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**Datasheet for the decision  
of 29 September 2023**

**Case Number:** T 0610/22 - 3.2.07

**Application Number:** 16700582.6

**Publication Number:** 3250481

**IPC:** B65G1/04

**Language of the proceedings:** EN

**Title of invention:**

ROBOT FOR TRANSPORTING STORAGE BINS

**Patent Proprietor:**

Autostore Technology AS

**Former Opponent:**

Abitz & Partner Patentanwälte mbB  
Tharsus Group Limited  
Ocado Solutions Limited

**Relevant legal provisions:**

EPC Art. 84, 123(2), 123(3)  
RPBA 2020 Art. 11

**Keyword:**

Amendments - added subject-matter - main request (yes) -  
auxiliary request (no) - extension of protection - auxiliary  
request (no)  
Claims - clarity - auxiliary request (yes)  
Remittal - special reasons (yes)



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Case Number: T 0610/22 - 3.2.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.07**  
**of 29 September 2023**

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**Decision under appeal:**      **Decision of the Opposition Division of the  
European Patent Office posted on 31 January 2022  
revoking European patent No. 3250481 pursuant to  
Article 101(3) (b) EPC.**

**Composition of the Board:**

**Chairman**                    G. Patton  
**Members:**                    S. Watson  
                                      F. Bostedt

## **Summary of Facts and Submissions**

- I. An appeal was filed by the patent proprietor (appellant) against the decision of the opposition division revoking European patent No. 3 250 481.
- II. In preparation for oral proceedings, the board gave its preliminary opinion in a communication pursuant to Article 15(1) RPBA 2020 dated 10 May 2023, which took into account the appellant's grounds of appeal and submissions of 6 February 2023 as well as the replies to the appeal submitted by the then opponents 1 to 3.
- III. The appellant initially requested
- that the decision under appeal be set aside; and
  - that the patent be maintained as granted, or in amended form on the basis of one of the sets of claims according to the first to fourteenth auxiliary requests as decided upon in the decision under appeal, whereby
    - the first, third and sixth to eighth auxiliary requests were filed on 30 April 2020 as first to fifth auxiliary requests;
    - the second auxiliary request was filed on 9 September 2021 as auxiliary request 1A;
    - the fourth and fifth auxiliary requests were filed as third and fourth auxiliary requests at the oral proceedings before the opposition division;
    - the ninth and tenth auxiliary requests were filed on 20 October 2020 as sixth and seventh auxiliary requests;
    - and the eleventh to fourteenth auxiliary requests were filed on 14 October 2021 as eighth to eleventh auxiliary requests.

The then opponents (respondents) all requested that the appeal be dismissed.

- IV. The oppositions of all three opponents were withdrawn on 28 July 2023.
- V. On 3 August 2023 the appellant submitted a response to the board's preliminary opinion and requested that the case be remitted for further prosecution on any matters not forming part of the decision under appeal.
- VI. Oral proceedings before the board took place on 29 September 2023.
- VII. At the conclusion of the proceedings the decision was announced. Further details of the oral proceedings can be found in the minutes.
- VIII. The final requests of the appellant correspond to the initial requests but with a change in order of the first three auxiliary requests. The third auxiliary request, filed on 30 April 2020 as the second auxiliary request, and renamed during the opposition proceedings as the third auxiliary request, became the new first auxiliary request, directly following the main request.

The initial first and second auxiliary requests then became the second and third auxiliary requests.

The fourth to fourteenth auxiliary requests remain the same.

- 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 main request reads as follows:

"A remotely operated vehicle (1) for picking up storage bins (2) from an underlying storage system (3), comprising  
a vehicle lifting device (7) for lifting the storage bin (2) from the underlying storage system (3),  
a first vehicle rolling means (10) comprising a first rolling set (101-102) and a second rolling set (103-104) arranged at opposite facing side walls of a vehicle body (4), allowing movement of the vehicle (1) along a first direction (X) on the underlying storage system (3) during use, and  
a second vehicle rolling means (11) comprising a first rolling set (111-112) and a second rolling set (113-114) arranged at opposite facing side walls of the vehicle body (4), allowing movement of the vehicle (1) along a second direction (Y) on the underlying storage system (3) during use, the second direction (Y) being perpendicular to the first direction (X),  
wherein each of said rolling sets comprises at least two wheels (101-104,111-114), wherein the vehicle (1) further comprises  
motor control electronics configured to supply electric power to the first and second vehicle rolling means (10,11),  
characterized in that the vehicle further comprises  
a first driving means (5,19) situated at or at least partly within the first vehicle rolling means (10) for providing rolling set specific driving force to the vehicle (1) in the first direction (X),

a second driving means (5,19) situated at or at least partly within the second vehicle rolling means (11) for providing rolling set specific driving force to the vehicle (1) in the second direction (Y) and motor control electronics are arranged within the volume between two of the wheels of each rolling set (101-104,111-114)."

