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**Datasheet for the decision  
of 23 November 2015**

**Case Number:** T 1783/10 - 3.5.02

**Application Number:** 01400545.8

**Publication Number:** 1130692

**IPC:** H01R13/627, H01R13/639,  
H01R13/703

**Language of the proceedings:** EN

**Title of invention:**  
Electrical connection system

**Patent Proprietor:**  
J.S.T. Mfg. Co., Ltd.  
Toyota Jidosha Kabushiki Kaisha

**Opponents:**  
Amphenol-Tuchel Electronics GmbH  
FCI

**Relevant legal provisions:**  
EPC Art. 123(2)

**Keyword:**  
Amendments - added subject-matter (yes)



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Case Number: T 1783/10 - 3.5.02

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.02**  
**of 23 November 2015**

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**Decision under appeal:**        **Interlocutory decision of the Opposition**

**Composition of the Board:**

<b>Chairman</b>	M. Ruggiu
<b>Members:</b>	G. Flyng
	W. Ungler

## **Summary of Facts and Submissions**

- I. Both opponents have appealed against the interlocutory decision of the opposition division on European Patent EP 1 130 692 B1. They are referred to herein as:  
Appellant O1: Amphenol-Tuchel Electronics GmbH; and  
Appellant O2: FCI.

The joint proprietors of the patent are respondents to the appeals.

- II. In the contested decision the opposition division held that claim 1 of the patent as granted (main request) met the requirements of Article 83, 100(b) EPC, but did not meet the requirements of Article 123(2), 100(c) EPC.

Referring in particular to Articles 123(2) and (3), 84, 54 and 56 EPC, the opposition division held that taking into consideration the amendments made by the proprietor according to the first auxiliary request filed during the oral proceedings on 1 June 2010, the patent and the invention to which it relates met the requirements of the EPC.

- III. The Board summoned the parties to attend oral proceedings on 23 November 2015, setting out preliminary observations on the appeal in an annex to the summons.

With letters dated 29 September and 13 October 2015 appellant O1 requested rescheduling/postponement of the oral proceedings. The Board refused these requests (see communications dated 8 and 15 October 2015).

Appellants O1 and O2 responded to the summons with letters dated 19 and 22 October 2015, respectively.

The respondents replied to the summons with a letter dated 23 October 2015, filing therewith a set of claims 1 to 10 of an amended main request.

IV. The oral proceedings took place as scheduled on 23 November 2015.

At the beginning of the oral proceedings the respondents filed a set of claims 1 to 10 of a further amended main request.

The appellants requested that the decision under appeal be set aside and that the patent be revoked in its entirety.

The respondents requested that the decision under appeal be set aside and the patent be maintained in amended form on the basis of claims 1 to 10 filed in the oral proceedings of 23 November 2015 (hereinafter "the main request").

V. Claim 1 of the main request (hereinafter: claim 1) reads as follows:

"1. An electrical connection system (1) comprising:  
- a first component (2) supporting a pair of first electrical connector elements (13),  
- a second component (3) supporting a pair of second electrical connector elements (30) engageable with the first electrical connector elements (13), the second component (3) being engageable with the first component (2) to engage the first electrical connector elements

(13) and the second electrical connector elements (30),

- a shorting element (4), mounted on the first component (2), electrically shorting the first electrical connector elements (13), and
- a latch element (5) for shifting the shorting element (4) to its non-shorting position,

the latch element (5) being adapted to be in a first position in which the latch element is maintained by the second component in a latched state and in which when the second component is engaged with the first component, the shorting element is in its shorting position, the latch element being further adapted to be in a second position in which when the second component is engaged with the first component the shorting element (4) is in its non-shorting position and, the latch element is latched to each of the first and second components by the fact that the latch element (5) comprises first latch portions (54) latched into a latch groove (62) of the second component (3) and second latch portions (55) fitted in a latch groove (15) formed in the first component (2), wherein the second component comprises latch portions (42) able to be engaged in said latch groove (15) formed in the first component when the latch element is in its second position, said system being characterized in that the latch element comprises restricting portions (52) which in said second position, confront an inside portion (63) of said latch portion (42) for restricting the disengagement of said latch portion from said latch groove, wherein the latch element (5) and the second component (3) are configured such that, when the latch element (5) is in the first position and the second component (3) is separated from the first component (2), the latch element (5) is not lowered to the second

position, even when it is pressed against the second component (3)."

VI. Appellants' submissions

Both appellants argue that the feature of claim 1 according to which the latch element (5) is latched to the first component (2) is not directly and unambiguously derivable from the application as filed, Article 100(c) EPC. This is the issue upon which the Board came to this decision.

The appellants raised further objections under Articles 100(c) and 123(2), Article 100(b), Articles 100(a) and 56 and Article 84 EPC, but in view of the Board's ruling on the above issue it is not necessary to consider these further objections in the decision.

VII. Respondents' submissions

The respondents argue that the feature of claim 1 according to which the latch element (5) is latched to the first component (2) is directly and unambiguously derivable from the application as filed, Article 100(c) EPC.

In particular, the respondents argue that the engagement of the latch portions 55 in the latch groove 15, which causes an interlocking relationship between the latch element and the first component 2, is derivable from figure 13 and the disclosures in paragraphs [0041], [0060] and [0061] of the published application (EP 1 130 692 A2).

Also, the respondents argue that the use of the term "latch portion 55" explicitly hints to the latch element being latched to the first component 2.

In order to demonstrate that the latch portion 55 latches in the latching groove 15, the respondents provided drawings to show what the arrangement of the various components of the connection system would be during removal of the latch element 5 or in the event of the latch portion 42 breaking off (see annexes I and II to the letter of 31 March 2011).

