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**Datasheet for the decision
of 3 June 2022**

Case Number: T 2053/19 - 3.2.06

Application Number: 13198131.8

Publication Number: 2749490

IPC: B62M25/04, B62K23/06, B60T7/10,
B60T11/16

Language of the proceedings: EN

Title of invention:
Bicycle control device

Patent Proprietor:
SHIMANO INC.

Opponent:
SRAM, LLC

Headword:

Relevant legal provisions:
EPC Art. 113(2)

Keyword:
Basis of decision - text or agreement to text withdrawn by
patent proprietor - patent revoked

Decisions cited:

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 2053/19 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 3 June 2022

Appellant: SHIMANO INC.
(Patent Proprietor) 3-77, Oimatsu-cho
Sakai-ku,
Sakai City
Osaka 590-8577 (JP)

Representative: Sonnenberg, Fred
Sonnenberg Harrison Partnerschaft mbB
Herzogspitalstraße 10a
80331 München (DE)

Appellant: SRAM, LLC
(Opponent) 1000 W. Fulton Market, 4th Floor
Chicago, IL 60607 (US)

Representative: Thum, Bernhard
Thum & Partner
Thum Mötsch Weickert
Patentanwälte PartG mbB
Siebertstr. 6
81675 München (DE)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
22 May 2019 concerning maintenance of the
European Patent No. 2749490 in amended form.**

Composition of the Board:

Chairman	M. Harrison
Members:	M. Dorfstätter
	E. Kossonakou

Summary of Facts and Submissions

- I. In its interlocutory decision the opposition division found that, account being taken of the amendments made by the patent proprietor during the opposition proceedings, the European patent No. 2 749 490 met the requirements of the EPC.
- II. Appeals were filed by both the proprietor and the opponent.
- III. The proprietor requested that the decision under appeal be set aside and the patent be maintained on the basis of a main request or any of auxiliary requests 1 to 16.
- IV. The opponent requested that the decision under appeal be set aside and the patent be revoked.
- V. The Board issued a summons to oral proceedings and a subsequent communication in which it gave its provisional opinion.
- VI. In a first letter the proprietor withdrew its appeal and declared that the patent was "abandoned in its entirety".
- VII. The oral proceedings were subsequently cancelled.
- VIII. In response to a telephone conversation with the registry, the proprietor specified its requests, in a further letter, by stating the following:

"As indicated the patentee abandons the patent and all of its pending requests. It is assumed that the abandonment will be considered in line with the

established case law. Hence, the patent is to be revoked without any need for a decision."

Reasons for the Decision

1. Pursuant to Article 113(2) EPC, the EPO shall examine, and decide upon, a European patent only in the text submitted to it, or agreed, by the patent proprietor of the patent. Such an agreement cannot be deemed to exist where the patent proprietor states that it no longer approves the text of the patent, withdraws all pending requests, and declares that it will not be submitting an amended text. In such a case, there is no text of the patent on the basis of which the Board can consider the appeal. In these circumstances, the proceedings are to be terminated by a decision ordering revocation of the patent, without examination as to patentability (see e.g. Case Law of the Boards of Appeal of the European Patent Office, 9th edition 2019, IV.D.2).

2. In the present case, the proprietor did not expressly state that it no longer approves the text of the patent, nor did it explicitly declare that it will not be submitting an amended text. However, the unequivocally stated abandonment of "the patent and all pending requests" together with the statement that in line with established case law "the patent is to be revoked", is a clear indication of the proprietor's wish to cause the legal consequence of revocation as laid out above. This statement of the proprietor is in the current circumstances to be understood such that the proprietor no longer approves any text of the patent. It is also unambiguous that the proprietor will not submit a new text since it acknowledges that revocation ought now to occur.

3. As to the last part of the sentence, stating that the patent was to be revoked "without any need for a decision", the Board can only interpret this as meaning "without any need for a decision on the merits." It is clear that the proprietor was aware that the patent was to be revoked. Indeed, it explicitly stated this in the same sentence. Revocation can, however, only occur by means of a decision, noting also that the opponent has maintained its request for revocation.

4. The Board must therefore revoke the patent. No reasoning concerning an examination of the substantive merits of the case is to be included, since there is no text agreed by the proprietor upon which such an examination can be carried out.

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:



D. Grundner

M. Harrison

Decision electronically authenticated