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Datasheet for the decision of 9 December 2021

Case Number: T 0722/15 - 3.5.01

Application Number: 10382075.9

Publication Number: 2372479

IPC: F03D11/00, G05B23/02

Language of the proceedings: EN

Title of invention:
Systems and methods for performance monitoring and identifying upgrades for wind turbines

Patent Proprietor:
GENERAL ELECTRIC COMPANY

Opponents:
RWE Innogy GmbH
Senvion GmbH
Vestas Wind Systems A/S
ENERCON GmbH

Headword:
Performance monitoring and identifying upgrades for wind turbines/GENERAL ELECTRIC COMPANY

Relevant legal provisions:
EPC Art. 56, 100(b)

Keyword:
Identity of an opponent - transfer of opponent status (yes)
Inventive step - identification of upgrades for performance improvements on the basis of benchmark data (no - obvious in view of prior art)

Decisions cited:
G 0004/88, T 0653/89

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Beschwerdekammern

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Case Number: T 0722/15 - 3.5.01

D E C I S I O N
of Technical Board of Appeal 3.5.01
of 9 December 2021

Appellant: (Patent Proprietor)	GENERAL ELECTRIC COMPANY 1 River Road Schenectady, NY 12345 (US)
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Representative:	Cohausz & Florack Patent- & Rechtsanwälte Partnerschaftsgesellschaft mbB Bleichstraße 14 40211 Düsseldorf (DE)
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Respondent: (Opponent 3)	Vestas Wind Systems A/S Hedeager 44 8200 Aarhus N (DK)
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Decision under appeal: **Decision of the Opposition Division of the European Patent Office posted on 12 February 2015 revoking European patent No. 2372479 pursuant to Article 101(3)(b) EPC.**

Composition of the Board:

Chairman W. Chandler
Members: M. Höhn
C. Schmidt

Summary of Facts and Submissions

I. This appeal is against the decision of the Opposition Division of the European Patent Office revoking European patent No. 2372479 pursuant to Article 101(3)(b) EPC with regard to prior-art publication:

E3: WO 2006/119112 A1.

II. The revocation of the patent in suit in the decision under appeal was based on a lack of novelty objection under Article 100(a) and 54(2) EPC with regard to prior art publication E3 (former main request) and a lack of inventive step objection under Article 100(a) and 56 EPC with regard to prior art publication E3 combined with the skilled person's common general knowledge (former first auxiliary request). A second auxiliary request was held inadmissible in the contested decision.

Furthermore and with regard to objections under Articles 100(a), 52 and 100(b) EPC raised by several opponents, the opposition division held that claim 1 as granted met the requirements of Articles 52, 83 and 123(2) EPC. In particular the subject-matter of claim 1 was considered to have technical character, since it was directed to a system (see point 4 of the decision) and to be sufficiently disclosed and specified by using functional features, which would enable the skilled person to calculate performance data and profiles (see e.g. points 3.3 to 3.5 of the contested decision).

III. In the statement setting out the grounds of appeal, dated 22 June 2015, the proprietor (appellant), General

Electric Company, requested that the decision under appeal be set aside and that the patent be maintained in amended form according to the main request (corresponding to the former first auxiliary request) or according to a first, second or third auxiliary request, all submitted therewith. Oral proceedings were requested on an auxiliary basis.

IV. The opponent 01 (respondent), RWE Innogy GmbH, requested that the appeal be dismissed. Oral proceedings were requested on an auxiliary basis.

The opponent 02 (respondent), Senvion GmbH, requested that the appeal be dismissed. Oral proceedings were requested on an auxiliary basis.

The opponent 03 (respondent), Vestas Wind Systems A/S, requested that the revocation of the patent should be maintained. The Board took this as a request that the appeal be dismissed.

The opponent 04 (respondent), ENERCON GmbH, requested that the appeal be dismissed. Oral proceedings were requested on an auxiliary basis.

V. In its communication, subsequent to the summons to oral proceedings, the Board expressed its preliminary opinion that all requests lacked inventive step (Article 56 EPC).

VI. Oral proceedings were held by videoconference on 9 December 2021 during the course of which the appellant withdrew the second auxiliary request.

The parties' final requests were as follows:

The appellant (patent proprietor) requested that the decision under appeal be set aside and that the patent be maintained on the basis of the main request or the first or third auxiliary request, all filed with the grounds of appeal.

The respondents (opponents) requested that the appeal be dismissed.

After due consideration of the parties' arguments the Chair announced the decision.

