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**Datasheet for the decision
of 28 July 2025**

Case Number: R 0011/23

Appeal Number: T 0532/20 - 3.5.02

Application Number: 04704812.9

Publication Number: 1590567

IPC: F03D7/04, F03D9/00, F03D7/02

Language of the proceedings: EN

Title of invention:

WIND TURBINE GENERATOR WITH A LOW VOLTAGE RIDE-THROUGH
CONTROLLER AND A METHOD FOR CONTROLLING WIND TURBINE
COMPONENTS

Patent Proprietor:

General Electric Renovables España, S.L.

Opponents:

Vestas Wind Systems A/S
Nordex Energy GmbH
Siemens Gamesa Renewable Energy Deutschland GmbH
Siemens Gamesa Renewable Energy Ltd.

Headword:

Petition for review

Relevant legal provisions:

EPC Art. 84, 105(1)(a), 112a(2)(c), 112a(5), 113(1)
EPC R. 12b(4), 106, 108(3)

Keyword:

Fundamental procedural defect - (yes)
Right to be heard - violation (yes)
Petition for review - re-opening of proceedings (yes)

Decisions cited:

R 0015/11, R 0002/14, T 1627/09



Große Beschwerdekammer
Enlarged Board of Appeal
Grande Chambre de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0

Case Number: R 0011/23

D E C I S I O N
of the Enlarged Board of Appeal
of 28 July 2025

Petitioner: (Patent Proprietor)	General Electric Renovables España, S.L. Calle Roc Boronat 78 08005 Barcelona (ES)
Representative:	Zimmermann & Partner Patentanwälte mbB Postfach 330 920 80069 München (DE)
Other party: (Opponent 2)	Nordex Energy GmbH Langenhorner Chaussee 600 22419 Hamburg (DE)
Representative:	Hauck Patent- und Rechtsanwälte PartmbB Postfach 11 31 53 20431 Hamburg (DE)
Other party: (Opponent 3)	Siemens Gamesa Renewable Energy Deutschland GmbH Seewindstraße 4 27572 Bremerhaven (DE)
Representative:	SGRE-Association Siemens Energy Global GmbH & Co. KG SE I IM P Intellectual Property Siemenspromenade 9 91058 Erlangen (DE)
Other party: (Opponent 4)	Siemens Gamesa Renewable Energy Ltd. Faraday House, Sir William Siemens Square Frimley, Surrey GU16 8QD (GB)
Representative:	2s-ip Schramm Schneider Bertagnoll Patent- und Rechtsanwälte Part mbB Postfach 86 02 67 81629 München (DE)

Decision under review: **Decision of the Technical Board of Appeal 3.5.02
of the European Patent Office of
8 February 2023.**

Composition of the Board:

Chair I. Beckedorf

Members: F. Blumer

 P. Gryczka

 Y. Podbielski

 F. Molina López

Summary of Facts and Submissions

- I. The petition for review concerns decision T 532/20 of Technical Board of Appeal 3.5.02 (the "Board") dated 8 February 2023, revoking the patent in suit after two opponents had filed an appeal against the opposition division's decision to reject the oppositions. The opposed patent EP 1 590 567 "Wind Turbine Generator with a Low Voltage Ride-Through Controller and a Method for Controlling Wind Turbine Components" was granted on 4 October 2017 to General Electric Company. The patent was assigned on 23 January 2024, during the review proceedings, to General Electric Renovables España, S.L., who consequently took over the role of the petitioner.
- II. The petitioner (patent proprietor) claims that its right to be heard was fundamentally violated in the appeal proceedings because the decision under review was based on reasons that were never discussed in the written or in the oral proceedings before the Board.

Opposition proceedings

- III. Three oppositions were filed on all grounds for opposition under Article 100 EPC. Opponent 1 withdrew its opposition before the opposition division issued its decision.
- IV. Based on its conclusions that none of the grounds for opposition prejudiced the maintenance of the patent as granted (main request of the petitioner in the opposition proceedings), the opposition division rejected the oppositions. Auxiliary requests 1 to 8

pending at the end of the opposition proceedings were not decided upon.

