

## Inventor Testimony Alone Not Sufficient to Show Invention Date

JULY 3, 2019

*Kolcraft Enterprises, Inc. v. Graco Children's Products, Inc.*, Nos. 2018-1259, and 2018-1260 (Fed. Cir. July 2, 2019)  
The Federal Circuit considered the sufficiency of evidence of conception that the patentee argued antedated the prior art. The patentee appealed the PTAB's decision in an IPR that two Design Patents, both titled "Exposed Legs for a Play Yard," were obvious in light of the prior art.

In order to antedate the prior art, the patentee submitted an inventor declaration as well as eight exhibits to the PTAB. The exhibits consisted of pictures and sketches of play yards, as well as instructions for assembling a play yard that was the subject of the alleged invention. Neither the declaration nor the exhibits included a conception date, and the declaration redacted the dates of the exhibits' creation. Before the inventor depositions, patentee produced an unredacted version of the declaration that contained the alleged relevant dates, and the inventor testified that those dates came from metadata from the related computer files. Significantly, the patentee did not submit the computer files containing the metadata. The PTAB found that the patentee failed to show conception, reduction to practice, and diligence before the filing date of the prior art.

The Federal Circuit affirmed. The court noted that it only needed to decide whether the inventors conceived of the invention prior to the critical date if there was sufficient independent corroboration of the inventors' testimony. The sufficiency of "corroboration is governed by a 'rule of reason' analysis, which requires all pertinent evidence to be examined to determine whether the inventor's testimony is credible." "Inventor testimony alone," the court said, "cannot prove conception."

The court found that there was no independent evidence corroborating the alleged conception date, even if it considered the unredacted inventor declaration and deposition testimony. Significantly, the metadata from the other exhibits were not in the record.

[A copy of the opinion can be found here](#)

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