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Inc.*

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Woodway USA, Inc.,

Plaintiff,

vs.

LifeCORE Fitness, Inc. d/b/a Assault
Fitness,

Defendant.

Case No. 3:22-cv-00492-JO-BLM

**WOODWAY USA, INC.'S FIRST
AMENDED AND SUPPLEMENTAL
DISCLOSURE OF ASSERTED
CLAIMS AND INFRINGEMENT
CONTENTIONS**

Action Filed: April 11, 2022

FIRST AMENDED AND SUPPLEMENTAL DISCLOSURE OF ASSERTED
CLAIMS AND INFRINGEMENT CONTENTIONS
Case No. 3:22-cv-00492-JO-BLM

4860-2976-8763.2

EX2078

Woodway USA, Inc.
IPR2024-00083

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

I. PRELIMINARY STATEMENT

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

(a) an identification of each claim of U.S. Patent Nos. 9,039,580 (“the ’580 Patent”), 10,561,884 (“the ’884 Patent”), 10,799,745 (“the ’745 Patent”), and 11,465,005 (“the ’005 Patent”) (collectively, the “Asserted Patents”) that is infringed by Assault under 35 U.S.C. §§ 271(a) and 271(b);

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

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

(d) an identification of any indirect infringement allegations;

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

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

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

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

These Amended Contentions may be amended or supplemented as a matter of right until the filing of the parties’ Joint Claim Construction Chart, pursuant to Patent Local Rule

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

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

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

Asserted Patents	Asserted Claims	Relevant Subsection(s) of 35 U.S.C. § 271
The '580 Patent	1-3, 5-6, 10, 25	35 U.S.C. §§ 271(a), 271(b)
The '884 Patent	30-34, 37-54, 57, 59	35 U.S.C. §§ 271(a), 271(b)
The '745 Patent	1, 4, 7-12, 14, 17, 18, 20-26	35 U.S.C. §§ 271(a), 271(b)
The '005 Patent	1-4, 6-13, 15-16	35 U.S.C. §§ 217(a), 271(b)

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

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

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1. The '580 Patent

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

2. The '884 Patent

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

3. The '745 Patent

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

4. The '005 Patent

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

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

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

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

Chart	Asserted Patent	Accused Instrumentalities
Appendix A	The '580 Patent	Assault AirRunner, AssaultRunner Elite, AssaultRunner Pro, AssaultRunner
Appendix B	The '884 Patent	Assault AirRunner, AssaultRunner Elite, AssaultRunner Pro, AssaultRunner
Appendix C	The '745 Patent	Assault AirRunner, AssaultRunner Elite, AssaultRunner Pro, AssaultRunner
Appendix D	The '005 Patent	Assault AirRunner, AssaultRunner Elite, AssaultRunner Pro, AssaultRunner

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

1. The '580 Patent

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

2. The '884 Patent

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

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3. The '745 Patent

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

4. The '005 Patent

Without permission or authorization from Woodway, Assault is inducing the direct infringement of claims 1-4, 6-13, and 15-16 of the '005 Patent, as set forth under subsection (c) herein, by aiding, abetting, and encouraging its customers' use of the Accused Instrumentalities by virtue of (1) selling the Accused Instrumentalities for their intended use, (2) upon information and belief, providing tutorials or demonstrations of the Accused Instrumentalities to its customers with the intent to induce the customers to use the Accused Instrumentalities, (3) upon information and belief, providing user manuals to its customers that provide instructions on how to use the Accused Instrumentalities with the intent to induce its customers to use the Accused Instrumentalities, all with knowledge of the infringement of the '005 Patent and with the intent to cause such infringement.

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

Each limitation of the Asserted Claims is literally present in the Accused Instrumentalities. Woodway reserves the right to allege infringement under the doctrine of equivalents after receiving additional discovery from Assault, Assault's claim

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construction positions, and/or the Court's claim construction decision(s).

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

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

1. The '580 patent

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

2. The '884 patent

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

3. The '745 patent

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

4. The '005 Patent

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

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

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asserted claim, each such apparatus, product, device, process, method, act, or other instrumentality that incorporates or reflects that particular claim; and

Woodway identifies the following models from Woodway's line of curved, manual treadmills that practice certain of the claimed inventions, including at least: Woodway Original CURVE, Woodway CURVE 1.5, Woodway Curve 3.0, Woodway CURVE XL, Woodway CURVE Trainer, Woodway CURVE FTG, and Woodway EcoMill ("Woodway's CURVE Treadmills").

. All Asserted Claims are practiced by Woodway's CURVE Treadmills as set forth in the following table:

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

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

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

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

At a minimum, the '580 Patent and '884 Patent have been listed on Woodway's website well before Assault introduced the Accused Instrumentalities, at <https://www.woodway.com/support/patents/>, in compliance with 35 U.S.C. § 287, thus providing Assault with constructive notice. Further, the '580 Patent has been the subject of prior litigation¹ and, on information and belief, Assault was aware of and regularly monitored this litigation.

As of September 6, 2022, by way of service of Woodway's Disclosure of Asserted Claims and Infringement Contentions ("Contentions"), which identified the Asserted

¹ See *Chapco, Inc., et al. v. Woodway USA, Inc.*, Case No. 3:15-cv-01665-JCH (D. Conn.).

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Claims in U.S. App. No. 17/247101 (“the ’101 Application”),² Assault has had notice of the ’005 Patent.

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

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

On September 6, 2022, Woodway served its Document Production Accompanying Disclosure pursuant to Patent Local Rule 3.2 with Appendix E identifying – by production number – those documents that fell within the relevant categories under the Rule. Woodway serves concurrently herewith a supplemental production relating to the ’005 Patent:

WAS-0003156: 3.2(c); and

WAS-0003157—WAS-0003161: 3.2(d).

DATED: November 2, 2022

FOLEY & LARDNER LLP

Ashley M. Koley

Kadie M. Jelenchick



Ashley M. Koley
Attorneys for Plaintiff Woodway USA, Inc.

² The ’101 Application issued as the ’005 Patent on October 11, 2022. While the numbering of the claims in the ’101 Application and the ’005 Patent differs, the claim language is identical.

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PROOF OF SERVICE

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

On November 2, 2022, I served the foregoing document(s) described as:
**WOODWAY USA, INC.'S FIRST AMENDED AND SUPPLEMENTAL
DISCLOSURE OF ASSERTED CLAIMS AND INFRINGEMENT
CONTENTIONS AND SUPPLEMENTAL DOCUMENT PRODUCTION** on the
interested parties in this action as follows:

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X Executed on November 2, 2022, at Los Angeles, California.

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

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


Ashley M. Koley

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