

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE OFFICE OF THE UNDER SECRETARY OF COMMERCE
FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE
UNITED STATES PATENT AND TRADEMARK OFFICE

WYBOTICS, CO. LTD.,
Petitioner,

v.

ZODIAC POOL SYSTEMS LLC,
Patent Owner.

IPR2026-00158 (Patent 11,003,191 B2)
IPR2026-00159 (Patent 11,262,766 B2)
IPR2026-00160 (Patent 11,880,207 B2)

Before JOHN A. SQUIRES, *Under Secretary of Commerce for Intellectual
Property and Director of the United States Patent and Trademark Office.*

DECISION
Denying Patent Owner's Request for Discretionary Denial

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IPR2026-00159 (Patent 11,262,766 B2)

IPR2026-00160 (Patent 11,880,207 B2)

Zodiac Pool Systems LLC (“Patent Owner”) filed a request for discretionary denial (Paper 6, “DD Req.”) in the above-captioned cases, and Wybotics, Co. Ltd. (“Petitioner”) filed an opposition (Paper 7, “DD Opp.”).¹ With authorization, Petitioner filed a Reply (Paper 9, “Reply”), addressing discretionary denial arguments presented in Patent Owner’s Preliminary Response (Paper 8, “Prelim. Resp.”). On April 14, 2026, after considering the parties’ arguments and the record, and in view of all relevant considerations, I issued a Notice indicating that the Petitions are referred for consideration of the merits and non-discretionary considerations in the above-captioned cases. Paper 10.

Petitioner provides persuasive reasoning, supported by evidence, that the Office materially erred during prosecution and, accordingly, discretionary denial is not appropriate. Specifically, during prosecution of the challenged claims in this proceeding, Petitioner argues that the examiner allowed the claims because the art of record did not teach

a controller positioned on or in the body, in electronic communication with the at least one camera, and configured to generate, in response to the captured image, at least one control signal to cause movement of the body within the swimming pool to, or away from, the first portion of the submerged surface.

DD Opp. 4 (citing Ex. 1002, 133–136). Petitioner alleges that the examiner erred because Fu,² listed on an information disclosure statement (“IDS”) considered by the examiner, plainly discloses this feature. *See* DD Opp. 4–6 (citing Ex. 1007 ¶¶ 24–26, Fig. 6); Ex. 1002, 56 (IDS listing Fu), 96 (IDS

¹ Citations are to papers in IPR2026-00158. The parties filed similar papers in IPR2026-00159 and IPR2026-00160.

² Fu et al., CN 101139007 B (June 15, 2011).

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considered). Patent Owner first provided Fu to the Office during prosecution of the parent application in a chain of applications resulting in the challenged patent.³ *See* DD Opp. 2 (citing Ex. 1035, 40–46). But Fu was not applied in any rejection against the claims challenged in the above-captioned proceedings, nor otherwise distinguished or discussed. *See* DD Opp. 2–3 (citing Exs. 1002, 1004, 1006).

In the Preliminary Response, Patent Owner responds to Petitioner’s error argument (Prelim. Resp. 4–12) and raises a new discretionary argument alleging an inconsistent claim construction in the district court (*id.* at 13–18).⁴ As to the alleged error, Patent Owner refers to arguments made in the prosecution of the parent application, but does not address differences in the challenged claims or why Fu does not disclose the subject matter found allowable in the prosecution of the challenged patent. *See id.* at 7–12 (citing Ex. 2015, 118, 204, 212). Accordingly, Patent Owner’s arguments are not persuasive.

As to the inconsistent claim construction, Patent Owner argues that Petitioner proposes claim construction positions in the district court that are inconsistent with those presented in the Petition and fails to sufficiently

³ Patent Owner submitted Fu on an IDS in the parent application after a first allowance of the parent claims, along with a request for continued examination (“RCE”). *See* DD Opp. 2 (citing Ex. 1036, 40–46, 276–283). After the RCE, the examiner allowed the claims for the same reasons as the first allowance. *See id.* (citing Ex. 1036, 24–31).

⁴ Because Patent Owner raises new discretionary arguments in the Preliminary Response, Petitioner was authorized a Reply. Discretionary arguments should not be raised in the Preliminary Response absent good cause, for example, if conflicting claim constructions are raised in the district court after the due date of the request for discretionary denial.

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explain why the different positions are warranted. Prelim. Resp. 13–18 (citing *Revvo Techs., Inc. v. Cerebrum Sensor Techs., Inc.*, IPR2025-00632, Paper 20 (Director Nov. 3, 2025) (precedential)). Specifically, Patent Owner argues that “Petitioner contends that multiple claim elements/terms in the Challenged Claims are ‘Indefinite’—including ‘to, or away from, the first [object/portion].’” *Id.* at 15.

In the Petition, Petitioner applies the plain and ordinary meaning of the challenged claims, other than a means-plus-function term, for which Petitioner identifies corresponding structure in the patent specification. *See* Pet. 7–8 (citing Ex. 1001, 3:31–43). In the Reply, Petitioner stipulates “to forego all §§ 102, 103, and indefiniteness challenges in the district court.” Reply 4–5 (citing Exs. 1051, 1055). But indefiniteness requires a claim construction inconsistent with the plain and ordinary meaning. Accordingly, Petitioner stipulates to a different claim construction contingent on institution. *See* Ex. 1055 (“if the Patent Trial and Appeal Board . . . institutes IPR”). Petitioner’s stipulation to continue to pursue different constructions and abandon the inconsistent construction in district court only if the IPR is instituted is inadequate to address the conflicting constructions. *See Tiktok, Inc. v. Shopsee, Inc.*, IPR2025-01485, Paper 13, 2–3 (Director Jan. 16, 2025). Despite the conflicting claim construction and Petitioner’s inadequate stipulation, however, it is an appropriate use of Office resources to review the potential error identified above. Petitioner’s stipulation is binding on Petitioner should the merits warrant institution.

While certain arguments are highlighted above, the determination not to exercise discretion to deny institution is based on the complete record and a holistic assessment of all of the evidence in light of the arguments

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presented. Accordingly, the Petitions will be reviewed for merits and non-discretionary considerations.

In consideration of the foregoing, it is:

ORDERED that Patent Owner's request for discretionary denial is *denied*; and

FURTHER ORDERED that neither party shall file a request for rehearing or Director Review of this decision until a Notice of Decision on Institution including this case issues.

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