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**Datasheet for the decision
of 10 October 2022**

Case Number: T 0325/22 - 3.2.04

Application Number: 09172594.5

Publication Number: 2343451

IPC: F03D1/06

Language of the proceedings: EN

Title of invention:

Wind turbine blade with plurality of longitudinally extending
flow guiding device parts

Patent Proprietor:

LM Wind Power A/S

Opponent:

Vestas Wind Systems A/S

Headword:

Relevant legal provisions:

EPC Art. 100(b)

Keyword:

Grounds for opposition - insufficiency of disclosure (no)
Principle of prohibition of reformatio in peius

Decisions cited:

G 0009/92

Catchword:



Beschwerdekammern

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Case Number: T 0325/22 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 10 October 2022

Appellant: LM Wind Power A/S
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Representative: COPA Copenhagen Patents
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Appellant: Vestas Wind Systems A/S
(Opponent) Hedeager 42
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Representative: Vestas Patents Department
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
10 December 2021 concerning maintenance of the
European Patent No. 2343451 in amended form.**

Composition of the Board:

Chairman A. de Vries
Members: G. Martin Gonzalez
K. Kerber-Zubrzycka

Summary of Facts and Submissions

I. Appeals were filed by the proprietor and the opponent against the interlocutory decision of the opposition division to maintain the patent in amended form.

The opponent withdrew their appeal on 7 April 2022.

II. The division held that the invention as claimed by the granted claims was insufficiently disclosed. The upheld claims were found sufficiently disclosed and inventive.

III. The appellant proprietor requests that the decision under appeal be set aside and the patent be maintained as granted, auxiliarily to maintain the patent according to auxiliary request 1 filed on 11 April 2022 with the statement of grounds. Oral proceedings are auxiliarily requested.

The respondent opponent requests with the notice of appeal that the decision is set aside and that the patent is revoked in its entirety.

IV. The wording of the granted claims (main request) relevant to this decision reads as follows:

"1. A blade (10) for a rotor of a wind turbine (2) having a substantially horizontal rotor shaft, said rotor comprising a hub (8), from which the blade (10) extends substantially in a radial direction when mounted to the hub (8), the blade having a longitudinal direction (r) with a tip end (14) and a root end (16) and a transverse direction, the blade further comprising:

- a profiled contour (40, 42, 50) including a pressure side and a suction side, as well as a leading edge (18) and a trailing edge (20) with a chord having a chord length extending there between, the profiled contour, when being impacted by an incident airflow, generating a lift, wherein the profiled contour is divided into:

- a root region (30) having a substantially circular or elliptical profile closest to the hub,
- an airfoil region (34) having a lift-generating profile furthest away from the hub, and
- a transition region (32) between the root region (30) and the airfoil region (34), the transition region (32) having a profile gradually changing in the radial direction from the circular or elliptical profile of the root region to the lift-generating profile of the airfoil region, characterised in that

- the blade is provided with a plurality of longitudinally extending flow guiding device parts (70), which are grouped together as modular parts to form a first flow guiding device group (77) in the transition region (32) of the blade (10), the first flow guiding device group extending along at least a longitudinal part of the transition region (32), wherein

- each of the flow guiding device parts (70) is added to the profiled contour (40, 42, 50) of the blade on the pressure side (52) of the blade (10), and wherein

- wherein the flow guiding device parts (70) are shaped as planar elements protruding from the profiled contour (40, 42, 50) and are extending substantially in the longitudinal direction of the blade (10) and comprise a first side nearest the leading edge (18) of the blade (10), a second side

nearest the trailing edge (20) of the blade (10) as well as a first longitudinal end nearest the root end (16) of the blade (10) and a second longitudinal end nearest the tip end (14) of the blade (10), and wherein
- the flow guiding device parts (70) are arranged so as to generate a separation of airflow from the pressure side of the blade at a point between the flow guiding device parts (70) and the trailing edge (20) of the blade, when the blade is impacted by the incident airflow".

"12. A wind turbine blade according to any of the preceding claims, wherein the individual flow guiding device parts are curved in the longitudinal direction".

V. The appellant's arguments can be summarised as follows:

The claimed invention as granted is sufficiently disclosed.

VI. The respondent's notice of appeal and subsequent withdrawal of the appeal of 7 April 2022 do not include any substantive arguments. Otherwise the respondent did not react to the proprietor's statement of grounds.

