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**Datasheet for the decision
of 17 October 2017**

Case Number: T 2226/14 - 3.2.01

Application Number: 10010694.7

Publication Number: 2289734

IPC: B60N2/34, B64D11/06

Language of the proceedings: EN

Title of invention:

A seating system and a passenger seat unit for an aircraft

Patent Proprietor:

Virgin Atlantic Airways Limited

Opponents:

Zodiac Seats UK Limited
AIRBUS SAS/AIRBUS OPERATIONS/AIRBUS OPERATIONS Ltd/
AIRBUS OPERATIONS GmbH/AIRBUS OPERATIONS S.L.

Headword:

Relevant legal provisions:

EPC Art. 54, 56

Keyword:

Inventive step (yes)

Decisions cited:

T 1495/09

Catchword:



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Case Number: T 2226/14 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 17 October 2017

Appellant: Virgin Atlantic Airways Limited
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 22 September
2014 revoking European patent No. 2289734
pursuant to Article 101(3)(b) EPC.**

Composition of the Board:

Chairman G. Pricolo
Members: C. Narcisi
 S. Fernández de Córdoba

Summary of Facts and Submissions

- I. European patent No. 2 289 734 was revoked by the decision of the Opposition Division posted on 22 September 2014. Against the decision an appeal was lodged by the Patentee on 27 November 2014 and the appeal fee was paid. The statement of grounds of appeal was filed on 23 January 2015.
- II. Oral proceedings took place on 17 October 2017. The Appellant (Patentee) requested that the decision under appeal be set aside and that the patent be maintained in amended form on the basis of auxiliary request 2 (sole request) (filed on 1 September 2017). The Respondent (Opponent) requested that the appeal be dismissed.
- III. Claim 1 reads as follows:
- "A seating system for an aircraft, comprising a plurality of seat units (40), each seat unit defining only one notional longitudinal seat axis (C-C) and comprising a supporting structure (42) adapted for attaching the seat unit to a floor of an aircraft and means formed or being configurable for forming a seat comprising a seat-pan (71) and a back-rest (72), the said seat units being arranged to form a column defining a notional longitudinal column axis (B-B), in which column said seat-units are arranged side-by-side in longitudinally offset relation at an acute angle to the notional longitudinal column axis (B-B), wherein the units are arranged to be disposed adjacent the sidewall (26, 28) of an aircraft and face inwardly thereby to define between the rear of each seat and the

sidewall a space (36) when the unit is configured as a seat, each seat unit further comprising means forming or being configurable for forming a substantially flat bed, a major proportion of which bed is disposed forwardly of the position of the seat, characterised in that the bed extends rearwardly into said space (36) defined between the rear of the seat and the aircraft sidewall when the unit is configured as a bed so as to provide a rearward space for use by a passenger accommodated in the unit (40), which rearward space is defined in part by the adjacent aircraft sidewall, wherein each seat unit (40) is provided on one side thereof with a privacy screen (60) which defines in use with the privacy screen of an adjacent unit a partially enclosed private space for a passenger using the respective seat unit, and wherein said rearward space (36) for said passenger which is provided in use when the unit is configured as a bed is partly bounded by the aircraft sidewall (26, 28) and partly by the screen (60)."

IV. The Appellant's arguments may be summarized as follows:

The subject-matter of claim 1 is new over D1 (GB-A-2 326 824) and over D3 (EP-A1-1 211 176). As to D1, this document does not disclose the feature reading "wherein each seat unit (40) is provided on one side thereof with a privacy screen (60) which defines in use with the privacy screen of an adjacent unit a partially enclosed private space for a passenger using the respective seat unit, and wherein said rearward space (36) for said passenger which is provided in use when the unit is configured as a bed is partly bounded by the aircraft sidewall (26, 28) and partly by the screen (60)" (hereinafter designated as feature (i)). Indeed,

as shown in D1 (see figures 7, 8, 9 to 11 and 13 to 16), and particularly in figures 13 to 16, the (rearward) space behind the back-rest 42 of the seat is bounded in its entirety by the screen 41, which is interposed between said rearward space (bed extension space) and the aircraft sidewall. This holds true also for the bed extension space located laterally of and contiguously to the location of the passenger's head in the bed configuration of the seat unit. If, in the alternative, the sidewall of the aircraft were regarded as constituting the boundary, then the terms of feature (i) would not be met, for in that case the rearward space would be bounded exclusively by said sidewall and would not be "partly bounded by the aircraft sidewall (26, 28) and partly by the screen (60)".

