

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'S REPLY TO PATENT OWNER RESPONSE

Table of Contents

List of Exhibits	vi
I. Introduction	1
II. Claim Construction	1
A. “bearings” / “support” / “disposed . . . on”	2
B. “electrically insulating material” of claims 44 and 51	3
III. Level of Ordinary Skill in the Art	3
IV. The Asserted Combinations Render the Challenged Claims Unpatentable.....	3
A. Chickering discloses a “curved” “running surface” (Ground 4: Claims [30.5], [37.6], [57.3])	3
B. A POSA would have been motivated to combine Schonenberger with Socwell.....	5
1. The Combination of Schonenberger and Socwell discloses rollers that define a “curved top profile.”	5
2. Modified Schonenberger has a curved running surface	6
3. Schonenberger’s Slat-type Running Belt Could be Used with a Curved Running Surface	8
4. Chickering, Schonenberger, Socwell, and Magid are all in the same field: Exercise Equipment, which includes exercise use and therapeutic use.....	12
5. Magid does not teach away from its combination with Chickering or Schonenberger/Socwell	14
C. A POSA would have been motivated to substitute Sclater for Magid.	15
1. Petitioner’s obviousness arguments do not rely on hindsight	15
D. Schonenberger and Skowronski discloses a running belt pulley formed from an electrically insulating material.	18
1. Schonenberger and Skowronski are properly combinable.	19
V. Secondary Considerations Fail	19
A. Commercial Success	20
1. PO’s Sales Did Not Result From Unique Claim Characteristics	21

2.	Sales Figures Do Not Show Commercial Success Absent Market Share Evidence	24
3.	No Other Factor Evidence.....	26
4.	PO's Sales Data is Missing Samsara's Data	27
B.	Industry Praise Was Not Due to the Claimed Invention	30
C.	Copying	31
1.	Treadmills.....	31
2.	LifeCORE Documents	33
D.	Failure of Others	35
E.	Passage of Time Between Prior Art and the Invention	35
VI.	Conclusion.....	36
	Certificate of Service	
	Certificate of Compliance Pursuant to 37 C.F.R. § 42.24.....	

Table of Authorities

Cases

<i>Dow Chemical Co. v. Halliburton</i> , 324 U.S. 320 (1945).....	20
<i>Ex parte Detroit Radiant Prod. Co.</i> , Appeal 2008-6291, 2009 WL 164096 (BPAI Jan. 22, 2009)	21, 23
<i>Ex parte Jamieson</i> , Appeal 2015-002630, 2016 WL 5543491 (PTAB Sept. 27, 2016)	35
<i>Ex parte Jellá</i> , Appeal 2008-1619, 90 U.S.P.Q.2d 1009, 2008 WL 5693899 (BPAI Nov. 3, 2008)	20, 23, 24
<i>Ex parte Jun Yang</i> , Appeal 2014-006514, 2017 WL 1150710 (PTAB February 23, 2017)	27
<i>Ex parte Sansone</i> , Appeal 2023-001331, 2023 WL 4677708 (PTAB July 19, 2023).....	35
<i>Ex parte Whirlpool Corp.</i> , Appeal 2013-008232, 2013 WL 5866602 (PTAB, Oct. 30, 2013).....	30
<i>Fox Factory, Inc. v. SRAM, LLC</i> , 944 F.3d 1366 (Fed. Cir. 2019)	20
<i>In re Conrad</i> , No. 2018-1659, 759 Fed. App'x 982, (Fed. Cir. Mar. 22, 2019)	19
<i>In re Gurley</i> , 27 F.3d 551 (Fed. Cir. 1994).....	15
<i>In re Huang</i> , 100 F.3d 135 (Fed. Cir. 1996).....	24

<i>In re Kahn</i> , 441 F.3d 977 (Fed. Cir. 2006).....	19, 35
<i>In re Keller</i> , 642 F.2d 413 (CCPA 1981)	5, 8
<i>In re Merck & Co., Inc.</i> , 800 F.2d 1091 (Fed. Cir. 1986).....	5, 20
<i>In re Sneed</i> , 710 F.2d 1544 (Fed. Cir. 1983).....	8
<i>Iron Grip Barbell Co., Inc. v. USA Sports, Inc.</i> , 392 F.3d 1317 (Fed. Cir. 2004).....	36
<i>KSR Int’l Co. v. Teleflex Inc.</i> , 550 U.S. 398 (2007).....	19
<i>Lectrosonics, Inc., v. Zaxcom, Inc.</i> , IPR2018-01129, Paper 33 (PTAB January 24, 2020).....	20
<i>Meiresonne v. Google, Inc.</i> , 849 F.3d 1379 (Fed. Cir. 2017).....	11, 14
<i>Stratoflex, Inc. v. Aeroquip Corp.</i> , 713 F.2d 1530 (Fed. Cir. 1983).....	35
<i>Superguide Corp. v. Directv Enter., Inc.</i> , 358 F.3d 870 (2004).....	3
<i>Syntex (U.S.A.) LLC v. Apotex, Inc.</i> , 407 F.3d 1371 (Fed. Cir. 2005).....	20
<i>Thorner v. Sony Computer Entm’t Am. LLC</i> , 669 F.3d 1362 (Fed. Cir. 2012).....	2
<i>Wyers v. Master Lock Co.</i> , 616 F.3d 1231 (Fed. Cir. 2010).....	31, 32, 34, 35

Rules

37 C.F.R. § 42.11.....	34
PTAB Consolidated Trial Practice Guide, November 2019	2

List of Exhibits

Exhibit #	Description
1001	U.S. Patent No. 10,561,884 (“the ‘884 Patent”)
1002	U.S. Patent No. 10,561,884 File History (“the ‘884 File History”)
1003	Declaration of Robert Giachetti, Ph.D. P.E. (“Giachetti”)
1004	Robert Giachetti, Ph.D. P.E. Curriculum Vitae (“Giachetti CV”)
1005	Complaint, <i>Woodway USA, Inc., v. LifeCORE Fitness, Inc. d/b/a Assault Fitness</i> , Case No. 3:22-cv-00492-JO-BLM, Southern District of California, Filed April 11, 2022 (“Complaint”) (Ex. 1005 at 1-8) Waiver of Service (April 13, 2022) (Ex. 1005 at 9-10)
1006	Amended Complaint, <i>Woodway USA, Inc., v. LifeCORE Fitness, Inc. d/b/a Assault Fitness</i> , Case No. 3:22-cv-00492-JO-BLM, Southern District of California, Filed October 24, 2022 (“Amended Complaint”)
1007	Treadmills: Supplier Guide © 2010. Trade Practices (Consumer Product Safety Standard) (Treadmills) Regulations 2009 (“ACCC Product Safety Supplier Guide”)
1008	U.S. Patent No. 641,424 to Ziebell (“Ziebell”)
1009	U.S. Patent No. 1,211,765 to Schmidt (“Schmidt”)
1010	U.S. Patent No. 4,614,337 to Schonenberger (“Schenkenberger”)
1011	U.S. Patent No. 5,897,461 to Socwell (“Socwell”)
1012	U.S. Patent No. 5,538,489 to Magid (“Magid”)
1013	U.S. Patent No. 3,637,206 to Chickering (“Chickering”)
1014	U.S. Patent No. 3,642,279 to Cutter (“Cutter”)
1015	U.S. Patent No. 6,042,514 to Abelbeck (“Abelbeck”)
1016	Power Transmission Handbook, (Power Transmission Distributors Association 1993) (“PT Handbook”)
1017	Neil Sclater and Nicholas P. Chironis, <i>Mechanisms & Mechanical Devices Sourcebook</i> , Third Ed., (McGraw-Hill 2001) (“Sclater”) (available at https://catalog.loc.gov/vwebv/holdingsInfo?searchId=26&recCount=25&recPointer=0&bibId=12308523)
1018	Mechanical Clutches and Torque Overload Devices, (Emerson Industrial Automation, 2001) (“Emerson”)

