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**Datasheet for the decision
of 22 May 2024**

Case Number: T 0411/22 - 3.2.07

Application Number: 15712572.5

Publication Number: 3271279

IPC: B66B13/14, B66B5/00

Language of the proceedings: EN

Title of invention:

SYSTEM AND METHOD FOR CONTROLLING AN ELEVATOR CAR

Patent Proprietor:

Otis Elevator Company

Opponent:

KONE Corporation

Headword:

Relevant legal provisions:

EPC Art. 105a(2), 113(2)

EPC R. 93

Keyword:

Request for revocation by proprietor - withdrawal of the agreement of the text of the patent

Decisions cited:

T 1287/08

Catchword:



Beschwerdekammern

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Case Number: T 0411/22 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 22 May 2024

Respondent: Otis Elevator Company
(Patent Proprietor) One Carrier Place
Farmington CT 06032-2568 (US)

Representative: Schmitt-Nilson Schraud Waibel Wohlfrom
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Appellant: KONE Corporation
(Opponent) Kartanontie 1
00330 Helsinki (FI)

Representative: K & H Bonapat
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
1 February 2022 concerning maintenance of the
European Patent No. 3271279 in amended form.**

Composition of the Board:

Chairman G. Patton
Members: V. Bevilacqua
E. Mille

Summary of Facts and Submissions

- I. The present appeal is from the decision of the opposition division concerning the maintenance in amended form of the European patent No. 3 271 279.
- II. Appeals were filed by the patent proprietor and by the opponent.
- III. The opponent requested
- that the decision be set aside and
 - that the patent be revoked in its entirety.

The patent proprietor initially requested

- that the decision be set aside and
- that the patent be maintained as granted,

alternatively

- that the appeal of the opponent be dismissed and the patent be maintained in the amended form considered by the opposition division to be in compliance with the EPC (auxiliary request 1),

as a further alternative

- that the patent be maintained according to auxiliary request 2, filed with the reply to the statement setting out the grounds of appeal of the opponent (letter of 31 October 2022).

IV. In preparation for oral proceedings, the board gave its preliminary opinion, according to which the appeal of the patent proprietor was to be dismissed and the patent in suit was to be revoked, in a communication dated 15 September 2023 pursuant to Article 15(1) RPBA 2020.

V. With letter of 17 May 2024, sent in preparation to oral proceedings scheduled for 22 May 2024, the patent proprietor replied as follows:

"The proprietor has lost economic interest in the above mentioned patent. We herewith withdraw the appeal and request revocation of the patent."

As a result, the proprietor lost its status as appellant and became respondent.

The final request of the patent proprietor is therefore that the patent be revoked.

Reasons for the Decision

1. According to Article 105(a)(2) EPC in conjunction with Rule 93 EPC, the request for revocation of the patent cannot be made by the patent proprietor, or such a request is deemed not to have been made, as long as opposition proceedings regarding the European patent are pending. In the present case, since the opposition appeal proceedings were still ongoing at the time the request was made, the patent cannot be revoked at the request of the patent proprietor.

However, according to the overall wording of the patent

proprietor's letter of 17 May 2024, the statement therein is to be understood as indicating that the patent proprietor no longer seeks the maintenance of the patent and withdraws its approval of the current version of the patent.

During oral proceedings the opponent agreed with this interpretation of the patent proprietor's letter.

2. As a matter of fact, the request for revocation by a patent proprietor is constantly interpreted by the Boards of Appeal as a disapproval of the text of the claims of the patent found acceptable by the opposition division and of all further requests which were submitted in the course of appeal proceedings (see for instance T 1287/08; Case Law of the Boards of Appeal, 10th Edition 2022, "CLB" in the following, III.B.3.3).

Taking into account the declaration of the patent proprietor (see point V above) the board considers that this interpretation is also justified in the present case.

A text of the patent agreed by the patent proprietor is therefore missing.

Article 113(2) EPC requires that the EPO confines the examination of a European patent and its decisions on this patent only in the text submitted to it or agreed by the Patent Proprietor.

In the absence of such a version of the text, one of the substantive requirements for maintaining the patent is lacking (see CLB, III.B.3.2).

In such a situation, it is established case law, based on Article 113(2) EPC, that the proceedings are to be terminated by an appropriate decision without addressing substantive legal issues.

Since the absence of a valid text of the patent precludes the possibility to maintain the patent, the board has to order its revocation.

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:



G. Nachtigall

G. Patton

Decision electronically authenticated