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**Datasheet for the decision
of 27 January 2023**

Case Number: T 1512/21 - 3.2.07

Application Number: 11190626.9

Publication Number: 2436619

IPC: B65G1/04, B65G1/137, B65G47/57,
B65G1/127, B65G1/06

Language of the proceedings: EN

Title of invention:
Vertical conveyor system

Applicant:
Casepick Systems, LLC

Headword:

Relevant legal provisions:
EPC Art. 123(2), 113(1)
RPBA 2020 Art. 12(6), 12(8)

Keyword:

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

Late-filed request - should have been submitted in first-instance proceedings (yes) - circumstances of appeal case justify admittance (no) - admitted (no)

Right to be heard - opportunity to comment (yes)

Decision in writing - cancellation of oral proceedings (yes)

Decisions cited:

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 1512/21 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 27 January 2023

Appellant: Casepick Systems, LLC
(Applicant) 200 Research Drive
Wilmington, MA 01887-4442 (US)

Representative: Ipside
7-9 Allées Haussmann
33300 Bordeaux Cedex (FR)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 26 February
2021 refusing European patent application No.
11190626.9 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman A. Cano Palmero
Members: V. Bevilacqua
E. Mille

Summary of Facts and Submissions

I. The appellant (applicant) filed an appeal against the decision of the examining division to refuse European patent application number 11 190 626.9, requesting that

the decision under appeal be set aside and that

a patent be granted on the basis of one of the sets of claims

according to the main request on which the decision under appeal was based (and re-filed with the statement of grounds of appeal), or

according to the auxiliary request, first filed with the statement of grounds of appeal.

II. The examining division found that the subject-matter of independent claims 1 and 13 of the main request extended beyond the content of the originally filed documents and therefore contravened the requirements of Article 123(2) EPC.

This finding related to the deletion of the feature "in a substantially continuous vertical loop" from claims 1 and 13 which the examining division considered an unallowable intermediate generalisation (see appealed decision, point 2.18).

III. In preparation for oral proceedings the Board communicated its preliminary assessment of the case, according to which the appeal was to be dismissed, by means of a communication pursuant to Article 15(1) RPBA 2020.

IV. With letter dated 24 January 2023 the appellant informed the Board that it will not attend the oral proceedings and requested a decision according to the state of the file.

V. **Claim 1 of the main request** reads as follows:

"A multilevel vertical conveyor system for transporting uncontained case units (750-753) to and from a multilevel storage structure having an array of vertically stacked storage levels (130), the multilevel vertical conveyor system comprising:

a multilevel vertical conveyor (150) including

a frame (710),

a drive member (720) supported by the frame (710), characterized in that

the multilevel vertical conveyor (150) includes support shelves (730), each of the support shelves being coupled to the drive member (720) by supports (930) where the drive member (720) is configured to move the support shelves (730) relative to the frame (710), each of the support shelves (730) being configured to support multiple uncontained case units (750, 752), wherein each support shelf (730) has first spaced apart fingers (910) that extend from a suitably shaped frame (911) to form a platform (900) configured for supporting multiple individual case units (750, 752) in a respective position (A, C) of multiple different separate positions (A, C) on a common support shelf (730); and

at least one transfer station (140) having a carriage system (1130) retractably extending into a path of the support shelves (730), the carriage system (1130) of the at least one transfer station includes second spaced apart fingers (1135) extending from a carriage base (1132) and arranged adjacent respective first spaced apart fingers (910) of a support shelf (730), the second spaced apart fingers (1135) interface with the first spaced apart fingers (910) to allow the first spaced apart finger (910) of the support shelves (730) to pass between the second spaced apart fingers (1135) of each transfer station (140) to load and unload the uncontained case units (750, 752) from the first spaced apart fingers (910) of the support shelf (930), where the first spaced apart fingers (910) of a respective support shelf (730) defines multiple different separate positions (A, C) of the support shelf (730);

wherein each of the at least one transfer station (140) comprises more than one transfer station (140) arranged relative to each other so that each of the transfer stations (140) corresponds with a respective position (A, C) of the multiple different separate positions (A, C) of the common shelf (930) where the multiple different positions (A, C) are located side by side, the second spaced apart fingers (1135) of the at least one transfer station (140) individually interface with first spaced apart fingers (910) corresponding to a respective position (A, C) of the common shelf (930) to place or remove an uncontained case unit (750, 752) in a predetermined one of the multiple different separate positions (A, C) of the common support shelf (730) where each of the transfer stations (140) includes a respective drive motor (1110) that drives a respective carriage system (1130) to retractably extend the second spaced apart fingers (1135) and the uncontained case

unit (750, 752) thereon to the predetermined one of the multiple separate positions (A, C) independently of other uncontained case units (750, 752) disposed in other different ones of the multiple different separate positions (A, C) of the common support shelf (930)."

