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**Datasheet for the decision
of 23 May 2024**

Case Number: T 1050/21 - 3.2.06

Application Number: 16163708.7

Publication Number: 3075693

IPC: B66B1/34

Language of the proceedings: EN

Title of invention:

TRAFFIC LIST GENERATION FOR PASSENGER CONVEYANCE

Patent Proprietor:

Otis Elevator Company

Opponent:

TK Elevator Innovation and Operations GmbH

Headword:

Relevant legal provisions:

EPC Art. 100(c), 54, 111(1), 84
RPBA 2020 Art. 12(6), 13(2), 12(4)

Keyword:

Amendments - added subject-matter - main request, Auxiliary requests 1-3, 3A, 4-6, 9 (yes)

Novelty - Auxiliary request 7 (no), auxiliary requests 10, 10A (yes)

Late filed auxiliary request - admitted - auxiliary request 8 (no)

Late filed auxiliary request - exceptional circumstances - auxiliary request 9A (no)

Decisions cited:

Catchword:



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Case Number: T 1050/21 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 23 May 2024

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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
26 April 2021 concerning maintenance of the
European Patent No. 3075693 in amended form.**

Composition of the Board:

Chairman M. Harrison
Members: M. Hannam
D. Prietzel-Funk

Summary of Facts and Submissions

- I. Appeals were filed by both the appellant (opponent) and the appellant (patent proprietor) against the interlocutory decision of the opposition division, in which it found that European patent No. 3 075 693 in an amended form met the requirements of the EPC.
- II. The opponent requested in its statement setting out the grounds of appeal that the decision under appeal be set aside and the patent be revoked. It also requested that its appeal fee be reimbursed and that the case be remitted for further prosecution.
- III. The patent proprietor requested in its statement setting out the grounds of appeal that the decision under appeal be set aside and the patent be maintained as granted. As an auxiliary measure it requested that the patent be maintained according to one of auxiliary requests 1 to 16.
- IV. The following documents are relevant to the present decision:
- E1 EP-B1-2 033 926
E4 US-A-2015/0073748
- V. 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 independent method claim 7 of the main request appeared to extend beyond the content of the application as filed. It further indicated that the same conclusion would seem to apply to the independent method claim of each of auxiliary requests 1 to 6.

In respect of auxiliary request 7, the Board indicated that the requirement of Article 123(3) EPC seemed not to be contravened but that the subject-matter of claim 1 lacked novelty over E1.

With respect to auxiliary request 8 the Board questioned whether this would be admitted while indicating that the subject-matter of claim 1 of auxiliary request 9 seemed not to meet the requirement of Article 123(2) EPC. It finally indicated that auxiliary request 10 appeared to be allowable.

VI. With its submission of 26 March 2024 the patent proprietor filed new auxiliary requests 3A and 9A.

VII. Oral proceedings were held before the Board on 23 May 2024, during which the patent proprietor filed a new auxiliary request 10A and the opponent withdrew both its request for reimbursement of the appeal fee and that for remittal of the case for further prosecution. The final requests of the parties were thus as follows:

The patent proprietor requested that the decision under appeal be set aside and the patent be maintained as granted, or that it be maintained in amended form according to one of auxiliary requests 1 to 12 filed with the statement setting out the grounds of appeal, auxiliary requests 13 to 16 filed with the reply to the opponent's statement setting out the grounds of appeal, auxiliary requests 3A or 9A filed by letter dated 26 March 2024, or auxiliary request 10A filed during oral proceedings.

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

VIII. Claim 7 of the main request (as granted) reads as follows (with paragraph annotation as used by the opposition division in its decision - see point 1.10.1.2):

"M7.0 A method of passenger tracking for an elevator system (230), the method comprising:

M7.1 tracking an individual passenger in an origin conveyance lobby;

M7.2 tracking the individual passenger while within a conveyance passenger enclosure (22) from the origin conveyance lobby: and

M7.3 tracking the individual passenger from the conveyance passenger enclosure (22) into a destination conveyance lobby to generate a traffic list;

M7.4 wherein a unique passenger identity is maintained during a passenger transition from at least one of the origin conveyance lobby to the conveyance passenger enclosure (22) and the conveyance passenger enclosure (22) to the destination conveyance lobby."

