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**Datasheet for the decision
of 4 February 2019**

Case Number: T 0127/15 - 3.2.06

Application Number: 05017423.4

Publication Number: 1642823

IPC: B62M25/08, B62L3/02, B62K23/06

Language of the proceedings: EN

Title of invention:
Bicycle brake control device with electrical operating member

Patent Proprietor:
SHIMANO INC.

Opponent:
SRAM Deutschland GmbH

Headword:

Relevant legal provisions:
EPC Art. 100(c)
RPBA Art. 13(1)

Keyword:

Grounds for opposition - subject-matter extends beyond content
of earlier application (yes)

Late-filed auxiliary requests - request clearly allowable (no)

Decisions cited:

Catchword:



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Case Number: T 0127/15 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 4 February 2019

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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
17 November 2014 concerning maintenance of the
European Patent No. 1642823 in amended form.**

Composition of the Board:

Chairman M. Harrison
Members: P. Cipriano
C. Brandt

Summary of Facts and Submissions

- I. Appeals were filed by the appellant (opponent) and the appellant (proprietor) against the interlocutory decision of the opposition division in which it found that European patent No. 1 642 823 in an amended form met the requirements of the EPC.
- II. The appellant/opponent (hereinafter referred to as the "opponent") requested with its grounds of appeal that the interlocutory decision be set aside and the patent be revoked.
- III. The appellant/proprietor (hereinafter referred to as the "proprietor") requested that the decision be set aside and the patent be maintained as granted. Auxiliarily, the proprietor requested that the patent be maintained in amended form according to one of the first to fourth auxiliary requests arranged in two groups I and II filed with the statement of grounds of appeal, or on the basis of one of the fifth to eighth auxiliary requests arranged in two groups I and II filed with letter dated 29 April 2016.
- IV. The Board issued a summons to oral proceedings including a communication containing its provisional opinion, in which it indicated *inter alia* that the subject-matter of claim 1 as granted appeared to extend beyond the content of the application as filed.
- V. With letter dated 31 January 2019 the proprietor filed a ninth auxiliary request.
- VI. Oral proceedings were held before the Board on 4 February 2019, during which the proprietor withdrew all its previous auxiliary requests and replaced them

by a new amended first auxiliary request (hereinafter called "first version"). This "first version" of the first auxiliary request was itself replaced during the course of the oral proceedings by the "first auxiliary request (15:50h)" and this request subsequently by the "first auxiliary request (16:45h)". The final requests of the parties were:

The proprietor requested that the decision under appeal be set aside and the patent be maintained as granted or, in the alternative, that the patent be maintained in amended form according to the first auxiliary request dated 4 February 2019 (16:45h) filed during the oral proceedings.

The opponent requested that the decision under appeal be set aside and the patent be revoked.

VII. Claim 1 of the main request and of the first auxiliary request (16:45h) are annexed to the end of the decision.

VIII. The arguments of the opponent may be summarised as follows:

Main request - Article 100(c) EPC

The subject-matter of claim 1 extended beyond the content of the application as originally filed. Paragraphs [0013] to [0036] of the description formed a single disclosure (albeit with some optional preferential features) of a first preferred embodiment of a brake control device, in which paragraph [0020] stated that the brake control device "basically" included a brake lever biasing mechanism. Thus, a brake

lever biasing mechanism, such as the lever of paragraph [0022], was necessarily a part of the disclosure.

Claim 1 comprised a combination of the features of claim 1 as originally filed together with features taken from paragraphs [0022] and [0032] to [0034] of the first preferred embodiment of the description, which together resulted in a combination of features for which no direct and unambiguous basis in the application as filed was derivable.

Although paragraph [0022] referred to a spring that urged the brake control lever to its rest position merely as a preferable disclosure, this preferable disclosure also necessarily contained the next sentence comprising the feature "the brake control lever 32 pivotally coupled to the gripping body about a pivot pin 31 with a brake pivot axis A". The link was made through the introductory expression "in particular". The skilled person reading paragraph [0022] thus considered that both features were inextricably linked.

Since the feature "the brake control lever 32 pivotally coupled to the gripping body about a pivot pin 31 with a brake pivot axis A" was part of claim 1 as granted but the rest of the disclosure regarding to the brake lever biasing member (spring) was not, the skilled person was not able to derive the combination of features in claim 1 directly and unambiguously, using common general knowledge, and seen objectively and relative to the date of filing, from the whole application as originally filed.

First auxiliary request (16:45h) - admittance

The request should not be admitted into the proceedings, since it was not clearly allowable. It was not clear if the second "when" expression (moving to the actuating positions) added to claim 1 represented an additional condition that needed to be fulfilled in order for the electrical shift signals to be sent or was in some way a further description of the first condition.

- IX. The arguments of the proprietor may be summarised as follows:

Main request - Article 100(c) EPC

The subject-matter of claim 1 did not extend beyond the content of the application as originally filed.

Since paragraphs [0020] and [0022] indicated that the brake lever biasing member/spring was not shown in the drawings and stated that the mounting of the spring was done "in a conventional manner", the skilled person reading paragraphs [0020] and [0022] inferred that a brake lever biasing member/spring which did not need to be depicted in the drawings was surely something trivial and conventional that also did not need to be in the claim.

The expression "in particular" in the second sentence of paragraph [0022] only introduced the way that the lever was coupled to the gripping body and implied that the coupling was not structurally and functionally linked to the spring in the first sentence of the paragraph, in order to form a single disclosure.

First auxiliary request (16:45h) - admittance

The request should be admitted into the proceedings, since the second "when" in the claim would be understood by the skilled person as an "and", which meant that the actuating positions were the positions when the electrical operating member contacted the electrical contacts.

Reasons for the Decision

1. Main request - Article 100(c) EPC

1.1 The subject-matter of claim 1, at least due to the inclusion of the feature

"the brake control lever (32) pivotally coupled to the gripping body (40) about a pivot pin (41) with a brake pivot axis (A)"

cannot be derived directly and unambiguously from the application as filed.

1.2 There is no basis in the application as filed for a brake control device comprising this feature while omitting a brake lever biasing member in the form of a spring mounted between the brake control lever and the gripping body to urge the brake control lever from a braking position to a normal rest position. The sole textual disclosure for these features is paragraph [0022], which however concerns the first preferred embodiment disclosed in the application, and which extends from paragraphs [0013] to [0036].

Paragraph [0020], also from this embodiment, states that the brake control device "basically includes" (*inter alia*) a brake lever biasing member, leading the skilled person reading this passage to infer that a brake lever biasing member is a non-optional part of the disclosed brake control device. Whilst it is true that paragraph [0022] states that a spring, mounted between the brake control lever and the gripping body 40, is simply preferable, this statement is followed by the sentence "*in particular*, the brake control lever 32 is pivotally coupled to the gripping body 40 about a pivot pin 41 with a brake pivot axis A" (i.e. the feature included in the claim). In this specific context, the expression "*in particular*" would thus be understood by the skilled person reading paragraph [0022] as meaning that which follows (the pivotally coupling of the brake lever and the gripping body) applies to the possibility described just before (i.e. a spring being mounted between the lever and the gripping body).

The claimed coupling of a lever to a gripping body thus clearly extends beyond the sole, more specific disclosure in the application as filed, namely of this being achieved together with the mounting of a spring between both.

