Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Central Division

Paris Seat

DECISION
of the Court of First Instance of the Unified Patent Court
Central division (Paris seat)
issued on 12 January 2026
in the revocation action
UPC_CFI_350/2025

HEADNOTES: Rule 355 of the Rules of Procedure ('RoP')

KEYWORDS: decision by default

PARTIES:

CLAIMANT:

WhiteWater West Industries Inc., 6651 Fraserwood Place, Unit 180, Richmond BC V6W 1J3, Canada

represented by **Dr. Tobias Wuttke** and UPC representatives of
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Patentanwälte, Rechtsanwälte
Prinzregentenplatz 7, 81675 München

DEFENDANT:

American Wave Machines, Inc., 224C S. Cedros Ave., Solana Beach, CA 92075, USA

PATENT AT ISSUE:

European patent n° EP 2 728 089

Title: Sequenced chamber wave generator controller and method

PANEL:

Panel 2:

Paolo Catallozzi	Presiding judge
Tatyana Zhilova	Legally qualified judge and judge-rapporteur
Michel Abello	Technically qualified judge

SUMMARY OF FACTS AND PARTIES' REQUESTS

1. On 22 April 2025 WhiteWater West Industries Inc (hereafter referred to as Claimant or WhiteWater) filed a revocation action against American Wave Machines, Inc (hereafter referred to as Defendant or American Wave) concerning the patent at issue (EP '089) before this Central Division, registered as No. UPC_CFI_350/2025.

2. Claimant requested the revocation of EP '089 within the scope of claim 1 for the territories of the UPC member states of France and Germany. They also requested that the defendant be ordered to bear the costs of the proceedings.

3. Claimant argues that the patent is not valid for the following reasons: extension of independent claim 1 beyond the content of the application as filed; lack of novelty over 3 different facilities ('Chilliwack', 'Chime Long' and 'Festival Bay') which represent public prior use and over two prior art documents - US 4,558,474 (filed as exhibit BP-CR1/D1) and US 2008/0085159 A1 (filed as exhibit BP-CR26/D5); lack of inventive step when combining said prior art documents with other documents (D2 to D4 and D6).

4. The Statement for revocation has been served on American Wave on 8 May 2025, as indicated in the Certificate Attestation issued by the contracting agent for the Office of International Judicial Assistance (document "Proof of Service", accessible via the Case Management System).

5. American Wave failed to file Defence to revocation within the two-month time period pursuant to Rule 49 'RoP 'which has expired on 8 July 2025. Furthermore, American Wave has not filed any applications to extend the deadline for submitting a defence to revocation or for re-establishment of rights. To date the defendant has not reacted to the action in any way .

6. On 10 July 2025 the Claimant requested that the Court render a decision by default against American Wave pursuant to R. 355(1)(a) 'RoP' and order that the defendant bear the costs of the proceedings. The facts put forward by the Claimant to justify the remedy sought are as mentioned at para. 3 above focused on the lack of inventive step when combining said prior art document D1 with other documents (D2 to D4 and D6). Besides the above validity attacks the Claimant submits further arguments regarding the public prior use.

GROUNDS FOR THE ORDER

I. Conditions for a decision by default

7. Pursuant to Rule 355 'RoP' a decision by default against the defendant may be given where: i) the relevant request is submitted by the claimant; ii) the defendant failed to take a step in the time limit foreseen in the Rules of Procedures or set by the Court or the party or the party which was duly summoned fails to appear at an oral hearing or the time limit for the defence to the claim has expired and thus, it is established that the service of the claim was effected in sufficient time to enable the defendant to enter a defence; iii) the facts put forward by the claimant justify the remedy sought and the procedural conduct of the defendant does not preclude such a decision.

8. With regard to the condition relating to the expiry of the time limit for the defence, Rule 277 'RoP' requires that the statement of claim be served by a method prescribed by the internal law of the state addressed for the service of documents in domestic actions upon persons who are within its territory or is actually served on the defendant under Chapter 2 of the Rules of the Procedure.

9. In the case at hand, as the Statement for revocation had to be served outside the Contracting Member States, the service has been done by the Registry under the rules of the Hague Service Convention in accordance with Rule 274.1(a)(ii) 'RoP'. This is evidenced by the Certificate Attestation issued by the serving authority by the Office of International Judicial Assistance, ABC Legal Services, Washington D.C. (document "Proof of Service", accessible via the Case Management System).

10. Where these conditions were met, it is in the discretion of the Court whether to issue a decision by default or not. In the current situation the panel, exercising its discretionary powers, considers appropriate to issue such a decision, taking into consideration that, as it will be explained later, the facts put forward by the Claimant justify the remedy sought and that the non-defaulting party is entitled to an expeditious procedure. It must be added that, in general, expeditious decisions are one of the aims of the Unified Patent Court Agreement and that UPC' legal framework provides the defendant with appropriate tools to give justifications for the default and to appeal the decision where unfavourable.

11. When addressing the request for decision by default, the Court will only consider the facts presented by Claimant to justify the remedy sought. It is not required to rule on all the grounds raised in the initial claim.

