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D E C I S I O N
of 27 April 2006

Case Number: T 1113/04 - 3.5.02

Application Number: 02076493.2

Publication Number: 1255325

IPC: H01R 13/115

Language of the proceedings: EN

Title of invention:
Female electrical terminal

Applicant:
Delphi Technologies, Inc.

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 54(2)

Keyword:
"Novelty (yes) - implicit disclosure (no)"

Decisions cited:
-

Catchword:
-

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Case Number: T 1113/04 - 3.5.02

D E C I S I O N
of the Technical Board of Appeal 3.5.02
of 27 April 2006

Appellant: Delphi Technologies, Inc.
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Decision under appeal: **Decision of the Examining Division of the European Patent Office posted 11 May 2004 refusing European application No. 02076493.2 pursuant to Article 97(1) EPC.**

Composition of the Board:

Chairman: W. Wheeler
Members: M. Ruggiu
C. Holtz

Summary of Facts and Submissions

I. This is an appeal of the applicant against the decision of the examining division to refuse European patent application No. 02076493.2.

II. The reason given for the refusal was that the subject-matter of claim 1 lacked novelty in view of the following document of the state of the art:

D1: EP-A-0 726 615.

Following a communication from the board, the appellant filed amended claims 1 to 3 with a letter of 28 February 2006.

III. The application in its present form comprises the following documents:

Description
Page 1 filed with a letter of 20 October 2003,
Pages 2 and 3 as originally filed.

Claims
No. 1 to 3 filed with the letter of 28 February 2006,
No. 4 to 6 as originally filed.

Drawings
Sheets 1/3, 2/3 and 3/3 as originally filed.

IV. Claim 1 reads as follows:

"A female electrical terminal (10) for mating with a flat blade contact (12) comprising first and second

arms (14, 16) positionable on one side (22) of the flat blade contact and extending in the mating direction (X); and third and fourth arms (18, 20) positionable on the other side (24) of the flat blade contact and extending in the mating direction; wherein the first arm and the second arm are pivotally mounted at one end (26, 28) on a first pivot axis (A); wherein the first and second arms have a free end (30, 32) opposed to said one end; wherein the third arm and the fourth arm are pivotally mounted at one end (34, 36) on a second pivot axis (B); wherein the third and fourth arms have a free end (38, 40) opposed to said one end; wherein the first arm is positioned opposed to said fourth arm; wherein the second arm is positioned opposed to said third arm; wherein each arm has a contact area (42-48) formed adjacent the free end thereof directed towards the opposed arm; characterised in that the first and third arms have a first predetermined length (L1) between said one end and said free end thereof; in that the second and fourth arms have a second predetermined length (L2) between said one end and said free end thereof, the second length being greater than said first length; in that the contact areas of the first and third arms are substantially aligned on a first plane (P1) extending substantially perpendicular to the mating direction; and in that the contact areas of the second and fourth arms are substantially aligned on a second plane (P2) which is substantially parallel to and offset from the first plane."

Claims 2 to 6 are dependent on claim 1.

V. The appellant essentially argued as follows:

Document D1 disclosed (at column 3, lines 11 to 13) that the second and fourth contact areas were staggered relative to each other. Therefore, these contact areas could not lie in the same plane. There was no mention anywhere in D1 that the second and fourth contact areas were not staggered. D1 did not disclose that the second and fourth contact areas lay in the same plane. Consequently, claim 1 was novel over D1. The fact that D1 indicated that the second and fourth contact areas being staggered was a "preferred embodiment" was irrelevant because D1 made no mention of the non-preferred embodiment. It was not acceptable to guess as to what was the non-preferred embodiment. Reliance on column 3, lines 19 to 22 of D1 to support the objection of lack of novelty was also flawed. This sentence referred to the staggering of the tines. It did not mention a staggering of the contact areas. There was a significant and fundamental difference between "tines" and "contact areas". Therefore, this sentence did not provide any support for the objection of lack of novelty. A novelty objection should be based on what was actually disclosed. Consequently, claim 1 was novel over D1. Attention was drawn to the Guidelines for Examination, Part C, Chapter IV, paragraph 7.2: the limitation to subject-matter "derivable directly and unambiguously" was important. Paragraphs 7.4 and 7.5 also applied in this instance.

