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**Datasheet for the decision
of 15 October 2024**

Case Number: T 0781/22 - 3.2.01

Application Number: 17174943.5

Publication Number: 3260371

IPC: B64D11/06

Language of the proceedings: EN

Title of invention:

AIRCRAFT PASSENGER SUITE SEATING ARRANGEMENT

Patent Proprietor:

B/E Aerospace, Inc.

Opponent:

Leeming, John Gerard

Headword:

Relevant legal provisions:

EPC Art. 76(1), 83, 84, 52(1), 54, 56
RPBA 2020 Art. 12(6)

Keyword:

Divisional application - main request - extension beyond the content of the earlier application as filed (yes) - auxiliary request - subject-matter extends beyond content of earlier application (no)

Sufficiency of disclosure - auxiliary request (yes)

Claims - clarity - auxiliary request (yes)

Novelty - auxiliary request (yes)

Inventive step - auxiliary request (yes)

Late-filed objection - should have been submitted in first-instance proceedings (yes) - circumstances of appeal case justify admittance (no)

Procedural violation (no)

Reimbursement of appeal fee (no)

Decisions cited:

Catchword:



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Case Number: T 0781/22 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 15 October 2024

Appellant: B/E Aerospace, Inc.
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
27 January 2022 concerning maintenance of the
European Patent No. 3260371 in amended form.**

Composition of the Board:

Chairwoman O. Loizou
Members: V. Vinci
M. Geisenhofer

Summary of Facts and Submissions

- I. Appeals were filed by the patent proprietor and the opponent against the interlocutory decision of the opposition division dated 16 November 2021 maintaining the European patent N° 3 260 371 in amended form.

The opposition division found that the ground for opposition pursuant Article 100(c) in view of Article 76(1) EPC was prejudicial to the maintenance of the patent as granted and decided to maintain the patent in amended form according to the auxiliary request 1 filed during oral proceedings. Novelty and inventive step within the meaning of Article 52(1) in combination with Articles 54 and 56 EPC respectively were assessed, among others, in view of the following prior art:

D1: WO 2005/080196 A1
D3: WO 2010/018367 A2
D6: WO 2010/131014 A1
D7: WO 03/013903 A1
D8: US 2003/0218095 A1
D9: US 2005/0189804 A1
D11: EP 2 879 907 A1 and WO 2014/022484 A1

- II. With a communication pursuant to Article 15(1) RPBA dated 14 June 2024 the Board informed the parties of its preliminary, non-binding assessment of the appeal.

Oral proceedings pursuant to Article 116 EPC were held before the Board on 15 October 2024 by videoconference.

- III. The final requests of the parties were the following:

The appellant (patent proprietor) requested that the

decision under appeal be set aside and that the patent be maintained as granted (main request) or, in the alternative, that the appeal of the appellant (opponent) be dismissed and hence that the patent be maintained according to the auxiliary request 1 dated 16 November 2021 allowed by the opposition division, or that the patent be maintained according to one of the auxiliary requests 2 to 8 filed with the statement of grounds of appeal.

The appellant (opponent) requested that the interlocutory decision of the opposition division be set aside and that the patent be revoked. Furthermore, the appellant (opponent) requested that the appeal fee be reimbursed due to an alleged substantial procedural violation affecting the first instance proceedings.

Independent claim 1 of the patent as granted reads as follows:

"An aircraft passenger suite seating arrangement for use in an aircraft having a longitudinal axis, comprising:

a first passenger suite (20a) including a seating area (26) and a living area (30) positioned to the side of the seating area, the seating area including a seat (28) and the living area including at least one passenger amenity;

a second passenger suite (22a) longitudinally adjacent the first passenger suite (20a) and including a seating area (26) and a living area (30) positioned to the side of the seating area, the seating area including a seat (28) and the living area including at least one passenger amenity, the living area having an entrance

to the seating area from an aisle being provided through the living area, and the first and second passenger suites separated by a shared privacy wall (24), and the seats in the first and second passenger suites arranged facing each other and laterally offset to one another with respect to the longitudinal axis;

a third passenger suite (20b) laterally adjacent the first passenger suite (20a) and including a seating area and a living area positioned to the side of the seating area, the seating area including a seat and the living area including at least one passenger amenity, the living areas of the first and third passenger suites separated by a shared privacy wall and the seats in the first and third passenger suites arranged facing in the same direction; and

a fourth passenger suite (22b) longitudinally adjacent the third passenger suite (20b) and laterally adjacent the second passenger suite (22a) , the fourth passenger suite including a seating area and a living area positioned to the side of the seating area, the seating area including a seat and the living area including at least one passenger amenity, the living area having an entrance to the seating area from an aisle being provided through the living area, wherein

the seating areas of the second and fourth passenger suites are separated by a shared privacy wall (24,32) and the seats in the second and fourth passenger suites are arranged facing in the same direction."

