

**IN THE COURT OF APPEAL (CIVIL DIVISION)  
ON APPEAL FROM THE PATENTS COUNTY COURT  
Mr Recorder Wilson QC  
CP12PO3112**

Royal Courts of Justice  
Strand, London, WC2A 2LL  
28th February 2014

**B e f o r e :**

**LORD JUSTICE PATTEN  
LORD JUSTICE LEWISON  
and  
LADY JUSTICE SHARP**

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**Between:**

**SCOPEMA SARL**

**Appellant**

**- and -**

**SCOT SEAT DIRECT LIMITED**

**Respondent**

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**(Transcript of the Handed Down Judgment of  
WordWave International Limited  
A Merrill Communications Company  
165 Fleet Street, London EC4A 2DY  
Tel No: 020 7404 1400, Fax No: 020 7831 8838  
Official Shorthand Writers to the Court)**

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**MR GEOFFREY PRITCHARD (instructed by Geldards LLP) for the Appellant  
MR PIERS ACLAND QC (instructed by Innovate Legal) for the Respondent  
Hearing date : 20 February 2014**

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**HTML VERSION OF JUDGMENT**

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**Lord Justice Lewison**

European Patent No EP2121377 is entitled (in translation from the original French) "Tilting device for a seat back". The patentee is Scopema. Scot manufactures a seat with a tilting back. The only question raised on this appeal is whether Scot's product infringes claim 1 of the patent. Mr Recorder Alastair Wilson QC, sitting as a judge of the Patents County Court (now the Intellectual Property Enterprise Court), held that it did not. His judgment is at [2013] EWPC 32, and is available on BAILII. With the permission of Kitchin LJ the claimant

appeals.

1. Mr Geoffrey Pritchard presented the appeal on behalf of Scopema. Mr Piers Acland QC presented Scot's response.
2. The patent is concerned with an invention consisting of a device to tilt a seat from an upright position to a reclining position: in effect converting it from a seat to a bed. It is intended particularly for use in leisure vehicles and camper vans; but it can also be used in buses, lorries, boats, aircraft or trains. The device consists of a folding bracket which is attached to the backrest of a seat. The specification points out that all new vehicles are fitted with seatbelts which have three anchoring points. When one of the anchoring points is situated on a folding backrest (as opposed to a fixed point on the chassis of the vehicle) the anchoring point moves with the backrest and must fold away in the reclining position so as not to impede use. The consequence of using the backrest as an anchoring point is that it must satisfy the impact resistance safety tests that are applied to fixed anchorage points. Thus the device which allows the movement must have optimal strength. But it must also be easy to install, easy to operate and must be capable of being easily hidden in the structure of the seat.
3. The specification of the patent goes on to describe the invention in greater detail, principally by reference to one embodiment that is illustrated, and two further embodiments that are not. The explanation will be easier to understand with the help of some of the figures included in the specification. I reproduce figure 4:

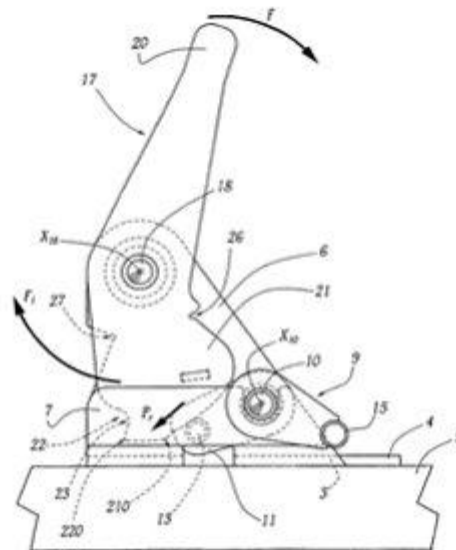


Fig.4

4. This figure shows the device in the tilting position. The specification explains that the bottom of the tilting component (17) is formed by a flattened and rounded end (21) orientated towards the immobilising component (9). The rounded end (21):

"... comprises a housing (22) for receiving a portion of the immobilising component (9). This housing can be seen notably in figures 3 to 6. It is formed by a notch (22) arranged in the periphery of the end (21). This notch (22) comprises a surface (23) that is adapted to come into contact with the surface (24) that complements the rod (13). The surface (23) is defined by the inner face of the notch (22). The shape and the position of the notch (22) on the end (21) of the component (17) make the notch (22) cap the rod (13) over about one third of its circumference.

