

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. 10,799,745 to Bayerlein et al.

Case No.: IPR2023-00849

PETITIONER'S REPLY TO PATENT OWNER RESPONSE

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List of Exhibits

Exhibit #	Description
1001	U.S. Patent No. 10,799,745 (“the ‘745 Patent”)
1002	U.S. Patent No. 10,799,745 File History (“the ‘745 Patent 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”) (available at https://cod.on.worldcat.org/oclc/49571648)
1017	Neil Sclater and Nicholas P. Chironis, Mechanisms & Mechanical Devices Sourcebook, 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”)

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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 Patent 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	U.S. Patent No. 6,923,746 to Skowronski (“Skowronski”)
1031	<i>Intentionally blank</i>
1032	<i>Intentionally 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 blank</i>
1035	<i>Intentionally 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 1-3 teach all claim limitations except: 1) “*a plurality of bearings,*” 2) “*a plurality of bearings at least partially supporting the running belt*” and 3) “*disposing a running belt on the plurality of bearings.*” PO’s arguments fail because the claims are taught by the asserted art and PO’s arguments focus on unclaimed features.

PO’s challenges 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 construction positions in Ground 2 for the terms: “*substantially prevent*”, “*safety device*”, and “*shaft.*”. (Pet.,14-16.) The Board did not construe any terms to reach their institution decision. (DI,24.) The District Court issued its Markman Order (Ex.1033) on November 14, 2023 and

construed the terms “*substantially prevent[]*,” “*safety device*,” and “*shaft*.” None of these constructions would affect Petitioner’s analysis in Grounds 1 and 3 if adopted by the Board. (Ex.1036,¶¶9-11.)

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

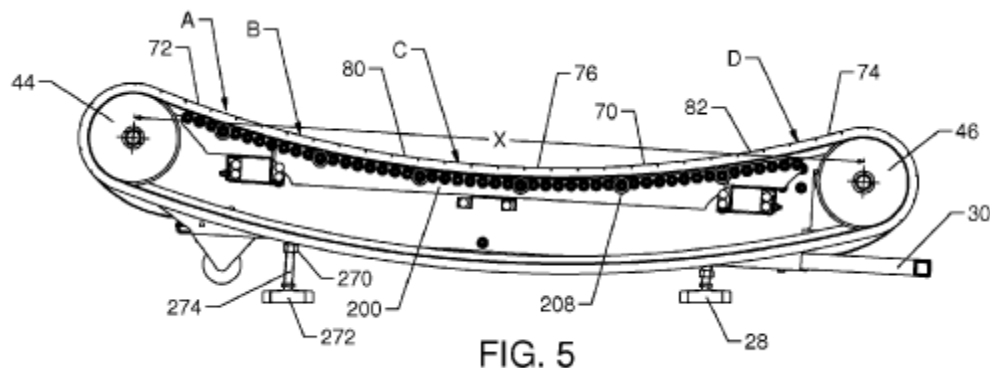
PO construed several terms, but failed to construe “*bearings*,” “*support*,” and “*disposed . . . on*.” (POR,4-6.) Therefore, PO concedes that these claim limitations should be given their plain and ordinary meaning and has waived any right to request specific constructions in future replies. (PTAB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

For example, PO, pointing to preferred embodiments in their specification, argues these terms require a specific location and weight-bearing relationship between the bearings and the running belt. (POR,7-14;Ex.1036,¶12.) The PTAB previously considered and rejected PO construction for “support.” (DI,22,48.) Here, PO reiterates its implied construction and extends it to three terms.

During his deposition, Dr. Blair confirmed that: 1) the claims do not expressly require these additional limitations; 2) PO is not proposing a construction to add these limitations; 3) the District Court did not provide such constructions;

and 4) PO is reading in limitations from the specification to support their improperly narrow constructions. (Ex.1040, 24:7-28:13;Ex.1036, ¶13.)