The wording of the respective independent method claim of each of auxiliary requests 1 to 3, 3A and 4 to 6 is not reproduced here since, including feature M7.4 of claim 7 of the main request, each of these method claims suffered the same objection as claim 7 of the main request.

Claim 1 of auxiliary request 7 reads as follows, with paragraph annotation as used by the opposition division in its decision (see point 1.10.1.1):

"M1.0 A passenger tracking system (230), comprising:

M1.1 one or more sensors (242) for capturing sensor data; and

M1.2 a processing module in communication with the

one or more sensors (242) to receive the sensor data,

M1.3 where the processing module uses the sensor data to track an object and

M1.4 calculate passenger data associated with the tracked object,

M1.5 such that the passenger tracking system is arranged to track a passenger in the sensor data from an origin conveyance lobby to a destination conveyance lobby to generate a passenger traffic list;

M1.6 wherein a passenger is tracked in at least one of the origin conveyance lobby, a conveyance passenger enclosure (22) and the destination conveyance lobby; and

M1.7 wherein a unique passenger identity is maintained during a passenger transition from at least one of the origin conveyance lobby to the conveyance passenger enclosure (22) and the conveyance passenger enclosure (22) to the destination conveyance lobby."

Claim 1 of auxiliary request 8 reads as follows:

"A passenger tracking system (230), comprising:

one or more sensors (242) for capturing sensor data; and

a processing module in communication with the one or more sensors (242) to receive the sensor data, where the processing module uses the sensor data to track an object and calculate passenger data associated with the tracked object, to track a passenger in the sensor data from an origin conveyance lobby to a destination conveyance lobby to generate a passenger traffic list containing detailed information of each individual passenger that has used an elevator including arrival time, origin lobby and destination lobby; wherein a passenger is tracked in at least one of the origin conveyance lobby, a conveyance passenger

enclosure (22) and the destination conveyance lobby;
and

wherein a unique passenger identity is maintained during a passenger transition from at least one of the origin conveyance lobby to the conveyance passenger enclosure (22) and the conveyance passenger enclosure (22) to the destination conveyance lobby."

Claim 1 of auxiliary request 9 reads as follows:

"A passenger tracking system (230), comprising:
one or more depth-sensing sensors (242) for capturing sensor data comprising 3D depth data; and
a processing module in communication with the one or more sensors (242) to receive the sensor data, where the processing module uses the sensor data to track an object and calculate passenger data associated with the tracked object, to track a passenger in the sensor data from an origin conveyance lobby to a destination conveyance lobby to generate a passenger traffic list, wherein the processing module calculates an object parameter of the tracked object, wherein the object parameter comprises an object count, a location, a size, a direction, an acceleration, a velocity, an object classification, or a combination comprising at least one of the foregoing;
wherein a passenger is tracked in at least one of the origin conveyance lobby, a conveyance passenger enclosure (22) and the destination conveyance lobby;
wherein a unique passenger identity is maintained during a passenger transition from at least one of the origin conveyance lobby to the conveyance passenger enclosure (22) and the conveyance passenger enclosure (22) to the destination conveyance lobby;
wherein the unique passenger identity and associated passenger tracking data is maintained in a way that

preserves privacy by using encryption, authentication and other security measures."

The precise wording of claim 1 of auxiliary request 9A is not relevant to the decision taken thereon and so is not reproduced here.

Claim 1 of auxiliary request 10 reads as for claim 1 of auxiliary request 7 with the following features appended:

"wherein a multiple of traffic lists for each individual passenger over time are combined, and a multiple traffic lists for each of a multiple of individual passengers over time are combined with time as a parameter, to facilitate statistical distribution determination of elevator usage for the entire building;
wherein the statistical distribution determination of elevator usage for the entire building is used to pre-assign cars to runs".

Claim 1 of auxiliary request 10A reads as for claim 1 of auxiliary request 7 with the following features appended:

"wherein a multiple of traffic lists for each individual passenger over time are combined, and a multiple of traffic lists for each of a multiple of individual passengers over time are combined with time as a parameter, to facilitate statistical distribution determination of elevator usage for an entire building;
wherein the statistical distribution determination of elevator usage for the entire building is used to pre-assign cars to runs".

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

Main request, auxiliary requests 1 to 3, 3A and 4 to 6
The subject-matter of claim 7 of the main request lacked basis in the application as filed due to the introduction of feature M7.4. Neither the claims as filed nor the passages of the description to which reference was made provided a direct and unambiguous disclosure of this feature. This objection applied, for the same reasons, to the independent method claim in each of auxiliary requests 1 to 6 and 3A.