One edge 220 of the notch extends downwards, in the locked position ... The end of this edge 220 is then substantially coplanar with the lowest point of the circumference of the rod 13 without being in contact with the latter. In the locked position, the misalignment 210 bears against the shaft 10. This pressure opposes a backward tilting movement of the backrest 8. In other words, the end 21 is held

in the locked position by the pressure of the notch 22 and of the misalignment 210 on the rod 13 and the shaft 10 respectively."

5. As we can see from figure 4, the notch is an irregular indentation at the base of the tilting component. Although it is curved for the most part, the edge 220 has a different configuration to the remainder of the notch. The fact that the notch has these two configurations seems to be of importance. Elsewhere in the patent specification it is described as having a "bucket" shape. The lines denoted by "F" show the rotation of the tilting component. The line "Pr" denotes the pressure exerted on the locking rod by the notch.
6. The specification also describes a second embodiment, which is not illustrated. The description of that embodiment is as follows:

"In an embodiment that is not illustrated, the immobilizing component 9 is fitted with two parallel rods 13 placed one above the other. In this case, the dimensions of the notch 22 are adapted so that the inner face of the latter is in contact with both rods simultaneously. The use of two rods makes it possible to increase the resistance to pulling of the immobilizing components while protecting the operation. Specifically, in the event of failure on one rod, the other rod immobilizes the tilting component."

7. Claim 1 of the patent (broken down into integers) reads:

"[a] Device for tilting the backrest (8) of a vehicle seat from a first position of the seat, referred to as the "sitting position", to a second position of said seat, referred to as the "reclining position",

[b] the said device comprising a tilting component (17) which is fixed to the backrest and is mounted for pivoting about a shaft (18) which is integral with a fixed support (2),

[c] the said tilting component being held in the first position by an immobilising component (9),

[d] one end (21) of the said tilting component (17) being provided with a housing (22) for receiving a rod (13) belonging to the immobilising component (9),

[e] one surface (23) of the housing (22) being adapted to bear against a complementary surface (24) of the rod (13) belonging to the immobilising component (9),

[f] the said receiving housing being a notch (22) which is arranged on one edge of the said end (21)

