

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

C&D ZODIAC, INC.,
Petitioner,

v.

B/E AEROSPACE, INC.,
Patent Owner.

Case IPR2017-01276
Patent 9,440,742 B2

Before JENNIFER S. BISK, SCOTT A. DANIELS, and
RICHARD H. MARSCHALL, *Administrative Patent Judges*.

MARSCHALL, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
35 U.S.C. § 318(a) and 37 C.F.R. § 42.73

I. INTRODUCTION

C&D Zodiac, Inc. (“Petitioner”), filed a petition to institute an *inter partes* review of claims 8 and 10–16 of U.S. Patent No. 9,440,742 B2 (Ex. 1001, “the ’742 patent”). Paper 2 (“Pet.”). 35 U.S.C. § 311. B/E Aerospace, Inc. (“Patent Owner”), filed a Preliminary Response. Papers 6, 7 (“Prelim. Resp.”).¹ Upon consideration of the Petition and Preliminary Response, we instituted an *inter partes* review pursuant to 35 U.S.C. § 314, as to claims 8 and 10–16. Paper 12 (“Inst. Dec.”).

Subsequent to institution, Patent Owner filed a Patent Owner Response (Paper 21, 22, “PO Resp.”)² and Petitioner filed a Reply to Patent Owner’s Response (Paper 28, “Reply”). Patent Owner filed a Motion to Exclude (Paper 34, “Mot. Exclude”), Petitioner filed an Opposition to Patent Owner’s Motion (Paper 37, “Opp.”), and Patent Owner filed a Reply (Paper 38, “PO Reply to Mot. Exclude”). Patent Owner also filed two unopposed Motions to Seal. Papers 8, 20.

On June 28, 2018, in response to the Board’s Orders instituting on Ground 2 based on the Supreme Court’s decision in *SAS Institute Inc. v. Iancu*, 138 S. Ct. 1348 (2018), Petitioner filed a Request for Partial Adverse Judgment against itself with respect to Ground 2, pursuant to 37 C.F.R. § 42.73(b). *See* Paper 30 (modifying institution decision to institute on all challenged grounds presented in Petition); Paper 33 (Petitioner’s Request for

¹ 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.

² Patent Owner filed two versions of the Patent Owner Response: Paper 21, to which access is restricted to the parties and the Board; and Paper 22, a publicly available, redacted version of Paper 21.

Partial Adverse Judgment as to Ground 2). We granted Petitioner's Request for Partial Adverse Judgment on July 5, 2018. Paper 36 (granting adverse judgment as to Ground 2).

On August 3, 2018, we held an oral hearing. Paper 40 ("Tr.").³

This Final Written Decision is entered pursuant to 35 U.S.C. § 318(a). For the reasons that follow, we determine that Petitioner has demonstrated by a preponderance of the evidence that claims 8 and 10–16 of the '742 patent are unpatentable.

A. Related Matters

Patent Owner asserted the '742 patent along with related patents, U.S. Patent Nos. 9,073,641, 9,365,292, 9,434,476, and D764,031, against Petitioner in *B/E Aerospace, Inc. v. Zodiac Aerospace, Inc.*, No. 2:14-cv-01417 (E.D. Tex.) (the "district court litigation"), that is currently stayed. Pet. 2; Paper 5, 2. All five of these patents claim priority to a U.S. application that issued as U.S. Patent No. 8,590,838 ("the '838 patent"), which patent was the subject of Case IPR2014-00727 between Petitioner and Patent Owner. In the final written decision in that case, the Board held that claims 1, 3–7, 9, 10, 12–14, 16–19, 21, 22, 24–29, 31, and 33–37 had been proven unpatentable, and claims 8, 20, 30, and 38 had not been proven unpatentable. IPR2014-00727, Paper 65. Both sides appealed, and the Court of Appeals affirmed. *See B/E Aerospace, Inc. v. C&D Zodiac, Inc.*, 709 F. App'x 687, 2017 WL 4387223 (Fed. Cir. Oct. 3, 2017).

³ The oral hearing included related proceedings, IPR2017-01275 and PGR2017-00019. Paper 40.

Each of the additional four related patents identified above is the subject of a petition for an *inter partes* or post-grant review filed by Petitioner. *See* Cases IPR2017-01273 (involving Patent 9,434,476); IPR2017-01274 (involving Patent 9,365,292); IPR2017-01275 (involving Patent 9,073,641); PGR2017-00019 (involving Patent D764,031).

