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**Datasheet for the decision
of 30 November 2017**

Case Number: T 0461/14 - 3.4.02

Application Number: 06794771.3

Publication Number: 1938048

IPC: G01D4/00, G05B19/00, B66B9/08,
H04W84/00, H04B17/00

Language of the proceedings: EN

Title of invention:
WIRELESS FAULT MONITORING SYSTEM

Patent Proprietor:
MINIVATOR LIMITED

Opponent:
Stannah Stairlifts Ltd.

Headword:

Relevant legal provisions:
EPC 1973 Art. 84, 54, 56
EPC Art. 123(2)
RPBA Art. 13(1), 13(3)

Keyword:

Claims - clarity (no) - main request, first auxiliary request
Inventive step - (no) - second and third auxiliary requests
Amendments - added subject-matter (yes) - fourth auxiliary
request
Admissibility of fifth and sixth auxiliary request (no) -
prima facie not clearly allowable

Decisions cited:

Catchword:



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Case Number: T 0461/14 - 3.4.02

D E C I S I O N
of Technical Board of Appeal 3.4.02
of 30 November 2017

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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
13 January 2014 concerning maintenance of the
European Patent No. 1938048 in amended form.**

Composition of the Board:

Chairman R. Bekkering
Members: A. Hornung
T. Karamanli

Summary of Facts and Submissions

- I. The opponent (appellant) appealed against the interlocutory decision of the opposition division maintaining European patent No. 1 938 048 in amended form.

Opposition had been filed against the patent as a whole and based on the grounds of Article 100(a) EPC, together with Articles 54(1) and 56 EPC.

The opposition division had found that the patent as amended according to a second auxiliary request then on file and the invention to which it related met the requirements of the EPC.

- II. Oral proceedings before the board were held on 30 November 2017.

- III. The opponent requested that the decision under appeal be set aside and that the patent be revoked.

- IV. The patent proprietor requested that the appeal be dismissed (main request) or, as an auxiliary measure, that the decision under appeal be set aside and the patent be maintained in amended form on the basis of the claims of one of the following auxiliary requests:

- Auxiliary Request 1, filed as Auxiliary Request 4 with the letter dated 30 October 2017;
- Auxiliary Request 2, filed in oral proceedings of 30 November 2017;
- Auxiliary Request 3, filed in oral proceedings of 30 November 2017;
- Auxiliary Request 4, filed in oral proceedings of 30 November 2017;

- Auxiliary Request 5 "18:45", filed in oral proceedings of 30 November 2017; or
- Auxiliary Request 6, filed as Auxiliary Request 15 with the letter dated 30 October 2017.

V. Claims of the requests

- Claim 1 according to the main request reads as follows:

"A system for monitoring for a fault in a stairlift (12), comprising:
a fault detector (14) for detecting a fault in the stairlift (12);
a signal generator for generating a signal representative of the fault;
a wireless transmitter (16), located in the stairlift (12), for transmitting the signal representative of the fault;
a wireless receiver (18), located remotely from the wireless transmitter (16), for receiving the fault signal;
the receiver (18) being further operable for causing an alert to be sent to an operator that the stairlift (12) requires attention; and
wherein the system can check whether the stairlift (12) starts moving when instructed to by a user, that it continues moving between the start and end points (X) and (Y), and that it stops at the end point."

- Claim 1 according to the first auxiliary request differs from claim 1 of the main request in that the word "can" is replaced by "is configured to" so that the feature reads "wherein the system **is configured to** check whether".

- Claim 1 according to the second auxiliary request differs from claim 1 of the first auxiliary request in that the word "continually" is added in the expression "wherein the system is configured to **continually** check whether" and in that the following feature is added at the end of the claim:

"wherein, if the stairlift (12) develops a fault, such that one or more of these conditions is not met, the system detects the fault and generates a fault code indicative of the type of fault that has occurred, and wherein the signal representative of the fault comprises the fault code."

