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**Datasheet for the decision  
of 3 May 2022**

**Case Number:** T 0239/20 - 3.2.01

**Application Number:** 09169856.3

**Publication Number:** 2163423

**IPC:** B60N2/28

**Language of the proceedings:** EN

**Title of invention:**

Harness storage system for child car seats

**Patent Proprietor:**

Wonderland Nurserygoods Company Limited

**Opponent:**

CYBEX GmbH

**Intervener:**

Columbus Trading-Partners GmbH & Co. KG

**Headword:**

**Relevant legal provisions:**

EPC R. 139, 99(2)

EPC Art. 111(1), 100(c), 83, 54(2), 123(2), 123(3)

RPBA 2020 Art. 11, 12(2), 12(3), 12(4), 12(5)

**Keyword:**

Correction of error - (yes)  
Remittal - direct (no) ; Intervention - special reasons for remittal (yes)  
Grounds for opposition - subject-matter extends beyond content of earlier application (yes)  
Amendment to case - auxiliary request 2 - amendment overcomes objection (no)  
Amendments - auxiliary request 21 - extension beyond the content of the application as filed (no) - extension of scope of protection (no)  
Discretion not to admit submission - requirements of Art. 12(3) RPBA 2020 met (yes)  
Sufficiency of disclosure - auxiliary request 21 (yes)  
Novelty - public prior use availability to the public (yes) - auxiliary request 21 (yes)

**Decisions cited:**

J 0008/80, G 0002/10, G 0003/97, G 0001/12, G 0001/92,  
T 0515/98

**Catchword:**



**Beschwerdekammern**  
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Case Number: T 0239/20 - 3.2.01

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.01**  
**of 3 May 2022**

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**Decision under appeal:** **Interlocutory decision of the Opposition**  
**Division of the European Patent Office posted on**  
**22 January 2020 concerning maintenance of the**  
**European Patent No. 2163423 in amended form.**

**Composition of the Board:**

<b>Chairman</b>	G. Pricolo
<b>Members:</b>	J. J. de Acha González
	S. Fernández de Córdoba
	S. Mangin
	A. Jimenez

## Summary of Facts and Submissions

I. The appeals of the patent proprietor and of the opponent lie against the interlocutory decision of the Opposition Division to maintain the European patent No. 2163423 in amended form according to the then auxiliary request 2.

II. The following documents and evidence are inter alia cited in the decision:

D1: JPH06183290 A;  
D2: GB 2 282 321 A;

Evidence provided and taken for an alleged public prior use relating to a child car seat of the type "Evenflo Triumph" (Triumph in the following) from the company Evenflo, among others:

A2: "Evenflo - Owner's Manual - Triumph Child Restraint", 2001

A8: US 6 695 412 B2;  
minutes of taking of evidence by inspection dated 22 October 2019 before the Opposition Division (MI in the following); and

Evidence provided and taken for an alleged public prior use relating to a child car seat of the type "Apollo Booster" produced by Evenflo (Apollo in the following), among others:

A14: "evenflo Apollo Booster Child Restraint Owner's Manual", 2001; and

A17: pictures taken from a seat with date November 2002 out of the inventory of Evenflo.

minutes of taking of evidence by inspection dated 22 October 2019 before the Opposition Division.

The Opposition Division found among others that:

- the subject-matter of granted claim 1 contravened Article 100(c) EPC;
- the amendments made to the patent under auxiliary request 2 met the requirements of Article 123(2) and (3) EPC;
- the subject-matter of the claims 1 and 7 of auxiliary request 2 was new over the public prior use Triumph and involved an inventive step over the following combinations of prior art:
  - D1 + D2;
  - D2 + D1;
  - A8 + common general knowledge or D2;
- the amended patent according to auxiliary request 2 disclosed the invention in a manner sufficiently clear and complete for it to be carried out by the person skilled in the art.

As regards the alleged public prior uses the Opposition Division decided that:

- a child car seat of the type Triumph as inspected during the oral proceedings (see MI) and the manual A2 were prior art under Article 54(2) EPC; and
- child car seats of the type Apollo as documented in the pictures A17 and the manual A14 were prior art under Article 54(2) EPC.

III. On 28 January 2020, after the opponent's filing of the notice of appeal on 24 January 2020, intervention was filed by an assumed infringer.

The intervener submitted the following new evidence not forming part of the opposition proceedings:

D12: US 5 458 398 A;  
D13: EP 1 199 213 A1;  
D14: EP 1 403 131 A2;  
D15: US 5 286 086 A;  
D16: US 6 474 735 B1;  
D17: WO 2007/121277 A2;  
D18: US 2009/0066130 A1;  
D19: US 2008/0073954 A1;  
D20: US 2009/0127902 A1;  
D21: US 2007/0108810 A1;

- alleged public prior use of a child seat from Evenflo "Odyssey V" (Odyssey in the following) supported by the following evidence:

- A22a: "evenflo Odyssey V Child Restraint Owner's Manual", 2000;
- A22b: Odyssey Production Numbers;
- A22c: Product Specification, "CS24 Odyssey Child Restraint System", 29 November 2000;
- A22d: work instructions revision list Odyssey V;
- A22e: internet extract:  
"https://members.rennlist.com/ajs993/Child\_Seat.html";
- A22f: internet extract:  
"https://www.carseat.org/Pictorial/0\_PicLink.htm";
- A22g: technical drawings of Odyssey V; and
- A22h: sales figures of the seat Odyssey V.

