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**Datasheet for the decision  
of 19 April 2021**

**Case Number:** T 0295/18 - 3.2.07

**Application Number:** 11196187.6

**Publication Number:** 2610036

**IPC:** B25J9/16, G05B19/418

**Language of the proceedings:** EN

**Title of invention:**

Method for anti-collision control and the management of picking devices with shared working areas in a packaging line

**Patent Proprietor:**

CAMA 1 SpA

**Opponent:**

Gerhard Schubert GmbH

**Headword:**

**Relevant legal provisions:**

EPC Art. 100(a), 100(b), 100(c)

**Keyword:**

Amendments - added subject-matter (no)

Sufficiency of disclosure - (yes)

Inventive step - (yes)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**

**Boards of Appeal**

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Case Number: T 0295/18 - 3.2.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.07**  
**of 19 April 2021**

**Appellant:** Gerhard Schubert GmbH  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 30 November  
2017 rejecting the opposition filed against  
European patent No. 2610036 pursuant to Article  
101(2) EPC.**

**Composition of the Board:**

**Chairman** I. Beckedorf  
**Members:** V. Bevilacqua  
S. Watson

## Summary of Facts and Submissions

I. The opponent (appellant) filed in the prescribed form and within the prescribed time limit an appeal against the decision rejecting the opposition against European patent No. 2 610 036, requesting

that the decision under appeal be set aside and that the European patent No. 2 610 036 be revoked.

II. The patent proprietor (respondent) requested

that the appeal be dismissed, *i.e.* that the patent be maintained as granted, or in the alternative, when setting aside the decision under appeal, that the patent be maintained in amended form on the basis of one of the sets of claims according to auxiliary requests 1 to 11 filed with letter dated 28 July 2017.

III. The opponent referred to the following documents, which were also mentioned in the appealed decision:

E6: EP0433522A1  
E7: US20030118436  
E8: US20100121489.

The following documents were introduced with the notice of appeal:

E9: JP 05111888A, with English translation  
E10: JP H 06348321A, with English translation.

The patent proprietor objected to the admittance into the proceedings of documents E9 and E10 and requested,

should these be admitted,  
that the case be remitted to the opposition  
division for further prosecution.

IV. By communication pursuant to Article 15(1) RPBA 2020 the Board provided the parties with its preliminary opinion on the above requests according to the then state of the file.

The opponent submitted a substantive reply thereto with letter of 10 March 2021.

Oral proceedings were held on 19 April 2021, during which the factual and legal situation was discussed with the parties.

For further details of the course of the oral procedure, reference is made to the minutes thereof.

The decision was announced at the end of the oral proceedings.

The lines of argument of the parties are dealt with in detail in the reasons for the decision, whereby the opponent's argument was that the findings of the opposition division in respect of the the grounds for opposition were incorrect and the patent proprietor defended the patent as granted.

V. Independent **claim 1 of the main request**, corresponding to claim 1 of the patent as granted, reads as follows (the features whose compliance with the requirements of Article 123(2) EPC is contested by the opponent are

shown in bold, emphasis added by the Board, the feature numbering used in the appealed decision has also been added by the Board):

- 1a "Method for anti-collision control and the assignment of missions to picking devices of a packaging line, said line comprising:
- 1b at least a first linear conveyor (1) for the inlet of items,
- 1c at least a second linear conveyor (2) for the outlet of items,
- 1d a plurality of picking devices (31-33), each of said devices being **adapted to** perform missions for picking items (10) from said first conveyor and missions for delivery items in predetermined locations on said second conveyor or inside containers (11) transported by said second conveyor,
- 1e each of the picking devices having a respective working area (51-53) comprising a region of the first conveyor and a region of the second conveyor accessible to the respective picking device,
- 1f the picking devices being arranged to operate with shared working areas (54-55) , so that there is at least one region of the first and/or second conveyor belonging to the working areas of at least two picking devices, and also:
- 1g said inlet conveyor (1) and said outlet conveyor (2) having a substantially linear extension along a respective direction, and having an orientation defined by the conveying direction (A), thus defining an upstream-downstream oriented direction;
- 1h the picking devices and the respective grabbing or picking locations on said conveyors being identifiable by the control system as organised according to said oriented direction,