Appeal proceedings

V. During the appeal proceedings, the petitioner filed several auxiliary requests. With its response to the statements setting out the grounds of appeal, the petitioner filed, inter alia, an auxiliary request D on 29 September 2020, which was substantially identical to auxiliary request 3D filed on 20 August 2021 and later was re-filed as auxiliary request 8 on 30 September 2022.

VI. Claim 1 of said request, underlying the decision under review as auxiliary request 8, was directed to a wind turbine generator comprising, inter alia, a power converter including a converter controller. This power converter was further specified by the following features originating from the originally filed description (the "critical feature"):

"wherein the power converter (315, 400) includes a protective circuit for maintaining currents within an allowable range, the converter controller being adapted for selectively activating and deactivating the protective circuit to maintain the current flow within the allowable range".

VII. When auxiliary request 8 was discussed during oral proceedings, the parties were heard about the clarity objection against claim 1 of said request (see page 4 of the minutes). The objection raised by the opponents' side was that it was not clear what "for maintaining currents in an allowable range" meant (see page 13 of the decision under review).

- VIII. After deliberation, the chairman informed the parties that auxiliary request 8 did not meet the requirements of Article 84 EPC and that the same conclusion applied correspondingly to the remaining auxiliary requests 6, 7 and 9. The petitioner then filed a further request, auxiliary request A. This request consisted of a single claim, which combined granted claims 1, 4 and 8 (Annex 1 to the minutes).
- IX. The admissibility of auxiliary request A was then discussed. The debate on this issue was closed and the Chairman, after deliberation of the Board, informed the parties of the Board's discretionary decision under Article 13 RPBA 2020 not to take into account the newly filed auxiliary request A. In the context of the admissibility of said request, the petitioner then filed a question to be referred to the Enlarged Board of Appeal, asking whether the maintenance of a single granted claim constituted an amendment in the sense of Article 13 RPBA (Annex 2 to the minutes). The request for a referral was discussed and deliberated upon by the Board, before the Chairman informed the parties that the request for a referral was rejected. The petitioner then filed an objection under Rule 106 EPC in writing (Annex 3 to the minutes). The objection concerned an alleged violation of Article 113 EPC in connection with the dismissal of the request for a referral and the presentation of arguments in favour of auxiliary request A.
- X. The objection under Rule 106 EPC was dismissed after another deliberation. After summarising the Board's conclusions on all request and establishing the final requests, the Chairman closed the debate and announced the decision to revoke the patent.

- XI. On 5 April 2023, after the oral proceedings but before the written decision under review was issued, opponent 4 withdrew "its Intervention and its Opposition" and opponent 3 withdrew its opposition and its appeal.
- XII. In the written decision under review, clarity of the critical feature is addressed both in the Summary of Facts and Submissions and in the Reasons. According to the summary of the facts and submissions, (former) opponent 3 argued that it was not clear what "for maintaining currents in an allowable range" meant and that, at best, it defined the result to be achieved but not the technical measure of how to achieve it (point XX). According to the Board's summary of the petitioner's counterarguments (point XXII of the Facts and Submissions and point 7.4 of the Reasons), the petitioner pointed out that the "allowable range" should be a range that "did the job" and that the allowable range simply referred to the operating range of the power converter which had defined operational ranges like any power electronics component.
- XIII. The Board held that claim 1 of auxiliary request 8 lacked clarity (point 7.5 of the Reasons). The Board's reasoning was that the claim wording did not contain any limitation as to which components the protective circuit functionally protects, and that it was thus not possible to determine what numerical values fell within the "allowable" range of claim 1. By contrast, a skilled person would probably be able to determine such a numerical range for a specific component in a given use situation. The Board explained further that the skilled person would be faced merely with a definition of a problem that some unspecified components are to be

protected so as to keep the current in some corresponding allowable range. The chosen definition amounted to placing the burden of determining all potential components to be protected on the skilled person. The resulting non-compliance with Article 84 EPC in claim 1 could not be remedied by further explanations in the description.

