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**D E C I S I O N**  
**of 15 March 2000**

**Case Number:** T 0833/95 - 3.3.6

**Application Number:** 87103258.7

**Publication Number:** 0236986

**IPC:** G03C 7/26

**Language of the proceedings:** EN

**Title of invention:**

Processing method of light-sensitive silver halide  
photographic material having good color reproducibility and  
whiteness

**Patentee:**

KONICA CORPORATION

**Opponent:**

Fuji Photo Film Co., Ltd.

**Headword:**

Reflective support/KONICA

**Relevant legal provisions:**

EPC Art. 54(2)(3), 84, 123  
EPC R. 88

**Keyword:**

"Novelty (yes) - no evidence to the contrary"  
"Inventive step (yes) - no reason to deviate from the  
conclusion of the opposition division"

**Decisions cited:**

-

**Catchword:**

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Chambres de recours

Case Number: T 0833/95 - 3.3.6

**D E C I S I O N**  
of the Technical Board of Appeal 3.3.6  
of 15 March 2000

**Appellant:**  
(Opponent)

Fuji Photo Film Co., Ltd.  
Minamiashigara  
Kanagawaken, 250-01 (JP)

**Representative:**

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**Respondent:**  
(Proprietor of the patent)

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**Representative:**

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**Decision under appeal:**

Interlocutory decision of the Opposition Division  
of the European Patent Office posted 10 August  
1995 concerning maintenance of European patent  
No. 0 236 986 in amended form.

**Composition of the Board:**

**Chairman:** P. Krasa  
**Members:** G. N. C. Raths  
C. Rennie-Smith

## Summary of Facts and Submissions

I. This appeal lies from the Opposition Division's decision maintaining European patent No. 0 236 986 in amended form. In a notice of opposition, based on lack of novelty, the following documents had been submitted, inter alia:

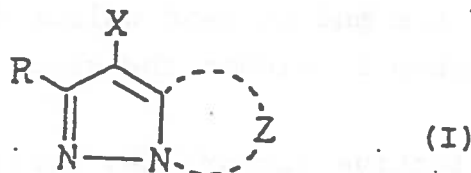
(1) EP-A-0 217 353,

(2) EP-A-0 170 164 and

(3) EP-A-0 161 577.

II. Claim 1 of the patent as maintained by the Opposition Division read:

"1. A processing method for a light-sensitive silver halide photographic material in which a light-sensitive silver halide photographic material having at least one silver halide emulsion layer on a reflective support is image-wise exposed and colour developed and then immediately bleach-fixed without effecting a water washing step, characterized in that 1) a magenta coupler represented by the following formula (I) is contained in at least one of the silver halide emulsion layers,



wherein Z represents a group of non-metallic atoms necessary for forming a nitrogen-containing heterocyclic ring which may have a substituent; X represents a hydrogen atom or a substituent eliminatable through

the reaction with the oxidized product of a colour developing agent; and R represents a hydrogen atom or a substituent,

2) the total gelatin amount contained in the silver halide emulsion layer containing said magenta coupler and a photographic constituent layer more distant to said layer viewed from the reflective support is 5.0 g/m<sup>2</sup> to 15.0 g/m<sup>2</sup>, and

3) a swelling degree (ratio of a film thickness (µm) of a light-sensitive silver halide photographic material at the terminating point of the colour development processing step and a film thickness (µm) of the light-sensitive silver halide photographic material before the colour development processing step and indicated by the following equation:

Film thickness (µm) of a light-sensitive silver halide photographic material at the terminating point of the colour development processing step

Swelling degree = -----

Film thickness (µm) of a light-sensitive silver halide photographic material before the colour development processing step)

of the light sensitive silver halide photographic material at the end of said colour development processing step is within the range of 220 to 350 %, and

4) said reflective support has surface reflective characteristics of  $L \geq 88$ ,  $-1.0 \leq a \leq 1.5$  and  $-5.0 \leq b \leq -2.0$  when the values are measured by a method prescribed in JIS-Z-8722-82 and indicated by a method prescribed in JIS-Z-8730-80."

III. In its decision, the Opposition Division found that the subject-matter of the claims as maintained was novel in view of documents (1) to (5) and inventive in view of documents (2) to (4).

