



FEDERAL SUPREME COURT
IN THE NAME OF THE PEOPLE
JUDGMENT

X ZR 27/20

Pronounced on:
January 25, 2022
Schönthal
Judicial Employee
as Clerk of the
Court Registry

in the patent nullity case

At the oral proceedings on January 25, 2022 the X. Civil Senate of the Federal Supreme Court by the Presiding Judge Dr. Bacher, the Judge Dr. Grabinski, the Judges Dr. Kober-Dehm and Dr. Marx, and the Judge Dr. Rensen

has ruled:

The appeal of the plaintiff against the judgment of the 5th Senate (Nullity Senate) of the Federal Patent Court of January 21, 2020 is dismissed.

The costs of the appeal proceedings incurred up to September 17, 2020 are set off against each other. The costs incurred for the appeal proceedings thereafter shall be charged to the plaintiff.

By law

Facts of the Case:

1 The defendant is the owner of European Patent 2 161 160 (patent in suit), which was granted with effect for the Federal Republic of Germany, was filed on September 2009, claiming a Norwegian priority of September 2008, and relates to a child restraint system. Claim 1, to which ten further claims are referred back, reads in procedural language:

A child restraint system (1) for use in a vehicle, said system comprising a base (2) having a lower surface resting on a sitting portion of a vehicle seat (13), where the base (2) is provided for engagement with anchorage means (12) in the vehicle seat (13), thereby providing a pivot connection between the base (2) and the anchorage means (12), a child seat (3) connected to the base (2), wherein the base (2) further comprises an impact absorbing mechanism (7) in the form of at least one Isofix connector (4) and at least one blocker element (9), characterized in that the at least one Isofix connector (4) is arranged in a void (8) in the base (2), and the blocker element (9) is arranged into a recess (14) in the base (2), such that a stud (11) of the blocker element (9) will protrude through the recess (14) into the void (8), the stud (11) abutting against and locking the Isofix connector (4) under normal utilization of the child restraint, thereby preventing the at least one Isofix connector (4) to be moved into the base (2), the blocker element (9) being brought out of abutment with the Isofix connector (4) under abnormal utilization of the child restraint, thereby allowing the ISOFIX connector (4) to slide into the base (2).

2 The plaintiff claimed that the subject matter of the patent in suit was not patentable. The defendant has defended the property right as granted and with six auxiliary requests.

3 The Patent Court declared the patent in suit invalid insofar as its subject matter extended beyond the version defended by auxiliary request 4, and dismissed the action in all other respects. In its appeal, the plaintiff continues to pursue its request for a full declaration of invalidity. The defendant opposes the appeal and defends the property right in the alternative with seven auxiliary requests modified compared to the first instance. It initially also filed an appeal, but later withdrew it.

Reasons for Decision:

4 The admissible appeal is unfounded.

5 I. The patent in suit concerns a child restraint system.

6 1. According to the description, conventional child restraint systems are
fastened with a lap belt and possibly a diagonal safety belt. Furthermore, there are
standardized securing systems in the form of Isofix connectors which have loops
as anchorage means (para. 6).

7 In the case of Isofix connectors, a rotational movement of the child restraint
around the anchorage points could occur in the event of an accident (para. 7). In
the event of an impact from behind, the restraint would be moved upwards, as
shown schematically in Figure 3 below. The relevant regulations stipulate that the
child's head may not be moved above a more closely defined height limit H during
such a movement (para. 34).

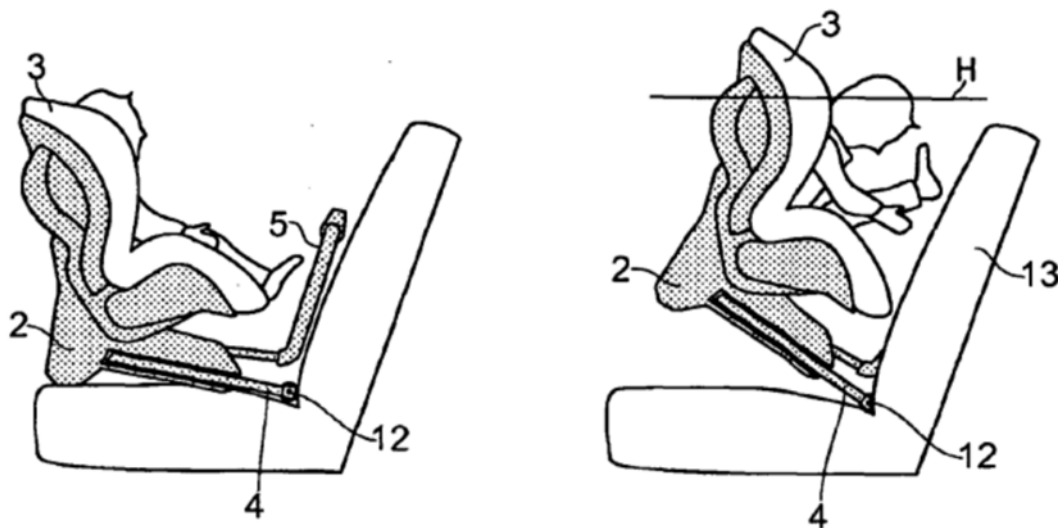


FIG. 3

- 8 2. Against this background, the patent in suit concerns the technical problem of providing a child restraint arrangement which offers good protection in the event of accidents and is easy to install in the vehicle.
9. 3. To solve this, the patent in suit proposes in claim 1 a child restraint system, the features of which can be divided as follows (changes from the granted version are highlighted):
0. The child restraint system (1) is for use in a vehicle and comprises a base (2).
 1. The base has a lower surface resting on a sitting portion of a vehicle seat (13).
 2. The base (2) is provided for engagement with anchorage means (12) in the vehicle seat (13), thereby providing a pivot connection between the base (2) and the anchorage means (12).
 3. A child seat (3) is connected to the base (2).
 4. The base (2) further comprises an impact absorbing mechanism (7) in the form of at least one Isofix connector (4) and at least one blocker element (9).
 - 4.1 The at least one Isofix connector (4) comprises a first end with a locking portion for engagement with the anchorage means (12) in the vehicle seat (13) and a second end opposite the locking portion.
 5. At least one Isofix connector (4) is arranged in a void (8) in the base (2).
 6. The blocker element (9) is arranged in a recess (14) in the base (2), such that a stud (11) of the blocker element (9) will protrude through the recess (14) into the void (8).
 - a') Under normal utilization of the child restraint, the stud (11) abuts against and locks the second end (17) of the at least

one Isofix connector (4), preventing the at least one Isofix connector (4) from moving into the base (2).

- b) In the case of abnormal utilization of the child restraint, the blocker element (9) is released from the anchor with the Isofix connector (4), allowing the Isofix connector (4) to slide into the base (2).

10 4. Some features require further consideration.

11 a) Of central importance is the blocker element (9) provided in feature 4. According to feature 6, this is arranged in a recess (14) formed in the base (2). It has a stud (11) which protrudes into a void (8) also formed in the base and there abuts against the end (17) of an Isofix connector (4) arranged therein.

12 According to feature 6 a', this arrangement prevents the Isofix connector (4) from being moved beyond the anchor point into the base during normal utilization.

13 In the case of abnormal utilization, on the other hand, the blocker element is released from the anchor in accordance with feature 6 b, so that the Isofix connector (4) can slide further into the base. After release from the anchor, the base is first moved in the direction of the vehicle seat, as shown in Figure 4 reproduced below.

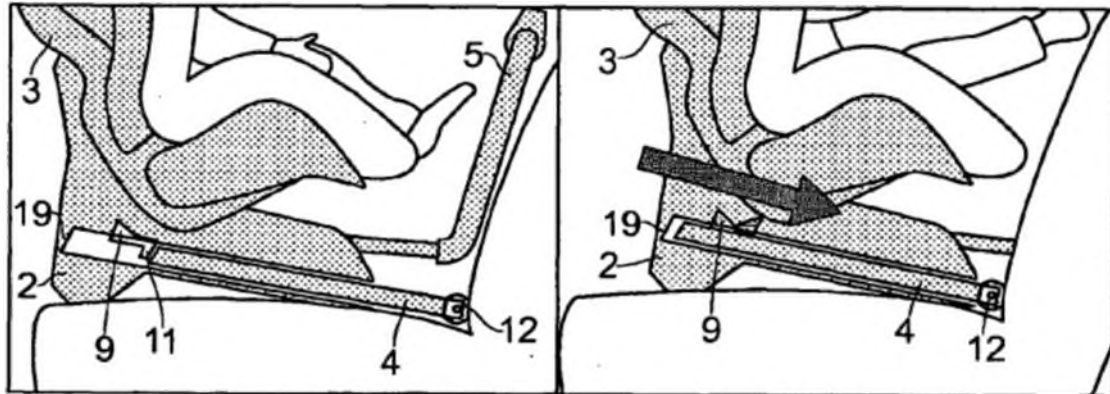


FIG. 4

14 Only when the Isofix connector (4) has completely penetrated the void (8) does the restraint begin a rotational movement. Less energy is available for this rotational movement because part of the energy supplied by the impact is absorbed by the blocker element and the movement of the base (2) towards the vehicle seat (para. 35).

