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**Datasheet for the decision
of 5 February 2026**

Case Number: T 1176/24 - 3.2.07

Application Number: 16724167.8

Publication Number: 3288715

IPC: B25B21/00, F16B1/00, F16B43/00,
B25B23/00, B25B23/14

Language of the proceedings: EN

Title of invention:

REACTION WASHER AND THREADED FASTENER COMPRISING SUCH WASHER

Applicant:

Hytorc Division Unex Corporation

Headword:

Relevant legal provisions:

EPC Art. 111, 113, 116
EPC R. 103(4) (c), 137(5)
RPBA 2020 Art. 11, 12(8)

Keyword:

Amendments of application - amended claims relating to
unsearched subject-matter
Remittal - special reasons for remittal
Oral proceedings - withdrawal of request for oral proceedings

Decisions cited:

T 0613/99, T 0708/00

Catchword:



Beschwerdekammern
Boards of Appeal
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Case Number: T 1176/24 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 5 February 2026

Appellant: Hytorc Division Unex Corporation
(Applicant) 333 Route 17 North
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Representative: Walther Bayer Faber Patentanwälte PartGmbB
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 22 April 2024
refusing European patent application No.
16724167.8 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman G. Patton
Members: B. Paul
Y. Podbielski

Summary of Facts and Submissions

- I. An appeal was filed by the applicant (appellant) against the decision of the examination division to refuse the European Patent application no. 16 724 167.8.

The appellant requested that the decision under appeal be set aside and that a patent be granted based on the Main Request filed as enclosure P3 with the grounds of appeal. In alternative they requested that the subject matter of the Main Request is searched and examined without the payment of an additional search fee, or in the alternative, that the subject matter of the Main Request is searched and examined after a payment of an additional search fee. They further requested the reimbursement of the appeal fee.

- II. In preparation for oral proceedings, the Board gave its preliminary opinion in a communication pursuant to Article 15(1) RPBA, dated 21 October 2025, according to which the appeal was likely to be allowed in part as claim 1 of the Main Request did not fulfil the conditions required for the application of Rule 137(5) EPC. The Examining Division's decision not to allow the amended claims according to the main request under Rule 137(5) EPC was thus incorrect. In its preliminary opinion, the Board recognized special reasons for a remittal (Article 11 RPBA) and indicated that it intended to remit the case to the Examining Division for further prosecution on the basis of the Main Request, in accordance with Article 111(1) EPC.

The Board also gave its preliminary opinion that the request for reimbursement of the appeal fee was likely to be dismissed.

III. The appellant filed submissions dated 20 November 2025. They amended their previous requests by withdrawing their request for oral proceedings and their request for full reimbursement of the appeal fee.

IV. The final requests of the appellant are

- that the decision under appeal be set aside and that a patent be granted based on the Main Request filed as enclosure P3 with the grounds of appeal, in alternative, while setting aside the decision under appeal,
- that the subject matter of the Main Request is searched and examined without the payment of an additional search fee, or in the alternative, while setting aside the decision under appeal,
- that the subject matter of the Main Request is searched and examined after a payment of an additional search fee.

They further requested that

- a decision on the merits be issued in writing according to Article 12(8) RPBA and
- that the appeal fee paid by the appellant be reimbursed at 25% according to Rule 103(4)c) EPC.

V. Claim 1 of the Main Request reads as follows:

*A threaded fastener for use with a stud (23) fastening objects including:
either a nut (2536) to be tightened or loosened threadedly engageable with the stud (23) or a stud-*

*head to be tightened or loosened connected to the stud (23); and
a reaction washer (1, 2301, 2501) for receiving counter torque generated due to tightening or loosening of a threaded fastener (20, 801, 802, 901) connected to either the nut (2536) or the stud-head,
an outer edge (4) having a geometric shape that allows for rotational coupling with a power tool (10);
a bottom surface (2318) having friction coefficient increasing treatments (2517) biased in areas outward from a center bore (2515); wherein the nut (2536) or stud-head and the reaction washer (1, 2301, 2501) are connected by a bond which breaks at or prior to a predetermined pre-torque once compression and friction forces overcome such bond such that the reaction washer (1, 2301, 2501) becomes a suitable reaction point.*

VI. The main arguments of the appellant relevant to the decision are included in the reasons below.

Reasons for the Decision

1. *Procedural matters*

1.1 The case is ready for decision which is taken in written proceedings without holding oral proceedings in accordance with Article 12(8) RPBA and Articles 113 and 116 EPC.

1.2 In response to the Board's communication under Article 15(1) RPBA the appellant, with submissions dated

20 November 2025, withdrew their request for oral proceedings pursuant to Article 116(1) EPC and requested the Board to issue a written decision on the merits.

