

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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BESTWAY (USA), INC.,  
Petitioner,

v.

INTEX MARKETING LTD.,  
Patent Owner.

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Case IPR2017-01655  
Patent 9,254,240 B2

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Before KEN B. BARRETT, FRANCES L. IPPOLITO, and  
KEVIN W. CHERRY, *Administrative Patent Judges*.

BARRETT, *Administrative Patent Judge*.

DECISION

Denying Institution of *Inter Partes* Review  
35 U.S.C. § 314 and 37 C.F.R. § 42.108

## I. INTRODUCTION

### A. *Background and Summary*

Bestway (USA), Inc. (“Petitioner”) filed a Petition requesting *inter partes* review of U.S. Patent No. 9,254,240 B2 (“the ’240 patent,” Ex. 1001). Paper 1 (“Second Petition” or “Second Pet.”). The Petition challenges the patentability of claims 18–22 and 30 of the ’240 patent on the grounds of obviousness under 35 U.S.C. § 103. As discussed below, these claims were challenged by Petitioner in its prior petition filed in Case PGR2017-00003 (Paper 1, “First Petition” or “First Pet.”). Intex Marketing Ltd. (“Patent Owner”) filed a Preliminary Response. Paper 7 (“Prelim. Resp.”).

Institution of *inter partes* review is discretionary. *See* 35 U.S.C. § 314(a); 37 C.F.R. § 42.108(a). Under the circumstances of this case, for the reasons explained below, we exercise our discretion to not institute an *inter partes* review as to any of claims 18–22 and 30 of the ’240 patent.

### B. *Related Proceedings*

Both parties identify, as matters involving the ’240 patent, *Intex Recreation Corp. v. Bestway USA, Inc. et al*, Civil Action No. 2:16-cv-03950 (C.D. Cal.) and Patent Trial and Appeal Board case PGR2017-00003. Second Pet. 3; Paper 5, 2. Petitioner also indicates that that District Court action has been consolidated with another case involving the parties and involving another patent, U.S. Patent No. 6,568,011, and that that patent is the subject of IPR2017-00848. Second Pet. 3.

### C. *The ’240 Patent*

The ’240 patent is titled “Inflatable Spa.” Figure 1 of the ’240 patent is reproduced below:

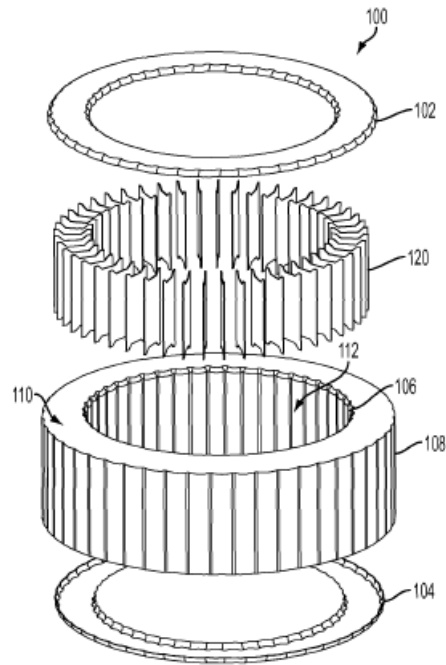


Figure 1 is an exploded perspective view of an inflatable spa, including tensioning structures. Ex. 1001, 4:27–29. The inflatable spa 100 has internal wall 106 and external wall 108 that together, along with top and bottom walls (102 and 104, respectively), define an inflatable air chamber 110. *Id.* at 5:60–6:9. Tensioning structures 120 couple the inner and outer walls, and may have gaps at the top and bottom. *Id.* at 6:30–38. Figure 6 of the '240 patent is reproduced below:

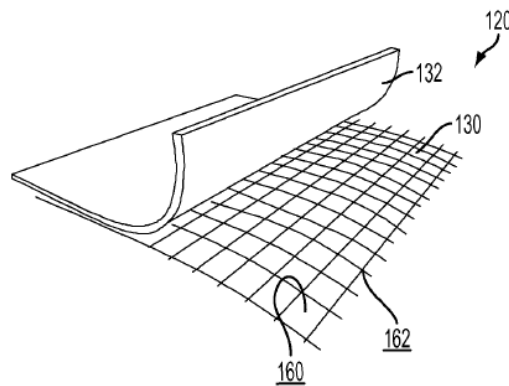


Figure 6 is “an exploded perspective view of the tensioning structure including a porous layer and an attachment layer.” *Id.* at 4:38–39. Each

tensioning structure may include “porous layer or sheet” 130 and attachment layer or sheet 132, with the porous layer sandwiched between two attachment layers or attached to a single attachment layer. *Id.* at 6:39–50. The porous layer may be formed from ligaments or frame members that define holes or pores. *Id.* at 6:64–66. The porous layer may be constructed of a mesh, cloth, or string with interwoven members. *Id.* at 7:39–42. “When the air chamber 110 is pressurized, frame members . . . may be placed in tension to help maintain the shape of spa 100.” *Id.* at 6:66–7:1.

#### *D. Illustrative Claim*

All of the claims of the ’240 patent challenged in this case are dependent claims that depend indirectly from independent claim 1. Claim 18 is illustrative and is reproduced below along with claims 1 and 17 from which it depends.

1. An inflatable product comprising:
  - a first wall;
  - a second wall;
  - an inflatable air chamber defined by the first wall and the second wall; and
  - a plurality of tensioning structures located in the air chamber and coupled to the first wall and the second wall, each tensioning structure including:
    - at least one attachment sheet having an outer perimeter;
    - and
    - a porous sheet coupled to the at least one attachment sheet, the porous sheet having an outer perimeter that substantially overlaps the outer perimeter of the at least one attachment sheet, the porous sheet including a plurality of enclosed pores located entirely within the outer perimeter of the at least one attachment sheet and a plurality of frame members that intersect to define the plurality of enclosed pores.

17. The inflatable product of claim 1, wherein the at least one attachment sheet is welded to the first wall along a first seam and welded to the second wall along a second seam and portions of the plurality of frame members extend diagonally relative to the first and second seams.

18. The inflatable product of claim 17, wherein the first wall comprises an inner wall of the inflatable product and the second wall comprises an outer wall of the inflatable product, further comprising a top wall and a bottom wall cooperating with the inner and outer walls to define the inflatable air chamber, each tensioning structure and the top and bottom walls cooperate to define gaps therebetween.

Ex. 1001, 19:2–19, 20:32–43.

*E. Procedural History and the First Petition in PGR2017-00003*

On November 8, 2016, Petitioner filed the First Petition in Case PGR2017-00003 requesting a post-grant review of claims 1–7, 17–22, and 30 of the '240 patent. First Pet. 1. In the First Petition, Petitioner asserted the following grounds of unpatentability (*id.* at 24):

References	Basis	Claims
Peterson <sup>1</sup> and Fireman <sup>2</sup>	§ 103	1–7, 17
Peterson, Fireman, and Guan '797 <sup>3</sup>	§ 103	18–22, 30
Peterson, Fireman, Guan '797, and Wang '615 <sup>4</sup>	§ 103	19–22

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<sup>1</sup> U.S. Patent No. 5,924,144, issued July 20, 1999 (Ex. 1002).

<sup>2</sup> U.S. Patent Application Publication No. 2004/0040082 A1, published March 4, 2004 (PGR2017-00003, Ex. 1003).

<sup>3</sup> Chinese Patent Application Publication No. CN 2064797 U, published Oct. 31, 1990 (PGR2017-00003, Ex. 1004).

<sup>4</sup> Chinese Patent Application Publication No. CN 202051615 U, published Nov. 30, 2011 (Ex. 1005).

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