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**Datasheet for the decision
of 10 March 2015**

Case Number: T 1958/12 - 3.2.07

Application Number: 06019294.5

Publication Number: 1775240

IPC: B65G1/04

Language of the proceedings: EN

Title of invention:

Article transporting facility and method of controlling the facility

Patent Proprietor:

DAIFUKU CO., LTD.

Opponent:

viastore systems GmbH

Headword:

Relevant legal provisions:

EPC Art. 56, 54
RPBA Art. 13(3), 13(1)

Keyword:

novelty - main request (yes)
inventive step -
main request (no), second auxiliary request (yes)
late filed request - admitted (second auxiliary request)

Decisions cited:

Catchword:



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Chambres de recours**

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Case Number: T 1958/12 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 10 March 2015

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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
4 July 2012 concerning maintenance of the
European Patent No. 1775240 in amended form.**

Composition of the Board:

Chairman H. Meinders
Members: K. Poalas
I. Beckedorf

Summary of Facts and Submissions

- I. The appellant (opponent) lodged an appeal against the interlocutory decision of the Opposition Division maintaining European patent No. 1 775 240 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) and on Article 100(b) EPC (insufficient disclosure).
- III. The opposition division found that the patent with the subject-matters of the claims 1 to 16 filed with telefax on 6 October 2010 meets the requirements of the EPC.
- IV. Oral proceedings took place before the Board on 10 March 2015.
 - a) The appellant requested that the decision under appeal be set aside and that the European patent No. 1 775 240 be revoked.
 - b) The respondent (patent proprietor) requested that the appeal be dismissed (main request) or, that in setting aside the decision under appeal the patent be maintained in amended form on the basis of the set of claims filed as second auxiliary request during the oral proceedings.
- V. The following document of the opposition proceedings is referred to in the present decision:

D2: US 2005/0080524 A1.

VI. Independent claims 1 and 9 according to the **main request** (said claims being identical with claims 1 and 9 of the patent as granted; the amendments carried out concerned only claims 8 and 16) read as follows:

"1. An article transporting facility with:
a single predetermined path (2) disposed along a plurality of article transfer locations (1a, 1b, 1c, 1d, 1e) and having a first end and a second end; a predetermined number of article transporting carriages (3a, 3b) traveling on the predetermined path (2);
controlling means (14) for controlling traveling of the predetermined number of article transporting carriages (3a, 3b);

wherein based on article transport request information for transporting an article (20) from an original article transfer location (A1-R1) to a destination article transfer location (A2-R2) among the plurality of article transfer locations, the controlling means (14) controls the traveling of the transporting carriages (3a, 3b) such that the controller selects an article transporting carriage (3a) from the plurality of article transporting carriages (3a, 3b) for causing the selected carriage to transfer the article from the original article transfer location to the destination article transfer location;

characterized in that

when a multiple request condition exists wherein a plurality of transport request information designating a same single article transfer location (A1-R1) as the original article transfer location are issued, the controlling means (14) executes a multiple carriage selecting mode wherein the controlling means selects a plurality of article transporting carriages (3a, 3b) from the predetermined number of article transporting carriages for article transport".

"9. A method of controlling an article transporting facility having a single predetermined path (2) disposed along a plurality of article transfer locations (1a, 1b, 1c, 1d, 1e) and having a first end and a second end, a predetermined number of article transporting carriages (3a, 3b) traveling on the predetermined path (2) and controlling means (14) for controlling traveling of the predetermined number of article transporting carriages (3a, 3b); wherein based on article transport request information for transporting an article (20) from an original article transfer location (A1-R1) to a destination article transfer location (A2-R2) among the plurality of article transfer locations, the traveling of the transporting carriages is controlled such that an article transporting carriage (3a) from the plurality of article transporting carriages (3a, 3b) is selected to transfer the article from the original article transfer location to the destination article transfer location; characterized by the step of: executing a multiple carriage selecting mode wherein the controlling means (14) selects a plurality of article transporting carriages (3a, 3b) from the predetermined number of article transporting carriages for article transport when a multiple request condition exists wherein a plurality of transport request information designating a same single article transfer location (A1-R1) as the original article transfer location are issued".

