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**Datasheet for the decision
of 2 February 2021**

Case Number: T 2447/16 - 3.2.06

Application Number: 04772528.8

Publication Number: 1785384

IPC: B66B1/18

Language of the proceedings: EN

Title of invention:

CONTROLLER OF ONE-SHAFT MULTI-CAR SYSTEM ELEVATOR

Patent Proprietor:

MITSUBISHI DENKI KABUSHIKI KAISHA

Opponent:

thyssenkrupp Elevator AG

Headword:

Relevant legal provisions:

EPC Art. 54, 56, 100(c), 100(a)

Keyword:

Novelty - (yes)

Inventive step - (yes)

Grounds for opposition - fresh ground for opposition (yes)

Late-filed objection - should have been submitted in first-instance proceedings (yes)

Decisions cited:

G 0007/95, G 0010/91

Catchword:



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Case Number: T 2447/16 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 2 February 2021

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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 7 September
2016 rejecting the opposition filed against
European patent No. 1785384 pursuant to Article
101(2) EPC.**

Composition of the Board:

Chairman M. Harrison
Members: P. Cipriano
W. Ungler

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. 1 785 384. It requested that the decision under appeal be set aside and the patent be revoked.
- II. With its response, the respondent (patent proprietor) requested that the appeal be dismissed or, in the alternative, that the patent be maintained according to one of auxiliary requests 1 to 11 filed therewith.
- III. The following documents, referred to by the appellant in its grounds of appeal, are relevant to the present decision:
 - D1 JP 6-305648 A and its translation D1c
 - D2 US 849 840
 - D3 WO 2004/048243 A1
 - D4 US 2003/0098208 A1
- IV. 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 seemed to be novel but not to involve an inventive step and that the Board was minded to exclude the inventive step attacks made for the first time with the grounds of appeal.
- V. Oral proceedings were held before the Board on 2 February 2021, during which the appellant withdrew its objection under Article 100(b) EPC and raised an objection under Article 100(c) EPC.

The final requests of the parties were as follows:
The appellant (opponent) requested that the decision under appeal be set aside and the European patent be revoked.

The respondent (patent proprietor) requested that the appeal be dismissed.

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

"[feature A] a control apparatus for a one-shaft multi-car system elevator in which a plurality of cars operate in one shaft,

[feature B] the apparatus being characterized by comprising approaching direction traveling prohibiting means (ID) for prohibiting the cars from traveling in a direction in which the cars approach each other in the same shaft, and

[feature C] door open standing by means (IE) for causing the car to stand by with its doors open if the car is prohibited by the approaching direction traveling prohibiting means from traveling and if any passenger is present in the car."

VII. The appellant's arguments relevant to the present decision may be summarised as follows:

Article 100(c) EPC - admittance

The ground of opposition under Article 100(c) EPC should be admitted into the proceedings; the subject-matter of claim 1 extended beyond the content of the application as originally filed. Should the ground of

opposition under Article 100(c) EPC not be admitted into the proceedings, the substantive details of the objection under Article 100(c) EPC should be noted in the minutes.

Interpretation of claim 1

The control apparatus defined in feature A was not exclusively for elevator systems comprising one shaft but for all systems comprising more than one car having a risk of collision.

It was not required for the approaching direction travelling prohibition means defined in feature B for both cars to be moving towards each other; it encompassed all car travelling that could result in a risk of collision. This interpretation was supported by the embodiments in the description, such as the embodiments of Figures 3(a) to 3(e) and 7(a) to 7(c).

Feature C did not require that the car be prohibited by the approaching direction traveling prohibiting means from traveling in addition to a person being present in the car for the doors to remain open. It merely required it to be suitable to open the doors if (possibly) a passenger was inside and the approaching direction traveling prohibiting means were activated. The embodiment of Figure 5 and corresponding paragraphs [0032] to [0036] also confirmed this interpretation.

Article 54 EPC

D1/D1c disclosed all the features of claim 1.

Feature B was disclosed in claim 3 of D1c.

Feature C was disclosed in claim 9 of D1c. Also paragraphs [0011], [0058], the flow diagram of Figure 5 and respective paragraphs [0070] to [0073] as well as paragraph [0105] disclosed this feature.