XI. Independent claim 1 of the new first auxiliary request reads as follows (amendments shown with respect to claim 1 as granted):

"A remotely operated vehicle (1) for picking up storage bins (2) from an underlying storage system (3), comprising a vehicle lifting device (7) for lifting the storage bin (2) from the underlying storage system (3), a first vehicle rolling means (10) comprising a first rolling set (101-102) and a second rolling set (103-104) arranged at opposite facing side walls of a vehicle body (4), allowing movement of the vehicle (1) along a first direction (X) on the underlying storage system (3) during use, and a second vehicle rolling means (11) comprising a first rolling set (111-112) and a second rolling set (113-114) arranged at opposite facing side walls of the vehicle body (4), allowing movement of the vehicle (1) along a second direction (Y) on the underlying storage system (3) during use, the second direction (Y) being perpendicular to the first direction (X), wherein each of said rolling sets comprises at least two wheels (101-104,111-114), ~~wherein the vehicle (1) further comprises~~

~~motor control electronics configured to supply electric power to the first and second vehicle rolling means (10,11),~~  
characterized in that the vehicle further comprises a first driving means (5,19) situated at or at least partly within the first vehicle rolling means (10) for providing rolling set specific driving force to the vehicle (1) in the first direction (X),  
a second driving means (5,19) situated at or at least partly within the second vehicle rolling means (11) for providing rolling set specific driving force to the vehicle (1) in the second direction (Y) and  
motor control electronics are arranged within the volume between two of the wheels of each rolling set (101-104,111-114) which motor control electronics are configured to supply electric power to the first and second vehicle rolling means (10,11)."

XII. As the further auxiliary requests are not dealt with in the decision, it is unnecessary to reproduce their claim wording here.

### **Reasons for the Decision**

1. *Main request - claim 1 - Article 100(c) EPC with Article 123(2) EPC*

1.1 Claim 1 as originally filed contained the following final feature in the characterising portion:

"motor control electronics arranged within the volume between two of the wheels of each rolling set (101-104,111-114), which motor control

electronics are configured to supply electric power to the first and second rolling means (10,11)".

In claim 1 as granted this feature, referred to as feature 1.9 in the decision under appeal, was amended as follows:

"motor control electronics are arranged within the volume between two of the wheels of each rolling set (101-104,111-114), ~~which motor control electronics are configured to supply electric power to the first and second rolling means (10,11)",~~

and the following feature, referred to as feature 1.6 in the decision under appeal, was introduced at the end of the preamble of the claim:

"motor control electronics configured to supply electric power to the first and second rolling means (10,11)".

- 1.2 The opposition division found that the ground for opposition under Article 100(c) EPC prejudiced the maintenance of the patent as granted.
- 1.2.1 The opposition division reasoned that the skilled person would interpret a remotely operated vehicle according to claim 1 of the patent as granted as comprising different motor control electronics: one having a specified function of supplying electric power to the first and second rolling means (feature 1.6); the other having a specified location within the volume between two wheels of each rolling set (feature 1.9).

This was because the wording of the characterising part of the claim listed additional elements of the remotely

operated vehicle following the term "further comprises".

1.2.2 As the documents as originally filed did not disclose a remotely operated vehicle with motor control electronics configured to supply electric power to the first and second rolling means located at any position in the vehicle, the subject-matter of claim 1 as granted extended beyond the content of the application as filed.

1.3 The appellant did not contest that there was no disclosure in the application documents as originally filed of motor control electronics having the claimed function but with no specified location.

However, the appellant argued that as the claim wording was plainly incorrect the skilled person would turn to the description and would interpret the claim in the manner disclosed in the application documents as originally filed.

1.3.1 The appellant argued that the claim was unclear as the skilled person, when reading the claim, would understand that different readings of features 1.6 and 1.9 were possible, namely that features 1.6 and 1.9 referred either to the same motor control electronics or they referred to different motor control electronics.

In its submissions of 3 August 2023, the appellant argued that the skilled person had to decide which reading of the claim was correct as two readings were possible.

The skilled person would turn to the description to overcome the inconsistency and interpret the claim.

On reading the description, it would be clear to the skilled person that the only correct interpretation of the claim was of motor control electronics being arranged within the volume between two of the wheels of each rolling set and also being configured to supply electric power to the first and second vehicle rolling means, i.e. that features 1.6 and 1.9 referred to the same motor control electronics.

There was therefore no extension of subject-matter as claim 1 and the description as originally filed clearly disclosed this embodiment.

- 1.4 The board agrees with the appellant that the skilled person would understand that the claim covers both a remotely operated vehicle where the motor control electronics in features 1.6 and 1.9 are different motor control electronics, one having a specified function, the other a specified location, and a vehicle where features 1.6 and 1.9 refer to the same motor control electronics having both the specified function and the specified location.

The term "motor control electronics" is used twice in the claim with no indication given whether the motor control electronics referred to in the characterising portion are the same as or different from the motor control electronics referred to in the preamble. Neither reading can be excluded as not being technically sensible (Case Law of the Boards of Appeal (CLB), 10th edition 2022, II.A.6.1, third paragraph).