Review proceedings before the Enlarged Board of Appeal

- XIV. The decision under review was notified on 25 May 2023. The petition for review was filed on 3 August 2023; the corresponding fee was paid on the same day.
- XV. After the patent lapsed in January 2024, the petitioner informed the Enlarged Board of Appeal in a letter of 24 January 2024 that it had still legal interest in the continuation of the pending review proceedings despite the patent's lapse.
- XVI. The Enlarged Board in its original three-member composition decided to submit the petition proceedings to the Enlarged Board of Appeal as composed under Rule 109(2)(b) EPC, which implied that the composition of the Enlarged Board was extended to five members and that the other parties to the appeal proceedings became parties to the review proceedings.
- XVII. By a communication of 24 February 2025, the parties were given the opportunity to file submissions concerning the petition for review within two months. No substantive comments were received before the expiry of this time limit.
- XVIII. After the parties were summoned for oral proceedings, the Enlarged Board issued a communication pursuant to

Articles 13 and 14(2) RPEBA, providing a preliminary and non-binding assessment of the case.

XIX. In response to said communication, only the petitioner filed comments in a letter of 18 July 2025.

XX. The oral proceedings were held on 28 July 2025. The parties' requests as stated or confirmed at the oral proceedings were as follows:

The petitioner requested that

- the decision under review be set aside;
- the proceedings before Technical Board of Appeal 3.5.02 be re-opened.

The other party / opponent 2 requested that

- the petition for review be rejected.

XXI. At the end of the oral proceedings, the Enlarged Board announced its decision.

Reasons for the Decision

Parties to the proceedings

1. In view of the procedural declarations of withdrawals by opponent 1, 3 and 4 (see points III. and XI. above), the only remaining parties to these proceedings are the petitioner and opponent 2.

Admissibility of the petition

2. The petition for review is admissible.

3. The petition was filed, and the respective fee was paid in due time (point XIV. above). The formal requirements of Rule 107 EPC are met.
4. The objection under Rule 106 EPC filed by the petitioner during oral proceedings made by the petitioner concerned a different alleged violation of the petitioner's right to be heard (see point IX. above). This objection, which was rejected by the Board, is of no relevance for the present review proceedings. The petitioner explicitly does not base its petition on the ground objected to under Rule 106 EPC during the oral proceedings before the Board (page 14 of the petition).
5. The petitioner argued that with respect to the procedural violations giving rise to its petition it could not file an objection under Rule 106 EPC during the appeal proceedings since it became aware of the reasons on which it had no opportunity comment only after receiving the reasons of the decision (page 3 of the petition). The Enlarged Board accepts that the exception from the obligation to raise objections under Rule 106 EPC applies.

Allowability of the petition

6. The petition is based on Article 112a(2) (c) EPC (fundamental violation of Article 113(1) EPC). It is alleged that the clarity objection against auxiliary request 8 which led to the Board's finding that said request was unallowable was never discussed, neither in the written nor in the oral proceedings, but was brought forward only in the Board's written decision.

7. Specifically, the petitioner argues that there were two distinct clarity objections against claim 1 of auxiliary request 8: The alleged lack of clarity what "maintaining currents in an allowable range" meant (the "allowable current range objection") and the alleged lack of information on which components were to be protected by the protective circuit (the "unspecified components objection"). The petitioner acknowledges that it was heard in the context of the "allowable current range objection" but it asserts that it was confronted with the "unspecified components objection" when reading the written decision only. Referring to pertinent case law of the boards of appeal, the petitioner argues that Article 113 EPC particularly meant that a party shall not be surprised by previously undisclosed reasons and evidence when studying the decision (pages 2 and 3 of the petition). Accordingly, the petitioner requested that the appeal proceedings be re-opened "to allow the parties a clarity discussion of the subject '*what specific components need protection*'" (page 15 of the petition).
8. In its communication pursuant to Articles 13 and 14(2) RPEBA (point 28), the Enlarged Board raised the question whether the "unspecified components objection" was adequately covered by the broader clarity objection presented during the appeal proceedings or whether it constituted a materially new line of reasoning which had required express discussion.
9. During the oral proceedings before the Enlarged Board both parties agreed with the distinction between the "allowable current range objection" and the "unspecified components objection" and both used these terms during the oral proceedings. The parties however

disagreed on whether the latter had been adequately discussed during the appeal proceedings.

