

**Internal distribution code:**

- (A) [ - ] Publication in OJ
- (B) [ - ] To Chairmen and Members
- (C) [ - ] To Chairmen
- (D) [ X ] No distribution

**Datasheet for the decision  
of 18 April 2024**

**Case Number:** T 2325/22 - 3.2.07

**Application Number:** 11873756.8

**Publication Number:** 2763816

**IPC:** B25F5/00, H05K7/20, A01D34/90

**Language of the proceedings:** EN

**Title of invention:**  
BATTERY OPERATED HANDHELD POWER TOOL

**Patent Proprietor:**  
Husqvarna AB

**Opponent:**  
Grünecker Patent- und Rechtsanwälte  
PartG mbB

**Headword:**

**Relevant legal provisions:**  
EPC Art. 56

**Keyword:**  
Inventive step - main request and auxiliary requests (no)

**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 2325/22 - 3.2.07**

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.07**  
**of 18 April 2024**

**Appellant:** Grünecker Patent- und Rechtsanwälte  
(Opponent) PartG mbB  
Leopoldstrasse 4  
80802 München (DE)

**Representative:** Zimmermann & Partner  
Patentanwälte mbB  
Josephspitalstr. 15  
80331 München (DE)

**Respondent:** Husqvarna AB  
(Patent Proprietor) Drottninggatan 2  
561 82 Huskvarna (SE)

**Decision under appeal:** **Decision of the Opposition Division of the European Patent Office posted on 17 August 2022 rejecting the opposition filed against European patent No. 2763816 pursuant to Article 101(2) EPC.**

**Composition of the Board:**

**Chairman** G. Patton  
**Members:** V. Bevilacqua  
R. Cramer

## **Summary of Facts and Submissions**

- I. An appeal was filed by the opponent against the decision of the opposition division to reject its opposition against European patent No. 2 763 816.
- II. The opposition was based on the grounds of lack of inventive step (Article 100(a) EPC in combination with Article 56 EPC) and unallowable extension (Article 100(c) EPC in combination with Article 123(2) EPC).
- III. The opposition division found that none of the grounds for opposition raised prejudiced the maintenance of the patent as granted.
- IV. In preparation for the oral proceedings, the board gave its preliminary opinion in a communication pursuant to Article 15(1) RPBA, to which only the patent proprietor replied with the letter of 15 December 2023.
- V. Oral proceedings before the board took place on 18 April 2024.

At the conclusion of the proceedings, the decision was announced.

Further details of the proceedings can be found in the minutes.

- VI. This decision makes reference to the following documents mentioned in the appealed decision:

D4: WO 2009/145206 A2  
D8: WO 2011/024479 A2

VII. The parties' final requests were as follows:

on the part of the appellant (opponent):

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

on the part of the respondent (patent proprietor):

- that the appeal be dismissed and the patent be maintained as granted, alternatively, if the decision is set aside,
- that the patent be maintained in amended form according to one of auxiliary requests 1 to 9 filed with the reply to the statement of grounds of appeal.

VIII. The arguments of the parties are dealt with in detail in the reasons for the decision.

IX. Independent claim 1 of the **main request** (patent as granted) reads as follows:

"A battery operated handheld power tool, the power tool (1) comprising a handle assembly (10), a working tool assembly (20), and an elongate rod (30) interconnecting the handle assembly (10) and the working tool assembly (20), the working tool assembly (20) comprising a working tool of the power tool, and an electric motor arranged to drive the working tool; and the handle assembly (10) comprising a body portion (11) to which a battery pack (13) may be detachably connected, which battery pack (13) is arranged to provide electric power to the electric motor, the power tool being

characterized in comprising a control unit (15) provided in the body portion (11) so as to control a flow of electric current from the battery pack (13) to the motor, and wherein the body portion (11) further comprises a fan (14) arranged to generate a flow of air passing by the control unit (15) during operation of the power tool (1)."

