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**Datasheet for the interlocutory decision
of 24 January 2024**

Case Number: T 2241/19 - 3.4.02

Application Number: 07789472.3

Publication Number: 2052447

IPC: H02B7/01, E21B41/00,
H02B13/035, E21B33/035

Language of the proceedings: EN

Title of invention:
A SUBSEA SWITCHGEAR APPARATUS

Patent Proprietor:
Vetco Gray Scandinavia AS

Opponent:
Siemens Aktiengesellschaft

Relevant legal provisions:
EPC Art. 128(4)
EPC R. 144(d)

Keyword:
Exclusion from file inspection (no)



Beschwerdekammern

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Case Number: T 2241/19 - 3.4.02

I N T E R L O C U T O R Y D E C I S I O N
of Technical Board of Appeal 3.4.02
of 24 January 2024

Appellant: Siemens Aktiengesellschaft
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
24 May 2019 concerning maintenance of the
European Patent No. 2052447 in amended form.**

Composition of the Board:

Chairman R. Bekkering
Members: B. Müller
F. Giesen

Summary of Facts and Submissions

I. In its letter of 14 June 2023 Siemens Energy Global GmbH & Co. KG requested the transfer of the status as an opponent from the opponent/appellant Siemens Aktiengesellschaft (hereinafter: "Siemens AG") to itself under the short designation "SE Global". This designation is also used in this decision for ease of reference.

On 15 June 2023, SE Global filed a further letter, together with two annexes. SE Global, in its letter of 14 June 2023 (on page 2) had referred to the decision of board 3.2.03 in "analogous case" T 1023/20. In that decision, the board had accepted the transfer of the party status from Siemens AG to SE Global.

II. SE Global also requested exclusion from file inspection of (i) the documents attached to the letter of 14 June 2023 as well as (ii) of the letter of 15 June 2023 and the two annexes thereto. The board, in its communication of 8 August 2023 (hereinafter: the communication), provided the following details on these requests (all emphases in quotations in this communication have been added):

4. ...In support SE Global [, together with its letter of 14 June 2023,] filed a number of **documents labelled (a) to (l)** and announced that two additional **documents (m) and (n)** would be filed with a subsequent letter. It **requested** that documents (a) to (l) **be not added to the public file**. Consequently, the board provisionally excluded, documents (a) to (l) from file inspection pending a final decision on the request...

6. On 15 June 2023, SE Global had filed a **letter** together with **two annexes**. Further to SE Global's request, the letter and the annexes were likewise provisionally excluded from file inspection.

III. In its communication, the board gave the following preliminary conclusion on the requests for exclusion from file inspection:

- Documents (a) to (l) (attached to the letter of 14 June 2023)

The board, further to a comprehensive legal analysis, intended to refuse the request for exclusion of documents (a) to (l) from file inspection.

- Letter of 15 June 2023, together with two annexes

Given the request that the letter be excluded from file inspection, the board was unable to assess the conditions for exclusion of that letter and its annexes in the public appeal proceedings, i.e. in its communication.

IV. SE Global's reply of 11 October 2023 ("the reply")

(a) Documents (a) to (l)

According to SE Global, referring to itself in the reply as "Siemens Energy", it was admissible to include documents (a) to (l) in the public file. If such inclusion was not required as to documents (f) to (l), then SE Global requested their exclusion from file inspection. On the other hand, if a favourable decision on the transfer of the status as an opponent depended on the inclusion of documents (a) to (l) in the public file, then SE Global agreed thereto.

(b) Documents (m) and (n) annexed to the letter of 15 June 2023

It was SE Global's view that including these documents in the public file was not necessary. Documents (a) to (l) already established the transfer of the business. Documents (m) and (n) might not contain any confidential information, but Siemens AG and SE Global had classified "the contract" as "strictly confidential". While these two documents might be available from the public file in a different case, any further publication in an additional file would lead to further dissemination of the documents. Therefore, even their publication in part should be avoided. These documents did not contain information on the split of Siemens AG. Apart from the signatures, they contained nothing establishing the split of Siemens AG into the residual Siemens AG and SE Global. However, if a favourable decision on the transfer of the opponent status depended on the inclusion of documents (m) and (n) in the public file, then SE Global agreed thereto.

Reasons for the Decision

1. Given its request for the transfer of the status as an opponent to itself, SE Global has the status of other party to the present appeal proceedings until the board has delivered a decision on its request for transfer.
2. Rule 144 EPC entitled "Parts of the file excluded from inspection" reads in pertinent part:

The parts of the file excluded from inspection under Article 128, paragraph 4, EPC shall be:

(d) any other document excluded from inspection by the President of the European Patent Office on the ground that such inspection would not serve the purpose of informing the public about the European patent application or the European patent.

3. Further to the request for exclusion from file inspection made in the letters of 14 and 15 June 2023, pursuant to Article 1(3) and (2)(a) of the "Decision of the President of the European Patent Office dated 12 July 2007 concerning documents excluded from file inspection" (hereinafter: "the Decision"; originally published in OJ EPO 2007, Special edition No. 3, 125, published again in OJ EPO 2020, Supplementary publication 1, 102) adopted having regard to Article 128(4) and Rule 144(d) EPC, documents (a) to (l) attached to the letter of 14 June 2023 and the letter of 15 June 2023, together with its two annexes, were provisionally excluded from file inspection, pending a final decision on the request (see above, point II).