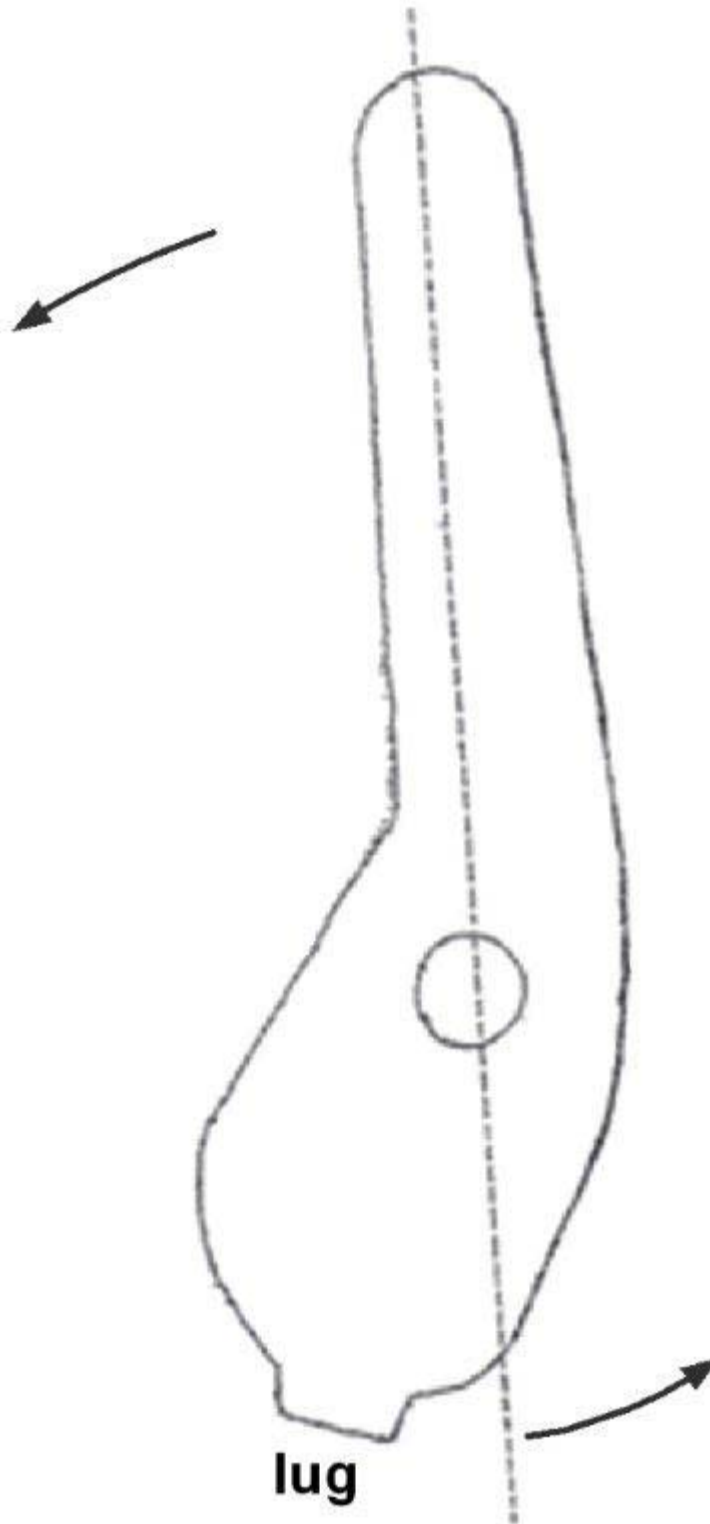
[g] and is configured so as to cap, over part of its circumference, the rod (13) of the immobilising component (9),

[h] that edge of the end (21) on which the notch (22) is arranged being selected in such a way that pulling on the backrest in the sitting position increases the bearing of the end (21) against the said rod (13) of the immobilising component (9) and

[i] that the geometry of the end (21) allows it, when the backrest (8) passes (F<sub>4</sub>) from its second position to its first position, to unlock the immobilising component (9)."

8. The judge decided that Scot's product did not infringe claim 1. There were two reasons for his decision:
  - i) Scot's product did not incorporate a "notch" as described in integers [d] to [h]; and
  - ii) Scot's product (unless greased) did not have the geometry described in integer [i].
9. In order to succeed on this appeal Scopema must show that the judge was wrong on both points. There were additional grounds of appeal, but they are contingent on success on both the above points.

