

Internal distribution code:

- (A) ☐ Publication in OJ
- (B) ☐ To Chairmen and Members
- (C) ☐ To Chairmen
- (D) ☒ No distribution

**Datasheet for the decision
of 14 September 2023**

Case Number: T 1269/22 - 3.2.01

Application Number: 18156922.9

Publication Number: 3372493

IPC: B64C23/06

Language of the proceedings: EN

Title of invention:

THE SPLIT BLENDED WINGLET

Patent Proprietor:

Aviation Partners, Inc.

Opponent:

AIRBUS OPERATIONS LIMITED/AIRBUS OPERATIONS
SAS/AIRBUS OPERATIONS S.L./AIRBUS SAS/AIRBUS
OPERATIONS GMBH

Headword:

Relevant legal provisions:

EPC Art. 56, 108

EPC R. 99

RPBA Art. 12(3), 12(5)

Keyword:

Admissibility of appeal - appeal sufficiently substantiated
(yes)

Inventive step - (no)

Decisions cited:

Catchword:



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 1269/22 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 14 September 2023

Appellant:

(Patent Proprietor)

Aviation Partners, Inc.
7299 Perimeter Road South
Seattle, WA 98108-3812 (US)

Representative:

Hoffmann Eitle
Patent- und Rechtsanwälte PartmbB
Arabellastraße 30
81925 München (DE)

Respondent:

(Opponent)

AIRBUS OPERATIONS LIMITED/AIRBUS OPERATIONS
SAS/AIRBUS OPERATIONS S.L./AIRBUS SAS/AIRBUS
OPERATIONS GMBH
Pegasus House, Aerospace Avenue, Filton/
/Site de Martin du Touch
316 Route de Bayonne/ Paseo John Lennon/2 rond-
Point Emile Dewoitine/Kreetslag 10
Toulouse/Getafe Madrid/Blagnac/Hamburg
Bristol BS34 7PA (GB)

Representative:

Abel & Imray LLP
Westpoint Building
James Street West
Bath BA1 2DA (GB)

Decision under appeal:

**Decision of the Opposition Division of the
European Patent Office posted on 22 March 2022
revoking European patent No. 3372493 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairman G. Pricolo

Members: S. Mangin

 S. Fernández de Córdoba

Summary of Facts and Submissions

- I. The appeal was filed by the appellant (patent proprietor) against the decision of the opposition division to revoke the patent in suit (hereinafter "the patent").
- II. The Opposition Division held that the subject-matter of claim 1 of auxiliary request IV did not involve an inventive step starting from D4, a blended winglet displayed at the NBAA 2011 Convention in Las Vegas, in combination with common general knowledge.
- III. Oral proceedings were held before the Board on 14 September 2023.
- IV. The appellant (patent proprietor) requested that the decision under appeal be set aside and the patent be maintained on the basis of auxiliary request IV (main request).

The respondent (opponent) requested that the appeal be dismissed. The admissibility of the appeal was further contested.

- V. Claim 1 of auxiliary request IV corresponds to claim 1 as granted and reads:

An arrangement of a winglet (100) and of a ventral fin (102) wherein:

- the winglet includes

- i) an adaptor section (AB) for attaching the winglet to the tip of an aircraft wing (104),
- ii) a blade section (CD) which, after attachment, is above the plane of the wing, and

iii) a curved transition section (BC) that connects the blade section to the adaptor section;

- the ventral fin is attached to and extends from the transition section, and:

wherein the ventral fin has a leading edge (303) that is generally curved so that the discontinuity between a winglet surface and the ventral fin is reduced, transitioning away from said winglet surface to a generally linear section and then transitioning to its tip shape.

Reasons for the Decision

1. Admissibility of the appeal

During the oral proceedings, the parties referred to their written submissions. The Board sees no reason to change its preliminary opinion submitted with the communication pursuant to Article 15(1) RPBA that the appeal of the proprietor is admissible pursuant to Article 108 EPC and Rule 99(2) EPC.

- 1.1 The respondent argued that the appellant did not provide any basis in the EPC for the appealed decision to be "set aside" on the basis of an "unreasoned" decision. In their view, the appellant failed to point out how, or why, the Opposition Division should have reached a different decision. Instead of explaining why the decision was incorrect, they have merely provided their alternative view. However, that alternative view had already been raised before the Opposition Division and fully considered.

1.2 The Board does not agree with the argument of the respondent.

1.2.1 The appellant contested the decision of the Opposition Division which held that the subject-matter of claim 1 of auxiliary request IV did not involve an inventive step starting from D4. They have given several reasons why they believed the decision was wrong:

- The differentiating feature between the subject-matter of claim 1 and D4 was not accurately identified;
- The objective technical problem contained a pointer to the solution;
- No evidence was provided showing that the winglet of D4 did not have to be sized to the wing or that attachment means were common general knowledge.

Based on the above reasons, the Board and the respondent can establish why the appellant regards the contested decision as incorrect.

The Board notes that it is established case law that whether the appeal is convincing or likely to be successful is irrelevant for the purposes of determining the admissibility of the appeal.

1.2.2 The respondent referred to Article 12(5) RPBA as regards admissibility of the appeal or parts of it.

According to Article 12(5) RPBA 2020, the Board has discretion not to admit any part of a submission by a party which does not meet the requirements in paragraph 3 of Article 12 RPBA 2020, requiring that the statement of grounds of appeal shall set out clearly and concisely the reasons why it is requested that the decision under appeal be reversed, amended or upheld and should specify expressly all the requests, facts, objections, arguments and evidence relied on.

In the present case the appellant specified why the appealed decision should be reversed, namely because contrary to the findings of the Opposition Division, the subject-matter of claim 1 is, in their view, not rendered obvious starting from the winglet displayed in 2011 at the NBAA Convention in Las Vegas (D4).

