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# Fed. Circ. OKs Cattle Breeding Patent, Kolcraft's \$4.4M Win

By [Tiffany Hu](#)

*Law360* (September 8, 2020, 9:38 PM EDT) -- The Federal Circuit on Tuesday upheld a Patent Trial and Appeal Board decision that a cattle breeding patent challenged by Trans Ova Genetics was valid and also affirmed Kolcraft's more than \$4.4 million patent victory against Chicco over playpens.

In the case involving Trans Ova, a three-judge panel summarily affirmed the PTAB's decision last June that XY LLC's patent for a cattle semen sorting method was not invalid as obvious over prior art.

At issue was the contribution level of a scientist with the last name Green who was referenced in a table that would later be copied over into the application for XY's patent. Trans Ova had argued that Green's contribution in an article predating the patent application — which included the table — qualified it as prior art, but the board was unpersuaded.

At [oral arguments](#) last week, U.S. Circuit Judge Raymond C. Clevenger said that it was both parties' fault for not getting a clear answer as to whether the inventor's article was prior art, a mistake that weighed more heavily on Trans Ova.

"Under the standard of review, you lose. That's as simple as I can say it," Judge Clevenger told Trans Ova at the hearing.

Trans Ova and XY have been going back-and-forth over patented bovine breeding technology for years, including another case that ended up at the Federal Circuit more than two years ago in which XY also came out on top.

XY accused Trans Ova of infringing a pair of its patents — not the one at issue in the instant case — and ultimately convinced a jury, which awarded it \$4.6 million in damages. The Federal Circuit ruled to preserve most of that verdict about two years ago.

Both parties were found to have broken their licensing agreement, which allowed Trans Ova to use XY's in-vitro cattle fertilization technology. Trans Ova was ordered to pay \$1.5 million to XY, and XY was ordered to pay \$528,000 to Trans Ova.

In the Kolcraft Enterprises Inc. case, a separate panel summarily affirmed an Illinois federal court's decision to award a \$4.4 million judgment to the baby products maker after finding that rival Chicco USA Inc. infringed its patent for a play gym.

Chicco, which does business as Artsana USA Inc., had argued on appeal that the lower court misinterpreted key pivoting claims in the patent and erred in allowing Kolcraft's expert to further "interpret" those constructions to the jury.

Citing the [U.S. Supreme Court's Markman](#) ruling, which held that claim constructions were "exclusively within the province of the court," Chicco said that the court's "abdication of its gatekeeper function as required by Markman was particularly prejudicial in this case."

But the panel was unmoved and affirmed the lower court judgment in Kolcraft's favor.

In the lawsuit filed in June 2009, Kolcraft accused Chicco of infringing a Kolcraft patent covering "play gyms and methods for operating the same."

Chicco lost at trial in August 2018, with the jury finding that a playpen made by Chicco infringed five claims of one of Kolcraft's patents. The jury awarded Kolcraft \$3.2 million in damages, based on a 7% royalty rate for \$46 million Chicco received in sales of the infringing playpens.

Last September, the district court issued a final judgment awarding Kolcraft \$4,215,419.04 in damages and prejudgment interest and \$107,635.35 in post judgment interest, court documents show.

Raymond P. Niro Jr. of [Niro McAndrews LLC](#), an attorney for Kolcraft, told Law360 in a statement Tuesday that he and his client are thrilled with the Federal Circuit ruling, adding that it encourages companies like Kolcraft to "continue innovating without the fear that competitors will come along and steal their ideas."

Counsel for the other parties immediately respond to a request for comment Tuesday.

Circuit Judges Jimmie V. Reyna, Raymond C. Clevenger and Raymond T. Chen sat on the Trans Ova panel for the Federal Circuit.

Chief Judge Sharon Prost and Circuit Judges Kimberly A. Moore and Kara F. Stoll sat on the Kolcraft panel for the Federal Circuit.

Trans Ova is represented by David A. Kelly and Steven Shipe of [Barnes & Thornburg LLP](#).

XY is represented by Z.W. Julius Chen, Kirt S. O'Neill and George Andrew Lever Rosbrook of [Akin Gump Strauss Hauer & Feld LLP](#).

Kolcraft is represented by Raymond P. Niro Jr. and Kyle Wallenberg of Niro McAndrews LLC.

Chicco is represented by George Pazuniak of [O'Kelly Ernst & Bielli LLC](#).

The first case is Trans Ova Genetics LC v. XY LLC, case number [19-2312](#), in the [U.S. Court of Appeals for the Federal Circuit](#). The second case is Kolcraft Enterprises Inc. v. Artsana USA Inc. et al., case number [20-1102](#), also in the U.S. Court of Appeals for the Federal Circuit.

--Additional reporting by Nadia Dreid and Mike Curley. Editing by Jill Coffey.

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### Case Title

[Trans Ova Genetics, L.C. v. XY, LLC](#)

### Case Number

[19-2312](#)

### Court

Appellate - Federal Circuit

### Nature of Suit

-

### Date Filed

August 27, 2019

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### Case Title

[Kolcraft Enterprises, Inc. v. Artsana USA, Inc.](#)

### Case Number

[20-1102](#)

### Court

Appellate - Federal Circuit

### Nature of Suit

830 Patent Infringement (Fed. Question)

### Date Filed

October 31, 2019

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