

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**C&D ZODIAC, INC.,**  
*Appellant*

v.

**B/E AEROSPACE, INC.,**  
*Appellee*

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2018-1693

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. IPR2017-  
01273.

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**C&D ZODIAC, INC.,**  
*Appellant*

v.

**B/E AEROSPACE, INC.,**  
*Appellee*

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2018-1694

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Appeal from the United States Patent and Trademark Office, Patent Trial and Appeal Board in No. IPR2017-01274.

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Before TARANTO, HUGHES, and STOLL, *Circuit Judges*.  
HUGHES, *Circuit Judge*.

### O R D E R

C&D Zodiac, Inc. appeals from the Patent Trial and Appeal Board's decisions denying its petitions to institute *inter partes* review and denying rehearing. Because we lack jurisdiction to review these non-institution decisions, we dismiss the appeals for lack of jurisdiction.

#### I.

C&D Zodiac petitioned to institute *inter partes* review of claims 1–12 of U.S. Patent No. 9,365,292 (“the ’292 patent”) and claims 1–6 of U.S. Patent No. 9,434,476 (“the ’476 patent”), which both relate to space-saving aircraft cabin enclosures, such as lavatories, closets, and galleys. For example, the claims in both patents recite an aircraft enclosure unit having a forward wall that is substantially not flat. The ’292 patent recites that the forward wall is adapted to provide “additional space” forward of the enclosure unit for a seat support to be positioned further aft in the cabin when compared with a position of the seat support if the forward wall was substantially flat. The ’476 patent similarly recites that the seat support can be positioned further aft in the cabin than if the cabin included another enclosure unit having a substantially flat front wall located in substantially the same position in the cabin as the forward wall (the “hypothetical enclosure unit limitation”).

The Board, acting on behalf of the Director of the Patent Office, issued decisions denying C&D Zodiac's petitions. The Board found that it was “unable to determine

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the metes and bounds” of the claim limitations. It further stated that “Petitioner has not provided sufficient information for a determination of the scope” of certain limitations, such as the “additional space” limitation of the ’292 patent and the “hypothetical enclosure unit limitation” of the ’476 patent, and, “therefore, we cannot conduct the necessary factual inquiry for determining whether the prior art meets [these] limitation[s].” The Board therefore was unable to conclude “that there is a reasonable likelihood that Petitioner would prevail” in its challenges to the claims.

C&D Zodiac sought rehearing of the rejection of both petitions, which was denied by the Board. C&D Zodiac then appealed. This court directed C&D Zodiac to show cause why its appeals should not be dismissed for lack of jurisdiction. On June 16, 2018, C&D Zodiac responded.

## II.

We conclude that C&D Zodiac’s appeals are outside of this court’s jurisdiction. Section 314(d) of title 35 of the U.S. Code states “[t]he determination by the Director whether to institute an inter partes review under this section shall be final and nonappealable.” That statutory bar on judicial review is clearly applicable to “the Director’s determinations closely related to the preliminary patentability determination” and “the exercise of discretion not to institute.” *Wi-Fi One, LLC v. Broadcom Corp.*, 878 F.3d 1364, 1373 (Fed. Cir. 2018) (en banc).

C&D Zodiac relies heavily on *Cuozzo Speed Technologies, LLC v. Lee*, 136 S. Ct. 2131 (2016). But that decision confirms, rather than undermines, the conclusion that we lack jurisdiction over C&D Zodiac’s challenges here. There, the Supreme Court determined that Congress intended to bar appellate review of institution decisions at least when a patent holder merely challenges the Board’s determination regarding whether the information presented in the petition shows that there is a reasonable

likelihood of success or “where a patent holder grounds its claim in a statute closely related to” the decision whether to institute *inter partes* review. *Id.* at 2142.

C&D Zodiac’s challenges to the Board’s decisions here fall comfortably within these categories. It contends in its response that the Board’s non-institution decisions were arbitrary and capricious because petitioners are not always required to define every claim term, “requiring the parties to propose a construction is contrary to controlling law,” and the Board instituted review on another patent that had a similar claim element.

We are also not persuaded by C&D Zodiac’s argument that the Board acted “outside its statutory limits by declining to institute review due to indefiniteness.” To the contrary, the Board did not find a patent claim term indefinite and did not refuse to institute on indefiniteness grounds. Rather, the Board concluded that C&D Zodiac failed to provide sufficient information in its petitions concerning the limitations of the claims to show that it was reasonably likely that the prior art references would have rendered the limitations obvious.\*

Accordingly,

IT IS ORDERED THAT:

- (1) The stay of the briefing schedule is lifted.
- (2) The appeals are dismissed.

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\* For these reasons, we would also deny mandamus to the extent that C&D Zodiac’s appeals could be construed as seeking such relief. *See In re Dominion Dealer Sols., LLC*, 749 F.3d 1379, 1381 (Fed. Cir. 2014) (denying mandamus based on the absence of a clear and indisputable right to relief in view of the statutory scheme precluding review of non-institution decisions).

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(3) Each side shall bear its own costs.

FOR THE COURT

/s/ Peter R. Marksteiner  
Peter R. Marksteiner  
Clerk of Court

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