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UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

Court File No. IPR2016-00219

Patent No. 8,136,613

THE TORO COMPANY,

Petitioner,

v.

MTD PRODUCTS INC.,

Patent Owner.

VIDEOTAPED DEPOSITION OF
FRED P. SMITH

Taken August 3, 2016 By Kelly A. Herrick

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22 Will Barron (Via telephone)
23 In-house counsel for Toro
24
25

1 from the handles.

2 Q. Okay. When was this work done?

3 A. It's probably been 20-plus years ago.

4 Q. So, that would make it, what, 1996?

5 A. That's really rough. I don't remember the
6 exact date by a long shot.

7 Q. Okay. What do you recall of the system that
8 was being used to control the mower, turn
9 it, et cetera?

10 A. As in -- I guess I don't know what you mean.

11 Q. How did it operate? How did it function?

12 A. Essentially, had two handles that you would
13 squeeze, and as you squeeze one, the left
14 wheel -- or as you squeeze the right handle,
15 the right wheel would operate; squeeze the
16 left handle, the left wheel would operate,
17 so you could, by squeezing differently, they
18 could operate the mower and turn it.

19 Q. Okay. And what was the nature of the
20 expertise that F.S. New Products was being
21 hired by Husqvarna to deliver?

22 A. Again, it's been a long time, but as I
23 recall, we were looking at different
24 possibilities for control of the mower.

25 Q. So, when you say "different possibilities

1 for control of the mower," what do you mean?

2 MR. PRANGE: Hold on just a second.
3 Mr. Johnson, could we go off the record? I
4 want to discuss with you just in terms of
5 the scope of this.

6 What I don't know right now is
7 whether this is protected by any type of
8 confidentiality by Husqvarna, and we have
9 Toro's counsel on the line, and I have a
10 proposal for you so you can continue with
11 the deposition and your questioning but so
12 we can be sensitive to that?

13 MR. JOHNSON: Sure. Off the
14 record.

15 THE VIDEOGRAPHER: We're going off
16 the record at 9:39 a.m.

17 (Discussion off the record.)

18 THE VIDEOGRAPHER: We're going back
19 on the record at 9:41 a.m.

20 BY MR. JOHNSON:

21 Q. Mr. Smith, was any of this work that you did
22 for Husqvarna covered by any sort of a
23 confidentiality obligation?

24 A. I imagine it would have been. I don't
25 recall specifically an agreement, but all of

1 the work that we do for our customers, we
2 consider confidential until it becomes
3 public, or until they tell us we can make it
4 public.

5 Q. Have you discussed this information
6 concerning your work with Husqvarna in
7 another public forum?

8 A. I've probably discussed it generally in a
9 deposition, wouldn't surprise me, but not
10 specifics.

11 Q. Is there any part of the work, as you sit
12 here today, you view as being something that
13 would be proprietary or trade secret to
14 Husqvarna?

15 MR. PRANGE: Objection: Form;
16 foundation.

17 THE WITNESS: Again, you know,
18 things that we have done that have not been
19 made public for a company, we would
20 certainly hold that as confidential.

21 MR. JOHNSON: Let's go off the
22 record.

23 THE VIDEOGRAPHER: We're going off
24 the record at 9:42 a.m.

25 (Discussion off the record.)

1 THE VIDEOGRAPHER: We're going back
2 on the record at 9:43 a.m.

3 BY MR. JOHNSON:

4 Q. When you described the work, you said it was
5 primarily in connection with the controls
6 that were used to steer the mower, correct?

7 A. Steer and -- yeah, cause it to go forward,
8 both.

9 MR. PRANGE: Let me make a
10 representation for the record that we have
11 muted the line for Toro's counsel to listen
12 to this deposition under the question of
13 whether the testimony that Mr. Smith is
14 providing may be confidential or trade
15 secret information of Husqvarna. Continue.

16 BY MR. JOHNSON:

17 Q. What was the ultimate configuration that you
18 guys set on for communicating steering input
19 into the drive system?

20 A. Well, it's been so long ago, I don't really
21 recall.

22 Q. Okay. You also made reference to some
23 preliminary work that you say was done in
24 connection with the ZTR Mower.

25 Do you recall that testimony?

1 A. Yes.

2 Q. Were there any final design drawings
3 prepared by F.S. New Products in connection
4 with that work?

5 A. I don't believe so.

6 Q. Okay. You said you did some preliminary
7 design work with respect to the ZTR Mowers.
8 What did you mean by "preliminary"?

9 A. Mower, you mean?

10 Q. Um-hmm. Yes.

11 A. That would have been some initial
12 conceptualization where things might be --
13 you know, where someone would sit, you know,
14 what kind of controls would be used.

15 Q. Did the work ever result in the manufacture
16 of a functional prototype?

17 A. We didn't do it. I'm not sure, you know,
18 how far they took what we did and what they
19 did with it, so I can't answer that.

20 Q. What do you recall was the final work
21 product of that engagement related to the
22 ZTR Mowers?

23 A. I think, essentially, we've done some
24 sketches, we've done some work with what
25 type of hydrostatic drives might be used on

1 the mower, looked at the -- some general
2 components that might be used.

3 Q. Was there any work done with F.S. New
4 Products in connection with designing --
5 strike that.

6 Thinking back now to the
7 walk-behind mower for Husqvarna, was it ever
8 commercialized?

9 A. Again, I'm not sure -- you know, they
10 already had a commercial mower. I'm not
11 sure that they did anything with the control
12 changes that we were looking at for them. I
13 don't know.

14 Q. So, you can't say one way or another?

15 A. I can't.

16 Q. Did Husqvarna ever bring the ZTR Mower that
17 you did -- that you recall there being some
18 preliminary sketches of to market?

19 A. Well, they have one. I own one. I'm not
20 sure that it's -- you know, there is a
21 connection there, there might be. I don't
22 know.

23 Q. But, as you sit here today, you don't know
24 one way or the other whether the one that
25 you did work on was ever commercialized?

1 A. I don't know.

2 Q. When was the work done in time related to
3 the ZTR Mower?

4 A. That would have been after the work we did
5 on the walk-behind.

6 Q. Okay. How far? How long after?

7 A. That was in the same general time period.

8 Q. So, you're saying 18, 19 years ago?

9 A. It may have still been 20 years ago. I
10 mean, it was very close in time.

11 Q. Do you have access to any of the work
12 product related to that engagement -- those
13 engagements, rather, with Husqvarna today?

14 A. I imagine we don't have any of that anymore.

15 Q. What do you think has happened to that
16 information?

17 A. I don't know.

18 Q. Did you make any effort to try and locate
19 any of that information?

20 A. No.

21 Q. So, you didn't review any of that
22 information in connection with any work that
23 you did related to either the '613
24 Declaration or the '458 Declaration?

25 A. No.