

OPINION UNDER SECTION 74A

Patent	GB 2528484 B
Proprietor(s)	Bibado Ltd
Exclusive Licensee	
Requester	Bibado Ltd
Observer(s)	Be-Baby Ltd
Date Opinion issued	18 Oct. 21

The Request

1. This opinion covers two opinion requests by Bibado Ltd (“Bibabo”), the proprietor of UK patent GB 2528484 B (“the Patent”). In the first request, Opinion 8/21, the Comptroller is requested to issue an opinion as to whether certain actions of Be-Baby Ltd (“Be-Baby”) regarding the ‘Tidy Tot Cover and Catch Bib’ (“the Product”) constitute a direct infringement of the Patent under section 60(1) of the Patents Act 1977 (“the Act”). In the second request, Opinion 10/21, the comptroller is requested to issue an opinion as to whether the claims of the Patent are valid i.e. novel and inventive, in light of three patent documents. The first request was filed on 12 July 2021 and the second request was filed on 13 July 2021. Both requests were accompanied by statements explaining the request.
2. Previously, in 2018, Mr Daniel Laxton of Bibado requested an opinion regarding the validity of the Patent (Opinion 34/18) in view of four registered designs and a US patent document.
3. As Bibado notes, one of the documents cited here (D3, US 2013/0025018 A1) was considered during prosecution of the Patent. Bibado accepts that D3 should only be considered in this Opinion in combination with either of the other documents for the purposes of assessing inventive step rather than being considered alone.

Observations & Observations in reply

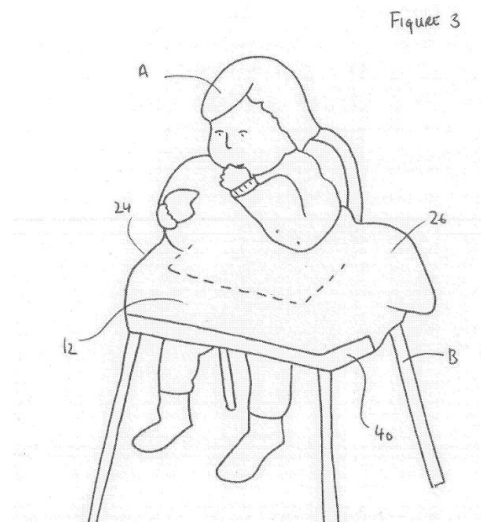
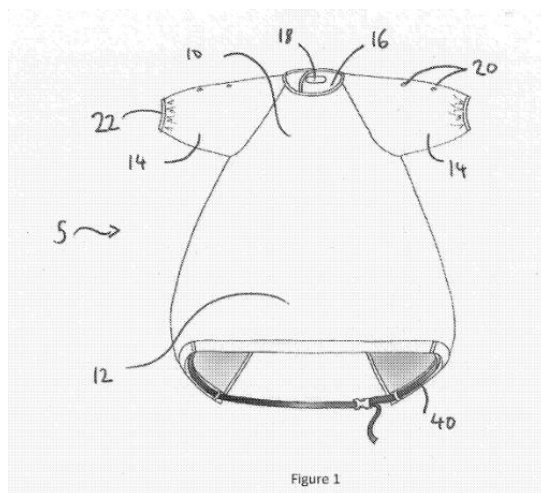
4. Be-Baby filed a further two opinion requests with regard to the Patent on 28 July 2021. The first was a further infringement request regarding the Product. It was agreed that this request should be withdrawn and be treated as observations in response to the current infringement opinion request. The second request was a further validity request which considers the same documents considered here but also introduces further documents as well as arguments surrounding sufficiency. It

was agreed that any relevant validity arguments would be considered as observations in response to the current validity request. The remaining validity matters would form the basis of a new opinion to be issued in a separate report (Opinion 16/21).

5. Further observations regarding Opinions 8/21 and 10/21 were filed by Be-Baby on 10 August 2021.
6. Observations in Reply were received by Bibado on 26 August 2021.

The Patent

7. The Patent entitled 'Protective Garment' was filed on 23 July 2014 in the name of Rachel Wood and was granted on 31 January 2018. Bibado was registered as proprietor of the Patent by virtue of assignment dated 26 April 2018. The Patent remains in force.
8. The Patent relates to a protective garment such as a bib or apron, especially for a child. The Patent explains that such bibs often protect the chest and occasionally the arms of the individual but do not prevent food from falling on and around the legs of the user and on the chair in which the individual may be sitting. In the invention, the bib has a lower region 12 which is arranged to cover the legs of the wearer and can also cover a chair in which the wearer is sitting. The inside of the bib is provided with a gripping region 40 that helps to prevent the garment slipping and holds it in place, by allowing the garment to grip an item of furniture about which the garment is placed. (See Figures 1 and 3 reproduced from the Patent below.)