Claim 1 of the **second auxiliary request** has, with respect to claim 1 of the main request, the additional features:

"and in that in said multiple carriage selecting mode,

said controlling means (14) selects, from the predetermined number of article transporting carriages (3a, 3b), the plurality of article transporting carriages for the respective plurality of transport request information, based on positional relationship of the plurality of destination article transfer locations (A2-R2) of the plurality of transport request information relative to the original article transfer location (A1-R1) along the length of said predetermined path (2), and in that in said multiple carriage selection mode, if all of the transport destination transfer locations (A2-R2) of the plurality of transport request information are located on a same side relative to the original article transfer location (A1-R1), said controlling means (14) selects the plurality of article transporting carriages (3a, 3b) for the respective plurality of transport request information, in such a manner that the positional order of the plurality of original article transfer locations along the length of the predetermined path (2) agrees with the positional order of the plurality of article transporting carriages".

Claim 7 of the **second auxiliary request** has, with respect to claim 9 of the main request, the additional features:

"and in that the step of executing the multiple carriage selecting mode includes selecting, from the predetermined number of article transporting carriages (3a, 3b), the plurality of article transporting carriages for the respective plurality of transport request information, based on positional relationship of the plurality of destination article transfer locations (A2-R2) of the plurality of transport request

information relative to the original article transfer location (A1-R1) along the length of said predetermined path (2),
and in that the step of executing the multiple carriage selecting mode includes, if all of the transport destination transfer locations (A2-R2) of the plurality of transport request information are located on a same side relative to the original article transfer location (A1-R1), selecting the plurality of article transporting carriages (3a, 3b) for the respective plurality of transport request information, in such a manner that the positional order of the plurality of original article transfer locations along the length of the predetermined path (2) agrees with the positional order of the plurality of article transporting carriages".

VII. The arguments of the appellant can be summarised as follows:

Claim 1 - main request - novelty, Articles 52(1) and 54 EPC

Paragraph [0015] of D2 mentions a single guide path and figure 1 of D2 shows also a single guide path having a first end and a second end.

D2 discloses a multiple request condition and a multiple carriage selecting mode as claimed in claim 1.

D2 does not exclude that a plurality of article transporting carriages (ATC = automated guided vehicles (AGVs)) services a multiple request condition as claimed by the patent in suit, wherein a same single article transfer location is designated as the original article transfer location, and the controlling means

selects the plurality of transporting carriages from the predetermined number of transporting carriages for the transport to transfer the articles from the original article transfer location to a destination article transfer location.

The "multiple carriage selecting mode" claimed in claim 1 is obviously a subset of a general mode of transporting multiple articles from different original locations to different destination locations via multiple ATCs. Such a "multiple carriage selecting mode" occurs inevitably during the functioning of the article transport facility over time. In such a case the controlling means of the facility known from D2 also executes a multiple carriage selecting mode wherein the controlling means selects a plurality of ATCs. Thus the above-mentioned specific multiple carriage selecting code is implicitly disclosed in D2.

This is in accordance with paragraphs [0010], [0042] and [0043] of the patent in suit stating that a multiple selection condition occurs a plurality of times during the day life of a conventional article transporting facility.

Claim 1 - main request - inventive step, Articles 52(1) and 56 EPC

In an article transport facility there is normally a path with a plurality of article transfer locations disposed along its length. It has either the form of an endless loop or it has an elongated extension with two distinct ends. Accordingly, when the person skilled in the art selects, depending on the circumstances, one out of said two available path configurations, there is no need for the exercise of an inventive activity.

According to paragraph [0015] and claims 1 and 5 of D2 the information concerning the working locations of the ATCs is read and registered in the host computer.

During the operational time of a conventional article transporting facility as the one known from D2 it occurs that a plurality of transport request information designating a same single article transfer location as the original article transfer location is issued and that thus a multiple request condition is automatically the result.

In D2 a plurality of ATCs is not only selected but also controlled so that the ATCs can be operated on a single path without collisions, see claims 1 and 5 and paragraphs [0007], [0012], [0014] and [0015].

