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**Datasheet for the decision
of 8 May 2023**

Case Number: T 2089/19 - 3.5.02

Application Number: 13758734.1

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Language of the proceedings: EN

Title of invention:
A method of determining individual set points in a power plant controller, and a power plant controller

Patent Proprietor:
Vestas Wind Systems A/S

Opponent:
Siemens Gamesa Renewable Energy GmbH & Co. KG

Relevant legal provisions:
EPC Art. 83, 56

Keyword:
Sufficiency of disclosure - main request (yes)
Inventive step - main request (yes)



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Case Number: T 2089/19 - 3.5.02

D E C I S I O N
of Technical Board of Appeal 3.5.02
of 8 May 2023

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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 21 May 2019
revoking European patent No. 2896102 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairman G. Flyng
Members: C.D. Vassoille
A. Bacchin

Summary of Facts and Submissions

I. This is an appeal of the patent proprietor against the decision of the opposition division with which European patent no. 2 896 102 was revoked.

II. The following documents are relevant for the present decision:

E1: V. Spudic et al.: "Wind Turbine Power References in Coordinated Control of Wind Farms",
Automatika 52(2), 2011, pages 82-94.

E2: US 2012/104755 A1

E3: US 2010/025994 A1

III. In the decision under appeal, the opposition division arrived at the conclusion that claim 1 of the main request met the requirements of Article 83 EPC, but that the subject-matter of claim 1 did not involve an inventive step in view of document E3.

For similar reasons, the then first auxiliary request and the then third auxiliary request were not considered allowable. The then second auxiliary request was not admitted into the proceedings.

IV. In a communication under Article 15(1) RPBA 2020, the board informed the appellant that claim 1 of the main request appeared to meet the requirements of Article 83 EPC and that its subject-matter also appeared to involve an inventive step in view of documents E3 and E1.

V. Oral proceedings before the board took place on 8 May 2023.

The appellant (patent proprietor) requested that the decision under appeal be set aside and that the patent be maintained in amended form according to the main request underlying the decision under appeal and re-filed with the statement of grounds of appeal. As an auxiliary measure, the appellant requested that the patent be maintained in amended form on the basis of one of the first to eighth auxiliary requests filed with the statement of grounds of appeal.

The respondent (opponent) requested that the appeal be dismissed.

VI. Claim 1 of the main request has the following wording:

"A method (100) of determining individual set points (Pref, Qref) in a power plant controller (15) arranged to control a wind power plant (10) comprising a plurality of wind turbine generators (1) and optional compensation equipment (2) capable of generating electrical output, the individual set points relating (Pref, Qref) to active and reactive power to be requested from each wind turbine generator (1) of the plurality of wind turbines and the optional compensation equipment (2) for delivery to an external electrical grid, the method comprising the steps of:

a) receiving a request for active (P) and reactive power (Q) to be delivered to the external electrical grid;

b) determining correction factors (c) for each wind turbine generator (1) in the plurality of wind turbine

generators and for the optional compensation equipment (2), said correction factors (c) relating to condition information on the plurality of wind turbine generators (1) and the optional compensation equipment (2);

c) receiving signals (37, 38) indicating available active power and available reactive power from each of said wind turbine generators (1) as well as from the optional compensation equipment (2);

d) comparing the requested active power with said indicated available active power from the plurality of wind turbines (1) and the optional compensation equipment (2) of the wind power plant, and comparing the requested reactive power with said indicated available reactive power of the wind turbines and the optional compensation equipment;

e) in the case where the comparison in step d) shows that the requested active power is less than the available active power of the wind turbines and the optional compensation equipment and the requested reactive power is less than the available reactive power of the wind turbines and the optional compensation equipment, carrying out the following step:

f) calculating said individual set points relating to active power and reactive power based on the correction factors (c) and the received signals (37, 38) indicating available active power and reactive power from the wind turbine generators and the optional compensation equipment."

Claims 2 to 13 are dependent on claim 1.

VII. Independent claims 14 and 15 of the main request are for a "wind power plant controller" and a "computer program product", respectively. As it was not in dispute that these correspond in essence to the method of claim 1, it is not necessary to reproduce their wording here.

