UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LIFECORE FITNESS, INC.
d/b/a ASSAULT FITNESS
Petitioner,

v.

WOODWAY USA, INC.
Patent Owner.

U.S. Patent No. 10,561,884 to Bayerlein et al.

Case No.: IPR2023-00843

PETITIONER LIFECORE FITNESS, INC.'S OBJECTIONS TO EVIDENCE PURSUANT TO 37 C.F.R. § 42.64(B)(1)

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I. Introduction

Petitioner LifeCORE Fitness, Inc. d/b/a Assault Fitness ("Petitioner"), objects under the Federal Rules of Evidence ("FRE") and 37 C.F.R. § 42.64(b)(1) to the admissibility of the following evidence (collectively the "Challenged Evidence"):

- **Exhibit 2027 –** "Woodway CURVE Treadmill Claim Chart ('884 Patent)"
- **Exhibit 2028 –** "Woodway Non-Motorized Treadmills User Manual"
- **Exhibit 2029 –** "Altria Industrial Motion Product Brochure"
- **Exhibit 2030 –** "Paul C. Begeman, et al., "Human Ankle Impact Response in Dorsiflexion" (1990)"
- **Exhibit 2031 –** "Press Release, Woodway USA, Inc., Woodway Debuts Speedboard at IHRSA Show (March 20, 2009) (on file with author**)**
- **Exhibit 2034 –** "Woodway's Confidential Sales and Placement Data for the CURVE Legacy Treadmill from Woodway's Fiscal Year 2010"
- **Exhibit 2035 –** "Video: Woodway CURVE® Treadmill With Safety Device"
- **Exhibit 2036 –** "Video: Woodway CURVE® Treadmill Without Safety Device"

- **Exhibit 2037** – "*Patents*, Woodway.com, http:www.woodway.com/support/patents (last visited Jan. 29, 2024)
- **Exhibit 2038** – "Confidential List Price and Cost Information for the CURVE Line of Treadmills from Woodway's Fiscal Year 2008 through Dec. 31, 2023"
- **Exhibit 2039** – "*Shop*, WOODWAY.COM, http://www.woodway/com/shop (last visited Jan. 23, 2024)"
- **Exhibit 2040** – "*Treadmills*, ASSAULTFITNESS.COM, http://assaultfitness/com/collections/treadmills (last visited January 23, 2024)"
- **Exhibit 2041** – "Search Results for Assault Air Runner for Sale Online, http://google.com (search "Assault Air Runner treadmill"; then follow "shopping" icon)"
- **Exhibit 2042** – "*Chapco, Inc. and Samsara Fitness, LLC v. Woodway USA, Inc.*, Case No. 3:13-cv-1665 (JCH), Dkt. 144 (D. Conn. Sept. 26, 2017)"
- **Exhibit 2043** – "Letter from Richard J. McKenna, Foley & Lardner LLP, to Christopher Kelly, Gym Store, Inc. (Oct. 21, 2014) (on file with author)"

- **Exhibit 2044** – "March 2, 2017 Expert Report of Kim B. Blair, Ph.D., *Chapco, Inc. and Samsara Fitness, LLC v. Woodway USA, Inc*., Case No. 3:15-cv-1665 (JCH) (D. Conn.")
- **Exhibit 2045** – "Lisa Malosky, HEALTH & FITNESS SPORTS MAGAZINE, February 2010"
- **Exhibit 2046** – "ATHLETIC BUSINESS, March 2010"
- **Exhibit 2047** – "Press Release, Woodway USA, Inc., Woodway CURVE Featured on NBC's The Biggest Loser (Dec. 29, 2010) (on file with author"
- **Exhibit 2048** – "Kelsey Cannon, *The Hardest 20-Minute Workout of Your Life*, MEN'S HEALTH, Mar. 4, 2014, https://www.menshealth.com/fitness/al9536030/instafit-harder-sprint-workout/ (last visited Jan. 30, 2024)"
- **Exhibit 2049** – "*Watch: Move, Shape and Shred Your Body For Summer*, MEN'S HEALTH, May 3, 2017, https://www.menshealth.com/uk/building-muscle/a757686/watch-move-sha12e-shred/ (last visited Jan. 30, 2024)"
- **Exhibit 2050** – "Kaleigh Ray, *The Woodway Curve*, TREADMILLREVIEWS.COM, Aug. 9, 2012,

https://www.treadmillreviews.com/articles/the-woodway-curve/ (last visited Jan. 30, 2024)"

