UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LULULEMON ATHLETICA CANADA INC.
and LULULEMON USA INC.
Petitioner,

v.

NIKE, INC.
Patent Owner.

Patent No. 9,278,256

Inter Partes Review No. IPR2023-00189

PETITIONER'S OBJECTIONS TO EVIDENCE SUBMITTED WITH PATENT OWNER'S PRELIMINARY RESPONSE

lululemon athletica Canada Inc. and lululemon USA Inc. ("lululemon") objects to the following evidence submitted by Nike, Inc. ("Nike") with its Patent Owner Preliminary Response (Paper 8) in the above-captioned proceeding. In accordance with 37 C.F.R. § 42.64(b)(1), lululemon is filing and serving these objections within ten business days of the Board's May 15, 2023, institution decision. (Paper 11).

A. Exhibit 2001

lululemon objects to Exhibit 2001 as lacking foundation, assuming facts not in evidence, containing legal conclusions, and mischaracterizing the evidence.

lululemon further objects to Exhibit 2001 because it includes arguments about claim construction, which are beyond the scope of Dr. Toney-Bolger's expertise. *See* Fed. R. Evid. 702, 703. For example, Dr. Toney-Bolger's opinions that Tagliabue and Arrasvuori do not teach limitations 1[G] and 11[E] depend on her assertions that the challenged claims require "data generation without perceived interruption" and that "the interface indicating whether the challenge has been met is communicated to the two users at essentially the same time that the athletic activities performed by the two users occurs," which are legal conclusions. (Ex. 2001, ¶ 39; *see also id.*, ¶¶ 40-44, 46-52.) Similarly, her opinion that Watterson does not teach limitations 1[F] and 11[D] assumes that those limitations require determining whether the claimed challenge was met based *solely* on the

athletic activity data collected from the claimed sensors, which is another legal conclusion. (*See e.g.*, *id.*, ¶¶ 56, 61 ("[a]ny such scaling of velocity still requires data collected by Watterson's treadmill as heart rate alone cannot independently determine a user's velocity").)

Dated: May 30, 2023

Respectfully submitted,

By: */s/ Alex S. Yap*

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Certificate of Service (37 C.F.R. § 42.6(e)(4))

I hereby certify that the attached PETITIONER'S OBJECTIONS TO EVIDENCE SUBMITTED WITH PATENT OWNER'S PRELIMINARY RESPONSE was served as of the below date on the Patent Owner via e-mail (by agreement) to the following counsel of record:

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