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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Woodway USA, Inc., Plaintiff, vs. LifeCORE Fitness, Inc. d/b/a Assault Fitness, Defendant.	Case No. 3:22-cv-00492-JO-BLM **WOODWAY USA, INC.'S DISCLOSURE OF ASSERTED CLAIMS AND INFRINGEMENT CONTENTIONS** Action Filed: April 11, 2022

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Plaintiff Woodway USA, Inc. ("Woodway") provides the following Patent Local Rules ("Patent L.R.") 3.1 Disclosure of Asserted Claims and Infringement Contentions ("Contentions") and Patent L.R. 3.2 Document Production Accompanying Disclosure, served concurrently herewith, to Defendant, LifeCORE Fitness, Inc. d/b/a Assault Fitness ("Assault").

I. PRELIMINARY STATEMENT

Consistent with Patent L.R. 3.1, Woodway's Contentions are as follows:

(a) an identification of each claim of U.S. Patent Nos. 9,039,580 ("the '580 Patent"), 10,561,884 ("the '884 Patent"), 10,799,745 ("the '745 Patent"), and soon to be issued App. No. 17/247101 ("the '101 Application")[1] (collectively, the "Asserted Patents") that is infringed by Assault under 35 U.S.C. §§ 271(a) and 271(b);

(b) for each asserted claim, the identity of each accused apparatus, product, device, process, method, act, or other instrumentality ("Accused Instrumentality") of which Woodway is aware;

(c) charts identifying specifically where each element of each asserted claim is found within each Accused Instrumentality, including for each element that Woodway contends is governed by 35 U.S.C. § 112(6), the identity of the structure(s), act(s), or material(s) in the Accused Instrumentality that performs the claimed function;

(d) an identification of any indirect infringement allegations;

(e) a statement identifying whether each element of each asserted claim is claimed to be literally present or present under the doctrine of equivalents;

(f) the priority date to which each asserted claim is entitled;

(g) an identification of Woodway's own product(s) that incorporate(s) or reflect(s) each asserted claim; and

(h) the basis for Woodway's allegations that Assault willfully infringes the Asserted Patents.

These Contentions may be amended or supplemented as a matter of right until the

[1] Woodway paid the issue fee for the '101 Application on September 1, 2022.

filing of the parties' Joint Claim Construction Chart, pursuant to Patent Local Rule 3.6(a) and are being provided without prejudice to Woodway's rights. Woodway expressly reserves the right to amend, expand, add, supplement, change, alter, or otherwise modify its Contentions as Woodway learns new information, Assault introduces or releases new products, additional facts are ascertained as discovery progresses in this case, including written discovery, document production, and fact and expert depositions, analyses are made, in response to any of Assault's contentions, and claims are construed.

Subject to the foregoing, Woodway's Contentions are as follows:

a) Each claim of each patent in suit that is allegedly infringed by each opposing party

Asserted Patents	Asserted Claims	Relevant Subsection(s) of 35 U.S.C. § 271
The '580 Patent	1-3, 5-6, 10, 25	35 U.S.C. §§ 271(a), 271(b)
The '884 Patent	30-34, 37-54, 57, 59	35 U.S.C. §§ 271(a), 271(b)
The '745 Patent	1, 4, 7-12, 14, 17, 18, 20-26	35 U.S.C. §§ 271(a), 271(b)
The '101 Application	1-4, 6-13, 15-16	35 U.S.C. §§ 217(a), 271(b)

b) Separately for each asserted claim, each accused apparatus, product, device, process, method, act, or other instrumentality ("Accused Instrumentality") of each opposing party of which the party is aware. This identification must be as specific as possible. Each product, device and apparatus must be identified by name or model number, if known. Each method or process must be identified by name, if known, or by any product, device, or apparatus which, when used, allegedly results in the practice of the claimed method or process;

The Accused Instrumentalities include Assault's AirRunner, AssaultRunner Elite, AssaultRunner Pro, and AssaultRunner. The following tables identify which claims of the Asserted Patents the Accused Instrumentalities infringe ("Asserted Claims"):