- **Exhibit 2051** – "11Alive, *Megaformer workout combines curved Woodway treadmill for new workout*, YOUTUBE (Mar. 5, 2019), https://www.youtube.com/watch?v QqlJiwsBRlc."
- **Exhibit 2052** – "Roy M. Wallack, *Treadmills, Ellipticals Tap Into Natural Power*, L.A. TIMES (Nov. 16, 2009), https://www.latimes.com/health/la-he-gear16-2009novl6-story.html (last visited Jan. 30, 2024)"
- **Exhibit 2053** – "David Quick, *New Treadmill Creates Buzz*, POST & COURIER (July 21, 2009), http:///www.postandcourier.com/news/2009/jul/21/new_treadmill_creates buzz898344/ (last visited July 23, 2009)"
- **Exhibit 2054** – "GOVERNMENT RECREATION & FITNESS, May 2020"
- **Exhibit 2055** – "Rachel Bachman, *Treadmills Unplugged: A Gym Workout Powered by Your Feet*, WALL STREET JOURNAL (July 6, 2015), http://www.wsj.com/articles/treadmills-unplugges-a-gym-workout-powered-by-your-feet-14 3 6202306."

- **Exhibit 2056** – "Rachel Zabonick-Chonko, *Treadmills Are Making a Comeback*, CLUB SOLUTIONS, Dec. 11, 2014, https://clubsolutionsmagazine.com/2014/12/treadmills-making-comeback/ (last visited Jan. 29, 2024)"
- **Exhibit 2057** – "Press Release, FIBO, FIBO Jubilee With Many Innovations: Nominees Announces For FIBO INNOVATION AWARDS (Apr. 14, 2010) (on file with Woodway)"
- **Exhibit 2058** – "Treadmills, TRUEFORMRUNNER.COM, https://trueformrunner.com/collections/treadmills-1/:Qroducts/trueform-trainer (last visited Jan. 30, 2024)"
- **Exhibit 2059** – "Treadmills, TECHNOGYM.COM, https://www.technogym.com/en-_US/product/skillmill_DJK0.html (last visited Jan. 30, 2024)"
- **Exhibit 2060** – "Speedboard, SPEEDFIT.COM, https://www.s2eedfit.com/S2eedboardPro.html (last visited Jan. 27, 2024)"
- **Exhibit 2061** – "*Products, INJ0CT Curved Manual Treadmill*, AxTIONFI1NESS.COM, https://axtionfitness.com/products/in10ct-curved-manual-treadmill (last visited Jan. 29, 2024)"

- **Exhibit 2062** – "*New Items*, XEBEXFI1NESS.COM, https://xebexfitness.com (follow "new items"; then follow "Xebex AirPlus Runner Smart Connect") (last visited Jan. 29, 2024)"
- **Exhibit 2063** – "*Shop, Sprintbok Treadmill*, WATERROWER.COM, http://www.waterrower.com/us/collection/nohrd-s2rintbok (last visited Jan. 29, 2024)"
- **Exhibit 2064** – "*Shop By Brand, Cascade Ultra Runner Plus Treadmill*, FITDIRECT.COM, https://fitdir.com/cascade-ultra-runner-12lus-treadmill/ (last visited Jan. 29, 2024)"
- **Exhibit 2065** – "*Cardio*, TRUGRIT-FITNESS.COM, https://trugrit-fitness.com/collections/cardio/products/grit-runner-curved-manual-treadmill (last visited Jan. 29, 2024)"
- **Exhibit 2066** – "Woodway Infringement Contentions ('580 Patent), Samsara TrueForm Runner, *Chapco, Inc. and Samsara Fitness, LLC v. Woodway USA, Inc*., Case No. 3:15-cv-1665 (JCH) (D. Conn.)"
- **Exhibit 2067** – "Woodway's Infringement Contentions ('580 Patent), Assault Air Runner, *Woodway USA, Inc. v. LifeCORE Fitness, Inc. d/b/a Assault*, Case No. 3:22-cv-00492-JP (BLM) (S.D. Cal.)"
- **Exhibit 2068** – "Woodway Infringement Contentions ('884 Patent),

Assault Air Runner, *Woodway USA, Inc. v. LifeCORE Fitness, Inc. d/b/a Assault*, Case No. 3:22-cv-00492-JP (BLM) (S.D. Cal.)"