the method being characterised in that

- 1i it **comprises an algorithm** for assigning a pickup location or a delivery location to a generic first picking device (32), said algorithm comprising at least the following steps:
- 1ia verifying the existence of a pickup or delivery location already assigned to a generic second picking device (31, 33) and comprised in a working area shared between said second picking device and said first picking device, and in the affirmative case dynamically redefining the working area of said first device (32) obtaining a new working area (52\*) accessible to said first device, such that said location assigned to said second device is outside of said new and redefined working area (52\*),
- 1ib repeating said verification for every picking device (31, 33) sharing a working area with said first device (32), obtaining a dynamically redefined accessible working area for said first device,
- 1ic assignment to said first device (32) of a respective pickup or delivery location belonging to said accessible working area, if there is at least one pickup location or delivery location in said area that can be assigned to said first device (32)."

Independent claim 8 of the main request is directed towards a packaging line comprising the features of claim 1 of the main request and reads as follows:

"A packaging line, comprising:

- at least a first linear conveyor (1) for the inlet of items,
- at least a second linear conveyor (2) for the outlet of items,

- a plurality of picking devices (31-33), each of said devices being adapted to carry out missions for picking items (10) from said first conveyor and delivery missions for delivering items in predetermined locations on said second conveyor or inside containers (11) transported by said second conveyor,
- a system for anti-collision control and for assigning missions to said picking devices,
- each of the picking devices having a respective working area (51-53) comprising a region of the first conveyor and a region of the second conveyor accessible to the respective picking device,
- the picking devices being arranged to operate with shared working areas (54, 55), and wherein:
  - said inlet conveyor and said outlet conveyor have a substantially linear extension along a respective direction, and having an orientation defined by the conveying direction, defining an upstream-downstream oriented direction;
  - the picking devices and the respective grasping and picking locations on said conveyors being identified by said control system as arranged according to said oriented direction, configured to characterised in that said control system includes an algorithm assign a pickup location or delivery location to a generic first picking device (32), through at least the following steps:
    - a) verifying the existence of a grasping or pickup location already assigned to a generic second picking device (31, 33), and comprised in a working area shared between said second picking device and said first picking device, and in the affirmative case dynamically redefining the working area of said first device (32) obtaining a new working area (52\*) accessible to said first device, such that said grasping or pickup



location assigned to said second device is outside of said new redefined working area,  
b) repeating said verification for every picking device (31, 33) having working area shared with said first device (32), obtaining a working area accessible to said dynamically redefined first device,  
c) assigning a respective pickup or delivery location belonging to said accessible working area to said first device (32), if there is at least one pickup or delivery location in said area that can be assigned to said first device."

## **Reasons for the Decision**

### 1. E9-E10 - Remittal

1.1 The opponent justifies the filing of documents E9 and E10 in appeal proceedings with the argument that the decision of the opposition division was surprising.

This was because according to point II.11.1.2 of the grounds for the appealed decision, feature 1ia was known from E7 while feature 1ic was not.

This conclusion was unexpected, because it was not anticipated in the communication dated 21 March 2017 sent by the opposition division in preparation of oral proceedings, and also did not follow the arguments of the patent proprietor, who, in its reply to the notice of opposition (see point 4.2), argued that E7 failed to disclose all the features of the characterizing portion of claims 1 and 8 of the main request.

Thus, according to the opponent, the filing of documents E9 and E10 was to be considered as a timely and appropriate reaction to a surprising stance taken by the opposition division in the appealed decision.

1.2 The Board disagrees, for the following reasons.

1.2.1 The Board is not persuaded that the conclusion reached in the appealed decision, that features lia-lic were not disclosed in E7, was surprising.

This is because the patent proprietor specifically had argued that E7 failed to disclose all the features of the characterizing portion of granted claim 1 at point 4.2 of the reply to the notice of opposition.

