

U.S. DEPARTMENT OF TRANSPORTATION

FEDERAL AVIATION ADMINISTRATION

WASHINGTON, DC 20591-0004

AERONAUTICAL REPAIR STATION)
ASSOCIATION)

Complainant)

vs.)

Parker Hannifin Corporation)

Respondent)

Docket No. _____

PART 13 FORMAL COMPLAINT

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Dated: February 29, 2008

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I. INTRODUCTION

Pursuant to Title 14 C.F.R. § 13.5¹, Complainant, the Aeronautical Repair Station Association (“Complainant”, “ARSA” or “Association”), respectfully submits this Formal Complaint to the Administrator on behalf of its member, Sonico, Inc. (Sonico).

Complainant alleges that Parker Hannifin Corporation (Parker Hannifin), a Parts Manufacturer Approval (PMA) holder under § 21.303, violated § 21.50(b) by refusing to make Instructions for Continued Airworthiness (ICA) available to persons required to comply with those instructions when performing maintenance on articles for which Parker Hannifin holds the design approval.

Complainant requests that the Federal Aviation Administration (FAA) institute an investigation and issue an order finding that Parker Hannifin is in violation of § 21.50(b). The information and Items of Proof (IOP) submitted herein will enable the FAA to expeditiously conclude an informal investigation as contemplated by §13.5(i). Should the Administrator believe that additional information is necessary to make a final determination, ARSA urges the

¹ All regulatory citations are to Title 14, Parts 1 through 199 of the Code of Federal Regulations (CFR) unless otherwise noted.

Administrator to issue an order of investigation in accordance with part 13, subpart F.

ARSA represents the interests of aircraft maintenance and alteration facilities before the FAA, the National Transportation Safety Board (NTSB), other federal agencies, and National Aviation Authorities (NAA) around the world. Its members perform maintenance and alterations on behalf of U.S. and foreign air carriers, as well as other aircraft owners and operators. In addition, the Association's membership includes companies that distribute parts to international civil aviation businesses, as well as air carriers and manufacturers. Through its publications, training activities and annual repair symposium, ARSA educates the aviation design, production and maintenance industries on domestic and international regulatory requirements.

Sonico is a part 145 certificated repair station located in the state of Washington. It holds accessory and limited airframe, landing gear and radio ratings (IOP 1 & 2). Sonico is a member of ARSA, and requested the Association's assistance in filing this complaint after Parker Hannifin refused numerous requests for the ICA that are the subject of this complaint.

Respondent Parker Hannifin is the holder of PMA No. PQ0658NE (IOP 3). The PMA covers Dual Temperature Sensor (Sensor) part number 055-019-001. This Complaint focuses on the Sensor installed on the Airbus A340-541 and A340-642 aircraft. Respondent's address, as noted on the PMA, is:

Parker Hannifin Corporation 300 Marcus Boulevard Smithtown NY 11787-9400 United States

II. FACTS

Parker Hannifin holds the PMA for the Sensor part number 055-019-001. Parker Hannifin applied for the PMA for the Sensor after January 28, 1981 and the affected product had a type certificate (TC) application date after January 28, 1981. [Part Manufacturer Approval dated 09/02/2005, Airbus Model A340-642 - approved July 22, 2002, Airbus Model A340-541 - approved January 27, 2003] (see IOP 3 & 4).

Sonico is an appropriately rated FAA-certificated part 145 repair station (see IOP 1) that performs maintenance on the Parker Hannifin Sensor (see IOP 2).

On May 16, Sonico requested maintenance manuals electronically from Paul Wehr, Senior Contract Administrator, Parker Hannifin Corporation, for the Dual

Temperature Sensor (IOP 5). In a letter to letter to Thomas A. Piraino, Jr., Vice President, General Counsel and Secretary, Parker Hannifin Corporation, on July 3, 2006, Sonico requested maintenance manuals for the Sensors on which Sonico performs maintenance pursuant to part 43 (see IOP 6). Sonico requested “information relating to the interface of the part with the airplane, including basic control and operation information; servicing information, the recommended periods at which the sensor should be cleaned, inspected, adjusted, tested, and lubricated, and the degree of inspection, the applicable wear tolerance, and work recommended at these periods; troubleshooting information; and details for the application of special inspection techniques.” Pursuant to §§ 21.50(b), 25.1529 and appendix H to part 25, this information is a required aspect of the ICA for the Parker Hannifin Sensor. To date Sonico has not received a response from Parker Hannifin despite numerous follow-up inquiries on its original request (see IOPs 7 & 8).

