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**Datasheet for the decision
of 20 May 2014**

Case Number: T 0502/12 - 3.2.07

Application Number: 07712715.7

Publication Number: 1986941

IPC: B65G47/90, B25J15/00

Language of the proceedings: EN

Title of invention:

PICK AND PLACE HANDLING DEVICE AND METHOD FOR ITS USE

Patent Proprietor:

AEW Delford Systems Limited

Opponent:

MULTIVAC Sepp Haggemüller GmbH & Co. KG

Headword:

Relevant legal provisions:

EPC Art. 123(2)

RPBA Art. 13(1)

Keyword:

Late filed auxiliary requests - admitted (yes)

Exception to prohibition of reformatio in peius: no (main and amended auxiliary request)

Amendments - added subject matter (yes) (new and additional amended auxiliary request)

Decisions cited:

G 0009/92, G 0004/93, G 0001/99, T 1033/08

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 0502/12 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 20 May 2014

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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
29 December 2011 concerning maintenance of the
European Patent No. 1986941 in amended form.**

Composition of the Board:

Chairman H. Meinders
Members: K. Poalas
E. Kossonakou

Summary of Facts and Submissions

- I. The appellant (opponent) lodged an appeal against the interlocutory decision of the Opposition Division maintaining European patent No. 1 986 941 in amended form.
- II. Opposition had been filed against the patent as a whole based on Article 100(a) EPC (lack of novelty and lack of inventive step), on Article 100(b) EPC (insufficient disclosure) and on Article 100(c) EPC (inadmissible amendments).
- III. The Opposition Division found that the patent according to the then auxiliary request 1B filed during the oral proceedings meets the requirements of the EPC.
- IV. Oral proceedings before the Board took place on 20 May 2014.
 - a) The appellant requested that the decision under appeal be set aside and that the European patent No. 1 986 941 be revoked. It also requested that the new auxiliary request, the amended auxiliary request and the additional amended auxiliary request, all filed by the respondent during the oral proceedings, not be admitted into the proceedings.
 - b) The respondent (patent proprietor) requested that the decision under appeal be set aside and the contested patent maintained in accordance with either the main request filed with its submissions dated 2 April 2014, or one of the "new", "amended" or "additional amended" auxiliary requests, all as

filed during the oral proceedings.

- V. The independent claims 1 according to the respondent's requests read as follows:

Main request

"1. A pick and place device for picking up and re-positioning an article carried by a support surface, comprising:
a first part, and
a belt of flexible material (29, 32), characterised in that
the first part includes a plate portion (20, 33) which is movable parallel to the support surface so that a leading edge thereof penetrates below the article, between the article and the support surface,
the belt is wrapped around at least the leading edge of the plate portion so that it is sandwiched between the plate portion and the article when the former penetrates therebelow and as the plate portion moves below the article there is substantially no relative sliding movement between the sandwiched portion of the belt and the article, and
a stop (23) is provided and in use the plate portion is moved towards the stop when an article which is to be lifted up from the support surface is located between the plate portion and the stop,
wherein an article will be pushed against the stop as the plate portion penetrates therebelow whereby in use the said penetration is prevented from pushing the article sideways across the support surface,
and wherein, at the leading edge of the plate portion, the movement of the belt is in an upward sense relative to the article, which therefore tends to lift the article off the support surface due to friction forces

between the article and the belt and thus assists the plate portion to get underneath the article".

New auxiliary request

"1. A pick and place device for picking up and re-positioning an article carried by a support surface, comprising:
a first part, and
a belt of flexible material (9, 9', 40),
characterised in that
the first part includes a plate portion (8, 8', 42, 42') which is movable parallel to the support surface so that a leading edge thereof penetrates below the article, between the article and the support surface, the belt is wrapped around at least the leading edge of the plate portion so that it is sandwiched between the plate portion and the article when the former penetrates therebelow and as the plate portion moves below the article there is relative sliding movement between the belt and the plate portion wherever the belt is in contact with the plate portion and substantially no relative sliding movement between the sandwiched portion of the belt and the article, and
a second first part (8, 8', 42, 42') is provided, and
in use the plate portion is moved towards the second first part when an article which is to be lifted up from the support surface is located between the plate portion and the second first part,
wherein the second first part (8, 8', 42, 42') is similar to the first part also having a flexible belt (9, 9', 40) wrapped around the plate portion thereof and the second first part is positioned relative to the first part so that in use the two plates move in the same plane but always in opposite directions, towards each other to penetrate below an article, and away from

each other to disengage therefrom".