10. The opponent 2 did not provide any convincing counterarguments or evidence with respect to the Enlarged Board's preliminary view that the "unspecified components objection" only surfaced in the written decision under review (see point 31 of the Enlarged Board's communication). During the appeal proceedings neither the parties nor the Board expressed explicit concerns that it was unclear which components of the power converter were to be protected by the protective circuit.
11. The Enlarged Board also does not see any clear indication that the "unspecified components objection" was raised implicitly, for example as an aspect of an overarching clarity objection. During the written appeal proceedings, an objection was made that the critical feature (as quoted above in point VI.) defined a result to be achieved ("*a protective circuit for maintaining currents within an allowable range*") but not the technical measure of how to achieve it (see e.g. the letter of (former) opponent 3 of 25 February 2022, sections 4.8 to 4.10).
12. The "allowable current range objection" and the "unspecified components objection" are the aspects of the overall clarity or "result to be achieved" objection against the critical issue which were discussed in the decision under review. The objections were addressed separately (Reasons points 7.4 and 7.5), with a different outcome. The Board's finding that the "unspecified components objection" was justified in view of Article 84 EPC ultimately led to the revocation

of the patent even though the "allowable current range objection" was not justified in the Board's view.

13. Referring to point 28 of the Enlarged Board's communication, the petitioner argued during the oral proceedings that the term "covered" used in the introduction of said point should be interpreted narrowly. The Enlarged Board agrees in that it is not sufficient for a relevant specific aspect such as the "unspecified components" to be covered or encompassed by a broader clarity objection that was discussed if the parties were not aware of the specific aspect during the discussion.
14. In this context, opponent 2 referred to paragraph [0018] of the patent which was mentioned in point 7.4 of the decision under review. The Enlarged Board cannot see that such a reference in point 7.4 and in point 7.5 (as argued by opponent 2) implies that the "unspecified components objection" was discussed. Firstly, point 7.4 does not address this objection; it was introduced only in point 7.5 of the Reasons. Secondly, references made during the review proceedings to point 7.5 of the Reasons are of limited value in terms of evidence for earlier discussions of the "unspecified components objection" since point 7.5 only relates to the Board's reasoning (not to the arguments of the parties) and does not contain any specific reference to earlier discussions of the "unspecified components objection".
15. The Enlarged Board agrees with opponent 2 in that paragraph [0018] of the patent addresses structural features of the power converter and that the lack of structural features in the critical feature was discussed during the appeal proceedings. However, the

reference to structural features in general (or the lack thereof) just represents the broader "result to be achieved" objection under Article 84 EPC against the critical feature. Specific components of the power converter (such as the inverters shown in Fig. 4 of the patent) may have been referred to but the references brought forward by the parties do not indicate that there was any discussion on which specific components needed to be protected from currents exceeding the allowable range and on any clarity issues in this respect.

16. The Board, after giving its reasons in paragraph 7.5 on the unspecified components objection, stated in the same paragraph that *"This is, as the appellants and the infringer [sic] correctly argue, merely a statement of a result to be achieved which does not meet the requirements of Article 84 EPC."* The Enlarged Board does not regard this as evidence that the unspecified components objection was discussed, because it is not clear whether the phrase "as the appellants and the infringer [sic] correctly argue" is linked to the unspecified components objection or only to the general argument that the critical feature merely defined a result to be achieved.
17. Since the Enlarged Board has no power or ability to investigate further whether other facts or indications might suggest that the petitioner could be aware that the Board had doubts about the specific aspect of clarity (namely, the "unspecified component" issue), it has to rely on the parties' submissions in this respect. In the absence of any such indication it is not for the party alleging a breach of its right to be heard to prove that there were no such facts or indications (see R 15/11, Reasons point 5). Any doubts

remaining on whether a decision under review is based upon facts and considerations on which the parties had an opportunity to comment must be solved to the affected party's benefit (see R 2/14, Reasons point 10.3.4).

