

United States District Court,
E.D. Pennsylvania.

GRACO CHILDREN'S PRODUCTS, INC,
Plaintiff.

v.

REGALO INTERNATIONAL LLC,
Defendant.

Aug. 8, 2000.

MEMORANDUM

KELLY

Before this Court are Cross-Motions for Partial Summary Judgment filed by the parties in the above-captioned matter, pursuant to Rule 56 of the Federal Rules of Civil Procedure. Defendant Regalo International LLC ("Regalo") seeks an order that foldable playyards manufactured and sold by Regalo and designated model Series 1400, 1500 and 1600 do not infringe U.S. Patent No. 4,811,437 ("the '437 patent"), either literally or under the doctrine of equivalents. FN1 Plaintiff Graco Children's Products, Inc. ("Graco"), on the other hand, seeks an order that the accused Regalo "early" and "current" model Series 1400, 1500 and 1600 playyards infringe the '437 patent. FN2 For the following reasons, Defendant's Motion for Partial Summary Judgment will be denied, and Plaintiff's Cross Motion for Summary Judgment will be granted with respect to the Regalo "early" model playyards and the "current" model playyards.FN3

FN1. Regalo contends that the accused device is lacking in the following features recited in Claim 1 of the '437 patent: (1) a unitary central hub member, and (2) hub legs collapsible by pivoting from a coplanar spread configuration to a non-coplanar configuration.

FN2. On May 19, 2000, Regalo filed Defendant's Response Brief in Opposition to Plaintiff's Cross-Motion for Partial Summary Judgment of Infringement in which Regalo does not contest Plaintiff's Motion for Partial Summary Judgment that Defendant's "early" series 1400 and 1500 playyards literally infringe Claim 1 of the @437 patent. However, Regalo does oppose Plaintiff's summary judgment motion with respect to Regalo's "current" model Series 1400, 1500 and 1600 playyards.

FN3. Oral Argument on the parties' cross-motions for partial summary judgment was held on July 28, 2000.

I. STANDARD OF REVIEW

"Summary judgment is appropriate when, after considering the evidence in the light most favorable to the

nonmoving party, no genuine issue of material fact remains in dispute and 'the moving party is entitled to judgment as a matter of law.' " *Hines v. Consolidated Rail Corp.*, 926 F.2d 262, 267 (3d Cir.1991) (citations omitted). "The inquiry is whether the evidence presents a sufficient disagreement to require submission to the jury or whether it is so one sided that one party must, as a matter of law, prevail over the other." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). The moving party carries the initial burden of demonstrating the absence of any genuine issues of material fact.FN4 *Big Apple BMW, Inc. v. BMW of North America, Inc.*, 974 F.2d 1358, 1362 (3d Cir.1992), *cert. denied*, 507 U.S. 912 (1993). Once the moving party has produced evidence in support of summary judgment, the nonmovant must go beyond the allegations set forth in its pleadings and counter with evidence that demonstrates there is a genuine issue of fact for trial. *Id.* at 1362-63. Summary judgment must be granted "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). "When there are cross-motions, each motion must be considered separately, and each side must still establish a lack of genuine issues of material fact and that it is entitled to judgment as a matter of law." *Nolen v. Paul Revere Life Ins. Co.*, 32 F.Supp.2d 211, 213 (E.D.Pa.1998).

FN4. "A fact is material if it could affect the outcome of the suit after applying the substantive law. Further, a dispute over a material fact must be 'genuine,' i.e., the evidence must be such 'that a reasonable jury could return a verdict in favor of the non-moving party.' " *Compton v. Nat'l League of Professional Baseball Clubs*, 995 F.Supp. 554, 561 n. 14 (E.D.Pa.) (citations omitted), *aff'd*, 172 F.3d 40 (3d Cir.1998).

