

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LIFECORE FITNESS, INC.,  
d/b/a ASSAULT FITNESS,  
Petitioner,

v.

WOODWAY USA, INC.  
Patent Owner.

U.S. Patent No. 10,799,745 to Bayerlein et al.

Case No. IPR2023-00849

DEPOSITION OF KIM B. BLAIR, PhD

taken by Petitioner on Tuesday, April 9, 2024, at

9:32 a.m. via Zoom

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JOB NUMBER: 29642

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NUMBER	DESCRIPTION	PAGE
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Via Remote Zoom

Tuesday, April 9, 2024

9:32 a.m.

\* \* \*

KIM B. BLAIR, PhD

having first been duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. TURNER:

Q. All right, good morning, Dr. Blair.

A. Good morning.

Q. Do you know why you're here today?

A. I am to be deposed in regards to my declaration for U.S. Patent 10,799,745.

Q. All right, and that's for IPR2023-00849?

A. Yes.

Q. Okay, great.

How did you prepare for your deposition today?

A. I did -- well, beyond what we already talked about yesterday, I did a quick review of the '745 report that I wrote.

Q. Okay. So the review that we discussed yesterday, you mentioned you -- you met with Kadie from Foley, is that correct, to prepare for it?

1 A. Correct.

2 Q. Did you meet with anyone else --

3 A. No.

4 Q. -- to prepare for your deposition? All right.

5 And about how much time did you spend  
6 preparing for your deposition?

7 A. Double digit hours.

8 Q. Okay. And what documents did you review?

9 A. I reviewed those listed in the various -- well, for  
10 this deposition in particular, I reviewed those listed  
11 on Section 2 materials considered.

12 Q. Okay. So in Section 2 materials considered, so are  
13 you referencing your exhibit -- your declaration,  
14 which is Exhibit 2018?

15 A. Correct.

16 Q. Okay. And can you turn to the last page of that  
17 exhibit?

18 A. Okay.

19 Q. All right. Is that your signature?

20 A. Yes.

21 Q. Okay. And who drafted your declaration?

22 MS. JELENCHICK: Objection, form.

23 A. I did.

24 BY MR. TURNER:

25 Q. Okay. And about how much time did you spend preparing

1 your declaration?

2 A. I would say double digit hours again.

3 Q. And do you remember when you started working on your  
4 declaration?

5 A. It would have been -- well, without records in front  
6 of me, it's a little hard to say. It would have been,  
7 you know, on the order of a couple months before it  
8 was due.

9 Q. Okay. So it was due -- you signed it January 31st.  
10 Do you think you started working on it last fall  
11 sometime; is that accurate?

12 A. Yes, that would be accurate.

13 Q. Okay. And who did you work with in preparing your  
14 declaration?

15 A. Ms. Jelenchick at Foley and a couple of other people  
16 that were working with her on her team.

17 Q. All right. Do you remember the names of the other  
18 people you were working with?

19 A. Not off the top of my head.

20 Q. Okay. But they were all attorneys at Foley?

21 A. Well, they were all employees of Foley, I don't know  
22 exactly -- I mean, there may be some legal assistants  
23 or something like that in there, but all members of  
24 the Foley team.

25 Q. Okay. And what did you rely on in preparing your

1 declaration?

2 A. The materials listed in the materials considered  
3 section.

4 Q. Okay. Did you rely on anything that's not cited in  
5 the materials considered?

6 A. No.

7 Q. All right. And do you have an exhibit book in front  
8 of you today?

9 A. I do.

10 Q. Okay. Can you go through and let me know what  
11 exhibits are included in your book?

12 A. Certainly. Exhibit 101 is the '745 patent that we're  
13 discussing.

14 Q. Okay.

15 A. 1001, sorry.

16 THE COURT REPORTER: I'm sorry, if you  
17 could keep your voice next to the microphone.

18 THE WITNESS: Oh, sure, let me rearrange  
19 what's in front of me here so I can get to it.

20 A. 1003 is the file history.

21 BY MR. TURNER:

22 Q. Is that 1003 or 1002?

23 A. Two, sorry.

24 Q. Okay.

25 A. Didn't realize which way these are labeled now.

1 1003 would be the CV -- no, 1003 is the  
2 declaration of Mr. Giachetti.

