

Deckblatt Übersetzung

Daten der Übersetzung:

Court/Gericht:	Bundesgerichtshof
Date of Decision / Datum der Entscheidung:	2015-06-02
Docket Number / Aktenzeichen:	X ZR 103/13
Name of Decision / Name der Entscheidung:	Kreuzgestänge





FEDERAL COURT OF JUSTICE

IN THE NAME OF THE PEOPLE

JUDGMENT

X ZR 103/13

Pronounced on:
2 June 2015
Hartmann
Judicial Secretary as
Clerk of the court
registry

in the matter

Kreuzgestänge/
Cross linkage

EPC Art. 69; Patent Act Sec. 14

- a) The infringement court shall interpret the patent in suit independently and shall not be bound, either legally or in fact, by the interpretation of the Federal Court of Justice in patent nullity proceedings relating to the patent in suit.
- b) If several embodiments are presented in the description of a patent as being according to the invention, the terms used in the patent claim are, in case of doubt, to be understood in such a way that all examples can be used to fill them out. Only if and to the extent that the teaching of the patent claim cannot be reconciled with the description and the drawings and an irresolvable contradiction remains, those elements of the description which are not reflected in the patent claim may not be used to determine the subject matter of the patent.

Federal Court of Justice, judgment of 2 June 2015 - X ZR 103/13 –

Higher Regional Court of Düsseldorf
Regional Court of Düsseldorf

The X. Civil Senate of the Federal Court of Justice, following the oral hearing on 2 June 2015, attended by the presiding judge Prof. Dr. Meier-Beck and the judges Gröning, Dr. Grabinski, Dr. Bacher and Hoffmann

ruled that

On appeal by the plaintiff, the judgment of the 2nd Civil Senate of the Düsseldorf Higher Regional Court pronounced on 8 August 2013 is set aside.

The defendant's appeal against the judgment of the 4b Civil Chamber of the Regional Court of Düsseldorf of 16 February 2012 is dismissed.

The defendant shall bear the costs of the appeal.

By operation of law

Facts of the case:

1 The plaintiff is the registered owner of the European patent 1 366 968 (hereinafter: patent in suit) granted with effect for the Federal Republic of Germany. He is suing the defendant for infringement of the patent in suit for injunction, provision of information, rendering of accounts and a declaration of the obligation to pay damages. Claim 1 of the patent-in-suit reads as follows:

"Collapsible push carriage for children and/or dolls with a carriage frame (1) which has at least:

- two upper frame spars (2a, 2b) arranged in mirror image, rising from the front to the rear and extending in a substantially V-shape, continuous or formed of interconnected sections, the lower ends of which are pivotally coupled to a connecting part (3) for displacement from a folded position to a set-up position,
- to which connecting part (3) are arranged two lower, mirror-inverted, from front to rear substantially V-shaped, continuous or pivotable frame spars (4a, 4b) formed of interconnected sections, to the rear ends of which are fastened wheel bearing holders (5) for rear wheels or wheel assemblies (6)
- at least one front wheel arrangement (7) with at least one wheel, which is fastened to the connecting part (3) or a bridge part of the lower frame spars (4a, 4b) by means of at least one wheel bearing holder (8),

characterized by:

- a spreading linkage (9) in the form of a cross linkage which can be set up and is provided at a certain distance from the connecting part (3) on the spars (2a, 2b; 4a, 4b) and connecting them and is designed in such a way that, after the wagon frame has been set up, the upper and the lower spars (2a, 2b) are brought into the characteristic V-position both with respect to one another and against one another and, when the spreading linkage (9) is folded together, the

upper and lower spars (4a, 4b) pivot simultaneously towards one another. "

2 Claims 2 to 19 are directly or indirectly related back to claim 1.

3 The defendant sells a baby carriage under the model name "Futura" via the Internet, the more detailed design of which is shown in the photographs submitted as Annex K 13 to the files, some of which are reproduced below (hereinafter: contested embodiment). The contested design was also exhibited at the "Kind und Jugend 2009" trade fair in Cologne.



