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**Datasheet for the decision  
of 3 December 2009**

**Case Number:** T 1335/08 - 3.2.06

**Application Number:** 97905183.6

**Publication Number:** 0896565

**IPC:** B66B 13/12

**Language of the proceedings:** EN

**Title of invention:**  
Door coupler and locking device

**Patentee:**  
Kone Corporation

**Opponent:**  
INVENTIO AG

**Headword:**  
-

**Relevant legal provisions:**  
RPBA Art. 13(1)  
EPC Art. 123(2)

**Relevant legal provisions (EPC 1973):**  
-

**Keyword:**  
"Re-introduction of requests filed with the reply to the statement of grounds of appeal - amendment to the respondent's case - not admitted"

**Decisions cited:**  
-

**Catchword:**  
-



Case Number: T 1335/08 - 3.2.06

**DECISION**  
of the Technical Board of Appeal 3.2.06  
of 3 December 2009

**Appellant:** INVENTIO AG  
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**Representative:** Ernicke, Klaus Stefan  
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**Respondent:** Kone Corporation  
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**Representative:** Zipse Habersack Kritzenberger  
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**Decision under appeal:** Interlocutory decision of the Opposition  
Division of the European Patent Office posted  
14 May 2008 concerning maintenance of the  
European patent No. 0896565 in amended form.

**Composition of the Board:**

**Chairman:** P. Alting Van Geusau  
**Members:** G. Pricolo  
W. Sekretaruk

## Summary of Facts and Submissions

I. The appeal is from the decision of the Opposition Division posted on 14 May 2008 maintaining European patent No. 0 896 565 in amended form according to the main request of the patentee filed at the oral proceedings held on 12 February 2008.

II. Claim 1 of the patent in the form as maintained reads as follows:

"1. A door coupler (4) for a car door of an elevator, the door coupler comprising: gripping elements (14, 15); two counterparts (17, 18) for the gripping elements (14, 15) provided on a landing door; a linkage system (2) for moving the gripping elements in order to engage at least one of the gripping elements (14, 15) with at least one of the counterparts (17, 18) on the landing door; a lock catch (10), movable between an open position permitting car door movement and a closed position preventing car door movement, whereas releasing the lock catch permits the opening movement of the car door to be started, and the lock catch (10) being moved by the linkage system (2), and that the releasing movement of the lock catch (10) from the closed position into the open position is allowed when a gripping element is pressed against a counterpart, and a drive for moving the doors which is connected to the linkage system (2) via an operating lever (5), whereby the linkage system (2) moves the gripping elements (14, 15) and the lock catch (10) and draws its actuating force from the drive for moving the doors via the operating lever (5) of the linkage system (2), and whereby the movement of the operating lever (5) for

releasing the lock catch (10) and moving the gripping elements (14, 15) to engage at least one of the counterparts (17, 18) consists of two successive stages, characterized in that during the first stage (6a) of the movement of the operating lever (5) the presence of one of the counterparts (18) within the reach of the gripping element (15) is recognized by means of one (15) of the gripping elements (14,15), and when the gripping element (15) meets the one of the counterparts (18), the lock catch (10) is released and the second stage (6A) of the movement of the operating lever (5) is enabled, and that during said second stage the counterparts (17, 18) are engaged by the gripping elements (14, 15)."

- III. The opposition division considered that the amendments made were supported by the application as filed (Article 123(2) EPC), that the invention was disclosed in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art (Article 83 EPC), and that the claimed subject-matter was novel and inventive over the available prior art.
  
- IV. The appellant (opponent) filed an appeal, received at the EPO on 15 July 2008, against this decision and paid the appeal fee on the same day. The statement setting out the grounds of appeal was received at the EPO on 22 September 2008.
  
