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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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Honeywell International, Inc.,)

No. CV 12-00645-PHX-JAT

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Plaintiff,)

ORDER

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vs.)

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Western Support Group, Inc. and Douglas)
C. Harmon and Cynthia A. Harmon,)

13

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Defendants.)

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Currently pending before the Court is Defendants Western Support Group, Inc., Douglas C. Harmon, and Cynthia A. Harmon’s Motion for Summary Judgment (Doc. 34). The Court now rules on this motion for summary judgment.

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I. BACKGROUND

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In the summary judgment context, the Court construes all disputed facts in the light most favorable to the non-moving party. *Ellison v. Robertson*, 357 F.3d 1072, 1075 (9th Cir. 2004).

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Plaintiff Honeywell International, Inc. (“Honeywell”) manufactures and sells various products used in the aerospace industry. (Doc. 1 at ¶ 1; Doc. 35 at ¶ 1). Among these products are auxiliary power units (“APUs”), which the FAA defines as “gas turbine engines intended to provide auxiliary electrical, pneumatic, or mechanical power to support the airplane systems operations.” (Doc. 37, Ex. B, TSO-C77b at 1). Honeywell creates repair and maintenance manuals for the APUs it manufactures and sells. (Doc. 35 at ¶ 2; Doc. 37

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1 at ¶ 18). One such manual is the Honeywell Pneumatic and Shaft Power Gas Turbine Engine
2 Inspection/Repair Manual 131-9 Series (the “131-9A Manual”). (Doc. 35, Ex. A). The 131-
3 9A Manual is over 2,000 pages long and contains technical details on the APU and its
4 components and various testing and repair procedures, including photographs, drawings,
5 charts, and schematics that illustrate the text. (Doc. 35, Ex. A; Doc. 37 at ¶ 19; *see* Doc. 35
6 at ¶¶ 8-11).

7 Honeywell does not sell copies of its manuals. (Doc. 37 at ¶ 20). Instead, Honeywell
8 licenses its manuals to the owners of aircraft and to certain repair and maintenance facilities
9 (“MRO”s), but retains ownership. (*Id.*; *see* Doc. 34 at 4). Honeywell’s manuals contain a
10 copyright notice. (Doc. 35, Ex. A at CL000007; Doc. 37 at ¶ 20). Honeywell’s manuals also
11 contain language that Honeywell describes as placing “some restrictions on the ability of the
12 aircraft owner and the MRO to distribute licensed manuals to persons or entities not
13 authorized by Honeywell to receive them,” but allowing use of the manuals “as may be
14 necessary to comply with FAA regulations.” (Doc. 37 at ¶ 22; *see* Doc. 35, Ex. A at
15 CL000006-7).

16 Defendants Western Support Group, Inc., Douglas C. Harmon, and Cynthia A.
17 Harmon (collectively, “Western Support”) are in the business of “obtaining and distributing
18 aircraft maintenance manuals for a service fee.” (Doc. 35, Ex. B at 1). In 2001, Honeywell
19 discovered that Western Support was copying and distributing various Honeywell manuals
20 and initiated a copyright infringement suit. (Doc. 37 at ¶ 23). In 2002, the parties entered
21 into a Settlement Agreement wherein Western Support “agree[d] that they shall not copy,
22 sell, offer for sale, or distribute” Honeywell’s manuals without written authorization from
23 Honeywell. (Doc. 1, Ex. A at 2; *see* Doc. 37 at ¶ 24).

24 In 2010, Honeywell claims that it discovered that Western Support had copied and
25 sold a number of 131-9A Manuals without Honeywell’s authorization. (Doc 1. at ¶¶ 8, 10;
26 Doc. 35 at ¶ 5; Doc. 37 at ¶ 25). Honeywell claims that it owns the 131-9A Manual and
27 holds a valid copyright. (Doc. 1 at ¶ 9; Doc. 35 at ¶ 6; *see* Doc. 37 at ¶¶ 19-20). On
28 November 29, 2011, Honeywell obtained a copyright registration for the 131-9A Manual.

