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Aktenzeichen / Case Number / N^o du recours : J 25/86
Anmeldenummer / Filing No / N^o de la demande : 85 306 779.1
Veröffentlichungs-Nr. / Publication No / N^o de la publication :

Bezeichnung der Erfindung: Self-adjusting utility pliers
Title of invention:
Titre de l'invention :

Klassifikation / Classification / Classement : B 25 B 7/04

ENTSCHEIDUNG / DECISION

vom / of / du

14 November 1986

Anmelder / Applicant / Demandeur : Warheit, William A. (appellant)

Patentinhaber / Proprietor of the patent /
Titulaire du brevet :

Einsprechender / Opponent / Opposant :

Stichwort / Headword / Référence : "Identity of applicant/Warheit"

EPÜ / EPC / CBE Art. 80(c), 90(2), 91(1)(d)(2), Rules 39, 41

Kennwort / Keyword / Mot clé :
"Date of filing" - "Identity of applicant" - "Deficiencies as to
the name of the applicant"

Leitsatz / Headnote / Sommaire

The requirement of Article 80(c) EPC for "information identifying the applicant" is to be considered to be met whenever it is possible to establish beyond reasonable doubt the identity of the applicant on the basis of all data contained in the documents filed by the applicant or his legal representative.



Case Number : J 25/86

D E C I S I O N
of the Legal Board of Appeal
of 14 November 1986

Appellant : Warheit, William A.
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USA

Representative : Lerwill, John
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Decision under appeal : Decision of the Receiving Section of the European Patent Office dated 7 April 1986 as to the date of filing to be accorded to European patent application No. 85 306 779.1 under Article 80(c) EPC and on the right of priority under Article 87(1) EPC.

Composition of the Board :

Chairman : P. Ford
Member : E. Persson
Member : O. Bossung

Summary of Facts and Submissions

- I. European patent application No. 85 306 779.1 was filed on 24 September 1985 claiming priority of US application 06/687 594, filed on 26 September 1984. The request for grant form gave the applicant's name as Walter A. Warheit but gave no other information about him, such as his home address, nationality or country of residence. However, in the address for correspondence section of the said form the business address of his legal representative in London was given. With the application was also filed an authorization form which was signed by a William A. Warheit. This name was also typed on the authorization form.

- II. By communication of 22 October 1985 the Receiving Section informed the applicant's representative pursuant to Rule 39 EPC that the application failed to meet the requirements laid down in Article 80 EPC for according a date of filing, as it did not contain information identifying the applicant. It was requested that this deficiency should be remedied within one month. Furthermore, it was pointed out that the information about the applicant in the request for grant form differed from that in the authorization form.

- III. By letter of 11 November 1985 the applicant's representative replied to the communication giving the applicant's home address in the US and his name as William A. Warheit. It was explained that a clerical error had caused the mistake in the Christian name in the request for grant form.

- IV. By letter of 21 November 1985 the Receiving Section informed the applicant's representative pursuant to Rule 39 EPC that the date of filing accorded to the application was 13 November 1985 which was the date the representative's

letter of 11 November 1985 had been received.

- V. By a further letter dated 29 November 1985 the Receiving Section informed the applicant's representative pursuant to Rule 41(3) EPC that the priority date preceded the date of filing by more than one year, and that there would be no right of priority for the application unless, within one month, a corrected priority date falling within the year preceding the date of filing were indicated.
- VI. By letter of 26 November 1985 received 28 November 1985, the representative replied to the communication referred to in paragraph IV above, stating that he did not agree to the application being accorded the date of filing of 13 November 1985. It was requested that this date instead be the initial date of filing, i.e. 24 September 1985. This request was supported by the following arguments.
- VII. The EPC does not specify the information which is necessary in order to identify the applicant. The text of the Guidelines for Examination in the EPO, A-II, 4.4, whereby the applicant is sufficiently identified where the name and address indicated is sufficient to meet the customary requirements for postal delivery, does not mean that other information is insufficient. The applicant was clearly and sufficiently identified in the application documents filed on 24 September 1985. The name of the applicant was given in the request for grant form and in the authorization form. The latter carried the personal signature of the applicant. The applicant was said to be the sole inventor. Details were given of an earlier US application from which priority was claimed. Consequently, the applicant must be one and the same person as the inventor and applicant on the US application which could be confirmed by the priority document to be filed in due course. It was added that the omission of the home address of the applicant did not

present to the EPO any problem of communication, since the name and full address of the representative were included in the request for grant form. This omission was a deficiency which the representative should have been requested to remedy pursuant to Article 91(2) and Rule 41 EPC.