Bild 1



Bild 4



Bild 5

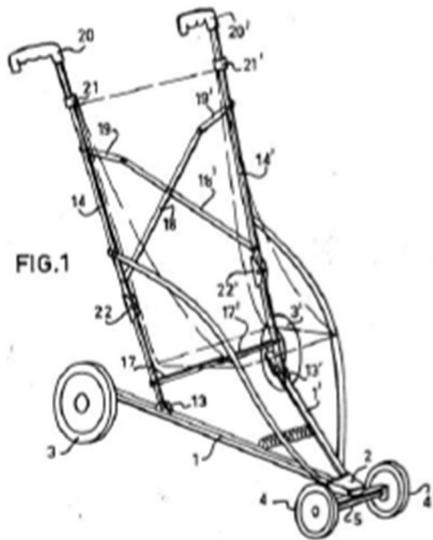
4 The Regional Court essentially granted the claims. The Court of Appeal dismissed them. In his appeal, which was allowed by the Senate, the plaintiff seeks to have the judgment of the Regional Court restored. The defendant opposes the appeal.

Grounds of the decision:

5 The admissible appeal is well-founded and leads to the reversal of the judgment of the Court of Appeal and the reinstatement of the judgment of the first instance insofar as it allowed the action.

6 I. The patent in suit relates to a foldable carriage for children or dolls with a carriage frame.

7 According to the description, inter alia, from the French patent application 2 310 910, from which the following drawing is taken,



a baby carriage with a frame construction is known, which has a lower pair of side spars (1, 1') hinged in a scissor-like manner to a hinge piece, which are connected to each other by collapsible transverse spars. The back spars (14, 14') are pivotally mounted on fixed bearings on the side spars and are divided below a collapsible scissor linkage (18, 18'; 19, 19'), which is provided as a spreader linkage between the back spars, and are designed to pivot relative to one another so that together with the seat spars they formed a parallelogram of forces. For spreading the side spars, a collapsible transverse spar (17) is additionally provided between the lower sections of the back spars.

8 The patent in suit is based on the problem ("the task") of further developing the known foldable push carriages in such a way that they can be easily erected and folded with a simplified construction.

9 According to the teaching of patent claim 1, this is to be achieved by a device with the following features:

1. Collapsible pushcart for children and/or dolls with a cart frame which has:
 - 1.1 two upper frame spars (2a, 2b),
 - 1.2 two lower frame members (4a, 4b),
 - 1.3 a connecting part (3),
 - 1.4 a spreader linkage (9),
 - 1.5 a front wheel assembly (7), and
 - 1.6 rear wheels or wheel assemblies (6).

2. The upper frame members (2a, 2b)
 - 2.1 are continuous or formed of interconnected sections,
 - 2.2 are arranged in mirror image, and
 - 2.3 rise from front to rear and are essentially V-shaped.

3. The lower frame members (4a, 4b),
 - 3.1 are continuous or formed from interconnected sections,
 - 3.2 are arranged in mirror image,
 - 3.3 run from front to rear in a substantially V-shape,
 - 3.4 are pivotable and
 - 3.5 have rear ends to which wheel bearings (5) for rear wheels or wheel assemblies (6) are attached.

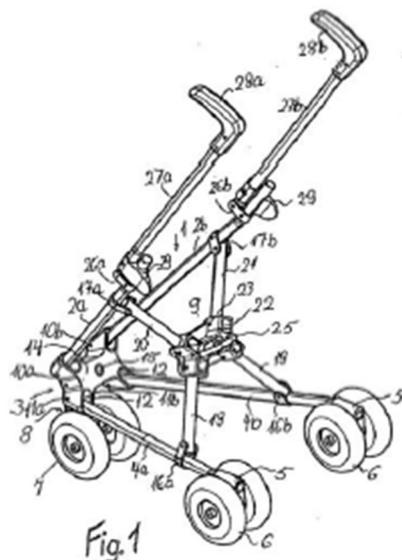
4. At the connecting part (3) are
 - 4.1 the lower ends of the upper frame members (2a, 2b) are pivotally coupled for movement from a folded position to a set-up position, and
 - 4.2 the lower frame spars (4a, 4b) are arranged.

