

GENERAL ELECTRIC COMPANY ET AL. V. WILKINS., Appeal No. 2013-1170 (Fed. Cir. May 8, 2014). Before Lourie, Taranto, Chen. Appealed from E.D. Cal. (Judge O'Neill).

### Background:

GE sued Wilkins, seeking to quiet title in the '985 patent. The '985 patent is directed to controlling a wind turbine to allow it to remain connected to the power grid and to safely ride through a low voltage event. This is known as "low voltage ride through" ("LVRT"). Wilkins counterclaimed, seeking (1) to be added as a named inventor of the '985 patent and (2) a declaration that he has an ownership interest in the '985 and other patents. Mitsubishi, a purported licensee of Wilkins under the '985 patent, intervened and filed counterclaims seeking a declaration that Wilkins is a co-owner of the '985 patent. The district court then conducted a bench trial on Wilkins' and Mitsubishi's inventorship counterclaims and held that they had failed to establish that Wilkins co-invented the subject matter of any claim of the '985 patent. Mitsubishi and Wilkins timely appealed. Mitsubishi's appeal was voluntarily dismissed.

### Issue/Holding:

Did the district court err in holding that Wilkins failed to establish that he co-invented the subject matter of any claim of the '985 patent? No, affirmed.

### Discussion:

GE's '985 patent names five co-inventors who were each members of a team of engineers based in Salzbergen, Germany that was tasked with meeting the standard of a German utility company. After GE acquired certain assets from Enron Wind Corporation, Wilkins worked as an engineer at GE. Correspondence between Wilkins and two of the named inventors in spring and summer of 2002 indicates that the German team was consulting Wilkins for confirmation that their invention, which was then implemented on German wind turbines, would work with the different grid requirements and turbine components used in the United States. The correspondence revealed that the work previously done by Wilkins at GE was not interchangeable with the specifications and requirements of the German LVRT design. Wilkins also traveled to Germany, and although no documents exist for that trip, Wilkins alleged that he shared his ideas and conveyed specific elements of the '985 patent to the German team at that time. It is undisputed that the German team had developed detailed specifications and concept documents of its LVRT solution by July 2002 and a presentation of the technical details was available for download through an internal GE website.

Mitsubishi eventually hired Wilkins in an effort to invalidate the '985 patent, then licensed the '985 patent from Wilkins based on his alleged ownership rights. Wilkins proved a difficult witness at trial and the district court found that Wilkins lacked credibility, noting that Wilkins was "repeatedly impeached during cross-examination, to the point where the veracity of even simple answers was called into question." The district court judge described Wilkins as "one of the worst witnesses I have ever seen."

The Court of Appeals agreed, and in light of all the record evidence held that Wilkins did not prove his inventorship claim by clear and convincing evidence because he did not present any credible testimony that could be corroborated — a requirement to guard "against courts being deceived by inventors who may be tempted to mischaracterize the events of the past through their testimony."