- **Exhibit 2069** – "Woodway Infringement Contentions ('745 Patent), Assault Air Runner, *Woodway USA, Inc. v. LifeCORE Fitness, Inc. d/b/a Assault*, Case No. 3:22-cv-00492-JP (BLM) (S.D. Cal.)"
- **Exhibit 2070** – "Woodway Infringement Contentions ('005 Patent), Assault Air Runner, *Woodway USA, Inc. v. LifeCORE Fitness, Inc. d/b/a Assault*, Case No. 3:22-cv-00492-JP (BLM) (S.D. Cal.)"
- **Exhibit 2071** – "Owner's Manual, Assault Air Runner Manual Treadmill"
- **Exhibit 2072** – "Marketing Material, Assault Air Runner"

The Challenged Evidence was filed by Patent Owner Woodway USA, Inc. ("Patent Owner") on January 31, 2024, with Patent Owner's Response to Petition. Petitioner's Objections are timely filed under 37 C.F.R. §42.64(b)(1), within five business days of the January 31, 2024 filing of Patent Owner's Response to the Petition. Petitioner files these objections to provide notice to Patent Owner and as a prelude to a motion to exclude, which the Petitioner may file pursuant to 37 C.F.R. §42.64(c).

II. Incorporation by Reference

As a preliminary matter, Petitioner objects to each of Patent Owner's exhibits that seek to impermissibly incorporate by reference arguments "from one document into another document," in violation 37 C.F.R. § 42.6(a)(3). *See e.g.*, Exhibits 2027, 2028, 2029, etc. Indeed, most of the Patent Owner's exhibits are not even cited, much less, relied upon in the Patent Owner's Response.

III. Exhibit 2027

Petitioner objects to Exhibit 2027 as not relevant under FRE 401–403, at least to the extent it is not relied upon in the Patent Owner's Response, and because any probative value it may have is substantially outweighed by other considerations under FRE 403, including unfair prejudice, confusion of the issues, and waste of time.

IV. Exhibits 2028 and 2029

Petitioner objects to Exhibits 2028 and 2029, as not relevant under FRE 401–403, at least to the extent they are not relied upon in the Patent Owner's Response and because any probative value they may have is substantially outweighed by other considerations under FRE 403, including unfair prejudice, confusion of the issues, and waste of time.

Petitioner also objects to Exhibits 2028 and 2029 under FRE 901 and 37 C.F.R. § 42.61 because Patent Owner fails to provide the authentication required

for these documents, and the Exhibits are not self-authenticating under FRE 902. Petitioner further objects to Exhibits 2028 and 2029 under FRE 801 and 802 as inadmissible hearsay to the extent that the out of court statements therein are offered to prove the truth of the matter asserted in the statements and it does not fall within any exception or exclusion to the rules against hearsay.

V. Exhibit 2030

Petitioner objects to Exhibit 2030 as not relevant under FRE 401–403, at least to the extent it is not relied upon in the Patent Owner's Response, and because any probative value it may have is substantially outweighed by other considerations under FRE 403, including unfair prejudice, confusion of the issues, and waste of time. Indeed, Exhibit 2030 is not even cited in the Patent Owner's Response.

Petitioner also objects to Exhibit 2030 under FRE 801 and 802 as inadmissible hearsay to the extent that the out of court statements therein are offered to prove the truth of the matter asserted in the statements and it does not fall within any exception or exclusion to the rules against hearsay. Petitioner further objects to Exhibit 2030 under FRE 901 and 37 C.F.R. § 42.61 because Patent Owner fails to provide the authentication required for this document, and this Exhibit is not self-authenticating under FRE 902.