Citing the '745 Patent disclosure at 11:39-40, PO states that “[i]n the '745 patent, the ‘plurality of bearings’ is only described and depicted as lying below and supporting the running belt 16” and “[t]his requires the bearings 208 to be positioned below the running belt 16.” (POR, 7-8.) Further Figure 5 shows the bearings 208 below an upper portion of the running belt 16 and above a lower portion of the running belt 16. (Ex.1036,¶15.)



Ex.1001, Fig. 5

The '745 Patent disclosure relied on by PO for this construction states the “running belt 16 contacts and is supported **in part** by the bearings 208 of the bearing rails.” (Ex.1001,11:39-40.) This disclosure of **partial** support by contact does not provide specific location and weight-bearing relationship. Further, the '745 Patent describes other bearings not providing a weight-bearing relationship with the belt. For example, Dr. Blair admitted that the related '580 Patent does not

“describe the one-way bearing assembly as providing a weight-bearing relationship with the running belt.” (Ex.1038,52:19-22;Ex.1036,¶16.)

Furthermore, the '745 Patent uses “disposed on” to refer to numerous arrangements, including arrangements that are not physically above. For example, the '745 Patent uses the term “disposed on” to refer to an interior and lateral arrangement of the endless belts 226 relative to the slats 228 of the running belt 16: “The endless belts 226 are shown disposed on opposite sides of the running belt 16, generally interior to the outer, lateral edge of the slats 228.” (Ex.1001,13:58-61¹; Ex.1036,¶16,25-26.)

III. Level of Ordinary Skill in the Art

Petitioner disagrees with PO's proposed skill level (POR,3-4) because both education and industry experience are important for a POSA to understand the '745 Patent. Further, PO's proposed skill level does not address exercise biomechanics, which is important to understand the design of curved treadmills. (Ex.1036,¶¶17-18.)

PO's statement that “the level of ordinary skill in the art as articulated by Patent Owner would not exclude certain of the inventors” (POR, 4) is irrelevant

¹ Emphasis added by Petitioner unless indicated otherwise.

and unsupported evidence--Dr. Blair could not identify any inventors for the related '580 Patent without engineering degrees.” (Ex.1038,9:24-10:11.)

IV. The Asserted Combinations Render the Challenged Claims Unpatentable

A. Socwell discloses “a plurality of bearings” (Claims [1.4], 17, 18) (Ground 3)

PO argues, Socwell does not disclose “a plurality of bearings” because the '745 Patent “requires the bearings 208 to be positioned below the running belt 16.” (POR,6-7.) PO further argues that “[a] POSA would therefore understand the '745 specification to require a relative, weight-bearing relationship between the running belt and the plurality of bearings.” (*Id.*,8;Ex.1036,¶19-20.)

As discussed above, this relies on an incorrect (and only implied) claim construction that improperly narrows the claims by reading in features of the preferred embodiment to preserve validity. As explained in the Petition, Socwell’s rollers 98 provide a “*plurality of bearings*” and as required by claims 1, 17, and 18. (Pet.,76-77,80,109; Ex.1036,¶21.) The deck 56 also forms a bottom “*bearing*.” (Pet., 80; Ex. 1003, ¶¶65-70, 401.)

B. Socwell discloses “the plurality of bearings at least partially supporting the running belt” (Claim 17) and “disposing a running belt on the plurality of bearings” (Claim 18)

PO argues “disposed on” and “support[ed]” require “the structure must be positioned below the running belt such that the structure supports and/or bears at

least some of the weight of the running belt.” (POR,13, Ex. 2018, ¶102-103.) This implied claim construction is wrong. *Supra*,§II.D. The running belt 16 is at least partially supported by, and disposed on, the rollers 98 and the deck 56 which are “bearings.” (Pet.,109-110,82-83,Ex.1003,¶396,404) That is all the claims require. (Ex.1036,¶¶24-26.)

