

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

|                        |   |                |
|------------------------|---|----------------|
| FISHER-PRICE, INC.,    | ) |                |
|                        | ) |                |
| Plaintiff,             | ) |                |
|                        | ) |                |
| v.                     | ) | C.A. No. 01-51 |
|                        | ) |                |
| SAFETY 1st, INC., CO., | ) |                |
|                        | ) |                |
| Defendants.            | ) |                |
|                        | ) |                |

**MEMORANDUM AND ORDER**

**I. INTRODUCTION**

On January 26, 2001, Fisher-Price filed an action for a declaratory judgment asserting that certain of the defendant’s products, namely the 2-in1-Bouncenette (“Bouncenette”) and the Magic Motion Bassinet (“Magic Motion”) infringed five of Fisher-Price’s patents. The patents at issue are U.S. Patent Nos. 5,660,435 (the ‘435 patent), 5,947,552 (the ‘552 patent), 6,257,659 (the ‘659 patent), 6,247,755 (the ‘755 patent), and 431,940 (the ‘940 patent). Safety 1st answered the complaint by asserting the affirmative defense of invalidity as to the ‘755, ‘940, ‘435 and ‘552 patents. Safety 1st’s answer also presented counterclaims of invalidity on these patents. A *Markman* hearing was held on March 6, 2002. The court issued a *Markman* order construing the disputed terms of the ‘435, ‘552, and ‘659 patents on April 2, 2002.<sup>1</sup> The jury trial in this case is scheduled for July 22, 2002.

Presently before the court are Safety 1st’s motions for partial summary judgment on each of the five patents. Safety 1st asserts that the ‘940 and ‘755 patents are invalid under the on-sale bar outlined in 35 U.S.C. § 102(b) because the products at issue were offered for sale in the United

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<sup>1</sup> There are no disputed claim terms in the ‘755 or ‘940 patents.

States more than one year before the patent application. Fisher-Price responds that there was no sale or offer for sale, and that even if there were, the sale did not take place in the United States.

Safety 1st further argues that its products do not literally infringe the '435, '552, or '659 patents and therefore summary judgment should be granted in its favor. Safety 1st also asserts that the '435 and '552 patents are invalid because they are anticipated by prior art. Fisher-Price responds that there are several genuine issues of material fact that must be resolved before summary judgment on literal infringement or invalidity of any of these three patents will be appropriate. Fisher-Price also asserts that Safety 1st failed to present any facts on infringement under the doctrine of equivalents. Safety 1st asserts that it is Fisher-Price's burden to produce evidence on the doctrine of equivalents, and that since Fisher-Price has failed to do so, summary judgment should be granted in its favor on that issue for the '435, '552, and '659 patents.

Upon review of the parties' submissions, the patents at issue, and the applicable law, the court will deny the motions for partial summary judgment of invalidity of the '940 and '755 patents. Although it seems likely that products covered by these patents were offered in the United States, there is a question of fact concerning whether Fisher-Price's conduct was sufficient to constitute an offer for sale under the on-sale bar. Thus, summary judgment on the invalidity of the '940 and '755 patents under the § 102 (b) on-sale bar is inappropriate on the current record.

With respect to the infringement of the '435, '552, and '659 patents under the doctrine of equivalents, the court concludes that Fisher-Price has failed to meet its burden on this issue. Therefore, the court will grant summary judgment in favor of the defendant on the issue of infringement under the doctrine of equivalents on the '435, '552, and '659 patents.

Regarding the literal infringement of the '435 patent, the court finds that its previous ruling on claim construction precludes a finding that either of Safety 1st's products literally infringe the mechanisms disclosed in the '435 patent. However, there is a genuine issue of material fact as to whether the '435 patent is anticipated by prior art. Therefore, Safety 1st's motion for partial summary judgment will be granted as to the issue of literal infringement but will be denied as to the issue of invalidity.

Turning to the '552 patent, the court finds that there are genuine issues of material fact that preclude summary judgment on the issue of literal infringement. Additionally, there is a question of fact as to whether the patented product was anticipated by prior art. Thus, the court will deny the defendant's motion for partial summary judgment on the '552 patent as to both literal infringement and invalidity.

Finally, as to the '659 patent, the court finds that there are no genuine issues of material fact and that the evidence of record clearly demonstrates that Safety 1st's Bouncenette product does not literally infringe the '659 patent.<sup>2</sup> Thus, Safety 1st is entitled to judgment as a matter of law on the literal infringement issue. Since Fisher-Price has waived its arguments under the doctrine of equivalents, summary judgment for the defendant as to both literal and equivalent infringement of '659 patent by the Bouncenette product is appropriate. The court will now explain its reasoning.

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<sup>2</sup> Safety 1st has moved for partial summary judgment as to the Bouncenette only. Therefore, the court will not discuss whether the Magic Motion product infringes the '659 patent.

## **II. FACTS**

### **A. The Allegedly Infringing Products**

Safety 1st manufactures and sells both the Bouncenette and the Magic Motion products. The products are similar to each other in several ways. Both products are canopy-covered bassinets designed to hold an infant that cannot crawl or walk. Both bassinets have a pliable seatback that can be manipulated between two different positions for baby. In the first position, the seatback is placed into an L-shape, which places the baby into a semi-upright position. In the second option, the seatback is placed in a nearly horizontal position, which allows the baby to lie down in the bassinet.

The Safety 1st products also employ similar means to maneuver the seatback from the horizontal to the seated position. The seatbacks of both bassinets are equipped with straps that have plastic buckles attached to the end of the straps. When the two ends of the buckles are engaged, the straps are pulled taut and the seatback is placed into the semi-seated position. When the buckles are unfastened, the straps are disconnected and the seatback is released into the horizontal position.

Both bassinets also have canopies. The canopies are supported by semi-circular or U-shaped rigid interior supports. The U-shaped supports are then connected to the bassinet's support frame at various points. Both bassinets also have enclosed areas, or housing assemblies, that cover or support certain parts of the support frame. The housing assembly of the Magic Motion is quite large, extending approximately fifteen inches from the floor to the upper edge of the bassinet frame. The housing is attached to the central portion of the bassinet frame. By contrast, the housing assemblies on the Bouncenette are much smaller, roughly 6.5 inches, and do not extend to the bassinet frame. The housings are attached at the rear of the bassinet frame. They are not attached to the central portion of the bassinet frame where the U-shaped supports are connected to each other.

## **B. The '940 and '755 Patents**<sup>3</sup>

The '940 patent is a patent for the "Dome Away from Home" or "Bounce-n-Play Activity Dome." The '755 patent covers the "Carrier Harness." The application for the '940 patent was filed on May 14, 1999. The '755 patent application was filed on July 28, 1998.<sup>4</sup>

At some point prior to the filing of the patents at issue, Fisher-Price developed quote packages for each product. A quote package is a set of information compiled by Fisher-Price to assist it in obtaining price quotes from the vendors who will eventually manufacture the product. Fisher-Price's quote packages generally contain drawings, tool plans, parts lists, product specifications and other information that a potential vendor might use to develop a price quote for the production of the desired product.

Fisher-Price states that its quote solicitation process operates in this fashion: Once assembled, Fisher-Price sends its quote packages to two of its Asian affiliates - Mattel Asia Pacific Sourcing ("MAPS") and Mattel Vendor Operations Asia, Ltd. ("MVOA"). Both MAPS and MVOA are located in Hong Kong, China. MAPS and MVOA are responsible for sending the quote packages to Asian vendors in order to solicit price quotes for production. The vendors generally reply to the solicitations with a price quote within four weeks. Fisher-Price asserts that the vendor quotes typically do not specify the total number of products to be produced because the actual ordering is done later. Fisher-Price states that after the vendor quotes are received, MAPS and

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<sup>3</sup> The facts supporting the invalidity arguments for each patent are very similar. Therefore, they will be addressed together.

