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**Datasheet for the decision  
of 22 April 2021**

**Case Number:** T 2434/16 - 3.2.03

**Application Number:** 08836412.0

**Publication Number:** 2198235

**IPC:** F41C23/04

**Language of the proceedings:** EN

**Title of invention:**

AUTOMATIC OR SEMIAUTOMATIC RIFLE WITH FOLDING CLAMSHELL  
BUTTSTOCK

**Applicant:**

Colt's Manufacturing IP Holding Company LLC

**Headword:**

**Relevant legal provisions:**

EPC Art. 56

**Keyword:**

Inventive step - obvious modification

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
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Case Number: T 2434/16 - 3.2.03

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.03**  
**of 22 April 2021**

**Appellant:** Colt's Manufacturing IP Holding Company LLC  
(Applicant) 545 New Park Avenue  
West Hartford, CT 06110 (US)

**Representative:** Ipside  
7-9 Allées Haussmann  
33300 Bordeaux Cedex (FR)

**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 13 June 2016  
refusing European patent application No.  
08836412.0 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** C. Donnelly  
**Members:** B. Miller  
D. Prietzel-Funk

## Summary of Facts and Submissions

I. The appeal was filed by the applicant (the "appellant") against the decision of the examining division to refuse the European patent application No.08836412.0 (the "application") for lack of an inventive step (Article 56 EPC).

II. The following documents are cited in the contested decision:

D1: US 2006/0242880 A1;  
D2: US 5 305 539 A;  
D4: US 5 827 992 A.

III. The examining division held that the subject-matter of independent claim 1 of each request filed with the letter of 29. April 2016 lacked an inventive step in view of D1 in combination with D2 or the combination of D1, D2 and D4.

IV. The appellant requested that the contested decision be set aside and a patent be granted on the basis of the set of claims filed together with the statement setting out the grounds of appeal which replaced all further requests on file.

V. Independent claim 1 reads as follows:

"An automatic or semiautomatic rifle (10) comprising:  
a receiver (16),  
a receiver extension (42), secured to the receiver (16); characterized in that an action spring (38) received within the receiver extension (42), the action

spring cooperating with a bolt carrier (22) for cycling the bolt carrier (22) in the receiver (16), a folding butt stock (618) is pivotally connected to the rifle (10) at a distal end of the receiver extension (42) with respect to the receiver (16), wherein the folding butt stock (618) is capable of movement from a first position extending rearwardly from the distal end of the receiver extension (42) to a second position wherein the folding butt stock portion extends forwardly from the distal end of the receiver extension (42), wherein the folding butt stock (618) has a butt portion (802, 803) slidably mounted to an extension (672) for movement between an extended position wherein the folding butt stock (618) has a first length and an unextended position wherein the folding butt stock (618) has a second length, the second length being less than the first length, wherein the extension (672) is pivotally secured the rifle (10) by a coupling (636) and wherein the butt portion (802) is pivotally mounted to the folding butt stock (618) for movement between a first position wherein the butt portion (802) is parallel to the axis of the folding butt stock (618) and a second position wherein the butt portion (802) is orthogonal to the axis of the folding butt stock portion (618), wherein a base and lower receiver or extension tube have interlocking detents with more than one selectable position allowing telescoping or rotational position between the receiver and base for a stock base of selectable variable length or rotational position."

Dependent claims 2 to 8 concern preferred embodiments of the rifle of claim 1.

- VI. With the summons to oral proceedings, the Board sent a communication pursuant to Articles 15(1) and 17(2) of the Rules of Procedure of the Boards of Appeal (RPBA) setting out its preliminary opinion of the case. In particular, the Board indicated that it considered the subject-matter of claim 1 to be based on an obvious juxtaposition of known features and to lack an inventive step for the same reasons as indicated in the appealed decision.
- VII. With a letter dated 2 April 2021 the appellant withdrew its request for oral proceedings.
- VIII. The appellant's arguments in regard to the claims as filed with the statement setting out the grounds of appeal may be summarised as follows.

The subject-matter of claim 1 was not obvious since more than two documents had to be combined with the closest prior art in order to arrive at the claimed subject-matter. Compared to the claims on which the appealed decision was based, the rifle of claim 1 was further defined in that the "base and lower receiver or extension tube have interlocking detents ...". This further feature was not disclosed in any of documents D1, D2 and D4.

Furthermore, the teachings of these documents would not be combined by the skilled person, since the structural differences of the rifles disclosed therein would have made the combination difficult to perform.

## Reasons for the Decision

1. Inventive Step, Article 56 EPC
  - 1.1 The Board agrees with the examining division and the appellant that D1 is a suitable starting point for the assessment of inventive step since it relates to firearms in a similar fashion to the application.
  - 1.2 It is uncontested that document D1 discloses a firearm with the following features as set out in point 1.1 of the appealed decision (the references applying to document D1):

an automatic or semiautomatic rifle (12; paragraphs [0001], [0007]; Figure 1) comprising:  
a receiver (14),  
a receiver extension (56; Figure 2), secured to the receiver (14);  
an action spring cooperating with an action for cycling the action in the receiver (inherent to automatic or semiautomatic rifles, paragraph [0007]), whereby a folding butt stock (30; Figure 10) is pivotally (paragraph [0006]) connected to the rifle (12) at a distal end of the receiver extension (Figures 2, 3) with respect to the receiver (14), wherein the folding butt stock (30) is capable of movement from a first position extending rearwardly from the distal end of the receiver extension (Figures 7, 10) to a second position wherein the folding butt stock portion extends forwardly from the distal end of the receiver extension (Figure 1),  
wherein the folding butt stock (30) has a butt portion (34+54) slidably mounted (Figure 10) to an extension (44) for movement (paragraph [0026]) between an

extended position (Figure 10) wherein the folding butt stock (30) has a first length and an unextended position (Figure 1) wherein the folding butt stock (30) has a second length, the second length being less than the first length, wherein the extension (44) is pivotally (Figures 2, 3) secured to the rifle (12) by a coupling (36). The folding buttstock of D1 is applicable to "any firearm or firearm platform" (paragraph [0007]). The figures show the folding buttstock as mounted on an exemplary firearm, the M203 grenade launcher (paragraph [0024]).