**C. A POSA would have been motivated to combine
Schonenberger and Socwell**

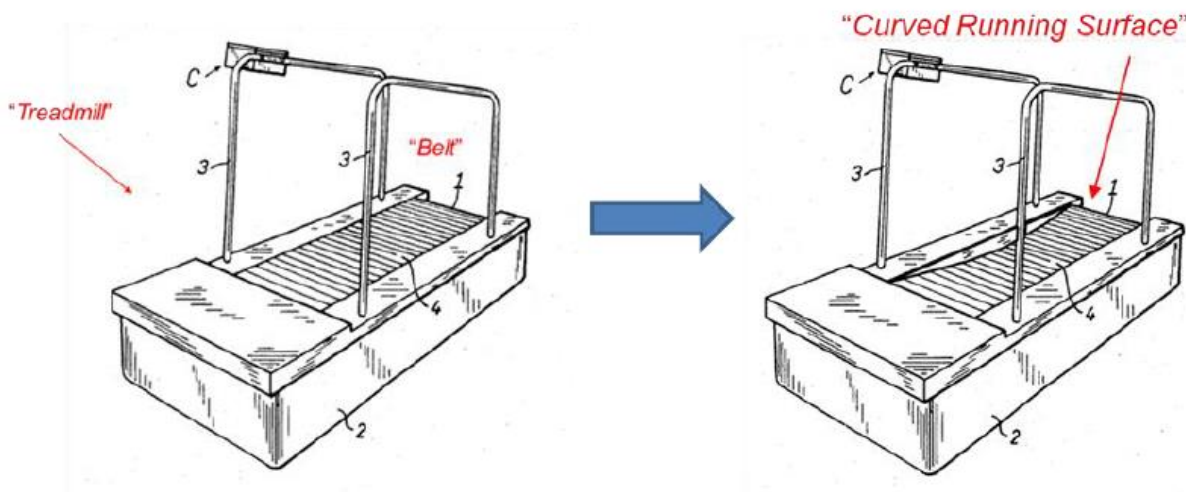
In relation to Grounds 1–2, PO alleges, “Petitioner mistakenly equates Socwell’s disclosure with Schonenberger’s (Claims 1, 10, 18, 21).” (POR,14.) But, Petitioner did not rely on Socwell’s bearings as motivation to combine Socwell’s and Schonenberger. Instead, Petitioner stated a POSA would have known how to modify placement of the plurality of roller bearings 12 of Schonenberger to be curvilinear, like the curved, plain bearing (deck 56) of Socwell, resulting in curved running surface to increase safety and reduce impact loading of the user’s joints. (Pet.,33-36;Ex.1036,¶30.)

**1. The Combination of Schonenberger and Socwell
discloses rollters that “*define at least a portion of a
curved top profile.*”**

PO alleges Petitioner relied on Schonenberger alone for disclosing a “curved *top profile*” limitations of claim 18. (POR,17.) But, Petitioner relied on modified Schonenberger for a “curved profile”. (Pet., 29; Ex. 1003, ¶¶246-247.)

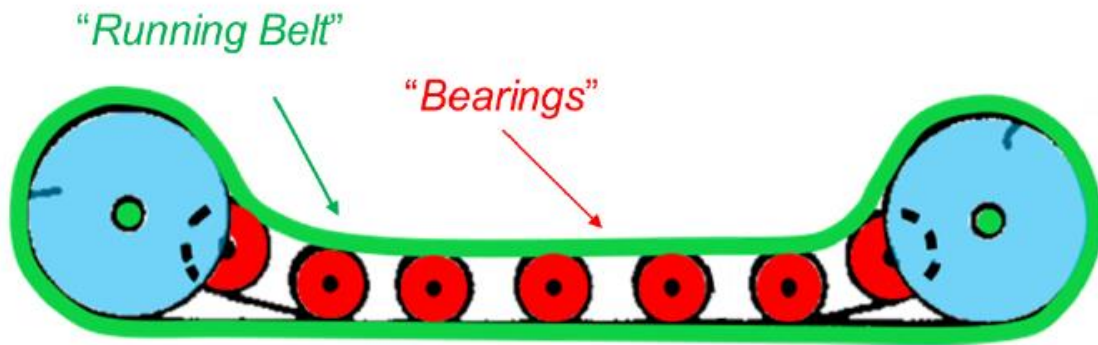
2. Modified Schonenberger is not merely Schonenberger flipped over.

