

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BOTE, LLC,
Petitioner,

v.

Twitch LLC,
Patent Owner.

IPR2024-00889
Patent 10,479,458

Before BARRY L. GROSSMAN, CYNTHIA L. MURPHY, and
JASON W. MELVIN, *Administrative Patent Judges*.

MURPHY, *Administrative Patent Judge*.

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

I. INTRODUCTION

BOTE, LLC (“Petitioner”) filed a Petition to institute *inter partes* review of claims 1–15 of U.S. Patent No. 10,479,458 (Ex. 1001, “the ’458 Patent”). Paper 2 (“Pet.”). Twitch, LLC (“Patent Owner”) waived filing Preliminary Response. Paper 12. Based on the record before us, we determine that there is a reasonable likelihood that Petitioner would prevail with respect to at least one claim (i.e., independent claim 10) of the ’458 Patent.¹

A. Real Parties in Interest

Petitioner identifies itself as the real party in interest. Pet. 2. Patent Owner identifies Steamboat Paddlesports LLC as the real party in interest. Paper 9.²

B. Related Matters

The parties each identify a case pending in U.S. District Court for the Western District of Texas (Case No. 6:24-cv-00233) as a related matter. *See* Pet. 2, Paper 5. We also consider IPR2024-00892 a related matter, as it

¹ An *inter partes* review may not be instituted unless the information presented in the petition “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).

² Patent Owner first said that “[t]he real party-in-interest to this proceeding is Twitch LLC d/b/a Hala Gear.” Paper 5, 1. Patent Owner later said that “Twitch LLC assigned U.S. Patent No. 9,862 466 to Steamboat Paddlesports LLC” and “[t]he real party-in-interest to this proceeding is Steamboat Paddlesports LLC.” Paper 9, 1. Patent Owner did not submit the assignment document as an exhibit, or otherwise provide us with further details of the assignment.

involves the same parties and challenges a patent sharing a priority chain with the '458 Patent.

The '458 Patent discloses an “inflatable paddle board 10” is shown in Figure 1, reproduced below. Ex. 1001 2:26–27.

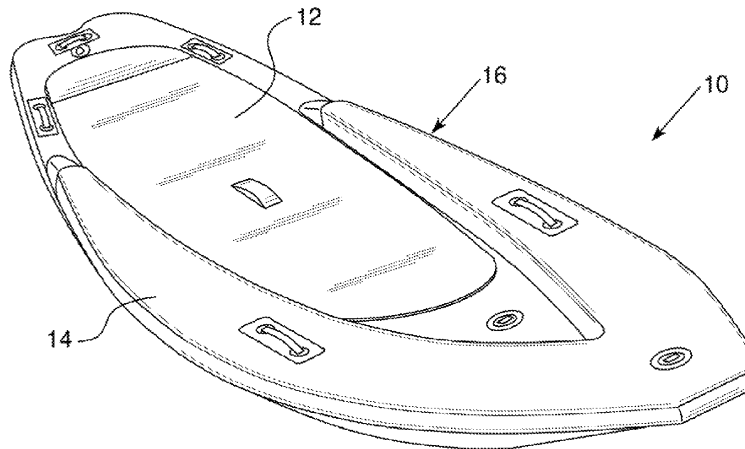


FIG. 1

This drawing “is a top perspective view of an example inflatable paddle board.” *Id.* 26–27. The illustrated watercraft 10 comprises a first (lower) inflatable chamber 12, a second (upper) inflatable chamber 14, and a tent 16. *See* Ex. 1001 1:44–2:3. 2:26–39, 2:59–65, 3:21–33, Fig. 1. “[T]he combination of the lower and upper inflatable chambers” form “a curve-shaped front hull.” *Id.* 1:63–65.

Chamber 12 “is the shape and outline of a stand-up board,” and “may be referred to as the board chamber 12.” *Id.* 2:59–61. Chamber 14 forms a rail around at least a portion of the chamber 12 and “may be referred to as the rail chamber 14.” *Id.* 2:63–64, *see also* 1:61–62. “The tent 16 may be connected (e.g., glued, sewed, or otherwise attached) to each chamber 12 and 14 and extend therebetween.” *Id.* 3:24–26, *see also* Figs. 2E, 2F.

In other words, the tent 16 “connect[s] the board chamber 12 and the rail chamber 14.” *Id.* 4:10–11.

II. INDEPENDENT CLAIM 10

10. An inflatable paddle board, comprising:
a lower inflatable stand-up board chamber;
an upper inflatable chamber stacked on the lower inflatable stand-up board chamber, the upper inflatable chamber forming a rail around at least a portion of a side of the stand-up board chamber, and the combination of the inflatable chambers forming a front hull; and
a tent covering between the stand-up board chamber and the upper inflatable chamber.