III. ANALYSIS

A. ICA Regulatory Framework

Since 1941, the federal government has required that manufacturers of civil aviation products prepare instructions relating to the installation, operation, servicing and maintenance of those products. The early rules specifically required that the design approval holder make the manuals available to persons performing maintenance under the applicable regulations.² Additionally, Technical Standard Orders (TSOs) have also required development and dissemination of maintenance information. Between 1941 and 1980 (when the current version of § 21.50(b) was adopted), the FAA and its predecessor agency consistently required the holders of design approvals for aircraft, aircraft engines, propellers and appliances to prepare instructions for performing maintenance.

In 1980, the FAA adopted the current version of § 21.50(b), which requires all design approval holders to provide ICA prepared in accordance with the airworthiness requirements applicable to the affected product. If the affected product has a TC or supplemental type certificate (STC) for which the application was made after January 28, 1981, a PMA holder must provide supplemental ICA, unless the product’s ICA is still valid with the PMA part installed.

Complainant respectfully submits that Parker Hannifin, by not providing this certificated and appropriately rated repair station with the complete ICA for the Sensor, has violated § 21.50(b).

1. Section 21.50(b)

² See Parts 6, 7, 13 and 14 of the Civil Air Regulations (CARs) and corresponding parts of the recodified FAR.

As the design approval holder for the Sensor, Title 14 CFR requires that Parker Hannifin prepare and submit ICA as part of the PMA application process. It also requires Parker Hannifin to distribute and maintain those ICA subsequent to certification. Section 21.50(b) contains the current legal requirement for establishing and distributing ICA, as follows:

[t]he holder of design approval, including either the type certificate or supplemental type certificate for an aircraft, aircraft engine, or propeller for which application was made after January 28, 1981, shall furnish at least one set of complete Instructions for Continued Airworthiness, prepared in accordance with Secs. 23.1529, 25.1529, 27.1529, 29.1529, 31.82, 33.4, or 35.4 of this chapter, or as specified in the applicable airworthiness criteria for special classes of aircraft defined in Sec. 21.17(b), as applicable, to the owner of each type aircraft, aircraft engine, or propeller upon its delivery, or upon issuance of the first standard airworthiness certificate for the affected aircraft, whichever occurs later, and thereafter make those instructions available to any other person required by this chapter to comply with any of the terms of those instructions. In addition, changes to the Instructions for Continued Airworthiness shall be made available to any person required by this chapter to comply with any of those instructions.

This is the primary regulation that requires Parker Hannifin, as a PMA design approval holder, to prepare ICA for its Sensor, and make them available to any person required by the regulations to comply with these instructions.

Notwithstanding the clear language of § 21.50(b), the FAA has been slow in enforcing the design approval holder's obligation to make ICA available to maintenance providers. On the other hand, the agency has vigilantly enforced the requirement that those performing maintenance do so in accordance with the ICA. In ARSA's view, this "double standard" of enforcement exists because the FAA's two primary safety oversight organizations, the Aircraft Certification Service (design and production) and the Flight Standards Service (operations and maintenance), have not developed a standard and uniform FAA policy. This is particularly unfortunate at a time when the agency has encouraged certificate holders to use a coordinated systems approach, complete with risk analysis, in managing their daily operations. System safety concepts are grounded in the fundamental belief that accidents and other safety lapses can be minimized by identifying and addressing "precursors" before they become full-blown safety problems.

In a policy statement issued on July 12, 2005, the FAA discussed the shared responsibility of Design Approval Holders (DAHs) and operators in achieving safety objectives. The FAA recognizes that to achieve safety goals in an increasingly complex industry "we need to facilitate more effective

communication of safety information between DAHs and operators.” Specifically, the policy seeks to “build on current regulations (§§ 21.50, 21.99) that require DAHs to “make available” certain service information that is necessary to maintain the airworthiness of airplanes” (IOP 9). Clearly, this policy reinforces the regulatory requirement of DAHs to provide airworthiness information, including ICA, to operators and those that maintain owner/operator aircraft and related components.

2. Part 25, Appendix H

Part 25 contains the airworthiness standards for the transport category aircraft that require installation of the Parker Hannifin Sensor. One of those standards, § 25.1529, requires an applicant for an aircraft type certificate to prepare ICA in accordance with appendix H. The appendix sets guidelines for the content and details what the design approval holder must include in the ICA.