The intervener offered additionally in order to prove the alleged facts relating to this public prior use to hear Mrs James and Mr Newbright as witnesses and to inspect an electronic storage device including two files (A22c and A22d) and a

child seat Odyssey from the inventory of Evenflo;  
and

- alleged public prior use of a child seat type "Evolva 1-2-3" (Evolva in the following) of the company Britax-Römer supported by the following evidence:
    - A23a: user manual Evolva, 8 September 2008;
    - A23b: article from "auto motor und sport" about the Evolva, 18/2006;
    - A23c: pictures of the original issue of "auto motor und sport" about the Evolva;
    - A23d: affidavit of Mr Powell;
    - A23e: test report - Stiftung Warentest from June 2006 (article "The right choice", p. 72);
    - A23f: instruction manual Britax Evolva;
    - A23g: copy of a communication from the user forum FordBoard;
    - A23h: instructions for use of the Evolva seat dated 23 March 2007;
    - A23i: posts in user forum about the Evolva; and
    - A23j: Evolva web pages from Internet Archive.
- The intervener offered additionally in order to prove the alleged facts relating to this public prior use to hear Mr Powell as a witness and to inspect a child seat Evolva from the inventory of Evenflo.

IV. Oral proceedings were held before the Board on 3 May 2022.

The appellant (patent proprietor) requested remittal to the department of first instance as main request. Alternatively, to set aside the decision of the Opposition Division, to dismiss the opposition of the opponent and intervener and to maintain the patent as



granted. Further, it is requested to maintain the patent according to any of the auxiliary requests 2 or 21 (filed with the statement of grounds of appeal), auxiliary request dfmp18 (filed by letter dated 14 April 2022), auxiliary requests 22 to 49 (filed with the statement of grounds of appeal), auxiliary request dfmp19 (filed by letter dated 14 April 2022).

The appellant (opponent) requested to revoke the patent in accordance with the request for revocation of the patent proprietor filed with the notice of appeal from 18 March 2020, or, in the alternative, to set aside the decision of the Opposition Division and to revoke the patent, or, further in the alternative, to remit the case to the Opposition Division.

The party as of right (intervener) requested to set aside the contested decision and to revoke the patent, and, in the alternative, to remit the case to the Opposition Division for further prosecution.

V. Granted claim 1 reads as follows (feature numbering according to the patent proprietor and differences with respect to claim 1 as originally filed are underlined or in strikethrough, emphasis added by the Board):

- M1 *A car seat (10) for transporting a child in an automobile, the car seat comprising*
- M2 *a rigid shell (16) having a seat member (12) having a first portion of a rigid shell,*
- M3 *a back rest (13) connected to projecting upwardly from a rear portion of said seat member (12), and having a second portion of a rigid shell;*
- M4 *a harness*
- M4.1 *including a pair of laterally spaced belt straps (22) connected to said rigid shell (16),*

- M4.2 a pair of laterally spaced shoulder straps (21)  
supported from said back rest (13) ~~rigid shell~~ and
- M4.3 a crotch strap (23) supported on said seat member  
(12) ~~connected to said seat shell,~~
- M4.4 said harness further including a pair of latch  
members (24), each said latch member (24) being  
connected to one of said shoulder straps (21),
- M4.5 said latch members (24) being engagable with a  
harness buckle (25) connected to said crotch strap  
(23) ~~and, whereby~~
- M5 a harness storage cavity (30) is formed in said rigid  
shell (16) and
- M5.1 ~~including~~includes a cover (32) forming a smooth  
support over said harness storage cavity (30),
- M5.2 said harness storage cavity (30) being sized to  
receive said latch members (24) and said harness  
buckle (25),
- M5.3 said harness storage cavity (30) further having at  
least one side provided with at least one slot (34)  
that permits the passage of at least one of said  
shoulder straps (21) and said belt straps (22) from  
said harness storage cavity (30) when said cover  
(32) is closed and said harness buckle (25) and  
said latch members (24) are positioned within said  
harness storage cavity (30).

Claim 1 of auxiliary request 2 reads as follows  
(differences with respect to granted claim 1 are  
underlined or in strikethrough, emphasis added by the  
Board):

A car seat (10) for transporting a child in an  
automobile, the car seat comprising a rigid shell (16)  
having a seat member (12), a back rest (13) projecting  
upwardly from a rear portion of said seat member (12)  
and connected to said seat member (12), and a harness

including a pair of laterally spaced belt straps (22) connected to said rigid shell (16), a pair of laterally spaced shoulder straps (21) supported from said back rest (13) and a crotch strap (23) supported on said seat member (12), said harness further including a pair of latch members (24), each said latch member (24) being connected to one of said shoulder straps (21) and to a corresponding said belt strap (22), said latch members (24) being engagable with a harness buckle (25) connected to said crotch strap (23), whereby a harness storage cavity (30) is formed in said rigid shell (16) and includes a cover (32) forming a smooth support over said harness storage cavity (30), said harness storage cavity (30) being sized to receive said latch members (24) and said harness buckle (25), ~~said harness storage cavity (30) further having at least one side provided with at least one slot (34) that permits the passage of at least one of said shoulder straps (21) and said belt straps (22) from said harness storage cavity (30) when said cover (32) is closed and said harness buckle (25) and said latch members (24) are positioned within said harness storage cavity (30).~~ wherein said seat member (12) and said back rest (13) are respectively formed as a first and a second portion of said rigid shell (16), and wherein said harness storage cavity is formed with slots to permit the passage of said shoulder straps (21) and said belt straps (22) from said harness storage cavity (30) when said cover (32) is closed and said harness buckle (25) and said latch members (24) are positioned within said harness storage cavity (30).

