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**Datasheet for the decision
of 5 March 2021**

Case Number: T 0312/19 - 3.2.01

Application Number: 13198135.9

Publication Number: 2749488

IPC: B62L3/02, B62M25/04

Language of the proceedings: EN

Title of invention:
Bicycle control device

Patent Proprietor:
SHIMANO INC.

Opponent:
SRAM, LLC

Headword:

Relevant legal provisions:
EPC Art. 100(a), 100(b), 100(c), 56
RPBA Art. 12(4)
RPBA 2020 Art. 13(2)

Keyword:

Grounds for opposition - subject-matter extends beyond content of earlier application (no) - insufficiency of disclosure (no) - novelty as fresh ground for opposition - approval by patent proprietor (no)

Inventive step - main request and auxiliary request 2 (no) - auxiliary request 6 (yes)

Amendment after summons - auxiliary request 6bis - cogent reasons (no)

Late-filed evidence - admitted (no)

Decisions cited:

G 0010/19, G 0007/95

Catchword:



Beschwerdekammern
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Case Number: T 0312/19 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 5 March 2021

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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 6 December 2018
rejecting the opposition filed against European
patent No. 2749488 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman G. Pricolo
Members: J. J. de Acha González
 P. Guntz

Summary of Facts and Submissions

- I. The appeal of the opponent lies against the decision of the Opposition Division to reject the opposition filed against European patent No. 2749488.
- II. The Opposition of the appellant was based on the following grounds:
- (i) the subject-matter of the European patent was not patentable (Article 100(a) EPC) because it did not involve an inventive step (Articles 52(1) and 56 EPC). In particular, the subject-matter of granted claim 1 did not involve an inventive step in view of **D1** (WO 2007/025984 A) in combination with **D2** (US 5 813 501 A) or **D3** (US 6 003 639 A), and the subject-matter of granted claim 6 did not involve an inventive step in view of D1 with D2;
 - (ii) the patent did not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art (Article 100(b) EPC). In particular, the subject-matter of granted claim 12 was not implementable; and
 - (iii) the subject-matter of the patent extended beyond the content of the application as filed (Article 100(c) EPC). In particular, the subject-matter of granted claim 12 had no basis in the originally filed documents.
- III. In its decision the Opposition Division found that none of the grounds for opposition invoked by the appellant prejudiced the maintenance of the patent as granted.

The Opposition Division further cited in its decision among others document **D4** (DE 10 2013 003 767 A) and **D7** (US 4 779 482).

- IV. With its statement of grounds of appeal the appellant further cited for the first time document **D8** (EP 1 325 863 A).
- V. With letter of 18 September 2020 the appellant submitted document **D9** ("*Taschenbuch für den Maschinenbau*", 19. Edition, 1997, Springer-Verlag, page T39).
- VI. With communication of 1 December 2020 pursuant to Article 15(1) RPBA 2020 (Rules of Procedure of the Boards of Appeal OJ EPO 2019, A63) in preparation to the oral proceedings, the Board set out its preliminary assessment of the case. In particular, the Board considered correct the view of the Opposition Division regarding the grounds for opposition according to Article 100(b) and (c) EPC for granted claim 12 and regarding inventive step of granted claim 6, and pointed out that novelty represented a fresh ground for opposition subject to the approval of the patentee, and that the Board intended not to admit the new evidence D8 pursuant to Article 12(4) RPBA 2007 (Rules of Procedure of the Boards of Appeal OJ EPO 2007, 536), and that inventive step of the subject-matter of granted claim 1 needed to be discussed.
- VII. Oral proceedings by videoconference were held before the Board on 5 March 2021.
- VIII. The appellant (opponent) requested that the decision under appeal be set aside and that the European patent be revoked.

The respondent (patent proprietor) requested (as a main request) to dismiss the appeal or, in the alternative, to maintain the patent in amended form according to one of the auxiliary requests 2, 6bis or 6, as filed with the statement of grounds of appeal (auxiliary requests 2 and 6) and during the oral proceedings (auxiliary request 6bis), respectively. All other requests were withdrawn.

