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Datasheet for the decision of 12 December 2019

Case Number: T 2063/15 - 3.2.06

Application Number: 08758980.0

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IPC: B66B5/00

Language of the proceedings: EN

Title of invention:
SINGLE BRAKESHOE TEST (ELECTRICAL) FOR ELEVATORS

Patent Proprietor:
Otis Elevator Company

Opponent:
INVENTIO AG

Headword:

Relevant legal provisions:
EPC Art. 54, 84, 100(a), 123(2), 111(1)
EPC R. 80
RPBA Art. 12(4), 13(1)

Keyword:
Novelty - Main request and auxiliary request 2 (no)
Clarity - auxiliary request 1 (no)
Amendments occasioned by a ground for opposition - auxiliary request 2 (yes), auxiliary request 3 (no)
Remittal - auxiliary request 4 (yes)

Decisions cited:
T 0263/05, T 0610/95, T 0223/97, G 0001/84

Catchword:
Amendment not occasioned by a ground for opposition - Reasons point 4.1.1 to 4.1.4

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Case Number: T 2063/15 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 12 December 2019

Appellant: (Opponent)	INVENTIO AG Postfach 6052 Hergiswil (CH)
Representative:	Ernicke, Moritz ERNICKE Patent- und Rechtsanwälte Beim Glaspalast 1 86153 Augsburg (DE)
Respondent: (Patent Proprietor)	Otis Elevator Company One Carrier Place Farmington CT 06032 (US)
Representative:	Schmitt-Nilson Schraud Waibel Wohlfrom Patentanwälte Partnerschaft mbB Pelkovenstraße 143 80992 München (DE)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 31 August 2015 rejecting the opposition filed against European patent No. 2297017 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman	M. Harrison
Members:	M. Hannam
	E. Kossonakou

Summary of Facts and Submissions

I. An appeal was filed by the appellant (opponent) against the decision of the opposition division rejecting the opposition to European patent No. 2 297 017. It requested that the decision be set aside and the patent be revoked.

II. In its letter of response of 20 July 2016, the respondent (patent proprietor) requested that the appeal be dismissed. In the alternative it requested that the patent be maintained according to one of auxiliary requests 1 to 7.

III. The following documents, relevant to the present decision, were referred to by the parties:

D1 US-B-6 269 910
D4 WO-A-2007/020325
D6 JP-A-2005 263371, and its translation D6b

IV. In response to the Board's invitation to file submissions regarding the auxiliary requests 1 to 7, the appellant *inter alia* filed a new document:

D8 WO-A-2005/066057

V. The Board issued a summons to oral proceedings and a subsequent communication containing its provisional opinion, in which it indicated *inter alia* that the subject-matter of claim 1 of the main request lacked novelty over D4, the subject-matter of claim 1 of auxiliary request 1 did not meet the requirement of Article 123(2) EPC and auxiliary request 3 did not meet the requirement of Rule 80 EPC.

VI. With letter of 6 December 2019 the respondent filed auxiliary requests 1A, 5A, 6A and 7A.

VII. Oral proceedings were held before the Board on 12 December 2019, during which the respondent withdrew auxiliary requests 1A, 5A, 6A and 7A.

VIII. The final requests of the parties were as follows:

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

The respondent requested that the appeal be dismissed (main request), alternatively that the patent be maintained in amended form according to one of auxiliary requests 1 to 7, filed with the reply to the grounds of appeal dated 20 July 2016.

IX. Claim 1 of the main request reads as follows (including the feature-by-feature analysis adopted in opposition proceedings and taken over on appeal):

1.1 "A control arrangement (100; 200) for an elevator brake (10), comprising a control circuit (110; 210)
1.2 adapted to generate, according to a demand for releasing a first braking member (14) of said elevator brake (10), a first actuating signal
1.3 and to generate, according to a demand for releasing a second braking member (16) of said elevator brake (10), a second actuating signal;
1.4 a first terminal (112; 212) for outputting said first actuating signal to a first electromagnetic actuating means (26) of said elevator brake (10);
1.5 a second terminal (114; 214) for outputting said second actuating signal to a second electromagnetic

actuating means (30) of said elevator brake (10); characterised by

1.6 said control arrangement (100; 200) being adapted to allow at least the following modes of operation:

1.7 A) a normal operation mode in which said first and said second actuating signals are supplied synchronously to said first and second electromagnetic actuation means (26,30), respectively; and

1.8 B) a single braking member test operation mode, in which one of said first and second actuating signals is supplied to the respective one of said first and second electromagnetic actuating means (26,30), and an actuating signal for permanently releasing the respective of said first and second braking members (14,16) is supplied to the other one of said first and second electromagnetic actuating means (26,30)."