9. The Patent has 6 claims including one independent claim, claim 1. Claim 1 reads as follows with the features separated out.

<i>1a</i>	<i>A protective garment to be worn by a wearer,</i>
<i>1b</i>	<i>the garment having a lower edge,</i>
<i>1c</i>	<i>wherein the lower edge is provided with a gripping region,</i>
<i>1d</i>	<i>the gripping region comprising a strip</i>
<i>1e</i>	<i>of thermoplastic elastomer, silicone, rubber or acrylic tape</i>
<i>1f</i>	<i>arranged to provide a frictional engagement between the garment and a chair or other item of furniture used by the wearer.</i>

10. The relevant legal provisions for novelty, inventive step and infringement are provided below.

Novelty and Inventive step – the law

11. Section 1(1)(a) and (b) of the Act reads:

1(1) A patent may be granted only for an invention in respect of which the following conditions are satisfied, that is to say –
(a) the invention is new;
(b) it involves an inventive step;

12. The relevant provisions in relation to novelty are found in section 2(1) and section 2(2) which read:

2(1) An invention shall be taken to be new if it does not form part of the state of the art.

2(2) The state of the art in the case of an invention shall be taken to comprise all matter (whether a product, a process, information about either, or anything else) which has at any time before the priority date of that invention been made available to the public (whether in the United Kingdom or elsewhere) by written or oral description, by use or in any other way.

13. The provisions in relation to inventive step are found in section 3 which states:

3. An invention shall be taken to involve an inventive step if it is not obvious to a person skilled in the art, having regard to any matter which forms part of the state of the art by virtue only of section 2(2) above (and disregarding section 2(3) above).

14. The Court of Appeal in *Windsurfing*¹ formulated a four-step approach for assessing

¹ *Windsurfing International Inc. v Tabur Marine (Great Britain) Ltd*, [1985] RPC 59

whether an invention is obvious to a person skilled in the art. This approach was restated and elaborated upon by the Court of Appeal in *Pozzoli*.² Here, Jacob LJ reformulated the *Windsurfing* approach as follows:

- (1)(a) Identify the notional “person skilled in the art”*
- (1)(b) Identify the relevant common general knowledge of that person;*
- (2) Identify the inventive concept of the claim in question or if that cannot readily be done, construe it;*
- (3) Identify what, if any, differences exist between the matter cited as forming part of the “state of the art” and the inventive concept of the claim or the claim as construed;*
- (4) Viewed without any knowledge of the alleged invention as claimed, do those differences constitute steps which would have been obvious to the person skilled in the art or do they require any degree of invention?*

Infringement - the law

15. Section 60(1) of the Patents Act governs what constitutes direct infringement of a patent:

(1) Subject to the provision of this section, a person infringes a patent for an invention if, but only if, while the patent is in force he does any of the following things in the United Kingdom in relation to the invention without the consent of the proprietor of the patent, that is to say-

(a) Where the invention is a product, he makes or disposes of, offers to dispose of, uses or imports the product or keeps it whether for disposal or otherwise;

(b) Where the invention is a process, he uses the process or he offers it for use in the United Kingdom when he knows, or it is obvious to a reasonable person in the circumstances, that its use there without the consent of the proprietor would be an infringement of the patent;

(c) Where the invention is a process, he disposes of, offers to dispose of, uses or imports any product obtained directly by means of that process or keeps any such product whether for disposal or otherwise.

16. As the claims here relate to a product, only part (a) of section 60(1) is relevant.
17. In the Supreme Court in *Actavis v Eli Lilly*³, Lord Neuberger stated that the problem of infringement is best approached by addressing two issues, each of which is to be considered through the eyes of the notional addressee of the patent in suit, i.e. the person skilled in the relevant art. Those issues are:
- (i) does the variant infringe any of the claims as a matter of normal interpretation; and, if not,*

² *Pozzoli SPA v BDMO SA* [2007] EWCA Civ 588

³ *Actavis UK Limited and others v Eli Lilly and Company* [2017] UKSC 48

(ii) *does the variant nonetheless infringe because it varies from the invention in a way or ways which is or are immaterial?*

