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**Datasheet for the decision  
of 29 March 2022**

**Case Number:** T 2526/19 - 3.5.03

**Application Number:** 07838288.4

**Publication Number:** 2062365

**IPC:** H04B1/034, G08G5/00, H04B7/185

**Language of the proceedings:** EN

**Title of invention:**

System and method for wirelessly transferring content to and from an aircraft

**Patent Proprietor:**

Thales Avionics, Inc.

**Opponent:**

AIRBUS Operations GmbH/Airbus S.A.S./Airbus Operations S.A.S./Airbus Operations Ltd./Airbus Operations S.L.

**Headword:**

Data-traffic-prioritisation mechanism for aircraft/THALES

**Relevant legal provisions:**

EPC Art. 56  
RPBA 2020 Art. 15a(1)

**Keyword:**

Oral proceedings - videoconference as a suitable format (yes)  
Inventive step - all claim requests (no): selection from  
equally likely alternatives

**Decisions cited:**

G 0001/21



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

Boards of Appeal of the  
European Patent Office  
Richard-Reitzner-Allee 8  
85540 Haar  
GERMANY  
Tel. +49 (0)89 2399-0  
Fax +49 (0)89 2399-4465

Case Number: T 2526/19 - 3.5.03

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.03**  
**of 29 March 2022**

**Appellant:** AIRBUS Operations GmbH/Airbus S.A.S./Airbus Operations S.A.S./Airbus Operations Ltd./Airbus Operations S.L.  
(Joint Opponents) Kreetslag 10/2 rond-point Emile Dewoitine/  
316 Route de Bayonne/New Filton House/  
Avenida de John Lennon S/N  
21129 Hamburg/31707 Blagnac/31060 Toulouse Cedex  
9 Bristol, BS99 7AR/28906 Getafe, Madrid (DE)

**Representative:** Isarpatent  
Patent- und Rechtsanwälte Barth  
Charles Hassa Peckmann & Partner mbB  
Friedrichstrasse 31  
80801 München (DE)

**Respondent:** Thales Avionics, Inc.  
(Patent Proprietor) 58 Discovery  
Irvine, CA 92618-3105 (US)

**Representative:** Plasseraud IP  
66, rue de la Chaussée d'Antin  
75440 Paris Cedex 09 (FR)

**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
23 July 2019 concerning maintenance of the  
European Patent No. 2062365 in amended form.**

**Composition of the Board:**

**Chair** K. Bengi-Akyürek  
**Members:** K. Peirs  
R. Romandini

## Summary of Facts and Submissions

I. The appeal lies from the interlocutory decision of the opposition division to maintain the opposed patent in amended form according to a "third auxiliary request".

The main request, i.e. the rejection of the opposition, was deemed to be not allowable under Article 100(c) EPC. Claim 1 of the auxiliary request 1 underlying the decision under appeal was found not to be allowable under Article 123(2) EPC for the same reasons as for claim 1 of the patent as granted. The second auxiliary request underlying the decision under appeal was deemed to be not allowable for lack of novelty as regards claim 1 (Article 54 EPC), having regard to the following prior-art document:

**E21:** EP 1 793 512 A2.

The joint opponents (appellant) appealed this decision.

II. Oral proceedings before the board were held on 29 March 2022 by videoconference.

- The appellant requests that the decision under appeal be set aside and that the patent be revoked.
- The proprietor (respondent) requests, as a **main request**, that the appeal be dismissed and, as an auxiliary measure, that the patent be maintained in amended form according to the claims of **first to third auxiliary requests**. The respondent also requests a reasoning why videoconferencing was the appropriate means to conduct oral proceedings in

the present appeal case.

At the end of the oral proceedings, the board's decision was announced.

III. Claim 1 of the **main request**, i.e. claim 1 as maintained in amended form by the opposition division, reads as follows (board's feature labelling):

- (a) "An equipment on an aircraft (108) for transferring content to and from the aircraft (108), the equipment comprising:
- (b) a first communication device; and
- (c) a transceiver connected to an antenna (124) on the aircraft (108) and the first communication device, the transceiver is configured to establish a terrestrial communication link through the antenna (124) directly to a second communication device (106) disposed at a ground based entity to communicate the content between the first communication device and the second communication device,
- (d) wherein the terrestrial communication link supports wireless exchange of data across a distance within a range of about 3 to 5 miles; and
- (e) the first communication device operating to provide a traffic prioritization mechanism that prioritizes transfer of the content between the first communication device and the second communication device (106)
- (f) in accordance with at least one of available link speed and anticipated connection time between the first communication device and the second communication device (106)."