Claim 1 of auxiliary request 1 reads as follows:

"A control arrangement (100; 200) for an elevator brake (10), comprising a control circuit (110; 210) adapted to generate, according to a demand for releasing a first braking member (14) of said elevator brake (10), a first actuating signal and to generate, according to a demand for releasing a second braking member (16) of said elevator brake (10), a second actuating signal; a first terminal (112; 212) for outputting said first actuating signal to a first electromagnetic actuating means (26) of said elevator brake (10); a second terminal (114; 214) for outputting said second actuating signal to a second electromagnetic actuating means (30) of said elevator brake (10); characterized by

said control arrangement (100; 200) being adapted to allow switching between at least the following modes of

operation:
A) a normal operation mode in which said control circuit (110; 210) supplies via control lines said first and said second actuating signals synchronously to said first and second electromagnetic actuation means (26, 30), respectively; and
B) a single braking member test operation mode, in which said control circuit (110; 210) supplies one of said first and second actuating signals to the respective one of said first and second electromagnetic actuating means (26, 30), and supplies an actuating signal for permanently releasing the respective of said first and second braking members (14, 16) to the other one of said first and second electromagnetic actuating means (26, 30); wherein when switched to single braking member test operation mode, the control lines are separated to allow to control just one of the braking members (14, 16) in a manner according to the normal control and to control the other braking member (16, 14) such as to be open for the respective test."

Claim 1 of auxiliary request 2 reads as for claim 1 of the main request with the following feature appended:

"wherein said actuating signal for permanently releasing said first and/or second braking members (14, 16) is supplied to a third terminal (132, 134; 232) of said control arrangement (100; 200)."

Claim 1 of auxiliary request 3 reads as for claim 1 of the auxiliary request 2 with the following feature appended:

"wherein said control arrangement (100; 200) comprises switching means for allowing to switch from the normal operation mode to the single braking member test

operation mode, the switching means being provided by a connector arrangement (124, 126, 128, 130; 224, 226, 228, 230a, 230b) for connecting said control arrangement (100; 200) to said electromagnetic actuating means (26, 30) of said elevator brake (10); the connector arrangement (124, 126, 128, 130; 224, 226, 228, 230a, 230b) predefining, for each of the operation modes, a specific scheme for connecting first connectors on the controller side (124, 126, 128, 224, 226, 228) to second connectors on the brake side (130; 230a, 230b)."

Claim 2 of auxiliary request 3 reads as for claim 1 of the main request with the following feature appended:

"said control arrangement (100; 200) further comprising monitoring means for monitoring releasing and engaging of said first and second brake elements (26, 30), respectively;
wherein said control arrangement (100; 200) is adapted to suspend said monitoring means in response to a request to enter one of the single braking member test operation modes; and
wherein said control arrangement (100; 200) allows, in response to a request to enter one of the single braking member test operation modes, a predetermined number of runs of an elevator car to be braked by said elevator brake (10)."

Claim 1 of auxiliary request 4 reads as for claim 1 of auxiliary request 2 with the following feature appended:

"wherein the control arrangement (100; 200) comprises a connector arrangement (124, 126, 128, 130; 224, 226, 228, 230a, 230b) for connecting said control

arrangement (100; 200) to said electromagnetic actuating means (26, 30) of said elevator brake (10); said connector arrangement (124, 126, 128, 130; 224, 226. 228, 230a, 230b), on the controller side, comprising a plurality of first connectors (124, 126, 128; 224, 226, 228); each of said first connectors (124, 126, 128; 224, 226, 228) having a plurality of terminals including said first terminal (112; 212) and/or said second terminal (114; 214); each of said first connectors (124, 126, 128; 224, 226, 228) having said terminals arranged in a same layout; and at least one of said first connectors (124,126, 128; 224, 226, 228) comprising said third terminal (132, 134; 232); and said connector arrangement (124, 126, 128, 130; 224, 226, 228, 230a, 230b), on the brake side, comprising at least one second connector (130; 230a, 230b) having terminals arranged in a layout complementary to the layout of said first connectors (124, 126, 128; 224, 226, 228)."

Claim 2 of auxiliary request 4 reads as for claim 2 of auxiliary request 3.