Auxiliary request 7

The subject-matter of claim 1 also failed to meet the requirement of Article 123(2) EPC. A 'tracking list' and a 'traffic list' were different lists, the tracking list including much more sensor data than a traffic list, such as the sensor data from which the speed of movement of an individual could be determined. Claim 1 as filed defined a tracking list to track a passenger in the sensor data but the traffic list did not do this. Page 20 of the description also defined the content of the two different lists and these were not the same.

Claim 1 also contravened Article 123(3) EPC. Deletion of 'such that the passenger tracking system is arranged' from claim 1 as granted resulted in the processing module tracking a passenger in the sensor data which extended the scope of protection.

The subject-matter of claim 1 lacked novelty over E1. Col. 5, lines 40 to 53 disclosed a continuous monitoring of a user's location which was implicitly 'tracking'. A continuous monitoring of a single user would also correspond to maintaining a unique passenger

identity for that user.

Auxiliary request 8

This request should not be admitted as it should have been filed before the opposition division.

Auxiliary request 9

The feature newly appended to claim 1 in this request lacked basis since it was disclosed from page 22 of the application as filed in combination with many other features of the fusion based passenger tracking system of Figure 25. This added subject-matter objection was not raised earlier since the claim had anyway been found to lack clarity by the opposition division.

Auxiliary request 9A

This request should not be admitted as it should have been filed earlier in the appeal procedure.

Auxiliary request 10

The subject-matter of claim 1 lacked novelty over E4. E4 indeed disclosed long-term registering of a unique passenger identity so that they could be tracked and this could be used to generate a plurality of traffic lists over time. It was not relevant whether the installation was temporary or permanent.

Auxiliary request 10A

No objections were apparent in the amended auxiliary request 10A with respect to auxiliary request 10.

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

Main request

The subject-matter of claim 7 found basis in a

combination of claims 7 and 8 as filed. The skilled person would recognise the specific technical features as being combinable. It was further supported by page 2, lines 26 to 29, page 4, lines 11 to 12 and page 22, line 24 to page 23, line 36 of the application as filed seen in combination.

Auxiliary requests 1 to 3, 3A and 4 to 6
The same basis as that for claim 7 of the main request provided support for the subject-matter of the respective independent method claim of each of these auxiliary requests in meeting the requirement of Article 123(2) EPC.

Auxiliary request 7

The subject-matter of claim 1 met the requirement of Article 123(2) EPC. From the application as a whole the skilled person understood that the terms 'tracking list' and 'traffic list' were simply interchangeable, the term 'tracking list' having been used in error. Page 19, lines 28 to 35 and page 20, lines 16 to 26 as filed clearly described one and the same list. A tracking list could include more sensor data than a traffic list, but lacking any definition of a tracking list in the application as filed, this assertion was simply not supported. The use of the definite article 'the' on page 20, line 16 for mention of 'tracking list' indicated that the list had already been introduced, this thus only possibly being the aforementioned traffic list.

With the same reasoning, claim 1 did not extend the scope of protection beyond that of the patent as granted.

The subject-matter of claim 1 was novel over E1. This failed to disclose a passenger tracking system arranged to track a passenger from an origin to a destination to

generate a passenger traffic list (feature M1.5). E1 was simply concerned with access control within a building so that user positions were evaluated and stored rather than a user being tracked. The disclosed detection of a user in a plurality of places in a building did not imply continual tracking. A unique passenger identity was also not maintained during their transition through the building (feature M1.7). Paragraph [0026] disclosed the user profile being recognised as a result of selecting a destination floor, rather than from sensors.

Auxiliary request 8

The request should be admitted as it was responsive to the clarity objection raised for the first time at oral proceedings before the opposition division. At those oral proceedings it had been decided to argue that claim 1 was clear. Only after receiving the written decision was it seen to be necessary to file an amended claim, which was done at the first opportunity in the appeal procedure.

Auxiliary request 9

The objection under Article 123(2) EPC should not be admitted as it was not raised before the opposition division in respect of this subject-matter. Even so, the objection was not persuasive. The feature added at the end of claim 1 found basis on page 22, lines 31 to 33 of the application as filed, from which it was clear that the encryption, authentication and other security measures were applicable to any instance where identity was associated with a passenger, not simply in the Figure 25 embodiment.