<sup>4</sup> As a technical matter, the application for the '755 patent was filed on July 12, 2000. However, since it was a continuation of an application filed on July 28, 1998, it is given an effective filing date of July 28, 1998.

MVOA negotiate with the vendors and then provide Fisher-Price with a recommendation and details of the quotes.

When MAPS or MVOA reach a decision to negotiate with a vendor, they generate a document called an Initial In-Line Commitment form (“Initial In-Line”) and send it to Fisher-Price. Fisher-Price asserts that after the Initial In-Line is signed, the product continues to be developed and a Final In-Line Commitment form (“Final In-Line”) is generated and subsequently sent to Fisher-Price for approval. According to Fisher-Price, the Final In-Line must be approved by Fisher-Price before the details of production are negotiated between MVOA or MAPS and the vendor. Once the details are finalized, Fisher-Price will submit a purchase order to the vendor ordering a certain amount of product to be produced by a certain date.

In the present case, Fisher-Price sent the quote packages for the ‘755 and ‘940 patents to MAPS and MVOA. MAPS and MVOA then sent the quote packages to various vendors to solicit price quotes for production. Fisher-Price asserts (and Safety 1st does not dispute) that all of the targeted vendors were located in Asia.

As MVOA and MAPS began soliciting offers from various vendors, the vendors began to respond. A vendor named Pointsder submitted a price quote for the production of the Carrier Harness disclosed in the ‘755 patent. Similarly, Jetta, Kiddyco, and Qualidux submitted price quotes for the Bounce-n-Play Activity Dome. Negotiations continued after the vendors submitted price quotes because the initial price quotes did not state the number of products to be produced and did not provide specific timelines. Eventually, Fisher-Price, through MVOA and MAPS, entered into Initial In-Line Commitments with Jetta and Pointsder. Safety 1st contends that the deposition testimony of Fisher-Price’s witnesses establishes that Fisher-Price considered the Initial In-Lines

to be an “agreement” between Fisher-Price and the vendor. Although the introductory price quotes did not contain references to the number of products or a specific time frame for production, the Initial In-Lines stated that the vendor would agree to produce 20,000 units of the product at a price of \$16.98 per unit by November 10, 1997.<sup>5</sup> The relevant documents also state that any sale is to be made or shipped within China. No provisions are made for shipment to the United States. However, at deposition, Fisher-Price executives admitted that the product would eventually be shipped and sold in the United States.<sup>6</sup>

Fisher-Price asserts that neither the Initial or Final In-Lines are offers that can be accepted. Rather, Fisher-Price argues that its purchase order is the offer that must be accepted. Fisher-Price alleges that its purchase orders are typically sent several weeks from the production start date. The applicable production start date for the Carrier Harness was September 29, 1997.<sup>7</sup> The production start date for the Bounce-n-Play Activity Dome was October 5, 1998. Fisher-Price also tracks its “launch dates” - or the date by which a vendor has produced enough product to enable Fisher-Price to ship the product to retailers. The launch date for the Carrier Harness was December 15, 1997. The launch date for the Bounce-n-Play Activity Dome was November 30, 1998.

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<sup>5</sup> These figures were quoted for the Bounce-n-Play Activity Dome. Safety 1st asserts that the figures for the Carrier Harness are similar, and has used these numbers as an example for both patents. Fisher-Price did not object to this usage of the figures.

<sup>6</sup> The relevant deposition testimony reads as follows:  
Q: . . . To be clear on this, the product that Jetta was to manufacture was being manufactured for shipment to and sale into the United States; is that right?  
A: I can’t say specifically only the United States. This product may have been available in other markets.  
Q: But certainly in the United States?  
A: Yes, certainly in the United States. (D.I. 123, Exh. L at 159).

<sup>7</sup> This is the production date for the Sit-n-Soothe Portable Bassinet, the subject of the patent on which the ‘755 patent relies for its effective date.

## **C. The '435 Patent**

### **1. The Alleged Infringement of the '435 Patent**

The abstract for the '435 patent states that it is a three-wheeled collapsible stroller that is ideal for use on bumpy terrain or at higher speeds (i.e. jogging or speed-walking). *See* '435 patent, col. 1:8-14. The patent asserts many advantages over prior art. Most important for the present case, it states that a disadvantage of a previous stroller configuration listed in U.S. Patent No. 4,836,573 issued to Gebhard (the "Gebhard patent") was that it was "only adjustable between one slightly reclined position or a fully lying down position. Accordingly, there exists a need for a stroller seat back that is conveniently adjustable between a relatively upright, seated position, and a more inclined, reclined seating position." *Id.* at col. 3:23-26.

The stroller disclosed in the '435 patent is adjustable between a standard seated position and a more reclined seated position. The stroller has a pliable seatback that has two fabric portions (first and second flexible webs) attached on either side of the seatback. In the preferred embodiment, straps are attached to the end of either web, and plastic buckles are attached to the straps. When the buckles are engaged, the webs and the straps are pulled tight and the seatback is moved into its more upright position. When the buckles are unclasped, the webs and straps loosen and the seatback returns to its reclined or less upright position. Neither the stroller drawings nor the specifications disclose a configuration which permits the seatback to be placed into a nearly or completely horizontal configuration.



In light of the previously known methods of constructing strollers, the relevant portions of independent claim 7 of the '435 patent were issued as follows:<sup>8</sup>

An adjustable child support comprising: . . . .

A first flexible web extending between said first frame portion and said second frame portion and integrally formed with said second child support member wherein when said first flexible web is in a fully extended configuration said second child support member is positioned in a first inclined position relative to said first child support member and wherein said first flexible web provides the sole means for supporting said second child support member in said first inclined position.

*Id.* at cl.7; col 16:39, 48-58. In its April 2, 2002, claim construction order, the court stated that the terms “first inclined position” and “second inclined position” as used in claim 7 “describe positions of the second child support member relative to the first child support member, with the second inclined position being the more upright. In the first inclined position the second child support member cannot be [in the] fully reclined or lying down position, but must be inclined (i.e. at an angle) relative to the first child support member.” (D.I. 163 at 2.)

The relevant portions of independent claim 15 of the '435 patent read as follows:

15. A reclining seatback assembly comprising . . . .

A first flexible web extending between said first frame portion and said seatback portion, said web having a first extended configuration in which said seatback is suspended in a first reclining position and said web having a second, foreshortened configuration in which said seatback is suspended in a second position more upright than the first position.

'435 Patent, cl. 15, col 18:9, 14-20. The court's claim construction order stated that the term first reclining position, when construed in context, “describe[s] positions of the second child support member relative to the first child support member, with the second position being the more upright. In the first reclining position the second child support member cannot be [in the] fully reclined or

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<sup>8</sup> Fisher-Price has alleged infringement of claims 7-10 and claim 15. Since claims 8-10 are dependent upon claim 7, however, only claim 7 will be quoted in this opinion.

lying down position, but must be inclined (i.e. at an angle) relative to the first child support member.” (D.I. 163 at 3.)

Safety 1st claims that its products do not infringe the ‘435 patent for several reasons. First, Safety 1st notes that one of the limitations of both claim 7 and claim 15 is that the seatback be adjustable between a “reclining” and a “more upright” position. Safety 1st argues that although the seatback in the ‘435 patent is adjustable between an upright and a reclining position, its products are only adjustable between a seated and a completely horizontal position. Safety 1st contends that the effect of this is that the ‘435 seatback is basically adjustable between two seated positions whereas its products have only one seated position, thus precluding a finding of literal infringement. In support of this contention, Safety 1st notes that strollers with one seated and one horizontal position were known at the time of the ‘435 patent, and that the patent was constructed to avoid this prior art. Fisher-Price responds that Safety 1st’s arguments are largely dependent upon a construction of the term “first inclined position” that “would exclude a “generally horizontal’ or ‘fully lying down’ position.” (D.I. 129 at 9.) Fisher-Price continues that regardless of the definition of the term, Safety 1st’s products are not completely horizontal, but rather lie at an angle of 177 degrees (Bouncenete) or 163 degrees (Magic Motion) as opposed to 180 degrees (completely flat or “co-planar”). Thus, Fisher-Price contends that there are genuine issues of material fact precluding summary judgment.