X. The appellant's arguments may be summarised as follows:

Main request
The subject-matter of claim 1 lacked novelty over D4. The elevator 'normal operation mode' was not further defined in claim 1 such that the brake test disclosed in D4, occurring during normal elevator operation, anticipated the claimed 'single braking member test operation mode'.

Auxiliary request 1
Claim 1 lacked clarity. The expression 'in a manner according to the normal control' was unclear, not least

since there was no antecedent defining any 'normal control'; it was not clear what 'normal control' meant and where this differed from the control existing during, for example, normal operation mode, particularly since the control lines were now separated in the brake test mode.

Auxiliary request 2
The subject-matter of claim 1 still lacked novelty over D4. A 'terminal' could be any point of connection in an electrical circuit. Fig. 2 and page 13, line 13 onwards disclosed a retrofitted safety device 104 which therefore had to comprise connection 'terminals'. The third terminal was thus disclosed in D4 at the junction on signal line 111 of Fig. 2.

Auxiliary request 3
This request did not meet the requirement of Rule 80 EPC. The introduction of an additional independent claim including features taken from the description was not occasioned by a ground for opposition.

Auxiliary request 4
This request should not be admitted since this would be procedurally inefficient. The subject-matter of claim 2 also did not meet the requirement of Article 123(2) EPC due to just a single braking member test mode being included in claim 1 whereas originally filed claim 7, on which claim 9 depended, disclosed two braking member test modes.
The subject-matter of claim 1 lacked novelty over D4. Since the claimed 'connector arrangement' could be generally understood as an 'element to functionally create a connection', D4 had to disclose this. Such connectors being present in D4 would also allow a desired disconnection of the safety device 113 once

more. As regards claim 2, the claimed 'monitoring means' were anticipated by measuring the temperature of the brake or detecting slip of the brake. The releasing and engaging of the brake would thus be indirectly monitored. Similarly, D1 disclosed an overspeed detection circuit which allowed the status of the brake to be inferred. The subject-matter of claim 2 was thus also not novel.
D8 should be admitted into the proceedings with respect to novelty since a 'counter' could be regarded as a 'monitoring means' as claimed. D6 should also be admitted since paragraphs [0013], [0017] and [0018], for example, disclosed 'detecting the braking state' which allowed the releasing or engaging of the brake elements to be inferred.

XI. The respondent's arguments may be summarised as follows:

Main request
The subject-matter of claim 1 was novel over D4. A brake member test mode was not disclosed in D4 since the brake test occurred during normal operation. 'Normal operation' of an elevator included the steps of arriving at a destination floor, the passengers alighting and the elevator door closing, as indeed the skilled person would appreciate. Unless all these steps occurred, normal operation had not finished.

Auxiliary request 1
Claim 1 was clear. The expression 'in a manner according to' clearly meant 'in the same way as' and the claimed 'normal control' was that related to the normal operation mode recited earlier in the claim.

Auxiliary request 2
The subject-matter of claim 1 was novel over D4. The third terminal of D4 failed to solely control the permanent release of the second brake and so could not anticipate the claimed third terminal.

Auxiliary request 3
This request met the requirement of Rule 80 EPC. Claims 1 and 2 each addressed the novelty objection found to be prejudicial to claim 1 of the main request.

Auxiliary request 4
This request should be admitted as it was filed with the response to the appellant's appeal. The subject-matter of claim 1 also met the requirement of Article 123(2) EPC, since the skilled person would clearly read the 'single braking member test operation mode' as being for testing each of the two brake members.
The subject-matter of claims 1 and 2 was novel over D4 as this failed to disclose at least a 'connector arrangement' or a 'monitoring means' for monitoring releasing and engaging of the brake elements. An indirect evaluation of whether the brake had been released or engaged could not be viewed as 'monitoring' of the brake condition.
D1 also failed to disclose all features of claim 2 since the overspeed device at best provided an indirect indication of the brake being applied, thus failing to disclose the claimed 'monitoring means'.
D8 should not be admitted since it was *prima facie* not relevant with respect to the novelty of the subject-matter of claim 2. Similarly, D6 should not be admitted since 'detection' of the brake condition encompassed indirect as well as direct monitoring of the brakes. D6 thus also failed to unambiguously disclose the claimed

'monitoring means for monitoring releasing and engaging of ... first and second brake elements'.

Reasons for the Decision

1. Main request

1.1 *Article 100(a) EPC - Novelty*

The ground for opposition under Article 100(a) EPC prejudices maintenance of the patent as granted since D4 deprives the subject-matter of claim 1 of novelty.