18. If the answer to either issue is “yes”, there is an infringement; otherwise there is not.

Construction of claim 1

19. When considering both the validity of the Patent and whether the Product infringes the Patent as a matter of normal interpretation, I will need to construe the claims. This means interpreting the claim in the light of the description and drawings as instructed by Section 125(1). In doing so, I must interpret the claim in context through the eyes of the person skilled in the art. Ultimately the question is what the person skilled in the art would have understood the patentee to be using the language of the claim to mean. This approach has been confirmed in the recent decisions of the High Court in *Mylan v Yeda*⁴ and the Court of Appeal in *Actavis v ICOS*⁵.
20. Bibado suggests that the person skilled in the art is ‘someone knowledgeable in the manufacture of bibs’. Be-Baby expands this to submit that the skilled person is ‘a designer of protective garments, including bibs and aprons, for example for young children or invalids, and would be well versed in the possible configurations of protective garments and the materials out of which such garments can be made’. I consider that the skilled person would have both these characteristics.
21. There has been some dispute regarding how claim 1 should be construed. I will make some general comments here; I will make further comments later in relation to the cited documents and alleged infringing product. Due to the nested formation of claim 1, some terms need to be considered in combination.
22. I will begin with the term ‘gripping region’. From page 2, paragraph 2 of the Patent, ‘The gripping region allows the garment to grip an item of furniture about which the garment is placed.’ And also, from the same paragraph, ‘The gripping region helps to hold the garment in place’. Further, the gripping region ‘may be provided with an area that is [sic] sticks to or grips a surface against which it is placed’. In its broadest construction the skilled person would understand a ‘gripping region’ to be simply a region that allows the garment to grip an item of furniture to help to hold the garment in place. However, claim 1 specifies in more detail where the gripping region is placed, what form it takes, what it’s made of, and how it operates to grip the furniture.
23. Regarding the first three points, claim 1 specifies: ‘the garment having a lower edge, wherein the lower edge is provided with a gripping region, the gripping region comprising a strip of thermoplastic elastomer, silicone, rubber or acrylic tape’.
24. Regarding the ‘lower edge’, on page 2 lines 7-8 of the Patent we are told, ‘The gripping region is preferably found at or near a lower edge of the lower region’. On

⁴ Generics UK Ltd (t/a Mylan) v Yeda Research and Dev. Co. Ltd & Anor [2017] EWHC 2629 (Pat)

⁵ Actavis Group PTC EHF v ICOS Corporation & Ors [2017] EWCA Civ 1671

page 2 lines 18-20, 'the gripping region may comprise a strip of thermoplastic elastomer or silicone tape that extends along part or all of the lower edge of the garment'. From page 5, paragraph 1 of the Patent: 'Near to the lower edge, 38, of the lower region, 12, the garment is provided with a gripping region, 40'. There seems to be some confusion from the Patent as to whether the 'lower edge' refers to the ultimate edge of the garment or a region at this extreme edge. I think the skilled person would understand the lower edge in claim 1 to have the latter interpretation. This construction is supported by Fig.1 where there is seen to be a small gap between the gripping region 40 and the extreme edge of the garment. Be-baby have allowed for this gap by construing the lower edge to be a region 'at or near' the most distal edge. I think this is unnecessary and the lower edge is simply a region of the garment at the distal boundary of the garment. Regarding 'the lower edge is provided with a gripping region', the skilled person would understand this to mean that at least part of the garment that is the lower edge (as defined previously) includes a gripping region. In other words another part of the lower edge (e.g. a small gap at the ultimate boundary) may not be provided with a gripping region.

25. In claim 1 the gripping region comprises a 'strip'. On page 2 lines 18-20 of the Patent we are told, 'In a particular embodiment the gripping region may comprise a strip of thermoplastic elastomer or silicone tape that extends along part or all of the lower edge of the garment'. Further on page 5 lines 2-5: 'the gripping region is made up of a strip of sticky or gripping material that helps to prevent the garment slipping and holds it in place'. This arrangement is illustrated in the Figures of the Patent where in the single embodiment the gripping region 40 is seen to extend as an elongate, continuous, piece along the garment. The skilled person would understand a strip to mean a long, narrow piece of material. The skilled person would further understand that the strip comprises a continuous, uninterrupted length of material as no other type of strip is described. The skilled person would also conclude that the 'strip' is a particular feature, distinct from the rest of the garment. It is not clear in claim 1 whether the strip may be of acrylic tape or whether 'acrylic tape' is a separate option. However, I do not think this is important as 'tape' will be construed in a similar way to 'strip'.
26. Regarding how the gripping region operates, claim 1 specifies that the gripping region (comprising a strip etc) is 'arranged to provide a frictional engagement between the garment and a chair or other item of furniture used by the wearer'. The term 'friction' or 'frictional engagement' is not mentioned explicitly in the description. However, from the Patent the skilled person would understand that the gripping region relies on frictional forces arising from the contact between the gripping region and the furniture to grip an item of furniture used by the wearer.
27. Therefore, the 'gripping region' can be interpreted broadly to be simply a region that allows the garment to grip an item of furniture to help to hold the garment in place. This interpretation will be used later to aid in considering feature 1(c) of claim 1 in isolation. However, when considering the claim as a whole the skilled person will understand that the gripping region has a much narrower interpretation as discussed above (and in keeping with that construed in previous Opinion 34/18).
28. Finally, from the Patent, the item of furniture in the last part of claim 1 is typically a chair or highchair (as in Fig. 3) but could be any suitable item of furniture 'on which the wearer is sitting or lying' (page 5, line 7). I think it is reasonable to assume that

this would also include a table *at which* the wearer is sitting.

