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**Datasheet for the decision
of 16 April 2013**

Case Number: T 0652/10 - 3.2.05

Application Number: 00305766.8

Publication Number: 1081389

IPC: F15B13/00

Language of the proceedings: EN

Title of invention:

Manifold-type solenoid valve with relay unit

Patent Proprietor:

SMC Corporation

Opponent:

FESTO AG & Co. KG

Relevant legal provisions:

EPC 1973 Art. 56

EPC Art. 123(2)

Keyword:

Inventive step - main, first and second auxiliary requests
(no)

Amendments - added subject-matter - third auxiliary request
(yes)

Admissibility - fourth auxiliary request (yes)

Remittal to the department of first instance - fourth
auxiliary request (yes)



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Case Number: T 0652/10 - 3.2.05

**D E C I S I O N
of Technical Board of Appeal 3.2.05
of 16 April 2013**

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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 19 February
2010 rejecting the opposition filed against
European patent No. 1081389 pursuant to Article
101(2) EPC.**

Composition of the Board:

Chairman: M. Poock
Members: S. Bridge
W. Ungler

Summary of Facts and Submissions

- I. An appeal was lodged against the decision of the opposition division rejecting the opposition filed against the European patent No. 1 081 389.
- II. The opposition was filed against the patent as a whole based on Article 100(a) EPC (lack of inventive step, Article 56 EPC).
- III. Oral proceedings were held before the board of appeal on 16 April 2013.
- IV. The appellant (opponent) requested that the decision under appeal be set aside and that the European patent No. 1 081 389 be revoked and that the case be decided by the board.

The respondent (patent proprietor) requested as main request that the appeal be dismissed or that the patent be maintained on the basis of any of the auxiliary requests 1 to 3 filed with letter of 15 March 2013 or on the basis of the auxiliary request 4 filed during oral proceedings of 16 April 2013 or to remit the case to the first instance for further prosecution.

- V. Claim 1 of the patent in suit as granted (main request) reads as follows:

"1. A manifold-type solenoid valve with a relay unit comprising a plurality of solenoid valves (1) each for controlling a fluid pressure device by switching channels, at least one relay unit (5) for controlling an electrical device by a relay that is opened and closed, and a plurality of manifold blocks (2) coupled together and each having one of the solenoid valves (1)

or the relay unit (5) installed on a mounting surface (28) thereof and each having substantially the same construction, wherein the plurality of manifold blocks (2) each have a plurality of channel holes (25, 26, 27) for supplying pressure fluids to the solenoid valves (1) which are opened on the mounting surface (28) and a power-feeding connector (34) for connection to a power-receiving connector (56) of each solenoid valve, and wherein the relay unit (5) has a housing (52) which, when the relay unit (5) is installed on the mounting surface (28) of one of the manifold blocks (2) is within the width of the block, the relay (51) which is built into the housing (52) and is electrically opened and closed, a power-receiving connector (56) that can be connected to the power-feeding connector (34) of the manifold block (2), and a sealing section (60) for sealing each channel hole on the mounting surface (28)".

- VI. Claim 1 according to the first auxiliary request differs from claim 1 of the main request in that the following additional feature is added at the end of the claim: *"the housing further having substantially the same external shape as the solenoid valve (1)."*
- VII. Claim 1 according to the second auxiliary request differs from claim 1 of the main request in that the following additional feature is added at the end of the claim: *"the housing further having the same external shape as the solenoid valve (1)."*
- VIII. Claim 1 according to the third auxiliary request differs from claim 1 of the main request in that the following additional feature is added at the end of the claim: *"and wherein an electric circuit member (50) is located in a hollow section of the housing (52), the*

electrical circuit member (50) includes the relay (51) on a substrate, and wherein the electrical circuit member (50) is pressed by support sections (52d) of a cover (52c) formed on end portions in a longitudinal direction of the cover to such an extent that the relay (51) does not move in the housing (52) for air-tightly sealing an upper surface portion of the housing."