3 Q. Okay.

4 A. 004 is the CV of Mr. Giachetti.

5 007 is the Australian Competition and  
6 Consumer Commission Product Safety for Treadmills  
7 Supplier Guide.

8 Q. Okay.

9 A. Number 8 is a patent from 1900, the year 1900, issued  
10 to Mr. Ziebell.

11 Q. Okay.

12 A. 1009 is a patent from 1917 issued to Schmidt.

13 Q. Okay.

14 A. 1010 is a patent 4,614,337 issued to Schönenberger.

15 Q. Okay. And that's one we'll discuss today, so you're  
16 okay if we refer to that as the Schönenberger or  
17 Schönenberger patent?

18 A. Yes.

19 Q. Okay.

20 A. Patent number 5,897,461 issued to Socwell, that's  
21 Exhibit 1011.

22 1012 is patent 5,538,489 issued to Magid --  
23 or Magid.

24 Exhibit 1013 is patent 3,637,206 issued to  
25 Chickering.



Exhibit 1014 is patent 3,642,279 issued to  
Cutter.

Exhibit 1015 is patent 6,042,514 issued to  
Abelbeck.

Exhibit 1016 is sections taken from the  
Power Transmission Handbook.

1017 are sections taken from a book called  
Mechanisms and Mechanical Devices by Sclater --  
Sclater.

1018 is a catalog from Emerson Industrial  
Automation, the focus is on mechanical clutches and  
torque overload devices.

1019 is an ASTM Standard F2115-05, standard  
specification for motorized treadmills.

Exhibit 1020 is ISO Standard 20957-6,  
stationary training equipment, part 6, treadmills,  
additional specific safety requirements and test  
methods.

Exhibit 1029 is patent number 4,635,771.

Exhibit Number 1030 is U.S. Patent Number  
6,923,746.

Exhibit 1033 is the claim construction  
order for the district court case.

Exhibit 2018 is my declaration.

Exhibit 219 is my CV.

Exhibit 2020 is the declaration of  
Eric Weber.

Exhibit 2021 is Mechanisms and Mechanical  
Devices Sports Book, excerpts from that text.

Exhibit 2022 is the transcript of  
Mr. Giachetti's deposition for patent '580.

Exhibit 2023 is the deposition transcript  
for Mr. Giachetti in relation to the '745 patent.

Exhibit 2024 is the transcript of the  
deposition of Mr. Giachetti for the '884 patent.

Exhibit 2026 is a claim chart for U.S.  
Patent Number '745.

Exhibit 2028 is a Woodway Nonmotorized  
Treadmills User Manual.

Exhibit 2029 is an Ultra Industrial Motion  
Stieber Clutch Catalog, that's S-T-I-E-B-E-R.

And Exhibit 2030 is a research paper titled  
Human Ankle Impact Response in Dorsiflexion.

And that's it.

Q. Okay. Now, are these all clean copies of these  
exhibits? Do you have any notes or comments on these  
documents?

A. These are all clean copies.

Q. Okay, great.

All right, can you turn to Exhibit 1001,

1 which is the '745 patent.

2 A. Okay.

3 Q. All right. Have you read the '745 patent?

4 A. Yes.

5 Q. The entire patent?

6 A. Yes.

7 Q. Approximately how many times?

8 A. Oh, probably at least half a dozen times.

9 Q. Okay. Are there any differences between the '745  
10 patent and the '580 patent that we discussed  
11 yesterday?

12 MS. JELENCHICK: Objection, form.

13 A. Well, certainly the claims are different. The  
14 specification is, if not identical, it's very, very  
15 similar.

16 BY MR. TURNER:

17 Q. Okay.

18 A. With some more content.

19 Q. The only primary difference is the claims between  
20 these patents?

21 MS. JELENCHICK: Object to form.

22 A. Yeah, that's correct. I -- you know, I wouldn't say I  
23 went through the references cited list in detail and  
24 compared them, but more for the meat of it, yeah, it's  
25 the claims.

