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**Datasheet for the decision
of 18 November 2019**

Case Number: T 1926/19 - 3.2.01

Application Number: 05783984.7

Publication Number: 1810590

IPC: A45B25/00, A45B25/14, A45B25/16

Language of the proceedings: EN

Title of invention:
A SWITCH USED FOR AN UMBRELLA CAPABLE OF OPERATION BY ONE HAND

Applicant:
Yung, Kwong Yuen

Headword:

Relevant legal provisions:
EPC Art. 52(1), 54

Keyword:
Novelty - (no)

Decisions cited:

Catchword:



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Case Number: T 1926/19 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 18 November 2019

Appellant: Yung, Kwong Yuen
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 2 January 2019
refusing European patent application No.
05783984.7 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman G. Pricolo
Members: V. Vinci
O. Loizou

Summary of Facts and Submissions

I. The appeal was filed by the appellant (applicant) against the decision of the examining division to refuse the patent application in suit.

II. In the decision under appeal the examining division concluded that the subject-matter of independent claim 1 of the sole request filed on 21 September 2018 was not novel over any of the following documents:

D1: JP 51 060 362 U

D2: JP 59 130 521 U

D3: JP 54 146 153 A

III. With the statement of grounds of appeal, the appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of claim 1 on which the decision for refusal was based, and with dependent claims 2 to 4 as filed on 21 September 2018.

IV. Independent claim 1 reads as follows:

A one-handed operating mechanism for opening and closing an umbrella, said one handed operating mechanism comprising a handle (1) adapted to be connected to a bottom end of a stem of the umbrella, an elbow member (2) having a curve, said elbow member(2) being pivotally connected to the handle (1) at said curve, a connecting member (3) having an upper end adapted to be connected, pivotally connected or attached to a slide of the umbrella sliding along the stem of the umbrella for opening and closing the umbrella, wherein said handle (1) has a channel (4), said channel (4) extending from an upper end to a lower end of the handle, whereby said elbow member (2) and

said connecting member (3) are moved therein, said channel (4) has a bottom side (13), said elbow member (2) having a handgrip section (5) exposed outside the channel (4) for palm squeezing, and an actuating section (6) located inside the channel (4) for mutual driving with a lower end of said connecting member (3); characterized in that said one-handed operating mechanism is selectively adapted to be connected to an umbrella in open position when said lower end of said connecting member (3) is positioned close to said upper end of said handle (1), said actuating section (6) is positioned close to said upper end of said handle (1), and said handgrip section (5) is positioned close to said bottom side (13) of said channel (4) and close to said lower end of said handle (1), and adapted to be connected to an umbrella in a closed position when said lower end of said connecting member (3) is positioned close to said lower end of said handle (1), and said handgrip section (5) is positioned away from said bottom side (13) of said channel (4) and away from said lower end of said handle (1), said connecting member (3) being driven upward by said actuating section (6) for the opening operation.

- V. The appellant's arguments presented with the statement of the grounds of appeal can be summarized as follows:

The mechanism according to D1 does not show the distinguishing features that the mechanism is

"adapted to be connected to an umbrella in a closed position when said lower end of said connecting member is positioned close to said lower end of said handle, and said handgrip section is positioned away from said bottom side of said channel and away from said lower end of said handle, said connecting member being driven

upward by said actuating section for the opening operation."

Operation of the mechanism according to claim 1 thus results in a closing and opening operation of the umbrella which is the opposite of the closing and opening operation performed by the mechanism of D1, whereby the subject-matter of claim 1 is novel.

The appellant further argued that these distinguishing features achieve the technical effect that the umbrella can be operated by only one hand and that it can be closed by gravity because no spring mechanism is provided for opening the umbrella.

VI. With a Communication pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal (RPBA) the appellant was informed that the Board preliminary agreed with the conclusion of the examining division in the decision under appeal that the mechanism according to claim 1 was not distinguishable from the one of D1 and this for the same reasons presented by the examining division in the decision under appeal.

In this Communication the Board drew the attention of the appellant in particular to the following points:

the independent claim is directed to a "one-handed operating mechanism for opening and closing an umbrella" and recites that the handle is "adapted to be" connected to a bottom end of a stem of the umbrella. Thus, it is clear that claim 1 seeks protection for the mechanism as such and not for an umbrella comprising the mechanism. Accordingly, the examining division's remark on page 4 of the contested decision is correct, according to which "the reference

to the open/closed position of the umbrella cannot be taken into consideration when the novelty of claim 1 is assessed because the umbrella and implicitly its features are not part of the mechanism of the claim". In fact, the structural elements of the mechanism of D1 are identical to the mechanism defined in claim 1. The alleged difference resides in the construction of the umbrella: according to the present application, an umbrella is used which, when connected to the handle, will open when squeezing the handgrip, i.e. when the connecting member moves upwards, and will close when the handgrip is released and the connecting member moves downwards. In other words, the alleged difference resides in the mechanism of the umbrella for its opening and closing. However, since the claim is not directed to an umbrella but to an operating mechanism adapted to be connected to an umbrella [*as explained above*], the mechanism of the umbrella cannot be regarded as a feature of the claimed subject-matter. It is moreover noted that the mechanism of D1, when connected to an umbrella of the kind used in the present application, will provide an umbrella which is closed when the handgrip is away from the handle (as in Fig. 2 of D1 and Fig. 1 of the present application) and open when the handgrip is close to the handle (as in Fig. 1 of D1 and Fig. 2 of the present application).

VII. Oral proceedings took place before the Board on 18 November 2019. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of claims 1 to 4 as filed on 21 September 2018. The appellant thus reiterated the request made with the statement of grounds of appeal (claim 1 as filed on 21 September 2018 being the claim underlying the decision under appeal).

VIII. At the oral proceedings the appellant replied to the Communication of the Board by repeating the same arguments presented with the statement of the grounds of appeal. He only additionally argued that claim 1 should be read and interpreted as a claim directed to the use of the claimed mechanism for opening and closing an umbrella rather than to the mechanism "per se", thereby being clearly distinguished from the mechanism of D1 which is used to operate the umbrella in the opposite way with respect to the way defined in claim 1.

Reasons for the Decision

1. The Board confirms the conclusion of the examining division that the subject-matter of claim 1 is not novel over D1 (Article 52(1) and 54 EPC).
- 1.1 The arguments presented with the statement of the grounds of appeal have been repeated by the appellant at the oral proceedings. However the Board, in the Communication issued in preparation of the oral proceedings, already concluded that these arguments are not convincing for the reasons given under point VI above to which reference is made. This reasoning thus still fully applies and is maintained.
- 1.2 The additional argument submitted by the appellant at the oral proceedings, namely that claim 1 should be regarded as a claim directed to the use of a mechanism for opening and closing an umbrella cannot be followed because claim 1 is clearly formulated as an apparatus claim directed to a mechanism and not as a claim directed to the use of this mechanism. The subject-matter of claim 1 in the present formulation thus

concerns the mechanism "per se", whereby the scope of the protection afforded is defined only by the combination of structural features of the mechanism stated in the claim and not by features relating to the use of this mechanism with an umbrella.

- 1.3 Under these circumstances the Board sees no reason for reviewing the preliminary conclusions presented in its Communication according to Article 15(1) RPBA and thus for deviating from the contested decision of the examining division which has rejected claim 1 for lack of novelty over D1.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



A. Vottner

G. Pricolo

Decision electronically authenticated