News from the Hill

BY JASON DICKSTEIN
AEA WASHINGTON COUNSEL

A Victory for Repair Stations and Canadian STCs

This months's article is split into two short articles because there are two timely issues worth sharing with AEA's members. First, a repair station in Arizona has won an important victory for our industry that will permit us to conitune performing installatios under both field approval and STC. Second, U.S. repair stations seeking to use Canadian STCs need not be stymied—there is currently an informal mechanism for "domesticating" Canadian STCs to create a U.S. STC.

A Victory for Independent Repair Stations

Able Engineering and Component Services is not an avionics shop, but they just won a lawsuit that should have the entire avionics community cheering.

Able was sued by Bell Helicopter. Bell alleged that Able had violated Bell's trademark by using DER-approved data to repair Bell components. This theory likely could have resulted in the end of the independent repair station, since any repair that was not pre-approved by the OEM was considered to be a trademark violation.

Under Bell's theory, any repair or alteration that was not pre-approved by the airframe OEM was a violation of the OEM's trademark. Bell's theory suggested that the FAA was not empowered to make decisions concerning intellectual property, and could not absolve intellectual property violations—therefore the fact that an STC or other approved data existed would be immaterial.

The ramifications of this theory are obvious. If any repair or alteration is a trademark violation unless pre-approved by the OEM, then airframe manufacturers would have to pre-approve avionics installations in order to make them legal! This is a problem the entire avionics industry would have shared, because this would have precluded the installation of avionics by field approval or STC unless the airframe manufacturer had pre-approved the installation, creating a potential problem for avionics manufacturers as well as installers.

Luckily, the Court saw through this theory and ruled against Bell. The court explained that what Able was performing was 'mere repair' and as such was outside the scope of the trademark laws; the Court also explained that there was no likelihood of confusion because of the use of the 8130-3 form as an approval for return to service tag.

This illustrates the importance of making sure that your 43.9 records are accurate and sufficiently descriptive to adequately explain the scope of your work—whether the 43.9 record is written on a yellow tag, 8130-3, logbook, or other form.

The Able case means that the industry remains safe for the independent repair station. Hooray for Able and hooray for the industry!

Using Canadian-Approved STC Data

An AEA member recently asked how he could use a Canadian STC to perform an installation. It seems that his repair station (in the United States) had an STC from Transport Canada. But the aircraft on which he was to perform the installation was originally type certificated in the United States, and the aircraft itself was registered in the United States.

A review of the U.S.-Canadian Bilateral Aviation Safety Agreement and its related Implementation Procedures for Airworthiness reveals no easy mechanism by which the FAA will directly accept a Canadian STC for a U.S. product. Under published guidance, there is no such mechanism. Nonetheless, the FAA confirms that a repair station may use the data from a Canadian STC on a U.S.-registered aircraft if the FAA issues a U.S. STC that approves that data—and the New York Aircraft Certification Office (ACO) has such a process for "domesticating" STC data.

Bilateral Agreements Between FAA and TCCA

The United States and Canada have concluded a Bilateral Aviation Safety Agreement (BASA) that governs the mutual recognition of a wide range of standards and procedures, among them airworthiness approvals and approval of civil aeronautical products. The associated Implementation Procedures for Airworthiness (IPA) sets forth in greater detail the procedures to be followed by the two parties. Both the BASA and the IPA are available on the FAA website at www2.faa.gov/certification/aircraft/BAA-BASA_Listing.stm.

Generally speaking, the BASAaims to reduce the need for duplicative airworthiness approvals and design approvals by providing a mechanism by which each country will accept the other country's airworthiness and design approvals to the greatest extent possible. For example, as set forth in the IPA, the FAA will recognize Canadian TCs, amended TCs, and STCs for Canadian products (aircraft, aircraft engines, and propellers for which Canada issued the original type certificate). Similarly, Transport Canada Civil Aviation (TCCA) recognizes U.S. TCs, amended TCs, and STCs for U.S. products. For more details on this mutual recognition, you should see the IPA Summary Tables 1 and 2, found at pages 13-14 of the IPA.

Unfortunately, the mutual recognition scheme in the BASA/IPA does not cover every possible situation, and in fact it omits a number of common situations. At present, there is no provision that would allow the FAA to directly recognize a Canadian STC for use on a U.S. product.

The only way in which a United States repair station could use a Canadian STC for a U.S. type certificated aircraft that is registered and located in the United States would be to have the FAAissue a corresponding United States STC. A procedure has been established to accomplish this, although it has not yet been incorporated into any formal guidance document.

Domesticating the Canadian STC

According to Leo Weston, a National Resource Specialist in AFS-300, an applicant may request that TCCA submit the Canadian STC to the FAA's New York Aircraft Certification Office (ACO). Transport Canada must submit the STC to the FAA—there is currently no formal mechanism that would permit a private person or company to make the submission.

TCCA uses a procedure similar to that outlined in paragraph 3.0.2.0.(c) of the U.S.-Canada IPA to make the submission. TCCA should provide a letter confirming that the STC meets all applicable Canadian regulations. The application to the ACO should include (1) a description of the change, together with the make and model of the product; (2) a copy of the TCCA approval document and certification basis (in this case, the STC itself); and (3) information on all equivalent safety findings or exemptions granted by TCCA for the Canadian STC.

Weston stated that the New York ACO is typically able to process applications of this nature in an expeditious manner. This makes the domestication process preferable to (and quicker than) simply applying for a U.S. STC based solely on the data used to obtain the Canadian STC.

Still, the overall complexity of the STC will be a deciding factor in the length of time that domestication takes. Both the FAA and TCCA reserve the right to review data approved by the other authority. Weston reports that procedures for the mutual recognition of STCs are still undergoing review, and that a Memorandum of Understanding [MOU] spelling out the procedures to be used is expected to be issued in the near future. This MOU will be similar to the memo concerning the design approval of aeronautical product repairs issued in 2001. In the meantime, the New York ACO or TCCA Aircraft Certification would be able to provide more specific information concerning specific STCs. They can be reached at:

Federal Aviation Administration
New York Aircraft Certification Office
Systems and Flight Test Branch, ANE-172
Michele Maurer, Manager
10 Fifth Street, 3rd Floor
Valley Stream, NY 11581-2718
Tel: (516) 256-7519
Fax: (516) 568-2716

Transport Canada Civil Aviation
Aircraft Certification (AARD)
Jodi Diamant Boustead
Place de Ville, Tower C
330 Sparks Street, 3rd Floor
Ottawa, Ontario K1A0N8
Tel: (613) 941-8382
Fax: (613) 996-9178

Please note that because the "domestication" process for U.S. acceptance of Canadian STCs is not yet formalized in any guidance, it is subject to change or cancellation without notice. When the MOU is finally published on this process, the MOU could significantly change the process for STC domestication, depending on the needs and findings of FAA and TCCA. ❑

AEA General Counsel

Jason Dickstein
The Washington Aviation Group
734 15th Street NW Suite 705
Washington DC 20005
Phone: 202-628-6776
Fax: 202-628-8948
jason@aea.net