VI. Exhibit 2031

Petitioner objects to Exhibit 2031 as not relevant under FRE 401–403, at least to the extent it is not relied upon in the Patent Owner's Response, and because any probative value it may have is substantially outweighed by other considerations under FRE 403, including unfair prejudice, confusion of the issues, and waste of time. Indeed, Exhibit 2031 is not even cited in the Patent Owner's Response or the Declaration of Dr. Blair. Petitioner further objects to Exhibit 2031 under FRE 801 and 802 as inadmissible hearsay to the extent that the out of court statements therein are offered to prove the truth of the matter asserted in the statements and it does not fall within any exception or exclusion to the rules against hearsay.

VII. Exhibit 2034

Petitioner objects to Exhibit 2034 as not relevant under FRE 401–403, at least to the extent it is not relied upon in the Patent Owner's Response, and because any probative value it may have is substantially outweighed by other considerations under FRE 403, including unfair prejudice, confusion of the issues, and waste of time. Indeed, Exhibit 2034 is not even cited in the Patent Owner's Response or the Declaration of Dr. Blair.

VIII. Exhibits 2035–2037

Petitioner objects to Exhibits 2035–2037 as not relevant under FRE 401–

403, at least to the extent they are not relied upon in the Patent Owner's Response, and because any probative value each may have is substantially outweighed by other considerations under FRE 403, including unfair prejudice, confusion of the issues, and waste of time. Indeed, Exhibits 2035–2037 are not even cited in the Patent Owner's Response or the Declaration of Dr. Blair.

Petitioner also objects to Exhibits 2035–2037 under FRE 801 and 802 as inadmissible hearsay to the extent that the out of court statements therein are offered to prove the truth of the matter asserted in the statements and such exhibits do not fall within any exception or exclusion to the rules against hearsay. Petitioner further objects to Exhibits 2035–2037 under FRE 901 and 37 C.F.R. § 42.61 as unauthenticated to the extent that such documents are not self-authenticating.

IX. Exhibit 2038

Petitioner objects to Exhibit 2038 as not relevant under FRE 401–403, at least to the extent it is not relied upon in the Patent Owner's Response, and because any probative value it may have is substantially outweighed by other considerations under FRE 403, including unfair prejudice, confusion of the issues, and waste of time. Indeed, Exhibit 2038 is not even cited in the Patent Owner's Response or the Declaration of Dr. Blair. Petitioner also objects to Exhibit 2038 under FRE 901 and 37 C.F.R. § 42.61 because Patent Owner fails to provide the

authentication required for this document and Exhibit 2038 is not self-authenticating under FRE 902.

X. Exhibit 2039

Petitioner objects to Exhibit 2039 as not relevant under FRE 401–403, at least to the extent it is not relied upon in the Patent Owner's Response, and because any probative value it may have is substantially outweighed by other considerations under FRE 403, including unfair prejudice, confusion of the issues, and waste of time. Indeed, Exhibit 2039 is not even cited in the Patent Owner's Response or the Declaration of Dr. Blair. Petitioner further objects to Exhibit 2039 under FRE 801 and 802 as inadmissible hearsay to the extent that the out of court statements therein are offered to prove the truth of the matter asserted in the statements and it does not fall within any exception or exclusion to the rules against hearsay.

XI. Exhibits 2040 and 2041

Petitioner objects to Exhibits 2040 and 2041 as not relevant under FRE 401–403, at least to the extent they are not relied upon in the Patent Owner's Response, and because any probative value each may have is substantially outweighed by other considerations under FRE 403, including unfair prejudice, confusion of the issues, and waste of time. Indeed, Exhibits 2040 and 2041 are not even cited in the Patent Owner's Response or the Declaration of Dr. Blair.

Petitioner also objects to Exhibits 2040 and 2041 under FRE 801 and 802 as inadmissible hearsay to the extent that the out of court statements therein are offered to prove the truth of the matter asserted in the statements and such exhibits do not fall within any exception or exclusion to the rules against hearsay. Petitioner further objects to Exhibits 2040 and 2041 under FRE 901 and 37 C.F.R. § 42.61 as unauthenticated to the extent that such documents are not self-authenticating.