The controlling means assigning work to the ATCs is configured so that if a plurality of ATCs is assigned the same kind of work, the ATC having a shorter distance from its current location to the working location is considered to have a lower priority of concession and thus to start moving first, see paragraph [0035].

The aim of D2 is the reduction of the conveying time by simultaneously moving ATCs to working locations without interfering with each other, see paragraph [0012].

When the above-mentioned multiple request condition exists it is obvious to the person skilled in the art that it has to group the transport request information designating a same single article transfer location as the original article transfer location and to select for said grouped requests a plurality of article

transporting carriages, avoiding thereby the same article transporting carriage moving to-and-fro when carriage selection takes place depending on the calculated concession value Y, see paragraphs [0031] to [0036] of D2.

Every article transporting facility using a plurality of ATCs, independently of whether said ATCs are grouped, has obviously a collision avoiding strategy like the one described in paragraphs [0040] to [0045] of D2. Otherwise the system would not work.

Claim 9 - main request - novelty and inventive step, Articles 52(1), 54 and 56 EPC

The above-stated for claim 1 according to the main request is applicable *mutatis mutandis* to claim 9 according to the main request.

Admissibility of the late filed second auxiliary request - Article 13(1) and (3) RPBA

The second auxiliary request was filed towards the end of the oral proceedings and is therefore late filed. The respondent should have been prepared that the Board might find that the subject-matters of the independent claims of its main and first auxiliary requests do not involve an inventive step and should therefore have filed its second auxiliary request well in advance before the oral proceedings.

The wording of the characterising features of the independent claims 1 and 7 of the second auxiliary request is *prima facie* misleading and thus said claims are not *prima facie* allowable.

Claims 1 and 7 - second auxiliary request - inventive step, Articles 52(1) and 56 EPC

No arguments were put forward by the appellant against inventive step of the subject-matter of claims 1 and 7 according to the second auxiliary request. It stated that it was not clear how the arrangement of said requests was expected to work, as the wording of claims 3 and 11 of the patent as granted, i.e. of the independent claims 1 and 7 of the second auxiliary request, led the appellant to believe that the controlling means selects the plurality of ATCs for the respective plurality of transport request information in such a manner that the **positional order** of the plurality of the **destination** article transfer **locations** and **not** of the **original** article transfer **locations** along the length of the predetermined path.

VIII. The respondent argued essentially as follows:

Claim 1 - main request - novelty, Articles 52(1) and 54 EPC

Presence of a single predetermined path having "a first end and a second end" in the facility of D2

In paragraph [0015] of D2 is stated that the automated guided vehicle control system described therein includes a plurality of automated guided vehicles operated on a single path. Figure 1 of D2 shows only a part of this single path. Thus the disclosure of D2 is any type of a single path without specified ends, which also could be of loop geometry or even a path with multiple destinations.

It cannot therefore be directly and unambiguously

inferred from the disclosure of D2 that D2 concerns "a single path having a first and a second end".

Presence of "a multiple request condition" in D2

D2 refers in paragraph [0015] to only one ATC that services the one predetermined original article transfer location to move articles from that location to a predetermined destination article transfer location according to the conveyance request, whereby the system of D2 at the same time is able to control movements of other ATCs moving to different destination locations.

D2 is totally silent about under what condition and under which rule the one ATC is selected when there is a conveyance request, besides that the ATC is waiting for work.

In particular, D2 is silent about a multiple request condition, wherein a plurality of conveyance requests is issued designating a same single article transfer location as the original article transfer location.

D2 is also silent about any rule to execute a multiple carriage selecting mode, whereby the controlling means selects a plurality of transporting carriages from the predetermined number of transporting carriages for the article transport from the same single article transfer location.

D2 thus does not mention a "multiple request condition" as claimed in claim 1.

Claim 1 - main request - inventive step, Articles 52(1) and 56 EPC

No hint exists in D2 for a single guide path having a first end and the second end.

Through the characterising features of claim 1 the commissioning quality of the article transporting facility known from D2 is improved.