Auxiliary request 9A

This request should be admitted since the objection it

was intended to overcome was not raised before the opposition division.

Auxiliary request 10

The opposition division found claim 1 of this request to meet the requirements of the EPC. Inventive step was also not objected to before the opposition division.

Auxiliary request 10A

Claim 1 of this request overcame the Board's objections relating to errors of transcription in claim 1 of auxiliary request 10.

Reasons for the Decision

1. *Main request (Patent as granted)*

1.1 *Article 100(c) EPC*

The ground for opposition under Article 100(c) EPC is prejudicial to maintenance of the patent as granted.

1.1.1 The subject-matter of claim 7 lacks a direct and unambiguous basis in the application as filed.

1.1.2 Claim 7 was argued by the patent proprietor to be a combination of the features of claims 7 and 8 as filed, claim 7 as filed essentially including feature M7.4 of claim 7 of the present request. This disclosure is not denied, yet this fails to provide a basis for the subject-matter of claim 7, since claim 8 as filed is not dependent on claim 7 as filed. Irrespective of claim 7 as filed including essentially method steps and thus allegedly being compatible with method claim 8 as

filed, in the absence of a dependency between claims 7 and 8 no direct and unambiguous basis can be found for the claimed subject-matter from these claims alone.

- 1.1.3 As to the patent proprietor's further reference to page 2, lines 26 to 29, page 4, lines 11 to 12 and page 22, line 24 to page 23, line 36 of the application as filed, this also fails to provide the requisite direct and unambiguous basis.

Whilst page 2, lines 26 to 29 as filed indeed discloses the 'unique passenger identity' of feature M7.4, this passage does so in specific relation to 'any of the foregoing embodiments', none of which is a method embodiment. The statement on page 4, lines 11 to 12 that 'foregoing features and elements may be combined in various combinations' is of such a general nature that, at least in the present case, this cannot be seen to specifically provide an unambiguous disclosure of the features of claim 7 in combination. Similarly, page 22, line 24 to page 23, line 36, even if it could be considered to disclose the maintaining of a unique passenger identity, does this in combination with a number of further specific features which have been omitted from claim 7. Even with, as argued by the patent proprietor, these parts of the description as filed being considered in combination, and even if the specific technical features disclosed therein could be combined, this does not provide a direct and unambiguous basis for the specific combination of features recited in claim 7.

- 1.1.4 Consequently, the subject-matter of claim 7 extends beyond the content of the application as filed such that the ground for opposition under Article 100(c) EPC is prejudicial to maintenance of the patent as granted.

2. *Auxiliary requests 1 to 3, 3A and 4 to 6*

2.1 *Article 123(2) EPC*

2.2 The respective independent method claim of each of auxiliary requests 1 to 3, 3A and 4 to 6 includes feature M7.4 of claim 7 of the main request, found to extend its subject-matter beyond the content of the application as filed. In its communication under Article 15(1) RPBA, the Board indicated that this would result in the subject-matter of each independent method claim also extending beyond the content of the application as filed. At oral proceedings the Board indicated that this would also seem to apply to the independent method claim of auxiliary request 3A. At oral proceedings the patent proprietor stated that it had no further arguments in this regard.

2.3 The Board therefore confirms its preliminary opinion that the subject-matter of the respective independent method claim of each of auxiliary requests 1 to 3, 3A and 4 to 6 extends beyond the content of the application as filed, contrary to the requirement of Article 123(2) EPC.

Auxiliary requests 1 to 3, 3A and 4 to 6 are thus not allowable.

3. *Auxiliary request 7*

3.1 *Article 123(2) EPC*

The subject-matter of claim 1 meets the requirement of Article 123(2) EPC.

3.2 Relative to claim 1 as filed, claim 1 of auxiliary request 7 recites the generation of 'a passenger *traffic* list' rather than a passenger *tracking* list. The Board finds this not to extend the claimed subject-matter beyond the content of the application as filed.

