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Date
06-09-2013

Reference 1394870-eb/cs	OPPO 02	Application No./Patent No. 03025325.6 - 1354 / 1394870
Applicant/Proprietor THE TRUSTEES OF PRINCETON UNIVERSITY, et al		

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Reference UF-15986	OPPO 04	Application No./Patent No. 03025325.6 - 1354 / 1394870
Applicant/Proprietor THE TRUSTEES OF PRINCETON UNIVERSITY, et al		

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Date

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Reference TA19972	OPPO 03	Application No./Patent No. 03025325.6 - 1354 / 1394870
Applicant/Proprietor THE TRUSTEES OF PRINCETON UNIVERSITY, et al		

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Date	06-09-2013
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Reference P8315 / KK /NH	Application No./Patent No. 03025325.6 - 1354 / 1394870
Applicant/Proprietor THE TRUSTEES OF PRINCETON UNIVERSITY, et al	

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Reference P2007,0143EP01	OPPO 05	Application No./Patent No. 03025325.6 - 1354 / 1394870
Applicant/Proprietor THE TRUSTEES OF PRINCETON UNIVERSITY, et al		

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Reference 2010C05081	OPPO 01	Application No./Patent No. 03025325.6 - 1354 / 1394870
Applicant/Proprietor THE TRUSTEES OF PRINCETON UNIVERSITY, et al		

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Introduction

- 1 This communication contains the provisional preliminary opinion of the Opposition Division.
- 2 In accordance with the parties' requests, oral proceedings are arranged (Art. 116 EPC).

Summary of facts and Submissions

- 3 European patent no. EP 1 394 870 B (date of publication and mention of the grant of the patent: 22.07.2009 Bulletin 2009/30) is based upon European patent application no. 03025325.6. The filing date is 08.10.1998 and 8 priority dates are claimed: 09.10.1997(US948130 = P1), 03.11.1997 (US64005 P = P2), 05.11.1997 (US964863 = P3), 01.12.1997 (US980986 = P4), 01.04.1998 (US53030 = P5), 03.04.1998 (US53707 = P6), 10.04.1998 (US58305 = P7) and 14.09.1998 (US 152960 = P8). The European patent application no. 03025325.6 is a divisional application of the European patent application no. 98953300.5, which stems from the International application PCT/US98/21171 (published as WO99/20081 A2).

The title of the patent is: "Phosphorescent organic light emitting device".

- 4 The Proprietors are:

The Trustees of Princeton University
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The University of Southern California
Los Angeles
California 90089 (US)

5 An opposition was filed on 16.04.2010 by:

Osram GmbH
Hellabrunner Str. 1
81543 München (DE)

hereafter referred to as OP1.

6 A further opposition was filed on 20.04.2010 by:

Merck Patent GmbH
Postfach
D-64271 Darmstadt (DE)

hereafter referred to as OP2.

7 A further opposition was filed on 20.04.2010 by:

Koninklijke Philips Electronics N.V.
High Tech Campus
5656 AE Eindhoven (NL)

hereafter referred to as OP3.

8 A further opposition was filed on 20.04.2010 by:

BASF (SE)
67056 Ludwigshafen (DE)

hereafter referred to as OP4.

9 A further opposition was filed on 21.04.2010 by:

Siemens AG
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hereafter referred to as OP5.

10 Note: As certain documents have been cited by more than one opponent, it is intended to use the numbering provided by the proprietors (see annex).

11 OP1 requests revocation of the patent in its entirety and in doing so refers to Articles 100(a), (b) and (c) EPC.

In the letter accompanying the notice of opposition, OP1 argues that none of the priority dates claimed are valid and that the filing date of 08.10.1998 should be considered to be the valid date for comparison with the prior art. In particular, OP1 argues that P4 may describe the transfer of energy from the emitting layer to the phosphorescent dopant, but only for PtOEP in Alq3, and that a general disclosure of phosphorescent dopant capable of receiving exciton triplet energy from a charge carrying material is not disclosed. OP1 further argues that the disclosure of P8 is also more specific than the subject-matter covered by claim 1 of the patent in suit, because in P8 phosphorescent dopants, which are porphyrin molecules with reduced symmetry for producing a saturated red emission are disclosed.

Furthermore, OP1 argues that the subject-matter of claims 1, 2, 4 and 5 lack novelty (Art. 100(a) EPC) and in doing so refers to E02 (p.5, l.11-p.6, l.7; p.6, l.19-24; p.9, l.12-p.10, l.10), E06 (figs. 2 & 3, col.5, l.34 - col. 6, l.8; col. 4, l. 1-5; col.13, l.65-68 and with reference to E38: col.1, l.65 - col.2, l. 26) and E05 (p. 3, l. 30-50; p. 18, l.21-23; p.18, l.39-44). Note: E02 may be an Art.54(2) or an Art. 54(3) document - depending on the validity of the priority.

In addition, OP1 argues the subject-matter of claim 3 lacks the involvement of an inventive step (Art. 100(a) EPC) over E18 (p. 2 & p.10) in combination with E02 or E06.

OP1 also argues that there is insufficiency of disclosure over the whole breadth of claim 1, because the Patent in Suit only contains one example of a charge carrying layer plus dopant, i.e. Alq₃ with PtOEP.

Moreover, OP1 argues that claim 1 does not fulfil the requirements Article 100 (c) EPC and in doing so, refers to p. 54, l.28 - p.67,l.4; p. 54, l.28-30, p.56,l. 4-13; p.57, l.25; p.60, l.22-28 of the parent application (WO99/20081). OP1 essentially argues that in the description the emission from a triplet state and energy transfer from the charge carrier layer are both only disclosed in connection with a sufficiently rapid phosphorescent decay rate. Furthermore, the energy transfer from Alq₃ to PtOEP is only described in connection with the emission of phosphorescence in a narrow emission band of a saturated colour.

