

# **An Introduction into Trademarks, Patents, Designs and Copyright**

**with Bugaboo example**

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# COLOPHON

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Krisis62 (Antonino Saccà): figure 6.1, figure 6.2, figure 6.3, figure 6.4, figure 6.5, figure 6.6

The source can be found on [Github](#).

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# Chapter 1

## Introduction

### 1.1 To the audience

This reader presents an introduction on the use of know-how and [intellectual properties \(IP\)](#) and its benefits for students in science, engineering, medical and business courses. The basic concepts and definitions of IP will be treated and also their use and purpose will be described.

The different topics of IP are explained with an example relevant to your background.

Those interested will find additional information in the appendix [appendix B](#) by following the links.

### 1.2 Every day IP

Chances are that you are using products or services appropriated by a variety of [intellectual property rights \(IPR\)](#) on a daily basis, eg. brands, designs, patents, copyrights.

Many of the products that you will buy or use daily are from a certain brand. Such a brand makes you recognize the product and the manufacturer. For example the brand Coca-Cola for cola. On the other hand manufacturers and organisations use their brands to market their products and services.

Next to brands, organisations have their tradenames registered at the Chamber of Commerce.

The book you are reading or the music you are listening to are works made by an author or musician. These makers would like to be rewarded for the efforts put into the making of their work. You are therefore not allowed to copy this work without their permission since it is copyrighted.

In the development and production of bicycles and cars there are many proprietary technologies. Manufacturers of these product would like to earn back their investments in research and development by using patents.

When you are already developing products yourself now or in the future and when involved as entrepreneur or manager you will have to work with different kinds of IP. As a student it is therefore useful to acquire sufficient knowledge of IP for your future career. Even during studies you it can be worthwhile to use them for many reasons, for example for design assignments.

### **1.3 Why do IP rights exist?**

Several hundred years ago the use of intellectual property rights was hardly known. At the beginning of the book printing technology it became possible to copy and disseminate works of literature far more easily. From that moment authors and publishers started to feel the need to appropriate the rights for the production and distribution of these works. With new technologies during the Industrial Revolution mass production in large quantities became feasible for products and devices. This gave rise to a growing interest by manufacturing companies to appropriate trademarks, logos and patents for their products and inventions.

#### **The modern patent in Venice**

During the fifteenth century, Venice was a rich and flourishing city. One of the reasons for this prosperity was the stained glass produced on the island of Murano.

This was a rare and expensive product that became an important economical asset for the city.

However, the formula for making coloured glass was known only to a few people: the glassmakers of Murano.

The Senate of Venice began to worry about the possibility that the glassmakers might die or flee to other countries, thus losing this precious secret.

To avoid such hypothesis, Venice offered the glassmakers to train some apprentices sent by the city. However, the glassmakers refused because accepting the offer would have meant that they loose their monopoly and create potential competitors.

Understanding Murano's concern, Venice offered, in exchange for the secret, an exclusive right for a limited time to guarantee



the glassmakers monopoly. The document granting this right was called a “patent”, from the Latin verb “patere”, meaning to make known.

Thanks to this, the craftsmen accepted the offer and Venice managed to keep the secret, so that we can still enjoy the beautiful coloured glass of Murano today.

In 1474, Venice published the first patent statute in history, to regulate the matter. See figure 1.1.

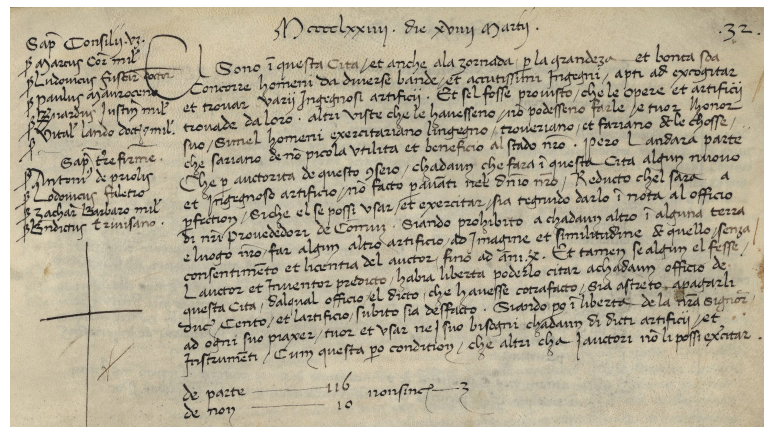


Figure 1.1: The Venetian Patent Statute, enacted by the Senate of Venice in 1474, is widely accepted to be the basis for the earliest patent system in the world.

The general concept behind the use of intellectual property rights is that the creator or manufacturer can apply for a temporary exclusive right hence appropriating their (often intangible) assets and stopping competitors. By doing so the IP owner acquires the possibility to exploit the production of these assets which are otherwise easily copied or manufactured by competitors. So, on the one hand intellectual property rights incentivize persons and innovators who invested both time and money to develop a new product. While on the other hand competitors cannot copy the product and sell it at a cheaper prices without making such investments.

Consumers of those products which have been appropriated with intellectual property rights may have to pay a higher price. Without these intellectual property rights competitors would have been able to sell the products at a lower price. For society at large the introduction of IPR is not only to have all products available at the lowest prices, but to have access to new products and innovations. While using IPR innovative companies are temporarily in a position to charge higher prices thus enabling a return on (earlier made) investments. This is shown in figure 1.2.

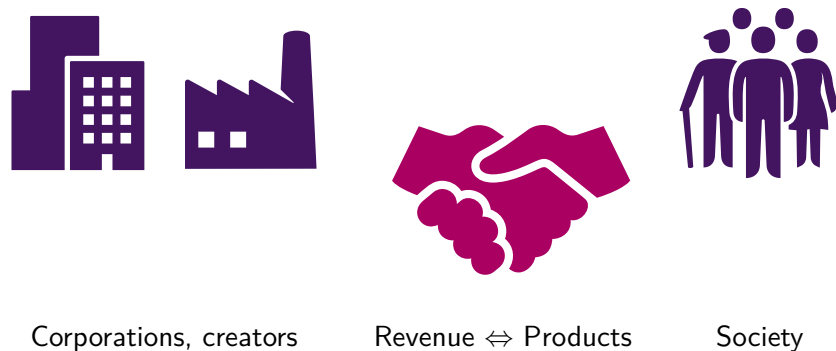


Figure 1.2: Use for business and society

## 1.4 Well known IP

Companies, entrepreneurs, authors, engineers, developers, scientists and inventors can use a variety of IPRs like copyrights, trademarks, patents, trade names, logos, designs, databases, plant breeders, integrated circuit layout and trade secrets.

Some of the well known IP rights are:

**Copyright** Will give the creator (author) at the end of the creation automatically global protection for original works like text, music and images. Copyrights limit free distribution of the work.

**Trademarks** After registration, the trademark owner receives the exclusive right to use the trademark for certain goods and services. A trademark right can be used to take action against competitors who want to exploit the same or similar trademark in the same market.

**Patents** After the application, registration and examination of a patent, others can be excluded from the commercial exploitation of the patented invention.

**Tradenames** Trade and company names are used to make a company known to customers in the market and ensure a reputation and thus customer loyalty. Another company may not cause confusion with its trade name by using a trade name that is too similar to a previously registered trade name.

**Designs** After registration, the design holder receives the exclusive right to use the design. A design right can be used to take legal action against competitors who wish to exploit a similar design.

## 1.5 Frequently used IP for innovations

This document will not describe the legal aspects of IP. See the links to several articles of different laws in [appendix D](#). We will describe how to use IP, and more specifically for innovations. An overview of the importance of the different IP rights for innovations can be seen in the following table.

Table 1.1: Effectiveness of appropriability mechanisms for product innovations; % product innovations for which deemed effective.

Sector	n	Se- crecy	Patents	Other IPRs	Lead time	Comple- mentary sales services	Comple- mentary manufac- turing
Food	89	59	18	21	53	40	51
Petroleum	15	62	33	6	49	40	36
Basic chemicals	35	48	39	12	38	46	45
Drugs	49	54	50	21	50	33	49
Machin- ery tools	10	62	36	9	61	43	35
Comput- ers	25	44	41	27	61	40	38
Electrical equip- ment	22	39	35	15	33	32	32
Semicon- ductors	18	60	27	23	53	42	48
Medical equip- ment	67	51	55	29	58	52	49
Au- toparts	30	51	44	16	64	45	53
All	1118	51	35	21	53	43	46

From: Scotchmer [Sco04] Table 9.1, page 260.

Source: Cohen, Nelson, and Walsh [CNW00], table 1. Note: Each number is a mean response, representing the percentage of product innovations in the row category for which the type of protection in the column is deemed “effective”. The response categories are <10%, 10%–40%, 41%–60%, 61%–90%, >90%.

In general we can see that secrecy (including what we call know-how) is one

of the most frequently used appropriability mechanisms. At the same time patents are important in the sectors drugs and medical equipment.

Other IPRs (for example trademarks or designs) are less frequently used for innovations, but are of course very important for sales and marketing.

## 1.6 An example

In this section we introduce the example which will be elaborated in next chapters.

Here, the main example is the Bugaboo stroller. This stroller is invented and developed by Max Barenbrug in 1994. In article section F.5 one will find more information about the development of the stroller and the start of the company.



Figure 1.3: Bugaboo

The first model of the Bugaboo stroller can be seen in figure 1.3. Barenbrug wanted to achieve a revolutionary improvement with the Bugaboo as compared with known strollers which were commonly used those days. Different configurations and certain properties made the Bugaboo suitable and adaptable to conditions in different environments. For example:

- The stroller can be used for both babies and small children by a simple change of the seat for a baby bassinet.
- The child can be looking both forward or backward towards the parent.
- It can be used on difficult rough terrain by changing the position of the wheels (see also figure 1.4).

- The stroller is small and light hence easy to steer.
- The stroller is foldable into small package format and then easy in transport.
- Clothing of the stroller can be easily changed for necessary cleaning or by clothing with different colours.

From the website:



Figure 1.4: Functionality of the Bugaboo

Max and his business partner saw the potential in the product immediately because it was revolutionary to combine so many functions and, at the same time, to fully integrate form and function into the design. It was the perfect all-in-one: a stroller that's flexible enough to go anywhere and everywhere. At the time, there simply wasn't anything like that out there. Together they applied for the patent right away.

“What initially led to the invention of the first Bugaboo stroller was my surprise at the types of strollers I'd see on the street. Everywhere I went, I would see people struggling to fold and even use their strollers. And they all looked old fashioned and similar with infantile colors, cumbersome white wheels... There was nothing desirable about these products at all.” — Max Barenbrug, Co-founder and Chief Design Officer.

The first patent application for the stroller as shown above can be read in section F.1. This patent application will be used in [chapter 4](#) for further elaboration and explanation about patents.

## Chapter 2

# Know-how and trade secrets

### 2.1 Introduction

Know-how and trade secrets are important assets for companies and public research institutes.

Many entrepreneurs consider know-how as one of the most valuable assets of their company. Hence and although know-how is not a IP right as such we will go into know-how in this chapter.

### 2.2 What is know-how?

Know-how is defined by certain knowledge and skill set obtained by a limited number of specific persons involved in manufacturing, marketing and sales processes of an organisation. By its very nature know-how is not accessible freely or without certain limitations to third parties and persons.

General knowledge in textbooks available to everybody is not considered know-how. See for an example of this definition of know-how Nieuwenhoven Helbach, Huydecoper, and Nispen [NHN02] chapter 5 (in Dutch).

In this context, third parties can be defined as organisations or persons who do not have access to certain know-how. In general very few persons within an organisation have access to specific know-how. Third parties and outsiders will always have to invest considerable time and resources to build up comparable know-how. As such, we conclude that know-how in an organisation is kept secret from third parties.

It is evident that persons must possess certain skills and knowledge in order to fulfill certain processes and tasks, for example the design and assembly

of a product, the draft of an algorithm, the acquisition and analysis of data. Therefore know-how consists of the combination of technical skills, the processing of information thereby using technical knowledge. Besides, non-technical knowledge like market data, marketing techniques, information about rules and regulations within a political context, data about relations and networks are also part of the know-how of organisations.

Investments in research and development contribute to the formation of valuable know-how, as well as working experience of and technical courses for personnel. In this case the acquisition and storage of information like technical data, equations, standards, specifications, processes, methods, recipes, drawings and their use by professional personnel.

## **2.3 Using know-how**

Many corporations, public research institutes and multinationals have a division with IP specialists or in house council. They make sure that procedures, certain rules and codes of conduct concerning IP and know-how are in place and will be followed upon. Such procedures and conduct are often mentioned explicitly in labor contracts. An example of this is a non-disclosure clause.

But also at small and medium sized enterprises or startup companies without in house IP specialists or council it is important to implement internal procedures and codes of conduct to deal with IP and know-how. For those companies which supply parts, products or processes in a supply chain these procedures and codes of conduct are even more important. Without them such companies may run the risk that employees share too much essential know-how with customers or clients.

### **2.3.1 Using know-how by the company itself**

The use of IP rights enable companies to have a positive return on investment in their research, development, marketing and manufacturing with a healthy commercial margin. On top of this, it is important to realise that the combined use of know-how and patents contribute to the successful introduction of technical innovations in the marketplace. In this process know-how of specialists is essential to deliver products and services to customers and clients. In the economic domain the concepts and use of know-how and patents show a striking number of resemblance. Both are a source of (technical) knowledge enabling the owner and user to use technical capacities and developments and thereby a head start or lead advantage which is not available to competitors. The owner of the know-how can exploit this



technological advantage in the marketplace, for example in certain manufacturing processes.

### **2.3.2 Using know-how by third parties**

Many companies do not have manufacturing plants in all countries over the globe. In those countries where there is an outlet for their products or services but where they are not operational themselves in terms of manufacturing, marketing and sales it may be profitable to act as a licensor and work with license agreements. These license agreements are often struck for both patents as well as for know-how. The temporary, exclusive nature of patents provide either the patentee or the patent licensee protection against infringement by competitors. On the other hand, license agreements between the licensor and licensee determine the scope and field of use, geographical area, region or country, time frame in years and royalties or milestones to be paid.

## **2.4 Rules and regulations**

Rules and regulations for know-how can be found in the EU directive 2016/943 and in the Dutch Act of Trade secret protection.

This act rules the protection against unlawful public use of know-how and business information. This combination of know-how and business information is often defined as trade secrets.

According to the act and the directive a company or organisation must comply to certain conditions with regard to the information which:

- a. is kept secret because it is not common knowledge or accessible by third parties,
- b. has value in relationship with the trade or transactions of the company or organisation, and
- c. is kept secret by the company or organisation by means of certain measures (for example a registration system and limited accessible for persons only on a need to know basis).

All in all it must be clear that know-how is a personalized asset. At the end of a labor contract the know-how does not automatically disappear (see figure 2.1). This situation raises the question if know-how can be claimed by the employer at all?



Figure 2.1: Know-how: There it is and there it goes.

## Chapter 3

# Trademarks

### 3.1 Introduction

A trademark is a sign that is used to distinguish the products or services of a company. Entrepreneurs and companies use trademarks to show the origin, quality or image of their products and services. A trademark can be a colour, name, word, logo, shape, number, pattern or sound. It is important that people can recognize a trademark as a sign of a certain company.

It is obligatory that trademarks must be registered for specific products and services. A trademark to be used in the Benelux countries can be registered at the Benelux Office for Intellectual Property (BOIP). For companies operating in the European market trademark registration at the European Union Intellectual Property Office (EUIPO) can be more appropriate, since an EU trademark is valid in all EU member states. Multinational firms can require a globally recognized trademark at the World Intellectual Property Organisation (WIPO) based upon a Benelux or EU trademark. A trademark for the Netherlands only does not exist.

A trademark is valid for 10 years and can be extended indefinitely by paying renewal fees. A trademark can be used to act against other companies that use an identical or similar sign in the same market. It is however important that a trademark is normally used. If a trademark is not used in the market, the trademark right can be cancelled after a certain period.

### 3.2 Trademark law

Rules and regulations for Benelux trademarks are described in the Benelux Convention on Intellectual Property (BCIP). A number of articles that will be further elaborated can be found in section D.1.

For EU trademarks rules and regulations are described in the EU trademark directive (EUTMR). A number of articles that will be further elaborated can be found in [section D.2](#).

### 3.3 What is a trademark?

Trademarks exist since ancient times. The English word for trademarks is branding and originates from branding cattle thus enabling identification and differentiation from other flocks of cattle. Thereby enabling the source of origin of the cattle. As such this function of origin still is regarded as an important function of trademarks.

Nowadays trademarks also have other functions. A trademark can be used for advertisement to inform the public and customers about the quality or image of the products or services. A trademark is also used as a means to communicate with consumers in the market place.

Following [Article 2.1 BCIP](#) or [Article 4 EUTMR](#) trademarks can be composed by any signs, in particular by words. For example names of persons or drawings, letters, numbers, colors, shapes or packages of products, or sounds on the condition that these trademarks:

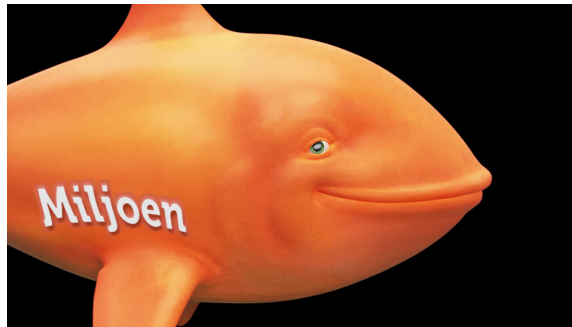
- a. distinguish the companies products or services from those of other companies,
- b. can be shown in the trademark register in such a way that it will allow competent authorities and the general public to determine the protection of the object granted to the trademark holder clearly and accurately.

Everyday we see traditional trademarks like word marks and figurative marks containing word elements used by companies. For example the logos and brands of Coca Cola, Apple, Google and Bugaboo (see [figure 3.1](#)). But different sizes of trademarks are on the rise, like a:

- position trademark, for example the red sole of a pump,
- shape trademark, for example the Toblerone chocolate packages,
- sound trademark, like the lions roar of film studio Metro-Goldwyn-Mayer
- motion trademark, like the swimming orange fish in the Dutch National lottery, see [video 3.1](#)
- multimedia trademark, like soccer club Feyenoord which is made both from pictures and sounds, see [video 3.2](#)



Figure 3.1: Trademark sign with word of Bugaboo



Video 3.1: Motion trademark Staatsloterij

### 3.4 Requirements of a trademark

There are some basic requirements to register a trademark application. These requirements can be found in [Article 2.1 BCIP](#) or [Article 4 EUTMR](#). The most important requirement is that a novel trademark has distinctive character. Besides, trademarks must be registered in a national or international trademark database in a clear and concise way. This will enable legal certainty. In such a way trademark registers will guarantee that third parties can browse through these databases and obtain a clear view about what the trademark protection refers to.

A trademark has to be registered for specific products or services. You can read more in [subsection 3.4.2](#).

There are some basic principles to refuse the registration of trademarks which are mentioned in [Article 2.2bis BCIP](#) or [Article 7 EUTMR](#); for example descriptive signs or signs and figures which are against good morals or undermine the public order can not be registered. During the trademark application procedure the office, where the trademark is applied for, will review these principles. If one of the grounds for refusal applies, the trademark will be refused.



Video 3.2: Multimedia trademark

### 3.4.1 Distinctive character of a trademark

The most important requirement for a trademark is to enable customers to distinguish trademarked products and services from one company versus products and services from a different company, for example a competitor. A trademark is actually a name for a product or service, just as people have a name. This is referred to as distinctive character.

This distinctive character can vary and change in time. A sign that was originally too descriptive and as such not distinctive can become so due to repetitive use over time. We refer to this process as acquired distinctiveness. As an example see Booking.com or Thuisbezorgd.nl. Both names initially have been too descriptive to pass the requirements for trademark registration, but over time people have come to get to know them as a trademark. This process of acquired distinctiveness will eventually enable the registering of these particular trademarks.

The opposite also applies. A distinctive sign can lose its distinctiveness when people start using it as generic or name for a certain species. This process is called becoming a generic name. In the Netherlands Hagelslag was a trademarked product for a specific spread on bread, however the general public does not regard this product originating from a particular company anymore but as a generic name. Other examples are the bikini or trampoline.

In order to prevent that a trademark will become a generic name it is important that the trademark holder will stop third parties using their trademark as a generic name. We will discuss such possibilities in [section 3.6](#).

### 3.4.2 Registration of trademarks for products or services

At the time of application the trademark will be registered for specific products or services using the so-called Nice classification system. This classification system has 45 classes, whereby class 1 till 34 are related to products

and class 35 till 45 are related to services. During the process of the application for a trademark a company can apply for one or more classes. Payment of trademark fees depends on number of classes, so a company will pay an additional fee once they apply for an additional classification. Each Nice classification describes a group of products or services for a trademark registration. You can have a look at these Nice classifications in appendix E.

Since a trademark can be registered for specific products or services it is possible that one trademark can be used by different companies operating in different niche markets or regions. For example Ajax is a trademark for fire extinguisher equipment, but also for a soccer company and cleaning materials. So, although the name Ajax is literary the same, used signs of the respective trademarks vary much and contain enough distinctiveness amongst themselves.

### 3.4.3 Absolute grounds for refusal

With every application for a trademark registration, the sign that will be registered is tested on the basis of a number of legal refusal and exception grounds, also called absolute grounds for refusal (see Article 2.2bis BCIP or Article 7 EUTMR). A sign is refused for registration as a trademark, if the sign:

- is descriptive;
- lacks distinctive character;
- is misleading;
- contains the emblem of a state or international organisation protected by article 6ter of the Paris Treaty;
- should be protected by design or patent rights;
- is contrary to morality or public order;
- refers to a protected geographical indication or protected designation of origin;
- refers to or resembles closely a protected plant variety name.

Most common ground for trademark refusal is when the sign is too descriptive. A sign is descriptive when it merely consists of signs and names serving and promoting the characteristics of products or services for which the trademark protection has been applied for. The common ground for refusal is that such too descriptive indications have to be able to be used freely. A trademark application for Apple cannot be granted for apples as a category of fruits or a trademark application for Sugar-free can not be granted for soft drinks.

In general, the combination of descriptive signs is also regarded as being descriptive. So, trademark registration for Biomild cannot be granted for

yoghurt. Here, there is one exception when a sign will acquire an certain degree of an extra dimension when it is composed by a combination of signs. For example in the Netherlands the application of Blikvanger (Can catcher) can be registered as a trademark due to the fact that it has a different meaning than ‘catching empty cans’.

### **3.5 Publication trademark application**

During the procedure to obtain a trademark it will be officially registered in the trademark register after formal requirements, including payment of fees, have been taken care of. The trademark register is freely accessible to the public via websites of BOIP, EUIPO and database TMView,

Trademark holders of earlier trademarks who are of the opinion that a new trademark application conflicts their existing rights can start an opposition procedure. During such a procedure you can object against the new trademark application. An opposition against a Benelux trademark application must be started at the BOIP within a time frame of two months after publication of the trademark application. An opposition procedure against an EU community trademark must start at the EUIPO within three months after publication.

#### **3.5.1 Opposition procedure**

An opposition procedure is a procedure giving an earlier trademark holder the possibility to object against the registration of a new trademark which conflicts with their existing right. Often such procedures are based upon earlier registered trademarks indicating that the registration of a new trademark could lead to potential confusion amongst consumers.

When the opposition procedure succeeds the registration of the trademark will be refused. If the opposition procedure fails the new trademark will be registered.

#### **3.5.2 Use of a trademark**

It is important that a registered trademark is in use in the market place for those products or services for which it is registered. If a trademark holder fails to do so he will run the risk that he cannot invoke his trademark in an opposition procedure or that the trademark will be lost and cancelled in the trademark register.

The use of the trademark must be directed towards finding or maintaining real commercial sales of products or services for which the trademark has



been registered. Symbolic use by itself does not suffice. The trademark does not need precise use according to its registration as minor variations also indicates its use (see [Article 2.23bis part 5 BCIP](#)). In this manner the trademark holder has the possibility to bring minor variations into the commercial use of its trademark.

### **3.5.3 Trademark registration of the Bugaboo trademark**

In the trademark register several sources of information about the trademark can be found like the trademark holder, the type and sign of the trademark, validity and the products or services for which the trademark has been registered. In ?? you can see the registration of the word trademark BUGABOO for products in class 12 and 28 and for services in class 35.

### **3.5.4 Cancellation or nullity procedure**

When a trademark has been registered in the trademark register it is still possible that a different party can claim its cancellation or nullity due to the fact that the trademark is not used, or that the trademark is too descriptive or infringes with an earlier granted trademark. In case of a Benelux trademark such a cancellation or nullity procedure can be conducted at the BOIP or the Court. Cancellation or nullity procedures of an EU community trademark have to be executed at the level of the EUIPO.

## **3.6 Trademark enforcement**

The owner of the trademark, also named trademark holder has to monitor the market to observe if a company or person uses a sign or applies for a trademark that looks too much like their own trademark, hence infringing the rights of the trademark holder. If you find a sign or trademark that looks like your own trademark you will have to take action in order to nullify the other trademark. On the other hand it is also possible to leave the other trademark as is.

### **3.6.1 The rights of the trademark holder**

The rights of the trademark holder can be found in [Article 2.20 part 2 BCIP](#) or [Article 9 EUTMR](#). A trademark holder can act against other parties in the market place who without formal permission are using:

- a. A same trademark for similar products or services,

- b. A same trademark or a trademark that looks much alike for similar products or services, where there may be a risk that consumers will be confused

Looking into the case of Bugaboo the company can act based upon her trademark registration in class 12 (e.g. strollers) against the trademark of BUGAZOO for strollers, since consumers maybe confused by these two trademarks for products used by competing companies in the same market niche.

In addition, holders of well-known trademarks can take action against parties who ‘free ride’ on a well-known trademark without permission and without valid reason or when the distinctive character or reputation of the well-known trademark is harmed.

If the BUGAZOO sign would not used for strollers, but for clothing, for example, Bugaboo could possibly rely on the extra protection that exists for holders of well-known trademarks. In that case, Bugaboo would have to substantiate that BUGABOO is a well-known trademark and that its trademark is being used without valid reason.

### **3.6.2 Trademark limitations**

In some situations trademark holders cannot act based upon their exclusive trademark right. Such limitations are mentioned and addressed in [Article 2.23 BCIP](#) or [Article 14 EUTMR](#). A trademark holder cannot act against the sales of trademarked products if these have been delivered or sold by the company itself or with its permission in the EU (European Economic Area). At the moment of the sales the holder has received revenues and has used the trademark. This is referred to as [exhaustion](#) of the trademark, see [Article 2.23 part 3 BCIP](#) or [Article 15 EUTMR](#).

## Chapter 4

# Patents

### 4.1 Introduction

With a [patent](#) you become the owner of your invention.

Thus a patent is property which you can use:

- a. preventing others to use your invention, or
- b. giving permission to others to use your invention.

The concept of property is defined under (inter) national law and regulations. This is also true for patents since patents are part of industrial property rights. Using a patent in a specific country will always depend on the framework of laws and legislation in that country.

Since the use of an invention is often not limited to a particular country only, it can be profitable to use it in other countries as well.

The world of inventions is therefore multinational or worldwide.

Since patents are used on a globally there are several international treaties for patents next to national patent laws. An introduction into the most important international treaties can be found in [section 4.2](#).

Most relevant features of patents are elaborated in following sections.

From [section 4.6](#), the contents of a patent will be described using the main example (see [section 1.6](#)).

## 4.2 Patent laws and treaties

Every country has its own patent law. In addition, there are often regional or international cooperations through treaties. An example of such a regional cooperation is the European Patent Convention. This European cooperation has ensured that the patent laws in the 38 member states are harmonised. There is also a global treaty for a central worldwide patent application through the World Intellectual Property Organization (WIPO) (193 member states).

- The Dutch Patent Act is determined in the Rijksoctrooiwet 1995 (ROW). The Netherlands Patent Office (Octrooiencentrum Nederland) grants Dutch patents.
- The patent law for European patents is determined in the European Patent Convention (EPC). A European patent is granted by the European Patent Office (EPO). Next they are registered by the applicant in the countries of interest.
- The route a worldwide patent application is determined in the Patent Cooperation Treaty (PCT). However, no patent will be granted in this procedure. After this central application, the patent application is continued in the countries or regions of interest.

## 4.3 Patent rights

Patent law excludes others from commercially:

- making,
- using,
- selling, or
- stocking

the invention.

Such exclusivity lasts for a maximum period of 20 years after the filing date of the patent application.

The restrictions that a patent exerts are determined by the legislation of a country in question. These restrictions can therefore differ greatly from country to country. It should be noted that the Treaty of Paris (1883) guarantees a minimum harmonisation.

In Europe, a patent generally restricts the commercial making, use, sale and stocking of the invention, but it does allow to use the invention for one's own non-commercial use.

So you can build a Ferrari for yourself, but don't sell it to your neighbour, because that would be a commercial act.

Under certain conditions, it is also permitted to use the invention for scientific and research purposes, without being able to be prosecuted for infringement.

For a precise description of the legal consequences of a patent in the Netherlands, see [article 53 ROW](#) (in Dutch).

The patent right can no longer be used if the patent holder, or someone else with the consent of the patent holder, has sold the patented product. You can then do whatever you want with the patented product. This is called exhaustion. This is described in [article 53 paragraph 5 ROW](#).

## 4.4 Inventions

Most people have a general idea about inventions and inventors. For example, it is:

- a new development,
- often with a technical background and
- an improvement over existing technologies.

More formally, an invention is often described as a technical solution to a problem.

However, an invention is not defined in patent law!

In patent law, the definition of an invention has been avoided by defining accurately what is not considered an invention. For example, theories and mathematical methods are not regarded as inventions hence they cannot be patented.

Furthermore, an invention must be industrially applicable. This requirement of industrial applicability separates patent law from the other intellectual property rights.

The requirements for novelty and inventive step ensure that certain technical developments and inventions are only considered to be patentable inventions, if their subject-matter is not already known by (or disclosed to) the public and is also not obvious.

For a more accurate description of the exceptions on patentability and the basic requirements, see [article 52 EPC](#) or [article 33\(1\) PCT](#).

## 4.5 Requirements for a patent

There are many requirements that a patent must meet. In addition to formal requirements, there are substantive requirements. Formal requirements are necessary for the proper processing of the application. For example, it is necessary that the patent office can contact the applicant and that the application is written in the correct language.

To obtain a granted patent, the most important substantive requirements are that the invention is:

- new,
- inventive,
- must be sufficiently clear disclosed.

The invention must be new and inventive, otherwise the patent would not contribute to the general knowledge and improvement of technology. It must therefore also be described clearly enough.

### 4.5.1 Novelty

Novelty means that the invention has not been disclosed. All information that is publicly accessible to the person skilled in the art can be used to determine this. It is an objective criterion, whereby the person skilled in the art is supposed to know all state of the art.

For the assessment of novelty (and inventive step) all information before the filing date of the application is taken into consideration. This is the date of the first filing: ‘first to file’.

Until recently, the United States had a different system: ‘first to invent’. The moment when the inventor conceived the invention was the moment for the assessment of the requirements. Although fundamentally correct, this brings with it all sorts of problems of proof when conflicts arise. That is why in 2011 the United States also switched to the ‘first to file’ principle.

Documents with a later publication date than the filing date can not be detrimental to novelty, nor can they take away inventiveness.

So if not all features of the invention are already known, the invention is new:

An invention shall be considered to be new if it does not form part of the state of the art (see also article 54 (1) EPC or article 33(2) PCT).

### 4.5.2 State of the art

The state of the art is accurately defined in the patent law:

The state of the art shall be held to comprise everything made available to the public by means of a written or oral description, by use, or in any other way, before the date of filing of the patent application (see also article 54 (2) EPC or Rule 64 PCT).

This definition stipulates that all information that is publicly accessible in the world is regarded as state of the art. This also includes the documents in a small library in a Chinese mountain village. An important limitation is that the information must be *publicly* accessible. Documentation, such as technical drawings used in a company, is normally not publicly accessible (due to confidentiality). These documents can therefore not be used to assess novelty.

The filing date is an important date. Anything that has become available public after this date will not affect the patent application. If the same invention is applied for on different dates, the person who applied first has the right to the invention.

Each patent application is published 18 months after the first filing. Thereby it also becomes part of the state of the art.

### 4.5.3 Inventive step

Inventive step means that it is not obvious for the person skilled in the art to carry out the improvement or modification, for which protection is requested, in the particular solution:

An invention shall be considered as involving an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the art (see also article 56 EPC or article 33(3) PCT).

In the practice of patent examination, this means that all claimed properties are known from a combination of two embodiments, described in one or two documents. The person skilled in the art is thereby also hinted to combine the features of the two embodiments.

or

If the only difference with a known embodiment is an alternative that is obvious to the person skilled in the art, which he knows on the basis of his general knowledge, then the invention is considered to lack an inventive step. For example: To attach something on a wall, a screw is a well-known alternative to a nail.

#### 4.5.4 Clear and sufficiently disclosed

In a patent, the invention must be made public. This must be done in such a way that it can be performed by the [person skilled in the art](#). It is therefore not possible to obtain a patent and keep your invention secret. See also article 83 and 84 EPC and article 5 PCT.

A perpetuum mobile is therefore by definition not patentable.<sup>1</sup>

Features that are well known by the person skilled in the art do not need to be described. For example: It is not necessary to describe how something should be fastened, if it is clear to the person skilled in the art that it can be either welded or glued.

The [person skilled in the art](#) is defined in patent law as skilled in the field of the invention with broad professional knowledge. The skilled person only knows obvious solutions to problems, but cannot become inventive himself.

## 4.6 Contents patent application

A patent application consists of the following parts:

**Description** The description consists of an introduction and a section containing at least one complete embodiment of the invention. The introduction briefly describes what is known in the state of the art, what problem still exists in this known state of the art and a short description of the solution (the invention) to this problem.

**Claims** The [claims](#) define the scope of the patent protection. These claims are normally written as a set of claims. Usually there is a main claim and several dependent claims. The main claim therefore offers the broadest scope of protection. The dependent claims add further features and therefore have a smaller scope of protection than the main claim.

**Figures** The figures are there to clarify the invention.

The claims determine the scope and type of protection. The legal scope of protection of the patent is therefore determined by the claims. The claims are therefore written in a legal style.

---

<sup>1</sup> Why is a perpetuum mobile not sufficiently disclosed? [Click for explanation](#).



For maximum protection, the invention is described as broadly as is possible in the claims. But if the invention is described too broadly, then the possibility increases, that it is deemed not new or not inventive.

## 4.7 Publication patent application

The patent application is published 18 months after the first filing. Figure 4.1 shows the front of the publication of the Bugaboo application. After the front page, the pages of the application as filed are published. The whole publication can be seen in [section F.1](#).

This is the A publication (see the A1 code in the publication number WO 00/06437 A1). The A publication is the publication of the patent application. The next publication is the B publication. The B publication is the publication of the granted patent.

Bibliographic data are published on the first page of a patent document. The following data are the most interesting:

**Title** gives a very quick indication of the subject of the patent.

**Abstract** gives a short summary of the contents.

**Figure next to the abstract** is normally a figure from the list of figures which is representing the invention.

Other data on the first page are more interesting to check for the legal aspects of the patent document:

**Applicant** is the one who has filed the application and the one who will normally have the patent rights.

**Inventor** is one person or are more persons who have made a significant contribution to the invention. In US patent law, the inventor is the one who has the rights to the patent. In other countries it is the applicant who has these rights.

**Priority data** is the date of the first patent application filed and for which a priority is claimed. The patent rights start from this date. In this case there is a dutch priority (NL 1009753).

**Filing date** is the date this application was filed.

**Designated states** are all the countries that are requested for patent protection when this application was filed under the [PCT](#). The PCT procedure is used to start a world wide patent application.

PCT

WORLD INTELLECTUAL PROPERTY ORGANIZATION  
International Bureau



INTERNATIONAL APPLICATION PUBLISHED UNDER THE PATENT COOPERATION TREATY (PCT)

(51) International Patent Classification <sup>7</sup> : <b>B62B 7/14</b>		A1	(11) International Publication Number: <b>WO 00/06437</b>
			(43) International Publication Date: 10 February 2000 (10.02.00)
(21) International Application Number: PCT/NL99/00476 (22) International Filing Date: 23 July 1999 (23.07.99) (30) Priority Data: 1009753 28 July 1998 (28.07.98) NL (71) Applicant (for all designated States except US): ROYALTY BUGABOO SARL [LU/LU]; RC Luxembourg B 69659, 4, rue Jean Monet, L-2180 Luxembourg (LU). (71)(72) Applicant and Inventor: BARENBRUG, Machiel, Gerardus, Theodorus, Marie [NL/NL]; Zandstraat 16'', NL-1011 HL Amsterdam (NL).		(81) Designated States: AE, AL, AM, AT, AU, AZ, BA, BB, BG, BR, BY, CA, CH, CN, CU, CZ, DE, DK, EE, ES, FI, GB, GD, GE, GH, GM, HR, HU, ID, IL, IN, IS, JP, KE, KG, KP, KR, KZ, LC, LK, LR, LS, LT, LU, LV, MD, MG, MK, MN, MW, MX, NO, NZ, PL, PT, RO, RU, SD, SE, SG, SI, SK, SL, TJ, TM, TR, TT, UA, UG, US, UZ, VN, YU, ZA, ZW, ARIPO patent (GH, GM, KE, LS, MW, SD, SL, SZ, UG, ZW), Eurasian patent (AM, AZ, BY, KG, KZ, MD, RU, TJ, TM), European patent (AT, BE, CH, CY, DE, DK, ES, FI, FR, GB, GR, IE, IT, LU, MC, NL, PT, SE), OAPI patent (BF, BJ, CF, CG, CI, CM, GA, GN, GW, ML, MR, NE, SN, TD, TG). Published With international search report. In English translation (filed in Dutch).	
(54) Title: BUGGY (57) Abstract <p>The invention concerns a buggy (1) comprising a frame (2) with front (3) and rear wheels (4), a pull and push bar (5), and front wheel bars (6) and rear wheel bars (7) that support the front and rear wheels and which are connected to the pull and push bar, and a seat (9) accommodated in the frame, the buggy being provided on either side with a coupling device (8) for the rotatable connection of the pull and push bar and the front wheel and rear wheel bars, this coupling device being equipped for the detachable fitting of the seat (9).</p>			

Figure 4.1: Front page of WO 00/06437 A1

**Publication date** is the date this application was published and thereby known to the public. Before this date, the application was secret and not known to the public.

Also some administrative data are mentioned, so that the document can be easily identified:

**Publication number** is a unique number to identify a patent document. It also gives information on the type of document. The first letters are the country code. In this case WO, which stands for the PCT world wide application. Others are for example EP for the European procedure at the European Patent Office (EPO), NL for the Netherlands, US for the United States, DE for Germany, etc. There is also a kind code. In this case A1, which stands for application published with search report. When an application is granted, then often the B code is used.

**Application number** is the number the application gets when it is filed.

There are also classification codes published on the document. These codes are used for searching.

## 4.8 Claims

The **claims** determine the scope of protection of the patent. Usually there is a main claim with several dependent claims. The dependent claims define further features of the invention.

The function of the dependent claims is to have more specific claims in case the main claim does not hold up in the examination procedure or in court.

### 4.8.1 Claim of the Bugaboo example

The main claim of the Bugaboo example is as follows (the numbers after the words refer to parts in the drawings; see figure 4.2):

Buggy comprising a frame with front and rear wheels, a pull and push bar, and front wheel bars and rear wheel bars that support the front and rear wheels and which are connected to the pull and push bar, and a seat accommodated in the frame, in which the buggy is provided on either side with a coupling device (8) for the rotatable connection of the pull and push bar (5) and the front wheel and rear wheel bars (6, 7), this coupling device being equipped for the detachable fitting of the seat.

The language used in the claim is a lot more complicated than the language you might normally use to describe the invention. The invention can also be described as:

Buggy with removable seat and a central connection for the bars of the wheels, the push bar and the seat.

