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**Datasheet for the decision
of 5 May 2009**

Case Number: T 0601/06 - 3.5.05

Application Number: 97201439.3

Publication Number: 0807897

IPC: G06F 19/00

Language of the proceedings: EN

Title of invention:

Method and apparatus for automatically providing jet engine thrust ratings to avionic systems

Patentee:

The Boeing Company

Opponent:

Airbus SAS

Headword:

Rating plugs

Relevant legal provisions:

EPC Art. 52, 69(1), 104(1), 123(2)(3)

RPBA Art. 12(2), 15(2), 15(3)

Relevant legal provisions (EPC 1973):

EPC Art. 56, 84, 100a, 101(2), 106, 107, 108, 112(1)a, 113, 114

EPC R. 58(3), 71a(1)

Keyword:

"Procedural violation (no)"
"Novelty (main request, auxiliary request I', II - no)"
"Inventive step (main request, auxiliary request I, I', II, III, V, VI - no)"
"Added subject-matter (auxiliary request IV, IV' - yes)"
"Clarity (auxiliary request V - no)"
"Request to postpone oral proceedings (no - late filed)"
"Referral to the Enlarged Board of Appeal (no)"

Decisions cited:

J 0010/07, T 0275/89, T 0514/06, T 0606/89, T 1110/03,
T 1122/01, T 1556/06, T 1102/03, T 1053/06

Catchword:

A request for postponing the date of oral proceedings may be refused if it is late filed (see point 2.1).



Case Number: T 0601/06 - 3.5.05

DECISION
of the Technical Board of Appeal 3.5.05
of 5 May 2009

Appellant: The Boeing Company
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Representative: Nicolle, Olivier
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 14 February 2006
revoking European patent No. 0807897 pursuant
to Article 102(1) EPC 1973.

Composition of the Board:

Chairman: D. H. Rees
Members: A. Ritzka
F. Blumer
P. Corcoran
G. Weiss

Summary of Facts and Submissions

I. This appeal is against the decision of the opposition division dispatched 14 February 2006 to revoke the European patent 0 807 897. The opposition was based on the grounds of lack of novelty and lack of an inventive step in accordance of Article 100(a) EPC 1973. The patent was revoked for lack of novelty as to auxiliary request I and for lack of an inventive step as to the main request and auxiliary requests II, III, IV and V having regard to the disclosure of

D1: US 5,006,993 A.

Further, a request for apportionment of costs according to Article 104 EPC 1973 was refused.

II. Notice of appeal was submitted on 13 April 2006. The appeal fee was paid on the same day. The statement setting out the grounds of appeal was submitted on 14 June 2006.

The appellant (patentee) requested that the decision under appeal be set aside and the patent be maintained as granted, that the case be remitted to the opposition division or that the patent be maintained based on one of the auxiliary requests I to VI filed with the statement setting out the grounds of appeal. An auxiliary request for oral proceedings was made.

Further, the appellant requested the reimbursement of the appeal fee on the basis that there had been procedural violations, and the appellant addressed the apportionment of costs.

- III. In its letter dated 1 November 2006 the respondent (opponent) requested that the appeal be dismissed and presented observations and comments on admissibility, novelty and inventive step of the requests on file and the procedural matters raised by the appellant. An auxiliary request for oral proceedings was made.
- IV. With letter of 1 November 2006 the appellant filed a copy of a communication with respect to the opposition to EP 0 894 709. The appellant had referred to this opposition in the grounds of appeal as a piece of evidence.
- V. With letter of 20 April 2007 in response to the respondent's letter of 1 November 2006 the appellant filed amended versions of auxiliary requests I, II, III, V and VI and stated that it maintained all requests.
- VI. In a communication accompanying the summons to oral proceedings, dated 19 February 2009 and received on 24 February 2009 by the appellant, the board stated that it assumed that the amended versions of auxiliary requests I, II, III, V and VI filed with letter of 20 April 2007 replaced the versions filed with the statement setting out the grounds of appeal and that the appeal was further based on the description and drawings as granted.

It commented on procedural questions which would have to be discussed at the hearing. In this context it mentioned the following documents:

- D2: sales contract between Airbus and Air France dated 26 March 1988 concerning an A320 aircraft, and related documents;
- D3: maintenance manual for A320;
- D4: extract of an annex to D3;
- D5: student training notes for a specific electronic engine control of the Hamilton standard customer trainings center;
- D6: extract from "Dictionnaire encyclopédique d'électronique", Maison du dictionnaire, 1991;
- D7: US 5,031,102 A.

Further, the board gave its preliminary opinion that the subject-matter of all the requests did not appear to be novel or to involve an inventive step having regard to the disclosure of D1 and the common general knowledge as disclosed e.g. by D6. Moreover, the board stated that claims 1 and 4 of auxiliary request IV did not appear to comply with Article 123(2) EPC. With respect to auxiliary request V the board commented on the objection under Article 123(3) EPC raised by the respondent and announced that it would be discussed at the hearing. In the same context it might be discussed whether it was clear what was claimed (Article 84 EPC 1973).

- VII. In its letter of 3 April 2009 (received by facsimile) in response to the board's communication the appellant filed claims 1 to 10 of auxiliary request I' and claims 1 to 10 of auxiliary request IV'. It further presented its comments on auxiliary requests I', II, IV, IV' and V. It requested that the patent be maintained as granted or that the patent be maintained on the basis of the claims of auxiliary requests I, I', II,

III, IV, IV', V and VI and offered to include the amendment of auxiliary request I' as an additional amendment in any of the further requests if the board were of the opinion that this would overcome an objection against maintaining the patent on the basis of one of these further requests. With respect to auxiliary request V the appellant made a subsidiary request to forward to the Enlarged Board of Appeal the question whether adding the feature of the jet engine to the independent claim would extend the scope of the claim.

VIII. In a further letter dated 3 April 2009 received about 15 minutes later, also by facsimile, the appellant requested the postponement of the oral proceedings for the reason that the representative had a firmly booked holiday for that day. The board made an attempt to find an alternative date within the following two months. As no alternative date suitable for both parties and for the five-member board could be agreed with the parties, the board informed the parties that the date for oral proceedings was maintained in a communication dispatched on 8 April 2009 per facsimile.

IX. In its letter of 20 April 2009 the appellant stated that it considered that it had fulfilled all the requirements for postponing oral proceedings given in the Notice of the Vice-President of DG3 dated 16 July 2007 concerning oral proceedings before the Boards of Appeal (see Special Edition No. 3 OJ EPO 2007, 115) and requested again to postpone the date for the hearing.

