

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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C&D ZODIAC, INC.,  
Petitioner,

v.

B/E AEROSPACE, INC.,  
Patent Owner.

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Case IPR2017-01273  
Patent 9,434,476 B2

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Before JENNIFER S. BISK, MICHAEL J. FITZPATRICK, and  
SCOTT A. DANIELS, *Administrative Patent Judges*.

BISK, *Administrative Patent Judge*.

DECISION

Denying Institution *Inter Partes* Review  
35 U.S.C. § 314, 37 C.F.R. §§ 42.4, 42.108

I. INTRODUCTION

A. BACKGROUND

C&D Zodiac, Inc. (“Petitioner”), filed a Petition (Paper 2, “Pet.”) to institute an *inter partes* review of claims 1–6 (the “challenged claims”) of U.S. Patent No. 9,434,476 B2 (Ex. 1001, “the ’476 patent”). 35 U.S.C. § 311. B/E Aerospace, Inc. (“Patent Owner”), timely filed a Preliminary

Response. Paper 7 (“Prelim. Resp.”).<sup>1</sup> Institution of an *inter partes* review is authorized by statute when “the information presented in the petition filed under section 311 and any response filed under section 313 shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a); 37 C.F.R. § 42.108.

For the reasons that follow, we decline to institute an *inter partes* review.

#### B. ASSERTED GROUNDS OF UNPATENTABILITY

Petitioner contends that the challenged claims are unpatentable under 35 U.S.C. § 103(a)<sup>2</sup> based on the following grounds (Pet. 10–79):

References	Claims challenged
Admitted Prior Art <sup>3</sup> and U.S. Patent No. 3,738,497 (Ex. 1005, “Betts”)	1–6
Admitted Prior Art and KLM Overhead Crew Rest Document (Ex. 1009, “KLM Crew Rest”) <sup>4</sup>	1–6

<sup>1</sup> Patent Owner filed two versions of the Preliminary Response: Paper 6, to which access is restricted to the parties and the Board; and Paper 7, a publicly available, redacted version of Paper 6. For purposes of this Decision, we refer only to Paper 7, the redacted version of the Preliminary Response.

<sup>2</sup> The Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112-29, took effect on March 18, 2013. Because the application from which the ’476 patent issued was filed before that date, our citations to Title 35 are to its pre-AIA version.

<sup>3</sup> Petitioner defines “Admitted Prior Art” as certain portions of the ’476 patent. Pet. 11–14 (citing Ex. 1001, Fig. 1, 1:24–26, 4:6–8).

<sup>4</sup> File history for U.S. Application serial No. 09/947,275, which issued as

### C. RELATED PROCEEDINGS

The parties have identified, as a related proceeding, the co-pending district court litigation of *B/E Aerospace, Inc. v. Zodiac Aerospace, Inc.*, Case No. 2:14-cv-01417 (E.D. Tex). Paper 5, 3; Pet. 2. Petitioner concurrently filed *inter partes* review proceedings IPR2017-01274, IPR2017-01275, and IPR2017-01276 challenging three related utility patents and PGR2017-00019 challenging a related design patent. Pet. 2.

In addition, Petitioner previously filed a Petition challenging Patent No. 8,590,838 (“the ’838 patent”) in IPR2014-00727, which resulted in a final written decision finding unpatentable claims 1, 3–7, 9, 10, 12–14, 16–19, 21, 22, 24–29, 31, and 33–37 of the ’838 patent. IPR2014-00727, Paper 65 (Oct. 26, 2015). On October 3, 2017, the Federal Circuit affirmed that decision. *B/E Aerospace, Inc. v. C&D Zodiac, Inc.*, 2017 WL 4387223 (Fed. Cir. Oct. 3, 2017). The ’476 is a continuation of application No. 14/043,500, which in turn is a continuation of application No. 13/089,063 that matured into the ’838 patent. Ex. 1001, [63]. The disclosure of the ’476 patent, therefore, is identical to that of the ’838 patent.

### D. THE ’476 PATENT

The ’476 patent relates to space-saving aircraft enclosures, including lavatories, closets and galleys. Ex. 1001, 1:17–23, 2:17–22. Figure 2 of the ’476 patent is reproduced below.

