

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PRIME TIME TOYS LLC, PRIME TIME TOYS LTD., and
EASEBON SERVICES LTD,
Petitioner,

v.

SPIN MASTER, INC.,
Patent Owner.

IPR2023-01348
Patent 8,371,282 B2

Before HYUN J. JUNG, NEIL T. POWELL, and BRENT M. DOUGAL,
Administrative Patent Judges.

POWELL, *Administrative Patent Judge.*

DECISION
Granting Institution of *Inter Partes* Review After Remand
35 U.S.C. § 314

I. INTRODUCTION

A. BACKGROUND

Prime Time Toys LLC, Prime Time Toys Ltd., and Easebon Services Ltd. (collectively, “Petitioner”) filed a Petition for *inter partes* review of claims 1–15, 17, and 19–21 of U.S. Patent No. 8,371,282 B2 (Ex. 1001, “the ’282 patent”). Paper 2 (“Pet.”). Spin Master, Inc. (“Patent Owner”) filed a Preliminary Response.¹ Paper 6 (“Prelim. Resp.”). With Board authorization, Petitioner filed a Reply to Patent Owner’s Preliminary Response (Paper 7), and Patent Owner filed a Preliminary Sur-reply (Paper 8).

After the Petition was filed, Patent Owner disclaimed independent claim 1 and dependent claim 4 of the ’282 patent. Prelim. Resp. 26; Ex. 2013. Accordingly, Petitioner’s challenges to claims 1 and 4 need not be addressed. *E.g.*, 37 C.F.R. § 42.107(e). Thus, the remaining challenged claims are claims 2, 3, 5–15, 17, and 19–21.

On February 12, 2024, we denied institution of *inter partes* review in this proceeding. Paper 10 (“Original Institution Decision”). On March 6, 2024, Petitioner requested that the Director review the Original Institution Decision. Paper 11. On July 9, 2024, the Director reversed and remanded our Original Institution Decision. Paper 12 (“Remand Dec.”). The Director ordered institution of *inter partes* review. Remand Dec. 21. Accordingly, as

¹ In Patent Owner’s Mandatory Notices, it is averred that “Hasbro, Inc. and Spin Master, Inc. are the real parties-in-interest.” Paper 4, 2. It is also explained that “Spin Master and Hasbro agree that Hasbro will actively control the defense of the ’282 Patent in this proceeding. Accordingly, Hasbro will submit all filings, make all arguments, and take all discovery.” *Id.*

explained below, we institute an *inter partes* review of claims 2, 3, 5–15, 17, and 19–21.

B. RELATED PROCEEDINGS

The '282 patent is involved in an ITC matter: *In the Matter of Certain Soft Projectile Launching Devices, Components Thereof, Ammunition, and Products Containing Same*, Investigation No. 337-TA-1325 (“ITC proceeding”). Pet. 7; Paper 4, 2; Prelim. Resp. 2–7. The '282 patent was also involved in *Gel Blaster, Inc. v. Hasbro, Inc.*, Case No. 1:22-cv-00828 (W.D. Tex.), which was dismissed with prejudice. Pet. 8; Paper 4, 2; Prelim. Resp. 8. The '282 patent was also the subject of IPR2023-00301 and IPR2023-00772; both of which were resolved by settlement. *Id.* The parties also note that the '282 patent is related to certain other U.S. patents that were challenged in IPR2023-00302 (terminated), IPR2023-00772 (terminated), and IPR2023-01461 (pending). Pet. 8; Paper 4, 2–3.

C. THE '282 PATENT

The '282 patent “relates to soft-projectile launching devices, such as projectile toys.” Ex. 1001, 1:5–6. More specifically, the '282 patent “discloses and teaches projectile launching devices, such as toys, amateur guns and weaponry that use projectiles formed from a super absorbent polymer (SAP).” *Id.* at 3:45–48. The '282 patent explains that SAPs can absorb large quantities of liquid, such as water, and swell. *Id.* at 3:41–42, 3:65–4:6. According to the '282 patent, hydrated SAP projectiles provide several benefits over other types of projectiles. *Id.* at 3:49–61. For example, “[t]he ability of SAP projectiles to maintain their shape allows them to be projected with a reasonable force and velocity” (*id.* at 3:54–56), whereas

light, foam-based projectiles “rapidly slow after initial firing and easily curve off line” (*id.* at 1:54–55).

