

Featherweight vs. **Heavyweight**

A patent fight between the mighty Sheaffer and a frail competitor at last reveals details of the early history of the revolutionary Balance pen

By Daniel Kirchheimer

On the afternoon of May 19, 1931, in a New York courtroom, J. Bernard Thiess, an attorney for the Sheaffer Pen Company, was questioning his client Walter A. Sheaffer, the company's president and founder, in a lawsuit brought by Sheaffer that delved into the birth and early history of Sheaffer's groundbreaking tapered Balance design. Mr. Sheaffer was the last witness of the proceedings, and Thiess was wrapping up his examination when this fascinating exchange took place:

Thiess asks,

"Do you remember, Mr. Sheaffer, a time that this tapered pen was first thought of and you came into my office, that is, I believe you put out some of these pens and you came into my office to have a patent application for it?"

Sheaffer replies,

"Yes."

Thiess:

"Do you remember what you told me about the pen at the time?"

Sheaffer:

"Yes."

Thiess then prompts,

"Will you kindly tell the Court?"

Before revealing what was to follow, I'd like to supply a little background into how I came to uncover this bit of Sheaffer history, and what the documents I discovered tell us about this iconic streamlined pen.

There are a number of important questions surrounding the early history of the Sheaffer Balance. It is commonly believed that the Balance made its first appearance in February of 1929, but that's based solely on the earliest known advertisements, and the filing date of November 1, 1928 on the Balance patent at least admits of the possibility of an earlier release. It is often held that the Balance replaced the flat top styles as soon as the new design came to market, with a corresponding cessation of production of the older models, but more sophisticated collectors have known for some time that flat top pens are found with features that date them to over a decade after that supposed changeover. Did Sheaffer underestimate the shift in demand to the Balance, leaving them and their dealers saddled with thousands of flat tops lying, unsellable, in cases and on shelves, leading Sheaffer to try to make lemonade from these lemons by

cobbling together the so-called Half Balance models that mated an old-style barrel with a Balance cap? Or did Sheaffer plan the transition carefully, with the Half Balance being a purpose-built design intended to meet the need of the more conservative consumer? And what about the supposed legal action threatened by Sheaffer when Wahl issued its pointed-end Equi-Poised model that was so similar to Sheaffer's design – did that threat by Sheaffer really happen, or is it just one of the legends that circulate in our hobby, never to be proven or disproven?

My discovery of a lawsuit filed by Sheaffer to protect its Balance patent led me to a number of important findings regarding the previously unknown early history of that iconic model, and it gives us some fascinating revelations that help straighten out some of these longstanding questions about the Balance.

I had long suspected that there might be clues to Sheaffer's activities buried in lawsuits. We already knew that the testimony of Walter A. Sheaffer and others in the Sheaffer v. Barrett case, which centered around a patent dispute with former Sheaffer salesman George Kraker, had yielded much important information about the early days of the Sheaffer company's operations and products, and as I am focused on the Balance series, I was hopeful that there might be something similar that would fill in some of the blanks and overturn a few of the myths surrounding that line. I finally discovered a promising case involving patent infringement – W. A. Sheaffer Pen Co. v. Worth Featherweight Pen Co., 41 F.2d 820 (S.D.N.Y., 1930) – but the case information available online was limited to the judge's opinion, which contained tantalizing clues that there was treasure in the case files, but nothing specific in the way of new revelations. For example, the opinion states,

“Four companies are named in the plaintiff's affidavit as having desisted, on notice, from manufacturing pens infringing the plaintiff's design.”

However, maddeningly, the four companies were not enumerated! Was one of them Wahl, long rumored to have been the target of Sheaffer's legal eagles?

[As an aside, I later discovered that Sheaffer also tangled with Eagle's legal eagles – the Eagle Pencil Company, that is. That later case, W. A. Sheaffer Pen Co. v. Eagle Pencil Co., 55 F.2d 420 (S.D.N.Y., 1931), has little in the way of important information not contained within the Sheaffer v. Worth battle that is the topic of this article.]

I set about the task of tracking down and obtaining the original case file. I determined that due to the age of the case, the government's original file was no longer stored in the New York court system, but it was now located at the National Archives' offsite storage facility in Missouri, and I arranged to have it transferred temporarily to the New York office, where I made an appointment to examine it. I enlisted the assistance of my father, who lives in New York City, to go as my proxy to the National Archives office there and to make a set of copies of whatever material seemed most promising. Though he did not have time to copy the entire contents of the case folder, I knew I had struck gold when he called me that night and his first words were, “I found the smoking gun!”

I later traveled to the Archives office myself to complete the examination and copying of the case documents. There was an undeniable thrill in holding papers prepared eighty years ago and signed by the likes of Walter A. Sheaffer himself. I have long had an affinity for Sheaffer pens – my dad always carried one, and still does – and that connection strengthened as I handled the same materials the creators of the Balance had drafted in its defense.