- Claim 1 according to the third auxiliary request differs from claim 1 of the second auxiliary request in that it comprises the following additional feature:

"further comprising audio and/or visual communications devices that allow a user of the stairlift (12) to speak to and/or see an operator".

- Claim 1 according to the fourth auxiliary request reads as follows:

"A system for monitoring for a fault in a stairlift (12), comprising:

a fault detector (14) for detecting a fault in the stairlift (12);

a signal generator for generating a signal representative of the fault, the signal representative of the fault comprising a code indicative of the type of fault that has occurred;

a wireless transmitter (16), located in the stairlift (12), for transmitting the signal representative of the fault;

a wireless receiver (18), located remotely from the wireless transmitter (16), for receiving the fault signal;

the receiver (18) being further operable for causing an alert to be sent to an operator that the stairlift (12) requires attention;

a filter configured to direct a particular type of fault codes to a particular customer services operator on a particular computer (22); and

audio and/or visual communications devices that allow a user of the stairlift (12) to speak to and/or see an operator;

wherein the system is configured to continually check whether the stairlift (12) starts moving when instructed to by a user, that it continues moving between the start and end points (X) and (Y), and that it stops at the end point, and

wherein, if the stairlift (12) develops a fault, such that one or more of these conditions is not met, the system detects the fault and generates the fault code."

- Claim 1 according to the fifth auxiliary request "18:45" reads as follows:

"A system for monitoring for a fault in a stairlift (12), comprising:

a fault detector (14) for detecting a fault in the stairlift (12);

a signal generator for generating a signal representative of the fault, the signal representative of the fault comprising a code indicative of the type of fault that has occurred;

a wireless transmitter (16), located in the stairlift (12), for transmitting the signal representative of the fault;

a wireless receiver (18), located remotely from the wireless transmitter (16), for receiving the fault signal;

a server (20);

several computers (22) of customer services operators; the receiver (18) being further operable for causing an alert to be sent via the server (20) to an operator that the stairlift (12) requires attention, wherein the server is in communication with the several computers (22) of the customer services operators, wherein the server (20) is configured to receive fault code signals from multiple users of stairlifts monitored by the system, and wherein the server (20) comprises a filter configured to direct a particular type of fault codes to a particular customer services operator on a particular computer (22); and

wherein the system further comprises audio and/or visual communications devices that allow a user of the stairlift (12) to speak to and/or see an operator;

wherein the system is configured to continually check whether the stairlift (12) starts moving when instructed to by a user, that it continues moving between the start and end points (X) and (Y), and that it stops at the end point, and

wherein, if the stairlift (12) develops a fault, such that one or more of these conditions is not met, the system detects the fault and generates the fault code."

- Claim 1 according to the sixth auxiliary request differs from claim 1 of the fourth auxiliary request in that the word "continually" is deleted and in that it comprises the following additional feature:

"and wherein the system is configured to operate via two-way communication to correct a fault that has been detected either temporarily or permanently by remote

means, the wireless transmitter (16) also being operable as a receiver for receiving data to correct or control the stairlift (12), and the wireless receiver (18) also being operable as a transmitter for transmitting data to the stairlift (12)".

VI. The following document will be referred to in the present decision:

YP: "Firm aims to increase jobs and turnover with intelligent home stairlift of future", Yorkshire Post, 2 November 2003

Reasons for the Decision

1. Main request

1.1 The subject-matter of claim 1 lacks clarity within the meaning of Article 84 EPC 1973.

Present claim 1 is based on claim 1 as granted but comprises the following amended feature:

"wherein the system *can* check whether the stairlift (12) starts moving when instructed to by a user, that it continues moving between the start and end points (X) and (Y), and that it stops at the end point".

According to Article 101(3)(b) EPC, the amendments to a patent have to meet the requirements of the EPC, including Article 84 EPC. In the present case, the amended feature is ambiguous, as argued by the opponent, since the word "can" has several meanings, including expressing either an effective ability or a mere possibility. Due to the use of the word "can" in the amended feature, it is unclear whether

the system effectively comprises the ability of checking various conditions or not.

