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**Datasheet for the decision
of 5 February 2025**

Case Number: T 2467/22 - 3.5.01

Application Number: 18156948.4

Publication Number: 3376450

IPC: G06Q10/08, B65G1/137, G05D1/02,
B65G1/04, G05D1/00

Language of the proceedings: EN

Title of invention:

METHODS, SYSTEMS AND APPARATUS FOR CONTROLLING MOVEMENT OF
TRANSPORTING DEVICES

Applicant:

Ocado Innovation Limited

Headword:

Transporting devices/OCADO

Relevant legal provisions:

EPC Art. 76(1), 111(1)
RPBA 2020 Art. 11

Keyword:

Divisional application - added subject-matter (no)
Remittal - (yes)

Decisions cited:

G 0002/10, T 0331/87, T 1852/13, T 2351/16, T 1365/16,
T 0838/16



Beschwerdekammern

Boards of Appeal

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Case Number: T 2467/22 - 3.5.01

D E C I S I O N
of Technical Board of Appeal 3.5.01
of 5 February 2025

Appellant:

(Applicant)

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Decision under appeal:

**Decision of the Examining Division of the
European Patent Office posted on 29 April 2022
refusing European patent application No.
18156948.4 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman

M. Höhn

Members:

L. Falò

D. Rogers

Summary of Facts and Submissions

- I. This is an appeal against the examining division's decision to refuse European patent application No. 18 156 948.4.
- II. The application was refused on the ground that the subject matter of the independent claims of all requests did not meet the requirements of Article 76(1) EPC.
- III. In the statement setting out the grounds of appeal, the appellant requested that the decision under appeal be set aside and a patent be granted on the basis of the refused main request or of the first to third auxiliary requests, re-filed with the statement of grounds of appeal. The appellant also requested oral proceedings.
- IV. In a communication under Rule 100(2) EPC, the Board set out its preliminary view that none of the requests on file met the requirements of Article 76(1) EPC.
- V. With letter of reply dated 28 August 2024, the appellant filed auxiliary requests 4 to 9 and provided arguments in favour of their patentability.
- VI. In the communication accompanying the summons to oral proceedings, the Board informed the appellant that it was of the opinion that none of the requests on file met the requirements of Article 76(1) EPC and was minded to dismiss the appeal.
- VII. With letter dated 25 November 2024 the appellant filed auxiliary requests 10 to 13 and provided arguments in favour of their patentability.

VIII. Oral proceedings were held on 5 February 2025. During the oral proceedings the appellant filed a fourteenth auxiliary request and withdrew all the previous requests.

IX. Claim 1 of the sole request (fourteenth auxiliary request) reads:

A system comprising:

a facility arranged to store containers in a plurality of stacks, the facility comprising a plurality of pathways arranged in a grid-like structure above the stacks;

a plurality of transporting devices arranged to transport containers and arranged to operate on the grid-like structure; and

a control system (202, 302) arranged to provide real or near-real time control of movement of the plurality of transporting devices, wherein the control system (202, 302) comprises:

a movement optimisation module (304) arranged to determine, by using one or more algorithms, potentially advantageous routes from one location on the grid-like structure to another location on the grid-like structure for the transporting devices, the determined routes having potential advantages including one or more of: shorter distance travelled, lower likelihood of encountering congestion, shorter time required, lower power consumption, co-ordination with movements of other transporting devices, routing around

obstacles, or co-ordination with workstation operations;

a reservation module (314) arranged to reserve, in advance of movement of the plurality of transporting devices, routes on the grid-like structure for the plurality of transporting devices based on the determined routes, wherein the reservation module (314) is arranged to make sure that the transporting devices do not plan to take conflicting paths; and

a clearance module (312) arranged to grant permissions to the transporting devices to continue along their planned paths, wherein the clearance module (312) is arranged to check, upon providing a given transporting device with a new instruction, whether a collision between the given transporting device and another transporting device is possible based upon a current position and speed of the transporting devices, and, where clearances are required, the clearance module (312) is arranged to interact with the movement optimisation module (304) to dynamically re-plan routes to resolve or avoid conflicts.

