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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

FILED

NOV 30 2005

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

BABYDAN CORP. and)
)
FINN ANDERSEN)
)
)
Plaintiffs,)
)
v.)
)
FOUR PAWS PRODUCTS LTD.)
)
Defendant.)

Civil Action No.

05C 6788

JURY DEMANDED

JUDGE GOTTSCHALL

COMPLAINT

MAGISTRATE JUDGE KEYS

Plaintiffs, BabyDan Corp. ("BabyDan") and Finn Andersen ("Andersen") complain of the Defendant, Four Paws Products Ltd. ("Four Paws"), as follows:

The Parties

1. BabyDan is a Danish corporation having its principal place of business at Niels Bohrs Vej 14, DK-8670 Laasby, Denmark.
2. Andersen is a Danish national having a residence in Laesby, Denmark. Andersen is a board member and co-investor of BabyDan.
3. Upon information and belief, Four Paws is a New York corporation with its principal place of business at 50 Wireless Boulevard, Hauppauge, New York 11788.

Jurisdiction and Venue

4. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1332(a)(2), 1338(a) and 1400(b).

5. Personal jurisdiction exists over Four Paws by virtue of its doing business in Illinois.

6. Venue is proper in this Judicial District under 28 U.S.C. §§ 1391(c).

Count 1 - Patent Infringement

7. This is a claim for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

8. On April 6, 1999, United States Patent No. 5,890,320 (the "'320 patent") for a "Barrier Gate Especially for Small Children" was legally issued by the United States Patent and Trademark Office with the entire right, title and interest in said patent being assigned to BabyDan by the inventor Andersen. As such, BabyDan is the sole owner of said patent. A copy of the '320 patent is attached hereto as Exhibit A.

9. Four Paws is infringing the '320 patent by offering for sale and selling in the United States gates that are covered by at least one of the claims of the '320 patent.

10. The invention covered by the '320 patent is of great value to BabyDan. Four Paws' infringing conduct has taken place within the United States without license or permission of BabyDan and it is believed that such activity will continue unless enjoined by this Court.

11. BabyDan has suffered and will continue to suffer damages from the acts of infringement complained of herein.

Count 2 - Breach of Contract

12. Andersen incorporates by reference the allegations of paragraphs 1 through 11 above as if fully set forth herein.

13. Four Paws and Anderson entered into a Settlement Agreement and Mutual Release which was executed by the parties on February 12, 2003, and July 1, 2003, respectively (the "Settlement Agreement"). Four Paws and Andersen entered into the Settlement Agreement to settle, compromise and discharge claims based on Four Paws' infringement of the '320 patent. A copy of the Settlement Agreement is attached hereto as Exhibit B.

14. Section 2 of the Settlement Agreement provides that Four Paws "will not manufacture, use, sell, offer for sale or import any gate, other than the Gates themselves, structurally identical to Item No. 57015 or Item No. 57010 as they existed on May 23, 2002." Section B. of the Settlement Agreement defines "the Gates" as the particular 8,550 Item No. 57015 and 57010 gates that Four Paws had in inventory as of May 23, 2002.

15. Four Paws has breached the Settlement Agreement in violation of at least Section 2 by selling Item No. 57015, 57010 and 57012 gates that are, as far as the '320 patent is concerned, structurally identical to the Item No. 57015 gate as it existed on May 23, 2002.

16. Andersen has suffered and will continue to suffer damages from the conduct of Four Paws complained of herein.

DEMAND FOR RELIEF

WHEREFORE, BabyDan and Andersen respectfully demand judgment against Four Paws, its subsidiaries, affiliates, agents, servants, employees, attorneys and all persons in active concert or in participation with them, granting BabyDan and Andersen the following relief:

(1) A permanent injunction prohibiting Four Paws from further acts of infringement of the '320 patent;

(2) A permanent injunction prohibiting Four Paws from further acts in breach of the Settlement Agreement;

