

**Internal distribution code:**

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

**Datasheet for the decision  
of 14 January 2011**

**Case Number:** T 0779/08 - 3.5.03

**Application Number:** 99930033.8

**Publication Number:** 1082644

**IPC:** G05B 19/00

**Language of the proceedings:** EN

**Title of invention:**

A control system for controlling process equipment

**Patentee:**

ABB AB

**Opponents:**

KUKA Roboter GmbH  
KUKA Systems GmbH

**Headword:**

Control System/ABB

**Relevant legal provisions:**

EPC Art. 123(2), 123(3)

**Keyword:**

"Amendments - added subject matter (main request) (yes)"  
"Amendments - extended scope of protection (all auxiliary requests) (yes)"

**Decisions cited:**

T 0378/86

**Catchword:**

-



Case Number: T 0779/08 - 3.5.03

**D E C I S I O N**  
of the Technical Board of Appeal 3.5.03  
of 14 January 2011

**Appellant:** ABB AB  
(Patent Proprietor) S-721 83 Västerås (SE)

**Representative:** Hoffmann Eitle  
Patent- und Rechtsanwälte  
Arabellastraße 4  
D-81925 München (DE)

**Respondent 1:** KUKA Roboter GmbH  
(Opponent 1) Zugspitzstr. 140  
D-86156 Augsburg (DE)

**Representative:** Ernicke, Hans-Dieter  
Ernicke Klaus  
Schwibbogenplatz 2b  
D-86153 Augsburg (DE)

**Respondent 2:** KUKA Systems GmbH  
(Opponent 2) Blücherstraße 144  
D-86165 Augsburg (DE)

**Representative:** Ernicke, Hans-Dieter  
Ernicke Klaus  
Schwibbogenplatz 2b  
D-86153 Augsburg (DE)

**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office posted 11 February 2008  
revoking European patent No. 1082644 pursuant  
to Article 101(2) EPC.

**Composition of the Board:**

**Chairman:** A. S. Clelland  
**Members:** A. J. Madenach  
R. Menapace

## Summary of Facts and Submissions

I. The present appeal arises from the decision of the opposition division posted on 11 February 2008 revoking European Patent No. 1 082 644.

Two oppositions were filed against the patent. The oppositions were based on the grounds of Article 100(a)-(c) EPC.

The opposition division came to the conclusion that the then main request did not fulfil the requirements of Article 123(2) EPC, that the then first auxiliary request met the requirements of Article 123(2) EPC and of Article 83 EPC but not those of Article 54(1) and (2) EPC, and that the then second auxiliary request met the requirements of Articles 123(2), 83 EPC and 54(1), (2) EPC, but not those of Article 56 EPC. A third auxiliary request was not admitted into the proceedings on the ground that it was late filed. In an obiter dictum, the opposition division came to the conclusion that the third auxiliary request would not have been allowable due to a lack of inventive step (Article 56 EPC).

II. An appeal was filed against this decision by the patentee (appellant) with letter received on 17 April 2008. The appropriate fee was paid and the corresponding statement of grounds was filed. It was requested that the appealed decision be set aside and that the patent be maintained as granted and the appeal fee be refunded. Oral proceedings were requested as an auxiliary measure. The grounds of appeal comprised three sets of auxiliary requests for consideration if oral proceedings were to be scheduled.

III. Opponent 1 (Kuka Roboter GmbH, respondent 1) requested with letter received on 17 June 2008 that the appeal be dismissed, that the board issue a preliminary opinion and that oral proceedings be scheduled as an auxiliary measure.

The representative of opponent 2 (Kuka Systems GmbH, respondent 2) informed the board with letter received on 9 January 2009 that he was taking over the representation of respondent 1. The previous requests made in the name of respondent 1 were confirmed for both respondents.

IV. On 2 November 2010, the board summoned the parties to oral proceedings. Together with the summons, the board issued a communication under Article 15(1) of the Rules of Procedure of the Boards of Appeal (RPBA).

V. In a letter of 10 December 2010 the respondents confirmed their previous requests.

VI. With letter of 14 December 2010 the appellant filed new auxiliary requests 1 to 7 as a replacement for the previous auxiliary requests.

VII. The oral proceedings took place on 14 January 2011. The parties confirmed their previous requests, with the exception that the appellant withdrew its request for a reimbursement of the appeal fee. At the end of the oral proceedings the decision of the board was announced.