The teaching of D2 is directed to selecting one ATC after the other, it would not group the transport request information according to the characterising part of claim 1, since it has no information or pointer in that direction.

According to paragraph [0015] of D2 the reading of information on current locations and working locations of the ATCs takes place only if there are ATCs moving to a working location.

The skilled person when providing the characterising features of claim 1 into the article transporting facility of D2 would have to cancel the request condition already sent to the first ATC and group it into a multiple request condition.

"Same type of work" according to paragraph [0035] of D2 may mean that the ATCs are assigned the same loading or unloading work and not inevitably that they are assigned to the same original article transfer location.

According to paragraphs [0040] to [0045] of D2 there are three safety aspects which have to be respected:

a) keeping a predetermined distance between the carriages,

- b) the moving directions of the carriages are not interfering with each other,
- c) performing the maximal approach between carriages when spontaneous movements of ATCs to the working locations are impossible.

It is very complicated to respect this condition when there is a selection of plurality of ATCs and not of only two as it is the case in D2.

Claim 9 - main request - novelty and inventive step, Articles 52(1), 54 and 56 EPC

The above-stated for claim 1 according to the main request is applicable *mutatis mutandis* to claim 9 according to the main request.

Admissibility of the late filed second auxiliary request - Article 13(1) and (3) RPBA

The filing of the second auxiliary request was the respondent's reaction to the Board's finding during the oral proceedings that the subject-matter of the independent claims of its previous requests does not involve an inventive step.

Independent claims 1 and 7 are based on the combination of the claims 1, 2 and 3 and 9, 10 and 11 respectively of the patent as granted.

These claims are *prima facie* allowable, since their characterising features specify further the selecting mode for the plurality of ATCs by interrelating the positional order of the plurality of original article transfer locations along the length of the predetermined path with the positional order for the

plurality of ATCs.

No hint can be found in D2 for the application of such a selection mode.

*Claim 1 - second auxiliary request - inventive step,
Articles 52(1) and 56 EPC*

The last features of claim 1 of the second auxiliary request define a further selecting condition for the plurality of ATCs, namely that in the multiple carriage selection mode, if all of the transport destination transfer locations of the plurality of transport request information are located on a same side relative to the original article transfer location, the controlling means selects the plurality of article transporting carriages for the respective plurality of transport request information, in such a manner that the positional order of the plurality of original article transfer locations along the length of the predetermined path agrees with the positional order of the plurality of article transporting carriages.

Said further selecting condition for the plurality of ATCs allows the overall travel time of the ATCs to the original article transfer locations to be reduced and collisions between the ATCs to be avoided.

No hint can be found in D2 towards such a selection mode for the ATCs.

*Claim 7 - second auxiliary request - inventive step,
Articles 52(1) and 56 EPC*

The arguments presented above in respect with claim 1 according to the second auxiliary request are *mutatis*

mutandis applicable to claim 7 according to the second auxiliary request.

Reasons for the Decision

1. *Claim 1 - main request - novelty, Article 54 EPC*
- 1.1 *Presence of a single predetermined path "having a first end and a second end" in D2*
 - 1.1.1 The Board considers that figure 1 of D2 shows only a part of a single guide path without any specified ends. The description and claims of D2 do not specify this path any further.
 - 1.1.2 Even if, for the sake of argument, the Board would follow the appellant's argument that in an article transport facility there is normally a single path along which a plurality of article transfer locations is disposed, which has either the form of a loop or the form of a path having two distinct ends, the Board notes that it is established jurisprudence of the Boards of Appeal that such a disclosure with only two possibilities of its execution is not a direct and unambiguous disclosure of one of them, see Case Law of the Boards of Appeal, 7th edition 2013, I.C.4.2.6.
 - 1.1.3 From the above it follows that D2 does not disclose a single predetermined path "having a first end and a second end".
- 1.2 *Characterising features of claim 1*

1.2.1 The Board considers further that D2 does not disclose the claimed controlling means which execute a multiple carriage selecting mode, i.e. selection of a plurality of article transporting carriages from the predetermined number of article transporting carriages for article transport, when a multiple transport condition exists wherein a plurality of transport request information designating the same single article transfer location as the original article transfer location are issued.

