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**Datasheet for the decision
of 18 March 2022**

Case Number: T 0035/19 - 3.2.08

Application Number: 05761316.8

Publication Number: 1907692

IPC: F16C19/08, F03D1/06, F03D7/02,
F03D80/70, F16C19/38,
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F16C33/60, F16C41/02, F16C23/08

Language of the proceedings: EN

Title of invention:
A WIND TURBINE PITCH BEARING, AND USE HEREOF

Patent Proprietor:
Vestas Wind Systems A/S

Opponent:
Siemens Aktiengesellschaft

Headword:

Relevant legal provisions:
RPBA Art. 12(4)
EPC Art. 54, 123(2), 104(1)
RPBA 2020 Art. 13(2)

Keyword:

Late-filed evidence - admitted (yes)

Novelty - main request and auxiliary requests 1 and 2 - (no) -
auxiliary request 3 (yes)

Amendments - extension beyond the content of the application
as filed (no)

Amendment after summons - cogent reasons (no)

Apportionment of costs - equitable

Decisions cited:

G 0002/10

Catchword:



Beschwerdekammern

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Case Number: T 0035/19 - 3.2.08

D E C I S I O N
of Technical Board of Appeal 3.2.08
of 18 March 2022

Appellant: Vestas Wind Systems A/S
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
24 October 2018 concerning maintenance of the
European Patent No. 1907692 in amended form.**

Composition of the Board:

Chairman C. Schmidt
Members: M. Foulger
A. Björklund

Summary of Facts and Submissions

- I. With the decision posted on 24 October 2018, the opposition division decided that the patent and the invention to which it related, in the version according to the then valid auxiliary request 3, met the requirements of the EPC. Moreover, the opposition division decided that the proprietor's costs of the preparation and conducting of the second oral proceedings including travel expenses and accommodation were to be attributed to the opponent.
- II. The opponent and the patent proprietor filed appeals against this decision.
- III. The appellant (opponent) requested that the decision under appeal be set aside and the patent be revoked, that auxiliary requests 4 - 8 not be admitted into the proceedings. Moreover, that the decision on apportionment of costs be set aside and each party bear their own costs.

The appellant (patent proprietor) requested that the decision under appeal be set aside and the opposition be rejected,
or in the alternative that the patent be maintained according to one of the auxiliary requests 1 - 3 filed with the statement setting out the grounds of appeal (letter of 22 February 2019) or one of the auxiliary requests 4 - 8 filed with the letter dated 4 February 2022.

- IV. Main request - Claim 1 as granted reads
- "A wind turbine (1) comprising

at least two pitch controlled wind turbine blades (5),
each blade (5) comprising one or more pitch bearings
(9) including two or more bearing rings (24, 25, 26),
and
pitch controlling means for pitching said blades (5) by
means of said bearings (9),
said blades (5) being mounted on a hub (7) via said
pitch bearings (9);
said one or more pitch bearings (9) comprise separate
flexibility enhancing means (10, 11, 12, 14, 19, 20,
28) for controlling loads in said bearings (9);
characterized in that
said separate flexibility enhancing means (10, 11, 12,
14, 19, 20, 28) include one or more plates (10, 11)
attached to one or more of said bearing rings (24, 25,
26) by means of e.g. screws, bolts, studs, rivets,
adhesive means or welding."

First auxiliary request

"e.g." has been deleted from claim 1 of the main
request.

Second auxiliary request

The following feature has been added to claim 1 of the
main request:

"wherein at least one of said one or more plates is a
strengthening plate providing additional non-uniform or
substantially non-uniform rigidity to said bearing ring
on which it is attached."

Third auxiliary request

The following feature has been added to claim 1 of the
main request:

"wherein at least one of said one or more plates is a
strengthening plate providing additional
circumferential non-uniform rigidity to said bearing

ring to which it is attached."