Independent claim 1 of **auxiliary request 1** reads as follows (features added with respect to claim 1 of the main request are in bold, emphasis added by the board):

"A battery operated handheld power tool **in the group consisting of grass trimmers and clearing saws**, the power tool (1) comprising a handle assembly (10), a working tool assembly (20), and an elongate rod (30) interconnecting the handle assembly (10) and the working tool assembly (20), the working tool assembly (20) comprising a working tool of the power tool, and an electric motor arranged to drive the working tool; and the handle assembly (10) comprising a body portion (11) to which a battery pack (13) may be detachably connected, which battery pack (13) is arranged to provide electric power to the electric motor, the power tool being characterized in comprising a control unit (15) provided in the body portion (11) so as to control a flow of electric current from the battery pack (13) to the motor, and wherein the body portion (11) further comprises a fan (14) arranged to generate a flow of air passing by the control unit (15) during operation of the power tool (1)."

Independent claim 1 of **auxiliary request 2** reads as follows (features added with respect to claim 1 of the main request are in bold, emphasis added by the board):

"A battery operated handheld power tool, **being a grass trimmer or a clearing saw**, the power tool (1) comprising a handle assembly (10), a working tool assembly (20), and an elongate rod (30) interconnecting the handle assembly (10) and the working tool assembly (20), the working tool assembly (20) comprising a working tool of the power tool, and an electric motor arranged to drive the working tool; and the handle assembly (10) comprising a body portion (11) to which a battery pack (13) may be detachably connected, which battery pack (13) is arranged to provide electric power to the electric motor, the power tool being characterized in comprising a control unit (15) provided in the body portion (11) so as to control a flow of electric current from the battery pack (13) to the motor, and wherein the body portion (11) further comprises a fan (14) arranged to generate a flow of air passing by the control unit (15) during operation of the power tool (1)."

Independent claim 1 of **auxiliary request 3** reads as follows (features added with respect to claim 1 of the main request are in bold, emphasis added by the board):

"A battery operated handheld power tool **in the form of a grass trimmer**, the power tool (1) comprising a handle assembly (10), a working tool assembly (20), and an elongate rod (30) interconnecting the handle assembly (10) and the working tool assembly (20), the working tool assembly (20) comprising a working tool of the power tool, and an electric motor arranged to drive the working tool; and the handle assembly (10) comprising a body portion (11) to which a battery pack (13) may be detachably connected, which battery pack (13) is arranged to provide electric power to the electric motor, the power tool being characterized in comprising

a control unit (15) provided in the body portion (11) so as to control a flow of electric current from the battery pack (13) to the motor, and wherein the body portion (11) further comprises a fan (14) arranged to generate a flow of air passing by the control unit (15) during operation of the power tool (1)."

Independent claim 1 of **auxiliary request 4** reads as follows (amendments with respect to claim 1 of the main request are in bold, emphasis added by the board):

"A battery operated handheld power tool in the group consisting of grass trimmers and clearing saws, the power tool (1) comprising a handle assembly (10), a working tool assembly (20), and an elongate rod (30) interconnecting the handle assembly (10) and the working tool assembly (20), the working tool assembly (20) comprising a working tool of the power tool, and an electric motor arranged to drive the working tool; and the handle assembly (10) comprising a body portion (11) to which a battery pack (13) may be detachably connected, which battery pack (13) is arranged to provide electric power to the electric motor, the power tool being characterized in comprising a control unit (15) provided in the body portion (11) so as to control a flow of electric current from the battery pack (13) to the motor, **and** wherein the body portion (11) further comprises a fan (14) arranged to generate a flow of air passing by the control unit (15) during operation of the power tool (1), **and wherein the fan is arranged to suck ambient air from an air inlet (17) provided in a cover (12) of the body portion (11) and to direct the air flow towards the control unit (15) and further to an air outlet (18) provided in the cover (17).**"



Independent claim 1 of **auxiliary request 5** reads as follows (amendments with respect to claim 1 of auxiliary request 1 are in bold, emphasis added by the board):

