

OPINION UNDER SECTION 74A

Patent	EP 1826094 B1
Proprietor(s)	Maxi Miliaan B.V.
Exclusive Licensee	
Requester	Barker Brettell LLP
Observer(s)	Forresters IP LLP
Date Opinion issued	22 February 2018

The request

1. The comptroller has been requested by Barker Brettell LLP (“the Requester”) to issue an opinion on the validity of Patent EP 1826094 B1 (“the Patent”) in the name of Maxi Miliaan B.V. In particular, the requester has argued that the claims of the Patent are not novel in light of patent documents US 6923467 B2 and US 3288482 A (D1 & D2) and that, alternatively, the claims are not inventive in light of US 6923467. Neither of these documents was cited during prosecution of the European Patent Application.

Observations

2. Observations were received Forresters IP LLP (“the observer”). These observations detailed how the claims of the patent are not anticipated by or obvious in light of the prior art documents filed by the requester.

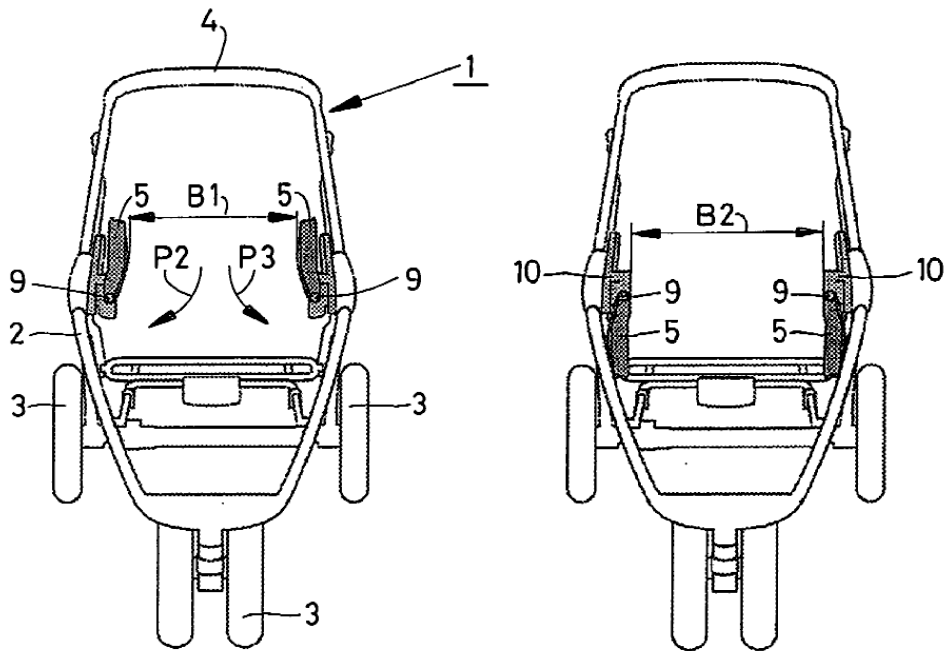
Observations in reply

3. Observations in reply were submitted by the requester.

The Patent

4. The Patent was filed on 14 February 2007, was granted on 13 October 2010 and is still in force. The Patent relates to a stroller 1 which can be detachably connected to first and second child seats, in particular child seats of different widths. The stroller 1 is provided with moveable adapters 5, by means of which a first child seat can be connected when the adapters 5 are in the first position (see fig 2 – reproduced on left below). The stroller is also provided with connecting pieces 10, by means of which a second seat can be connected when the adapters 5 are in the second position (see fig 5 – reproduced on the right below). The spacing (B1) between the adapters 5 in the first position is different to the spacing (B2) between the connecting pieces 10 in

the second position.



