

Internal distribution code:

- (A) [-] Publication in OJ
- (B) [-] To Chairmen and Members
- (C) [-] To Chairmen
- (D) [X] No distribution

**Datasheet for the decision
of 13 March 2018**

Case Number: T 0018/18 - 3.2.06

Application Number: 05254976.3

Publication Number: 1630633

IPC: F01D17/02, G05B23/02

Language of the proceedings: EN

Title of invention:

System for gas turbine health monitoring

Patent Proprietor:

United Technologies Corporation

Opponent:

Siemens Aktiengesellschaft

Headword:

Relevant legal provisions:

EPC R. 111(2), 103(1) (a)
RPBA Art. 11

Keyword:

Appealed decision - reasoned (no) - substantial procedural violation (yes)

Reimbursement of appeal fee - (yes)

Decisions cited:

T 0534/08

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 0018/18 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 13 March 2018

Appellant: United Technologies Corporation
(Patent Proprietor) 10 Farm Springs Road
Farmington, CT 06032 (US)

Representative: Leckey, David Herbert
Dehns
St Bride's House
10 Salisbury Square
London EC4Y 8JD (GB)

Appellant: Siemens Aktiengesellschaft
(Opponent) Werner-von-Siemens-Straße 1
80333 München (DE)

Representative: Kaiser, Axel
CT IP S DE
Corporate Intellectual Property and Functions
Postfach 22 16 34
80506 München (DE)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
9 November 2017 concerning maintenance of the
European Patent No. 1630633 in amended form.**

Composition of the Board:

Chairman M. Harrison
Members: T. Rosenblatt
W. Ungler

Summary of Facts and Submissions

- I. The proprietor and opponent each filed an appeal against the interlocutory decision of the opposition division, in which it found that European patent No. 1 630 633 as amended met the requirements of the EPC.
- II. The opposition division had rejected the proprietor's main request because amended claim 1 was found not to satisfy the requirement of Article 123(2) EPC and it stated, following a summary of the arguments submitted by the opponent and the proprietor (in points 5.1 and 5.2 of the grounds for the decision):
- 5.3 The opposition division agrees with the analysis of the opponent. Claims 1 and 10 of the main request thus introduce subject-matter which extends beyond the content of the application as filed. Hence, the main request as a whole is not allowable.

Similarly, in regard to the opponent's objections raised against amended claim 1 of auxiliary request 1, the opposition division stated, after or preceding the respective summaries of the parties' arguments,

in view of the opponent's objections under Articles 83 and 84 EPC:

- 6.4 The opposition division could not follow the arguments of the opponent, and agreed on the other hand with the arguments put forward by the proprietor.

in view of the opponent's objection under Article 54 EPC, based on document D2 (WO-A-02/03041),

7.3 During the oral proceedings (as also in PA4) the proprietor argued that D2 does not disclose a plurality of device health features (he pointed in particular to p.3, l.13-22, where the only example of processed sensory outputs consists in a "scalar signature", i.e. one value, which is the result of the merging of all the sensory outputs), nor it discloses a time window, i.e. the claimed "window duration" (the sequence of events in D2 is different, as it is the result of a search algorithm, that is, searching backward or forward for sensory outputs with closest matching time-stamps, hence no chronology is adopted in D2, p. 11, l.8-25 and p.15, l.10-19).

The opponent replied that the "vector" (alternative to the "scalar signature" on p.3, l.13-22 of D2) contains indeed a plurality of condition indicators, that is, the "sensory outputs" of claim 1, that are combined, hence processed and that a time window is actually present in D2, as there is cyclically an instant from which the algorithm starts to measure (D2: p.7, l.19-24, p.15, l.8-15).

The opposition division agrees with the proprietor concerning the fact that in D2 only one "device health feature" and agrees with the opponent concerning the fact that in D2 a time window is actually present. The opposition division could not however find in D2 mentioning of sampling of sensory output within the time window.

in view of the opponent's objection under Article 54 EPC, based on document D3 (EP-A-0 257 745), followed by a summary in points 8.2 and 8.3 of the parties' arguments:

8.1 The opposition agrees substantially with the proprietor that at least the features F3.3 and F4 are missing in D3.

and in view of the opponent's objection under Article 56 EPC:

9.3 The skilled person has no motivation to change the algorithm adopted by D2 (the single scalar signature compared to a normal signature) to the one of the patent making use of more device health features for the final assessment of health; in D2 many sensor inputs are already used to produce a single "device health feature" (signature), thus D2 points away from the claimed feature. hence, in the view of the opposition division, the distinguishing feature concerning the use of a plurality of device health features contributes to render the claimed subject-matter inventive.

During the oral proceedings the opponent argued that the skilled person would select one or more device health features according to routine considerations, the proprietor replied that the skilled person is not motivated and can not arbitrarily decide to move from the approach with the single device health feature of D2 to the one with more device health features of the patent. The opposition division agrees with the proprietor.

- III. In its notice of appeal, setting out also the grounds of appeal, the appellant-opponent submitted that the impugned decision was tainted by a substantial procedural violation in that it was not reasoned in regard to the decisions reached in points 6.3, 7.3, 8.1 and 9.2 and 9.3.
- IV. By its notification dated 1 March 2018 the Board informed the parties about its intention to remit the case to the opposition division due to the apparent procedural violation.
- V. In its response of 6 March 2018 the appellant-proprietor "agree[d] to the present case being remitted to the Opposition Division". It also requested reimbursement of the appeal fee.
- VI. The appellant-opponent requested in writing that the decision under appeal be set aside and the patent be revoked in its entirety. It also requested reimbursement of the appeal fee.

