

Trials@uspto.gov
571-272-7822

Paper No. 57
Entered: March 26, 2025

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
Patent 11,465,005 B2

Record of Oral Hearing
Held: February 18, 2025

Before MEREDITH C. PETRAVICK, NEIL T. POWELL, and
AMEE A. SHAH, *Administrative Patent Judges*.

IPR2024-00083
Patent 11,465,005 B2

APPEARANCES:

ON BEHALF OF THE PETITIONER:

ANDREW B. TURNER, ESQ.
REZA R. ESFAHANI, ESQ.
Brooks Kushman, P.C.
150 W. Second Street
Suite 400N
Royal Oak, MI 48067-3846
248-226-2707 (Turner)
aturner@brookskushman.com (Turner)

ON BEHALF OF THE PATENT OWNER:

RICHARD J. McKENNA, ESQ.
KADIE M. JELENCHICK, ESQ.
SARAH E. RIEGER, ESQ.
JACK T. CARROLL, ESQ.
Foley & Lardner, LLP
777 East Wisconsin Avenue
Milwaukee, WI 53202
414-319-7324 (Jelenchick)
kjelenchick@foley.com (Jelenchick)

The above-entitled matter came on for hearing on Tuesday, February 18, 2025, commencing at 1:00 p.m. EST, via video-conference.

IPR2024-00083
Patent 11,465,005 B2

P R O C E E D I N G S

- - - - -

JUDGE PETRAVICK: Good afternoon. I am Judge Petravick, and with me on the panel today is Judge Shah and Judge Powell. We're here for an oral argument in IPR2024-00083. Could I know who's here from the Petitioner?

MR. TURNER: Hello. This is Andrew Turner for Petitioner. And I'm joined with Reza Esfahani also for Petitioner.

JUDGE PETRAVICK: Thank you. And for the Patent Owner?

MS. JELENCHICK: Good afternoon. This is Kadie Jelenchick of Foley & Lardner LLP on behalf of Patent Owner. On the line is my law partner, Richard McKenna. And then here on video is Ms. Rieger and Mr. Carroll, also of Foley & Lardner.

JUDGE PETRAVICK: Great. Thank you. So we have given each side 60 minutes to present, and I believe Patent Owner also has a LEAP request, so they will get a extra 15 minutes. We will hear from Petitioner first.

Petitioner, how much time would you like to reserve for rebuttal?

MR. TURNER: I'd like to save 30 minutes for rebuttal, please.

JUDGE PETRAVICK: Okay. So you'll have 30 minutes in your main argument, and then I'll give you a warning. And we will save 30 minutes for rebuttal.

IPR2024-00083
Patent 11,465,005 B2

1 MR. TURNER: Well, we have the --

2 JUDGE PETRAVICK: And --

3 MR. TURNER: -- LEAP time, too, correct?

4 JUDGE PETRAVICK: You have a LEAP time too?

5 MR. TURNER: Yeah. We submitted a request for Reza. I
6 believe we received confirmation that it was --

7 JUDGE PETRAVICK: Okay. Did not get that email, but we
8 will add 15 minutes to your time that you're saving -- so you're saving 30
9 minutes for rebuttal and 45 minutes for reply -- or, I'm sorry, 30 minutes for
10 your main argument and 45 minutes for your reply?

11 MR. TURNER: We'd like to have 45 for our main argument
12 and then 30 for rebuttal, please.

13 JUDGE PETRAVICK: All right. That's better. Okay. 45
14 minutes for your main argument. 30 minutes for Petitioner.

15 And from Patent Owner, how much time would you like to
16 reserve?

17 MS. JELENCHICK: Patent Owner will reserve 15 minutes for
18 rebuttal.

19 JUDGE PETRAVICK: 15 minutes. So you have 60 minutes
20 for your main argument?

21 MS. JELENCHICK: Correct. Thank you.

IPR2024-00083
Patent 11,465,005 B2

1 JUDGE PETRAVICK: With that, we will hear from Petitioner
2 first, unless anybody else has any other issues that need to be brought up
3 before the start of argument.

4 MS. JELENCHICK: Nothing from Patent Owner.

5 JUDGE PETRAVICK: All right. Mr. Turner, you can begin
6 when ready.

7 MR. TURNER: All right. Thank you. Good afternoon, Your
8 Honors.

9 JUDGE PETRAVICK: Okay.

10 MR. TURNER: Can you hear me okay?

11 JUDGE PETRAVICK: Yes I can.

12 MR. TURNER: Okay. Great. So, again, this is Andrew
13 Turner for Petitioner. I'm joined by Reza, and we'd like to thank you for
14 granting his LEAP request. If we go to slide 2. Slide 2, this is an overview
15 of the topics we plan to discuss today. I will discuss topics 1 through 6.
16 And Reza will discuss topics 7 and 8. Now we plan to discuss the topics in
17 series. But if Your Honors prefer to jump to a specific section, we could do
18 that.

19 JUDGE PETRAVICK: We don't have any preference.

20 MR. TURNER: Okay. Great. So we'll get started. So first, if
21 we go to slide 4, this is the Woodway patent family. Now, this is a large
22 patent family. Not all of it is shown on this slide. The challenged patent is
23 the '005 Patent, which is annotated in yellow. There's some related patents

IPR2024-00083
Patent 11,465,005 B2

1 that are annotated in gray that we challenged in previous IPRs. All four of
2 these challenged patents are directed to similar claim scope, which is a
3 curved manual treadmill with a safety device to permit unidirectional belt
4 movement.

5 An example of this similarity in claim scope was seen in the
6 prosecution of the '005 Patent, where the examiner asserted that the '005
7 Patent claims were not patently distinct from claims of four different
8 Woodway patents from this family, including the '884 Patent. And then he
9 issued non-statutory double-patenting rejections. So that's in Exhibit 1002,
10 pages 207 to 208. And then Woodway filed four internal disclaimers to
11 overcome these rejections. And that's the same Exhibit 1002, pages 259 to
12 266.

13 So then I'd also like to give a brief update on the related
14 litigation. Your Honors issued final written decisions in the related IPRs last
15 October, found many of the challenged claims unpatentable. Now, after
16 these final written decisions, Woodway elected to drop the '005 Patent and
17 claims found unpatentable in the other patents from the related litigation. So
18 the Court issued an order to dismiss certain claims, defenses, and
19 counterclaims, including dismissing Woodway's infringement allegations
20 with respect to the '005 Patent with prejudice. So we submitted that order as
21 Exhibit 1055. Now, more recently, the Court granted LifeCORE's motion
22 for summary judgment of non-infringement, and then the Court closed the

IPR2024-00083
Patent 11,465,005 B2

1 case. So that is Exhibit 2087. But also Woodway recently appealed that
2 decision. So that's Exhibit 2088.

3 So then we'll go to the next slide, slide 5. So this lists the two
4 different grounds that we're going to discuss today. These are from the
5 petition. These two grounds, the first one has Socwell as a primary
6 reference: Socwell, Magid, and Sclater. And this is the same combination
7 that we applied in some of the prior IPRs. And the Tolkien reference is a
8 similar -- is -- excuse me, Tolkien is a new reference. But then the
9 secondary reference Sclater is old. We've discussed prior. So here we've
10 annotated the Socwell ground in purple with the purple box.

11 Now, if we go to the next slide, slide 6, here we see -- these are
12 the independent claims. And Patent Owner does not dispute that the Socwell
13 combination discloses all limitations of these independent claims. So there's
14 no dispute there. However, they do dispute the rationale to combine. If we
15 look at the dependent claims, here the only limitation, excuse me, the Patent
16 Owner disputes with the dependent claims with respect to the Socwell
17 grounds is the plurality-of-bearings limitation, which we have annotated in
18 purple.

19 So now if we go back to slide 5, slide 5 again, ground 2, which
20 is Tolkien plus Sclater that we have annotated in blue. For this ground, if
21 we look at the independent claims, Patent Owner does dispute that the
22 Tolkien ground teaches the running belt limitations, which is annotated in
23 blue. Now, if we look at the dependent claims again for the Tolkien

IPR2024-00083
Patent 11,465,005 B2

1 ground, Patent Owner disputes that the combination teaches a front shaft
2 coupled to the frame. And then for claim 6, Patent Owner disputes that the
3 combination of Tollkien and Sclater teaches a plurality of bearings coupled
4 to the frame. So those are the disputed limitations that we're going to
5 discuss today.

6 If we go to the -- sorry, the next slide, slide 8. So on the left we
7 have some excerpts from the petition quoting Woodway's complaint from
8 the related litigation. So in their complaint, Patent Owner states that the
9 challenged patents teach a revolutionary manual treadmill. And this
10 treadmill was the first of its kind when it was introduced in 2009.

11 However, as explained by Petitioner's expert Dr. Giachetti, the
12 Patent Owner's manual treadmill technology was well known. And Dr.
13 Giachetti included a state-of-the-art section in his first declaration, and he
14 showed some of these prior art manual treadmills, such as the Schmidt
15 patent, which is Exhibit 1009, which issued over 100 years ago. And then
16 also the Socwell patent and the Tollkien German patent, which are shown
17 here. And those are the primary references we're going to discuss today.

18 Now, if we go to slide 10. Now, treadmills have safety
19 concerns. Users may be injured by falling off the treadmill while mounting
20 or dismounting or while using it. Now, some of the prior art patents, such as
21 Chickering and Socwell, explain such safety concerns and the underlying
22 problems in their background sections. For example, such falls may be

IPR2024-00083
Patent 11,465,005 B2

1 caused by the treadmill belt moving in an unexpected direction due to low
2 friction conditions of the running surface.

3 Now, professional organizations have produced standards to
4 address such safety concerns. For example, the ISO standard, which we
5 have reproduced on the slide here. It provides guidance regarding treadmill
6 stability and requires treadmills to have handrails and foot rails. However,
7 some users may choose not to use these features, so the handrails, foot rails
8 do not completely solve this treadmill safety concerns.

9 So now if we skip ahead to slide 17, one-way bearings and
10 clutches were also well known. Now, again, Petitioner's expert Dr. Giachetti
11 explained the state of the art with respect to mechanical clutches, including
12 one-way bearing clutches, in his first declaration. Dr. Giachetti also
13 explained different modes of operation for one-way clutches, such as
14 overrunning, indexing, and backstopping.

15 Now backstopping, which we have some -- reproduced on this
16 slide -- backstopping mode is relevant to our discussion today, and this is
17 where the clutch is used to prevent reverse rotation of a drive shaft. Now,
18 clutch manufacturers such as Emerson distributed catalogs to their
19 customers, and we've included one of those, Exhibit 1018 here. Now, if we
20 look at, Dr. Blair, who is Patent Owner's expert, we asked him about the
21 Emerson catalog in his deposition, and he explained how a POSA, a person
22 of ordinary skill in the art, would have used such a catalog. For example,

IPR2024-00083
Patent 11,465,005 B2

1 they would use it to educate themselves on the principles of operations of
2 these clutches.

3 Now, if we go to the next slide, slide 18, Dr. Giachetti, again,
4 Petitioner's expert, he explained that commercially available and
5 inexpensive sprag-type clutches require less design and qualification work to
6 implement. Now, for example, this Emerson catalog includes numerous
7 commercially available clutches along with their specifications such as
8 torque, capacity, and dimensions. Now, since Emerson already specced out
9 these clutches, it reduced the amount of time a POSA would have needed to
10 design and qualify or evaluate their design.

11 Now, again -- so on the right we have Patent Owner's expert,
12 Dr. Blair. His testimony confirms these points. For example, during his
13 deposition, he explained how a POSA would have used the Emerson catalog
14 to select a clutch. First they would identify a problem, and a clutch is a
15 potential solution. And then second, they would call up the tech support line
16 for the catalog for the company, and then they would help them confirm
17 their clutch selection.

18 So go to the next slide, slide 19. Now, again, Dr. Giachetti -
19 this is Petitioner's expert - he explained that a POSA would have considered
20 a sprag-type one-way clutch bearing for exercise equipment application,
21 such as a treadmill. The Emerson catalog, they describe the industry served
22 and field applications for its clutches. For example, on the right, they note
23 fitness, exercise equipment, and roll conveyors. And Dr. Blair's testimony

IPR2024-00083
Patent 11,465,005 B2

1 on the left, again, Patent Owner's expert, he stated that a POSA would
2 certainly be drawn to this product for exercise equipment because it calls it
3 out as an application in the catalog.

4 So now on slide 20, Dr. Blair, again, Patent Owner's expert,
5 confirmed that a POSA would have used the Emerson catalog to find a
6 solution to the treadmill instability problem of preventing motion in the
7 unintended direction.

8 So with that, we'll jump to slide 22. So this is the prosecution
9 history of the '005 Patent. The prosecution history confirms that the safety
10 device limitations were the focus for patentability. Now, the original
11 dependent claims 9, 12, and 20 required -- they included additional features
12 of the safety device. They required that one of the 1st and 2nd elements
13 substantially surrounds the other of the 1st and 2nd elements. Now, in the
14 first office action, the examiners rejected the independent claims, but
15 indicated that these dependent claims 9, 12, and 20 were allowable. So in
16 response, Woodway amended the independent claims to include this
17 allowable subject matter as shown on the slide -- excuse me, which
18 illustrates how examination focused on the safety of this.

19 So now if we go to slide 24, we're going to talk about the level
20 of skill in the art. So this shows side by side the Petitioner's proposed level
21 and the Patent Owner's proposed level. Now, both proposed levels reference
22 education and industry experience. Now, Petitioner disagrees with Patent
23 Owner's proposed skill level because it requires education or industry

IPR2024-00083
Patent 11,465,005 B2

1 experience. And we believe this is too broad. Patent Owner has a number
2 of arguments against Petitioner's proposed level. However, in their Patent
3 Owner response, they admit that the analysis throughout this response would
4 not change whether Petitioner or Patent Owner's level of ordinary skill in the
5 art was adopted. And that's Patent Owner response on page 4.

