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Aktenzeichen / Case Number / N^o du recours : T 183/89 - 3.2.1

Anmeldenummer / Filing No / N^o de la demande : 84 903 183.6

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Bezeichnung der Erfindung: Wheelbarrow

Title of invention:

Titre de l'invention :

Klassifikation / Classification / Classement : B62B1/22, B62B1/24

ENTSCHEIDUNG / DECISION

vom / of / du 30 July 1990

Anmelder / Applicant / Demandeur : Steer, Clive, Allen

Patentinhaber / Proprietor of the patent /
Titulaire du brevet :

Einsprechender / Opponent / Opposant :

Stichwort / Headword / Référence :

EPO / EPC / CBE Article 113(2), Rule 86(3), Rule 68(2), Article 56

Schlagwort / Keyword / Mot clé :
"exercise of discretion under Rule 86(3)"
"decision to refuse claims under Rule 86(3)
not reasoned"
"novelty (yes)"
"inventive step (yes)"

Leitsatz / Headnote / Sommaire



Case Number : T 183/89 - 3.2.1

D E C I S I O N
of the Technical Board of Appeal 3.2.1
of 30 July 1990

Appellant : Steer, Clive, Allen
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Decision under appeal : Decision of Examining Division 079
of the European Patent Office
dated 22 December 1988 refusing
European patent application
No. 84 903 183.6 pursuant to
Article 97(1) EPC

Composition of the Board :

Chairman : F. Gumbel
Members : P. Alting van Geusau
J.-C. Saisset

Summary of Facts and Submissions

- I. European patent application No. 84 903 183.6 filed as International application PCT/GB84/00298 on 29 August 1984 and published on 14 March 1985 was refused by a decision of the Examining Division dated 22 December 1988.
- II. The Decision was based on Claims 1 to 7 submitted with letter of 17 November 1987.

The reason given for the refusal was that the subject-matter of Claim 1 lacked an inventive step in the sense of Article 56 EPC having regard to the documents US-A-1 327 578 (D1) and GB-A-1 332 010 (D2) or US-A-2 544 505 (D3).

The Examining Division also stated in the Decision that the applicant had submitted Claims 1 to 7, with his letter of 2 May 1988, without the consent of the Examining Division and that these claims had, therefore, not been taken into consideration.

- III. An appeal was lodged against this decision on 24 February 1989, the appeal fee being paid on 22 February 1989.

The Statement of Grounds of Appeal was submitted on 24 April 1989 setting out reasons as to why the subject-matter of Claim 1, as submitted by letter of 2 May 1988, not only included novel subject-matter but also should be considered to involve an inventive step. In particular, the Appellant drew attention to the different effect of the known handle-joining members in D1 and D2 when compared to the joining member of the present application.

- IV. In a communication dated 23 January 1990, the Board expressed the provisional opinion that Claim 1, amended in order to clarify that the frame is fixed to the bin of the wheelbarrow to form one unit with it, would provide an acceptable main claim. Some further amendments were suggested to bring the application in order for grant.
- V. By letter filed on 27 March 1990, the Appellant filed a new set of Claims 1 to 7 and replacement pages of the description.

The Appellant, by implication, requests grant of a patent on the basis of the new claims and amended description together with the original drawings.

Present Claim 1 reads as follows:

"A wheelbarrow having a bin (1) for the load, a ground wheel (2) carried on a frame (5) at a front end of the bin, the frame holding the wheel in a fixed location relative to the bin, and a handle (3) on each side at a rear end of the bin, each handle terminating in a cam-shaped leg (7) arranged to support the bin at its rear end, in which each cam-shaped leg is attached at its periphery to a pivot (4) whereby movement of the handles (3) in the direction of the wheel (2) will cause rotation of the cams so that the bin rear end is lowered to ground level to assist loading, the return of the handles (3) to the rear position causing lifting of the bin, the continuous rolling action of the cam periphery in contact with the ground surface causing a steady and readily controllable lifting force to be developed with the control of this force being maintained throughout the whole range of the handle movement, the handles (3) then being retainable in a working condition of the wheelbarrow by a releasable lock (6), characterised in that, the frame (5) is fixed to the bin (1) to form one

unit therewith and each said pivot (4) to which a respective leg is attached is located on the said frame, and the two handles (3) are coupled together by a joining member (10) which ensures that both handles are movable simultaneously as a rigid unit about the pivots (4)."

Reasons for the Decision

1. The appeal is admissible.
2. Procedural issues.
 - 2.1 According to Article 113(2) EPC, the European Patent Office shall consider and decide upon the European application only in the text submitted to it, or agreed, by the applicant.
 - 2.2 Thus, since the Examining Division refused to consider the amended claims filed by letter of 2 May 1988 and since the the Appellant did not maintain the former claims filed with letter of 17 November 1987, there was no text of the application pending which had been submitted or agreed to by the applicant.

The decision under appeal rejecting the present application on the ground of Article 56 EPC, in that the subject-matter of Claim 1, filed with letter of 17 November 1987, lacked an inventive step, is therefore void in respect of this ground, since this claim did not at that time, represent a valid text of the application documents.

