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**Datasheet for the decision  
of 18 December 2007**

**Case Number:** T 1199/04 - 3.2.04

**Application Number:** 98959504.6

**Publication Number:** 1045724

**IPC:** A63C 9/08

**Language of the proceedings:** EN

**Title of invention:**

Method and apparatus for indicating when a snowboard binding  
is locked

**Patentee:**

THE BURTON CORPORATION

**Opponent:**

SKIS ROSSIGNOL S.A.

**Headword:**

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**Relevant legal provisions:**

EPC Art. 100(a)

**Relevant legal provisions (EPC 1973):**

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**Keyword:**

"Main request and auxiliary request - inventive step (no)"

**Decisions cited:**

-

**Catchword:**

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Case Number: T 1199/04 - 3.2.04

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.04  
of 18 December 2007

**Appellant I:** THE BURTON COMPANY  
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**Representative:** HOFFMANN EITLE  
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**Appellant II:** SKIS ROSSIGNOL S.A.  
(Opponent) Le Menon  
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**Representative:** Kiliaridis, Constantin  
Bugnion S.A.  
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**Decision under appeal:** Interlocutory decision of the Opposition  
Division of the European Patent Office posted  
19 August 2004 concerning maintenance of  
European patent No. 1045724 in amended form.

**Composition of the Board:**

**Chairman:** M. Ceyte  
**Members:** C. Scheibling  
T. Bokor

## Summary of Facts and Submissions

I. In its interlocutory decision posted 19 August 2004, the Opposition Division found that, taking into consideration the amendments according to the second auxiliary request made by the patent proprietor during opposition proceedings, the European patent and the invention to which it relates met the requirements of the EPC. On 29 September 2004 the Appellant I (patentee) filed an appeal and paid the appeal fee simultaneously. On 18 October 2004 the Appellant II (opponent) filed an appeal and paid the appeal fee simultaneously. The statements setting out the grounds of appeal were received respectively on 8 December 2004 (Appellant I) and 16 December 2004 (Appellant II).

II. The patent was opposed on the grounds based on Article 100(a) (54 and 56) EPC.

III. The following documents played a role in the present proceedings:

D2: WO-A-97/03734

D7: AT-B-316 387

D14: WO-A-97/45178

IV. Oral proceedings took place on 18 December 2007 before the Board of Appeal.

Appellant I requested that the decision under appeal be set aside and that the patent be maintained as granted (main request), or in the alternative on the basis of the set of claims according to the auxiliary request, filed during the oral proceedings before the Board.

He mainly argued as follows:

In D14 the handle itself forms the visual indicator and therefore cannot move relative to the handle as stated in claim 1 as granted. Since the handle of D14 gives already a visual indication whether the binding is fully closed or not, there is no incentive for a skilled person to provide it with a further visual indicator. A skilled person would not consider a ski binding of the type disclosed in D7 for improving a snowboard binding. Furthermore, a skilled person would not have used an indicator as shown in D7 in a binding according to D14, since there is no teaching how to adapt the visual indicator to a different type of binding. Claim 1 of the auxiliary request has been amended to distinguish the claimed moving visual indicator from the moving visual indicator of D7.

Appellant II (opponent) contested the arguments of Appellant I and submitted that it was known from D14 to use the handle of a snowboard binding as a visual indication that the binding is closed. Nevertheless, such indication was not always accurate; therefore a need for a more reliable indicator existed. D7 provides a solution to the problem of improving such a visual indication. As a matter of fact, the ski binding of D7 can be used to secure a boot on a snowboard as well, so that a skilled person would not have been deterred from using this ski binding indicator in a snowboard binding. The skilled person would have no practical difficulties in applying the visual indicator of D7 to the snowboard of D14 in view of D2, in which the housing of the snowboard binding is provided with a window through which the moving visual indicator is visible.

The wording of claim 1 of the auxiliary request does not imply that the visual indicator only starts moving when the binding is almost closed. It simply requires that when the engagement member is in the closed position, the visual indicator indicates that the binding is closed. However, this is likewise obtained by the visual indicator system of D7.