IX. Granted claim 1 reads as follows (feature numbering according to the impugned decision):

- 1.1 "A bicycle control device (12) capable of being mounted on a handlebar of a bicycle and capable of controlling a braking device (18) and a shifting device (15), the bicycle control device comprising:
 - 1.2 a housing member (20) having a grip part (20b) extending in a longitudinal direction between a first end (20c) and a second end (20d), and an attachment part (20a) provided on the first end side of the grip part and capable of being attached to the handlebar;
 - 1.3 a control lever member (22) capable of pivoting with respect to the housing member;
 - 1.4 a shift-operating mechanism (23) provided on the housing member, for controlling a control cable (14) capable of being coupled to the shifting device; and
 - 1.5 a hydraulic pressure-generating part (21) for controlling the braking device,
 - 1.5.1 the hydraulic pressure-generating part (21) having a cylinder (30) provided to the housing member and disposed closer to the second end side of the grip part than the shift-operating mechanism,
 - 1.5.2 a piston (31) displaceable within the

cylinder (30) and operated by the control lever member (22),

characterized in that

- 1.6 a piston position adjustment mechanism (435A) is capable of adjusting the initial position of the piston with respect to the cylinder, wherein
 - 1.6.1 the piston position adjustment mechanism (435A) has a second adjustment member (435a) for coupling the control lever member (422) and the piston (30), and capable of adjusting the relative position of the control lever member (22) and the piston (30)."

Granted claim 6 reads as follows (feature numbering according to the impugned decision):

- 6.1 "A bicycle control device (12) capable of being mounted on a handlebar of a bicycle and capable of controlling a braking device and a shifting device, the bicycle control device comprising:
 - 6.2 a housing member (20) having a grip part (20b) extending in a longitudinal direction between a first end (20c) and a second end (20d), and an attachment part (20a) provided on the first end side of the grip part and capable of being attached to the handlebar;
 - 6.3 a control lever member (22) capable of pivoting about a first axis (X1) with respect to the housing member;
 - 6.4 a shift-operating mechanism (23) provided to the housing member, and adapted for controlling a control cable (14) capable of being coupled to the shifting device;
 - 6.5 a hydraulic pressure-generating part (21) for controlling the braking device,
 - 6.5.1 the hydraulic pressure-generating part (21) having a cylinder (30) provided to the housing member (20) and disposed closer to the second end

- side of the grip part relative to the shift-operating mechanism, and
- 6.5.2 a piston (31) displaceable within the cylinder (30) and operated by the control lever member (22);
- characterized by
- 6.6 a control lever position adjustment mechanism (35B) for adjusting the initial position of the control lever member with respect to the housing member, wherein
- 6.7 the hydraulic pressure-generating part (21) has a rod part (32) coupled to the piston and operated by the control lever member;
- 6.8 the control lever member (22) has a cam member (41) for pivoting about a first axis (X1) in conjunction with pivoting of the control lever member, actuating the rod part; and
- 6.8 wherein the device has a fourth adjustment member (335a) coupled to the cam member (41) as well as to the control lever member (22), and capable of adjusting the initial position of the control lever member and the cam member."

Claim 1 according to the auxiliary request 2 differs from granted claim 1 in that it further includes the following technical feature:

"wherein the second adjustment member is configured to adjust the position of the control lever relative to the piston, such that the initial position of the piston can be adjusted irrespectively of the position of the control lever member."

Claim 1 of the auxiliary request 6 differs from claim 1 of auxiliary request 2 in that it further includes the following technical feature:

"wherein the hydraulic pressure-generating part (21) has a rod part (32) coupled to the piston (31), and operated by the control lever member (22); and the second adjustment member (435a) has an adjustment screw (435b) capable of adjusting the length of the rod part."