Amended auxiliary request

"1. A pick and place device for picking up and re-positioning an article carried by a support surface, comprising:
a first part, and
a belt of flexible material (9, 9', 40),
characterised in that
the first part includes a plate portion (8, 8', 42, 42') which is movable parallel to the support surface so that a leading edge thereof penetrates below the article, between the article and the support surface, the belt is wrapped around at least the leading edge of the plate portion so that it is sandwiched between the plate portion and the article when the former penetrates therebelow, the belt is not secured to the plate portion, and as the plate portion moves below the article there is relative sliding movement between the belt and the plate portion and substantially no relative sliding movement between the sandwiched portion of the belt and the article, and
a second first part (8, 8', 42, 42') is provided, and in use the plate portion is moved towards the second first part when an article which is to be lifted up from the support surface is located between the plate portion and the second first part,
wherein the second first part (8, 8', 42, 42') is similar to the first part also having a flexible belt (9, 9', 40) wrapped around the plate portion thereof and the second first part is positioned relative to the first part so that in use the two plates move in the same plane but always in opposite directions, towards each other to penetrate below an article, and away from each other to disengage therefrom".

Additional amended auxiliary request

"1. A pick and place device for picking up and re-positioning an article carried by a support surface, comprising:

a first part (64, 64'), and
a belt of flexible material (40),
characterised in that the first part includes a plate portion which is movable parallel to the support surface so that a leading edge thereof penetrates below the article, between the article and the support surface,

the belt is wrapped around at least the leading edge of the plate portion so that it is sandwiched between the plate portion and the article when the former penetrates therebelow and as the plate portion moves below the article there is substantially no relative sliding movement between the sandwiched portion of the belt and the article,

the plate portion constitutes a thin curved plate, two first parts (64, 64') are provided, one on each side of an article support surface, the two parts being movable as a unit up and down relative to the surface and the belt extends below the plate portions of the two first parts to protrude from below the leading edge of each plate portion and extend from one plate portion to the other, whereby in use the device is lowered over an article on the support surface so that the belt overlies and partially enwraps the article, and thereafter the plate portions are moved towards one another so as to more completely enwrap the article as the plate portions penetrate therebelow, and the flexible belt is connected to second parts (61, 61') after passing over rollers (62, 62') located on respective first parts (64, 64'), such that relative

movement of the first parts (64, 64') and their respective second parts (61, 61') determines the length of belt between the leading edges of the first parts".

VI. The appellant's arguments insofar as relevant for the decision can be summarised as follows:

Claim 1 according to the main request - prohibition of reformatio in peius

The deletion of the causal relationship between the friction forces between the article and the belt and the pushing of the article against the stop in claim 1 according to the main request broadens the subject-matter of said claim over claim 1 of the patent as upheld by the opposition division, contrary to the prohibition of *reformatio in peius*. The amendment in claim 1 of the main request, consisting in this deletion and the introduction of a new causal relationship between said friction forces and the lifting of the article off the support, does not comply with any of the three allowable exceptions listed in G 1/99 (OJ EPO 2001, 381).

Admissibility of the respondent's auxiliary requests filed during the oral proceedings

The respondent's auxiliary requests filed for the first time during the oral proceedings should not be admitted into the proceedings, since they are late filed. Such a piecemeal approach should not be allowed.

Claim 1 according to the new auxiliary request - amendments, Article 123(2) EPC

The introduction of the feature "wherever the belt is in contact with the plate portion" into claim 1 of the new auxiliary request violates the requirements of Article 123(2) EPC.

Claim 1 according to the amended auxiliary request - prohibition of reformatio in peius

The amendment in claim 1 of the amended auxiliary request consisting in the **deletion** of the feature "due to friction forces between the article and the belt" **and** the **introduction** of the feature "the belt is not secured to the plate portion" violates the prohibition of *reformatio in peius* and does not comply with any of the three allowable exceptions listed in G 1/99 (*supra*).

Claim 1 of the additional amended auxiliary request - amendments, Article 123(2) EPC

The feature in claim 1 of the additional amended auxiliary request that "the flexible belt is connected to second parts (61, 61') after passing over rollers (62, 62') located on respective first parts (64, 64'), such that relative movement of the first parts (64, 64') and their respective second parts (61, 61') determines the length of belt between the leading edges of the first parts" violates the requirements of Article 123(2) EPC.