- IX. Claim 1 according to the fourth auxiliary request differs from claim 1 of the main request in that the following additional feature is added at the end of the claim: *"the housing (52) constructed to have substantially the same shape as the solenoid valve (1) so as not to stick out from the mounting surface (28) in a width direction, in which an electrical circuit member (50) is built in a hollow section of the housing, wherein the electrical circuit member (50) includes the following on a substrate (53): the relay (51) electromagnetically or electronically opened and closed; an intermediate terminal (55) connected to the relay (51) by the wiring on the substrate (53); a cord (54) having conductors (54c) from the intermediate terminal (55) therein; a power-receiving connector (56) having power-receiving terminals (57) electrically connected to the relay (51); and electronic parts (59), wherein the electrical circuit member (50) is stably pressed by support sections (52d) of a cover (52c) to such an extent that it does not move in the housing (52) for air-tightly sealing an upper surface portion of the housing (52)."*

- X. The following documents are referred to in the present decision:

D1: DE 43 12 729

D4: EP 0 915 275

D6: DE 42 22 637

D7: "*Der Pneumatic-Katalog 97/98*", front and back cover sheets and pages 6.4/10-1 to 6.4/16-4, Festo AG, Esslingen

D8 consisting of D8.1 to D8.16: Evidence relating to an alleged public prior use of a "*IIFB-02-1/4*" manifold; wherein:

D8.1a to D8.1c are delivery notes relating to the catalogue D7 and D8.16; and

D8.16 is an additional extract from "*Der Pneumatic-Katalog 97/98*", index page and pages 6.1/10-1 to 6.1/10-4, Festo AG, Esslingen.

XI. The arguments of the appellant in the written and oral proceedings can be summarised as follows:

Main request

The only difference between the subject-matter of claim 1 and the device of document D7, when read by the skilled person, is the modular construction of the manifold base. The skilled person already knows from document D1 (column 5, lines 24 to 27) that the advantage of a modular base is that the manifold may be arbitrarily extended when required. When seeking this advantage, the skilled person will thus make the base of the manifold of document D7 modular and thereby immediately arrive at the subject-matter of claim 1 without performing an inventive step.

First auxiliary request

The patent in suit does not disclose any objective bounds for the expression "*substantially*" in the feature "*the housing [of the relay] having the substantially same external shape as the solenoid*

valve". This feature is therefore subject to an arbitrarily broad interpretation and thus cannot justify an inventive step.

Second auxiliary request

The skilled person is familiar with the use of uniform housings for various components. In addition, the consequences of the relay housing having the "*same external shape as the solenoid valve*" can be readily contemplated in advance by the skilled person and are immediately obvious to him. The subject-matter of claim 1 according to the second auxiliary request does not involve an inventive step.

Third auxiliary request

Claim 1 according to the third auxiliary request involves a combination of features selected from an embodiment and the figures. This combination is not directly and unambiguously derivable from the application documents as filed. The subject-matter of claim 1 according to the third auxiliary request does not satisfy the requirements of Article 123(2) EPC.

Fourth auxiliary request

Claim 1 according to the fourth auxiliary request concerns, in addition, the internal construction of the relay unit, as taken from the description. The appellant could not have anticipated this. The subject-matter of claim 1 is also not clear, because of contradictions between the description and the figures of the embodiment, for example, concerning the location of the power-receiving connector 56 (Article 84 EPC).

The fourth auxiliary request should not be admitted into the proceedings.

- XII. The arguments of the respondent in the written and oral proceedings can be summarised as follows:

Main request

The order forms included in document D7 simply indicate the numbers of solenoid valves, relay units and blanking plates to be included rather than their specific position. Such a manifold block would have the same functionality whatever the position of the components. Document D7 does not show explicitly that either a solenoid valve or a relay unit may be installed on each of the plurality of mounting locations of the base unit. There is no disclosure in document D7 of the internal construction of the manifold base and in particular of the mounting surfaces. So another interpretation is that the manifold base will be specifically manufactured to reflect the positions of the manifold valves, solenoid units and blanking plates to be located on it, once these have been specified. In other words, once the components on the manifold base have been specified, they are not interchangeable. The comments in the affidavit dated 19 April 2010 that the mounting sequence has to be indicated because it is relevant to the programming of the electronic control unit, implies that, after reversing the positions of a solenoid valve and relay unit, these units would no longer function.