XII. Exhibit 2042

Petitioner objects to Exhibit 2042 as inadmissible under FRE 401–403 because it is not relevant to any argument in this proceeding and any probative value it may have is substantially outweighed by the potential confusion it injects into the record of this case. Indeed, Exhibit 2042 is not even cited in the Patent Owner's Response.

XIII. Exhibit 2043

Petitioner objects to Exhibit 2043 as not relevant under FRE 401–403, at least to the extent it is not relied upon in the Patent Owner's Response, and because any probative value it may have is substantially outweighed by other considerations under FRE 403, including unfair prejudice, confusion of the issues, and waste of time. Indeed, Exhibit 2043 is not even cited in the Patent Owner's Response or the Declaration of Dr. Blair. Petitioner further objects to Exhibit 2043 under FRE 801 and 802 as inadmissible hearsay to the extent that the out of court

statements therein are offered to prove the truth of the matter asserted in the statements and it does not fall within any exception or exclusion to the rules against hearsay.

XIV. Exhibit 2044

Petitioner objects to Exhibit 2044 as inadmissible under FRE 401–403 because it is not relevant to any argument in this proceeding and any probative value it may have is substantially outweighed by the potential confusion it injects into the record of this case. Exhibit 2044 purports to be an excerpt of an Expert Report of Dr. Blair in the case of *Chapco, Inc. and Samsara Fitness, LLC v. Woodway USA, Inc.*, before the District Court for the District of Connecticut, which is an entirely different proceeding involving different accused products and patents. Indeed, Exhibit 2044 is not even cited in the Patent Owner's Response or the Declaration of Dr. Blair.

Petitioner further objects to Exhibit 2044 under FRE 801 and 802 as inadmissible hearsay to the extent that the out of court statements therein are offered to prove the truth of the matter asserted in the statements and it does not fall within any exception or exclusion to the rules against hearsay. Still further, Petitioner objects to Exhibit 2044 under FRE 106. This Exhibit appears to be an excerpt of a document and, therefore, is incomplete. Accordingly, Petitioner

objects to the use of Exhibit 2044 to the extent it does not include all statements or recorded parts that in fairness ought to be considered at the same time.

XV. Exhibits 2045 and 2046

Petitioner objects to Exhibits 2045 and 2046 as not relevant under FRE 401–403, at least to the extent they are not relied upon in the Patent Owner's Response, and because any probative value each may have is substantially outweighed by other considerations under FRE 403, including unfair prejudice, confusion of the issues, and waste of time.

Petitioner also objects to Exhibits 2045 and 2046 under FRE 801 and 802 as inadmissible hearsay to the extent that the out of court statements therein are offered to prove the truth of the matter asserted in the statements and it does not fall within any exception or exclusion to the rules against hearsay. Petitioner further objects to Exhibits 2045 and 2046 under FRE 901 and 37 C.F.R. § 42.61 as unauthenticated to the extent that such documents are not self-authenticating. Still further, Petitioner objects to Exhibits 2045 and 2046 under FRE 106. These Exhibits appear to be excerpts of two documents and, therefore, are incomplete. Accordingly, Petitioner objects to the use of Exhibits 2045 and 2046 to the extent they do not include all statements or recorded parts that in fairness ought to be considered at the same time.

XVI. Exhibit 2047

Petitioner objects to Exhibit 2047 as not relevant under FRE 401–403, at least to the extent it is not relied upon in the Patent Owner's Response, and because any probative value it may have is substantially outweighed by other considerations under FRE 403, including unfair prejudice, confusion of the issues, and waste of time.

Petitioner further objects to Exhibit 2047 under FRE 801 and 802 as inadmissible hearsay to the extent that the out of court statements therein are offered to prove the truth of the matter asserted in the statements and it does not fall within any exception or exclusion to the rules against hearsay.