6 And, again, these are the same skill levels the parties proposed
7 in the prior IPRs. And in the final written decisions for these related IPRs,
8 the Board merged these proposals. And they included a POSA level. So,
9 Your Honors, you included a skill level that included both the education
10 requirement and the industry experience. However, the industry experience,
11 in the level was that proposed by Patent Owner. So if the Board chooses to
12 take a similar approach here and adopt a -- kind of a merged skill level, that
13 would be fine with Patent Owner -- or excuse me, Petitioner, and that would
14 not change our analysis.

15 So now, we'll discuss claim construction. So slide 26. This
16 lists the terms construed by the District Court. So the parties propose these
17 constructions for substantially prevents and safety device in line with the
18 District Court's constructions. In the institution decision for this case, the
19 Board noted that its analysis is consistent with District Court's construction
20 without expressly construing the terms. So if the Board adopts a similar or -
21 - so if the Board adopts the Court's constructions here, this would not affect
22 Petitioner's analysis in the Petition.

IPR2024-00083
Patent 11,465,005 B2

1 On another note, in the '580 Patent final written decision, which
2 is IPR2023-00836, Your Honors declined to construe “substantially
3 prevent,” stating, we need not construe this claim term as there is no related
4 dispute. And that was in the final written decision in page 13. Likewise, the
5 parties do not dispute the substantially prevent term here. So if the Board
6 takes a similar approach, that would be fine with Petitioner.

7 Slide 27. Now, Patent Owner also makes some arguments that
8 imply a claim construction. And this is similar argument to what we saw in
9 the prior IPRs. Here, Patent Owner argues that in this -- so this is on the top
10 left side of the slide. Patent Owner argues that the '005 Patent, the 'plurality
11 of bearings' is only described and depicted as lying below and supporting the
12 running belt. Thus, Patent Owner's argument implies a construction that
13 requires all bearings, all of the plurality of bearings to be located vertically
14 below and supporting the running belt.

15 Now Your Honors correctly declined to construe bearings in the
16 related IPRs. For example, the '745 Patent final written decision, Your
17 Honors reasoned that the plain language of claim 1 recites only that there are
18 bearings coupled to the treadmill frame. There is no further consideration of
19 where in relation to the belt the bearings must be. Similarly, the sole
20 requirement of the plurality of bearings limitations here for the claims is that
21 they are simply coupled to the frame. Now, the claims also require at least
22 one bearing to support the running belt, but the parties do not dispute that the
23 prior art discloses at least one bearing that supports the belt.

IPR2024-00083
Patent 11,465,005 B2

1 Now, bearing is a broad term. Dr. Giachetti included a
2 definition for bearing in his 1st declaration in paragraph 65, which is
3 reproduced on the slide. He provided a definition, that A bearing is a
4 general term for mechanical element that provides a means for low-friction
5 movement between two surfaces. A bearing is a common mechanical
6 element, and it does not cease to be a bearing based on its location. The
7 term does not require one element to be located above or have a weight-
8 bearing relationship with another element.

9 Now, the -- excuse me. All right. So the '005 Patent describes
10 other bearings that do not have such relationship. For example, the one-way
11 bearing assembly in figure 36 that's reproduced on the slide does not provide
12 a weight-bearing relationship with the belt, and its bearings are arranged in a
13 circular pattern around a shaft.

14 All right. So no questions. We'll keep moving on. So now,
15 this is the Socwell ground. Here, if we go to slide 29, this is claim 6, which
16 is representative of claims 13 and 16. And Patent Owner does not dispute --
17 or Patent Owner does dispute that the Socwell ground teaches a plurality of
18 bearings. And, again, the sole requirement of the plurality-of-bearings
19 limitations is that they are coupled to the frame.

20 Okay. If we go to slide 30, the parties do not dispute that
21 Socwell's deck 56 is a bearing that supports the running belt. Patent Owner
22 argues Socwell's rollers 98 are not bearings because they are not located
23 below the belt. But as discussed above previously, this is based on an

IPR2024-00083
Patent 11,465,005 B2

1 incorrect claim construction. The rollers 98 are mechanical elements of a
2 treadmill that provide a means for low-friction movement. Therefore, they
3 are bearings.

4 Rollers 98 and -- in the deck 56 are coupled to the frame by
5 cover members, which is shown in green in the annotated figure. These
6 cover member -- the cover member attaches to the frame using bolts that
7 extend through apertures in the deck 56, which is also shown in the
8 annotated figure. Now, again, claims 6, 13, and 16 only require one bearing
9 partially supports the running belt, and the deck 56 undisputedly discloses
10 this.

11 So now we'll move on to slide, let's see, 31. This is the
12 Tolkien grounds. And first, here's our independent claim 1 which is
13 representative of independent claims 9 and 15. And, again, this claim is
14 similar to what we've discussed in the past. The independent claim, directed
15 to a manually powered treadmill requires a frame, a front running belt
16 pulley, a rear running belt pulley; a running belt at least partially supported
17 by at least one of the front running belt pulley, and at least one of the rear
18 running belt pulley, wherein the running belt includes a running surface, at
19 least a portion of which is curved. So that's the disputed limitation here.
20 The independent claims also require a safety device and wherein clause
21 similar to what we discussed with the prior IPRs.

22 Now if we go to slide 33, Tolkien describes the belt 12 as an
23 assembly that includes a belt and cross members. So if we look at the quote

IPR2024-00083
Patent 11,465,005 B2

1 on the bottom right from paragraph 22 of Tollkien, the belt 30 - so here
2 Tollkien's referring to his figure 3 embodiment - is analogous to the belt 12
3 shown in figure 1, in particular, comprising numerous cross members. So
4 here he's describing this belt as an assembly that comprises cross members.
5 Now, the belt assembly at the top, the belt assembly also includes, a belt
6 attached to the cross members 10, so the cross members are used based on
7 reference numeral 10. The running surface is formed by cross members 10
8 that are transverse to the direction of movement.

9 All right. So if we go to slide 35, these are the dependent
10 claims. So this is dependent claim 2, which is representative of claim 3.
11 The only difference here is claim 2 is directed to a front shaft. Claim 3 is
12 directed to a rear shaft. But the arguments are pretty much the same for
13 both. So Patent Owner disputes that Tollkien discloses a shaft coupled to
14 the frame, and adapted to support a pulley.

15 So now if we look at slide 36, this has some annotated figures
16 from Tollkien. Figure 1 of Tollkien. And just a note on figure 1 in the
17 patent. It shows half of the treadmill and it's described as the other half is a
18 mirror image. So we -- our expert provided a mirror image for our analysis.
19 So that's what's shown in the top left.

20 Figure 1 of Tollkien discloses a shaft which is annotated front
21 shaft extending through the center of the front roller 2, so that's shown on
22 the left side of that image. And a shaft -- a rear shaft extending through the
23 center of the rear roller 2. Now, figure 3 of Tollkien, this illustrates the

IPR2024-00083
Patent 11,465,005 B2

1 treadmill in a vehicle embodiment. This illustrates the shaft extending from
2 opposing ends of the roller 32 and through holes formed in the frame to
3 couple the roller to the frame for support. Thus, Tollkien discloses a shaft
4 coupled to the frame and adapted to support a pulley. So now if we go --
5 jump to slide 39, this is claim 6, which is representative of claims 13 and 16,
6 Patent Owner disputes that Tollkien discloses a plurality of bearings coupled
7 to the frame.

8 Now slide 40, Tollkien discloses in paragraph 20 that, the
9 runners 14 placed underneath the running surface prevent the belt from
10 bouncing when in use. So here these runners are annotated on the right side
11 of the screen in this image. Now, Dr. Giachetti -- again, this is Petitioner's
12 expert. Dr. Giachetti explained that a POSA would have understood that
13 these runners are mounted and fixed to the frame, and the bearings are
14 mounted for rotation about the axles and relative to the frame to provide
15 rolling engagement with a continuous belt.

16 Now, on the next slide, slide 41, this is -- during Dr. Giachetti's
17 deposition, he explained that Tollkien's disclosure of runners 14 placed
18 underneath the running surface to prevent the belt from bouncing when in
19 use means -- so this is what's highlighted in green on the left -- top left. This
20 -- that excerpt from Tollkien means that the runners are attached to the
21 treadmill underneath the running surface and that they provide an upward
22 force to the running surface when the person is on it. Dr. Giachetti further
23 explained that a POSA would have understood that the runners are mounted

IPR2024-00083
Patent 11,465,005 B2

1 to the frame. Otherwise, it wouldn't provide the upward force for what
2 Tolkien is talking about in terms of bouncing.

3 All right. So next we're going to skip ahead to slides, let's see,
4 43 and discuss the rationale to combine. So here first the rationale to
5 combine for ground 1, this is combining Magid with Socwell. So these
6 arguments are pretty much the same as presented in the prior IPRs. And so
7 first for ground 1 here, as described previously in slide 10, the treadmill
8 safety concerns were well known and addressed in the background section of
9 prior art references such as Chickering and Socwell. Regarding Socwell, we
10 have figure 2 of Socwell reproduced on the right side of the slide, and with a
11 curved running surface, forward motion is likely to occur if a user were to
12 step onto the rearward end of the running surface -- which is -- we have that
13 annotated with a red arrow -- causing the foot to unexpectedly move towards
14 the lower portion of the treadmill. Where a user adjusts the frame to a
15 generally horizontal position using the front elevating mechanism, as shown
16 in this figure, this unexpected motion would be exacerbated and result in a
17 fall.

18 Now, Magid -- on the left side, Magid discloses a one-way
19 clutch, which he calls a control means 6 -- or 6 prime, operatively coupled to
20 a front shaft or rear shaft of a treadmill to permit only unidirectional belt
21 movement. And for this embodiment. Magid discloses a ratchet-and-pawl
22 combination. Now, Dr. Giachetti explains, it'd be obvious to a POSA to
23 combine the manual treadmill topology of Socwell with the one-way clutch,

IPR2024-00083
Patent 11,465,005 B2

1 as disclosed in Magid. Now, Magid discloses its ratchet gear embodiment as
2 an embodiment, which suggests unidirectional control means could be a
3 different mechanism in another embodiment.

4 So that leads us to the next slide, slide 45. This is the
5 combination -- the rationale to combine Sclater with either the Socwell
6 Magid combination or Tolkien. It's basically -- our analysis is pretty much
7 the same for both. It's very similar for both. Now, Sclater is a reference
8 source book that describes over 2,000 different mechanisms. The preface of
9 the document describes itself as a book of different solutions for different
10 machine-design problems. Sclater identifies such problems with ratchet-
11 and-pawl clutch mechanisms such as noise, which is shown on the left side
12 of the screen in the excerpt from page 316, and durability.

13 Now, Dr. Giachetti, again, this is Petitioner's expert, explains
14 this durability concern is because the pawl may skip past a few teeth before
15 backstopping. Whereas, the sprags are always in contact with the rings and
16 do not need to find a discrete gear tooth to stop. That was in Exhibit 1003,
17 paragraphs 142 to 144.

18 Now, Sclater at 320, discloses applications for sprag-type
19 clutches, including a backstopping clutch for conveyor that permits rotation
20 in one direction only. And Dr. Giachetti, again Petitioner's expert, explains
21 that a POSA would have understood that conveyors and treadmills operate
22 the same. Accordingly, a POSA would have considered a sprag-type one-

IPR2024-00083
Patent 11,465,005 B2

1 way clutch bearing for an exercise equipment application, such as a
2 treadmill.

3 All right. And with that, if there's no questions on this section,
4 I will hand it off to Reza. I guess just to confirm, you guys, you can still
5 hear me okay?

6 JUDGE SHAH: Judge Petravick, you're on mute.

7 JUDGE PETRAVICK: Thank you. Yes, we can hear you.
8 And we have no questions on that section.

9 MR. TURNER: Okay. All right. Thank you. I'll hand it off to
10 Reza.

11 MR. ESFAHANI: Good afternoon, Your Honors. Given the
12 nature of the motion to exclude the Patent Owner's motion, we believe
13 unless the Board deems best otherwise to respond to it on our rebuttal. If
14 there is no request now, we can just move on to the next section. So moving
15 on to the secondary consideration section. All right.

16 So as an initial matter for secondary consideration, case law is
17 clear that secondary considerations of non-obviousness simply can't
18 overcome a strong prima facie case of obviousness. Here, as explained by
19 my colleague, Mr. Turner, this is a strong case of prima facie case of
20 obviousness because the purported invention is simply predictable use of a
21 prior art element according to established use. In fact, as Mr. Turner
22 explained for one of the grounds, Patent Owner does not even dispute that

IPR2024-00083
Patent 11,465,005 B2

1 the combination discloses all of the claim elements except for one element in
2 three of the dependent claims.

3 In any event, for secondary considerations to accord substantial
4 weight to secondary consideration of non-obviousness, the patentee bears
5 the burden of showing that the evidence of secondary consideration have a
6 nexus to the claims. An owner may carry this burden of showing nexus, you
7 know, two different ways. It can show nexus via a presumption of nexus, or
8 it can show nexus by showing that the evidence is the direct result of the
9 unique characteristics of the claimed invention. Here, the Patent Owner
10 does not attempt to show nexus using -- arguing that the evidence is a direct
11 result of the unique characteristics of the claimed invention, and instead,
12 Patent Owner relies solely on presumption of nexus.