Article 56 EPC

D4 in combination with the teaching of D1/D1c

D4 disclosed features A and B of claim 1.

The objective problem was to reduce passenger discomfort.

D1/D1c disclosed feature C in order to solve the objective problem that could be derived from paragraphs [0058] and [0105] which explicitly mentioned passenger discomfort.

The skilled person would therefore combine the teaching of D1/D1c with D4 and arrive at the subject-matter of claim 1 without exercising an inventive step.

D3 alone or in combination with the teaching of D1/D1c or common general knowledge

D3 disclosed all features of claim 1 and therefore its subject-matter also lacked an inventive step.

In particular, on page 8 it disclosed a system for opening and keeping the doors open such that it was implicit that the doors could be kept open also in the non-operable ("nicht bedienbar") condition. Thus feature C was disclosed.

Should D3 not disclose feature C, the objective problem would be to reduce passenger discomfort.

The skilled person would therefore combine the teaching of D1/D1c with D3 and arrive at the subject-matter of claim 1 without exercising an inventive step.

Further, feature C was also common general knowledge, such that starting from D3 and combining this with common general knowledge would lead the skilled person to the subject-matter of claim 1 without involving an inventive step.

D2 in combination with the teaching of D1/D1c

D2 disclosed features A and B.

The objective problem was the same as above when starting from D4, i.e. to reduce passenger discomfort.

The skilled person was skilled in mechatronics and when faced with the objective problem would adapt the system of D2 and combine it with D1/D1c, thus arriving at the subject-matter of claim 1 without involving an inventive step.

D1/D1c in combination with the teaching of D4

Should D1/D1c be considered to disclose only features B and C, the objective problem was to adapt the control system of D1/D1c to a one-shaft multi-car system elevator.

Figure 1 of D4 disclosed a one-shaft multi-car system elevator and the skilled person would convert the

system of D1/D1c to a system as disclosed in D4 without involving an inventive step.

Additional attacks - admittance

The new attacks resulted from an unexpected interpretation of feature C (regarding the detection of passengers) that the opposition division adopted during the oral proceedings.

Article 114(1) EPC empowered the Board to examine the facts of its own motion and thus the Board should admit at least the attack starting from D4 in combination with the teaching of D3, as this was highly relevant.

VIII. The respondent's arguments relevant to the present decision may be summarised as follows:

Article 100(c) EPC - admittance

The respondent did not give its consent for the introduction of the opposition ground under Article 100(c) EPC.

Interpretation of claim 1

Feature A was directed to a control apparatus specifically designed to control a one-shaft multi-car system elevator and was not merely suitable to perform such control.

Feature B prohibited all forms of mutual approach between the elevator cars. The prohibition applied at all times, not only under certain circumstances.

Feature C defined two conditions that had to be fulfilled; the operation of the door open standing-by means was conditional upon the operation of the approaching direction travelling means defined in feature B and upon a passenger being present in the car.

Article 54 EPC

D1/D1c did not disclose at least features B and C. In D1/D1c the cars could not approach each other as defined in feature B and the door open standing by mechanism did not test for the presence of a passenger in the car to work. Paragraphs [0071] and [0072] disclosed alternative events which did not form a sequence.

The new novelty attack based on D3 should not be admitted into the proceedings as it could have been presented before the opposition division.

Inventive step

D4 in combination with the teaching of D1/D1c

D4 disclosed only feature A. In D4 the prohibition means did not apply when both cars entered the common zone and feature B required that the prohibition applied irrespective of the position of the cars in the shaft.

D1/D1c did not disclose feature C. Therefore, it would not be obvious for the skilled person starting from D4, faced with the objective technical problem, to apply the teaching of D1/D1c to arrive at the subject-matter of claim 1.

D3 alone or in combination with the teaching of D1/D1c or common general knowledge

D3 disclosed feature A but did not disclose features B and C. In D3 cars travelled in opposite directions and approached each other under certain circumstances, such that feature B was not disclosed.

