

Deckblatt Übersetzung

Daten der Übersetzung:

Court/Gericht:	Bundesgerichtshof
Date of Decision / Datum der Entscheidung:	2018-03-27
Docket Number / Aktenzeichen:	X ZR 59/16
Name of Decision / Name der Entscheidung:	Kinderbett



Arbeitskreis
Patentgerichtswesen
in Deutschland e.V.



FEDERAL COURT OF JUSTICE

IN THE NAME OF THE PEOPLE

JUDGMENT

X ZR 59/16

Pronounced on:
March 27, 2018
Füllsack
Judicial Secretary
as Clerk of the
Court Registry

in the patent nullity proceedings

Kinderbett/
Baby crib

EPC Art. 56; Patent Act Sec. 4

The general suitability of a solvent belonging to the general technical knowledge can only suffice as a reason for its use if it is readily recognizable to a skilled person that a technical initial situation exists in which the use of the solvent in question is objectively expedient (following Federal Court of Justice, judgment of April 30, 2009 – Xa ZR 56/05, GRUR 2009, 743 – *Airbag-Auslösesteuerung*, and judgment of March 11, 2014 – X ZR 139/10, GRUR 2014, 647 – *Farbversorgungssystem*).

Federal Court of Justice, judgment of March 27, 2018 – X ZR 59/16 –

Federal Patent Court

The X. Civil Senate of the Federal Court of Justice, following the oral hearing on March 27, 2018, attended by the presiding judge Prof. Dr. Meier-Beck, the judges Dr. Bacher and Hoffmann as well as the judges Dr. Kober-Dehm and Dr. Marx

ruled that:

On appeal, the judgment of the 2nd Senate (Nullity Senate) of the Federal Patent Court of February 4, 2016, is amended insofar as the Patent Court found against the defendant.

The action is dismissed in its entirety.

The plaintiff shall bear the costs of the legal dispute.

By operation of law

Facts of the case:

1 The defendant is the proprietor of European patent 1 550 387 (patent in suit), which was granted with effect for the Federal Republic of Germany, was filed on April 19, 2004, claiming a Chinese priority of January 2, 2004, and relates to a baby crib. Patent claim 1 reads in the language of the proceedings:

2 "1. A baby crib comprising:

a bed frame structure (1) including a plurality of upright tubes (11), each of which has a tube wall (110) defining a receiving hole (111) and having a slit (112) that extends along the length of said tube wall (110) and that is in spatial communication with said receiving hole (111);

a fabric member (2) mounted on said bed frame structure (1) to define a surrounding wall around said bed frame structure (1); and

a plurality of positioning posts (22) mounted on said fabric member (2) and inserted respectively into said receiving holes (111) in said upright tubes (11), said fabric member (2) being clamped between each of said upright tubes (11) and a corresponding one of said positioning posts (22) and extending outward through said slit (112) in each of said upright tubes (11)."

3 The other claims are directly or indirectly related to this patent claim.

4 The plaintiff challenged the patent in suit on the grounds that its subject matter was not patentable. The defendant defended the patent in suit as granted and in the alternative in limited versions. The Patent Court found the patent in suit in the version of auxiliary request IV to be legally valid and otherwise declared it to be null and void.

5 The defendant's appeal is directed against this, in which it defends the patent in suit in the version of its main request at first instance and with five new auxiliary requests. The plaintiff opposes the appeal.

Grounds of the decision:

6 I. The patent in suit relates to an easy-to-assemble baby crib with a frame and a fabric covering.

7 1. According to the patent specification, in the state of the art the fabric covering is attached to the frame, at the corners of which upright tubes are arranged. In order to prevent the fabric from shifting relative to the frame, clamps are placed on the fabric, which are screwed to the tubes and thus hold the fabric to the frame. The patent in suit complains that the assembly is time-consuming. The fabric could also tear at the attachment point. Finally, the visible screw connection impairs the appearance of the crib.

8 2. The task of the patent in suit is therefore, as stated in the patent specification, to develop a baby crib that is easy and quick to assemble and allows reliable and visually appealing attachment of the fabric covering to the bed frame (description, paragraph 5).