15 The penetration of the Isofix connector (4) into the void (8) also results in the lever arm, i.e. the distance between the rotational axis and the end of the restraint facing away from it, being shortened. As the parties agree in this respect, this does not in itself lead to an absorption of the energy introduced by the impact. As the defendant also does not doubt, absorption can only occur if energy has to be expended for the movement that leads to the shortening of the lever arm, whether to release the blocker element (9) from the stop with the Isofix connector, to overcome friction or in some other way.

16 b) In which way and to what extent the energy introduced by the impact is absorbed is not specified in claim 1.

17 aa) However, from the specification in feature 4 that the Isofix connector (4) and the blocker element (9) must form an impact absorbing mechanism (7),

it can be inferred that a certain amount of energy must be absorbed.

18 Contrary to the view of the response to appeal, the fact that the wording of feature 4 only provides for impact absorption, but not energy absorption, does not lead to a different understanding.

19 According to the description of the patent in suit, the function of the impact absorbing mechanism is to partially absorb the impact energy resulting from the collision (para. 12). Which other impact effect could be considered as the object of absorption instead is neither shown nor otherwise apparent.

20 bb) Contrary to the opinion of the appeal, however, it cannot be inferred from these specifications in which way the energy absorption has to take place.

21 However, it follows from the connection with feature group 6 that energy absorption must take place during or after the release of the blocker element (9) from the abutment with the Isofix connector (4).

22 However, as has been pointed out above, energy absorption at this stage can be considered in at least two ways, namely due to the energy required to release from the abutment or due to the energy required to overcome a frictional force during the subsequent penetration of the Isofix connector (4) into the void (8). Claim 1 does not specify one of these possibilities, but also does not exclude any of them.

23 cc) The extent of energy absorption is also not specified.

24 The regulations mentioned in the description, according to which the child's head may not be moved beyond a certain height, may argue for the need to absorb at least enough energy to avoid a movement prohibited thereafter.

25 However, claim 1 contains no reference to such provisions, nor to other
parameters relevant to the extent of the rotational movement, such as the size and
weight of the child and the restraint.

26 c) The second end (17) of the Isofix connector (4), against which the stud
(11) must abut in normal utilization in accordance with feature 6 a', is, as the Patent
Court rightly assumed, the front side of the Isofix connector (4) facing away from
the vehicle seat and the anchorage means (12) arranged therein.

27 aa) This understanding is supported by the wording of feature 6 a'.

28 As the appeal rightly asserts in its approach, an unspecified end area could
also be regarded as the end of the connector when viewed in isolation. However,
the requirement that the stud (11) must abut against the end and the requirement
formulated in feature 6 b that the Isofix connector (4) can slide into the base (2) after
this abutment has been released, indicate that the end piece must abut against the
front side of the Isofix connector (4) as seen in the direction of movement, i.e. the
front side.

29 bb) This understanding is consistent with the embodiment example
described in the description and Figures 4 and 5.

30 From Figure 4 already reproduced above, it can be seen that the stud (11)
abuts against the front side of the Isofix connector (4) facing away from the vehicle
seat and anchorage means (12). To explain this example, the description uses the
same words (abutting against the end) found in feature 6 a' (para. 35, lines 25 to
28).

31 The same formulation is found in the description of the details of the blocker element (9) used in this embodiment shown in Figure 5 reproduced below.

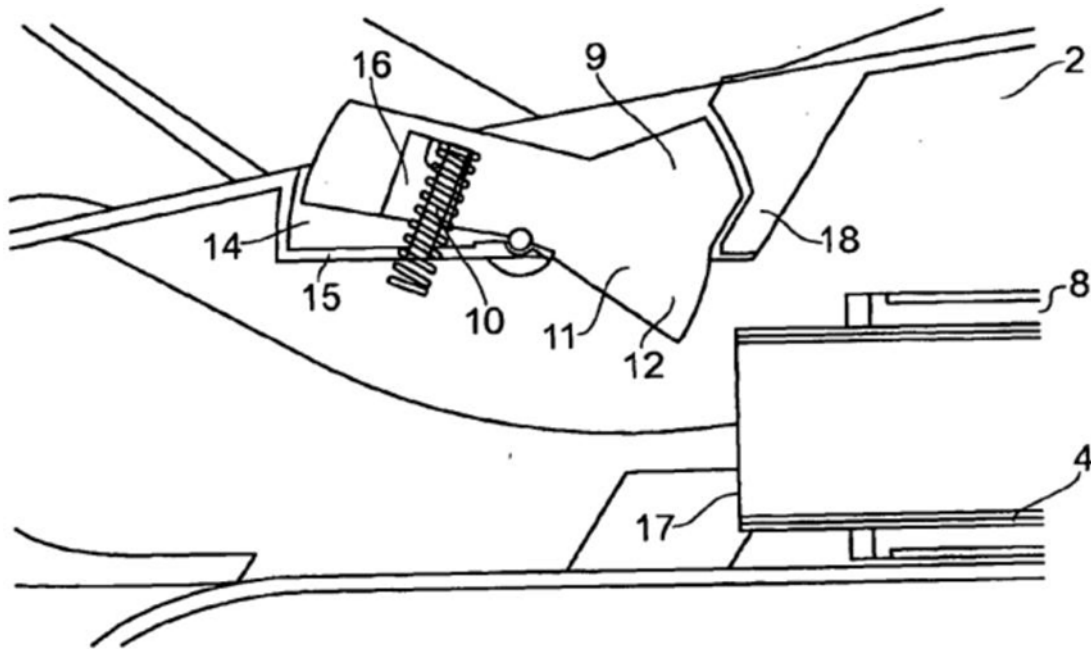


FIG. 5

32 In this embodiment, a portion (12) of the stud (11) abuts or is in contact with the end of the Isofix connector (4) (para. 36, lines 8 to 10).

33 Whether the connection between the stud (11) and the end of the Isofix connector (4) mentioned in this context could also be established in a way other than by abutting against it does not require a final decision. Even if the question were to be answered in the affirmative, it would follow from the fact that feature 6 a' provides for a mandatory abutting against the end that other embodiments do not belong to the subject-matter of the claim.

34 cc) No different conclusions are drawn from granted claims 7 and 8, which
provide for a plurality of recesses on one side of the Isofix connector (4) and a
locking portion formed thereon, respectively.

35 These claims can be reconciled without contradiction with the granted version
of claim 1. According to feature 6 a of the granted version, the stud can in principle
abut at any point of the Isofix connector.

36 On the other hand, the granted claims 7 and 8 would contradict the
interpretation of feature 6 a' as set out in the version of the judgment under appeal.
However, this version precisely does not provide for comparable subclaims.

37 (d) The distinction between normal and abnormal utilization underlying
features 6 a' and 6 b shall be made on the basis of the purpose for which the
restraint is intended.

38 Normal utilization includes, in any case, mounting of the device in the vehicle
in accordance with the specifications in the operating instructions and driving
situations as those that typically occur. Abnormal utilization in any case includes
force effects such as typically occur in the event of a collision from behind.

39 Claim 1 does not contain any further specifications, for example by specifying
certain limit values for the force effect or other relevant parameters. The details are
left to the discretion of the person skilled in the art. In this respect, claim 1 also
does not necessarily provide for orientation to technical standards or other
regulations.

40 II. The Patent Court gave the following main reasons for its decision,
insofar as those are of interest for the appeal proceedings:

41 The subject matter of the patent in suit would not go beyond the content of the
original version of the application (B4). The latter would disclose a child restraint
system whose impact absorption mechanism reacted differently in normal and
abnormal utilization. The use of the term "normal utilization of the child restraint"
instead of the term "normal driving conditions of the vehicle" provided for in claim 1
of the application was not accompanied by a substantive change. The terms were
used synonymously in the application. To the extent that the granted claim, in
contrast to claim 1 of the original application, would not specify that the child seat
and base were "releasably" connected to each other, it was not an essential feature
of the invention. The one-sided locking of the Isofix connector (4) during normal
utilization was described in the application not only for the case where the Isofix
connector was fully extended, but for all conceivable embodiments.

