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**Datasheet for the decision
of 7 November 2007**

Case Number: T 0242/06 - 3.2.06

Application Number: 98103789.8

Publication Number: 0853997

IPC: B23B 31/12

Language of the proceedings: EN

Title of invention:
Non-impact keyless chuck

Applicant:
POWER TOOL HOLDERS, Inc.

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 76(1), 84, 123(2)
RPBA Art. 10b(1)

Keyword:
"Divisional application - extension of subject-matter (yes)"
"Late-filed auxiliary request - not clearly allowable - not admitted"

Decisions cited:
T 0397/01

Catchword:
-



Case Number: T 0242/06 - 3.2.06

D E C I S I O N
of the Technical Board of Appeal 3.2.06
of 7 November 2007

Appellant:

POWER TOOL HOLDERS, Inc.
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Christiana
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Representative:

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Decision under appeal:

Decision of the Examining Division of the
European Patent Office posted 20 October 2005
refusing European application No. 98103789.8
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: P. Alting Van Geusau
Members: M. Harrison
K. Garnett

Summary of Facts and Submissions

- I. European patent application 98103789.8 was filed as a divisional application of the European patent application 96104715.6 (in the following referred to as "parent" application) which in turn was divided out of the European patent application 90122324.8 ("grandparent").
- II. This is an appeal by the appellant (applicant) against the decision of the examining division refusing application 98103789.8 for the reason that the subject-matter of claim 1 of the main and auxiliary requests did not comply with Article 76(1) EPC.
- III. In a first communication, the Board provisionally opined that the main and auxiliary requests did not meet the requirements of Article 76(1) EPC.
- IV. With the appellant's submission of 8 October 2007 a further auxiliary request was filed.
- V. Following the appellant's statement of 2 November 2007, informing the Board that it would not attend the oral proceedings, the Board issued a second communication by facsimile on 5 November 2007, indicating deficiencies *inter alia* with respect to Article 76(1) EPC in regard to said further auxiliary request. The Board noted that these deficiencies were not necessarily exhaustive.
- VI. On 6 November 2007, the appellant submitted an additional auxiliary request to address the objections raised in the Board's second communication.

- VII. Oral proceedings were held on 7 November 2007, in the absence of the appellant.
- VIII. The appellant requested that the decision under appeal be set aside and a patent be granted on the basis of the set of claims according to the main or auxiliary requests before the Examining Division (main and first auxiliary requests respectively), alternatively on the basis of the set of claims filed on 8 October 2007 (second auxiliary request) or on the basis of the set of claims filed on 6 November 2007 (third auxiliary request).
- IX. Claim 1 of the main and three auxiliary requests reads as follows (emphasis added by the Board indicating amendments with respect to the main request):

Main request:

"A chuck for use with a manual or powered driver having a rotatable drive shaft comprising a generally cylindrical body member (16) having a nose section (20) and a tail section (22) and a first circumferential groove formed therein intermediate said nose and tail sections, said tail section (22) having an axial bore (26) formed therein to mate with said drive shaft of said driver and said nose section (20) having an axial bore (24) formed therein and a plurality of angularly disposed passageways (30) formed therethrough and intersecting said axial bore and said first circumference groove, a plurality of jaws (18) slidably positioned in each of said angularly disposed passageways, each of said jaws having a jaw face (32) formed on one side thereof and threads (34) formed on

the opposite side thereof, a split nut (38) rotatably mounted in said circumferential groove and in engagement with said threads on said jaws (18), a generally cylindrical front sleeve member (12a) on said split nut (38) and overlying the said nose section (20) on said body member, an anti-friction bearing (48) disposed between said nut and said body, characterised in that said split nut (38) has axially directed serrations (44) formed around its circumferential surface and adapted for press fitting of said front sleeve member (12a) to thereby fix together said front sleeve member (12a) and split nut (38)."

First auxiliary request:

"A chuck for use with a manual or powered driver having a rotatable drive shaft comprising a generally cylindrical body member (16) having a nose section (20) and a tail section (22) and a first circumferential groove formed therein intermediate said nose and tail sections, said tail section (22) having an axial bore (26) formed therein to mate with said drive shaft of said driver and said nose section (20) having an axial bore (24) formed therein and a plurality of angularly disposed passageways (30) formed therethrough and intersecting said axial bore and said first circumference groove, a plurality of jaws (18) slidably positioned in each of said angularly disposed passageways, each of said jaws having a jaw face (32) formed on one side thereof and threads (34) formed on the opposite side thereof, a split nut (38) rotatably mounted in said circumferential groove and in engagement with said threads on said jaws (18), **said split nut having a first bearing race formed thereon, a**

generally cylindrical front sleeve member (12a) on said split nut (38) and overlying the said nose section (20) on said body member, **a bearing thrust ring fixed on said body member and having a second bearing race formed thereon and in juxtaposition with said first bearing race**, an anti-friction bearing (48) disposed between said **first and second bearing races**, characterised in that said split nut (38) has axially directed serrations (44) formed around its circumferential surface and adapted for press fitting of said front sleeve member (12a) to thereby fix together said front sleeve member (12a) and split nut (38)."

