



**PATENTS ACT 1977**

BETWEEN

Heathrow Hub Limited	Claimant
and	
Captain Daniel Gellert	Proprietor

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PROCEEDINGS

Declaration of Non-Infringement under Section 71 of The Patents Act 1977 in  
respect of Patent EP(UK) 2 160 625 B1

HEARING OFFICER                      Stephen Probert

Decision off the papers

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**DECISION**

**The Request**

- 1 This decision concerns a request, made on 14<sup>th</sup> April 2015, for a declaration of non-infringement of EP(UK) 2 160 625 B1. The request is made by Heathrow Hub Limited, following refusal of the patent proprietor, Captain Daniel Gellert, to provide a written acknowledgment of non-infringement.
- 2 Following a case management conference (CMC), and a short stay of proceedings to enable the parties to explore the possibility of a negotiated settlement, the parties have agreed that I should issue a written decision based on the papers on the official file.

**Background**

- 3 This dispute concerns a method of increasing the capacity of an airport runway by using the two ends of the runway separately for aircraft taking off and landing. More specifically, the idea is to take an existing runway, extend it, and then split it into two separate sections with a 'no go' area<sup>1</sup> between the two sections.
- 4 The first point of contention in this dispute is whether aircraft may use the buffer zone for taxiing. The second point of contention concerns the possibility of returning the runway to a single, long runway – eg. by reconfiguring the runway lighting & marking.

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<sup>1</sup> Called a 'buffer zone' in the patent and a 'sterile Intermediate Safety Area' in the proposal.

## Why keep a dog and bark yourself?

- 5 Captain Gellert has written to the Office directly on several occasions throughout the course of these proceedings. Other than to establish that he is professionally represented, I have ignored all such correspondence – unless it was provided through his patent attorneys (Mewburn Ellis).

## The Patent

- 6 Captain Gellert's patent has three independent claims – 1, 9 & 14. They all define the same invention, and there is no need to distinguish between them for the purposes of this decision. Claim 1 recites the following:-

1. An aircraft arrival and departure system (2) comprising:

a split runway (4, 4') having a first end portion that comprises a landing strip portion (14, 14'), a second end portion that comprises a takeoff strip portion (16, 16'), and a buffer zone (10, 10') located between the landing strip portion and the takeoff strip portion,

a split runway arriving aircraft;

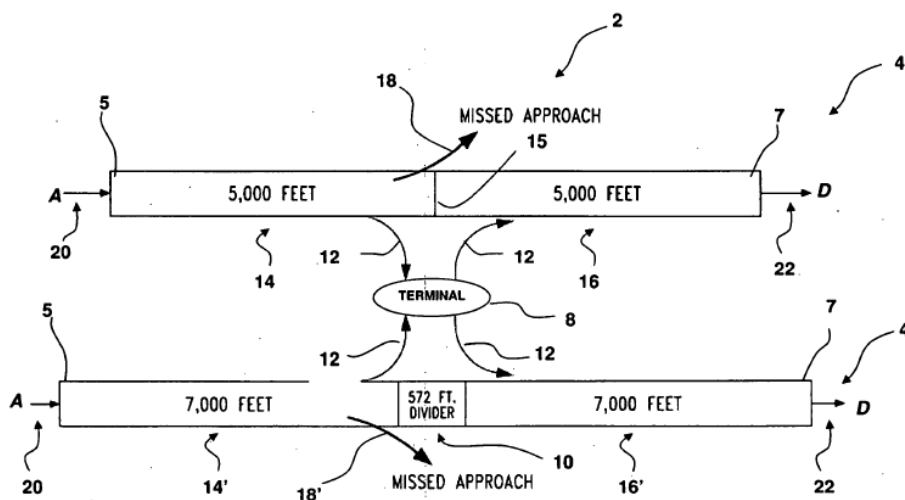
a split runway departing aircraft;

wherein said split runway arriving aircraft is designated to land on the landing strip portion (14, 14') of the split runway and said split runway departing aircraft is designated to depart from the takeoff strip portion (16, 16') of the split runway and

wherein said split runway has markers or lighting systems or signals, or a combination thereof, for marking the boundaries of the buffer zone (10, 10'), and additional marking systems capable of being made visually apparent for a split runway configuration, and being rendered non-visible to return the runway to a full length configuration in which the full length of the runway is usable by aircraft to either take-off or to land, and

wherein, when the system is designated as a split runway, a dedicated crossing taxiway is provided through the buffer zone to allow an aircraft to taxi laterally across the split runway.