Independent claim 1 of the patent as maintained by the opposition division reads as follows:

"An aircraft passenger suite seating arrangement for

use in an aircraft having a longitudinal axis, comprising:

a first passenger suite (20a) including a seating area (26) and a living area (30) positioned to the side of the seating area, the seating area including a seat and the living area including at least one passenger amenity, wherein the entrance to the first suite is through the seating area of the first suite;

a second passenger suite (22a) longitudinally adjacent the first passenger suite (20a) and including a seating area (26) and a living area (30) positioned to the side of the seating area, the seating area including a seat (28) and the living area including at least one passenger amenity, the living area having an entrance to the seating area from an aisle being provided through the living area, and the first and second passenger suites separated by a shared privacy wall (24) separating the seating area of the first suite from the living area of the second suite and the living area of the first suite from the seating area of the second suite, and the seats in the first and second passenger suites arranged facing each other and laterally offset to one another with respect to the longitudinal axis;

a third passenger suite (20b) laterally adjacent the first passenger suite and is a mirror image of the first passenger suite (20a) and including a seating area and a living area positioned to the side of the seating area, the seating area including a seat and the living area including at least one passenger amenity, the living areas of the first and third passenger suites separated by a shared privacy wall and the seats in the first and third passenger suites arranged facing

in the same direction; and

a fourth passenger suite (22b) longitudinally adjacent the third passenger suite and laterally adjacent the second passenger suite and is a mirror image of the second passenger suite (22a), the fourth passenger suite including a seating area and a living area positioned to the side of the seating area, the seating area including a seat and the living area including at least one passenger amenity, the living area having an entrance to the seating area from an aisle being provided through the living area, wherein

the seating areas of the second and fourth passenger suites are separated by a shared privacy wall (24,32) and the third and fourth passenger suites separated by a shared privacy wall separating the seating area of the third suite from the living area of the fourth suite and the living area of the third suite from the seating area of the fourth suite and the seats in the second and fourth passenger suites are arranged facing in the same direction,

wherein the seats of the first, second, third and fourth passenger suites are configured to achieve horizontal bed positions."

Reasons for the Decision

APPEAL OF THE PATENT PROPRIETOR - PATENT AS GRANTED

Article 100(c)EPC

1. The ground for opposition pursuant to Article 100(c) in view of Article 76(1) EPC is prejudicial to the maintenance of the patent as granted as correctly found by the opposition division.
- 1.1 At the oral proceedings before the Board the parties relied in this regard on their arguments presented in writing and did not make any further submissions. Since the parties did neither contest nor comment the preliminary opinion of the Board set out in the communication pursuant to Article 15(1) RPBA dated 14 June 2024, the Board, having considered all relevant aspects of this case, sees no reason to deviate from its preliminary opinion which is hereby incorporated as its final findings and repeated below.
- 1.2 The appellant (patent proprietor) contested in their statement of grounds of appeal the conclusion of the opposition division that the subject-matter of claim 1 as granted extends beyond the content of the earlier application WO 2013/142181 A1 as originally filed (Article 76(1) EPC).
- 1.3 The Board shares the view of the opposition division that the most closely related basis for the combination of features according to claim 1 as granted could be independent claim 7 in combination with dependent claims 9 to 11 and Figure 1 of the originally filed earlier application. However, the opposition division followed the opponent's assertion that some of the

amendments introduced in claim 1 as granted resulted in several unallowable intermediate generalisations of what was disclosed in originally filed claims 7, 9 and 11 of the earlier application, thus infringing Article 76(1) EPC.

The following features were, *inter alia*, under discussion:

Arrangement of the "*shared privacy wall*"

- 1.4 The provision and the arrangement of the privacy wall has been further specified in claim 1 as granted on the basis of the following wording of independent claim 7 of the originally filed parent application:

"wherein the first and second suits share a privacy wall separating the seating area of the first suite from the living area of the second suite and the living area of the first suite from the seating area of the second suite"

However, the features underlined above have been omitted in claim 1 as granted, this omission resulting in the opposition division's view in an unallowable intermediate generalisation infringing Article 76(1) EPC.

- 1.4.1 The appellant (patent proprietor) was of the opinion that the objected omission of these features resulted at the most in an allowable intermediate generalisation supported by paragraph [0010] to be read in the light of paragraph [0019] of the original parent application, wherein the privacy wall feature was presented without mentioning the omitted features objected to by the

appellant (opponent).

- 1.4.2 The Board does not agree and follows the view of the opposition division and the appellant (opponent) that the underlined features are inseparably linked to the definition of the geometrical arrangement of the suits. There is no basis in the originally filed parent application for omitting these features in claim 1. These features are in fact not only recited in independent claim 7 in combination with the shared privacy wall features introduced in claim 1 as granted, but are also presented in the same combination in paragraph [0044] and in Figure 1 of the originally filed parent application. Paragraph [0010] cited by the appellant (patent proprietor) in support of their view that the omitted features are disclosed as being optional contains a general statement merely reciting that adjacent suites share a privacy walls. This statement does not specifically relate to the privacy wall between the first and second suite which is the object of the amendment.

"Mirror Image"

- 1.5 A further amendment to claim 1 as granted under discussion is based on the following wording of dependent claim 11 of the originally filed parent application reading:

"wherein the living area of the first suite shares a privacy wall with a living area of a third suite that is laterally adjacent the first suite and is a mirror image of the first suite, and the seating area of the second suite shares a privacy wall with a seating area of a fourth suite that is laterally adjacent the second suite and is a mirror image of the second suite"

However, the "*mirror image*" features underlined above have been omitted in claim 1 as granted, this omission resulting in the opposition division's view in an unallowable intermediate generalisation infringing Article 76(1) EPC.

