

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNITED INDUSTRIES CORPORATION,
Petitioner,

v.

SUSAN McKNIGHT, INC.,
Patent Owner.

Case IPR2017-01687
Patent 9,066,511 B2

Before JAMES A. TARTAL, TIMOTHY J. GOODSON, and
RICHARD H. MARSCHALL, *Administrative Patent Judges*.

TARTAL, *Administrative Patent Judge*.

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

I. INTRODUCTION

United Industries Corporation (“Petitioner”) filed a Petition (Paper 2, “Pet.”) requesting institution of *inter partes* review of claims 1–12 of U.S. Patent No. 9,066,511 B2 (Ex. 1001, “the ’511 patent”) owned by Susan McKnight, Inc. (“Patent Owner”). We have jurisdiction under 35 U.S.C. § 6(c) to hear this *inter partes* review instituted pursuant to 35 U.S.C. § 314. In this Final Written Decision, issued pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73, we find on the record before us that Petitioner has not shown by a preponderance of the evidence that claims 1–12 of the ’511 patent are unpatentable. *See* 35 U.S.C. § 316(e).

A. PROCEDURAL HISTORY

Petitioner filed a Petition requesting institution of *inter partes* review of claims 1–12 of the ’511 patent on four grounds of alleged unpatentability. Pet. 3. Patent Owner filed a Preliminary Response (Paper 6, “Prelim. Resp.”). We initially instituted review of all challenged claims under two of the four grounds because we determined the Petition showed a reasonable likelihood that Petitioner would prevail on the following grounds:

References	Basis	Claim(s) challenged
Anderson, ¹ Lang, ² and Lyng ³	§ 103	1–4 and 7–10
Anderson, Lang, Lyng, and Jennerich ⁴	§ 103	5, 6, 11, and 12

Paper 7 (“Inst. Dec.”); *see also* 35 U.S.C. § 314.

¹ U.S. Patent No. 5,996,531, issued December 7, 1999 (Ex. 1003, “Anderson”).

² U.S. Patent App. No. 2007/0044372 A1, published March 1, 2007 (Ex. 1008, “Lang”).

³ U.S. Patent App. No. 2005/0138858 A1, published June 30, 2005 (Ex. 1007, “Lyng”).

⁴ U.S. Patent No. 2,167,978, issued August 1, 1939 (Ex. 1002, “Jennerich”).

After institution of *inter partes* review, Patent Owner filed a Response to the two grounds instituted. Paper 14 (“PO Resp.”). Subsequent to the Patent Owner Response, the Supreme Court held in *SAS Institute Inc. v. Iancu* that a decision to institute under 35 U.S.C. § 314 may not institute on fewer than all claims challenged in the petition. 138 S. Ct. 1348, 1359–60 (2018). In light of the Guidance on the Impact of SAS on AIA Trial Proceedings⁵ issued by the Office, which states that “if the PTAB institutes a trial, the PTAB will institute on all challenges raised in the petition,” we modified the Institution Decision to include review of all challenged claims on all grounds asserted in the Petition. Paper 15, 2. Specifically, we further instituted review on the following additional claims and grounds:

References	Basis	Claims Challenged
Denton, ⁶ Lang, Lyng, and Jennerich	§ 103	1–12
Beach, ⁷ Lang, and McKnight ’812 ⁸	§ 103	1–4 and 7–10

Id. at 2–3. We also authorized Patent Owner to file supplemental briefing in response to the additional instituted grounds. Paper 16, 2–3.

Patent Owner filed a Supplemental Patent Owner Response to address the grounds not addressed in the Patent Owner Response. Paper 17 (“PO Supp. Resp.”). Petitioner filed a Reply addressing all four grounds instituted (Paper 20 (“Pet. Reply”)). Patent Owner filed a Surreply. Paper 22 (“PO

⁵ Available at <https://www.uspto.gov/patents-application-process/patent-trial-and-appeal-board/trials/guidance-impact-sas-aia-trial>.

⁶ U.S. Patent No. 223,321, issued January 6, 1880 (Ex. 1004, “Denton”).