5. The Patent has seven claims, with only a single independent claim 1. Claim 1 of the Patent as granted, which for the purposes of this opinion I have broken down into integer parts (a-f), reads:

a	A stroller provided with at least one adapter, by means of which a first child seat can be detachably connected to the stroller, which stroller is furthermore provided with
b	at least one connecting piece, by means of which a second child seat can be detachably connected to the stroller,
c	wherein the adapter is movable from at least a first position, in which the first child seat can be detachably connected to the adapter, to at least a second position connected to the stroller, in which the second child seat can be detachably connected to the connecting piece, and vice versa,
d	characterised in that the stroller is provided with at least two adapters
e	as well as with two connecting pieces,
f	wherein the spacing between the adapters in the first position is different from the spacing between the connecting pieces in the second position of the adapters.

Claim Construction

6. Before considering the documents put forward in the request I need to construe claim 1 of the Patent, that is to say I must interpret it in the light of the description

and drawings as instructed by Section 125(1). In doing so I must interpret the claims 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 claims to mean. This approach has been confirmed in the recent decisions of the High Court in *Mylan v Yeda*¹ and the Court of Appeal in *Actavis v ICOS*².

7. I consider the person skilled in the art to be a designer of strollers, and the Patent should be read through the eyes of such a skilled person.
8. A number of points regarding the interpretation of the claims have been discussed in the submissions – but construing the claim essentially comes down to the requirements for the adaptor(s) and/or the connecting piece(s).
9. The requester has submitted the adaptor(s) to be:

“the means by which a first seat is detachably connected to the stroller (corresponding to parts a and c of claim 1 as defined above); to be moveable between a first position (when a first seat can be connected) and a second position (when a second seat can be connected) (part c); to be two or more (part d); and to be spaced differently from the connecting pieces (part f)
10. Furthermore, The requester has submitted the connecting piece(s) to be:

“the means by which a second seat is detachably connected to the stroller (parts b and c); to be two or more (part e); and to be spaced differently from the adapters (part f)
11. The requester notes that the claims do not limit the circumstances in which the first or second seats are in fact connected to the stroller. In other words provided the first seat *can be* connected when the adapter is in the *first position* and the second seat *can be* connected (to the connecting pieces) when the adapter is in the *second position*, claim 1 (part c) is satisfied. They further note that the specification does not describe, and the claims do not require, any interaction between the adaptor(s) and the connecting piece(s).
12. The observer comments that it is clear from part c of claim 1 that that the adapters are moveable from a first position to a second position, where in both the first and second position the adapters remain connected to the stroller. The requester refutes such an interpretation.
13. I agree with the requester that the correct construction of claim 1 does not require the adapters to be permanently connected to the stroller – as both the description and claims simply refer to the adapter(s) being connected to the stroller when in the second position.
14. However, I believe that the requester has taken a literal interpretation of claim 1 – in

¹ *Generics UK Ltd (t/a Mylan) v Yeda Research and Development Co. Ltd & Anor* [2017] EWHC 2629 (Pat)

² *Actavis Group & Ors v ICOS Corp & Eli Lilly & Co.* [2017] EWCA Civ 1671

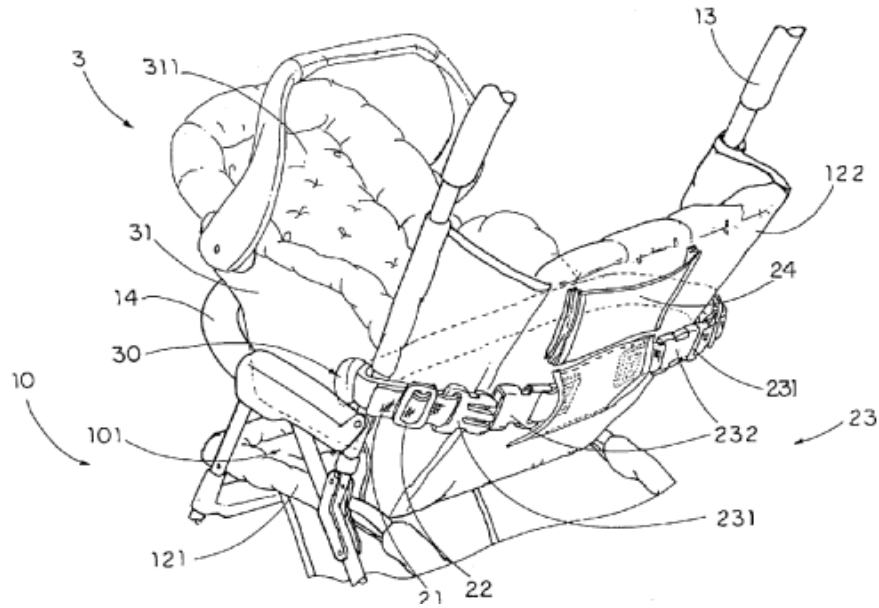
particular part c – rather than interpreting the claims in context through the eyes of the person skilled in the art. Construing claim 1 in light of the description and figures it is clear that there is some sort of relationship, or synergy, between the adapter(s) and the connecting piece(s). For example paragraph 27 of the description states:

“By pivoting the adapters 5 about the pivot axes 9 in the directions indicated by the arrows P2 and P3, respectively, the adapters are moved to the second position as shown in figure 5. In this second position the connecting pieces 10 that are connected to the frame are accessible, which connecting pieces 1- are spaced a distance B2 apart”

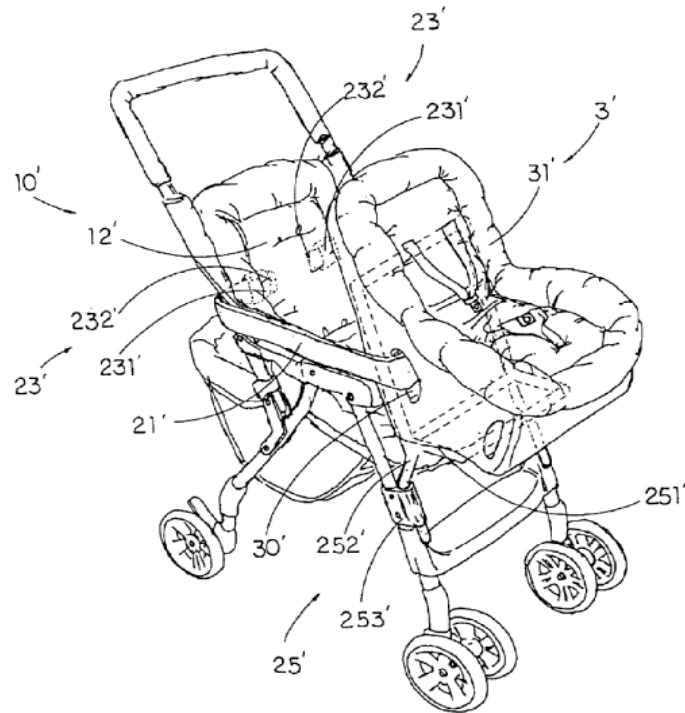
15. Furthermore, each of the embodiments disclosed in the various figures of the Patent clearly show that the second seat being connectable to the connecting piece(s) is conditional upon the movement of the adapter(s) to the second position. It is therefore my opinion that it is the movement of the adapter(s) which permits the connecting piece(s) to be detachably connectable to the second seat. Indeed, to construe part c of claim 1 as suggested by the requester would add little if anything to features of the claim.
16. The requester and observer have also provided contrasting views on the term ‘adapter’ – with the observer suggesting it is distinct from the term ‘connecting piece’, and means a device used to connect parts that otherwise could not be connected together. In contrast the requester submits that ‘adapter’ has a dictionary definition of ‘a connecting part’. Again interpreting this term in light of the description and figures, I note that ‘adapter’ and ‘connecting piece’ have been used interchangeably (see paragraphs 34&37) and that the embodiments of figs 9&10 are where the manner of connection to the child seats is the same (in first and second positions). Thus the person skilled in the art would interpret both ‘adapter’ and ‘connecting piece’ as means by which a (respective) seat can be connected to a stroller.