- 2.3 Considering the question as to whether the decision comprises grounds for refusing the claims filed by letter of 2 May 1988 the following is observed:

- 2.4 According to Rule 86(3) EPC, after an applicant has amended the application documents in reply to a first communication from the Examining Division, any further amendment may only be made with the consent of the Examining Division.
- 2.5 In the Board's opinion and in accordance with former Decisions (see T 118/88 of 14 November 1989, point 2 and T 182/88 of 3 November 1988, Headnote published in the OJ EPO 1989, No. 10) such discretion must be exercised having regard to the factors which are relevant to the issues, i.e. the relation of the amendments to the objections made. Further, when exercising a discretion either positively or negatively, the reasons for the exercise of that discretion should be given.
- 2.6 In this respect, the question arises whether the Examining Division has applied Rule 86(3) EPC correctly, i.e. made proper use of its discretion when deciding not to allow the claims filed on 2 May 1988.
- 2.7 Under the heading "Readiness for the Decision", the Examining Division concluded that it had stated in the communication dated 21 July 1987 that it would allow only one further amendment under Rule 86(3) EPC and, since the amendments filed with letter of 2 May 1988 had been submitted without the consent of the Examining Division, these amendments were not allowable. Such argumentation cannot, in the Board's opinion, be considered as representing reasoning in support of the exercise of discretion under Rule 86(3) EPC, but rather constitutes a reference to the power given to the Examining Division by the above Rule.

The Board, therefore, concludes that, contrary to Rule 68(2) EPC, the decision was not reasoned with respect to not allowing the claims filed with letter of

2 May 1988 and, in the Board's judgement, the Examining Division has not correctly applied Rule 86(3) and Rule 68(2) EPC.

- 2.8 In view of Rule 67 EPC, it has, therefore, to be decided whether reimbursement of the appeal fee is equitable.

In the present case, the contents of the claims taken into consideration by the Examining Division in their decision and of the claims filed with letter of 2 May 1988 differ solely in that Claim 1 of the latter set of claims comprises a further clarification of the continuous rolling action of the cam periphery to cause a readily controllable lifting force.

These features belong to the prior art considered to be nearest to the subject-matter of the application by the Examining Division and, thus, do not change the situation as far as the assessment of inventive step is concerned.

Therefore, if the Examining Division had considered Claim 1 filed with letter of 2 May 1988, this claim would most probably also have been considered as not allowable for lack of inventive step of its subject-matter based on the same reasons as those advanced against the Claim 1 considered in the appealed decision: this would thus not have resulted in a different situation for the Appellant.

Consequently, the Board is of the opinion that the line followed by the Examining Division has not affected the further procedure or the Appellant's rights, such that there is no basis on grounds of equity for reimbursing the appeal fee, which in fact was not requested by the Appellant.

2.9 The Board is further of the opinion that in view of the minor differences between Claim 1 filed with letter of 2 May 1988 and Claim 1 considered by the Examining Division in the appealed decision, such as indicated in point 3.4 above, it is appropriate to decide also on the issue of inventive step rather than remitting the case to the Examining Division under Article 111(1) EPC.

3. Acceptability of the claims

3.1 Considering the merely clarifying nature of the amendments to Claim 1 filed with letter of 2 May 1988 as compared with Claim 1 considered in the appealed decision, the Board sees no reason to object to this claim under Article 86(3) EPC and accepts these claims in the proceedings before the Board.

3.2 Present Claim 1 is essentially based upon original Claims 1, 2 and 6 and contains a further detail described on original page 6, lines 14 to 22 (the two handles being coupled together by a joining member).

The functional indication of lines 11 to 15 of Claim 1 does not appear to have an explicit basis in the application as originally filed. It is, however, considered that it is implicit to the skilled engineer from the functioning of the wheelbarrow shown in Figures 2 and 3 (see also page 5, lines 11 to 14).

The dependent claims are based on respectively:

Claim 2: page 6, line 23 to page 7, line 1

Claim 3: page 6, lines 14 to 16

Claim 4: page 4, lines 11 to 14

Claim 5: original Claim 3 and page 5, lines 15 to 17

Claim 6: page 6, lines 3 to 9

Claim 7: original Claim 9.

All claims are, therefore, acceptable under Article 123(2) EPC and there are, in the Board's view, also no objections under Article 84 and Rule 29(1) EPC.

4. Novelty

- 4.1 The nearest prior art when considering the subject-matter of Claim 1 is disclosed in US-A-1 327 578 (D1), which document shows a wheelbarrow comprising the precharacterising features of Claim 1.

The wheelbarrow according to Claim 1 differs from the known wheelbarrow in that

- (a) the frame is fixed to the bin to form one unit therewith and each said pivot to which a respective leg is attached is located on the said frame, and
- (b) the two handles are coupled together by a joining member which ensures that both handles are movable simultaneously as a rigid unit about the pivots.

