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**Datasheet for the decision
of 6 September 2019**

Case Number: T 2132/14 - 3.5.02

Application Number: 07254357.2

Publication Number: 1983617

IPC: H01R13/187, H01R13/26

Language of the proceedings: EN

Title of invention:

Electrical connector assembly

Applicant:

Traxxas LP

Relevant legal provisions:

EPC Art. 108

EPC R. 99(2)

Keyword:

Admissibility of appeal - statement of grounds does not address all main reasons for the decision



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Case Number: T 2132/14 - 3.5.02

D E C I S I O N
of Technical Board of Appeal 3.5.02
of 6 September 2019

Appellant: Traxxas LP
(Applicant) 6250 Traxxas Way
McKinney TX 75070 (US)

Representative: CSY Herts
Helios Court
1 Bishop Square
Hatfield, Hertfordshire AL10 9NE (GB)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 16 May 2014
refusing European patent application No.
07254357.2 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman R. Lord
Members: C. Vassoille
W. Ungler

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. 07254357.2.
- II. In the reasons for the decision the examining division found *inter alia* that claims 7 and 19 of the main request extended beyond the content of the application as originally filed, contrary to the requirements of Article 123(2) EPC.
- III. With the statement of grounds of appeal, the appellant filed a new set of claims.
- IV. In a communication under Article 15(1) RPBA, the board informed the appellant that it was doubtful whether the appeal is admissible in the sense of Article 108 and Rule 99(2) EPC and that the amendments to the new claims 1 and 15 of the main request also did not seem to fulfil the requirements of Article 123(2) EPC.
- V. With letter dated 5 September 2019, the appellant filed a new set of claims replacing the set of claims on file and informed the board that the appellant would not attend the oral proceedings scheduled for the next day.
- VI. Oral proceedings before the board were held on 6 September 2019 in the absence of the appellant.

The appellant requested in writing that the decision under appeal be set aside and a patent be granted on the basis of the set of claims filed with letter dated 5 September 2019, or that the case be remitted to the examining division for further prosecution.

Reasons for the Decision

1. *Admissibility of the appeal (Article 108 and Rule 99(2) EPC)*
 - 1.1 The appeal is not admissible, since the conditions for an adequate statement of grounds of appeal are not fulfilled. From the third sentence of Article 108 EPC in conjunction with Rule 99(2) EPC it follows that the statement of grounds of appeal must state the grounds on which the decision is to be set aside. Accordingly, it is settled case law of the Boards of Appeal that a statement of grounds must address all the main reasons given for the decision under appeal (see Case Law of the Boards of Appeal, 8th Edition 2016, IV.E. 2.6.3.b)).
 - 1.2 In the reasoning of the decision under appeal, the examining division concluded that the subject-matter of claims 7 and 19 of the main request, on which the main request filed with the statement of grounds of appeal was substantially based, did not seem to meet the requirements of Article 123(2) EPC (see point 1.5 of the reasons for the decision under appeal). This must therefore be interpreted as being one of the main grounds on which the application was refused.
 - 1.3 The appellant did not address this ground for refusal under Article 123(2) EPC in the statement of grounds of appeal at all. Claim 31 of the set of claims filed with the statement of grounds of appeal, which is based on the former claim 19 which had been objected to, has indeed been amended. The appellant however did not provide any comment as to why the amendments should be considered to be suitable to overcome the examining division's objections with respect to Article 123(2)

EPC. The mere filing of an amended claim without any comment cannot be considered as a sufficient reasoning that would establish compliance of the statement of grounds of appeal with Article 108 EPC (see Case Law of the Boards of Appeal, 8th Edition 2016, IV.E.2.6.5.b)).

1.4 The board further observes that the independent claim 15 of the set of claims filed with the statement of grounds of appeal, which substantially corresponds to former claim 7, still comprises the feature which had been objected to: "the first insulating cover extends along [...] a portion of a surface of the first male terminal" in unamended form. No comments were provided by the appellant in this regard either. The board concludes that the appellant did not address the corresponding ground for refusal under Article 123(2) EPC, either implicitly by filing amendments, or explicitly by filing comments on this point.

1.5 The board further observes that the appellant in the letter dated 5 September 2019, one day prior to the oral proceedings, did not in any way refer to the question of admissibility of the appeal, raised by the board in the communication under Article 15(1) RPBA.

Furthermore, filing of the new set of claims with the before-mentioned letter also cannot be considered as an adequate response to the board's concerns as regards the admissibility of the appeal expressed in their preliminary opinion.

The board further notes that the conditions under Rule 99(2) EPC, i.e. an adequate statement of grounds of appeal, must be satisfied within the time limit for filing the statement of grounds of appeal laid down in the third sentence of Article 108 EPC so that

deficiencies in this respect cannot be overcome by filing a new set of claims one day prior to the oral proceedings.

- 1.6 Given the above observations, the board comes to the conclusion that the appeal does not meet the requirements of Article 108 and Rule 99(2) EPC and is therefore not admissible. The question as to whether the new set of claims filed with letter dated 5 September 2019 is admissible can therefore remain unanswered.

Order

For these reasons it is decided that:

The appeal is rejected as inadmissible.

The Registrar:

The Chairman:



U. Bultmann

R. Lord

Decision electronically authenticated