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Datasheet for the decision of 29 August 2023

Case Number: T 2684/19 - 3.2.06

Application Number: 10857753.7

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Title of invention:
ELEVATOR SYSTEM

Patent Proprietor:
Kone Corporation

Opponent:
Otis Elevator Company

Headword:

Relevant legal provisions:
EPC Art. 54, 56
RPBA 2020 Art. 13(2)

Keyword:
Novelty - auxiliary request 1 (no)
Inventive step - auxiliary request 2 (yes)
Late-filed objection - admitted (no)

Decisions cited:
G 0004/92

Catchword:

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Case Number: T 2684/19 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 29 August 2023

Appellant: (Opponent)	Otis Elevator Company Intellectual Property Department One Carrier Place Farmington, Connecticut 06032 (US)
Representative:	Dehns St. Bride's House 10 Salisbury Square London EC4Y 8JD (GB)
Respondent: (Patent Proprietor)	Kone Corporation Kartanontie 1 00330 Helsinki (FI)
Representative:	Glück Kritzenberger Patentanwälte PartGmbB Hermann-Köhl-Strasse 2a 93049 Regensburg (DE)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 15 July 2019 rejecting the opposition filed against European patent No. 2621847 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman	M. Harrison
Members:	P. Cipriano
	D. Prietzel-Funk

Summary of Facts and Submissions

I. In its interlocutory decision the opposition division found that, account being taken of the amendments made by the patent proprietor during the opposition proceedings, European patent No. 2 621 847 met the requirements of the EPC.

II. The appellant (opponent) requested that the decision under appeal be set aside and the patent be revoked.

III. The respondent (patent proprietor) requested that the appeal be dismissed or, in the alternative, that the patent be maintained in amended form on the basis of one of auxiliary requests 1 to 7 filed with the reply to the statement of grounds of appeal.

IV. The following documents are relevant to the present decision:

D1 WO 2009/122002 Al
D2 US 2007/0084674 Al
D3 WO 2009/090206 Al
D4 US 2009/0159374 Al
D5 Printout "Vertical Transportation in Tall Buildings," Dr. Gina Barney

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 10 of the main request was not novel over D1.

VI. Oral proceedings were held as a videoconference before the Board on 29 August 2023, during which the respondent withdrew the main request.

At the close of the proceedings, the requests of the parties were as follows:

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

The respondent requested that the patent be maintained in amended form on the basis of one of auxiliary requests 1 to 7 submitted with the reply of 20 March 2020 to the statement setting out the grounds of appeal.

VII. Claim 1 of auxiliary request 1 reads as follows (feature breakdown as used in item 1.10.1 of the decision):

"**M1.1** Method for optimizing the transport capacity of an elevator system,

M1.2 which elevator system serves two or more floors in a building and which elevator system comprises at least one elevator and also

M1.3 call-giving appliances for registering the calls given by the passengers,

M1.4 in which method locking rules of the floors are defined;

M1.5 and at least one floor served by the elevator system is dynamically locked on the basis of the aforementioned locking rules,

characterized in that

M1.6 statistical information about the travel events of the elevator system is collected;

M1.7 on the basis of the aforementioned statistical information, the periods of time during which the value of the performance indicator describing the transport capacity of the elevator system exceeds a given limit value are forecast; and

M1.8 one or more floors served by the elevator system are locked for the duration of the aforementioned periods of time."

VIII. Claim 10 of auxiliary request 1 reads as follows:
"Elevator system, which comprises at least one elevator (A, B, C, D) , a control system (130) of the elevator system and also call-giving appliances (110) connected to the control system (130) for registering the calls given by the passengers, whereby the control system (130) is arranged to dynamically lock one or more floors served by the elevator system based on the locking rules recorded in the control system, characterized in that the elevator system is arranged to collect statistical information about the travel events of the elevator system, to forecast on the basis of the aforementioned statistical information the periods of time during which the value of the performance indicator describing the transport capacity of the elevator system exceeds a given limit value, and to lock one or more floors served by the elevator system for the duration of the aforementioned periods of time."

IX. Claim 1 of auxiliary request 2 differs from claim 1 of auxiliary request 1 in that the last "and" (in feature

M1.7) was deleted and in that the following features were appended at the end of claim 1:
"a destination call given by a passenger to a locked floor is registered; and on the basis of the aforementioned destination call an elevator car is allocated to the passenger for the purpose of taking the passenger from the call floor to an unlocked floor, from which there is an alternative passageway to the aforementioned locked floor."