The bibliographic data of the documents relied on by OP1 can be found the annex.

- 12 OP2 requests revocation of the patent in its entirety and in doing so refers to Articles 100(a), (b) and (c) EPC.

In the letter accompanying the notice of opposition, OP2 argues that the following features of claim 1 do not have a basis in the parent application (WO99/20081):

- 1) "wherein the emissive layer is a charge carrying layer";
- 2) "wherein the phosphorescent dopant compound is capable of capturing the exciton triplet energy from the charge carrying material"

3) "phosphorescent radiation from a triplet molecular excited state"

With regard to feature 1), OP2 argues that there is no general disclosure that the emitting layer is a charge carrying layer. With regard to feature 2), OP2 argues that this feature is only disclosed in connection with a narrow emission band and a saturated colour (p. 60, l. 25-28). With regard to feature 3), OP2 argues that there is no basis for the phosphorescent radiation being from a triplet **molecular** state.

OP2 raises objections under Art.100(b) EPC - in connection with the meaning/ interpretation of the following terms: "charge carrying layer", "the phosphorescent dopant compound is capable of capturing the exciton triplet energy from the charge carrying material" and "phosphorescent radiation from a triplet molecular excited state". OP2 also argues that the disclosure is not sufficient over the whole scope of claim 1 (and claims 4 & 5) and in doing so cites T435/91 & T694/92.

With regard to novelty, OP2 cites E07(col.25, l.36 - col.26, l.54; col.26, l. 5-6; col. 26, l.10-14; fig. 1; col.6, l. 8-16; col.1, l. 15-16) against claims 1 and 4, E08 (paragraphs 0008, 0014 & 0015) & its translation E08a (p.4, first para.; p. 6, penultimate para.; p. 6, last para. - with reference also to E21 & E22) against claims 1 & 2, E04 (p. 20, l. 15 - p.21, l.15, fig. 10, claim 21; p.22, l.25- p.23, l.10; p.23, l.15 with reference also to E23) against claims 1, 4 and 5, E09 (abstract, fig. 1; p.15, Introduction) & E03 (abstract, fig.1; p.224, first col., l. 3-6) against claims 1 & 4, E10 (p.445-446, fourth para.; p.437, first sentence of the introduction; p. 439, fig.1; p.437, second sentence of the introduction) against claims 1 & 4, and, as Art. 54(3) document, E02 (claim 1; p.5, l. 11-13; claims 3-11) against claims 1, 2, 4 and 5.

Various combinations of documents are cited by OP2 with regard to the issue of inventiveness: E14 with E20 or general knowledge in the art and E19 with E20. With regard to the use of a dopant in a charge carrying layer, OP2 refers to E24 & E25.

The bibliographic data of the documents relied on by OP2 can be found the annex.

- 13 OP3 effectively requests revocation of the patent in its entirety and in doing so refers to Article 100(a) EPC.

In the letter accompanying the notice of opposition, OP3 argues that claims 1, 4 and 5 lack novelty over E01 (col. 2, l. 27-51; col.3, l.12-19 & 40-48; col.2, l.66 - col.3, l.2; col. 6, l.41-49; col.1, l.50-60, col. 5, l.14-26, col. 8, l. 62 - col. 9, l.10 & l.20-56 - with reference to E40, E41 & E42) and E03 (p.224-226; figs. 1 & 3 - with reference to E43 & E44).

Various combinations of documents are cited by OP3 with regard to the issue of inventiveness: E39 with E01 (against claim 1), E01 with E18 (against cls.2 & 3) and E01 with E10 (against claim 5).

The bibliographic data of the documents relied on by OP3 can be found the annex.

- 14 OP4 requests revocation of the patent in its entirety and in doing so refers to Articles 100(a), (b) and (c) EPC.

In the letter accompanying the notice of opposition, OP4 argues that the claims 1-5 do not fulfil the requirements of Article 100(c) EPC, because the devices according to the claims of the parent application (WO99/20081) require the cathode includes an electrically conducting non-metallic layer.

With regard to Art. 100(b) EPC, OP4 argue that the disclosure is not sufficient over the whole breadth of claim 1 and in doing so refers to T727/95 and E33.

OP4 argues that US08/980,986 (01.12.1997) is not the valid priority for claims 1-5, because of different definitions of the term "single heterostructure". Thus, the filing date (08.10.1998) should be taken as the relevant date for considering the prior art and thus, E15 (available online 05.10.1998) would become relevant prior art. OP4 also mentions that there are embodiments in

the description, which would be accorded a later priority date than 01.12.1997, for example, the compounds of formula E-II and E-III are first mentioned in US09/152960 (14.09.1998).

With regard to novelty, OP4 cites E16 (p. 1267, left hand col., second para. & fig 1 - with reference also to E21 & E28) against claim 1, E17 against claim 1, E01 (col.2, l. 53-60, examples 1 & 2, col. 8, l. 44) against claims 1, 4 and 5, E03 (fig. 1, p.225, right hand col., 1st and 2nd para., figs. 2-4) against claim 1, E14 (p. 2597, 2nd col., 2nd para., fig. 6) against claim 1, E02 (Art. 54(3) document) against claims 1, 2, 4 and 5, E11 (fig. 1, p. 1268) against claim 1, E12 against claim 1, E13 against claim 1, E15 (fig. 1, p. 246, 1st col., 3rd para., figs. 3 & 5, p. 248, left col., 2nd para.) which is an Art. 54(2) document-provided the priorities are not valid, against claim 1, E04 (fig. 2A, p.7, l.23 - p. 9, l.18, p.23, l. 18-23 with reference to E22, E23 and E32) against claims 1, 4 and 5.

