

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BESTWAY (USA), INC.,
Petitioner,

v.

INTEX MARKETING LTD.,
Patent Owner.

Case PGR2017-00029
Patent 9,567,762 B2

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

IPPOLITO, *Administrative Patent Judge*.

DECISION
Institution of Post-Grant Review
37 C.F.R. § 42.208

I. INTRODUCTION

Bestway (USA), Inc. (“Petitioner”) filed a Petition (Paper 1, “Pet.”) for post-grant review of claims 1–29 of U.S. Patent No. 9,567,762 B2 (Ex. 1001, “the ’762 patent”). Intex Marketing Ltd. (“Patent Owner”) filed a Preliminary Response to the Petition (Paper 8, “Prelim. Resp.”). We have jurisdiction under 35 U.S.C. § 324, which provides that a post-grant review may be instituted only if “the information presented in the petition . . . demonstrate[s] that it is more likely than not that at least 1 of the claims challenged in the petition is unpatentable.” We determine that the information presented in the Petition demonstrates that it is more likely than not that Petitioner would prevail in showing that claims 1, 2, 6–9, and 16–29 of the ’762 patent are unpatentable. Pursuant to 35 U.S.C. § 324, we authorize a post-grant review to be instituted as to claims 1, 2, 6–9, and 16–29 of the ’762 patent.

A. *Related Proceedings*

We are informed that the ’762 patent is involved in a federal district court case in the Central District of California, *Intex Recreation Corp. v. Bestway (USA), Inc.*, Civil Action No. 2:17-cv-1177. Pet. 3, Prelim Resp. 2.

B. *The ’762 Patent*

The ’762 patent, titled “Drain for a Pool,” issued February 14, 2017, from U.S. Application No. 14/550,049 (“the ’049 application”), filed November 21, 2014. Ex. 1001, at [54], [45], [21], [22]. The ’762 patent claims the benefit of Chinese Patent Application No. 201320745905.2, filed

November 21, 2013. *Id.* at [30].¹

The '762 patent is directed generally to a drain for a pool. Ex. 1001, Title. Figure 1 of the '762 patent is reproduced below.

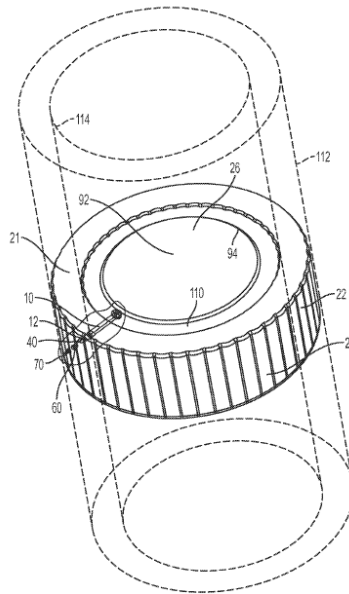


FIG. 1

Figure 1 is a perspective view of an underside of inflatable pool showing the pool having a floor drain. *Id.* at 2:12–13. In Figure 1, pool 20 includes scalloped external wall 22, and internal wall 24 (see FIG. 6) positioned inside of external wall 22, and a floor 26. *Id.* at 2:45–47. Floor 26 and internal wall 24 cooperate to define a water cavity 28 which holds water during use of inflatable pool 20. *Id.* at 2:47–49. Pool 20 includes a floor drain 10 in communication with water cavity 28 to assist in draining

¹ Because the earliest possible effective filing date for the '762 patent is after March 16, 2013 (the effective date for the first inventor to file provisions of the America Invents Act) and this petition was filed within 9 months of its issue date, the '762 patent is eligible for post-grant review. *See* 35 U.S.C. § 321(c).

pool 20. *Id.* at 2:49–51. Referring to Figure 2 (reproduced below), the '762 patent teaches that floor drain 10 includes a drainage conduit 32.

