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**Datasheet for the decision  
of 27 January 2020**

**Case Number:** T 2153/15 - 3.5.02

**Application Number:** 10774240.5

**Publication Number:** 2618476

**IPC:** H02M7/493

**Language of the proceedings:** EN

**Title of invention:**

Control method for arranging DC/AC converters in parallel

**Applicant:**

Ingeteam Power Technology, S.A.

**Relevant legal provisions:**

RPBA Art. 13(1)

**Keyword:**

Late-filed request - justification for late filing (no)



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Case Number: T 2153/15 - 3.5.02

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.02**  
**of 27 January 2020**

**Appellant:** Ingeteam Power Technology, S.A.  
(Applicant) Parque Tecnológico de Bizkaia  
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**Representative:** Carpintero Lopez, Francisco  
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**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 8 July 2015  
refusing European patent application No.  
10774240.5 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** R. Lord  
**Members:** C.D. Vassoille  
J. Hoppe

## **Summary of Facts and Submissions**

- I. This is an appeal of the applicant (appellant) against the decision of the examining division to refuse European patent application no. 10774240.5 on the ground that the subject-matter of claim 1 did not involve an inventive step in the sense of Article 56 EPC.
- II. A summons for oral proceedings was notified on 29 October 2019 together with a communication under Article 15(1) RPBA 2007. In that communication the board informed the appellant that it was doubtful whether the subject-matter of claim 1 fulfilled the requirements of Articles 84 and 56 EPC. In particular, the board in section 5 of the communication held the following:

"In the view of the board it is particularly unclear how the object of "matching the common-mode voltages generated by the DC/AC converters" could generally be solved by "using pulse width modulation (PWM) so that said voltages fall on the transformer". It is specifically unclear what is meant with "voltages fall on the transformer" and how pulse width modulation, without any further specification, could be used to achieve this effect. From the description on page 4, lines 12 to 15 it further seems that the common mode voltage "falls mainly on the transformer" because the transformer capacity is lower than that of the photovoltaic generator, which is consequently somehow in contradiction to the wording of claim 1."

III. In response to the board's communication, the appellant filed a first and a second auxiliary request. These requests as well as the main request were withdrawn during the oral proceedings and replaced by a new main request.

IV. Oral proceedings before the board were held on 27 January 2020.

The appellant at the end of the oral proceedings requested that the decision under appeal be set aside and that a patent be granted based on the new main request, filed during the oral proceedings.

V. Claim 1 of the new main request reads as follows:

"A control method for connecting DC/AC converters in parallel (1.1 - 1.n) at power conversion installations comprising:

- at least one DC photovoltaic generator power supply (3),
  - at least two DC/AC converters (1.1 - 1.n), connected to at least one DC power supply (3), that convert the direct power provided by the DC power supply (3) into alternating power, and
  - a transformer (2) provided with a primary winding to which at least two DC/AC converters (1.1 - 1.n) are connected and the secondary winding of which is connected to the power grid to which it finally injects the alternating energy,
- characterised in that** it comprises matching the common-mode voltages generated by the DC/AC converters (1.1 - 1.n) using a single carrier signal and pulse width modulation."

VI. The appellant's arguments can be summarised as follows:

The appellant understood the board's objection regarding the wording of claim 1 "so that said voltages fall on the transformer" for the first time at the oral proceedings before the board. The new main request was a reaction to this objection, of which the appellant thus only became aware during the oral proceedings.

The appellant also had a different understanding of the claim. In particular, claim 1 with respect to the objected wording "so that said voltages fall on the transformer" was read in view of the whole method and not only with respect to the preceding wording "using pulse width modulation".

The new main request overcame the objection by deletion of the objected wording "so that said voltages fall on the transformer". No further issues, in particular as regards Article 123(2) EPC were raised by the deletion, since the deleted wording was not an essential feature. The new main request should therefore be admitted into the appeal proceedings.

### **Reasons for the Decision**

1. The appeal is admissible.
2. *Main request - admittance into the appeal proceedings*
3. According to Article 25(3) RPBA 2020, Article 13(2) RPBA 2020 does not apply where the notification to oral proceedings - as in this case - has been notified before 1 January 2020. Instead Article 13 RPBA 2007 continues to apply. As Article 25(3) RPBA refers to

Article 13 RPBA 2007 as a whole, all the paragraphs of Article 13 RPBA 2007 are encompassed by the reference.

