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**Datasheet for the decision
of 1 February 2023**

Case Number: T 2285/18 - 3.2.07

Application Number: 13169853.2

Publication Number: 2713119

IPC: B05B12/08, F25C3/04

Language of the proceedings: EN

Title of invention:

Control system for an artificial snow making plant

Patent Proprietor:

Technoalpin Holding S.p.A.

Opponent:

Demaclenko IT S.r.l.

Headword:

Relevant legal provisions:

EPC Art. 100(a), 54(2)

RPBA 2020 Art. 15(1)

EPC R. 103(4)(a)

Keyword:

Novelty - (no)

Reimbursement of appeal fee - withdrawal of appeal

Decisions cited:

Catchword:



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Case Number: T 2285/18 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 1 February 2023

Appellant: Technoalpin Holding S.p.A.
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
5 July 2018 concerning maintenance of the
European Patent No. 2713119 in amended form.**

Composition of the Board:

Chairman I. Beckedorf
Members: V. Bevilacqua
B. Paul

Summary of Facts and Submissions

- I. Appeals were filed by the patent proprietor and originally also by the opponent against the interlocutory decision of the opposition division to maintain European patent No. 2 713 119 in amended form.
- II. The opposition division held that the maintenance of the patent as granted was prejudiced by the ground for opposition pursuant to Articles 100(a) and 54 EPC for lack of novelty of the claimed subject-matter over the disclosure of document D1 (US 4 717 072 A).

The patent proprietor's appeal is directed against this finding of the opposition division.

- III. In preparation for oral proceedings the Board communicated its preliminary assessment of the case by a communication pursuant to Article 15(1) RPBA 2020.
- IV. Oral proceedings were held on 1 February 2023. The factual and legal situation was discussed with the parties.

The opponent withdrew their appeal during oral proceedings.

For further details of the course of the oral proceedings, reference is made to the minutes thereof.

V. The final requests of the parties were as follows:

for the patent proprietor

that the appealed decision be set aside and
that the patent be maintained as granted;

for the opponent

that the appeal be dismissed.

VI. Claim 1 of the patent as granted reads as follows (with the identification of features 3 and 4, discussed in the reasons of the present decision, emphasis added by the Board):

"A control system (1) for controlling an artificial snow making plant (100) having a plurality of snow making apparatuses (101) positioned along a ski run and connected to a communication line (102), comprising:

- a processing unit (2) connected with the communication line (102); characterized in that the processing unit (2) is designed for:

- receiving a status signal (S) from each snow making apparatus (101); the status signal (S) representing the quantity of snow currently produced by the relative snow making apparatus (101);

- comparing the data contained in each status signal (S) with a respective predetermined single snow making value (P_f) to be reached and representing a preset quantity of snow to be produced (**feature 3**);

- generating a condition signal (A) of the apparatuses (101) as a function of the comparison; the condition signal (A) of the apparatuses (101) representing the difference between the quantity of snow currently produced by each apparatus (101) and the respective single snow making value (P_f);
- generating a condition signal (P) of the ski run as a function of the contents of the condition signal (A) of the apparatuses (101); the condition signal (P) of the ski run representing the current snow status of the ski run. **(feature 4)**"

Reasons for the Decision

1. Procedural aspects of the withdrawal of the opponent's appeal

As the opponent withdrew their appeal during oral proceedings, the opponent remains a party to the proceedings as of right under Article 107, second sentence, EPC, and the patent proprietor is therefore the sole appellant in the present proceedings.

The appeal of the patent proprietor (see the statement setting out the ground of appeal, page 1, point 1.) is aimed at setting aside the appealed decision and the maintenance of the patent as granted.

The further requests of the patent proprietor (see the statement setting out the ground of appeal, page 2, points 2 and 3), which were submitted in expectation of the original appeal of the opponent and relied upon in reply thereto, became procedurally obsolete when this appeal was withdrawn.

As a further consequence of the withdrawal of the opponent's appeal (Rule 103(4)(a) EPC) the appeal fee paid by the opponent is to be reimbursed at 25%.

2. Claim 1 - Lack of novelty

2.1 The opposition division found (see starting from page 3, last paragraph) that the subject-matter of claim 1 of the patent as granted lacks novelty over the content of the disclosure of document D1.

2.2 The patent proprietor contests the above finding of the opposition division and puts forward that the last two features of the characterizing portion of claim 1 of the main request (referred to in the patent proprietor's statement of grounds of appeal as features 3 and 4 and in the opponent's reply thereto as features 1.5.3 and 1.5.4) were not disclosed in D1.

The appealed decision was based on an excessively broad interpretation of the expression "condition signal" used in these distinguishing features, and on a misunderstanding of the content of the disclosure of document D1, as follows.

2.2.1 D1

The opposition division did not correctly interpret the content of the disclosure of D1.

The expression "programmed quantity of snow" used at column 13, line 19, of D1 was to be interpreted on the basis of column 4 lines 33 to 39, and of the knowledge of a skilled person, as the maximum quantity of water (and therefore of snow) which could be pumped to a

number of snow guns in parallel on the basis of the maximum capacity of the engine room.

The control system of D1 therefore was aimed at maximising the quantity of snow produced by each snow gun on a ski run on the basis of their actual atmospheric conditions, and not at controlling this quantity.

There was therefore no feature in D1 corresponding to the "single snow making value (P_f)" of granted claim 1 (see feature 3).

2.2.2 Feature 3

The "condition signal" of feature 3 was to be interpreted as a signal giving information on the status of of the snow making apparatuses, based on the result of an elaboration of other signals.