1 (Doc. 1, Ex. B; *see* Doc. 35 at ¶ 6).

2 In 2012, Honeywell filed its initial Complaint (Doc. 1) against Western Support
3 claiming that Western Support’s copying and distribution of the 131-9A Manual (and
4 possibly other yet-to-be identified manuals) infringes Honeywell’s copyright and breaches
5 the parties’ 2002 Settlement Agreement. (Doc. 1 at ¶¶ 11-18). Western Support denies
6 copying and distributing the 131-9A Manual (Doc. 17 at ¶¶ 8, 10, 12) and claims that, in any
7 event, Honeywell does not hold a valid copyright for the manual (Doc. 34 at 2). Western
8 Support filed the present Motion for Summary Judgment (Doc. 34), Honeywell has
9 responded (Doc. 36), and Western Support has replied (Doc. 39). The Court now rules on
10 the motion.

11 **II. LEGAL STANDARD FOR SUMMARY JUDGMENT**

12 Summary judgment is appropriate when “there is no genuine dispute as to any
13 material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R.
14 Civ. P. 56(a). A party asserting that a fact cannot be or is genuinely disputed must support
15 that assertion by “citing to particular parts of materials in the record,” including depositions,
16 affidavits, interrogatory answers or other materials, or by “showing that the materials cited
17 do not establish the absence or presence of a genuine dispute, or that an adverse party cannot
18 produce admissible evidence to support the fact.” Fed. R. Civ. P. 56(c)(1). Thus, summary
19 judgment is mandated “against a party who fails to make a showing sufficient to establish the
20 existence of an element essential to that party’s case, and on which that party will bear the
21 burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

22 Initially, the movant bears the burden of pointing out to the Court the basis for the
23 motion and the elements of the causes of action upon which the non-movant will be unable
24 to establish a genuine issue of material fact. *Id.* at 323. The burden then shifts to the
25 non-movant to establish the existence of a disputed material fact. *Id.* The non-movant “must
26 do more than simply show that there is some metaphysical doubt as to the material facts” by
27 “com [ing] forward with ‘specific facts showing that there is a genuine issue for trial.’ ”
28 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986) (quoting

1 Fed. R. Civ. P. 56(e) (1963) (amended 2010)). A dispute about a fact is “genuine” if the
2 evidence is such that a reasonable jury could return a verdict for the non-moving party.
3 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The non-movant’s bare
4 assertions, standing alone, are insufficient to create a material issue of fact and defeat a
5 motion for summary judgment. *Id.* at 247–48. However, in the summary judgment context,
6 the Court construes all disputed facts in the light most favorable to the non-moving party.
7 *Ellison v. Robertson*, 357 F.3d 1072, 1075 (9th Cir. 2004).

8 **III. DISCUSSION**

9 For Honeywell to establish copyright infringement, it must prove: “(1) ownership of
10 a valid copyright, and (2) copying of constituent elements of the work that are original.”
11 *Feist Publ’n, Inc. v. Rural Tel. Serv. Co., Inc.*, 499 U.S. 340, 361 (1991). The Court reaches
12 the issue of infringement only if Honeywell demonstrates that the 131-9A Manual is entitled
13 to copyright protection.

14 **A. The Validity of Honeywell’s Copyright of the 131-9A Manual is in 15 Genuine Dispute**

16 With respect to the ownership of a valid copyright, Honeywell undisputedly registered
17 the copyright for the 131-9A Manual with the United States Copyright Office on November
18 29, 2011. Honeywell’s certificate of registration entitles it to a “rebuttable presumption of
19 originality” for the 131-9A Manual. *Ets-Hokin v. Skyy Spirits, Inc.*, 225 F.3d 1068, 1075
20 (9th Cir. 2000) (*Ets-Hokin I*) (internal citations omitted); *see* 17 U.S.C. § 410(c) (registration
21 “shall constitute prima facie evidence of the validity of the copyright”). To overcome the
22 presumption of validity, Western Support must show why the 131-9A Manual is not
23 copyrightable. *Ets-Hokin I*, 225 F.3d at 1076.

