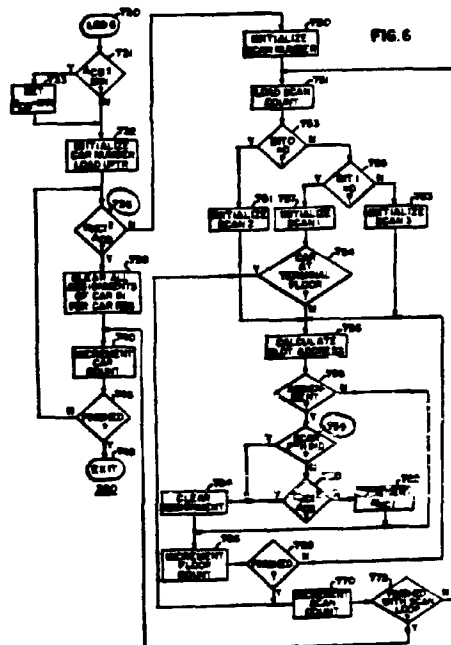


COMMISSIONER'S DECISION

NON-STATUTORY; S.2: The elevator system in providing an arrangement to answer a hall call behind an advanced position of an elevator, presented patentable matter considered allowable in view of Schlumberger, as were the claims. Rejection withdrawn.

This decision deals with Applicant's request for review by the Commissioner of Patents of the Final Action on application 251,205 (Class 364-15) assigned to Westinghouse Electric Corporation entitled ELEVATOR SYSTEM. The inventor is Bruce A. Powell. The Examiner in charge issued a Final Action refusing to allow the application. A Hearing was held at which Applicant was represented by his Patent Agents Mr. Robert H. Fox and Mr. Edward H. Oldham.

This application relates to an elevating system having a strategy to decrease the time taken to answer hall calls included in the assigned path of a car but which occur behind the travel of the car. A call classed as behind is, for example, one made for the same direction of car travel but which occurs behind the advanced position of a car. The Applicant explains how steps 736 and 759 of figure 6, reproduced below, bring about the strategy he claims. He describes how his modification at 736 and his subsequent steps differ from the copending applications referred to in this application. He says his strategy permits a scan of all scan slot assignments for a car having a hall call associated with it. Step 759 determines if the scan slot is behind the advanced position of a car and, if so, it is cleared and reassigned by another strategy to a car which can answer the demand.



The Examiner rejects the method claims 1 to 5 for being the steps of the elevator strategy or algorithm to be implemented by the system processor or microprocessor in figures 1 and 2 and the traffic detecting circuits shown in figure 4, of Applicant's United States patent 4,029,175 to Winkler which corresponds to Applicant's Canadian application 251,155, hereinafter referred to as Winkler. He refuses claims 6 to 11 for being "...the instruction means or computer program means executed by the same known microprocessor and traffic detecting circuit." He rejects all the claims for being solely the strategies "...carried out by the known microprocessor and traffic detecting circuits disclosed and claimed in the United States patent number 4,029,175 which corresponds to the Canadian application 251,155 of same assignee...". In view of his reasons for rejecting the claims, he concludes there is no patentable subject matter present and refuses the application.

In response Applicant refers to his argument in his letter of June 21, 1979 wherein he points out how his strategy provides better service for hall calls received behind an elevator car. He argues, in part, as follows:

...

Instead of automatically allowing landing service directions which have a hall call associated therewith to remain assigned to the car to which it was assigned during an earlier processing cycle, each new processing cycle examines each landing service direction. If a landing service direction is found to have a hall call associated therewith, it is immediately determined if the location of the hall call is "behind the car." If it is "behind the car", the associated landing service direction is cleared and then reassigned during the assignment sequence of the processing cycle.

...

In that letter, Applicant says his claims are directed to an elevator strategy and not to a computer programmed in a particular manner, nor to a generalized program that has application to computers. He argues elevator strategies incorporated into a system have been recognized as patentable inventions.

In his letter of November 20, 1979 Applicant presented claim 1 of his Canadian application 251,155, now Canadian Patent 1,079,425, and claim 1 of this application and asked how the Examiner could consider those claims to be directed to the same thing. He draws attention to the fact that both his applications were filed in Canada on the same day.

The issue before the Board is whether or not the application is directed to patentable subject matter in view of Section 2 of the Patent Act, and whether it is claiming solely the strategies carried out by the elevator system of United States patent 4,029,175. Claim 1 reads:

A method of controlling a plurality of elevator cars to provide service for a plurality of floors of a building, comprising the steps of:

providing means for registering up and down hall calls from at least certain of the floors of the building,

assigning the various up and down service directions of the floors by dividing them among all of the in-service elevator cars according to a predetermined strategy,

periodically clearing those assigned up and down service directions of the floors which do not have a registered hall call associated therewith, and also an assigned up or down service direction of a floor which has a hall call associated therewith which is located behind the advanced position of the elevator car it is assigned to,

and reassigning the up and down service directions from the floors cleared in the clearing step, by dividing them among all of the in-service elevator cars according to the predetermined strategy.