Independent claim 5 of the auxiliary request 6 differs from granted claim 6 in that it further includes the following technical feature:

"wherein the fourth adjustment member has a worm gear bolt (335A) provided to either the control lever member (22) or the cam member (341), and adapted for engaging the other of the control lever member and the cam member."

Independent claim 1 of auxiliary request 6bis is identical to claim 1 of auxiliary request 6 and independent claim 5 of auxiliary request 6bis is identical to granted claim 6.

Reasons for the Decision

1. *Patent as granted - Article 56 EPC*
- 1.1 The subject-matter of granted claim 1 does not involve an inventive step in view of D1 in combination with D2 (Article 56 EPC).
- 1.2 D1 undisputedly discloses a bicycle control device according to the preamble of claim 1. The subject-matter of claim 1 differs therefrom by the features of the characterising part, namely:

"a piston position adjustment mechanism (435A) is capable of adjusting the initial position of the piston with respect to the cylinder, wherein the piston position adjustment mechanism (435A) has a second adjustment member (435a) for coupling the control lever member (422) and the piston (30), and capable of adjusting the relative position of the control lever member (22) and the piston (30).".

It is also undisputed that the objective technical problem can be formulated as "how to adjust a hydraulic bicycle braking control device in order to increase braking responsiveness and/or reduce play in the bicycle braking control device".

- 1.3 The Board shares the view of the appellant. The skilled person faced with the above-mentioned technical problem would turn to D2, as it discloses the possibility of adjusting the braking mechanism, and would immediately recognize that, in the arrangement shown in figure 3, the adjustments of the brake control device by means of the adjustment screws 24 and 30 serve two purposes. Set screw 24 provides the limit of travel of the brake lever 14 when reaching back its rest position after braking. This rest position is thus adjusted to the rider's preference. Further, once this position is defined by the driver an additional adjustment is carried out by screw 30. The purpose of this screw is to set the braking sensitivity, i.e. responsiveness and consequently play, when operating the braking lever from its initial position (it is noted that the adjustment of the screw 30 is independent of that of screw 24; for the adjustment of screw 30 the stop 26 of the brake lever is only needed such that its function can also be performed without the screw 24). This is

due to the mechanics of the arrangement. In fact, when the screw 30 is rotated such that it is displaced to the left departing from the initial position of the brake lever as shown in figure 3 in which it abuts against stop 26, the screw will push piston 36 to the left. As a consequence, the spring 46 will move the piston/bushing 38 also to the left (since the arrangement is intended to push brake fluid for braking the wheel of the bicycle). With this adjustment brake fluid is pushed out from reservoir/master cylinder 50 to the slave cylinder at the brake pads (figure 4) through port 60. If this adjusted initial position of the piston (be it 36 or 44) pushes out too much brake fluid, the pads 84 will contact the bicycle's rim. If it pushes out less brake fluid the pads will move out approaching the rim but without contacting it. Accordingly, by playing with the adjustment of screw 30 for a given initial position of the brake lever adjusted through screw 24, the braking responsiveness and play of the brake control device at the initial position of the brake lever can be adjusted. It follows that the adjustment mechanism shown in D2 teaches the skilled person to solve the posed objective technical problem in exactly the same way as the invention according to granted claim 1 does, since the braking control device in figure 2 shows a piston position adjustment mechanism (abutment 26 and screw 30) capable of adjusting the initial position of the piston (38 or 36) with respect to the cylinder (40), wherein the piston position adjustment mechanism has an adjustment member (screw 30) for coupling the control lever (brake lever 14) and the piston, and capable of adjusting the relative position of the control lever member and the piston. Hence, the skilled person would implement the brake control device adjustment shown in figure 3 of D2 in order to increase braking responsiveness and reduce

play in the control braking part of the bicycle control device of D1.