X. Claim 9 of auxiliary request 2 differs from claim 10 of auxiliary request 1 in that the last "and" was deleted and in that the following features were appended at the end of claim 9:
"and in that the control system is arranged to register a destination call given by a passenger and if the aforementioned destination call is to a locked floor, to allocate an elevator car to the passenger for the purpose of taking the passenger to an unlocked floor, from which there is an alternative passageway to the aforementioned locked floor."

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

Auxiliary request 1 - novelty

The subject-matter of claim 1 was not novel over D1.

The expression ”floor locking" as defined in feature M10.4 and M10.8 did not require that all the elevators serving one floor be locked nor that access is forbidden to all the users. D1 therefore disclosed features M10.4 and M10.5.

It was not relevant if during peak hours the floors became locked or unlocked. Feature M10.8 encompassed both possibilities and was disclosed in D1. D1 used a traffic forecaster to predict a future traffic situation. Features M1.7 and M1.8 were therefore disclosed.

Auxiliary request 2 - inventive step

Starting from D1, the allocation of a car to take the passenger to an unlocked floor from which there is an alternative passageway to the locked floor was an obvious solution to the skilled person trying to allow an authorised passenger to access its destination floor, requiring only common general knowledge or the teaching of D5 (see section 1.4).

Starting from D3, the skilled person searching for an alternative system to manage the floor locking would consider the teaching of D4, D2 and D1 and arrive at the subject-matter of claims 1 and 9 of auxiliary request 2 in an obvious manner, when also considering common general knowledge or D5 in the same way as when starting from D1.

Starting from D2, the skilled person seeking to improve the transport capacity would consider the teaching of D2 and arrive at the subject-matter of claims 1 and 9 of auxiliary request 2 in an obvious manner, when also considering common general knowledge or D5 in the same way as when starting from D1.

Starting from D1, the skilled person searching to allow an authorised passenger to access its destination floor, despite the floor being locked, would consider the teaching of D2 and arrive at the subject-matter of

claims 1 and 9 of auxiliary request 2 in an obvious manner, when also considering common general knowledge or D5 in the same way as when starting from D1.

New attacks - Article 13(2) RPBA 2020

The new attacks were based on D1 together with D3 or D4. Since only passages in D3 or D4 would be referred to which had already been referred to in other attacks, this constituted only arguments that represented a normal development of the appellant's case. They did not constitute an amendment thereof.

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

Auxiliary request 1 - novelty

The subject-matter of claim 1 was novel over D1.

The expression ”floor locking" must be interpreted as requiring locking of an entire floor irrespective of the group that the user belonged to.

In D1 the floors were therefore not locked as there was no example in D1 for a specific floor or a specific zone being locked as such, nor would the skilled person directly and unambiguously derive this teaching from document Dl. Features M1.4 and M1.5 were therefore not disclosed in D1.

The traffic situation prevailing in the elevator system described in the embodiment on page 18 of D1 referred to a traffic situation which was monitored in real time by the group control. D1 therefore did not disclose features M1.7 and M1.8.

Auxiliary request 2 - inventive step

D1 disclosed an elevator system divided into floor zones to prevent users from accessing floors for which they are not authorised, whereas the invention did so to make the system more efficient during peak hours. It was therefore not obvious to use common general knowledge or the teaching of D5 to modify D1 in order to arrive at the subject-matter of claims 1 and 9.

Neither D2, D3 or D4 disclosed feature M1.8 such that no attack combining these documents rendered the subject-matter of claims 1 and 9 obvious.

Neither D1 nor D2 disclosed the features added to claims 1 and 9 in auxiliary request 2 with respect to claims 1 and 10 of auxiliary request 1 such that the skilled person starting from D1, faced with the technical problem would not be able arrive at the subject-matter of claims 1 and 9 by taking into consideration the teaching of D2.

New attacks - Article 13(2) RPBA 2020

The inventive step attacks starting from D1 in combination with D3 and D4 were an amendment to the respondent's appeal case that were not to be taken into account in the appeal proceedings.

Reasons for the Decision

1. Auxiliary request 1 - novelty over D1

1.1 It has not been disputed by the respondent that D1 discloses the features M1.1 to M1.3 and M1.6 of claim 1 of auxiliary request 1. The Board also sees no reason to find otherwise.