1.5.1 The appellant (patent proprietor) essentially argued that the omitted mirroring arrangement was inherent to the wording of claim 1 and therefore does not need to be specified in order to comply with the requirements of Article 76(1) EPC.

1.5.2 The Board does not agree:

Claim 1 as granted, in the absence of an explicit definition of a symmetrical design of the four suites, does not provide any information on how the suites shall be formed. The combination of features as presented in above cited portion of original dependent claim 11 is also disclosed in paragraph [0046] and shown in Figure 1 of the originally filed parent application. The Board concurs with the opposition division and the appellant (opponent) that the expression "*mirror image*" does not only encompass information describing positional and orientational aspects that may be indeed inherent to the wording of claim 1 read as a whole, but that it implies further information as for example that the first and third suites have the same size, shape and structure, which are now omitted in claim 1. Therefore, in accordance with the findings of the opposition division, the omission of the "*mirror imagine*" features in claim 1 as granted results in an unsupported and hence unallowable intermediate generalisation of the invention as

disclosed in the originally filed parent application.

- 1.6 In view of the above and irrespective of the assessment of the further issues raised under Article 76(1) EPC by the opposition division and of the other substantial objections raised by the appellant (opponent), the main request is not allowable.

The patent proprietor's appeal hence is to be dismissed.

APPEAL OF THE OPPONENT - PATENT AS MAINTAINED BY THE OPPOSITION DIVISION

2. The appeal of the appellant (opponent) is directed against the decision of the opposition division to maintain the patent in amended form according to the auxiliary request 1 filed during oral proceedings before the opposition division. The opposition division held that auxiliary request 1 fulfils all requirements of the EPC.
- 2.1 At the appeal oral proceedings before the Board the parties relied regarding the alleged procedural violation and the objections raised under Articles 83, 84, 76(1) and 54 EPC by the appellant (opponent) on the arguments presented in writing and did not make any further submission. Also because the parties did neither contest nor comment the preliminary opinion of the Board regarding the alleged procedural violation and the objections raised under Articles 83, 84, 76(1) and 54 EPC by the appellant (opponent) as set out in the communication pursuant to Article 15(1) RPBA dated 14 June 2024, the Board, having considered all relevant aspects of this case, sees no reason to deviate from said opinion which is hereby incorporated as its final

findings and repeated below.

Alleged Procedural Violation

3. The appellant (opponent) put forward that although the ground for opposition pursuant to Article 100 (b) EPC was not discussed at the oral proceedings in respect of granted claim 1, it was dealt with and decided upon in favour of the appellant (patent proprietor) in the contested decision when discussing the auxiliary request with respect to the analogous requirements defined in Article 83 EPC, these circumstances amounting to a violation of the appellant's (opponent's) right to be heard.

3.1 The allegation of the appellant (opponent) cannot be followed:

The Board observes that the opposition division held that the ground for opposition pursuant to Article 100(c) in view of Article 76(1) EPC was prejudicial to the maintenance of the patent as granted. Therefore, a further additional discussion on compliance of the main request with Article 83 EPC was not required.

3.1.1 It was held that the main request did not comply with Article 100(c) EPC. Not discussing further outstanding issues (including a possible lack of sufficiency) was thus not to the detriment of the appellant (opponent) since the main request was dismissed by the opposition division as requested by the opponent.

From the minutes, and this is not contested by the appellant (opponent), sufficiency of disclosure was indeed discussed with the parties in respect of auxiliary request 1. Therefore, the opponent was given

several opportunities to present their comments on this issue (see last statement on page 4 of the minutes of the oral proceedings).

3.1.2 The sole objection under Article 83 EPC raised during the opposition proceedings and discussed at the oral proceedings related to the expression "*longitudinally adjacent*". This objection applies with the same arguments to both the main and auxiliary request and was discussed with the parties. The reasoning of the opposition division under point 18 of the decision dealing with the main request also applies to the auxiliary request 1.

3.2 In conclusion, based on the submission of the parties, on the content of the decision and the minutes of the oral proceedings, the Board has no doubt that the appellant (opponent) was adequately heard by the opposition division. Their right to be heard pursuant to Article 113 (1) EPC was not violated and hence no procedural violation occurred during the first instance proceedings.

Consequently, the request of the appellant (opponent) for reimbursement of the appeal fee is not justified and is refused.

Article 83 EPC: Sufficiency of Disclosure

4. The patent as maintained complies with the requirements of Article 83 EPC as correctly found by the opposition division.

4.1 This finding of the opposition division is contested by the appellant (opponent) with their appeal. The appellant (opponent) raised following issues:

"longitudinally adjacent"

4.2 The appellant (opponent) argued that the expression *"longitudinally adjacent"* in claim 1 was inherently unclear as to which positional constraints were put on the suites that were required to be longitudinally adjacent. In this regard it was observed that no definition or explanation of this expression could be found anywhere in the contested patent. They thus argued that due to this lack of information the person skilled in the art was not able to carry out the invention as defined in claim 1 of the patent as maintained without undue burden.

4.2.1 The Board does not agree:

Firstly, the formulation of the objection by the appellant (opponent) in the statement of grounds of appeal supports the view of the opposition division and that of the appellant (patent proprietor) that a clarity issue under Article 84 is raised rather than an issue under Article 83 EPC.

