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Datasheet for the decision of 7 November 2024

Case Number: T 0923/22 - 3.2.06

Application Number: 04788085.1

Publication Number: 1792864

IPC: B66B5/00, B66B3/00, B66B1/28, B66B5/02, B66B5/06

Language of the proceedings: EN

Title of invention:
ELEVATOR APPARATUS

Patent Proprietor:
MITSUBISHI DENKI KABUSHIKI KAISHA

Opponent:
KONE Corporation

Headword:

Relevant legal provisions:
EPC Art. 123(2), 123(3)
RPBA 2020 Art. 13(1)

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It can be changed at any time and without notice

Keyword:
Amendments - added subject-matter - auxiliary request 1 (yes)
Extent of protection - extension of protection conferred - auxiliary request 2 (yes) - admitted (no)

Decisions cited:
T 1045/02

Catchword:

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Case Number: T 0923/22 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 7 November 2024

Appellant: (Opponent)	KONE Corporation Kartanontie 1 00330 Helsinki (FI)
Representative:	Glück Kritzenberger Patentanwälte PartGmbB Franz-Mayer-Str. 16a 93053 Regensburg (DE)
Respondent: (Patent Proprietor)	MITSUBISHI DENKI KABUSHIKI KAISHA 7-3, Marunouchi 2-chome Chiyoda-ku, Tokyo 100-8310 (JP)
Representative:	Hoffmann Eitle Patent- und Rechtsanwälte PartmbB Arabellastraße 30 81925 München (DE)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted on 24 March 2022 concerning maintenance of the European Patent No. 1792864 in amended form.**

Composition of the Board:

Chairman	M. Harrison
Members:	M. Hannam
	S. Fernández de Córdoba

Summary of Facts and Submissions

I. An appeal was filed by the appellant (opponent) against the interlocutory decision of the opposition division in which it found that European patent No. 1 792 864 in an amended form met the requirements of the EPC.

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

III. The respondent (patent proprietor) requested that the appeal be rejected as inadmissible or that the appeal be dismissed as unallowable (i.e. that the patent be maintained according to auxiliary request 1), or as an auxiliary measure that the patent be maintained in amended form on the basis of one of auxiliary requests 1A, 1B or 2A filed with the reply to the statement of ground of appeal, or on the basis of auxiliary requests 2 to 6 filed during opposition proceedings with letter dated 24 January 2022.

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 appeal appeared to be admissible and that the subject-matter of claim 1 of auxiliary request 1 appeared to extend beyond the content of the application as filed. It further indicated that none of the lower ranking auxiliary requests seemed to overcome this objection.

V. With its submission of 15 October 2024 the respondent filed further auxiliary requests 2* to 6*.

VI. Oral proceedings were held before the Board on 7 November 2024, during which the respondent withdrew

all auxiliary requests ranked below auxiliary request 1 and filed a sole replacement request labelled 'auxiliary request 2'. At the close of the oral proceedings, the parties requests were thus as follows:

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

The respondent requested that the appeal be rejected as inadmissible or that the appeal be dismissed as unallowable (i.e. that the patent be maintained according to auxiliary request 1), or as an auxiliary measure that the patent be maintained in amended form on the basis of a new sole auxiliary request (labelled auxiliary request 2) filed during oral proceedings before the Board.

VII. Claim 1 of auxiliary request 1 reads as follows (with paragraph annotation as used by the appellant in its grounds of appeal):

"1.1 An elevator apparatus, comprising:
1.2 an elevator control panel (11) including an operation control unit (12) for calculating a position and speed of a car (3) to control the operation of a driving apparatus (7) based on a first detection signal from a motor encoder (10) of the driving apparatus (7)
1.3 and a safety circuit unit (13) that suddenly stops the car (3) when an elevator has abnormality;
1.4 a sensor (18 and 23-26) that generates second detection signal for detecting a state of the elevator; and
1.5 an electronic safety controller (21) having an Emergency Terminal Slowdown, ETS, circuit unit (22)
1.6 that detects abnormality of the elevator based on the second detection signal from the sensor (18 and

23-26) to output an instruction signal for shifting the elevator to a safe state to the operation control unit (12) or the safety circuit unit (13),
1.8 wherein the ETS circuit unit (22) of the electronic safety controller (21) can detect abnormality of the electronic safety controller (21) itself and,
1.9 when abnormality of the electronic safety controller (21) itself is detected, the electronic safety controller (21) also outputs the instruction signal for shifting the elevator to the safe state to the operation control unit (12),
1.10 and wherein the ETS circuit unit (22) is adapted to calculate a traveling speed and position of the car (3) based on the second detection signal from the sensor (18 and 23-26) independent of the operation control unit (12),
1.11 and adapted to monitor whether the traveling speed of the car in a vicinity of a terminal landing reaches an ETS monitoring overspeed."

