

Keyword(s): obviousness, predictable, common sense, prior art

General: Invocation of common sense properly accompanied by reasoned analysis and evidentiary support serves a critical role in determining obviousness.

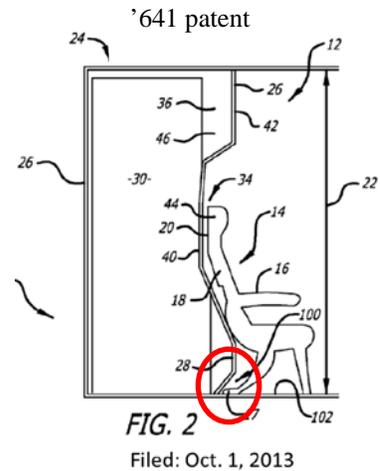
B/E Aerospace, Inc. v. C&D Zodiac, Inc.
 United States Court of Appeals for the Federal Circuit
 No. 2019-1935, 2019-1936
 Decided: June 26, 2020

Detailed Summary

I. Facts

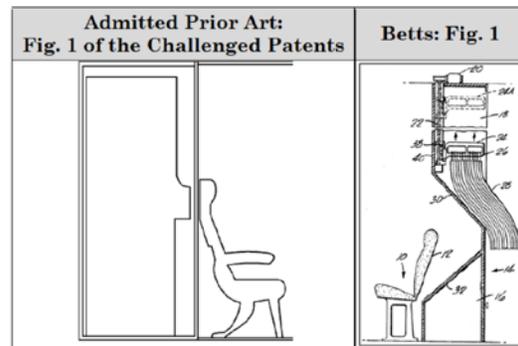
This appeal arises from an *inter partes* review (“IPR”) proceeding. Petitioner, C&D Zodiac, Inc. (“Zodiac”), challenged two patents owned by B/E Aerospace, Inc. (“B/E”), U.S. Patent No. 9,073,641 (“the ’641 patent”) and U.S. Patent No. 9,440,742 (“the ’742 patent”) (collectively, “the challenged patents”).

In the IPR, the PTAB found certain claims of B/E’s aircraft lavatory-related patents obvious. B/E contends that the PTAB’s decision is erroneous because the Board overlooked a claim limitation that is not present in the prior art. B/E also contends that the Board erred by relying on printed matter that does not qualify as prior art under 35 U.S.C. § 311(b).



The technology involved in this appeal is simple. The challenged patents relate to space-saving technologies for aircraft enclosures such as lavatories, closets, and galleys, and specifically to modifications to the walls of aircraft enclosures with two recesses for the seat back and the seat support, respectively. *See* Fig. 2 of the ’641 patent.

Zodiac's petition asserted that the challenged claims were obvious over so-called “Admitted Prior Art” and U.S. Patent No. 3,738,497 (“Betts”). However, while the claims required multiple recesses, there was only one recess for the seat back disclosed in Betts. Zodiac then provided three “design drawings” as evidence that lower recesses to receive a seat support were “known in the art.”



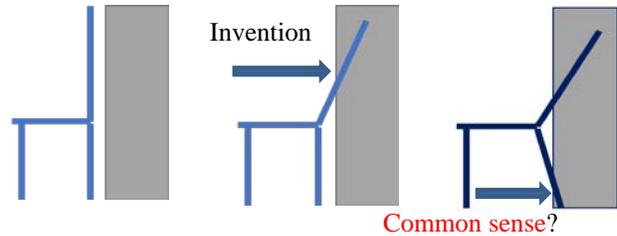
The PTAB found that a skilled artisan would have found it “obvious to further modify the Admitted Prior Art/Betts combination to include the ‘second recess’ to receive passenger seat supports.” IPR2017-01275 at 22.

The PTAB also found that “it would have been a matter of common sense” to incorporate a second recess in the Admitted Prior Art/Betts combination. *Id.* at 26.

The PTAB clarified that they considered the design drawings provided by Zodiac only for the purpose of identifying the knowledge of those skilled in the art. Therefore, the drawings “need not be ‘printed publication’ prior art.” *Id.* at 41-42 see also *id.* at 24.

II. Issues

- Did the PTAB err in holding that the challenged patents claims would have been obvious over the Admitted Prior Art/Betts combination?
- Could the PTAB invoke common sense to supply a missing claim limitation?
- Did the PTAB err by relying on the design drawings, which are not prior art, consisting of “patents or printed publications” under 35 U.S.C. § 311(b)?



