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Datasheet for the decision of 23 April 2019

Case Number: T 1031/15 - 3.5.02

Application Number: 08759379.4

Publication Number: 2137800

IPC: H02J3/32, H02J3/14, H02J3/38

Language of the proceedings: EN

Title of invention:
A Load Management Controller

Patent Proprietor:
Cooper, Timothy Patrick

Opponents:
SIB Energy Limited
ENERGENO LIMITED
SMA Solar Technology AG
Viessmann Werke GmbH & Co. KG
Stiebel Eltron GmbH & Co. KG

Relevant legal provisions:
EPC R. 84(1)

Keyword:
Lapse of patent in all designated states - continuation of appeal proceedings (no)

Decisions cited:
T 0708/01

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

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Case Number: T 1031/15 - 3.5.02

D E C I S I O N
of Technical Board of Appeal 3.5.02
of 23 April 2019

Appellant: (Patent Proprietor)	Cooper, Timothy Patrick Cambridge Mews Sandycove Avenue East Dun Laoghaire County Dublin (IE)
Representative:	O'Connor, Michael Donal Cruickshank 8a Sandyford Business Centre Sandyford Dublin 18 (IE)
Respondent: (Opponent 1)	SIB Energy Limited 32 Thorpe Wood Thorpe Wood Business Park Peterborough Cambridgeshire PE3 6SR (GB)
Representative:	Forsyth, Helen Jane Nash Matthews LLP 24 Hills Road Cambridge CB2 1JP (GB)
Respondent: (Opponent 3)	SMA Solar Technology AG Sonnenallee 1 34266 Niestetal (DE)
Representative:	Lahnor, Peter SMA Solar Technology AG Corporate Intellectual Property Management Sonnenallee 1 34266 Niestetal (DE)

Respondent: (Opponent 4)	Viessmann Werke GmbH & Co. KG Viessmannstrasse 1 35107 Allendorf (DE)
Representative:	MERH-IP Matias Erny Reichl Hoffmann Patentanwälte PartG mbB Paul-Heyse-Strasse 29 80336 München (DE)
Respondent: (Opponent 5)	Stiebel Eltron GmbH & Co. KG Dr.-Stiebel-Str. 37603 Holzminden (DE)

Decision under appeal: **Decision of the Opposition Division of the European Patent Office posted on 12 March 2015 revoking European patent No. 2137800 pursuant to Article 101(3)(b) EPC.**

Composition of the Board:

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

Summary of Facts and Submissions

I. The patent proprietor has appealed against the decision of the Opposition Division of 12 March 2015 revoking the European patent No. EP 2 137 800.

II. The patent has meanwhile lapsed in all designated Contracting States.

III. By a communication of the Board of 4 February 2019, the attention of the parties was drawn to Rule 84(1) EPC and the appellant (patent proprietor) was invited to inform the Board within two months from notification of the communication whether it was requested that the appeal proceedings be continued. The parties were advised that if no request for continuation of the appeal proceedings was received, the Board intended to terminate the appeal proceedings.

IV. Within the time period set in the above communication no reply was filed.

Reasons for the Decision

1. If a European patent has lapsed in all designated Contracting States, opposition proceedings may be continued at the request of the opponent, Rule 84(1) EPC. It follows from Rule 100(1) EPC that this also applies in appeal proceedings following opposition proceedings.

2. However, if, as in the present case, the patent proprietor is the appellant, it would be inappropriate to allow the opponent to determine whether or not the appeal proceedings are to be continued. For this

reason, Rule 84(1) EPC has to be applied in such cases so that the patent proprietor can request that the appeal proceedings be continued (see decision T0708/01, not published in OJ EPO, and Case Law of the Boards of Appeal, eighth edition, IV.C.4.1.2.b - Request for continuation of the proceedings made by the patent proprietor).

3. The patent proprietor has been invited to file such a request for continuation, but has not done so.

4. The appeal proceedings are consequently terminated by this decision of the Board.

Order

For these reasons it is decided that:

The appeal proceedings are terminated.

The Registrar: The Chairman:

U. Bultmann R. Lord

Decision electronically authenticated