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**Datasheet for the decision
of 6 February 2024**

Case Number: T 0876/22 - 3.2.01

Application Number: 12830562.0

Publication Number: 2795055

IPC: E21B41/00

Language of the proceedings: EN

Title of invention:

AN INTEGRATED SYSTEM FOR OFFSHORE INDUSTRIAL ACTIVITIES WITH
FUME INJECTION

Patent Proprietor:

International Energy Consortium AS

Opponents:

Hargreaves Elsworth Limited
Gassnova SF
Equinor ASA

Headword:

Relevant legal provisions:

RPBA 2020 Art. 12(6)

Keyword:

Late-filed request - should have been submitted in first-instance proceedings (yes) - circumstances of appeal case justify admittance (no)

Decisions cited:

Catchword:



Beschwerdekammern
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Case Number: T 0876/22 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 6 February 2024

Appellant: International Energy Consortium AS
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 1 February 2022
revoking European patent No. 2795055 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairman G. Pricolo
Members: J. J. de Acha González
 O. Loizou

Summary of Facts and Submissions

- I. The patent proprietor's appeal lies against the decision of the Opposition Division to revoke the European patent No. 2795055.
- II. In its decision, the Opposition Division found that the subject-matter of the patent, according to the main request and auxiliary requests 1 to 4, extended beyond the content of the application as filed (Articles 100(c) and 123(2) EPC). In particular, the Opposition Division found that claim 1 of these requests introduced new information over the application as filed because it did not comprise the *installation, the riser structure and the storage facility* (see points 25 and 26 of the contested decision).
- III. In the communication under Article 15(1) RPBA (Rules of Procedure of the Boards of Appeal, OJ EPO 2021, A35), the Board set out its preliminary view of the case. In particular, the Board explained why it did not intend to admit any of the patent proprietor's new requests under Article 12(6) RPBA.
- IV. Oral proceedings before the Board took place on 6 February 2024 as a videoconference with the consent of the parties.

The appellant (patent proprietor) requested that the decision under appeal be set aside and the patent be maintained in amended form on the basis of the main request, or, in the alternative, on the basis of one of the auxiliary requests 1 to 3, all requests filed with the statement of grounds of appeal.

The respondent 1 (opponent 1) did not submit any observations in the present appeal proceedings.

The respondents 2 and 3 (opponents 2 and 3) requested that the appeal be dismissed.

V. Claim 1 of the main request reads as follows:

1. System for at least one industrial activity on at least one onshore or offshore location which use as feedstock and/or produce at least one of gas, crude oil, refined hydrocarbon components or products, where the at least one industrial activity is represented by combinations of at least one hydrocarbon producing installation, at least one distillation unit, at least one upgrading unit, oil refinery, combined cycle electric power plant, production of heat, production of steam, production of at least one fertilizer or production of at least one petrochemical product,

- where the system comprises an installation,*
- where the system is arranged for controlling the installation and for handling fume gas from the installation and a network, where the installation comprises several sub-systems (1, 5, 8), where the installation is part of a network of at least one such installation and at least one offshore or onshore industrial activity where the interconnection constitute combinations of pipelines and power transmission devices or cables, wherein pipelines within the network is for the transportation of fume gases, and the electric transmission devices or cables are for the transfer of electric power, and*
- where the system comprises at least one pipeline or electric power grid for the transportation of fume gas or industrial products to or from said installation*

from at least one of a) other industrial activity offshore, b) other industrial activity onshore, c) a vessel or mobile unit, for the reinjection of the fume gas via at least one riser structure, and an integrating control and guidance system (11) comprising at least one central processing unit and sensors for guiding at least the industrial activity (5) of the sub-systems (1, 5, 8), where the integrating control and guidance system (11) interconnects the subsystems (1, 5, 8) via the sensors, wherein the installation comprises:

- hydrocarbon feedstock from a mobile unit, from storage facilities (3), from a pipeline or from underground reservoir(s) or well(s), and*
- an industrial activity (5) for producing a petrochemical product, heat, steam, fertilizer, and*
- a storage facility (8) into which fume gas from the industrial activity (5) can be injected,*
- at least one riser structure for leading the fume gas from the industrial activity (5) to the storage facility (8), and wherein the integrating control and guidance system (11) is configured to, in real time:*
 - measure a demand for the industrial activity (5),*
 - measure a demand for supply of fume gas from the network in combination with measuring a demand of any of electric power consumption or electric requirements to the grid of which the at least one electric power unit is part of, consumption of heat or steam locally or within the network, defined or predetermined production level of gas, crude oil, refined products and refined components, defined utilization rate of a CCS unit (6), all storage or delivery facilities/ capacities (1, 3, 8, 9, 10) taken into account,*
 - provide the feedstock from said mobile unit, storage facilities (3), pipeline, or reservoir(s) or well(s) (1) to fuel the industrial activity (5), and*

- control and monitor the injection of fume gas from the industrial activity (5) to the storage facility (8) in real time.

