

## Fed. Circ. Vacates Toro's PTAB Win On Lawn Mower Patent

By **Matthew Bultman**

*Law360 (August 12, 2019, 6:03 PM EDT)* -- The Federal Circuit on Monday threw out a Patent Trial and Appeal Board decision invalidating a lawn mower patent that was challenged by The Toro Co., finding the board misinterpreted a key phrase in the patent.

The court said in a precedential opinion that the PTAB, which found the MTD Products patent would have been obvious, made a mistake in inter partes review when it gave the phrase its ordinary meaning and refused to interpret the phrase more narrowly as a means-plus-function term.

"We ... vacate the board's obviousness conclusion, which was predicated on its incorrect claim construction, and remand for further proceedings," the appeals court wrote.

MTD, the company behind brands like Cub Cadet and Troy-Bilt, makes outdoor power equipment, including zero-turn riding lawn mowers. The patent covers a system that allows the steering wheel on these mowers to operate like a steering wheel on a conventional automobile.

Toro asked the PTAB to review the patent in 2015, months after MTD filed a lawsuit alleging Toro's TimeCutter and eXmark riding mowers infringed its patented steering system. The suit was dismissed in February 2018 after the two sides reached a confidential settlement.

By the time the district court case was dismissed, the PTAB had already found each of the patent's claims were obvious. Toro had agreed not to participate in MTD's appeal, so the USPTO stepped in at the Federal Circuit to defend the board's decision.

Central to the appeal was the phrase "mechanical control assembly."

While the PTAB found the term should be given its "plain and ordinary meaning," MTD argued it was a means-plus-function limitation, describing a means for performing a certain function. Under this interpretation, MTD says, Toro's evidence doesn't prove the claims are obvious.

Ruling Monday, the Federal Circuit said assessing whether a given phrase is a means-plus-function limitation involves two steps.

The first is to determine whether the phrase is written in means-plus-function format. If the answer is yes, the second step is to review the patent's specification to identify the structure that performs the

claimed function. The court said the PTAB conflated these two steps.

"The board's analysis implies that so long as a claim term has corresponding structure in the specification, it is not a means-plus-function limitation," the court wrote. "This is not consistent with our prior decisions."

The court also found the PTAB misinterpreted certain statements MTD made during examination of the patent. Under the appropriate legal framework, the court said "mechanical control assembly" is a means-plus-function term.

This is not the first MTD patent on zero-turn radius technology to appear in front of the Federal Circuit. Earlier this year, the court affirmed a PTAB decision finding part of a second patent challenged by Toro was invalid because it was anticipated.

An attorney for MTD declined to comment and a USPTO representative could not immediately be reached.

The patent at issue is U.S. Patent No. 8,011,458.

U.S. Circuit Judges Jimmie Reyna, Richard Taranto and Kara Stoll sat on the panel for the Federal Circuit.

MTD is represented by John Cipolla, Andrew Alexander, Tracy Johnson and Mark McDougall of Calfee Halter & Griswold LLP.

The USPTO is represented by Thomas Krause, Peter Sawert and Philip Warrick of the USPTO Office of the Solicitor.

The case is MTD Products Inc. v. Andrei Iancu, case number 17-2292, in the U.S. Court of Appeals for the Federal Circuit.

--Editing by Orlando Lorenzo.