Furthermore, in the example configuration in document D7 (for example see page 6.4/12-3, right hand column, about half way down the page under the word, "*Bestellbeispiel*") the configured sequence of solenoid

valves, relay unit and blanking plates is, "JJGGGMMAMQ" where "J", "G" and "M" indicate different types of solenoid valves, "A" a blanking plate and "Q" a relay unit. In all of the examples, the relay unit is located on the end of the other components. There is no example, of, say, a relay unit with solenoid valves on either side, that might imply that solenoid valves and relay units may be located in any position. Thus, the implication from document D7 is that relay units are restricted to being located on the end of other components (solenoid valves or blanking plates) only.

Therefore, there is no unambiguous evidence from document D7 that each of the locations on the valve island described therein are identical, such that either a relay unit or solenoid valve could be mounted at each location. Document D7 does not make available to the public that either a relay unit or solenoid valve could be in any location on the manifold base.

The patent in suit provides the advantage of flexibility when designed to mount both solenoid valves and relay units on a manifold base. There is no suggestion in document D1 that both relay units or solenoid valves could be located interchangeably.

The teaching of document D1 is that any number of solenoid valve base units can be put together as desired. There is no suggestion that this would be the case when both solenoid valve and relay units are combined, particularly as there are issues with sealing when relay units might be placed on a base unit intended for a solenoid valve.

If a skilled person considered "*modularising*" the manifold body of document D7, he would not use

identical manifold blocks for both solenoid valves and relay units, but, in keeping with the general advantages of a modular system, would select different manifold blocks designed for the component that is to be mounted on it. This simplifies mounting of solenoid valves and relay units without introducing sealing issues. Sealing is not an issue in documents D1, D4 and D6 as only one type of component is used on a manifold block. The arrangement of different manifold blocks depending on solenoid valves or relay units being required is as shown in document D8.16 (that is, in the same catalogue as document D7) (see page 6.1/10-4 of document D8.16 - pictures of the "Ventilplatte" and "Relaisplatte" right hand column, top two pictures). This excerpt of document D8.16 leads the skilled person away from the subject-matter of claim 1 of the patent in suit.

Thus, the combination of documents D7 and any one of documents D1 , D4 and D6 is based on the use of impermissible hindsight. For these reasons, the subject-matter of claim 1 of the patent in suit involves an inventive step.

First auxiliary request

The expression "*substantially the same shape*" is to be understood as only including slight variations and constitutes a further limitation to the claimed subject-matter.

Second auxiliary request

By omitting the word "*substantially*" claim 1 according to the second auxiliary request overcomes any difficulty in interpreting this term in the final feature of claim 1.

The additional feature of claim 1 of the second auxiliary request that "*the housing [of the relay] further having the same external shape as the solenoid valve*" provides the advantage that the profile of the modular manifold arrangement is not varied by the inclusion of relay units and the relays can be handled in the same way as the valves which increases flexibility. In addition, any problem of overheating of the relay is solved.

For these reasons, the subject-matter of claim 1 according to the second auxiliary request involves an inventive step.

Third auxiliary request

Support for the words "*an electric circuit member (50) is located in a hollow section of the housing (52), the electrical circuit member (50) includes the relay (51) on the substrate,*" can be found at page 11, lines 3 to 9 of the original application. Support for the words "*an wherein the electronic circuit member (50) is pressed by support sections (52D) of a cover (52C) to such an extent that the relay (51) does not move in the housing (52) for air- tightly sealing an upper surface portion of the housing*" can be found at page 11, lines 15 to 19. Support of "*[the support sections being] formed on end portions in a longitudinal direction of the cover 2*" can be found in figures 2 and 3 of the

drawings. The subject-matter of claim 1 according to the third auxiliary request thus meets the requirements of Article 123(2) EPC.

Fourth auxiliary request

The fourth auxiliary request is filed to address the objections raised against the subject-matter of claim 1 according to the third auxiliary request. In particular, the features concerning the internal construction of the relay unit have now been taken literally from the description, paragraph [0025] (application as published). The fourth auxiliary request should be admitted into the proceedings.