42 The invention was also disclosed in such a way that a person skilled in the art
- a mechanical engineer with knowledge of vehicle technology and several years of
professional experience in the design of child seats and the development of motor
vehicle-specific safety systems - could carry it out. In a normal driving situation,
forces that usually occur, including usual braking decelerations and acceleration
processes, would be acting. An abnormal utilization would describe an accident
situation due to an impact from behind. The prevailing forces in each case would be
known from the general prior art. The skilled person would also recognize that the
disclosed mechanism reduces the impact energy. The claim does not require that
there be complete absorption. The impact mechanism must ensure that the blocking
element blocks the Isofix connectors in a normal driving situation, while the Isofix
connectors are released in an abnormal driving situation. The person skilled in the

art would receive sufficient information from the patent specification in dispute to design the impact mechanism accordingly with its general expertise.

43 The child restraint system according to claim 1 as amended by auxiliary claim 4 was also patentable.

44 The German patent specification 20 2007 012 746 (BB2) was not anticipating the subject-matter of claim 1. It would disclose features 0, 1, 2, 3, 4 and 5 and 6 b, but not feature 6 a'. The locking assemblies described in BB2 were not connected to the end of the Isofix connectors. These interacted with several recesses in the Isofix connector in order to be able to fix the child seat in a certain position on the vehicle seat. It was also not obvious to modify the locking group according to feature 6 a'. Even if there had been a suggestion in the prior art or in the expert knowledge to have the blocking element interact with the end of the Isofix connectors, the embodiment disclosed in BB23 with a locking system would have prevented the skilled person from taking this step.

45 Against this background, no other assessment was possible on the basis of the international application WO 2007/020350 (BB5). With regard to features 4.1 and 6 a', this application would not provide any further disclosure than BB2.

46 The subject-matter of claim 1 was also not anticipated by the pre-used child seat of the mark R. (BB25). This child restraint likewise showed a spring-loaded snap-in element which locked the child seat in various positions, but did not cooperate with the end of the Isofix connector.

47 The other citations could also not provide a corresponding suggestion, either on their own or in combination.

48 III. This assessment withstands appellate review.

49 1. Contrary to the plaintiff's view, the invention is disclosed with the
examples described in the patent in suit so clearly and completely that a person
skilled in the art can carry it out.

50 a) According to the case law of the Federal Supreme Court, sufficient
disclosure for practicability is given if the person skilled in the art is able, without
inventive effort and without unreasonable difficulties, to practically implement the
teaching of the patent claim on the basis of the overall disclosure of the patent
specification in combination with the general knowledge of the art on the filing or
priority date in such a way that the desired success is achieved (Federal Supreme
Court (BGH), judgment of February 3, 2015 - X ZR 76/13, GRUR 2015, 472, para.
36 - Stabilisierung der Wasserqualität). Accordingly, it is sufficient if the person
skilled in the art can supplement incompleteness without his own inventive effort
and, if necessary, obtain clarity with the aid of orienting experiments (BGH,
judgment of July 13, 2010 - Xa ZR 126/07, GRUR 2010, 916, 918 -
Klammernahtgerät).

51 b) The Patent Court correctly applied these principles to the patent in suit.

52 aa) The Patent Court rightly considered it irrelevant whether the energy
introduced by an impact can be absorbed sufficiently by means of a spring, such
as is used in the embodiment shown in Figure 5, and possibly by means of frictional
forces, to prevent the restraining device from pivoting beyond the limits provided
for in the relevant regulations.

53 As has already been explained above, claim 1 does not mandatorily provide
for a minimum level of absorbed energy nor for compliance with specific regulations
or limit values. It is therefore sufficient for practicability if the blocker element (9)
can be designed without inventive step in such a way that the stop with the

Isofix connector (4) is released when forces occur which go beyond normal utilization in the sense set out above.

54 The Patent Court answered this question in the affirmative. The appeal does not point to any specific circumstances which cast doubt on the completeness or correctness of the factual findings on which this assessment is based.

55 The objection raised by the appeal that the patent in suit merely discloses in Figure 4 that the blocker element must release in the event of an impact, but does not show what force threshold must be reached for this, is irrelevant. As stated above, the determination of this limit is left to the discretion of the person skilled in the art anyway.

56 bb) It is not necessary to make a final decision as to whether the arrangement shown schematically in Figure 5 allows the blocker element to move upwards when a force is applied by the Isofix connector or whether the forces applied can only lead to a clockwise rotation of the blocker element.

57 Even if this question were to be answered in the latter sense, the skilled person would have the possibility of achieving the desired direction of movement by a deviating design and arrangement of the blocker element.

58 The plaintiff also does not doubt that an upward swerve could be made possible, for example, by arranging the axis of rotation at a different location. The fact that the patent specification does not show such an arrangement is irrelevant because it is sufficient that it can be determined by recourse to general knowledge and, if necessary, by tests.

59 In addition, the description contains the indication that the stud can be
designed in such a way that it breaks and in this way allows the Isofix connector
to slide in (para. 22). This also indicates a feasible way of doing this.

60 cc) Likewise, the Patent Court rightly decided that it is not necessary for an
executable disclosure to define exact values for the demarcation between normal
and abnormal use.

61 The demarcation between normal driving and use situations and accident
situations, as shown above and also taken as a basis by the Patent Court, is
sufficient to demarcate the two features. The fact that it is not possible on this basis
to determine in advance with mathematical precision whether certain embodiments
belong to the protected subject matter does not prevent an executable disclosure.

62 dd) Against this background, contrary to the opinion of the appeal, it is not
necessary to obtain an expert opinion.

63 The opinion of the appeal, which deviates from the assessment by the Patent
Court, is essentially based on different legal conceptions. The assessment of these
questions is not incumbent on an expert but on the court called upon to decide.

64 2. The Patent Court also rightly concluded that the subject-matter of claim
1 does not go beyond the content of the original application.

65 a) According to the case law of the Senate, the principles of novelty
examination apply to the assessment of whether the subject matter of a patent
claim extends beyond the original application documents.

66 According to this, what matters is whether the person skilled in the art can
directly and unambiguously infer the technical teaching designated in the claim

from the original documents as a possible embodiment of the invention (BGH, judgment of December 16, 2018 - X ZR 89/07, BGHZ 179, 168, para. 25 - Olanzapin). If the technical instructions described in the original application documents by means of an example of an embodiment or in any other way present themselves to a person skilled in the art as an embodiment of the teaching more generally claimed by the patent and if this teaching can be taken directly and unambiguously from the application as belonging to the invention applied for, this does not go beyond the content of the application (BGH, judgment of July 19, 2016 - X ZR 107/12, BGHZ 200, 63, para. 25 = GRUR 2014, 542 Kommunikationskanal).

67 b) On the basis of this standard, the Patent Court correctly decided that an impermissible extension did not result from the fact that the term "abnormal driving conditions of the vehicle" used in the original application documents was replaced by "abnormal utilization of the child restraint" in the granted version.

68 As the Patent Court correctly pointed out, the application (B4, para. 11, lines 40 to 47) already indicates - as does the patent in suit (para. 12, lines 42 to 49) - that the blocker element locks the Isofix connector during normal utilization of the restraint. This expression may not be a complete synonym to the term normal driving conditions used elsewhere (B4, para. 34, lines 23 to 26; patent in suit, para. 35, lines 25 to 28) because it includes not only driving situations but also other situations such as mounting the restraint in the vehicle. However, it is sufficiently clear from the fact that already in the application, in largely the same context, the one expression is used in one place and the other expression in another place that both requirements are disclosed from the beginning as belonging to the invention.

69 c) The Patent Court also correctly decided that the original documents did
not disclose only a detachable connection between the child seat and the base as
belonging to the invention.

70 As the Patent Court correctly pointed out, it does not follow from the
application that the detachability of the connection between the child seat and the
base is of decisive importance for the invention. The appeal does not show any
indications which could lead to a different assessment.

71 Contrary to the opinion of the appeal, the Patent Court did not take a
retrospective view in this respect. Rather, it correctly focused on the disclosure
content of the application.

72 The fact that a releasable connection is described in the description of the
application as being particularly advantageous because it enables simple use in
different vehicles is not significant in this context, because it is not apparent that
this aspect is technically related to the possibilities and effects of a locking within
the meaning of features 4 to 6.

73 d) Contrary to the opinion of the plaintiff, the subject-matter of the patent
in suit does not go beyond the content of the originally filed documents because
feature 6 a' provides for locking in one direction only.

74 Just as in the patent in suit (para. 35, lines 34 to 36), it is also stated in the
application in the description of the embodiment example shown in Figure 4 that
the release of the blocker element (9) from the abutment with the Isofix connector
(4) allows the Isofix connector (4) to penetrate into the void (8) (B4 para. 34, lines
32 to 34). Whether and under what conditions a movement of the Isofix connector
(4) in the other direction is possible is not clear from this.

