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**Datasheet for the decision  
of 25 February 2025**

**Case Number:** T 0500/23 - 3.2.06

**Application Number:** 16702531.1

**Publication Number:** 3253700

**IPC:** B66B1/24, B66B1/46

**Language of the proceedings:** EN

**Title of invention:**  
ELEVATOR CONTROL SYSTEMS

**Patent Proprietor:**  
TK Elevator Innovation and Operations GmbH

**Opponent:**  
Otis Elevator Company

**Headword:**

**Relevant legal provisions:**  
EPC Art. 54, 100(a), 123(2), 111(1)  
RPBA 2020 Art. 11, 13(2)

**Keyword:**

Novelty - main request (no); auxiliary request 2 (yes)

Added subject-matter - auxiliary request 1 (yes)

Remittal - special reasons for remittal (yes)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**

**Boards of Appeal**

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**Case Number:** T 0500/23 - 3.2.06

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.06**  
**of 25 February 2025**

**Appellant:**

(Opponent)

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**Decision under appeal:**

**Decision of the Opposition Division of the  
European Patent Office posted on 23 December  
2022 rejecting the opposition filed against  
European patent No. 3253700 pursuant to Article  
101(2) EPC.**

**Composition of the Board:**

**Chairman**

M. Harrison

**Members:**

M. Hannam

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. 3 253 700. It requested that the decision under appeal be set aside and the patent be revoked.
- II. In its reply to the appeal, 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 8.
- III. The following documents are relevant to the present decision:
- D1 US-A-2008/0236956  
D2 EP-A-2 149 533
- 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 of the main request appeared to lack novelty over D1. It further indicated that the subject-matter of claim 1 of auxiliary request 1 seemed not to meet the requirement of Article 123(2) EPC.
- V. In a submission dated 15 January 2025 the respondent provided further arguments in reply to the preliminary opinion of the Board.
- VI. Oral proceedings were held before the Board on 25 February 2025, during which the appellant filed auxiliary request 10 (noting here that there is no

auxiliary request 9).

VII. At the close of the oral proceedings the requests of the parties were unchanged from those indicated in I and II above save for the respondent additionally requesting maintenance of the patent according to auxiliary request 10.

VIII. Claim 1 of the main request (claim 1 as granted) reads as follows, with paragraph annotation added as used by the opposition division in its decision:

1. An elevator control system (100) for controlling a plurality of elevators (10A-10F) in an elevator bank (10), comprising:
  2. a processor (102) in communication with a non-transitory memory (104);
  3. a networking device (114); and
  4. software instructions that, when executed by the processor (102), perform steps for:
  5. receiving an elevator call placed by at least one of a user (136) and a mobile device (126) of the user (136);
  6. wirelessly communicating with the mobile device (126) to determine an elevator criteria set by the user (136); and
  7. wirelessly communicating an alert (334, 335) to the mobile device (126) to notify the user (136) of a status of the assigned elevator (10A-10F);
- characterized in that
8. the elevator criteria comprising a requirement (308R) and a preference (306P);
  9. and in that the software instructions further perform the step for: assigning an elevator (10A-10F) to the user (136) that meets at least the requirement (308R).

Claim 1 of auxiliary request 1 reads as for claim 1 of the main request with the following feature inserted immediately before feature 8:

"the elevator criteria is set by the user (136) on the mobile device (126) using an elevator control application (300); and in that".

Claim 1 of auxiliary request 2 reads as for claim 1 of the main request with the following feature appended:

"and in that the assigned elevator (10A-10F) is at least one of: (i) an elevator (10A-10F) that meets the requirement (308R) and the preference (306P); and (ii) an elevator (10A-10F) that meets the requirement (308R) and has a time to destination that is shorter than the time to destination of all other elevators (10A-10F) in the elevator bank (10) that meet the requirement (308R)".