Reasons for the Decision

1. The invention concerns controlling the movement of transporting devices (such as robots) in a storage system including a grid of pathways along which the robots can move to retrieve or deliver containers (page 1, lines 3-4 and 28 to 32, Figure 7). The robots are centrally managed by a control system including a movement optimisation module, a reservation module and a clearance module, which interact to implement a path

conflict resolver (page 22, lines 5 to 10, Figure 3). The movement optimisation module optimises the movement of robots by applying various algorithms to determine potentially advantageous routes (page 19, line 31 to page 20, line 1). The reservation module reserves in advance various paths for the robots, so as to create non-conflicting robot movement plans (page 27, lines 9 to 14). The clearance module determines whether a robot may safely traverse a given path and provides clearance accordingly. To do so, it makes use of parameters such as grid dimension, grid position, current position, speed and braking ability of robots and move commands generated during the planning phase (page 25, line 27 to page 26, line 5).

2. The application, which was filed as a divisional of the European patent application No. 15794475, was refused by the examining division under Article 76(1) EPC because all requests included subject matter extending beyond the contents of the parent application. As in the contested decision, in the following the Board will make reference to the international publication of the parent application (WO 2015/185628 A2).
3. The examining division was of the opinion that the description of the parent application, with exception of the passages of page 2, line 28 to page 3, line 5, failed to adequately define the invention, as all the features described therein were presented as optional. Consequently, the originally filed claims and the aforementioned description passages - which, however, referred to a different embodiment - were the only part of the parent application which could be used to assess compliance with the requirements of Article 76(1) EPC.

4. The division then applied the test defined in the EPO Guidelines, H-V 3.1 (known as "essentiality test", or "three-point test"), based in turn on the one developed in decision T 331/87 (OJ EPO 1991, 22). In that decision the Board, building on T 260/85 (OJ EPO 1989, 105), held that the replacement or removal of a feature from a claim might not be in breach of Article 123(2) EPC if the skilled person would directly and unambiguously recognise that:
 - (1) the feature was not explained as essential in the disclosure,
 - (2) it was not, as such, indispensable for the function of the invention in the light of the technical problem it served to solve, and
 - (3) the replacement or removal required no real modification of other features to compensate for the change
5. By applying this test, the division came to the conclusion that the independent claims of all requests were unallowable generalisations of those of the application as filed and, therefore, that the requirements of Article 76(1) EPC were not met.
6. The appellant argued that the division had misapplied the "essentiality test" as set out in the Guidelines. Furthermore, following decision G 2/10, the only test for assessing compliance with Articles 123(2) and 76(1) EPC was whether the skilled person, using common general knowledge, would regard the claimed subject matter as explicitly or implicitly, but directly and unambiguously disclosed in the (parent) application as

filed when taking into account the contents of the application as a whole (the "gold standard").

The appellant further argued that the description of the parent application did not include only optional features. On the contrary, it defined a system including a particular combination of a movement optimisation module, a reservation module and a clearance module, which were utilized together to resolve path conflicts (as in page 22, lines 21 to 26). The description further explicitly addressed the separate problem of determining and reserving routes in order to avoid collisions (page 2, line 28 to page 3, line 5).

7. The Board agrees with the appellant that the description defines at least an embodiment in which the clearance module, the reservation module and the movement optimisation module are used in combination as a path conflict resolver (see description, page 22, lines 21 to 26). Further (optional) characteristics of these modules are described in detail for example on page 26, line 13 to page 27, line 4, page 27, line 28 to page 28, line 16, page 20, lines 12 to 18.

If only for this reason, the presence of added subject-matter should have not been assessed by applying the essentiality test but on the basis of the disclosure of the parent application as a whole and, in particular, of the passages cited above.

8. More generally, the Board agrees with the appellant that it is the requirements of the "gold standard" (G 2/10, reasons, point 4.3) which ultimately must be met when assessing any amendment for its compliance with the requirements of Articles 123(2) and

76(1) EPC, essentially for the reasons discussed in decision T 1852/13, reasons, point 2. This appears to be in line with the more recent jurisprudence of the EPO, which tends to consider the essentiality test as inappropriate (see for example decisions T 2351/16, T 1365/16) or, at most, a mere aid which cannot replace the "gold standard" (see for example T 838/16).

9. In view of the above, the Board judges that the examining division erred in their assessment of compliance with the requirements of Article 76(1) EPC because it applied the wrong criteria.
10. During the appeal proceedings the Board raised a number of objections under Article 76(1) EPC in respect of the independent claims of all the requests on file. The Board is satisfied that all these objections are overcome by the present sole request.
11. Accordingly, the case is remitted to the first instance for further prosecution on the basis of the present sole request, Article 111(1) EPC and Article 11 RPBA.

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 Registrar:

The Chairman:



T. Buschek

M. Höhn

Decision electronically authenticated