X. The board having considered the new arguments maintained the date for oral proceedings on 5 May 2009

and informed the parties accordingly in a communication dispatched on 21 April 2009 per facsimile.

XI. In its letter of 28 April 2009 the appellant announced that it would not be represented at the oral proceedings in view of the maintenance of the date.

XII. In a further letter of 29 April 2009 the appellant, referring to a decision of a different board in a different case in which a postponement of the date for oral proceedings had been granted shortly before the set date, requested again that the date for oral proceedings be postponed in view of a uniform application of the law.

XIII. The board, having considered the new arguments, maintained the date for oral proceedings on 5 May 2009 and informed the parties accordingly.

XIV. In its letter of 4 May 2009 the appellant presented further arguments on novelty and inventive step with respect to claims 1 and 8 as granted and expressed its expectation that the board would reconsider its provisional opinion on this matter.

XV. The oral proceedings took place on 5 May 2009. Nobody attended on behalf of the appellant. The respondent requested that auxiliary requests I' and IV' be not admitted for late filing and that the appeal be dismissed. At the end of the hearing the chairman announced the board's decision.

XVI. Claim 1 of the main request reads as follows:

"Apparatus for automatically providing jet engine thrust rating data to aircraft avionic systems comprising:

a data bus (110a-110d;114)

an electronic engine controller (108a, 108b) coupled to said data bus and associated with and coupled to each jet engine (104a, 104b) of an aircraft for reading data supplied by the associated jet engine describing the thrust rating of the jet engine and applying said thrust rating data to said data bus; and

an avionic computer (120a, 120b) coupled to said data bus for receiving said thrust rating data applied to said data bus by said electronic engine controller(s), said avionic computer including a memory (124, 126) for storing data related to the aircraft whose chosen values are based on the thrust rating of the jet engines of said aircraft, said avionic computer using said thrust rating data received from said electronic engine controller to choose the value of said data related to the aircraft for said memory of said avionic computer."

Claim 8 of the main request reads as follows:

"A method of automatically providing engine thrust rating defined by a plurality of plugs (106) associated with a jet engine (104a, 104b) to an avionic computer (120a, 120b) of an aircraft, said method comprising:

determining, in accordance with the configuration of the plugs, the thrust rating of the jet engine;

transmitting a digital data representation of the thrust rating to the avionic computer;

causing the avionic computer to determine if a database (125) includes entries corresponding to said thrust rating; and

causing said avionic computer to store said thrust rating if said database includes entries corresponding to said thrust rating."

Claim 1 of auxiliary request I adds to claim 1 of the main request that the data read from the jet engine is supplied by plugs included in the associated engine, that the avionic computer is either directly or through an interface coupled to the data bus allowing said thrust rating data to be changed without changing program pin wiring connected to the avionic computer and that thrust rating is established by said plugs. Claim 8 of auxiliary request I is directed to a method corresponding to the apparatus of claim 1.

Claims 1 and 8 of auxiliary request I' add to claims 1 and 8 of the main request that the apparatus and the method is intended to overcome reconfiguration of pin wiring, respectively.

Claim 1 of auxiliary request II corresponds to claim 8 of the main request. Claim 4 of auxiliary request II corresponds to the combination of claims 1, 2 and 3 of the main request, further specifying that the thrust data is read and received upon power-up and the memory in the avionic computer is non-volatile.

Claim 1 of auxiliary request III adds to claim 1 of the main request that the data is read and received upon power up and that the avionic computer includes a non-volatile memory.

Claim 8 of auxiliary request III adds to claim 8 of the main request that the thrust rating is determined on power-up and transmitted by an electronic engine controller over a data bus and that the avionic computer determines if a thrust rating already exists in non-volatile memory of the avionic computer.

Claim 1 of auxiliary request IV corresponds to claim 8 of the main request replacing the avionic computer by a flight management computer and a thrust management computer and adding that in each of these computers it is determined if a thrust rating already exists in a non-volatile memory of the respective computer.

Claim 4 of auxiliary request IV comprises similar amendments.

Claim 1 of auxiliary request IV' corresponds to claim 8 of the main request replacing the avionic computer by a flight management computer and a thrust management computer and adding that the digital data representation of the thrust rating is transmitted over a data bus to the flight management computer and the thrust management computer and that in each of these computers it is determined if a thrust rating already exists in a non-volatile memory.

Claim 4 of auxiliary request IV' corresponds to claim 1 of the main request replacing the avionic computer by a flight management computer and a thrust management computer and adding that the memory for storing data is non-volatile, that the flight management computer and the thrust management computer each use the thrust

rating data received from said electronic engine controller to choose the value of said data related to the aircraft for said memory of each of the flight management computer and the thrust management computer.

Claim 1 of auxiliary request V is a combination of claims 1, 2 and 3 of the main request, explicitly including "a jet engine of an aircraft having a plurality of plugs in a selected configuration to represent a thrust rating of the jet engine" and replacing the data related to the aircraft whose chosen values are based on the thrust rating by data entries whose values are a function of the thrust rating.

Claim 7 of auxiliary request V adds to claim 8 of the main request that a configuration of a plurality of plugs is provided in a jet engine and that a digital data representation of the thrust rating is transmitted by the electronic controller over a data bus.

Claim 1 of auxiliary request VI adds to claim 1 of the main request the content of claims 6 and 7 as granted, namely that the jet aircraft includes multiple jet engines and that the avionic computer compares the thrust rating data received from the jet engines and reports a fault condition if the thrust rating data does not match, and that the avionic computer compares the thrust rating data received from the jet engines and reports said fault condition only when the jet aircraft is on the ground.

Claim 6 of auxiliary request VI adds to claim 8 of the main request the content of claims 9 and 10 as granted, namely causing said avionic computer to update said

stored thrust rating if a new thrust rating is received by said avionic computer, and causing said avionic computer to compare thrust rating data from different jet engines and produce a fault if the thrust rating data does not compare, further specifying that the data is transmitted by an electronic engine controller, associated with and coupled to each jet engine, over a data bus.

Reason for the Decision

1. *Admissibility*

The appeal complies with the provisions of Articles 106 to 108 EPC 1973, which are applicable according to J 10/07, point 1 (see Facts and Submissions point II above). Therefore, it is admissible.

2. *Procedural matters*

2.1 Request for postponement of oral proceedings

The appellant requested in its letter dated 3 April 2009 that the oral proceedings be postponed for the reasons that 5 May 2009 was a public holiday in the Netherlands, the appellant's representative had firmly booked a holiday for that date and there was no other representative available to replace him due to the holiday season. The representative indicated that the other party had orally agreed to the request.