(3) Damages sufficient to compensate BabyDan for the infringement by Four Paws in an amount to be proved at trial, but in no event less than a reasonable royalty, together with prejudgment interest from the date infringement of the '320 patent began;

(4) An award to BabyDan of three times the amount of damages so determined, as provided for in 35 U.S.C. § 284;

(5) A finding that this case is "exceptional," and an award to BabyDan of its costs and reasonable attorneys' fees, as provided in 35 U.S.C. § 285;

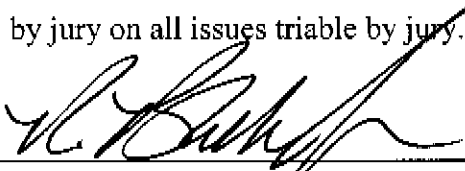
(6) Damages and/or restitution sufficient to compensate Andersen for the breach of the Settlement Agreement by Four Paws;

(7) A finding that Defendant's breach of the Settlement Agreement has been willful and in bad faith; and

(8) Such other and further relief as this Court or jury may determine to be proper and just.

JURY DEMAND

BabyDan and Andersen demand a trial by jury on all issues triable by jury.



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Attorneys for BabyDan Corp. and Finn Andersen



US005890320A

United States Patent [19]
Andersen

[11] **Patent Number:** **5,890,320**
 [45] **Date of Patent:** **Apr. 6, 1999**

[54] **BARRIER GATE ESPECIALLY FOR SMALL CHILDREN**

3,476,427 11/1969 Killelson 292/175
 4,677,789 7/1987 Merry 49/56
 5,272,840 12/1993 Knoeller .

[76] Inventor: **Finn Andersen, Niels Bohrsvej 14, Låsby, Denmark, 8670**

FOREIGN PATENT DOCUMENTS

[21] Appl. No.: **793,456**

2650014 1/1991 France 49/50
 2010164 12/1990 United Kingdom .
 2267725 12/1993 United Kingdom .
 2271603 4/1994 United Kingdom .
 2026253 12/1994 United Kingdom .
 2294080 4/1996 United Kingdom .

[22] PCT Filed: **Aug. 28, 1995**

[86] PCT No.: **PCT/DK95/00346**

§ 371 Date: **Feb. 26, 1997**

§ 102(e) Date: **Feb. 26, 1997**

[87] PCT Pub. No.: **WO96/07008**

PCT Pub. Date: **Mar. 7, 1996**

Primary Examiner—Jerry Redman
Attorney, Agent, or Firm—Watson Cole Grindle; Watson, P.L.L.C.

[30] **Foreign Application Priority Data**

Aug. 26, 1994 [DK] Denmark 0987/94

[51] Int. Cl.⁶ **E05C 21/02**

[52] U.S. Cl. **49/465; 49/463**

[58] Field of Search 49/463, 465, 394, 49/50, 56; 292/175

[57] **ABSTRACT**

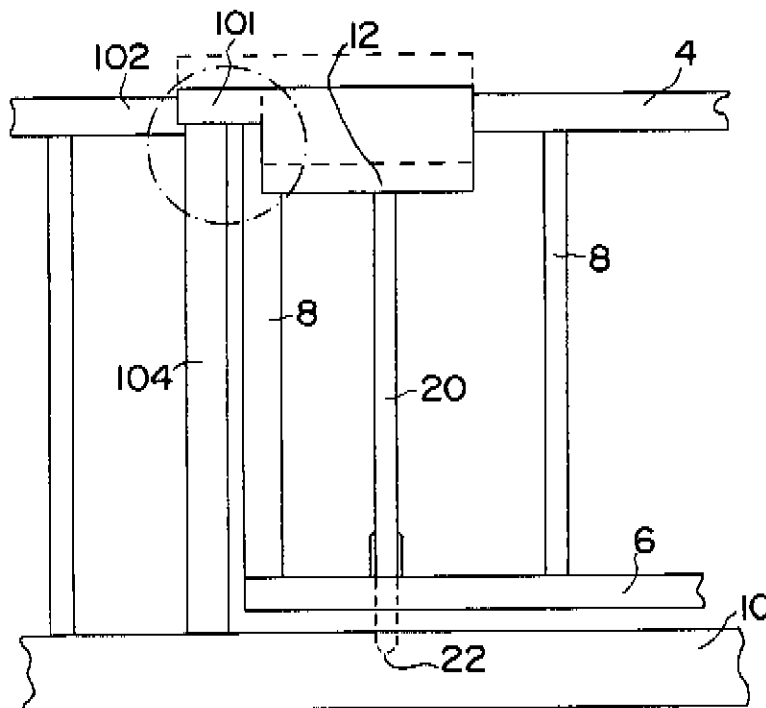
A temporary barrier for an opening includes a frame which is securable in the opening and a gate which is connected to the frame to swing open and closed, the gate including a manually activatable locking device which can include an inverted U-shaped housing that straddles an upper member of the gate, an operating handle that is positioned beneath the upper member and between sides of the U-shaped housing, and a lock bar which extends downwardly from the operating handle to cooperate with a part of the frame to lock or unlock the gate relative to the frame, the operating handle being biased downwardly by springs.