13 But to show presumption of nexus, Patent Owner must show
14 two elements, that the objective evidence is tied to a specific product, that is
15 that the product embodies the patent claims, and, two, that the product is the
16 invention disclosed. And that is that they are coextensive. At most, in its
17 papers, Patent Owner has offered evidence that establishes that its curved
18 manual treadmills embody the claimed invention. But Patent Owner offers
19 no evidence or argument that its products are coextensive with the claimed
20 invention. Federal Circuit law is clear that co-extensiveness is a separate
21 requirement. In fact, if you look at the Patent Owner's briefings, it -- the
22 entirety argument relies on providing a chart, demonstrating that its line of

IPR2024-00083
Patent 11,465,005 B2

1 curved manual treadmills embody its purported invention and then simply
2 saying that they are coextensive without any more.

3 This is especially improper in this case, where -- on slide
4 number 53, especially in this case, where Patent Owner itself devotes nearly
5 two pages of its response to outlining unclaimed features. For instance, it
6 explains that its CURVE XL offers a larger running surface. Its CURVE 3.0
7 contains upgraded software and other sophisticated electronics. Similarly,
8 CURVE FTG has different levels of resistance or CURVE trainer is quieter,
9 more acceleration, and along with other ones. But more importantly, in this
10 case, Woodway has separately applied for and received a patent on some of
11 these unclaimed features, including the toothed belt which Patent Owner
12 incorporates into the at-issue patent by reference.

13 All of the products that Woodway contends embody the
14 claimed invention incorporate this patented toothed belt. And Woodway
15 markets them as such. In fact, Woodway itself states that these toothed belts
16 facilitate synchronization and make the curve possible. This is precisely the
17 situation that the Federal Circuit addressed in the Fox Factory case where it
18 found that the patent claim is not coextensive with a product that includes a
19 critical unclaimed feature that is claimed by a different patent and that
20 materially impacts the product's functionality. In this case, this toothed belt
21 materially impacts the product's functionality because based on Patent
22 Owner's own manual, it facilitates synchronization. And it is a critical

IPR2024-00083
Patent 11,465,005 B2

1 unclaimed feature because, again, according to Woodway's own
2 documentation, it makes the curve possible.

3 So with this, Patent Owner has not showed that its CURVE
4 manual line of treadmills are coextensive with its purported inventions. And
5 as I mentioned earlier, it offers no evidence that the evidence is the result of
6 the unique characteristics of the invention. The -- as my colleague
7 mentioned, the prosecution history of '005 Patent, along with Patent Owner
8 response and some of the supporting documents, suggest that the safety
9 feature is the novel feature or the unique characteristics of the claimed
10 invention, but there's simply no argument that there is a nexus between that
11 characteristic and the offered evidence. Without any evidence, there is
12 simply no nexus between Patent Owner's offered evidence and the claims.
13 And that's fatal to the secondary consideration, or rather it renders the
14 evidence irrelevant.

15 But even if we were to look at it, we will see that even
16 considering the offered evidence, it still makes for a weak secondary
17 consideration. For instance, when Patent Owner -- in support of the
18 commercial success argument, Patent Owner simply provides gross sales
19 figures. And these gross sales figures in vacuum, divorced from any market
20 share, doesn't provide any understanding of how successful the product
21 actually is. And this is what the Federal Circuit and the Board have
22 consistently found that gross sales number or bare sales numbers make for a
23 weak, secondary consideration evidence of success.

IPR2024-00083
Patent 11,465,005 B2

1 Patent Owner does say that prior to 2014, it had 100 percent of
2 the market share. But even in doing that, Patent Owner unduly narrows the
3 relevant marker and calls the market the curved manual treadmill market,
4 even though the market is actually the manual treadmill market. In fact, the
5 '005 Patent itself states on it that the claimed invention relates to area of
6 treadmills and more specifically to the area of manual treadmills.

7 So Patent Owner's sales evidence or gross sales numbers are
8 simply untethered to any unique characteristics of the claimed invention.
9 Patent Owner also offers, via a declaration of its director of sales and
10 marketing, a list of articles that have featured Patent Owner's products. But
11 none of the articles mentioned the safety device or the CURVE treadmill's
12 ability to move in one-way direction. They are mostly pertinent to things
13 like the product's smooth and sturdy.

14 Patent Owner also argues copying as evidence of secondary
15 consideration and in support, again via the declaration of its director of sales
16 and marketing, states that every curved manual treadmill in the market is a
17 copy, even though Mr. Weber, its director of sales and marketing, has
18 admitted that he has no technical background, he has not looked at the inner
19 components of the competing treadmills, and he's simply not qualified to
20 opine on infringement or copying.

21 Patent Owner also points to a Petitioner draft manual as
22 evidence of copying. But again, case law is clear that copying requires
23 evidence of efforts to replicate a specific product. Here, there is no specific

IPR2024-00083
Patent 11,465,005 B2

1 product or attempt to replicate it by the Petitioner or anybody else. Patent
2 Owner also points to a litigation pre-dating the '005 Patent. But, again, that
3 litigation concluded before the '005 Patent had even issued, renders that
4 irrelevant.

5 And, finally, there is no other objective considerations. Patent
6 Owner simply says that they were the first to introduce the curved manual
7 treadmill or commercialize the first manual treadmill. But it -- the -- but for
8 failure of others to establish -- to be in evidence of secondary consideration,
9 Patent Owner must show that others skilled in the art failed but attempted to
10 make it. There is no such evidence here. Relatedly, without failure of
11 others, the simple passage of time between the dates of some of the cited art
12 and the date of Patent Owner's introduction of the CURVE manual treadmill
13 is not evidence of non-obviousness. And with that, if the Board doesn't have
14 any questions, we would like to reserve the remainder of time for rebuttal.

15 JUDGE PETRAVICK: I have no further questions. Judge
16 Powell? Judge Shah?

17 JUDGE SHAH: I have no further questions. Thank you.

18 JUDGE POWELL: None for me.

19 MR. ESFAHANI: Thank you.

20 JUDGE PETRAVICK: Great. You used up 40 minutes of your
21 time. So you will have 35 minutes left for your rebuttal.

22 MR. ESFAHANI: Yeah.

IPR2024-00083
Patent 11,465,005 B2

1 JUDGE PETRAVICK: All right. Patent Owner, we will hear
2 from you now. I just want to -- I know that you've marked your slides as
3 confidential, and I just want to let you know that we have closed the public
4 line at the beginning of this hearing. So there is no public access, and you
5 are free to talk about your confidential information.

6 MS. JELENCHICK: Thank you, Your Honor. To the extent
7 that we do get into any financial information, we intend to identify that in
8 advance on the record for the ease of potential sealing any reliance on that
9 evidence down the road in the final written decision or otherwise, including
10 in the transcript of these proceedings.

11 JUDGE PETRAVICK: Thank you.

12 MS. JELENCHICK: You're welcome.

13 On behalf of Patent Owner, I would like to address one
14 preliminary issue before we dive into talking about the deficiencies of
15 Petitioner's obviousness challenge to the '005 Patent. Patent Owner
16 continues to object to the Board's jurisdiction over this proceeding and
17 renews its arguments as detailed in papers 6 and 9 and as stated during the
18 conference before Your Honors on May 7th of 2024, relating to the statutory
19 provision identifying who constitutes a person.

20 In Patent Owner's view and as briefed previously, the Petition
21 filed by LifeCORE Fitness, Inc., did not confer jurisdiction on this Court
22 because LifeCORE Fitness, Inc., was no longer in existence at the time these
23 proceedings were filed. And the case law supports the proposition that 35

IPR2024-00083
Patent 11,465,005 B2

1 U.S.C. Section 311(a), identifying who is entitled to file a petition, is
2 jurisdictional in nature.

3 Turning now the virtual podium over to my colleague, Ms.
4 Rieger, she intends to address the requisite level of skill in the art, claim
5 construction regarding plurality of bearings and the Socwell, Magid, and
6 Sclater references, including Petitioner's arguments regarding the deficient
7 combination of the same. Mr. Carroll intends to discuss the Tolkien
8 reference as well as Patent Owner's secondary indicia of non-obviousness,
9 and to the extent, relevant considerations pertinent to the motion to exclude.

10 With that, Ms. Rieger?

11 MS. RIEGER: Thank you, Kadie.

12 And good afternoon, Your Honors. As said, my name is Sarah
13 Rieger. I'm also counsel for Patent Owner Woodway in this matter. And
14 there are several topics that I want to address with respect to the challenged
15 patent claims as Ms. Jelenchick just indicated. Starting briefly with defining
16 the level of ordinary skill in the art, if we go to slide 9, you'll see that the
17 parties dispute certain issues related to this particular definition. Now, it has
18 been long established under Federal Circuit law that a person of ordinary
19 skill in the art is a hypothetical person who is not only presumed to be aware
20 of all pertinent prior art but also has certain qualifications that are considered
21 ordinary in the relevant field.

22 Here, Petitioner argues for a heightened set of qualifications for
23 a POSA, or person of ordinary skill in the art, including a bachelor's degree

IPR2024-00083
Patent 11,465,005 B2

1 in mechanical engineering, at least one year of machine design experience
2 related to this broad category of power transmission equipment, and "a
3 demonstrated understanding of exercise biomechanics, including
4 anthropometry." Now, all of those are required under Petitioner's definition
5 for someone to qualify as a person of ordinary skill in the art. Patent Owner,
6 on the other hand, argues for a much more straightforward set of
7 qualifications whereby a POSA may have either a bachelor of science in
8 mechanical engineering or at least two years of experience in the treadmill
9 industry, in addition, of course, to the presumption that they are aware of all
10 pertinent prior art.

11 Looking at Petitioner's proposal, there are several problems that
12 justify rejecting it, with respect to their proposed set of qualifications. The
13 first is that at least some aspects of Petitioner's definition have actually
14 already been rejected by the Board in proceedings dealing with related
15 patents. You heard Mr. Turner refer to some of these earlier, but in IPR
16 2023-849, for example, the Board expressly found that this knowledge of
17 exercise biomechanics requirement is not the required qualification for a
18 POSA. That finding in that particular aspect of the Board's POSA definition
19 in the prior cases remains correct here, particularly when the Petitioner has
20 failed to provide any actual evidence to support any different conclusion.
21 But the second problem with Petitioner's proposals regarding the level of
22 ordinary skill in the art is that Petitioner's definition would affirmatively
23 exclude certain of the named inventors from qualifying as a POSA.

IPR2024-00083
Patent 11,465,005 B2

1 As Patent Owner's expert Dr. Blair testified both in his
2 declaration and at his deposition, at least some of the named inventors of the
3 '005 Patent do not have bachelor's degrees in mechanical engineering. Now,
4 Petitioner has made some token efforts to dispute that issue, but it hasn't
5 actually presented any evidence to the contrary, likely because it cannot.
6 That is just a fact that there are inventors on this patent who do not have
7 mechanical engineering degrees. But such a degree is nonetheless required
8 by Petitioner's definition, in addition to those other vague and unsupported
9 requirements. And having that in the definition would be improper, as it
10 would mean that the inventors themselves could not conceivably qualify as
11 even people of ordinary skill in the art, let alone as people with the
12 heightened level of skill that you would typically see with an inventor.

13 Now, Petitioner tries to downplay this issue as irrelevant,
14 particularly in its papers. But controlling case law establishes that the level
15 of ordinary skill in the art should be defined to include the inventor. I mean,
16 Phillips itself expressly says that, when determining that -- when you are
17 determining how a POSA understands the claims, the starting point is based
18 on the well-settled principle -- or the well-settled understanding, excuse me,
19 that inventors are typically persons skilled in the art of the invention and that
20 patents are addressed to and intended to be read by others of skill in the
21 pertinent art. That language is included here on slide 9. So definitions that
22 exclude inventors are almost never correct. And this is the primary issue
23 with the POSA definition, not only that is proposed here by Petitioner, but

IPR2024-00083
Patent 11,465,005 B2

1 also with the entirety -- the remainder of the POSA definition that was
2 adopted in the prior IPRs.

3 You heard Petitioner's counsel reference that earlier, but to be
4 clear, Patent Owner does not agree with and does not believe that that POSA
5 definition should be adopted wholesale here, because the definition suffers
6 from the same problems as Petitioner's proposal, in that it requires a
7 bachelor's degree in engineering, which would exclude certain of the
8 inventors. But setting that aside, why does the POSA definition matter?
9 Well, the use of Petitioner's improperly heightened POSA definition would
10 constitute error here, as it would skew the analysis of Petitioner's proposed
11 obviousness grounds, including specifically the motivation to combine
12 arguments that Petitioner presents.

13 An actual person of ordinary skill in the art, rather than one of
14 exceptional or more than ordinary skill, just would not be motivated to make
15 Petitioner's proposed combinations and modifications, because they would
16 lack the extraordinary knowledge or extraordinary formal education and
17 training needed to bridge the gaps in Petitioner's arguments. By artificially
18 inflating the level of ordinary skill, however, Petitioner can argue that a wide
19 variety of information is now somehow suddenly within the knowledge of a
20 POSA, and then try to use that to backfill the gaps in his motivation to
21 combine arguments. You saw some of that even in the opening arguments
22 made by Counsel. This is improper, and it underscores the importance of
23 correctly articulating the level of ordinary skill in the art, not allowing that

IPR2024-00083
Patent 11,465,005 B2

1 definition to slip into heightened levels of skill that are inappropriate for that
2 analysis. Unlike Petitioner's proposed level of ordinary skill, Patent Owner's
3 definition does not have these problems and therefore should be adopted.

4 But with that out of the way, I would like to discuss some
5 additional issues related to construing the claims from the perspective of one
6 of ordinary skill in the art and more specifically construing those claims that
7 include the term plurality of bearings. Now, the basic contours of the
8 parties' dispute regarding the plurality of bearings term is outlined starting
9 on slide 13, which we can go to now.