As the appealed decision clearly follows the arguments of the patent proprietor (see point II.11.1.2, fourth paragraph, on page 11 of the appealed decision, clearly stating that E7 fails to disclose "the characterizing portion of claims 1 and 8") the Board does not see how the opponent could have been surprised by the conclusions of the opposition division.

1.2.2 As the primary object of the appeal proceedings is to review the decision under appeal in a judicial manner, as laid out in Article 12(2) RPBA 2020, a party's appeal case must be directed to facts, objections, arguments and evidence on which the contested decision was based.

According to Article 12(4) RPBA 2007, the Board has the power to hold inadmissible evidence which could have been presented during the opposition proceedings.

The opponent submitted documents E9 and E10 to raise new inventive step objections against the granted independent claims 1 and 8, but failed to convincingly explain (see point 1.2.1 above) why these documents could not have been filed already within the opposition period.

It is therefore not apparent to the Board how the late filing of these new documents could be regarded as a timely and appropriate procedural step taken in reaction to the reasons of the appealed decision.

Therefore, the Board uses its discretion pursuant to Article 12(4) RPBA 2007 to hold E9 and E10 inadmissible.

- 1.3 As a consequence of the non-admission of documents E9 and E10 it is not necessary to discuss the conditional request of the patent proprietor for remittal of the case to the opposition division.
2. Added subject-matter - claims 1 and 8 of the main request
- 2.1 The opponent contests the conclusions reached under points II.9.1 and 9.3 of the appealed decision, that the replacement of the expressions "suitable for" and "operates with an algorithm" with respectively "adapted to" and "includes an algorithm" did not introduce added subject-matter.

According to the opponent, the introduced features were more restrictive than the original features but, being not literally disclosed, had no basis in the originally filed documents, as follows.

- 2.1.1 Because of the formulation "includes an algorithm" used in the granted claims, the algorithm was not necessarily used by the controller.

Thus, according to the opponent, the granted claims extended to an originally undisclosed embodiment in which the control system included several algorithms and was operated by an algorithm different to the one defined by features 1ia-1ic.

The presence of added subject-matter was also evident because the originally filed claims encompassed embodiments in which the control system operated with algorithms which were not installed in the control system, but in a cloud system.

- 2.1.2 According to the opponent the term "suitable for" only expressed the basic suitability of the picking devices mentioned in the originally filed claims 1 and 8 for the claimed purpose ("perform missions for picking items...").

These picking devices being merely "suitable for" did not necessarily comprise all the details which were necessary to actually achieve the intended purpose.

On the other hand the picking devices of the granted claims 1 and 8, being "adapted for" were directly capable, i.e. fully designed, to achieve this purpose.

As a consequence of the above the granted claims 1 and 8 extended beyond the content of the originally filed documents.

- 2.2 During oral proceedings the opponent also contested the deletion of the words "if necessary" in feature 1ib of

claims 1 and 8 with the argument that according to the originally filed claims the repetition was foreseen only in particular cases ("if necessary"), and was excluded in all the others.

2.3 The Board disagrees.

2.3.1 The opponent, after having alleged the presence of a distinguishing aspect between the picking devices (**suitable for**) as originally claimed, and the picking device (**adapted to**) of the granted claims, concluded that the granted claims extended beyond the original disclosure because the formulation "adapted to" had no literal basis therein.

This argument is not convincing, because, as noted by the patent proprietor, the opponent did not make clear which additional limitation would be implied by the formulation "adapted to" in the present case.

The opponent's argument is also not sufficient for showing the incorrectness of the finding in point II.9.1 of the appealed decision, because the opponent failed to provide a discussion on why the (unidentified) alleged additional technical information implied by the "adapted to" formulation was not derivable from the originally filed documents.

2.3.2 The Board is also not convinced by the arguments submitted in relation to the feature "includes an algorithm" that the conclusions of point II.9.3 of the appealed decision were not correct.

According to the opponent a skilled person would read in the amended claim an embodiment (running an anti-

collision control of a plurality of robots from the cloud) which was not originally disclosed.

The opposition division considered that a skilled person would not have taken such an embodiment into consideration.

