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D E C I S I O N
of 14 January 1994

Case Number: T 0961/93 - 3.2.4

Application Number: 85301872.9

Publication Number: 0159805

IPC: F03D 7/02

Language of the proceedings: EN

Title of invention:
Wind turbine operated electrical generator system

Patentee:
James Howden & Company Limited

Opponent:
Stork Product Engineering B.V.

Headword:
Revocation at the proprietor's request

Relevant legal norms:
EPC Art. 102(3)(a), 113(2)

Keyword:
-

Decisions cited:
T 459/88

Headnote/Catchword:
-



Case Number: T 0961/93 - 3.2.4

D E C I S I O N
of the Technical Board of Appeal 3.2.4
of 14 January 1994

Appellant:
(Opponent)

Stork Product Engineering B.V.
Oostenburgervoorstraat 70
P.O. Box 379
NL-1000 AJ Amsterdam (NL)

Representative:

Iemenschot, Johannes Andreas Ir.
Exterpatent B.V.
P.O. Box 3241
NL-2280 GE Rijswijk (NL)

Respondent:
(Proprietor of the patent)

James Howden & Company Limited
195 Scotland Street
Glasgow G5 8PJ
Scotland (GB)

Representative:

Allen, William Guy Fairfax
J.A. Kemp & Co.
14 South Square
Gray's Inn
London WC1R 5LX (GB)

Decision under appeal:

Decision of the Opposition Division of the
European Patent Office dispatched on 31 August
1993 rejecting the opposition filed against
European patent No. 0 159 805 pursuant to
Article 102(2) EPC.

Composition of the Board:

Chairman: C. Andries
Members: M. Hatherly-
J.C. de-Preter

Summary of Facts and Submissions

- I. In its decision dispatched on 31 August 1993 the Opposition Division rejected the opposition filed against European patent No. 0 159 805.
- II. On 1 November 1993 the Appellant (Opponent) appealed against the Opposition Division's decision, requesting that the patent be revoked. The appeal fee was paid on the same day.
- III. A letter from the Respondent (Proprietor) was received on 4 November 1993 asking that the patent be revoked.
- IV. On 27 December 1993 a letter was received from the Opponent stating that the ground for appeal is Proprietor's request for revocation. The Opponent requests revocation of the patent and refund of the appeal fee.

Reasons for the Decision

1. *Admissibility of the appeal*

The sole ground for appeal advanced by the Opponent is the Proprietor's request for revocation. The Board finds, following decision T 459/88 (OJ EPO 1990, 425) and in particular sections 1 and 5 thereof, that this sole ground of the present appeal constitutes a written statement of grounds within the meaning of Article 108, third sentence, EPC.

Since the appeal also complies with the other requirements of Articles 106 to 108 and Rule 64 EPC, the appeal is admissible.

2. The Board, following section 4 of the above cited decision, finds that the present request of the Proprietor for the patent to be revoked is equivalent to withdrawal of his agreement - required under Article 113(2) EPC - to the text of the patent as granted. So the Proprietor and the Opponent are agreed that the patent should be revoked. Accordingly the Board decides to exercise its power under Article 111(1) EPC to revoke the patent without examining the substantive grounds for opposition.

3. The Opponent has made a request, without giving any reasons, for refund of the appeal fee. Rule 67 EPC provides for reimbursement of the appeal fee only if this is equitable by reason of a substantial procedural violation. The Board sees no substantial procedural violation in the present case.

Order

For these reasons, it is decided that:

1. The decision under appeal is set aside.

2. The patent is revoked.

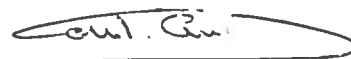
3. The request for reimbursement of the appeal fee is refused.

The Registrar:



N. Maslin

The Chairman:



C. Andries