24 Western Support argues that the 131-9A Manual is not entitled to copyright protection
25 because it lacks the requisite originality. (Doc. 34 at 2). Specifically, Western Support first
26 argues that, as a matter of law, “aircraft maintenance manuals are not protected by copyright
27 law.” (Doc. 34 at 5). Second, in its Reply, Western Support argues that the photographs,
28 diagrams, and facts and procedures within the 131-9A Manual lack sufficient originality to

1 justify copyright protection. (Doc. 39 at 2-8).

2 **1. As a Matter of Law, Aircraft Maintenance Manuals Can Possess**
3 **Sufficient Originality to Allow Copyright Protection**

4 Western Support offers a three-pronged rationale for its argument that, as a matter of
5 law, aircraft maintenance manuals in general, and the 131-9A Manual, in particular, are not
6 entitled to copyright protection: (1) manuals describe “procedures for checking and repairing
7 aircraft parts,” which cannot be copyrighted under 17 U.S.C. § 102(b); (2) the “identification
8 of the aircraft parts to which each check and repair procedure applies are simply facts”; and
9 (3) manuals are not “original” works within the meaning of the Copyright Act because the
10 publication, distribution, and “format and content of the manuals” is dictated by federal
11 regulations. (Doc. 34 at 1-2).

12 With regard to Western Support’s first and second arguments, Western Support is
13 correct insofar as copyright protections do not extend to “procedures” or facts. Title 17 of
14 the United States Code governs copyrights and specifies that “[i]n no case does copyright
15 protection for an original work of authorship extend to any idea, procedure, process, system,
16 method of operation, concept, principle, or discovery, regardless of the form in which it is
17 described, explained, illustrated, or embodied in such work.” 17 U.S.C. § 102(b). In *Feist*,
18 the United States Supreme Court acknowledged that it is “universally understood” that “there
19 can be no valid copyright in facts” and explained that “[n]o one may claim originality as to
20 facts . . . because facts do not owe their origin to an act of authorship.” 499 U.S. at 344, 347
21 (internal quotations and citation omitted). Honeywell concedes this point, but argues that
22 copyright nonetheless protects Honeywell’s particular “expression” of those facts and the
23 accompanying illustrations and descriptive text because they are original to Honeywell.
24 (Doc. 36 at 5-6) (emphasis omitted).

25 Unlike the facts they are composed of, “[f]actual compilations . . . may possess the
26 requisite originality” because the “compilation author typically chooses which facts to
27 include, in what order to place them, and how to arrange the collected data so that they may
28 be used effectively by readers.” *Feist*, 499 U.S. at 348. Similarly to the inclusion of facts

1 within an original work, the inclusion of a “procedure” or “process” within an original work
2 does not negate the copyright protection of the original aspects of the work—the copyright
3 protection merely fails to extend to the actual “procedure” or “process.” 17 U.S.C. § 102(b);
4 *see* M. Nimmer & D. Nimmer, *Copyright* § 2.03[D] (2012) (“if a given ‘procedure’ is
5 reduced to written form, this will constitute a protectable work of authorship, so as to
6 preclude the unlicensed copying of ‘the expression’ of the procedure, even if the procedure
7 *per se* constitutes an unprotectable ‘idea’”).

8 Assuming that aircraft maintenance manuals are generally compilations of facts and
9 procedures,¹ the dispositive question, then, is whether any portion of an aircraft maintenance
10 manual can ever possess the requisite originality to enjoy copyright protection, no matter
11 how “thin”² the protection may be. Rephrased in the language of *Feist*, the Court must
12 decide whether it is possible for the author of an aircraft maintenance manual to creatively
13 express the underlying facts and procedures by exercising discretion in the “choos[ing],”
14 “order[ing],” and/or “arrange[ment]” of the included facts and procedures. *See Feist*, 499
15 U.S. at 348. To answer this question, Western Support submits its third argument: that FAA
16 regulations “dictate the format and content of aircraft maintenance manuals, so there is
17 nothing original about their creation.” (Doc. 34 at 15).