As to D3, this document does not disclose a "seat unit defining only one notional longitudinal seat axis (C-C)" (hereinafter designated as feature (ii)), since the seat unit shown in D1 has a rotational axis and is capable of being moved (by rotation) into two different positions having a different notional longitudinal axis, one for landing (and take-off), the other one during cruising. The aforesaid feature is actually intended to explicitly exclude such a possibility.

The subject-matter of claim 1 involves an inventive step over D1 or (equivalently) over public prior use D5 (based on documents D5.1 to D5.9 submitted during opposition proceedings and basically disclosing a seating system and a seat unit according to D1) in conjunction with D3. In effect, the skilled person would not combine these documents due to substantial differences in their technical teaching.

V. The Respondent's arguments may be summarized as follows:

The subject-matter of claim 1 lacks novelty over D1 (equivalently over public prior use D5) and D3 (this document representing prior art according to Article 54(2) EPC, given that both priority dates of the contested patent are not validly claimed). Specifically, D5 discloses the aforementioned feature (i), given the position of the sidewall defining and bounding said rearward space, where the passenger's head rests in the bed configuration of the seat (bed extension space), and given the position of the screen 41. This holds true irrespectively of the screen 41 (interposed between the seat-backrest and the aircraft sidewall) illustrated in D1, since despite taking said screen 41 into account feature (i) is nonetheless fulfilled. Indeed, it is clearly visible in the figures (see figures 7, 8, 13) that said rearward space is bounded laterally on one side by the aircraft sidewall and in a longitudinal direction (behind the passenger's head) by the screen 41.

D3 likewise anticipates the claimed subject-matter, for aforesaid feature (ii) is known from D3. In particular, said "only one notional longitudinal axis" is defined in relation to the "seat unit" and not to the "seating system" and clearly this definition applies to the seat unit of D3.

The subject-matter of claim 1 is not inventive over D1 (or equivalently D5) and D3. In view of D1 (or D5) the skilled person would look for an improvement and an optimization of the space available for each passenger (in the seat and in the bed configuration), thus likewise saving space. The skilled person would notice

that according to D1 no optimal use is made of the space between the back-rest of the seat and the aircraft sidewall. Therefore it would retain document D3, disclosing a seat arrangement and configuration wherein only a privacy screen (D3, reference signs 13A, 12A) is provided, separating the private space of each seat unit from the neighbouring seat unit. Thus, the skilled person would eliminate the screen 41, housing (or at least partly enclosing) the back-rest of the seat, and would retain only the privacy screen 34 (see D1, figures 7,8), which already provides sufficient protection and shelter for a passenger's private space. Consequently, said rearward space (bed extension space) behind the back-rest of the seat would be fully available for use in the bed configuration of the seat, being delimited only by the aircraft sidewall and by the privacy screen 34. Thus the subject-matter of claim 1 would be obtained in an obvious manner.

The objections under Article 100(c) EPC raised in the written procedure against auxiliary request 2 (now the sole request of the Appellant) were withdrawn during the oral proceedings.

Reasons for the Decision

1. The appeal is admissible.
2. Document D3 forms part of the prior art pursuant to Article 54(2) EPC, given that both priority dates are invalidly claimed, as was conceded by the Appellant itself during oral proceedings before the Board and as likewise set out in decision T 1495/09 (page 23, point 6.1), relating to a divisional application of the parent application D9 (EP-A-1 602 526) of the contested

patent. Therefore the contested patent is only entitled to the filing date of D9.

3. The subject-matter of claim 1 is new over D1 and over D3 (Article 54(2) EPC).

In relation to D1, the Board considers that said feature (i) is not derivable from D1, thereby essentially following the Patentee's reasoning in that D1 discloses a rearward space (for use in the bed configuration) "physically" bounded by the screen 41, but does not disclose a rearward space bounded partly by the screen 41 and partly by the sidewall, since the screen or housing 41 ("physically") entirely delimits and encloses said rearward space, even at its lateral boundaries contiguous to the location of the passenger's head in the bed configuration of the seat (see figures 7, 8 and 13). If, in the alternative, the rearward space were considered in a broader and more general (or abstract) way as being "geometrically" bounded or delimited (i.e. being the "geometrical" outer border or the totality of the rearward space, behind the seat-backrest, available in principle for use as a bed extension) by the aircraft sidewall, then it could not at the same time be partly delimited or bounded by the screen 41, since this would necessarily require considering at the same time two different and incompatible interpretations of the term "bounded" (a purely "physical" and a purely "geometrical" one; in effect, regarding or considering said rearward space in D1 as being "partly bounded" by said aircraft sidewall entails ignoring the "physical" obstacle constituted by the interposed screen 41). Consequently, such a construction of feature (i) would be inconsistent and impermissible.

