

**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE PATENTS COUNTY COURT**  
**HIS HONOUR JUDGE BIRSS QC**  
**[2013] EWPC 21**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 16/04/2014

**Before:**

**THE CHANCELLOR OF THE HIGH COURT**  
**LORD JUSTICE KITCHIN**  
and  
**SIR STANLEY BURNTON**

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**Between:**

**Phil & Ted's Most Excellent Buggy Company Limited**

**Claimant/  
Respondent**

**- and -**

**(1) TFK Trends for Kids GmbH**

**(2) Oliver Beger**

**(3) Udo Beger**

**Defendants/  
Appellants**

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Andrew Lykiardopoulos (instructed by Fasken Martineau LLP)  
for the Claimant/Respondent  
Douglas Campbell (instructed by Jennings IP & Media Solicitors)  
for the Defendants/Appellants

Hearing date: 6 March 2014  
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**Judgment**

## **Lord Justice Kitchen:**

### **Introduction**

1. This is an appeal against the judgment of His Honour Judge Birss QC (as he then was) dated 8 May 2013 and his consequential order in a patent action concerning baby buggies. The appellants (collectively “TFK”) are the owners of EP (UK) 1 795 424 which has a priority date of 8 December 2005. In this action TFK complained that the respondent (“Phil & Ted’s”) had infringed the patent by selling in the UK a buggy called the Promenade. Phil & Ted’s denied infringement and asserted that the patent was, in any event, invalid in the light of a well known buggy called the Bugaboo Frog and two prior publications referred to as Bigo and Goodbaby.
2. The judge held in favour of TFK on the issue of infringement and rejected the attack on the patent based upon Bigo and Bugaboo Frog. But he held the patent was obvious in the light of Goodbaby. TFK now appeal against that finding with the permission of Floyd LJ.
3. In very broad outline TFK contend that the judge erred in principle in arriving at his conclusion in that he:
  - i) wrongly assumed that the skilled person would be interested in putting Goodbaby into practice;
  - ii) held, contrary to the evidence, that it was obvious to implement Goodbaby in such a way as to make it detachable from a buggy chassis; and
  - iii) held, contrary to the evidence, that it was obvious to implement Goodbaby with fabric walls which would constitute relevant suspension means.
4. I will deal with these three arguments in turn but first must set the scene by saying a little about the expert evidence and the common general knowledge, by explaining the invention of the patent and by describing, at least in outline, the disclosure of Goodbaby.

### **The expert evidence and the common general knowledge**

5. Phil & Ted’s called as its expert Mr David Cocks, an industrial designer who had, for some five years before the priority date, focused upon the design of buggies. The judge considered that, despite an inventive nature and a tendency to be somewhat imprecise in his evidence, Mr Cocks was well placed to assist him to understand the common general knowledge in the field of buggy design.
6. TFK called as their expert Mr Jon Whyte, an industrial designer of some thirty six years’ experience in the field of racing cars and bicycles. However, he had never designed or worked on a buggy and did not profess to know anything about the common general knowledge in the field of buggy design in 2005. The judge therefore had no relevant evidence from TFK to qualify or amplify the evidence given by Mr Cocks. I should add that Mr Whyte was, like Mr Cocks, a designer of proven inventive ability and this was another matter which the judge took into account, just as he did with Mr Cocks.