With regard to inventive step, various combinations of documents are cited by OP4: E04 with E32 and E03 with E30. In doing so, OP4 also refers to E21, E14, E03, E29 & E31.

The bibliographic data of the documents relied on by OP4 can be found the annex.

- 15 OP5 requests revocation of the patent in its entirety and in doing so refers to Articles 100(a), (b) and (c) EPC.

With the letter accompanying the notice of opposition, OP5 argues that the claims do not fulfil the requirements of Art. 100(c) EPC. In doing so, OP5 points out that the description of the parent application is composed of various different sections, which arise from the 8 priority documents claimed, which deal with different embodiments. OP5 essentially argues that features have been combined to form claim 1, which were not disclosed together in the same context. OP5 argues that phosphorescent dopants are disclosed, if at all, only together with phosphorescence lifetimes of not longer than 10 μ s, that the feature of a phosphorescent dopant in a charge carrying material is disclosed only for the special case of PtOEP in Alq₃, that a charge carrying material in which exciton triplet energy is produced is not disclosed, that a

single or double heterostructure is not disclosed in the context of OLEDs, which contain a phosphorescent dopant in the emission layer, and that the combination of a single or double heterostructure with an emissive layer, which is a charge carrying layer is not disclosed.

With regard to Art. 100(b) EPC, OP5 essentially argues the specification does not provide sufficient information for a person skilled in the art to be able to select a suitable phosphorescent dopant and a suitable charge carrying layer and in doing so refers to T409/91. The examples use only PtOEP and Alq₃, whereby it is not known, whether triplet excitons are produced in Alq₃. The sequence of layers in example D (p. 92 of the parent application) is not a double heterostructure as defined in the Patent in Suit - no separate emissive layer. Furthermore, no methods of measurement for determining suitable dopants and charge carrying layers are described in the specification. Thus, search for suitable dopants and charge carrying layers represents an undue burden for a person skilled in the art.

With regard to novelty, OP5 cites E05 (p.2, l. 39-42, p.2, l.49 - p.3, l. 9, p. 18, l.21-23, p.18, l. 42-44, p.18, l.25-28, figs.1 & 11, p.5, l. 2-25, p.11, l.56 - p.12, l. 17) and E01 (col. 2, l. 23-51, col. 2, l. 53-60, col.2, l. 66- col. 3, l.1, col. 8, l. 48-61, col. 9, l.1-7) against claim 1.

With regard to inventive step, various combinations of documents are cited by OP5: E05 with E45, E05 with E46, E06 with E45, E06 with E46, E01 with the general knowledge of a person skilled in the art .

The bibliographic data of the documents relied on by OP5 can be found the annex.

16 The proprietors requested in their letter dated 10.12.2010 rejection of the opposition, i.e. maintenance of the patent as granted.

The proprietors provided their counter arguments with regard to the objections raised under Article 100(a), (b) and (c) EPC. Furthermore, the proprietors argue that the document P4 serves as the valid priority document for the patent in suit (date: 01.12.1997).

Preliminary Provisional Opinion of the Opposition Division

- 17 With regard to assessing whether the requirements of Article 100(c) EPC have been fulfilled or not, it is noted the claims are not based on the originally filed claims of the parent application, but if there is a valid basis, it comes from the description of the parent application, which appears to be identical to the description of 03 025 325.6 upon which the patent in suit is based. Thus, the assessment of whether the claims as granted have a valid basis is based only on a comparison of the wording of claim 1 of the patent in suit with the originally filed description of the parent application: WO99/20081).

Claim 1 of the patent in suit, as granted, is worded as follows:

"A single or double heterostructure OLED comprising an emissive layer, wherein the emissive layer is a charge carrying layer further comprising a phosphorescent dopant compound that emits phosphorescent radiation from a triplet molecular excited state when a voltage is applied across the OLED, wherein the phosphorescent dopant compound is capable of capturing the exciton triplet energy from the charge carrying material."

The description of WO99/20081 encompasses various different embodiments, so that the passages dealing with OLEDs comprising phosphorescent compounds are distributed throughout the description.

On page 1, lines 13 and 14, it is stated that the invention concerns OLEDs comprising an emissive layer containing a phosphorescent dopant compound. According to p.18, l. 28-30, the invention is further directed to OLEDs that may also be comprised of a material that is capable of receiving energy from a singlet or triplet exciton state and emitting that energy as phosphorescent energy. On page 56, l.4-9, it is stated that a second advantage that is offered by selecting a phosphorescent compound is that the emission of such a molecule comes from the triplet state and that a molecule that is capable of being excited to a triplet state provides the possibility of having the energy transferred from the non-emissive exciton triplet state to a triplet state that is capable of emitting this energy as phosphorescent radiation. Moreover,

according to p.60, l. 22-28, the phosphorescent compounds may also be selected according to their ability to effectively capture the exciton triplet energy from a charge carrier material.

Thus, there appears there may be a basis for an OLED comprising an emissive layer containing a phosphorescent dopant compound that emits phosphorescent radiation from a triplet excited state, wherein the phosphorescent dopant compound is capable of capturing the exciton triplet energy from the charge carrying material. Furthermore, there appears to be basis for the feature of claim 1 according to which, the emissive layer is a charge carrying layer (see p. 42, l. 22-24).

The feature that the OLED is a single or double heterostructure is allegedly derived from p.3, l.29 - p.4, l.2. This passage appears to provide a general explanation of available OLED structures. It seems that the structures generally described in this passage can be understood as applying also to any or all of the embodiments mentioned in the description, i.e. also the embodiment in which the emissive layer of the OLED comprises a phosphorescent dopant compound. Note: The OLEDs in Examples D and E appear to exhibit a single heterostructure.

