

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GRACO CHILDREN'S PRODUCTS INC.,
Petitioner,

v.

KOLCRAFT ENTERPRISES, INC.,
Patent Owner.

Case IPR2016-00816 (Patent D604,970 S)
Case IPR2016-00826 (Patent D616,231 S)¹

Before KEN B. BARRETT, JOSIAH C. COCKS, and JENNIFER S. BISK,
Administrative Patent Judges.

BARRETT, *Administrative Patent Judge.*

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

¹This Decision addresses the same legal and factual issues raised in IPR2016-00816 and IPR2016-00826. The patents at issue in both cases are related, and the arguments made by Petitioner largely are the same in both cases. Therefore, we issue one Decision to be entered in each case.

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I. INTRODUCTION

A. *Background and Summary*

Graco Children's Products Inc. ("Petitioner") filed a Petition requesting *inter partes* review of the sole claim of U.S. Patent No. D604,970 S (Ex. 1001, "the '970 patent"). IPR2016-00816, Paper 2 ("Pet."). Petitioner also filed a Petition requesting *inter partes* review of the sole claim of U.S. Patent No. D616,231 S. IPR2106-00826,² Paper 2. Kolcraft Enterprises, Inc. (Patent Owner) did not file a Preliminary Response to the Petitions. The Board instituted a trial for the challenged claims. Paper 8 ("Dec. on Inst."). Although Petitioner proposed eleven grounds of unpatentability, we instituted trial on only one asserted ground of unpatentability for obviousness. Dec. on Inst. 8, 23–24.

After institution of trial, Patent Owner filed a Patent Owner Response ("PO Resp.") to the Petition. Paper 10. Petitioner filed a Reply ("Reply") to Patent Owner's Response. Paper 21.

Oral hearing was conducted on July 6, 2017. The record contains a transcript of the hearing. Paper 28 ("Tr.").

The Board has jurisdiction under 35 U.S.C. § 6. This Final Written Decision is issued pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73. For the reasons discussed herein, we determine Petitioner has shown by a preponderance of the evidence that the claim of the '970 patent and the

² Substantively similar papers were filed in both the subject cases. For clarity and expediency, we treat IPR2016-00816 as representative of IPR2016-00816 and IPR2016-00826. Unless indicated otherwise, all citations are to IPR2016-00816.

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claim of the '231 patent are unpatentable on the ground upon which we instituted *inter partes* review.

B. Related Proceedings

One or both parties identify, as a matter involving or related to the '970 patent, *Kolcraft Enterprises, Inc. v. Graco Children's Products Inc.*, No. 1:15-cv-07950 (N.D. Ill.), and an *Inter Partes* Review involving the same parties and related patents, IPR2016-00810 (Patent No. D570,621 S). Pet. 2–3; Paper 5.

C. The Instituted Grounds of Unpatentability

We instituted *inter partes* review of the sole design claim of the '970 patent and sole design claim of the '231 patent, both on the ground of obviousness under 35 U.S.C. § 103(a) over Chen '393³.

II. ANALYSIS

Petitioner bears the burden of proving unpatentability of the challenged claims, and that burden never shifts to Patent Owner. *Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015). As discussed below, the burden of production, in certain circumstances, shifts to Patent Owner. *Id.* at 1379. To prevail, Petitioner must establish the facts supporting its challenge by a preponderance of the evidence. 35 U.S.C. § 316(e); 37 C.F.R. § 42.1(d). Petitioner relies on the Declarations of Mr. Robert John Anders, dated March 30, 2016 (IPR2016-00816, Ex. 1002) and March 31, 2016 (IPR2016-00826, Ex. 1002) in

³ US Patent No. D494,393 S to Chen, filed Jan. 7, 2004, issued Aug. 17, 2004 (Ex. 1007).

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support of its arguments. Patent Owner relies on the Declaration of Damon Oliver Casati Troutman and Edward B. Bretschger, dated December 29, 2016 (Ex. 2008), in support of its arguments.

