

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BESTWAY USA, INC.,
Petitioner,

v.

INTEX MARKETING, LTD.,
Patent Owner.

Case PGR2017-00003
Patent 9,254,240

Record of Oral Hearing
Held: August 1, 2018

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

Case PGR2017-00003
Patent 9,254,240

APPEARANCES:

ON BEHALF OF THE PETITIONER:

BRIAN A. JONES, ESQUIRE (Telephonic appearance)
McDermott, Will & Emery
444 West Lake Street
Suite 4000
Chicago, IL 60606

ON BEHALF OF THE PATENT OWNER:

R. TREVOR CARTER, ESQUIRE (Telephonic appearance)
Faegre, Baker, Daniels
300 North Meridian Street
Suite 2700
Indianapolis, IN 46204

The above-entitled matter came on for hearing on Wednesday, August 1, 2018, commencing at 11:08 a.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

P R O C E E D I N G S

- - - - -

1 JUDGE BARRETT: Good morning everybody. We are on the
2 record. Thank you for indulging us as the court reporter set up this morning.
3 We're on the record today for a second and supplemental hearing in PGR
4 2017-00003, Bestway v. Intex Marketing. I am Judge Barret in the hearing
5 room in Alexandria along with the court reporter. There is no public present
6 at this time. On the phone with me are Judges Cherry and Ippolito and the
7 counsel are appearing telephonically. So I'd like to start with the parties'
8 appearances. Who do we have from Petitioner?

9 MR. JONES: Good morning, Your Honors. Brian Jones of
10 McDermott, Will & Emery on behalf of Petitioner Bestway USA. With me
11 is Michael Chu also of McDermott Will.

12 JUDGE BARRETT: Welcome. And who do we have from Patent
13 Owner?

14 MR. CARTER: Good morning, Your Honor. This is Trevor Carter
15 and with me are my colleagues Drew McCoy and Reid Dodge for the Patent
16 Owner.

17 JUDGE BARRETT: All right. So we set forth the procedure for
18 today's hearing. Each party's going to have 15 minutes total time to present
19 arguments. The panel does have the demonstrative exhibits and we also
20 have the record available. Because this is telephonic, it is even more
21 important than normal for you to identify the slides you are talking about.
22 The court reporter does have a set of the demonstratives. I would ask that
23 only one attorney per side speak at a time. If you want to have your co-
24 counsel speak, please request that before people just jump in and, along

1 those lines, please identify yourself at the beginning of your argument. That
2 will help the court reporter immensely in keeping track of who is speaking.

3 As always, Petitioner will go first and you may reserve time for
4 rebuttal. Patent Owner will then respond and Petitioner can use any time
5 remaining. I'll be watching the clock and give counsel warning as they're
6 approaching their time. Any questions or concerns before we get started?
7 Petitioner?

8 MR. JONES: Nothing from Petitioner. This is Brian Jones, nothing
9 from Petitioner.

10 JUDGE BARRETT: All right. Patent Owner, you good?

11 MR. CARTER: Yes. Trevor Carter for Patent Owner, nothing.

12 JUDGE BARRETT: Well then with that, Petitioner you may begin.

13 MR. JONES: This is Brian Jones. I'd like to reserve three minutes for
14 rebuttal, please.

15 JUDGE BARRETT: Okay.

16 MR. JONES: And I'll do my best to identify the slide number in the
17 lower right corner of our demonstratives but please let me know if you have
18 any questions along the way or if I forget to do so.

19 So turning to slide 2. As you know the Board issued a modified
20 institution decision. Today we'll only address the newly instituted grounds.
21 On slide 3 those newly instituted grounds are highlighted. The Board
22 previously heard arguments on ground one which covered Peterson and
23 Fireman for claims 1 through 7 and 17. Ground two adds the teachings from
24 Guan 797. On top of that ground three adds the teachings from Wang 615.

25 Turning to slide 4. The claims in grounds two and three can be
26 organized into two groups. The first group is claims 18 through 22 and these

1 all depend from claim 17. The claims add features related to the walls of the
2 pool and the notches of the internal tensioning structures. The second group
3 is really just claim 30. It depends from claim 7 and it adds a requirement that
4 the pool floor be a double layered floor and attached through an annular
5 perimeter rim.

6 So if we look at slide 6 it shows the Guan 797 reference. This is the
7 additional prior art used in ground two and Guan is an inflatable pool with
8 internal tensioning structures and a cross-sectional view of Guan's inflatable
9 pool is shown in figure 3, and the petition uses Guan to show the wall-
10 related limitations of claim 18 and the petition also uses Guan to show the
11 double layered floor of claim 30.

12 On slide 7 is the Wang 615 reference. This is the additional prior art
13 used in ground three, and Wang is also an inflatable pool with internal
14 tensioning structures and the petition uses Wang for the notch-related
15 features of claims 19 through 22.

16 On slide 8, just a reminder that the Patent Owner relies solely on its
17 preliminary response for grounds two and three and on slide 9, the Patent
18 Owner's preliminary response identifies no unique disputes for the features
19 added by claims 18 through 22. Patent Owner simply rehashes its ground
20 one arguments related to the Fireman reference.

21 So moving on to slide 11. Under ground two the petition presented
22 two alternative arguments to address the wall-related limitations of claim 18.
23 First, the petition presented the combination of Peterson and Fireman and
24 second, it presented a further combination with Guan.

25 Slide 12 shows claim 18 with the additional wall-related limitations
26 including the inner wall, the outer wall, the top wall and the bottom wall.

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.