II. DISCUSSION

A. Claim Construction

The first step of an infringement analysis is for the Court to construe the patent's claims as a matter of law to determine their scope and meaning. *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 390 (1996). In construing the claim, a court first looks to intrinsic evidence, i.e., the patent itself, which includes the claims, the specification, and the prosecution history before the Patent and Trademark Office. *Vitronics Corp. v. Conceptronc, Inc.*, 90 F.3d 1576, 1582 (Fed.Cir.1996). If the inventor intended for any terms to be defined in a special or uncommon manner, such intent must be clearly indicated in the patent specification. *Id.* In the absence of any special definition, the terms of the claim should be given their ordinary and accustomed meaning. *Id.*; *see also Intellicall, Inc. v. Phonometrics, Inc.*, 952 F.2d 1384, 1387 (Fed.Cir.1992). In situations where an analysis of the intrinsic evidence alone will not resolve any ambiguity in a disputed claim term, extrinsic evidence may be considered on the issue of how someone skilled in the art would understand the claims; however, such extrinsic evidence may not contradict the manifest meaning of the claims as set forth, even by implication, in the specification and prosecution history. *Rohm & Haas Co. v. Lonza, Inc.*, 997 F.Supp. 635, 638 (E.D.Pa.1998).

The second step is for the fact finder to compare the claim, as construed by the Court, to the accused device to determine whether a finding of infringement is warranted in that the device embodies every limitation of the claim, either literally or by an equivalent. *Carroll Touch, Inc. v. Electro Mechanical Sys., Inc.*, 15 F.3d 1573, 1576 (Fed.Cir.1993). However, "to the extent that the dispute here 'turns solely on the legal question of the proper construction of the claims,' it is amenable to summary judgment." *Quigley Corp. v. Gumtech*, NO. CIV. A. 99-5577, 2000 WL 264130, (E.D.Pa. March 9, 2000).

Literal infringement requires that the accused device contain each limitation of a claim exactly; any

deviation from the claim precludes a finding of literal infringement. *Litton Systems, Inc. v. Honeywell, Inc.*, 140 F.3d 1449, 1454 (Fed.Cir.1998). Summary judgment of infringement is proper when no reasonable jury could find that the properly construed claims at issue are infringed literally by the accused device. *Gintry Gallery, Inc. v. Berkline Corp.*, 134 F.3d 1473, 1476 (Fed.Cir.1998).

"A device that does not literally infringe a claim may nonetheless infringe under the doctrine of equivalents if every element in the claim is literally or equivalently present in the accused device." *Sage Prods., Inc. v. Devon Indus., Inc.*, 126 F.3d 1420, 1423 (Fed.Cir.1997). "A claim element is equivalently present in an accused device if only 'insubstantial differences' distinguish the missing claim element from the corresponding aspects of the accused device." *Id.* Summary judgment of non-infringement under the doctrine of equivalents is proper only if no reasonable jury could determine that a claim limitation is met in the accused device by an equivalent. *Warner-Jenkinson Co. v. Hilton-Davis Chemical Co.*, 520 U.S. 17, 39 n. 8 (1997).

Here, the parties' dispute centers on Claim 1 of the '437 patent. The relevant portion of Claim 1 is as follows:

1. Foldable playyard, comprising

a unitary central hub member,

a lower frame assembly comprising corner leg connecting members and hub legs each pivotally coupled at one end portion thereof to said hub member and pivotally coupled at an opposite end portion thereof to one of said lower frame assembly corner leg connecting members such that said hub legs are collapsible by pivoting said hub legs from a substantially coplanar spread configuration wherein said hub legs diverge radially outwardly from said hub member to a compact non-coplanar configuration where said hub legs are substantially parallel,

(Def.'s Summ. J. Mot., Ex. 2, '437 patent, col. 12, lines 1-13.)