III. ASSERTED UNPATENTABILITY GROUNDS

Ground	Claim(s) Challenged	35 U.S.C. §	Reference(s)
One	13, 14	102	Hoffmann ³
Two	13	103	Hoffmann
Three	13–15	103	Hoffmann, Swan, ⁴ Hoge, ⁵ Scadden, ⁶
Four	1, 2, 4, 6, 8, 9	103	Hoffmann, Airhead SS, ⁷ Swan, Hoge
Five	1–9	103	Hoge, Swan, Hoffmann, Scadden
Six	10–12	103	Hoffmann, Swan, Hoge

³ DE 26,12,881A1 (Ex. 1006). Petitioner provides a certified translation of this reference. *See* Ex. 1007, 1008. We refer to the translated version of this reference (Ex. 1007) in our analysis.

⁴ US 2014/0245943 A1 (Ex. 1010).

⁵ US 2016/0096591 A1 (Ex. 1009).

⁶ US 8,438,985 B2 (Ex.1011).

⁷ <https://isupworld.com/airhead-ss-camouflage-review/> (Ex. 1021).

IV. CLAIM 10 — GROUND SIX

In Ground Six, Petitioner asserts that the inflatable paddle board set forth in independent claim 10 would have been obvious over the combined teachings of Hoffmann, Swan, and Hoge. *See* Pet. 7.

A. OBVIOUSNESS

A patent for a claimed invention may not be obtained “if the differences between the claimed invention and the prior art are such that the claimed invention as a whole would have been obvious before the effective filing date of the claimed invention to a person having ordinary skill in the art to which the claimed invention pertains.” 35 U.S.C. § 103.⁸ The obviousness analysis “need not seek out precise teachings directed to the specific subject matter of the challenged claim,” and “the inferences and creative steps that a person of ordinary skill in the art would employ” can be taken into account. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). The question of obviousness is resolved on the basis of underlying factual determinations, including (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of skill in the art; and (4) when in evidence, objective indicia of non-obviousness (i.e., secondary considerations). *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966).⁹

⁸ The Leahy-Smith America Invents Act (“AIA”) included revisions to 35 U.S.C. § 103 that became effective on March 16, 2013. We apply the post-AIA version of § 103 here, because the earliest application date identified in the ’458 Patent is after the effective date of the AIA. *See* Ex. 1001, code (60).

⁹ The record presently before us contains no evidence of objective indicia of non-obviousness.

B. LEVEL OF ORDINARY SKILL IN THE ART

The level of skill in the art is a factual determination that provides a primary guarantee of objectivity in an obviousness analysis. *Al-Site Corp. v. VSI Int'l Inc.*, 174 F.3d 1308, 1324 (Fed. Cir. 1999) (citing *Graham*, 383 U.S. at 17–18; *Ryko Mfg. Co. v. Nu-Star, Inc.*, 950 F.2d 714, 718 (Fed. Cir. 1991)). In determining the level of ordinary skill in the art, various factors may be considered, including the “type of problems encountered in the art; prior art solutions to those problems; rapidity with which innovations are made; sophistication of the technology; and educational level of active workers in the field.” *In re GPAC Inc.*, 57 F.3d 1573, 1579 (Fed. Cir. 1995) (citation omitted).

Petitioner describes a person of ordinary skill in the art (“POSITA”) as having “a B.S. or higher degree in Mechanical Engineering (or an equivalent degree/experience) with sufficient experience in design, manufacture, use of inflatable watercraft and/or the materials and components that make up such products.” Pet. 18, *see also* Ex. 1004 ¶ 72. Petitioner contends that “[d]ue to the modest design and implementation complexities in the field,” POSITA will have “an average-level of problem-solving acumen and would seek solutions to design, material selection, and manufacturing issues for inflatable watercraft problems, but would look to other areas of recreational watercraft, surfboards, boats, other inflatable structures etc. to find similar solutions to similar problems confronted in the field.” Pet. 19–17; *see also* Ex. 1004 ¶ 72.¹⁰

¹⁰ Per Petitioner, “[t]he type of experience is as relevant as the length of the experience,” and “[t]he more direct experience that involves design, manufacture, or use of inflatable watercraft for recreational activities is

For purposes of institution, we apply this proposed level of skill because it is presently undisputed by Patent Owner and consistent with the level of skill at the time of the claimed invention reflected by the '458 Patent and the cited prior art references. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001).

