

**OPINION UNDER SECTION 74A**

Patent	GB2613005
Proprietor(s)	MICHAEL ANTONIOU
Exclusive Licensee	
Requester	Robertson IP Limited on Behalf of the Proprietor
Observer(s)	SHENZHEN SUNTO TECHNOLOGY CO.,LTD
Date Opinion issued	Click here to enter a date.

**The request**

1. The Comptroller has been requested to issue an opinion as to whether carrying out the potentially infringing acts laid out in Section 60 of the Patents Act 1977 in relation to the Exway X-Pack Detachable 2nd Gen Pro Skate Backpack (hereafter 2G X-Pack) would infringe claim 1 of patent GB2613005 (hereafter the Patent).
2. The Request was submitted on 18<sup>th</sup> June 2024 and included a link to the webpage describing the 2G X-Pack and a short analysis comparing the 2G X-Pack to claim 1 (hereafter the Claim) of the Patent.
3. Observations were received on 28<sup>th</sup> June 2024, no Observations in Reply were received.
4. The Request indicated the interested parties as being Shoutu Technology (Hong Kong) Co., Limited and Emilyma Limited. The Observations were received from SHENZHEN SUNTO TECHNOLOGY CO.,LTD and indicated that Emilyma Limited are not affiliated with matters regarding website operation. These differences suggest there is some uncertainty around the parties behind [www.exwayboard.com](http://www.exwayboard.com). Whilst noting this issue, I do not believe it will have a bearing on the infringement question raised by the request and need not be pursued further.

**Matters to be considered by this Opinion**

5. Section 74A of the Patents Act provides for the procedure where the Comptroller can issue, on request, non-binding opinions on questions of validity and on questions of infringement. Any observations should be confined to the issues raised by the request and should not broaden the scope of the opinion by raising new issues. Consequently, if an observer wishes to explore validity issues not raised by the

requestor then they must file a separate request.

6. The Observations included references to a first generation backpack (this dated from May/June 2022 after the filing date of the Patent) whose purpose is not explained but which do not appear relevant to the question of infringement. I will therefore not consider them further.
7. The Observations also include some order references from November 2020 (before the filing date of the Patent) for an ATSA backpack. The Exway website contains no reference to an ATSA backpack but a skateboard carrying backpack is shown on <https://atsa.co/> . It would appear that Observer is attempting to question the validity of the Patent by reference to this older backpack. However, since the Request related only to the question of infringement, I am unable to consider any validity issues which may arise from the Observations.

## **The Patent**

8. The Patent was filed on 19<sup>th</sup> November 2021 (with no claim to priority) and was granted on 24<sup>th</sup> May 2023. It relates to a backpack which is capable of carrying skis and ski-poles in a manner which keeps a skier's hands free whilst they walk around between skiing sessions. Paragraph 5 of the description suggests that the backpack is also intended to store ski boots but considering the overall disclosure this seems to be optional.
9. As shown in Fig. 1A, the invention comprises a backplate 101 with shoulder straps (on the far side in Fig. 1A and thus not visible) and holders for skis and ski-poles (111,112) which may take the form shown in Fig. 1B of two arms (118,119) bracketing a U-shaped void into which the skis and ski-poles can be slotted and then held in place with a pin (300). The ski holders may be hinged to lie flat against the backplate when no skis/poles are being carried. The backplate of the embodiment has various zips (105) around the edge which can be used to attach a sealable storage backpack (not shown in the figures) which has matching zip fasteners. The skis/poles would thus be sandwiched between the backplate and the backpack during carriage.

