

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WHITEWATER WEST INDUSTRIES, LTD.,
Petitioner,

v.

AMERICAN WAVE MACHINES, INC.,
Patent Owner.

IPR2022-01033
Patent 8,434,966 B1

Before BENJAMIN D. M. WOOD, CARL M. DeFRANCO, and
ALYSSA A. FINAMORE, *Administrative Patent Judges*.

DeFRANCO, *Administrative Patent Judge*.

DECISION
Granting Institution of *Inter Partes* Review
35 U.S.C. § 314

American Wave Machines, Inc., (“AWM”) is the owner of U.S. Patent No. 8,434,966 B1 (Ex. 1001, “the ’966 patent”). WhiteWater West Industries, Ltd. (“WhiteWater”) filed a Petition requesting *inter partes* review of claims 1–18 of the ’966 patent. Paper 2 (“Pet.”). AWM filed a Preliminary Response. Paper 6 (“Prelim. Resp.”). Because we determine that WhiteWater has demonstrated a reasonable likelihood that at least claim 1 of the ’966 patent is unpatentable, we institute an *inter partes* review of all claims as challenged in the Petition. *See* 35 U.S.C. § 314(a).

I. BACKGROUND

A. *Related Matters*

The ’966 patent is the subject of an infringement action filed May 20, 2022 in *Whitewater West Industries, Ltd. v. American Wave Machines, Inc.*, Case No. 3-22-cv-00729 (S.D. Cal.). *See* Paper 5, 2. WhiteWater notes that they have filed petitions challenging three other AWM patents, namely, U.S. Patent Numbers 10,662,663 B2 (IPR2022-01032), 9,279,263 B2 (IPR2022-01034), and 10,738,492 B1 (IPR2022-01035). Pet. 1.

B. *The ’966 Patent*

The ’966 patent is directed to wave generators for making waves in pools for recreational purposes. Ex. 1001, 1:7–8. According to the ’966 patent, waves that are created from known wave generators can be ridden for only a short period of time and distance because the waves quickly decrease in amplitude and become unrideable, and are more often small, non-realistic waves that are produced near the shore. *Id.* at 1:30–33, 2:12–13. The ’966 patent overcomes these shortcomings by using sequenced chambers to create waves that travel in a direction that is *not perpendicular* to the wave generator apparatus so that the wave strength is replenished by the wave

generator as it moves across the pool. *Id.* at 2:24–28. Figure 1 of the '966 patent, reproduced below, illustrates an embodiment of the wave generator apparatus.