VII. The respondent's arguments insofar as relevant for the decision can summarised as follows:

Claim 1 according to the main request - prohibition of reformatio in peius

The amendment in claim 1 according to the main request clarifies that the friction forces between the article and the belt cause the lifting of the article off the support surface. Said amendment falls under the first exception listed in G 1/99 (*supra*) and is thus allowable.

The skilled person inevitably understands from the originally filed application that the friction forces act also in the vertical direction. In addition to that, in the last paragraph of page 1 is mentioned the transport of thin slices of meat or fish. This makes obvious that said thin slices are lifted off the support surface due to vertically acting friction forces.

Admissibility of the respondent's auxiliary requests filed during the oral proceedings

Given the fact that all independent claims of the respondent's auxiliary requests formed part of the main request filed with its submissions of 2 April 2014, that the appellant had had the possibility to comment on said independent claims, and also that these independent claims do not raise issues which the Board or the appellant cannot reasonably be expected to deal with without an adjournment of the oral proceedings, said requests should be admitted.

Claim 1 according to the new auxiliary request - amendments, Article 123(2) EPC

An implicit disclosure of the feature "wherever the belt is in contact with the plate portion" is to be found in claim 3 as originally filed and in figures 1 to 43. The configurations of these figures make it immediately apparent to the person skilled in the art that the relative sliding movement between the belt and the plate portion inevitably occurs "wherever the belt is in contact with the plate portion".

Claim 1 according to the amended auxiliary request - prohibition of reformatio in peius

The restricting feature that the belt is not secured to the plate portion, is introduced into claim 1. Said feature narrows the subject-matter of said claim by excluding gripper assemblies as depicted in figures 44 to 50.

Claim 1 of the additional amended auxiliary request - amendments, Article 123(2) EPC

Claim 1 is a combination of the originally filed claims 1, 15 and 22 together with the paragraph bridging pages 13 and 14 of the originally filed description. The functional features on page 14 of that description, in particular the slack state of the belt, are not to be seen as limiting features for the device and thus they do not need to be taken up into the claim.

Reasons for the Decision

1. *Claim 1 of the main request - prohibition of reformatio in peius*
- 1.1 The opponent is the sole appellant against the interlocutory decision of the opposition division to maintain the patent in amended form. As ruled in G 9/92 and G 4/93 (OJ EPO 1994, 875, see Headnote II and Reasons, points 15 and 16), under these circumstances the patent proprietor is primarily restricted during the appeal proceedings to defending his patent in the form in which it was maintained by the opposition division. In particular, the patent proprietor is not permitted to improve his position to the detriment of the opponent and sole appellant.
- 1.2 Claim 1 of the patent as upheld had the added limitation "wherein an article will be pushed against the stop **due to friction forces between the article and the belt** as the plate portion penetrates therebelow" (emphasis added by the Board). As a reaction to the Board's communication annexed to the summons to oral proceedings the respondent filed with its submissions of 2 April 2014 a new main request with *inter alia* an amended independent claim 1. Claim 1 according to said main request differs from claim 1 as upheld by the opposition division in that the above mechanism for pushing the article against the stop, i.e. the friction forces between the article and the belt, has been deleted and in that the feature "and wherein, at the leading edge of the plate portion, the movement of the belt is in an upward sense relative to the article, which therefore tends to lift the article off the support surface **due to friction forces between the article and the belt** and thus assists the plate

portion to get underneath the article" (emphasis added by the Board) has been introduced into said claim.

1.3 Accordingly, claim 1 of the present main request is of broader scope since said causal relationship between the said friction forces and the pushing of the article against the stop is no longer present in said claim. It is also not substituted (in the same or a more limited form) by the introduced features. As a consequence, claim 1 of the main request now covers the possibility of pushing the article against the stop by means different from the above-mentioned friction forces, which it did not cover before. This results in an improvement of the proprietor's position putting the opponent and sole appellant in a worse situation than if he had not appealed, contrary to the prohibition of *reformatio in peius*.