5. The front wheel arrangement (7)
 - 5.1 has at least one wheel and
 - 5.2 is fastened by means of at least one wheel bearing holder (8) to the connecting part (3) or a bridge part

of the lower frame spars (4a, 4b).

6. The spreader linkage (9) is
 - 6.1 erectable and
 - 6.2 in the form of a cross linkage.
 - 6.3 The cross linkage is
 - 6.3.1 provided on the spars (2a, 2b; 4a, 4b) at a certain distance from the connecting part (3) and connecting the spars (2a, 2b; 4a, 4b),
 - 6.3.2 designed in such a way that, after the carriage frame (1) has been set up, the upper and lower spars (2a, 2b; 4a, 4b) are brought into the characteristic V-position both relative to one another and against one another, and
 - 6.3.3 designed in such a way that, when the spreader linkage (9) is folded, the upper and lower spars (2a, 2b; 4a, 4b) pivot simultaneously towards one another.

10 The drawing reproduced below is taken from the patent specification and shows an example of an embodiment according to the invention:



11 II. The Court of Appeal substantiated its decision essentially as follows:

12 The patent in suit was not infringed because the challenged embodiment neither had a cross linkage that literally realized feature group 6.3 nor a substitute means that could be considered equivalent under patent law.

13 An average skilled person is an engineer specializing in mechanical engineering who is engaged in design tasks at a manufacturer of baby carriage frames and has several years of professional experience in this field.

14 A literal realization was ruled out already because it was factually established for the Court of Appeal on the basis of the judgment of the Federal Court of Justice (Federal Court of Justice, judgment of 22 May 2012 X ZR 58/11) rendered in the nullity proceedings of the parties that a cross linkage, the struts of which could only be pivoted in one plane to each other as in the challenged embodiment, could not be regarded as a cross linkage within the meaning of feature group 6.3. In order not to create a ground for admission, there was a factual obligation for the court of appeal to follow the interpretation of the Federal Court of Justice in the nullity proceedings.

15 Irrespective of this, the interpretation of the Federal Court of Justice was also correct. It may well be that the transmission of the force acting on the cross linkage to the bars can be made possible regardless of whether the cross linkage can be moved in only one plane ("two-dimensional") or in two planes ("three-dimensional"). The patent in suit, however, had specified the latter solution. Conclusions of a general nature on the cross linkage according to the invention from subclaims 6 and 7, as drawn by the Regional Court, were not justified because these patent claims ultimately dealt only with the pivot bearing holders and not with the cross linkage as such. The fact that it would also be possible to use a two-dimensionally acting cross linkage in the construction taught in these claims did not mean that this would also be in accordance with the invention. The same applied to subclaim 11, which had a special feature not in that it taught a three-dimensionally acting cross linkage per se for the first time, but (among other things) in that additional locking means were provided for the ends of the supporting struts.

16 The statement in the description (para. 7, sentence 3) that a trolley frame according to the invention is constructed similarly to an umbrella linkage, but

that it is also possible that only the upper struts can be pivoted relative to the lower struts, cannot be reconciled with the patent claim. In feature 6.3.3, the latter presupposes that when the spreader bar is folded together, the upper and lower bars simultaneously swivel towards each other. This required active participation of all bars, including the lower ones, which is why these also had to be able to swivel.

17 It is also clear from the description (paragraph 9) that a spreader linkage in the form of a cross linkage, e.g. in the shape of an X, is particularly advantageous. in the form of an X, is particularly advantageous if the linkage consists of divided support struts which are pivotably linked on the one hand to pivot holders on the spars and on the other hand to a central bearing holder, so that, as in an umbrella, the struts can be erected and folded up by moving the bearing holder in the longitudinal direction, the reverse conclusion cannot be drawn that two-dimensionally acting cross linkages are also covered by patent claim 1. Rather, the special suitability refers to special three-dimensional cross linkages, namely X-shaped ones. Even if "particularly advantageous" was originally meant as a distinguishing feature compared to cross linkages not constructed like umbrellas, this wording lost its meaning in view of the primacy of the claim to be considered in the interpretation. The patent in suit thus wanted to distinguish itself from the solution known from the French patent application 2 310 910, which worked according to the principle of a scissor linkage, in which the spars could only be swiveled in one plane relative to each other, by a movement coupling in more than just one plane.