According to Article 15(2) of the Rules of Procedure of the Boards of Appeal, a change of date for oral

proceedings "may exceptionally be allowed in the Board's discretion". Examples of circumstances that can be taken into account by exercising this discretion are given in the Notice of the Vice-President of DG3 dated 16 July 2007 concerning oral proceedings before the Boards of Appeal (see Special Edition No. 3 OJ EPO 2007, 115). According to this notice serious substantive reasons to request the change of the date may be, for instance, a previously notified summons to oral proceedings of the same party in other proceedings before the EPO or a national court, serious illness, a case of death within the family, the marriage of a person whose attendance in oral proceedings is relevant, military service or other obligatory performance of civic duties, or holidays which have already been firmly booked before the notification of the summons to oral proceedings. Any request to fix another date shall be filed as soon as possible after the grounds preventing the party concerned from attending the oral proceedings have arisen.

Although the board accepts on the basis of the representative's statement with respect to the major importance of this holiday to him and his family that he had a firmly booked holiday on the date set for oral proceedings before the notification of the summons, the board considers the request to be late filed. The representative should have been aware when receiving the summons, i.e. at the end of February (see Facts and Submissions, point VI above), that he would be prevented from attending the oral proceedings and should have filed his request immediately. Filing the request more than one month later is not considered to fulfil the requirement of "as far in advance of the

appointed date as possible" as required under Article 15(2) of the Rules of Procedure of the Boards of Appeal or "as soon as possible" as required in the Notice of the Vice-President of DG3. Therefore, the request does not satisfy the conditions given in the Vice-President's Notice and in the Rules of Procedure.

The board notes that, in accordance with established case law (see e.g. T 1102/03 and T 1053/06), the provisions of Article 15(2) of the Rules of Procedure of the Boards of Appeal and the Notice of the Vice-President of DG3 balance the interests of the parties and the public taking into account, among other factors, an efficient use of resources and capacities of the office.

In the board's judgement, an alternative date within a period of about two months from the date of the request would have been justifiable in view of the balance of interests of the parties and the public, since, except for when the parties consent, new summons have to be issued two months in advance of a hearing, so that dates within this two-month period could not have been used for other cases. In view of the presented importance of the holiday for the representative, as a courtesy the board therefore made an attempt to fix a date within a period of about two months from the date of the request. As no alternative date suitable for the five-member board could be agreed with the parties, the board informed the parties that the date of 5 May 2009 for the hearing was maintained.

In his letter of 20 April 2009 the representative of the appellant argued that, considering the need for

consulting the client and the opponent, his request for postponement was not late filed and that the request had to be granted. This argument does not convince the board. The reason for the request was a firmly booked holiday of the representative, i.e. a personal reason. It would not be usual for the representative to need the consent of his client before filing such a request based on a personal reason. Any exceptional circumstances requiring the consent of the client (and thereby leading to a delay) should therefore have been explained in a substantiated request. Even assuming that all the consultations mentioned by the appellant's representative were necessary, the use of modern communication means and according the appropriate urgency to the matter should not result in a delay of more than a few days. The board notes that in its attempt to find an alternative date it received an answer from the opponent's representative, who also had to consult his client, within one day. The board therefore maintains its conclusion that the request for postponing the date for oral proceedings was late filed. The right to be heard is therefore not violated by the refusal of this request.

In his letter of 29 April 2009 the appellant's representative drew the board's attention to the decision T 514/06, in which a request for postponement made a couple of days before the set date was granted, and requested postponement again, in view of a uniform application of the law. The board considers that, taking into account the specific circumstances (a case of death within the family), the request for postponement in the cited case was not late filed. Thus, the board is satisfied that its decision to

refuse the present request maintains a uniform application of the law.

2.2 Non-attendance of oral proceedings

The appellant was not represented at the oral proceedings which was requested by both parties and to which the appellant was duly summoned, see Facts and Submissions point VI above.

Article 15(3) RPBA stipulates that the board shall not be obliged to delay any step in the proceedings, including its decision, by reason only of the absence at the oral proceedings of any party duly summoned who may then be treated as relying only on its written case.

Thus, the board was in a position to take a decision at the end of the hearing.

2.3 Late filing of auxiliary requests I' and IV'

Auxiliary requests I' and IV' were filed with letter of 3 April 2009 in response to the board's communication accompanying the summons.

The respondent stated that, although the new auxiliary requests were submitted before the expiry of the one-month period before the hearing set as time limit in the communication, they were late filed since according to Article 12(2) RPBA the statement of grounds of appeal shall contain the party's complete case and a communication was not an invitation to amend the claims.

The board notes that auxiliary requests I' and IV' were filed within the time limit set in the communication and that they included amendments intended to emphasize the difference between the claimed subject-matter and the prior art. The board considers auxiliary requests I' and IV' as a converging attempt to put the case in a better condition for the decision, even if the attempt finally failed, see points 8 and 12 below. Therefore, the board exercises its discretion and admits auxiliary requests I' and IV' into the procedure.

3. *Procedural violations*

The appellant requested the remittal of the case to the department of first instance and/or reimbursement of the appeal fee based on several alleged procedural violations.

3.1 Procedural violation arising in the context of slide show presentation

At the oral proceedings held before the opposition division both parties presented computer-generated slide shows. According to the file the patentee had provided copies of its slides just two days before the oral proceedings and the opponent did not provide any copies of its slides before the oral proceedings. According to the minutes of the hearing some aspects of the use of the slides were discussed at the hearing, but, eventually, the parties did not object to the use of the specific slides that were presented. After the decision was taken, the patentee in its letters of

14 October 2005 and 9 December 2005 expressed its assumption/ expectation that it would be provided with copies of the presentation together with the decision. The decision did not raise this point. The appellant considered this to be a procedural violation.

According to established case law, see e.g. T 1122/01, T 1110/03, T 1556/06, a computer-generated slideshow presentation is in essence the presentation of written material, which belongs in the written procedure rather than in oral proceedings. Since the purpose of oral proceedings is to give the parties an opportunity to present the main points of their arguments orally, only exceptionally is the use of a computer-generated slideshow presentation at a hearing acceptable.

In the present case according to the minutes and the facts and submissions of the written decision both parties agreed to the computer-generated slideshow presentations during the hearing. According to the minutes apparently no negative comments were made about the opponent's slideshow presentation before the decision was delivered. Moreover, the written decision did not depend on any new facts or evidence presented in this slideshow. Thus, in the board's judgement, neither the fact that a decision was taken at the end of the hearing, i.e. after the slideshow presentations, nor the fact that, after the hearing, the opponent did not provide copies of the slides, which had been presented with the consent of the patentee at the hearing, constitute a procedural violation.