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

The subject-matter of claim 1 of the main request lacked novelty over D1. The opposition division had already found features 1 to 7 of claim 1 to be known from D1. Paragraph [0021] of D1 explicitly disclosed the control unit being informed of a handicap of a user (a 'requirement') in addition to a series of preferred elevator cars. Feature 8 was thus known. Paragraph [0021] also disclosed a particularly suitable elevator car being assigned to a handicapped user i.e. a car meeting the user's requirement. Feature 9 was thus also disclosed by D1.

The subject-matter of claim 1 of auxiliary request 1 did not meet the requirement of Article 123(2) EPC. Claim 12 as filed did not provide a basis for claim 1 since this did not include the requirement of 'wirelessly communicating an alert to the mobile device to notify the user of a status of the assigned elevator'. Claim 12 as filed however also required the determination of whether an elevator in the bank met the requirement and the preference, which was not included in claim 1. The subject-matter of claim 1 thus offended Article 123(2) EPC.

The subject-matter of claim 1 of auxiliary request 2 lacked novelty over both D1 and D2. D1 aimed to satisfy both the requirement and the preference, since it was directed to improving the user experience. Paragraph [0021] of D1, when interpreted in this light, thus had to be interpreted as disclosing the specific elevator car which met the requirement as being selected from the series of preferred elevator cars.

Col. 18, lines 21 to 24 and paragraphs [0008], [0086] and [0087] of D2 disclosed a most-favourable call allocation T4 for a destination call being determined with a subsequent check that this allocation T4 fulfilled the passenger specific option T2 and, only if it did, was the allocated elevator T4 sent to the user. The passenger specific option T2 was thus actually a requirement because the allocation was only effected if the option was met. Alternatively, Fig. 5 and paragraph [0092] of D2, particularly the A7-A3'-T3' leg of the Fig. 5 flowchart, described a requirement for the selected elevator car. This line of objection had only been presented for the first time at oral proceedings

since a change of representative had occurred.

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

The novelty attack based on D2 and the inventive step attacks starting from D1 and D2, each combined with common general knowledge, should not be admitted since these were not included in the notice of opposition.

The subject-matter of claim 1 of the main request was novel over D1. D1 failed to disclose:

- a processor in communication with a non-transitory memory i.e. feature 2. No proof of this was provided by the appellant.
- feature 4 of claim 1. As claimed, the processor of feature 4 was the same as that of feature 2. The appellant had failed to show that the same, rather than two separate processors, were known from D1.
- feature 5. The opposition division failed to show how the destination call of D1 anticipated the claimed elevator call.
- feature 6. D1 failed to disclose elevator criteria being set by the user, rather than by the user's employer or the building landlord. Feature 6 of claim 1 clearly recited the user being personally able to select elevator criteria.

D1 also failed to disclose features 8 and 9 i.e. that the elevator criteria comprised a requirement and a preference and that an elevator was assigned to the user that at least met the requirement. The disabled subject of paragraph [0021] of D1 would solely be offered an elevator able to transport them but would not be able to include a preference. This option was not disclosed.



The 'series of preferred elevator cars' of paragraph [0021] should be understood as a requirement since, resulting from a user's demand, it excluded unsuitable elevator cars. The appellant's contention that both a preference and a requirement were disclosed in D1 was based on prior knowledge of claim 1 rather than a clear teaching in D1.

According to the Case Law of the Boards of Appeal, a feature could only be seen as known if the prior art document directly and unambiguously disclosed it. This was not the case for feature 8.

Paragraph [0021] solely addressed method steps a and b out of the 5 method steps a to e disclosed on page 1 of D1. The 'particularly suitable elevator car' determined in paragraph [0021] was thus to be understood as a single elevator in the group which, according to step d, would still need to be selected by the user in order for the elevator to be assigned. The term 'assigned' was known in the art to imply an elevator that was already on its way or had received its instruction to move to the user. If 'assigning an elevator' were interpreted broadly to include the elevator car being allocated to a user without necessarily being called yet, feature 7 of claim 1 requiring a user to be notified of a status of the assigned elevator would not be satisfied.

