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**Datasheet for the decision  
of 7 March 2019**

**Case Number:** T 0671/14 - 3.2.07

**Application Number:** 03777814.9

**Publication Number:** 1567280

**IPC:** B05B13/04

**Language of the proceedings:** EN

**Title of invention:**  
MODULAR PAINTING APPARATUS

**Patent Proprietor:**  
Fanuc Robotics America, Inc.

**Opponent:**  
Dürr Systems AG

**Headword:**

**Relevant legal provisions:**  
EPC Art. 116(1), 123(2)  
RPBA Art. 12(3)

**Keyword:**

Oral proceedings - announcement of non-attendance treated as withdrawal of the request

Amendments - extension beyond the content of the application as filed (yes)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
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Case Number: T 0671/14 - 3.2.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.07**  
**of 7 March 2019**

**Appellant:** Fanuc Robotics America, Inc.  
(Patent Proprietor) 3900 W. Hamlin Road  
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**Representative:** Barker Brettell LLP  
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**Respondent:** Dürr Systems AG  
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**Representative:** Heusler, Wolfgang  
v. Bezold & Partner  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 21 January 2014  
revoking European patent No. 1567280 pursuant to  
Article 101(3) (b) EPC.**

**Composition of the Board:**

**Chairman** I. Beckedorf  
**Members:** G. Patton  
A. Pieracci

## **Summary of Facts and Submissions**

- I. The appellant (patent proprietor) lodged an appeal within the prescribed period and in the prescribed form against the decision of the opposition division revoking European patent No. 1 567 280.

In the impugned decision, the Opposition Division held that none of the then requests met the requirements of Article 123(2) EPC.

- II. With its statement setting out the grounds of appeal the appellant requested

that the impugned decision be set aside and that the case be remitted to the opposition division for further prosecution on the basis of one of the sets of claims filed with letter dated 15 April 2013 as main request and as first to third auxiliary requests, and filed during the oral proceedings before the opposition division on 14 May 2013 as new fourth auxiliary request.

The appellant's requests in appeal proceedings correspond to the requests underlying the impugned decision.

The appellant also subsidiarily requested appointment of oral proceedings.

- III. The respondent requested in its reply to the appellant's statement setting out the grounds of appeal

(1) that the appeal be rejected as inadmissible,  
(2) that the main request and the auxiliary requests not be admitted into the proceedings,

(3) that the appeal be dismissed as unallowable.

The respondent also subsidiarily requested appointment of oral proceedings.

IV. In view of the oral proceedings set for 2 April 2019, the Board gave its provisional opinion concerning all the appellant's requests in its communication pursuant to Article 15(1) RPBA dated 22 January 2019. The Board indicated that the appeal was likely to be dismissed. The relevant parts of said communication read as follows:

*"4. Main request and second auxiliary request*

*4.1 The feature of claim 1 of the main and second auxiliary request at stake in the impugned decision, point 1, is:*

*"...wherein the at least one frame rail is prevented from moving relative to the object".*

*4.2 The appellant considers that this feature should be interpreted in that the at least one frame rail would be fixed and stationary, i.e. part of a frame structure not able to move. This would be clear from the application as originally filed, page 3, lines 3-7 and page 5, lines 2-8, where it is disclosed that the robot arm 16 is mounted on a mounting base 15 that is movable along the at least one frame rail 11.*

*The appellant further argues that the frame rails explicitly lead to "a rigid box frame structure" implicitly resulting in that the at least one frame rail is stationary, i.e. prevented from moving relative*

to the object, as shown for instance in figures 1 and 6.

In view of the above reasons, the requirements of Article 123(2) EPC should be regarded as fulfilled.

4.3 The Board cannot preliminarily share this view since as explained in the impugned decision, point 1.3, the above feature at stake **also covers** technically plausible embodiments, which were not originally disclosed or derivable from the application as originally filed, in that **the at least one frame rail moves along with and at the same pace as the object while the object moves.**

5. First auxiliary request

5.1 The feature of claim 1 of the first auxiliary request at stake in the impugned decision, point 2, is :

"...such that the at least one frame rail is prevented from moving relative to the object".

