

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LIFECORE FITNESS, LLC d/b/a
ASSAULT FITNESS,

Petitioner,

v.

WOODWAY USA, INC.

Patent Owner.

IPR2024-00083
U.S. Patent No. 11,465,005

**PATENT OWNER'S OBJECTIONS TO EVIDENCE
SUBMITTED WITH PETITIONER'S REPLY**

Woodway USA, Inc. (“Patent Owner”) hereby objects to certain evidence submitted by Petitioner LifeCORE Fitness LLC (“Petitioner”) with the Petitioner’s Reply (“Reply,” Paper 37) in the above-captioned proceeding. In accordance with 37 C.F.R. § 42.64(b)(1), these objections are being timely filed and served within five (5) business days of service of the evidence to which the objections are directed. Patent Owner’s objections are based on the Federal Rules of Evidence (“FRE”), relevant case law, federal statute, and the Patent Trial and Appeal Board (“PTAB”) Rules. Patent Owner’s objections are set forth with particularity below.

I. Exhibit 1036

Exhibit 1036 is described as the Second Declaration of Robert Giachetti, Ph.D. P.E. Patent Owner objects to Exhibit 1036, including specifically to the extent it includes subject matter that is not permitted pursuant to FRE 602 or 702-703, including without limitation, to the extent that the declaration presents as “facts” information that is outside the personal knowledge of the declarant and/or to the extent that the testimony is not based on sufficient facts or data or the product of reliable principles and methods reliably applied in this case. *See, e.g.*, EX1036, ¶¶30, 39, 47, 57, 62-64, 66, and 73.

Patent Owner objects to Exhibit 1036 as irrelevant under FRE 401 and 402 because it does not make any facts at issue in the *inter partes* review more or less probable than it would have been without the evidence. Patent Owner objects to

Exhibit 1036, and the exhibits thereto, as unfairly prejudicial, confusing the issues, and a waste of time under FRE 403. Patent Owner also objects to Exhibit 1036 as it contains information that should have been included with the Petition and thus does not meet the requirements of PTAB Rule 104(b)(5). *See, e.g.*, EX1036, ¶¶29-32, 47-48, 50-68, 78-79, 83-84, 97-98, 109-112. Patent Owner further objects to the portions of Exhibit 1036 that cite an exhibit objected to herein for the reasons stated herein.

II. Exhibits 1041-1044, 1046

Exhibit 1041 is described as Woodway 4Front Owners Manual October 24, 2023 OM_EN_V2 (accessed March 31, 2024) (available at <https://www.woodway.com/treadmills/4-front/>). Exhibit 1042 is described as Woodway Homepage, (accessed March 31, 2024) (available at <https://www.woodway.com/>). Exhibit 1043 is described as Woodway Curve Specification (accessed March 31, 2024) (available at <https://www.woodway.com/treadmills/curve/>). Exhibit 1044 is described as Woodway Manual Treadmills Webpage (accessed March 31, 2024) (available at <https://www.woodway.com/manual-treadmills/>). Exhibit 1046 is described as 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/>).

Patent Owner objects to Exhibits 1041-1044 and 1046 as lacking authentication under FRE 901, for example, Petitioner fails to offer sufficient evidence that these exhibits were publicly accessible in their presented form as of the alleged dates, or that these exhibits are what Petitioner claims them to be.

III. Exhibit 1053

Exhibit 1053 is described as Tru Grit Runner Webpage (accessed on September 4, 2024) (available at <https://trugrit-fitness.com/collections/cardio/products/grit-runner-curved-manual-treadmill>).

Patent Owner objects to Exhibit 1053 as lacking authentication under FRE 901 and as containing hearsay under FRE 801 and FRE 802 to the extent that Patent Owner attempts to rely on it to prove the truth of any matter asserted therein, but the exhibit fails to meet the requirements of any hearsay exception or exemption under FRE 803-807, for example, Petitioner fails to offer sufficient evidence that Exhibit 1053 was publicly accessible in its presented form as of the alleged dates, or that Exhibit 1053 is what Petitioner claims it to be.

Dated: November 13, 2024

Respectfully submitted,

/R.J. McKenna/

Richard J. McKenna

Registration No. 35,610

Counsel for Patent Owner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **PATENT OWNER'S OBJECTIONS TO EVIDENCE SUBMITTED WITH PETITIONER'S REPLY** was served on November 13, 2024, by email to Petitioner's counsel of record:

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