II. The patent at issue

12. The patent-in-suit was filed on 28.10.2013 under n° 13190442.7 and claims priorities from 01.11.2012, US 201261721304 P and 14.01.2013 US 201313740419. The patent was granted on 09.09.2020 and expires on 28.10.2033. There are no opposition and no appeal pending according to the EPO response of 30.04.2025. The current patent owner is American Wave Machines, Inc.

13. The EP '089 relates to wave generators, such as those used to create waves in pools for recreational purposes (see para. [0001]), where people typically play in or use the waves for

aquatic sports, such as board sports. Such sports require the waves to be rideable (para. [0002]).

14. The patent does not seem to be intended to generate high-quality surfing waves, but rather, as stated in para. [0007] of EP '089, to "create a variety of rideable waves and provide the rider with the ability to customise the wave characteristics, including size, shape and pattern".

15. EP '089 as granted comprises 14 claims, including two independent claims: apparatus claim 1 and method claim 10. Only claim 1 is challenged.

16. The Court accepts the feature breakdown of independent claim 1 of EP '089, as proposed by the Claimant:

1. An aquatic sports amusement apparatus, comprising:

1.1 a pool (50);

1.2 a plurality of wave generating chambers (54) that communicate with the pool (50) so as to release water into the pool (50);

2. each of the plurality of chambers (54) having a valve structure (24, 26, 28), wherein each valve structure (24, 26, 28) is connected to an application controller (62)

2.1 wherein the connection is constructed to allow for the actuation of each valve structure (24, 26, 28) independently of the other valve structures (24, 26, 28); and

2.2 wherein the controller is configured to perform the following chamber control steps:

a. actuating the valve structure (24, 26, 28) of a first chamber (54) or valve structures (24, 26, 28) of a first set of chambers (54) in the plurality to release water into the pool (50), during step (a) the valve structure (24, 26, 28) of a second chamber (54) or the valve structures (24, 26, 28) of a second set of chambers (54) of the plurality are actuated so as to prevent the release water into the pool (50); and

b. after a delay, actuating the valve structure (24, 26, 28) of the second chamber (54) or the valve structures (24, 26, 28) of the second set of chambers (54) in the plurality to release water into the pool (50);

2.3 wherein the release of water into the pool (50) creates a wave (110) that can be ridden by a user;

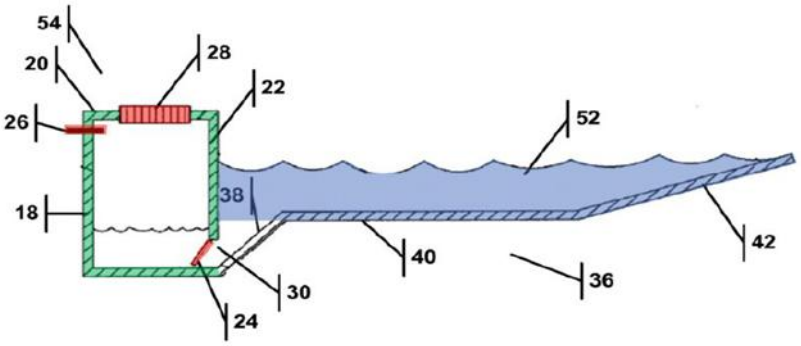
characterized in that

3. the application controller (62, 1520, 1525) is a mobile application controller (62, 1520, 1525) that connects to the plurality of chambers (54) via a network connection (1515) and further has a graphical user interface that further comprises a wave creation module (1611) adapted

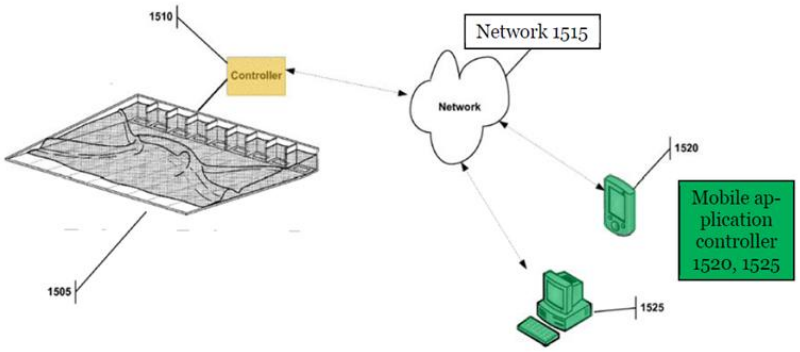
to create a wave profile; and

4. wherein the mobile application controller (62) is electrically connected with the valve structure (24, 26, 28) in order to control their operation by first filling the chamber (54) with air through a gas supply valve (26), thereby displacing water into the pool (50), then closing the gas supply valve (26) and then venting the chamber air suddenly through a vent valve (28), causing the water (52) to flow from the pool (50) through passageway (30) into the now empty space (56) in the chamber (54).

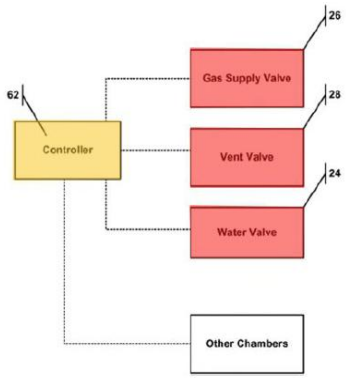
17. The following figures from the EP ’089 (colours added by the Claimant) illustrate the claimed invention.