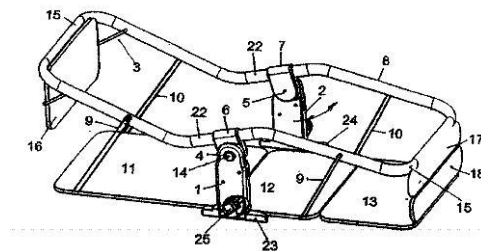
7. The judge's findings as to the common general knowledge were therefore primarily based upon the evidence of Mr Cocks. Those aspects of it which have a particular bearing upon the issues arising on this appeal may be summarised as follows.
8. By 2005 the concepts of "convertible" and "combination" buggies were very well known. Convertible buggies could be changed from one configuration to another, for example from a pram into a seat. Combination buggies used a chassis to which different units could be fixed. So, for example, in a typical combination buggy the seat could be unclicked from the chassis and replaced with a cot or a car seat. Parents whose baby had fallen asleep in the car could remove the car seat from the car and clip it into the chassis of the buggy, hopefully without waking the baby.
9. Two buggies had a major impact upon the market in the years to 2005. The first was the Maclaren Stroller which had an adjustable reclining seat and used gussets in the seat fabric to accommodate the different seat positions. It had a three part base, and from 2000 could be reclined into a lie-flat position in which the backrest and leg rest sections were near horizontal with the seat base.
10. The second was the Bugaboo Frog which was launched in 1997. This transformed the market by creating a consumer demand for "travel systems" or "3-in-1" products. It was described by the judge in these terms at [24]:

".... The Bugaboo Frog had a wheeled chassis onto which different items could be fitted. One item was a seat frame. The seat frame could be tilted in three positions (upright, recline or horizontal). The Bugaboo Frog had two fabric inserts: one was used when the seat frame was a seat; and the other fabric insert was used when the frame was horizontal, to make a carrycot. Thus to convert the seat into a carrycot, the frame was tilted to the horizontal position, the seat fabric insert was removed and the cot fabric insert was put in place. The seat frame was removable by releasing two connectors. This allowed the seat to be turned to face either the direction of travel or the parent. Instead of the frame, a car seat could be fitted into the chassis sockets."
11. These and similar buggies, and a general acceptance that a large recline angle was necessary for seats for new born children meant that, by December 2005, important considerations for a designer of a new buggy were that it should be:
  - i) removable, so that a car seat or carry cot could be clipped to the buggy frame in place of the buggy seat, and so that it could be oriented so that the baby was facing either towards or away from the parent; and
  - ii) convertible from an upright to a substantially lie-flat position.
12. In light of all these matters the judge found the following design features were part of the common general knowledge:
  - i) a chassis with connectors or adapters to enable different components to be attached and locked to it;

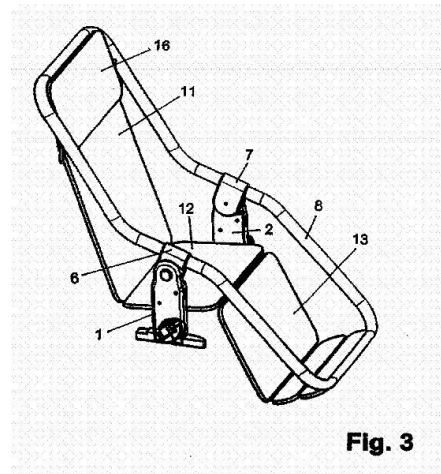
- ii) foldable fabric seat units;
  - iii) movable foot sections;
  - iv) reclining mechanisms;
  - v) frames constructed from aluminium or steel tubular components with plastic moulded joints.
13. Finally, there were a number of well known design techniques for the handling of fabric. As the judge explained, buggies generally had fabric side walls and this fabric often extended under the base. Gussets, zips and straps to gather up or release the fabric, as required, were all well known design features.

### The patent

14. The object of the invention is the provision of a new insert for a buggy which can be converted from a seat into a cot. It consists of an upper frame, an articulated base which forms the seat or bed, as required, and suspension means which hang down from the frame and support the parts of the base. As the judge explained, the idea is that the insert can be converted from one state to another simply by tilting the upper frame and by adjusting the position of the base parts by changing the length or connecting points of the suspension means. One embodiment is shown in its cot position in figure 1 and in its seat position in figure 3:



**Fig. 1**



**Fig. 3**

15. In this embodiment the base consists of three panels, 11, 12 and 13, which are hinged to one another and suspended from the frame 8 by the suspension tapes 9 and 10. The frame is, in turn, coupled to the adapters 1 and 2 by mounts 6 and 7. The adapters themselves have coupling elements 23 and 24 which allow them to be detachably mounted on elements on a buggy chassis. As the judge correctly noted, although it might appear from figure 1 that the middle panel of the three part base is connected to the adapters, that is not in fact the case. Accordingly, when the insert is turned into a

seat, as shown in figure 3, it can be seen that the relative position of the middle panel and the adapters has changed.