III. Discussion

Obviousness is a question of law with underlying factual findings relating to the scope and content of the prior art; differences between the prior art and the claims at issue; the level of ordinary skill in the pertinent art; the presence or absence of a motivation to combine or modify prior art with a reasonable expectation of success; and any objective indicia of non-obviousness. *Acoustic Tech., Inc. v. Itron Networked Sols., Inc.*, 949 F.3d 1366, 1373 (Fed. Cir. 2020).

1) No. The court reviewed de novo the Board’s legal conclusions of obviousness and its factual findings for substantial evidence. The court found that modifying the Admitted Prior Art/Betts combination to include the second recess was nothing more than the predictable application of known technology.

The court argued that the prior art yields a predictable result, the “second recess”, because a person of skill in the art would have applied a variation of the first recess and would have seen the benefit of doing so. The court also noted that the affirmation of the Board’s conclusion was also supported by substantial evidence, for example, expert testimony presented at the Board that as a seat is moved further aft, the seat support necessarily is also moved further aft causing feet of the seat support to come into contact with the lower section of the wall. Expert testimony at the Board further suggested that creating one or more recesses to accommodate whatever portion(s) of the seat support that would contact the forward wall of the enclosure is the obvious solution to this known problem.

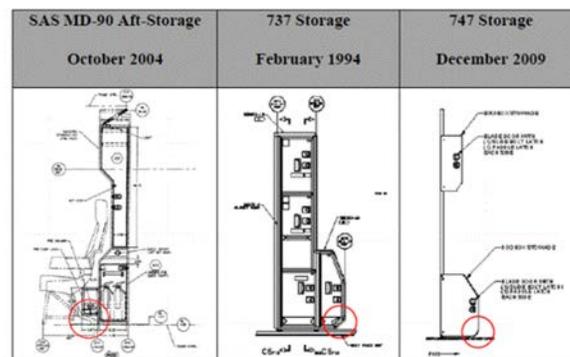
2) Yes. The court found that the PTAB’s invocation of common sense was properly accompanied by reasoned analysis and evidentiary support.

In *KSR*, the Supreme Court opined that common sense serves a critical role in determining obviousness. *Id.* at 421. As the Supreme Court explained, common sense teaches that familiar

items may have obvious uses beyond their primary purposes. In applying *KSR*, the Federal Circuit recognized that courts must “consider common sense, common wisdom, and common knowledge in analyzing obviousness.” *Arendi S.A.R.L. v. Apple Inc.*, 832 F.3d 1355, 1361 (Fed. Cir. 2016). However, the Federal Circuit also cautioned that common sense cannot be used as a “wholesale substitute for reasoned analysis and evidentiary support, especially when dealing with a limitation missing from the prior art references specified.” *Id.* at 1362. Moreover, the court recognized that “[c]ommon sense has long been recognized to inform the analysis of obviousness if explained with sufficient reasoning.” *Perfect Web Techs, Inc. v. InfoUSA, Inc.*, 587 F.3d 1324, 1328 (Fed. Cir. 2009).

Applying this to the present case, the court determined that the evidence showed that the technology of the claimed invention is simple. The missing claim limitation (the “second recess”) was found to merely involve repetition of an existing element (the “first recess”). Furthermore, the Board dedicated more than eight pages of analysis to the “second recess” limitation and relied on detailed expert testimony. Accordingly, the court upheld the analysis of the Board; that the logic of using a recess to receive the seat back applies equally to using another recess to receive the aft extending seat support and, therefore, it is reasonable that a skilled artisan would have used common sense to incorporate a second recess in the Admitted Prior Art/Betts combination.

Design Drawings



3) No. The court determined that the PTAB did not rely on design drawings when it found the challenged claims obvious. Instead, the court found that when the Board found the challenged claims obvious under a “traditional obviousness approach,” it relied on expert testimony. Likewise, when the Board separately found the challenged claims obvious based on “common sense,” its analysis relied on the analysis and reasoning of Petitioner’s expert regarding why it would have been obvious and a matter of common sense to add a second recess. The design drawings were merely used as further evidence in support of the common sense argument.

IV. Conclusion

The Court confirmed the PTAB’s decision that certain claims of appellant's aircraft lavatory-related patents would have been obvious. The court held that the PTAB’s invocation of common sense was properly accompanied by reasoned analysis and evidentiary support.