Claim 1 of auxiliary request 1 reads as follows:

1. System for at least one industrial activity on at least one onshore or offshore location which use as feedstock and/or produce at least one of gas, crude oil, refined hydrocarbon components or products, where the at least one industrial activity is represented by combinations of at least one hydrocarbon producing installation, at least one distillation unit, at least one upgrading unit, oil refinery, combined cycle electric power plant, production of heat, production of steam, production of at least one fertilizer, production of at least one petrochemical product and at least one pipeline or electric power grid for the transportation of fume gases or industrial products to or from an installation from at least one of a) other industrial activity offshore, b) other industrial activity onshore, c) vessel or mobile unit, for the reinjection via at least one riser structure,

- where the system comprises the installation,
- where the system is arranged for controlling the installation and for handling fume gas from the installation and a network, where the installation comprises several sub-systems (1, 5, 8), where the installation is part of a network of at least one such installation and at least one offshore or onshore industrial activity where the interconnection constitute combinations of pipelines and power transmission devices or cables, wherein pipelines within the network is for the transportation of fume gases, and the electric transmission devices or cables are for the transfer of electric power, and

- where the system comprises at least one pipeline or electric power grid for the transportation of fume gas or industrial products to or from said installation from at least one of a) other industrial activity offshore, b) other industrial activity onshore, c) a vessel or mobile unit, for the reinjection of the fume gas via at least one riser structure, and an integrating control and guidance system (11) comprising at least one central processing unit and sensors for guiding at least the industrial activity (5) of the sub-systems (1, 5, 8), where the integrating control and guidance system (11) interconnects the subsystems (1, 5, 8) via the sensors, wherein the installation comprises:

- hydrocarbon feedstock from a mobile unit, from storage facilities (3), from a pipeline or from underground reservoir(s) or well(s), and

- an industrial activity (5) for producing a petrochemical product, heat, steam, fertilizer, and

- a storage facility (8) into which fume gas from the industrial activity (5) can be injected,

- at least one riser structure for leading the fume gas from the industrial activity (5) to the storage facility (8), and wherein the integrating control and guidance system (11) is configured to, in real time:

- measure a demand for the industrial activity (5),

- measure a demand for supply of fume gas from the network in combination with measuring a demand of any of electric power consumption or electric requirements to the grid of which the at least one electric power unit is part of, consumption of heat or steam locally or within the network, defined or predetermined production level of gas, crude oil, refined products and refined components, defined utilization rate of a CCS unit (6), all storage or delivery facilities/ capacities (1, 3, 8, 9, 10) taken into account,

- provide the feedstock from said mobile unit, storage facilities (3), pipeline, or reservoir(s) or well(s) (1) to fuel the industrial activity (5), and
- control and monitor the injection of fume gas from the industrial activity (5) to the storage facility (8) in real time.

Claim 1 of auxiliary request 2 reads as follows:

- 1.** A method for controlling an installation and for handling fume gas from the installation and a network,
- where the installation and the network is part of a system for at least one industrial activity on at least one onshore or offshore location which use as feedstock and/or produce at least one of gas, crude oil, refined hydrocarbon components or products, where the at least one industrial activity is represented by combinations of at least one hydrocarbon producing installation, at least one distillation unit, at least one upgrading unit, oil refinery, combined cycle electric power plant, production of heat, production of steam, production of at least one fertilizer or production of at least one petrochemical product,
 - where the system is arranged for controlling the installation and for handling fume gas from the installation and the network, where the installation comprises several sub systems (1, 5, 8), where the installation is part of a network of at least one such installation and at least one offshore or onshore industrial activity where the interconnection constitute combinations of pipelines and power transmission devices or cables, wherein pipelines within the network is for the transportation of fume gases, and the electric transmission devices or cables are for the transfer of electric power, and
 - where the system comprises at least one pipeline

or electric power grid for the transportation of fume gas or industrial products to or from said installation from at least one of a) other industrial activity offshore, b) other industrial activity onshore, c) a vessel or mobile unit, for the reinjection of the fume gas via at least one riser structure, and an integrating control and guidance system (11) comprising at least one central processing unit and sensors for guiding at least the industrial activity (5) of the sub-systems (1, 5, 8), where the integrating control and guidance system (11) interconnects the subsystems (1, 5, 8) via the sensors, wherein the installation comprises:

- hydrocarbon feedstock from a mobile unit, from storage facilities (3), from a pipeline or from underground reservoir(s) or well(s), and
- an industrial activity (5) for producing a petrochemical product, heat, steam, fertilizer, and
- a storage facility (8) into which fume gas from the industrial activity (5) can be injected,
- at least one riser structure for leading the fume gas from the industrial activity (5) to the storage facility (8), and wherein the integrating control and guidance system (11) is configured to, in real time:
 - measure a demand for the industrial activity (5),
 - measure a demand for supply of fume gas from the network in combination with measuring a demand of any of electric power consumption or electric requirements to the grid of which the at least one electric power unit is part of, consumption of heat or steam locally or within the network, defined or predetermined production level of gas, crude oil, refined products and refined components, defined utilization rate of a CCS unit (6), all storage or delivery facilities/ capacities (1, 3, 8, 9, 10) taken into account,
 - provide the feedstock from said mobile unit,

storage facilities (3), pipeline, or reservoir(s) or well(s) (1) to fuel the industrial activity (5), and

- control and monitor the injection of fume gas from the industrial activity (5) to the storage facility (8) in real time,

the method comprises:

- producing a petrochemical product, heat, steam, fertilizer using an industrial activity (5) of the installation;

- injecting fume gas from the industrial activity (5) into a storage facility (8) using at least one riser structure, wherein the method further comprises performing the following steps using the control and guidance system (11), in real time,

- measuring a demand for the industrial activity (5),

- measuring a demand for supply of fume gas from the network in combination with measuring a demand of any of electric power consumption or electric requirements to the grid of which the at least one electric power unit is part of, consumption of heat or steam locally or within the network, defined or predetermined production level of gas, crude oil, refined products and refined components, defined utilization rate of a CCS unit (6), all storage or delivery facilities/capacities (1, 3, 8, 9, 10) taken into account,

- receiving fume gas from the network,

- providing the feedstock from said mobile unit, storage facilities (3), pipeline, or reservoir(s) or well(s) (1) to fuel the industrial activity (5), and

- monitoring the injection of fume gas from the industrial activity (5) to the storage facility (8) in real time, and

- controlling the injection of fume gas from the

industrial activity (5) to the storage facility (8) in real time.

Claim 1 of auxiliary request 3 reads as follows:

1. *A method for controlling an installation and for handling fume gas from the installation and a network,*
- *where the installation and the network is part of a system for at least one industrial activity on at least one onshore or offshore location which use as feedstock and/or produce at least one of gas, crude oil, refined hydrocarbon components or products, where the at least one industrial activity is represented by combinations of at least one hydrocarbon producing installation, at least one distillation unit, at least one upgrading unit, oil refinery, combined cycle electric power plant, production of heat, production of steam, production of at least one fertilizer, production of at least one petrochemical product and at least one pipeline or electric power grid for the transportation of fume gases or industrial products to or from an installation from at least one of a) other industrial activity offshore, b) other industrial activity onshore, c) vessel or mobile unit, for the reinjection via at least one riser structure,*
- *where the system is arranged for controlling the installation and for handling fume gas from the installation and the network, where the installation comprises several subsystems (1, 5, 8), where the installation is part of a network of at least one such installation and at least one offshore or onshore industrial activity where the interconnection constitute combinations of pipelines and power transmission devices or cables, wherein pipelines within the network is for the transportation of fume*

gases, and the electric transmission devices or cables are for the transfer of electric power, and

- where the system comprises at least one pipeline or electric power grid for the transportation of fume gas or industrial products to or from said installation from at least one of a) other industrial activity offshore, b) other industrial activity onshore, c) a vessel or mobile unit, for the reinjection of the fume gas via at least one riser structure, and an integrating control and guidance system (11) comprising at least one central processing unit and sensors for guiding at least the industrial activity (5) of the sub-systems (1, 5, 8), where the integrating control and guidance system (11) interconnects the subsystems (1, 5, 8) via the sensors, wherein the installation comprises:

- hydrocarbon feedstock from a mobile unit, from storage facilities (3), from a pipeline or from underground reservoir(s) or well(s), and

- an industrial activity (5) for producing a petrochemical product, heat, steam, fertilizer, and

- a storage facility (8) into which fume gas from the industrial activity (5) can be injected,

- at least one riser structure for leading the fume gas from the industrial activity (5) to the storage facility (8), and wherein the integrating control and guidance system (11) is configured to, in real time:

- measure a demand for the industrial activity (5),

- measure a demand for supply of fume gas from the network in combination with measuring a demand of any of electric power consumption or electric requirements to the grid of which the at least one electric power unit is part of, consumption of heat or steam locally or within the network, defined or predetermined production level of gas, crude oil, refined products and refined components, defined utilization rate of a

CCS unit (6), all storage or delivery facilities/capacities (1, 3, 8, 9, 10) taken into account,

- provide the feedstock from said mobile unit, storage facilities (3), pipeline, or reservoir(s) or well(s) (1) to fuel the industrial activity (5), and
- control and monitor the injection of fume gas from the industrial activity (5) to the storage facility (8) in real time.

the method comprises:

- producing a petrochemical product, heat, steam, fertilizer using an industrial activity (5) of the installation;
- injecting fume gas from the industrial activity (5) into a storage facility (8) using at least one riser structure, wherein the method further comprises performing the following steps using the control and guidance system (11), in real time,
 - measuring a demand for the industrial activity (5),
 - measuring a demand for supply of fume gas from the network in combination with measuring a demand of any of electric power consumption or electric requirements to the grid of which the at least one electric power unit is part of, consumption of heat or steam locally or within the network, defined or predetermined production level of gas, crude oil, refined products and refined components, defined utilization rate of a CCS unit (6), all storage or delivery facilities/capacities (1, 3, 8, 9, 10) taken into account,
 - receiving fume gas from the network,
 - providing the feedstock from said mobile unit, storage facilities (3), pipeline, or reservoir(s) or well(s) (1) to fuel the industrial activity (5), and
 - monitoring the injection of fume gas from the

industrial activity (5) to the storage facility (8) in real time, and

- controlling the injection of fume gas from the industrial activity (5) to the storage facility (8) in real time.

Reasons for the Decision

Admissibility of the requests in appeal proceedings

1. The Board exercising its discretion under Article 12 (6) RPBA did not admit any of the requests filed by the appellant in these appeal proceedings.
2. All of the appellant's requests in the present case were filed with the statement of grounds of appeal; none of them corresponds to any of the requests underlying the impugned decision.
3. Under Article 12(6) RPBA the Board shall not admit requests, facts, objections or evidence which should have been submitted, or which were no longer maintained, in the proceedings leading to the decision under appeal, unless the circumstances of the appeal case justify their admittance.
 - 3.1 With the statement of grounds of appeal, the appellant essentially submitted that the requests were filed in order to take account of the Opposition Division's negative findings concerning the installation, the riser structure and the storage facility. At the oral proceedings, the appellant merely referred to the

arguments presented in the statement of grounds of appeal, and reiterated that the amendments made to claim 1 of the newly filed requests were in response to the decision of the Opposition Division.

- 3.2 The Board judges, in line with the opponent 3's arguments, that the appellant not only could, but should, have filed the new requests in appeal during the opposition proceedings and that the circumstances of the case do not justify their admittance for the following reasons.

The system claim 1 of the main request and the system claim 1 of the auxiliary request 1 have been amended to include, inter alia, the following additional feature: "*where the system comprises the installation*". Similarly, the method claims of the auxiliary requests 2 and 3 (method claim 1 of each request) have been amended to include, inter alia, the following additional feature: "*where the installation and the network is part of a system...*".

The Board accepts that the amendments made to claim 1 represent an attempt to overcome the objection which is the central part of the reasoning in the contested decision (see points 24 to 29).

However, the objection that claim 1 introduced added subject-matter by not reciting the feature that the system comprises the installation was already raised and substantiated at the outset of the opposition proceedings in the notice of opposition of opponent 3. Moreover, in the annex to the summons to the oral proceedings of 14 June 2019 (see points 17 and 24 of the communication), the Opposition Division expressed the preliminary view that the objection was well-founded. Accordingly, the patent proprietor had several

opportunities during the opposition proceedings to file such an amendment to the claims. Moreover, the patent proprietor was again given the opportunity to make such requests, in particular those limited to the method claim, at least during the oral proceedings before the Opposition Division (see minutes of the oral proceedings points 11 to 16).

However, the appellant ultimately decided not to file requests specifically addressing the objection at any stage of the opposition proceedings.

The Board points out that it pertains to established case law of the Boards of Appeal that the appeal proceedings are primarily concerned with a judicial review of the decision under appeal and do not constitute a continuation of the opposition proceedings.

Accordingly, since the appellant has not substantiated the presence of any circumstances of the appeal case justifying the admittance of the requests, but, on the contrary, the circumstances of the case are such that the requests should have been filed in opposition proceedings, as explained above, the Board decided to not admit any of the appellant's requests.

4. It follows from the above that the appeal is not allowable.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



A. Voyé

G. Pricolo

Decision electronically authenticated