Furthermore, objections have been raised along the lines that certain features have been taken out of their original context and generalised in an unallowable manner or not, i.e. whether the emission from an excited triplet state (phosphorescence) has to be coupled to a sufficiently rapid decay rate (sufficiently short lifetime) to meet the requirements of a display device or whether a phosphorescent compound capable of capturing the exciton triplet energy from the charge carrying material is only disclosed together with a narrow transmission band corresponding to a highly saturated colour. It appears that the features in question are desired technical effects and as such these need not be incorporated in the independent claim. However, as with the other points raised, this matter is still open to discussion.

The basis for the term "triplet **molecular** excited state" (emphasis added) in claim 1 has also been questioned. This precise wording does not appear to be disclosed in the parent application. However, p. 56, l. 5 & 6, uses the wording: " is that the emission from such a **molecule** comes from a triplet state"; p. 11,

l. 19 refers to "the triplet state of a **molecule** that phosphoresces" and p. 57, l. 8 also refers to "excited PtOEP **molecules**". Thus, there appears to be a basis for "triplet **molecular** excited state".

Thus, provisionally, the subject-matter of claim 1 appears to fulfil the requirements of Article 100(c) EPC.

- 18 With regard to Art.100(b) EPC, objections were raised by OP2, with regard to certain terms used in claim 1: "charge carrying layer", "phosphorescent dopant", "triplet molecular excited state" and "capable of capturing the exciton triplet state". The objections appear to be more related to the issue of clarity. However, the meaning of these terms is well known to the skilled person in the field of OLEDs. These objections do not appear to constitute valid objections under Art.83 EPC.

Otherwise, OP1, OP2, OP4 and OP5 all argue that the disclosure is insufficient over the breadth of claim 1. All of these opponents point out that there are worked examples for only one combination of one particular phosphorescent dopant (PtOEP) with one particular charge carrying material (Alq₃) and argue that the description does not provide any information or guidance on how to find other suitable pairings. It is also argued that no methods are provided for determining whether a compound is a phosphorescent dopant or for determining whether the excited triplet state of the phosphorescent compound is capable of receiving triplet exciton energy from the charge carrying material. It is argued that finding additional pairings thus represents an undue burden for a person skilled in the art.

The proprietor argues that a person skilled in the art would realise that he has to select a charge carrying material which exhibits a triplet exciton state of higher energy than the excited triplet state of the phosphorescent compound for a transfer of energy to take place via Förster or Dexter energy transfer. The proprietor also argues that a person skilled in the art can distinguish between fluorescent and phosphorescent by merely measuring the photoluminescent lifetime of the excited state of the dopant (or by other methods, e.g. quenching by molecular oxygen). The proprietor also states that the efficiency of the energy transfer between the charge carrying material and the phosphorescent dopant can be determined by simply measuring the

electroluminescence spectra and photoluminescence spectra of an OLED and in doing so refers to paragraphs 0134 to 0139 and figs. D2 to D5 of the patent in suit.

Thus, it appears that the proprietor is suggesting that a person skilled in the art at the time of priority would have known that he would simply have to determine the triplet exciton state of a variety of known charge carrying materials and that he would simply have to determine the excited triplet state of candidate phosphorescent dopants and then all he would have to do is to select a phosphorescent dopant which has an excited triplet state of lower energy than the triplet state. To confirm that the pairing is successful, a measurement of the photoluminescence lifetime and a measurement of electroluminescence spectra and photoluminescence spectra of an OLED at various levels of dopant concentration and voltages would suffice (as in D2-D5).

It is noted that the opponents have not provided the results of any tests with other dopant/charge carrying layer materials in support of their allegation that finding other working combinations places an undue burden on the person skilled in the art.

The Opposition Division wishes to state the following:

Claim 1 of the patent-in-suit requires, that the charge carrier layer is phosphorescent and includes a phosphorescent dopant. The proprietor confirmed, that only one example is given in the specification to support claim 1 (letter of 10.12.2010), p.13, point 6). This example discloses Alq3 as the charge carrier layer and PtOEP as the dopant.

On page 42, point 3.2.1 in his letter of 10.12.2010, the proprietor clearly states that "Alq3 is a well known fluorescent emitter and not a phosphorescent compound."

The Opposition Division has to take this declaration into account and draws the following conclusion therefrom:

Claim 1 does not appear to be sufficiently supported by the description, as in also required by Article 83 EPC, as no valid examples, providing evidence for the subject-matter of claim 1, are given in the specification. Thus, neither the skilled person nor the public have any guidance how to carry out the alleged invention.

As a preliminary opinion, it appears that the requirements of Article 83 EPC are not met.

It is intended to discuss all aspects relating to the issue of sufficiency of disclosure at the Oral Proceedings.

- 19 With regard to the validity of the priority, the most relevant document for the discussion is P4. The passages cited as evidence for the validity of this priority document seem to correspond to those cited with respect to the discussion of Art. 100(c) EPC. Thus, provisionally, P4 (01.12.1997) appears to be the valid priority for the claims.
- 20 Seventeen documents have been cited with regard to novelty (E01-E17). The provisional opinion, regarding the issue of novelty, is summarised below:

E01 discloses OLEDs with single heterostructures, whereby the charge carrying emissive layer comprises a complex of a rare earth ion. According to E01, triplet exciton energy can be utilised by transfer to the organic ligands. The proprietor argues that the triplet energy is transferred to the central rare earth atom which then emits light as fluorescence and not phosphorescence (see col. 6, l.50-54 & col. 8, l.48-61). OP3 argues (with reference to E40) that certain rare earth complexes are phosphorescent. OP4 argues that Eu and Tb complexes are known to have decay rates of greater than 10 μ s. OP5 also cites E01. However, the description of E01 states that the emission is fluorescence. Examples 1 and 2 of E01 merely state that the OLEDs exhibit luminescence of a certain colour without specifying whether the luminescence is fluorescence or phosphorescence or both. In the absence of evidence that the emission does indeed occur via phosphorescence in examples 1 and 2 of E01, then the statement in E01 that the emission is fluorescence (col.6, l. 50-54) will be taken at face value, i.e. the subject-matter of claim 1 appears to be novel over the disclosure of E01.