- V. With its written reply to the statement of grounds of appeal, the respondent (patentee) made the following submission:

*"The patent is defended with the claims filed in oral proceedings on February 12, 2008 on which the decision of the Opposition Division is based. Furthermore, auxiliary requests I to III filed in opposition proceedings with submission of 11.01.2008 are to be considered".*

VI. In a communication accompanying the summons to oral proceedings pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal, the Board expressed a preliminary view according to which claim 1 in the form as maintained by the Opposition Division did not meet the requirements of Article 123(2) EPC. The relevant text of the communication reads as follows:

*"The appellant contests that the feature that *"the linkage system moves the gripping elements and the lock catch draws its actuating force from the drive for moving the doors"* is disclosed in the original application.*

It would appear that this feature cannot be clearly derived from originally filed claims 2 and 3. Claim 2 mentions that the actuating force needed to enable the gripping elements to grip the counterpart is obtained from a drive moving the doors and claim 3 that the operating lever receives an actuating force for releasing the lock catch and moving the gripping element to grip the counterpart from an external source. There appears to be no clear disclosure in these claims that the linkage system (i.e. the whole system of levers and joints) which moves the gripping elements and the lock catch draws its actuating force from the drive for moving the doors.

As regards the description of the embodiment in the application as filed, it discloses in particular (see page 5, line 6-23) that the drive for actuating the doors (in particular a rope drive) is connected to the operating lever, and (see page 8, lines 11 to 18) that the door drive pulls the operating lever. However, it would appear that this disclosure does not form a basis for the general definition of claim 1, as it relates to a specific linkage system and claim 1 is not restricted to this specific linkage system.

It is noted in particular that claim 1 includes the possibility that the force for actuating the levers downstream of rod 22 (see Figs. 1 and 2) for releasing the lock catch 10 is directly drawn from the drive moving the doors. This however does not appear to be the case in the embodiment shown, for the following reasons:

As submitted by the appellant, when the operating lever 5 is moved for releasing the lock catch 10, the elements of the linkage system downstream of rod 22 (i.e. levers 7, 24, 8 etc.) cannot be moved by the force transmitted by rod 22, as the latter has a joint 22a that allows it to bend, whereby it does not transmit an axial force (except for the instable position depicted in Fig. 1 in which the two portions of the rod 22 are aligned). It would appear that these elements are moved by the force of the spring 23. Hence, it is not the drive for moving the doors that moves and releases, via the operating lever 5, the lock catch 10."

VII. In response to the communication, the respondent filed by letter dated 21 October 2009 a main request and two auxiliary requests in replacement of the previous requests on file. In claim 1 of these new requests, the contested feature according to which *"the linkage system moves the gripping elements and the lock catch and draws its actuating force from the drive for moving the doors via the operating lever of the linkage system"* was replaced by the feature *"the operating lever draws its actuating force for releasing the lock catch and moving the gripping elements so as to grip the counterparts from the drive"*.

VIII. By telefax sent on 19 November 2009, the respondent made the following statement:

*"In the above case the claim set as maintained in the first instance proceedings is prosecuted as auxiliary request I. The further auxiliary requests I and II on file follow as new auxiliary requests II and III"*.

No other submissions were made by the respondent.

IX. Oral proceedings, at the end of which the decision of the Board was announced, took place on 3 December 2009.

The appellant requested that the decision under appeal be set aside and that the European patent be revoked.

The respondent requested that the appeal be dismissed or the European patent be maintained on the basis of one of the auxiliary requests I or II filed on 11 January 2008.

