

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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THE TORO COMPANY  
Petitioner,

v.

MTD PRODUCTS INC.,  
Patent Owner.

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Case IPR2016-00219  
Patent 8,136,613

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Before WILLIAM V. SAINDON, RICHARD E. RICE, and  
TIMOTHY J. GOODSON, *Administrative Patent Judges*.

SAINDON, *Administrative Patent Judge*.

FINAL WRITTEN DECISION

Finding the Sole Challenged Claim Unpatentable  
*35 U.S.C. § 318(a); 37 C.F.R. § 42.73*  
Denying Patent Owner's Motion to Exclude Evidence  
*37 C.F.R. § 42.64*

## I. INTRODUCTION

We have jurisdiction under 35 U.S.C. § 6. We enter this Final Written Decision pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73.

With respect to the grounds asserted in this trial, we have considered the papers submitted by the parties and the evidence cited therein. For the reasons discussed below, we determine that Petitioner has shown, by a preponderance of the evidence, that claim 28 of U.S. Patent No. 8,136,613 (Ex. 1001, “the ’613 patent”) is unpatentable. We also deny Patent Owner’s Motion to Exclude Evidence.

### *A. Procedural History*

Petitioner requested an *inter partes* review of claim 28 of the ’613 patent. Paper 1 (“Pet.”). Patent Owner filed a Preliminary Response to the Petition. Paper 7 (“Prelim. Resp.”). Upon consideration of the Petition and Patent Owner’s Preliminary Response, we instituted a trial on the challenged claim on one of the two asserted grounds. Paper 10 (“Dec. on Inst.”).

During the trial, Patent Owner filed its Response (Paper 14, “PO Resp.”), and Petitioner filed its Reply (Paper 18, “Pet. Reply”). We also permitted Patent Owner to file a Sur-Reply (Paper 22, “Sur-Reply”) and Petitioner to file a Sur-Sur-Reply (Paper 31, “Sur-Sur Reply”). An oral hearing was held. Paper 37 (“Tr.”).

### *B. Related Matters*

The parties represent that the ’613 patent is asserted in *MTD Products Inc. v. Toro Company et al.*, 1:15-cv-00766-PAG (N.D. Ohio). Pet. 1; Paper 6, 2. Petitioner also has filed a petition challenging Patent Owner’s U.S.

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Patent No. 8,011,458 (IPR2016-00194). Patent Owner identifies U.S. Patent No. 8,944,191 as a related patent and U.S. Patent App. No. 14/613,102 as a related application. Paper 6, 2.

### C. The '613 Patent

The '613 patent is directed to a steering and driving system. Ex. 1001, Abstract. In particular, the patent is directed to the steering systems of Zero Turn Radius (ZTR) lawn mowers. *Id.* at 1:6–14; 4:39–40. Figure 5 of the '613 patent, reproduced below with color added and extraneous labeling removed by the Board, depicts this steering system:

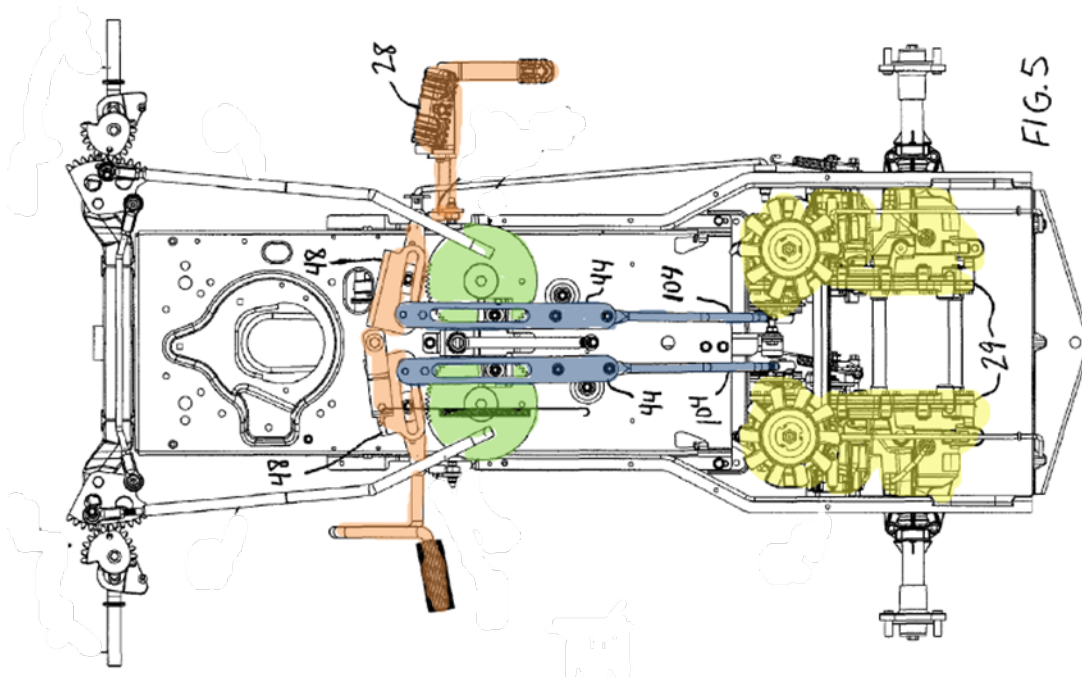


Figure 5 of the '613 patent shows speed control device 28 (in orange), left and right speed input members 48 (in orange), left and right control members 36 (item numbers not shown, colored in green), left and right integration links 44 and control rods 104 (in blue), and left and right drive units 29 (in yellow). Control rods 104 are connected to drive units 29 in a

manner such that the distance of the rod fore or aft of a neutral position causes the output of the corresponding drive unit to spin the wheel forward or backward with increasing speed. *See* Ex. 1001, 9:32–44; Fig. 14. Integration links 44 serve to integrate both speed control as well as steering control. *See, e.g., id.* at 9:57–10:21 (explaining how the linkages work as the vehicle is operated from straight forward movement to left forward movement). Although the vehicle may include steerable wheels, turning can also be facilitated by spinning the outside wheel faster than the inside wheel (relative to the radius of the turn). *See, e.g., id.* at 10:8–21. To do this, integration links 44 are connected in a manner such as to respond to forward and reverse speed inputs from speed input members 48 as well as steering inputs from control members 36. *See, e.g., id.* at 10:22–35 (providing an example of how the various components interact to make a full forward left turn), Fig. 9 (cited in this example); *see also* Figs. 5–13 (showing how the various components interact to make each forward/reverse/neutral and left/right/straight permutation).

#### *D. Challenged Claim*

Petitioner challenges claim 28, which is reproduced below.

28. A vehicle control system comprising:  
a pair of integration links, each integration link having a slot that is straight over substantially all of the length of the slot, and each integration link being movable in response to a speed input and configured to:  
lie in a plane parallel to any flat surface on which a vehicle that incorporates the steering control system is used; and

transmit a drive signal that is a product of any received steering input and any received speed input.

*E. Prior Art and Instituted Grounds*

We granted an *inter partes* review of the '613 patent on the question of whether claim 28 is anticipated by Seaberg.<sup>1</sup> Petitioner relies on the declaration of Fred P. Smith, a Professional Engineer with a background in mechanical engineering. Ex. 1004 ¶ 4.

II. PATENT OWNER'S MOTION TO EXCLUDE

Patent Owner moved to exclude Exhibits 1004 and 1025, the declarations of Petitioner's expert, Mr. Fred Smith. Paper 25 ("Mot."). Petitioner filed its Opposition (Paper 29), and Patent Owner filed its Reply (Paper 32).

Patent Owner's Motion argues that Mr. Smith is not qualified to testify as an expert in the relevant art. Patent Owner asserts that the "pertinent art" is "vehicle control systems." Mot. 2. Patent Owner relies on the testimony of its expert, Dr. Steven A. Velinsky, in support of its assertion of the pertinent art. Dr. Velinsky testifies, however, that the person of ordinary skill in the art would have "specific knowledge and experience in vehicle design *to allow understanding of* the requirements of the mechanism for vehicle power and steering control." *Id.* ¶ 24 (emphasis added). Accordingly, Patent Owner's assertion of the pertinent art is undermined by its own expert. That is, Dr. Velinsky's testimony indicates

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<sup>1</sup> U.S. Patent No. 4,100,738, issued July 18, 1978 (Ex. 1002).

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