The '282 patent discloses an exemplary combination of a projectile launching device and SAP projectiles in connection with Figure 1, which is reproduced below.

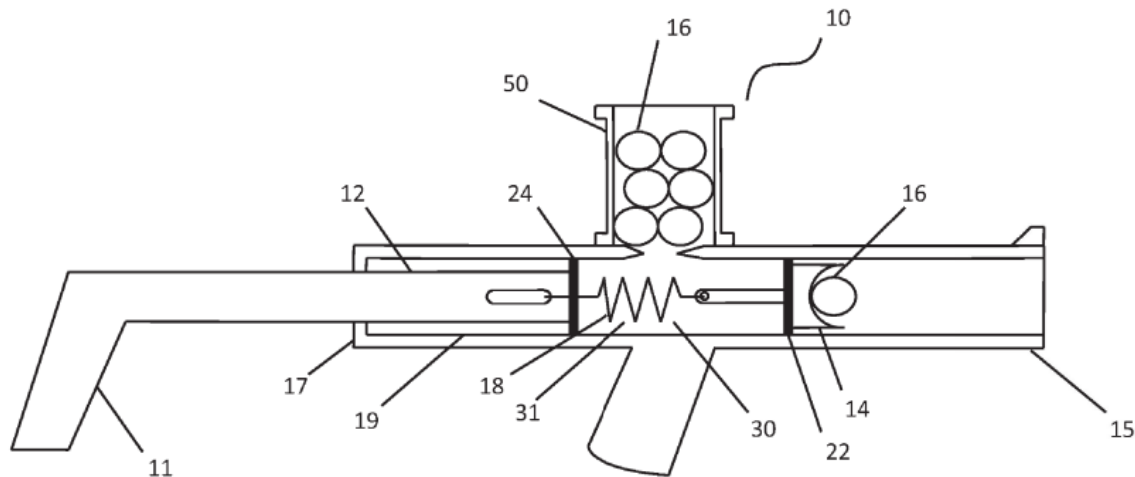


FIG. 1

“[Figure] 1 illustrates a cross section of one embodiment of a projectile launching toy designed for use with a plurality of projectiles made from a super absorbent polymer.” *Id.* at 3:17–19.

Specifically, Figure 1 shows projection device 10 with soft-projectile 16 made of a super-absorbent polymer. *Id.* at 4:60–64. In the embodiment of Figure 1, projection device 10 has “the general form of a gun.” *Id.* at 4:64–65.

Projection device 10 includes barrel 15 and soft-projectile holder 14. *Id.* at 5:50–56. Soft-projectile holder 14 is retained inside barrel 15.

Id. at 5:54–55. Soft-projectile holder 14 carries soft-projectile 16.

Id. at 5:65–66.

Projection device 10 also includes plunger cylinder 19 and plunger 12.

Id. at 5:38–39. Spring 18 is connected to plunger 12. *Id.* at 5:37–39.

Spring 18 retains soft-projectile holder 14 in barrel 15. *Id.* at 5:54–59.

A user starts the firing process by drawing handle 11 back, thereby pulling plunger 12 from plunger cylinder 19's aft end 17. *Id.* at 5:36–39.

This readies projection device 10 for firing:

As the spring 18 is stretched, air is sucked into an air compression chamber 31 located between plunger seal 24 and air seal 22. Air seal 22 abuts against a stop (not shown) just behind the firing position 30 to prevent air seal 22 from following the plunger 12 past a certain point as it is drawn back.

Id. at 5:40–45. To fire projection device 10, the user lets go of handle 12:

When the user releases the handle 12, the spring 18 quickly pulls the plunger 12 back inside the plunger cylinder 19. This creates a rapid increase in air pressure in the air compression chamber 31 between plunger seal 24 and air seal 22. Consequently, air seal 22 is propelled rapidly through barrel 15 towards the distal end of barrel 15 and simultaneously accelerates the holder for a soft-projectile 14 and the soft-projectile 16.

Id. at 5:45–52.

