

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

LIFECORE FITNESS, INC. d/b/a

ASSAULT FITNESS,

Petitioner, Case No. IPR2023-00843

US Patent No. 10,561,884 to Bayerlein et al

vs.

WOODWAY USA, INC.,

Patent Owner.

-----/

DEPONENT: DR. KIM B. BLAIR, PH.D.

DATE: Monday, April 8, 2024

TIME: 2:16 p.m.

LOCATION: Zoom Video Conference

REPORTER: Shari J. Pavlovich, CSR-5926

Job No.: 29641

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1 **APPEARANCES:**

2
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17 - - -

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DEPOSITION EXHIBIT PAGE MARKED

(None offered.)

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Monday, April 8, 2024

About 2:16 p.m.

- - -

DR. KIM B. BLAIR, PH.D.,
having affirmed or been duly sworn, was
examined and testified as follows:

- - -

EXAMINATION

BY MR. TURNER:

Q Welcome back, Dr. Blair.

A Thank you.

Q All right. So do you understand you're here for
your deposition in IPR2023-00843, and this is an
IPR challenging U.S. patent number 10,561,884?

A Yes.

Q Okay. Do you have a copy of your declaration,
which is Exhibit 2018?

A I do.

Q All right. Can you turn to the last page of your
declaration?

A Okay.

Q Do you recognize the signature on the last page?

A Yes, I do.

Q Is that your signature?

A Yes, it is.

1 Q Okay. All right. What materials did you consider
2 in preparing your declarations?

3 A The materials that are listed under the "Materials
4 Considered" section in my declaration starting
5 with -- that section starts on page 9. There's a
6 table that starts at the bottom of page 9.

7 Q All right. And so you have a book of Exhibits; is
8 that correct?

9 A I do.

10 Q Are any of the Exhibits -- I guess, first, do you
11 have all the Exhibits that are listed in your
12 "Materials Considered" table in your book?

13 A It appears that way, yes.

14 Q Okay. And are these clean Exhibits? Do you have
15 any markings or notes on them?

16 A Yes, these are all clean.

17 Q Okay. Excellent. Can you turn to paragraph 79 of
18 your declaration.

19 A Yes.

20 Q All right. Do you see here you're analyzing the
21 Chickering reference regarding a claim limitation
22 of a curved running surface?

23 A Yes.

24 Q Do you know if your positions here with respect to
25 the curved running surface are different from your

1 positions that we discussed earlier for the '580
2 Patent?

3 A In regards to the Chickering?

4 Q Yes. Chickering, and this curved running surface
5 limitation.

6 A No, there's no difference.

7 Q Okay. Can you turn to paragraph 107 of your
8 declaration?

9 A Okay.

10 Q Do you see here you're analyzing the plurality of
11 bearings limitation with reference to the Socwell
12 reference?

13 A Yes.

14 Q Okay. Can you turn to paragraph 109?

15 A Okay.

16 Q Now, here your sentence here that a POSA would
17 understand that the plurality bearings would all be
18 positioned below and have some kind of weight-
19 bearing relationship with the running belt.

20 Do you see that?

21 A Yes.

22 Q So this is -- is this a similar argument to -- that
23 we discussed for the '580 Patent?

24 A Yes.

25 Q Are you construing the term "plurality of bearings"

1 here to require these position limitations and
2 weight-bearing relationship limitations?

3 A No.

4 Q And did the District Court construe these terms?

5 A Which term, specifically?

6 Q "Plurality of bearings".

7 A No.

8 Q Okay. Can you turn to paragraph 126 of your
9 declaration? Do you see here you're analyzing
10 these plain terms, "A running belt at least
11 partially supported by the plurality of bearings"
12 and "disposing the running belt on the plurality of
13 bearings", those limitations?

14 A Yes.

15 Q Okay. So are you -- let's see, are you
16 interpreting these terms as also requiring some
17 type of position limitation relative to the --
18 between the bearing and the belt and a
19 weight-bearing relationship?

20 A I would say I'm not construing the term to be such.
21 I'm construing the combination as it's described in
22 the specification to be that way.

23 Q Okay. So it's not -- you're not proposing a
24 construction, but that's your interpretation of the
25 claims, is that -- would that be correct?

1 A Yes.

2 Q And do you know if the District Court construed
3 either of these terms?

4 A They did not.

5 Q Can you turn to paragraph 143 of your declaration?

6 A Yes.

7 Q Can you see from -- based on the heading above it,
8 so this section has to do with the Schonenberger
9 reference and the curved running surface?

