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**Datasheet for the decision  
of 24 January 2017**

**Case Number:** T 0919/12 - 3.5.02

**Application Number:** 07010533.3

**Publication Number:** 1833125

**IPC:** H01R13/629, G02B6/42

**Language of the proceedings:** EN

**Title of invention:**

Fiber optic connector release mechanism

**Applicant:**

Fourte Design & Development

**Relevant legal provisions:**

EPC Art. 123(2)

**Keyword:**

Amendments - added subject-matter (yes)



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

European Patent Office  
D-80298 MUNICH  
GERMANY  
Tel. +49 (0) 89 2399-0  
Fax +49 (0) 89 2399-4465

Case Number: T 0919/12 - 3.5.02

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.02**  
**of 24 January 2017**

**Appellant:** Fourte Design & Development  
(Applicant) 11908 Main Street  
Sunol, CA 94586 (US)

**Representative:** Fiener, Josef  
Patentanw. J. Fiener et col.  
P.O. Box 12 49  
87712 Mindelheim (DE)

**Decision under appeal:** **Decision of the Examining Division of the European Patent Office posted on 25 November 2011 refusing European patent application No. 07010533.3 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** R. Lord  
**Members:** G. Flyng  
W. Ungler

## **Summary of Facts and Submissions**

- I. The applicant's appeal contests the examining division's decision to refuse the (divisional) European patent application No. 07 010 533.3, which was published as EP 1 833 125 A1.
- II. The contested decision is a so-called "decision according to the state of the file" which refers for its reasoning to the communications of the examining division dated 27 March 2009, 16 March 2010 and 23 March 2011.

The latter two communications were based on the following application documents:

Description, pages

- 1 to 5 filed with telefax on 26 May 2007;

Claims, numbers

- 1 to 5 filed with telefax on 20 January 2010; and

Drawings, sheets

- 1/4 to 4/4 filed with telefax on 26 May 2007.

The examining division held that claim 1 did not specify any mechanical link between the bail/handle and the cage assembly and that it was therefore unclear (Article 84 EPC) how the rotation of the bail would transform to a force acting on the locking tab 121 of the cage for release, see:

- communication dated 23 March 2011, point 2;
- communication dated 16 March 2010, point 2; and
- communication dated 23 March 2009, point 2.3.

Furthermore, the examining division held that the subject-matter of claim 1 was not inventive (Article 56 EPC).

III. The Board summoned the appellant to attend oral proceedings, setting out their initial observations on the appeal in a communication annexed to the summons.

The Board stated that they were not convinced that it was possible to discern, from the information given in the application as filed, how the rotation of the bail relative to the handle caused the handle to move forward relative to the transceiver module. Hence, it was questionable whether this aspect of the claimed invention was disclosed sufficiently, in the sense of Article 83 EPC.

Furthermore, the Board stated that it was perhaps conceivable that the handle would be caused to move forwards upon rotation of the bail if the second axis pin 162 were to be mechanically linked to the transceiver module so as to provide a fixed axis of rotation of the bail 16 relative to the transceiver module 10 and noted that this was perhaps what the examining division had in mind when they observed that claim 1 did not specify any mechanical link between the bail/handle and the cage assembly. The Board stated that if this was how the invention was supposed to work, then this would seem to be an essential feature of the invention that should, according to established case law, be included in the independent claim for it to meet the requirement for clarity of Article 84 EPC.

The Board pointed out, however, that the question remained, whether this arrangement was directly and unambiguously disclosed in the application as filed (Article 123(2) EPC).