The third paragraph of page 8 of D3 was not concerned with a stoppage for safety reasons but only with how a decision was made to allocate a destination call to a particular floor and reduce stops required efficiently by adjusting time and/or passenger load.

Should D3 disclose feature B, D3 in combination with the teaching of D1/D1c involved an inventive step for the same reasons as applied to the combination of D4 with the teaching of D1/D1c.

As regards the combination of D3 with the knowledge of the skilled person, the appellant had not brought forward any evidence that feature C was known to the skilled person at the priority date.

D2 in combination with the teaching of D1/D1c

D2 disclosed an electromechanical control for a system elevator from 1906 which also did not disclose feature C. It would be even more difficult for the skilled person faced with the objective problem of reducing passenger discomfort (i.e. the same problem as when starting from D3 and D4) to adapt such an electromechanical control system to the teaching of D1/D1c, which did not disclose feature C and in addition used a more modern electronic control.

D1/D1c in combination with the teaching of D4

Neither D1/D1c nor D4 disclosed feature C and therefore the skilled person would not arrive at the subject-matter of claim 1 even when combining them in some way.

Additional attacks - admittance

The new inventive step attacks (D1/D1c in combination with common general knowledge, D1/D1c in combination with the teaching of D3, D4 in combination with the teaching of D3) should not be admitted into the proceedings as they could have been filed before the opposition division.

Reasons for the Decision

1. Article 100(c) EPC - admittance
 - 1.1 The ground of opposition under Article 100(c) EPC was raised for the first time during the oral proceedings before the Board (see page 3 of the minutes of those oral proceedings).
 - 1.2 The introduction of an opposition ground at the appeal stage can only be allowed with the consent of the proprietor (see G 10/91, Headnote and Reasons 18 "*volenti non fit injuria*"), which consent was not given.
 - 1.3 The ground of opposition under Article 100(c) EPC was therefore not admitted into the proceedings.

1.4 During the oral proceedings before the Board, the appellant requested that substantive details of its objection under Article 100(c) EPC be noted in the minutes. The Chairman explained to the appellant that the minutes included the essentials of the oral proceedings (see Rule 124(1) EPC). Since the objection under the new ground of opposition was not admitted, any particulars of the objection itself were neither essential nor relevant. Further, and as is established case law (see G 10/91 (Reasons 18)), only the fact that the question has been raised may be mentioned.

2. Interpretation of claim 1

Feature B: "approaching direction traveling prohibiting means (ID) for prohibiting the cars from traveling in a direction in which the cars approach each other in the same shaft"

2.1 This feature implies a prohibition of both cars moving in opposing approaching directions. The use of the plural "cars" together with the reciprocal pronomial verb "approach ... each other" implies a movement of both cars towards each other.

2.2 The respondent argued that the embodiments of the description supported an interpretation of absolute "prohibition" that unconditionally forbade all car travelling that could result in risk of collision.

However, the wording of feature B has a clear technical meaning, such that the description, including paragraphs [0026], [0027], [0028], [0033] and Figures 3(a) to 3(e) and 7(a) to 7(c) of the patent, cited by the appellant (which relate to the description of a specific embodiment comprising a retreating operation)

cannot be used to interpret this feature in a different way.

The term "prohibiting" in feature B should not be interpreted as meaning that simultaneous movement of the cars towards each other is avoided at all times and under every possible circumstance.

Even if the patent discloses only embodiments describing this situation (see paragraphs [0027], [0028 and [0040] to [0042] as well as respective Figures 3 and 8), this is not a reason to interpret the claim more narrowly than its actual wording. Claims are drafted in general terms and do not need to reflect all the specific aspects of an embodiment of the description.

Although the respondent argued that the word "prohibition" is always absolute and without exception, the Board is not convinced by this since a prohibition can be absolute yet still confined to particular conditions. For example, an elevator car may be prohibited by a control unit from moving within a certain time frame but may be permitted to move outside the time frame, irrespective of whether the description explains such a conditional operation or not. The prohibition in the former case is still "absolute".

- 2.2.1 The wording of claim 1 therefore defines only the effect of the prohibition and does not exclude the prohibition applying only under certain conditions.

