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**Datasheet for the decision
of 6 November 2023**

Case Number: T 2322 / 22 - 3.2.07

Application Number: 14720413.5

Publication Number: 2969857

IPC: B65G1/04

Language of the proceedings: EN

Title of invention:

AUTOMATED STORAGE AND RETRIEVAL SYSTEM

Applicant:

Symbotic LLC

Headword:

Relevant legal provisions:

RPBA 2020 Art. 12(6)

Keyword:

Late-filed request - should have been submitted in examination proceedings (yes) - admitted (no)

Decisions cited:

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 2322/22 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 6 November 2023

Appellant:
(Applicant)

Symbotic LLC
200 Research Drive
Wilmington, MA 01887-4442 (US)

Representative:

Ipside
7-9 Allées Haussmann
33300 Bordeaux Cedex (FR)

Decision under appeal:

**Decision of the Examining Division of the
European Patent Office posted on 3 May 2022
refusing European patent application No.
14720413.5 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman

G. Patton

Members:

A. Cano Palmero

E. Mille

Summary of Facts and Submissions

- I. The appellant (applicant) lodged within the prescribed time limit and in the prescribed form an appeal against the decision of the examining division refusing European patent application no. 14 720 413.5.
- II. In its decision, the examining division held that the subject-matter of claims 1 and 12 of the then main request did not fulfil the requirements of Articles 123(2), 84 and 54 EPC.
- III. In preparation for oral proceedings requested by the appellant, the board communicated its preliminary assessment of the case in a communication pursuant to Article 15(1) RPBA 2020 dated 11 May 2023, according to which the appellant's sole request filed for the first time with the statement setting out the grounds was likely to be not admitted and the appeal was likely to be dismissed.
- IV. With letter dated 9 October 2023, the appellant filed arguments and submitted a set of claims according to an auxiliary request.
- V. Oral proceedings before the board were held on 6 November 2023.

At the conclusion of the proceedings the decision was announced. Further details of the oral proceedings can be found in the minutes.

- VI. The appellant's final requests are as follows:

that the decision be set aside and

that a patent be granted on the basis of the set of claims of the main request filed with the statement setting out the grounds of appeal or of the auxiliary request filed with the appellant's letter dated 9 October 2023.

- VII. Since the wording of the claims of the appellant's requests is not relevant for the present decision, there is no need to reproduce it here.

Reasons for the Decision

1. *Admittance of the main request and auxiliary request - Article 12(6) RPBA 2020*
- 1.1 The appellant filed the main request with the statement setting out the grounds of appeal. With letter dated dated 9 October 2023, the appellant filed the auxiliary request.
- 1.2 The board notes that neither the claims according to the main request nor the claims according to the auxiliary request formed part of the decision under appeal. The appellant chose to base its case in examination proceedings on claims according to a different main request filed during the examination proceedings on 7 March 2022.
- 1.3 According to Article 12(6), second sentence, RPBA 2020, the board shall **not admit requests which should have been submitted** in the proceedings leading to the decision under appeal, unless the circumstances of the appeal case justify their admittance.
- 1.4 The appellant argued that the amendments made to the main and the auxiliary request overcame the objections

in points 17.1 and 15.1, respectively, of the reasons for the decision under appeal. In addition, these objections were raised at the oral proceedings before the examining division "such that [the applicant itself did not have opportunity to formally review such objection[s]" (see letter dated 9 October 2023, page 2, first paragraph). Furthermore, the amendments made in the main request filed with the statement setting out the grounds of appeal were not substantive and were of a trivial nature.

- 1.5 The board is not persuaded by the appellant's arguments. In the present case, it is evident from the the last three paragraphs of page 1 of the minutes of the oral proceedings before the examining division that the appellant had been made aware *inter alia* of the objections on clarity and on added subject-matter of points 17.1 and 15.1 of the reasons for the decision under appeal and, being asked by the chair, the appellant refrained from submitting new requests. It follows that the appellant not only could, but - more importantly - **should** have filed the main and the auxiliary requests in an attempt to overcome at least those objections at that point of time, but deliberately chose not to do so.
- 1.6 The board, considering that the main aim of appeal proceedings is that of reviewing the decisions of the administrative departments of the EPO (cf. Article 12(2) RPBA 2020), does not consider it appropriate that the appellant starts a completely fresh case in appeal, thereby avoiding having a decision from the competent EPO department.
- 1.7 Since there are no justifying circumstances submitted by the appellant, **the board does not admit the**

appellant's main and auxiliary requests into the proceedings under Article 12(6), second sentence, RPBA 2020.

2. *Conclusion*

In the absence of an admissibly filed set of claims on the basis of which a patent could be granted, **the appeal is to be dismissed.**

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



G. Nachtigall

G. Patton

Decision electronically authenticated