

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

THE BOEING COMPANY,
Petitioner,

v.

SEYMOUR LEVINE,
Patent Owner.

Case IPR2016-00023
Patent RE39,618

Before MICHAEL W. KIM, TRENTON A. WARD, and
DANIEL N. FISHMAN, *Administrative Patent Judges*.

WARD, *Administrative Patent Judge*.

DECISION

Denying Institution of *Inter Partes* Review
and Dismissing Motion for Joinder
35 U.S.C. §§ 315(c), 325(d); 37 C.F.R. §§ 42.122, 42.108

I. INTRODUCTION

A. Background

The Boeing Company (“Petitioner”) filed a Petition seeking to institute an *inter partes* review of claims 4, 5, 8, 9, 10, 14, and 16 (“the challenged claims”) of U.S. Patent No. RE39,618 (Ex. 1001, “the ’618 patent”) pursuant to 35 U.S.C. §§ 311–319. Paper 1 (“Pet.”). Seymour Levine (“Patent Owner”) filed a Preliminary Response. Paper 6 (“Prelim. Resp.”). After filing the Petition, Petitioner subsequently filed a Motion for Joinder, requesting joinder with an *inter partes* review trial currently pending before the Board, *The Boeing Company v. Levine*, Case IPR2015-01341. Paper 7 (“Joinder Motion”). Patent Owner filed an Opposition to Petitioner’s Motion for Joinder. Paper 8 (“Joinder Opposition”). We have statutory authority under 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted “unless . . . there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.”

Upon consideration of the Petition, Motion for Joinder, and the specific facts of this case, we exercise our discretion to deny review under 35 U.S.C. § 325(d). Because we determine that the Petition does not warrant institution, we are prohibited from granting, and thus dismiss as moot, the Motion for Joinder under 35 U.S.C. § 315(c).

B. Additional Proceedings

The parties indicated the ’618 patent is the subject of the following district court action: *Levine v. The Boeing Company*, No. 14-cv-1991 (W.D. Wash.). Pet. 1; Paper 5, 1. The ’618 patent is also the subject of an *inter partes* review trial currently pending before the Board, *The Boeing Company*

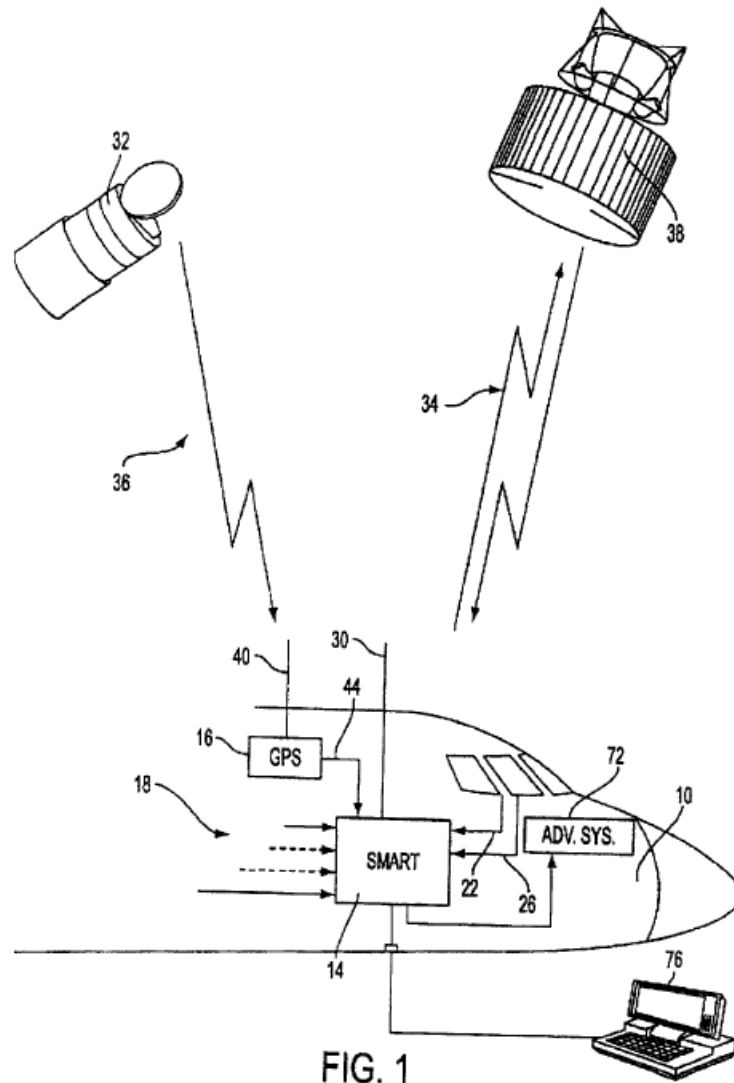
IPR2016-00023
Patent RE39,618

v. Levine, Case IPR2015-01341 (the “1341 IPR”). In that proceeding, we instituted review of claims 4, 5, 8, 9, 10, 14, and 16 of the ’618 patent, the same claims challenged in this proceeding, on December 21, 2015. 1341 IPR, Paper 10. Trial is currently ongoing in the 1341 IPR, with oral argument scheduled for September 14, 2016. 1341 IPR, Paper 24.

C. The ’618 Patent

The ’618 patent is titled “Remote, Aircraft, Global, Paperless Maintenance System” and generally relates to a system that monitors performance parameters and aircraft operational parameters, and broadcasts this information along with aircraft identification, audio, video, global positioning and altitude data, to a worldwide two-way RF network. Ex. 1001, Abstract. The ’618 patent discloses that the information is monitored and recorded at a remote, centralized location and analysis of this information allows identification of problems and generation of advisories. *Id.*

Figure 1 of the ’618 patent, reproduced below, illustrates an embodiment of the system described:



As shown above in Figure 1, the '618 patent discloses an aircraft 10 with Sensor Multiplexer Receiver & Transmitter (“SMART”) 14, which can receive aircraft performance and control data 18, acoustic data 22, video data 26, and information from GPS receiver system 16. *Id.* at 4:57–65. SMART 14 periodically samples the sensor signals 18, 22, 26, 44 and adds to each signal a sensor identification label, an aircraft identification label, and a configuration label. *Id.* at 5:1–5. Aircraft 10 equipped with SMART 14 transmits the sensor data over a UHF radio to communication satellite 38, which relays the data to Central Ground Based Processing Station

(“CGBS”) 42. *Id.* at 5:21–28. CGBS 42 includes processing station 62 for data analysis and problem simulation and advisory module 70 for generating aircraft advisories. *Id.* at 5:49–53.

D. Illustrative Claims

Claims 4 and 8 are illustrative of the claimed subject matter and are reproduced below.

4. An aircraft maintenance system for use on an aircraft having a flight data recorder, the maintenance system comprising:

a transmitter portable to be placed on an aircraft, said transmitter configured for transmission of digital aircraft performance data across a communication network while said aircraft is in flight;
and

a central station connected to said communication network configured to receive and analyze said digital aircraft performance data to generate maintenance advice for said aircraft while said aircraft is in flight,

wherein said digital aircraft performance data includes an identifier unique to a particular aircraft and a configuration label, and at least a portion of said digital aircraft performance data comprises data directed to the flight data recorder.

8. The aircraft maintenance system of claim 4 wherein said digital aircraft performance data includes aircraft position data directed to said flight data recorder.

E. The Asserted Grounds of Unpatentability

Petitioner challenges the patentability of the challenged claims of the '618 patent based on the following grounds, the same grounds as raised in the 1341 IPR:

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.