16. The invention as claimed requires two particular features which have a bearing upon this appeal. The first is that there must be adapters. The judge interpreted this at [65]:

“I think a skilled reader would understand, particularly bearing in mind figures 1 to 3 but also the word adapter itself, that the inventor was not seeking to use language in the claim in a narrow sense. The skilled reader would understand that the adapters, in terms of claim 1, are simply the parts of the insert by which the insert can be mounted onto and dismounted from the chassis.”

17. The second is that there must be suspension means which perform the particular function called for by these closing words of claim 1:

“and the relative angular adjustment of the sections is carried out by change in length and/or by changing the connecting points of the suspension means.”

18. The suspension means in figure 1 are, as I have mentioned, tapes. But the teaching of the patent is clear that the invention is not so limited and the suspension means may include the fabric side walls. So, for example, paragraph [0028] states:

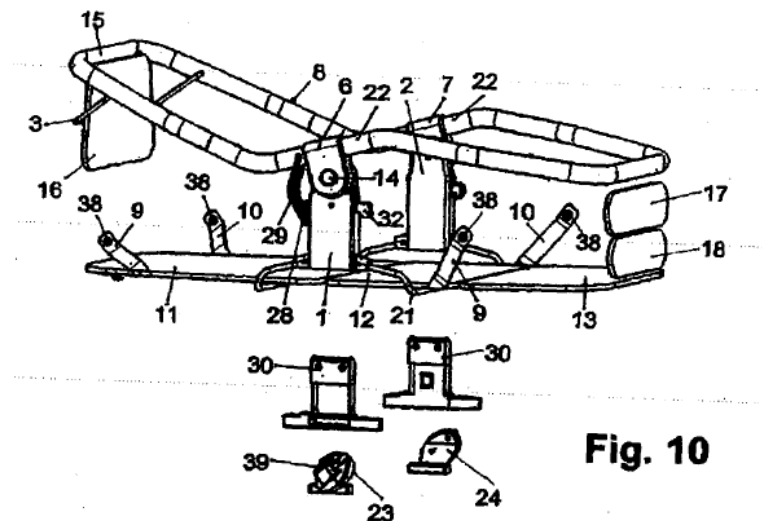
“However, instead of such tape-formed suspension means, the side walls consisting of textile material can also be used directly as adjustable suspension means. For example, by folding the side wall it can be ensured that this can be shortened or lengthened by means of press studs 38. Tape-formed suspension means can also be stitched into the material and can then each be connected with press stud elements arranged in a particular pattern in order to achieve the desired raising or lowering of the individual base parts 11, 12, 13 depending on the position of the frame.”

19. This does not mean that all fabric side walls will constitute suspension means, however. They will only do so if they in fact perform a suspension function. The judge put it this way at [54]:

“Mr Lykiardopoulos submitted that the skilled reader would understand that the patent acknowledged that suspension means could be the fabric side walls of the insert. I agree up to a point. The description is clearly stating that the adjustable suspension means can be made using fabric side walls but that does not mean that any fabric side wall will automatically be “suspension means”. The example the description gives involves using press studs for shortening or lengthening the material by gathering it up. At paragraph [0016] the description refers to integrating the suspension means in the side walls or attaching them separately and mentions press

studs, loops, tape connections or strap systems. Whether in a given case a fabric side wall is all or part of the suspension means will depend on how it is arranged and what it does.”

