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**Datasheet for the decision
of 13 October 2023**

Case Number: T 1094/22 - 3.2.07

Application Number: 14722858.9

Publication Number: 2969858

IPC: B65G1/04

Language of the proceedings: EN

Title of invention:

STORAGE AND RETRIEVAL SYSTEM ROVER INTERFACE

Applicant:

Symbotic LLC

Headword:

Relevant legal provisions:

RPBA 2020 Art. 12(6)

Keyword:

Late-filed request - no longer maintained in examination
proceedings (yes) - admitted (no)

Decisions cited:

Catchword:



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Case Number: T 1094/22 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 13 October 2023

Appellant: Symbotic 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 9 December 2021
refusing European patent application No.
14722858.9 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman G. Patton
Members: A. Cano Palmero
E. Mille

Summary of Facts and Submissions

- I. The appellant (applicant) lodged within the prescribed time limit and in the prescribed form an appeal against the decision of the examining division refusing European patent application no. 14 722 858.9.
- II. In its decision, the examining division held that the subject-matter of the claims of the then main request did not fulfil the requirements of Article 56 EPC.
- III. The appellant requested

that the decision be set aside and
that the patent be granted based on the set of claims according to the sole request submitted with the statement setting out the grounds of appeal.
- IV. In preparation for oral proceedings requested by the appellant, the board communicated its preliminary assessment of the case in a communication pursuant to Article 15(1) RPBA 2020, according to which the appellant's sole request was likely to be not admitted and the appeal was likely to be dismissed.
- V. With letter dated 29 September 2023, the appellant withdrew its request for oral proceedings and requested that the proceedings be continued in writing.
- VI. Since the wording of the claims of the appellant's sole request is not relevant for the present decision, there is no need to reproduce it here.

Reasons for the Decision

1. *Procedural matters*

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 In response to the board's communication under Article 15(1) RPBA 2020 the appellant, with letter dated 29 September 2023, withdrew its request for oral proceedings pursuant to Article 116(1) EPC and requested that the proceedings be continued in writing.

1.3 Since the appellant has been informed of the board's preliminary assessment of the case, the principle of the right to be heard pursuant to Article 113(1) EPC is observed since that provision only affords the opportunity to be heard and the appellant's submissions are fully taken into account.

2. *Admittance of the set of claims filed with the statement of grounds of appeal as the appellant's sole request - Article 12(6) RPBA 2020*

2.1 The appellant filed with the statement setting out the grounds of appeal as its sole request a set of claims 1 to 15.

2.2 The board notes that the claims according to the appellant's sole request have not been subject of the decision under appeal. The appellant chose to base its case in examination proceedings on claims 1 to 15 according to a different main request filed during the oral proceedings before the examining division at 09:27

(see point 19 of the minutes of the oral proceedings before the examining division), while withdrawing all previous requests, including the sole request of the present appeal which corresponds to the request which had been filed by letter dated 18 October 2021 (see points 4 to 8 and 11 of said minutes).

2.3 According to Article 12(6), second sentence, RPBA 2020, the board shall **not admit requests which were no longer maintained** in the proceedings leading to the decision under appeal, unless the circumstances of the appeal case justify their admittance.

2.4 The board, considering that the main aim of appeal proceedings is that of reviewing the decisions of the administrative departments of the EPO (cf. Article 12(2) RPBA 2020), does not consider it appropriate that the appellant starts a completely fresh case in appeal, thereby avoiding having a decision from the competent EPO department, without even providing any justification for this course of action.

2.5 In the absence of any justifying circumstances submitted by the appellant, **the board does not admit the appellant's sole request into the proceedings under Article 12(6), second sentence, RPBA 2020**, since this request could and should have been maintained at the oral proceedings in examination.

3. *Conclusion*

In the absence of an admissibly filed set of claims on the basis of which a patent could be granted, **the appeal is to be dismissed.**

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



G. Nachtigall

G. Patton

Decision electronically authenticated