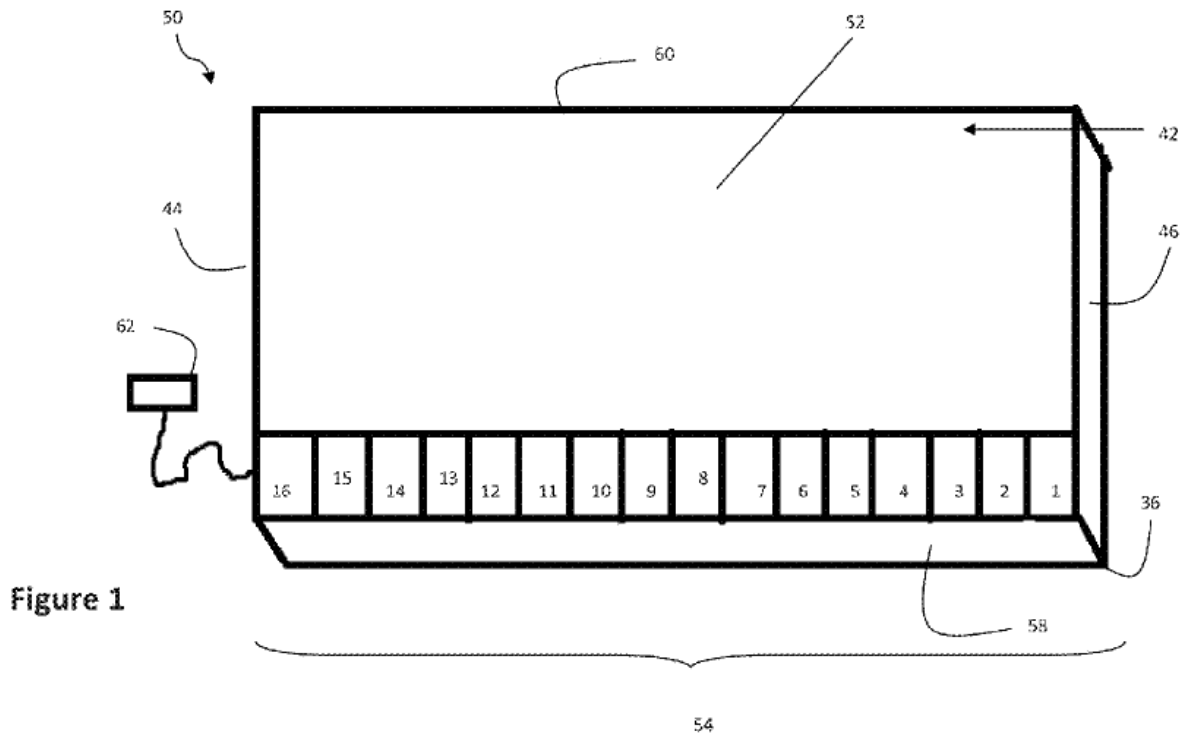


Figure 1 is a top view of a wave generator apparatus in a wave pool with sixteen chambers. Ex. 1001, 3:6–7. Pool 50 contains water 52, and includes a plurality of wave generating chambers 54 (each chamber is individually numbered 1–16), and a controller 62 to operate chambers 54. *Id.* at 3:55–58. The '966 patent explains that although sixteen wave generating chambers 54 are depicted, there is no required number of chambers, but that too few chambers may not be able to create a wave that can be ridden. *Id.* at 3:59–64. Pool 50 includes first end 58 having a plurality of chambers 54 adjacent to one another and second end 60 opposite the first end and having beach 42, and also includes two sides 44, 46, and

floor 36. *Id.* at 4:5–9. An exemplary wave generating chamber 54 is depicted in Figure 2, reproduced below.