Regalo draws this Court's attention to the above clauses of Claim 1, particularly with respect to "unitary central hub member" and "hub legs ... collapsible by pivoting said hub legs from a substantially coplanar spread configuration ... to a compact non-coplanar configuration." In doing so, Regalo contends that the '437 patent requires a unitary central hub member that may be composed of several pieces but acts as one piece, or a unit, and does not fold. Regalo adds that Claim 1 requires that moving the unitary central hub causes the hub legs to pivot about their pivot connection at the hub from a position coplanar with the unitary central hub to a position substantially perpendicular to the unitary central hub and substantially parallel to each other. (Def.'s Brief in Supp. of Partial Summ. J. at 3-4.) While Regalo argues that in *Graco Children's Products v. Century Products Co.*, No. CIV. A. 93-6710, 1996 WL 421966 (E.D.Pa. July 23, 1996) ("*Graco I*"), Judge Bechtel agreed with this, Regalo admits that Judge Bechtel stopped short of expanding the scope of Claim 1 to include the requirement that the hub must define one plane with respect to the "coplanar" versus "non-coplanar" distinction in the second paragraph of Claim 1.^{FN5} Thus, Regalo now invites this Court to build on Judge Bechtel's definition and find that the hub must define one plane to meet the requirements of a "unitary central hub ." (Regalo's Brief In Supp. Of Partial Summ. J. at 8.)

FN5. In *Graco I*, Judge Bechtel defined the term "unitary central hub member" as follows:

A single device comprising at least two parts pivotably coupled to and centrally located among the lower

frame assembly, that enables corner legs, hub legs and side rails to collapse into a substantially parallel compact configuration without the need to disassemble fabric or other components of the structure or to release a latch or lock on the corner legs to permit the corner legs to collapse.

1996 WL 421966 at *6-7.

Graco agrees with the portion of Regalo's proposed construction that Claim 1 requires a central hub that acts as a unit, and hub legs pivotally connected to the hub and corner leg connecting members. However, Graco disputes Regalo's request to build on Judge Bechtle's definition from *Graco I* and find that the hub must define one plane. Graco argues that this is not a claimed requirement and that Regalo improperly relies on extrinsic evidence in an effort to buttress its proposed claim construction and, thus, has failed to meet its burden to overcome the heavy presumption in favor of the ordinary meaning of the claim language.FN6 (Pl.'s Opp'n Brief at 10-11.) In doing so, Graco explains that a review of the prosecution history of the '437 patent reveals no specific arguments or definitions with respect to the term "unitary." As a result, Graco contends that this term, as used in connection with the claim element "unitary central hub member," should be given its ordinary meaning and, thus, be construed to include one or multiple components which are connected together to operate as a unit. *Id.* at 6.

FN6. Graco characterizes Regalo's citation to Judge Bechtle's prior ruling with respect to the construction of "unitary central hub member" as extrinsic, reminding this Court of its earlier decision that the prior claim construction from *Graco I* should not be given preclusive effect in this case. *Graco Children's Products v. Regalo International*, 77 F.Supp.2d 660, 665 (E.D.Pa.1999).

In defining the scope of the claim at issue, the task begins, and in this case ends, with the language of the claim. Here, the parties disagree as to whether the descriptive terms "coplanar" and "noncoplanar," when used in the second paragraph of Claim 1, refer to the position of the playyard legs with respect to the legs themselves or with respect to the "unitary central hub member." The parties also disagree as to whether "unitary central hub member" can encompass the hinged hub used in Regalo's current model playyards. The positions of the parties regarding these elements is set forth in more detail below.

B. Literal Infringement

1. Unitary Central Hub Member

Regalo contends that its current model playyards do not infringe Claim 1 because the requirement of a "unitary central hub member" found in Claim 1 of the '437 patent cannot encompass the two separate hinged members of the central hub in the Regalo playyards.FN7 Regalo submits that interpreting "unitary central hub member" to include a hinged structure functionally reads the word "unitary" out of the claim, and makes the structure equivalent to just a central hub member. (Tr., dated 7/28/00, at 15-16.)