18 III. This interpretation of the patent claim does not stand up to review under the law of review. 1.

19 1. The Court of Appeal wrongly considered itself prevented from correctly determining the meaning of patent claim 1 by considering itself bound by the alleged finding of the Senate in the nullity proceedings that feature group 6.3 requires a cross linkage whose supporting struts can be pivoted in two planes relative to each other. However, there is no such binding, neither in law nor in fact.

20 The determination of the meaning of a patent claim is a finding of law and

is to be made independently by the infringement court, as by any other court seized with the matter (Federal Court of Justice, judgment of 31 March 2009 X ZR 95/05, BGHZ 180, 215 marginal no. 16 Straßenbaumaschine; Federal Court of Justice, order of 29 June 2010 X ZR 193/03, BGHZ 186, 90 marginal no. 15 Crimpwerkzeug III). This includes the possibility that the infringement court arrives at an interpretative result that differs from that reached by the Federal Court of Justice in patent nullity proceedings concerning the same patent. Such a divergence justifies, if it is relevant to the decision, the admission of an appeal (BGHZ 186, 90 marginal no. 11 ff. Crimpwerkzeug III). However, in this respect it does not differ from other cases of an assessment of a legal issue by a court of appeal that deviates from a decision of the Federal Court of Justice and therefore justifies admission of the appeal pursuant to Sec. 543(2) No. 2 Code of Civil Procedure. In these as in those cases, the Court of Appeal has to examine whether it adheres to its previous case law or whether the better reasons for the Court of Appeal's assessment are in dispute. Such a better finding in patent litigation proceedings may furthermore result from facts established by the Court of Appeal, which are to form the basis of the review under the law of appeal, and which were not established in the nullity proceedings, but which have an effect on the interpretation of the patent (Federal Court of Justice, judgment of 11 October 2005 X ZR 76/04, BGHZ 164, 261 marginal no. 19 Seitenspiegel; judgment of 12 February 2008 X ZR 153/05, GRUR 2008, 779 marginal no. 31 Mehrgangnabe).

21 2. The Court of Appeal erred in law in its interpretation of the patent in suit to the effect that feature 6.3.3 of patent claim 1 requires a cross linkage that can be pivoted in two planes ("three-dimensionally").

22 a) According to the case law of the Senate, description and drawings which explain and illustrate the teaching of the patent claim to a skilled person are not only relevant for determining the scope of protection (Art. 69(1) EPC, Sec. 14 Patent Act), but also for the interpretation of the patent claim, irrespective of whether this interpretation is the basis of the infringement examination, the examination of the subject matter of the patent claim for its patentability or the examination of another ground for nullity (Federal Court of Justice, judgment of 17 July 2012 X ZR 117/11, BGHZ 194, 107 marginal no. 27

Polymerschaum I; judgment of 12 May 2015 X ZR 43/13, juris marginal no. 15 - Rotorelemente). In this context, the patent specification must be read in a meaningful context and, in case of doubt, the patent claim must be understood in such a way that there are no contradictions with the statements in the description and the pictorial representations in the drawings (Federal Court of Justice, judgment of 10 May 2011 X ZR 16/09, BGHZ 189, 330 marginal no. 24 - Okklusionsvorrichtung). Patent specifications constitute their own lexicon, as it were, with regard to the terms used therein. If these deviate from the general linguistic usage, only the conceptual content resulting from the patent specification is ultimately decisive (Federal Court of Justice, judgment of 2 March 1999 X ZR 85/96, GRUR 1999, 909 Spannschrabe). Only if and insofar as the teaching of the patent claim cannot be reconciled with the description and the drawings and an irresolvable contradiction remains, those elements of the description which are not reflected in the patent claim may not be used to determine the subject matter of the patent (BGHZ 189, 330, marginal no. 23 Okklusionsvorrichtung).

23 Accordingly, an interpretation of the patent claim that would result in none of the embodiments described in the patent specification being covered by the subject-matter of the patent can only be considered if other possibilities of interpretation that lead to the inclusion of at least some of the embodiments are necessarily ruled out or if sufficiently clear indications can be derived from the patent claim that something is actually claimed that deviates so largely from the description (Federal Court of Justice, judgment of 14 October 2014 X ZR 35/11, GRUR 2015, 159 marginal no. 26 access rights). If several embodiments are presented in the description as being according to the invention, the terms used in the patent claim are, in case of doubt, to be understood in such a way that all embodiments can be used to fill them out.

24 b) Patent claim 1 protects a collapsible sliding carriage which, in addition to front and rear wheel arrangements, consists essentially of two upper and two lower frame members which are each articulated at the lower end to a connecting part and are each connected above at a certain distance from the connecting part by an expanding linkage in the form of a cross linkage. The cross linkage is to be designed in such a way that the upper and lower spars

are brought into the characteristic V position both relative to each other and against each other after the carriage frame has been set up (feature 6.3.2) and, when the spreader linkage is folded together, are simultaneously pivoted towards each other (feature 6.3.3).

25 This means that it is specified for the upper and lower struts that they must pivot simultaneously towards each other and towards the other pair of struts from a V-position during folding. However, this does not apply to the supporting struts of the cross linkage, the design of which in claim 1 alone provides that the latter is connected to the upper and lower bars respectively and causes the bars to pivot towards each other simultaneously when the frame is folded. Whether the supporting struts of the cross linkage are movable in one or in two planes is left open. Patent claim 1 does not mention this at all, and the description does not provide any indication for such a concretization. The description does mention a cross linkage in which the struts are erected and folded longitudinally as in an umbrella by moving a centric bearing holder (para. 9). However, this is merely a particularly advantageous embodiment which the description also expressly identifies as such and which is not capable of limiting the broader subject matter of patent claim 1. Nothing else applies to the embodiment described in subclaim 11.

26 With regard to the instruction to the skilled person contained in feature 6.3.3 to design the cross linkage in such a way that the upper and the lower spars are to be pivoted "simultaneously" towards each other when the spreader linkage is folded, it can first be inferred from the description that a carriage frame according to the invention is constructed similarly to an umbrella linkage and consists of four spars which can be pivoted from a folded position into an erected position (para. 7, lines 29 to 33). Subsequently, however, mention is also made of the possibility of arranging not the lower but only the upper spars to pivot relative to the lower spars in such a way that they are brought from a folded position in which they are almost parallel to the lower spars to an inclined position in which the carriage frame is erected (para. 7, lines 34 to 41). This justifies the conclusion that the simultaneous pivoting towards each other provided for in feature 6.3.3 need not necessarily involve both the lower and the upper frame members, but that it is sufficient if there is a simultaneous relative

movement of all four members. Contrary to the opinion of the court of appeal, such an understanding is not incompatible with the wording of the patent claim, but corresponds to a function-oriented interpretation. For the objective pursued by the patent teaching of achieving easy handling of the trolley frame during erection and folding (para. 6), it is irrelevant whether only the upper bars move towards the lower bars or also the lower bars move towards the upper bars.

27 Such an understanding of the "simultaneous" pivoting of the upper and lower spars towards each other is additionally supported, as the Regional Court correctly pointed out, by patent claims 6 and 7, which provide pivot bearing holders for support struts of the spreader bar on the lower or upper spars, a pair of pivot bearing holders being arranged on the lower or upper spars so as to be longitudinally displaceable and lockable in the erected position of the spreader bar. This permits, as the Court of Appeal does not fail to recognize in itself, a simultaneous pivoting of the spars towards each other by a movement of the cross linkage in one plane. Neither the wording of patent claim 1 nor the description provides any indication that such an arrangement is not to be covered by patent claim 1.