Reasons for the Decision

1. The appeal is admissible.
2. The respondent opponent has not replied to the appellant's statement of grounds, though given the opportunity to do so within the set time limit. Nor has it requested oral proceedings. As the Board essentially agrees with the reasons given by the appellant in its statement of grounds, the Board is satisfied that the

right to be heard is met and that it can now decide the case.

3. Background

The invention is directed to a blade for a rotor of a wind turbine with a profiled contour and a root region closest to the hub and having a substantially circular or elliptical profile, an airfoil region having a lift-generating profile and a transition region between them, see patent specification paragraph [0001]. In order to improve the aerodynamic profile of the blade in a flexible and safe manner (reduced risk of break off) the blade is provided with a plurality of flow guiding device parts (flaps), which are grouped together as modular parts in the transition region of the blade, see paragraphs [0009]-[0010]. The flow guiding device parts comprise planar or plate shaped elements protruding from the profile. This is a simpler and more flexible design than the typically wedge-shaped design. The planar design also has a smaller susceptibility to high joint loads, which can make them break off from the surface of the wind turbine blade, see paragraph [0012].

4. Main request - Sufficiency of disclosure

4.1 The appellant contests the opposition division's conclusion of insufficiency of disclosure.

The division argues, see sections 16-18 of the impugned decision, that claim 12 as dependent on claim 1 is insufficiently disclosed, due to contradictory requirements in claim 1 and 12. Claim 1 requires that the flow guiding device parts are shaped as *planar* elements, whereas dependent claim 12 requires that the

flow guiding device parts are *curved* in the longitudinal direction. Both requirements (planar and curved) cannot be met at the same time.

- 4.2 However, in the Board's view and as argued by the appellant this contradiction might give rise in the present case to a lack of clarity, Article 84 EPC, but not to one of insufficiency of disclosure, Article 83 or 100(b) EPC.
- 4.3 Indeed, as variously stated in case law sufficiency of disclosure within the meaning of Art. 83 EPC (or Art. 100(b) EPC) must be assessed on the basis of the application as a *whole* - including the description and claims - and not of the claims alone, see Case Law of the Boards of Appeal, 10th edition 2022 (CLBA), II.C.3.1. If it is argued that insufficiency arises from a lack of clarity, it is generally not sufficient to establish a lack of clarity of the claims in order to establish lack of compliance with Art. 83 EPC. Rather, it is necessary to show that the patent as a whole (i.e. not only the claims) does not enable the skilled person - who can avail himself of the description and his common general knowledge - to carry out the invention, CLBA II.C.8.2.
- 4.4 In the present case, paragraph [0048] of the patent specification is a detailed description corresponding to granted claim 12. The last sentence of said paragraph reads (emphasis by the Board) "*The plate shaped element can be moulded in the curved shape or be formed as a planar element, which subsequently is bent to the desired shape*". This explanation in the description resolves any apparent contradiction of terms of claims 1 and 12 and thus provides clear

guidance to the skilled person to carry out the invention as claimed in claim 12 without undue burden.

4.5 The Board thus regards the contradiction between claims 1 and 12 as granted only as a matter of clarity, Article 84 EPC. This is however not a ground for opposition under Article 100 EPC. Only grounds for opposition under Article 100 EPC can serve as legal basis for revoking an unamended patent, Article 101(2). The Board is thus unable to confirm the division's finding of insufficiency for the patent as granted.

5. With the withdrawal of the opponent's appeal the proprietor has become sole appellant. According to the principle of prohibition of reformatio in peius, where the proprietor is the sole appellant neither the Board nor the non-appealing opponent can challenge maintenance of the patent as upheld, **G 9/92** (OJ 1994, 875). Consequently the respondent opponent's request to set the decision aside and revoke the patent is inadmissible.

In the present case the only amendment to the patent according to the auxiliary request maintained is the deletion of claim 12. Otherwise the patent is unchanged; claim 1 as upheld is thus identical to granted claim 1. As the Board and the respondent opponent are barred by the principle of prohibition of reformatio in peius from challenging the patent as maintained, this bar applies also to any challenge to the unamended patent beyond the only ground (insufficiency) held to be prejudicial to the unamended patent. As the Board finds that the division was wrong in its conclusion regarding that only ground it can but set the decision aside and maintain the patent as granted.

Order

For these reasons it is decided that:

1. **The decision under appeal is set aside.**
2. **The patent is maintained as granted.**

The Registrar:

The Chairman:



G. Magouliotis

A. de Vries

Decision electronically authenticated