1.2.2 The appellant's argument that a multiple carriage selecting mode under the conditions mentioned in claim 1 may also occur in the transporting system known from D2 during any period of time (since the duration of operation is not claimed), refers to a "possible", i.e. "accidental" carriage selecting mode to be executed by the controlling means of D2.

1.2.3 In the absence of any specific information in D2 in this respect the controlling means of D2 are obviously not configured to execute such a multiple carriage selecting mode according to claim 1 depending on the presence or absence of a plurality of transport request information designating the same single article transfer location.

1.3 Accordingly, the subject-matter of claim 1 of the main request is novel over the facility of D2 (Articles 52(1) and 54 EPC).

2. *Claim 1 - main request - inventive step, Article 56 EPC*

2.1 According to point 1 above, the article transport facility according to claim 1 differs from the one

known from D2 by

a) the feature that the single predetermined path along which a plurality of article transfer locations is disposed has a first end and a second end and by

b) the features of the characterising part of claim 1.

2.2 As far as it concerns the above-mentioned differentiating feature a) the Board follows the appellant arguing that in an article transport facility there is normally a guide path along which a plurality of article transfer locations are disposed which normally has either the form of an endless loop or the form of elongated path having two distinct ends. Accordingly, when the person skilled in the art selects, depending on the circumstances, one out of said two available path configurations, there is no need for the exercise of an inventive activity.

The argument of the respondent that in the absence of any explicit formation in D2 on the specific form of the path the skilled person would not be inclined to choose said specific path configuration therefore cannot hold. In any case, the Board cannot distinguish a hitherto unknown technical effect for the choice of the claimed solution. In the present case no such technical effect was argued by the respondent.

2.2.1 For the above-mentioned reasons, the Board considers that incorporating feature a) into the facility of D2 does not involve an inventive step.

2.3 According to the characterising features of claim 1 a controlling means is provided, which, depending on the existence of a plurality of transport request

information designating the same single article transfer location, executes a multiple carriage selecting mode by selecting a plurality of ATCs from the predetermined number of ATCs for article transport.

- 2.3.1 The respondent argues that the technical effect of these differentiating features over the transporting system known from D2 is a better utilisation of the plurality of transporting system's carriages, improving thereby the capacity of said transporting system, see paragraphs [0007], [0008], [0011], [0012] and [0013] of the patent as granted.
- 2.3.2 The problem solved by said differentiating features can therefore be seen in improving the utilisation of the plurality of ATCs.
- 2.3.3 The Board considers that since D2 employs a plurality of ATCs, see claims 1 and 5 of D2, the system possesses already the capability to send different carriages to the same single article transfer location, since simultaneous movements are possible in the facility of D2, see paragraph [0015].
- 2.3.4 Claim 1 does not specify whether the multiple request condition is established only if such requests follow each other in immediate time sequence or whether such requests are stored first and only from the stored data requests for the same single article transfer location are grouped to form together a multiple request.
- 2.3.5 That being the case, the problem can therefore be seen in a less ambitious perspective for the situation that two consecutive request conditions for the same original transfer location exist, namely: instead of moving one article transporting carriage back and

forwards over the path a number of times in respect of that same article transfer location (which means occupying the single transfer path for an unnecessary long time), one sends two article transporting carriages at the same time.

- 2.3.6 The question is whether such adaptation of the control program requires inventive skills.
- 2.3.7 The Board follows the appellant arguing that during the operation of a conventional article transport facility as the one known from D2 it inevitably occurs that at least two subsequent transport request information designating the same single article transfer location are issued and that thus such a multiple request condition is generated. Such situation tends to occur in storage systems like in D2 as well as in the patent in suit, where there is a high frequency of the requests for the so-called "fast moving products", i.e. "frequently asked products", see also hereto paragraph [0010] of the patent in suit.
- 2.3.8 In the article transport facility known from D2 a plurality of ATCs are operated on a single guide path, a host computer transmits a conveyance request to move articles from a predetermined loading location to a predetermined unloading location using each time one of the ATCs, and a controlling means assigns work to the ATC waiting for work according to the convenience request from the host computer. Said controlling means reads thereby information on current locations and working locations of the ATCs, if ATCs moving to a working location exist, i.e. during the operation of the article transport facility, it determines further whether simultaneous movements are possible based on the read information, and moves the ATC waiting for

work to a working location if the simultaneous movements are possible, see figure 1, paragraph [0015] and claims 1 and 5 of D2.

