

BESCHWERDEKAMMERN
DES EUROPÄISCHEN
PATENTAMTS

BOARDS OF APPEAL OF
THE EUROPEAN PATENT
OFFICE

CHAMBRES DE RECOURS
DE L'OFFICE EUROPEEN
DES BREVETS

Internal distribution code:

- (A) [] Publication in OJ
(B) [] To Chairmen and Members
(C) [] To Chairmen
(D) [X] No distribution

**Datasheet for the decision
of 30 November 2009**

Case Number: T 1353/09 - 3.2.06

Application Number: 02734995.0

Publication Number: 1399289

IPC: B23Q 1/56

Language of the proceedings: EN

Title of invention:

Parallel positioning mechanism, especially for machining
and/or manipulation and/or measuring

Applicant:

Kovosvit Mas A.S., et al

Opponent:

-

Headword:

-

Relevant legal provisions:

EPC Art. 123(2)

Relevant legal provisions (EPC 1973):

EPC Art. 111(1)

Keyword:

"Amendments - basis in the application as filed"
"Remittal (yes)"

Decisions cited:

-

Catchword:

-



Case Number: T 1353/09 - 3.2.06

D E C I S I O N
of the Technical Board of Appeal 3.2.06
of 30 November 2009

Appellant: Kovosvit Mas A.S.
Nam. Tomase Bati 419
CZ-391 02 Sezimovo sti (CZ)

Representative: Novotny, Karel
Zufanova 2
CZ-163 00 Praha 6 (CZ)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 12 February 2009
refusing European application No. 02734995.0
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: P. Alting van Geusau
Members: G. Pricolo
W. Sekretaruk

Summary of Facts and Submissions

I. The appeal lies from the decision of the Examining Division, posted on 12 February 2009, refusing the European patent application 02 734 995.0 on the grounds that it did not fulfil the requirements of Article 123(2) EPC.

II. The decision under appeal is based on the set of claims filed by letter dated 14 December 2007. Claim 1 of this set reads as follows:

"1. Parallel positioning mechanism, especially for machining and/or manipulation and/or measuring, consisting of a platform for the carrying and/or manipulation with, for instance, a tool, a workpiece, a measuring device or the like, wherein the platform is connected with the machine frame by means of at least one positioning arm, wherein the platform (3) is joint-connected with at least two sliding guide (4), which are arranged on the mutually opposite side of the platform (3) via at least three rotatable joints (11) of which at least two are arranged on a positioning arm (6) for the connection with the sliding guide (4), characterized in that the sliding guides (4) are in mutually intersecting relationship."

III. The Examining Division considered that the deletion from claim 1 of the feature recited in claim 1 as filed according to which "*the axes of rotation of the rotatable joints are mutually parallel*" violated Article 123(2) EPC, in particular because this feature had been portrayed as essential in the application as filed.

IV. The appellant (applicant) filed a notice of appeal on 15 April 2009 and paid the appeal fee on the same day. With the statement setting out the grounds of appeal, received at the European Patent Office on 13 June 2009, the appellant contested the findings of the Examining Division. The appellant further textually submitted that *"If the Examiner considers keeping the feature of rotational joint's axes alignment as desirable, in this sense we submit a modification of Claim 1, propounded on 14/12/2007"*. An amended version of claim 1 in which the above-mentioned feature was reinstated was attached to the statement of grounds of appeal.

V. In a communication dated 4 September 2009, the Board issued a preliminary assessment of the case according to which the Examining Division's finding of lack of compliance with Article 123(2) EPC in respect of claim 1 according to the appellant's main request (claim 1 underlying the decision under appeal) was correct. As regards the auxiliary request (claim 1 as filed with the statement of grounds of appeal), the Board expressed the preliminary opinion that claim 1 did not give rise to objections under Article 123(2) EPC because it consisted of the combination of originally filed claims 1 and 10 and was further limited by adding the feature taken from the description according to which there were at least two sliding guides. However, claim 1 according to the auxiliary request did not mention the limitation, defined in claim 1 according to the main request, that *"the at least two sliding guides are arranged on the mutually opposite side of the platform"*. Claim 1 thus seemed to go in a different direction than that