The Product

29. Bibado maintains that actions regarding the Product infringe the claims of the Patent. The Product is a bib that is manufactured and sold in the UK by Be-Baby under the name 'Tidy Tot Cover & Catch Bib' (<https://tidytot.com/product/tidy-tot-cover-and-catch-bib/>). The Product consists of a bib with arms, which is secured by Velcro (RTM) around a child's neck. The bib has a lower portion or region for covering a table or highchair or other smooth surface. The distal edge of the lower portion is provided, on the inside face, with a row of three suction cups for fixing to the surface of the table and thereby holding it in place on the surface. Examples of the Product are reproduced below.



Assessment of Infringement

30. In accordance with the guidance above, I shall start by considering whether the Product infringes the Patent as a matter of normal interpretation. I will consider the features of claim 1.
31. Both Bibado and Be-Baby agree that the Product has features 1(a) and 1(b) of claim 1 i.e. a protective garment having a lower edge. The lower edge of the Product is provided with a gripping region (in its broadest interpretation) in the form of three suction cups for securing the bib to the surface of the table. Therefore, the Product also exhibits feature 1(c).
32. Regarding feature 1(d), according to my construction above, I do not consider the suction cups to form a strip as they do not form a *continuous* arrangement. Specifically, there are only three suction cups with significant gaps between them.
33. I will now move onto feature 1(e) and consider this feature with respect to the material of the suction cups. Be-Baby asserts that the suction cups are made of PVC rather than any of the materials specified in claim 1. Bibado in their observations in reply submit that PVC is a thermoplastic polymer. They explain that there are two

methods to make PVC soft and pliable. One is to blend the PVC with an elastomer which could then be considered to be a type of thermoplastic elastomer (TPE) as required in claim 1. The second method is to add plasticiser to the PVC which results in a soft and pliable PVC *akin to* a TPE. In support, they provide document <https://www.alphagary.com/blog/tpe-compounds-are-the-right-touch-for-many-products/3215/>. I am not convinced that this is sufficient to meet the terms of feature 1(e). As the document above states: 'Sometimes a blend of PVC with an elastomer can be considered a TPE. But in most cases, a soft and flexible PVC is not a TPE'.

34. Regarding the final feature of claim 1, Be-Baby points out that the suction cups operate through forming a negative pressure. I agree it is well established that when a suction cup is sealed against a surface, air is pushed out forming a low-pressure region inside the suction area. Atmospheric pressure outside the cup presses down on the low-pressure area creating the suction. Bibado submit, however, that the suction cups of the Product have a dual mode of action. As well as being affixed to the surface in a normal direction as described above, they are also prevented from sliding around the surface laterally due to the frictional engagement of the suction cups against the surface. They provide a short film clip which shows initially the suction cups of the Product firmly attached to a dry window. In a second demonstration water is applied to both the suction cups and the window and the suction cups are seen to be freely moveable about the surface. Bibado suggests that the water acts as a lubricant to reduce the friction between the suction cups and the surface. They conclude that 'while there is a negative fluid pressure mode of action by which the suction cups may be retained on a surface, it is frictional engagement between the suction cups and the surface which maintains the lower edge of the Product in a desired position on a surface'.
35. In response, I agree with Be-Baby that the suction cups operate by forming a negative pressure. However, I agree with Bibado that the suction cups also rely on frictional forces arising from the contact between the suction cups and the furniture to grip the item of furniture and restrict lateral movement of the suction cups along the surface. Therefore, on balance I consider that the Product meets feature 1(f).
36. Therefore, it is my view, as a matter of normal interpretation, the Product does not infringe claim 1. Specifically, the Product does not meet features 1(d) and 1(e) i.e. a gripping region comprising a strip of thermoplastic elastomer, silicone, rubber or acrylic tape.
37. I now move onto the second step namely whether the Product nonetheless infringes because it varies from the invention in a way or ways which is or are immaterial. To decide this, I will consider the so-called *Actavis* questions:

(i) Notwithstanding that it is not within the literal meaning of the relevant claim(s) of the patent, does the variant achieve substantially the same result in substantially the same way as the invention, i.e. the inventive concept revealed by the patent?