PO incorrectly alleges modified Schonenberger is merely flipping the roller arrangement 12 up-side-down. (POR,21.) Based on this incorrect characterization, PO argues modified Schonenberger is not curved. (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.,33-37;Ex.1036,¶32.) Dr. Blair conceded this in his deposition: 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,¶¶35.)



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, 24.) This is wrong. First, the Petition explains modified Schonenberger is the rollers 12 arranged like the curved deck 56 of Socwell. (Pet.,33-37.) 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,¶37.)

PO attacks this visual aid as if it is a blueprint for building a curved treadmill. (Ex.1036,¶38.) 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 413, 425 (CCPA 1981); *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,23,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 the slat-type belt of Schonenberger would not work in a curved treadmill. (POR,28-29;Ex.2018,¶137.) 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,¶¶40.) Additionally, Petitioner explained the heavy slats 4 would *aid* in creating the curved running surface. (Pet.,37;Ex.1036,¶41.)

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,¶¶157,219,224,239;Ex.1036,¶42.) A POSA would have known that slat-

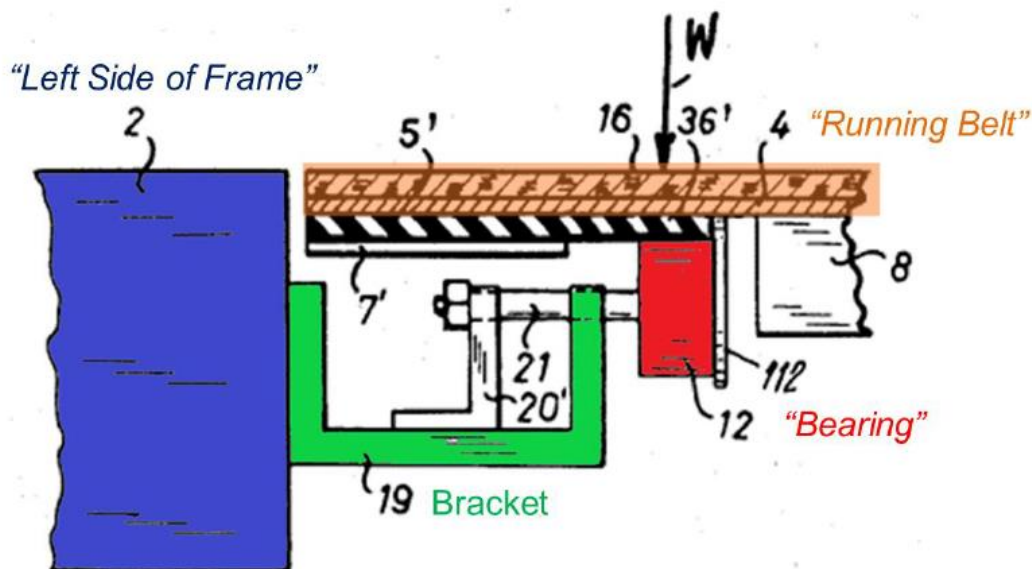
style running surfaces were used as curved belts prior to the invention of the '745 Patent, e.g., Schmidt (Ex.1009, Fig.1). (Ex.1003, ¶¶53,62; Ex.1036, ¶43; Ex.1009, 1:50-159, Fig.1.)

PO also alleges the slats would overlap and pinch when curved. (POR, 31, Ex.2018, ¶¶143-144.) This has no merit. 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; Ex.1036, ¶43.)

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 suitable for a curved running surface. (1036, ¶43.)

4. Schonenberger does not teach away from combining with Socwell.

PO argues Schonenberger 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, 33.) First, the belts 13/13' are an optional feature (Ex.1010, 9:1-2) 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'. (Pet., 31, 39; Ex.1036, ¶47.)



Ex.1010, Fig.10

Pet.,31 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,¶46,48.)

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,¶48.) 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,¶49.)

Schonenberger does not expressly discourage removing the 0.5 mm gap and therefore does not teach away. (Ex.1036,¶46-47.) *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 Schonenberger. (Pet.,30;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,¶48.)