The 'personal identification code' of D1 could not be interpreted as criteria set by the user as this was pre-decided by the user's employer or building landlord.

The case should be remitted for further prosecution since none of the auxiliary requests had been considered by the opposition division.

The subject-matter of claim 1 of auxiliary request 1 met the requirement of Article 123(2) EPC. The features added to claim 1 came from claim 12 as filed, this being supported by paragraph [0003] as filed. Further basis was to be found in: paragraphs [0032] to [0056] and figures 4A to 7B, particularly Fig. 5 and paragraphs [0033] and [0051]; Figs. 6A to 7B in combination with paragraphs [0037] to [0049] in the light of [0054]; and paragraphs [0034] to [0049] in combination with Figs. 5 to 7B. From the referenced paragraphs, and indeed the description as a whole, it was clear that the omitted features from claim 1 of auxiliary request 1 were disclosed to be merely optional in the description. Alternatively, claim 13 as filed in combination with paragraph [0055] as filed provided the requisite basis.

The subject-matter of claim 1 of auxiliary request 2 was novel over D1. Paragraph [0021] of D1 did not unambiguously disclose the preference and the requirement both being satisfied by the selected 'suitable elevator car'. The paragraph merely disclosed 'that it is thus possible to inform ... about the handicap of the user' i.e. this did not necessarily occur in combination with the series of preferred elevator cars.

As regards D2, this failed to disclose features 8 and 9 of claim 1 of the main request, this also applying to claim 1 of auxiliary request 2. No requirements were unambiguously disclosed in D2, all the options being preferences.

## **Reasons for the Decision**

1. *Admittance of novelty / inventive step attacks*
  - 1.1 The novelty attack based on D2 and the inventive step attacks starting from D1 and D2, each combined with common general knowledge, were filed by the opponent outside the nine month opposition period. Despite not being specifically identified as 'late filed' attacks by the opposition division, it dealt in substance with each of the attacks in its decision in sections 2.2.2, 2.3.2 and 2.3.3 respectively.
  - 1.2 Consequently, as also indicated by the Board in its communication under Article 15(1) RPBA, the decision under appeal is based on these novelty and inventive step attacks such that they are part of the appeal case (see Article 12(1) and 12(2) RPBA) and are thus a validly raised part of the appellant's complete appeal case (see Article 12(3) RPBA). To this preliminary opinion, the respondent submitted no counter-arguments at oral proceedings, explicitly relying solely on its written submissions. Thus, having no reason to amend its preliminary opinion, the Board confirms the same herewith.

### *Main request*

2. *Article 100(a) EPC, Novelty over D1*
  - 2.1 The subject-matter of claim 1 lacks novelty over D1, which discloses all the features of claim 1 as follows (all references cited being to D1):
    1. An elevator control system (see paragraph [0035],

'destination call control unit') for controlling a plurality of elevators (21, 22, 23) in an elevator bank, comprising:

2. a processor in communication with a non-transitory memory (the processor is implicitly present as part of the destination call control unit of D1 in order for the processing of call requests to be performed);
3. a networking device (the destination call terminal 40 is networked, since it receives a destination call from an elevator user's mobile phone; see paragraph [0034]); and
4. software instructions (implicitly present in an elevator system with a processor, a memory device and a destination call control unit) that, when executed by the processor, perform steps for:
  5. receiving an elevator call placed by at least one of a user ('appropriate button or speech input'; see line 11 of paragraph [0034]) and a mobile device (30) of the user (see line 8 of paragraph [0034]);
  6. wirelessly communicating with the mobile device (30) to determine an elevator criteria set by the user (see [0021]; the personal identification code of the user (10) can dictate such a criteria i.e. a handicap of the user); and
  7. wirelessly communicating an alert to the mobile device (30) to notify the user (10) of a status of the assigned elevator (see paragraph [0041]; 'the allocations can obviously also be displayed ... on the display device' of the mobile phone 30);
8. elevator criteria comprising a requirement (see paragraph [0021]; 'In addition, it is thus possible to inform the destination call control unit about a handicap of the user'; this is a necessity for the handicapped user to be able to use the elevator e.g. the elevator must depart from the ground floor if the

user is in a wheelchair) and a preference (see paragraph {0021]; 'a previously generated personal identification code can be linked with ... a series of preferred elevator cars); and in that

