

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARTSANA USA, INC.
Petitioner

v.

KOLCRAFT ENTERPRISES, INC.
Patent Owner

Case IPR2015-00582

Patent 8,388,501

**MOTION FOR JOINDER TO RELATED
INSTITUTED *INTER PARTES* REVIEW (37 C.F.R. § 42.122(b))**

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I. STATEMENT OF RELIEF REQUESTED

Pursuant to 35 U.S.C. § 315(c) and 37 C.F.R. §42.122(b), Petitioner Artsana USA, Inc. (“Artsana” or “Petitioner”) files this Motion for Joinder of the concurrently filed Second Petition for *Inter Partes Review* (“Second Petition”), with the previously instituted *inter partes* review styled as *Artsana USA, Inc. v. Kolcraft Enterprises, Inc.*, Case No. IPR2014-01053 (“First IPR Proceeding”).

II. STATEMENT OF MATERIAL FACTS

1. On July 8, 2013, Patent Owner, Kolcraft Enterprises, Inc. (“Kolcraft” or “Patent Owner”), filed suit against Petitioner, in a case styled *Kolcraft Enterprises, Inc. v. Artsana USA, Inc.*, No. 1:13-cv-04863 (N.D. Ill.) (“Co-Pending Litigation”), asserting at least claims 1, 9, and 14 of U.S. Patent No. 8,388,501 (“the ‘501 patent”). Petitioner was served with Patent Owner’s Complaint on July 11, 2013.

2. On June 27, 2014 Petitioner filed a Petition for *Inter Partes Review* (hereinafter, “First Petition”) requesting review of claims 1-20 of the ‘501 Patent, now instituted as *Artsana USA, Inc. v. Kolcraft Enterprises, Inc.*, Case No. IPR2014-01053 (*i.e.*, “First IPR Proceeding”). In its First Petition, Petitioner raised seven grounds of unpatentability based on five prior art references:

(1) U.S. Patent No. 3,223,098 to Dole (“Dole”) (Ex. 1003);

(2) U.S. Patent No. 2,948,287 to Rupert (“Rupert”) (Ex. 1006);

(3) The Graco Pack ‘N Play Model No. 386-11-01 Owner’s Manual (“Graco”) (Ex. 1004);

(4) The Century Fold-n-Go Care Center Manual (“Century”) (“Ex. 1005);
and

(5) A certified copy of the publication of Tyco’s Sesame Street Cozy Quilt Gym, which was taken from the Declaration of Denny Conley and accompanying Exhibits filed on July 18, 1995 in a litigation styled, *Tyco Industries, Inc. v. TinyLove, LTD and The Maya Group, Inc.*, (D.N.J. 1995) (No. 95-1135) (Ex. 1009)¹.

3. On September 15, 2014, the Co-Pending Litigation was stayed.

4. On December 19, 2014, the Board instituted the First IPR Proceeding on claims 1-5 and 8 of the ‘501 patent based on Ground 3 from the First Petition; however, the Board did not authorize *inter partes* review on Grounds 4-7 because they were based in part on Tyco, Ex. 1009, which the Board concluded “ha[d] not been established to be a patent or printed publication.” Ex. 1017 at p. 29-33. Shortly after institution of the First IPR Proceeding, the Board issued a Scheduling Order (*see* IPR2014-01053, Paper 15). Patent Owner’s response to the First Petition is not due until March 12, 2015. *Id.* at pg. 6.

¹Throughout this motion, Petitioner refers to this reference from the First Petition as “Tyco, Ex. 1009.”

5. On December 31, 2014, Petitioner filed a Request for Rehearing (First IPR Proceeding, Paper 16) seeking reconsideration of the determinations: (1) that Tyco, Ex. 1009 did not constitute a printed publication, and (2) the refusal to institute a review on Grounds 4-7 as asserted in the Petition. At the time of filing of this Motion for Joinder, Petitioner's Request for Rehearing remains pending before the Board.

6. Petitioner is concurrently filing its Second Petition, challenging claims 1-20 of the '501 patent on grounds substantially identical to Grounds 4-7 of the First Petition, with a 1995 Tyco Playtime™ Catalog © 1994 (Ex. 1015) ("Tyco, Exhibit 1015") which shows the same Tyco Cozy Quilt Gym as Tyco, Ex. 1009 that the Board concluded "ha[d] not been established to be a patent or printed publication." Ex. 1017 at p. 29-33.

7. Subsequent to the filing of the First Petition, Petitioner located the Tyco, Exhibit 1015 which Petitioner was unable to locate prior to filing its First Petition.

8. Apart from Tyco, Exhibit 1015, Petitioner relies on the same prior art as in the First Petition, namely, Dole, Rupert, Graco, and Century in its proposed obviousness rejections herein.

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