Claim 1 of auxiliary request 21 reads as follows (differences with respect to claim 1 of auxiliary request 2 are underlined or in strikethrough, emphasis added by the Board):

A car seat (10) for transporting a child in an automobile, the car seat comprising a rigid shell (16) having a seat member (12), a back rest (13) projecting upwardly from a rear portion of said seat member (12) and connected to said seat member (12), and a harness including a pair of laterally spaced belt straps (22) connected to said rigid shell (16), a pair of laterally spaced shoulder straps (21) supported from said back rest (13) and a crotch strap (23) supported on said seat member (12), said harness further including a pair of latch members (24), each said latch member (24) being connected to one of said shoulder straps (21), said latch members (24) being engagable with a harness buckle (25) connected to said crotch strap (23), whereby a harness storage cavity (30) is formed in said rigid shell (16) and includes a cover (32) forming a smooth support over said harness storage cavity (30), said harness storage cavity (30) being sized to receive said latch members (24) and said harness buckle (25), ~~said harness storage cavity (30) further having at least one side provided with at least one slot (34) that permits the passage of at least one of said shoulder straps (21) and said belt straps (22) from said harness storage cavity (30) when said cover (32) is closed and said harness buckle (25) and said latch members (24) are positioned within said harness storage cavity (30). said harness storage cavity (30) further having at least one side provided with at least one slot (34) that permits the passage of at least one of said shoulder straps (21) and said belt straps (22) from said harness storage cavity (30) when said cover (32) is closed and said harness buckle (25) and said latch members (24) are positioned within said harness storage cavity (30).~~ wherein said seat member (12) and said back rest (13) are respectively formed as a first and a second portion of said rigid shell (16), and said

car seat (10) further comprises: a back panel pad (18) and a head rest pad (17) being supported on said rigid shell (16), each of said back panel pad (18) and said head rest pad (17) being selectively removable from said rigid shell (16); each said latch member (24) being connected to said shoulder strap (21) and a corresponding said belt strap (22), said shoulder straps (21) and said belt straps (22) being positionable behind said back panel pad (18) and said head rest pad (17) and against said rigid shell (16) to permit said harness to be stored in said harness storage cavity (30) with said shoulder straps (21) and said belt straps (22) projecting out of said harness storage cavity (30) along said rigid shell (16), and wherein said harness storage cavity is formed with slots to permit the passage of said shoulder straps (21) and said belt straps (22) from said harness storage cavity (30) when said cover (32) is closed and said harness buckle (25) and said latch members (24) are positioned within said harness storage cavity (30).

Claim 7 of auxiliary request 21 reads as follows:

A method of converting a car seat (10) from a car seat configuration into a belt positioning booster configuration, said car seat having a first portion of a rigid shell (16), said first portion being a seat member, and a seat pad (19) mounted on the rigid shell (16), a back rest (13) projecting upwardly from a rear portion of said seat member (12) and having a second portion of said rigid shell (16) on which a back panel pad (18) and a head rest pad (17) are supported, each of said back panel pad (18) and said head rest pad (17) being selectively removable from said rigid shell (16); and a harness including a pair of laterally spaced shoulder straps (21) connected to said rigid shell

(16), a pair of laterally spaced belt straps (22) connected to said rigid shell (16), and a crotch strap (23) supported from said rigid shell (16), said harness including a pair of latch members (24), each said latch member (24) being connected to one of said shoulder straps (21) and a corresponding said belt strap (22), both said latch members (24) being engagable with a harness buckle (25) connected to said crotch strap (23), the method comprising the steps of: storing said harness buckle (25) and said latch members (24) in a harness storage cavity (30) formed in said rigid shell (16); and locating all of said straps (21, 22) between said back panel pad (18), said head rest pad (17) and said rigid shell (16) to conceal said harness behind said back panel pad (18) and said head rest pad (17), wherein said shoulder straps (21) and said belt straps (22) being positionable behind said back panel pad (18) and said head rest pad (17) and against said rigid shell (16) to permit said harness to be stored in said harness storage cavity (30) with said shoulder straps (21) and said belt straps (22) projecting out of said harness storage cavity (30) along said rigid shell (16), and wherein said harness storage cavity (30) is formed with slots (34) to permit the passage of said shoulder straps (21) and said belt straps (22) from said harness storage cavity (30) when said cover (32) is closed and said harness buckle (25) and said latch members (24) are positioned within said harness storage cavity (30).

## **Reasons for the Decision**

1. The appeals as well as the intervention are admissible.

*Appeal of the patent proprietor*

2. *Initial request of the patent proprietor in the notice of appeal*

2.1 The patent proprietor requested with the notice of appeal from 18 March 2020 to set aside the decision and to revoke the patent. Correction under Rule 139 EPC, first sentence was requested with letter of 29 April 2020.

2.2 The opponent contested the requested correction and essentially argued that there was no obvious editorial mistake in the requests formulated in the notice of appeal since the only possible way for the patent proprietor to revoke the patent was to file an appeal in view of the requirements of Article 105a(2) EPC, the appeal of the opponent and the new facts and evidence submitted with the intervention.

2.3 Under Rule 139 EPC, first sentence, linguistic errors, errors of transcription and mistakes in any document filed with the European Patent Office may be corrected on request. As pointed out by the opponent one of the criteria for permitting such a correction is set out in J 8/80, point 6 of the reasons, namely: "It is the responsibility of the person requesting correction to put evidence as to the relevant facts fully and frankly before the Office. In cases where the making of the alleged mistake is not self-evident and in cases where it is not immediately evident that nothing else would have been intended than what is offered as the correction, the burden of proving the facts must be a heavy one. If the evidence put forward is incomplete, obscure or ambiguous, the request for correction should

be rejected. In particular, there should be no reasonable doubt as to the true intention of the person on whose behalf the document was filed. A mere statement of his intention which is not supported by evidence as to what he said and did is almost certain to be insufficient. Provisions designed to facilitate correction of mistakes cannot be allowed to be used to enable a person to give effect to a change of his mind or a subsequent development of his plans."