Ill. 6 Fig. 2 of the patent-in-suit (colouring added)



Ill. 8 Fig. 15 of the patent-in-suit (colouring added)



Ill. 7 Fig. 2A of the patent-in-suit (colouring added)

III. The skilled person and its common general knowledge (CGK)

18. The Claimant does not define the profile of the person skilled in the art. The Court finds that the skilled person should be defined as a mechanical engineer who specialises in wave generators and has general knowledge of fluid mechanics, computer control, and automation.

19. As mentioned in the Decision of 22 January 2025, CD Paris, UPC_CFI_310/2023: "The person skilled in the art (skilled person) is a legal fiction which, in the interests of legal certainty, forms a standardized basis for the assessment of the legal concepts of 'prior art', 'novelty, 'inventive step' and 'enablement'. The skilled person stands for the average expert who is typically active in the technical field of the invention, has had the usual prior training and has acquired average knowledge, skills and practical experience for routine work, but does not have inventive imagination, thinking and skills. When interpreting a patent claim, the person skilled in the art does not apply a philological understanding but determines the technical meaning of the terms used with the aid of the description and the drawings."

20. The Claimant refers to Apple's "Macintosh 128k" introduced since 1984, and equipped with a graphical user interface (GUI) and network connections, at least via a modem port (https://en.wikipedia.org/wiki/Macintosh_128K) as common general knowledge (CGK) of the skilled person before the date of publication of D1. The Court does not consider that Claimant has sufficiently proven that Apple's "Macintosh 128k" was at that time a general and commonly and/or familiar type of controller available to a mechanical engineer specialized in wave generators. Indeed the Wikipedia article indicates that "though the Mac garnered an immediate, enthusiastic following, some labelled it a mere "toy", (…) existing text-mode and command-driven applications had to be redesigned and the programming code rewritten. This was a time-consuming task that many software developers chose not to undertake, and could be regarded as a reason for an initial lack of software for the new system".

21. As stated by this Central Division (decision on 22 January 2025, UPC_CFI_310/2023, para. 44), "The 'CGK', in general, is information which has been commonly known to the skilled person from written sources or from practical experience in the relevant technical field. The 'CGK' includes knowledge which is directly available from familiar sources of information relating to the specific technical field at the prior date but is not to be confused with publicly available knowledge, which may not be general and common. A familiar source of information typically is a source to which a skilled person regularly turns for guidance on standard design solutions that are generally applicable, such as standard textbooks, encyclopaedias, manuals, handbooks, dictionaries and databases which the skilled person knows and can use as a suitable and reliable source for the respective information in the respective technical field. A familiar source of information should not be confused however with all publicly available prior art documents".

IV. Claim construction

22. According to the patent description, features 3 and 4 seem essential to the validity of Claim 1, as they now constitute the characterising portion of the claim. This means that the entire

preamble (the pre-characterising portion of Claim 1) is already disclosed by a single piece of prior art: US '860, as stated in para. [0006] EP '089.

23. Some terms and features that are pivotal tor the validity and/or requires clarification are explained below. All other features are deemed self-explanatory.

Feature "wave generating chambers (54)" (Features 1.2 and 4)

24. According to para. [0020] of EP'089 "wave generating chamber 54" performs: 1) a first step of water release in the pool 50, by displacing/pushing water from the inner space 56 of the chamber through a passageway 30 in the pool, to generate a first wave segment 105 (see Figures 4 and 2); and a second step of water refill, by causing the water to flow from the pool through the same passageway 30 into the now empty space 56 in the chamber 54, causing a depression in the water level of the pool, to amplify the wave (a higher peak). The Court agrees with the Claimant that feature 4 makes clear that the patent-in-suit relies on increasing / decreasing air pressure to operate the wave generator.

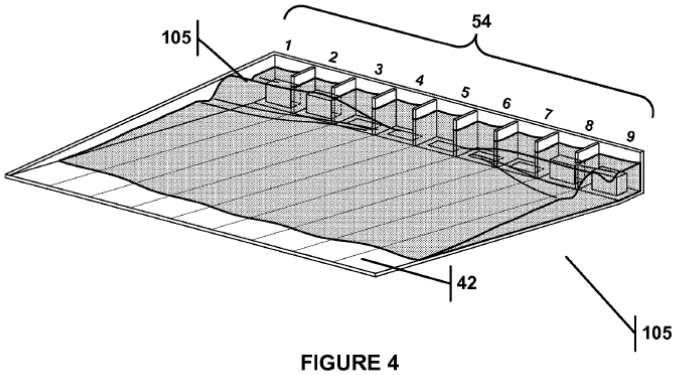


FIGURE 4

25. According to the Claimant, this process of releasing water may be operated by air pressure (pneumatic) or alternatively by mechanical or hydraulic plungers and refers to para. [0005] of EP '089 which relates to prior WO'031 (D3) disclosing "hydraulic rams that move the [mechanical] plunger using a controlling computer or PLC electronics". The Court agrees with the Claimant.

Feature "valve structure (24, 26, 28)" (features 2, 2.1 and 4.)

