

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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C&D ZODIAC, INC.  
Petitioner

v.

B/E AEROSPACE, INC.  
Patent Owner

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IPR2017-01274  
Patent No. 9,365,292

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**PETITIONER C&D ZODIAC, INC.'S NOTICE OF APPEAL**

Pursuant to 35 U.S.C. §§ 141-144, 319; 5 U.S.C. §§ 702, 704, 706; 37 C.F.R. §§ 90.2(a) and 90.3(a), and Rules 3 and 4(a) of the Federal Rules of Appellate Procedure, Petitioner C&D Zodiac, Inc. (“C&D Zodiac”) hereby gives notice that it appeals to the United States Court of Appeals for the Federal Circuit from the Decision Denying Institution of the Patent Trial and Appeal Board (“Board”) entered on October 31, 2017 (Paper 12) and the Board’s Decision Denying Petitioner’s Request for Rehearing entered on March 9, 2018 (Paper 15), and from all underlying findings, orders, decisions, rulings, and opinions adverse to C&D Zodiac, including, without limitation, the Board’s decision denying Petitioner’s request to file a reply and new evidence in response to Patent Owner’s Preliminary Response (Ex. 1022). Copies of the Board’s October 31, 2017 Decision Denying Institution and the Board’s March 9, 2018 Decision Denying Petitioner’s Request for Rehearing are attached to this Notice.

In accordance with 37 C.F.R. § 90.2(a)(3)(ii), Petitioner further notes that the issues on appeal may include, but are not limited to, whether the Board exceeded its statutory limits under 35 U.S.C. §§ 311 *et seq.* by making a determination of indefiniteness, and on that basis denying institution of *inter partes* review; and whether the Board’s decision ignoring record evidence of the meaning of a claim term that was not placed at issue and that was understood by the parties and persons of ordinary skill in the art was arbitrary and capricious. *Cuozzo Speed*

*Techs., LLC v. Lee*, 136 S. Ct. 2131, 2141-42 (2016) (holding that the Board may not “act outside its statutory limits” and that “[s]uch ‘shenanigans’ may be properly reviewable in the context of §319 and under the Administrative Procedure Act, which enables reviewing courts to ‘set aside agency action’ that is . . . ‘in excess of statutory jurisdiction,’ or ‘arbitrary [and] capricious.’” ); *see also Wi-Fi One, LLC v. Broadcom Corp.*, 878 F.3d 1364 (Fed. Cir. 2018) (*en banc*). One example of an issue on appeal is the Board’s explanation that “[t]he fact that others appeared to understand the meaning of a claim term does not illuminate for us what that meaning is, constrain us to blindly adopt the same understanding, or dictate how we are to apply the prior art in this case.” IPR2017-01274, Paper 15 at 4 (P.T.A.B. March 9, 2018). The issues on appeal may further include all other issues decided adversely to C&D Zodiac in any orders, decisions, rulings, and opinions of the Board.

In accordance with 37 C.F.R. § 90.2(a), copies of this Notice of Appeal are being filed simultaneously with the Patent Trial and Appeal Board and with the Director of the United States Patent and Trademark Office. In addition, this Notice of Appeal, along with the required docketing fees, is being filed electronically with the Clerk of the United States Court of Appeals for the Federal Circuit.

Respectfully submitted,

Dated: March 19, 2018

By: /John C. Alemanni/  
John C. Alemanni (Reg. No. 47,384)  
Lead Counsel for Petitioner

Lead Counsel	Back-Up Counsel
<p>John C. Alemanni Registration No. 47,384 jalemanni@kilpatricktownsend.com</p> <p><u>Postal and Hand-Delivery Address:</u> Kilpatrick Townsend &amp; Stockton LLP 4208 Six Forks Road, Suite 1400 Raleigh, NC 27609 Telephone: 919-420-1724 Fax: 919-420-1800</p>	<p>Dean W. Russell (Reg. No. 33,452) David A. Reed (Reg. No. 61,226) Michael T. Morlock (Reg. No. 62,245)</p> <p><u>Postal and Hand-Delivery Address:</u> Kilpatrick Townsend &amp; Stockton LLP 1100 Peachtree Street, NE, Suite 2800 Atlanta, GA 30309-4528 Telephone: 404-815-6500 Fax: 404-815-6555 drussell@kilpatricktownsend.com dreed@kilpatricktownsend.com mmorlock@kilpatricktownsend.com</p> <p>Andrew Rinehart (Reg. No. 75,537)</p> <p><u>Postal and Hand-Delivery Address:</u> Kilpatrick Townsend &amp; Stockton LLP 1001 West Fourth Street Winston-Salem, NC 27101-2400 Telephone: 336-607-7300 Fax: 336-734-2621 arinehart@kilpatricktownsend.com</p>

