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**Datasheet for the decision
of 17 July 2007**

Case Number: T 0604/03 - 3.2.04

Application Number: 97932491.0

Publication Number: 0844902

IPC: A63C 9/08

Language of the proceedings: EN

Title of invention:
Step-in snowboard binding

Patentee:
THE BURTON CORPORATION

Opponent:
MARKER Deutschland GmbH

Headword:

-

Relevant legal provisions:
EPC Art. 100a, 113(1), 114(1)
EPC R. 58(3), 71(2), 71a(1)

Keyword:
"Main request - novelty (no)"
"Auxiliary requests 2, 2A, 2B, 3, 3A, 3B - inventive step (no)"
"Auxiliary request 4A - inventive step (yes)"
"Reimbursement of the appeal fee - refused"

Decisions cited:

-

Catchword:

-



Case Number: T 0604/03 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 17 July 2007

Appellant:
(Patent Proprietor)

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Decision under appeal:

Decision of the Opposition Division of the
European Patent Office posted 27 March 2003
revoking European patent No. 0844902 pursuant
to Article 102(1) EPC.

Composition of the Board:

Chairman: M. Ceyte
Members: C. Scheibling
H. Preglau

Summary of Facts and Submissions

I. By its decision dated 27 March 2003 the Opposition Division revoked the patent. On 27 May 2003 the Appellant (patentee) filed an appeal and paid the appeal fee simultaneously. The statement setting out the grounds of appeal was received on 6 August 2003.

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

D3: DE-U-296 01 682

D4: US-A-4 097 062

D5: DE-C-44 24 737

III. The opposition was filed on the grounds based on Article 100a) and b) EPC.

The Opposition Division revoked the patent on the ground of lack of novelty (main and second auxiliary request) and lack of inventive step (first auxiliary request).

IV. Oral proceedings before the Board of Appeal took place on 17 July 2007.

Although duly summoned the Respondent (opponent) did not attend the oral proceedings which were continued without him (Rule 71(2) EPC).

The Appellant 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 one of the sets of claims according the auxiliary requests 2, 2A, 2B, 3, 3A, 3B all filed with letter of 22 May 2007 or on the basis of the set of claims according to auxiliary request 4A filed during oral proceedings.

Claim 1 of the main request (as granted) reads as follows:

"1. A snowboard binding (2) for securing a snowboard boot (4) to a snowboard (5), the binding having an open position and a closed position, the binding comprising: a base (3) adapted to receive the snowboard boot; a first engagement member (6), pivotally mounted to the base, adapted to engage a first side of the snowboard boot, when the binding is in the closed position; and an over-center locking assembly that locks the binding in the closed position, the locking assembly including; a first locking member (12), pivotally mounted to the base, that supports the first engagement member and mounts the first engagement member to the base; and a second locking member (26), mounted to the base for movement between an open configuration and a closed configuration respectively corresponding to the open and closed positions of the binding, the second locking member being arranged to engage the first locking member when the second locking member is in its closed configuration, the first and second locking members being constructed and arranged so that when the binding is in the closed position, a lifting force on the first engagement member acts to maintain the second locking member in the closed configuration."

Claim 1 according to the auxiliary request 2 reads as follows:

"1. A snowboard binding (2) for securing a snowboard boot (4) to a snowboard (5), the binding having an open position and a closed position, the binding comprising: a base (3) adapted to receive the snowboard boot; a first engagement member (6), pivotally mounted to the base, adapted to engage a first lateral side of the snowboard boot, when the binding is in the closed position; and an over-center locking assembly that locks the binding in the closed position, the locking assembly including; a first locking member (12), pivotally mounted to the base, that supports the first engagement member and mounts the first engagement member to the base; and a second locking member (26), mounted to the base for movement between an open configuration and a closed configuration respectively corresponding to the open and closed positions of the binding, the second locking member being arranged to engage the first locking member when the second locking member is in its closed configuration, the first and second locking members being constructed and arranged so that when the binding is in the closed position, a lifting force on the first engagement member acts to maintain the second locking member in the closed configuration."

Claim 1 according to the auxiliary request 2A reads as follows:

"1. A snowboard soft boot binding (2) for securing a soft snowboard boot (4) to a snowboard (5), the binding

having an open position and a closed position, the binding comprising:

a base (3) adapted to receive the snowboard boot;
a first engagement member (6), pivotally mounted to the base, adapted to engage a first side of the snowboard boot, when the binding is in the closed position; and
an over-center locking assembly that locks the binding in the closed position, the locking assembly including;
a first locking member (12), pivotally mounted to the base, that supports the first engagement member and mounts the first engagement member to the base; and
a second locking member (26), mounted to the base for movement between an open configuration and a closed configuration respectively corresponding to the open and closed positions of the binding, the second locking member being arranged to engage the first locking member when the second locking member is in its closed configuration, the first and second locking members being constructed and arranged so that when the binding is in the closed position, a lifting force on the first engagement member acts to maintain the second locking member in the closed configuration."