### **Reasons for the Decision**

1. According to claim 1, when the latch element (5) is in its second position and when the second component (3) is engaged with the first component (2), "the latch element is latched to each of the first and second components by the fact that the latch element (5) comprises first latch portions (54) latched into a latch groove (62) of the second component (3) and second latch portions (55) fitted in a latch groove (15) formed in the first component (2)". It follows from this that the latch element (5) is latched to the first component (2) by the fact that the latch element (5) comprises second latch portions (55) fitted in a latch groove (15) formed in the first component (2).
  
2. In the description and claims of the application as filed there is no explicit disclosure of the latch element 5 being latched to the first component 2.

The question thus has to be considered, whether such latching is derivable directly and unambiguously from the application as filed, taking into account what is



implicit to the person skilled in the art. If not, then the subject-matter of the European patent extends beyond the content of the application as filed, contrary to Article 123(2) EPC.

3. Figures 10 to 13 of the application as filed show the process of engaging the second component 3 to the first component 2 from the initial condition as shown in figure 10 to completion as shown in figure 13 (see the published application, EP 1 130 692 A2, paragraphs [0028] to [0031]).

In figure 13, where the engagement of the second component 3 to the first component 2 is completed, there is a distinct gap between the upper sloping face of the latch portion 55 of the latch element 5 and the upper wall of the latch groove 15 of the first component 2. Because of this gap, the board considers that the skilled person would not derive unambiguously from the figure that there is engagement between the upper sloping face of the latch portion 55 and the upper wall of the groove 15. However, as the respondents accepted, such engagement would be necessary for the latch element 5 to be latched to the first component 2.

The respondents argued that the skilled person would understand the gap shown in figure 13 between the upper sloping face of the latch portion 55 and the upper wall of the latch groove 15 as being merely a drafting technique used to allow the reader to see the latch portion 42 of the second component 3, which are behind the latch portion 55. The Board is not persuaded by this argument because the latch portion 55 projects deeper into the groove 15 than the latch portion 42, and so would have been visible even if the latch

portion 55 had been depicted in engagement with its upper sloping face engaging the upper wall of the latch groove 15.

4. Regarding the passages of the description cited by respondents as a basis for the claimed latching between the latch element 5 and the first component 2, the Board finds as follows:

In paragraph [0041] it is stated that the "latch groove 15 acts to receive the latch portions 42 of the second component 3 and keep them in the engaged state, as best shown in FIG. 12". By comparison, it is stated in the very next sentence that the latch groove 15 "also acts to receive the second latch portions 55 of the latch element 5 and switch it to the second latch position, as best shown in FIG. 13" (emphasis added).

The explicit statement that the latch portions 42 of the second component 3 are kept "in the engaged state" is consistent with there being a latching action between the latch portions 42 of the second component 3 and the latch groove 15. The absence of a corresponding statement concerning the second latch portions 55 of the latch element 5, together with the disclosure of another, different purpose for the second latch portions 55 being received in the latch groove 15 (i.e. to switch it to the second latch position) is considered by the Board as an indication that the second latch portions 55 are not necessarily kept in an engaged state (i.e. latched) in the latch groove 15. Rather, the latching of the latch element 5 in the second latch position is disclosed as being achieved by the first latch portions 54 of the first legs 51 of the latch element 5 being latched in the latch groove 62 of the second component 3 as set out in paragraph [0061].

5. The Board is not persuaded by the respondents' argument that the use of the term latch portion itself gives a hint that the latch element is latched to the first component 2 for the following reasons. When the latch element has been inserted in the second component 3 as shown in figure 8 and is in the position shown in figures 3 and 10, "the second latch portion or the largely projecting portion 55 of the latch element 5 projects outwardly from the opening 60, so that it is put in the operable state" (see paragraph [0055]). Although this is not explicitly disclosed, it seems evident from the above disclosure that the second latch portion serves to keep the latch element 5 in place, preventing it from being easily removed from, or falling out of, the second component 3. Hence, it is at least plausible that the term "latch portion" has been used because it serves to latch the latch element 5 in place in the second component 3, before it is connected to the first component 2. Thus, the use of this term does not unequivocally indicate that the latch portion 55 latches in the groove 15.
6. As to the drawings submitted by the respondents (see annexes I and II to the letter of 31 March 2011), the Board is not persuaded that the movement of the latch portion 55 during its removal can be predicted with the level of precision necessary to establish that there would necessarily be some latching action with the edge of the groove as shown in annex I. The precise movement of the latch portion would depend too heavily on the exact shape of the parts 62 and 54 as well as the material characteristics of the latch element 55. Similarly, the depiction of what would happen if the second component were to be forced out of engagement

with the first component (Annex II) is considered by the Board to be mere speculation.

7. Finally, the Board notes that in paragraph [0055] it is stated that the "latching magnitude in the second latch position is set to the extent to which the latch element 5 can be returned to the first latch position by pulling it up from the second component 3". It is evident that this sentence refers to the preceding two sentences which describe the way in which the latch element 5 latches to the second component 3 by the outward projecting portion of the first latch portion 54 of the latch element 5 latching. This lends further support to the supposition that the latching element 5 is only latched to the second component, and not to the first component as well.
  
8. For the reasons set out above, the Board concludes that it is not derivable directly and unambiguously from the application as filed that in its second position the latch element is latched to the first component. Hence, the subject-matter of claim 1 of the respondents' main request extends beyond the content of the application as filed, contrary to Article 123(2) EPC. Thus, the Board has to accede to the appellants' requests that the decision under appeal be set aside and the patent be revoked.

**Order**

**For these reasons it is decided that:**

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:



U. Bultmann

M. Ruggiu

Decision electronically authenticated