

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DYNACRAFT BSC, INC.,
Petitioner,

v.

MATTEL, INC.,
Patent Owner.

Case IPR2018-00038
Patent 7,222,684 B2

Before BARRY L. GROSSMAN, MITCHELL G. WEATHERLY, and
JAMES A. WORTH, *Administrative Patent Judges*.

GROSSMAN, *Administrative Patent Judge*.

DECISION
Instituting Inter Partes Review
37 C.F.R. § 42.108

I. INTRODUCTION

Dynacraft BSC, Inc. (“Petitioner”) filed a Petition (Paper 1, “Pet.”) requesting an *inter partes* review of claims 1–3, 5, 6, 9, 11–13, 15, 16, 22–24, 27, 28, 32–34, 37, and 38 of U.S. Patent No. 7,222,684 B2 (Ex. 1001, “the ’684 patent”). Mattel, Inc. (“Patent Owner”) filed a Preliminary Response to the Petition. Paper 6 (“Prelim. Resp.”).

Under 35 U.S.C. § 314, 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.” 35 U.S.C. § 314(a). The Board considers the Petition on behalf of the Director. 37 C.F.R. § 42.4(a).

Upon considering the Petition, Preliminary Response, and the evidence of record, we determine that Petitioner has shown a reasonable likelihood that it would prevail with respect to at least one of the challenged claims.

A. *Related Matters*

Petitioner states the following as a related matter:

Mattel, Inc. (“Mattel”) and its alleged wholly-owned subsidiary and exclusive licensee, Fisher-Price, Inc., asserted the ’684 patent in the United States District Court for the District of Delaware in an ongoing case originally captioned *Fisher-Price, Inc. v. Dynacraft BSC, Inc.*, Case No. 1:17-cv-00051-LPS-CJB. That case has been transferred to the United States District Court for the Northern District of California and is now captioned *Fisher-Price, Inc. v. Dynacraft BSC, Inc.*, Case No. 3:17-cv-03745-PJH.

Pet. 1. Patent Owner also identifies as a related matter the district court suit identified by Petitioner. Paper 4, 1.

Additionally, however, Patent Owner identifies as related matters the following three *inter partes* reviews, each filed by Petitioner, Dynacraft, against Patent Owner, Mattel:

IPR2018-00039 (challenging patentability of claims in U.S. Patent No. 7,950,978, which is a continuation of the application that matured into the '684 patent);

IPR2018-00040 (challenging patentability of claims in U.S. Patent No. 7,487,850, which is directed to a shifter assembly for a toy ride-on vehicle, but otherwise not directly related to the '684 patent); and

IPR2018-00042 (challenging patentability of claims in U.S. Patent No. 7,621,543, which is directed to blow-molded wheels for a toy ride-on vehicle, but otherwise not directly related to the '684 patent). *Id.*

B. Asserted Grounds

Petitioner contends that the challenged claims are unpatentable under 35 U.S.C. § 103 based on the following grounds (Pet. 20–63):

References	Basis	Claims challenged
U.S. Patent No. 5,859,509 (Ex. 1003, “Bienz”) and U.S. Patent No. 4,634,941 (Ex. 1004, “Klimo”)	§ 103 ¹	1–3, 5, 6, 9, 22–24, and 28

¹ The Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112-29, 125 Stat. 284, 296–07 (2011), took effect on September 16, 2012. Because the application for the patent at issue in this proceeding has an effective filing date before that date, we refer to the pre-AIA versions of the statute.

References	Basis	Claims challenged
Bienz, Klimo, and U.S. Patent No. 5,994,853 (Ex. 1005, “Ribbe”)	§ 103	11–13, 15, 16, 27, 32–34, 37, and 38

Petitioner also relies on the opinion testimony of Dr. Michael Sidman². *See* Ex. 1017. Dr. Sidman opines that “each of the challenged claims would have been obvious” in view of Bienz and Klimo (“Ground 1”) and Bienz, Klimo, and Ribbe (“Ground 2”). *Id.* ¶ 2.

Generally, Patent Owner contends that the Petition should be denied in its entirety. For the reasons described below, we institute an *inter partes* review of all challenged claims on all grounds asserted above.

C. The '684 Patent

The '684 patent relates generally to battery powered “toy vehicles that may be ridden by people.” Ex. 1001, 1:15–16. More specifically, the '684 patent relates to a control mechanism for a toy vehicle “for softening the initiation of motion of the toy vehicle.” *Id.* at 1:17–18. “Softening” the initiation of motion is intended to avoid the abrupt acceleration or “whiplash effect” (*id.* at 2:17–19) of the vehicle when the driver “floors” the accelerator.

One of the inventors of the '684 patent, Robert E. Mimlitch, III, submitted a declaration (Ex. 2002) that contains a clear, simple explanation

² Dr. Sidman earned Bachelor’s and a Master’s degree in Electrical Engineering from Northeastern University, and earned a Ph.D. from Stanford University. Ex. 1017, ¶¶ 4, 5; *see also* Ex. 1018 (Dr. Sidman’s CV). Dr. Sidman is a named inventor on eighteen U.S. patents. Ex.1017 ¶ 6.

of the technology disclosed in the '684 patent. The objective was to make a “speed controller” for use with battery-powered ride-on toy vehicles. Ex.

2002 ¶ 11. Mr. Mimlitch states:

Children drive these vehicles erratically at times by, for example, stomping and releasing the foot pedal forcefully when they jump into and out of the vehicle. As a result, these foot pedals tend to be basic, two-state, on-off buttons that are covered by a plastic cap made to look like a car's gas pedal. The button is spring loaded to the off position so that the motor is immediately disengaged when the child releases the pedal to, for example, jump out of the vehicle. The direction shifters also present a challenge because they must be easy enough to operate for a child, but the child can often almost immediately switch motor direction from forward to reverse.

Id. ¶ 10. Mr. Mimlitch further explains the “basic, two-state, on-off buttons” referred to in his declaration testimony as “a throttle signal that only had two possible levels, one correlating to ‘off’ and one to ‘on.’” *Id.* ¶ 12.

According to Mr. Mimlitch, “[a] two-state, digital signal like this is commonly referred to as a binary signal.” *Id.*

The inventors of the device and method disclosed in the '684 patent considered “a proportional throttle pedal that would allow the child to more gently and gradually increase the speed of the vehicle.” *Id.* ¶ 11. The inventors “did not feel [a proportional throttle pedal] to be a practical solution at the time.” *Id.* The inventors “determined that the best course would be to add soft-start circuitry to the existing on/off drive system that would be able to first detect a change in the signal created by the on/off throttle pedal, and delay the time over which that change in motor speed was implemented.” *Id.* ¶ 12. It is this “soft-start circuitry” that “is reflected in” the '684 patent. *Id.*

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