Irrespective of this, the Board concurs with the opposition division and the appellant (patent proprietor) that the person skilled in the art is able to realise a passenger suite seating arrangement according to claim 1 of the patent as maintained by looking at the embodiment shown in Figure 1 which clearly indicates what is meant by the expression *"longitudinally adjacent"* suites in the context of the patent, namely suites that are arranged adjacently along the longitudinal axis of the aircraft.

"Missing technical effect over the breath of the claim"

4.3 The appellant (opponent) further argued that all the possible variations of the specific embodiment shown in Figure 1 falling within the allegedly very broad scope of claim 1 as granted do not necessarily achieve the technical effect claimed by the contested patent (enhanced comfort and convenience for the passenger) with the consequence that the person skilled in the art would not be able to carry out the invention across the full scope of the claim.

4.3.1 However, this remained as a very general objection because in cases regarding the assessment of compliance with the requirements of Article 83 the opponent bears the burden of proof and in the case at hand has not put forward anything to this effect. The opponent did not identify an embodiment falling within the wording of claim 1 that does not allow to achieve the above identified effect. The mere allegation as such does not convince the Board.

"The living area having an entrance to the seating area from an aisle being provided through the living area"

4.4 The appellant (opponent) essentially argued that the seating area represented only a part of the suite and that the patent only provided guidance regarding the design of the entrance to the suite itself, but not to the seating area. The appellant (opponent) also criticized that when deciding on the capability of the person skilled in the art to implement this feature without undue burden, the opposition division unallowably reworded the claim in such a way to replace the expression *"from an aisle"* by the expression *"from the aisle"* and moved it back after the word *"entrance"*. Furthermore, the appellant (opponent) alleged that even

when reading the feature as proposed by the opposition division the person skilled in the art was not in the position to carry out the invention because what was claimed did not correspond to what was represented in Figure 1.

4.4.1 The appellant (patent proprietor) noted that this feature was objected under Article 83 EPC for the first time with the statement of grounds of appeal of the appellant (opponent) and requested that this objection be disregarded under Article 12(6) RPBA.

4.4.2 The Board notes that, contrary to the allegation of the appellant (opponent), the contested feature was already recited in claim 1 as granted. The Board does not thus see any circumstance - be it in the first instance proceedings or in the appeal proceedings - justifying the submission of this objection for the first time with the statement of grounds of appeal. Therefore, in exercise of the discretion provided by Article 12(6) RPBA, the Board decided to disregard this objection which could and should have been submitted before the department of the first instance.

Article 84 EPC: Clarity

5. The patent as maintained by the opposition division complies with the requirements of Article 84 EPC as correctly stated in the decision under appeal.

6. This finding of the opposition division was contested by the appellant (opponent) with their appeal. The following objections under Article 84 EPC already raised during the first instance proceedings were maintained by the appellant (opponent) with their statement of grounds of appeal.

No antecedent basis for the feature "*the entrance* "

6.1 The appellant (opponent) argued that the lack of an antecedent basis in claim 1 of the patent as maintained for the feature "*the entrance*" resulted in a lack of clarity under Article 84 EPC.

6.1.1 This is not convincing:

The Board follows the view of the opposition division and the appellant (patent proprietor) that the objected lack of antecedent basis for the feature "*entrance*" is justified by the fact that a person skilled in the art knows that an aircraft passenger suite is inherently always provided with an entrance allowing the passenger to reach the seating area. Therefore, this minor linguistical inconsistency does not affect the clarity of independent claim 1 of the patent as maintained.

Expression "*through the seating area*"

6.2 The appellant (opponent) alleged that this expression in claim 1 was ambiguous and thus unclear regarding the intended limitation introduced.

6.2.1 This is not convincing:

In fact, in the headline of section 5.3 of the statement of the grounds of appeal reference is made to the expression "*through the seating area*" while the arguments presented thereafter in support of the alleged lack of clarity of this expression relate to the wording "*the living area having an entrance to the seating area from an aisle being provided through the living area*" (emphasis added) which relates to the

second passenger suite and which does not contain the objected expression "*through the seating area*".

Moreover, the Board cannot identify a clarity issue when reading the claim as a whole and within its technical context. As correctly argued by the appellant (patent proprietor), the contested feature is understood by a person skilled in the art as simply meaning that the entrance is provided directly adjacent to the seating area. This arrangement results in a so-called "outboard seat" as clarified in the description (see paragraph [0027] of the contested patent) which may be taken into account to resolve any ambiguity which may affect the claims.

Grammatical issue with the wording "is a mirror image of the first passenger suite" (emphasis added)

- 6.3 The issue is of a mere grammatical nature and - as correctly stated by the opposition division - does not prevent the person skilled in the art, reading the claim with a mind willing to understand, to identify the correct formulation, wherein the verb "*is*" shall be replaced by the verb "*being*". No lack of clarity arises.

Expression "*mirror image*"

- 6.4 The appellant argued that - contrary to the findings of the opposition division - the limitations imposed by this expression are unclear even in view of the whole technical context of the claim, in particular because the plane with respect to which mirroring should be achieved was not defined.

