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D E C I S I O N
of 21 April 2005

Case Number: T 0684/03 - 3.2.7

Application Number: 98201426.8

Publication Number: 0876884

IPC: B25H 3/00

Language of the proceedings: EN

Title of invention:

Blade-holding case for a hack sawing machine

Applicant:

Hardware Industrial Manufacturing S.r.l.

Opponent:

-

Headword:

-

Relevant legal provisions:

EPC Art. 123(2), 54, 56

Keyword:

"Extension beyond the content of the application as filed

(no) "

"Novelty (yes) "

"Inventive step (yes) "

Decisions cited:

-

Catchword:

-



Case Number: T 0684/03 - 3.2.7

D E C I S I O N
of the Technical Board of Appeal 3.2.7
of 21 April 2005

Appellant: Hardware Industrial Manufacturing S.r.l.
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I-23868 Valdamadrera, (Lecco) (IT)

Representative: Faraggiana, Vittorio, Dr. Ing.
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 19 February 2003
refusing European application No. 98201426.8
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: H. Meinders
Members: K. Poalas
C. Holtz

Summary of Facts and Submissions

- I. The appellant (applicant) lodged an appeal against the decision of the Examining Division refusing European patent application No. 98 201 426.8.

The Examining Division held that the subject-matter of claim 1 was not new (Article 54 EPC) compared with the prior art disclosed in the document

D1: DE 85 31 422 U.

For assessing inventive step in the dependent claims the Examining Division took into consideration also the disclosure of document

D2: GB 2 124 191 A.

- II. The appellant requested that the decision under appeal be set aside and a patent be granted on the basis of the following documents:

claims: 1 to 6 as filed with the letter of 2 April 2003;

description: pages 1 and 2 as filed with the letter of 2 April 2003, and pages 3 to 7 as originally filed;

figures: 1 to 6 as originally filed.

- III. Amended claim 1 reads as follows:

"Blade-holding case for a hack sawing machine, comprising a support (13) with housings (17) each intended for receiving one end of a blade (18) for supporting it within the case, each housing (17) having

an opening (19) extending from a front face (26) of the support (13) to an upper face (25) thereof for enabling introduction of one end of a blade (18) through the portion of the opening (19) at the front face (26) of the support (13) with the blade inclined in a first direction (20) towards the fore portion of the housing (17) and for enabling positioning of the blade (18), through the portion of the opening (19) at the upper face (25) of the support (13), into a supporting position with the blade arranged in a second direction (21) angularly spaced apart from the first direction (20) towards the rear portion of the housing, characterized in that said housing (17) comprises fitting means (22) provided in the rear portion of the housing, near its opening (19), in form of a transverse narrowing of the housing width for enabling lateral fitting of the blade (18) into the supporting position upon rotation of the blade from said first direction (20) to said second direction (21)."

IV. The Appellant argued essentially as follows:

Document D1 does not disclose a blade-holding case provided with a support with housings which have the following structural features:

- (a) openings extending from the front face of the support to the upper face thereof; and
- (b) fitting means provided in the rear portion of the housing, near the opening of the housing, in form of a transverse narrowing of the housing width, as claimed in present claim 1.

Therefore, the subject-matter of claim 1 is new over the teaching of document D1.

The above mentioned feature (b) is missing also in document D2, said document representing the most relevant prior art.

Therefore, the subject-matter of claim 1 is new over the prior art in the file.

The characterizing part of claim 1 defining the means for enabling a lateral fitting of the blades in the housings, discloses a feature which is neither anticipated nor suggested by any of the prior art documents in the file.

Therefore, the subject-matter of claim 1 also involves an inventive step.

Reasons for the Decision

1. *Article 111(1) EPC*

Given that the decision under appeal also includes grounds why the subject-matter of the dependent claims is not novel or does not involve an inventive step and that the three remaining documents of the search report are considered less relevant than documents D1 and D2 which have been taken into consideration by the Examining Division the Board exercises its discretion under Article 111(1) EPC by examining also the inventive step of amended claim 1.

2. *Amendments (Article 123(2) EPC)*

Amended claim 1 is a combination of the originally filed claims 1, 4, 5 and 6 together with the information concerning the manner of introducing the blades into the housings and the position of the fitting means within the housings, said information being derivable from figure 3.

New claims 2 to 6 correspond to originally filed claims 2, 3, 7, 8 and 9.

In the amended pages 1 and 2 of the description the prior art documents D1 and D2 have been identified and the description has been brought into conformity with new claim 1.

Therefore, the application as amended fulfils the requirements of Article 123(2), Rule 27(1) (b) and Article 84 EPC.

3. *Novelty (Article 54 EPC)*

- 3.1 Document D1 discloses a blade-holding case for a hack sawing machine comprising a support 3 with housings 6 each intended for receiving one end of a blade for supporting it within the case, each housing having an opening for receiving said one end of a blade positioned in the upper face of the support 3. The edges of the wall portions 11 and 12 of said housings 6 are provided with inclined or rounded parts in the form of "Anlaufschrägen 15" (see page 9, first complete sentence; figure 7) in order to facilitate the insertion of the blades into the housing. Fitting means

10 are provided in the bottom portion of the housing 6 in order to clamp the blade in the housing, whereby said blade abuts with its back against the rear wall portion 12 (see page 8, lines 6 to 9 and 22 to 28; figures 5 and 7).