1.1.1 D4 discloses all features of claim 1 as follows (see Figs. 1 and 2; page 7, line 19 to page 9, line 5):

A control arrangement (1) for an elevator brake (106, 107), comprising a control circuit (see Fig. 2) adapted to generate, according to a demand for releasing a first braking member (106) of said elevator brake, a first actuating signal (via signal line 111) and to generate, according to a demand for releasing a second braking member (107) of said elevator brake, a second actuating signal (via signal line 112);
a first terminal (at signal line 111 junction with 106) for outputting said first actuating signal to a first electromagnetic actuating means (see page 8, lines 1 to 3) of said elevator brake;
a second terminal (at 112 junction with 107) for outputting said second actuating signal to a second electromagnetic actuating means (see page 8, lines 1 to 3) of said elevator brake; wherein
said control arrangement (1) being adapted to allow at least the following modes of operation:
A) a normal operation mode in which said first and said

second actuating signals are supplied synchronously to said first and second electromagnetic actuation means (see page 8, lines 3 to 7), respectively; and
B) a single braking member test operation mode, in which one of said first and second actuating signals is supplied to the respective one of said first and second electromagnetic actuating means (see page 8, lines 26 to 28), and an actuating signal for permanently releasing the respective of said first and second braking members (see page 8, lines 28 to 31) is supplied to the other one of said first and second electromagnetic actuating means.

1.1.2 Regarding the respondent's argument that the brake test performed in D4 occurred during the normal operational mode and so could not anticipate the claimed brake test, this is not accepted. It is noted that the patent is entirely silent in defining what constitutes the claimed 'single braking member test operation mode'. No limitation is provided defining that this must occur outside of 'normal operation' or as a separately identifiable stage of elevator operation. Indeed, all that is defined in claim 1 is that a single brake member is tested and no less than this is disclosed on page 8, lines 24 to 31 of D4 where 'the operability of the first holding brake can be checked'.

1.1.3 The respondent's argument that 'normal operation' of an elevator included arriving at a destination floor, the passengers alighting and the elevator door closing does not alter the Board's finding. Indeed, no limitation is provided in the patent, let alone claim 1, as to what 'normal operation' of the elevator entails and when it starts and finishes; an elevator for moving goods between floors includes none of the above limitations, yet must implicitly include a period of 'normal

operation' such that the desired limitation of the claim sought by the respondent cannot be recognised in the term 'normal operation'. Nor has it been demonstrated by any evidence that 'normal operation' did have any such meaning (and indeed the respondent's interpretation was also disputed by the appellant).

1.1.4 The conclusion of the Board that claim 1 fails to differentiate between the 'normal operation mode' and the 'single braking member test operation mode' is also contrary to the finding of the opposition division in its decision (see point 2.1.2.4). The opposition division's finding that D4 discloses just a single operation mode in which both the normal operation of the elevator system and the testing of the braking members occurs, is thus found not to be based on the wording of the claim, nor on any other factual basis; the claimed modes of operation are not defined in claim 1 in such a way as to enable these to be differentiated from the disclosure in D4.

1.1.5 The respondent's further argument in writing, that D4 failed to disclose simultaneous releasing of both brakes yet sequential applying of them, is contradicted by the disclosure in D4 on page 9, lines 3 to 5 (simultaneous release) and page 8, lines 26 to 31 (sequential brake application).

1.1.6 All features of claim 1 are thus known from D4 such that its subject-matter lacks novelty.
The main request is therefore not allowable.

2. Auxiliary request 1

2.1 *Article 84 EPC*

Claim 1 lacks clarity and thus fails to meet the clarity requirement of Article 84 EPC.

2.1.1 Relative to claim 1 of the main request, claim 1 of the present request has been amended *inter alia* to include the feature that the 'control lines are separated to allow to control just one of the braking members in a manner according to the normal control'. It is unclear what is meant by 'in a manner according to the normal control'. It is not clear for example which actions of any normal control are maintained in the now claimed control arrangement. Likewise it is not clear, in which way the now claimed control arrangement operates 'according to' the normal control. Furthermore, with the control lines defined as 'being separated' (which in itself raises the question as to what such 'separation' entails), it is not clear which elements of 'normal control' are then maintained in the control arrangement.

2.1.2 The respondent's argument that the expression 'in a manner according to' means 'in the same way as' attempts to provide clarity by way of a synonymous expression but fails to address the fundamental lack of clarity associated with this expression in its context. Even if the respondent's argument were accepted and the claim were understood to define control of just one of the braking members 'in the same way as the normal control', it can still not be clearly understood what elements of the normal control are then maintained for that single braking member in the single braking member

test operation mode.