- 1.2 The patentee, while acknowledging that the word "can" has both meanings of expressing an ability or a possibility, argued that the principal meaning of the word "can" was "being able to". This was confirmed by an English dictionary explaining in the first place the meaning "ability" of the word "can". Interpreting the word "can" as merely expressing a possibility was not compatible with the technical context in which the word "can" was used in claim 1 and in the description as originally filed, for instance, on page 3, last paragraph. Moreover, it would make no sense to define a feature in claim 1 which was merely optional.

The board is not convinced by these arguments since claim 1 does indeed encompass both interpretations of the word "can", i.e. "ability" and "possibility", a fact which is not contested by the patentee. The patentee did also not identify any precise passage or indication in the description from which it could be deduced that the word "can" had to be interpreted as meaning "being able to". The board did also not find such a passage or indication in the description. The board further notes that defining an optional feature in a claim is not prohibited per se.

2. First auxiliary request

- 2.1 The subject-matter of claim 1 lacks clarity within the meaning of Article 84 EPC 1973.

As argued by the opponent, the amended feature of claim 1, i.e. "wherein the system is configured to check whether the stairlift (12) starts moving when instructed to by a user, that it continues moving between the start and end points (X) and (Y), and that it stops at the end point", defines a

collection of features unrelated to the claimed system. It is insufficiently clear from the wording of the claim whether the amended feature defines the fault referred to in the claim, i.e. "a system for monitoring for a fault in a stairlift", and, if so, how these three checks defined by the amended feature effectively contribute to the monitoring of this fault.

2.2 The patentee explained that it was clear for the skilled person that if a user instructed a stairlift to move, but the stairlift did not move, this situation represented a fault in the stairlift. Since the claimed system was "a system for monitoring a fault in a stairlift", the skilled person would understand that this fault in the stairlift, which was detected due to one of the checks defined in the amended feature, was indeed monitored as a fault by the claimed system in the way as defined in claim 1. Furthermore, concerning the clarity issue of this feature, the patentee explained in its letter of 18 September 2014, page 2, fourth paragraph, that "the genesis of the present claim includes a permissible post-grant amendment" which met the requirements of Article 123(2) and (3) EPC. A freshly drafted claim might have been phrased differently, but the claim was, nonetheless, clear.

The board is not persuaded by the patentee's arguments since, on the one hand, none of the three checks of the amended feature refers to a "fault" and, on the other hand, the remaining claim wording does not refer to any of the checks of the amended feature. There is no unambiguous link between the amended feature and the remaining claim wording. For instance, claim 1 covers the possibility that the fault to be monitored by the claimed system is a different fault as that implied by the three checks defined by the amended feature.

3. Second auxiliary request

3.1 Admissibility

The opponent objected to the admission of the second auxiliary request by invoking various reasons, such as the procedural economy of the appeal proceedings, the fairness to let the opponent become aware of the patentee's complete case right at the beginning of the appeal proceedings, the excessively high number of auxiliary requests filed/withdrawn in the course of the appeal proceedings and the fact that the amended features were taken from the description including the risk that the amended subject-matter was unsearched.

The patentee argued that, with respect to claim 1 as found allowable by the opposition division, present claim 1 was amended essentially by adding features destined to overcome clarity issues raised by the opponent and pointed at by the board in its communication annexed to the summons to oral proceedings. The opposition division, in its interlocutory decision, did not follow the opponent's views on clarity. No new subject-matter was introduced. Moreover, the present claim request corresponded essentially to the twelfth auxiliary request filed on time with the letter of reply to the opponent's grounds of appeal, i.e. on the earliest possible point in time.

The board, exercising its discretion under Article 13(1) RPBA, decided to admit the second auxiliary request into the proceedings for the reasons presented by the patentee.

3.2 Added subject-matter and clarity

The opponent, in writing before and orally during the oral proceedings, raised objections under Article 123(2) EPC and

Article 84 EPC 1973 against the amended feature of present claim 1, i.e. "wherein the system is configured to continually check ... comprises the fault code".

