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**Datasheet for the decision
of 28 September 2021**

Case Number: T 0234/18 - 3.5.02

Application Number: 10000321.9

Publication Number: 2346135

IPC: H02J3/38

Language of the proceedings: EN

Title of invention:

Converter device and method for converting electrical power

Patent Proprietor:

Siemens Aktiengesellschaft

Opponents:

Woodward Kempen GmbH

Senvion GmbH

Vestas Wind Systems A/S

Relevant legal provisions:

EPC Art. 84

Keyword:

Claims - clarity - all requests (no)

Transfer of opponent status (no)

Decisions cited:

G 0004/88, T 0006/05, T 1421/05, G 0003/14



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Case Number: T 0234/18 - 3.5.02

D E C I S I O N
of Technical Board of Appeal 3.5.02
of 28 September 2021

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Decision under appeal: **Decision of the Opposition Division of the European Patent Office posted on 24 November 2017 revoking European patent No. 2346135 pursuant to Article 101(3) (b) EPC.**

Composition of the Board:

Chairman R. Lord
Members: C.D. Vassoille
 R. Cramer

Summary of Facts and Submissions

- I. The appeal of the patent proprietor lies against the decision of the opposition division to revoke European patent no. 2 346 135.
- II. In the decision under appeal, the opposition division concluded *inter alia* that claim 1 of the main request did not fulfil the requirements of Article 84 EPC. The same conclusion was found by the opposition division to apply to each of auxiliary requests 1 to 3.
- III. The parties were summoned to oral proceedings. In a communication under Article 15(1) RPBA 2020 annexed to the summons, the board set out their preliminary observations on the appeal, concluding *inter alia* that the subject-matter of claim 1 of the main request did not seem to meet the requirements of Article 84 EPC and that this also seemed to apply to each of auxiliary requests 1 to 3.
- IV. In a further communication dated 19 March 2021, the board provided their preliminary opinion that the request for transfer of the party status as opponent O1 should be rejected and that the case should proceed with the original opponent.
- V. With letter of 12 April 2021, respondent 2 informed the board that they would not be attending the oral proceedings.
- VI. With letter dated 12 July 2021 the appellant withdrew their request for oral proceedings.

VII. With letter dated 21 July 2021 respondent 1 maintained their request for oral proceedings only for the case that the board would intend to set the decision under appeal aside.

VIII. The patent proprietor (appellant) requested in writing that the decision under appeal be set aside and that the patent be maintained in amended form according to the main request filed with the statement setting out the grounds of appeal, or alternatively, that the patent be maintained according to one of auxiliary requests 1 to 3, filed on the same day.

The opponents 1, 2 and 3 (respondents 1, 2, 3) requested in writing that the appeal be dismissed.

Respondent 1 further requested in writing that the case be remitted to the opposition division for examination as to whether the substantive requirements were fulfilled by the appellant's requests, in the event that the board should conclude that any of the main request and auxiliary requests 1 to 3 fulfilled the requirements of Articles 84 and 83 EPC.

IX. Claim 1 of the main request has the following wording (emphasis added by the board):

"Power plant (100), comprising:

- a converter device (102) for converting an electrical input power (106) to an electrical output power (108), the converter device (102) comprising:

- a voltage input (118) for receiving a voltage signal (120), said voltage signal (120) being indicative of a voltage in a electricity network (112) to which the converter device (102) is coupled during operation in

order to provide said electrical output power (108) to said electricity network;

- a controller (116);

characterized by

- the controller being configured for setting a reactive component of said electrical output power (108) depending on said voltage signal (120) according to a predetermined out-of-band reactive current gradient (150a, 150b) if the voltage indicated by the voltage signal (120) is outside a predetermined voltage band, thereby varying the reactive component so as to vary the reactive current according to the predetermined out-of-band reactive current gradient;

- wherein the out-of-band reactive current gradient (150a, 150b) is defined as change of reactive current per voltage unit of a change in the voltage indicated by the voltage signal (120),

the power plant further comprising:

a power plant controller (128) for providing to the converter device (102) a control signal (130) for setting the out-of-band reactive current gradient (150a, 150b)

thereby controlling the out-of-band reactive current gradient for adaption of the reactive current

contribution outside the predetermined voltage band to a network impedance of the electricity network."