In addition, the Board also considers that, unlike the term "defined by" recited in claim 1, the wording "bounded by" (in the given context of feature (i)) confers and conveys a stronger meaning implying or emphasizing a physical boundary or physical border delimiting a space which in its entirety is made accessible or available for use as a bed extension space. This again excludes the possibility or alternative that in D1 said rearward space for use as a bed extension space be regarded as being "partly bounded by the aircraft sidewall (26, 28) and partly by the screen (60)".

For the above reasons the subject-matter of claim 1 is new over D1.

The seating system of D3 differs from the claimed subject-matter at least in that each seat unit does not define "only one notional longitudinal seat axis" (see claim 1), this feature excluding any possible rotation of the seat unit as disclosed in D3. Thus, said feature can only be seen in relation to the seating system and its overall orientation in the aircraft, mention of "only one" notional longitudinal axis in an isolated seat unit being otherwise completely meaningless.

4. The subject-matter of claim 1 involves an inventive step over D1 (or equivalently D5) and D3. The skilled person starting from D1 would have no incentives and no valid reasons for combining this document with D3. In the seat unit of D1, the skilled person would have to remove the screen or seat housing 41 in order to arrive at feature (i) of the claimed subject-matter, thus obtaining a rearward space (for use as a bed extension space) bounded partly by the aircraft sidewall and partly by privacy screen 34 (see D1, figures 7, 8, 13). However, the skilled person would not have any reasons

for doing this, given that the screen or housing 41 constitutes an essential part of the seat in D1, providing protection and shelter for the private space of each passenger, which is a major concern according to D1 (see pages 1, 2). Moreover, a main object of D1 resides in providing "a seating unit comprising a fixed housing containing a primary seat with a reclinable back, wherein the back is arranged to recline in such a manner that it remains within the housing" (D1, page 2, lines 10-15). Already for these reasons the skilled person would not contemplate removing the screen or housing 41. Further, as clearly visible in figures 4, 7, 8, 13 in D1, merely removing the screen 41 would not lead to any space optimisation or additional space being available for the bed configuration of the seat, given the privacy screen 34 located immediately behind the screen or housing 41. The skilled person starting from D1 would thus have no incentives to remove said screen or housing 41. Consequently, additional modification of the shape and configuration of the privacy screen 34 would be necessary too, in order to increase the available rearward space. However, even D3 would not suggest to the skilled person such further modification of the privacy screen 34 either, for (according to D3) in the bed configuration (D3, figure 4) the seat unit (7A', 7B') is rotated to a position wherein its notional longitudinal axis forms an even larger acute angle with the notional longitudinal column axis than in the standard normal seat configuration (D3, [0011]); it can be derived from figure 4 that the bed-configured seat unit 10A is distanced and separated from both screen 13A and screen 13B, such that said rearward space (for use as a bed extension space) is essentially bounded by the aircraft sidewall and only to a very minor extent by the screen.

Hence, D3 does not suggest any modification of the privacy screen 34 in D1.

For the above reasons the skilled person would not combine D1 and D3 (or equivalently D5) in an obvious manner and would thereby not arrive at the subject-matter of claim 1 (Article 56 EPC).

Order

For these reasons it is decided that:

1. The appealed decision is set aside.
2. The case is remitted to the department of first instance with the order to maintain the patent as amended in the following version:

Claims 1 to 10 according to auxiliary request 2 as filed with letter dated 1 September 2017 (sole request);

Description : columns 1, 2 and 7 to 14 of the patent specification; columns 3 to 6 as filed during the oral proceedings;

Figures 1, 1A, 2, 2A of the patent specification.

The Registrar:

The Chairman:



A. Vottner

G. Pricolo

Decision electronically authenticated