As the board concludes that a procedural violation did not take place, the appellant's consequent requests in

this context, namely that the respondent should be ordered to provide copies of the presentation as held during the oral proceedings or that new oral proceedings be held before the opposition division, are refused.

3.2 Procedural violation based on introduction of documents D2 to D7 into the proceedings

According to the opponent's letter of 29 August 2005, D2 to D6 were presented in reaction to the patentee's request for evidence for the common general knowledge. The documents were filed a month before the date set for the hearing, with exception of pages 291 to 304, which were filed with letter of 21 September 2005 in reaction to the patentee's letter of 29 August 2005. This submission is not very extensive.

D7 was filed on 26 September 2005, i.e. three days before the hearing, and was said to be in reaction to the second auxiliary request presented with letter of 29 August 2005. This letter was forwarded to the opponent with letter of 6 September 2005. The board considers it to be appropriate that the opponent carried out a further search with respect to the newly presented auxiliary requests.

Documents D2 to D7 were presented in reaction to requirements or amendments made by the patentee. The board does not consider it to be a procedural violation that they were introduced into the proceedings.

3.3 Communication of the opposition division prior to oral proceedings

The appellant considers it to be a procedural violation that, in the communication accompanying the summons to oral proceedings, the opposition division did not address the novelty objection to claim 8 made by the opponent.

The board notes that according to Rule 71a(1) EPC 1973, when issuing the summons, the European Patent Office shall draw attention to the points which in its opinion need to be discussed for the purposes of the decision to be taken. However, Rule 71a(1) EPC 1973 does not impose an obligation on the EPO to give a preliminary opinion on the allowability of individual claims when issuing the summons. It lies within the discretion of the EPO to give such an opinion when it considers it to be appropriate.

If the communication of the opposition division did not refer to claim 8 in the present case, this had to be interpreted in the sense that the arguments which were on file with respect to claim 8 did not need to be further discussed for the opposition division to be able to decide on the matter. As at that time only the opponent's objections to claim 8 were on file, it might be interpreted in the sense that the board did not challenge the opponent's arguments. However, this did not indicate that claim 8 was considered to be allowable. Thus, not mentioning the objections to claim 8 in the communication is not considered to constitute a procedural violation.

The appellant further stated that the opposition division did not allow any further additional requests during oral proceedings. According to the minutes, page 5, the proceedings were interrupted at 11:55 for preparing a further auxiliary request. After the break a further auxiliary request was filed, the auxiliary requests were renumbered and the opposition division stated that it "currently [did] not expect any further requests from the proprietor." In fact, no further requests were presented. Therefore it is an open question as to whether or not they would have been accepted.

Moreover, the appellant indicated that the opposition division should have sent out a communication without a summons in this case, which was exceptional for being dealt with under Article 114 EPC 1973 (see page 6, lines 10 to 29 of the letter setting out the grounds of appeal).

According to Rule 58(3) EPC 1973 a reasoned statement shall, where appropriate, cover all of the grounds against the maintenance of the European patent. In the communication accompanying the summons the opposition division listed the differing features of claim 1 with respect to D1, see point 3.3, stated that the subject matter of claim 1 was novel and gave its preliminary opinion that it lacked inventive step. Claim 8 was not mentioned in the communication.

According to established case law, see e.g. T 275/89, points 3.2 and 3.3, Article 101(2) EPC 1973 does not require, as a matter of principle, that a communication stating why it is considered that the patent should not

be maintained be issued in every case, but only in those cases where it is necessary. The necessity can arise in respect of a further enquiry on facts or on the basis of Article 113(1) EPC 1973. In the cited case the fact that the documents and their substantive and legal significance were mentioned in the notice of opposition was held to be sufficient to comply with the provisions of Article 113 EPC 1973.

In the present case a detailed reasoning for the lack of novelty of claim 8 was given in the notice of opposition. The appellant should have been aware of the novelty objection against claim 8. Moreover, both parties had requested oral proceedings. Holding oral proceedings allowed the parties to exercise the right to be heard.

The appellant did not indicate from which provision of the EPC it inferred that the decision not to send a communication without summons was a procedural violation. In the board's view, Article 101(2) EPC 1973 and Rule 58(3) EPC 1973 do not provide a basis for this inference.

3.4 Article 113(1) EPC 1973

The appellant alleges that the main passage of D1, on which the decision was based, namely column 4, lines 8 and 9, had not been mentioned or discussed before the decision was issued (see page 6, lines 4 to 8 of the letter setting out the grounds of appeal).

Column 4, lines 8 and 9 were not mentioned explicitly in the notice of opposition, the communication or the

minutes. However, the communication in point 3.1 refers to the passage from column 3, line 41 to column 6, line 16, including column 4, lines 8 and 9. Moreover, according to the minutes the opponent referred to various details of figure 1 of D1. The disclosure of D1, column 4, lines 8 and 9, which are only part of a sentence, that "the A/T controller 23 includes an engine identification block 31a, 31b, ...31n for each engine 11a, 11b,11n;" corresponds to the statements made by the opponent, see page 3 of the minutes, paragraph beginning with "At 10:04...". Moreover, D1, column 3, line 41 to column 6, line 16 is the written description of figure 1.

Thus, the decision is considered to be based on grounds discussed at the oral proceedings, complying with the provisions of Article 113(1) EPC 1973.

4. *Apportionment of costs*

In point I.2 of the statement setting out the grounds of appeal and in point I.5 of its letter of 20 April 2007 the appellant refers to the request for apportionment of costs made in the opposition proceedings. It is not clear from the wording whether these passages are intended to be a request for apportionment of costs in the appeal proceedings or whether they represent the allegation of a further procedural violation.

The request of apportionment of costs made before the department of first instance was based on the reason that documents D2 to D7 were late filed and their analysis required additional effort.

As set out in point 3.2 above, the board does not consider that introducing documents D2 to D7 at a late stage of the opposition proceedings was a procedural violation as their filing was a legitimate reaction to the newly filed requests of the appellant.

Moreover, for the same reason, submitting these documents is not considered to have been an abuse of the procedure justifying an apportionment of costs.

Thus, the board agrees with the decision under appeal as to the apportionment of costs.

As the appellant neither clearly requested the apportionment of costs in the appeal proceedings nor presented additional facts and submissions in this context, and the board agrees with the opposition division in its assessment of the facts and submissions presented as support for the request for apportionment of costs, an apportionment of costs is not considered to be justified.

