

Veröffentlichung im Amtsblatt	<input checked="" type="checkbox"/> Ja/ <input type="checkbox"/> Nein
Publication in the Official Journal	<input checked="" type="checkbox"/> Yes/ <input type="checkbox"/> No
Publication au Journal Officiel	<input checked="" type="checkbox"/> Oui/ <input type="checkbox"/> Non



Aktenzeichen / Case Number / N° du recours : T 82/84
Anmeldenummer / Filing No / N° de la demande : 80 900 744.6
Veröffentlichungs-Nr. / Publication No / N° de la publication : WO 80/02011

Bezeichnung der Erfindung: Pen Construction
Title of invention:
Titre de l'invention :

Klassifikation / Classification / Classement : B 43 K 27/12

ENTSCHEIDUNG / DECISION
vom / of / du 27 February 1986

Anmelder / Applicant / Demandeur : WALGAN CORP.

Patentinhaber / Proprietor of the patent /
Titulaire du brevet :

Einsprechender / Opponent / Opposant :

Stichwort / Headword / Référence :

EPÜ / EPC / CBE Articles 56; 111(1)
"Inventive Step" "Remittal of the case"

Leitsatz / Headnote / Sommaire

Europäisches
Patentamt

Beschwerdekammern

European Patent
Office

Boards of Appeal

Office européen
des brevets

Chambres de recours



Case Number: T 82 / 84

DECISION
of the Technical Board of Appeal
of 27 February 1986

Appellant: Walgan Corporation
155 Avenue of the Americas
New York New York 10013/US

Representative: Eduard Lorenz
Rechtsanwälte Eduard Lorenz - Bernhard Seidler
Margit Seidler - Dipl.-Ing. Hans-K. Gossel
Dr. Ina Philipps - Dipl.-Chem. Rainer Wulf
Widenmayerstraße 23
D-8000 München 22

Decision under appeal: Decision of Examining Division 087 of the European Patent
Office dated 11 November 1983 refusing European patent
application No 80 900 744.6 pursuant to Article 97(1)
EPC

Composition of the Board:

Chairman: M. Huttner
C. Wilson
Member: P. Ford
Member:

Summary of Facts and Submissions

I European patent application No. 80 900 744.6 filed on 19 March 1980 as an international application No. PCT/US 80/00283 claiming priority from a national US application of 26 March 1979 and published under the international publication No. WO 80/02011 was refused by a Decision of Examining Division 087 of the European Patent Office dated 11 November 1983. The Decision was based on Claim 1 received on 11 June 1983.

The reason given for the refusal was that in view of the prior art documents US-A-2 826 173 and GB-A-2 002 295, the subject-matter of Claim 1 did not involve an inventive step within the meaning of Article 56 EPC and was thus not allowable under Article 52(1) EPC.

II On 12 January 1984 the appellants lodged an appeal against the Decision. The appeal fee was duly paid and the statement of grounds was received on 14 March 1984, a supplement thereto being received on 21 March 1984.

The appellants argued that a combination of the teachings of the two cited documents would not result in the subject-matter of Claim 1. Moreover, it should be borne in mind that the subject-matter of the claim related to a mass-produced article, in which even small improvements leading to an economical success can involve an inventive step.

III As a result of objections raised by the Board of Appeal in a communication to the appellants, the latter submitted on 10 September 1985 a new set of Claims 1-5 together with a revised introductory portion of the description, requesting that the impugned Decision be set aside and that a European patent be granted on the basis of these amended documents.

Claim 1 reads as follows:

A writing instrument (10), comprising a barrel member (11) having a first barrel section (12) with a front end opening (14) and a second barrel section (13) with a rear end opening (14), said barrel section (12, 13) being connected end-to-end and relatively rotatable,

a ball pencil (47) and a lead pencil (49) located in said barrel member (11), said pencils (47, 49) being longitudinally movable between an advanced operable position projecting through said front opening (14) and a retracted position and being adjustable in response to a longitudinal compressive force thereon,

means (16) for limiting the forward movement of said lead pencil (49) to a predetermined advanced position,

a follower element (39) for each pencil (47, 49), respectively coupled rearwardly of the front end thereof,

a cam member (32) connected to said second barrel section (13) and having a cam (33) engaging said follower element (39) and being shaped so that rotation of said cam member (32) to a predetermined position advances said pencils (47, 49) alternatively by way of said follower element (39) to said advanced operable position, and a push button (64) guided in said rear end opening (17) of said second barrel section (13) and being connected to a plunger (56) having a depending leg (61),

characterized in

that said leg (61) depends from the wall of the plunger (56) into engagement with the top face of an actuating bar (15), carried by said cam member (32) and being longitudinally selectively movable along a path intercepting respective follower element (39) of each of said advanced pencils (47, 49), and

that the second barrel section (13) comprises a rotatable body member (22), said actuating bar (15) engaging each advanced follower element (39) outside said body member (22).

IV On being informed by the Board that it was inclined to set aside the Decision and remit the application to the Examining Division, the appellants' representative withdrew the request for oral proceedings and requested that the application be so remitted.

V For the original claims, description and drawings, reference should be made to publication No. WO 80/02011.

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is therefore admissible.
2. The Board considers that the Decision of the Examining Division regarding the amended Claim 1 received on 11 June 1983 was correct.
3. The effective Claim 1 filed on 10 September 1985 has now however been limited with respect to the original Claim 1 inter alia to define more clearly the manner in which motion is transmitted from the push button to each follower member. These amendments could possibly lead to the grant of a patent but have not been considered by the Examining Division,

beyond an indication given by the primary examiner to the appellants' representative at an interview on 25 January 1983 that the only possibility for an allowable claim seemed to lie in this manner of transmission. It is therefore considered appropriate to set aside the Decision of the Examining Division and, in the exercise of the Board's discretion under Article 111(1) EPC, to remit the case to the Examining Division for further prosecution.

ORDER

For these reasons,

it is decided that:

1. The Decision of Examining Division 087 of the European Patent Office dated 11 May 1983 is set aside.
2. The application is remitted to the Examining Division for further substantive examination on the basis of the claims and amended description filed on 10 September 1985.

The Registrar

J. B. B.

The Chairman

G. J. J.