26. According to the Claimant, Claim 1 specifies the three mandatory components of this valve structure (24, 26, 28), namely a water valve (24), a gas supply valve (26), and a vent valve (28). The Court rejects this interpretation since feature 4. makes clear that only two valves are mandatory, a gas supply valve (26) and a vent valve (28). This is confirmed by the patent specification where the provision of a water valve 24 is only mentioned as a possibility (use of the terms "may" and "can" at paras. [0018] and [0020]). The water valve (24) is an optional embodiment used to prevent immediate water resurgence back into the pool 50 from the

chamber after completion of the chamber period. Since preventing immediate water resurgence is also possible with shutting both valves (26) and (28) after completion of the chamber period (see paras. [0018] and [0020]), the Court concludes that the valve structure comprises at least two air valves for supplying and venting air to the inner space of the chamber to operate the first step of water release and the second step of water refill of the wave generating chamber.

Feature "Actuating the valve structure (24, 26, 28) to release water or to prevent the release water into the pool (50);" (features 2.2 and 2.2a and 2.2b).

27. The feature 2.2a reads "to prevent the release water into the pool (50)", but it is an obvious clerical error, it should be read "to prevent the release **of** water into the pool (50)". For the understanding of the term "release" see para. 24. above.

28. For the understanding of the term "prevent" as outlined above, Claimant offers as evidence the Expert opinion of Dr. Glen Stevick, director and principal of Berkeley Engineering and Research, Inc. (BEAR) (Exhibit BP4): he refers to para. [0020] to assert that the water valve is necessary to prevent water release. The Expert asserts that the purpose of the patent is to generate high quality surfing wave, so that in his opinion "preventing" requires no water or only marginal amount of water released in the pool from the second set of chambers. The Court does not accept this opinion as it contradicts to the purpose of the patent which is not to generate high quality surfing wave (see para. 14 above).

29. In addition, the Court disagrees with the Expert assertion that the water release prevention of feature 2.2a is the same as preventing immediate water resurgence back into the pool 50 mentioned at para. [0020]: this paragraph relates to the operation of a water valve to prevent immediate resurgence of water back to the pool from a chamber, after the water refill of the same chamber. It does not relate to the operation of a valve structure to prevent water release into the pool from a second chamber (or second set of chambers), when a first chamber (or first set of chambers) are releasing water into the pool.

Feature "application controller (62)" (features 2. 2.1 and 2.2)

30. Para. [0021] of EP '089 reads at the end "the controller 62 can actuate each chamber in sequence after a delay and control the valves", which means according to Claimant that the same electronic controller 62 may be connected to the plurality of valve structures 24, 26, 28 (see Figure 2A). The controller is also referenced 1510 on Figure 15.

31. The Court considers that the controller actuates the valve structure (without limitation to a water valve) in a sequence: in a first step (a), to release water in the pool from a first set of chambers, while preventing the release of water into the pool from a second set of chambers; in a further step (b) after a delay, to release water into the pool from the second set of chambers, but this step (b) does not require to prevent water release from the first set of chambers.

Feature "mobile application controller electrically connected and via a network connection with the valve structure" (features 2.1, 3 and 4)

32. This feature is described in para. [0048] of EP '089, which states: "As discussed above, the wave generator can produce a variety of waves because the sequencing of the individual chambers by the controller. The controller has until now been described as residing at the wave generator facility. This however need not be the case. The wave generator apparatus may actually be controlled by the user through a mobile application controller. The mobile application controller may be used on a variety platform, such as smartphones (e.g., iPhone, Droid, etc.), tablets (e.g., iPad, Nexus, etc.), laptops, personal digital assistants and personal computers. Referring to FIG. 15, the controller 1510 of the wave generator apparatus 1505 may be connected to the internet, local area network ("LAN"), virtual private network, wireless network 1515".

33. The Claimant states that features 3. and 4. require the mobile application controller to be both electrically connected and via a network connection (cloud) to the valve structure. The Claimant argues this is technically inconsistent as the application controller 62 cannot be electrically connected to the valve structure at the location of the facility (see para. [0035]) while simultaneously being connected via a network to a user remote device 1520, 1525 (see para. [0062]).

34. It is true that the combined wording of features 3. and 4. lacks clarity and needs to be interpreted. Although claim 3 is not subject to this revocation action, its dependency on claim 1 implies that claim 1 encompasses embodiments where the controller is partly located at the facility and partly at a remote location. Consequently, the controller is to be understood as a functional entity for controlling the valve structure, regardless of whether it comprises distinct structural components situated in different physical locations.

35. Indeed, claim 3 (the wording of which remains unchanged from the application as filed) (Exhibits BP1 and BP3), depends on claim 1 and states that "wherein the pool (50) and chambers (54) are located at one location and the controller (62) is at least partially located at a second location, wherein the first location and second location are separated by at least 1.61 km (1 mile)".

36. Consequently, the controller of claim 1 is to be interpreted as encompassing a two-part system: a "fixed" component electrically connected to the wave generator facility (such as a PC) and a "mobile" component (such as a smart phone or a laptop). The latter is connected via a network – such as the internet or a wired or wireless Local Area Network (LAN) to the valve structure, directly or indirectly (Figure 15) via the fixed component. This integrated controller architecture enables the independent actuation of each valve structure.

