

Candidate's Answer (C)

FACTS AND ARGUMENTS

The patent is opposed in its English text and is referred to herein as Annex 1.

1. Date for assessing the validity of the claims

- 1.1 The subject-matter of claims 1 to 5 was first disclosed in priority application FR 9805910, having a filing date of 04.5.98. Since the priority claim appears to be valid, the validity of claims 1 to 5 is to be assessed at 04.5.98.
- 1.2 The subject-matter of claim 6 was first disclosed in European patent application 99 402861.1, having a filing date of 03.05.99. The validity of claim 6 is therefore to be assessed at 03.05.99.

2. Prior art documents

- 2.1 References to the attached summary of proceedings (hereafter Annex 2) are to the English text. Annex 2 is citeable against claim 6 under Article 54(2) EPC since it has a publication date (09.06.98) prior to the date at which the validity of this claim is to be assessed. It is therefore relevant for the novelty and inventive step of claim 6.

Furthermore, Annex 2 is evidence of the content of a public lecture which took place between the 14-16th April 1998. This public disclosure made the contents of Annex 2 available to the public before the date at which the validity of claims 1 to 5 is to be assessed and the content of Annex 2 is therefore citeable against these claims under Article 54(2) EPC.

The opponent considers that the short delay between the conference and the publication of the abstract, the fact that the abstract is an official publication of the proceedings and the concise contents of the abstract present a convincing prima facie case that the contents of Annex 2 were made available sometime between 14-16th April 1998. However, in the event that the proprietor disputes these facts, the opponent is willing to provide a witness who attended the conference who will provide corroboration.

- 2.2 References to US-5, 236, 304 (henceforth, Annex 3) are to the English text. Annex 3 is citeable against claims 1 to 6 under Article 54(2) EPC since it has a publication date (17.8.93) which is prior to the date at which the validity of these claims is to be assessed. It is therefore relevant to the novelty and inventive step of claims 1 to 6.
- 2.3 References to FR 2712496 (henceforth, Annex 4) are to the French text. Annex 4 is citable against claims 1 to 6 under Article 54(2) EPC since it has a publication date (6.9.95) which is prior to the date at which the validity of these claims is to be assessed. It is therefore relevant to the novelty and inventive step of claims 1 to 6.

- 2.4 References to EP 0 839 758 (henceforth, Annex 5) are to the English text. Annex 5 is citable against claim 6 under Article 54(2) EPC since it has a publication date (6.5.98) prior to the date at which the validity of claim 6 is to be assessed. It is therefore relevant to the novelty and inventive step of claim 6.

Furthermore, Annex 5 is citable against claims 1 to 5 under Article 54(3)-(4) and Rule 23a EPC for all common, validly designated states (ie, DE, ES, FR, GB, IT and NL) since Annex 5 is a European patent application published after but having a filing date earlier than the priority date to which these claims are entitled. It is therefore relevant to the novelty of these claims.

3. CLAIM 1

INVENTIVE STEP

Annex 4 is determined to be the closest prior art for the assessment of inventive step since it is in the relevant technical field on exit systems for aircraft and has a number of technical features in common with Annex 1. Annex 4 describes, in the language of claim 1, an aircraft (see page 1, line 25 "La fig. 1 montre un avion") having a plurality of seats arranged in rows (see Figure 1 and page 1, lines 26-28) and which comprises a floor system for finding an exit in the aircraft (see, for example, claim 1, "Système indiquant une sortie d'un avion ... revêtement de sol sous lequel se trouve une bande lumineuse").

Furthermore, the system of annex 4 includes passive visual means for identifying an exit by vision (the tufts above arrow-shaped casings 30 can be of a different colour to the rest of the carpet - see page 2, lines 24-26).

The step that lies between Annex 4 and the invention of claim 1 is therefore the provision of further tactile means for identifying an exit by touch associated with the visual means already in place.

The technical effect associated with such an extra feature is the ability to be able to locate the exit when the floor moorings are obscured by smoke etc.