Figure 1: Sheaffer v. Worth Case Materials at the National Archives

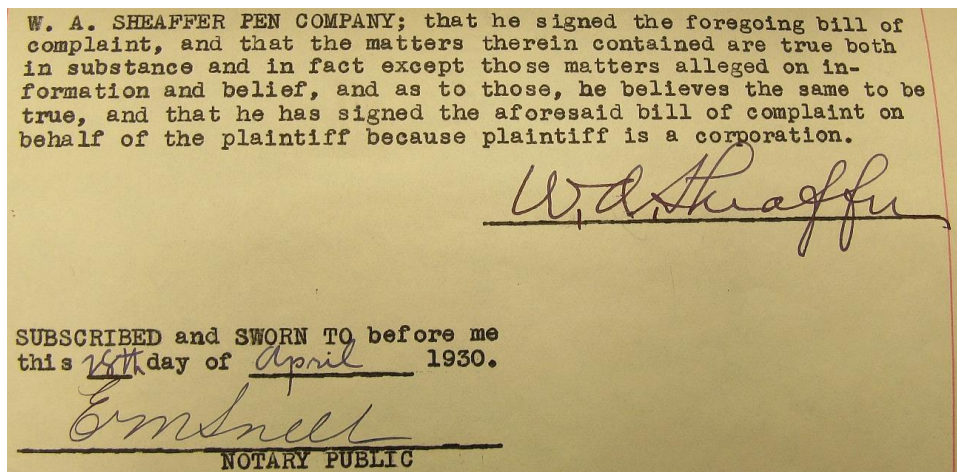


Figure 2: Walter A. Sheaffer's Signature on the Complaint

The Lawsuit

Penmakers had a long history of copying one another when a potentially successful innovation hit the market, and Sheaffer's Balance was not immune to this flattering treatment. Manufacturers large and small reacted by streamlining their pens to some degree, though some were more blatant than others. Here's an example of a couple of such copies:



Figure 3: Two Sheaffer Balance Knock-Offs with the Genuine Article

The leftmost item is perhaps the most flagrant Balance copy I have ever come across. Aside from the fact that Sheaffer never produced a model with these proportions (oversize girth but short length), the other details are clearly stolen from the genuine Sheaffer to its right, right down to the peaked round-ball clip, which dates this imposter to the early 1930s. The brand name on the clip is “Warranted” – finally, I’ve found a pen to hold all those nibs...

The black and pearl item second from right represents what is almost certainly the first version of Wahl-Eversharp’s Equi-Poised pen, which dates to 1929, according to catalogs. More on Wahl’s Balance copying to follow.

By the spring of 1930, Sheaffer had become aware that a tiny New York company was also hawking pens that copied the patented Balance design. The patent had been granted on June 18, 1929, as design patent D78,795 – a number familiar to many who have handled a Balance pen, as it is stamped on the barrel of models produced during some of the earlier years of production. The competing firm was the Worth Featherweight Pen Co., and in addition to their appropriation of the Balance design for their pens, they marketed them as being produced by the “Safer Service Pen Co.”, and they employed the graphic device of a large letter “S” – both apparent attempts to deceive buyers into believing the pens were Sheaffer products. Here’s Sheaffer’s submission of the packaging of the Safer Service pen; this is an actual cardboard pen box that has been flattened and attached to the case as an exhibit:



Figure 4: Box for "Safer" Fountain Pen

To complete the deception, the pens were packaged with a Certificate of Guarantee not dissimilar from Sheaffer’s Lifetime guarantee paperwork. I will note, however, that the use of “Featherweight” in the company name was not an attempt to imitate Sheaffer’s Feathertouch mark, as that term was not used by Sheaffer until a year later (indeed, one wonders if Sheaffer might have been inspired by Worth’s term). Sheaffer submitted a copy of Safer’s guarantee along with one of its own for comparison:

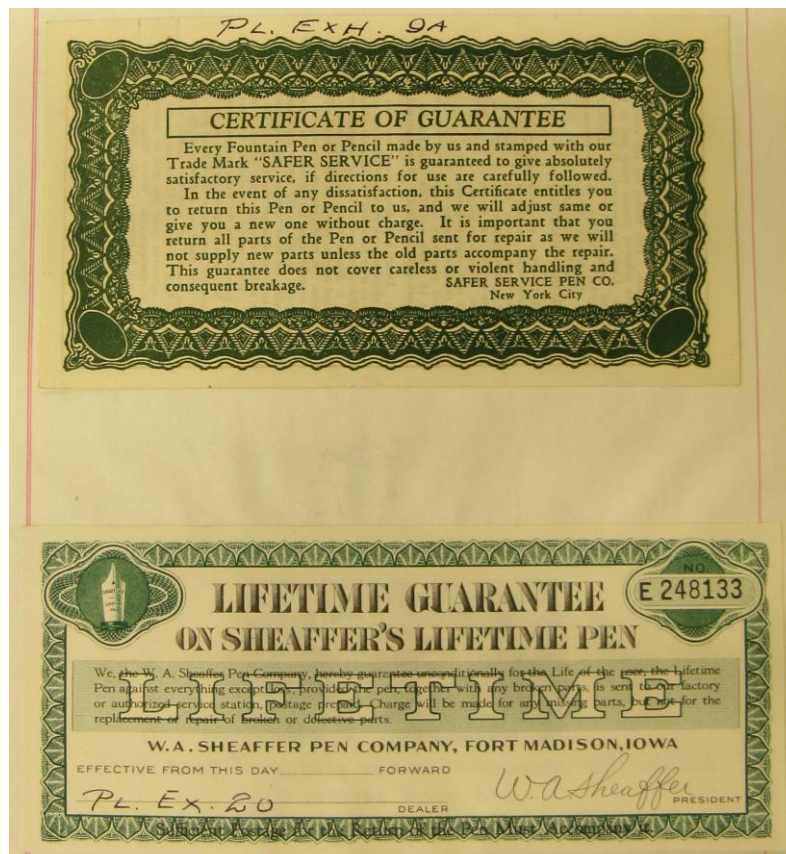


Figure 5: Safer and Sheaffer Guarantees

Sheaffer had previously demonstrated their willingness to engage in a bit of cloak-and-dagger work when tangling with a competitor, and they did so again in this situation, retaining the services of various third parties, including the H. M. Diamond Detective Agency, and sending in an undercover operative from an advertising firm on April 3, 1930 to arrange for the purchase of samples from Worth, which turned out to be a tiny operation with a single-room office in New York City. The ad man, H. O. Morris of the McJunkin Advertising Company of Chicago (though representing himself as being from “School Thrift Inc.”) engaged the president of Worth, Walter E. Bauer. According to Morris’s retelling, Bauer made several incriminating statements regarding the similarity of his pens to Sheaffers’, including the happy likelihood of confusion between their names. The conversation, as reported by Morris, includes this exchange, which will resonate with collectors today:

Morris: “...There probably isn’t one person in a dozen that can spell the name Sheaffer correctly.”

