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November 27, 2024

Via E-Mail: rmckenna@foley.com

Richard McKenna
Foley & Lardner LLP
777 East Wisconsin Ave.
Milwaukee, WI 53202

Re: *LifeCORE Fitness, LLC d/b/a Assault Fitness v. Woodway USA, Inc.*
Case IPR2024-00083
Our File No. LCF0115IPR

Dear Mr. McKenna:

This letter is in response to the notice we received on November 13, 2024 in which you objected to certain evidence submitted in support of the Petitioner's Reply. As outlined below, we disagree with your arguments concerning the deficiency of the evidence.

With regard to Exhibit 1036, "Second Declaration of Robert Giachetti, Ph.D.," we note that the opinion provided in Dr. Giachetti's Declaration were based upon: (1) his qualifications and professional experience and (2) the documents Dr. Giachetti cited and considered. (Ex.1036, ¶¶4-5.) Dr. Giachetti is a testifying expert pursuant to the Federal Rules of Evidence ("FRE") 703 and he may therefore express opinions based on facts or data he has been made aware of or personally observed. Accordingly, your objections under FRE 602, 702, and 703 are inapplicable to Exhibit 1036. See, FRE 602, 702, 703.

Further, Dr. Giachetti's Declaration is relevant under FRE 401 and 402 because it identifies and explains technical issues that the Patent Owner's Response/Expert failed to explain or accurately address, and therefore has a tendency to make a fact more or less probable than it would be without the evidence. Still further, Dr. Giachetti's Declaration is not prejudicial under FRE 403 because its probative value significantly outweighs any alleged prejudice. Finally, Exhibit 1036 does not violate the requirements of PTAB Rule 104(b)(5) because the cited to "information" either merely elaborates on issues raised in the petition (and the supporting documents thereof) or simply respond to issues raised in Patent Owner's Response. See e.g., Petition at 11, 20-33, 67, 69, 77-80, 89-91, and 93-95; see also Patent Owner's Response at 48-69.

Accordingly, your objections under FRE 401-403 and 37 C.F.R. § 42.104(b)(5) are inapplicable to Exhibit 1036. See FRE 401-403; 37 C.F.R. § 42.104(b)(5).

We also disagree with your objection to Exhibits 1041-1044, and 1046 under FRE 901 as allegedly lacking authenticity. First, the list of exhibits includes websites clearly identifying where one may locate the above-referenced exhibits and demonstrating their public availability. See Reply at ix-x. Second, each of Exhibits 1041-1044 and 1046 is authentic under Rule 901(b) because their "appearance, contents, substance, internal patterns, [and/or] other distinctive characteristics" demonstrate that they bear all the earmarks of authentic documents. See FRE 901(b). Third, each of the said exhibits is self-authenticating at least under FRE 902(7). Finally, Woodway's website is referenced in Patent Owner's Response (Ex.2037) further demonstrating that the above-mentioned exhibits are authentic. See Patent Owner's Response at v, 51 (citing Ex.2018, ¶¶176-177).

Finally, with respect to Exhibit 1053, we disagree with your objections regarding authentication under FRE 901 and hearsay under FRE 801-802. As to the authentication objections, we note that Exhibit 1053 includes a website identifying where one may locate this exhibit which also demonstrates its public availability. See Reply at x. Exhibit 1053 is also authentic under Rule 901(b) because its "appearance, contents, substance, internal patterns, [and/or] other distinctive characteristics" demonstrate that it bears all the earmarks of an authentic document. See FRE 901. Still further, Exhibit 1053 is self-authenticating at least under FRE 902(7). We further disagree with your objection based on FRE 801-802 because Exhibit 1053 is not offered to prove the truth of the matters asserted therein. Indeed, as offered, the text and image of Exhibit 1053 are not statements at all. See *Foreword Mag., Inc. v. OverDrive, Inc.*, No. 1:10-CV-1144, 2011 WL 5169384, at *4 (W.D. Mich. Oct. 31, 2011) ("When a printout from a third party website is offered merely to show that certain images and text appeared on the website, they are not statements at all and thus fall outside the ambit of the hearsay rule.").

Very truly yours,

/Reza Roghani Esfahani/

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RRE/fea
Enclosure