1.4 However, an exception to this principle may be made according to G 1/99 (*supra*, see Headnote) in order to meet an objection put forward by the opponent/appellant or the Board during the appeal proceedings in circumstances where the patent maintained in amended form would otherwise have to be revoked as a direct consequence of an inadmissible amendment held allowable by the opposition division. Such an objection has been raised in the present case. In such circumstances, in order to overcome the deficiency, the patent proprietor/respondent may be allowed to file requests in the form defined and following the order specified in G 1/99 (*supra*). Decision G 1/99 is limited to the situation that the opponent/appellant would be in a worse situation because the offending amendment would have to be deleted, broadening again the subject-matter of the claim, see reasons, point 2.3 and also T 1033/08, not published, see reasons, point 3.

However, none of the exceptions can be applied to the main request, for the following reasons.

- 1.5 An allowable amendment according to the first exception is the **deletion of the offending amendment** and the **introduction of one or more originally disclosed features** which **limit the scope** of the patent as amended. According to the respondent, its main request complies with the first exception.

The Board cannot agree, because the required limitation of the scope of the patent as amended can only be achieved if the introduced features relate to the same features that caused the objection. That is not the case here; the friction forces between the article and the belt, which caused the article to be pushed against the stop, have now the effect of pushing up an article.

- 1.6 The second possibility is the **deletion of the offending amendment** and the introduction of **one or more originally disclosed features** which extend the scope of the patent as maintained, but within the limits of Article 123(3) EPC, which is the case with the main request. However, for the Board the condition is that the introduced features are **originally disclosed in the same context** as the remainder of the claim.

As argued by the appellant at the oral proceedings, that condition is not fulfilled with this request, in which claim 1 is directed to the movement of the article against the stop. The features now introduced are taken from page 8 of the originally filed description, relating to figures 1 to 8. This part has no relationship whatsoever with the functioning of the stop against which the article is pushed. Figures 1 to 7 and their description have no mention of a stop and

the stop in figure 8 is one above the article, which has nothing to do with the claimed movement parallel ("sideways") with the support surface towards the stop. In this respect the passage at the bottom of page 9 mentioning that this vertically operating stop can also be applied to the other embodiment cannot help either.

Finally, the introduced features would require the articles to be on raised ribs to assist the plate portion to move under the article, which is in fact the feature that is disclosed in connection with the stop. However, this feature is not comprised in claim 1. The result of the above analysis is that the introduced features in the present context lack basis in the application as originally filed (Article 123(2) EPC).

1.7 The third possibility, which allows the **deletion of the offending amendment**, is not applicable to this request.

1.8 The respondent argues that it is obvious to the skilled person from the last paragraph on page 1 and the fourth paragraph of page 8 of the originally filed description that the device according to the present invention is used for picking up thin slices of meat or fish and that the friction forces at the leading edge of the plate portion between said thin slices and the belt cause the lifting of said slices off the support surface.

However, this argument cannot help the respondent, since it does not answer the issue which determines the Board's position as set out in point 1.6 above. This is all the more so taking account of the fact that a stop does not appear to have any effect in picking up thin slices of meat or fish. When pushing the article lying

on a support surface against a stop, this is according to the description always in a direction parallel to said support surface, see figures 16 to 43. This will not work with thin slices of meat or fish, which will crumple up against the stop. The lifting of the article off the support surface, i.e. the movement of the article in a direction perpendicular to said surface has no relationship with the movement against the stop.

1.9 From the above it follows that the main request does not fulfil the conditions for an exception to the prohibition of *reformatio in peius* as specified in G 1/99 (*supra*). As a consequence, the main request is refused.

2. *Admissibility of the respondent's auxiliary requests filed during the oral proceedings*

2.1 The patent in suit was upheld by the opposition division on the basis of the then auxiliary request 1B, said request having three independent device claims 1, 2, 18 and three corresponding independent method claims 16, 17 and 20. The decision stated that each pair of independent claims (1 + 16, 2 + 17 and 18 + 20) fulfilled the requirements of Article 123 EPC.

2.2 The appellant presented in its statement setting out the grounds of appeal arguments against the allowability of said request based on Article 123(2) EPC only in respect of the method claims 16, 17 and 20. The respondent answered these objections in its reply to the appeal, the appellant added further Article 123(2) EPC objections against claims 18 and 20 in its letter of 9 April 2014, the respondent replied also to

these objections.

2.3 Also the Board addressed the Article 123 EPC objections against all independent claims in its annex to the summons to oral proceedings.