The opponent contested this finding of the opposition division, but failed to explain why a skilled person would have considered a cloud-based interpretation of the claim as safe, and therefore as encompassed by the formulation of claim 1 of the main request.

The Board considers this line of argument incomplete and sees no reason, on the basis thereof, to deviate from the reasoned finding of the opposition division that for a skilled person a control system of a packaging machine which operates with a certain algorithm necessarily also "includes" the algorithm.

The opponent then argued that the presence in the control system of other algorithms coexisting together with the one comprising the steps of the characterising portion of claim 1 was not originally claimed, but failed to explain why this was not originally disclosed.

As noted by the patent proprietor, even if the skilled person would have regarded the "cloud based" interpretation of the claims as technically feasible, still no added subject-matter would be present in the granted claims, because the application as originally filed did not exclude such "cloud based" embodiments, as it was not restricted to a specific structure of the control system.

- 2.3.3 The Board is also not convinced by the arguments submitted in relation to the removal of "if necessary".

As noted by the patent proprietor the originally filed claims were directed towards, and therefore disclosed, also an embodiment where an optional step, recited after the words "if necessary", was effectively carried out.

The granted claims, after deletion of the words "if necessary", still relate to this originally disclosed embodiment, and do not therefore extend beyond the content of the original disclosure.

- 2.4 As a consequence of the above, the opponent has not convincingly demonstrated that the opposition division was wrong in deciding that the claims of the main request did not contain unallowable amendments.

3. Sufficiency of disclosure - claims 1 and 8 of the main request

The opponent raised a plurality of objections as follows.

- 3.1 Objection related to feature 1g

- 3.1.1 The opponent argued that as the wording of claim 1 was limited to only one conveying direction (A) (see feature 1g), the skilled person was unable to carry out the invention in a system with more than one conveying direction.

- 3.1.2 According to point II.10.1 of the appealed decision this objection was not to be followed, because the patent in suit clearly also disclosed how to carry out

an embodiment with more than one conveying direction, as such an embodiment was depicted in figure 3 and described in the passages of the description related thereto.

In addition to that, the opposition division saw no contradiction between the claim and the descriptions and the drawings of the patent in suit because the wording "respective direction" also encompasses conveyors having different directions.

3.1.3 The opponent now criticizes these conclusions by stating that the opposition division failed to explain how the single conveying direction (A) which is defined in the claim was to be chosen, and that for this reason a skilled person was not able to carry out the invention.

3.1.4 The Board disagrees.  
The presence of more than one possible conveying direction does not prevent the skilled person from being able to carry out the invention.

This is because, as found by the opposition division, the relative positions and directions of the components of a given packaging are known in advance, and therefore it is possible to organize the picking devices and the locations according to the oriented direction of any conveyor by using a predefined coordinate system as explained in paragraphs [0028], [0045], [0051] and [0056] of the patent in suit.

3.2 Objection related to feature 1h

3.2.1 The opponent puts forward that the skilled person would not be able to carry out feature 1h because of the



allegedly unclear expressions "identifiable" and "as organised" (see points 2 and 3 starting on page 8 of the statement setting out the grounds for appeal).

- 3.2.2 According to the appealed decision (point II.10.3) there would be no difficulty in carrying out feature 1h in practice, because a skilled person would understand that the control system is able to sort the position of picking devices or the locations according to the oriented direction of any relevant conveyor, which can be readily implemented with an internal coordinate system.
- 3.2.3 The opponent criticizes the opposition division's finding in point II.10.3 of the appealed decision by arguing that, due to the presence of several conveying directions, the skilled person does not know which of these several conveying directions to use to organise and identify the devices.

The opponent also argues that feature 1h is excessively broad, leaving the skilled person in doubt as to which of its possible interpretations with regard to the identification should be chosen by a skilled person.

- 3.2.4 The Board disagrees, and concurs with the patent proprietor that feature 1h, referring to the ability of the control system to sort the position of the picking devices or of the target locations according to the oriented direction of a conveyor, can easily be implemented by a skilled person with an internal coordinate system, as explained in paragraphs [0045], [0051] and [0056] of the patent in suit.

