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**Datasheet for the decision
of 21 September 2015**

Case Number: T 1835/11 - 3.5.02

Application Number: 04015561.6

Publication Number: 1501157

IPC: H01R4/48

Language of the proceedings: EN

Title of invention:

Connecting box for a solar panel and solar panel

Patent Proprietor:

TE Connectivity Germany GmbH

Opponents:

Weidmüller Interface GmbH & Co. KG
Günther Spelsberg GmbH & Co. KG

Relevant legal provisions:

EPC Art. 108, 56
EPC R. 99(1)(a)
RPBA Art. 12(4)

Keyword:

Admissibility of appeal - notice of appeal
Admissibility of appeal - name and address of appellant
Late-filed evidence -
request could have been filed in first instance proceedings
(yes)
Inventive step - (yes)

Decisions cited:

G 0001/12



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Chambres de recours**

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Case Number: T 1835/11 - 3.5.02

D E C I S I O N
of Technical Board of Appeal 3.5.02
of 21 September 2015

Appellant: Günther Spelsberg GmbH & Co. KG
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Respondent: TE Connectivity Germany GmbH
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Party as of right: Weidmüller Interface GmbH & Co. KG
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
20 July 2011 concerning maintenance of the
European Patent No. 1501157 in amended form.**

Composition of the Board:

Chairman M. Ruggiu
Members: R. Lord
 R. Cramer

Summary of Facts and Submissions

I. This is an appeal of opponent 2 (Günther Spelsberg GmbH & Co. KG) against the decision of the opposition division that, account being taken of the amendments made by the patent proprietor, the European patent No. 1 501 157 and the invention to which it relates meet the requirements of the EPC. The basis for this decision was the main request as filed at the oral proceedings of 15 June 2011.

II. The following document cited during the procedure before the opposition division is relevant for this decision:

E6: US 4 460 232 A.

III. With the statement of grounds of appeal received on 14 November 2011 the appellant requested that the decision under appeal be set aside and that the patent be revoked. As an auxiliary measure the appellant also requested that oral proceedings be held. Annexed to the grounds of appeal were three documents, labelled Anlage/Exhibit MHP1, MHP2 and MHP3 relating to the alleged sale by the appellant of a connecting box for solar panels.

In a reply dated 22 February 2012 the respondent (patent proprietor) requested that the appeal be dismissed, and, if that was not possible, that oral proceedings be held.

In a letter dated 22 March 2012 the appellant provided the name and address which were missing from the notice of appeal.

In a communication accompanying a summons to oral proceedings, dated 3 July 2015, the board indicated *inter alia* its preliminary opinion that the appeal was admissible, that the additional prior art introduced with the grounds of appeal should not be admitted into the procedure, and that the contact terminals (reference sign 40) of E6 were part of the connecting box, as argued by the respondent, not of the solar panel, as argued by the appellant.

With letter dated 16 July 2015 the appellant withdrew their request for oral proceedings.

With letter dated 21 August 2015 the respondent confirmed the requests of 22 February 2015, and also indicated that the six auxiliary requests filed with letter dated 13 May 2011 were maintained.

In a letter dated 8 September 2015 the board cancelled the appointed oral proceedings.

IV. Claim 1 of the request underlying the decision under appeal reads as follows:

"[1a] Connecting box (22, 40) for a solar panel (28)
[1b] comprising a housing (16, 25, 24, 37, 38)
[1c] comprising contact elements (10, 20) for electrically connecting to contacts (41) of the solar panel (28),
[1d] the housing (16, 25, 24, 37, 38) comprising an opening for introducing the contacts (41) of the solar panel (28), characterised in that
- [1e] the contact elements (10, 20) comprise a tapered receiving region (17, 18, 36)
[1f] to which a contact region (19, 35) adjoins,

[1g] so automatic introduction of a contact (41) of the solar panel (28) via the receiving region (17, 18, 36) into the contact region (19, 35) of the contact elements (10, 20) is possible;

- [1h] a base board (25) comprises a larger opening (39) in the longitudinal direction of the contact elements than is necessary for receiving contacts (41);
- [1i] in the region of the opening (39), the housing comprises a receiving space (23) for insertion of the contact (41); and
- [1j] the receiving space (23) is laterally offset with respect to a lid opening (27)."

The inserted feature numbering is that proposed by the appellant on page 2 of the statement of grounds of appeal received on 14 November 2011.

V. The arguments of the appellant which are relevant for the present decision can be summarised as follows:

The respondent's objection that the appeal was inadmissible had been addressed by the submission of 22 March 2012.

The sole feature distinguishing the subject-matter of claim 1 as maintained in the decision under appeal was feature [1j], relating to the lateral offset of the lid opening, which would have been an obvious measure for the skilled person.

