



EN

EUROPEAN QUALIFYING EXAMINATION 2025

Paper D2

This paper comprises:

Part II: Legal Opinion

[00] Today is 11 March 2025.

[01] We, Bikey GmbH, are a company of bicycle enthusiasts with our principal place of business in Germany. Our main clients are located in Europe, the US and Taiwan.

[02] We develop gear shift systems for bicycles, as well as saddle connectors for bicycles. Traditionally, the saddle is fixed on a bicycle by means of a rigid connector, and damping is achieved by gel inlays in the saddle cover.

[03] In July 2021, our founder was on vacation in Malaysia (MY) and met a local bicycle enthusiast, Mr Sandobike, who had filed a national patent application, P-MY, in his own name with the Malaysian Patent Office (MyIPO) on 28 May 2021. P-MY discloses and claims a bicycle saddle connector comprising damping means in the form of either spheres made from rubber (O) or pyramids made from rubber (P). The new connector allows for a surprisingly better riding experience while still suppressing hard shocks.

[04] In August 2021, Bikey and Mr Sandobike signed an agreement to transfer all rights and titles to application P-MY and any ensuing rights to our company. This includes the right to claim priority. The transfer was registered with the MyIPO. P-MY was granted in autumn 2023 after a substantive examination in which only documents of no particular relevance were cited.

[05] On 26 May 2022, our company filed a PCT application, PCT-MY, in English with the EPO, claiming priority from P-MY. PCT-MY discloses a bicycle saddle connector comprising damping means made from rubber (Q) and further contains the disclosure of P-MY in its entirety. PCT-MY has two claims. Claim 1 is directed to a bicycle saddle connector with damping means made from rubber (Q) and dependent claim 2 specifies that the damping means are in the form of spheres (O). We thought that the spheres would be our preferred solution and therefore did not claim damping means in the form of pyramids. The international search report cited a brochure by Selle S.A., a producer of saddles for bicycles located in France. Published in March 2022, this brochure shows a bicycle saddle connector with damping means in the form of cubes made from rubber (R). When entering the European phase as Euro-PCT-MY, we amended the claims by filing a single claim directed to the subject-matter of original claim 2.

[06] On 4 April 2024, we received an invitation from the EPO, asking us to provide information on prior art taken into consideration in national patent proceedings and concerning the same invention as Euro-PCT-MY. We did not respond, because we were convinced that the search by the EPO was anyway better than that by the MyIPO. Six months ago, we received a notification of loss of rights from the EPO.

[07] When we started experimenting with such bicycle saddle connectors last year, we realised that pyramids achieve even better damping results. We therefore filed a divisional application EP-DIV from Euro-PCT-MY on 30 April 2024. EP-DIV contains the description of PCT-MY and a single claim directed to a bicycle saddle connector with damping means in the form of pyramids made from rubber (P). The search report for EP-DIV was accompanied by a positive opinion. EP-DIV was published together with the search report on 18 December 2024.

[08] We further need your advice in a case concerning our longtime competitor Campagnelli SpA, which is a big brand in gear shift systems for bicycles and has its principal place of business in Italy. Its main clients are also located in Europe, the US and Taiwan. Campagnelli filed an Italian patent application, IT-A, on 6 June 2018. IT-A discloses and claims a bicycle gear shift system comprising an electric motor for shifting the gears and a switch to be mounted on the handlebar of a bicycle for selecting the gears, wherein the switch is connected via an electrical wire to the motor (A). On 20 September 2018, Campagnelli filed a European patent application, EP-B, disclosing and claiming a bicycle gear shift system comprising an electric motor for shifting the gears and a switch to be mounted on the handlebar of a bicycle for selecting the gears, wherein the switch is connected via a wireless radio connection to the motor (B). Compared with traditional bicycle gear shift systems, which have no electric motor, the inventions in IT-A or EP-B have the advantage that the cyclist can always operate the switch with the same force, irrespective of the gear engaged. IT-A was withdrawn before publication, while EP-B is still pending.