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1. The ’580 Patent

Asserted Claims	Accused Instrumentalities
1-3, 5-6, 10, 25	Assault AirRunner, AssaultRunner Elite, AssaultRunner Pro, AssaultRunner

2. The ’884 Patent

Asserted Claims	Accused Instrumentalities
30-34, 37-54, 57, 59	Assault AirRunner, AssaultRunner Elite, AssaultRunner Pro, AssaultRunner

3. The ’745 Patent

Asserted Claims	Accused Instrumentalities
1, 4, 7-12, 14, 17, 18, 20-26	Assault AirRunner, AssaultRunner Elite, AssaultRunner Pro, AssaultRunner

4. The ’101 Application

Asserted Claims	Accused Instrumentalities
1-4, 6-13, 15-16	Assault AirRunner, AssaultRunner Elite, AssaultRunner Pro, AssaultRunner

c) A chart identifying specifically where each element of each asserted claim is found within each Accused Instrumentality, including for each element that such party contends is governed by 35 U.S.C. § 112(6), the identity of the structure(s), act(s), or material(s) in the Accused Instrumentality that performs the claimed function;

Discovery in this case is in the early stages, and Assault has failed to produce documents responsive to Woodway's document requests as of yet. Consequently, these Contentions are based in large part upon information that Woodway has been able to glean from publicly available sources, disassembly of an Assault AirRunner, as well as its current good faith belief that the Assault AirRunner is mechanically and structurally the same as Assault's AssaultRunner Elite, AssaultRunner Pro, and AssaultRunner, for infringement purposes. Indeed, Assault has represented that there are no differences in the "mechanical or structural design of [sic] between the Air Runner Treadmill, the Air Runner Elite Treadmill and the Air Runner Pro Treadmill." *See* Assault Resp. Interrog. No. 2. Accordingly, Woodway asserts that each of the Accused Instrumentalities infringe each Asserted Claim the same way both directly and indirectly.

Attached hereto are claim charts identifying where each limitation of each Asserted Claim in each Asserted Patent is practiced by the Accused Instrumentalities:

Chart	Asserted Patent	Accused Instrumentalities
Appendix A	The '580 Patent	Assault AirRunner, AssaultRunner Elite, AssaultRunner Pro, AssaultRunner
Appendix B	The '884 Patent	Assault AirRunner, AssaultRunner Elite, AssaultRunner Pro, AssaultRunner
Appendix C	The '745 Patent	Assault AirRunner, AssaultRunner Elite, AssaultRunner Pro, AssaultRunner
Appendix D	The '101 Application	Assault AirRunner, AssaultRunner Elite, AssaultRunner Pro, AssaultRunner

d) For each claim which is alleged to have been indirectly infringed, an identification of any direct infringement and a description of the acts of the alleged indirect infringer that contribute to or are inducing that direct infringement. Insofar as alleged direct infringement is based on joint acts of multiple parties, the role of each such party in the direct infringement must be described.

1. The ’580 Patent

Without permission or authorization from Woodway, Assault is inducing the direct infringement of claims 1-3, 5-6, 10, and 25 of the ’580 Patent, as set forth under subsection (c) herein, by aiding, abetting, and encouraging its customers’ use of the Accused Instrumentalities by virtue of (1) selling the Accused Instrumentalities for their intended use, (2) upon information and belief, providing tutorials or demonstrations of the Accused Instrumentalities to its customers with the intent to induce the customers to use the Accused Instrumentalities , (3) upon information and belief, providing user manuals to its customers that provide instructions on how to use the Accused Instrumentalities with the intent to induce the customers to use the Accused Instrumentalities, all with knowledge of the infringement of the ’580 Patent and with the intent to cause such infringement.

2. The ’884 Patent

Without permission or authorization from Woodway, Assault is inducing the direct infringement of claims 30-34, 37-54, 57, and 59 of the ’884 Patent, as set forth in subsection (c) herein, by aiding, abetting, and encouraging its customers’ use of the Accused Instrumentalities by virtue of (1) selling the Accused Instrumentalities for their intended use, (2) upon information and belief, providing tutorials or demonstrations of the Accused Instrumentalities to its customers with the intent to induce the customers to use the Accused Instrumentalities, (3) upon information and belief, providing user manuals to its customers that provide instructions on how to use the Accused Instrumentalities with the intent to induce the customers to use the Accused Instrumentalities, all with knowledge of the infringement of the ’884 Patent and with the intent to cause such infringement.