VII. Independent claim 1 according to the main request reads as follows:

"A system (200) for indicating a performance of a wind turbine (100), the system comprising:
a database system (208) for storing performance data (1002) for a plurality of known wind turbines; and
a server system (206) coupled to the database system, the server system (206) configured to:
acquire, from the database system (208), performance data corresponding to one or more target wind turbines to create target performance data, the target wind turbines including a subset of the known wind turbines;
acquire, from the database system (208), performance data corresponding to one or more baseline wind turbines to create baseline performance data, the baseline wind turbines including a subset of the known wind turbines not included in the target wind turbines; and provide, to a client system (204), a relative performance profile relating the target performance data to the baseline performance data;
characterised in that:
the server system (206) is further configured to define the baseline wind turbines by identifying known wind

turbines (100) having at least one attribute that is substantially similar to an attribute of the target wind turbines, the at least one attribute comprising at least one of the following: a geographic attribute and an environmental attribute, wherein the server system (206) is further configured to:
for a first target wind turbine (100) of the target wind turbines, identify an available upgrade not included in the first target wind turbine; compare target performance data corresponding to the first target wind turbine to baseline performance data corresponding to a known wind turbine including the available upgrade to determine a predicted performance improvement (1008); and provide the predicted performance improvement to the client system."

In claim 1 of the first auxiliary request the preamble is changed to:

"A system (200) configured for comparing performance data for one or more wind turbines (100) to performance data for other wind turbines and evaluating potential performance-enhancing upgrades, the system comprising:".

The server system in the first characterising feature is said to be configured "automatically".
The determined predicted performance improvement in the last feature is qualified with "that may be achieved upon implementation of the available upgrade".

Claim 1 of the third auxiliary request adds at the end of the pre-characterising portion of claim 1 of the first auxiliary request:

"wherein the performance data (1002) include fault occurrence data, and the server system (206) is further configured to compare target fault occurrence data from the target performance data to baseline fault occurrence data from the baseline performance data to create the relative performance profile".

The determined predicted performance improvement in the last feature is qualified with "wherein the predicted performance improvement is expressed as an increase in availability or a reduction in fault occurrences".

VIII. Regarding the identity of the opponents, the appellant objected during oral proceedings and with letter dated 7 December 2021 that, contrary to the entry in the European patent register, respondent (opponent 02) was not Senvion GmbH.

The appellant argued that claim 1 according to the main request was a combination of claims 1 and 2 as granted. Therefore the additional aspect of an upgrade to the target turbine and the prediction of performance improvements caused further differences over the disclosure of E3 that were not considered by the opposition division in the contested decision.

The appellant essentially argued that E3 did not disclose automation of a performance improvement, but instead a System Integrator would be needed to manually do so. Furthermore, E3 was directed to improved supply chain management rather than to improving wind turbines. While according to E3 target turbine and baseline turbine could be the same, since target data was included in the aggregated performance database, this was different in claim 1. According to claim 1 a

target system with an upgrade was different from the baseline turbines. E3 therefore did not properly predict performance gains, since benchmark data included the upgrade (see e.g. page 11 of the statement setting out the grounds of appeal).

Crucial differences over E3 were how upgrades were identified and the possibility of predicting how much the performance could be improved. According to table 8 of E3, however, with the indication of "+", "-" or "0" performance improvements could not be quantified. The appellant further expressed doubts as to whether E3 disclosed the use of different components for an upgrade. Rather improved installation procedures etc. were addressed by E3, which was different from the claimed subject-matter.

The subject-matter of claim 1 according to the main request was therefore not rendered obvious by E3 when combined with the skilled person's common general knowledge.

Claim 1 of the first auxiliary request was submitted as a fallback position and clarified that the system was configured to compare performance data for evaluating potential performance enhancing upgrades. A predicted performance improvement might be achieved upon implementation of the available upgrade. Baseline wind turbines were automatically defined. Claim 1 was new and inventive over E3 for the same reasons as in the main request.

Claim 1 of the third auxiliary request further incorporated the features of claim 6 as granted (claim 8 as originally filed) and thereby achieved the effect of an increase in availability and a reduction in fault

occurrence. By adding the feature of fault occurrence data the claimed subject-matter was further delimited from E3, in particular tables 7 and 8, which referred to the number of errors, but however related to the quality of an installation team. E3 therefore could not render the claim obvious.