FN7. Regalo argues that the Graco design is inconsistent with the "bifold hub" structure of U.S. Patent No. 4,688,280 ("Kohus '280" or "'280 patent"), which Regalo likens its device to. Regalo notes that the '280 patent shows the limited motion of the legs within the plane of a hub to and away from each other that is identical to the motion of the pairs of legs in the Regalo Series 1400, 1500 and 1600 playyards, and is completely inconsistent with legs moving out of a plane. (Def.'s Mem. at 5 n. 3.) In response, Graco correctly argues that the description in the '280 patent of a "bi-fold" hub does not provide any guidance in construing the '437 patent claim terms. In addition, Graco points out that Claim 1 is not directed to a hub,

but to an entire combination, and that the '437 patent was issued to protect the combination of elements recited in the claims as defining over the prior art, including the '280 patent. Thus, Graco contends that even if some elements of the claimed combination were known in the prior art and were not patentable individually, that does not shield an infringer using such known elements in the claimed combination which is patentable.

Graco replies that a comparison of the opened/spread and closed/folded positions of the playyards to the claims reveals that the Regalo "hinged hub" operates as a unit, i.e., always remains joined together as a unitary hub in moving from the opened to the closed position. Graco asserts that such a configuration is entirely consistent with Graco's interpretation of a unitary central hub, i.e., that is a centrally located member that operates as a unit to perform the claimed function.FN8 The claimed hub member, whether or not it has multiple components, allows the pivotably coupled hub legs to be drawn upwardly and inwardly to a substantially parallel configuration.

FN8. Graco contends that what this claim calls for is a combination of elements, and what unitary calls for is that the hub member be a central hub member that functions together, and that a bi-fold hub qualifies as a species of the unitary central hub because it does perform the function of one hub member. (Tr., dated 7/28/00, at 29-30.)

In resolving this issue, this Court must first look to the language of the '437 patent. In addition to the language found in Claim 1, the term "unitary" is used by the patentee in column 3, lines 21-24 of the '437 patent, which read as follows:

The foldable playyard 10 includes a flexible enclosure 54 comprising side panel portions 56, 58, 60, 62 and a floor portion 66. These portions of the enclosure are stitched together to form a unitary flexible structure.

At oral argument on the instant motions, counsel for Graco cited the above portion of the '437 patent to argue that "the patentee is using unitary to show that a number of pieces can be put together in an assemblage, so that they act as one." (Tr., dated 7/28/00, at 23-24.) We adopt this common-sense interpretation, especially in light of the parties agreement that the unitary central hub can have multiple parts that act as one piece. (Id. at 15, 24.) Thus, this Court finds that the term "unitary central hub member" as expressed in the '437 patent does encompass the hinged hub used in Regalo's current model playyards.

2. Hub Legs Collapsible by Pivoting from Coplanar Spread Configuration to Non-coplanar Configuration

Regalo also contends that the legs of the accused device do not pivot about their pivot connection into and out of the plane defined by each hinged member of the central hub to a compact non-coplanar configuration, but, rather, the leg pairs remain in the same plane as the hinged members.

Graco responds that Regalo's hub legs in the spread/open configuration diverge radially from the hub member and are coplanar with each other. The legs in the compact or folded position are substantially parallel and non-coplanar. Thus, according to Graco, the reference in the claim to a "compact non-coplanar configuration" only refers to the change in relationship between and among the legs when they arrive at the folded position. (Graco's Reply at 7.)