According to Article 13(1) RPBA 2007, any amendments to a party's case after it has filed its grounds of appeal may only be admitted and considered at the board's discretion. The board exercises its discretion on a case by case basis in view of *inter alia* the complexity of the new subject-matter matter and the current state of the proceedings.

3.1 In the present case, the new main request could and should have been filed at an earlier stage of the proceedings. The board's communication under Article 15(1) RPBA 2007 already objected under point 5 to the wording "using pulse width modulation (PWM) so that said voltages fall on the transformer" and the question was raised how pulse width modulation could be used to make voltages fall on the transformer according to the wording of the claim. The board in this context further referred to the description on page 4, lines 12 to 15, and noted that this passage, explaining that the common mode voltage "falls mainly on the transformer" because the transformer capacity was lower than that of the photovoltaic generator, seemed to be in contradiction to the wording of claim 1.

3.2 The new main request, which sought to overcome the board's corresponding objection by deletion of the objected wording, should have been filed at the latest within the term set out under point 12 of the communication, i.e. at the latest one month prior to the date of the oral proceedings. While the appellant filed new first and second auxiliary requests within this term, none of these requests addressed the issue raised by the board under point 5 of the summons. The

appellant did not put forward any arguments in this respect either.

- 3.3 The board is not convinced by the appellant's argument that they became aware of the objection only during the oral proceedings. The board in this context observes that already the International Preliminary Report on Patentability of 3 December 2012 contained in section VIII, 1.3 the following remark:

"Contrary to applicant's argument (see letter of 09/07/2012: page 2, lines 8-10), the fact that the voltages "*fall*" on the transformer is not a direct consequence of the action of "*matching*", but purely a consequence of the fact that the parasitic capacitance of the transformer is lower than the parasitic capacitance of a photovoltaic generator, as correctly mentioned in the description (see page 2, lines 14-16 ; page 4, lines 13-14). In consequence, trying to establish a causal link between the action of "*matching*" and the effect of "*having the voltage fall over the transformer*", as has been done, is a further technical obscurity."

A similar remark was present in section 1.4 of the examining division's communication dated 30 January 2014.

Furthermore, even though the application was refused solely on the ground that the subject-matter of claim 1 did not involve an inventive step in the sense of Article 56 EPC, the decision under appeal explicitly addressed the unclear wording of the claim (see in particular section 1) of the reasons for the decision under appeal) and in particular contained a

corresponding remark in section 3.5 of the reasons for the decision under appeal.

The corresponding objection raised by the board under point 5 of the summons can thus in no way have surprised the appellant.

- 3.4 The board is also not convinced by the argument that the appellant only understood the clarity objection at the oral proceedings before the board, in the light of the clear formulation of the objection in several communications during the international and European examination procedure as well as in the board's summons (see point 3.3 above). In the event that there had been a technical misunderstanding of the claimed invention on the appellant's side, this also cannot be seen as a justification for the late filing of the request. Technical misunderstandings on the part of the appellant cannot be regarded as a justification for not appropriately addressing objections raised by an examining division. The same applies in the case of an alleged lack of understanding of an objection.

It is also to be noted that the appellant withdrew their request for oral proceedings before the examining division, although that would have been the appropriate forum for the clarification of such misunderstandings.

- 3.5 In so far as the appellant argued that the wording of the claim should be read in a different manner, namely such that the objected part ("so that said voltages fall on the transformer") referred to the whole claimed method, this is also not convincing. It does not, in any event, justify a very late substantive reaction in the proceedings to an objection that has been on file for a long time.



3.6 There are therefore no convincing reasons apparent that could justify the appellant's conduct, in particular the fact that throughout the entire examination procedure the appellant did not respond to the objection in question by submitting a corresponding auxiliary request. Filing a corresponding request for the first time at the oral proceedings before the board is therefore not compatible with the established criteria for admittance under Article 13(1) RPBA 2007.

3.7 The board further observes that the new main request also does not address the board's preliminary opinion that the subject-matter of claim 1 is obvious in view of D1. The new main request therefore cannot be considered to address all the objections raised by the board in the summons, which however could have been expected when filing a new main request at this very late stage of the procedure, namely after all requests then on file had been discussed at the oral proceedings before the board. The new main request is therefore *prima facie* also not allowable.

3.8 For these reasons, the board exercised its discretion under Article 13(1) RPBA 2007 not to admit the main request into the appeal proceedings.

#### 4. *Conclusion*

Since the only request on file was not admitted into the appeal proceedings, the appeal had to be dismissed.

**Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:



U. Bultmann

R. Lord

Decision electronically authenticated