VIII. The appellant's arguments, as far as they are relevant for the present decision, can be summarised as follows:

Claim 1 of the main request fulfilled the requirements of Article 83 EPC. In particular, the patent in paragraphs [0024] to [0033] sufficiently described the correction factor (according to feature (c)) as well as its application for the calculation of the individual set points according to feature f) of said claim.

The subject-matter of claim 1 of the main request involved an inventive step within the meaning of Article 56 EPC with respect to document E3. Claim 1 of the main request and document E3 referred to a fundamentally different control scheme from which it followed that document E3 did not disclose features b), c), d) and f) of claim 1. These features were also not rendered obvious to the person skilled in the art.

The subject-matter of claim 1 of the main request involved an inventive step within the meaning of Article 56 EPC with respect to document E1. Document E1, amongst other features, did not disclose the claimed method as far as reactive power was concerned. In particular, it did not disclose the calculation of individual set points relating to reactive power based on the correction factors and the received signals indicating reactive power from the wind turbine generators according to step f).

Similar arguments applied to document E2. In particular, paragraph [0097] did not imply the supply of reactive power in the event of a grid disturbance, and in particular not the calculation of individual set points relating to reactive power according to feature f).

The following arguments concerning the non-obviousness of the subject-matter of claim 1 applied to both document E1 and document E2 as starting documents:

The distinguishing feature of calculating individual set points relating to reactive power (feature f)) achieved the technical effect of an overall improved and more flexible control. The objective technical problem was therefore that of how to increase the life time of the individual wind turbine generators and to improve maintenance scheduling (see paragraph [0017] of the patent). The distinguishing feature was not rendered obvious by either document E1 or E2, as there was no suggestion in the prior art to calculate individual set points relating to reactive power.

The appellant's submissions also applied to claims 14 and 15 of the main request.

IX. The respondent's arguments, as far as they are relevant for the present decision, can be summarised as follows:

The patent failed to provide any guidance how to determine the "correction factors" referred to in claim 1. The patent also did not contain any information of how to calculate the set points on the basis of the correction factors and the received signals. Thus, the skilled person would not know how to

implement this feature. Consequently, claim 1 of the main request did not meet the requirements of Article 83 EPC.

The subject-matter of claim 1 of the main request did not involve an inventive step within the meaning of Article 56 EPC when starting from document E3. Document E3 disclosed the case where each individual wind farm comprised only one wind turbine. The only distinguishing feature was thus feature d), which was obvious to the person skilled in the art, as correctly found by the opposition division.

The subject-matter of claim 1 did not involve an inventive step in view of document E1. The only distinguishing feature of calculating individual set points relating to reactive power (part of feature f)) was obvious. The technical effect as formulated by the appellant did not exist, because claim 1 did not contain any specification of how the set points should be set to achieve the alleged technical effect. Furthermore, the patent itself did not provide any definition of active power and reactive power. It was clear to the skilled person that reactive power had to be controlled, so it was obvious.

Document E2 in paragraph [0012] referred to active and reactive power. Furthermore, according to paragraph [0097] the invention applied also in the event of a grid voltage decrease, which was a clear indication that reactive power had to be controlled and injected into the power grid. The subject-matter of claim 1 was thus obvious in view of E2.

The respondent's submissions also applied to claims 14 and 15 of the main request.

Reasons for the Decision

1. *Main request - Sufficiency of disclosure (Article 83 EPC)*
- 1.1 The invention according to claim 1 of the main request is described in the patent in a manner sufficiently clear and complete for it to be carried out by the person skilled in the art, Article 83 EPC.
- 1.2 The respondent essentially argued that the contested patent failed to provide any guidance as to the technical content, purpose and relevance of the "correction factors" referred to in the claims. It was further argued that, contrary to the opposition division's opinion expressed in the decision under appeal, paragraphs [0024] and [0026] of the contested patent did not provide sufficient information as to how the "prioritisation factors" and a relative capability indicated on that basis could be used as a correction factor.
- 1.3 The board considers that the respondent may be correct in that the patent does not describe in detail how exactly the correction factors for each wind turbine generator are determined, nor how the individual set points relating to active power and reactive power are calculated based on these correction factors (see feature f) of claim 1).
- 1.4 The board has however arrived at the conclusion that the disclosure of the contested patent, considered as a whole, in particular in view of the disclosure in paragraphs [0024] to [0033], as well as in consideration of the skilled person's common general

knowledge, provides sufficient information for the invention to be carried out by the person skilled in the art.