- 2.3.9 Since during operation of the article transport facility known from D2 the control unit reads information on current locations and working locations of the ATCs it is evident that said data are stored in the memory of the host computer of said article transport facility. Since the control means assigns "work" to the ATCs, it is also evident that this "work" is also stored in the memory, i.e. the conveyance requests are stored.
- 2.3.10 In case of a multiple request condition wherein at least two subsequent transport request information designating the same single article transfer location are issued it may occur that depending on the calculated concession value Y for each ATC in connection with its current position and specific time parameters, see paragraphs [0031] to [0037] of D2, the same single ATC will be carrying out not only the first but also the subsequent article transport operation(s), moving thus repeatedly back and forth, whereby other ATCs remain at their places.
- 2.3.11 Since all the data of the ATCs' current locations and also of their working locations, i.e. the data of their original and destination article transfer locations, are stored in the memory of the host computer the skilled person seeking to avoid the above-mentioned situation will at least perform a check among the stored conveyance requests to see whether two subsequent requests for the same original article transfer location exist, so as to group the data available in the host computer's memory in order to

enhance the occupancy quality of the ATCs. That is the least he will do.

2.3.12 In actual fact, the Board considers that the skilled person would not only arrange the system to check if two consecutive requests in the data storage for the same original article transfer location exist, but will also check for two such requests, even separated by one or more requests for other original article transfer locations, and to group them so as to send a plurality of ATCs from the predetermined number of ATCs waiting for work to the same article transfer location.

2.3.13 The respondent argued that according to paragraph [0015] of D2 the reading of information on current locations and working locations of the ATCs takes place only if there are ATCs moving to working locations and thus the skilled person when implementing the characterising features of claim 1 into the article transporting facility of D2 would have to cancel the request condition already sent to the first ATC.

The Board cannot follow this argument, since the occurrence of ATCs moving to working location(s) simply describes the normal operational situation of the article transporting facility known from D2. The fact that ATCs are already moving to working location(s) does not prevent the controlling means of said known transporting facility from executing, parallel to that, a multiple carriage selecting mode. There is no need for cancelling the request condition already sent to the first ATC.

2.3.14 Also the respondent's further argument that the safety aspects according to paragraphs [0040] to [0045] of D2 would be an obstacle for the execution of the claimed

multiple carriage selection mode cannot be followed by the Board, since, as argued by the appellant, every article transporting facility, independently of whether said ATCs are grouped or not, has a collision avoiding strategy, which is automatically adapted to the working conditions. As a consequence, the Board cannot see the adaptation of the collision avoiding strategy known from D2 as an obstacle to the modification of the controlling means known from D2 to execute a multiple carriage selecting mode.

2.4 For the above-mentioned reasons the subject-matter of claim 1 of the main request does not involve an inventive step (Articles 52(1) and 56 EPC).

3. *Claim 9 - main request - novelty and inventive step, Articles 52(1), 54 and 56 EPC*

The Board's findings under points 1.3 and 2.4 above with respect to claim 1 according to the main request are applicable *mutatis mutandis* to claim 9 according to the main request.

4. *Admissibility of the late filed second auxiliary request - Article 13(1) and (3) RPBA*

4.1 In its reply to the statement setting out the grounds of appeal the respondent requested the dismissal of the appeal and put forward arguments for the maintenance of the patent as upheld by the opposition division.

4.2 With its communication dated 12 December 2014 the Board summoned the parties to oral proceedings. In its annex to the summons the Board questioned the presence of an inventive step for the subject-matters of independent

claims 1 and 9 of this request.