XVII. Exhibits 2048–2065

Petitioner objects to Exhibits 2048–2065 as not relevant under FRE 401–403, at least to the extent they are not relied upon in the Patent Owner's Response, and because any probative value each may have is substantially outweighed by other considerations under FRE 403, including unfair prejudice, confusion of the issues, and waste of time. Indeed, Exhibits 2048–2051, 2053–2056, 2059, and 2061–2065 are not even cited in the Patent Owner's Response or the Declaration of Dr. Blair.

Petitioner also objects to Exhibits 2048–2065 under FRE 801 and 802 as inadmissible hearsay to the extent that the out of court statements therein are

offered to prove the truth of the matter asserted in the statements and such exhibits do not fall within any exception or exclusion to the rules against hearsay. Petitioner further objects to Exhibits 2048–2065 under FRE 901 and 37 C.F.R. § 42.61 as unauthenticated to the extent that such documents are not self-authenticating.

XVIII. Exhibit 2066

Petitioner objects to Exhibit 2066 as inadmissible under FRE 401–403 because it is not relevant to any argument in this proceeding and any probative value it may have is substantially outweighed by the potential confusion it injects into the record of this case. Exhibit 2066 purports to be Woodway's Infringement Contentions in the case of *Chapco, Inc. and Samsara Fitness, LLC v. Woodway USA, Inc.*, before the District Court for the District of Connecticut, which is an entirely different proceeding involving different accused products and patent. Petitioner also objects to Exhibit 2066 under FRE 801 and 802 as inadmissible hearsay to the extent that the out of court statements therein are offered to prove the truth of the matter asserted in the statements and it does not fall within any exception or exclusion to the rules against hearsay. Petitioner further objects to Exhibit 2066 under FRE 901 and 37 C.F.R. § 42.61 as unauthenticated to the extent that this exhibit is not self-authenticating.

XIX. Exhibits 2067–2070

Petitioner objects to Exhibits 2067–2070 as inadmissible under FRE 401–

403 because they are not relevant to any argument in this proceeding and any probative value each may have is substantially outweighed by the potential confusion it injects into the record of this case. Exhibits 2067–2070 purport to be Woodway's Infringement Contentions from the District Court litigation involving the above-captioned parties, which is a different proceeding. Indeed, Exhibits 2067, 2069, and 2070 relate to patents that are not even subject to the instant proceeding. Petitioner also objects to Exhibits 2067–2070 under FRE 801 and 802 as inadmissible hearsay to the extent that the out of court statements therein are offered to prove the truth of the matter asserted in the statements and it does not fall within any exception or exclusion to the rules against hearsay. Petitioner further objects to Exhibits 2067–2070 under FRE 901 and 37 C.F.R. § 42.61 as unauthenticated to the extent that these exhibits are not self-authenticating.

XX. Exhibits 2071 and 2072

Petitioner objects to Exhibits 2071 and 2072 as not relevant under FRE 401–403, at least to the extent they are not relied upon in the Patent Owner's Response, and because any probative value each may have is substantially outweighed by other considerations under FRE 403, including unfair prejudice, confusion of the issues, and waste of time.

Petitioner also objects to Exhibits 2071 and 2072 under FRE 801 and 802 as

inadmissible hearsay to the extent that the out of court statements therein are offered to prove the truth of the matter asserted in the statements and such exhibits do not fall within any exception or exclusion to the rules against hearsay. Petitioner further objects to Exhibits 2071 and 2072 under FRE 901 and 37 C.F.R. § 42.61 as unauthenticated to the extent that such documents are not self-authenticating.

XXI. Conclusion

Pursuant to 37 C.F.R. § 42.64(c), Petitioner may seek to exclude the Challenged Evidence unless Patent Owner remedies the above-identified defects.

Respectfully submitted,

Dated: February 7, 2024

/Andrew B. Turner/

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Certificate of Service

The undersigned hereby certifies that on February 7, 2024, a complete and entire copy of **Petitioner's Objection to Evidence**, was served via electronic mail to the attorneys listed below at rmckenna@foley.com; kjelenchick@foley.com; srieger@foley.com.

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Respectfully submitted,

Dated: February 7, 2024

/Andrew B. Turner/

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