2.1.3 The respondent's contention that the claimed 'normal control' was that related to the normal operation mode recited earlier in the claim also fails to address the underlying objection as to what the 'normal control' itself entails. The expression 'normal control' in the feature cited in paragraph 2.1.1 lacks an antecedent such that the claim itself fails to identify what is meant by 'normal control'. Even if the respondent's contention were accepted, this does not clarify what elements of the 'normal control' present in the normal operation mode are maintained when just one of the braking members is controlled according to this normal control manner.

2.1.4 Claim 1 thus lacks clarity contrary to the requirement of Article 84 EPC. At least for this reason, therefore, auxiliary request 1 is not allowable.

3. Auxiliary request 2

3.1 The appellant's argument that the independent claims in auxiliary request 2 were not convergent with claim 1 of auxiliary request 1 resulting in auxiliary request 2 being inadmissible is not accepted. Auxiliary request 2 was filed by the respondent in response to the appellant's grounds of appeal and, as defined in Article 12(2) RPBA, was thus comprised in the respondent's complete case. There is no requirement for requests filed as part of a party's complete case to be convergent, this normally only becoming of relevance with respect to the aspect of procedural economy in the consideration of the admittance of requests filed as an amendment to a party's complete case, i.e. under Article 13 RPBA. The Board thus does not find auxiliary

request 2 to be inadmissible.

3.2 *Rule 80 EPC*

Claims 1 and 2 of auxiliary request 2 are based on combinations of claims 1 and 2 and claims 1 and 9 as granted respectively. Claim 1 of the main request corresponds to claim 1 as granted and the subject-matter of this claim was found (see finding for main request above) to lack novelty. Since granted claims 2 and 9 were each separately dependent upon granted claim 1, found not to be novel, the amendments made to the claims in auxiliary request 2 are occasioned by a ground for opposition. In this regard, see also T263/05 (Headnote I and II).

3.3 *Article 54 EPC*

D4 however deprives the subject-matter of claim 1 of novelty (Article 54 EPC).

3.3.1 Relative to claim 1 of the main request, found not to be novel over D4 (see above), the present claim 1 includes the additional feature

'wherein said actuating signal for permanently releasing said first and/or second braking members is supplied to a third terminal of said control arrangement'.

3.3.2 A permanent release of the second braking member (107) of D4 is present as a result of the delay means (104) - see page 14, lines 11 to 13 and Fig. 2. This was also accepted by both parties. The third terminal of the control arrangement of D4 is depicted in Fig. 2 at the junction of the signal line going to the means 104 on

signal line 111. As was also argued by the appellant, with the delay means 104 possibly being an item retrofitted into an existing elevator system (see e.g. page 13, lines 13 to 16), such an installation would necessarily require some form of terminal on either side of the delay means i.e. also on the incoming signal side from the control unit 100 (see Fig. 2).

3.3.3 The respondent's argument, that the third terminal of D4 failed to solely control the permanent release of the second brake, is not decisive in the above identified junction on signal line 111 of D4 anticipating the claimed third terminal. Claim 1 lacks any limitation of the third terminal solely controlling the permanent release of the first or second braking member; within the scope of claim 1 it is not prevented from additionally carrying other signals, such as those for 'normal' brake operation. In the case of D4, the junction on signal line 111 in addition to the 'permanent release signal' also transfers other signals, such as the 'normal operation' signal, yet is not thereby prohibited from anticipating the claimed third terminal.

3.3.4 D4 thus discloses all features of claim 1 such that its subject-matter lacks novelty (Article 54 EPC). Auxiliary request 2 is therefore not allowable.

4. *Auxiliary request 3*

4.1 Rule 80 EPC

4.1.1 This request comprises two independent claims, similarly to auxiliary request 2. However, whilst claim 2 is based on a combination of claims 1 and 9 as granted, claim 1 is based on a combination of claims 1

and 2 as granted and also additional features taken from the description. As a result of the additional features taken from the description, claim 1 presents a new independent claim which had no counterpart in the granted patent (see e.g. Case Law 9th Edition 2019, IV.C.5.1.5b) .