6.4.1 This cannot be followed:

The Board concurs with the appellant (patent proprietor) that as this term was included in claim 9 as granted it is not open to clarity objections (following the general principles set in the decision G3/14 of the Enlarged Board of Appeal) . In any event, the Board shares the view of the opposition division that the person skilled in the art realizes that the mirror image within the meaning of claim 1 must be verified with respect to the imaginary plane containing the shared wall between the first and third suite and the second and forth suite. No lack of clarity can be identified.

Article 76(1) EPC

7. The patent as maintained meets the requirements of Article 76(1) EPC as correctly assessed by the opposition division.

7.1 The amendments introduced in independent claim 1 of the patent as maintained according to the auxiliary request 1 filed during oral proceedings overcome the objections discussed under points 1.4 to 1.5 above in the context of the main request. This is not contested.

As for claim 1 of the main request, the nearest basis for the amendments in claim 1 according to auxiliary request 1 is represented by claims 7 and 9 to 11 and Figure 1 of the originally filed earlier application.

7.2 The appellant (opponent) maintained the following objections under Article 76(1) EPC which in their view were justified by unsupported omissions and/or addition of technical features.

"suites bound by one or more privacy walls"

7.3 The appellant pointed out that the omission of this feature which was contained in claim 7 of the originally filed earlier application resulted in an unallowable intermediate generalisation infringing Article 76(1) EPC.

7.3.1 However, the Board shares the view of the opposition division and the appellant (patent proprietor) that the term *"bound"* does not necessarily imply a continuous boundary entirely encircling the suite's volume, whereby the omission of this feature in claim 1, in which 4 distinguished privacy walls partially delimiting the passenger suites are defined, does not add any new information.

"premium class"

7.4 The appellant maintained that the omission of this feature that was present in claim 7 of the originally filed earlier application resulted in an unallowable intermediate generalisation also infringing Article 76(1) EPC.

7.4.1 This cannot be followed:

The Board concurs with the opposition division and the appellant (patent proprietor) that the expression *"premium class"* qualifying the suite arrangement of independent claim 7 of the originally filed parent application does not inherently imply *"per se"* any additional technical information going beyond the information already inherently implied by the subject-matter of independent claim 1 which relates to a *"suite"*

seating arrangement", namely a seat arrangement with seats providing privacy to the neighbouring seats well distinguishable from an *"economy class"* seat arrangement without privacy. No unallowable intermediate generalisation thus occurs.

"the seats in the third and fourth suites facing each other and being laterally offset"

7.5 The appellant (opponent) alleged that when dependent claims 9 and 11 of the originally filed parent application has been incorporated in claim 1 of the auxiliary request 1, the limitation that *"the seats in the third and fourth suites facing each other and being laterally offset"* was unallowably omitted.

7.5.1 However, neither claim 9 nor claim 11 contain this wording. In any event the fact the the seats in the third and fourth suite face each other and are laterally offset follows from the arrangement of the first and second suites and from the mirroring requirement which are both defined in claim 1.

Addition of the feature *"facing in the same direction"*

7.6 The appellant (opponent) essentially argued that claim 9 of the parent application required that the seats in the first and second suites face each other and were laterally offset and claim 11 of the parent application required that the third suite was a mirror image of the first suite and the fourth suite was a mirror image of the second suite. From this limitations the appellant (opponent) assumed that the seats in the third and fourth suites must face each other and be laterally offset. It was concluded that as this information was missing from claim 1, the claim covered an undisclosed

arrangement where the seats in the third and fourth suites did not face each other and were not laterally offset.

7.6.1 This cannot be followed:

The Board concurs with the appellant (patent proprietor) that the arrangement of the seats of the first and third suite and of the second and fourth suite *"in the same direction"* directly follows from the face to face arrangement of the seats of the first and second suite disclosed in paragraphs [0020] and [0045] and in claim 9 of the originally filed earlier application read together with the mirrored arrangement of the suites disclosed in paragraphs [0009], [0022] and [0046] and recited claim 11. Furthermore, the Board is convinced that in the present case also Figure 1 can be used as a direct and unambiguous basis for the disclosure of the claimed orientation.

Basis for the feature *"the third suite is laterally adjacent the first suite and is a mirror image of the first suite"*

7.7 Contrary to the allegation of the appellant (opponent,) this feature is directly and unambiguously derivable from the wording of claim 11 read in the light of the arrangement of Figure 1 of the originally filed parent application.

Basis for the feature *"the living area [of the second suite] having an entrance to the seating area from an aisle being provided through the living area"*

7.7.1 Contrary to the allegation of the appellant (opponent), the Board shares the view of the appellant (patent

proprietor) that this feature is directly and unambiguously derivable from paragraphs [0021] and [0045] read together with Figure 1 of the originally filed parent application. In this respect the Board also agrees with the appellant (patent proprietor) that the expression "*aisle*" indicates the aisle of the aircraft from which the suite is accessible.

Basis for the expression "*longitudinally adjacent*"

7.8 The appellant (opponent) argued that there was no literal support for this expression in the originally filed earlier application, whereby its introduction in claim 1 of the patent as maintained infringed Article 76(1) EPC.

7.8.1 The Board concurs with the opposition division that this limitation and the arrangement of the suites resulting therefrom is directly and unambiguously derivable from paragraph [0044] read in combination with Figure 1 of the originally filed parent application.