The board did not find these objections persuasive and concluded during the oral proceedings that claim 1 was sufficiently clear and that it had a basis in the application as originally filed. In particular, the amendments are based inter alia on the last paragraph on page 3 and the first paragraph on page 4 of the application as filed, in combination with claim 3 as originally filed.

3.3 Novelty

3.3.1 The subject-matter of claim 1 is novel (Article 54(1) EPC 1973).

As acknowledged by the patentee, YP discloses a "project to incorporate Bluetooth wireless Internet technology into domestic stairlifts" to "enable remote monitoring and diagnosis of faults to inform carers and contractors of immediate or future problems with stairlift equipment", thereby providing a system for monitoring for a fault in a stairlift.

The system of YP for monitoring for a fault in a stairlift comprises:

- a fault detector for detecting a fault in the stairlift [*the "diagnosis of **faults**" mentioned in YP requires the presence of a fault detector*],
- a signal generator for generating a signal representative of the fault [*in order to enable the diagnosis of faults, a signal representing the fault which has been detected by the fault detector of YP must*

implicitly be generated by a signal generating means of the system of YP],

- *a wireless transmitter, located in the stairlift, for transmitting the signal [YP explicitly describes the Bluetooth technology as being a "**wireless** Internet technology" and as being "**incorporated** (...) **into stairlifts**"; Bluetooth technology implicitly comprises a wireless transmitter; since the goal of the project is remote monitoring and diagnosis of faults, it is implicit that the transmitted Bluetooth signal is a signal representative of the detected fault in the stairlift],*

- *a wireless receiver, located remotely from the wireless transmitter, for receiving the fault signal [the diagnosis of faults of YP based on Bluetooth technology implies not only a wireless transmitter but also a wireless receiver for receiving the transmitted signal; the wireless receiver is necessarily located remotely from the transmitter, i.e. at a distance which the transmitted signal runs through],*

- *the receiver being further operable for causing an alert to be sent to an operator that the stairlift requires attention [the final goal of the system of YP is "to inform carers and contractors of immediate or future problems with the stairlift"; in order to inform carers and contractors of problems with the stairlift, they must implicitly receive from the system of YP an information about the problem, i.e. they must receive a corresponding alert; this alert is implicitly triggered by the signal representing the fault in the stairlift and received by the wireless receiver],*

- wherein, if the stairlift develops a fault, the system detects the fault [*implicit disclosure since the system of YP enables a diagnosis of faults*] and generates a fault code indicative of the type of fault that has occurred [*as suggested by the opponent during oral proceedings, the word "code" is not particularly limiting since, in its broadest meaning, it is to be interpreted merely as a signal having a format which enables the receiver of the signal to understand the information contained in the signal; in this respect, any signal representative of a fault in the stairlift generated, transmitted and received by the system of YP is a "code" which implicitly is indicative of the type of fault that has occurred*] and wherein the signal representative of the fault comprises the fault code [*the format of the signal is the code*].

However, YP does not disclose which kind of faults in the stairlift is detected by the system.

Therefore, the feature of claim 1 "wherein the system is configured to check continually whether the stairlift (12) starts moving when instructed to by a user, that it continues moving between the start and end points (X) and (Y), and that it stops at the end point" is novel over the disclosure of YP.

The opponent did not raise any further novelty objection based on the available prior-art documents other than YP. The board does also not see any reason to put into doubt the novelty of the claimed subject-matter in view of these other documents.

- 3.3.2 The patentee contested that YP disclosed a signal generator, a wireless transmitter and a wireless receiver as claimed for the reason that "it cannot be inferred from YP in any

way that a signal representative of the fault is generated at the stairlift" (see page 8 of the patentee's letter of 30 October 2017). For the patentee, monitoring and diagnosis of faults in YP was made remotely. The fact that YP referred to a motor speed controls manufacturer, "strongly suggests that it was intended to remotely monitor and diagnose motor parameters", such as "abnormal voltage/current/speed conditions". The patentee further submitted that "Bluetooth technology typically is suitable for transfer of larger, continuous streams of data", whereas fault signals "can be assumed to be rare events not requiring continuous streaming of data". Since "a fault can only be recognized as such after diagnosis of monitored data", the generation, transmission and reception of a signal representative of the fault as claimed could not be inferred from YP.

