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**Datasheet for the decision
of 30 September 2021**

Case Number: T 0341/18 - 3.2.06

Application Number: 06779777.9

Publication Number: 2032491

IPC: B66B11/00

Language of the proceedings: EN

Title of invention:

ELEVATOR INSTALLATION WITH REDUCED HOISTWAY DIMENSIONS

Patent Proprietor:

Otis Elevator Company

Opponents:

Inventio AG

TK Elevator Innovation and Operations GmbH

Headword:

Relevant legal provisions:

EPC Art. 101, 113(2)

Keyword:

Basis of decision - text or agreement to text withdrawn by
patent proprietor - patent revoked

Decisions cited:

T 0073/84, T 0186/84, T 0237/86, T 0459/88, T 0655/01,
T 1526/06, T 1960/12

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

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Case Number: T 0341/18 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 30 September 2021

Appellant: Inventio AG
(Opponent 1) Seestrasse 55
6052 Hergiswil (CH)

Appellant: TK Elevator Innovation and Operations GmbH
(Opponent 2) E-Plus-Straße 1
40472 Düsseldorf (DE)

Representative: Nißl, Alexandra
Paustian & Partner Patentanwälte mbB
Oberanger 32
80331 München (DE)

Respondent: Otis Elevator Company
(Patent Proprietor) One Carrier Place
Farmington CT 06032 (US)

Representative: Dehns
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10 Salisbury Square
London EC4Y 8JD (GB)

Decision under appeal: **Interlocutory decision of the Opposition**
Division of the European Patent Office posted on
1 December 2017 concerning maintenance of the
European Patent No. 2032491 in amended form.

Composition of the Board:

Chairman	M. Harrison
Members:	P. Cipriano
	C. Almborg

Summary of Facts and Submissions

- I. In its interlocutory decision the opposition division found that European patent No. 2 032 491 in an amended form met the requirements of the EPC.
- II. This decision was appealed by both opponents.
- III. The appellants (opponents) requested that the decision under appeal be set aside and the patent be revoked.
- IV. The patent proprietor requested, with its reply to the opponents' appeals, that those appeals be dismissed or, as an auxiliary measure, that the patent be maintained on the basis of one of auxiliary requests 1 to 7.
- V. In preparation for oral proceedings, the Board issued a communication under Article 15(1) RPBA 2020 containing *inter alia* its provisional view on the various requests.
- VI. Oral proceedings before the Board were held on 30 September 2021, at the end of which the proprietor withdrew all its requests and disapproved any text for maintenance of the patent. The opponents maintained their initial requests.

Reasons for the Decision

1. Under Article 113(2) EPC, the European Patent Office shall consider and decide upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent. This principle has to be strictly observed also in opposition and opposition appeal proceedings.
2. Since the text of the patent is at the disposition of the patent proprietor, a patent cannot be maintained against the patent proprietor's will. During the oral proceedings the proprietor withdrew its approval of any text for maintenance of the patent and withdrew all its requests. There is therefore no text of the patent on the basis of which the Board can consider the appeal.
3. In view of the above, the Board concludes that the patent must be revoked. This conclusion is also in line with case law developed by the Boards of Appeal in *inter alia* decisions T 73/84, T 186/84, T 655/01, T 1526/06 and T 1960/12; cf. also T 237/86, T 459/88.

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:



D. Grundner

M. Harrison

Decision electronically authenticated