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**Datasheet for the decision  
of 16 November 2018**

**Case Number:** T 0352/14 - 3.2.05

**Application Number:** 08388008.8

**Publication Number:** 2093043

**IPC:** B29C70/44, G01M3/32

**Language of the proceedings:** EN

**Title of invention:**

Method, apparatus and system for detecting leak in a VARTM process

**Patent Proprietor:**

LM Glasfiber A/S

**Opponent:**

Vestas Wind Systems A/S

**Headword:**

**Relevant legal provisions:**

EPC Art. 123(2), 123(3)

**Keyword:**

Amendments - added subject-matter (no) - broadening of claim (no)

**Decisions cited:**

**Catchword:**



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Case Number: T 0352/14 - 3.2.05

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.05**  
**of 16 November 2018**

**Appellant I:**  
(Patent Proprietor)

LM Glasfiber A/S  
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**Representative:**

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**Appellant II:**  
(Opponent)

Vestas Wind Systems A/S  
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**Representative:**

Peter Joseph Kent  
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**Decision under appeal:**

**Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
13 December 2013 concerning maintenance of the  
European Patent No. 2093043 in amended form.**

**Composition of the Board:**

**Chairman** M. Poock  
**Members:** P. Lanz  
D. Rogers

## **Summary of Facts and Submissions**

- I. The appeals by the patent proprietor (appellant I) and the opponent (appellant II) are against the interlocutory decision of the opposition division on the version in which European patent EP-B-2 093 043 meets the requirements of the European Patent Convention.
- II. During the opposition proceedings, the opponent had raised the grounds for opposition according to Article 100(a) EPC (lack of novelty and lack of inventive step).
- III. The initial requests of appellant I at the appeal stage were to set aside the decision under appeal and, as a Main Request, to maintain the patent as granted, or alternatively, to maintain the patent upon the basis of one of the First to Eleventh Auxiliary Requests, all filed under cover of a letter dated 10 April 2014.
- IV. During the written appeal procedure, appellant II challenged the novelty and inventive step of the subject-matter of the claims of the patent as granted and of the auxiliary requests. However, it did not raise any objections regarding the claims of the Eleventh Auxiliary Request.
- V. Appellant II notified the board of appeal that it would not attend the scheduled oral proceedings.
- VI. Oral proceedings were held before the board on 16 November 2018 in the absence of appellant II.

At the end of the oral proceedings, appellant I withdrew its Main Request and its First to Tenth

Auxiliary Requests and resubmitted the Eleventh Auxiliary Request renamed as the new Main Request.

- VII. The final requests of appellant I were to set aside the decision under appeal and to maintain the patent upon the basis of the Main Request filed during the course of the oral proceedings before the board.
- VIII. Appellant II requested that the decision under appeal be set aside and that the patent be revoked.
- IX. The arguments presented by appellant I in writing and during the oral proceedings regarding the sole request were essentially as follows:

The new Main Request was identical to the former Eleventh Auxiliary Request. It corresponded to the Ninth Auxiliary Request filed on 31 July 2013 and further specified that the inlet and the outlet of the resin overflow vessel are connected to a detachable lid. The basis for the amendment could be found e.g. in claims 11 and 12 of the patent application as filed.

## **Reasons for the Decision**

### *1. Amendments*

The board is satisfied that claim 1 of the amended Main Request is a combination of original claims 7, 8, 11 and 12 and the second and third paragraph of description page 4.

The description is adapted to the claims of the Main Request.

The request therefore meets the requirements of Article 123(2) EPC.

Since the amendments in the only independent claim of the Main Request restrict the scope of granted apparatus claim 7, the provisions of Article 123(3) EPC are fulfilled.

2. *Substantive requirements*

The board notes that the former Eleventh Auxiliary Request, which finally became the new Main Request, was not touched upon in the decision under appeal and that appellant II did not raise any objections against this request. The board has no reasons to object either.

In view of that, the contested patent can be maintained on the basis of the new Main Request.

## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance with the order to maintain the patent as amended in the following version:

#### Description:

Pages 4 and 5 of the patent specification.  
Pages 2 and 3 of the amended patent specification received during the oral proceedings of 16 November 2018.

#### Claims:

Nos. 1 to 6 of the Main Request received during the oral proceedings of 16 November 2018.

#### Drawings:

Figs. 1 to 4 of the patent specification.

3. The appeal of appellant II is dismissed.

The Registrar:

The Chairman:



M. H. A. Patin

M. Poock

Decision electronically authenticated