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**Datasheet for the decision
of 17 October 2018**

Case Number: T 2166/16 - 3.2.01

Application Number: 08761264.4

Publication Number: 2158125

IPC: B64C1/06

Language of the proceedings: EN

Title of invention:

METHOD AND DEVICE FOR PRODUCING A FUSELAGE CELL OF AN AIRPLANE

Applicant:

Airbus Operations GmbH

Headword:

Relevant legal provisions:

EPC Art. 123(2), 111(1)

Keyword:

Amendments - added subject-matter (no)

Remittal to the department of first instance - (yes)

Decisions cited:

Catchword:



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Case Number: T 2166/16 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 17 October 2018

Appellant: Airbus Operations GmbH
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted on 10 February
2016 refusing European patent application No.
08761264.4 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman G. Pricolo
Members: W. Marx
O. Loizou

Summary of Facts and Submissions

- I. The appeal of the applicant is against the decision of the Examining Division refusing European Patent application No. 08 761 264.4.
- II. Independent claim 1 according to the main request underlying the decision under appeal reads as follows:
- "1. Method for producing a fuselage cell (27) of an airplane with an at least partially prefabricated cockpit section (1, 40, 58) or with an at least partially prefabricated rear section (15, 60), and with a central wing box section (26), comprising the following steps:
attaching at least two shell components to the cockpit section (1, 40, 58) or to the rear section (15, 40, 60), and to the central wing box section (26), wherein the at least two shell components are simultaneously connected to the cockpit section (1, 40, 58) or to the rear section (15, 40, 60), and to the central wing box section (26), and integrating at least one floor framework section (14, 25, 32, 49, 66, 67)."
- III. The Examining Division held that claim 1 of the main request did not comply with the requirements of Article 123(2) EPC and that dependent claim 3 did not meet the requirements of Article 84 EPC.
- IV. With the statement of grounds of appeal, the appellant requested (*inter alia*) the grant of a patent on the basis of the main request underlying the decision under appeal.
- V. With communication dated 9 July 2018 the Board informed the appellant of its provisional view according to

which, contrary to the opinion of the Examining Division, claim 1 of the main request met the requirements of Article 123(2) EPC. However, the Board expressed its agreement with the position of the Examining Division according to which claim 3 lacked clarity, and invited the appellant to file a new main request in which claim 3 was deleted.

VI. With its reply dated 14 August 2018, the appellant filed a set of claims according to a new main request corresponding to the set of claims according to the previous main request in which dependent claim 3 was deleted and the numbering and back-references of the dependent claims were adjusted where applicable. The appellant further filed an amended description.

The requests of the appellant as set out in the reply of 14 August 2018, were the following:

(1) To set aside the decision to refuse the European patent application and grant a patent based on:

- claims 1 to 11 according to the main request, as filed with letter of 14 August 2018;
- description pages 1 to 23 according to the main request, as filed with letter of 14 August 2018;
- drawing sheets 1/4 to 4/4, as published.

(2) In case that the Board of Appeal does not intend to grant a patent based on the newly filed main request, then it is requested to set aside the decision to refuse the European patent application and remit the case to the Examining Division for further prosecution on the basis of the newly filed main request.

(3) Oral proceedings are requested in the event that the Board of Appeal is not inclined to grant any of the above requests.

Finally, the appellant withdrew its request for refund of the appeal fee filed with the statement of grounds of appeal.

Reasons for the Decision

1. As submitted by the appellant, the claims according to the main request correspond to the main request underlying the decision under appeal in which dependent claim 3 is deleted and the numbering and back-references of the dependent claims is adjusted where applicable.

Accordingly, the objection under Article 84 EPC raised by the Examining Division no longer applies, as it was directed against claim 3 only.

2. *Article 123(2) EPC*

- 2.1 The amendments made to claim 1, as compared to claim 1 as originally filed, are the following (features added are underlined; features deleted struck through):

1. Method for producing a fuselage cell of an airplane with an at least partially prefabricated cockpit section ~~and/or~~ with an at least partially prefabricated rear section, and with a central wing box section, comprising the following steps:
attaching at least two shell components to the cockpit section ~~and/or~~ to the rear section, and to the central wing box section, wherein the at least two shell components are simultaneously connected to the cockpit

section or to the rear section, and to the central wing box section, and
integrating at least one floor framework section ~~for~~
~~forming a front fuselage section and/or a rear fuselage~~
~~section.~~

2.2 The Examining Division considered that claim 1 did not meet the requirements of Article 123(2) EPC because
a) the application as filed did not disclose a simultaneous connection of the at least two shell components to the cockpit section or to the rear section, and to the central wing box section;
b) the claim did not recite that the manufacturing method produced circumferentially closed barrel type structures, so-called fuselage sections.

2.3 Concerning a), the Examining Division referred to the disclosure of claim 3 and of pages 5, 9 of the application as filed. The Examining Division considered that a simultaneous connection between cockpit section and central wing box section or between rear section and central wing box section, was only disclosed in the context of claim 3, which referred to front and rear fuselage sections. The "front fuselage section" and "rear fuselage section" were finished structures that comprised respectively a cockpit and a rear section connected to at least two shell components.

