

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PACIFIC SURF DESIGNS, INC.,
Petitioner,

v.

Owner of U.S. Patent 6,491,589.

Case IPR2016-01674
Patent 6,491,589 B1

Before PHILLIP J. KAUFFMAN, WILLIAM V. SAINDON, and
JASON W. MELVIN, *Administrative Patent Judges*.

MELVIN, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

Petitioner, Pacific Surf Designs, Inc., filed a Petition (Paper 2, “Pet.”) requesting *inter partes* review of claims 1, 3, 13, 15–17, 24–27, 29–38, 40–43, 50, and 54–55 of U.S. Patent No. 6,491,589 B1 (Ex. 1001, “the ’589 patent”).¹ No Preliminary Response was filed. Pursuant to 35 U.S.C. § 314 and 37 C.F.R. § 42.4(a), we have jurisdiction to determine whether to institute review.

An *inter partes* review may not be instituted unless “the information presented in the petition . . . and any response . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a). For the reasons set forth below, we conclude that the Petition does not show a reasonable likelihood that Petitioner would prevail in establishing the unpatentability of any challenged claim. We therefore do not institute *inter partes* review.

A. RELATED MATTERS

Petitioner identifies the following pending judicial matter as relating to the ’589 patent: *Flowrider Surf, Ltd. v. Pacific Surf Designs, Inc.*, Case No. 15cv1879 (S.D. Cal.). Pet. 1.

B. REAL PARTIES IN INTEREST

Petitioner identifies no additional real party-in-interest. Pet. 1. Although the patent owner of record appears to be Surf Park PTE. LTD., that entity has not filed a paper in this proceeding. Rather, both Surf Waves, Ltd., and FlowRider Surf, Ltd. filed mandatory notices, claiming to be the

¹ See Certificate of Correction at Ex. 1001, 26–27.

patent owner and “exclusive worldwide licensee,” respectively. Papers 5, 8; *see* Order (Paper 9). Although we noted in our October 31, 2016, Order that “the true patent owner must file the required papers to represent its interest in in this proceeding” (Paper 9), no such paper was filed. Patent Owners are not, however, required to file a Preliminary Response (*see* 37 C.F.R. § 42.107(a)), so we proceed to consider the merits of the Petition.

C. THE '589 PATENT

The '589 patent is titled “Mobile Water Ride Having Sluice Slide-Over Cover,” was filed Aug 2, 2000, issued December 10, 2002, and claims priority to a provisional application filed August 2, 1999. Ex. 1001, [54], [22], [45], 1:6–8. The '589 patent describes two improvements in water rides: nozzles having “slide-over covers for ensuring the safety of riders” (*id.* at [57], 2:10–22); and a transportable design (*id.* at [57], 2:5–9).

The '589 patent describes that water is introduced to a ride through nozzles, and that the ride surface sloping up away from the nozzles causes riders to move towards the nozzles, thus requiring a horizontal transition surface “to provide an energy-absorbing buffer between the upward sloped ride surface and the lower end of the ride surface.” *Id.* at 1:22–48. To eliminate or minimize that transition surface, the '589 patent teaches a “slide-over cover” that “enables riders to safely slide over the nozzle without risk of injury or interference with ride operation.” *Id.* at 8:40–47 (reference number omitted); *see id.* 8:39–12:26. Figure 3A is reproduced below:

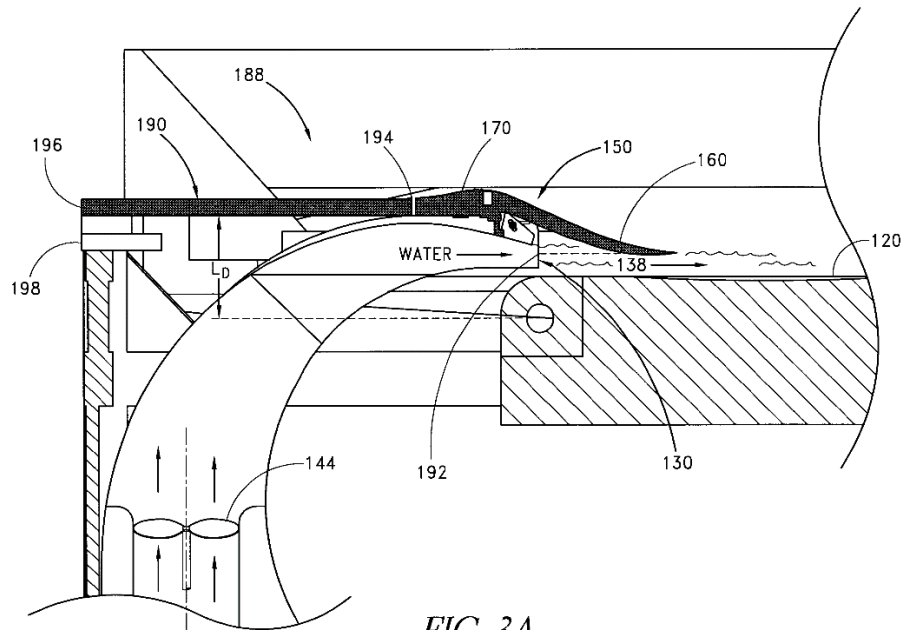


FIG. 3A

Figure 3A depicts a preferred embodiment of an “injection nozzle assembly” in which water from a pump 144 moves through nozzle 130 to the ride surface 120; the nozzle has a slide-over cover 150, which itself includes a tongue 160 that contacts the water exiting the nozzle. *Id.* at 10:19–50. Biasing or urging the tongue portion down towards the water exiting the nozzle “reduces or minimizes the possibility of a rider catching a finger underneath the pad 150 (or tongue 160) and sluice gate [i.e., nozzle] 130.” *Id.* at 10:38–50.

The '589 patent also describes an aspect of water rides such that the rides may be transported more easily. *Id.* at 12:27–16:40. To that end, the '589 patent discloses using a set of transportable modules that “can be quickly assembled on-site without the need for a time-consuming long, drawn out construction process.” *Id.* at 12:44–50. Figure 4A is reproduced below:

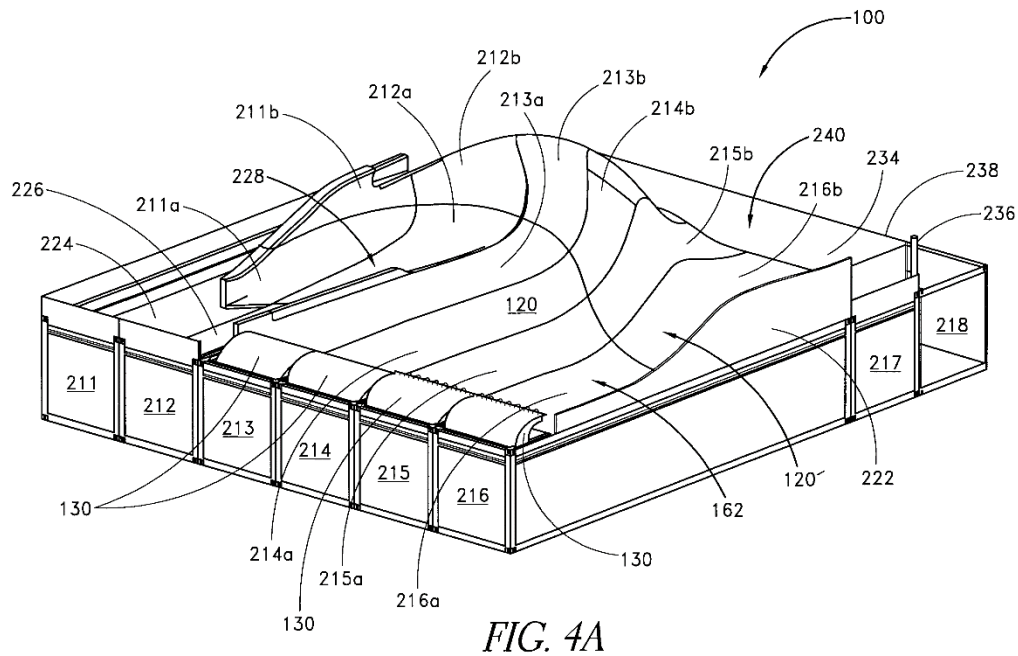


Figure 4A depicts a water ride attraction 100 formed from “a plurality of shippable modules, units or containers 211, 212, 213, 214, 215, 216, 217, and 218.” *Id.* at 12:62–65. Four of the modules depicted in Figure 4A contain a circulation pump “in fluid communication with a respective flow forming nozzle 130.” *Id.* at 13:25–28. Various portions of the ride surface are associated with certain modules such that the connected modules form an overall ride surface. *See id.* at Fig. 4A, 13:39–14:9.

D. CHALLENGED CLAIMS

Petitioner challenges 1, 3, 13, 15–17, 24–27, 29–38, 40–43, 50, and 54–55 of the ’589 patent. Pet. 1. Claims 1, 17, 24, 31, 37, 38, 42, and 50 are independent. Ex. 1001, 16:53–20:31. Claims 1 and 31 (reproduced below) are illustrative:

1. A nozzle assembly for a water ride attraction, comprising:
a nozzle having an outlet aperture adapted to emit a jet of water onto a ride surface; and

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.