Prior art – D1

17. US 6923467 B2 (D1) discloses a stroller incorporating a car seat fastening arrangement 20. The fastening arrangement 20 comprises a holding belt 21, two buckles plugs 231 and two buckle sockets 232 (provided at the rear of the seat). At least an adjustment member 22 is also provided to selectively adjust a holding loop provided by the holding belt 21. In a first embodiment (see fig 2 reproduced below) a child car seat 3 with a fastening slot 30 is disposed in stroller seat 12 and secured using the fastening arrangement 231,232,21,22.

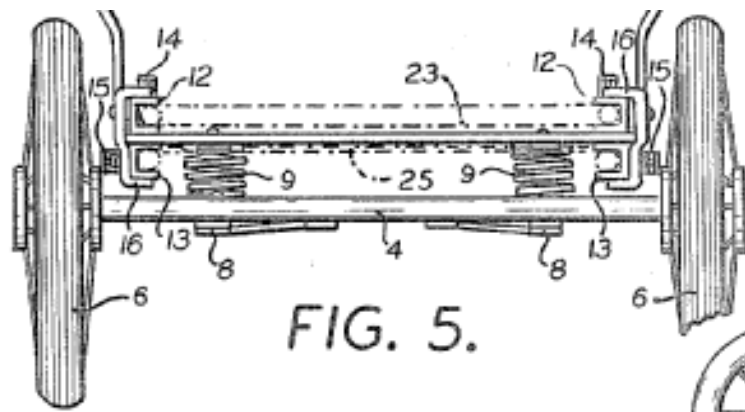


18. In a second embodiment (see fig 6 reproduced below) the fastening arrangement 231',232',21',22' is utilised in addition to a child seat adapter frame 25'. The frame 25' is detachably mounted to the stroller frame 10' via tube holders 253' to support child car seat 3' thereon.



Prior art - D2

19. US 3288482 (D2) discloses a stroller with detachable chairs. The chairs can be attached to the stroller by running horizontal portions of the chair legs through respective channels 12,13. The chair legs can be secured to the stroller using respective pairs of spring bolts 14,15. Fig 5 of D2 is reproduced below.



Novelty – D1

20. In order for a claim to lack novelty, a prior art disclosure must clearly and unambiguously disclose all of the features of the claim. The requester has argued that D1 has two adapters – in the form of two separate buckle sockets 232 alongside two buckle plugs 231 and two belt adjustment mechanisms 22, where each grouping of these elements, in conjunction with belt 21, represents a separate adapter. By means of these adapters a first seat is detachably affixed to the stroller, thus disclosing parts a & d of claim 1. Furthermore, the connecting points 252',253' on the front legs of the stroller correspond to the connecting pieces (in parts b & e) of claim 1. With regard to part c of claim 1, the requester states that this is disclosed as the adapters are moveable from at least a first position (fig 2 and/or fig 3 of D1) to at least a second position (figure 6 of D1), with the adapters performing their stated function with the connecting pieces connectable to the seat 3' in the second position. The spacing between the adapters is different (for all configurations) to the spacing between the connecting pieces (part f of claim 1).
21. The observer comments that plugs 231 and sockets 232 form connecting elements and not adapters, and that these elements are not moveable from a first position to a second position – as they are fixed to the back of the stroller. They further suggest that the belt and connectors are completely detachable from the stroller, whereas claim 1 requires that the adapters remain connected to the stroller.
22. Considering D1 in light of claim 1 as construed above, it would appear that the buckle sockets 231,231', buckle plugs 232,232' and adjustment mechanism 22 form adapters and are each, at least in part, moveable in some way. A child seat 3 can be connected to the stroller by means of these adapters when the adapters are in a first position, and that a child seat 3' can be connected by means of connecting pieces 252',253' when the adapters are in any position. The spacing between the adapters and the spacing between the connecting pieces is always different and is

independent of the movement of the adapters. Consequently, the seat 3' can be connected to the connecting pieces irrespective of the position and movement of the adapters. Thus the adapters and their movement have no bearing on whether a seat can be detachably connected to the connecting pieces. Put simply, there is no relationship, or synergy, between the adapter(s) and the connecting piece(s). Therefore it is my opinion that D1 does not disclose part c of claim 1, as correctly construed.

