

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

WOODWAY USA, INC.

Plaintiff,

v.

LIFECORE FITNESS, INC.

Defendant.

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

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT AND DENYING
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

For the reasons stated on the record at the January 30, 2025, hearing, the Court rules as follows. First, based on Defendant's stipulation at the January 23, 2025 hearing, and Plaintiff's counsel's non-objection, the Court dismisses Defendant's counterclaims of inequitable conduct against Plaintiff. Fed. R. Civ. Proc. 41(a)(1)(A)(ii). Second, the Court grants Defendant's motion for summary judgment of noninfringement as to all claims and denies Plaintiff's motion for summary judgment of infringement as to all claims. Dkt. 146; Dkt. 151. While the parties' summary judgment briefing was predominately directed at Plaintiff's theory of direct infringement, the Court's ruling regarding direct infringement requires it to grant summary judgment in favor of Defendant on Plaintiff's claims of induced infringement as well. Dkt. 34 at 4-8; *Minn. Min. & Mfg. Co. v. Chemque, Inc.*, 303 F.3d 1294, 1304-05 (Fed. Cir. 2002) (explaining that to establish inducement, the patentee must show direct infringement). Third, because the Court grants Defendant's

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1 motion for summary judgment in full, and it disposes of all of Plaintiff's claims as
2 discussed above, the Court orders the Clerk of Court to CLOSE the case.

3 **IT IS SO ORDERED.**

4
5 Dated: January 30, 2025



6
7 Hon. Jinsook Ohta
United States District Court

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

	)	
WOODWAY USA, INC.,	)	Case No.: 22-cv-00492-JO-BLM
	)	
Plaintiff,	)	San Diego, California
	)	
	)	Thursday, January 23, 2025
v.	)	
	)	Motion Hearing Summary
LIFECORE FITNESS, INC.,	)	Judgement
	)	
Defendant.	)	

**CERTIFIED
TRANSCRIPT**

TRANSCRIPT OF STATUS CONFERENCE
BEFORE THE HONORABLE JINSOOK OHTA
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

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THURSDAY - JANUARY 23, 2025

9:37 A.M.

P R O C E E D I N G S

--- oOo ---

THE CLERK: All rise. This United States District Court for the Southern District of California is now in session, the Honorable Jinsook Ohta presiding.

Please be seated and come to order.

Calling Matter Number 2 on calendar: 22-cv-0492, Woodway USA, Inc. v. LifeCORE Fitness, Inc., for a motion hearing.

THE COURT: Good morning, everyone.

I'll take appearances. Plaintiff's side first.

MS. JELENCHICK: Good morning, Your Honor.

Kadie Jelenchick of Foley and Lardner LLP. Here with me is my colleague Ashley Koley.

THE COURT: Good morning, both of you.

MR. LEROY: Good morning, Your Honor. My name is John LeRoy for the defendant LifeCORE Fitness with the law firm Brooks Kushman. And with me today is John Halan.

MR. HALAN: Hello, Your Honor.

THE COURT: Okay. Good morning.

So the Court's tentative on this set of motions is to grant the motion for summary judgment on noninfringement.

The Court has read the briefing on both sides and the briefing on the cross motions on both sides.

1 And here's the basis for the tentative, which is the
2 Court construed the claims on the "substantially prevents"
3 language to mean "restricting rotations" such that there's
4 only one directional rotation of the running belt.

5 And just on a very simple and straightforward level, the
6 accused devices, they rotate in both ways.

7 And I've read your arguments about the "sometimes," "not
8 only," and also "different modes of operation."

9 Both of those, essentially, collapse into one argument,
10 which is you're trying to frame the issue as if there are two
11 modes of operation: One, which is infringing; and one that is
12 noninfringing. But whether there's only one mode or whether
13 there are multiple modes or not, I don't ever see an instance
14 of infringement, because there's no instance in which the
15 accused devices are working with a safety device that
16 restricts rotation such that there is only one directional
17 rotation of movement.

18 So I don't even see infringement in mode 1.

19 And your sometimes-not-never argument, basically, I don't
20 even see the "sometimes."

21 So, for those reasons, the Court's tentative thinking on
22 this is to grant the motion for summary judgment on
23 noninfringement and, of course, deny your motion on
24 infringement.

25 Going through all the paperwork, I understand that there

1 are other arguments as well, but at least right now, it's this
2 court's preliminary current understanding that with this
3 ruling, it would moot out or obviate the need to reach all of
4 those other issues.

5 And so correct me if I'm wrong on that.

6 The one exception to that might be the inequitable
7 conduct and the fraud on the PTO.

8 And so I'm going to start with -- because of the nature
9 of the tentative, I'm going to give plaintiff most of the
10 argument time here. That's just usually how I run things. I
11 hear more from the party against whom the tentative runs
12 because then it gives them an opportunity to point out things
13 or convince me that I've been wrong. And I will also -- I'll,
14 of course, let you address -- or address the Court if I feel
15 that I'm flip-flopping on the tentative or changing my mind.

16 But I do want to start with asking you, if you got a
17 noninfringement summary judgment, is that inequitable conduct
18 fraud on the PTO something that you would still be pursuing?

19 **MR. HALAN:** Your Honor, the only infringement is that
20 it -- would that be an issue --

21 **(Court reporter clarification.)**

22 **THE COURT:** Can you --

23 **MR. HALAN:** Infringement is an issue we'll
24 be -- inequitable conduct might be an issue in this case.

25 **THE COURT:** Okay.

1 **MR. HALAN:** So for the time being, it would be
2 mooted.

3 **THE COURT:** Okay. Thank you.

4 **MR. HALAN:** Thank you, Your Honor.

5 **THE COURT:** Okay. So plaintiff's counsel, if you'd
6 like to -- and then I have a question for you before you go
7 into argument.

8 So this court's tentative -- and you're about to tell me
9 why you disagree and why I'm wrong -- but if the Court sticks
10 with that tentative, does this take care of all issues?

11 Are there any stray -- you know, that would take care of
12 several of the patents but not this one patent or not this one
13 sub- -- you know, if there's some subvariant of an argument
14 buried in there, if the Court sticks with this tentative,
15 wrong or right, does it take care of all the issues?

16 **MS. JELENCHICK:** Yes, it does. This particular claim
17 limitation is included in each of the 13 asserted claims. So
18 it would be dispositive.

19 **THE COURT:** Okay. Thank you. I just wanted to make
20 sure of that, that there weren't going to be hidden small
21 corners left unaddressed by the Court.

22 So you can go ahead and address the Court's tentative,
23 and I may have questions for you along the way. If you want,
24 you can stand at the podium because the microphone is more
25 comfortable usually for people's height, but that's up to you.

1 So, go ahead.

2 **MS. JELENCHICK:** If I may, I do have a question at
3 the outset. For the purposes of the Court's proffered
4 tentative, is that based on which iteration of the Assault
5 AirRunner?

6 **THE COURT:** Okay.

7 **MS. JELENCHICK:** If you recall from the paperwork --

8 **THE COURT:** Thank you. Thank you, yes. I did want
9 to make that clear from the beginning as well so that you know
10 what playing pieces are on the table for you to argue from.

11 So, the Court's going to exclude or strike the Kenji Gray
12 Declaration and the videos that are associated with that as
13 undisclosed information outside the -- as undisclosed outside
14 the period of fact discovery. And for the same exact reason,
15 the Hoerig Declaration and accompanying materials.

16 I do find that the Exhibit 17 that plaintiffs don't
17 appear to object to, and have been disclosed and have been the
18 subject of a lot of deposition testimony, the Court's relying
19 on that as well as the other pieces of evidence, but I am not
20 relying -- on either side, I'm not going to rely on Kenji
21 Gray, and I'm not going to rely on Hoerig and all the
22 accompanying materials, because they are both undisclosed
23 materials outside the period of fact discovery, and neither
24 should be considered by this court.

25 So you can go ahead, plaintiff's counsel.

1 **MS. JELENCHICK:** Thank you, Your Honor.

2 Where we'd like to start is with -- I believe you were
3 referring to deposition Exhibit 18 and the video of the
4 accused infringing AirRunner as operated by an employee or a
5 representative of Assault.