Regalo counters that Plaintiff ignores the fact that Claim 1 requires each hub leg to be "pivotably coupled at one end portion" to the "hub member" and at the same time requires that all of the hub legs to "diverge radially outwardly" from the "hub member" while the legs are in a "substantially co-planar spread configuration." According to Regalo, "[i]f the legs diverge 'radially outwardly' from the hub member AND at the same time are 'co-planar,' the hub must have a plane in common with the legs. Otherwise, the adjective 'radially' has no context or meaning." (Def.'s Reply in Supp. of Mot. for Partial Summ. J. at 4.) That being said, Regalo takes this one step further and argues, under its claim interpretation, that since "coplanar" refers to the legs having a common plane with the central hub in the spread configuration, than "non-coplanar" must refer to the legs not sharing a common plane with the central hub in the folded position. Based on the above, Regalo submits that because the hinged members of its central hub fold into the same plane as the legs, or become "coplanar" with the legs, when the playyard collapses, there can be no infringement based on the limitation in the '437 patent that the hub legs be in a "non-coplanar" position when they are collapsed (assuming "non-coplanar" refers to the position of the legs with respect to the "unitary central hub member" of the '437 patent).

Despite Regalo's arguments, a review of the claim language at issue shows that there is no requirement that the central hub be substantially coplanar with the legs in the spread configuration; rather, only the hub legs need be substantially co-planar in the spread configuration. As Graco points out, "[w]hile it may be reasonable that the plane defined by the legs in the spread configuration is within the plane defined by the hub member, there is no requirement that any part of the hub member be within the same plane as the legs." (Graco's Surreply Brief at 3) (citing '437 patent, Fig. 4, hub member (166) and hub legs (206) and (212), and Fig. 10, which shows a cross-section through hub leg (208) and the hub member in the open or spread configuration of the hub legs).

Thus, Regalo's concern that the term "radially" has no meaning unless the "coplanar" and "noncoplanar" language of Claim 1 is interpreted to include the legs with respect to the hub is unfounded. An examination of the language of Claim 1 makes clear that "radially" merely refers to how the legs diverge from the hub in the coplanar spread configuration. Moreover, the final part of the of the claim language at issue specifically refers only to the hub legs, which, upon collapsing, form "a compact non-coplanar configuration where said hub legs are substantially parallel" with no reference to the central hub. Based on the above, this Court concludes that the terms "coplanar" and "noncoplanar" refer to whether or not *all* of the hub legs lie in the same plane.FN9 In other words, all of the hub legs lie within the same plane, or are coplanar, when the lower frame assembly is in the spread configuration, and all of the hub legs do not lie within the same plane, or are non-coplanar, when in the collapsed position.FN10

FN9. During oral argument, Regalo's counsel stated that Claim 1 lacks the prepositional phrase that explains what the hub legs are "coplanar" and "non-coplanar" to. (Tr., dated 7/28/00, at 39-40 .) However, an examination of the entire paragraph at issue reveals that, despite referencing the central hub when describing the position of the legs in the spread configuration, the patentee consistently used "coplanar" and "non-coplanar" when referring to just the hub legs, and the choice not to specifically reference the central hub when describing the legs in the collapsed position indicates to this Court that the terms "coplanar" and "non-coplanar" refer to whether or not all of the legs lie in the same plane. Therefore, this Court concludes that Regalo's attempt to read into the claim language the requirement that the "coplanar" and "non-coplanar" language references the position of the legs with respect to the hub is unsupported by the patent itself.

FN10. Counsel for Graco convincingly makes the point that because Regalo has admitted infringement with respect to its early model playyards, which contain a unitary central hub member that is structurally the same as in the Graco playyard, it is difficult to understand how its current models do not fit the claim language and, thus, do not infringe on the '437 patent. (Tr., dated 7/28/00, at 20-22, 27-28.) Indeed, although this Court is mindful of Regalo's stated position with regard to how the bi-fold hub in its current model playyards makes the structure of the lower frame of Regalo's playyard distinguishable from that of the Graco playyard, such a distinction becomes insignificant when employing this Court's interpretation of the "coplanar" and non-coplanar" language of Claim 1 of the '437 patent as referring to whether or not all of the hub legs lie in the same plane.