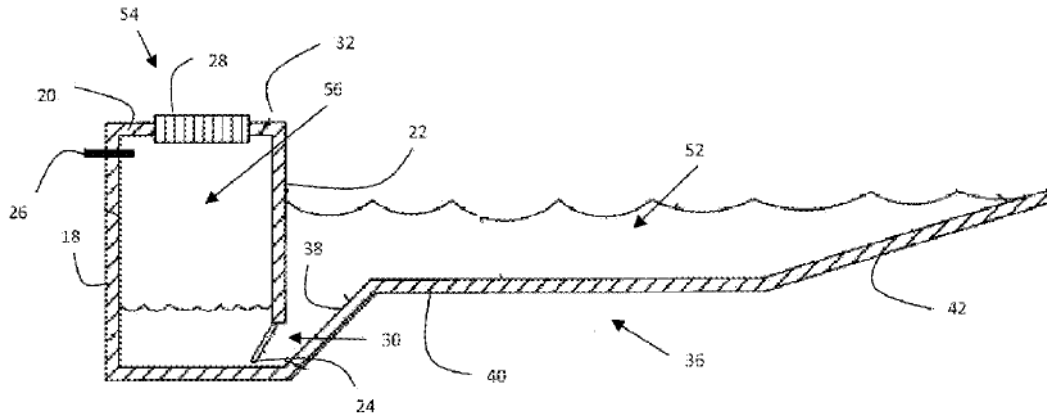


Figure 2

Figure 2 is a cross-sectional view of a wave generating chamber in a wave pool. Ex. 1001, 3:8–9. In operation, chamber 54 is first filled with air through inlet valve 26 to displace water into pool 50. *Id.* at 4:36–38. Vent valve 26 is then closed, and the air in the chamber is vented through vent valve 28, causing water 52 to flow from pool 50 through passageway 30 into the now empty space 56 in chamber 54. *Id.* at 4:38–41. This causes the water level in the pool to quickly drop, creating a depression or trough in the water that reflects against wave reflecting wall 22 of the pool, which creates a circulating motion of the water. *Id.* at 4:41–45. Vent valve 28 in the air chamber is then shut to prevent water resurgence back into the pool. *Id.* at 4:45–47. Mechanical two-way valve 24 can also be used to prevent resurgence, and may be closed during the initial air fill phase to create a larger air volume in the chamber which, when released, creates a larger depression in the pool. *Id.* at 4:48–52.

Electronic controller 62 is connected to valves 24, 26, 28 to control the operation for each chamber, and actuates each of the chambers in sequence. *Id.* at 4:61–66. Controller 62 may begin by actuating the first chamber, then after a delay, actuating the second chamber, and, after another delay, actuating the third chamber and any number of additional chambers, as desired. *Id.* at 4:66–5:4. Controller 62 controls the valves in each chamber so that, after actuating the first chamber, it controls the valves in that chamber and, after a delay, actuates the second chamber and controls its valves, and continues to actuate each chamber in sequence after a delay and controls its valves. *Id.* at 5:6–10. Notably, the '966 patent explains that by operating the valves in sequence with a delay between actuating each chamber, the wave generator apparatus creates waves where the peak of the wave travels in a direction that is not substantially perpendicular to the ends of the pool and the chambers. *Id.* at 5:11–14, 5:21–24, Fig. 3.

C. The Asserted Challenges

Claims Challenged	35 U.S.C. §	Basis
1–9, 11–18	102(b)	McFarland ¹
1–18	103(a)	McFarland
1–9, 11–18	102(b)	Chutter ²
1–18	103(a)	Chutter
1–18	103(a)	McFarland, Chutter
10	103(a)	McFarland, Chutter, GIP Blueprint ³

¹ U.S. Patent No. 7,815,396 B2, iss. Oct. 19, 2010 (Ex. 1004, “McFarland”).

² U.S. Patent No. 4,999,860, iss. Mar. 19, 1991 (Ex. 1005, “Chutter”).

³ Grand Island Pool Blueprint, dated Oct. 21, 1992 (Ex. 1008, “GIP Blueprint”).

In further support of these challenges, WhiteWater submits the declaration of Glen Stevick, Ph.D., P.E. *See* Ex. 1009. AWM responds with the declaration of Charles Alexander Garris, Jr., Ph.D. *See* Ex. 2003.

D. The Challenged Claims

Of the challenged claims, claims 1, 11, and 16 are independent.

Claim 1 is representative and recites:

[1 Preamble] 1. An aquatic sports amusement apparatus, comprising:

[1A] a pool which holds a body of water, the pool having a first and second end, two sides, and a floor;

[1B] a plurality of wave generating chambers that communicate with the body of water so as to release water into the pool, the chambers located adjacent to each other on one of the ends of the pool;

[1C] *each of the plurality of chambers having a valve structure, wherein each valve structure is connected to a controller wherein the connection is constructed to allow for the actuation of the [sic] each valve structure independently of the other valve structures; and*

[1D] the controller operates each valve structures independently, the operation comprising the steps of:

[1D.1] actuating each valve structure in a sequenced fashion to release water into the pool from each chamber in the plurality;

[1D.2] creating a wave, wherein the wave comprises a peak defined as the highest water level in the pool; and

[1D.3] traveling the peak in a direction that is not substantially perpendicular to the ends of the pool.

Id. at 7:58–8:11 (nomenclature and emphasis added).