- 4.3 With its submissions dated 20 February 2015 the respondent filed a set of claims labelled first auxiliary request, wherein the independent claims 1 and 8 were based on the combination of claims 1 and 2 respectively 9 and 10 of the patent as granted.
- 4.4 During the oral proceedings the Board found that the independent claims of the main and the first auxiliary requests did not involve an inventive step (the first auxiliary request was later withdrawn).
- 4.5 The filing of the second auxiliary request was the respondent's reaction to the above-mentioned Board's finding, whereby the independent claims 1 and 7 of said request are based on the combination of claims 1, 2 and 3 respectively 9, 10 and 11 of the patent as granted.
- 4.6 According to Article 13(1) RPBA any amendment to a party's case after it has filed its statement of grounds of appeal or reply may be admitted and considered at the Board's discretion, whereby said discretion shall be exercised in view of *inter alia* the complexity of the new subject matter submitted, the current state of the proceedings and the need for procedural economy.

Further, according to Article 13(3) RPBA amendments sought to be made after oral proceedings have been arranged shall not be admitted if they raise issues which the Board or the other party cannot reasonably be expected to deal with without adjournment of the oral proceedings.

4.7 In the present case the appellant has dealt with the subject-matters of the dependent claims 2, 3, 10 and 11 of the patent as granted in its notice of opposition, see the paragraph bridging pages 11 and 12, the first complete paragraph on page 12, and the fourth and fifth complete paragraphs on page 13 of that notice.

4.8 The amendment of the independent claims of the second auxiliary request consisting of the introduction of the dependent claims 2, 3, respectively 10 and 11 of the patent as granted into the independent claims 1 and 9 thus cannot take the appellant by surprise. The incorporation of these dependent claims, all relating to the further specification of the multiple carriages selecting mode - the essential feature of the present proceedings - form further limitations, i.e. contribute to a convergent debate. They therefore do not add any complexity to the case and so both the Board and the appellant can deal with it without adjournment of the oral proceedings or remittal to the opposition division.

4.9 For the above-mentioned reasons, the Board exercises its discretion under Article 13(1) and (3) RPBA and admits the second auxiliary request into the appeal proceedings.

5. *Claim 1 according to the second auxiliary request - inventive step, Articles 52(1) and 56 EPC*

5.1 The Board notes that it cannot follow the appellant's argument that the wording of claims 3 and 11 of the patent as granted, i.e. of the independent claims 1 and 7 of the second auxiliary request, leads to the conclusion that the controlling means selects the plurality of ATCs for the respective plurality of

transport request information in such a manner that the **positional order** of the plurality of the **destination** article transfer **locations** and **not** of the **original** article transfer **locations** along the length of the predetermined path.

This is because the relationship between the positional order of original article transfer locations and the positional order of the plurality of ATCs along the predetermined path as defined in said claims is to be found in more detailed form in the description of the patent in suit, see for example paragraphs [0076] to [0084].

5.2 The respondent argues in this respect that said further specified selecting condition for the plurality of ATCs allows the overall travel time of the ATCs to the original article transfer locations to be reduced, avoiding at the same time collisions between the ATCs. In the absence of any information in D2 towards such a multiple carriages selecting mode the subject-matter of claim 1 of the second auxiliary request involves thus an inventive step.

5.3 The Board, especially in the absence of any counterarguments from the appellant, sees no reason not to follow the above-mentioned respondent's arguments and considers that the subject-matter of claim 1 of the second auxiliary request involves an inventive step (Article 52(1) and 56 EPC).

6. *Claim 7 - second auxiliary request - inventive step, Articles 52(1) and 56 EPC*

The Board's finding under point 5.3 in respect with claim 1 according to the second auxiliary request

applies *mutatis mutandis* to claim 7 according to the second auxiliary request.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the opposition division with the order to maintain the patent in amended form on the basis of the following claims and a description and figures to be adapted:

claims 1 to 12 filed as second auxiliary request during the oral proceedings.

The Registrar:

The Chairman:



G. Nachtigall

H. Meinders

Decision electronically authenticated