V. The following document is referred to in this decision:

D8: WO 01/69081

VI. The appellant (patent proprietor) essentially argued the following:

i) Admission of D8

This was late-filed. No justification for the late-filing had been submitted. Moreover, it was not *prima facie* relevant.

ii) Main request - Novelty

D8 did not disclose flexibility enhancing means in the sense of the patent.

iii) First auxiliary request - Novelty

The arguments for the main request also applied to this request.

iv) Second auxiliary request - Novelty

D8 did not disclose flexibility enhancing means with a plate providing non-uniform rigidity in the sense of the patent.

v) Third auxiliary request

a) Added subject-matter

From the description and Figs. 2 and 3 of the

application as filed, it was clear that a "circumferential" non-uniform rigidity was disclosed.

b) Novelty

The novelty objection was first raised during the oral proceedings and should therefore not be admitted into the proceedings.

vi) Repartition of costs

The discretionary decision of the opposition division was correct because the opponent had by continual late-filing of documents and requesting further oral proceedings provoked the extra costs incurred by the patent proprietor.

VII. The appellant (opponent) essentially argued the following:

i) Admission of D8

D8 was *prima facie* relevant for novelty. It was filed as soon as possible in the proceedings.

ii) Main request - Novelty

The subject-matter of claim 1 was not new at least with respect to D8.

iii) First auxiliary requests - Novelty

The previously optional feature was now mandatory but as screws were disclosed in D8 the subject-matter of claim 1 was still not new.

iv) Second auxiliary request - Novelty

In D8, the plate 16 stiffened the bearing rings 10 and 12. Thus the flexibility of the rings varied along the axial direction. Consequently, the subject-matter of claim 1 was not new.

v) Third auxiliary request

a) Added subject-matter

The term "additional circumferential non-uniform rigidity" was as such not disclosed in the application as originally filed nor was it derivable therefrom. Thus, the subject-matter of claim 1 extended beyond that of the application as originally filed.

b) Novelty

The subject-matter of claim 1 was not new.

vi) Repartition of costs

Each party should bear its own costs.

Reasons for the Decision

1. Admittance of D8 into the proceedings

According to Article 12(4) RPBA 2007 in conjunction with Article 114(2) EPC the Board has the discretion to admit evidence which was not admitted in the proceedings before the opposition division.

The Board considered D8 to be *prima facie* relevant and

therefore admitted it into the appeal proceedings.

2. Main Request - Novelty

D8 discloses:

A wind turbine comprising
at least two pitch controlled wind turbine blades (3),
each blade comprising one or more pitch bearings (4)
including two or more bearing rings (10, 12, 13), and
pitch controlling means (8) for pitching said blades by
means of said bearings,
said blades (5) being mounted on a hub (7) via said
pitch bearings (9);
said one or more pitch bearings (9) comprise separate
flexibility enhancing means (plate 16) for controlling
loads in said bearings;
wherein
said separate flexibility enhancing means include one
or more plates (16) attached to one or more of said
bearing rings (see Fig. 2) by means of e.g. screws (see
screws 17, 18 in Fig. 2), bolts, studs, rivets,
adhesive means or welding.

The appellant (patent proprietor) argued that the plate
16 of D8 was not a "flexibility enhancing means" in the
sense of the invention on the grounds that the plate
did not in any way contribute to the flexibility of
bearing.

This is not persuasive because in the embodiment of the
invention according to dependent claim 13 the
"flexibility enhancing means" may provide additional
non-uniform rigidity to the bearing ring. Since the
requirement of "non-uniform" is not in claim 1, any
plate which provides rigidity may be viewed as a

"flexibility enhancing means" in the light of dependent claim 13. The plate 16 of D8 does indeed provide extra rigidity to the bearing ring and thus can be viewed as a "flexibility enhancing means".

Thus, all features of claim 1 are known from D8 and its subject-matter is not new.