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U.S. Patent No. 6,520,451 to Moore and which file history contains a drawing and related description of a KLM Crew Rest. *See, e.g.*, Ex. 1009, 70. Petitioner terms the file history “the KLM Crew Rest Document.” Pet. 16. We employ the same nomenclature.

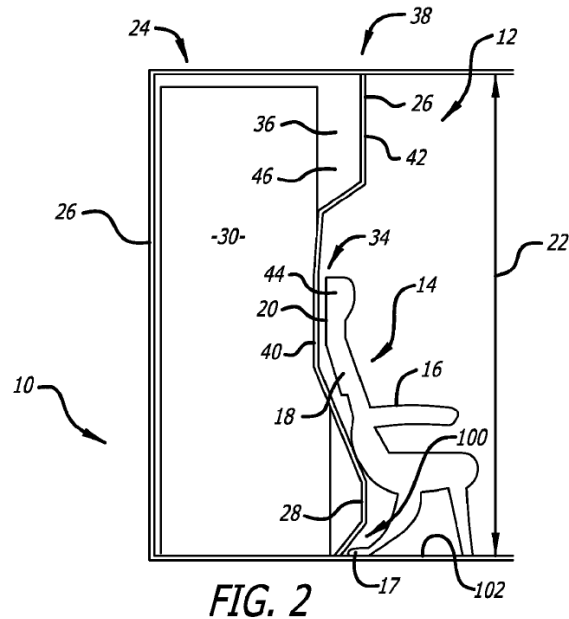


Figure 2, reproduced above, illustrates enclosure 10, such as a lavatory, positioned aft of aircraft cabin 12. Ex. 1001, 4:9–12, 4:17–24. Forward wall 28 of the lavatory is described as “substantially not flat in a vertical plane” and “disposed immediately aft of and adjacent to or abutting the exterior aft surface of” passenger seat 16. *Id.* at 4:24–34. In particular, the forward wall is shaped to provide recess 34, which accommodates the partially-reclined backrest of the passenger seat, as shown in Figure 2. *Id.* at 4:34–38. In addition, the forward wall is shaped to also provide lower recess 100, which accommodates “at least a portion of an aft-extending seat support 17.” *Id.* at 4:41–46.

The '476 patent contrasts the embodiment of Figure 2 with a prior art configuration shown in Figure 1, which is reproduced below.

**FIG. 1**  
(Prior Art)

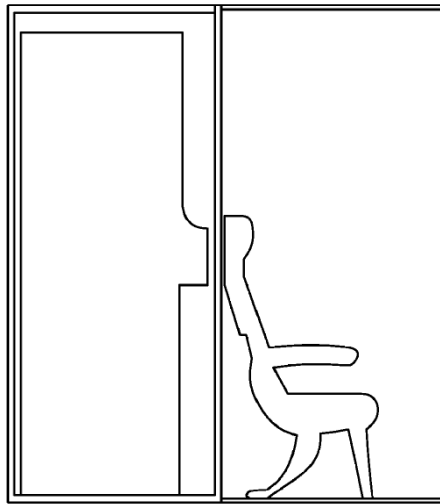


Figure 1, reproduced above, illustrates “a prior art installation of a lavatory immediately aft of and adjacent to an aircraft passenger seat.” Ex. 1001, 4:6–8.

#### E. THE CHALLENGED CLAIMS

Of the challenged claims, claims 1 and 2 are independent. Claim 1, which is illustrative, recites:

1. A method of retrofitting an aircraft to provide additional passenger seating in the cabin of said aircraft, the cabin including a passenger seat having a seat back with an exterior aft surface that is substantially not flat, a seat bottom, and a seat support that interfaces with the floor of the aircraft cabin and holds the seat bottom in an elevated position above the floor of the aircraft cabin, the method comprising the steps of:

installing an aircraft enclosure unit comprising

a forward wall, said forward wall being part of an outer boundary defining a single enclosed space that includes a toilet, said forward wall being substantially not flat and configured to receive a portion of the exterior aft surface of the seat back when the seat back is in an unreclined seat position;

wherein said forward wall is adapted to provide more space forward of the enclosure unit such that the seat support can be

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