- 1.3 The proprietor argued that the spring was a trivial feature that need not be claimed, due to the fact that paragraphs [0020] and [0022] explicitly stated that the feature was "not shown" in the drawings. The Board is however not convinced by this argument. The fact that a component of the brake control device is mentioned in the description but not depicted in the drawings does not imply that the component is in some way not part of

the disclosed invention. It could simply be in order to make the drawings more understandable for the skilled person - since such a biasing member would normally be inside the bracket, its explicit identification in dotted lines along with a reference sign in an area already quite filled with other references could simply have been found not necessary and/or too complicated. Quite the contrary, the Board finds that the brake lever biasing member/spring being not shown in the drawings but nevertheless being disclosed in the description of a preferred embodiment shows that the brake lever biasing member/spring is not to be omitted but is a part of the brake control device disclosed.

- 1.4 The Board is also not convinced by the proprietor's argument regarding the expression "in a conventional manner". The fact that the spring is mounted "in a conventional manner" does not render the spring and its mounting not part of the disclosure, but simply tells the skilled person that any more specific details about the mounting simply correspond to the way in which they are generally done using common general knowledge.
- 1.5 The Board does not agree with the proprietor's argument that the expression "in particular" in the second sentence of paragraph [0022] introduced only the way in which the lever was coupled to the gripping body and was not structurally and functionally linked to the spring in the first sentence of the paragraph in order form a single disclosure.

The spring mounting between the lever and the gripping body disclosed in the earlier sentence creates a further structural link between the lever and the bracket in addition to the pivot pin 41 disclosed in the later sentence. Both the spring and the pin 41 are

also functionally necessary (i.e. linked) to allow the lever to be biased towards its rest position as disclosed in paragraph [0022]. The two first sentences thus form a single disclosure and cannot be separated, with the consequence that the spring alone cannot be considered optional.

- 1.6 For the reasons stated above, the ground of opposition under Article 100(c) EPC is prejudicial to maintenance of the patent. The main request is therefore not allowable.

2. First auxiliary request (16:45h) - admittance
 - 2.1 During the oral proceedings, a "first version" of the first auxiliary request was filed and later replaced by the "first auxiliary request (15:50h)", which was subsequently replaced by the "first auxiliary request (16:45h)".

 - 2.2 The "first version" of the first auxiliary request was filed during oral proceedings in order to overcome *inter alia* a specific argument from the opponent discussed above regarding extension of subject-matter with respect to the brake lever biasing member and the spring. However, the amendments carried out in claim 1 relating to the sending of electric shift signals to a cycle computer rendered the claim both unclear and not originally disclosed. The Board thus concluded that this request did not fulfill the requirements of Articles 123(2) and 84 EPC and did not admit it into the proceedings.

In this regard, it should nevertheless be noted first that the proprietor withdrew the "first version" of the first auxiliary request and then filed the first

auxiliary request (15:50h) in an attempt to overcome the specific objections regarding Article 123(2) EPC and 84 EPC. The Board however considered that while the amendments carried out overcame certain clarity and extension of subject-matter objections raised against the first auxiliary request regarding the cycle computer, these amendments nevertheless gave rise to further new objections concerning the structural relationship between the actuating positions of the electrical contact portion and the electrical contacts. The Board thus concluded that the first auxiliary request (15:50h) did not comply with the requirements of Articles 123(2) and 84 EPC, and did not admit the request into the proceedings (see the minutes of oral proceedings). The detailed reasoning for this is however not relevant here, as the proprietor anyway withdrew the "first auxiliary request (15:50h)" and replaced this with "first auxiliary request (16:45h)" to address the objections.

2.3 According to Article 13(1) of the Rules of Procedure of the Boards of Appeal (RPBA), it lies within the discretion of the Board to admit any amendment to a party's case after it has filed its grounds of appeal or reply. In order to be admitted at such a late stage of proceedings, such requests should normally be clearly allowable at least in the sense that they overcome the objections raised and do not give rise to new objections.