- 1.4 The respondent disagreed and followed the view of the Opposition Division in the impugned decision. In particular, it considered that the skilled person would not even look into the teachings of D2 since the document merely dealt with bicycle braking control devices and not with bicycle control devices capable of controlling both a braking device and a shifting device as claimed (also known as "briffters") and which as a consequence were more compact. D2 did not even explicitly address an adjustment of the initial position of the bushing 38 within the master cylinder and the screw 30 was used for adjusting the rest or initial position of the brake lever 14. The piston 38 in D2 did not move and consequently there was no incitation in D2 for adjusting the initial position of the piston in order to solve the formulated objective technical problem. Even if the skilled person were to consider the arrangement shown in D2, the differences in the kinematic arrangement and mechanics of the braking devices in D1 and D2 would hinder the skilled person to implement the brake adjustment mechanism of D2 into D1. The combination of the two pieces of prior art was based on a hindsight analysis. Furthermore, the respondent emphasized that the features of the characterizing part of claim 1 provided a brake system in which the initial position of the piston could be adjusted as a first adjustment member, and the relative position of the piston and lever could be adjusted as a second adjustment member, irrespective of the position of the control lever and irrespective of the initial position of the piston. In contrast thereto, in the prior art available there was no disclosure, not even a hint at combining two adjustment

means to adjust the relative position of the lever and the piston.

The Board finds the lines of argument of the respondent not persuasive for the following reasons. Firstly, according to the control device of D1 (see figure 3) the braking and shifting is carried out by independent systems integrated within the same device (lever 46 and lever 62). Consequently, the skilled person would indeed also look into any bicycle control device for hydraulic brake systems when trying to solve the posed technical problem which is only directed to solving a problem with respect to the hydraulic braking part. The bicycle control device of D1 is already capable of controlling a braking device and a shifting device and therefore the compact issue raised by the respondent is already overcome.

The Board agrees that D2 does not explicitly address adjusting the initial position of the piston to solve the posed technical problem. However, the skilled person in the art clearly recognizes the purpose and effect imparted by the adjustment screw 30 in the brake system disclosed in D2 as explained above and would not have any difficulties to implement it in the braking and shifting bicycle control device disclosed in D1 since that integration would merely amount to providing a stop in the clockwise direction for the braking lever 46, and replacing the articulated push rod 50 to the brake lever by a bushing and screw as shown in figure 3 of D2.

As regards the view of the respondent that the characterising part of claim 1 includes two adjustment members within the piston adjustment mechanism, the following is noted. As defined in the characterising portion of claim 1, the piston adjustment member is capable of adjusting the initial position of the piston

with respect to the cylinder and has a "second" adjustment member for coupling the control lever member and the piston which is capable of adjusting the relative position of the control lever member and the piston. The Board notes in line with the appellant that the wording "second" is superfluous as no first adjustment member is present in claim 1 for the piston position adjustment mechanism. Thus, the piston adjustment mechanism according to claim 1 does not necessarily include a first and a second adjustment member. Claim 1 does not exclude and is neither limited to the fact that the adjustment member, that couples the control lever member and the piston for adjusting the relative position of the control lever member and the piston, is capable of adjusting the initial position of the piston with respect to the cylinder. In any case, this applies for the adjustment member 435 in figure 14 of the contested patent and also applies to the adjustable screw 30 of D2. It is also noted that changing a relative position of one element with respect to another is always carried out irrespective of the absolute position of each of them, since a relative position is a reference between the two elements without consideration of their absolute position.

1.5 The Opposition Division further considered in its decision (see page 19 of the contested decision) that D2 prompted the skilled person to adjust the position of the brake calipers and the pads as a means to properly position the brake pads in order to improve the responsiveness and/or reduce play in the bicycle braking system.

In the Board's view, the fact that D2 also teaches this kind of adjustment within a bicycle brake system does not mean that the skilled person would ignore the

adjustments taught for the bicycle control device provided on the handlebar.

1.6 Consequently, the decision of the Opposition Division must be set aside since at least one ground for opposition (Article 56 together with Article 100(a) EPC) prejudices the maintenance of the patent as granted (Article 101(2) EPC).

