

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DYNACRAFT BSC, INC.,
Petitioner,

v.

MATTEL, INC.,
Patent Owner.

Case IPR2018-00040
Patent 7,487,850 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, 2, 4, 6, 7, and 10–14 (“the Challenged Claims”) of U.S. Patent No. 7,487,850 B2 (Ex. 1001, “the ’850 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 ’850 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.

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

IPR2018-00038 ((challenging patentability of claims of U.S. Patent No. 7,222,684, which is directed to battery powered “toy vehicles that may be ridden by people”);

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

IPR2018-00042 (challenging patentability of claims of U.S. Patent No. 7,621,543, which is directed to blow-molded wheels for a toy ride-on vehicle). Paper 4, 1.

B. Asserted Ground

Petitioner asserts that the Challenged Claims are unpatentable under 35 U.S.C. § 103¹ based on Damon² and Chi³.

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.

² U.S. Pat. Publ. No. US2005/0056474 A1, published March 17, 2005 (Ex. 1003, “Damon”).

³ U.S. Pat. Publ. No. US2005/0087033 A1, published April 28, 2005 (Ex. 1004, “Chi”).

Petitioner also relies on the opinion testimony of Dr. Michael Sidman⁴. *See* Ex. 1005. Dr. Sidman opines that the Challenged Claims “would have been obvious” based on Damon and Chi. Ex. 1005 ¶ 2.

C. *The '850 Patent*

The '850 patent relates generally to reduced-scaled vehicles designed for use by children. Ex. 1001, 1:13–14; *see* Figure 1. Typically, these vehicles use battery-powered motors to move the vehicle. *Id.* at 1:19. These vehicles also include an actuator foot pedal and a “transmission” lever that allows the child to select the speed and/or direction of the vehicle. *Id.* at 1:21–27. The '850 patent provides a comprehensive disclosure of the various systems and components required to provide power from the batteries to the wheels, and the systems and components required to control the direction and speed of the reduced-scale vehicle. *See, e.g.*, Ex. 1001, 3:54 (steering assembly 26), 4:30 (battery assembly 60), 5:1 (drive assembly 30), 6:20 (switch assembly 106), 6:35 (velocity control assembly 104), 6:56 (actuator assembly 112). These various assemblies all interact in controlling the speed and direction of the reduced-scale vehicle.

Ride-on or ride-in electric reduced-scale vehicles, in general, are well-known. *See, e.g.*, Ex. 1002, 84 (Examiner’s statement in Office Action that “Applicant admits the prior art of lines 1–19 of claim 1 in the background of the invention, and Examiner notes that such vehicles are extremely old and

⁴ 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. 1005, ¶¶ 4, 5; *see also* Ex. 1006 (Dr. Sidman’s CV). Dr. Sidman is a named inventor on eighteen U.S. patents. Ex. 1005 ¶ 6.

well known in the children's electric vehicle art.”). The disclosed and claimed invention (*see e.g.*, Ex. 1001, 1:1–2 (“Children's Ride-On Vehicles Having *Improved Shifter Assemblies*” (emphasis added)), as well as the dispute between the parties, focuses on actuator, or shifter, assembly 112.

Figure 10 from the '850 patent is reproduced below.

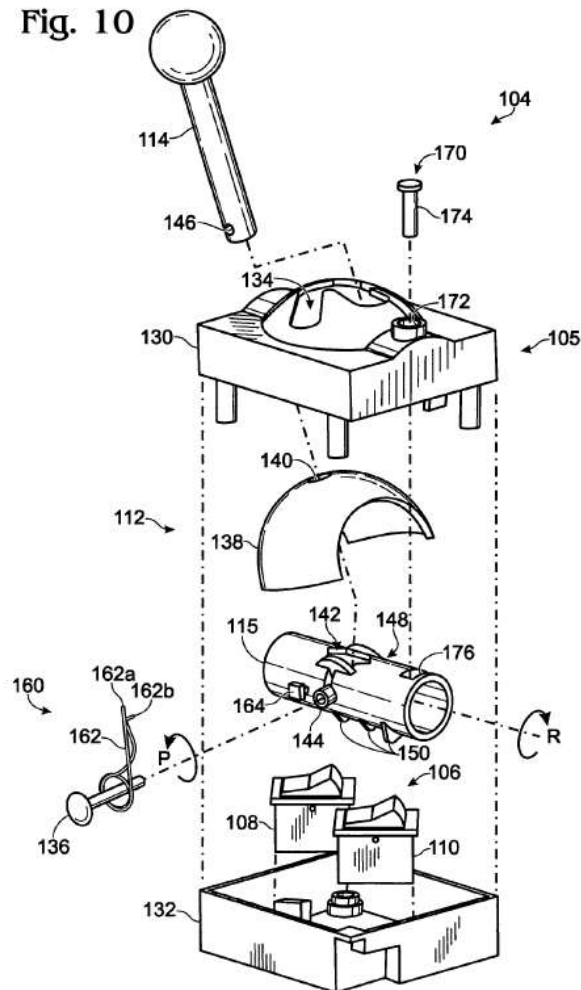


Figure 10 from the '850 patent is an exploded isometric view of a velocity control assembly, including actuator assembly 112.

Actuator assembly 112, shown in Figure 10, may have various structural configurations, thus allowing shifter handle 114 to be moved along a wide variety of shift paths. Ex. 1001, 7:4–6. Figures 6–8 each provide

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