Feature "graphical user interface comprises a wave creation module" (feature 3)

37. This feature is described in paras. [0049] and [0050], illustrated in Figure 16, and further detailed in paras. [0051] and [0055] to [0057], as well as in Figures 17 to 19 of EP '089. These

paragraphs state that the wave creation module creates a new wave profile or modifies a previously saved or shared profile at step 1615.

38. In one embodiment, the system may allow the user to select only three attributes of the wave profile - i.e., (1) size (from small, medium or large), (2) shape (mushy or hollow), and (3) pattern (i.e., direction, location and number of wave peaks) (Figure 17).

39. In another embodiment, Figures 18 and 19 provide a more complex interface that a user may use to create a wave profile, where the user may select the magnitude of the water expelled by a particular chamber (by shortening or increasing the length of the actuation of a chamber), add new chamber actuations, move, modify and delete existing chamber actuations, select the delay of actuation between each chamber or the actuating simultaneous actuation of particular set of chambers.

40. The system gives the option at step 1620 to have the application render a computer model of the wave profile to fully visualize what the wave will look like (see Figures 8 and 15 with a hollow barrel wave profile).

41. The Court considers that the user feedback through a graphical interface showing a computer model of the customized wave profile that the user has created or modified, is not part of feature 3. of claim 1. This wave modelling is described in the specification as optional, and is not necessary for the wave creation module to operate.

42. The user of the wave creation module may be different from the user who rides the newly created wave profile (see para. [0049] of EP '089): "Alternatively, the user can create a wave profile and actuate the wave generator apparatus remotely for someone else to ride."

43. The wave creation module shall provide the ability to customize the wave characteristics (see para. [0007]).

V. Novelty over prior art document US 4,558,474 (Exhibit D1)

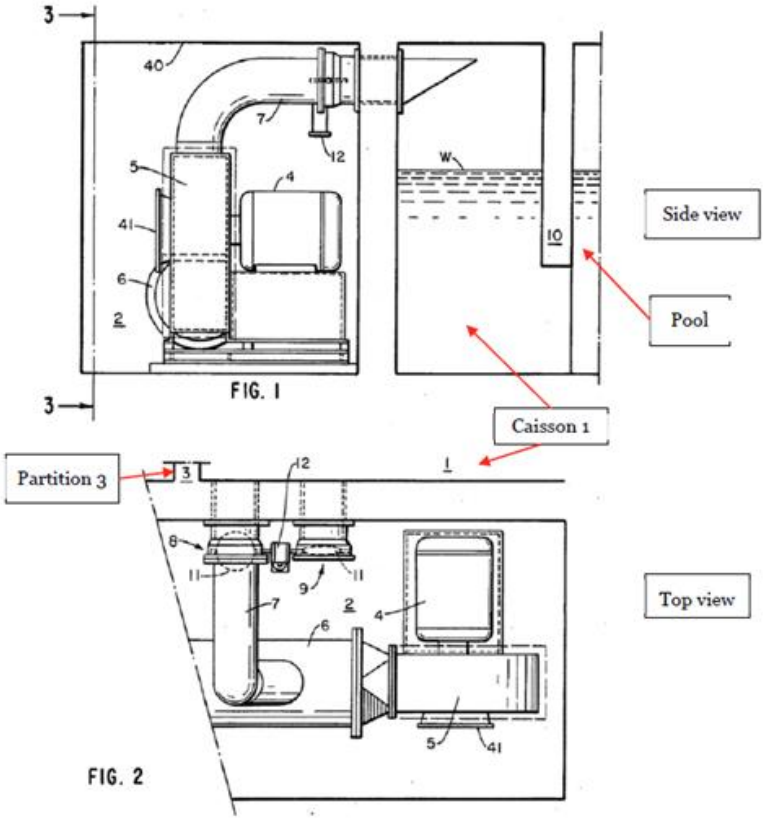
44. D1 is published on 17 December 1985, filed on 3 August 1983, and discloses a pneumatic wave generator for a surf pool.

45. The pneumatic wave generator comprises a caisson 1 divided in several chambers 20, which are partially filled with water and air (see Figure. 1). A blower 5 supplies compressed air to the chambers to lower the water level W in the chamber, through an air inlet valve 8 and air inlet duct 7 and aspires air from the chambers through the air outlet valve 9 next to the air inlet valve 8.