More specifically, the board agrees with the appellant in that it is clear from the contested patent as a whole, in particular from the above cited passages, that the correction factors may be prioritisation factors and/or they may be determined on the basis of wind conditions, operating characteristics, component conditions, wind power plant topology, ageing of the individual wind turbine generators, and/or ageing of the optional compensation equipment.

- 1.5 However, the respondent considered that the corresponding definitions of "correction factors" in the patent were of no help, as it was still not clear what was to be understood by "correction factors".

The board disagrees with the respondent on this point. As noted by the opposition division in the contested decision, paragraph [0061] of the patent provides a concrete example of what "correction factors" may be, namely "a vector of numerical factors, containing one or more correction factor for each wind turbine generator and one or more correction factor for each part of the compensation equipment."

- 1.6 The respondent did not challenge this finding in the contested decision (see paragraph 2.2) of the reasons for the contested decision). Rather, they argued that, despite the disclosure in paragraph [0061] of the patent, it remained unclear whether a given correction factor related to the condition information on only one wind turbine generator to which it was assigned or to

the condition information of all of the plurality of wind turbine generators.

The board considers that the respondent's corresponding objection would relate to a lack of clarity of the claim (Article 84 EPC) rather than an issue of insufficiency of disclosure under Article 83 EPC. In any event, the board considers that the patent sufficiently and completely describes the case where each wind turbine generator has its own correction factor related to condition information on just the one wind turbine generator, see for example paragraph [0024]:

"Hereby, the correction factors may indicate a capability of wind turbine generators [...] to take a relatively bigger portion of the production relative to other wind turbine generators and optional compensation equipment."

The respondent's argument therefore does not convince the board.

- 1.7 The respondent further argued that the contested patent did not provide sufficient information for the skilled person to implement feature f), i.e. to calculate the individual set points "based on the correction factors and the received signals". In their opinion, the additional feature of dependent claim 2 was also confusing for the person skilled in the art, in particular because the interrelation between the "prioritisation factors" and the "capability" of the wind turbine generators was unclear.

In this respect, the board agrees with the appellant in that the skilled person, *inter alia*, directly and

unambiguously understands from the contested patent that the meaning of "correction factors" as "prioritisation factors" is to be understood in the sense that a wind turbine generator that is capable of producing larger amounts of power may be given a higher priority (see e.g. paragraphs [0024] and [0025] of the patent).

- 1.8 In light of the above, the board confirms the decision under appeal as regards the conclusion that the invention as defined in claim 1 of the main request is described in a manner sufficiently clear and complete for it to be carried out by the person skilled in the art (see point 2 of the reasons for the decision under appeal). The same applies to independent claims 14 and 15.

Therefore, the board arrived at the conclusion that the main request fulfils the requirements of Article 83 EPC.

2. *Main request - Inventive step (Article 56 EPC)*

2.1 *Document E3*

- 2.1.1 The subject-matter of claim 1 involves an inventive step with respect to document E3.

- 2.1.2 As regards the determination of the distinguishing features of claim 1 of the main request with respect to document E3, the board does not agree with the opposition division that each wind farm 10, 15 and 20 in E3 can comprise only one wind turbine and that the master controller 75 could therefore also be applied to control a power plant comprising individual wind

turbines (see paragraph 3.2 of the reasons for the contested decision).

2.1.3 In this context, the respondent referred in particular to figure 2 of document E3, which shows only a single wind turbine generator for each of wind farms 10, 15 and 20. Their further argument was essentially limited to the assertion that, according to paragraph [0006] of E3, "one individual wind turbine generator is shown representing multiple wind turbine generators usually present in the local windfarm". According to the respondent, the term "usually" indicated that a wind farm could be comprised of only one wind turbine generator.