C. CLAIM CONSTRUCTION

We apply the same claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. § 282(b). 37 C.F.R. § 42.100(b). Under that standard, claim terms “are generally given their ordinary and customary meaning” as would have been understood by a person of ordinary skill in the art at the time of the invention. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–13 (Fed. Cir. 2005) (en banc). In construing claims in accordance with their ordinary and customary meaning, we take into account the specification and prosecution history. *Phillips*, 415 F.3d at 1315–17.

We need only construe claims “to the extent necessary to resolve the controversy.” *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999). We need only construe claims “to the extent necessary to resolve the controversy.” *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999). Thus, for the purposes of institution, we need only determine whether a claim term is broad enough to read on the prior art asserted by Petitioner. The parties are hereby given notice that final

preferred.” Pet. 19. Also, “[a]dditional education may substitute for some of the practical experience such as graduate degrees like M.S. or Ph.D.” and “[l]ikewise, certain direct experience may substitute for some more formal education.” *Id.*

claim construction is an issue to be addressed at trial, to the extent it impacts either party's unpatentability arguments.

D. ANALYSIS

Independent claim 10 sets forth an “inflatable” watercraft comprising a “lower” inflatable chamber and an “upper” inflatable chamber that is “stacked on” the lower inflatable chamber. Ex. 1001 6:1–5. The upper chamber “form[s] a rail around at least a portion of the side of” the lower chamber. *Id.* 6:6–7. And “the combination of the inflatable chambers form[s] a front hull.” *Id.* 6:7–8. Petitioner asserts that Hoffmann discloses an inflatable watercraft with such chambers. *See* Pet. 62–64.

Hoffmann discloses an “inflatable boat” that is constructed from “two straight extending side tubes 4,” “a transverse tube 5,” and “a continuous floor 6.” Ex. 1007 ¶ 9. “A filling valve with tube connector 8” is provided for “inflating the floor [6],” and “[a] similar filling valve with a tube connector 9” is provided for “inflating the gunwale tubes.” *Id.* ¶ 9. The tubes 4 and 5 are positioned above and connected to the floor 6, with tubes 4 extending upward from sides of the floor 6. *See id.* Figs. 1–3. “The side tubes 4 continue towards the front via curved pieces 7 into the bow section, where they converge in a truncated bow tip.” *Id.*

Thus, there is a reasonable likelihood that Petitioner would prevail in showing that Hoffmann discloses an inflatable watercraft comprising a lower inflatable chamber (i.e., floor 6) and an upper inflatable chamber (i.e., tubes 4, 7) that is stacked thereon. There is a reasonable likelihood that Petitioner would prevail in showing that Hoffmann's tube 4 forms a rail around at least

a portion of the sides of Hoffmann’s floor 6.¹¹ And there is a reasonable likelihood that Petitioner would prevail in showing that the combination of Hoffmann’s floor 6 and Hoffmann’s tubes 4 form a front hull (i.e., bow.).

Independent claim 10 sets forth that the inflatable watercraft is “[a]n inflatable paddle board” and that the lower inflatable chamber is a “stand-up board chamber.” Ex. 1001 6:1–2. Petitioner asserts that Hoffmann’s floor 6 forms a stand-up board chamber. *See* Pet. 62.

Swan discloses that “[s]tand up paddleboarding” is an aquatic activity that involves “an oversized surfboard in combination with a paddle for propulsion” and that “[i]nflatable stand up paddle boards have been in use for several years.” Ex. 1010 ¶¶ 3–4. Hoffmann discloses that, when, “in a state of use,” its inflatable boat “has almost flat surfaces inside and out,” which offer the occupants “standing options.” Ex. 1007 ¶ 5. Petitioner provides evidence that POSITA would understand from Hoffmann’s drawings (*see* Ex. 1007, Figs. 1–3) that floor 6 has an elongated surfboard-like shape. *See* Ex. 1004, ¶ 102, *see also* Ex. 1007, Figs. 1–3. Petitioner provides evidence that POSITA would understand that Hoffmann’s inflatable watercraft “can be used with paddles.” Ex. 1004 ¶ 49, *see also* Ex. 1007, ¶ 12.

Thus, there is a reasonable likelihood that Petitioner would prevail in showing that Hoffmann’s inflatable boat can be considered an inflatable

¹¹ Petitioner proposes that the claim term “rail” be construed as “structure extending along at least a portion of the peripheral sides of the paddleboard.” Pet. 9. For the purposes of institution, we need only resolve that this claim term is at least broad enough to read on the structure formed by Hoffmann’s tubes 4 along the side of Hoffmann’s floor 6.

paddle board and that Hoffmann's floor 6 can be considered a stand-up board chamber.¹²

Independent claim 10 sets forth "a tent covering between the stand-up chamber and the upper inflatable chamber." Ex. 1001 6:9–10. Petitioner asserts that it would have been obvious to provide Hoffmann's inflatable boat with such a tent covering. *See* Pet. 64–65.