Bauer: “You’d naturally spell it ‘Scheafer’, or some such way.”

Morris placed his order, and he and another operative who had also made contact with Worth picked up their sample pens in the following days. The offending evidence now in hand, Sheaffer initiated legal action, resulting in the filing of W. A. Sheaffer Pen Company vs. Worth Featherweight Pen Co. on April 28, 1930. The complaint alleged infringement of the Balance design patent, as well as multiple trademark violations and deceptions with regards to the product naming and packaging. Sheaffer’s case was overwhelming, and Bauer mounted a frantic, but completely ineffective, defense, with claims that Sheaffer’s patent was invalid because tapered pens had been on the market for decades, and that the Safer name, logo, and guarantee papers could not be confused with Sheaffer’s. Though Worth filed affidavits and exhibits, they did not submit an actual legal brief to the Court, in contrast to Sheaffer’s extensive and well-written papers, and the judge in the case, John M. Woolsey, felt compelled to perform some of the defendant’s legal research in an effort to at least tilt back, if not actually level, the playing field.

To support Worth’s central defense that the Balance design should not enjoy the protection of a design patent, they submitted numerous exhibits consisting of pages from other penmakers’ catalogs purporting to show a long history of tapered pens being offered. Unfortunately, not one of the dozens of pens depicted in these sheets has both a tapered cap and a tapered barrel – a fact that was obvious to the judge who ruled on the matter. Sheaffer, to counter, filed affidavits from various parties in the pen-selling trade and associated fields, which (in almost suspiciously similar language) stated how completely innovative the Balance design was and what a success it had been.

It is interesting to note some of the physical pen samples submitted by Worth in support of their claim that the Balance design was not original. Though none is clearly entirely the same design as the Balance, there is one design (“D”), said to be produced by George W. Heath in around 1923, that at first glance we might now, in retrospect, mistake for a post-Balance imitation formed with truncated ends so as to escape the very sort of action Sheaffer was prosecuting in this case.

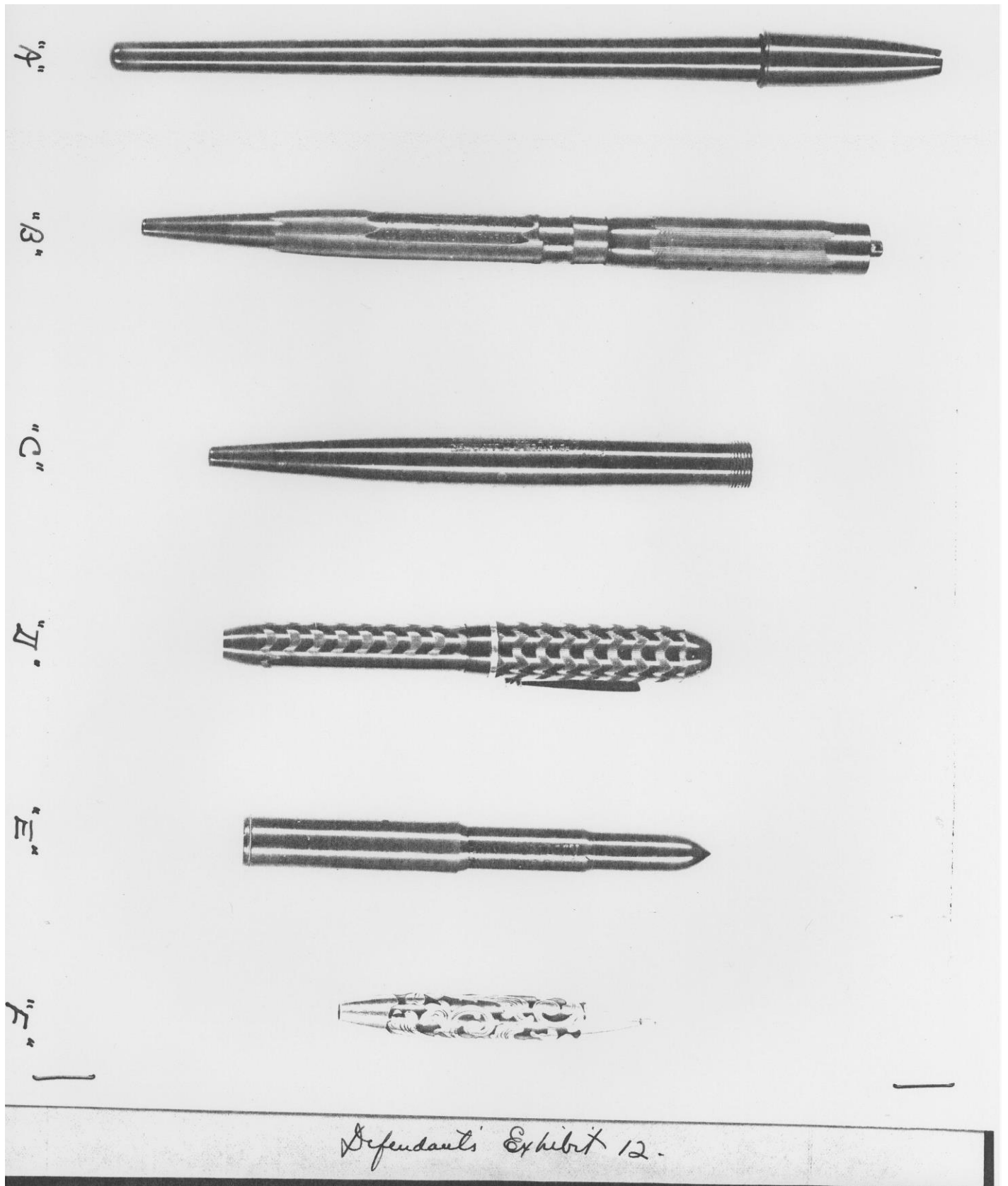


Figure 6: Worth's Exhibit 12, Showing Supposed Prior Art

Interestingly, there is also a depiction of a small cutwork overlay pencil from 1913 (item “F”) attributed to “Hutchins” – certainly a misspelling of Hutcheon -- that might have served as a reasonable prior-art challenge to Sheaffer’s patent D80,362, filed August 30, 1929, for its utility/golf & handbag pencil design, had anyone taken notice of it; here’s Sheaffer’s patent drawing for their pencil:

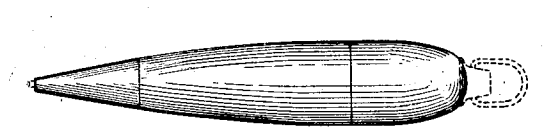


Figure 7: Sheaffer Utility/Golf & Handbag Pencil patent Drawing

The fact that this small item alone seemed to have some resemblance in line to the symmetrically-tapered Balance did catch the attention of the judge, but when Worth’s attorney was asked about it, he wandered off on a digression about his difficulty in submitting his own affidavits, and the inquiry petered out.

Worth even offered one of the first fountain pens as an example of prior art. The top item in the exhibit is a Prince Protean, dating to as early as the 1850s.

Worth employed some legal stalling tactics during May of 1930, requesting multiple adjournments which Sheaffer agreed to, no doubt as standard legal courtesy. Sheaffer ultimately discovered that this time had apparently been used by Worth to draft and circulate a letter, dated May 15, 1930, among other pen manufacturers asking – begging, really – that they band together to fight Sheaffer’s Balance patent, lest none of them be able to produce a tapered pen. Sheaffer ultimately got their hands on a copy of this letter, and they filed it with the judge in the case with an accusation that Worth had requested adjournments with impure motives. There is no evidence that any top-rank penmaker responded favorably – or at all – to Worth’s entreaties, which make for fascinating reading; the letter, complete with the baldly imitative slogan “Balanced to the Hand” in the letterhead, appears below:



WORTH Featherweight PEN CO.

BALANCED TO THE HAND

1209 BROADWAY - NEW YORK

May

15

1930

PLAINTIFF'S EXHIBIT 24

Gentlemen:

You have undoubtedly heard from Mr. Charles Greenwald, our attorney, about the injunction action brought against us by the W. A. Sheaffer Pen Company in which they are trying to establish the exclusive right to manufacture and sell the tapered style pens.

In the affidavits served on us by the Sheaffer Company is a schedule showing the sale of tapered and square end pens by that company for a period of 14 months. Since we thought that the sale figures presented by them under oath might be of interest to you, we are sending you, enclosed herewith, a copy thereof. You will note that the sale of the tapered pen by Sheaffer Company increased in 14 months from approximately 25% to 80% of the entire total output by that Company, in spite of the fact that the tapered pen was sold at a higher price than their old style pen. Furthermore, in his affidavit, Sheaffer states that they found it necessary to decrease the advertising of their tapered pen in order to dispose of their existing stocks of the old design, square-end pens. Accordingly in March, 1929, the tapered pen was not shown in their advertisements; nevertheless this decrease in advertising for the month of March, 1929, did not affect the sales of the tapered pen - for you will notice that the figures show the sales of the tapered pen practically doubled the sales of the square-end pens for that month - and thereafter sales of the tapered pen increased enormously from month to month, so much so that Mr. Sheaffer states in his affidavit that "the tapered pen has practically superseded the old square-end pen". The figures showing the volume of business by the Sheaffer Company are very significant in that the public seems to prefer the tapered pen to that of the square-end pen.

You may say "I don't see how this is going to affect me" but if you are far-sighted in your business methods, you cannot help but understand just how much you may be hurt in the next few years. We are led to believe that, if Sheaffer should win this case and establish for itself the exclusive right to manufacture and sell the tapered style pen, they will eventually bring out on the market a tapered pen under the trade name of "Craig" or some other name to retail at \$1.50 to \$4.00. The figures submitted by Sheaffer, as set forth in the schedule enclosed herewith, show that the public prefers the tapered shape, and should Sheaffer bring out a medium priced tapered pen, it would be impossible for us to conjecture what enormous amount of business it would take away from concerns who are manufacturing a straight top pen, which

WORTH *Featherweight* PEN CO.

BALANCED TO THE HAND

1209 BROADWAY - NEW YORK

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retails from \$1.00 to \$3.50. If you will carefully examine and analyze the schedule showing the increase of sales by Sheaffer over the straight end pens for each successive month, you cannot fail to appreciate what a what a menace it would be to the trade as a whole, were Sheaffer granted by the Court the exclusive right to manufacture and sell the tapered pen.

We could adopt, of course, if we wished, the "I don't care attitude" and discontinue the tapered style pen, which would leave us in the same position that you are in to-day. The suit would be discontinued and we would forget such a thing as a tapered pen was existing;-but for how long? We would only be kidding ourselves until the final blow would strike.

We can see, however, just what is ahead of the trade and we are willing to stake our all and fight to the limit to preserve those rights, which we believe all of us are entitled to by law;- but even though we are right, it takes real money to fight a big concern like Sheaffer's.

We have been assured by an eminent patent attorney that we should beat Sheaffer in this matter, if the case is properly prepared and presented. The services of eminent patent attorneys who know every inch of the ropes, must be engaged. Our financial reserves will not permit us to do this, and we are asking every manufacturer to do his bit. Only concerted action on the part of you and the other manufacturers in the field will make it possible for us to defeat Sheaffer's efforts. We are raising a defense fund so that we may successfully meet the issues, and it is our sincere hope that every dealer and manufacturer will aid us by financially contributing to the fund to the best of his ability. Contribute what you will, but keep in mind the situation which we are confronting, for our defense to this suit will require every possible dollar we can get. The fund will be applied strictly to the defense of this action, and all contributors will be furnished with a report from time to time showing exactly the disposition of the funds.