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,¶48.) Thus, modified Schonenberger would function for its intended purpose. (Ex.1036,¶47.)

D. A POSA would have motivated to combine Magid with Schonenberger and Socwell

1. 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 and Schonenberger are a non-therapeutic. (POR,35.) Even if true, which it is not²³, Schonenberger, and Socwell treadmills are for exercise **and therapeutic/rehabilitative use** (Ex.1010,1:10–14; Ex.1011,3:1-9,3:52-57,13:38-47.) Accordingly, Schonenberger, Socwell, and Magid are from the same field. (Ex.1036,¶¶52-53.)

² Magid’s walker is for exercise too. (Ex.1012,1:53-56,3:23-27.)

³ 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.)

The Petition explains why a POSA would have been motivated to combine Magid with Schonenberger and Socwell. (Pet.,46–50;Ex.1003,¶¶175–186;Ex.1036,¶58.) It would have been obvious to a POSA to combine 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 in the forward direction. (*Id.*) Dr. Blair identified the same problem of unintended motion with Socwell. (Ex.2018,¶175;Ex.1036,¶59.)

Several professional organizations have produced standards regarding treadmill safety. (Ex.1019;Ex.1020,Ex.1007;Ex.1036,¶60.) 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.) Further, Dr. Blair explained 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 Schonenberger and Socwell to include Magid’s unidirectional control means to limit their moving surfaces to one direction. (Ex.1036,¶61.)

2. Magid does not teach away from its combination with Schonenberger and Socwell

PO argues Magid teaches away from being combined with modified Schonenberger because Magid has two flat belts and modified Schonenberger has a single curved belt. (POR,37-38). PO merely identifies a difference between preferred embodiments—PO fails to even allege that Magid criticizes or discourages using his safety device in curved, single belt treadmills. *Meiresonne*, 849 F.3d at 1382. (Ex.1036,¶63-64.)

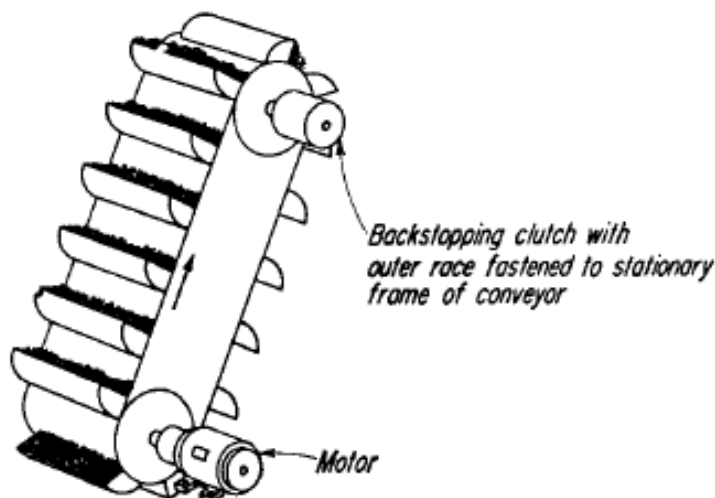
Moreover, Petitioner’s proposed combinations with Magid are not related to Magid’s belts. Rather, Petitioner alleged it would have been obvious to add Magid’s safety device to Schonenberger and Socwell. (Pet.,46;Ex.1036,¶63-65.) Therefore, Magid’s disclosure regarding the dual, flat belts is not relevant 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).

E. 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, 41.)

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. 1036,¶72.)

A POSA would have understood conveyers and treadmills operate the same. (Ex.1036,¶73) Accordingly, a POSA would have considered a sprag-type one-way clutch bearing for an exercise equipment application. For example, the Emerson bearing catalog specifically describes its NSS Series sprag-type one-way clutch as an option for multiple “Field Applications,” including “Exercise equipment,” and “Roll conveyors”(Ex.1018,52-53;Ex.1003,¶¶90,211,447;Ex.1036,¶73.)