"A battery operated handheld power tool in the group consisting of grass trimmers and clearing saws, the power tool (1) comprising a handle assembly (10), a working tool assembly (20), and an elongate rod (30) interconnecting the handle assembly (10) and the working tool assembly (20), the working tool assembly (20) comprising a working tool of the power tool, and an electric motor arranged to drive the working tool; and the handle assembly (10) comprising a body portion (11) to which a battery pack (13) may be detachably connected, which battery pack (13) is arranged to provide electric power to the electric motor, the power tool being characterized in comprising a control unit (15) provided in the body portion (11) so as to control a flow of electric current from the battery pack (13) to the motor, **and** wherein the body portion (11) further comprises a fan (14) arranged to generate a flow of air passing by the control unit (15) during operation of the power tool (1) **and wherein the fan is arranged to suck ambient air from an air inlet (17) provided in a cover (12) of the body portion (11) and to direct the air flow towards the control unit (15) and further to an air outlet (18) provided in the cover (17).**"

Independent claim 1 of **auxiliary request 6** reads as follows (amendments with respect to claim 1 of auxiliary request 2 are in bold, emphasis added by the board):

"A battery operated handheld power tool, being a grass trimmer or a clearing saw, the power tool (1)

comprising a handle assembly (10), a working tool assembly (20), and an elongate rod (30) interconnecting the handle assembly (10) and the working tool assembly (20), the working tool assembly (20) comprising a working tool of the power tool, and an electric motor arranged to drive the working tool; and the handle assembly (10) comprising a body portion (11) to which a battery pack (13) may be detachably connected, which battery pack (13) is arranged to provide electric power to the electric motor, the power tool being characterized in comprising a control unit (15) provided in the body portion (11) so as to control a flow of electric current from the battery pack (13) to the motor, **and** wherein the body portion (11) further comprises a fan (14) arranged to generate a flow of air passing by the control unit (15) during operation of the power tool (1) **and wherein the fan is arranged to suck ambient air from an air inlet (17) provided in a cover (12) of the body portion (11) and to direct the air flow towards the control unit (15) and further to an air outlet (18) provided in the cover (17).**"

Independent claim 1 of **auxiliary request 7** reads as follows (amendments with respect to claim 1 of auxiliary request 3 are in bold, emphasis added by the board):

"A battery operated handheld power tool in the form of a grass trimmer, the power tool (1) comprising a handle assembly (10), a working tool assembly (20), and an elongate rod (30) interconnecting the handle assembly (10) and the working tool assembly (20), the working tool assembly (20) comprising a working tool of the power tool, and an electric motor arranged to drive the working tool; and the handle assembly (10) comprising a body portion (11) to which a battery pack (13) may be

detachably connected, which battery pack (13) is arranged to provide electric power to the electric motor, the power tool being characterized in comprising a control unit (15) provided in the body portion (11) so as to control a flow of electric current from the battery pack (13) to the motor, **and** wherein the body portion (11) further comprises a fan (14) arranged to generate a flow of air passing by the control unit (15) during operation of the power tool (1) **and wherein the fan is arranged to suck ambient air from an air inlet (17) provided in a cover (12) of the body portion (11) and to direct the air flow towards the control unit (15) and further to an air outlet (18) provided in the cover (17).**"

Independent claim 1 of **auxiliary request 8** reads as follows (amendments with respect to claim 1 of the main request are in bold, emphasis added by the board):

"A battery operated handheld power tool **in the form of a grass trimmer**, the power tool (1) comprising a handle assembly (10), a working tool assembly (20) **in the form of a cutting means assembly**, and an elongate rod (30) interconnecting the handle assembly (10) and the working tool assembly (20), the working tool assembly (20) comprising a working tool of the power tool, and an electric motor arranged to drive the working tool; and the handle assembly (10) comprising a body portion (11) to which a battery pack (13) may be detachably connected, which battery pack (13) is arranged to provide electric power to the electric motor, the power tool being characterized in comprising a control unit (15) provided in the body portion (11) so as to control a flow of electric current from the battery pack (13) to the motor, and wherein the body portion (11) further comprises a fan (14) arranged to generate a flow of air

passing by the control unit (15) during operation of the power tool (1)."