3.2.1 The patent proprietor alleges that the expression 'tracking list' used in claim 1 as filed was a drafting error which should have read 'traffic list', as indeed now recited in claim 1 of auxiliary request 7. In addition to claim 1 as filed, the expression 'tracking list' is used in the application as filed solely on page 1, lines 21 to 26 and on page 20, line 16 to 17, whereas 'traffic list' is used extensively throughout the application whenever the tracking of the sensor data indicating the movement of a passenger is discussed. Whilst page 1, lines 21 to 26 is essentially merely a recitation of claim 1 and so cannot cast any light on the expression 'tracking list', page 20, lines 11 to 26 supports the view that 'traffic list' is the intended expression. Page 20, lines 11 to 15 initially discloses how the detail of the individual passenger movement with respect to time is registered in the traffic list. The immediately subsequent lines 16 to 26 then disclose how particular sensors can be used to detect and track the movement of the individual passenger, which in the context of these two paragraphs is without doubt the same passenger movement disclosed in the foregoing lines 11 to 15, in order to generate the 'traffic list'. From the context it is thus unambiguous that the two expressions relate to the same 'list', even if that in line 16 is erroneously referred to as the 'tracking list'.

3.2.2 As also pointed out by the patent proprietor, the consistent use of definite and indefinite articles for

the 'lists' on page 20, lines 11 to 26 further supports this understanding. The first recitation of 'traffic list' in line 11 uses the indefinite article 'a' and the subsequent recitation in lines 12 to 13 correctly uses the definite article 'the'. In contrast, the first recitation of 'tracking list' in line 16 immediately uses the definite article 'the' which, being the first recitation, would be a grammatical inaccuracy unless the already recited 'traffic list' is actually intended.

- 3.2.3 The opponent's argument that a 'tracking list' included much more data than a 'traffic list', such as the data from which the speed of movement of an individual could be derived, and thus could not be equivalent, is, in the present context, not accepted. Even if such a differentiation between a tracking list and a traffic list were often applicable, the application as filed as a whole does not support that the traffic list and tracking list could be different. Page 20, lines 11 to 15 discloses the detailed information of individual passengers comprised in a traffic list and how this is generated. Page 20, lines 16 to 19 then provides additional detail of how this passenger information is collected through use of various detection and tracking processes. No additional data can thus be seen to be collected for the cited 'tracking list', rather simply further information about how the data is gathered is provided. The same two lists are thus seen to be under discussion, the reference to 'tracking list', as also opined by the patent proprietor, being a drafting error which would be understood as the 'traffic list'.
- 3.2.4 The opponent's argument that claim 1 as filed recited the tracking list tracking a passenger in the sensor data whilst this was no longer to be found in claim 1

of auxiliary request 7 is not found to offend Article 123(2) EPC. Feature M1.5 discloses the tracking of a passenger in the sensor data which generates a passenger traffic list which, in view of the finding above that tracking list and traffic list are synonymous in the context of the present application, does consequently not result in an extension of subject-matter over the content of the application as filed.

3.2.5 It thus follows that the subject-matter of claim 1 meets the requirement of Article 123(2) EPC.

3.3 *Article 123(3) EPC*

3.3.1 The opponent argues that claim 1 as granted discloses both the processing module and the passenger tracking system being arranged to track a passenger in the sensor data. Deletion of 'such that the passenger tracking system is arranged' from claim 1 as granted allegedly removes a limitation from granted claim 1 such that claim 1 of auxiliary request 7 extends the protection conferred.

3.3.2 This argument is not persuasive. It is noted that the processing module is comprised in the passenger tracking system (see features M1.0 and M1.2 of claim 1). Therefore, to the same extent that in claim 1 as granted the passenger tracking system was arranged to track a passenger in the sensor data, so in claim 1 of auxiliary request 7 the passenger tracking system is still arranged to do so, since the processing module is comprised in the passenger tracking module. The deletion does therefore not extend the protection conferred.

3.3.3 To this preliminary opinion given in the communication under Article 15(1) RPBA, the opponent proffered no further argument at oral proceedings. The Board thus confirms its preliminary opinion herewith and finds the requirement of Article 123(3) EPC to be met.

3.4 *Novelty*

3.4.1 With respect to the disclosure of the subject-matter of claim 1 in E1, the sole contentious features between the parties were M1.5 and M1.7 i.e.

- such that the passenger tracking system is arranged to track a passenger in the sensor data from an origin conveyance lobby to a destination conveyance lobby to generate a passenger traffic list; and
- wherein a unique passenger identity is maintained during a passenger transition from at least one of the origin conveyance lobby to the conveyance passenger enclosure and the conveyance passenger enclosure to the destination conveyance lobby.

