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**Datasheet for the decision
of 09 October 2012**

Case Number: T 0902/10 - 3.5.03

Application Number: 98944773.5

Publication Number: 1040393

IPC: G05B 19/04, G05B 19/418,
B25J 9/16

Language of the proceedings: EN

Title of invention:
Method for calibration of a robot inspection system

Applicant:
Dynalog France

Opponent:
-

Headword:
Robot calibration/DYNALOG

Relevant legal provisions:
RPBA Art. 12(4), 13(1), 13(3)

Relevant legal provisions (EPC 1973):
-

Keyword:
Sole request not admissible

Decisions cited:
G 0009/91, G 0010/91, G 0010/93, T 0922/08

Catchword:
-



Case Number: T 0902/10 - 3.5.03

D E C I S I O N
of the Technical Board of Appeal 3.5.03
of 9 October 2012

Appellant: Dynalog France
(Applicant) 1-3 Allée Lavoisier
F-59650 Villeneuve D'Ascq (FR)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 22 September 2009
refusing European patent application
No. 98944773.5 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman: A. S. Clelland
Members: T. Snell
M.-B. Tardo-Dino

Summary of Facts and Submissions

- I. This appeal is against the decision of the examining division refusing European patent application No. 98944773.5, with international publication number WO-A-99/12082.

The refusal was based on the ground that claims of a main request and a third auxiliary request did not comply with Article 123(2) EPC and that claims of first, second, fourth and fifth auxiliary requests did not meet the requirement of inventive step pursuant to Article 52(1) in combination with Article 56 EPC.

- II. The present decision mentions the following documents cited during the examination procedure:

D1: US-A-5083073

D2: Chen et al, "Modeling and Calibration of a Structured Light Scanner for 3-D Robot Vision", Proceedings of the International Conference on Robotics and Automation, Raleigh, March 30 - April 3, 1987, Washington, IEEE Comp. Soc. press, vol. 2, 1987, pages 807-815

D5: DE-A-19501094

- III. The appellant filed a notice of appeal against the above decision. Claims of a single new request and an amended description were subsequently filed together with a statement of grounds of appeal.

Oral proceedings were conditionally requested.

- IV. In a communication accompanying a summons to oral proceedings the board gave a preliminary opinion in which it was considered that claim 1 did not comply with the EPC for various reasons.
- V. With a response to the board's communication, the appellant filed claims of a new request apparently intended to replace the request on file.
- VI. Oral proceedings were held on 09 October 2012. At the oral proceedings, after discussion of the then pending request with respect to Articles 123(2) and 56 EPC, the appellant filed a new request to replace the existing request. The appellant requested that the decision under appeal be set aside and a patent granted on the basis of claims 1-7 as filed during the oral proceedings or, in the alternative, that the case be remitted to the department of first instance for further prosecution.

At the end of the oral proceedings, after due deliberation, the board announced its decision.

- VII. Claim 1 of the only request reads as follows:

"A system for calibrating a robot inspection system, said robot inspection system comprising:
a robot arm having an outer end movable within a working envelope;
a measurement device mounted at said outer end of said robot arm and consisting of a laser light source generating a plane of laser light and of a camera mounted at an angle relative to said laser light source;

an object located within said working envelope and containing features of interest to be inspected by said measurement device; and
means for controlling said robot arm to move said measurement device to take measurements of said features on said object to be inspected. [sic]
said calibration system further comprising:
a target of a known shape positioned within said working envelope;
means for controlling said robot arm to move said measurement device to take a measurement of said target at each of a plurality of locations and orientations;
means for storing the location of said robot corresponding to said measurement at each of said plurality of locations and orientations;
means for calculating the position of said target for each said measurement as a function of said location of said robot;
means for optimizing the calibration parameters of said robot, the location of said target, and the location of said measurement device, by minimizing the deviation between said measurement and said calculated position of said target at each of said plurality of locations and orientations."

Reasons for the decision

1. *Admissibility of the appellant's sole request*
 - 1.1 The appellant filed a new request at the oral proceedings of which claim 1 includes the following feature:

"a measurement device mounted at said outer end of said robot arm and consisting of a laser light source generating a plane of laser light and of a camera mounted at an angle relative to said laser light source".

1.2 The appellant argued that neither D2 nor D5 (which, as regards novelty and inventive step, were the documents forming the basis of the discussion at the oral proceedings in respect of the claim 1 previously on file) disclosed a calibration system including a camera, nor was the inclusion of a camera obvious.

1.3 However the board noted that this feature had been included in claim 1 as originally filed. In the examining division's first communication it was argued that the subject-matter of claim 1 as originally filed was not new with respect to the disclosure of a further document, namely D1. In response, the applicant (now appellant) amended claim 1 by removing the camera feature and replacing it by other features concerned with a different aspect. No independent claim was subsequently filed including this feature. In other words the applicant expressly chose not to present a request including the camera feature for decision by the examining division.

1.4 Article 12(4) of the Rules of Procedure of the Boards of Appeal (RPBA; cf. Supplement to OJ EPO 1/2011, pages 39-49) confers on the board the power "to hold inadmissible facts, evidence or requests which could have been presented ... in the first instance proceedings".

1.5 In the present case, a claim including the camera feature, eg based on original claim 1, could have been presented for the purposes of requesting a decision during the examination procedure. However, the applicant expressly chose not to pursue such a claim. It is established case law that the Boards of Appeal do not admit requests that were withdrawn during first instance proceedings (cf. eg T 922/08, not published, point 2.1 of the reasons); if the board were to admit such a request, it would be contrary to the main purpose of ex parte appeal proceedings, which are primarily concerned with examining the contested decision (cf. G 10/93, OJ EPO 1995, 172, point 4 of the reasons), ie with providing the adversely affected party (the applicant) with the opportunity to challenge the decision on its merits and to obtain a judicial ruling as to whether the first-instance decision was correct (cf. G 9/91 and G 10/91 - OJ EPO 1993, 408, 420).

1.6 Furthermore, the text of Articles 13(1) and (3) RPBA reads as follows:

(1) 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. The 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.

(3) Amendments sought to be made after oral proceedings have been arranged shall not be admitted if they raise issues which the Board ... cannot reasonably be

expected to deal with without adjournment of the oral proceedings.

- 1.7 The board notes that the appellant's request was filed at a late stage during the oral proceedings before the board, ie at a very late stage of the appeal procedure. In order to examine the request in respect of novelty and/or inventive step the board would have had to consider it in relation to the disclosure of document D1, a document of some complexity which had hitherto not been discussed during the appeal procedure. The new request therefore gave rise to an issue which the Board could not reasonably have been expected to deal at such a late stage of the oral proceedings (cf. Article 13(3) RPBA). Any alternative course of action, such as remittal of the case to the examining division, or adjournment of the oral proceedings in order to continue in writing, would be clearly contrary to the need for procedural economy (cf. Article 13(1) RPBA), especially as the board considers it *prima facie* unlikely that the new request would be allowable given that the examining division had already expressed a negative opinion with respect to a claim including the allegedly novel and inventive feature.
- 1.8 Consequently, the board decided not to admit the appellant's request. Further, particularly in view of the examining division's negative opinion mentioned above, the board also refused the appellant's auxiliary request to remit the case to the examining division (cf. Article 111(1) EPC).

2. *Conclusion*

2.1 When informed by the board that the new request might be found inadmissible on procedural grounds, the appellant expressly declined the opportunity to re-submit the request previously on file (cf. the minutes of the oral proceedings).

2.2 Consequently, there is no admissible request. 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