Replacement of the expression "*next to*" by "*positioned to the side*"

7.9 The appellant (opponent) contested the conclusion of the opposition division that the term "*positioned to the side*" was supported by paragraph [0012] of the originally filed parent application.

7.9.1 However, in accordance with the opposition division and the appellant (patent proprietor), the Board does not see any additional undisclosed information introduced by the replacement of the expression "*next to*" by "*positioned to the side*" which is indeed supported by

paragraph [0012] and Figure 1 of the originally filed parent application.

Replacement of the term "*closet*" by the term "*garment stowage amenity*" in dependent claim 2

7.10 Contrary to the appellant's (opponent's) allegation, this amendment is supported by the statement in paragraph [0048] of the originally filed earlier application. The Board also concurs with the appellant (patent proprietor) that there is no substantial difference either in the construction nor from a functional point of view between a stowage amenity and a closet. Furthermore, as the first sentence of paragraph [0048] only discloses the provision of a closet associated with each suite, the Board does not see any reason why the features described in the following paragraphs relating to constructional details of the closet/stowage should be considered inextricably linked thereto in such a way that their omission in claim 2 would infringe Article 76(1) EPC as asserted by the appellant (opponent).

Finally, the positioning of the garment stowage amenity to the side of the seat, the omission of which is also objected by the appellant (opponent) under Article 76(1) EPC, is inherently implied by the feature of claim 1 according to which the living area (in which the amenity is provided) is located to the side of the seating area.

Disclosure of "*about an imaginary line between the first and second column*" introduced in dependent claim 7.

7.11 Contrary to the appellant's (opponent's) allegation, the Board is satisfied that paragraph [0046) and Figure 1 of the originally filed earlier application provide a sufficient basis for the introduction in dependent claim 7 of this feature.

Articles 52(1) and 54 EPC: Novelty

8. The subject-matter of claim 1 of the patent as maintained is novel within the meaning of Articles 52(1) and 54 EPC as correctly assessed by the opposition division.

8.1 The positive assessment of novelty in view of documents D3, D1, D7 and D11 of the opposition division is contested by the appellant (opponent) with their appeal.

Novelty over D3

8.2 The appellant (opponent) mapped the disputed features of claim 1 as maintained on an annotated and coloured version of Figure 1 of this prior art document which was submitted with the statement of grounds of appeal. The four passenger suites shown therein were numbered as 1 to 4 according to the appellant's (opponent's) reading of this prior art document.

8.2.1 However, the Board - contrary to the conclusions of the appellant (opponent) - concurs with the opposition division that at least the following features are not directly and unambiguously disclosed in D3:

(a) *"the entrance to the first suite is through the seating area of the first suite"*

As correctly observed by the the appellant (patent proprietor), an extended "access passage 24" is provided between the aisle of the aircraft and the seating area of the first suite, whereby the entrance to the first suite of the suite arrangement of D3 cannot be said to be "through the seating area" as alleged by the the appellant (opponent), but rather through said access passage (24) which does not belong to the seating area.

(b) *"the living area [of the second suite or of the fourth suite] having an entrance to the seating area from an aisle being provided through the living area"*

8.2.2 Regarding the alleged disclosure of this feature in D3, and as convincingly explained by the opposition division in the decision under appeal and by the appellant (patent proprietor) in their reply, the conclusions of the appellant (opponent) are based on an arbitrary and inconsistent reading/assignment of the "living areas" of the second and fourth suite in Figure 1 of D3. The allegation of the appellant (opponent) that feature (b) could be read in D3 derives from such an incorrect reading and mapping of features in Figure 1 of D3 and cannot thus be followed.

(c) *"the seats in the first and third passenger suites are arranged facing in the same direction", and*

(d) *"the seats in the second and fourth passenger suites are arranged facing in the same direction"*

8.2.3 The appellant (opponent) expressed the view that the first and third passenger suites faced both in the same inward direction and that the second and fourth suites faced both in the same outward direction, where the

terms inward and outward were referred to the median plane of the aircraft. Based on this interpretation of the term "*same direction*" the appellant (opponent) concluded that the first and third suites and the second and fourth suites of the suite arrangement of D3 also faced in the same direction as required by claim 1, be this the inward or the outward direction respectively.

8.2.4 This argument cannot be followed:

As convincingly explained by the opposition division and the appellant (patent proprietor), two objects face in the same direction when they are oriented along the same line/direction or, at the most, along two parallel lines/directions. The seats of the first and third passenger suites and the seats of the second and fourth passenger suites of D3 are oriented according to two different outwardly diverging directions and according to two different inwardly converging directions respectively, and thus they cannot be said to face in the same direction. This conclusion applies also to the line of argument based on an alternative "*second mapping*" of the features of claim 1 with respect to document D3 proposed by the appellant (opponent) presented for the first time with the statement of grounds of appeal, and this irrespective of the admissibility objection raised by the appellant (patent proprietor) against this new line of argument.