20. The judge then illustrated this by reference to figure 10:

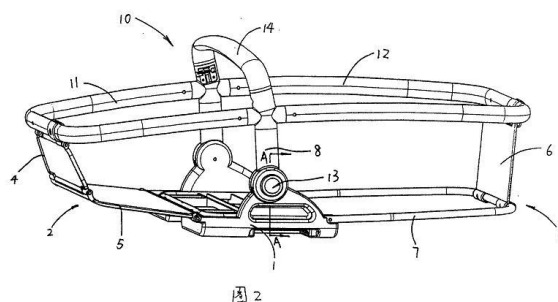
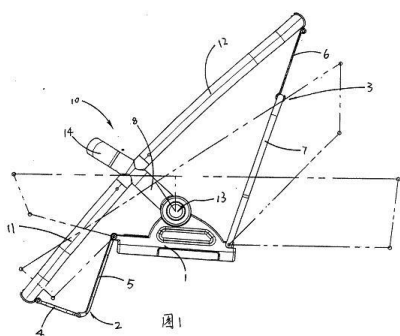


**Fig. 10**

21. As the judge observed, in this arrangement nothing appears to be holding the base in place but, although not stated in the patent, the base could be supported by textile material which encompasses it and is fixed to the frame.
22. The final aspect of this feature I must mention is that the claim requires the relative angular adjustment of the base parts to be carried out by changing the length or connecting points of the suspension means. However, as the judge correctly held, this does not mean that the position of each of the base parts needs to be adjustable in this way. All the claim requires is relative adjustment and is therefore satisfied by an arrangement in which, for example, only the end parts are adjustable, for this will mean that all the parts are adjustable relative to each other.

### **Goodbaby**

23. Goodbaby is a Chinese utility model which was applied for on 30 September 2004 and published on 9 November 2005. Its structure and the way it works can readily be appreciated from figures 1 and 2 which show it in seat and cot positions respectively:



24. The parties are agreed that the judge accurately described the various components of this design at [73]-[74] of his judgment:

“73. There is a frame 10 and a seat plate 1. There are said to be pivots at the top and bottom of the supporting rod 8 but the one which matters is the lockable pivot with the seat plate marked as 13. When the lockable pivot 13 is unlocked, the frame can be moved between the horizontal position when the device forms a cot and the tilted position when the device forms a seat. Parts 6 and 7 are hinged to each other. In the seat position parts 6 and 7 form the place for the backrest. The parts were at 90° when the device was a cot but as a seat they form a straight line. Parts 4 and 5 are also hinged to each other.

74. As drawn there is no solid base in the region 7 nor is there a seat on the seat plate 1. The mechanical parts on seat plate 1 are visible in figure 2. Equally no fabric walls are shown, as in the TFK patent. No chassis is mentioned in Goodbaby either although TFK accepted that feature 5, which requires a chassis, was not a relevant difference from the point of view of assessing obviousness. I am sure TFK were right to make the concession but in order to consider obviousness properly I need to identify with care what exactly is disclosed by the document itself.”

### The appeal

25. The judge found that Goodbaby does not deprive the invention of the patent of novelty because it does not describe fitting the seat to a chassis removably and, further, it does not describe any fabric or other form of suspension means. It was not, therefore, inevitable that a skilled person putting Goodbaby into practice would produce an arrangement within claim 1. However, the judge concluded that an arrangement within this claim was something which the skilled person could produce without exercising any inventive step. This being the only claim said to be independently valid, it necessarily followed that the whole patent was invalid for obviousness.