6 And in this video, this is...

7 ***(Video played in open court. Not reported.)***

8 **MS. JELENCHICK:** What you don't see in this video is
9 when this particular user is mounting or dismounting the
10 treadmill. And at least in that moment of time, there is a
11 period where the one-way safety device is triggered and locks
12 into place to prevent bidirectional movement.

13 Thereafter, as you can see in this video, the user --

14 **THE COURT:** So I'm going to pause you there.

15 So, your patent, the Court's construed that as one
16 directional rotation only.

17 The accused device has, as we've just seen, perhaps with
18 more force, perhaps you have to overcome a resistance or
19 overcome a -- overcome some kind of friction or some kind of
20 initial stoppage, but there's clearly bidirectional movement.

21 And we're going to get to your argument that there is
22 this one moment in time where the bidirectional movement is
23 impeded. But in general, aside from that one moment of time,
24 are you disputing that -- are you disputing -- is there a
25 material dispute of fact that the accused devices -- the

1 defendant's devices, that they do have this bidirectional
2 movement?

3 **MS. JELENCHICK:** There is a -- there is the ability,
4 there is the capability for the unit to have bidirectional
5 movement.

6 **THE COURT:** Okay.

7 **MS. JELENCHICK:** However --

8 **THE COURT:** So this is where my whole tentative is
9 coming down to, which is the way I construed your claims at
10 the claim construction stage -- and most of that was based on
11 the statements your clients have made in prosecution
12 history -- that your patents do not have that capability of
13 bidirectional movement.

14 And so this freeze frame, just that one movement in time
15 when someone is getting on or getting off, throughout the
16 briefing or throughout the technical materials, you're using
17 the words "at that point of ingress or egress," but that
18 really is needlessly complicated. So when someone's stepping
19 onto the device and stepping off the device, yes, the accused
20 products have some type of resistance. They do make it safer
21 by preventing movement in that moment. But I don't see
22 anything about the way that I've construed the patent that
23 would -- such that it would be satisfied by just that freeze
24 frame or momentary resistance, when I've construed the patent
25 to say rotation has been restricted so that there is no

1 bidirectional movement of this running belt.

2 **MS. JELENCHICK:** Okay. Your Honor, respectfully,
3 your tentative is imposing a temporal requirement where the
4 claim language does not include it.

5 **THE COURT:** No, I think you're the one imposing the
6 temporal requirement, because my claim construction said it
7 never moves in both ways. And you're saying that it's
8 actually okay because in that one moment of someone getting on
9 or getting off, it does.

10 **MS. JELENCHICK:** An interpretation of the adopted
11 claim construction that it never moves in both ways is, in
12 essence, adopting the exact proposal that Assault proffered in
13 claim construction and that you rejected because it was far
14 broader than what --

15 **THE COURT:** Okay. So, Counsel, I've seen this
16 argument in the briefing. I've seen this argument in the
17 briefing. We're not going to revisit claim construction here.

18 Work with me on how I construed this, which is
19 resisting rotation or resisting movement such that there
20 isn't -- there's only one directional movement -- let me look
21 up my exact words again.

22 **MS. JELENCHICK:** Restrict --

23 **THE COURT:** So, I'm the one that did this claim
24 construction.

25 **MS. JELENCHICK:** Understood.

1 **THE COURT:** And I see a lot of daylight between
2 rejecting their proposed construction and what I said,
3 so -- which is "restricts rotation to allow for only one
4 rotational direction of movement."

5 So I'll let you make the rest of your argument.

6 **MS. JELENCHICK:** If you go to the specific language
7 of the '580 patent in Claim 25, there is no limitation on the
8 breadth of that claim to interpose this temporal requirement.

9 It -- it contemplates that --

10 **THE COURT:** That's right. My construction has no
11 temporal requirement. It says it "restricts rotation to allow
12 for only one rotational direction of movement."

13 And we have accused devices that have this bidirectional
14 capacity.

15 Even when people are getting on and off, there's a
16 resistance. But there isn't a bi- -- there isn't a
17 restriction or such a high degree of prevention of movement,
18 or a high degree of restriction such that there's only one
19 direction of movement. At no time. Basically, I think this
20 is where you and I are parting ways in how we're seeing this,
21 which is there's no time at which the accused devices restrict
22 movement such that it's not capable of this bidirectional
23 movement.

24 **MS. JELENCHICK:** Respectfully, we disagree with that,
25 the one-way bearing that's incorporated into the Assault

1 AirRunner requires a frictional torque threshold of -- in
2 excess of a certain limit.

3 We know from Mr. Hoerig's declaration, which I understand
4 is not part of these proceedings based on the ruling today,
5 that's at least 40 pounds. This gentleman in this deposition
6 exhibit --

7 **THE COURT:** So, wait. Hold on.

8 Yes. So, Counsel, you're the one that asked to exclude
9 Mr. Gray's declaration and video on the grounds that it was
10 undisclosed; correct?

11 **MS. JELENCHICK:** Yes, correct.

12 **THE COURT:** And then in response to that, you
13 provided your own undisclosed testimony, which was equally
14 undisclosed; correct?

15 **MS. JELENCHICK:** Correct.

16 **THE COURT:** And equally strikable for the same exact
17 reasons; correct?

18 **MS. JELENCHICK:** Well, I think we can disagree on
19 that point, but I understand it's not part of the case.

20 **THE COURT:** Which part are we disagreeing on? It is
21 equally --

22 **MS. JELENCHICK:** Well, it --

23 **THE COURT:** It is equally strikable as undisclosed;
24 correct?

25 **MS. JELENCHICK:** No, I don't think that's correct.

1 We were responding to arguments that they put in, recognizing
2 that it was outside of discovery. And if --

3 **THE COURT:** So now I've stricken Mr. Gray's
4 information. And now you're no longer responding to anything
5 that was undisclosed.

6 And I've told you clearly that I'm striking Mr. Hoerig's
7 testimony, so let's not refer to that in our argument because
8 that's not on the table. It's something that you easily could
9 have put on the record during discovery, but you didn't. So
10 let's not confuse the argument by introducing and arguing
11 matters that I've clearly -- you asked this question -- it was
12 a good question -- I'm glad you did. So now let's not muddy
13 the waters by bringing in things that shouldn't be here.

14 **MS. JELENCHICK:** Okay.

15 **THE COURT:** Because if there was any grounds for this
16 undisclosed testimony to come in, was because it was in
17 response to their undisclosed testimony, but I have stricken
18 it. So, go ahead.

19 **MS. JELENCHICK:** Understood. And we don't need
20 Mr. Hoerig's declaration to make the point. The point is when
21 this unit is operating as intended, as constructed, as
22 detailed by the internal Assault AirRunner documents, their QC
23 testing, the effective operation of that one-way device is to
24 restrict the rotation of the running surface.

25 And it is only in the circumstance when the force

1 provided by way of the step or by way of the operation of the
2 unit exceeds that maximum frictional threshold.

3 And so there is a period of time where the one-way device
4 is operational.

5 And from a practical perspective, if they don't need the
6 one-way device to prevent the bidirectional movement, they
7 would take it out. They would not include an auxiliary
8 extraneous component if they don't need it.

9 What we've heard repeatedly from their expert,
10 Dr. Giachetti, is that he agrees that bidirectional movement
11 is precluded by the one-way bearing safety device and its
12 housing in combination with the rest of the system provided
13 that frictional capacity has not been reached.

14 So, in that window of time, that "substantially prevents"
15 limitation, for example, in Claim 25 of the '580 patent, is
16 satisfied.

17 Are there other periods of time in operation that a user
18 could use the device not as intended? Sure.

19 But that, therein, goes to the "sometimes infringes" is
20 sufficient to provide for a finding of infringement.

21 At a minimum, there's a fact issue as to how much or how
22 long that period needs to be to meet that claim limitation,
23 i.e., what is sufficient to restrict rotation to allow for
24 only one rotational direction of movement? And that's not
25 something, based on this record, that the Court can rule on if

1 for no other reason we know there's a period of time based on
2 the admissions of Assault's expert and their internal
3 documentation that there is a window where bidirectional
4 movement is precluded.

5 **THE COURT:** Okay. So, Counsel, I agree with you in
6 concept as to that there could be a triable issue of fact as
7 to whether this device does, in fact -- the accused devices
8 do, in fact, have a bidirectional movement as in, is what
9 we're seeing on this video a -- some kind of jerry-rigged
10 product that's not representative of the -- of what comes off
11 the assembly line regularly?

