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

**Case Number:** T 1440/05 - 3.2.01

**Application Number:** 04003441.5

**Publication Number:** 1449756

**IPC:** B62K 23/06

**Language of the proceedings:** EN

**Title of invention:**  
Bicycle control device

**Applicant:**  
SHIMANO INC.

**Opponent:**  
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**Headword:**  
-

**Relevant legal provisions:**  
EPC Art. 84, 123(2)

**Keyword:**  
"Claims - clarity (yes)"  
"Amendments - added subject-matter (no)"

**Decisions cited:**  
-

**Catchword:**  
-



Case Number: T 1440/05 - 3.2.01

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.01  
of 18 June 2007

**Appellant:** SHIMANO INC.  
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**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 5 July 2005  
refusing European application No. 04003441.5  
pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** S. Crane  
**Members:** J. Osborne  
S. Hoffmann

## Summary of Facts and Submissions

- I. The appeal is directed against the decision posted 5 July 2005 refusing European patent application No. 04 00 3441.5 (EP-A-1 449 756) due to a lack of clarity of the claims 1 according to all requests and also due to addition of subject-matter beyond the content of the application as filed in claim 1 according to the 4<sup>th</sup> auxiliary request.
- II. In its statement of grounds of appeal the applicant requested that the case be remitted to the first instance for further examination on the basis of an amended claim 1 filed therewith. In reply to a communication pursuant to Article 110(2) EPC from the board the applicant requested that a patent be granted on the basis of a further amended claim 1 filed therewith and claims 2 to 12 as originally filed. The applicant filed an auxiliary request for oral proceedings in the case that the appeal should not be decided in a way favourable for the applicant.
- III. Claim 1 according to the applicant's most recent request reads as follows, wherein wording deleted from the claim as originally filed is included in square brackets:
- "A bicycle control device comprising:  
a support member (21) having a mounting portion configured and arranged to be coupled to a bicycle handlebar;  
a cable winding mechanism (32) coupled to said support member, and having a cable attachment point; and

a control lever (33) operatively coupled to said cable winding mechanism, said control lever including an attachment end portion and a shift operating portion extending outwardly from said support member, said attachment end portion of said control lever being pivotally coupled to said support member (21) to move between a rest position and a shifting position about a shift pivot axis, and said shift operating portion of said control lever (33) being configured and arranged to be disposed along a line that is angled relative to said shift pivot axis by [approximately] an angle between forty-five degrees and fifty-five degrees at said rest position and that passes through said attachment end portion at said shift pivot axis."

- IV. The reasons for the decision to refuse the application in as far as they are relevant to the applicant's present request may be summarised as follows:

Claims 1 specifies that the control lever includes an attachment end portion and a shift operating portion but there is no indication of the limits of, and the relationship between, these portions. The shift operating portion is specified as extending outwardly from the support member but in the described embodiments this portion appears to extend more inwardly than outwardly from the support member. The specification of the position of the shift operating portion with respect to a line is rendered imprecise because it relates to an infinity of intersection points. As a result of the lack of clarity the subject-matter of the claim is too vaguely defined for

meaningful comparison with the available state of the art.

### **Reasons for the Decision**

1. The application relates to a control device for shifting the gear ratio on a bicycle. The device comprises a support member for attachment to the handlebar and a control lever having an attachment end portion pivotally coupled to the support member and an operating portion where the rider typically will place his fingers to pivot the lever about an axis in order to actuate the gear shift. The application particularly is concerned with the geometrical relationship between the operating portion and the axis about which the lever pivots during the shifting operation.

#### *Amendments (Article 123(2) EPC)*

2. Present claim 1 differs from that as originally filed only in the deletion of the word "approximately". In the claim as originally filed this was used to qualify the specification of a 45° to 55° angle between a line along which the operating portion is disposed and the pivot axis. The amendment does not contravene the provision of Article 123(2) EPC because the specification of the angle as between 45° and 55° was present in the claim as originally filed.

*Clarity (Article 84 EPC)*

3. The first point of objection raised by the examining division in this respect was that the claim specifies the attachment end portion and the shifting portion of the control lever but defines neither the limits of these portions nor any relationship between them. It is clear from the terminology that the attachment end portion is at the end of the lever where it attaches to the support member and that the shift operating portion is a portion which may be contacted by a rider's hand for shifting. The claim further specifies that both portions extend outwardly from the support member. A definition of the limits of and adjacency or otherwise of these portions is unnecessary to define the subject-matter of the application and, indeed, is not even contained in the original application. By providing broad definitions in the claim the applicant may be facilitating objections of lack of novelty or inventive step but is not failing to provide a clear definition of the subject-matter to be protected.
  
4. Claim 1 specifies that the attachment end portion and the shift operating portion extend outwardly from the support member. The examining division considered this to be inconsistent with the illustrations in the figures in which, in their view, the shift operating portion "extends more inwardly". It is not altogether clear how the examining division derives this from the figures since the shift operating portion is consistently shown not only wholly outside of the support member but diverging from it in the direction of the free end of the lever. Nevertheless, in the board's view the wording of the claim in this respect

is totally consistent with the figures which illustrate the attachment end portion of the control lever extending away from the support member and the shifting portion extending beyond that.

5. The examining division's final objection relates to the wording "a line that is angled ... between forty-five degrees and fifty-five degrees relative to said shift pivot axis ... and that passes through said attachment end portion at said shift pivot axis". The examining division was of the opinion that although with this wording the applicant intended to define a point of intersection, in fact it was defining "a segment geometrically comprising an infinity of points". Moreover, it held that the direction of the line defined by a range of angles would "allow plenty of possibilities". The range of angles is, in fact, defined somewhat more precisely in present claim 1 since the term "approximately" has been deleted. However, this alone would appear not to satisfy the examining division's objection when it stated that "the definition is so unclear that it embraces unlimited possibilities of shapes". In this context the board again believes that it is necessary to distinguish between a broad definition and an unclear definition. The wording of the claim is quite clear in that it requires that the line be within a certain angular range relative to the shift pivot axis and that the intersection of these fall within the envelope of the attachment end portion. That this definition encompasses many variations does not render the claim unclear.

6. Contrary to the opinion of the examining division, the board therefore finds that the wording of claim 1 does not result in an objectionable lack of clarity.

*Further procedure*

7. Although the applicant with its letter of 30 March 2007 requested that a patent be granted on the basis of the documents presently on file, it had previously requested that the case be remitted for further prosecution. Since the contested decision concerned only formal matters the board exercises its discretion in accordance with Article 111(1), second sentence, EPC to remit the case for further prosecution. Since the outcome of the case is favourable for the applicant the auxiliary request for oral proceedings is without effect.



**Order**

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

1. The decision under appeal is set aside.
2. The case is remitted to the first instance for further prosecution.

The Registrar:

The Chairman:

A. Counillon

S. Crane