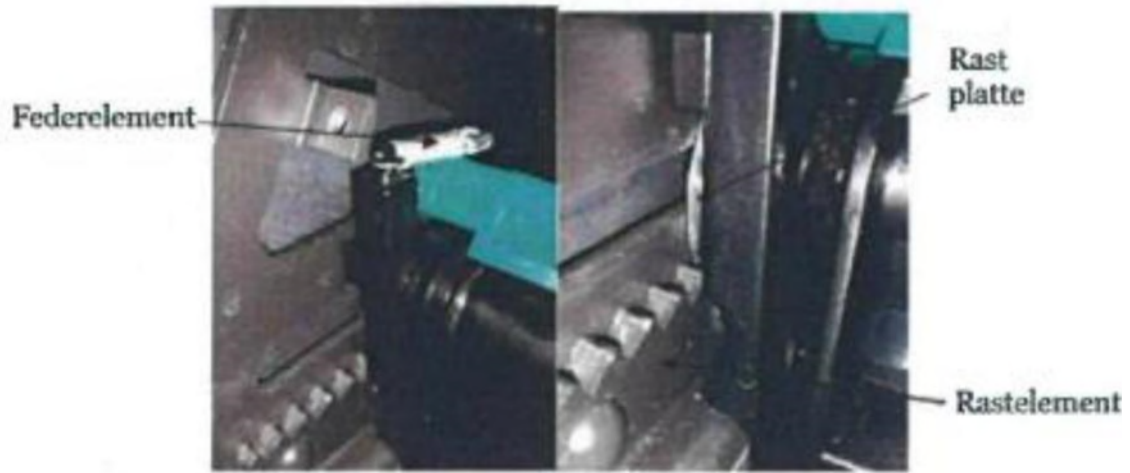
75 Against this background, it cannot be inferred from the statements preceding the aforementioned passages, according to which a movement of the Isofix connector (4) relative to the base (2) is prevented during normal utilization (B4 para. 34, lines 23 to 26), that this locking must necessarily act in both directions. The illustration in Figures 4 and 5, in which the end face of the Isofix connector (4) abuts against the stud (11), does not indicate in any case that this can also prevent the Isofix connector (4) from being pulled out. The application does not mention any additional locking means in this context.

76 The subject-matter of claim 1 as amended in the judgment under appeal is new.

77 a) The said subject matter is not anticipated by the claimed prior use of the child seat "Römer Duo Plus" (BB25), which is also the subject of a report in issue 6/2007 of the magazine test (BB26). Therefore, it can remain open whether this child seat belongs to the state of the art.

78 aa) BB25 discloses a child seat with an Isofix attachment (BB26, p. 80).

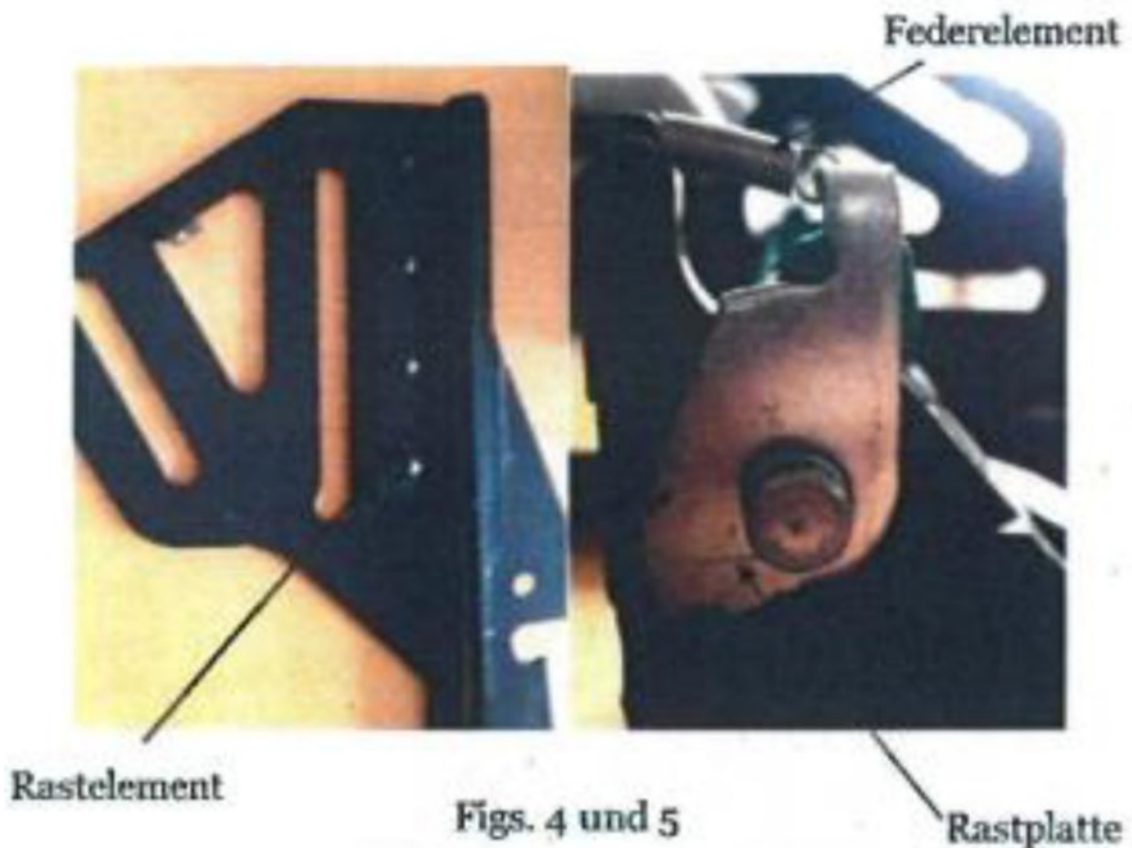
79 As can be seen from the photographs reproduced below, the seat has a base on which a rack with a plurality of teeth is arranged.



Figs. 6 und 7

80

A pivoting latch belonging to the Isofix assembly engages in this toothed rack (referred to as the snap-in element in the legend to photograph no. 7), which is referred to as the snap-in plate in the legends to photograph no. 6 reproduced above and photograph no. 5 reproduced below.



81 bb) Thus, as the defendant also does not doubt, features 0, 1, 2, 3, 4 and
82 5 are disclosed.

83 cc) It can be left open whether features 4.1 and 6 b are also anticipated. In
84 any case, features 6 and 6 a' are not disclosed.

85 (1) The pivoting and spring-loaded latch can indeed be regarded as a
86 blocker element within the meaning of the patent in suit. However, in deviation from
87 feature 6, it is not arranged in a recess of the base, but on the Isofix assembly
88 itself.

89 (2) Nothing else applies to the toothed rack.

90 The toothed rack may also be considered a blocker element within the
91 meaning of the patent in suit because it prevents movement of the Isofix assembly

into the base under normal circumstances. However, it is not mounted in a recess in the base in such a way that only a stud belonging to it protrudes into the void for the Isofix assembly. Rather, it is completely accommodated in this void.

86 In addition, the toothed rack does not abut against the front side of the Isofix assembly, but against the latch mounted adjacent to the front side. While this is substantially flush with the Isofix assembly. However, this is not sufficient to disclose feature 6 a' because, according to this feature, the blocker element must abut against the connector itself, not just against a component attached thereto specifically for the purpose of locking.

87 Feature 6 a' is also not implemented because the toothed rack is arranged in such a way that the child seat can be moved backwards against the backrest of the car seat with little effort; the engagement between the toothed rack and the latch only has to be released to pull it out.

88 b) The subject matter of claim 1 as amended in the judgment under appeal is also not fully disclosed by European patent application 1 900 567 (BB16).

89 aa) BB16 discloses a child seat that can be attached to the rear seat of a vehicle using Isofix connectors.

90 The device comprises a base (2) consisting of two portions (3, 4) which can be moved telescopically relative to each other. These are shown in Figure 3 reproduced below.

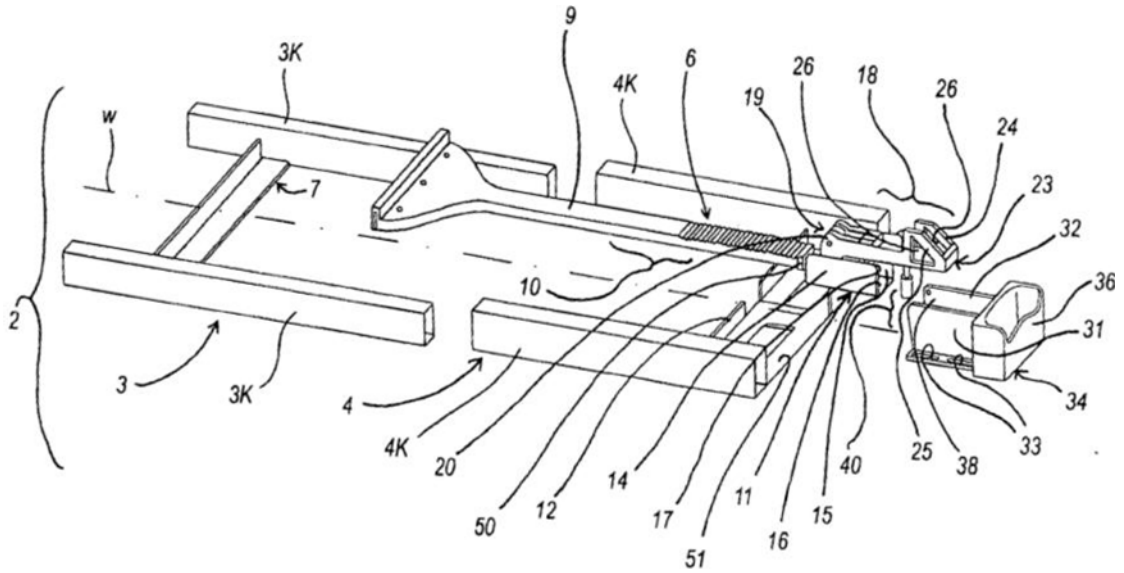


Fig. 3

91 The portion (3) comprises the Isofix connectors for attachment to the vehicle seat. Portion (4) supports that part of the device in which the child is placed (para. 18). The two portions are slidably connected to each other by a rack (6) attached to portion (3) and a component (5) also provided with a toothed part (70) (para. 19).

92 A pivoting lever (18) is provided at the end of the component (5). This is arranged in a compartment (17) which is bounded by two lateral flanges (14, 15) (para. 20). The operation of this lever is shown in Figures 4 to 6 reproduced below.

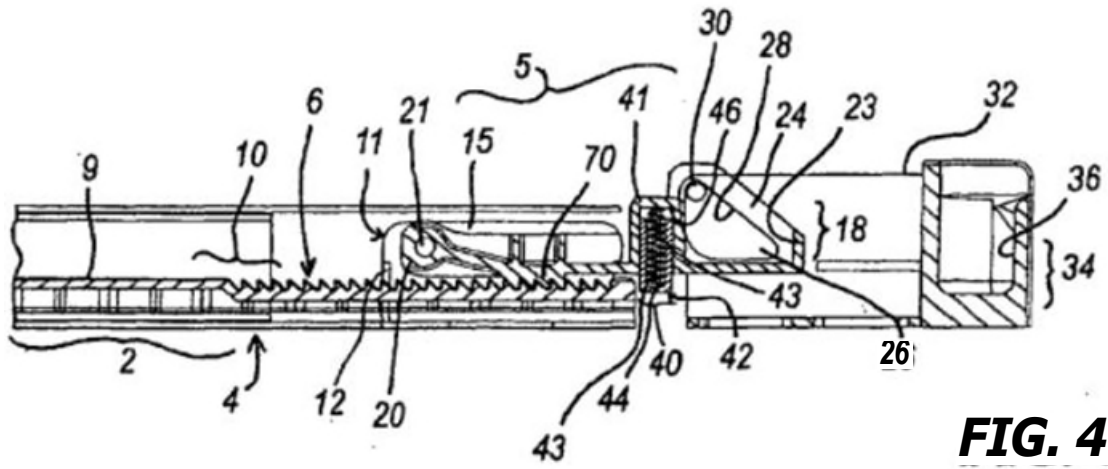


FIG. 4

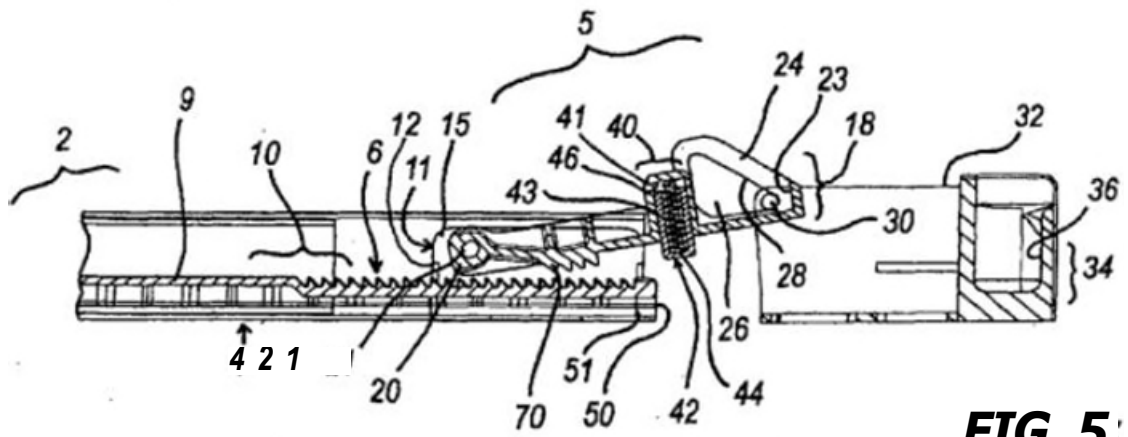


FIG. 5

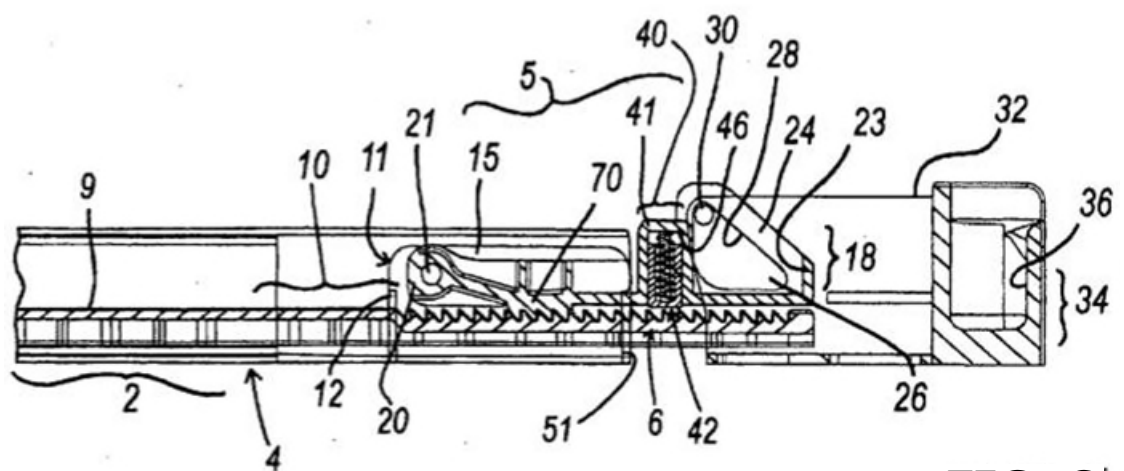


FIG. 6

93 In the position shown in Figure 4, the telescope connection is completely extended. Further extension is prevented by the shape of the teeth, and telescoping is prevented by the stop element (40) formed on the lever (18), which in this position rests against the end face of the rack portion (6). This position is used for fastening the device to the vehicle seat (para. 23).

94 By pulling on a handle (34), the lever (58) can be pivoted upwards by means of a pin (42), as shown in Figure 5. In this position, the components (3, 4) can be pushed together. In the further course, the stop element (40) rests on the rack (6), as shown in Figure 6. Due to the shape of the teeth, the two components (3, 4) can be pushed further together even when the lever (58) is in the lowered position. This makes it possible to move the seat toward the back rest. Pulling them apart again, on the other hand, is prevented by the shape of the teeth (paras. 24 to 26).

95 bb) Features 0, 1, 2, 3, 4.1 and 5 are thus disclosed.

96 cc) Contrary to the view of the defendant, feature 6 is also disclosed.

97 The lever (18) acts as a blocking element because it prevents movement of the Isofix connectors (3). The compartment (17) in which it is located forms a recess within the meaning of feature 6. The rack portion (70) connected to the lever is an extension piece that projects into the space for the Isofix connectors (3).

98 dd) On the other hand, the combination of features 6 a' and 6 b is not disclosed.

99 (1) In the position shown in Figure 4, feature 6 b is not realized.

100 As the appeal correctly argues in its approach, this item can be counted as normal utilization, because this also includes the intended installation of the device in the vehicle.

101 However, as rightly argued in the response to appeal, BB16 does not disclose that the stop element (40) is configured in such a way that the abutment against the front side of the Isofix connectors (3) that exists in this position is released when an accident occurs.

