

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PACIFIC SURF DESIGNS, INC.,
Petitioner,

v.

SURF WAVES, LTD.,
Patent Owner.

Case IPR2016-01454
Patent 8,088,016 B2

Before PHILLIP J. KAUFFMAN, BEVERLY M. BUNTING, and
JASON W. MELVIN, *Administrative Patent Judges*.

MELVIN, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
35 U.S.C. § 318(a) and 37 C.F.R. § 42.73

I. INTRODUCTION

In this *inter partes* review, instituted pursuant to 35 U.S.C. § 314, Petitioner, Pacific Surf Designs, Inc., challenges all claims of U.S. Patent No. 8,088,016 (Ex. 1001, “the ’016 patent”), claims 1–20 (*see* Petition (Paper 1, “Pet.”)). Patent Owner, Surf Waves, Ltd., did not file a Preliminary Response. We instituted review of all challenged claims. Paper 9 (“Inst.” or “Institution Decision”). Patent Owner filed a Response (Paper 13, “PO Resp.”) and Petitioner filed a Reply (Paper 16, “Pet. Reply”). Patent Owner filed a Motion to Exclude (Paper 21), which we address below. We held a hearing on November 8, 2017, and a transcript of the hearing is included in the record. Paper 30 (“Tr.”).

This a final written decision as to the patentability of claims for which *inter partes* review is instituted. For the reasons discussed below, we determine that Petitioner has proven by a preponderance of the evidence claims 1–5 and 7–20 are unpatentable but has not proven by a preponderance of the evidence that claim 6 is unpatentable.

A. RELATED MATTERS

The parties identify the following pending judicial matter as relating to the ’016 patent: *Flowrider Surf, Ltd. v. Pacific Surf Designs, Inc.*, Case No. 15cv1879 (S.D. Cal.). Pet. 1; Paper 5, 2.

B. THE ’016 PATENT

The ’016 patent is titled “Half-Pipe Water Ride,” was filed April 21, 2009, issued January 3, 2012, and claims priority to a provisional application filed April 21, 2008. Ex. 1001, [54], [22], [45], 1:5–8. The ’016 patent describes a water ride in which water flows from a water-delivery section

through an activity section and to a dewatering section. *Id.* at 1:23–37. The activity section includes curved sidewalls on opposite sides of a middle section of the activity section. *Id.* Figure 1 of the '016 patent is reproduced below:

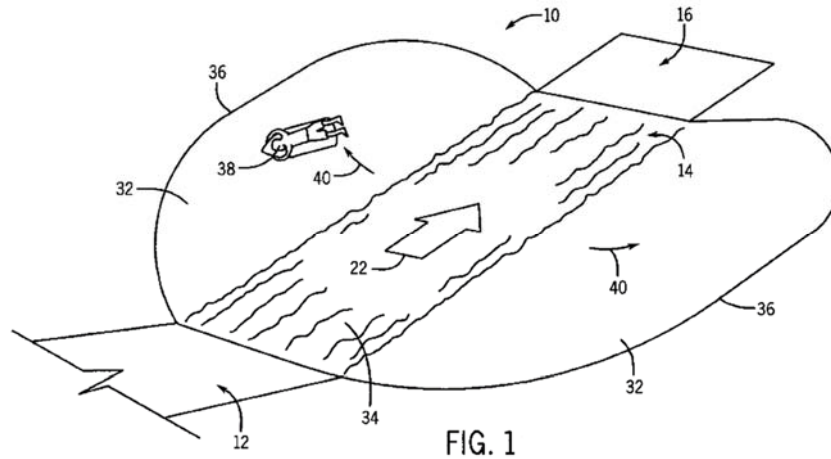


Figure 1 illustrates an embodiment of the half-pipe water ride with water-delivery section 12, activity section 14, and dewatering section 16; activity section 14 includes middle section 34 and sidewalls 23. *Id.* at Fig. 1, 1:41–42, 2:42–62, 3:22–24. Water from the dewatering section is returned to the water-delivery section through a water-retrieval section, as depicted in the embodiment of Figure 5. Figure 5 is reproduced below:

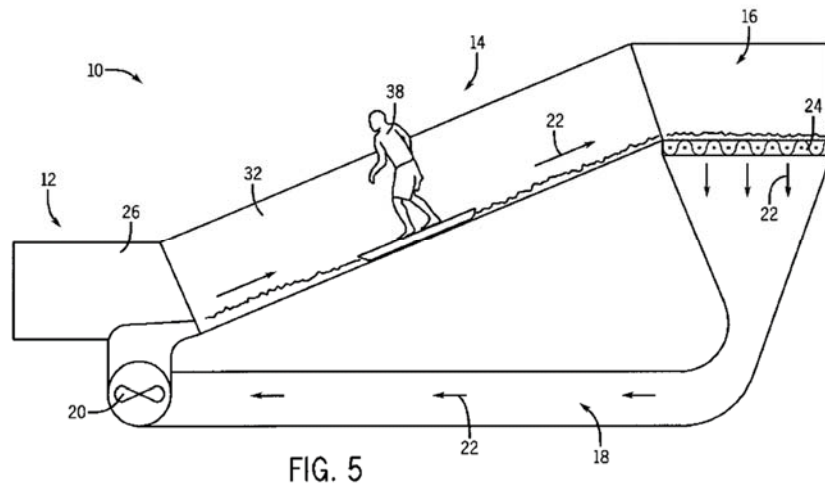


Figure 5 illustrates a cross-sectional view with pump 20 circulating water through a nozzle assembly and into the ride as described above. *Id.* at 1:49–50, 2:46–48, 2:58–62, 2:67–3:2.

C. CHALLENGED CLAIMS

The only two independent claims of the '016 patent, 1 and 20 (reproduced below), are illustrative of the claimed subject matter:

1. A water ride for use by a rider, the water ride comprising:
 - an activity section including
 - a substantially flat middle section,
 - a first curved sidewall extending substantially upwardly from an edge of the middle section, and
 - a second curved sidewall extending substantially upwardly from another edge of the middle section opposite the first curved side;
 - a water delivery section coupled to a side of the middle section; and
 - the water delivery section configured and arranged to deliver water up the middle section in a direction

substantially opposite the rider's direction of travel
along the middle section;

a dewatering section coupled to another side of the middle
section opposite the water delivery section and located
at an elevation higher than the water delivery section;
and

a rider exit located adjacent the water delivery section.

Id. at 4:58–5:8.

20. A water ride for use by a rider, the water ride comprising:

an activity section including

a substantially flat, inclined middle section,

a first curved sidewall extending substantially upwardly
from an edge of the middle section, and

a second curved sidewall extending substantially
upwardly from another edge of the middle section
opposite the first curved side;

a water delivery section coupled to a side of the middle
section;

the water delivery section including at least one nozzle
configured and arranged to deliver water up the entire
length of the middle section;

a dewatering section coupled to another side of the middle
section opposite the water delivery section and located
at an elevation higher than the water delivery section;
and

a rider exit located adjacent the water delivery section.

Id. at 6:19–36.

D. REVIEWED GROUNDS OF UNPATENTABILITY

Petitioner relies on the following references:

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