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**Datasheet for the decision  
of 25 May 2023**

**Case Number:** T 0728/20 - 3.2.01

**Application Number:** 14734154.9

**Publication Number:** 3022134

**IPC:** B65G1/04, B65G1/137

**Language of the proceedings:** EN

**Title of invention:**

METHOD OF ORDER FULFILLING BY PREPARING STORAGE UNITS AT A  
PICKING STATION

**Patent Proprietor:**

Dematic GmbH

**Opponent:**

SSI Schäfer Automation GmbH

**Headword:**

**Relevant legal provisions:**

EPC Art. 56  
EPC R. 100(2)

**Keyword:**

Inventive step - (yes)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

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**Case Number: T 0728/20 - 3.2.01**

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.01**  
**of 25 May 2023**

**Appellant:**

(Opponent)

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**Representative:**

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**Respondent:**

(Patent Proprietor)

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**Representative:**

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**Decision under appeal:**

**Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
7 January 2020 concerning maintenance of the  
European Patent No. 3022134 in amended form.**

**Composition of the Board:**

**Chairman**

G. Pricolo

**Members:**

A. Pieracci

A. Jimenez

## **Summary of Facts and Submissions**

- I. An appeal was filed by the opponent in the prescribed form and within the prescribed time limit against the interlocutory decision of the opposition division maintaining European patent No. 3 022 134 in amended form according to the then auxiliary request 1, filed on 14 August 2019.
- II. The Board responsible for the case gave its preliminary opinion in a communication dated 2 December 2021 pursuant to Rule 100(2) EPC, in which it indicated that the appeal was likely to be dismissed.
- III. The opponent responded to the Board's communication with a letter dated 14 February 2022 and the patent proprietor replied thereto with letter dated 3 March 2022.
- IV. With communication dated 17 February 2023 the parties were informed that the case had been transferred to a different Board.
- V. With communication dated 17 May 2023 the Board informed the parties that the preliminary opinion given in the communication dated 2 December 2021 by the previous Board was maintained.
- VI. Oral proceedings before the Board took place on 25 May 2023. At the conclusion of the proceedings, the decision was announced. Further details of the oral proceedings can be found in the minutes.
- VII. The following documents are mentioned in this decision:

E2: DE 20 2004 012021 U1;

E3: DE 10 2006 008932 A1;

E5: WO 2013/090970 A2;

D2: EP 1 486 435 A1.

VIII. The final requests of the parties are as follows.

The opponent (appellant) requested:

that the appealed decision be set aside and that the European patent be revoked.

The patent proprietor (respondent) requested:

that the appeal be dismissed, or in the alternative, that the patent be maintained on the basis of the set of claims according to auxiliary requests 1 to 3 corresponding to auxiliary requests 2 to 4 filed in opposition proceedings on 14 August 2019.

IX. The arguments of the parties relevant for the decision are dealt with in detail in the Reasons for the Decision.

X. Independent claim 1 of the patent as amended in the version found by the opposition division to meet the requirements of the EPC (auxiliary request 1 filed on 14 August 2019) reads as follows (features' numbering according to page 4 of the appealed decision):

- (1.1) Method of order fulfilling by making order and/or product units (T) available from a storage facility (1) in a desired sequence at a picking station (10) wherein the storage facility comprises:
  - (1.2) - a storage racking comprising a plurality of multilevel storage racks (R) in which order and/or product units are stored,
  - (1.3) wherein the storage racks are disposed back-to-back in pairs
  - (1.4) and have an aisle (2) between pairs;
  - (1.5) - at least one automatic storage and retrieval device (5) wherein the order and/or product units are stored and retrieved from the storage racks by the automatic storage and retrieval device (5);
  - (1.6) - at least one lift (8) used, in order to transfer the order and/or product units to one or more storage-exit conveyor(s) (6);
  - (1.7) - at least one storage-entry conveyor (4) per lift provided for feeding order and/or product units into the storage racking;
  - (1.8) - at least one storage-exit conveyor per lift provided for retrieval of order and/or product units from the storage racking;
  - (1.9) - at least one fully or semiautomatic picking station (10) for picking from product units into order units for fulfilling orders, to

which order and/or product units are fed;

- (1.10) - wherein each lift is directly connected to a picking station in a picking level by the storage-entry conveyor and the storage-exit conveyor, characterized in that
- (1.11) - the automatic storage and retrieval device is of the shuttle type
- (1.12) provided per aisle and per level for each storage racking aisle,
- (1.13) and in that order and/or product units (T) are exchanged directly between two adjoining storage racks (R) from a source storage rack to an adjacent destination storage rack via cross conveyance locations (Q) in the storage racks themselves,
- (1.14) and in that the at least one lift (8) is arranged in one of the pair of racks (R) of an aisle."