E02, which appears to be an Art.54(3) document, discloses single or double heterostructures and mentions fluorescence, but not phosphorescence. To be relevant for novelty, it would have to be shown that either all of the compounds covered by formula I are inherently phosphorescent dopants or at least the preferred compound (TPP). Thus, the subject-matter of claim 1 appears to be novel over the disclosure of E02.

E03 (fig.1, p.225, right hand col., second para.), which was cited by OP2, OP3 and OP4 against the novelty of claim 1, appears to disclose a double heterostructure, with a phosphorescent dopant compound (benzophenone) in a separate emissive layer. The proprietor argues that the PMMA layer is an insulator and the opponents argue that the PMMA/BP layer carries charge. Furthermore, OP2 and OP3 argue that a benzophenone molecule is capable of accepting an exciton triplet state from another benzophenone molecule and that benzophenone is a charge carrier. However, as pointed out by the proprietor, claim 1 requires a phosphorescent dopant compound which is capable of receiving exciton triplet energy from the charge carrying layer. The wording of claim 1 does not appear to include the transfer between dopant molecules. Thus, the subject-matter of claim 1 appears to be novel over the disclosure of E03.

E04 is cited against the novelty of claim 1 by OP2 and OP4. However, irrespective of whether the compounds of E04 emit light by phosphorescence or not, it appears the compounds are not present in the form of a dopant in a charge carrying layer, but are used in pure form. Thus, the subject-matter of claim 1 appears to be novel over the disclosure of E04.

E05 is cited against the novelty of claim 1 by OP1 and OP4 (see in particular p.18, l. 21-23, l.25-28 & l.39-44. However, the proprietor argues that the disclosure of E05 is speculative, because no specific examples are given. This argument appears to be correct. Thus, the subject-matter of claim 1 appears to be novel over the disclosure of E05.

E06 is cited against the novelty of claim 1 by OP1 (with reference to E38), because it discloses a layer which comprises a porphyrinic compound as a hole injecting zone of an organic EL device. However, there does not appear to be any mention of emission by phosphorescence. Examples 1 and 2

appear to disclose double heterostructures, which use phthalocyanine compounds as a dopant in Alq as a separate emissive layer, but such compounds are described in E06 as being fluorescent. Thus, the subject-matter of claim 1 appears to be novel over the disclosure of E06.

E07 (cited by OP2) appears to belong to the same patent family as E05. The content appears to be the same and the same arguments apply as for E05.

E08/E08a (cited by OP2) appears to fall short of disclosing a charge carrying layer which is an emissive layer comprising a phosphorescent dopant compound. Thus, the subject-matter of claim 1 appears to be novel over the disclosure of E08/E08a.

E09 (cited by OP2): the disclosure of this document appears to be very similar to that of E03. Essentially, the same arguments apply. Thus, the subject-matter of claim 1 appears to be novel over the disclosure of E09.

E10 (cited by OP2) discloses the fabrication of EL devices using coumarin dyes (p. 445) to produce emission via phosphorescence. The proprietor essentially argues that E10 does not disclose the use of coumarin dye as a dopant in a charge carrying layer.

E11 (cited by OP4) discloses a single heterostructure and an emissive layer comprising an europium complex as a dopant, but it is not disclosed that the emission is phosphorescence.

E12 (cited by OP4) apparently discloses an europium complex as the emitter layer, but not an europium complex as dopant in a charge carrying layer.

E13 (cited by OP4) appears to disclose single layer LEDs, which use a hole transporting layer doped with organo-lanthanide (III) complexes, i.e. a single or double heterostructure does not appear to be used.

E14: OP4 argues that E14 discloses LEDs with an emitter layer, which comprises a dopant, which phosphoresces at low temperatures. OP4 further remarks that phosphorescence at room temperature is not required by claim 1. The proprietor argues that E14 discloses a single layer device, i.e. not a single or double heterostructure, that there is no phosphorescence at room temperature and that it is not disclosed that triplet exciton energy from the charge carrying layer is transferred to the excited triplet state of the dopant. The temperature of operation is not a limiting feature of claim 1, but it seems that E14 does not disclose a single or double heterostructure. Thus, claim 1 appears to be novel over E14.

E15 (OP4): assuming the priority date of P4 (01.12.1997) is the valid date - then this document (published online 05.10.1998) would be too late. However, should the Opposition Division come to the conclusion later in the procedure that the priority is not valid - then this document would appear to disclose a single heterostructure with a phosphorescent dopant in a charge carrying layer. It would then have to be discussed whether the dopant molecule is capable of accepting triplet exciton energy from the charge carrying layer or not.

E16: OP4 argues that E16 uses Ru-complexes which are known to be triplet emitters and in doing so refers to E21 and E28. The proprietor argues that the heterostructure used in E16 uses the Ru-complex itself as an emissive layer and not the Ru-complex as a dopant in a charge carrying layer. Furthermore, the proprietor argues that it has not been shown that in the heterostructure the emission is by phosphorescence or that the Ru-complex is capable of capturing triplet exciton energy from the charge carrying layer. The proprietor further argues that the complexes disclosed in E21 and E28 use different ligands. E16 does not appear to be prejudicial to the novelty of claim 1.

