

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 IPR2014-00727
Patent 8,590,838

Before MICHAEL J. FITZPATRICK, SCOTT A. DANIELS, and
CARL M. DEFRANCO, *Administrative Patent Judges*.

FITZPATRICK, *Administrative Patent Judge*.

DECISION
Granting-In-Part Motion For Discovery
37 C.F.R. § 42.51

Petitioner filed a Motion for Routine Discovery pursuant to 37 C.F.R. § 42.51(b)(1)(iii).¹ Paper 34, “Mot.” Patent Owner filed an Opposition to the Motion. Paper 36.

Petitioner’s Motion seeks production of:

1. Documents concerning the development of the KLM crew rest that reference (a) the DC-10 coat closet or (b) any other monument with a recessed forward wall; and

2. Documents concerning the development of the alleged invention of the ’838 Patent or B/E’s “Spacewall” lavatory (including any documents of Robert Papke or Don Cook), that reference (a) the KLM crew rest, (b) the DC-10 coat closet, or (c) any other monument with a recessed forward wall.

Mot. 1.

Petitioner contends that these documents are inconsistent with a position Patent Owner has advanced in the *inter partes* review. *See* 37 C.F.R. § 42.51(b)(1)(iii) (“Unless previously served, a party must serve relevant information that is inconsistent with a position advanced by the party during the proceeding concurrent with the filing of the documents or things that contains the inconsistency.”). The Motion identifies particular statements from the Patent Owner Response, including the following statement: “Petitioner’s obviousness assertions hang entirely on generalizations about a desire for space efficiency—desires that have purportedly existed for decades and yet never resulted in any product or reference that included all the ’838 patent’s claim elements.” Mot. 5 (quoting Paper 31, 3–4). Petitioner presents evidence—sufficient for

¹ We authorized the Motion in an April 2, 2015, Order. Paper 33.

purposes of its Motion—that what it refers to as the “KLM crew rest”² included all elements of at least claim 9 of the involved U.S. Patent No. 8,590,838. *See* Exs. 1011, 1012.

In consideration of the foregoing, it is hereby:

ORDERED that Petitioner’s Motion is granted-in-part;

FURTHER ORDERED that Patent Owner shall produce all documents within its possession or control that:

(1) concern the development of the KLM crew rest that reference (a) the DC-10 coat closet or (b) any enclosure unit that is taller than a passenger seat and has a recessed forward wall; or

(2) concern the development of the alleged invention of U.S. Patent No. 8,590,838 or B/E’s “Spacewall” lavatory (including any documents of Robert Papke or Don Cook), that reference (a) the KLM crew rest, (b) the DC-10 coat closet, or (c) any enclosure unit that is taller than a passenger seat and has a recessed forward wall; and

FURTHER ORDERED that Patent Owner shall produce these documents within one week of the date of this Order.

² The KLM crew rest is a crew rest purportedly developed in the early 1990s by Flight Structures, Inc. (which was later acquired by Patent Owner) for KLM Royal Dutch Airlines. Mot. 1.

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