## The appeal

26. Upon this appeal the parties have been represented as they were before the judge, with Mr Douglas Campbell appearing on behalf of TFK and Mr Andrew Lykiardopoulos appearing on behalf of Phil & Ted's.
27. Mr Campbell accepted that the judge properly directed himself that it is convenient to address an allegation of obviousness by adopting the structured approach explained by this court in *Pozzoli v BDMO* [2007] EWCA Civ 588, [2007] FSR 37. Mr Campbell also took no issue with the identification by the judge of the notional person skilled in the art or the common general knowledge, the essential elements of which I have summarised. Nor did Mr Campbell quarrel with the approach taken by the judge to the identification of the inventive concept and the differences between that concept and Goodbaby. However, he emphasised, entirely fairly, that it is important to keep in mind that there were two such differences: first, Goodbaby does not disclose the idea of using adapters so that the seat can be detachably mounted on a chassis, and second, there is no description in Goodbaby of any suspension means.
28. That brought the judge to consider the fourth and crucial *Pozzoli* question, namely whether, viewed without any knowledge of the invention as claimed, these differences constituted steps which would have been obvious to the person skilled in the art or whether they required any degree of invention. Mr Campbell submitted that it was here that the judge fell into error, and did so in the three respects I summarised at the outset of this judgment.

### *Putting Goodbaby into practice*

29. The judge described the nature of the obviousness case based upon Goodbaby in these terms at [76]:

“Many obviousness arguments start from an item of prior art which differs from a claim and contend it would be obvious to modify the prior art in such a way as to remove that difference. The obviousness case over Goodbaby is of a different character. Phil & Ted's argues that if a skilled person put the disclosure into practice, without any inventive step, the resulting product would be a product within the claim. The argument is not focussed on modifying the disclosure.”
30. The argument thus identified, the judge proceeded to consider the two differences between Goodbaby and the invention to which I have referred and whether or not they constituted steps which would have been obvious to the person skilled in the art.
31. Mr Campbell submitted that here the judge fell into error because he assumed, without giving any reasons, that the skilled person would indeed put the disclosure of Goodbaby into practice. He continued that it was never established that the skilled person would have had any motivation to do so and the judge's conclusion was not supported by the evidence.
32. The skilled person is deemed to have read the prior art with interest. The question then is whether or not the steps from the prior art to the invention were or were not



obvious. The correct approach was explained by Aldous LJ (with whom Tuckey LJ and Jonathan Parker LJ agreed) in *Asahi Medical Co Ltd v Macopharma (UK) Ltd* [2002] EWCA Civ 466 at [21]:

“I will come later to analyse the judge’s reasoning, but must first make it clear that a decision on obviousness does not require a conclusion as to whether or not the skilled person would be slightly, moderately or particularly interested in any document. The court has to adopt the mantle of the skilled person. That mantle will include the prejudices, preferences and attitudes that such persons had at the priority date. Thereafter the court has to decide whether the step or steps from the prior art to the invention were obvious. That decision has to be taken without the invention in mind and through the eyes of the skilled person. Of course any prior art document relied on must be deemed to be read properly and in that sense with interest. To conclude otherwise would deprive the public of their right to make anything which is an obvious modification of a published document. By obvious I mean that which would be obvious to the skilled person. The correct approach was set out by Oliver LJ in the *Windsurfing* case. He said at page 74 line 20:

“We agree, of course, that one must not assume that the skilled man, casting his experienced eye over Darby [the prior art], would at once be fired with the knowledge that here was something which had a great commercial future which he must bend every effort to develop and improve, but he must at least be assumed to appreciate and understand the free-save concept taught by Darby and to consider, in the light of his knowledge and experience, whether it would work and how it will work”.

33. So the crucial issue for us to determine is whether the judge had any proper basis for concluding that the skilled person who had read Goodbaby would have been interested in putting it into practice, so that that would have been an obvious thing to do. I believe he plainly did. Goodbaby was published in November 2005, only shortly before the priority date, and describes a device which can be converted from a seat to a cot and back again. Though not, perhaps, a good starting point for a car seat, it is plainly a reasonable starting point for the design of a buggy, and that is precisely what Mr Cocks said. He put it this way in his report at paragraph 7.15:

“The Chinese Utility Model describes a seat unit for a stroller that is convertible between seat and cot configuration. When I first read the Chinese Utility Model its design struck me as a clever one that would be of interest to the skilled person as it is based on geometries and fixed pivot points to convert from a seat shape to a cot shape. It achieves this by having a rigid seat frame (item 10 in the Figures, with lower and upper parts 11 and 12), a seat plate (1) and rigid end pieces (4 and 6). There is

also a support rod (8) between the seat frame (10) and seat plate (1).”