Appendix H, paragraph H25.1(b) states, “The Instructions for Continued Airworthiness for each airplane must include the Instructions for Continued Airworthiness for each engine and propeller (hereinafter designated “products”), for each *appliance* required by this chapter, and any required information relating to the interface of those appliances and products with the airplane.” Further the ICA must be supplied either by the manufacturer of an appliance or product installed on an aircraft, or by the manufacturer of the aircraft (see Appendix H, para. H25.1(b)).

Appendix H, paragraph H25.3(b) also requires that ICA include:

(b) *Maintenance Instructions.* (1) Scheduling information for each part of the airplane and its...accessories, instruments, and equipment that provides the recommended periods at which they should be cleaned, inspected, adjusted, tested, and lubricated, and the degree of inspection, the applicable wear tolerances, and work recommended at these periods. **However, the applicant may refer to an accessory, instrument, or equipment manufacturer as the source of this information** if the applicant shows that the item has an exceptionally high degree of complexity requiring specialized maintenance techniques, test equipment, or expertise. The recommended overhaul periods...must also be included. In addition, the applicant must include an inspection program that includes the frequency and extent of the inspections necessary to provide for the continued airworthiness of the airplane. **(emphasis added)**

As the appendix outlines, the ICA must contain *details* for performance of maintenance, including specific information regarding maintenance techniques, overhauls and inspections for each part of the aircraft. It further states that an appliance manufacturer (i.e.: PMA holder) may provide the ICA (instead of the

TC or STC applicant) when the item has an exceptionally high degree of complexity. On several occasions, Sonico requested from Parker Hannifin the detailed maintenance information appendix H explicitly requires (see IOPs 5 through 8). In violation of §§ 21.50(b), 25.1529 and part 25, appendix H, Parker Hannifin consistently denied these requests by not responding to the Sonico's inquiries and numerous follow-up attempts.

B. Repair Stations Must Comply with the ICA Requirements

Sonico is a part 145 certificated repair station rated to perform maintenance, preventive maintenance and alterations on the Parker Hannifin Sensor. Section 145.109(d)(2) requires Sonico to obtain and keep current the ICA for this appliance. In addition, § 43.13(a) generally requires that Sonico perform the maintenance, preventive maintenance or alterations of these items in accordance with the current ICA.

As used in § 21.50(b), part 145 repair stations qualify as "other persons" required to comply with the regulations. An FAA legal interpretation regarding ICA requirements, commonly known as the "Whitlow Letter," supports this reading of the regulation (see IOP 10). The letter concluded that FAA certificated repair stations are "other persons required by [Chapter I of Title 14 CFR] to comply with any of the terms of the instructions." The letter correctly observed that although § 21.50(b) did not "technically" require the aircraft manufacturer to provide accessory ICA (because the design approval holder filed its application for the BAe-146's type certificate prior to January 28, 1981), such a refusal was **"puzzling, at best, and, at worst, [was] an artificial obstacle to ensuring that each BAe-146 airplane is maintained in an airworthy condition."** (emphasis added).

In contrast to the BAe-146, the Parker Hannifin Sensor is installed on the Airbus Model A340-541 and A340-642 which were type certificated after January 28, 1981, the date specified in § 21.50(b). In addition, Title 14 CFR has required maintenance manuals for complete aircraft and their accessories since 1970. As a result, Parker Hannifin's refusal is not only an artificial barrier to performing airworthy maintenance, but is also a violation of the plain language of the pertinent regulations.

1. Current Part 145

Part 145 requires that Sonico possess ICA both at the time of certification and at the time maintenance is performed (see §§ 145.51(b), 145.109(d)(2), and 145.211(c)). This makes it a "party required to comply with these regulations" as set forth in § 21.50(b).

Section 145.51(b) provides, in part, "The equipment, personnel, **technical data**, and housing and facilities required for the certificate and rating, or for an

additional rating must be in place for inspection at the time of certification or rating approval by the FAA” (emphasis added). Section 145.109(d) further specifies that data “required for the performance of maintenance, preventive maintenance, or alterations under [a] repair station[’s] certificate and operations specifications” includes ICA. In addition, § 145.211(c) requires that a repair station include in its quality control manual the manufacturer’s inspection standards and any related data the manufacturer specifies, information which is most appropriately found in the ICA.

Based on the requirements identified above, part 145’s regulatory scheme requires a repair station to possess the current ICA appropriate for its rating both at the time of certification and at the time the repair station performs the work. In addition, it requires repair stations to integrate the ICA into their manuals and procedures and ensure repair station personnel follow them when performing work. In short, the FAA has made the possession of current ICA a condition of obtaining a repair station certificate.