### **CERTIFICATE OF FILING**

I hereby certify that on March 19, 2018, a true and correct copy of the foregoing **PETITIONER C&D ZODIAC, INC.’S NOTICE OF APPEAL** was filed electronically through the Patent Trial and Appeal Board’s End to End (E2E) system, and that the original of the foregoing was hand-delivered to the Director of the United States Patent and Trademark Office, at the following address in accordance with 37 C.F.R. §§ 42.6(b), 90.2(a), and 104.2:

Office of the General Counsel  
United States Patent and Trademark Office  
10B20, Madison Building East  
600 Dulany Street  
Alexandria, Virginia 22313-1450

### **CERTIFICATE OF FILING**

I hereby certify that on March 19, 2018, a true and correct copy of the foregoing **PETITIONER C&D ZODIAC, INC.’S NOTICE OF APPEAL** was filed electronically via the CM/ECF system with the Clerk of Court for the United States Court of Appeals for the Federal Circuit, and that the requisite fee was paid in accordance with 37 C.F.R. § 90.2(a)(2) and Federal Circuit Rule 15.

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date below a copy of this **PETITIONER C&D ZODIAC, INC.’S NOTICE OF APPEAL** has been served by email at [Zodiac-BE-Aero-IPRGroup@irell.com](mailto:Zodiac-BE-Aero-IPRGroup@irell.com) and upon the following:

Michael Fleming: [mfleming@irell.com](mailto:mfleming@irell.com)  
Benjamin Haber: [bhaber@irell.com](mailto:bhaber@irell.com)  
IRELL & MANELLA LLP  
1800 Avenue of the Stars, Suite 900  
Los Angeles, CA 90067-4276

*Counsel for Patent Owner  
B/E Aerospace, Inc.*

Dated: March 19, 2018

By: /John C. Alemanni/  
John C. Alemanni (Reg. No. 47,384)  
Lead Counsel for Petitioner

# Attachments

UNITED STATES PATENT AND TRADEMARK OFFICE  
\_\_\_\_\_  
BEFORE THE PATENT TRIAL AND APPEAL BOARD  
\_\_\_\_\_

C&D ZODIAC, INC.,  
Petitioner,

v.

B/E AEROSPACE, INC.,  
Patent Owner.

\_\_\_\_\_  
Case IPR2017-01274  
Patent 9,365,292 B2  
\_\_\_\_\_

Before JENNIFER S. BISK, MICHAEL J. FITZPATRICK, and  
SCOTT A. DANIELS, *Administrative Patent Judges*.

DANIELS, *Administrative Patent Judge*.

DECISION

Denying Institution *Inter Partes* Review  
35 U.S.C. § 314, 37 C.F.R. §§ 42.4, 42.108

I. INTRODUCTION

A. *Background*

C&D Zodiac, Inc. (“Petitioner”), filed a petition (Paper 2, “Pet.”) to institute an *inter partes* review of claims 1–12 (the “challenged claims”) of U.S. Patent No. 9,365,292 B2 (Ex. 1001, “the ’292 patent”). 35 U.S.C.

§ 311. B/E Aerospace, Inc. (“Patent Owner”), timely filed a Preliminary Response. Paper 7 (“Prelim. Resp.”).<sup>1</sup> Institution of an *inter partes* review is authorized by statute when “the information presented in the petition filed under section 311 and any response filed under section 313 shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a); 37 C.F.R. § 42.108.

For the reasons that follow, we decline to institute an *inter partes* review.

*B. Asserted Grounds of Unpatentability*

Petitioner contends that the challenged claims are unpatentable under 35 U.S.C. § 103(a)<sup>2</sup> based on the following grounds (Pet. 11–80):

<b>References</b>	<b>Claims challenged</b>
Admitted Prior Art <sup>3</sup> and U.S. Patent No. 3,738,497 (Ex. 1005, “Betts”)	1–12

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<sup>1</sup> Patent Owner filed two versions of the Preliminary Response: Paper 6, to which access is restricted to the parties and the Board; and Paper 7, a publicly available, redacted version of Paper 6. For purposes of this Decision, we refer only to Paper 7, the redacted version of the Preliminary Response.