34. Mr Cocks was not challenged on this evidence. In all these circumstances I am satisfied that the judge was entitled to proceed as he did.

*Adapters*

35. Although Goodbaby is intended to be attached to some kind of a chassis, it does not state that it should be removable. Nevertheless, the judge considered this would have been an entirely obvious way to implement it, as he explained at [78]-[80]:

“78. Goodbaby does not state in terms that the seat plate can be mounted and dismounted from a chassis. Mr Campbell put to Mr Cocks that the seat could simply be clamped to a chassis. Mr Cocks accepted that it was possible simply to clamp it but he did not think it was desirable. Mr Cocks thought you would want to removably attach it.

79. The idea of removably attaching a seat was consistent with the common general knowledge, after all combination products are mentioned in the 2003 standard. There were at least two reasons for having a combination product, one was to allow a car seat to be fitted to the chassis instead and the other was to allow the seat to be turned round so that the child faced in the opposite direction. In the context of Goodbaby, Mr Cocks accepted in cross-examination that the Goodbaby arrangement was not a good starting point for fitting a car seat, although he was not asked to elaborate as to the reasons why not. However Mr Cocks’ view that the skilled person would want to attach the seat insert removably was not limited to the idea of replacing it with a car seat.

80. In my judgment it would have been obvious for a skilled person to fasten the Goodbaby insert to a chassis in a removable manner. On that basis, assuming the other features 7, 8, and 9 are satisfied, the arrangement would involve the use of adapters since it would be an insert with parts which allowed it to be mounted onto and dismounted from a chassis.”

36. Mr Campbell attacked the judge’s reasoning in these paragraphs on the basis that it does not properly address the evidence which was before him. Indeed, Mr Campbell continued, it is contrary to that evidence.
37. I cannot accept this submission for the following reasons. First, the judge had already found that making the buggy seat detachable from the chassis was a very important consideration for any buggy designer by December 2005. Second, Mr Cocks explained in cross-examination that it would have been desirable to make Goodbaby in such a way that the child could be oriented facing towards or away from the parent. His cross-examination by Mr Campbell ran as follows (day 1, page 123-124):

- “Q. Okay. That being so, why does he want to make it removable at all?
- A. For reversibility, maybe.
- Q. Why?
- A. To reorientate the carrycot so that the baby can face the parent, as I explained, is the general sort of orientation for a carrycot.
- Q. There is nothing in the document that says he wants to reverse it round. I mean, that is just –
- A. That generally would have been the current thinking at this time, that parents do like to face their child.
- Q. But the Maclaren buggy is not reversible.
- A. But the Maclaren buggy, when it was designed, was designed for six months, so they are at the stage – admittedly, now it has a lie-flat, but –
- Q. Why are you getting the idea that you have to have reversibility? Where has that idea come from?
- A. It has been medically voiced that it is advisable for the first six months for the child to face the parents, for communication, although not essential; but it is generally the desired way that any pram body/carrycot is generally positioned, in an orientation so that the mother can see the child and the child can see the mother.”

38. Despite this evidence and the support which it gives to the judge's conclusion, Mr Campbell maintained that the judge's reasoning was flawed. First, Mr Campbell argued, Phil & Ted's primary case on Goodbaby was, until closing speeches, one of anticipation rather than obviousness. I am prepared to accept that that was so. But it is perfectly clear from the pleadings (see, for example, paragraph 8 of the amended particulars of claim) that the issue of obviousness over Goodbaby, including the obviousness of making it with adapters and so removable, was also being run. Moreover, this was a point which TFK must have appreciated was a live one because they addressed it in their opening skeleton argument.
39. Mr Campbell next submitted that TFK did not know what Phil & Ted's case on obviousness was with respect to this feature when cross-examining Mr Cocks. More substantively, parts of Mr Cocks's report suggested that the reason for having adapters was so that buggy seats and frames were compatible with the products of other companies and, in particular, with their car seats. Mr Cocks was cross-examined upon this latter issue and, so Mr Campbell submitted, accepted that for this purpose, that is to say car seat compatibility, Goodbaby was not a good starting point.