18 This Court has previously interpreted *Feist* and found that “[o]riginal, in copyright
19 parlance, means only that the work was independently created by the author (as opposed to

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21 ¹ Western Support argues, and Honeywell has not disputed, that its 131-9A Manual
22 contains numerous facts and procedures. The Court’s examination of the 131-9A Manual
confirms this assessment.

23 ² “A thin copyright ‘protects against only virtually identical copying.’” *Express, LLC*
24 *v. Fetish Group, Inc.*, 424 F.Supp.2d 1211, 1226 (C.D. Cal. 2006) (quoting *Satava v. Lowry*,
25 323 F.3d 805, 812 (9th Cir. 2003); *see also Ets-Hokin v. Skyy Spirits, Inc.*, 323 F.3d at 766
26 (9th Cir. 2003) (*Ets-Hokin II*) (“When we apply the limiting doctrines, subtracting the
27 unoriginal elements, Ets Hokin is left with . . . a ‘thin’ copyright, which protects against only
28 virtually identical copying.”); *Apple Computer, Inc. v. Microsoft Corp.*, 35 F.3d 1435, 1439
(9th Cir. 1994) (“When the range of protectable expression is narrow, the appropriate
standard for illicit copying is virtual identity.”).

1 copied from other works), and that it possess[es] at least some minimal degree of creativity.”
2 *B2B CFO Partners, LLC v. Kaufman*, 787 F.Supp.2d 1002, 1007 (D. Ariz. 2011) (citing
3 *Feist*, 499 U.S. at 345 (citing Nimmer, *Copyright* §§ 2.01[A], [B] (1990))) (internal
4 quotations omitted). This Court further found that “the requisite level of creativity[] is
5 extremely low; even a slight amount will suffice. The vast majority of works make the grade
6 quite easily, as they possess some creative spark, no matter how crude, humble or obvious
7 it might be.” *Id.* (internal citation and quotations omitted).

8 With this minimal creative burden in mind, the Court must examine whether FAA
9 regulations necessarily preclude originality in compliant aircraft maintenance manuals. Both
10 parties agree that aircraft maintenance manuals must be prepared in accordance with certain
11 federal regulations promulgated by the FAA (the parties disagree, however, on which
12 specific regulations govern the 131-9A Manual). (Doc. 34 at 9-15; Doc. 36 at 8-10; Doc. 39
13 at 9-10). As an example of the control over “format and content” exercised by such
14 regulations, Western Support quotes (Doc. 34 at 11-15) the majority of Appendix A to Part
15 33, a regulation that “specifies requirements for the preparation of Instructions for Continued
16 Airworthiness” of an aircraft engine. FAA Instructions for Continued Airworthiness, 14
17 C.F.R. § 33, App. A (2012). The Court’s review of Appendix A reveals that, with regard to
18 “format,” compliance only requires a manual to “provide for a *practical* arrangement” and
19 be in a form “*appropriate* for the quantity of data to be provided”; more specific instructions
20 or a definition of “practical” or “appropriate” are not provided. *Id.* at A33.2 (emphasis
21 added). Providing significantly greater specificity than the “format” regulations, the several
22 pages of “content” regulations within Appendix A undoubtably reduce the scope for an
23 author’s creative expression. *Id.* at A33.3. A careful reading of these “content” regulations,
24 however, reveals neither an explication nor an implication that compliance requires the
25 author to cede *all* creative discretion in choosing, ordering, and/or arranging the included
26 facts and procedures. *See, e.g., Id.* at A33.3(a)(2) (only requiring a “*detailed* description of
27 the engine and its components, systems, and installations”) (emphasis added); *Id.* at
28 A33.3(a)(4) (only requiring “[b]asic control and operating information *describing* how the

1 engine” operates) (emphasis added). The Court also notes that the Appendix A “content”
2 regulations do not contain any prescription for or prohibition against the inclusion of
3 diagrams, drawings, or photographs, except, perhaps, an implication that they be
4 “appropriate” (a vague standard which the regulations do not define). *See id.* at A33.3.