The subject-matter of Claim 1 is, therefore, novel in the sense of Article 52(1) and Article 54 EPC.

5. Inventive step

- 5.1 When compared to the known wheelbarrow disclosed in D1, the above differences (a) and (b) lead to a simple construction of the wheelbarrow, with few moving parts and easy handling and without the risk of sideways tilting of the bin when the lifting operation is carried out.

Proceeding on the basis of the above referenced prior art, therefore, the object of the invention may be seen in improving the known wheelbarrow by providing a relatively simple and easy to handle construction of a wheelbarrow

with lifting action of the handles while at the same time avoiding tilting of the bin during the lifting or lowering actions.

5.2 In view of the fact that the movable frame in D1 is essential for the intended scoop action in this prior art, this document cannot, in the Board's opinion, give a lead to a frame which is fixed to the bin to form one unit with it.

5.3 Document D2 cited by the Examining Division discloses a wheelbarrow comprising a fixed frame and handles in the form of loops which are coupled together by a joining member.

However, these handles merely represent fixed handles which may be swung to lie side-by-side with the bin during storage and transportation and are clearly not intended for use as lifting means in the sense of the arrangement disclosed in D1 or in the present application. Although there is a joining member, this joining member is also fixed to the bin at the rear wall thereof (see page 1, lines 40-43) and cannot, therefore, provide the effect of simultaneous movement of the handles as set out in feature (b) above.

For these reasons, the skilled man would look in vain for a solution to the above problem when considering D2.

5.4 Document D3 cited by the Examining Division discloses a self-loading wheelbarrow of substantially different construction when compared to the wheelbarrow of D1 and the present application. The wheelbarrow in D3 comprises a fixed and a movable part (scoop 6) which may be swivelled downward in order to provide a scoop. Down and upward movement of the scoop is provided in one embodiment by a pair of handles 21 joined by cross bars 24 and 30.

However, the connection between the handles is not related to avoiding tilting of the scoop during lifting thereof, since due to two-part construction with the use of hinges at the lower part of the scoop (column 1, lines 25 to 27) such tilting is already avoided.

Further, the handles for lifting the scoop are separate from the barrow handles and the lifting mechanism comprises a pawl arrangement 36, 38.

In the Board's opinion, not only the different construction, but in particular the different functioning of this known barrow deprives the skilled man of any basis for transferring features from this known barrow to the wheelbarrow known from D1, as was contended by the Examining Division in their Decision.

5.5 On the other hand, considering the use of the wheelbarrow disclosed in D1 and the abilities of the skilled man, it would appear, in the opinion of the Board, that the user would easily become aware of the restrictions which separately operated handles present. In view of the normal considerations of the skilled man, it would, in the Board's judgement, not need inventive skills to realise that the handles should be connected to each other so as to move in unison when one of them is operated.

5.6 Such an improvement of the known wheelbarrow disclosed in D1, however, still would not lead to the wheelbarrow claimed in Claim 1 under consideration.

In order to arrive at that construction, further adaptations would be necessary, in particular the provision of a frame fixed to the bin and the location of the pivot points at the frame, such that in the lowered

position the bin's rear end is at ground level to assist loading, a feature which could obviously not be achieved by merely fixing the known movable frame to the bin in the wheelbarrow of D1, nor in the wheelbarrows of D2 and D3.

In view of these further adaptations which lead to a particularly simple arrangement, for which no example or instruction can be derived from the cited prior art, the Board considers the wheelbarrow defined in Claim 1 to comprise an inventive step.

5.7 It follows that Claim 1 is acceptable under Articles 52(1) and 56 EPC. The same applies to dependent Claims 2 to 15 which concern particular embodiments of the invention according to independent Claim 1 (Rule 29(3) EPC).

6. The Board notes that the amended description filed with letter of 20 March 1990 is also suitable for the grant of a patent after being amended on lines 9 to 10 on page 2A to read

"The present invention provides a simpler wheelbarrow with improved lifting operation so that the risk of tilting the bin is substantially reduced".

This amendment was agreed upon by the Appellant with telephone call dated 30 July 1990.

Order

For these reasons, it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the first instance with the order to grant a patent on the basis of the following documents

Claims: 1 to 7 filed with letter of 20 March 1990.

Description: pages 2, 2A, 2B, 3, 6, 7 and 8 filed with letter of 20 March 1990

pages 1, 4 and 5 as originally filed.

Drawings: page 1/1 as originally filed.

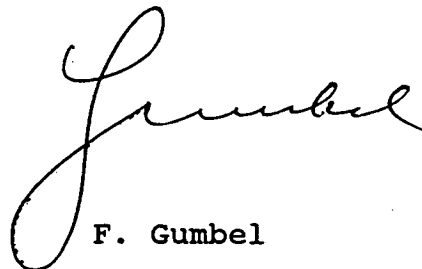
With the adaptations in the description for reason of compliance with Rule 27(1)(d) as indicated in paragraph 6 of this decision.

The Registrar:

The Chairman:



S. Fabiani



F. Gumbel

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Fabiani