(ii) Would it be obvious to the person skilled in the art, reading the patent at the priority date, but knowing that the variant achieves substantially the same result as the invention, that it does so in substantially the same way as the invention?

(iii) Would such a reader of the patent have concluded that the patentee

nonetheless intended that strict compliance with the literal meaning of the relevant claim(s) of the patent was an essential requirement of the invention?

38. In order to establish infringement in a case where there is no literal infringement, a patentee would have to establish that the answer to the first two questions was “yes” and that the answer to the third question was “no”.
39. Considering the first *Actavis* question, it is useful to consider the problem underlying the invention. This is stated clearly on page 1 of the Patent where we are told that bibs of the prior art ‘are useful for protecting the chest and occasionally arms of the individual but don’t prevent food from falling on and around the legs of the user and on the chair in which the individual is sitting’.
40. The inventive core or inventive concept of claim 1 that seeks to solve this problem is claim 1 as construed above. It can be expressed more succinctly as follows: a protective garment with a lower edge provided with a gripping region comprising a strip of appropriate material which relies on frictional forces to grip an item of furniture used by the wearer.
41. It is my view that the inventive concept and the Product both achieve substantially the same result; for both, the garment grips the user’s chair (or similar furniture) so that food falls on the bib rather than on or around the legs of the user or on the chair.
42. I need to consider next how the invention and the Product work to achieve this result. In the invention the result is achieved using a continuous strip of appropriate material. The garment is simply placed on the furniture and held in place by frictional forces arising from the contact between the material and the furniture. In the Product the result is achieved with three spaced apart suction cups. The suction cups are pushed down to produce a negative pressure to hold them in place vertically and this then also results in some lateral frictional engagement. I do not consider that the Product and the invention achieve the result in substantially the same way. The suction cups rely on being individual elements (rather than a continuous material) as each is required to create a separate pocket of negative pressure. Further, in order to operate the suction cups, they must first be pushed onto the surface to create the suction. Only then does the frictional aspect come into play. If the suction cups were simply placed on the surface, in a similar way to the strip of the invention, they would not be of any use. Therefore, I consider the answer to the first *Actavis* question to be ‘no’.
43. I do not need to consider the remaining two questions. Therefore, in my view actions concerning the Product will not infringe the Patent.

Whether claim 1 is novel in light of the documents cited by Bibado

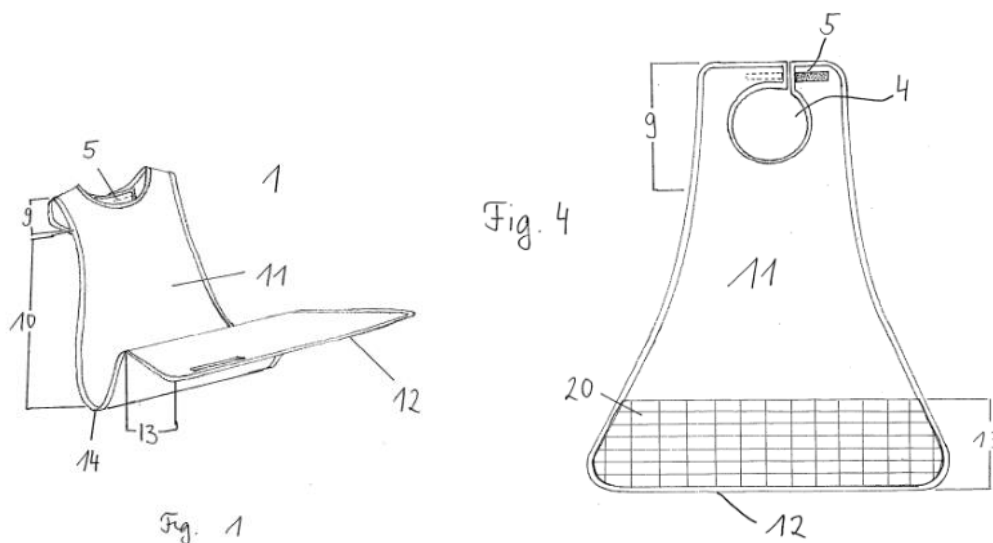
44. The validity opinion is sought in view of three prior art documents:

D1: WO 2013/004230 A1 (Schrader)

D2: GB 533656 A (Burnley)

D3: US 2013/0025018 A1 (Muhammad)