Exhibit #	Description
1019	Standard Specification for Motorized Treadmills, (ASTM, 2005) (“ASTM Standard”)
1020	Stationary Training Equipment – Part 6: Treadmills, additional specific safety requirements and test methods. (ISO, 2005) (“ISO Standard”)
1021	U.S. Patent No. 8,986,169 File History (“the ’169 File History”)
1022	Responsive Claim Constructions, <i>Woodway USA, Inc., v. LifeCORE Fitness, Inc. d/b/a Assault Fitness</i> , Case No. 3:22-cv-00492-JO-BLM, Southern District of California, Filed January 5, 2022
1023	United States District Courts – National Judicial Caseload Profile, December 2022
1024	Inhabitat, “HUMAN-POWERED GYMS in Hong Kong” (March 8, 2007) (available at https://inhabitat.com/human-powered-gyms-in-hong-kong/)
1025	Minute Order, <i>Woodway USA, Inc., v. LifeCORE Fitness, Inc. d/b/a Assault Fitness</i> , Case No. 3:22-cv-00492-JO-BLM, Southern District of California, March 30, 2023.
1026	U.S. Patent No. 10,561,884 File History (“the ‘884 File History”)
1027	Claim Construction Brief, <i>Woodway USA, Inc., v. LifeCORE Fitness, Inc. d/b/a Assault Fitness</i> , Case No. 3:22-cv-00492-JO-BLM, Southern District of California, March 1, 2023
1028	Responsive Claim Construction Brief, <i>Woodway USA, Inc., v. LifeCORE Fitness, Inc. d/b/a Assault Fitness</i> , Case No. 3:22-cv-00492-JO-BLM, Southern District of California, March 14, 2023
1029	U.S. Patent No. 4,635,771 to Shoji (“Shoji”)
1030	<i>Intentionally left blank</i>
1031	<i>Intentionally left blank</i>
1032	<i>Intentionally left blank</i>
1033	Claim Construction Order <i>Woodway USA, Inc., v. LifeCORE Fitness, Inc. d/b/a Assault Fitness</i> No. 3:22-cv-00492-JO-BLM, Dkt. No. 59, Southern District of California, November 14, 2023
1034	<i>Intentionally left blank</i>
1035	<i>Intentionally left blank</i>
1036	Second Declaration of Robert Giachetti Ph.D. P.E. (“Giachetti”)

Exhibit #	Description
1037	Confidential Transcript of Deposition of Eric A. Weber taken on March 19, 2024. <i>LifeCore Fitness, Inc., d/b/a Assault Fitness v. Woodway USA, Inc.</i> , IPR2023-00836, IPR2023-00843, and IPR2023-00849
1038	Transcript of Deposition of Dr. Kim. B. Blair taken on April 8, 2024 <i>LifeCore Fitness, Inc., d/b/a Assault Fitness v. Woodway USA, Inc.</i> , IPR2023-00836
1039	Transcript of Deposition of Dr. Kim. B. Blair taken on April 8, 2024 <i>LifeCore Fitness, Inc., d/b/a Assault Fitness v. Woodway USA, Inc.</i> , IPR2023-00843
1040	Transcript of Deposition of Dr. Kim. B. Blair taken on April 9, 2024 <i>LifeCore Fitness, Inc., d/b/a Assault Fitness v. Woodway USA, Inc.</i> , IPR2023-00849
1041	Woodway 4Front Owners Manual October 24, 2023 OM_EN_V2 (accessed March 31, 2024) (available at https://www.woodway.com/treadmills/4-front/)
1042	Woodway Homepage, (accessed March 31, 2024) (available at https://www.woodway.com/)
1043	Woodway Curve Specification (accessed March 31, 2024) (available at https://www.woodway.com/treadmills/curve/)
1044	Woodway Manual Treadmills Webpage (accessed March 31, 2024) (available at https://www.woodway.com/manual-treadmills/)
1045	Confidential Condensed Transcript of Deposition of Traci Bates taken on January 26, 2024 <i>Woodway USA, Inc., v. LifeCORE Fitness, Inc. d/b/a Assault Fitness</i> , Case No. 3:22-cv-00492-JO-BLM, Southern District of California
1046	Woodway Trueform Trainer Webpage dated August 12, 2020 (accessed April 4, 2024) available from Wayback at https://web.archive.org/web/20200812204597/https://www.woodway.com/product/trueform/trainer-powered-by-woodway/)
1047	Confidential Draft AirRunner Manual Treadmill Owner's Manual Assault Fitness Release v.01 (20.February,17)
1048	Correspondence with Patent Owner dated April 15, 2024

I. Introduction

Patent Owner (“PO”) focuses on the “*safety device*” but does not dispute Magid and Sclater disclose the “*safety device*” limitations. PO did not invent the “*safety device*” (one-way bearing/clutch), nor was it the first to add it to a treadmill.

PO admits Grounds 1–4 teach all claim limitations except: a “*curved running surface*” (Ground 4). PO’s argument fails because the claims are taught by the asserted art and the arguments focus on unclaimed features.

PO’s challenges to the rationale to combine Schonenberger and Socwell, to combine Magid with Chickering or Socwell, and to replace Magid’s one-way clutch with Sclater’s fail because they focus on features not included in the proposed combinations, *e.g.*, Socwell’s bearings and belt, Magid’s dual belts, and Sclater’s toothless ratchet gear.

PO’s secondary considerations of nonobviousness arguments also fail because *inter alia*, there is no nexus to the “*safety device*.”

II. Claim Construction

Petitioner proposed alternate claim constructions for Ground 3: “*substantially prevent*”, “*safety device*”, and “*shaft*”. (Pet.,18-19.) The Board did not construe any terms in their institution decision. (DI,20.) The District Court

construed the following terms:

- “*substantially prevent[]*” as “restricts rotation to allow for only one rotational direction of movement.” (Ex.1033,16.)
- “*safety device*” as “a device that includes the elements recited and restricts rotation to allow for only one rotational direction of movement.” (Ex.1033,23.)
- “*shaft*” – plain and ordinary meaning. (Ex.1033,27.)

If this Board adopts the District Court’s Constructions, this would not affect Petitioner’s analysis in Grounds 1-2, and 4 of the Petition. (Ex.1036, ¶¶7-11.)

A. “*bearings*” / “*support*” / “*disposed . . . on*”

PO construed several terms, but failed to construe “*bearings*”, “*support*”, and “*disposed . . . on*.” (POR,4-6.) Therefore, PO concedes that these claim limitations should be given their plain and ordinary meaning and has waived any future constructions. (PTAB CTPG, 73–74.).Rather than give the claims full breath, PO attempts to read limitations from the specification into the claims (POR,14-21)—this is improper. *See Thorner v. Sony Computer Entm’t Am. LLC*, 669 F.3d 1362, 1367 (Fed. Cir. 2012).

B. “electrically insulating material” of claims 44 and 51

PO did not construe claims 44 or 51 thus conceding they should be given their plain and ordinary meaning. PO improperly reads limitations from the specification into the claims to preserve validity. (POR,55.) *Superguide Corp. v. Directv Enter., Inc.*, 358 F.3d 870, 875 (2004). Regardless, the specification cuts against PO arguments. (Ex.1001,5:61–66;Ex.1036,¶19.)

III. Level of Ordinary Skill in the Art

PO’s proposed skill level (POR,3–4) is wrong because both education and industry experience are important for understanding the ’884 Patent. Further, PO’s proposed skill level does not address exercise biomechanics, which is important to understanding the design of curved treadmills. (Ex.1036,¶¶22-23.)

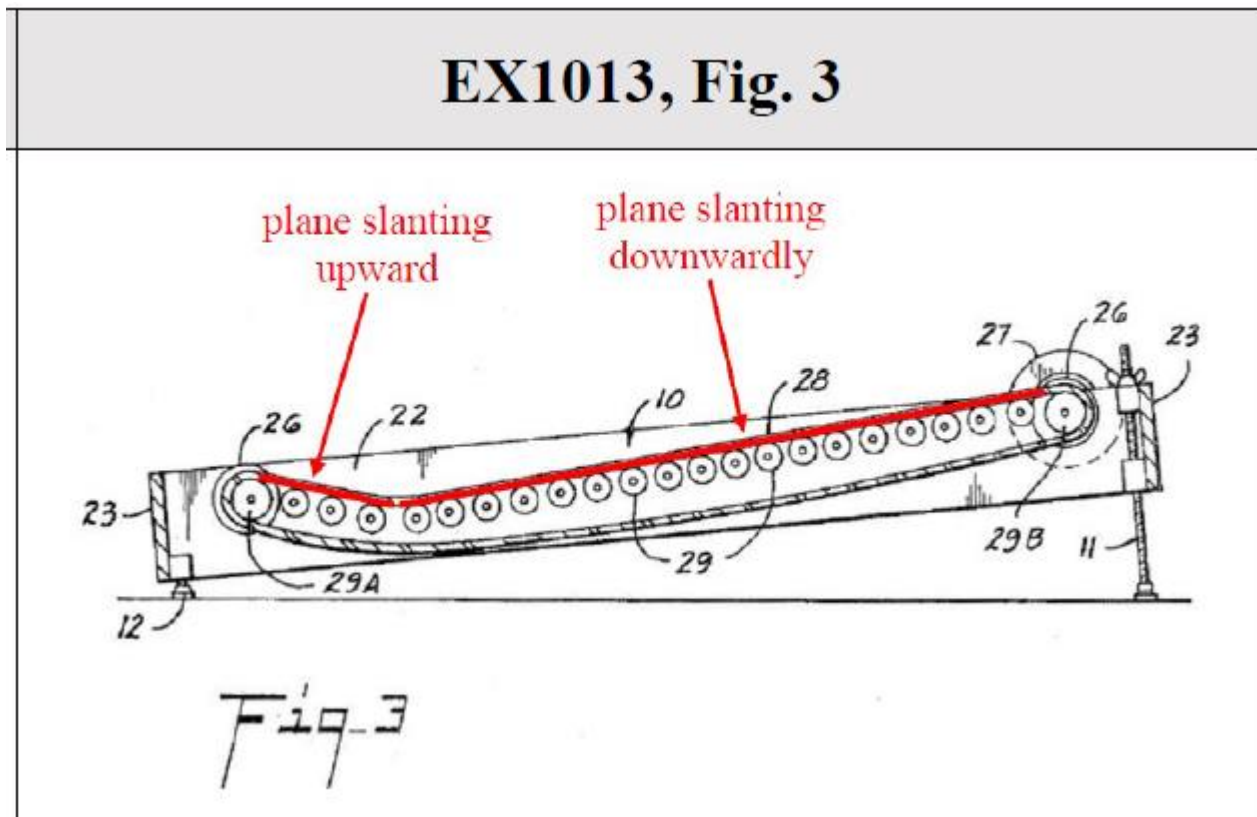
PO’s statement that certain inventors would be excluded (POR,4) is irrelevant and unsupported evidence—Dr. Blair could not identify any inventors without engineering degrees. (Ex.1038,9:24-10:11.)