IV. The Appellant (Opponent), restricting his arguments to objections under Article 54 EPC, argued in essence

- that in example 17 of document (1) a hardening agent, although not explicitly disclosed, was used and that, therefore, the claimed swelling degree was implicitly disclosed;

in support of his arguments he filed experimental data and document

- (6) D.M. Burness and J. Pouradier, The hardening of gelatin and emulsions, in The Theory of the Photographic Process, fourth edition, Macmillan Publishing Co., Inc., New York, 1966, pages 77 and 78;

he also submitted that documents (2) and (3) mentioned the use of a gelatin hardening agent and thus implicitly disclosed photographic material exhibiting the same swelling degree as that given in Claim 1 of the patent in suit.

He further argued

- that in Example 20 of document (1) a paper support having a polyethylene coating on both surfaces thereof was used which contained  $TiO_2$  and ultramarine blue and had the same reflectivity properties as given in Claim 1 of the patent in suit; he alleged that such a support was on the market at the priority date of the patent in suit;

he also referred to documents (2) and (3) and argued

- that these documents disclosed reflective supports being available on the market and having the same reflective characteristics as those of the support as defined in Claim 1 of the patent in suit.

V. The Respondent argued

- that even if the silver halide photographic materials disclosed in the citations contained a hardening agent in an amount of 5 to 50 mg/g of gelatin, their swelling degree was not necessarily between 220 to 350% since other factors than the amount of the hardening agent also affected the swelling degree, for example the type of hardening agent and the processing conditions.

VI. Oral proceedings took place on 15 March 2000.

The Appellant requested that the patent be revoked; the Respondent requested that the appeal be dismissed.

At the end of the oral proceedings the Chairman announced the decision.

## **Reasons for the Decision**

### *1. Amendments (Articles 84 and 123 EPC)*

Claim 1 as maintained by the Opposition Division differs from Claim 1 as originally filed by the incorporation of both the definition of the swelling degree and of the subject-matter of Claim 2 as granted relating to the reflective characteristics of the reflective support; these amendments are supported by

page 117, lines 11 to 25 of the description and by Claim 2 of the application as originally filed. The term "after" (page 117, line 24 as originally filed) in the definition of the swelling degree had already been changed to "before" as a self-evident correction (see "before" on page 117, line 15 as originally filed) under Rule 88 EPC during the examining procedure (annex to letter of 3 September 1992).

The Board noted that the definition of the swelling degree results in a film thickness ratio which can however be easily recalculated by a skilled person to produce the percentages indicated in Claim 1.

Consequently, the Board is satisfied that the claims in the form maintained by the Opposition Division meet the requirements of Articles 84 and 123 EPC; no objections have been raised by the Appellant in this connection.

## 2. Novelty

2.1 Claim 1 of the patent in suit is directed to a process for a light-sensitive silver halide photographic material which is characterized by a number of features, inter alia by a light sensitive silver halide photographic material having a swelling degree of 220 to 350 % and a reflective support having surface reflective characteristics of  $L \geq 88$ ,  $-1.0 \leq a \leq 1.5$  and  $-5.0 \leq b \leq -2.0$ .

2.2 Document (1), which forms part of the state of the art by virtue of Article 54 (3) EPC, does not disclose the surface reflective characteristics of the paper support used in the preparation of the respective silver halide colour photographic material. It is only stated that the paper support has on both surfaces a polyethylene coating (e.g. example 15, column 276, lines 53 to 56;

example 17, column 304, lines 41 to 44) which, in example 20, contains TiO<sub>2</sub> and ultramarine blue on the emulsion layer carrying side (column 333, lines 16 to 23).

- 2.3 The Appellant submitted that the paper support of example 20 of document (1) was the same as Fuji colour paper type 01 which was available on the market at the priority date of the patent in suit. The Respondent contested this submission. In the absence of any evidence by the Appellant to support its submission, and in particular that the support displayed the surface reflective characteristics as defined in Claim 1 and was actually used in example 20 of document (1), the Board dismisses this submission as a mere unsubstantiated allegation. For this reason alone, the disclosure of document (1) does not anticipate the subject-matter of Claim 1.

The same considerations apply with respect to documents (2) and (3) which form part of the state of the art according to Article 54 (1), (2) EPC; these two documents are also silent on the surface reflective characteristics of a support.

- 2.4 Moreover, none of the citations (1), (2) and (3) discloses a swelling degree.
- 2.5 For these reasons the Board concludes that the subject-matter of Claim 1 and of dependent Claims 2 to 6 is novel.

### 3. *Inventive step*

The Opposition Division found that the subject-matter of Claims 1 to 6 as maintained after the opposition procedure involved an inventive step. The Board has no reason to differ with this conclusion of the Opposition



Division. Since the objection of lack of inventive step was not maintained by the Appellant in the appeal proceedings, no detailed reasons are required.

**Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:



G. Rauh

The Chairman:



P. Krasa