10 Now, despite how Petitioner characterizes the issues in reply
11 and even in its oral argument here today, both parties here are actually
12 asserting that the plain and ordinary meaning applies for this term. We just
13 disagree on what that plain and ordinary meaning entails. As seen here on
14 slide 13, while the Petitioner asserts that there is no requirement for any
15 specific location or weight-bearing relationship for the bearings element,
16 Patent Owner asserts in reliance on both intrinsic evidence and new extrinsic
17 evidence that Petitioner itself has identified in reply that the plurality of
18 bearings are defined by their functional relationship with other moving parts,
19 here the running belt. And the intrinsic evidence establishes that Patent
20 Owner's understanding is correct.

21 If we turn now to slide 14, you'll see where the plurality of
22 bearings term is introduced in the specification. As shown here, the bearings
23 are expressly described based on their structural and functional relationship

IPR2024-00083
Patent 11,465,005 B2

1 relative to the running belt. As described here, the running belt 16 contacts
2 and is supported in part by the bearings 208. And bearings 208 are
3 configured to rotate, thereby decreasing the friction experienced by the
4 running belt 16 as the belt moves. And the associated figures demonstrate
5 that this description refers to an arrangement in which the plurality of
6 bearings shown in red in annotated figure 5 are positioned below the running
7 belt shown in blue, and support or bear at least some of the weight of that
8 running belt. That is all consistent with Patent Owner's understanding of the
9 plain and ordinary meaning of a plurality of bearings. And nowhere in the
10 specification is a different configuration described or shown for the plurality
11 of bearings.

12 Now, you heard Petitioner's counsel earlier mention something
13 called a one-way bearing assembly. And he argued that the presence of this
14 mechanism in the specification somehow vitiates the specification's
15 consistent discussion of the plurality of bearings element, which is separate.
16 That's simply incorrect. As used in the specification, that one-way bearing
17 assembly language is an expressly defined term. Specifically, the
18 specification states that the one-way bearing assembly is a motion-restricting
19 element that is configured to permit rotation of at least one of the front and
20 rear shaft assemblies and hence the running belt in only one direction.

21 Now, that express definition contrasts with how the term
22 plurality of bearings or how the term bearings in general are used. Those
23 terms are not defined anywhere in the specification, and thus they have to be

IPR2024-00083
Patent 11,465,005 B2

1 given their plain and ordinary meaning as provided by the context in which
2 they are used, not this separate definition that the authors of the patent gave
3 to the one-way bearing assembly element, which is a completely separate
4 element.

5 Now, with respect to plurality of bearings, the fact that the
6 specification is consistent regarding its use of that term is important. The
7 Federal Circuit has repeatedly explained that the plain and ordinary meaning
8 of a term is not determined in a vacuum. Rather, it is the meaning one of
9 ordinary skill in the art would ascribe to the -- to a term when read in the
10 context of the claim specification and prosecution history. How a term is
11 used in the specification and how it is not used has to be taken into account
12 when determining the plain and ordinary meaning of those terms.

13 Now, Petitioner's understanding ignores the specification and is
14 overbroad and contradicted by the intrinsic evidence. So for example, if we
15 turn to slide 15, the specification never uses the term bearings when
16 describing structures that are positioned above or in line with the running
17 belt and that do not bear any of the belt's weight, even though its structures
18 of that nature are described repeatedly in the specification. Instead, in
19 situations in which structures are positioned above or in line with the
20 running belt, and especially when those structures are meant to exert a
21 downward force to hold the running belt in an arced shape, those structures
22 are referred to consistently as rollers or wheels and are described as part of a

IPR2024-00083
Patent 11,465,005 B2

1 belt retention system. The term bearings is never used in that context, as
2 Petitioner's expert actually admitted during his deposition.

3 Two examples of these belt retention systems are included on
4 slide 15 for reference, but this choice of language is important. As the
5 Federal Circuit held in Chicago Board, which is cited in our papers, there is
6 a general presumption that different terms have different meanings, because
7 the specification differentiates between bearings positioned below and
8 bearing the weight of the running belt and rollers or wheels that are
9 positioned above to exert a downward force on the running belt. Bearings
10 should be understood to exclude structures like those rollers, wheels, or
11 other structures that would be positioned above the running belt and exert a
12 downward force. Doing so importantly does not improperly import
13 limitations from the best specification into the claims. This is just the way
14 that claim construction and determination of the plain and ordinary meaning
15 of claim terms is supposed to be done. You must consider how the terms are
16 used in the context of the specification and other intrinsic evidence. And it's
17 contrary to law to do anything else.

18 Now, Petitioner argues that Patent Owner's understanding of the
19 plain and ordinary meaning of plurality of bearings has already been rejected
20 in other proceedings dealing with related patents. You heard them mention
21 that earlier. That argument is fundamentally flawed, however, as discussed
22 on slide 16, which we can go to now. The Board's prior construction of
23 plurality of bearings in the 849 IPR did not have the benefit of the additional

IPR2024-00083
Patent 11,465,005 B2

1 evidence that Petitioner itself introduced in this case on reply. Specifically,
2 the Board in the 849 IPR rejected the idea that bearings should be defined
3 based on its function and position relative to the running belt. But the
4 dictionary definitions Petitioner itself submitted in Exhibit 1051 confirmed
5 that the term bearings is properly defined based on function and relative
6 position.

7 Specifically, bearing is defined according to its relationship
8 with other components, i.e., as a component on which another element
9 revolves, slides, et cetera, while the root word bear is defined by its weight-
10 bearing function. Both of these definitions are fully consistent with and
11 support Petitioner's understanding of the plurality of bearings term, and that
12 understanding should be adopted as the plain and ordinary meaning.

13 Now, why does the correct understanding of plurality of
14 bearings matter? Well, if we turn to slide 18, which provides a summary of
15 the disputed elements in this proceeding, you can see that the parties dispute
16 whether this element is shown in at least ground 1 of the Petition, which
17 depends on Socwell. Now, there are also several other disputes in this case,
18 which are summarized on this slide as well, but in the interest of time, I
19 won't go over them in detail at this time. But if we turn to the actual grounds
20 presented in the Petition, I would like to start with a discussion of Socwell.
21 Here, possibly more than with any other reference, the importance of claim
22 construction comes into particular focus.

IPR2024-00083
Patent 11,465,005 B2

1 If we turn to slide 20, one of the primary disputes with respect
2 to Socwell is whether it discloses a plurality of bearings as required by
3 dependent claims 6, 13, and 16. Now, each of dependent claims 6, 13, and
4 16 depends from an earlier claim in the patent and further recites that the
5 claimed treadmill further comprises a plurality of bearings coupled to the
6 frame, at least one bearing of the plurality of bearings configured to at least
7 partially support the running belts. And while it's not presented on this slide
8 here, that language is shown for your convenience on slide 7, if you would
9 like to refer to it.

10 Now, as Petitioner acknowledged, the Petition identified
11 Socwell's rollers 98 as all but one of the recited bearings, the other bearing
12 being this curved deck 54, which is a single unitary structure.
13 But as Patent Owner explained in its papers, in particular, Socwell's rollers
14 98 do not constitute a plurality of bearings, as that term is actually used in
15 the patents. Rollers 98 do not bear any of the weight of the running belts
16 and are not even positioned below the running belt as required by the
17 specification. Rather, they are positioned above belt 16 and exert a
18 downward force to hold the belts in an arced shape. And, as I previously
19 explained in connection with claim construction, the specification clearly
20 distinguishes between structures like rollers 98, which are characterized as
21 part of a belt retention system or braking system, and bearings. Bearings
22 support the weight of the running belts. Rollers and wheels do not.

IPR2024-00083
Patent 11,465,005 B2

1 While several exemplary belt retention systems are described in
2 the specification, none of them use the term bearings to describe the
3 structure that -- to describe a structure that exerts a downward force on the
4 belt to hold it in a preferred shape. Importantly, Dr. Blair, Patent Owner's
5 expert, provided a fulsome analysis comparing Socwell's disclosure of
6 rollers 98 and the associated belt, securing assemblies 94, to the belt
7 retention roller and wheel assemblies in the specification. And he confirmed
8 that a POSA would consider those to be structurally and functionally
9 comparable structures. Therefore, like the roller and wheel assemblies,
10 Socwell's rollers 98 cannot be bearings under the plain and ordinary
11 meaning of that term as informed by the intrinsic evidence.

12 Turning to slide 21, Petitioner's arguments regarding the claims
13 requirement that at least one bearing be configured to at least partially
14 support the running belt, and particularly their focus on the fact that that
15 phrase references only one bearing, can't change the fact that Socwell still
16 fails to disclose a plurality of bearings, as that term is defined and used in
17 the challenged patent. The intrinsic and extrinsic evidence all make clear
18 that the plain and ordinary meaning of the term bearings has functional and
19 structural components that are incompatible with the features of Socwell's
20 rollers 98. And without rollers 98, the only structure Petitioner identifies as
21 a bearing, as they admit, is deck 54.

22 But there's only one deck 54. There is not a plurality of them.
23 And the Federal Circuit has explained that the use of the word plurality in

IPR2024-00083
Patent 11,465,005 B2

1 the claims means that there must be at least two of the relevant structures.
2 Here, with only one deck 54, Socwell cannot possibly disclose a plurality of
3 bearings. And in short, these issues are fatal to Petitioner's arguments
4 regarding dependent claims 6, 13, and 16 in ground 1. But more broadly,
5 ground 1 in its entirety must fail because Petitioner has failed to establish the
6 requisite motivation to combine Socwell with either of the two secondary
7 references Petitioner cites.

8 First, for every claim challenged in ground 1, Petitioner argues
9 that a POSA would modify Socwell in view of Magid or Magid or Magid,
10 however we want to pronounce it. To add Magid's unidirectional control
11 means six or six prime to provide some aspects of the safety device
12 limitation required by all challenge claims. Those arguments, however, fail
13 to establish any viable motivation to combine Magid and Socwell as argued.

14 Now, if we turn to slide 23, a POSA considering Magid would
15 immediately recognize that it is directed to a two-belt therapeutic walker
16 device that is fundamentally different from and has features and objectives
17 that are incompatible with the exercise-focused running treadmill disclosed
18 in Socwell. Now, as seen here on this slide, Magid's two-belt design and the
19 focus on therapeutic use would be readily apparent to a POSA even from
20 just its title and abstract. And Magid's specification only makes the
21 fundamental differences between Magid and Socwell even more apparent.

22 For example, if we turn to slide 24, Magid's primary objective
23 is to provide a device with two independently moving belts that is uniquely

IPR2024-00083
Patent 11,465,005 B2

1 suited for therapeutic use or more generally for use by people with
2 uncoordinated foot movements. By Magid's own terms, its two-belt design
3 is meant to prevent the action of a user's left foot from influencing the
4 actions of their right foot, or vice versa, by giving each foot its own belt.
5 But not only that, it also criticizes prior art treadmills that use only a single
6 belt as being unsuited for that use. With a single belt that both feet contact,
7 moving one foot will necessarily impact the other and cause substantial risk
8 to the intended users of Magid's device.

9 But that single belt design criticized in Magid is exactly what
10 Socwell teaches. We turn to slide 25. You can see that Socwell discloses a
11 single-running belt design like those criticized in Magid. It also teaches that
12 its device is intended solely for exercise, not for therapeutic use, which, with
13 these fundamental different designs and different purposes, a POSA simply
14 would not have any motivation to look to Magid in the first place for ways to
15 improve the design of Socwell. After all, Magid's teachings effectively
16 reject the entire design of Socwell. So why would a person of ordinary skill
17 in the art be motivated to look at Magid at all? And even if they did, how
18 would they be able to identify any discrete features that are -- as somehow
19 being nonetheless applicable to Socwell despite Magid's expressed criticisms
20 of Socwell's kind of design. They wouldn't. And Petitioner has not
21 presented any evidence to suggest otherwise.

22 Moreover, if we turn to slide 26, a POSA would have
23 understood that Socwell simply would have no need for Magid's

IPR2024-00083
Patent 11,465,005 B2

1 unidirectional control means, given the actual function that feature serves in
2 Magid. As Dr. Blair explained, the unidirectional control means in Magid is
3 intended to mitigate the risk that Magid's two belts could move in opposite
4 directions when the device is in use. That kind of movement could lead to a
5 significant risk of injury for the uncoordinated intended users of the Magid
6 device if their feet are forced apart unexpectedly. And that, importantly, is a
7 risk that even Petitioner's own expert, Dr. Giachetti, acknowledged during
8 his deposition.

9 In contrast, Socwell, which has only a single running belt, has
10 no need for such a safety feature because a single belt can only ever move in
11 one direction at a time. There's no risk that the user's feet will move in
12 opposite directions when they are contacting only one belt to begin with.
13 And those differences demonstrate that Socwell's design is inherently
14 incompatible with a design like that in Magid that is focused on developing a
15 device that is suited for use by children, people with physical disabilities, the
16 elderly, or other people with uncoordinated movement.

17 In fact, with reference now to slide 27, Socwell's own teachings
18 would further reinforce a conclusion by a POSA that Magid and Socwell are
19 incompatible. Unlike Magid, Socwell criticizes a number of different safety
20 features, including even the use of handrails for users to grab onto. That
21 necessarily renders Socwell unsuitable for use by people with uncoordinated
22 foot movements. And there's no reason why a POSA considering Socwell

IPR2024-00083
Patent 11,465,005 B2

1 would be motivated to begin incorporating discrete features of Magid's
2 fundamentally safety-oriented design into the Socwell device.

3 And that's especially true given that Petitioner's proposed
4 combination would use Magid's unidirectional control means for a
5 completely different purpose than what it is used for in Magid itself. As
6 referenced now on slide 28, the only reason Petitioner identifies for
7 incorporating Magid's unidirectional means into Socwell is to mitigate the
8 risk that the belt will move in an unintended direction when the user mounts
9 the treadmill from the rear.