II. ANALYSIS

A. Level of Ordinary Skill in the Art

WhiteWater asserts that one skilled in the art of wave generators for pools “would have knowledge and familiarity with: (i) design of mechanical structures and (ii) fluid characteristics and the interaction of fluid forces upon mechanical structures,” and that this knowledge “could be obtained by: (i) successfully completing a Master’s degree in Mechanical Engineering or (ii) at least 5 years of experience in a job working with control systems, including designing or implementing such wave generation machines.” Pet. 15–16. AWM does not contest that assertion. *See* Prelim. Resp. 16. Nor do we discern any reason to question its credibility, at least not at this stage. Thus, for purposes of institution, we review the asserted prior art mindful of the level of skill in the art as stated by WhiteWater.

B. Claim Construction

We apply the claim construction standard set forth in *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–13 (Fed. Cir. 2005) (en banc). That is, “the words of a claim ‘are generally given their ordinary and customary meaning’ . . . that the term would have to a person of ordinary skill in the art in question at the time of the invention.” *Id.* at 1312–13; *see also* 37 C.F.R. § 42.100(b). Here, WhiteWater asserts that “the invalidity of the claims can be determined by using the ordinary meaning of the claim terms.” Pet. 16 (citing Ex. 1009 ¶ 94). AWM essentially agrees, stating that the claim terms should be “afforded their plain and ordinary meaning as would be understood by [one skilled in the art] in view of the specification and prosecution history.” Prelim. Resp. 18 (citing Ex. 2003 ¶¶ 25–27).

For purposes of institution, the specification and prosecution history of the '966 patent, as well as the asserted prior art, adequately inform us as to the plain and ordinary meaning of the claim terms. Thus, at this stage, we do not perceive the need to expressly construe any claim terms, as the threshold question of institution in this case can be decided without further construction. *See Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (approving Board decision not to construe claim language where the construction is not material to the dispute).

C. Single Claim Threshold for Institution

We begin with WhiteWater's challenge that independent claim 1 is unpatentable as anticipated and rendered obvious by Chutter. *See* Pet. 4, 43. In challenging claim 1, WhiteWater submits a detailed mapping of how Chutter satisfies each of the recited claim elements and cites to its declarant's testimony in further support. *See id.* at 43–46. AWM responds to WhiteWater's challenge of claim 1 by disputing Chutter's disclosure of limitation [1C] of claim 1, as identified above. *See* Prelim. Resp. 45–51. AWM does not dispute Chutter's disclosure of any other limitation of claim 1, at least not at this preliminary stage of the proceeding. *See id.*

Limitation [1C] recites that “each valve structure is connected to a controller wherein the connection is constructed to allow for the actuation of each valve structure independently of the other valve structures.” Ex. 1001, 7:65–8:2. For meeting this limitation, WhiteWater points to Chutter's disclosure of “controller 40” (Pet. 26, 44), which Chutter describes as being “coupled to each of the operating devices 30 so that the pool can be provided

with recreational waves of any desired pattern by operation of the various flow control valves 17” (Ex. 1005, 4:3–10).

AWM raises several arguments in response. *First*, AWM argues that Whitewater “do[es] not identify with any degree of specificity where Chutter discloses the claimed connection between each of the valve structures of a plurality of chambers and the controller 40 of Chutter.” Prelim. Resp. 48. According to AWM, Whitewater’s showing that Chutter’s valve structures (i.e., flow control devices 17, 19/20) “are connected to and operated by ‘*device 30*,’ . . . is clearly insufficient . . . because each of [Chutter’s] plurality of chambers is disclosed . . . as having its own device 30 for operating the valves of each individual chamber.” *Id.* at 48–49 (citing Ex. 1005, 3:43–44, 4:4–5). From there, AWM contrasts Chutter’s disclosure of distinct operating devices 30 for actuating the valves in each chamber with claim 1’s requirement that “the valve structures of multiple chambers be connected to a *single* controller that is capable of independently controlling the valve structures.” *Id.* at 49 (emphasis added).

