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**Datasheet for the decision  
of 16 September 2008**

**Case Number:** T 0388/08 - 3.2.06

**Application Number:** 03020197.4

**Publication Number:** 1415751

**IPC:** B23K 9/32

**Language of the proceedings:** EN

**Title of invention:**

System for connecting housing parts of a welding apparatus

**Applicant:**

ILLINOIS TOOL WORKS INC.

**Headword:**

-

**Relevant legal provisions:**

EPC Art. 123(2)

RPBA Art. 13

**Relevant legal provisions (EPC 1973):**

EPC Art. 84, 54(1)(2), 111(1)

**Keyword:**

"Late-filed amendments - admitted"

"Amendments - added subject-matter (no)"

"Claim 1 - clarity and support by the description (yes)"

**Decisions cited:**

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**Catchword:**

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Case Number: T 0388/08 - 3.2.06

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.06  
of 16 September 2008

**Appellant:**  
(Applicant) ILLINOIS TOOL WORKS INC.  
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**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 18 October 2007  
refusing European application No. 03020197.4  
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. With its decision posted on 18 October 2007 the examining division refused European patent application No. 03020197.4. The examining division held that the subject-matter of the independent apparatus claim 1 and independent method claim 17 did not involve an inventive step having regard to the combination of

D1 : US-A-5 831 240, considered to represent the closest prior art, and

D2 : US-A-5 795 193.

II. Against this decision the appellant (applicant) filed an appeal which was received at the European Patent Office on 8 December 2007. The corresponding fee was paid on the same date and a statement setting out the grounds of appeal was received on 14 February 2008.

III. In an annex to the summons to oral proceedings the Board *inter alia* noted that the interpretation given by the appellant to certain terms used in the pending claims appeared unjustifiably narrow. It also questioned whether the problem stated in the description was actually solved by the features of the independent claims.

IV. Oral proceedings took place on 16 September 2008, in the course of which the appellant submitted an amended set of claims 1 to 8 on the basis of which the appellant requested that the decision under appeal be set aside and a patent be granted.

V. The sole independent claim has the following wording:

"1. A welding apparatus comprising an enclosure (12) having a front end panel (14) and a rear end panel (16), the welding apparatus further comprising a base (26) characterized in that each of the end panels (14,16) has a receptacle area (50) formed therein at the lower portion of the respective end panel (14,16) and in that the base (26) has a first and a second end (28,30), which ends (28,30) are interfitted into the receptacle areas (50) of the end panels (14,16), wherein each of the receptacle areas (50) is bounded by oppositely disposed angled internal lateral surfaces (52,54) and a lower surface (56) of the respective end panel (14,16), and wherein the base (26) includes angled lateral external sides (32) adapted to interfit in close proximity to the angled internal lateral surfaces (52,54) of the end panels (14,16) such as to stabilize the affixation of the base (26) and the end panels (14,16), wherein the lower surface (56) of the respective end panel (14,16) follows the contour of the end (28,30) of the base (26) such that, when the base (26) is affixed to the end panels (14,16), the end (28,30) of the base (26) sits atop the lower surface (56) in close proximity therewith, wherein the internal lateral surfaces (52,54) of the respective end panel (14,16) closely surround the lateral external sides (32) of the base (26) in close proximity thereto, when the base (26) is affixed to the end panels (14,16),

wherein a pair of ramps (60) is formed in the lower surface (56) of each of the end panels (14,16) and wherein a pair of snaps (42) extends outwardly from each of the ends (28,30) of the base (26), each snap (42) having a distal end (44) with an opening (46) therein, and

wherein each ramp (60) is generally in alignment with one snap (42), whereby the distal end (44) of each snap (42) is engaged to one of the ramps (60) to retain the end panels (14,16) to the base (26)."

VI. The appellant essentially presented the following arguments:

The basis for the amendments in claim 1 is found in originally filed claims 1 and 5 and in the originally filed description on page 6, lines 3-5, and the second sentence of the last full paragraph, as well as on page 7, from the fourth line of the first full paragraph to the fourth line of the second full paragraph.

