

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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THE BOEING COMPANY  
Petitioner

v.

SEYMOUR LEVINE  
Patent Owner

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Case No. IPR2015-01341  
U.S. Patent No. RE39,618

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**Petitioner's Reply to Patent Owner's Response**

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## I. Introduction

Patent Owner (“PO”) does not dispute that the heart of the challenged claims—real-time transmission of aircraft data to the ground for maintenance analysis—was well-known in the prior art. PO’s sole defense of the independent claims of the ’618 patent hinges on limitations, added during reissue, that the aircraft transmitter be “portable” or “positionable.” As it did in its Institution Decision, the Board should find these obvious in view of the prior art. The record establishes that, at the time of PO’s purported invention, standard aircraft transmitters were discrete devices capable of being removed for repair or replacement. This evidence satisfies the “portable/positionable” limitations.

To remove any doubt on this score, Petitioner submitted the declaration of Dr. Helfrick, attesting that “any transmitter used on an aircraft, and specifically a transmitter used in conjunction with an ACARS system, is necessarily ‘removable.’” Ex. 1042, ¶ 4. PO neither submitted a contrary expert opinion nor refuted Dr. Helfrick’s testimony in any way. Accordingly, the “portable/positionable” limitation cannot avoid a finding of unpatentability of independent claims 4, 5, 14 and 16 on Grounds 1 and 3.

Nor can PO defend the patentability of dependent claims 8-10 (the “position data” claims). As a threshold matter, under their broadest reasonable interpretation, these claims do not require any *use* of aircraft location data within

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