1.3 The appellant argues that the subject-matter of claim 1 is distinguished from D1 in that

a base and a lower receiver or extension tube have interlocking detents with more than one selectable position allowing telescoping or rotational position between the receiver and base for a stock base of selectable variable length or rotational position.

However, this argument cannot be followed. Document D1 discloses in figure 10 and paragraphs [0041] to [0043] that the extension of the butt stock can be fixed by keyway detent positions, see paragraph [0041] - final sentence:

"... the keyway 42 thereof, functions ... to provide indexing positions "

and paragraph [0043] - first sentence:

"the interchangeability of keyways allows users to have keyway detent positions custom made or configured ...".



D1 therefore discloses an extension tube having interlocking detents with more than one selectable position allowing telescoping position between the receiver and base for a stock base of selectable variable length position.

1.4 The subject-matter of claim 1 therefore differs from the rifle disclosed in D1 by the same features as claim 1 of the former main request, on which the appealed decision was based, see point 1.2 of the reasons:

- (a) the action spring is received within the receiver extension;
- (b) the action comprises a bolt carrier;
- (c) the butt portion is pivotally mounted to the folding butt stock for movement between a first position wherein the butt portion is parallel to the axis of the folding butt stock and a second position wherein the butt portion is orthogonal to the axis of the folding butt stock portion.

1.5 The distinguishing features (a) to (c) solve different problems, which in line with the reasoning in point 1.3 of the appealed decision may be regarded as:

- (A) to provide sufficient length for the recoil movement of the action;
- (B) to allow the bolt to be rotatably mounted so that it can be locked by means of locking lugs in its ready-to-fire position;
- (C) to obtain compactness in a situation where the rifle is temporarily not in a ready-to-shoot condition (see paragraph [0003] of the application).

- 1.6 The distinguishing features (a) and (b) relate to the firing mechanism that operates during shooting. The distinguishing feature (c) on the other hand is related to a non-shooting situation. Consequently, there is no synergistic effect between distinguishing features (a) and (b) and distinguishing feature (c).

According to established case law, the obviousness of each solution of each individual problem can be separately assessed, see Case Law of the Boards of Appeal, 9<sup>th</sup> edition, 2019, Chapter I.D.9.2.2. It is also common practice that the skilled person starting from the closest prior art may consult different documents for solving each of the individual problems. Therefore, the mere fact that the reasoning of the appealed decision is based on a combination of more than two documents does not imply on its own that the claimed subject-matter is based on an inventive step.

- 1.7 In line with the reasoning in point 1.4 of the appealed decision, the solution to the individual technical problems as proposed by claim 1 is obvious when further considering the teaching of documents D2 and D4 for the following reasons:

- 1.7.1 The above-cited distinguishing features (a) and (b) basically relate to the folding butt stock being mounted on a rifle wherein the bolt carrier and the recoil spring are arranged within the receiver extension.

It is known in the art that (a) an action spring within the receiver extension and (b) a bolt carrier can be used as evidenced by D4, column 8, lines 11 to 15.

There is no technical hindrance which would prevent using the known action spring arrangement and the bolt carrier for their known purpose in the firearm of D1.

Consequently, the incorporation of distinguishing features (a) and (b) into a firearm according to D1 would be obvious for the skilled person in view of the teaching of D4.

1.7.2 D2 proposes a butt portion (802), which is pivotally mounted to a folding butt stock (feature (c)), (see column 4 lines 23 to 26 and Figures 11 and 12) for the same reason as in the application, i.e. for obtaining compactness in a situation where the rifle is temporarily not in a ready-to-shoot condition (D2: column 2, lines 12 to 13).  
To use a pivotable butt portion for its known advantage for a rifle as disclosed in D1 constitutes a routine modification and is therefore obvious for the skilled person.

1.7.3 Starting from the disclosure in document D1, the subject-matter of claim 1 therefore lacks an inventive step when further considering the teaching of documents D2 and D4.

1.8 The appellant argues that the combination of features defined in claim 1 is not obvious, since the skilled person would not be motivated to combine document D1 with D2 and D4, since the structural differences of the rifles disclosed therein would have made the combination difficult to perform.

However, no specific technical hindrances have been identified by the appellant or are evident from general

knowledge, which would prevent the skilled person from modifying the rifle of D1 by integrating features of the rifles disclosed in D2 and D4.

- 1.9 In summary, the arguments of the appellant do not provide any reasons to deviate from the conclusion in point 1.4. of the appealed decision that the subject-matter of claim 1 is based on an obvious juxtaposition of known features and therefore does not comply with the requirements of Article 56 EPC. It follows that the appeal is not allowable.

## Order

### **For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:



D. Hampe

C. Donnelly

Decision electronically authenticated