One reason for this complicated language in claims is that the text is a legal text. The invention must be legally clearly described. For example the wording central connection in the short description above does not define any feature of the connection. The boundary of what part of the buggy is this connection and what are the bars is not defined. This may not seem relevant, but it will give issues when determining the requirements for novelty.

Another reason for the use of this kind of language is that the patent holder wants the largest possible scope of protection. The patent holder would also like to include embodiments of the invention that differ in features that are not important for the invention. In this case, the details of the coupling device are not described in the main claim.

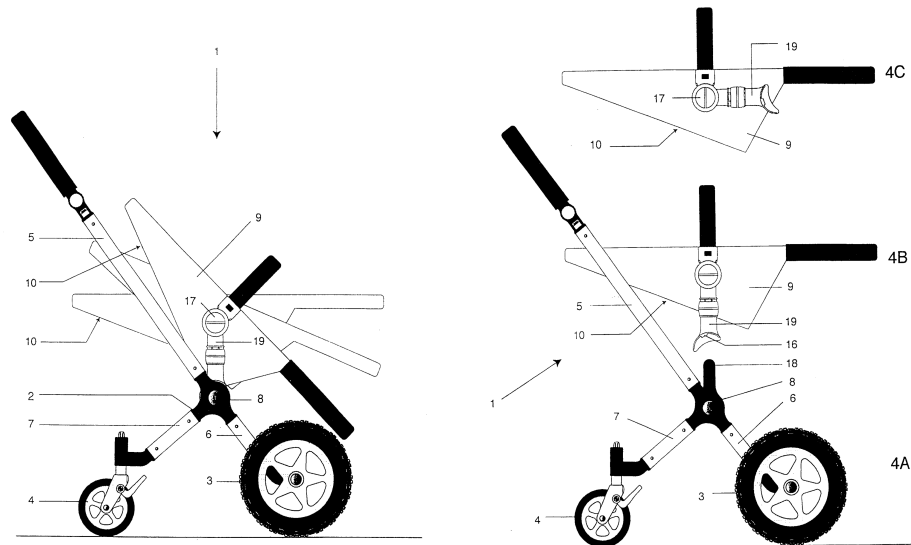


Figure 4.2: The embodiment of the Bugaboo example

#### 4.8.2 Test for novelty

As mentioned earlier, a patent must be new. In the [search report](#) in the publication of the patent application in [section F.1](#), it can be seen that several documents are cited as state of the art. The search report is used by the

examiner to assess the novelty and inventive step of the patent application. In this search report none of these documents are considered detrimental to the novelty of the buggy claimed in the patent application.

The following demonstrates how novelty can be assessed. It starts with breaking down the claim into separate features. It is then determined whether these features are collectively known in a prior art document. For this exercise, the second document of the search report is used. This document with number US 5 772 279 can be found in [section F.2](#).

Try to find the answer yourself before viewing the answer.

Features claim 1 of the patent application	Where to be found in US 5 772 279?
Buggy comprising a frame with front and rear wheels	<a href="#">Click for answer.</a>
a pull and push bar	<a href="#">Click for answer.</a>
and front wheel bars and rear wheel bars that support the front and rear wheels and which are connected to the pull and push bar	<a href="#">Click for answer.</a>
and a seat accommodated in the frame	<a href="#">Click for answer.</a>
in which the buggy is provided on either side with a coupling device	<a href="#">Click for answer.</a>
for the rotatable connection of the pull and push bar	<a href="#">Click for answer.</a>
and the front wheel and rear wheel bars	<a href="#">Click for answer.</a>
this coupling device being equipped for the detachable fitting of the seat.	<a href="#">Click for answer.</a>

Thus one of the features of the patent application can not be found in the document. You have thus demonstrated that the buggy as claimed is not known from this document. The buggy as claimed is therefore new, when considering this document.

## 4.9 Patent application procedures

Patents can be applied for in different countries, but also regionally. In Europe, a European patent can be applied for at the European Patent Office (EPO). A worldwide patent application can be applied for via the PCT procedure at the WIPO.

These different patent application procedures have great similarities, but they are not the same. Therefore, the different procedures are briefly described below. Finally, the procedures chosen in the example are described.

### 4.9.1 EP patent application

The patent application procedure for a European patent (EP) will be discussed first. This procedure is similar to the patent application procedures used in many countries. Figure 4.3 shows an overview of the EP procedure.

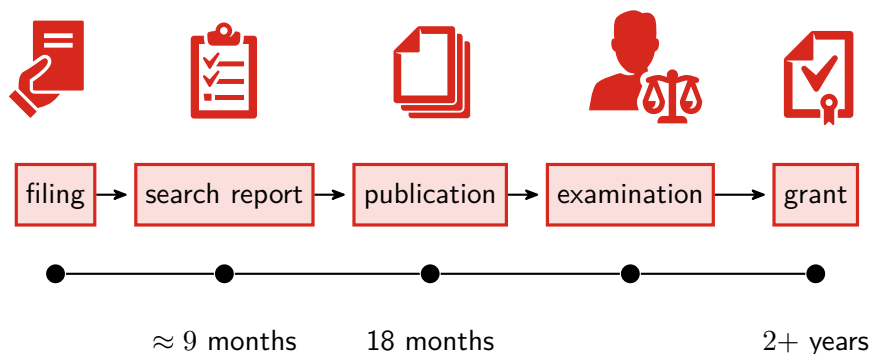


Figure 4.3: EP procedure

The application starts with the filing of the application at the patent office. The first substantive response to the request is a [search report](#). The most relevant state of the art is mentioned in the search report. The state of the art mentioned in the search report is used in the assessment of the requirements for a patent. This assessment of the requirements takes place during the examination. In addition to the search report, a written opinion is delivered with the search report. Possible objections to the grant of the

patent are noted in the written opinion. Not being new or not having an inventive step are the most well-known objections.

The application will be published 18 months after the first filing date. Up to the publication date, the application is secret. From the moment of publication, the invention is known all over the world.

Before the patent is granted, first an assessment is made whether the application meets all the requirements. If not all requirements are met, a communication will be written by the examiner and sent to the applicant. This communication states the objections against the grant and that the application can thus not be granted. The applicant has the possibility of overcoming these objections, for example, by amending the claims. This round of objections and amendments can take place several times. At the end of the procedure an oral hearing may also be held to come to a decision. If there are no objections, the application will be granted. There is also the possibility that the application will be refused if the objections are not overcome.

After the grant, the patent must be validated at the national patent offices in the desired countries in Europe. The European patent then becomes a bundle of national patents.

#### 4.9.2 NL patent application

The Dutch procedure for a patent is simpler than, for example, the European procedure. The Dutch procedure is shown in figure 4.4. A similar procedure is also used in other countries, such as Belgium.



Figure 4.4: NL procedure

The big difference with, for example, the EP procedure is that there is no examination. The patents are granted automatically together with the publication. Also patents that do not meet the requirements are automatically granted. The information from the search report and the accompanying

written opinion must then be used to estimate the extent to which the patent holder can exercise his patent rights. A possible lawsuit will clarify these patent rights.

### 4.9.3 PCT patent application

The PCT (Patent Cooperation Treaty) procedure, for the worldwide application of a patent, is shown schematically in Figure 4.5. The single central application for the most relevant countries in the world is the advantage of the PCT procedure over national or regional procedures.

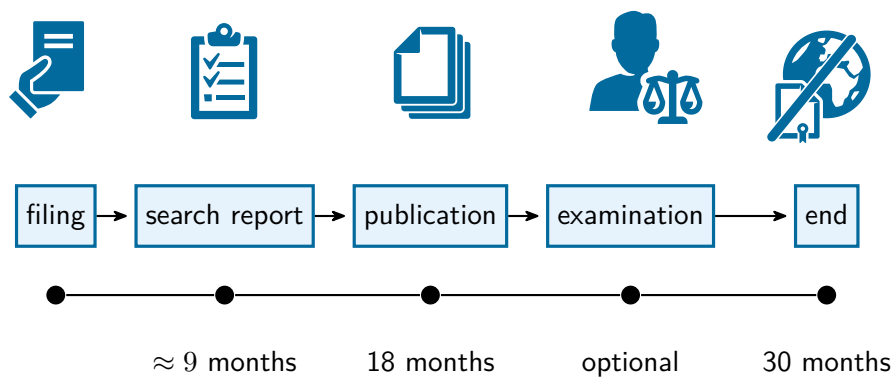


Figure 4.5: PCT procedure

However, there are 2 characteristics that form an important difference to the other procedures:

1. The PCT procedure ends after 30 months. At that moment no patent has been granted.
2. The examination is optional.

The procedure to obtain a patent must be continued in regional or national proceedings. So the PCT procedure is only the beginning of the patent procedure. The optional examination is therefore not a decision to grant or refuse the patent, but an opinion on patentability.

The postponement of the choice of the desired countries and therefore also a postponement of costs is a reason why often the PCT procedure is chosen. Furthermore, the costs of a search report happen only once, because the search report from the PCT phase is used in the later national or regional examination. Otherwise, if parallel applications were made in different countries, these costs would have to be incurred in all the selected countries.

The PCT procedure is therefore of interest if patent rights are expected to be desired in several countries in different regions.



#### 4.9.4 Priority year

It is usually only possible to assess whether continuing the application is useful after receipt of the search report. That is why most countries have the rule that the **priority** of a previous application from another (or the same) country can be used for 1 year. The applicant then has one year to determine in which countries a patent is also wanted. The later application will then receive the priority date of the earlier application. It is then as if the later application was filed on the date of the earlier application (see also article 87 – 89 EPC or article 8 PCT).

This priority right can also be used for regional procedures such as the EP procedure or for the PCT procedure. It is therefore possible to start with the patent application in one country and then go to the worldwide PCT procedure within 1 year. You then have the opportunity to estimate the usefulness of the patent application before larger costs have to be incurred.

#### 4.9.5 Procedure of the Bugaboo patent

Figure 4.6 shows an overview of the procedure from the application of the Bugaboo invention up to the grant of the patent.

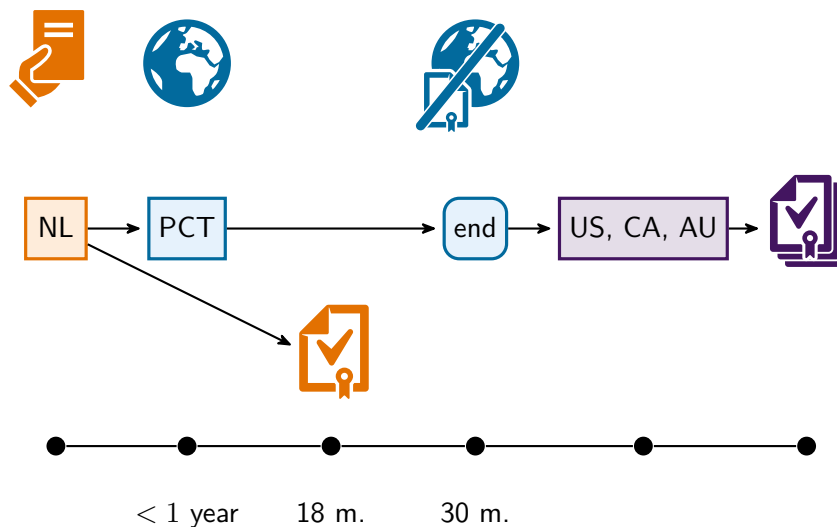


Figure 4.6: Procedure of the Bugaboo patent

The first patent application was filed in the Netherlands. This application was published and granted 18 months after filing. In this procedure there was no examination and the patent was granted automatically.

Before 1 year passed, the second patent application was filed as a PCT

application. The second filing claimed the priority of the first filing. The PCT procedure ends after 30 months.

They decided to continue after the PCT phase in various national procedures. The national procedures are in the United States (US), Canada (CA) and Australia (AU). The patent was eventually also granted in these countries.

As can be seen, the patent was eventually granted in 4 countries. Although we can not be certain, it seems that the costs of a patent played a role in the choice of countries.

#### 4.9.6 Granted Bugaboo patent

From the search report of the patent application for the buggy it was clear that no novelty destroying documents were found. Still, during the examinations in the different patent procedures, the claims have been amended. It seems that objections concerning the clarity of the claim have been raised. The main claim that has been granted in the US procedure is as follows, whereby the added text is in italics:

*A buggy comprising: a frame with two spaced-apart hinging members; a front wheel bar and a rear wheel bar rotatably attached to each of the hinging members to be rotatable around a transverse axis; a front wheel supported by each front wheel bar; a rear wheel supported by each rear wheel bar; a push bar connected to each of the hinging members; a seat; the hinging members comprising a respective attachment part for releasably receiving the seat; the attachment parts comprising locking members for locking the relative movement of the front wheel bars, the rear wheel bars and the push bar; and the seat comprising an actuating member for placing the locking members in a locking position upon placement of the seat on the attachment parts and for releasing the locking members upon removal of the seat from the attachment parts; the distance between the front wheels being different from the distance between the rear wheels, and wherein the buggy can be placed in a first operating position by rotating the front wheel bars and the rear wheel bars with respect to one another around the transverse axis such that the front wheel bars and the rear wheel bars include an angle, and in a second operating position by rotating the front wheel bars and the rear wheel bars with respect to one another around the transverse axis to extend generally parallel, in which second operation position, the front and rear wheels are placed substantially side by side.*

Several features have been added to the main claim. With these additional features, the claimed buggy is deemed to be clearly claimed.

You see that the scope of protection of the granted patent is reduced compared to the patent application. This also indicates the importance of the dependent claims and of a sufficiently detailed and complete description. The claims can then be modified with additional features mentioned in the dependent claims or the description. With these additional features it is possible to overcome the objections to the granting of the patent. These features must already have been described in the patent application, as they can not be added later after the original filing of the application.

#### **4.9.7 Patent family**

You have seen from the example that a first patent application resulted in several equally granted patents in the different countries. These patent applications and granted patents have practically the same content. However, they are all published separately.

Most of these publications are included in the patent databases. However, when you are searching, you don't want to see every publication with the same content separately. That's not helpful. If you have seen one, you also know the content of the other publications.

In the patent databases, the publications are therefore grouped by family. A family of patents is therefore a collection of patent applications and patents that have the same content. The grouping is done automatically, using the relationship with the first filed application (the priority document) to group the documents. However, this may sometimes not be correct if a non-standard procedure has been followed.

### **4.10 After grant of the patent**

It is only after the granting of the patent that it is clear what the exact scope of protection of the patent is. That is why the patent can only really be used to stop others using the invention once the patent has been granted. However, the work on the patent and also the costs and even risks are not over yet.

The following activities are still required:

1. You must discover potential infringement of your patent yourself. So you have to pay close attention to which competitor may be infringing.

2. You must also organize the stopping of a possible infringement yourself. Warn the potential infringer first and perhaps eventually even file a lawsuit. A lawsuit is not cheap. This will have to be taken into account when deciding on the strategy to be followed.
3. Even if your patent has been granted, you can still lose it. In the EP procedure, an opposition procedure is still possible within 9 months after the grant. During an opposition procedure, third parties can object to the granted patent. In that case, the patent may still be rejected. It is also possible that the patent needs to be modified. This is comparable to the examination of the patent application.

The patent can also be attacked later through the courts by third parties. Also then is it possible that the patent will be declared invalid. This step is usually taken by third parties if they are accused of infringement.

4. To ensure that patent rights do not continue to exist for an unnecessarily long time, an annual maintenance fee must be paid. If payment is not made, the patent expires. If the patent does not have enough economic value, it is probably better not to maintain it any longer.

It is clear from the foregoing that the publications in the patent databases do not provide information about the status of a patent. This status must be looked up in the patent registers. Each country has its own patent register to administer this status. Some links to these registers can be found in section B.4.

## Chapter 5

# Designs

### 5.1 Introduction

A design right offers the possibility to protect the appearance, also called design or shaping, of a product. A design right application can be granted if it is new and has an individual character at the time of filing for registration. This individual character of a product can be appropriated by the filing of a design right.

A design right has to be filed and applied for like many other IP rights. At the BOIP you can file a Benelux design right for the Benelux countries. At the EUIPO you can apply for an EU community design right which is valid in all countries of the EU. Next a global design right can be applied for at the WIPO.

A granted design is valid for five years which can be renewed for another five years till a maximum of 25 years on the condition that fees are paid. A design enables the owner to act against third parties who sell a product showing the same individual character of your design.

### 5.2 Design law

The rules for Benelux designs are part of the Benelux Convention on Intellectual Property rights (BCIP). A number of relevant articles will be elaborated further and can be found in [section D.6](#).

The rules for EU community designs can be found in the Regulation on Community designs (CDR). A number of relevant articles will be elaborated further and can be found in [section D.7](#).

### 5.3 What is a design?

With designs we refer to the appearance of an object, for example a new set of headphones, a watch, a bag or a stroller like the Bugaboo. Also two dimensional products named also ‘drawings’ can be protected as design. For example, think of the pattern on wallpaper, fabric, tiles or crockery.

According to [Article 3.1 part 3 BCIP](#) or [Article 3 CDR](#) the appearance of a product is derived by certain features such as lines, circumference, colors, shape, texture, decoration of the materials of the product.

### 5.4 Requirements for design right protection

To claim your design right for a certain product you have to register the design. A design has to be new when it is filed. According to [Article 3.3 BCIP](#) or [Article 5 CDR](#) a design can be considered to be new if no identical design is available to the public on the date on which you file the application. Once a design has been published on for example a website, commercial material or shown at a trade fair the design has become publically known and hence not new.

Next, a design must have its individual character. According to [Article 3.3 BCIP](#) or [Article 6 CDR](#) the individual character of the new design means that it will give a different impression from the general impression made on users by designs which have been made available to the public before the date of application. For such a comparison of impressions the informed user is used a legal basis.

A design right cannot be of use if the characteristics or external features of the design are determined by technical functions. In such conditions patents are the kind of appropriate Intellectual Property rights to apply for.

### 5.5 Design right application procedure

A design right is obtained by registration of a design application at, for instance, [BOIP](#), [EUIPO](#) or [WIPO](#). These organisations will not examine whether a design is new and has a individual character. However some formal requirements will be taken into consideration ([Article 3.9 BCIP](#) or [Article 35 CDR](#)). A picture of the appearance of the design must be sufficiently clear and fees must be paid.

If the design application fulfils the formal requirements the design will be registered into the register of designs. This register is freely accessible for everybody and can be found at the websites of [BOIP](#), [EUIPO](#) or [DesignView](#).

It is recommendable to browse the design register and monitor what designs are already available in the market place through literature and internet searches prior to the filing of your design and determine whether your design is new and has individual character.

### 5.5.1 Design rights in the Bugaboo case

In the design register several data can be found, for example the owner of the design right, the application date, validity and appearance of the design. In section F.4 you will find some EU community designs for the Bugaboo stroller. Figure 5.1 shows an example of a Bugaboo design.



Figure 5.1: An example of a design from Bugaboo

### 5.5.2 Nullity procedure

A third party may demand nullity if the design has been registered in the design register of the office. This may happen because the design is not new, lacks individual character or is technically defined. In case of a Benelux design such a nullity procedure must be initiated and will take place at the

Court. In case of a EU community design nullity procedures have to be initiated at the EUIPO.

## 5.6 Design right enforcement

The owner of the design, also called design holder has to monitor the market to observe if anybody is using a design that looks too much like the appearance of his design right. If such a situation occurs the design holder must act to stop the sales of products infringing his design rights. A design holder can also choose not to do anything.

### 5.6.1 Rights of the design right holder

The rights of the design holder are described in [Article 3.16 BCIP](#) and [Article 19 CDR](#). A design holder can oppose the use of any product in which the design has been processed or on which the design is applied. This can occur when a product shows the same appearance and design as a product with a registered design or if it invokes the same general appearance to an informed user.

In order to be able to estimate whether a design will create the same appearance as an existing design one must consider the nature of products and product niches. The freedom to design for designers may vary between product niches for example due to certain legal aspects and technical specifications. In general, we see that in a sector with a smaller freedom to design during product development the chances will increase that minor differences between designs suffice.

In the Bugaboo example, Bugaboo could act on the basis of its EU community design (see some examples in [section F.4](#)) against the trade in strollers that give the same general appearance as the Bugaboo design.

### 5.6.2 Limitations

There are situations in which the design holder cannot act based upon the design right. These limitations are pronounced in [Article 3.19 BCIP](#) and [Article 20 CDR](#). A design holder cannot act against resales of his products once they have been sold and brought into the market place by himself or with his permission into the EU (or the European Economic Area). At the moment of sales the holder has received revenues and has used his design right. This is called *exhaustion of rights* (see [Article 3.19 BCIP](#) and [Article 21 CDR](#)). On the other hand, a design holder cannot stop private use of his design right protected products or certain use for experimental purposes.



## Chapter 6

# Copyright

### 6.1 Introduction

Copyright provides legal protection for the creators of literary, scientific and artistic works for their creations. Copyright law protects a wide range of works, such as books, magazines, newspapers, plays, music, drawings, paintings, sculptures, architecture, photographs and films. But copyright is not limited to works in the field of the arts. More functional works, such as geographical maps, industrial design, computer programs, video games and original databases can also count on protection through copyright.

The purpose of copyright protection is to encourage creators to create new works and to give them the opportunity to negotiate a fee for the exploitation of those works. To that end, copyright gives creators of original works a temporary right that gives them exclusive control over the reproduction and distribution of their intellectual creations. This control is not unlimited. In certain cases, the law allows others to use their works without permission.

This chapter provides a brief overview of national and international copyright legislation in section 6.2.

Subsequently, section 6.3 – section 6.5 discuss what copyright entails, how it is obtained and to whom it belongs.

In section 8.2 under chapter 8 specifically the copyright protection of software is addressed. It will also briefly discuss other ways to protect software, including the possibility of obtaining a patent for software-related inventions.

## 6.2 Legislation and regulations

Like other intellectual property rights, copyright is territorially limited. In the Netherlands, copyright is regulated in the Dutch Copyright Act.

The Copyright Act has been frequently adapted in recent decades to European directives that aim to harmonize copyright within the EU. The most important EU directives are:

- Directive on copyright in the information society (Directive 2001/29)
- Directive on the legal protection of computer programs, in short: Software Directive (Directive 2009/24)
- Directive on copyright in the digital single market (Directive 2019/790)

Furthermore, there are a large number of specific EU directives that harmonize parts of copyright, such as the term of protection. There are now 14 directives and 1 regulation at EU level that regulate aspects of copyright and its enforcement. This allows some similarity to be found between the copyright laws of the various EU member states, but there are still important differences in protection at national level.

At international level, the most important copyright treaties are the Berne Convention of 1886, last revised in 1971, and the WIPO Copyright Treaty of 1996. The international protection of copyright is also regulated in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), an annex to the Agreement establishing the World Trade Organization of 1994. These treaties guarantee that copyrighted works are automatically protected in a large number of countries around the world. As of 2024, 181 countries are party to the Berne Convention.

## 6.3 Copyrights

The Copyright Act gives the holder of a copyright following exclusive rights:

- The right to reproduce (Article 13 et seq. of the Dutch Copyright Act)
- The right to publish (Article 12 et seq. of the Dutch Copyright Act)

The reproduction right is broad. It includes direct or indirect, temporary or permanent, complete or partial reproduction, by whatever means and in whatever form. Making adaptations and imitations in a modified form, such as the translation or film adaptation of a book, also falls under the reproduction right. Only temporary reproductions of a transient or incidental nature, such as on-screen & cached copies that take place when viewing

websites and technical copies in the memory of a satellite decoder and on TV screens, are explicitly excluded from the reproduction right.

The publication right is also broad and relates to every situation in which a work is accessible to the public. This includes tangible acts of public disclosure, such as the distribution, rental and lending of physical copies of works, and intangible acts of public disclosure, such as ‘live’ presentations, public performances, broadcasts, satellite and cable transmissions and online availability via streaming or on-demand services.

All these activities are in principle exclusively reserved for the owner of the copyright. This copyright holder may authorise or prohibit others from performing such activities with the work. This permission is often granted by means of licences.

However, there are situations in which the law permits third parties to use works without the permission of the rights holders. For example, no permission is required for quoting from works, using works for caricature, parody or pastiche and copying for private use. Other exceptions permit use for educational purposes, lending, reading disabilities, public safety, criminal investigation and church singing or use by cultural heritage institutions or the media. Use under these exceptions is often permitted under conditions, including in some cases the payment of a fair compensation to compensate the copyright holder for the damage suffered. The cases in which copyright is limited are laid down in articles 15 to 25a of the Dutch Copyright Act.

As soon as a material copy of a work, such as a physical book, DVD or CD, has been sold in the EU by or with the permission of the copyright holder, the right holder cannot prohibit further trading of that copy. This makes second-hand sales and parallel import possible. This is called exhaustion (Article 12b of the Dutch Copyright Act).

Copyright is also limited in duration. Copyright expires 70 years after the year of death of the creator. In case of multiple creators, the calculation starts from the death of the longest-living creator. If the creator is unknown, copyright expires 70 years after the year of first legitimate publication. Copyright on works that have not been made public expires 70 years after creation. More information on this topic can be found in article 37 of the Dutch Copyright Act.

## 6.4 Requirements of copyright

Copyright protects works within the broad domain of literature, science or art, provided that they are original creations.

Exempt from protection are:

- Technically or functionally determined forms
- Concepts, ideas and stylistic features
- Factual information

No formalities are required to obtain copyright protection.

#### 6.4.1 Work categories

Copyright protects any work in the field of literature, science or art, regardless of the manner or form in which it is expressed. The copyright right act contains a non-exhaustive list of examples of works that are protected by copyright. This list includes not only literary, scientific and artistic works, but various types of creations in the cultural domain, as well as numerous functional works, including computer programs and databases.<sup>1</sup> The full list can be found in article 10.

Because this list of work categories is not exhaustive, various types of creations are considered to be work. This concerns not only cultural, but also commercial creations, such as marketing and advertising material, product catalogues, manuals, instruction sheets and web content. But not every creation qualifies for protection. For example, case law shows that no copyright applies to tastes and scents, because their form of expression is not sufficiently precise and objectively determinable, and sports competitions, because they are too bound by the rules of the game. Furthermore, official documents, such as laws and regulations and court decisions, are exempt from copyright protection.

#### 6.4.2 Mental creation

The tangible appearance of a work is not the essential object of protection. Copyright protects the mental creation which can be an intangible abstraction in which the work is recorded. It is therefore not the printed text that is protected, but the story that is told in that text. It is therefore the product of the human mind that enjoys legal protection. A work therefore does not have to be recorded in tangible form to be protected by copyright. On the other hand, the work must have been expressed in some way. Hence, a work that has only been performed but not recorded, such as a live improvisation by a jazz band, can therefore also be protected by copyright.

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<sup>1</sup>Copyright protects databases that meet the originality test (see subsection 6.4.3). For databases in which substantial investments have been made, there is a separate protection regime in the Database Act.

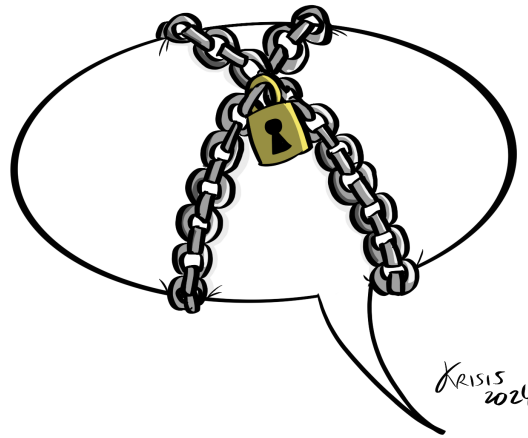


Figure 6.1: Creation of the mind

### 6.4.3 Originality

A work must have its own, original character and bear the personal stamp of the creator in order to be protected by copyright. This means that the form may not be derived from that of another work and must be the result of creative human labor and hence by certain creative choices. In other words, it must originate from the creator's own intellectual creation, based upon free, creative choices.

The originality test does not have a high threshold, but there is a lower limit. If a work has a form that is quite trivial that no creative labor of any kind can be identified behind it, then it is not protected by copyright. Everyday work in which no creative choices can be discerned cannot be appropriated by copyright.

### 6.4.4 Technically or functionally determined shapes

Copyright requires subjective creativity. Shapes that are determined solely by technical or functional requirements cannot be protected by copyright, because the choice of that shape is necessary for obtaining a technical effect and does not reflect the subjective creativity of the creator. Everyone must be free to use such technical or functional shapes in a new design. To the extent that the creator has room to make creative choices outside of that and has also used that room, copyright does apply to the subjective elements of the product.

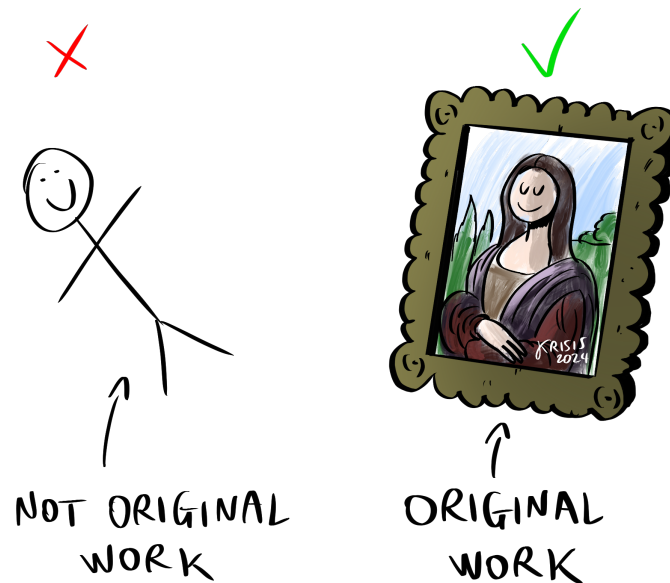


Figure 6.2: Original character

#### 6.4.5 Concepts, ideas and stylistic features

Copyright does not protect ideas, procedures, methods or mathematical concepts as such, but only the individual form in which the creator has expressed such abstractions in his work. The reason for this is that everyone must be free to elaborate on an idea or concept underlying a work. Ideas and concepts can therefore not be monopolized by copyrights. The same rationale applies to working in a certain style. If such abstractions could have been protected by copyright, this would restrict the freedom of creation too much and form obstacles to cultural developments.

#### 6.4.6 Factual information

Objective facts, data and events as such are also not protected by copyright. The idea is that everyone should be able to report on factual information, whether it concerns news or scientific, historical or biographical facts, even if they have become available after much scientific research. Copyright does protect the subjective way in which a creator has expressed such information. Objective facts may therefore be copied, provided that the individual form in which the creator has expressed those facts is not copied.

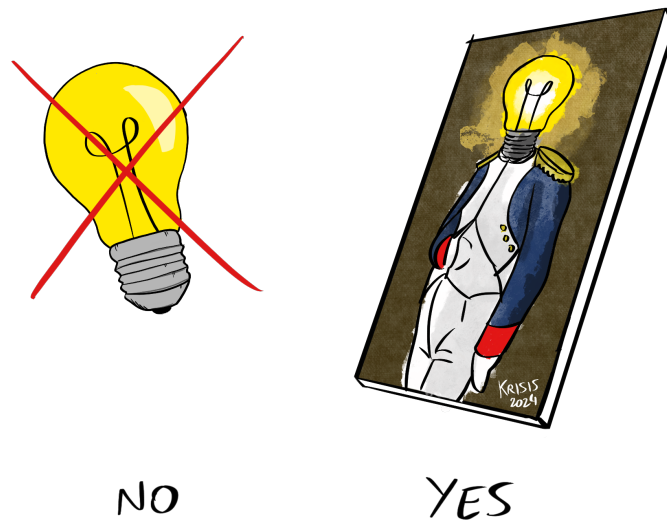


Figure 6.3: Individual form

#### 6.4.7 No formalities required

The copyright act enables a creator to become the owner of the copyright of a certain work as soon as someone has created an original work of literature, science or art. No formalities, such as a registration, filing or filing a form or request, need to be performed to obtain copyright. It is also not mandatory to include a © sign on or with the work to show the creation of copyrighted work.

The advantage of copyright arising without formalities is that no deadlines need to be observed and that the creator does not have to worry about unintentionally losing protection as a result of not complying with formalities in time. The disadvantage is that there is no official register of copyrighted works. This sometimes makes it difficult for users to find out which works are protected by copyright and who is the owner or holds the copyright. On the other hand, it can also be difficult for creators and rights holders to prove that they hold the copyright on specific works. For the latter reason, in several countries it is possible to deposit a work and thus obtain evidence on a voluntary basis. Eg. in the Benelux this is possible via the i-Depot, which is maintained by the Benelux Office for Intellectual Property. Please note: a voluntary deposit only provides a date stamp but does not prove that the claim to copyright is valid.

## 6.5 Copyright holders

Copyright belongs to the creator of the work. In principle, this is the natural person who created the work. Under certain circumstances, a fictitious person, such as the employer or a legal entity, is considered the creator.

Copyright can also be transferred to other persons through transfer and succession.

### 6.5.1 Authorship

There is a natural relationship between maker and work. The maker is the natural person through whose creative choices the intellectual creation comes into being. The copyright is primarily vested in this maker. The starting point of the law is that the writer as maker of the text has the copyright on that text. The same applies to the photographer as maker of the photo, the composer as maker of the composition, the programmer as writer of the source code of the computer program, etc. The person who is named as maker in or on the work is legally assumed to be the maker.



Figure 6.4: Creator and work

### 6.5.2 Multiple creators

Where two or more persons have contributed to the creation of one and the same work, they are entitled to joint copyright. This concerns a work that



has been created by multiple creators whose contributions are inseparable. An example is a text that has been co-written by multiple persons. The creators obtain a single copyright on this, which is jointly granted to them. This means that the various co-authors must jointly decide on the exercise and management of the copyright. A licence or transfer of the right therefore requires the consent of each of them. However, in the event of infringement, each of the creators can independently enforce the right against third parties.



Figure 6.5: Multiple creators

### 6.5.3 Authorship in separable works

When two or more works are coordinated and jointly published, but are nevertheless clearly separable, such as the composition and lyrics of a song, each individual work is entitled to copyright. The different creators therefore each obtain their own copyright on their own separate contribution. In the example given, the composer obtains copyright on the composition and the lyricist on the song lyrics. Each of these creators can therefore decide individually on the exploitation of their own work.

When an adaptation of an existing work is made, a separate copyright also arises on the adaptation, provided that it meets the originality test (see subsection 6.4.3). For example, the translator of a book obtains his own copyright on the translation, provided that it shows creative choices and is

not merely a technical (or machine) translation. This is without prejudice to the copyright on the original work, which belongs to the creator of that work. A translated book is therefore subject to two layers of rights: separate copyright rests on the translation and on the original work. Therefore, permission from both the original creator and the translator is required to market the translation.

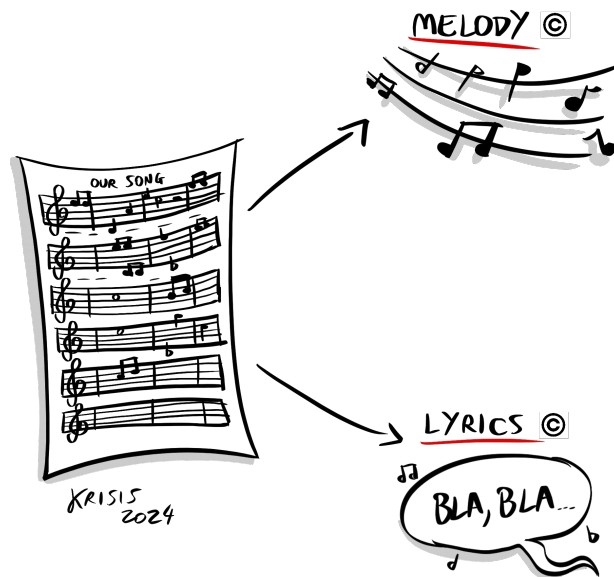


Figure 6.6: Separable works

#### 6.5.4 Fictitious authorship

In specific cases, the Copyright Act grants authorship to someone other than the natural creator, who thus also obtains copyright. With regard to works that employees have created in the performance of an employment contract, the employer is considered the creator. For works made public as originating from a public institution, association, foundation or company, without mentioning any natural person as the creator, the institution or legal entity concerned is considered the creator.

In particular when you, as the creator, create works for or on behalf of another person, you should be wary of this ‘fictitious’ authorship. If the company for which you perform the assignment stipulates that you, as the creator, waive the right to mention the name and then publish the work as originating from it, then the copyright automatically belongs to the company for which you created the work and not to you as the creator. This

has far-reaching consequences, because it immediately changes the claim of ownership.

These rules of ‘fictitious’ authorship are of regulatory law. This means that you as the author can agree otherwise and still retain the authorship yourself.

#### **6.5.5 Transfer of rights**

Copyright is transferred by succession. In addition, copyright is transferable. In the event of succession and transfer, the ownership position changes: the exclusive rights are transferred to another person. The creator thus loses control over the exploitation of the work. From that moment on, the exclusive authority to exploit the copyright rests with the person to whom the rights have been transferred.

However, the creator retains certain personal rights after transfer. This concerns the right to be named, the right to object to changes in the title or authorship, and the right to object to changes or infringement of the work. Due to the personal bond between the creator and the work, the idea is that these rights should always remain associated with the creator, even after the transfer of copyright. The creator can waive certain personal rights, such as the right to be named. Personal rights expire upon the death of the creator, unless the creator has appointed someone during his lifetime to exercise the personal rights until the copyright expires. Personal rights are regulated in article 25 Dutch Copyright Act.

Copyright can also be licensed to third parties. In the case of licensing, another person is given permission to exercise the copyright (for specific purposes), but ownership remains with the licensor. This can involve an exclusive license, with which the licensee obtains the sole right and the licensor may not grant competing powers to another person, or a non-exclusive license, with which the licensee only obtains a specific right of use and the licensor remains free to grant further licenses to another person.

It is important that transfer and licensing can concern all or part of the copyright. For example, copyright can only be transferred or licensed for specific purposes, user environments, distribution channels, branches or countries. This means that in practice the copyright can be split up and in this way can rest with multiple persons, each of whom manages a part of the copyright.

## Chapter 7

# Using IP to make money with technical innovations

### 7.1 Introduction

In this chapter we will discuss the topic of strategic management and use of industrial property rights in companies. Copyrights do not belong to the industrial property rights, but they deserve a specific place in companies.

Here it is also important to distinguish ideas from inventions and innovations as they are often used throughout or amongst one another. We presented a working definition of inventions in [section 4.4](#). While some ideas about new products and services may lead to new research and development and further product development and hence towards inventions, most of them will not be used in the process of innovation management. As such those ideas will not be translated into inventions incorporated into to valuable innovations in certain sectors of industry. Because, on the other hand an [innovation](#) is most often regarded as a new and tangible product or service which can be bought by customers in the market place thus creating economic growth.

In the next section we describe a number of common steps in a company's innovation process as the basis for the use of IP. In the following sections the use and exploitation of IP rights is discussed in the various steps throughout the innovation process.

### 7.2 Innovation process

Often innovation is a time and resources consuming process going through various phases from first idea, prototyping, validation to market entry of an novel product or process. Throughout that innovation process information

about IP can be used in multiple ways. In figure 7.1 this innovation process is schematically pictured.

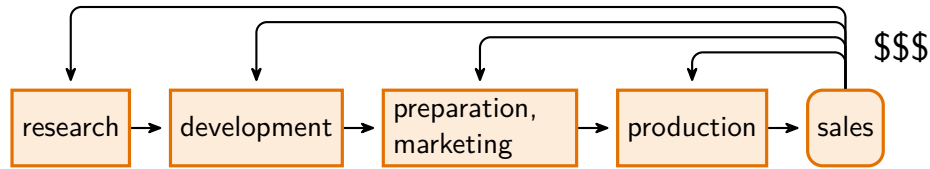


Figure 7.1: Proces from research to sale of product

Many companies start their innovation process by assigning market intelligence to one or more specialists. A state of the art research and necessary steps for product development may require significant time and resources depending on the sector of industry. For long term projects a company can decide to cooperate with a university for example for research ends working with scientists and PhD students. The goal of this phase in product development can be to ascertain proof of concept and bringing an idea for a novel product to the next stage.