8.2.5 The subject-matter of claim 1 of the patent as maintained differs hence from the seating arrangement known from D3 in that

- the entrance to the first suite is through the seating area of the first suite;

- *the living area [of the second suite or of the fourth suite] has an entrance to the seating area from an aisle being provided through the living area;*
- *the seats in the first and third passenger suites are arranged facing in the same direction; and*
- *the seats in the second and fourth passenger suites are arranged facing in the same direction.*

Novelty over D1

8.3 The appellant (opponent) referred to an annotated and coloured Figure 1 submitted with the statement of grounds of appeal and to Figure 5 of D1 and maintained that all the features of claim 1 of the patent as maintained can be directly and unambiguously derived therefore.

8.3.1 The Board does not agree:

As correctly stated by the opposition division, features (a) and (b) according to the labelling adopted under points 8.2.1 and 8.2.2 above cannot be directly and unambiguously read in D1. As already put forward in respect of the novelty assessment in view of D3, the Board, in accordance with the opposition division, considers the mapping of the features "*living area*" and "*seating area*" in Figure 1 of D1 arbitrary and inconsistent, this fact rendering the arguments of the appellant (opponent) moot. Furthermore, it cannot be directly and unambiguously derived from the disclosure of D1 that the seats of all the suites are also

(e) "*configured to achieve horizontal bed positions*"

as required by claim 1 of the patent as maintained. On

the contrary, the seating arrangement of D1 all comprises a chair (31) that can be folded away to provide space for a separate bed (29) that is foldable between a storage position in the end wall and a horizontal sleeping position within the compartment space (cf. e. g. page 18, first paragraph). It is hence not intended that the chair of D3 achieves at any time a horizontal bed position but it is either in a seating position or in a folded-away position.

8.3.2 The subject-matter of claim 1 of the patent as maintained differs hence from the seating arrangement known from D1 in that

- the entrance to the first suite is through the seating area of the first suite;
- *the living area [of the second suite or of the fourth suite] has an entrance to the seating area from an aisle being provided through the living area;*
- *the seats of the first, second, third and fourth passenger suites are configured to achieve horizontal bed positions.*

Novelty over D7

8.4 The appellant (opponent) referred to an annotated and coloured Figure 1 of D7 submitted with the statement of grounds of appeal and read in this figures the combination of features of claim 1 of the patent as maintained.

8.4.1 However, the Board, in accordance with the opposition division and the appellant (patent proprietor) finds that features (c) and (d) as labelled above cannot be

read in this document for the same reason given in respect of D3.

8.4.2 The subject-matter of claim 1 of the patent as maintained differs hence from the seating arrangement known from D7 in that

- *the seats in the first and third passenger suites are arranged facing in the same direction; and*
- *the seats in the second and fourth passenger suites are arranged facing in the same direction.*

Novelty over D11

8.5 The appellant (opponent) considered document D11 as a prior art pursuant to Article 54(3) EPC due to the fact that the priority of the contested patent is in their opinion invalid. This view was followed by the opposition division that however, in accordance with the appellant (patent proprietor), found that also the priority of D11 was invalid, in particular regarding the relevant passage cited by the appellant (opponent) against the novelty of the feature of the "*mirroring suites*".

8.5.1 Irrespective of the above priority issues, the Board shares the narrow interpretation of the opposition division of the term "*mirror image*" (see point 1.5.2 above) with the consequence that it cannot directly and unambiguously be derived from D11 that the third suite and the fourth suite are mirror images of the first and second suite respectively as required by claim 1.

Articles 52(1) and 56 EPC: Inventive Step

9. The subject-matter of claim 1 of the patent as maintained involves an inventive step within the meaning of Articles 52(1) and 56 EPC as correctly assessed by the opposition division.

9.1 The appellant (opponent) contested this assessment of the opposition division and reiterated the lines of inventive step attack starting from documents D1, D6, D8 and D9 as closest prior art brought forward before the department of first instance. At the appeal oral proceedings and regarding the line of inventive step attack starting from D1, D6 and D8, the appellant (opponent) relied on their arguments presented in writing and did not make any further submission. Consequently, the Board has no reason to deviate from the preliminary assessment of this lines of arguments as presented in its communication pursuant to Article 15(1) RPBA dated 14 June 2024 that is herewith confirmed and reads as follows:

D1 as closest state of the art

9.2 This line of argument of the appellant (opponent) was based on the assumption that the only distinguishing feature with respect to D1 is that the seats of all four suites are "*configured to achieve horizontal bed positions*". However, as explained under point 8.3.1 above, document D1 fails to disclose a layout of the seating and living areas according to feature (a) and (b). The reasoning of the appellant (opponent) which is based on the incorrect assessment of the actual distinguishing features is moot and does not therefore render the subject-matter of claim 1 obvious when starting from D1 because it fails to consider the

further distinguishing features.

D6 as closest prior art

- 9.3 The appellant (opponent) referred to Figures 25c and 31 of this prior art document where however a mere 2-suite arrangement is disclosed. Consequently - contrary to the view of the appellant (opponent) - this prior art document fails to disclose at least the provision of additional third and fourth suites arranged as mirror images of the first and second suite respectively. The Board, in agreement with the reasoning of the opposition division and the arguments presented by the appellant (patent proprietor) cannot see any motivation for the person skilled in the art to implement the two-suites concept of D6 by adding two additional suites in the way suggested in claim 1. On the contrary, adding third and fourth suits facing in opposite direction would lead to a situation where half of the seats are oriented in a direction opposite to the direction of travel of the plane which is often perceived as unpleasant by travellers.