IV. The Asserted Combinations Render the Challenged Claims Unpatentable

A. Chickering discloses a “curved” “running surface” (Ground 4: Claims [30.5], [37.6], [57.3])

The Board correctly found “Chickering’s endless belt 28 has a curved running surface.” (DI,49.) PO’s contrary argument is meritless. (POR,7.) Dr. Blair admitted Chickering’s running belt of Figure 3 has a “very small curve.”

(Ex.1038,24:23-25¹.) Thus, the experts agree Chickering discloses a “curved” “running surface.” (Ex.1036,¶¶24-26.)



Ex.2018,¶87

Next, PO argues the claims require the runner’s intent, i.e., that “a runner’s feet never contact the . . . ‘curved surface’” of Chickering’s single-belt embodiment (Figure 3) because a “runner’s feet are not intended to contact the area between those surfaces (POR,11–12;Ex.2018,¶¶91-92.) This argument is flawed. First, the claims do not require runner’s intent (PO never even proposed it).

¹ Emphasis added by Petitioner unless notated otherwise.

Second, PO cites to the dual-belt embodiment that Petitioner did not rely on. Third, Chickering discloses the single belt is heavier thus requiring a more gradual curvature. (Ex.1013,3:11-18.) A POSA would have understood this disclosure in Chickering to teach that a user would contact the curved area of the running surface. (Ex.1036,¶¶27-31.)

**B. A POSA would have been motivated to combine
Schonenberger with Socwell**

PO devotes eight pages arguing Socwell fails to disclose claim limitations that Petitioner relies on Schonenberger for teaching, e.g., “*a plurality of bearings.*” (POR,13-21.) These arguments are nonresponsive and fail because non-obviousness cannot be established by attacking references individually where the rejection is based upon combinations of references. *In re Keller*, 642 F.2d 413, 426 (CCPA 1981); *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

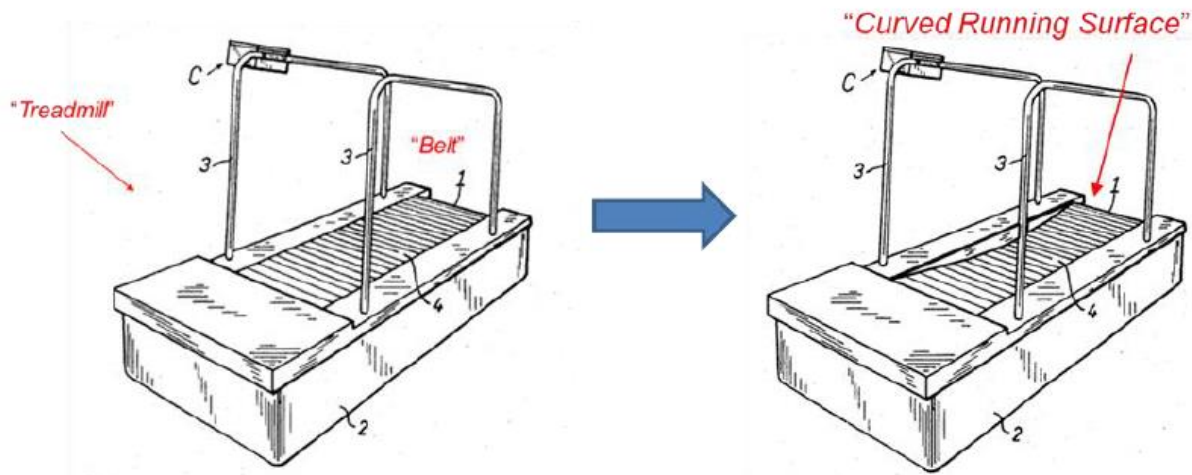
**1. The Combination of Schonenberger and Socwell
discloses rollers that define a “*curved top profile.*”**

PO alleges Petitioner relied on Schonenberger alone for disclosing this limitation “*curved top profile.*” But, Petitioner relied on modified Schonenberger for the “*curved top profile*” limitations of claims [32], [47], [57.2][b]. (Pet.,33,63-64;Ex.1036,¶¶34-35.)

2. Modified Schonenberger has a curved running surface

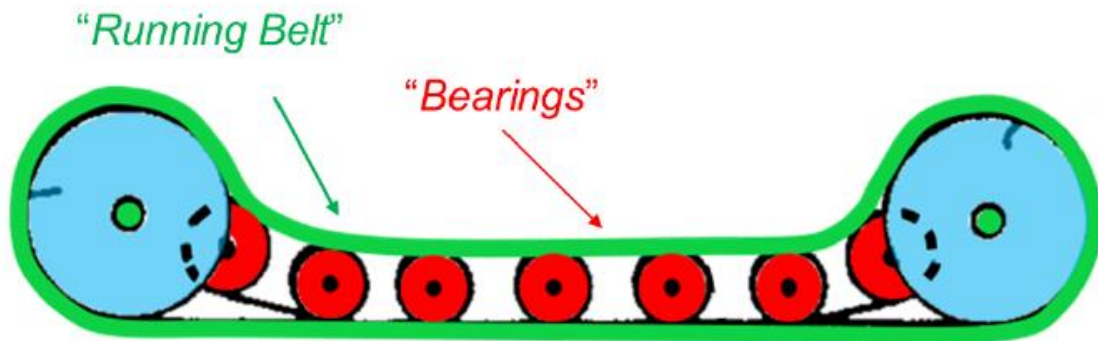
PO incorrectly alleges modified Schonenberger is merely flipping the roller arrangement 12 up-side-down. (POR,26.) But, Petitioner's position is it would have been obvious to arrange the rollers 12 curvilinearly like the curved deck 56 of Socwell. (Pet.,41;Ex.1036,¶36.) Petitioner referenced the curved arrangement of the rollers to show Schonenberger already discloses placing them at different heights. (Pet.,42.)

PO argues modified Schonenberger is not curved. (POR,29.) This is based on their incorrect characterization—that Petitioner is flipping Schonenberger upside-down. But, Petitioner stated it would have been obvious to modify the rollers to be curved like Socwell. (Pet.,41.) Petitioner's proposed modifications to Schonenberger's Figure 1 results in a "surface . . . [that] is actually similar in shape to the Socwell reference." (Ex.1040,44:8-13;Ex.1036,¶¶38-39.)



Petition,54

PO also mischaracterizes the petition's use of the below annotated figure.



Ex.1010, Fig.12

Petition,42

PO attempts to distill Petitioner's multi-page obviousness analysis to a single Figure—Figure 12, (POR, 28.) This is wrong. First, the Petition explains modified Schonenberger is the rollers 12 arranged like the curved deck 56 of Socwell. (Pet.,41-42.) Second, the above annotated figure is merely a visual aid

showing how Schonenberger's running belt 1 would sag to conform with the profile defined by the rollers 12. (Ex.1036,¶41.)