B. The '742 Patent

The '742 patent relates to space-saving aircraft enclosures, including lavatories, closets, and galleys. Ex. 1001, 1:20–6, 2:26–31. Figure 2 of the '742 patent is reproduced below.

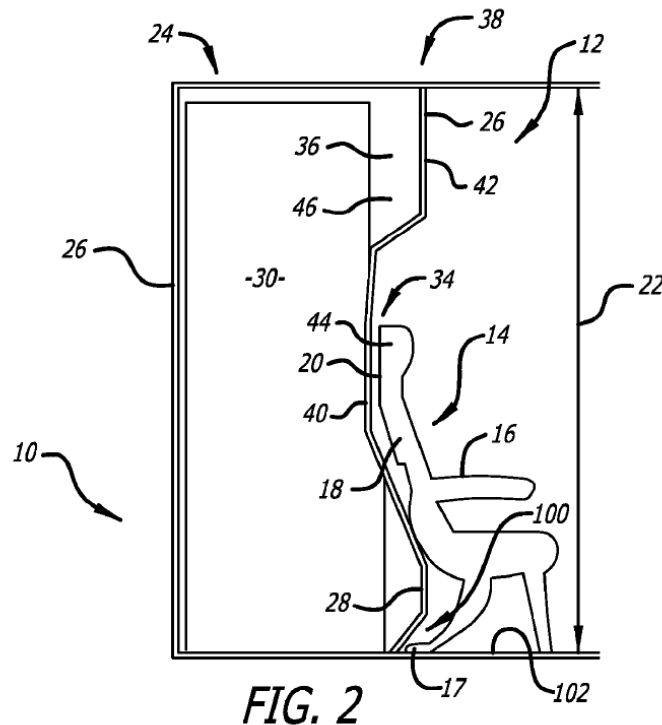


Figure 2, reproduced above, illustrates enclosure 10, such as a lavatory, positioned aft of aircraft cabin 12. Ex. 1001, 4:22–27. The lavatory has walls that define interior lavatory space 30. *Id.* at 4:33–36. Forward wall 28 of the lavatory is described as “substantially not flat in a

vertical plane” and “disposed immediately aft of and adjacent to or abutting the exterior aft surface of” passenger seat 16. *Id.* at 4:36–43. 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 4:39–43. In addition, the forward wall is shaped to also provide second, lower recess 100, which accommodates “at least a portion of an aft-extending seat support 17.” *Id.* at 4:46–51. The ’742 patent contrasts the embodiment of Figure 2 with a prior art configuration shown in Figure 1, which is reproduced below.

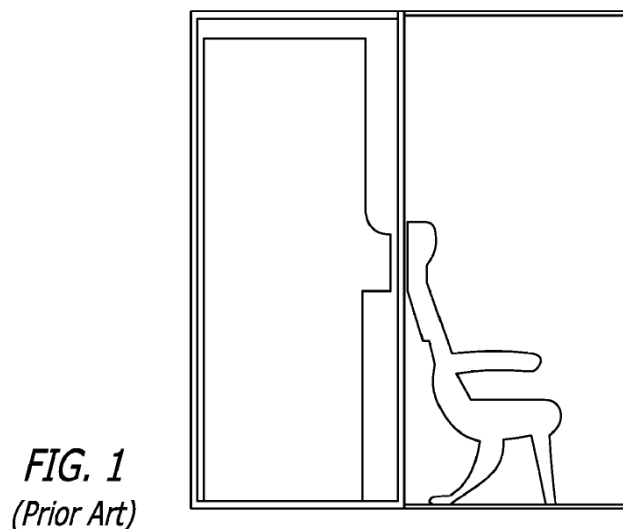


Figure 1, reproduced above, illustrates “a prior art installation of an aircraft lavatory immediately aft of and adjacent to an aircraft passenger seat.” Ex. 1001, 4:11–13. In the depiction of the prior art in Figure 1, a forward wall of the lavatory (double-lined structure immediately aft of seat) is flat and in a vertical plane.

As can be seen by comparing FIG. 1 and FIG. 2, the recess 34 and the lower recess 100 combine to permit the passenger seat 16 to be positioned farther aft in the cabin than would be possible if the lavatory enclosure 10 included a conventional flat and

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