3. The ’745 Patent

Without permission or authorization from Woodway, Assault is inducing the direct infringement of claims 1, 4, 7-12, 14, 17, 18, and 20-26 of the ’745 Patent, as set forth in subsection (c) herein, by aiding, abetting, and encouraging its customers’ use of the Accused Instrumentalities by virtue of (1) selling the Accused Instrumentalities for their intended use, (2) upon information and belief, providing tutorials or demonstrations of the Accused Instrumentalities to its customers with the intent to induce the customers to use the Accused Instrumentalities, (3) upon information and belief, providing user manuals to its customers that provide instructions on how to use the Accused Instrumentalities with the intent to induce the customers to use the Accused Instrumentalities, all with knowledge of the infringement of the ’745 Patent and with the intent to cause such infringement.

4. The ’101 Application

Upon the issuance of the patent stemming from the ’101 Application, without permission or authorization from Woodway, Assault will be inducing the direct infringement of claims 1-4, 6-13, and 15-16 of the ’101 Application,[2] as set forth under subsection (c) herein, by aiding, abetting, and encouraging its customers’ use of the Accused Instrumentalities by virtue of (1) selling the Accused Instrumentalities for their intended use, (2) upon information and belief, providing tutorials or demonstrations of the Accused Instrumentalities to its customers with the intent to induce the customers to use the Accused Instrumentalities , (3) upon information and belief, providing user manuals to its customers that provide instructions on how to use the Accused Instrumentalities. Upon the issuance of the patent stemming from the ’101 Application, upon information and belief, Assault will have the intent to induce its customers to use the Accused Instrumentalities, all with knowledge of the infringement and with the intent to cause such infringement.

[2] Although these are the claims that Woodway expects to be set forth in the forthcoming issued patent, they do not represent the numbering set forth in the pending ’101 Application.

e) Whether each element of each asserted claim is claimed to be literally present and/or present under the doctrine of equivalents in the Accused Instrumentality;

Each limitation of the Asserted Claims is literally present in the Accused Instrumentalities. Woodway reserves the right to allege infringement under the doctrine of equivalents after receiving additional discovery from Assault, Assault's claim construction positions, and/or the Court's claim construction decision(s).

f) For any patent that claims priority to an earlier application, the priority date to which each asserted claim allegedly is entitled;

Each of the Asserted Patents claim priority to or are linked to U.S. Application No. 61/161027, which has a priority date of March 17, 2009. The following table identifies the priority dates to which each Asserted Claim within the Asserted Patents is entitled:

1. The '580 patent

Asserted Claims	Priority Date(s)
1-3, 5-6, 10, 25	March 16, 2010

2. The '884 patent

Asserted Claims	Priority Date(s)
30-34, 37-43, 45-50, 52-54, 57, 59	March 16, 2010
44, 51	September 16, 2011

3. The '745 patent

Asserted Claims	Priority Date(s)
1, 4, 7-12, 14, 17, 18, 20-26	March 16, 2010

4. The '101 Application

Asserted Claims	Priority Date(s)
1-4, 6-13, 15-16	March 16, 2010

g) If a party claiming patent infringement asserts or wishes to preserve the right to rely, for any purpose, on the assertion that its own apparatus, product, device, process, method, act, or other instrumentality practices the claimed invention, the party must identify, separately for each asserted claim, each such apparatus, product, device, process, method, act, or other instrumentality that incorporates or reflects that particular claim; and

Woodway identifies the following models from Woodway's line of curved, manual treadmills that practice certain of the claimed inventions, including at least: Woodway Original CURVE, Woodway CURVE 1.5, Woodway Curve 3.0, Woodway CURVE XL, Woodway CURVE Trainer, Woodway CURVE FTG, and Woodway EcoMill ("Woodway's CURVE Treadmills"). [redacted]. All Asserted Claims are practiced by Woodway's CURVE Treadmills and the [redacted] as set forth in the following table:

Asserted Patent	Asserted Claims	Instrumentality Incorporating Claim(s)
'580 Patent	1-3, 5-6, 10, 25	Woodway Original CURVE Woodway CURVE 1.5 Woodway CURVE 3.0 Woodway CURVE XL Woodway CURVE Trainer Woodway CURVE FTG Woodway EcoMill

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Asserted Patent	Asserted Claims	Instrumentality Incorporating Claim(s)
		[redacted]
’884 Patent	30-34, 37-54, 57, 59	Woodway Original CURVE Woodway CURVE 1.5 Woodway CURVE 3.0 Woodway CURVE XL Woodway CURVE Trainer Woodway CURVE FTG Woodway EcoMill [redacted]
’745 Patent	1, 4, 7-12, 14, 17, 18, 20-26	Woodway Original CURVE Woodway CURVE 1.5 Woodway CURVE 3.0 Woodway CURVE XL Woodway CURVE Trainer Woodway CURVE FTG Woodway EcoMill [redacted]
’101 Application	1-4, 6-13, 15-16	Woodway Original CURVE Woodway CURVE 1.5 Woodway CURVE 3.0 Woodway CURVE XL Woodway CURVE Trainer Woodway CURVE FTG Woodway EcoMill [redacted]

h) If a party claiming infringement alleges willful infringement, the basis for such allegation.

Assault has had actual notice of the ’580 Patent, the ’884 Patent, and the ’745 Patent since at least July 21, 2020, when Woodway sent Assault a cease and desist letter with detailed infringement contentions as applied to a representative sample of the Accused Instrumentalities, the Assault AirRunner. On information and belief, Assault was aware of Woodway’s patented technology, which is protected by the Asserted Patents, when it was developing the Accused Instrumentalities, at least due to Woodway’s notoriety with respect to its revolutionary introduction and continued improvements to curved, manual treadmills, and the striking similarities between the Accused Instrumentalities and Woodway’s CURVE Treadmills. On information and belief, Assault’s development of the Accused Instrumentalities was deliberately calculated to undermine the commercial success of Woodway’s CURVE Treadmills by incorporating technology protected by the Asserted Patents, aiding and abetting its customers to use the Accused Instrumentalities, and offering the Accused Instrumentalities at dramatically lower retail prices than Woodway’s CURVE Treadmills.

At a minimum, the ’580 Patent and ’884 Patent have been listed on Woodway’s website well before Assault introduced the Accused Instrumentalities, at https://www.woodway.com/support/patents/, in compliance with 35 U.S.C. § 287, thus providing Assault with constructive notice. Further, the ’580 Patent has been the subject of prior litigation[3] and, on information and belief, Assault was aware of and regularly monitored this litigation.

As of September 6, 2022, Assault has had notice of the ’101 Application by virtue of these Contentions. For good cause shown, Woodway reserves the right to seek leave to amend its Complaint to assert patent infringement of the corresponding U.S. patent following its issuance.

[3] *See Chapco, Inc., et al. v. Woodway USA, Inc.*, Case No. 3:15-cv-01665-JCH (D. Conn.)

Notwithstanding its knowledge and infringement of the Asserted Patents in a malicious, deliberate, and consciously wrongful manner, Assault continues to import, manufacture, offer to sell, sell, and induce its customers to use the Accused Instrumentalities in bad faith.

II. DOCUMENT PRODUCTION PURSUANT TO PATENT L.R. 3.2

Woodway serves concurrently herewith its document production pursuant to Patent L.R. 3.2. Woodway has identified production numbers responsive to each of the L.R. 3.2 categories as set forth in Appendix E attached hereto.

DATED: September 6, 2022

FOLEY & LARDNER LLP
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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to this action; my current business address is 555 South Flower Street, Suite 3300, Los Angeles, CA 90071-2418.

On September 6, 2022, I served the foregoing document(s) described as: **WOODWAY USA, INC.'S DISCLOSURE OF ASSERTED CLAIMS AND INFRINGEMENT CONTENTIONS** on the interested parties in this action as follows:

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___ BY MAIL

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X Executed on September 6, 2022, at Los Angeles, California.

X I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

X I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Ashley M. Koley