9. Software instructions assign an elevator to the user meeting the requirement (see para [0021]; 'the destination control unit then determines in step b) a particularly suitable elevator car for a user ...').

- 2.2 The respondent's argument with respect to feature 2, that any memory present in D1 was not necessarily non-transitory is not accepted. Such a permanent memory, as claimed, must be present and accessible by the processor in order for the desired control algorithms of the elevator to be stored. A non-transitory memory is thus implicitly present in D1.
- 2.3 The respondent's contention that it was possible for two separate processors to be present in D1, one in communication with the non-transitory memory, the other performing method steps 5 to 7, is not denied. Yet, as indicated in point 2.2.3 of the Board's preliminary opinion, the 'processor' of features 2 and 4 can reasonably be seen as comprising multiple processing units (e.g. sub-processors) such that the processor(s) implicitly present in D1 as part of the destination call control unit unambiguously disclose(s) the processor(s) of features 2 and 4 of claim 1.
- 2.4 The respondent's argument that the destination call of D1 did not anticipate the claimed elevator call of feature 5 is not accepted. Paragraph [0034] of D1 discloses how a user 10, wishing to use the elevator installation 20, lodges a destination call at the destination call control unit by means of a mobile phone. The 'destination call' is further disclosed to

'comprise details of the desired destination floor' which can only be interpreted as the elevator call of feature 5 of claim 1.

2.5 The respondent's further contention that D1 failed to disclose elevator criteria being set by the user, since it could be the user's employer or the building landlord that sets the criteria associated with the personal identification code, is not seen to be relevant for feature 6 of claim 1 not to be anticipated. It is noted that 'elevator criteria set by the user' is a broad expression which can encompass anything from the user themselves setting new individually selected criteria e.g. on each use of the elevator, to criteria which are set based on the user (hence, set by the user) even if input by the user's employer, which are then stored in a user's profile and are carried out simply by the user's proximity to the destination call control unit. This latter option is how the disclosure in paragraph [0021] can logically be understood. Consequently, a user profile associated with a personal identification code, even if established/input by the user's company or landlord is always set by the user, which determines a 'particularly suitable elevator car for a user', as disclosed in paragraph [0021], anticipates feature 6 of claim 1, particularly the determining of 'elevator criteria set by the user'.

2.6 The respondent's further arguments that features 8 and 9 of claim 1 were not known from D1 are also not persuasive.

2.6.1 As regards the handicapped subject of paragraph [0021] of D1 solely being offered an elevator able to transport them (i.e. meeting a 'requirement') but not

being able to lodge a preference, this view does not reflect what is disclosed in paragraph [0021]. Lines 11 and 12 of this paragraph link a user's personal identification code with a series of preferred elevator cars. The use of the word 'preferred' in this context unambiguously discloses the preference of the elevator criteria in feature 8 i.e. an elevator criteria which is not essential but desirable, such as, for example, elevators with a glass cabin providing a view of the surrounding buildings. Paragraph [0021] continues to state '*In addition*, it is thus possible to inform the destination call control unit about a handicap of the user' which unambiguously discloses the foregoing 'preferred' elevator criteria in combination with the requirement for a handicapped user e.g. the elevator providing access from a wheelchair accessible location.