- 2.4 In the present case, the Board judges that the criterion for the correction of the requests in the notice of appeal of the patent proprietor under Rule 139 EPC, first sentence, is met. The reasoning put forward by the opponent errs because it does not take into account that an appeal is only admissibly filed once the statement setting out the grounds of appeal is filed (Article 108, Rule 101 EPC). Without an admissible appeal, the relief sought by the appellant cannot be granted since the appeal is rejected as inadmissible. Moreover, under Rule 99(1)(c) EPC, the notice of appeal shall only contain a request defining the subject of the appeal, here that the impugned decision be set aside, but not necessary specify whether the patent should be revoked or maintained in a specific form. Those requests relate to the "extent to which the decision is to be amended" and must be contained in the statement of grounds of appeal (Rule 99(2) EPC). In the notice of appeal the patent proprietor specifically requested that the decision under appeal be set aside and explained that: "The Grounds of Appeal will be submitted in due course within the fixed term.". Consequently, it is clear from the notice of appeal that the true intention of the patent proprietor was to challenge the decision of the Opposition Division and to continue to defend the



patent in a form to be specified in the statement of grounds of appeal, as confirmed by the request for oral proceedings and by the statement that the grounds of appeal would be submitted in due time. The correction was submitted with letter of 29 April 2020 and before the filing of the statement of grounds of appeal. The letter specified once more that the statement of grounds of appeal would be submitted in due time. Accordingly, the letter requesting the correction together with the ulteriorly filed statement of grounds of appeal specifying among others the requests of the patent proprietor as appellant unequivocally confirm the obvious incorrectness of the request to revoke the patent formulated in the notice of appeal and the true intention of the patent proprietor.

3. *Main request - remittal to the department of first instance*
- 3.1 The patent proprietor requested as a main request to remit the case to the Opposition Division for further prosecution in view of the new legal and factual situation arising from the intervention and the limited room of manoeuvre allowed from a procedural point of view in appeal proceedings in comparison to that in opposition proceedings.
- 3.2 Under Article 111(1) EPC the Board may either exercise any power within the competence of the department which was responsible for the decision appealed or remit the case to that department for further prosecution when deciding on the appeal. Article 11 RPBA 2020 further stipulates that the Board shall not remit a case to the department whose decision was appealed for further prosecution, unless special reasons present themselves for doing so.

3.3 In the present case a direct remittal of the case in view of the substance of the intervention does not qualify as such special reasons. As specified in Article 12(2) RPBA 2020 the primary object of the appeal proceedings amounts to review the decision under appeal in a judicial manner. Consequently, since the appeal of the patent proprietor is directed against the decision of the Opposition Division it has first to be determined whether the decision of the Opposition Division is correct. After such an examination on the allowability of the appeal of the patent proprietor, the Board will be in a position to determine whether a remittal in view of the submissions of the intervener and as requested by both appellants is justified. Accordingly, the requested direct remittal without reviewing the substance of the impugned decision was denied.

4. *Patent as granted - Article 100(c) EPC*

4.1 The subject-matter of granted claim 1 goes beyond the content of the application as originally filed (Article 100(c) EPC).

4.2 According to the impugned decision the subject-matter of granted claim 1 went beyond the content of the application as originally filed because among others the subject-matter resulting from the introduction of the following features to claim 1 had no basis in the originally filed documents:

- (i) *"a pair of laterally spaced belt traps (22) connected to said rigid shell (16)" (see point 26.1.4 of the decision); and*
- (ii) *"at least one side provided with at least one slot (34) that permits the passage of*

at least one of said shoulder straps (21) and said belt straps (22)" (see point 26.1.5 of the decision).

These features have been taken from claims 2 and 3 respectively as follows (amendments as compared to claims 2 and 3 as originally filed emphasized by the Board):

- (i) ~~"a back panel pad and a head rest pad being supported on said rigid shell, each of said back panel pad and said head rest pad being selectively removable from said rigid shell; and a pair of laterally spaced belt straps (22) connected to said rigid shell (16), each said latch member being connected to said shoulder strap and a corresponding said belt strap, said shoulder straps and said belt straps being positionable behind said back panel pad and said head rest pad and against said rigid shell to permit said harness to be stored in said harness storage cavity with said shoulder straps and said belt straps projecting out of said harness storage cavity along said rigid shell"; and~~
- (ii) "said harness storage cavity (30) ~~is formed with further having at least one side provided with at least one slots (34) that~~ to permits the passage of at least one of said shoulder straps (21) and said belt straps (22) from said harness storage cavity (30) when said cover (32) is closed and said harness buckle (25) and said latch members (24) are positioned within said harness storage cavity (30).".

4.3 According to the patent proprietor feature (i) could be taken in isolation from originally filed claim 2 because the skilled person would understand that the other features present in claim 2 are not essential features and could therefore be omitted (i.e. an admissible intermediate generalization). In particular, each latch member being connected to a shoulder strap and a corresponding belt strap and the features relating to the back panel pad and the head rest pad were not inextricably linked to the belt straps.

Regarding feature (ii) the patent proprietor argued that it derived from the overall disclosure that the technical function of the slots formed in the cavity was to allow the harness to be easily stored and to project out of the cavity without disturbing a child sitting on the closed cavity, when another belt system was used. That function was carried out independently of the number of slots and, accordingly, also with only one slot. Originally filed claims 3 and 15 did not refer to a "plurality of slots" but only to "slots". It followed that "at least one slot" was implicitly disclosed in the originally filed documents.

