Patents Act 1977 **Opinion Number** **34/18**

OPINION UNDER SECTION 74A

Patent	GB 2528484 B
Proprietor(s)	Bibado Ltd
Exclusive Licensee	
Requester	Mr Daniel Laxton
Observer(s)	
Date Opinion issued	12 March 2019

The Request

1. The comptroller has been requested by Mr Daniel Laxton of Bibado Ltd ("the Requester") to issue an opinion as to whether claim 1 of GB 2528484 ("the Patent") is valid, i.e. novel and inventive, in light of four registered designs related to a competitor's product now available for sale online and additionally in light of a US patent document. The request was received on 20 December 2018. It was accompanied by a statement explaining the request.

2. 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 Ltd was registered as proprietor of the Patent by virtue of assignment with effect from 4 May 2018. The Requester is therefore seeking assurance regarding the validity of their own Patent. The Patent remains in force.

3. There were no observations or observations in reply.

The Patent

4. The Patent relates in particular to 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 don't prevent food from falling on and around the legs of the user and on the chair in which the individual is sitting. In the invention, the bib has a lower region 12 which is arranged to cover the legs of the wearer and also covers the sides of the chair on which the wearer is sitting. Near to the lower edge of the lower region 12, the inside of the bib is provided with a gripping portion 40 in the form of a strip of sticky or gripping material that holds the garment 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.)

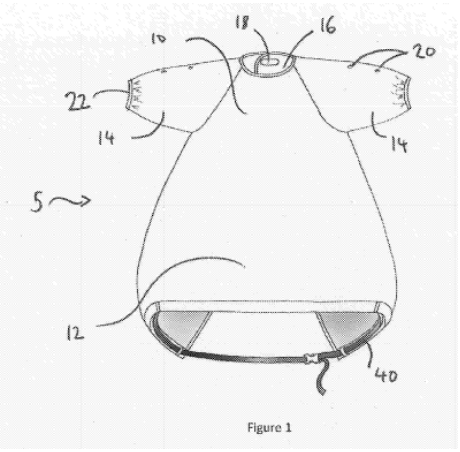
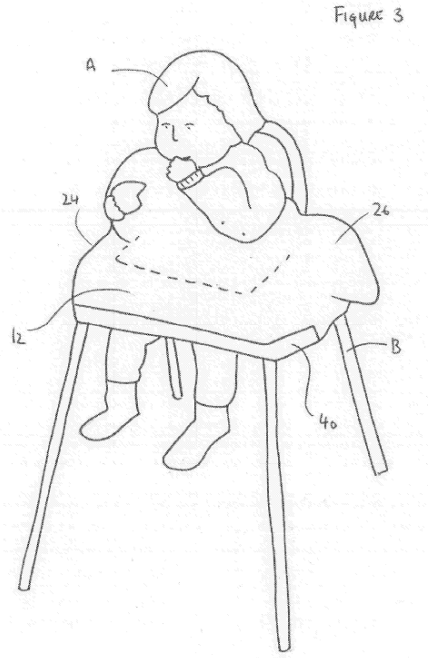


Figure 1



5. The Patent has 6 claims including one independent claim, claim 1, which reads as follows:

> *A protective garment to be worn by a wearer, 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 arranged to provide a frictional engagement between the garment and a chair or other item of furniture used by the wearer.*

Novelty and Inventive step – the law

6. The Requester asserts that claim 1 of the Patent is novel and involves an inventive step in light of a number of disclosures. Section 1(1)(a) and (b) of the Patents Act 1977 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;*

7. 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.

8. 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).*

9. The Court of Appeal in *Windsurfing*[1] formulated a four-step approach for assessing 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?*

10. I will begin by determining whether claim 1 is novel.

Construction of claim 1

11. When considering the validity of the claims of the Patent I will first need to construe them. That is to say I must interpret them 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.

12. The Requester has not identified the person skilled in the art. I consider this person to be a person skilled in the design and manufacture of protective garments.

13. I consider claim 1 to be generally straightforward to construe. The key feature is the 'gripping region'. As claim 1 specifies, the lower edge of the garment is provided with a gripping region which comprises 'a strip of thermoplastic elastomer , silicone, rubber or acrylic tape arranged to provide a frictional engagement between the garment and a chair or other item of furniture used by the wearer'.