E17: OP4 argues that E17, which describes the preparation of polymers containing Ru-complexes is relevant for the novelty of claim 1. However, this document seems to disclose single layer devices and not single or double heterostructures. Thus, E17 does not appear to be relevant for novelty.

General comment with regard to novelty: several documents appear to disclose OLEDs having a single or double heterostructure and a charge carrying emissive layer with a dopant. However, evidence in the form of tests does not appear to have been provided to show that the dopants emit by phosphorescence and that energy has been transferred from the exciton triplet state of the charge carrying material to the dopant. According to the proprietor's arguments with regard to the objections under Art.100(b) EPC, one can establish whether emission occurs via phosphorescence by measuring the decay lifetime and one can measure the electroluminescence and photoluminescence spectra with dopant and without dopant to determine the efficiency of energy transfer from the charge carrying material to the dopant.

- 21 With regard to the issue of inventiveness, the parties are reminded that the Opposition Division expects the problem-solution approach to be applied.

Each of the opponents have cited several different documents as possible starting points for their inventive step arguments.

Each of the parties is kindly requested to identify a single document as the closest prior art for the Oral Proceedings. The Opposition Division intend then to discuss first what is the closest prior art document, with the intention, if possible, of arriving at a consensus on this matter, before proceeding with the rest of the problem-solution approach.

Note: The Opposition Division anticipates that the Oral Proceedings could last up to three days. The parties should be prepared to attend the Oral Proceedings from 08.04.14 to 10.04.14.

Wichtige Hinweise zur mündlichen Verhandlung

Das Europäische Patentamt verfügt über keine eigenen Dolmetscher. Diese müssen im Bedarfsfall von außerhalb, teilweise sogar aus anderen Ländern, beigezogen werden, was mit einem hohen Aufwand an Kosten und organisatorischen Vorbereitungen verbunden ist. Muss ein Verhandlungstermin kurzfristig abberaumt werden, können Kosten für bestellte Dolmetscher nicht mehr vermieden werden.

Es wird daher gebeten, eine Simultanübersetzung nur bei wirklichem Bedarf in Anspruch zu nehmen. Es wäre wünschenswert, wenn sich die Beteiligten (zweckmäßigerweise gleichzeitig mit der Terminabstimmung) auf die Benutzung einer Amtssprache einigen könnten. Bei Verständigungsschwierigkeiten sind die Mitglieder der Einspruchsabteilung bereit zu helfen.

Die von den Verfahrensbeteiligten bevorzugte (abgestimmte) Verhandlungssprache und ggf. eine notwendige Simultanübersetzung sind dem Amt möglichst vor der in Regel 4(1) EPÜ angegebenen Frist mitzuteilen.

Verfahrenssprache ist **Deutsch**

Von der/dem/den Einsprechenden wurde

Englisch

Französisch benutzt.

Es wird um eilige Mitteilung - möglichst per Telefax an den zuständigen Formalprüfer - gebeten,

Important information concerning oral proceedings

The European Patent Office has no interpreters of its own. When interpreters are needed they have to be brought in from outside, sometimes even from other countries, which is costly and involves considerable organisation. If oral proceedings have to be cancelled at short notice, the cost of interpreters already engaged still has to be borne.

Please therefore make use of simultaneous interpreting facilities only where strictly necessary. If possible the parties should agree on an official language for the proceedings, preferably at the time when they arrange a date. The members of the Opposition Division will be willing to help should any communication problems arise.

The EPO should be told if possible before the period mentioned in Rule 4 (1) EPC which language the parties prefer (agree on) and whether simultaneous interpreting facilities are required.

Language of the proceedings is **English**

The language used by the opponent/s was

German

French.

Please inform us urgently - where possible by fax addressed to the formalities officer concerned -

Très important Procédure orale

L'Office européen des brevets ne dispose pas de son propre service d'interprètes. Aussi faut-il appel le cas échéant à des interprètes de l'extérieur, qui viennent même parfois de l'étranger, ce qui occasionne de frais élevés et demande un grand travail d'organisation. Si la date d'une procédure orale doit être annulée au dernier moment, il n'est plus possible d'éviter les frais d'interprètes.

Les parties à une procédure sont donc priées de ne demander une traduction simultanée qu'en cas de réel besoin. Il serait souhaitable qu'elles puissent se mettre d'accord en même temps qu'elles conviennent de la date sur l'utilisation d'une langue officielle comme langue des débats. Si les parties éprouvent des difficultés de compréhension lors des débats, les membres de la division d'opposition sont disposés à leur prêter leur assistance.

L'Office doit être avisé si possible avant le début du délai mentionné dans la règle 4(1) CBE de la langue préférée par les parties pour le déroulement des débats (et sur laquelle elles se sont préalablement mises d'accord) et de la nécessité éventuelle d'une traduction simultanée.

La langue de la procédure est le **français**

La langue utilisée par l'opposant/les opposants était

l'allemand

l'anglais.

Prière d'indiquer d'urgence à l'agent des formalités compétent si possible par téléfax

möglichst bis	if possible by	si possible jusqu'au
Datum 04.02.2014	Date 04.02.2014	Date 04.02.2014

1. welche Sprache(n) Sie in der mündlichen Verhandlung verwenden (**Sprechen**)
2. aus welcher Sprache Sie eine Simultanübersetzung benötigen (**Hören**).

1. which language(s) you intend to use during the oral proceedings (**Speaking**)
2. from which language you need simultaneous interpretation (**Listening**).

