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**Datasheet for the decision
of 30 January 2024**

Case Number: T 0983/20 - 3.5.02

Application Number: 13873552.7

Publication Number: 2953150

IPC: H01H33/00, H01H9/54

Language of the proceedings: EN

Title of invention:

Apparatus for Limiting Current of Circuit or Breaking Current,
and Control Method thereof

Patent Proprietor:

NR Electric Co., Ltd.
NR Engineering Co., Ltd

Opponent:

Hitachi Energy Ltd

Relevant legal provisions:

EPC Art. 108
EPC R. 99(2)

Keyword:

Admissibility of appeal - appeal sufficiently substantiated
(no)

Decisions cited:

T 2012/16



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Case Number: T 0983/20 - 3.5.02

D E C I S I O N
of Technical Board of Appeal 3.5.02
of 30 January 2024

Appellant: Hitachi Energy Ltd
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 10 February
2020 rejecting the opposition filed against
European patent No. 2953150 pursuant to Article
101(2) EPC.**

Composition of the Board:

Chairman R. Lord
Members: G. Flyng
 W. Ungler

Summary of Facts and Submissions

- I. The opponent is appealing against the decision of the opposition division rejecting the opposition against the European patent EP 2 953 150.

- II. In the contested decision, the opposition division considered the solution proposed by claim 1 as granted to involve an inventive step. In section 2.2 of the reasons for the decision the opposition division addressed the opponent's objection of obviousness based on a combination of WO 2012/175319 A1 (document D1) and WO 2011/057675 A1 (document D2). The opposition division summarised the opponent's arguments and set out two reasons why they were not found convincing (see the last two paragraphs of section 2.2).

- III. In the statement of grounds of appeal the appellant (opponent) requested that the decision under appeal be set aside and that the patent be revoked in its entirety. They submitted that the subject-matter of all of the claims 1 to 7 of the patent lacked an inventive step over a combination of D1 and D2.

- IV. In the reply to the appeal, the respondents (patent proprietors) requested that the appeal be dismissed. They submitted that the appellant's statement of grounds of appeal merely repeated, partially even literally, the written arguments submitted in the first-instance written proceedings and did not address or confront the reasons given in the contested decision. The respondent referred to those reasons and their first-instance submissions.

- V. With further submissions filed after the statement of grounds of appeal, the appellant presented further arguments regarding the objection of lack of inventive step over documents D1 and D2. The appellant also presented a new objection of lack of novelty under Article 54(3) EPC over a European patent application which had not previously been cited.
- VI. The Board summoned the parties to oral proceedings. In a communication pursuant to Article 15(1) RPBA the Board *inter alia* expressed the preliminary view that the appeal should be rejected as inadmissible because there did not appear to be a causal relationship between the arguments in the statement of grounds of appeal and the reasons given in the decision under appeal.
- VII. Oral proceedings were held on 30 January 2024. The parties were heard on the question of admissibility of the appeal.

The appellant (opponent) requested that the decision under appeal be set aside and that the patent be revoked.

The respondent (patent proprietor) requested that the appeal be dismissed.

Reasons for the Decision

Admissibility of the appeal, Article 108, third sentence, EPC in conjunction with R. 99(2) EPC

1. Rule 99(2) EPC requires that the statement of grounds of appeal "shall indicate the reasons for setting aside the decision impugned". If the statement of grounds of appeal does not comply with this provision, the appeal shall be rejected as inadmissible (Rule 101(1) EPC).
2. According to established case law on Rule 99(2) EPC (see Case Law of the Boards of Appeal, 10th Edition, V.A.2.6.3.b) and decision T 2012/16), if the appellant submits that the decision under appeal is incorrect, then the statement setting out the grounds of appeal must enable the board to understand immediately why the decision is alleged to be incorrect and on what facts the appellant bases its arguments, without first having to make investigations of its own. There must be a causal relationship between the arguments in the statement of grounds of appeal and the reasons given in the decision under appeal. The absence of any correlation between the grounds of appeal and the contested decision is detrimental to the admissibility of the appeal.
3. In the present case, the Board concurs with the respondents that the statement of grounds of appeal does not address the reasons given in the contested decision as to why the subject-matter of claim 1 is not

rendered obvious by the combination of document D1 and document D2.