Furthermore they have provided specific reasons as listed above. Therefore, the appellant's submissions meet the requirements of Article 12(3) RPBA 2020 and there is no reason not to admit any part thereof.

2. Inventive step starting from D4 (Blended winglet displayed at the NBAA 2011 Convention in Las Vegas)

The Board follows the opinion of the Opposition Division that the subject-matter of claim 1 does not involve an inventive step starting from the blended winglet displayed at the NBAA 2011 Convention in Las Vegas (D4).

- 2.1 The appellant neither agreed with the difference identified between the subject-matter of claim 1 and the blended winglet displayed at the NBAA 2011 convention in Las Vegas (D4), nor with the defined objective technical problem to be solved, nor with the conclusion of the Opposition Division according to which it was obvious to add attachment means to connect the winglet tip to the tip of an aircraft wing. The appellant argued as follows:

- 1) The subject-matter of claim 1 differed from the blended winglet displayed at the NBAA 2011 convention in Las Vegas (D4) in that the winglet included an adaptor section (AB) for attaching the winglet to the tip of an aircraft and not just by specific features

for rendering the winglet suitable for attaching the winglet to the tip of an aircraft wing. The appellant also emphasised that claim 1 did not require to be interpreted in the light of the description as claim 1 was clear and further noted that the wording of claim 1 did not cover an attachment end of the winglet integrally formed with the wing as described in paragraph [0034].

2) The problem defined by the Opposition Division comprised a pointer to the solution and was therefore not suitable. In their view the problem to be solved should be formulated as how to implement the use of the shape of a winglet as proposed by D4 in a real aircraft.

3) The internal structure, if any, of the model winglet was not disclosed in the blended winglet displayed at the NBAA 2011 Convention in Las Vegas (D4). It was therefore not at all possible for a skilled person to simply modify the root end. One had to start from scratch. D4 only disclosed the outer shape of the winglet. The winglet presented in the mock-up of D4 for attaching to the tip of an aircraft wing would need to be modified. There was no evidence that the winglet could simply have a "one size fits all" nature.

4) The Opposition Division did not present any evidence that attachment means for connecting a winglet tip of an aircraft without affecting the intended advantageous aerodynamics provided by the shape of the winglet were part of the general knowledge and their conclusion was not logic.

The appellant was of the opinion that the provision of an adaptor section that was suitable for attaching the

winglet to the tip of an aircraft wing was not the very same as providing attachment means.

5) The solution to include in the winglet an adaptor section for attaching the winglet to the tip of an aircraft wing was not necessarily what a person skilled in the art would do, particularly as alternative ways of implementing this shape were conceivable, such as making a wing that had integrally a winglet as proposed by D4, and such as making transitional parts which were neither a part of the wing nor a part of the winglet.

2.2 The Board does not agree with the appellant's arguments.

The Board concurs with the Opposition Division that the only difference between the subject-matter of claim 1 and D4 are the required means for attaching the adaptor section to an aircraft wing (see point 55 of the decision of the appealed decision). The adaptor section is not further defined in claim 1. No structural features are defined. The only requirement associated to the adaptor section is that it is included in the winglet and suitable for attaching the winglet to the tip of an aircraft wing. The end section of the blended winglet displayed at the NBAA 2011 convention in Las Vegas (D4) may be regarded as an adaptor section. The only feature missing is its suitability for attaching the winglet to the tip of an aircraft. Claim 1 does not define the type of attachment, such that any type of attachment suitable for attaching the winglet to the tip of the aircraft wing is encompassed by claim 1. There is indeed no need to refer to paragraph [0034] of the description as the feature is clear.

The objective technical problem defined by the Opposition Division is correct as the distinguishing feature is defined in terms of an effect ("the winglet being suitable for attachment to the tip of the aircraft wing").

But even accepting the problem formulated by the appellant, the solution, i.e. an adaptor section for attaching the winglet to an aircraft wing, is obvious starting from the winglet of D4.

The Board underlines again that the "adaptor section (AB) for attaching the winglet to the tip of an aircraft wing (104)" is not further defined in claim 1. No specific arrangement for attaching the adaptor section to the tip of an aircraft wing is defined in claim 1, be it in terms of structure or design. Moreover claim 1 does not define any specific internal construction of the winglet, it merely defines its shape.

The blended winglet displayed at the NBAA 2011 Convention in Las Vegas (D4) shows a section at the end of the root end of the winglet which can be considered as an adaptor section. It is implicit for the skilled person that the end of the root of the winglet is meant to be attached to the tip of an aircraft wing. This is the essence of such a winglet.

Furthermore, the aircraft wing is not part of claim 1. Claim 1 requires the winglet to be suitable for attaching to an aircraft wing. For certain aircraft wings, no adjustments of the size of the blended winglet displayed at the NBAA 2011 Convention in Las Vegas will be necessary to arrive at the subject-matter of claim 1. In any case, if the aircraft wing chosen requires an adaptation of the winglet size, then the skilled person would obviously resize it.

The Opposition Division has indeed not referred to any document to show that attachment means for attaching a winglet to the tip of the wing are well known to the skilled person. However such consideration does not need any evidence. Indeed a winglet is to be attached to the tip of an aircraft wing with attaching means. It is implicit to the definition of a winglet.

Finally, the shape of the winglet of D4 falls within the scope of claim 1, such that the advantageous aerodynamics should also be achieved by the winglet of D4 when attached to a wing. If not, it would mean that the advantageous aerodynamics of the arrangement of the winglet defined in claim 1 are not achieved over the whole scope of claim 1.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



A. Voyé

G. Pricolo

Decision electronically authenticated