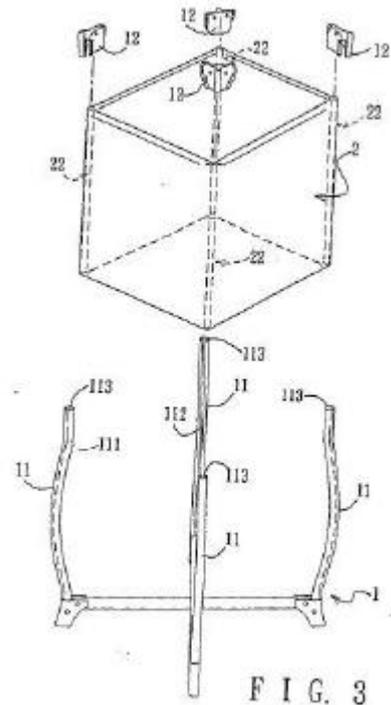
9 3. As a solution, the patent in suit proposes in claim 1 a baby crib, the features of which can be divided as follows:

(1) The crib comprises a bed frame structure having a plurality of upright tubes, each having a tube wall, which

(1.1) defines a receiving hole; and

- (1.2) a slot extending along the length of the tube wall and in spatial communication with the receiving cavity.
- (2) A fabric member (2.1)
 - (2.1) is mounted on the frame structure and
 - (2.2) provides a perimeter wall around the frame structure.
- (3) A plurality of positioning posts is
 - (3.1) mounted on the fabric part and
 - (3.2) each inserted into the receiving cavity of a tube.
- (4) The fabric part
 - (4.1) is clamped between the tube and the positioning post, respectively, and
 - (4.2) extends outward through said slit.

10 Figure 3 shows an example of an embodiment, with the reference sign 1 indicating the frame structure, 2 indicating the fabric part, 11 indicating the upright tubes and 22 indicating the positioning rods.



11 4. The Patent Court stated for the understanding of this claim: Its subject matter is a baby crib. The sectional structure of the claim with the indications of how the individual components would be assembled may tempt to consider these components according to a logical assembly sequence. However, in the case of an assembled baby crib, it is irrelevant when the individual parts were assembled. A bed frame structure is the structure determining the outer shape of a bed. As stated in the patent in suit with reference to the state of the art, this was chosen in such a way that the frame structure and an enclosing part defined a space for the child to be accommodated. The upright tubes are a part of the frame structure; however, this is not limited to this. The fact that the tubes fulfilled a function with regard to the stability of the frame structure was not described in the patent in suit.

12 5. This interpretation of the patent claim only partially withstands the
examination in the appeal proceedings.

13 a) According to feature 1, the bed frame structure gives the outer
shape of the bed and, together with the fabric component forming an enclosure
(feature 2), forms a receiving space for the child (description paras. 5, 6, 9).
According to the description, the bed frame structure is rectangular in shape and
has four tubes (upright tubes) arranged in the corners (description para. 9,
Figure 5).

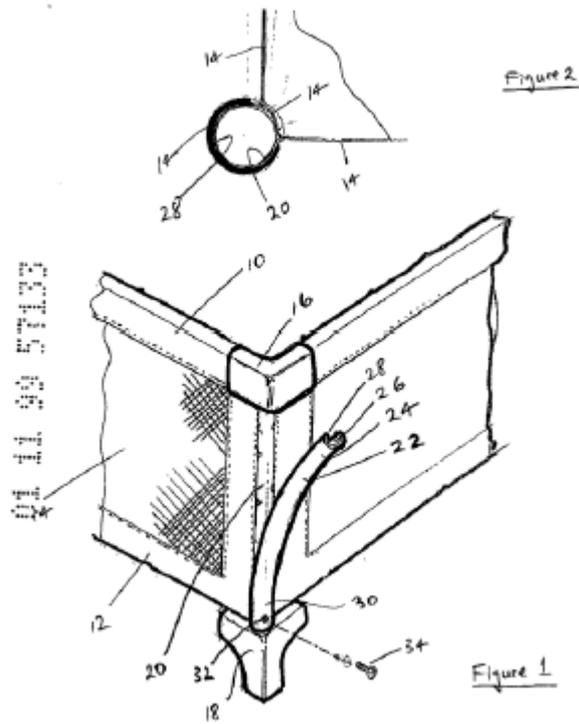
14 b) Contrary to the opinion of the Patent Court, only those elements
are to be regarded as belonging to the frame, which have a load-bearing
function and form the substructure of the bed.

15 In German translation, the English term *structure* does not fully
correspond to the meaning of the word "Struktur". According to general English
usage, it can also be understood to mean a building structure or a supporting
structure.