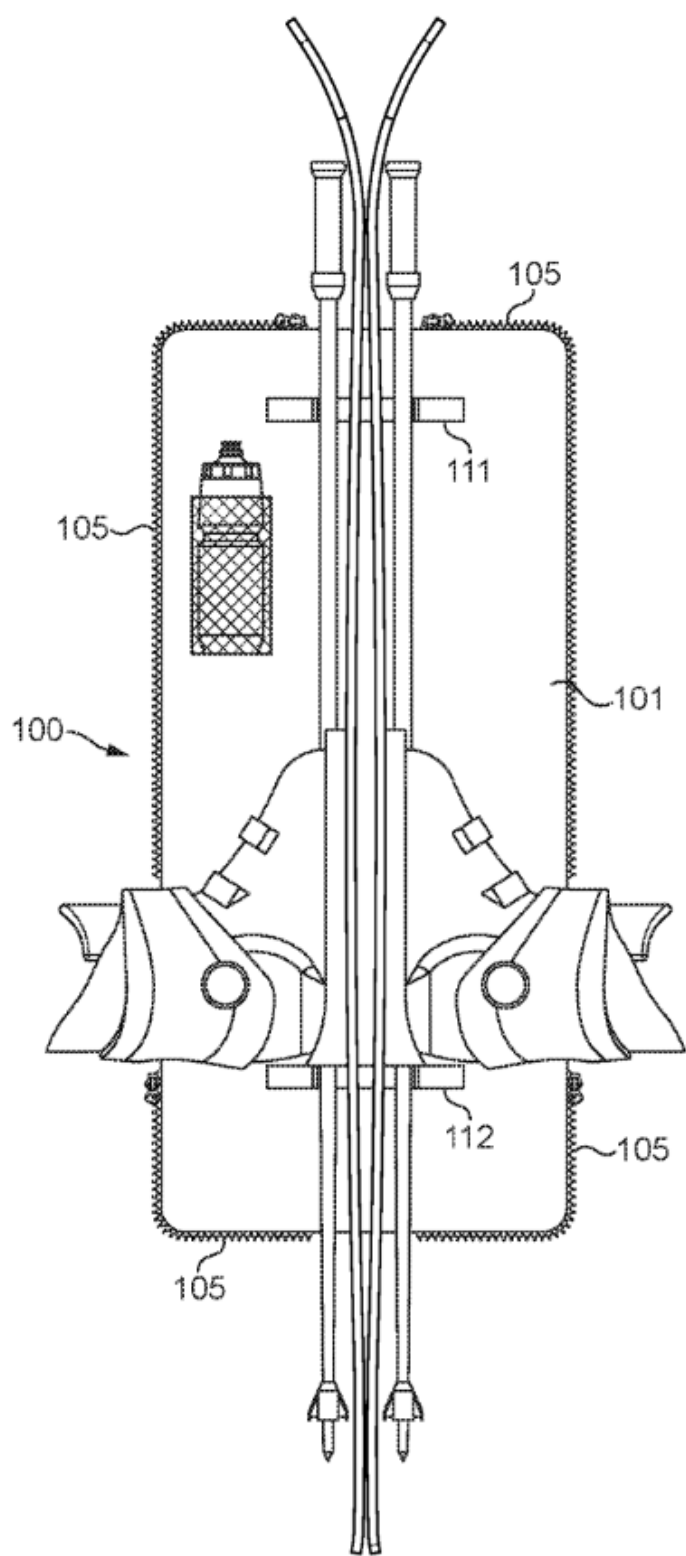


FIG. 1A

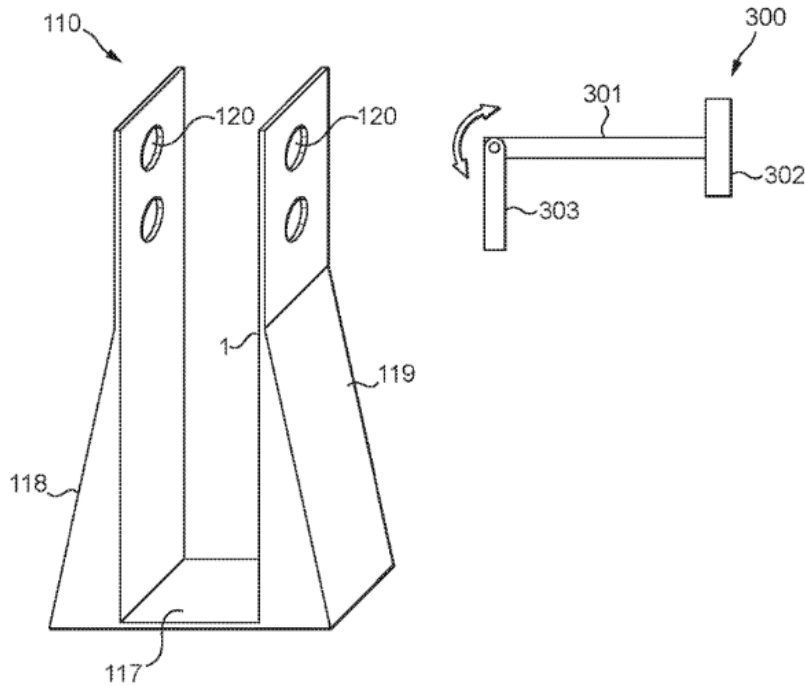


FIG. 1B

10. The Patent has a single independent claim, 1 [extra line breaks added]:

*A carrier for skis comprising:*

*a backplate having  
a first substantially flat surface and  
an opposing second substantially flat second surface;*

*at least one shoulder strap extending from the first surface of the backplate;*

*two ski holders connected to the second surface of the backplate at  
opposing ends thereof for holding at least one pair of skis and poles  
therebetween in use; and*