5 In sum, the Court finds that Appendix A, the aircraft-engine-manual regulation that
6 Western Support offers as an example of how the FAA controls the “format” and “content”
7 of aircraft maintenance manuals, does not foreclose the possibility that the author of an
8 aircraft maintenance manual can exercise at least some creative control over the choosing,
9 ordering, and/or arrangement of facts and procedures included in an aircraft maintenance
10 manual.³ Where, like under Appendix A, the author may have at least a “slight amount” of
11 creative control over some portions of an aircraft maintenance manual, the Court cannot find
12 a lack of originality as a matter of law. *See B2B*, 787 F.Supp.2d at 1007 (citing *Feist*, 499
13 U.S. at 345).

14 Western Support further argues that FAA regulations mandating the publication and
15 distribution of aircraft maintenance manuals render the manuals unoriginal for the purposes
16 of copyright protection. (Doc. 34 at 7-9; Doc. 39 at 9-10). Relying on dicta from *Feist*,⁴
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18 ³ In its Motion, Western Support heavily relies upon *Gulfstream Aerospace Corp. v.*
19 *Camp Sys. Int’l, Inc.*, 428 F.Supp.2d 1369 (S.D. Ga. 2006), as an “expla[nation] why aircraft
20 maintenance manuals are not protected by copyright law.” (Doc. 34 at 5). Western
21 Support’s reliance is misplaced, however, because the Georgia district court in *Gulfstream*
22 held that defendants had successfully asserted a fair use defense, not that aircraft
23 maintenance manuals are *per se* not copyrightable. *Id.* at 1376, 1380-81. Despite discussing
24 why FAA manual regulations and the facts and procedures contained within a manual render
25 “much” of the manual ineligible for copyright protection, the *Gulfstream* court acknowledged
26 that portions of the manual *may* be protected by copyright and expressly avoided deciding
27 whether or not the entirety of the manual at issue was foreclosed from copyright protection.
28 *Id.* at 1375-76.

⁴ “We note in passing that the selection featured in Rural’s white pages may also fail
the originality requirement for another reason. *Feist* points out that Rural did not truly
‘select’ to publish the names and telephone numbers of its subscribers; rather, it was required
to do so by the Kansas Corporation Commission as part of its monopoly franchise.
Accordingly, one could plausibly conclude that this selection was dictated by state law, not

1 Western Support claims that “when law requires that material be published, that material fails
2 the originality required for copyright protection because it is the government, not the author,
3 that controls the content.” (*Id.* at 7). It is unclear how this argument differs from Western
4 Support’s argument that FAA regulations prescribe the format and content of aircraft
5 maintenance manuals so completely that the author has no room for originality. Moreover,
6 the cases Western Support relies on for support are unavailing because none held that the law
7 requiring the creation of the various written works precluded, as a matter of law, creative
8 expression by the author. *See Muncey v. Eyeglass World, LLC.*, 289 P.3d 1255, 1260 (N.M.
9 App. 2012) (holding that the medical records at issue were solely “facts” because “[t]here
10 is nothing in the record that indicates that any form of expression or creativity was involved
11 in creating the fact-based patient files.”); *Mid Am. Title Co. v. Kirk*, 59 F.3d 719, 722 (7th
12 Cir. 1995) (“We do not mean to hold that a title commitment can never be copyrightable;
13 rather, we hold that in this case the element of selection was not sufficiently original to merit
14 copyright protection.”); *Eng’g Dynamics, Inc. v. Structural Software, Inc.*, 26 F.3d 1335,
15 1351 (5th Cir. 1994) (reversing the district court’s holding that computer/user interfaces in
16 the forms of input and output formats are *per se* not copyrightable and remanding to
17 determine if industry standards, as applied here, precluded sufficient originality).