X. Claim 1 according to the auxiliary request I reads as follows (emphasis added by the Board to show the amendments to claim 1 underlying the decision under appeal):

"1. A door coupler (4) for a car door of an elevator, the door coupler comprising: gripping elements (14, 15); ~~two~~ at least one counterparts (17, 18) for the gripping elements (14, 15) provided on a landing door; a linkage system (2) for moving the gripping elements in order to engage at least one of the gripping elements (14, 15) with at least one of the counterparts (17, 18) on the landing door; a lock catch (10), movable between an open position permitting car door movement and a closed position preventing car door movement, whereas releasing the lock catch permits the opening movement of the car door to be started, and the lock catch (10) being moved by the linkage system (2), and that the releasing movement of the lock catch (10) from the closed position into the open position is allowed when a gripping element is pressed against a counterpart, and a drive for moving the doors which is connected to the linkage system (2) via an operating lever (5), whereby the linkage system (2) moves the gripping elements (14, 15) and the lock catch (10) and draws its actuating force from the drive for moving the doors via the operating lever (5) of the linkage system (2), and whereby the movement of the operating lever (5) for releasing the lock catch (10) and moving the gripping elements (14, 15) to engage at least one of the counterparts (17, 18) consists of two successive stages, characterized in that during the first stage (6a) of the movement of the operating lever (5) the presence of ~~one of the~~ a counterparts (~~18~~17) within the reach of



the gripping element (15) is recognized by means of one (15) of the gripping elements (14,15), and when the gripping element (15) meets the ~~one of the~~ counterparts (18,17), the lock catch (10) is released and the second stage (6A) of the movement of the operating lever (5) is enabled, and that during said second stage the counterparts (17, 18) are engaged by the gripping elements (14, 15), so that in this second stage the landing door and car door are completely coupled for being opened."

Claim 1 according to the auxiliary request II differs from claim 1 according to the first auxiliary request by its characterizing portion reading as follows:

"characterized in that during the first stage (6a) of the movement of the operating lever (5) the presence of a first counterpart (18) within the reach of the gripping element (15) is recognized by means of the first gripping element (15), and when the gripping element (15) meets the first counterpart (18), the lock catch (10) is released and the second stage (6A) of the movement of the operating lever (5) is enabled, and that during said second stage the counterparts (17, 18) are engaged by moving a second gripping element (14) into contact with the second counterpart (17)."

XI. The respondent's arguments concerning the admissibility of its requests may be summarised as follows:

The requests filed by letter dated 21 October 2009 were made in response to the negative opinion of the Board expressed in the communication accompanying the summons to oral proceedings, according to which claim 1 as

maintained by the Opposition Division was not allowable under Article 123(2) EPC. It was only shortly before the oral proceedings that the respondent noticed that the objection under Article 123(2) EPC was not admissible. In fact, the feature contested was already present in granted claim 1 and Article 100(c) EPC was not one of the grounds of opposition invoked by the opponent on filing its opposition. Nor had this ground been discussed at the oral proceedings before the Opposition Division.

In any case, the contested feature according to which the linkage system moved the gripping elements and the lock catch drew its actuating force from the drive for moving the doors, had been added during examination for clarity's sake but was clearly not essential for the invention. Claim 1 did not specify that the operating lever moved the gripping elements and the lock catch directly and accordingly reflected the operation of the door coupler disclosed in the description. In fact, the wording of claim 1 was based on the wording of the description as originally filed. Therefore, claim 1 according to the requests on file did not contravene Article 123(2) EPC.

XII. At the oral proceedings the appellant submitted that it was taken by surprise by the respondent's going back to the requests previously on file, and that it was not prepared to discuss them fully. Furthermore, these requests were not allowable under Article 123(2) EPC for a number of reasons, in particular the reasons given by the Board in the communication annexed to the summons to oral proceedings. Accordingly, the requests of the respondent should not be admitted.