Thus, to create harmony within the regulations and avoid what the Whitlow Letter refers to as an “artificial obstacle” to airworthy maintenance, one must recognize that § 21.50(b) and the related regulations require design approval holders to make ICA available to repair stations. Parker Hannifin, however, has not provided this technical information to repair stations such as Sonico.

Section 145.109(d) mandates that documents and data must be current and accessible when repair station personnel perform the relevant work. This includes Instructions for Continued Airworthiness, Maintenance Manuals and Overhaul Manuals.

2. Part 43 Requirement to Use ICA

In addition to *possessing* the ICA at the time of certification, maintenance providers must *use* the ICA when performing maintenance, preventive maintenance and alteration on civil aviation articles pursuant to §43.13. That rule states that those who perform maintenance on appliances, shall use “the methods, techniques, and practices prescribed in the current manufacturer’s maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer, or other methods techniques, and practices acceptable to the Administrator.” (§ 43.13(a)).

In addition, maintenance providers are required to “do that work in such a manner...that the condition of the aircraft, airframe, aircraft engine, propeller, or appliance worked on will be at least equal to its original or properly altered condition (with regard to...qualities affecting airworthiness).” (§ 43.13(b)).

The ICA required under § 43.13(a) are necessary for Sonico to perform maintenance in an airworthy manner. They contain information relating to

maintenance techniques, overhauls and inspections. Without the ICA, a repair station must forego doing that work or develop its own, non-standard maintenance procedures.

3. FAA Legal Interpretation: The Whitlow Letter

On December 13, 1999, the FAA's deputy chief counsel issued the Whitlow Letter, a legal interpretation related to the issues raised in this Complaint (IOP 10). The Whitlow Letter related to a dispute in which GE Accessory Services-Grand Prairie, Inc. (GE-Grand Prairie) protested British Aerospace PLC's (BAe) refusal to provide ICA for various airframe accessories installed on the BAe-146 airplane.

The Whitlow Letter describes the essential elements of a § 21.50(b) violation. First, the subject accessories must be part of the approved type design, and not added by someone other than the design approval holder pursuant to a Supplemental Type Certificate. Since the Parker Hannifin Sensor is part of the Airbus A340-351 and A340-642 model aircraft, they are part of the approved type design.

Second, the repair station requesting the ICA must possess the appropriate certificate ratings to perform maintenance on the articles for which it is requesting the ICA. As discussed in Section II, Sonico holds an FAA part 145 certificate and the ratings required to perform maintenance on the Sensor in question. Therefore, according to the elements set forth in the Whitlow Letter, § 21.50(b) requires Parker Hannifin to provide Sonico with the ICA for the Sensor.

C. Parker Hannifin Must Furnish Sonico with ICA

Section 21.50(b) requires that the holder of a design approval must furnish ICA. Based on the evidence presented herein, Parker Hannifin meets the criteria of § 21.50(b), thereby requiring it to provide Sonico with ICA.

1. Parker Hannifin Holds the Design Approval for the Dual Temperature Sensor Part Number 055-019-001

Parker Hannifin holds PMA No. PQ0658NE for the Sensor installed in the Airbus A340-541 and A340-642 (see IOP 3). Sections 21.50(b), 25.1529 and part 25, appendix H, therefore, clearly cover this appliance. As a result, Parker Hannifin meets the first criteria for providing ICA.

2. Airbus Made its Application for the A340-541 and A340-642 After January 28, 1981

Airbus applied for the TC for the A340-541 and A340-642 after January 28, 1981 (see IOP 4). Therefore, the Parker Hannifin Sensor installed in these Airbus models meets the second criteria cited in § 21.50(b).

3. The Parker Hannifin Sensor is an Accessory that is Part of the Model A340-541 and A340-642 and Subject to the ICA Requirements

Part 25, Appendix H, paragraph 25.1(b) directs that the ICA for each airplane must include the ICA for each appliance and any required information relating to the interface of those appliances with the airplane.

In the present case, Parker Hannifin must provide the ICA for the Sensor as it is part of the Airbus A340-541 and A340-642 type certificated aircraft.

“Appliance” is defined in 14 CFR § 1.1 to mean “any instrument, mechanism, equipment, part, apparatus, appurtenance, or **accessory**, including communication equipment, that is used or intended to be used in operating or controlling an aircraft in flight, is installed in or attached to the aircraft, and is not part of the airframe, engine, or propeller.” (emphasis added.)

The Sensor referenced in this complaint (Part No. 055-019-001) is an appliance within the meaning of 14 CFR § 1.1. The ratings appropriate for maintenance, preventive maintenance and alteration of the Sensor is the accessory rating held by Sonico.