Feature A: "a control apparatus for a one-shaft multi-car system elevator in which a plurality of cars operate in one shaft"

2.3 Feature A defines a control apparatus suitable for a one-shaft multi-car system elevator in which a plurality of cars operate in one shaft. As the appellant argued, feature A alone does not define specifically how this control is to be carried out (e.g. no specific control function is defined) and leaves open to which parts of the elevator it applies.

Feature C: "door open standing-by means (IE) for causing the car to stand by with its doors open if the car is prohibited by the approaching direction traveling prohibiting means from traveling and if any passenger is present in the car"

2.4 The appellant argued that feature C merely required the standing-by means to be suitable to open the doors if (possibly) a passenger was inside and the approaching direction traveling prohibiting means were activated.

The Board does not concur and instead finds that the door open standing-by means must be able to cause the car to stand by with the doors open if the two (i.e. both) conditions are fulfilled ("if the car is prohibited by the approaching direction traveling prohibiting means from traveling" and additionally "if any passenger is present in the car"). The means defined in feature C does not refer merely to a mechanical system "capable of" opening doors in general, but to a control apparatus which is set up to perform this. Merely for completeness, it should be added that the wording of the claim does not exclude the car standing by with open doors under further circumstances, but this does not imply (contrary to the appellant's argument) that the control apparatus is not required to act in accordance with both defined conditions.

2.5 The appellant further argued that the description of the approaching direction travelling prohibition operation shown in Figure 5 and explained in corresponding paragraphs [0032] to [0036] did not require a passenger to be present in the car when executing the flow chart, much less for an explicit detection of the presence of a passenger. The operation described ran irrespective of the presence of a passenger.

The Board does not find this argument persuasive. Feature C has a clear technical meaning such that the description of the approaching direction travelling prohibition operation according to Figure 5 which corresponds to the specific Embodiment 1 cannot be used to interpret this feature more broadly, merely because no detection means for the presence of a passenger in the lift are depicted or used in the flow chart.

3. Article 54 EPC

D1/D1c

3.1 D1/D1c, claim 3, discloses a "movement prohibition means" but this prohibition means calculates a minimum distance interval to a leading car and stops the trailing car from entering this distance interval, with both cars travelling always in the same direction. The Board finds that (contrary to the argument of the appellant) this does not correspond to the cars (i.e. plural) approaching "each other" as defined in claim 1, but instead to the trailing car approaching the leading car. Feature B is thus not disclosed in D1/D1c.

3.2 D1/D1c, claims 4 and 9 as cited by the appellant, disclose a door open standing-by means for causing the car to stand by at a safe stoppage floor with its doors open if the car is prohibited by the traveling prohibiting means of D1 from traveling, but it pays no regard to whether any passenger is present in the car.

3.3 The appellant argued further that such a safe stoppage implied the presence and consequently the detection of a passenger in the car and cited paragraphs [0011], [0058], the flow diagram of Figure 5 and respective paragraphs [0070] to [0073] as well as paragraph [0105], and argued in more detail as explained below.

Paragraph [0011] described the differences of the device according to D1/D1c with regard to a system for managing railway cars that worked "even if there are no passengers" and that could not be compared to an elevator system with flexible movement, which only moved when a passenger was present. This allegedly implied that the elevator system according to D1/D1c required the detection of the passenger.

Also paragraph [0058] described the case of the following elevator having passengers and their concern when stopping at a serviced floor. Since only this case was described, it could allegedly be derived that the device of D1/D1c comprised some system of passenger detection.

D1/D1c, claim 9, paragraphs [0070] to [0073] and Figure 5 described a subroutine for safe stoppage. In paragraph [0071] the door closure button was deactivated whilst in paragraph [0072] a check was "made as to whether or not embarking/disembarking processing is complete". Paragraph [0073] then closed

the door if the embarking/disembarking processing was completed. The subroutine did not disclose any time requirements as to how long the door needed to stay open and thus it was implicit that a check of the presence of passengers was carried out.

Paragraph [0105] also disclosed that the door was opened during the safe stoppage "so a feeling of confinement was not imparted to the passengers". For the appellant it was therefore clear that the subroutine for safe stoppage disclosed in D1c opened the door depending on both conditions of feature C.

