

OPINION UNDER SECTION 74A

Patent	EP 2440171
Proprietor(s)	Dongguan Kidsme Trading Company Limited
Exclusive Licensee	
Requester	Handy Baby Products Limited
Observer(s)	
Date Opinion issued	20 March 2014

The request

1. The comptroller has been requested to issue an opinion under Section 74A of the Patents Act 1977 as to whether acts in relation to the products illustrated in the drawings and photographs in their request (“the product”) would infringe the claims of European patent EP 2440171 B (“the patent”).
2. The requester asserts that the illustrated products lack the “position fixing mechanism” required in claim 1 of the patent.

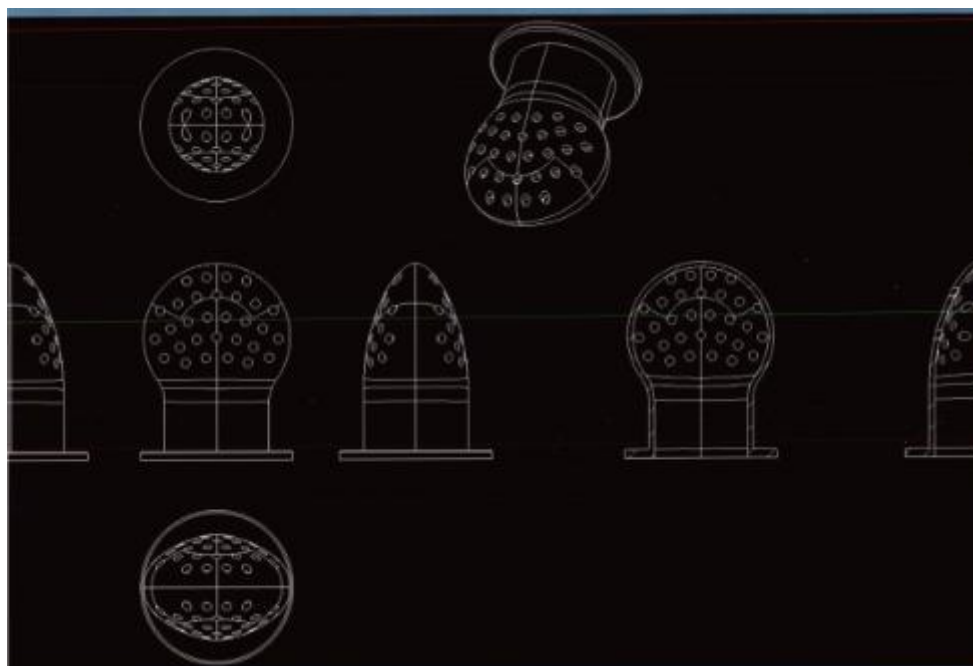
Observations

3. No observations have been received in relation to this opinion request.

The product

4. The product is based on drawings which are stated to show “an infant feeding device which includes a ring shaped handle formed integrally with which is a hingeable clamp between which may be captured the flange of a resiliently deformable teat ... The clamp port[i]on of the device includes a central opening in an upper surface thereof through which the main body of the teat projects when clamped there between”. Whilst the drawings show a number of differently shaped teats this is not pertinent to the question of infringement of claim 1 and thus the drawings can be considered as relating to one product.

5. The product is best understood by reference to the following drawings and picture taken from the request:





The Patent

6. The patent was filed on 25 February 2010 with an earliest priority date of 10 March 2009, published on 18 April 2012 and granted on 6 November 2013. The patent remains in force.
7. The patent relates to an infant feeding apparatus formed of a resilient container 7 with open end 71, closed end 72, aperture 8, a first coupling member 5 with opening 51 communicating with the open end and second coupling member 3 co-operating with the first coupling member to open or seal the container, wherein the container can be collapsed by an external force when in a person's mouth, e.g. by chewing or biting, to force the food through the aperture, the container returning to its original shape on release of the force.
8. The patent has fourteen claims and one independent claim. Claim 1 reads as follows:

A feeding apparatus comprising:

A separate food container (7) comprising an open end (71), a closed end (72), an annular flange (73) at the open end (71), and a plurality of apertures

