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**Datasheet for the decision
of 24 July 2018**

Case Number: T 1207/15 - 3.2.03

Application Number: 09743456.7

Publication Number: 2281141

IPC: F21L4/04, F21V21/088, F21V21/40

Language of the proceedings: EN

Title of invention:
FLASHLIGHT WITH INTEGRATED CLAMP HANDLE

Patent Proprietor:
Blackbeam LLC

Opponent:
Stanley Black & Decker, Inc.

Headword:

Relevant legal provisions:
EPC Art. 54, 56

Keyword:
Novelty - (yes)
Inventive step - (yes)

Decisions cited:

Catchword:



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Chambres de recours

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Case Number: T 1207/15 - 3.2.03

D E C I S I O N
of Technical Board of Appeal 3.2.03
of 24 July 2018

Appellant: Blackbeam LLC
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Respondent: Stanley Black & Decker, Inc.
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Representative: SBD IPAdmin
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 10 April 2015
revoking European patent No. 2281141 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairman G. Ashley
Members: C. Donnelly
G. Weiss

Summary of Facts and Submissions

I. The appeal lies from the decision of the opposition division to revoke European patent no. EP 2 281 141.

In its decision, the opposition division held that the subject-matter of claim 1 as granted lacked novelty in view of US 5 993 022 (D1).

II. The patent proprietor (hereinafter: the "appellant") lodged an appeal against this decision.

III. In its response to the grounds of appeal the opponent (hereinafter: the "respondent") referred to the following documents already cited in the opposition proceedings:

D1: US 5 993 022;

D2: CN 2415 242 (English translation);

D3: Varta clip torch, internet page print-out dated 18 March 2012;

D4: US 4 399 498;

D5: US 7 040 783;

D6: US 5 420 767.

The respondent also cited a further document in relation to auxiliary request 3.

D22: GB 2 366 593.

IV. In a communication dated 2 May 2018, pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal (RPBA), annexed to the summons to oral proceedings, the Board informed the parties of its provisional opinion.

- V. By letter of 25 June 2018, the appellant submitted a further auxiliary request 1A.

By letter dated 9 July 2018, submitted in reply to the board's communication, the respondent indicated that it withdrew its request for oral proceedings and would not be represented at them.

- VI. Oral proceedings were held on 24 July 2018 in the absence of the respondent. At the end of the debate the following requests were confirmed:

The appellant requested that the decision under appeal be set aside and that the patent be maintained as granted (main request) or, alternatively, that the patent be maintained in amended form on the basis of one of the auxiliary request 1 to 3 filed with the statement setting out the grounds of appeal or the auxiliary request 1A filed with letter dated 25 June 2018.

The respondent requested in writing that the appeal be dismissed.

- VII. Claim 1 of the appellant's main request (claim 1 as granted) reads as follows:

"An illumination device (10), comprising:

- a head (20) comprising a light-emitting portion and a mount (40), wherein said light-emitting portion is connected to said mount (40);
- a handle (70) rotatably connected to said head (20), wherein said handle (70) comprises a clamp (76) integrally formed therein, said clamp (76) having a gripping portion,

characterized in that

- said clamp (76) is defined by an end of a main arm (72) and an end of a clamp arm (74), wherein said clamp arm (74) is pivotably connected to said main arm (72); and
- at least one battery compartment is disposed within at least one of said main arm (72) and said clamp arm (74)."

VIII. The parties submissions concerning claim 1 of the main request can be summarised as follows:

(a) Appellant

(i) *Novelty*

The subject-matter of claim 1 as granted is new with respect to D1, D2 and D3, since these documents disclose illumination devices which comprise a clip appended to the main body of the device, as opposed to a clamp integrally formed in the handle, and wherein the clamp is defined by an end of a main arm and an end of a clamp arm.

Feature 146, shown in figure 1 of D1, is only an optional clip intended for attaching the device to an item of the user's clothing, such as a belt, and is incapable of transmitting any kind of force comparable with a clamp. Furthermore, the clipping action takes place along the flat part of the clip and not at the end. The absence of the clip does not affect the ability of the body 22 to act as a handle, hence the clip is not an integral part of the handle.

Similar arguments apply to the clip 5 of D2 which is provided with gripping serrations along its entire length. The clip 5 of D2 is made of a different type of material to the main body 1 of D2 and is merely appended to it. The clip 5 is not integrally formed in the handle and actually disturbs the handling function which is carried out entirely by the cylindrical body 1.

