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**Datasheet for the decision
of 3 May 2022**

Case Number: T 2918/18 - 3.2.06

Application Number: 05723924.6

Publication Number: 1855978

IPC: B66B5/00, B66B1/44, B66B1/34

Language of the proceedings: EN

Title of invention:
ELEVATOR MOTOR BRAKE TORQUE MEASUREMENT DEVICE

Patent Proprietor:
Otis Elevator Company

Opponent:
KONE Corporation

Headword:

Relevant legal provisions:
EPC Art. 113(2)

Keyword:
Basis of decision - text or agreement to text withdrawn by
patent proprietor - patent revoked

Decisions cited:

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 2918/18 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 3 May 2022

Appellant: KONE Corporation
(Opponent) Kartanontie 1
00330 Helsinki (FI)

Representative: K & H Bonapat
Patentanwälte Koch · von Behren & Partner mbB
Donnersbergerstraße 22A
80634 München (DE)

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

Representative: Dehns
St. Bride's House
10 Salisbury Square
London EC4Y 8JD (GB)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
10 October 2018 concerning maintenance of the
European Patent No. 1855978 in amended form.**

Composition of the Board:

Chairman M. Harrison
Members: M. Dorfstätter
J. Hoppe

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, account being taken of the amendments made by the patent proprietor during the opposition proceedings, European patent No. 1 855 978 met the requirements of the EPC.
- II. The appellant requested that the decision under appeal be set aside and the patent be revoked.
- III. In its reply to the appeal, the respondent (patent proprietor) requested that the appeal be dismissed or, as an auxiliary measure, that the patent be maintained on the basis of one of auxiliary requests 1 to 4, filed with the reply.
- IV. The Board issued a summons to oral proceedings and a subsequent communication in which it gave the Board's provisional opinion on several matters of the case.
- V. Oral proceedings took place by videoconference on 3 May 2022 during which the respondent declared that it withdrew all pending requests, and declared its disapproval of any text for maintenance of the patent.

Reasons for the Decision

1. Pursuant to Article 113(2) EPC, the EPO shall examine, and decide upon, the European patent only in the text submitted to it, or agreed, by the patent proprietor of the patent.

2. Such an agreement cannot be deemed to exist where - as in the present case - the patent proprietor expressly states that it no longer approves any text for maintenance of the patent.
3. There is therefore no text of the patent on the basis of which the Board can consider the appeal. In these circumstances, the proceedings are to be terminated by a decision ordering revocation of the patent, without examination as to patentability (see e.g. Case Law of the Boards of Appeal of the European Patent Office, 9th edition 2019, IV.D.2).

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