VIII. By letter dated 20 December 1985 the representative stated that the serial number of the priority application earlier given was incorrect, the correct number being 06/654 405. On 30 December 1985 the representative filed the priority document, i.e. a certified copy of US application 06/654 405 indicating that Mr. William A. Warheit was the applicant for the US application.

IX. The Receiving Section issued a decision dated 7 April 1986 according to which :

a) the applicant's request of 26 November 1985 that the application be accorded the date of filing of 24 September 1985 was refused;

b) the date of filing should be 13 November 1985; and,

c) the application should have no right of priority since the priority date claimed did not fall within the year preceding the date of filing.

X. In the reasons for the decision the Receiving Section stated, inter alia, that the identity of the applicant must be clearly and unmistakably established to the EPO and, if it is not, that it is not permissible to establish who the applicant is by producing evidence subsequent to the initial filing of the application in order to safeguard this date of filing. In such a situation Article 90(2) and Rule 39 EPC are to be applied. In this respect, reference

was made to a decision of the Technical Board of Appeal 3.3.1 of 18 December 1985, T 25/85 (OJ 3/1986, p. 81) concerning when the identity of an opponent must be established. The Receiving Section, for stated reasons, did not agree with the argument that in the subject application the applicant was clearly and sufficiently identified in the application papers filed on 24 September 1985. The Receiving Section also considered the question whether Rule 88 EPC could be used in order subsequently to provide, in the form of a correction, information needed in order to identify an applicant in the case of Article 80(c) EPC, and it concluded that the answer must be negative. Also in this respect reference was made to the above mentioned decision of the said Technical Board of Appeal.

- XI. By letter dated 27 May 1986 the appellant filed an appeal against the decision of the Receiving Section. The appeal fee was duly paid and a statement of grounds was communicated in a letter dated 11 August 1985 received the following day.
- XII. To summarize the main grounds of appeal, the appellant contended that :
- a) the information contained in the application papers filed on 24 September 1985 identified the applicant uniquely and unambiguously to the extent that it could only have been the one William A. Warheit who personally signed the authorization form and who lodged the patent application in respect of his invention in the US 26 September 1984, and hence the information was sufficient to satisfy the requirement of Article 80(c) EPC concerning information identifying the applicant; the application should consequently be accorded the filing date of 24 September 1985;

- b) the typographical error as regards the name of the applicant in the request for grant form should be permitted to be corrected under Rule 88 EPC;
- c) the deficiency in the request for grant form in respect of the omission of the address of the applicant should be allowed to be put right either as a remedy effected under Article 91(2) and Rule 41(1) EPC or as a correction under Rule 88 EPC;
- d) the claim for priority from the application filed in the US on 26 September 1984 should be allowed; and
- e) the error in the file number of the priority document given in the request for grant form should be allowed to be corrected under Rule 88 EPC.

XIII. Reimbursement of the appeal fee was requested under Rule 67 EPC.

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is, therefore, admissible.
2. The question whether the date of filing of the present application shall, as requested by the appellant, be 24 September 1985 or, as held by the Receiving Section in the contested decision, be 13 November 1985, depends primarily on the interpretation of Article 80(c) EPC. According to this provision, the date of filing of a European patent application shall be the date on which documents filed by the applicant contain, inter alia, "information identifying the applicant".