Appendix H, paragraph H25.1(b) requires that ICA be available, “for each appliance.” In addition, if a parts manufacturer fails to provide the ICA, then H25.1(b) requires that the higher level ICA “must include the information essential to the continued airworthiness of the airplane.” The ICA are required not just for the completed type certificated product, but also for each part included in the aircraft. As a result, whether as separate ICA or as a portion of the ICA for the aircraft, Parker Hannifin must provide Sonico the ICA for the Sensor referenced in this complaint.

4. FAA Legal Interpretation: Order 8110.54

FAA Order 8110.54, issued on July 1, 2005, reinforces the fact that design approval holders must provide ICA to properly rated repair stations under § 21.50(b) (IOP 11). The opinion sets forth four conditions that, if met, require a design approval holder to make ICA available to the repair station. Those conditions are set forth in *italics* below, with the relevant facts in **bold**.

1. *Application for the latest related type certificate (original, amended or supplemental) was made after January 28, 1981.*

Airbus applied for the type certificate for the A340-541 and A340-642 aircraft on [Airbus Model A340-642 - approved July 22, 2002, Airbus Model A340-541 - approved January 27, 2003].

2. *The latest related certification basis includes § 21.50 as amended 09/11/80 or later (and § 25.1529 as applicable), i.e., the certificate holder was required to develop (furnish) ICA as part of the certification process.*

The certification basis for the A340-541 and A340-642 model aircraft encompasses § 21.50(b) and part 25, amendments 25-1 through 25-95, 25-97, 25-98, and 25-104. Part 25, appendix H was added by Amendment 25-54.

3. *The requester (repair station) of the ICA is currently rated for the product/part and is required by Chapter 1 of 14 CFR to comply with the ICA for the product/part.*

Sonico is rated to perform maintenance on the specified Parker Hannifin accessories. As discussed above, in performing work on these accessories, Sonico is required under Chapter 1 of Title 14 CFR to comply with the ICA for these parts. Specifically, §§ 43.13 and 145.109(d) require that Sonico possess and use the ICA in performing maintenance, preventive maintenance and alterations on the Sensor.

4. *If the requested ICA data are a CMM or specific repair information, the design approval holder must refer to the CMM or repair information in higher-level ICA (airplane, engine, or propeller ICA) as the source of information for continued airworthiness actions.*

It is Complainant's understanding that the Airbus A340 Aircraft Maintenance Manual (AMM) states that the AMM provides information for performing maintenance on aircraft including references to the CMMs of its suppliers. The CMM contain maintenance instructions specifically required by Title 14 CFR part 25, appendix H, paragraph H25.3(b). With respect to the Parker Hannifin Dual Temperature Sensor Part Number 055-019-001, it is Complainant's understanding that the Airbus AMM refers to the Parker Hannifin CMM for this component. Indeed this is the reason Complainant brings this complaint on behalf of its member who was unable to obtain the CMM from the design approval holder, Parker Hannifin. Complainant urges the FAA to examine the A340 AMM to determine whether this condition is satisfied.

D. Required Content: Instructions for Continued Airworthiness (ICA)

The ICA for PMA parts must contain all appropriate instructions essential to the continued airworthiness of the affected product. The ICA required by part 25 contains the Maintenance Instructions for the Sensor. Parker Hannifin has failed to provide these instructions to Sonico.

1. Meaning of Airworthiness

Under the statute formerly known as the Federal Aviation Act of 1958,³ the FAA must oversee the design, production, operations and maintenance of civil aviation products and other articles.⁴ The FAA accomplishes its statutory responsibility through a comprehensive regulatory system that covers each person engaged in these activities.⁵ Although the rules vary depending on the specific FAA certificate or approval obtained, the concept of airworthiness applies equally to all regulated persons. Each entity functions as part of an integrated civil aviation system that maintains safety at each stage of an article's "regulatory life."

Designed articles must meet the applicable airworthiness standards (including the ICA requirements) contained in parts 23, 25, 27, 29, 31, 33 and 35 of the regulations. Each article, produced in conformity with its approved design, must also be in condition for safe operation when it leaves the control of the design approval holder or production approval holder.

Similarly, the regulations require that parties operating aircraft do so in an airworthy manner. The regulations, guidance material, and enforcement cases make it abundantly clear that this only occurs when owner/operators or the maintenance providers working on their behalf, perform maintenance, preventive maintenance and alterations in an airworthy manner.