Claim 1 of auxiliary request 2 reads as for claim 1 of auxiliary request 1 except for features 1.8 and 1.9 which read as follows:

"1.8 wherein the ETS circuit unit (22) of the electronic safety controller (21) can detect abnormality of the ETS circuit unit (22) itself and,
1.9 when abnormality of the ETS circuit unit itself is detected, the ETS circuit unit (22) also outputs the instruction signal for shifting the elevator to the safe state to the operation control unit (12)".

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

The appeal was admissible. An appellant / opponent had merely to indicate a single reason why the decision was incorrect in order to satisfy the requirements of admissibility. This was achieved e.g. through the objection to the opposition division's decision with respect to feature 1.5 alone.

Auxiliary request 1
The subject-matter of claim 1 did not meet the requirement of Article 123(2) EPC. Features 1.5, 1.6 and 1.8 all lacked basis.
Regarding feature 1.5, 'provided at' as used in the application as filed and 'having' in claim 1 did not have the same meaning, such that this feature of claim 1 lacked basis. Neither Fig. 1 nor Fig. 3 provided a direct and unambiguous disclosure of this feature.
Regarding feature 1.6, the omission of the qualifier 'according to the contents of the abnormality' resulted in this feature lacking basis. The causality between the sensor signal and the control action was missing.
Similarly, feature 1.8 lacked basis. No disclosure of the ETS circuit unit detecting abnormality of the electronic safety controller was to be found in the application as filed.

Auxiliary request 2
If admitted, the protection conferred by claim 1 extended beyond that of claim 1 as granted, contrary to Article 123(3) EPC.

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

The appellant's appeal was inadmissible as it failed to indicate all the reasons for setting aside the impugned decision. This had been found to be a requirement for

an admissible appeal in *inter alia* T 1045/02, Reasons 4. Taking the opposition division's finding under Article 123(2) EPC with respect to feature 1.5 of claim 1 in point 3.2.2.2 as an example, it found that 'Fig. 1 shows clearly that the ECS circuit unit is part of the electronic safety controller. The term "provided at" in [0019] together with Fig. 1 is understood as being equivalent to the wording "having" in claim 1'. The appellant failed in its grounds of appeal to address Fig. 1 and the opposition division's reasoning, instead referring to Fig. 3 which had not been used by the opposition division in its decision regarding feature 1.5. It was thus not possible for the respondent to understand why the appellant considered the decision to be incorrect.

Auxiliary request 1
The subject-matter of claim 1 met the requirement of Article 123(2) EPC.
Feature 1.5 had basis through a consideration of Figs. 1 and 3. In Fig. 1 the various signals from the speed governor encoder and the reference position sensors were depicted to be input directly to the ETS circuit unit. In Fig. 3 the signals from these very same sensors were depicted to be input only to the electronic safety controller yet, in view of Fig. 1, these had actually to reach the ETS circuit unit. For the skilled person the only technically reasonable way for this to be achieved was for the ETS circuit to be located in the electronic safety controller, which was reflected in feature 1.5 as the electronic safety controller having an ETS circuit unit.
Feature 1.6 had basis in para. [0057] of the application as filed without the signal having to be output 'according to the contents of the abnormality'. Feature 1.6 referred to 'shifting the elevator to a

safe state' by sending a signal to the operational control unit 12 or the safety circuit unit 13. Thus, the result in case of an abnormality being detected was the same irrespective of the signal content. It was implicit that the decision regarding to which unit (i.e. either unit 12 or 13) the signal was sent depended on the abnormality. In this respect, there was no difference between a type of signal and the content of that signal.
Feature 1.8 also had basis through consideration of paras. [0021] and [0031]. With the ETS circuit unit being within the ESC, the ETS circuit unit being able to detect abnormality of the ETS circuit unit itself, it must as a consequence detect abnormality of the ESC as a whole. Particularly at the level of abstraction depicted in Figs. 1 and 3, the ETS could be seen as the main component of the ESC and would thus necessarily detect an abnormality in the ESC.

Auxiliary request 2
Claim 1 did not offend Article 123(3) EPC. Claim 1 as granted recited the ESC to detect abnormality of the ESC itself. With the ETS being a sub-unit of the ESC, claim 1 was now more limited than claim 1 as granted.

Reasons for the Decision

1. References to the 'application as filed' in this decision, in concordance with the references made by the opposition division and both parties in this respect, are to the A-publication.

2. *Admissibility*

2.1 According to Rule 101(1) EPC, an appeal shall be rejected as inadmissible if it does not comply *inter alia* with Rule 99(2) EPC, which requires that the statement of grounds of appeal indicates the reasons for setting aside the impugned decision.