Independent claim 1 of **auxiliary request 9** reads as follows (amendments with respect to claim 1 of auxiliary request 8 are in bold, emphasis added by the board):

"A battery operated handheld power tool in the form of a grass trimmer, the power tool (1) comprising a handle assembly (10), a working tool assembly (20) in the form of a cutting means assembly, and an elongate rod (30) interconnecting the handle assembly (10) and the working tool assembly (20), the working tool assembly (20) comprising a working tool of the power tool, and an electric motor arranged to drive the working tool; and the handle assembly (10) comprising a body portion (11) to which a battery pack (13) may be detachably connected, which battery pack (13) is arranged to provide electric power to the electric motor, the power tool being characterized in comprising a control unit (15) provided in the body portion (11) so as to control a flow of electric current from the battery pack (13) to the motor, **and** wherein the body portion (11) further comprises a fan (14) arranged to generate a flow of air passing by the control unit (15) during operation of the power tool (1) **and wherein the fan is arranged to suck ambient air from an air inlet (17) provided in a cover (12) of the body portion (11) and to direct the air flow towards the control unit (15) and further to an air outlet (18) provided in the cover (17).**"

## Reasons for the Decision

1. D8 - Admittance
  - 1.1 The opposition division decided to admit late-filed document D8, considering it *prima facie* relevant for inventive step (appealed decision, II.14.1.2).
  - 1.2 The respondent requests that D8 not be taken into account in appeal proceedings, arguing that as the opposition division admitted D8 because it found that this document was, when compared with the other available prior art, a better starting point for the discussion on inventive step, it applied its discretion in an unreasonable way.

This was because the *prima facie* relevance assessment was only based on a comparison with the available prior art.

However, the fact that the appellant's timely filed documents were of minor relevance should not automatically make a late-filed document, such as D8, *prima facie* relevant.

The respondent also argued that the discretionary decision to admit this document into opposition proceedings was "clearly wrong" because the opposition division applied the principle of *prima facie* relevance in contradictory way.

The contradiction resides in the fact that after having considered D8 *prima facie* relevant, the opposition division ultimately found this document to be non-

prejudicial to the maintenance of the patent as granted.

This happened because the opposition division came to its findings on the admittance without properly taking the requirements of Article 56 EPC into account.

As D8 was introduced by the appellant as an alternative starting point in the discussion of inventive step, the opposition division clearly acted in an unreasonable way.

D8 should therefore be excluded from these appeal proceedings.

1.3 D8 is not excluded from these appeal proceedings for the following reasons.

According to the Case Law of the Boards of Appeal (CLB in the following, see the 10th edition 2022, IV.C. 4.5.2), a "board of appeal should only overrule the way in which a department of first instance has exercised its discretion when deciding on a particular case if it concludes that it has done so according to the wrong principles, or without taking into account the right principles, or in an unreasonable way".

It is not the function of a board to review all the facts and circumstances of the case as if it was in the place of the department of first instance to decide whether or not it would have exercised such discretion in the same way.

As the discretionary decision of admitting D8 was taken on the basis of the correct principle (*prima facie* relevance), it could only be reviewed by the board if

the assessment of *prima facie* relevance was based on inappropriate or arbitrary considerations.

In accordance with established case law (CLB, I.C. 4.4.3.b)), a *prima facie* relevance assessment is not *per se* to be overturned only because it contains a comparison with the other available prior art.

In the current case, contrary to what has been put forward by the respondent, the opposition division did not base its *prima facie* relevance assessment exclusively on such a comparison.

The opposition division only admitted D8 into the proceedings after having *prima facie* examined the disclosure of Figures 1 and 7 of this document and having compared it with the subject-matter of claim 1 of the main request (see point II.14.1.2 of the appealed decision).

The fact that the opposition division, after a full assessment of document D8, considered it to not prejudice the maintenance of the patent as granted does not affect and contradict the *prima facie* assessment which had been made for its admittance.