The "airworthiness" requirement stems from 49 U.S.C. § 44704(d), which states, "[t]he Administrator shall issue an airworthiness certificate when the Administrator finds that the aircraft conforms to its type certificate and, after inspection, is in condition for safe operation."

Case law has further clarified the standard for determining airworthiness. The Administrator has consistently held that an "aircraft is airworthy when: 1) it conforms to its type design or supplemental type design and to any applicable airworthiness directives, **and** 2) is in a condition for safe operation." In the Matter of Watts Agricultural Aviation, FAA Order No. 91-8, at 17 (April 11, 1988, citing

³ 49 U.S.C. § 44701 *et seq.*

⁴ The term "article" when used in this Complaint shall have the same meaning as in the new section 145.3 (66 FR 41088, August 6, 2001). It includes aircraft, airframe, aircraft engine, propeller, appliance or accessory part.

⁵ The term "person" is defined in part 1 to mean "an individual, firm, partnership, corporation, company, association, joint-stock association, or governmental entity. It includes a trustee, receiver, assignee, or similar representative of any of them."

the Federal Aviation Act of 1958, as amended, 49 USC App. 1423 (c) (IOP 12). Moreover, as the 10th Circuit Court of Appeals made clear in Morton v. Dow, “[a]irworthiness is not synonymous with flyability. An aircraft that does not conform to its type certificate is unairworthy, even if it may be in condition for safe operation.” 525 F.2d 1302, 1307 (10th Cir. 1975) (emphasis added).

The FAA has established the ICA as a critical link in the airworthiness chain between the design and production rules, on the one hand, and the operating and maintenance rules on the other. As discussed above, the FAA requires an applicant to prepare ICA during certification, and upon certification, revise them as necessary to reflect operating experience. Most importantly, design approval holders must make the ICA available to owner/operators and maintenance providers. The ICA provide basic safety information that allows owner/operators or the person performing maintenance on their behalf to maintain and alter the article in accordance with instructions developed by those in the best position to provide them—the manufacturers of civil aviation articles.

2. Accessory Maintenance Instructions

Part 25, appendix H, paragraph H25.3(b) provides that the ICA for a type certificated aircraft must contain “Maintenance Instructions” for each part of the aircraft, including accessories. Further, the TC applicant may refer to an accessory, instrument or equipment manufacturer, like Parker Hannifin, as the source of the maintenance instructions. **Parker Hannifin, by its failure to provide the ICAs to Sonico in spite of numerous requests, has constructively refused to provide the maintenance information for the Sensor installed in the Airbus A340-541 or A340-642 aircraft.**

Because Parker Hannifin has failed to provide the required maintenance instructions, it has failed to make complete ICA available. As discussed above, these manuals and information are essential to the continued airworthiness of the Sensor.

E. The Parker Hannifin ICA are Essential to Continued Airworthiness

In refusing to provide Sonico with ICA for its Sensor, Parker Hannifin contradicts the FAA’s policy, as illustrated by a series of enforcement actions that have held operators and repair stations accountable for not following the airworthiness requirements *found in the ICA* and for failing to perform airworthy repairs.

1. Failure to Follow the Applicable Maintenance Manual

FAA and NTSB enforcement decisions establish that air carriers and maintenance providers violate § 43.13(a) when they fail to perform maintenance in accordance with the ICA. As the agency is aware, most enforcement cases settle without an administrative hearing and therefore there is no reported

decision. Nevertheless, such cases are a matter of public record and Complainant requests the FAA to take administrative notice of their existence. Through these actions, the FAA and NTSB have clearly established that proper maintenance and alterations are so essential to continued airworthiness that those who fail to comply with their regulatory obligations face enforcement action.

Complainant believes that the reported enforcement cases discussed below are representative of the general enforcement cases on this topic.

In Administrator v. Aero Lectrics, Inc., 6 NTSB 1085, 1088 (1989) (IOP 13), the NTSB concluded that a repair station that failed to perform an overhaul for an air carrier in accordance with the accessory manufacturer's overhaul manual violated § 43.13(a). The Administrator noted:

The record establishes that respondent overhauled the blower without the aid of either an overhaul manual or such other technical data as would assure that the work would be correctly or properly accomplished.

* * * * *

A repair station such as respondent is permitted to do maintenance work based on technical data supplied by the operator usually in the form of the maintenance manual.