2.2 In the present case, the appellant as an opponent need solely present at least one reason for setting aside the impugned decision. The respondent's argument that an appellant must address all of the reasons in the decision in order for the appeal to be admissible is often true when the appellant is the patent proprietor (see for example T 1045/02, Reasons 4, also referred to by the respondent in its submissions), but is not correct when the appellant is the opponent. In the present case the appellant is found to have provided a reasoned objection to the opposition division's finding regarding disclosure in the application as filed of features 1.5, 1.6 and 1.8 of claim 1, such that its appeal is admissible.

2.3 As for the respondent's reference to the opposition division's decision in point 3.2.2.2, the appellant objects to this finding in point I.2 of its grounds of appeal. Whilst not explicitly referring to Fig. 1 in its arguments, it indicates with reference to Fig. 3 why, in its opinion, the finding of the opposition division was wrong and why the disclosure 'provided at' could not be equated with 'having'. Likewise, the appellant has referred to paragraphs [0031] and [0019], where paragraph [0031] states the relationship of Figs. 1 and 3, and paragraph [0019] is the paragraph which the opposition division seemingly relies on when looking at Fig. 1 to conclude that "provided at" should

be understood to mean "having". Indeed, the appellant argues that Fig. 3 is the only relevant figure for considering whether a disclosure exists. This is seen to adequately indicate why, in the eyes of the appellant, the opposition division's conclusion was wrong and thus, even if this were its only objection to the opposition division's decision, is found to fulfil the requirement of indicating why the impugned decision should be set aside as mentioned in Rule 99 EPC.

2.4 The appeal is thus admissible (Rule 101(1) EPC).

3. *Article 123(2) EPC*

3.1 Feature 1.5

3.1.1 The Board finds feature 1.5 to have a direct and unambiguous basis in the application as filed.

3.1.2 Despite Figs. 1 and 3 when seen in isolation from each other not providing a direct and unambiguous disclosure of the electronic safety controller (ESC) having an Emergency Terminal Slowdown (ETS) circuit unit, when seen in combination this requirement is found to be met.

3.1.3 Fig. 1 schematically depicts the subject elevator apparatus of the patent, particularly showing how control signals are distributed between sensors and the various control units. From the figure it can be seen how the two signals from the speed governor encoder 18 and the individual signals from the reference position sensors (23 to 26) are connected directly to the ETS circuit unit 22. This connection is further described in paras. [0019] and [0022] of the application as filed. Fig. 3, which presents a block diagram of the

connections between the sensors and the control units of the elevator apparatus, shows the signals from sensors 18 and 23 to 26 being connected only to the electronic safety controller. However, in view of Fig. 1, these sensor signals are known to actually reach the ETS circuit unit which, in the block diagram of Fig. 3, is positioned within the ESC. In view of the combined disclosure of these two figures, the skilled person would conclude that the only technically reasonable way for the signals connecting with the ESC to reach the ETS is for the ETS circuit to be included within the 'unit' identifiable as the ESC. Any other location for the ETS circuit unit would contradict the information provided by the block diagram of Fig. 3.

3.1.4 The Board thus concludes that feature 1.5, according to which the ESC has an ETS circuit unit, has a direct and unambiguous basis in the application as filed.

3.1.5 To this preliminary opinion given at oral proceedings, the appellant provided no counter-argument.

3.2 Feature 1.6

3.2.1 The Board finds feature 1.6 to lack a direct and unambiguous basis in the application as filed.

3.2.2 Para. [0057] of the application as filed, in which feature 1.6 allegedly finds basis, discloses that the signal to be output to the operation control unit or the safety circuit unit is decided according to the contents of the abnormality. The qualifier 'according to the contents of the abnormality' has however been omitted from feature 1.6 of claim 1 such that feature 1.6 presents an unallowable intermediate generalisation

of the content of the application as filed.

3.2.3 The respondent's argument that the type of signal sent to the operation control unit 12 or the safety circuit unit 13 was clear from their respective control functions such that the content of those signals was implicitly included in feature 1.6 is not accepted. Firstly in this regard, the 'type of signal' is not defined in claim 1 such that there is some ambiguity as to which signal from which sensor would be sent to unit 12 or unit 13. Even if this were clear from the claim alone, there is a technical difference between simply an 'abnormality signal' and the 'contents of an abnormality signal'. The sensors providing the signals are not detailed beyond providing a signal under certain conditions yet, as the skilled person knows, a sensor does not necessarily only provide an on/off signal e.g. the reference sensors 23 to 26 could reasonably detect a degree of offset from the expected position of the car and provide a signal indicating this. Such a signal would reflect the 'content of the abnormality' rather than simply an 'abnormality'. It thus follows that the omission from feature 1.6 of the qualifier that the signal is output ... 'according to the contents of the abnormality' lacks basis.