[56] **References Cited**

U.S. PATENT DOCUMENTS

2,392,874 1/1946 Delaez 49/463 X
 2,668,729 2/1954 Watters 49/50 X

10 Claims, 2 Drawing Sheets



U.S. Patent

Apr. 6, 1999

Sheet 1 of 2

5,890,320

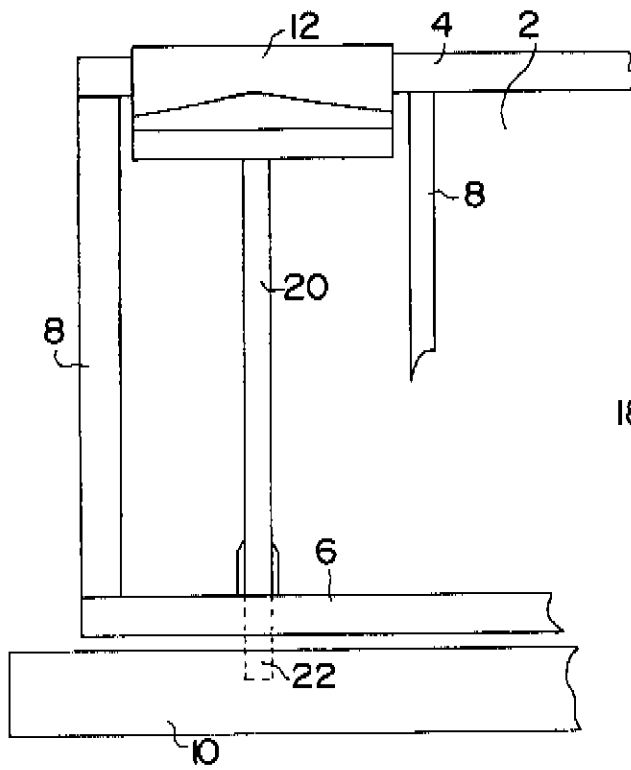


FIG. 1

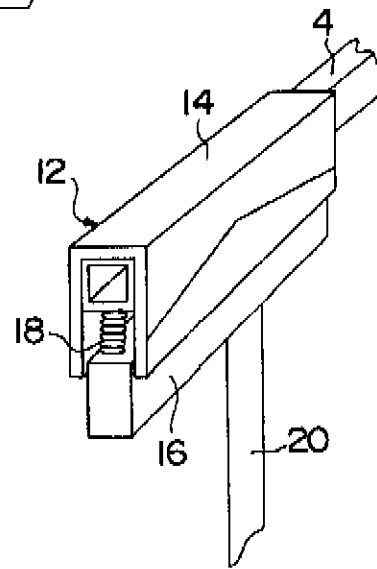


FIG. 2

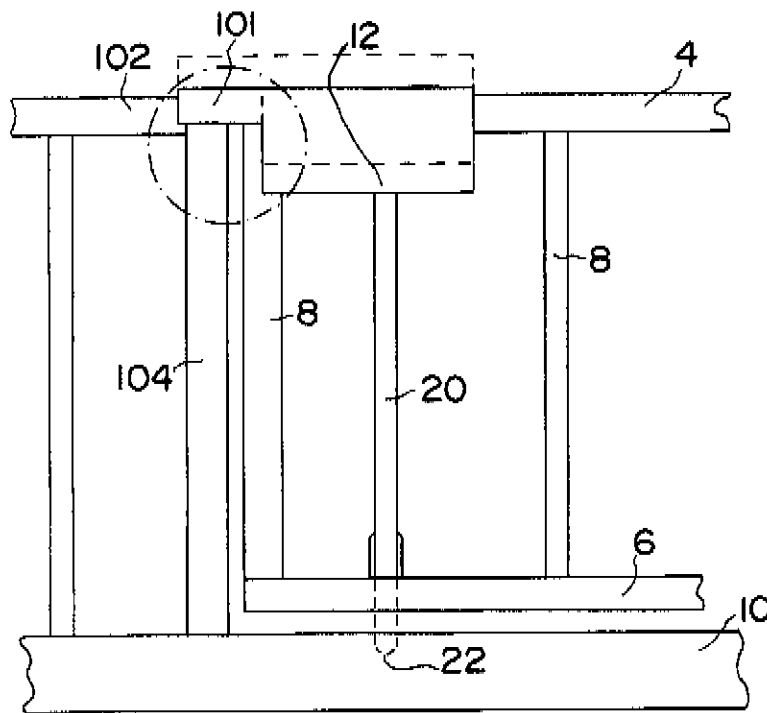


FIG. 3

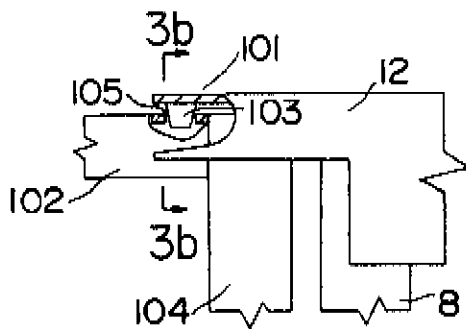


FIG. 3a

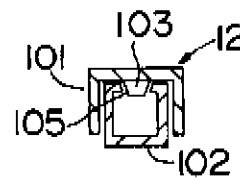


FIG. 3b

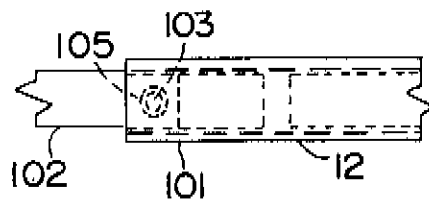


FIG. 3c

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1

BARRIER GATE ESPECIALLY FOR SMALL CHILDREN

BACKGROUND OF THE INVENTION

1. Field of the Invention

The present invention relates to a barrier gate of the type, that includes a frame which is secured in an opening such as a doorway or a staircase so as to seal off the opening, and an openable gate with a locking mounted in the frame for locking the gate in a closed position.

2. The Prior Art

An example of such a child safety gate is known from GB-A 2 226 845. A disadvantage is that the lower corner of the gate is not fixed in the locking position and is deflectable.

SUMMARY OF THE INVENTION

This problem is solved by a child safety gate according to the invention which includes a locking member with an operation handle at the upper member of the gate for the activation of an engaging part at the lower member of the gate, the engaging part being designed for engaging the lower member of the gate which is designed for receiving the engaging part. Hereby a safe fixation of the lowermost corner of the gate is obtained. It is understood that of necessity other locking devices can be fixed to the top corner of the gate, e.g., activated through the same operation handle.

In a simple manner the locking device is designed with an operation handle which is downwardly loaded with a spring, i.e., when opening the gate it is to be pulled upwards. This ensures an easy handling for adults combined with it being a difficult movement, if not even an impossible one, for small children to operate. At the same time it is possible to provide an extra security through a heavy spring load, which only can be overcome by an adult person.