At the development stage the product will be shaped towards the final version, although the manufacturing process at full scale is not yet determined. Since experts and engineers from various disciplines are involved in this stage, it can be time consuming and expensive.

Next, decisions about the output level of production and the layout of the factory have to be made during the production preparation phase before the start of a manufacturing process. Costs will usually depend on both the final product and sector of industry. For example building a construction plant for new cars can require initial investments of billions of euros.

Although marketing and sales do not seem a logical next step in an innovation process, they are of key importance. A successful market entry of new products will depend on sales to customers, thereby assuring that all investments and expenditures made earlier (like research and development, production engineering and marketing) will be earned back.

Only the sales of the product generate revenues!

All steps in the innovation process prior to the stage of sales require adequate funding and investments. Those initial investments can be substantial while the return on these investments will be realised through sales. Using IP enables companies to create large enough margins when selling their innovative products to earn back those initial investments. Thus while IP contribute to the return on investment of companies, they can incentivize the market launch of their innovations at the same time. Conversely, intellectual properties only have value if a product is brought to market.

### 7.3 Using IP information for decision making throughout the innovation process

Using information from available intellectual properties in a timely manner is useful to avoid potential issues after market introduction of the product or to reduce certain costs throughout the innovation process.

In figure 7.2 the type of information that can be used and the moment of use is displayed.

We distinguish two kinds of analysis to retrieve and analyse such information;

1. patent landscape analysis
  - a. Technical information about known solutions,
  - b. Appropriated technical solutions with potential legal effect to take into account,
  - c. A market analysis with names of competitors or potential partners

2. Freedom to Operate (FTO) analysis

Information with potential infringement and risks assessment.

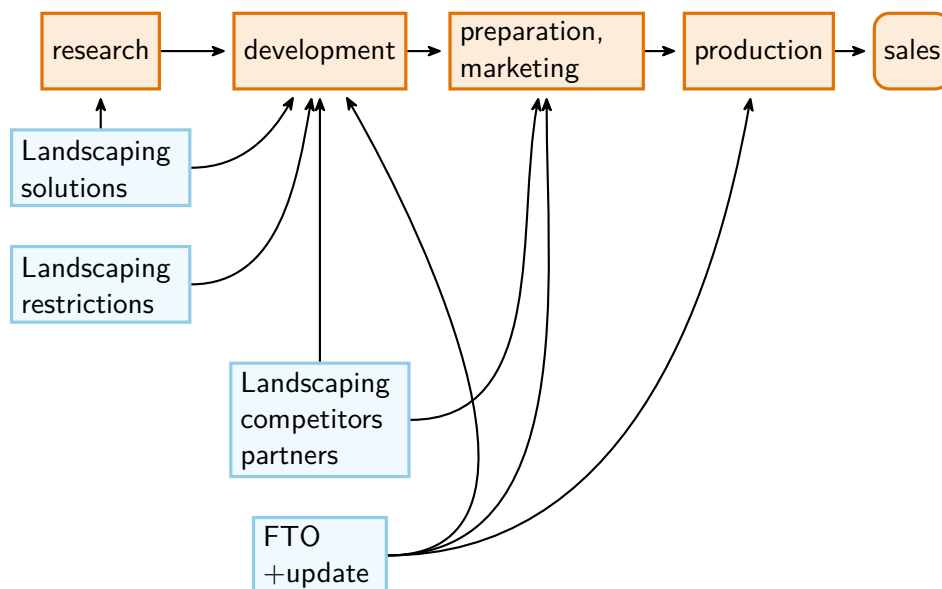


Figure 7.2: IP information in the process for a new product

### 7.3.1 Patent landscape analysis

In a global market companies and research organisations are surrounded by competitors and other actors. Using a [patent landscape analysis](#) one will acquire more information about them and about their technologies.

In a patent landscape analysis data can be analysed in three ways. Those three ways will generate useful data enabling easier decision making throughout different stages of the innovation process.

A. It is useful to create an overview of known technologies in order to be able to determine which problems and solutions need to be further analysed and developed within your organisation. For this analysis (technical) persons with knowledge of the subject-matter are necessary.

B. Prior to the decision to start developing a new product it is useful to study interesting technologies described by patents and pending patents. Search for possible technical solutions that may come close to the research and development of the organisation. Both technical and (legal) patent knowledge are required for these analyses. Analysing these data from a legal point of view may restrain your willingness to start a new innovation process. However, following decisions will depend on the business strategy of the organisation. Assuming that useful data have been retrieved and analysed one can decide to avoid potential litigation or infringement by redirecting the scope of research and development. A different strategy will be to license in the patents or start working as a partner of the patentee. These strategies will be further elaborated in next sections.

C. In addition to the technical and legal information from a [patent landscape analysis](#), you can also obtain useful data for further market research. You can use this information to discover interesting countries, markets and possible partners for the sale of new products. It is also possible to analyze interesting markets in which you do not want or cannot be active yourself, but can become active through for example a partner.

### 7.3.2 Freedom to Operate (FTO) analysis

If the product reaches its final appearance at the end of the development phase, it could be useful to make an analysis about the risks to potential infringement of patents of third parties. An infringement of patents of third parties may seriously hinder or even stop market introduction of a novel product or device. Such a risk assessment is called a [Freedom to Operate analysis](#).

Throughout the patent landscape analysis one has analysed a first indication of potential infringement. But only when the the product is sufficiently specified and defined, an FTO analysis will be able to give sufficient certainty

of the risks. Until the moment that your product will become part of the state-of-the-art for example through sales, a publication or a patent, it is still possible that others will get IP rights that will hinder sales of the products. Therefore it is useful to update the FTO analysis.

An FTO analysis requires both technical knowledge and legal IP expertise. Also knowledge about legal and financial risks is required. Due to that multidisciplinary character of such an FTO analysis costs are high. Therefore scope and nature of an FTO analysis better be aligned with the risks and business strategy of the company.

## 7.4 Strategic IP use

For companies it is important to determine which sort of IP rights are needed for launching successful innovations. Bigger companies and established firms have their own IP division with an IP strategy in place. In line with their strategy they usually start applying for a diversity of IP rights during the various stages of their innovation process. More in depth information about commonly used IP appropriation regimes by economic sector, products and process innovations can be found Cohen, Nelson, and Walsh [CNW00] and Scotchmer [Sco04], chapter 9.

We know that IP can enable companies to create enough margins once they sell their products to have a return on their investments thus incentivizing innovations. As IP proprietor the innovator may decide to stop competitors to bring the same product or process at the market price at lower costs or prices. Such mechanism is called a defensive IP strategy and is generally used by companies in the pharma sector. Economic literature about such a price mechanism enabled by product or process patents is described by Greenhalgh and Rogers [GR10] in chapters 1 and 2.

Figure 7.3 describes which kind of IP can be relevant in certain stages of the innovation process.

During research and development leading to technical innovations patents often are used. When publishing articles about scientific results at universities copyrights are important. Depending on the sector of industry in which a company is operational designs becomes relevant at the stage when the product will have a clearly defined outer shape and the shape needs to be easily recognizable by customers.

Brands are important for the marketing of products and services. In the interest of marketing designs can be used as well.

Know-how (secrets) about certain features in a manufacturing technology process, for example the use of parts are regarded as yet another intellectual property. If a company has a more offensive IP strategy patents can be used



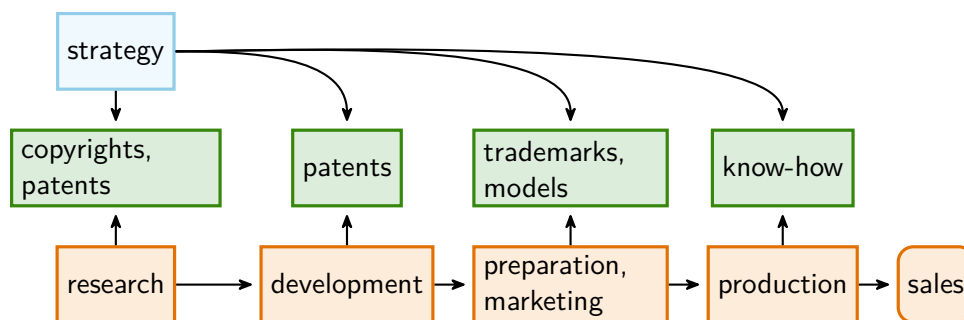


Figure 7.3: Generating IP with a new product

for (parts of) the manufacturing process. Such patented processes maybe out-licensed for example by companies in the chemical industry.

## 7.5 Purchasing and selling IP

In most economic sectors technologies are well developed at such a stage that many parts and processes are now available. Hence, there is no more reason to develop or manufacture those parts or processes. This is a huge difference compared with the upcoming economy at the start of the industrial revolution when manufacturers needed to have all parts and manufacturing processes in house by themselves. For example: the Ford Company wanted to have their own rubber plantations for the production of the tyres.

During the stage of research and development it is useful to analyse which technology, semi-finished products or parts can be purchased from others. Next the company can decide what needs further development by itself. Such strategy is also useful to identify interesting technologies developed by others which may solve technical problems and can be applied for further use. If these technologies have been appropriated in a patent portfolio of others they cannot be use as such without further analysis. Maybe there is a possibility to acquire ownership by assignment or come to terms in a license agreement.

### 7.5.1 Inlicensing patented technologies

A company may decide to obtain a license for a technology in order to start production and sales easier or faster. The results from a [patent landscape analysis](#) or [Freedom to Operate](#) may show that such a technology already exists or even that obtaining such a license agreement from a licensor is compulsory given the legal situation. Obviously, further information about the legal status on the validity of the patent in the country where the licensee

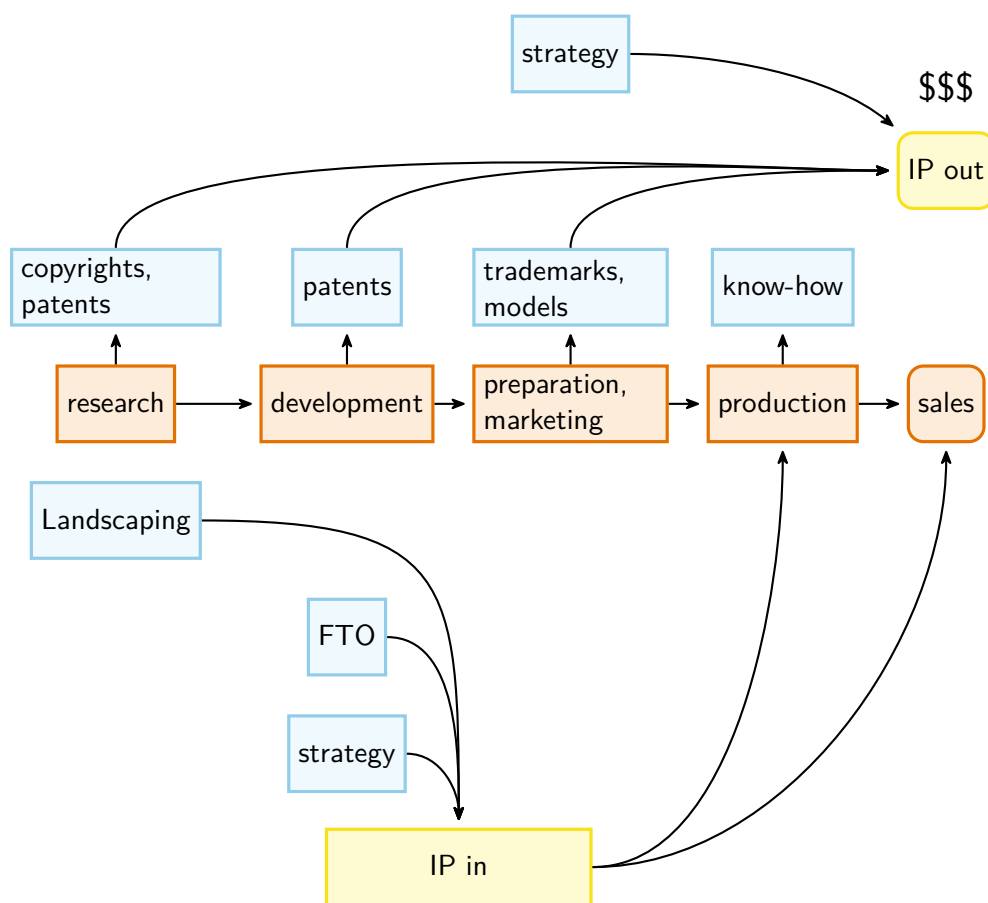


Figure 7.4: IE in and out

is operating is then required. For example if a Dutch manufacturer who is only working in the Netherlands needs certain technology the patent from the licensor should be valid in the Netherlands.

The business strategy and market perspectives are key in the decision making process to use licenses on technologies from third parties. But a patent landscape analysis is a useful business tool for companies with limited budgets for research and development. Next the company can contact the original patentee to start negotiations to obtain necessary patent licenses depending on its results. This is called *inlicensing* and presented as “IP in” in figure 7.4.

### 7.5.2 Outlicensing patented technologies

Usually a company decides to start production in a country or for a market by itself or by approaching others. Licensing technologies to others or franchising enables the patentee to do both. Such strategic decisions are often taken at central level of a multinational company or organisation and then followed up at decentral level.

But even if the patentee decides not to commercialise the technology itself, licensing to third parties remains an interesting option for example for organisations without production capacity in a particular country or market or a sales force. This is called *outlicensing* technologies and presented by “IP out” in figure 7.4. Outlicensing is often used successfully in cooperation with companies who are already active in certain markets and regions using the outlicensed technology to *diversify* their supply chain of products. Often the patentee is required to show successful sales records in an established home market for its patented technology.

### 7.5.3 Using patents in IP strategies

Depending on business strategy and use of IP a company can decide to outlicense their patent portfolio enabling others introducing new products or using manufacturing processes. Thereby allowing other companies to generate revenues without prior investments (in research and development, manufacturing, marketing, etc.) which were made by the patentee. This is called an *offensive IP strategy* which maybe more relevant for companies with products based upon a platform technology or compound with a large and diverse scope of applications.

On the other hand, companies may have a *defensive IP strategy* in the markets thereby stopping competitors selling look alike products to customers at lower prices. A large portfolio of nationally registered patented products in many countries is usually a prerequisite. Such a strategy may be relevant

for companies with patented products based upon very narrowly defined technologies and compounds which can easily be copied or circumvented.

Which IP strategy a company can use will depend on its market position at present and foreseeable future versus those of competitors. A [patent landscape analysis](#) gives interesting insights and a global overview on certain technical developments over the years. Such information is useful to determine the market position as defined by patents and can contribute in the decision making process which IP strategy best be followed. At the same time with this analysis one can retrieve information about the patent strategy of competitors.

## 7.6 Example of IP use at Bugaboo

Bugaboo uses various IP rights. In addition to patents, design rights also play a major role. In the following paragraphs, the IP rights used by Bugaboo are summarized to get an impression of their strategy.

### 7.6.1 Patents

Bugaboo has used patents since the company's inception. Figure 7.5 provides an overview of the number of patent applications per region over time. This information can be obtained from the publicly accessible databases (see the links in [appendix B](#)).

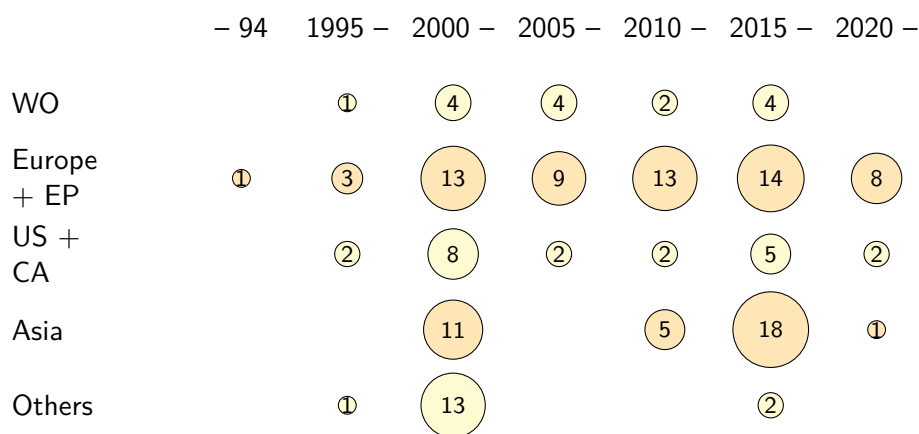


Figure 7.5: Bugaboo patent applications

This shows that Bugaboo has regularly applied for patents in some European countries and in North America. In the early years of the company, only

a few patents were applied for. The patent in the general example, which forms the basis of the buggy, belongs to this.

### 7.6.2 Purchase of patents

Bugaboo has purchased two patent families (WO 2004/065192 and WO 2004/065193) from 2003 from French inventor Henry Gilles. These patents were probably necessary for the development or sale of a new model of folding buggy (the Bugaboo Bee) that was under development at that time.

From 2010 it can be seen that Bugaboo is busy to diversify. A patent family from 2015 (WO 2016/116727) for a foldable cot has also been acquired by Bugaboo for this diversification.

### 7.6.3 Design rights

A large part of Bugaboo's IP consists of design rights. Figure 7.6 provides an overview of the number of design registrations per region.

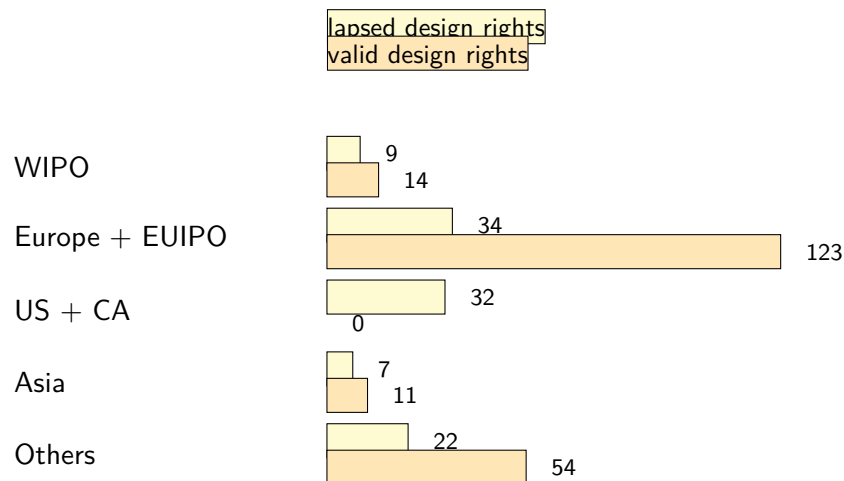


Figure 7.6: Bugaboo design registrations

As with patent applications, design rights in Europe constitute the largest amount. In the remaining regions, where patent applications are little used, design rights play a more important role.

### 7.6.4 Trademarks



Figure 7.7: Trademark sign with word of Bugaboo

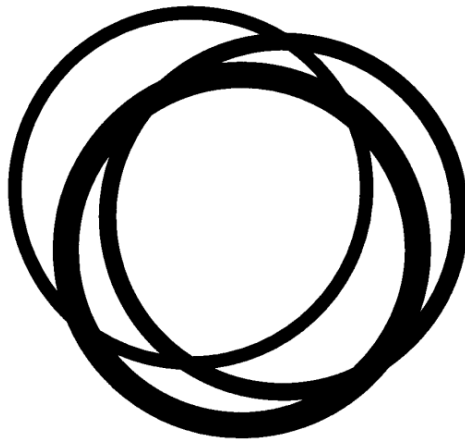


Figure 7.8: Trademark sign of Bugaboo

## Chapter 8

# Using IP for specific topics

### 8.1 Introduction

In this chapter the use of IP for specific topics is described. These topics are not linked to a specific activity as e.g. mentioned in [chapter 7](#) and are of more general use.

Since software is nowadays very important in many parts of innovation and in society this topic is especially dealt with in [section 8.2](#) and for open-source software in [section 8.3](#).

### 8.2 Software

Computer programs are primarily protected by copyright.

Sometimes a patent can also be obtained on software-related inventions. Computer programs as such cannot be protected by patent law.

#### 8.2.1 Copyright on software

Historically, there has been a long debate about whether software should be protected under patent law, copyright law or a separate legal regime. Ultimately, it was decided to protect software primarily under copyright law. This was a practical choice. Because software is written in programming language, it can be expressed as a kind of text. That is why computer programs are protected as literary works under copyright law. This principle is laid down in Article 10, paragraph 1, of the TRIPs Agreement and Article 4 of the WIPO Copyright Treaty.

Copyright protection of software relates to the concrete expression of the computer program, i.e. the specific form in which the programmer has expressed his intellectual creation in the source code. The source code concerns the instructions written by the programmer in a programming language and readable by humans. The target code is also subject to copyright protection. The object code comprises the binary, computer-readable and executable instructions generated from the source code by a compiler or interpreter. The object code is therefore in fact the translation of the source code into a computer-readable form.

The same conditions apply to copyright protection of software as to any other work. The source code and object code must demonstrate originality. They may not be derived from earlier software and the programmer must have made creative choices when writing the source code. If these conditions are met, the computer program is legally protected under copyright.<sup>1</sup>

Copyright does not protect an idea underlying a work. This means that the functionality, logic, method or purpose of a computer program and the processes, procedures, algorithms, programming languages and layout of data files that are used in the context of a computer program to be able to use certain functions of the program are not protected by copyright.

Copyright does not create a monopoly on the functionality of software. It grants the creator or right holder exclusive rights to permit or prohibit the reproduction (copying or editing) and publication (publishing, marketing, lending, renting or making available on demand) of a computer program. However, the creator or right holder cannot prohibit others from developing their own computer programs that pursue the same or similar purpose or functionality.

Copyright on software largely follows the same rules as those that apply to any other work. For example, the rules for authorship and legal succession are the same, right holders are entitled to the same broad exploitation rights and the term of protection is determined in the same way (see section 6.3 and section 6.5). However, there are a few special provisions concerning computer programs that are recorded in Chapter VI of the Copyright Act.

Based on the right of reproduction, the right holder may prohibit others from copying or taking over the computer program in whole or in part or from changing the source code. The law also stipulates that the right of reproduction also includes reproductions that are necessary for loading, displaying, executing, transmitting or storing the computer program. Someone who has lawfully obtained the software, such as the person who has purchased a computer program, may make these reproductions to the extent necessary

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<sup>1</sup>Preparatory design material can also be protected by copyright, provided that no programming step with creative steps is needed to turn that material into a computer program.



for the use of the computer program. The lawful acquirer may also make a backup copy if this is necessary for the intended use.

In addition, the law permits the operation of software to be observed, studied and tested in order to discover the underlying ideas and principles. There is therefore an explicit authority to ‘reverse-engineer’ the software.

Furthermore, the ‘decompilation’ of a computer program, the reconstruction of a source code based on the target code, is permitted under certain circumstances. The law stipulates that a computer program may be decompiled, not in order to create a competing program that imitates the decompiled software, but to create compatible programs that can communicate with the decompiled software and are therefore interoperable. Furthermore, it follows from case law that decompilation is permitted to correct errors in the proper functioning of a computer program.

### **Graphical user interface and other elements**

When executing a computer program on a computer, users are primarily confronted with the graphical user interface (GUI). These are the visual elements that enable the user to communicate with a computer program and thus instruct the program (software) to control the computer (hardware). Think of the various icons in the taskbar or the menu of a computer program.

However, the GUI itself is not a computer program. The special provisions regarding computer programs therefore do not apply to GUIs. A GUI can be independently protected by copyright, if the designer has made creative choices in the design of the interface. When decompiling a computer program for the purpose of interoperability or error correction, the source code may be reconstructed on the basis of the target code, but the GUI may not also be copied to the extent that it is protected by copyright. That would infringe the copyright on the GUI.

The same applies to the graphic and sound elements of, for example, video games. These can be independently protected by copyright if they are the creator’s own intellectual creation, but do not themselves qualify as a computer program.

### **Video games**

Video games generally consist of different types of works. In addition to software (source and target code), many video games contain a storyline, characters, images, animations, video, music and texts. Provided that the requirements are met, each of these

works enjoys copyright protection. In principle, the copyright on the various works can lie with different creators. Sometimes hundreds of people can have made a creative contribution to a single video game. Because permission must be obtained from each rights holder for the release of the video game, the large number of rights holders can greatly hinder exploitation.

In practice, it is therefore arranged that all copyrights on the video game are, as much as possible, in the hands of the producer of the video game. The Copyright Act already provides for this to some extent. Insofar as creators have contributed to a video game under employment, the copyrights are in principle already held by the producer as employer under the law. For components of a video game that have been created by freelancers on assignment, the producer will usually have the copyrights contractually transferred to him. In addition, the producer can stipulate that the creator waives the right to mention his name, so that the rights are automatically granted to his/her company. For existing works that are included in a video game, such as the music that plays in the background of a video game, the producer will usually arrange permission by concluding a license agreement with the relevant copyright holders.

### **8.2.2 Software patent law**

The starting point of patent law is that software as such cannot be patented, because computer programs are not considered inventions. However, the term invention contains the requirement of technical nature. A computer program that has a ‘further technical effect’ when executed on a computer, beyond the effect of the normal control of the computer, can therefore be patented. The computer program must provide a technical solution to a technical problem. Inventions with software must also meet the patent law requirements of novelty, inventive step and industrial applicability (see section 4.5).

Examples of computer programs that have a ‘further technical effect’ when executed on a computer are programs for controlling an anti-lock braking system (ABS) in cars, determining emissions from X-ray equipment, compressing data, encrypting electronic communications, restoring distorted digital images or training artificial intelligence. A ‘further technical effect’ can also concern the internal functioning or security of the computer. For example, programs for distributing the processor load, memory allocation or securing integrity during start-up offer a technical solution to a technical problem.

Patent protection is broader than copyright protection in the sense that patent law does grant a temporary monopoly on the technical functionality of the software-related invention. Patent law gives the holder the exclusive right to prohibit others from applying and using the patented invention for commercial purposes. It is therefore not permitted to market computer programs with the same ‘further technical effect’, or an effect that is more or less equivalent, during the period that the patent is valid.

### 8.2.3 Other ways to protect software

In addition to copyright protection of computer programs and patent protection of software-related inventions, software or parts thereof can also be protected by other intellectual property rights. For example, the source code of computer programs can be protected as a trade secret. Graphic features of computer programs, such as icons or pictograms of the graphic user interface, can be protected as drawings under design and model law, provided of course that the specific protection conditions are met (see chapter 5).

In addition, the producer of software can of course contractually agree on additional protection with third parties, for example in license agreements.

Software can of course also be protected technologically, by security measures such as encryption methods and copy protection. The Copyright Act offers protection against circumvention of such technological protection measures.

## 8.3 Example of IP use in open source software

Open source software, or alternatively also called free software (free as freedom and not necessarily free as in a free beer), aims to make the software available to everyone and to be developed jointly.

Part of this software is in the public domain and another part is licensed. Well-known licenses are the GPL (GNU General Public License) or the BSD (Berkely Software Distribution) license. These licenses allow the use of the software under certain conditions. The user must therefore comply with those conditions and is not free to do everything.

Question:

How can the terms of the open source licenses be enforced if the source code is publicly available? [Click for answer.](#)

Although the open source movement mainly originated in the academic world, there are now many large companies that develop open source software. These companies use the joint development to offer products and services around the open source software.

## 8.4 Example of IP use with standards

### 8.4.1 VESA (Video Electronics Standards Association)

Vesa is a non-profit corporation, which represents more than 300 companies. These companies are members of the corporation. It sets and supports interface standards for computers and consumer electronics.

The vision statement (from the website):

VESA's vision is continual growth in technical standards development and evolution into an international trade association, with world-wide membership driving standards initiatives, product implementations, and market implementation.

### 8.4.2 Displayport

The displayport connection between a computer and a monitor is an important Vesa standard. The Vesa members are allowed to use the displayport logo on their products if these meet the requirements of the standard. In figure 8.1 the logo is displayed.



Figure 8.1: Displayport logo

Question:

How can the use of the logo be limited to members who comply to the standard? [Click for answer.](#)

# Appendix A

## Glossary

### B

#### BCIP

Benelux Convention on Intellectual Property (trademarks and designs). The Benelux Convention on Intellectual Property is a treaty between the Netherlands, Belgium and Luxembourg and provides the legal system for trademarks and designs in the Benelux. 22, 48, 91, 108

#### BOIP

Benelux Office for Intellectual Property. The Benelux Office for Intellectual Property (dutch BBIE: Benelux-Bureau voor de Intellectuele Eigendom, french: Office Benelux de la Propriété intellectuelle) registers trademarks and designs for the Benelux. 22, 27, 28, 48, 49, 86

### C

#### CDR

Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs. 48, 111

#### claims

The claims are part of a patent to define the scope of protection. Usually, the set of claims consists of a main claim with several dependent claims. 35, 38

### D

**diversify**

Diversification gives companies the opportunity to expand their range of products and services. 70, 72

**DPMA**

Deutsches Patent- und Markenamt. The German Patent and Trademark Office is tasked with the granting of patents and trademarks for Germany. 86

**E****EPC**

European Patent Convention. A multilateral treaty to provide the legal system for granting European patents. Next to articles and rules for obtaining a patent, it also institutes the European Patent Organisation. In German: EPÜ, French: CBE. The European Patent Office is tasked with the granting of the European patents. 31, 81, 103

**EPO**

European Patent Office. The European Patent Office is tasked with the granting of the European patents according to the EPC. Main seat in Munich with dependancies in Rijswijk, Berlin and Vienna. 31, 38, 41, 86

**EUIPO**

European Union Intellectual Property Office. The European Union Intellectual Property Office registers trademarks and designs for the EU. 22, 27, 28, 48, 49, 51, 86

**EUTMR**

Regulation (EU) 2017/1001 of the European parliament and of the council of 14 June 2017 on the European Union trade mark. 23, 97

**examiner**

The person working at a patent office, who will do the substantive examination (search report and grant) of a patent application. 40

**exhaustion**

If a patent, trademark or design holder, or someone else with the permission of the holder, has sold a product, he can no longer use the patent, trademark or design right for that product. 29, 32, 51

**F**

**Freedom to Operate**

Freedom to Operate (FTO) is a study that analyzes potential risks of possible infringement of third party patents when introducing a new product to the market. 65, 66, 68

**I****industrial property rights**

Industrial property rights are all intellectual property rights except copyright. 63

**informed user**

is a fictitious person that lies somewhere between that of the average consumer, who need not have any specific knowledge, and the sectorial expert, who has detailed technical expertise. 49, 51

**innovation**

Innovation is most often regarded as a new and tangible product or service which can be bought by customers in the market place. 63

**intellectual properties**

Intellectual property is a category of property that includes intangible creations of the human intellect. 10, 64, 65, 82

**intellectual property rights**

Intellectual Property Rights are the legal rights for creators over the creations of the minds. Intellectual property rights include patents, copyright, industrial design rights, trademarks, plant variety rights, trade dress, geographical indications, and in some jurisdictions trade secrets. 10, 82

**IP**

Intellectual Property. See also the description of intellectual properties and intellectual property rights in the glossary. 2, 10, 11, 13, 18, 64, 67, 70, 74, 83

**IPR**

Intellectual Property Rights are the legal rights for creators over the creations of their minds. See also the description of intellectual property rights and intellectual properties in the glossary. 10, 12, 13

**J**

## **JPO**

Japan Patent Office. The Japan Patent Office is tasked with the granting of patents and trademarks for Japan. 86

## **L**

### **license**

Meaning of license when used in IP: The right to commercially use a product or service to which another legal entity has intellectual property rights, on the basis of financial or material compensation. 68

## **O**

### **Octrooiencentrum Nederland**

The Netherlands Patent Office is the patent office of the Netherlands. The Netherlands Patent Office is a department of the Netherlands Enterprise Agency, an agency of the Ministry of Economic Affairs and Climate Policy. The Netherlands Patent Office grants patents in the Netherlands and deals with European patents validated in the Netherlands. 31, 86

## **P**

### **patent**

A patent is an intellectual property right for an invention. 13, 30

### **patent landscape analysis**

A patent landscape analysis provides a worldwide overview of patent holders who have technology in the economic sector of your organization. This gives you both market and product information of existing technology. With the help of this analysis, you can adjust research and development in time or decide to apply for a license from the patent holder for your market. 65, 66, 68, 71

## **PCT**

Patent Cooperation Treaty. The Patent Cooperation Treaty is an international patent law treaty. It provides a unified procedure for filing patent applications to protect inventions in each of its contracting states. A patent application filed under the PCT is called an international application, or PCT application. 31, 36, 41, 43, 105

### **person skilled in the art**

The term person skilled in the art, as used in patent law, is a constructed virtual person with knowledge and skill of a (broad) technical



field. The person skilled in the art knows the entire state of the art, but has no inventive capacity. This constructed person skilled in the art is used in drawing up arguments, especially in the case of inventive step, sufficient disclosure and clarity of the patent application. 33–35

### **priority**

A patent application can get right of priority from an earlier filing. This has the effect as if the patent application is filed on the date of the earlier filing. 44

## **R**

### **ROW**

National Patents Act 1995. Law for patents valid in the Netherlands, including the Caribbean, Curaçao and Sint Maarten. 31, 101

## **S**

### **search report**

The search report is prepared by the patent office where the patent application has been filed. It is used to assess novelty and inventive step during the examination of the patent. It therefore contains the most relevant documents that are used in the examination. 39, 41

### **state of the art**

The state of the art is formed by everything made available to the public by means of a written or oral description, by use, or in any other way, before the date of filing of the patent application 33, 39, 64

## **U**

### **USPTO**

United States Patent and Trademark Office. The United States Patent and Trademark Office is tasked with the granting of patents and trademarks for the United States of America. 86

## **W**

### **WIPO**

World Intellectual Property Organisation. The World Intellectual Property Organization is one of the 15 specialized agencies of the United Nations (UN). WIPO administers 26 international treaties that concern a wide variety of intellectual property issues, ranging from the protection of audiovisual works to establishing international patent

classification. WIPO currently has 193 member states and is headquartered in Geneva, Switzerland. 22, 31, 41, 48, 49, 86

# Appendix B

## Links

### B.1 National and international IP offices

Netherlands patent office (Octrooiencentrum Nederland):

<https://www.rvo.nl/onderwerpen/innovatief-ondernemen/octrooien-ofwel-patenten>

Benelux Office for Intellectual Property (BOIP):

<https://www.boip.int/>

European Patent Office (EPO):

<https://www.epo.org/>

European Union Intellectual Property Office (EUIPO):

<https://www.euipo.europa.eu/>

World Intellectual Property Organisation (WIPO):

<https://www.wipo.int/>

German patent office (DPMA):

<https://www.dpma.de/>

United States Patents and Trademark Office (USPTO):

<https://www.uspto.gov/>

Japan Patent Office (JPO):

<https://www.jpo.go.jp/e/>

### B.2 Additional information

ThatsIP E-learning Intellectual Property:

<https://www.thatsip.nl/en/>

Netherlands patent office, videos explaining basics of patents:

<https://www.rvo.nl/onderwerpen/octrooien-ofwel-patenten/uitlegvideos>

UK Intellectual Property Office, videos on IP basic, case studies and others:

<https://www.youtube.com/user/ipogovuk>

Werkgemeenschap Octrooi-informatie Nederland (WON):

<http://www.won-nl.org>

## **B.3 Interesting publications from the WIPO**

What is Intellectual Property?

<https://www.wipo.int/publications/en/details.jsp?id=4528&plang=EN>

Intellectual Property Basics: A Q&A for Students

<https://www.wipo.int/publications/en/details.jsp?id=4410&plang=EN>

Understanding Industrial Property

<https://www.wipo.int/publications/en/details.jsp?id=4080&plang=EN>

Inventing the Future

An Introduction to Patents for Small and Medium-sized Enterprises

<https://www.wipo.int/publications/en/details.jsp?id=4350&plang=EN>

Enterprising Ideas

A Guide to Intellectual Property for Startups

<https://www.wipo.int/publications/en/details.jsp?id=4545&plang=EN>

Guide to the International Patent Classification (2022)

<https://www.wipo.int/publications/en/details.jsp?id=4593&plang=EN>

International Patent Classification (IPC)

<https://www.wipo.int/publications/en/details.jsp?id=4582&plang=EN>

## **B.4 IP databases**

Espacenet:

<https://worldwide.espacenet.com/patent/>

Espacenet pocket guide:

<https://www.epo.org/espacenet-pocket-guide>

Manual Espacenet (Dutch):

[https://www.rvo.nl/sites/default/files/2021/03/Handleiding%20Espacenet\\_februari2021.pdf](https://www.rvo.nl/sites/default/files/2021/03/Handleiding%20Espacenet_februari2021.pdf)

European Patent Register:

<https://register.epo.org/>

European Patent Bulletin:

<https://data.epo.org/expert-services/index.html>

Google patents:

<https://patents.google.com/>

Depatisnet (DPMA):

<https://depatisnet.dpma.de/DepatisNet/depatisnet>

Patentscope:

<https://patentscope.wipo.int/>

The lens:

<https://www.lens.org/>

Trademark view and Design view:

<https://www.tmdn.org/>

EUIPO register (eSearch plus):

<https://euipo.europa.eu/eSearch/>

BOIP trademark register:

<https://www.boip.int/en/trademarks-register>

BOIP design register:

<https://www.boip.int/en/designs-register>

Register of the Netherlands patent office:

<https://mijnocrooi.rvo.nl/fo-eregister-view/>

Register of the German patent office (DPMA register):

<https://register.dpma.de/DPMAreger/pat/basis>

UK Intellectual Property Office, online patent information and document inspection service:

<https://www.ipo.gov.uk/p-ipsum.htm>

Japan platform for patent information:

<https://www.j-platpat.inpit.go.jp/>

## B.5 The patent classification schemes

CPC classification scheme at the USPTO (US patent and trademark office):

<https://www.uspto.gov/web/patents/classification/cpc/html/cpc.html>

CPC classification scheme in table to download scheme and definitions:

[https://www.cooperativepatentclassification.org/cpcSchemeAndDefinitions/  
table](https://www.cooperativepatentclassification.org/cpcSchemeAndDefinitions/table)

## Appendix C

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- [Sco04] S. Scotchmer. *Innovation and Incentives*. MIT Press, 2004. ISBN: 9780262195157. URL: <https://mitpress.mit.edu/9780262693431/innovation-and-incentives/>.
- [VT21] Hendriks Visser Schaap en Kreijger and James Legal Translations. *The Dutch Copyright Act 2021–2022*. deLex, 2021. ISBN: 978-90-86920-77-8. URL: <https://vertaalbureau-fiducia.nl/wp-content/uploads/2022/07/Vertaling-Auteurswet-EN.pdf>.

# Appendix D

## Parts of IP law

### D.1 Parts of the Benelux Convention on Intellectual Property (trademarks)

These are some of the most relevant parts of the Benelux Convention on Intellectual Property (BCIP).

- Article 2.1. Signs that may constitute a trademark

A trademark may consist of any signs, in particular words, including personal names, or designs, letters, numerals, colours, the shape of goods or of the packaging of goods, or sounds, provided that such signs are capable of:

  - a. distinguishing the goods or services of one undertaking from those of other undertakings; and
  - b. being represented on the register in a manner which enables the competent authorities and the public to determine the clear and precise subject matter of the protection afforded to its proprietor.
- Article 2.2bis Absolute grounds for refusal or invalidity
  1. The following shall not be registered or, if registered, shall be liable to be declared invalid:
    - a. signs which cannot constitute a trademark;
    - b. trademarks which are devoid of any distinctive character;
    - c. trademarks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, or the time of production of the goods or of rendering of the service, or other characteristics of the goods or services;



- d. trademarks which consist exclusively of signs or indications which have become customary in the current language or in the bona fide and established practices of the trade;
  - e. signs which consist exclusively of:
    - i. the shape, or another characteristic, which results from the nature of the goods themselves;
    - ii. the shape, or another characteristic, of goods which is necessary to obtain a technical result;
    - iii. the shape, or another characteristic, which gives substantial value to the goods;
  - f. trademarks which are contrary to public policy or to accepted principles of morality;
  - g. trademarks which are of such a nature as to deceive the public, for instance, as to the nature, quality or geographical origin of the goods or service;
  - h. trademarks which have not been authorised by the competent authorities and are to be refused or invalidated pursuant to Article 6ter of the Paris Convention;
  - i. trademarks which are excluded from registration pursuant to Union legislation or the internal law of one of the Benelux countries, or to international agreements to which the European Union is party or which have effect in a Benelux country, providing for protection of designations of origin and geographical indications;
  - j. trademarks which are excluded from registration pursuant to Union legislation or international agreements to which the European Union is party, providing for protection of traditional terms for wine;
  - k. trademarks which are excluded from registration pursuant to Union legislation or international agreements to which the European Union is party, providing for protection of traditional specialities guaranteed;
  - l. trademarks which consist of, or reproduce in their essential elements, an earlier plant variety denomination registered in accordance with Union legislation or the internal law of one of the Benelux countries, or international agreements to which the European Union is party or which have effect in a Benelux country, providing protection for plant variety rights, and which are in respect of plant varieties of the same or closely related species.
2. A trademark shall be liable to be declared invalid where the application for registration of the trademark was made in bad faith by the applicant.