10 That's a risk that is unique to curved treadmills. It is not
11 referenced anywhere in Socwell itself, but -- and nothing in Magid suggests
12 that the unidirectional control means would be suited for that kind of use at
13 all. In fact, Magid teaches a flat, uniplanar device, and mounting that kind
14 of device from the rear is no different than mounting it at any other point
15 along the belt. Again, a POSA would have no reason to look to Magid to
16 solve this alleged problem. And Magid, by its own terms, could not possibly
17 have been concerned about the features of curved surface treadmills when it
18 only discloses a flat treadmill.

19 Now, finally, if we look at slide 29, Petitioner's efforts to
20 overcome these clear deficiencies in its Reply must fail. Merely being in the
21 same broad field of exercise equipment is not enough to supply a motivation
22 to combine, as the Board itself has acknowledged, in cases like Johns
23 Manville, which is quoted on this slide. Also, you heard Petitioner's counsel

IPR2024-00083
Patent 11,465,005 B2

1 mention third-party safety standards earlier. Petitioner's attempt to rely on
2 those standards must also fail. None of the standards that Petitioner
3 references are included as either a primary or secondary reference in any
4 ground of the Petition. And the Petition also never asserted that the
5 described motivation to combine needed to be supplemented by a POSA's
6 general knowledge of the art, so those standards are just irrelevant from the
7 get-go.

8 However, even if they were somehow tangentially relevant,
9 none of the safety standards Petitioner cites say anything about including a
10 safety device to prevent bidirectional movement of the belts. You heard Mr.
11 Turner say it before, and Dr. Blair pointed it out in his declaration, these
12 standards only describe requirements for foot rails and handrails in order to
13 address user stability. There is nothing in those standards that would
14 provide a motivation for a POSA to add a completely different mechanism,
15 for a completely different purpose from anything described in the standards
16 to Socwell.

17 And, finally, even setting that aside, Petitioner does not actually
18 contest that Magid includes teachings that would discourage a POSA from
19 combining it with Socwell. Instead, at least in its papers, it just asks the
20 Board to ignore those teachings as not relevant to the proposed
21 combinations. But that kind of request is wrong as a matter of law. As the
22 Federal Circuit held in Arctic Cat, prior art must be considered for
23 everything that it teaches, not just for teachings that the party challenging

IPR2024-00083
Patent 11,465,005 B2

1 validity is relying on. It is reversible error to fail to consider the entirety of
2 the art.

3 Here, Petitioner has failed to offer any explanation as to why a
4 POSA would disregard the various teachings discussed before that would
5 discourage combining Socwell and Magid. And the fact that those teachings
6 have gone un rebutted means that Petitioner has failed to establish motivation
7 to combine. Now, likewise, Petitioner has also failed to establish any
8 motivation to combine the other secondary reference it relies on Sclater with
9 any of the primary references in this case.

10 We move ahead now to slide 31. Even if a POSA had been
11 motivated to add Magid's unidirectional control means to Socwell -- as
12 discussed before, they would not -- Petitioner has still failed to establish that
13 a POSA would have been further motivated to immediately replace that
14 Magid device with the specific clutch it has plucked out of Sclater, without
15 the benefit of impermissible hindsight. Now, Sclater is a massive reference
16 book that, by its own terms, describes more than 2,000 different mechanisms
17 in mechanical devices, which is a point you heard Petitioner's counsel admit
18 earlier. Even the limited cherry-picked sections of Sclater that Petitioner has
19 provided to the Board, however, identified dozens of mechanisms and
20 devices, at least 20 of which are different types of clutches that might be
21 incorporated into a treadmill.

22 Somehow, from those dozens if not thousands of mechanisms,
23 Petitioner has selected one that it asserts meets all of the elements of the

IPR2024-00083
Patent 11,465,005 B2

1 claims. But there's a big problem with that. Petitioner hasn't actually
2 explained in any viable terms why a POSA would have made that specific
3 selection. And that's because there is no explanation that does not rely on
4 impermissible hindsight. Sclater itself certainly doesn't provide enough
5 information to support Petitioner's selection of that specific clutch. If we
6 turn to slide 32, the full disclosure from Sclater regarding the device that
7 Petitioner has identified is reproduced in the orange box. This disclosure is
8 minimal, and it says nothing about the alleged benefits that Petitioner
9 purports to identify.

10 Even looking at Sclater's teachings about the entire category of
11 devices that this particular disclosure comes from, it, at best, ambiguously
12 states that this device, as well as nine other overrunning clutches, all allow
13 freewheeling, indexing, and backstopping and, quote, will solve many
14 design problems, end quote, that are not identified. There is nothing to
15 suggest here or elsewhere that a POSA -- to a POSA that any particular
16 clutch is suited to any particular purpose. Now, importantly, Emerson,
17 which Petitioner's counsel spent a lot of time discussing in their opening,
18 also can't fix these problems.

19 Now, I understand that Petitioner has decided that it now claims
20 a POSA would have looked to and understood Emerson to teach that a sprag
21 similar to the one disclosed in Sclater, although clearly not identical, could
22 be used in a treadmill. But that's not what the Petition says. Emerson is not
23 relied on either as a primary or a secondary reference in any ground, and it

IPR2024-00083
Patent 11,465,005 B2

1 cannot be used now to backfill motivation to combine simply by labeling it
2 as somehow showing the state of the art. The Petition relied on Sclater and
3 only Sclater for the sprag-type clutch. Emerson does not mention Sclater,
4 and Sclater does not mention Emerson. And Petitioner has not identified
5 any reason why a POSA would consider Emerson to provide a motivation to
6 use a completely different reference in combination with Socwell or
7 Tollkien.

8 Now, simply put, none of the portions of Sclater Petitioner
9 actually relies on to support -- none of the -- excuse me, none of the portions
10 of Sclater that Petitioner relies on actually support its proposed
11 combinations. If we go now to slide 33, to the extent Sclater discusses any
12 of the alleged benefits Petitioner attributes to the sprag-type clutch it relies
13 on, those teachings are not actually ascribed to the specific clutch on which
14 Petitioner relies. Durability is not addressed in connection with this clutch at
15 all, either directly or in connection with the broader category of clutches.
16 And as shown here, reduced noise is attributed to all friction-type clutches,
17 including the six different categories of clutches outlined on this slide alone.

18 This is not a unique feature of the sprag-type clutch that
19 Petitioner identifies. And Petitioner offers no explanation whatsoever as to
20 why a POSA would have actually selected that sprag-type clutch over one of
21 these many other options. In fact, Petitioner has completely failed to
22 provide any actual evidence that would support its motivation to combine.
23 As outlined now on slide 34, they instead relied entirely on the unsupported

IPR2024-00083
Patent 11,465,005 B2

1 and untested say-so of Dr. Giachetti, whose name you heard several times
2 during Petitioner's opening arguments.

3 Now, Dr. Giachetti admitted during his deposition that he did
4 not conduct any analysis of the relative noise of the specific sprag-type
5 clutch that he plucked out of Sclater, compared to a ratchet and pawl-type
6 clutch like that in Magid. Instead, Dr. Giachetti admitted that he came to the
7 problem preloaded with how quiet a belt on rollers is and therefore assumed
8 that he didn't have to conduct even a basic analysis to confirm his
9 preconceived assumptions.

10 If we skip ahead to slide 36, however, Sclater itself
11 demonstrates that Dr. Giachetti's preconceived notions are not correct. Dr.
12 Giachetti's deposition testimony and his report make clear that he assumes a
13 ratchet-and-pawl-type clutch, like that described in Magid, makes too much
14 noise because the teeth of the ratchet cause an audible click when the pawl
15 runs over them. But Sclater itself discloses a number of ratchet-and-pawl
16 clutches that lack teeth entirely and thus could not possibly cause the
17 excessive noise Dr. Giachetti assumes, again, without any support, would
18 occur. A POSA would have understood, if they looked at Sclater, that any
19 one of those could be used in Magid rather than a toothed design. Yet Dr.
20 Giachetti and Petitioner not only completely overlooked this section of
21 Sclater in their analysis, they didn't even include it in the relevant excerpts
22 that they submitted to the Board. That leaves some serious unanswered
23 questions.

IPR2024-00083
Patent 11,465,005 B2

1 Most importantly, given the teachings of Sclater, why would a
2 POSA have been motivated to swap in a completely different type of clutch,
3 a sprag-type clutch, instead of using a more functionally and structurally
4 similar and therefore more easily implemented toothless ratchet clutch, if
5 they were starting with the ratchet clutch of Magid? We don't know, and
6 Petitioner has not attempted to offer an explanation as to why that would be.

7 This is just another reason why Petitioner has failed to meet its burden on
8 motivation to combine. But the toothless ratchet discussion in Sclater is not
9 the only part of the reference that Dr. Giachetti and Petitioner failed to take
10 into account before coming up with their positions in this case. Dr.

11 Giachetti's refusal to support his alleged opinions with any kind of analysis
12 or factual support is particularly egregious when Sclater itself sets forth a
13 simple list of factors that it says are required to be taken into account before
14 a particular sprag-type clutch could be selected for a particular use.

15 If we go now to slide 35, you will see that these factors are
16 outlined in the box on the left. Dr. Giachetti failed to do an actual analysis
17 of any of these factors, as he admitted during his deposition, despite the fact
18 that Sclater makes clear that their consideration is required before a
19 particular sprag-type clutch is selected. Instead, all Dr. Giachetti could do
20 was point to the fact that some of these concepts were also mentioned
21 generally, but not actually analyzed in materials like Emerson.

22 But Emerson and other such materials, again, are not relied on
23 as prior art in the Petition. And despite what Petitioner might argue now,

IPR2024-00083
Patent 11,465,005 B2

1 these kinds of vague references cannot fill in the gaps in Dr. Giachetti's
2 report and in the grounds that are actually set forth in the Petition. Rather,
3 the fact that these other references may have also considered these issues,
4 and according to Petitioner, it would have been obvious from the face of
5 them that those issues were important, only serves to underscore the fact that
6 Petitioner and its experts should have known that that kind of analysis was
7 necessary in the Petition, but still failed to conduct it in any way, shape, or
8 form. Again, the arguments set forth in the Petition are lacking in necessary
9 factual support and therefore have to be rejected.

10 Now, if we go ahead to slide 37, the kinds of generic statements
11 that Dr. Giachetti and Petitioner rely on, instead of conducting a supported
12 analysis with respect to the sprag they identify, are not enough to establish
13 motivation to combine. As the Federal Circuit noted in Purdue Pharma,
14 generic statements that are untethered to the feature to be incorporated into
15 the proposed combination cannot support motivation to combine. Here, the
16 exact same alleged benefits that Petitioner identifies with respect to
17 allegedly the sprag-type clutch that they would incorporate would also apply
18 to countless other mechanisms and devices disclosed in Sclater alone. Other
19 factors must be considered before any one of them can be selected for a
20 particular use, which is something a POSA would have immediately
21 recognized given that Sclater expressly tells them that. Petitioner's reliance
22 on alleged non-specific benefits against this background is inexcusable and
23 fails to meet its burden.

IPR2024-00083
Patent 11,465,005 B2

1 Now, likewise Dr. Giachetti and Petitioner also cannot hand-
2 wave away the deficiencies in their argument simply by saying that using
3 Sclater's sprag-type clutch is a simple substitution, as they have argued at
4 various points throughout this and other cases. In both of the grounds, the
5 primary references at issue, Socwell and Tollkien, lack any one-way bearing
6 mechanism whatsoever, let alone one for which Sclater's sprag-type clutch
7 could be considered an obvious substitute. As a pure matter of logic, you
8 can't substitute a mechanism for something that does not exist. It just doesn't
9 make any sense.

10 Now, if we turn next to slide 38, in view of the lack of actual
11 facts and evidence to support its selection of the sprag-type clutch depicted
12 in Sclater, there is simply no way that Petitioner could have made this
13 selection without impermissibly using the challenged claims and the patent
14 as a guide for its obviousness arguments. The claims and their requirement
15 that a safety device have features like a first element that substantially
16 surrounds a second element have to have been what led Petitioner to select
17 that particular clutch from the dozens of clutches and thousands of other
18 mechanisms described in Sclater, not these non-specific supposed benefits
19 that Sclater itself never even ties to that device in the first place.

20 Now, this process of working backward from the claims
21 themselves is clearly improper and has long been rejected both by the Board
22 and by the Federal Circuit, as shown in the case law excerpts on this slide.
23 So, in short, Petitioner has no actual evidence to support its motivation to

IPR2024-00083
Patent 11,465,005 B2

1 combine arguments. What it has instead are thinly veiled hindsight-based
2 assumptions and unsupported expert say-so that simply cannot support an
3 actual finding of obviousness. Petitioner has failed to meet its burden as to
4 obviousness based on Magid and Sclater, and both grounds 1 and 2 should
5 be rejected for at least those reasons.

6 Now, with that, unless Your Honors have any questions, I will
7 turn it over to my colleague Jack Carroll, who is going to discuss Tolkien
8 and ground 2 in some more detail, as well as secondary considerations.

9 JUDGE PETRAVICK: I have no further questions. Judge
10 Powell or Judge Shah?

11 JUDGE SHAH: I have no questions.

12 JUDGE POWELL: No questions for me.

13 MS. RIEGER: Thank you.

14 MR. CARROLL: Good afternoon. Can you hear me?

15 JUDGE PETRAVICK: Yes, we can hear you.

16 MR. CARROLL: Excellent. My name is Jack Carroll, also
17 counsel for Patent Owner Woodway. There are a few topics that I will now
18 address with respect to the challenged patent claims. Those topics include
19 the Tolkien reference, secondary considerations of non-obviousness. And
20 finally, if necessary, I may address Patent Owner's motion to exclude. And
21 please take note that during my argument today, I may reference slides
22 containing confidential information as you've already mentioned. I will alert
23 the Court before showing such information if that becomes relevant.