- 2.6.2 As to the respondent's argument that the 'series of preferred elevator cars' in paragraph [0021] should be understood as a requirement since, resulting from a user's demand, it excluded unsuitable elevator cars is not accepted. The elevator criteria of D1 (a series of preferred elevator cars; access for a handicapped person) are in this context unambiguously linked to the previously generated personal identification code (see paragraph [0021], lines 10 to 14) and remain as these pre-determined preferences and requirements irrespective of the elevator allocation decision of the destination call control unit. This control unit may be able to fulfil the user's preference(s) as well as their requirement, but that does not change the preference to a requirement; in a subsequent journey, the destination call control unit may be unable to fulfil the preference (e.g. a good view), only the requirement (e.g. access from a wheelchair accessible

location) being satisfied.

2.6.3 The respondent's further contention that seeing both a preference and a requirement disclosed in D1 was based on a prior knowledge of claim 1 rather than a clear teaching in D1 is rejected. The wording of paragraph [0021] is unequivocal in this regard, the wording 'In addition, it is thus possible ...' unambiguously showing that both the series of preferred elevator cars and the requirement for the selected elevator to cater for a handicapped user are conditions considered by the destination call control unit in combination. For the same reasons, the respondent's further argument that feature 8 lacked a direct and unambiguous disclosure in D1 is not accepted.

2.7 The respondent's argument in respect of feature 9 of claim 1 that D1 did not disclose 'assigning an elevator to the user' within the specific disclosure of paragraph [0021] is also not accepted. In this regard the Board disagrees with the respondent that 'assigning' an elevator implied more than it being available and offered for use, but not yet selected. The term 'assigning' is used widely in the patent specification, but none of the uses require a conclusion to be drawn that it refers to an elevator which has necessarily been selected by the user and is actively on its way to fulfil the call. Rather, a more general meaning is found to apply, which simply requires the elevator to have been offered for use in fulfilling an elevator call without necessarily having been accepted (yet). Although the respondent argued in oral proceedings that a skilled person always understood 'assigning' to imply sending the instruction to the elevator to carry out an assigned run, there is no evidence that the skilled person interprets the term



in this manner, even if some particular elevator manufacturers might use this in that way.

In the context of D1 in which a 'suitable elevator car' (see paragraph [0021]) is determined in step b of the 5 step method a to e, this single elevator car makes a group of one single elevator car offered to the user (step c) from which this single elevator can then be selected by the user according to step d. However, the 'assigning' of an elevator according to feature 9 of claim 1 has already been achieved at the time of the elevator being offered to the user for use; no selection, accepting or confirmation of this elevator car is necessary for the elevator to have been 'assigned'.

- 2.8 The respondent concluded that, if 'assigning an elevator' were interpreted broadly, as in point 2.7 above, to include the elevator car being allocated to a user without necessarily being called yet, feature 7 of claim 1, which required a user to be notified of a status of the assigned elevator, would not be satisfied. The respondent's assumption is, however, based on a rather narrow interpretation of how a 'status' of an elevator must be understood. The Board can see no reason to provide such a narrow interpretation, but rather includes an indication that an elevator has been assigned i.e. is available for selection to fulfil the call. Put in practical terms, the 'status' is thus that the elevator is indicated as having been assigned according to various criteria and is available for selection/confirmation. The 'particularly suitable elevator car' having been determined in step b of paragraph [0021] is thus presented to the user in step c as available to fulfil the call. This is seen to be a notification to the user

of the status of the assigned elevator i.e. feature 7 of claim 1.

