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**Datasheet for the decision
of 11 May 2016**

Case Number: T 1180/11 - 3.4.01

Application Number: 03700988.3

Publication Number: 1595150

IPC: G01R15/14

Language of the proceedings: EN

Title of invention:

A MONITORING DEVICE FOR A MEDIUM VOLTAGE OVERHEAD LINE

Applicant:

FMC Tech Limited

Headword:

Relevant legal provisions:

EPC 1973 Art. 84
RPBA Art. 12(2), 12(4)

Keyword:

Claims - clarity (no)
Remittal to the department of first instance - (no)
Reimbursement of appeal fee - (no)

Decisions cited:

Catchword:



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Case Number: T 1180/11 - 3.4.01

D E C I S I O N
of Technical Board of Appeal 3.4.01
of 11 May 2016

Appellant: FMC Tech Limited
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Representative: Cleary, Fidelma
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted on 10 January 2011
refusing European patent application No.
03700988.3 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman G. Assi
Members: T. Zinke
J. Geschwind

Summary of Facts and Submissions

- I. The appeal, filed on 21 March 2011, lies from the decision of the examining division, posted on 10 January 2011, refusing European patent application No. 03 700 988.3, published with publication No. 1 595 150 (WO-A-2004/068151). The appeal fee was paid on the same date. The statement setting out the grounds of appeal was filed on 20 May 2011.

- II. In its decision, the examining division dealt with a main request, as filed by letter of 24 August 2005, and auxiliary requests 1 to 7, as filed during the oral proceedings on 1 September 2010. The examining division raised objections under Article 123(2) EPC and Article 54(1), (2) EPC 1973 (lack of novelty over document D1 (Article 52(1) EPC 1973)) against the main request and auxiliary request 2. Moreover, the examining division did not give consent under Rule 137(3) EPC to auxiliary requests 1, 3, 4 and 5 and deemed auxiliary requests 6 and 7 to be inadmissible. As an obiter dictum, the examining division raised further objections.

- III. With the notice of appeal the appellant (applicant) appealed the decision in its entirety and requested that a patent be granted.

- IV. With the statement setting out the grounds of appeal, the appellant requested, as a main request, that the decision under appeal be set aside and that a patent be granted on the basis of *"the claims currently on file"*. As a first auxiliary request, the appellant requested the grant of a patent based on *"the claims currently on file with independent claim 36 amended to address the Art. 123 objections that may remain"*. As a second

auxiliary request, the appellant requested the remittal to the department of first instance in the event that the Board is not fully persuaded by the arguments presented in the statement of grounds of appeal or the Board believes that there are reasons that prejudice the grant of a patent. As a third auxiliary request, the appellant requested the grant of a patent on the basis of any one of auxiliary requests 1 to 5 submitted during the oral proceedings held on 1 September 2010 before the examining division. Moreover, as further requests, the appellant requested the reimbursement of the appeal fee due to a "*number of substantial procedural errors*" on the part of the examining division and the appointment of oral proceedings.

The appellant, with regard to the objection of lack of novelty raised in the decision under appeal, drew attention to a "*fundamental lack of understanding of the Examining Division of the disclosure of D1*" (cf. grounds of appeal, page 2). Moreover, with regard to the objection under Article 123(2) EPC, the appellant stated: "*The applicant notes that the objection regarding Added Subject Matter under Art. 123 EPC has been maintained. The applicant proposes to address this issue once the matter of novelty have been decided upon by the Board of Appeal and requests further time to do so in due course.*" (cf. grounds of appeal, page 3, last paragraph).

- V. By summons of 8 February 2016, the appellant was summonsed to oral proceedings due to take place on 11 May 2016. A communication under Article 15(1) RPBA was issued on 14 April 2016 drawing attention to the issues to be discussed during oral proceedings.

VI. The appellant did not provide any comments to the Board's communication.

With a letter dated 10 May 2016, the appellant informed the Board that the representative would not be attending the oral proceedings.

VII. The oral proceedings took place as scheduled in the absence of the appellant.

VIII. Claim 1 of the main request reads as follows:

"1. A monitoring device (1) for monitoring the electrical properties of a medium voltage overhead line (3) in a medium voltage network, the monitoring device comprising means to measure the electrical properties of the medium voltage line and means to communicate the measured electrical properties to a control centre computer of the medium voltage network, characterised in that

the monitoring device comprises three separate measurement sensors (2a, 2b, 2c), each measurement sensor being adapted for direct and electrically insulated connection onto a separate medium voltage overhead line (3a, 3b, 3c);

each measurement sensor having means to measure (4) the electrical properties of its respective medium voltage overhead line;

each measurement sensor having means to communicate (6) with at least one of the control centre computer and another measurement sensor, at least one of the measurement sensors having means to communicate with the control centre computer; and

in which the three measurement sensors further comprise a master sensor and two slave sensors, each of the

slave sensors having means to communicate data to and from the master sensor and the master sensor having means to communicate with the control centre computer."