<sup>2</sup> The Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112-29, took effect on March 18, 2013. Because the application from which the ’292 patent issued as a continuation was filed before that date, our citations to Title 35 are to its pre-AIA version.

<sup>3</sup> Petitioner defines “Admitted Prior Art” as certain portions of the ’292 patent. Pet. 11–14 (citing Ex. 1001, Fig. 1, 1:23–24, 3:65–67; Ex. 1004 ¶ 86).

References	Claims challenged
Admitted Prior Art and KLM Overhead Crew Rest Document (Ex. 1009, “KLM Crew Rest”) <sup>4</sup>	1–12

*C. Related Proceeding*

The parties have identified as a related proceeding the co-pending district court litigation of *B/E Aerospace, Inc. v. Zodiac Aerospace, Inc.*, Case No. 2:14-cv-01417 (E.D. Tex.). Paper 5, 2; Pet. 2. Petitioner concurrently filed *inter partes* review proceedings IPR2017-01273, IPR2017-01275, and IPR2017-01276 challenging three related utility patents and PGR2017-00019 challenging a related design patent. Pet. 2.

In addition, Petitioner previously filed a Petition challenging Patent No. 8,590,838 (“the ’838 patent”) in IPR2014-00727, which resulted in a final written decision finding unpatentable claims 1, 3–7, 9, 10, 12–14, 16–19, 21, 22, 24–29, 31, and 33–37 of the ’838 patent. IPR2014-00727, Paper 65 (Oct. 26, 2015). On October 3, 2017, the Federal Circuit affirmed that decision. *B/E Aerospace, Inc. v. C & D Zodiac, Inc.*, 2017 WL 4387223 (Fed. Cir. Oct. 3, 2017). The ’292 is a continuation of application No. 14/043,500, which in turn is a continuation of application No. 13/089,063 that matured into the ’838 patent. Ex. 1001, [63].

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<sup>4</sup> File history for U.S. Application serial No. 09/947,275, which issued as U.S. Patent No. 6,520,451 to Moore and which file history contains a drawing and related description of a KLM Crew Rest. *See, e.g.*, Ex. 1009, 70. Petitioner terms the file history “the KLM Crew Rest Document.” Pet. 16. We employ the same nomenclature.

*D. The '292 Patent*

The '292 patent relates to space-saving aircraft enclosures, including lavatories, closets and galleys. Ex. 1001, 1:17–22, 2:16–21. Figure 2 of the '292 patent is reproduced below.

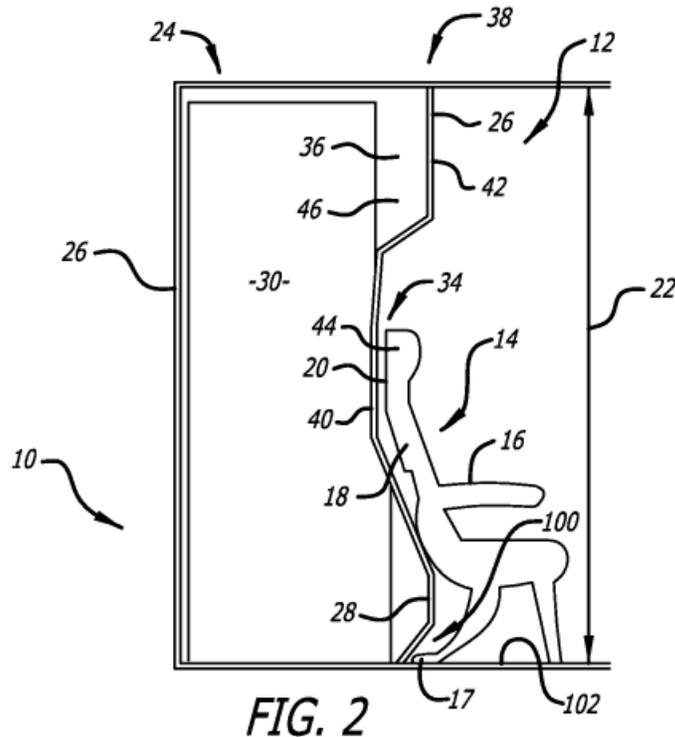


Figure 2, reproduced above, illustrates enclosure 10, such as a lavatory, positioned aft of aircraft cabin 12. Ex. 1001, 4:8–11, 4:15–24. Forward wall 28 of the lavatory is described as “substantially not flat in a vertical plane” and “disposed immediately aft of and adjacent to or abutting the exterior aft surface of” passenger seat 16. *Id.* at 4:21–28. In particular, the forward wall is shaped to provide recess 34, which accommodates the partially-reclined backrest of the passenger seat, as shown in Figure 2. *Id.* at 4:24–28. In addition, the forward wall is shaped to also provide lower recess 100, which accommodates “at least a portion of an aft-extending seat support 17.” *Id.* at 4:31–36.