3. A trademark shall not be refused registration in accordance with paragraph 1 (b), (c) or (d) if, before the date of application for registration, following the use which has been made of it, it has acquired a distinctive character. A trademark shall not be declared invalid for the same reasons if, before the date of application for a declaration of invalidity, following the use which has been made of it, it has acquired a distinctive character.
- Article 2.20 Rights conferred by a trademark
    1. The registration of a trademark referred to in Article 2.2 shall confer on the proprietor exclusive rights therein.
    2. Without prejudice to the rights of proprietors acquired before the filing date or the priority date of the registered trademark, and without prejudice to the possible application of ordinary law in matters of civil liability, the proprietor of that registered trademark shall be entitled to prevent all third parties not having his consent from using any sign where such sign:
      - a. is identical with the trademark and is used in the course of trade in relation to goods or services which are identical with those for which the trademark is registered;
      - b. is identical with, or similar to, the trademark and is used in the course of trade in relation to goods or services which are identical with, or similar to, the goods or services for which the trademark is registered, if there exists a likelihood of confusion on the part of the public; the likelihood of confusion includes the likelihood of association between the sign and the trademark;
      - c. is identical with, or similar to, the trademark irrespective of whether it is used in relation to goods or services which are identical with, similar to, or not similar to, those for which the trademark is registered, where the latter has a reputation in the Benelux territory and where use in the course of trade of that sign without due cause takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the trademark;
      - d. is used for purposes other than those of distinguishing goods or services, where use of the sign without due cause, would take unfair advantage of or be detrimental to the distinctive character or the repute of the trademark.
    3. The following, in particular, may be prohibited under paragraph 2 (a) to (c):
      - a. affixing the sign to the goods or to the packaging thereof;

- b. offering the goods or putting them on the market, or stocking them for those purposes, under the sign, or offering or supplying services thereunder;
  - c. importing or exporting the goods under the sign;
  - d. using the sign as a trade or company name or part of a trade or company name;
  - e. using the sign on business papers and in advertising;
  - f. using the sign in comparative advertising in a manner that is contrary to Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising.
4. Without prejudice to the rights of proprietors acquired before the filing date or the priority date of the registered trademark, the proprietor of that registered trademark shall also be entitled to prevent all third parties from bringing goods, in the course of trade, into the Benelux territory, without being released for free circulation there, where such goods, including the packaging thereof, come from third countries and bear without authorisation a trademark which is identical with the trademark registered in respect of such goods, or which cannot be distinguished in its essential aspects from that trademark. The entitlement of the trademark proprietor pursuant to the first subparagraph shall lapse if, during the proceedings to determine whether the registered trademark has been infringed, initiated in accordance with Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No 1383/2003, evidence is provided by the declarant or the holder of the goods that the proprietor of the registered trademark is not entitled to prohibit the placing of the goods on the market in the country of final destination.
5. Where the risk exists that the packaging, labels, tags, security or authenticity features or devices, or any other means to which the trademark is affixed, could be used in relation to goods or services and that use would constitute an infringement of the rights of the proprietor of a trademark under paragraph 2 and 3, the proprietor of that trademark shall have the right to prohibit the following acts if carried out in the course of trade:
- a. affixing a sign identical with, or similar to, the trademark on packaging, labels, tags, security or authenticity features or devices, or any other means to which the mark may be affixed;

- b. offering or placing on the market, or stocking for those purposes, or importing or exporting, packaging, labels, tags, security or authenticity features or devices, or any other means to which the mark is affixed.
  - 6. The exclusive right to a trademark expressed in one of the national or regional languages of the Benelux territory extends automatically to its translation into another of those languages. Evaluation of the similarity arising from translations into one or more languages foreign to the aforesaid territory shall be a matter for the courts.
- Article 2.23 Limitation of the effects of the exclusive right
  - 1. A trademark shall not entitle the proprietor to prohibit a third party from using, in the course of trade:
    - a. the name or address of the third party, where that third party is a natural person;
    - b. signs or indications which are not distinctive or which concern the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of the service, or other characteristics of goods or services;
    - c. the trademark for the purpose of identifying or referring to goods or services as those of the proprietor of that trademark, in particular, where the use of the trademark is necessary to indicate the intended purpose of a product or service, in particular as accessories or spare parts; provided that such use is made in accordance with honest practices in industrial or commercial matters.
  - 2. A trademark shall not entitle the proprietor to prohibit a third party from using, in the course of trade, an earlier right which only applies in a particular locality, if that right is recognised by the law of one of the Benelux countries and the use of that right is within the limits of the territory in which it is recognised.
  - 3. A trademark shall not entitle the proprietor to prohibit its use in relation to goods which have been put on the market in the European Economic Area under that trademark by the proprietor or with the proprietor's consent, unless there exist legitimate reasons for the proprietor to oppose further commercialisation of the goods, especially where the condition of the goods is changed or impaired after they have been put on the market.
- Article 2.23bis Genuine use of the trademark

1. If, within a period of five years following the date of the completion of the registration procedure, the proprietor has not put the trademark to genuine use in the Benelux territory in connection with the goods or services in respect of which it is registered, or if such use has been suspended during a continuous five-year period, the trademark shall be subject to the limits and sanctions provided for in Article 2.16bis (1) and (2) 2.23ter, 2.27 (2) and 2.30quinquies (3) and (4), unless there are proper reasons for non-use.
2. In the case referred to in Article 2.8 (2), the five-year period referred to in paragraph 1 shall be calculated from the date when the mark can no longer be subject of a refusal on absolute grounds or an opposition or, in the event that a refusal has been issued or an opposition has been lodged, from the date when a decision lifting the Office's objections on absolute grounds or terminating the opposition proceedings became final or the opposition was withdrawn.
3. With regard to international trademarks having effect in the Benelux territory, the five-year period referred to in paragraph 1 shall be calculated from the date when the mark can no longer be subject to refusal or opposition. Where an opposition has been lodged or when a refusal on absolute grounds has been notified, the period shall be calculated from the date when a decision terminating the opposition proceedings or a ruling on absolute grounds for refusal became final or the opposition was withdrawn.
4. The date of commencement of the five-year period, as referred to in paragraphs 1 and 2, shall be entered in the register.
5. The following shall also constitute use within the meaning of paragraph 1:
  - a. use of the trademark in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered, regardless of whether or not the trademark in the form as used is also registered in the name of the proprietor;
  - b. affixing of the trademark to goods or to the packaging thereof in the Benelux territory solely for export purposes.
6. Use of the trademark with the consent of the proprietor shall be deemed to constitute use by the proprietor.

## D.2 Parts of the Regulation on the European Union trade mark

These are some of the most relevant parts of the Regulation (EU) 2017/1001 of the European parliament and of the council of 14 June 2017 on the European Union trade mark ([EUTMR](#)).

- Article 4. Signs of which an EU trade mark may consist

An EU trade mark may consist of any signs, in particular words, including personal names, or designs, letters, numerals, colours, the shape of goods or of the packaging of goods, or sounds, provided that such signs are capable of:

  - (a) distinguishing the goods or services of one undertaking from those of other undertakings; and
  - (b) being represented on the Register of European Union trade marks ('the Register'), in a manner which enables the competent authorities and the public to determine the clear and precise subject matter of the protection afforded to its proprietor.
- Article 7. Absolute grounds for refusal
  - 1. The following shall not be registered:
    - (a) signs which do not conform to the requirements of Article 4;
    - (b) trade marks which are devoid of any distinctive character;
    - (c) trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service, or other characteristics of the goods or service;
    - (d) trade marks which consist exclusively of signs or indications which have become customary in the current language or in the bona fide and established practices of the trade;
    - (e) signs which consist exclusively of:
      - (i) the shape, or another characteristic, which results from the nature of the goods themselves;
      - (ii) the shape, or another characteristic, of goods which is necessary to obtain a technical result;
      - (iii) the shape, or another characteristic, which gives substantial value to the goods;
    - (f) trade marks which are contrary to public policy or to accepted principles of morality;

- (g) trade marks which are of such a nature as to deceive the public, for instance as to the nature, quality or geographical origin of the goods or service;
  - (h) trade marks which have not been authorised by the competent authorities and are to be refused pursuant to Article 6ter of the Paris Convention for the Protection of Industrial Property ('Paris Convention');
  - (i) trade marks which include badges, emblems or escutcheons other than those covered by Article 6ter of the Paris Convention and which are of particular public interest, unless the consent of the competent authority to their registration has been given;
  - (j) trade marks which are excluded from registration, pursuant to Union legislation or national law or to international agreements to which the Union or the Member State concerned is party, providing for protection of designations of origin and geographical indications;
  - (k) trade marks which are excluded from registration pursuant to Union legislation or international agreements to which the Union is party, providing for protection of traditional terms for wine;
  - (l) trade marks which are excluded from registration pursuant to Union legislation or international agreements to which the Union is party, providing for protection of traditional specialities guaranteed;
  - (m) trade marks which consist of, or reproduce in their essential elements, an earlier plant variety denomination registered in accordance with Union legislation or national law, or international agreements to which the Union or the Member State concerned is a party, providing for protection of plant variety rights, and which are in respect of plant varieties of the same or closely related species.
2. Paragraph 1 shall apply notwithstanding that the grounds of non-registrability obtain in only part of the Union.
  3. Paragraph 1(b), (c) and (d) shall not apply if the trade mark has become distinctive in relation to the goods or services for which registration is requested as a consequence of the use which has been made of it.

- Article 9. Rights conferred by an EU trade mark

1. The registration of an EU trade mark shall confer on the proprietor exclusive rights therein.

2. Without prejudice to the rights of proprietors acquired before the filing date or the priority date of the EU trade mark, the proprietor of that EU trade mark shall be entitled to prevent all third parties not having his consent from using in the course of trade, in relation to goods or services, any sign where:
  - (a) the sign is identical with the EU trade mark and is used in relation to goods or services which are identical with those for which the EU trade mark is registered;
  - (b) the sign is identical with, or similar to, the EU trade mark and is used in relation to goods or services which are identical with, or similar to, the goods or services for which the EU trade mark is registered, if there exists a likelihood of confusion on the part of the public; the likelihood of confusion includes the likelihood of association between the sign and the trade mark;
  - (c) the sign is identical with, or similar to, the EU trade mark irrespective of whether it is used in relation to goods or services which are identical with, similar to or not similar to those for which the EU trade mark is registered, where the latter has a reputation in the Union and where use of that sign without due cause takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the EU trade mark.
3. The following, in particular, may be prohibited under paragraph 2:
  - (a) affixing the sign to the goods or to the packaging of those goods;
  - (b) offering the goods, putting them on the market, or stocking them for those purposes under the sign, or offering or supplying services thereunder;
  - (c) importing or exporting the goods under the sign;
  - (d) using the sign as a trade or company name or part of a trade or company name;
  - (e) using the sign on business papers and in advertising;
  - (f) using the sign in comparative advertising in a manner that is contrary to Directive 2006/114/EC.
4. Without prejudice to the rights of proprietors acquired before the filing date or the priority date of the EU trade mark, the proprietor of that EU trade mark shall also be entitled to prevent all third parties from bringing goods, in the course of trade, into the Union without being released for free circulation there, where such goods, including packaging, come from third countries and



bear without authorisation a trade mark which is identical with the EU trade mark registered in respect of such goods, or which cannot be distinguished in its essential aspects from that trade mark.

The entitlement of the proprietor of an EU trade mark pursuant to the first subparagraph shall lapse if, during the proceedings to determine whether the EU trade mark has been infringed, initiated in accordance with Regulation (EU) No 608/2013, evidence is provided by the declarant or the holder of the goods that the proprietor of the EU trade mark is not entitled to prohibit the placing of the goods on the market in the country of final destination.

- Article 14. Limitation of the effects of an EU trade mark
  1. An EU trade mark shall not entitle the proprietor to prohibit a third party from using, in the course of trade:
    - (a) the name or address of the third party, where that third party is a natural person;
    - (b) signs or indications which are not distinctive or which concern the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of the service, or other characteristics of the goods or services;
    - (c) the EU trade mark for the purpose of identifying or referring to goods or services as those of the proprietor of that trade mark, in particular, where the use of that trade mark is necessary to indicate the intended purpose of a product or service, in particular as accessories or spare parts.
  2. Paragraph 1 shall only apply where the use made by the third party is in accordance with honest practices in industrial or commercial matters.
- Article 15. Exhaustion of the rights conferred by an EU trade mark
  1. An EU trade mark shall not entitle the proprietor to prohibit its use in relation to goods which have been put on the market in the European Economic Area under that trade mark by the proprietor or with his consent.
  2. Paragraph 1 shall not apply where there exist legitimate reasons for the proprietor to oppose further commercialisation of the goods, especially where the condition of the goods is changed or impaired after they have been put on the market.

- Article 18. Use of an EU trade mark
  1. If, within a period of five years following registration, the proprietor has not put the EU trade mark to genuine use in the Union in connection with the goods or services in respect of which it is registered, or if such use has been suspended during an uninterrupted period of five years, the EU trade mark shall be subject to the sanctions provided for in this Regulation, unless there are proper reasons for non-use.  
The following shall also constitute use within the meaning of the first subparagraph:
    - (a) use of the EU trade mark in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered, regardless of whether or not the trade mark in the form as used is also registered in the name of the proprietor;
    - (b) affixing of the EU trade mark to goods or to the packaging thereof in the Union solely for export purposes.
  2. Use of the EU trade mark with the consent of the proprietor shall be deemed to constitute use by the proprietor.

### **D.3 Parts of the Dutch patent law, Rijksoctrooiwet 1995 (in Dutch)**

These are some of the most relevant parts of Dutch patent law (ROW).

- Artikel 53
  1. Een octrooi geeft de octrooihouder, behoudens de bepalingen van de artikelen 53a tot en met 60, het uitsluitend recht:
    - a. het geoctrooieerde voortbrengsel in of voor zijn bedrijf te vervaardigen, te gebruiken, in het verkeer te brengen of verder te verkopen, te verhuren, af te leveren of anderszins te verhandelen, dan wel voor een of ander aan te bieden, in te voeren of in voorraad te hebben;
    - b. de geoctrooieerde werkwijze in of voor zijn bedrijf toe te passen of het voortbrengsel, dat rechtstreeks verkregen is door toepassing van die werkwijze, in of voor zijn bedrijf te gebruiken, in het verkeer te brengen of verder te verkopen, te verhuren, af te leveren of anderszins te verhandelen, dan wel voor een of ander aan te bieden, in te voeren of in voorraad te hebben.

2. Het uitsluitend recht wordt bepaald door de conclusies van het octrooischrift, waarbij de beschrijving en de tekeningen dienen tot uitleg van die conclusies.
3. Het uitsluitend recht strekt zich niet uit over handelingen, uitsluitend dienende tot onderzoek van het geoctrooieerde, daaronder begrepen het door toepassing van de geoctrooieerde werkwijze rechtstreeks verkregen voortbrengsel. Het uitsluitend recht strekt zich evenmin uit tot de bereiding voor direct gebruik ten behoeve van individuele gevallen op medisch voorschrift van geneesmiddelen in apotheken, noch tot handelingen betreffende de aldus bereide geneesmiddelen.
4. Het uitvoeren van de noodzakelijke studies, tests en proeven met het oog op de toepassing van artikel 10, eerste tot en met vierde lid, van Richtlijn 2001/83/EG tot vaststelling van een communautair wetboek betreffende geneesmiddelen voor menselijk gebruik (PbEG L 311) of artikel 13, eerste tot en met het vijfde lid van Richtlijn 2001/82/EG tot vaststelling van een communautair wetboek betreffende geneesmiddelen voor diergeneeskundig gebruik (PbEG L 311) en de daaruit voortvloeiende praktische vereisten worden niet beschouwd als een inbreuk op octrooien met betrekking tot geneesmiddelen voor menselijk gebruik, respectievelijk geneesmiddelen voor diergeneeskundig gebruik.
5. Is een voortbrengsel als in het eerste lid, onder a of b, bedoeld, in Nederland, Curaçao of Sint Maarten rechtmatig in het verkeer gebracht, dan wel door de octrooihouder of met diens toestemming in één der Lid-Statens van de Europese Gemeenschap of in een andere staat die partij is bij de Overeenkomst betreffende de Europese Economische Ruimte in het verkeer gebracht, dan handelt de verkrijger of latere houder niet in strijd met het octrooi, door dit voortbrengsel in of voor zijn bedrijf te gebruiken, te verkopen, te verhuren, af te leveren of anderszins te verhandelen, dan wel voor een of ander aan te bieden, in te voeren of in voorraad te hebben.
6. Een voortbrengsel als in het eerste lid, onder a of b, bedoeld, dat voor de verlening van het octrooi, of, indien het een Europees octrooi betreft, voor de dag, waarop overeenkomstig artikel 97, derde lid, van het Europees Octrooiverdrag de vermelding van de verlening van het Europees octrooi is gepubliceerd, in een bedrijf is vervaardigd, mag niettegenstaande het octrooi ten dienste van dat bedrijf worden gebruikt.

## D.4 Parts of the European Patent Convention

These are some of the most relevant parts of patent law in the European Patent Convention (EPC).

- Article 52. Patentable inventions
  - (1) European patents shall be granted for any inventions, in all fields of technology, provided that they are new, involve an inventive step and are susceptible of industrial application.
  - (2) The following in particular shall not be regarded as inventions within the meaning of paragraph 1:
    - a) discoveries, scientific theories and mathematical methods;
    - b) aesthetic creations;
    - c) schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers;
    - d) presentations of information.
  - (3) Paragraph 2 shall exclude the patentability of the subject-matter or activities referred to therein only to the extent to which a European patent application or European patent relates to such subject-matter or activities as such.
- Article 54. Novelty
  - (1) An invention shall be considered to be new if it does not form part of the state of the art.
  - (2) The state of the art shall be held to comprise everything made available to the public by means of a written or oral description, by use, or in any other way, before the date of filing of the European patent application.
  - (3) Additionally, the content of European patent applications as filed, the dates of filing of which are prior to the date referred to in paragraph 2 and which were published on or after that date, shall be considered as comprised in the state of the art.
  - (4) Paragraphs 2 and 3 shall not exclude the patentability of any substance or composition, comprised in the state of the art, for use in a method referred to in Article 53(c), provided that its use for any such method is not comprised in the state of the art.
  - (5) Paragraphs 2 and 3 shall also not exclude the patentability of any substance or composition referred to in paragraph 4 for any specific use in a method referred to in Article 53(c), provided that such use is not comprised in the state of the art.

- Article 56. Inventive step

An invention shall be considered as involving an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the art. If the state of the art also includes documents within the meaning of Article 54, paragraph 3, these documents shall not be considered in deciding whether there has been an inventive step.

- Article 83. Disclosure of the invention

The European patent application shall disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

- Article 84. Claims

The claims shall define the matter for which protection is sought. They shall be clear and concise and be supported by the description.

- Article 87. Priority right

- (1) Any person who has duly filed, in or for
  - (a) any State party to the Paris Convention for the Protection of Industrial Property or
  - (b) any Member of the World Trade Organization,
 an application for a patent, a utility model or a utility certificate, or his successor in title, shall enjoy, for the purpose of filing a European patent application in respect of the same invention, a right of priority during a period of twelve months from the date of filing of the first application.
- (2) Every filing that is equivalent to a regular national filing under the national law of the State where it was made or under bilateral or multilateral agreements, including this Convention, shall be recognised as giving rise to a right of priority.
- (3) A regular national filing shall mean any filing that is sufficient to establish the date on which the application was filed, whatever the outcome of the application may be.
- (4) A subsequent application in respect of the same subject-matter as a previous first application and filed in or for the same State shall be considered as the first application for the purposes of determining priority, provided that, at the date of filing the subsequent application, the previous application has been withdrawn, abandoned or refused, without being open to public inspection and without leaving any rights outstanding, and has not served as a basis for claiming a right of priority. The previous application may not thereafter serve as a basis for claiming a right of priority.

- (5) If the first filing has been made with an industrial property authority which is not subject to the Paris Convention for the Protection of Industrial Property or the Agreement Establishing the World Trade Organization, paragraphs 1 to 4 shall apply if that authority, according to a communication issued by the President of the European Patent Office, recognises that a first filing made with the European Patent Office gives rise to a right of priority under conditions and with effects equivalent to those laid down in the Paris Convention.
- Article 88. Claiming priority
    - (1) An applicant desiring to take advantage of the priority of a previous application shall file a declaration of priority and any other document required, in accordance with the Implementing Regulations.
    - (2) Multiple priorities may be claimed in respect of a European patent application, notwithstanding the fact that they originated in different countries. Where appropriate, multiple priorities may be claimed for any one claim. Where multiple priorities are claimed, time limits which run from the date of priority shall run from the earliest date of priority.
    - (3) If one or more priorities are claimed in respect of a European patent application, the right of priority shall cover only those elements of the European patent application which are included in the application or applications whose priority is claimed.
    - (4) If certain elements of the invention for which priority is claimed do not appear among the claims formulated in the previous application, priority may nonetheless be granted, provided that the documents of the previous application as a whole specifically disclose such elements.
  - Article 89. Effect of priority right

The right of priority shall have the effect that the date of priority shall count as the date of filing of the European patent application for the purposes of Article 54, paragraphs 2 and 3, and Article 60, paragraph 2.

## D.5 Parts of the Patent Cooperation Treaty

These are some of the most relevant parts of Patent Cooperation Treaty (PCT).

- Article 5. The Description

The description shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art.

- Article 6. The Claims

The claim or claims shall define the matter for which protection is sought. Claims shall be clear and concise. They shall be fully supported by the description.

- Article 8. Claiming Priority

- (1) The international application may contain a declaration, as prescribed in the Regulations, claiming the priority of one or more earlier applications filed in or for any country party to the Paris Convention for the Protection of Industrial Property.
- (2)
  - (a) Subject to the provisions of subparagraph (b), the conditions for, and the effect of, any priority claim declared under paragraph (1) shall be as provided in Article 4 of the Stockholm Act of the Paris Convention for the Protection of Industrial Property
  - (b) The international application for which the priority of one or more earlier applications filed in or for a Contracting State is claimed may contain the designation of that State. Where, in the international application, the priority of one or more national applications filed in or for a designated State is claimed, or where the priority of an international application having designated only one State is claimed, the conditions for, and the effect of, the priority claim in that State shall be governed by the national law of that State.

- Article 33. The International Preliminary Examination

- (1) The objective of the international preliminary examination is to formulate a preliminary and non-binding opinion on the questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), and to be industrially applicable.
- (2) For the purposes of the international preliminary examination, a claimed invention shall be considered novel if it is not anticipated by the prior art as defined in the Regulations.
- (3) For the purposes of the international preliminary examination, a claimed invention shall be considered to involve an inventive step if, having regard to the prior art as defined in the Regulations, it

is not, at the prescribed relevant date, obvious to a person skilled in the art.

- (4) For the purposes of the international preliminary examination, a claimed invention shall be considered industrially applicable if, according to its nature, it can be made or used (in the technological sense) in any kind of industry. “Industry” shall be understood in its broadest sense, as in the Paris Convention for the Protection of Industrial Property.
- (5) The criteria described above merely serve the purposes of international preliminary examination. Any Contracting State may apply additional or different criteria for the purpose of deciding whether, in that State, the claimed invention is patentable or not.
- (6) The international preliminary examination shall take into consideration all the documents cited in the international search report. It may take into consideration any additional documents considered to be relevant in the particular case.

- Rule 64. Prior Art for International Preliminary Examination

- 64.1 Prior Art

- (a) For the purposes of Article 33(2) and (3), everything made available to the public anywhere in the world by means of written disclosure (including drawings and other illustrations) shall be considered prior art provided that such making available occurred prior to the relevant date.
- (b) For the purposes of paragraph (a), the relevant date shall be:
  - (i) subject to item (ii) and (iii), the international filing date of the international application under international preliminary examination;
  - (ii) where the international application under international preliminary examination claims the priority of an earlier application and has an international filing date which is within the priority period, the filing date of such earlier application, unless the International Preliminary Examining Authority considers that the priority claim is not valid;
  - (iii) where the international application under international preliminary examination claims the priority of an earlier application and has an international filing date which is later than the date on which the priority period expired but within the period of two months from that date, the filing date of such earlier application, unless the International Preliminary Examining Authority considers that the priority claim is not valid for reasons other than the fact that the international



application has an international filing date which is later than the date on which the priority period expired.

#### 64.2 Non-Written Disclosures

In cases where the making available to the public occurred by means of an oral disclosure, use, exhibition or other non-written means (“non-written disclosure”) before the relevant date as defined in Rule 64.1(b) and the date of such non-written disclosure is indicated in a written disclosure which has been made available to the public on a date which is the same as, or later than, the relevant date, the non-written disclosure shall not be considered part of the prior art for the purposes of Article 33(2) and (3). Nevertheless, the international preliminary examination report shall call attention to such non-written disclosure in the manner provided for in Rule 70.9.

#### 64.3 Certain Published Documents

In cases where any application or any patent which would constitute prior art for the purposes of Article 33(2) and (3) had it been published prior to the relevant date referred to in Rule 64.1 was published on a date which is the same as, or later than, the relevant date but was filed earlier than the relevant date or claimed the priority of an earlier application which had been filed prior to the relevant date, such published application or patent shall not be considered part of the prior art for the purposes of Article 33(2) and (3). Nevertheless, the international preliminary examination report shall call attention to such application or patent in the manner provided for in Rule 70.10.

## D.6 Parts of the Benelux Convention on Intellectual Property (designs)

These are some of the most relevant parts of the Benelux Convention on Intellectual Property (BCIP).

- Article 3.1. Designs
  1. A design shall be protected to the extent that it is new and has individual character.
  2. The appearance of the whole or a part of a product shall be regarded as a design.
  3. The appearance of a product shall be imparted, in particular, through the features of the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation.

4. A product shall mean any industrial or handicraft item, including inter alia parts intended to be assembled into a complex product, packaging, get-up, graphic symbols and typographic typefaces. Computer programs shall not be regarded as a product.
- Article 3.3. Novelty and individual character
    1. A design shall be considered new if no identical design has been made available to the public before the date of filing of the application or the date of priority. Designs shall be deemed to be identical if their features differ only in immaterial details.
    2. A design shall be considered to have individual character if the overall impression it produces on the informed user differs from the overall impression produced on such a user by any design which has been made available to the public before the date of filing or the date of priority. In assessing individual character, the degree of freedom of the designer in developing the design shall be taken into consideration.
    3. In order to assess novelty and individual character, a design shall be deemed to have been made available to the public if it has been published following registration or otherwise, or exhibited, used in trade or otherwise disclosed, except where these events could not reasonably have become known in the normal course of business to the circles specialised in the sector concerned, operating within the European Community or the European Economic Area, before the date of filing or the date of priority. The design shall not, however, be deemed to have been made available to the public for the sole reason that it has been disclosed to a third person under explicit or implicit conditions of confidentiality.
    4. In order to assess novelty and individual character, a disclosure shall not be taken into consideration if a design for which protection is claimed under a registered design right has been made available to the public during the 12-month period preceding the date of filing of the application or the date of priority:
      - a. by the designer, his successor in title, or a third person as a result of information provided or action taken by the designer, or his successor in title; and
      - b. if the design has been made available to the public as a consequence of an abuse in relation to the designer or his successor in title.
    5. Right of priority shall mean the right provided for under Article 4 of the Paris Convention. This right may be claimed by anyone

who properly submits an application for a design or utility model in one of the countries which is a party to the said Convention or the TRIPS Agreement.

- Article 3.9. Filing

1. A Benelux application for designs shall be filed, either with the national administrations or with the Office, in the manner specified by the implementing regulations and against payment of the fees due. A Benelux application may comprise either a single design (single filing) or several (multiple filing). A check shall be made to ensure that the documents produced satisfy the conditions specified for fixing the filing date and the filing date shall be fixed. The applicant shall be informed, without delay and in writing, of the date of filing or, where applicable, of the grounds for not fixing a filing date.
2. If other provisions of the implementing regulations are not satisfied at the time of filing, the applicant shall be informed without delay and in writing of the conditions which are not fulfilled and shall be given the opportunity to respond.
3. The application shall have no further effect if the provisions of the implementing regulations are not satisfied within the period granted.
4. Where filing takes place with a national administration, the national administration shall forward the Benelux application to the Office, either without delay after receiving the application or after establishing that the application satisfies conditions specified in paragraphs 1 to 3.
5. Without prejudice in the case of Benelux filings to the application of Article 3.13, filings of designs may not be the subject, as far as substance is concerned, of any examination giving rise to findings which could be binding on the applicant by the Office.

- Article 3.16. Scope of protection

1. Without prejudice to the application of ordinary law relating to civil liability, the exclusive right in a design shall allow its right holder to challenge the use of a product in which the design is incorporated or on which the design is applied, which has an identical appearance to the design as filed, or which does not produce a different overall impression on an informed user, taking into consideration the designer's degree of freedom in developing the design.

2. Use shall cover, in particular, the making, offering, putting on the market, sale, delivery, hire, importing, exporting, exhibiting, or using or stocking for one of those purposes.
- Article 3.19. Limitation of the effects of the exclusive right
    1. The exclusive right to a design shall not imply the right to contest:
      - a. acts done privately and for non-commercial purposes;
      - b. acts done for experimental purposes;
      - c. acts of reproduction for the purpose of making citations or of teaching, provided that such acts are compatible with fair trade practice and do not unduly prejudice the normal exploitation of the design, and that mention is made of the source.
    2. Furthermore, the exclusive right in a design shall not imply the right to contest:
      - a. the equipment on ships and aircraft registered in a third country when these temporarily enter the Benelux territory;
      - b. the importation in the Benelux territory of spare parts and accessories for the purpose of repairing such craft;
      - c. the execution of repairs on such craft.
    3. The exclusive right in a design constituting a part of a complex product shall not imply the right to contest use of the design for the purposes of repair of that complex product in order to restore to its initial appearance.
    4. The exclusive right in a design shall not imply the right to contest the acts mentioned in Article 3.16 relating to products which have been placed in circulation in one of the Member States of the European Community or European Economic Area, either by the holder or with the holder's consent, or the acts mentioned in Article 3.20.
    5. Actions may not relate to products which were put on the market in Benelux territory prior to the filing.

## **D.7 Parts of the Regulation on Community designs**

These are some of the most relevant parts of the Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (CDR).

This Council Regulation will be exchanged for a new regulation on community designs in the near future.

- Article 3. Definitions

For the purposes of this Regulation:

- (a) “design” means the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation;
- (b) “product” means any industrial or handicraft item, including inter alia parts intended to be assembled into a complex product, packaging, get-up, graphic symbols and typographic typefaces, but excluding computer programs;
- (c) “complex product” means a product which is composed of multiple components which can be replaced permitting disassembly and re-assembly of the product.

- Article 5. Novelty

1. A design shall be considered to be new if no identical design has been made available to the public:
  - (a) in the case of an unregistered Community design, before the date on which the design for which protection is claimed has first been made available to the public;
  - (b) in the case of a registered Community design, before the date of filing of the application for registration of the design for which protection is claimed, or, if priority is claimed, the date of priority.
2. Designs shall be deemed to be identical if their features differ only in immaterial details.

- Article 6. Individual character

1. A design shall be considered to have individual character if the overall impression it produces on the informed user differs from the overall impression produced on such a user by any design which has been made available to the public:
  - (a) in the case of an unregistered Community design, before the date on which the design for which protection is claimed has first been made available to the public;
  - (b) in the case of a registered Community design, before the date of filing the application for registration or, if a priority is claimed, the date of priority.
2. In assessing individual character, the degree of freedom of the designer in developing the design shall be taken into consideration.

- Article 7. Disclosure

1. For the purpose of applying Articles 5 and 6, a design shall be deemed to have been made available to the public if it has been published following registration or otherwise, or exhibited, used in trade or otherwise disclosed, before the date referred to in Articles 5(1)(a) and 6(1)(a) or in Articles 5(1)(b) and 6(1)(b), as the case may be, except where these events could not reasonably have become known in the normal course of business to the circles specialised in the sector concerned, operating within the Community. The design shall not, however, be deemed to have been made available to the public for the sole reason that it has been disclosed to a third person under explicit or implicit conditions of confidentiality.
2. A disclosure shall not be taken into consideration for the purpose of applying Articles 5 and 6 and if a design for which protection is claimed under a registered Community design has been made available to the public:
  - (a) by the designer, his successor in title, or a third person as a result of information provided or action taken by the designer or his successor in title; and
  - (b) during the 12-month period preceding the date of filing of the application or, if a priority is claimed, the date of priority.
3. Paragraph 2 shall also apply if the design has been made available to the public as a consequence of an abuse in relation to the designer or his successor in title.

- Article 19. Rights conferred by the Community design

1. A registered Community design shall confer on its holder the exclusive right to use it and to prevent any third party not having his consent from using it. The aforementioned use shall cover, in particular, the making, offering, putting on the market, importing, exporting or using of a product in which the design is incorporated or to which it is applied, or stocking such a product for those purposes.
2. An unregistered Community design shall, however, confer on its holder the right to prevent the acts referred to in paragraph 1 only if the contested use results from copying the protected design.

The contested use shall not be deemed to result from copying the protected design if it results from an independent work of creation by a designer who may be reasonably thought not to be familiar with the design made available to the public by the holder.

3. Paragraph 2 shall also apply to a registered Community design subject to deferment of publication as long as the relevant entries in the register and the file have not been made available to the public in accordance with Article 50(4).
- Article 20. Limitation of the rights conferred by a Community design
    1. The rights conferred by a Community design shall not be exercised in respect of:
      - (a) acts done privately and for non-commercial purposes;
      - (b) acts done for experimental purposes;
      - (c) acts of reproduction for the purpose of making citations or of teaching, provided that such acts are compatible with fair trade practice and do not unduly prejudice the normal exploitation of the design, and that mention is made of the source.
    2. In addition, the rights conferred by a Community design shall not be exercised in respect of:
      - (a) the equipment on ships and aircraft registered in a third country when these temporarily enter the territory of the Community;
      - (b) the importation in the Community of spare parts and accessories for the purpose of repairing such craft;
      - (c) the execution of repairs on such craft.
  - Article 21. Exhaustion of rights
 

The rights conferred by a Community design shall not extend to acts relating to a product in which a design included within the scope of protection of the Community design is incorporated or to which it is applied, when the product has been put on the market in the Community by the holder of the Community design or with his consent.
  - Article 35. Filing and forwarding of applications
    1. An application for a registered Community design shall be filed, at the option of the applicant:
      - (a) at the Office; or
      - (b) at the central industrial property office of a Member State; or
      - (c) in the Benelux countries, at the Benelux Design Office.

2. Where the application is filed at the central industrial property office of a Member State or at the Benelux Design Office, that office shall take all steps to forward the application to the Office within two weeks after filing. It may charge the applicant a fee which shall not exceed the administrative costs of receiving and forwarding the application.
3. As soon as the Office has received an application which has been forwarded by a central industrial property office of a Member State or by the Benelux Design Office, it shall inform the applicant accordingly, indicating the date of its receipt at the Office.
4. No less than 10 years after the entry into force of this Regulation, the Commission shall draw up a report on the operation of the system of filing applications for registered Community designs, accompanied by any proposals for revision that it may deem appropriate.

## D.8 Parts of the Dutch Copyright law

Next, some relevant articles of the Dutch Copyright Act can be found here. See: Visser Schaap en Kreijger and Translations [VT21].

- Article 10

1. For the purposes of this Act, literary, scientific or artistic works are:
  1. books, brochures, newspapers, periodicals and other writings;
  2. dramatic and dramatic-musical works;
  3. recitations;
  4. choreographic works and mime shows;
  5. musical works, with or without words;
  6. drawings, paintings, works of architecture and sculpture, lithographs, engravings and other graphic works;
  7. geographical maps;
  8. designs, sketches and plastic models pertaining to architecture, geography, topography or other sciences;
  9. photographic works;
  10. films;
  11. works of applied art and industrial drawings and models;
  12. computer programs and preparatory design materials for such;



and generally any creation in the literary, scientific or artistic domain, regardless of the manner or form in which it has been expressed.

2. Reproductions of a literary, scientific or artistic work in a modified form, such as translations, musical arrangements, screen and other adaptations, as well as collections of different works are protected as separate works, without prejudice to the copyright in the original work.
3. Collections of works, data or other independent materials arranged in a systematic or methodical way and individually accessible by electronic or other means are protected as separate works, without prejudice to other rights in the collection and without prejudice to copyrights or other rights in the works, data or other materials included in the collection.

- Article 12

1. Disclosure to the public of a literary, scientific or artistic work includes:
  1. the disclosure to the public of a reproduction of the whole or part of the work;
  2. the distribution of the whole or part of the work or of a reproduction thereof, as long as the work has not appeared in print;
  3. the rental or lending of the whole or part of a copy of the work, works of architecture and works of applied art excepted, or of a reproduction thereof which has been put into circulation by or with the consent of the rightholder;
  4. the recitation, playing, performance or presentation in public of the whole or part of the work or a reproduction thereof;
  5. the broadcasting of the work incorporated in a radio or television programme, by satellite or another transmitter or a broadcasting organisation within the meaning of article 1.1 of the Media Act 2008;
  6. the disclosure of a work to the public by means of retransmission by cable or by any other means.
2. Rental, as referred to in the first subsection sub 3, means making available for use for a limited period of time for direct or indirect economic or commercial advantage.
3. Lending, as referred to in the first subsection sub 3, means making available for use by institutions which are accessible to the public for a limited period of time and not for direct or indirect economic or commercial advantage.

4. The expression ‘recitation, playing, performance or presentation in public’ includes in a closed circle, except where this is limited to relatives or friends or equivalent persons and no form of payment whatsoever is made for admission to the recitation, play, performance or presentation. The same applies to exhibitions.
5. The expression ‘recitation, playing, performance or presentation in public’ does not include those that take place exclusively for the purposes of education provided that this is on behalf of the public authorities or a non-profit-making legal person insofar as such recitation, playing, performance or presentation forms part of the syllabus or curriculum where applicable, or those that exclusively serve a scientific purpose. The first sentence also applies to digital use for the purpose of illustrating the aforesaid education under the responsibility of an educational establishment through a secure electronic environment that is only accessible for that educational establishment’s pupils or students and teaching staff provided that:
  1. the use takes place at the same time as the recitation, playing, performance or presentation;
  2. the use, including the acts of reproduction necessary for the disclosure to the public, is justified by the non-commercial purpose to be achieved; and
  3. the use is accompanied by the indication of the source, including the author’s name, unless this turns out to be impossible.
6. The simultaneous broadcasting of a work incorporated in a radio or television programme by the same organisation that originally broadcasts the programme is not regarded as a separate instance of disclosure to the public.
7. The broadcasting by satellite of a work incorporated in a radio or television programme means the act of introducing, under the control and responsibility of the broadcasting organisation, the programme-carrying signals intended for reception by the public into an uninterrupted chain of communication leading to the satellite and down towards the earth. Where the programme-carrying signals are encrypted, a work incorporated in a radio or television programme is broadcast by satellite if the means for decoding the broadcast are made available to the public by or with the consent of the broadcasting organisation.
8. The retransmission of a work by cable means the simultaneous, unaltered and unabridged retransmission by a cable or microwave system for reception by the public of an initial broadcast, by wire or over the air, including by satellite, of a work incorporated in a television or radio programme intended for reception by the

public, regardless of how the party enabling the retransmission obtains the programme-carrying signals from the broadcasting organisation for the purpose of retransmission.