3. When considering the standards to be applied to this requirement, attention has to be drawn to the provisions on request for grant contained in Rule 26 EPC. In particular, the specified data listed in Rule 26(2)(c) EPC are aimed at identifying the applicant in a proper manner. However, it is obvious that not all this data is necessary to meet the requirement of Article 80(c) EPC. This view is also reflected in the Guidelines for Examination in the EPO, A-II, 4.4, referred to in the communication by the Receiving Section of 22 October 1985, where it is stated that the applicant is to be considered sufficiently identified where the name and address indicated are sufficient to meet the customary requirements for postal delivery. It may not be necessary in every case to rely upon the address in order to sufficiently identify the person concerned. Each case must be considered on its own facts.
4. While it is to be emphasized that the due observance of formalities of various kinds is of great importance for the proper functioning of the European patent system, it is not of less importance that applicants and other parties making use of this system should be given fair treatment. This implies that a too narrow interpretation of provisions of a formal character should be avoided, in particular if such an interpretation could have serious legal repercussions, e.g. on priority rights.
5. As regards the requirement of Article 80(c) EPC for "information identifying the applicant" it is to be noted that the wording of this provision does not exclude the possibility of the applicant being properly identified even if there are some deficiencies in the data given in the application form concerning the name and the address of the applicant or other formal matters. This appears even more clear from the wording of the Convention on this point in

the German and French languages, which reads "Angaben, die es erlauben, die Identität des Anmelders festzustellen" and "les indications qui permettent d'identifier le demandeur", respectively.

6. In this context it is also of some interest to note that according to Rule 20.4 (b) PCT (as in force on 1 January 1985) it is (for the purpose inter alia of according a filing date) sufficient to indicate the name of the applicant in a way which allows his identity to be established even if the name is misspelled, the given names are not fully indicated or, in the case of legal entities, the indication of the name is abbreviated or incomplete.
7. This Board takes the view that Article 80(c) EPC is to be interpreted in the sense that the requirement for "information identifying the applicant" is to be considered to be met whenever it is possible to establish beyond reasonable doubt the identity of the applicant on the basis of all data contained in the documents filed by the applicant or his legal representative.
8. In the present case, the application as initially filed was signed by the applicant's legal representative in London acting on behalf of the applicant by virtue of an authorization signed by the applicant himself clearly and legibly in the name of William A. Warheit. Furthermore, it was stated that the applicant was the sole inventor and that he claimed priority from an earlier US application. In these circumstances, and having in mind that the signing of the authorization is to be considered to be the legal act from which the application ultimately originated, the Board is of the opinion that it could be established beyond reasonable doubt already when the application was filed on 24 September 1985 that the identity of the applicant

- corresponded to the signature of the authorization, i.e. to William A. Warheit, and that the difference between the Christian names given in the request for grant form and the authorization form was due to a clerical error.
9. The application should, thus, have been accorded the filing date of 24 September 1985 and the action taken by the Receiving Section under Rule 39 EPC was not justified. The deficiencies in the application as to the Christian name and the home address of the applicant should instead have been dealt with in accordance with Article 91(1)(d) and (2) and Rule 41(1) EPC. The corrections made by the applicant's representative in his letter of 11 November 1985 ought in these circumstances to be accepted as a remedy under the latter Article and Rule of the Convention.
 10. The Board is satisfied that the request for correction under Rule 88 EPC of the serial number of the US priority application, self-evidently a simple clerical error, should be granted.
 11. Since the correct date of filing is 24 September 1985 and this date falls within 12 months from the date of filing of the appellant's US application 06/654 405 of 26 September 1984, the appellant is entitled to a right of priority in accordance with Article 87(1) EPC.
 12. The Board considers that there was no substantial procedural violation by the Receiving Section in misinterpreting Article 80(c) and Rule 39 EPC and that accordingly no reimbursement of the appeal fee can be allowed in the present case.
 13. In view of the references made in the contested decision to the decision of the Technical Board of Appeal 3.3.1 of 18 December 1985, T 25/85 (OJ 3/1986, p. 81) this Board

wishes, finally, to make it clear that it does not consider its findings in the present case to be in conflict with those of the said Technical Board, since the relevant facts differ significantly, in particular, as the party concerned in the earlier case was and remained anonymous at all material times.

Order

For these reasons,

it is decided that:

1. The decision of the Receiving Section dated 7 April 1986 is set aside.
2. The date of filing to be accorded to the application is 24 September 1985.
3. The appellant shall enjoy a right of priority from US application 06/654 405 filed on 26 September 1984.
4. The serial number of the US application given in the request for grant form shall be corrected in accordance with the request by the appellant's representative to read "06/654 405".
5. Reimbursement of the appeal fee is refused.

The Registrar



The Chairman

