

Internal distribution code:

- (A) [-] Publication in OJ
- (B) [-] To Chairmen and Members
- (C) [-] To Chairmen
- (D) [X] No distribution

**Datasheet for the decision
of 6 October 2017**

Case Number: T 2016/12 - 3.2.06

Application Number: 00306670.1

Publication Number: 1079071

IPC: F01D5/18

Language of the proceedings: EN

Title of invention:

Turbine blade with preferentially cooled trailing edge pressure wall

Patent Proprietor:

GENERAL ELECTRIC COMPANY

Opponent:

ALSTOM Technology Ltd

Headword:

Relevant legal provisions:

EPC Art. 107

Keyword:

transfer of opponent status (not proven)

Decisions cited:

G 0004/88, G 0004/97, G 0002/04

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 2016/12 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 6 October 2017

Appellant: ALSTOM Technology Ltd
(Opponent) Brown Boveri Strasse 7
5400 Baden (CH)

Representative: Bernotti, Andrea
Studio Torta S.p.A.
Via Viotti, 9
10121 Torino (IT)

Respondent: GENERAL ELECTRIC COMPANY
(Patent Proprietor) 1 River Road
Schenectady, NY 12345 (US)

Representative: Illingworth-Law, William Illingworth
Global Patent Operations Europe
GE International Inc.
The Ark
201 Talgarth Road
Hammersmith
London W6 8BJ (GB)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
13 July 2012 concerning maintenance of the
European Patent No. 1079071 in amended form.**

Composition of the Board:

Chairman M. Harrison
Members: T. Rosenblatt
E. Kossonakou

Summary of Facts and Submissions

- I. The opponent, Alstom Technology Ltd (in the following also abbreviated to "ATech Ltd"), filed an appeal against the interlocutory decision of the opposition division dated 13 July 2012, in which it was held that the European patent no. 1 079 071 in amended form met the requirements of the EPC.
- II. With letters of 1 April 2016, 9 May 2016, 22 November 2016 and 5 September 2017, sent by a company named "General Electric Technology GmbH" (in the following also abbreviated to "GETech GmbH"), located at the same address as the above-mentioned opponent/appellant, the Board was informed that, as a result of the acquisition of Alstom's power business by the General Electric (GE) group, the business sector and business interests to which the present opposition and appeal related were transferred to "Ansaldo Energia Switzerland AG" (in the following abbreviated to "AES AG"). The former opponent/appellant, ATech Ltd, nevertheless still existed after a purported change of name under its new name GETech GmbH.
- III. The following extracts of the commercial register of the canton Aargau were submitted as evidence for the alleged change of name and the requested transfer of the opposition and appellant status:
- CRA1 (with the letter of 9 May 2016): internet extract, dated 5 November 2015, relating to a limited liability company with business number CHE-110.110.814;
 - attachment C (with the letter of 22 November 2016): copy of an extract dated 4 March 2016, relating to a limited liability company with business number

CHE-110.110.814, in which an asset splitting plan dated 27 June 2014 for a part of the active and passive assets to be transferred to Alstom Energy Technology AG is mentioned;

- attachment F (letters of 9 May and 22 November 2016): copy of an extract dated 11 March 2016, relating to a public limited company ("Aktiengesellschaft") with business number CHE-105.595.570.

Also submitted were a number of press releases published on the internet by the European Commission (europa.eu), the Alstom group (alstom.com), the GE group (genewsroom.com), the Ansaldo group (ansaldoenergia.com) as well as by several business-related news providers (trend-online.com, businesswire.com, modernpowersystems.com), all relating to the acquisition of part of the Alstom group's business by the GE group.

- IV. Summons for oral proceedings were sent to the original opponent/appellant, ATech Ltd., and to its purported successor, AES AG, as well as to the patent proprietor (respondent).
- V. In its communication sent to the parties in preparation for the oral proceedings, the Board noted that it had to be established which legal person was entitled to the party status of opponent and appellant in the present appeal proceedings and that the evidence submitted to prove a transfer of party status as appellant to AES AG did not appear sufficient.
- VI. Oral proceedings were held on 6 October 2017, in the presence of the representative for AES AG, who also provided a sub-authorisation to represent GETech GmbH.

The respondent did not appear, as previously announced in its letter of 3 October 2017.

VII. The arguments presented by the purported appellant can be summarised as follows.

In November 2015, the acquisition by the GE group of the Alstom power business, involving several companies of the Alstom group, *inter alia* ATech Ltd and "Alstom Power O&M Ltd", was completed. For this acquisition to be allowed by the European Commission, a part of Alstom's business, namely that relating to Alstom's newer gas turbines and those still under development, GT26 and GT36, was to be divested to the Ansaldo Energia group. ATech Ltd (and therewith Alstom's "older" gas turbines GT13) stayed with the GE group and was renamed to GETech GmbH, as per attachment C. The newer gas turbines went to Alstom Power O&M Ltd, which was transferred to the Ansaldo group and eventually renamed AES AG. In a ring fence operation carried out to separate the various technology sectors so as to satisfy the Commission's requirements, the opposition underlying the present appeal was identified as belonging to the technology sector of the newer gas turbines. The opposition was therefore transferred to and managed by Alstom Power O&M Ltd, which later became AES AG. GETech GmbH did therefore not own any business interests in the present appeal.

The relevant contracts could not be provided as they were confidential. The press releases from well-recognised sources should be regarded as sufficient. Moreover, GETech Ltd belonged to the group of the proprietor of the opposed patent and would thus have no interest in giving the present case away.

Reasons for the Decision

1. According to Article 107 EPC, any party to proceedings before the EPO adversely affected by a decision may appeal.

At any given time throughout the proceedings there should be no doubt as to who may validly exercise the procedural rights and to whom official actions by the EPO are to be addressed (G 2/04, OJ EPO 2005, 549, Reasons, point 1.3).

The opponent does not have a right of disposition over his status as a party (G 4/97, OJ EPO 1999, 270, Reasons, point 2.2). An opposition may be assigned to a third party as part of the opponent's business assets together with the assets in the interests of which the opposition was filed. The term "business" must be understood in a broad sense as describing an economic activity which is or could be carried on by the opponent and which constitutes a specific part of his business assets (G 4/88, OJ 1989, 480, Reasons, points 5 and 6).

2. In the present case the opponent, ATech Ltd, was adversely affected by the interlocutory decision of the opposition division and was entitled to file an appeal.
3. However, uncertainty as to the status of the appellant after the filing of the appeal arose due to the acquisition by the GE group of part of the business of the Alstom group, to which the opponent/appellant belonged. It was argued by GETech Ltd, the transferor

and purported successor of the original opponent/ appellant ATech Ltd, and by AES AG, the transferee, that in order to satisfy the requirements set by the European Commission for allowing the acquisition, Alstom's business concerning the newer gas turbines GT26 and GT36 had to be transferred to the Ansaldo group. The opposition, at least according to the argument made, belonged to this newer technology and had therefore allegedly been transferred to AES AG.

4. As stated in the written submissions of GETech GmbH (see for example letters of 22 November 2016, page 1 and of 5 September 2017), the GE group acquired several separate companies from the Alstom group, amongst which were ATech Ltd (the original party to the present appeal proceedings) and another subsidiary named "Alstom Power O&M Ltd".

The extract of the commercial register in attachment C reveals a succession of changes leading from (Alstom's subsidiary) ATech Ltd to GETech GmbH. Attachment F shows a succession of changes leading from the second subsidiary "Alstom Power O&M Ltd" to AES AG. Neither of these extracts contains any reference to a company referred to in the respective other, nor is there any detail as to the transferred assets.