D. ILLUSTRATIVE CLAIMS

Independent claim 1 recites “[a]mmunition configured for use with a projectile launcher.” Ex. 1001, 9:29–30. Each of the challenged claims adds limitations to claim 1's limitations. For example, each of claims 2, 3, and 5–7 depends, directly or indirectly from claim 1. *Id.* at 9:29–30, 9:34, 9:36, 9:41, 9:43, 9:46. Claim 8 recites “[a] projectile launcher including the ammunition of claim 1.” *Id.* at 9:50–51. Each of claims 9–15, 17, and 19–

21 depends from claim 8. *Id.* at 10:3, 10:5, 10:7, 10:9, 10:11, 10:15, 10:18, 10:23, 10:31, 10:38, 10:46. Claims 1 and 8 are reproduced below.

1. Ammunition configured for use with a projectile launcher comprising: a plurality of soft-projectiles having the same shape, each soft projectile being formed from hydrated super absorbent polymer.

Ex. 1001, 9:29–34.

8. A projectile launcher including the ammunition of claim 1 disposed within a feed chamber of the projectile launcher, and wherein the projectile launcher is adapted to load a soft-projectile from the feed chamber to a firing position.

Ex. 1001, 9:50–10:2.

E. ASSERTED GROUND OF UNPATENTABILITY

Claims 2, 3, 5–15, 17, and 19–21 are challenged on the following ground:²

Claims Challenged	35 U.S.C. § ³	References
2, 3, 5–15, 17, 19–21	103(a)	Spitball ⁴ , Peev ⁵

² The Petition also challenged claims 1 and 4 as allegedly anticipated and obvious, but Patent Owner’s disclaimer of claims 1 and 4 obviated these challenges. Pet. 15; Prelim. Resp. 26; Ex. 2013.

³ The Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112-29, 125 Stat. 284, 287–88 (2011), revised 35 U.S.C. § 103, effective March 16, 2013. Because the application for the ’282 patent was filed before this date, the pre-AIA version of § 103 applies. *See* Ex. 1001, code (22).

⁴ Publication Declaration of Nathaniel E. Frank-White and ThinkGeek Spitballs Internet Archive Webpage (Ex. 1002, “Spitballs”).

⁵ Peev et al., Bulgarian Patent Application Publication No. 110343, published July 31, 2009 (Ex. 1003, “Peev”).

In support of its challenges, Petitioner also relies on the Declarations of Joel Delman (Ex. 1016) and Mauren T.F. Reitman, Ph.D. (Ex. 1017).

II. DISCUSSION

An *inter partes* review may not be instituted “unless . . . the information presented in the petition . . . shows that there is 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). The Director “determine[d] that Petitioner has shown a reasonable likelihood of prevailing in showing that at least one of the claims challenged . . . would have been obvious over Peev and Spitballs.” Remand Dec. 17. Additionally, having considered arguments from Patent Owner vying for discretionary denial of *inter partes* review, the Director “decline[d] to exercise . . . discretion under § 314(a) to deny institution of *inter partes* review.” *Id.* at 21. Accordingly, the Director “reverse[d] [our Original Institution Decision] and remand[ed] to the Board to institute trial.” *Id.*

III. CONCLUSION

An *inter partes* review of claims 2, 3, 5–15, 17, and 19–21 is hereby instituted with respect to the Petition’s obviousness challenge.⁶ At this stage of the proceeding, the Board has not made a final determination as to the patentability of any challenged claims or any underlying factual or legal issues. The final determination will be based on the record as developed during the *inter partes* review.

⁶ Because Patent Owner disclaimed independent claim 1 and dependent claim 4, the only remaining ground from the Petition is the obviousness challenge of claims 2, 3, 5–15, 17, and 19–21. Prelim. Resp. 26; Ex. 2013; Pet. 15.

IV. ORDER

In consideration of the foregoing, it is:

ORDERED that, pursuant to 35 U.S.C. § 314(a), an *inter partes* review of the '282 patent is instituted with respect to challenged claims 2, 3, 5–15, 17, and 19–21 with respect to the Petition's obviousness challenge of those claims; and

FURTHER ORDERED that, pursuant to 35 U.S.C. § 314(a) and 37 C.F.R. § 42.4(b), *inter partes* review of the '282 patent shall commence on the entry date of this Order, and notice is hereby given of the institution of a trial.

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