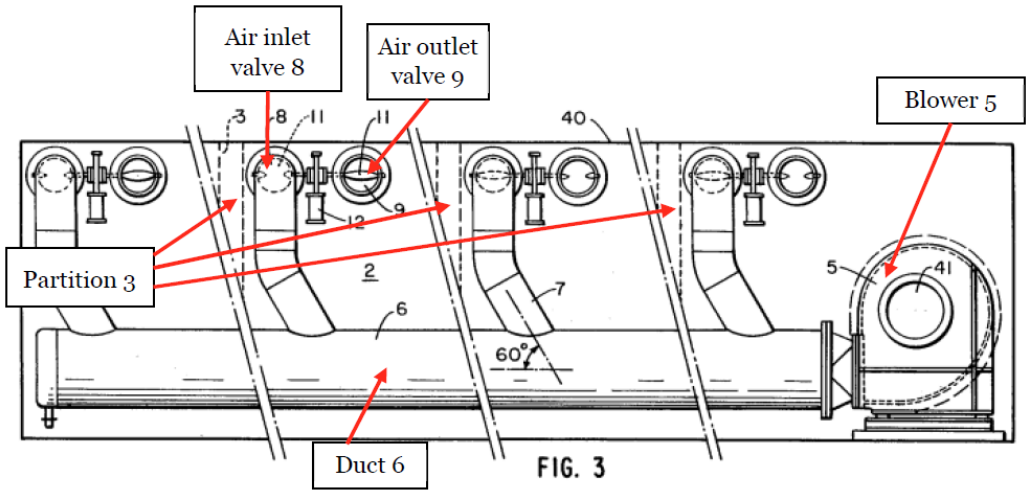
46. The valves may be butterfly-valve type 11 and rotated by a common drive 12.

47. The air inlet valve 8 and the air outlet valve 9 are coupled by common drive means, so that the power necessary to operate the valves is greatly reduced (col. 5, lines 33-34, and claim 1).

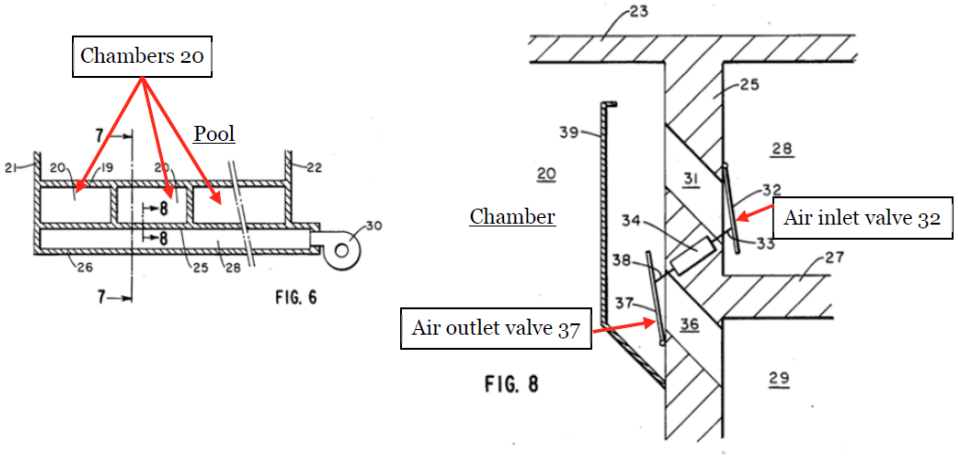
48. The following figures from D1 (with annotations added by Claimant) illustrate the prior art generator.



Ill. 11 Figs. 1 and 2 of D1 (annotation added)



Ill. 10 *Fig. 3 of D1 (annotation added)*



Ill. 13 *Figs. 6 and 8 of D1 (annotation added)*

49. Features 1, 1.1, 1.2, 2, 2.2 and 2.3 and 4 are disclosed in D1.

50. Feature 2.1. is also disclosed, since it only requires a possibility of independent actuation: "the connection is constructed to allow for the actuation of each valve structure independently of the other". In fact, the operation is not fully independent, since features 2a and 2b require an actuation of the valves in a specific sequence. Consequently, in D1, since a sequence of actuation is disclosed, it follows that the connection is also constructed to allow for an independent actuation.

51. Features 2.2a and 2.2b. are missing in D1. The alternate aspiration/expiration of the same chamber is disclosed. But the claimed sequence of aspiration by a first set of chambers while preventing aspiration by a second set of chambers is not disclosed. The choice of the sequence is considered as part of common general knowledge (CGK) of the skilled person in D1 but not specified in D1. The delay between aspiration of a first set and a second set of chambers is also not disclosed in D1.

52. Feature 3. of EP '089 is also missing in D1. The prior art document does not seem to disclose alone, even taking into account the CGK of the skilled person at the date of its publication, a computer control comprising a mobile application controller equipped with a graphical user interface (GUI) and network connections.

53. Whether providing D1 with the claimed sequence controlled by a mobile application controller constitutes a routine step will be assessed in the context of inventive step. However, D1 does not affect the novelty of the invention, as it does not disclose the wave creation module in any case (feature 3.).

VI. Inventive step

54. The Court of Appeal set the approach for assessing the inventive step (Order of 26 February 2024, Nanostring v 10X Genomics, UPC_CoA_335/2023; Decision of 25 November 2025, Meril

v Edwards, UPC_CoA_464/2024). It first has to be established what the object of the invention is, i.e. the objective problem. This must be assessed from the perspective of the person skilled in the art, with their common general knowledge, as at the application or priority date (also referred to as the effective date) of the patent. This must be done by establishing what the invention adds to the state of the art, not by looking at the individual features of the claim, but by comparing the claim as a whole in the context of the specification and the drawings, thus also considering the inventive concept underlying the invention (the technical teaching), which must be based on the technical effect(s) that the person skilled in the art, on the basis of the application, understands is (are) achieved with the claimed invention. In order to avoid hindsight, the objective problem should not contain pointers to the claimed solution. A starting point is realistic if the teaching thereof would have been of interest to a person skilled in the art who, at the effective date, wishes to solve the objective problem.