2.4 At the start of the oral proceedings the respondent stated that, although it had not submitted further requests during the written proceedings in consideration of procedural efficiency, it intended, depending on the outcome of the discussion of the first pair of independent claims, to file such requests based on the remaining pairs of independent claims. If the second pair would not survive the discussion, the next auxiliary request would be one for only the third pair of independent claims. These should be possible since said claims were in any case already in the proceedings.

The appellant objected to this piecemeal approach and argued that it was also unfair on the appellant.

2.5 Considering that the issue of the entire oral proceedings was exclusively one of Article 123(2) EPC, that all independent claims had been objected to in this respect either individually or in pairs, and that the parties as well as the Board were prepared for this discussion, the Board decided to admit the filing of such requests. This applies to the following "new auxiliary request" and the "additional amended request". In view of the final result of this decision, this approach was, apart from a longer duration of the oral proceedings, not detrimental to the interests of the appellant.

- 2.6 The "amended auxiliary request" was admitted as it mainly brought the existing auxiliary request, filed with letter of 2 April 2014, into the same format (2 pairs of independent claims) as the "new auxiliary request". The latter was discussed at the oral proceedings before the "amended auxiliary request".
3. *Claim 1 of the new auxiliary request - Amendments, Article 123(2) EPC*
- 3.1 Claim 1 of the new auxiliary request is identical with claim 2 of the patent as upheld by the opposition division, said last being in turn based inter alia on the combination of claims 1, 2, 8 and part of claim 6 of the patent as granted together with the following feature added in opposition:
"[there is] relative sliding movement between the belt and the plate portion **wherever the belt is in contact with the plate portion**" (emphasis added by the Board).
- 3.2 It is undisputed that for this additional feature and especially its second part concerning the belt being in contact with the plate portion, no direct textual basis can be found in the application as originally filed. For the respondent said feature was implicitly disclosed therein, having as basis claims 1 and 3 and figures 1 to 43.
- 3.3 The Board, following the respondent's argument, recognises that claim 3 discloses that there is a sliding movement between the belt and the plate portion when the plate portion is **withdrawn** from below the article. However, according to claim 3 this is limited to the belt being **in tension around the plate**. This feature is missing in claim 1. Original claim 1 only mentions that there is no relative sliding movement

between the belt and the article when the plate moves below the article, but nothing about a relative sliding movement in that case.

- 3.4 The figures 1 to 43 of the specific pick and place devices are by their very nature "snapshots", thus cannot help much in order to determine which type of movement actually takes place.

However, even if these figures are considered to disclose such a sliding movement, the amended feature is, as argued by the appellant, based on the singling out of only some features of these figures, whereas the sliding movement clearly depends on more features.

This is primarily the feature of the belt being in tension around the plate, see point 3.3 above. This requires the belt 9, 29 to be anchored at its one end on a vertical arm 3, 24 of a second block 2, 15 and fixed at its other end to one end of a spring 10, 28 the other end of which is anchored to a first block 6, 22, said spring maintaining the tension in the belt. With the devices depicted in figures 9 to 15, 23 to 29 and 30 to 43 the flexible belt 9, 32 is wrapped completely around the plate 8, 33 and both ends of the flexible belt are anchored on a single point (19) near the lower end of a vertical arm 3, 36 of a second block 2, 37. If and how the belt is tensioned around the plate cannot be derived from these figures.

The Board establishes therefore that none of said specific structural features are present in claim 1 of the new auxiliary request.

- 3.5 According to the established case law of the Boards of Appeal, it is normally not allowable to base an amended

claim on the extraction of isolated features from a set of features originally disclosed only in a structural and/or functional combination with other features. Such an amendment results in an inadmissible intermediate generalisation, see Case Law of the Boards of Appeal, 7th edition 2013, II.E.1.2, third paragraph. As explained in points 3.3 and 3.4 above, that is the case here.

4. *Claim 1 according to the amended auxiliary request - prohibition of reformatio in peius*
- 4.1 Independent claim 1 according to the amended auxiliary request differs from independent claim 2 as upheld by the opposition division in that the feature "wherever the belt is in contact with the plate portion" has been deleted and in that the feature "the belt is not secured to the plate portion" has been introduced into claim 1.
- 4.2 Accordingly, this restriction in claim 2 as upheld by the opposition division on the feature that at every contact point between the belt and the plate portion a relative sliding movement between the belt and the plate portion takes place is no longer present. Hence, the subject-matter of said claim is in this respect broader than that of claim 2 as upheld by the opposition division. The deletion of the above-mentioned restriction is also not compensated by the introduced feature "the belt is not secured to the plate portion", since this has nothing to do with the relative sliding movement. This puts the opponent and sole appellant in a worse situation than if he had not appealed, contrary to the prohibition of *reformatio in peius*.