14. The Patent provides further details regarding the 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 the gripping region 'may be

[1] Windsurfing International Inc. v Tabur Marine (Great Britain) Ltd, [1985] RPC 59
[2] Pozzoli SPA v BDMO SA [2007] EWCA Civ 588

provided with an area that is [*sic*] sticks to or grips a surface against which it is placed'. From page 5, paragraph 1 of the Patent, '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'. From page 5, paragraph 2, 'When worn, the garment extends over and about the body of a wearer and any chair or other piece of furniture on which the wearer is sitting or lying.'

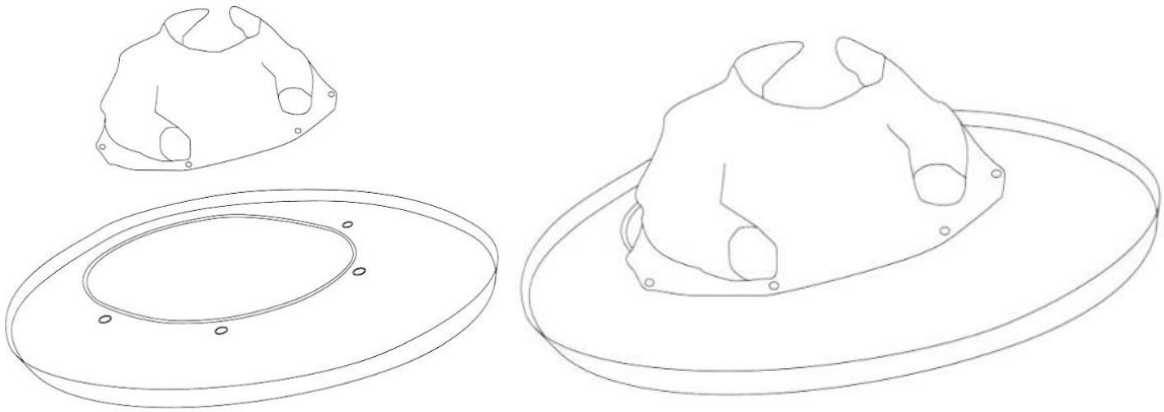
15. From claim 1 and these passages, the skilled person would realise that the gripping region comprises a strip or tape that relies on frictional forces to grip an item of furniture used by the wearer. The item of furniture is typically a chair or highchair (as in Figure 3) but could be any suitable item of furniture on which the wearer is sitting or lying.

Whether claim 1 is novel in light of the disclosures cited by the Requester

16. The Requester cites four registered designs: GB4022331S, GB4023323S, GB4023322S and GB4023324S. The registered designs were all made public before the filing date of the Patent. The Requester explains that the four registered designs relate to a competitor's product, the 'Tidy Tot Bib and Tray Kit'. The Requester supplies the competitor's website https://tidytot.com/product-category/stage-one/ where this product is available for sale. The product illustrated in the website is slightly different to that illustrated in the registered designs. The Requester has stated that the 'Tidy Tot Bib and Tray Kit' was 'on the market prior to our patent being approved' but it is not clear whether this version of the product was made public before the filing date of the Patent as required. I will continue with my analysis although this important factor has not been confirmed.

17. I will begin by considering the product as illustrated in the four registered designs. In each, the product comprises both a child's bib and an attachable tray. The bib fits over the arms and chest of the child. The lower edge of the bib attaches to a circular or rectangular tray via a number of discrete attachment points with complementary features on the tray and bib. (See illustrations from GB4022331S reproduced below showing the bib and tray both separated and attached.)

18. Comparing the product with the features of claim 1, the product does not have the key feature of a 'gripping region'. In the product, the bib is attached to the tray of the product at discrete points, not via a strip or tape. There is no indication of how the tray may then interact with a piece of furniture. Therefore claim 1 is novel in light of the registered designs.



19. The product illustrated on the competitor's website is slightly different. Here, the bib is attached to the tray of the product via complementary strips of hook-and-loop (or Velcro (RTM)) fastening material. We are told that the product may then fit over the tray of a highchair or be used with a booster seat; suction cups may be provided on the underside of the tray of the product to secure it.