9. The retransmission of a work by other means refers to the simultaneous, unaltered and unabridged retransmission, other than by cable as referred to in the eighth subsection, of an initial broadcast, by wire or over the air, including by satellite but excluding an online transmission of a work incorporated in a television or radio programme intended for reception by the public, regardless of how the party enabling the retransmission obtains the programme-carrying signals from the broadcasting organisation for the purpose of retransmission. If an internet access service as referred to in Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union (OJEU 2015, L 310) provides the retransmission, there is only a retransmission of a work by other means if it is a secure retransmission made to users authorised for that purpose.

- Article 12b

If, by means of transfer of ownership, the original literary, scientific or artistic work or a copy thereof has been put into circulation for the first time by or with the consent of the author or his successor in title in one of the Member States of the European Union or in a State that is party to the Agreement on the European Economic Area, then putting the original work or a copy thereof into circulation in any other way, except by rental and lending, does not infringe the copyright.

- Article 13

The reproduction of a literary, scientific or artistic work includes the translation, musical arrangement, film or stage adaptation and generally any partial or total adaptation or imitation in a modified form which cannot be considered as a new, original work.

- Article 15

1. Using reports or articles on current economic, political, religious or ideological topics or works of the same nature which have been published in a daily or weekly newspaper or weekly or other periodical, radio or television programme or other medium that has

the same function, is not regarded as an infringement of the copyright in a literary, scientific or artistic work, if:

1. the use is made by a daily or weekly newspaper, a weekly or other periodical, a radio or television programme or other medium that has the same function;
  2. the provisions of article 25 are observed;
  3. the source, including the name of the author, is clearly indicated; and
  4. the copyright is not expressly reserved.
2. This section also applies to use in a language other than the original

- Article 15a

1. Quoting from a literary, scientific or artistic work in an announcement, review, polemic or scientific treatise or a piece with a comparable purpose, is not regarded as an infringement of the copyright in a literary, scientific or artistic work provided that:
  1. the work quoted from has been lawfully disclosed to the public;
  2. the quotation is in accordance with what is generally regarded as reasonably acceptable and the number and size of the quoted parts are justified by the purpose to be achieved;
  3. the provisions of article 25 are observed; and
  4. the source, including the author's name, is clearly indicated, insofar as this is reasonably possible.
2. In this section the term quotation also includes quotations in the form of press surveys of articles appearing in a daily or weekly newspaper or other periodical.
3. This section also applies to quotations in a language other than the original.

- Article 15b

Renewed disclosure to the public or reproduction of a literary, scientific or artistic work already disclosed by or on behalf of the public authority which is the work's author or his successor in title is not regarded as an infringement of the copyright in that work unless the copyright has been expressly reserved, either generally by law, decree or regulation, or specifically by a notice on the work itself or provided when the work was disclosed to the public. Even if no such reservation has been made, the author retains the exclusive right to have a collection of his works which have been disclosed to the public by or on behalf of a public authority appear.

- Article 15c

1. Lending, as referred to in article 12 (1) sub 3, the whole or part of a literary, scientific or artistic work or a reproduction of it which has been put into circulation by or with the consent of the rightholder is not regarded as an infringement of the copyright, provided that the person doing or causing the lending pays fair compensation. The first sentence does not apply to a work as referred to in article 10 (1) sub 12 unless that work is part of a data carrier that contains data and the work serves exclusively to make those data accessible.
2. Educational establishments and research institutes and the libraries attached to them, as well as the Royal Library, in its capacity as a research institute, are exempt from payment of compensation for lending as referred to in the first subsection.
3. Public library facilities, which are for the most part funded or maintained by municipal, provincial or national authorities or the public body of Bonaire, St Eustatius or Saba, are exempt from paying the compensation referred to in the first subsection in respect of lending items converted on the basis of article 15i or article 15j (1) sub 1 or 2, or a converted work imported by an authorised entity on the basis of article 15k for persons with disabilities who are registered with those facilities.
4. The compensation referred to in the first subsection is not owed if the person liable for payment can demonstrate that the author or his successor in title has waived the right to fair compensation. The author or his successor in title must notify the legal persons referred to in articles 15d and 15f of the waiver in writing.

- Article 15d

The level of the compensation referred to in article 15c (1) will be determined by a foundation to be designated by the Minister of Security and Justice in agreement with the Minister of Education, Culture and Science, the board of which is composed so as to represent, in a balanced manner, the interests of the authors or their successors in title and the persons liable for payment pursuant to article 15c (1). The chair of the board of this foundation will be appointed by the Minister of Security and Justice in agreement with the Minister of Education, Culture and Science. The board must have an odd number of members.

- Article 15e

Disputes concerning the compensation referred to in article 15c (1) are to be decided in the first instance exclusively by the District Court of

The Hague.

- Article 15f

1. The compensation referred to in article 15c must be paid to a legal person, which is to be designated by the Minister of Security and Justice in agreement with the Minister of Education, Culture and Science, and which they judge to be representative. The legal person is to be exclusively entrusted with the collection and distribution of such compensation. In matters relating to the level and collection of the compensation and the exercise of the exclusive right, the legal person referred to in the preceding sentence will represent the rightholders both in and out of court.
2. The legal person referred to in the first subsection will be supervised by the Supervisory Board as referred to in the Supervision of Collective Management Organisations for Copyright and Related Rights Act.
3. The compensation collected will be distributed on the basis of regulations drawn up by the legal person referred to in the first subsection and approved by the Supervisory Board referred to in the Supervision of Collective Management Organisations for Copyright and Related Rights Act.

- Article 15g

Unless another date is agreed, by 1 April of every calendar year whoever is required to pay the compensation referred to in article 15c (1) will be obliged to submit a specification of the number of legal acts performed, as referred to in article 15c, to the legal person referred to in article 15f (1). He will also be obliged to provide this legal person, on request, with immediate access to any documents or other data carriers needed to establish liability and the level of the compensation.

- Article 15h

Unless otherwise agreed, providing access to a literary, scientific or artistic work that forms part of the collections of libraries accessible to the public, educational establishments and museums or archives which do not seek a direct or indirect economic or commercial advantage, by means of a closed network and through dedicated terminals on the premises of these establishments, to individual members of the public, for purposes of research or private study, is not regarded as an infringement of the copyright.

- Article 15i

1. Without prejudice to the provisions of article 15j, the reproduction or disclosure to the public of a literary, scientific or artistic work where this is exclusively intended for disabled persons is not regarded as an infringement of the copyright in that work, provided this is directly related to the disability, is not of a commercial nature and is required on account of the disability.
2. Fair compensation is due to the author or his successor in title for the act of reproduction or disclosure to the public referred to in the first subsection.

- Article 15j

1. Any act required for the following purposes is not regarded as an infringement of the copyright in a literary, scientific or artistic work:
  1. the conversion of published writings into a format accessible to a print-disabled person by a print-disabled person or a person acting on their behalf, provided that the print-disabled person has lawful access to the published writings, the converted work is intended solely for use by the print-disabled person, and the integrity of the published writings is respected to the greatest extent possible;
  2. the conversion of published writings into a format accessible to a print-disabled person by an authorised entity, provided that the authorised entity has lawful access to the published writings, the converted work is intended solely for use by a print-disabled person, and the integrity of the published writings is respected to the greatest extent possible; and
  3. the disclosure to the public of a converted work as referred to sub 2, by an authorised entity to a print-disabled person residing in or to another authorised entity established in a Member State of the European Union or a state that is party to the Print Disability Treaty, provided that the disclosure to the public is made for the purpose of the exclusive use by the print-disabled person and is made on a non-profit basis.
2. No agreement may derogate from the provisions of the first subsection.
3. It may be determined by order in council that the authorised entity established in the Netherlands owes fair compensation to the author or his successors in title for the conversion or disclosure to the public referred to in the first subsection sub 2 and 3. Further rules may be issued and conditions set for this.

- Article 15k

The import by a print-disabled person or an authorised entity of a work that has been converted by an authorised entity in another Member State of the European Union or in a state that is party to the Print Disability Treaty is not regarded as an infringement of the copyright in a literary, scientific or artistic work. No agreement may derogate from this provision.

- Article 15l

1. An authorised entity that effects a cross-border disclosure to the public of a converted work on the basis of article 15j (1) sub 3, or imports a converted work on the basis of article 15k, must have its own practices in place to ensure that it:
  1. only discloses converted works to print-disabled persons or other authorised entities;
  2. takes appropriate measures to discourage the unauthorised reproduction or disclosure to the public of converted works;
  3. demonstrates due care in, and keeps records of, its handling of published writings and converted works; and
  4. publishes and updates information, on its website if appropriate, or through other online or offline channels on how it complies with the obligations provided sub 1 to 3.
2. An authorised entity that effects a cross-border disclosure to the public of a converted work on the basis of article 15j (1) sub 3°, or imports a converted work on the basis of article 15k, must provide a print-disabled person, another authorised entity or the author or their successors in title, upon request, with:
  1. the list of converted works, as well as the available formats; and
  2. the name and contact details of the authorised entities with which it has exchanged converted works.

- Article 15m

For the purposes of articles 15j, 15k and 15l, the following definitions apply:

- a. print-disabled person: a person
  1. who is blind;
  2. who has a visual impairment which cannot be improved to give visual function substantially equivalent to that of a person who has no such impairment and so is unable to read printed works to substantially the same degree as a person without such an impairment;



3. who has a perceptual or reading disability and so is unable to read printed works to substantially the same degree as a person without such disability; or
  4. who is otherwise unable, due to a physical disability, to hold or manipulate a book or to focus or move his eyes to the extent that would be normally acceptable for reading;
- b. published writings: a literary, scientific or artistic work in the form of a book, newspaper (daily or otherwise), periodical or other type of writing, notations including sheet music and related illustrations, in any media, including works in audio format, which is protected by copyright and which has been disclosed to the public;
  - c. converted work: a work which has been converted into an alternative format which gives a print-disabled person access to the work, including allowing the print-disabled person to have access as feasibly and comfortably as a person without a print disability;
  - d. authorised entity: an entity authorised or recognised by a Member State to provide education, instructional training, adaptive reading or information access to print-disabled persons on a non-profit basis. This includes government institutions or non-profit organisations that offer print-disabled persons the same services as one of their primary activities, institutional obligations or as part of their public-interest missions;
  - e. Print Disability Treaty: the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, concluded in Marrakesh on 27 June 2013.

- Article 15n

1. Reproductions of a literary, scientific or artistic work made by research organisations and cultural heritage institutions to carry out, for the purposes of scientific research, text and data mining of a work to which they have lawful access will not be regarded as an infringement of the copyright in that work.
2. The reproduction referred to in the first subsection is stored with an appropriate level of protection and may be retained for the purposes of scientific research.
3. The authors of literary, scientific or artistic works and their successors in title may take measures to ensure the protection and integrity of the networks and databases where such works are retained. Such measures will not go beyond what is necessary in order to achieve that objective.
4. No agreement may derogate from the provisions of this section.

- Article 15o

1. Without prejudice to the provisions of article 15n, a reproduction made in the context of text and data mining is not regarded as an infringement of a copyright in a literary, scientific or artistic work, provided that the person performing the text and data mining has lawful access to the work and the author or their successors in title have not expressly reserved the copyright in an appropriate manner, such as by machine-readable means in the case of a work made available online.
2. The reproduction made in accordance with the provisions of the first subsection may be retained as long as is necessary for the purposes of text and data mining.

- Article 16

1. The reproduction or disclosure to the public of parts of a literary, scientific or artistic work for the sole purpose of illustration for teaching, insofar as this is justified by the intended and non-commercial purpose, is not regarded as an infringement of the copyright in that work, provided that:
  1. the work from which the part is taken has been lawfully disclosed to the public;
  2. it is in accordance with what is generally regarded as reasonably acceptable use;
  3. the provisions of article 25 have been observed;
  4. insofar as reasonably possible the source, including the author's name, has been clearly indicated; and
  5. fair compensation is paid to the author or his successors in title.
2. For the same purpose, and subject to the same conditions, use of the whole work is allowed if it concerns a short work or a work as referred to in article 10 (1) sub 6, 9 or 11.
3. Where the use is for a compilation, the use of works by the same author must be limited to a few short works or short passages of his works. Where it concerns works referred to in article 10 (1) sub 6, 9 or 11, only a few of the said works may be used and only if the reproductions differ appreciably from the original work, in size or as a result of the manner in which they are made, on the understanding that, where two or more such works were disclosed to the public together, the reproduction of only one of them is permitted.
4. The provisions of this section also apply where the use is in a language other than the original.

5. The provisions of this section also apply to digital use under the responsibility of an educational establishment through a secure electronic environment that is only accessible to that educational establishment's pupils or students and teaching staff.
6. No agreement may derogate from the provisions of this section.

- Article 16a

Making a short recording, show or presentation of a literary, scientific or artistic work in public in a photographic, film, radio or television report is not regarded as an infringement of the copyright in that work, insofar as this is justified for giving a proper account of the current event that is the subject of the report and provided that, as far as is reasonably possible, the source, including the author's name, is indicated clearly.

- Article 16b

1. Making a reproduction of a literary, scientific or artistic work that is limited to a few copies intended exclusively for private practice, study or use by the natural person who, for ends that are neither directly nor indirectly commercial, made the reproduction or had it made exclusively for his own benefit, is not regarded as an infringement of the copyright in that work.
2. Where this concerns a daily or weekly newspaper or weekly or other periodical, or a book or a score or parts of a musical work, and of other works included in the said works, the reproduction is furthermore to be limited to a small part of the work, except in the case of:
  - a. works of which it may reasonably be assumed that no new copies will be made available to third parties for payment of any kind;
  - b. short articles, news items or other texts, which have appeared in a daily or weekly newspaper or weekly or other periodical.
3. Where this concerns a work referred to in article 10 (1) sub 6, the reproduction must differ appreciably from the original work, in size or as a result of the manner in which it was made.
4. If a reproduction permitted under this section has been made, the copies made may not be issued to third parties without the consent of the author or his successors in title, unless it is for the purposes of judicial or administrative proceedings.
5. It may be determined by order in council that fair compensation is due to the author or his successors in title for the reproduction referred to in the first subsection. Further rules may be issued and conditions set for this.

6. This section does not apply to acts of reproduction referred to in article 16c, or to the recreation of works of architecture.

- Article 16c

1. Reproducing a literary, scientific or artistic work or part of it on an article that is intended for allowing a work to be heard, shown or presented, provided that the reproduction is carried out for ends that are neither directly nor indirectly commercial and is intended exclusively for private practice, study or use by the natural person who makes the reproduction, is not regarded as an infringement of the copyright in that work.
2. For the reproduction referred to in the first subsection, fair compensation is owed to the author or his successor in title. The manufacturer or the importer of the articles referred to in the first subsection is obliged to pay the compensation.
3. The manufacturer's obligation to pay compensation arises at the time that the articles manufactured by him are ready to be put into circulation. The importer incurs this obligation at the time of import.
4. The obligation to pay compensation lapses if the person liable for the ayment referred to in the second subsection exports the article referred to in he first subsection.
5. The compensation is only due once for each article.
6. Further rules may be issued by order in council for the articles for which compensation referred to in the second subsection is due. For the implementation of this section, further rules may be issued and conditions set, also by order in council, with respect to the level and form of fair compensation and liability for payment.
7. If a reproduction permitted under this section has been made, an article as referred to in the first subsection may not be issued to third parties without the consent of the author or his successors in title, unless it is for judicial or administrative proceedings.
8. This section does not apply to the reproduction of a collection accessible by electronic means as referred to in article 10 (3).

- Article 16d

1. The compensation referred to in article 16c must be paid to a legal person which is to be designated and judged representative by the Minister of Security and Justice and which is entrusted with the collection and distribution of that compensation in accordance with regulations it has drawn up and which have been approved by the Supervisory Board referred to in the Supervision of Collective Management Organisations for Copyright and

Related Rights Act. In matters relating to collection and compensation, this legal person will represent the authors and their successors in title both in and out of court.

2. The legal person referred to in the first subsection will be supervised by the Supervisory Board as referred to in the Supervision of Collective Management Organisations for Copyright and Related Rights Act.

- Article 16e

The level of the compensation referred to in Article 16c will be determined by a foundation to be designated by the Minister of Security and Justice, the board of which is composed so as to represent, in a balanced manner, the interests of the authors or their successors in title and the persons liable for payment pursuant to Article 16c (2). The chair of the board of the said foundation will be appointed by the Minister of Security and Justice.

- Article 16f

The person who is required to pay the compensation referred to in Article 16c is obliged to submit a specification of the number of articles as referred to in Article 16c (1) that were imported or manufactured by him, to the legal person referred to in Article 16d (1), either immediately or within a period agreed with the said legal person. He is also obliged to provide the said legal person, on request, with immediate access to the documents necessary to establish liability for payment and the level of the compensation.

- Article 16g

Disputes pertaining to the compensation referred to in Articles 15i, 15j, 16, 16b, 16c and 16h are decided in first instance exclusively by the District Court of The Hague.

- Article 16ga

1. At the request of the legal person referred to in Article 16d (1), the seller of articles referred to in Article 16c (1) is obliged to immediately provide access to such documents as are necessary to establish whether the compensation referred to in Article 16c (2) has been paid by the manufacturer or importer.
2. If the seller cannot demonstrate that the compensation has been paid by the manufacturer or the importer, he is obliged to make the payment to the legal person referred to in Article 16d (1) unless the documents referred to in the first subsection above show who the manufacturer or importer is.

- Article 16h

1. A reprographic reproduction of an article in a daily or weekly newspaper or weekly or other periodical, or of a small part of a book and other works contained in such a work, is not regarded as an infringement of the copyright, provided that compensation is paid for this reproduction.
2. A reprographic reproduction of the whole work is not regarded as an infringement of the copyright if it may reasonably be assumed that no new copies of the book will be made available to third parties for payment of any kind, provided that compensation is paid for this reproduction.
3. By order in council it may be determined that, in relation to the reproduction of works referred to in Article 10 (1) sub 1°, the provisions of one or more of the foregoing subsections may be derogated from for the benefit of public service as well as for the performance of tasks entrusted to institutions operating in the public interest. Further rules may be issued and conditions set by order in council in this regard.

- Article 16i

The compensation referred to in Article 16h is calculated on the basis of each page of a work, as referred to in the first and second subsections of that section, that is reprographically reproduced. The level of compensation will be determined, and further rules may be issued and conditions set, by order in council.

- Article 16j

Without the consent of the author or his successor in title, a reprographic reproduction made with due regard to Article 16h may only be issued to individuals working in the same company, organisation or institution, unless it is issued for the purposes of judicial or administrative proceedings.

- Article 16k

The obligation to pay compensation, as referred to in Article 16h, lapses after the expiry of three years from when the reproduction was made. The compensation is not owed if the person liable for payment can demonstrate that the author or his successor in title has waived the right to compensation.

- Article 16l

1. The compensation referred to in Article 16h must be paid to a legal person which is to be designated and judged representative

by the Minister of Security and Justice and which will be exclusively entrusted with the collection and distribution of the said compensation.

2. In matters pertaining to the collection of the compensation, the legal person referred to in the first subsection represents the authors or their successors in title both in and out of court.
3. The legal person referred to in the first subsection will distribute the collected compensation on the basis of regulations. The regulations require the approval of the Supervisory Board referred to in the Supervision of Collective Management Organisations for Copyright and Related Rights Act.
4. The legal person referred to in the first subsection will be supervised by the Supervisory Board specified in the Supervision of Collective Management Organisations for Copyright and Related Rights Act.
5. The first and second subsections do not apply to the extent that the person who is obliged to pay the compensation can directly to the author or his successor in title.

- Article 16m

The person who is obliged to pay the compensation referred to in Article 16h to the legal person referred to in Article 16l (1), is obliged to submit a specification to the legal person of the total number of reprographic reproductions he makes each year. The specification referred to in the first subsection is not required if the number of annual reprographic reproductions is smaller than such number as will be specified by order in council.

- Article 16n

1. The reproduction of a literary, scientific or artistic work by a cultural heritage institution is not regarded as an infringement of the copyright in that work if:
  1. the reproduction is made for the purpose of preserving the work and the reproduction is necessary for that purpose; and
  2. the work is permanently in the collection of the cultural heritage institution.
2. No agreement may derogate from the provisions of the first subsection.

- Article 16o

1. It is not regarded as an infringement of the copyright in a literary, scientific or artistic work referred to in Article 10 (1) sub 1, 5

or 10, for publicly accessible libraries, educational establishments and museums, as well as archives and film or audio-visual heritage institutions that do not seek any direct or indirect economic or commercial advantage, to reproduce or make available a work first disclosed to the public in a Member State of the European Union or in a State that is party to the Agreement on the European Economic Area provided that:

- a. the work forms part of the own collection of organisations referred to above;
  - b. the rightholder to the work has not been identified and located after a diligent search within the meaning of Article 16p has been carried out;and
  - c. the work is reproduced and made available within the scope of the performance of a public duty, in particular the conservation and restoration of works and providing access for cultural and educational purposes to the works from the own collections of the organisations referred to above.
2. If the copyright in the work is vested in one or more persons and not all the rightholders have been identified and located after a diligent search has been carried out, the work may only be reproduced and made available if the located rightholder has given his consent in relation to the rights that he himself holds. Upon making a work available, the organisations referred to in the first subsection must indicate the identified, but not yet located, rightholder or rightholders.
  3. A work that has not previously been disclosed to the public may be reproduced and made available, in accordance with the first subsection, if the work has been included in the collection referred to in the first subsection sub a with the consent of the rightholder and if it may reasonably be assumed that the rightholder would not oppose the work being reproduced and made available.
  4. The organisations referred to in the first subsection may generate revenue by reproducing and making the works available provided that this revenue serves solely to compensate the costs of digitising and making the works referred to in the first subsection available.

- Article 16p

1. The diligent search for the rightholder referred to in article 16o (1)(b) will be carried out by consulting the appropriate sources for the category of works in question to locate rightholders for each work referred to in article 16o (1),and for each literary, scientific or artistic work incorporated therein. On the recommendation of



the Minister of Education, Culture and Science, regulations will be issued by order in council with respect to the sources to be consulted in the search.

2. The search will be carried out in the Member State in which the work was first disclosed to the public. In the case of films the search will be carried out in the Member State in which the producer has his headquarters or habitual residence.
3. The search for a work referred to in article 16o (3) will be carried out in the Member State in which the organisation that has incorporated the work in its own collection with the consent of the rightholder is established.
4. If there is evidence to suggest that information on the rightholder is to be found in other Member States, the sources of information prescribed for a diligent search in those other Member States will also be consulted.
5. The organisations referred to in article 16o (1) maintain records of the sources that were consulted as part of the search and which information they have produced. The organisations will provide the following data to a body to be designated on the recommendation of the Minister of Education, Culture and Science, by or pursuant to an order in council, to forward the following data to the Office for Harmonization in the Internal Market (the Office):
  - a. the results of the diligent searches that the organisations have carried out and which have led to the conclusion that a work is considered an orphan work;
  - b. the manner in which the work will be used;
  - c. the contact information of the organisations; and d where applicable, any change to the status of the work.

On the recommendation of the Minister of Education, Culture and Science, further regulations will be issued by order in council with respect to the data to be provided and the manner in which it is to be provided.

6. In the case of orphan works incorporated in the database of the Office referred to in the fifth subsection, a diligent search referred to in article 16o (1)(b) is not required for reproducing them or making them available to the public.

- Article 16q

The use of a literary, scientific or artistic work in accordance with article 16o (1) will be revoked if a rightholder avails himself of the possibility to put an end to the orphan work status in respect of rights that he himself holds. Fair compensation is due from the organisations

referred to in article 16o (1) to the rightholder for the use that has been made of the work on the basis of article 16o.

- Article 16r

For the purposes of articles 16o, 16p, 16q and 17, making a work available to the public will be understood to mean making a literary, scientific or artistic work available to the public, by wire or wireless, in such a way that members of the public may access the work from a place and at a time individually chosen by them.

- Article 17

It is not regarded as an infringement of the copyright in a literary, scientific or artistic work as referred to in article 10 (1)(5) or (10) for a public media institution as referred to in Part 2 of the Media Act 2008 to reproduce or make available a work, disclosed to the public as referred to in article 16o (1)(b) in a Member State of the European Union or in a State that is party to the Agreement on the European Economic Area, if it was produced by the public media institution before 1 January 2003 and archived. articles 16o to 16r apply equally.

- Article 17a

In the public interest, rules may be issued by order in council with respect to the exercise of the rights of an author of a work or his successors in title in relation to the disclosure to the public of a work by means of a broadcast of a radio or television programme by radio or television, or some other medium fulfilling the same function. The order in council referred to in the first sentence may determine that such a work may be disclosed to the public in the Netherlands without prior consent from the author or his successors in title if the broadcast is made from the Netherlands or from a State that is not party to the Agreement on the European Economic Area. The person who is entitled to disclose a work to the public without prior consent is nonetheless obliged to respect the author's rights as referred to in article 25, and to pay the author or his successors in title fair compensation, which, failing agreement, will be determined by the court on the application of either party and which may also order the provision of security. The foregoing provisions do not apply to the broadcast by satellite of a work incorporated in a radio or television programme.

- Article 17b

1. Unless otherwise agreed, the authority to disclose to the public a radio or television programme by broadcasting it by radio or television or another medium fulfilling the same function, does not include authorisation to create a fixation of the work.

2. The broadcasting organisation that is authorised to disclose to the public as referred to in the first subsection, is however entitled to create a temporary fixation of the work intended for broadcasting with its own equipment and exclusively for the purposes of broadcasting its own radio or television programmes. The broadcasting organisation thus entitled to create a fixation is nonetheless obliged to respect the rights of the author of the work as referred to in article 25.
  3. Fixations created with due observance of the second subsection and which have exceptional documentary character may be kept in official archives.
- Article 17c  
Singing in a congregation with instrumental accompaniment during a service of worship is not regarded as an infringement of the copyright in a literary or artistic work.
  - Article 17d  
Any order in council issued pursuant to articles 15j (3), 16b (5), 16c (6), 16h (3), 16m (2), 17a, 29a (4) and (5), 29c (7), 44 (4) or 45 (2) or any amendment thereto will not come into effect any earlier than eight weeks after the date of issue of the Bulletin of Acts and Decrees in which it is published. Both Houses of the States General will be notified of such publication without delay.
  - Article 18  
The reproduction or disclosure to the public of images of a work referred to in article 10 (1) sub 6 or a work pertaining to architecture as referred to in article 10 (1) sub 8 which has been made to be permanently situated in public places and as it is situated there is not regarded as an infringement of the copyright in that work. Where this concerns incorporation into a compilation work, no more than a few works by the same author may be incorporated.
  - Article 18a  
The incidental incorporation of a literary, scientific or artistic work into another work as a part of minor significance is not regarded as an infringement of the copyright in that work.
  - Article 18b  
Disclosure to the public or reproduction of a literary, scientific or artistic work in the context of a caricature, parody or pastiche is not regarded as an infringement of the copyright in that work, provided that

this use is in accordance with what is generally regarded as reasonably acceptable.

- Article 18c

1. Where a cultural heritage institution makes a literary, scientific or artistic work available to the public for non-commercial purposes, this will not be regarded as an infringement of the copyright in that work provided that:
  1. the work is not commercially available;
  2. the work is permanently in the collection of the cultural heritage institution;
  3. the work is made available on a non-commercial website; and
  4. the name of the author is indicated, unless this turns out to be impossible.
2. Articles 44 (3) to (5) and 44b apply equally.
3. This section does not apply to types of works for which there is a collective management organisation as referred to in article 1 (d) of the Collective Management Organisations (Copyright and Related Rights) Supervision and Dispute Resolution Act which complies with the provisions in article 44 (1) sub 1.

- Article 19

1. The reproduction of a portrait by or on behalf of the person portrayed or, after his death, his relatives, is not regarded as an infringement of the copyright.
2. If the same portrait portrays two or more persons, for each of them the entitlement to reproduce the other person's (or persons') portraits requires the consent of that person/those persons, or, for ten years after their death, the consent of their relatives.
3. In the case of a photographic portrait, disclosure of the portrait to the public in a newspaper or periodical by or with the consent of one of the persons referred to in the first subsection is not regarded as an infringement of the copyright, provided that the name of the author is stated if the name is indicated on or with the portrait.
4. This section only applies to portraits made on commission by or on behalf of the persons portrayed, or created on commission by the author for their benefit.

- Article 20

1. Unless otherwise agreed, the holder of the copyright in a portrait is not entitled to disclose it to the public without the consent of the person portrayed or, for ten years after his death, his relatives.

2. If an image contains the portrait of two or more persons, then, with respect to the whole image the consent of all the persons portrayed is required, or, for ten years following their death, their relatives.
3. The last subsection of the preceding section applies.

- Article 21

If a portrait is made without the author having been commissioned by or on behalf of the person portrayed, or for his benefit, the rightholder is not permitted to disclose the portrait to the public if there is a reasonable interest opposing disclosure on the part of the person portrayed or, after his death, one of his relatives.

- Article 22

1. In the interests of public safety as well as for the purpose of criminal investigations, images of any kind whatsoever may be reproduced or disclosed to the public by or on behalf of the judicial authorities.
2. The use of a literary, scientific, or artistic work for purposes of public safety, or for ensuring the proper course of administrative, parliamentary or judicial proceedings or the reporting of them, is not regarded as an infringement of the copyright in that work.

- Article 23

Unless otherwise agreed, whoever owns, possesses or holds a drawing, painting, sculpture or a work of architecture or applied art, is permitted to reproduce and disclose that work to the public insofar as that is necessary for a public exhibition or public sale of that work, subject to the exclusion of any other commercial use.

- Article 24

Unless otherwise agreed, the author of any painting, notwithstanding the assignment of his copyright, remains entitled to create similar paintings.

- Article 24a

1. It is not regarded as an infringement of the copyright in a collection as referred to in article 10 (3) for the lawful user of the collection to reproduce it where this is necessary to gain access to and make normal use of the collection.
2. If the lawful user is only entitled to use part of the collection, the first subsection applies solely to the access to and normal use of that part.

3. No agreement may derogate from the provisions of the first and second subsections to the detriment of the lawful user.

- Article 25

1. Even after assigning his copyright, the author of a work has the following rights:
  - a. the right to oppose disclosure to the public of the work without reference to his name or other indication as author, unless such opposition would be unreasonable;
  - b. the right to oppose disclosure to the public of the work under a name other than his own, as well as any alteration to the title of the work or the indication of the author, insofar as these appear on or in the work or have been disclosed to the public in connection with the work;
  - c. the right to oppose any other alteration to the work, unless the nature of the alteration is such that opposition would be unreasonable;
  - d. the right to oppose any distortion, mutilation or other impairment of the work that could be prejudicial to the honour or reputation of the author or to his dignity as an author.
2. After the death of the author and until the copyright expires, the rights referred to in the first subsection vest in the person the author has specifically designated by testamentary disposition.
3. The right referred to in the first subsection sub a. may be waived. The rights referred to sub b. and c. may be waived insofar as alterations to the work or its title are concerned.
4. If the author of the work has assigned his copyright, he remains entitled to make such alterations to the work as he may make in good faith in accordance with the generally accepted rules. As long as copyright continues to subsist in the work, the same right vests in the person the author has specifically designated by testamentary disposition, if it is reasonably likely that the author would also have approved such alterations.

- Article 25a

1. For the purposes of this Part, “relatives” means parents, spouse or registered partner and children. The rights of relatives may be exercised by each of them individually. In the event of a dispute, the Court may issue a decision which will be binding upon them.
2. For the purposes of this Part, “research organisation” means a university, including its libraries, a research institute or any other entity, the primary goal of which is to conduct scientific research

or to carry out educational activities also involving the conduct of scientific research:

1. on a not-for-profit basis or by reinvesting all the profits in its scientific research; or
2. pursuant to a public interest mission recognised by a State that is a Member of the European Union or the European Economic Area; in such a way that the access to the results generated by such scientific research cannot be enjoyed on a preferential basis by an undertaking that exercises a decisive influence upon such organisation.
3. For the purposes of this Part, “text and data mining” means any automated analytical technique aimed at analysing text and data in digital form in order to generate information which includes but is not limited to patterns, trends and correlations.
4. For the purposes of this Part, “cultural heritage institution” means a publicly accessible library or museum, an archive or a film or audio(visual) heritage institution.

- Article 37

1. Copyright expires after 70 years calculated from the first of January of the year following the year of the author’s death.
2. The duration of the copyright that is vested jointly in two or more persons in their capacity as co-authors of one and the same work, is calculated from the first of January of the year following the year of the last surviving co-author’s death.

- Article 38

1. The copyright in a work whose author has not been indicated or not in such a way that his identity is beyond doubt, expires after 70 years calculated from the first of January of the year following the year in which the work was first lawfully disclosed to the public.
2. The same applies to works whose author is considered to be a public institution, an association, a foundation or a company unless the natural person who created the work is indicated as the author on or in copies of the work which have been disclosed to the public.
3. If the author discloses his identity before the term referred to in the first subsection ends, the duration of the copyright in that work concerned will be calculated in accordance with the provisions of Article 37.

- Article 39

The copyright in works for which the duration of copyright is not calculated in accordance with Article 37 and which have not lawfully been disclosed to the public within 70 years of their creation, expires.

- Article 40

The copyright in a film expires after 70 years calculated from the first of January of the year following the year in which the last of the following persons to survive dies: the principal director, the screenplay writer, the writer of the dialogue and the composer of the music created for the film.

- Article 40a

If, in the case of a musical work with words, the copyright in the music and the copyright in the words are vested in different persons, the copyright expires after 70 years calculated from the first of January of the year following the year in which the last of these persons to survive dies.

- Article 41

For the purposes of Article 38, where a work is published in volumes, parts, issues or episodes, each volume, part, issue or episode is considered as a separate work.

- Article 42

Notwithstanding the provisions of this Part, no copyright can be invoked in the Netherlands in cases where it has already expired in the country of origin of the work. The provision in the first sentence does not apply to works whose author is a national of a Member State of the European Union or of a State that is party to the Agreement on the European Economic Area of 2 May 1992.



## Appendix E

### Nice classification

This is a short version of the Nice classification. The full version can be found on the website [WIPO Nice classification](#).

Goods class	Short description
1	Chemicals used in industry, science and photography, as well as in agriculture, horticulture and forestry; unprocessed artificial resins, unprocessed plastics; manures; fire extinguishing compositions; tempering and soldering preparations; chemical substances for preserving foodstuffs; tanning substances; adhesives used in industry.
2	Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; colorants; mordants; raw natural resins; metals in foil and powder form for use in painting, decorating, printing and art.
3	Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices.
4	Industrial oils and greases; lubricants; dust absorbing, wetting and binding compositions; fuels (including motor spirit) and illuminants; candles and wicks for lighting.
5	Pharmaceuticals, medical and veterinary preparations; sanitary preparations for medical purposes; dietetic food and substances adapted for medical or veterinary use, food for babies; dietary supplements for humans and animals; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides.

Goods class	Short description
6	Common metals and their alloys; metal building materials; transportable buildings of metal; materials of metal for railway tracks; non-electric cables and wires of common metal; ironmongery, small items of metal hardware; pipes and tubes of metal; safes; ores.
7	Machines and machine tools; motors and engines (except for land vehicles); machine coupling and transmission components (except for land vehicles); agricultural implements other than hand-operated; incubators for eggs; automatic vending machines.
8	Hand tools and implements (hand-operated); cutlery; side arms; razors.
9	Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; compact discs, DVDs and other digital recording media; mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment, computers; computer software; fire-extinguishing apparatus.
10	Surgical, medical, dental and veterinary apparatus and instruments; artificial limbs, eyes and teeth; orthopedic articles; suture materials.
11	Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes.
12	Vehicles; apparatus for locomotion by land, air or water.
13	Firearms; ammunition and projectiles; explosives; fireworks.
14	Precious metals and their alloys; jewellery, precious stones; horological and chronometric instruments.
15	Musical instruments.

Goods class	Short description
16	Paper and cardboard; printed matter; bookbinding material; photographs; stationery; adhesives for stationery or household purposes; artists' materials; paintbrushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); plastic materials for packaging; printers' type; printing blocks.
17	Unprocessed and semi-processed rubber, gutta-percha, gum, asbestos, mica and substitutes for all these materials; plastics in extruded form for use in manufacture; packing, stopping and insulating materials; flexible pipes, not of metal.
18	Leather and imitations of leather; animal skins, hides; trunks and travelling bags; umbrellas and parasols; walking sticks; whips, harness and saddlery.
19	Building materials (non-metallic); non-metallic rigid pipes for building; asphalt, pitch and bitumen; non-metallic transportable buildings; monuments, not of metal.
20	Furniture, mirrors, picture frames; unworked or semi-worked bone, horn, ivory, whalebone or mother-of-pearl; shells; meerschaum; yellow amber.
21	Household or kitchen utensils and containers; combs and sponges; brushes (except paintbrushes); brush-making materials; articles for cleaning purposes; steelwool; unworked or semi-worked glass (except glass used in building); glassware, porcelain and earthenware.
22	Ropes and string; nets; tents, awnings and tarpaulins; sails; sacks; padding and stuffing materials (except of paper, cardboard, rubber or plastics); raw fibrous textile materials.
23	Yarns and threads, for textile use.
24	Textiles and substitutes for textiles; bed covers; table covers.
25	Clothing, footwear, headgear.
26	Lace and embroidery, ribbons and braid; buttons, hooks and eyes, pins and needles; artificial flowers.
27	Carpets, rugs, mats and matting, linoleum and other materials for covering existing floors; wall hangings (non-textile).
28	Games and playthings; gymnastic and sporting articles; decorations for Christmas trees.
29	Meat, fish, poultry and game; meat extracts; preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs; milk and milk products; edible oils and fats.

Goods class	Short description
30	Coffee, tea, cocoa and artificial coffee; rice; tapioca and sago; flour and preparations made from cereals; bread, pastries and confectionery; edible ices; sugar, honey, treacle; yeast, baking-powder; salt; mustard; vinegar, sauces (condiments); spices; ice.
31	Agricultural, horticultural and forestry products; raw and unprocessed grains and seeds; fresh fruits and vegetables; natural plants and flowers; live animals; foodstuffs for animals; malt.
32	Beers; mineral and aerated waters and other non-alcoholic beverages; fruit beverages and fruit juices; syrups and other preparations for making beverages.
33	Alcoholic beverages (except beers).
34	Tobacco; smokers' articles; matches. Tobacco; smokers' articles; matches.
Services class	Short description
35	Advertising; business management; business administration; office functions.
36	Insurance; financial affairs; monetary affairs; real estate affairs.
37	Building construction; repair; installation services.
38	Telecommunications.
39	Transport; packaging and storage of goods; travel arrangement.
40	Treatment of materials.
41	Education; providing of training; entertainment; sporting and cultural activities.
42	Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software.
43	Services for providing food and drink; temporary accommodation.
44	Medical services; veterinary services; hygienic and beauty care for human beings or animals; agriculture, horticulture and forestry services.
45	Legal services; security services for the protection of property and individuals; personal and social services rendered by others to meet the needs of individuals.