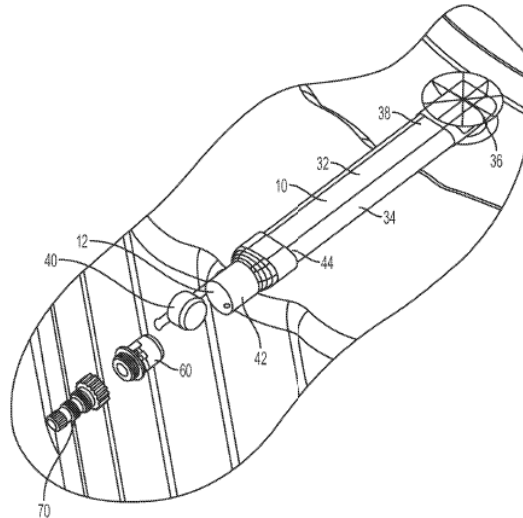


FIG. 2

Figure 2 provides an enlarged view of floor drain 10, including drainage conduit 32 with midsection pipe 34, inlet cap 36 coupled to midsection pipe 34, and outlet cap 42 coupled to the midsection pipe, and a plug positioned to plug the outlet cap. *Id.* at 2:14–18, 3:11–16. Inlet cap 36 defines inlet 11 of drainage conduit 32 and outlet cap 42 defines outlet 12 of drainage conduit 32. *Id.* at 3:14–16.

The '762 patent further discloses that midsection pipe 34 has an oblong cross section/profile with flat portions 54 and rounded portions 56. Ex. 1001, 3:30–32. According to the '762 patent, midsection pipe 34 has longitudinal axis 58, major axis 61 extending through rounded portions 56 (of the oblong cross section) in a direction substantially parallel to floor 26, and minor axis 62 extending through flat portions 54 in a direction substantially perpendicular to floor 26. *Id.* at 3:32–37. Flat portions 54 and

rounded portions 56 extend in the direction of longitudinal axis 58 between inlet cap 36 and outlet cap 42. *Id.* at 3:37–39.

Additionally, the '762 patent teaches that inlet cap 36 may include conical body portion 68 (shown in Figure 7), pipe-receiving portion 71, and inlet portion 72 that defines inlet 11. *Ex.* 1001, 3:42–45. Figure 7 is reproduced below.

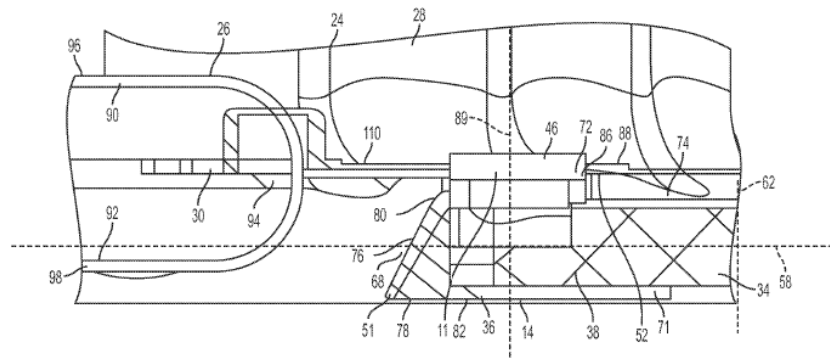


FIG. 7

Figure 7 provides an enlarged view of the truncated conical profile of the inlet cap shown in Figure 5. *Ex.* 1001, 2:30–31. The '762 patent describes conical body portion 68 as a substantially hollow truncated cone 76 having wide end 78 and narrow near end 80. *Id.* at 3:46–48. Inlet cap 36 includes an oblong profile at pipe-receiving portion 71 that transitions into the truncated conical profile of conical body portion 68 that then transitions to the cylindrical profile of inlet portion 72. *Id.* at 3:48–51.

C. Illustrative Claim

Of the challenged claims, claims 1, 9, and 16 are independent. Claims 1 and 16 (reproduced below) are illustrative of the claimed subject matter:

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