18 Lastly Western Support argues that a recent FAA “policy statement concerning
19 actions taken to ‘inappropriately restrict the availability, distribution, and use of [aircraft
20 maintenance manuals] through restrictive language in the [manual] or through restrictive
21 access or use agreements’ ” renders aircraft maintenance manuals ineligible for copyright
22 protection. (Doc. 34 at 15-16 (quoting Doc. 35, Ex. B-2, FAA Policy Statement at 1)).
23 However, Western Support does not explain—and the Court finds no reason—why this FAA
24 policy statement “intended to help . . . FAA employees . . . [and manufacturers like
25 Honeywell] determine whether their [manual distribution] practices meet the intent of the

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by Rural.” *Feist*, 499 U.S. at 363.

1 CFR” is in any way relevant to the issue of whether aircraft maintenance manuals are *per se*
2 not copyrightable.⁵ (Doc. 35, Ex. B-2, FAA Policy Statement at 1).

3 In sum, Western Support has not demonstrated that aircraft maintenance manuals, in
4 their entirety, necessarily lack even the “slight amount” of creativity sufficient to render
5 certain portions original and engender copyright protection. *See B2B*, 787 F.Supp.2d at 1007
6 (citing *Feist*, 499 U.S. at 345, 111 S.Ct. at 1287). Accordingly, as a matter of law, aircraft
7 maintenance manuals can possess sufficient originality to allow copyright protection, thin
8 as it may be.

9 **2. There is a Genuine Dispute of Fact Over the Originality of the 131-
10 9A Manual**

11 Honeywell argues that its 131-9A Manual meets the low threshold for copyrightability
12 described above because it contains hundreds of photographs, diagrams, and “expressions”
13 of facts and procedures. (Doc. 36 at 4-6). Because Honeywell registered the copyright for
14 the 131-9A Manual with the United States Copyright Office, Honeywell is entitled to a
15 “rebuttable presumption of originality” for the 131-9A Manual. *Ets-Hokin I*, 225 F.3d at
16 1075 (internal citations omitted); *see* 17 U.S.C. § 410(c) (registration “shall constitute prima
17 facie evidence of the validity of the copyright”). To overcome the presumption of validity,
18 Western Support must show why the 131-9A Manual is not copyrightable. *Ets-Hokin I*, 225
19 F.3d at 1076. Consequently, in its Reply, Western Support argues that the photographs,
20 diagrams, and facts and procedures within the 131-9A Manual lack sufficient originality to
21 justify copyright protection. (Doc. 39 at 2-8).

22 First, with regard to the photographs in the 131-9A Manual, “courts have recognized
23 repeatedly that the creative decisions involved in producing a photograph may render it
24 sufficiently original to be copyrightable and ‘have carefully delineated selection of subject,
25 posture, background, lighting, and perhaps even perspective alone as protectable elements

26 ⁵ At most, the FAA policy statement indicates that a manufacturer may not use
27 restrictive language in its manuals to prevent an aircraft owner/operator from receiving
28 maintenance from an FAA approved facility of the owner/operator’s choice. (*See* Doc. 35,
Ex. B-2, FAA Policy Statement at 3).

1 of a photographer's work.” *Ets-Hokin I*, 225 F.3d at 1077 (quoting *Los Angeles News Serv.*
2 *v. Tullo*, 973 F.2d 791, 794 (9th Cir. 1992) (quoting *United States v. Hamilton*, 583 F.2d 448,
3 452 (9th Cir. 1978))). Western Support does not challenge specific photographs, but instead
4 argues, generally, that the photographs in the 131-9A Manual are of utilitarian objects and
5 “do not involve the skill of a professional photographer” because they are “plain shots . . .
6 for practical application.” (Doc. 39 at 3). In *Ets-Hokin I*, however, the court found that
7 “straight on” photographs of a utilitarian object (a vodka bottle) with a plain background and
8 “slight shadows” reflected creative decisions. 225 F.3d at 1077. Here, the Court notes that
9 the verbiage could describe many of the photographs at issue here. (*See, e.g.*, Doc. 35, Ex.
10 A, 131-9A Manual at CL000366-373). Additionally, some of the photographs in the 131-9A
11 Manual are actually a series of photographs of the same object from multiple angles and with
12 the focus on varying parts of the object. (*See, e.g.*, Doc. 35, Ex. A, 131-9A Manual at
13 CL000311-313). Such series of photos imply the potential for creativity because they require
14 the photographer to choose from among many possible angles and portions of the object to
15 zoom-in on. Accordingly, Western Support has not met its burden of demonstrating that, as
16 a matter of law, the photographs within the 131-9A Manual are devoid of originality.