VIII. Claim 1 according to the main request which corresponds to claim 1 as granted, reads as follows:

"A control system including a master system (1), process equipment (4) and memory means (9) adapted to store data comprising parameters specific to the process carried out by the process equipment (4), whereby the master system comprises: a first interface (2) for connecting a programming unit (3) adapted for entering and/or modifying said data; a second interface (5) for connecting the process equipment (4), transmitting means (6) for transmitting data between the two interfaces (2, 5) and thus between the programming unit (3) and the process equipment (4); whereby said data may be accessed by the programming unit (3); the memory means (9) is arranged within the process equipment (4); the master system (1) is provided with a rule data base (8) including a configuration file and a text data base (7) including a text file, wherein these files are adapted to the format of the data stored in the memory means (9) of the process equipment (4); and whereby each data base (7, 8) is connected to the transmitting means (6) and utilises a general process application protocol to enable the transmitting means (6) to interpret data received from the process equipment (4) in accordance with said protocol and to transmit said data to programming unit (3)."

In view of the board's decision it is not necessary to reproduce in full the claims of each auxiliary request. In all of these requests claim 1 specifies the text file as "a text file storing texts needed for interactively setting said control parameters for process equipment" and includes the following feature in relation to the data base: "for enabling access to

said data through the programming unit (3) so as to enable a determination of said commands based upon said data". Moreover, the reference to the memory means being adapted to store "data comprising parameters specific to the process carried out by the process equipment" in claim 1 of the main request has been replaced in claim 1 of each auxiliary request by "data required for describing and defining the process of the process equipment" whilst "for entering and/or modifying said data" has been replaced by "for entering commands to the process equipment (4) for setting control parameters for the process".

## **Reasons for the Decision**

### 1. *Background of the invention*

- 1.1 In known control systems comprising a master system and process equipment, such as the welding apparatus of a welding robot (paragraphs [0001] and [0002]), all system parameters were stored within the master system, and any change in the (welding) process equipment required re-entering new process parameters into the master system (paragraph [0004]). This inconvenience is overcome according to the invention by the process equipment itself storing detailed knowledge about the process, this knowledge being transferred in the form of text files and configuration files into text and configuration data bases provided for this purpose within the master system when the process equipment is changed (paragraph [0009]). The process equipment thus has a memory means of its own, in contrast to the aforementioned prior art systems which included such

memory means within the master system. Such a system also requires specific transmitting and interface means as well as a specific architecture within the master system comprising rule and text data bases (see claim 1).

2. *Main request - added subject matter (Article 123(2) EPC):*

2.1 The then main request (identical to the present main request) of the appellant was not allowed by the opposition division on the ground that the content of claim 1 extended beyond the subject-matter as originally filed.

2.2 Claim 1 according to the main request, *i.e.* claim 1 as granted, comprises the feature "a programming unit (3) adapted for entering and/or for modifying said **data**", "said data" referring to "**data comprising parameters specific to the process**" which replaces the feature "a programming unit (3) adapted for entering **commands** to the process equipment **for setting control parameters for the process**" of claim 1 of the application as originally filed (emphasis by the board).

2.3 Thus, according to claim 1 as filed the programming unit was adapted for entering commands whereas according to claim 1 of the patent it is adapted for entering data, which may be two different things.

According to the application examples of parameters specific to the process are "voltage, wire feed speed, gas mixture and the like" which will be set at the installation of the system or may be modified if new

objects are to be welded (page 7, lines 27 - 31 of the published application).

In the given context, the board understands a command for setting control parameters as comprising instructions to the process equipment to start or to end the control or to change from one set of previously entered control parameters to another set of previously entered control parameters. Such a command would not comprise a parameter in the sense of claim 1 as granted.

Thus, parameters and commands understood as above would not only differ in their content but also in their data structure since parameters could be expected to have a numerical value (*cf.* the examples quoted above) whereas commands could be expected to have a text based data format.

Since no unambiguous disclosure can be found in the original application documents for the feature "entering and/or modifying said data" where the data comprise "parameters specific to the process", subject-matter has been added in contravention of Article 123(2) EPC.