- 3.3.1 The Board however finds otherwise. Paragraph [0011] discloses that, in contrast to railway cars, an elevator car only moves at the request of a passenger. This however does not imply a passenger presence in the elevator car as the passenger usage request can be performed outside the car (e.g. by a hall call).
- 3.3.2 Paragraph [0058] of D1/D1c also describes generally the concern caused to passengers if a car would stop unexpectedly at a non-serviced floor and does not disclose anything about the opening of doors or measures to be taken in a particular situation, which could require the detection of the presence of passengers. With reference to passengers, it merely states that the following car "also has passengers", but that is clearly a reference to the embodiment shown in which passengers are shown to be in the following car.
- 3.3.3 In the subroutine described in paragraphs [0070] to [0073] and Figure 5 corresponding to claim 9, the steps (1) and (2) described respectively in paragraphs [0071] and [0072] are not cumulative.

Paragraph [0071] describes that if the floor is a safe stoppage floor the doors remain open and the closing of the doors is temporarily disabled to prevent travel. This step does not require the detection of a passenger presence in the car and the doors are opened and stay open regardless of the passenger presence.

On the other hand, paragraph [0072] describes what happens if the floor is not a safe stoppage floor and is thus an alternative to the process described in paragraph [0071]. In paragraph [0072] a check is made as to whether the embarking or disembarking is complete. Regardless of whether this check requires the detection of presence of a passenger in the car, in this case after the passengers embarked, the doors do not remain open and instead start the closing procedure.

In contrast to claim 1, the door open standing-by means of D1/D1c do therefore not check whether a passenger is present in the car in order for the doors to remain open. Also claim 9 does not refer to anything regarding the presence of a passenger, but merely to stopping at a safe stoppage floor with the door open.

3.3.4 Further, although paragraph [0105] of D1/D1c discloses opening the doors during safe stoppage so that "a feeling of confinement is not imparted to the passengers", this does not necessarily imply a determination of presence of a passenger in the car since the effect is also ensured if the doors open at every safe stoppage regardless of a passenger being present or not (see item 2.4 above).

3.3.5 Further, the movement prohibiting means of D1/D1c does not correspond to the approaching direction traveling

prohibiting means defined in claim 1 (see item 3.1 above). D1/D1c therefore also does not disclose feature C.

- 3.4 In summary, D1/D1c does not disclose at least features B and C of claim 1, such that the subject-matter of claim 1 is novel with regard to D1/D1c.

D3 - admittance

- 3.5 The novelty attack in view of D3 was made for the first time in the appeal proceedings and the proprietor requested this attack not be admitted into the proceedings.

- 3.6 As mentioned in G 7/95, the allegation that the claims lack novelty in view of the closest prior art document (in this case D3) may be considered in the context of deciding upon the ground of lack of inventive step. As an attack on inventive step starting from D3 is part of the appellant's entire case, the Board finds that it cannot avoid assessing which features from claim 1 are disclosed in D3 at least in the context of deciding whether the subject-matter of claim 1 involves an inventive step when starting from D3 in combination with the teaching of D1/D1c (see items 4.8 to 4.11 below). The question of holding the novelty attack inadmissible under Article 12(4) RPBA 2007 can thus be left aside, as the objection will be dealt with under inventive step.

4. Article 56 EPC

D4 in combination with D1/D1c

4.1 It has not been disputed that D4 discloses feature A. D4 discloses a group control apparatus for a one-shaft multi-car system elevator in which two cars (A1 and A2) operate in one shaft (see e.g. abstract or Figures 6a to 6c).

4.2 As regards feature B, paragraphs [0047] to [0050] and Figure 6c of D4 explain that there are circumstances when one of the cars is temporarily stopped and has to wait for the other car to reverse and move in a direction away from the first car, depending on the positive or negative determination carried out in step 320 (S320). As explained in paragraph [0050] referring to Figure 6C, when the lower car A2 is moving in the upward direction (while the upper car A1 is moving down - see paragraph [0047]), that is, when a negative determination is made in step S320, it is judged that there is a high probability of danger of collisions if the one car enters the common zone, so the one car is stopped at the entry determination floor in step S330.