4.4 According to the established case law, the criterion for assessing whether the patent incurs in an inadmissible extension of subject-matter is the "*gold standard*", namely whether the claimed subject-matter is derivable directly and unambiguously for the skilled person from the application as originally filed (see e.g. point 4.3 in the Decision of the Enlarged Board of Appeal G 2/10, OJ EPO 2012, 376).

The criterion for evaluating whether features left out from the claim are essential for the invention (also

referred to as the essentiality test), as invoked by the patent proprietor, is in itself not sufficient for fulfilling the gold standard (see Case Law of the Boards of Appeal, 9th edition 2019, II.E.1.4.4.b) - c)).

- 4.5 In order to establish in the present case whether the inclusion of the feature (i) of claim 2 as originally filed in claim 1 results in subject-matter extending beyond the content of the application as filed, it is necessary to analyse the relationship between the features of claim 2 as originally filed which have been included in claim 1 and those which have not. In particular, whether there exists a functional or structural relationship between those features. According to claim 2 as originally filed the pads are removable in order for the straps to be positionable behind them and against the rigid shell and to permit the harness (together with the latch members among others) to be stored in the cavity with the straps projecting out of the cavity along the rigid shell. Additionally, each latch member of the harness is connected to a shoulder strap and a corresponding belt strap. Consequently, the features of the belt straps of originally filed claim 2 which have been included in claim 1 as granted are unquestionably structurally and functionally closely linked to the further features of claim 2 as originally filed. Their omission thus results in an unallowable intermediate generalisation of the subject-matter of claim 2 as originally filed.

As regards feature (ii) the line of argument of the patent proprietor is not persuasive. The whole application as originally filed discloses slots in the cavity. The wording "slots" and "plurality of slots" are analogous in that two or more slots are meant.

Further, the slots are specified to permit the passage of all the straps, i.e. the shoulder straps and belt straps, and not at least one of them in order to provide the above mentioned function. A single slot formed in the storage cavity and permitting the passage of only one strap finds no basis in the application as originally filed. Consequently, the generalization of the subject-matter of claim 3 as originally filed goes beyond the content of the application as originally filed as well.

5. *Auxiliary request 2 - admissibility*

5.1 Auxiliary request 2 was not admitted into the appeal proceedings.

5.2 Auxiliary requests 2 was filed for the first time with the statement of grounds of appeal. The request attempts to seek a subject-matter for the patent in suit broader than that of the maintained version by omitting features of claim 2 as originally filed and including those of claim 3 as originally filed.

This request was to be regarded as an amendment under Article 12(4) RPBA 2020 since the impugned decision was not based on this request (see also Article 12(2) RPBA 2020).

5.3 Under Article 12(4) RPBA 2020 the Board has the discretion to admit such an amendment and it shall exercise the discretion in view of, inter alia, the complexity of the amendment, the suitability of the amendment to address the issues which led to the decision under appeal, and the need for procedural economy.

- 5.4 In the present case, claim 1 of auxiliary request 2 still suffered from the unallowable intermediate generalisation pointed out above regarding feature (i) since the features relating to the pads from claim 2 as originally filed had not been included to claim 1. Consequently, auxiliary request 2 was not suitable to address the issues that led to the decision under appeal and the Board exercised its discretion and did not admit the request into the appeal proceedings.
6. It follows from the above that the appeal of the patent proprietor is to be dismissed because the next request on file, auxiliary request 21, corresponds to the version of the patent maintained by the Opposition Division in its interlocutory decision.

*Appeal of the opponent*

*Auxiliary request 21 - version maintained by the  
Opposition Division*

7. *Amendments - Article 123(2) and (3) EPC*
- 7.1 The subject-matter of claim 1 of the auxiliary request 21 does not extend beyond the content of the application as originally filed and the amendments carried out to the European patent according to the auxiliary request 21 does not extend the protection it confers.
- 7.2 Claim 1 of the version maintained by the Opposition Division is a combination of granted claims 1, 2 and 3 wherein:
- the following feature has been added to feature M3:  
"projecting upwardly from a rear portion of said seat member (12) and";

- feature M5.3 has been deleted; and
- the wording "*at least one slot (34) include multiple*" has been replaced by "*harness storage cavity is formed with*".

The subject-matter of claim 1 corresponds to that of the combination of claims 1, 2 and 3 as originally filed and consequently meets the requirements of Article 123(2) EPC.

- 7.3 The opponent and intervener argued that according to the combination of originally filed claims 1, 2 and 3, the shoulder straps were supported from the rigid shell and not from the back rest as stipulated in current claim 1. The latter was only disclosed in claim 8 as originally filed in combination with other features. Omitting those features amounted to an inadmissible extension of subject-matter of the application as originally filed.

This is not persuasive for the following reasons. The difference in wording does not affect the subject-matter of the claim. According to claim 1, the back rest and the seat member are part of the same rigid shell. Consequently, stipulating that the shoulder straps are supported from the back rest, the seat member or the rigid shell is the same. A support from a part does not mean that the straps are directly fixed or connected to that specific part. Therefore, the previously mentioned three wordings actually have the same limitation. Further, even if one were to assume that the claim would be limited to a direct support or attachment of the shoulder straps to the back rest of the rigid shell, it is noted that the shoulders of a child sitting on the car seat will be located at a position corresponding to the back. Consequently, claim



1 as originally filed defined already this by specifying that the shoulder straps are supported by the rigid shell which has a portion defining the back rest of the seat.

The opponent further argued that the subject-matter of the claims of the auxiliary request 21 could under certain circumstances be understood more broadly than the interpretation according to which several slots must be provided on an upper and a lower side of the cavity that derived from the application as originally filed. This was allegedly a consequence of the unspecific wording "*cavity formed with slots*". Therefore, the maintained version of the patent in suit was based on an inadmissible extension of the originally disclosed subject-matter of the application as filed.