The patentee further submitted that "YP leaves the skilled person in the dark about any implementation of the Bluetooth wireless internet technology" and that "the distance covered by Bluetooth technology is too short to reach from the stairlift equipment to the carers and contractors" (see page 9 of the patentee's letter of 30 October 2017). Therefore, it could not be inferred from YP how a receiver could be operable for causing an alert to be sent to an operator that the stairlift required attention.

3.3.3 These arguments are not found convincing by the board.

Since YP discloses "remote monitoring and diagnosis of faults", faults in the stairlift are implicitly detected and a signal representative of the faults is implicitly provided and transmitted to a station for "remote monitoring and diagnosis of faults". Concerning the motor manufacturer recited in YP, the board notes that monitoring abnormal voltage/current/speed conditions of a motor of a stairlift is part of the monitoring of the stairlift. With respect to

the patentee's argument about the continuous stream of Bluetooth data, the board agrees that a fault in a stairlift basically is a rare event but the board cannot see why this would exclude a system capable to provide a continuous stream of data from being used. Indeed, in case that no fault occurred in the stairlift, simply no signal representative of a fault is provided by the system.

The patentee's argument in support of novelty that YP does not disclose any details about how the system concretely implements the Bluetooth wireless Internet technology is rendered moot by the fact that claim 1 does not contain any feature which would establish novelty by defining details about how the receiver is made operable for causing an alert to be sent to an operator. Hence, the broad feature of claim 1 of a wireless receiver "operable for causing an alert to be sent to an operator" is implicitly anticipated by the disclosure in YP of "remote monitoring and diagnosis of faults to inform carers and contractors of immediate or future problems".

3.4 Inventive step

3.4.1 The subject-matter of claim 1 lacks an inventive step in view of the disclosure of YP (Article 56 EPC 1973).

It was not contested by the parties that document YP represented the closest prior art.

The subject-matter of claim 1 differs from the system disclosed in that the system is configured to continually check whether the stairlift starts moving when instructed to by a user, that it continues moving between the start and end points (X) and (Y), and that it stops at the end point.

Based on these differing features, the objective technical problem consists, as suggested by the patentee, in the improvement of assistance to a user of a stairlift in case a fault develops in the stairlift.

Starting from YP and confronted with the above problem, the skilled person would consider which type of faults in the operation of a stairlift is important for a user to be monitored and repaired as quickly as possible. The skilled person in the technical field of stairlifts, based on his common general knowledge, is aware that the main functions of a stairlift are to start moving when instructed, to continue moving to its end point and to stop at the end point. Therefore, even though YP does not provide any indication about the type of faults to be monitored by its system, it is obvious for the skilled person to include in the monitoring capabilities of the system of YP at least the monitoring of these three main functionalities of a stairlift. Not checking these three basic functionalities of a stairlift and, hence, not being able to inform carers and contractors about a corresponding basic dysfunction of the stairlift, is unreasonable for the skilled person responsible of the project "intelligent home stairlift of future" disclosed in YP. Indeed, a user would be in a situation where the stairlift is unusable but no carer and no contractor being alerted, which would be contrary to the object of the project disclosed in YP. Finally, in view of the urgency to inform carers and contractors about anyone of the three major dysfunctions of the stairlift, once one of them occurred, it is self-evident for the skilled person to foresee a system which detects a fault in the stairlift as soon as it occurs. Hence, continuous checking of the functioning of stairlift, as opposed to intermittent checking, is imperative for the system of YP to be helpful for the user.

It follows that the differing feature is not based on an inventive step.