At the outset, we note that AWM misunderstands WhiteWater’s assertions. WhiteWater does not rely on Chutter’s “operating devices 30” as meeting the claimed “controller,” but, instead, relies on Chutter’s “controller 40,” a point that WhiteWater makes abundantly clear by annotating Chutter’s Figure 1 to identify element 40 as the “controller.” *See* Pet. 44–45. Although WhiteWater identifies element 30 as an additional intermediate structure for operating the valves in each chamber, that does not negate the fact that controller 40 is nonetheless effectively connected to valves 17, 19 via operating device 30 for controlling their operation.

Second, to the extent AWM argues that “the connections between device 30 and the valves 17, 19/20 . . . do not allow for the actuation of valve structures of more than one chamber,” we disagree. Prelim. Resp. 49. Chutter expressly allows for the controller to operate valves in multiple chambers by stating that “several operating means [i.e., devices 30] may be connected to *a controller* arranged to control the rhythm or pattern of the several operating means so that, for example, . . . the several operating means enter the said other mode *sequentially*.” Ex. 1005, 2:14–20 (emphases added). Indeed, Figure 1 of Chutter, reproduced below, depicts controller 40 with multiple “connection” arrows for operating the valves in more than one wave-generating chamber 11.

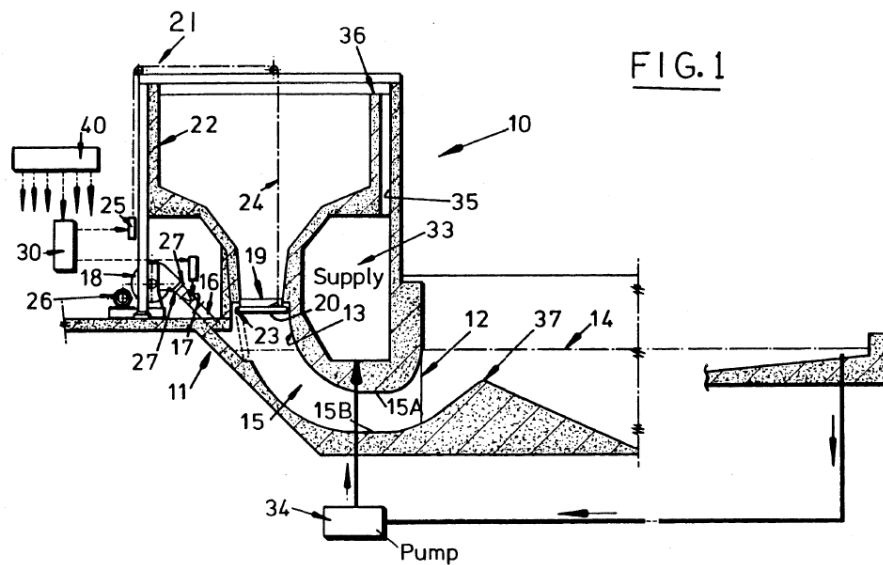


Figure 1 is a longitudinal sectional view of Chutter’s wave-generating apparatus 10. *Id.* at 3:11–13. As shown, controller 40 is connected to operating device 30, which in turn is connected to valve structures 17, 19 in chamber 11. *See id.* at 3:43–45 (“[O]perating device 30 is provided which is effectively connected to operate both of the flow control devices 17, 19.”).

Although Figure 1 depicts only a single operating device 30 and a single set of valves 17, 19, one skilled in the art would reasonably understand from the additional “connection” arrows extending from Chutter’s controller 40 that it is also connected to operating devices in Chutter’s plurality of other chambers. Chutter confirms as much by disclosing that “controller 40 [is] coupled to *each* of the operating devices 30 so that the pool can be provided with recreational waves of any desired pattern by operation of the various flow control valves 17” (*id.* at 4:7–10 (emphasis added)), and, “although the mechanisms for only one chamber 11 have been described in detail each chamber has similar mechanisms” (*id.* at 4:3–5). Those disclosures clearly support that Chutter’s controller 40 is capable of operating the valve structures in more than one of Chutter’s plurality of chambers. Thus, we reject AWM’s arguments to the contrary.