This reasoning cannot be followed. The subject-matter of claim 1 is based on claims 1 to 3 as originally filed alone. Said claims, specifically claim 3, contained the mentioned wording *expressis verbis*. Consequently, the subject-matter of claim 1 has a basis in the application as originally filed in that form irrespective of the interpretation of that wording. In any case, said wording is broader in interpretation to that alleged by the opponent (see below).

- 7.4 The opponent and the intervener shared the view that the amendment of claim 1 according to the version maintained extended the scope of protection of the granted European patent. This was a consequence of the replacement of the wording "*said harness storage cavity having at least one side provided with at least one slot*" with the wording "*said harness storage cavity is formed with slots*" in claim 1. In particular, the

interpretation of the term "side" of the cavity of the Opposition Division in the decision was not shared. The skilled person understood a "side" of the cavity as the edge area of the cavity, in particular the upper, lower, left or right edge area of the cavity, i.e. the outer perimetral contour edge of the rigid shell delimiting the opening giving access to the cavity defined by the shell. Since the amended claim 1 did no longer include the restriction to the side of the cavity, the scope of protection was extended.

The assessment of the Opposition Division is correct in this regard. A cavity as such is an empty space and consequently cannot have a slot. According to the wording of claim 1 such empty space is defined by the rigid shell which forms and delimits the cavity. The cover, however, is not specified as forming the cavity but merely is included in order to close the access to the cavity while providing a smooth support over it. It follows that the wording of claim 1 "said harness storage cavity is formed with slots" can only be interpreted as stipulating that the slots are found on the part of the rigid shell that forms the cavity and not in the cover.

Granted claim 1 specifies that the cavity has at least one side with at least one slot. Said at least one side remains however undefined. Said side is therefore any side of the part of the rigid shell that forms the cavity. A side of an object, as correctly pointed out by the Opposition Division, does not have to be an edge but can be a surface or any part of the wall of the rigid shell forming the cavity. The term is broader in meaning than that of the opponent and intervener. Accordingly, claim 1 as granted only specifies that the cavity, i.e. the part of the rigid shell forming it, includes one slot (but not necessarily only one),

because a slot will inevitably be formed in one side of the rigid shell forming the cavity. Amending claim 1 so that slots are formed in the cavity is consequently a limitation of the scope of protection defined by granted claim 1 because one slot only is no longer included and at least one of the slots from the plurality of slots will be in at least one side of the cavity.

8. *Sufficiency of disclosure - Article 83 EPC*

8.1 The patent as amended according to auxiliary request 21 discloses the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

8.2 The opponent and intervener essentially argued making reference to established case law of the Boards of Appeal that the patent did not sufficiently disclose the invention over the whole claimed range as regards the slots of the cavity since it only disclosed a single embodiment comprising four slots. Furthermore, the patent did not teach the skilled person how to carry out the invention in case the cavity would be arranged in a part other than the central part of the back rest of the rigid shell.

8.3 It pertains to established case law of the Boards of Appeal also that an invention is sufficiently disclosed if at least one way is clearly indicated enabling the skilled person to carry out the invention. Consequently, any non-availability of some particular variants of a functionally defined component feature of the invention is immaterial to sufficiency as long as there are suitable variants known to the skilled person through the disclosure or common general knowledge,

which provide the same effect for the invention (see Case Law of the Boards of Appeal of the EPO, 9th Edition, II.C.5.2).

8.4 The patent discloses at least a way of carrying out the invention according to claim 1 and consequently enables the skilled person to perform it. The intervener and the opponent misapply the Case Law of the Boards of Appeal they referred to since it relates to claimed inventions that reside in range of values where the associated effect may not be proven or plausible for large parts of that range. Moreover, the intervener and the opponent fail to identify which variants of the car seat of claim 1 would not be sufficiently disclosed and why the skilled person - bearing in mind his common general knowledge - would not be in a position to produce a seat as claimed in which the storage cavity would be located in part of the rigid shell other than the back rest, i.e. in the seat member.

9. *Evidence - availability of the public prior uses of the contested decision*

9.1 The child car seats of the type Triumph with the technical features established during the inspection before the Opposition Division and its manual A2, as well as child car seats of the type Apollo as documented in the pictures A17 and the manual A14 are prior art under Article 54(2) EPC.

9.2 The patent proprietor contested regarding the alleged public prior uses Triumph and Apollo merely their availability to the public. In particular, the Opposition Division erred in its evaluation of evidence since the availability of these public prior uses was

not proven beyond any reasonable doubt and the witness Mr. Dahle was not credible.

9.3 The specific arguments put forward by the patent proprietor in this respect in the statement of grounds of appeal were duly taken into consideration by the Opposition Division in its decision. The patent proprietor did not either refute the view of the Opposition Division that the seats Triumph and Apollo have been mass produced before the priority date of the patent in suit.

9.4 The reasoning of the Opposition Division in this respect is free of any error as regards the underlying facts and the evaluation of the evidence is also free of any contradiction.

9.5 Bearing in mind the principle of free evaluation of evidence which pertains to established case law of the Boards of Appeal (see Case Law of the Boards of Appeal of the EPO, 9th Edition, III.G.4.1) and applies before the European Patent Office (see also G 3/97, reasons point 5, G 1/12 reasons point 31), the Board concludes that there is no reason to overturn the evaluation of the evidence made by the Opposition Division in its decision in this respect.