Whilst it is true that in D4 this does not happen always (i.e. it happens only under certain conditions, depending on the zones in which the two cars are located and the determination of steps S310 and S320), this is also not excluded by the wording of claim 1. The Board finds that D4 therefore discloses also feature B.

4.3 It was not contested that D4 lacks a disclosure of feature C and the Board sees no reason to find otherwise. The effect provided by this differentiating feature is to reduce the time that the passengers are confined such that at least some feel less discomfort (see column 3, lines 11-12 and column 1, lines 55-57 of the patent). The objective technical problem can thus

be seen as providing the control apparatus with means for the reduction of passenger discomfort.

- 4.3.1 Whilst the shaft construction is very different, the cars of D1/D1c and D4 work according to the same principle and conditions from a passenger perspective, and pose the same problems to the passengers in regard to the problem of confinement. The skilled person would therefore look into D1/D1c when looking for a solution to the objective problem.
- 4.4 Paragraph [0058] of D1c already describes that passengers can feel discomfort during unexpected stops and claim 9 as well as paragraph [0105] disclose a solution to reduce such discomfort during a (for the passenger, unexpected) safe stoppage - to stop at a serviced floor and open the door to reduce the feeling of confinement. The appellant argued that the skilled person would therefore apply the teaching of D1/D1c to the control apparatus disclosed in D4.
- 4.5 However, as discussed above under items 3.2 and 3.3, D1/D1c does not disclose a door open standing-by means that keeps the doors open during a safe stoppage only when a passenger is detected inside the car. In D1/D1c the doors are always opened during a safe stoppage. More importantly, during safe stoppage, paragraph [0071], lines 32 to 35 of page 26, of D1c teaches against creating any condition regarding the passenger presence as it is the temporary opening of the doors and the temporary disablement of the door closure button that is used as a mechanism to ensure that the car does not travel during a safe stoppage.
- 4.6 The Board therefore finds that even considering the teaching of D1/D1c, the skilled person would not arrive

at the subject-matter of claim 1, and, more specifically, at a door open standing-by means that opens and keeps the door open only on the condition that (among possibly further conditions) any passenger is present in the car.

- 4.7 It thus follows that, when starting from D4 and wishing to solve the aforementioned objective problem, the skilled person would not apply the teaching of the door open standing-by control apparatus known from D1/D1c in order to reach the subject-matter of claim 1 without exercising an inventive step.

D3 alone, in combination with common general knowledge or in combination with the teaching of D1/D1c

- 4.8 It has not been contested that D3 discloses feature A. D3 (see e.g. Figure 1 and the abstract) discloses a control apparatus for a one-shaft multi-car system elevator in which a plurality of cars 21, 22 operate in one shaft 12.

- 4.9 D3 also discloses feature B. At least when the destination ("Zielruf", "gebucht") of one of the cars is between the two cars, the other (resting) car is prevented ("nicht bedienbar") from moving and approaching the incoming car (see page 19, line 16 to page 20, line 12 of D3).

- 4.10 As regards feature C, page 8, third paragraph of D3 just discloses that the car can be made to wait with its doors open until a certain number of passengers have entered the car or a certain time has elapsed before it moves. This does not correspond to feature C defined in claim 1, since it does not occur when the resting car is in the "nicht bedienbar" condition

described on pages 19 and 20 nor based on the condition of when a passenger is present.

- 4.10.1 The appellant argued that, technically, it did not matter why the doors were kept open, since it was an apparatus and not a method claim. Likewise, D3 disclosed a system for opening and keeping the doors open on page 8 and thus it was implicit that the doors could be kept open also in the "nicht bedienbar" condition, since this would allow more passengers to enter the car and optimize the elevator usage as suggested on page 8 of D3.