## Appendix F

# Documents

F.1 WO 00/06437 A1

PCT

WORLD INTELLECTUAL PROPERTY ORGANIZATION  
International Bureau



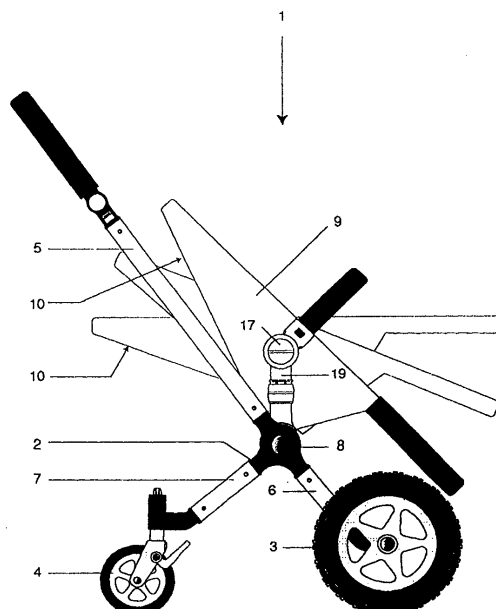
INTERNATIONAL APPLICATION PUBLISHED UNDER THE PATENT COOPERATION TREATY (PCT)

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<p>(21) International Application Number: PCT/NL99/00476</p> <p>(22) International Filing Date: 23 July 1999 (23.07.99)</p> <p>(30) Priority Data: 1009753 28 July 1998 (28.07.98) NL</p> <p>(71) Applicant (for all designated States except US): ROYALTY BUGABOO SARL [LU/LU]; RC Luxembourg B 69659, 4, rue Jean Monet, L-2180 Luxembourg (LU).</p> <p>(71)(72) Applicant and Inventor: BARENBRUG, Machiel, Gerardus, Theodorus, Marie [NL/NL]; Zandstraat 16'', NL-1011 HL Amsterdam (NL).</p>		<p>(81) Designated States: AE, AL, AM, AT, AU, AZ, BA, BB, BG, BR, BY, CA, CH, CN, CU, CZ, DE, DK, EE, ES, FI, GB, GD, GE, GH, GM, HR, HU, ID, IL, IN, IS, JP, KE, KG, KP, KR, KZ, LC, LK, LR, LS, LT, LU, LV, MD, MG, MK, MN, MW, MX, NO, NZ, PL, PT, RO, RU, SD, SE, SG, SI, SK, SL, TJ, TM, TR, TT, UA, UG, US, UZ, VN, YU, ZA, ZW, ARIPO patent (GH, GM, KE, LS, MW, SD, SL, SZ, UG, ZW), Eurasian patent (AM, AZ, BY, KG, KZ, MD, RU, TJ, TM), European patent (AT, BE, CH, CY, DE, DK, ES, FI, FR, GB, GR, IE, IT, LU, MC, NL, PT, SE), OAPI patent (BF, BJ, CF, CG, CI, CM, GA, GN, GW, ML, MR, NE, SN, TD, TG).</p> <p><b>Published</b> With international search report. In English translation (filed in Dutch).</p>

(54) Title: BUGGY

(57) Abstract

The invention concerns a buggy (1) comprising a frame (2) with front (3) and rear wheels (4), a pull and push bar (5), and front wheel bars (6) and rear wheel bars (7) that support the front and rear wheels and which are connected to the pull and push bar, and a seat (9) accommodated in the frame, the buggy being provided on either side with a coupling device (8) for the rotatable connection of the pull and push bar and the front wheel and rear wheel bars, this coupling device being equipped for the detachable fitting of the seat (9).



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## Buggy

The invention concerns a buggy comprising a frame with front and rear wheels, pull and push bar, and front wheel bars and rear wheel bars that support the front and rear wheels and that are connected to the pull and push bar, and a seat accommodated in the frame.

Such a buggy is generally known from practice. The purpose of the invention is to construct a buggy that is highly versatile in use and meets all the safety requirements that are made of buggies. These requirements of versatility in use and safety are at odds with one another. Increasing the versatility usually requires attention by the user for the way in which the buggy is used.

The invention aims to provide a buggy that is inherently safe, while still being extremely versatile in use. A further aim of the buggy according to the invention is its drastic simplification. This is achieved with the buggy according to the invention in that the buggy is provided on either side with a coupling device for the rotatable connection of the pull and push bar and the front wheel and rear wheel bars, this coupling device being equipped for the detachable fitting of the seat.

In a certain aspect of the invention the buggy has been designed so that it essentially has two positions for use, in a first position the front and rear wheels being placed apart and in a second position the front and rear wheels being placed close together. This latter position is also called the wheelbarrow position.

The versatility of the buggy according to the invention manifests itself in that in the first position for use the seat can be fitted in two ways, firstly by the seat being fitted facing the front and secondly by the seat being fitted facing the rear.

For safety reasons the buggy is preferably made so that in the second position for use the seat can only be fitted with its back towards the front and rear wheels.



An advantageous form of construction of the buggy according to the invention is characterised by the coupling device being made up of interconnected rotatable discs that are connected as the case may be to the pull and push bar and the front and rear wheel bars, in the first and the  
5 second positions for use the said discs forming at least one recess that is suitable for taking a projection that is provided on the seat. One of the effects this has is that by fitting the seat the projection slots into a recess formed by the discs and the discs are secured against mutual rotation. A further effect is that the frame is only collapsible when the seat has been removed. This of  
10 course serves safety.

It is preferable that in the first position for use two recesses are formed that are suitable for taking the projection and that in the second position for use one recess is formed that is located in such a way that the seat can only be fitted with its back towards the front and rear wheels. On the  
15 one hand this meets the wish to provide a buggy with great versatility and on the other the requirement to make the buggy completely safe to use in spite of this versatility. In the second position for use in particular, in other words the wheelbarrow position, there could be a risk in the user losing contact with the pull and push bar. In this case the seat is fitted in such a way that it will  
20 land on the ground safely and with a low drop height.

It is also desirable that the coupling device and the seat are equipped with a male and female connection. This guarantees a simple and secure fitting of the seat in the frame.

It is also preferable that the seat is provided on either side with a  
25 lockable hinge and that effectuation of the male and female connection makes the hinge adjustable to a predetermined number of selected intermediate positions. In this way the seat can be set to the desired position in the frame, while, if the seat is used separately from the frame, the hinge is released for rotation so that it can be positioned in such a way that a safe  
30 placement of the seat on the ground is provided. This is achieved in the form of construction that is characterised by the hinge being connected to a part of the male and female connection that in a first position of the hinge essentially

runs diagonally in relation to the back of the seat and extends beyond the back of the seat. In a second position of the hinge this part essentially runs parallel to the back of the seat. If the male and female connection is broken, the hinge can be rotated between the first position and the second position.

5           The construction is preferably such that effectuation of the male and female connection adjusts a pawl incorporated into the hinge of the seat which releases the hinge for rotation.

          The invention will now be explained in detail with reference to the drawing which

10           in figs. 1 and 2 shows the buggy according to the invention in the first position for use,

          in fig. 3 shows the buggy according to the invention in the second position for use,

          in fig. 4 shows separately from one another the frame and the seat  
15 of the buggy according to the invention,

          in figs. 5A and 5B shows the seat with the hinge connected to it in its two possible positions,

          in figs. 6 and 7 shows in detail a coupling device of the buggy according to the invention with the seat not fitted and fitted respectively,

20           in fig. 8 shows a coupling device of the buggy according to the invention in the wheelbarrow position and

          in figs. 9A and 9B shows a side and front view respectively of a section of the male and female connection of the seat and the coupling device of the buggy according to the invention.

25           Like reference numbers used in the figures refer to the same parts. Figures 1 to 4 show the buggy 1, which comprises a frame 2 with front wheels 3 and rear wheels 4, a pull and push bar 5, front wheel bars 6 and rear wheel bars 7, which support the front wheels 3 and rear wheels 4 and which are connected to the pull and push bar 5 by means of a coupling device 8.

30           The buggy 1 also comprises an adjustable seat 9. The buggy 1 is provided on either side with a coupling device 8 by which the rotatable connection of the pull and push bar 5 is provided in respect of the front wheel

bars 6 and rear wheel bars 7. The coupling device 8 is also equipped for the detachable fitting of the seat 9 as shown in fig. 4. This will be explained in further detail below.

The buggy 1 essentially has two positions for use. In a first position, as shown in figs. 1 and 2, the front wheels 3 and rear wheels 4 are placed apart and in a second position, as shown in fig. 3, the front and rear wheels are placed close together.

Figs. 1 and 2 show that the seat 9 can be fitted in two ways. In the first the seat 9 is fitted facing the front. This is shown in fig. 1.

In the second, as shown in fig. 2, the seat 9 is fitted facing the rear.

Fig. 3 shows that in the second position for use of the buggy 1, that is the wheelbarrow position, the seat 9 can only be fitted with the back 10 of the seat 9 towards the front and rear wheels.

Referring to figs. 6, 7 and 8, the preferred form of construction of the coupling device 8 of the buggy according to the invention will now be explained in further detail.

The coupling device 8 is preferably made up of in essence interconnected rotatable discs 11, 12 and 13 which are connected as the case may be to the pull and push bar 5, the front wheel bars 6 and rear wheel bars 7. In both the first position for use of the buggy, in which the coupling device 8 occupies the position shown in figs. 6 and 7, and in the second position for use of the buggy according to the invention, in which the coupling device 8 occupies the position shown in fig. 8, the discs 11, 12 and 13 form at least one recess 14 or 15 that is suitable for taking a projection 16 that is provided on the seat.

Figs. 6 to 8 show the hinge 17 to which the seat 9 not shown is connected.

The coupling device 8 is preferably arranged so that in the situation of the first position for use as shown in figs. 6 and 7 there are two recesses 14 or 15 present that are each suitable for taking the projection 16.

In the second position for use, the wheelbarrow position, in which the position of the coupling device 8 is as shown in fig. 8, there is only one

recess 15 present that is suitable for taking the projection 16. There can then also be a recess 14' present as shown in fig. 8, but it is not suitable for taking the projection 16. With this arrangement the seat 9 can only be fitted with its back 10 towards the front and rear wheels 3, 4.

5            Fig. 7 clearly shows that by fitting the seat 9 the projection 16 slots into a recess 15 formed by the discs 11, 12 and 13, as a consequence of which the discs 11, 12 and 13 are secured against mutual rotation.

             Figs. 6, 7, 8, 9A and 9B also clearly show that the coupling device 8 and the seat 9 are provided with a male and female connection 18, 19. It  
10           has already been mentioned that the seat 9 is provided on either side with a hinge 17. This hinge 17 can be locked. Through effectuation of the male and female connection 18, 19 the hinge 17 is fixed in one of a predetermined number of intermediate positions, so that the seat 9 is locked against rotation.

             The hinge 17 is connected to a part 19 of the male and female  
15           connection 18, 19 that in a first position of the hinge 17 extends beyond the back 10 of the seat 9. This is shown in figs. 4B and 5A.

             In a second position of the hinge 17 as shown in figs. 4C and 5B this part 19 essentially runs parallel to the back 10 of the seat 9.

             Figs. 4 and 5 show the seat 9 separately from the coupling device  
20           8 with the male and female connection being broken. Then the hinge 17 is rotatable between the first position according to figs. 4B and 5A and the second position according to figs. 4C and 5B. The fixed intermediate positions that have been explained above are obtained by effectuating the male and female connection 18, 19. Figs. 9A and 9B show that when this male and  
25           female connection 18, 19 is made, a pawl 20 incorporated into the hinge 17 of the seat 9 is adjusted which adjusts a disc 21 with teeth 22 sideways until these teeth 22 are taken up in recesses 23 of an adjacent disc 24. The discs 23 and 24 are secured against mutual rotation.

             The invention is not restricted to the form of construction  
30           described. The form of construction described serves merely as a means of explaining the claims below. Variations are possible within the scope of these claims without departing from the thinking behind the invention.

CLAIMS

1. Buggy comprising a frame with front and rear wheels, a pull and push bar, and front wheel bars and rear wheel bars that support the front and rear wheels and which are connected to the pull and push bar, and a seat accommodated in the frame, **in which** the buggy is provided on either side with a coupling device (8) for the rotatable connection of the pull and push bar (5) and the front wheel and rear wheel bars (6, 7), this coupling device being equipped for the detachable fitting of the seat.

2. Buggy according to claim 1, **in which** it essentially has two positions for use, in a first position (figs. 1, 2) the front and rear wheels (3, 4) being placed apart, and in a second position (fig. 3) the front and rear wheels being placed close together.

3. Buggy according to claims 1 or 2, **in which** in the first position for use (figs. 1, 2) the seat can be fitted in two ways, firstly (fig. 1) with the seat (9) being fitted facing the front and secondly (fig. 2) with the seat (9) being fitted facing the rear.

4. Buggy according to claims 1, 2 or 3, **in which** in the second position for use (fig. 3) the seat (9) can only be fitted with the back (10) of the seat (9) towards the front and rear wheels (3, 4).

5. Buggy according to one of the claims 1-4, **in which** the coupling device (8) is made up of interconnected rotatable discs (11, 12, 13) which are connected as the case may be to the pull and push bar (5) and the front and rear wheel bars (6, 7), in the first (figs. 6, 7) and in the second (fig. 8) position for use the said discs (11, 12, 13) forming at least one recess (14, 15) that is suitable for taking a projection (16) that is provided on the seat (9).

6. Buggy according to claim 5, **in which** in the first position for use two recesses (14, 15) are formed that are suitable for taking the projection (16).

7. Buggy according to claim 5 or 6, **in which** in the second position for use (fig. 8) a recess (15) is formed that is located in such a way that the

seat (9) can only be fitted with the back (10) towards the front and rear wheels (3, 4).

8. Buggy according to one of the claims 1-7, **in which** through the fitting of the seat (9) the projection (16) slots into a recess (15) formed by the  
5 discs (11, 12, 13) and the discs (11, 12, 13) are secured against mutual rotation.

9. Buggy according to claim 8, **in which** the coupling device (8) and the seat (9) are provided with a male and female connection (18, 19).

10. Buggy according to claim 9, **in which** the seat (9) is provided  
10 on either side with a lockable hinge (17) and in which effectuation of the male and female connection (18, 19) makes the hinge adjustable to a predetermined number of selected intermediate positions.

11. Buggy according to claims 9 or 10, **in which** the hinge (17) is connected with a part (19) of the male and female connection (18, 19) that in  
15 a first position (fig. 4B, 5A) of the hinge (17) essentially runs diagonally in relation to the back of the seat and extends beyond the back (10) of the seat (9) and in a second position (fig. 4C, 5B) of the hinge (17) essentially runs parallel to the back (10) of the seat (9) and in which if the male and female connection (18, 19) is broken the hinge is rotatable between the first position  
20 and the second position.

12. Buggy according to claim 10 or 11, **in which** effectuation of the male and female connection (18, 19) adjusts a pawl (20) incorporated into the hinge (17) of the seat (9) for fixing the hinge (17) in one of the predetermined number of intermediate positions.

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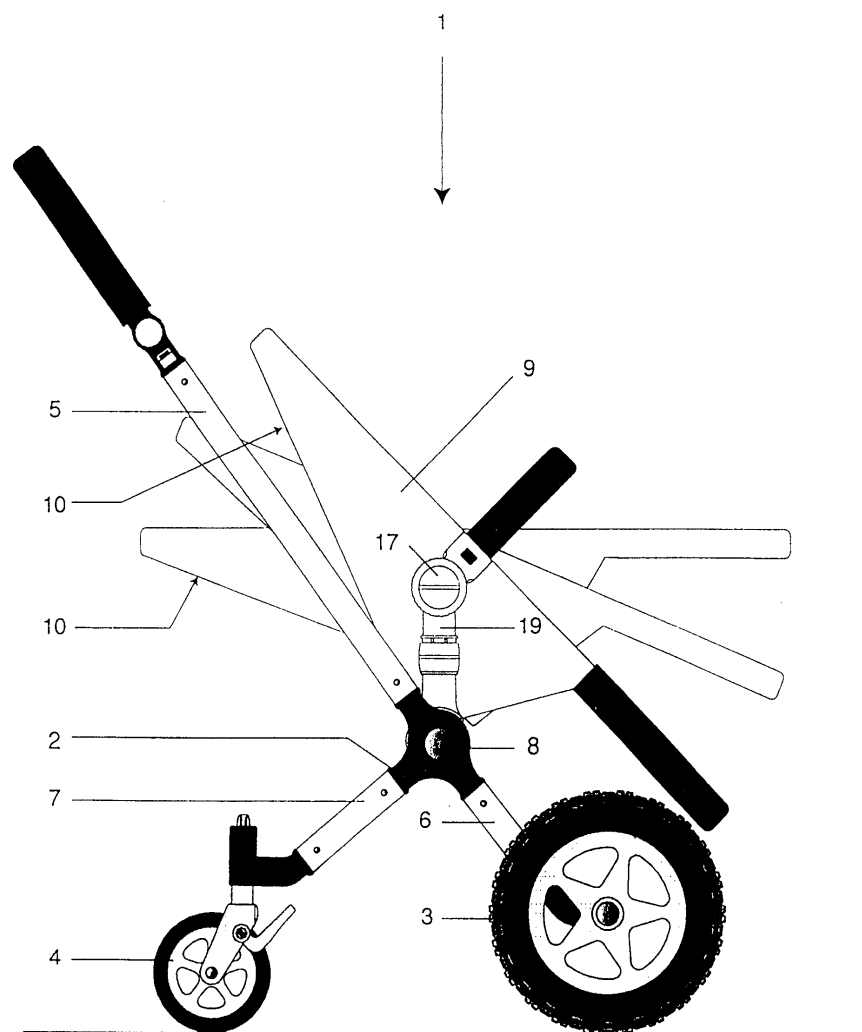


FIG. 1

SUBSTITUTE SHEET (RULE 26)

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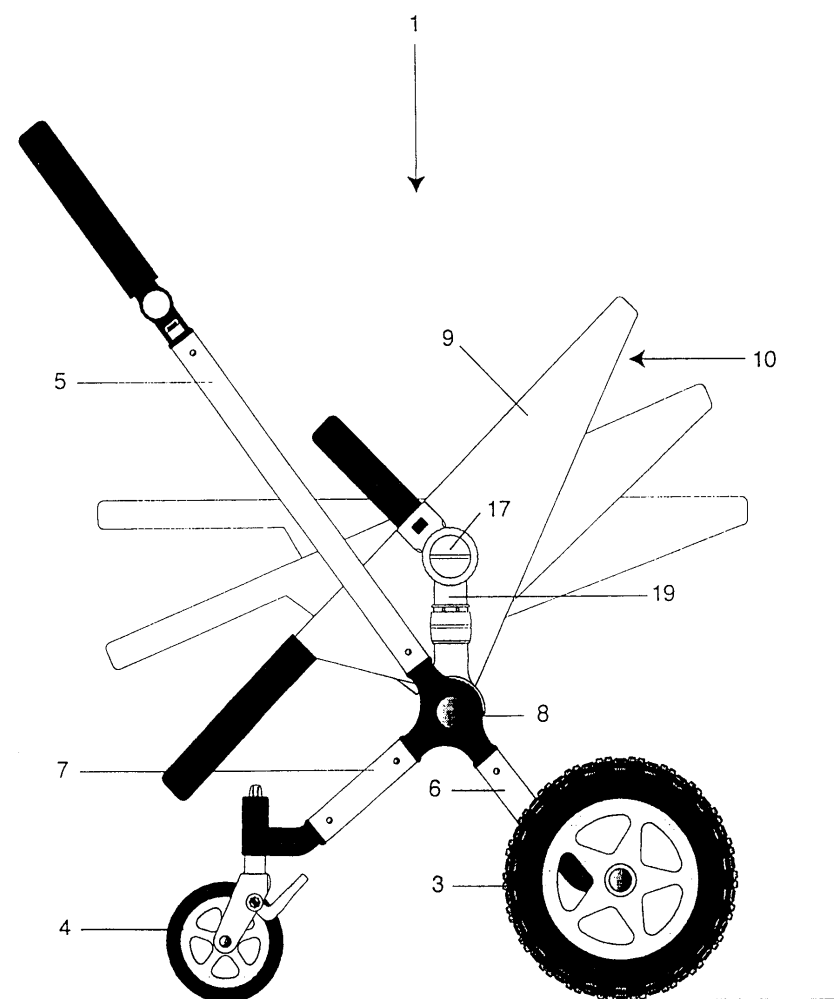


FIG. 2

SUBSTITUTE SHEET (RULE 26)



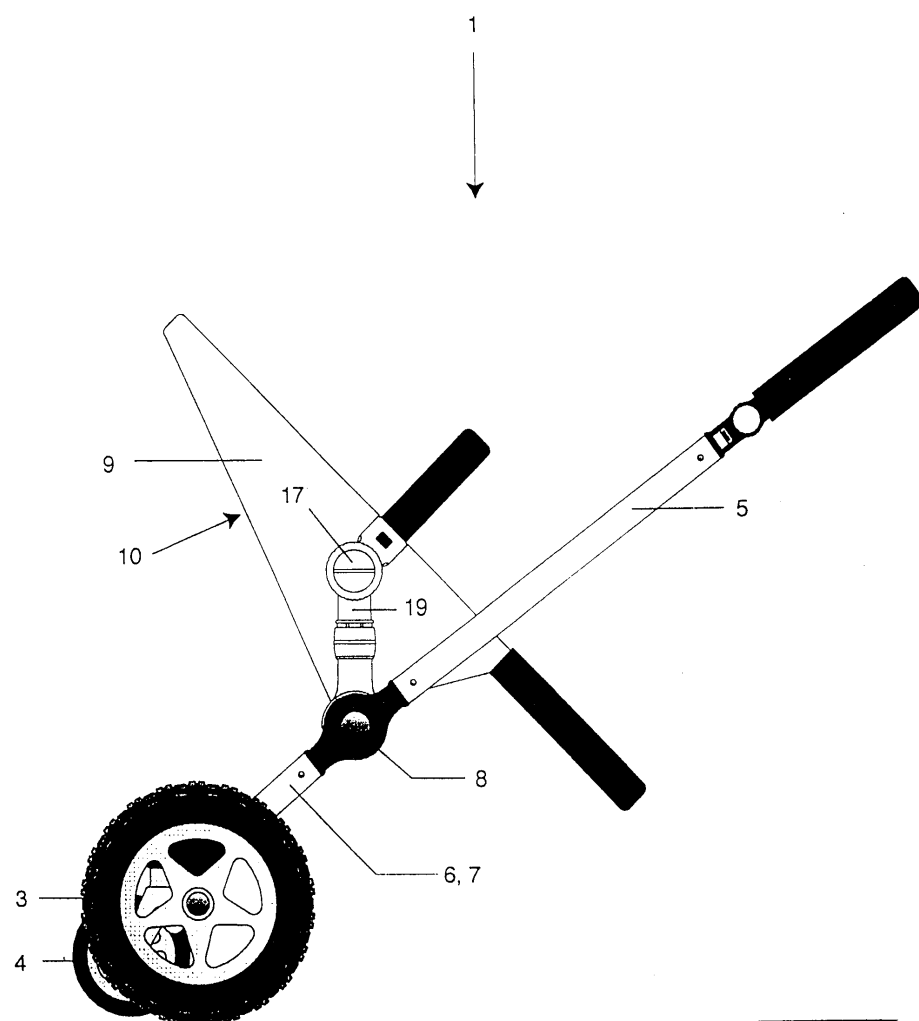


FIG. 3

SUBSTITUTE SHEET (RULE 26)

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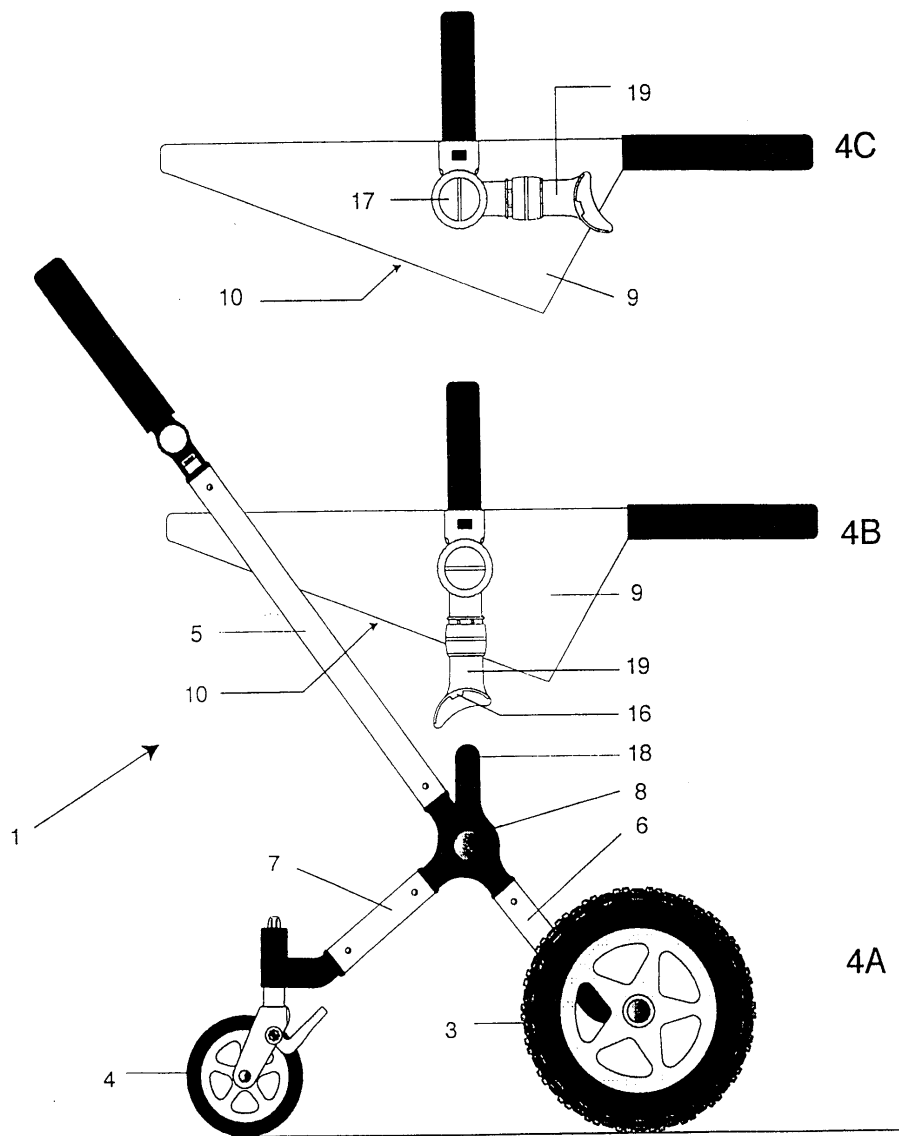


FIG 4

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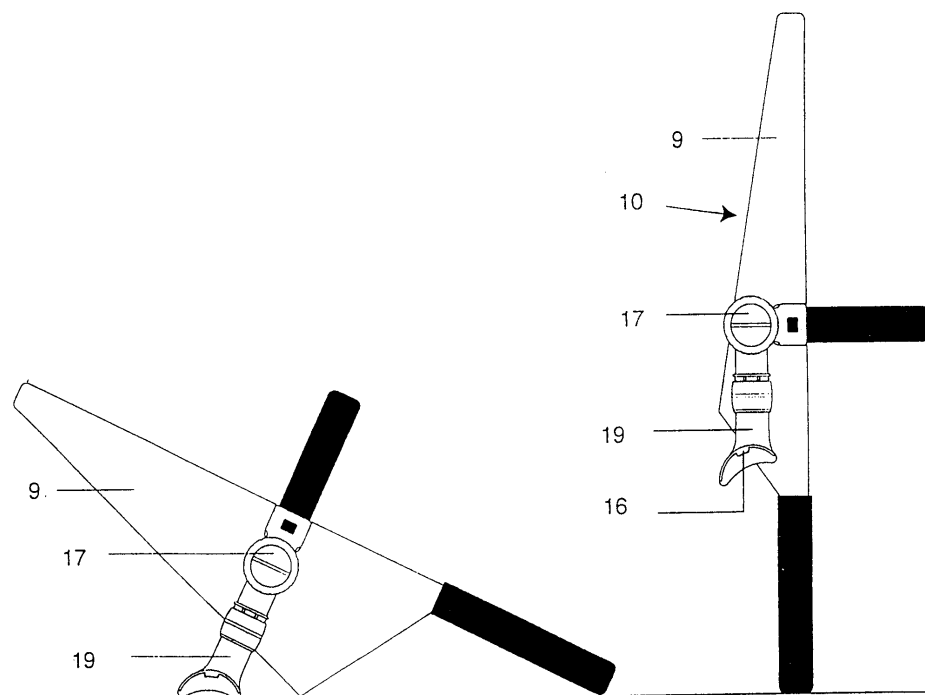
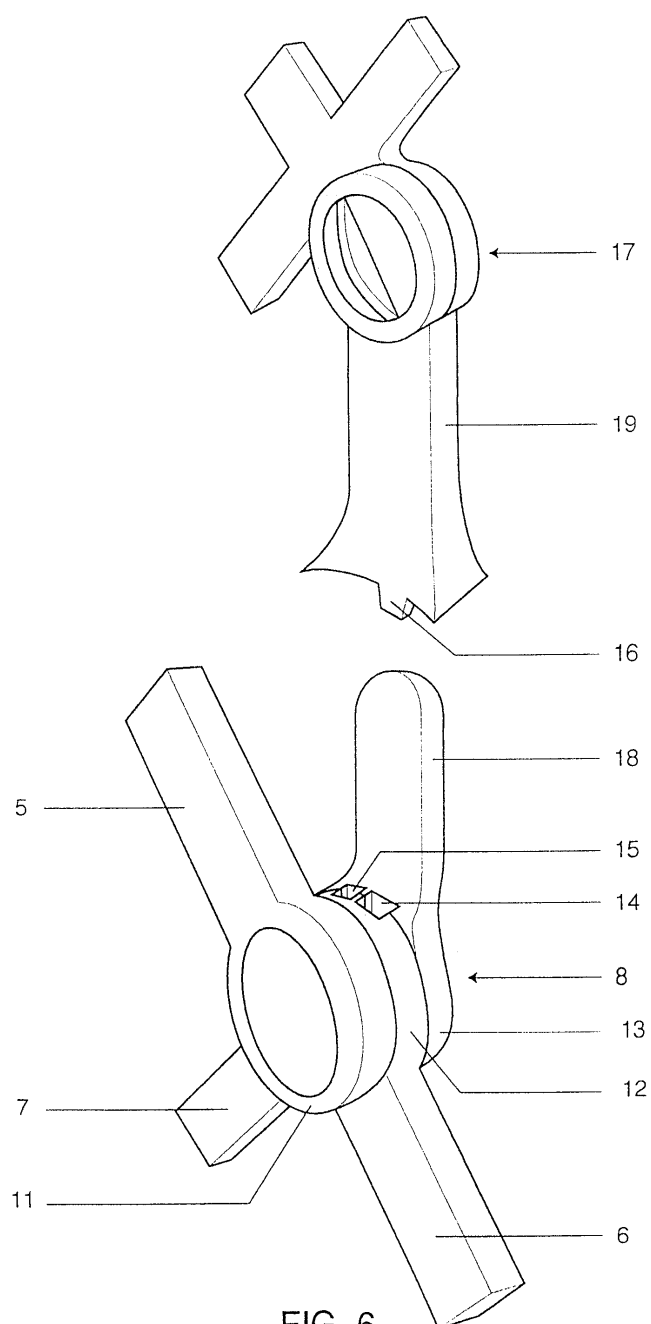


FIG. 5A

FIG. 5B



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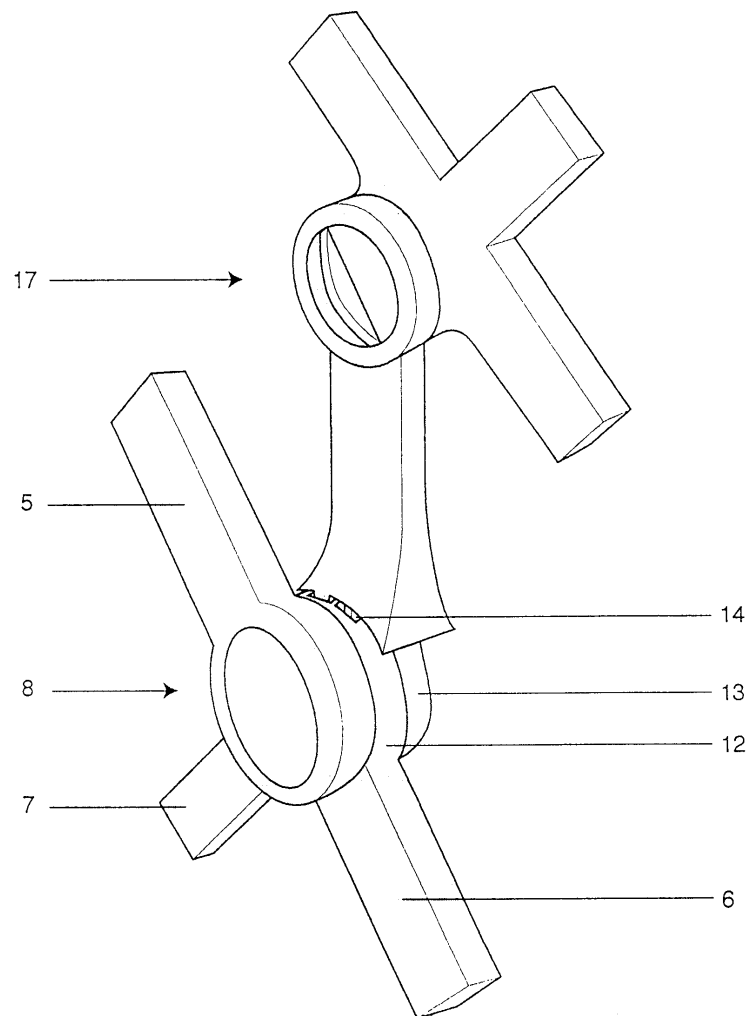


FIG. 7

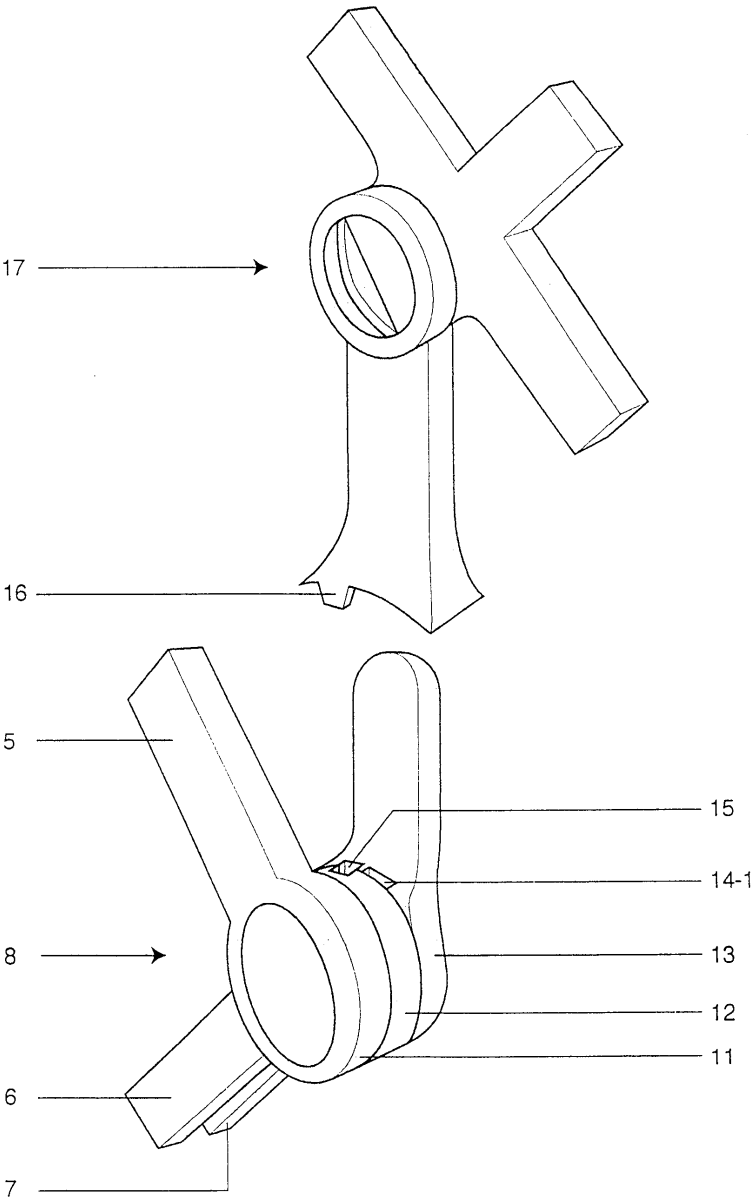


FIG. 8

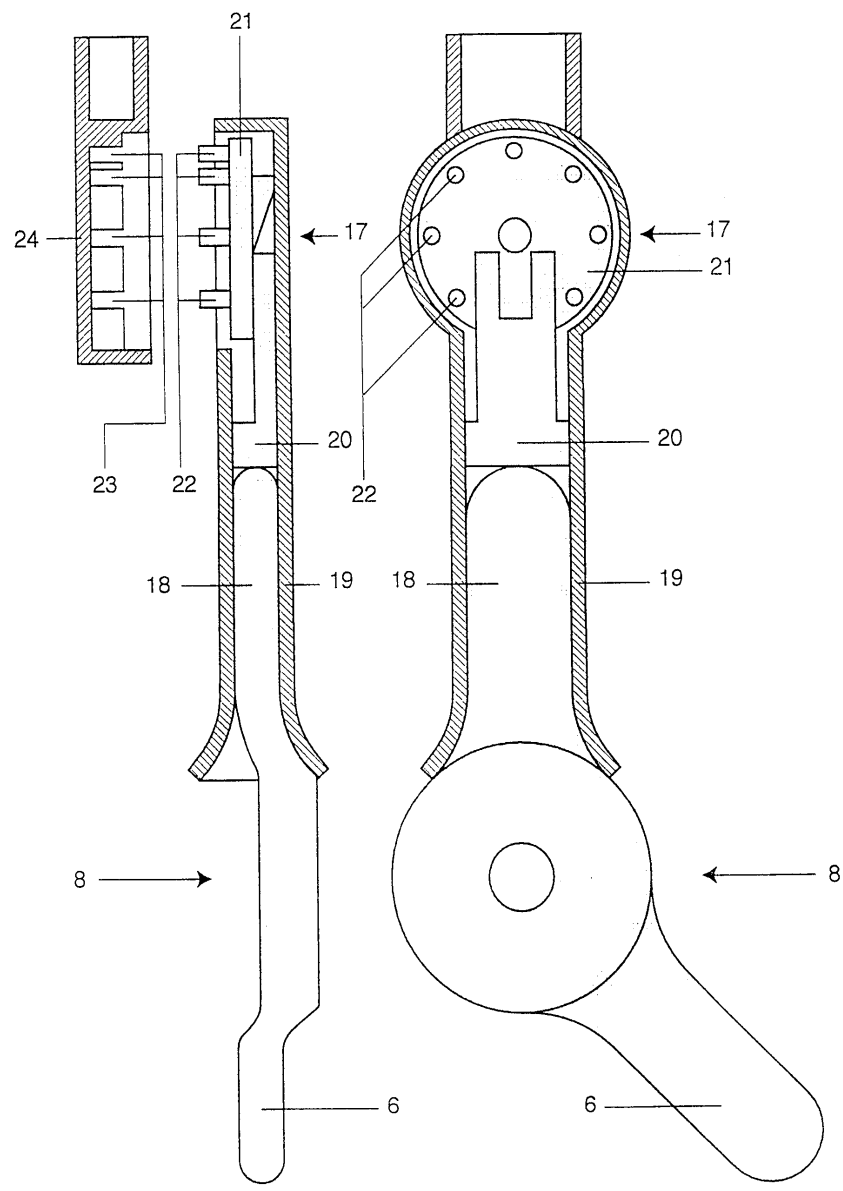


FIG. 9A

FIG. 9B

# INTERNATIONAL SEARCH REPORT

International Application No  
PCT/NL 99/00476

A. CLASSIFICATION OF SUBJECT MATTER  
IPC 7 B62B7/14

According to International Patent Classification (IPC) or to both national classification and IPC

## B. FIELDS SEARCHED

Minimum documentation searched (classification system followed by classification symbols)  
IPC 7 B62B

Documentation searched other than minimum documentation to the extent that such documents are included in the fields searched

Electronic data base consulted during the international search (name of data base and, where practical, search terms used)

## C. DOCUMENTS CONSIDERED TO BE RELEVANT

Category *	Citation of document, with indication, where appropriate, of the relevant passages	Relevant to claim No.
A	US 5 257 799 A (CONE RICHARD E ET AL) 2 November 1993 (1993-11-02) abstract; figures	1
A	US 5 772 279 A (JOHNSON JR EDWARD M) 30 June 1998 (1998-06-30) abstract; figures	1
A	EP 0 663 332 A (BRITAX TEUTONIA KINDERWAGEN) 19 July 1995 (1995-07-19)	
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☐ Further documents are listed in the continuation of box C.