3.4.2 The patentee counter-argued by stating that YP did not provide any hint to continually check the three specific conditions of the stairlift as defined in claim 1, to detect the fault immediately when it occurred and to send a fault signal only once the fault had occurred. In the system of YP, on the contrary, a large amount of data was continuously transmitted by the Bluetooth transmitter and had to be "digested" first before a fault could be diagnosed, thereby increasing the error probability of the diagnosis of fault in the stairlift.

3.4.3 The board is not persuaded by these arguments. The three checks defined in claim 1 concern basic functionalities of a stairlift which are the most obvious and indispensable to be monitored by the system of YP enabling the diagnosis of faults in a stairlift. Furthermore, as argued by the opponent during oral proceedings, the scope of claim 1 is indeed not so limited as to define or imply that a signal is transmitted *only* when a fault occurred, i.e. that no data is transmitted when no fault occurred. The mere fact that the Bluetooth technology of YP is capable of continuously transmitting a large amount of data is, therefore, not relevant for the assessment of inventive step of the claimed system. Similarly, claim 1 does also not define or imply that a fault is detected *immediately*, whatever "immediately" exactly means in the present context. Therefore, the corresponding arguments of the patentee cannot contribute to demonstrate an inventive step of the claimed system.

4. Third auxiliary request

4.1 Admissibility

The opponent requested not to admit the third auxiliary request into the appeal proceedings essentially for the reason that the feature added to present claim 1, i.e. audio and/or visual communications devices, represented a "separate feature" which was not linked to the alleged inventive concept of the higher ranking requests relating to the checking of the stairlift. Therefore, since the added feature of present claim 1 could not contribute to the inventive step, it should not be admitted into the proceedings.

The patentee argued in favour of the admission of the third auxiliary request by submitting that the feature added to present claim 1 corresponded to the dependent claim 9 of the patent, that it was already part of claim 1 of auxiliary requests filed during the first-instance opposition proceedings and re-filed at the beginning of the appeal proceedings and that it had a substantial effect on the inventiveness of the subject-matter of claim 1.

The board, for the reasons given by the patentee and for the reason that no objections of lack of clarity or added subject-matter had to be raised against the amended feature, exercised its discretion under Article 13(1) RPBA and decided to admit the third auxiliary request into the appeal proceedings.

4.2 Inventive step

4.2.1 The subject-matter of claim 1 lacks an inventive step in view of the disclosure of YP and common general knowledge (Article 56 EPC 1973).

The claimed system differs from the system disclosed in YP in that

- (a) the system is configured to continually check whether the stairlift starts moving when instructed to by a user, that it continues moving between the start and end points (X) and (Y), and that it stops at the end point, and in that
- (b) it comprises audio and/or visual communications devices that allow a user of the stairlift to speak to and/or see an operator.

Features (a) and (b) do not interact synergistically for providing an additional effect going beyond the sum of the effects of each feature taken in isolation. Therefore, their respective contribution to inventiveness of the claimed subject-matter is evaluated separately.

Feature (a) does not include an inventive step for the reasons given in point 3.4.1 above.

As suggested by the patentee, the objective technical problem solved by the differing feature (b) can be seen as how to provide further assistance to a user of a stairlift in which one of the three faults defined in claim 1 occurred.

It is uncontestedly common general knowledge that audio and/or visual communication devices enable communication between a user of a transport means and an assistance department in a situation where the user is stranded due to a defect of the transport means. Such devices are provided, for instance, in elevators, railway trains or undergrounds. Especially in case of major defects, such as those rendering impossible the transport of the user from a starting point to an end point and requiring quick intervention of a rescue operator, do audio and/or visual communication devices, built into the transport system, represent an efficient tool for improving the assistance to a stranded user. In the

present case of stairlifts, used by elderly and/or disabled users, the helpfulness of audio and/or visual communication devices built in the stairlift is all the more obvious because these users will often feel less comfortable with handling the issue of a defective stairlift on their own. Therefore, the board is of the view that the skilled person would obviously implement audio and/or visual communication devices into the stairlift system of YP for solving the problem posed.

