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**Datasheet for the decision
of 21 May 2026**

Case Number: T 0421/24 - 3.5.01

Application Number: 09783009.5

Publication Number: 2342152

IPC: B66B1/18

Language of the proceedings: EN

Title of invention:

METHOD AND APPARATUS FOR MODERNIZING AN ELEVATOR INSTALLATION

Patent Proprietor:

INVENTIO AG

Opponent:

TK Elevator Innovation and Operations GmbH

Headword:

Elevator modernisation/INVENTIO

Relevant legal provisions:

EPC Art. 83, 100(b)
RPBA 2020 Art. 13(2)

Keyword:

Sufficiency of disclosure - (main request - no)
Amendment after notification of Art. 15(1) RPBA communication
- correction of an alleged filing error (auxiliary request 1 -
not admitted)

Decisions cited:

T 0752/93



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 0421/24 - 3.5.01

D E C I S I O N
of Technical Board of Appeal 3.5.01
of 21 May 2026

Appellant: TK Elevator Innovation and Operations GmbH
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Representative: Paustian & Partner Patentanwälte mbB
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Respondent: INVENTIO AG
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Representative: Inventio AG
Seestrasse 55
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted/
electronically transmitted on 17 January 2024
concerning maintenance of the European Patent
No. 2342152 in amended form.

Composition of the Board:

Chairman G. Flyng
Members: L. Falò
B. Burm-Herregodts

Summary of Facts and Submissions

- I. The appeal was filed by the opponent against the opposition division's (second) interlocutory decision of 17 January 2024 in which it was found that account being taken of the amendments made by the patent proprietor according to the then auxiliary request 1, the European Patent No. 2 342 152 met the requirements of the EPC.
- II. In the statement of grounds of appeal, the appellant (opponent) requested that the decision of the opposition division be set aside and that the patent be revoked.
- III. In the reply to the statement of grounds of appeal, the respondent (patentee) requested, as its main request, that the appeal be rejected (i.e. dismissed) and the patent be maintained in the form approved by the opposition division, or that the patent be maintained with claims 1 to 9 according to the auxiliary request 1 filed therewith.
- IV. In the communication pursuant to Article 15(1) RPBA the board *inter alia* expressed the provisional opinion that claim 10 of the main request did not meet the requirements of Article 83 EPC, and stated that they were minded not to admit the auxiliary request 1 in the appeal proceedings.
- V. Oral proceedings were held on 21 May 2026. During oral proceedings the respondent filed a new auxiliary request 1, replacing the previous one.

The appellant requested finally that the decision of the opposition division be set aside and that the patent be revoked.

The respondent requested finally that the appeal be dismissed (main request) or alternatively that the patent be maintained with claims 1 to 9 according to the auxiliary request 1 filed during the oral proceedings.

VI. Claim 10 of the main request reads as follows:

System for modernizing an elevator installation, which elevator installation comprises an elevator (A, B, C) including at least one elevator car and an elevator control (5, 5', 5''), comprising:

a programmed processor (60);

a memory (61, 61') for containing a series of instructions to be executed by the programmed processor (60),

whereby the programmed processor (60) is operative to install at least one destination call control (6) for receiving a destination call signal and/or an identification code and for generating at least one start floor signal for a journey of the elevator car to the input floor and at least one destination floor signal for a journey of the elevator car from the input floor to a destination floor associated with the destination call signal and/or the identification code

characterised by further comprising

a serial maintenance interface (5.3, 5.3', 5.3'') for connecting the destination call control (6) with at least one elevator control (5, 5', 5'') of the elevator installation such that the start floor signal and the destination floor signal are communicated by the destination call control (6) via the interface (5.3, 5.3', 5.3'') to the elevator control (5, 5', 5'').

VII. Claim 1 of auxiliary request 1 filed during the oral proceedings reads as follows:

Method of modernizing an elevator installation, which elevator installation comprises an elevator (A, B, C) including at least one elevator car (11, 11', 11'') and an elevator control (5, 5', 5''), wherein the method of modernizing comprises the following steps:

installing at least one destination call control (6) which receives a destination call signal and/or an identification code, said destination call control (6) generating at least one start floor signal for a journey of the elevator car to an input floor and at least one destination floor signal for a journey of the elevator car from said input floor to a destination floor associated with the destination call signal and/or the identification code; and

connecting the destination call control (6) with at least one elevator control (5, 5', 5'') of the elevator installation by way of a serial maintenance interface (5.3, 5.3', 5.3'') of the elevator control such that the start floor signal and the destination floor signal are communicated by the destination call control (6) via the interface (5.3, 5.3', 5.3'') to the elevator control (5, 5', 5'').