This is because, again in line with established case law (CLB, I.C.4.4.3.a)), *prima facie* relevance is ascertained on the face of the facts, i.e. with little investigative effort, which reflects the need for procedural expediency in considering and admitting late-filed facts and evidence.

This principle is therefore not applied in a contradictory way if a subsequent detailed analysis of the document later led the opposition division to

conclude that the inventive-step attacks based on the document were actually not prejudicial because such an in-depth analysis is not part of the *prima facie* assessment of the relevance of a document.

The appealed decision then also clearly shows that the opposition division did not assess *prima facie* relevance in isolation from the submissions put forward by the parties, but fully considered, in exercising its discretion, the objection of lack of inventive step that this late-filed document was supposed to substantiate.

In view of the above, the board decided not to overturn the decision of the opposition division to admit D8 into the proceedings. Considering the fact that the decision under appeal is based on D8, D8 is part of the appeal proceedings (Article 12(2) RPBA).

2. Claim 1, main request - inventive step starting from D8
- 2.1 Starting from the following distinguishing features:

"wherein the body portion further comprises a fan arranged to generate a flow of air passing by the control unit during operation of the power tool"

the opposition division identified the problem to be solved as providing reliable heat dissipation for the control unit (see points II.15.2.5 to II.15.2.8 of the appealed decision).

After having discussed the combination with the teachings available in the prior art, comprising document D4, the opposition division acknowledged inventive step (decision under appeal, point II.15.2).



2.2 The appellant, while agreeing with the appealed decision on the distinguishing features and on the formulation of the problem to be solved, contests the findings of the opposition division on the combination of D8 with D4 arguing as follows.

According to the appellant, D4 deals with a battery operated handheld power tool and teaches the distinguishing features in Figure 2 and page 19. In this passage and Figure 2, a cooling fan arranged to generate a flow of air passing by the control unit (9) during operation of the power tool is depicted and described as a way of improving heat dissipation for a control unit of the tool.

The skilled person would see the advantages of this teaching and have no practical difficulties in applying it to the battery operated handheld power tool disclosed in D8. In this way, they would arrive at the subject-matter of claim 1 of the main request without having to exercise any inventive skill.

2.3 The respondent replies as follows.

2.3.1 While the distinguishing features starting from D8 have been correctly identified by the opposition division and by the appellant, the formulation of the problem to be solved is based on hindsight because by identifying the control unit as the element to be cooled down, it contains a pointer to the solution.

2.3.2 According to the respondent, the problem should instead be formulated as "how to make the device more powerful".

This is because the effect of the distinguishing features is that they allow the use of a more powerful drive train in the tool of D8.

With a more powerful drive train, issues resulting from too much heat may arise which have to be dealt with.

The skilled person aiming at making the device of D8 more powerful would not look at D4 and would not arrive at the subject-matter of claim 1 of the main request without using inventive skills as there are many other ways to increase power delivery that are not based upon the distinguishing features.

This is also because the skilled person would have instead identified, reading D8, that overheating of the battery and the motor were the main issues to be worked on when increasing power delivery. As a matter of fact, starting from D8, the skilled person would not identify cooling the control unit as an issue to be addressed as this document only mentions passive cooling of the motor ([0143], last three lines) and overcurrent protection for the battery ([0009] to [0012]), i.e. no cooling of the control unit. Therefore, the skilled person would not arrive at implementing in D8 a fan arranged to generate a flow of air passing by the control unit during operation of the power tool without having knowledge of the current invention.

- 2.3.3 Still according to the respondent, the skilled person would not have arrived at the subject-matter of claim 1 of the main request without using inventive skills, even if inventive step had to be discussed on the basis of the problem as wrongly formulated by the appellant.

This is because a skilled person aiming at finding a way to cool the control unit of D8 would, as D8 uses passive cooling, inevitably have chosen passive cooling also for the control unit.

The respondent also puts forward that the fan 22 shown in Figure 2 of D4 would not provide a viable solution for cooling the control unit of a tool such as the tool of D8.