C. Doctrine of Equivalents

In applying the doctrine of equivalents, Regalo argues that its current playyard does not function in the same way as the device claimed in the Graco patent.FN11 More specifically, Regalo states that its current playyard, in having a pair of hinged members connected by a central latch that must be released in order to collapse the playyard, is akin to the prior art device described in the Kohus ' 280 patent. By having a hub in one "coplanar" plane, Regalo contends that the playyard of the patent in suit eliminates not only the corner leg latches of the Kohus '280 device, but also the latch between the central hinged members, by claiming a "unitary" central hub instead of the "bifold" hub that Kohus '280 was stated to have by Graco.FN12 *See* Regalo's Brief in Supp. of Partial Summ. J. at 14 (citing *K-2 Corp. v. Salomon S.A.*, 191 F.3d 1356, 1367 (Fed.Cir.1999) (doctrine of equivalents cannot be used to reconfigure the claims or vitiate claim elements), and *Ethicon Endosurgery, Inc. v. United States Surgical Corp.*, 149 F.3d 1309, 1318-19 (Fed.Cir.1998) (patentee cannot expand the scope of claims by relocating positions of claimed elements)).

FN11. In its memoranda and at oral argument, Regalo argues to no avail that the declaration of Mark Flannery, in which Mr. Flannery describes Regalo's playyard as substantially different from the limitations expressed in the '437 patent, is sufficient to raise a genuine issue of material fact with respect to Graco's argument of doctrine of equivalents infringement. (Def.'s Resp. Brief in Opp'n to Pl.'s Cross-Mot. for Summ. J., Ex. C; Tr., dated 7/28/00, at 17-18.) Indeed, Mr. Flannery's declaration is undermined by his own deposition testimony in which he not only admits that he may not be qualified to give such testimony, but had trouble explaining what his affidavits meant. (Pl.'s Brief in Opp'n to Def.'s Summ. J. Mot. and in Supp. of Pl.'s Cross-Mot. for Summ. J. at 14-15 (citing *Flannery Dep.*, dated 3/28/00, at 55-62, 69-70); Tr, dated 7/28/00, at 32, 38-39.)

FN12. Regalo submits that Graco, in its Information Disclosure Statement, cited the '280 patent and adopted the language of the patent to describe the "bifold hub" of the device in the '280 patent, without defining the term. According to Regalo, that usage amounts to an admission by Plaintiff that the term "bifold hub" had an accepted meaning in the art. Regalo explains that if another term for the hub, such as "unitary," would have been more appropriate or meaningful to a person of ordinary skill, Graco could have used it.

Regalo summarizes how its design embodies the prior art "bifold hub" design of Kohus '280 as follows: (1) the pair of hinged members of the Regalo playyard is not equivalent to the pivot pins that couple the hub legs to the hub in the '437 patent because the hub of the '437 patent defines a plane and the pivoting motion of the legs is required to be into and out of the plane; (2) the pivot connection between the hinged members

and the legs in the Regalo device is not equivalent to the pivot connection between the hub and the hub legs in the '437 patent because the pairs of legs in the Regalo device pivot within a common plane while the hub legs in the '437 patent pivot out of a common plane. Regalo adds that construing the claim so that it encompasses a pair of hinged members would vitiate critical elements of the claim.

In response, Graco first contends that no reasonable jury could determine that the claim limitations are not met by Regalo's current models, especially in light of the admitted infringement by Regalo's early models. Next, Graco argues that Regalo does not offer any evidence of prosecution history estoppel that would limit the recited "unitary central hub member" in Claim 1 from covering the Regalo central hub.FN13 Graco points out that no amendments were made to the language in Claim 1 referring to the "unitary central hub member" during the prosecution of the ' 437 patent and there is no showing that construing this element to cover the hinged hub member of the Regalo playyard would entirely vitiate the meaning of the element.FN14 In taking this position, Graco again points out that the term "unitary" is used consistently in the specification of the ' 437 patent to refer to an element formed from one or more components, which is also consistent with the ordinary meaning of the term. Based on the above, Graco submits that this is *not* a case where no reasonable fact finder could find equivalence, and, thus, looking at the facts in a light most favorable to the non-movant, the Regalo hub member literally meets this element in Claim 1 of the ' 437 patent.