It should be remembered that every manufacturer is needed to cope with the situation; not one in every five. Reluctance on the part of any manufacturer to aid us in this cause would not only evidence unfairness to those who willingly contribute, but, to our way of thinking, would indicate poor sportsmanship. We are sure that you understand that if Sheaffer is successful in this suit, other suits will follow, with less difficulty to them to achieve success, and your contribution to this fund will be comparatively small with what you and other manufacturers will be required to expend in defending any subsequent independent action brought against you. We know that you cannot help but agree with us that a contribution to this fund will be much cheaper to you in the end and more effective than to later stand alone against the powerful Sheaffer Company.

WORTH *Featherweight* PEN CO.

BALANCED TO THE HAND

1209 BROADWAY - NEW YORK

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If you have never made a tapered pen, it appears to us that your aid and assistance should not be lessened in the slightest, for we should feel it our duty to now protect our business against the inroads that will surely follow in the fountain pen industry, should Sheaffer win this suit for the exclusive right to manufacture and sell tapered pens. Should we lose this suit because of lack of sufficient financial support, we feel certain that you will later regret your action, for you will then necessarily come to realize that you failed to take advantage of an opportunity which did not require you to make every sacrifice. For once let the fountain pen industry forget its trivial differences and stand united against this powerful organization.

Our time to submit answering affidavits to the injunction order has been extended by the court to May 27th next, and it is, therefore, urgently requested that all contributions be sent immediately to the writer. If there is any further information you desire, we will gladly furnish same to you upon request. In order for us to make proper arrangements for the defense of this action, it is extremely necessary that you favor us with the courtesy of a reply to this communication, regardless of whether you contribute or not.

Please give this matter your immediate attention, and oblige,

Very truly yours,

WORTH FEATHERWEIGHT PEN CO. INC.

By 

Enc.

P.S. We have procured some very interesting samples of tapered pens as far back as the year 1855, and with all the data and information which we have been able and still hope to accumulate, we are convinced that we should be able to come out of this battle with flying colors.

As noted, Bauer's pleas fell on deaf ears, and he was overwhelmingly outgunned from every standpoint. Predictably, the case was decided in Sheaffer's favor. Following a May 3, 1930 temporary restraining order and a series of extensions thereto, on July 1, 1930, Judge Woolsey granted in full Sheaffer's motion for a preliminary injunction against Worth; this was the beginning of the end for Bauer's enterprise. Following a brief trial in May of the following year, the court found wholly in Sheaffer's favor, and Sheaffer and Worth then engaged in settlement activities, though Worth did not make it easy -- in June of 1931, U. S. Marshal R. J. Mulligan was unable find Worth Featherweight "after due and diligent search" to serve the company with settlement papers. Though it was initially agreed that an accounting of Worth's gains from their infringing activities be prepared, with all such profits being transferred to Sheaffer, the heavyweight of Fort Madison ultimately agreed to waive their claim to those monies, and the case was finally settled on June 30, 1931 for the grand sum of \$250.

There are many affidavits in the case files, but perhaps the most revealing one for present-day pen collectors is that of Craig Royer Sheaffer, son of company founder Walter A. Sheaffer and treasurer of the pen company. Here are some of the more interesting points brought out in Craig Sheaffer's testimony:

- The Sheaffer Balance was first sold in late 1928, not in early 1929 as is generally believed. Here is how Craig puts it:

"The first pens with tapered ends were actually sold by plaintiff during the latter part of the year 1928."

This fact is narrowed by other documents in the case, such as Sheaffer's attorney's statement during arguments that "the pen first came out in December of 1928" and the declaration in the complaint that "in December, 1928, plaintiff began the manufacture and sale of fountain pens...embodying the invention of said Design Letters Patent."

- As mentioned, it has long been surmised that Sheaffer threatened Wahl over a version of that company's Equi-Poised pen. At last, I have found proof:

"After the issuance of said Design Letters Patent No. 78,795, plaintiff sent notice of infringement thereof to certain manufacturers of pens throughout the United States, and many of these, upon receipt of said notice, desisted from the further manufacture of pens in infringement of said letters patent and changed the design of their pens. Among such companies are the following:

The Wahl Company, Chicago, Illinois,
D. W. Beaumel & Co., Inc., New York, NY
C. E. Barrett & Co., Chicago, Illinois,
Townsend Pen Company, New York, N. Y."

(I note, however, that in court testimony Worth's president, Bauer, contests the claim that Townsend acceded to Sheaffer's demands at the time.)

The case of Wahl is mentioned again during the trial, when W. A. Sheaffer is asked,

Q: "Now, Mr. Sheaffer, have any concerns in the fountain pen business, that is the manufacture, made a tapered pen to whom you have called attention to your patent and if so, have they discontinued the manufacture of such a tapered pen?"

A: "Yes."

...

Q: "Neither Parker, Wahl nor Waterman manufacture these balanced or tapered pens, do they?"

A: "Not now. Wahl started, but stopped."