A. The Designer of Ordinary Skill

Petitioner’s expert, Mr. Anders, opines:

A designer of ordinary skill in the art relevant to the ’970 Patent would be an industrial designer of ordinary capabilities in the field of consumer product design, including foldable structures. A designer of ordinary skill would also be aware of prior art play yards or play pens, including, but not limited to, working with, designing, or evaluating juvenile products.

Ex. 1002 ¶ 48; *see also* IPR2016-00826, Ex. 1002 ¶ 45 (same for the ’231 patent). Patent Owner does not contest this definition. For purposes of this Decision, we adopt Mr. Anders’s definition of the designer of ordinary skill.

B. The ’970 Patent, the ’231 Patent, and the Claims

In an *inter partes* review, claim terms in an unexpired patent are given their broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b); *see also* *Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2144–46 (2016). With regard to design patents, it is well-settled that a design is represented better by an illustration than a description. *Egyptian Goddess, Inc. v. Swisa, Inc.*, 543 F.3d 665, 679 (Fed. Cir. 2008) (en banc) (citing *Dobson v. Dornan*, 118 U.S. 10, 14 (1886)). Although preferably a design patent claim is not construed by providing a detailed verbal description, it may be “helpful to point out . . . various features of the claimed design as they relate to the . . . prior art.” *Id.* at 679–80; *cf. High Point Design LLC v. Buyers Direct, Inc.*, 730 F.3d 1301, 1314–15 (Fed. Cir. 2013) (remanding to the district court, in part, for a

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“verbal description of the claimed design to evoke a visual image consonant with that design”).

Both the '970 patent and the '231 patent are titled “Exposed Legs for a Play Yard,” and the claim of the '970 patent recites “[t]he ornamental design for exposed legs for a play yard, as shown and described.” Ex. 1001 (57); IPR2016-00826, Ex. 1001 (57) (“The ornamental design for the exposed legs for a play yard, as shown and described.”). The '231 Patent issued from an application that was a continuation of the application that led to the issuance of the '970 Patent. IPR2016-00826, Ex. 1001 (63); IPR2016-00816 (21).

The '970 patent contains seven figures. Figures 1 and 2 of the '970 patent are reproduced below.

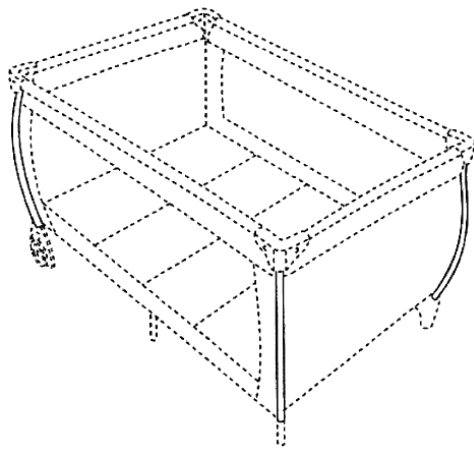


FIG. 1

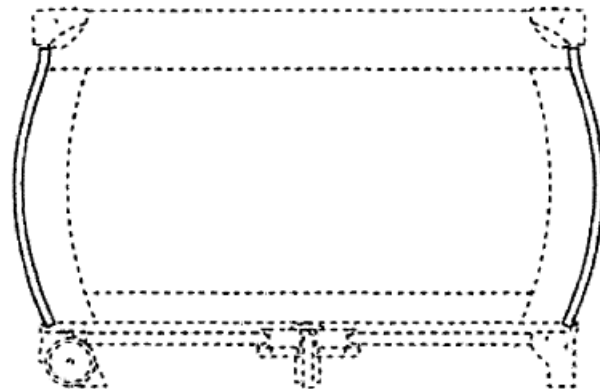


FIG. 2

Figure 1 is “a perspective view of exposed legs for a play yard,” and Figure 2 is “a front view of the design of FIG 1.” IPR2016-00816, Ex. 1001, 1. The description of the '970 patent states “[t]here is no fabric covering the exposed legs shown in any of FIGS. 1–7.” *Id.* Additionally,

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