FN13. "Prosecution history estoppel arises when a concession is made or a position is taken to establish patentability in view of prior art on which the examiner has relied, which is a substantive position on the technology for which a patent is sought." (Graco's Opp'n Brief at 16) (citing *Pall Corp. v. Micron Separations Inc.*, 66 F.3d 1211, 1219 (Fed.Cir.1995), *cert. denied*, 520 U.S. 1115 (1997)).

FN14. Graco also reaffirms its contention that there is no requirement anywhere in the '437 patent or its prosecution history that the hub member be in or define a plane. And with respect to Regalo's continuing assertion that the unitary central hub member in Claim 1 cannot encompass the similar structure of the '280 patent, which includes a bi-fold hub member, without encompassing prior art, Graco argues that (1) the '280 patent was considered by the examiner during the prosecution of the '437 patent and the combinations claimed in the '437 patent were found to be patentable over this reference, and (2) the law does not preclude a patented combination from including known elements, since it is the invention as a whole that must be patentable over the prior art. (Graco's Opp'n Brief at 17) (citing *Conroy v. Reebok International Ltd.*, 14 F.3d 1570, 1577 (Fed Cir.1994) (proper test for determining the claim scope under the doctrine of equivalents is directed to the invention as a whole)).

Having considered the respective positions of the parties, this Court finds that the "current" Regalo playyards do infringe on the '437 patent under the doctrine of equivalents. As counsel for Graco points out:

Even if the Court were to accept that the unitary hub is not literally infringed by a hub which splits, even though it acts-and functions-as one, the admission that bi-fold hubs were known in the prior art and that the patent was allowed over it, constitutes-allows-the patentee to cover known elements, which are substitutes for the elements in the patent.

And as far as performing the same function in the same way to obtain the same result,.... There could be no dispute that these two playyards produce exactly the same result, each and every time you open and close

them. And, in fact, the defendant did not even find it a significant enough change to change the model numbers between the admitted infringement and the current product.

....

... The bi-fold hub is nothing but a subset of a unitary hub, it's a different way of doing the unitary hub. They switched one function for the pins and the legs to a function in the-in the pin that's in the hub. It is, in fact, a unitary hub.

(Tr., dated 7/28/00, at 30-31.) And with regard to "the lower frame assembly" language in the second paragraph of Claim 1, it is clear that the position of the elements of the lower frame in Regalo's earlier model playyards (the admitted infringement) and Regalo's current product produce the same result when they are opened and closed.FN15

FN15. The parties' final dispute is over Plaintiff's proposed hypothetical claim, "a hinged unitary central hub member," which arguably demonstrates that there is infringement under the doctrine of equivalents. Because this Court has already decided that Regalo's playyards infringe on the '437 patent, there is no need to explore this issue further.

III. CONCLUSION

Graco's reliance on the patent and structure of the accused device has not only raised a genuine issue of material fact that defeats Regalo's summary judgment motion, *see* Conroy v. Reebok Int'l Ltd, 14 F.3d 1570 (Fed.Cir.1994), but, because the '437 patent makes clear that Regalo's playyard contains each limitation, or its equivalent, of Claim 1 and, thus, infringes on the '437 patent, both literally and under the doctrine of equivalents, Graco's Cross-Motion for Partial Summary Judgment shall be granted with respect to Regalo's "early" and "current" model playyards.

An Order follows.

ORDER

AND NOW, this 8th day of August, 2000, upon consideration of Defendant's Motion for Partial Summary Judgment of Non-Infringement, Plaintiff's Cross Motion for Partial Summary Judgment of Infringement, and all responses thereto, it is hereby ORDERED that Defendant's Motion of Partial Summary Judgment is DENIED, and Plaintiff's Cross-Motion for Partial Summary Judgment is GRANTED.

E.D.Pa.,2000.

Graco Children's Products, Inc. v. Regalo Intern. LLC

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