D8 as closest prior art

- 9.4 With reference to Figure 9 of this prior art document, the appellant (opponent) expressed the view that the only distinguishing feature with respect to claim 1 of the patent as maintained is that the first passenger suite was laterally adjacent to the third passenger suite and that the fourth passenger suite was laterally adjacent to the second passenger suite. Under this assumption, it was argued that the skilled person aiming to maximize the usage of the space in the aircraft cabin obviously considered to push together the two central columns in Figure 9 thereby suppressing

the middle aisle, and thereby arriving without inventive step to the subject-matter of claim 1.

These arguments are not convincing:

The Board shares the view of the appellant (patent proprietor) that there is no direct and unambiguous disclosure in D8 of "*living areas* " positioned to the side of the seating areas and including at least a passenger amenity as required by claim 1. Therefore, at least all the features implying the presence of said living areas and the shared walls separating the seating areas from the living areas are missing in D8. It follows that even if the person skilled in the art would consider to suppress the central aisle and push together the two central columns shown in Figure 9 of D8 in order to gain space, is at least doubtful, further major and hence non obvious structural modifications, adaptations and additions would be required to arrive to the subject-matter of claim 1 of the patent as maintained . In the Board's view, the skilled person would refrain from such a modification since this would require a total re-design of the plane's interior, the skilled person hence not arriving at the subject-matter of claim 1.

D9 as closest prior art

- 9.5 The appellant (opponent) pointed out both in writing and during oral proceedings that Figure 1 of D9 showed a configuration of seating and living areas that is very similar in shape to the embodiment of the patent in suit. It was also observed that the expression "*living area*" used in claim 1 is in itself very general to the extent that, in principle, it could cover any area of the suite accessible for a passenger. The appellant (opponent) argued that the only additional

technical requirement for the living areas of claim 1 is that they included amenities, wherein also a storage/stowage was covered by this term. Their attention was drawn to the passages (6) shown in Figures 1 and 2 of D9 which - in the appellant's (opponent's) view - clearly represented living areas having the useful functionality to provide both access to the suite and a storage space. It was thus alleged that the passages (6) represented living areas provided with amenities within the meaning of claim 1 (reference was made to paragraphs [0022] and [0025] of D9). In view of all the above, the appellant (opponent) concluded that - contrary to the assessment of the opposition division - the only distinguishing feature of claim 1 of the patent as maintained with respect to D9 was the face to face arrangement of the first and second and of the third and fourth passenger suites. The appellant (opponent) argued that the person skilled in the art had only 2 possibilities to arrange the suites in an aircraft, namely either facing in the same direction as shown in Figures 1 and 2 of D9 or face to face as required by claim 1, whereby the selection of this second alternative for the suite lay-out of D9 did not involve an inventive step. In support of this allegation, it was observed that in D9 the head end of the bed had the same shape as the foot end of the bed, whereby reversing the orientation of the seating area of the known suite arrangement did not require any constructional change. According to an alternative line of argument, the appellant (opponent) put forward that the person skilled in the art could introduce in the suite arrangement of D9 the well known design for the lie-flat beds of D9 where a main seat could be folded down to meet a static ottoman seat. This kind of lie-flat bed was suggested by any of documents D2, D3, D4, D5, D6, D7 and D8 and therefore its introduction in the

suite arrangement of D9 did not imply any inventive contribution. It was argued that by adopting this well known solution for the lie-beds in D9, there will be always seats facing each other according to claim 1 since - besides the main seats - also the ottomans of the lie-flat beds represented seating areas.

9.5.1 Also this line of inventive step attack is not convincing:

Firstly, the Board does not follow the view that the passages (6) in Figures 1 and 2 of D9 can be considered living areas provided with amenities within the meaning of the contested patent. Contrary to the assumption of the appellant (opponent) the functionality of providing access to the seating area of the suite associated with the passages (6) of D9 cannot be seen as an "amenity" in the sense that the person skilled in the art confers to this term in the technical context of the patent, namely a suite arrangement for an aircraft (see also paragraph [0030] of the patent). Furthermore, the Board is convinced that a passageway in an aircraft cannot have in the practice any storage functionality because, in view of security requirements, quick evacuation of the aircraft in case of emergency would be hindered by the presence of items obstructing the passage (6). Secondly, document D9 explicitly teaches to orient all the seats towards the front of the aircraft. In view of all above, starting from the arrangement suggested in D9, several fundamental constructional changes, adaptations and additions would be required to arrive to the subject-matter of claim 1 of the patent as maintained, namely it would be necessary (1) to completely redesign the known suite arrangement in order to provide living areas with amenities and (2) to reverse the orientation

of some of the seats in order to arrange the seats of the first and second suites and of the third and fourth suite in such a way to face each other, this last step going against the teaching of D9.

In view of all the above, the Board cannot see any motivation for the person skilled in the art to revise the fully different design concept underlying the suite seating arrangement of D9 to arrive - without inventive step - to the subject-matter of claim 1 of the patent as maintained.

Order

For these reasons it is decided that:

The appeals are dismissed.

The Registrar:

The Chairwoman:



M. Schalow

O. Loizou

Decision electronically authenticated