

EPC Rules 43 and 88.

"Missing drawings" - "Correction of errors in drawings" -
"Evidence required"

Headnote

- I. If a part of a drawing identified as a Figure is missing, the missing part is not to be considered as a missing drawing for the purposes of Rule 43 EPC; but the whole Figure is to be considered as an incorrect drawing. The correction of drawings is dealt with in Rule 88 EPC.
- II. The evidence required to support a request for correction of a drawing by adding a missing part must be unambiguous.

Europäisches
Patentamt

Juristische
Beschwerdekammer

European Patent
Office

Legal Board
of Appeal

Office européen
des brevets

Chambre de
recours juridique



Case No. J 19/80

DECISION
of 3 February 1981

Appellant:

Franklin Electric Co., Inc.
400 East Spring Street
Bluffton, Indiana 46714
U.S.A.

Representative:

Dr. Heinz Goddar
c/o Forrester & Boehmert
Widenmayerstraße 5/IV
D-8000 München 22

Decision under appeal:

Decision of the Receiving Section
of the European Patent Office
dated 27 May 1980 rejecting a request
for addition to the drawings filed on
European patent application N° 80101010.9
of a sheet of drawings, by way of correction.

Composition of the Board:

- Dr. R. Singer, Chairman
- P. Ford, Member
- L. Gotti Porcinari, Member

SUMMARY OF FACTS AND SUBMISSIONS

I. On 29 February 1980 the appellant filed a European patent application which contained four sheets of drawings marked as follows: Fig. 1, Fig. 2, Fig. 3 A and Fig. 3 A (sic). The appellant claimed priority from a patent application filed in the U.S.A. on 19 March 1979.

On 28 March 1980 the appellant sent the priority documents (containing four sheets of drawings marked: Fig. 1, Fig. 2, Fig. 3 A and Fig. 3 B) and one additional copy for each sheet of drawings marked 1/4 Fig. 1, 2/4 Fig. 2, and 3/4 Fig. 3 A and two copies of a sheet marked 4/4 Fig. 3 B. The new copies were referred to by the appellant as "formal drawings".

II. Figure 3 of the drawings was a flow chart drawn on two sheets. All references included in the description to steps from 112 to 174 and to Counters C-1, C-2, C-3 and C-4 related only to the part of the flow chart drawn on the sheet marked Fig. 3 B.

III. The relevant part of the description found in the application was identical with that found in the priority documents and the sheet of drawings marked 4/4 Fig. 3 B which the appellant filed as part of the "formal drawings" was identical with the sheet of drawings marked Fig. 3 B in the priority documents.

IV. On 16 April 1980 the European Patent Office informed the appellant that, having regard to Rule 43 (1) EPC, the sheet of drawings marked 4/4 Fig. 3 B had been filed later than the date of filing of the application. Therefore this sheet of drawings and the references to it in the European patent application would be deemed to be deleted, unless the applicant were to request within a period of one month that the application be redated to the date on which this sheet of drawings was filed.

- V. In a letter dated 23 April 1980, the appellant alleged that a mistake had occurred in copying the drawings. Fig. 3 was necessarily split between two separate sheets of drawings (Figs. 3 A and 3 B). When making copies of the full set of drawings, the appellant's representative's assistant had made two copies of sheet Fig. 3 A and no copy of sheet Fig. 3 B. This mistake was not noticed when the application was filed. The appellant requested to be permitted to correct the mistake in accordance with Rule 88 EPC.
- VI. The Receiving Section issued a decision dated 27 May 1980, rejecting the appellant's request, on the ground that the addition of sheet 4/4 Fig. 3 B could not be regarded as a correction in accordance with Rule 88 EPC. The Receiving Section held also that the provisions of Rule 43 EPC do not permit late filing of a sheet of drawings to be considered as a correction of an error.
- VII. On 23 June 1980, the appellant lodged an appeal against this decision. Notice of the appeal and the statement of grounds were received by the European Patent Office in time and the appeal fee was duly paid.

In the statement of grounds the appellant repeated the arguments previously set out in his letter to the Receiving Section and asked that the decision of the Receiving Section should be set aside and that the correction of the mistake should be permitted.

REASONS FOR THE DECISION

1. The appeal complies with Articles 106 to 108 and Rule 1 (1) and 64 EPC, and is, therefore, admissible.
2. If part of a drawing identified as a Figure is missing, the missing part is not to be considered as a missing drawing for the purposes of Rule 43 EPC. The Figure as a whole is, in principle, to be considered as an incorrect or defective drawing.
3. The question of incorrect drawings is dealt with in Rule 88 EPC. The first sentence of that Rule makes possible the correction of incorrect drawings. The second sentence expressly refers to such a possibility and prescribes conditions under which correction may be permitted. In particular, the correction must be obvious in the sense that it is immediately evident that nothing else would have been intended than what is offered as the correction.
4. Mistakes within the meaning of Rule 88 EPC can consist of omissions, as has been decided by this Board in Case No. J 08/80, on 18 July 1980 (Official Journal 9/1980 page 293). The failure to present part of a Figure can constitute such an omission. For the purposes of the present decision, it is immaterial whether the omitted part is, or is not, on a separate sheet of drawings.
5. The evidence required to support a request for correction of such an omission must be unambiguous. In this case, the documents in the file provide the necessary evidence.
6. The description filed referred expressly to a Fig. 3 B. When two copies of the sheet Fig. 3 A were filed and no copy of the sheet 3 B, this must have been a mistake.
7. The relevant part of the description and the sheet 4/4 Fig. 3 B correspond. That part of the description is also identical with

the corresponding part of the description in the priority documents and the sheet 4/4 Fig. 3 B is identical with the sheet Fig. 3 B in the priority documents. It is therefore clear that nothing else would have been intended than what is offered as the correction.

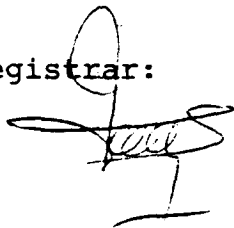
8. No application has been made for reimbursement of the appeal fee in accordance with Rule 67 EPC, and it is not considered that the circumstances of the case would have justified such an order.

For these reasons

it is decided that

1. The Decision of the Receiving Section of the European Patent Office dated 27 May 1980 is set aside.
2. It is ordered that European patent application No. 80101010.9 is to be corrected by the addition to the drawings filed thereon of the sheet of drawings identified as "Fig. 3 B".

The Registrar:



The Chairman:

