

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

KOLCRAFT ENTERPRISES, INC.,  
Patent Owner.

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Case IPR2016-00352  
Patent 9,027,180 B2

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

GALLIGAN, *Administrative Patent Judge*.

FINAL WRITTEN DECISION  
*Inter Partes* Review  
35 U.S.C. § 318(a)

## I. INTRODUCTION

In this *inter partes* review, instituted pursuant to 35 U.S.C. § 314 and 37 C.F.R. § 42.108, Thorley Industries LLC, d/b/a 4Moms (“Petitioner”) challenges the patentability of claims 1–18 of U.S. Patent No. 9,027,180 B2 (“the ’180 patent,” Ex. 1001), owned by Kolcraft Enterprises, Inc. (“Patent Owner”).

We have jurisdiction under 35 U.S.C. § 6. This Final Written Decision, issued pursuant to 35 U.S.C. § 318(a), addresses issues and arguments raised during trial. For the reasons discussed below, we determine that Petitioner has proven by a preponderance of the evidence that claims 1–18 of the ’180 patent are unpatentable. *See* 35 U.S.C. § 316(e) (“In an *inter partes* review instituted under this chapter, the petitioner shall have the burden of proving a proposition of unpatentability by a preponderance of the evidence.”).

### A. Procedural History

On December 16, 2015, Petitioner requested an *inter partes* review of claims 1–18 of the ’717 patent. Paper 1, “Pet.” Patent Owner filed a Preliminary Response. Paper 12 (“Prelim. Resp.”). In a Decision on Institution of *Inter Partes* Review, we instituted trial of claims 1–18 on the following grounds of unpatentability:

1. Whether claims 1–4, 6–14, and 16–18 are unpatentable under 35 U.S.C. § 103(a) as having been obvious over Mariol<sup>1</sup> and Pasin;<sup>2</sup>

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<sup>1</sup> U.S. Patent No. 4,985,948, issued Jan. 22, 1991 (Ex. 1003).

<sup>2</sup> U.S. Patent No. 6,004,182, issued Dec. 21, 1999 (Ex. 1009).

2. Whether claims 1–4, 6–14, and 16–18 are unpatentable under 35 U.S.C. § 103(a) as having been obvious over Mariol and Stoeckler;<sup>3</sup>
3. Whether claims 1–4, 6–8, 10–14, 16, and 18 are unpatentable under 35 U.S.C. § 103(a) as having been obvious over Mariol and Rexroad;<sup>4</sup>
4. Whether claims 1–8, 10–16, and 18 are unpatentable under 35 U.S.C. § 103(a) as having been obvious over Mariol and Johnston;<sup>5</sup>
5. Whether claims 5 and 15 are unpatentable under 35 U.S.C. § 103(a) as having been obvious over Mariol, Pasin, and Hartenstine;<sup>6</sup>
6. Whether claims 5 and 15 are unpatentable under 35 U.S.C. § 103(a) as having been obvious over Mariol, Stoeckler, and Hartenstine;
7. Whether claims 5 and 15 are unpatentable under 35 U.S.C. § 103(a) as having been obvious over Mariol, Rexroad, and Hartenstine;
8. Whether claims 7 and 8 are unpatentable under 35 U.S.C. § 102(b) as anticipated by Tharalson.<sup>7</sup>

Paper 14 (“Dec. on Inst.”), 22.

During the trial, Patent Owner filed a Response (Paper 18, “PO Resp.”), and Petitioner filed a Reply (Paper 20, “Pet. Reply”). In addition, Petitioner filed a Motion to Exclude evidence. Paper 21. Patent Owner filed

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<sup>3</sup> U.S. Patent No. 7,063,096 B2, issued June 20, 2006 (Ex. 1010).

<sup>4</sup> U.S. Patent No. 6,076,448, issued June 20, 2000 (Ex. 1011).

<sup>5</sup> U.S. Patent No. 3,875,623, issued Apr. 8, 1975 (Ex. 1006).

<sup>6</sup> U.S. Patent No. 6,510,570 B2, issued Jan. 28, 2003 (Ex. 1013).

<sup>7</sup> U.S. Patent No. 5,845,349, issued Dec. 8, 1998 (Ex. 1012).

an Opposition to Petitioner's Motion to Exclude (Paper 23), and Petitioner filed a Reply in support of its Motion to Exclude (Paper 24).

No oral hearing was held. *See* Paper 22 (ordering that no oral hearing would be held because neither party requested it).

### *B. Related Matters*

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

### *C. 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:

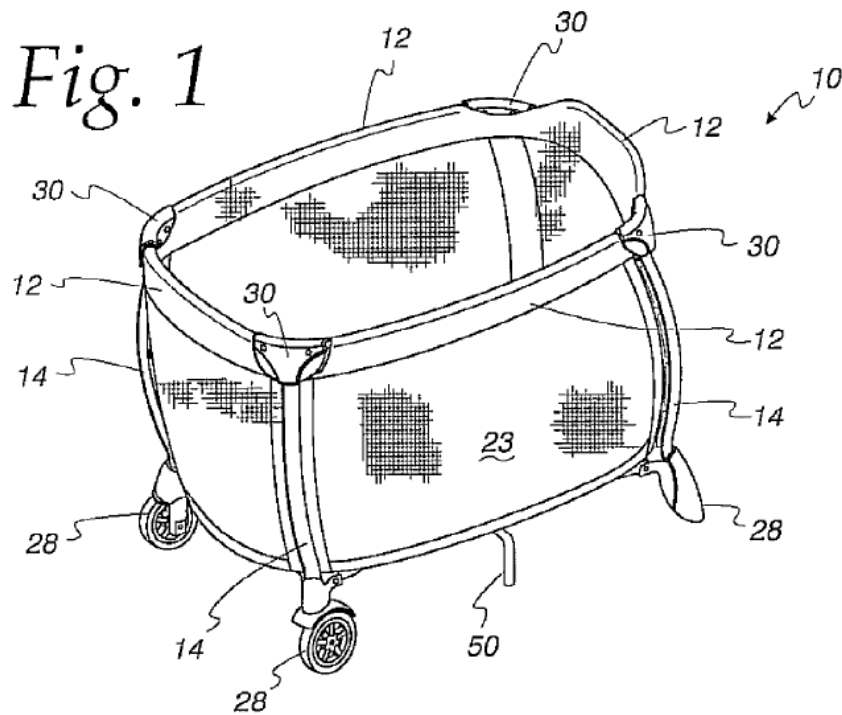


Figure 1 depicts “an example play yard constructed in accordance with the teachings of the invention.” Ex. 1001, 1:39–40, 2:11.

#### *D. 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

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