3.4.2 Regarding feature M1.5, E1 (see column 5, lines 40 to 53) discloses a continuous monitoring of a lift user's location in the building. Specifically lines 40 to 45 also disclose exemplarily how, as a user moves, they may be monitored by a first camera, in the camera overlap region by a first and second camera, and finally just by the second camera, which is found to correspond to a 'tracking' of a user. With this being carried out continuously with respect to the lift user's location in the building (see col. 5, lines 51 to 53), such tracking will implicitly occur at least from an origin to a destination lobby. Further, since the claimed 'traffic list' solely includes locations and times at these locations for at least one user (see table 20 of the patent), column 5, lines 47 to 50 of E1

discloses precisely such information being evaluated and stored.

3.4.3 The patent proprietor's contention that E1 was simply concerned with access control within a building so that user positions were evaluated and stored rather than a user being tracked is not accepted. Whilst the term 'tracking' is indeed not used in E1, this is implicitly seen to occur by way of the continual monitoring of where an elevator user is located in the building at that moment (see column 5, lines 51 to 53, "... lässt sich laufend kontrollieren, wo sich ein Aufzugsbenutzer im Gebäudeareal gerade befindet."). If a user's position is continually monitored, this is seen to imply nothing other than the user being tracked. The patent proprietor's further argument that mere detection of a user in a plurality of places in a building was not tracking is not contested, yet E1 discloses more than sporadic position detection since continual monitoring of an elevator user in a building is disclosed, which corresponds to a tracking of the user.

3.4.4 The patent proprietor's further argument that E1 failed to disclose a passenger tracking system arranged to track a passenger from an origin to a destination to generate a passenger traffic list is also not accepted. Column 7, lines 3 to 7 discloses the position data of every elevator user being transmitted to the main controller and being recorded on a transport profile ("Positionsdaten ... eines jeden Aufzugsbenutzers an die Hauptsteuereinheit übermittelt und im Förderprofil abgelegt werden"). Such a transport profile is disclosed to store the same information to the exemplary traffic list disclosed in Fig. 20 of the patent i.e. user ID, location and time such that the

generation of a traffic profile is indeed disclosed in E1.

- 3.4.5 E1 thus discloses feature M1.5
- 3.4.6 Regarding feature M1.7, as already indicated in point 3.4.3 above, column 5, lines 51 to 53 discloses the camera signals being continuously analysed in order to monitor the user's location in the building. With the entirety of claim 1 including the tracking of just a single passenger within its scope, a single user's location would without doubt be tracked through the building by the system of E1. Such a single user would also, being the sole user of the system, have a unique passenger identity which would be maintained throughout their movement through the building.
- 3.4.7 The patent proprietor's argument that a unique passenger identity was not maintained by E1 during their transition through the building is not accepted. Column 7, lines 27 onwards discloses how the system of E1 uniquely authenticates a user through biometric identification, this recognition then implicitly being maintained for at least that one single user throughout their time in the building.
- 3.4.8 The patent proprietor's further argument that paragraph [0026] of E1 disclosed the user profile being recognised as a result of selecting a destination floor, rather than from sensors, is also not accepted. Whilst column 7, lines 7 to 11 indeed discloses an elevator destination call being received by a main controller, this is disclosed in the context of the main controller also being able to assign such calls to a current position of the elevator user and their access authorisation ("Die Hauptsteuereinheit kann so

jedem an einem Eingabeterminal getätigten Zielruf ... genau eine zeitlich aktuelle Aufzugsbenutzerposition und eine Zutrittsberechtigung des Aufzugsbenutzers zuordnen"). Such would not be possible without having uniquely identified the user using any of the biometric identification methods disclosed in column 7, lines 27 to 30.

3.4.9 It thus follows that feature M1.7 is also known from E1.

3.4.10 In summary, therefore, all features of claim 1 are known from E1 such that the subject-matter of claim 1 lacks novelty (Article 52(1) and 54 EPC). Auxiliary request 7 is thus not allowable.

4. *Auxiliary request 8*

4.1 *Admittance*

4.2 This request is new on appeal, claim 1 of which is based on claim 1 of auxiliary request 2 before the opposition division and with a further amendment to clarify the meaning of 'detailed information'. The patent proprietor indicated the modification in this request was responsive to the clarity objection raised for the first time at oral proceedings before the opposition division.