IPR2024-00083
Patent 11,465,005 B2

1 So, Tollkien, I'm going to start with, it's a German patent
2 reference. Petitioner's Exhibit 1031 is the certified English translation of
3 Tollkien. Tollkien contains just 26 paragraphs of text in its specification, 3
4 figures, and 14 claims. Petitioner relies on Tollkien for the vast majority of
5 the limitations in ground 2.

6 Now, I'm going to turn back to slide 18 for a second to
7 guidepost for the disputed claim elements. So there are three disputed claim
8 elements with respect to the Tollkien reference. These include: one, a
9 running belt wherein the running belt includes a running surface; two, a front
10 or rear shaft; and three, a plurality of bearings coupled to the frame. I'll take
11 each of those in turn.

12 Turning to the first disputed claim element of Tollkien at slide
13 40, the Petitioner has failed to establish that Tollkien discloses a running belt
14 wherein the running belt includes a running surface, at least a portion of
15 which is curved. This is relevant to all the challenge claims, as this
16 limitation appears in claims 1, 9, and 15, all the independent claims.

17 Specifically, the Petition only identified belt 12 highlighted in
18 blue in the annotated figure as the claimed running belt. Crossmembers 10,
19 highlighted in red in the annotated figure, are riveted to the blue belt 12 with
20 rivets 6 which are highlighted in yellow. These are separate structures. The
21 red crossmembers 10 are not included in the blue running belt and are not
22 comprised as part of the whole of the running belt structure, as argued in the
23 Petition. In the Petition, only the blue belt 12 is identified as the running

IPR2024-00083
Patent 11,465,005 B2

1 belt. There is no running surface on the blue belt 12 because the runner's
2 foot never makes contact with that belt.

3 While the Petition makes the conclusory statement that the belt
4 12 includes crossmembers 10, it fails to demonstrate how the blue belt 12
5 includes those crossmembers as part of the same structure. For example, in
6 applying similar claim language, other courts have required that including in
7 a claim term means that it requires the two parts to comprise as part of the
8 whole, the same claim structure. Petitioner provides no reasoned analysis or
9 evidence for why the blue belt 12 includes the red crossmembers 10, i.e.,
10 why the blue belt 12 and red crossmembers 10 comprise, as part of a whole,
11 the same claim structure, namely the running belt including a running
12 surface.

13 Turning now to slide 41 -- and note that this will be a common
14 thread throughout the rest of this presentation. The Petitioner made several
15 arguments and presented new evidence in its Reply that was not included in
16 the Petition as a way to backfill the deficient arguments that were made in
17 the Petition. Such backfilling with new arguments and evidence is not
18 proper under 37 C.F.R. § 42.23(b) and controlling precedent. This also
19 relates in part to Patent Owner's motion to exclude, which I may circle back
20 to later in the presentation.

21 Controlling law dictates that new arguments and new evidence
22 raised for the first time in reply may not be considered. Unlike in district
23 court litigation, in IPRs there is a strict requirement that the Petitioners must

IPR2024-00083
Patent 11,465,005 B2

1 make their case in the Petition. For example, in the Intelligent Bio-Systems
2 case, which is quoted on the slide here, states that, examples of indications
3 that a new issue has been raised in a reply include new evidence necessary to
4 make out a prima facie case for the unpatentability of an original claim, and
5 new evidence that could have been presented in a prior filing. That latter
6 issue is particularly salient here, as the Petitioner has presented new
7 evidence in its Reply that could have been presented in its Petition, but it
8 failed to do so.

9 For example, turning now to slide 42, this slide shows a side-
10 by-side comparison between how the Petition and the Reply framed the
11 running belt claim element. As can be seen in the Petition on page 79, this is
12 the only argument that was presented for how the claim element is found in
13 Tolkien. As discussed previously, the Petition only identifies the belt 12 as
14 the, quote, running belt. And although it makes a conclusory statement that
15 the belt 12 includes crossmembers 10, it provides no evidentiary support for
16 that conclusory statement.

17 Indeed, the cited portions of Exhibit 1003, Dr. Giachetti's first
18 expert declaration, does not provide any additional support for the
19 conclusory statement, but in its Reply, for the first time, now, Petitioner has
20 retooled its argument in an attempt to backfill by saying that the belt
21 assembly 12 should be considered as both the running belt and the
22 crossmembers 10 together as one assembly. This is not the same evidence

IPR2024-00083
Patent 11,465,005 B2

1 and argument that was presented in the Petition, and it should be disregarded
2 under 37 C.F.R. § 42.23.

3 As one example, the Reply cites to paragraph 22 from Tollkien
4 for the first time. This paragraph was not cited in the Petition, nor in Dr.
5 Giachetti's first expert declaration. And likewise, the Reply cites now to Dr.
6 Giachetti's second expert declaration, Exhibit 1036, which likewise
7 introduces the same new arguments and represents new evidence that was
8 not presented in the Petition. In any event, even if Petitioner's new
9 arguments and evidence presented in the Reply are considered, which they
10 should not be, the Petitioner has still failed to establish that the
11 crossmembers 10 comprise the same structure as the belt 12 beyond mere
12 conclusory statements. They are simply separate structures. And the belt 12
13 does not include a running surface.

14 Now, turning to the second disputed claim element for Tollkien
15 at slide 43, the Petition also fails to establish that Tollkien discloses a front
16 or rear shaft coupled to the frame. This is relevant to claims 2 and 3, which
17 are both dependent claims. It is the Petitioner's burden to demonstrate that
18 all the claim elements are present in the Tollkien reference. Here, the
19 Petition has failed to establish that Tollkien expressly or inherently discloses
20 any shaft whatsoever. For one thing, the word shaft does not appear
21 anywhere in the Tollkien reference. Petitioner's expert admitted as much in
22 his deposition.

IPR2024-00083
Patent 11,465,005 B2

1 The Petition relies solely on unidentified and unlabeled
2 structures in figures 1 and 3 of Tollkien that show a purported shaft, but Dr.
3 Blair testified in his declaration that these figures and unlabeled structures
4 could represent any number of different structures, including, for example, a
5 socket of a ball-type joint, the outshoot of the roller itself that fits into a
6 complementary-shaped receiver on the frame, and moreover, given the lack
7 of disclosure in Tollkien generally, the circles in figure 1, for example, may
8 not represent a connection point at all, in which case a person of ordinary
9 skill in the art would have no indication of what the circle in figure 1 is
10 intended to represent. Critically, the Petition never explains why a person of
11 ordinary skill in the art would have understood the figures to depict a shaft.

12 Turning to slide 44, as described in Tollkien -- or as described,
13 Tollkien never expressly discloses any shaft. Despite this, the Petition has
14 failed to present any evidence for how the Tollkien reference would
15 inherently require any shafts to operate, or why a person of ordinary skill in
16 the art would necessarily understand a shaft to be present. Where the
17 reference is silent on a specific claim element, it is not enough for the
18 Petition to baldly state that the unmarked holes in figure 1, or the protrusions
19 in figure 3 are a shaft.

20 As in the Microsoft case, which is quoted on the slide here,
21 indicates, while it is certainly possible, possible that the figures could
22 inherently disclose a shaft -- and Dr. Blair admitted that in his deposition,
23 that it could be a shaft -- the Petitioner has provided no evidence for why a

IPR2024-00083
Patent 11,465,005 B2

1 person of ordinary skill in the art would understand that the figures
2 necessarily disclose a shaft, as the inherency analysis requires. For example,
3 neither the Petition nor Dr. Giachetti's first declaration present any reasons
4 why a person of ordinary skill in the art would understand the figures in
5 Tollkien to disclose a shaft, as opposed to any other possible structures or
6 couplings. Accordingly, the Petitioner has failed to meet its burden to show
7 that Tollkien inherently teaches a shaft.

8 Moving on to slide 45, here again the Petitioner makes
9 improper new arguments in reply that should not be considered. This slide
10 again provides a side-by-side comparison between what was in the Petition
11 and what was in the Reply. Where the Petition merely makes a conclusory
12 statement about Tollkien's figures 1 and 3, the Reply now adds new
13 arguments about common sense that were not presented in the Petition.
14 Furthermore, the Reply provides a newly presented annotated figure 3 from
15 Tollkien that was not presented in either the Petition or Dr. Giachetti's first
16 declaration. Such a newly presented annotated figure and the accompanying
17 new evidence from Dr. Giachetti's second expert declaration should be
18 disregarded.

19 Turning to slide 46, specifically for the first time in its Reply,
20 as stated, Petitioner attempts to rely on a common sense argument to fill the
21 gaps of Tollkien where there is no express disclosure of any shaft. But
22 Petitioner's common sense argument was not presented in the Petition, and it
23 should be disregarded. However, even if the newly presented common sense

IPR2024-00083
Patent 11,465,005 B2

1 argument is not disregarded, the Petitioner has failed to present any reasoned
2 analysis or evidentiary support to demonstrate why it would have been
3 common sense that Tollkien discloses a shaft. The Petitioner attempts to
4 evoke the common sense argument as a wholesale substitute for reasoned
5 analysis. This is not sufficient, and it in fact directly contravenes Federal
6 Circuit precedent, for example, the B/E Aero case, which is cited here on
7 screen. Accordingly, Petitioner has failed to meet its burden to show that the
8 Tollkien reference discloses expressly or inherently a front or rear shaft
9 coupled to the frame.

10 And for the third disputed claim element in Tollkien, turning to
11 slide 47 now, Petitioner has failed to meet its burden to show that Tollkien
12 discloses a plurality of bearings coupled to the frame. This is relevant to
13 claims 6, 13, and 16, all dependent claims. First, as with shaft, Tollkien
14 never uses the word bearings or bearing in its written disclosure. The
15 Petition makes a conclusory statement that a person of ordinary skill in the
16 art would have understood that the runners 14 are mounted and fixed to the
17 frame, and the bearings are mounted for rotation about the axles. This
18 statement is repeated verbatim in Dr. Giachetti's expert declaration without
19 any other citations or any other evidentiary support. In this way, the Petition
20 has failed to present a reasoned analysis or evidentiary support for why a
21 person of ordinary skill in the art would have understood the runners 14 in
22 Tollkien in this way.

IPR2024-00083
Patent 11,465,005 B2

1 For example, on slide 48, the annotated figure here depicts the
2 runners 14 in red and blue that Petitioner relies on to meet the plurality of
3 bearings element. The only time that the runners 14 are described in
4 Tollkien's written disclosure is in paragraph 20, which is copied here on the
5 slide, specifically the last sentence. All it says is, quote, the runners 14
6 placed underneath the running surface prevent the belt from bouncing when
7 in use. That's it. There's no description that the runners support the belt 12,
8 that they rotate, or how they are attached to the frame, or that they are even
9 attached to the frame in the first place. There are no attachment points
10 depicted in figure 1. And in figure 1, as you can see, there is even a space
11 depicted between the belt and the runners 14.

12 Turning to slide 49, there is simply no support for Petitioner's
13 bald argument that a person of ordinary skill in the art would understand the
14 runners 14 to be coupled to the frame. As discussed, the express disclosure
15 in Tollkien does not provide any guidance for how the runners 14 are
16 attached at all. Even Petitioner's expert was not able to point to any
17 attachment point between the runners 14 and the frame, namely because it is
18 not specified and not depicted. That's direct quotes from Dr. Giachetti's
19 deposition testimony. And, again, to the extent that the Petition attempts to
20 rely on an inherency argument, there is no evidence or reasoned analysis in
21 the Petition to explain why a person of ordinary skill in the art would have
22 understood that Tollkien's scant disclosure in one sentence necessarily
23 included that the runners 14 are a plurality of bearings coupled to the frame.

IPR2024-00083
Patent 11,465,005 B2

1 Turning now to slide 50, once again, the Petition has presented
2 new evidence and new arguments for the first time -- or the -- excuse me, the
3 Petitioner has presented new evidence and new arguments for the first time
4 in its Reply that should not be considered. This again shows the side-by-
5 side comparison of the Petition and the Reply. As can be seen, in the
6 Petition, it only makes a bald argument that a person of ordinary skill in the
7 art would have understood runners 14 to be mounted and fixed to the frame.

8 While that alone is not sufficient, in reply, the Petitioner evokes for the first
9 time, again, a common sense argument to fill in the gaps of the disclosure
10 which was not in the Petition. What's more, the Reply introduces new
11 evidentiary support by citing to two references, Abelbeck and
12 Schonenberger, references that were not cited in the Petition.

13 These newly cited references included newly annotated figures,
14 which, again, were not included in the Petition. These references could have
15 been used as support for the argument in the Petition, but they were not.
16 Indeed, these references were both listed on the face of the '005 Patent. And
17 both references were included in Petitioner's original list of exhibits,
18 included with the Petition. Yet for either strategic reasons or based on word
19 count considerations, whatever it may be, these references were not
20 discussed or relied on as evidence in the Petition. Petitioner cannot now rely
21 on such evidence in its Reply for the first time.

22 Such newly presented evidence is also part of the basis for
23 Patent Owner's motion to exclude the second declaration of Dr. Giachetti,

IPR2024-00083
Patent 11,465,005 B2

1 where Petitioner cited to these newly annotated figures in evidence for the
2 first time in its Reply and in Exhibit 1036. Accordingly, because the
3 Petition fails to provide any reasoned basis for why a person of ordinary skill
4 in the art would understand that the runners 14 were -- satisfied the claim
5 limitation of the bearings coupled to the -- a plurality of bearings coupled to
6 the frame.

7 Switching gears a little bit, I'm going to now discuss the
8 motivations to combine Tollkien with the Sclater reference, starting on slide
9 51. And as discussed previously with respect to the Sclater reference
10 presented by my colleague Ms. Rieger, there is no motivation to combine
11 Sclater with Tollkien for similar reasons as discussed. First, Petitioner and
12 Dr. Giachetti made contradictory statements about the motivations to
13 combine a safety device with a curved treadmill based on the Socwell
14 reference. What is relevant here is that the Petition implies that Socwell
15 provides the motivation to add a safety device to a curved treadmill, but
16 that's simply not true. Socwell specifically teaches that the curved running
17 surface solves the safety issue associated with prior art flat treadmills design
18 by helping to keep the runner from falling off the back of the treadmill while
19 in use.