Claim 1 of the auxiliary request reads as follows (features added with respect to claim 1 of the main request are in bold, features deleted are stroke through, emphasis added by the Board):

"A multilevel vertical conveyor system for transporting uncontained case units (750-753) to and from a multilevel storage structure having an array of vertically stacked storage levels (130), the multilevel vertical conveyor system comprising:

infeed and outfeed multilevel vertical conveyors. each
~~a~~ multilevel vertical conveyor (150) including

a frame (710), **and**

a drive member (720) supported by the frame (710), characterized in that

the multilevel vertical conveyor (150) includes support shelves (730), each of the support shelves being coupled to the drive member (720) by supports (930) where the drive member (720) is configured to ~~move~~ **circulate** the support shelves (730) **along a rectilinear path** relative to the frame (710), each of the support shelves (730) being configured to support multiple uncontained case units (750, 752), wherein each support shelf (730) has first spaced apart fingers (910) that extend from a suitably shaped frame (911) to form a platform (900) configured for supporting multiple

individual case units (750, 752) in a respective position (A, C) of multiple different separate positions (A, C) on a common support shelf (730); and

at least one transfer station (140) having a carriage system (1130) retractably extending into a path of the support shelves (730), the carriage system (1130) of the at least one transfer station includes second spaced apart fingers (1135) extending from a carriage base (1132) and arranged adjacent respective first spaced apart fingers (910) of a support shelf (730), the second spaced apart fingers (1135) interface with the first spaced apart fingers (910) to allow the first spaced apart finger (910) of the support shelves (730) to pass between the second spaced apart fingers (1135) of each transfer station (140) to load and unload the uncontained case units (750, 752) from the first spaced apart fingers (910) of the support shelf (930), where the first spaced apart fingers (910) of a respective support shelf (730) defines multiple different separate positions (A, C) of the support shelf (730); wherein each of the at least one transfer station (140) comprises more than one transfer station (140) arranged relative to each other so that each of the transfer stations (140) corresponds with a respective position (A, C) of the multiple different separate positions (A, C) of the common shelf (930) where the multiple different positions (A, C) are located side by side, the second spaced apart fingers (1135) of the at least one transfer station (140) individually interface with first spaced apart fingers (910) corresponding to a respective position (A, C) of the common shelf (930) to place or remove an uncontained case unit (750, 752) in a predetermined one of the multiple different separate positions (A, C) of the common support shelf (730) where each of the transfer stations (140) includes a

respective drive motor (1110) that drives a respective carriage system (1130) to retractably extend the second spaced apart fingers (1135) and the uncontained case unit (750, 752) thereon to the predetermined one of the multiple separate positions (A, C) independently of other uncontained case units (750, 752) disposed in other different ones of the multiple different separate positions (A, C) of the common support shelf (930)."

Reasons for the Decision

1. *Decision in writing, Article 12(8) RPBA 2020*
- 1.1 The case is ready for decision which is taken in written proceedings without holding oral proceedings in accordance with Article 12(8) RPBA 2020 and with Articles 113 and 116 EPC.
- 1.2 After having been informed by the Board in its communication pursuant to Article 15(1) RPBA 2020, that the appeal was likely to be dismissed, the appellant informed the Board with letter dated 24 January 2023 that it will not attend the oral proceedings and requested a decision according to the state of the file. In this light, the Board decided to cancel the oral proceedings and to issue a decision in writing according to Article 12(8) RPBA 2020.
- 1.3 The principle of the right to be heard pursuant to Article 113(1) EPC is observed because the appellant's submissions are fully taken into account and because the present decision is based solely on grounds and evidence, which were notified to the appellant and were considered by the Board in its communication under Article 15(1) RPBA 2020.