4.1.2 Rule 80 EPC stipulates that amendments to the claims of a granted patent may be made provided that these are occasioned by a ground for opposition. With the subject-matter of claim 1 as granted having been found not to be novel, one or more independent claims based on a combination of claim 1 as granted with features of granted claims dependent upon claim 1 could be understood to be occasioned by the ground for opposition under Article 100(a) EPC (as was indeed the case in auxiliary request 2). The filing of the present independent claim 2 (based on a combination of claims 1 and 9 as granted) was clearly directed to overcome this objection of lack of novelty. However, the inclusion of the additional independent claim 1, based on claims 1 and 2 as granted in combination with features taken from the description, was no longer simply occasioned by a ground for opposition since this ground was already addressed through the filing of independent claim 2; the additional independent claim 1 furthermore introduced claimed subject-matter which had no counterpart in the claims of the granted patent.

4.1.3 Even if the facts underlying decision T 610/95, from where this wording is taken (Reasons, 2.2 (e)), do not exactly correspond to those of the case at hand, the reasoning adopted therein still does reflect and expand the general principle enunciated by the Enlarged Board of Appeal in G 1/84, that 'opposition procedure is not designed to be, and is not to be misused as, an

extension of examination procedure.' (OJ 1985, 299, Reasons 9). In the same vein, the Board in decision T 223/97 (not published in the OJ) confirmed that the addition, during opposition proceedings, of one or more independent claims cannot be admitted since it cannot influence the fate of the originally contested independent claim as it cannot be considered as a restriction of its wording in answer to the invoked opposition ground. Such an amendment is thus usually considered to be neither appropriate nor necessary in order to overcome a ground for opposition (which, according to T 263/05, OJ 2008, 329, Reasons 4.8, is the correct criterion to assess the admissibility/ admittance of further independent claims by way of amendment; see also Case Law of the Boards of Appeal, 2019, IV.C.5.1.5 b) for further references).

4.1.4 The amendments made to the claims are thus not occasioned by a ground for opposition contrary to the requirement of Rule 80 EPC. Auxiliary request 3 is therefore not allowable.

5. Auxiliary request 4

5.1 Admittance

5.1.1 The appellant's argument that this request should be held inadmissible is not accepted.

5.1.2 This request was filed with the respondent's reply to the appellant's grounds of appeal and thus is included in the respondent's complete case (Article 12(2) RPBA). With the opposition division having decided to reject the opposition, there was no motivation or need for the respondent to have filed this request in the first instance proceedings (see Article 12(4) RPBA) i.e.

before the opposition division. Auxiliary request 4 is consequently not excluded from the proceedings.

5.2 *Article 123(2) EPC*

5.2.1 The appellant's contention that the combination of claims 1 and 9 as filed unallowably extended the subject-matter of claim 1 beyond the content of the application as filed is not accepted. Claim 1 as filed defines a first and a second braking member in addition to a 'single braking member test operation mode'. The skilled person would unambiguously understand from claim 1 that the 'single braking member test operation mode' was suited for separately testing the function of each one of the first and second braking members. This is also confirmed on page 8, lines 1 to 10 as filed where the 'single braking member test operation mode' is further specified as including a 'first braking member test operation mode' and a 'second braking member test operation mode'.

5.2.2 The appellant's argument on this point was that claim 9 as filed, whilst multiply dependent from any of claims 1 to 8, actually necessarily had to include the features of claim 7 in which the 'first braking member test operation mode' and the 'second braking member test operation mode' were cited. However, from the understanding in point 5.2.1, the skilled person would unequivocally interpret the 'single braking member test operation modes', disclosed in claim 9 as filed, as being the 'single braking member test operation mode' associated with each of the first and the second braking member i.e. also a plural number of modes. As a consequence, there is no need for an explicit recitation of the 'first braking member test operation mode' and the 'second braking member test operation

mode' from claim 7 as filed to be included in claim 1 in order for an unambiguous basis for the subject-matter to be recognised.

5.2.3 The subject-matter of claim 1 thus meets the requirement of Article 123(2) EPC.

5.3 *Article 54 EPC - Claim 1*

5.3.1 Relative to claim 1 of auxiliary request 2, present claim 1 additionally includes the features of claim 6 as filed, relating *inter alia* to a connector arrangement for connecting the control arrangement to the electromagnetic actuating means of the brake. Not even implicitly does D4 disclose such a feature to the skilled reader.

5.3.2 The respondent's suggesting that a 'connector arrangement' is to be generally understood as an 'element to functionally create a connection' can be accepted. Nonetheless, absolutely no detail of any connector at all is provided in D4. There is also no unambiguous disclosure of any specific feature which could be interpreted as functionally creating a connection, such that even this general interpretation of the term fails to allow even an implicit disclosure of a connector arrangement to be recognised in D4.

