

Internal distribution code:

- (A) Publication in OJ
(B) To Chairmen and Members
(C) To Chairmen
(D) No distribution

**Datasheet for the decision
of 31 October 2007**

Case Number: T 1582/06 - 3.2.07

Application Number: 04021919.8

Publication Number: 1516702

IPC: B25F 5/02

Language of the proceedings: EN

Title of invention:

Removable battery pack for a portable electric power tool

Applicant:

Techtronic Industries Co., Ltd.

Opponent:

-

Headword:

-

Relevant legal provisions:

EPC Art. 54, 111(1)

Keyword:

"Novelty - yes, after amendment"
"Remittal - yes"

Decisions cited:

-

Catchword:

-



Case Number: T 1582/06 - 3.2.07

DECISION
of the Technical Board of Appeal 3.2.07
of 31 October 2007

Appellant: Techtronic Industries Co., Ltd.
24/F
CDW Building
388 Castle Peak Road
Tsuen Wan
New Territories, Hong Kong (CN)

Representative: HOFFMANN EITLE
Patent- und Rechtsanwälte
Arabellastrasse 4
D-81925 München (DE)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 23 May 2006
refusing European application No. 04021919.8
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: H. Meinders
Members: P. O'Reilly
I. Beckedorf

Summary of Facts and Submissions

- I. European application No. 04021919.8 was refused by the examining division for lack of novelty.
- II. The appellant (applicant) filed an appeal against that decision.
- III. The appellant requested that the decision under appeal be set aside and the case be remitted to the department of first instance for further prosecution on the basis of the main request filed with letter of 11 July 2007 or on the basis of the first to ninth auxiliary requests also filed with said letter. These requests were amended with letter of 4 October 2007 whereby page 14 of the description was amended.
- IV. The independent claim of the main request reads as follows (change to claim as originally filed highlighted in bold):

"1. A battery pack (20) for use with a portable electric power tool (22, 32) comprising:
a plastic housing (44) having a floor (46), a circumferential wall (48) extending upward from an outer peripheral edge of the floor (46) and a cap (50) cooperating with an upper outer peripheral region of the circumferential wall to define an enclosed internal cavity (52);
a relatively soft elastic bumper (58) mounted to the plastic housing (44) and extending **only** about the outer peripheral edge of the floor, and overlying adjacent portions of the floor (46) and circumferential wall (48);
and

a plurality of battery cells (54) mounted within the enclosed internal cavity (52) of the plastic housing (44);

wherein the elastic bumper (58) serves to cushion an impact load exerted on the battery pack (20) and the associated power tool (22, 32) if the battery pack (20) or the electric power tool (22, 32) and battery pack assembly is dropped in an orientation in which the batter pack (20) strikes a hard surface."

V. The document cited in the present decision is the following:

D1: US-A-5 401 591

VI. The arguments of the appellant concerning its main request may be summarised as follows:

Claim 1 as amended requires that the elastic bumper extends only about the outer peripheral edge of the floor. In D1 the protective boot 106 extends about the whole of the lower portion of the battery pack, which includes the floor thereof. The surface extent of the prior art bumper is not therefore limited to the outer peripheral edge. The subject-matter of claim 1 as amended therefore is novel.

Since the decision of the examining division concerned the novelty of claim 1 only over D1 the case should be remitted to consider the other documents, as well as inventive step.

Reasons for the Decision

1. *Article 123(2) EPC*

1.1 The only amendment to claim 1 compared to claim 1 as originally filed is the addition of the word "only" before "about the peripheral edge of the floor". A basis for this amendment may be found in the application as originally filed on page 7, lines 17 to 21 together with the figures. In that part of the description it is stated that: "Accordingly, the elastic bumper 58 extends about the outer peripheral edge of the floor 46 and overlays portions of the floor 46 and the circumferential wall 48. The bumper 58 covers and protects the area of the battery pack plastic housing 44 that is most likely to experience an impact load and failure and thus minimizes damage to the battery pack 20." From this statement it is clear that the bumper does not cover the whole of the floor or the whole of the wall since it refers just to portions of these and mentions that it covers the areas most likely to be damaged, i.e. omitting areas unlikely to be damaged. This interpretation is consistent with the figures that show such a limited surface extent cover by the bumper 58.

1.2 The other amendments are to the description and the figures and comprise the deletion of embodiments which are not longer consistent with claim 1 as amended.

1.3 The Board is therefore satisfied that the application as amended satisfies Article 123(2) EPC.

2. *Novelty*

2.1 The examining division refused the application for lack of novelty over D1. It considered that since the bumper disclosed in this document covered the whole floor it also covered portions of the floor and hence took away the novelty of claim 1 as originally filed.

2.2 The amendment to claim 1 now limits the claim in that the bumper only covers the peripheral edge. In D1 there is resilient boot 106 covering the whole of the battery pack including the floor thereof. The boot is intended, amongst other matters, to be an environmental seal protecting the battery pack against contaminants (see column 4, lines 42 to 44). In claim 1 of the document the boot is described as cup-shaped. It is thus clear that the boot covers the whole of the lower part including the floor thereof. This is in contrast to claim 1 of the present application in which it is specified that only the peripheral edge is covered by the elastic bumper.

2.3 Therefore, the subject-matter of claim 1 of the main request is novel in the sense of Article 54 EPC.

3. *Remittal to the department of first instance*

3.1 The examining division has not yet examined claim 1 for novelty with regard to the documents cited in the search report other than D1, and for inventive step with regard to all the documents. In accordance with Article 111(1) EPC, the Board therefore considers it appropriate to remit the case to the department of first instance so as

to give the appellant the possibility to argue its case before two instances.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance for further prosecution.

The Registrar:

The Chairman:

G. Nachtigall

H. Meinders