2.1.4 The board does not agree with the respondent's argument. The skilled person would understand from the overall disclosure of E3 that each of the wind farm comprises a plurality of wind turbine generators, as is normally the case. Consequently, the skilled person would understand the term "usually" in the context of document E3 to mean that each wind farm corresponds to what it normally is, namely a conglomerate of a plurality of wind turbine generators. This understanding is also confirmed by further passages of document E3, see in particular paragraph [0011]:

"...each local windfarm includes a plurality of wind turbine generators."

and paragraph [0024]:

"Each of the local windfarms 10, 15, 20 is shown with one wind turbine generator 35, which may represent any plurality of wind turbine generators within the local windfarm".

2.1.5 With regard to figure 2, which shows only a single wind turbine generator, it is directly and unambiguously derivable from paragraph [0006] that the single wind turbine generator represents multiple wind turbine generators. From the term "usually" alone, the skilled person would in any event not understand that the local wind farm may consist of a single wind turbine generator, which would be contrary to what is "usually" the case.

2.1.6 Therefore, contrary to the conclusion of the opposition division in the contested decision, there can be no doubt for the board that the skilled person would not derive any explicit or implicit teaching from document E3 of a local wind farm consisting of a single wind turbine generator, in the sense that the master reactive control device 75 could be understood to be applicable to the control of a power plant (windfarm) consisting of individual wind turbines.

2.1.7 As argued by the appellant, the method of claim 1 is generally concerned with determining individual set points in a power plant controller arranged to control a wind power plant comprising a plurality of wind turbine generators. On the contrary, document E3 refers to a method of controlling a plurality of windfarms within an electric power system and, more specifically, to a master controller and a method for controlling a plurality of interconnected windfarms at a point of common coupling within the electric power system, see e.g. paragraphs [0001] and [0024] of E3.

They are thus entirely different types of control. Therefore, document E3 at least does not disclose

features b), c) and f), which will be explained in more detail below.

2.1.8 In particular, as regards feature b), document E3 does not disclose determining correction factors (within the wind power plant/windfarm) for each wind turbine in the local windfarm controller 60. The passages cited by the opposition division in this context (paragraphs [0037] and [0043]) may refer to total active and reactive power references. However, there is no indication in this passage that these references are applied to the individual wind turbine generators.

2.1.9 Moreover, contrary to feature c), document E3 and in particular paragraphs [0031] and [0037], do not directly and unambiguously disclose the reception of signals indicating the available active power and the available reactive power from each of the wind turbine generators. In particular, the parameters Q_{nPOSS} and $Q_{iONLINERATING}$ of E3, cited by the opposition division in the contested decision, refer to the total power rating of a specific windfarm "i" or "n" (see paragraph [0037]: "windfarm i" and paragraph [0043]: "windfarm n"). In any event, the reception of signals indicating the available active power and the available reactive power from each of the wind turbine generators within the meaning of feature c) cannot be inferred from those passages of document E3 in a direct and unambiguous manner.

2.1.10 Since features b) and c) are not disclosed in document E3, it immediately follows that feature f) is also not disclosed in document E3, which requires the calculation of individual set points relating to active and reactive power based on the correction factors and

the received signals indicating available active power and available reactive power.

- 2.1.11 The respondent did not argue in the appeal proceedings on what grounds features (b), (c) and (f) of claim 1 of the main request would have been obvious to the skilled person when starting from document E3. Consequently, in the absence of any arguments and of any immediately evident indications to that effect, the board concluded that the subject-matter of claim 1 was not rendered obvious in view of document E3.

The same applies to the independent claims 14 and 15 of the main request.

2.2 *Document E1*

- 2.2.1 The subject-matter of claim 1 involves an inventive step in view of document E1.

Distinguishing features

- 2.2.2 It was not in dispute between the parties that document E1 does not disclose the features of claim 1 of the main request as far as they relate to reactive power control.

Technical effect / objective technical problem

- 2.2.3 The technical effect of the distinguishing features, as argued by the appellant, is that optimum set points in relation to active and reactive power can be provided to each of the wind turbine generators as described in paragraph [0007] of the patent.