10 A Yes.

11 Q Okay. If you turn to paragraph 146, you have a
12 number of images in 146.

13 Do you see this?

14 A Yes.

15 Q So what do these images represent?

16 A So the images on page 81 represent images that were
17 contained in the -- that were included in the
18 Petitioner's modification to the Schonenberger
19 reference.

20 Q Okay. And so on the left side of the top image,
21 that Figure 1, is that the existing Figure 1 of the
22 Schonenberger reference?

23 A Yes.

24 Q Okay. So what is Petitioner's proposed
25 modification to the Schonenberger reference?

1 A So moving back to page 79, paragraph 143 of my
2 declaration, the modification there that the
3 Petitioner is proposing is reversion or flipping
4 the orientation of the terminal rollers:

5 "Such that the rollers 12a are
6 positioned above the" re -- sorry, the
7 "remaining rollers."

8 Q So what do you mean, by reversing or flipping the
9 orientation?

10 A As the Petitioner suggested it, if you look at
11 figure 12 on the bottom of page 81, the rollers 12a
12 on both far ends, as opposed to being slightly
13 below the other rollers in the middle, they're
14 positioned to be above those rollers.

15 Q Okay. So when you say reversing or flipping, you
16 mean, I guess, flipping relative to a horizontal
17 plane?

18 A The rollers in the middle are in a horizontal
19 plane. If you can look at the top of page 80, and
20 the representation of Figure 12, you can see there.

21 There's a green line that shows a flat
22 bottom profile from the middle rollers that are all
23 in red. And it would be basically taking out 12a
24 on each end is below that line, to moving it so it
25 would be above that line.

1 Q So in the image that you have on the top of
2 page 80, where is the running surface in figure 12?

3 A According to the -- excuse me. According to the
4 Schonenberger specification, the item labeled 13 in
5 figure 12 is the support belt. And the running
6 surface would actually -- is not found in figure
7 12.

8 Q So there's no running surface shown in figure 12?
9 Is that what you said?

10 A That's correct. If you look at figure 4 in
11 Schonenberger, you can see the belt, item 13. And
12 then you can see item 4 is that which are the
13 slats. And that's what the runner makes contact
14 with.

15 Q So you're saying 13 is a support belt. So that's
16 not a running surface in figure 12; is that
17 correct?

18 A Yes, that's right.

19 Q So what does element one in Figure 12 refer to?

20 A That's the surface that the person would run on.
21 So that's one of the surfaces below -- oh, I'm
22 sorry, I -- be number 1 over there.

23 I didn't see the number 1 up top or
24 didn't notice it earlier. Number 1 on the top of
25 Figure 12 on the top of page 80 would be the

1 running surface.

2 Q Okay. So does that running surface extend all the
3 way to the rollers 10? Or does it stop at the --
4 at the edges of the red bearings where that --
5 reference numeral 12?

6 A No. The running surface, number 1, goes out and
7 around the big circular number 10s all the way.
8 So it's a continuous --

9 Q So it's a continuous running surface; is that
10 correct?

11 A Well, it's a continuous surface. It's the running
12 surface. So it's not -- when it's on the top. You
13 don't run on the bottom.

14 Q So the running surface refers to the portion of the
15 belt that's on the top of the image in figure 12?

16 A Yeah. Yeah, where a runner would normally make
17 contact.

18 Q Okay. All right. So now back to paragraph 146 of
19 your declaration. Here it shows -- is this correct
20 that the images on the left side of the screen are
21 kind of the original Schonenberger reference
22 figures? And the images on the right are the
23 modified Schonenberger images?

24 MS. JELENCHICK: Objection, form.

25 THE WITNESS: Well, certainly for Figure

1 1, the left side is exactly as it's shown, minus a
2 couple of labels in the Schonenberger reference.

3 The -- for figure 12 down below, there's
4 been some modifications to it. But the running
5 belt's been added. The light peach-colored, I
6 guess, on top, and certainly the colors have been
7 added.

8 BY MR. TURNER:

9 Q Okay. So you're referring to Figure 12 on the left
10 side of the screen as the annotations; is that
11 correct?

12 A Yes. The annotations have been added, the colors.

13 Q Okay. So then how has Figure 12 been modified as
14 shown in the image on the bottom right side?

15 A Well --

16 MS. JELENCHICK: Objection, form.

17 THE WITNESS: -- in particular, the two
18 outside rollers, the two outside red ones have
19 been moved above the plane of the central ones,
20 the red ones. And then the pulleys are moved up,
21 as well.

22 BY MR. TURNER:

23 Q Okay. In your paragraph 146 you say that "the
24 useable surface would still be flat."

25 So where is the useable surface, in your

1 opinion, on these proposed modifications to
2 Schonenberger?

3 A So in the bottom right figure would be -- basically
4 the proposed useable surface would be the one, two,
5 three, four, five -- you know, above the five red
6 circles in the middle.