PO attacks this visual aid as if it is a blueprint for building a curved treadmill. But, "[t]he test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference.... Rather, the test is what the combined teachings of those references would have suggested to those of ordinary skill in the art." *In re Keller*, 642 F.2d, 425; *See also In re Sneed*, 710 F.2d 1544, 1550 (Fed. Cir. 1983).

In sum, PO critiques Petitioner's annotations to Schonenberger Figure 12 while admitting Petitioner's annotations to Schonenberger's Figure 1 result in a curved running surface that corresponds with Socwell. (POR,29-31,Ex.1040,43:21-44:25.) Accordingly, the combination of Schonenberger and Socwell teaches a "*curved running surface*." (Ex.1036,¶38.)

3. Schonenberger's Slat-type Running Belt Could be Used with a Curved Running Surface

a. Petition accounted for the slat-style belt of Schonenberger

PO argues Petitioner ignored Schonenbergers slats. (POR,33;Ex.2018,¶157.) On the contrary, Dr. Giachetti described different types of treadmill running surfaces (e.g., Socwell's belt and Schonenberger's track) and corresponding bearing surfaces as understood by a POSA in the state-of-the-art section of his first

declaration. (Ex.1003,¶¶58-60,65-70;Ex.1036,¶44.) Additionally, Petitioner explained the heavy slats 4 would *aid* in creating the curved running surface. (Pet.,42–43;Ex.1036,¶45.)

b. Dr. Blair relies on an unused embodiment to allege Schonenberger’s belt cannot be curved.

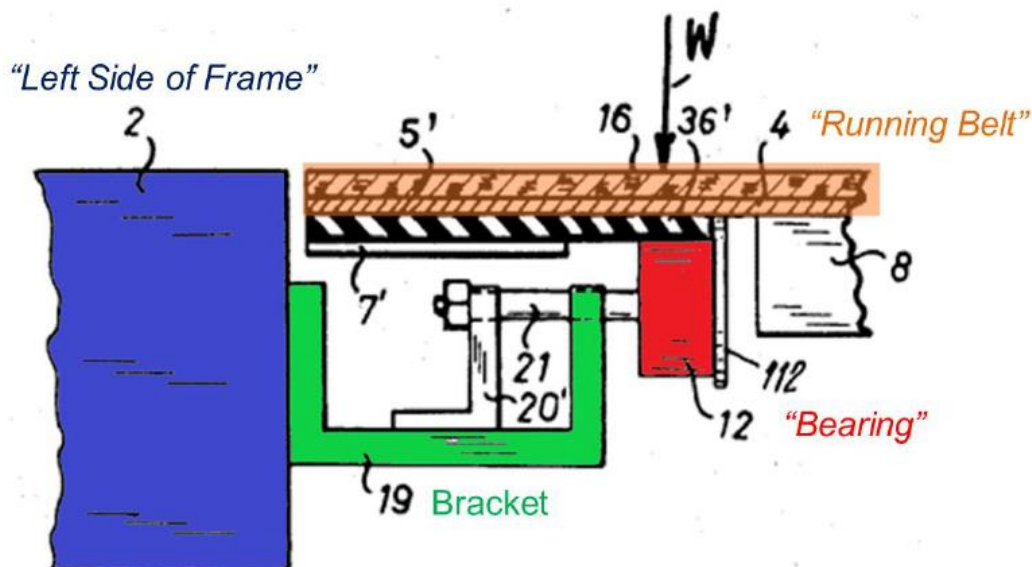
PO argues Schonenberger’s Figure 9 cannot be curved. (POR,34;Ex.2018, ¶159.) But, Petitioner relied on Figure 10, which is structurally different. (Ex.1003,¶¶126,157,162,177,242;Ex.1036,¶45-46.) Furthermore, a POSA knew that track-style running surfaces were used as curved belts prior to the invention of the ’884 Patent. (Ex.1036,¶46.)

PO also alleges the slats would overlap and pinch when curved. (POR,35-36,Ex.2018,¶163.) This has no merit. In the embodiments relied upon by Petitioner, the individual slats 4 cannot overlap because the belts 5’ maintain positioning of the slats 4 relative to each other. (Ex.1010,4:37–41,8:34-44;Ex.1036,¶47.)

The slats 4 are also designed for relative movement. (Ex.1010,5:54–56;Ex.1036,¶47.) A POSA would have recognized the movable surface 1 of Schonenberger as being suitable for a curved running surface. (1036,¶47.)

c. Schonberger does not teach away from combining with Socwell.

PO argues Schonberger teaches away because it would “result in running belt 1 resting directly against support belts 13, 13’” which could affect the “small amount of space (*e.g.*, ½ cm) between running belt 1 and support belts 13” and the “pleasant, springy feel.” (POR,37.) First, the belts 13/13’ are an optional feature that are not included in the embodiment that Petitioner relied on—Figures 10 and 10A—where the movable surface 1 rides directly on the rollers 12 via its modified belt 5’. (Ex.1010,8:34–63,9:01–02;Pet.,31–32,35–36,43–44; Ex.1036,¶50–51.)



Ex.1010, Fig.10

Pet.,36 Annotated

Schonenberger provides resilient cushion with modified belts 5' in combination with the padding 16. (Ex.1010,8:37–40,8:67–9:02.) Therefore, Schonenberger does not teach away (nor are critical features from Schonenberger undermined or eliminated) as Petitioner proposed to use the movable surface 1 as described in the embodiment shown in Figures10/10A albeit it with the rollers 12 modified into a curved arrangement as disclosed in Socwell. (Ex.1036,¶52.)

Second, Schonenberger discloses a 0.5 mm gap (Ex.1010, 5:55-56) not a 0.5 cm gap and a POSA would have known that a user would not perceive a 0.5 mm gap. (Ex.1036,¶52.) Further, Petitioner never said the tiny 0.5 mm gap disclosed in Schonenberger was eliminated by the modification. Indeed, the 0.5 mm gap between the rollers 12 and belt 5' could be provided. (Ex.1036,¶53.)

Schonenberger does not expressly discourage removing the 0.5 mm gap and therefore does not teach away. (Ex.1036,¶50-51.) *Meiresonne v. Google, Inc.*, 849 F.3d 1379, 1382 (Fed. Cir. 2017)(citation omitted) (“A reference teaches away ‘when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken’ in the claim. A reference that ‘merely expresses a general preference for an alternative invention but does not criticize, discredit, or otherwise discourage investigation into’ the claimed invention does not teach away.”).

Furthermore, while Schonenberger seeks “a pleasant, springy feel” he does not proscribe a gap between the belt/roller as the only way of doing so. Indeed, Schonenberger provides an impacting-reducing cover 16, which is present on Petitioner’s modification of Schonberger. (Ex.1010,4:58–66, Fig.10.) Thus, even if the 0.5 mm gap was removed, the “springy feel” would still be achieved by the impacting-reducing cover 16. (Ex.1036, ¶52.)

Moreover, Socwell explains its curved deck reduces the physical impact to the joints and muscles. (Ex.1011,13:38-42.) Therefore, even if the rollers 12 were not spaced from the belts 5’ by 0.5 mm, the curved running surface would offset any potential loss of springiness to reduce stress on joints and ligaments. (Ex.1036, ¶52.) Thus, modified Schonenberger would function for its intended purpose. (Ex.1036, ¶52.) A POSA would have motivated to combine Magid with Schonenberger/Socwell and Chickering.

4. Chickering, Schonenberger, Socwell, and Magid are all in the same field: Exercise Equipment, which includes exercise use and therapeutic use

PO argues therapy and exercise are mutually exclusive uses of treadmills, *i.e.*, Magid is therapeutic, whereas “Socwell, Schonenberger, and Chickering are [] non-therapeutic. (POR,39–40; Ex.1036, ¶55-56.) Neither the references nor the challenged claims describe such limited use:

- Magid’s is for exercise too² (Ex.1012,1:53-56,3:23-27)
- Schonenberger, and Socwell describe their treadmills are used for exercise **and therapeutic/rehabilitative use** (Ex.1010,1:10–14; Ex.1011,3:1-9,3:52-57,13:38-47), and
- Chickering discloses “an exercising device on which the user can simulate the acts of walking, jogging and running.” (Ex.1013,1:1-5.)

Accordingly, Chickering, Schonenberger, Socwell, and Magid are from the same field. (Ex.1036,¶¶55-60.)

