

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

3 Court File No. IPR2016-00219

4 Patent No. 8,136,613

5 THE TORO COMPANY,

6 Petitioner,

7 v.

8 MTD PRODUCTS INC.,

9 Patent Owner.  
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16 VIDEOTAPED DEPOSITION OF

17 FRED P. SMITH  
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Taken August 3, 2016 By Kelly A. Herrick

1 APPEARANCES:

2 CALFEE, HALTER & GRISWOLD LLP  
3 1405 East Sixth Street  
4 Cleveland, Ohio 44114-1607  
5 Phone: 216.622.8564  
6 Email: Tjohnson@calfee.com  
7 Jcipola@calfee.com

8 By: Tracy Scott Johnson  
9 John S. Cipolla  
10 For the Patent Owner

11 ROBINS, KAPLAN LLP  
12 800 LaSalle Avenue  
13 Minneapolis, Minnesota 55402-2015  
14 Phone: 612.349.8786  
15 Email: Dprang@robinskaplan.com  
16 Wmanske@robinskaplan.com

17 By: David Prange  
18 William E. Manske  
19 For the Petitioners, The Toro Company  
20 and Exmark Manufacturing

21 Also present: Kraig Hildahl, Videographer  
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.