Similarly, In the matter of Empire Airlines, Inc., FAA Order No. 2000-13, Docket No. CP98NM0011 (June 8, 2002) (IOP 14), an administrative law judge held that Empire violated § 43.13(a) when "the left engine mount of Empire's Fairchild F-27F aircraft was repaired in a manner not specified by either the Fairchild Structural Repair Manual (SRM) or Overhaul Manual (OM)." The Fairchild overhaul and structural repair manuals permitted only two methods of repair for non-negligible damage to the engine mount, patching, and insertion. Further, the manuals stated that any damage in excess of the allowable limits for patching and insertion required replacement of the engine mount. Empire ignored the Fairchild manuals and performed a "sleeve" weld repair on the engine mount. The law judge stated that Empire was "obligated to follow the terms of governing manuals" and affirmed the civil penalty. The Administrator denied Empire's appeal and affirmed the law judge's decision.

Furthermore, in Administrator v. Missouri Aerotech Industries, Inc., FAA Order No. EA-3999, Docket No. SE-13249 (October 15, 1993) (IOP 15), the Administrator appealed from the law judge's decision not to revoke a repair station's certificate when it consistently performed numerous repairs on navigational equipment without the benefit of the manufacturer's manuals or other approved or acceptable data. In reversing the law judge's decision and affirming the revocation of Respondent's repair station certificate, the NTSB stated:

[W]e agree with the Administrator that the impact on aviation safety of such unauthorized repairs is not trivial. The reliability of a repair station's work depends in large part upon its adherence to the approved techniques and procedures which are **set forth in published technical data.** Id. at page 12 (emphasis added).

Finally, in Administrator v. Alphin, 4 NTSB 23 at 26 (1984)(IOP16), the NTSB held that:

[T]he overhaul manual for this engine, in relevant part, specifies only a visual inspection of camshaft 'journals for scoring, deformation and excessive wear' and of 'cam lobes for profile wear, scoring and pitting'...and it does not, apparently for proprietary reasons, provide the information needed to do so. While we do not take issue with the FAA inspector's opinion that a better overhaul might be accomplished if testing not dictated by the overhaul manual were undertaken, **the regulatory standard is not what an inspector believes should be done in connection with an overhaul, but, rather what the Administrator has specified, through approved overhaul manuals and other documents, must be done.** (emphasis added.)

The holding in this case demonstrates that under Title 14 CFR the ICA contains information essential to the continued airworthiness of the type-certificated product.

The law is clear—a repair station must have current manufacturer's maintenance information at the time of certification and each time it performs work. In addition, maintenance must generally be performed in accordance with the methods, techniques and practices set forth in the pertinent manufacturer's maintenance or overhaul manual. This duty applies whether the article is an aircraft, aircraft engine, propeller, **appliance**, accessory, instrument **or a part thereof.**

2. Operations with Improperly Repaired Appliances

Operating an aircraft with a damaged or improperly repaired appliance renders the aircraft unairworthy. Each of the operating rules found in parts 91, 121, 125 and 135 prohibits such operation. Therefore, performing maintenance on all parts of the aircraft in accordance with the applicable maintenance manual is essential to the continued airworthiness of the aircraft.

In the Matter of Warbelow's Air Ventures, Inc., FAA Order No. 2000-3, Docket No. CP97AL0012 (February 3, 2000)(IOP 17), the FAA imposed a civil penalty on an air carrier for operating an unairworthy aircraft contrary to §§ 91.7(a) and 135.25(a)(2). Specifically, the two aircraft flew for almost 1,400 hours with

improperly modified and repaired fuel pumps. In affirming the law judge's finding of unairworthy operation due to the fuel pumps being in an unsafe operating condition, the Administrator stated:

The Romec manual for the fuel pumps provides: '**Avoid application of excessive torque when tightening valve cover mounting screws. Tighten screws progressively to 29-31 lb.-in. torque.**' (emphasis in original). Rimer did not have a copy of the Romec manual when he modified the two fuel pumps. He did not know the proper torque values and did not use a torque wrench. It is undisputed that if the screws are not tightened properly the fuel pumps may leak, resulting in a fire hazard.

In the matter of USAir, FAA Order No. 92-48, Docket No. CP91NM0183 (July 22, 1992) (IOP 18), the FAA found that USAir operated an unairworthy aircraft contrary to §121.153(a)(2). The aircraft had sustained damage to its nose gear water deflector during pushback from the gate. Because the aircraft no longer conformed to its type certificate, the Administrator affirmed the law judge's finding that the aircraft had been operated in an unairworthy manner.

Persons who design, produce, operate and maintain civil aircraft are responsible for ensuring airworthiness. Parker Hannifin's denial of Sonico's request for ICA is contrary to the regulatory obligations on which safety is based.