- 2.9 The respondent's further contention that the method steps a to e disclosed in paragraphs [0008] to [0012] of D1 did not allow the appellant's interpretation of paragraph [0021] without contradiction is not accepted. Quite the contrary, when reading paragraph [0021] it is important to read the entire paragraph as a skilled person would do without negating certain words (e.g. like 'preferred') which do not fit to a particular viewpoint that one may be trying to defend. Paragraph [0021] itself identifies that the process of determining a particularly suitable elevator car for a handicapped user fulfils method step b, which the Board, as reasoned above, concludes as meeting feature 9 of claim 1 i.e. assigning an elevator to the user that meets the requirement. Step b however requires that a group of elevator cars for serving the destination call be determined, which group the Board sees as a group of one single elevator car (an argument forwarded by the respondent itself), which elevator car meets the requirement. A single elevator car being considered 'a group of elevator cars' is also consistent with the disclosure of D1 which, for example in claim 38 (as mentioned during the oral proceedings), discloses conditions under which only a single elevator car is made known to the user in step c, this single elevator car therefore still meeting the requirement in step b for being determined and step c for a "group" of elevator cars to be made known to the user (i.e. the group of one). Step d is also satisfied through this neutral reading of paragraph [0021], since the single elevator car forming the group of elevator cars can then, after being assigned to the user (by being made available to the user for the case that the user wants

to use it, as explained above), be selected by the user, whereupon in step e they would then be guided to the selected elevator car by their communications unit (mobile phone).

It thus follows from a complete reading of paragraph [0021], taking into account its full disclosure, not least in the part disclosing the claimed 'requirement' by way of determining a particularly suitable elevator car, is fully consistent with all method steps a to e in paragraphs [0008] to [0012] of D1. The respondent's corollary argument that the Board was interpreting paragraph [0021] in a manner isolated from the context of the rest of the document, when considering a 'whole contents' approach to disclosure, also fails for the same reason, as does its argument that paragraph [0021] was erroneously drafted and thus not congruent with claim 30 of D1.

- 2.10 It thus follows from all the above that the subject-matter of claim 1 lacks novelty over D1. Therefore, the ground for opposition under Article 100(a) EPC is prejudicial to maintenance of the patent as granted.

*Auxiliary request 1*

3. *Remittal, Article 111(1) EPC*

- 3.1 The respondent requested that the case be remitted to the opposition division for further prosecution since none of the auxiliary requests had been considered by the opposition division.
- 3.2 Prior to any particular request being remitted for further prosecution, it is normal and indeed appropriate given the objections on file, that the

Board should examine whether the request meets at least the clarity requirement of Article 84 and the requirements of Article 123 EPC.

- 3.3 The request for remittal on the basis of auxiliary request 1 was therefore, at least at this juncture, refused.

#### 4. *Article 123(2) EPC*

- 4.1 The subject-matter of claim 1 fails to meet the requirement of Article 123(2) EPC.
- 4.2 In its reply to the grounds of appeal, the respondent gave the basis for the subject-matter of claim 1 to be claim 12 and paragraph [0003] as filed. Claim 12, however, does not reflect the subject-matter of claim 1, feature 7 of claim 1 not being found therein. Paragraph [0003] as filed merely cites the features of claim 12 as filed, such that this can also provide no additional basis.
- 4.3 In its submission of 15 January 2025, the respondent provided an alternative basis based on numerous paragraphs and figures of the application as filed, with the argument that, from the description as a whole, it was evident that the claimed subject-matter did not extend beyond the content of the application as filed.

This argument is, however, not persuasive. All of the passages cited by the respondent relate to specific embodiments of the invention which are disclosed in considerably more detail than that included in claim 1 of auxiliary request 1. Extracting selected features for inclusion in claim 1 from embodiments of the

description in which many features are disclosed in combination does not meet the required direct and unambiguous disclosure criterion for the claimed subject-matter, and is instead an unallowable intermediate generalisation of the disclosed subject-matter.

4.4 The alternative basis, provided for the first time at oral proceedings, comprising claims 12 and 13 in combination with paragraph [0055] as filed, also fails to provide the requisite basis. As indicated by the appellant in point 7.4.2 of its grounds of appeal, claim 12 as filed requires the determination of 'whether an elevator in the elevator bank meets the requirement and the preference', which feature has not been included in claim 1. Paragraph [0055] as filed also provides no basis for the omission of this feature, it rather describing a particular action of the control system when no elevator in the bank of elevators meets all the user defined preferences. It is furthermore noted that claim 1 fails to recite the presence of a networking device which is disclosed in combination with the wireless communication of an alert in claim 13 as filed.