The petition explains **why** a POSA would have been motivated to combine Chickering and Magid and Schonenberger/Socwell with Magid. (Pet.,47–51,85-90;Ex.1003,¶¶187–198,432–442;Ex.1036,¶62.) It would have been obvious to a POSA to combine Chickering’s treadmill with Magid’s control means, and modified Schonenberger’s treadmill with Magid’s control means to permit only unidirectional movement of the running belt to reduce the risk of a user stepping onto the running belt of the treadmill and losing their balance when the belt moves

² Magid further states, “this invention is not limited to the disclosed embodiments but is intended to cover various arrangements included within the spirit and scope of the broadest interpretation so as to encompass all such modifications and equivalent arrangements.” (Ex.1012,7:61-67;Ex.1036,¶57.)

in the forward direction. (*Id.*) Dr. Blair identified the same problem of unintended motion with Socwell and Chickering. (Ex.1036,¶63.)

Several professional organizations have produced standards regarding treadmill safety. (Ex.1019;Ex.1020,Ex.1007;Ex.1036,¶64.) As Dr. Giachetti explained in deposition, the ISO standard (Ex.1020) defines a treadmill as “training equipment with a unidirectional moving surface on which a walking or running activity can take place, where the feet are free to leave the moving surface.” (Ex.1020,4;Ex.2024,61:20-25.) Dr. Blair explained that a POSA would understand from this definition “that the [treadmill] is designed to be only walked on or run on in one direction.” (Ex.1040,58:18-20.) This definition provides additional motivation for a POSA to modify Chickering and Schonenberger/Socwell to include Magid’s unidirectional control means to limit their moving surfaces to one direction. (Ex.1036,¶64-65.)

5. Magid does not teach away from its combination with Chickering or Schonenberger/Socwell

PO argues Magid teaches away from being combined with Chickering or modified Schonenberger. (POR,42-43;Ex.1036,¶66). PO merely identifies a difference between preferred embodiments—PO fails to even allege that Magid criticizes or discourages using his safety device in curved treadmills. *Meiresonne*, 849 F.3d at 1382.

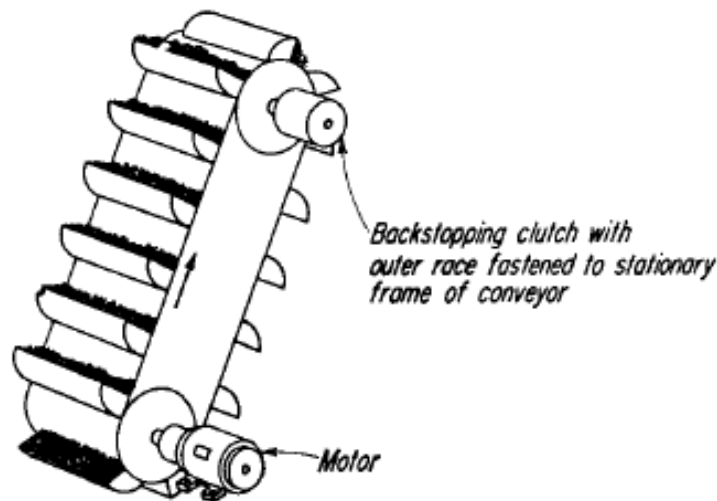
Moreover, Petitioner's proposed combinations with Magid are not related to Magid's belts. Rather, Petitioner alleged it would have been obvious to add Magid's safety device to Chickering and modified Schonenberger. (Ex.1036, ¶¶64-67; Pet.,85-90.) Therefore, Magid's disclosure regarding the dual, flat belts is not relevant to the proposed combinations, i.e., the solution in question, and cannot form the basis for a teaching away. *In re Gurley*, 27 F.3d 551, 553 (Fed. Cir. 1994).

C. A POSA would have been motivated to substitute Sclater for Magid.

1. Petitioner's obviousness arguments do not rely on hindsight

PO argues "Petitioner does not adequately explain why a POSA would have been specifically motivated to select the mechanism Petitioner relies on, rather than one of the dozens of other options Sclater presents." (POR, 46.)

Sclater illustrates a back stopping mode of operation for a conveyor belt using a "sprag-type clutch[]" in which the "outer race [is] fastened to [the] stationary frame of [the] conveyor":



Ex.1017,320

In Fig. 2, the backstopping clutch permits rotation in one direction only as shown by the arrow. In this example, the clutch is mounted on the headshaft of a conveyor (Ex.1017,320;Ex.1003,¶209-210, 445-446;Ex. 1036,¶¶73-75.)

A POSA would have understood that conveyers and treadmills operate the same. (Ex.1036,¶76) Accordingly, a POSA would have considered a sprag-type one-way clutch bearing for an exercise equipment application, such as a treadmill. For example, Emerson is a bearing catalog from 2001 that specifically describes its NSS Series sprag-type one-way clutch as an option for multiple “Field Applications,” including “Exercise equipment,” “Food processing equipment,” “Printing presses,” and “Roll conveyors.” (Ex.1018,52-53;Ex.1003,¶89,211,447;Ex.1036,¶76.)

Commercially available and inexpensive sprag-type clutches would be attractive since they require less design and qualification work to implement as well. (Ex.1036,¶76.) For example, Dr. Blair explained a user could identify a problem and a potential solution from a catalog, e.g., the Emerson catalog (Ex.1018) and then call the tech support line to confirm their clutch selection. (Ex.1038,89:12-90:12.) Dr. Blair further confirmed that a POSA would have used the Emerson catalog to find a solution for “Preventing motion in the unintended direction” on “a curved manual treadmill.” (Ex.1018;Ex.1038,104:21-105:12;Ex.1036,¶ 77-78.)

Accordingly, a POSA would have been specifically motivated to select the sprag-type clutch disclosed in Sclater based on Sclater’s description of the sprag-type clutch **for back stopping a conveyor belt**, and based on the description of such sprag-type clutches **as an option for exercise equipment** in the Emerson bearing catalog from 2001. (Pet.,57-58;Ex.1036,¶73-.)

PO argues that Petitioner’s argument does not apply to toothless ratchet gears. (POR,48.) However, Dr. Blair admits Magid does not describe any ratchet gears without teeth. (Ex.1038,85:16-19.) PO’s no teeth argument is not relevant to Petitioner’s proposed substitution of Magid’s toothed ratchet gear with Sclater’s one-way bearing. (Ex.1036,¶79.)

D. Schonenberger and Skowronski discloses a running belt pulley formed from an electrically insulating material.

PO argues “Skowronski does not *necessarily*³ teach a pulley formed ‘from an electrically insulating material.’” (POR,55.) To the extent PO alleges plastic is not an electrically insulating material, they are wrong. (Ex.1036,¶¶81-83.) To the extent PO alleges the plastic pulley disclosed in Skowronski does not necessarily prevent the buildup of static charge, that is irrelevant as the claims do not require it. (*supra*,§II(B);Ex.1036,¶84-85)

Dr. Giachetti opined, “plastic is electrically insulating.” (Ex.2024,142:7–8,144:14–22;Ex.1036,¶81). This aligns with the ’884 Patent specification, describing plastic as an example electrically insulating material that requires an optional additive to prevent the static-charge buildup. (Ex.1001,5:61–64;Ex.1036,¶81.)

It is undisputed that Skowronski discloses a plastic pulley. And “[a] POSA would have understood that plastic is electrically insulating.” (Ex.1003,¶302.) Therefore, Skowronski discloses a pulley formed of an electrically insulating material. (Ex.1036,¶83.)

³ It is unclear what PO means by “necessarily” in this context.

1. Schonenberger and Skowronski are properly combinable.

PO argues Schonenberger and Skowronski are not combinable because Skowronski is silent regarding preventing static charge. (POR, 55.) PO does not explain why this matters, but it appears PO is alleging no motivation because Skowronski's weight reduction differs from the PO's static-charge prevention. Oddly, PO fails to realize their own patent explains plastic pulleys reduce weight. (Ex.1001,5:47–53.)

Moreover, “The Supreme Court and [the Federal Circuit] ... have repeatedly held that **the motivation** that a person of ordinary skill in the art would have had to combine prior art references **need not be the same motivation that inspired the patent owner.**” *In re Conrad*, No. 2018-1659, 759 Fed. App'x 982, (Fed. Cir. Mar. 22, 2019)(nonprecedential) citing *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 420 (2007). *See also In re Kahn*, 441 F.3d 977, 989 (Fed. Cir. 2006).

Therefore, Petitioner's obviousness analysis is not negated because the '884 Patent lists electrical insulation as one of multiple motivations for using plastic.