45. All three documents were published before the filing date of the Patent. D3 is only considered with regard to inventive step.
46. I will begin with D1, which is in German. Bibado has provided an English language translation of D1 as well as a copy of a European Patent derived from D1. I will use the English translation here.
47. D1 is concerned with a child's bib. From the description regarding Fig.1, the bib 'is composed of a collar section 9 that can be placed around the child's neck and of a protective section 10 that extends as a surface 11 as far as the end border 12 of the bib 1'. In connection with Fig. 4, 'A friction-increasing means 20 extends on the underside of the protective section 10 from the end border 12 over only part of the surface 11'. In this embodiment, 'the friction-increasing means 20 are limited to the edge strip 13 along the end border 12, with which the bib rests on the table'. Further, 'this edge strip 13 is approximately as wide as the diameter of a conventional plate, or somewhat larger. During use, therefore, the plate rests on the edge strip 13 and applies weight to the latter'. D1 explains that the friction-increasing means ensures that the section of the bib extending toward the end border remains on the table or tray surface and does not slip away.

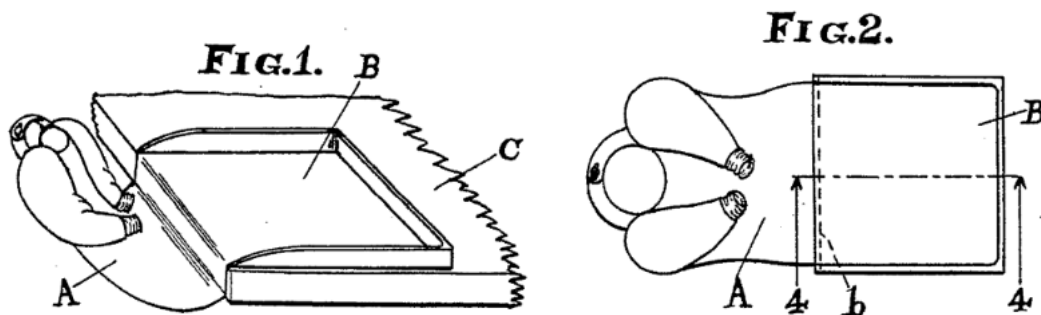


48. D1 clearly anticipates features 1(a) and 1(b) of claim 1 as it discloses a protective garment to be worn by a wearer and has a lower edge.
49. D1 discloses a gripping region (in its broadest interpretation) i.e. friction-increasing means 20. Feature 1(c) requires the lower edge of the garment to be provided with a gripping region. D1 specifies that 'the friction-increasing means 20 are limited to the edge strip 13 along the end border 12'. Bibado refers to several instances in D1 that they maintain suggest that the friction-increasing means 'extends from or extends toward or extends up to the end border, but does not include the end border'. I agree that Fig. 4 shows that there may be a small gap between the extreme edge of the garment and the friction-increasing means 20 (hatched markings in Fig.4). However, according to my construction above it is not necessary for the gripping region to occupy the whole of the lower edge and so this gap would not put this disclosure

outside claim 1. I consider D1 to meet the terms of feature 1(c).

50. Feature 1(d) requires the gripping region to comprise a strip. I construed a strip previously to be a long, narrow, continuous piece of material. As Bibado accepts, there is no specific requirement in the Patent that the strip has a particular length/width ratio. We are told in D1 that: 'It is not essential that the entire protective section of the bib is provided with friction-increasing means; preferably, the friction-increasing means extend on an edge strip along the end border.' We are told further that this edge strip is 'no more than one-third of the surface of the protective section' or 'approximately as wide as the diameter of a conventional plate'. I agree with Bibado that the strip in D1 is longer than it is wide. This can be seen in Fig. 4 of D1. I think the edge strip in D1 is sufficiently narrow to be considered a strip according to claim 1.
51. Regarding feature 1(e), Bibado asserts that there is no explicit disclosure of the strip in D1 being of *thermoplastic elastomer, silicone, rubber or acrylic tape*. We are told in D1 that the friction-increasing means 20 may be a 'rubberized additional fabric, which is applied to the underside of the protective section'. Be-Baby submits that 'to be rubberized is to be made of, or coated in, rubber, therefore clearly falling within the terms of the claims'. In response, I consider that the skilled person would understand a rubberized fabric to be a fabric coated or impregnated with rubber and 'rubberized' in D1 can be taken to disclose both these limited options. If the additional fabric in D1 is a fabric coated with rubber, then the gripping region would comprise a strip of rubber on top of the fabric. It is my opinion that this is sufficient to meet feature 1(c). (If I am wrong, I consider that replacing a strip of rubberized fabric with a strip of rubber to be an obvious modification.)
52. There seems to be no dispute that D1 discloses the final feature 1(f) where the gripping region is arranged to provide a frictional engagement between the garment and a chair or other item of furniture used by the wearer, here the table of a highchair.
53. Therefore, I consider claim 1 to be not novel in light of D1.
54. I will briefly consider the dependent claims. Claim 2 requires the protective garment to be a bib or apron. This is clearly disclosed in D1.
55. Claim 3 requires the protective garment to comprise 'a lower region for, in use, covering the body of the wearer or for, in use, covering a chair or other item of furniture used by the wearer'. The skilled person would understand this claim to mean that the lower region of the garment in use covers the body of the wearer, the item of furniture used by the wearer or both. It is clear from the Patent that the lower region is not expected to cover the whole body of the wearer or the whole item of furniture. For example, on page 4 lines 19-20 of the Patent the lower region is arranged 'to cover the legs of the wearer'. In D1, the edge strip 'is placed flat against the table surface'. Further, 'the protective section drops downward and rises toward the chest area of the child or of the person requiring care, thereby forming a trough 14. Foods that fall down while eating are caught in the trough 14 thus formed.' Therefore, the bib is covering the legs of the wearer and this is sufficient to anticipate claim 3.