4.3 According to Article 12(6) RPBA, the Board shall not admit requests, facts, objections or evidence which should have been submitted, or which were no longer maintained, in the proceedings leading to the decision under appeal, unless the circumstances of the appeal case justify their admittance.

- 4.4 Even though the clarity objection was presented for the first time at oral proceedings before the opposition division, it is accepted that this objection need not have been raised sooner since auxiliary request 2 had been filed on the final date for making written submissions according to Rule 116(1) EPC.
- 4.5 At the oral proceedings before the opposition division the patent proprietor was granted time to prepare its response to the clarity objection (see page 2, paragraph 4 of the minutes) after which it argued in support of the request and did not file a request to overcome the clarity objection (see point 2.4.2.3 of the decision). It is thus evident that the patent proprietor was given the opportunity to file a request overcoming the specific clarity objection but had elected not to do so.
- 4.6 The patent proprietor's argument that, only after receiving the written decision was it seen to be necessary to file an amended request, is not accepted. From paragraph 4 on page 2 of the minutes referenced above, it is evident that it should have been clear to the patent proprietor, in the context of the request under consideration, already during the oral proceedings which features were required to fulfil the clarity requirement. Despite this, no request was filed before the opposition division, this only occurring on appeal.
- 4.7 It is thus evident that claim 1 of the present auxiliary request 8 should have been submitted before the opposition division. Auxiliary request 8 is thus not admitted into the appeal proceedings (Article 12(6) RPBA).

5. *Auxiliary request 9*

5.1 *Admittance of Article 123(2) EPC objection*

5.1.1 Claim 1 of this request corresponds to claim 1 of auxiliary request 3 before the opposition division. As to the patent proprietor's contention that the objection under Article 123(2) EPC should not be admitted since no such objection had been raised before the opposition division, this is not accepted. In point 2.5.2.1 of its decision, the opposition division indicates that irrespective of any objection under Article 123(2) EPC, the claims must be clear which, in point 2.5.2.5, it found not to be the case. The decision under appeal therefore did not decide on whether the subject-matter of claim 1 of auxiliary request 3 before it met the requirement of Article 123(2) EPC.

5.1.2 The admittance of the opponent's objection to this claim under Article 123(2) EPC on appeal is thus justified. Moreover, it is the Board's *ex officio* duty to examine any amendment under at least Articles 84 and 123(2) EPC, not least when *prima facie* the requirements of at least one of these Articles are seen not to be fulfilled.

5.1.3 As a basis for the amendment in claim 1 of auxiliary request 9, the patent proprietor refers to page 22, lines 31 to 33 of the application as filed. At least *prima facie* this sentence is part of a disclosure relating to Figure 25 starting on page 22, line 24 and continuing until page 23, line 36. The omission of further features of this embodiment disclosed in combination with those taken up into claim 1 thus *prima facie* lacks a direct and unambiguous basis, contrary to

the requirement of Article 123(2) EPC.

5.1.4 The Board thus decided to admit the Article 123(2) EPC objection when exercising its discretion under Article 12(4) RPBA.

5.2 *Article 123(2) EPC*

5.2.1 In response to the Board's *prima facie* finding at oral proceedings, the patent proprietor argued that lines 31 to 33 of page 22 stated that 'in any instance where identity is associated with a passenger ...', such that the amendment to claim 1 applied not only to the fusion based passenger tracking system disclosed from page 22 to 23 of the application as filed. This argument is not persuasive. From the context of this disclosure, it is not unambiguous that the patent proprietor's interpretation of the 'in any instance' expression indeed relates to a completely general disclosure of absolutely any instance of identity associated with a passenger. This is not least the case due to the preceding lines to this expression disclosing a number of specific ways in which identity is associated with a passenger, e.g. facial recognition, badge identification, fingerprints etc. which can reasonably be understood to be precisely the specific instances of identity associated with a passenger being referred to by the 'in any instance' expression.

5.2.2 The patent proprietor's further reference to page 25, lines 28 to 34 of the application as filed again fails to provide a direct and unambiguous disclosure of the claimed subject-matter. The general 'catch-all' in the patent proprietor's reference, essentially suggesting that any two or more embodiments of the patent disclosure can be combined, does not provide the

requisite direct and unambiguous disclosure of the specifically claimed subject-matter in claim 1.