Reasons for the Decision

Main request, Article 100(b) EPC

1. The appellant argued that claim 10 did not meet the requirements of Article 83 EPC, because it was not apparent how a processor might "install" a destination call control, which constituted a piece of hardware. Furthermore, contrary to the arguments of the opposition division (see below), the appellant argued that claim 10 was directed to a system for modernising an elevator installation, rather than to the management of an already modernised one. An interpretation according to which the installation was merely software-based was not supported by the disclosure of the patent and could not be carried out by the person skilled in the art, since the elevator control did not constitute an operating system in which a further component could be installed.
2. In section 2.2.6 of the reasons for the contested decision, the opposition division held in respect of the corresponding independent claim 11 of the patent as granted that, interpreting the claim with "a mind willing to understand" and taking into account the whole disclosure of the patent, the feature that "the programmed processor (60) is operative to install at least one destination call control" had to be understood in the sense that the programmed processor merely participated in the realisation of the destination control once the physical modernization had taken place, by receiving a destination call signal and/or an identification code and generating in response a start floor signal and destination floor

signal. The person skilled in the art would have no difficulty in programming a processor accordingly.

3. The respondent argued in line with those findings that the feature of the programmed processor being operative to install a destination call control should be interpreted in the sense that the processor was "effective or participates in the installation of the destination call control". As explained in the application, the processor 60 executed a computer program controlling, for example, the communication by way of the input 6.1 with the destination call terminal 4, 4' and by way of the output 6.2 with the interface 5.3, 5.3', 5.3" of the elevator control 5, 5', 5".
4. During oral proceedings, the respondent stressed that the processor was merely "operative" to achieve a certain effect, namely the execution of functionalities such as those described for example in paragraph [0046] of the patent. According to the respondent, it was clear to the skilled person that this did not require any hardware installation. The respondent further drew an analogy with the installation of a peripheral device - such as a printer - on a computer, which required the download and execution of appropriate drivers not necessarily the physical connection of the printer. Furthermore, it was clear from Figure 13 that the processor had to be part of the destination call control.
5. The appellant replied that, throughout the description, the installation was described only as a physical installation, and that the skilled person would not know how to implement a processor-based installation. While the processor in Figure 13 belonged to the destination call control, in the claimed system the

processor was clearly defined as operative to install the destination call control.

6. The board observes that claim 10 concerns a system for modernising an elevator installation. Accordingly, the features recited therein - namely, a processor operative to install at least one destination call control, a memory and a serial maintenance interface - cannot be understood as merely defining the behaviour of the system after the modernisation has been completed. This is particularly so because the system as claimed does not include a destination call control among its components. Moreover, the expression "operative to install" must be construed as a whole, and clearly indicates that the processor participates in the modernisation process.
7. As argued by the appellant, the destination call control 6 is presented in the patent as a physical device to be physically installed in the elevator system (see for example column 15, lines 20 to 40 of the patent, corresponding to page 17, line 25 to page 18, line 2 of the application as filed).
8. The respondent's interpretation of the installation as being purely software-based is not convincing, as it is not supported by the patent specification. It would further not be apparent to the skilled person how to carry out such installation in a known elevator system.
9. It follows from the above that the skilled person would interpret the expression "installation" as designating a physical installation of the destination call control in an elevator system to be modernised. The mere execution, by the processor, of the destination call control functionalities would not be regarded by the

skilled person as an installation, but as the normal operation of an already installed module. The patent however does not provide any indication as to how such installation may be carried out by a processor.

10. Accordingly, the board concludes that the ground for opposition of Article 100(b) EPC prejudices the maintenance of the patent in amended form in accordance with the main request.