5. *Public availability of documents D2 to D7*

D6 is an extract from a dictionary and D7 a patent document, for both of which the public availability is not in question.

The decision under appeal did not use the disclosure of any of D2 to D5 in its reasoning. Since none of the arguments below are based on documents D2 to D5, the question as to whether and from what date they were publicly available does not need to be considered.

6. *Main request*

6.1 Claim 1

D1 discloses an automatic throttle controller for controlling the thrust produced by the engines of an aircraft, see column 2, lines 17 to 20. A code that denotes type and rating is provided for each engine, see column 2, lines 26 to 28, by engine identification blocks, which are manually or electronically adjustable, see column 4, lines 14 to 21. The binary code may be produced by electronic means such as a read only memory or by an external data loader, see column 4, lines 28 to 32.

With respect to its functionality, the engine identification block corresponds to the electronic engine controller, which according to [0022] of the patent specification continuously senses the configuration of the plugs of the engines and interprets the configurations to determine the current thrust ratings of the engines. Each engine identification block is associated with an engine. The binary code is adjustable via the engine pin selection inputs, see D1, column 4, lines 16 to 18 and figure 1. In summary, D1 discloses an engine identification block corresponding to an electronic engine controller, being associated with each jet engine of an aircraft for reading data describing the thrust rating of the engine.

The automatic throttle controller further comprises a limit control block, a dynamic compensation block, a rating data and position data block and a look-up and

calculate dynamic control parameter block, see D1, column 4, lines 6 to 11. The data stored in the engine identification block is applied in some manner to the rating data and rating position block and the look-up and calculate dynamic control parameters block, see D1, column 4, lines 42 to 46. The rating data and rating position block and the look-up and calculate dynamic control parameters block may scan the data and store it in a suitable memory, see D1, column 4, lines 46 to 54.

The functions of the limit control block, the dynamic compensation block, the engine identification block, the rating data and position data block and the look-up and calculate dynamic control parameters block are performed by a suitably programmed central processing unit (CPU) or several CPUs connected together to form a distributed data processing network. Preferably, the same CPU or CPU network is used to control and/or perform a variety of other avionic functions. See D1, column 5, line 59 to column 6, line 5. Thus, D1 discloses a CPU network including an avionic computer comprising the limit control block, the dynamic compensation block, the rating data and position data block and the look-up and calculate dynamic control parameters block and an engine identification block which may be implemented as a separate CPU.

The functions of the rating data and position data blocks and the look-up and calculate dynamic control parameters blocks may be implemented as a CPU program by which the engine rating code is read from the corresponding engine identification block, the rating data for the corresponding engine is looked up in an engine rating table based on the engine rating code and

the looked up data is loaded into the CPU memory, see D1, column 6, lines 5 to 9 and 47 to 53.

D1, column 8, lines 33 to 35 and lines 39 to 42 states that the invention provides an automatic throttle control for aircraft with intermixed engines and that separate control channels allow separate control signals, based on the type and rating of each engine to be used to provide separate control signals. This implies that the avionic computer is part of an apparatus for automatically providing jet engine thrust rating data to aircraft avionic systems.

The board considers that the subject-matter of claim 1 differs from D1 in the following respects:

- (a) providing a data bus for data transfer between the electronic engine controller and the avionic computer,
- (b) that the electronic engine control is coupled to each jet engine and
- (c) that the data describing the thrust rating of the jet engine are supplied by the associated jet engine.

Therefore, the subject-matter of claim 1 is novel.

As to difference (a), the board notes that reading data by the rating data and position data blocks and the look-up and calculate dynamic control parameters blocks from the engine identification block implies a data transfer between these blocks. It is common general knowledge to use a data bus for data transfer, see e.g. D6. Thus, it is obvious to couple the engine identification block of D1, which corresponds to the electronic engine controller, and the avionic computer

via a data bus and for the avionic computer to receive thrust rating data applied to the data bus by the electronic engine computer including a memory for storing data related to the aircraft whose chosen values are based on the thrust rating of the jet engines of the aircraft, the avionic computer using thrust rating data received from the electronic engine controller to choose the value of data related to the aircraft for the memory of the avionic computer.

The respondent argued that the meaning of "coupled" in claim 1 in the feature "electronic engine controller ... associated with and coupled to each jet engine" had to be interpreted in the broad sense and therefore encompassed mechanical as well as electronic coupling. Using this interpretation difference (b) would not exist.

The board notes that D1 discloses that the engine identification blocks, which correspond to the electronic engine controller, can be electronically or manually adjusted in many ways, see column 4, lines 18 to 21 and column 8, lines 23 to 32. In the board's judgement the term "coupling" requires some permanent link and D1 does not provide a basis for such an electronic or mechanical coupling.

As to difference (c) the respondent argued that it was evident to any skilled person that a jet engine cannot supply data. The board notes that according to Article 69(1) EPC the description and drawings shall be used to interpret the claims. The skilled person would understand from the description as a whole that the jet engines are provided with some means capable of

supplying data, e.g. the plugs to which is referred in paragraph [0015] of the patent specification as granted, and would interpret claim 1 accordingly.

The board considers the problem underlying claim 1 to be to provide a further apparatus with an adjustable electronic engine controller.

D1 is directed to a similar problem and is considered to be the most relevant prior art.

In its letter of 3 April 2009 the appellant challenged the choice of D1 as most relevant prior art document referring to T 0606/89, which was said to require as first consideration in selecting the closest prior art that it must be directed to the same purpose or effect as the invention, as otherwise it can not lead a skilled person in an obvious way to the claimed invention.

The board notes that T 606/89 states that the claimed invention should be compared with the prior art concerned with a similar use, requiring the minimum of structural and functional modifications. D1 is directed to providing an automatic throttle control system for controlling the engines of multi-engine jet aircraft having unmatched side-mounted jet engines with different thrust ratings and dynamic characteristics, enabling the use of an automatic throttle control system in an aircraft with intermixed engines, see D1, column 2, lines 4 to 14. This requires for each engine an adjustable electronic engine controller. The problems underlying D1 and claim 1 are thus similar. D1 thus fulfils the requirements established by the

jurisprudence of the Boards of Appeal for the most relevant prior art.

According to D1, column 4, lines 18 to 21, the engine identifier blocks are adjustable manually or electronically. The codes may be established by an external mechanism such as a data loader, see D1, column 4, lines 30 to 32. Further, the automatic throttle controller comprising the limit control block, the dynamic compensation block, the engine identification block, the rating data and position data block and the look-up and calculate dynamic control parameters block may be implemented by several CPUs connected together to form a distributed data processing network, see D1, column 5, line 66 to column 6, line 5.