17 Second, with regard to the diagrams in the 131-9A Manual, “diagrams, models, and
18 technical drawings” enjoy copyright protection for their “form[,] but not their mechanical or
19 utilitarian aspects.” 17 U.S.C. §§ 101, 102(a)(5). Western Support argues that, here, the
20 “merger doctrine bars [the diagrams’] protection because the idea and expression of the
21 diagrams are inseparable, *i.e.*, the diagrams cannot be expressed differently in substance to
22 remain functional.” (Doc. 39 at 4). Western Support, however, has offered no support for
23 its claim that the diagrams in the 131-9A Manual cannot be expressed differently. Moreover,
24 some of the diagrams in the 131-9A Manual are exploded-parts drawings (*e.g.* Doc. 35, Ex.
25 A, 131-9A Manual at CL000098, 333, 335, 337), which other courts have explicitly found
26 can be expressed in multiple ways. *See, e.g. Axxiom Mfg., Inc. v. McCoy Invs., Inc.*, 846
27 F.Supp.2d 732, 748 (S.D. Tex. 2012) (holding that the merger doctrine did not apply to an
28 exploded-parts diagram because “more than one way exists in which to create an

1 exploded-parts drawing of the” particular object). Western Support’s conclusion that the
2 diagrams “cannot be expressed differently,” therefore, is a question of fact for the jury. *See*
3 *N. Coast Indus. v. Jason Maxwell, Inc.*, 972 F.2d 1031, 1034-35 (9th Cir. 1992) (declining
4 “to accept the view that, as a matter of law the differences in the placement of geometric
5 shapes should be regarded as trivial,” and holding that the “plaintiff was entitled to have the
6 validity of its copyright determined by a trier-of-fact”). Accordingly, Western Support has
7 not met its burden of demonstrating that, as a matter of law, the diagrams within the 131-9A
8 Manual are devoid of originality.

9 Third, with regard to the facts and procedures in the 131-9A Manual, as discussed
10 above, compilations of facts and procedures can enjoy copyright protection if “possess[ing]
11 at least some minimal degree of creativity.” *B2B*, 787 F.Supp.2d at 1007 (citing *Feist*, 499
12 U.S. at 345, 111 S.Ct. at 1287). Western Support rehashes its arguments that the 131-9A
13 Manual contains only bare facts and procedures, not expressions of facts and procedures.
14 (Doc. 39 at 9). The Court notes that Honeywell argues (Doc. 8-10) that the 131-9A Manual
15 is governed by Technical Standard Order C77b (“TSO-C77b”) (submitted in its entirety as
16 Doc. 37, Ex. B at 6-30), and not Appendix A as Western Support contends. TSO-C77b
17 includes only a single page of ten short paragraphs to explain the required components of an
18 aircraft maintenance manual prepared pursuant to it. *Id.* at 30. The Court further notes that
19 these requirements contain less specificity and afford more potential discretion to the author
20 than those in Appendix A discussed above. *See, e.g. id.* at ¶ 1.4 (only requiring
21 “[t]roubleshooting information describing probable malfunctions, how to recognize those
22 malfunctions, and the remedial action for those malfunctions”). Giving the benefit of the
23 doubt to Honeywell (the non-moving party, as is required on a motion for summary
24 judgment), the Court recognizes that from this single page of FAA mandated instructions,
25 Honeywell produced an approximately 2,000 page manual—a feat which implies at least
26 some minimal level of creative control. Accordingly, Western Support has not met its burden
27 of demonstrating that, as a matter of law, the expression of facts and procedures within the
28 131-9A Manual are devoid of originality.

1 In sum, the presence of photographs, diagrams, and expressions of facts and
2 procedures within the 131-9A Manual give rise to a genuine dispute of fact regarding the
3 originality of the 131-9A Manual. Consequently, whether or not Honeywell possesses a
4 valid copyright on the 131-9A Manual is question of fact for the jury.