12 Is this an unusually strong man, such that this is not a
13 typical -- that such that this is not the typical operational
14 capacity of the device?

15 There could be all those triable issues, but I don't see
16 that you've put in anything into the record that would create
17 those triable issues.

18 So what have you done to create -- so, first of all, am I
19 just understanding your argument differently?

20 Is this not the triable issue you're saying exists?

21 Is it a different triable issue?

22 **MS. JELENCHICK:** No. I think it's at least that,
23 yes. And for --

24 **THE COURT:** Okay. And then so if it is, then what
25 have you put in the record to create that triable issue?

1 **MS. JELENCHICK:** We have the expert testimony of
2 Dr. Kim Blair.

3 **THE COURT:** Your experts admit that this goes in both
4 ways.

5 **MS. JELENCHICK:** No -- our expert admits that
6 when -- up until that frictional torque capacity has been
7 exceeded, the belt will not move in a bidirectional way.

8 Our experts -- our expert agrees with their expert on
9 that point.

10 **THE COURT:** Yes, but you haven't proved -- you
11 haven't put anything in the record. Yes, there's a
12 resistance; yes, you have to exceed a frictional torque -- but
13 you haven't put anything in the record that that frictional
14 torque or that force, the poundage of force would be -- have
15 to be so high that this is not a -- something that could be
16 done by regular people in the regular usage of the product.

17 Whereas they've put things in the record that children
18 have run this device in the opposite way. We have a video
19 that you haven't objected to where it seems like it's just a
20 man who's using it both ways. And clearly, he's exerting more
21 force going in the other way, but not in anything that is
22 unusual.

23 So this is what I'm asking you, which is, yes, it's
24 requiring more force in the other way, but I don't see you as
25 having put anything in the record that would establish that

1 this isn't the normal operation of the machine.

2 One way, it's running very easily and smoothly.

3 The other way, it's harder to do, but certainly doable in
4 the normal course of usage of the device if they -- if anyone
5 wanted to use it in that way.

6 Basically, it wouldn't take some kind of unus- -- someone
7 of unusual strength or capacity. It's not some kind of
8 freakish occurrence to make it go this way.

9 **MS. JELENCHICK:** Well, Dr. Blair's testimony and the
10 evidence that is cited on that point is directed to the
11 ability of a forcing it over that torque frictional threshold.

12 We specifically point in --

13 **THE COURT:** Yes, so tell me what he says. Because
14 aside from Hoerig, which I've excluded, I don't have any
15 numbers, or I don't think I have any numbers about what
16 that -- what the force it would take or any testimony that
17 it's an unusual force and not one that someone just couldn't
18 do because they wanted a harder workout.

19 **MS. JELENCHICK:** Okay. Well, we have the technical
20 specification for the particular one-way device that the
21 Assault AirRunner uses and that's --

22 **THE COURT:** So, at this point, I'm going to want you
23 to -- right now, I'm honing down on what you have pointed out
24 in the record. So I'm going to want you to not just vaguely
25 say, "We have this and we have this and we have this," and I

1 go back there and none of those things actually say that.

2 I'm going to want you to read language that shows me
3 you've created a triable issue of fact on the capacity of this
4 device to go both directions under fairly normal
5 circumstances.

6 **MS. JELENCHICK:** Sure. I'm just looking for the
7 citation. I believe it's ECF 34-7, which our colleague
8 Mr. Alex Neuworth submitted a declaration in support of this
9 motion identifying that --

10 **THE COURT:** Read it. Read the language.

11 **MS. JELENCHICK:** So this is in our statement of
12 facts, paragraph 1.

13 **THE COURT:** Are you reading from ECF 34-7, the
14 declaration there?

15 **MS. JELENCHICK:** Yes, I'm citing to Mr. Neuworth's
16 declaration at paragraphs 2 and 3, where -- where the
17 particular document that's cited ECF 37 -- 34-7 at 6, states
18 that the sprag-type freewheel that allows rotation in one
19 direction only. The freewheel prevents reverse rotation.

20 And that information was included as well in Dr. Blair's
21 pin chart.

22 **THE COURT:** Sorry. So when you're reading from
23 Mr. Neuworth's declaration -- so read me the specific language
24 that you're pointing to. Just start with "quote," and
25 then -- and "end quote" so I know where the quote leaves off

1 and where your argument begins. But I'm just going to ask you
2 just to do the reading.

3 **MS. JELENCHICK:** Sure. It's, quote, sprag-type
4 freewheel that allows rotation in one direction only. The
5 freewheel prevents reverse rotation.

6 **THE COURT:** Okay. Thank you. Anything else?

7 **MS. JELENCHICK:** We also have submitted evidence of
8 Mr. Simons, a former CEO of Assault's --

9 **THE COURT:** Again, get right to the evidence and tell
10 me where you're reading from and read it to me.

11 **MS. JELENCHICK:** Sure. And this is taken from our
12 statement of facts, paragraph 29, where Mr. Simons stated that
13 he had used --

14 **THE COURT:** Okay. So paragraph 29 of the Simons
15 declaration?

16 **MS. JELENCHICK:** Yes.

17 **THE COURT:** Okay.

18 **MS. JELENCHICK:** And that's at page -- and
19 specifically citing to page 64, line 17, through page 65,
20 line 8, where Mr. Simons, the former CEO of Assault identified
21 that despite his use of this unit hundreds of times, he's
22 never used it to run the reverse direction --

23 **THE COURT:** Okay. So read me the quote, please. So
24 where does the quote -- so give me the citation. Say,
25 "paragraph 29 of the Simons declaration at the Court filing

1 number" -- and then read me the quote, "quote," and then read
2 me the evidence that I'm supposed to be considering to see if
3 you've raised a triable issue of fact here.

4 **MS. JELENCHICK:** Well, Mr. Simons, quote, stated that
5 the product is designed to run forward.

6 And that's at page 64, line 17, through page 65, line 8,
7 which is paragraph -- which is included in our statement of
8 fact, paragraph 29 of Docket Number 150

9 **THE COURT:** Okay. Thank you.

10 So, so far you're not pointing to me pieces of evidence
11 that show that this product can't move both ways without some
12 unusual degree of force. So you've pointed to me evidence
13 what it was designed to do, and what -- how the sprags provide
14 resistance.

15 My original question to you is -- you haven't objected to
16 this video, your experts have agreed that the product works in
17 both ways, it rotates in both ways, assuming that the -- some
18 frictional force has been exerted.

19 And I'm looking for you having put into the record to
20 create this triable issue of fact that that level of force
21 exerted is unusual such that this device doesn't run both ways
22 in the normal course.

23 In the normal course of a gentleman choosing to run both
24 ways, and the normal course of children messing around at the
25 CrossFit exhibition, running the device in both ways just in

1 the way that mischievous children will do -- have you put into
2 the record anything that disputes it takes an unusual amount
3 of force to make it go the other way such that it's not the
4 normal operation of this device?

5 **MS. JELENCHICK:** Yes. And I will point you back to
6 the --

7 **THE COURT:** You don't need to point me back to
8 anything you've already said. Keep doing this. So if you
9 think there's something that shows that unusual degree of
10 force such that this bidirectional movement isn't the normal
11 operation of the device, it's some kind of He-Man just
12 basically forcing the device to go a way that it shouldn't,
13 then you can show me those. I haven't seen it in your
14 briefing, but I'm giving you the chance to show me them again
15 and highlight them for me.

16 So we're going to do it the same way: Give me the
17 citation and then read me the quotation clearly demarcating
18 the quotation by starting, "quote," and saying "end quote,"
19 when you're done.

20 **MS. JELENCHICK:** So I'm looking at ECF Number 34-7,
21 which is the specification sheet for the particular one-way
22 device that is included in the AirRunner.

23 And within the specification, it identifies the torque
24 threshold -- specifically it identifies the torque
25 thresholds --

1 **THE COURT:** I'm looking at the specification sheet.
2 Tell me where, and then say, "quote," and read me the
3 language.