*a backpack body  
defining at least one sealable storage space,  
and having a first releasable attachment means located around an outer  
edge;*

*wherein the backplate further comprises second releasable attachment  
means located on the edges of second surface configured to cooperate with  
the first attachment means of the backpack body,*

*such that, in use, when skis are being held by the backplate via the two  
holders, the backpack body can be attached to the backplate via the first and  
second attachment means with the skis located between the backplate and  
the backpack body.*

## Claim Construction

11. Before considering the question of infringement, I need to construe the claims of the Patent to determine the extent of protection the provide — that is to say, I must interpret them in the light of the description and drawings as instructed by Section 125(1):

*For the purposes of this Act an invention for a patent for which an application has been made or for which a patent has been granted shall, unless the context otherwise requires, be taken to be that specified in a claim of the specification Of the application or patent, as the case may be, as interpreted by the description and any drawings contained in that specification, and the extent of the protection conferred by a patent or application for a patent shall be determined accordingly.*

12. 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 (hereafter Skilled Person) 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<sup>1</sup> and the Court Of Appeal in Actavis v ICOS<sup>2</sup>.
13. Neither the Request nor the Observations commented explicitly on the construction of the claims or the nature of the skilled person. Therefore, I am left to consider these issues based upon the disclosure in the Patent alone.
14. First, identifying the Skilled Person. I think the skilled person would be a designer of backpacks and similar storage bags intended for use in outdoor activities (hiking, skiing, snowboarding, skateboarding, cycling and the like). Whilst these activities are somewhat diverse, the requirements of backpacks seem similar enough that specialisation in one activity (e.g. winter sports) would represent an overly narrow conception of the skilled person.
15. The Claim can in general be straightforwardly understood but three points are worthy of comment.
16. Firstly, the general point that where a claim specifies apparatus ‘for’ a particular purpose it is normally construed to encompass apparatus ‘suitable for’ that purpose (L’Air Liquide<sup>3</sup>). In relation to the Claim this would apply to ‘a carrier for skis’ and the subject of my second point.
17. “two ski holders ... for holding at least one pair of skis and poles therebetween in use”. Whilst the embodiments of the invention all specify U shaped ski holders, this form of holder is specified in dependent claim 4 and the Skilled Person would therefore conclude that claim 1 was not intended to be so limited. No other limitations on the form of ski holder are suggested in the description and drawings, therefore the Skilled Person would construe claim 1 as being agnostic about the nature of the ski holder and consider (in line with the (suitable) for point above) any

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

<sup>2</sup> Actavis Group & Ors v ICOS Corp & Eli Lilly & co. [2017] EWCA Civ 1671

<sup>3</sup> L’Air Liquide Societe’s Application, 49 RPC 428

holder suitable for holding at least one pair of skis and poles to be encompassed within the Claim's scope.

18. Finally, "two ski holders connected to ... the backplate at opposing ends thereof". As can be seen from Fig. 1A above the ski-holders in the embodiment are attached some distance from the ends of the backplate. In para. 027 the holders are described as being located at 'upper and lower regions' of the backplate. Given this, I think that the Skilled Person would not construe 'at' strictly and would consider ski-holders connected in the region of opposing ends to fall within the scope of the claim.

## **The Exway X-Pack Detachable 2nd Gen Pro Skate Backpack**

19. The Request included a link to the Exway website (<https://www.exwayboard.com/collections/all-accessories-of-the-flexseries/products/exway-x-pack-detachable-2nd-gen-pro-skate-backpack-free-shipping> ). That link now produces a 404 error (likely due to the free shipping offer ending) but the description of the backpack can still be found at (<https://www.exwayboard.com/collections/all-accessories/products/exway-x-pack-detachable-2nd-gen-pro-skate-backpack> ).
20. The page describes the 2G X-Pack and includes many still photographs and an embedded video demonstrating features of the backpack. The images below are reproduced from the website and video (I note that I accessed the video through the YouTube website <https://www.youtube.com/watch?v=rHcYemZ2yyE> due to the video navigation functions being unavailable with the embedded video).
21. The 2G X-Pack is a backpack that is intended for use with skateboards, particularly skateboards with electric propulsion.
22. Firstly, we see backplate and backpack elements. It is readily apparent that the backplate has two surfaces and the two straps used to attach skateboards can also be seen.



Next, the shoulder straps on the backplate are shown (the straps can be removed and attached directly to the backpack if desired).



Then the main sealable backpack compartment is shown, several other compartments are also shown in the video.



Another video sequence shows skateboard being secured to the backplate using the straps seen in the picture above ...