4. In the contested decision, the question at issue was whether it was obvious, starting from the arrangement of figure 1 of document D1, to provide a bidirectional power semiconductor switch in series with the mechanical switch 11, 12, 13, 14 in each of the four branches.

5. In the penultimate paragraph of section 2.2 of the reasons for the decision, the opposition division found that when turning to D2 to solve the problem of contact wear caused by arcing on the mechanical switches 11, 12, 13, 14 of D1, the skilled person would not be tempted to isolate just auxiliary breaker 9 from the rest of the circuit of figure 2 of document D2 before inserting it in the circuit of D1. This was because they considered the lower chain of breakers 6 in figure 2 of D2 to be necessary to limit the voltage to a level that auxiliary breaker 9 could bear. Hence, they considered that for the device to work, the skilled person would have to add the complete circuit of figure 2 of D2 to each of the four branches of the circuit of figure 1 of D1. The opposition division held it to be immediately apparent that the skilled person would not do so, as the resulting circuit would be far too complicated. This complicated structure would moreover be redundant, as in the device of D1 the actual breaking was performed by semiconductor 15, while in the circuit of D6 it was the chain of breakers 6 that performed this task. In D1 breaking was performed by a device in series with the mechanical switch, whereas in D2 this device was in parallel with the mechanical switch. By combining the two circuits there would be

two separate current breaking sections, which would be unnecessary and complicated.

6. The statement of grounds of appeal to a large extent merely repeats the submissions that were made in the letter of 10 October 2019 prior to the oral proceedings before the opposition division. The statement of grounds of appeal does not address or deal with the reasons set out in the penultimate paragraph of section 2.2 of the reasons for the decision and does not enable the board to understand immediately why they should be incorrect.
7. In the oral proceedings, the appellant submitted that the material on pages 1 to 5 of the statement of grounds of appeal in the section entitled "I. Subject matter of EP 2 953 151" had not been submitted in the first-instance proceedings and had been included to show that the opposition division had misunderstood the technical background of the invention.
8. Furthermore, the appellant submitted that the statement of grounds of appeal included in section II.1 a more detailed explanation of the operation of the circuit in document D1 (see the portion from page 8, third paragraph to page 10 up to "Fig 3"), as well as an explanation of the teachings of document D2 (see section II.2 on pages 13 to 16) which had not been submitted in the first-instance proceedings.
9. Furthermore, the appellant pointed to the the arguments in section II.3 of the statement of grounds of appeal (see "Combined teachings of documents D1 and D2", pages 16 to 18), which lead to the conclusion that "*a combination of the documents D1 and D2 would lead the person skilled in the art to a circuit in which a*

series-connection of a high-speed isolation switch and a power semiconductor switch is provided at those positions where the circuit of document D1 only provides a single high-speed isolation switch suffering from arcing".

10. According to the appellant, these submissions in the statement of grounds of appeal enabled the Board to see that the technical analysis of document D2 in the contested decision was incorrect, and that it would be obvious for the skilled person to combine D1 and D2 and so come to the claimed arrangement.
11. The Board did not find the appellant's arguments in this respect convincing. There is nothing in the new explanations regarding the patent and the teachings of D1 and D2 in sections I, II.1 and II.2 that points to an error in the analysis of these documents in the contested decision. Furthermore, the arguments in section II.3 of the statement of grounds of appeal were presented to the opposition division in the letter of 10 October 2019 and were summarised by the opposition division in the first and second paragraphs of section 2.2 of the reasons for the decision. The opposition division set out in the third and fourth paragraphs of section 2.2 the reasons why the appellant's arguments in this respect were not found to be convincing and there is nothing in the statement of grounds of appeal to explain why the appellant considers these reasons to be incorrect.
12. In other words, there is no causal relationship between the arguments in the statement of grounds of appeal and the reasons given in the decision under appeal.

13. For these reasons, the appeal is rejected as inadmissible.

Order

For these reasons it is decided that:

The appeal is rejected as inadmissible.

The Registrar:

The Chairman:



U. Bultmann

R. Lord

Decision electronically authenticated