2. *Auxiliary request 2 - inventive step*

2.1 The subject-matter of claim 1 of the auxiliary request 2 does not involve an inventive step in view of the combination of D1 with D2 (Article 56 EPC).

2.2 Claim 1 of auxiliary request 2 differs from granted claim 1 in that it further includes the following additional feature:

"wherein the second adjustment member is configured to adjust the position of the control lever relative to the piston, such that the initial position of the piston can be adjusted irrespectively of the position of the control lever member."

2.3 In the respondent's view the added feature emphasized its argument regarding granted claim 1, namely that the second adjustment member represented an additional adjustment member that was configured to adjust the position of the control lever relative to the piston, such that the initial position of the piston could be adjusted irrespectively of the position of the control lever member. This was not taught by D2.

2.4 The Board shares the view of the appellant in this respect. The added feature solely further specifies

that the "second" adjustment member can adjust the initial position of the piston. Accordingly, the added feature limits the subject-matter of claim 1 to a piston adjustment mechanism in which the adjustment member, that is able to adjust the relative position of the control lever member and the piston, can also adjust the initial position of the piston within the cylinder. As mentioned above, the adjustment screw 30 of D2 functions the same way: by screwing or unscrewing it, the piston (36, 44) is displaced within the cylinder 50 departing from any initial position of the brake lever 14 since it changes the relative position of the piston with respect to brake lever 14. Consequently, for the same reasons as explained above for the main request the subject-matter of claim 1 of the auxiliary request 2 does not involve an inventive step in view of the combination of D1 with D2.

3. *Auxiliary request 6bis - admissibility*

3.1 This request was filed during the oral proceedings before the Board. Auxiliary request 6bis comprises claims 1 to 4 that correspond to claims 1 to 4 of auxiliary request 6 filed with the reply to the statement of grounds of appeal, and claims 5 to 11 that correspond to granted claims 6 to 12 with their dependencies adapted accordingly. Auxiliary request 6bis constitutes therefore an amendment to the respondent's appeal case after notification of the summons to oral proceedings.

3.2 According to Article 25(3) RPBA 2020 (Rules of Procedure of the Boards of Appeal OJ EPO 2019, A63) the provisions of Article 13(2) RPBA 2020 apply to the current case since the summons to oral proceedings was notified after 1 January 2020.

Pursuant to Article 13(2) RPBA 2020 any amendment to a party's appeal case made after notification of a summons to oral proceedings shall, in principle, not be taken into account unless there are exceptional circumstances, which have been justified with cogent reasons by the party concerned.

3.3 The appellant alleged that this new request did not add anything new to the discussion. The subject-matter under discussion already formed part of the respondent's appeal case but not included in one and the same request since independent claim 1 corresponded to claim 1 of auxiliary request 6 submitted with the statement of grounds of appeal and independent claim 5 to the opposed granted claim 6. By not submitting all possible permutations of the independent claims the respondent avoided the filing of an overwhelming number of requests, whereas a request including one or more of the independent claims could be formulated depending on what independent claims were regarded as allowable by the Board.

3.4 The Board sees it differently. Auxiliary request 6bis represents a change in the respondent's appeal case since the request was never part of the appeal proceedings until the oral proceedings. It might well be that the issues to be discussed would remain the same as for claim 1 of auxiliary request 6 and claim 6 as granted; however, the auxiliary request 6bis combines two independent claims of two different requests and thus constitutes a new contingency position of the respondent. The respondent then failed to identify any exceptional circumstances justified with cogent reasons that would allow the Board to take into account this change of case.

In this respect it is noted that the fact that the subject-matter of granted claim 6 was considered non obvious by the Board in its preliminary opinion (as expressed in the communication pursuant to Article 15(1) RPBA 2020) does not automatically give to the respondent the right of having admitted into the appeal proceedings any new requests including claim 6 in combination with any independent claims of other requests. Seen in more general terms, this is tantamount to presenting the Board with a number of independent claims, waiting for the Board's opinion, and then formulating a request including those independent claims that are allowable in the Board's opinion. This might be more efficient than presenting all permutations of independent claims at the offset of the proceedings, as was pointed out by the respondent during oral proceedings, but in the Board's view runs counter to the principle of fair proceedings in inter partes cases. Finally, although this depends on the circumstances of each specific case, it cannot generally be said that requests with all permutations of independent claims would necessarily all be admitted, for instance if this does not constitute a reaction commensurate to the other party's case.