Floor locking - features M1.4 and M1.5

1.2 The respondent argued that D1 did not disclose floor locking as such, i.e. an entire floor becoming inaccessible for all the users as explained in paragraph [0008] of the patent. There was no example in D1 of a specific floor or a specific zone being locked.

1.2.1 The Board does not accept this argument. The locking of floors as defined in claim 1 does not imply that no elevators can stop on the locked floors, nor that the locked floors must be locked for all user groups.

1.2.2 This would not be the interpretation of the skilled person, since, for example, persons with disabilities as well as e.g. security and building administration personnel are usually entitled to bypass such floor locks. The patent also does not contradict this interpretation. The locking of floors explained in paragraph [0008] does not apply to *all* the elevators of an elevator system, as paragraph [0008] only uses the more generic expression "elevators of an elevator system".

Further, at least the exception for disabled persons is described in the patent in paragraphs [0015], [0018] and [0030]. The respondent's argument that this was simply due to legal requirements is not accepted either. The locked floors of the patent are also accessible to some users, regardless of the motivation behind that, such that there is no reason for the Board itself to adopt a more limited interpretation of floor locking.

1.2.3 Further, the classification rules in D1 are used to classify the user into different user groups and contain data about the "permitted" destination floors or zones, to which travel is possible for the requesting group (e.g. page 7, lines 26-34, and page 12, lines 28-37, referring to Figure 1). The Board finds that all the floors which are not "permitted" are locked, i.e. they cannot be accessed by the user group, such that these classification rules contain locking rules, whereby some floors become non accessible (at least to some user groups). The paragraph bridging pages 16 and 17 of D1 also states that these permitted destination floors can be changed "dynamically" according to the time of day or of the week. This occurs via the control system (group control 1300; see also page 18, lines 8 to 16).

1.3 D1 therefore discloses a control system arranged to dynamically lock one or more floors served by the elevator system based on the locking rules recorded in the control system as defined in features M1.4 and M1.5 of auxiliary request 1.

Forecasting - features M1.7 and M1.8

1.4 The respondent argued that the traffic situation prevailing in the elevator system described in the embodiment on page 18 of D1 referred to a traffic situation monitored in real time by the group control. In order to determine this traffic situation at any given time, the elevator system used a so-called traffic forecaster as disclosed in lines 33-37 of page 18. It was not disclosed how the traffic forecaster handled the real time information but it was clear from lines 5-23 on page 18 that when a peak traffic situation or an exceptional situation was assessed the classification rules could be changed and two or more user groups be connected.

These arguments are not accepted. The traffic situation prevailing in the elevator system described in D1 refers to a forecast situation. As described on page 3, lines 3 to 11, in order to identify the prevailing traffic situation, the traffic forecaster collects information about the use of the elevator during a period of use and uses it to forecast a future traffic situation which is used to identify the prevailing traffic situation. The prevailing traffic situation identified by the traffic forecaster is therefore a future situation.
This implies that a period of time during which the value of the performance indicator describing the transport capacity of the elevator system exceeds a given limit value is a period of time which has been predicted on the basis of the aforementioned statistical information, as defined in feature M1.7.

Page 18, lines 8-17, of D1 then explains that when the traffic situation prevailing in the elevator (i.e. the situation that was forecast in advance) changes, the classification rules are changed such that zone limits are changed too. Hence, one or more floors served by the elevator system are therefore locked for the duration of a period of time determined by the traffic forecaster as defined in feature M1.8 of claim 1.

1.5 The respondent also argued that the connection of several user groups disclosed in lines 16-23 on page 18 of D1 did not correspond to the locking of one or more floors as defined in feature M1.8 of claim 1, but, quite on the contrary, to the unlocking of floors for some user groups.

The Board does not find these arguments persuasive either. The locking of floors as defined in feature M1.8 does not imply that *more* floors need to be locked for the duration of the periods of time. Instead, it is sufficient in term of the claims that at least one floor remains locked for that time period. This is disclosed in the embodiment of page 18, lines 17-23, which describes the connection of two of the user groups into one user group, which implies that the remaining user groups will still be blocked from using certain floors, or indeed that the (thus-formed) one user group has more floors accessible to it during that period but not all floors (i.e. one or more floors are locked, also for the duration of the periods when the one user group can access more floors, but not all floors).