The locking device is preferably fixed to the upper member of the gate, with the operation handle below the member and at a distance such that an adult person, with the palm of his hand on the upper member, can nevertheless reach below the operation handle and activate it with his fingers. This results in an operation that is easy to accomplish and a simple construction.

The engaging part is in a particularly simple manner formed at the end of a bar connected to the operation handle and where the end extends through the introduction in the upper member of the gate and can go into a locking engagement with a lock hole on the top side of the lower member of the gate frame. Hereby a safe locking of the lowermost corner of the gate is achieved.

In order to unload or as a stop for the operation handle, the bar is designed with a stopping means for co-operation with the top side of the lower member of the gate frame for determination of the extreme position of the bar. This gives a simple construction as the operation handle in this case does not need to be designed with proper stops.

Alternatively, the engaging part can be shaped as a fork fitting that grips around the top side of the lower member of the frame, which also provides a safe fixation.

A particularly simple embodiment is achieved by forming the fork fitting so that it also grips around the lower member of the gate and is guided thereon. Hereby extra equipment for guiding the fitting is avoided.

The connection between the operation handle and the engaging parts does not necessarily have to be a rigid

2

connection, but could be a wire, a string, a strap or the like, and that the engaging part is spring-loadedly arranged for locking engagement in the lower member of the gate. In such a case the guidance is suitably hidden away in a tube with a view to the child's safety.

A particularly preferred embodiment of the locking device includes a U-shaped part fixed straddling on the upper member of the gate, and the operation handle extends up between the sides of the U-shaped part, and a spring means is placed between the lower side of the upper member of the gate and the top side of the operation handle. This construction is simple and easy to mount and easy to operate but foremost child proof.

In barrier gates of the type where a fixed grid piece is present at each side of the gate, the operation handle can be designed in a U-shape with an elongation beyond the front edge of the gate intended for engagement across the top side of the upper member of the gate frame for providing a locking engagement therewith. Hereby, a fixation of the top corner of the gate is obtained as well. The fixation can be further improved in that the elongated part furthermore is provided with a dowel for engagement with a hole on the top side of the upper member of the gate frame.

The invention will in the following be further explained with reference to the accompanying drawing that exclusively displays the essential parts for the understanding of the invention.

In the drawings:

BRIEF DESCRIPTION OF THE DRAWINGS

FIG. 1 shows a section of the front end of a first embodiment of the gate.

FIG. 2 shows a perspective view of the handle, and

FIG. 3 shows a section at the front end of a second embodiment of the gate according to the invention.

DETAILED DESCRIPTION OF THE PREFERRED EMBODIMENTS

In the figures a gate is displayed where a number of gate bars 8 extend between an upper member 4 and a lower member 6. The gate is hinged to the frame at the side that is not shown in the drawing. The lower member of the frame is shown by the reference number 10.

The locking device of the gate comprises a handle 12, which consists of a U-shaped top part 14 that is placed on the upper member 4 of the gate and that extends beyond the member 4. Below the upper member 4 an underpart 16 is placed in the top part 14. This underpart 16 is slidably placed in the top part 14 and loaded by spring 18 to an extreme position, i.e., downwards. The spring-load could be provided by coil springs, but most suitably a leaf spring is used. To the underpart a bar 20 is connected that also functions as a gate bar. The end of the bar is formed as a fork fitting 22 that grips around the lower member of the gate and extends down on the side of the lower member of the frame, and through this locks the lower corner of the gate in a closed position. In the plane of the gate the bar 22 could be provided with not shown side guiding projections on the lower member of the gate.

Instead of the fork fitting the bar can extend through a hole in the lower member of the gate and down in an underlying hole in the lower member of the frame, whereby a locking effect is achieved.