4.5 It thus follows that none of the arguments given by the respondent support the required direct and unambiguous basis for the subject-matter of claim 1, such that the requirement of Article 123(2) EPC is not met. Auxiliary request 1 is consequently not allowable.

*Auxiliary request 2*

5. *Admittance*

- 5.1 The appellant, in point 7.2 of its grounds of appeal, argued that *inter alia* auxiliary request 2 should not be admitted since this was filed late before the opposition division without any explanation or justification.
- 5.2 In this regard, it should be noted that the opposition division had in its annex to the summons already outlined its preliminary view that the ground for opposition under Article 100(a) EPC, in conjunction with Articles 54 and 56 EPC, did not prejudice maintenance of the patent as granted. Nevertheless, the respondent clarified its fall-back positions by filing auxiliary requests (shortly) before the oral proceedings before the opposition division. The fact that the auxiliary requests were filed shortly before the oral proceedings, although this was not strictly necessary due to the preliminary opinion of the opposition division, should not be unfavourable to the patent proprietor. Furthermore the opposition division found the patent as granted to meet the requirements of the EPC such that it had no need to consider any further requests, including the auxiliary requests that were late filed. Therefore, with no need to consider any auxiliary requests in the impugned decision, it is clearly reasonable for the respondent to be able to pursue auxiliary requests filed in the opposition proceedings and/or to file other auxiliary requests on appeal as part of its complete appeal case (see Article 12(3) RPBA) in order to provide suitable fall-back positions should the patent as granted be found not to be allowable. This the respondent has done at the first opportunity on appeal i.e. in its reply to the grounds of appeal.

- 5.3      Consequently, under the particular circumstances, the Board exercises its discretion to admit auxiliary request 2 into the proceedings.
6.      Relative to claim 1 as granted, claim 1 of auxiliary request 2 includes the further limitation that the assigned elevator is at least one of:
- (i) an elevator that meets the requirement and the preference; and
  - (ii) an elevator that meets the requirement and has a time to destination that is shorter than the time to destination of all other elevators in the elevator bank that meet the requirement.

The amendments introduced into claim 1 come from claim 3 as granted (claim 3 as filed). No objections under Article 84 or Article 123 EPC were made during the oral proceedings before the Board, nor can the Board see that there would be any.

6.1      *Novelty*

The subject-matter of claim 1 is novel over both D1 and D2.

6.2      D1

- 6.2.1    Regarding option (i) in point 6. above, paragraph [0021] fails to disclose the elevator car determined to be suitable for a handicapped user necessarily being one of the series of preferred elevator cars. Whilst such commonality would indeed be possible, there is no unequivocal link in paragraph [0021] provided between the elevator car satisfying the 'requirement' (i.e. one suited for a handicapped user) and this being one of

the series of preferred elevator cars.

6.2.2 The appellant's argument that D1 aims to satisfy both the requirement and the preference, since it was directed to improving the user experience, does not allow paragraph [0021] to be interpreted differently from the interpretation given above. The relevant wording in paragraph [0021] is unambiguous and does not allow an interpretation that both the requirement and the preference must be met when the elevator is assigned.

6.2.3 Option (i) above is thus not disclosed in D1.

6.2.4 Regarding option (ii) above, the appellant referred to paragraph [0017] of D1 which discloses a particular elevator car being offered to the user in order to reach the destination floor as fast as possible. However, this paragraph makes no reference to an elevator car which is also suited for transport of a handicapped user. Again, whilst it is indeed possible in D1 for the fastest elevator to be suitable for transport of a handicapped user, there is no direct and unambiguous disclosure of this. Hence, option (ii) is also not disclosed in D1.