In addition, it is noted that feature M1.7 does not define any specific performance indicator for describing the transport capacity of the elevator

system such that where the performance indicator value "exceeds a given limit" as defined in feature M1.7, this could refer to a situation where the transport capacity is increasing (i.e. leaving a peak traffic period) and the user groups of the embodiment on page 18 of D1 are necessarily disconnected again.

1.6 The respondent argued that in D1 the decision to change the locking rules was assessed on a call by call basis such that a general rule for a period of time as defined in features M1.7 and M1.8 was not established.

The Board does not accept this argument. As explained in the paragraph bridging pages 16 and 17 ("The determination of permitted destination floors can be fixed or it can change dynamically according to the time of day and/or the day of the week") as well as in lines 16 to 23 on page 18 ("during peak traffic periods... the group control can in the classification rules connect two or more user groups into one user group"), the decision to change the locking rules is not assessed for each individual call, but over a period of time.

1.7 It was not disputed between the parties that the apparatus claim 10 of auxiliary request 1 defines only the corresponding features to method claim 1 of auxiliary request 1 such that its novelty assessment corresponded to the one of claim 1. The Board also sees no reason to find otherwise.

1.8 It follows that the subject-matter of claims 1 and 10 is not novel over D1 (Article 54(1) and 54(2) EPC), since D1 discloses all the features of claims 1 and 10 of auxiliary request 1. Auxiliary request 1 is therefore not allowable.

2. Auxiliary request 2 - inventive step

D1 in combination with common general knowledge or D5

2.1 It was not disputed that D1 does not disclose the features of granted claim 2 which were added to claim 1 in auxiliary request 2, which were the following:
- a destination call given by a passenger to a locked floor is registered; and,
- on the basis of the aforementioned destination call an elevator car is allocated to the passenger for the purpose of taking the passenger from the call floor to an unlocked floor,
- from which there is an alternative passageway to the aforementioned locked floor.

2.2 As confirmed in paragraph [0018] of the patent, these added features allow an authorised passenger to access their destination floor even if locked, such that the objective problem is to allow an authorised passenger to access their destination floor, despite the floor being locked.

2.3 The Board finds that the skilled person would not adapt the elevator system of D1 and arrive at the subject-matter of claim 1 in an obvious manner using their common general knowledge.

2.4 Contrary to the appellant's argument, the allocation of a car to take the passenger to an unlocked floor from which there is an alternative passageway to the locked floor is not an obvious solution in the context of an elevator system that has some locked floors and some unlocked floors, requiring only common general knowledge.

D1 deals with an elevator system where the floors are divided into floor zones such that certain zones are only accessible to particular user groups who are authorised to access those zones. In such systems, and unlike in the system of the patent, the floors are not locked to make the system more efficient by reducing the number of stops, but to prevent users from accessing floors for which they are not authorised. In the elevator system of D1 it is thus not possible for a destination call given by a passenger to a locked floor to be registered, unlike in claim 1 which allows destination calls to locked floors to be registered.

Quite to the contrary of the teaching of the patent as to the locking of floors and the provision of an alternative passageway to increase the transport capacity of the elevator system during peak hours, page 18, lines 17-23, of D1 discloses that two or more groups can be connected, i.e. floors from more zones should be serviced by the same elevator and thus more floors should be unlocked to the users of these groups.

2.5 The appellant argued that D1 already disclosed the possibility of providing the user with an alternative route on page 10, lines 20-25.

The Board does not find this argument persuasive. D1 discloses on page 10 that the congestion of the building can be avoided by directing different user groups to different arrival lobbies from where there is only access to the authorised floors. Providing different arrival lobbies for different user groups achieves a sorting of the users according to their destination floor before the destination call is even registered, after which an elevator car is allocated to

take the passenger to their desired destination floor. This would not lead the skilled person to provide an alternative way (i.e. after making the call) for a user group to arrive at its destination floor.

2.6 The appellant further argued that, should the skilled person nevertheless wish to go to a locked floor, they would just select the nearest unlocked floor and take the stairs in an obvious manner and thus arrive at the subject-matter of claim 1.

However, the Board finds that the skilled person would not modify the elevator system of D1 in this way since the locked floors of D1 are closed to unauthorized users (e.g. the residential floors are off limits to company employees working in the building) and so any stair access to a locked floor would necessarily be closed as well, even if the stairs allowed a passenger to go past the level of the locked floor in the stairwell.