V. Secondary Considerations Fail

“[E]vidence of secondary considerations must have a ‘nexus’ to the claims, *i.e.*, there must be ‘a legally and factually sufficient connection between the evidence and the patented invention.’” *Fox Factory, Inc. v. SRAM, LLC*, 944 F.3d

1366, 1373 (Fed. Cir. 2019)(citations omitted). There is a rebuttable presumption of nexus only if patentee shows the evidence is tied to a specific product and the product “is the invention disclosed and claimed.” *Id.*, 1373 (citation omitted). “Where the offered secondary consideration actually results from something other than what is both claimed and *novel* in the claim, there is no nexus” “there must be a nexus to some aspect of the claim not already in the prior art.” *Lectrosonics, Inc., v. Zaxcom, Inc.*, IPR2018-01129, Paper 33, 33 (PTAB January 24, 2020) (precedential)(citation omitted)(emphasis in original).

PO’s secondary considerations focus on the “*safety device*” limitations. (POR,71;Ex.2020,¶¶34-41.) However, PO does not dispute that Magid and Sclater disclose the “*safety device*” limitations. Since all claim elements were in the prior art, **Commercial Success**

Commercial success is relevant only in a “close case where all other proof leaves the question of invention in doubt.” *Dow Chemical Co. v. Halliburton*, 324 U.S. 320, 330 (1945)(citations omitted); *see also Merck & Co., Inc. v. Teva Pharm. USA, Inc.*, 395 F.3d 1364, *Ex parte Jellá*, Appeal 2008-1619, 90 U.S.P.Q.2d 1009, 2008 WL 5693899, *3 (BPAI Nov. 3, 2008) (commercial success has minimal probative value); *Syntex (U.S.A.) LLC v. Apotex, Inc.*, 407 F.3d 1371, 1383 (Fed. Cir. 2005) (commercial success is for “close cases”). This is not a “close case.”

1. PO's Sales Did Not Result From Unique Claim Characteristics

“If commercial success is relied upon, [PO] must offer proof ‘...sales were a direct result of the unique characteristics of the claimed invention—as opposed to other economic and commercial factors....’” *Ex parte Detroit Radiant Prod. Co.*, Appeal 2008-6291, 2009 WL 164096, *7 (BPAI Jan. 22, 2009) (citation omitted).

PO argues “[t]he commercial success of Patent Owner’s products was based on the key features of the claimed invention,” (POR,71) and cites Weber’s Declaration (Ex.2020,¶¶34-41) where the only feature he asserts is “a safety mechanism to control the unintended rotation of the running belt.” (*Id.*,¶34.) PO emphasizes the “safety device” as the unique claimed feature:

Part of Woodway’s innovative technology in the CURVE® Line, and what makes it commercially viable due to safety and hazard considerations associated with falling, is the incorporation of a **safety device...**

(*Id.*,¶9.)

PO does not provide any evidence correlating sales with the “*safety device.*”

[REDACTED]

[REDACTED]

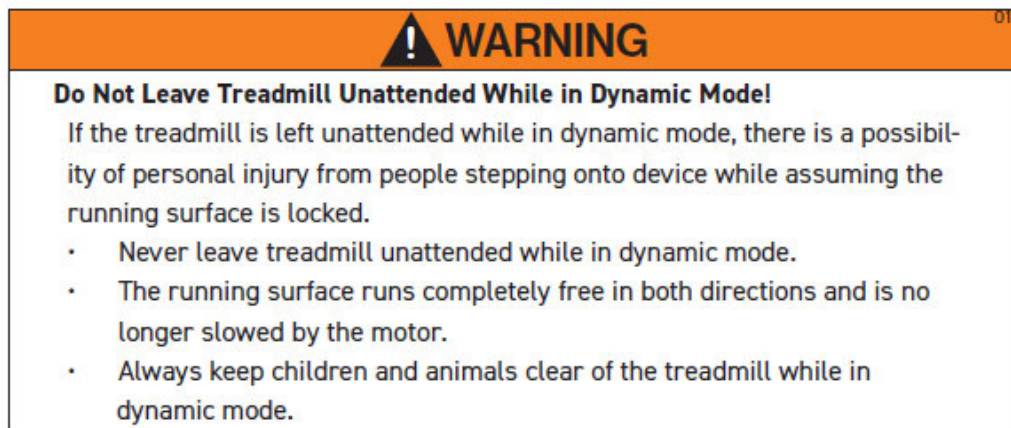
[REDACTED]

[REDACTED]

Weber states the safety device is

22

5.4 Dynamic Mode (Overview)



The treadmill makes it possible that the user serves as the running surface belt drive. The user drives the running surface belt manually during training. This is known as "Dynamic Mode"

(Ex.1041,29)

Further, like an inventor, Weber's opinion regarding a purchaser's reason for buying is biased and should be given little weight. "An inventor's opinion as to the purchaser's reason for buying the product is insufficient to demonstrate a nexus between the sales and the claimed invention." *Ex parte Jellá*, 2008 WL 5693899, *3 (citations omitted).

PO's commercial success argument fails—it has not offered proof sales resulted from "unique characteristics of the claimed invention-as opposed to other ... factors..." *Detroit Radiant*, 2009 WL 164096, *7.

2. Sales Figures Do Not Show Commercial Success Absent Market Share Evidence

PO asserts: “from March 2009 through December 2023, Patent Owner sold or provided nearly [REDACTED] curved, manual treadmills....” (POR,69.) However, “gross sales figures do not show commercial success absent evidence as to market share”—i.e., a share of the manual treadmill market—or “what sales would normally be expected in the market.” *Jellá*, 2008 WL 5693899, *3 (citations omitted); *In re Huang*, 100 F.3d 135, 139, 140 (Fed. Cir. 1996) (without evidence sales are a substantial quantity in the market, “bare sales numbers” are a “weak showing of commercial success, if any”) (citations omitted). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

While PO asserts it “enjoyed 100% of the market share [from 2009 through 2017] for curved, manual treadmills” (POR,69), the relevant market is manual treadmills, not curved manual treadmills.

The '884 Patent explains the “invention relates generally to the field of treadmills. More specifically, the present invention relates to manual treadmills.” (Ex.1001,1:20-23.) Further, it describes a manual non-curved treadmill embodiment:

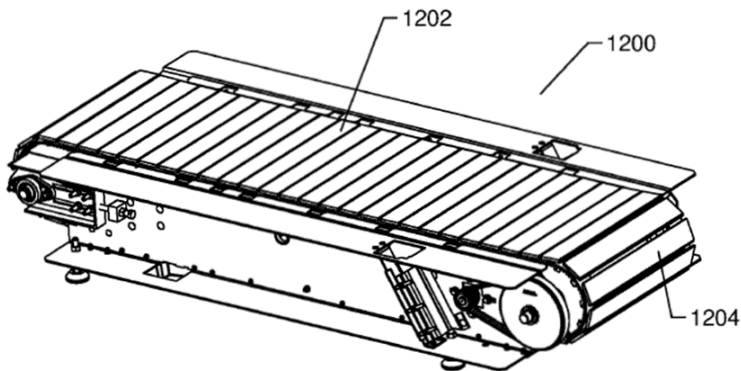
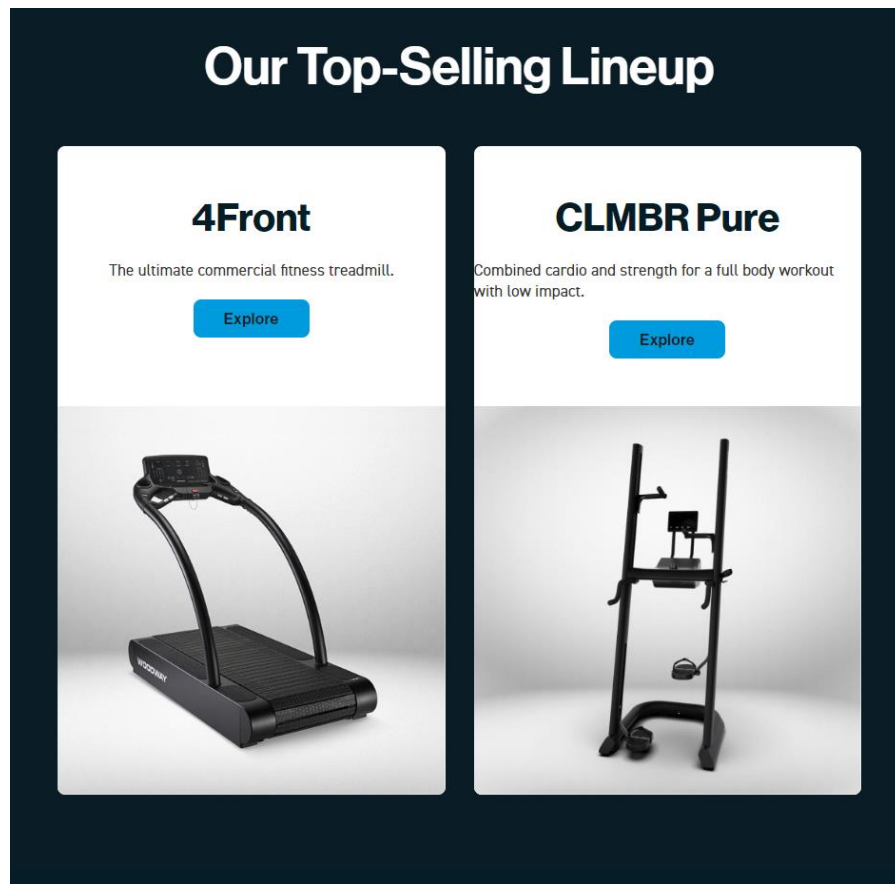


FIG. 35

Ex.1001, Fig. 35

PO's expert stated **all claims** at issue are directed to a “manually powered treadmill.” (Ex.2018, ¶227.) Thus, the '884 Patent defines the field of the invention as manual treadmills, not just curved manual treadmills. PO's sales figures do not show commercial success because they do not provide “evidence as to market share” in the manual treadmill market.

