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**Datasheet for the decision
of 7 March 2022**

Case Number: T 1404/18 - 3.2.06

Application Number: 08250523.1

Publication Number: 1967694

IPC: F01D5/14

Language of the proceedings: EN

Title of invention:

Turbine blade for a turbomachine

Patent Proprietor:

Rolls-Royce plc

Opponent:

Siemens Aktiengesellschaft

Headword:

Relevant legal provisions:

Keyword:

Withdrawal of approval of any text for maintenance of the patent

Decisions cited:

T 0073/84, T 0186/84, T 0655/01, T 1526/06, T 1960/12

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 1404/18 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 7 March 2022

Appellant: Rolls-Royce plc
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Appellant: Siemens Aktiengesellschaft
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Representative: Siemens Aktiengesellschaft
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
3 April 2018 concerning maintenance of the
European Patent No. 1967694 in amended form.**

Composition of the Board:

Chairman M. Harrison
Members: M. Hannam
J. Hoppe

Summary of Facts and Submissions

- I. An appeal was filed by each of the opponent and the patent proprietor against the interlocutory decision of the opposition division, in which it found the patent in an amended form to meet the requirements of the EPC.
- II. The appellant/opponent requested that the decision under appeal be set aside and the patent be revoked. The appellant/patent proprietor requested finally that the decision under appeal be set aside and the patent be maintained as granted or, as an auxiliary measure, that the patent be maintained according to one of auxiliary requests 1 to 20.
- III. In its preliminary opinion the Board indicated that none of the patent proprietor's requests on file appeared to be allowable.
- IV. With letter of 25 February 2022 the patent proprietor stated that it "hereby disapproves the texts on file of its Main Request and all of its Auxiliary Requests, and will not be submitting any amended texts." It further stated, "As there is no longer a text on the basis of which the Board can maintain the patent, we understand that the patent must be revoked without further substantive examination as to patentability."

Reasons for the Decision

1. Under Article 113(2) EPC, the European Patent Office shall examine, and decide upon, the European patent only in the text submitted to it, or agreed, by the proprietor of the patent. This principle has to be

strictly observed also in opposition and opposition appeal proceedings.

2. Such an agreement cannot be deemed to exist if the patent proprietor, as in the present case, expressly states that it no longer approves the text of any of its requests on file.
3. Since the text of the patent is at the disposition of the patent proprietor, a patent cannot be maintained against the patent proprietor's will. It is moreover clear that it wishes to prevent any text whatsoever of the patent from being maintained.
4. In the interests of legal certainty, the proceedings ought to be terminated as quickly as possible. The only possibility in such a case is for the Board to revoke the patent as envisaged, for other reasons, in Article 101 EPC.
5. In view of the above, the Board concludes that the patent must be revoked. This conclusion is also in line with case law developed by the Boards of Appeal in *inter alia* decisions T 73/84, T 186/84, T 655/01, T 1526/06 and T 1960/12.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:



D. Grundner

M. Harrison

Decision electronically authenticated