

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 B2

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

MOORE, *Administrative Patent Judge*

DECISION

Denying *Inter Partes* Review
Denying Motion for Joinder
37 C.F.R. § 42.108

I. INTRODUCTION

A. Background

Artsana USA, Inc. (“Petitioner”) filed a paper styled “Second Petition for *Inter Partes* Review of U.S. Patent No. 8,388,501” (Paper 1, “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.

Petitioner also filed a Motion for Joinder (Paper 3). The Motion for Joinder seeks joinder to IPR2014-01053. Kolcraft Enterprises, Inc. (“Patent Owner”) filed a Preliminary Response (Paper 7). 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. § 103 on the following specific grounds (Pet. 4–5):

References	Basis	Claims challenged
Tyco ¹ in view of Graco ²	§ 103	1, 6, 7, 9, 10, 12 and 13
Tyco, Graco, and Dole ³	§ 103	2–5, 8 and 11
Tyco and Rupert ⁴	§ 103	14, 19, and 20
Tyco, Rupert, and Century ⁵	§ 103	15–18

For reasons discussed below, we decline to institute *inter partes* review of the ’501 patent.

¹ 1995 Tyco Playtime Catalog copyright 1994 (“Tyco”) (Ex. 1015).

² Graco Pack ’N Play Model No. 386-11-01 Owner’s Manual, copyright 2001 (“Graco”) (Ex. 1004).

³ U.S. Patent No. 3,223,098, Dec. 14, 1965 (“Dole”) (Ex. 1003).

⁴ U.S. Patent No. 2,948,287, Aug. 9, 1960 (“Rupert”) (Ex. 1006).

⁵ Century Fold-n-Go Care Center Instruction Manual dated 1998 (“Century”) (Ex. 1005).

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. 1–2 and Ex. 1002. Patent Owner has requested adverse judgment in related IPR2014-01053, also concerning the '501 patent, which request has been granted (Paper 24 in IPR2014-01053). Petitioner has moved for joinder with IPR2014-01053 (Paper 3). There is also a copending *inter partes* review petition pending, instituted May 29, 2015, and given number IPR2015-00286 challenging U.S. Patent No. 8,764,612.

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.

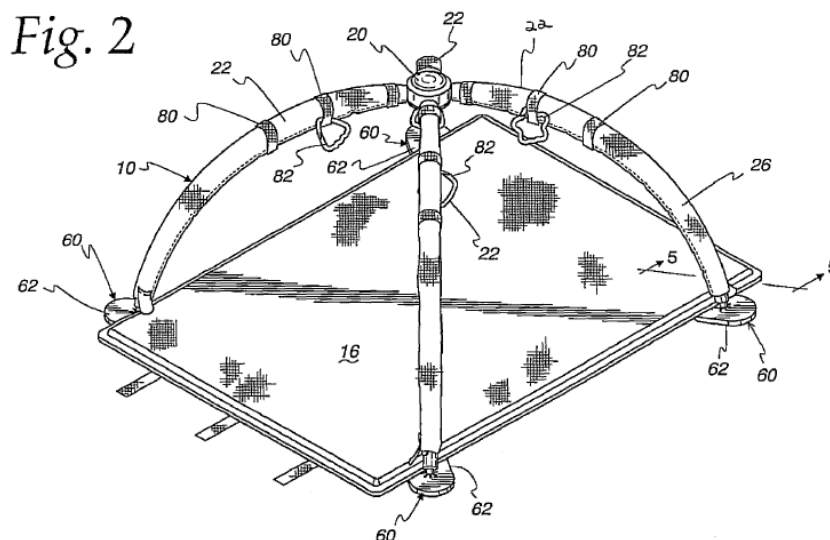


Figure 2 is a perspective view of a play gym and mat

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

Procedural Matters

Patent Owner filed suit against Petitioner asserting the '501 patent. The complaint was served upon the Petitioner on July 11, 2013. Paper 3 ¶1. The instant Petition was filed January 20, 2015, more than a year from the service date of the complaint in the infringement civil action.

Normally, such a Petition would be time barred. 35 U.S.C. § 315(b). Under certain circumstances, a Petitioner can file a petition and request joinder of the later proceeding, if instituted, with a previous proceeding. 35 U.S.C. § 315(c).

In order for a proceeding to be joined with another, however, there must be a motion filed for joinder to a proceeding, and the proceeding sought to be joined with must be an ongoing proceeding.

37 C.F.R. § 42.122.

Patent Owner requested adverse judgment in IPR2014-01053 (Paper 23 in IPR2014-01053). Although Petitioner sought a delay in terminating that proceeding via conference call, that request was denied, and adverse judgment was entered on some of the claims of the '501 patent.

The practical effect of that entry of judgment was to end IPR2014-01053 as a proceeding. As Paper 3 seeks joinder to that particular *inter partes* review proceeding, the motion for joinder must be denied.

Thus, without the benefit of joinder, the instant Petition fails to comply with the time requirements of 35 U.S.C. § 315(b).

As a consequence, the instant petition is denied.

III. CONCLUSION

For the foregoing reasons, we deny the Petition because it was not filed within the time limits imposed under 35 U.S.C. § 315(b).

IV. ORDER

For the reasons given, it is
ORDERED that the Motion for Joinder is DENIED, and
FURTHER ORDERED that, pursuant to 35 U.S.C. § 315(b), no *inter partes* review is instituted as to claims 1–20 of the '501 patent.

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