4 I've gone over this procedure now three times, and I
5 expect to not have to say this again. And the reason I'm
6 asking for this is I want -- I don't want to hear what you
7 think the evidence says, I want you to show me the evidence,
8 so that I can decide what it says.

9 **MS. JELENCHICK:** My difficulty in quoting it is that
10 it's included in the chart, so I'm going to pop it up on the
11 screen here. So here on the light -- are you seeing on the
12 screen?

13 **THE COURT:** No. I'm just seeing somebody's desktop.
14 You don't need to show it to me, Counsel. Just do what I'm
15 asking you to do. Just read the language that you're
16 referring to.

17 **MS. JELENCHICK:** Well, on page 7 of ECF 34-7, it
18 identifies Step 1, the torque selection.

19 **THE COURT:** So start, "quote," so I know where the
20 quote starts.

21 **MS. JELENCHICK:** Okay.

22 Step -- quote, Step 1, Torque Selection. The
23 first step is to calculate the catalogue torque,
24 $T_{sub KN}$, of the unit to be chosen. The torque
25 is derived from the application nominal torque,

1 T sub app, multiplied by a service factor, paren,
2 S, period, F, period, paren, depending on the
3 function of the freewheel and working conditions.
4 Nominal torque of the application -- it provides
5 an equation. The catalogue torque will be --
6 another equation. SF, service factor, can be
7 read from the selection tables on page 8.

8 Note: All units shown in this catalogue can
9 support a maximum torque equal to two times the
10 catalogue torque indicated in the respective data
11 tables.

12 The following curve may be used as a guide to
13 determine the relationship between torque
14 transmitted and the number of cycles, paren,
15 applications of this torque, paren, the unit
16 would withstand in its life time. Average values
17 are shown.

18 And then on page 8 of this application, there are a
19 series of tables that identify --

20 **THE COURT:** Okay. And this material, what you've
21 read to me from the specification sheet just now, did you cite
22 that in your briefing?

23 **MS. JELENCHICK:** The specification sheet is cited,
24 not the specific language.

25 **THE COURT:** Is this specific language -- basically,

1 you just cited to the specification sheet in general, but
2 not -- so -- sorry -- are you saying you cited to all the
3 specification sheets and this is buried in there? Or are they
4 two different things?

5 **MS. JELENCHICK:** Well, we specifically cited to
6 language in the specification sheet which I read to you about
7 the sprag freewheel and how it -- right --

8 **THE COURT:** Just what you read right now.

9 **MS. JELENCHICK:** Right, that is not specifically
10 cited. That is material that Dr. Blair relied on and includes
11 in his expert report.

12 **THE COURT:** So it's not cited in your summary
13 judgment briefing?

14 **MS. JELENCHICK:** The specific quotation that I read
15 to you, no; but the document is, and Dr. Blair's opinions
16 based on this document are.

17 **THE COURT:** Okay. So, Counsel, I'm sure you're aware
18 of circuit case law, as am I, that says that trial courts have
19 no obligation to search through the whole entire record in
20 deciding motions for summary judgment.

21 You have to point to the information and let me know how
22 that creates a triable issue of fact.

23 So it being somewhere in Dr. Blair's report doesn't
24 suffice unless you've pointed to that in the briefing. Same
25 thing with it being somewhere in the specification sheets is

1 not going to suffice unless you've pointed to it in the
2 briefing. So thank you for pointing this language to me.

3 And now let me know how you think that it's been cited in
4 the -- in -- where in your summary judgment briefing you think
5 you've cited to it and drawn it to our attention.

6 **MS. JELENCHICK:** Sure. I think it's drawn to your
7 attention in Dr. Blair's claim chart, which is cited as
8 Exhibit A at page 20.

9 **THE COURT:** Okay. So page 20, Exhibit A.

10 So page 20, is this your opposition or your opening brief
11 of your cross motion?

12 **MS. JELENCHICK:** This is our opening brief.

13 **THE COURT:** Okay. Page 20 of your opening brief at
14 Exhibit A. Hold on. Okay. So I'm at page 20 of your opening
15 brief. Which line should I be looking at?

16 **MS. JELENCHICK:** I'm sorry. I'm talking about
17 page 20 of Exhibit A which was attached to our statement of
18 facts, which is the claim chart for --

19 **THE COURT:** Oh, no, no, no. I'm asking for where is
20 it in your briefing.

21 **MS. JELENCHICK:** It's on page 1 of our opening brief.

22 **THE COURT:** Okay. What line?

23 **MS. JELENCHICK:** Line 24.

24 **THE COURT:** Line 24, which reads: Despite actual
25 knowledge of infringement, SOF paragraph 2, Assault has failed

1 to redesign the accused products.

2 So I'll take a look at SOF 2.

3 **MS. JELENCHICK:** It's actually SOF 1, which is the
4 first part of line 24.

5 **THE COURT:** Oh, sorry. So, are manually, that
6 include a sprag, one direction only, SOF number 1.

7 So that's the language that you read to me earlier, not
8 this torque language.

9 **MS. JELENCHICK:** Right. But then in SOF 1 we cite to
10 these various claim charts that Dr. Blair relies on.

11 **THE COURT:** Okay.

12 **MS. JELENCHICK:** And in that claim chart, we cite to
13 page 9.

14 We also cite to page 16.

15 We cite to page 3.

16 **THE COURT:** Okay. So as far as the briefing goes,
17 though, you're not referencing this language?

18 **MS. JELENCHICK:** Only by way of the statement of
19 facts and the evidence submitted in support of our statement
20 of facts.

21 **THE COURT:** Okay. Thank you. Do you have anything
22 else? Again, I'm going to remind you, 'cause I'm giving you
23 this opportunity, but you want to use your own judgment as to
24 how you want to use this time here.

25 This language, even if it is -- even if it was proper for

1 the Court's consideration, just tells me that there's some
2 torque, and my question to you is, how have you raised a
3 triable issue that the torque, the force, the pounds of force,
4 what you -- the strength you need on this machine to make it
5 go the other direction is so strong that it's not in the
6 normal operation of the machine? So you've shown me that
7 there is some resistance, you show me that there's some
8 torque, no side is disputing that.

9 But I have asked you if you've put anything in the record
10 to show me that that torque is so great that the machine
11 doesn't effectively move the other way under normal
12 circumstances unless there's some He-Man or some unusually
13 strong person or unusual set of circumstances. And I'm asking
14 you the same question now for the third time. Do you -- have
15 you put anything in the record in that regard?

16 The only thing I see is something that has been stricken,
17 which is the Hoerig testimony on the -- whether it was -- I
18 can't remember if it was 34 pounds or 43 pounds of force, but
19 that's not in the record.

20 **MS. JELENCHICK:** Well, the specific torque that is
21 dictated by the operation of this unit is in the manual. But
22 I think what's important to note is that the claim limitation
23 does not require any quantifiable number.

24 **THE COURT:** Okay. So I think you're going on to
25 something else. Do you have any further answers to my

1 question? Is there anything in the record that I've
2 overlooked that shows the amount of force or the amount of
3 resistance or amount of poundage such that you're creating a
4 triable issue of fact that shows me that this device doesn't
5 move in both ways under normal circumstances?

6 **MS. JELENCHICK:** I believe I cited to what's been put
7 in, and I have nothing more to offer there.

8 **THE COURT:** Thank you. So you don't have anything
9 else?

10 **MS. JELENCHICK:** Right.

11 **THE COURT:** Okay.

12 **MS. JELENCHICK:** I do have one --

13 **THE COURT:** You can conclude your argument at this
14 point?

15 **MS. JELENCHICK:** Well, I have just one final comment.

16 Our affirmative motion was directed to the accused
17 AirRunner. Their cross motion for summary judgment is focused
18 on the operation of the Gray unit, and this quantification
19 issue that came up in the context of a different unit that
20 we're not even talking about. So at a minimum, that should
21 also create an issue of disputed fact as to what type of
22 force, if any, is necessary.

23 **THE COURT:** Agreed, agreed.

24 So if the testimony I'm seeing deals with one device and
25 there are three or four iterations of the treadmill here, what

1 have you put in the record to create that triable issue of
2 fact? Because I can see that the, you know, model 1 is
3 different from model 2 is different from model 4, but we have
4 admissions from you that as for the safety device, it's the
5 same across all the products. We have that in the record.

