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**Datasheet for the decision
of 26 January 2017**

Case Number: T 1543/14 - 3.2.03

Application Number: 08747621.4

Publication Number: 2150747

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H02G3/12

Language of the proceedings: EN

Title of invention:
LIGHTING FIXTURE

Applicant:
Cree, Inc.

Headword:

Relevant legal provisions:
EPC Art. 123(2)

Keyword:

Decisions cited:

Catchword:



Beschwerdekammern
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Case Number: T 1543/14 - 3.2.03

D E C I S I O N
of Technical Board of Appeal 3.2.03
of 26 January 2017

Appellant: Cree, Inc.
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted on 7 February 2014
refusing European patent application No.
08747621.4 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman G. Ashley
Members: Y. Jest
M.-B. Tardo-Dino

Summary of Facts and Submissions

I. On 27 March 2014 the appellant (applicant) lodged an appeal against the decision of the examining division to refuse European patent application No. 08747621.4 (based on international application No. PCT/US2008/062610 published with the International Publication No. WO 2008/137822).

By its decision dated 7 February 2014 the examining division refused the European patent application No. 08747621.4 on the grounds of lack of novelty (Articles 52(1) and 54(1), (2) EPC) of the subject-matter of claim 1 of the main request and of four auxiliary requests as compared to the state of the art disclosed in document US-A-2003/0006353 (D1).

II. By letter dated 13 June 2014 the appellant filed the grounds of appeal and requested the contested decision to be set aside and a patent granted on the basis of an amended set of claims according to a main request or subsidiary to one of four auxiliary requests.

III. In response to the board's communication pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal (RPBA) dated 28 September 2016, the appellant submitted a revised set of claims as the new main/single request dated 24 November 2016.

IV. The appellant submitted the following arguments *in extenso* in support of the amended set of claims filed with letter of 24 November 2016:

"The amended claims are based on the previously filed 4th Auxiliary Request.

Claim 1 has been limited to the feature that both the first and second rails are connected to the light emitting element mounting assembly.

Claim 1 has also been amended to replace the feature "the support element being configured such that..." with "the support element is spring biased, or the support element comprises a tensioning element, such that..." Support for this feature is found at least at page 7, lines 10 and 16 of the application as filed.

It is submitted that the amendments made to Claim 1 do not add matter and are in accordance with Article 123(2) EPC.

It is further submitted that Claim 1 as now amended in both novel and inventive over the cited prior art."

V. Claim 1 reads as follows:

"A lighting fixture comprising:
a light emitting element mounting assembly (11);
at least a first set of rails, said first set of rails comprising a first rail (17a) and a second rail (18a), said first rail and second rail connected to said light emitting element mounting assembly, at least one of said first rail and said second rail being slidable relative to said light emitting element mounting assembly, said first rail having a major dimension extending in a first direction, said second rail having a major dimension extending in a second direction, said first direction being substantially parallel to said second direction, said first rail being slidable relative to said second rail along said first direction, said first rail having a first profile and said second rail having a second profile, the first rail and the second rail being formed from the same extrusion such that said first profile comprises a

first male component and a first female component and said second profile comprises a second male component and a second female component, said first male component being positioned within said second female component, said second male component being positioned within said first female component, the lighting fixture further comprising at least one engagement element arranged to clamp said first and second rails to inhibit them from sliding relative to one another, and

characterized in that the engagement element comprises a support element (20), a first pad (19) and a second pad (19), said first pad being mounted on a first portion of said support element and being in contact with said first portion of said first rail, said second pad being mounted on a second portion of said support element and being in contact with said first portion of said second rail, and the support element is spring biased, or the support element comprises a tensioning element, such that said first pad exerts force on said first portion of said first rail and said second pad exerts force on said first portion of said second rail."

- VI. In a letter dated 23 January 2017, the appellant informed the board of his decision not to attend the oral proceedings scheduled to take place on 26 January 2017.
- VII. At the end of the oral proceedings hold on 26 January 2017 in absence of the appellant, the board pronounced its decision.