- 7 Figure 1 of the patent shows the following arrangement:-



## The Proposal

### 8 Heathrow Hub Limited has provided the following proposal for the design of an airport runway configuration:-

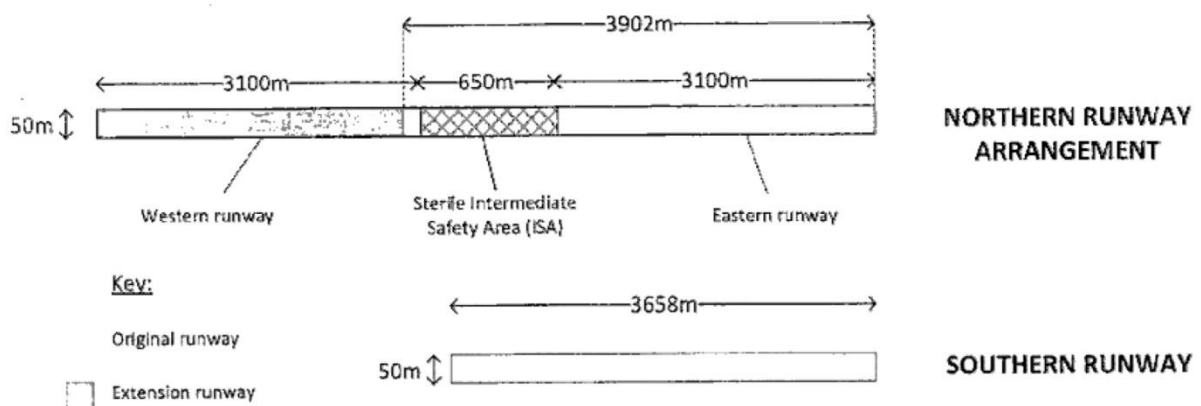
2.1.1 The design increases capacity at London Heathrow Airport (LHR) by extending the existing 3902m Northern runway to the West (but not extending the Southern runway), and in so doing splitting the extended Northern runway arrangement thus produced into three distinct sections, consisting of: two individual runways (an Eastern and a Western runway) around 3,100m in length; and, separating those two runways, a 650m sterile Intermediate Safety Area (ISA) which no aircraft is permitted to enter for any purpose, whether for taxiing across the ISA (whether laterally or not) or otherwise. At least the boundaries between each runway section and the ISA are proposed to be marked (e.g. using painted markings and/or lighting – in conformity with airport regulations) to make clear that no aircraft is permitted to enter the ISA for any purpose (whether for taxiing across the ISA or otherwise). Thus the only taxiing that it is proposed will be permitted to take place will be off and on each runway, for landing and take-off purposes only, and this will be restricted to the relevant runway and will not take place in the ISA.

2.1.2 In fact there are no taxiways at all that cross the Northern runway arrangement to allow an aircraft to taxi across the runway arrangement (whether laterally or otherwise), either within the sterile ISA or without it. This is so not least because there is no need for an aircraft to cross the Northern runway arrangement since there is no further runway, terminal or other infrastructure that aircraft would be required to cross to the northern side of that runway.

2.1.3 The sterile ISA is maintained as a safety area; the Northern runway arrangement consisting of two individual runways and the sterile ISA is not to be returned to a full-length configuration. Thus, in particular, no markers or lighting or any other means is proposed to be rendered non-visible to return the said runway to a full length configuration in which the full length of the runway arrangement is usable by aircraft to either take-off or land. At least the boundaries between each runway section and the ISA are proposed to be marked (e.g. using painted markings and/or lighting – in conformity with airport regulations ) to make clear that the use of the full length of the runway arrangement is not permitted.

2.1.4 Such an arrangement with the restrictions on the length and sterility of the Intermediate Safety Area allows for simultaneous take-off and landing on the Western and Eastern runways (or *vice versa*) thereby increasing the capacity of LHR.

### 9 The following figure (provided as part of the proposal) illustrates the proposed runway configuration:-



## **Does the proposal satisfy the requirements of Section 71?**

- 10 Section 71 of the Act sets out the law regarding declarations of non-infringement. It states:

71(1) Without prejudice to the court's jurisdiction to make a declaration or declarator apart from this section, a declaration or declarator that an act does not, or a proposed act would not, constitute an infringement of a patent may be made by the court or the comptroller in proceedings between the person doing or proposing to do the act and the proprietor of the patent, notwithstanding that no assertion to the contrary has been made by the proprietor, if it is shown -

(a) that that person has applied in writing to the proprietor for a written acknowledgment to the effect of the declaration or declarator claimed, and has furnished him with full particulars in writing of the act in question; and

(b) that the proprietor has refused or failed to give any such acknowledgment.

- 11 The proprietor says that the proposal does not satisfy these requirements because it does not provide sufficient detail about the operation of the markers and/or the lighting that is likely to be used. For example, how will the proposed runway configuration prevent the runway lighting that marks the boundaries of the ISA from being 'rendered non-visible'? (Any kind of switch or circuit breaker in the relevant lighting circuit – such as would be necessary to permit maintenance on the lighting – could be used to render the lighting 'non-visible'.) Similarly, how will the proposed runway configuration prevent aircraft from taxiing laterally across the runway through the buffer zone (or ISA)?
- 12 I have considered the claimant's proposal carefully, and I believe that it does contain enough detail about the proposed runway configuration to enable me to decide whether it would infringe the patent. If the proposal had said nothing about the possibility of restoring the split runway to a single, long runway, then I would have agreed with the proprietor that it lacked important information. Similarly, if there was no mention in the proposal about aircraft using the ISA (or buffer zone) to taxi across the runway, then I would not have been in a position to decide whether it might infringe. But the proposal is very clear on both of these points. Paragraph 2.1.3 clearly rules out any possibility of the two runways being returned to a full-length configuration, and paragraph 2.1.1 is equally clear that aircraft will not be permitted to enter the sterile ISA for any purpose.
- 13 Consequently, the request by Heathrow Hub Limited complies with section 71 of the Act.

## **Does the proposed runway configuration infringe EP(UK) 2 160 625 B1?**

- 14 The claimant's proposed runway configuration is undoubtedly similar to the patent proprietor's aircraft arrival and departure system in at least one respect – ie. it splits a single (extended) runway into two end portions separated by a buffer zone, such that the two ends of the runway may be used as two separate runways. However, I consider that the proposal lacks two very significant features of the claimed

invention. First, the proposal specifically excludes the possibility of *returning the runway to a full length configuration*; and secondly, it does not provide a '*dedicated crossing taxiway through the buffer zone*' when the runway is designated as a split runway. In fact, as stated above, the proposal expressly excludes aircraft from entering the buffer zone (or 'sterile ISA') for any purpose whatsoever.

- 15 Absent these two features, which are clearly intended to be important elements of the claimed invention, the proposed airport runway configuration would not infringe patent EP(UK) 2 160 625 B1. I understand that the proprietor is concerned that it could be a relatively simple task to switch off a few lights (or even place covers over them) to reconfigure the split runways as a single ('full length') runway. Similarly, it might not involve much of a change to use the sterile ISA as a taxiway across the split runway. However, that would be a **different** airport runway configuration, and as such it would be outside the scope of this declaration of non-infringement. I am only concerned with the airport runway configuration described in the claimant's proposal, and not with potential variations of it – especially not potential variations that are expressly disclaimed in the proposal itself.

### **Declaration**

- 16 I hereby declare that the making, disposing of, offering to dispose of, using, importing and keeping the aircraft arrival and departure system precisely described at paragraph 8 above, and using or offering to use the method of airport runway design and method of operating an airport having a split runway also as precisely described at paragraph 8 above, does not and would not constitute an infringement of EP(UK) 2 160 625 B1.

### **Costs**

- 17 Heathrow Hub Limited has been successful in these proceedings, and is entitled to an award of costs. The Comptroller's standard scale of costs is set out in Tribunal Practice Notice 4/2007. The scale costs are not intended to compensate parties fully for the expense to which they have been put, but to represent a contribution to that expense. This policy reflects the intention that the IPO be a low cost tribunal for litigants, and builds a degree of predictability as to how much proceedings before the IPO may cost them.
- 18 In respect of the relevant categories in the scale, I award the following amounts:-

Official fees	£400
Preparing a statement and considering the other side's statement	£300
Preparing for and attending a CMC (by telephone)	£200
<b>Total</b>	<b>£900</b>

### **Costs Order**

- 19 I hereby order Captain Gellert to pay Heathrow Hub Limited the sum of £900 as a contribution towards their costs in these proceedings. This sum is to be paid within seven days of the expiry of the appeal period below.

### **Appeal**

- 20 Any appeal must be lodged within 28 days after the date of this decision.

**Stephen Probert**

Deputy Director acting for the Comptroller