40. In assessing this submission it is, I think, important to have in mind that the case of obviousness in the light of Goodbaby was put entirely generally, and not simply on the basis that it was obvious to make the Goodbaby seat interchangeable with car seats. Moreover, it was part of the common general knowledge that it was desirable to make a buggy seat reversible so that the baby could be seated facing towards or away from its mother. This was, as Mr Cocks said, an important design consideration and it was a matter to which he returned in his cross examination in the passage of his evidence I have set out at [37] above.

41. That brings me to Mr Cocks's evidence in relation to car seats and the submission that he accepted in the course of cross examination that if one wanted to make a buggy seat which was interchangeable with a car seat then Goodbaby would not have been the place to start. Mr Campbell relied upon a particular question and answer but I think it important that this is seen in context. The relevant passage of his evidence reads as follows (day 1, page 112-114):

“Q. But I understand your point of view. Now, if you wanted to connect this to a chassis, you could just clamp it in place. I think you accepted earlier that was a possibility?

A. You could, but not preferably.

Q. That is why I want to take it up with you. Why is it not preferred – because you can clamp it to a chassis and it still works; you still have the rotation from seat to lying down. So you do not need to go further than a simple clamp to get the purpose of the Chinese utility model itself, do you?

A. No, but as I said before, I mean, it was favourable in 2005 to have the thing removable and/or reversible.

[...]

Q. Okay. You appreciate that Mr. Whyte disagrees with you about these particular changes?

A. Yes.

Q. He says that you are using quite a bit of hindsight and introducing points of car seats. Can I suggest another possibility to you. If there was a commercial need to have something which connected to car seats in 2005, someone looking at this would probably think it was not a good starting point at all?

A. Not necessarily, because I think, looking at the design in general, it is obviously designed to be fitted on to a chassis, in the same way as it could be removed from the chassis. So, I don't see it is ...

Q. Right.

A. It is not a good starting point.

Q. Okay. Can we now come on to the UK patent, please?"

42. I have to say that I regard this evidence as being somewhat ambiguous. The interruption of the penultimate answer renders it difficult to be sure quite what Mr Cocks meant. Nevertheless, I am prepared to assume in favour of TFK that Mr Cocks was indeed accepting that, for the purpose of car seat connectability, Goodbaby was not a good starting point. That takes TFK nowhere, however. The fact that a particular modification may not be obvious for one purpose matters not if it is obvious for another. And Mr Cocks was clear that it was obvious to make Goodbaby reversible. That would be a device within the claim.
43. Finally, it is said that the judge fell into error in failing to consider Mr Whyte's evidence. Now it is entirely true to say that the judge did not specifically refer to Mr Whyte's evidence in this context. But it seems to me that this is hardly surprising in the light of the fact that the obviousness case was founded on the common general knowledge and was, in substance, that it was obvious in the light of the common general knowledge to make Goodbaby reversible. This was not something about which Mr Whyte knew anything at all. His opinion on this particular issue would therefore have been of no assistance to the judge.