Claim 1 according to the auxiliary request 2B comprises both additional features "soft" and "lateral" of auxiliary requests 2 and 2A.

Independent claim 3 according to the auxiliary request 3 reads as follows:

"3. A snowboard binding (2) for securing a snowboard boot (4) to a snowboard (5), the binding having an open position and a closed position, the binding comprising:

a base (3) having a length and a width and being adapted to receive the snowboard boot;

a first engagement member (6), pivotally mounted to the base, adapted to engage a first lateral side of the snowboard boot, when the binding is in the closed position; and

an over-center locking assembly that locks the binding in the closed position, the locking assembly including;

a first locking member (12), pivotally mounted to the base about a first pivot axis (18) extending along the length of the base, the first locking member (12) supporting the first engagement member and mounting the first engagement member to the base; and

a second locking member (26), mounted to the base for movement between an open configuration and a closed configuration respectively corresponding to the open and closed positions of the binding, the second locking member being arranged to engage the first locking member when the second locking member is in its closed configuration, the first and second locking members being constructed and arranged so that when the binding is in the closed position, a lifting force on the first engagement member acts to maintain the second locking member in the closed configuration.

Independent claim 3 according to the auxiliary request 3A comprises compared to independent claim 3 of the auxiliary request 3 the additional feature "soft" whereas "lateral" has been omitted.

Independent claim 3 according to the auxiliary request 3B comprises compared to independent claim 3 of the auxiliary request 3 the additional feature "soft" whereas "lateral" has been maintained.

Claim 1 according to the auxiliary request 4A reads as follows:

"1. A snowboard binding (2) for securing a snowboard boot (4) to a snowboard (5), the binding having an open position and a closed position, the binding comprising: a base (3) adapted to receive the snowboard boot; a first engagement member (6), pivotally mounted to the base, adapted to engage a first lateral side of the snowboard boot, when the binding is in the closed position; and an over-center locking assembly that locks the binding in the closed position, the locking assembly including; a first locking member (12), pivotally mounted to the base, that supports the first engagement member and mounts the first engagement member to the base; and a second locking member (26), mounted to the base for movement between an open configuration and a closed configuration respectively corresponding to the open and closed positions of the binding; the second locking member being arranged to engage the first locking member when the second locking member is in its closed configuration, the first and second locking members being constructed and arranged so that when the binding is in the closed position, a lifting force on the first engagement member acts to maintain the second locking member in the closed configuration, the first and second locking members being separately mounted to the base, such that the first locking member is not mounted to the second locking member and the second locking member is not mounted to the first locking member."

V. The Appellant mainly argued as follows:

The snowboard binding of claim 1 of the main request is novel over D5, because in D5 the engagement member does not engage a "side" of the snowboard boot and is not pivotally mounted to the base, additionally the second locking member is not mounted to the base either.

The binding according to the auxiliary requests specifies that the engagement member engages a "lateral side" of the boot or that the binding is for "soft" boots. The binding of D5 does not fulfil either of these requirements and thus, is not a suitable starting point for the claimed invention. When starting from D3 which discloses a binding for a soft boot with a side engagement of the boot, a skilled person would not take D5 into consideration, because it is not obvious to use features of a hard boot binding for improving a soft boot binding. Furthermore, the over-centre locking assembly of D5 comprises a pivot axis which links the two locking members together; this type of construction is clearly excluded by claim 1 of auxiliary request 4A.

The Respondent (opponent) did not file any request or observations, although invited to do so.

Reasons for the Decision

1. The appeal is admissible.

2. *Novelty (claim 1 of the main request)*

2.1 D5 discloses a snowboard binding for securing a snowboard boot (1) to a snowboard, the binding having an open position and a closed position, the binding comprising:

a base (12) adapted to receive the snowboard boot;
a first engagement member (7), pivotally mounted to the base, adapted to engage a first side of the snowboard boot, when the binding is in the closed position; and
an over-center locking assembly that locks the binding in the closed position, the locking assembly including;
a first locking member (9), pivotally mounted to the base, that supports the first engagement member and mounts the first engagement member to the base; and
a second locking member (13), mounted to the base for movement between an open configuration and a closed configuration respectively corresponding to the open and closed positions of the binding, the second locking member being arranged to engage the first locking member when the second locking member is in its closed configuration, the first and second locking members being constructed and arranged so that when the binding is in the closed position, a lifting force on the first engagement member acts to maintain the second locking member in the closed configuration.

2.2 The Appellant argued that in the meaning of the patent in suit "side" and "lateral side" are understood to be synonymous. Furthermore, he considered that when trying to determine the meaning of the term "side" so that this feature does make technical sense, a skilled person could give it no other meaning than "lateral side".

