COMMISSIONER'S DECISION

NON-STATUTORY; S2: The elevator system provided an elevator service to a special floor in a service configuration, not attainable by previous systems, and was considered allowable in view of Schlumberger. Rejection withdrawn.

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This decision deals with Applicant's request for review by the Commissioner of Patents of the Final Action on application 299,518 (Class 364-2) assigned to Westinghouse Electric Corporation entitled ELEVATOR SYSTEM. The inventor is Robert C. MacDonald. 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.

The application relates to an elevator system and a strategy to service one of the floors designated a special floor and provide a priority service to it. The strategy may be connected into an existing elevator system and responds to calls from switches at the main floor and the special floor. It selects from the cars assigned to service the special floor, the closest car not in service and not assigned by the system processor or by other demands. It also determines if the special floor is in the upper half of the building and if so gives up calls priority, whereas if in the lower half down halls receive priority.

In figure 6, reproduced as follows, Applicant's system is placed to permit a signal to pass from step 605 to 606 of the system described in United States patent 3,851,733, issued to Westinghouse Electric Corporation, and from step 605 to 604 for assignment. The operation from step 605 advances to the first step 60 of Applicant's system where the special and main floor numbers are stored, and then to step 62 which determines if there is an up or down hall call at the special floor. If none exists, the signal passes to step 64 and if there is no setting for the main floor, the signal continues to step 606. If step 64 finds the main floor placed a demand for the special floor, Applicant's particular strategy selects from the cars assigned to service the special floor, the closest car not in service

and not assigned by the system processor or by other demands. If no car is found the signal passes to step 606.

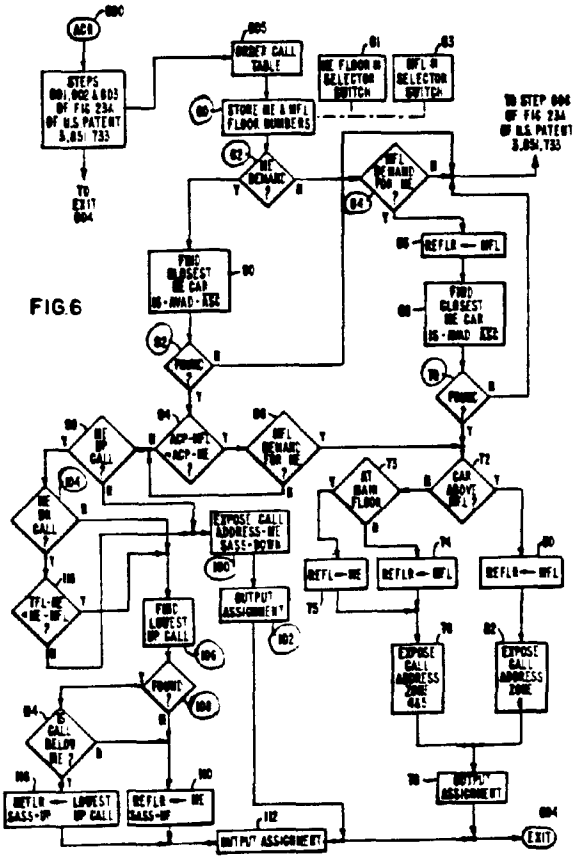

FIG.6

When a car is found at 70, a determination is made whether the car is above the main floor 72 or at the main floor 73, and according to the findings an appropriate assignment is made and sent to step 604.

Returning to step 62, if a demand is found at the special floor, step 90 carries out Applicant's particular strategy, and if no car is found at 92 the signal passes to 606. However, when a car is found, the position of the car relative to the main floor is checked. If the car is closer to the main floor, and there is a main floor demand for the special floor, the signal passes to 72 for processing. If the car is closer to the special floor and there is no up call an assignment passes via steps 100, 102 to

step 604. Should an up call be found at 98 a check for a down call is made at 104 and if none is found the signal is processed through step 106 and then 108, after which it may proceed by one of two paths before exit at 604.