The objective technical problem solved by the invention of claim 1 in light of Annex 4 is therefore how to provide an improved exit-finding system that operates well even in conditions of poor visibility.

Annexes 2 and 3 both teach solutions to this problem falling within claim 1.

Annex 3 teaches that a band of fabric (see page 2, line 11) containing visual directional information (see Fig 1) may be provided with a surface that is smooth when brushed with the hand in one direction and rough when brushed in the other direction (see page 1, lines 26 to 28).

Both Annexes 4 and 3 fall within the general technical field of systems aiding safe escape from structures, are contemporaneous and here would be known to the

skilled man who would associate them and consider combining their disclosures. Such a combination was straightforward and offered advantages.

Both annexes solve the same problem of providing an escape means in poor as well as good visibility. Their teaching is, furthermore, entirely compatible since the carpet of Annex 4 would require no substantial modification for the incorporation of a fabric according to Annex 3. The skilled person, wishing to improve the usefulness of the exit-directing system of Annex 4 would therefore have incorporated the fabric of Annex 3 since this is the routine solution he is presented with. Claim 1 can therefore be seen to lack an inventive step pursuant to Article 56 EPC as it represents an obvious modification of Annex 4 in light of Annex 2 and is opposed pursuant to Article 100(a) EPC.

Furthermore, Annex 2 teaches that a series of angular members attached to a supplier of some kind (eg hose) can be used to provide directional information, that is effective in conditions of poor visibility (page 1, lines 21-22 and 28-32). It would be a matter of routine variation for the skilled person to add to the "band lumineuse 17" of Annex 4 (page 1, lines 30-31) a series of angular members at floor level since such members are already suggested by the v-shaped boxes 30. This would provide a solution to the problem falling within the scope of claim 1. Claim 1 therefore represents an obvious modification of Annex 4 in light of Annex 2 and lacks an inventive step. It is opposed pursuant to Article 100(a) EPC.

CLAIM 2

Claim 2 includes the features of claim 1 in combination with the further feature that the tactile means of identifying the exit through touch are "readable" using the foot in addition to or instead of the hand.

Whilst Annex 3 envisages that the information the fabric tape provides should be ascertained using the hand it is never-the-less clear that since the fabric provides greater resistance to frictional contact in one direction as opposed to the other, its directionality could be appreciated by rubbing a shoe over its surface. Since the extra feature of claim 2 is to be found in Annex 3 and the combination of Annexes 3 and 4 is obvious, as described above, claim 2 also lacks an inventive step.

Furthermore, the angular members of Annex 2 are most certainly detectable through the sole of a shoe when incorporated into the luminous strip of Annex 4. Indeed this is exactly the kind of solution contemplated by the opposed patent (see page 2, lines 28-30). Since the combination of Annex 2 and Annex 4 has been shown to be obvious above, claim 2 must also be obvious and is opposed under Article 100(a) EPC.

CLAIM 3

Claim 3 includes the features of claim 1 and adds the further feature that two means of identifying the exit are provided, are on the floor and are above seat level, both being passive tactiovisual means.

This feature is not present in Annex 4 and so the objective technical problem solved by the invention of claim 3 in light of Annex 4 now becomes the provision of an improved exit-finding system that operates well in conditions of poor visibility and which can be used in the crawling or walking positions.

In incorporating the teaching of Annex 3 into Annex 4, which has already been shown to be an obvious combination the skilled man would be struck by the fact that Annex 3 teaches the use of a tactiovisual means provided at waist height that can be followed using the hands while walking along a corridor. Annex 3 therefore already teaches the solution to the objective problem since in an aeroplane such an additional tactiovisual means could not be provided at waist height due to the presence of seats but would have to be provided above seat level. Therefore, the skilled man, in applying the teaching of Annex 3 to Annex 4 would be routinely led to incorporate the touch directionality of the Annex 3 fabric not just on the floor, to aid those crawling, but also above the seats to aid those walking. Claim 3 therefore lacks an inventive step.