The blade can be inserted into the housing at an angle to the axial extension of the housing due to these "Anlaufschrägen 15", until its end reaches the bottom portion of the housing. However, an opening as defined in claim 1 of the present application, namely an opening extending from a front face of the support to an upper face thereof for enabling introduction of one end of a blade through the portion of the opening at the front face of the support with the blade inclined in a first direction towards the fore portion of the housing is not disclosed in document D1.

Document D1 disclosing only fitting means 10 in the bottom portion of the housing 6 and abutting means 12 in the middle rear portion of the housing 6, therefore also fails to show the claimed fitting means provided in the rear portion of the housing, near its opening, in form of a transverse narrowing of the housing width for enabling lateral fitting of the blade into the supporting position upon rotation of the blade from a first to a second direction.

- 3.2 Document D2 is directed to a tool storage case for the storage of tools, particularly twist drill bits, comprising tool-retaining inserts 5 and 7 having housings each intended for receiving one end of a tool, each housing having an opening extending from a front face of the tool-retaining insert to an upper face

thereof, thereby enabling introduction of one end of a tool through the portion of the opening at the front face of the tool-retaining insert with the tool inclined in a first direction towards the fore portion of the housing and for enabling positioning of the tool through the portion of the opening at the upper face of the tool-retaining insert into a supporting position with the tool arranged in a second direction angularly spaced apart from the first direction towards the rear portion of the housing.

Therefore, an opening or fitting means as defined in claim 1 of the present application is not anticipated by the disclosure of document D2.

Document D2 gives no information about fitting means provided within the housing and therefore fitting means for enabling lateral fitting of blades as defined in the characterising portion of claim 1 of the present application is not anticipated by the disclosure of document D2.

None of the other three documents of the search report discloses an opening or fitting means in a blade-holding case housing as defined in claim 1 of the present application.

Therefore, the subject-matter of claim 1 is new and fulfils the requirements of Article 54 EPC.

4. *Inventive step*

4.1 Closest prior art

Both D1 and D2 can be chosen as closest prior art.

The appellant considers that the tool-retaining inserts 5 and 7 of document D2 are suitable also for the storage of hack-saw blades, and therefore considers document D2 to represent the closest prior art. The Board agrees with the appellant that document D2 discloses a device having all the structural features of a case capable of holding hack-saw blades as disclosed in the preamble of claim 1 of the present application.

4.2 Problem

The problem with the tool storage case of D2 is that hack-saw blades may fall out from the housings.

4.3 Solution

In accordance with claim 1 the above-mentioned problem is solved in that each of the housings comprises fitting means provided in the rear portion of the housing, near its opening, in the form of a transverse narrowing of the housing width for enabling lateral fitting of the blade into the supporting position upon rotation of the blade from a first to a second direction.

This fitting means, by enabling a lateral fitting of blades in the housings, avoids any axial movement of the blades within the housings which could result in damage of the housings by the blade's teeth.

4.4 The above mentioned solution is not rendered obvious by the documents available in the file for the following reasons:

Document D2 does not give any indications as to such fitting means within the housings.

Document D1 does not address the above mentioned problem at all and it teaches the positioning of fitting means 10 in the bottom portion of the housing 6, so that the blade can be engaged by said fitting means at the end of an introduction-movement into the housing. The provision of inclinations at the edges of the wall portions 11, 12 is intended to reduce any interference between said wall portions 11, 12 and the teeth or the lower corners of the blade upon insertion thereof into the housing.

Therefore, since a fitting means as described in the characterising part of claim 1 of the present application enabling a lateral fitting of the blades in the housings is neither anticipated nor suggested by the prior art documents, the person skilled in the art is not led to incorporate such fitting means into a housing as known from document D2.

- 4.5 Starting, as the Examining Division did, from D1 as the closest prior art (it relates to a hack saw blade holding case) the case of claim 1 is distinguished by the features discussed under point 3.1.

The problem solved by these features is to facilitate introduction of the hack-saw blade into the housing and rotate it into its storage position between the fitting means provided in the rear portion of the housing.

None of the documents available on file provides an indication to include such features in a housing such as the one disclosed in document D1.

Thus it is not obvious to the skilled person to incorporate such features into a housing as known from document D1.

- 4.6 For the above-mentioned reasons, the subject-matter of claim 1 of the present application involves an inventive step within the meaning of Article 56 EPC.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the first instance with the order to grant a patent on the basis of the following documents:

claims: 1 to 6 as filed with the letter of 2 April 2003;

description: pages 1 and 2 as filed with the letter of 2 April 2003, and pages 3 to 7 as originally filed;

figures: 1 to 6 as originally filed.

The Registrar:

The Chairman:

U. Bultmann

H. Meinders