1. quelle(s) langue(s) vous utiliserez au cours de la procédure orale (**pour parler**)
2. à partir de quelle langue vous aurez besoin d'une traduction simultanée (**pour écouter**).

Sollten Sie Ihren Antrag auf mündliche Verhandlung zurückziehen oder zum anberaumten Verhandlungstermin nicht erscheinen wollen bzw. aus wichtigem Grund daran gehindert sein, werden Sie gebeten,

- unverzüglich das Amt - möglichst per Telefax - davon zu benachrichtigen, wobei das Schriftstück mit einem deutlichen Vermerk "Dringend, mündliche Verhandlung am ..." oder sinngemäß gekennzeichnet sein sollte;
- in dringenden Fällen (weniger als 1 Monat vor dem Verhandlungstermin) zusätzlich auch dem/die anderen Verfahrensbeteiligten bzw. ihre(n) Vertreter auf schnellstem Weg direkt zu unterrichten.

In jedem solchen Fall obliegt der Einspruchsabteilung die Entscheidung, ob die Verhandlung durchgeführt oder abberaumt wird. Es wird jedoch darauf hingewiesen, dass einem Verfahrensbeteiligten, der eine nicht rechtzeitige oder unterbliebene Benachrichtigung zu verantworten hat, die dadurch den anderen Beteiligten verursachten Kosten auferlegt werden können (Art. 104 EPÜ).

Hinweis auf Regel 4 EPÜ

Regel 4
Sprache im mündlichen Verfahren

(1) Jeder an einem mündlichen Verfahren vor dem Europäischen Patentamt Beteiligte kann sich anstelle der Verfahrenssprache einer anderen Amtssprache des Europäischen Patentamts bedienen, sofern er dies dem Europäischen Patentamt spätestens einen Monat vor dem angesetzten Termin mitgeteilt hat oder selbst für die Übersetzung in die Verfahrenssprache sorgt. Jeder Beteiligte kann sich einer Amtssprache eines Vertragsstaats bedienen, sofern er selbst für die Übersetzung in die Verfahrenssprache sorgt. Von diesen Vorschriften kann das Europäische Patentamt Ausnahmen zulassen.

Should you decide to withdraw your request for oral proceedings or not wish to attend on the date set, or if for some special reason you are unable to do so, you are requested

- to notify the EPO immediately, where possible by fax, marking the document clearly with the words "Urgent, oral proceedings on ..." or similar;
- in urgent cases (less than one month before the date set for the proceedings), additionally to notify the other party/parties and/or their representative(s) direct as rapidly as possible.

In all such cases the Opposition Division will decide whether the proceedings are to go ahead or be cancelled. You should however note that costs incurred by the other parties may be charged to a party who either fails to notify them or does not do so in good time (Article 104 EPC).

Attention is drawn to Rule 4 EPC

Rule 4
Language in oral proceedings

(1) Any party to oral proceedings before the European Patent Office may use an official language of the European Patent Office other than the language of the proceedings, if such party gives notice to the European Patent Office at least one month before the date of such oral proceedings or provides for interpretation into the language of the proceedings. Any party may use an official language of a Contracting State, if he provides for interpretation into the language of the proceedings. The European Patent Office may permit derogations from these provisions.

Si vous retirez votre requête tendant à recourir à la procédure orale ou si vous ne souhaitez pas vous présenter à la date fixée pour la procédure orale ou ne pouvez vous y présenter pour une raison sérieuse, veuillez

- en faire avis sans retard à l'Office, si possible par téléfax, en partant sur votre communication clairement la mention "Urgent, procédure orale le ..." ou une indication similaire;
- dans les cas urgents (moins d'un mois avant la date fixée pour la procédure orale) en faire avis également directement par la voie la plus rapide à l'autre/aux autres partie(s) ou bien à son/leurs mandataire(s).

Il appartient alors à la division d'opposition de décider si la procédure orale aura lieu ou non. Il est néanmoins souligné que les frais causés aux autres parties par une partie qui est responsable de l'omission d'un tel avis ou de ce que cet avis n'a pas été fait en temps utile peuvent être mis à la charge de cette partie (art. 104 CBE).

Rappel de la Règle 4 CBE

Règle 4
Langues admissibles lors de la procédure orale

(1) Toute partie à une procédure orale devant l'Office européen des brevets peut utiliser une langue officielle de l'Office européen des brevets autre que la langue de la procédure, à condition soit d'en aviser l'Office européen des brevets un mois au moins avant la date de la procédure orale, soit d'assurer l'interprétation dans la langue de la procédure. Toute partie peut utiliser une langue officielle de l'un des Etats contractants à condition d'assurer l'interprétation dans la langue de la procédure. L'Office européen des brevets peut autoriser des dérogations aux présentes dispositions.

(2) Die Bediensteten des Europäischen Patentamts können sich im mündlichen Verfahren anstelle der Verfahrenssprache einer anderen Amtssprache des Europäischen Patentamts bedienen.

(2) In the course of oral proceedings, employees of the European Patent Office may use an official language of the European Patent Office other than the language of the proceedings.

(2) Au cours de la procédure orale, les agents de l'Office européen des brevets peuvent utiliser une langue officielle de l'Office européen des brevets autre que la langue de la procédure.

(3) In der Beweisaufnahme können sich die zu vernehmenden Beteiligten, Zeugen oder Sachverständigen, die sich in einer Amtssprache des Europäischen Patentamts oder eines Vertragsstaats nicht hinlänglich ausdrücken können, einer anderen Sprache bedienen. Erfolgt die Beweisaufnahme auf Antrag eines Beteiligten, so werden die Beteiligten, Zeugen oder Sachverständigen mit Erklärungen, die sie in einer anderen Sprache als in einer Amtssprache des Europäischen Patentamts abgeben, nur gehört, sofern dieser Beteiligte selbst für die Übersetzung in die Verfahrenssprache sorgt. Das Europäische Patentamt kann jedoch die Übersetzung in eine seiner anderen Amtssprachen zulassen.