6 And then you haven't put anything to dispute that, oh,
7 actually, it's different across these devices, that model 1 of
8 the treadmill requires a much greater force and -- or they're
9 just essentially -- or that they're essentially different.
10 What have you put in the record to create that dispute?

11 **MS. JELENCHICK:** Okay. Well, I think it's all of the
12 evidence that we talked about, but Assault in --

13 **THE COURT:** No, no -- I don't know what all the
14 evidence -- like, what shows me that the -- so, remind me, how
15 many variations of this treadmill are we dealing with here?

16 **MS. JELENCHICK:** Well, I think we're in agreement
17 that the unit that is in our affirmative motion for summary
18 judgment is comparable. The experts agree. We agree with
19 that. My point is Assault, in opposition to our motion, cited
20 to a different unit. And, in fact, in their briefing, they
21 pointed to the arguments that they made about a different
22 unit. They cannot --

23 **THE COURT:** So what does it matter if they're all the
24 same, though?

25 **MS. JELENCHICK:** Well --

1 **THE COURT:** All the same for the parts that matter,
2 which is --

3 **MS. JELENCHICK:** For the purposes of our affirmative
4 motion. Assault's motion was predicated on the Gray unit
5 which has been stricken, and their opposition to our argument
6 as to how the "substantially prevents" limitation is met is by
7 referring to their expert, new declarations as to how the Gray
8 Declaration works.

9 **THE COURT:** Sorry. Sorry, I don't -- there's the
10 Gray declaration, has to do with the Court striking the
11 specific videos. But their -- I didn't read their whole
12 motion as being restricted to just that -- just that one
13 device. I read it as applying to all of them.

14 **MS. JELENCHICK:** So, I'll point you to page 2 of
15 their opposition brief.

16 **THE COURT:** Page 2. Sorry. So why are we looking at
17 page 2 of their opposition brief? I think that -- weren't you
18 saying that they're not moving for noninfringement -- that
19 they're only moving for noninfringement summary judgment on
20 one of the devices?

21 **MS. JELENCHICK:** Our understanding is that their
22 motion -- their motion for summary judgment of noninfringement
23 was based on the Gray Declaration. They do make statements by
24 way of new declarations that the Gray unit is the same as the
25 unit that's in our affirmative motion.

1 **THE COURT:** So, Counsel, so the Gray Declaration is
2 stricken. But I'm finding they have enough evidence to get
3 noninfringement summary judgment regardless.

4 So tell me, after the Gray Declaration is out, why they
5 don't have enough to get noninfringement summary judgment on
6 their -- on the whole range of their devices which you admit
7 they're substantially similar in the areas that matter for
8 what we're talking about here?

9 **MS. JELENCHICK:** We do not agree that arguments
10 predicated on the Gray treadmill are the same arguments
11 predicated on the unit that's part of our affirmative motion
12 for summary judgment. And their opposition to our motion,
13 their effort to demonstrate that there's not any infringement
14 is predicated on this normal operation of the unit that not
15 that much force is required to move the belt in the opposite
16 direction. And all of the evidence that they're citing in
17 their opposition brief to our affirmative motion is based on
18 the Gray exhibits and the Gray Declaration and the new Wallace
19 Declaration. They can't create -- they should not be able to
20 create -- to create an issue of disputed fact or to establish
21 summary judgment of noninfringement based on evidence that the
22 Court has struck.

23 **THE COURT:** Okay. And totally agree, but I think
24 they had ten other pieces of evidence. I'll read out loud to
25 you the evidence that I'm relying on, and then you let me know

1 what's wrong with those. Okay?

2 **MS. JELENCHICK:** Okay.

3 **THE COURT:** So, it's that Exhibit 17 or 18, the video
4 that you played, along with your concession that the part of
5 the treadmill that is relevant to the infringement analysis is
6 the same for each model and has remained identical since 2017.

7 And then we have CEO, LifeCORE, Simons testifying that he
8 has seen children run backwards on the accused products.

9 And then we have your own expert explaining that the
10 accused products can fully rotate in two directions,
11 explaining that any limitation of movement created by the
12 safety device does not change the fact that the running belt
13 will continue to move in the forward directions provided a
14 pushing or stepping effort by the user.

15 So, that's someone from your side of the case, Counsel.

16 We also have you conceding in your briefing that the
17 accused products' running belts can rotate fully in two
18 directions, assuming that this force is overcome, up
19 until -- quote, up until the maximal frictional capacity
20 between the running belt and the pulley is overcome with extra
21 force, end quote. And that's from your own statement of
22 facts.

23 Without any evidence in the record that this maximal
24 frictional capacity is something so great that it's
25 practically impossible under normal circumstances.

1 And then we have Mr. Bates's statement that the AirRunner
2 does go in both directions and that he uses the accused
3 products in reverse because it actually is a better workout.

4 And then we have your own expert, Dr. Blair stating he
5 had, quote, certainly seen videos where the belts of the
6 accused products move in both directions, and admitting that,
7 quote, with enough load, end quote, the belts can move in the
8 opposite direction.

9 So we have a lot of evidence here on both sides that
10 these belts can move in the opposite direction, certainly with
11 greater force, with overcoming resistance, with overcoming
12 some type of torque, but we have agreement on both sides that
13 they do move in both directions. And so I don't see this as a
14 motion or an opposition that's built just on the Gray device.

15 And as I said, I've stricken it, and I haven't considered
16 at all in my tentative analysis, and yet I still got here. So
17 tell me what's wrong with that.

18 **MS. JELENCHICK:** In all of the instances that you
19 pointed to, each of them contemplate jumping over the safety
20 device. And a certain amount of force that's required. A
21 person of ordinary skill in the art would understand that to
22 be the case based on the torque requirements that are included
23 in the specification sheet. There is no quantifiable force
24 requirement in the claim language. There's no quantifiable
25 force requirement in the Court's claim construction which --

1 **THE COURT:** That's right, the construction just says
2 it can't rotate in the other direction. And we have a device
3 that can.

4 **MS. JELENCHICK:** Right. But in all of the instances
5 that you pointed to, none of those say that it always works in
6 that way. They all contemplate jumping the safety device and
7 exceeding the, the torque and the frictional maximum capacity.

8 And so, again, I think we're back to where we started in
9 terms of there is a window of time when the safety device is
10 going to be locked in place unless and until that force
11 threshold is exceeded. And based on the Court's claim
12 construction, based on the evidence that's put in, there's an
13 issue of fact as to how much is enough.

14 **THE COURT:** Okay. Thank you, Counsel.

15 The Court's tentative hasn't changed.

16 Is there anything else you'd like to place on the record?

17 **MR. LEROY:** Very briefly, Your Honor, just as a
18 matter of housekeeping, if I may.

19 The torque specification, 34-7, is for the bearing, and
20 the torque specified in the table are for effectively breaking
21 the bearing.

22 There's no evidence or record in this case that I know of
23 that any treadmill does that. The issue, as Your Honor's well
24 aware, with respect to the claim language is whether the belt
25 can -- you know, what torque does it take to push the belt?

1 So the specification, we would assert, is not relevant to
2 the issue the Court's undertaking which, of course, concerns
3 the belt and not the rotation of the bearing itself.

4 That's all I had, Your Honor.

5 **THE COURT:** Okay. Thank you.

6 So, here's what we'll do. The Court will rule on some of
7 the housekeeping motions right now, and then it will set a
8 further date on calendar where you'll get your -- where you'll
9 get your ruling on this set of cross motions.

10 So the first motion to seal at Docket 145, you need to
11 establish a compelling reason to seal. Just the existence of
12 a con- -- of a protective order is not going to suffice. And
13 so Docket Number 145 is denied without prejudice on the motion
14 to seal.

15 Docket Number 148, denied for the same reason.

16 Docket Number 155, largely denied for the same reason
17 except for Exhibit K. There was some mention of sensitive
18 financial and consumer information, but the information in the
19 briefing provided doesn't suffice to meet that
20 compelling reason to seal.

21 Basically, you're going to need to work harder if you
22 want these documents sealed. We're talking about a first
23 amendment right of access to the courts that is abstract and
24 doesn't really impact the parties, but is something that the
25 Court has to be very careful in watching out for.