The objective problem to be solved

55. The object of the invention as defined in the EP '089 at para. [0007] is "providing an apparatus that can create a variety of rideable waves, and further providing the rider the ability to customize the wave characteristics - including size, shape, and pattern". Two additional citations incorporated in the granted patent specification at paras [0005] and [0006] disclose a sequenced control of the wave generator to create different wave profiles. Therefore, the object of creating a variety of rideable waves was already solved in the state of the art (the wording of para [0007] has not been updated during the EPO prosecution when citations at paras [0005] and [0006] have been added to the granted version of the patent specification - see Exhibits BP1 and BP3).

56. Regarding the specific wave characteristics, since claim 1 does not refer to "size, shape and pattern", the objective problem to be solved is so to be formulated more broadly as the general customisation of wave characteristics.

57. Consequently, the objective technical problem in view of the state of the art should be considered as limited to "how to provide the rider with the ability to customise the wave characteristics" (para. [0007]).

The inventive concept for solving the objective problem

58. As stated by the Court of Appeal in its settled case-law, the inventive concept underlying the invention (the technical teaching), must be based on technical effects.

59. In this case, the inventive concept underlying the claimed invention resides in the provision of a graphical user interface (GUI) comprising a wave creation module to enable the customization of wave characteristics.

60. Accordingly, when assessing inventive step, only the GUI features that contribute to a technical effect shall be taken into consideration. The wording of the objective problem does not contain

any hints or pointers towards the claimed solution as it does not refer to a GUI or a wave creation module.

Realistic starting point for assessing inventive step

61. Claimant selected D1 as the primary basis for its attacks on inventive step, despite it not appearing to have been referenced during the EPO prosecution.

62. D1 belongs to the relevant field of technology since it relates to a "pneumatic wave generator" (col. 1, lines 1–14), identical to the claimed apparatus.

63. Starting from D1, the skilled person would identify the problem of implementing a computer-based control system to manage the sequence and rhythm of the wave generator's operation. This is closely aligned with the aforementioned objective problem, since customisation of the wave is achieved through precise control of the sequence and rhythm of operation of the wave generator. Therefore, the skilled person would recognise the necessity of implementing a computer control that operates the valves in each chamber sequentially and rhythmically, since the specific control mechanism is not described in D1 (col. 4, lines 54–66).

Disclosure of prior art document WO 2009/058031 A1 (Exhibit BP-CR3/D3)

64. D3 is already cited in the patent specification at para. [0005] which reads: "From the international patent application published under the publication number WO 2009/058031 A1 a caisson wave generator for generating high quality surfing waves is known that includes pressure means in the form of a mechanical plunger that moves vertically within the caisson and is controlled by hydraulic rams that move the plunger using a controlling computer or PLC electronics. A software interface allows the preferred wave profile to be specified".

65. Consequently, D3 also relates to the same relevant field, "a caisson wave generator", and explicitly discloses "a software interface [which] allows the preferred wave profile to be specified." This provides a clear pointer for the skilled person to use the software interface of D3 in the computer control of D1 to solve the objective problem.

66. Furthermore, D3 discloses that "the caisson may have multiple chambers, have those chambers interlinked to enable displaced water to enter the pool at the same time, <u>at different times</u>, in combination/unison or <u>in series</u> and so forth as required" (D3, page 16, lines 22-25). Accordingly, D3 discloses the control sequence defined in feature 2.2:

- feature 2.2a: the chambers may be actuated "in series" which means that a chamber may release water while a second chamber does not. This second chamber may be equipped across the exit channel between the caisson 1 and the pool 2 with a one-way valve 17 integrally linked to operation of the hydraulic ram 7 directing movement of the plunger 5 (page 17, lines 30-35, and Figure 4), so that the one-way valve 17 prevents the release of water when the plunger is not actuated;

- and feature 2.2b: the second chamber/valve structure may be actuated after a first chamber ("in series ") or after a delay ("at different times")

