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**Datasheet for the decision
of 20 May 2010**

Case Number: T 0643/09 - 3.2.07

Application Number: 05750249.4

Publication Number: 1753585

IPC: B25C 1/18

Language of the proceedings: EN

Title of invention:

Fastening driving tool with pivotally mounted magazine and magazine therefor

Applicant:

SOCIETE DE PROSPECTION ET D'INVENTIONS TECHNIQUES SPIT

Headword:

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Relevant legal provisions:

EPC Art. 54, 111(1), 123(2)

Relevant legal provisions (EPC 1973):

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Keyword:

"Novelty - yes"
"Remittal - yes"

Decisions cited:

-

Catchword:

-



Case Number: T 0643/09 - 3.2.07

D E C I S I O N
of the Technical Board of Appeal 3.2.07
of 20 May 2010

Appellant:
(Applicant)

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Decision under appeal:

Decision of the Examining Division of the
European Patent Office posted 16 October 2008
refusing European patent application
No. 05750249.4 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: H. Meinders
Members: H.-P. Felgenhauer
E. Dufrasne

Summary of Facts and Submissions

- I. This appeal is against the decision of the examining division refusing the European patent application No. 05 750 249.
- II. The appellant (applicant) requested that the decision under appeal be set aside and a patent be granted on the basis of the single request (claims 1 - 11) filed during the oral proceedings held before the Board on 20 May 2010.
- III. Claim 1 filed at the oral proceedings reads as follows:
- "Apparatus for fixing fastening elements, comprising a barrel (1) and means (3, 5) for driving a fastening element in the barrel (1), a handle (9) containing means (25, 33) for receiving a removable magazine (4) for feeding the fastening elements, with the forward part (3) of the apparatus being arranged so that it cooperates with a feed end (55) of the magazine (4) and ensures that a fastening element is transferred from the magazine (4) into the barrel (1), with the free end (33) of the handle (9) away from the barrel being arranged so that the loading end (54) of magazine (4) is fixed thereto, the apparatus being characterized by the fact that the aforementioned free end (33) of the handle (9) carries a cylindrical rod (47) mounted so that the rod (47) pivots around a point on its axis (42), for fixing the aforementioned loading end (54) of the magazine (4) and alters the relative position of the free end (33) of the handle (9) and of the loading end (54) of the magazine (4), the fixing rod (47) including a threaded end (49) which carries a thumb-

wheel (50) for tightening the magazine (4) and the free end (33) of the handle (9) comprising an inclined face (62) arranged so that it cooperates with another inclined face (63) on the magazine (4) and acts as a wedge and moves the magazine (4) towards the front of the apparatus so that it pushes its feed end (55) against the barrel (1) of the apparatus."

Independent claim 11 reads as follows:

"11. Removable feed magazine for feeding of fastening elements for the apparatus of any one of claims 1 to 10, a feed end (55) of the magazine being arranged so that it cooperates with the forward part (3) of the apparatus, the other loading end (54) of the magazine being fixed to the free end (33) of the handle (9) of the apparatus away from the barrel (1) of the apparatus, characterised by the fact that it includes means (53, 57, 52, 58) for receiving a fixing rod (47) and means (58, 59) of providing support for a head (48) of the fixing rod, in which magazine a structure (52) is provided which is shaped to present the inclined face (63) to cooperate with the inclined face (62) of the handle of the apparatus."

IV. The following documents relied upon in the impugned decision are referred to

D1: GB-A-2 024 691

D2: US-A-5 025 968

D3: DE-A-33 37 278

D4: US-A-3 464 614.

- V. According to the impugned decision the subject-matter of claim 1 (as filed) lacks novelty with respect to each one of the documents D1 to D4.

The feature according to which the rod is "mounted so that it pivots" has been considered by the examining division in point 3 of the reasons of the impugned decision as having the meaning that the **rod provides for a pivotable mounting** of the magazine, as it is the case for the apparatuses according to documents D1 to D4 which consequently have been considered as each anticipating the apparatus of claim 1.