Therefore, the binding described in D5 cannot be said to engage the boot at its side.

This point of view cannot be shared.

It is true that in the patent specification the specific term "lateral side" is consistently used for the inner and outer sides of the boot. In claim 1, in contrast, the term "first side" is used without any particular definition.

It cannot be disputed that the term "first side" is broader than "lateral side". A boot has a front side, a rear side and two lateral sides and each of these four sides may be a "first side". The term "first side" means what it says, namely the first side or the side which is regarded before all the others.

Obviously the use of "first side" in the claim gives no cause to understand also the more restrictive wording "lateral side" as meaning the same. It can only be concluded that when the patent drafter wished to distinguish between "first side" and "lateral side", he did so.

The Appellant further argued that in D5 the engagement member is not pivotally mounted to the base. However, in the patent in suit, the engagement member is formed by a separate part that is not directly mounted to the base either. In fact it is fixedly mounted to the first locking member which in turn is pivotally mounted to the base. This is clear from the Figures 2 to 9 and from claim 1 which states "a first locking member (12), pivotally mounted to the base that supports the first

engagement member and mounts the first engagement member to the base". However, this construction is exactly the one disclosed in D5, Figures 1, 2 where the engagement member (7) is supported by the first locking member (9) which is pivotally mounted to the base (12).

The Appellant finally argued that in D5 the second locking member is not mounted to the base. However, claim 1 does not require that the second locking member is "directly" mounted to the base. In D5 the second locking member is mounted to the piston (28) which in turn is mounted to the base (12) so that second locking member is mounted to the base too.

2.3 Accordingly, the subject-matter of claim 1 lacks novelty with respect to D5.

3. *Inventive step*

3.1 Auxiliary requests 2, 2A and 2B:

3.1.1 In claim 1 of the auxiliary request 2 the term "first side" of claim 1 as granted has been amended to read "first lateral side". In claim 1 of the auxiliary request 2A the limiting feature is introduced that the binding is for a "soft" snowboard boot. This is also a limiting feature of claim 1 of the auxiliary request 2B together with the additional limiting feature that the binding engages a first "lateral side" of the snowboard boot. These amendments are disclosed in the originally filed application (WO-A-97/45178) in Figures 1 and 2 and page 13, lines 10 and 11.

3.1.2 D3 discloses a snowboard binding for securing a soft snowboard boot (11) to a snowboard (page 3, lines 3 to 6), the binding having an open position and a closed position, the binding comprising:

- a base (1) adapted to receive the snowboard boot;
- a first engagement member (9), pivotally mounted to the base, adapted to engage a first lateral side of the snowboard boot when the binding is in the closed position (Figures 1, 3 and 8); and
- an over-center locking assembly that locks the binding in the closed position (page 12, second paragraph), the locking assembly including:
 - a first locking member (6) pivotally mounted to the base that supports the first engagement member and mounts the first engagement member to the base;
 - a second locking member that is mounted for movement between an open configuration and a closed configuration respectively corresponding to the open and closed positions of the binding, the second locking member being arranged to engage the first locking member when the second locking member is in its closed configuration (implicit since the assembly is an over-centre locking assembly).

3.1.3 The binding according to claim 1 differs from that of D3 in that:

- the second member is mounted to the base,
- the locking assembly is constructed and arranged so that when the binding is in the closed position, a lifting force on the first engagement member acts to maintain the binding in the closed configuration.

3.1.4 Thus the problem, the present invention seeks to solve is to provide an improved step-in binding which is simple, secure and which does not necessitates substantial force to open it (patent specification, column 1, lines 31 to 42 and 53 to 55).

3.1.5 From D5 there is known a snowboard binding comprising an over centre locking assembly (column 4, lines 43 to 66) which is constructed so that when the binding is in the closed position, a lifting force on the first engagement member acts to maintain the binding in the closed configuration (column 4, line 66 to column 5, line 7). This known binding is therefore secure and simple, since it remains in the locked position without necessitating a strong spring or a latch to achieve this effect. Furthermore, this binding does not require substantial force to be opened since the locking force does not rely on the force of the spring (column 4, lines 63 to 66).

Thus it is obvious for a skilled person to use a locking system as disclosed in D5 to improve a step-in binding as known from D3 to obtain a simple and secure binding which reduces the force needed to open it.

3.1.6 The Appellant argued that the locking assembly of D5 would not be directly transposable to the binding of D3.

However, D5 teaches a skilled person that a locking assembly for a snowboard binding is secure when using an over-centre locking assembly which cannot be opened by a lifting force and that no substantial force is required to open it if it does not necessitate a strong spring. Such a locking assembly is also simple because it does

not rely on a strong spring or a latch to keep it closed. How the different parts of the binding are configured and shaped is irrelevant since not specified in claim 1 either.