2.7 Alternatively, the appellant argued that section 1.4 of D5 taught the skilled person that it was normal for the passenger to be guided to exit at the nearest odd floor and to walk up/down a flight of stairs, such that the skilled person would arrive at the subject-matter of claim 1 by combining the teachings of D1 and D5.

This argument is also not persuasive. D5, item 1.4 states *inter alia* "During peak periods the decks are arranged to serve 'even' and 'odd' floors respectively with passengers guided into the appropriate deck for their destination. Special arrangements are made at the lobby for passengers to walk up/down a half flight of stairs/escalators to reach the lower or upper main lobby".

This is not the same as "an elevator car is allocated to the passenger for the purpose of taking the passenger from the call floor to an unlocked floor, from which there is an alternative passageway to the aforementioned locked floor" as defined in claim 1. D5 works the other way round, i.e. the system of D5 makes the passenger walk a flight of stairs and then the elevator takes him to the correct floor. The teaching of D5 would therefore also not lead the skilled person to the subject-matter of claim 1.

2.8 It was not disputed that the apparatus features of granted claim 11 added to apparatus claim 9 of auxiliary request 2 corresponded to the method features of granted claim 2 added to claim 1 such that the inventive step assessment of claim 9 corresponds to that of claim 1.

2.9 The Board thus finds that the subject-matter of claims 1 and 9 of auxiliary request 2 involves an inventive step when starting from D1 as the closest prior art and, given the technical problem to be solved, when considering common general knowledge or the teaching of D5.

3. Further Inventive step attacks

3.1 During the oral proceedings, the appellant stated that it maintained its further inventive step attacks made in writing but made no further arguments. These attacks can only be understood to start from D3, D1 or D2 respectively, concerning the broader claims 1 and 10 of auxiliary request 1 taken together with the further attacks made against the dependent claims 2 and 11 (which are in sections 4.6.1.1 and 4.6.1.2 of the

grounds of appeal and which correspond to those mentioned above when starting from D1 as the closest prior art).

3.2 Since no further arguments were submitted by the appellant after the preliminary opinion of the Board, the Board sees no reason to deviate from its assessment of inventive step in regard to those attacks (see item 2.3 *et seq* of the Board's communication). These are addressed below

Starting from D3, in combination with D4, D2 or D1

3.3 Given the broader interpretation of "floor locking" discussed above, the creation of zones described in D3, which prevents certain users from going directly to their desired floor, falls under the above interpretation, such that D3 discloses features M1.4 and M1.5. It was not contested that D3 does not disclose features M1.6, M1.7 and M1.8.

3.4 As D3 already discloses a system for locking floors, the objective problem is to provide an alternative system to lock the floors or manage the floor locking.

3.5 D4 deals with the situation of re-routing passengers who have lost their original ride and should be provided with a "possible alternative route" which may be faster and have a lower cost (see e.g. paragraph [0023]).

3.5.1 According to the respondent, paragraphs [0022] and [0028] of D4 do not disclose that individual floors are locked, but entire elevator systems, namely single-deck or multi-deck elevator systems. This is, however, also

"floor locking" as discussed above such that D4 discloses floor locking.

3.5.2 However, this locking does not occur for the duration of the periods of time during which the value of the performance indicator describing the transport capacity of the elevator system exceeds a given limit value in comparison to other periods of time.

3.5.3 At least feature M1.8 is therefore not unambiguously disclosed in D4, such that the teaching of D4 would not lead the skilled person to the subject-matter of claim 1 in an obvious manner.

3.6 D2 discloses a statistical system to evaluate the elevator capacity such that features M1.6 and M1.7 are disclosed in D2. However, D2 also states that (see e.g. paragraph [0018]), during peak hours, a direct return of the elevators to the ground floor is automatically ordered (i.e. without waiting for a call from the ground floor). D2 does not disclose what would happen in the event of a conflicting elevator call, i.e. whether this direct return would override any other call or stop any call from a user.

3.6.1 At least feature M1.8 is therefore not unambiguously disclosed in D2, such that the teaching of D2 would not lead the skilled person to the subject-matter of claim 1 in an obvious manner.

3.7 As discussed above, D1 discloses features M1.7 and M1.8. However, confirming item 3.2 of its preliminary opinion and as discussed above in items 2.4 to 2.7 in relation to common general knowledge and D5, the features of granted claims 2 and 11 added in claims 1 and 9 of auxiliary request 2, respectively, are not

disclosed in the prior art nor rendered obvious to the skilled person.