3.2.4 The respondent's argument that the control action of the elevator being shifted to a safe state in case of an abnormality being detected was the same irrespective of the signal content does not change the above conclusion. The sole disclosure of an instruction signal going to the operation control unit 12 or the safety circuit unit 13 in order to shift the elevator to a safe state, is for this signal to be according to the contents of the abnormality. As argued by the appellant, absent this qualifier, the signal sent to

the units 12 or 13 could be independent of the contents of the abnormality for which there was no disclosure in the application as filed. It is further noted that the two abnormalities indicated in para. [0057] (overspeed, abnormal position) are merely examples and further sensors are not excluded by claim 1, not least since the reference signs in feature 1.6 for 'the sensor (18 and 23-26)' are not limiting. The content of the abnormality detected by such sensors is thus of importance for the possible control action of the units 12 or 13.

3.2.5 It thus follows that feature 1.6 lacks the requisite direct and unambiguous disclosure in the application as filed.

3.3 Feature 1.8

3.3.1 The Board finds feature 1.8 to also not be directly and unambiguously derivable from the application as filed.

3.3.2 Claim 1 as filed recited that 'the electronic safety controller can detect abnormality of the electronic safety controller itself', this being amended in feature 1.8 of auxiliary request 1 to define that the ETS circuit unit of the electronic safety controller can detect abnormality of the electronic safety controller itself. The basis for this amendment was given as paragraph [0021] as filed which recites that 'the ETS circuit unit 22 can also detect abnormality of the ETS circuit unit 22 itself'. Even though the ETS circuit unit is part of the electronic safety controller (see above), there is no unambiguous disclosure that the ETS circuit unit would detect any abnormality occurring in the ESC in the generality now

claimed.

3.3.3 The respondent's argument that, with the ETS circuit unit being within the ESC and it being able to detect abnormality of the ETS circuit unit itself, it must be able to detect abnormality in the ESC as a whole, is not accepted. The ETS circuit unit detecting an abnormality in the ETS circuit unit itself does not result in it also detecting abnormalities in the ESC (generally). The ESC is a larger functional unit than the ETS circuit unit and, albeit not explicitly disclosed to have any, could indeed include further functional units within it which the ETS circuit unit would be unsuited to detect abnormalities in.

3.3.4 The respondent's further argument that, particularly at the level of abstraction depicted in Figs. 1 and 3, the ETS could be seen as the main component of the ESC and would thus necessarily detect an abnormality in the ESC is also not accepted. The definition of the ESC in claim 1 generally, and in feature 1.8 specifically, was much broader than that depicted in Figs. 1 and 3 such that no conclusion could be drawn from the fact that these figures depicted nothing other than the ETS circuit unit to be in the ESC. Consequently, as found in point 3.3.3 above, there is not direct and unambiguous disclosure that the ETS circuit unit could detect an abnormality in the ESC itself, other than specifically a fault of the ETS.

3.4 In conclusion, therefore, with features 1.6 and 1.8 not being derivable directly and unambiguously from the application as filed, the subject-matter of claim 1 fails to meet the requirement of Article 123(2) EPC. Auxiliary request 1 is thus not allowable.

4. *Auxiliary request 2*

Article 13(1) RPBA

4.1 According to Article 13(1) RPBA, any amendment to a party's appeal case after it has filed its grounds of appeal or reply is subject to the party's justification for its amendment and may be admitted only at the discretion of the Board. This discretion shall be exercised in view of *inter alia* whether the amendment gives rise to new objections.

4.1.1 Feature 1.8 of claim 1 as granted recited that the electronic safety controller (21) can detect abnormality of the electronic safety controller (21) itself. According to feature 1.8 of auxiliary request 2 'the ETS circuit unit (22) of the electronic safety controller (21) can detect abnormality of the ETS circuit unit (22) itself.

4.1.2 In claim 1 of auxiliary request 2, therefore, the limitation present in claim 1 as granted that abnormality of the electronic safety controller itself is detected has been deleted. Claim 1 of auxiliary request 2 therefore has amended the patent as granted in such a way as to extend the protection it confers.

4.1.3 The respondent's argument that the ETS was a sub-unit of the electronic safety controller such that, relative to claim 1 as granted, the claim was more limited can only be understood to the extent that the claimed subject-matter is directed to a more limited part of the ESC rather than the ESC as such. However, with claim 1 of auxiliary request 2 no longer detecting abnormality of the electronic safety controller which, according to claim 1 as granted, did have to be

detected, the protection conferred by auxiliary request 2 has been extended relative to claim 1 as granted.

4.1.4 Auxiliary request 2 thus fails to meet the requirement of Article 123(3) EPC.

4.1.5 The Board thus exercised its discretion under Article 13(1) RPBA not to admit auxiliary request 2.

5. Absent an allowable request on file, the patent must be revoked.

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