1 BY MR. TURNER:

2 Q. Okay. All right. Can you turn to Exhibit 1010, which  
3 is the Schönenberger patent.

4 A. Okay.

5 Q. All right. Have you read the entire Schönenberger  
6 patent?

7 A. Yes.

8 Q. Okay, approximately how many times?

9 A. Oh, single digit.

10 Q. Okay.

11 A. More than once.

12 Q. All right. So you have an overview of Schönenberger  
13 in your declaration starting at paragraph 48. Can you  
14 turn to paragraph 48, please?

15 A. Okay.

16 Q. All right. Actually if you could flip a couple more  
17 pages to paragraph 50. If you could go to 50, read  
18 paragraph 50, and then let me know when you're done,  
19 please.

20 A. Okay.

21 Q. In paragraph 50 you reference Schönenberger's support  
22 rollers 12; is that correct?

23 A. Correct.

24 Q. What is the structure of the support rollers?

25 A. Column 5 of the patent, of the '337 patent, states,

1 "The support rollers 12 and 12' are journalled to  
2 rotate about screws or bolts 21."

3 Q. All right, and you're reading -- is that line about  
4 35, 36 in that column?

5 A. Yes.

6 Q. Okay.

7 A. And below that, this is about line 47 or 48, "The  
8 support rollers are journalled by means of  
9 low-friction bearings, for example needle bearings or  
10 ball bearings [referencing] (Figure 5) although sleeve  
11 bearings operating with low friction with respect to  
12 bolt 21 may be also used."

13 Q. Okay. So they describe -- Schönenberger describes the  
14 structure as including bearings, different types of  
15 bearings; is that correct?

16 A. That's correct.

17 Q. Okay. And what is the function of these support  
18 rollers in Schönenberger?

19 A. "A support belt --" top of column 5, first line, "A  
20 support belt 13 is positioned between the upper sides  
21 of the support rollers 12 and the lower sides of the  
22 slats 4. Therefore -- slats 4, therefore, are  
23 supported at their marginal ends by the support  
24 rollers 12 with the support belt 13 interposed."

25 Q. So do the support rollers support the slats?

1 A. It says here in column 5, line 3, "The slats 4,  
2 therefore, are supported at their marginal ends by the  
3 support rollers 12 with the support belt 13  
4 interposed."

5 Q. Okay. And what are the slats?

6 A. Column 4, line 43, "The slats 4 are preferably of  
7 lightweight metal, for example of aluminum, and extend  
8 transversely to the running direction indicated by  
9 arrow A of the movable surface. The slats 4 have  
10 generally T-shaped cross section and have a center  
11 [tab at] web 8. The ends --" skipping forward to line  
12 50 -- sorry, 49, "The ends of the slats, in the region  
13 of connection of the slats 4 to the belts 5, have  
14 reduced width with respect to the width of slats 4  
15 intermediate to their length, to form an essentially  
16 rectangular tongue 38 having a width B and a length L.  
17 The upper surface --" skipping forward to 58, line 58  
18 of column 4, "The upper surface of the slats 4 is  
19 covered with an impact-reducing cover 16 to provide  
20 for soft initial engagement when stepping on the  
21 surface and to provide a pleasant yielding top surface  
22 to reduce stress on joints and ligaments."

23 Q. Okay. So it would be accurate to describe these slats  
24 as a component of the running belt or moving surface?

25 A. Yes.

1 Q. Okay. So would it be accurate to describe these  
2 rollers as components that include bearings and  
3 supports the moving surface or running surface?

4 A. Yeah, to the effect as I read in the specifications  
5 state that, yes.

6 Q. Would you describe these rollers as having a  
7 weightbearing relationship with the running surface?

8 A. Yes. I mean, the top of column 5, line 3, says, "The  
9 slats, therefore, are supported at their marginal ends  
10 by support rollers 12 with the support belt  
11 interspersed."