Woodway's assertions are especially without merit because Woodway competes with itself by selling non-curved manual treadmills and non-curved motorized treadmills useable manually in “Dynamic Mode.” (Ex.1041,29.) PO lists its “Top-Selling Lineup” as the “4Front” flat treadmill (operable in Dynamic Mode) and its “CLIMBR Pure.” (Ex.1042,2.) Absent are Curve treadmills.



Ex.1042,2

3. No Other Factor Evidence

[O]bjective evidence [of secondary considerations] is not commensurate in scope (coextensive) with the claimed subject matter... if the product included elements or features not recited in the claims which may be responsible for the commercial success or praise. ... “[T]he [PO] must offer proof ‘that the sales were a direct result of the unique characteristics of the claimed invention as opposed to other economic and commercial factors....’”

Detroit Radiant, 2009 WL 164096, *7.

Yet, Woodway's Curve treadmills include unclaimed features that could account for sales, e.g., displays, heart-rate monitors, [REDACTED]

[REDACTED] [REDACTED]
[REDACTED] (Ex.2028,77-79.)

Further, Woodway's sales could be due to (1) "industry reputation" *Jellá*, 2008 WL 5693899, *12, (2) "consumption by purchasers normally tied to [Woodway], or [3] other business events..." *Ex parte Jun Yang*, Appeal 2014-006514, 2017 WL 1150710, *8 (PTAB February 23, 2017) (citation omitted).

As to reputation, Woodway claims to be "the largest specialized treadmill manufacturer in the world and... a market leader in... fitness ... equipment..." and can "command a pricing premium because of its durable, commercial-grade parts, reputation, service, history, and quality." (Ex.2020,¶¶2,13.)

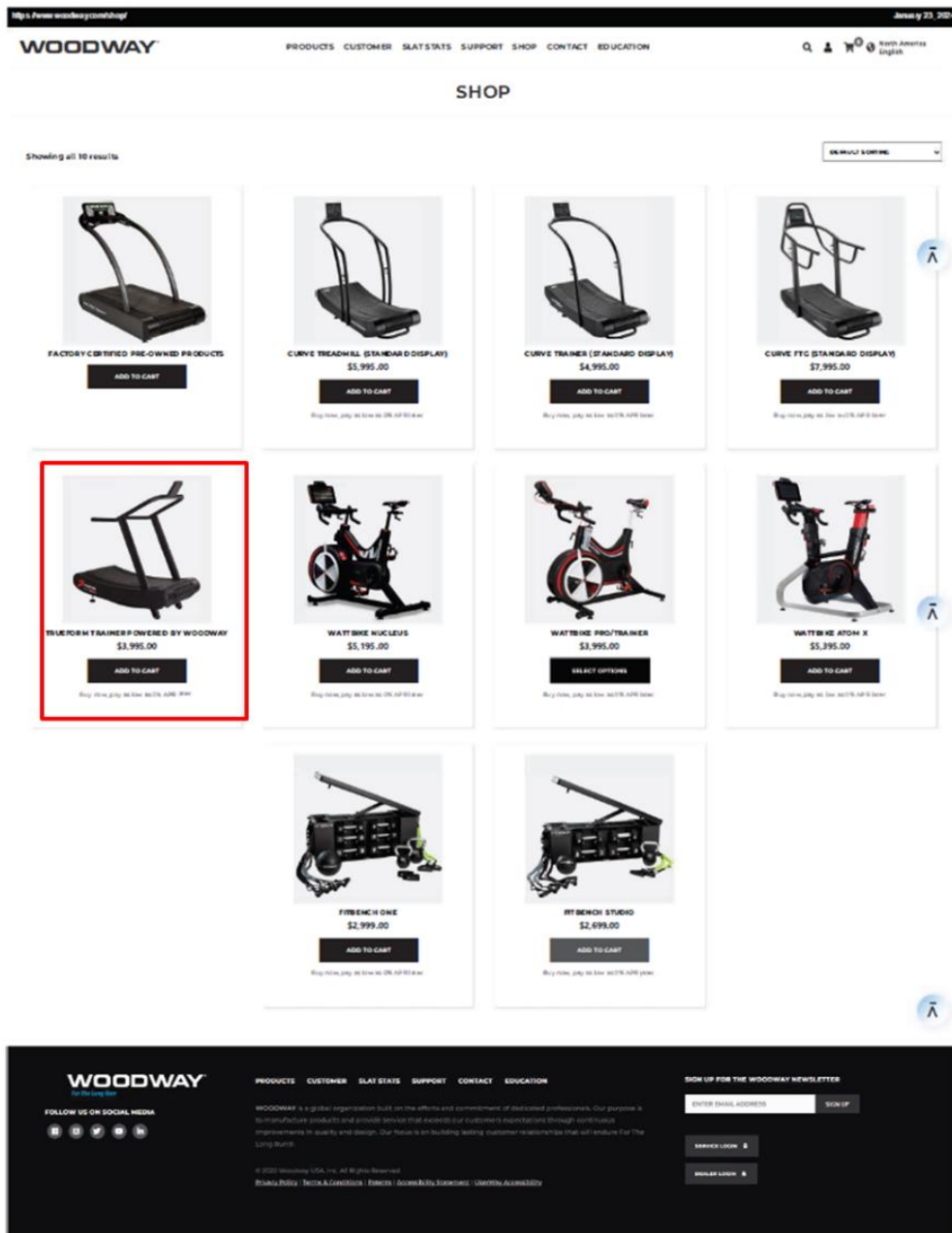
[REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]

Woodway has offered no proof its sales did not result from such other factors.

4. PO's Sales Data is Missing Samsara's Data

PO asserts sales were affected in 2014 when Samsara introduced a competing product but were restored "when Samsara took a license" to use the '580 patent. (POR,69.) PO also asserts sales of its Curve treadmills decreased from

2017-2022, and attributes this to Petitioner’s treadmill. (*Id.*;Ex.2020,¶29.) However, Woodway sells the Samsara Trueform treadmill “Powered by Woodway” on its website, and has been doing so since at least 2020. (Ex.2039;Ex.1046.) Woodway sells the Trueform for \$3,995—much less than Curves. (Ex.2039.)



EX2039
Woodway USA, Inc.
IPR2023-00836

Ex.2039(Annotated)

PO excludes Trueform sales from its sales data. (Ex.2020,¶33.) However, PO's [REDACTED] of Curves can be linked to selling a cheaper alternative (Trueform) side-by-side with the Curve on its website. (Ex.2039.) PO's exhibits support this. Treadmill Review: "It's too bad the Curve costs 8,000 dollars because were it affordable, I would have one...." (Ex.2050,3); LA Times: "Dislikes: Twice the price of a great conventional motorized treadmill." (Ex.2052,1.)

B. Industry Praise Was Not Due to the Claimed Invention

"An invention may be praised or commercially successful for reasons other than the claimed invention but a nexus may still exist as long as it can be shown that such praise or success is also due in part to the claimed invention." *Ex parte Whirlpool Corp.*, Appeal 2013-008232, 2013 WL 5866602, *8 (PTAB, Oct. 30, 2013) (informative)(citation omitted).

PO cites Exs.2045-2057 as industry praise evidence. (POR,73,57.) However none mention the "safety device" (one way bearing). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

PO's argument fails because Exs. 2045-2057 do not show industry praise of the safety device.

C. Copying

Federal Circuit precedent holds “copying requires evidence of efforts to replicate a **specific product**, which may be demonstrated through internal company documents, direct evidence such as disassembling a patented prototype, photographing its features, and using the photograph as a blueprint to build a replica, or access to the patented product combined with **substantial similarity to the patented product**.” *Wyers v. Master Lock Co.*, 616 F.3d 1231, 1246 (Fed. Cir. 2010).