- The immediate success of the Balance stunned Sheaffer, and the sales of the new design dramatically exceeded Sheaffers planning. Note that according to the earliest ads (first appearing in February, according to exhibits in the case) and supported by the known 1929-dated pages supplementing the 1928 catalog showing the Balance, the initial model offerings were very limited – just two sizes of pen, oversize and standard, exclusively in the Lifetime tier, both available with clip or ring, plus matching pencils. Despite this very small selection, by February of 1929 when those first print ads appeared, *the Balance was already outselling square-end pens by almost two to one!*

In fact, the success was so overwhelming that there was concern that dealers would be left holding stocks of flat tops, so Sheaffer took the extraordinary step of ceasing Balance advertising in March, instead running ads for the square-end pens in hopes of drumming up consumer interest in that style while not adding further momentum to the Balance's sales locomotive. Judging by the sales figures Craig supplies, that effort was wholly unsuccessful; here are the numbers from the start of 1929 through February of 1930, as offered by C. R. Sheaffer's affidavit:

Year	Month	Square-End Pens	Balance Pens
1929	January	15,981	5,256
	February	20,574	37,038
	March	16,619	31,008
	April	15,198	27,093
	May	14,645	27,502
	June	17,142	29,346
	July	13,387	30,489
	August	15,023	36,569
	September	20,647	43,580
	October	21,904	48,929
	November	14,558	40,034
	December	14,805	40,900
1930	January	5,046	17,707
	February	6,072	22,217

Figure 8: Sales Figures for Styles of Sheaffer Pens

Here are the relative sales in chart form:

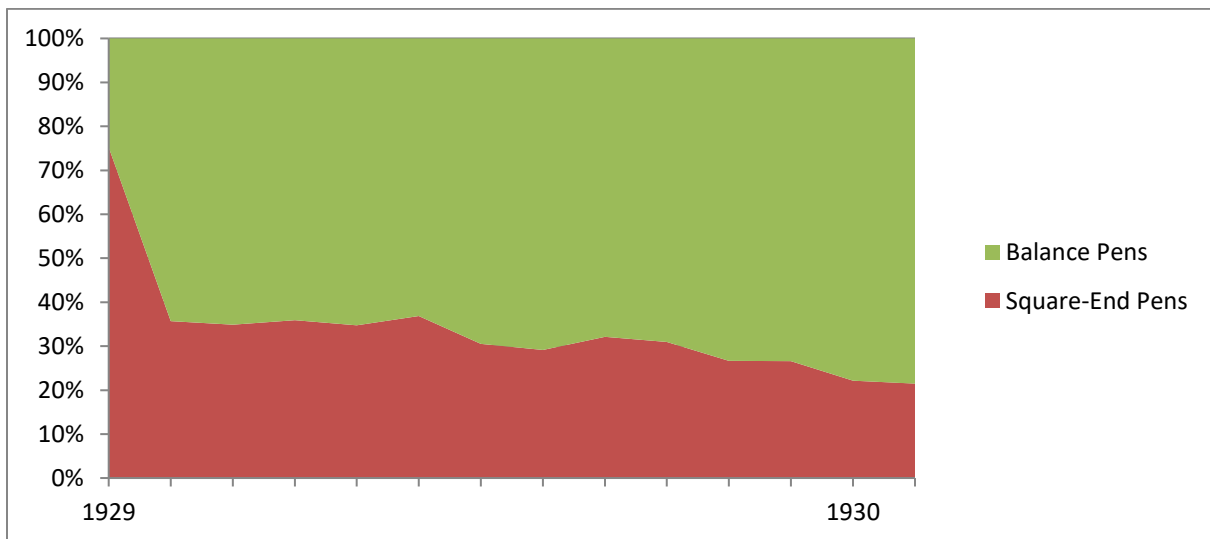


Figure 9: Relative Sales of Square-End and Balance Pens

It is now clear that contrary to widely-held belief, Sheaffer did not expect, nor even intend, the Balance to be a total replacement for its existing line of pens, but rather it was added as an additional style in a very modest selection of models. In a way, this makes perfect sense – why would a manufacturer cast aside a tried-and-true design upon which its business was built in favor of a radical new design unproven in the market? It is equally clear that the rapidity and scale of the success of the new design was staggering, and it had the effect of a complete overtaking of the flat top in the short term, as Sheaffer fretted about disposing of dealers’ inventories within mere months of the Balance’s first appearance (and this, when ads had not even appeared until February 1929!). To round out the numbers, Craig Sheaffer cites revenue figures of \$2,182,254.48 for Balance pens over the time period discussed above (an average take of \$4.97 per item), and he also mentions that unit sales of square-end pens dropped from 545,014 in 1928 to 211,601 in the 14-month period following.

There are other revelations scattered throughout the case affidavits and the complaint itself; here are a few of the highlights:

- The Sheaffer Balance patent application was initially rejected on the basis of prior art, according to Judge Woolsey’s opinion on Sheaffer’s motion for a preliminary injunction and also confirmed by affidavits in the case. Specifically, on January 3, 1929, the patent office ruled that a previous patent undermined Sheaffer’s claim to a novel design, and also that some actual pens of a similar shape, manufactured by the Eagle Pencil Company, significantly pre-dated Sheaffer’s filing. However, Sheaffer responded to the patent office that the pen in the previous patent, number 1,550,599, filed by Samuel Walker on August 13, 1923, “did not in any way resemble the design for which Sheaffer was seeking a patent,” in the words of the judge, and that the Eagle pens (which were similar to the well-known Waterman taper cap items) were also dissimilar from the Balance shape. Upon evaluating Sheaffer’s response, the patent office reversed itself and the patent was granted.

Indeed, the Walker patent was only for pen cap, and it is depicted on the body of a pen that most closely resembles a flat-top button-filling Parker of the day:

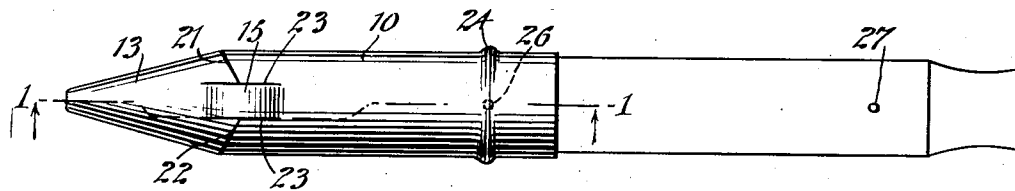


Figure 10: Walker Pen Patent Drawing

The Eagle items the patent office considered also show only a tapered cap, but tantalizingly, they are only shown posted, so the barrel shape is obscured, and the sections are smoothly tapered rather than cylindrical, so they differ in shape from the generally similar Waterman taper-cap pens, which had a cylindrical section, barrel butt (for posting), and cap interior:

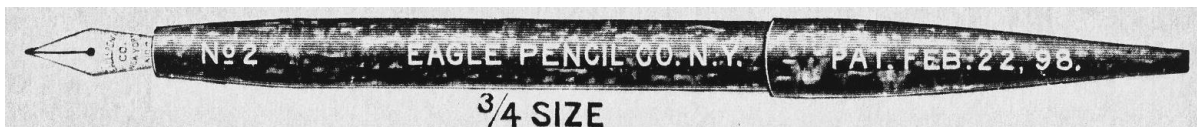


Figure 11: Eagle Taper-Cap Pen Exhibit Detail

Note that the cap overlaps the barrel when posted, rather than being flush with it as it would be with a Waterman-style taper-cap pen. It is interesting to note that Walter A. Sheaffer himself submitted an affidavit in the Worth case addressing Eagle pens of this general design (though referring specifically to a different set of catalog images that do not contain the picture above, which is from the affidavit of Sheaffer's patent attorney), and making an engineering case that the end of the Eagle pen's barrel could not have been tapered like the Balances. Sheaffer says,

"...because there is practically no difference in diameter between the cap and the holder and because there is no reinforcing band on the cap, there must have been a reduced portion on the end of the barrel..."

However, given the significant step between the cap mouth and the barrel in the catalog picture above, I'm not convinced that W. A.'s premise is correct – though his conclusion may well be.

- As noted earlier, manufacture and sales of the Balance started in December of 1928 (the patent application was filed on November 21 of that year), according to Sheaffer's complaint. And, as Sheaffer's ad man at the McJunkin Advertising Company, Harold Peter Falvey, put it,

"In the case of Sheaffer, their 'Balance' pen was a demonstrated commercial success before it was advertised."

- Craig Sheaffer's second affidavit contains this interesting piece of information about the composition of Sheaffer pens' metal trim:

"The clips and levers of the pen of the Plaintiff Corporation are 10K 1/30 th gold plate..."

- Most of the affidavits in support of Sheaffer are from shopkeepers who tout the innovation and success of the Balance line, but there is one submission from a commercial artist and designer named Robert Jacobson that waxes rhapsodic about the beauty of the design. Indeed one wonders if Wahl might have perused Jacobson's words and been struck by inspiration when naming its faceted pen:

"I have examined the drawing of Sheaffer Design Patent No. 78,795, and a Sheaffer pen embodying the design of this patent, and in my opinion this design displays the exercise of the creative artistic faculty in the highest degree. Beauty and symmetry are achieved entirely by the exceptional finesse with which the outline is treated. The eye is instantly struck with a balanced proportion obtained by a gracefully restrained taper at each end. A slender appearance over a short length is achieved. This results in a light, graceful streamline appearance, perfectly harmonized, and presenting a most interesting contrast to the old-style, squat, stubby, club-shaped appearance where the ends of the pen were cut off substantially at right angles to the barrel. The Sheaffer design achieves a distinctive and attractive shape which produces a pleasing impression upon the human eye."

"The importance of line in creative art may be illustrated by referring to certain fundamental principles in architecture. The Parthenon, erected during the Periclean age in Athens, is generally accepted as perhaps the highest embodiment of classic beauty. And it is common knowledge that perhaps the outstanding feature of this structure is the colonnades of Doric columns. It is in the configuration of these columns that we may find an example of the same subtle treatment of beauty. The outline of these Doric columns gives an appearance of strength combined with slenderness."

There remains one other group of papers that holds delights for the Sheaffer researcher: the testimony of the parties before the court. For example, there is this intriguing reference to other Sheaffer lawsuits, made by Charles Greenwald, the attorney for the defendant:

"MR. GREENWALD: [Sheaffer] had a similar situation with the Eclipse fountain Pen and Pencil Company with respect to certain colors and they had litigation there, and I think that was the Parker concern, and they defeated them."

...

"How did Mr. Sheaffer start off? In the same manner, on the square end pen. What did he do? He made a steal from this man and the next man. Sure he had his litigation from the Parker suit. He wanted to take black and red."

"MR. THIESS [Sheaffer attorney]: That is all off the record."

It's not clear exactly what Greenwald is referring to, and the wording leaves it unclear which party prevailed in the Parker action. Perhaps more digging will turn up these cases, if they indeed reached the courts. Or might there have been an action initiated between Sheaffer and Parker which was withdrawn and an off-the-record settlement reached? We know from Sheaffer's autobiography that he had an exclusive deal with DuPont for certain colors of celluloid which they apparently breached by selling stock to Parker for their Duofold, but in that document Sheaffer implies that he decided not to pursue the matter after meeting with DuPont's attorney. Might the truth have been otherwise?

Another possibility is that Greenwald is mixing up Sheaffer and Parker, as Parker sued Eclipse's Marx Finstone (Parker Pen Co. v. Finstone 7 F.2d 753 [S. D. N. Y., 1925]) over that company's offering of a black-tipped red pen that Parker claimed infringed on Parker's trademark for the Duofold color scheme (registration no. 163,481, filed May 23, 1922).

Parker lost that suit, with the judge in the case gutting Parker's trademark, finding that the Duofold color scheme was already "common to the trade." (That judgment might explain the large number of Duofold knock-offs that were produced despite Parker's trademark on the black-tipped red.)

Throughout the 1930 proceedings, the old style of Sheaffer pens were referred to by all parties as being "square-end" (or "square end") pens. It is interesting to note that when the actual trial took place in the spring of 1931, several witnesses for Sheaffer (including Walter A. himself) used the term "flat top". Some parties also employ "square top" – perhaps a (gaspl!) transitional term for that style of instrument?