1 So while you guys may think it's no big deal to ask for
2 something like this, this is a big deal and you're going to
3 reach a -- you need a high hurdle, and when that hurdle's not
4 met -- because it's your burden -- there's going to be no
5 sealing.

6 Same thing with Docket 154, there's some loose assertion
7 of confidential business information related to strategies,
8 you're going to need to do a better job to meet that standard.

9 Same with 149.

10 So, basically, the Court's denying without prejudice the
11 motions to seal at Docket 145, 148, 149, 154, and 155.

12 The parties, I'm going to give you ten days to re-file
13 any motions to seal.

14 I'm going to deny these without prejudice because it may
15 be that you might be able to meet the standard, just have not
16 bothered to do so, and -- but if you fail to re-file within
17 ten days, these documents are going to hit the public record.

18 The -- with regard to -- there was a motion to strike at
19 Document Number 170. The Court is deny- -- on the grounds
20 that it was untimely, the Court is denying that motion to
21 strike.

22 And the Court is striking and not considering, as the
23 Court already mentioned, the undisclosed information that is
24 the Kenji Gray declaration and accompanying materials, as well
25 as the declaration of Scott Hoerig, and attached videos and

1 other materials both for the same reason, that they are
2 undisclosed information, either factual or expert in nature,
3 that was not exchanged during the fact discovery and expert
4 discovery period.

5 So what that leaves is -- I'm going to get you your
6 ruling and the reasons for the ruling on the cross motions for
7 summary judgment here in about a week.

8 Mr. Deputy, what's going on next Thursday?

9 **THE CLERK:** Your Honor, we do have Thursday, January
10 30th, at 9:30 a.m. available. There's only one other matter,
11 Baker v. City of San Diego.

12 **THE COURT:** Okay. And is Baker on at 9:30,
13 Mr. Deputy?

14 **THE CLERK:** Yes, Your Honor, for a status
15 conference regarding settlement.

16 **THE COURT:** Okay. We can set this one for 9:30 as
17 well.

18 Okay. And you'll get your ruling from me on this at that
19 time.

20 Anything else I can do for the parties today?

21 **MS. JELENCHICK:** No. Thank you, Your Honor.

22 **MR. LEROY:** No, Your Honor. I just -- at 9:30 on the
23 30th, is that a -- would that be another hearing? Or is
24 that --

25 **THE COURT:** You don't have to prepare for any

1 argument. I'm just going to give you my ruling on the record.

2 **MR. LEROY:** Okay. Thank you.

3 **MR. HALAN:** Thank you, Your Honor.

4 **THE COURT:** Thank you.

5 **THE CLERK:** Your Honor, that concludes the Court's
6 morning calendar.

7 *(Proceedings concluded at 10:36 a.m.)*

8 -oOo-

9
10 C E R T I F I C A T E

11 I, Cristine R. Gerongco, certify that I am a duly
12 qualified and acting Official Court Reporter for the United
13 States District Court; that the foregoing is a true and
14 accurate transcript of the proceedings as taken by me in the
above-entitled matter; and that the format used complies with
the rules and requirements of the United States Judicial
Conference.

15 Dated: January 29, 2025

16 /s/ Cristine R. Gerongco

17 Cristine R. Gerongco, CSR 13517
18 U.S. Official Court Reporter
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25

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

	)	
WOODWAY USA, INC.,	)	Case No.: 22-cv-00492-JO-BLM
	)	
Plaintiff,	)	San Diego, California
	)	
	)	Thursday, January 30, 2025
v.	)	
	)	Ruling on Motion for
LIFECORE FITNESS, INC.,	)	Summary Judgement Hearing
	)	
Defendant.	)	
	)	

**CERTIFIED
TRANSCRIPT**

TRANSCRIPT OF STATUS CONFERENCE
BEFORE THE HONORABLE JINSOOK OHTA
UNITED STATES DISTRICT COURT JUDGE

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THURSDAY - JANUARY 30, 2025

9:36 A.M.

P R O C E E D I N G S

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THE CLERK: Calling Matter Number 2 on calendar:
22-cv-0492, Woodway USA, Inc. v. LifeCORE Fitness, Inc. for a
ruling on the motion for summary judgment hearing.

THE COURT: Good morning, everyone.

We'll take appearances from plaintiff's side first.

MS. JELENCHICK: Good morning, Your Honor.

Kadie Jelenchick of Foley and Lardner LLP on behalf of
plaintiff Woodway USA, Inc.

Also on the line today is my colleague, Ashley Koley.

THE COURT: Good morning.

MS. KOLEY: Good morning.

MR. LEROY: Good morning, Your Honor. John LeRoy for
LifeCORE Fitness, Inc. from the firm Brooks Kushman.

With us today as well as co-counsel, John Halan.

THE COURT: Okay. Good morning, Counsel, on both
sides.

So the Court is going to issue its ruling at this point
on the cross motions for summary judgment.

And the Court is granting LifeCORE's motion on
noninfringement grounds and denying Woodway's motion on
infringement grounds because defendant stipulated on the
record at the prior court hearing that they would not be

1 pursuing the equitable conduct claim if there was a
2 noninfringement ruling. The Court is not going to reach that
3 issue based on the stipulation. Based on the stipulation and
4 the non-opposition by plaintiff, the Court is going to go
5 ahead and dismiss that claim -- again, on the voluntary
6 stipulation from defendant -- and dismiss that counterclaim,
7 rather, on the voluntary stipulation of defendant and the
8 non-opposition by plaintiff.

9 With regard to the summary judgment ruling, at issue here
10 is whether the defendant's line of treadmills literally
11 infringe three of plaintiff's patents for manual curved
12 treadmills.

13 The standards that the Court is governed by come
14 from 35 U.S.C. 271(a), which states:

15 "Whoever without authority makes, uses, offers to
16 sell, or sells any patented invention, within the
17 United States...during the term of the patent
18 therefore, infringes the patent," closed quote.
19 Quote, "Literal infringement requires that each and
20 every limitation set forth in a claim appear in
21 an accused product."

22 And this is from Fed Circuit case *Cross Medical Products*.

23 Even if one limitation is missing or not met as
24 claimed, there is no literal infringement.

25 This is drawing from *Riles v. Shell Exploration*, Fed

1 Circuit case, 2002.

2 As such, a court may grant summary judgment of
3 noninfringement where no reasonable jury could
4 find that at least one limitation is not found in
5 the accused device.

6 *Innovation Toys*, Fed Circuit, 2011.

7 As the parties are aware, the Court has already conducted
8 its claim construction and, therefore, we're on the second
9 step of the infringement analysis.

10 Plaintiff's infringement claims require the accused
11 products to feature a safety device that permits their running
12 belts to, quote, "freely rotate in," closed quote, one
13 direction while, quote, "substantially preventing," closed
14 quote, rotation in the other direction.

15 In conducting its claim construction analysis, the
16 Court -- after reviewing Woodway's prosecution history of the
17 asserted patents -- found "substantially prevents" to mean --
18 restriction to mean, quote, "restricts rotation to allow for
19 only one rotational direction of movement."

20 Thus, to succeed on its summary judgment motion of
21 noninfringement, the defendant must show that no reasonable
22 juror could find the accused products feature safety devices
23 that restrict rotation of the running belts to allow only one
24 directional -- only one rotational direction of movement.

25 Here, the Court finds that defendant is entitled to

1 summary judgment of noninfringement on all claims because the
2 Court finds that defendants have introduced evidence showing
3 that the accused products' running belts can rotate fully in
4 two directions under normal conditions. Thus, the accused
5 products do not meet the required claim limitation of allowing
6 for only one rotational direction of movement. And plaintiff
7 has not introduced facts in the record that create a triable
8 issue disputing those facts.

9 In reaching this conclusion, the Court relies on the
10 following pieces of evidence. All other pieces of evidence,
11 any objections to those, are overruled as moot.

12 The Court is going to address right now the pieces of
13 evidence that it relied on and any evidentiary objections that
14 came in with regard to those pieces of evidence.

15 First, Exhibit 17 contains a video of a person running on
16 an AirRunner where the runner is clearly able to rotate the
17 running belt with his own bodyweight in two full rotational
18 directions.