X. Claim 1 of each of auxiliary requests 1 to 3 comprises the above underlined wording of claim 1 of the main request.

XI. The arguments of the appellant, as far as they are relevant for the present decision, can be summarised as follows:

The added feature of claim 1, reciting "controlling the out-of-band reactive current gradient for adaption of the reactive current contribution outside the predetermined voltage band to a network impedance of the electricity network" was clear in the sense of Article 84 EPC. The wording of claim 1 was particularly clear when reading it in connection with the definition of the reactive current contribution in the preceding portion of claim 1, according to which the out-of-band reactive current gradient was defined as change of reactive current per voltage unit of a change in the voltage indicated by the voltage signal.

The meaning of the impedance of the electricity network was further known to the skilled person and also how it could be measured. This was also explained in the patent under appeal in paragraph [0058], where it was stated *inter alia* that the impedance of the electricity network may be determined by a targeted injection of a reactive power for a short time and measurement of relevant parameters of the electricity network. The current had both an active component and a reactive component, whereby changing the reactive component alone changed the output impedance of the energy source. The cited passage thus specified that the gradient of the reactive current was controlled so that the contribution of the reactive current, and consequently the output impedance of the energy source, was adapted to the network impedance. The skilled person, when reading the patent with a mind willing to understand, would thus understand that changing the reactive component of the current changed the impedance of the power system, which could thus be adapted to the impedance of the electricity network.

Reference was further made to figure 2 of the patent under appeal, from which the person skilled in the art knew that the reactive current gradient could be set in an angular range such that the desired adaption would result (see also paragraph [0058] of the description).

The wording of claim 1 which had been objected to was thus clear, because an adaption to the network impedance was achievable by controlling the reactive current gradient, which entailed an adjustment of the reactive current, and "controlling ... for adaption ..." as defined in the claim, was a clear operational instruction.

XII. The arguments of the respondents, as far as they are relevant for the present decision, can be summarised as follows:

Claim 1 did not meet the requirements of Article 84 EPC. In claim 1 of the main request, the appellant introduced a feature from the description of controlling the out-of-band reactive current gradient for adaption of the reactive current contribution outside the predetermined voltage band to a network impedance of the electricity network. It was entirely unclear what the meaning of "for adaption ... to a network impedance of an electricity network" was. The meaning of this wording was also not explained in the description of the patent under appeal. When reading claim 1, the person skilled in the art therefore could not understand what was meant by "adaption of the reactive current contribution ... to a network impedance ...".

In particular, no relationship between the output impedance and the network impedance was established

either in the claims or in the specification. In particular, it was not specified whether "adaption of the reactive current contribution to the network impedance" meant that the output impedance of the converter was to be matched with the network impedance or whether a certain voltage or reactive current output of the converter device was to be achieved such that a certain unspecified output impedance of the converter device may be measured.

Additionally, it was to be noted that claim 1 defined that a reactive current was adapted to an impedance, and consequently adapted to a different physical quantity. It was thus unclear how a current could be adapted to an impedance, so that it would be necessary to specify in claim 1 the term "adaption".

Claim 1 did not contain any technical teaching that would allow the skilled person to determine when an adaption to the network impedance was achieved. Consequently, it was impossible for the skilled person to determine under which conditions the result to be achieved, i.e. an adaptation of the reactive current contribution to the network impedance, was met.

In conclusion, the added feature amounted to a mere result to be achieved and therefore claim 1 did not meet the requirements of Article 84 EPC.

Reasons for the Decision

1. The appeal is admissible.

2. *Main request - Clarity (Article 84 EPC)*

2.1 Claim 1 of the main request does not meet the requirements of Article 84 EPC.

2.2 Claim 1 of the main request contains the following additional functional features with respect to the granted claim 1:

(a) a power plant controller for providing to the converter device a control signal for setting the out-of-band reactive current gradient

(b) thereby controlling the out-of-band reactive current gradient for adaption of the reactive current contribution outside the predetermined voltage band to a network impedance of the electricity network.