- VI. The facts, evidence and arguments essentially relied upon by the appellant can, as far as they are relevant to the present decision, be summarised as follows:

- (a) It is evident that by means of the features added to claim 1 it is now clearly defined that it is the **rod which pivots** and not, as it is the case for the apparatuses according to D1 to D4, the magazine fixed by the rod.
- (b) It is further evident that by means of the features added to claim 1 relating to the thumb-wheel and the inclined faces on the handle and the magazine, that tightening the thumb-wheel can have the effect that the magazine is moved towards the front end of the apparatus as well as the effect that it is fixed onto the handle.

- (c) Since it can be clearly derived from the wording of present claim 1 that the rod itself pivots, the apparatus according to claim 1 is novel with respect to any of documents D1 to D4.

- (d) The magazine according to present claim 11 is likewise novel with respect to these documents, at least for the fact that none of the magazines disclosed therein is provided with a structure which is shaped to present the inclined face to cooperate with the inclined face on the handle of the apparatus.

Reasons for the decision

1. *Claim 1*

1.1 Claim 1 as filed during the oral proceedings before the Board comprises features added to claim 1 as filed and as underlying the impugned decision, which define that

- (a) the free end of the handle carries a cylindrical rod mounted so that the **rod pivots around a point on its axis**,

- (b) the fixing rod including a threaded end which carries a thumb-wheel for tightening the magazine and

- (c) the free end of the handle comprising an inclined face

(d) arranged so that it cooperates with another inclined face on the magazine and acts as a wedge and moves the magazine towards the front of the apparatus so that it pushes its feed end against the barrel of the apparatus.

1.2 The features (a) to (d) introduced into claim 1 are essentially those of claims 3, 6 and 8 as filed. The Board thus considers the requirement of Article 123(2) EPC as being satisfied.

1.3 The Board considers the features introduced into claim 1 now clearly define that

- the free end of the handle carries a cylindrical **rod, which is mounted such that it pivots around a point on its axis,**
- the rod includes a threaded end which carries a thumb-wheel for tightening the magazine and fixes the loading end of the magazine to the free end of the handle

and that

- the rod alters the relative position of the free end of the handle and of the loading end of the magazine,
- wherein the free end of the handle comprises an inclined face arranged so that it cooperates with another inclined face on the magazine and acts as a wedge and moves the magazine towards the front

of the apparatus so that it pushes its feed end against the barrel of the apparatus.

1.4 As compared to claim 1 underlying the impugned decision it is now clear that it is the rod carried by the free end of the handle which pivots and alters the relative position of the free end of the handle and the loading end of the magazine. Concerning the structural elements enabling this alteration it is clearly defined that the free end of the handle comprises an inclined face arranged so that it cooperates with another inclined face on the magazine acting as a wedge (cf. features (c) and (d)).

2. *Novelty*

2.1 The apparatus according to claim 1 is novel with respect to the apparatuses according to any one of documents D1 to D4 already for the reason that on those apparatuses, as correctly stated in the impugned decision, it is the magazine which is pivotably mounted on the rod (reasons, points 1 - 5).

2.2 The structure of the magazine according to claim 11 is i.a. defined by features according to which in the magazine a structure is provided which is shaped to present the inclined face to cooperate with the inclined face of the handle of the apparatus. Since the magazines known from D1 to D4 are not provided with such a structure, the magazine according to claim 11 is novel with respect to the magazines of the cited prior art documents already for that reason alone.

2.3 Consequently the subject-matters according to claims 1 and 11 are novel in the sense of Article 54 EPC.

3. *Remittal*

3.1 The Board, in its annex to the summons for oral proceedings dated 15 March 2010 indicated that in case that a claim 1 can be considered as being clear and its subject-matter novel, it appeared to be appropriate to remit the case for further prosecution, since in that event the understanding of an essential feature (the pivoting rod) has changed as compared to the understanding of this feature in the impugned decision and since inventive step has not been considered yet.

3.2 Since the situation has not changed in that respect and since the appellant did not provide any arguments to the contrary the Board considers it appropriate to remit the case to the examining division according to Article 111(1) EPC for further prosecution.

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