Commercially available and inexpensive sprag-type clutches would be attractive since they require less design and qualification work to implement as well. (Ex.1036,¶75.) 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 a POSA would have known to use 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;.)

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. (Ex.1036,¶¶73-75.)

PO argues that Petitioner’s argument does not apply to toothless ratchet gears. (POR,43-44.) 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,¶76.)

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).

PO’s secondary considerations focus on the “*safety device*” limitations. (POR,66;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, there is no nexus. *Id.*

A. 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,66) 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]

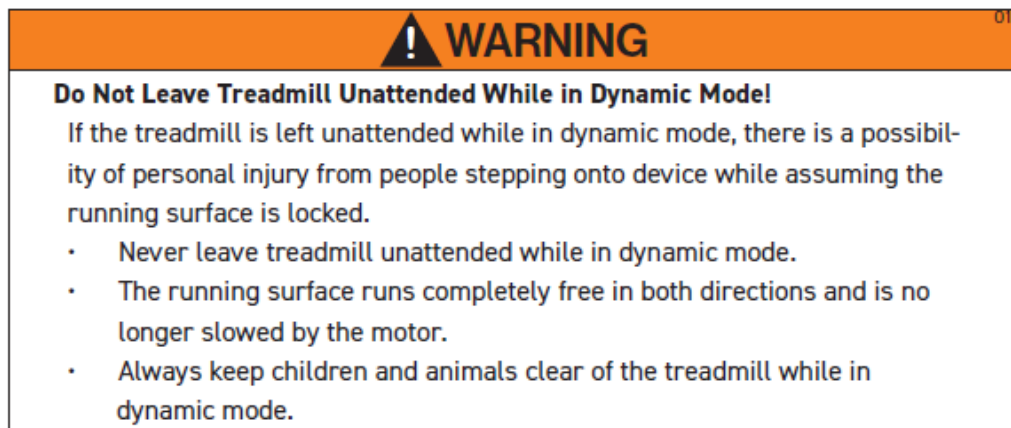
[REDACTED]

[REDACTED] However, Ex.1043 does not mention the safety device or its functionality. Additionally, PO’s webpage regarding “Manual” and “Curve” treadmills does not mention any “*safety device*.” (Ex.1044.)

Weber states the safety device is [REDACTED]

[REDACTED] However, no evidence supports this. To the contrary, Woodway’s assertion is undermined by its 4FRONT flat treadmill—one of Woodway’s “Top-Selling Lineup” (Ex.1042,2)—that has a “Dynamic Mode” in which “[t]he running surface runs completely free in both directions and is no longer slowed by the motor.” (Ex.1041,29.) Yet, while “there is a possibility of personal injury from people stepping onto the device” in Dynamic Mode, the 4Front does not include a “safety device.”—instead it “runs completely free in both directions.” (*Id.*)

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." *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,64.) 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,64), the relevant market is manual treadmills, not curved manual treadmills.

The '745 Patent explains the “invention relates generally to the field of treadmills. More specifically, the present invention relates to manual treadmills.” (Ex.1001,1:21-23.) Further, it describes a manual non-curved treadmill embodiment:

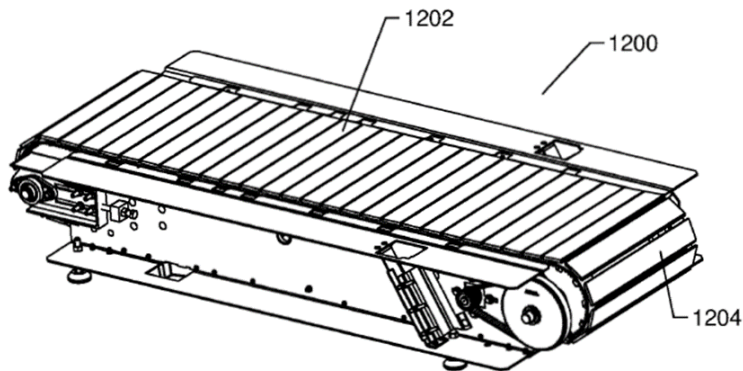
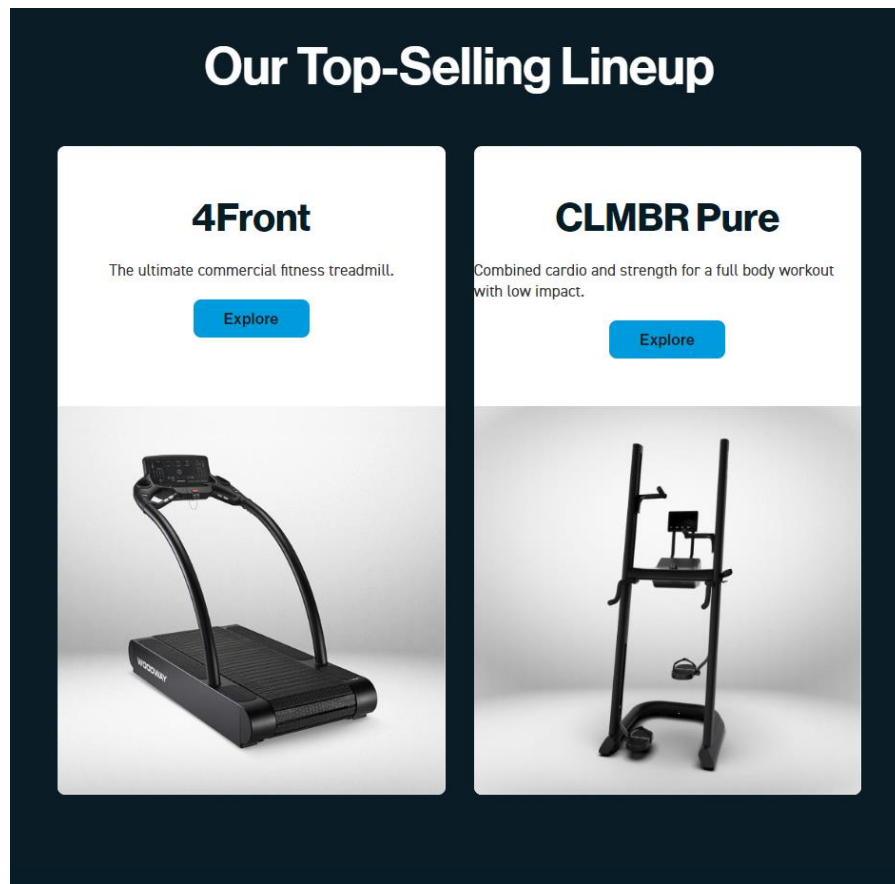


FIG. 35

Ex.1001, Fig. 35

PO's expert stated **all claims** at issue are directed to a “manually powered treadmill.” (Ex.2018, ¶199.) Thus, the '745 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];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).