This was because this fan is too small and only provides a minor cooling effect, the main cooling effect being achieved through the fan connected to the motor in D4, which was the only one capable of forcing air through the whole of the housing.

The skilled person starting from D8 would therefore not have applied the teaching of page 19 and Figure 2 of D4 to D8, but would rather have put the control unit of D8 in a position, within the tool, in which it would have benefited from the main cooling system acting on the motor.

During oral proceedings before the board, the respondent submitted, as a further reason not to combine the teachings of D4 with those of D8, that these two documents are not compatible with each other, belonging to two remote technical fields.

D4 disclosed tools not specifically designed for outdoor use, such as a drill or a driver, whereas D8 deals with gardening tools, which are always weather protected.

The tool of Figure 2 of D4 not even being suitable for outdoor use was evident from the fact that both the air

inlet (25) and the air outlet (26) shown are without weather protection and oriented upward.

Furthermore, the different uses of the tools necessarily implied that the motors and the control units are also different.

2.4 The appellant convincingly demonstrated the incorrectness of the appealed decision on the combination of D8 with D4 for the following reasons.

2.4.1 In the patent in suit, the effect of the distinguishing features mentioned in the paragraph [0010]:

*"wherein the body portion further comprises a fan arranged to generate a flow of air passing by the control unit during operation of the power tool"*

is unambiguously that the control unit is cooled during operation of the power tool to reduce the negative impact of the heat generated in the control unit.

The following paragraph [0011] reads as follows:

*"Thereby the control unit may be cooled during operation of the power tool and the negative impact of the heat generated in the control unit during operation of the power tool will be reduced. Accordingly, the risk for control unit failures will be reduced, and the life time of the control unit might be extended"*

Under established case law (CLB, I.D.4.2), the objective technical problem, which determines the angle of vision that the skilled person will adopt when considering the remaining prior art in the problem-solution approach, can be formulated as how to achieve

the technical effect of exactly those features distinguishing the claim from the prior art.

As D8 already discloses a control unit, the control unit is not a distinguishing feature as such, so that mentioning this control unit in the formulation of the problem to be solved cannot be seen as a pointer towards the claimed solution, contrary to the respondent's view.

As a consequence of the above, the problem to be solved derived from the appealed decision and agreed with by the appellant can be seen as correctly formulated.

- 2.4.2 The alternative problem formulation proposed by the respondent is not accepted by the board because the respondent failed to convincingly demonstrate that providing, in the body portion, a fan arranged to generate a flow of air passing by the control unit during operation of the power tool achieves *per se* the effect of increasing the power of the tool.

Contrary to the allegation of the respondent, increased power is neither achieved by nor a technical consequence of including the distinguishing features in a power tool.

- 2.4.3 Document D4 discloses a battery operated handheld power tool (see Figure 1) comprising a handle assembly (6b, identified as "grip portion" in the description) and a working tool assembly (6a, "body portion").

The working tool assembly (6a) comprises an electric motor (3) arranged to drive the working tool; and the handle assembly (6b) comprises a body portion to which a battery pack (2) may be detachably connected, battery

pack (2) being arranged to provide electric power to the electric motor.

The tool of D4 also comprises a control unit (9) to control a flow of electric current from the battery pack (2) to the motor (3).

The filters mentioned on page 20, lines 18 to 20 of this document show that, contrary to what has been submitted by the respondent, the tool of D4 is not only suitable for use in clean or indoor environments.

For this reason, the doubts raised by the respondent on the fundamental incompatibility with the tool in D8 are not shared by the board.

On the contrary, the board considers that the technical field in which D4 lies, i.e. electric handheld power tools such as a drill or a driver, is a neighbouring technical field to that of gardening tools as in D8, as the gardening tools of D8 also concern electric handheld power tools. The board is not convinced that the intended uses of the tools and the possible differences in their specific conceptions tailored to their specific uses would prevent the skilled person from combining documents from the two neighbouring technical fields.