It follows that the system of claim 1 lacks an inventive step in view of YP and common general knowledge.

4.2.2 In support of its contention that the subject-matter of claim 1 included an inventive step, the patentee submitted that before the priority date of the present patent application, it was unknown to provide stairlifts with audio and/or visual communication devices. By way of proof, the patentee referred to all the documents D1 to D16 filed by the opponent, stating that none of them disclosed a stairlift having audio or visual communication means. In case of a defect in a stairlift, the user had to contact the stairlift dealer via its personal phone or some other equivalent means. The patentee further explained the advantages of the inventive audio and/or visual communication devices, e.g. enhanced assistance by visual and/or communication means, immediate feedback loop between operator and user, possibility of instantaneously reassuring users in distress.

4.2.3 The board does not consider these arguments to be pertinent. They essentially confirm that the amended feature is novel over the prior art and provides practical benefits to a user of a stairlift, both points not having been open to debate because uncontested by the opponent and the board. In

particular, the patentee did not contest that audio and/or visual communication devices in elevators were known.

5. Fourth auxiliary request

5.1 Admissibility

The opponent argued that the fourth auxiliary request should not be admitted into the proceedings essentially for the reason that the amendment comprised features taken from the description, thereby potentially circumventing a thorough search and examination of the corresponding subject-matter. As stated in its letter of 27 October 2017, page 3, point 12, neither the opposition proceedings in first instance, nor the appeal proceedings in second instance were instituted for the purpose to prolong the examination stage.

The patentee submitted that the incriminated feature, i.e. a filter for directing a particular type of fault codes to a particular operator, had always been present in one of the independent claims of the auxiliary requests filed during the first-instance opposition proceedings and at the beginning of the appeal proceedings. The opponent never had objected to its admission into the proceedings until its latest letter of 27 October 2017.

The board, in view of the fact that the feature relating to the filter was always present in an independent claim of an auxiliary request since the beginning of the opposition proceedings, exercised its discretion under Article 13(1) RPBA and decided to admit the fourth auxiliary request into the proceedings.

5.2 Amendments

- 5.2.1 Claim 1 contains subject-matter which extends beyond the content of the application as filed, contrary to the requirement of Article 123(2) EPC.

The application as filed discloses a filter for directing a particular type of fault codes to a particular customer services operator only in combination with a server receiving fault code signals and passing them to the customer services operator (paragraph bridging pages 4 and 5 of the application as filed). This means that the filter forms part of a server. Claim 1, however, does not comprise any server. The filter as defined in claim 1 may, for instance, form part of the receiver, for which there is no basis in the original application. This represents an inadmissible "intermediate generalisation".

Therefore, the amended feature of claim 1 "a filter configured to direct a particular type of fault codes to a particular customer services operator on a particular computer (22)" contains subject-matter which extends beyond the content of the application as filed, contrary to the requirement of Article 123(2) EPC.

- 5.2.2 According to the patentee, a server is implicitly defined in claim 1, namely in the feature "the receiver being further operable for causing an alert to be sent to an operator that the stairlift requires attention". Indeed, the skilled person would deduce from this feature that a filter is implicitly located in the path between the receiver and the operator.
- 5.2.3 The board cannot agree with this viewpoint. Claim 1 covers a configuration in which the receiver itself filters the fault signals for redirecting each signal to the most adequate operator. Since the application as filed discloses such a filter exclusively in a separate server, the claim has a

broader scope as the skilled person is taught by the application as filed.

6. Fifth auxiliary request

Admissibility

6.1 Following the opponent's request not to admit the fifth auxiliary request into the proceedings and taking into account the arguments of both parties, the board decided not to admit the fifth auxiliary request into the proceedings under Articles 13(1) and (3) RPBA for the following reasons:

- The fifth auxiliary request was filed for the first time at a very late stage of the proceedings, namely at the end of the oral proceedings before the board of appeal.