Lastly, AWM argues that “[t]here is absolutely no disclosure in Chutter that there is any form of connection between the valves 17, 19/20 and device 30 that would allow for the actuation of ‘*each valve structure independently of the other valve structures,*’” as required by limitation [1C]. Prelim. Resp. 49–50. Again, AWM disregards WhiteWater’s reliance on controller 40 for disclosing this limitation. To that end, Chutter discloses that “the bank of chambers can be operated in *any desired rhythm or sequence by a controller . . .* so that the pool can be provided with recreational waves of any desired pattern by operation of the various flow control valves 17.” Ex. 1005, 4:3–13. Similarly, Chutter explains that controller 40 may be connected “to control the rhythm or pattern” of operating devices 30 so that valves 17, 19 in each chamber are operated “sequentially.” *Id.* at 2:14–20. That Chutter’s controller is capable of

operating the valve structures in any desired rhythm or sequence provides ample support for WhiteWater’s assertion that each of Chutter’s valve structures operates “independently of the other valve structures,” as required by limitation [1C]. Indeed, Chutter’s disclosure in that regard is essentially no different than the ’966 patent’s supporting disclosure that “the controller 62 actuates each of the chambers *in sequence*.” Ex. 1001, 4:65–66 (emphasis added).

Having reviewed the preliminary record, including WhiteWater’s showing as to how Chutter discloses each limitation of claim 1, we conclude that WhiteWater demonstrates a reasonable likelihood that at least claim 1 of the ’966 patent is unpatentable as anticipated by Chutter.

D. WhiteWater’s Other Challenges Based on Chutter Alone

1. Independent Claims 11 and 16

WhiteWater also challenges independent claims 11 and 16 based on Chutter alone. *See* Pet. 43–55. In response, AWM groups independent claims 11 and 16 with its arguments for limitation [1C], while also asserting that “Chutter fails to teach or suggest the features of elements [11D.1]–[11D.2]” and “elements [16D.1]–[16D.2].” Prelim. Resp. 46, 51–58. According to AWM, Chutter discloses “sequential activation of the chambers in pairs,” and, with that disclosure in mind, AWM surmises that “Chutter fails to teach or suggest preventing the release of water by one chamber during the actuating process of another chamber.” *Id.* at 53–54, 56.

We disagree. Chutter discloses that “[t]he several operating means may be connected to a controller arranged to control the rhythm or pattern of the several operating means so that, for example, all operating means enter the said other mode simultaneously” *or* “[i]n an alternative rhythm the

several operating means enter the said other mode sequentially.” Ex. 1005, 2:14–20. According to WhiteWater, “it is inherent[]” from those disclosures that “when it is chamber one’s turn in the sequence (actuated to release water), it is not chamber two’s turn or chamber three’s turn in the sequence (actuated not to release water).” Pet. 46–47. Indeed, Chutter confirms elsewhere that “[a]djacent chambers may be air pressurised *alternately* or simultaneously.” Ex. 1005, 2:58–59 (emphasis added). In our view, one skilled in the art would most likely understand from those disclosures that Chutter’s other chambers are not actuated when the first chamber is actuated. Thus, we reject AWM’s argument to the contrary, which appears to rely on a further embodiment in Chutter where “[p]airs of operating means may enter the said other mode sequentially.” *Id.* at 2:21–24; *see also* Prelim. Resp. 53–55. Thus, in addition to claim 1, we conclude that WhiteWater demonstrates a reasonable likelihood that independent claims 11 and 16 of the ’966 patent are also unpatentable as anticipated by Chutter.