- 2.4 If it were assumed, as argued by the appellant that commands and data are in the given context synonymous, the "setting control parameters for the process" would nevertheless be of narrower scope than "parameters specific to the process", since the latter is not restricted to control parameters; for example it may include parameters merely relating in some indeterminate manner to the process or the equipment

used but in no way necessary for the control of the process.

- 2.5 In relation to this amendment the appellant also argued that claim 1 was a device claim and that a difference of data stored in the device would not amount to a modification of the device.

The board does not accept this argument because, as already pointed out at point 2.3 above, commands can have a different data structure compared to parameters, resulting in a different device structure.

- 2.6 Furthermore, claim 1 according to the main request comprises the feature "memory means (9) adapted to store **data comprising parameters specific to the process** carried out by the process equipment (4)" which replaces the feature "a memory member (9) adapted to store **important data required for describing and defining the process** of the process equipment" of claim 1 as originally filed (emphasis by the board).

Similar to the above situation (point 2.3) "data comprising parameters specific to the process" may be different from "data required for describing and defining the process".

In particular, the term "data comprising parameters specific to the process" could as noted at point 2.4 above embrace any data or parameters relating in some indeterminate manner to the process whereas "data required for describing and defining the process" implies a more restricted set of data excluding data which are loosely related to the process but not

necessary for its description and definition such as e.g. the date and time.

Accordingly, the board takes the view that the amended claim is based on a generalisation of the originally filed claim which is not derivable from it. Since no unambiguous disclosure can be found in the original application documents, subject-matter has been added by this amendments also, in contravention of Article 123(2) EPC.

- 2.7 The feature "means adapted to enable access to said data through the programming unit so as to enable a determination of said commands based upon said data" of original claim 1 has been deleted.

According to established case law, deletion of a feature from a claim is only allowable under Article 123(2) EPC if the original disclosure provides a basis for the deletion or if the deleted feature was not explained as essential in the original disclosure, is not indispensable for the functioning of the invention and does not require a modification of other features.

No direct disclosure for a process without the deleted feature can be found in the original application documents, nor was this argued by the appellant. Furthermore, the deleted feature is indispensable for the functioning of the invention. According to the board's understanding a particular process is set up by an operator using the programming unit (page 7, lines 23-31 of the application as published). Thus, the provision of means enabling the programming unit access

to the data characterising a process is necessary for the functioning of the invention.

Deletion of this feature therefore contravenes the requirements of Article 123(2) EPC.

2.8 For the reasons set out above the subject-matter of claim 1 of the main request extends beyond the content of the application as originally filed. Therefore, the request as a whole is not allowable.

3. *Auxiliary requests - extension of protection (Article 123(3) EPC):*

3.1 According to Article 123(3) EPC "the European patent may not be amended in such a way as to extend the protection it confers".

Protection has been inadmissibly extended within the meaning of Article 123 (3) EPC when it is obvious that an act can be considered as an infringement after a claim has been amended although prior to the amendment it could not have been considered as an infringement of the patent as granted. This would in all likelihood always be the case where the amended claims and the granted claims are directed to different subject-matter (referred to in the German literature as an "aliud") (see T 378/86, OJ 386, 1988, point 3.1.3 of the reasons).

3.2 In the present case, claim 1 of each auxiliary request includes the feature "a programming unit (3) adapted for entering **commands** to the process equipment (4) **for setting control parameters for the process**" which

replaces "a programming unit (3) adapted for entering and/or modifying said data", "said data" referring to "**data comprising parameters specific to the process**" of claim 1 of the patent as granted (emphasis by the board).

As has already been pointed out at point 2.3 above these two features define different subject-matter.

In particular, a control system in accordance with claim 1 of each auxiliary request with a programming unit adapted for entering commands, e.g. start and end commands for the control of a process, would not necessarily fall within the scope of a claim to a control system in accordance with claim 1 as granted, with a programming unit adapted for entering and/or modifying data comprising parameters specific to the process, e.g. voltage, wire feed speed, gas mixture and the like.

3.3 Thus, claim 1 of each auxiliary request is of wider scope than the granted claim 1 and contravenes the requirements of Article 123(3) EPC. Therefore, none of these requests is allowable.

4. Since none of the appellant's requests is allowable, it follows that the appeal must be dismissed.

**Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar

The Chairman

G. Rauh

A. S. Clelland