CLAIM 4

NOVELTY

Annex 5 describes, in the words of claim 4, a system for finding an exit in a structure (see page 1, lines 20-22), the structure having a plurality of seats arranged in rows (see page 2, line 20 - a cinema is an anticipated structure), said system comprising a plurality of passive tactiovisual means identifying a direction to said exit by touch and vision (see Fig 3 and page 2, lines 19-22 - a plurality of means is provided, one on each seat in the cinema. Such means are passive, requiring no electricity and provide visual information (see page 2, lines 1-2) and tactile information (page 2, lines 6-11) indicating the exit (page 1, lines 29-30).

Hence, claim 4 lacks novelty in light of Annex 5 in respect of commonly designated states.

Furthermore, the phrase "for finding an exit in a structure, said structure having a plurality of seats arranged in rows" does not limit claim 4 since claim 4 actually relates to a "system" and as long as a prior art system is "suitable" for finding the exit in a structure having a plurality of seats then it is novelty-destroying.

Annex 3 describes a system for finding an exit in a structure (page 1, lines 18-19) which comprises a plurality of passive tactiovisual means (= each element "2" in Fig 1, each of which provides visual information (page 2, line 1) in the form of arrows and tactile information (page 2, lines 4-6) through smoothness. In such a way, the direction of the exit is indicated (page 2, line 1).

The same logic applies to Annex 2 which provides a hose with annular members for finding the exit, the members being passive, present in a plurality and having visual and tactile information. Claim 4 therefore lacks novelty over Annex 2.

Claim 4 is opposed under Article 100(a) EPC in all these cases.

CLAIM 5

INVENTIVE STEP

Annex 4 may be taken to be the closest prior art for the assessment of inventive step in relation to claim 5, since it is the only art relating to an aircraft.

Annex 4 discloses, in the words of claim 5, the use of V-shaped elements (= boitier 30 in the form of an arrowhead, see page 2, lines 2-3) in aircraft (see, eg. line 25 on page 1) for visually indicating a route to an exit (either when lit up - page 2, lines 11-12 - or when passive - page 2, lines 24-26) such elements having straight legs (implicit in "pointe de flèche" since arrowheads have straight edges - see also Fig 2).

However, in Annex 4 the arrow-head has an apex angle of 90° which is disclaimed by claim 5.

Since there is no technical effect associated with the range $80-100^\circ$ excluding 90° when compared with the angle 90° the objective technical problem solved by claim 5 in light of Annex 4 must be the provision of a V-shaped element with an angle other than $80-100^\circ$ excluding 90° . This problem is solved by Annex 4 itself which provides an angle of 90° .

CLAIM 6

INVENTIVE STEP

Annex 5 discloses in the words of claim 6, a seat (page 2, line 20 and Fig 3) comprising a passive tactiovisual means (no electricity is required, both visual information - page 2, lines 1-2 and 4-6 - and tactile information - page 2, lines 7-11 - are provided) for identifying a direction to an exit by touch and vision (see page 2, lines 9-11 and 1-2).

Annex 5 may therefore be taken to be the closest prior art for the assessment of inventive step since it is the only art describing a seat comprising directional information.

The means of claim 6 has, in addition to the features already discussed a serrated surface to provide the tactile information. A "serrated" surface in this context is one which "feels rough in one direction and smooth in the other" (Annex 1, page 3, lines 17-19). Annex 5, on the other hand conveys tactile information by providing a raised surface (page 2, lines 7-9) or a surface with a contracting surface (page 2, lines 9-11).

The objective technical problem solved by claim 6 in light of Annex 5 may therefore be seen to be the provision of alternative means conveying tactile information.

The solution provided by claim 6, the provision of a serrated surface, is taught by 3. Annex 3 provides a fabric (page 2, line 11) having a serrated surface (see Fig 2) which conveys directional information by feeling "smooth in one way, rough in the other" (page 1, lines 27-28 - see also page 2, lines 8-9).