18. For these reasons, the Enlarged Board concludes that the "unspecified components objection" was not discussed during appeal proceedings and its use in the written decision under appeal therefore came as a surprise to the petitioner.
19. In its communication pursuant to Articles 13 and 14(2) RPEBA, the Enlarged Board referred to similarities between the present petition and the case underlying decision R 2/14, concerning appeal case T 1627/09. This case was decided on 22 April 2016 in favour of the petitioner. In the appeal case underlying R 2/14, claims to purified proteins with certain activities and amino acid sequences were objected to under Article 83 EPC. In order to obtain the claimed products, the skilled person had to carry out several steps. In the written and the oral proceedings before the Board, it was discussed for the individual steps whether they could be carried out by the skilled person without undue burden. In the written decision, the Board argued that even though each of the steps necessary for recloning (an essential prerequisite for obtaining the claimed products) could be performed by a person skilled in the art, it was the combination of all the necessary steps which created an undue burden on the skilled person trying to perform the invention (T 1627/09, Reasons point 30).
20. The Enlarged Board in R 2/14 found that the relevant points of the reasons of the decision under review

mentioned neither facts nor a sequence of arguments that led it to arrive at the conclusion that the combination of the required steps imposed an undue burden on the skilled person. The summary of facts and submissions in the decision under review was also silent in this respect (Reasons, point 10.3.2). The petitioner's right to be heard was therefore fundamentally violated because one aspect of an objection under Article 83 EPC was not discussed during the appeal proceedings and the board's written decision on this - decisive - aspect caught the petitioner by surprise.

21. Like in the appeal case underlying R 2/14, a broader objection was discussed during appeal proceedings in the present case but not the specific aspect encompassed by the broader objection that turned out to be decisive for the case. In such cases, the "grounds" as referred to in Article 113(1) EPC may have a more specific meaning than a broader objection like "lack of clarity" or "insufficiency of disclosure". In the present case it is irrelevant that the broader clarity objection was discussed and that one specific aspect (the "allowable current range objection") was also discussed (and turned out to be non-critical). The critical aspect, namely the question of which components needed to be protected, was not discussed during the appeal proceedings and the Board's conclusion on this aspect came as a surprise to the petitioner.
22. The "unspecified components objection" which had not been discussed during the appeal proceedings eventually was the reason for the Board's finding that the patent was invalid. The Enlarged Board concludes that a fundamental violation of Article 113(1) EPC occurred.

Procedural issues

23. The decision under review was taken by Board of Appeal 3.5.02. During the pending review proceedings, the business distribution scheme was amended such that appeals concerning patents with the main classification of the patent (F03) are no longer allocated to said board. Since 1 July 2024, Board 3.5.02 has no technically or legally qualified members allocated to it.
24. If a petition is allowable and the Enlarged Board sets aside the decision, the proceedings are re-opened "before the Boards of Appeal" (Article 112a(5) EPC). Rule 108(3) EPC specifies that the proceedings shall be re-opened "before the Board of Appeal responsible under Rule 12b, paragraph 4". The board responsible for the re-opened proceedings is therefore not automatically the board which issued the decision underlying the review proceedings but the allocation of the re-opened proceedings is to be determined in accordance with the applicable business distribution scheme.
25. In the present case, the board responsible for the proceedings after their re-opening is the board to which the appeal cases concerning patents with the main classification F03 are allocated under the business distribution scheme as applicable when the proceedings are re-opened.

Order

For these reasons it is decided that:

1. The decision under review is set aside.
2. The proceedings before the Board of Appeal 3.5.02 are re-opened.
3. The fee for the petition for review is reimbursed.

The Registrar:

The Chair:



N. Michaleczek

I. Beckedorf

Decision electronically authenticated