At the Hearing the Agents discussed the purpose and environment of Applicant's strategy recited in claim 1. They described how it reduces the longer processing time in other systems because it determines those calls which were made behind the direction of an elevator car and then reassigns them to another car for quicker service. They argued Applicant's claims define this feature of reassigning a hall call located behind the advanced position of the elevator car to which it is assigned.

In dealing with the issue of whether or not the claims are acceptable under Section 2, we find guidance in the decision in Schlumberger Canada Ltd. v The Commissioner of Patents 56 CPR 2d 204, 1981. Pratte, J. had the following comments:

In order to determine whether the application discloses a patentable invention, it is first necessary to determine what, according to the application, has been discovered.

and

I am of opinion that the fact that a computer is or should be used to implement discovery does not change the nature of that discovery

We will look first to the disclosure to determine what constitutes the subject matter of the claims. We learn that an elevator system is disclosed capable of performing several kinds of service functions, for example, dividing service directions among the elevator cars, assigning scan slots, clearing certain assignments to cars and reassigning cleared assignments, detecting special traffic conditions, and providing special floor instructions. Figure 6 shows one of these functions; an arrangement of processing steps to remove scan slots having a hall call behind the advanced position of the car to which they are assigned and to reassign such slots. The description for that figure relates to a certain operation for detecting whether a scan slot is behind a car. In that arrangement if step 736 finds the number of scan slots having hall calls associated therewith is not equal to or greater than the building hall calls per car average, the process advances directly to 750. Applicant then loads a scan count 751 and uses logic steps 753, 755 to initialize scans 1 to 3. Two of these scans proceed to step 756 for scan slot address. The other passes to 754 to determine if the car is at a terminal floor, and if so the program moves to step 770 and proceeds to reassignment via exit 748. Otherwise, the scan moves with the other two for assignment detection at 758. When step 758 finds the scan slot is assigned to the particular car, step 759 checks if the scan

slot is behind the car's advanced floor position, and if so, the information goes directly to step 764. Here, the assignment is cleared and the information is processed through steps 766, 770, 772 and into step 740 for exit through 748 and assignment by another strategy which takes care of the hall call. We are persuaded that more than a generalized program for application to computers has been presented. Applicant says his step 759 improves the elevator service because it reduces the waiting time for a call to be answered. We agree with Applicant that an elevator strategy has been disclosed and that more than a computer program has been set forth. We are satisfied an elevator system is the "what" that has been discovered and that it incorporates a strategy to produce improvement in an elevator operation. Having found the subject matter to be an improved elevator system, we consider the presence of a microprocessor as part of it should not remove the system from a patentable field. In our opinion the rejection of the application for not being directed to patentable subject matter should be withdrawn.

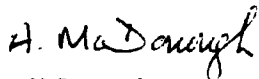
We turn to the claims which were rejected by the Examiner for setting forth "algorithm, program and instruction means." We find that all the claims include the feature that a hall call behind the advanced position of the elevator car is cleared and reassigned. In our view this agrees with the disclosed elevator strategy and the claims should be considered acceptable under Section 2.

We note the steps of Applicant's described strategy as shown in figure 6 of this application correspond identically to the strategy disclosed in Winkler and shown by Winkler's figure 6. We do not, however, hold the view that Winkler's copending application should serve as illustrating what is known, in the patent sense of Section 28 of the Patent Act, in order to reject this application. Furthermore, under the Patent Act it is permissible to file one application disclosing and claiming several inventions, and thereafter file divisional applications each claiming a different invention from the parent application (and each other) and eventually obtain a patent for each invention, provided they all conform with all the conditions of the Patent Act. We see no difference in effect between the above provisions, and the procedure Applicant has followed in attempting to patent different inventions.

In the situation before us Westinghouse Electric Corporation filed two applications on the same day. The first (Winkler) disclosed several inventions and claimed one of them; the second (this Applicant) claims and discloses one of the inventions not claimed in the first. We do not find in Winkler's claims a recitation of the arrangement to scan behind the advanced position of a car and to clear and reassign any hall call so found behind the car. We see no reason therefore to reject the claims in this application as being known merely because the Westinghouse Electric Corporation, on the same day, filed two applications by different inventors claiming different inventions, even though both applications disclose the two different inventions.

In summary, we are not able to support the rejection of this application in view of Winkler's copending application filed on the same day as this application, nor in view of the Winkler United States patent which issued after Applicant's filing date. It may be in this case the Examiner was attempting to show that this application defines no inventive matter different from the copending application. In any event, the Board considers a different elevator strategy is being claimed in this application from that in Winkler.

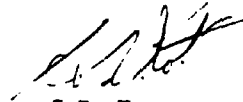
We recommend that the rejection of the application and claims for being directed to non-patentable subject matter be withdrawn and the application returned for normal prosecution.



A. McDonough
Chairman
Patent Appeal Board



M.G. Brown
Assistant Chairman



S.D. Kot
Member

I concur with the findings and the recommendation of the Patent Appeal Board. Accordingly, I withdraw the Final Action and I remand the application to the Examiner for prosecution consistent with the recommendation.



J.E.A. Gariépy
Commissioner of Patents

Agent for Applicant

McConnell & Fox
Box 510
Hamilton, Ont.

Dated at Hull, Quebec
this 6th. day of May, 1985