

**United States Court of Appeals
for the Federal Circuit**

MTD PRODUCTS INC.,
Appellant

v.

**ANDREI IANCU, UNDER SECRETARY OF
COMMERCE FOR INTELLECTUAL PROPERTY
AND DIRECTOR OF THE UNITED STATES
PATENT AND TRADEMARK OFFICE,**
Intervenor

2017-2292

Appeal from the United States Patent and Trademark
Office, Patent Trial and Appeal Board in No. IPR2016-
00194.

Decided: August 12, 2019

JOHN SALVATORE CIPOLLA, Calfee, Halter & Griswold
LLP, Cleveland, OH, argued for appellant. Also repre-
sented by ANDREW ALEXANDER, TRACY SCOTT JOHNSON,
MARK McDOUGALL.

PETER JOHN SAWERT, Office of the Solicitor, United
States Patent and Trademark Office, Alexandria, VA, ar-
gued for intervenor. Also represented by THOMAS W.
KRAUSE, PHILIP J. WARRICK.

Before REYNA, TARANTO, and STOLL, *Circuit Judges*.

STOLL, *Circuit Judge*.

The Toro Company sought inter partes review of claims 1–16 of U.S. Patent No. 8,011,458 before the U.S. Patent and Trademark Office’s Patent Trial and Appeal Board. The Board instituted review and, in its final written decision, held the challenged claims obvious under 35 U.S.C. § 103. Critical to its decision, the Board determined that the claim term “mechanical control assembly . . . configured to” perform certain functions is not a means-plus-function term subject to 35 U.S.C. § 112, ¶ 6. MTD Products Inc., owner of the ’458 patent, appeals the Board’s decision.

We conclude that the Board erred by conflating corresponding structure in the specification with a structural definition for the term, and by misinterpreting certain statements in the prosecution history. Under the appropriate legal framework, we conclude that the term “mechanical control assembly” is a means-plus-function term governed by § 112, ¶ 6. We therefore vacate the Board’s obviousness conclusion, which was predicated on its incorrect claim construction, and remand for further proceedings consistent with this opinion. Because we are persuaded by MTD’s primary argument, we do not reach its alternative arguments.

BACKGROUND

I

The ’458 patent discloses a steering and driving system for zero turn radius (“ZTR”) vehicles, with specific reference to ZTR lawn mowers. ’458 patent col. 1 ll. 17–21. The patented system is designed to provide a more intuitive steering mechanism to operators of ZTR vehicles. *Id.* at col. 1 ll. 20–38. In contrast to prior art systems that

reverse in the opposite direction of a forward motion turn, the claimed invention permits ZTR vehicles to turn in the same direction both forward and backwards. *Id.* at col. 1 ll. 20–47. The claimed steering mechanism thus mimics the forward and backward movements of an automobile.

The term “mechanical control assembly” appears in both claims 1 and 9, the only independent claims of the ’458 patent. Claim 1 recites:

1. A vehicle capable of making a small radius turn, comprising:

a frame;

a left drive wheel and a right drive wheel, both coupled to the frame;

two independent left and right drive units, the left drive unit coupled to the left drive wheel via an axle and the right drive unit coupled to the right drive wheel via another axle;

a steering device coupled to the frame;

a speed control member coupled to the frame; and

a *mechanical control assembly* coupled to the left and right drive units that is configured to actuate the left and right drive units based on a steering input received from the steering device and a speed input received from the speed control member;

the *mechanical control assembly* being configured such that if the speed control member is shifted from (a) a forward position in which the left drive wheel is rotating in a forward direction at a first forward speed and the right drive wheel is rotating in a

forward direction at a second forward speed that is less than the first forward speed as a result of the steering device being in a first right turn position to (b) a reverse position while the first right turn position of the steering device is maintained, then the left drive wheel will rotate in a reverse direction at a first reverse speed and the right drive wheel will rotate in a reverse direction at a second reverse speed that is less than the first reverse speed.

Id. at col. 7 l. 63–col. 8 l. 24 (emphasis added to highlight portion of disputed claim term). Claim 9 is identical to claim 1 in substantial part, adding only the further limitation of:

the *mechanical control assembly* also being configured to cause the vehicle to execute a zero-radius turn when the speed control member is in a maximum forward position and the steering device is in a maximum turn position.

Id. at col. 9 ll. 13–16 (emphasis added).

While the patent specification does not expressly refer to a “mechanical control assembly,” it discloses a preferred embodiment that includes a “ZTR control assembly.” *Id.* at col. 3 ll. 41–42. The specification describes components of the ZTR control assembly and its inputs, outputs, and linkages. *Id.* at col. 3 l. 41–col. 4 l. 57.

II

Toro petitioned for inter partes review of the ’458 patent in November 2015, arguing that the challenged claims were invalid as anticipated or obvious. MTD responded that the term “mechanical control assembly” is a means-plus-function term, and that the asserted prior art did not disclose the claim term’s corresponding structure. In

support of its argument, MTD introduced expert testimony indicating that “mechanical control assembly” has no reasonably well-understood meaning in the art. Specifically, MTD’s expert testified that “mechanical control assembly” is a nonce term that is not used in common parlance and does not bring to mind any specific structure to a person of ordinary skill in the art. J.A. 1366. He explained that the term is used as a black box recitation for structure and, at most, amounts to a collection of various parts. J.A. 1248, 1366. He further demonstrated that the term is used in various prior patents and publications to describe a wide variety of structures with varying functions. J.A. 1367–69 (noting that “mechanical control assembly” is used generically to describe mechanisms for infusion pumps, digital firing systems, flush tanks, endoscopes, transmissions, and engine outputs).

Toro did not expressly contradict MTD’s evidence that “mechanical control assembly” did not have a well-understood structural meaning. Instead, Toro responded that a person of ordinary skill in the art would understand the term to denote a specific structure in the context of the ’458 patent specification. Specifically, Toro argued that the “ZTR control assembly” disclosed in the specification provides an express structural definition for the claimed “mechanical control assembly.” J.A. 2201–03. Toro also argued that MTD admitted that the term “mechanical control assembly” conveys particular structure when it distinguished the patent claims from a prior art reference during prosecution. J.A. 2203.

The Board initially agreed with MTD, stating that when viewed “in isolation, the genericness of this term bears similarities to other words or phrases that have been held to be subject to § 112, ¶ 6 . . . such as ‘mechanism,’ ‘element,’ ‘device,’ ‘link member,’ and ‘control mechanism.’” *Toro Co. v. MTD Prods. Inc.*, No. IPR2016-00194, 2017 WL 1969747, at *9 (P.T.A.B. May 10, 2017) (first citing *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1350

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