⁷ U.S. Patent No. 57,036, issued August 7, 1866 (Ex. 1009, “Beach”) (citations to Beach are to the page number and column).

⁸ U.S. Patent No. 8,966,812 B2, issued March 3, 2015 (Ex. 1013, “McKnight ’812”).

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Surreply”). Oral argument was held before the Board on October 18, 2018. Paper 30 (“Tr.”).

B. RELATED MATTERS

The parties indicate that the ’511 patent was asserted in a case captioned *Susan McKnight, Inc. v. United Industries Corp.*, No. 2:16-cv-02534-JPM-tmp (W.D. Tenn.). Pet. 1; Paper 4, 2. According to Petitioner, that proceeding was transferred to the Eastern District of Missouri, captioned *Susan McKnight, Inc. v. United Industries Corp.*, No. 4:18-cv-00338-RLW (E.D. Mo.), and stayed pending resolution of this *inter partes* review and the *inter partes* review of related U.S. Patent No. 9,253,973 B2 challenged by Petitioner in IPR2017-01686. Paper 13, 3.

C. REAL PARTIES IN INTEREST

Petitioner identifies United Industries Corporation and Spectrum Brands, Inc. as real parties in interest. Pet. 1. Patent Owner identifies itself and Purdue Research Foundation as real parties in interest. Paper 4, 2; Paper 13, 2–3.

II. BACKGROUND

The ’511 patent, titled “Crawling Arthropod Intercepting Device and Method,” issued June 30, 2015, from U.S. Application No. 13/134,150, filed May 31, 2011. Ex. 1001. As background information, below we provide a summary of the ’511 patent, discuss the prosecution history, and provide an illustrative claim. We also identify the proffered witness testimony.

A. SUMMARY OF THE ’511 PATENT

The ’511 patent generally relates to the use of a device to intercept crawling arthropods and other crawling pests that includes “pitfall trap surfaces that form multiple pitfall traps.” *Id.* at Abstract. In one

embodiment, the '511 patent describes “an intercepting device comprising an exterior, upstanding clim[b]able surface that crawling arthropods . . . can climb and first and second pitfall traps disposed inwardly of the clim[b]able exterior surface for trapping crawling arthropods.” *Id.* at 3:45–50. “[T]he first pitfall trap comprises an inner receptacle that receives a leg of furniture or other object and the second pitfall trap comprises an outer receptacle.” *Id.* at 3:50–53. “[C]rawling arthropods are trapped in the inner receptacle and/or outer receptacle as a result of being unable to climb out, preventing crawling arthropods from moving between the furniture (or other object) and the floor.” *Id.* at 3:53–56.

Figure 1a of the '511 patent is reproduced below:

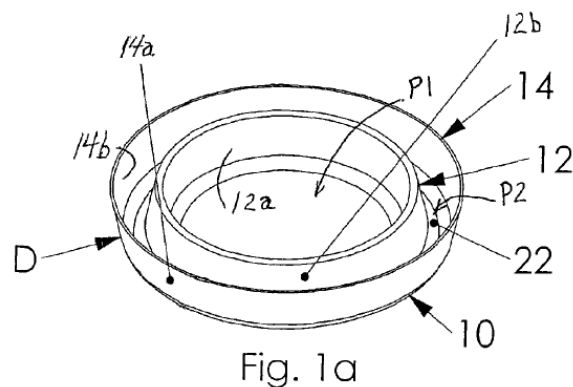


Figure 1a illustrates a perspective view of one-piece intercepting device D with first pitfall trap P1 and second pitfall trap P2. *Id.* at 4:15–17, 4:50–57. Patent Owner explains that “[t]he exterior climbable surface 14a has a surface texture rough enough to be readily climbable by crawling arthropods” (citing Ex. 1001, 5:30–34), and “surfaces 12a, 12b, 14b are slippery so that crawling arthropods cannot climb or have difficulty climbing the surfaces thereby trapping the arthropods in either receptacle” (citing *id.* at 5:36–42). Prelim. Resp. 3. “Humans are effectively acting as bait for a trap.” Ex. 1001, 4:6–7. According to Patent Owner, a novel feature of the

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