The '292 patent contrasts the embodiment of Figure 2 with a prior art configuration shown in Figure 1, which is reproduced below.

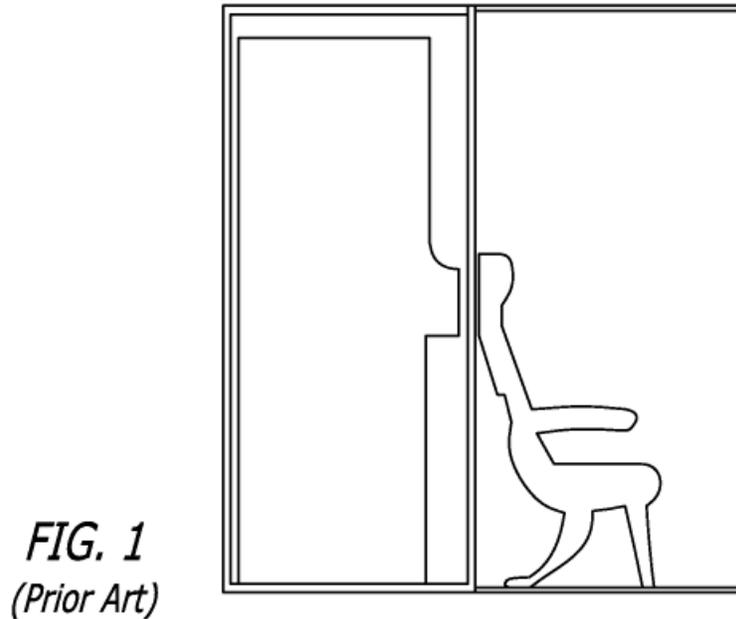


Figure 1, reproduced above, illustrates “a prior art installation of a lavatory immediately aft of an adjacent to an aircraft passenger seat.” Ex. 1001, 3:65–67.

*E. The Challenged Claims*

Of the challenged claims, claims 1 and 6 are independent. Claim 1, which is illustrative, recites:

1. An aircraft enclosure for a cabin of an aircraft, the cabin including a passenger seat located forward of and proximate to the aircraft enclosure, said passenger seat having a seat back with an exterior aft surface that is substantially not flat, a seat bottom, and a seat support that interfaces with the floor of the aircraft cabin and holds the seat bottom in an elevated position above the floor of the aircraft cabin, the aircraft enclosure comprising:

an enclosure unit having a forward wall, said forward wall being part of an outer boundary defining a single enclosed space that includes a toilet, said forward wall being substantially not flat

and configured to receive a portion of the exterior aft surface of said seat back when the seat back is in an unreclined seat position;

wherein said forward wall is adapted to provide additional space forward of the enclosure unit for said seat support to be positioned further aft in the cabin when compared with a position of said seat support if said forward wall was instead substantially flat; and

wherein said single enclosed space is taller than said passenger seat.

Ex. 1001, 4:63–5:16.

## II. ANALYSIS

### A. Claim Interpretation

“A claim in an unexpired patent that will not expire before a final written decision is issued shall be given its broadest reasonable construction in light of the specification of the patent in which it appears.” 37 C.F.R. § 42.100(b). When applying that standard, we interpret the claim language as it would be understood by one of ordinary skill in the art in light of the specification. *In re Suitco Surface, Inc.*, 603 F.3d 1255, 1260 (Fed. Cir. 2010). Thus, we give claim terms their ordinary and customary meaning. *See In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007) (“The ordinary and customary meaning ‘is the meaning that the term would have to a person of ordinary skill in the art in question.’”). Only terms which are in controversy need to be construed, and then only to the extent necessary to resolve the controversy. *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999).

*B. The Hypothetical Forward Wall Comparison Limitation*

Although neither party proposes an express construction for this limitation (*see* Pet. 30–31; Prelim. Resp. 25–27), we nevertheless address the meaning of “wherein said forward wall is adapted to provide additional space forward of the enclosure unit for said seat support to be positioned further aft in the cabin *when compared with a position of said seat support if said forward wall was instead substantially flat;*” which we refer to as “the hypothetical forward wall comparison limitation.”<sup>5</sup> Ex. 1001, 5:10–14 (emphasis added).