☒ Patent family members are listed in annex.

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"&" document member of the same patent family

Date of the actual completion of the international search

16 November 1999

Date of mailing of the international search report

22/11/1999

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# INTERNATIONAL SEARCH REPORT

Information on patent family members

International Application No

PCT/NL 99/00476

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**F.2 US 5 772 279**



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# United States Patent [19]

Johnson, Jr.

[11] Patent Number: 5,772,279

[45] Date of Patent: Jun. 30, 1998

[54] COUPLING SYSTEM FOR INFANT CARRIER TO SECOND SUPPORT DEVICE

[75] Inventor: Edward M. Johnson, Jr., Park Forest, Ill.

[73] Assignee: Kolcraft Enterprises, Inc., Chicago, Ill.

[21] Appl. No.: 863,135

[22] Filed: May 27, 1997

## Related U.S. Application Data

[63] Continuation of Ser. No. 522,135, Aug. 31, 1995, abandoned.

[51] Int. Cl.<sup>6</sup> ..... A47C 13/00

[52] U.S. Cl. .... 297/130; 297/256.16; 297/440.16; 280/30

[58] Field of Search ..... 297/130, 256.16, 297/440.16; 280/30, 647, 648, 650, 657, 33.993, 658, 47.38

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Primary Examiner—Laurie K. Cranmer  
Attorney, Agent, or Firm—Marshall, O'Toole, Gerstein, Murray & Borun

## [57] ABSTRACT

A system for coupling an infant carrier to a second support device in which the infant carrier has coupling members extending from the side of the carrier, the coupling members forming mounting pockets. The support device, such as an infant car seat base or stroller, employs coupling posts adapted to be received within the carrier mounting pocket.

13 Claims, 8 Drawing Sheets

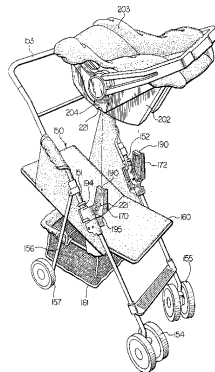


FIG. 1

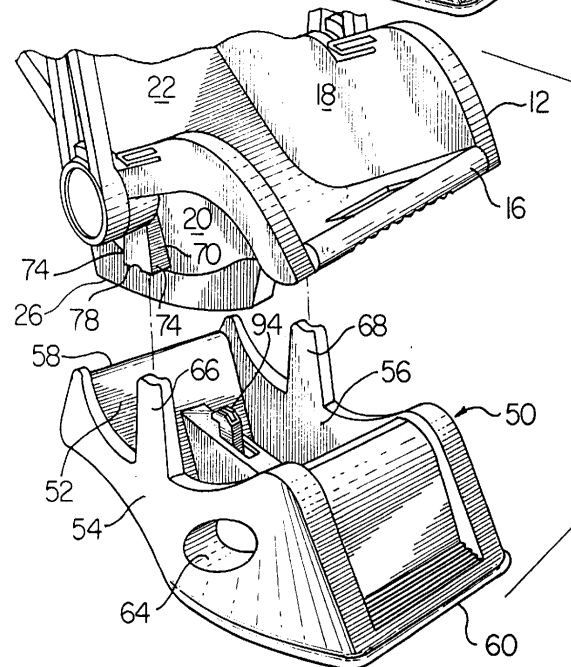
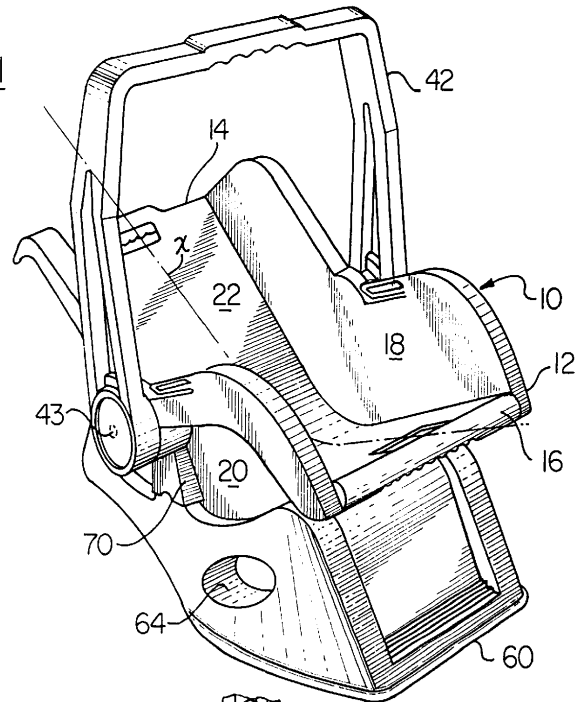
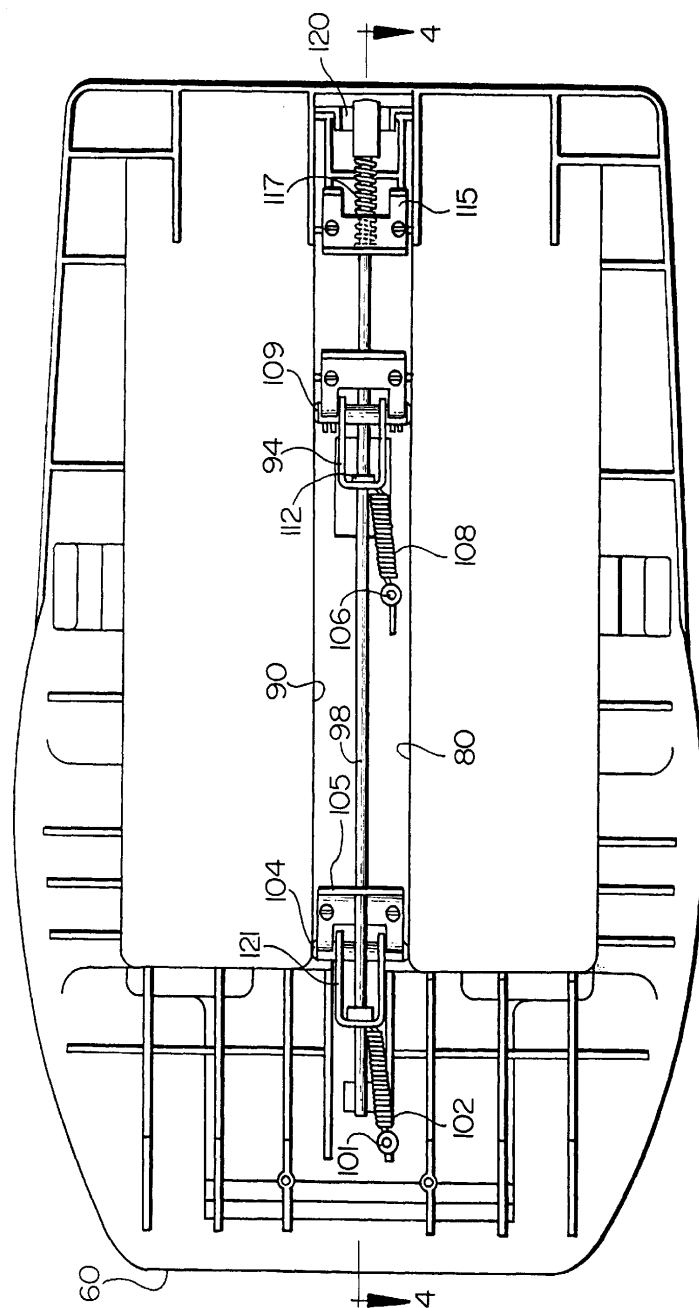


FIG. 2

FIG. 3





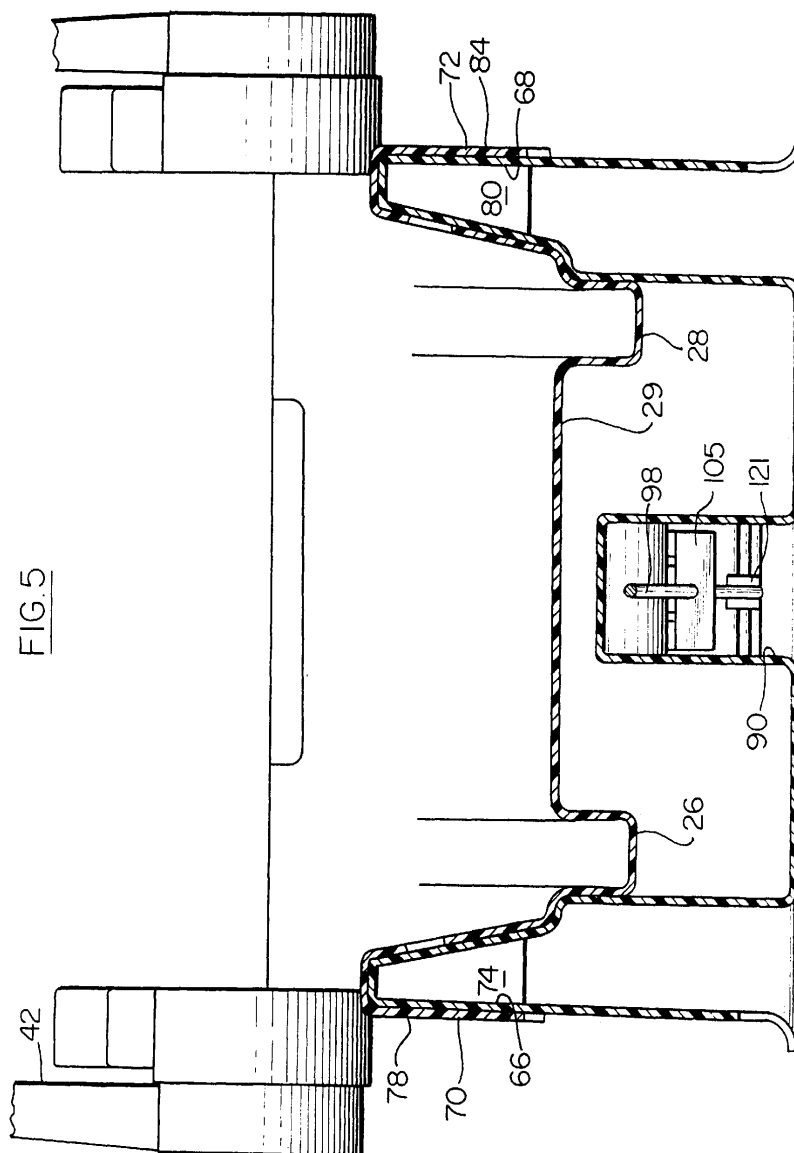
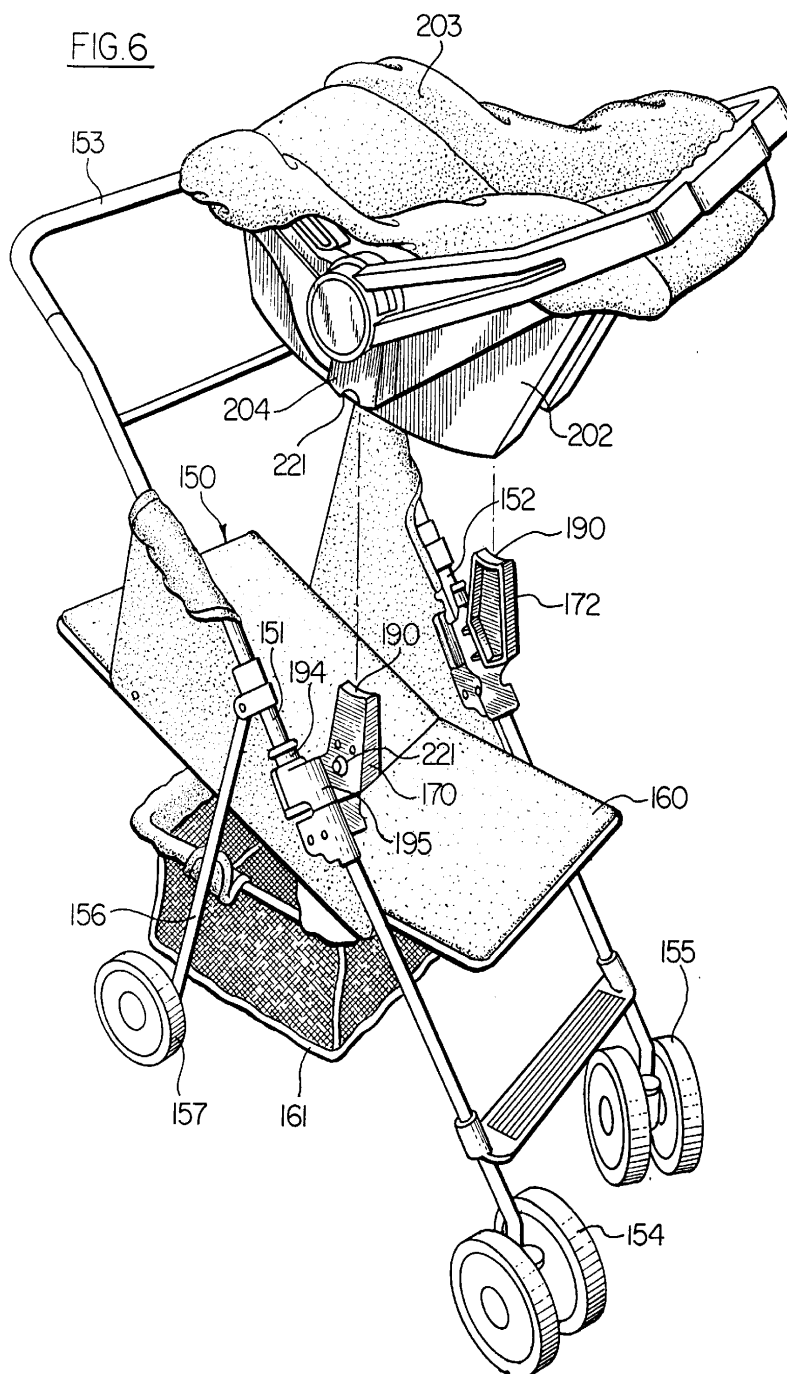


FIG. 6





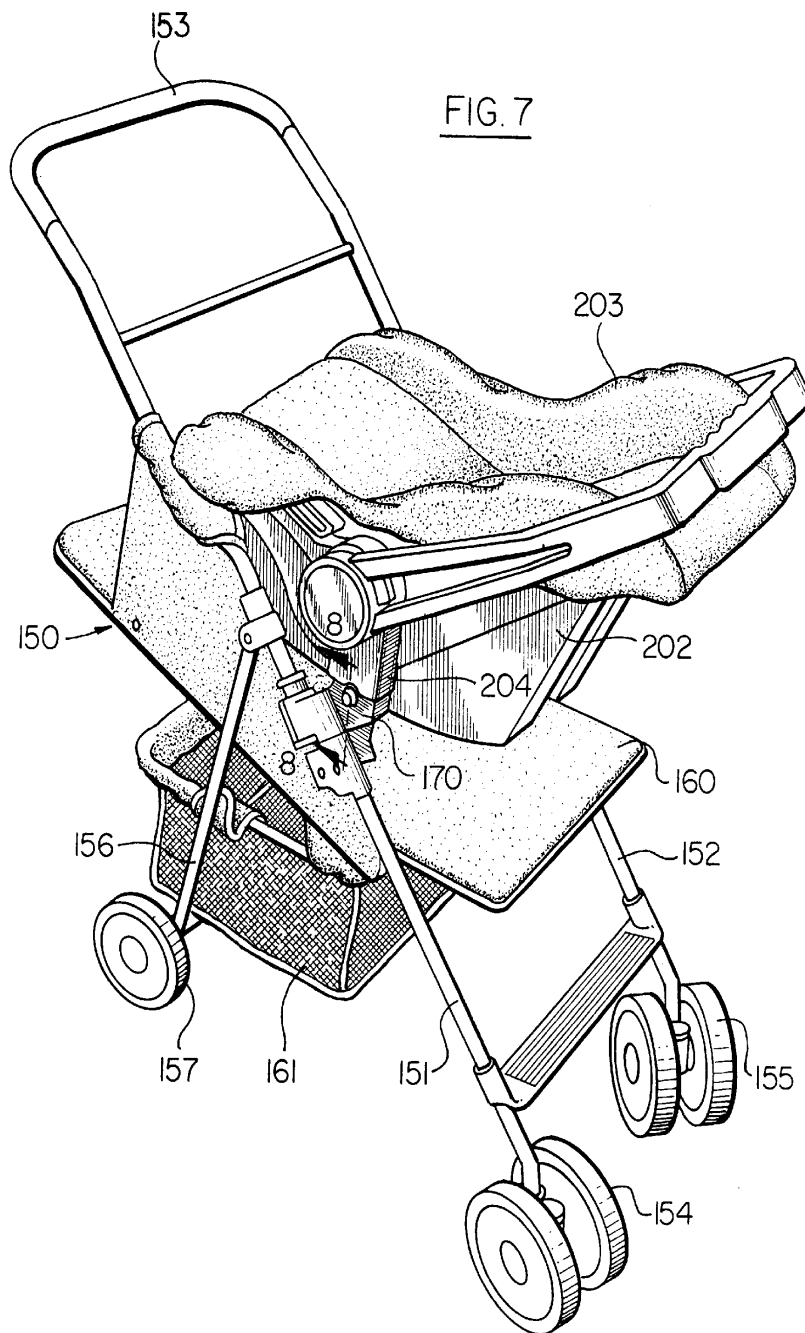


FIG. 8

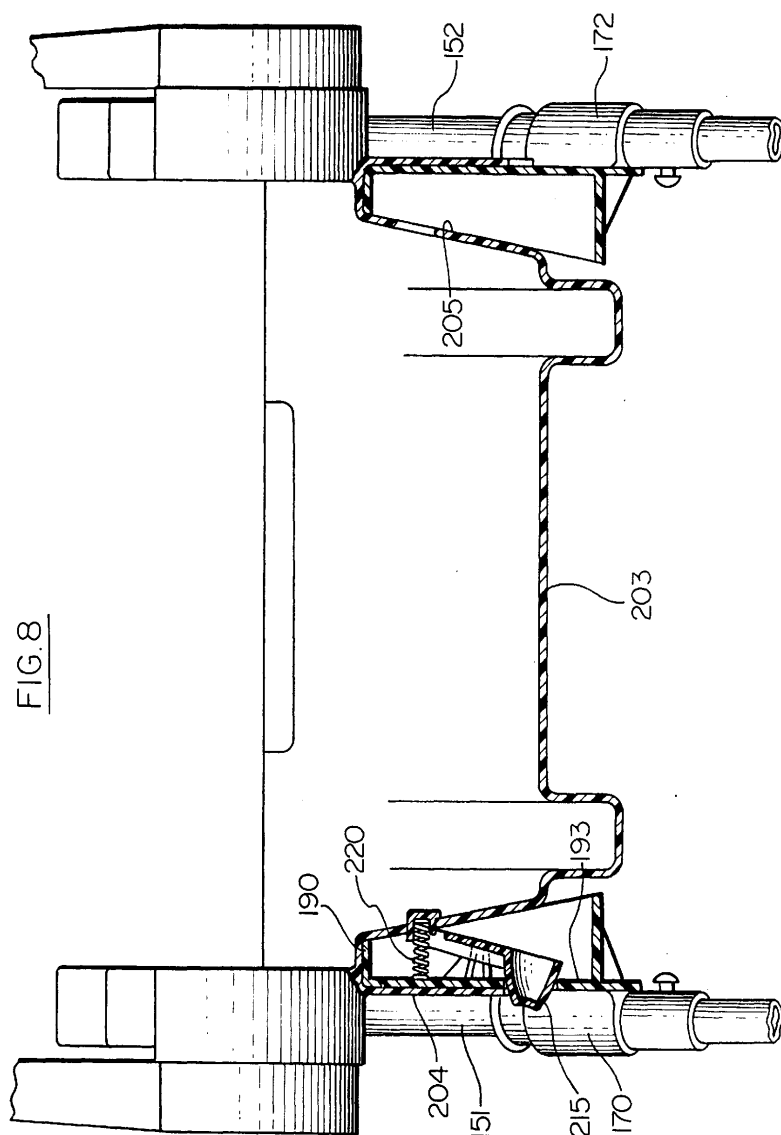
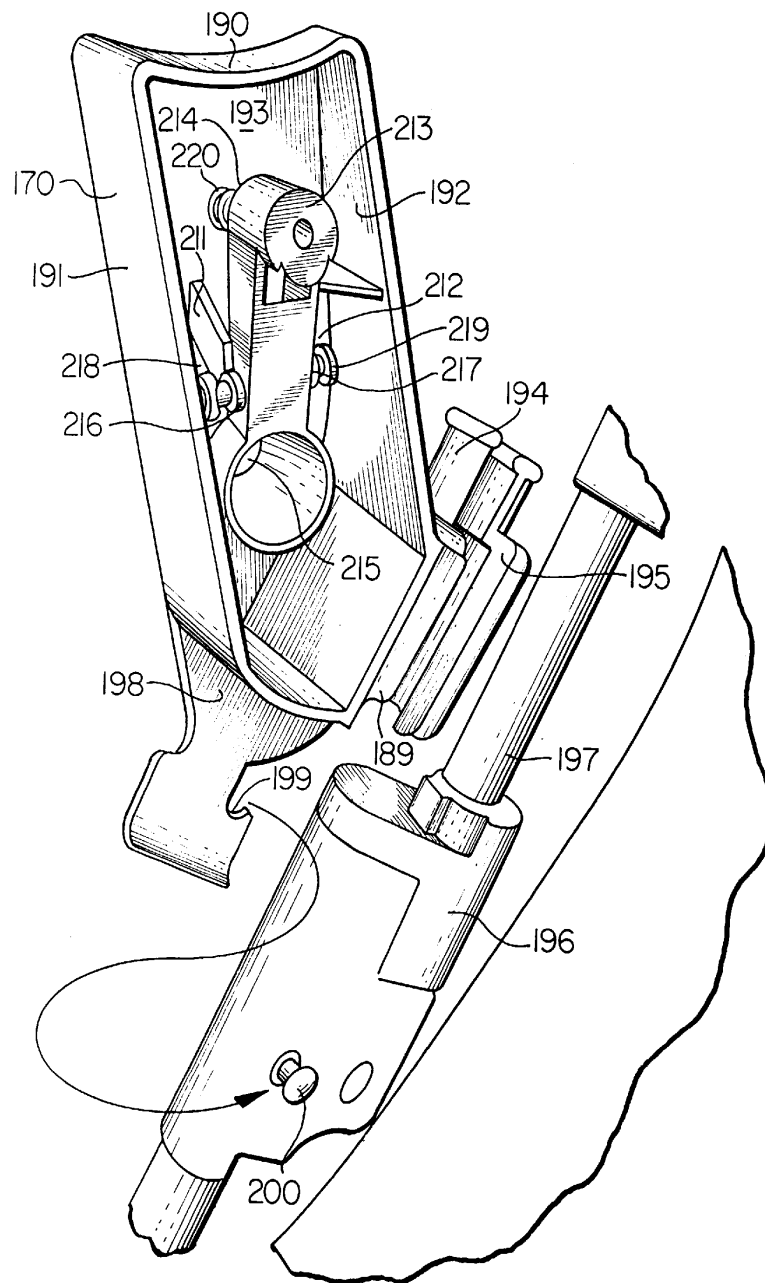


FIG. 9



## COUPLING SYSTEM FOR INFANT CARRIER TO SECOND SUPPORT DEVICE

This is a Continuation of U.S. application Ser. No. 08/522,135, filed Aug. 31, 1995, now abandoned.

### BACKGROUND OF THE INVENTION

The invention disclosed and claimed herein relates generally to apparatus and a system for coupling an infant carrier device to a second support device disposed below the infant carrier, and, more particularly, the invention relates to securing an infant carrier to an infant car seat base, stroller or the like.

### DESCRIPTION OF THE PRIOR ART

There are presently available in the art various systems for coupling an infant seat carrier to a base or another device such as a stroller. One example is disclosed in U.S. Pat. No. 4,943,113 which discloses an infant carrier disposed on a carrier base by means of a three-point triangular coupling arrangement. The system utilizes a pair of spaced pivotable fingers extending upward adjacent the sides of the base and a J-hook connection located at the front end of the carrier. It has been viewed that this system is not entirely satisfactory inasmuch as the finger couplings are not readily visible by a viewer. Moreover, the coupling system utilizes what is deemed to be an excessive number of parts.

Further, it is desired to have a relatively simple system for readily coupling an infant carrier not only to a car seat base, but to other support devices as well, such as an infant stroller or infant glider.

What is desired is to have a coupling system which is easily viewable by an individual while an individual is coupling an infant seat to a car seat base, infant stroller or other device. Moreover, it is desired the coupling device be relatively easy to operate and utilize as few a number of parts as possible.

### SUMMARY OF THE INVENTION

The invention disclosed and claimed herein serves to obviate the problems associated with the prior art while at the same time achieving the desired features for coupling an infant carrier to a second support device.

Briefly, the coupling system utilized with the present invention utilizes an infant seat which has a coupling socket or pocket which extends outward from each side of the infant seat. Each pocket is adapted to receive a readily viewable seating post which extends upward from an infant car seat base, stroller or other support device. The infant seat can relatively easily and readily be seated on the coupling posts.

It is preferred that, at least with a car seat base, a pair of fingers, which are located along the longitudinal axis of the carrier base, be employed to further assist in the coupling system. When an infant carrier is seated, for example, on an infant stroller, however, the fingers need not be utilized.

### BRIEF DESCRIPTION OF THE DRAWINGS

FIG. 1 shows the infant carrier of the present invention coupled to an infant carrier base;

FIG. 2 shows the infant carrier of FIG. 1 spaced above the infant carrier base with the carrier pockets positioned above corresponding base coupling posts;

FIG. 3 shows a bottom view of the infant carrier base of FIG. 1;

FIG. 4 shows a side section view of the infant carrier base and carrier assembly taken along line 4—4 in FIG. 3 with the bottom portion of the infant carrier broken away and shown in section;

FIG. 5 shows a cross-section elevated view taken substantially long line 5—5 in FIG. 4;

FIG. 6 shows the infant carrier of the present invention spaced above an infant stroller;

FIG. 7 shows an infant carrier of the present invention coupled to an infant stroller;

FIG. 8 shows a fragmentary, vertical, cross-section view taken along line 8—8 in FIG. 7; and,

FIG. 9 shows a perspective view of a removable locking post adaptor of the present invention attached and coupled to the infant stroller shown in FIGS. 6 and 7.

### DETAILED DESCRIPTION OF THE DRAWINGS

Referring to the drawings and more particularly to FIG. 1, carrier 10 is a conventional carrier for an infant. Carrier 10 often is referred to in the art as an infant car seat. It is to be understood that carrier 10, as disclosed and claimed herein, can be utilized and referred to, if desired, as an infant car seat. Carrier 10 includes shell 12 extending from head end 14 to foot end 16 and normally is of a length which is substantially greater than its width. Sides 18, 20 extend upwardly from the side edges of central portion 22 and serve to restrain an infant from excessive lateral movement. Shell 12 is contoured along its length in a serpentine manner to provide for greater infant comfort. Generally, a soft cloth pad, such as illustrated in FIG. 6, is disposed within the shell and an infant is placed upon the pad. A plurality of buckles and belts normally are employed to further restrain an infant in the carrier.

Carrier 10 preferably is fabricated or otherwise molded from a rigid, impact resistant, high polymer plastic such as polyethylene, polyvinyl chloride or the like.

The lower portion of carrier 10 includes rocker legs 26, 28 (FIG. 5) which extend outward from lower carrier face 29. Each leg is located adjacent to a carrier side extending generally centrally along a portion of the length of the carrier.

Extending outward from lower carrier face 29 are latch members 30, 31 which are spaced from one another along the longitudinal axis "X" of carrier 10 (FIG. 1). Latch member 30 is disposed on the face of carrier 12 contiguous to foot end 16. Latch member 30 includes a stamped, bent metal member having one end portion 33 which extends through an opening in the carrier and is riveted or bolted at 34 to upper carrier face 29'. A second end portion 35 includes opening 37. Second latch member 31 comprises a stamped, bent metal member having an end portion 38 which extends through an opening in the carrier and is riveted or bolted at 39 to upper carrier face 29'. Second end portion 40 has an opening 41.

Carrier 10 also includes a handle 42 which is illustrated in an inverted U-shaped configuration. The handle is coupled to the carrier by pins 43 which extend through the sides of the carrier near the central portion of its length.

Infant carrier base 50, which can be molded from the same material as the carrier, includes a central portion 52 which is adapted to receive the central portion 22 of carrier 10. Upstanding side walls 54, 56 are molded to the sides of portion 52. The length of the base from head end 58 to foot end 60 is substantially equal to that of the mating surface of the carrier, save at the head end, where base 50 is somewhat

shorter in length than the corresponding portion of carrier 10. Like the carrier, the molded base is curved in a serpentine fashion to mate with the curves of carrier 10. Base foot end 60 is located almost substantially beneath carrier foot end 16 for contact with a car seat to which the assembly is adapted to be secured via a seat belt which extends through holes 64 in base 50.

Coupling of carrier 10 to infant carrier base 50 is effected initially by a plurality of spaced base mounting posts 66, 68 and corresponding coupling members comprising carrier pockets 70, 72. Referring to FIG. 2, mounting post 66 is integrally molded as part of base side wall 54. Post 66 extends vertically upward and is tapered inwardly as the post extends outwardly from side wall 56. An identical mounting post 68 is molded integrally with base side wall 56, posts 66, 68 being identical in structure. The posts each have a length substantially greater than its thickness and its width.

Referring to carrier 10, it will be seen that coupling members having mounting pockets 70, 72 are formed on the outer surfaces of carrier sides 18, 20. Specifically, pocket 70 is formed by a U-shaped member comprising side member 74 and base 78. Pocket 72 also is formed by a U-shaped member which is integrally molded with and extends laterally outward from side 18, the U-shaped member including side members 80 and base 84.

While one particular preferred configuration has been illustrated as serving as a carrier mounting pocket and base post, it is appreciated that other structures could be utilized by a person of skill in the art. What is desired is that the coupling base and pocket be of a sufficient size that they are readily viewable to a person intending to deposit infant carrier 10 on base 50. One need only align the carrier mounting pockets 70, 72 over base mounting posts 66, 68, FIG. 2, whereby the posts are relatively readily and easily received in the mounting pockets or sockets and carrier 10 seats on base 50 without substantial movement of carrier 10 relative to base 50 in either a lateral or longitudinal direction. As shown in FIG. 2, the posts taper inwardly moving away from a base side wall. The pocket formed in the carrier coupling member also is tapered whereby a base post seats snugly within a carrier coupling pocket.

If desired, a further coupling system can be employed along with the carrier/base coupling arrangement shown and described with respect to FIG. 1. Referring to FIGS. 2-5, the lower surface of base 50 has a recess 90 (FIG. 3) which extends substantially along the longitudinal axis of base 50. Within the recess are disposed a pair of longitudinally aligned, U-shaped locking fingers 94, 96. A locking lever 98 is disposed in the recess and is pivotally connected to spaced fingers 94, 96.

A web 100 includes a suitable extension member 101 to which is attached one end of compression spring 102. The remaining end of spring 102 fastens to the bottom of finger 96.

A mounting bracket 103 is fastened to a base web and includes a pivot 104 which extends through an opening 105 in finger 96.

A second web 106 has a mounting extension 107 to which is fastened in any suitable manner one end of compression spring 108. The remaining end of spring 108 is fastened to the lower end of finger 94. A pivot member 109 is mounted on a second mounting bracket, not shown, in a manner similar to the first mounting bracket 103, the second mounting bracket also being attached to a web member on base 50. Pivot 109 extends through an opening 110 in finger 94. A pin or washer 112 is fastened to lever 98 and is positioned adjacent to the base 113 of finger 94.

A third mounting bracket 115 is fastened to an extension 116 joined to base 50. Lever rod 98 extends through an opening in bracket 115. Compression spring 117 is disposed over rod 98 and positioned between mounting bracket 115 and lever rod button 120.

At the end of rod 98 furthest from button 120, a U-shaped link member 121 has the open ends of the member fastened to the lever rod while the base end of the U-shaped member extends through the side walls of U-shaped finger 96.

When coupling carrier 10 to base 50, carrier 10 is disposed on base 50 with mounting pockets 70, 72 adapted to seat on posts 66, 68. As the carrier is moved toward the base, latch member 30 contacts pivotable finger 96 while latch member 31 contacts pivotable finger 94 whereby both fingers are urged away from their normal position to a position, as shown in dotted lines in FIG. 4, which is in the direction of base end 60. When fingers 94, 96 reach the latch openings 37, 41, the fingers will be urged in the direction of base end 58 whereby fingers 94, 96 will enter the openings and, in conjunction with the primary coupling posts 66, 68 and pockets 70, 72, serve to lock carrier 10 to base 50.

When it is desired to remove carrier 10 from base 50, button 120 is urged in the direction of arrow "AA" which in turn moves lever rod 98 in the direction of arrow "B". As rod 98 moves toward base end 60, washer member 112 urges finger 94 out of latch opening 41 as finger 94 pivots about pivot member 109. Simultaneously, as link 121 is pulled toward base end 60, it serves to withdraw finger 96 from latch opening 37 as finger 96 pivots about pivot 104. When fingers 94, 96 are disengaged from latch openings 37, 41, carrier 10 can be lifted off posts 66, 68 to remove carrier 10 from base 50.

Upon release of button 120, lever rod 98 is urged by spring 117 in the direction of arrow "C" and fingers 94, 96 are returned to their normal position as illustrated in solid lines in FIG. 4.

FIGS. 1-5 illustrate carrier 10 disposed upon infant car seat base 50. If desired, carrier 10 can be disposed on other support devices, as, for example, an infant stroller or infant glider. Referring, for example, to FIGS. 6-9, inclusive, stroller 150 is a conventional stroller device and comprises frame members 151, 152 which are connected together at one end by handle bar 153. Wheels 154, 155 extend from the remaining open ends of members 151, 152. A second pair of frame members 156 extend from members 151, 152 and a second pair of wheels 158, only one of which is shown, is connected to the outboard end of the second pair of frame members. A conventional infant seat 160 and basket 161 are mounted to the respective frame members.

A first mounting post adaptor 170 is releasably mounted to frame member 151 and a second mounting post adaptor 172 is releasably mounted to frame member 152. Each adaptor is essentially of the same construction, preferably being molded from the same plastic material as the carrier. The molded adaptor provides the desired rigidity for the mounting posts while at the same time allows the adaptor to have a sufficient resiliency to permit it to be released from a stroller frame member.

Adaptor 170, as seen in FIG. 9, is a one-piece molded U-shaped member which includes mounting post 190. Post 190 comprises sides 191, 192 and base 193. An adaptor portion 189 extends from post 190 and includes a slotted circular portion 194 and a slotted frame portion 195. Portions 194, 195 are sized and configured to slide over a corresponding stroller frame section 196 and snap on to tubular frame section 197. Web 198 depends from post 170

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and includes a notch 199 which is adapted to engage a locking button 200 on stroller frame member 151.

Adaptor 172 is sized and configured in the same manner as adaptor 170 and is the mirror image of adaptor 170.

Carrier 202, having an insulating pad 203 disposed in the carrier shell, employs the same construction described previously with respect to carrier 10 in FIG. 1.

When it is desired to seat carrier 202 onto stroller 150, adaptors 170, 172 are snapped on and locked to frame members 151, 152 as shown, for example, in FIGS. 6 and 8. Carrier 202, having coupling members with mounting pockets 204, 205 are disposed above mounting posts 190 as seen in FIG. 6. Carrier 202 is seated on the stroller with mounting pockets 204, 205 disposed over the post portions 190 of mounting adaptors 170, 172, as seen in FIG. 7. The mounting pockets and posts are as described previously with respect to the carrier coupling system of FIGS. 1-5.

If desired, one or both adaptors 170, 172 may include a biased lock assembly 210 whereby a mounting post is locked positively in a mounting pocket. Referring to FIG. 9, there is shown a locking assembly which includes two spaced brackets 211, 212. An elongated button member 213 comprises a recessed portion 214 at one end thereof and a button 215 at the opposite ends. Arms 216, 217 extend laterally from approximately the center of member 213. Arm 216 seats in bracket 211 while arm 217 seats in bracket 212. Brackets 218 and 219 extend over arms 216, 217 respectively to retain the button member within mounting post portion 190. One end of compression spring 220 seats on a stub, not shown, extending out from base 193 while the remaining end of spring 220 seats in recessed portion 214, the spring serving to bias button 215 whereby the button extends partially through opening 221.

Referring to FIG. 6, the lower edge of mounting pocket 204 is notched at 221. Upon seating of carrier 202 upon stroller 150, mounting pocket 204 compresses against biased button 215 at notch 221 which further serves to retain a mounting post within a carrier pocket. If desired, the mounting pocket can include an opening into which button 215 extends thereby locking the mounting post in the carrier pocket. While one locking assembly has been illustrated for the embodiment of FIGS. 6-9, it is appreciated each mounting post adaptor may include a lock assembly 210.

In one embodiment of the invention where the carrier is adapted to be utilized with an infant car seat base as well as a stroller, the mounting posts are approximately 4 inches high, 2 inches wide and taper in depth from 1 inch at the top of the post to about 1½ inches at the bottom of the mounting posts. The carrier mounting pocket is sized in taper and dimension to receive the post so that a snug fit exists when a post is disposed within a mounting pocket.

The mounting system of the present invention is relatively efficient in that an infant carrier can be mounted to a car seat base, stroller or other carrier support device simply by orienting the mounting pockets over the posts and dropping or placing the carrier onto the posts. If desired, as in the instance of a car seat base, an additional locking assembly may also be utilized whereby a pair of longitudinally spaced fingers can be releasably secured to latch members located longitudinally along the lower surface of the carrier.

Additionally, button assemblies may be utilized to releasably lock a mounting post within a mounting pocket.

While the present invention has been described in connection with a single embodiment, it will be understood to those skilled in the art that many changes and modifications may be made without departing from the true spirit and

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scope of the invention. It is therefore intended by the appended claims to cover all such changes and modifications which come within the true spirit and scope of the invention.

What is claimed is:

1. A system for releasably mounting an infant carrier to a separate infant carrier support device disposed below the carrier, the system comprising:

a carrier which includes a head end, foot end and a pair of spaced sides connecting said ends;

a coupling member extending outward from and for a portion of the length of each side of said carrier, said member being integrally formed in said carrier and sized and configured to form a discrete pocket located substantially centrally of said carrier sides; and,

said second support device including a pair of spaced mounting posts extending upward from said second device, each post having a length, width, and depth and sized and configured to be received within a pocket in said carrier coupling member,

each pocket comprising means for receiving a post and having an open end through which said post is inserted into said pocket;

said post and pocket being dimensioned and configured so that said post substantially fills said pocket to provide a snug fit;

said pocket open end having an area substantially corresponding to the cross-sectional area of the pocket adjacent said open end whereby said carrier is adapted to be coupled to said second support device solely by disposing said mounting posts into the corresponding pockets in the carrier coupling members whereby said infant carrier is coupled to the second support device and said coupling members each permit said carrier to be freely lifted vertically from said bases; and,

said coupling member posts and pockets being free of any positive latching means.

2. A system for mounting an infant carrier to a second device in accordance with claim 1 in which the second device is an infant car seat base.

3. A system for mounting an infant carrier in accordance with claim 2 wherein said carrier includes at least one latch means located along the longitudinal axis of the bottom of the carrier and said base includes a biased, pivotable finger and means for releasably locking said finger to said latch means.

4. A system in accordance with claim 3 wherein said carrier includes a pair of spaced latch means located along the longitudinal axis of said carrier;

said latch means each including a biased base pivotable finger located along the longitudinal axis of said base; and,

means for releasably locking said finger in said latch means.