2. *Dependent Claims 2–10, 12–15, 17, and 18*

With respect to WhiteWater’s challenge of the dependent claims as being anticipated and rendered obvious by Chutter alone, AWM simply argues that WhiteWater’s challenge of these claims fails “for at least the same reasons explained above in connection with the discussion of claims 1, 11 and 16.” Prelim. Resp. 59. At this preliminary stage, because WhiteWater demonstrates a reasonable likelihood of prevailing with respect to at least the independent claims, we do not see the need in this particular case to further address the dependent claims. Instead, we proceed with institution of all the claims as challenged on the basis of Chutter alone. *See SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348, 1356 (2018).

E. WhiteWater’s Challenges Based on McFarland Alone and in Combination with Chutter and GIP Blueprint

WhiteWater also challenges claims 1–18 as anticipated and rendered obvious by McFarland alone. Pet. 29–43. In addition, WhiteWater challenges claims 1–18 as rendered obvious by McFarland and Chutter, and challenges claim 10 as rendered obvious by McFarland, Chutter, and GIP Blueprint. *Id.* at 55–65.

With respect to claims 1, 11, and 16, AWM disputes WhiteWater’s showing as to limitations [1C], [11C], [16C], which recite “*each* of the plurality of chambers having a valve structure, *wherein each valve structure is connected to a controller* wherein the connection is constructed to allow for the actuation of the [sic] each valve structure independently of the other valve structures.” See Prelim. Resp. 23–36. According to AWM, WhiteWater fails to “identify any disclosure whatsoever [in McFarland] of *the claimed structure of a connection between each valve structure* (from a plurality of chambers) to *a (common) controller*.” *Id.* at 27; *see also id.* at 30 (“McFarland does not expressly disclose the use of a *single* controller to control the valves of each of the chambers 52.” (emphasis added)).

Whether or not McFarland satisfies the “controller” limitation of these claims turns on how this limitation is construed, for which neither WhiteWater nor AWM offers a proposed construction. See Pet. 16; Prelim. Resp. 15. Without more from the parties on this issue, we believe that further analysis of the McFarland-based challenges is best left for trial after full development of the record. Because “[e]qual treatment of claims and grounds for institution purposes has pervasive support in *SAS*,” we institute on all the McFarland-based challenges as raised in WhiteWater’s petition. *PGS Geophysical AS v. Iancu*, 891 F.3d 1354, 1360 (Fed. Cir. 2018); *see*

also Adidas AG v. Nike, Inc., 894 F.3d 1256, 1258 (Fed. Cir. 2018)
(remanding for Board to consider non-instituted ground).

F. Discretionary Denial Under 35 U.S.C. § 325(d)

AWM urges us to deny the Petition under 35 U.S.C. § 325(d), because “[WhiteWater’s] proposed grounds have already been considered by the Patent office during examination of the ’966 patent,” which “favor[s] denying institution.” Prelim. Resp. 7. The exercise of our discretion under § 325(d) involves a two-part framework that considers:

- (1) whether the same or substantially the same art or arguments previously were presented to the Office; and
- (2) if either condition of the first part of the framework is satisfied, whether the petitioner has demonstrated that the Office erred in a manner material to the patentability of challenged claims.

Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH, IPR2019-01469, Paper 6 at 8 (PTAB Feb. 13, 2020) (precedential) (“*Advanced Bionics*”). Notably, *Advanced Bionics* expressly states that it “resolved” the question of what is meant by “previously presented to the Office” only after first looking to *Becton, Dickinson*⁴ as a “useful insight into how to apply the framework of 35 U.S.C. § 325(d).” *See Advanced Bionics*, Paper 6 at 9–11. So, to the extent AWM relies on earlier background statements in *Advanced Bionics* (see Prelim. Resp. 7 (citing “*Advanced Bionics*, Paper 6, pp. 7–8”)), its reliance is not persuasive.

⁴ *Becton, Dickinson & Co. v. B. Braun Melsungen AG*, IPR2017-01586, Paper 8 at 17–18 (PTAB Dec. 15, 2017) (precedential as to § III.C.5, first paragraph).

