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**Datasheet for the decision
of 15 October 2019**

Case Number: T 2473/17 - 3.2.01

Application Number: 09010163.5

Publication Number: 2154067

IPC: B64D11/06

Language of the proceedings: EN

Title of invention:

Array of aircraft seats

Applicant:

American Airlines, Inc.

Headword:

Relevant legal provisions:

RPBA Art. 13(1)

EPC Art. 54

Keyword:

Admissibility of new main request (no)

Decisions cited:

Catchword:



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Case Number: T 2473/17 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 15 October 2019

Appellant: American Airlines, Inc.
(Applicant) 4333 Amon Carter Boulevard
Fort Worth TX 76155 (US)

Representative: Brooks, Nigel Samuel
Hill Hampton
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Petersfield, Hampshire GU32 1QN (GB)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted on 17 May 2017
refusing European patent application No.
09010163.5 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman G. Pricolo
Members: C. Narcisi
O. Loizou

Summary of Facts and Submissions

- I. European patent application No. 9 010 163.5 was refused by the decision of the Examining Division posted on 17 May 2017. An appeal was lodged against this decision by the Applicant in due form and in due time pursuant to Article 108 EPC.
- II. The Opposition Division held that the subject-matter of claim 1 was not novel over documents
D1: DE 10 2006 656 898 A1 and
D2: US 2003/218095.
- III. A summons to oral proceedings to be held on 13 June 2019 were issued on 17 July 2018. Further, with communication dated 8 April 2019, the Board expressed the preliminary opinion that the subject-matter of claim 1 of the Appellant's main request as filed with the statement of grounds of appeal was not novel over D1 and D2. Following a request for postponement by the Appellant, oral proceedings were rescheduled for 15 October 2019.
- IV. In preparation for the oral proceedings the Appellant filed, with letter dated 13 September 2019, amended Main, First and Second auxiliary requests, each request in a Version 1 and in a Version 2, respectively.
- V. Oral proceedings were held on 15 October 2019. The Appellant (Applicant) requested that the decision under appeal be set aside and that a patent be granted on the basis of the set of claims of the main request filed as amended second auxiliary request Version 1 during oral proceedings, all previous requests being withdrawn.

VI. Claim 1 reads as follows:

"An array of aircraft seats comprising :
two columns (8, 9) of seats (1) arranged for array
along an aircraft cabin on respective sides of a
longitudinal axis (10) of the array;
the seats having respective central axis (A),
the seats in each column having their central axis
angled with respect to the longitudinal axis,
the seats in one column (8, 9) being offset along the
longitudinal axis with respect to the corresponding
seats in the other column (9, 8), whereby the
intersections with the longitudinal axis of the central
axis of the seats of one column are interdigitated with
the intersections with the longitudinal axis of the
central axis of the seats of the other column and
minor, overlapping, inner-end portions (11) of any two
seats arranged for-and-aft of each other in one column
(8, 9) extending across the longitudinal axis from
their major portions at their intersections and an
intervening seat in the other column (9, 8) having a
minor, overlapping, inner-end portion extending
oppositely across the longitudinal axis from its major
portion at its intersection; and
a continuously curved serpentine divider (12) extending
generally along the longitudinal axis between the seats
of the two columns, following the extent of the minor
overlapping portions across the longitudinal axis,
dividers (7) between the seats, the serpentine divider
being comprised of successive longitudinal axis
portions (15) of the dividers between the seats and
bed side areas (18, 118) extending across the
longitudinal axis with the seats."

VII. The Appellant's arguments may be summarized as follows:

The Appellant's main and sole request should be admitted into the appeal proceedings since the subject-matter of claim 1 overcomes the objections of lack of novelty over D1. D1 does not disclose a "continuously curved serpentine divider (12)". In particular, the divider illustrated in D1 is not a continuously curved serpentine divider since it includes straight line portions or rectilinear portions.

Reasons for the Decision

1. The appeal is admissible.
2. The Appellant's main request was filed during oral proceedings after novelty over D1 was discussed in respect of all pending requests at the beginning of the oral proceedings, after deliberation of the Board, and after the Chairman informed the Appellant that the subject-matter of claim 1 of all requests - including the second auxiliary request Version 1, filed with letter dated 13 September 2019 - lacked novelty in view of D1.

The Appellant filed the new main request in order to address the objection of lack of novelty over D1 by introducing the feature, in claim 1 of the previous second auxiliary request, Version 1, that the serpentine divider was "continuously curved".

According to Article 13(1) RPBA (Rules of Procedure of the Boards of Appeal), the Board has a discretionary power not to admit this request.

Considering

- i) that the new main request was filed to overcome the objection of lack of novelty over D1 (i.e. the ground of refusal for the application) and thus cannot be regarded as a reaction to an unexpected development in the proceedings,
- ii) that the added wording "continuously curved" has no explicit basis in the application as filed and, by the Appellant's own admission, can only be derived from the figures, and thus gives rise to issues under Article 123(2) and 84 EPC (in particular, what should be understood by "continuously curved" serpentine: with straight portions or not, with a constant radius of curvature or a variable one , etc.) which would require further discussion, and
- iii) that D1 (figure 2) apparently also shows a serpentine divider having a smooth, continuously curved shape, without cusps or angles introducing discontinuities, i.e. that D1 apparently discloses what can be regarded as a continuously curved serpentine divider (in its broadest interpretation, this term would not exclude straight line portions), whereby the amendment is not such as to *prima facie* overcome the objection of lack of novelty over D1 in respect of the previous second auxiliary request Version 1, the Board takes the view that, having regard to the current state of the proceedings and for reasons of procedural economy, the new main request is not to be admitted to the appeal proceedings pursuant to Article 13(1) RPBA.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



A. Vottner

G. Pricolo

Decision electronically authenticated