19 Plaintiff does not object to this evidence, and plaintiff
20 presents no evidence to dispute that the accused products --
21 sorry -- prevent -- presents no evidence to dispute that the
22 product featured in Exhibit 17 is an aberrant product or one
23 that has been tampered with.

24 Second, the Court relies on the declaration and
25 deposition testimony of one of the designers of the accused

1 products, Gregory Wallace. At his deposition, Mr. Wallace
2 stated that the accused products can be used in both
3 directions, that he had seen people use the accused products
4 in both directions in online videos, and that he himself had
5 used the accused products to run backwards.

6 Plaintiff objects to the above testimony on hearsay, lack
7 of personal knowledge, and speculation grounds.

8 The Court overrules these objections because, first,
9 Mr. Wallace's testimony is based on his own use of the
10 products and his own eyewitness experience of seeing the
11 videos.

12 And secondly, Mr. Wallace's testimony is not hearsay
13 because the testimony does not contain an out-of-court
14 statement being offered for the truth.

15 Third, the Court relies on the deposition testimony of
16 the former CEO of LifeCORE, Matthew Simons. When asked in
17 deposition if he had ever seen anyone run on the accused
18 products in the reverse direction, Mr. Simons replied, "I
19 have," and went on to explain that he had seen, quote, "little
20 kids messing around," closed quote, on the accused products by
21 running backwards on the devices.

22 Plaintiff objects to this testimony on relevance grounds,
23 which the Court overrules because Mr. Simons's testimony that
24 children -- he had seen children running backwards on the
25 products is relevant to whether these accused products can

1 rotate fully in both directions without extraordinary force
2 and that the accused products' running belts can be rotated
3 fully in both directions using a force that even children are
4 capable of generating.

5 Fifth, the Court relies on plaintiff's own concessions
6 that the accused products all function in similar ways with
7 regard to the operation of the safety device and the
8 resistance -- the amount of resistance that it does or does
9 not offer in terms of allowing or not allowing a bidirectional
10 rotation of movement.

11 Plaintiff's undisputed facts number 21 and 22 state that
12 the accused products feature a one-way bearing that restricts
13 rotation of the running belt to allow for only one rotational
14 direction of movement up until the maximum frictional capacity
15 between the running belt and the pulley is overcome with extra
16 force.

17 Plaintiff's undisputed fact number 14 states: The
18 underlying mechanics relevant to the infringement analysis of
19 the accused products are all identical.

20 By stating that the accused products all function in the
21 same way and that they only rotate in one direction until --
22 quote, "until the maximum frictional capacity," closed quote,
23 of the safety device is overcome, plaintiff concedes that the
24 accused products can rotate fully in both directions assuming
25 that there is that extra force.

1 With regard to that -- and that includes similar
2 concessions from plaintiff's expert, Dr. Blair, where she
3 makes statements, like "the accused products moved in the
4 other direction," quote, "with enough load on it."

5 While conceding that the direct -- while conceding that
6 there is rotation in both directions in the accused devices,
7 plaintiff also does not put facts into the record to create a
8 triable issue of fact that that force needed is so
9 extraordinary or so unusual that a triable issue of fact is
10 created, that the accused devices do, in fact, go in both
11 directions under normal conditions. They fail to present any
12 evidence that the forward force exerted needs to be abnormally
13 large or extraordinary such that the accused products would
14 not be able to rotate fully in both directions under normal --
15 as opposed to extraordinary and specifically extraordinary or
16 specifically-tampered-with circumstances.

17 There were several examples that plaintiff's counsel
18 pointed to when the Court asked during oral argument whether
19 there was anything in the record that established facts as to
20 the amount of force necessary to make the accused products
21 move in the second direction, and whether that amount of force
22 was so extraordinary and usual -- and unusual such that that
23 second direction of movement is not really a practical
24 reality.

25 The Court explored all of those additional instances

1 pointed to in the record as -- in addition to everything
2 submitted in briefing, and the Court finds that aside from the
3 stricken testimony that was stricken as undisclosed,
4 plaintiffs have not introduced any evidence in the record that
5 quantifies that amount of force or establishes that it is an
6 unusually large one such that the second direction of movement
7 is really a practical unreality.

8 On the plaintiff's side of the column, there's also the
9 additional piece of evidence in the form of deposition
10 testimony by Roger Bates, one of the owners of LifeCORE, who
11 states that the accused products' running belts do rotate
12 fully in both directions and that he uses the accused products
13 in reverse because it is actually -- it is, quote, "actually a
14 better workout."

15 The Court addresses whether Dr. Blair's expert testimony
16 creates a dispute of fact as to the bidirectional rotational
17 capability of the accused products.

18 While Dr. Blair's expert opinion purports to find that
19 the accused products substantially prevent rotation of the
20 running belts in a second direction, Dr. Blair's opinion fails
21 to create a triable issue of fact because Dr. Blair's opinion
22 is based on a -- either an incorrect understanding of the
23 claim construction or a deliberate misconstruing of the claim
24 construction.

25 Based on the plaintiff and Dr. Blair's recognition that

1 the accused products can rotate fully in both directions if
2 enough force is exerted on the belts, Dr. Blair's opinion is
3 properly understood to state that the "substantially prevents
4 limitation" is met because of the friction that occurs on the
5 belt until the frictional capacity of the safety device is
6 overcome.

7 However, the Court's claim construction forecloses such
8 an opinion because it requires the accused products to only
9 rotate in one direction of movement if infringement is to be
10 found.

11 Thus, because Dr. Blair's opinion rests on a faulty
12 understanding of the Court's claim construction, it is
13 insufficient to create a triable issue of fact as to the
14 bidirectional rotational capability of the accused products.

15 Because defendant's evidence establishes that the accused
16 running belts can fully rotate in two directions with greater
17 force but under normal conditions -- or normal and
18 nonextraordinary conditions -- and the Court's claim
19 construction requires the accused products to allow for only
20 one rotational direction of movement, the Court grants the
21 summary judgment of noninfringement because plaintiff has not
22 introduced evidence that disputes either one. They don't
23 dispute that the products do, in fact, move in both directions
24 nor do they create triable issues of fact that the force
25 required to make it do so is so great that, in fact, there is

1 no bidirectional rotation or bidirectional movement under
2 normal circumstances. For the reasons that I just
3 articulated, they fail to create that triable issue of fact.

4 The Court, at this point, will address plaintiff's
5 invocation of the "sometimes" infringement rule. And it is a
6 very similar argument to one that plaintiff also makes,
7 arguing that the accused products have two modes: one going
8 forward, where the user is using the treadmill to go in the
9 forward direction where there is an infringement because the
10 accused products do offer some type of resistance to going in
11 the other way; and a noninfringing mode where a user is using
12 the treadmill in the reverse direction.

13 However, the Court will address each of these separately,
14 although they do largely, pretty much seem to be the same
15 argument.

16 Plaintiff argues that the Court could still find that
17 defendant infringed plaintiff's patents because the accused
18 products sometimes embody the claim limitation when the
19 running belts of the accused products stop rotating in the
20 forward direction until the frictional capacity of the safety
21 devices are overcome.

22 While the federal circuit has held that an accused
23 product that sometimes but not always embodies a claimed
24 method nonetheless infringes, the applicability of this rule
25 is limited by the terms of the relevant claim construction.

1 And the Court is looking at the *Ferguson Beauregard* case,
2 Fed Circuit 2003, where the patent's claim language -- as
3 construed by the court -- requires a patented device to always
4 perform a certain function and accused device's mere
5 capability of performing that function is insufficient to
6 support a finding of infringement of that patented device.

7 Here, the Court finds that this doctrine is just plain
8 inapplicable because plaintiff has not created a triable issue
9 of fact that there is even "sometimes" infringement.

10 Even when a runner is using the accused devices to go in
11 the forward direction only, there is never a point at which
12 that runner is protected by a safety device that restricts
13 rotation to only allow for one direction of movement.

14 And that is how the Court has construed plaintiff's
15 patent.

16 When a runner is using the device in the forward
17 direction in accused -- in the accused devices, he or she is
18 protected by some other mechanism that resists movement, that
19 makes it harder to make it go in the other way unless some
20 deliberate exertional force is applied; however, that is not
21 the same thing as a safety device that restricts rotation so
22 that it cannot fully rotate in the other direction.