102 It can be assumed with the appeal that an accident or other abnormal utilization can also occur in this position, although it is not intended for use while driving. Even under this premise, however, it is not clear from BB16 that the stop element (40) is lifted even without pulling on the handle (34) when the two components (3, 4) are pressed against each other by a sufficiently large force.

103 The private report of expert J. (BB54), according to which the snap-in mechanism of the child seats examined there can already be overcome by an adult of below-average strength (p. 24), does not show anything to the contrary, if only because these examinations do not relate to the seat disclosed in BB16 and because the locking mechanism in the position shown in Figure 4 is not effected by racks engaging with one another, but by a stop element (40) specially configured for this purpose. It may not be impossible to configure such a stop element in such a way that it no longer fulfills its function when subjected to forces such as occur in an accident. However, an unambiguous and direct disclosure of this mode of operation would

require that it be expressly designated in BB16 or that it typically occurs when the teaching disclosed in BB16 is reworked. Neither of these requirements is fulfilled.

104 (2) In the position shown in Figure 6, feature 6 a' is not realized.

105 As already explained above, the two components (3, 4) can be pushed together in this position. The two racks merely prevent them from being pulled apart.

106 c) The German utility model 20 2007 012 746 (BB2) also does not anticipate the features of claim 1 as amended in the judgment under appeal.

107 aa) BB2 discloses a device for anchoring a child seat in a vehicle.

108 The device has a seating surface assembly (3) with a shell-shaped base part (8). An anchoring device (2) is arranged inside the seating surface assembly (para. 48 et seq.). An embodiment of this is shown in Figure 4 reproduced below.

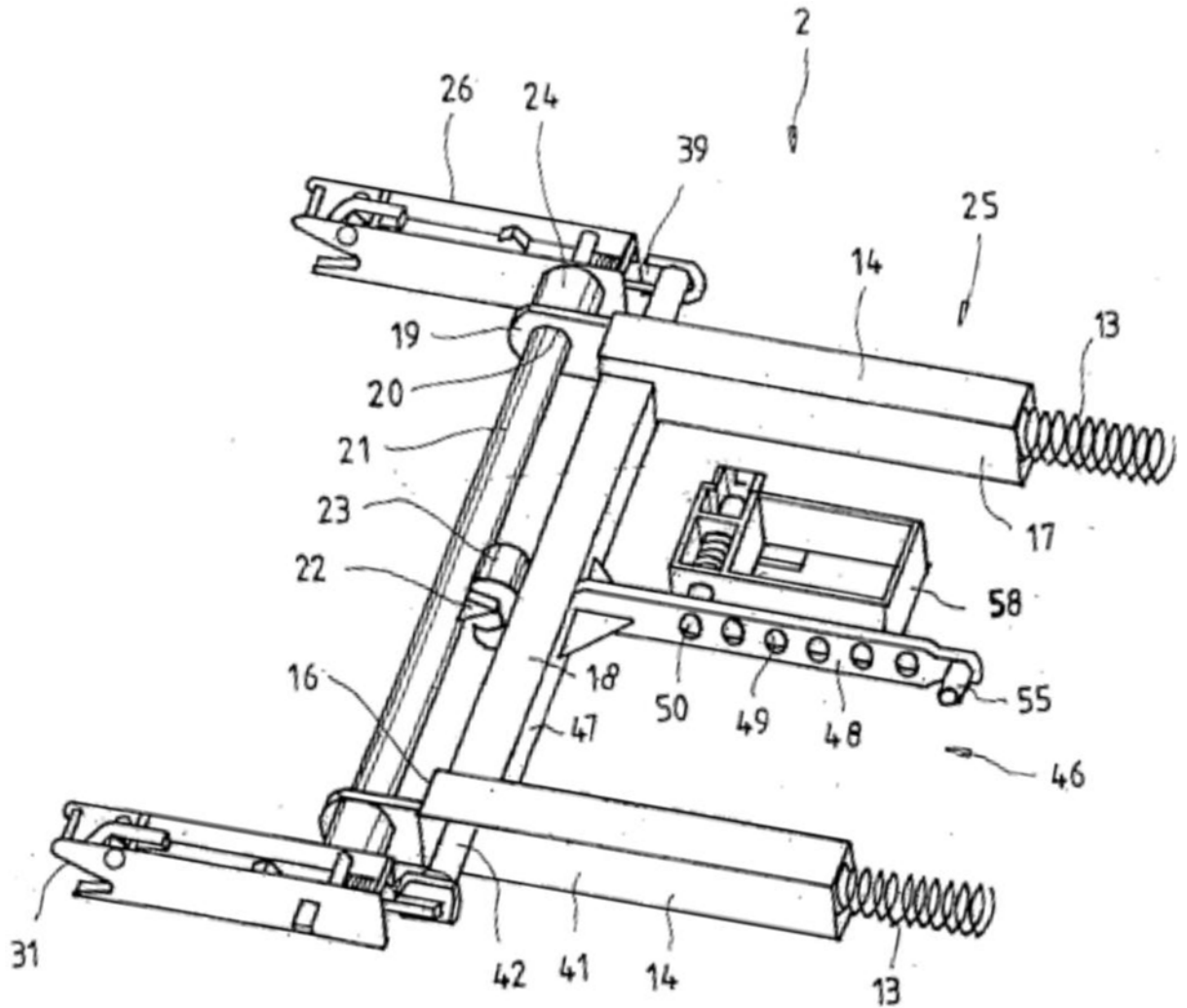


FIG. 4

109 The anchoring device (2) consists of two anchoring adapters (26) (paras. 59 et seq.), a pivot bearing assembly (25) and a locking device (46) associated therewith (para. 68).

110 The locking device (46) consists of a bracket (51) (not marked in Fig. 4) in which a transverse pin (50) is arranged. A spring (52) presses the pin (50) in the direction of a perforated rod (48) so that it engages in one of the perforations (49) depending on the displacement position (para. 70).

111 To extend the anchoring assemblies (26), the pin (50) must be pulled out of the perforation (49) against the force of the spring (52). This extension movement is stopped at the latest by striking a stop element (56) against a stop element (55) at the free end of the perforated rod (48) (para. 71).

112 The insertion movement, on the other hand, is not inhibited because the perforations (49) have inclined contact surfaces capable of pushing the transverse pin (50) out of the area of the perforated rod (48) (para. 72).

113 To enable the child seat to move forward to a limited extent in the event of a rear-end collision, the bracket (51) is not rigidly connected to the seat base assembly (3) but is guided by a preferably dovetail-shaped guide (57) so that it can be displaced in the direction of travel (para. 73). This guide is shown in Figure 3 reproduced below.

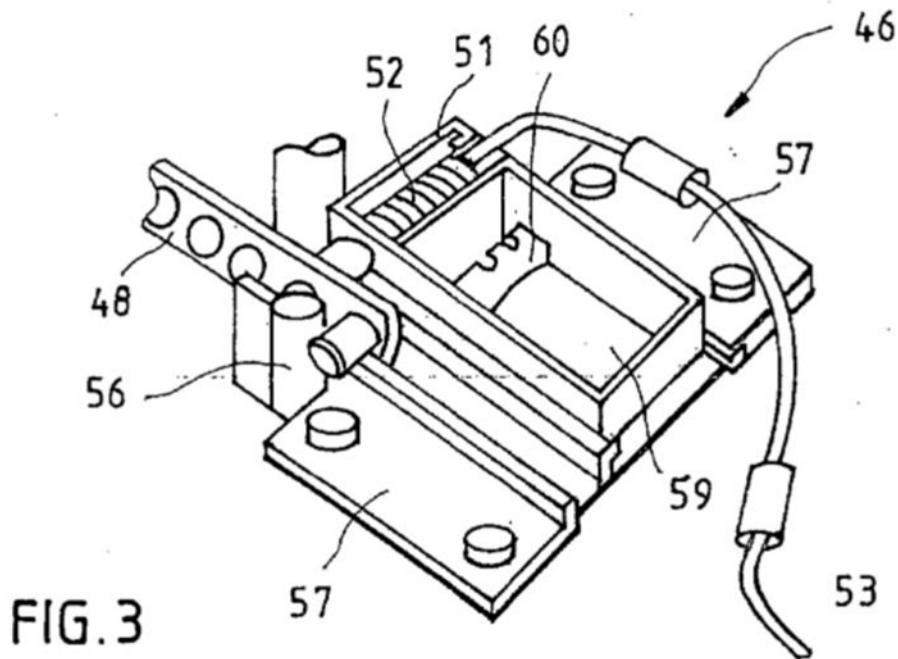


FIG. 3

114 To prevent relative movement in the normal operating state, there is a surface (58) on the racket (51). A spring element (59) that can be loaded under pressure is located against or behind this surface. Its opposite front side is supported on a solid, upwardly projecting extension (60) of the seat surface assembly (3). If the child seat wants to move forward under the influence of a strong deceleration, the spring element can compress elastically, allowing the desired movement and at the same time generating high counterforces. Under normal operating conditions, the spring element (59) acts like a rigid block due to its high spring forces (para. 74).