## Reasons for the Decision

1. Inventive step of the subject-matter of claim 1 of the patent as maintained in opposition proceedings in view of E5 in combination with D2 (Article 56 EPC)
  - 1.1 The opponent (see the statement setting out the grounds of appeal, page 3, first to ninth paragraph) contests the finding of the opposition division (see page 10, point 7.6 of the appealed decision) that the combination of the embodiment of figure 6 of E5 with D2 does not disclose all the features of claim 1. In particular the opponent contests the finding of the opposition division (see page 9, point 7.4 of the appealed decision) that document D2 does not disclose feature 1.13 of claim 1 (see point X above), namely:

"...and in that order and/or product units (T) are exchanged directly between two adjoining storage racks (R) from a source storage rack to an adjacent destination storage rack via cross conveyance locations (Q) in the storage racks themselves..."
  - 1.2 The Board cannot follow the argument of the opponent expressed at the oral proceedings and in writing (see the statement setting out the grounds of appeal, page 11, third paragraph to page 12, second paragraph and the letter dated 14 February 2022, page 1, last paragraph to page 4, third paragraph), that the embodiment of Figure 2 of D2 together with paragraphs [0019] and [0022] to [0025] and in particular the last sentence of paragraph [0024], discloses feature 1.13 of claim 1.

1.3 The Board cannot concur with the opponent that item 4 of figure 2 of D2 represents two adjoining and adjacent storage racks according to feature 1.13 of claim 1. The Board rather follows the view of the patent proprietor that item 4 represents a single storage rack with double-deep container spaces per storage level as apparent from paragraph [0019], first sentence and paragraph [0022] of D2.

1.4 The Board also cannot see elements 5a and 4 of figure 2 of D2 as representing respectively the source storage rack and the destination storage rack according to feature 1.13 of claim 1.

This is because, at least in view of the presence of an aisle between elements 5a and 4, the Board can neither see them as being "adjoining" and "adjacent" as required by feature 1.13, nor "back to back in pairs" as required by feature 1.3 of claim 1 (see point X above).

The Board notes incidentally that, contrary to what argued by the opponent, the fact that the racks are disposed back-to-back in pairs as outlined in feature 1.3 cannot be disregarded when considering feature 1.13, since this property also applies to the racks mentioned therein.

1.5 The Board is thus not convinced by the argument of the opponent that the opposition division erred in finding that feature 1.13 of claim 1 is not to be directly and unambiguously derivable from D2 and that therefore the combination of the teachings of E5 with D2 would not lead to the claimed subject-matter.

2. Inventive step of the subject-matter of claim 1 of the patent as maintained in opposition proceedings in view of E5 in combination with the common general knowledge as represented by E2 and E3 (Article 56 EPC)
- 2.1 The Board has given its preliminary opinion on the objection of lack of inventive step in view of E5 in combination with the common general knowledge as represented by E2 and E3 in point 10 of its communication pursuant to Rule 100(2) EPC.
- 2.2 Since the opponent has neither contested nor commented the preliminary opinion of the Board on this issue, after having considered again all relevant aspects of the case, the Board does not see any reason to deviate from its preliminary opinion, which is repeated in the following.
- 2.3 The Board cannot follow the argument of the opponent (see the passage bridging pages 14 and 15 of the statement setting out the grounds of appeal), that E2 and E3 show that it was well known to the person skilled in the art to move the items transversally through the racks so to have shorter distances and save time and that therefore the person skilled in the art would have introduced this teaching in E5, thereby arriving to the subject-matter of claim 1 in an obvious way.
- 2.4 The Board rather concurs with the patent proprietor (see page 5, last paragraph of the reply to the statement setting out the grounds of appeal), that the opponent has not provided any basis for its assertions, in particular why and how the person skilled in the art should have derived a specific teaching from E2 and E3 and applied it to E5 in the way it maintains.

The argument of the appellant is therefore an assertion which remains unsubstantiated and thus not convincing.

The Board has therefore no reason to consider the decision of the opposition division as not being correct.

**Order**

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

The appeal is dismissed

The Registrar:

The Chairman:



L. Stridde

G. Pricolo

Decision electronically authenticated