IV. The appellant responded to the summons with a letter dated 23 December 2016 (received by fax on 27 December 2016) and filed therewith a new set of claims 1 to 5. Claim 1 filed with letter dated 23 December 2016 reads as follows (amendments compared to claim 1 as considered in the contested decision underlined):

"1. Transceiver module (10) housed in a cage assembly (12) and release mechanism for releasing the transceiver module (10) from the cage assembly (12), comprising a sliding handle (14) and a rotating bail (16), wherein said transceiver module (10) is held in place in said cage assembly (12) by at least one locking tab (121) protruding inward from a side of said cage assembly (12) and wherein, said locking tab (121) being received in a slide path (101) formed in a side of a transceiver module housing (103), and said handle (14) comprises a pair of arms (141) received in said slide path (101), said arms (141) having at distal ends thereof a wedge element (142); such that when said release mechanism is in a locked position, said handle (14) is in a rearmost position in said slide path (101), and said at least one locking tab (121) protrudes into said slide path (101) so as to secure said transceiver module (10), and when said bail (16) is rotated to a released position, said handle (14) moves to a forward position in said slide path (101), causing said wedge elements (142) to push against said at least one locking tab (121) so as to move said at least one locking tab (121) out of said slide path (101), thereby releasing said transceiver module (10) from said cage assembly (12), **characterized in that** said bail (16) is mounted on said handle (14) by a first axis pin (161) received in an eccentric cam slot (143) in said handle (14), and a second axis pin (162)

received in a straight second slot (144) in said handle (14), wherein the second axis pin (162) is linked to the transceiver module (10) to provide an axis of rotation of the bail (16) relative to the transceiver module (10) and the straight second slot (144) is orientated along the slide path (101), wherein said bail (16) moves in a two stage travel path, said bail (16) rotating from a locked position through an approximately 45° arc without moving said transceiver (10) from an installed position as said first axis pin (161) moves through a first stage of said cam slot (143), and said bail (16) further rotating as said first axis pin (161) moves through a second stage of said cam slot (143)."

- V. Oral proceedings were held before the Board on 24 January 2017.

The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the set of claims 1 to 5 filed with letter dated 23 December 2016.

After having heard the appellant and after deliberation the Board came to the conclusion that claim 1 of the appellant's request contravened Article 123(2) EPC and pronounced the present decision.

- VI. The appellant argued that the feature added to claim 1, that "the second axis pin (162) is linked to the transceiver module (10) to provide an axis of rotation of the bail (16) relative to the transceiver module (10)", was directly and unambiguously derivable from the application as filed and that Article 123(2) EPC was therefore not contravened by the amendment.

More particularly, the appellant argued that it was immediately apparent to the person skilled in the art that in order for the handle 14 to be urged forward in the slide path 101 on the transceiver module 10 when the bail 16 was rotated past 45°, as set out in the application as filed, the second axis pin had to be linked to the transceiver module in some way to provide an axis of rotation of the bail relative to the transceiver module. This might be achieved by fixing the second pin to the bail and mounting it for rotation in a hole in the transceiver module, or it might be achieved by fixing the second pin to the transceiver module and providing the bail with a hole to mount it for rotation on the second pin.

According to the appellant, the latter arrangement was directly and unambiguously derivable from figure 4 of the application. Figure 4 showed two unreferenced concentric circles. It would be evident to the skilled person that the inner circle, being located in the straight second slot 144 of the sliding handle 14, corresponded to the second axis pin 162. Furthermore, it would be evident to the skilled person that the outer circle represented a hole in the bail 16, in which the second axis pin 162 fitted loosely, allowing the bail to rotate about the second axis pin. It was then evident that the second axis pin was fixed to the transceiver module, so that when the bail 16 was rotated past 45°, the handle 14 was urged forward relative to the transceiver module 10 due to the cooperation of the first axis pin 161 with the second stage 1432 of the eccentric cam slot 143, as set out in paragraph [0018].

## Reasons for the Decision

1. According to Article 123(2) EPC a European patent application may not be amended in such a way that it contains subject-matter which extends beyond the content of the application as filed. The "gold standard" for assessing compliance with this requirement is that amendments can only be made within the limits of what a skilled person would derive directly and unambiguously, using common general knowledge, from the application as filed.