D3 shows no more than D2 and cannot be considered to be prior art since it was published after the priority date of the patent.

(ii) Inventive step

D1 in combination with D4

D4 teaches away from the invention since it concerns a standard flashlight which can be used independently of the completely separate clamp construction. Therefore, there is no integration of the clamp construction into that of the flashlight. Thus, D4 does not give the skilled person a teaching to provide a handle which comprises a clamp integrally formed therein.

D5 in combination D6

D5 is not considered to be a realistic starting point for the invention since it relates to a device in which the light emitting head is intended to function independently of the clamp.

Even if the skilled person were to take D5 as the starting point, arranging the battery compartment in one of the clamp arms would not be considered to be a realistic option, since this would mean abandoning the

essential idea of a head comprising a light-emitting portion which is capable of completely autonomous and separate use.

(b) Respondent

(i) Novelty

Claim 1 lacks novelty in view of D1, D2 or D3.

The clip 146 illustrated in figure 1 of D1 fulfils all the constructional requirements specified in claim 1, as was set out by the opposition division. Similar considerations apply to the spring clip 5 disclosed in D2. There is no essential difference between a clip and a clamp.

D3 is published after the prior date, but states that the devices were sold well before.

(ii) Inventive step

The subject-matter of claim 1 lacks an inventive step in view of (i) D1 in combination with D4; or (ii) D5 in combination with D6.

D1 in combination with D4

The only potential difference between the subject-matter of claim 1 and the disclosure of D1 is that the clip of D1 is not considered to be a clamp. The objective technical problem is therefore how to make the flashlight of D1 grip to larger fixed objects. The solution is obvious; the skilled person would seek a stronger means for the attaching the flashlight to a fixed object. Such a means is shown in D4 which discloses a clamp construction.

D5 in combination with D6

The only difference between the subject-matter of claim 1 and the device disclosed in D5 is that the battery compartment is in one of the clamping legs. The technical problem to be solved is therefore one of how to provide the battery in an alternative location. The solution is obvious since locating the battery in one of clamping legs is a mere design option. Such a feature is also shown in D6.

Therefore, the subject-matter of claim 1 does not involve an inventive step.

Reasons for the Decision

1. Novelty

1.1 With respect to D1

1.1.1 It is not considered that there is any clear and precise distinction between a "clip" and a "clamp", contrary to the submission of the appellant, since there is a considerable area of overlap where a single device could be labelled with either designation. In particular, in both the "clip" of D1 and the "clamp" of the contested patent, the gripping force is provided by a spring. An object cannot be seen to be different merely because it is assigned a different label.

1.1.2 At column 5, line 1 to 3 of D1, it is explicitly stated that:

"The flashlight body 22 may be provided with a resilient spring-load clip 146 as shown in FIG. 1".

Thus, the clip 146 is an optional feature intended for fixing the light to a user's garments (see column 1, lines 26 to 27). In particular, its presence or not does not affect whether the body 22 can be used as a handle. Therefore, the clip 146 cannot be said to be "integrally formed" in the handle since a complete handle is present whether the clip 146 is there or not. In contrast thereto, it is evident from all the figures of the contested patent that if the clamp arm 74 of the illumination device is missing then the handle is not complete and cannot fulfil its function as a usable handle.

1.1.3 It is also evident from figure 1 that the end of clip 146 is turned outwards from the body 22 to facilitate sliding over a thin object such as clothing or a belt and plays no role in the attachment force, which is applied between the flat part of the clip and the surface to which it is attached. Thus, D1 fails to disclose a clamp which is defined by an end of a main arm and an end of a clamp arm.

1.1.4 Therefore, D1 discloses:

an illumination device (20) comprising:

- a head (24,26) comprising a light-emitting portion (26) and a mount (24), wherein said light-emitting portion (26) is connected to said mount (24);
- a handle ("body 22) rotatably connected to said head (24,26), and wherein a clip (146) is attached to said handle to form a clamp defining a gripping portion

between the main portion (32) of the body (22) and the clip (146);
wherein said clip (146) is pivotably connected to said main portion (32); and
a battery compartment is disposed within said main portion (32).