10. Scot's product is illustrated by the following diagram.

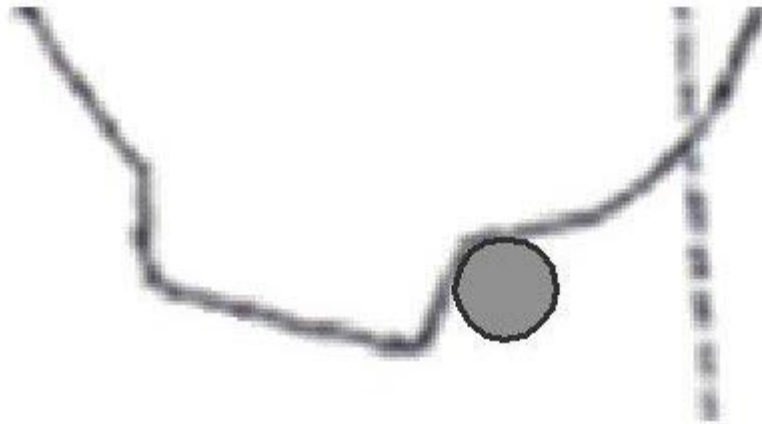


11. The judge described Scot's product at [33] as follows:

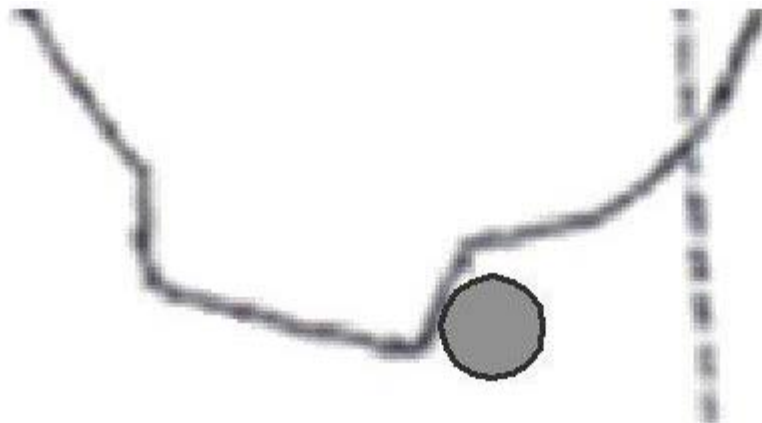
"As illustrated, the Defendants' tilting component is in its upright position. The crucial part for present purposes is the little lug protruding from the bottom of it. The left hand side of this lug has the function of completely preventing the tilting component from moving in a clockwise direction; it bears against the hinge pin of a locking device (not shown) in much the same way as the Claimants' protrusion 210 bears against the hinge pin 10. It is the right hand side of the lug which can prevent or permit rotation of the tilting component into its reclining position: the Defendants' bracket has a locking device with a locking rod (like the Claimants' rod 13) which can be swung into engagement

with the right hand side of the lug. This restrains anti-clockwise movement of the tilting component, but when the locking rod is swung out of the way, the tilting component is free to rotate anti-clockwise into its reclining position."

12. Thus Scot's product locks the backrest against unwanted rotation to the reclining position by means of the contact between the locking rod and the more or less flat right hand face of the lug. Scopema contended at trial that it also contacted the bottom of the tilting component, so that the round locking rod touched the tilting component at two points, though not at any points between them, like a boy's head in a dunce's cap. The claimants contended that the defendant's locking pin was thus held in a "notch" of the kind claimed in claim 1. This is illustrated by the following diagram:



13. The main debate about the notch at trial, in terms of construction of claim 1, was whether it had to mirror the shape of the rod (like a head in a skull cap) or whether it was sufficient for it to touch the rod at two points (like a head in a dunce's cap). But after the trial, the judge noticed from his examination of a mock-up or sample of Scot's product that its locking rod only touched the lug on the bracket at one point. This is illustrated by the following diagram:



14. This finding of fact is not challenged. Thus whichever of the two constructions advanced at trial was correct, Scot's product did not infringe. There was neither a skull cap arrangement nor a dunce's cap arrangement. In the light of that, the judge concluded at [35]:

"Looking carefully after the trial at the sample bracket handed up in the course of the trial, however, I noticed that the Defendants' locking pin can not actually be lifted far enough to touch the bottom of the tilting component. The reason for this appears to be that the width of the lug increases the closer it is to the bottom of the tilting component, to the point where the lug completely fills the gap between the locking pin and the pivot pin of the locking mechanism, and the locking mechanism can rise no further along the lug. It is in my judgment clear that in the case of brackets where this is so, there cannot be said in any sense to be a "notch": the locking pin bears only against the flat edge of the lug, and against nothing else."