5.2 Further to the arguments put forward for the main request, the appellant considers that the wording "such that" emphasizes the causal relationship between the following structural features of claim 1:

the at least one frame rail mounted on floor engaging legs and connected to another frame rail by at least one cross support member so as to form a rigid frame structure

and the requirement that the at least one frame rail is prevented from moving relative to the object. This

*causal relationship would be immediately understood and derived by the skilled person.*

*The requirements of Article 123(2) EPC should then be regarded as fulfilled.*

*5.3 The Board cannot preliminarily share this view for the same reasons as the ones given under point 4.3 above (see also impugned decision, point 2.3).*

#### *6. Third auxiliary request*

*6.1 The feature of claim 1 of the third auxiliary request at stake in the impugned decision, point 3, is :*

*"...such that the at least one frame rail is prevented from moving relative to the object when the object is conveyed to a stop".*

*6.2 The appellant considers that this feature is based on the passage of the application as originally filed, page 9, lines 19-28.*

*For the appellant it would be clear from the cited passage that the robots can still move along the rails when the object is conveyed to a stop. The skilled person would then immediately and directly derive, as the only reasonable interpretation of the passage, that the frame rail is prevented from moving relative to the object when the object is conveyed to a stop.*

*The requirements of Article 123(2) EPC should then be regarded as fulfilled.*

6.3 The Board cannot preliminarily share this view for the reasons given in the impugned decision, point 3.3. The at least one frame rail is not specified in claim 1 as being unconditionally stationary so that the wording used also covers embodiments not originally disclosed or derivable from the application as originally filed in that the at least one frame rail can move when the object moves as already discussed under point 4.3 above.

#### 7. Fourth auxiliary request

The feature of claim 1 of the fourth auxiliary request at stake in the impugned decision, point 4, is:

"...such that the at least one frame rail is prevented from moving relative to the vehicle body when the vehicle body is conveyed to a stop".

With respect the third auxiliary request, in the feature at stake the word "object" has been substituted by "vehicle body".

Hence, the amendments do not appear to affect the reasoning and the conclusion given under point 6 above for the third auxiliary request. Consequently, the same preliminary reasoning and conclusion as those for the third auxiliary request apply *mutatis mutandis* against the fourth auxiliary request."

In the same communication dated 22 January 2019, section 9, the Board informed the parties that

"...the appeal appears to be admissible but not allowable, and, for that reason, is likely to be dismissed."



- V. Neither the appellant nor the respondent commented on the aforementioned preliminary opinion of the Board.

With its submission dated 14 February 2019, the appellant merely informed the Board that they "*will not be attending the oral proceedings scheduled to be held on 2 April 2019*".

And with letter dated 25 February 2019, the respondent withdrew its requests directed to the rejection of the appeal as inadmissible and to the non-admittance of the appellant's main request and auxiliary requests.

### **Reasons for the Decision**

1. The appellant's notice not to participate in the oral proceedings scheduled for 2 April 2019 is treated as equivalent to a withdrawal of the request for oral proceedings (see Case Law of the Boards of Appeal, 8th Edition 2016, III.C.2.3.1).

In view of the withdrawal of the requests for rejection of the appeal as inadmissible and for non-admittance of the appellant's main request and auxiliary requests, the respondent's request for dismissal of the appeal as unallowable becomes that party's sole request and the request for oral proceedings is subsidiary to said request.

As a consequence, the oral proceedings scheduled for 2 April 2019 are cancelled and the present decision is taken in the written proceedings on the basis of the parties' requests and their submissions on file in accordance with Article 12(3) RPBA and Article 113 EPC.

2. Under sections 4, 5, 6 and 7 of its above-mentioned communication dated 22 January 2019, the Board stated why it considers that the appeal would be dismissed, see point IV above.

The above-mentioned preliminary finding of the Board has not subsequently been commented on nor has it been contested by the appellant during the appeal proceedings, see point V above.

Under these circumstances, the Board - having once again taken into consideration all the relevant aspects concerning said issues - sees no reason to deviate from its above-mentioned finding.

3. As a consequence, the appellant's requests are not allowable.

**Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:



G. Nachtigall

I. Beckedorf

Decision electronically authenticated