12 Q. Okay. All right.

13 Can you turn to paragraph 52 of your  
14 declaration, in which you're describing the Socwell  
15 rollers?

16 A. Okay. I'm there.

17 Q. All right. And then if you can go down to paragraph  
18 56 of your declaration.

19 A. Okay.

20 Q. Can you read paragraph 56 and then let me know when  
21 you're done?

22 A. Okay.

23 Okay.

24 Q. All right, so paragraph 56 you describe a belt  
25 securing assembly 94; is that correct?

1 A. Yes.

2 Q. What does the belt securing assembly include?

3 A. Which is quoted from -- right here in my report, which  
4 is quoted from the Socwell patent, it "comprises a  
5 roller 98 having an axle 100 which rotatably engages a  
6 mounting bracket 96. The mounting bracket 96 is  
7 preferably disposed in relation to the roller 98 such  
8 that the roller 98 may engage the belt 16, thereby  
9 substantially retaining a side portion of the belt 16  
10 substantially flush with the deck 56."

11 Q. Now, you included an annotated image of Figure 5 of  
12 Socwell at the bottom of that paragraph. Do you see  
13 that?

14 A. Yes.

15 Q. Does that image include the belt securing assembly 94?

16 A. Yes.

17 Q. All right. And -- so the belt securing assembly, you  
18 said it includes a roller 98 and an axle 100; is that  
19 correct?

20 A. Yes.

21 Q. Are both of those components shown in Figure 5?

22 A. Yes.

23 Q. Okay, where is the roller shown?

24 A. That's number 98.

25 Q. And that's the element you have highlighted or



1 annotated in green; is that correct?

2 A. Correct.

3 Q. All right, and is the axle 100 shown also?

4 A. Yes.

5 Q. And where is that shown in the figure?

6 A. It's just to the right of item 98 labeled 100.

7 Q. All right, and is that annotated in your Figure 5?

8 A. It's not colored in any way. It's noted as a figure  
9 from the patent.

10 Q. Okay. Now, this roller and axle as described in  
11 Socwell, is that similar to the roller that we  
12 described in the Schöenberger claims?

13 MS. JELENCHICK: Objection, form.

14 MR. TURNER: I can rephrase that.

15 BY MR. TURNER:

16 Q. Is the roller of Socwell -- does the roller of Socwell  
17 have the same structure as the roller of  
18 Schöenberger?

19 A. As I am reading and reskimming the Socwell patent at  
20 the moment, it appears that Socwell doesn't go into  
21 the detail to describe the roller structure at a  
22 similar level as to what was done in Schöenberger.

23 Q. By the roller structure, you're referring to whether  
24 it includes bearings -- roller bearings, needle  
25 bearings, something like that; is that correct?

1 A. Yeah, I don't see similar language or, yeah, similar  
2 detail of description here in Socwell.

3 Q. Would a person of ordinary skill in the art consider  
4 the roller of Socwell to be a bearing?

5 A. A person of ordinary skill would -- no, I mean, a  
6 roller and a bearing are two different things.

7 Q. Okay, what's the difference between a roller and a  
8 bearing?

9 A. Well, I think that the -- the previous reference that  
10 we were just talking about actually does a nice job  
11 of -- the Schöenberger actually does a nice job of  
12 describing that the roller includes -- potentially  
13 includes bearing components.

14 Q. So a roller would be more of a roller assembly that  
15 includes bearings as a subcomponent?

16 A. Well, that's the way that Schöenberger described it  
17 and I think a person of ordinary skill would relate to  
18 that.

19 Q. Okay. Now, if you go back to your declaration  
20 paragraph 56.

21 A. Okay.

22 Q. So here you reference a deck 56 of Socwell. Do you  
23 see that?

24 A. Yes.

25 Q. Would a person of ordinary skill in the art consider

1           that deck 56 of Socwell to be a bearing?

2   A.   No.

3   Q.   How would you describe deck 56 of Socwell?

4   A.   I would describe it as a deck.  It's a flat sheet of  
5       material.  Well, in this case -- in this case it's a  
6       curved sheet of material, but it's a big -- one would  
7       imagine that it would start from a flat sheet of  
8       material and then put into the shape that it was  
9       wanting to be.  It doesn't have anything in common  
10      with, you know, the needle bearings or those kind of  
11      things that are described inside of Schöenberger.