28 c) Such an understanding of feature 6.3.3 is also not in conflict with the decisive considerations in the Senate's judgment of 22 May 2012. Insofar as it is stated therein that a cross linkage whose "spars" (support struts) - as in French patent application 2 310 910 - can only be pivoted in one plane relative to each other, cannot be regarded as a cross linkage within the meaning of feature group 6. 3, because it is not designed in such a way that, when folded together, the upper and lower bars can be pivoted towards each other at the same time, this is in accordance with the above interpretation of feature 6. 3.3 In the design disclosed in the citation, the two support struts (18 and 19' as well as 18' and 19) are hinged with their two ends only to the upper struts (14 and 14') of the linkage (marginal no. 15 of the Senate judgment), so that, as the Regional Court also stated, they can neither cause the upper and lower struts to pivot towards each other, in which case both pairs of struts move, nor such that only the upper pair of struts moves towards the lower pair. The comment of the Senate that the design principle of the carriage frame according to the invention essentially lies in the fact that the four spars are, on the one hand,

hinged to the same connecting part and, on the other hand, are connected to one another by a spreader linkage in the form of a cross linkage, so that the upper and lower spars, like an umbrella, are brought into a V-position both towards and against one another when erected and are simultaneously pivoted towards one another when folded, can be understood in view of the comparison with the folding and opening of an umbrella (borrowed from the embodiment example of the patent specification shown in the drawings) that the upper and the lower bars (must) move simultaneously during folding. However, according to the reasons for the judgment, this is of no significance for the assessment of the two asserted grounds for nullity.

29 IV. Accordingly, the judgment of the Court of Appeal cannot stand and must be set aside. The Senate can decide the matter itself because additional findings are neither necessary nor to be expected and the matter is therefore ripe for decision (Sec. 563(1) sentence 1 Code of Civil Procedure).

30 1. According to the findings of the Court of Appeal and the Regional Court, which are not objected to, the upper and lower bars are connected by the cross linkages in such a way that they each move towards each other when folded together. In addition, connecting legs cause the upper bars to also pivot towards the lower bars, so that a displacement on the longitudinal axis is caused and a single act of force is sufficient for folding the stroller.

31 As the Regional Court has already correctly stated, the fact that in the challenged embodiment, in addition to the cross linkage, additional linkage parts in the form of the connecting legs are involved in the pivoting of the upper to the lower bars does not prevent the literal implementation of feature 6.3.3. Such an understanding is supported not only by the wording of patent claim 1, which does not exclude such an embodiment, but also by subclaims 6 to 9, the description (paragraph 14) and the drawings (Figures 1 to 3), according to which the pivoting of the spars towards each other can also be effected by the pivot bearing holders (16a, 16b and 17a and 17b) in addition to the cross linkage (9).

32 Furthermore, it is irrelevant for a literal realization of feature 6.3.3 whether the pivoting of the upper spars towards the lower spars takes place during the entire time or only during a part of the time in which the upper and the lower

spars respectively move towards each other, because, as the Regional Court also correctly stated, "simultaneously" in the sense of the teaching according to the invention does not necessarily mean that during the folding all pivoting movements must take place uninterruptedly in parallel. In this respect, it is only decisive that the swiveling movements are effected by a movement of the cross linkage or an exertion of force by the user, as is also realized in the challenged embodiment.

33 2. Since the challenged embodiment is also in conformity with patent claim 1 in all other respects, as the Regional Court stated without error of law, the defendant is charged with infringement of the patent in suit. 3) It is justified according to the further claims.

34 3. According to the further statements of the Regional Court, which are also free of legal errors, and the supplementary statements of the Court of Appeal in this regard, it justifies the claims of the action to the extent admitted, so that the judgment of the court of first instance must be restored on appeal.

35 V. The decision on costs is based on Sec. 91(1), 97(1) Code of Civil Procedure.

Meier-Beck

Gröning

Grabinski

Bacher

Hoffmann

Previous instances:

Regional Court of Düsseldorf, judgment of 16 February 2012 – 4b O 212/09 –

Higher Regional Court of Düsseldorf, judgment of 08 August 2013 – I-2 U 22/12 –