Having considered the entire record, we are unable to determine the metes and bounds of this limitation. A plain reading of the claim language requires the forward wall of the claimed enclosure unit to provide “additional space” such that the seat support can be positioned “further aft in the cabin” compared to another position of the seat support relative to a “substantially flat” forward wall configuration. The abject comparison, however, of the claimed “substantially not flat” forward wall, and a hypothetical “substantially flat” forward wall, juxtaposed as it is with moving the seat support between different positions, is at best unclear.

The clause just prior to the hypothetical forward wall comparison limitation recites “said forward wall being substantially not flat,” as a negative limitation. Ex. 1001, 5:6–7. The use of negative limitations is acceptable in claim drafting. *See* MPEP 2173.05(i) (For example “[i]f

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<sup>5</sup> Independent claim 6 includes a limitation with the same wording, “wherein said forward wall is adapted to provide additional space forward of the enclosure unit for said seat support to be positioned further aft in the cabin *when compared with a position of said seat support if said forward wall was instead substantially flat;*” Ex. 1001, 6:5–9 (emphasis added).

alternative elements are positively recited in the specification, they may be explicitly excluded in the claims.”) (citing *In re Johnson*, 558 F.2d 1008, 1019, (CCPA 1977) (“[the] specification, having described the whole, necessarily described the part remaining.”), and *Ex parte Grasselli*, 231 USPQ 393 (Bd. App. 1983), *aff’d mem.*, 738 F.2d 453 (Fed. Cir. 1984).). Although it is an acceptable claim drafting technique, the exclusionary limitation of a substantially flat forward wall tells us nothing about the profile, contour, or shape of the claimed forward wall, except that it is essentially not a single planar surface. Further, that the “substantially not flat” forward wall is “configured to receive a portion of the exterior aft surface of said seat back when the seat back is in an unreclined seat position,” also tells us nothing about the structure of the claimed forward wall because the claim does not provide any structural details, e.g. profile, shape, or contour, of the claimed “seat back.” *See Ex. 1001, 5:7–9.*

Were the claim to end here it could be comprehensible. Despite not reciting positively any structure, apart from being “not flat,” the claim language might be considered broad, as a claim is indefinite only when those skilled in the art would not understand what is claimed when the claim is read in light of the specification. *See Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1576 (Fed. Cir. 1986) (citations omitted). A reasonable understanding of the plain meaning of this claim requirement when viewed in the context of the specification, including Figure 2, is, therefore, that the forward wall is “substantially not flat.”

It is the following clause, i.e. the hypothetical forward wall comparison limitation, however, that has indeterminable scope on the record presented.

wherein said forward wall is adapted to provide additional space forward of the enclosure unit for said seat support to be positioned further aft in the cabin when compared with a position of said seat support if said forward wall was instead substantially flat;

Ex. 1001, 5:10–14. The limitation, “wherein said forward wall is adapted to provide additional space forward of the enclosure” is functional because it recites a feature “by what it does rather than by what it is.” *In re Swinehart*, 439 F.2d 210, 212, (CCPA 1971). The recitation of “additional space,” therefore, adds no structural element or significance to the forward wall itself. To try and make any sense of this clause we must look to the subsequent hypothetical “substantially flat” forward wall comparison limitation and the “seat support” recitations as it relates to the claimed “additional space.”

The “additional space” functionally allows for the “seat support to be positioned further aft in the cabin,” but provides no explanation of the spatial or structural relationship between the forward wall and the seat support. In an effort to delineate an intelligible meaning of “additional space” the claim provides that the recited “additional space” occurs “when compared with a position of said seat support *if said forward wall was instead substantially flat.*” Ex. 1001, 5:12–14 (emphasis added).

Based on a reasonable reading of the claim language, it is entirely incomprehensible how the excluded shape of the wall provides any cognizable scope to “additional space.” For example, the claim language “if said forward wall was instead substantially flat,” by its plain language, requires an *additional* hypothetical “forward wall” that is “substantially flat.” Clearly, having two forward walls is likely to be physically

impossible. This limitation, therefore, is an *alternative* hypothetical forward wall.

