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**Datasheet for the decision  
of 13 September 2011**

**Case Number:** T 1883/10 - 3.2.07

**Application Number:** 08157146.5

**Publication Number:** 2127808

**IPC:** B24B 23/03

**Language of the proceedings:** EN

**Title of invention:**  
Power tool

**Applicant:**  
Black & Decker, Inc.

**Opponent:**  
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**Headword:**  
-

**Relevant legal provisions:**  
EPC Art. 84, 111(1)

**Relevant legal provisions (EPC 1973):**  
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**Keyword:**  
"Support in the description: yes"  
"Remittal: yes"

**Decisions cited:**  
-

**Catchword:**  
-



Case Number: T 1883/10 - 3.2.07

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.07  
of 13 September 2011

**Appellant:** Black & Decker, Inc.  
(Applicant) 1207 Drummond Plaza  
Newark, DE 19711 (US)

**Representative:** Bell, Ian Stephen  
Black & Decker  
Patent Department  
210 Bath Road  
Slough  
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**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 9 July 2010  
refusing European patent application  
No. 08157146.5 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. The examining division decided to refuse European application No. 08 157 46. It considered that claim 1 lacked support in the description.
- II. The appellant (applicant) filed an appeal against that decision.
- III. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the set of claims filed as main request with letter dated 20 August 2010.
- IV. Claim 1 of the **main request** reads as follows:
- "A power tool comprising:  
a housing (4) for containing a motor (6) therein;  
the motor arranged to rotate a drive shaft (18) about a rotational axis A-A;  
a tool part (24) mounted with free rotation eccentrically with respect to the drive shaft and driven thereby;  
a counter-balance mass (26) mounted on and arranged to be rotated by the drive shaft, which counter-balance mass is mounted with an eccentric (e) offset relative to the drive shaft;  
control means (48, 50) for varying the eccentric offset of the tool part with respect the rotational axis of the drive shaft, without rotation thereabout, by radial movement of the tool part with respect to the rotational axis of the drive shaft;  
such radial movement of the tool part by the control means also causing concomitant radial movement of the

counter-balance mass, without rotation about the rotational axis of the drive shaft, such that the radial movement of the counter-balance mass is diametrically opposite to movement of the tool part."

- V. The document of the examination proceedings cited in the present decision is the following:

D1: US-A-5 947 804

- VI. The arguments of the examining division may be summarised as follows:

Claim 1 is not supported by the description. The subject-matter of the claim is distinguished over the disclosure of D1 by the feature that the eccentric offset of the tool part and counter-balance mass is varied **without rotation about the rotational axis of the drive shaft**. The only embodiment in the description of a non-rotating structure for carrying out this feature is that of a wedge and a pin on an axially slidable member. No alternative embodiment is disclosed. The generalisation of the disclosed embodiment to the feature as set out in the claim is broader than justified by the description.

- VII. The arguments of the appellant may be summarised as follows:

Claim 1 is supported by the description. It is true that the description only discloses one particular way of carrying out the feature whereby the eccentric offset of the tool part and counterbalance mass is varied without rotation about the rotational axis of

the drive shaft. However, the skilled person would have no problem in carrying out this feature in other ways such as using parallelogram-type links or mechanisms involving cogs and worm gears. Such mechanisms are well known to the skilled person.

VIII. At the oral proceedings held 13 September 2011 the main request filed with letter of 11 August 2011 was discussed for compliance with Articles 84 and 123(2) EPC, after which the appellant returned to the main request filed 20 August 2010.

### **Reasons for the Decision**

#### 1. *Support for the claims in the description*

1.1 The examining division refused the application because it considered that the feature of the claim according to which the radial movement of the tool with respect to the rotational axis of the drive shaft and the concomitant radial movement of the counterbalance mass were "without rotation" about the rotational axis of the drive shaft was not supported by the description as required by Article 84 EPC.

The examining division noted that there was a single embodiment in the description of a mechanism which achieved the desired result and it considered that this was not sufficient to support the claim.

1.2 The appellant with its grounds of appeal provided **for the first time** arguments to the effect that the skilled person would be aware of other mechanisms capable of

achieving the desired result. The appellant provided two examples of such mechanisms with the appeal grounds. It elaborated this view with its submission dated 11 August 2011, filing a "witness statement" from a Mr Walker who is one of the inventors, which indicated further possible mechanisms capable of achieving the desired result.

- 1.3 The description of the application provides one example of a mechanism capable of providing concomitant radial movement of two parts in two opposed directions without rotation. The mechanism involves two oppositely angled surfaces of a slidable member which are formed on the one hand as a wedge and on the other hand as a pin. When the member is slid along the rotational axis one of the angled surfaces acts on the tool part and the other acts on the counter-balance mass to move these in opposed radial directions.

The question therefore arises as to whether the skilled person would be immediately aware of other mechanisms which are capable of achieving this result.

During the appeal proceedings the appellant has convinced the Board that this would be the case. With its grounds of appeal the appellant indicated two simple mechanisms of parallelogram-type levers. In the witness statement of Mr Walker reference was made to two further mechanisms based on cogs and worm gears together with toothed linear members. These mechanisms are recognisably well-known. They are based on principles different to those of the mechanism of the embodiment but all achieve the same result.

The Board is therefore convinced that the skilled person would know at least the above ways of providing the required movement, equivalent to the mechanism of the particular embodiment disclosed in the description. The fact that there is only one embodiment in the present case does not therefore lead to the conclusion that the claim is not supported by the description.

1.4 Therefore, claim 1 of the request is considered to be supported by the description in the sense of Article 84 EPC.

2. *Remittal to the department of first instance*

2.1 During the examination proceedings the examining division considered an independent claim having essentially the same subject-matter as the present independent claim. It reached the conclusion that this claim did not comply with Article 84 EPC. It expressed an opinion with respect to novelty, i.e. that its subject-matter is novel (see point 1 of the decision grounds), but no opinion with respect to inventive step.

The only opinion expressed by the examining division with respect to inventive step concerned a combination of claims 1, 4, 5 and 6 (see point 4 of the decision grounds) which it considers to be inventive.

2.2 Since no examination has been made with respect to inventive step of the independent claim of the main request the Board considers it to be appropriate to remit the case to the examining division for further prosecution pursuant to Article 111(1) EPC.

**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