More specifically, AWM asserts that the first part of the *Advanced Bionics* framework is satisfied simply because McFarland and Chutter were listed in an IDS and initialed by the Examiner during prosecution of the '966 patent. *See* Prelim. Resp. 8. We disagree. The exercise of discretion in *Advanced Bionics* did not turn on mere citation in an IDS of the art asserted in the petition. Rather, the Board's exercise of discretion in that case turned on the Examiner's application and discussion of that art. Specifically, the Board found in *Advanced Bionics* that the asserted art, Zimmerling, "is the same art previously presented to the Office" because "the Examiner rejected [the claims] as anticipated by Zimmerling" and "Zimmerling was discussed during prosecution." *Advanced Bionics*, Paper 6 at 13. In other words, the criteria adopted by the Board for denying the petition in *Advanced Bionics* included not only the fact the art was made of record, but also the fact it was *applied and discussed* during prosecution. Anything less disregards the express reasoning behind the Board's exercise of discretion in that case. And because it is undisputed here that Chutter was neither applied nor meaningfully discussed during prosecution, we find that Chutter, which forms the challenge on which institution is based, does not qualify as prior art previously presented to the Office.⁵

⁵ As for the other conditions under the first part of the *Advanced Bionics* framework, AWM cannot argue meritoriously that Chutter is "substantially the same" as any art applied by the Examiner given that, as discussed above, Chutter discloses the very limitation—i.e., chambers that are actuated independently of each other—that Applicant argued was missing from the Examiner's application of the art. *See* Ex. 1003, 132–133, 159–160. For the same reason, AWM also cannot meritoriously argue that WhiteWater's arguments relating to Chutter are the "same or substantially the same" as any arguments previously presented to the Office. *See* Prelim. Resp. 9–12.

Moreover, irrespective of the first part of the *Advanced Bionics* framework, we determine that, under the second part of the framework, the Examiner materially erred by overlooking key aspects of Chutter’s disclosure. *See* Pet. 59–64. As discussed above, WhiteWater demonstrates a reasonable likelihood that at least independent claims 1, 11, and 16 of the ’966 patent are unpatentable over Chutter based on the current record. In doing so, WhiteWater shows that the Examiner erred in a manner material to the patentability of the challenged claims by not appreciating Chutter’s disclosure of the very limitations, i.e., limitations [1C], [11C], and [16C], that the Applicant argued, and the Examiner acquiesced, were missing from the applied art. *See, e.g.*, Ex. 1003, 132–133 (Applicant arguing that the applied prior art’s actuation of the valve structures “*simultaneously and in unison*” is different from the claimed invention’s actuation of the valve structures “*sequentially or independently*”); *id.* at 142 (the Examiner subsequently allowing the claims without further comment). Because WhiteWater persuasively shows that Chutter discloses the very limitations that were purportedly found to be missing in the applied prior art, we determine that the Examiner “erred in a manner material to the patentability of the challenged claims” per the second part of the *Advanced Bionics* framework. Thus, we decline to exercise our discretion under § 325(d).

III. CONCLUSION

For the above reasons, we determine that the information presented in WhiteWater’s Petition shows a reasonable likelihood that at least claims 1, 11, and 16 of the ’966 patent are unpatentable as anticipated by Chutter. Because WhiteWater demonstrates that at least one claim of the ’966 patent meets the threshold for institution, we institute an *inter partes* review of all

claims as challenged in the Petition. *See* 37 C.F.R. § 42.108(a) (“When instituting . . . review, the Board will authorize the review to proceed on all of the challenged claims and on all grounds of unpatentability asserted for each claim.”).

IV. ORDER

Accordingly, it is:

ORDERED that, pursuant to 35 U.S.C. § 314(a), an *inter partes* review of claims 1–18 of the ’966 patent is *instituted*; and

FURTHER ORDERED that, pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4(b), notice is hereby given of the institution of trial, which will commence on the entry date of this Decision.

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