The question arises whether the skilled person would understand that the engine identification block might be implemented as a separate CPU coupled to the other components by a data bus and arranged at a remote location.

The patent specification as granted refers in the section "Background of the invention" (see paragraph [0002]), to modern jet aircraft including one or more flight management computers electronically connected to electronic engine controllers that are used to control the engines of the aircraft. It is further stated in the patent specification as granted (see paragraph [0015]), that plugs which are included in jet engines and whose configuration establishes the thrust rating of the jet engine are well known in this art, i.e. it

was well known that information about the thrust rating was available at the jet engines.

The appellant stated in its letter of 3 April 2009 that the interpretation of paragraph [0015] to the effect that "this reading by the EEC of rating plugs in the engine, thereby providing thrust data was known" was incorrect. The board notes that [0015] at lines 21 to 25 says "As is also well known in this art and, thus, not described here, the EECs 108a and 108b are capable of sensing the configuration of the plugs 106, interpreting the configuration, and producing digital data denoting the thrust rating of the engines 104a and 104b." The skilled person would understand this passage in the sense that the EECs are capable of producing digital data denoting the thrust rating of the engines based on the configuration of the plugs. Accordingly, the board interprets the appellant's statement in the letter of 3 April 2009 at page 3, lines 14 and 15 that paragraph [0015] does not state that it was known that the thrust data are provided to the flight management computer and the thrust management computer. This interpretation is in accord with the appellant's statement in its letter of 4 May 2009 at page 2, first paragraph, that when a rating plug was exchanged at the engine, a binary code had to be adjusted by setting switches, jumpers or reading other codes into a memory (electronically) according to the prior art.

As D1 explicitly states that the engine identification blocks can be adjustable electronically or manually using any one of a variety of other well-known electronic and mechanical coding systems including an external mechanism such as a data loader (see column 4,

lines 18 to 32 and column 8, lines 24 to 32), using the electronic engine controller arranged at the engine as an external mechanism for providing information related to the engine, e.g. thrust rating, is considered to be an obvious matter of design choice. Therefore, differences (b) and (c) do not add any inventive matter.

Thus, claim 1 does not involve an inventive step.

6.2 Claim 8

D1 discloses that the engine identification blocks produce binary codes that designate the type and rating of a related engine, based on the engine number pin selection inputs, see D1, column 4, lines 14 to 18. The function of the pins is considered to be substantially identical to that of the plugs and the appellant has not established that this is any more than a difference in terminology. Thus, the thrust rating of the jet engine is determined in accordance with the configuration of the plugs.

The binary codes, i.e. a digital data representation of the thrust rating, is applied, i.e. transmitted, to the rating data and rating position block and to the look-up and calculate dynamic control parameters block, being part of an avionic computer, see D1, column 4, lines 42 to 46 and column 5, line 66 to column 6, line 5.

The rating data for the respective engine is looked up in an engine rating table, i.e. database, based on the engine rating code, and loaded into the CPU memory, see column 6, lines 47 to 53. This corresponds to causing

the avionic computer to determine if a database includes entries corresponding to the thrust rating and to store the thrust rating if the database includes entries corresponding to the thrust rating. Thus, the subject-matter of claim 8 is not novel having regard to the disclosure of D1.

6.3 Request for remittal

As explained in point 3 above, the board does not consider the fact that the objection to claim 8 was not explicitly mentioned in the communication accompanying summons to oral proceedings of the opposition division and that this communication was the only issued prior to oral proceedings to be a procedural violation. Therefore, the request for remittal to the department of first instance is refused.

7. *Auxiliary request I*

7.1 Claim 1

Claim 1 of auxiliary request I differs from claim 1 of the main request in that it explicitly states that the engines include plugs describing the thrust rating and that the transmission of the thrust rating via the data bus allows the thrust rating data to be changed without changing program pin wiring connected to the avionic computer.

The comments made in point 6.1 above with respect to inventive step of claim 1 of the main request apply to the common features.

As set out in paragraph [0015] of the patent specification as granted and discussed in point 6.1 above, plugs which are included in jet engines and whose configuration establishes the thrust rating of the jet engine were well known in the art and do not add any inventive matter.

Allowing the thrust rating data to be changed without changing program pin wiring connected to the avionic computer is considered to be an effect rather than a feature.

Moreover, D1 discloses that the engine identification blocks can be electronically or manually adjusted, see column 4, lines 18 to 21. According to an alternate implementation an engine memory is changed by a data loader. This implementation also allows the thrust rating data to be changed without changing program pin wiring connected to the avionic computer. Even if this were to be seen as feature, it would therefore not be considered to add any inventive matter.

Thus, the subject-matter of claim 1 does not involve an inventive step.

7.2 Claim 8

Similar arguments as set out with respect to claim 1 in point 7.1 above apply to claim 8 which is directed to a method corresponding to the apparatus of claim 1.

8. *Auxiliary request I'*

Independent claims 1 and 8 of auxiliary request I' add to claims 1 and 8 of the main request that the claimed subject-matter is intended to overcome reconfiguration of pin wiring.

The respondent argued during the oral proceedings before the board that this addition is an objective rather than a limiting feature. Thus, the objections made to claims 1 and 8 of the main request equally apply.

It was further argued that even if this addition were considered to be a limiting feature, claims 1 and 8 would not be novel since D1 discloses as an alternate implementation that the engine memory is changed by a data loader with the equal effect of overcoming reconfiguration of the pin wiring.

The board agrees with the respondent that the addition to these claims does not constitute a distinguishing limitation over the prior art.

Thus, as explained above in points 6.1 and 6.2 the subject-matter of claim 1 does not involve an inventive step and the subject-matter of claim 8 is not novel.

9. *Auxiliary request II*

9.1 Claim 1

Claim 1 of auxiliary request II is identical to claim 8 of the main request. Thus, the comments made with

respect to claim 8 of the main request (see point 6.2) apply to claim 1. The subject-matter of claim 1 is not novel.

9.2 Claim 4

Claim 4 of auxiliary request II corresponds to the combination of claims 1, 2 and 3 of the main request, further specifying that the thrust data are read and received upon power-up and the memory in the avionic computer is non-volatile.

With respect to the common features of claim 4 of auxiliary request II and claim 1 of the main request the arguments presented in point 6.1 apply.

