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Datasheet for the decision of 26 May 2025

Case Number: T 1026/24 - 3.4.02

Application Number: 18808220.0

Publication Number: 3729589

IPC: H02J3/12, H02J3/24, H02J3/00

Language of the proceedings: EN

Title of invention:
Adaptive active power control in renewable energy power plants

Patent Proprietor:
VESTAS WIND SYSTEMS A/S

Opponent:
Siemens Gamesa Renewable Energy Deutschland GmbH

Relevant legal provisions:
EPC Art. 107
EPC R. 101(1)

Keyword:
Admissibility of appeal (no) - non-identity of opponent and appellant

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Case Number: T 1026/24 - 3.4.02

D E C I S I O N
of Technical Board of Appeal 3.4.02
of 26 May 2025

Appellant: (-)	Siemens Gamesa Renewable Energy GmbH & Co. KG Beim Strohhause 17-31 20097 Hamburg (DE)
Representative:	SGRE-Association Siemens Energy Global GmbH & Co. KG SE I IM P Intellectual Property Siemenspromenade 9 91058 Erlangen (DE)
Respondent: (Patent Proprietor)	VESTAS WIND SYSTEMS A/S Hedeager 42 8200 Aarhus N (DK)
Representative:	Grünecker Patent- und Rechtsanwälte PartG mbB Leopoldstraße 4 80802 München (DE)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 17 May 2024 rejecting the opposition filed against European patent No. 3729589 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman	G. Flyng
Members:	H. Bronold
	P. Guntz

Summary of Facts and Submissions

The appeal lies from the opposition division's decision of 17 May 2024 to reject the opposition filed on 4 October 2022 by

Siemens Gamesa Renewable Energy Deutschland GmbH
Am Lunedeich 156
D-27572 Bremerhaven.

The notice of appeal was lodged on 16 July 2024 in the name of

Siemens Gamesa Renewable Energy GmbH & Co. KG
Beim Strohhause 17-31
D-20097 Hamburg.

On 17 September 2024 the statement of grounds of appeal was filed indicating the same company name and address.

In the reply to the appeal the respondent (patent proprietor) requested that the appeal be rejected as not admissible due to a lack of identity between the opponent in opposition proceedings and the appellant in appeal proceedings.

The appellant did not submit any additional facts or legal arguments regarding this issue.

On 19 March 2025, in response to a communication by the Board indicating that the appeal appeared to be inadmissible, the appellant withdrew their request for oral proceedings, making way for a decision in writing by the Board.

Reasons for the Decision

The appeal is inadmissible.

1. The appellant is not identical with the opponent.

1.1 There is a divergence between the name, the legal structure and the address of the legal persons named as opponent and as appellant in the proceedings.

1.2 Both in the notice of appeal, dated 16 July 2024, and in the statement of grounds of appeal, dated 17 September 2024, and in the letter withdrawing the request for oral proceedings, dated 19 March 2025, the appellant was indicated to be:

Siemens Gamesa Renewable Energy GmbH & Co. KG.
Beim Strohhause 17-31
D-20097 Hamburg

This does not correspond to the notice of opposition which was filed, although on business paper of the appellant, explicitly in the name and on behalf of:

Siemens Gamesa Renewable Energy Deutschland GmbH
Am Lunedeich 156
D-27572 Bremerhaven

1.3 There seems to be no doubt that the latter company acted as the opponent and remained party to the entire opposition proceedings.

1.3.1 The opponent's name, legal form and address was indicated consistently in the notice of opposition

dated 4 October 2022 and in the corresponding form 2300E, submitted on the same day. It was also used throughout the opposition proceedings in several documents issued by the opposition division (see communication dated 18 July 2023, as annexed to the summons, minutes of the oral proceedings and decision rejecting the opposition, both dated 17 May 2024).

1.3.2 On the letterhead of a submission dated 27 April 2023 the name of the later appellant was mentioned as the purported opponent. However, the discrepancy with regard to the notice of opposition was neither explained nor could it be concluded from this fact alone that the notice of opposition must have contained an unintentional misnomer.

To the contrary, with regard to the clear statement in the notice of opposition that the opposition was lodged by Siemens Gamesa Renewable Energy GmbH & Co. KG in the name and on behalf of Siemens Gamesa Renewable Energy Deutschland GmbH it could rather be assumed that the indication in the letter of 27 April 2023 was erroneous.

1.3.3 A transfer of the status of opponent was never declared and substantiated nor are there any facts on file that might allow for the conclusion that the appellant must be the universal successor of the opponent.

1.4 There is also no room for interpretation with regard to the appellant's identity that was consistently indicated in the appeal proceedings. No facts and arguments have been submitted in appeal proceedings as to why the appellant should not be the person named in the three written submissions mentioned in paragraph 1.2 above.

2. The appellant had no right to appeal.

2.1 According to Article 107 EPC, only parties to the proceedings may appeal. As set out above, the appellant was never a party to the opposition proceedings.

2.2 Appeals not complying with the requirements in Article 107 EPC shall be rejected as inadmissible, see Rule 101(1) EPC.

3. Therefore, the appeal is to be rejected.

4. The request for oral proceedings was withdrawn within the time limit set in the Board's communication dated 28 January 2025 and well before the time limit foreseen in Rule 103(4)(c) EPC and hinging on the issue of a future communication in preparation for the oral proceedings would have lapsed. Thus a partial reimbursement of the appeal fee according to Rule 103(4)(c) EPC can be ordered ex officio.

Order

For these reasons it is decided that:

1. The appeal is rejected as inadmissible.

2. The appeal fee is to be reimbursed at 25%.

The Registrar: The Chairman:

D. Meyfarth G. Flyng

Decision electronically authenticated