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**Datasheet for the decision
of 11 February 2022**

Case Number: T 0924/19 - 3.2.07

Application Number: 10193259.8

Publication Number: 2332705

IPC: B27B15/02

Language of the proceedings: EN

Title of invention:

Sawhead Vertical Adjusting Friction Winch and Self-Locking/
Braking System for Sawmill

Applicant:

Norwood Industries, Inc.

Headword:

Relevant legal provisions:

EPC Art. 56, 84, 113, 116
RPBA 2020 Art. 12(8)

Keyword:

Decision in written proceedings without oral proceedings -
(yes)
Inventive step - (yes)
Claims - clarity (yes)

Decisions cited:

Catchword:



Beschwerdekammern

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Case Number: T 0924/19 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 11 February 2022

Appellant: Norwood Industries, Inc.
(Applicant) RR 2 1660 HWY 11 North
Kilworthy ON P0E 1G0 (CA)

Representative: Mewburn Ellis LLP
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 31 October 2018
refusing European patent application No.
10193259.8 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman I. Beckedorf
Members: A. Pieracci
B. Paul

Summary of Facts and Submissions

- I. This appeal, which was filed within the prescribed period and in the prescribed form, lies from the decision of the examining division to refuse European patent application No. 10 193 259.8 *i.a.* for lack of inventive step of the subject-matter of claim 1 of the then - and current - main request (*ratio decidendi*). The examining division considered a lack of clarity of claim 1 of the then main request in an *obiter dictum*.
- II. The appellant requested
- that the decision under appeal be set aside and that the case be remitted to the examining division for granting a patent on the basis of the set of claims according to the main request decided upon in the appealed decision,
or, in the alternative, on the basis of the set of claims according to one of auxiliary requests 1 to 3.
- III. The present decision refers to the following documents, on which the decision under appeal is based:
- D1: FR 1 009 690 A;
D5: GB 537 266 A.
- IV. The appellant's line of argument contesting the decision of the examining division is dealt with in detail in the reasons for the decision.

V. Independent claim 1 of the main request reads:

A sawmill carriage for use on a sawmill base (90) and with a saw head, comprising:

a horizontal base (32, 34) having an assembly which provides planar horizontal movement when fitted onto a set of rails (86, 88) of a sawmill base;

a vertical saw support (22) extending vertically from the horizontal base (32, 34); and

a cross rail (44) attached to the first vertical saw support (22);

whereby the vertical saw support (22) and the cross rail (44) form a rigid frame,

characterized in that the sawmill carriage further comprises:

a rotate rod (48) extending horizontally from said vertical saw support (22), said rotate rod capable of axial rotation;

at least one cable (82) configured to raise or lower the saw head when said rotate rod is rotated;

a friction winch/brake assembly (70, 72, 80) capable of frictionally imparting an adjustable resistance to the axial rotation of the rotate rod;

whereby a saw head can be slidably affixed to said rigid frame and affixed to the second cable end, such that rotation of the rotate rod displaces the saw head in a generally vertical direction.

VI. The text of the independent claims of the auxiliary requests does not need to be reproduced here since they are not addressed in the present decision.

Reasons for the Decision

1. The decision is issued in written proceedings without oral proceedings.

According to Article 12(8) RPBA 2020, the Board may, subject to Articles 113 and 116 EPC, decide the case at any time after filing of the statement of grounds of appeal. Given the findings and the order of the decision, the appellant's auxiliary request for oral proceedings has not become effective.

The case is ready for decision on the basis of the appellant's extensive written submissions and the decision under appeal. For this reason, the issuing of the decision in written procedure without oral proceedings is in compliance with the requirements of Articles 113(1) and 116(1) EPC.

2. Inventive step of the subject-matter of claim 1 (Article 56 EPC)
 - 2.1 The Board cannot share the opinion of the examining division (see point 13.2, penultimate paragraph; points 13.3 und 13.4 of the reasons for the decision) that document D1 shows a sawmill carriage having:

"a winch/brake assembly capable of imparting a resistance to the axial rotation of the rotate rod",

so that the subject-matter of claim 1 differs from the sawmill carriage of claim 1 only in that the winch brake is of the adjustable friction type and that the problem to be solved by the invention may be regarded

as to find a type of winch with means to brake the winch.