2. Claim 1 filed with letter dated 23 December 2016 includes the added feature that:

"the second axis pin (162) is linked to the transceiver module (10) to provide an axis of rotation of the bail (16) relative to the transceiver module (10)".

This added feature was not disclosed explicitly in the description or the claims of the application as filed. The question therefore has to be considered, whether it is directly and unambiguously derivable in some other way from the application as filed.

3. The following disclosures in the application as filed are relevant to this question (paragraph references from the published application, EP 1 833 125 A1):

3.1 In claim 1 as filed it is disclosed that:

"when said bail (16) is rotated to a released position, said handle (14) moves to a forward position in said slide path (101)".



3.2 In paragraph [0016] of the description it is disclosed that:

"The bail 16 is mounted on the handle 14 by a first axis pin 161 received in an eccentric cam slot 143 in the handle 14 and a second axis pin 162 received in a straight second slot 144".

3.3 In paragraph [0018] of the description it is disclosed that:

"As the bail 16 rotates past 45° with the first axis pin 161 moving into the second stage 1432 of the cam slot 143, the cooperation of the first axis pin 161 mounted in the cam slot 143 and the second axis pin 162 mounted in the second slot 144 urges the handle 14 forward in the slide paths 101 on the transceiver module 10".

3.4 In figure 4 a side view of the transceiver module is shown, with the bail and handle in their released positions (see column 3, lines 6 and 7). The following features are referenced in figure 4:

- bail 16;
- eccentric cam slot 143, including first and second stages thereof, 1431 and 1432; and
- straight second slot 144.

4. The Board considers that whilst it is possible to understand, from the arrangement of the pins and slots disclosed in paragraphs [0016] and [0018] and depicted in figure 4, how the bail is able to rotate relative to the handle, it is not possible to derive from these disclosures how the rotation of the bail relative to the handle causes the handle to move forward relative to the transceiver module.

5. The appellant argues that whilst the description does not set out all of the features necessary to explain how the handle is caused to move forwards by rotating the bail, the skilled person would be able to work out how this happens from the side view shown in figure 4 and would derive, directly and unambiguously, from it that the second axis pin must be linked to the transceiver module to provide an axis of rotation of the bail relative to the transceiver module.
  
6. The Board accepts that linking the second axis pin to the transceiver module to provide an axis of rotation of the bail might be a mechanical arrangement that could cause the handle to move forwards when the bail is rotated, but is not convinced that the skilled person would conclude from figure 4 that this is the only mechanical arrangement that could cause this effect.
  
7. Furthermore, the Board is not convinced by the appellant's argument that the skilled person would directly and unambiguously derive from figure 4 that the two unreferenced concentric circles depicted represent a hole in the bail 16 (outer circle) and a second axis pin 162 (inner circle) fixed to the transceiver module 10. Figure 4 is the only figure which shows the arrangement of the slots and pins. It does so from only one view and with the bail only in one position. The arrangement of the slots and pins is not shown in great detail and is indistinct, with several of the lines of the drawing merging into one another, obscuring the detail. Furthermore, the drawing does not consistently depict details that would be hidden from view with dotted lines. All of these factors make it difficult to draw clear conclusions as to what the skilled person would necessarily derive

from the figure. In particular, whilst the outer circle might conceivably depict a hole in the bail, it might equally depict some other feature, such as a mushroom head on the pin, a hole in the handle or transceiver module, or the outer surface of a hollow second axis pin. Similarly whilst the inner circle might represent the second axis pin, there is nothing to suggest that this is necessarily so. It could equally be indicative of a hole in the second axis pin.

8. For the reasons set out above, the Board finds that the amendments to claim 1 are not directly and unambiguously derivable from the application as filed and therefore the application as amended contravenes Article 123(2) EPC. Hence, the appeal has to be dismissed.

**Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:



U. Bultmann

R. Lord

Decision electronically authenticated