7 Q So is it your position that a person running on
8 this treadmill would not use the portions of the
9 running belt outside of those five central bearings
10 or rollers?

11 A Yes, that's correct. As I noted in my report on
12 page -- or paragraph 148, that it's just -- that
13 "proposed modification is too steep near the pulley
14 rollers to constitute a running surface."

15 Q All right. And so what is the figure in -- on
16 page 83, which is in paragraph 148 of your
17 declaration?

18 A That is showing -- that's basically an excerpt of
19 Figure 12. And it's showing the relative size,
20 roughly, of the difference between the drums and
21 rollers.

22 Which is also noted there as described in
23 column 5, 30 through 32, that:

24 "The diameter of the rollers 12 is
25 less than the diameter of the drums or

1 rollers 10."

2 Q So here you're assuming a scale and a diameter for
3 these components. Are patent drawings typically
4 drawn to scale?

5 MS. JELENCHICK: Objection, form.

6 THE WITNESS: A lot of times they say
7 they're not drawn to scale. But usually the
8 relative sizes of individual objects in a given
9 patent image are roughly relative in size to one
10 another, in order to be able to explain the
11 concept to the reader.

12 BY MR. TURNER:

13 Q Does the Schonenberger Patent describe Figure 12 as
14 being drawn to scale?

15 A Now, Figure 12 is listed as:

16 "A highly schematic representation of
17 the arrangement of the support to provide
18 a soft, resilient step-on feel."

19 Q By "highly schematic", does that mean it's drawn to
20 scale?

21 MS. JELENCHICK: Objection, form.

22 THE WITNESS: No. But schematic
23 representation usually understands that it's drawn
24 such that it represents the functionality, even if
25 it's not, like -- drawn to scale typically means,

1 you know, if it's a quarter inch on the page, it's
2 2-foot in real life. That's what drawn to scale
3 means.

4 The schematic should show the functional
5 relationship where geometry is required to
6 understand that.

7 BY MR. TURNER:

8 Q Can you turn to column 1, line 10 of the
9 Schonenberger reference?

10 A Okay.

11 Q So that if you recall we briefly discussed this,
12 this morning. But in this paragraph, Schonenberger
13 references both exercise and walking therapy.

14 Do you recall that?

15 A Yes.

16 Q So would a person of ordinary skill in the art
17 understand that the Schonenberger treadmill could
18 be used for both exercise and therapy?

19 A For exercise and walking therapy, yes.

20 Q Okay. Is the walking therapy described in the
21 Schonenberger Patent different than the therapeutic
22 purpose described in Magid?

23 A In my declaration, page 30, I note that
24 paragraph 58, I state:

25 "Magid discloses that, unlike the

1 prior art, his design is intended to be
2 used 'by people with uncoordinated feet
3 movements, such as small children,
4 physically handicapped people, and old
5 people.'"

6 And goes on to say:

7 "Magid also teaches that each of its
8 embodiments is to be used either 'in
9 hospitals or retirement homes', or as a
10 'baby stroller' or 'baby chair'."

11 Q So is it your position that Schonenberger's purpose
12 is different than Magid's purpose because
13 Schonenberger doesn't reference that "small
14 children, physically handicapped people, and old
15 people" can use this treadmill?

16 A My position is that Magid specifically has designed
17 his apparatus to be that. Whereas, Schonenberger
18 has designed his to be specifically useful for
19 physical exercise and training for ergonometry and
20 walking therapy for handicapped people.

21 Q What is ergonometry? Are you familiar with that
22 term?

23 A I am familiar with the term of "ergonomics", which
24 is usually study of human proportions.

25 Q I'm sorry, you said the "study of human

1 proportions". Was that correct?

2 A Yes. Or how, you know, people's surroundings
3 interact with them. Think of phrases like
4 ergonomic chairs and things like that.

5 Q Does the Schonenberger reference explain how its
6 treadmill is used for ergonometry and walking
7 therapy for handicapped people?

8 MS. JELENCHICK: Object to form.

9 THE WITNESS: So at the bottom of column
10 1 of the Schonenberger reference -- well, he
11 describes his invention. The object of the
12 present invention --

13 "It is an object of the present
14 invention to provide a movable surface
15 apparatus, typically for physical exercise
16 and training, which is safe in operation
17 and requires little operating power, has
18 low noise level in operation and provides
19 a pleasant, springy feel when being
20 stepped or jumped on without, however,
21 being excessively stressed by bending or
22 bowing, so that the surface which is
23 engaged by the foot of the user will have,
24 essentially, the characteristics of a
25 yielding, yet firm support similar, for

example, to walking on moss-covered ground
or a needle-covered path."