Second, Safety 1st asserts that its products do not infringe the ‘435 patent because they merely follow the methods disclosed in the art preceding the ‘435 patent, or “practice the prior art.” Fisher-Price responds that the Federal Circuit has rejected the “practicing the prior art” defense. Safety 1st contends that although the Federal Circuit may have rejected the defense in certain instances, it remains viable on the facts of this case.

## 2. The Alleged Invalidity of the '435 Patent

Safety 1st further asserts that claims 7 and 15 of the '435 patent were anticipated by prior art. In particular, Safety 1st refers to the Gebhard patent and the GB 2,163,045 patent issued to Bigo in the United Kingdom (“the Bigo reference”).

Safety 1st argues that claim 15 of the '435 patent is anticipated by the Bigo reference. The Bigo reference discloses a carrier for an infant that is convertible to a stroller. The seatback described in the Bigo reference is moved from a slightly inclined position to a more upright position by the use of straps. The straps have a “press-stud,” or snap, at the end. When the snaps are connected, the seatback is placed in a more upright position. The Bigo reference also discloses that zippers may be used to perform this function. The use of zippers is also disclosed in the '435 patent as an alternative embodiment.

Safety 1st contends that because the use of zippers was disclosed in the Bigo reference, the '435 patent necessarily reads on and is anticipated by the Bigo reference. Fisher-Price responds that the '435 patent does not read on (is not the same as) the Bigo reference because although it discloses snaps and zippers, it does not disclose plastic buckles. Fisher-Price further asserts that although both the '435 patent and the Bigo reference disclose zippers, it is unclear how the zippers would work. More specifically, Fisher-Price questions whether they would be able to hold a seatback in an upright position or if they would work in the same manner as the zippers disclosed in the '435 patent. Moreover, Fisher-Price asserts that the disclosure of zippers was not “sufficiently enabling” to permit the transition from zippers and snaps to plastic buckles. Safety 1st answers by stating that the drawings in the Bigo patent suggest that the zippers can place the seatback in an upright position. Additionally, in refuting Fisher-Price’s “sufficiently enabling” argument, Safety 1st asserts the Bigo

reference also disclosed buckles as an alternative embodiment. Finally, Safety 1st maintains that it would take very little effort for one skilled in the art to make to the transition from zippers or snaps to plastic buckles.

Safety 1st further contends that claims 7-10 of the '435 patent are anticipated by either the Bigo reference, the Gebhard patent, or both. Fisher-Price responds that Gebhard does not anticipate claim 7 because the Gebhard patent is not adjustable between two seated positions, but rather a seated position and a lying down position. Moreover, Fisher-Price argues that unlike claim 7, the Gebhard patent does not require that the seat must be in a more upright position relative to the seatback in the second position. As to the Bigo patent, Fisher-Price states that in the Bigo patent, the snaps or connectors are not used to connect fabric webs as in the '435 patent. Fisher-Price further contends that the Bigo patent does not teach the disconnecting of the fabric webs. Finally, Fisher-Price alleges that although Bigo discloses the use of straps, the disclosure was not sufficiently enabling to permit a person skilled in the art to develop the method eventually patented in claim 7. Fisher-Price also asserts that since it is claiming infringement of claims 7-10, Safety 1st must prove that each of these claims is invalid. Fisher-Price argues that Safety 1st has not stated how claims 8-10 are invalidated by either the Bigo or Gebhard prior art.

#### **D. The '552 Patent**

##### **1. The Alleged Infringement of the '552 Patent**

The '522 patent covers a collapsible bassinet with a canopy. Fisher-Price asserts that Safety 1st's products infringe claims 26, 27, 32-34 and 36 of the '552 patent.<sup>9</sup> The '552 patent discloses

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<sup>9</sup> Although multiple claims are asserted, only claim 36 is asserted against the Magic Motion product.

a bassinet for an infant that has a seatback that is capable of moving between a semi-seated position and a horizontal position. The product uses support straps similar to those used in the ‘435 patent to accomplish the movement of the seatback, or “receptacle.” The bassinet is covered with a canopy that is supported by U-shaped supports, or “rim members.” Moreover, the basinet is capable of moving between two formats - an open configuration that permits the baby to be placed in the bassinet (“the deployed position”) and a folded configuration that permits the storage of the basinet (“the compact position”). When the bassinet is in the compact position, the U-shaped rim members should be touching, or nearly touching (i.e. “substantially parallel”). As issued, Claim 26 reads, in pertinent part:<sup>10</sup>

26. A foldable infant product for supporting an infant that is foldable between a compact position and a deployed position, comprising: . . . .

An annular support rim having a first U-Shaped rim member with a first open end and a second U-Shaped rim member with a second open end, the first and second rim members being disposed in the deployed position with their open ends opposed, the second rim member being coupled to the first rim member for pivotal movement with respect to the first rim member, the second rim member being disposed adjacent a first side of the first rim member in the compact position;

A first support coupled to the first rim member for pivotal movement with respect thereto, the first support being disposed on a second side, opposite the first side of the first rim member in the compact position; and

A second support coupled to the annular support rim and pivotable with respect thereto, the second support being disposed substantially parallel to and on the second side of the first rim member in the compact position and substantially parallel to the first rim member in the deployed position.

‘552 Patent, cl. 26, col 13:14-35.

Additionally, the relevant portions of claim 36 read as follows:

36. An infant-supporting device convertible between a compact configuration and an [sic] deployed configuration, comprising: . . .

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<sup>10</sup> Claims 26, 27, and 32-24 are asserted, but since the remaining claims are dependent upon Claim 26, only claim 26 will be discussed.

a collapsible support frame movably connected to the suspension assembly, wherein the support frame supports the suspension assembly above a supporting surface in the deployed configuration and the support frame is disposed substantially adjacent the first rim member in the compact configuration; and

a receptacle for supporting an infant including a support surface and an annular side wall with an upper edge connected to the suspension assembly and a lower edge connected to the support surface, the support surface having a first end and a second end movably connected to the first end, wherein the receptacle is suspended from the support assembly above the supporting surface in the deployed configuration and the first end of the support surface is disposable at an angle relative to the second end and a pair of receptacle support straps are attached to the receptacle and are interconnected to support the first end at the angle . . .

*Id.* at cl. 36, col 14:18, -35.

Safety 1st claims that the Bouncenette does not infringe claim 26 of the ‘552 patent because it does not have two independent supports - or legs - as required by the ‘552 patent. Safety 1st claims that the Bouncenette does not infringe the patent because it has only one, bent rectangular leg whereas the bassinet in the ‘552 patent has two separate legs that provide support.<sup>11</sup> However, Fisher-Price points out that in the Bouncenette instruction manual, Safety 1st refers to a “left” and “right” leg being joined by a “connector piece.” (See D.I. 161 at Exh. D.) In its claim construction order, the court stated that “the first support must be separate and independent from the second support.” (D.I. 163 at 4.).

Safety 1st also asserts that it does not have a “rim member” that meets the requirements of claim 26. In particular, Safety 1st states that the rim member in question must meet three requirements: it must be disposed directly between the other rim member and the supports when folded (the compact position); it must be substantially parallel to the other support when deployed (the unfolded position); and the second support must be pivotally coupled to the rim member. Safety

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<sup>11</sup> Drawing sheet number 6 of 26 for the ‘552 patent labels the two legs as items #104 and #106. See ‘552 patent, fig. 10.