23 So the Court has looked at this doctrine and examined it
24 but finds that it is just plainly inapplicable because
25 basically you argue that it's good enough to sometimes

1 infringe, but the Court does not even find that there is a
2 "sometimes" infringement even when someone is using this in
3 the forward direction way. There is never a safety device
4 that will prevent rotation in the other way because, as we've
5 seen in the evidence, the device does go in the other
6 direction.

7 Secondly, the Court has a similar analysis with regard to
8 the arguments that plaintiffs make under -- with regard to the
9 arguments that plaintiffs make that the accused devices are
10 reasonably capable of satisfying the claim limitation. And
11 the Court has looked at the -- looked at and examined and
12 considered the *Hilgraeve* line of cases: 265 F.3d, 1336, 1343,
13 Fed Circuit case 2001.

14 And this doctrine generally states that regardless of an
15 accused products' capability of noninfringing modes of
16 operation, an accused product may still be found to infringe
17 if it is reasonably capable of satisfying the claim
18 limitations.

19 The -- this line of cases, or at least plaintiff's
20 argument, appears to be built on -- built on or inviting the
21 Court to conceptualize this as a device where there are two
22 modes of use of the accused devices: one in which the runner
23 is using it to go forward and one in which it's -- in which
24 the runner is using the accused device to go backwards and
25 arguing that when the device or the runner is in the forward

1 mode that there is an infringement -- that the device is
2 reasonably capable of infringement in that forward mode.

3 And again, the Court's analysis with regard to this
4 doctrine -- or this line of cases or this way of
5 conceptualizing -- the Court just finds that it's
6 inapplicable. Just like the Court found that you didn't have
7 a "sometimes" to apply the "sometimes not always" rule. The
8 Court finds that even if this is a case where there are
9 different modes, even in the forward mode, there is no
10 reasonable capability of infringement, because even in the
11 forward mode, that runner is never dealing with an
12 advice [sic] -- never dealing with a safety device that
13 protects them by preventing full direction [sic] -- full
14 rotational movement in the other direction.

15 They are -- there is some resistance there -- there's
16 some resistance until it is overcome, but there's no point at
17 which the runner using an accused device is protected by a
18 safety device that will fully prevent rotational direction of
19 movement going the other way.

20 And because that is how the Court has construed the
21 plaintiff's patents, that's the reason why the Court finds no
22 infringement here.

23 The Court has addressed the evidentiary objections to the
24 pieces of evidence -- to the pieces of defendant's evidence
25 that it is relying on. And like I said, all other -- all

1 other objections that plaintiff has made, it is either going
2 to be moot because subsumed in the summary judgment
3 standard -- as in the Court doesn't rely on them if they are
4 irrelevant or don't meet other admissibility standards
5 anyway -- and moot also because the Court didn't rely on it in
6 its ruling.

7 With regard to plaintiff's argument that there is
8 a -- there should be a finding of infringement based on the
9 accused -- based on the product literature or internal
10 communications of surrounding the accused devices, and the
11 Court has looked at the district court case that plaintiff has
12 pointed it to -- *Quality Edge v. Rollex* -- it is an
13 unpublished Western District of Michigan case -- and while
14 this case seems to indicate that at least one court considered
15 a defendant's advertising materials in conducting its
16 infringement analysis, the Court is relying on the law
17 established in Fed Circuit case *Mag Aerospace Industries v. BE*
18 *Aerospace*, Fed Circuit case 2016, which holds that it's the
19 actual physical manifestation on the functionality of the
20 accused products rather than the accompanying text or
21 documents that determines infringement.

22 And so, the plaintiff, in arguing that this literature or
23 the communication surrounding a product can serve the function
24 of raising this triable issue of fact, urges the Court to look
25 at the following evidence.

1 Plaintiff offers, one, a technical specification sheet of
2 the accused products that states: "The belt moves freely in
3 only one direction."

4 And, two, an internal email that purportedly shows the
5 defendant's former COO stating that the accused products'
6 designs only allow one-way rotation.

7 And, three, a copy of defendant's overseas product
8 quality testing sheets, which indicates manufacturers check
9 the running belts with hand pressure to ensure smooth rotation
10 and that the belt cannot move forward.

11 The Court finds that this evidence is insufficient to
12 support a finding of infringement because, as was the case in
13 the *Mag Aerospace* case, the undisputed evidence here shows
14 that the accused devices -- shows that the accused products'
15 running belts can rotate fully in more than one direction and
16 thus do not embody the "substantially prevents" claim
17 limitation in the way that the Court has construed that claim
18 limitation, which is to restrict rotation to allow for only
19 one directional [sic] -- only one direction of rotation.

20 So you're going to -- this is the ruling of the Court.

21 You're going to get a short written order from me that
22 simply states summary judgment is -- of noninfringement -- is
23 granted for defendants, is denied for plaintiffs, and that the
24 equitable conduct claims are dismissed based on stipulation of
25 the defendants and non-opposition of the plaintiffs.

1 As -- I believe that I double-checked this during oral
2 argument. The parties' agreement that this, in conjunction
3 with the plaintiff's stipulation, takes care of all the issues
4 raised, because while there were issues that were not raised,
5 such as infringement or noninfringement of other claim
6 limitations, the Court need not reach those for this finding
7 of noninfringement purposes -- for this finding of
8 noninfringement. So, basically, if one claim limitation has
9 not been infringed, the Court doesn't need to go into whether
10 a third or fourth or fifth claim limitation has or has not
11 been infringed.

12 So does either side have any questions before we conclude
13 this hearing?

14 **MS. JELENCHICK:** Your Honor, Kadie Jelenchick on
15 behalf of Woodway. No questions but one comment. Woodway's
16 infringement was predicated on 35 U.S.C. 271(a) and (b).

17 And we understand your Court's ruling today as it relates
18 to "substantially prevent" to also address the 271(b)
19 allegations even though the summary judgment briefing was not
20 directed in particular to the indirect infringement
21 allegations.

22 **THE COURT:** Thank you, Counsel. The Court will look
23 back at the transcript and if it was -- if it misstated a
24 subpart or if there was some error there, then we'll address
25 that in the short written ruling.

1 Anything else?

2 **MR. LEROY:** Hi, Your Honor. This is John LeRoy for
3 LifeCORE Fitness.

4 As a matter of housekeeping with respect to the dismissal
5 of LifeCORE's claim for inequitable conduct, our understanding
6 is that that's dismissed as moot, not on the merits I believe
7 Your Honor indicated con- -- with our stipulation, you don't
8 need to reach the merits of that claim in view of the
9 noninfringement ruling of the Court?

10 **THE COURT:** It was your stipulation that the Court
11 need not reach that.

12 So I'm happy to --

13 **MR. LEROY:** Correct.

14 **THE COURT:** -- insert "as moot," but it was on your
15 stipulation and a non-opposition, and the Court is dismissing
16 that counterclaim.

17 **MR. LEROY:** Thank you, Your Honor.

18 **THE COURT:** Thank you.

19 Anything else I can do?

20 **MS. JELENCHICK:** Nothing from plaintiff.

21 **MR. LEROY:** Nothing for the defense.

22 **THE COURT:** Okay. Thank you, everybody.

23 Matter's concluded.

24 **MR. LEROY:** Thank you.

25 **MS. JELENCHICK:** Thank you.

1 **THE COURT:** Oh, sorry. Just -- and this is just for
2 technicalities. It's -- the Court also orders the vacating of
3 all trial dates -- all pretrial dates -- and upon issuance of
4 that short written order, it will also be closing the case.

5 Thank you.

6 **MS. JELENCHICK:** Thank you.

7 **MR. LEROY:** Thank you, Your Honor.

8 **MR. HALAN:** Thank you.

9 *(Proceedings concluded at 10:09 a.m.)*

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11
12 C E R T I F I C A T E

13 I, Cristine R. Gerongco, certify that I am a duly
14 qualified and acting Official Court Reporter for the United
15 States District Court; that the foregoing is a true and
16 accurate transcript of the proceedings as taken by me in the
above-entitled matter; and that the format used complies with
the rules and requirements of the United States Judicial
Conference.

17 Dated: January 31, 2025

18 /s/ Cristine R. Gerongco

19 _____
20 Cristine R. Gerongco, CSR 13517
U.S. Official Court Reporter