5. The Board considers that the transfer of the opposition from ATech Ltd to AES AG is not proven.
 - 5.1 No reliable evidence has been submitted which shows clearly and unambiguously which business assets were transferred between the companies involved in the alleged chain of events. GETech GmbH and AES AG replied to the Board's inquiry to submit for example the contracts concluded between the legal entities involved

in the merger, that such contracts could not be provided for reasons of confidentiality.

- 5.2 The press releases from different sources, which in the opinion of the aforementioned two companies constituted appropriate evidence, despite mentioning that some particular business assets relating *inter alia* to Alstom's newer turbines GT26 and GT36 were divested to the Ansaldo group, are not considered sufficient as proof for the transfer of the opposition and appeal. These sources do not mention the allegedly involved particular legal entities ATech Ltd, in whose name the opposition and the present appeal were filed, and AES AG, the purported transferee, and therefore do not allow a link between these companies and the business assets transferred from the Alstom group to the Ansaldo group (gas turbines GT26 and GT36) to be established.
- 5.3 Moreover, a link between, on the one side, the present appeal and the underlying opposition filed against the European patent in suit which is the property of another company, here incidentally the "GE Company" located in the United States, and, on the other side, the opponent's transferred gas turbine technology, GT26 and GT36, is in no way apparent.

The Board cannot follow the argument presented by AES AG in the oral proceedings, that the opposition evidently related to the turbines GT26 and GT36 which constituted newer technology, in contrast to the older gas turbines GT13 which were acquired by the GE group and remained with it. It is not apparent to the Board that the patent in suit relates specifically to these turbines developed by the opponent and former competitor of the patent proprietor. The filing date of

the opposed patent, to which it was referred to support this argument, cannot establish such a link.

5.4 The only piece of evidence specifically containing the name of the purported transferee is the extract of the commercial register of the canton Aargau submitted as attachment F. This extract establishes, at best, a succession of changes in the commercial register from a company called "Alstom Power O&M AG" to AES AG. It does however not allow any link to be established to the original opponent and appellant ATech Ltd, which was a separate legal entity as shown by the evidence of the company identification numbers in the commercial register extracts of attachments C and F. Nor does any of the commercial register extracts contain any detail relating to a transfer of assets, let alone of the present appeal.

5.5 There is thus no conclusive evidence proving the transfer of a specific part of the original appellant's (ATech Ltd) business assets to the purported transferee (AES AG).

6. Under these circumstances and in view of the principles arising from G 4/88 (see point 1), the status of the appellant cannot be attributed to AES AG. AES AG is thus not a party to the present appeal proceedings.

7. In case a transfer is not unequivocally proven, the original party to the proceedings would normally continue to be considered as the appellant.

In the present case however, ATech Ltd, the original party, acquired by the GE group, allegedly continues to exist under its new name of GETech GmbH, as submitted by GETech GmbH in its letters of 22 November 2016 and

5 September 2017. However, from the two extracts of the commercial register of the canton Aargau concerning the business GETech GmbH, attachments CRA1 and C, it is apparent that some assets had been transferred according to a separation plan of 27 June 2014 to still another company, "Alstom Energy Technology AG, Baden", registered under a separate identification number CHE-227.302.344 (see section "Qualified facts" of eg. attachment C).

Upon an inquiry by the Board during the oral proceedings as to the details of this split and the business assets involved, no details could be given.

From the date of the separation plan it follows that this split of assets occurred in the period between the filing of the appeal (17 September 2012) and the completion of the acquisition of business parts of the Alstom group by the GE group in 2016, and indicates that GETech GmbH did not become the universal successor of that party through a complete acquisition of the entire business of the original party and a successive simple change of name.

Therefore it also cannot be concluded that GE Tech GmbH is a party to the proceedings.

8. Under these circumstances, the Board cannot reliably establish, who is the owner of the business assets to which the present opposition and appeal belong.
9. Consequently the Board cannot continue the proceedings, which therefore have to be terminated.

Order

For these reasons it is decided that:

The appeal proceedings are terminated.

The Registrar:

The Chairman:



M. H. A. Patin

M. Harrison

Decision electronically authenticated