As mentioned at the beginning of this article, the last witness to testify in the case was Walter A. Sheaffer himself. Some of the most important information he reveals pertains to the effects of the runaway success of the Balance and the resultant responses, both with respect to manufacturing and company inventory as well as the maintenance of dealers' inventories:

Q: "During [the first few months of Balance sales, before the first ad appeared in February of 1929], how did the tapered ends take with the public, how did they sell?"

A: "They received a most splendid reception."

Q: "Will you kindly tell the Court what the character of this reception was and what the Sheaffer Pen Company was compelled to do as a result of this reception in the way of their advertising?"

A: "The sale of the balanced pen, as soon as it was introduced, after the first month, if I remember, was so far in excess of what we expected, that we had to withdraw our ads for balanced pens and our next ad that we brought out was only for the flat top pen so that we were trying to counteract the demand for the balanced pen."

Q: "As I understand it, the purpose of bringing out this ad was to counteract the great demand for the tapered end pen so that you could get rid of the square end pens."

A: "That was the only reason, to get rid of the stuff that was in our dealers' hands and in stock with us."

Further on, Sheaffer details dealers' disgruntlement with being left with excess stocks of flat tops, which were no longer selling:

Q: "Down to the present time, tell us what your experience has been [with sales of flat top pens] and what the Sheaffer Pen Company has had to do?"

A: "Our experience was that the dealers began to demand a return of the square top pens."

Q: "Why was this, Mr. Sheaffer, for what reason?"

A: "They told us that they could see no reason why we put a penalty for exchanging of the square top pens for the tapered pens."

...

A: "I mean by that, if a dealer sent in a flat top pen in exchange for balanced pens, we would not take his flat tops back at full price, but we would take them in at a discount of 15 per cent below what he paid for them."

...

Q: "Mr. Sheaffer, at the present time, what is the experience of the Sheaffer Pen Company with respect to the possible sale of the square end pen compared with the tapered end pen?"

A: "The demand has been so insistent by our dealers, that we have been compelled to buy them back - buy all the flat top pens and give balanced pens in their place."

Sheaffer goes on to reveal that the company was not producing flat tops, and that production had stopped when the Balance was first released and, apparently, had never resumed, due to the near-total shift in demand (though they were advertised as late as September of 1929):

Q: "Does the Sheaffer Company make any square end pens today?"

A: "Not at all."

Q: "And the reason for that is what?"

A: "Because we have no demand for them; I do not say that we do not have a sale for one or two, but we have more coming back [from dealer stocks], so we do not have to manufacture and we will be unable to get rid of what we have."

...

Q [By Defendant Bauer himself, as he had no attorney at the trial]: "What percentage of tapered pens were you turning out prior to the time of your first advertising?"

A: "Prior to our first advertising, I could not tell you, because when we began to manufacture one thing, we stopped manufacturing what we had on hand, to see how the new thing takes....the new pen took from the time we shipped it to the dealer and we saw from the acceptance of the new thing that it would be a splendid thing from the day we started to show it."

If Sheaffer's testimony is accurate, the truth regarding Sheaffer's continued production of flat tops after the introduction of the Balance is rather more complex than has previously been believed. Sheaffer neither immediately and permanently ceased production of flat tops when the Balance was introduced, nor did they continue production of the older style pens in parallel with the new. Instead, it seems that Sheaffer did stop flat top manufacture in late 1928 or early 1929, according to testimony - but the overwhelming physical evidence is that they later re-started the production of some flat top styles, perhaps when stocks were at long last depleted, but the market demand for the old style pens never completely dried up, and Sheaffer wanted to satisfy it.

The situation has another complexity that needs to be factored in. As previously noted, when first cataloged, the Balance line only had a few models, all in the Lifetime tier. Given the obvious popularity of the design, and in light of the configuration of known examples of Balance pens with early attributes (clip design and placement, barrel imprints, gripping section design), it is clear that Sheaffer rapidly expanded the selection of models and filled in their lineup from the top down, adding Balance pens in the best non-Lifetime tier (then called the 5-30 line). However, as was a Sheaffer marketing pattern, innovations took time to work their way downwards through the tiers (likely to encourage consumers to select higher-priced models, which would sport newer details), and in some cases, they never made it below a certain stratum (witness, for example, the continued use of the flat-ball clip on Sheaffer's lower-level products, which never received the "radius" clip design at all). Thus, we see that there are low-end (\$3.00/\$3.50) flat top models in the June, 1930 Sheaffer catalog that must have been produced after the manufacturing stoppage to which W. A. Sheaffer and others refer, because they were of newer configuration than the pens in the 1928 catalog -- Sheaffer still had not migrated the Balance design all the way down to the bottom of their line yet, so these few inexpensive flat top offerings were manufactured to represent the entry-level Sheaffers.

This proposed history also provides, perhaps for the first time, an explanation for the appearance of the Half Balance styles that is consistent with our knowledge that Sheaffer was manufacturing flat tops long after the Balance was introduced: at the time these Half Balance pens were cataloged (mid-1930), Sheaffer had suspended production of flat top styles and was saddled with large stocks of returned flat tops that they had no expectation of ever selling, so the barrels were used in the hybrid design in an attempt to have half a loaf rather than none at all (being left with a stock in caps may not have been as much of a burden due to the likelihood of ongoing demand for repairs for damaged caps). Subsequently, a low level of flat top production resumed, resulting in the finding of late-manufacture flat tops today.

Oh, and what of that intriguing exchange between Sheaffer and his attorney? The reader may recall that Sheaffer's lawyer had asked Walter A.,

"Do you remember, Mr. Sheaffer, a time that this tapered pen was first thought of and you came into my office, that is, I believe you put out some of these pens and you came into my office to have a patent application for it.... Do you remember what you told me about the pen at the time?"

"Yes."

"Will you kindly tell the Court?"

Sheaffer's response?

We'll never know. According to the transcript, the judge cut him off before he could reply, snapping,

"No, I do not think so."

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