- 2.2.4 The objective technical problem when starting from document E1 and in view of the distinguishing feature was considered by the appellant to be that of how to provide a method for determining, in a more accurate manner, control of active and reactive power in order to increase the lifetime of the individual wind turbine generators and an improved maintenance scheduling as described in paragraph [0017] of the patent.
- 2.2.5 The respondent disputed the existence of a technical effect resulting from the distinguishing features. It was essentially argued that the patent did not contain a definition of active and reactive power. Nor did it contain any teaching or description of a technical effect resulting from the distinction between these two types of power. It was therefore not apparent how the claimed technical effect could be achieved solely by regulating the reactive power. The respondent also considered this to be supported by the fact that claim 1 does not define, in particular in a functional manner, the purpose and extent of the calculation of the individual set points, which, in their view, are not limited in such a way that the alleged technical effect is actually achieved.
- 2.2.6 The board considers that the technical effect as formulated by the appellant is achieved by the distinguishing features, i.e. the features of claim 1 as far as they relate to reactive power. Consequently, the board also considers the resulting objective technical problem as formulated by the appellant, and corresponding to what is described in paragraph [0017] of the contested patent, to be appropriate in view of the distinguishing features.

In particular, as argued by the appellant, the patent clearly distinguishes between active and reactive power and contains a corresponding definition of the reactive power in paragraph [0041], where *inter alia* the following is stated :

"The converter enables current to be produced with an arbitrary phase, as desired, relative to the grid voltage, thereby enabling variable reactive power to be produced."

Apart from the fact that the skilled person can of course distinguish between active and reactive power, the patent is thus clearly directed to the calculation of individual set points of both types of power. The skilled person can thus see from the patent in its entirety that not only the calculation of individual set points for the active power according to the invention, but also the control of the reactive power in itself contributes to a more flexible control, which can increase the lifetime of the individual wind turbines.

In particular, the skilled person recognises from the overall disclosure of the patent that the calculation of individual set points for both types of power enables an improved and in particular more differentiated adjustment of the set points of each individual wind turbine. In this context, the appellant has also convincingly argued that particular advantages for the power converters result from a corresponding individual adjustment of the set points for the reactive power. The board is convinced by the appellant's argument to the extent that the dimensioning and loading of the power converters, as part of the wind turbine equipment, depends on the

amount of reactive power set for each wind turbine generator. More specifically, the load on the converter increases with an increase in reactive power, as argued by the appellant. A corresponding consideration of individual conditions, in particular of the converters, can therefore realistically contribute to an extension of the lifetime of the relevant components by individually calculating the set points relating to reactive power within the meaning of feature f).

Furthermore, if the skilled person is concerned with understanding the overall scope of claim 1, an interpretation of the claim that would lead to a deterioration would obviously not be considered. The board is therefore not convinced by the respondent's argument in this respect.

Obviousness

- 2.2.7 The board agrees with the appellant that the invention according to claim 1 of the main request is not obvious in view of document E1 and the objective technical problem.

As was argued by the appellant, document E1 is not concerned with the control of active and reactive power but serves the purpose of reducing load oscillations by allowing the power to deviate with the wind speed. In particular, calculating individual set points regarding the reactive power of individual wind turbines is not addressed in document E1.

Moreover, document E1 does not distinguish between active and reactive power. Rather, it refers to "power reference" throughout. From the overall disclosure of this document the board's impression is that "power" in

the context of this document exclusively refers to active power, because it is particularly concerned with the power produced by the wind turbine or in other words, with the usable output power of the wind turbine.

However, even if the skilled person would understand "power" in document E1 to be used as a generic term, thus encompassing in principle both, active and reactive power, the invention would still not be obvious. In fact, there is no reference or hint in this document to a distinction between individual set points relating to active power and relating to reactive power according to feature f) of claim 1 of the main request.

In particular, claim 1 of the main request explicitly requires calculating individual set points relating to active power and reactive power based on the correction factors and the received signals indicating available active power and reactive power from the wind turbine generators. Claim 1 therefore explicitly defines the set points to relate in a differentiated manner to active power and reactive power. The calculation of differentiated set points in order to achieve a more flexible control, leading to an increased lifetime and an improved maintenance scheduling, is not disclosed or suggested by document E1.

2.2.8 The respondent has essentially argued that it would have been obvious to the skilled person to also consider set points for reactive power as the need for, and importance of, controlling both active and reactive power during power production was well known to the person skilled in the art.

The respondent's argument does not convince the board.