2.3 Feature (b) is based on page 8, lines 22 to 25 of the originally filed description, so that, in accordance with the findings of the Enlarged Board of Appeal in decision G 3/14, the corresponding amended feature is open to review under Article 84 EPC. This was not contested by the appellant.

2.4 While a functional definition may in principle be admissible, it must in any case not conflict with the clarity of the claim. In accordance with the findings of the opposition division, the board has come to the conclusion that the functional wording of feature (b) of claim 1 represents a result to be achieved and does not specify any clear technical teaching in this respect. More specifically, claim 1 specifies neither how the control needs to be established for adaption of the reactive current contribution outside the predetermined voltage band to a network impedance, nor

what is to be understood by an adaption of a reactive current contribution to a network impedance, as the respondents have correctly pointed out.

The board considers it further unclear how a reactive current contribution can be adapted to a network impedance at all, given that the reactive current contribution does not represent an impedance. It might be true that, as was argued by the appellant, the skilled person is generally aware of an interrelation between the reactive current contribution, an output impedance of the energy system and an input impedance of the electricity network. It further appears from the description that what was actually intended to be covered by the additional functional feature (b) is matching of the (output) impedance of the energy system to the input impedance of the electricity network by way of changing the reactive current contribution accordingly. However, a corresponding technical teaching reflecting such a configuration is not derivable from the wording of claim 1.

The board therefore considers the appellant's explanation of what was intended to be covered by the amendment of claim 1, and the specific technical relationships generally known to the skilled person, in the present case to be irrelevant to the question as to whether claim 1 of the main request meets the requirements of Article 84 EPC.

To the contrary, the above cited feature (b) of claim 1 represents a mere result to be achieved and does not contain any specific technical teaching for the skilled person as to what is meant by performing a control of the out-of-band reactive current gradient for adaption of the reactive current contribution outside the

predetermined voltage band to a network impedance of the electricity network.

2.5 In the light of the above considerations, the board has arrived at the conclusion that claim 1 of the main request does not fulfil the requirements of Article 84 EPC.

3. *Auxiliary requests 1 to 3 - Clarity (Article 84 EPC)*

Given that claim 1 of each of auxiliary requests 1 to 3 is also subject to the amendments of claim 1 of the main request, the board's findings under point 2 above also apply to these requests.

4. *Party status*

4.1 In a letter of 10 November 2020 respondent 1, Woodward Kempen GmbH, stated that they had transferred the business assets in the interest of which the opposition was filed together with the status as opponent to ConverterTec Deutschland GmbH. As evidence a purchase agreement was filed from which the board can deduce that the "Newton Business" was purchased by ConverterTec Deutschland GmbH from Woodward Kempen GmbH. According to the agreement, the intellectual property rights relating to the "Newton Business" have been transferred.

4.2 Being party to a pending opposition is however not a **property** right but a **procedural** right (G 4/88, Reasons Nr. 2). There is nothing in the agreement that mentions the transfer of this procedural right. The board does not share respondent 1's view that according to decision G 4/88 the opponent status is automatically transferred together with the business assets in the

interest of which the opposition was filed. According to decision G 4/88 an opposition which is part of those business assets must "be regarded as **transferable** or **assignable**" (Reasons Nr. 6). The decision does not say that they are automatically transferred.

4.3 According to the case law of the Boards of Appeal, an automatic transfer only occurs in the case of a universal succession, but not where particular business assets are transferred from one party to another, as in the latter case the party status may either remain with the original opponent or be transferred to the new opponent. See in this respect e.g. T 6/05, Reasons Nr. 1.6.4, and T 1421/05, Reasons Nr. 3.3.

4.4 The request to register ConverterTec Deutschland GmbH as new opponent 01 in lieu of Woodward Kempen GmbH can therefore not be granted.

5. *Result*

Given that none of the appellant's requests meet the requirements of Article 84 EPC, the appeal is to be dismissed. As the decision is favourable to the respondents, respondent 1 has not requested oral proceedings for the decision on the request in Nr. 4, and the appellant has withdrawn their request for oral proceedings, the board is in a position to take a decision without holding oral proceedings.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



U. Bultmann

R. Lord

Decision electronically authenticated