The opposition division wrongly identified the control signal mentioned in D1 (column 13) for adjusting the slide 26 of the snow gun with the "condition signal of the apparatuses" of feature 3.

However, no such condition signal was derivable from column 13 of D1, because no "single snow making value" was disclosed in this document (see point 1.2.1 above).

The signal for adjusting the slide in D1 was nothing more than a control signal, based on the atmospheric conditions, without taking into account the status of the snow making apparatuses or the quantity of snow produced.

There was therefore no disclosure in D1 of feature 3 of claim 1.

2.2.3 Feature 4

The last feature of claim 1, namely that the processing unit was designed for generating a condition signal of the ski run as a function of the contents of the condition signal of the apparatuses, was also not derivable from D1.

This was because the "condition signal of the ski run" used in feature 4 was also to be interpreted as a signal obtained through elaboration of other signals, giving information on the status of the ski run.

This feature implied that the signal received by the snow gun was elaborated in order to monitor the current snow status of each zone of the ski run.

D1 did not disclose any processing of the condition signal in order to establish the current status of the ski run.

The control system of D1 only optimized the quantity of snow to be produced on the basis of the atmospheric conditions, without monitoring the current snow status of the ski run.

2.3 The Board disagrees, for the following reasons.

2.3.1 The patent proprietor failed to convincingly demonstrate that the interpretation of D1 as the basis of the appealed decision is not correct.

There is no link between the passage of D1 to which the patent proprietor refers (column 4, lines 33 to 39) and the passage at column 13, line 19, upon which the appealed decision is based.

The interpretation of the expression "programmed quantity of snow" used at column 13, line 19, of D1, as the maximum quantity of water which could be pumped to a number of snow guns in parallel on the basis of the maximum capacity of the engine room is therefore considered by the Board as being excessively restrictive.

The statement on column 13, lines 19 to 24, of D1, according to which

"the central computer 6 causes stoppage of the snow gun(s)" when

"the programmed quantity of snow has been achieved"

clearly indicates that this control system is configured to determine when a preset quantity of snow has been achieved and to be responsive to such a condition.

D1 explicitly states that the central computer controls the amount of snow produced for the runs (column 4, lines 1 and 2), and also mentions a snow-production program (column 12, lines 27 to 29).

As already noted in the appealed decision, in order to be able to perform this function, the control system 6 of D1 has to necessarily compare the signals representing the quantity of snow currently produced by each gun with individual preset reference values (see "programmed" at column 13, line 19).

In the control system of D1 signals representing the current snow production are compared to target values, which represent snow making values, because D1 expressly mentions that the water flow-rate is determined by the computer 6 (column 12, lines 9 to 14) and is checked by means of pressure sensors 70a (column 12, lines 19 to 22, and column 13, lines 7 to 9) and that this information is sent to the control system, which maintains or modifies the flow-rates on the basis of these data (column 13, lines 9 to 13).

These target values correspond to the "single snow making value (P_f)" of granted claim 1 (see feature 3).

Based on the above interpretation of D1, the Board is not convinced that the opposition division was wrong in deciding that features 3 and 4 are disclosed in D1, as follows.

2.3.2 Feature 3

The interpretation of "condition signal of the apparatuses" at the basis of the arguments of the patent proprietor is excessively restrictive and not supported by the text of granted claim 1.

As long as the programmed quantity of snow has not yet been produced by each apparatus, the control system of D1 maintains the water flow-rate thereto, or modifies it in reply to a change in atmospheric conditions (column 12, lines 49 et seq., column 13, lines 9 to 20).

When the programmed quantity of snow has been achieved by a particular apparatus the control system stops the

water flow (column 13, lines 19 to 24) to this particular apparatus.

To perform this function the control system is necessarily configured to perform a comparison between the status signals representing the quantity of snow currently produced by each apparatus and the preset or programmed quantity of snow to be produced therefrom (single snow making value (P_f)).

Therefore, the commands sent by the control system 6 of D1 can be considered as corresponding to a condition signal generated as a function of this comparison, as claimed, and representing the difference between the quantity of snow currently produced by each apparatus and the respective single snow making value.

Feature 3 is therefore disclosed in D1 (see the appealed decision, page 5, last paragraph).

2.3.3 Feature 4

The interpretation of "condition signal of the ski run" as the basis of the arguments of the patent proprietor is also not supported by the text of the claim, because no specific requirement for the form and content of this signal is mentioned therein, except that it is a function of the condition signals of the snow making apparatuses.

As a consequence, the Board is also not convinced by the arguments of the patent proprietor.

D1 (column 13, lines 19 to 24) disclosed that, as long as the programmed quantity of snow has not been achieved and the atmospheric conditions are still

favorable, the central computer does not cause stoppage of the snow guns.

Hence, a condition signal being the snow guns still producing snow, which represents a current status of the ski run, is automatically generated.

The control system of D1 therefore generates a condition signal of the ski run, representing the current snow status of the ski run, as a function of the contents of the condition signal of the apparatuses (feature 4, see the appealed decision, page 6, first paragraph).

3. Conclusions

The patent proprietor has failed to convince the Board of the incorrectness of the findings of the opposition division in the decision under appeal that the subject-matter of claim 1 of the patent as granted lacks novelty over the disclosure of document D1. In the absence of any other request relied upon by the patent proprietor for their appeal, the appeal is to be dismissed. Hence, the interlocutory decision of the opposition division according to which the patent as amended in form of auxiliary request 1 becomes final.

Order

For these reasons it is decided that:

1. The appeal of the patent proprietor is dismissed.
2. The appeal fee paid by the opponent is reimbursed at 25%.

The Registrar:

The Chairman:



G. Nachtigall

I. Beckedorf

Decision electronically authenticated