

RECORD OF ORAL HEARING
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 IPR 2017-01275 (Patent 9,073,641 B2)

Case IPR 2017-01276 (Patent 9,440,742 B2)

Case PGR 2017-00019 (Patent D764,031 S)

Record of Oral Hearing
Held: August 3, 2018

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

Case IPR 2017-01275 (Patent 9,073,641 B2)
Case IPR 2017-01276 (Patent 9,440,742 B2)
Case PGR 2017-00019 (Patent D764,031 S)

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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BEHALF OF THE PATENT OWNER:

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The above-entitled matter came on for hearing on Friday, August 3, 2018, commencing at 1:01 p.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia, before Julie Souza, Notary Public.

P R O C E E D I N G S

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2 JUDGE BISK: Okay. Good afternoon. I am Judge Bisk. I have
3 Judge Marschall with me and as you can see Judge Daniels is joining us by
4 video today. Can I get the names of the people here for Petitioner?

5 MR. ALEMANNI: Yes, thank you, Your Honor. My name is John
6 Alemanni. I'm here on behalf of Petitioner C&B Zodiak. With me are Mr.
7 David Reed, Mr. Michael Morlock, Mr. Andrew Rinehart, who will be
8 arguing the three of them, Ms. Arneita Grey will be helping us on
9 demonstratives, and here on behalf of C&B Zodiak is in-house counsel Mr.
10 John Murray.

11 JUDGE BISK: Okay. And for Patent Owner.

12 MR. FLEMING: Yes, Your Honor. I'm Mike Fleming from Irell &
13 Manella. I'm representing B/E Aerospace, the Patent Owner, and I have
14 with me Talin Gordnia as well.

15 JUDGE BISK: Okay. Thank you.

16 MR. FLEMING: Your Honor, could we present hard copies of the --

17 JUDGE BISK: Oh, sure.

18 MS. GORDNIA: May I approach?

19 JUDGE BISK: Yes. Okay, Judge Daniels was asking me to remind
20 everyone to speak into the microphone because otherwise he can't hear
21 anything that's going on. Each side today has 90 minutes to argue the three
22 cases. The three cases that we're here to see are PGR2017-00019 and IPRs

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1 2017-01275 and 01276. So Petitioner, whenever you're ready just let me
2 know how much time you want me to reserve for rebuttal.

3 MR. ALEMANNI: Thank you, Your Honor. I believe our opening
4 will be between 45 and 50 minutes, and I'd like to reserve whatever time we
5 have left for rebuttal, if I may.

6 JUDGE BISK: Okay. I'll put 50 minutes on the timer.

7 MR. ALEMANNI: Perfect. Thank you.

8 JUDGE BISK: Okay.

9 MR. ALEMANNI: Great. Thank you. Again, good afternoon, Your
10 Honors. My name is John Alemanni here on behalf of Petitioner, C&D
11 Zodiak. I'll try to speak slowly for the court reporter.

12 Let's go to slide 2 please, Ms. Grey. So slide 2 is a brief overview of
13 what we plan to cover. I will present evidence that a recess was well known
14 in the art, applying recess to a forward wall was well known in the art, and
15 that it's obvious to apply a recess to a lavatory which is what the Board held
16 in the prior case in the parent patent and the Federal Circuit affirmed, and
17 further that a second recess is no less obvious.

18 Then I'll turn it over to my colleague, Mr. Morlock, who will
19 demonstrate that the secondary considerations case that B/E has presented is
20 like a house of cards precariously perched on a couple of pieces of evidence
21 that don't say what B/E purports they say.

22 Then I'll turn to my colleague David Reed. He'll demonstrate that the
23 design patent, the 031 patent, is not entitled to the priority date of the 838
24 patent and therefore it is eligible for PGR review. Then he'll demonstrate

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1 that B/E has admitted that it sold the design that's embodied in the 031
2 patent and is therefore invalid.

3 And finally I'll turn it over to my colleague, Andy Rinehart, who will
4 present and demonstrate that the 031 patent is indefinite, and for the record
5 Your Honors I'll just note Mr. Rinehart has helped us in numerous
6 proceedings before the Board and in District Court. This will be his first
7 opportunity to get up and argue.

8 JUDGE BISK: Okay. He has been admitted pro hac?

9 MR. ALEMANNI: He is admitted and he is fully prepared. I just
10 appreciate that he's making his first argument.

11 JUDGE BISK: Okay.

12 MR. ALEMANNI: Wanted to make note of that.

13 MR. ALEMANNI: So with that let's go to slide 3, please. These are
14 the instituted grounds. There's essentially one ground in the two IPRs that is
15 admitted prior art and that's the Betts patent which is a patent from
16 McDonnell Douglas back in the '70s. The two instituted grounds for the IPR
17 are that the challenged claims are obvious in view of Betts, the admitted
18 prior art in combination with Betts, and then for the design patent as I
19 mentioned there is a prior sale which invalidates the patent because it is not
20 entitled to its priority date and is also indefinite.

21 So with that let's go to B/E's slide 10. So I was just going to bring up
22 the Patent Owner's slide 10 briefly. The only reason I bring this is up is to
23 set some context. I want to just talk early about what's at issue in this case,
24 and basically it's a first recess and a second recess and we're going to talk

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