D1 does not disclose that the end panels are provided with receptacle areas in which correspondingly formed ends of the base are interfitted in the specific manner defined by the features of claim 1.

### **Reasons for the Decision**

1. The appeal is admissible.
2. The amendments in claim 1 concern clarifications of features which the appellant had already disputed in

its grounds of appeal as being disclosed in D1. They represent a fair and convergent attempt to overcome the board's objections raised in its communication and discussed during the oral proceedings. Since these amendments did not raise issues which the Board could not deal with during the oral proceedings, the Board decided to admit the request (Article 13(1) and(2) of the Rules of Procedure of the Boards of Appeal, Supplement to OJ EPO 1/2008).

3. The passages of the description and the claims indicated by the appellant as a basis for the amendments directly and unambiguously disclose the subject-matter of claim 1. The amendments are hence allowable under Article 123(2) EPC.
4. The Board is satisfied that claim 1 is supported by the description and is clear, so that the requirements of Article 84 EPC 1973 are also met by claim 1.
5. D1 discloses in Figures 2, 3 and 4 a welding apparatus comprising an enclosure (400) having a front end panel (100) and a rear end panel (200), the welding apparatus further comprising a base (300). Each of the end panels has a receptacle area (Fig. 3a) formed therein at the lower portion of the respective end panel (where the lower portion can be equated with the panel portion carrying the cooling slots 104/204, Fig. 2). The base has first and second ends (310), which ends are interfitted into the receptacle areas (Fig. 3a) of the end panels (100,200).

A pair of snaps (312) extends outwardly from each of the ends (310) of the base, each snap having a distal

end. It is also known from D1 that the snaps engage with corresponding features (106) on the end panels to retain the end panels to the base.

6. While the feature of claim 1 "the base has a first and a second end, which ends are interfitted into..." can be equated with that portion of the ends (310) - in the form of projections - which extend outwardly from a plane defined by the respective rear and front end members (306,308) of the base up to the point where the snap, in the form of the ramp-shaped protrusion (312), extends further distally, the feature "receptacle area" mentioned in claim 1 would necessarily have to be identified with those portions of the through-holes or slots (106,206) which correspond in Fig. 3a to the thickness of the wall which is engaged by the right vertical face of the ramp-shaped protrusion (312). The remaining features of claim 1, further defining the base's first and second ends and the end panel's receptacle areas, cannot be consistently equated with further features disclosed in D1. For example, in D1 the receptacle areas interpreted in this way would not be bounded by oppositely disposed angled internal lateral surfaces and a lower surface of the respective end panel.

Other technically meaningful ways of attributing the features of claim 1 to further features of D1 are not apparent.

For these reasons, the subject-matter of claim 1 is new over the welding apparatus of D1 (Article 54(1) EPC 1973).

7. The amendments made to claim 1 compared to claim 1 considered by the examining division change its subject-matter substantially. Most of the added features were taken from the description and it is therefore questionable whether the subject-matter now claimed was covered by the European search. Under these circumstances, the Board is not in a position to conclusively decide on the questions of novelty and inventive step. In accordance with the powers conferred upon it under Article 111(1) EPC 1973, the Board therefore decides to remit the case to the examining division to continue the examination proceedings.
  
8. The Board notes that novelty of the subject-matter of claim 1 has only been examined to the extent defined by the decision under appeal, i.e. only in view of D1.
  
9. For the avoidance of doubt, it is also to be noted that the Board has not considered whether the subject-matter of the dependent claims meets the requirements of the EPC, nor has it considered whether claim 1 is e.g. in a correct two-part form.



**Order**

**For these reasons it is decided that:**

1. The decision under appeal is set aside.
2. The case is remitted to the Examining Division with the order to continue the examination proceedings.

The Registrar

The Chairman

M. Patin

P. Alting van Geusau