Reasons for the Decision

1. Claim 1 - Amendments - Article 123(2) EPC

1.1 Claim 1 is based on features of claims 1, 9, 10, 19 and 20 as originally filed and further comprises the following characterising features F1, F2 and F3:

F1: the support element is spring biased,

or [*emphasis added by the board*]

F2: the support element comprises a tensioning element,

F3: such that said first pad exerts force on said first portion of said first rail and said second pad exerts force on said first portion of said second rail.

1.2 Concerning the basis for the original disclosure of features F1 to F3, the appellant referred to page 7, lines 10 and 16 of the application as filed.

The full corresponding passage of the description, namely page 7, lines 10 to 18, reads:

"In some of such embodiments, the support element is spring biased such that the first pad exerts force on the first portion of the first rail and the second pad exerts force on the first portion of the second rail (and in some of such embodiments, the support element further comprises a tensioning element which can be tightened to increase the force exerted by the first pad on the first portion of the first rail and to increase the force exerted by the second pad on the first portion of the second rail). In others of such embodiments, the support element further comprises a tensioning element which can be tightened to cause the first pad to exert force on the first portion of the first rail and the second pad to exert force on the first portion of the second rail."

1.3 The board considers that this passage of the application as originally filed cannot support the claimed alternative ("or") between features F1 and F3 because of the following consideration.

1.3.1 The first sentence (lines 10 to 15) unambiguously describes a spring biased support element (feature F1) such that the pads can exert a force on portions of the rails. The purpose of the force exerted by the pads is defined in the first paragraph on page 26 of the originally filed description as creating a so-called "rail brake", impeding by friction the relative movement of the rails while allowing a provisional positioning of the light emitting element mounting assembly (feature F3).

In addition to being spring biased, the support element may then, according to the text, "further comprise" a tensioning element which provides an additional impediment to rail movement for maintaining the light emitting element mounting assembly in its final position.

The first sentence therefore does not support the disclosure of a tensioning element, which would replace the spring bias property of the support element and enable the pads to exert the force defined in feature F3 of claim 1.

1.3.2 The board considers that the second sentence (lines 15 to 18) referring to so-called "others of such embodiments" also discloses a tensioning element in combination with a spring biased support element because the adverb "further" is joined to the verb "comprises".

The alternative (F1 or F2) introduced in the characterising part of claim 1 is thus not supported by the passage cited by the appellant.

1.4 Other parts of the application as originally filed

The board itself considered all the remaining parts of the application which are relevant for deciding on the original disclosure of the claimed alternative between features F1 and F2.

1.4.1 The first sentence (lines 24 to 27) of the passage lines 24 to 30 of page 18 as originally filed confirms that the support element is spring biased. The second sentence of this passage (lines 27 to 30) starting with the adverb "Alternatively" could at first glance appear to define an embodiment in which the support element is no longer spring biased but comprised a tensioning element. When reading the whole sentence, the skilled person would however understand from the expression "the support element can further comprise a tensioning element" [*emphasize added by the board*], that the tensioning element, if present, is provided only in addition to the spring bias.

1.4.2 The embodiment of Fig. 14 is described at page 28, lines 11 to 14, as being similar to the one of Fig. 10, wherein the support element is spring biased (see page 27, lines 27 to 31) but having the particularity of including further a tensioning element. This passage therefore teaches the provision of a tensioning element not alone but in combination with a spring biased support element.

1.4.3 Another relevant source of information is to be found in the set of claims as originally filed.

Claim 21, which was dependent on claim 20 defining pads comprised by the support element, was characterised by the feature that the support element was spring biased so that the pads exerted a force on the rails. Claim 22 introduced the feature of a tensioning element and was solely dependent on claim 21.

Thus also in the set of originally filed claims, the presence of a tensioning element was disclosed not as alternative but as a further and optional development of the embodiment having a spring biased support element.

1.5 Conclusion

The board arrives at the conclusion, that the application as originally filed lacks a clear and unambiguous disclosure for the claimed alternative of features F1 and F2 and that claim 1 as filed with letter dated 24 November 2016 thus introduces fresh subject-matter contrary to Article 123(2) EPC.

2. The main/sole request does not meet the requirements of the EPC and is therefore refused.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



C. Spira

G. Ashley

Decision electronically authenticated