The Board shares the view of the appellant that paragraph [0011] of document D1 indicated by the examining division as disclosing a winch/brake assembly, namely:

"...le tubes de support 8 peuvent être déplacés en hauteur par un treuil 16 au moyen des liens 15 qui passent sur des poulies 14, en même temps que le treuil 16 permet de les fixer..."

does not directly and unambiguously disclose a winch/brake assembly.

The fact that the winch allows the cables (15) and the pulleys (14) to be fixed does not imply that the winch has a brake. As argued by the appellant (see page 6, first paragraph of the statement setting out the grounds of appeal) fixing can take place with conventional fixing means other than a brake, such as locking pins.

The Board does concur with the examining division (see point 13.7 of the reasons for the decision) that in document D1

"...it is merely not disclosed how the function "permet de les fixer" is executed..."

but the Board reaches a different conclusion, due to this very reason it cannot be directly and unambiguously derived that D1 discloses a winch/brake assembly.

2.2 The Board is also of the opinion that the objective technical problem is not correctly formulated. As indicated by the appellant (see page 3, eighth paragraph of the statement setting out the grounds of appeal), the brake of the winch is part of the solution and therefore cannot form part of the objective technical problem.

The reasoning of lack of inventive step of the examining division is therefore not convincing.

2.3 The Board shares the view of the appellant that document D1, although showing a winch, does not show the feature of claim 1 of:

"...a friction winch/brake assembly capable of frictionally imparting an adjustable resistance of the axial rotation of the rotate rod..."

As argued by the appellant, this feature allows the solution of the originally formulated problem of automatically locking and unlocking the saw head without additional operator inputs (see page 4, first full paragraph of the original description as well as page 9, line 25 to page 10, line 9 and page 11, lines 28 to 31).

Document D5, as also acknowledged by the examining division (see point 13.8, first sentence of the reasons for the decision), does not address this problem, so that the person skilled in the art has no reason to combine the teaching of documents D1 and D5.

The argument of the examining division (see point 15 of the reasons for the decision) that the person skilled in the art would apply the braking arrangement

according to D5, page 3, lines 39 to 70, to the winch of D1 for the reasons given in D5, lines 48 to 54 can also not be followed. The problem outlined in the cited passage of D5 is that of obtaining a damping effect and preventing the winding drum from gathering too much momentum when the cable is pulled out freely, this is not linked to the objective technical problem outlined above.

2.4 The subject-matter of claim 1 is thus based on an inventive step.

3. Clarity (Article 84 EPC)

The Board cannot share the consideration of the examining division given in an *obiter dictum* that claim 1 is not clear since the saw head is indicated as being part of the carriage in line 1 of the claim in contradiction to the expression "whereby a saw head can be slidably affixed" in line 23 (see point 17 of the reasons for the decision).

The Board concurs with the appellant (see page 11, paragraphs 2 to 8 of the statement setting out the grounds of appeal), that as claim 1 is directed to

"...A sawmill carriage for use on a sawmill base and with a saw head, comprising...",

it is readily apparent to the skilled person that the carriage is intended to be used on a sawmill base and with a saw head, which however do not form part of the claimed subject-matter.

The Board thus considers the matter of claim 1 to meet the requirements of Article 84 EPC.

4. As a consequence, the appellant has convincingly demonstrated the incorrectness of the findings of the examining division with respect to inventive step and clarity of the subject-matter of claim 1, so that the decision cannot be upheld. As no other reasons preventing the grant of a patent on the basis of the appellant's main request have been invoked by the examining division or are apparent to the Board, the appeal is allowable.

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 grant a patent in the following version:

Description, Pages

1-3, 6-13 as originally filed
4-5 filed in electronic form
on 22 November 2011

Claims, Numbers

1-15 filed in electronic form
on 18 September 2018

Drawings, Sheets

1/11-11/11 as originally filed

The Registrar:

The Chairman:



G. Nachtigall

I. Beckedorf

Decision electronically authenticated