IX. Claim 1 of auxiliary request 2 as filed before the examining division (which is included in the bundle of requests as the third auxiliary request of the appeal proceedings) reads as follows:

"1. A monitoring device (1) for monitoring the electrical properties of a medium voltage overhead line (3) in a medium voltage network, the monitoring device comprising means to measure the electrical properties of the medium voltage line and means to communicate the measured electrical properties to a control centre computer of the medium voltage network, characterised in that
the monitoring device comprises three separate measurement sensors (2a, 2b, 2c), each measurement sensor being adapted for direct and electrically insulated connection onto a separate medium voltage overhead line (3a, 3b, 3c);
each measurement sensor having means to measure (4) the electrical properties of its respective medium voltage overhead line, the means to measure the electrical properties of its associated medium voltage line further comprises a current measurement device;
each measurement sensor having means to communicate (6) with at least one of the control centre computer and another measurement sensor, at least one of the measurement sensors having means to communicate with the control centre computer; and
in which the three measurement sensors further comprise a master sensor and two slave sensors, each of the slave sensors having means to communicate data to and

from the master sensor and the master sensor having means to communicate with the control centre computer."

(Emphasis added by the Board, showing the amendment as compared to claim 1 of the main request).

Reasons for the Decision

1. The appeal is admissible.
2. Admissibility of the requests

2.1 Main request

The Board interprets the term "*claims as currently on file*" as referring to the claims of the main request on which the contested decision is based, which consists of claims 1 to 31 and 36 (in part) to 50 as filed by letter of 24 August 2005 and claims 32 to 36 (in part) as filed by letter of 25 October 2007. The Board notified the appellant of this understanding with the communication of 14 April 2016. The appellant did not submit any comments.

The main request is in the appeal proceedings under Article 12(1) (a) RPBA.

2.2 First auxiliary request

The first auxiliary request is not admitted into the appeal proceedings, because the intended amendment to meet the requirements of Article 123(2) EPC had not been made.

2.3 Second auxiliary request

The second auxiliary request is a procedural request in the appeal proceedings (Article 12(1)(a) RPBA).

2.4 Third auxiliary request

2.4.1 The third auxiliary request is in fact a bundle of requests consisting of auxiliary requests 1 to 5 as filed at the oral proceedings before the examining division. The appellant did not put forward any argument in support of these auxiliary requests contrary to the provisions of Article 12(2) RPBA. The Board agrees with the reasons given in points 15.1 and 15.3 to 15.5 of the contested decision for refusing consent under Rule 137(3) EPC with regard to auxiliary requests 1 and 3 to 5. The examining division exercised its discretion in a correct manner.

Hence, the Board holds inadmissible these requests (Article 12(4) RPBA).

2.4.2 Auxiliary request 2 of the bundle was admitted by the examining division and underlies the decision under appeal. It is in the appeal proceedings under Article 12(1)(a) RPBA.

3. Main request - Article 84 EPC 1973

Due to the use of the terms "*comprises*" (cf. feature "*the monitoring device comprises three separate measurement sensors*") and "*further comprise*" (cf. feature "*the three measurement sensors further comprise a master sensor and two slave sensors*"), the actual number of sensors is not properly defined in claim 1. The claim could, for instance, be understood as encompassing a monitoring device comprising more than three separate measurement sensors, each of which

comprises a master sensor and more than two slave sensors. This arrangement, however, would not be supported by the description and, therefore, does not comply with Article 84 EPC 1973.

The main request is not allowable.

4. Second auxiliary request

No new factual situation has arisen in the appeal. Thus, in view of the specific circumstances of the present case and taking the public's interest in legal certainty into consideration, a remittal to the examining division is not expedient.

The request for remittal is rejected.

5. Third auxiliary request

As explained above, this request corresponds to auxiliary request 2 filed at the oral proceedings before the examining division.

Claim 1 of this request, however, uses the same formulations "*comprises*" and "*further comprise*" as claim 1 of the main request, leaving the actual number of sensors open. Hence, the same objection under Article 84 EPC 1973 applies.

The third auxiliary request is not allowable.

6. Reimbursement of appeal fee

According to Rule 103(1)(a) EPC, the appeal fee shall be reimbursed, where the Board deems the appeal to be

allowable, if such reimbursement is equitable by reason of a substantial procedural violation.

Since in the present case the appeal is not allowable, the request for reimbursement of the appeal fee is rejected.

7. Right to be heard (Article 113(1) EPC 1973)

The reasons for the present decision are all mentioned in the Board's communication of 14 April 2016. The appellant, however, failed to make any submissions in reply. The Board has no reason to take another view.

Order

For these reasons it is decided that:

1. The appeal is dismissed.

The Registrar:

The Chairman:



R. Schumacher

G. Assi

Decision electronically authenticated