Accordingly, auxiliary request 6bis is not taken into account since there are no exceptional circumstances, justified with cogent reasons by the respondent, for filing auxiliary request 6bis only at such a late stage of the procedure.

4. *Auxiliary request 6*

4.1 *Article 100(b) and 100(c) EPC*

4.1.1 With the statement of grounds of appeal the appellant pursued the grounds of inadmissible extension (Article 100(c) EPC) and sufficiency of disclosure (Article 100(b) EPC) for the subject-matter of granted claim 12. With letter of 18 September 2020, in response to the reply of the patent proprietor, the appellant maintained these objections for all claims of the auxiliary requests that corresponded to granted claim 12 (claim 10 for auxiliary request 6) by making reference to the explanations in the statement of grounds of appeal regarding granted claim 12. During the oral proceedings the appellant did not make further submissions in respect of these objections and the Board sees no reasons to deviate from the preliminary opinion expressed in the communication and confirmed hereinbelow, according to which the view of the Opposition Division in its decision and that of the respondent is shared.

4.1.2 Independent claim 1 is based on claims 1, 5 and 6 as well as paragraph 14 as originally filed (see A1 publication of the application) and claim 5 is based on claims 7, 11 and 13 as originally filed. Claim 10 corresponds to claim 14 as originally filed where the dependencies have been adapted accordingly. Consequently, the subject-matter of claim 10 is directly and unambiguously derivable from the patent application as originally filed (Article 100(c) EPC).

4.1.3 With respect to the sufficiency of disclosure objection the following is noted (Article 100(b) EPC). The fact

that the embodiments of figures 14 and 13, respectively, fall under the subject-matter of claims 1 and 5 does not mean that the claims are limited to those specific embodiments. In fact, the subject-matter of these claims is broader than the embodiments of figures 13 and 14. Moreover, the skilled person when reading the claims and looking at the embodiments of figures 13 and 14 recognizes that the adjusting mechanism for adjusting the length of the link between the piston and side plate 439c of figure 14 is compatible with the angular adjustment of the cam and the control lever of figure 13. Clearly both solutions are combinable.

4.2 *Novelty - Fresh ground*

4.2.1 This ground for opposition under Article 100(a) EPC was submitted by the appellant during the appeal proceedings with letter of 18 September 2020.

4.2.2 According to the decisions of the Enlarged Board of Appeal G 10/91 (headnote 3) and G 7/95 (headnote), in a case where a patent has been opposed under Article 100(a) EPC on the ground that the claims lack an inventive step in view of documents cited in the notice of opposition, the ground of lack of novelty based upon Articles 52(1), 54 EPC is a fresh ground for opposition and accordingly may not be introduced into the appeal proceedings without the agreement of the patentee.

4.2.3 With letter of 10 February 2021 the respondent (patent proprietor) did not approve the introduction of lack of novelty of the granted patent in view of D4 as a fresh ground for opposition under Article 100(a) EPC.

4.2.4 Consequently, lack of novelty does not constitute a ground for opposition of the contested patent.

4.3 *Admissibility of D8*

Article 12(4) RPBA 2007 (Rules of Procedure of the Boards of Appeal OJ EPO 2007, 536) applies to the current appeal (see Article 25(2) RPBA 2020). Under this provision the Board has the power to hold inadmissible evidence which could have been presented in the first instance proceedings.