In FIG. 3 a second embodiment of the gate according to the invention is shown where the handle 12 has an extension

5,890,320

3

for engaging the top side of the upper member on the gate that here is of the type where both sides of the gate have a grid piece. The handle is loosely placed on the upper member of the gate, but is otherwise spring-loaded as before, as the handle has a bottom piece where the bar 20 is connected to. The spring is provided between the bottom piece and the lower side of the upper member of the gate in such a way that the handle is held down by the spring force. By pulling the handle as a whole upwards to the position indicated in dotted lines, the locking engagement is released, as the bar is pulled up from the lower member and the extension of the handle is lifted free from the upper member.

By the invention a simple locking mechanism is thus provided that in the locked position of the gate simultaneously fixes the lower corner of said gate.

I claim:

1. A child barrier for temporary barring of an opening by insertion and securing of the barrier in the opening, said child barrier comprising:

a frame which is securable in the opening and which includes a lower member having a lock hole on a top side thereof, and

a gate which is hinged to said frame so as to swing relative to said frame to open and close said opening, said gate having an upper member, a lower member having a hole therethrough, and a lock device having an operating handle at said upper member and a lock bar extending from said operating handle to said lower member and longitudinally movable by said operating handle to move through said hole in said lower member of the gate to enable an end part of said lock bar to lockingly engage in the lock hole of the lower member of said frame.

2. A child barrier according to claim 1, wherein said lock bar includes stop means for cooperating with the lower member of said gate to determine an extreme lower positioning of said lock bar.

3. A child barrier according to claim 1, wherein said gate includes a plurality of gate bars which extend between said upper member and said lower member thereof, said lock bar functioning as one of said gate bars.

4. A safety barrier for temporary insertion in an opening to prevent passage of a person or animal through the opening, said safety barrier comprising:

a frame which is securable in the opening and which includes a substantially horizontal lower member,

a gate which has one end hinged to said frame so that an opposite free end can swing relative to said frame to open and close said opening, said gate comprising an upper member, a lower member, and a locking device, said locking device including an inverted U-shaped housing straddling said upper member, an operating handle positioned beneath said upper member and between sides of said U-shaped housing, a spring means located between the operating handle and the upper member to bias said operating handle downwardly relative to said upper member, and a lock bar which extends downwardly from said operating handle to move longitudinally based on movement of said

4

operating handle relative to said upper member, a lower end of said lock bar being movable downwardly to lock the free end of said gate to said frame and close said opening when said operating handle is biased by said spring means downwardly relative to said upper member, and upwardly to unlock the free end of said gate relative to said frame when said operating handle is manually moved upwardly relative to said upper member.

5. A safety barrier according to claim 4, wherein said lock bar includes stop means for cooperation with said lower member of said gate to determine an extreme lower positioning of said lock bar.

6. A safety barrier according to claim 4, including a fork means at said lower end of said lock bar for straddling a top of the lower member of said frame to lock said gate in position.

7. A safety barrier for temporary insertion in an opening to prevent passage through the opening of a person or animal, said safety barrier comprising:

a frame which is securable in the opening and which includes an upper member and a substantially horizontal lower member,

a gate which has one end hinged to said frame so that an opposite free end can swing relative to said frame to open and close said opening, said gate comprising an upper member, a lower member, a side member, and a locking device, said locking device including a U-shaped operating handle which straddles said upper member of said gate and is movably mounted relative thereto, said operating handle extending beyond said side member to engage with a top side of the upper member of said frame for locking engagement therewith, and a lock bar which extends downwardly from said operating handle to move longitudinally based on movement of said operating handle relative to said upper member, a lower end of said lock bar being movable downwardly to lock the free end of said gate to said frame and close said opening when said operating handle is biased by said spring means downwardly relative to said upper member, and upwardly to unlock the free end of said gate relative to said frame when said operating handle is manually moved upwardly relative to said upper member.

8. A safety barrier according to claim 7, wherein said lock bar includes stop means for cooperation with said lower member of said gate to determine an extreme lower positioning of said lock bar.

9. A safety barrier according to claim 7, including a fork means at said lower end of said lock bar for straddling a top of the lower member of said frame to lock said gate in position.

