Paper No. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GREGG STOCKMAN

Appeal No. 2005-0050
Application No. 10/143,261

ON BRIEF

Before COHEN, MCQUADE and NASE, Administrative Patent Judges.

MCQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Gregg Stockman appeals from the final rejection of claims 1 through 8 and 10, all of the claims pending in the application.

THE INVENTION

The invention relates to an aircraft training simulator designed to sharpen a pilot's response to common malfunction scenarios. Representative claim 1 reads as follows:

1. A gauge simulator for use in conjunction with pilot training comprising:

a housing;

a plurality of electrically controlled gauges mounted to said housing, each said gauge having a variable display value corresponding to an aircraft condition;

a processor contained in said housing, said processor having outputs electrically connected to said gauges for controlling the display value of each said gauge, said processor being programmed to simulate gauge display values corresponding to predefined malfunctions of an aircraft; and

means mounted to said housing and electrically connected to said processor for varying the time duration from initiation of a simulation and before initiation of the simulated malfunction.

THE REJECTION

Claims 1 through 8 and 10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,599,070 to Hladky et al. (Hladky).

Attention is directed to the brief (Paper No. 12) and to the final rejection and answer (Paper Nos. 6 and 13) for the respective positions of the appellant and the examiner regarding the merits of this rejection.[1]

DISCUSSION

Hladky discloses an aircraft flight simulator comprising a pilot's console 20, an instructor's console 22 and a computer 24. The pilot's console includes a number of flight controls and

[1] In the final rejection, claims 1 through 8 and 10 also stood rejected under both the first and second paragraphs of 35 U.S.C. § 112. The examiner has since reconsidered and withdrawn these rejections (see Paper No. 9).

avionics indicators (see column 6, line 28, through column 7, line 22), the instructor's console includes some of the same avionics indicators (see column 7, lines 23 through 40), and the computer includes a program that provides the desired relationship between the controls, the indicators and aircraft operating conditions (see column 9, lines 3 through 19). Of particular interest in this appeal is the inclusion in the instructor's console of buttons 114 through 127 which "permit the instructor to introduce a number of simulated emergencies which may arise during a flight" (column 7, lines 55 through 57). Hladky describes a number of different emergencies which can be simulated by these buttons (see column 7, line 57, through column 8, line 31).

As framed and argued by the appellant, the dispositive issue in the appeal is whether Hladky teaches or would have suggested a pilot training gauge simulator meeting the recitation in claim 1 of the "means . . . for varying the time duration from initiation of a simulation and before initiation of the simulated malfunction."

The examiner acknowledges that this limitation is in means-plus-function format and hence must be construed under 35 U.S.C. § 112, sixth paragraph, as covering the corresponding structure

described in the underlying specification and equivalents thereof. See In re Donaldson Co. Inc., 16 F.3d 1189, 29 USPQ2d 1845 (Fed. Cir. 1994). In the examiner's view, Hladky's simulated emergency buttons 114 through 127 constitute such equivalent structures. By way of example, the examiner points to Hladky's HOLD GEAR button 115 for simulating a failure of the landing gear operating system and explains that

> such a malfunction would not be evident/initiated until the time that the trainee would attempt to actuate the landing gear to a different position (i.e. lowering the landing gear for a landing toward the end of the simulation), thus providing for a first time increment. Using the same logic a "Hold Gear" malfunction can be initiated at the beginning of the simulation (i.e. raising the landing gear during a simulate take off), thus providing for a second time increment [answer, page 4].

It is well settled that for a means-plus-function limitation to read on a device, the device must employ structure which not only has identity or equivalence of the corresponding structure described in the specification, but also identity of the function specified in the claim. See Chiuminatta Concrete Concepts, Inc. v. Cardinal Indus., Inc., 145 F.3d 1303, 1308, 46 USPQ2d 1752, 1755 (Fed. Cir. 1998); King Instrument Corp. v. Perego, 65 F.3d 941, 945-946, 36 USPQ2d 1129, 1131-32 (Fed. Cir. 1995). In the present case, Hladky contains no indication that simulated emergency buttons 114 through 127 allow for any sort of setting,

let alone varying, of the time duration from initiation of a simulation and before initiation of the simulated malfunction. Even under the examiner's hypothesis as to how the HOLD GEAR button 115 would function, the time duration from initiation of a simulation and before initiation of the simulated malfunction would essentially depend on the actions of the pilot/trainee rather than on actuation of the button. Thus, the examiner's determination that this button has identity of function with the "means . . . for varying the time duration from initiation of a simulation and before initiation of the simulated malfunction" recited in claim 1 is unsound.

In light of the foregoing, the fair teachings of Hladky do not justify a conclusion that the subject matter recited in independent claim 1 would have been obvious at the time the invention was made to a person having ordinary skill in the art. Accordingly, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of claim 1, and dependent claims 2 through 8 and 10, as being unpatentable over Hladky.

SUMMARY

The decision of the examiner to reject claims 1 through 8 and 10 is reversed.

REVERSED

IRWIN CHARLES COHEN Administrative Patent Judge	)
JOHN P. MCQUADE Administrative Patent Judge	) BOARD OF PATENT APPEALS AND INTERFERENCES
JEFFREY V. NASE Administrative Patent Judge	)

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