In the present case the appellant filed for the first time D8 with the statement of grounds of appeal in order to address the patent as granted, in particular granted claims 1 and 5. The Board sees no reasons in the course of the opposition proceedings that justify the filing of D8 at this stage. The arguments of the patent proprietor as regards inventive step of the granted patent were already present in its reply to the notice of opposition, and, in particular, it argued that neither D2 nor D3 disclosed a piston position adjustment mechanism capable of adjusting the initial position of the piston with respect to the cylinder. The appellant justified the filing of D8 at the appeal stage in view of the fact that, at the oral proceedings, the Opposition Division changed its preliminary view on inventive step with respect to the combinations put forward by the opponent. However, the opponent should have expected that the lines of argument of the proprietor could persuade the Opposition Division. Further, as the appellant considers D8 closer to the subject-matter of the opposed patent than D2 or D3, it should have filed D8 already with the notice of opposition. Additionally, auxiliary request 6 in appeal corresponds to the

auxiliary request 6 before the Opposition Division which the patent proprietor filed well in advance of the oral proceedings (letter of 31 July 2018) and consequently, the opponent (appellant) should have filed D8 at the latest during the oral proceedings before the Opposition Division in order to address the patent as granted as well as the auxiliary requests filed by the patent proprietor.

The appellant argued during the oral proceedings before the Board that, since claim 1 of auxiliary request 6 included features from the description, in particular from paragraph 14 as originally filed, the introduction of D8 at this stage was justified. However, those features were already included in auxiliary requests 2 and 6 before the Opposition Division and the introduction of D8 in the appeal proceedings was not motivated by these features taken by the description but solely in view of its relevance for the patent as granted.

It belongs to established jurisprudence of the Boards of Appeal that the appeal is not a continuation of the opposition proceedings.

Under these circumstances the Board exercising its discretionary power under Article 12(4) RPBA 2020 did not admit document D8 into the proceedings.

4.4 *Inventive step*

- 4.4.1 The subject-matter of independent claim 1 of auxiliary request 6 is not rendered obvious by the combination of D1 with D2.

Claim 1 of auxiliary request 6 differs from claim 1 of auxiliary request 2 in that it further includes the following feature:

"wherein the hydraulic pressure-generating part (21) has a rod part (32) coupled to the piston (31), and operated by the control lever member (22); and the second adjustment member (435a) has an adjustment screw (435b) capable of adjusting the length of the rod part."

The appellant essentially argued that the additional feature was also known from D2 so that the objection on inventive step for the subject-matter of claim 1 of the auxiliary request 2 still applied for the subject-matter of claim 1 of the auxiliary request 6. In particular, the piston 36 in figure 3 had at one end a circumferential extending edge constituting the rod part coupled to the piston. When the control lever member 14 was pivoted, the adjustment member 28, 30 operated the rod part together with the piston. Also, the length of the rod part extending out of the bushing 38 could be adjusted by screwing the adjustment screw 30.

The Board disagrees and shares the view of the respondent. The mechanism in figure 3 of D2 does not disclose the added feature. There is no rod part coupled to the piston whose length is adjusted by an adjustment screw. The circumferential extending edge of the piston constitutes the piston itself and not a rod part coupled to the piston and operated by the control lever member. Even if that edge of the piston were to be seen as the claimed rod part, its length cannot be adjusted since it does not change. That the length of the rod part extending out of the bushing 38 can be adjusted has nothing to do with the feature under discussion since the feature requires that the length of the rod part itself is adjustable.

In the mechanism of figure 3 of D2, clearly the distance between the bushing 20 and the piston 36 is adjusted by the screw 30 to obtain an adjustment of the initial piston position in the same way as the distance of the attachment points of the rod part 432 to the piston and the control lever member of figure 14 of the patent is adjustable. However, the adjustment of that distance is performed with different mechanisms in D2 and in the patent. In the patent it is the length of the rod part that is adjustable, and in D2 it is the effective length of the screw 30 coming out of the bushing 28 that is adjustable. However, in D2 there is no part whose length is adjustable.

Consequently, the combination of D1 with D2 cannot render obvious the subject-matter of claim 1.