IV. Claim 1 of the **first auxiliary request** includes all the features of claim 1 of the main request with feature (f) replaced by the following feature (board's feature labelling; amendments highlighted by the board):

(g) "in accordance with ~~at least one of the~~ available link speed and the anticipated connection time between the first communication device and the second communication device (106)".

V. Claim 1 of the **second auxiliary request** includes all the features of claim 1 of the main request and further includes, at the end, the following feature (board's feature labelling):

(h) "the first communication device further operating to provide a mechanism to enable support a type of communication link established by the second communication device (106)".

VI. Claim 1 of the **third auxiliary request** includes all the features of claim 1 of the first auxiliary request and further includes, at the end, feature (h).

## **Reasons for the Decision**

1. *Conducting oral proceedings by videoconference*

1.1 Initially, the parties were summoned to in-person oral proceedings. Two weeks ahead of the scheduled oral proceedings before the board, the hearing was converted to VICO-based oral proceedings under Article 15a(1) RPBA.

1.2 In view of the pandemic developments and the resulting high incidences in Bavaria at the relevant time, the risk for an infection for all participants, including the board, was to be weighed up against the respondent's reservations as to holding VICO-based oral proceedings, the complexity of the case, and the suitability of the case for a hearing in this format.

1.3 The board, after having considered all these relevant criteria, came to the conclusion that a VICO-based hearing was indeed a suitable format for such proceedings under Article 15a(1) RPBA. Moreover, the compliance of Article 15a RPBA with the EPC has not been questioned by the Enlarged Board of Appeal in case G 1/21, whether or not a "general emergency" applies. Article 15a RPBA thus remains applicable, without any qualification, to these and future appeal proceedings.

2. *Technical background*

The patent concerns the wireless transfer of content such as weather information, voice and in-flight entertainment (IFE) between an aircraft 108 and a server 106 of a ground station while the aircraft is at a parking gate of the ground station (see Figure 1 of the patent reproduced below).

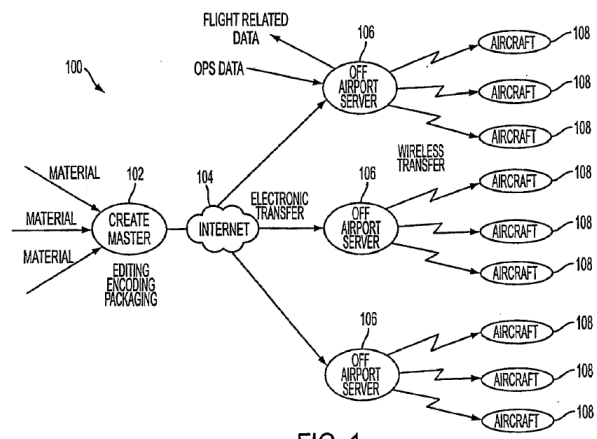


FIG. 1



A well-known system for this purpose is the so-called "Gatelink" approach. According to the patent, the implementation of this approach typically requires a modification of the airport facility. To address this, the patent proposes a mechanism to prioritise content transfer in accordance with at least the *available link speed* and the *anticipated connection time* between aircraft 108 and server 106. Via this prioritisation mechanism, the system of the invention is said to be able to adapt to the particularities of a given airport. By doing so, the proposed system purportedly operates with a minimal modification to the airport facility.

3. *Main request: claim 1 - inventive step*

Reasons 18 and 19 of the impugned decision are reviewed as follows in the light of the parties' arguments.

- 3.1 The parties contested neither the choice of **E21** as the most promising starting point for the assessment of inventive step nor that E21 disclosed **features (a) to (d)**. The board sees no reason to contest this either.
- 3.2 The respondent disputed that Figure 2 of E21 disclosed a traffic prioritisation mechanism as required by **feature (e)** because this figure showed merely to which one of radio towers 28, 30 and 32 the aircraft's client devices 46, 48, 50 and 52 and IFE server 23 were connected. The respondent argued that no traffic prioritisation took place in Figure 2 of E21 once these connections were established. By contrast, the respondent construed **features (c) to (e)** in the sense that the terrestrial communication link of claim 1 must already be established before the traffic prioritisation mechanism was provided, i.e. traffic was

prioritised once the communication had started.

Even when adopting, *arguendo*, the respondent's interpretation of features (c) to (e) (although no temporal order can be derived as to the establishment of the terrestrial communication link and the application of the traffic prioritisation mechanism from the claim wording), the appellant correctly pointed out that paragraph [0021] and Figure 3 of E21 teach to establish, in a first step 74, an initial association and link by central terminal wireless LAN unit (TWLU) client 24 of aircraft 4 of Figure 2 of E21 and, in a second step 76, to search for all detectable access points. If only one access point is detected, a data transfer takes place, in a third step 78, in accordance with how a system manager prioritises the data from clients 46, 48, 50 and 52 of Figure 2 of E21. If multiple access points are detected, the system manager makes use of "a communication priority matrix" to provide for an optimised data transfer, as is explained in paragraph [0022] of E21. Either way, a traffic prioritisation mechanism is applied after the link between TWLU client 24 and one of radio towers 28, 30 and 32 was established.