16 It can be seen from the context of the description that *bed frame structure*
means the "supporting structure", the load-bearing structure of the crib. The
(usually four) positioning rods are "montiert" (*mounted on said fabric member*,
feature 3.1) on the fabric member distinguished from the frame structure by the
patent in suit. They allow, as their name indicates, to position this fabric member.
Accordingly, it is in turn mounted on the frame structure (*mounted on said bed
frame*, feature 2.1) with the positioning rods attached to it, in that the positioning
rods are each inserted into the receiving cavity of one of the tubes of the frame
structure (feature 3.2). This results in the clamping support of the fabric part on
the frame structure (feature 4.1). In this way, an easily mountable crib is
available without visible mounting aids, because for mounting it is only
necessary that the fabric part (with the positioning rods) is inserted into the tubes
of the frame structure (the "supporting structure").

17 II. The Patent Court assumed that the subject matter of claim 1 was
not new and essentially reasoned as follows:

18 Australian utility model specification 715 883 (NK9), from which the accompanying figures 1 and 2 are taken, described a baby's crib with a bed frame structure. The description shows that the bed frame structure is formed by an upper frame 10, a lower frame 12 and by vertical tubes ("corner posts" 20 and "retaining members" 22) arranged in the corners of the bed (feature 1a). The crib thus has a bed frame structure that includes a plurality of vertical tubes. The



19 The defendant's objection that the printed document shows only the corner posts as part of the bed frame structure and the retaining elements merely as clamping elements cannot be accepted. According to patent claim 1, the bed frame structure need only contain a plurality of vertical tubes. The claim leaves open whether the bed frame structure contains other components in addition. By mounting a retaining element on a corner post in order to brace the fabric component in between, the crib disclosed therein has a bed frame structure formed by these retaining elements and corner posts.

20 III. The reasoning of the Patent Court does not withstand the attacks of the appeal. The subject matter of claim 1 is novel; contrary to the Patent Court's view, it is not disclosed by NK9.

21 Australian utility model specification 715 883 (NK9) deals with a support element for a baby crib, which has a bed frame structure and a fabric side wall.

It describes it as having been known for some time that the fabric attached to the bottom of the bed posts could wrinkle when passed (from the outside) over the corner posts. It also says the fabric can easily stretch over time and then lose its tension where it passes over the corner posts. To address these issues, NK9 proposes to install a retaining member (retaining member 22) on the bed posts located in the corners (corner posts 20) to assist in retaining the fabric sidewall of the crib and to help reduce or cover wrinkles in the fabric sidewall at the corner posts (NK9, p. 1 lines 11-15). This support element is positioned upright on the bedpost and is cylindrical. It has a tubular wall and gives a receiving cavity. The tubular wall of the retaining element in turn has a slot along its length, each of which is in spatial communication with the receiving cavity (NK9, p. 1 line 24 p. 2 line 4, p. 3 lines 9-12).

22 According to this, the holding elements of NK9 described for fastening the fabric component are not load-bearing components of the bed frame structure. According to the explanations in the description, the retaining elements are only attached when the load-bearing elements are already present and have been joined together to form a frame (NK9, p. 2 lines 4-7, p. 3 lines 26-28). Consequently, there is no anticipation of feature group 1, because the corner posts belonging to the supporting structure do not have a slot, and the clamped slotted retaining elements do not belong to the supporting frame structure. In contrast to claim 1, NK9 also does not disclose positioning rods in the sense of feature group 3, which are mounted on the fabric part and inserted into the receiving opening of a tube. Nor does it implement feature group 4, which teaches internal clamping of the fabric sidewall between the corner post inner wall and the positioning rods ("key slot method").

23 IV. The judgment of the Patent Court also does not prove to be correct in result for other reasons. The subject matter of the patent in suit is not obvious by the cited state of the art.

24 1. As far as the plaintiff claims that the skilled person had reason to reverse the functions of the corner posts of the bed and the holding element of the crib according to citation NK9 on the basis of his technical knowledge, this cannot be accepted.