5.2.3 It thus follows that the subject-matter of claim 1 fails to meet the requirement of Article 123(2) EPC.

5.2.4 Auxiliary request 9 is thus not allowable.

6. *Auxiliary request 9A*

6.1 *Admittance*

6.1.1 This request was submitted by the patent proprietor in response to the Board's communication under Article 15(1) RPBA. According to Article 13(2) RPBA, such an amendment to a party's appeal case shall not be taken into account unless there are exceptional circumstances justifying its admittance.

6.1.2 The patent proprietor argues that this request was filed in response to the opponent's objection under Article 123(2) EPC to claim 1 of auxiliary request 9. The opponent's objection was submitted on 10 July 2022 with its reply to the patent proprietor's grounds of appeal. The patent proprietor provided no exceptional circumstances as to why it submitted auxiliary request 9A only after receipt of the Board's communication under Article 15(1) RPBA, this also being over 18 months after the opponent's objection to claim 1 of auxiliary request 9 was filed.

6.1.3 Absent any exceptional circumstances, in accordance with Article 13(2) RPBA auxiliary request 9A is not taken into account.

7. *Auxiliary request 10*

7.1 *Novelty*

7.1.1 Claim 1 of this request corresponds to claim 1 of auxiliary request 4 before the opposition division. In point 2.6.3 of its decision, the opposition division concluded that the subject-matter of claim 1 of auxiliary request 4 before it was novel over E4 at least due to the features newly added to claim 1 not being known i.e.

- wherein a multiple of traffic lists for each individual passenger over time are combined, and a multiple traffic lists for each of a multiple of individual passengers over time are combined with time as a parameter, to facilitate statistical distribution determination of elevator usage for the entire building; and

- wherein the statistical distribution determination of elevator usage for the entire building is used to pre-assign cars to runs.

7.1.2 As also indicated in the communication under Article 15(1) RPBA, paragraph [0012] of E4 discloses the tracking of individual passengers and, in the recording/processing unit, the production of a traffic list for 'each passenger from the entrance door to the destination floor'. E4 however discloses nothing suggesting that multiple traffic lists for any one passenger over time are combined since, after having been tracked from e.g. the entrance door to the destination floor, there is no indication that the passenger ID is stored for later recognition of the passenger in order to allow multiple traffic lists for that passenger to be produced. Even if the temporary system in E4 allows the 'elevator builder to exactly

adapt the new people mover system to the detailed needs of the persons in the building', this seems to just identify elevator needs at individual moments in time.

7.1.3 To this preliminary opinion, the opponent at oral proceedings presented no counter arguments and indicated that it relied upon its written submissions.

7.1.4 The Board thus confirms its preliminary opinion herewith that the subject-matter of claim 1 is novel over E4.

7.1.5 No other novelty objections were raised. The subject-matter of claim 1 is thus novel (Article 54 EPC).

7.2 Also, no further objections (e.g. lack of an inventive step) were raised against the subject-matter of claim 1. The Board also *prima facie* sees no way in which the claimed subject-matter can be reached when starting from the cited documents without exercising an inventive step. The subject-matter of claim 1 thus involves an inventive step (Article 56 EPC).

7.3 The Board noted two errors of transcription in claim 1 of auxiliary request 10 which were seen to adversely affect clarity (Article 84 EPC) of the claim. Having been identified for the first time at oral proceedings before the Board, exceptional circumstances exist (Article 13(2) RPBA), such that the patent proprietor was given the opportunity to correct these through the filing of auxiliary request 10A.

8. *Auxiliary request 10A*

8.1 The opponent raised no objections under the EPC to the claims of auxiliary request 10A. The Board also saw

none.

8.2 The Board thus found the claims of auxiliary request 10A to meet the requirements of the EPC.

9. Remittal

The Board avails itself of its power under Article 111(1) EPC to remit the case back to the department of first instance for adaptation of the description, noting that the method is no longer part of the claim set upon which the patent is to be maintained.

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 with the order to maintain the patent with the following claims and a description to be adapted thereto:

Claims:

1 to 6 submitted on 23 May 2024 in the oral proceedings before the Board as auxiliary request 10A.

The Registrar:

The Chairman:



C. Spira

M. Harrison

Decision electronically authenticated