D1, column 6, lines 32 to 34 discloses that engine type and rating codes are read and stored in suitable memory bins. As the respondent argued, the skilled person would be aware of the possible choice of volatile and non-volatile memories and of the advantages of each alternative. The skilled person would understand that it is sensible to store data which is to be looked-up in a non-volatile memory. Thus, the non-volatile memory is considered to be an obvious design choice lying within the routine competence of the skilled person.

D1, column 6, lines 49 to 53 discloses that the rating data for an engine is looked up in an engine rating table, based on the engine rating code read from the first identification block in the preceding sequence, and loaded into the memory of the CPU. The step of looking-up implies a validity determination as claimed.

The respondent further argued that the skilled person would understand that it is important to determine current thrust rating data at the starting of an engine implying that the thrust data are read and received upon power-up. The programs disclosed with references to figures 2 and 3 of D1 are intended for use in the automatic throttle controller disclosed in Figure 1 of D1 to determine the type and rating of aircraft engines and to generate for each engine the data needed by the channels of the automatic throttle controller, (see column 3, lines 23 to 30). The automatic throttle controller controls the engines which may be different on the basis of these data, (see column 2, line 61 to column 3, line 3). The production of asymmetrical thrust by side-mounted engines being eliminated by this means, there is no need to disable an automatic throttle controller merely because an aircraft has unmatched side-mounted engines. This implies that the automatic throttle controller may be active at any time. The board is therefore satisfied that D1 discloses implicitly that the programs disclosed with reference to figures 2 and 3 of D1 start with the power-up of the automatic throttle controller.

Thus, claim 4 is not considered to add any inventive matter.

10. *Auxiliary request III*

10.1 Claim 1

Claim 1 of auxiliary request III adds to claim 1 of the main request that the data is read and received upon power up and that the avionic computer includes a non-

volatile memory. Except for the features of claims 2 and 3 of the main request, claim 1 of auxiliary request III corresponds to claim 4 of auxiliary request II. Thus, the scope of claim 1 of auxiliary request III is broader than and encompasses the scope of claim 4 of auxiliary request II.

Therefore, with respect to the common features of claim 1 of auxiliary request III and claim 4 of auxiliary request II the arguments presented in point 9.2 apply. Claim 1 does not involve an inventive step.

10.2 Claim 8

Claim 8 of auxiliary request III adds to claim 8 of the main request that the thrust rating is determined on power-up and transmitted by an electronic engine controller over a data bus. As to the transmittal of the thrust rating by an electronic engine controller over a data bus claim 8 of auxiliary request III corresponds to claim 1 of auxiliary request I. Further, claim 8 specifies that the avionic computer determines if a thrust rating already exists in non-volatile memory of the avionic computer.

The arguments presented with respect to claim 8 of the main request apply to the common features of claim 8 of this request and the main request. Further, the arguments presented with respect to claim 1 of this request apply to the features of "power-up" and "non-volatile memory".

D1, column 6, lines 20 to 22 discloses that a test is made to determine if all of the engine identification blocks have been read. Thus, determining if a thrust rating already exists in non-volatile memory of the avionic computer is not considered to add any inventive matter.

11. Auxiliary request IV

11.1 Article 123(2) EPC

Claim 1 of auxiliary request IV corresponds to claim 8 of the main request replacing the avionic computer by a flight management computer and a thrust management computer and adding that in each of these computers it is determined if a thrust rating already exists in a non-volatile memory of the respective computer.

Claim 4 of auxiliary request IV comprises similar amendments.

The description refers to flight management computer/thrust management computer (FMC/TMC) and it is understood from the context that they are part of or constitute the avionic computer, see page 2, lines 4 to 16 of the patent application as originally filed. The flight management computer and the thrust management computer may be separated from each other, each of them employing the same process as a computer including both of them, see page 5, lines 28 to 32 of the application as filed.

However, the description as filed is not considered to provide a basis for the FMC and the TMC each having a

distinct non-volatile memory. The process disclosed with reference to a combined FMC/TMC refers to a volatile memory and a non-volatile memory, see page 7, line 37 to page 8, line 1. A database may be stored in the non-volatile memory, see page 8, lines 6 to 9. At various steps of the process, information is stored in the volatile or non-volatile memory, see e.g. page 9, lines 1 to 3 and 18 to 22; page 11, lines 3 to 8; page 12, lines 5 to 18; page 13, lines 10 to 13. The process only refers to a volatile or non-volatile memory. The skilled person would understand that, if the FMC and the TMC are implemented as separate entities employing the same process as the combined FMC/TMC, the database assigned to both of them is stored in the non-volatile memory assigned to both of them and included in one of them. The description does not specify in which of the TMC and FMC the memory would be included in this case. Further, the description does not provide a basis for a simultaneous use of two distinct memories each of them being assigned only to one of the FMC and the TMC.

The "respective memories" mentioned at page 3, lines 14 to 19 of the application as filed refer to two different instances of the FMC/TMC rather than to an FMC and a TMC.

Thus, the board agrees with the respondent's view that claims 1 and 4 of auxiliary request IV do not comply with Article 123(2) EPC.

11.2 Novelty and inventive step

Although auxiliary request IV is not allowable on the basis of Article 123(2) EPC as explained in point 11.1 above, the board would like to make the following observations on novelty and inventive step as an obiter dictum.

The arguments presented with respect to novelty and inventive step of claims 8 and 1 of the main request apply to the common features of claims 1 and 4, respectively.

Although the application states that, in an alternate configuration, the flight management computer and the thrust management computer may be separated from each other (see column 4, lines 9 to 11 of the patent application as published), the application fails to indicate any advantage achieved or technical problem solved by this configuration. It is considered therefore that this alternative is a simple matter of design choice lying within the routine competence of the skilled person.

Thus, the subject-matter of claims 1 and 4 is not considered to involve an inventive step.

12. *Auxiliary request IV'*

12.1 Article 123(2) EPC

Claim 1 of auxiliary request IV' corresponds to claim 1 of auxiliary request IV replacing the feature that each of the flight management computer and thrust management

computer has a non-volatile memory by the feature that there is a non-volatile memory to which both of the flight management computer and thrust management computer have access. Claim 1 of auxiliary request IV' complies with the provisions of Article 123(2) EPC.

Claim 4 of auxiliary request IV' corresponds to claim 1 of auxiliary request IV deleting the feature that the flight management computer and thrust management computer each includes a non-volatile memory, see page 2, line 20 of auxiliary request IV'. By contrast, line 23 to 28 of this claim specify that the flight management computer and thrust management computer choose the value of said data related to the aircraft for said memory of each of said flight management computer and said thrust management computer implying that each of the flight management computer and thrust management computer have a non-volatile memory. As set out in point 11.1 above, the patent application as filed does not provide a basis for the flight management computer and the thrust management computer each having a distinct non-volatile memory. Therefore, claim 4 does not comply with the provisions of Article 123(2) EPC.