Reasons for the Decision

1. *Main request*

1.1 Documents D7 and D8.16 are different extracts from the same product catalogue "*Der Pneumatic-Katalog 97/98*". According to delivery notes D8.1a to D8.1c, which also exhibit bar coding from the delivery company "*DPD*", such a catalogue was sent to different members of the public in October 1997. Thus, documents D7 and D8.16 were made available to the public before the priority date of the patent in suit and therefore constitute prior art according to Article 54(2) EPC 1973. This was not contested by the respondent.

1.2 Document D7 discloses the closest prior art, a manifold base (e.g. "*Ventilinsel Typ 02*") permitting either 4, 6, 8, 10, 12, 14 or 16 elements to be mounted thereon. Each mounting position may be fitted with either a solenoid valve (M, V, L, P, J, K, G, O, E, F, B, C), a

blanking plate (A) or a relay (R, Q) (for example, pages 6.4/10-1 to 6.4/10-4). Hence, it may have mounted thereon two solenoid valves of the same type M and one relay unit R.

Document D7 also contains instructions to potential customers on how to specify a manifold block by providing a form (e.g. pages 6.4/10-3, 6.4/11-3, 6.4/12-3, 6.4/13-4) which, when filled out, contains information concerning the manifold type, size of fluid line, number of positions for mounting units, type of electrical connection and connector, what unit (i.e. solenoid valve, blanking plate or relay) should be mounted in which position and accessories. As the form requires a unit to be specified for each mounting position on the base, it goes beyond merely indicating the overall numbers of solenoid valves, relay units and blanking plates to be included.

In view of this attention to detail, it goes against common sense, that the catalogue in general and in particular the instructions ("*Bestellhinweise*") provided for filling out these forms were to remain silent concerning any limitations as to the positions some units may, or may not, occupy on the manifold base. The omission of such important limitations, assuming there were any, would potentially result in orders for invalid configurations from would-be customers and thus be inconvenient and embarrassing for both the potential customer and the supplier. Therefore, the absence of indications concerning any limitations with regard to the positioning of any of the units implies that any unit may in fact be placed at any position amongst those that are available on the manifold base.

The section "*Relaisplatte*" concerning the relay units of document D7 indicates that, as an alternative, a relay unit ("*Relaisplatte*") may be mounted at a position suitable for receiving a valve ("*Ventilplatz*", page 6.4/16-4). In particular, the mention of a "*Ventilplatz*" alternatively receiving a relay contradicts the respondent's thesis that there might in fact be a difference in the configuration of a mounting position depending whether a valve or a relay has been selected by the customer for mounting on it. Similarly, the listing relay units R and Q amongst the piece parts for retrofitting ("*Einzelteile zum Nachrüsten*", page 6.4/16-2) would not make sense, if the positions on the base unit had to be different depending on the components to be mounted on them. In view of this clear disclosure, the board did not come to a different conclusion even taking into account the respondent's argument that in all of the examples shown in document D7, the relay unit is located on the end of the other components.

Although there is no explicit disclosure of the internal construction of the base unit, document D7 (page 6.4/10-1, penultimate paragraph of the text column) points out that the electrical connections of the magnetic bobbins or relays are linked internally to the central connector ("*Die elektrischen Anschlüsse der Magnetspulen oder Relais werden intern zum Zentralstecker geführt*"). As stated in the section "*Relaisplatte*" (page 6.4/16-4) the relay is controlled like a valve. Again, this implies that the electrical connections provided at each mounting position are the same, independently of the components to be mounted there.

Thus, although document D7 does not explicitly disclose the design of the mounting surfaces, the skilled person nevertheless understands from document D7, when read as a whole, that each mounting position on the manifold base may be used for either mounting a valve or a relay.

The fact that any unit may be placed at any position on the manifold base, in turn, implies, firstly, that all mounting positions are identical, secondly, that all units, i.e. in particular the relay units, may not extend width-wise beyond the width of such a mounting position and, thirdly, that mounting a relay unit will prevent losing pressurised fluid from the connections needed by a valve should it have been mounted in the position to be occupied by the relay unit.

In consequence, the only difference between the subject-matter of claim 1 according to the main request and the disclosure of document D7, as understood by the skilled person, is the modular construction of the manifold base, i.e. that a plurality of manifold blocks are coupled together.

