
Notice of opposition

A1 is opposed in its English version

(IX) Evidence presented

A2 English

A3 English

A4 German

A5 French

Report of lecture held in US on 10th June 1994 (report published August 1994)

(VII) Facts and Arguments

Claim 1 priority date 19.07.93

Claim 1 lacks novelty according to Article 54(2) because all the features of claim 1 are disclosed in document A2 published on 26.06.89.

A2 discloses a floppy disc comprising a cover jacket enclosing a magnetic recording disc (claim 1 (a)) and a cleaning sheet interposed between the cover jacket and the magnetic recording disc (claim 1 (e)) wherein the cover jacket and the cleaning sheet present central windows (Fig. 1 and line 28) and elongated apertures (Fig. 1 and line 28) and said cleaning sheet is attached to the cover jacket by welded portions (line 19) the welded portions comprising a plurality of spot welds formed around the periphery of said central windows and said elongated apertures.

Claim 1 lacks novelty according to Article 54(3) because all of the features are disclosed in document A4 which has a priority date of 20.05.92 and was published on 18.11.93. If the European national phase was entered correctly (translation if required and national fees paid Article 158(1) and (2) EPC) the A4 will form prior art under Article 54(3) for the commonly designated states ie CH, DE, FR, GB, LU. A4 discloses a floppy disc comprising a cover jacket enclosing a magnetic recording disc (claim 1) and a cleaning sheet interposed between the cover jacket and the magnetic recording disc (claim 1) wherein the cover jacket and the cleaning sheet present central windows (6) and elongate apertures (7) and said cleaning sheet is attached to the cover jacket by welded portions (line 27) said welded portions comprising a plurality of spot welds formed around the periphery of said central windows and said central apertures (claim 1, line 27, Fig. 1).

Claim 2 priority date 11.07.94

Claim 2 lacks novelty in view of Article 54(2) because all the features of claim 2 were disclosed orally at a public lecture in the US held on 10.06.94.

Claim 2 lacks inventive step in view of Article 56 over a combination of A4 (published 18.11.93) and A3 (published 30.01.90).

A4 discloses all the features of claim 1 as described previously, the only difference is that further second welded portions are provided adjacent indexing windows in an area upstream of said indexing windows with respect to disc rotation. Thus the objective problem solved by this extra feature is that cleaning sheet fibres will not come off in the region of the indexing window during use. A3 coming from the same technical field as A4 discloses the feature (page 36 lines 35 and 36) although the weld surrounds the index hole it is quite clearly upstream of the disc rotation. It is not stated in A3 whether the weld comprises one portion or portion(s) as required for claim 2 but such a modification is simply a selection from possible techniques known to one skilled in the art.

Similarly A2 published (26.06.89) discloses all the features of claim 1 so the feature of claim 2 solves the same objective problem as before. A2 says it is preferable not to have welded portions around the indexing hole windows but clearly the technique of A3 which comes from the same technical field as A2 does not have the problem described in A2 so there is no reason not to add this feature.

Claim 3 when dependent on claim 1
priority date 19.07.93

Claim 3 is not inventive in view of Article 56. A2 discloses all the features of claim 1, the difference between claim 3 and claim 1 is the feature of a plurality of continuous welds. The problem solved by this feature is the problem of firmly attaching the cleaning sheet to the cover jacket. This feature is acknowledged as being well known in the art according to A1 page 21 line 10 for solving the same problem. Therefore it is not inventive to add this known feature to the known features of claim 1

∴ Claim 3 when dependent on claim 1 is not inventive.

Claim 3 when dependent on claim 2
priority date 11.07.94

Claim 3 when dependent on claim 2 lacks novelty in view of Article 54(2) because all of the features were disclosed in a public lecture held on 10.06.94.

Claim 3 when dependent on claim 2 is not inventive for the same reason as it is not inventive when dependent on claim 1 ie in view of A2 + common general knowledge and A2 + A3 OR A4 + common general knowledge and A4 + A3. Claim 3 and claim 2 solve different problems so adding 2 non-inventive features to a known claim does not provide an inventive claim.

Claim 4 priority date 20.01.94

Claim 4 lacks novelty in view of Article 54(2) because of a sale of cleaning sheet having all the features of claim 4 in September 1993 prior to the priority date of claim 4. See attached sworn statement.

The sale was of a cleaning sheet comprising a non-woven fabric (last paragraph first line) containing thermoplastic and non-thermoplastic fibres (lines 35 and 36) wherein said non-woven fabric has thermocompression-bonded parts and the non-woven fabric being provided with a water soluble binding resin (line 36).