1st states that the first requirement of being adjacent the first side is not met because the first rim member is nested inside the larger rim member, rather than being opposite that rim member. In its claim construction order, the court stated, “Regarding the term opposite, there is no requirement that the first rim member be directly disposed between the second rim member and the supports.” (*Id.*)

Safety 1st further argues that the second requirement of being substantially parallel to the second rim member when deployed is not met because the rim that it has designated as the first rim member will intersect the plane of the second support, thereby preventing the two components from being substantially parallel. In its claim construction order, the court stated, “Regarding the term “substantially parallel,” there is no requirement that the planes of the second support and the first support do not intersect.” (D.I. 163 at 4.)

Finally, Safety 1st argues that its first rim member does not meet the third requirement of pivotal movement with respect to the first support because the pivot action does not occur at a place where the first support and first rim member are coupled. Rather, if any pivoting occurs, Safety 1st contends that it takes place at the housing assembly located on the ground. In its claim construction order, the court stated that the term “pivotal with respect thereto,” should be construed to mean that “there is no requirement that the second support pivots with respect to each part of the annular rim.” (D.I. 163 at 4.).

In response to each of the arguments regarding the infringement of claim 26, Fisher-Price asserts that the report of its expert conclusively shows that the Bouncenette infringes the mechanisms taught in the ‘552 patent, whereas Safety 1st has not submitted any evidence on non-infringement. Given the lack of evidence, Fisher-Price maintains that Safety 1st has failed to demonstrate the absence of genuine issues of material fact and, therefore, summary judgment should

be denied.

Regarding claim 36 of the '552 patent, Safety 1st asserts that its products do not infringe that claim because its products do not have support straps that are “interconnected to support.” Safety 1st argues that given the description of the straps in the Bigo reference, claim 36 must be construed to mean that the interconnection must occur underneath the support surface or receptacle. Safety 1st asserts that neither of its products employ an interconnection of straps that is underneath the seatback. Fisher-Price responds that the Bigo reference does not explicitly disclose a pair of interconnected straps, thus undermining Safety 1st’s argument.

Additionally, Safety 1st asserts that its products are not “movably connected” to the suspension assembly as required by claim 36. Safety 1st argues that its product is “fixedly connected” because the base support (or supports) is joined to the U-shaped rim member in such a manner that there is no movement between those two components. Fisher-Price again responds that there is a genuine issue of material fact on this point because its expert report demonstrates that the Bouncenette is movably connected to the suspension assembly. The claim construction order states that the term “movably connected” means that “the support frame is movably connected to the suspension assembly, but there is no requirement that the support frame move with respect to each part of the suspension assembly.” (D.I. 163 at 5.)

## **2. The Alleged Invalidity of the '552 Patent**

Safety 1st asserts that claims 26, 27, 32, 33, and 34 are all invalid because they were anticipated by U.S. Patent No. 5,509, 721 issued to Huang (“the Huang patent”). The Huang patent is for a baby seat which allows the baby to bounce. Like the '552 bassinet, the Magic Motion, and the Bouncenette, the bassinet in the Huang patent is capable of being folded and has a seat portion



that is supported by a U-shaped rim member. Safety 1st asserts that certain portions of the Huang patent read directly on the Bouncenette. Safety 1st therefore asserts that if the Bouncenette is construed to read on claims 26, 27, and 32-34, they will be invalid in light of the prior Huang patent. Moreover, Safety 1st asserts that claim 36 is invalid because it is obvious in light of the prior art. Safety 1st alleges that the Bigo reference, when coupled with at least two other references, discloses a method for converting the seatback from a seated position to a horizontal position through the use of straps, buckles, and flexible webs of fabric. Safety 1st further asserts that Bigo made reference to a laterally collapsible stroller. Safety 1st also contends that to the extent that Bigo did not explicitly disclose laterally collapsible strollers or buckles, other prior art can be used to fill in these gaps. Fisher-Price disputes that Bigo disclosed any of the mechanisms attributed to it by Safety 1st. Moreover, Fisher-Price asserts that even if the Bigo reference did disclose buckles and lateral collapsibility, it did not disclose a way to make the collapsible support frame movably connected to the suspension assembly. Finally, Fisher-Price notes that in order to prevail, Safety 1st must present evidence as to the knowledge of one ordinarily skilled in the art, and that its failure to do so will preclude summary judgment based upon a finding of obviousness.

**E. The Alleged Infringement of the ‘659 Patent**<sup>12</sup>

The ‘659 patent is a continuation of the ‘552 patent and, therefore, discloses a bassinet that is nearly identical to the bassinet covered by the ‘552 patent. The ‘659 patent, however, includes claims that differ from those in the ‘552 patent. For instance, both the ‘522 and the ‘659 patent

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<sup>12</sup> Safety 1st has moved for partial summary judgment as to the Bouncenette only. Therefore, the court will not discuss whether the Magic Motion product infringes the ‘659 patent.

employ “housing assemblies.” In both patents, the housing assemblies are plastic enclosures that cover the areas where the support legs of the bassinet are joined to the main bassinet frame. The ‘552 patent did not contain a claim covering “housing assemblies,” however. To remedy this omission, claim 1 of the ‘659 patent was written as follows:

1. An infant device, comprising: . . .

A left and right housing assembly of said lower frame portion, said left housing assembly being coupled to said upper frame at said left central portion and said right housing assembly being coupled to said upper frame at said right central portion, wherein said left and right terminal ends of at least one of said first and second rim members are rotationally coupled to the respective left and right housing assemblies . . .

‘659 Patent, cl. 1, col 11:45, 60-67.

Fisher-Price contends that both of Safety 1st’s products infringe the ‘659 patent. Safety 1st responds that the Bouncenette does not infringe the patent because the Bouncenette’s housing assemblies are not located at the left and right central frame portions as required by the ‘659 patent. Instead, Safety 1st says that they are connected at the base of the frame and lay on the ground. Fisher-Price asserts that the claim language does not preclude housing assemblies that are on the ground. The court construed housing assembly as referring to “a fully enclosed case, enclosure, or structure in which the first U-shaped member can be moved or rotated with respect to the second U-shaped member.” (D.I. 163 at 5.)

#### **IV. DISCUSSION**

Given the number of issues and patents in this case, the court will proceed as follows. Section A below will discuss whether the ‘940, ‘755, ‘435, and ‘552 patents are invalid.<sup>13</sup> Section

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<sup>13</sup> The court is aware that when invalidity is presented only as an affirmative defense, the court need not address invalidity where it finds non-infringement. *See Cardinal Chemical Co. v. Morton Intern., Inc.*, 508 U.S. 83, 93 (1993) (noting that resolution of invalidity as an affirmative

B will discuss the arguments bearing on the infringement of the ‘435, ‘552, and ‘659 patents.

## **A. INVALIDITY**

### **1. The ‘940 and ‘755 Patents**

Section 102(b) states that a person shall be entitled to a patent unless “the invention was . . . in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States . . .” 35 U.S.C. § 102(b). Thus, the on-sale bar applies when two conditions are satisfied before the critical date of one year before the filing date of the application: (1) a product embodying the claimed invention is the subject of a commercial offer for sale and (2) the claimed invention is ready for patenting. *See Pfaff v. Wells Electronics, Inc.*, 525 U.S. 55, 67 (1998). Additionally, the statute requires that the sale activity take place in the United States. *See* 35 U.S.C. § 102(b). Whether an invention was on sale in the United States more than one year before the patent’s application date is a question of law for the court to decide based on underlying factual determinations. *See Abbot Lab. v. Geneva Pharm., Inc.*, 182 F.3d 1315, 1317 (Fed. Cir. 1999); *Ferag AG v. Quipp Inc.*, 45 F.3d 1562, 1566 (Fed. Cir. 1995).