... the backpack being placed onto the backplate over the skateboard ...





... and attached with a zip.



The final result is the skateboard being stowed between the backplate and the backpack.



## Infringement

23. Section 60 of the Act states that:

*(1) Subject to the provisions 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.*

*(2) Subject to the following provisions of this section, a person (other than the proprietor of the patent) also infringes a patent for an invention if, while the patent is in force and without the consent of the proprietor, he supplies or offers to supply in the United Kingdom a person other than a licensee or other person entitled to work the invention with any of the means, relating to an essential element of the invention, for putting the invention into effect when he knows, or it is obvious to a reasonable person in the circumstances, that those means are suitable for putting, and are intended to put, the invention into effect in the United Kingdom.*

24. In the Supreme Court in *Actavis UK Limited*<sup>4</sup> 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,*

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

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

26. The first of those questions requires consideration of whether the 2G X-Pack falls within the extent of the protection discussed under construction above.

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<sup>4</sup> *Actavis UK Limited and others v Eli Lilly and Company* [2017] UKSC 48

27. The Request essentially lists the Claim integers and asserts that they are present in the 2G X-Pack. It says that the straps in the 2G X-Pack 'appear' suitable for holding skis and poles without further analysis, The Observations point out that the 2G X-Pack has two shoulder straps (which falls within the scope of at least one) and that the company has never been involved in skiing related activities but does not meaningfully argue that the 2G X-Pack does not fall within the extent of the protection provided by the Claim.
28. Whilst it is arguable based on the lack of argument that the Observer has conceded that the 2G X-Pack falls within the scope of the Claim and that no further analysis is required I think that an Opinion following that reasoning would provide negligible utility. I will therefore attempt to directly assess the information available about the 2G X-Pack to form an Opinion about whether it falls within the scope of the Claim.
29. I think that it is straightforwardly evident that several of the claim's integers are present in the 2G X-Pack. There is a backplate with two surfaces, at least one shoulder strap (two) is attached to one of the surfaces, there is a backpack body with at least one sealable storage space and the backplate and backpack body can be attached to each other with cooperating releasable attachment means (zips) found on the outer edges of each.
30. There are straps intended for holding skateboards on to the second surface of the backplate such that the skateboard would be between the backplate and the backpack when they were attached to each other. However, no skis are shown or mentioned so the suitability of the skateboard holding elements for skis needs to be assessed.
31. I think that this assessment can be approached with three questions. (1) Are the skateboard attachment straps connected to the backplate at opposing ends thereof? (2) Are the skateboard attachment straps suitable for holding at least one pair of skis and poles, and thus de facto ski holders? (3) Is the space between the backplate and the backpack suitable for accommodating skis and poles?
32. Looking at the positioning of the straps first. As construed the Claim requires that the ski holders are connected in the region of opposing edges of the backplate. The straps of the 2G X-Pack are the potential ski holders, so are they connected in the region of opposing edges? Each whole strap would be a ski holder, therefore the connection of each end of a single strap to the left and right (as worn) edges does not fulfil the requirement. Looking at the locations of the straps relative to the top and bottom ends of the backplate, the straps are somewhat distant from these ends but the positioning is similar to that of the lower ski holder 112 shown in Fig. 1a of the Patent. Given this similarity I think that the Skilled Person would consider them connected at opposing ends of the backplate.
33. As noted above, neither the request nor the observations have provided any detail about how the skis/poles would be secured with the straps nor the adequacy of the skateboard holding space for accommodating skis. Thus, I will form my opinion based upon commonly known information about skis and ski poles.
34. Dealing with the ski poles first. Consulting the relevant Wikipedia page reveals that poles are relatively homogeneous. Poles all seem to have a grip/handle and a

basket (to stop the pole sliding into the snow) at opposite ends of a shaft. The grips and baskets are invariably wider than the shaft so if the shaft is secured with the straps of the 2G X-Pack the grips or baskets should snag upon the top edge of the backplate preventing longitudinal movement. That plus the limitation on lateral movement provided directly by the straps themselves should be enough to hold the poles in place. The poles are considerably narrower than the skateboards the 2G X-Pack is intended to hold and would thus fit into the space between the backplate and backpack comfortably.

35. Moving on to consider the skis, there is somewhat more variety, as shown in the photograph below (by [Fancy-cats-are-happy-cats](#)<sup>5</sup>, available from [File:SkiCollection.jpg - Wikipedia](#)<sup>6</sup>) showing from left to right (1) Nordic (cross country) (2) Telemark (3) older style alpine with little sidecut (4-6) carving and race (7-9) all mountain twin tip (10-12) 'fat' powder skis. Whilst there is no scale it appears likely that a pair of each type would lay side by side against the backplate (possibly with some overlap needed for the powder skis).