10. A safety barrier according to claim 7, wherein said upper member of said frame includes a hole and wherein said operating member includes a dowel which fits in said hole when said operating member engages with the top side of said upper member of said frame.

* * * * *

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Agreement") is made and entered into by and between Finn Andersen ("Andersen"), a Danish national having a residence in Laesby, Denmark; and Four Paws Products Ltd, a New York corporation having a principal place of business in Hauppauge, NY ("Four Paws"). Andersen and Four Paws are collectively referred to herein as "Parties."

RECITALS AND DEFINITIONS

A. On May 23, 2002, Four Paws received a letter from counsel for Andersen, accusing Four Paws of infringing Andersen's United States Patent No. 5,890,320 issued April 6, 1999 (the "Patent"). By that letter Andersen alleged that the Four Paws Walk-Thru Metal Gate, Item No. 57015, infringed several claims of the Patent.

B. Prior to May 23, 2002, Four Paws distributed two varieties of gates to which this Agreement pertains: Item No. 57015, and a similar Item No. 57010. As of May 23, 2002, Four Paws had in its inventory 8,550 gates that were either Item No. 57015 or Item No. 57010. These particular 8,550 gates will be referred to collectively hereinafter as "the Gates."

C. Andersen and Four Paws are entering into this Agreement to settle, compromise and discharge any and all claims based on Four Paws's alleged infringement of the Patent based on Four Paws's manufacture, use, sale, offer for sale or importation of the Gates.

AGREEMENT

In consideration of the foregoing recitals, and all of the covenants and representations expressed herein, and for other good and valuable consideration, the receipt and sufficiency of



which the Parties acknowledge, and intending to be legally bound, the Parties and agree as follows:

1. **Payment.** At the time that Four Paws forwards to Andersen a copy of this Agreement, as signed by Andersen and an authorized representative of Four Paws, Four Paws shall include therewith a check in the amount of Twenty one thousand three hundred seventy-five United States Dollars (\$21,375.00) (hereinafter referred to as the "Payment") made out to Finn Andersen.

2. **No Further Sale, etc. of Certain gates.** Four Paws acknowledges that other than the Gates themselves, it has not manufactured, used, sold, offered for sale or imported any gate structurally identical to Item No. 57015 or Item No. 57010 as they existed on May 23, 2002, and promises that, for the remaining life of the Patent, it will not manufacture, use, sell, offer for sale or import any gate, other than the Gates themselves, structurally identical to Item No. 57015 or Item No. 57010 as they existed on May 23, 2002.

3. **Covenant not to Sue Third Parties.** Andersen shall not bring any action for infringement of the Patent based on the use, sale, offer for sale or importation of the Gates by any third party.

4. **Release by Andersen.** Andersen, for himself and any and all successors, licensees, affiliates, heirs and assignees, and the directors, officers, shareholders, members, partners, employees, attorneys, and agents of any of the foregoing, hereby releases and forever discharges Four Paws and each of its predecessors, successors, representatives, directors, officers, shareholders, employees, attorneys, agents, subsidiaries, affiliates, heirs and assignees,

from any and all claims based on infringement by Four Paws of the Patent by reason of Four Paws's manufacture, use, sale, offer for sale and/or importation of the Gates.

5. **Release by Four Paws.** Four Paws, for itself and for each of its predecessors, successors, representatives, directors, officers, shareholders, members, partners, employees, attorneys, agents, subsidiaries, affiliates, heirs and assignees, hereby releases and forever discharges Andersen and each of his successors, representatives, heirs and assignees, and any current or former members, directors, officers, shareholders, employees, attorneys, agents, or subsidiaries of the foregoing, from any and all claims and causes of action whatsoever, whether known or unknown, asserted or unasserted, arising in whole or in part from the assertion by Andersen that Four Paws was infringing the Patent by its manufacture, use, sale, offer for sale or importation of the Gates.