The Board does not find this argument persuasive. As already discussed above under items 2.4 and 2.5 regarding the interpretation of feature C, two conditions must be fulfilled in order for the door open standing-by means to correspond to the one defined in claim 1. The Board finds that the door open standing-by means as defined in claim 1 must involve a processing means (of some type) specifically adapted to carry out the functions defined in claim 1 under the conditions specified in claim 1, rather than merely being general means merely suitable for carrying them out if set up in a certain way. Therefore, D3 does not disclose means that open and keep the door open in the "nicht bedienbar" condition and if a passenger is present.

- 4.11 D3 does not disclose feature C and therefore claim 1 is effectively novel. Thus, when considering D3 alone, the subject-matter of claim 1 does not lack an inventive step, since it is not obvious for the skilled person (when considering only the arguments put forward under the heading of lack of novelty over D3) how the subject-matter of claim 1 would be arrived at.

- 4.12 It was not contested by the parties that, under the assumption that D3 only disclosed features A and B, the effect and corresponding objective problem would be the same as when starting from D4 as discussed above under item 4.3 (i.e. to reduce passenger discomfort).
- 4.13 The appellant also presented essentially the same arguments (both orally and in writing) regarding combining the teaching of D1/D1c with D4 (when starting from D4) as when starting from D3. These have already been dealt with above under items 4.4 to 4.6 and therefore the Board, for the same reasons, arrives at the same conclusion as above.
- 4.14 It thus follows that, when starting from the control apparatus of D3 and wishing to solve the objective problem, the skilled person would not combine the teaching of the door open standing-by means known from D1/D1c with this control apparatus, in order to reach the subject-matter of claim 1 unless an inventive step were involved.
- 4.15 As regards starting from D3 and combining this with common general knowledge, the appellant has failed to demonstrate that feature C is at all common general knowledge. In this regard, the respondent has not presented any information that a door open standing-by means as defined in claim 1 was common general knowledge. This is also not demonstrated by D1/D1c (see items 4.4 to 4.6).
- 4.16 It thus follows that, starting from D3 and wishing to solve the aforementioned objective problem, the skilled person using common general knowledge would not reach the subject-matter of claim 1 unless an inventive step were involved.

D2 in combination with D1/D1c

4.17 It was not contested that D2 discloses feature A and does not disclose feature C. The Board also has no reason to find otherwise. D2 (see Figure 1) discloses a control apparatus for a one-shaft multi-car system elevator in which a plurality of cars A, B operate in the single shaft 1.

4.18 As regards feature B, whilst it is true that D2 does not determine and compare the direction of travel of the cars, this is not required by feature B of claim 1 which more generally defines "approaching direction traveling prohibiting means for prohibiting the cars from traveling in a direction in which the cars approach each other in the same shaft".

This does not necessarily imply any determination or comparison step. As disclosed in D2, page 2, lines 33-36, the electromechanical architecture of the circuit in E2 does not allow the simultaneous movement of the two cars towards each other. This can thus be seen as a prohibiting means of claim 1. D2 therefore discloses feature B.

4.19 It was also not contested by the parties that, under the assumption that D2 disclosed features A and B, the effect and corresponding objective problem were the same as when starting from D4 as discussed above under item 4.3 (i.e. to reduce passenger discomfort).

4.20 However, it would not be obvious for the skilled person to combine the electromechanical control of D2 with the electronic one of D1. For example, it would first

require decoupling both cars with the consequent elimination of feature B and the need of its replacement with a different system.

- 4.21 The appellant argued that the skilled person was skilled in mechatronics and thus had experience in both mechanics and electronics such that they would be able to change the electromechanical circuit of 1907 shown in Figures 3 to 5 into an equivalent electronic microcontroller according to modern standards at the priority date without any difficulty. An additional separate door operating system with a separate control could be also provided.

The Board can accept that the skilled person would know how to replace electromechanical circuits by equivalent more modern electronic circuits in general. However, the Board notes that the system elevator of D2 does not explicitly disclose door operation, such that the skilled person starting from D2 would need to provide a door open standing-by means in the first place and not simply adapt one as when starting from D4 or D3.

In addition, even if this were done as the appellant suggested, the teaching of D1/D1c does not disclose the same solution as the one defined in claim 1, as has been discussed above for the attacks using D4 and D3 as starting points.