It is not relevant that the fabric may not have been used in floppy disc covers. To anticipate the claim it simply needs to be suitable for that purpose.

Claim 4 is not inventive in view of Article 56 with reference to A4 (published 20.05.92). A4 discloses a cleaning sheet comprising non-woven fabric comprising thermoplastic and non-thermoplastic fibres (claim 2) wherein said non-woven fabric has thermocompression parts (claim 2) and the non-woven fabric is provided with an organically soluble binding resin (page 40 line 36). However A1 states that a water soluble resin is conventional and a well known equivalent to an organic solvent (page 22 lines 42-43) so such a difference cannot provide an inventive step.

Claim 5 priority date 20.01.94.

Claim 5 lacks novelty according to Article 54(2) because it is dependent on claim 4 which lacks novelty and because the added feature of claim 5 wherein the proportion of resin is 6-8% by weight was also disclosed by prior use from September 1993 onwards (see A5). The selected sub-range is not narrow compared to the disclosed sub-range and is not far removed from the preferred sub-range and does not show a surprising or different technical effect

⇒ the selection of 6-8% is not novel over a known range of (4-10%) see decision T 279/89.

Claim 5 is not inventive in terms of Article 56 because it is dependent on claim 4 which is not inventive in view of A4. Therefore as A4 discloses the additional feature of claim 5 proportion of resin is 6-8% by weight. A4 discloses 7% by weight ∴ as the specific discloses the generic this feature is disclosed in A4. Therefore claim 5 is not inventive over A4 for the same reason that claim 4 is not inventive over A4.

Claim 6 priority date 20.01.94

Claim 6 is dependent on claim 5 which is not inventive over the disclosure in A4. A4 also discloses the additional feature of claim 6 in that the non-woven fabric is squeezed before drying (see lines 35-39 page 40). Therefore claim 6 is not inventive because the only feature of claim 6 not disclosed in A4 is that of a water soluble resin which A1 acknowledges as being a well known equivalent to a resin soluble in organic solvents.

Claim 7 priority date 11.07.94

Claim 7 is not novel in view of Article 54(2) because all of the features of claim 7 were disclosed at a public lecture held in the US on 10.06.94.

Claim 7 is not inventive with regard to Article 56 as A4 discloses all the features of claim 1 and also of claim 4 except for the use of a resin soluble in organic solvent rather than water
∴ Claim 7 lacks inventive step in view of A4 for the same reasons that claims 4, 5 and 6 lack inventive step in view of A4.

Claim 8 priority date 11.07.94

Claim 8 is not patentable in view of Article 52(2) and (3). Claim 8 is dependent on claim 1 which is not novel. The feature of claim 8 relates to unpatentable subject-matter under Article 52(2) as it is an aesthetic creation (see T 119/88). An invention must have an inventive step in a field not excluded by Article 52(2) (see T 65/86). Therefore claim 8 is not patentable.

Dear Mr Matuvu,

I have filed an opposition to the patent A1 as requested contesting all claims. The priority right of multiply claimed priorities is governed by Article 88(3) EPC which dictates that the right of priority covers only those elements of a European patent application which are included in the application whose priority is claimed.

Therefore claim 1 has priority of 19.07.99 claim 2 is entitled to the date of filing 11.07.94, claim 3 is entitled to the priority date of 19.07.93 when dependent on claim 1 but only to the date of filing 11.07.94 when dependent on claim 2. Claims 4-6 are entitled to the priority date of 20.01.94 but as claim 7 was the first disclosure of the combination of features in claims 1 and 4 it is only entitled to the filing date of 11.07.94. Claim 8 is entitled to the filing date 11.07.94.

A4 was published on 18.11.93 so it can be used as prior art against all claims having a priority date later than that (ie claims 4, 5, 6, 7, 8, 2 and 3 when dependent on 2).

If the national phase is entered properly (ie fees paid translations made as necessary) it will form 54(3) prior art for states designated in common with A1.

Once something has been sold unless there is an obligation of secrecy then the structure and composition is deemed to be known (T 482/89). The degree of burden involved in analysing a prior sold product is in principle irrelevant to the determination of what constitutes the state of the art (T 952/92).

The material only needs to be suitable for the use to destroy the novelty of claim 1. According to T 472/92, in those public prior use cases where practically all of the evidence in support of the public prior use lies within the power and knowledge of the opponent he has to prove his case up to the hilt (this will be the case in this case). Unless there was an obligation of confidence on Mr Tsujitu then his oral disclosure is prior art. If an oral disclosure is followed by a written disclosure then the date of the oral disclosure applies. The written disclosure is assumed to represent the oral presentation except where proven to the contrary. As you said the disclosure disclosed all features of claim 3, I had assumed that the disclosure disclosed the features of claim 2 as well as claim 3 is optionally dependent on claim 2.