6. **No Waiver of Defenses.** Nothing in this Agreement affects any right of Four Paws to assert and prove any defense, counterclaim, or declaratory action with regard to the Patent, including, but not limited to, the rights to assert patent invalidity, unenforceability, inequitable conduct in procurement, false advertising, or unfair competition, as a defense or response to any future act, threat, claim or action (formal or informal) brought or made by Andersen against Four Paws relating to the Patent.

7. **No Admission of Liability.** The Parties enter into this Agreement solely for the purposes of settling, compromising and discharging disputed claims in order to avoid the nuisance and expense of litigation. Nothing contained in this Agreement shall be construed as a confession of liability of wrongdoing of any kind on the part of either of the Parties. Nothing contained in this Agreement shall be construed as an admission that the Patent is, or is not, valid

or enforceable, or as admission that any Gate or other gate construction infringes, or does not infringe, the Patent.

8. **No Assignment of Claims.** Each of the Parties represents and warrants that he or it has not sold, assigned, or transferred in any way any claims released in paragraph nos. 4 - 5 above (the "Released Claims") and that the Released Claims are intended to be full and complete general releases of Released Claims. Each Party agrees to indemnify and hold the other Party harmless of and from any and all loss incurred including, but not limited to, reasonable attorneys' fees and costs caused by the Party's sale, assignment or transfer of any of the Released Claims in breach of this paragraph.

9. **Confidentiality.** All Parties hereto agree that the terms of this Agreement shall be confidential and shall not be disclosed to any persons or entities who are not Parties to this Agreement, except: (1) to the Parties' attorneys, accountants, tax and financial advisors, bankers, insurers, investors, lenders or bona fide purchasers seeking due diligence; (2) in response to a lawful subpoena or court order, provided that notice and an opportunity to object or seek a protective order is given to the other Party; (3) to the extent necessary to comply with state or federal laws or regulations; (4) to the extent necessary to enforce the terms of this Agreement; or (5) to persons covered by the Released Claims. In making any disclosure permitted in this paragraph, the Parties agree that they will limit the content of all disclosures to the extent possible and make only the disclosures necessary to achieve the purposes as stated in this paragraph.

10. **Governing Law; Venue.** This Agreement shall be governed and construed in accordance with the laws of the State of New York without regard to laws relating to conflict and

choice of laws. All disputes arising or related to this Agreement, if brought initially by Four Paws, shall be brought in the appropriate state or federal court located in Chicago, Illinois, or if brought initially by Andersen, shall be brought in the appropriate state or federal court in New York, New York.

11. **Entire Agreement.** This Agreement constitutes the sole and entire Agreement and understanding among the Parties as to its subject matter and supercedes all prior discussions, agreements and understandings of every kind and nature among the Parties as to such subject matter.

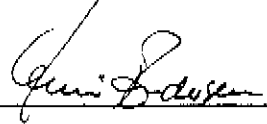
12. **Construction of Agreement.** The language of this Agreement shall be construed as a whole according to its fair meaning and attainment and shall not be construed for or against either Party hereto, regardless of who drafted or was principally responsible for the drafting of this Agreement or any specific term or condition hereof. This Agreement shall be deemed to have been drafted by both Parties hereto and no Party shall urge otherwise. The headings used in this Agreement are for the convenience of the Parties and are not to be considered in construing the meaning of any of the terms herein.

13. **Authority to Enter this Agreement.** Each person represents by his or her signature below that he or she has the authority to sign or act on behalf of the Party or entity for whom he or she signs.

14. **Binding Effect.** This Agreement is binding upon and inures to the benefit of each of the Parties hereto and their respective heirs, next of kin, executors, administrators, successors, assigns, officers, directors, shareholders, employees and agents.


15. Each of the Parties to this Agreement acknowledges that no promise, inducement or agreement other than those stated herein was made to them in connection with this Agreement and that this Agreement constitutes the entire Agreement between the Parties.

FINN ANDERSEN



Dated: 7/1-03

FOUR PAWS PRODUCTS LTD.



Allen Simon
President

Dated: 2/12/03