*Suspension means*

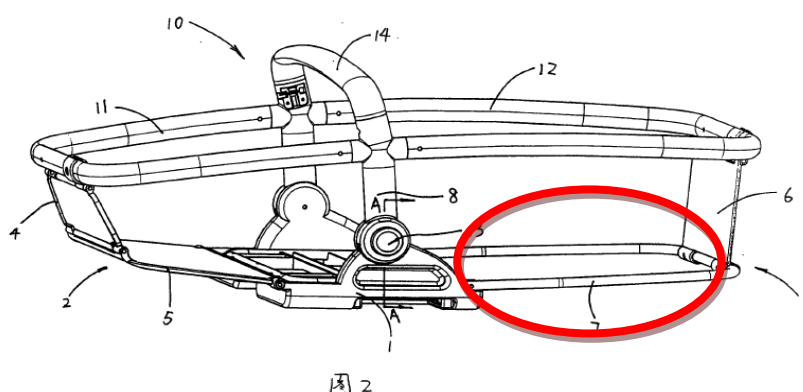
44. I have explained earlier in this judgment that the relative angular adjustment of the sections of the base must be carried out by changing the length or the connecting points of the suspension means.
45. Mr Cocks explained and the judge accepted that although Goodbaby does not in terms describe fabric side walls or an upholstered fabric base, the skilled person would understand that in practice they must be present. These fabric walls would be attached to the frame and anchored at the base to allow the fabric to articulate with the frame. The fabric would be integral with the mattress and seat parts and would have fold lines to match those parts so that it would fold in the right places as their orientation changed. Importantly, the fabric side walls would support the base.
46. The judge then turned to consider the question of how the skilled person would deal with the change in geometry as the product moved from cot to seat configuration and back again. Here Mr Cocks explained and again the judge accepted that to accommodate these changes the skilled person would include a series of gussets or pieces of elasticated material in the fabric sides. The judge also referred to the evidence given by Mr Whyte but indicated he preferred that of Mr Cocks in the light of the latter's understanding of the common general knowledge.
47. The judge summarised his conclusion as to the obvious way to implement Goodbaby in these terms at [88]:

“Whether the product a skilled person would produce based on Goodbaby had gussets, some elasticated fabric, zips, straps or some combination of these elements does not matter. What matters is that a skilled person putting this into practice would produce an arrangement in which the changes in length of the fabric which arose from the changes in geometry would be accommodated. Loose fabric would be gathered up in gussets by straps, zips, press studs or the like and conversely, when lengthening was needed, the straps, zips, press studs etc. would be released. Doing this would not involve an inventive step.”

48. That brought the judge to the crucial question, namely whether or not Goodbaby, implemented in this way, would fall within the claim. After reciting TFK’s argument that it would not, the judge expressed his conclusion in these terms at [89]:

“... In the obvious implementation of Goodbaby the fabric walls, including gussets, straps/zips etc. would be suspension means. At the very least the fabric would suspend the backrest part which would be fitted in section 7 of Goodbaby. When the product is moved from cot to seat format, these suspension means would need to be changed in length and/or have the connecting points changed. That will satisfy feature 13.”

49. Mr Campbell submitted that the judge fell into error in this last part of his analysis. He argued that when a device such as that described by the judge is moved from cot to seat configuration, the relative angular adjustment of the base parts is still carried out by the movement of the framework and not by the fabric.
50. The fallacy in this argument is well illustrated in the reproduction of figure 10 below in which Mr Lykiardopoulos helpfully illustrated the location of the backrest part of the base with a ring:



51. This figure shows the frame but not the base parts and mattress. As Mr Cocks explained and the judge accepted, at least the backrest part of the base would fit inside the frame 7 and be supported by the fabric walls. When this device is moved from cot to seat configuration, the frame will indeed be moved, but so also will the fabric side walls which are acting as the suspension means for the backrest part of the base. This

fabric will change in length and be gathered up by straps, zips, press studs or the like, as the judge described. In so doing, it is the fabric side walls which will result in the relative angular adjustment of the base parts. I believe the judge was therefore right to say that this satisfies the requirements of the claim.

**Conclusion**

52. I am satisfied that the judge was entitled to reach the conclusion that the patent was obvious in the light of Goodbaby and I would therefore dismiss this appeal.

**Sir Stanley Burnton:**

53. I agree.

**The Chancellor:**

54. I also agree.