Understanding the language, “if said forward wall was instead substantially flat,” to mean an alternative hypothetical forward wall, such a limitation does not recite positively any structural elements or characteristics of the claimed “not flat” forward wall, nor does it impart any understandable relative position of the seat support to the hypothetical “substantially flat” forward wall. As a whole, the claim language does not in any comprehensible way tie the relative position of the seat support to the shape of the wall, be it “substantially not flat” or, hypothetically speaking, “substantially flat.” In other words, a critical question left unanswered by this description is what would be the position of the “seat support” relative to a wall that “was instead substantially flat.” It is unclear, for example, how any such comparison of seat support position can be made based solely on the shape of a wall, without knowing where the hypothetical “substantially flat” wall itself resides relative to the seat support and in relation to the claimed “substantially not flat” wall.

With great effect, the claim places few, if any, substantive limits on the forward wall and the physical and functional relationship of the forward wall relative to the seat support, apart from the wall being “substantially not flat.” Without clear fundamental structural and functional undergirding, a person of ordinary skill in the art is unable to determine further the boundaries, for example the size, shape, and location, of the “additional space” as recited in the claim that is reliant on these elemental relationships. *See Halliburton Energy Servs., Inc. v. M-I LLC*, 514 F.3d 1244, 1253 (Fed. Cir. 2008) (Despite distinguishing over the prior art, the Federal Circuit

found that the claim did not limit the invention, explaining that “[w]hile patentees are allowed to claim their inventions broadly, they must do so in a way that distinctly identifies the boundaries of their claims.”)

With the failure to reasonably communicate to the reader what position the seat support is in, relative to any forward wall, flat or not, the claim becomes open to a myriad of plausible claim constructions and renders at least the term, “additional space,” functionally, and structurally, so incongruous as to fail to impart to one of ordinary skill in the art any reasonable scope of protection. *See Datamize, LLC v. Plumtree Software, Inc.*, 417 F.3d 1342, 1350 (Fed. Cir. 2005). (“The scope of claim language cannot depend solely on the unrestrained, subjective opinion of a particular individual purportedly practicing the invention.”) (*abrogated on other grounds by Nautilus, Inc. v. Biosig Instruments, Inc.*, 134 S. Ct. 2120 (2014)).

In its analysis, Petitioner does not shed light on the claim scope of the hypothetical forward wall. Instead, Petitioner explains that “[a] person of ordinary skill in the art would realize that [Betts’] contoured forward wall provides additional space forward of the enclosure unit for the seat to be placed further aft in an aircraft cabin than would be possible if the forward wall [was] instead substantially flat” and that the KLM Crew Rest design “allow[s] the last row of seats positioned in front of the contoured wall to sit further aft in the aircraft.” Pet. 35–36, 61–62 (citing Ex. 1004 ¶¶ 103–105, Ex. 1007, ¶ 13). There is no explanation, however, of how the required comparison was made. We cannot find, and Petitioner does not point to, any part of the specification of the ’292 patent which reveals any definite frame of reference explaining the relationship between the claimed “substantially

not flat” forward wall and the hypothetical “substantially flat” forward wall. Indeed, Petitioner appears to conflate the hypothetical forward wall limitation with the claim limitation where “said forward wall is adapted to provide additional space forward of the enclosure unit for said seat support to be positioned further aft in the cabin.” *Id.* at 36 (Petitioner, arguing in support of its obviousness challenges that “Betts specifically states that it ‘provide[s] more room for passengers in an aircraft.’”).

In summary, Petitioner has not provided sufficient information for a determination of the scope of certain limitations, such as the “additional space” and, therefore, we cannot conduct the necessary factual inquiry for determining whether the prior art meets this limitation. *See In re Aoyama*, 656 F.3d 1293, 1298 (Fed. Cir. 2011) (quoting *Enzo Biochem, Inc. v. Applera Corp.*, 599 F.3d 1325, 1332 (Fed. Cir. 2010) (“[A] claim cannot be both indefinite and anticipated.”); *In re Steele*, 305 F.2d 859, 862–63 (CCPA 1962) (reversing the Board’s decision of obviousness because it relied on “what at best are speculative assumptions as to the meaning of the claims”); 37 C.F.R. § 42.104(b)(3)–(4) (A petition must show “[h]ow the challenged claim is to be construed” and “[h]ow the construed claim is unpatentable.”).

We are unable to conclude, therefore, that there is a reasonable likelihood that Petitioner would prevail in its challenges of claims 1–12.

### III. CONCLUSION

For the foregoing reasons, based on the information presented in the Petition, we are not persuaded that there is a reasonable likelihood that Petitioner would prevail in showing unpatentability of claims 1–12 of the ’292 patent. We, therefore, decline to institute *inter partes* review as to any of the challenged claims. 37 C.F.R. § 42.108.