As stated in item 2.1 above, these features are not disclosed in D1, such that the teaching of D1 when starting from D3 would also not lead the skilled person to the subject-matter of claim 1 in an obvious manner.

3.8 Since it has not been disputed that the conclusions reached for claim 1 would also apply to claim 9 (see item 2.8 above), the Board thus finds that the subject-matter of claims 1 and 9 of auxiliary request 2 involves an inventive step when starting from D3 as the closest prior art and, given the technical problem to be solved, when considering the teaching of D1, D2 or D4.

Starting from D1, in combination with D2

3.9 As discussed above, D1 discloses features M1.1 to M1.8 and the objective problem to be solved is to allow an authorised passenger to access its destination floor, despite the floor being locked.

3.10 The appellant has not argued that D2 disclosed the features of granted claims 2 and 11 added to claims 1 and 9 in auxiliary request 2.

Thus, confirming item 3.2 of its preliminary opinion and as discussed above in items 2.4 to 2.7 in relation to common general knowledge and D5, the Board finds that features of granted claims 2 and 11 added in claims 1 and 9 of auxiliary request 2, respectively, are not disclosed in the prior art nor rendered obvious by common general knowledge alone.

3.11 Consequently the teaching of D2 would not lead the skilled person to the subject-matter of claim 1 in an obvious manner when starting from D1 as the closest prior art.

3.12 Since it has not been disputed that the conclusions reached for claim 1 would also apply to claim 9 (see item 2.8 above), the Board thus finds that the subject-matter of claims 1 and 9 of auxiliary request 2 involves an inventive step when starting from D1 as the closest prior art and, given the technical problem to be solved, when considering the teaching of D2.

Starting from D2, in combination with D3

3.13 D2 does not disclose features M1.4, M1.5 and M1.8 which relate to the locking of floors. This has not been disputed. Following its provisional opinion and in the absence of further arguments by the appellant, the Board sees no reason to find otherwise.

3.14 Following the arguments by the appellant, the objective problem is to further improve the transport capacity.

3.15 The appellant argued that, starting from D2, and seeking to solve that objective problem, the skilled person would turn to D3, since D3 taught that the transport capacity of the elevator system could be improved by preventing an elevator car from stopping at certain floors (paragraphs [0006] and [0007]). Thus, starting from D2, the skilled person would be taught by D3 to lock certain floors, but would do so on the basis of forecast time periods disclosed in D2.

The Board does not accept this argument. It is not contested that D3 fails to disclose features M1.6, M1.7

and M1.8 such that the skilled person would not combine the elevator system of D2 with the teaching of D3 and arrive at the subject-matter of claim 1, since at least feature M1.8 would still be missing in the combination.

The Board also notes that the establishment of zones in D3 is dependent on the target floors of the users and does not depend on any sort of forecasts, whereas in D2 the identification of peak traffic conditions activates the direct return of the elevators to the lobby floor(s).

3.16 The subject-matter of claim 1 thus involves an inventive step when starting from D3 as the closest prior art.

3.17 Since it has not been disputed that the conclusions reached for claim 1 would also apply to claim 9 (see item 2.8 above), the Board thus finds that the subject-matter of claims 1 and 9 of auxiliary request 2 involves an inventive step when starting from D2 as the closest prior art and, given the technical problem to be solved, when considering the teaching of D3.

4. Admittance of further inventive step attacks starting from D1, in combination with the teaching of D3 or D4.

4.1 Inventive step attacks starting from D1 and combining the teaching of either D3 or D4 with this, were neither filed with the statement of grounds of appeal nor in the reply dated 28 July 2022 to the seven auxiliary requests filed by the respondent.

It was during the oral proceedings before the Board that the appellant submitted for the first time that it

wished to file inventive step attacks starting from D1 in combination with the teaching of either D3 or D4.

4.2 According to Article 13(2) RPBA 2020, "[a]ny amendment to a party's appeal case made ... after notification of a summons to oral proceedings shall, in principle, not be taken into account unless there are exceptional circumstances, which have been justified with cogent reasons by the party concerned".

4.3 The Board can see no exceptional circumstances in the present case justifying the filing of the new lines of attack after notification of the summons to oral proceedings.

