

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

NIKE, INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	Case No. 1:22-cv-00082-RA-OTW
LULULEMON USA INC. and	)	
CURIOUSER PRODUCTS INC. d/b/a	)	
MIRROR	)	
	)	
Defendants.	)	

JOINT CLAIM CONSTRUCTION STATEMENT

Plaintiff Nike, Inc. (“Nike”) and Defendants lululemon USA Inc. and Curiouser Products d/b/a. MIRROR (“lululemon”) submit this Joint Claim Construction Chart pursuant to the parties’ August 5, 2022, Joint Status Report (ECF No. 59) and the Court’s August 15, 2022, Civil Case Management Plan and Scheduling Order (ECF No. 61).

Nike believes all the terms and phrases in the asserted claims have their ordinary and customary meanings, which are readily apparent, and no further construction is required. lululemon believes that three claim terms should be construed consistent with Federal Circuit precedent and representations made by Nike in the specifications and file histories. The three claim terms identified for construction are:

- “a piece of workout equipment” (’225 Patent);
- “one or more of an endurance fitness attribute, a flexibility fitness attribute, and a strength fitness attribute” (’930 Patent); and
- “one or more of a speed athleticism attribute, an agility athleticism attribute, a reaction athleticism attribute, a power athleticism attribute and a balance athleticism attribute of the user” (’930 Patent).

lululemon v. NIKE, Inc. IPR2023-00424 Patent No. 10,923,225 Ex. 2001

In the table below, the parties have set forth each party's proposed claim construction or indefiniteness position, along with an identification of intrinsic and extrinsic evidence (including expert testimony) on which they intend to rely. *See* ECF No. 59 at 13 n.1. The parties believe a two-hour technology tutorial and claim construction hearing would be sufficient to address the three disputed claim phrases. *See id.* Neither party intends to call a witness to testify at that hearing. *See id.*

Claim Term	Nike's Proposed Construction	Nike's Identified Evidence	lululemon's Proposed Construction	lululemon's Identified Evidence
“a piece of workout equipment” U.S. Patent No. 10,923,225 Claims 1, 3, 5, 7, 9, 10, 12, 13, 14, 16, 18	Ordinary and customary meaning; no further construction required.	U.S. Patent No. 10,923,225 at 9:50–65; 18:22–33; 20:27–47. http://www.mirror.co MIRROR_SDNY82_00000462 Expert declaration and testimony of Scott McLean relating to (1) the technical background of the '225 Patent and the state of the art, (2) the level of skill of a person of ordinary skill in the art as of the priority date of the claimed invention, and/or (3) how a person of ordinary skill in the art would understand the meaning of this phrase as of the priority date of the claimed invention.	“a training machine on which the user performs workout activities”	U.S. Patent No. 10,923,225 at 9:50–10:5, 18:61–67, 20:1–47, 21:13–29, 4:22–33, 4:65–5:4, 10:48–11:15, 44:64–45:5, 5:53–6:17, 10:6–19, 18:58–60, 29:6–20, 18:22–33 (and associated figures) Expert testimony of David Paulus and/or Kevin Lynch concerning (1) the technical background of the '225 Patent and the state of the art, (2) the level of skill of a person of ordinary skill in the art as of the priority date of the alleged invention(s), and (3) how a person of ordinary skill in the art as of the priority date of the alleged invention(s) would interpret this claim term.

Claim Term	Nike's Proposed Construction	Nike's Identified Evidence	lululemon's Proposed Construction	lululemon's Identified Evidence
“one or more of an endurance fitness attribute, a flexibility fitness attribute and a strength fitness attribute of the user” U.S. Patent No. 10,188,930 Claim 1	Ordinary and customary meaning; no further construction required.	U.S. Patent No. 10,188,930 at Abstract, 23:24–24:33, 26:16–51. Expert declaration and testimony of Scott McLean relating to (1) the technical background of the '930 Patent and the state of the art, (2) the level of skill of a person of ordinary skill in the art as of the priority date of the claimed invention, and/or (3) how a person of ordinary skill in the art would understand the meaning of this phrase as of the priority date of the claimed invention.	“one or more endurance fitness attribute, one or more flexibility fitness attribute, and one or more strength fitness attribute of the user”	U.S. Patent No. 10,188,930 at 23:39–25:17, 25:5–25:50; 26:16–51; Fig. 13. William Strunk, Jr. & E.B. White, <i>The Elements of Style</i> 27 (4th ed. 2000). Expert testimony of David Paulus and/or Kevin Lynch concerning (1) the technical background of the '930 Patent and the state of the art, (2) the level of skill of a person of ordinary skill in the art as of the priority date of the alleged invention(s), and (3) how a person of ordinary skill in the art as of the priority date of the alleged invention(s) would interpret this claim term.

Claim Term	Nike's Proposed Construction	Nike's Identified Evidence	lululemon's Proposed Construction	lululemon's Identified Evidence
“one or more of a speed athleticism attribute, an agility athleticism attribute, a reaction athleticism attribute, a power athleticism attribute and a balance athleticism attribute of the user” U.S. Patent No. 10,188,930 Claim 1	Ordinary and customary meaning; no further construction required.	U.S. Patent No. 10,188,930 at Abstract, 23:24–24:33, 26:16–51. Expert declaration and testimony of Scott McLean relating to (1) the technical background of the '930 Patent and the state of the art, (2) the level of skill of a person of ordinary skill in the art as of the priority date of the claimed invention, and/or (3) how a person of ordinary skill in the art would understand the meaning of this phrase as of the priority date of the claimed invention.	“one or more speed athleticism attribute, one or more agility athleticism attribute, one or more reaction athleticism attribute, one or more power athleticism attribute, and one or more balance athleticism attribute of the user”	U.S. Patent No. 10,188,930 at 23:39–25:17; 26:16–51; Fig. 13. William Strunk, Jr. & E.B. White, <i>The Elements of Style</i> 27 (4th ed. 2000). Expert testimony of David Paulus and/or Kevin Lynch concerning (1) the technical background of the '930 Patent and the state of the art, (2) the level of skill of a person of ordinary skill in the art as of the priority date of the alleged invention(s), and (3) how a person of ordinary skill in the art as of the priority date of the alleged invention(s) would interpret this claim term.

Dated: October 20, 2022

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