3.3 As a result, paragraphs [0021] and [0022] together with Figure 3 of E21 indeed disclose feature (e).

3.4 The board acknowledges that E21 does not disclose **feature (f)**. Instead, paragraph [0024] of E21 teaches creating the communication priority matrix by adopting the criteria of

- (i) the number of available access points,
- (ii) a detected signal strength and

- (iii) how many clients are associated with each access point.

3.5 The board agrees with the appellant that the technical effect of feature (f) is, at best, that "an alternative implementation of the traffic prioritisation mechanism of E21 is provided".

The respondent's technical effect that a more efficient transfer of content would be provided cannot be credibly ascribed to feature (f): the use of the available link speed or the anticipated connection time to prioritise content transfer does not necessarily render this content transfer more efficient. Quite the opposite, it can be detrimental for the content transfer's efficiency if, for instance, the anticipated connection time turns out to be different than what was expected. Likewise, if the link speed changes due to interference and the content transfer prioritisation is changed accordingly, it could be that a particular content is never delivered to the aircraft. This may severely impact the transfer's efficiency, depending on which criteria are used to measure this efficiency.

3.6 Consequently, the board endorses the objective technical problem identified in Reasons 19.5.3 of the appealed decision and frames it as "how to provide for an alternative implementation of the traffic prioritisation mechanism of E21".

3.7 In contrast to the opposition division's positive assessment in Reasons 19.5.6 of the decision under appeal, in the board's view it would have been immediately apparent for the skilled person in the field of communication networks, based on their common general knowledge, to apply one of "available link

speed" and "anticipated connection time" as an alternative for **criteria (i) to (iii)** mentioned in point 3.4 above. This can be analysed more in detail as follows:

- 3.7.1 Regarding the *first* alternative of feature (f), i.e. the criterion "available link speed", the board notes that this appears to be technically equivalent to criterion (ii) for all practical purposes. It would therefore have been obvious for the skilled person, when faced with the objective technical problem considered above, to arrive at the first one of the two alternatives mentioned in feature (f) by starting from E21 and drawing solely on their common general knowledge.
- 3.7.2 Concerning the *second* alternative of feature (f), the board will, for the sake of argument, adhere to the respondent's interpretation of the criterion "anticipated connection time" as an anticipated connection duration. In this respect, the term "airport schedules" of paragraph [0014] of E21, describing a prior-art communication system, can be seen as a rough estimate of such a duration. This is because an airport schedule will typically include an arrival and a departure time. Consequently, the skilled person would readily have considered the second alternative of feature (f) as an equally valid option based on the teaching of E21 itself.
- 3.8 In conclusion, the subject-matter of claim 1 of the main request does not involve an inventive step, contrary to Article 56 EPC.

4. *First to third auxiliary requests: claim 1 - inventive step*

4.1 Claim 1 of the **first auxiliary request** specifies in **feature (g)** that the traffic prioritisation mechanism of feature (e) operates in accordance with both criteria of feature (f), i.e. in accordance with the "available link speed" and the "anticipated connection time".

As regards inventive step, both criteria of feature (f) were known to the skilled person for the reasons set out in points 3.7.1 and 3.7.2 above. It would have been a simple routine-design measure for the skilled person to implement both criteria in the communication priority matrix of paragraph [0024] of E21. In particular, drawing upon their common general knowledge, the skilled person would have chosen either one of these criteria or a combination of those to implement the communication priority matrix of paragraph [0024] of E21, depending on how circumstances dictate.

4.2 Regarding claim 1 of the **second auxiliary request**, it is immediately apparent that the central TWLU client of paragraph [0021] of E21 must enable Aircraft/Ground Systems Communication device 70 shown in Figure 3 of E21 to support the type of link established by the access points, otherwise no communication would be possible. As a result, **feature (h)** is disclosed in paragraph [0021] of E21.

4.3 Claim 1 of the **third auxiliary request** is a mere juxtaposition of the features of claim 1 of the first and second auxiliary requests, which cannot lead to the

acknowledgement of an inventive step either.

- 4.4 In conclusion, claim 1 of the auxiliary requests on file does not comply with Article 56 EPC either.

## Order

### **For these reasons it is decided that:**

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chair:



B. Brückner

K. Bengi-Akyürek

Decision electronically authenticated