The subject-matter of claim 1 differs from this known device in that:

- (a) - said handle comprises a clamp integrally formed therein,
- (b) - said clamp is defined by an end of a main arm and an end of a clamp arm.

1.2 *With respect to D2*

- 1.2.1 Novelty with respect to D2 and D3 was not discussed in the decision under appeal, however, the objection was raised by the respondent during the opposition proceedings and referred to in the response to the appeal.
- 1.2.2 It can be seen that D2 concerns a similar type of device to that disclosed in D1 wherein a clip 5 is pivotably 13 connected to the main cylindrical body 1 of the torch. A serrated gripping portion extending the length of the clip arm is clearly shown in figure 2.
- 1.2.3 In a similar fashion to the device of D1, the clip 5 of D2 is merely appended to the main cylindrical body 1 of the device which fulfils the function of the handle, irrespective of whether the clip is present or not. In fact, the user would probably avoid grasping the clip 5 since it is made of metal with potentially sharp edges and is not recessed in any way, whereas the lower part

of the cylindrical body 1 is covered with a rubber sleeve 6 which would increase user comfort.

1.2.4 Therefore, D2 does not disclose at least distinguishing feature (a).

1.3 In conclusion, the subject-matter of claim 1 as granted is new with respect to D1 and D2.

1.4 D3 does not disclose any more detail than D2 and bears a date of 18 March 2012, which is after the priority date of the patent. The fact that D3 states that a device has been on offer under the same designation since 10 June 2003 does not exclude that there could have been modifications in the intervening period. Therefore, D3 is not taken into consideration.

2. *Inventive step*

Inventive step with respect to D1 in combination with D4, and D5 in combination with D6 was also not discussed in the decision under appeal. However, these objections were raised by the respondent during the opposition proceedings and were referred to in the response to the appeal. The Board gave a thorough analysis of these two attacks in its provisional opinion and considers it is competent to deal with this matter in accordance with Article 111(1) EPC.

2.1 *D1 in combination with D4*

2.1.1 The distinguishing features of claim 1 with respect to D1 have been identified above. The objective technical problem is seen to be one of how to provide an improved and more versatile device.

2.1.2 D4 discloses a clamp to which a standard flashlight can be fitted. The flashlight can be used independently of the clamp construction (see abstract), hence there is no integration of the clamp construction into that of the flashlight. Therefore, it cannot be seen how D4 would give the skilled person faced with the above problem, a teaching to provide a handle that comprises a clamp integrally formed therein when it teaches the separation of the two components. In short, D4 as well as D1 do not disclose distinguishing feature (a) identified above, and hence the claimed subject-matter cannot be derived from a combination of these documents.

2.2 *D5 in combination with D6*

2.2.1 Taking D5 as the starting out point, this document discloses:

an illumination device comprising:

- a head (10) comprising a light-emitting portion and a mount (14), wherein said light-emitting portion (10) is connected to said mount (14);
- a handle (12) rotatably connected to said head (10), wherein said handle (12) comprises a clamp integrally formed therein, said clamp having a gripping portion,

and wherein

- said clamp (12) is defined by an end of a main arm (12M) and an end of a clamp arm (12C), wherein said clamp arm (12C) is pivotably connected (see column 2, line 41) to said main arm (12M); and
- a battery compartment is disposed within the head.

2.2.2 The subject-matter of claim 1 differs therefrom in that:

- at least one battery compartment is disposed within at least one of said main arm and said clamp arm.

2.2.3 The objective technical problem can be seen as one of providing an alternative location for the battery compartment.

2.2.4 However, the relocation of the battery compartment from the head to one of the clamp arms is not a realistic technical modification of the device according to D5 since the lamp is deliberately designed to have a wireless connection between the head and clamp, such that the head can be removed from the clamping assembly and used alone (see column 3, lines 63 to 67).

2.2.5 Therefore, the skilled person starting out from D5 and would not consider disposing the battery compartment in one of the clamp arms, since this would mean abandoning the essential idea of a head comprising a light-emitting portion which is capable of completely autonomous and separate use. Hence the claimed invention cannot be derived if D5 is considered as the starting point, irrespective of the disclosure of D6.

2.3 In conclusion, the subject-matter of claim 1 as granted involves an inventive step and meets the requirements of Article 56 EPC.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is maintained unamended.

The Registrar:

The Chairman:



C. Spira

G. Ashley

Decision electronically authenticated