- 1.3 The object of the invention, as set out in paragraph [0004] of the patent in suit, is *"...to provide a manifold-type solenoid valve with a relay unit, in which the manifold-type solenoid valve and the relay unit are integrated in one place so that the number of installation locations is reduced, control and wiring are simplified, and the solenoid valve and the relay unit can be handled simultaneously"*.

This object is already achieved by the device disclosed in document D7 as solenoid valves and at least one relay unit are arranged on the same manifold base (for

example, the figure at the top right of page 6.4/14-1 or figures on pages 6.4/14-4 and 6.4/14-5).

Although, the patent in suit does not explicitly mention any particular effects associated with the modular construction of the manifold base, its advantages, such as simplified production and mounting process are generally known. In the context of document D7, it is thus immediately evident to the skilled person that the manifold may be arbitrarily extended when required.

The objective problem is therefore to permit the manifold to be arbitrarily extended when required.

- 1.4 Document D1 sets out to reduce the structural effort needed for the parallel operation of hydraulic and pneumatic valves (column 1, lines 39 to 42). The solution is a manifold comprising manifold modules (25) for addressing off-board hydraulic valves (column 4, lines 43 to 49) and modular manifold base blocks (2) with pneumatic valves releasably mounted thereon (column 2, lines 44 to 47; column 5, lines 19 to 27). Document D1, also discloses that the advantage of a modular construction of the manifold base is that it permits the manifold to be extended as required (column 5, lines 24 to 27).

Document D1 thus belongs to the same technical areas as the patent in suit so that the skilled person seeking to solve the above objective problem would be familiar with it and, in consequence, consider using a modular manifold base to permit the manifold of document D7 to be extended as required. Thus, in following the teaching of document D1, the skilled person immediately

arrives at the subject-matter of claim 1 according to the main request without performing an inventive step.

It was argued on behalf of the respondent, that the skilled person would necessarily want to avoid sealing issues between each base module and the relay or valve unit mounted thereon and, therefore, instead use a modular construction in which each base module is integrated with the respective relay or valve mounted thereon disclosed as "*Ventilinsel Typ 10*" in the same catalogue as document D7 (see document D8.16, page 6.1/10-4, figures "*Ventilplatte*" and "*Relaisplatte*"), thereby arriving at a modular construction without a separate modular base.

The sealing between the valve base and the valve or relay mounted thereon is not mentioned as an issue in either documents D7 or D1. In addition, the solution according to document D8.16 requires disassembling the manifold as a whole when a valve or relay has to be changed, which is not the case for the manifold according to document D7, whether with or without a modular construction of the base. Thus the solution according to document D8.16 constitutes a different compromise which potentially avoids sealing issues between the base and the valve or relay at the cost of more complex handling when exchanging valves or relays.

The existence of such a different kind of modular manifold does not affect the above reasoning concerning the lack of inventive step of the subject-matter of claim 1 when applying the teaching of document D1 to the manifold of document D7.

1.5 For these reasons, the subject-matter of claim 1 according to the main request does not involve an inventive step (Article 56 EPC 1973).

2. *First auxiliary request*

Claim 1 according to the first auxiliary request differs from claim 1 of the main request in that the following feature from claim 2 of the application as published was added: "*the housing [of the relay unit (5)] further having substantially the same external shape as the solenoid valve (1)*". An understanding of the expression "*substantially the same external shape*" can only be gained from the description of the patent in suit as follows: the feature is merely stated in the description at paragraphs [0008] and [0014] and only explained in the context of the detailed description of an embodiment as "*not to stick out from the mounting surface 28 in a width direction*" (paragraph [0025]). However, this constraint on the width is already an explicit feature of claim 1: "*...the relay unit (5) has a housing (52) which ... is within the width of the block...*". There is thus no basis in the patent in suit that the expression "*substantially the same shape*" is limiting the claimed subject-matter to "*slight*" variations in shape, as argued by the respondent. On the contrary, the term "*substantially*" may be interpreted broadly, so that the expression "*substantially the same external shape*" effectively becomes meaningless.

As a result, the subject-matter of claim 1 according to the first auxiliary request remains unchanged with respect to claim 1 according to the main request.

In consequence, the finding of lack of inventive step of the subject-matter claim 1 according to the main request carries over identically to claim 1 according to the first auxiliary request.