- 4.4.2 The subject-matter of independent claim 5 involves an inventive step in view of D1 in combination with D2.

The appellant's line of attack starting from D1 in combination with D2 was based on the fact that D2 allegedly disclosed a cam member formed at the control lever 14. This cam member was the protrusion extending from pivoting pin 18 downwards and receiving the bushing 28. Due to its integral provision with the lever 14, this cam member pivoted around the pin 18 forming the first axis in conjunction with pivoting of the control lever member in order to actuate the rod part formed by the screw 30. The appellant considered that the definition of a cam adopted by the Opposition Division in its decision was too narrow. By referring to D9 it considered that a correct definition was: "Cams move a plunger/pusher when passing over it, which triggers a switching function of mechanical, electrical, hydraulic or pneumatic type."

The Board shares the view of the respondent and that of the Opposition Division in its decision. A cam is a mechanical part that pertains to common general knowledge of the skilled person and its definition is in line to that expressed by the Opposition Division in its decision (see point 2.4.3). In particular the mechanical cam claimed is a pivoting cam member. This kind of cam member is a pivoting part in machinery designed to make sliding/rolling contact with another part (the cam follower) to impart by pivoting a reciprocal motion to it. The definition provided by the appellant fails to define a pivoting cam as claimed and applies broadly to cams which nevertheless involve a sliding/rolling contact (i.e. when passing over) between cam and cam-follower (i.e. plunger/pusher).

D2 does not disclose a cam-follower arrangement with a cam pivoting in conjunction with the control lever member and actuating the rod part which represents the cam follower. The alleged cam member of the opponent is merely a pivoting arm of the brake lever. It does not possess a contour which the piston rod 30 follows by sliding/rolling contact. Accordingly, D2 does not disclose a control lever member having a pivoting cam member. Consequently, the combination of D1 with D2 cannot render obvious the subject-matter of claim 5.

4.5 In respect of auxiliary request 6 the appellant only argued, at the oral proceedings, lack of inventive step starting from D1 in combination with D2 or D8. Since D8 is not admitted into the appeal proceedings (see point 4.3 above), there is no need to consider the combination D1 with D8. In writing (see appellant's letter dated 18 September 2020, section V, points 2, 5 and 6) the appellant referred to lack of novelty over D4, which is not taken into consideration as explained

above point 4.2, and to lack of inventive step for claim 1 starting from D1 also in view of D3 and D7 and for claim 5 also in view of D3. D3 and D7 were cited in view of the feature of claim 1 that "the hydraulic pressure-generating part has a rod part coupled to the piston, and operated by the control lever member; and the second adjustment member has an adjustment screw capable of adjusting the length of the rod part" (see section V, point 5 of the above-mentioned letter). However, analogously as for D2, D3 (see push rod 25 = rod part 25 in Fig. 2) and D7 (see bolt 23 = rod part) do not disclose a rod part whose length can be adjusted. Accordingly, these attacks against claim 1 fail for the same reasons as the attack based on D1 with D2, see above point 4.4.1. Also, D3 was cited in view of the feature of claim 5 that "the fourth adjustment member has a worm gear bolt provided to either the control lever member or the cam member, and adapted for engaging the other of the control lever member and the cam member" (see section V, point 3 of the above-mentioned letter). However, analogously as for D2, D3 does not disclose a control lever member having a pivoting cam member but merely a pivoting arm (see rod 25 in Fig. 2). Accordingly, this attack against claim 5 fails for the same reasons as the attack based on D1 with D2, see above point 4.4.2.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the opposition division with the order to maintain the patent in amended form on the basis of the following documents:

- Claims 1 to 10 according to auxiliary request 6, submitted with the reply to the statement of grounds of appeal;
- Description columns 1-2 and 7-26 of the patent as granted and description columns 3-6 as submitted during the oral proceedings;
- Figures 1 to 17 as granted.

The Registrar:

The Chairman:



A. Vottner

G. Pricolo

Decision electronically authenticated