IX. Opponent 01 essentially raised objections under Article 100(a) EPC based *inter alia* on E3 for lack of inventive step. The claimed subject-matter amounted to nothing more than a well known process of improving the performance of technical systems in general. With regard to E3, on which the contested decision was based, it was argued that table 8 of E3 disclosed performance data of OEM components X, Y and Z. When referring to "future projects" (see [0044]), E3 disclosed what components were to be used for future installations, which also comprised optimisations of existing systems. Table 8 of E3 indeed showed a prognosis of performance by comparison with benchmark data. Supply chain management was addressed in E3, but it was clearly disclosed that the measures in E3 were also directed to improving system performance metrics. Reference was made to claim 7 of E3. Claim 1 therefore lacked inventive step (Article 56 EPC) in view of the disclosure of E3.

With regard to the auxiliary requests opponent 01 essentially argued:

First auxiliary request: The amendment infringed the requirement of Article 123(3) EPC because claim 1 no longer required that the system was suitable for indicating a performance. Therefore the scope of protections was broader in this regard. Furthermore, it was unclear how a baseline wind turbine could be

automatically defined (Article 84 EPC). A mere automation could not involve an inventive activity (reference was made to decision T 775/90).

Third auxiliary request: E3 also disclosed detection of error data, which were to be considered part of the performance data (E3, [0027, 0038]). Improvement of the performance by reduction of the number of errors was therefore obvious in view of E3 (Article 56 EPC). No special synergy could be recognised or had been credibly shown.

X. Opponent 02 explained during oral proceedings that opponent 02 was indeed Senvion GmbH by referring to the German Handelsregister, copies of which had been provided during the appeal proceedings.

Objections were raised under Article 100(a) EPC for lack of novelty and inventive step. The claimed subject-matter consisted of the technical features of a database, a server and a client. The rest of the features were non-technical. In view of the fact that a performance improvement was not necessarily an electrical improvement, but also security features such as a guard rail, the subject-matter of claim 1 was anticipated by a Client-Server-System with an Excel-Sheet, which was updated by setting a marker for a guard rail to "yes".

With regard to E3, the subject-matter of claim 1 was anticipated or at least obvious in view of the skilled person's common general knowledge. According to the wording of the claim, a target and a baseline turbine could still be the same. In view of replacements of old worn components the temporal aspect would have to be considered as well. Replacement of a used component by

a new one of the same type of turbine would therefore be covered by the claim. Future projects also comprised upgrades, OEM components comprised parts of a system. In particular the "Component Selection Decisions" in E3 covered upgrades. Since a performance improvement according to the patent in suit was also achieved by providing a security feature such as a guard rail, table 8 with "+1" would anticipate the corresponding feature of claim 1.

With regard to the auxiliary requests opponent 02 essentially argued:

First auxiliary request: The amendments to claim 1 introduced a lack of clarity (Article 84 EPC) and did not fulfil the requirements of Article 123(2) EPC. In particular, [0064] of the description of the present application did not disclose an automatic definition of baseline wind turbines. The claimed subject-matter would be an intermediate generalisation of what is disclosed in figure 6 of the application.

Third auxiliary request: The added feature regarding an increase in availability or reduction in fault occurrences would be an intermediate generalisation of what is disclosed in [0063] of the application. In particular, the processor and the central server system had been omitted. This constituted an intermediate generalisation and introduced a lack of clarity, which was in contrast to the requirements of Articles 84 and 123(2) EPC. Furthermore, claim 1 still lacked inventive step in view of *inter alia* E3 when combined with the skilled person's common general knowledge (Article 56 EPC).

XI. Opponent 03 essentially argued that the main request did not fulfil the requirements of Articles 100(a) EPC because of lack of inventive step in view of the disclosure of E3 when combined with the skilled person's common general knowledge.

Performance data according to claim 1 could be any data describing the operation of one or more wind turbines. Target performance data and baseline performance data would not have a technical distinction. A predicted performance improvement could also be a guard rail to improve security and, hence, amounted to nothing more than a suggestion to change an element in order to improve the system.

E3 was directed to the installation and the operation of renewable energy systems and therefore was not solely directed to supply chain management. E3 disclosed highlighting OEM manufacturer components and thereby identifying an available upgrade, e.g. component X, since component X was not included in any of the systems using components Y or Z (see E3, [0037] in conjunction with [0044] and table 7). Components X, Y and Z were substitutes. Since target performance data might also be errors according to claim 1, table 7 of E3 disclosed a comparison between target systems in the form of systems including components Y and Z, and baseline performance data including an available upgrade in the form of component X (see page 3 of the letter dated 23 October 2015).