10. *Novelty in view of public prior use Triumph - Article 54 EPC*

10.1 *Opponent appeal case on novelty*

10.1.1 The case of the opponent/appellant as regards the novelty attack against the subject-matter of claim 1 over the public prior use Triumph is complete and

consequently part of the appeal proceedings (Article 12(3) and (5) RPBA 2020).

10.1.2 With letter of 14 April 2022 the patent proprietor argued for the first time that the appeal case of the opponent was not complete with respect to the lack of novelty of the subject-matter of claim 1 in view of Triumph and had to be held as inadmissible. In particular, the statement of grounds of appeal of the opponent addressed only the features of claim 1 which the Opposition Division found as not being disclosed by Triumph. However, for an appeal to be successful, it was not sufficient to identify where the department of first instance incurred an error of judgement. The appellant had also in line with Article 12(3) RPBA 2020 to set out the facts, evidence and arguments why the decision under appeal must be reversed. Accordingly, the opponent had also to specify where all remaining features of claim 1 were disclosed by the child car seat Triumph in order for the outcome of the decision to be reversed.

10.1.3 According to Rule 99(2) EPC the appellant shall indicate in the statement of grounds of appeal the reasons for setting aside the decision impugned, or the extent to which it is to be amended, and the facts and evidence on which the appeal is based. Further, Article 12(3) RPBA 2020 stipulates that the statement of grounds of appeal and the reply shall contain a party's complete appeal case and set out clearly and concisely the reasons why it is requested that the decision under appeal be reversed, amended or upheld, and should specify expressly all the requests, facts, objections, arguments and evidence relied on.

- 10.1.4 In the present case the Opposition Division decided that the car seat Triumph did not anticipate a car seat according to claim 1 because it did not disclose the following features of claim 1:
- (a) "said shoulder straps ... being positionable ... to permit said harness to be stored in said harness storage cavity with said shoulder straps ... projecting out of said harness storage cavity ..."; and
  - (b) "said harness storage cavity is formed with slots to permit the passage of said shoulder straps ... from said harness storage cavity when said cover is closed and said harness buckle and said latch members are positioned within said harness storage cavity".

The opponent in the statement of grounds of appeal contested the decision of the Opposition Division in this regard and indicated the reasons why the findings of the Opposition Division were not correct and the decision under appeal should be amended (see points [100] to [170] of the statement of grounds of appeal of the opponent). Consequently, the statement of grounds of appeal of the opponent fulfills the requirements set out under Rule 99(2) EPC and Article 12(3) RPBA 2020, since the Opposition Division did not explicitly reason which other features the car seat Triumph did not disclose. Accordingly, the novelty objection over Triumph is part of the contested decision and also part of the current appeal proceedings because the opponent challenges the decision in that respect. If the patent proprietor further were to contest in view of the statement of grounds of appeal of the opponent that other features of claim 1 than those identified in the impugned decision were not disclosed by Triumph, these alleged facts belong to the patent proprietor's

complete appeal case and should accordingly be expressly specified in the reply to the statement of grounds of appeal of the opponent.

10.1.5 The Board consequently has no discretion to hold inadmissible the novelty attack for the subject-matter of claim 1 in view of Triumph, since according to Article 12(5) RPBA 2020 the Board disposes of that discretion only if that part of the submission of the opponent does not meet the requirements of Article 12(3) RPBA 2020.

10.1.6 The objection of the opponent regarding the admissibility of the objection of non-admissibility of the novelty attack over the public prior use Triumph under Article 13(2) RPBA 2020 as representing a late filed change of case of the patent proprietor can be left aside since the novelty attack forms part of the appeal proceedings.

10.2 *To the merits of lack of novelty over Triumph*

10.2.1 The subject-matter of claim 1 is new in view of the car seat Triumph as evidenced by the minutes of the taking of evidence by inspection (MI) recorded in the oral proceedings before the Opposition Division on 22 October 2019 and the owner's manual A2 (Article 54 EPC).

10.2.2 In particular, the car seat Triumph does not disclose at least:

- (c) a harness storage cavity allowing to position therein the harness buckle of the car seat; and
- (d) a harness storage cavity formed in the rigid shell with slots to permit the passage of the shoulder straps and belt straps when the cover is closed and



the harness buckle and latch members are positioned therein.

- 10.2.3 The opponent and intervener essentially argued that claim 1 merely stipulated that the storage cavity was broad in interpretation in that it only defined that the cavity was suitable from a size standpoint to receive the latch members and the harness buckle of the seat. This was the case in the car seat Triumph because the harness buckle and the latch members could be placed in the cavity formed by the seat shell as shown in the minutes of the inspection of the Triumph seat. In particular, the buckle could not reach the cavity when mounted to the seat. However, when the crotch strap was demounted from the seat by disassembling it as specified under points 7 to 9 of and as confirmed by Mr Dahle for the purposes of replacing a damage or defective crotch strap and/or buckle (see page 35 of the minutes), it could be placed and stored inside the cavity. Accordingly, the functionality of the cavity shown in the back rest of the Triumph seat was implicitly disclosed even though it was neither explicitly specified nor suggested. The contested patent was also in line with this interpretation since it disclosed specifically that the buckle could be inserted into the cavity either by lengthening the crotch strap or by disconnecting it from the seat shell.
- Furthermore, the cavity according to claim 1 was not only defined by the rigid shell alone but the cover formed part of it. Consequently, it was not excluded from the claims that the slots formed in the cavity were included in the cover as shown in the Triumph seat.