The parties do not dispute that the inventions were ready for patenting. Thus, the second prong of the *Pfaff* test is satisfied. *See Pfaff*, 525 U.S. at 67. However, the parties dispute whether the invention was offered for sale pursuant to the first prong of the *Pfaff* test. *See id.* Fisher-Price applied for the ‘940 and ‘755 patents on May 14, 1999 and July 28, 1998, respectively. Thus, the

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defense is “unnecessary”). That is the case with respect to the ‘435 patent. However, since invalidity is also asserted as a counterclaim in this case, the court feels it is appropriate to address the invalidity of the ‘435 patent in spite of the finding of non-infringement. *See id.* (noting that resolution of counterclaim asserting invalidity is “necessary”).

court must determine whether an offer for sale was made prior to May 14, 1998 for the ‘940 patent and July 28, 1997 for the ‘755 patent.

a. Was the alleged offer made “in the United States”?

Before addressing whether an offer was made, however, the court must first address whether any such offer was made in the United States. The Federal Circuit has stated that an offer to sell that originates in a foreign country may implicate the on-sale bar if it is directed to a buyer in the United States. *See In re Caveney*, 761 F.2d 673, 676-77 (Fed. Cir. 1985). In this case, Fisher-Price would have been the ultimate purchaser. Fisher-Price is located in the United States. Therefore, any offer that was made would be directed to a buyer in the United States.

Even assuming that Fisher-Price was not the ultimate purchaser, the products were directed at customers in the United States which could also trigger the on-sale bar. *See C.R. Bard, Inc. v. M3 Systems, Inc.*, 157 F.3d 1340, 1358 (Fed. Cir. 1998) (Newman, J., dissenting) (“An offer for sale originating in a foreign country, directed to a consumer in the United States, can establish an on-sale bar as to what was offered.”). Fisher-Price asserts that all of the products that might have been offered for sale were to be shipped to addresses in China, and therefore no sale took place in the United States. Safety 1st responds that although this is true, a Fisher-Price executive testified during deposition that the products were eventually intended to be shipped to the United States. Fisher-Price does not refute this allegation. Given the statement in *Bard*, the fact that the products were intended to be shipped to consumers in the United States would allow the court to find that any offer was made “in the United States” for §102(b) purposes.

Fisher-Price also argues that MAPS and MVOA, not Fisher-Price U.S.A, were responsible

for any such offers, and since MVOA and MAPS were located in China, the on-sale bar is inapplicable. Although Fisher-Price places great weight on the fact that MVOA and MAPS are located in Asia, it is clear that the acts of a third party taken on behalf of a patentee must be considered in the on-sale analysis. *See Special Devices, Inc. v. OEA, Inc.*, 270 F.3d 1353, 1355 (Fed. Cir. 2001) (“[I]t does not matter who places the invention ‘on sale’; it only matters that someone--inventor, supplier or other third party--placed it on sale.”). Thus, if the actions of MVOA and MAPS are sufficient to constitute an offer to sell in the United States, those actions can be attributed to Fisher-Price.

For all of the foregoing reasons, the court finds that if an offer occurred, it was made “in the United States” for the purposes of the on-sale bar.

b. Was an offer made?

There must be a “definite ... offer to sell” before the on-sale bar will apply. *Group One, Ltd. v. Hallmark Cards, Inc.*, 254 F.3d 1041, 1046 (Fed. Cir. 2001). The offer will be considered definite if it would constitute an offer in the commercial community. *See id.* Thus, in determining whether an offer was made, the court is guided by the Uniform Commercial Code (“UCC”). *See id.* at 1047. The UCC does not define the term offer. However, federal courts may draw guidance from state and federal courts interpreting the UCC when deciding whether an offer has been made. *See Linear Tech. Corp. v. Michel, Inc.*, 275 F.3d 1040, 1048 (Fed. Cir. 2001). The Restatement of Contracts is also a permissible source of guidance. *See Group One*, 254 F.3d at 1048.

The Restatement defines an offer as “the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it.” RESTATEMENT (SECOND) OF CONTRACTS § 24. However, the Restatement

qualifies this definition by stating that “a manifestation of willingness to enter into a bargain is not an offer if the person to whom it is addressed knows or has reason to know that the person making it does not intend to conclude a bargain until he has made a further manifestation of assent.” *Id.* at § 26.

In the present case, it is not clear that the Initial-In Line forms constituted a manifestation of willingness to enter into a bargain on the part of Fisher-Price. Safety 1st argues that since the Initial In-Line forms were in writing, contained somewhat specific terms, and were drafted after some negotiation, they should be considered offers. Although this is some evidence that an offer was intended, it is not conclusive. The Restatement teaches that even where the parties have made “promissory expressions or words of assent” and memorialized them in writing, such writing may not be an offer if “the document is intended not as an offer but only as a step in the preliminary negotiation of terms, or as a specimen for use in other transactions, or as something to be shown to a third person to influence his action.” *See id.* at §26, cmt. e. In light of this language, the fact that the prices and schedules were memorialized in the Initial In-Lines, without more, does not require the court to find that an offer was made. However, in light of the testimony that Fisher-Price considered the Initial-In Line forms to be “agreements,” the court finds that there is a question of fact as to whether Fisher-Price intended the Initial In-Line forms to be offers.

Indeed, Safety 1st relies heavily on the fact that Fisher-Price’s executives testified at deposition that they considered the Initial-In Line forms to be “agreements.” Although this is some evidence that Fisher-Price intended the Initial In-Lines to constitute offers, it is not conclusive evidence because it is not clear whether the “agreement” in question was a final agreement or an agreement to further negotiate. Thus, the court continues to find that there is a question of fact as

to whether Fisher-Price intended the Initial In-Line forms to be offers at the time they were issued.

Moreover, the court finds that given Fisher-Prices's bid solicitation process, there is a question as to whether the Initial In-Line form was the final step in the process such that assent to that document would complete the deal. Although the Initial In-Lines did contain some specific terms, Fisher-Price has indicated that after an Initial In-Line form was generated, further negotiations would occur and a Final In-Line would then issue. Fisher-Price also alleges that after the Final In-Line was issued, further discussions would occur, resulting in a purchase order being sent to the vendor. In light of the fact that it appears additional negotiations were necessary after the Initial In-Lines were issued, it is less likely that Fisher-Price intended the Initial In-Lines to constitute offers. Nevertheless, regardless of Fisher-Price's intent, there is a question of fact - not addressed by either party - as to whether the vendors understood the Initial In-Line "agreement" to be a final offer or whether they believed that further discussion was necessary. If the vendors believed that the Initial In-Line forms to be final offers that could be accepted, the court could find that an offer had been made. If, however, the vendors believed further negotiations were required, there was no offer. Thus, unless and until facts are adduced which establish the level of knowledge of the vendors, there is a question of fact that will preclude summary judgment on the issue of whether an offer was made.

In light of the foregoing, the court concludes that several questions of fact exist regarding whether Fisher-Price made an offer for sale under the on-sale bar. Therefore, the court must deny the defendant's partial motions for summary judgment of invalidity of the '940 and '755 patents.

## 2. The '435 Patent

Fisher-Price alleges that Safety 1st has infringed claims 7-10 and claim 15 of the '435 patent. Safety 1st alleges that these claims are invalid as anticipated. Both the teachings of a reference and whether that reference anticipates a patented invention are questions of fact. *See In re Baird*, 16 F.3d 380, 382 (Fed. Cir. 1994) (reference teaching) (citations omitted); *Akzo N.V. v. United States ITC*, 808 F.2d 1471, 1479 (Fed. Cir. 1986) (anticipation) (citations omitted).

Patents carry a presumption of validity. *See* 35 U.S.C. § 282. Thus, “[a] party challenging the validity of a claim, absent a pretrial agreement or stipulation, must submit evidence supporting a conclusion of invalidity of each claim the challenger seeks to destroy.” *Ortho Pharmaceutical Corp. v. Smith*, 959 F.2d 936, 942 (Fed. Cir. 1992). The invalidity must be proven by clear and convincing evidence. *See Pennwalt Corp. v. Akzona Inc.*, 740 F.2d 1573, 1578-79 (Fed. Cir. 1984).