3.3 Objection related to features lia-lic

3.3.1 According to the opponent, lack of sufficiency of disclosure was also evident in relation to the features of the characterizing portion of independent granted claims 1 and 8 (lia-lic), because these alone were not sufficient for avoiding collisions.

This was because only the position of the "hand" of each picker robot was verified, without taking into account that collisions with other components of the picking devices were also possible.

3.3.2 The Board disagrees and concurs with the patent proprietor, who noted that the above argument of the opponent, based on an alleged low performance of the claimed method and device, does not address the reasons of the opposition division for concluding that the skilled person is able to carry out the claimed inventions containing features lia-lic.

According to the established case law of the Boards of Appeal, the burden of proof for establishing that the disclosure is insufficient in inter partes proceedings generally lies with the opponent, who has to prove that a skilled reader of the patent would not be able to carry out the invention on the basis of his general knowledge of the subject matter and without unreasonable effort (cf. Case Law of the Boards of Appeal, 9th edition 2019, Chapter II.C.9).

The opponent has not argued that the implementation of features lia-lic poses a burden to the skilled person, but rather explained that even with implementation of these features collisions may still be possible.

Even if, as argued by the opponent, the granted independent claims 1 and 8 were not formulated in such a way to exclude any possible collision, it is nevertheless incumbent on the opponent to at least credibly demonstrate why the technical knowledge of a skilled person would not enable him to reduce these inventions in practice, also because the contested decision recognised sufficiency of disclosure (see points II.10.4 and 10.5 of the appealed decision).

The above objection of the opponent is therefore not convincing.

#### 3.4 Further objections of lack of sufficiency of disclosure

In the statement of grounds of appeal, the opponent also raised further objections related to sufficiency of disclosure (see points 4-9 thereof).

The Board noted in its communication of 26 October 2020 (points 4.4.2 and 4.5.1) that these objections did not appear to have been substantiated.

This preliminary finding of the Board was neither commented on nor contested by the opponent during the oral proceedings.

However, the above objections are no longer relevant for the decision in the present case since the opponent did not specifically invoke them during oral proceedings. At the end of the discussions on the merits the opponent stated, when asked, that it did not want to raise any further objections to the main request other than those discussed in the minutes (minutes, page 5, first paragraph).

4. Inventive step, starting from the teaching of document E8 in combination with the common general knowledge

4.1 During oral proceedings the opponent raised an objection against granted claims 1 and 8 arguing for the first time that the subject-matter thereof lacked inventive step starting from the teaching of document E8 taken in combination with the common general knowledge.

According to the opponent, E8 did not only disclose all the features of the preamble of these claims, and in particular a packaging line, but also features 1ia and 1ic of the characterizing portion thereof (see also the analysis given at pages 12 and 13 of the letter dated 10 March 2021).

Feature 1ia was disclosed, according to opponent, in figures 5, 10A and paragraphs [0104] and [0105] of this document, according to which a "workpiece detecting step", a "robot detection step" , a "simulation step" and a "collision calculating step" were carried out .

The opposition division wrongly found (see point II. 12.3.2 of the appealed decision) that E8 failed to disclose feature 1ia because the "plan changing step" of E8 was only performed after running a simulation aimed at detecting possible collisions.

Running simulations was clearly not excluded by the granted claims.

The verification steps of feature 1ia were in fact nothing else than a simulation, because no skilled person would risk operating the picking devices up to the point of collision in reality.

The only distinguishing feature, namely feature 1b, did not provide, according to the opponent, any contribution to inventive step because this feature merely extended, in cases in which more than two interfering picking devices were present, the verification steps set out in feature 1a, and already disclosed in E8 to all potentially interfering picking devices.

In such a case, namely where more than two picking devices were to be controlled, extending to all pickers what was already done to prevent collisions between two picking devices according to the teaching of document E8, would not require any inventive step.

#### 4.2 The Board disagrees.

E8 describes a method for controlling picking devices which includes a collision determining step, see figure 5 and paragraphs [0079] to [0081].