10.2.4 The Board disagrees. It derives from the wording of claim 1 that the car seat can store its buckle in the cavity of the rigid shell whilst remaining a car seat as claimed. It is noted, however, that the fact that the cavity of the Triumph seat was not intended or explained to store the buckle and the latches the way claimed does not mean that it does not anticipate the subject-matter claimed by way of its suitability to act that way, as long as the structure of the seat of the prior art does not exclude that suitability. However, the suitability of the Triumph seat requires a disassembly of the seat beyond what the user would do (panels and cover removable in order to change the position in height of the straps) in order to be able to place the buckle with the crotch strap into the cavity in the back rest of the shell. As pointed out by Mr Dahle such a demounting is carried out to replace a damaged or defective crotch strap with its buckle that requires a disassembling of the seat by removing its base (see point 7 of MI). Accordingly, the seat is disassembled, therefore not being a seat anymore, and then reassembled, however, with its crotch strap and buckle mounted in the same place for providing its function. The seat will not be remounted without the crotch strap and buckle at its place in order to function as a Triumph seat. Consequently, the car seat Triumph is not a car seat that includes a cavity in its rigid shell and has the functionality defined in claim 1. The seat Triumph does not make such functionality available to the public. If a user were to detach the crotch strap with the buckle and reassembling the seat without it, the seat would no longer be a Triumph seat as disclosed. This reasoning is in line with the findings in T 515/98 referred to by the patent proprietor (see point 3 of the reasons). According to the submissions of the opponent and intervener, the

Triumph seat device would exhibit all the features of claim 1 only if one of its essential components is left out (the crotch strap and the buckle) and thus its structure has been changed. The opponent and intervener thus implicitly acknowledged that it is not the Triumph seat in the form available on the market which is identical to the seat according to claim 1, but a modified version thereof which has been reassembled using the original components but one, so that the structure is different. Since the skilled person has to perform several acts (disassembly, omission of components, partial reassembly) on the Triumph seat in order to arrive at the seat according to claim 1, and these acts do not result from the normal use of the seat commercially available, the Board concludes that the subject-matter of claim 1 cannot be derived directly and unambiguously from the teaching of this prior use.

Additionally, the interpretation of the cavity formed in the rigid shell of the opponent and intervener is not correct. As laid out above under point 7.4 the cavity is defined by the rigid shell and not by the cover such that the slots are found on the part of the shell of the seat forming the cavity and not on the cover. Since none of the belt straps passes through slots formed on the cavity of the Triumph seat, but only through slots formed in the cover, feature (d) is not disclosed either.

10.2.5 The Board further notes that the reasoning of the Opposition Division regarding extrinsic and intrinsic features by referring to G 1/92 (see point 3 of the reasons for the opinion) and the corresponding passage of the Guidelines for Examination is flawed. Said decision of the Enlarged Board of Appeal clarifies that

extrinsic characteristics of a commercially available product, which are only revealed when the product is exposed to interaction with specifically chosen outside conditions, e.g. reactants or the like, in order to provide a particular effect or result or to discover potential results or capabilities, point beyond the product per se as they are dependent on deliberate choices being made and consequently, cannot be considered as already having made available to the public. In the present case and as explained above, the question is in contrast whether Triumph seat in itself is such that its cavity is suitable for functioning the way claimed as regards the storage of its buckle and latch members and not to any characteristic of such seat when exposed to interaction with specifically chosen outside conditions.

10.3 Since claim 7 of auxiliary request 21 also includes the above mentioned differentiating features, its subject-matter is also new over the public prior use Triumph.

11. *Remittal to the Opposition Division*

11.1 The impugned decision on the maintenance of the patent in amended form is based on the following objections as regards novelty and inventive step:

- novelty over the public prior use Triumph; and
- inventive step over the following combinations of prior art:
  - D1 + D2;
  - D2 + D1; and
  - A8 + common general knowledge or D2.

With the intervention two additional alleged public prior uses have been submitted (public prior use Odyssey and public prior use Evolva), as well as

documents D12 to D21. Documents D18 and D20 are US patent P-documents and therefore only relevant if the priority of the contested patent is not validly claimed. The validity of the priority was contested by the intervener and by the opponent. Moreover, new objections on novelty (over public prior use Apollo and Odyssey) and inventive step based on new evidence have been raised by the intervener which were not part of the opposition proceedings leading to the contested decision, in particular lack of inventive step for the subject-matter of claim 1 in view of the following combinations of prior art:

- Odyssey with Apollo, Evolva, D15 or D19;
- Apollo with common general knowledge (D12-D15) and Odyssey;
- Evolva with common general knowledge (D13, D15 or D17), Triumph, Apollo or D8;
- Triumph with common general knowledge;
- D18 with common general knowledge; and
- D20 with common general knowledge (D12-D15, Odyssey); and

for the subject-matter of claim 7 in view of:

- D20 with common general knowledge;
- Apollo with Evolva, D2, D1, D17 or D20;
- Evolva with common general knowledge, D1 or D2; and
- D2 with Evolva and D1.

11.2 Under Article 111(1) EPC the Board of Appeal may either decide on the appeal or remit the case to the department which was responsible for the appealed decision.

Under Article 11 RPBA 2020 the Board may remit the case to the department whose decision was appealed if there are special reasons for doing so.

11.3 The Board holds that such special reasons are immediately apparent in the present case in view of the new legal and factual situation arising from the intervention, the primary purpose of the appeal proceedings to be a judicial review of the decision of the first instance proceedings, and the principle of procedural fairness for the patent proprietor.

Under these circumstances and further considering that all the parties to the current appeal proceedings requested a remittal, the Board considers it appropriate to remit the case to the Opposition Division for further prosecution.

## **Order**

### **For these reasons it is decided that:**

1. The decision under appeal is set aside.
2. The case is remitted to the Opposition Division for further prosecution.

The Registrar:

The Chairman:



A. Vottner

G. Pricolo

Decision electronically authenticated