56. Claim 4 specifies: 'The protective garment of any preceding claim, wherein the lower region comprised a fastening means, to allow it to be fastened around the wearer and/or a piece of furniture used by the wearer'. From the Patent the sides of the garment may be fastened together by two straps 28, 30 with a clip 32 to clip them together. There are no such fastening means disclosed in D1 and therefore claim 4 is novel. (There have been no arguments by either Bibado or Be-Baby regarding claim 4 and inventive step.)
57. Claim 5 specifies that 'the gripping region is found at or near a lower edge of the lower region'. This has already been covered by the features of claim 1 and therefore claim 5 is not new.
58. Claim 6 requires the gripping region to be found on the inside of the garment. This is met by the friction-increasing means being located 'on the underside of the protective section'. Claim 6 is not novel.
59. Thus claims 1-3, 5 & 6 are not novel in light of D1.
60. I will now move on to **the second patent document, D2.**
61. D2 discloses a child's feeding apron A which is permanently or detachably connected to a tray B. The apron 'may be constructed from sheet rubber' and the tray 'may be moulded from rubber of a more or less rigid nature'. The tray may be provided with tapes of other fastening devices for temporarily securing it to the table C on which it is placed and preventing it from being displaced or pulled off by the child. See Figs.1 and 2 reproduced below.



62. Regarding claim 1 of the Patent, D2 discloses a protective garment which I consider to be the combination of the apron A and tray B. The garment has a lower edge situated at the distal end of the tray B. Therefore, D1 meets the terms of features 1(a) and 1(b).
63. Regarding the remaining features, Be-Baby in summary submits that the tray is formed from rubber and is intended to be positioned on, and maintain contact with, a surface, such as a table. They submit further that the rubber construction of the tray itself, provides a gripping material in a gripping region to help maintain contact between the garment and the table. They argue that the lower portion of the tray at least would form a strip of rubber which would provide a high coefficient of friction and thus a frictional engagement between the rubberised surface and the table on which it is placed.

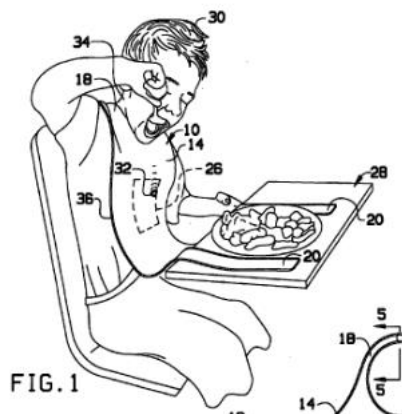
64. In response, I agree that the underside of the rubber tray including its lower edge is formed of rubber and is therefore provided with a gripping region in its broadest interpretation. This rubber gripping region is likely to, by its nature, provide a frictional engagement between the garment and the table on which it is placed. Therefore, this meets features 1(c), 1(e) and 1(f). However, I do not consider the gripping region to comprise a 'strip' as construed above. The gripping region in D2 is the entire lower surface of the tray portion of the garment. As discussed above, the skilled person would realise that the 'strip' is meant to be a long, narrow piece of material distinct from the rest of the garment. Therefore, D2 does not meet feature 1(d).

