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**Datasheet for the decision
of 26 September 2018**

Case Number: T 1203/13 - 3.5.02

Application Number: 05807583.9

Publication Number: 1738341

IPC: G08G5/04

Language of the proceedings: EN

Title of invention:

Systems and methods employing a collision avoidance system to enhance pilot awareness

Applicant:

Aviation Communication & Surveillance Systems, LLC

Relevant legal provisions:

EPC Art. 123(2)

RPBA Art. 12(4)

Keyword:

Amendments - main request - allowable (no)

Auxiliary requests - admitted (no)



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Case Number: T 1203/13 - 3.5.02

D E C I S I O N
of Technical Board of Appeal 3.5.02
of 26 September 2018

Appellant: Aviation Communication & Surveillance Systems,
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 6 December 2012
refusing European patent application No.
05807583.9 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman R. Lord
Members: H. Bronold
J. Hoppe

Summary of Facts and Submissions

- I. The appeal lies from the decision of the examining division to refuse European patent application No. 05 807 583.9.
- II. The appellant (patent applicant) requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims of the main request, or if that was not possible, on the basis of the claims of the first or second auxiliary request, all filed together with the statement setting out the grounds of appeal.
- III. The following document cited in the proceedings before the examining division is relevant for this decision:

D1: WO03/060855 A1
- IV. In a communication under Article 15(1) RPBA the board had informed the appellant that it tended to the opinion that the subject-matter of the main request was inadmissibly amended and is not patentable and that the first and second auxiliary requests were directed to diverging subject-matter and should therefore not be admitted into the proceedings.
- V. With a fax received on 24 September 2018 the appellant informed the board that they would not attend the oral proceedings.
- VI. Oral proceedings before the board were held on 26 September 2018 in the absence of the appellant.

VII. Claim 1 of the main request reads as follows:

"A method of employing a CAS (Collision Avoidance System) (12) for an aircraft (10A) of an aircraft formation (14) to distinguish between other members (10B to 10D) and a nonmember (16) of the formation (14), comprising the steps of:

a) detecting (34) with a computer unit (20) of CAS (12) other formation member aircraft (10B-10D) and nonmember aircraft (16),

b) determining (36) with computer unit (20) of CAS (12) whether detected aircraft are members of formation (14), wherein the process passes to step c) for nonmember aircraft (16) and to step e) for formation members (10B to 10D),

c) determining (38) with computer unit (20) of CAS (12) whether a predefined condition is met for nonmember aircraft (16), wherein, the process passes to step a) when nonmember aircraft (16) has not met the predefined condition and to step d) when such a condition is met,

d) providing (40) a nonmember aircraft alert to signify that nonmember aircraft (16) has met a predefined condition,

e) determining (42) with computer unit (20) of CAS (12) whether aircraft is in formation,

f) determining (44) with computer unit (20) of CAS (12) whether one or more of the other formation member aircraft (10B-10D) has attained one or more of a predefined spatial condition and a predefined temporal

condition, wherein the process passes to step a) when neither a predefined spatial condition, nor a predefined temporal condition is met and to step g) when one or both conditions are met, and

g) providing (46) a formation member aircraft alert in response to a signal provided by computer unit (20) of CAS (12) to indicate to the occupant(s) of formation member aircraft (10A) that one or more of aircraft 10B-10D has attained one or more of a predefined spatial condition and a predefined temporal condition."

VIII. Claim 1 of the first auxiliary request relates to "A method of employing a CAS (Collision Avoidance System) (12) of a tanker aircraft that is engaged in an airborne refueling operation with a receiver aircraft".

IX. Claim 1 of the second auxiliary request relates to "A method of employing a CAS (Collision Avoidance System) (12) of [sic] to enhance the awareness of the operation of CAS 12 for the occupant(s) of aircraft (10)".

X. The appellant did not reply to the board's preliminary opinion on inadmissible amendments of the main request or admissibility of the first and second auxiliary requests as set out in the above mentioned communication under Article 15(1) RPBA.

Reasons for the Decision

1. The appeal is admissible.

2. Main request - Amendments (Article 123(2) EPC)

In steps a) to c), e) and f) of the method according to claim 1 the expression "with computer unit (20) of CAS (12)" was added. However, according to the corresponding disclosure starting on page 6 of the description as originally filed (WO 2006/019422 A2), these steps are carried out by the "formation member aircraft 10A ... with computer unit (20) of CAS (12)".

Moreover, the process disclosed on page 6 of the description is also significantly more specific. For example:

- the CAS of formation member aircraft 10A is assumed to be in formation mode and formation members 10B to 10D need to broadcast identifying information;
- the predefined condition for non-member aircraft is defined to be a "condition that triggers a TA";
- the alert of step 40 is defined to be a traffic advisory (TA). The determination whether aircraft 10A is in formation is made based on range, bearing, elevation, etc;
- the consequence of step 42 (determine whether aircraft is in formation) has to be continuing

either with step 34 (detect other formation member aircraft or nonmember aircraft) or step 44 (determine attainment of predefined spatial condition or predefined temporal condition).

None of these aspects is included in claim 1 of the main request.

Further, in step e) the reference to aircraft 10A was deleted in the determination whether aircraft 10A is in formation. According to the original disclosure on page 7, lines 29 to 32, the formation member alert is not provided generally, as claimed, but only to the occupant(s) of formation member aircraft 10A.

Linguistically, all the parts of the original description, which the appellant indicates as the basis for these amendments, are defined as optional by using "may" as an auxiliary verb in each sentence. Nevertheless, the disclosure as a whole clearly defines a single embodiment without alternatives. Thus, in this context the use of the auxiliary verb "may" does not provide its literal effect, since if it did, all aspects of the described process would be optional, thereby rendering unclear what was to be considered as part of the embodiment.

The board therefore considers the subject-matter of claim 1 of the main request to constitute an inadmissible intermediate generalisation which contravenes Article 123(2) EPC.

3. Auxiliary requests (Article 12(4) RPBA)

The appellant did not file the first and second auxiliary request in the first instance. Thus, the contested decision is not based on the subject-matter of the first and second auxiliary requests. Further, the board could not identify any convergence in the subject-matter of the first and second auxiliary requests with the subject-matter of the main request. The main request relates to distinguishing between members and non-members of an aircraft formation.

The subject-matter of the first auxiliary request relates to airborne refuelling and the subject-matter of the second auxiliary request is directed to enhancing awareness of CAS operation.

Thus, these requests would lead the assessment in a completely different direction for the first time in appeal proceedings, contrary to the principle that appeal proceedings should be primarily concerned with examining the contested decision.

Should the appellant have wished to proceed with this diverging subject-matter, requests defining subject-matter of this nature should have been filed in the first instance proceedings, so that they could have been addressed in the decision of the examining division.

The board therefore exercises its discretion under Article 12(4) RPBA not to admit the first and second auxiliary requests into the proceedings.

4. Since, for the reasons indicated above, the only admissible request is not allowable, the appeal has to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



B. ter Heijden

R. Lord

Decision electronically authenticated