BY MR. TURNER:

Q So how does that description in Schonenberger
relate to ergonometry and walking therapy for
handicapped people?

MS. JELENCHICK: Object to form.

THE WITNESS: I think there's aspects of
it: "Safe in operation. "Requires little
operating power." The "pleasant, springy feel
when being stepped or jumped on."

BY MR. TURNER:

Q What does a "springy feel" mean?

A It's opposite of rigid. So it's a little bit of
give when you step on the surface.

Q Does the Schonenberger reference describe some type
of trans -- sorry, suspension system to provide
this springy feel?

A Well, column 2, for example, line 12:

"The movable surface includes a
plurality of step slat elements,
preferably in the form of separate slats
preferably covered with a compact
continuous endless or sectionalized
resilient such as foam rubber, carpeting,"

1 or the like -- "and the like."

2 Sorry.

3 Q So you're saying this is describing that the slats,
4 themselves, slightly resiliently yield without
5 bowing or bending. And that provides the springy
6 feel; is that correct?

7 A Yes.

8 Q Does this springy feel help reduce the impact felt
9 by the runner while running on a treadmill?

10 A So if we go to column 4, line 60 or so, 58:

11 "The upper surface of the slats 4 is
12 covered with an impact-reducing cover 16
13 to provide for soft initial engagement
14 when stepping on the surface and to
15 provide" pleasant -- "a pleasant yielding
16 top surface and to reduce stress on joints
17 and ligaments."

18 And it goes on to list a sampling of
19 materials to be used for that cover.

20 Q Okay. So that helps reduce stress on joints and
21 ligaments?

22 A Yes. That's what it says here.

23 Q Okay. Can you turn to paragraph 219 of your
24 declaration, please?

25 A Okay.

1 Q All right. You see this section you're discussing
2 the motivation to combine Schonenberger with
3 Skowronski?

4 A Yes.

5 Q Do you have a copy of this Skowronski?

6 A I do.

7 Q All right. Can you read paragraph 219 to yourself,
8 and let me know when you're done.

9 A (Witness reviewing document.) Okay.

10 Q Would a person of ordinary skill in the art
11 understand that plastic is electrically insulating?

12 A There are certain additives to plastic that changes
13 properties significantly.

14 Q Are you aware of any additives to plastic that make
15 it electrically conductive?

16 MS. JELENCHICK: Form, scope.

17 THE WITNESS: I'd have to go dig up a
18 reference to figure out the answer to that one.

19 BY MR. TURNER:

20 Q Do you agree that a person of ordinary skill in the
21 art would generally understand plastic to be an
22 electrically-insulating material?

23 MS. JELENCHICK: Form.

24 THE WITNESS: Again, not necessarily
25 because it depends on what the additives in it are

1 in the plastic and how it behaves. You can get
2 static build up.

3 BY MR. TURNER:

4 Q Okay. Can you read paragraph 220 to yourself, and
5 let me know when you're done?

6 A (Witness reviewing document.) Okay.

7 Q Do you know if the claims -- see the claims of the
8 '884 Patent require a static charge?

9 A I'm still here. Had to reach to the other binder.

10 Q Do you have a copy of the '884 Patent, which is
11 Exhibit 1001?

12 A Yes. I'm scanning through the claims now.

13 Q So if it helps, if you can look at claim 15, maybe
14 that will be helpful.

15 A Okay, yes. Claim 15 is requiring an
16 electrically-insulating material.

17 Q Do you see any of the other claims requiring
18 specifically a static charge?

19 A I don't see one requiring a static charge. Not in
20 the claims.

21 Q All right. Why don't we take a five-minute break.

22 A Okay.

23 (Short recess taken at 3:04 p.m.)

24 (Back on the record at 3:13 p.m.)

1 MR. TURNER: I don't have any further
2 questions.

3 MS. JELENCHICK: No redirect.

4 (Deposition concluded at 3:14 p.m.)

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CERTIFICATE

STATE OF MICHIGAN

COUNTY OF WAYNE

I do hereby certify the witness, whose attached testimony was taken in the above matter, was first duly sworn to tell the truth; the testimony contained herein was reduced to writing in the presence of the witness, by means of stenography; afterwards transcribed; and is a true and complete transcript of the testimony given. I further certify that I am not connected by blood or marriage with any of the parties, their attorneys or agents, and that I am not interested directly, indirectly or financially in the matter of controversy. In witness whereof, I have hereunto set my hand at Westland, Michigan, April 15, 2024.

Shari J. Pavlovich

Shari J. Pavlovich, CSR-5926

Notary Public, Wayne County, Michigan

My commission expires 4/14/2025

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