Reasons for the Decision

1. The appeal is admissible.

2. Claim 1 has been amended merely to place it in the two-part form defined in Rule 29(1) EPC. Claims 2 and 3 are identical to claims 2 and 3 as originally filed. Page 1 of the description has been amended to cite document D1 and indicate the background art known therefrom. Thus, the amendments to the application do not introduce subject-matter which extends beyond the content of the application as filed (Article 123(2) EPC).

3. Document D1 discloses a female electrical terminal 10 for mating with a flat blade contact. The terminal comprises first and second arms (tines) 18, 26 positionable on one side of the flat blade contact and extending in the mating direction 16, and third and fourth arms (tines) 30, 22 positionable on the other side of the flat blade contact and extending in the mating direction. The first arm 18 and the second arm 26 are each pivotally mounted at one end on a first pivot axis and have a free end opposed to said one end. The third arm 30 and the fourth arm 22 are each pivotally mounted at one end on a second pivot axis and have a free end opposed to said one end. The first arm 18 is positioned opposed to said fourth arm 22 (with respect to the flat blade contact), and the second arm 26 is positioned opposed to said third arm 30. Each arm 18, 26, 30, 22 has a contact area 20, 28, 32, 24 formed adjacent the free end thereof and directed towards the opposed arm. At column 3, lines 4 to 11, D1 indicates that the contact area 24 of the fourth arm 22 is staggered relative to the contact area 20 of the first

arm 18 in the direction of the longitudinal axis 16 (i.e. in the mating direction), and the contact area 32 of the third arm 30 is staggered relative to the contact area 28 of the second arm 26. Figure 3 of D1 shows four arms 18, 26, 30, 22 all having different lengths, with the opposed second and third arms 26, 30 shorter than the opposed first and fourth arms 18, 22. Furthermore, D1 indicates at column 3, lines 11 to 13, that in the preferred embodiment, the contact area 24 of the fourth arm 22 is also staggered relative to the contact area 28 of the second arm 26 and at column 3, lines 19 to 22, that the staggering of the tines provides a lower insertion force than that required for a non-staggered configuration.

4. Document D1 refers to a preferred embodiment. This might imply that the author of document D1 had in mind a non-preferred embodiment. However, D1 does not provide any description of this hypothetical non-preferred embodiment and leaves the reader free to speculate as to what the non-preferred embodiment could be. This cannot be regarded as a direct and unambiguous disclosure of the features of the hypothetical non-preferred embodiment. In line with the consistent case law of the Boards of Appeal (see Case Law of the Boards of Appeal of the European Patent Office, 4th edition 2001, page 54, I.C.2, under "Determining the content of the relevant prior art"), the board considers that for an invention to lack novelty its subject-matter must be clearly and directly derivable from the prior art. The same concept seems to be expressed in the Guidelines for Examination in the European Patent Office of June 2005, Part C, Chapter IV, paragraph 7.2. The non-staggered configuration mentioned in the passage at

column 3, lines 19 to 22 of D1 might consist of tines all having the same length with the contact areas all in the same plane perpendicular to the mating direction. Accordingly, D1 cannot be considered to make available to the public in the sense of Article 54(2) EPC the teaching that the first and third arms 18, 30 have, or can have, a (common) first predetermined length and the second and fourth arms 26, 22 a (common) second predetermined length between said one end and said free end thereof. It follows that D1 cannot be considered to make it available to the public that the contact areas 20, 32 of the first and third arms 18, 30 of D1 are substantially aligned on a first plane extending substantially perpendicular to the mating direction 16 and the contact areas 28, 24 of the second and fourth arms 26, 22 substantially aligned on a second plane extending substantially perpendicular to the mating direction 16. Consequently, the subject-matter of claim 1 is considered to be new in the sense of Article 54(1) EPC.

5. Since only the question of novelty has been examined in the procedure before the first instance, the board considers it appropriate to make use of its power under Article 111(1) EPC and remit the case to the department of the first instance for further prosecution, in particular for examination of the question of inventive step.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the department of the first instance for further prosecution.

The Registrar: The Chairman:

U. Bultmann W. J. L. Wheeler