- 2.4.4 D4 explicitly teaches that the body portion of the tool comprises a fan (22, see page 19, lines 17 to 18 and Figure 2) arranged to generate a flow of air passing by the control unit (9, see page 19, lines 19 to 24) during (and also after) operation of the power tool (see page 20, lines 21 to 25) described in D4.

This teaching is confirmed by the statements on page 21, lines 13 to 14 of D4.

The board fully concurs with the appellant that the skilled person aiming at providing a reliable heat dissipation system would see the advantages of this teaching and have no practical difficulties in applying it to the battery operated handheld tool disclosed in D8.

The argument of the respondent that a skilled person would not have used this solution to cool the control device in the tool of D8 is not convincing because the above-identified passages of D4 explain that this fan (22) alone is designed, and therefore sufficient, to cool the control unit (9) during normal use of the tool independently from the cooling system (fan 18) of the motor.

The fact that the fan (22) cooling the control unit in D4 is small is not relevant because the claim does not specify any size.

By combining the teachings of documents D8 and D4, as explained above, the skilled person would arrive at the subject-matter of claim 1 of the main request without having to exercise any inventive skill.

Consequently, the appellant convincingly demonstrated that the subject-matter of claim 1 of the main request does not involve an inventive step.

2.5 As a consequence of the above, the ground for opposition of Article 100(a) EPC holds against claim 1 of the main request, and the appealed decision has to be set aside.

3. Auxiliary request 1

3.1 Claim 1 of auxiliary request 1 has been amended, with respect to claim 1 of the main request, exclusively by adding features intended to overcome the objections of unallowable extension raised against the main request (see the substantiation of this request in the reply to the statement of grounds, pages 1 and 2).

3.2 During oral proceedings before the board, the respondent referred to its written submissions on inventive step of auxiliary request 1 and added that the additional feature added to claim 1 of auxiliary request 1, although not being a distinguishing feature with respect to the content of the disclosure of document D8, still could contribute to inventive step.

This was because, as now the claimed invention was restricted to power tools in the group consisting of grass trimmers and clearing saws, the skilled person would refrain from combining a teaching coming from document D4, which clearly was outside this technical field, with the clearing saw disclosed in D8.

3.3 The board is not convinced by the above argument.

As there is no further distinguishing feature, the subject-matter of claim 1 of auxiliary request 1 lacks inventive step for the same reasons discussed above for the main request.

4. Auxiliary request 7



4.1 Claim 1 of auxiliary request 7 has been amended with respect to claim 1 of the main request by specifying that:

- (a) the battery operated handheld power tool is in the form of a grass trimmer
- (b) the fan is arranged to suck ambient air from an air inlet provided in a cover of the body portion and to direct the air flow towards the control unit and further to an air outlet provided in the cover

The respondent argues that both these added features are not disclosed in D8 and that they overcome the objection of lack of inventive step raised and discussed against the main request because they were also not taught by D4.

D8, while disclosing a tool which may be suitable for cutting grass, clearly failed to disclose a grass trimmer as such because grass trimmers are designed for trimming grass and only use trimmer lines as the cutting means.

D4, on the other hand, did not mention gardening tools at all.

As discussed above, there is no fan in D8 cooling the control unit.

This feature is also absent from D4, contrary to what the appellant has argued, because the fan (22) shown in Figure 1 is not positioned on the line connecting the inlet (25) with the outlet (26) and is not oriented along this line.

As a consequence of the above, according to the respondent, the combination of the teachings of documents D8 and D4 cannot result in the subject-matter of claim 1 of auxiliary request 7.

4.2 The board disagrees for the following reasons.

4.2.1 D8 discloses a tool suitable for cutting grass (see paragraph [003]) which is considered by the board to be a "grass trimmer" (additional feature (a)).

This is because the board sees no reason for considering that the rather restrictive interpretation of the respondent of "grass trimmer" would be the one chosen by a skilled reader.

As established in the case law (CLB, II.A.6.1), a broad term used in a claim, such as "grass trimmer", is not to be construed narrowly, even if, as in the case at issue, the narrower interpretation would refer to a structure which is common, but not exclusive, in the technical field concerned.