[09] On 14 May 2019, Campagnelli filed an EP application EP-ABC, claiming priority from IT-A and EP-B. EP-ABC contains the disclosures of IT-A and EP-B in their entirety. In addition, EP-ABC discloses and claims in claim 1 a bicycle gear shift system comprising an electric motor for shifting the gears and a switch to be mounted on the handlebar of a bicycle for selecting the gears (C). Dependent claim 2 corresponds to the subject-matter of IT-A, i.e. the switch is connected via an electrical wire to the motor (A). Claim 3 is dependent on claim 1 and corresponds to the subject matter of EP-B, i.e. the switch is connected via a wireless radio connection to the motor (B).

[10] In 2023, EP-ABC was granted with the claims as originally filed. We filed an opposition with the EPO against all claims of EP-ABC, based on the ground of lack of inventive step. In January 2025, together with the summons to oral proceedings, the Opposition Division sent its preliminary opinion, according to which our opposition is admissible but is likely to be rejected.

[11] After learning about Campagnelli's gear shift systems, our developers came up with an improved bicycle gear shift system. Without claiming any priority, we filed a German patent application, DE-GPS, on 22 March 2024. DE-GPS discloses and claims in claim 1 a bicycle gear shift system comprising an electric motor for shifting the gears and means for selecting the gears, the means including a GPS sensor (D). Dependent claim 2 is directed to the bicycle gear shift system of claim 1, wherein the means for selecting the gears further include a switch to be mounted on the handlebar of a bicycle, wherein the switch is connected via a wireless radio connection to the motor (E). DE-GPS describes how a GPS-sensor can be used to automatically select the correct gear, based on the slope of the road and the speed of the bicycle. The overall effort by the cyclist is thereby reduced enormously, as the cyclist always rides in the optimal gear. DE-GPS also describes that a handlebar switch may be provided to override the automatic selection.

[12] Last weekend, at "Bike & Gravel", an international trade fair in Milan, we presented two prototypes of our improved bicycle gear shift system according to DE-GPS, one without a handlebar switch and one with a handlebar switch connected via a wireless radio connection. As the interest was tremendous, we plan to launch systems according to the two prototypes on the market. We will manufacture in Germany and Taiwan.

[13] At “Bike & Gravel”, our founder was approached by Alessio Alessi, the inventor of the subject-matter of EP-B and a former employee of Campagnelli. Alessio was very happy to see the interest our prototypes had attracted and offered to co-operate. Alessio told our founder that pending application EP-B belongs to him, as it was transferred to him when he left Campagnelli in 2019. This transfer was registered with the EPO in 2020. To speed up co-operation, Alessio immediately sent us a copy of a notary agreement dated 2 May 2019. In this agreement between Campagnelli and Alessio Alessi, all rights and title including the right to priority for EP-B were transferred to Alessio as of that date.

[14] Much to our concern, our founder also learned at “Bike & Gravel” that Selle S.A., which produces in France, has announced that it plans to start developing a new line of bicycle saddle connectors comprising damping means in the form of spheres made from rubber. This is in addition to continuing its existing line of bicycle saddle connectors with damping means in the form of cubes made from rubber.

[15] Faced with these multiple challenges, we want to hand all IP matters over to you.

Questions:

1. What is the current patent situation as regards the following subject-matter:
 - (a) a bicycle saddle connector with damping means in the form of
 - (i) spheres made from rubber (O),
 - (ii) pyramids made from rubber (P), or
 - (iii) cubes made from rubber (R);
 - (b) a bicycle gear shift system comprising an electric motor for shifting the gears and a switch to be mounted on the handlebar of a bicycle for selecting the gears
 - (i) via an electrical wire (A),
 - (ii) via a wireless radio connection (B), or
 - (iii) as such (C);
 - (c) a bicycle gear shift system comprising an electric motor for shifting the gears and means for selecting the gears, the means including a GPS sensor (D).
2. As the situation currently stands:
 - (a) are we free to produce and sell bicycle gear shift systems according to our two prototypes?
 - (b) is Selle S.A. free to produce and sell their existing and planned lines of bicycle saddle connectors?
3. What can we do to improve our position?
4. After the improvements:
 - (a) will we be free to produce and sell bicycle gear shift systems according to our two prototypes?
 - (b) will Selle S.A. be free to produce and sell their existing and planned lines of bicycle saddle connectors?