3. *Second auxiliary request*

Claim 1 according to the second auxiliary request corresponds to claim 1 of the first auxiliary request, except that the term "*substantially*" was deleted. Hence, the housing of the relay unit (5) has the same external shape as the solenoid valve.

The drawings in plan view of document D7, for example, those on page 6.4/11-4, only show that the solenoid valve 7 and the relay unit 9 as having the same width and length. However, the corresponding figure at the top right of page 6.4/11-1 is not clear. Thus, document D7 does not provide any certainty whether the solenoid valves (e.g. type M) and the relay unit (e.g. type R) have the same external shape or not.

Thus the subject-matter of claim 1 according to the second auxiliary request differs from the disclosure of document D7, as understood by the skilled person, in that a plurality of manifold blocks are coupled together and in that the housing of the relay unit (5) has the same external shape as the solenoid valve. These features are however fully independent of one another, nor was any synergistic interaction between them presented. As set out above in the context of the first auxiliary request, the feature that a plurality of manifold blocks are coupled together was already found to lack an inventive step.

The only concrete advantage presented on behalf of the respondent resulting from the relay having the same external shape as the solenoid valve is that the uniform design makes the handling of the relay easier. In contrast, the description of the patent in suit neither raises any problem of overheating of the relay nor discloses any solution of this problem, nor explicitly discloses any other advantages.

However, this does not alter the foregoing conclusions on inventive step for the following reasons.

If the housing of the relay was, for example, smaller than that of the solenoid valves, this may make accessing the relay more difficult when mounted next to a valve contained in a larger housing. In this case the objective problem is to improve the ease of handling the relay when mounted next to solenoid valves.

The board is convinced, that not only can the skilled person readily contemplate in advance that providing the relay with a housing having the same external shape as the solenoid valve would solve this inconvenience and improve the ease of handling the relay mounted next to solenoid valves, but that such a solution would also not go beyond the usual practice of the skilled person and thus not require an inventive step.

In consequence, the subject-matter of claim 1 according to the second auxiliary request also does not involve an inventive step (Article 56 EPC 1973).

4. *Third auxiliary request*

The features added to claim 1 according to the third auxiliary request relate to the electrical circuit

member 50 included in the relay unit 5. These features are based on the embodiment described in paragraph [0025] application as published, which i.a. discloses a specific electrical circuit member 50 including other components in addition to the relay 51 (for example, intermediate terminal 55, power receiving connector 56, electronic parts 59, etc.) on a substrate 50. These are not included in the subject-matter of claim 1 and the skilled person cannot directly and unambiguously derive from the application documents as filed that these components are optional.

Thus, already for this reason alone, the subject-matter of claim 1 according to the third auxiliary request does not satisfy the requirements of Article 123(2) EPC.

5. *Fourth auxiliary request*

As the third auxiliary request was filed for the first time as second auxiliary request in opposition proceedings on 25 September 2009 and the argument concerning the omission of features from the electrical circuit member was itself only presented for the first time during oral proceedings before the board, it is only fair that the respondent be given the opportunity to address this issue.

The features concerning the internal construction of the relay unit now appear to have been taken literally, without any omissions, from the description paragraph [0025] (application as published) so that the objection under Article 123(2) EPC which led to the rejection of the third auxiliary request appears *prima facie* to have been overcome.

Thus, the board finds it appropriate to admit the request into the procedure in accordance with Article 13 of the Rules of Procedure of the Boards of Appeal.

6. Remittal

The introduction of features concerning the internal construction of the relay unit from the embodiment into the subject-matter of claim 1 according to the fourth auxiliary request gives rise to a change in the factual framework of the case, potentially giving rise to new lines of argument.

Whilst it is accepted that remittal to the department of first instance conflicts with the desirability for procedural economy, the board is of the opinion that this consideration is outweighed by the need for fairness vis-à-vis the respondent.

It is accordingly considered appropriate for the board to exercise its discretion in accordance with Article 111(1) EPC and remit the case to the opposition division, so that the respondent is not deprived of the possibility of having any new lines of argument considered at two instances.

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 first instance for further prosecution.

The Registrar:

The Chairman:



D. Meyfarth

M. Poock

Decision electronically authenticated