

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte KELLY McCOOL, DAVID J. HAAS, and GENE L. BARNDT

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Appeal No. 2004-1457  
Application No. 09/696,299

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ON BRIEF

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Before JERRY SMITH, BARRY, and BLANKENSHIP, Administrative Patent Judges.

JERRY SMITH, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 1-12, which constituted all the claims in the application. An amendment after final rejection was filed on September 26, 2003 and was entered by the examiner. This amendment cancelled claims 3-8 and 10-12. Accordingly, this appeal is directed to the rejection of claims 1, 2 and 9.

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The disclosed invention pertains to a procedure for monitoring and determining flight usage of an aircraft based on measurements of flight parameters.

Representative claim 1 is reproduced as follows:

1. In combination with an algorithm system located onboard an aircraft through which data from measurement of flight parameters is processed on a real time basis, a method of monitoring flight usage of the aircraft, including the steps of: sampling the flight parameters by generation of measurement signals reflecting the flight parameters; programming said sampling of the flight parameters; performing calculations of estimates on the flight usage derived from said sampled measurement signals; operationally intermapping said programming of the sampling with the estimate calculations of the flight usage for accurate determination thereof; and displaying data reflecting said accurate determination of the flight usage.

The examiner relies on the following reference:

Adams et al. (Adams)                      4,336,595                      Jun. 22, 1982

Claims 1 and 2 stand rejected under 35 U.S.C. § 102(b) as being anticipated by the disclosure of Adams. Claim 9 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Adams in view of "Official Notice."

Rather than repeat the arguments of appellants or the examiner, we make reference to the briefs and the answer for the respective details thereof.

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OPINION

We have carefully considered the subject matter on appeal, the rejections advanced by the examiner and the evidence of anticipation and obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, the appellants' arguments set forth in the briefs along with the examiner's rationale in support of the rejections and arguments in rebuttal set forth in the examiner's answer.

It is our view, after consideration of the record before us, that the evidence relied upon fails to support either of the examiner's rejections. Accordingly, we reverse.

We consider first the rejection of claims 1 and 2 as being anticipated by the disclosure of Adams. Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention as well as disclosing structure which is capable of performing the recited functional limitations. RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir.), cert. dismissed,

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468 U.S. 1228 (1984); W.L. Gore & Assocs. v. Garlock, Inc., 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

The examiner has indicated how he reads the claimed invention on the disclosure of Adams (answer, page 4). Appellants argue that the examiner has improperly interpreted the claim terminology "measurement of flight parameters" to include the measurement of fatigue and fracture characteristics of airframe components as taught by Adams. Appellants argue that the definition of "flight parameters" as defined in the specification explicitly excludes the applicability of Adams (brief, pages 4-6). The examiner responds that when the claim language is given its broadest reasonable interpretation, then the claimed invention is met by Adams (answer, pages 8-10). Appellants respond that the invention of claims 1 and 2 is not met by any set of physical property values of aircraft, and that evaluation of fatigue damage to aircraft is not applicable to the evaluation of flight usage (reply brief).

We will not sustain the examiner's rejection of claims 1 and 2 for essentially the reasons argued by appellants in the

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briefs. We agree with appellants' argument that the examiner's finding that the claimed "measurement of flight parameters" is met by the structural fatigue measurements of Adams is incorrect. Appellants' specification indicates that the claimed invention is intended to improve on the prior art techniques of using fatigue measurements. The types of flight parameters described in the specification are all of a type which relate to conditions of flight which can provide an estimate of the actual flight regime of the aircraft (specification, page 3). Thus, the examiner's decision to read the claimed measurement of flight parameters on the fatigue measurements of Adams was unreasonable in view of appellants' specification and in view of the generally accepted definition of what constitutes a flight parameter.

With respect to the rejection of claim 9 under 35 U.S.C. § 103, since this rejection fundamentally relies on the examiner's incorrect findings with respect to Adams as discussed above, we will not sustain the examiner's rejection of claim 9 because the examiner has failed to establish a prima facie case of obviousness.

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In summary, we have not sustained either of the examiner's rejections of the claims on appeal. Therefore, the decision of the examiner rejecting claims 1, 2 and 9 is reversed.

REVERSED

JERRY SMITH	)	
Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
LANCE LEONARD BARRY	)	APPEALS AND
Administrative Patent Judge	)	INTERFERENCES
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HOWARD B. BLANKENSHIP	)	
Administrative Patent Judge	)	

JS/hh

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