4.3 G 1/99 (*supra*) provides for exceptions to this principle, see point 1.4 above. However, none of the possibilities developed in G 1/99 (*supra*) apply to the amended auxiliary request, for the following reasons.

4.4 As stated under point 4.1 above the amendment in claim 1 of the amended auxiliary request consists in the **deletion** of the feature "wherever the belt is in contact with the plate portion" **and the introduction** of the feature "the belt is not secured to the plate portion" into said claim.

As discussed in point 4.2 above, the first possibility offered by G 1/99 (*supra*) to replace the offending feature by a further limiting feature or by adding further limiting features cannot apply, because the deleted and introduced features have no relationship that can have this limiting effect.

The situation here is comparable to the one discussed in point 1.6 above: the added feature "the belt is not secured to the plate portion" needed to have been originally disclosed, more particularly in this form only.

4.5 As argued by the appellant at the oral proceedings, that condition is not fulfilled. As soon as there is an issue of the belt being expressly not secured, the question arises of how the belt is then arranged, since it cannot just float in the air.

In that respect the same argumentation as for the previous request applies. If the belt is not secured to the plate portion, thus excluding the embodiments of figures 44 to 50, it is secured to the vertical arms 3, 24 of a second block 2, 25 on its one end and on its

other end via a spring 10, 28 to a first block 6, 22. Another securing of the belt is achieved by fixing both its ends to a vertical arm 36 and a third block 37.

Not only for the sake of clarity, but also in order to provide sufficient basis for the amendment, such fixations would have been required as features of claim 1.

The result of the above is that the introduced features have been isolated from the context in which they were originally disclosed in the figures, leading to an inadmissible intermediate generalisation, contrary to Article 123(2) EPC.

4.6 From the above reasoning it is clear that the absence or presence of the phrase "wherever the belt is in contact with the plate portion" does not make any difference for the conclusion reached.

4.7 The third possibility offered by G 1/99 (*supra*) is not applicable for this request.

5. *Claim 1 of the additional amended auxiliary request - amendments, Article 123(2) EPC*

5.1 Claim 1 of the additional amended auxiliary request being identical with claim 18 as upheld by the opposition division is based *inter alia* on the combination of claim 1 as granted with the subject-matter of originally filed claims 15 and 22, together with the feature added in the opposition proceedings: the flexible belt is connected to second parts after passing over rollers located on respective first parts, such that relative movement of the first parts and their respective second parts determines the length of

belt between the leading edges of the first parts.

For this feature, the impugned decision refers to figures 51 to 55 and the respondent refers to pages 13 and 14 of the description as filed.

5.2 Textual basis for this added feature is to be found in the paragraph bridging pages 13 and 14 of the originally filed application. It is undisputed that this feature is one of the features of the gripper assembly as depicted in figures 51 to 55. It is further undisputed that the added feature is a functional or process feature defining that the determination of the length of the belt between the leading edges of the first parts is achieved via the relative movement of the first parts in their respective second parts.

5.3 As discussed at the oral proceedings, according to the description on page 14 of how the length of the belt between the leading edges is used to pick and place an article, it is imperative for the ability of the gripper assembly depicted in figures 51 to 55 to pick up and subsequently envelop an article, that the belt be in a slack state at the beginning of the gripping process. This requires not only the presence of the above-mentioned added feature but also of the feature that the gripper assembly has a mirrored structure as well as the capability to take a first outer position at which the first and second parts are positioned away from the centre with the belt in a slack state and to move then towards the centre to a second inner position, with first and second parts maintaining the same relative distance between each other. All of these features have a clear functional relationship with each other and are inextricably linked.

5.4 The Board notes that none of these features of the gripper assembly are present in claim 1 of the additional amended auxiliary request. The added feature therefore has been isolated from its original context, leading to an inadmissible intermediate generalisation. The established case law of the Boards of Appeal on this issue, see Case Law of the Boards of Appeal, 7th edition 2013, II.E.1.2, third paragraph, is therefore applicable.

The additional amended auxiliary request is for the above-mentioned reasons not allowable.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:



G. Nachtigall

H. Meinders

Decision electronically authenticated