20. Again considering the required 'gripping region' of claim 1, the bib of the product has a strip of Velcro (RTM). However, the strip requires another strip of Velcro (RTM) on the tray and therefore does not rely on frictional forces to grip. Further, I agree with the Requester that the tray of the product does not constitute an item of furniture because it is not used by the wearer of the garment for sitting or lying on. There are no other gripping regions as the tray of the product is placed for example on the tray of a highchair using suction cups to secure it. Therefore the product illustrated in the website does not have the required 'gripping region' and claim 1 is novel in light of this disclosure.

21. The Requester also cites US patent document US 6581210 B2 which was published before the filing date of the Patent. US '210 discloses a bib and dish combination device 20 (see Figure 1 reproduced below). The lower end of the bib 22 is intended to engage a dish 26 that may be temporarily attached to the tray of a highchair using suction cups 28. The bib can be secured to the dish using for example a lock bar 24 such that any food or drink that contacts the bib will roll off the bib and into the dish in order to prevent the spillage from falling into the wearer's lap. The document discloses different ways of attaching the bib to the dish. However, there is no mention of using a strip or tape of material for this purpose. Similarly, there is no mention of using a strip or tape to secure the dish to an item of furniture. Thus, the product does not have the key feature of a 'gripping region'. Therefore this disclosure also does not meet the terms of claim 1.

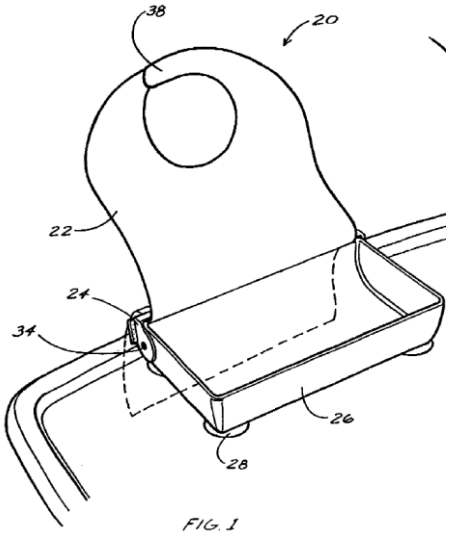


FIG. 1

22. Therefore I consider claim 1 of the Patent to be novel in light of all the disclosures provided by the Requester.

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

23. The Requester also submits that claim 1 involves an inventive step in light of these disclosures. In order to consider whether claim 1 is obvious, I will consider the four Windsurfing/Pozolli steps outlined above.

24. 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. Regarding step 2, the inventive concept is as set out in claim 1 and as construed above.

25. Moving onto step 3, the difference between the cited disclosures and the inventive concept of claim 1 is that none of the disclosures includes the required 'gripping region'.

26. Finally I will consider step 4 and whether these differences constitute an inventive step. The Requester explains that 'our product attaches directly to a piece of furniture; whereas their products have a tray portion which rests on a highchair to which their bib is then attached'. He goes onto explain that 'Our product can be used with any chair/highchair/similar item of furniture which children commonly sit in while eating. The competitor product can only be used in conjunction with the sub-set of these on which their tray can be placed horizontally (predominantly highchairs with an in-built tray).' He explains that these differences are particularly significant when parents are taking their children out for a meal as the product of the Patent is compatible with any furniture that may be provided and there is no additional equipment required, such as the specific tray.

27. I agree that the product as defined in claim 1 of the Patent is very different to those disclosed in the cited documents and website. In each of the disclosures provided,

the bib is attached to a dish or tray; the dish or tray is then either placed or secured with suction cups to say a tray of a highchair. None discloses attaching the bib directly to the furniture. Moreover, none employs a strip or tape which relies on frictional forces for this purpose. The skilled person would not be motivated to modify the structure of any of these alternative designs to arrive at the product defined in claim 1 of the Patent, as it would involve operating the product in a completely different way using different attachment means. In my view, the modifications could not be done without the skilled person exercising some inventive ingenuity.

28. I therefore consider claim 1 to involve an inventive step in light of the cited disclosures.

Opinion

29. It is my opinion that independent claim 1 of the Patent is both novel and involves an inventive step in light of the disclosures provided by the Requester.

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.