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**Datasheet for the decision
of 13 November 2023**

Case Number: T 1448/22 - 3.2.07

Application Number: 10179226.5

Publication Number: 2305439

IPC: B27G19/00, B27B17/00,
B27B17/08, H02P3/12, H02P3/16,
H02P3/22, H02P3/26, H02H7/08

Language of the proceedings: EN

Title of invention:
Electric power tool

Patent Proprietor:
Makita Corporation

Opponent:
Andreas Stihl AG & Co. KG

Headword:

Relevant legal provisions:
RPBA 2020 Art. 12(6)
EPC Art. 56

Keyword:

Late-filed evidence - should have been submitted in first-
instance proceedings (yes) - admitted (no)
Inventive step - (yes)

Decisions cited:

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 1448/22 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 13 November 2023

Respondent:
(Patent Proprietor)

Makita Corporation
3-11-8, Sumiyoshi-cho,
Anjo,
Aichi 446 (JP)

Representative:

Kramer Barske Schmidtchen
Patentanwälte PartG mbB
European Patent Attorneys
Landsberger Strasse 300
80687 München (DE)

Appellant:
(Opponent)

Andreas Stihl AG & Co. KG
Badstrasse 115
71336 Waiblingen (DE)

Representative:

Karzel, Philipp
Patentanwälte
Dipl.-Ing. W. Jackisch & Partner mbB
Menzelstraße 40
70192 Stuttgart (DE)

Decision under appeal:

**Interlocutory decision of the Opposition
Division of the European Patent Office posted on
8 April 2022 concerning maintenance of the
European Patent No. 2305439 in amended form.**

Composition of the Board:

Chairman G. Patton
Members: A. Cano Palmero
E. Mille

Summary of Facts and Submissions

- I. The opponent (appellant) lodged an appeal within the prescribed period and in the prescribed form against the decision of the opposition division to maintain European patent No. 2 305 439 in amended form on the basis of the then auxiliary request II.
- II. An opposition was filed against the patent in its entirety and based on the grounds for opposition pursuant to Article 100(a) EPC (novelty and inventive step).
- III. The patent proprietor (respondent) likewise lodged an appeal against the decision. Its appeal was withdrawn during the oral proceedings before the board on 13 November 2023.
- IV. In preparation for oral proceedings, scheduled upon the parties' requests, the board communicated its preliminary assessment of the case to the parties by means of a communication pursuant to Article 15(1) RPBA 2020. Neither of the parties replied to this communication in substance.
- V. Oral proceedings before the board took place on 13 November 2023. At the conclusion of the proceedings the decision was announced. Further details of the proceedings can be found in the minutes thereof.
- VI. The final requests of the parties are as follows,

for the opponent:

that the decision under appeal be set aside and that the patent be revoked.

for the patent proprietor:

that the appeal be dismissed, *i.e.* that the patent be maintained in the form held by the opposition division to meet the requirements of the EPC (main request),

or, in the alternative, that the patent be maintained in amended form according to one of the sets of claims filed as auxiliary requests V to VIII with the reply to the opponent's statement setting out the grounds of appeal.

VII. The lines of arguments of the parties, which are focused on the admittance of document D11 and on inventive step of the subject-matter of claim 1 of the main request, are dealt with in detail in the reasons for the decision.

VIII. Independent **claim 1** according to the main request, with the labelling used by the parties, reads as follows:

- "1.1: An electric power tool comprising:
- 1.2: a tool(16);
- 1.3: a main body (12) supporting the tool (16);
- 1.4: an electric motor (48) disposed in the main body (12) to drive the tool (16);
- 1.5: a power supply circuit (42) electrically connected to the electric motor (48) to supply electric power to the electric motor (48);
- 1.6: a movable hand guard (26) supported by the main body (12);

- 1.7: a detector (46) disposed in the main body (12) to detect a movement of the movable hand guard (26),
- 1.8: and connected to a first switch (60) via a signal line,
- 1.9: wherein the first switch (60) is disposed in the power supply circuit (42) to electrically open and close the power supply circuit (42),
- 1.10: and configured to electrically open the power supply circuit (42) when the detector (46) detects the movement of the movable hand guard (26),
- 1.11: the electric power tool further comprising: a motor short circuit (64) configured to electrically shorts terminals of the electric motor (48) so as to brake the electric motor (48);
- 1.12: and a second switch (62) disposed in the motor short circuit (64) to electrically open and close the motor short circuit (64),
- 1.13: wherein the second switch (62) is configured to electrically close the motor short circuit (64) when the detector (46) detects the movement of the movable hand guard (26),
- 1.14: a controller (54) electrically connected to the second switch (62) and the detector (46),
- 1.15: wherein the controller (54) is configured to control the second switch (62) so as to electrically close the motor short circuit (64) when the controller (54) receives a predetermined detection signal from the detector (46),
- 1.16: wherein the controller (54) is further configured to control the first switch (60) so as to electrically open the power supply circuit (42) when the controller (54) receives the

predetermined detection signal from the detector (46)."