- 4.22 It thus follows that, starting from the control apparatus of D2 and wishing to solve the objective problem, the skilled person would not combine the door open standing-by means known from D1/D1c with this in order to reach the subject-matter of claim 1 unless an inventive step were involved.

D1/D1c in combination with D4

- 4.23 During the oral proceedings, the appellant referred to its written submissions as regards its inventive step objection starting from D1/D1c in combination with D4. In its written submissions the appellant assumed that D1/D1c disclosed features B and C and that it differed from claim 1 only by feature A (see second and third paragraphs of page 24 of its grounds of appeal).
- 4.24 Following its provisional opinion, the Board finds (as in items 3 and 4 above) that D1/D1c does not disclose at least features B and C and that D4 does not disclose feature C. Therefore none of the written arguments from the appellant regarding its inventive step attack starting from D1/D1c in combination with D4 establishes that the subject-matter of claim 1 lacks an inventive step.
- 4.25 The requirement of Article 56 EPC is therefore fulfilled.
5. Additional attacks - admittance
- 5.1 The appellant submitted further inventive step attacks starting from D4 in combination with D3, D1/D1c in combination with the skilled person's knowledge and D1/D1c in combination with D3, all for the first time with its grounds of appeal.
- 5.2 Article 12(4) RPBA 2007 requires the Board to take into account everything presented by the parties under Article 12(1) RPBA 2007 if and to the extent that it relates to the case under appeal and meets the requirements in Article 12(2) RPBA 2007. Nevertheless, according to Article 12(4) RPBA 2007, the Board has the

discretionary power to hold inadmissible facts, evidence and requests that could have been presented or were not admitted in the first instance proceedings.

The purpose of this provision is to enable the Board, acting primarily as a review instance, to retain discretion to refuse new material, including attacks (which necessarily involve a combination of facts), not submitted during opposition proceedings.

- 5.3 The appellant argued that the new attacks resulted from an unexpected interpretation of feature C (regarding the detection of passengers) that the opposition division had adopted during the oral proceedings.

The Board does not find this argument convincing and sees no reason why these attacks could not have been made at the oral proceedings. The notice of opposition of the (now) appellant itself already describes the potential interpretation problems of feature C that could arise (see page 3, last paragraph). It follows that the discussion of the interpretation of feature C in the oral proceedings cannot be regarded as an unexpected event for the appellant that could justify the filing of more attacks in the appeal proceedings.

- 5.4 The appellant further argued that Article 114(1) EPC empowered the Board to examine the facts of its own motion and allowed the Board to admit at least the attack starting from D4 in combination with D3 which was very relevant and which relied on documents that were already part of the proceedings.

- 5.4.1 The Board however finds otherwise. The obligation of *ex officio* examination as laid down in Article 114(1) EPC is explicitly limited in particular by Article 114(2)

EPC, i.e. the possibility of disregarding facts and evidence not submitted in due time, which is further specified by Articles 12 and 13 RPBA. Furthermore, the appeal (*inter partes*) procedure is a first and foremost judicial procedure (see Article 12(2) RPBA 2020), separate from the preceding purely administrative opposition procedure, in which the decision of an opposition division is reviewed by a judicial authority. Its function is mainly to give the losing party an opportunity to challenge the decision against it and to obtain a judicial ruling on whether this decision is correct. Such procedure is by its very nature less investigative than an administrative procedure. Although Article 114(1) EPC also covers the appeal procedure, it is therefore justified to apply this provision generally in a more restrictive manner in the appeal procedure when primarily reviewing the decision in a judicial manner, than in the opposition procedure (cf. G 10/91, OJ EPO 1993, 420, Reasons point 18).

- 5.5 For the above reasons, the Board holds inadmissible the inventive step objections starting from D4 in combination with D3, D1/D1c in combination with the skilled person's knowledge and D1/D1c in combination with D3 (Article 12(4) RPBA 2007).
6. The subject-matter of claim 1 is thus novel and involves an inventive step. The grounds for opposition under Article 100(a) in combination with Articles 54 and 56 EPC respectively therefore do not prejudice maintenance of the patent as granted.

The appeal must therefore be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



D. Grundner

M. Harrison

Decision electronically authenticated