2.4 Claim 1 of the first auxiliary request (16:45h) was amended such that it contains the following feature

"wherein the electrical shift control switch (S) includes an internal mechanism with a pair of electrical contacts (56) adapted to send electrical

shift signals to the cycle computer (24) through the electrical cord (54), when the electrical contact portion (36c) of the electrical operating member (36) contacts either of the electrical contacts (56), when the electrical operating member (36) is moved to its actuating positions"

- 2.5 The Board however finds that it is not clear from the successive expressions
- when the electrical contact portion (36c) of the electrical operating member (36) contacts either of the electrical contacts (56),
 - when the electrical operating member (36) is moved to its actuating positions,

whether the actuating positions are the same positions as the positions at which the electrical operating member contacts either the electrical contacts and represent a single condition or if each expression represents a different condition, wherein for the latter both need to be fulfilled for the electrical shift signals to be sent. Contrary to the argument of the proprietor, the second "when" expression is not necessarily understood as "and", in the sense of a single condition being fulfilled. Instead the Board finds that, at least *prima facie*, the claim is not clear as it cannot be ascertained whether it includes either two conditions or a single condition having to be fulfilled, even though both possibilities would be technically feasible.

- 2.6 Accordingly, the objections raised against the first auxiliary request (15:50h), and in particular the clarity objection under Article 84 EPC, were at least *prima facie* not overcome, since the relationship between the actuating positions of the electrical

contact portion and the electrical contacts remained unclear.

Thus, the Board exercised its discretion under Article 13(1) RPBA not to admit the first auxiliary request (16:45h) into the proceedings.

- 2.7 Absent any request which meets the requirements of the EPC, the patent has to be revoked according to Article 101(3)(b) EPC.

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:



M. H. A. Patin

M. Harrison

Decision electronically authenticated

Claim 1 of the main request

pendicular to the pivot axis (A) and substantially coincides with the clamp axis of the band clamp (42), the brake control lever (32) including a proximal portion (44) pivotally coupled to the brake lever bracket (30) and a distal portion (46) extending from the proximal portion (44); and

an electrical operating member (32) movably coupled to the distal portion (46) of the brake control lever (32) to electrically operate a bicycle component, the electrical operating member (36) including a mounting portion (36a) and a rider engagement portion (36b) rotating together about a rotating axis (R) aligned with or located slightly laterally outwardly from the braking plane (P),

wherein the rider engagement portion (36b) of the electrical operating member (36) is located laterally outwardly from the mounting portion (36a) of the electrical operating member (36) and is spaced laterally outwardly from the braking plane (P) as measured perpendicularly relative to the braking plane (P) when the brake control lever (32) is positioned in the braking position,

characterized in that the distal portion (46) of the brake control lever (32) has a laterally outermost distal edge (46a) located laterally outwardly from a laterally outermost proximal edge (44a) of the proximal portion (44) as measured perpendicularly relative to the braking plane (P), and the mounting portion (36a) of the electrical operating member (36) is thinner than the rider engagement portion (36b) as measured along the rotational axis (R).

Claims

1. A bicycle brake control device (12R, 12L), comprising:

40 a brake lever bracket (30) configured and arranged to be fixedly attachable to a mounting portion (14b) of a bicycle handlebar (14) with a handlebar centerline (C) extending through the mounting portion (14b), the brake lever bracket 45 (30) comprising a gripping body (40) and a band clamp (42) to clamp around the mounting portion (14b) of the handlebar (14), the band clamp (42) defining a clamp axis to coincide with the handlebar centerline (C) of the mounting portion 50 (14b) of the handlebar (14) when clamped thereto;

a brake control lever (32) pivotally coupled to the gripping body (40) about a pivot pin (41) with a pivot axis (A), the brake control lever (32) 55 configured to move from a rest position along a braking plane (P) to a braking position about the pivot axis (A), wherein the braking plane (P) is per-

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Claim 1 of the first auxiliary request (16:45h)

