

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LAROSE INDUSTRIES, LLC
Petitioner

v.

CAPRIOLA CORP.
Patent Owner

Case IPR2013-00120¹
Patent 7,731,558 B2

Before KEVIN F. TURNER, JUSTIN T. ARBES, and JAMES B. ARPIN,
Administrative Patent Judges.

ARPIN, *Administrative Patent Judge.*

FINAL WRITTEN DECISION
35 U.S.C. § 318(a) and 37 C.F.R. § 42.73

¹ Case IPR2013-00121 has been joined with this proceeding.

I. INTRODUCTION

On January 30, 2013, LaRose Industries, LLC (“Petitioner”) filed a corrected petition (Paper 10)² challenging claims 1-27 of Patent No. US 7,731,558 B2 (Ex. 1001, “the ’558 Patent”). In the corrected petition, Petitioner identifies the following prior art references:

Dunfee	US 750,953	Feb. 2, 1904	(Ex. 1007)
Pacent	US 1,552,227	Sep. 1, 1925	(Ex. 1008)
Engstrom	US 1,642,064	Sep. 13, 1927	(Ex. 1009)
Calvin	US 2,440,661	Apr. 27, 1948	(Ex. 1010)
Ziemianin	US 2,657,369	Oct. 27, 1953	(Ex. 1011)
Bird	US 2,703,393	Mar. 1, 1955	(Ex. 1012)
Geib	US 2,731,614	Jan. 17, 1956	(Ex. 1013)
Pawloski	US 3,289,149	Apr. 28, 1964	(Ex. 1029)
Barrett	US 3,418,438	Dec. 24, 1968	(Ex. 1014)
Edward	US 3,626,360	Dec. 7, 1971	(Ex. 1015)
Teller	US 3,696,548	Oct. 10, 1972	(Ex. 1006)
Taylor	US 4,096,379	June 20, 1978	(Ex. 1017)
Williams	US 4,223,377	Sep. 16, 1980	(Ex. 1024) ³
Robb	US 5,018,980	May 28, 1991	(Ex. 1026)
Lie	US 5,020,253	June 4, 1991	(Ex. 1021)
Yuen	US 5,778,579	July 14, 1998	(Ex. 1025)
Stewart	US 6,019,486	Feb. 1, 2000	(Ex. 1023)
Dai	US 6,241,371 B1	June 5, 2001	(Ex. 1019)
Feuerborn	US 7,080,927 B2	July 25, 2006	(Ex. 1022)

² Unless indicated otherwise, references to papers are to papers filed in IPR2013-00120.

³ Petitioner initially filed Exhibits 1022-1027 in IPR2013-00121. In accordance with our order, Petitioner re-filed these exhibits in IPR2013-00120 after the joinder of these cases. See Papers 16 and 17.

Case IPR2013-00120
Patent 7,731,558 B2

Arlinsky	US 2003/0148700 A1	Aug. 7, 2003	(Ex. 1016)
Rosen I	US 2006/0134978 A1	June 22, 2006	(Ex. 1005)
Doherty	US 2007/0184722 A1	Aug. 9, 2007	(Ex. 1020)
Callegari	EP 1 162 400 A2	Dec. 12, 2001	(Ex. 1027)

Product packaging and instruction manual for
Dynatech “ATOMIC BLOX Zetatron” toy construction set
 (“*Atomic Blox*”) (attached as Ex. B to Ex. 1018)

On April 24, 2013, Capriola Corp. (“Patent Owner”) filed a patent owner preliminary response (Paper 13). In a decision to institute (Paper 14), issued June 28, 2013, we instituted *inter partes* review of all of the challenged claims as to the following grounds for review:

claims 1-27 under 35 U.S.C. § 103(a), as unpatentable over Teller and Rosen I (Paper 14, 17-23);
claims 1-6, 8-22, 24, 26, and 27 under 35 U.S.C. § 102(e), as anticipated by Doherty (*id.* at 23-25); and
claims 7, 23, and 25 under 35 U.S.C. § 103(a), as unpatentable over Doherty and Rosen I (*id.* at 25).

In a contemporaneous decision to institute in IPR2013-00121, we instituted *inter partes* review of claims 18-25 as to the following ground for review:

claims 18-25 under 35 U.S.C. § 103(a), as unpatentable over Feuerborn and Rosen I. IPR2013-00121, Paper 11, 20-22.

IPR2013-00121 was joined with IPR2013-00120 and terminated. *See* IPR2013-00121, Paper 11, 24-25.

On September 27, 2013, Patent Owner filed a motion to amend, accompanied by a single exhibit, Patent No. US 8,371,894 B1 (Ex. 2001, “Rosen II”), but elected not to file a patent owner response. In the scheduling order mailed June 28, 2013 (Paper 15, 2-3), we had cautioned Patent Owner that any arguments for patentability not raised in the patent owner response are deemed waived. On December 27, 2013, Petitioner filed an opposition (Paper 25) to the motion to amend, including three additional exhibits: the declaration of Ronald M. Barrett Ph.D. (Ex. 1028) and Patent Nos. US 3,289,149, issued November 29, 1966 (Ex. 1029, “Pawloski”), and US 5,409,403, issued April 25, 1995 (Ex. 1030, “Falossi”). On January 27, 2014, Patent Owner filed a reply (Paper 28) to Petitioner’s opposition to the motion to amend.

On February 18, 2014, Petitioner filed a motion to exclude evidence (Paper 29). Specifically, Petitioner moved to exclude Rosen II (Ex. 2001) as allegedly lacking relevance to the instant case. Paper 29, 2. On March 3, 2014, Patent Owner filed Patent Owner’s opposition (Paper 32) to Petitioner’s motion to exclude evidence, and, on March 10, 2014, Petitioner filed a reply (Paper 33) to Patent Owner’s opposition to Petitioner’s motion to exclude evidence.

Although only Petitioner requested an oral hearing (Paper 30), we ordered an oral hearing (Paper 31). The oral hearing was conducted on March 24, 2014.⁴

⁴ A transcript of the hearing is included in the record as Paper 36.

We have jurisdiction under 35 U.S.C. § 6(c). This final written decision is entered in IPR2013-00120, pursuant to 35 U.S.C. § 318(a).

For the reasons that follow, based on our review of the evidence presented, we conclude that Petitioner has established by a preponderance of the evidence that claims 1-27 of the '558 Patent are unpatentable. The motion to amend requesting entry of substitute claims 47-50 is *denied*.

Petitioner's motion to exclude evidence is *dismissed*.

A. Related Proceedings

The '558 Patent is involved in a Federal district court case, *Capriola Corp. v. LaRose Industries, LLC*, Civil Action No. 8:12-cv-02346 (M.D. Fla.).

B. The '558 Patent

The '558 Patent, titled "Illuminated Toy Building Structures," issued on June 8, 2010, based on U.S. Patent Application No. 11/839,444 ("the '444 Application"), filed August 15, 2007. The '558 Patent relates to "building blocks incorporating a variety of colored lights that can mimic the look of a laser and can be interlocked to make a variety of multi-colored 3-dimensional shapes." Ex. 1001, col. 1, ll. 42-45. The patent describes building blocks of various shapes, such as a cylinder (Figure 1), a rectangle (Figure 2), a cylinder with a 90-degree bend (Figure 3), and a wheel (Figure 4). Figure 1 is reproduced below:

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