previously undertaken by the applicant in the examining procedure, and it would appear that already for this reason the amendment should not be admitted pursuant to Rule 137(3) EPC. Moreover, claim 1 was objectionable under Article 84 EPC because there was no support in the description for the generic wording of claim 1 which also included sliding guides in mutually intersecting relationship provided on a same side of the platform. The Board informed the appellant that it would appear that the application might be pursued on the basis of claim 1 according to the auxiliary request, amended to include the feature that the guides were arranged on mutually opposite side of the platform, and further to include a limitation to two (as shown in Figs. 2, 3 and 5) or four guides (as shown in Fig. 6; in this case, two guides were arranged on two mutually opposite sides of the platform and the two other guides on the other two mutually opposite sides of the platform). Finally, the Board stated that if the applicant filed such a request, then the Board intended to remit the case back to the Examining Division since the decision under appeal was only based on the issue of Article 123(2) EPC and the issues of novelty and inventive step in respect of the particular combination of features claimed had not yet been considered by the Examining Division.

VI. In reply to the communication, the applicant requested with letter dated 1 November 2009 that the proceedings be continued according to the "*claims proposed lately, which we enclose repeatedly*". The appellant did not comment the Board's objections in respect of the previous auxiliary request.

VII. Claim 1 attached to the letter dated 1 November 2009 has the following wording:

"1. Parallel positioning mechanism, especially for machining and/or manipulation and/or measuring, consisting of a platform for the carrying and/or manipulation with, for instance, a tool, a workpiece, a measuring device or the like, wherein the platform is connected with the machine frame by means of at least one positioning arm, wherein the platform (3) is joint-connected with at least two sliding guide (4) via at least three rotatable joints (11) of which at least two are arranged on a positioning arm (6) for the connection with the sliding guide (4), wherein the axis of rotation of the rotatable joints are mutually parallel, characterized in that the sliding guides (4) are in mutually intersecting relationship."

[Note of the Board: the claim includes obvious typing errors, e.g. manipultaion instead of manipulation; two sliding guide instead of two sliding guides, ratatable instead of rotatable, axis instead of axes, mutally instead of mutually.]

Reasons for the Decision

1. The appeal is admissible.
2. The set of claims 1 to 5 filed with the letter dated 1 November 2009 is identical to the set of claims filed as auxiliary request with the statement of grounds of appeal.

Accordingly, the appellant's request filed with this letter "*to continue the proceedings according to the claims proposed lately, which we enclose repeatedly*", clearly and unambiguously represents a request to grant a patent on the basis of the set of claims in accordance with the auxiliary request filed with the grounds of appeal, which is the same set of claims that has been filed again with the letter dated 1 November 2009.

3. Claim 1 according to the present and sole request of the appellant includes all the features of claims 1 and 10 according to the application as originally filed. Additionally, claim 1 includes the feature that "at least two" sliding guides are provided, rather than "at least one" as in originally filed claim 1. The feature that there are at least two guides is clearly and unambiguously disclosed in the application as filed, in the context of the claimed combination of features. Reference is made in particular to page 3, third paragraph, and Figs. 2 to 6, showing that two or four slides are possible and therefore, that the claimed area defined by "at least one sliding guide" in original claim 1 includes the area defined by "at least two sliding guides" in present claim 1. Therefore, claim 1 meets the requirements of Article 123(2) EPC.

4. Present claim 1 differs from claim 1 underlying the decision under appeal in that the feature that the axes of rotation of the rotatable joints are mutually parallel has been reinstated - the absence of this feature in claim 1 led the Examining Division to its finding of non-compliance with Article 123(2) EPC -, and in that the feature that the sliding guides are

arranged on the mutually opposite side of the platform has been deleted.

5. Accordingly, the objections of the examining division in the decision under appeal no longer apply to the present request; however, the combination of features of claim 1 was not present in any previous requests of the applicant and gives rise to new issues, in particular the issues under Rule 137(3) EPC and Article 84 EPC 1973 mentioned by the Board in its communication dated 4 September 2009. Under these circumstances, and in view of the fact that if the Board's objections were overcome, then it is likely that the case would be remitted back to the Examining Division for considering novelty and inventive step (as mentioned in the Board's communication), the Board considers it appropriate to exercise its power conferred by Article 111(1) EPC 1973 to remit the case to the examining division for further prosecution.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the Examining Division for further prosecution.

The Registry

The Chairman

M. Patin

P. Alting van Geusau