Second auxiliary request:

"A chuck for use with a manual or powered driver having a rotatable drive shaft comprising a generally cylindrical body member (16) having a nose section (20) and a tail section (22) and a first circumferential groove formed therein intermediate said nose and tail sections, said tail section (22) having an axial bore (26) formed therein to mate with said drive shaft of said driver and said nose section (20) having an axial bore (24) formed therein and a plurality of angularly disposed passageways (30) formed therethrough and intersecting said axial bore and said first circumference groove, a plurality of jaws (18) slidably positioned in each of said angularly disposed passageways, each of said jaws having a jaw face (32) formed on one side thereof and threads (34) formed on the opposite side thereof, a split nut (38) rotatably mounted in said circumferential groove and in engagement with said threads on said jaws (18), **said**

split nut having a first bearing race formed thereon, a generally cylindrical front sleeve member (12a) on said split nut (38) and overlying the said nose section (20) on said body member, **a bearing thrust ring fixed on said body member and having a second bearing race formed thereon and in juxtaposition with said first bearing race**, said bearing thrust ring (50) having cutouts (56) formed therethrough in alignment with said jaws (18), said cutouts (56) being shaped to conform with and supportably engage the threaded surfaces of said jaws (18), an anti-friction bearing (48) disposed between said **first and second bearing races**, characterised in that said split nut (38) has axially directed serrations (44) formed around its circumferential surface and adapted for press fitting **in the bore (42)** of said front sleeve member (12a) to thereby fix together said front sleeve member (12a) and split nut (38)."

Third auxiliary request:

"A chuck for use with a manual or powered driver having a rotatable drive shaft comprising a generally cylindrical body member (16) having a nose section (20) and a tail section (22) and a first circumferential groove formed therein intermediate said nose and tail sections, said tail section (22) having an axial bore (26) formed therein to mate with said drive shaft of said driver and said nose section (20) having an axial bore (24) formed therein and a plurality of angularly disposed passageways (30) formed therethrough and intersecting said axial bore and said first circumference groove, a plurality of **identical** jaws (18) slidably positioned in each of said angularly disposed

passageways, each of said jaws having a **tool engaging** face (32) formed on one side thereof and threads (34) formed on the opposite side thereof, a split nut (38) rotatably mounted in said circumferential groove and in engagement with said threads on said jaws (18), **said split nut having a first bearing race formed thereon**, a generally cylindrical front sleeve member (12a) **fixed** on said split nut (38) and overlying the said nose section (20) on said body member, **a bearing thrust ring fixed on said body member and having a second bearing race formed thereon and in juxtaposition with said first bearing race**, said bearing thrust ring (50) having jaw guideways (56) formed around the circumference thereof in alignment with said jaws (18), said jaw guideways (56) being shaped to conform with and supportably engage the threaded surfaces of said jaws (18), an anti-friction bearing (48) disposed between said first and second bearing races, characterised in that said split nut (38) has **circumferential serrations or teeth (44) and the outer edges are provided with a small chamfer to facilitate press fitting into the bore (42)** of said front sleeve member (12a) to thereby fix together said front sleeve member (12a) and split nut (38)."

Reasons for the Decision

1. The appeal is admissible.

Main and first auxiliary requests

2. *Article 76(1) EPC*

- 2.1 The feature in claim 1 of the parent application

"said bearing thrust ring (50) has cutouts (56) formed therethrough in alignment with said jaws (18), said cutouts (56) being shaped to conform with and supportably engage the threaded surfaces of said jaws (18)"

comprised in its characterising portion has been omitted from claim 1 of the main and first auxiliary requests.

- 2.2 The examining division held that there was no direct and unambiguous disclosure supporting such a deletion.