Should an up and down call be found at 104, step 118 determines the location of the special floor. If the special floor is located in the upper half, the signal passes to steps 106, 108 etc. to 604 to serve the up hall call, but if the special floor is in the lower half, the signal proceeds to steps 118, 100, 102 to exit at 604 to serve the down hall call.

In the Final Action, the Examiner rejected the application for failure to disclose any novel apparatus or new electronic circuit to enable a person skilled in the art to carry out the strategies defined in the claims. He referred to one of the criteria stated in a decision by the Appeal Board that if the novelty lies solely in a program, then claims to a computer programmed in a novel manner are not directed to patentable subject matter. The Examiner cited no prior art to show the claims were directed to a known elevator system. He said, in part:

> ...
>
> ...the novelty of applicant's elevator system lies solely in the programs implemented by the known programmable system processor to operate the known elevator system in a novel way as defined in claims 1 to 10
>
> ...

In his argument, Applicant urged that his system is clearly an elevator system, and his claims are not directed to a computer nor a computer programmed in a manner expressed in any and all modes. He suggested that a person skilled in the art would find sufficient information in the application to arrange the elevator system set out in the claims. He also referred to a United States Supreme Court decision published March 2, 1981, which is before the decision in Schlumberger Canada Ltd. v The Commissioner of Patents 56 CPR at 204 (1981).

The issue before the Board is whether or not the application is directed to patentable subject matter in view of Sections 2 and 36(1) of the Patent Act. Claim 1 reads:

> A method of providing elevator service for a special floor of a building, which special floor is located between the top and bottom floors, comprising the steps of:
>
> providing means for registering up and down hall calls from the special floor,
>
> determining when registered up and down hall calls coexist from the special floor;
>
> and giving a predetermined one of such coexisting hall calls priority over the other, according to the location of the special floor in the building,
>
> said step of giving priority to a predetermined one of coexisting hall calls at the special floor including the steps of giving the up hall call priority over the down hall call when the special floor is located in the upper one-half of the building, and giving the down hall call priority over the up hall call when the special floor is located in the lower one-half of the building.

We find guidance in considering the issue before us, in the Federal Court decision in Schlumberger, supra. We note the decision was not available to assist either the Examiner or the Applicant when the Final Action was taken. In reaching his decision on computer-related subject matter, Pratte J. had these 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 learn from the application that the subject matter is directed towards a new strategy that may be placed in an elevator system to obtain a service to a designated special floor between the uppermost and main floors of a building. The application refers to elevator systems disclosed in United States patents assigned to Applicant and says service to a special floor was not obtainable by those systems. Further, we find the claims are directed to the method and means of obtaining an elevator system operating with the new strategy so that the special floor receives priority based on whether it is in the upper or lower half of the building relative to the hall calls. We

see in the claimed elevator arrangement that more than an algorithm or a program is presented. In our view, Applicant's discovery pertains to an elevator service to a special floor regardless of its position between the top and bottom floors. In our view, incorporation of the new strategy produces a kind of elevator service that may not be derived from the previous systems referred to by Applicant. We are persuaded the "what" discovered by Applicant lies not merely in a program but in the kind of operation brought to the elevator system. We consider Applicant's enhanced elevator system is the kind of subject matter that may be patented under Section 2 of the Patent Act.

We turn to the Examiner's rejection of the disclosure on the ground of insufficiency. Applicant argued his specification is sufficient to enable a person skilled in the art to arrange the new elevator system in the manner defined by the claims. It appears from the disclosure that by following the steps outlined and using the known systems that an acceptable method and means would be available to a person skilled in the art to practice the system described. On the basis of the reasons and evidence advanced by the Examiner, we are not prepared to refuse the application. We find the strategy shown in figure 6 is different from any claimed in the above previous systems and is sufficiently described.

We recommend the rejection of the application under Section 2 of the Act for disclosing and claiming non-statutory subject matter, and under Section 36(1) of the Act for insufficiency of disclosure, be withdrawn.

A. McDonough
Chairman, Patent Appeal Board

M.G. Brown
Assistant Chairman

S.D. Kot
Member

I concur in 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.H.A. Gariépy
Commissioner of Patents

Agent for Applicant

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