Even if the skilled person were to consult the description, there is no indication that the claim cannot include a vehicle where features 1.6 and 1.9 refer to different motor control electronics. The application as published mentions the motor control electronics on pages 2, lines 23 to 25 and page 3, line 33 to page 4, line 3. Both of these passages refer to motor control electronics which are configured to both supply electric power to the first and second vehicle rolling means, and arranged within the volume between two of the wheels of each rolling set. There is, however, nothing in the description which would point to the fact that the motor control electronics in features 1.6 and 1.9 could not be seen to refer to different motor control electronics.

- 1.4.1 The board, does not agree with the appellant that the skilled person must choose whether features 1.6 and 1.9 refer to different motor control electronics or to the same motor control electronics.

Both readings of the claim are equally valid and are technically sensible, so that the claim can be interpreted as including both. The claim refers twice to motor control electronics in features 1.6 and 1.9 and does allow for the technically sensible understanding that both features refer to the same motor control electronics. Therefore, the fact that features 1.6 and 1.9 may refer to the same motor control electronics can be seen as a limitation of the more general, equally technically sensible understanding of the feature that there are motor control electronics configured to supply electric power to the first and second rolling means and motor control electronics being arranged within the volume between two of the wheels of each rolling set.

1.4.2 However, although the claim is to be interpreted such that features 1.6 and 1.9 refer to the same or different motor control electronics, there is no direct and unambiguous disclosure in the application as originally filed of a remotely operated vehicle with two distinct, i.e. different, motor control electronics, one having a specified function according to feature 1.6 but no specified location, the other a specified location according to feature 1.9 but no specified function. Therefore, the subject-matter of claim 1 extends beyond the content of the application as originally filed and the ground for opposition under Article 100(c) EPC prejudices the maintenance of the patent as granted.

2. *New auxiliary request 1 - claim 1 - Article 123(2) and (3) EPC*

2.1 Claim 1 of the new auxiliary request 1 overcomes the above objection against claim 1 of the patent as granted as it is now the motor control electronics arranged within the volume between two of the wheels of each rolling set which are configured to supply electric power to the first and second vehicle rolling means.

This feature is disclosed in claim 1 of the patent application as originally filed, together with the other features of claim 1 of the new auxiliary request 1.

Therefore, the requirements of Article 123(2) EPC are fulfilled.

2.2 The opposition division found in the decision under appeal that the amendments made to the then auxiliary request 3 (now new auxiliary request 1) extended the protection of the contested patent.

The opposition division reasoned that claim 1 of the patent as granted "could only mean that there were two different motor control electronics, those of feature 1.6 and those of feature 1.9", therefore the amendment to the claim extended the protection as it referred only to "one single motor control electronics" (see decision under appeal, grounds for the decision, 5.4.3).

Combining features 1.6 and 1.9 extended the protection as the claim only comprised one single motor control electronics rather than the two different motor control electronics in claim 1 as granted.

2.2.1 As set out above with respect to the main request, the board interprets claim 1 as granted as encompassing embodiments where the motor control electronics of features 1.6 and 1.9 are the same motor control electronics as well as other embodiments where they are different.

The amendment to the claim therefore does not extend the protection it confers as it limits the claim to embodiments where the motor control electronics configured to supply electric power to the first and second rolling means are also arranged within the volume between two of the wheels of each rolling set, the requirements of Article 123(3) EPC are thus fulfilled.

3. *New auxiliary request 1 - claim 1 - Article 84 EPC*

In the decision under appeal, the opposition division found that the scope of the claim was broad but that the claim was clear.

The board agrees that the skilled person reading the claim understands that the vehicle comprises motor control electronics which are arranged within the volume between two of the wheels of each rolling set, and which are configured to supply electric power to the first and second rolling means. The claim is not rendered not clear by defining a location for the motor control electronics configured to supply electric power to the rolling means. As reasoned by the opposition division, it does not affect the clarity of the claim that it is not specified whether the motor control electronics which are arranged within the volume between specific wheels supplies power to those wheels, or to other wheels.

Claim 1 of the new auxiliary request 1 is therefore regarded as fulfilling the requirements of Article 84 EPC.

4. *Remittal for further prosecution*

- 4.1 The appellant requested that the case be remitted to the opposition division for further prosecution relating to patentability issues which had not been decided upon in the decision under appeal.

The opposition division did not consider any objections raised against the new first auxiliary request under the requirements of Articles 54, 56 or 83 EPC. Indeed, objections of lack of novelty and inventive step were

not dealt with for any requests in the decision under appeal.

Article 11 RPBA 2020 sets out that cases should only be remitted if special reasons present themselves for doing so. It is established case law that if the relevant further issues cannot be decided upon without undue burden in the appeal proceedings, then special reasons for remittal exist (see CLB, *supra*, V.A.9.3.2 c)).

In the present case, to consider novelty and inventive step objections for the first time in appeal proceedings to the proceedings would constitute an undue burden and be counter to the purpose of appeal proceedings as a judicial review within the meaning of Article 12(2) RPBA 2020, therefore the case should be remitted to the opposition division for further prosecution.

## **Order**

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

1. The decision under appeal is set aside.
2. The case is remitted to the opposition division for further prosecution.

The Registrar:

The Chairman:



G. Nachtigall

G. Patton

Decision electronically authenticated