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D E C I S I O N
of 29 July 1998

Case Number: T 0271/96 - 3.2.1

Application Number: 90305886.5

Publication Number: 0400994

IPC: B66B 11/04

Language of the proceedings: EN

Title of invention:
Linear motor driven elevator

Patentee:
Otis Elevator Company

Opponent:
Thyssen Aufzüge GmbH

Headword:
-

Relevant legal provisions:
EPC Art. 102(3a), 113(2)

Keyword:
"Revocation at request of the Proprietor"

Decisions cited:
-

Catchword:
-



Case Number: T 0271/96 - 3.2.1

D E C I S I O N
of the Technical Board of Appeal 3.2.1
of 29 July 1998

Appellant: Thyssen Aufzüge GmbH
(Opponent) Bernhäuser Strasse 45
73765 Neuhausen a.d.F. (DE)

Representative: Hössle, Markus, Dipl.-Phys.
Raeck & Hössle
Patentanwälte
Moserstrasse 8
70182 Stuttgart (DE)

Respondent: Otis Elevator Company
(Proprietor of the patent) Four Farm Springs Farmington
Connecticut 06032 (US)

Representative: Lecky, David Herbert
Frank B. Dehn & Co.
European Patent Attorneys
179 Queen Victoria Street
London EC4V 4EL (GB)

Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 23 January 1996
rejecting the opposition filed against European
patent No. 0 400 994 pursuant to Article 102(2)
EPC.

Composition of the Board:

Chairman: F. A. Gumbel
Members: P. Alting van Geusau
V. Di Cerbo

Summary of Facts and Submissions

- I. In its decision dated 23 January 1996 the Opposition Division maintained the European patent No. 0 400 994.
- II. The Appellants (Opponents) appealed against the decision of the Opposition Division on 19 March 1996, requesting that the patent be revoked. The appeal fee was paid on 18 March 1996 and the statement of grounds filed on 3 May 1996.
- III. In a letter dated 16 July 1998 the Respondents (proprietors of the patent) likewise requested revocation of the patent.

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is admissible.
2. The Respondents request the revocation of their European patent. This has to be construed as a statement meaning that they no longer approve of the text in which the patent was granted and that they also refrain from submitting an amended text (cf. decision T 186/84; OJ EPO 1986, 79).
3. Since it follows from the provision according to Article 113(2) EPC that a European patent cannot be maintained against the proprietor's will, the present European patent has, therefore, to be revoked (cf. T 73/84; OJ EPO 1985, 241).

Order

For these reasons it is decided that:

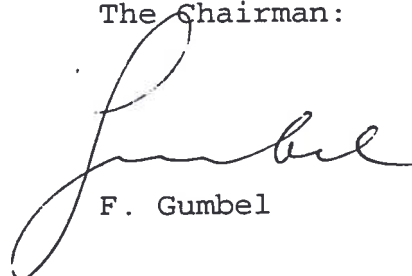
1. The decision under appeal is set aside.
2. The European patent No. 0 400 994 is revoked.

The Registrar:



N. Maslin

The Chairman:



F. Gumbel