20 In its Reply, the Petitioner even concedes that Socwell's curved
21 surface may solve that specific concern. Since the curved surface itself
22 enhances the safety of a user using the Socwell device as described,
23 Petitioner has not presented a sufficient reason for why a person of ordinary

IPR2024-00083
Patent 11,465,005 B2

1 skill in the art would have combined Sclater with Tollkien, as the example
2 presented from Socwell does not provide the requisite motivation.

3 And now, turning to slide 52, the Petition does not present any
4 reference in the prior art or any evidentiary support whatsoever to show that
5 mounting and dismounting a treadmill, specifically a curved treadmill,
6 warrants the inclusion of a one-way bearing device. As discussed
7 previously, not only Petitioner, but Dr. Giachetti himself admitted that the
8 curved surface of Socwell prevents a safety feature, not a concern. And
9 while the Petitioner generally cites to Chickering and Socwell to purportedly
10 show the instability when mounting or dismounting, neither the Petition nor
11 the Reply make any specific citation to any teaching in Chickering or
12 Socwell that would provide a motivation to add a one-way bearing device to
13 Tollkien, based on the curved surface. The bald and unsupported statements
14 and general citations to Chickering and Socwell, without pinpointing any
15 safety concerns specific to mounting or dismounting the curved treadmill, is
16 clear.

17 And turning to slide 53, there is simply no evidence presented
18 that a person of ordinary skill in the art would have been motivated to select
19 the specific sprag-type clutch from Sclater to combine with Tollkien. For
20 very similar reasons, as described with Socwell and Magid and Sclater
21 combination discussed by Ms. Rieger, the Petition relies on generic and
22 threadbare arguments for why a person of ordinary skill in the art would
23 have been motivated to select that specific sprag. Accordingly, for all these

IPR2024-00083
Patent 11,465,005 B2

1 reasons, the Petition has failed to establish a motivation to combine the
2 specific sprag from Sclater with Tollkien. And that applies to the entirety of
3 ground 2.

4 Switching gears again, now, I'm going to turn to Patent Owner's
5 evidence of secondary considerations, starting on slide 55. Patent Owner
6 has put forward evidence of commercial success, licensing, copying,
7 industry praise, and failure of others, all of which weighs significantly in
8 favor of non-obviousness, all of which is outlined in the papers. When
9 secondary considerations are presented by the Patent Owner, it is error not to
10 consider them. That's from the Lectrosonics case cited in the papers, which
11 also cites *to ClassCo Inc. v. Apple Inc.*, a Federal Circuit decision. As will
12 be discussed, Petitioner's counterarguments rely on misstatements of the law
13 and should be rejected.

14 Now, turning to slide 56 and -- as will be the focus of my
15 secondary considerations discussion. As the Board knows, for a Patent
16 Owner's evidence of non-obviousness to be accorded substantial weight,
17 there must be a nexus between the merits of the claimed invention and the
18 evidence of secondary considerations. Ultimately, Petitioner disputes nexus,
19 but Petitioner is wrong. Here, there is a presumption of nexus when the
20 Patent Owner shows that the asserted objective evidence is tied to a specific
21 product, and that product embodies the claimed features and is coextensive
22 with them. Patent Owner is entitled to a presumption of nexus in this case.

IPR2024-00083
Patent 11,465,005 B2

1 The claimed invention is a manual treadmill with a curved
2 running surface which includes, among other things of various safety
3 devices. Woodway's invention is not merely a safety device, as Petitioner
4 attempts to argue. Dr. Blair presented unrebutted testimony that the
5 Woodway CURVE line of treadmills, on the whole, practice and are
6 coextensive with, the challenged claims of the '005 Patent. Just like in the
7 *Fox Factory* case cited in the papers, Patent Owner presented the testimony
8 of its expert Dr. Blair, which was supported by detailed claim charts along
9 with the testimony of Eric Weber, Patent Owner's director of sales and
10 marketing, to illustrate how the Woodway line of curved treadmills is
11 coextensive with the challenge claims.

12 As an example, claim chart Exhibit 2083 presents a detailed
13 analysis as to whether the Woodway Curve treadmill embodies and is
14 coextensive with the challenge claims. Dr. Blair's declaration and deposition
15 testimony further confirm that the curved treadmills practice and are
16 coextensive with the claims. According to Dr. Blair's fulsome and
17 unrebutted analysis, Woodway's curve line of treadmills do embody and are
18 coextensive with all of the challenge claims. Petitioner now argues in its --

19 JUDGE PETRAVICK: Counsel, I didn't mean to interrupt, but
20 you are now into your rebuttal time.

21 MR. CARROLL: Okay. Thank you. Let me continue shortly
22 here, and then we'll reserve the rest.

IPR2024-00083
Patent 11,465,005 B2

1 Petitioner argues in its presentation that the separate
2 requirement -- that co-extensiveness is a separate requirement. However, in
3 the Federal Circuit analysis, determining whether there is co-extensiveness
4 is determining the degree of correspondence between a product of a patent
5 claim, and it falls along a spectrum. At one end of the spectrum lies the
6 perfect or near-perfect correspondence. And at the other end, lies no or very
7 little correspondence. Although they do not require a patentee to prove
8 perfect correspondence to meet the co-extensiveness requirement, what they
9 do require is that the patentee demonstrate that the product is essentially the
10 claimed invention.

11 All of the evidence presented by Patent Owner in this case has
12 shown that the CURVE line of treadmills essentially is the claimed
13 invention. And neither Petitioner nor its expert, Dr. Giachetti, have disputed
14 these conclusions. Petitioner has not identified a single claim limitation
15 that's missing in the Woodway CURVE treadmills, and they've said nothing
16 about the mapping of the CURVE treadmills to the various claims in this
17 case.

18 For the sake of time, I'm going to skip ahead to slide 61. Patent
19 Owner's presumption is not disturbed based on Petitioner's argument that the
20 CURVE treadmills may include one or more unclaimed features. Petitioner
21 argues, without any evidence whatsoever, that displays, heart rate monitors,
22 speed outputs, adjustable resistance, large running surfaces, load cells,
23 different various software features that are provided, purportedly with some

IPR2024-00083
Patent 11,465,005 B2

1 of the Woodway CURVE lineup of treadmills, precludes a nexus of finding.

2 The Petitioner is wrong.

3 The Federal Circuit in *Teva v. Eli Lilly* has made it clear that the
4 court has never held that the existence of one or more unclaimed features
5 standing alone means that nexus may not be presumed. The Board must
6 evaluate the unclaimed features on a spectrum at one end, the unclaimed
7 features, if they amount to nothing more than insignificant features, the
8 presumption of nexus is still appropriate. At the other end, the patent claim
9 may not be deemed coextensive if it includes a critical unclaimed feature or
10 a feature that materially impacts the product's functionality. Despite bearing
11 the burden to rebut the presumption of nexus with actual evidence under
12 *WBIP v. Kohler*, Petitioner offers nothing but a list of purported unclaimed
13 features and bare speculation that these features may have contributed to the
14 curved treadmill success.

15 Petitioner offers no evidence that these unclaimed features are
16 critical, that they affect the material -- impact the curved treadmill's
17 functionality in any way. Instead, they rely on conjecture and attorney
18 argument. That is not proper and that is not sufficient under Federal Circuit
19 precedent. Moreover, the features that Petitioner has identified are not
20 critical features or otherwise impact the curved treadmill's functionality.
21 Not all of the listed unclaimed features are even found in all of the curved
22 treadmills. So such features cannot be critical or materially affect the
23 functionality of the success of those specific curved treadmills.

IPR2024-00083
Patent 11,465,005 B2

1 As one example in its argument today, Petitioner's counsel has
2 claimed that all of the curved treadmills have a toothed belt subject to a
3 previous patent. But that's simply not true. In fact, only the CURVE XL
4 product has the toothed belt feature. The others do not. And quite frankly,
5 Petitioner doesn't have or present evidence that all of the curved treadmills
6 do have the toothed belt design. And while certain product changes are
7 inevitable for a product that has been sold and on the market since 2009,
8 Petitioner has presented no evidence that the unclaimed features are critical
9 or materially impact the functionality of the devices in any way.

10 With nexus established and unrebutted by Petitioner with any
11 specific evidence, Patent Owner's additional evidence presented in the
12 papers establishes that there was commercial success. Industry praise,
13 copying, passage of time, and failures of others all support that the '005
14 Patent was not obvious.

15 Unless Your Honors have any other questions at this time, that
16 concludes my presentation, and we reserve the right to make further
17 arguments in rebuttal as appropriate. Thank you.

18 JUDGE PETRAVICK: Counsel, I do have a question.

19 MR. CARROLL: Okay.

20 JUDGE PETRAVICK: Actually, with respect to the
21 jurisdictional statement that was made at the very beginning of the
22 arguments and to the slide. And I just want to clarify the record. That
23 jurisdictional argument was made in the preliminary response but not raised

IPR2024-00083
Patent 11,465,005 B2

1 again in the Patent Owner's response after trial was instituted. Could you
2 point me to where that argument was raised again?

3 MS. JELENCHICK: The specifics of the argument are not in
4 the Patent Owner response. You're correct. We do identify on the first page
5 of the Patent Owner response, the fact that the Petition was filed by
6 LifeCORE Fitness, Inc. However, jurisdiction can be addressed regardless
7 of whether the parties to the proceeding raise it or not, and we cite to the
8 *Henderson v. Shinseki* case for that proposition.

9 JUDGE PETRAVICK: And where do you cite to that case?

10 MS. JELENCHICK: Well, that's on our slide 3.

11 JUDGE PETRAVICK: So when you wrote the POR at 1 on
12 that slide, you're referring to this sentence on page 1 as the, quote, argument
13 in the Patent Owner response, where it's the very first paragraph and it says,
14 Woodway US, Inc., Patent Owner or Woodway, submits this response to the
15 Petition for inter partes review IPR of claims 1 through 4, 6 through 13, 5
16 through 16, challenge claims of U.S. Patent Number 11,465,005. The '005
17 Patent filed by LifeCORE Fitness, Inc., now LifeCORE Fitness, LLC, doing
18 business as Assault Fitness, Petitioner. Is that correct?

19 MS. JELENCHICK: Yes, that's correct.

20 JUDGE PETRAVICK: That's your sole sentence?

21 MS. JELENCHICK: Yes, that's correct.

22 JUDGE PETRAVICK: And you understand that new
23 arguments cannot be raised in the oral argument slides?

IPR2024-00083
Patent 11,465,005 B2

1 MS. JELENCHICK: Well, I understand that general
2 proposition, but the Board is required to address jurisdictional issues,
3 whether they're raised by the parties or not.

4 JUDGE PETRAVICK: Thank you.

5 MS. JELENCHICK: You're welcome.

6 JUDGE PETRAVICK: I'm sorry. One more thing. You're
7 preserving this argument for appeal, but you do not expect us to rewrite our
8 decision on your paper as a preliminary response in the final written
9 decision? I believe there's been Fed Circuit cases on issues that are similar.

10 MS. JELENCHICK: Right. I understand the point you're
11 making. Certainly, we're preserving it on appeal. The Board may always
12 address issues in their final written decision that deviate from the institution
13 decision. And we don't believe this is any different, particularly in view of
14 the fact that it's a jurisdictional issue and not simply a procedural issue,
15 which the institution decision decided.

16 JUDGE PETRAVICK: All right. So that is your sole argument
17 in the Patent Owner's response or any papers after the institution of trial, that
18 one sentence?

19 MS. JELENCHICK: The one sentence identifies who, in fact,
20 filed the Petition. And we made the arguments that this is not a person and
21 it's a jurisdictional issue. We do not allege --

22 JUDGE PETRAVICK: You're not confused about who filed
23 the -- what entity filed the Petition?

IPR2024-00083
Patent 11,465,005 B2

1 MS. JELENCHICK: Whether Patent Owner is confused or not
2 isn't the litmus test for who has standing to file a petition in the first instance.
3 We're the ones who --

4 JUDGE PETRAVICK: But you didn't argue that in the Patent
5 Owner's response. You made a statement filed by LifeCORE Fitness, Inc.,
6 now LifeCORE Fitness, LLC, doing business as Assault Fitness, Petitioner.
7 That's your sole argument?

8 MS. JELENCHICK: That's the sole sentence in the Patent
9 Owner response.

10 JUDGE PETRAVICK: That's the -- a sentence we should
11 address?

12 MS. JELENCHICK: Yes, but the Board is also --

13 JUDGE PETRAVICK: Thank you. I think we understand
14 where you're coming from. All right. Patent Owner, you have ten minutes
15 left for rebuttal.

16 MS. JELENCHICK: Thank you.

17 JUDGE PETRAVICK: Did not count the time that I was
18 asking those questions.

19 MS. JELENCHICK: Understood. Thank you.

20 JUDGE PETRAVICK: So now we will talk to the Petitioner
21 again and hear from them.

22 MR. TURNER: All right. Thank you, Your Honors. Let's see,
23 I think I'm sharing my screen here. Just a quick note on -- as we, Your

IPR2024-00083
Patent 11,465,005 B2

1 Honors, just discussed for slide 3, this is actually a slide we objected to
2 during the demonstratives, but we did not file our objection with the Board,
3 that this was raising new arguments. The Henderson case is not cited.
4 Another note, Patent Owner did file a request for director review on this
5 issue, but it was denied. So that was papers 18 and 21.

6 All right. Now, if we go to -- let's see, on Petitioner's slides 12
7 through 16, they discuss the claim construction of bearings. And let's see
8 here. So first with claim construction under the Phillips analysis, we start
9 with the claims themselves. And the claims here at issue require that at least
10 one of the bearings supports the belt, not the plurality of bearings.