12  Q.   Would a person of ordinary skill in the art consider  
13       the deck to be a planar bearing or a bearing surface?

14  A.   In the context of bearing surface, it could be.  It's  
15       designed to bear weight.

16  Q.   What is your understanding of the term bearing  
17       surface?

18  A.   I would say it's a surface that's allowed to bear  
19       weight and, for example, wouldn't be a whole lot  
20       dissimilar in context from -- I'm looking for a figure  
21       here.  It wouldn't be a whole lot different in context  
22       than the -- you know, like, for example, part 168 in  
23       Figure 1 of Socwell, one can imagine that when a  
24       person mounts the treadmill of Socwell, if they come  
25       in from the side, they might first step on 168, and in

1       which case 168 is a bearing surface bearing the weight  
2       of the user as they mount the treadmill.

3   Q.   So you're saying element 168 of Socwell would be  
4       considered a bearing surface?

5   A.   If a person is standing on it, it is bearing their  
6       load.

7   Q.   Now, is a bearing surface typically designed to have  
8       another surface move relative to it and have some type  
9       of low-friction properties?

10               MS. JELENCHICK: Objection, form.

11   A.   Well, certainly there's been a lot of work in the last  
12       several years over artificial ice and that is  
13       definitely a bearing surface, it's definitely low  
14       friction.

15   BY MR. TURNER:

16   Q.   Does Socwell describe the running belt as sliding over  
17       this deck 56? Maybe it would help if I could direct  
18       you to column 8 of Socwell beginning on line 7  
19       paragraph starting "In preferred construction."

20   A.   Oh, yes, thank you. That's what I was looking for.

21               So deck 56 is preferably -- so now down  
22       around 13 of column 8, "deck 56 is preferably formed  
23       consisting of a wood laminate having an upper surface  
24       66 that may be impregnated with a wax material to  
25       provide a means for reducing the coefficient of

friction acting thereon."

Q. All right, so would you describe that as a  
low-friction surface?

A. Well, certainly Socwell does definitely.

Q. Okay. And you mentioned artificial ice a few minutes  
ago.

A. Yes.

Q. Would this be considered artificial ice?

A. No.

Q. What is artificial ice?

A. Artificial ice is a polymer compound that a few  
companies have invented basically to replace ice in  
ice rinks, low-friction surface, planar surface.

Q. Okay.

Can you turn to paragraph 65 of your  
declaration, please?

A. Yes.

Q. All right, so this section you're discussing the level  
of ordinary skill in the art?

A. Yes.

Q. All right, can you read paragraph 66 to yourself and  
let me know when you're done?

A. Okay.

Q. In paragraph 66 you mention that you "considered  
several things, including the type of problems

1 encountered in this field."

2 What are some examples of the type of  
3 problems encountered in this field that you  
4 considered?

5 A. Well, so, for example, in all the prior art that is  
6 existing out there by that point in time, it will be  
7 various solutions to being able to make, you know,  
8 exercise device that would allow people to run, walk  
9 or otherwise exercise, stationary location, i.e.,  
10 treadmills, and the challenges they have in order to  
11 create a -- a good quality of experience in using the  
12 device, and balance that with safety, and of course  
13 there's always the business cases around those kind of  
14 things too and being able to make it for a price point  
15 that's acceptable in the market and those kind of  
16 challenges.

17 Q. Okay. In your declaration you mention the issue of a  
18 treadmill or a running surface moving in an unintended  
19 direction. Do you recall that?

20 A. Yes.

21 Q. Is that a type of problem encountered in this field at  
22 the relevant time?

23 A. It certainly existed in some of the prior art that the  
24 treadmill could move in the opposite direction that  
25 someone would be normally using that treadmill.

1 Q. Okay. So that is an example of one of the types of  
2 problems a person of ordinary skill in the art would  
3 have encountered at the relevant period of time?