- 2.3 The Board agrees with the position taken by the examining division. As pointed out in item 1.1.3 of the Board's first communication, the feature "cutouts" is described explicitly with respect to the embodiments depicted in Figures 2 and 3 of the parent application (see also column 4, lines 37-44, referring there to the "jaw guideways"). The "cutouts" nevertheless appear also to be essential in the other two embodiments of Figures 4 and 7, since the jaws always pass through the bearing thrust ring (50) in the same manner, without any indication in the parent application's description

that this could be different or would be merely preferable. Hence, there is no direct and unambiguous disclosure in the parent application justifying the omission of the above feature.

- 2.4 The appellant essentially argued that a basis for the omission was provided in the grandparent and that this was sufficient for compliance with Article 76(1) EPC.

However, the Enlarged Board's decisions G 1/05 and G 1/06 make it clear that a basis must be present in both the parent and grandparent applications (G 1/06, point 11.2). No such basis was indicated by the appellant with respect to the parent application and none can be found by the Board.

- 2.5 Since the resulting subject-matter of claim 1 according to the main and first auxiliary requests extends beyond the content of the parent application, the requirement of Article 76(1) EPC (second sentence) is not met.

Second auxiliary request

3. *Article 76(1) EPC*

In accordance with the Board's second communication, the feature added to claim 1 "said split nut has axially directed serrations (44) and adapted for press fitting in the bore (42) of said front sleeve member (12a) to thereby fix together said front sleeve member (12a) and split nut (38)" is an intermediate generalisation of the statement taken from column 4, lines 15-19 of the published version of the parent application. In particular, according to this passage,

press fitting is facilitated by outer edges provided with a small chamfer, which is however not defined in the claim.

The appellant made no submissions as to where the added feature was disclosed in isolation.

The amendment is hence not allowable under Article 76(1) EPC (second sentence).

Third Auxiliary request

4. *Admissibility*

4.1 Amendments to a party's case after it has filed its grounds of appeal may be admitted and considered at the Board's discretion (Article 10b(1) Rules of Procedure of the Boards of Appeal). According to well established Case Law of the Boards of Appeal, requests, even if filed during the oral proceedings, can be exceptionally admitted if the amendments introduced *inter alia* are *prima facie* allowable and thus can be easily dealt with during the oral proceedings by the Board (see e.g. T 397/01).

4.2 In claim 1 of the third auxiliary request the appellant *inter alia* amended

(i) the feature "said bearing thrust ring (50) having cutouts (56) formed therethrough" so as to read "said bearing thrust ring (50) having jaw guideways (56) formed around the circumference thereof", and

(ii) the feature "plurality of jaws" so as to read "plurality of identical jaws".

4.3 The feature resulting from amendment (i) would generally be understood as relating to a ring having jaw guideways formed around the ring's outer circumference. However, this is in contradiction to the passage on page 7, lines 17 and 18 of the description as originally filed, put forward by the appellant as the only justification for this amendment, reading as follows: "A plurality of jaw guideways 56 are formed around the circumference of the central hole 52 in the thrust ring to permit the retraction of the jaws therethrough". In the absence of any other support for this amendment the requirements of Article 84 EPC appear not to be met. Furthermore, by omitting a limitation to the exact location of the guideways around the circumference of the ring's central hole, the amendment also constitutes an intermediate generalisation of the passage referred to above. It appears therefore also not allowable under Article 123(2) EPC.

4.4 As a basis for the amendment (ii), the appellant indicated lines 26 to 30 on page 3 of the application as originally filed, which read as follows: "In accordance with a process feature of the invention, the three jaws are identical with respect to their nut engaging threads and the eccentricity of their engagement is overcome by a grinding procedure following assembly of the chuck". Therefore, *prima facie* on the evidence provided by the appellant, the expression "identical jaws" employed in claim 1 of the third auxiliary request appears to be an unallowable

generalisation of the disclosure in the application as originally filed, since this passage of the description indicates that the jaws are only identical with respect to their nut engaging threads and not necessarily with respect to all details, as is evident from the fact that in the finished chuck a different amount of material will have been removed from each jaw during grinding.

Even if, as a result of a deeper investigation of the application as filed (which is not required of the Board in the case of such a late-filed request) other parts of the description were to be taken into consideration when examining the allowability of this amendment under Article 123(2) EPC, the feature "identical jaws" is only disclosed in the specific context of a fine pitch of the nut engaging threads (cf. paragraph bridging pages 8 and 9). Since the pitch of the nut engaging threads has however not been included in amendment (ii) it is thus a generalisation of the specific context in which the feature is disclosed.

- 4.5 The above cited amendments of claim 1 are thus *prima facie* not allowable under Articles 84 and 123(2) EPC. The third auxiliary request is therefore not admitted in the proceedings.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar

The Chairman

M. Patin

P. Alting van Geusau