If there was an obligation of confidence on Mr Tsujitu then Article 55(1) applies and we cannot use the disclosure because the application was filed less than six months later.

Yours sincerely,

A. Gaspi



Notice of Opposition to a European Patent

To the
European Patent Office

Tabulation marks

		for EPO use only	
I. Patent opposed		Opp. No.	OPPO (1)
Patent No.		0 788 670 B1	
Application No.		94300322.8	
Date of mention of the grant in the European Patent Bulletin (Art. 97(4), 99(1) EPC)		8.7.1998	
Title of the invention: FLOPPY DISC			
II. Proprietor of the Patent first named in the patent specification SONITACHI CORP.			
Opponent's or representative's reference (max. 15 spaces)		OREF	
III. Opponent			
Name	SAKAI S.A.		
Address	140 avenue du Pôle Nord F - 54260 Longwy		
State of residence or of principal place of business	FRANCE		
Telephone/Telex/Fax			
Multiple opponents	☐ further opponents see additional sheet		
IV. Authorisation			
1. Representative (Name only one representative to whom notification is to be made)	OPPO (9)		
Name	A. Gaspi		
Address of place of business	2 impasse des Fabriques F - 57020 METZ		
Telephone/Telex/Fax			
Additional representative(s)	☐ (on additional sheet/see authorisation)		OPPO (5)
2. Employee(s) of the opponent authorised for these opposition proceedings under Art. 133(3) EPC	Name(s):		
Authorisation(s)	☒ not considered necessary		
To 1./2.	☐ has/have been registered under No.		
	☐ is/are enclosed		

V. Opposition is filed against

— the patent as a whole



— claim(s) No(s).

VI. Grounds for opposition:**Opposition is based on the following grounds:**

(a) the subject-matter of the European patent opposed is not patentable (Art. 100(a) EPC) because:

— it is not new (Art. 52(1); 54 EPC)



— it does not involve an inventive step (Art. 52(1); 56 EPC)



— patentability is excluded on other grounds, i. e.

Art. 52 (2)



(b) the patent opposed does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art (Art. 100(b) EPC; see Art. 83 EPC).



(c) the subject-matter of the patent opposed extends beyond the content of the application/ of the earlier application as filed (Art. 100(c) EPC, see Art. 123(2) EPC).

**VII. Facts and arguments**

(Rule 55(c) EPC)

presented in support of the opposition are submitted herewith on a separate sheet (annex 1)

**VIII. Other requests:**

If the request of the opponent cannot be allowed oral proceedings are requested

IX. Evidence presented

Enclosed = ☐

will be filed at a later date = ☐

Publication
date

A. Publications:

1

Particular relevance (page, column, line, fig.):

2

Particular relevance (page, column, line, fig.):

3

Particular relevance (page, column, line, fig.):

4

Particular relevance (page, column, line, fig.):

5

Particular relevance (page, column, line, fig.):

6

Particular relevance (page, column, line, fig.):

7

Particular relevance (page, column, line, fig.):

Continued on additional sheet ☐

B. Other evidence

Continued on additional sheet ☐

X. Payment of the opposition fee is made☒ as indicated in the enclosed voucher for payment of fees and costs (EPO Form 1010)☐**XI. List of documents**Enclosure
No.

No. of copies

- | | | |
|----|--|---|
| 0 | ☒ Form for notice of opposition | <input type="text" value="2"/> (min. 2) |
| 1 | ☒ Facts and arguments (see VII.) | <input type="text" value="2"/> (min. 2) |
| 2 | Copies of documents presented as evidence (see IX.) | |
| 2a | ☒ — Publications | <input type="text" value="2"/> (min. 2 of each) |
| 2b | ☐ — Other documents | <input type="text"/> (min. 2 of each) |
| 3 | ☐ Signed authorisation(s) (see IV.) | <input type="text"/> |
| 4 | ☒ Voucher for payment of fees and costs (see X.) | <input type="text" value="1"/> |
| 5 | ☐ Cheque | <input type="text"/> |
| 6 | ☐ Additional sheet(s) | <input type="text"/> (min. 2 of each) |
| 7 | ☒ Other (please specify here): | <input type="text"/> |

form for acknowledgement of receipt

**XII. Signature
of opponent or representative**Place **Metz**Date **26.3.99****A. Gaspi**

Please type name under signature. In the case of legal persons, the position which the person signing holds within the company should also be typed.