- 25 a) In order to consider the subject matter of an invention as suggested, it is necessary, on the one hand, that the skilled person, with his knowledge and skills acquired through his education and professional experience, has been able to develop the solution of the technical problem according to the invention from what is available. On the other hand, the skilled person must have had reason to follow the path of the invention. As a rule, this requires additional impulses, suggestions, indications or other causes going beyond the recognizability of the technical problem (Federal Court of Justice, judgment of April 30, 2009 – Xa ZR 92/05, BGHZ 182, 1 marginal no. 20 – *Betrieb einer Sicherheitseinrichtung*; judgment of December 8, 2009 – X ZR 65/05, GRUR 2010, 407 marginal no. 17 – *einteilige Öse*; established case law).
- 26 b) From NK9, there was no suggestion for the skilled person to redesign the corner post of the crib and to associate it with a fastening of the fabric covering by means of the "key slot method". According to the utility model, clamping of the fabric side wall is achieved by clamping a retaining member from the outside over a corner post of the bed with the fabric part surrounding it in the form of a cuff (marg. no. 21 f.). Preferably, the retaining element – to this extent as in the state of the art described in NK9 – is additionally secured to the fabric part with a fastener engaging in a hole in the corner post. Contrary to the plaintiff's view, this did not give the skilled person any reason to reverse the functions of the corner post and retaining element, so to speak, in order to assign the bed post the further function of being able to clamp the fabric on the inside. For this purpose, the skilled person would have had to abandon the concept underlying both NK9 and the state of the art developed by the latter, namely to guide the fabric covering from the outside or by means of a sleeve formed from the fabric around the corner posts of the bed, which are accepted as necessary frame components, in order to then fasten the fabric covering to this corner post in the simplest and most reliable as well as visually appealing manner possible.
- 27 c) A different assessment also does not result from the fact that – as the Patent Court correctly assumed – the internal clamping or "key slot method" was known as such to the skilled person.

28 The fact that knowledge of a technical matter is part of general technical knowledge does not prove that it was obvious for the skilled person to make use of this knowledge when solving a particular problem (Federal Court of Justice, judgment of April 30, 2009 – Xa ZR 56/05, GRUR 2009, 743 marginal no. 37 – *Airbag-Auslösesteuerung*). Contrary to the plaintiff's view, the basic possibility of using the "key slot method" for fastening a fabric panel in particular does precisely not mean that there was reason for the skilled person to attribute a further function to the bedpost in order to use this technique for fastening the fabric panel.

29 The lack of suggestion is not overcome by the principle recognized in case law that there may already be a reason to use a technical solution which, as a general means to be considered for a multitude of applications, belongs by its nature to the general technical knowledge of the skilled person addressed, if there is no concrete model for the application of this solution, but the use of its functionality in the relevant context appears to be objectively expedient and no special circumstances can be ascertained, which make an application appear impossible, connected with difficulties or otherwise impractical (Federal Court of Justice, judgment of March 11, 2014 – X ZR 139/10, GRUR 2014, 647 – *Farbversorgungssystem*; judgment of September 26, 2017 – X ZR 109/15, Mitt. 2018, 21 marginal no. 113 – *Spinfrequenz*). Admittedly, the writings submitted at first instance may prove that the positioning and fastening of a fabric web by inserting it into a tube designed as a support and holding rail was part of the general technical knowledge as a means that can be applied in a variety of ways within the meaning of this case law. However, the general suitability of a solvent that is part of the general technical knowledge can only suffice as a reason for its use if it is readily apparent to the skilled person that a technical starting position exists in which the use of the solvent in question is objectively expedient. The skilled person's knowledge of the "key slot method" could therefore only suffice as a sufficient reason for its use if he was aware of the basic possibility of designing the bedposts themselves as holding and fastening means for the fabric covering – to be mounted on positioning rods for this purpose. Only then would he have been able to resort to the "key slot method" as a general means available to him for designing such a supporting and holding means. This prerequisite, however, is lacking according to the examples, which

resulted for the skilled person from NK9 and the state of the art in the field of fabric-covered baby crib's referred to therein.

30 2. Accordingly, contrary to the plaintiff's statements, a suggestion for a redesign of the corner posts of the bed did not result from the US patent specification 5 911 478 (NK33-5), which uses support and holding rails in the form of sling rails for the back and seat surface of a chair or armchair consisting of a fabric web. The sling rails are added to the frame elements of the chair and have only the function of supporting, guiding and holding the fabric. Therefore, they also do not provide any reason for the development of the subject matter of the patent in suit.

31 3. The citations cited by the plaintiff do not come any closer to the invention than the state of the art assessed above. Therefore, they do not suggest the teaching of claim 1 either.

32 4. Since the further claims are related back to claim 1, their subject matter is also patentable.

33 V. The decision on costs is based on Sec. 121(2) Patent Act, Sec. 91(1) Code of Civil Procedure.

Meier-Beck

Bacher

Hoffmann

Kober-Dehm

Marx

Previous instance:

Federal Patent Court, judgment of February 4, 2016 – 2 Ni 52/13 (EP) –