<sup>5</sup> <https://en.wikipedia.org/wiki/User:Fancy-cats-are-happy-cats>

<sup>6</sup> <https://en.wikipedia.org/wiki/File:SkiCollection.jpg>

36. The straps of the 2G X-Pack will clearly limit lateral movement of any skis strapped under them. However, when carrying skateboards the 2G X-Pack uses a strap around the wheels and trucks to prevent longitudinal movement so it seems likely that the straps would not grip a 'naked' ski sufficiently tightly to stop it from slipping down. Thus, I do not think that the 2G X-Pack could hold 'naked' skis without bindings and I need to consider whether it could hold skis with bindings attached.
37. The bindings being used can be somewhat seen in the above picture. All the skis except the Telemark and Nordic seem to have Alpine bindings, the Nordic has some sort of Nordic binding and the Telemark seems to have a further sort of binding involving a cable. Alpine and Nordic skiing are the most common forms so I will consider those first and only investigate the Telemark binding if necessary.
38. Wikipedia again provides a useful photograph [File:Salomon bindings 1980s 2011.jpg](https://en.wikipedia.org/wiki/File:Salomon_bindings_1980s_2011.jpg) - [Wikipedia](https://en.wikipedia.org/wiki/File:Salomon_bindings_1980s_2011.jpg)<sup>7</sup> from [Chianti](https://commons.wikimedia.org/wiki/User:Chianti)<sup>8</sup> showing Alpine bindings (shared under a Creative Commons [Attribution-Share Alike 3.0 Unported](https://creativecommons.org/licenses/by-sa/3.0/deed.en)<sup>9</sup> license).



39. The lower of the two bindings shown is the more recent, therefore I shall base my analysis on that. The bindings clearly have a lot of protruding parts around which the straps of the 2G X-Pack could be looped in order to limit longitudinal movement. Thus, I think that the straps of the 2G X-Pack would be suitable for holding a pair of skis with Alpine bindings.
40. There is not a similarly useful photograph of the Nordic bindings so I have cropped the Nordic binding shown in the Ski Collection photograph above.

<sup>7</sup> [https://en.wikipedia.org/wiki/File:Salomon\\_bindings\\_1980s\\_2011.jpg](https://en.wikipedia.org/wiki/File:Salomon_bindings_1980s_2011.jpg)

<sup>8</sup> <https://commons.wikimedia.org/wiki/User:Chianti>

<sup>9</sup> <https://creativecommons.org/licenses/by-sa/3.0/deed.en>



41. This binding is significantly lower profile but would seem to have enough protuberant parts for the straps of the 2G X-Pack to catch upon and limit longitudinal movement. Therefore, I think that the 2G X-Pack straps would be suitable for holding a pair of skis with Nordic bindings.
42. I think that there would be sufficient space under the straps to hold a pair of both skis and poles together where either of these types of binding are present, so the straps would function as ski holders as specified in the claim.
43. The third question is whether the space between the backplate and the backpack of the 2G X-Pack could accommodate the skis with the bindings fitted, since the binding would need to be in this region to be longitudinally restrained by the straps. The 2G X-Pack is shown holding a skateboard with a battery that appears to be more protuberant than the Nordic bindings but rather less protuberant than the Alpine bindings. It is not possible to discern from the website or video how much space there is between the backpack and backplate, but there does not appear to be a tight fit over the skateboard battery shown.





44. Given this information, it is fairly clear that skis with Nordic bindings would fit between the 2G X-Pack backplate and backpack when they were attached together.
45. Due to their larger size the situation with the Alpine bindings is far less certain. However, since the space available in the 2G X-Pack seems to be reasonably generous from the limited information available, it is my opinion that skis with Alpine bindings would fit between the backplate and the backpack.
46. In both cases it is clear that there would be sufficient space to accommodate ski poles alongside the skis and bindings given their comparatively small cross section.

47. In light of the above analysis it is not necessary to consider the Telemark bindings further.
48. Having considered the three questions posed above it is my opinion that they are answered in the affirmative and that the 2G X-Pack falls within the extent of the protection of the Claim as a matter of normal interpretation. Thus, it is not necessary to go on and consider the issue of variants.

## **Opinion**

49. In my opinion carrying out the acts specified in Section 60 of The Patents Act 1977 in relation to the Exway X-Pack Detachable 2nd Gen Pro Skate Backpack would amount to infringement of claim 1 of GB2613005.

Owen Wheeler  
Examiner

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## **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.*