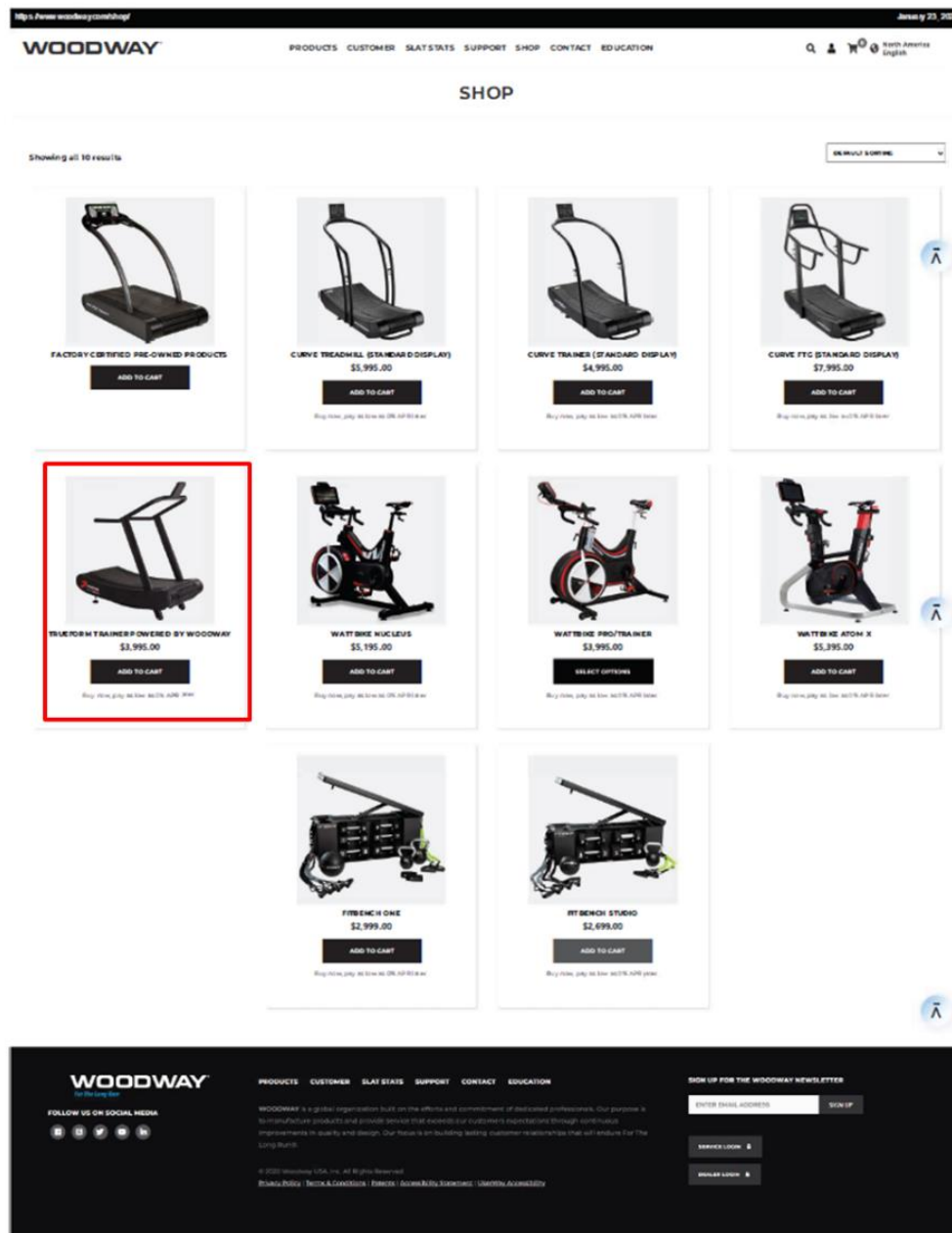
As to reputation, Woodway claims to be "the largest specialized treadmill manufacturer in the world and... a market leader in... fitness ... equipment..." and can "command a pricing premium because of its durable, commercial-grade parts, reputation, service, history, and quality." (Ex.2020,¶¶2,13.)

[REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED]
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,64.) PO also asserts sales of its Curve treadmills decreased from

2017-2022, and attributes this to Petitioner’s treadmill. (*Id.*) 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. (*Id.*)



EX2039
Woodway USA, Inc.
IPR2023-00836

Ex.2039(Annotated)

PO excludes Trueform sales from its sales data. (Ex.2020,¶33.) However, PO's [REDACTED] 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. 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]

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,68.) However, Weber admitted he is not an engineer and did not analyze infringement:

* * *

[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,69-71.) 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 ‘745 Patent was not at issue. (Ex. 2042.) PO also asserts “Petitioner’s incursion into the ... market is also indicative of the commercial success ... as the Assault

AirRunner infringes the claims of the '745 patent.” (POR,65.) However, the AirRunner does not infringe, [REDACTED]

[REDACTED]

[REDACTED]

[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,71; Ex.2071) and then used the draft when deposing Petitioner’s [REDACTED]

[REDACTED]

(Ex.1047, Ex.2071)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[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,71.) 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 ’745 patent, no one had successfully commercialized a curved, manual treadmill.” (POR,72.) 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,73.) 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

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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.

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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 5,573 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

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