4.4 The appellant argued that the new attacks were a normal development of its case and did not represent an amendment to its appeal case. According to the appellant, the attacks were simply new arguments based only on already cited facts in item 4.6.2 of the statement of grounds, since they did not rely on any new passages from the cited documents. This was also supported by G 4/92, which stated that new arguments could be used to support the reasons for the decision.

4.4.1 The Board does not accept this. The new lines of attack change the framework of the appellant's appeal case. The passages from D3 and D4 cited in item 4.6.2 of the statement of grounds (which the appellant wished to use in combination with claim 1) were cited in a different context, namely in regard to granted dependent claim 4 and not with respect to granted dependent claims 2 and 11, i.e. they supported an argument related to a different set of features which were allegedly disclosed in D3 and D4. The use of these passages to

argue that D3 and D4 disclose the specific features of dependent claims 2 and 11 constitutes new facts.

The admittance of these new lines of attack combining new facts and their respective arguments would open a completely new discussion (at least as to whether the features of granted claims 2 and 11 are disclosed in D3 and D4 and whether the skilled person would combine the teaching of D1 with the teaching of D3 and D4), which is not a mere development of the appellant's case and instead constitutes an amendment to the appellant's appeal case.

At least because the new lines of attack raise not only new arguments but also relate to new facts, the argument of the appellant regarding G4/92 does not apply.

4.4.2 The Board also finds that there are no exceptional circumstances which could justify this amendment nor did the appellant argue that there were any.

In particular, the appellant had already made inventive step attacks starting from D1 in combination with common general knowledge and starting from D1 in combination with D2, against claim 1 of the main request and both auxiliary requests 1 and 2 in its grounds of appeal (see paragraph 5.1), even before these requests were filed in the appeal proceedings by the respondent in its reply to the statement of grounds of appeal. In its response of 28 July 2022 to the patent proprietor's reply, the appellant did not add any further attacks.

The Board can see nothing which would have prevented the appellant from submitting the inventive step

attacks starting from D1 in combination with either D3 or D4 at an earlier stage of the appeal proceedings.

4.5 For the above reasons, the Board exercised its discretion under Article 13(2) RPBA 2020 not to take the inventive step attacks starting from D1 in combination with D3 or D4 into account.

5. In the absence of any further attack, the Board concludes that the subject-matter of the claims of auxiliary request 2 involves an inventive step (Article 56 EPC) and that the claims fulfil the requirements of the EPC.

6. Regarding adaptation of the description to the amended claims, the Board considers that the required amendments to the description are not of inconsiderable scope, e.g. a description of the relevant disclosure in D1 (see item 1.8 above) should be added to the description.

Under these circumstances, the Board avails itself of its power under Article 111(1) EPC to remit the case back to the opposition division for the description to be adapted to the amended claims.

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 with the order to maintain the patent in amended form based

on claims 1 to 15 of auxiliary request 2 filed with the letter dated 20 March 2020 and a description to be adapted.

The Registrar: The Chairman:

D. Grundner M. Harrison

Decision electronically authenticated

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

Boards of Appeal

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Case Number: T 2684/19 - 3.2.06

D E C I S I O N
of the Technical Board of Appeal 3.2.06
of 23 October 2023
correcting an error in the decision
of 29 August 2023

Appellant: (Opponent)	Otis Elevator Company Intellectual Property Department One Carrier Place Farmington, Connecticut 06032 (US)
Representative:	Dehns St. Bride's House 10 Salisbury Square London EC4Y 8JD (GB)
Respondent: (Patent Proprietor)	Kone Corporation Kartanontie 1 00330 Helsinki (FI)
Representative:	Glück Kritzenberger Patentanwälte PartGmbB Hermann-Köhl-Strasse 2a 93049 Regensburg (DE)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 15 July 2019 rejecting the opposition filed against European patent No. 2621847 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman: M. Harrison
Members: P. Cipriano
D. Prietzel-Funk

In application of Rule 140 EPC, the decision dated 29 August 2023 is corrected as follows:

Point I. of the Summary of Facts and Submissions on page 1

"In its interlocutory decision the opposition division found that, account being taken of the amendments made by the patent proprietor during the opposition proceedings, European patent No. 2 621 847 met the requirements of the EPC."

is replaced by

"An appeal was filed by the appellant (opponent) against the decision of the opposition division rejecting the opposition to European patent No. 2 621 847."

The Registrar: The Chairman:

D. Grundner M. Harrison

Decision electronically authenticated