5 **B. Western Support’s Alleged Infringement is in Genuine Dispute**

6 With respect to whether or not Western Support copied constituent elements of the
7 131-9A Manual that are original (and therefore the subject of a valid copyright), the
8 presumption of validity imparted by registering a copyright does not extend to infringement,
9 the second element of a copyright claim. *Smith v. Jackson*, 84 F.3d 1213, 1219 (9th Cir.
10 1996). If ownership of a valid copyright is established, then to avoid summary judgment a
11 plaintiff asserting a claim for copyright infringement need only demonstrate a triable issue
12 of fact as to whether the defendant “copied anything that was original to their work.” *Funky*
13 *Films, Inc. v. Time Warner Entertainment Co., L.P.*, 462 F.3d 1072, 1076 (9th Cir. 2006)
14 (quoting *Feist*, 499 U.S. at 361).

15 Here, Honeywell claims that Western Support has copied “the entire” 131-9A Manual,
16 and not merely “only certain pages” from it. (Doc. 36 at 7; *see* Doc 1. at ¶¶ 8, 10; Doc. 35
17 at ¶ 5; Doc 36 at 5-6; Doc. 37 at ¶ 25). Western Support, however, denies this allegation in
18 its Answer to the Complaint. (Doc. 17 at ¶¶ 8, 10, 12). Nonetheless, in its Motion for
19 Summary Judgment (Doc. 34) and Reply (Doc. 39), Western Support relies exclusively on
20 the argument that, as a matter of law, the 131-9A Manual “is not protected by copyright law.”
21 (Doc. 34 at 9). Accordingly, the Court finds the issue of whether or not Western Support
22 copied the entire 131-9A Manual is an issue of fact in genuine dispute. Critically, if Western
23 Support copied the entire 131-9A Manual, and if any portion of the 131-9A Manual is
24 protected by a valid copyright (which is also in genuine dispute), then Western Support
25 necessarily infringed on a valid copyright held by Honeywell. Therefore, Honeywell has
26 asserted a triable issue of fact as to whether Western Support “copied anything that was
27 original to [its] work.” *Funky Films*, 462 F.3d at 1076 (internal citation omitted).
28 Accordingly, the Court denies Western Support’s Motion for Summary Judgment with

1 respect to Honeywell's copyright infringement claim.

2 **C. Honeywell's Breach of Contract Claim is in Genuine Dispute**


3 In addition to its copyright infringement claim, Honeywell's Complaint (Doc. 1)
4 includes a claim against Western Support for breach of contract arising from a violation of
5 the parties' 2002 Settlement Agreement (Doc. 1, Ex. A). In a footnote in its Motion for
6 Summary Judgment, Western Support argues that the breach of contract claim "is dependent
7 on Honeywell prevailing on its copyright infringement claim. If Honeywell has no copyright
8 protection in its [131-9A M]annual, the contract claim fails as a matter of law." (Doc. 34 at
9 2, n.1).⁶ Without deciding if Western Support's contention on this point of law is correct,
10 the Court notes that it has not found that Honeywell "has no copyright protection in its [131-
11 9A M]annual."⁷ Accordingly, the Court denies Western Support's Motion for Summary
12 Judgment with respect to Honeywell's breach of contract claim.

13 **IV. CONCLUSION**

14 Accordingly,

15 **IT IS ORDERED** denying Western Support's Motion for Summary Judgment (Doc.
16 34).

17 DATED this 4th day of April, 2013.

18
19
20 
21 **James A. Teilborg**
22 **Senior United States District Judge**

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24
25 ⁶ The Court notes that Western Support offers no argument, support, or analysis of its
26 contention beyond the quoted footnote.

27 ⁷ The Court further notes that, regardless of the its findings on the copyright issue,
28 Western Support's single, unsupported footnote is insufficient to justify summary judgment
on the breach of contract issue. *See* Fed. R. Civ. P. 56(c)(1).