Since Annexes 3 and 5 are in the same technical field (providing systems to escape buildings when visibility is poor) and are contemporaneous they would be associated in the mind of the skilled person who would naturally consider combining their features if such combination was straightforward and advantageous.

It would indeed be straightforward to replace the fabric of Annex 5 with the fabric of Annex 3 to provide an alternative tactile means and no special modification would be necessary. It is thus clear that the problem addressed by claim 6 had already been appreciated and solved in the prior art in a complementary context - the solution of claim 6 is merely an analogous substitution. The skilled man, wishing to provide an alternative tactile means for the set of Annex 5 would routinely have incorporated the fabric of Annex 3 and claim 6 can therefore be seen to lack an inventive step pursuant to Article 56 EPC, representing an obvious modification of Annex 6 in light of the teaching of Annex 3. Claim 6 is opposed pursuant to Article 100(a) EPC.

NOTES FOR LETTER TO CLIENT

- As presented in the notice of opposition, we should be able to use the oral disclosure evidenced by Annex 2 as prior art against claims 1 to 5 and it is itself a prior publication to claim 6. We need to convince the EPO that Annex 2 is an accurate record of the oral disclosure. This is not always taken for granted (T 153/88, T 348/94) but the burden of proof may shift if a good prima facie case exists (T 86/95). I think we have such a case but may need a witness if challenged (see also Guidelines D/V/3.2.).
- In light of T 5/81 we cannot use Annex 6 in the opposition. It has no effect under Article 54(2) EPC being published after the filing date of Annex 1 and its potential Article 54(3) effect was denied by the unambiguous withdrawn before the date of publication (no application was \therefore pending when it was published). See Guidelines C/IV/6.19.
- Disclaimers are allowable in principle (T 4/80) where the subject matter cannot be defined more positively. In any case, clarity is not a ground of opposition. There is no Article 100(1) attack since the disclaimer was in the application as filed and in any case may be added later under appropriate circumstances (T 433/86, T 917/94 - confirmation from the Enlarged Board awaited). However, whilst a disclaimer can restore novelty over an accidental anticipation, it cannot make a non-inventive teaching inventive (T 170/87, T 597/92) and so we were able to attack claim 5 for lack of inventive step.

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- Priority is validly claimed from FR for claims 1-5 since same applicant, with same priority year and same invention (Article 87(1)). However, the priority claim from IT is invalid since not the first application disclosing the subject matter of claim 4. Priority claim from DE also invalid since no claim exists in respect of the subject matter of DE \therefore not same invention (G 2/98, Article 87(1)). \therefore claim 6 only entitled to filing date when it must have been added.
See notice of opposition for the consequences.
 - Allowance of the filing date only a consequence of the wording of A 80 EPC and the Argentinian company would not be allowed to file an opposition in Spanish (T 149/85). In any case, since I am fluent in an EPO language (Eng) it would be more costly to file in Spanish and have a translation made (saving = 20% of opposition fee = Euro 122).
 - Point out to client that proceedings can be accelerated if he is being threatened with infringement proceedings.
 - 9m date for filing opposition = 3.4.2003 = quite soon - can file by fax and send confirmation by courier.
 - No authorisation needed on basis of President's decision of 19.7.91.