### a. Claims 8-10

Both dependent and independent claims must be proven invalid. *See Shelcore, Inc. v. Durham Industries, Inc.*, 745 F.2d 621, 624 (Fed. Cir. 1984). Although Safety 1st has presented some evidence regarding the anticipation of claims 7 and 15, no clear and convincing evidence has been presented as to the invalidity of claims 8-10. Although Safety 1st has made limited arguments as to the invalidity of these claims in relation to claim 7, mere argument does not constitute clear and convincing evidence. *See id.* (“It [is the accused infringer’s] burden, not only to argue, but to submit evidence establishing the invalidity of each claim it asserted to be invalid.”). Therefore, summary judgment will be denied as to the invalidity of claims 8-10.



b. Claim 7

Safety 1st contends that claim 7 of the '435 patent is anticipated by both the Bigo reference and the Gebhard patent. Fisher-Price argues that although claim 7 requires that both the seatback and the infant seat must be able to be placed in both the more upright and reclining positions, the Gebhard patent does not include a similar limitation. Fisher-Price also argues that claim 7 requires that the seat must be in a more upright position relative to the seatback in the second position, and that Gebhard does not disclose this limitation either.

Fisher-Price also contends that the Bigo reference does not read on claim 7 because although claim 7 requires that the end of the first flexible fabric web must be connected to the second flexible web in a manner that permits the second web to provide the sole support for the seatback in the more upright position, the Bigo reference does not contain these limitations. Fisher-Price also argues that unlike claim 7, the Bigo patent does not teach disconnecting the ends of the second flexible fabric web to permit the seatback to be fully supported by the first flexible web in the less upright position. Finally, Fisher-Price argues that although the Bigo reference discloses fasteners, in particular “press studs” or snaps, these snaps are used differently in claim 7. In this regard, Fisher-Price contends that the Bigo disclosure is not “sufficiently enabling” to permit one of ordinary skill in the art to use the Bigo disclosure to develop the method patented in claim 7. Safety 1st maintains that the straps are used in the same manner in both inventions. Safety 1st further notes that no additional disclosures from Bigo would be necessary to enable one skilled in the art to create the invention in claim 7 because the transition from one product to the other would only require the substitution of parts.

Safety 1st has presented no clear and convincing evidence to establish exactly how or why either reference anticipates claim 7. Safety 1st has not even produced a chart demonstrating how

either the Bigo or Gebhard disclosures read on each of the aspects claimed in claim 7. Furthermore, although Safety 1st asserts that one skilled in the art could make the transition from the Bigo reference to the disclosure in claim 7 with little effort, Safety 1st has not provided the court with any evidence regarding the level of skill that would be required to bridge the gap between the two ideas. Nor has Safety 1st adduced evidence as to the applicable level of skill in the art at the time claim 7 was patented. Given the lack of evidence on these issues, the court finds that there are genuine issues of material fact on these points that preclude summary judgment as to whether claim 7 is invalid in light of the prior art.

c. Claim 15

As to claim 15, Fisher-Price argues that the Bigo reference does not read on the '435 patent because it does not disclose buckles as used in the '435 patent. The court disagrees with Fisher-Price on this point. Lines 94-95 of the Bigo reference clearly state that “self-gripping or buckled or knotted straps” may be used as well as “zip fasteners.” (D.I. 108, Ex. D at Lns. 94-95). Thus, the court will not refuse to consider the Bigo reference on this ground.

Safety 1st asserts that the Bigo reference's disclosure of zippers as a means for pulling the seatback upright reads on and therefore invalidates the '435 patent. However, the court finds that although both Bigo and the '435 patent disclose zippers, the Bigo patent has a different structure from the '435 patent. Unlike the '435 patent, the Bigo device does not employ flexible fabric webs attached to the seatback. Rather, the Bigo device has the straps and buckles attached to the inside of the well of the bassinet. Neither the Bigo reference nor the '435 patent include depictions or descriptions of the exact operation of the zippers. Thus, the court cannot determine how the zippers would operate in one device as opposed to the other. Given the structural differences between the

two patents and the lack of evidence as to how they operate in each device, the court finds that there is a question of fact as to whether the '435 patent's use of zippers was anticipated by the Bigo reference.<sup>14</sup>

For all of the forgoing reasons, the court will deny Safety 1st's motion for partial summary judgment as to whether the '435 patent is anticipated and therefore invalid in light of the prior art.

3. The '552 Patent

a. Claim 26

Safety 1st asserts that claim 26 is invalid as anticipated by the Huang patent. Safety 1st has provided detailed charts and diagrams demonstrating how the Huang patent reads on each disclosure of claim 26 as well as its dependent claims. Fisher-Price argues that even if Safety 1st's descriptions are accepted as true, claim 26 requires that, in the compact position, the second rim member be disposed adjacent a second side of the first rim member (i.e. the U-shaped supports must be able to be folded such that they are nearly touching). Fisher-Price asserts that the Huang device does not have a second rim member that is disposed adjacent a first side of the rim member.

The court notes that there do appear to be several similarities between the Huang reference and the '552 bassinet. However, there are some differences between the products in the compact position, which is primarily at issue here. Initially, the first rim member in the Huang device is much shorter than the rim member disclosed in the '552 bassinet. While the first and second rim members in the '552 patent are roughly the same size, the first rim member in the Huang carrier is

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<sup>14</sup> Although Safety 1st also alleged that claim 15 was anticipated by the Gebhard reference, it presented no evidence in support of this argument. Therefore, to the extent that Safety 1st's motion for partial summary judgment on the invalidity of claim 15 is dependent upon the Gebhard patent, it is denied for the same reasons stated in the court's discussion of the Gebhard patent in relation to claim 7.

roughly half the size of the second rim member. Additionally, in Huang, the second rim member is able to be folded over in the compact configuration. Given these differences, the court finds that there is a question of fact as to whether the devices are similarly configured in the compact position. In other words, there is a question of fact as to whether Huang actually teaches and anticipates the configuration disclosed in claim 26 of the '552 patent. The court also agrees with Fisher-Price that, given the construction of the Huang device, there is a question of fact as to whether it is adjacent the second side or the first side of the first rim member. Due to the existence of these questions of fact, the court will deny summary judgment on the invalidity of claim 26.

b. Claim 36

Safety 1st asserts that claim 36 is invalid as obvious over the prior art. In support of this argument, Safety 1st alleges that the Bigo reference discloses all of the limitations of claim 36. However, Safety 1st further asserts that to the extent that Bigo does not disclose all of the limitations, it left only a few “gaps,” namely the disclosure of laterally collapsible strollers and buckled straps. Safety 1st contends these gaps can be closed if the Bigo reference is coupled with other references that disclosed those limitations at the time the '552 bassinet was patented. Fisher-Price argues that Bigo did not disclose lateral collapsibility or buckled straps. Alternatively, Fisher-Price asserts that even if the Bigo reference contained these disclosures, it did not disclose a way to make the collapsible support frame movably connected to the suspension assembly as required by claim 36. Fisher-Price also argues that in order to prevail, Safety 1st must present evidence as to the knowledge of one ordinarily skilled in the art. According to Fisher-Price, the fact that Safety 1st has failed to do so precludes summary judgment.

A patent may be invalidated as obvious if “the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 3 (1966) (citing 35 U.S.C. § 103). The obviousness of a patent is a legal conclusion which is predicated upon four underlying factual inquiries: (1) the scope and content of the prior art; (2) the differences between the claims and the prior art; (3) the level of ordinary skill in the pertinent art; and (4) secondary considerations, if any, of nonobviousness. *See id.* at 17-18; *Kegel Co., Inc. v. AMF Bowling, Inc.*, 127 F.3d 1420, 1430 (Fed. Cir. 1997).