115 bb) Thus, as also the defendant does not doubt, the features 0, 1, 2, 3, 4.1 and 5 are disclosed.

116 cc) Whether it is sufficient for the disclosure of feature 6 b that the anchoring device (2) can also be pushed into the seat surface assembly (3) without pulling out the pin (50), or whether an express indication would be required for this purpose that

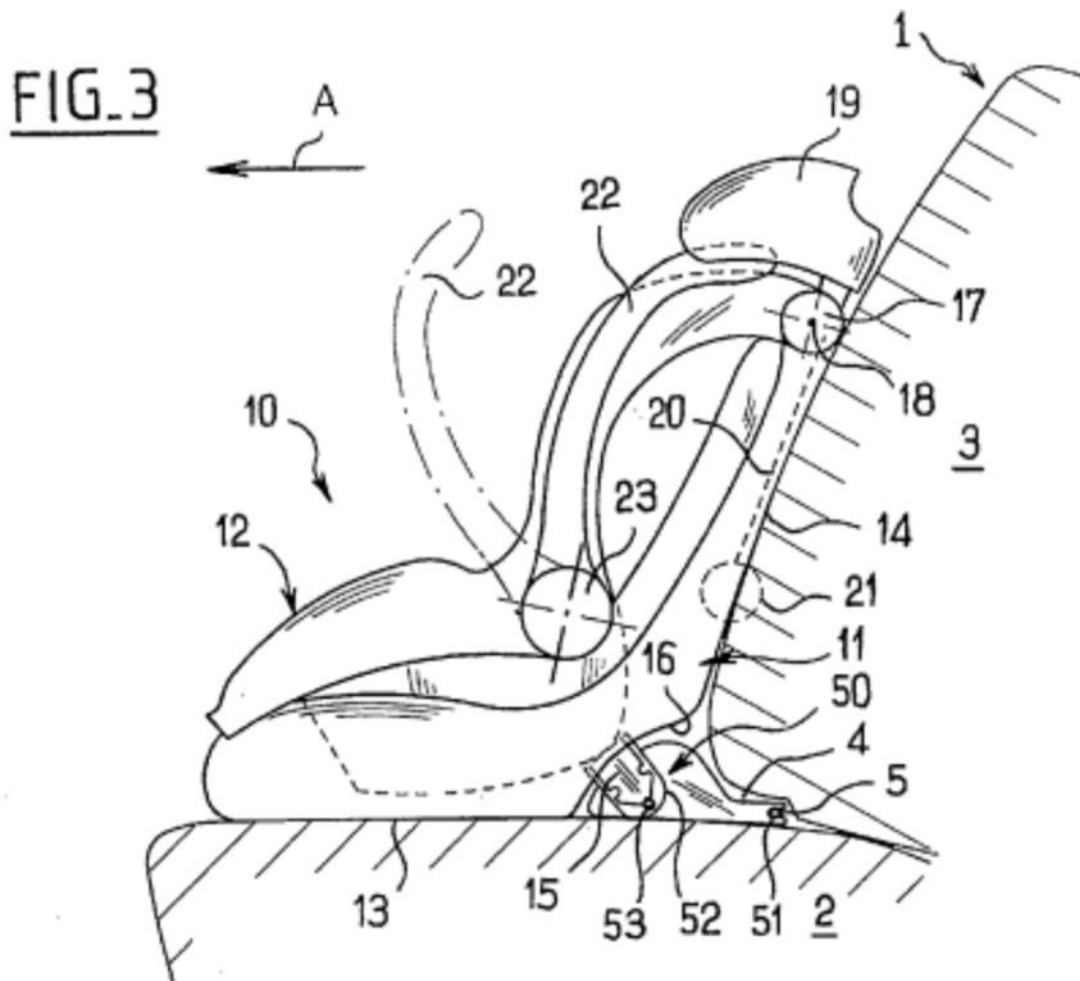
such a movement is only possible in accident situations or in the case of other abnormal application of force, does not require a final decision.

117 dd) In any case, as the appeal also does not fail to recognize, there is no disclosure of feature 6 a' because the pin (50) does not abut the end face of the perforated rod (48).

118 d) The international application WO 2007/020350 (BB5) also does not anticipate the subject-matter of claim 1 as amended in the judgment under appeal.

119 aa) BB5 discloses a restraint system comprising a child seat (10) supported on a seat base (11).

120 An example of an embodiment is shown in Figure 3 reproduced below.



121 The seat base (11) is connected to a preferably U-shaped fitting (15') which has two lateral fastening lugs (15) (p. 11, bottom). An intermediate structure (50) allows the seat structure (10) to be connected to a standard anchoring unit, which may consist of crossbars (5) (p. 13, top).

122 An example embodiment of an intermediate structure (50) is shown in Figure 8 reproduced below.

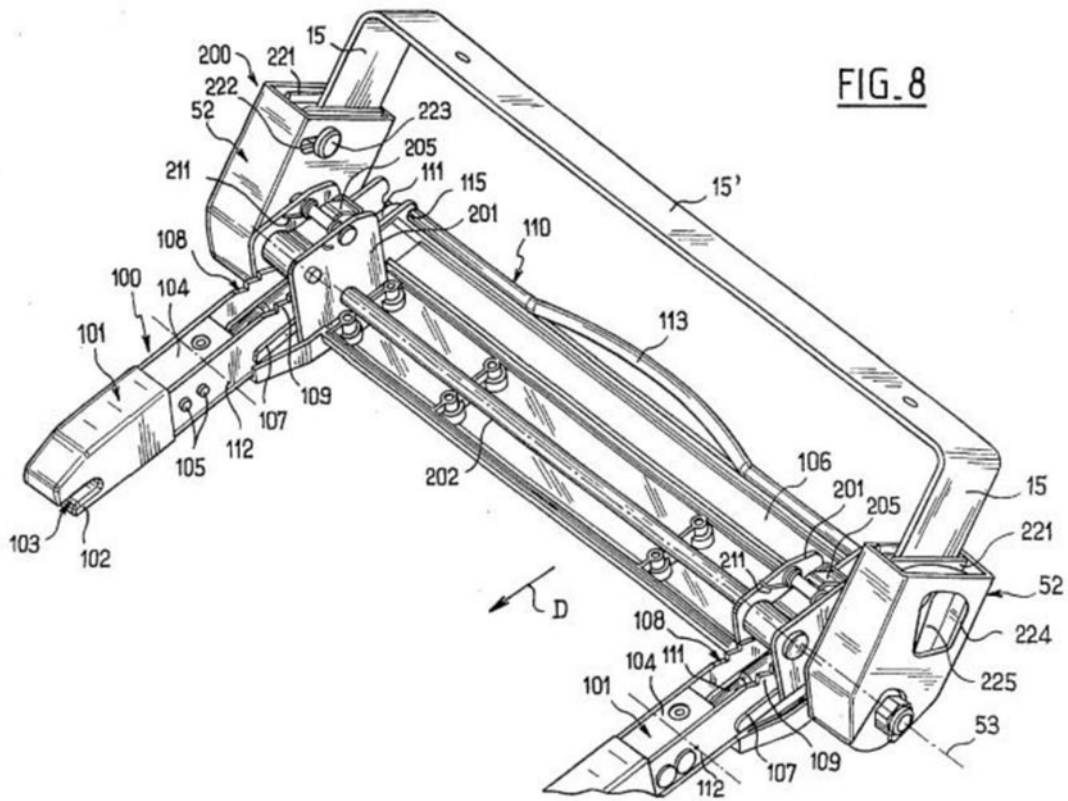
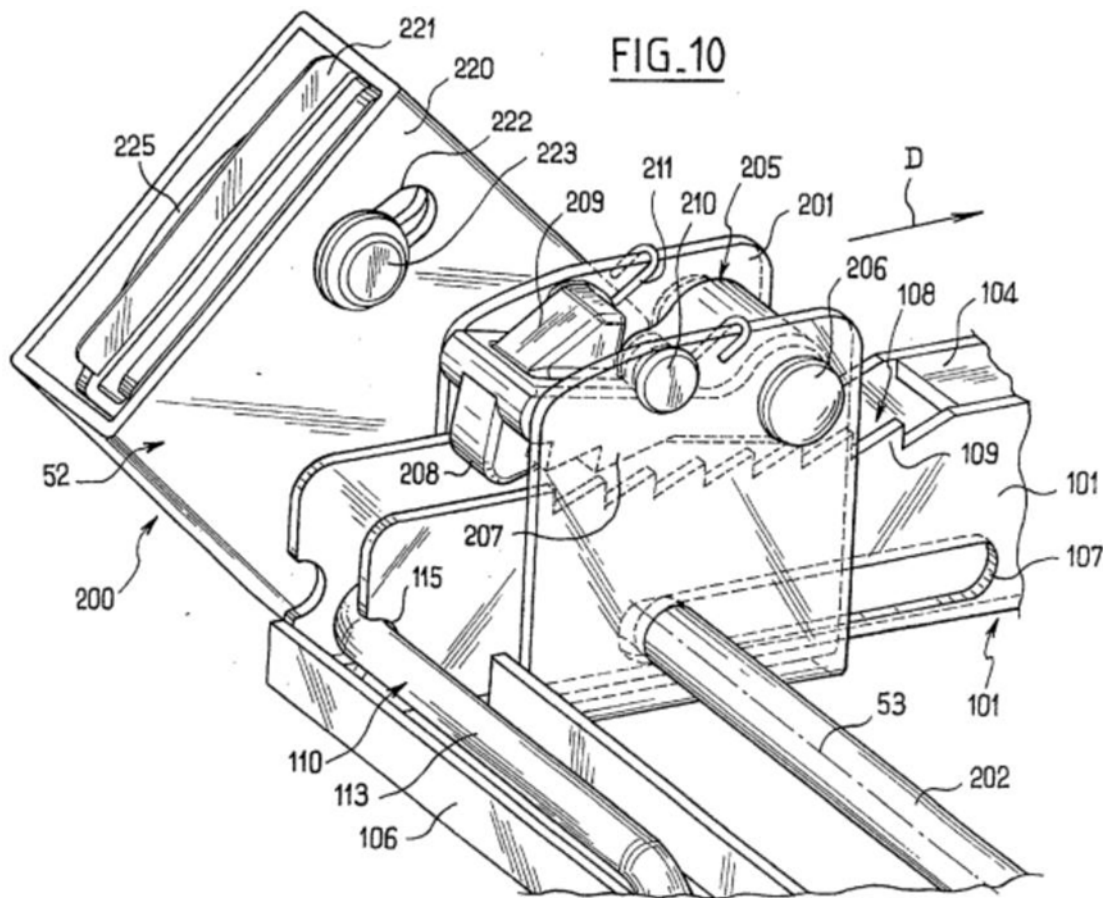


