

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

THORLEY INDUSTRIES LLC, D/B/A 4MOMS,
Petitioner,

v.

KOLCRAFT ENTERPRISES, INC.,
Patent Owner.

Case IPR2016-00352
Patent 9,027,180 B2

Before MICHAEL R. ZECHER, BRIAN J. McNAMARA, and
DANIEL J. GALLIGAN, *Administrative Patent Judges*.

GALLIGAN, *Administrative Patent Judge*.

DECISION

Institution of *Inter Partes* Review
35 U.S.C. § 314(a) and 37 C.F.R. § 42.108

I. INTRODUCTION

Thorley Industries LLC, d/b/a 4Moms (“Petitioner”) filed a Petition (“Pet.”) requesting *inter partes* review of claims 1–18 of U.S. Patent No. 9,027,180 B2 (“the ’180 patent,” Ex. 1001¹). Paper 1. Kolcraft Enterprises, Inc. (“Patent Owner”) timely filed a Preliminary Response. Paper 12 (“Prelim. Resp.”). We have jurisdiction under 35 U.S.C. § 314 and 37 C.F.R. § 42.4(a).

The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted unless the information presented in the Petition shows “there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.”

After considering the Petition, the Preliminary Response, and associated evidence, we conclude that Petitioner has demonstrated a reasonable likelihood of prevailing in showing the unpatentability of all challenged claims. Thus, we institute an *inter partes* review as to claims 1–18 of the ’180 patent.

A. *Related Matters*

Petitioner and Patent Owner cite the following two judicial matters in the United States District Court for the Northern District of Illinois as involving the ’180 patent: (1) *Kolcraft Enterprises, Inc. v. Thorley*

¹ In the Notice of Filing Date, the Board identified defects in Petitioner’s exhibits that required correction. Paper 3, 2. In response, Petitioner timely filed corrected exhibits on January 5, 2016. *See* Paper 4; Exhibits 1001–19. To clarify the record, we will exercise our discretion and expunge the defective exhibits, which are the exhibits bearing a filing date in PRPS of December 16, 2015. *See* 37 C.F.R. § 42.7.

Industries LLC, d/b/a 4Moms, No. 1-15-cv-07954; and (2) Kolcraft Enterprises, Inc. v. Graco Children's Products Inc., No. 1-15-cv-07950. See Pet. 3; Paper 6.

B. The '180 Patent

The '180 patent is directed to foldable, portable "play yards." Ex. 1001, Abstract. In particular, the '180 patent discloses an exemplary play yard having

a collapsible upper frame, a collapsible lower frame, and posts to support the upper frame above the lower frame. The posts include respective tracks. The example also includes a foldable, frameless enclosure operatively coupled to the upper frame, the lower frame and the posts. The enclosure has a plurality of sides and a bottom to define an enclosure volume. The enclosure also has a plurality of corner beads dimensioned for receipt in a respective one of the tracks to secure the enclosure to the posts.

Ex. 1001, Abstract. Figure 1 of the '180 patent is reproduced below:

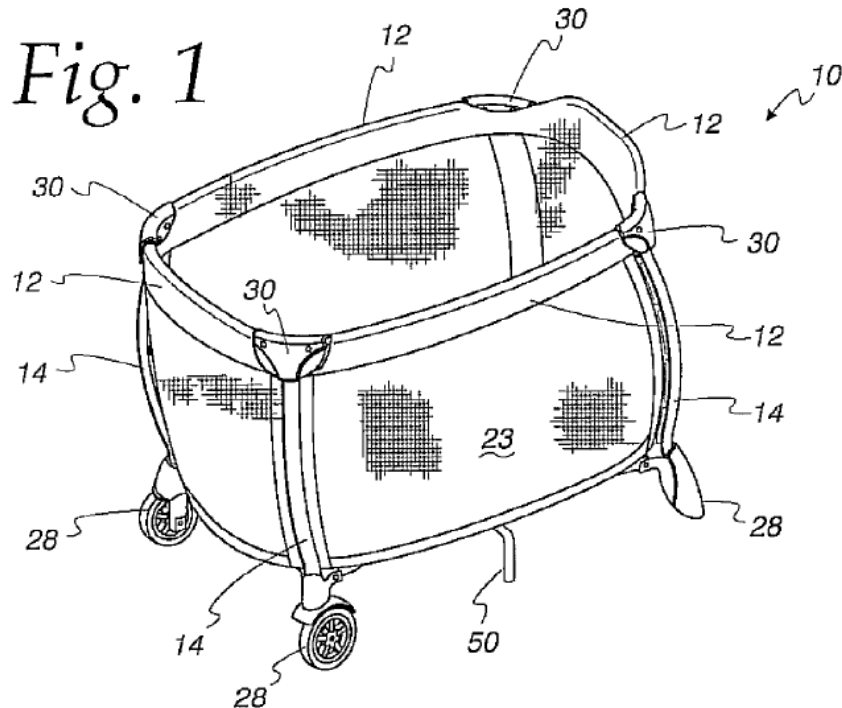


Figure 1 depicts “an example play yard constructed in accordance with the teachings of the invention.” Ex. 1001, 1:39–40, 2:11.

C. Illustrative Claims

Claims 1, 7, and 11 are independent claims. Claims 2–6 depend directly or indirectly from independent claim 1; claims 8–10 depend from claim 7; and claims 12–18 depend directly or indirectly from claim 11. Claims 1 and 7 are illustrative of all the challenged claims and are reproduced below:

1. A play yard comprising:
 - a collapsible upper frame;
 - a collapsible lower frame;
 - posts to support the upper frame above the lower frame, the posts including respective channels; and
 - a foldable, frameless enclosure operatively coupled to the upper frame, the lower frame and the posts, the enclosure having a plurality of sides and a bottom to define an enclosure volume, the enclosure having a plurality of corner beads dimensioned for receipt in a respective one of the channels to secure the enclosure to the posts.

Ex. 1001, 6:35–45.

7. A play yard comprising:
 - a frame movable between an erected position and a collapsed position, the frame including an upper frame and a lower frame;
 - a post positioned between the upper frame and the lower frame, the post having an inner portion including a channel; and
 - a flexible enclosure having a first side, a second side and a bottom side, a corner bead threaded into the channel to couple the enclosure to the post.

Id. at 6:61–7:3.

D. References

Petitioner relies upon the following references:

Johnston	US 3,875,623	Apr. 8, 1975	Ex. 1006
Mariol	US 4,985,948	Jan. 22, 1991	Ex. 1003
Tharalson et al.	US 5,845,349	Dec. 8, 1998	Ex. 1012
Pasin	US 6,004,182	Dec. 21, 1999	Ex. 1009
Rexroad	US 6,076,448	June 20, 2000	Ex. 1011
Hartenstine	US 6,510,570 B2	Jan. 28, 2003	Ex. 1013
Stoeckler	US 7,063,096 B2	June 20, 2006	Ex. 1010

E. Asserted Grounds of Unpatentability

Petitioner challenges claims 1–18 of the '180 patent based on the asserted grounds of unpatentability set forth in the table below. Pet. 9, 28–59.

Reference(s)	Basis	Claims Challenged
Mariol and Pasin	§ 103(a)	1–4, 6–14, and 16–18
Mariol and Stoeckler	§ 103(a)	1–4, 6–14, and 16–18
Mariol and Rexroad	§ 103(a)	1–4, 6–8, 10–14, 16, and 18
Mariol and Johnston	§ 103(a)	1–8, 10–16, and 18
Tharalson	§ 102	7 and 8
Mariol, Pasin, and Hartenstine	§ 103(a)	5 and 15
Mariol, Stoeckler, and Hartenstine	§ 103(a)	5 and 15
Mariol, Rexroad, and Hartenstine	§ 103(a)	5 and 15

II. CLAIM CONSTRUCTION

Petitioner proposes to construe the terms “enclosure,” “frameless enclosure,” and “corner bead” to mean, respectively, “something that encloses,” “an enclosure without a frame,” and “a bead at a corner.” Pet. 10–12. Patent Owner does not address Petitioner’s proposed

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