(3) Where evidence is taken, any party, witness or expert to be heard who is unable to express himself adequately in an official language of the European Patent Office or of a Contracting State may use another language. Where evidence is taken upon request of a party, parties, witnesses or experts expressing themselves in a language other than an official language of the European Patent Office shall be heard only if that party provides for interpretation into the language of the proceedings. The European Patent Office may, however, permit interpretation into one of its other official languages.

(3) Lors de l'instruction, les parties, témoins ou experts appelés à être entendus, qui ne possèdent pas une maîtrise suffisante d'une langue officielle de l'Office européen des brevets ou d'un Etat contractant, peuvent utiliser une autre langue. Si la mesure d'instruction est ordonnée sur requête d'une partie, les parties, témoins ou experts qui s'expriment dans une langue autre qu'une langue officielle de l'Office européen des brevets ne sont entendus que si cette partie assure l'interprétation dans la langue de la procédure. L'Office européen des brevets peut toutefois autoriser l'interprétation dans l'une de ses autres langues officielles.

(4) Mit Einverständnis aller Beteiligten und des Europäischen Patentamts kann jede Sprache verwendet werden.

(4) If the parties and the European Patent Office agree, any language may be used.

(4) Sous réserve de l'accord des parties et de l'Office européen des brevets, toute langue peut être utilisée.

(5) Das Europäische Patentamt übernimmt, soweit erforderlich, auf seine Kosten die Übersetzung in die Verfahrenssprache und gegebenenfalls in seine anderen Amtssprachen, sofern ein Beteiligter nicht selbst für die Übersetzung zu sorgen hat.

(5) The European Patent Office shall, if necessary, provide at its own expense interpretation into the language of the proceedings, or, where appropriate, into its other official languages, unless such interpretation is the responsibility of one of the parties.

(5) L'Office européen des brevets assure à ses frais, en tant que de besoin, l'interprétation dans la langue de la procédure, ou, le cas échéant, dans ses autres langues officielles, à moins que cette interprétation ne doive être assurée par l'une des parties.

(6) Erklärungen von Bediensteten des Europäischen Patentamts, Beteiligten, Zeugen und Sachverständigen, die in einer Amtssprache des Europäischen Patentamts abgegeben werden, werden in dieser Sprache in die Niederschrift aufgenommen. Erklärungen in einer anderen Sprache werden in der Amtssprache aufgenommen, in die sie übersetzt worden sind. Änderungen einer europäischen Patentanmeldung oder eines europäischen Patents werden in der Verfahrenssprache in die Niederschrift aufgenommen.

(6) Statements by employees of the European Patent Office, parties, witnesses or experts, made in an official language of the European Patent Office, shall be entered in the minutes in that language. Statements made in any other language shall be entered in the official language into which they are translated. Amendments to a European patent application or European patent shall be entered in the minutes in the language of the proceedings.

(6) Les interventions des agents de l'Office européen des brevets, des parties, témoins et experts faites dans une langue officielle de l'Office européen des brevets sont consignées au procès-verbal dans cette langue. Les interventions faites dans une autre langue sont consignées dans la langue officielle dans laquelle elles sont traduites. Les modifications apportées à une demande de brevet européen ou à un brevet européen sont consignées au procès verbal dans la langue de la procédure.

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Oral Proceedings

Application No./Patent No. 03025325.6/1394870
Conference room no. 3465 PschorrHöfe
Date 08.04.14 /09.04.14 and 10.04.14
Time 09.00 hrs

The proceedings are PUBLIC

Parties

Patent proprietor: THE TRUSTEES OF PRINCETON UNIVERSITY
Representative: Maiwald Patentanwalts GmbH

Opponent (01) : OSRAM GmbH
Representative(01): -

Opponent (02) : Merck Patent GmbH
Representative(02): -

Opponent (03) : Koninklijke Philips N.V.
Representative(03): Raasch, Detlef

Opponent (04) : BASF SE
Representative(04): -

Opponent (05) : Siemens Aktiengesellschaft
Representative(05): Epping - Hermann - Fischer

Opposition Division

Chairman: Doslik N
1st member: Munro B
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Legally qualified member:

Language of the proceedings EN



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Reference 2010C05081	OPPO 01	Application No./Patent No. 03025325.6 - 1354 / 1394870
Applicant/Proprietor THE TRUSTEES OF PRINCETON UNIVERSITY, et al		

Summons to attend oral proceedings pursuant to Rule 115(1) EPC

You are hereby summoned to attend oral proceedings arranged in connection with the above-mentioned European patent.

The matters to be discussed are set out in the communication accompanying this summons (EPO Form 2906).

The oral proceedings, which will be public, will take place before the opposition division

on 08.04.14 at 09.00 hrs in Room 3465 and 09 & 10-04-14
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2nd Examiner:
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Chairman:
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Annexes:
Confirmation of receipt (Form 2936)
Rule 4 EPC (EPC Form 2043)
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Reference P2007,0143EP01	OPPO 05	Application No./Patent No. 03025325.6 - 1354 / 1394870
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Reference UF-15986	OPPO 04	Application No./Patent No. 03025325.6 - 1354 / 1394870
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Reference P8315 / KK /NH	Application No./Patent No. 03025325.6 - 1354 / 1394870
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Reference 1394870-eb/cs	OPPO 02	Application No./Patent No. 03025325.6 - 1354 / 1394870
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