Whether claim 1 involves an inventive step in light of the disclosures cited by Bibado

65. In order to consider whether claim 1 involves an inventive step in light of D2, I will consider the four Windsurfing/Pozolli steps outlined above.
66. Regarding step 1, I have already identified the person skilled in the art. The skilled person would be equipped with the necessary knowledge to enable them to design and manufacture protective garments using materials and techniques established in the art. They would be aware of common designs of protective garments but would not necessarily be aware of particular patent disclosures.
67. Regarding step 2, the inventive concept is as set out in claim 1 and as construed above.
68. Moving onto step 3, I consider claim 1 to be novel in light of D2 because it does not disclose feature 1(d); specifically, D2 does not disclose a gripping region comprising a strip.
69. Finally, I will consider step 4 and whether these differences constitute an inventive step. In D2 the entire tray, which forms a significant part of the protective garment, is formed of rubber. There is no suggestion in D2 that the tray is intended to provide a frictional engagement between the tray and the table, although as discussed above from its nature (i.e. rubber) it is likely to be the case. In fact, D2 states that the tray may be provided with tapes or other fastening devices for securing the tray to the table on which it is placed. Therefore, the arrangement in D2 is very different to the inventive concept of claim 1 where a gripping material comprising a strip, separate from the rest of the garment, provides the required frictional engagement between the garment and an item of furniture. I do not think it would be obvious to include an additional strip in D2 because for the reasons given above it would teach away from the existing arrangement.
70. Therefore, I consider claim 1 to involve an inventive step in light of D2 and common general knowledge. Similarly, dependent claims 2-6 are also inventive.
71. Bibado asks me to consider whether claim 1 involves an inventive step in light of the combination of D2 with D1. I can see no incentive for the skilled person to include the friction increasing means of D1 on the protective garment of D2. As discussed above D2 employs a very different approach and such an arrangement would teach

away from the disclosure in D2.

72. Bibado also cites D3 (See Fig.1 reproduced below) which was considered during prosecution of the Patent. As Bibado submits, considering D3 in isolation either via novelty or inventive step will not raise a new question. Bibado instead asks me to consider whether claim 1 is inventive over D3 when combined with D1 or D2. Bibado provides very little in way of argument. They simply state: 'D3 provides a bib with weighted arms. The weighted arms project forward and have non-planar surfaces'. Bibado then conclude: 'There is no reason that the skilled person would combine D3 with either of D1 or D2 and, even if they did, would not be led thereby to the invention as defined by claim 1 of the patent. Thus, claim 1 is inventive over D3 combined with D1 or D2.'



73. Be-Baby also discusses D3 (given the notation D5) and concludes that all the features of claim 1 of the Patent are disclosed in D3 apart from the material of the strip. They state briefly that the missing feature is clearly obvious in view of D3 and common general knowledge of the person skilled in the art and/or with the disclosures of D1 and D2 'each of which discloses, in the same field of endeavour, maintaining contact between a bib and another surface using rubber or rubberised material'. However, in their more-detailed approach they do not mention these documents. Their argument therefore appears to be primarily one of combining D3 with common general knowledge and therefore will not raise a new question. Moreover, it appears from their comments elsewhere that Be-Baby is further concerned that any weighting of the bib is not precluded by the claimed invention and whether this was taken into account during prosecution of the Patent. This latter issue can also not be re-visited here.
74. I will consider briefly the narrow question of whether claim 1 of the Patent is inventive in light of the combination of D3 with either D1 or D2 (when starting with D3). I agree a key difference between D3 and claim 1 is that D3 does not mention the material of the non-slip backing under the arms. Firstly, it would not be obvious to combine this disclosure with D2 where the rigid rubber of the tray in D2 would appear to be incompatible with the flexible arms of D3. Regarding D1, again it would not be obvious in my view for the skilled person to combine the two disclosures. The two designs are very different; the skilled person would not consider transferring the 'rubberized additional fabric' of D1 situated in a rectangular area across the whole

width of the garment to the narrow arms of D3.

Opinion

75. It is my opinion that (assuming that the Patent is valid) actions by Be-Baby Ltd regarding the Product ('Tidy Tot Cover and Catch Bib') will not constitute a direct infringement of the Patent.
76. It is my opinion that claims 1-3, 5 & 6 of the Patent are not novel in light of D1 (WO 2013/004230 A1).
77. It is my opinion that the claims of the Patent are novel in light of D2 (GB 533656 A). Further the claims involve an inventive step when starting with D2 and combined with common general knowledge or with D1.
78. It is my opinion that the claims of the Patent involve an inventive step when starting with D3 (US 2013/0025018 A1) and combined with either D1 or D2.

Application for review

79. Under section 74B and rule 98, the proprietor may, within three months of the date of issue of this opinion, apply to the comptroller for a review of the opinion.

Susan Dewar
Examiner

NOTE

This opinion is not based on the outcome of fully litigated proceedings. Rather, it is based on whatever material the persons requesting the opinion and filing observations have chosen to put before the Office.