5.3.3 Fig. 2 of D4 schematically depicts power supply lines (111, 112; see page 15, lines 17 to 18) starting at the control unit 100 and supplying the first and second brakes (106, 107). The option of retro-fitting the safety device 113 into the elevator system is indicated on page 13, lines 13 to 16 yet this does not suggest the use of connectors in order to connect the safety device into supply lines 111, 112. A permanently

connected safety device (e.g. by soldering the wires together) into the elevator system is at least as likely an option for connection, not least in view of the fact that, contrary to the argument of the appellant, the safety device is not disclosed as needing to be removable after fitting. The provision of a connector arrangement is thus just one, undisclosed, way of fitting the safety device, an unambiguous disclosure of the provision of a connector arrangement thus being missing in D4.

5.3.4 Since all features from claim 6 as filed included in present claim 1 relate to a connector arrangement, D4 is found not to disclose all those features of claim 6 as filed included in the present claim 1.

5.3.5 The subject-matter of claim 1 is thus novel over D4. No further objection under Article 54 EPC was raised against claim 1.

5.4 Article 54 EPC - Claim 2

5.4.1 Present claim 2 is a combination of claims 1 and 9 as filed. The features of claim 9 added to claim 1 define *inter alia* 'monitoring means for monitoring releasing and engaging of ... first and second brake elements'.

5.4.2 The Board holds that such 'monitoring of releasing and engaging' implies that some form of observation and the presence/issue of an evaluation signal which must be produced to indicate the actual releasing or engaging of the brake. As a consequence, an indirect assertion that the brake would seem to have been released or engaged (such as temperature observations or motor speed) is not considered to correspond with 'monitoring' of the brake released or engaged

condition.

5.4.3 With respect to D4, the appellant's argument that indirect monitoring of releasing and engaging of the brake is still to be regarded as 'monitoring' is not accepted. An indirect indication that the brake is released or engaged (such as via the 'slip status monitoring means' of D4) does not actually identify, in the sense of monitoring, that the brake is released or engaged. It is possible that the elevator car could still move even when the brake is engaged if, for example, the drive motor is not also disabled; as a consequence, a mere presumption of the brake condition via an indirect parameter, such as is the case in the 'slip status monitoring means' of D4, may well not indicate the releasing or engaging of the brake elements since this condition is indeed not being monitored.

5.4.4 In the absence of this 'monitoring' feature of claim 2 in D4, this document also does not disclose the control arrangement being 'adapted to suspend said monitoring means ...'.

5.4.5 D4 also fails to unambiguously disclose a predetermined number of runs of an elevator car in the single braking member test operation mode. The braking member test mode in D4 occurs at the end of a run, i.e. when the elevator reaches its desired floor (see page 8, line 24 to page 9, line 5) and is no longer active when a new run is started. With a 'run' in D4 being understood as a typical movement of the elevator e.g. between floors (see page 8, line 25 and page 9, lines 1 to 2), there is therefore not even a single run of the elevator car in D4 which occurs with the single braking member test

operation mode engaged.

5.4.6 D4 thus fails to disclose those features of present claim 2 originally disclosed in claim 9 as filed.

5.4.7 With respect to D1, the overspeed detection circuit 20 also provides only at best an indirect indication of the possibility that brake elements may be being released or engaged. It receives a speed control signal from the speed encoder 22 from which the brake condition may be indirectly inferred, yet this is simply a presumption of the brake having been released or engaged, but it is not a monitoring means as understood by a skilled person since there is no evaluation. D1 thus also fails to disclose the claimed 'monitoring means for monitoring releasing and engaging of ... first and second brake elements'.

5.4.8 Lacking the monitoring means feature of claim 2, D1 also does not disclose the control arrangement being 'adapted to suspend said monitoring means ...'.

5.4.9 As regards the claimed 'predetermined number of runs', the brake test mode of D1 results from the elevator car being manually shifted to a destination floor when the car fails to reach a floor in normal operation e.g. through a power failure. Such car movement through depressing of buttons 28, 32 cannot be equated with the claimed 'predetermined number of runs' of the elevator car.

5.4.10 D1 thus also fails to disclose those features of the present claim 2 originally disclosed in claim 9 as filed.

5.4.11 The subject-matter of claim 2 is therefore novel over both D1 and D4.

6. *Admittance of D8*

6.1 D8 was filed with the appellant's letter of 16 May 2019 to provide an attack against the presence of an inventive step in the subject-matter of claim 2 of auxiliary requests 2, 3 and 4. At oral proceedings the appellant then attacked the novelty of the subject-matter of claim 2 of auxiliary request 4 using this document. It was argued that this change of case was justified by the respondent stating that a 'monitoring means' could also be a 'counter'.