As to the first factor, the court finds that there is a factual question as to the scope of the prior art. As Fisher-Price points out, claim 36 discloses a support frame that is movably connected to the suspension assembly. Safety 1st, however, has presented no evidence or argument to demonstrate that the Bigo reference or any of its other alleged prior art also disclosed this limitation. Thus, the scope of the prior art has not been sufficiently established such that the court can conclude that claim 36 is obvious.

The court further finds that there is another factual question as to the differences between the patented device and the prior art. Although the Bigo patent mentions buckles, Safety 1st has failed to present clear and convincing evidence that the Bigo buckles operate in the same manner as the buckles in the ‘552 bassinet. Similarly, there is no evidence of record that the lateral collapsing mechanisms in the Bigo reference function in a way that is comparable to the ‘552 bassinet.

Finally, there is also a question of fact as to the level of ordinary skill in the pertinent art. However, Safety 1st has failed to present any evidence on the level of skill in the art at the time the '552 patent was being developed and prosecuted. Thus, the court cannot determine what a person ordinarily skilled in the art would have known at that time. Since Safety 1st has not provided the court with any information on this essential element of its obviousness claim, the court cannot enter summary judgment in its favor on the claim of obviousness.<sup>15</sup>

For all of the foregoing reasons, the court will deny the defendant's motion for partial summary judgment on the issue of the invalidity of the '552 patent.

## **B. INFRINGEMENT**

### **1. Infringement Under the Doctrine of Equivalents**

Fisher-Price asserts that Safety 1st is not entitled to summary judgment under the doctrine of equivalents because it has failed to present any evidence on this point. Safety 1st responds that Fisher-Price, as patentee, has the burden of proof on the doctrine of equivalents issue, and therefore, it is Fisher-Price's responsibility to submit evidence on the applicability of the doctrine although Fisher-Price is the non-movant in the summary judgment phase.

Safety 1st's argument is persuasive. Indeed, it is patentee's burden to produce evidence to demonstrate infringement under the doctrine of equivalents. *See Roberts Dairy Co. v. United States*, 530 F.2d 1342, 1357 (Fed. Cir. 1976) ("Plaintiffs have the burden of proving, by a preponderance of the evidence, that defendant has infringed their patents."). A movant may prevail at the summary

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<sup>15</sup> The parties did not cite any facts or raise any arguments pertaining to the fourth factor, secondary indicia of non-obviousness. Therefore, the court will not address the issue.

judgment stage by pointing out the absence of evidence to support the non-moving party's case with respect to an issue on which the non-movant bears the burden of proof. *See Intellicall, Inc. v. Phonometrics, Inc.*, 952 F.2d 1384, 1389 (Fed. Cir. 1992) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986)). Thus, the Federal Circuit has held that where a patentee, as non-movant during the summary judgment phase, fails to present evidence on the doctrine of equivalents, summary judgment may be granted in favor of the accused infringer. *See id.*

In the present case, the burden is on Fisher-Price, as patentee, to prove infringement under the doctrine of equivalents. Fisher-Price has presented no evidence on this issue. Therefore, pursuant to the Federal Circuit's holding in *Intellicall*, the court will grant summary judgment in favor of Safety 1st on the issue of infringement of the '435, '552, and '659 patents under the doctrine of equivalents

## 2. Literal Infringement

A patent infringement analysis entails two steps: "(1) claim construction to determine the scope of the claims, followed by (2) determination of whether the properly construed claim encompasses the accused device." *Bai v. L & L Wings, Inc.*, 160 F.3d 1350, 1353 (Fed. Cir. 1998) (citations omitted). The first step, claim construction, is a matter of law for the court to decide. *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 372 (1996). The second step, the determination of infringement, is a question of fact. *Bai*, 160 F.3d at 1353. "Literal infringement of a claim occurs when every limitation recited in a claim appears in the accused device, i.e., when 'the properly construed claim reads on the accused device exactly.'" *Honeywell Intern., Inc. v. Hamilton Sundstrand Corp.*, 166 F. Supp. 2d 1008, 1015 (D. Del. 2001) (citations omitted). Thus, summary judgment on the grounds of literal infringement is proper when no reasonable jury could

conclude that every limitation recited in the properly construed claim is present in the accused device. *See Karlin Technology, Inc. v. Surgical Dynamics, Inc.*, 177 F.3d 968, 974.

With this guidance in mind, the court will now consider whether the ‘435, ‘552, and ‘659 patents have been literally infringed.

a. The ‘435 Patent

Fisher-Price has asserted that Safety 1st’s products infringe claims 7-10 and claim 15 of the ‘435 patent. Claim 7 asserts that the seatback can be placed into a “first inclined position” and “second inclined position” relative to the seat. Similarly, claim 15 asserts that the seatback can be placed into a “first reclined position” in relation to the seat. In its claim construction order, the court construed the terms “first inclined position” and “second inclined position” to exclude a horizontal position, stating, “In the first inclined position the second child support member cannot be [in the] fully reclined or lying down position, but must be inclined (i.e. at an angle) relative to the first child support member.” (D.I. 163 at 4.) The “first reclined position” and “second reclined position” language in claim 15 was also construed to eliminate the possibility of a horizontal configuration.

Given this interpretation of these claims, the court finds that it is not possible for the Safety 1st products to literally infringe either claim 7 or claim 15 of the ‘435 patent. The ‘435 patent discloses a stroller that is adjustable between a more upright seated position and a more reclined seated position. However, they are both essentially seated positions. The Safety 1st products are only adjustable between a semi-seated position and a lying down position. Unlike the ‘435 stroller, they do not have a second seated position. In light of the fact that the Safety 1st products are not adjustable between two seated positions as required by claims 7 and 15 of the ‘435 patent, the court finds that no reasonable jury could find that the Safety 1st products infringe those claims.



Fisher-Price initially argued that the ‘435 patent did not preclude a reclined position that was fully lying down. However, the court’s claim construction order effectively mooted that argument. Fisher-Price also argues that the Safety 1st products can still be held to infringe the ‘435 patent because they are not perfectly flat or co-planar, and thus could be considered to be in a reclining position. The court is not persuaded by this argument. First, although Fisher-Price places great weight on the fact that the Safety 1st products are not perfectly co-planar, the court’s claim construction order did not require this limitation. Second, although the Safety 1st products are not perfectly horizontal at 177 degrees and 163 degrees, they are much closer to the co-planar angle than the much steeper angle of the ‘435 stroller, which reclines at 134 degrees. Finally, although the Safety 1st products may not be “fully horizontal,” at an angle of either 177 or 163 degrees, the baby is clearly in a “lying down” position. Indeed, in either position of the ‘435 stroller, the baby is somewhat upright or seated. By contrast, in their horizontal configurations, the Safety 1st products do not permit the baby to sit upright. In fact, they do not permit the baby to sit at all because in the horizontal configuration, the Safety 1st products do not have anything that could be considered a seat. No reasonable jury examining these products could otherwise conclude.