(8) at least adjacent to the closed end;

a first coupling member (5) comprising an opening (51) in communication with the container open end (71), the food container (7) being engagable with the first coupling member (5); and a second coupling member (3) which is separate of the food container (7), and which is cooperable with the first coupling member (5) to be movable between an open configuration allowing food to pass through the opening (51) of the first coupling member (5) and into the food container (7), and a sealed configuration where the second coupling member covers and closes the opening (51) of the first coupling member (5) thereby sealing the open end (71) of the food container (7); wherein the food container (7) is made of a soft resilient material and is deformable between an original shape having a first volume and a second volume, wherein food is forcible through the apertures (8) when the food container (7) is deformed by an external force, and when the external force is removed, the food container (7) returns to its original shape; characterised by

a position fixing mechanism having a notch (75) at one of the edge of the annular flange (73) of the food container (7) and the first coupling member (5), and a projection (58) at the other of the edge of the annular flange of the food container (7) and the first coupling member (5), the notch (75) and projection (58) fixing a position of the separate food container (7) when the annular flange (73) is clamped between the annular platform (54) of the first coupling member (5) and the second coupling member (3).

9. One embodiment of this apparatus is illustrated by figure 15:

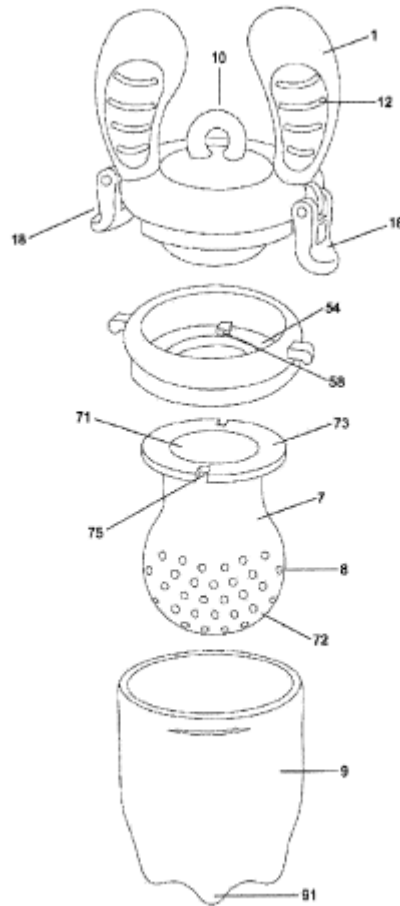


FIG. 15

Infringement

10. Section 60 Patents Act 1977 governs what constitutes infringement of a patent; Section 60(1) reads:

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, 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.*

11. In order to decide if there is any infringement of the claims of the patent, I shall decide whether or not the alleged infringing product falls within the scope of the claims. I shall first consider claim 1. Since claim 1 is the only independent claim only

if I find that there is infringement of claim 1 will I consider any of the dependent claims.

12. I do not believe that the person skilled in the art, required by the usual purposive approach to claim construction as described in *Kirin-Amgen and others v Hoechst Marion Roussel Limited and others* [2005] RPC 9, would have any difficulty in understanding claim 1, and the requester has offered no submissions in relation to the interpretation of any of the claim wording. As a result I need merely to determine whether the product falls within the scope of the claim.
13. I infer that the requester accepts, by concentrating on the asserted absence of the “position fixing mechanism”, that the product possesses all the technical features of the feeding apparatus required in claim 1 prior to the clause beginning “characterised by”. In any case it is my view that all these features are present. It remains only therefore for me to determine whether any appropriate part of the product can be described as a “position fixing mechanism” as required in the claim. From the drawings and photographs provided I can see nothing that the skilled worker might construe as conforming with the “notch” and “projection” required in the claim, and thus the product does not possess all of the technical features of claim 1.

Conclusion

14. I conclude that the product as illustrated by the requester falls outside of the scope of the claims of the patent and therefore I find that performance of any of the acts specified in Section 60 of the Patents Act 1977 would not constitute infringement of the patent.

Application for review

15. 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.

Dr Simon Grand
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.