FIG. 8

123 The intermediate structure (50) comprises a first structure (100) and a second structure (200) that can slide on the side cheeks (101) of the first and be locked in a plurality of axial positions (p. 14, bottom). For this purpose, the side cheeks (101) have a tothing (108). Each sliding piece (201) is equipped with a pivoting pawl (205) (p. 16, bottom to p. 17, mid). This arrangement is shown in Figure 10 reproduced below.



124 The second element (200) can slide in direction D by applying slight pressure. This causes it to move in the direction of the seat backrest (p. 17, lower half).

125 To allow movement in the other direction, an unlocking element (110) must be actuated to release the pawls (205) from their interlocking with the notches (108) (p. 18, top).

126 bb) Thus, as also the defendant does not doubt, the features 0, 1, 2, 3, 4.1 and 5 are anticipated.

127 cc) Whether feature 6 b is disclosed, although BB5 expressly states that pushing together is already possible with normal force, does not require a final decision.

128 dd) In any case, there is no disclosure of features 6 and 6 a'.

129 Contrary to the opinion of the appeal, BB5 does not disclose a recess through which a stud of the locking pawls (205), which act as a blocker element, projects into the void for the side bolsters (101), which act as Isofix connectors. Both the side bolsters (101) and the pawls (205) are guided in U-shaped sliding shoes (201).

130 In addition, the pawls (205) do not rest against an front side of the side cheeks (101), but against notches (208) on the top face thereof.

131 4. The subject-matter of claim 1 as amended in the judgment under appeal is also based on inventive step.

132 a) Based on BB25, a configuration of the interlock assembly according to features 6 and 6 a' was not suggested.

133 Contrary to the view of the appeal, a mere kinematic reversal, i.e. a mirror image arrangement of toothed strip and snap-in plate, was not required on the basis of BB25 in order to arrive at such a configuration. If the two elements were simply swapped, the snap-in plate would not abut against a front side of the Isofix connector, but against a rack formed on its underside.

134 An arrangement in which a blocker element abuts against the front side of the Isofix connector was, as the Patent Court correctly assumed, also not obvious for other reasons on the basis of BB25. This would remove the possibility of being able to lock the child seat in various positions.

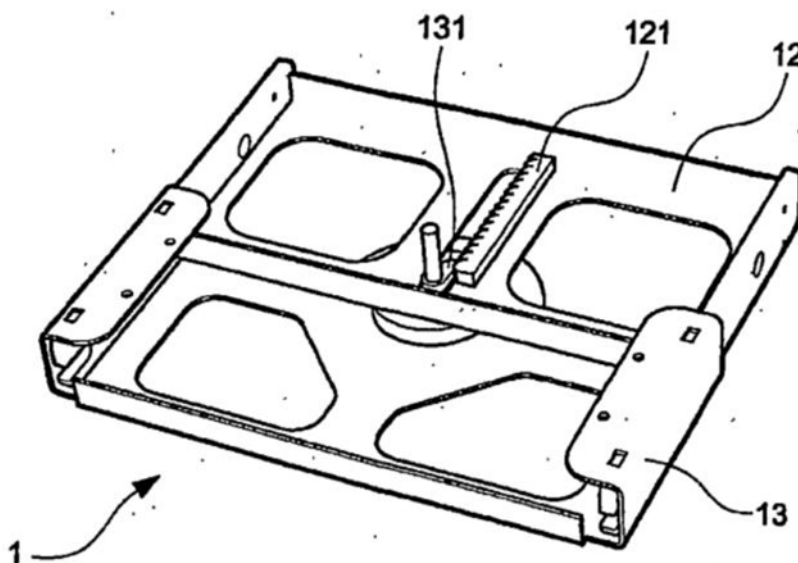
135 b) Based on BB2, a configuration according to feature 6 a' was also not suggested.

136 aa) It may have been possible to arrange the perforated rod (48), the stop element (55) and the stop element (56) so that the pin (50) engages in a semi-circular recess at the end of the perforated rod (48) in the maximum pull-out position. However, there was no suggestion for this based on BB2.

137 bb) A further suggestion based on BB2 also did not result from European patent specification 1 625 967 (BB18).

138 (1) BB18 discloses an infant car seat that provides a reliable device.

139 The child seat is preferably mounted on a base part (1) in accordance with the Isofix standard. An example of an embodiment is shown in Figure 3 reproduced below.



140 The base part (1) has means for hooking into a fixed structural element on the vehicle seat (para. 47). These hooking means are fixedly connected to a slider (12) which is displaceable relative to a base element (13) (para. 50). A pivoted lever

(131), which engages in a rack (121) and is held in this position by elastic return means, is used for locking and releasing. When the seat is attached, the slide is in the extended position. Once attached to the vehicle seat, it is sufficient to press the seat against the back rest to bring the slider into a retracted position. Re-extension, on the other hand, is blocked by the rack and is possible only after operating a handle (132) that lifts the lever (131) from the rack (paras. 51 to 55).

141 (2) Contrary to the view of the appeal, there was also no suggestion that a stud of a blocker element should abut against a front side of an Isofix connector.

142 It can be left open whether BB18 suggests that the toothed rack (121) and the lever (131) should be configured in such a way that the lever rests against the front side of the rack in the fully extended position. Even with such a configuration, the blocker element would not rest against a front side of the Isofix connector, as the latter does not close flush with the rack (121), as the response to appeal rightly claims. A suggestion to position the rack in such a way that it fulfills the latter requirement is also not apparent.

143 c) A design according to features 6 and 6 a' was also not suggested based on BB5.

144 Based on this citation, it may also have been possible to arrange the pawls (205) and notches (108) so that the pawl abuts the front side of the side cheek (101) in the completely extended position. However, it is not apparent from what a suggestion for such a configuration could result.

145 IV. The decision on costs is based on Sec. 121 (2) Patent Law (PatG) in conjunction with Sec. 92 (1), Sec. 97 (1) and Sec. 516 (3) sentence 1 Code of Civil Procedure (ZPO).

Bacher

Grabinski

Kober-Dehm

Marx

Rensen

Lower court:

Federal Patent Court, decision of January 21, 2020 - 5 Ni 15/18 (EP) -