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Datasheet for the decision of 10 February 2023

Case Number: T 1077/19 - 3.2.06

Application Number: 05816126.6

Publication Number: 1819624

IPC: B66B5/00, B66B1/34

Language of the proceedings: EN

Title of invention:
POWER-ON-RESET OF ELEVATOR CONTROLLERS

Patent Proprietor:
Otis Elevator Company

Opponents:
KONE Corporation
INVENTIO AG

Headword:

Relevant legal provisions:
EPC Art. 101, 113(2)
EPC R. 103(1)(a)

Keyword:
Withdrawal of approval of any text for maintenance of the patent
Reimbursement of appeal fee - opponent I - substantial procedural violation (no) - opponent II - substantial procedural violation (yes)

Decisions cited:

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

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Case Number: T 1077/19 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 10 February 2023

Appellant: (Patent Proprietor)	Otis Elevator Company One Carrier Place Farmington CT 06032 (US)
Representative:	Dehns St. Bride's House 10 Salisbury Square London EC4Y 8JD (GB)
Appellant: (Opponent 1)	KONE Corporation Kartanontie 1 00330 Helsinki (FI)
Representative:	K & H Bonapat Patentanwälte Koch · von Behren & Partner mbB Donnersbergerstraße 22A 80634 München (DE)
Appellant: (Opponent 2)	INVENTIO AG Seestrasse 55 6052 Hergiswil (CH)
Representative:	Inventio AG Seestrasse 55 6052 Hergiswil (CH)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted on 18 March 2019 concerning maintenance of the European Patent No. 1819624 in amended form.**

Composition of the Board:

Chairman	M. Harrison
Members:	M. Hannam
	W. Ungler

Summary of Facts and Submissions

I. This decision concerns the appeals filed by each of the patent proprietor, opponent I and opponent II against the interlocutory decision of the opposition division in which it found that European patent No. 1 819 624 in an amended form met the requirements of the EPC.

II. Opponent I and opponent II each requested that the decision under appeal be set aside and the patent be revoked. Each opponent also requested reimbursement of the appeal fee.

III. In preparation for oral proceedings, the Board issued a communication containing its provisional opinion concerning the patent proprietor's requests on file.

IV. With letter of 26 January 2023 the patent proprietor withdrew all its requests on file and indicated that it disapproved any text for maintenance of the patent and that, accordingly, it requested that the patent be revoked.

V. The scheduled oral proceedings were cancelled.

Reasons for the Decision

1. Under Article 113(2) EPC, the European Patent Office shall examine, and decide upon, the European patent only in the text submitted to it, or agreed, by the proprietor of the patent. This principle has to be strictly observed also in opposition and opposition

appeal proceedings.

2. Such an agreement cannot be deemed to exist if the patent proprietor, as in the present case, expressly states that it no longer approves any text for maintenance of the patent and also withdraws all its requests on file.

3. Since the text of the patent is at the disposition of the patent proprietor, a patent cannot be maintained against the patent proprietor's will. It is moreover clear that it wishes to prevent any text whatsoever of the patent from being maintained.

4. Revocation at the request of the patent proprietor in the framework of opposition or opposition appeal proceedings is not possible, as it is expressly excluded by Article 105a(2) EPC. At the same time, the proceedings ought to be terminated as quickly as possible in the interests of legal certainty. The only possibility in such a case is for the Board to revoke the patent as envisaged, for other reasons, in Article 101 EPC.

5. In view of the above, the Board concludes that the patent must be revoked. This conclusion is also in line with case law developed by the Boards of Appeal in *inter alia* decisions T 73/84, T 186/84, T 655/01, T 1526/06 and T 1960/12; cf. also T 237/86 and T 459/88.

6. Each opponent has additionally requested reimbursement of the appeal fee. According to Rule 103(1)(a) EPC, such reimbursement may be ordered if the Board of Appeal deems the appeal to be allowable and if such reimbursement is equitable by reason of a substantial

procedural violation.

6.1 Reimbursement request of opponent I

6.1.1 In its grounds of appeal, opponent I argues that its right to be heard was not respected in regard to objections made under Article 100(c) EPC in claim 1 of the main request. It also makes several statements about what it regards is to be understood by its arguments and also why the claimed subject-matter is not disclosed. Exactly which aspect the opponent believes should lead to its right to be heard having not been respected is however difficult to determine.