1. Treadmills

PO largely relies on Weber for evidence of copying and infringement: “As Mr. Weber recounts, a number of companies (including Petitioner) have launched products that not only infringe the patents covering Patent Owner’s CURVE line of treadmills but are also close copies.... EX2020, ¶¶57-68.” (POR,73.) However, Weber admitted he is not an engineer and did not analyze infringement:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Mr. Weber has a similarly broad view of copying, testifying [REDACTED]

[REDACTED]

[REDACTED]

Weber also admitted [REDACTED]

[REDACTED] Since Weber admitted not knowing [REDACTED]

[REDACTED]” his opinions do not provide evidence of copying. *Wyers*, 616 F.3d, 1246.

PO includes side-by-side images of the Curve with the Samsara, Speedfit, and Assault treadmills. (POR,74-76.) However, none illustrate most claim requirements, including “*front shaft*,” “*rear shaft*,” “*bearings*,” “*bearing rails*” or “*safety device*.” Accordingly, the images do not provide evidence of copying (in fact exterior components, such as the handrails, are significantly different).

PO's reference to the Samsara litigation is not relevant because the '884 Patent was not at issue. (Ex. 2042.) PO also asserts "Petitioner's incursion into the... market is also indicative of ... commercial success ... as the Assault AirRunner infringes the claims of the '884 patent." (POR,70.) However, The AirRunner does not infringe, [REDACTED]

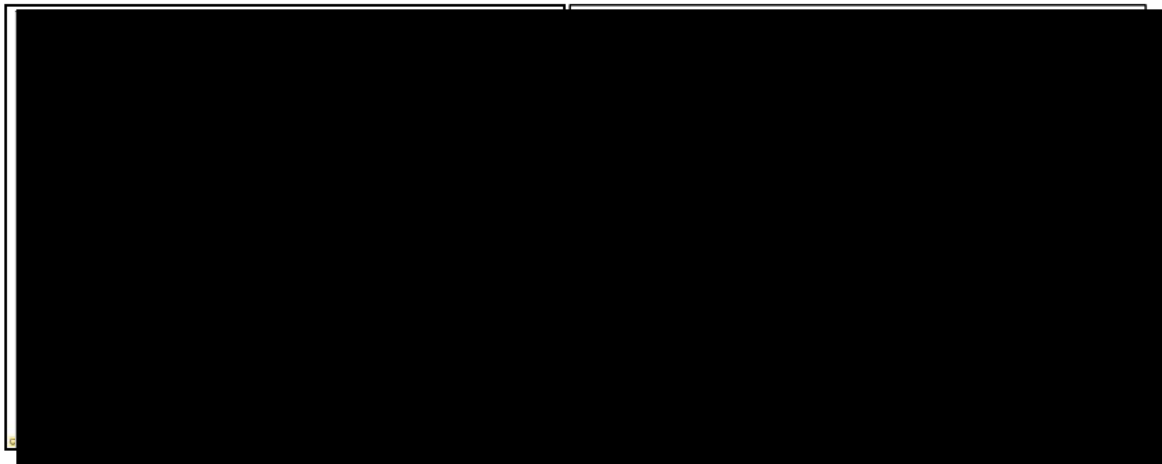
[REDACTED]

[REDACTED]

[REDACTED]

2. LifeCORE Documents

As evidence of copying, PO refers to a draft of Petitioner's Owner's Manual doctored by Petitioner to remove the litigation designation "CONFIDENTIAL – FOR COUNSEL ONLY" (POR,76; Ex.2071) and then used the draft when deposing Petitioner's [REDACTED]



(Ex.1047, Ex.2071)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

When Petitioner raised PO's improper public filing of the doctored draft here as Ex.2071, PO's counsel claimed printing error. (Ex.1048.) [REDACTED]

[REDACTED]

[REDACTED] By introducing the draft here, PO violated the district court's protective order and its duty of candor under 37 C.F.R. § 42.11.

Regardless, reference to Woodway Customer Service in Ex.2071 is irrelevant because statements regarding customer service are not "evidence of efforts to replicate a **specific product**". *Wyers*, 616 F.3d, 1246.

PO also asserts a caloric burn rate in Petitioner's sales collateral (Ex.2072) is based on Woodway testing. (POR,76.) However, PO's unsupported assertion cites no evidence of such testing by Woodway. Further, even if true, reference to a

caloric burn rate is not “evidence of efforts to replicate a **specific product.**” *Wyers*, 616 F.3d, 1246.

D. Failure of Others

PO asserts: “Before the priority date of the ’884 patent, no one had successfully commercialized a curved, manual treadmill.” (POR,77.) However, to show failure of others, the evidence must establish “that others skilled in the art tried and failed to find a solution for the problem” solved by applicant. *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 1540 (Fed. Cir. 1983). Further, “one must show that the others who failed had knowledge of the critical prior art.” *Ex parte Jamieson*, Appeal 2015-002630, 2016 WL 5543491, *5 (PTAB Sept. 27, 2016) (citation omitted). Woodway has offered no such proofs and its conclusory statements do not establish any nexus between the claim invention and any failure of others.

E. Passage of Time Between Prior Art and the Invention

Woodway asserts, “the length of time between the cited prior art references and the patent also ‘speaks volumes to ... nonobviousness.’” (POR,78.) However, “‘absent a showing of long-felt need or the failure of others, the mere passage of time without the claimed invention is not evidence of nonobviousness.’” *Ex parte Sansone*, Appeal 2023-001331, 2023 WL 4677708, *7 (PTAB July 19, 2023) citing *In re Kahn*, 441 F.3d 977, 990-991 (Fed. Cir. 2006); *Iron Grip Barbell Co.*,

Inc. v. USA Sports, Inc., 392 F.3d 1317, 1324-25 (Fed. Cir. 2004). Woodway has made no such showing.

VI. Conclusion

For the above-mentioned reasons, Petitioner requests that the Board should cancel the challenged claims as unpatentable.

Respectfully submitted,

Dated: April 24, 2024

/ Andrew B. Turner /
John M. Halan (Reg. No. 35,534)
Andrew B. Turner (Reg. No. 63,121)
Rebecca J. Cantor (Reg. No. 57,748)
Kyle G. Konz (Reg. No. 68, 910)
Brooks Kushman P.C.
150 W. 2nd St.,
Suite 400N
Royal Oak, MI 48067
(248) 358-4400

Attorneys for Petitioner

Certificate of Service

The undersigned hereby certifies that on April 24, 2024, a complete and entire copy of **PETITIONER’S REPLY TO PATENT OWNER’S RESPONSE**, was served via electronic mail to the attorneys listed below at rmckenna@foley.com; kjelenchick@foley.com; srieger@foley.com.

LEAD COUNSEL	BACK-UP COUNSEL
Richard J. McKenna Foley & Lardner LLP 777 East Wisconsin Avenue Milwaukee, WI 53202 Direct Line: 414-297-5723 Fax: 414-297-4900 Email: rmckenna@foley.com USPTO Reg. No. 35,610	Kadie M. Jelenchick Sarah E. Rieger Foley & Lardner LLP 777 East Wisconsin Avenue Milwaukee, WI 53202 Direct Line: 414-319-7324 Fax: 414-297-4900 Email: kjelenchick@foley.com Srieger@foley.com

Dated: April 24, 2024

Respectfully submitted,

/ Andrew B. Turner /
John M. Halan (Reg. No. 35,534)
Andrew B. Turner (Reg. No. 63,121)
Rebecca J. Cantor (Reg. No. 57,748)
Kyle G. Konz (Reg. No. 68,910)
Brooks Kushman P.C.
150 W. Second St., Suite 400N
Royal Oak, MI 48067-3846
(248) 358-4400

Attorneys for Petitioner

Certificate of Compliance Pursuant to 37 C.F.R. § 42.24

This paper complies with the type-volume limitation of 37 C.F.R. § 42.24. The paper contains 5,556 words, excluding the parts of the paper exempted by §42.24(a).

This paper also complies with the typeface requirements of 37 C.F.R. § 42.6(a)(ii) and the type style requirements of § 42.6(a)(iii)&(iv).

Dated: April 24, 2024

Respectfully submitted,

/ Andrew B. Turner /
John M. Halan (Reg. No. 35,534)
Andrew B. Turner (Reg. No. 63,121)
Rebecca J. Cantor (Reg. No. 57,748)
Kyle G. Konz (Reg. No. 68,910)
Brooks Kushman P.C.
150 W. Second St., Suite 400N
Royal Oak, MI 48067-3846
(248) 358-4400

Attorneys for Petitioner