11 Now, Patent Owner -- on this slide, Patent Owner argues that
12 Dr. Giachetti's definitions for bearings demonstrate that the bearing is
13 specifically defined by its relation to other parts and references this
14 Webster's Dictionary. However, this Webster's Dictionary definition for
15 bearing is using machinery as any part of a machine in or on which another
16 part revolves, slides, et cetera. That is consistent with Dr. Giachetti's
17 definition from his first declaration, and it's a broad definition that does not
18 specify a location. It's -- gives general terms, et cetera. And Patent Owner
19 argues that this in or on in the definition means exclusively on top. And we
20 believe this is wrong. A bearing is a simple mechanical element. It's still a
21 bearing if it's located on top of a surface, underneath the surface, on the side
22 of a surface.

IPR2024-00083
Patent 11,465,005 B2

1 Also on this slide, Patent Owner also argues regarding the root
2 term bear. However, this root term bear in the center of the slide, this is with
3 respect to bear as used as a verb, whereas in the claims, the bearings are used
4 as a noun. So it's not particularly relevant.

5 Let's see. We're going to jump to their slide 42. Okay. On
6 Patent Owner slide 42, Patent Owner argues that in the Petition, we did not
7 rely on Tolkien's belt assembly. So now if we can -- let's toggle over to
8 Petitioner's slide, 34. All right. So here -- let's see, on slide 34. Okay. So
9 here on the top left, we have Patent Owner argues that Petitioner points to a
10 series of crossmembers that are attached to either belt 12 or belt 30 for
11 satisfying the running surface limitation. However, this is incorrect. If you
12 look on the right side, Petitioner, we relied on the belt 12 -- the
13 crossmembers are satisfying the slats limitation of claim 8. And we
14 explained that the slats formed the running surface.

15 Now, Patent Owner's argument treats the running surface as a
16 separate structural element. However, a running surface is not a separate
17 structural element. It's just a portion of the running belt assembly. Patent
18 Owner also argues on the bottom left that the Petition did not identify the
19 combined assembly of continuous belt 12 and the crossmembers 10 as the
20 claimed running surface. However, Petitioner explained that Tolkien's belt
21 includes, so here -- and this is from our Petition, that the belt includes these
22 crossmembers. So we're clearly relying on this as an assembly where the
23 belt is an assembly that includes these crossmembers.

IPR2024-00083
Patent 11,465,005 B2

1 All right. So now if jump to Patent Owner slide 44, Patent
2 Owner argues that Tollkien does not expressly disclose that the shaft is
3 coupled to the frame. So now if we go back to Petitioner's slide 37, here this
4 is -- when asked about this during his deposition -- this is Dr. Giachetti -- Dr.
5 Giachetti explained that the teachings of Tollkien are not just the words, they
6 are the pictures also. And if we see on these figures of Tollkien, the shaft is
7 clearly shown extending through and coupled to the frame here. And we
8 asked -- Dr. Blair noted the same, that this could be a frame -- and it's
9 supported by the frame, during his deposition. So that's Dr. Blair again.
10 That's Patent Owner's expert.

11 Now, Patent Owner argues on their slide 44, that Petitioner did
12 not explain how Tollkien necessarily discloses a shaft. And it cites
13 Microsoft for some of its inherency arguments. Now, this is not exactly on
14 point. I mean, we're running an obviousness ground here. And we're not
15 relying on inherency for disclosing these. We see it's -- Tollkien expressly
16 discloses the shaft is coupled to the frame in the figures.

17 Now, on -- let's see the slide -- Petition -- or excuse me, Patent
18 Owner's slide 48, Patent Owner argues that nothing in the disclosure
19 suggests rotation or rolling engagement with the belt and noted this
20 conspicuous space between the belt and the runners. Now, Dr. Giachetti
21 explained that fixed bumpers, as proposed by Patent Owner in his
22 declaration, would create excessive friction and would not be a reasonable
23 interpretation of Tollkien's drawings. The only fixed non-rotating bearings

IPR2024-00083
Patent 11,465,005 B2

1 commonly used for treadmills are planar decks, such as those in the Socwell
2 reference.

3 Dr. Giachetti also explained that a POSA would have
4 understood the weight of the user would close the gap between the belt and
5 the runners to place them in contact when in use. And that was in response
6 to this argument. That's one of the sentences from the Declaration that
7 Patent Owner objected to in its motion to exclude. And that's just an
8 example that Dr. Giachetti lists of something that he had from his own
9 personal knowledge from analyzing treadmills.

10 Here on slide 49, Patent Owner slide 49, Patent Owner argues
11 that Dr. Giachetti did not point to any attachment point between the runners
12 and the frame in Tollkien's figure 1. We jump back to Petitioner's slide 41,
13 which we discussed previously, Dr. Giachetti explained what the Tollkien
14 disclosure means, that these runners are coupled to the frame. Now on --
15 during Dr. Blair's -- this is Patent Owner's expert, provided some interesting
16 hypothetical attachments for Tollkien on attaching these runners or bearings
17 to structure other than the frame.

18 For example, Dr. Blair opined that -- this is on the top left -- the
19 runners could be attached to the belt itself or attached to and suspended
20 between the front and rear pulleys. So we asked for some clarification in his
21 deposition, and he kind of admitted that for a treadmill, you could not couple
22 the bearings to the belt if you want the belt to move. That's in the bottom
23 left. And then also, he clarified that for his -- this other coupling as far as

IPR2024-00083
Patent 11,465,005 B2

1 suspension of the bearings, he could under -- his hypothetical, you could
2 couple the bearings to the ceiling or the floor. But then on further testimony,
3 he admitted he hasn't seen any commercial examples of that.

4 So from this, we see that Dr. Blair's hypothetical attachments to
5 Tolkien's runners, bearings, and structure other than the frame, would not
6 have been reasonable to a person of ordinary skill in the art. So on slide 50,
7 Patent Owner argues that Petitioner's reference to Dr. Giachetti's state-of-
8 the-art section, in his first declaration, to explain a POSA's knowledge
9 regarding a treadmill bearing system was this new argument. And this -- it
10 is permissible for Petitioner to respond to new arguments raised in the Patent
11 Owner response in its Reply. So this is not a new argument. It's a response
12 to Patent Owner response. So that's another one of the issues that was raised
13 in the motion to exclude.

14 And also, from the MPEP -- the MPEP states that to reach a
15 proper determination under 35 U.S.C. 103, one must step backward in time
16 and into the shoes worn by a hypothetical person of ordinary skill in the art.
17 That's MPEP 2142 that we cite in our briefing. And that's an example where
18 to get a better understanding of the hypothetical person of skill in the art.
19 That's -- we reference the state-of-the-art section of this Declaration. Let's
20 see.

21 All right. So regarding slides 51 and 52, these have to do with
22 the motion to combine Sclater with Tolkien. Patent Owner alleges that the
23 Petitioner's positions on Socwell are inconsistent. Petitioner's argument

IPR2024-00083
Patent 11,465,005 B2

1 remains the same. It has long been recognized that users may be injured by
2 falling off of a treadmill while mounting or dismounting or during use. This
3 may due to -- may be due to the treadmill belt moving in an unexpected
4 direction or in such a way the user cannot regain their equilibrium.

5
6 The Patent Owner also argues on this slide 51 that Socwell
7 explains that its curved running surface solves the safety issues associated
8 with prior art flat treadmills. Well, a curved running surface may solve the
9 issue of a user falling off the back of the treadmill, but it does not solve the
10 problem of instability when mounting or dismounting a treadmill.

11 I think with that, did you have anything you want to discuss,
12 then?

13 MR. ESFAHANI: I will just point out the one --

14 MR. TURNER: Okay. So I'm going to turn it over to Reza to
15 discuss secondary considerations.

16 MR. ESFAHANI: Good afternoon. I just wanted to note that
17 we heard Patent Owner discuss secondary considerations of non-
18 obviousness. Again, it reiterated that its products embodied the claim
19 invention, but didn't say anything about the co-extensiveness except just
20 saying that they are coextensive. So I just wanted to point to a provision
21 from the *Fox Factory* case, Federal Circuit case cited in the briefings, where
22 it says, we reject SRAM's attempt to reduce the co-extensiveness
23 requirement to an inquiry into whether the patent claim broadly covered the

IPR2024-00083
Patent 11,465,005 B2

1 products that is subject to the evidence of secondary consideration. Such an
2 interpretation is inconsistent with DeMarco's requirement that nexus can
3 only be presumed where the evidence of secondary consideration is tied to a
4 specific product that is the invention disclosing claim. That is *Fox Factory*
5 at 1377. And *Fox Factory* also states on 1373 that the patentee bears the
6 burden of showing that a nexus exists.

7 With that, if there is no questions from the Board, I think we
8 can forfeit the remainder of our time.

9 JUDGE PETRAVICK: I have no further questions. Judge
10 Powell? Judge Shah?

11 JUDGE SHAH: I have no questions. Thank you.

12 JUDGE POWELL: No more questions for me.

13 MR. ESFAHANI: Thank you, Your Honors.

14 MR. TURNER: Thank you.

15 JUDGE PETRAVICK: Patent Owner, you have ten minutes.

16 MS. RIEGER: Thank you, Your Honor. Just a few quick
17 points. This is Sarah Rieger for Patent Owner. Regarding Petitioner's
18 comments on Patent Owner's slide 3 and jurisdictional issues, as the Board is
19 surely aware, any objections that are not actually raised in writing with the
20 Board are waived. Petitioner's counsel admitted that they did not actually
21 raise any objections to that slide, so I just wanted to point that out for the
22 Board, just to make sure you were aware that you did not miss any written
23 objections.

IPR2024-00083
Patent 11,465,005 B2

1 Regarding Petitioner's counsel's comments on the bearings
2 limitation, Petitioner argued just now that the claims control and seemed to
3 imply effectively that what's said in the specification can be ignored based
4 on what is in the claims. That is simply incorrect. As is well established in
5 Federal Circuit law, all intrinsic evidence must be considered, including
6 what comes from the specification. And this is supported by cases such as
7 *Apple v. MPH Technologies*, which explains that the plain and ordinary
8 meaning of a term is the meaning a POSA would ascribe to a term when
9 read in the context of the claim specification and prosecution history. You
10 can't just ignore what the specification says because of, you know, other
11 language in the claims.

12 Now, regarding the dictionary definitions that were discussed
13 by both parties today, there is simply no basis for the idea that the meaning
14 of the root word bear is somehow irrelevant because that term can be used as
15 a verb. It is still the word root of the term bearing, and it should be taken
16 into account for everything that it stands for. And with respect to the
17 definition of the term bearing itself, that definition cannot support the idea
18 that there is no functional or positional requirements for a bearing, as
19 Petitioner actually argues. The definition is abundantly clear that there are
20 such requirements for something to constitute a bearing. And, again, these
21 are definitions that Petitioner itself submitted during the course of these
22 proceedings. It shouldn't be able to just disregard them when it's convenient
23 for them.

IPR2024-00083
Patent 11,465,005 B2

1 Regarding Tolkien, just very briefly, Petitioner's counsel made
2 a comment about the annotated figures during their rebuttal. I just wanted to
3 point out that those annotated figures that we've been discussing were not
4 presented in Dr. Giachetti's opening report or in the Petition. Those are
5 completely new and were never presented before Petitioner made its new
6 arguments on reply, so the idea that those are just an elucidation of
7 something that Petitioner actually did argue in the Petition is simply
8 incorrect.

9 And, finally, counsel for Petitioners also made some comments
10 regarding Socwell, and particularly with respect to Socwell's teachings
11 regarding mounting or dismounting the treadmill. Socwell does not say
12 anything whatsoever about bidirectional movement when mounting or
13 dismounting the treadmill. It does discuss issues related to friction and
14 ensuring the belt does not move unexpectedly. But that is not a directional
15 issue. That is something that comes into play at any point in time and is not
16 something that would be addressed or remedied by the inclusion of a one-
17 directional, one-way bearing device, like Petitioner argues there. It's simply
18 unrelated in any way, shape, or form to the supposed modifications or
19 improvements that Petitioner has presented with respect to the grounds in
20 this case, both grounds 1 and 2.

21 And with respect to other issues that were raised, I believe our
22 positions regarding other issues related to Tolkien that were raised by
23 Petitioner's counsel on rebuttal have been more than sufficiently covered by

IPR2024-00083
Patent 11,465,005 B2

1 our opening arguments and what is presented in the papers. So with that,
2 unless my colleagues have anything to add, I believe we will also cede
3 whatever the remaining time is for our rebuttal, unless, of course, Your
4 Honors have any questions, which I'm happy to answer.

5 JUDGE PETRAVICK: I have no question.

6 JUDGE SHAH: I have no questions.

7 JUDGE POWELL: Nor do I.

8 JUDGE PETRAVICK: So hearing nothing else, I'm going to
9 thank you for coming here today and providing us with this information to
10 consider. I ask that you stay on the line after the judges have left in order to
11 help the court reporter get the correct spelling of your names and any other
12 items that she may need, cases for the spelling of the prior art. With that, we
13 are adjourned. Thank you.

14 (Whereupon, the above-entitled matter went off the record at
15 3:15 p.m.)

IPR2024-00083
Patent 11,465,005 B2

PETITIONER:

Andrew Turner
John Halan
Rebecca Cantor
Kyle Konz
Reza Esfahani
BROOKS KUSHMAN P.C.
aturner@brookskushman.com
jhalan@brookskushman.com
rcantor@brooks.law
kkonz@brookskushman.com
resfahani@brookskushman.com

PATENT OWNER:

Richard McKenna
Kadie Jelenchick
Sarah Rieger
FOLEY & LARDNER LLP
rmckenna@foley.com
kjelenchick@foley.com
srieger@foley.com