The only difference of claim 1 over E3 was the one identified in the contested decision of providing the predicted performance improvement to the client system (see point 8.1 of the decision). By providing a plurality of output means (see E3, [0016]), the results

of table 7 of E3 could be provided to another computer, e.g. a client. This would have to be regarded as obvious in view of the skilled person's common general knowledge.

With regard to the auxiliary requests opponent 03 essentially argued:

First auxiliary request: The amendment merely concerned a modified purpose statement with no limiting effect in view of the fact that the system merely had to be "suitable for" such a purpose. A mere automation of the process of defining the baseline wind turbines could not involve an inventive step in view of the established case law. Without further distinguishing the claimed subject-matter over the prior art on file, this request should be rejected under Rule 80 EPC.

Third auxiliary request: By listing errors, tables 7 and 8 of E3 would include fault occurrence data as performance data. The corresponding additional feature therefore did not further distinguish the claimed subject-matter from E3. Claim 1 of this request was a mere juxtaposition and, hence, obvious, since no functional interaction or synergetic effect was achieved.

All requests therefore lacked an inventive step (Article 56 EPC).

XII. Opponent 04 essentially argued that the main request did not fulfil the requirements of Articles 100(a) EPC, because of lack of novelty in view of the disclosure of *inter alia* E3, and lack of inventive step when combined with the skilled person's common general knowledge.

In particular, E3 disclosed that baseline and target turbines were different from each other when comparing data of systems of different geographical regions like Europe and North America. Because of the possibility to highlight OEM components as a result of exceeding benchmark metrics (see E3, [0014]), an upgrade could be identified and the corresponding feature of claim 1 was disclosed by E3 in view of the fact that it merely required the system to be suitable for doing so. A system integrator or VAR according to E3 would have to be regarded as belonging to a client system. Since services would also be applicable to OEM components, which are technical components of the wind turbine, E3 was not only directed to supply chain management, but also to modifications of the wind turbines as such. Additional development according to E3 (see [0044]) would also comprise updates or upgrades of components. Tables 7 and 8 of E3 clearly showed that the existence of an upgrade could improve the performance.

With regard to the auxiliary requests opponent 04 essentially argued:

First auxiliary request: The request should not be admitted, because paragraph [0001] of the application as filed was no antecedent basis for the amendment "configured for" and [0065] did not disclose how an automatic definition of baseline turbines was performed. This resulted in an intermediate generalisation. Mere automation would not involve an inventive activity.

Figure 2 of E3 disclosed in step 204 that if data was above benchmark, benchmark data was improved (step 209). Therefore, the system disclosed in E3 was configured to evaluate improvements and anticipated the

subject-matter of claim 1 of this request, or at least rendered it obvious.

Third auxiliary request: Claim 1 of this request was not convergent with the first auxiliary request. E3 disclosed in tables 7 and 8, indication of errors and as a result an analysis. The number of errors was therefore corresponding to fault occurrence according to claim 1. It was therefore obvious for the skilled person to compare the occurrence of faults in wind turbines. Claim 1 was therefore obvious in view of E3.

Reasons for the Decision

1. Identity of opponent 02

Concerning the appellant's objection that, contrary to the entry in the European patent register, respondent (opponent 02) was not Senvion GmbH, for the purpose of these proceedings, the Board relies on the European patent register. The facts presented during oral proceedings by opponent 02 revealed that the opposition was assigned as part of the opponent's business assets together with the assets in the interests of which the opposition was filed. Thus the requirements established for the transfer of an opposition (see G 4/88, OJ EPO 1989, 480) are met. Since these facts were plausible to the Board, the Board did not have a reason to put the correctness of the European patent register into question and follows the principle that it is decisive for the proceedings what the register says (see T 653/89, point 1 of the reasons).

Main request

2. Article 100(b) EPC

With regard to the objections under Article 100(b) EPC the Board concurs with the decision under appeal that claim 1 as granted meets the requirements of Articles 83 and 123(2) EPC. This is also the case for present claim 1 of the amended main request (corresponding to claim 1 of the first auxiliary request in the contested decision).

3. Article 100(a) EPC

3.1 Technical character of the claimed invention

With regard to the question of technical character and the objections under Articles 100(a) EPC the Board concurs with the decision under appeal that claim 1 as granted meets the requirements of Article 52 EPC. This is also the case for present claim 1 of the amended main request. The Board is of the opinion that the subject-matter of claim 1 as a whole has technical character.