12.2 Article 84 EPC 1973

As the respondent argued additionally, claim 4 of auxiliary request IV' lacks a basis in the description, (see point 12.1 above), and therefore formal support by the description, contravening Article 84 EPC 1973.

12.3 Novelty and inventive step

Although auxiliary request IV' is not allowable on the basis of Articles 123(2) EPC and 84 EPC 1973 as explained in points 12.1 and 12.2 above, the board would like to make the following observations on novelty and inventive step as an obiter dictum.

The respondent argued during the oral proceedings before the board that separating the flight management computer and the thrust management computer as stated as an alternate configuration (see column 4, lines 9 to 11 of the patent application as published) was an obvious design choice lying within the routine competence of the skilled person, since redundancy was of paramount importance in avionics.

As the application fails to indicate any advantage achieved or technical problem solved by the separation of the flight management computer and the thrust management computer, the board considers that this alternative is a simple matter of design choice lying within the routine competence of the skilled person.

Thus, the subject-matter of claims 1 and 4 is not considered to involve an inventive step.

13. *Auxiliary request V*

13.1 Article 123(3) EPC and 84 EPC 1973

Claim 1 of auxiliary request V is a combination of claims 1, 2 and 3 of the main request, explicitly including "a jet engine of an aircraft having a

plurality of plugs in a selected configuration to represent a thrust rating of the jet engine" and replacing the data related to the aircraft whose chosen values are based on the thrust rating by data entries whose values are a function of the thrust rating.

The respondent objected that claim 1 of auxiliary request V did not comply with Article 123(3) EPC as a result of including the jet engine.

The appellant took the view that claim 1 of auxiliary request V was limited by comprising a further feature and therefore did not extend the scope of protection.

According to Article 123(3) EPC the European patent may not be amended in such a way as to extend the protection it confers. According to Article 84 EPC 1973 the claims shall define the matter for which protection is sought. They shall be clear and concise and be supported by the description.

The apparatus of claim 1 as granted only referred to an electronic engine controller, a data bus and an avionic computer. This is considered to be an electronic system. The amended claim additionally includes the jet engine itself. It is not clear whether the apparatus including the jet engine is to be considered as a special implementation of an electronic system or a part of an airplane. Thus, the matter for which protection is sought is not clear, contravening the provision of Article 84 EPC 1973.

The appellant in its letter of 3 April 2009 did not comment on this issue.

The lack of clarity of claim 1 makes it impossible to determine whether the scope of the claim was extended. However, auxiliary request V is not allowable for lack of clarity of claim 1, Article 84 EPC 1973.

13.2 Novelty and inventive step

The arguments presented with respect to inventive step of claim 1 of the main request in point 6.1 apply to claim 1 as to the common features. According to these arguments using the electronic engine controller arranged at the engine as an external mechanism for providing information related to the engine, e.g. thrust rating, is considered to be an obvious matter of choice. The board notes that considering the electronic engine controller and the respective jet engine which is provided with plugs as an external mechanism for providing information related to the engine is equally obvious.

Moreover, as set out in point 9.2 with respect to the features of claims 2 and 3 of the main request, D1, column 6, lines 49 to 53 discloses that the rating data for an engine is looked up in an engine rating table, based on the engine rating code read from the first identification block in the preceding sequence, and loaded into the memory of the CPU. The step of looking-up implies a validity determination as claimed.

Claim 7 of auxiliary request V differs from claim 8 of the main request in that the engine thrust rating is provided to an avionic computer of an aircraft, that a configuration of a plurality of plugs is provided in a

jet engine and that a digital data representation of the thrust rating is transmitted by the electronic controller over a data bus.

The comments made in point 6.2 above with respect to claim 8 of the main request apply.

Moreover, D1 discloses an automatic throttle controller for controlling the thrust produced by the engines of an aircraft, see column 2, lines 17 to 20. This implies the reference to an aircraft.

As set out in point 6.1 with respect to claim 1 of the main request, it is considered to be obvious that the electronic engine controller and the avionic computer are coupled to a data bus and that the electronic engine controller arranged at the engine which is provided with plugs is used as an external mechanism for providing information related to the engine.

Thus, the subject-matter of claims 1 and 7 does not involve an inventive step. Auxiliary request V is therefore not allowable.

13.3 Referral to the Enlarged Board of Appeal

The appellant requested in its letter of 3 April 2009 that the question as to whether adding the feature of the jet engine to the independent claim of auxiliary request V extended the scope of the claim, be referred to the Enlarged Board of Appeal.

According to Article 112(1)a EPC 1973, in order to ensure uniform application of the law, or if a point of

law of fundamental importance arises, the board of appeal shall refer any question to the Enlarged Board of Appeal if it considers that a decision is required for the above purposes.

In the present case, auxiliary request V does not comply with the provisions of Article 84 EPC 1973 and Article 52 EPC in connection with Article 56 EPC 1973. The question for referral is thus not decisive. Therefore, the request for referral is refused.

14. *Auxiliary request VI*

Claim 1 of auxiliary request VI is a combination of claims 1, 6 and 7 as granted. Claim 6 is a combination of claims 8, 9 and 10 as granted, specifying that the data is transmitted by an electronic engine controller, associated with and coupled to each jet engine, over a data bus.

Claims 6, 7, 9 and 10 as granted refer to the handling of engines having different thrust rating. This is the main objective of D1. D1, column 1, line 33 to line 54 discloses that different engines may be mounted on an aircraft and provide different thrust ratings requiring appropriate action. D1, column 8, lines 33 to 42 discloses that in an automatic throttle control for aircraft with intermixed engines separate control channels are provided allowing separate control signals, based on the type and rating of each engine, plus common rating values and limits, to be used to provide separate control signals.

Knowing about the problems arising from the intermixed use of engines with different thrust ratings, it would lie within the routine competence of the skilled person to realise that the thrust rating data provided by the apparatus and method of claims 1 and 8 of the main request, respectively, may be used to generate a fault report. Moreover, it is common practice in avionics to perform important checks on the ground, i.e. at power-up.

The board agrees with the respondent's view that claims 1 and 6 of auxiliary request VI do not involve an inventive step.

15. There being no further requests, the appeal has to be dismissed.

Order

For these reasons, it is decided that:

The appeal is dismissed.

Registrar:

Chairman:

K. Götz

D. H. Rees