Novelty – D2

23. The requester has argued that D2 has adapters in the form of spring bolts 14, for securing a first chair in the upper channel 12, which are moveable and able to take up different positions (spring tight, loaded, spring law, released). Furthermore, D2 is also said to have connecting pieces in the form of spring bolts 15, for securing a second chair in the lower channel 13, which are also moveable and able to take up different positions. The spacing between the adapter spring bolts 14 when the first child seat is detachably connected is different to the spacing between the connecting piece spring bolts 15 when the second seat is detachably connected.
24. The observer notes that the spring bolts are not adapters – as the chair(s) can be received by the channel member(s) 12,13 even when the spring bolts are not present. They also note that the second seat can be connected to the lower channel member 13 independent of whether a first seat 2 is located in the upper channel member 12 or not. Therefore there is no 'second position' as defined in part c of claim 1.
25. Similar to my assessment of D1 above, whilst I consider that D2 has moveable adapters in the form of the spring bolts 14 and connecting pieces in the form of bolts 15, with the spacing of bolts 14 being different to the spacing of bolts 15 – the movement of the adapter bolts 14 has no consequence regarding the connection of a seat to the connecting piece bolts 15. Again there is no relationship, or synergy, between the adapter(s) and the connecting piece(s). Therefore it is my opinion that D2 does not disclose part c of claim 1, as correctly construed.

Inventive Step

26. The requestor has also argued that the claims lack an inventive step in light of D1. No inventive step argument has been provided with regard to D2. Therefore I will not consider D2 with regard to inventive step.
27. To determine whether or not an invention defined in a particular claim is inventive over the prior art, I will rely on the four step test established in *Pozzoli*³ which reformulated the well-known *Windsurfing*⁴ test. The Pozzoli steps are as follows:

(1)(a) Identify the notional "person skilled in the art";

(1)(b) Identify the relevant common general knowledge of that person;

³ *Pozzoli SPA v BDMO SA* [2007] EWCA Civ 588

⁴ *Windsurfing International Inc. v Tabur Marine (Great Britain) Ltd*, [1985] RPC 59

(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, determine whether those differences constitute steps which would have been obvious to the person skilled in the art.

28. I consider the person skilled in the art to be a designer of strollers. He would have a knowledge of mechanical engineering, in particular connection devices, for connecting various parts of the stroller and/or accessories together. He would also be readily aware of child car seats and their design.
29. The inventive concept of claim 1 lies in a stroller which can be detachably connected to first and second child seats. The stroller is provided with adapters, by means of which a first child seat can be connected when the adapters are in a first position. The stroller is also provided with connecting pieces, and through movement of the adapters to a second position, a second seat can be connected to the connecting pieces. The spacing between the adapters in the first position is different to the spacing between the connecting pieces in the second position.
30. The difference between D1 and the inventive concept is that the movement of the adapters of D1 from the first to the second position has no consequence on, and is independent of the connection of the second seat to the connecting pieces.
31. The requester has argued that any distinction between ‘moving’ an adapter and ‘adjusting’ a holding belt are immaterial and non-inventive. They have also noted that movement of the adapter in the Patent is to accommodate a differently sized child seat is identical to the adjustment/movement of the holding belt in D1.
32. However, movement of the belt and/or buckle mechanism does not have any effect on the connectability of the seat 3’ to the connection piece(s) – nor can I find anything in D1 to point towards such an interrelationship. Consequently, I do not believe such a difference would be obvious to the person skilled in the art.

Opinion

33. It is my opinion that claim 1 of the Patent is novel in light of D1 and D2. I also consider that claim 1 involves an inventive step in light of D1.

Benjamin Widdows
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.