6.2.5 It thus follows that the subject-matter of claim 1 is novel over D1.

6.3 D2

6.3.1 Regarding the respondent's objection to admittance of a novelty objection with respect to D2, reference is made to point 1. above.



6.3.2 Under point 2.3 of the Board's preliminary opinion, reasons were given as to why the passages of D2 cited by the appellant in its grounds of appeal (col. 18, lines 21 to 24, paragraph [0008]) and the arguments relating thereto, did not disclose a 'requirement', such that features 8 and 9 of claim 1 of the main request were not known from D2. Identically reciting features 8 and 9, the same conclusion regarding the 'requirement' not being known from the cited passages of D2 also applies to claim 1 of auxiliary request 2.

6.3.3 To the Board's preliminary opinion, the appellant provided no counter-argument such that no reason is apparent to change this opinion and the objection addressed in the preliminary opinion is confirmed to not be persuasive. At oral proceedings, however, the appellant for the first time raised a new line of attack on which its novelty objection based on D2 should be evaluated.

6.3.4 *Article 13(2) RPBA*

According to this provision, any amendment to a party's appeal case made after notification of a communication under Article 15, paragraph 1, shall, in principle, not be taken into account unless there are exceptional circumstances, which have been justified with cogent reasons by the party concerned.

6.3.5 For the first time at oral proceedings, the appellant presented alternative sections of D2 in support of its contention that feature 8 of claim 1, i.e. elevator criteria comprising a requirement and a preference, were known from D2. It specifically referred to Fig. 5 and paragraph [0092] of D2, particularly the A7-A3'-T3' leg of the Fig. 5 flowchart. Having been presented for

the first time at oral proceedings, this was an amendment to the appellant's appeal case, the admittance of which was subject to Article 13(2) RPBA.

6.3.6 The appellant's argument that, although it was a new attack, there had been a change of representative since filing of the appeal, and the alternative attack for the novelty objection had been identified by the new representative, was not found by the Board to be a valid reason for exceptional circumstances to be recognised. It is established jurisprudence that exceptional circumstances concern new or unforeseen developments in the appeal proceedings, see Case Law of the Boards of Appeal, 10th edition 2022, V.A.4.5.4.a). The fact that the former representative of the appellant had possibly overlooked this newly filed basis for the novelty objection based on D2 when drafting the grounds of appeal, or possibly considered it simply not suitable for a novelty attack, is not a development of the appeal proceedings, let alone a new or unforeseen one.

6.3.7 It thus followed that, absent exceptional circumstances justifying its admittance, the amendment to the appellant's appeal case was not taken into account (Article 13(2) RPBA).

6.3.8 In summary, therefore, the subject-matter of claim 1 is novel over D2.

7. *Remittal (Article 111(1) EPC), Article 11 RPBA*

7.1 According to Article 111(1) EPC, when deciding on an appeal, the Board may either exercise any power within the competence of the department which was responsible for the decision appealed or remit the case to that

department for further prosecution.

- 7.2 In the exercise of such discretion, in the present case an important aspect is that the Board has, through its finding with respect to claim 1 of the main request, overturned the entire basis on which the opposition division had understood D1 to subsequently conclude that the claims before it met the requirements of the EPC. The Board would thus be considering the specific issues with respect to inventive step for the very first time on a totally different basis, which would deprive the parties of the opportunity of having an examination of the claimed subject-matter before two instances and moreover would go far beyond the purpose of the appeal proceedings as being primarily a review of the impugned decision. Not least due to this, special reasons (Article 11 RPBA) exist for remitting the case. Also, the parties had not developed their inventive step arguments with respect to the subject-matter of claim 1 of auxiliary request 2 in view of how this is differentiated over D1 and D2.
- 7.3 With remittal having been requested by the respondent, the Board avails itself of its power under Article 111(1) EPC to remit the case to the opposition division for further prosecution.

## 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 for further prosecution.

The Registrar:

The Chairman:



D. Grundner

M. Harrison

Decision electronically authenticated