IV. ORDER

It is ordered that the Petition is denied as to all challenged claims, and no trial is instituted.

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For PETITIONER:

John C. Alemanni  
Dean W. Russell  
David A. Reed  
Michael T. Morlock  
KILPATRICK TOWNSEND & STOCKTON LLP  
Andrew Rinehart  
jalemanni@kilpatricktownsend.com  
drussell@kilpatricktownsend.com  
dareed@kilpatricktownsend.com  
MMorlock@kilpatricktownsend.com  
[arinehart@kilpatricktownsend.com](mailto:arinehart@kilpatricktownsend.com)

For PATENT OWNER:

Benjamin Haber  
Michael R. Fleming  
IRELL & MANELLA LLP  
bhaber@irell.com  
mfleming@irell.com

UNITED STATES PATENT AND TRADEMARK OFFICE

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Case IPR2017-01274  
Patent 9,365,292 B2

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Before JENNIFER S. BISK, MICHAEL J. FITZPATRICK, and  
SCOTT A. DANIELS, *Administrative Patent Judges*.

DANIELS, *Administrative Patent Judge*.

DECISION  
Denying Petitioner's Request for Rehearing  
*37 C.F.R. § 42.71(d)*

## INTRODUCTION

Petitioner, listed above, filed a Request for Rehearing (Paper 14, “Request” or “Reh’g Req.”) of our decision denying institution of *inter partes* review (Paper 12, “Institution Decision” or “Inst. Dec.”). The Request contends that we misapprehended or overlooked evidence regarding the meaning of, and improperly construed, the claim term “wherein said forward wall is adapted to provide additional space forward of the [aircraft] enclosure unit for said seat support to be positioned further aft in the cabin when compared with a position of said seat support if said forward wall was instead substantially flat,” which we refer to as “the hypothetical forward wall limitation.”<sup>1</sup> Reh’g Req. 3–9. In addition, Petitioner argues that “regardless of any ambiguity,” the panel should consider the indefinite limitation, compare the limitation to the prior art, and find the claims invalid. *Id.* at 10–13.

“When rehearing a decision on petition, a panel will review the decision for an abuse of discretion.” 37 C.F.R. § 42.71(c). “The burden of showing a decision should be modified lies with the party challenging the decision[,]” which party “must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each

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<sup>1</sup> Both independent claims 1 and 6 include essentially this claim term, with claim 12 slightly differently reciting “additional space forward of the *aircraft* enclosure unit.” *Compare* Ex. 1001, 5:10–11 *with id.* at 6:5–6 9 (emphasis added).

matter was previously addressed in a motion, an opposition, or a reply.”  
37 C.F.R. § 42.71(d).

For the reasons discussed below, Petitioner’s Request is *denied*.

## ANALYSIS

### A. Background

Petitioner requested, under 35 U.S.C. § 311, *inter partes* review of claims 1–12 (the “challenged claims”) of U.S. Patent No. 9,365,292 B2 (Ex. 1001, “the ’292 patent”) based on obviousness over several references. Paper 2 (“Pet.”), 10–79. The ’292 patent relates to space-saving aircraft enclosures, including lavatories, closets and galleys. Ex. 1001, 1:17–23, 2:17–22.

In the Institution Decision, we explained that we were unable to determine the metes and bounds of the hypothetical enclosure unit limitation required by all the challenged claims. Inst. Dec. 7–12. Specifically, we found that “[a]s a whole, the claim language does not in any comprehensible way tie the relative position of the seat support to the shape of the wall, be it “substantially not flat” or, hypothetically speaking, “substantially flat.”” Inst. Dec. 10. In light of this uncertainty, we found that “Petitioner has not provided sufficient information for a determination of the scope of certain limitations, such as the ‘additional space’ and, therefore, we cannot conduct the necessary factual inquiry for determining whether the prior art meets this limitation.” *Id.* at 16.

According to Petitioner, because “[n]ot even the Patent Examiner that issued the ’292 Patent was confused by this claim element,” the Patent Office “indicated that it believed this claim terms was clear.” *Id.* at 5–6. And, Petitioner asserts that we overlooked expert testimony indicating that

Petitioner's expert "did not have any problem understanding what the claims meant." *Id.* at 6 (citing Ex. 2047, 190:21–191:2). These arguments are unpersuasive. The fact that others appeared to understand the meaning of a claim term does not illuminate for us what that meaning is, constrain us to blindly adopt the same understanding, or dictate how we are to apply the prior art in this case.

