

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MYTEE PRODUCTS, INC.,
Petitioner,

v.

JOHN FRANKLIN GEURKINK,
Patent Owner.

Case IPR2016-01654
Patent 8,522,385 B2

Before WILLIAM V. SAINDON, BART A. GERSTENBLITH, and
ROBERT L. KINDER, *Administrative Patent Judges*.

KINDER, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
37 C.F.R. § 42.108

Mytee Products, Inc. (“Petitioner”) filed a Petition pursuant to 35 U.S.C. §§ 311–319 to institute an *inter partes* review of claims 1 and 5 of U.S. Patent No. 8,522,385 B2, issued on September 3, 2013 (Ex. 1001, “the ’385 patent”). Paper 1 (“Pet.”). John Franklin Geurkink (“Patent Owner”) filed a Preliminary Response. Paper 6 (“Prelim. Resp.”). We have jurisdiction under 35 U.S.C. § 314 and 37 C.F.R. § 42.4(a).

To institute an *inter partes* review, we must determine that the information presented in the Petition shows “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). Having considered both the Petition and the Preliminary Response, we are not persuaded that Petitioner has demonstrated a reasonable likelihood that it would prevail in showing the unpatentability of either claim 1 or 5 of the ’385 patent. Accordingly, we do not institute an *inter partes* review.

I. BACKGROUND

A. The ’385 Patent (Ex. 1001)

The ’385 patent is titled “High Efficiency Floor Treating System and Method.” Ex. 1001, (54). The “[e]mbodiments of the floor treating system include a floor treating device with a power source having a rotatable drive shaft with an axis of rotation, a flywheel with an aperture for receiving the drive shaft, a counterbalance connected to the flywheel, and a floor treating attachment.” *Id.* at Abstract, (57).

As depicted below in Figure 2 of the ’385 patent, a floor treating system and method includes bottom portion 110, in which flywheel 210 is driven by drive shaft 200 powered by power source 150. *Id.* at 1:38–58,

2:37–62. Drive shaft 200 connects to flywheel 210 via aperture 215, and flywheel 210 in turn connects to counterbalance 230. *Id.* Bolt 270 is radially offset (d_2) from drive shaft 200 and supports floor treating attachment 130 via plug bearing 240. *Id.*

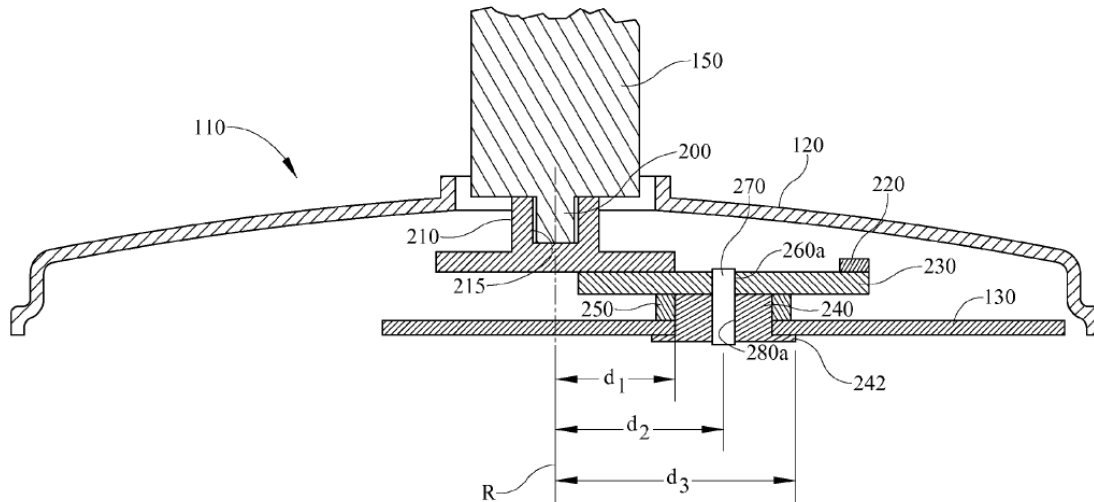


FIG. 2

Figure 2 of the '385 patent represents a cross-sectional, side view of the bottom portion of a floor treating system.

The '385 patent describes floor treating attachment 130 located at multiple distances (d_1 , d_2 , d_3) from axis of rotation (R) of rotatable drive shaft 200 of power source 150, including at least 0.400 inch. *Id.* at 2:47–55, 3:49–52. “Each distance from the axis of rotation R corresponds to a different speed of oscillating motion that may be imparted from the drive shaft 200 to the floor treating attachment 130.” *Id.* at 2:52–55. The Specification states that an increased distance between floor treating attachment 130 and axis of rotation of the rotatable drive shaft (R) produces

a corresponding increased orbit size and increased speed of oscillating motion, which improves efficiency in floor treating. *Id.* at 4:39–46.

B. Illustrative Claim

Claim 1, reproduced below, is illustrative of the claims at issue:

1. An oscillating, floor treating device comprising:

 a power source having a rotatable drive shaft, wherein the rotatable drive shaft rotates around an axis of rotation;

 a flywheel having an aperture configured to receive the drive shaft;

 a counterbalance connected to and extending radially from the flywheel; and

 a floor treating attachment configured to connect to the counterbalance at at least two different distances from the axis of rotation of the drive shaft, a first distance being at least 0.400 inch from the axis of rotation of the drive shaft.

Ex. 1001, 6:27–38. Independent claim 5 is similar in scope but adds the recitation of “a plug bearing configured to be positioned between a bottom of the counterbalance and a top of the floor treating attachment.” *Id.* at 6:48–61.

C. Related Proceedings

According to the parties, there are no related proceedings involving the '385 patent. Pet. 29; Paper 4, 2.

D. References

Petitioner relies on the following references:

U.S. Patent No. 3,448,476, filed Mar. 6, 1967, issued June 10, 1969 (Ex. 1006, “Zaccone”);

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U.S. Patent No. 3,482,362, filed Jan. 28, 1966, issued Dec. 9, 1969
(Ex. 1003, “Bangerter”);

U.S. Patent No. 3,550,324, filed Apr. 17, 1968, issued Dec. 29, 1970
(Ex. 1004, “Gerry”);

U.S. Patent No. 6,938,295 B1, filed Apr. 9, 2003, issued Sept. 6, 2005
(Ex. 1002, “Lancaster”);

U.S. Patent No. 7,294,095 B1, filed May 4, 2004, issued Nov. 13,
2007 (Ex. 1005, “Charnitski”); and

International Publication No. WO 2008/062280 A2, filed Nov. 20,
2007, published May 29, 2008 (Ex. 1012, “Marton”).

E. Grounds Asserted

Petitioner challenges the ’385 patent on the following grounds
(Pet. 8–9):

References	Basis	Claims Challenged
Lancaster, Bangerter, Gerry (or Marton), and Charnitski	§ 103(a) ¹	1, 5
Zaccone, Gerry (or Marton), and Charnitski	§ 103(a)	1, 5

¹ The relevant sections of the Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112–29, 125 Stat. 284 (Sept. 16, 2011), took effect on March 16, 2013. Because the application from which the ’385 patent issued was filed before that date, our citations to Title 35 are to its pre-AIA version.

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