Appellant II requested firstly that the decision under appeal be set aside and the patent be revoked, secondly that D11 to D13 and D15 to D19 be introduced into the proceedings, thirdly that the ground of opposition under Article 100(c) EPC be introduced into the proceedings, fourthly that the ground of opposition under Article 100(b) EPC be introduced into the proceedings, fifthly that all dependent claims be considered to be covered by the statement under Rule 76(c) EPC.

V. Claim 1 according to the main request (as granted) reads as follows:

"1. A snowboard binding (3) for securing a snowboard boot (1) to a snowboard (5), comprising:  
a base (9) adapted to receive the snowboard boot;  
a movable engagement member (7) that is mounted to the base for movement between an open position and a closed position in which the engagement member is adapted to secure the boot in the binding;  
a handle (42) mechanically coupled to the engagement member and adapted to move the engagement member from the closed position to the open position, the handle being movable between a first position corresponding to the engagement member being in the closed position and a

second position corresponding to the engagement member being in the open position; characterised by:  
a visual indicator (111), movably mounted relative to the movable engagement member and the handle, that is adapted to provide a visual indication that the engagement member is in the closed position."

Claim 1 according to the auxiliary request reads as follows:

"1. A snowboard binding (3) for securing a snowboard boot (1) to a snowboard (5), comprising:  
a base (9) adapted to receive the snowboard boot;  
a movable engagement member (7) that is mounted to the base for movement between an open position and a closed position in which the engagement member is adapted to secure the boot in the binding;  
a handle (42) and mechanically coupling thereof to the engagement member, the handle being adapted to move the engagement member from the closed position to the open position, the handle being movable between a first position corresponding to the engagement member being in the closed position and a second position corresponding to the engagement member being in the open position;  
and characterised by:  
a visual indicator (111), movably mounted relative to the base, the movable engagement member and the handle, that is adapted to provide as a consequence of its movement a visual indication that the engagement member is in the closed position, but only when the engagement member is in the closed position."

## Reasons for the Decision

1. The appeal is admissible.
2. *Main request - inventive step of claim 1:*
  - 2.1 D14 is the closest prior art, because it relates to the same technical field of snowboard bindings and discloses the most technical features common with the claimed solution, among the other disclosures relating to snowboard bindings.

The snowboard binding disclosed therein comprises (see in particular figures 7, 8):

    - a base (3) adapted to receive the snowboard boot;
    - a movable engagement member (6) that is mounted to the base for movement between an open position and a closed position in which the engagement member is adapted to secure the boot in the binding;
    - a handle (40) mechanically coupled to the engagement member and adapted to move the engagement member from the closed position to the open position, the handle being movable between a first position corresponding to the engagement member being in the closed position and a second position corresponding to the engagement member being in the open position;
    - the movable handle forms a visual indicator that is adapted to provide a visual indication that the engagement member is in the closed position (page 9, lines 14 to 17).
  - 2.2 Thus, the snowboard binding of claim 1 differs from that of D14 in that the visual indicator is movably mounted relative to the movable engagement member and the handle.

As it is stated in D14 a user can get a visual indication from the handle that the binding appears to be locked. According to D14 this should be the case when the handle sits flush with the binding cover (page 9, lines 14 to 17). However due to snow and ice it might be difficult to assess whether the handle sits really flush with the cover and thus there is a need for a more effective indication that the binding is fully closed.

Thus, the problem to be solved by the invention can be seen in improving the visual indication that the binding is fully closed and therefore the safety of the binding as well.

2.3 D7 discloses a ski binding comprising an engagement member (1), a handle (7) and coloured visual indicator (10), which is movable with respect to a window provided in the binding cover (12) and is movably mounted relative to the movable engagement member and the handle, such that the coloured surface of the visual indicator is visible or not through the window depending on whether or not the binding is in its closed position.