The person skilled in the art is a power grid engineer who is particularly knowledgeable about the control of wind turbines. It may be part of the common general knowledge of this skilled person that a regulation of active and reactive power is possible in principle. However, the mere knowledge of this fact is not sufficient to establish the obviousness of the invention in the present case. Rather, the person skilled in the art would have needed a hint or a specific motivation to implement the distinguishing features in the method of document E1 in order to solve the objective technical problem and, in particular, to arrive at the solution of calculating individual set points taking into account the active power and the reactive power as specified in feature f) of claim 1. A specific hint or motivation, however, is not apparent, nor has the respondent provided any convincing arguments to this effect.

- 2.2.9 Consequently, the board concluded that the subject-matter of claim 1 is not rendered obvious by document E1 in combination with the common general knowledge of the skilled person.

This also applies to independent claims 14 and 15 of the main request.

2.3 *Document E2*

Distinguishing features

- 2.3.1 Document E2 is *inter alia* concerned with controlling inertial energy and therefore with controlling active power (see for example paragraphs [0074] to [0089] in connection with the second embodiment illustrated in figures 4 and 5).

2.3.2 With reference to paragraph [0097], the respondent submitted that document E2 implicitly disclosed also the control of reactive power. It was further argued by the respondent that figures 1 to 3 of document E2 did not explicitly refer to inertial control and, consequently, did not explicitly refer to active power control.

Paragraph [0097] states the following:

"... the present invention is not limited thereto and may have a configuration in which, when the voltage of the utility grid 20 has decreased due to the occurrence of a disturbance in the utility grid 20, electric power is further supplied from the wind turbine generators 14 to the utility grid 20."

The respondent argued that a voltage drop in the utility grid implied the need for reactive power, which was therefore covered by the teaching of document E2. The appellant replied that the respondent's statement was only true if the power grid was of an inductive nature. However, this was not clear from document E2. On the contrary, the power grid could well be of a resistive nature, in which case the respondent's assumption would not apply.

2.3.3 The board considers that the disclosure in paragraph [0097] does not directly and unambiguously imply the control of reactive power. In particular, the board does not consider the mere reference to supplying electric power to the utility grid in the event of a voltage drop induced by a disturbance to be sufficient to imply that "electric power" in this sense is to be understood as reactive power.

Also, the nature of the utility grid undisputedly is not disclosed in E2, so any considerations to that effect are speculative. In any case, it cannot be clearly deduced that E2 in paragraph [0097] or elsewhere refers to the control of reactive power.

In addition, the board notes that even if it were to be accepted that figures 1 to 3 of document E2 may not refer to inertial control, the respondent has also not explained, how these figures relate to reactive power control and the board cannot infer any such indication from the figures or the corresponding description.

- 2.3.4 The board therefore concluded that the subject-matter of claim 1 of the main request differs from the method of document E2 at least in the features relating to reactive power.

Technical effect / objective technical problem

- 2.3.5 The arguments of the parties with regard to the questions concerning the technical effect and the formulation of the objective technical problem in view of the distinguishing features, were essentially identical to the arguments with regard to document E1.

Consequently, as regards the technical effect and the objective technical problem of the distinguishing features in view of document E2, the findings of the board in relation to document E1 apply *mutatis mutandis*. Therefore, the board refers to the reasons set out under points 2.2.3 to 2.2.6 of the present decision.

Obviousness

2.3.6 Also the arguments of the parties with regard to the question of whether the distinguishing features were obvious in view of document E2, were essentially identical to the arguments with regard to document E1.

Consequently, as regards the question of whether the distinguishing features were obvious in view of document E2 in combination with the common general knowledge of the skilled person, the findings of the board in relation to document E1 apply *mutatis mutandis*. Therefore, the board refers to the reasons set out under points 2.2.7 to 2.2.8 of the present decision.

2.3.7 In light of the above, the board arrived at the conclusion that the subject-matter of claim 1 is not rendered obvious by document E2 in combination with the common general knowledge of the skilled person.

2.4 *Result*

Since none of the respondent's objections under Article 83 and Article 56 EPC prejudices the maintenance of the patent in amended form according to the main request, the board had to accede to the appellant's main request.

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 amended form on the basis of claims 1 to 15 of the main request, filed with the statement setting out the grounds of appeal, a description to be adapted thereto and the figures of the patent specification.

The Registrar:

The Chairman:



U. Bultmann

G. Flyng

Decision electronically authenticated