5. A system for releasably mounting an infant carrier to a second, separate infant carrier support device disposed below the carrier, the system comprising:

a carrier which includes a head end, foot end and a pair of spaced sides connecting said ends;

a coupling member extending outward from and for a portion of the length of each side of said carrier, said member being sized and configured to form a discrete pocket located substantially centrally of said carrier sides;

said second support device including a pair of spaced mounting posts extending upward from said second

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device, each post having a length, width, and depth and sized and configured to be received within a pocket in said carrier coupling member, whereby said carrier can be coupled to said second support device solely by disposing said mounting posts into the corresponding pockets in the carrier coupling members whereby said infant carrier is coupled to the second support device and precluded from substantially moving longitudinally relative to said second support device;

said second device is a stroller which includes a pair of spaced frame members; and,

a mounting adaptor releasably attached to each frame member, each adaptor including a post for receiving a carrier coupling member pocket.

6. A system in accordance with claim 5 wherein at least one of said mounting adaptors includes a biased locking assembly for locking at least one mounting post to a carrier coupling member when said post is seated in a coupling member pocket.

7. A system in accordance with claim 6 wherein said locking assembly includes a spring biased button means.

8. An infant carrier coupled to a second support device located below said carrier;

said carrier including a head end, foot end and a pair of spaced side walls;

a coupling member extending outward from and for a portion of the length of each side wall, said member being sized and configured to form a discrete pocket located substantially centrally of said carrier sides;

a second support device adapted to be disposed below and coupled to said carrier, said second support device including a pair of spaced mounting posts extending vertically upward from said second device; and,

each of said posts having a length, width, and depth and being sized and configured to be received within a carrier coupling member pocket,

each pocket comprising means for receiving a post and having an open end through which said post is inserted into said pocket,

said post and pocket being dimensioned and configured so that said post substantially fills said pocket to provide a snug fit;

said pocket open end having an area substantially corresponding to the cross-sectional area of the pocket adjacent said open end; and,

said coupling member posts and pockets being free of any positive latching means.

9. The infant carrier device and second support device of claim 8 wherein said carrier includes a pair of spaced latch members located along the longitudinal axis of said carrier and extending outward from the bottom surface of said carrier, each latch member having an opening therein; and,

said second support device comprising an infant car seat base and including a pair of spaced, releasable biased fingers located along the longitudinal axis of said base, each finger being adapted to be received within an opening in one of said latch members;

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whereby said posts and releasable fingers and latch members releasably couple said carrier to said base.

10. An infant carrier coupled to a second support device located below said carrier;

said carrier including a head end, foot end and a pair of spaced side walls;

a coupling member extending outward from and for a portion of the length of each side wall, said member being sized and configured to form a discrete pocket located substantially centrally of said carrier sides;

a second support device adapted to be disposed below and coupled to said carrier, said second support device including a pair of spaced mounting posts extending vertically upward from said second device; and,

each of said posts having a length, width, and depth and being sized and configured to be received within a carrier coupling member pocket whereby said carrier is precluded from any substantial movement relative to said second support device along the longitudinal axis;

said second support device comprises a stroller having a pair of spaced frame member;

a mounting adaptor releasably seated on each of said frame members and including said mounting post; and, said carrier coupling member pocket being adapted to be received on said post.

11. A system for releasably mounting an infant carrier to a second separate support device, the system comprising:

a carrier which includes a head end, foot end, and a pair of spaced sides connecting said ends,

a first coupling member located at each carrier side substantially centrally of said side;

said second support device including a pair of second coupling members, each of said second members being adapted to couple with a first second coupling members preclude substantial movement of said carrier relative to said second device when said carrier and second support device are coupled;

one pair of said coupling members each being sized and configured to form a discrete pocket;

said remaining pair of coupling member each comprising a mounting post having a length, width and depth and sized and configured to be received within said coupling member pocket;

said posts and said pockets being dimensioned and configured so that each post substantially fills a pocket to provide a snug fit between the post and pocket; and, said coupling member posts and pockets being free of any positive latching means.

12. A system in accordance with claim 11 wherein said coupling members in said carrier each comprise one of said pockets and said coupling members on said second support device each comprise one of said posts.

13. A system for mounting an infant carrier to a second device in accordance with claim 11 in which the second device is an infant car seat base.

\* \* \* \* \*

### F.3 Copy from Benelux trademark register





## Copy from the Benelux trademark register

### Trademark information

Filing number	1281065
Registration number	950018
Basis	Benelux
Date and time of filing	18-12-2013 , 17.00
Expiration date	18-12-2033
Publication date of the application	16-01-2014
Opposition period start and end date	16-01-2014 / 16-03-2014
Registration date	21-07-2016
Publication date of the registration	21-07-2016
Publication date of the renewal	19-06-2023
Status	Trademark registered

### Trademark

Representation of the mark	BUGABOO
Type	Word mark
Kind	Individual trademark

### Goods and services

#### List of goods and services

CI 12 Vervoermiddelen, waaronder kinderwagens, wandelwagens, buggy's, fietsen, steps, scooters, fietsaanhangwagens, golfkarren; onderdelen voor alle voornoemde producten voor zover niet begrepen in andere klassen, alsmede fietsstoeltjes en kinderautostoeltjes; dekzeil voor kinderwagens en buggy's; kappen voor kinderwagens en buggy's; aangepaste voetenzakken en zgn. babycocons 'voor kinderwagens, wandelwagens, combiwagens, duowagens en buggy's.

CI 28 Speelkleden; spellen en speelgoed voor baby's, peuters en kinderen, waaronder speelmatten, stationaire entertainers, baby bouncers, baby schommels, draagbare schommels, niet-gemotoriseerde scooters, niet-gemotoriseerde golfkarretjes en onderdelen voor voornoemde producten, poppen, pluche speelgoeddieren, knuffels; rammelaars; speelgoed met muziek; speelgoed, speelgoed kinderwagens, spelletjes en speelgoed voor het onderwijs of de ontwikkeling van baby's, peuters en kinderen; gymnastiek- en sportartikelen voor baby's en kinderen niet

begrepen in andere klassen, waaronder baby gym artikelen.

CI 35 Beheer van commerciële zaken en detailhandel (ook via elektronische netwerken zoals internet) op het gebied van voertuigen, waaronder kinderwagens, wandelwagens, buggy's, fietsen, scooters, fietsaanhangwagens en golfkarretjes, onderdelen, accessoires voor alle voornoemde producten, fietsstoeltjes en autostoeltjes, hoezen voor kinderwagens en buggy's, kappen voor kinderwagens en buggy's, koffers, boodschappentassen (met frame en op wielen), tassen (met frame en op wielen), tassen, reiskoffers, verzorgingstassen voor baby's, luiertassen voor baby's, luiierzakken, paraplu's en parasols, textieldoeken en textielbanden voor het dragen van baby's en kinderen, draagzakken en draagrekken voor het dragen van baby's en kinderen en high-end baggage systemen, draagbare dekens, inbakerdekens, babycocons voor kinderwagens, (hardloop) buggies, driewielers, duowagens, buggies, hoge stoelen, kinderzitjes, tafelhangstoelen, meubilair voor baby's, peuters en kinderen, kinderwagen -/ transportzakken, (zon)schermen voor kinderwagens, (hardloop) kinderwagens, driewielers, duowagens, buggies; bed-, wieg- en ledikanttextiel (waaronder beddengoed, bedbumpers en bedrokken, dekens, lakens, dekbedden, matrasbeschermers), commodehoezen, kussens en tafellopers, speelkleden, wikkeldoeken, draagbare dekens, inbakerdekens/-doeken voor baby's, peuters en kinderen, babycocons voor kinderwagens, (hardloop) buggies, driewielers, duowagens, buggies, spellen en speelgoed voor baby's, peuters en kinderen, poppen, pluche speelgoeddieren, knuffels, rammelaars, speelgoed met muziek, speelgoed, speelgoedkinderwagens, spelletjes en speelgoed voor het onderwijs of de ontwikkeling van baby's, peuters en kinderen, gymnastiek- en sportartikelen voor baby's en kinderen, babygym-artikelen (bijvoorbeeld speelkleden, speelmatten, loopstellen, stationaire entertainers, babybouncers, babyschommels, draagbare schommels), niet-gemotoriseerde scooters, niet-gemotoriseerde golfkarretjes en onderdelen voor alle voornoemde producten.

**Class numbers (00 = to)**

12, 28, 35

## Holder

**Name and address of the holder**

**Royalty Bugaboo GmbH**

Zug

Zwitserland

### View address details

This data is only shown to users with a My BOIP account who have at least one valid trademark, design or i-DEPOT with BOIP. [More information](#)

**Show address details**

## Representative

**Name and address of the representative**

**HGF B.V.**

Gedempt Hamerkanaal 257

1021 KP Amsterdam

Nederland

## **F.4 Copies from the EUIPO design register**

## RCD file information

001229868-0001

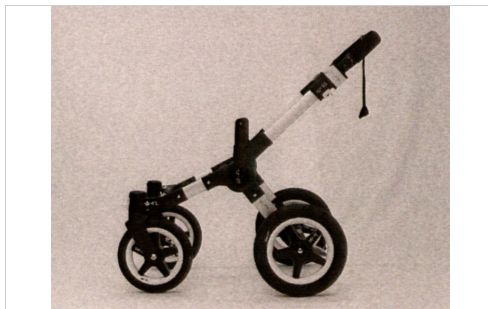
### Timeline



### Graphic representation



1 / 2



### Design information

Design number	001229868-0001	Filing language	DUTCH
Name		Second language	ENGLISH
Filing date	13/08/2010	Reference	AH/1307458D/CTM
Registration date	13/08/2010	Vienna Classification	
Expiry date	13/08/2025	Verbal element	
Design status	Registered and fully published (A.1.)		

### Indication of the product, (DesignClass)

Locarno	12.12
Values	Strollers

English ▾

### Owners

## Royalty Bugaboo GmbH

ID	271631	Country	CH - Switzerland	Correspondence address	
Organisation	Royalty Bugaboo GmbH	State/country	n/a	Royalty Bugaboo GmbH Schmidgasse 3 CH-6300 Zug SUIZA	Hidden. You can set your contact details to be publicly available via the User Area.
Legal status	Legal entity	Town	Zug		
		Post code	6300		Hidden. You can set your contact details to be publicly available via the User Area.
		Address	Schmidgasse 3		Hidden. You can set your contact details to be publicly available via the User Area.

## Representatives

### HGF B.V.

ID	80286	Country	NL - Netherlands	Correspondence address	
Organisation	n/a	State/country	n/a	HGF B.V. Gedempt Hamerkanaal 257 NL-1021 KP Amsterdam PAÍSES BAJOS	Hidden. You can set your contact details to be publicly available via the User Area.
Legal status	Legal person	Town	Amsterdam		
Type	Association	Post code	1021 KP		Hidden. You can set your contact details to be publicly available via the User Area.
		Address	Gedempt Hamerkanaal 257		Hidden. You can set your contact details to be publicly available via the User Area.

## Designers

No data

## Exhibition priority

No data

## Priority

No data

## Publications

Bulletin number	Date	Section	Description
2010/212	20/09/2010	A.1	Applications published under Articles 48 and 50 CDR
2013/027	07/02/2013	B.9.1	Change of name(s) and professional address(es) of the representative(s)
2015/165	02/09/2015	C.1	Renewals
2017/137	21/07/2017	B.9.2	Appointment, replacement and deletion of representative(s)
2018/070	13/04/2018	B.9.2	Appointment, replacement and deletion of representative(s)
2020/055	20/03/2020	C.1	Renewals

Showing 1 to 6 of 6 entries

## Recordals

Bulletin number	Date	Section	Filing number	Title
			013409824	Change of representative name(s) and address(es)
2013/027	07/02/2013	B.9.1	006619138	Change of representative name(s) and address(es)
2015/165	02/09/2015	C.1	008923975	Registration renewal
2017/137	21/07/2017	B.9.2	012204799	Appointment replacement and deletion of representative
2018/070	13/04/2018	B.9.2	012417281	Appointment replacement and deletion of representative
2020/055	20/03/2020	C.1	012709297	Registration renewal
Showing 1 to 6 of 6 entries				

## Appeals

No data

## Decisions

No data

## Renewals

Title	Filing number	Status	Status date
Registration renewal	008923975	Record published	02/09/2015
Registration renewal	012709297	Record published	20/03/2020
Showing 1 to 2 of 2 entries			

## Documents

	Date	Type	Procedure	File	Portfolio	Language	Pages	Actions
	04/03/2011	certi	RCD	001229868-0001				
	21/09/2010	certi	RCD	001229868-0001				
Showing 1 to 2 of 2 entries								





## RCD file information

001229868-0004

### Timeline



### Graphic representation



1 / 2



### Design information

Design number	001229868-0004	Filing language	DUTCH
Name		Second language	ENGLISH
Filing date	13/08/2010	Reference	AH/1307458D/CTM
Registration date	13/08/2010	Vienna Classification	
Expiry date	13/08/2025	Verbal element	
Design status	Registered and fully published (A.1.)		

### Indication of the product, (DesignClass)

Locarno	12.12
Values	Strollers

English ▾

### Owners

## Royalty Bugaboo GmbH

ID	271631	Country	CH - Switzerland	Correspondence address	
Organisation	Royalty Bugaboo GmbH	State/country	n/a	Royalty Bugaboo GmbH Schmidgasse 3 CH-6300 Zug SUIZA	Hidden. You can set your contact details to be publicly available via the User Area.
Legal status	Legal entity	Town	Zug		
		Post code	6300		Hidden. You can set your contact details to be publicly available via the User Area.
		Address	Schmidgasse 3		Hidden. You can set your contact details to be publicly available via the User Area.

## Representatives

### HGF B.V.

ID	80286	Country	NL - Netherlands	Correspondence address	
Organisation	n/a	State/country	n/a	HGF B.V. Gedempt Hamerkanaal 257 NL-1021 KP Amsterdam PAÍSES BAJOS	Hidden. You can set your contact details to be publicly available via the User Area.
Legal status	Legal person	Town	Amsterdam		
Type	Association	Post code	1021 KP		Hidden. You can set your contact details to be publicly available via the User Area.
		Address	Gedempt Hamerkanaal 257		Hidden. You can set your contact details to be publicly available via the User Area.

## Designers

No data

## Exhibition priority

No data

## Priority

No data

## Publications

Bulletin number	Date	Section	Description
2010/212	20/09/2010	A.1	Applications published under Articles 48 and 50 CDR
2013/027	07/02/2013	B.9.1	Change of name(s) and professional address(es) of the representative(s)
2015/165	02/09/2015	C.1	Renewals
2017/137	21/07/2017	B.9.2	Appointment, replacement and deletion of representative(s)
2018/070	13/04/2018	B.9.2	Appointment, replacement and deletion of representative(s)
2020/055	20/03/2020	C.1	Renewals

Showing 1 to 6 of 6 entries

## Recordals

Bulletin number	Date	Section	Filing number	Title
			013409824	Change of representative name(s) and address(es)
2013/027	07/02/2013	B.9.1	006619138	Change of representative name(s) and address(es)
2015/165	02/09/2015	C.1	008923967	Registration renewal
2017/137	21/07/2017	B.9.2	012204799	Appointment replacement and deletion of representative
2018/070	13/04/2018	B.9.2	012417281	Appointment replacement and deletion of representative
2020/055	20/03/2020	C.1	012709298	Registration renewal

Showing 1 to 6 of 6 entries

## Appeals

No data

## Decisions

No data

## Renewals

Title	Filing number	Status	Status date
Registration renewal	008923967	Record published	02/09/2015
Registration renewal	012709298	Record published	20/03/2020
Showing 1 to 2 of 2 entries			

## Documents

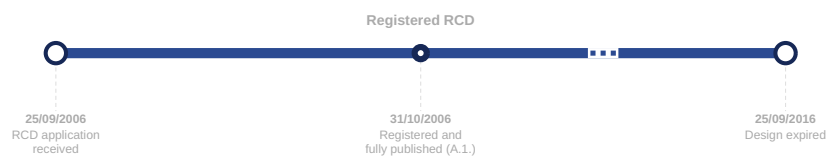
	Date	Type	Procedure	File	Portfolio	Language	Pages	Actions
	04/03/2011	certi	RCD	001229868-0004				
	21/09/2010	certi	RCD	001229868-0004				
Showing 1 to 2 of 2 entries								



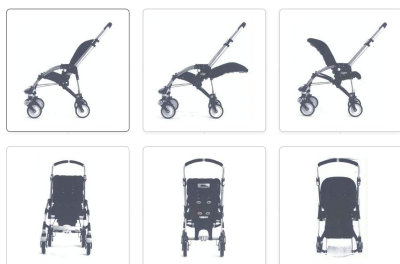
## RCD file information

**000594023-0001**

### Timeline



### Graphic representation



1 / 2



### Design information

Design number	<b>000594023-0001</b>	Filing language	<b>DUTCH</b>
Name		Second language	<b>ENGLISH</b>
Filing date	<b>25/09/2006</b>	Reference	<b>D3006226EM</b>
Registration date	<b>25/09/2006</b>	Vienna Classification	
Expiry date	<b>25/09/2016</b>	Verbal element	
Design status	<b>Design lapsed</b>		

### Indication of the product, (DesignClass)

Locarno	<b>12.12</b>
Values	<b>Baby carriages</b>

English ▾

### Owners

## Royalty Bugaboo GmbH

ID	271631	Country	CH - Switzerland	Correspondence address	
Organisation	Royalty Bugaboo GmbH	State/country	n/a	Royalty Bugaboo GmbH Schmidgasse 3 CH-6300 Zug SUIZA	Hidden. You can set your contact details to be publicly available via the User Area.
Legal status	Legal entity	Town	Zug		
		Post code	6300		Hidden. You can set your contact details to be publicly available via the User Area.
		Address	Schmidgasse 3		Hidden. You can set your contact details to be publicly available via the User Area.

## Representatives

### HGF LIMITED

ID	11852	Country	GB - United Kingdom	Correspondence address	
Organisation	n/a	State/country	Leeds	HGF LIMITED 1 City Walk Leeds, Leeds LS11 9DX REINO UNIDO	00 44-1132330100
Legal status	n/a	Town	Leeds,		00 44-1132330101
Type	Association	Post code	LS11 9DX		
		Address	1 City Walk		hgf@hgf.com

## Designers

No data

## Exhibition priority

No data

## Priority

No data

## Publications

Bulletin number	Date	Section	Description
2006/122	31/10/2006	A.1	Applications published under Articles 48 and 50 CDR
2007/029	27/02/2007	A.3.2	Relative errors on designs
2010/180	13/08/2010	B.9.2	Appointment, replacement and deletion of representative(s)
2011/198	01/09/2011	C.1	Renewals
2013/027	07/02/2013	B.9.1	Change of name(s) and professional address(es) of the representative(s)
2016/174	14/09/2016	B.2.1	Transfers of ownership
2017/137	21/07/2017	B.9.2	Appointment, replacement and deletion of representative(s)
2017/200	20/10/2017	C.2	Expired registrations

Showing 1 to 8 of 8 entries

## Recordals

Bulletin number	Date	Section	Filing number	Title
2007/029	27/02/2007	A.3.2	000024657	Relative error(s) concerning design (A.3.2)
2010/180	13/08/2010	B.9.2	004205732	Appointment replacement and deletion of representative
2011/198	01/09/2011	C.1	004662692	Registration renewal
2013/027	07/02/2013	B.9.1	006619138	Change of representative name(s) and address(es)
2016/174	14/09/2016	B.2.1	011068073	Transfer of ownership
2017/137	21/07/2017	B.9.2	012204799	Appointment replacement and deletion of representative

Showing 1 to 6 of 6 entries

## Appeals

No data

## Decisions

No data

## Renewals

Title	Filing number	Status	Status date
Registration renewal	004662692	Record published	01/09/2011
Showing 1 to 1 of 1 entries			

## Documents

	Date	Type	Procedure	File	Portfolio	Language	Pages	Actions
	28/10/2010	certi	RCD	000594023-0001				
	28/10/2010	certi	RCD	000594023-0001				
Showing 1 to 2 of 2 entries								

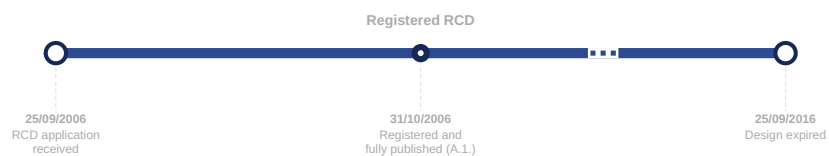




## RCD file information

**000594023-0002**

### Timeline



### Graphic representation



### Design information

Design number	<b>000594023-0002</b>	Filing language	<b>DUTCH</b>
Name		Second language	<b>ENGLISH</b>
Filing date	<b>25/09/2006</b>	Reference	<b>D3006226EM</b>
Registration date	<b>25/09/2006</b>	Vienna Classification	
Expiry date	<b>25/09/2016</b>	Verbal element	
Design status	<b>Design lapsed</b>		

### Indication of the product, (DesignClass)

Locarno	<b>12.12</b>
Values	<b>Baby carriages</b>

English ▾

### Owners

## Royalty Bugaboo GmbH

ID	271631	Country	CH - Switzerland	Correspondence address	
Organisation	Royalty Bugaboo GmbH	State/country	n/a	Royalty Bugaboo GmbH Schmidgasse 3 CH-6300 Zug SUIZA	Hidden. You can set your contact details to be publicly available via the User Area.
Legal status	Legal entity	Town	Zug		
		Post code	6300		Hidden. You can set your contact details to be publicly available via the User Area.
		Address	Schmidgasse 3		Hidden. You can set your contact details to be publicly available via the User Area.

## Representatives

### HGF LIMITED

ID	11852	Country	GB - United Kingdom	Correspondence address	
Organisation	n/a	State/country	Leeds	HGF LIMITED 1 City Walk Leeds, Leeds LS11 9DX REINO UNIDO	00 44-1132330100
Legal status	n/a	Town	Leeds,		00 44-1132330101
Type	Association	Post code	LS11 9DX		
		Address	1 City Walk		hgf@hgf.com

## Designers

No data

## Exhibition priority

No data

## Priority

No data

## Publications

Bulletin number	Date	Section	Description
2006/122	31/10/2006	A.1	Applications published under Articles 48 and 50 CDR
2007/029	27/02/2007	A.3.2	Relative errors on designs
2010/180	13/08/2010	B.9.2	Appointment, replacement and deletion of representative(s)
2011/198	01/09/2011	C.1	Renewals
2013/027	07/02/2013	B.9.1	Change of name(s) and professional address(es) of the representative(s)
2016/174	14/09/2016	B.2.1	Transfers of ownership
2017/137	21/07/2017	B.9.2	Appointment, replacement and deletion of representative(s)
2017/199	19/10/2017	C.2	Expired registrations

Showing 1 to 8 of 8 entries

## Recordals

Bulletin number	Date	Section	Filing number	Title
2007/029	27/02/2007	A.3.2	000024657	Relative error(s) concerning design (A.3.2)
2010/180	13/08/2010	B.9.2	004205732	Appointment replacement and deletion of representative
2011/198	01/09/2011	C.1	004663245	Registration renewal
2013/027	07/02/2013	B.9.1	006619138	Change of representative name(s) and address(es)
2016/174	14/09/2016	B.2.1	011068073	Transfer of ownership
2017/137	21/07/2017	B.9.2	012204799	Appointment replacement and deletion of representative
Showing 1 to 6 of 6 entries				

## Appeals

No data

## Decisions

No data

## Renewals

Title	Filing number	Status	Status date
Registration renewal	004663245	Record published	01/09/2011
Showing 1 to 1 of 1 entries			

## Documents

	Date	Type	Procedure	File	Portfolio	Language	Pages	Actions
	28/10/2010	certi	RCD	000594023-0002				
	28/10/2010	certi	RCD	000594023-0002				
Showing 1 to 2 of 2 entries								



## F.5 The start of Bugaboo

From:

<https://www.baby-magazine.co.uk/talking-business-bugaboo-co-founder-max-barenbrug/>

### Talking business with Bugaboo co-founder Max Barenbrug



Figure F.1: Bugaboo co-founder Max Barenbrug

**We chat to the designer and co-founder of Bugaboo about work life, and his passion to help parents feel ‘free’**

**The Bugaboo story started in 1994, when you designed a stroller for your graduation. What made you go down the route of baby travel systems?**

Going back to when I was a student at Eindhoven, I actually remember that moment I got the idea for my graduation project. I looked out of the window and saw an unhappy-looking couple struggling with their stroller – that was my ‘Aha!’ moment.

**Where did you start?**

All the strollers I’d seen looked similar, with infantile colors and cumbersome white tyres – there was nothing desirable about them. I decided then that I wanted to turn my graduation project into a mission to help parents feel free, so I created an all-terrain stroller. It had to be tough, it had to be multifunctional, it had to be made for outdoor adventures. It had to be

something that both men and women would love. I imagined all the different ways parents might want to use their stroller and created something that would allow them to live their lives. This very first stroller – my graduation project – is the blueprint for all the Bugaboo strollers we have made since.

**You’ve collaborated with the likes of Marc Jacobs, Diesel, Van Gogh and Missoni, did you have a favourite partnership?**

We love collaborating with artists and other like-minded companies to make these special editions, as long as we stay true to the core of the brand. I personally prefer the simple designs. My two daughters grew up with the standard models.



Figure F.2: The Bugaboo Chameleon remains a firm favourite

**What’s your role within the business these days?**

I come into our office in Amsterdam every day and work hand-in-hand with our team of designers and engineers on new design projects. I am also very involved in creating new sustainable business models.

**All the products are named after animals, where did that idea stem from?**

The idea came in 2001, when we were working on the upgrade of our Bugaboo Classic. We were creating a new kind of suspension – a frog-leg-style suspension that made navigating obstacles easier. Then we realised that Bugaboo Frog was quite a nice name. When we created our third stroller,

the Bugaboo Cameleon, it had all sorts of colour combinations, so again, the name fitted. And the tradition started...

**Victoria Beckham, Gwyneth Paltrow and Elton John are all reportedly fans, how does it feel to see so many A-listers choosing your products?**

Celebrities are also parents, and we want all parents to have the best for their children. I personally want people to buy our pushchairs because they know they are getting good durability and quality for their money, and not necessarily because of who else pushes it.

**What's new for Bugaboo?**

Our luggage system, the Bugaboo Boxer. People know us for our strollers, but Bugaboo has always been a mobility brand at heart. We're about creating products that combine design, engineering, quality and style to help all kinds of people move freely, all over the world.

## **F.6 Continuation of Bugaboo with private equity investor (Dutch)**

From:

<https://managementscope.nl/magazine/artikel/1465-private-equity-stabiliteit-crisistijd>

**Hoe private equity stabiliteit kan bieden in crisistijd**



14-04-2021 | Interviewer: Marc van Voorst tot Voorst | Auteur: Ellis Bloembergen | Beeld: Ton Zonneveld

**Private equity-investeerder Bain Capital is eigenaar van kinderwagenproducent Bugaboo, dat in 2020 ondanks schokeffecten op de**

**verkoop in de eerste coronagolf goed presteerde. Jurjen van der Wiel van Bain en Bugaboo-ceo Adriaan Thierry vertellen over de kracht van private equity in volatiele tijden. ‘Natuurlijk is er aanvankelijk kritisch naar onze financiële positie gekeken, maar er is nooit sprake geweest van paniekvoetbal.’**

20 jaar geleden zag de Bugaboo het levenslicht. De hippe kinderwagen werd bedacht door Max Barenbrug en vormde destijds zijn afstudeeropdracht aan de Design Academy in Eindhoven. Aanvankelijk probeerde Barenbrug tevergeefs zijn concept te verkopen aan kinderwagenproducenten. Hij besloot zijn concept zelf op de markt te brengen, samen met zijn zwager Eduard Zanen. De Bugaboo bleek een succes. Behalve in Nederland rollen de Bugaboo's ook in Amerika, Zuid-Korea en Australië door de straten. Het bedrijf telt inmiddels 1.000 werknemers en is actief in 50 landen.

Een jaar geleden trad Adriaan Thierry als ceo aan bij Bugaboo. De bestuurder heeft als opdracht de organisatie verder te laten groeien. Daarbij werkt het management nauw samen met Bain Capital, de Amerikaanse private equity-investeerder die sinds 2018 eigenaar is van Bugaboo. Binnen Bain Capital is managing director Jurjen van der Wiel verantwoordelijk voor vijf van Bains 20 bedrijven in Europa, waaronder Bugaboo. In een dubbelgesprek met Marc van Voorst tot Voorst, plaatsvervangend directeur van de Nederlandse Vereniging voor Participatieverenigingen (NVP), vertellen Thierry en Van der Wiel over hun samenwerking en de toekomst van Bugaboo.

#### **Wat was voor u de aantrekkingskracht van Bugaboo?**

Thierry: ‘Bugaboo zorgde bij de introductie voor een revolutie op de markt. Tot die tijd was een kinderwagen vooral een ongedifferentieerd gebruiksartikel. Met de Bugaboo konden kersverse ouders kiezen voor een designproduct van hoge kwaliteit. Het hippe en functionele design is nog steeds de grote kracht, maar er liggen grote kansen voor het internationale bedrijf om beter in te spelen op de nieuwe wereld. De concurrentie is enorm, de klant is veranderd. Ik zet me graag in om Bugaboo te transformeren.’

#### **Welke kennis en ervaring brengt u mee?**

Thierry: ‘Ik was eerder betrokken bij transitities met een sterke digitale component. Bij Ahold was ik als marketing- en e-commerce-directeur onder andere verantwoordelijk voor de omschakeling van albert.nl naar ah.nl. Bij Bugaboo is nog werk te doen om de digitale klantreis verder te verbeteren. Daarnaast heb ik ervaring met het leiden van organisaties in transitie. Hoe krijg je een bedrijf in beweging en hoe inspireer je je mensen om de benodigde wijzigingen door te voeren?’

#### **Waarom besloot Bain Capital in 2018 te investeren in Bugaboo?**



Van der Wiel: ‘We investeerden al eerder in een groot aantal founder led-bedrijven. Vaak weten de oprichters een prachtig bedrijf op te bouwen, maar voor verdere groei kunnen zij op enig moment wel een investeerder gebruiken. Bij Bugaboo was dat ook het geval. Er liggen nog volop kansen voor het bedrijf. Bugaboo heeft een goed product, een sterke innovatiecultuur en enorm betrokken medewerkers. Er is een grote groeiambitie, daarbij kan Bain Capital veel betekenen.’

### **Hoe gaat Bugaboo de groeiambities waarmaken?**

Thierry: ‘We hebben tijdens de pandemie de strategie en de organisatiestructuur drastisch herzien. De drie toekomstige pijlers zijn diversifiëring, internationalisering en digitalisering, met veel verantwoordelijkheid voor de regio’s. Het is allereerst onze ambitie om naast de kinderwagen meer producten op de markt te brengen. Zo hebben we al autostoeltjes en kinderbedjes gelanceerd. Ook zullen we, zonder Europa uit het oog te verliezen, steviger inzetten op Azië. Daar groeien we nu ook al: in Zuid-Korea zijn we marktleider in het luxesegment. Maar we zullen ook fors investeren in digitalisering. We willen op alle momenten van de customer journey relevant zijn. Door de pandemie is er online al veel verbeterd, maar er zijn nog grote slagen te maken. Daarnaast blijven we innoveren. Sinds 1 februari hebben we een nieuwe chief product officer, Youn Lee. Hij volgt in feite oprichter Max Barenbrug op en zal een nieuwe generatie producten gaan vormgeven.’

### **Hoe ziet samenwerking met Bain Capital eruit?**

Van der Wiel: ‘Bain Capital gelooft in intensieve samenwerking met bedrijven. Dat vormt een belangrijk uitgangspunt bij de vraag of en hoe we willen investeren. De focus ligt op industrieën en transitieën waarvan we veel kennis hebben. Op die manier bieden we partners toegevoegde waarde op voor hen soms lastige thema’s, zoals digitalisering, groei-acceleratie door internationale expansie en innovatie van het businessmodel. Wij zijn gespecialiseerd in complexe transformaties, waar een sterke strategische positie is om op voort te bouwen – zoals bij Bugaboo het merk, product en de cultuur – maar waar verder veel verandering vereist is.

Voor organisaties kan een transformatie veel onzekerheid brengen, de druk is vaak hoog. Managementteams waarderen deze samenwerking en echte hulp op concrete thema’s. Er is een gezamenlijke langetermijnvisie. Als investeerder hebben we de intentie en de daadkracht om echt betere bedrijven te bouwen, met een duidelijke strategie, de sterkste teams in hun industrie en operationele discipline. Bain Capital brengt veel bedrijven naar de beurs die vervolgens goed presteren, ook nadat wij ons teruggetrokken hebben. Publieke investeerders participeren dus graag als wij verkopen, omdat wij echt een verbeterd bedrijf hebben neergezet. In onze samenwerking kiezen we er bewust voor om bestuurders persoonlijk te begeleiden, dus niet volgens de traditionele benadering via de board. Ik heb daarom regelmatig

contact met Adriaan. Bugaboo heeft het onder zijn leiding erg goed gedaan. Ondanks de pandemie en de schokeffecten op de verkoop in de eerste golf, groeide in 2020 zowel de omzet als de winst.'

### **Hoe ervaart u de samenwerking met Bain Capital?**

Thierry: 'Er bestaan veel vooroordelen over private equity- investeerders. Mijn ervaring met Bain Capital is echter positief, ik kan me geen betere aandeelhouder wensen. Het bedrijf is niet uit op kortetermijnwinst, het draait juist om waardecreatie. Daarnaast hebben we toegang tot eersteklas kennis binnen de wereldwijde organisatie. Ons managementteam werkt nauw samen met diverse experts. We kunnen rekenen op support bij IT-projecten, het optimaliseren van processen of het aantrekken van talent. Dat biedt, zeker in de fase waarin wij zitten, veel voordelen.

Ook prettig: er is veel vertrouwen vanuit Bain Capital. Tijdens de eerste maanden van de pandemie is er geen paniekvoetbal gespeeld. Natuurlijk is er aanvankelijk kritisch naar de financiële positie gekeken, maar er was al snel ruimte om te investeren. Ik ben trots dat we 2020 met significante groei van de winst hebben afgesloten.'

### **Hoe belangrijk is duurzaamheid voor Bugaboo en hoe passen ESG-doelstellingen in de samenwerking met Bain Capital als private equity-investeerder?**

Thierry: 'Duurzaamheid zit van oudsher in ons DNA. Allereerst omdat de klant dat verlangt. Die wil het liefst een kinderwagen die lang meegaat. De Bugaboo behoudt ook zijn waarde. Kijk maar op verkoopplatforms als marktplaats.nl of eBay.nl om te zien hoeveel een tweedehands Bugaboo nog opbrengt. We zorgen ervoor dat reparaties mogelijk zijn en dat reserveonderdelen kunnen worden besteld.

Maar we willen het thema duurzaamheid nog verder brengen. Afgelopen zomer formuleerden we onze nieuwe strategie. De ESG-criteria komen daarin nadrukkelijker naar voren. Ik zie totaal geen spanning met de belangen van private equity- investeerders. Onze huidige en toekomstige investeerders vinden het een belangrijk thema. We voeren voortdurend discussies met Bain Capital hoe we verder kunnen verduurzamen. Op diverse vlakken doen we het goed, maar er zijn ook nog kansen.'

### **Hoe laat Bain Capital duurzaamheid meewegen in investeringsbesluiten?**

Van der Wiel: 'Laat ik beginnen met het wegnemen van een misvatting: we investeren niet alleen kapitaal van Bain Capital zelf. Het grootste deel is afkomstig van onze klanten, die duurzaam investeren ook hoog op de agenda hebben staan. Met die middelen kopen we bedrijven. Verder realiseren wij ons dat we grote impact kunnen maken met onze investeringen en de transformaties die we mede doorvoeren, aangezien wij veel bedrijven in ons

portfolio hebben met een groot bereik en duizenden werknemers. Daarbij voelen we een sterke drang to do the right thing. We willen goed zorgen voor de medewerkers van onze portfolio-bedrijven, maar we voelen die zorgplicht ook richting de maatschappij. Het is bemoedigend dat alle spelers in het veld – consumenten, investeerders, medewerkers, bestuurders – overtuigd zijn van de noodzaak om te verduurzamen.’

**Met het oog op de pandemie: is het ingewikkeld om te investeren zonder mensen fysiek te ontmoeten?**

Van der Wiel: ‘Ja, dat is best moeilijk. In de private equity-industrie gaat het om een gelimiteerd aantal, maar erg belangrijke beslissingen. Die worden genomen nadat we ons intensief hebben laten informeren en nadat we diepgaande analyses hebben gemaakt. Maar er speelt uiteindelijk ook altijd een menselijke component mee. Het moet immers van beide kanten goed voelen. Als je elkaar niet in de ogen kunt kijken vereist dat wel wat aanpassingsvermogen.

Ik heb het afgelopen jaar drie ceo’s en cfo’s aangenomen, waarvan ik een aantal nooit heb ontmoet. Daarnaast was ik dit jaar bij twee grote industriële investeringen betrokken, die nagenoeg volledig virtueel zijn afgerond. Het gemis van fysiek contact is echter het grootst bij nieuwe collega’s. We zijn een bedrijf dat zwaar leunt op jarenlange coachingtrajecten. Nieuwe medewerkers doen ervaring op door mee te kijken met collega’s. Dat is veel moeilijker via videoconferencing.’

**Hoe was het om in deze coronatijd als ceo te beginnen?**

Thierry: ‘Ik was net begonnen toen de pandemie uitbrak. Ik heb de managing directors van onze internationale markten via videobellen leren kennen. Dat viel niet tegen. Ik heb het gevoel dat ik zowel de markt als de mensen goed ken. Binnen het bedrijf plannen we veel gezamenlijke meetings. Het voelt als overcommuniceren, maar medewerkers vinden het prettig. Tijdens het noodgedwongen thuiswerken steunen we collega’s mentaal, maar ook financieel als dat nodig is.’

**Wat heeft Bain Capital tijdens deze coronacrisis geleerd van de 20 bedrijven in het portfolio?**

Van der Wiel: ‘Het heeft ons verrast hoe snel bedrijven met een sterke marktpositie zich herstelden. Een groot aantal bedrijven met sterke posities, zoals Bugaboo, groeide vanaf half mei 2020 zelfs sterker dan voor de lockdown, terwijl iedereen in maart en april hard geraakt werd. De grootste les: met een goed product en een loyale klantenkring ben je veerkrachtig tijdens crises en kun je zelfs je positie versterken als je zorgt dat je in moeilijke tijden ook klanten blijft bedienen. Het herstel is tevens te danken geweest aan sterke leiders: het was een tijd waarin sommige managers echt boven zichzelf uitstegen.’

**Als de NVP met politici praat, geven we aan dat participatiemaatschappijen door de combinatie van kapitaal, kennis en netwerk bij uitstek goed geëquipeerd zijn om bedrijven door uitdagende periodes te helpen. Ook nu, bij het herstel van de economie, kunnen participatiemaatschappijen deel van de oplossing zijn. Hoe denkt Bain Capital daarover?**

Van der Wiel: 'Private equity is een geschikt model gebleken om bedrijven door deze onzekere economische periode te helpen. Omdat we echt een langetermijnvisie hebben, kijken we door een crisis heen. In deze pandemie hebben we bedrijven terzijde gestaan die kampten met moeilijkheden. Mede dankzij onze support en geduld zijn we er met onze partners in geslaagd sterker uit de crisis te komen.

Ter onderbouwing: een jaar na corona is het vooruitzicht van waarde van de bedrijven in ons Europese portfolio nagenoeg onveranderd gebleven. Het jaar 2021 wordt interessant gezien het sterke herstelpotentieel van de bestedingen, vooral in de Verenigde Staten. Verder heeft de pandemie duidelijk gemaakt welke bedrijven een sterke marktpositie hebben. Dat geeft nieuwe kansen en een heel interessante set data voor bedrijvenbouwers zoals Bain om nieuwe partners te vinden.'

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