4. The Board notes that a request for exclusion from file inspection of documents or parts thereof, under the pertinent provision of Article 1(2)(a) of the Decision, is allowable

at the reasoned request of a party or his representative if their inspection would be prejudicial to the legitimate personal or economic interests of natural or legal persons

5. In its communication of 8 August 2023 the Board gave its preliminary opinion on the requests for exclusion from file inspection, which is as follows.

7.1 Documents (a) to (l) attached to the letter of 14 June 2023

The board doubts that that there is a legitimate legal interest for exclusion of these documents from file

inspection; the reason being that all these documents, with the exception of the English translation of document (f), had been filed in case T 1023/20 referred to above.

In that case the documents are available for file inspection.

Apart from that, the board does not consider that SE Global has established that the conditions for exclusion from file inspection set out in the provisions of paragraph (2) (a) of [Article 1 of] the aforementioned decision of the President are met. ...

SE Global argued that the documents solely related to the (opponent's) status as a party and were irrelevant to an assessment of novelty or at least lack of inventive step in respect of the patent in suit (see the last paragraph of page 2 of the letter). SE Global did not explain in which way inspection of the documents in question would be prejudicial to its legitimate economic interests or those of Siemens AG.

...
The board ... intends to refuse the request for exclusion of documents (a) to (l) from file inspection.

7.2 Letter of 15 June 2023, together with two annexes

Given the request that the letter be excluded from file inspection, the board is unable to assess the conditions for exclusion of that letter and its annexes in the public appeal proceedings. The letter, together with its annexes, will therefore not be considered in the proceedings. Upon request, these documents will be returned to SE Global. In the absence of such a request, they will remain excluded from file inspection.

6. The board's final opinion on the requests for exclusion from file inspection is as follows.

6.1 Documents (a) to (l) filed with the letter of 14 June 2023

The board, first, refers to its preliminary view reproduced above that SE Global has no legitimate interest in the exclusion from file inspection of these

documents that were made publicly available in appeal case T 1023/20.

The board now affirms that view. SE Global's argument in relation to documents (m) and (n) that any further publication in an additional file would lead to further dissemination of the documents is also applicable to documents (a) to (l), but not relevant. Those interested in the matter will know how to inspect EPO public files and will be able to easily retrieve documents (a) to (l) from a different file, in the case in hand the file relating to T 1023/20.

The board, second, notes that, in its reply, SE Global conditions its request for exclusion from file inspection of certain sets of documents on whether or not inclusion in the public file of the respective documents is required for a favourable decision on the transfer (see above, point IV). The board holds that this condition is not a criterion for the assessment of exclusion from file inspection.

According to Article 1(2)(a) of the Decision (see above, point 3) the criterion is whether "inspection would be prejudicial to the legitimate personal or economic interests of natural or legal persons", in the case in hand to the legitimate economic interests of SE Global, the other party, being the requester.

In its communication the board said:

SE Global did not explain in which way inspection of the documents in question would be prejudicial to its legitimate economic interests..

SE Global, in its reply, provided no such explanation. Nor is the board able to identify any such prejudice.

As a consequence, the request is not well-founded.

6.2 Letter of 15 June 2023 and documents (m) and (n) annexed to that letter

As to document (m), which is publicly available in the file pertaining to case T 1023/20, the above reasoning given for documents (a) to (l) evidently also applies to **document (m)** in respect of a lack of legitimate interest in the exclusion from file inspection. Furthermore, the fact that the parties to the agreement, i.e. Siemens AG and Siemens Gas & Power GmbH & Co. AG (renamed Siemens Energy Global GmbH & Co. KG (SE Global)), had classified "the contract", i.e. obviously documents (m) and (n), as "strictly confidential" does not constitute an explanation as to the way in which inspection of document (m) would be prejudicial to SE Global's legitimate economic interests. Nor is the board able to identify any such prejudice.

As to **document (n)**, SE Global said it was also available in the file pertaining to case T 1023/20.

The board notes that a document with contents corresponding to those of document (n) is included in that file. Both documents are entitled "Agreement on the Transfer of Pending Litigation", one pertaining to T 1023/20, the other one to the appeal case in hand. The parties mentioned are Siemens AG and Siemens Gas & Power GmbH & Co. AG (renamed Siemens Energy Global GmbH & Co. KG (SE Global)) in the former case, Siemens AG and SE Global in the case in hand.

The documents thus not being identical, the first strand of the reasoning regarding documents (a) to (l), i.e. lack of a legitimate interest, does not apply.

On the other hand, the second strand, which is independent of the first, applies mutatis mutandis: no explanation has been given in which way inspection of document (m) would be prejudicial to SE Global's legitimate economic interests, and the board is unable to identify any such prejudice.

This second strand of reasoning is also valid mutatis mutandis for the request for exclusion of the **letter of 15 June 2023**, together with which documents (m) and (n) were submitted.

Order

For these reasons it is decided that:

The requests by Siemens Energy Global GmbH & Co. KG (the other party) for exclusion from file inspection of 14 and 15 June 2023 are refused.

The Registrar:

The Chairman:



L. Gabor

R. Bekkering

Decision electronically authenticated