To the
European Patent Office

Notice of Opposition to a European Patent

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Tabulation Marks

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I. Patent opposed		Opp. No.	OPPO (1)
Patent No.		EP 1 101 403 B1	
Application No.		99 402 861.1	
Date of mention of the grant in the European Patent Bulletin (Art. 97(4), 99(1) EPC)		03.07.2002	
Title of the invention:		EXIT FINDING SYSTEM FOR AIRCRAFT	
II. first named in the patent specification		EUROBUS INDUSTRIES SA	
Proprietor of the Patent			
Opponent's or representative's reference (max. 15 spaces)		OREF	
III. Opponent		OPPO (2)	
Name	AERONAUTICA DE LA PAMPA SA		
Address	AVD. MANO DE DIOS 1420 BUENOS AIRES ARGENTINA		
State of residence or of principal place of business	ARGENTINA		
Telephone/Telex/Fax			
Multiple opponents	<input type="checkbox"/> further opponents see additional sheet		
IV. Authorisation		OPPO (9)	
1. Representative (Name only one representative to whom notification is to be made)			
Name	MR RODRIGUEZ		
Address of place of business	BRAHMS, LISZT AND RODRIGUEZ FREIDEGG STR. 15 81545 MÜNCHEN		
Telephone/Telex/Fax			
Additional representative(s)	<input type="checkbox"/> (on additional sheet/see authorisation)		OPPO (5)
2. Employee(s) of the opponent authorised for these opposition proceedings under act. 133(3) EPC	Name(s):		
Authorisation(s)	<input checked="" type="checkbox"/> not considered necessary		
To 1./2.	<input type="checkbox"/> has/have been registered under No.		
	<input type="checkbox"/> is/are enclosed		

for

V. Opposition is filed against

— the patent as a whole

— claim(s) No(s).

VI. Grounds for opposition:

Opposition is based on the following grounds:

(a) the subject-matter of the European patent opposed is not patentable (Art. 100(a) EPC) because:

— it is not new (Art. 52(1); 54 EPC)

— it does not involve an inventive step (Art.52(1); 56 EPC)

— patentability is excluded on other grounds, i.e.

Art.

(b) the patent opposed does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art (Art. 100(b) EPC; see Art. 83 EPC).

(c) the subject-matter of the patent opposed extends beyond the content of the application/ of the earlier application as filed (Art. 100(c) EPC, see Art. 123(2) EPC).

VII. Facts and arguments

(Rule 55(c) EPC)

presented in support of the opposition are submitted herewith on a separate sheet (annex 1)

IX. Other requests:

IF THE OPPOSITION DIVISION INTENDS TO MAINTAIN THE PATENT IN ANY FORM, ORAL PROCEEDINGS ARE REQUESTED

IX. Evidence presented

Enclosed =

will be filed at a later date =

B. Publications:

Publication date

1

Particular relevance (page, column, line, fig.):

2

Particular relevance (page, column, line, fig.):

3

Particular relevance (page, column, line, fig.):

4

Particular relevance (page, column, line, fig.):

5

Particular relevance (page, column, line, fig.):

6

Particular relevance (page, column, line, fig.):

7

Particular relevance (page, column, line, fig.):

Continued on additional sheet

C. Other evidence

Continued on additional sheet

for E

X. Payment of the opposition fee is made

- as indicated in the enclosed voucher for payment of fees and costs (EPO Form 1010)
-

XI. List of documents:

Enclosure No.:		No. of copies
0	<input checked="" type="checkbox"/> Form for notice of opposition	<input type="text"/> (min. 2)
1	<input checked="" type="checkbox"/> facts and arguments (see VII.)	<input type="text"/> (min. 2)
2	Copies of documents presented as evidence (see IX.)	
2a	<input checked="" type="checkbox"/> — Publications	<input type="text" value="2"/> (min. 2 of each)
2b	<input type="checkbox"/> — Other documents	<input type="text"/> (min. 2 of each)
3	<input type="checkbox"/> Signed authorisation(s) (see IV.)	<input type="text"/>
4	<input checked="" type="checkbox"/> Voucher of payment of fees and costs (see X.)	<input type="text" value="1"/>
5	<input type="checkbox"/> Cheque	<input type="text"/>
6	<input type="checkbox"/> Additional sheet(s)	<input type="text"/> (min. 2 of each)
7	<input checked="" type="checkbox"/> Other (please specify here): FORM FOR ACKNOWLEDGEMENT OF RECEIPT	<input type="text" value="1"/>

XII. Signature of opponent or representative

Place MUNICH

Date 28.3.2003

Please print name under signature. In the case of legal persons, the position which the person signing holds within the company should also be