15. On this appeal the argument has shifted. Mr Pritchard now submits that claim 1 is infringed by a product in

which the rod (13) bears against only one side of the notch.

16. The principles of construction applicable to patents are well-known. I set them out in *Virgin Atlantic Airways Ltd v Premium Aircraft Interiors Ltd* [2009] EWHC 26 (Pat) at [182] in terms that with minor amendments were approved by the Court of Appeal: [2009] EWCA Civ 1062; [2010] RPC 192 at [5]. There is no need to set them out again.
17. The short answer to Mr Pritchard's point, in my judgment, is that the language of claim 1 will not support his construction. First, we are told by integer [d] (in combination with integer [f]) that the notch is a "housing" for "receiving" a rod. Integer [f] repeats its description as a "receiving housing". If a rod simply bears against a flat surface the flat surface cannot be described as a "housing". Nor can it be said to "receive" the rod. I do not agree with Mr Pritchard that the fact that the upper part of the defendant's tilting component overhangs the lug makes all the difference. Second, we are told in integer [e] that one surface of the housing is "adapted" to bear against "a complementary surface" of the rod. The usual meaning of "complementary" as applied to things is that they combine together in some way, thus making a whole or making up for each other's deficiencies. As the judge said at [26] the more natural meaning of the word is that it refers to two essentially mating surfaces, although he was prepared to stretch the meaning so as to include the "dunce's cap" interpretation. But whatever the precise meaning of "complementary" in the context of the patent in suit, it stretches the language of the claim beyond breaking point to say that a round rod meeting a flat surface can thus be described. What is to be adapted, according to integer [e], is one surface of the housing. As applied to the defendant's product, this means the lug. I cannot see that the lug in the defendant's product has been "adapted" in the manner claimed in that integer. As Mr Acland QC submitted if all that was required was that a round rod met a flat surface almost all of integer [e] would be superfluous. It is also striking that the language of integer [e] is used elsewhere in the patent to describe a piece of prior art which also has an irregular indentation of the kind illustrated in the first embodiment of the patent. Third, we are told by integer [g] that the notch is configured "so as to cap" the rod "over part of its circumference". A flat surface against which a round rod bears cannot be said to "cap" the rod in any sense of that word. Nor does it cover any meaningful part of the circumference of the rod if there is only one point of contact. As Mr Acland QC argued the patentee clearly envisaged that the rod would engage with an indentation in the tilting component. A meeting of the round rod and the flat surface does not fall within claim 1.
18. Mr Pritchard submitted that the fact that the rod met a flat surface in the defendant's product was an immaterial variation, which did not prevent infringement. That is an argument that patentees often rely on in order to overcome a finding that an alleged infringement falls outside the scope of the claim. It does not entitle a court to ignore whole integers of a claim, or to disregard obviously intentional elements. I reject this argument.
19. Mr Pritchard also submitted that from the description of the second embodiment it was "clear" that the patent taught an arrangement in which one of the locking rods was only in contact with the flat edge of the notch. First, I do not think that the patent does teach that the notch has a flat edge, or that the inner face of the notch is vertical. Second, the teaching of the patent about the second embodiment is that the dimensions of the notch will be adapted. Whether "dimensions" just means size or whether it also extends to shape is not, to my mind, "clear". In Mr Pritchard's illustrative diagram it has a different shape. I do not consider that the argument based on the second embodiment overcomes the limitations of the claim.
20. Mr Pritchard had a number of other criticisms of the judge. But irrespective of the merits of those criticisms, none overcomes the fundamental problem that once the judge had found as a fact that in Scot's product the round rod simply met the flat edge of the lug at one point only, it fell outside claim 1.
21. The other grounds of appeal do not, therefore, arise. I would dismiss the appeal.

**Lady Justice Sharp:**

22. I agree.

**Lord Justice Patten:**

23. I also agree.