3. First auxiliary request

In this request the "e.g." in claim 1 has been deleted. The wind turbine must now comprise screws, bolts, studs, rivets, adhesive means or welding to attach the plate to the bearing ring. As D8 also discloses the attachment of the bearing rings by means of screws then the subject-matter of claim 1 is not new.

4. Second auxiliary request

Claim 1 of this request is further restricted over that of the main request by the feature "at least one of said one or more plates is a strengthening plate providing additional non-uniform or substantially non-uniform rigidity to said bearing ring on which it is attached."

The plate 16 which is fixed to the bearing rings increases the rigidity of one side of the bearing. Thus, viewed in the axial direction the bearing ring is provided with non-uniform rigidity.

The appellant (patent proprietor) referred to paragraphs [0065] - [0067] and argued that by interpreting the claims in the light of the description led to the conclusion that a circumferential non-rigidity was meant. The skilled person would therefore

read the claim in this sense with a "mind willing to understand" and its subject-matter was thus according to the appellant (patent proprietor) new.

The Board does not agree with this argument. The claim does not mention how the non-uniform rigidity should be distributed. Given that according to Article 84 EPC whereby the claims define the matter for which protection is sought, the claim may be given its widest scope as there is no justification for artificially restricting its literal scope. For the Board, it is inconsistent to read a particular meaning into the claim which only appears in the description and then to rely on this feature to provide a distinction over the prior art.

The subject-matter of claim 1 is consequently not new.

5. Third auxiliary request

5.1 Added subject-matter

The European patent may not be amended in such a way that it contains subject-matter which extends beyond the content of the application as filed. This means that an amendment may only be made within the limits of what the skilled person would derive directly and unambiguously, using common general knowledge, from the whole of the application as filed (G 2/10, OJ 2012, 376).

The application as originally filed does not mention "circumferential non-uniform rigidity". The application is concerned with "non-uniform rigidity" without specifying circumferential, see claim 13 of the application.

The application as originally filed discloses strengthening plates which have non-uniform rigidity around the circumference of the plate because of either extra material (plate 10) or an oval offset hole 8 in plate 11. This is described on page 13, final paragraph - page 14, first paragraph. The skilled person would directly and unambiguously derive from this that the plate had "circumferential non-uniform rigidity".

The requirements of Article 123(2) EPC are therefore met.

5.2 Admission of novelty attack

During the written appeal proceedings the appellant (opponent) had not raised any issues concerning novelty of the subject-matter of claim 1. This was raised only during the oral proceedings.

According to Article 13(2) RPBA 2020 such a change in a party's case is only to be admitted if it is backed by cogent reasons. In the current case no cogent reasons were provided.

Thus, the Board did not admit these new arguments into the appeal proceedings.

6. Apportionment of costs

In the impugned decision, the opposition division ordered that the costs of appellant 2 (patent proprietor) relating to the preparation and conducting of the second oral proceedings including travel expenses and accommodation were to be attributed to the appellant 1 (opponent).

The Board considers that this decision was a discretionary decision reached by the opposition division. As such, this decision should only be set aside if it is concluded that the opposition division has acted according to the wrong principles or without taking into account the right principles or in an unreasonable way and thus has exceeded the proper limits of its discretion (see Case Law of the Boards of Appeal, 9th edition, 2019, IV.C.4.5.2).

In the present case, the opposition division was obliged to hold a second oral proceedings because of the actions of appellant 1 (opponent) and consequently their decision is reasonable. Their decision regarding apportionment of costs is therefore upheld.

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 with the order to maintain the patent in the following version:
 - claims 1 to 27 of auxiliary request 3 filed on 22 February 2019,
 - description: Columns 1 to 10 of the description filed at the oral proceedings before the Board,
 - drawings: figures 1 to 15 of the patent specification.
3. The request to set aside the decision on the apportionment of costs is rejected.

The Registrar:

The Chairman:



C. Moser

C. Schmidt

Decision electronically authenticated