Petitioner contends also that we overlooked substantial evidence as to the meaning of the hypothetical enclosure unit limitation introduced by the Patent Owner, in the form of "a claim chart purporting to compare certain *claims of the '292 patent* to an allegedly infringing product." Reh'g Req. 3–4 (emphasis added). Moreover, according to Petitioner, we have abused our discretion in this case, because the panel, itself, understood a similar claim term in other cases. *Id.* at 7–9 (citing IPR2017-01273, -01275, -01276). Petitioner asserts that "[t]he only difference in the two claims is that [the related patent claim] requires replacing an existing 'substantially flat' partition rather than a hypothetical forward wall that is 'substantially flat.'" *Id.* at 8. According to Petitioner "[t]he use of the hypothetical here does not alter the meaning of the claim." *Id.* Petitioner, however, provides no analysis, either in the Petition or in this Request, explaining how the two claim terms, *using different language*, mean exactly the same thing.

Essentially, Petitioner invites us to ignore the actual words of the hypothetical forward wall limitation and instead assume that this limitation has the same meaning as a limitation found in claims of related patents regardless of the differences in language. *Id.* We decline this invitation, because to ignore the words and limitations in the claims before us now—that would be an abuse of discretion. *See Stumbo v. Eastman Outdoors, Inc.*,

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508 F.3d 1358, 1362 (Fed. Cir. 2007) (denouncing claim constructions that render phrases in claims superfluous), *see also Bicon Inc. v. Straumann Co.*, 441 F.3d 945, 950 (Fed. Cir. 2006) (“claims are interpreted with an eye toward giving effect to all terms in the claim”).

Petitioner also argues that because neither party addressed the construction of this term, it was legal error for the panel to consider its construction and that “[u]nder any definition, the claim falls within the prior art.” *Id.* at 9–10. Petitioner, however, fails to explain what that reasonable interpretation is, or how the actual words of the hypothetical forward wall limitation lead to such an interpretation.

We address also Petitioner’s reliance on *GPNE Corp. v. Apple Inc.*, 830 F.3d 1365 (Fed. Cir. 2016), for the proposition that the Board “is under no obligation to address other potential ambiguities that have no bearing on the operative scope of the claim.” *Id.* at 10 (citing *GPNE*, 830 F.3d at 1372). This precedent, however, does not support Petitioner’s contention that we have made an error of law. *See id.*, *see also Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 970–71 (Fed. Cir. 1995), *aff’d*, 517 U.S. 370 (1996) (Where the district court had properly undertaken claim construction, the Federal Circuit explained “that the interpretation and construction of patent claims, which define the scope of the patentee's rights under the patent, is a matter of law exclusively for the court.”). Our interpretation is not one of a mere ambiguity, as the hypothetical forward wall enclosure limitation bears directly on, and in fact attempts to define, the scope of the “additional space forward of the [aircraft] enclosure unit” limitation as recited in independent claims 1 and 6. *See Ex. 1001*, 5:21–5:27. 6:5–11, *see also Bicon*, 441 F.3d at 950. Moreover, in citing to *GPCE*, Petitioner fails to

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explain why the hypothetical enclosure limitation, as it modifies and defines the “additional space” limitation, is not an operative part of the claim scope.

Reh’g Req. 10.

Accordingly, it is

ORDERED that Patent Owner’s Request for Rehearing is *denied*.

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PETITIONER:

KILPATRICK TOWNSEND & STOCKTON LLP

John C. Alemanni

Dean W. Russell

David A. Reed

Michael T. Morlock

Andrew Rinehart

[jalemanni@kilpatricktownsend.com](mailto:jalemanni@kilpatricktownsend.com)

[drussell@kilpatricktownsend.com](mailto:drussell@kilpatricktownsend.com)

[dareed@kilpatricktownsend.com](mailto:dareed@kilpatricktownsend.com)

[MMorlock@kilpatricktownsend.com](mailto:MMorlock@kilpatricktownsend.com)

[arinehart@kilpatricktownsend.com](mailto:arinehart@kilpatricktownsend.com)

PATENT OWNER:

IRELL & MANELLA LLP

Michael R. Fleming

Benjamin Haber

[mflaming@irell.com](mailto:mflaming@irell.com)

[bhaber@irell.com](mailto:bhaber@irell.com)