6.2 The new novelty attack on the basis of D8 could be admitted under Article 13(1) RPBA if, as per established case law of the Boards of Appeal, its admittance would *prima facie* change the conclusion for this request i.e. that D8 would *prima facie* deprive the subject-matter of claim 2 of novelty.

6.3 Irrespective of how the respondent argued with respect to the claimed 'monitoring means' and 'counter', the Board does not see these two expressions as functionally or otherwise denoting the same feature. Indeed, with respect to 'monitoring means', points 5.4.2 and 5.4.7 above indicate how this feature is not known from D4 and D1 respectively. Also, points 5.4.5 and 5.4.9 indicate why a 'predetermined number of runs' (referred to by the respondent as a 'counter') is not disclosed in D4 and D1. It is also evident from the above that there is nothing suggesting a commonality between these two features such that the respondent's allegation of the two features being the same is not

accepted.

6.4 Consequently the respondent's argument that D8 *prima facie* anticipates the subject-matter of claim 2 fails, since the features 'monitoring means' and 'counter' are not functionally or otherwise the same feature.

6.5 The Board thus exercised its discretion not to admit D8 into the proceedings (Article 13(1) RPBA) for arguments in respect of novelty of the subject-matter of claim 2 of auxiliary request 4. It should be noted, however, that this does not preclude the use of D8 in objections to the presence of an inventive step before the opposition division.

7. *Admittance of D6 / D6b*

7.1 According to Article 12(4) RPBA, the Board may hold inadmissible facts, evidence or requests which could have been presented in the first instance proceedings. D6 having been filed with the grounds of appeal for the first time against claim 1 as granted, the Board needs first to examine whether this document could not objectively have been filed earlier. As is also established case law of the Boards of Appeal, the Board would be inclined to admit D6 into the proceedings if the argument based upon the document would change the outcome in this objection i.e. if it were *prima facie* to deprive the subject-matter of claim 2 of novelty.

7.2 Paragraphs [0017] and [0018] were referred to by the appellant, in which the detection of the brake being in an applied or released state allegedly corresponded to the claimed monitoring of the brake condition. This is not accepted, with 'detection' of the brake condition being imprecise in the context stated, and encompassing

a "state" which is detected in which the system might be understood to be in a condition with a brake applied without actually any monitoring of the condition ever taking place. As also found with respect to D1 and D4 above, monitoring of the brake condition must also include the actual evaluation of whether the brake is engaged or not engaged, rather than just an indication that it 'should' be engaged. This interpretation of the verb 'detect' used in D6 results in D6 failing to unambiguously disclose the claimed 'monitoring means for monitoring releasing and engaging of ... first and second brake elements'.

7.3 It thus follows that, lacking at least this feature of claim 2, D6 is not relevant with respect to the novelty of the subject-matter of claim 2. The Board thus held D6 to be inadmissible with respect to a novelty objection of claim 2 (Article 12(4) RPBA). As was also the case with respect to D8 above, this does not exclude the use of D6 in objections to the presence of an inventive step before the opposition division.

8. *Remittal according to Article 111(1) EPC*

8.1 According to Article 111(1) EPC, when deciding on an appeal, the Board may either exercise any power within the competence of the department which was responsible for the decision appealed or remit the case to that department for further prosecution.

8.2 The opposition division's decision to reject the opposition was based solely on the claims as granted. The Board notes that the presently claimed subject-matter was both not examined before the opposition division and has also comprehensively changed. Further, the Board's finding in respect of the main request that

claim 1 failed to specify in any manner whatsoever when the normal operation mode of the elevator switched over to the single braking member test operation mode resulted in the opposition division's premise for its decision with respect to the main request being fully negated.

8.3 It is also noted that, in the present case, if the Board itself carried out the further examination as to patentability, the parties would lose the opportunity of having an examination of entirely different subject-matter before two instances. Also, at present, the parties have not yet had the opportunity to develop their arguments with respect to the subject-matter of the claims of auxiliary request 4 in the light of the Board's findings. With neither party having objected to remittal, the Board avails itself of its power under Article 111(1) EPC to remit the case back to the department of 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 opposition division for further prosecution.

The Registrar: The Chairman:

M. H. A. Patin M. Harrison

Decision electronically authenticated