## **Reasons for the Decision**

1. The appeal is admissible.
2. With its letter of reply to the statement of grounds of appeal, the respondent contested the argument of the appellant that claim 1 included subject-matter extending beyond the content of the application as filed in view of the presence of the feature, hereinafter referred to as the contested feature, according to which the linkage system moved the gripping elements and the lock catch drew its actuating force from the drive for moving the doors.
3. In the communication accompanying the summons to oral proceedings posted on 4 September 2009, the Board expressed a preliminary opinion confirming, in substance, the appellant's objection. The Board thus provisionally disagreed with the view expressed by the Opposition Division in respect of Article 123(2) EPC in the decision under appeal.
4. With its letter dated 21 October 2009 the respondent amended its case as set out in the reply to the statement of grounds of appeal (cf. Article 12(2) of the Rules of Procedure of the Boards of Appeal, "RPBA"). The new requests were clearly intended to overcome the objection under Article 123(2) EPC, since the amendments made included modifying the wording of the contested feature in claim 1 according to all requests.
5. The present requests go back to the previous wording of claim 1 including the contested feature. Even if they

were already filed firstly with the reply to the statement of grounds of appeal and then as auxiliary requests by telefax dated 19 November 2009, the present requests were filed in replacement of the requests filed with letter dated 21 October 2009 and thus represent a further amendment to the respondent's case. As such, pursuant to Article 13(1) RPBA, the present requests may be admitted and considered at the Board's discretion.

6. Article 13(1) RPBA makes clear that in exercising that discretion, the Board must consider a range of factors including inter alia the complexity of the new subject-matter submitted, the current state of the proceedings and the need for procedural economy.
  
7. The respondent submitted that the objection under Article 123(2) EPC related to a feature already present in claim 1 as granted and that, therefore, it was an objection under Article 100(c) EPC. Since Article 100(c) EPC was not one of the grounds of opposition invoked by the opponent on filing its notice of opposition, and since it had not been properly discussed at the oral proceedings before the Opposition Division, this objection had to be excluded from the appeal proceedings.

This is a fresh issue that was raised for the first time during the oral proceedings before the Board. It would need to be discussed if the respondent's requests were admitted. The discussion of this issue would lengthen the proceedings, since the appellant could not be expected to be prepared for it. Moreover, this issue seems *prima facie* unfounded. In particular, in all

requests claim 1 does not merely consist of a combination of granted claims but also includes features taken from the description. The contested feature is thus presented in a combination which is different from the combination in which it was presented in the claims as granted, and which is objectionable under Article 123(2) EPC. Accordingly, the respondent's issue being prima facie unfounded, admitting the requests into the proceedings would adversely affect procedural economy.

8. As explained in the communication annexed to the summons to oral proceedings (see above section VII), the contested feature, present in claim 1 of all requests, according to which the linkage system moves the gripping elements and the lock catch draws its actuating force from the drive for moving the doors, contains subject-matter extending beyond the content of the application as filed, contrary to the requirements of Article 123(2) EPC.

The arguments submitted by the respondent during the oral proceedings did not convince the Board of the contrary. The specific wording of the contested feature cannot be found in the description of the application as filed. More importantly, claim 1 includes the possibility, which is not disclosed in the application as filed, that the force for actuating the levers for releasing the lock catch is directly drawn from the drive moving the doors. In fact, this was not contested by the respondent. The respondent essentially submitted that claim 1 should not be read broadly such as to include this possibility. However, in the absence of clear limitations in the claim itself, the wording of

the claim cannot be read as being limited by features which are only present in the embodiment disclosed in the description. The respondent further submitted that the contested feature was not essential for the invention. Whether this feature is essential or not is however irrelevant for assessing whether, in the present case, it introduces subject-matter extending beyond the content of the application as filed. In fact, the contested feature undisputedly provides a technical information. This technical information, at least in the breadth in accordance with the wording of claim 1, cannot be found in the application as filed.

Therefore, the respondent's requests not being clearly allowable, admitting them into the proceedings would seriously adversely affect procedural economy.

9. Thus, having regard for the current state of the proceedings and for reasons of procedural economy, the Board exercised its discretion under Article 13(1) RPBA not to admit the respondent's requests into the proceedings.
10. In the absence of any admissible request submitted or agreed by the appellant, the patent has to be revoked.

**Order**

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

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:

M. Patin

P. Alting Van Geusau