3.2 Inventive step

3.3 Claim 1 defines a system for determining the effect of an upgrade on the performance of a wind turbine. The preamble of the claim essentially identifies target performance data from a set of "target wind turbines" and baseline performance data from a disjoint set of "baseline wind turbines". The first characterising feature qualifies the baseline wind turbines to be similar (in location or environment) to the target wind

turbines. The second characterising feature compares the performance of a turbine from the target set with one from the (similar) baseline set that has an "available upgrade". This gives a predicted performance improvement of making the upgrade.

The subject-matter corresponding to claim 1 of the main request was held to lack an inventive step in view of E3, which was considered to be the closest prior art on file (see point 8 of the contested decision).

3.4 The Board concurs with the opponents' view that the subject-matter of claim 1 at least lacks inventive step in view of E3.

E3 concerns the installation and the operation of renewable energy systems (see e.g. the Title and [0002]). Contrary to the appellant's view, therefore, its content cannot be limited to supply chain management. E3 concerns wind turbines (see [0026] and claim 11) and deals with system performance (see e.g. table 2) and establishing benchmark metrics (see e.g. [0038] and claim 7).

3.5 Much time was spent during the oral discussing exactly how the invention differed from E3. Opponent 02 (and opponent 04 in the written proceedings) even argued that there was no difference at all.

The discussion can be grouped into two main aspects, which were the subject of claims 1 and 2, respectively, of the granted patent. Firstly the nature of the target and baseline performance data in the pre-characterising part and first feature of the characterising part of the claim. Secondly, determining the performance improvement of an upgrade to a target wind turbine in

the last feature of the claim.

However, there is little interaction between these aspects in the claim. The upgrade aspect merely compares "target performance data corresponding to *the* first target wind turbine to baseline performance data corresponding to *a* known wind turbine including the available upgrade". Thus providing that the single target and known turbine have the required characteristics, namely at least one similar attribute, but not the upgrade, then the other details of the performance data are irrelevant to the upgrade aspect. This reduces the strength of the appellant's argument about the hindsight of combining features from E3 as these additional details need only be disclosed, but not necessarily in combination with the upgrading aspect.

3.6 Concerning the definition of the target and baseline turbine data, the Board considers that target performance data and baseline performance data do not have a technical distinction, but are distinguished by their purpose, namely having features relevant to the desired comparison. In view of the formulation in claim 1 that baseline data "including a subset" of the known wind turbines not part of the target data, baseline performance data can comprise all the target data plus one more turbine of the known wind turbines.

Thus the Board concurs with the opposition division and respondents that E3 does disclose the claimed details of the performance data of the target and baseline wind turbines, including have a similar attribute, such as geographical region (see e.g. [0036] and [0038]).

3.7 The contested decision identified the following features of claim 1 as distinguishing features over the disclosure of E3:

- for a first target wind turbine of the target wind turbines, identify an available upgrade not included in the first target wind turbine;

- compare target performance data corresponding to the first target wind turbine to baseline performance data corresponding to a known wind turbine including the available upgrade to determine a predicted performance improvement; and

- provide the predicted performance improvement to the client system.

3.8 E3 also discloses providing predicted improvement to a "client system", for example personal computers ([0016] and end of [0050]).

3.9 According to the appellant the objective technical problem underlying the combination of these features was to provide the user with information to improve the performance of an existing system. The Board agrees with the formulation of the problem to be solved.

3.10 E3 discloses solving the problem of providing the user with information to improve the performance of an existing system *inter alia* by highlighting OEM manufacturer components and thereby to identify an available upgrade, for example at [0014]:

"...the aggregated data may be used to offer services to the System Integrators and VARs that improve the use and performance of the various OEM components used [in]

their installed systems. Data across the network may be used to establish benchmark metrics for OEM component performance. Typically, data from new installations are collected, analyzed and compared to the benchmark metrics. The services may typically highlight OEM components that are deserving of ... selection because their performance metrics exceed the benchmark metrics [and vice versa]."

3.11 Concerning the "upgrade", the Board first notes that according to the description of the patent in suit the expression performance improvement can be interpreted broadly so that a predicted performance improvement could also be a guard rail to improve security (see [0080] of the application as filed) and covers a suggestion to change an element in order to improve the system as was argued by the opponents.

The appellant argued that an upgrade according to the invention would be different from repair or maintenance. However, the Board does not agree with this point of view in the light of the fact that the description of the application even mentions consumable components such as a lubricant (see [0017]) to be an upgrade in the context of the patent in suit. Hence, also the term "upgrade" in claim 1 can be interpreted broadly. Moreover E3 specifically mentions the possibility of performing upgrades during the service of the system, i.e. not just at installation ([0025], [0027]).