Auxiliary request 1 - Admissibility

11. During the oral proceedings the respondent filed a new auxiliary request 1, replacing the auxiliary request then on file. The respondent explained that the new request corrected an error included in the auxiliary request filed with the reply to the statement of grounds of appeal. As had been pointed out by the board in the communication pursuant to Article 15(1) RPBA, claim 1 of that request had broadened the scope of protection compared with the main request (and the patent as granted) by replacing the expression "by way of a serial maintenance interface" with "by way of at least one serial interface, in particular a serial maintenance interface". The newly filed request omitted the expression "at least one serial interface, in particular".
12. The respondent argued that the amendment was not detrimental to the economy of the proceedings, and *prima facie* overcame the objection raised by the board. According to the established case law of the Boards of Appeal and, in particular, to decision T 0752/93, a party should, or at least can, be given the possibility to correct mistakes. The error was clear, as the feature introduced with the statement of grounds

generalised the claim as maintained by the opposition division, whose decision had not been appealed by the patentee. It was further clear from the reply to the statement of grounds of appeal that the request filed therewith did not reflect the respondent's intention. The new auxiliary request 1 should therefore be admitted, particularly considering that the board had issued a positive opinion concerning novelty and inventive step.

13. The appellant argued that the request should not be admitted under Article 13 RPBA, as it was late filed and should have been presented immediately after the board's communication pursuant to Article 15(1) RPBA. By filing the request only at the oral proceedings, the respondent compromised the appellant's ability to respond effectively. Furthermore, irrespective of whether an error had occurred, the request was not admissible under Article 12(6) RPBA, as it merely tried to overcome an objection which had been raised during the opposition proceedings.
14. The respondent replied that, when reading the board's communication, he had thought that the board had made a mistake in their preliminary opinion. He only realised a few days before the oral proceedings that the wrong version of the claims had been filed with the reply to the statement of grounds of appeal.
15. The board considers decision T 0752/93 not relevant in this case, because it concerns a different case, namely the possibility for a non-appealing patentee to amend a patent erroneously maintained in amended form by the opposition division, rather than the specific point in time at which such amendment should be filed. Moreover, the decision was issued before the present Rules of

Procedure of the Boards of Appeal (RPBA) came into force.

Under Article 13(2) RPBA, any amendment to a party's appeal case made after the expiry of a period specified by the board in a communication under Rule 100, paragraph 2 EPC or, where such a communication is not issued, after notification of a communication under Article 15, paragraph 1, shall in principle not be taken into account, unless there are exceptional circumstances which have been justified with cogent reasons by the party concerned.

16. The provisions of Article 13(2) RPBA apply to any amendment filed after the relevant date. The presence of a filing error may however be considered, in particular cases, an "exceptional circumstance".
17. In the present case, the respondent filed with the reply to the statement of grounds of appeal as auxiliary request a claim 1 which generalised the subject matter of the claim 1 as maintained by the opposition division, as well claim 1 as granted, by adding the expression "*connecting the destination call control ... by way of at least one serial interface, in particular a serial maintenance interface*".
18. In the reply to the statement of grounds, the respondent formulated their request as follows (emphasis added): "We request as an auxiliary request that the patent is maintained with claims 1 - 9, as attached, wherein claims 10 - 14 of the patent maintained in amended form are deleted."
19. As that statement does not appear to be fully in line with the contents of the request effectively filed and

does not mention the introduced generalisation of claim 1 as granted or maintained, the presence of a filing error is at least plausible.

20. However, the board raised the issue of the presence of the (unallowable) generalisation of the claimed subject-matter already in the communication pursuant to Article 15(1) RPBA, and even indicated that this was considered prejudicial to the admittance of the request. Therefore the respondent could and should have filed a new request upon receipt of the board's communication, as argued by the appellant. At the very latest, the respondent should have filed the request in writing immediately after becoming aware of the error, namely in the week preceding the oral proceedings.
21. The respondent chose instead to present the new request only at the oral proceedings. The board cannot see any cogent reasons justifying the filing of the request at such a late stage of the procedure, nor did the respondent provide any.
22. Accordingly, the board decides not to admit auxiliary request 1 into the appeal proceedings, Article 13(2) RPBA.

Conclusion

23. As the only admitted request (i.e. the main request) is not allowable, 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:



T. Buschek

G. Flyng

Decision electronically authenticated