According to paragraph [0081] if step S6 gives the result that portions of the robots collide with each other when moved according to a first plan, a "plan changing step" S7 is executed.

Paragraph [104] and figure 10A disclose how such "plan changing step" is carried out, namely by stopping the first robot in order to avoid the collision with the second robot.

According to feature 1ia of granted claim 1 the control system has to do more than simply determining if paths of the picking devices intersect, and in the

affirmative, to stop one of the two picking devices to avoid collision (as disclosed at paragraph [0104]).

Feature 1ia stipulates that the control system has to verify the existence of a pickup or delivery location already assigned to a generic second picking device and comprised in a working area shared between said second picking device and said first picking device, and in the affirmative case to dynamically redefine the working area of said first device obtaining a new working area accessible to said first device, such that said location assigned to said second device is outside of said new an redefined working area.

Nothing in E8 discloses such a way of operation, comprising a dynamic redefinition of an accessible area of a picking device, as stated in the appealed decision .

As a consequence of the above, the opponent could not convincingly show that the opposition division's finding in point II.12.3.2 of the appealed decision, related to the non-disclosure of feature 1ia in E8, was not correct.

The objection of lack of inventive step is based on the assumption that feature 1ib is the only distinguishing feature of the subject-matter of granted claims 1 and 8 over the content of the disclosure of E8.

As this assumption has not been convincingly proven by the opponent, the Board sees no reason to conclude that the subject-matter of granted claims 1 and 8 lack inventive step starting from the teaching of document E8 in combination with the common general knowledge.

As the above objection of the opponent is not to be followed, the Board does not consider it necessary to decide on the admissibility thereof.

5. Inventive step, starting from the teaching of document E7 in combination with the common general knowledge

5.1 The opponent also raised an objection against granted claims 1 and 8 arguing that the subject-matter thereof lacked inventive step starting from the teaching of document E7 in combination with the common general knowledge.

E7 did not only disclose all the features of the preamble of these claims, but also features 1ia and 1ic of the characterizing portion thereof.

Feature 1ia was disclosed, according to the opponent (see page 10, second paragraph, of the letter dated 10 March 2021), because in E7 the control system verifies if a pick-up position for a first picking device is occupied by another picking device, and if there is no pick-up position available that can be allocated to the first picking device, no allocation takes place.

In analogy to what has been argued starting from E8, the only distinguishing feature, namely feature 1ib, did not establish an inventive step because it would be obvious to extend, in cases in which more than two interfering picking devices were present, the verification steps set out in feature 1a, and already disclosed in E7, to all potentially interfering picking devices.

5.2 The Board notes that also the above objection is based on the assumption that feature 1ib is the only feature distinguishing the subject-matter of granted claims 1 and 8 from the method and packaging line disclosed in E7.

The Board, however, does not see any reason to deviate from the conclusion of the appealed decision (see point II.11.1.2) that E7 also fails to disclose features 1ia and 1ic for the following reasons.

As noted in the appealed decision, the collision avoidance system disclosed in E7 is based on an interference area entry interlock signal I/L (see figures 2 and 5 to 12, paragraphs [0128]-[0133] of E7).

This is possible because the picking devices of E7 may only interfere at the so-called centering areas or at the pallet areas.

When a picking device enters such an area of potential interference, the respective controller turns an interlock signal (I/L) to ON, preventing the other picking devices from entering the same area.

E7 therefore discloses that a robot is allowed to enter an area of potential interference only if the interlock signal of the other potentially conflicting robot (having accession to said area) is OFF, but does not disclose that the working area thereof is re-defined or changed.

As convincingly argued by the patent proprietor, this way of operation does not correspond to what is recited in feature 1ia, according to which the control system has to verify the existence of a pickup or delivery



location already assigned to a generic second picking device and comprised in a working area shared between said second picking device and said first picking device, and in the affirmative case to dynamically redefine the working area of said first device obtaining a new working area accessible to said first device, such that said location assigned to said second device is outside of said new and redefined working area.