Furthermore, in [0030] E3 discloses aggregation of data from systems with similar features comprising OEM component identification. The same suggestion is found in [0036] which discloses "benchmark metrics from data collected only from their region", in combination with

OEM component identification.

Thus, the Board judges that the skilled person would consider providing the user with information about possible upgrades by comparing data from wind turbines with benchmark data from similar turbines.

3.12 E3 also gives details about how such comparisons might be done. Specifically, paragraphs [0037] and [0044], figure 2, claim 7 and tables 7 and 8 are particularly relevant, because they deal with the comparison of alternative OEM components X, Y and Z. Tables 7 and 8 concern solar energy systems, but in the context of E3 the skilled person would recognise that the same could be carried out for other kinds of renewable energy systems such as wind turbines mentioned in E3 as well (see [0002]).

The comparison is in terms of "Errors" (Table 7, last column), but since target performance data can also be errors according to claim 1 (see "fault occurrence data" according to the third auxiliary request; see also [0018] of the application as filed), E3 discloses a comparison of performance data. The comparison is between target systems in the form of systems including components Y and Z, and baseline performance data including an available upgrade in the form of component X (see e.g. opponent 03 on page 3 of the letter dated 23 October 2015). In particular, the Board agrees with the opponent's argumentation that, for example, a 100kW system with component Y installed as shown in line 6 of table 7 as a target system could be replaced with component Z of line 7 or line 9, both also being 100kW systems, but producing fewer errors, which is a performance improvement. E3 teaches that data of a particular component are compared with those not having

said component to build a comparative table 8. The information that component Z is advantageous is found in the last three lines of table 8 of E3, which reveals that component Z produces fewer errors than component Y.

The appellant argued, based on [0040], that tables 7 and 8 of E3 only disclosed measures for installation of a system. However, the Board does not agree, because, apart from the above-mentioned passages, E3 teaches to favour better performing OEM components in future projects (see [0044]) as well as to use the benchmark for "proper corrective actions" (see [0039]). The Board therefore agrees with the opponents' argumentation that the skilled person would use the comparative information such as that in tables 7 and 8 of E3 to decide which components to use for correcting existing installations or improving upgrade future projects.

3.13 The distinguishing features, even if not disclosed in combination in E3, and thus claim 1, are therefore rendered obvious in view of E3 combined with the skilled person's common general knowledge (Article 56 EPC).

First auxiliary request

4. With regard to the first auxiliary request, the Board does not regard an automation of the process of defining the baseline wind turbines as involving an inventive step. The Board does not concur with the appellant that claim 1 according to this request defined a fully automated system. As argued by the opponents it is rather merely the definition of the baseline wind turbines that is automated, not the whole

process. Furthermore, E3 discloses a computer implemented, i.e. an automated process for establishing improved benchmark metrics (see claim 7 of E3). The other modifications to claim 1 merely rephrase existing features, but do not add substantive subject-matter that could further distinguish claim 1 from the disclosure of E3.

Therefore claim 1 of the first auxiliary request does not add inventive matter over E3 and is obvious for the same reasons as given with regard to the main request.

Second auxiliary request

5. This request was withdrawn during oral proceedings.

Third auxiliary request

6. E3 discloses an indication of errors as a result of an analysis. By listing errors, tables 7 and 8 of E3 disclose fault occurrence data as performance data. The appellant argued that claim 1 was limited to operational faults, whereas according to E3 only errors in past installations were mentioned. The Board, however, does not agree, but concurs with the opponents' view that by listing also a guard rail as an upgrade and safety improvement to a wind energy system (see [0080]) a missing guard rail had to be considered a missing security feature which was an installation error. Claim 1 according to this request therefore is not limited to operational errors. The number of errors in tables 7 and 8 of E3 therefore corresponds to target and baseline fault occurrence data according to

claim 1. The corresponding additional feature therefore does not further distinguish the claimed subject-matter from E3.

6.1 Being a combination of claims 1 of the first and second auxiliary requests, claim 1 of this request is a juxtaposition. The Board finds no indication that there is a functional interaction or synergetic effect achieved as alleged by the appellant.

7. As none of the appellant's requests fulfil the requirements of Articles 100(a) and 56 EPC, the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

T. Buschek W. Chandler

Decision electronically authenticated