Thus the Board has had to consider what the objections in regard to Article 100(c) EPC actually were and then which aspect might be being objected to as regard the right to be heard. With reference to items III.1 and III.2 of its notice of opposition of 4 January 2017 and to the first 6 lines of point 2.1 in the minutes of the oral proceedings before the opposition division, it appears that opponent I argued that the application as filed failed to disclose on-site elevator monitoring equipment which was connected to the main, drive and door controllers (16, 17, 18) and to the central elevator monitoring and control station (11) and this is what is now being objected to as having not been addressed by the opposition division.

6.1.2 The arguments presented by opponent I before the opposition division relate to objections which are addressed in point 12.3 of the interlocutory decision of the opposition division. In item 12.3, a summary of the objections made by opponent I are listed. In the paragraph bridging pages 6 and 7 of this decision, the opposition division however states that the controllers

(16, 17, 18) are clearly and unambiguously disclosed to be connected to remote monitoring equipment (10) in Figure 1 and on page 3, lines 18 to 22 of the application as filed. Whilst not explicitly mentioning the on-site elevator monitoring equipment and its link to the central elevator monitoring and control station (11), it is apparent from the decision that the opposition division saw the remote elevator monitor (10) as the same as the on-site elevator monitoring equipment. It can thus be understood that the corollary for the opposition division was that all of the objections of opponent I regarding added subject-matter had been addressed.

6.1.3 In this regard it may be added that it is irrelevant to the issue of the right to be heard being respected whether a substantive examination of the objection by the Board, based on the submissions in the grounds of appeal would have resulted in the Board concurring with the findings of the opposition division, since the Board sees the opposition division's interlocutory decision as having addressed the objection raised, as indicated above. A failure of the opposition division to consider the arguments of opponent I cannot be recognised, such that the Board does not see a failure in respecting opponent I's right to be heard having occurred.

6.1.4 It is finally noted that opponent I's request for oral proceedings did not relate to an adverse decision with respect to reimbursement of the appeal fee, rather solely in the event that the Board did not revoke the patent in its entirety (see page 2, lines 1 to 2 of opponent I's grounds of appeal). Deciding on the issue of reimbursement without oral proceedings is thus in

line with the requests of opponent I.

6.1.5 Opponent I's request for reimbursement of the appeal fee is thus rejected, since no substantial procedural violation can be recognised (Rule 103(1)(a) EPC).

6.2 Reimbursement request of opponent II

6.2.1 In point 5.1.3 of its grounds of appeal, opponent II argued that the reasoning with respect to inventive step is rather short in the interlocutory decision of the opposition division. With regard to arguments starting from D05(O2) it was questioned whether the opposition division had even considered the correct document, not least due to its succinct dismissal as an appropriate starting document ('since so many features are missing in D5, it would be impossible for the person skilled in the art to modify the system of D5 ...'). Alternatively, opponent II argued that its arguments had simply been ignored or incorrectly understood.

6.2.2 The Board notes that point 11.2 of the minutes of the oral proceedings before the opposition division explicitly mentions an inventive step objection having been discussed starting from D5(O2) in combination with D8(O2). The opposition division's decision, as also argued by opponent II, identifies in point 16.4 the 'inventive step attacks ... brought forward by the opponents', which ambiguously refers to 'D5' as a starting point rather than D5(O1) or D05(O2) which are the two entirely different documents identified in point 4 of the 'Summary of Facts and Submissions' as included in the evidence submitted within the opposition period. Furthermore D8(01) is clearly identified among the inventive step attacks whereas

D8(O2), again a completely different document to D8(O1), is plainly nowhere considered in regard to inventive step. It is clear that, despite the opposition division having recorded the objection in the minutes even with a counter argument from the proprietor that one feature of claim 1 was not known from D5(O2), the attack and the opposition division's reasoning on this have been completely omitted. It is thus impossible from the decision to understand why the attack was not successful.

6.2.3 In view of the subject-matter of claim 1 of the request before the opposition division being found to involve an inventive step and to meet the requirements of the EPC, in failing to address at least one of opponent II's inventive step objections to this request the opposition division committed a substantial procedural violation.

6.2.4 Opponent II's appeal fee is thus reimbursed due to this being equitable by reason of a substantial procedural violation (Rule 103(1)(a) EPC).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The patent is revoked.

3. Opponent II's appeal fee is to be reimbursed.

The Registrar: The Chairman:

D. Grundner M. Harrison

Decision electronically authenticated