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D E C I S I O N
of 28 September 2004

Case Number: T 0294/03 - 3.2.1

Application Number: 95116984.6

Publication Number: 0710618

IPC: B66B 11/00

Language of the proceedings: EN

Title of invention:
Traction sheave elevator

Patentee:
Kone Corporation

Opponent:
Schmitt & Sohn GmbH & Co. Aufzugswerke

Headword:
-

Relevant legal provisions:
EPC Art. 111(1), 123(2)

Keyword:
"Added subject-matter (no, after amendment)"
"Remittal for further prosecution (yes)"

Decisions cited:
-

Catchword:
-



Case Number: T 0294/03 - 3.2.1

D E C I S I O N
of the Technical Board of Appeal 3.2.1
of 28 September 2004

Appellant: Kone Corporation
(Proprietor of the patent) Munkkiniemen Puistotie 25
FI-00330 Helsinki (FI)

Representative: Zipse + Habersack
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D-80639 München (DE)

Respondent: Schmitt & Sohn GmbH & Co.
(Opponent) Aufzugswerke
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D-90402 Nürnberg (DE)

Representative: LOUIS- PÖHLAU- LOHRENTZ
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D-90409 Nürnberg (DE)

Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 27 January 2003
revoking European patent No. 0710618 pursuant
to Article 102(1) EPC.

Composition of the Board:

Chairman: S. Crane
Members: Y. A. F. Lemblé
G. E. Weiss

Summary of Facts and Submissions

- I. The appeal is directed against the decision of the Opposition Division posted 21 January 2003 to revoke the European patent No. 0 710 618. The patent had been opposed on the grounds that its subject-matter extended beyond the content of the application as filed (Article 100(c) EPC), that it did not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art (Article 100(b) EPC) and that its subject-matter was not new and lacked an inventive step (Article 100(a) EPC).
- II. The Opposition Division revoked the patent under the terms of Article 100(c) EPC. The Opposition Division held that the subject-matter of granted claim 1 (main request) as well as of the claims according to the auxiliary requests extended beyond the content of the application as filed.
- III. A notice of appeal against this decision was filed on 11 March 2003 and the fee for appeal paid at the same day. The statement of grounds of appeal was filed on 24 March 2003. The appellants requested that the decision to revoke the patent be set aside and the patent be maintained as granted (main request), or in the alternative that the patent be maintained on the basis of claim 1 according to the auxiliary request filed with the notice of appeal.
- IV. In a reasoned communication pursuant to Article 12 of the RPBA posted on 24 March 2004, the Board expressed the view that that the subject-matter of granted

claim 1 (main request) extended beyond the content of the application as filed and that claim 1 according to the auxiliary request met the requirements of Article 123(2) and (3) EPC.

V. In reaction to the communication of the Board, the appellants, in their letter dated 7 April 2004, submitted an amended set of claims as a new main request and requested that the case be remitted to the first instance to discuss the other aspects of patentability.

VI. The respondents (opponents), in their letter dated 28 May 2004, requested that the case be remitted to the first instance without tackling the other issues of patentability.

VII. Independent claim 1 reads as follows:

"1. Traction sheave elevator comprising an elevator car (1) moving along elevator guide rails (10), a counterweight (2) moving along counterweight guide rails (11), a set of hoisting ropes (3) on which the elevator car and the counterweight are suspended, and a drive machine unit (6) comprising a traction sheave (7) driven by the drive machine and engaging the hoisting ropes (3), whereby the drive machine unit (6) is placed in the top part of the elevator shaft in the space between the shaft space needed by the elevator car on its path and/or an overhead extension of said space and a wall of the elevator shaft, and whereby the drive machine unit (6) is mounted on the upper end of one or more guide rails (10, 11, 11a), characterized in that the drive machine unit (6) is fastened to the elevator

shaft by means of a bracing element (21) that takes up horizontal forces acting on the drive machine unit (6) but substantially does not take up any vertical supporting forces."

Reasons for the Decision

1. The appeal meets the requirements of Articles 106 to 108 and Rule 64 EPC and is therefore admissible.
2. Amendments (Article 123(2) and (3) EPC)

The preamble of claim 1 repeats the wording of claim 1 as originally filed. The wording of the characterising part of claim 1 corresponds to the wording of dependent claim 3 as originally filed, a claim which referred back to claim 1 as filed.

By virtue of the incorporation of the wording of original claim 3 it has now been specified that the bracing element fastens the drive machine unit to the elevator shaft in contrast to the generalized terms of granted claim 1 according to which the bracing element was merely "provided" in some undefined manner.

Dependent claim 2 corresponds to claim 2 as granted and dependent claims 3 to 5 correspond to claim 4 to 6 as granted.

The claims meet therefore the requirements of Article 123(2) and (3) EPC. These findings have not been contested by the respondents.

3. *Remittal*

In accordance with the requests of the parties and in order not to deprive them of the possibility of having the issues of insufficiency of disclosure (Article 100(b) EPC and of lack of novelty and/or inventive step (Article 100(a) EPC) considered by two instances, the Board remits the case to the first instance 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 first instance for further prosecution on the basis of the following documents:
 - claim 1 to 5 submitted with letter dated 7 April 2004;
 - description and drawings as granted.

The Registrar:

The Chairman:

D. Sauter

S. Crane