- One of the well-established criteria for assessing the admittance of amended claims during appeal proceedings is whether the amendments are *prima facie* clearly allowable (see, for instance, the decisions cited in the Case Law of the Boards of Appeal, 8th edition, chapter IV.E.4.4.2). The present amendment does not fulfil this criterion since *prima facie* it infringes the requirements of at least Article 123(2) EPC. In particular, the feature of claim 1 "wherein the server (20) is configured to receive fault code signals from multiple users of stairlifts monitored by the system" has no clear basis in the application as originally filed. Indeed, according to this feature, the system of claim 1 monitors a plurality of stairlifts. There is no basis, however, in the application as filed of a system comprising the features of claim 1 and monitoring a plurality of stairlifts.

- The new feature of claim 1 was completely taken from the description. Such type of an amendment is potentially complex since (i) it may open, as it did in the present case, the debate about the compliance of the amendment with respect to the basic requirements of Article 123(2) and 84 EPC and (ii) it defines subject-matter which was not previously claimed and, therefore, may require an additional search and substantive examination to be restarted.

- If the fifth auxiliary request would be admitted into the proceedings, remittal for further prosecution might become necessary, which is contrary to the provision of Article 13(3) RPBA. In addition, remittal would substantially increase the procedural complexity and length of the opposition proceedings, which is not desirable for reasons of procedural efficiency.

6.2 The patentee argued in favour of admitting the fifth auxiliary request by explaining, first of all, that the basis of the amendments was in the paragraph bridging pages 4 and 5 of the application as filed, disclosing inter alia that "the server 20 can receive fault code signals from a large number of users". Each one of this large number of users has a stairlift. Therefore, the server received fault code signals from a large number of stairlifts, each stairlift being monitored by a system as claimed.

Secondly, the present amendment was filed in response to the objection of added subject-matter raised against the fourth auxiliary request. This objection of added subject-matter was raised by the opponent only one month before the date of the oral proceedings, instead of having been filed already during the first-instance opposition proceedings. Therefore, the patentee should be given a chance to overcome this late-filed objection.

6.3 These arguments are not found persuasive by the board for the following reasons:

Even under the assumption that the patentee's interpretation of paragraph bridging pages 4 and 5 of the application as filed was correct, the patentee failed to show the basis for the feature of claim 1 "stairlifts monitored by the system" [the plural of the word stairlift is used in the claim].

Concerning the second argument of the patentee, the board, after having weighed up the parties' arguments, accepts the opponent's counter-arguments that the patentee, by filing, then withdrawing, combining or replacing a large number of auxiliary requests during the whole first and second-instance opposition proceedings, without substantiating the requests filed, presented "moving targets". For this reason, the opponent filed additional objections against the requests then on file only after having received the board's communication annexed to the summons to oral proceedings. Furthermore, and most importantly, the amendment introduced by the patentee in its fifth auxiliary request for overcoming the objection of added subject-matter does *prima facie* not overcome the objection.

7. Sixth auxiliary request

Present claim 1 comprises the same feature as claim 1 of the fourth auxiliary, i.e. "a filter configured to direct a particular type of fault codes to a particular customer services operator on a particular computer (22)". This feature contains subject-matter extending beyond the content of the application as filed for the same reasons as given in point 5.2.1 above.

Since the sixth auxiliary request was filed only after the oral proceedings were arranged and since the amendment made in claim 1 is not suitable to overcome the objection of added subject-matter raised already against a higher ranking request, the board decided not to admit the sixth auxiliary request into the proceedings under Articles 13(1) and (3) RPBA.

The patentee maintained its arguments presented in support of the admission of the fourth auxiliary request and concerning the basis in the application as filed for the amended feature of claim 1 of the fourth auxiliary request relating to the filter, but did not add any further arguments. Therefore, the board sees no reason to deviate from its reasoning of not admitting the sixth auxiliary request.

8. For the above reasons the board comes to the conclusion that 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:



M. Kiehl

R. Bekkering

Decision electronically authenticated