1. A bicycle brake control device (12R, 12L), comprising:
 - a brake lever bracket (30) configured and arranged to be fixedly attachable to a mounting portion (14b) of a bicycle handlebar (14) with a handlebar centerline (C) extending through the mounting portion (14b), the brake lever bracket (30) comprising a gripping body (40);
 - a brake control lever (32) pivotally coupled to the gripping body (40) about a pivot pin (41) with a pivot axis (A), the pivot axis (A) extends in a transverse direction relative to the brake lever bracket (30), the brake control lever (32) configured to move toward the handlebar (14) from a rest position along a braking plane (P) to a braking position about the pivot axis (A), wherein the braking plane (P) is perpendicular to the pivot axis (A), the brake control lever (32) including a proximal portion (44) pivotally coupled to the brake lever bracket (30) and a distal portion (46) extending from the proximal portion (44), wherein the proximal portion (44, 344, 444, 544) has a proximal center longitudinal axis that moves along the braking plane (P), and the braking plane (P) is substantially coincident with the centerline (C) of the mounting portion (14b, 14c) of the handlebar (14);
 - wherein the proximal portion (44,) extends in a substantially linear direction along the braking plane (P);
 - the brake control lever (32) includes an intermediate portion (48) arranged between the distal portion (46) and the proximal portion (44) that has a shape configured to position the distal portion (46) laterally outwardly from the proximal portion (44),
 - wherein the distal portion (46) of the brake control lever (32) extends in a substantially linear direction away from the proximal portion (44),
 - wherein the distal portion (46) has a distal center longitudinal axis (X₂) that is centered along the distal portion (46) and the distal center longitudinal axis (X₂) is substantially parallel to and offset from the brake plane (P) and the proximal center longitudinal axis (X₁); and
 - an electrical switch (S) with an electrical operating member (36),
 - the electrical switch (S) includes a switch housing (52) being fixedly attached to the distal portion (46) and the intermediate portion (48) of the brake control lever (32) via a pair of screws (50);
 - wherein the electrical operating member (36) is pivotally coupled to the switch housing (52) for rotation about an rotation axis (R) from a rest position to two different actuating positions to electrically operate a bicycle component, the electrical operating member (36) including a mounting portion (36a), a rider engagement portion (36b) and an electrical contact portion (36c) rotating together about the rotating axis (R) aligned with or located slightly laterally outwardly from the braking plane (P) and the proximal center longitudinal axis (X₁),
 - wherein the rider engagement portion (36b) of the electrical operating member (36) is located laterally outwardly from the mounting portion (36a) of the electrical operating member (36) and

<shift control>

is spaced laterally outwardly from the braking plane (P) as measured perpendicularly relative to the braking plane (P) when the brake control lever (32) is positioned in the braking position, and the mounting portion (36a) of the electrical operating member (36) is thinner than the rider engagement portion (36b) as measured along the rotational axis (R),
the bicycle brake control device (12R, 12L) further comprising a brake lever biasing member; the brake lever biasing member is a spring mounted between the brake control lever (32) and the gripping body (40) to urge the brake control lever (32) from the braking position to a normal rest position;
wherein the electrical operating member (36) of the electrical switch (S) is adapted to be electrically coupled to a cycle computer (24) via an electrical cord (54);
wherein the electrical switch (S) includes an internal mechanism with a pair of electrical contacts (56) adapted to send electrical shift signals to the cycle computer (24) through the electrical cord (54), when the electrical contact portion (36c) of the electrical operating member (36) contacts either of the electrical contacts (56), < . . . >
wherein the brake lever bracket (30) further comprising a band clamp (42) to clamp around the mounting portion (14b) of the handlebar (14), the band clamp (42) defining a clamp axis to coincide with the handlebar centerline (C) of the mounting portion (14b) of the handlebar (14) when clamped thereto,
wherein the braking plane (P) substantially coincides with the clamp axis of the band clamp (42);
the distal portion (46) of the brake control lever (32) has a laterally outermost distal edge (46a) located laterally outwardly from a laterally outermost proximal edge (44a) of the proximal portion (44) as measured perpendicularly relative to the braking plane (P).

<when the electrical operating member (36) is moved to its actuating position>