IV. CONCLUSION

For the reasons set forth above, Complainant requests that the FAA initiate an informal investigation and thereafter issue an order finding that Parker Hannifin is in violation of §§ 21.50(b), 25.1529 and part 25, appendix H. The Complainant has provided the Administrator with the necessary IOPs establishing these violations.

If the FAA requires additional information to establish the violation, Complainant urges the Administrator to issue an order of investigation in accordance with part 13, subpart F. A formal investigation would allow the Administrator to name a Presiding Officer, issue subpoenas, take depositions, hold an evidentiary public hearing and issue a written report of the investigation.

Complainant urges the FAA to consider this Complaint in the broadest possible terms. In the Association's view, it would make little sense for the Administrator to issue a ruling favorable to Sonico without recognizing that the same issues apply throughout the aviation maintenance industry. Ultimately, Complainant requests that the Administrator enforce the ICA requirements against design approval holders as diligently as it enforces them against maintenance providers and operators.

LIST OF ITEMS OF PROOF (IOP)

- **IOP 1** – Sonico, Inc.'s repair station certificate, issued January 17, 1985
- **IOP 2** – Sonico, Inc.'s ratings and operations specifications (multiple effective dates)
- **IOP 3** – Parker Hannifin Corporation Parts Manufacturer Approval Holder No. PQ0658NE, dated September 13, 2005
- **IOP 4** – Airbus Type Certificate, No. A43NM, dated March 19, 2007 (covers both Airbus planes)
- **IOP 5** – Sonico, Inc.'s E-mail to Parker Hannifin Corporation requesting overhaul/component maintenance manuals for the Dual Temperature Sensor, part no. 055-019-001, dated May 16, 2006
- **IOP 6** – Sonico, Inc.'s request to Parker Hannifin Corporation for ICA data for the Dual Temperature Sensor, part no. 055-019-001, dated July 3, 2006
- **IOP 7** – Sonico, Inc.'s E-mail to Thomas Piraino requesting Parker Hannifin Corporation's reply to July 3 & August 31, 2006 letter
- **IOP 8** – Sonico, Inc.'s E-mail to Steve Vaughn requesting Parker Hannifin Corporation's reply to July 3, 2006 letter
- **IOP 9** – FAA policy statement, dated July 12, 2005, "Safety- A Shared Responsibility- New Direction for Addressing Airworthiness Issues for Transport Airplanes."
- **IOP 10** – FAA legal interpretation, dated December 13, 1999 (Whitlow letter)
- **IOP 11** – FAA Order 8110.54, Instructions for Continued Airworthiness Responsibilities, Requirements and Contents, Issued July, 1 2005.
- **IOP 12** – *In the Matter of Watts*, FAA Order No. 91-8, served April 11, 1988
- **IOP 13** – *Administrator v. Aero Lectrics, Inc.*, 6 NTSB 1088 (1989).

- **IOP 14** – *In the matter of Empire Airlines, Inc.*, Docket No. CP98NM0011, FAA Order No. 2000-13 served June 8, 2000.
- **IOP 15** – *Administrator v. Missouri Aerotech Industries, Inc.*, Docket No. SE-13249, FAA Order No. EA-3999 served October 15, 1993.
- **IOP 16** – *Administrator v. Alphin*, 4 NTSB 23 Order EA-2008 adopted May 31, 1984
- **IOP 17** – *In the Matter of Warbelow's Air Ventures, Inc.*, Docket No. CP97AL0012 FAA Order No. 2000-3 served February 3, 2000.*In*
- **IOP 18** – *the Matter of USAir*, Docket No. CP91NM0183 FAA Order No. 92-48 served July 22, 1992.

Respectfully submitted,

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February 29, 2008

CERTIFICATE OF SERVICE

I, Colin P. Carroll, certify that on February 29, 2008, I caused the executed original and one copy of the foregoing Aeronautical Repair Station Association part 13 Complaint on § 21.50(b) of the Federal Aviation Regulations to be delivered via Certified Mail, Return Receipt to:

Federal Aviation Administration
Office of the Chief Counsel
800 Independence Avenue, S.W.
Washington, D.C. 20591-0004
ATTN: Enforcement Docket AGC-10

I, Colin P. Carroll, certify that on February 29, 2008, I caused one copy of the foregoing Aeronautical Repair Station Association part 13 Complaint on § 21.50(b) of the Federal Aviation Regulations to be delivered via Certified Mail, Return Receipt to:

Thomas A. Piraino, Jr.
Vice President, General Counsel and Secretary
Parker Hannifin Corporate Headquarters
6035 Parkland Boulevard
Cleveland, OH 44124-4141

Signature