Hoge discloses an inflatable watercraft 10 comprising an inflatable floor 12 and inflatable sides 14, 16. *See* Ex. 1009 ¶ 32, Figs. 1, 2, 4. The inflatable sides 14, 16 "may be glued or welded to a non-inflated fabric floor 28," and the inflatable floor 12 "may be positioned and attached to a top of the non-inflated fabric floor 28 with the inflatable sides 14, 16 pressing against the inflatable floor 12." *Id.*

Thus, there is a reasonable likelihood that Petitioner would prevail in showing that Hoge teaches that a tent covering (i.e., fabric 28) can extend between a lower inflatable chamber (i.e., floor 12) and an upper inflatable chamber (i.e., side 14, 16).¹³

¹² Petitioner proposes the claim term "stand-up board" be construed as "a generally elongated board (like a surfboard) that a user can stand upon and use a paddle to maneuver over the water." Pet. 8–9. For the purposes of institution, we need only resolve that this claim term is at least broad enough to read on Hoffmann's floor 6 (i.e., an inflatable chamber having an elongated surfboard-like shape on which a person can stand and paddle).

¹³ Petitioner proposes the claim term "tent covering" be construed as "a sheet of material covering one or more objects to provide a shape over or between such objects." Pet. 12–13. For the purposes of institution, we need only we need only resolve that this claim term is at least broad enough to read on Hoge's fabric 28 (i.e. a fabric extending between a first inflation chamber and a second inflation chamber).

Petitioner asserts that it would have been “obvious to add Hoge’s tent covering (fabric floor 28)” to Hoffmann’s inflatable floor 6 and inflatable sides 4, 7 “to protect against punctures in such inflatable chambers.” Pet. 64. And Petitioner provides evidence that “modifying Hoffmann in such a way would be a routine implementation for a POSITA requiring merely adding an additional protective fabric floor (as informed by Hoge), rendering predictable results.” Ex. 1004 ¶ 137. Patent Owner has not directed us to any contrary evidence.

Thus, based on the evidence and arguments before us, there is a reasonable likelihood that Petitioner would prevail in showing that it would have been obvious to provide Hoffmann’s inflatable boat with a tent covering extending between its lower chamber (floor 12) and its upper chamber (i.e., tubes 14, 16).

Consequently, we determine that, based on the current record, there is a reasonable likelihood that Petitioner would prevail in showing that the inflatable paddle board set forth in independent claim 10 would have been obvious over the combined teachings of Hoffmann, Swan, and Hoge

V. OTHER CLAIMS AND OTHER GROUNDS

The Supreme Court has held that the Board, in a decision to institute under 35 U.S.C. § 314(b), may not institute review on less than all claims challenged in the petition. *SAS Inst. Inc. v. Iancu*, 138 S. Ct. 1348, 1355–56 (2018). Moreover, in accordance with our rules, “[w]hen instituting *inter partes* 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.” 37 C.F.R. § 42.108(a) (2020); *see also PGS Geophysical AS v. Iancu*, 891 F.3d 1354, 1360 (Fed. Cir. 2018) (interpreting the statute to

require “a simple yes-or-no institution choice respecting a petition, embracing all challenges included in the petition”).

As discussed above, we determine the record before us sufficiently shows a reasonable likelihood that Petitioner would prevail in establishing the unpatentability of at least one of the challenged claims (i.e., independent claim 20 on Ground One). Accordingly, we institute an *inter partes* review of all challenged claims (i.e., claims 1–15), based on Grounds One–Six asserted in the Petition.

VI. CONCLUSION

After considering the arguments presented in the Petition, the Preliminary Response, and the evidence of record, we determine that Petitioner has demonstrated at least a reasonable likelihood of success in proving that at least one claim (i.e., independent claim 20) of the ’458 Patent is unpatentable. Thus, we institute an *inter partes* review of all challenged claims (i.e., claims 1–15) on all grounds set forth in the Petition. Our determinations at this stage of the proceeding are based on the evidentiary record currently before us. This decision to institute trial is not a final decision as to patentability of any claim for which we have instituted an *inter partes* review. *See TriVascular, Inc. v. Samuels*, 812 F.3d 1056, 1068 (Fed. Cir. 2016) (noting that “there is a significant difference between a petitioner’s burden to establish a ‘reasonable likelihood of success’ at institution, and actually proving invalidity by a preponderance of the evidence at trial”). We will base any final decision on the full record developed during trial.

VII. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that, pursuant to 35 U.S.C. § 314(a), an *inter partes* review is instituted for claims 1–20 of the '458 Patent on the unpatentability grounds asserted in the Petition; and

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

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