FIGURE 1

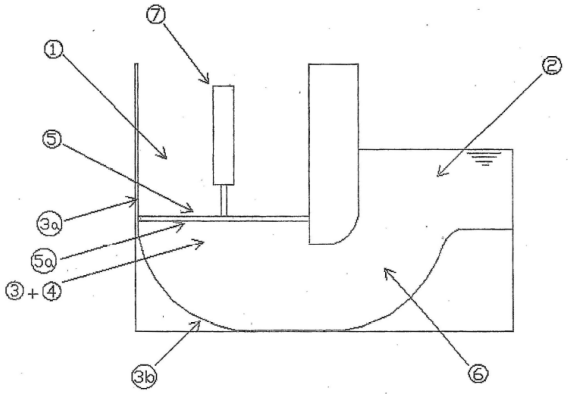
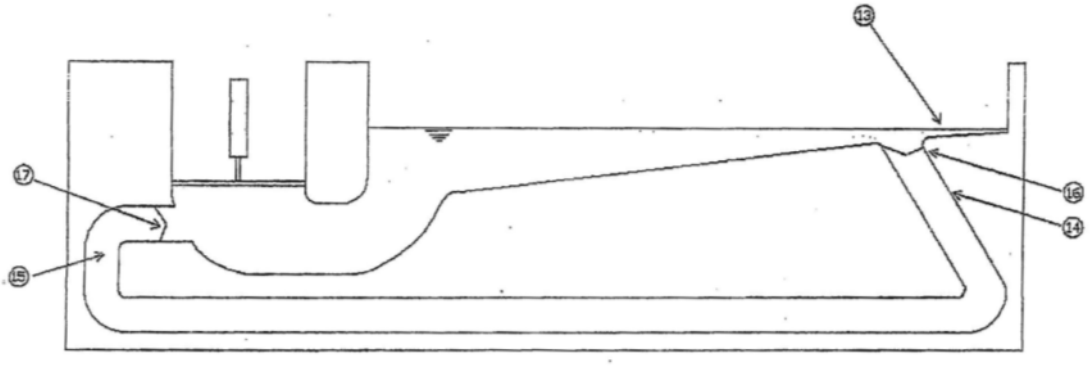
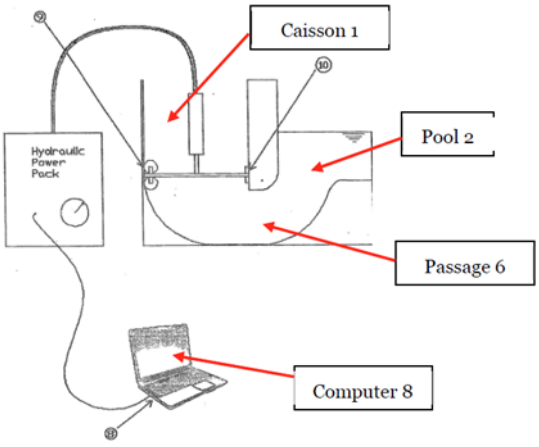


FIGURE 4



67. D3 discloses also feature 3 of the claimed invention: "The wave generating caisson is controlled by the computer and includes a software interface that allows the wave profile to be precisely specified" (page 8, lines 1-2). As shown in Figure 3 (annotation added by Claimant, Statement for revocation) this computer is a laptop 8 connected by a wired cable to the Hydraulic Power Pack.



Ill. 18 Fig. 3 of D3 (annotations added)

Lack of inventive step starting from D1 combined with D3

68. While D3 relates to mechanical actuation of the water release by a hydraulically actuated plunger, D1 relates to pneumatic actuation of the water release. However, this difference in actuation method would not deter the skilled person from considering the teachings of D3 in an attempt to solve the objective problem of customising wave characteristics starting from D1.

69. Furthermore, the sequence of operation of the controller is independent of the specific valve structure employed. As disclosed on page 5, lines 28 to 34 of D3, the valve structure may be pneumatic, hydraulic, mechanical, or a combination of thereof without this choice having any technical effect on the controller's sequence of operation.

70. The laptop in Figure 3 of D3 corresponds to the "mobile application controller" according to paras. [0009] and [0048] of EP'089. The wired connection can be considered a local area network (LAN), and it would have been obvious to a skilled person as a matter of routine practice at the priority date in 2012, to implement such a connection via a standard LAN or wireless network.

71. In conclusion, D3 provides the skilled person with a clear incentive to equip the apparatus of D1 with a mobile application controller that performs the sequence of feature 2.2, featuring a software interface that enables users to create wave profiles, according to feature 3.

72. Furthermore, it is highly questionable whether the mere addition of a wave creation module constitutes a technical contribution. Since the user selects the parameters according to their personal preferences this choice does not appear to produce a further technical effect on the apparatus's operation beyond what is already achieved according to a pre-programmed wave profile.

73. Therefore, the challenged claim 1 of EP '089 is obvious in view of D1 combined with D3.

Conclusion

74. For these reasons, the grounds of invalidity raised by the Claimant against the scope of Claim 1 of EP '089, and addressed by the panel, are well founded. Any arguments that have not been specifically considered must be deemed absorbed.

75. Therefore, patent EP '089 shall be partially revoked with regard to the scope of Claim 1 in the territories of UPC member states in which the patent is in force.

Costs

76. The Court accepts the value in dispute to be EUR 1,000,000, as set by the Claimant.

77. The Court and Claimant's costs shall be borne by American Wave, as the unsuccessful party.

DECISION

The Court rules as follows:

1. Grants the request for a default decision filed by WhiteWater West Industries, Inc. on 10 July 2025.
2. Declares the European patent No. EP 2 728 089 B1 partially revoked with regard to the scope of Claim 1 and the territories of the Contracting Member States for which the European patent was in effect at the time the revocation action was filed.
3. Orders that, after the deadline for appeal has passed, the Registry shall send a copy of this decision to the European Patent Office and to the national patent offices of any Contracting Member States concerned;
4. Orders that the costs of the proceedings shall be borne by American Wave Machines, Inc.

Issued on 12 January 2026.

Paolo Catallozzi
Presiding judge

Paolo Catallozzi
Firmato digitalmente da Paolo Catallozzi
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Tatyana Zhilova
Legally qualified judge and judge-rapporteur

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