This restrictive interpretation is also not supported by the description of the patent in suit, according to which also a knife is a suitable cutting means for a grass trimmer (see paragraph [0019]).

When reading a broadly formulated claim, only technically illogical interpretations should be excluded.

4.2.2 The additional features (b) are already known from D4 as a part of the solution proposed in this document for cooling the control unit.

This is because D4, Figure 2 discloses both an air inlet (25) and an air outlet (26) provided in a cover of the body portion (6c) to direct the air flow (indicated by the arrow 30b) from the inlet towards the control unit (9) and further to an air outlet provided in the cover (see arrows 30a, 30b, 30c and 30d; see also page 19, lines 19 to 21 and page 20, lines 6 to 9).

The counter-arguments of the respondent are not convincing because the claim does not stipulate that the fan, the inlet and the outlet have to be on the same straight line or even to present any relative disposition with respect to the others.

A skilled person would, when combining the teachings of documents D8 and D4, as explained above when discussing claim 1 of the main request, also arrange the fan to suck ambient air from an air inlet provided in a cover of the body portion and to direct the air flow towards the control unit and further to an air outlet provided in the cover, as disclosed in D4.

As a consequence of the above, the subject-matter of claim 1 of auxiliary request 7 also lacks inventive step.

5. Auxiliary requests 2 to 6, 8 and 9
- 5.1 During oral proceedings, the respondent referred to its written submissions on inventive step of auxiliary requests 2 to 6, 8 and 9, adding that it had no further arguments to present in defence of them beyond those already submitted and discussed for the previously discussed main request and auxiliary requests 1 and 7.

5.2 None of these auxiliary requests is inventive for the same reasons explained above for the main request and auxiliary requests 1 and 7.

5.2.1 There are no written arguments on file for inventive step of claim 1 of auxiliary requests 2, 3 and 8.

This is because the respondent explicitly stated, in the reply to the statement setting out the grounds of appeal, that these claims have been amended, with respect to claim 1 of the main request, exclusively by adding features intended to overcome the objections of unallowable extension raised against the main request.

The features added to claim 1 of auxiliary requests 2 and 3 are, respectively:

- "being a grass trimmer or a clearing saw"
- "in the form of a grass trimmer"

These features clearly cannot overcome the inventive-step objection since D8 discloses a grass trimmer (see point 4.2.1 above).

The features added to claim 1 of auxiliary request 8 with respect to claim 1 of auxiliary request 3 ("in the form of a cutting means assembly") do also not distinguish the claimed tool from the one disclosed in D8.

This is because D8 also discloses (see the mention of "blade" in paragraph [003]) a working tool assembly in the form of a cutting means assembly.

Auxiliary requests 2, 3 and 8 are therefore not allowable for the reasons discussed above for claim 1 of auxiliary request 1.

5.2.2 Auxiliary requests 4, 5, 6 and 9 are also not allowable for the following reasons.

The preamble of claim 1 of each of auxiliary requests 5, 6 and 9 has been amended by adding the same non-distinguishing features, already discussed above, which were respectively added to claim 1 of auxiliary requests 1, 2 and 8.

The characterising portion of claim 1 of each of these auxiliary requests 4, 5, 6 and 9 has been amended by specifying that "the fan is arranged to suck ambient air from an air inlet provided in a cover of the body portion and to direct the air flow towards the control unit and further to an air outlet provided in the cover".

These are the same features added to claim 1 of auxiliary request 7 and identified as feature (b) in point 4.2.2 above.

However, as discussed in point 4.2.2 above, these additional features cannot justify inventive step because they are already known from D4 as a part of the solution proposed in this document for cooling the control unit.

As a consequence of the above, auxiliary requests 4, 5, 6 and 9 are not allowable for the reasons discussed above for claim 1 of auxiliary request 7.

**Order**

**For these reasons it is decided that:**

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:



G. Nachtigall

G. Patton

Decision electronically authenticated