Therefore, the opponent could not convincingly show that the opposition division's finding in point 11.1.2 of the appealed decision, related to the non-disclosure of at least feature lia in E7, was not correct.

The remaining arguments of the opponent all rely on the assumption that feature lib is the only distinguishing feature.

As, however, this assumption has not been convincingly proven the Board sees no reason to follow the opponent and conclude that the subject-matter of granted claims 1 and 8 lack inventive step starting from the teaching of document E7 in combination with the common general knowledge.

6. Inventive step, starting from the teaching of document E6 in combination with the common general knowledge or document E7
- 6.1 The opponent then raised inventive step objections against granted claims 1 and 8 starting from E6.

According to the opponent, the only distinguishing feature between the subject-matter of claims 1 and 8

and the method and the packaging line disclosed in E6 was step 1ic.

During oral proceedings the opponent argued that feature 1ia was disclosed in the embodiment of figure 1b of E6, showing a packaging method consisting in placing of components on an (electrical) board at predetermined positions.

No inventive step should be acknowledged on the basis of feature 1ic alone, according to the opponent, because a skilled person would have immediately recognized, on the basis of their technical knowledge, that assigning to each device a respective pickup or delivery location within its accessible working area, as soon as one becomes available, is more efficient than leaving the picking device in a waiting state.

As E7 also provided a teaching in this respect, the opposition division was wrong when it concluded that the subject-matter of granted claims 1 and 8 involved an inventive step over the combination of the teachings of documents E6 and E7.

6.2 The Board, again disagrees.

E6 discloses that picking devices take discrete electrical components (resistors, capacitors, etc.) from feeders and mount them on a circuit board (see page 6, line 24 to page 7, line 9).

This document does not mention any packaging line, and, as noted by the patent proprietor, does not even relate to the technical field of packaging.

Feature 1ia is clearly not disclosed in E6, because E6 teaches that, whenever a picking device is assigned a target position, the system calculates a path for the robot to reach this target position and said path is then compared the path of other robots. In case of a path intersection one of the two picking devices does not move (a "move grant" is not generated) until the intersection is eliminated, see page 21, lines 8-14.

E6 therefore avoids collisions simply by making one of the two meeting picking devices to wait, and therefore does not disclose any modification of the working area of these picking devices.

Therefore, the opponent could not convincingly show that the conclusion of point 11.1.2 of the appealed decision, related to the non-disclosure of feature 1ia in E6, was not correct.

The remaining arguments of the opponent related to the objection of lack of inventive step, starting from the teaching of document E6 in combination with the common general knowledge or with the teaching of document E7 all rely on the above discussed assumption that feature 1ic is the only distinguishing feature.

As this assumption has not been convincingly proven, the Board sees no reason to conclude, following the opponent, that the opposition division wrongly acknowledged inventive step over the combination E6+E7 (see point II.12.1.2 of the appealed decision), or that the subject-matter of granted claims 1 and 8 lack inventive step starting from the teaching of document E6 in combination with common general knowledge (as argued during oral proceedings).

7. Inventive step - starting from E3

The opponent submitted, with its letter dated 19 May 2020 (pages 13 and 14), a new inventive step objection taking E3 as the closest prior art, without however providing a complete substantiation therefor.

The Board noted in its communication of 26 October 2020 (point 7.2) that this objection did not appear to have been substantiated.

This preliminary finding of the Board was neither commented on nor contested by the opponent during the oral proceedings.

However, the objection of lack of inventive step starting from E3 is no longer relevant for the present decision since the opponent did not specifically invoke it during oral proceedings. At the end of the discussions on the merits the opponent stated, when asked, that it did not want to raise any further objections to the main request other than those discussed in the minutes (minutes, page 5, first paragraph).

8. Conclusions

As discussed above, the Board finds

- that documents E9 and E10 are not admitted into the proceedings;

- that the opponent has failed to demonstrate in a convincing manner the incorrectness of the decision under appeal; and

- that none of the opponent's objections prejudice the maintenance of the patent as granted.

Hence, the appeal is to be dismissed.

**Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:



G. Nachtigall

I. Beckedorf

Decision electronically authenticated