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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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12/001,255

12/10/2007

Jochen Erhardt

209,259

2882

38137 7590 01/08/2009
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EXAMINER

CHUKWURAH, NATHANIEL C

ART UNIT

PAPER NUMBER

3721

MAIL DATE

DELIVERY MODE

01/08/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 12/001,255	Applicant(s) ERHARDT, JOCHEN	
	Examiner NATHANIEL C. CHUKWURAH	Art Unit 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 11 and 12 is/are rejected.
- 7) ☒ Claim(s) 5-10 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 December 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>8/6/2008</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Specification

1. The abstract of the disclosure is objected to because the Abstract contains “means” in lines 7 and 8. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4 and 11-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Höser (US 5,125,461).

With regard to claim 1, Höser discloses a hand-held electric power tool (1), comprising a switching gear unit (33, 34) having at least two switching stages (hammer and non-hammer); an impact mechanism (21, 22); a mode switch (57) for switching the switching gear unit (33, 34) back and forth between the at least two switching stages and for switching the impact mechanism (21, 22) on and off, and a switching arrangement (Figs 6-8) having gear unit switching means (Fig. 5) for connecting the mode switch (57) with the switching gear unit (33, 34) and impact mechanism switching means (60) for connecting the mode switch (57) with the impact mechanism (21, 22), the impact mechanism switching means (60) having a mechanism (Figs. 6-8) considered to be swiveling, switchable by the mode switch (57) between an active position in

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which the impact mechanism (21, 22) is switched on, and a passive position in which the impact mechanism is switched off.

With regard to claim 2, Höser shows both the gear unit switching means (33, 34) and the impact mechanism switching means (60) are movement-coupled with the mode switch (57).

With regard to claim 3, Höser shows the swiveling mechanism which has a switch-side swiveling member (62) which is held so as to be swivelable at a first rotary bearing (see bearing axis Fig. 5), is movement-coupled with the mode switch (57), and is actuated by actuating means as shown in Figure 6, depending on the position in which the impact mechanism (21, 22) is switched on or off.

With regard to claim 4, Höser shows both the switch-side swiveling member (62) and the gear unit switching means (33, 34) are actuated by a cam element (60) which is provided on the mode switch (57).

With regard to claim 11, Höser shows the gear unit switching means (33, 34) which has a shift element (41) for displacing a gear group (33, 34) of the switching gear unit between the switching stages (hammer and non-hammer) and which is considered to be formed as a bent-punched part.

With regard to claim 12, Höser shows first rotary bearing (see bearing axis Fig. 5) provided between the switch-side swiveling member (60) and the shift element (41) and is considered to be formed by a pin (not shown) which penetrates into a passage.

Allowable Subject Matter

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4. Claims 5-10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The pertinent prior art of record fails to show or teach the actuating means comprises a swiveling member on the impact mechanism side held at a second rotary bearing and swivelable transverse to the switch-side swiveling member.

Conclusion

5. Refer to attachment for notice of references cited and recommended for consideration based on their disclosure of limitations of the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NATHANIEL C. CHUKWURAH whose telephone number is (571)272-4457. The examiner can normally be reached on M-F 8:00AM-4:30PM.

6. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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7. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nathaniel C. Chukwurah/
Examiner, Art Unit 3721

/Rinaldi I Rada/
Supervisory Patent Examiner, Art Unit 3721
1/2/2009.