In light of the fact that the court construed claims 7 and 15 to exclude lying down positions, the Safety 1st products cannot infringe those claims or their dependent claims. Therefore, the court will grant summary judgment in favor of Safety 1st on the issue of the literal infringement of claims 7 and 15 of the ‘435 patent.<sup>16</sup>

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<sup>16</sup> Given the court’s finding of non-infringement, it need not address Safety 1st’s argument that its products are merely “practicing the prior art.”

b. The '552 Patent

1). Claim 26

Safety 1st presents four arguments concerning the non-infringement of claim 26. First, Safety 1st claims that the Bouncenette does not infringe claim 26 of the '552 patent because it does not have two independent supports - or legs - as required by the '552 patent, but rather one, bent rectangular leg. Indeed, the court's claim construction order did state that the support legs of the '552 patent must be separate and independent from one another. (D.I. 163 at 4.) In light of the claim construction language and the fact that the Bouncenette leg does appear to be crafted from one piece, the court would normally be inclined to grant summary judgment in favor of Safety 1st. However, the Bouncenette instruction manual refers to a "left" and "right" leg being joined by a "connector piece." (See D.I. 161 at Exh. D.) The reference in the instruction manual creates a question of fact as to whether the Bouncenette's support leg is truly one piece or whether it is two separate pieces. Safety 1st also asserts that the rim member of the Bouncenette is not adjacent the first side because the first rim member is not opposite the larger rim member, but is nested within the larger rim member. The claim construction order provides that there is no requirement that the first rim member be directly disposed between the second rim member and the supports. (D.I. 163 at 4.) In other words, the first and second rim members need not directly touch in the compact position.<sup>17</sup> Thus, court's claim construction would permit a construction of the '552 patent that included nesting.

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<sup>17</sup> The court's construction of the term "adjacent" also supports this conclusion. (D.I. 163 at 4.)

Safety 1st's argument that its second rim member is not "substantially parallel" because the planes of the first and second rim members would eventually intersect is similarly precluded by the court's claim construction order. The claim construction order construed the term "substantially parallel" to exclude any requirement that the planes of the second support and the first support must never intersect. (*Id.*) In light of this claim construction, Safety 1st's argument that its rim members are not substantially parallel is without merit.

Finally, Safety 1st argues that the first rim member of the Bouncenette is incapable of pivotal movement with respect to the first support because the pivot action does not occur at the place where the first support and first rim member are coupled. Rather, if any pivoting occurs, Safety 1st contends that it takes place at the housing assembly located on the ground. Employing its construction of the term "pivotal movement," the court finds that the Bouncenette may alternatively be capable of pivoting at the housing assembly or at the place where the supports and rim members are conjoined. Thus, there is a question of fact on this point that precludes the award of summary judgment.

## 2). Claim 36

Regarding claim 36 of the '552 patent, Safety 1st asserts that its products do not infringe that claim because its products do not have support straps that are interconnected to support and its rim members are fixedly connected to the support frame rather than movably connected. There are questions of fact on each of these points. Regarding the "interconnection" argument, the court construed the term "interconnected to support" to mean that "the straps may be connected at any position on the receptacle as long as when the straps are connected, the first end of the support surface is at an angle with respect to the second end of the support surface." (*Id.*) Safety 1st argues

that its products are non-infringing because they do not employ an interconnection that is underneath the seatback. However, the court's claim construction is broad enough to include an interconnection that occurs anywhere on the seatback. Thus, the jury must resolve whether the Safety 1st products are interconnected to support within the meaning of claim 36 of the '552 patent.

As to "movably connected, the court's claim construction order did state that the support frame must be movably connected to the suspension assembly. Although the court is persuaded that a "fixedly connected" product would be excluded under its claim construction, there is a question of fact as to whether the Safety 1st products' support frames are movably or fixedly connected to the suspension assembly. The jury will need to resolve this factual question at trial.

In light of the previously discussed genuine issues of material fact regarding the literal infringement of the '552 patent, Safety 1st's motion for partial summary judgment on this issue is denied.

c. The '659 Patent

Fisher-Price asserts that Safety 1st's products infringe the '659 patent through the use of housing assemblies. The court's claim construction order defined a housing assembly as "a fully enclosed case, enclosure, or structure in which the first U-shaped member can be moved or rotated with respect to the second U-shaped member." (*Id.* at 5.) The accused Safety 1st products do include plastic structures that enclose the hinges on the lower portion of the product. Thus, the Safety 1st products employ housing assemblies.

Nevertheless, Safety 1st asserts that the patent requires that the housing assemblies be placed on the upper frame at the left central portion and the right central portion. Safety 1st therefore argues that the Bouncenette's housing assemblies do not infringe the '659 patent because they are

attached on the lower frame that touches the ground and therefore (or alternatively) are not located on the left and right central portions of the frame.

The court is persuaded by this analysis. Although Fisher-Price accuses Safety 1st of attempting to reargue the claim construction of term “housing assembly,” the court finds that Safety 1st’s argument has very little to do with what a housing assembly is, but much to do with the patent’s teaching of where those housing assemblies should be placed. Although the court was not asked to construe the terms “left central portion” and “right central portion,” they will be accorded their normal meanings of being in the left at the center and in the right at the center, respectively. Given this claim construction, the court finds that the Bouncenette has both a left central portion and a right central portion and that they are located at the area where the annular rim members are joined together. The housing assemblies are not attached in this area. This fact is not disputed. Therefore, the housing assemblies are not located at the left and right central portions of the Bouncenette frame.

However, the court need not decide whether the housing assemblies are attached at the left and right central portions because they are not attached to the upper frame as required by the patent. The court construed the term upper frame to mean “that the upper frame has first and second U-Shaped rim members.” (*Id.* at 5.) In order to be on the upper frame then, the housing assemblies must touch or be connected to the part of the frame that includes both of the annular rim members. Although there is a portion of the Bouncenette frame that includes both the U-shaped rim members and could therefore be considered the upper frame, the housing assemblies on the Bouncenette frame are not connected to and do not touch this portion of the frame. Rather, they are connected to the lower portion of the frame that touches the ground and includes only the lower portion of one rim member and the support frame. This fact is not disputed. Therefore, given these undisputed facts,

the court concludes that the Bouncenette's housing assemblies are not connected to the upper frame and that no reasonable jury could conclude otherwise. Since the '659 patent requires that the housing assemblies be attached to the upper frame, and the Bouncenette's housing assemblies are not, summary judgment in favor of the defendant on literal infringement of the '659 patent by this product is appropriate.<sup>18</sup>

## **V. CONCLUSION**

For all of the foregoing reasons, Safety 1st's motions for partial summary judgment on the invalidity of the '940 and '755 patents will be denied. Furthermore, Safety 1st's motion for partial summary judgment that the '435 patent is not infringed literally or under the doctrine of equivalents is granted as to both literal and equivalent infringement, but is denied as to whether the '435 patent is valid. Moreover, Safety 1st's motion for partial summary judgment that the '552 patent is not infringed literally or under the doctrine of equivalents is granted as to equivalent infringement, but is denied as to whether the '552 patent is valid or literally infringed. Finally, Safety 1st's motion for partial summary judgment that the '659 patent is not infringed literally or under the doctrine of equivalents by the Bouncenette product is granted as to both literal and equivalent infringement.

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<sup>18</sup> Safety 1st did not raise invalidity in this motion. Therefore the court will not address this issue. Similarly, since Safety 1st did not move for summary judgment on this patent with regard to the Magic Motion bassinet, summary judgment is denied as to that product.

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The Defendant's Motion for Partial Summary Judgment of Invalidity of the '940 patent (D.I.75) is DENIED.
2. The Defendant's Motion for Partial Summary Judgment of Invalidity of the '755 patent (D.I.88) is DENIED.
3. The Defendant's Motion for Partial Summary Judgment Dismissing all Claims of Infringement of the '435 patent (D.I.106) is DENIED as to invalidity, but is GRANTED as to literal and equivalent infringement.
4. The Defendant's Motion for Partial Summary Judgment of Infringement Dismissing all Claims of Infringement of the '659 patent (D.I.117) is GRANTED as to literal and equivalent infringement of the '659 patent by the Bouncenette but is DENIED in all respects as to the literal or equivalent infringement of the '659 patent by the Magic Motion product.
5. The Defendant's Motion for Partial Summary Judgment Dismissing all Claims of Infringement of the '552 patent (D.I.138) is DENIED as to invalidity and literal infringement, but is GRANTED as to equivalent infringement.

Dated: June 14, 2002

Gregory M. Sleet  
UNITED STATES DISTRICT JUDGE