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Paper 14
Entered: December 19, 2014

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARTSANA USA, INC.,
Petitioner,

v.

KOLCRAFT ENTERPRISES, INC.,
Patent Owner.

Case IPR2014-01053
Patent 8,388,501 B2

Before JAMES T. MOORE, HYUN J. JUNG, and
BARRY L. GROSSMAN, *Administrative Patent Judges.*

MOORE, *Administrative Patent Judge.*

DECISION
Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

A. Background

Artsana USA, Inc. ("Petitioner") filed a Corrected Petition (Paper 5, "Pet.") seeking to institute an *inter partes* review of claims 1–20 of U.S. Patent No. 8,388,501 B2 ("the '501 patent") pursuant to 35 U.S.C. §§ 311–

319. Kolcraft Enterprises, Inc. ("Patent Owner") filed a Preliminary Response (Paper 11, "Prelim. Resp."). We have jurisdiction under 35 U.S.C. § 314, which provides that an *inter partes* review may not be instituted "unless . . . there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition."

Petitioner contends the challenged claims are unpatentable under 35 U.S.C. § 102 or 35 U.S.C. § 103 on the following specific grounds (Pet. 20–59):

References	Basis	Claims challenged
Dole[1]	§ 102	14, 19, and 20
Rupert[2]	§ 102	14 and 19
Dole and Graco[3]	§ 103	1–13, 15, 16, and 18
Tyco[4] and Graco	§ 103	1, 6, 7, 9, 12, and 13
Tyco, Graco, and Dole	§ 103	2–5, 8, and 11
Tyco and Rupert	§ 103	14, 19, and 20
Tyco, Rupert, and Century[5]	§ 103	15–18

Our factual findings and conclusions at this stage of the proceeding are based on the evidentiary record developed thus far (prior to Patent Owner's Response). This is not a final decision as to patentability of claims

[1] U.S. Patent No. 3,223,098, Dec. 14, 1965 (Ex. 1003).
[2] U.S. Patent No. 2,948,287, Aug. 9, 1960 (Ex. 1006).
[3] Graco Pack 'N Play Product Brochure, copyright 2001 ("Graco") (Ex. 1004).
[4] Tyco's Sesame Street Cozy Quilt Gym ("Tyco") (Ex. 1009).
[5] Century Fold -n- Go Care Center Manual ("Century") (Ex. 1005).

for which *inter partes* review is instituted. Our final decision will be based on the record as fully developed during trial.

For reasons discussed below, we institute *inter partes* review of the '501 patent as to claims 1–5 and 8 based on the authorized grounds, as discussed herein, and we do not institute *inter partes* review of claims 6–7 and 9–20.

B. Related Proceedings

Petitioner informs us that the '501 patent is at issue in *Kolcraft Enterprises, Inc. v. Artsana USA, Inc.*, No. 1:13-cv-04863 (N.D. Ill.). Pet. 1.

C. The '501 Patent

The '501 patent relates to a play gym which suspends an object over a mat within a play yard. Ex. 1001, Abstract. Figure 2 is illustrative and is reproduced below.

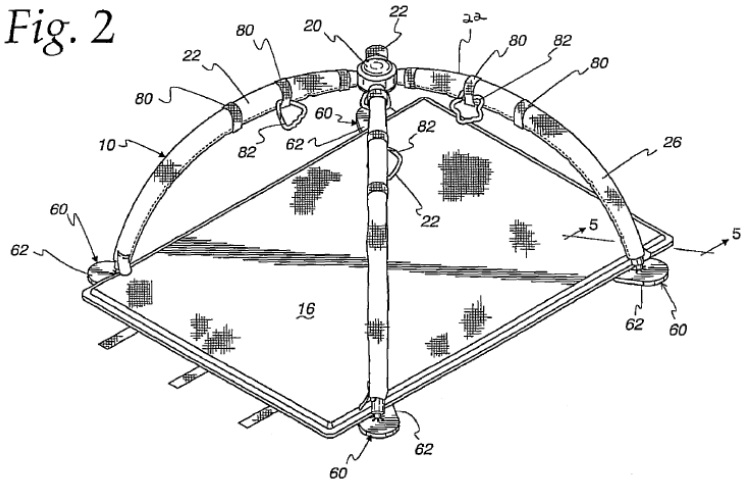

Figure 2 is a perspective view of a play gym and mat

D. Illustrative Claim

As noted above, Petitioner challenges claims 1–20 of the '501 patent, of which claims 1, 9, and 14 are independent. Claim 1 is illustrative of the challenged claims and is reproduced below:

> 1. An apparatus comprising:
>
> at least one of a play yard or a bassinet;
>
> a floor mat dimensioned to substantially cover a floor of the play yard or the bassinet, the floor mat having a connector positioned in proximity to a perimeter edge of the floor mat, and the floor mat to couple to at least one of the play yard or the bassinet when the floor mat is located within the play yard or the bassinet; and
>
> a play gym to suspend an object above the floor mat, the play gym having a fastener to engage the connector of the floor mat to couple the play gym to the floor mat, the floor mat to couple the play gym to the play yard or the bassinet when the play gym is positioned in one of the play yard or the bassinet.

II. DISCUSSION

A. Claim Construction

In an *inter partes* review, claim terms in an unexpired patent are interpreted according to their broadest reasonable construction in light of the Specification of the patent in which they appear. 37 C.F.R. § 42.100(b); *see also* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,766 (Aug. 14, 2012). Claim terms are given their ordinary and customary meaning as would be understood by one of ordinary skill in the art in the context of the entire disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). Any special definition for a claim term must be set forth in the Specification with reasonable clarity, deliberateness, and precision. *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994).

Petitioner does not assert a particular meaning for the term "play yard" or the term "play gym," although the terms occur singularly, and occasionally together, in all of the challenged claims. There seems to be little doubt that play yards were well known in the art. Pet. 10 (citing Ex. 1001, 2:60–62). There also seems to be little doubt that play gyms were known in the art. Ex. 1001, 1:60–66.

The proper construction for these terms is necessary in order to properly address the Patent Owner's contention concerning the sufficiency of the description in the cited prior art. *See* Prelim. Resp. 25.

Patent Owner asserts that the term "play gym" should be construed as "an apparatus that is specifically designed: (1) to be used by small children – namely babies and infants; and (2) to suspend an object — namely a toy — above a mat or other structure to which the play gym is coupled." Prelim. Resp. 9.

There are no size limitations in the claims, and no requirement in the claims that the apparatus only be used in combination with babies and infants (although an alternative embodiment includes a bassinet). Indeed, Patent Owner's statement that it is "to be used" makes the point that the interpretation the Patent Owner desires is a statement of intended use, rather than a definition of a structure. It is not unreasonable to imagine the claim covering, for example, a device suspended over an adult in rehabilitation in a confined area.

Petitioner's expert witness, Mr. Drobinski, testifies that the '501 patent describes a known prior art play gym "having two flexible arches for suspending objects such as toys or the like is coupled to the corners of a rectangular mat via snaps or the like. The arches cross and are snapped to

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