The subject-matter of that claim was also obvious in the light of the combination of E6 with the public prior use for which evidence had been provided with the grounds of appeal.

VI. The respondent argued essentially as follows:

The appeal was inadmissible because the notice of appeal did not include the name and address of the appellant.

The new prior art introduced with the grounds of appeal should not be admitted into the proceedings because there had been no change to the substance of the claims since the reply of 9 September 2010 to the opposition grounds, and because it concerned the appellant's own product, so that there was no reason why it could not have been presented during the proceedings before the opposition division.

The appellant's reading of E6 onto the claim was incorrect, because the contacts 40 in E6 were part of the connecting box, not of the solar panel, so that feature [1g] of the claim was not disclosed in E6. It was also not suggested anywhere else in the prior art. The lateral offset of feature [1j] was also not obvious to the skilled person. Therefore the subject-matter of the claim was not obvious to the skilled person.

- VII. Opponent 1 (Weidmüller Interface GmbH) filed no requests or other submissions during the appeal proceedings, other than stating that they would not attend oral proceedings.

Reasons for the Decision

1. In their reply of 22 February 2012 to the grounds of appeal the respondent objected that the notice of appeal did not comply with the requirements of Article 108 EPC in combination with Rule 99(1)(a) EPC because

it did not contain the name and address of the appellant. For the purpose of Rule 99(1)(a) EPC it is necessary that the identity of the true appellant, i.e. the person on whose behalf the appeal was actually filed, can be established on the basis of the information given in the notice of appeal (G 1/12, OJ EPO 2014, A114, Reasons for the Decision, Nos. 20 to 23). As the notice of appeal was filed by the representatives of opponent 2 in the first instance, and opponent 2 was a party adversely affected by the decision under appeal, it was possible to identify the appellant as opponent 2. The appeal is therefore admissible.

2. The appellant has withdrawn their request for oral proceedings. The present decision is in accordance with the respondent's main request, so that their auxiliary request for oral proceedings does not need to be taken into account. Therefore the case can be decided without the need to hold oral proceedings.

3. In the grounds of appeal the appellant introduced new prior art in the form of an alleged public prior use, evidence for which was contained in the three documents, labelled Anlage/Exhibit MHP1, MHP2 and MHP3, which were filed with those grounds. The appellant has not however provided any reasons as to why this prior art was not introduced earlier, in which context the respondent has correctly observed that the claims had not been amended in substance since the reply of 9 September 2010 to the opposition grounds (the amendments to the claims filed during the oral proceedings before the opposition division consisted only of deletion of reference signs). Moreover, as indicated in the grounds of appeal, the alleged prior use concerns sales of the appellant's own products, so

that it must be assumed that they have not only recently become aware of it. The board therefore agrees with the respondent that the appellant should have been able to introduce this prior art during the procedure before the opposition division. The board therefore decided that it was appropriate to exercise its discretion under Article 12(4) of the Rules of Procedure of the Boards of Appeal to not admit this prior art in to the proceedings.

4. The appellant argues that the subject-matter of the independent claim 1 which was the subject of the decision under appeal does not involve an inventive step according to Article 56 EPC. The board does not find this argument convincing for the following reasons.
 - 4.1 Document E6, like the present claim 1, relates to a connecting box (junction box 4) for a solar panel (5), as depicted in figures 1 and 2 and described in column 2, lines 4 to 54 of that document. According to the appellant the introduction of the contacts (terminals 40) of E6 into the tapered ends of the contact elements (terminals 72) can be read onto feature [1g] of the present claim. However, according to feature [1c] of the claim, these contacts are those of the solar panel, and thus correspond to the tabs (6) of E6. In contrast, E6 describes at column 2, lines 55 to 61, referring to figure 2, that the terminals 40 are fixed within the receptacles 20 of the connecting box, so that they cannot be considered as being the contacts of the solar panel. Thus the contacts (tabs 6) of the solar panel in E6 contact with the terminals 40, and the manner in which this occurs is not an automatic introduction as defined in feature [1g] of the claim.

- 4.2 Thus feature [1g] is not disclosed in E6, so that the appellant's objection of lack of inventive step with respect to that document fails, since no further arguments have been presented as to why that feature might have been obvious to the skilled person. The board therefore concludes that the subject-matter of claim 1 according to the appellant's main request involves an inventive step in the light of E6. As a consequence, it is not necessary to consider whether or not feature [1j] would have been obvious.
5. Given the above, and given that the appellant has raised no further objections during the appeal procedure, the board has to accede to the respondent's request to dismiss the appeal. It was therefore not necessary to consider the respondent's auxiliary requests.

Order

For these reasons it is decided that:

The appeal is dismissed

The Registrar:

The Chairman:



U. Bultmann

M. Ruggiu

Decision electronically authenticated