2.4 Appellant I argued that a skilled person would not consider ski bindings for improving a snowboard binding.

It is true that a ski binding comprises a release function which opens the binding when the forces applied thereto by the boot exceed a determined threshold. In snowboard bindings such a release function is not wanted, because it could lead to an unexpected release of the binding during riding.

Nevertheless, the problem of indicating accurately whether or not the binding is fully closed is the same



for ski bindings and snowboard bindings. Furthermore, the technical fields of snowboard bindings and ski bindings are closely related, so that the skilled person seeking a solution to a given problem would take into account developments in the neighbouring field. Therefore, there is no reason for a skilled person not to consider visual indicators of ski bindings when trying to improve the visual indicator of a snowboard binding.

- 2.5 Appellant I further argued that even if a skilled person would consider using an indicator as disclosed by D7 in a binding according to D14, this would not be feasible.

This point of view cannot be shared either. In D7 the visual indicator is a separate part, mounted rotatably with respect to the base and linked to the handle. It is visible through a window provided in the cover of the binding. The binding of D14 comprises a base, a handle and a binding cover. Thus the skilled person would not have to make any major constructional alteration when incorporating the visual indicator of D7 into the snowboard binding of the closest prior art. In this respect, D2 (page 15, lines 19 to 21 and page 30, lines 10 to 13) shows a snowboard binding cover provided with a window, through which a coloured portion of engaging members forming a visual indicator is visible.

- 2.6 Appellant I also argued that there would be no incentive for a skilled person to modify the snowboard binding of D14 since the handle of this binding fulfils already the function of a visual indicator. However, as stated above, it might be difficult under some circumstances to assess whether or not the handle

of D14 effectively sits flush with the binding cover. Accordingly starting from the closest prior art the objective problem to be solved is to improve the visual indication that the binding is fully closed and thus to improve its safety.

2.7 For these reasons, a skilled person would find it obvious to provide the snowboard binding of D14 with a visual indicator according to D7 in order to obtain a more reliable indication that the binding is fully closed. The skilled person would thus arrive at the subject-matter of claim 1 as granted without exercising any inventive skill. Accordingly, the subject-matter of claim 1 as granted does not involve an inventive step.

3. *Auxiliary request - inventive step of claim 1:*

3.1 With respect to claim 1 as granted, claim 1 of the auxiliary request further specifies that the visual indicator is also movably mounted relative to the base and is adapted to provide as a consequence of its movement a visual indication that the engagement member is in the closed position, but only when the engagement member is in the closed position.

3.2 Appellant I considered that this amendment would make clear that the visual indicator pops up only once the engagement member is in the closed position, thus excluding a progressive or gradual movement of the visual indicator.

However, this is not the only possible interpretation of this wording. On a fair reading this wording does not exclude that the visible indicator although moving progressively, reaches the position indicating that the

engagement member is in the closed position, only when the engagement member has effectively reached its fully closed position.

3.3 This result is however likewise obtained by the visual indicator of D7 (see page 2, lines 29 to 32) where it is stated that the binding is in its fully closed position if the coloured surface has completely moved through the window and is no more visible (see figure 1). This also provides, as a consequence of its movement, a visual indication that the binding i.e. the engagement member is in the closed position, but only when the engagement member is in the closed position. It is noted that, in D7 too the visual indicator is movably mounted relative to the base.

3.4 Consequently, for the same reasons as given above for claim 1 of the main request, the subject-matter of claim 1 of the auxiliary request does not involve an inventive step either.

3.5 Since the subject-matter of claim 1 according to the auxiliary request filed during the oral proceedings before the Board does not involve an inventive step, there is no need to consider whether this late filed submission is admissible or not and whether it fulfils the requirement of Article 123(2) EPC.

4. *Second to fifth requests of Appellant II:*

Since the main request of Appellant II, that is cancellation of the decision under appeal and revocation of the patent, can be granted, there is no need to consider its further requests.

**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. Magouliotis

M. Ceyte