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**Datasheet for the decision
of 8 February 2007**

Case Number: T 1543/05 - 3.2.01

Application Number: 98203524.8

Publication Number: 0911542

IPC: F16H 25/20

Language of the proceedings: EN

Title of invention:

Linear actuator with manual or motor drive

Patentee:

ABB Sace SpA

Opponent:

Siemens AG CT IP PTD

Headword:

-

Relevant legal provisions:

EPC Art. 123(2), 84

Keyword:

"Subject-matter extending beyond the content of the
application as filed (yes)"

"Lack of clarity (yes)"

Decisions cited:

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Catchword:

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Case Number: T 1543/05 - 3.2.01

D E C I S I O N
of the Technical Board of Appeal 3.2.01
of 8 February 2007

Appellant: ABB Sace SpA
(Patent Proprietor) Via Baioni 35
I-24100 Bergamo (IT)

Representative: Giavarini, Francesco
Zanoli & Giavarini S.r.l.
Via Melchiorre Gioia, 64
IT-20125 Milano (IT)

Respondent: Siemens AG CT IP PTD
(Opponent) Nonnendammallee 101
DE-13629 Berlin (DE)

Representative: -

Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 11 October 2005
revoking European patent No. 0911542 pursuant
to Article 102(1) EPC.

Composition of the Board:

Chairman: S. Crane
Members: C. Narcisi
G. Weiss

Summary of Facts and Submissions

- I. The European patent Nr. 911 542 was revoked by the decision of the opposition division posted on 11 October 2005. An appeal was lodged by the patentee against the decision on 12 December 2005 and the appeal fee was paid at the same time. The statement of grounds of appeal was filed on 13 February 2006. The appellant requested that the patent be maintained in amended form on the basis of an amended claim 1 as filed with the statement of grounds of appeal.
- II. With a communication dated 17 October 2006 the board expressed the provisional opinion that amended claim 1 did not comply with Articles 123(2) and 84 EPC. Moreover the addition of new dependent claims 2 and 3 was considered as going beyond any amendment necessary to meet the grounds of opposition.
- III. Oral proceedings were held on 8 February 2007. The appellant did not attend the oral proceedings, as already announced by fax on 7 February 2007, and did not comment on the points raised in the provisional opinion of the board.

The respondent (opponent) requested revocation of the patent in its entirety on the grounds already set out in its reply to the appellant's statement of grounds of appeal.

Claim 1 reads as follows:

"A device with manual and motorized actuation for the translatory motion of a frame of an electrical circuit

breaker having a movable frame which is slidably associated with a fixed structure, said device comprising a threaded bar which is arranged in the sliding direction and is rotatably supported by said fixed structure and a female thread engaging said threaded bar and being rotatably supported by said movable frame; wherein in order to produce the translatory motion with manual actuation, said threaded bar being rotated and said female thread being fixed with respect to said movable frame and, in case of motorized actuation, said threaded bar being fixed with respect to said fixed structure and said female thread rotating with respect to said movable frame and wherein said device comprises a hub which is arranged on the axial extension of said female thread and is not connected to it, said hub having, in its peripheral region, seats in which it is possible to insert a locking detent connected to the control of the circuit breaker by means of kinematic systems so as to prevent rotation of said hub."

IV. The appellant's arguments may be summarized as follows:

The amendments introduced into granted claim 1 do not extend the content of the application as filed. In particular these amendments are supported by paragraph (0026), column 4, lines 4-5 and lines 7-8 of the patent specification.

V. The respondent's arguments may be summarized as follows:

The amendments introduced into granted claim 1 are not supported by the application as originally filed, contrary to Article 123(2) EPC. In particular, the

feature (i) "wherein said device comprises a hub which is arranged on the axial extension of said female thread and is not connected to it, said hub having, in its peripheral region, seats in which it is possible to insert a locking detent connected to the control of the circuit breaker by means of kinematik systems so as to prevent rotation of said hub" is not disclosed in the original patent application. In fact, according to the patent specification, said hub must be rotatably fixed to the threaded bar for performing the intended essential function of preventing any inadvertent movement of said frame when the electrical contacts of said electrical circuit are closed. This essential technical function is however not reflected by feature (i) which gives no indication as to the connection between said hub and said threaded bar.

Reasons for the Decision

1. The appeal is admissible since it meets the requirements of Articles 106 to 108 EPC in conjunction with Rules 1(1) and 64 EPC.

2. In the board's judgement the above mentioned feature (i) does not meet the requirements of Articles 123(2) and 84 EPC. It is true that this feature is part of the content of the application as originally filed insofar as it can be found literally therein. However, it has been omitted that the hub is engaged on the threaded bar "so as to rotate synchronously with said bar" (cf. published A-document, column 3, lines 53-54). This last mentioned feature is an essential element of the embodiment disclosed in said passages of the patent

specification, which is necessary to avoid rotation of the threaded bar in the closed position of said circuit breaker. Consequently its omission constitutes a generalization which has not been originally disclosed and thus contravenes Article 123(2) EPC. This omission likewise leads to a lack of clarity and support (Article 84 EPC) since thereby a disagreement ensues between the claimed subject-matter and the description of the patent specification.

Finally, a further lack of clarity arises from the fact that, while it appears from figures 5 and 6 of the patent specification and from the wording of feature (i) "and is not connected to it" that the hub 30 is not arranged on the female thread 10, the opposite statement indeed results from the further wording of feature (i) specifying "a hub which is arranged on the axial extension of said female thread".

In view of the above facts and reasons the subject-matter of claim 1 according to the main and sole request of the appellant does not fulfil the requirements of the European Patent Convention.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

A. Vottner

S. Crane