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**Datasheet for the decision  
of 26 February 2024**

**Case Number:** T 0533/22 - 3.2.01

**Application Number:** 15842277.4

**Publication Number:** 3186146

**IPC:** B64C11/30, B64C11/34,  
B64C11/40, B64C27/56, B64C27/82

**Language of the proceedings:** EN

**Title of invention:**  
PITCH CONTROL SYSTEM

**Patent Proprietor:**  
Sikorsky Aircraft Corporation

**Opponent:**  
Airbus Helicopters

**Headword:**

**Relevant legal provisions:**  
EPC Art. 100(c)

**Keyword:**  
Grounds for opposition - extension of subject-matter (yes)

**Decisions cited:**

G 0002/10, T 0437/17

**Catchword:**



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Case Number: T 0533/22 - 3.2.01

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.01**  
**of 26 February 2024**

**Appellant:** Airbus Helicopters  
(Opponent) Aéroport International Marseille-Provence  
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**Decision under appeal:** **Decision of the Opposition Division of the European Patent Office posted on 17 February 2022 rejecting the opposition filed against European patent No. 3186146 pursuant to Article 101(2) EPC.**

**Composition of the Board:**

**Chairman** G. Pricolo  
**Members:** J. J. de Acha González  
O. Loizou

## **Summary of Facts and Submissions**

- I. The appeal of the opponent lies against the decision of the Opposition Division rejecting the opposition against European patent n° 3186146.
- II. In its decision the Opposition Division found among others that the subject-matter of granted claim 1 did not go beyond the content of the application as originally filed.
- III. With the statement of grounds of appeal, the appellant (opponent) requested that the decision of the Opposition Division be set aside and the patent be revoked.
- IV. In response to a communication according to Rule 84(1) EPC dated 3 August 2022 indicating that the European patent had lapsed with effect for all the designated Contracting States, the appellant requested with letter dated 17 August 2022 that the appeal proceedings be continued.
- The respondent (patent proprietor) has not made any submissions in the appeal procedure.
- V. Granted claim 1 reads as follows (feature numbering according to the contested decision):
- a)** A flight control system (70) comprising
  - b)** a pitch control system (150)
  - b1)** configured to vary a pitch angle of at least one

of a plurality of propeller blades (40) of a propeller system (32) of a translational thrust system (30) of a rotary wing aircraft (10), characterized in that the pitch control system (150) comprises:

- c)** a switch (155) movable between a neutral position and a plurality of non-neutral positions, wherein
  - c1)** movement of the switch (155) to a first non-neutral position generates a command to move the propeller blades (40) in a first direction,
  - c2)** movement of the switch (155) to a second non-neutral position generates a command to move the propeller blades (40) in a second direction, and
  - c3)** movement of the switch (155) to a third non-neutral position generates a command to move the propeller blades (40) to a zero thrust position.

## **Reasons for the Decision**

1. *Article 100(c) EPC - inadmissible extension*
  - 1.1 The subject-matter of granted claim 1 extends beyond the content of the application as originally filed.
  - 1.2 According to the contested decision, the subject-matter of granted claim 1 is based on claim 1 in conjunction with paragraphs [0002] and [0005] of the application as originally filed (see WO publication).

The Opposition Division considered that claiming a flight control system instead of a pitch control system was not limiting in any way, since it was unambiguously implicit that a pitch control system is part of a

(rotary wing aircraft) flight control system. The term was not considered to be based on figure 3 and paragraph [0023] in conjunction with further paragraphs describing the logic of figure 3, but only on the claim itself in conjunction with paragraphs [0002] and [0005].

The Opposition Division also added the following in its reasoning (underlining added by the Board):

*"However, even when considering further and different passages as a basis for the amended claims 1 and 11, the feature definition could be considered as an allowable intermediate generalization because the type of aircraft, the type of control haptic (grip) and of flight control system (flight control computer, fly-by-wire) are not considered to be essential for claims 1 and 11 which merely deal with a control logic of a rotary wing translational thrust system."*

1.3 According to established case law of the Boards of Appeal the criterion for assessing whether the subject-matter of a European patent extends beyond the content of the application as originally filed is the "gold standard", i.e. whether the claimed subject-matter is derivable directly and unambiguously for the skilled person from the application as originally filed (see e.g. points 4.3 and 4.6 in the Decision of the Enlarged Board of Appeal G 2/10, OJ EPO 2012, 376).

1.4 Claim 1 and paragraphs [0002] and [0005] of the application as originally filed directly and unambiguously disclose a pitch control system configured to vary a pitch angle of at least a plurality of propeller blades of a propeller system of a translational thrust system of a rotary wing aircraft having features c to c3.

However, granted claim 1 is directed to a flight control system, i.e. a system for controlling the flight of an aircraft. In this sense, and in agreement with the appellant's submissions, a pitch control system configured to vary a pitch angle of a plurality of propeller blades is a system which controls the pitch of said blades, but not necessarily a system which controls the flight of an aircraft. Such a flight control system performs a more technically complex task. Therefore, the disclosure of a pitch control system does not correspond to an implicit disclosure of a flight control system in general, even if it is intended to be a part of it. Furthermore, it should be noted that the translational thrust system and the rotary wing aircraft are not part of the pitch control system of claim 1. Accordingly, the claimed flight control system may well be for a different type of aircraft than that which the pitch control system is configured to control.

Consequently, the only basis for a flight control system in the application as originally filed is figure 3 and its corresponding description. This flight control system is more specific than that claimed in general terms and also further specifies the pitch control system (see paragraph [0034] of the application as originally filed). In particular, as pointed out by the appellant, the flight control system includes a propeller blade pitch controller which receives signals from a flight control computer, and an actuator which is activated by the propeller blade pitch controller. These features are, in the embodiment of figure 3, inextricably linked to the features of the pitch control system of claim 1, but are not included in claim 1. The subject-matter of granted claim 1 is

therefore an unallowable intermediate generalisation of this embodiment of the invention (see Case Law of the Boards of Appeal of the EPO, 10th edition 2022, II.E. 1.9).

As mentioned above, the criterion for assessing compliance with the requirements of Article 100(c) EPC is the gold standard and not - contrary to the Opposition Division's reasoning - whether the features omitted from the original disclosure are explained as being essential (see e.g. T 0437/17, point 3.3.5).

2. Accordingly, the ground for opposition under Article 100(c) EPC prejudices the maintenance of the patent as granted and the appeal of the opponent is allowable.

## **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:



H. Jenney

G. Pricolo

Decision electronically authenticated