IX. As the auxiliary requests do not form part of this decision, it is not necessary to reproduce them here.

Reasons for the Decision

1. *Document D11 - admittance, Article 12(6) RPBA 2020*

1.1 The opponent submitted document D11 and the following objections on inventive step against the maintained version (main request in appeal proceedings) based on this document for the first time with its statement setting out the grounds of appeal:

- D8 or D10 as closest prior art in combination with the teaching of D11;
- D11 as closest prior art in combination with the common general knowledge or with the teaching of D8.

1.2 According to Article 12(6), second sentence, RPBA 2020, the board shall not admit evidence or objections which should have been submitted in opposition proceedings, unless the circumstances of the appeal case justify their admittance.

1.3 In this respect, the opponent argued that D11 was *prima facie* relevant for the outcome of the proceedings.

1.4 The board notes that the maintained version was filed by the patent proprietor with the reply to the notice of opposition, therefore at an early stage of the opposition proceedings. In the absence of any change in the subject of the proceedings, the board is of the view that, in the present case, nothing prevented the

opponent forming its complete opposition case during opposition proceedings, including all pertinent evidence and objections. The opponent's course of action deprived the opposition division of the opportunity to decide on the relevance of D11 and the objections based on it.

- 1.5 The board, considering that the main aim of appeal proceedings is to review decisions of the administrative departments of the EPO (cf. Article 12(2) RPBA 2020), does not consider it appropriate that the opponent starts a completely fresh case in appeal, thereby avoiding having a decision from the competent EPO department, without a convincing justification for this course of action. In this respect, the board underlines that an alleged *prima facie* relevance generally does not constitute a justifying circumstance in the sense of Article 12(6) RPBA 2020.
- 1.6 In this light, the board is convinced that the opponent could and should have submitted document D11 and the objections based on this document during opposition proceedings, and that in the absence of any justifying circumstances, the board does not admit these into the proceedings under Article 12(6), second sentence RPBA 2020.
2. *Patent as maintained by the opposition division (main request) - inventive step, Article 56 EPC*
 - 2.1 The opponent contested the reasoned finding of the opposition division that the subject-matter of claim 1 of the main request (auxiliary request II in opposition proceedings) was inventive in view of document D8 as closest prior art in combination with the teaching of

D3 (see points 15.1 to 15.4 of the reasons for the decision under appeal).

- 2.1.1 It is uncontested that at least features 1.11 to 1.15 of claim 1 of the main request are not disclosed in the tool of D8.
- 2.1.2 The parties also agreed that the technical effect associated with these distinguishing features is that the motor is slowed down and that the tool comes to a standstill more quickly. The objective technical problem could be seen as to further develop the motor of the tool of D8 in such a way that during operation in the event of a kick-back, injury to the user is prevented more quickly and effectively.
- 2.1.3 According to the opponent, the skilled person, starting from the tool of D8 and in order to solve the problem of faster avoidance of injury to the user in the event of a kick-back, would be taught by D3 of the possibility of a trigger switch 7 that can provide an electrical braking circuit (coasting brake 17) of the electric motor (column 4, lines 40 to 52; figure 5). It would be obvious for the skilled person to implement the trigger switch of D3 in the tool of D8 and further to use the signal which is transmitted to the control unit in D8 to cause an interruption of the current supply to the electric motor to also activate an electric coasting brake (features 1.13 to 1.15) as taught by D3. A corresponding "second switch" as required by claim 1 of the main request is already disclosed by the trigger switch 7 in D3.
- 2.1.4 In sum, the skilled person would arrive at the subject-matter of claim 1 of the main request in an obvious

manner starting from D8 in combination with the teaching of D3.

2.2 The board is not persuaded by the arguments of the opponent for the following reasons.

2.2.1 As correctly found by the opposition division, the controller of D8 is directed to the opening and closing of the motor circuit, implicitly to the operation of a simple, single switch, which is in principle quite different to the circuit taught by D3 in figures 4 and 5. If the solution of D3 were to be implemented in the tool of D8, the skilled person would not only need to adapt the controller of D8 in a first step, but also would be forced in a second step to disregard the existing simple motor circuit and implement a completely different, more complex, circuit including two switches.

2.2.2 In this light, the board is of the view that starting from D8 as closest prior art and in view of the teaching of D3, the skilled person would only arrive at the subject-matter of claim 1 of the main request as the result of an *ex post facto* analysis.

3. It follows that the opponent has not provided convincing reasons and/or admissible objections that could demonstrate the incorrectness of the decision under appeal, which maintained the patent according to the set of claims of the main request. The appeal is thus to be dismissed.

Order

For these reasons it is decided that:

1. The appeal is dismissed.
2. The appeal fee paid by the patent proprietor is reimbursed at 25%.

The Registrar:

The Chairman:



G. Nachtigall

G. Patton

Decision electronically authenticated