The Examining Division however did not take into account the whole disclosure of the application as filed, in particular the disclosure on page 16 specifically referred to by the Appellant in the statement of grounds of appeal.

Claim 1 includes two alternatives (see also section 1.1.1.2.5 of the decision under appeal), namely:

- i) at least two shell components are simultaneously connected to the **cockpit section** and to the central wing box section;
- ii) at least two shell components are simultaneously connected to the **rear section** and to the central wing box section.

The application as filed discloses on page 9, first paragraph, that at least two cross-seams are formed simultaneously, on the one hand between the cockpit section and the central wing section and on the other hand between the central wing box section and the rear section respectively. On page 9, second paragraph, it is further stated that at least four cross-seams between the sections are produced simultaneously. This disclosure is made however in the context in which all of the cockpit section, the central wing section and the rear section are present (they must be aligned, see the paragraph bridging pages 8 and 9). Claim 1 is however more general in that the first alternative only requires the cockpit section and the central wing box section and the second alternative only requires the rear section and the central wing box section.

A disclosure corresponding to that of page 9 is found on page 15, third and fourth paragraph. Here also, the context is that of positioning one after the other the cockpit section, the central wing box section and the rear section. In the embodiment described on page 15 (see the last two lines), at least four continuous cross-seams as well as at least eight continuous longitudinal seams are formed. On page 16, 2nd paragraph, it is stated that in a further variant it is also possible to insert shell components in a site only between the cockpit section and the central wing box section or between the central wing box section and the

rear section, whereby the attaching of the pre-fabricated cockpit section or of the rear section can be carried out in another site or in the same site so as to complete the fuselage cell of the airplane. Accordingly, this disclosure corresponds to the disclosure of two alternatives, one in which shell components are simultaneously connected to the **cockpit section** and to the central wing box section, and another in which two shell components are simultaneously connected to the **rear section** and to the central wing box section.

Moreover, since the disclosure on page 16, 2nd paragraph, is a variant of the previously disclosed method which encompasses both a four shell construction (see page 15, last paragraph) as well as a half shell construction (i.e. a construction using only upper and lower shells, see page 16, first paragraph), it is clear that said disclosure can be regarded as general according to the broad teaching of claim 1 as originally filed reciting "at least two" shell components.

It follows from the above that the two alternatives i) and ii) are clearly and unambiguously derivable from the application as filed. Hence, contrary to the view taken by the Examining Division, the application as filed discloses a simultaneous connection of the at least two shell components to the cockpit section or to the rear section, and to the central wing box section.

2.4 Concerning b)

This objection of the Examining Division relates to the omission of the feature "for forming a front fuselage

section and/or a rear fuselage section" in original claim 1 and further relies on the interpretation of the terms "front fuselage section" and "rear fuselage section" as finished structures that comprise respectively a cockpit and a rear section connected to at least two shell components by means of complete circumferential cross-seams (see page 8, 2nd paragraph, and point 1.1.2.2 of the decision under appeal).

In the absence of any specific definition in the description, there is no reason for interpreting the terms "front fuselage section" and "rear fuselage section" in such a restrictive manner based on the description. In fact, the wording of claim 1 as originally filed allows for the broadest possible interpretation of these terms, the fuselage sections being the result of the steps of the claimed method consisting in attaching at least two shell components to the cockpit section or to the rear section, respectively, and integrating at least one floor framework section.

Since claim 1 under consideration specifies the attachment of at least two shell components to the cockpit section or to the rear section, and to the central wing box section, and the integration of at least one floor framework section, it is clear that a front fuselage section and a rear fuselage section, in a broad sense, are obtained.

Therefore, the omission of the feature "for forming a front fuselage section and/or a rear fuselage section" does not result in any technical information extending beyond the content of the application as filed.

2.5 Claim 1 thus meets the requirements of Article 123(2) EPC.

3. In view of the above, the decision under appeal must be set aside.

4. *Remittal to the department of first instance*

4.1 The appellant submitted (see reply to the Board's communication dated 14 August 2018) that since the Board already indicated that independent claim 1 met the requirements of Article 123(2) EPC and the Examining Division already acknowledged novelty and inventive step of the claims according to the main request in the communication pursuant to Article 94(3) EPC dated 28 June 2012, the Board could issue a decision setting aside the decision under appeal and ordering the grant of a patent on the basis of the claims, description and figures in accordance with the main request.

4.2 For the reasons given above, the grounds for refusing the application given by the Examining Division have been overcome. The Board already informed the appellant that in this event it intended to remit the case to the Examining Division for further prosecution (see point 6 of the Board's communication). The Board notes that the first examiner has given, in the communication dated 28 June 2012, a positive opinion as to novelty and inventive step of the claimed subject-matter. However, the other members of the Division have not yet expressed their agreement or otherwise with the first examiner's opinion. Under these circumstances the Board considers it appropriate to remit the case to the Examining Division for further prosecution (Article 111(1) EPC).

5. Finally, the Board notes that it was not necessary to hold oral proceedings, as these were requested conditionally only for the case that the Board did not grant any of the requests (1) and (2) (see under point VI above) and the Board allows request (2).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance for further prosecution.

The Registrar:

The Chairman:



A. Vottner

G. Pricolo

Decision electronically authenticated