1.4 The following findings on added subject-matter of the main request and on the admittance of the auxiliary request correspond to the preliminary opinion communication by the Board pursuant to Article 15(1) RPBA 2020, which has not been commented on nor has it been contested by the appellant. 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 preliminary opinion, which is substantially reflected in the following findings.

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

2.1 The arguments submitted by the appellant for showing that the appealed decision is not correct and should be set aside are not convincing.

This is because while the examining division considered the deletion of "in a substantially continuous vertical loop" as **the** unallowable intermediate generalisation justifying the non-allowance of the main request and therefore the refusal of the patent application (appealed decision, point 2.18), the appellant failed to address this feature when discussing the main request in the statement setting out the grounds of appeal.

2.2 In the statement setting out the grounds of appeal the appellant justifies the compliance of the main request with the requirements of Article 123(2) EPC as follows:

- there is no intermediate generalisation by not including "drive chains" in the claims (see point 1

- of the statement setting out the grounds of appeal),
- the features "elongated fingers" and "suitably shaped frame" find support in [0025] on page 9 of the original description (see point 2 of the statement setting out the grounds of appeal),
 - the feature "positioning device extending into a path" is supported in [0030]-[0032] of the original description (see point 3 of the statement setting out the grounds of appeal),
 - the features "one or more transfer station" and "special configuration" were not correctly assessed by the examining division, who only focused on figure 7B, whereby a basis for these features is given in [0028] and [0030] of the original description (see point 4 of the statement setting out the grounds of appeal),
 - the feature "independently operable conveyor drive" is unambiguously and directly derivable from [0027], [0032] and figure 7B of the specification (see point 5 of the statement setting out the grounds of appeal).

2.3 Since the appellant has failed to address the decisive finding of the examining division, *i.e.* the deletion of the feature "in a substantially continuous vertical loop", the Board is not in the position to conclude that the appealed decision should be regarded as incorrect.

The appellant has therefore not convincingly demonstrated that decision not to allow the main request was not correct.

3. *Auxiliary request - admittance, Article 12(6) RPBA 2020*

3.1 The auxiliary request, first submitted with the statement setting out the grounds of appeal, is not admissible.

3.2 The appellant argues that the auxiliary request contains amendments based on paragraph [0024] of the description as filed disclosing circulating the support shelves "along a rectilinear path relative to the frame (710)".

These amendments clearly compensate, so the appellant, for the removal of the feature "in a substantially continuous vertical loop" because they substantially amount to a reformulation of this missing feature based on language expressly used in the description.

3.3 The Board notes that the removal of this feature was objected to during the written phase of the examination procedure, namely in the communication issued on 13 December 2016 and in the summons to oral proceedings (issued on 12 August 2020).

The Board also notes that the chairman of the examining division, after having announced the conclusion that the main request was not allowable because of the missing feature "in a substantially continuous vertical loop", also explained, at oral proceedings, the reasons that led to the above conclusion (minutes of the oral proceedings, page 1) and asked the appellant whether it intended to submit further requests, to which the appellant replied declaring its intention not to file further requests.

In the above outlined circumstances the appellant could not have been taken by surprise by the stance taken by the examining division and missed a clear opportunity to submit the present auxiliary request during examination proceedings.

In other words, the Board considers that the appellant should have submitted the auxiliary request during examination proceedings.

According to Article 12(6), second sentence, RPBA 2020, the Board shall not admit requests which should have been submitted in the proceedings leading to the decision under appeal, unless the circumstances of the appeal case justify their admittance.

In the absence of any explanation given by the appellant, on why the circumstances of the present case justify the filing a new request for the first time with the statement of grounds of appeal, the Board decides that the auxiliary request is not admitted pursuant to Article 12(6), second sentence, RPBA 2020.

This is because, according to Article 12(2) RPBA 2020, in view of the primary object of the appeal proceedings to review the decision under appeal in a judicial manner, a party's appeal case shall be directed to the requests, facts, objections, arguments and evidence on which the decision under appeal was based.

4. *Conclusion*

In view of the above, the Board concludes that the appellant has failed to provide convincing reasons that would demonstrate the incorrectness of the decision under appeal. In the absence of any admissible or in

its substance allowable request, the appeal is to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



G. Nachtigall

A. Cano Palmero

Decision electronically authenticated