1.3 Since the appellant has been informed of the Board's preliminary assessment of the case, the principle of the right to be heard pursuant to Article 113(1) EPC is observed, as that provision only affords the opportunity to be heard and the appellant's submissions are fully taken into account.

1.4 The Board is satisfied that the appeal is ready for decision. After definitive deliberation of the case, it confirms its previously stated preliminary opinion as final, as outlined below.

2. *Admittance of the Main Request*
(Rule 137(5) EPC)

2.1 In point 12 of the grounds for the decision under appeal the Examination Division concluded not to admit the Main Request under Rule 137(5) EPC since the amendments to the claims of the Main Request were based on original claim 93 that was found to be non-unitary during the international search phase.

2.2 The sole independent claim 1 of the Main Request is a combination of original claim 90 with reference to original claim 1 and the addition of the features of original claim 93.

In their findings, the Examination Division agreed with the competent Search Division that the common concept between original claim 1 and original claim 93 would be the friction coefficient increasing treatments which

was found to be known from the document JTP Markting: 'Hytorc Washer instructiefil', 27 October 2014, page 1, XP054976730, retrieved on 23 August 2016 from the internet: URL: <https://www.youtube.com/watch?v=BFENPA35exk> ('**document D1**'). Since this concept was known, it could not serve as a single general inventive concept, so that the original application did not fulfil the requirement for unity of invention under an *a posteriori* analysis.

Furthermore, the applicant did not pay the requested additional search fee in time, so that the invention of original claim 93 was never searched. In consequence claim 1 of the Main Request related to unsearched subject-matter which did not combine with the originally claimed group of inventions to form a single general inventive concept.

2.3 However, the Examination Division erred in its application of Rule 137(5) EPC by merely finding that original claim 93 did not meet the requirements of unity when assessed *a posteriori*. This criterion is irrelevant in the present context when applying Rule 137(5) EPC.

According to well-established case law, Rule 137(5) EPC does not apply when the applicant has not paid the search fee in respect of a non-unitary invention relating to the originally filed claims (see Case Law of the Boards of Appeal [CLB], 11th edition, July 2025, IV.B.5.3 with reference to T 613/99 and in particular T 708/00, point 16. of the reasons).

The Examining Division did furthermore not establish whether the features of original claim 93 as basis of the amendment to claim 1 of the Main Request can be

subordinated to the original general inventive idea underlying original claim 90 with reference to original claim 1 or not.

- 2.4 The subject matter of claim 1 of the Main Request as well as the subject matter of original claim 90 are directed to a threaded fastener, *i.e.* an assembly of a nut or a stud-head and a reaction washer for receiving counter torque generated due to tightening or loosening of the threaded fastener. The feature added by original claim 93 relates to a further and more specific implementation of the interplay between the nut or stud-head and the reaction washer in defining a bond that connects said elements and breaks at or prior to a predetermined pre-torque.

The Board is therefore convinced that claim 1 of the Main Request merely constitutes a restriction to a particular embodiment of the subject matter as claimed in the original claim 90 (with reference to original claim 1) and can be subordinated to the original general inventive idea.

This applies as well if the general inventive idea relating to original claim 90 with reference to original claim 1 is to be seen in an improvement in the friction between the workpiece and the reaction washer, as it was defined by the Examining Division. In this context, the Board points to the features of the original claim 93 that establish a connection between the breaking point of the connection between the nut/stud-head and the reaction washer in dependence of the existent friction forces.

- 2.5 The Board therefore concludes that claim 1 of the Main Request does not fulfil the conditions required for the

application of Rule 137(5) EPC and that the decision not to allow the amended claims according to the Main Request under Rule 137(5) EPC was incorrect.

The decision under appeal is therefore to be set aside.

- 2.6 The Board stresses that a supplementary search concerning the aspects arising from the original claim 93, now reflected in claim 1 of the Main Request, would be in accordance with due process should the Examining Division deem it necessary. Moreover, such supplementary search appears to be highly appropriate in the light of the Examining Division's findings set out in point 12.2 of the grounds for the decision under appeal.

3. *Remittal of the case*
(Article 111(1) EPC and Article 11 RPBA)

The decision under appeal, the review of which being the primary object of the appeal proceedings (Article 12(2) RPBA), only deals with the issue of admittance of the Main Request. Substantive requirements of the EPC, such as novelty and inventive step of the Main Request, are not addressed.

In view of the non-assessment of the substantive requirements for granting a patent during examination proceedings so far, the Board acknowledges that not all requirements of the EPC relevant for the requested grant of a patent can be examined and decided by the Board without an undue burden.

Hence, the Board recognizes special reasons for a remittal (Article 11 RPBA) and remits the case to the Examining Division for further prosecution on the basis

of the Main Request, in accordance with 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 Examination Division for further prosecution.

The Registrar:

The Chairman:



G. Nachtigall

G. Patton

Decision electronically authenticated