Reasons for the Decision

1. The Board understands from the notice of appeal and from its submission of 6 March 2018, that the appellant-proprietor is (also) requesting the setting aside of the decision, remittal of the case to the department of first instance and reimbursement of the appeal fee. In the specific circumstances of the present case, no further substantiation (in respect of the proprietor's request that the decision under appeal should be set aside) is required due to the appellant-proprietor's consent to the procedural handling as

explained in the Board's prior communication dated 1 March 2018, which implies consent to the envisaged setting aside of the decision due to the procedural violations mentioned in said communication.

2. According to Rule 111(2) EPC decisions of the European Patent Office which are open to appeal shall be reasoned. The purpose of this requirement is to enable the party or parties and, if an appeal is filed, the Board of Appeal to examine whether a decision taken by a department of first instance was justified or not. It is the established case law of the Boards of Appeal that, in order for a decision to be reasoned, it must contain, in logical sequence, those arguments which justify the decision. The conclusion drawn from the facts and evidence must be made clear. Therefore, all the facts, evidence and arguments which are essential to the decision must be discussed in detail (see for example T 534/08, point 3.1 of the reasons).

3. The opposition division decided to maintain the patent in amended form according to an auxiliary request, rejecting thereby all objections raised by the appellant-opponent concerning the requirements of Articles 83, 84, 54 and 56 EPC. As also argued by the appellant-opponent in its appeal grounds, the Board finds that the opposition division indeed failed to provide adequate reasoning as to why the objections were rejected (see items 5 to 7 below). The Board finds additionally that the further conclusion reached by the opposition division rejecting the appellant-proprietor's main request for non-compliance with the requirement of Article 123(2) EPC is also not reasoned (see item 4 below).

4. Section 5 of the grounds for the impugned decision deals with the objection under Article 123(2) EPC, raised against claims 1 and 10 of the main request. In point 5.1 thereof, the arguments of both parties submitted during the written proceedings are summarised, whereas in point 5.2 the arguments provided during the oral proceedings are presented. These passages do not contain any consideration or finding of the opposition division itself. Point 5.3 then sets out: "The opposition division agrees with the analysis of the opponent. Claims 1 and 10 of the main request thus introduce subject-matter which extends beyond the content of the application as filed. Hence, the main request as a whole is not allowable."

It remains entirely obscure to the Board why the opposition division reached these conclusions and, in particular, for what reason the opposition division could not follow the arguments of the appellant-proprietor. A reasoning for its conclusion, in the form of a logical sequence of arguments, taking into account the facts, evidence and arguments essential for reaching it, dealing especially also with those of the party negatively affected by this conclusion, here the appellant-proprietor, have not been given.

5. Similarly, in section 6 of the grounds for the impugned decision, the appellant-opponent's objections under Article 83 and 84 EPC against the claims of the auxiliary request are considered. In point 6.1 thereof and the respective first paragraphs of points 6.2 and 6.3 the objections raised against a number of expressions of the amended independent claims are summarised. The respective second paragraphs of points 6.2 and 6.3 contain the summary of the appellant-proprietor's response. Again, none of these paragraphs

comprises any consideration or finding of the opposition division itself in regard to the arguments presented by the parties. Point 6.4 simply states the conclusion of the opposition division, with the sentence: "The opposition division could not follow the arguments of the opponent, and agreed on the other hand with the arguments put forward by the proprietor."

As set out above in regard to the rejection of the appellant-proprietor's main request, such statement does not constitute adequate reasoning in the sense set out above in item 2.

6. In section 7 of the grounds, dealing with the requirement of Article 54 EPC in view of D2, the opposition division again adopted a similar approach as with the objections raised under Articles 83 and 84. In points 7.1, 7.2 and the first two paragraphs of point 7.3, a feature analysis and a summary of the arguments of the parties are given. In the last paragraph of point 7.3, the opposition division states its conclusion (see above item II), without however presenting any reasoning which would allow it to be understood why some of the features, which the appellant-opponent considered to be anticipated in the cited document and for which it seemingly had indicated relevant passages, were considered not to be disclosed. For example, the opponent alleged an explicit disclosure of a "vector" of data in D2 in response to the proprietor's argument that only the use of scalar data was disclosed. No reasoning is given by the opposition division why the alleged explicit disclosure was considered not to anticipate the relevant feature in the claims. It also remains unclear from the whole of section 7, why the opposition division considered the feature recited in the last line of point 7.3,

"sampling of sensory output in the time window" not to be disclosed. Does it rely on some concluded difference between "collecting" and "sampling" (cf. point 7.1, feature F2.3) and if so, what would be such difference?

7. The same applies in regard to the conclusion on the other novelty objection raised by appellant-opponent, dealt with in section 8, where the brief conclusion given in point 8.1 precedes a feature analysis (point 8.2) and a cryptic summary of the appellant-proprietor's counter argument (point 8.3). Also the rejection of the appellant-opponent's objection under Article 56 EPC, dealt with in section 9 of the grounds for the impugned decision, especially in points 9.2 and 9.3, is not reasoned.
8. In view of the above deficiencies, the Board concludes that the impugned decision is not reasoned within the meaning of Rule 111(2) EPC.
9. The failure to provide adequate reasoning in the decision in accordance with Rule 111(2) EPC amounts to a substantial procedural violation.
10. In view of this substantial procedural violation the case shall be remitted to the department of first instance (Article 11 of the Rules of Procedure of the Boards of Appeal), such that a reasoned decision can be provided.
11. Since the appeals of both appellants are deemed allowable, the reimbursement of their appeal fees is equitable due to the substantial procedural violation (Rule 103(1) (a) EPC).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the opposition division for further prosecution.
3. The requests for reimbursement of the appeal fees are allowed.

The Registrar:

The Chairman:



L. Stridde

M. Harrison

Decision electronically authenticated