3.1.7 Accordingly, the subject-matter of claim 1 of the auxiliary requests 2, 2A and 2B does not involve an inventive step.

3.2 Auxiliary requests 3, 3A and 3B:

3.2.1 All these requests comprise four independent claims 1 to 4:

- in independent claim 3 of auxiliary request 3 the additional features are introduced that the binding comprises a base "having a length and a width", a first engagement member adapted to engage a first "lateral" side of the snowboard boot and a first locking member pivotally mounted to the base "about a first pivot axis (18) extending along the length of the base";
- in independent claim 3 of auxiliary request 3A the additional features are introduced that the binding is a "soft" boot binding for securing a "soft" snowboard boot, comprising a base "having a length and a width" and a first locking member pivotally mounted to the base "about a first pivot axis (18) extending along the length of the base";
- in independent claim 3 of auxiliary request 3B the additional features are introduced that the binding is a "soft" boot binding for securing a

"soft" snowboard boot, comprising a base "having a length and a width", a first engagement member adapted to engage a first "lateral" side of the snowboard boot and a first locking member pivotally mounted to the base "about a first pivot axis (18) extending along the length of the base".

These additional features are clearly disclosed in the originally filed application.

3.2.2 These additional features "lateral", "soft", "having a length and a width" and "about a first pivot axis (18) extending along the length of the base" are likewise disclosed in D3 (Figures). Consequently, the same considerations with respect to inventive step of the subject-matter of claim 1 according to the auxiliary requests 2, 2A and 2B apply mutatis mutandis to the snowboard binding defined in claim 3 of the auxiliary requests 3, 3A and 3B, which therefore must fail.

3.3 Auxiliary request 4A:

3.3.1 With respect to claim 1 as granted, claim 1 of the auxiliary request 4A comprises the additional features of claim 3 as granted and specifies that the "first side" is a "first lateral side".

3.3.2 Claim 1 of this request makes it clear that the first and second locking members are separately mounted to the base, such that the first locking member is not mounted to the second locking member and the second locking member is not mounted to the first locking member.

However, the provision of an over-centre locking assembly having two separately mounted locking members is disclosed neither in D3 nor in D5, and there is no hint in these documents that could lead a skilled person to such a construction.

3.3.3 D4 (Figures 1 to 4) shows a locking assembly comprising two locking members which are separately mounted to the base. However, this citation fails to disclose an over-centre locking assembly and that a lifting force applied on the first engagement member acts to maintain the second locking member in the closed configuration. Therefore, D4 cannot suggest the claimed over-centre locking assembly, in which the first and second locking members are separately mounted to the base, the first locking member of the over-centre locking assembly being not mounted to second locking member and vice versa.

3.3.4 Consequently, the subject-matter of claim 1 of the auxiliary request 4A involves an inventive step with respect to D3, D4 and D5 seen alone or in combination.

4. *Reimbursement of the appeal fee*

4.1 The Board is unable to see a substantial procedural violation in the opposition proceedings that justifies the reimbursement of the appeal fee.

The patent had been opposed inter alia on the ground that the claimed subject-matter lacked an inventive step in view of D4 cited in the notice of opposition. The Opposition Division could in application of Article 114(1) EPC of its own motion consider the ground of lack of novelty vis-à-vis said document.

4.2 The annex to the summons to attend oral proceedings stated inter alia that D4 "appears to disclose all features of claim 1". The Appellant considered that this annex was in clear violation of Rule 58(3) EPC stipulating that any communication on the merits of the opposition shall contain a reasoned statement. The Board considers that the binding described in D4 is not so complicated that further reasoning was necessary to understand the novelty issue raised by the Opposition Division. Moreover, according to Rule 71a(1) EPC, when issuing the summons, the EPO shall draw the attention to the points which in its opinion need to be discussed for the purpose of the decision to be taken. The statement that D4 "appears to disclose all features of claim 1" is to be understood as an indication that the issue of novelty in view of D4 had to be discussed during the oral proceedings. The Appellant was also given the opportunity to present his comments on this issue during oral proceedings. In fact, the Appellant already filed arguments with letters of 11 October 2002 and 4 November 2002 and the statement D7 in response to the summons. The requirements of Article 113(1) EPC were thus complied with.

4.4 Therefore, the request for reimbursement of the appeal fee is to be refused.

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 with the order to maintain the patent on the basis of the following documents:

Description: columns 3 to 12 of the patent specification,
columns 1 and 2 as filed during the oral proceedings

Claims: 1 to 33 filed as auxiliary request 4A during the oral proceedings

Drawings: Figures 1 to 10 of the patent specification

3. The request for reimbursement of the appeal fee is refused.

The Registrar:

The Chairman:

G. Magouliotis

M. Ceyte