4 A. Yes.

5 Q. Okay. So in paragraph 66 you also mention the  
6 rapidity with which innovations were made?

7 A. Yes.

8 Q. How would you describe the rapidity with which  
9 innovations were made in this field at the relevant  
10 time?

11 A. It's -- overall, it's how quickly the technology or  
12 variations on current products evolve and whether  
13 there's a big gap in time between -- a relatively  
14 large gap in time in a new innovation or a new  
15 technology coming into play.

16 Q. So how would you describe the rapidity in which  
17 innovations were made in this field, this field being  
18 as I think you describe it as manual treadmills?

19 MS. JELENCHICK: Form.

20 A. I think if we skip over to page 115 of my declaration,  
21 I discuss that in paragraph 204.

22 "In addition, the passage of time between  
23 the time of invention and the prior art cited and  
24 relied upon by Dr. Giachetti and Petitioner  
25 demonstrates the long-felt need for the invention.

1       Schönenberger [was] issued in September of 1986 --  
2       more than 20 years before Woodway filed the patent  
3       application that ultimately issued as the '745 patent  
4       -- and Socwell and Magid were both published in the  
5       1990s -- more than a decade before the claimed  
6       priority date."

7               And then the following paragraph 205,  
8       "Despite the purportedly obvious need for improved  
9       safety in Socwell, nothing really changed in the  
10      industry for many years."

11             And I state, "In my opinion, the passage of  
12      time between the publication of the cited prior art  
13      and the time of the invention was significant and  
14      undermines the idea that the combination of prior art  
15      that Dr. Giachetti and Petitioner rely on would have  
16      been obvious to a person of ordinary skill."

17 BY MR. TURNER:

18 Q.    So in your view the innovation was not rapid?

19 A.    Yes, correct.

20 Q.    Okay. Can you turn to paragraph 71 of your  
21       declaration, please?

22 A.    Yes.

23 Q.    All right, can you read paragraph 71 to yourself and  
24       let me know when you're done?

25 A.    Okay.



1 Okay.

2 Q. So here you reference a claim construction order from  
3 the district court and you mention that they construed  
4 a few specific terms. Are you construing any other  
5 terms in this IPR?

6 A. No.

7 Q. Are you proposing a construction for the term bearings  
8 or plurality of bearings?

9 A. No.

10 Q. Are you proposing a construction for the term support  
11 or supported or supporting?

12 A. No.

13 Q. Are you proposing a construction for the term disposed  
14 or disposing?

15 A. No.

16 Q. All right, can you turn to paragraph 76 of your  
17 declaration?

18 A. Okay.

19 Q. So here you're analyzing the claim term "a plurality  
20 of bearings in view of the Socwell reference."

21 Is that correct?

22 A. Yes.

23 Q. Okay. And now can you turn the page and read  
24 paragraph 79 to yourself and let me know when you're  
25 done?

1 A. Okay.

2 Okay.

3 Q. So if you're not proposing a construction for the term  
4 plurality of bearings, why would a person of ordinary  
5 skill in the art "understand that the [term]  
6 'plurality of bearings' must all be positioned below  
7 and have some kind of weightbearing relationship with  
8 the running belt?"

9 A. Because of what's described in the specification of  
10 the '745 patent.

11 Q. In your view do claim terms typically incorporate all  
12 of their description from the specification of a  
13 patent?

14 MS. JELENCHICK: Objection, form.

15 A. I would say in my view a person of ordinary skill  
16 reading the patent would understand the details of the  
17 components of the system from the specification.

18 BY MR. TURNER:

19 Q. All right, can you turn to paragraph 96 of your  
20 declaration?

21 A. Okay.

22 Q. Do you see here you're analyzing claim terms "the  
23 plurality of bearings at least partially supported --  
24 sorry, excuse me, partially supporting the running  
25 belt" and the claim term "disposing a running belt on

1 the plurality of bearings" in view of the Socwell  
2 reference?

3 A. I'm commenting that -- in that paragraph I'm  
4 commenting how the Petitioner and Dr. Giachetti rely  
5 on those claims.

6 Q. Okay. Can you turn to paragraph 101 of your  
7 declaration?

8 A. Okay.

9 Q. Can you read paragraph 101 to yourself and then let me  
10 know when you're done?

11 A. Okay.

12 Q. So here although you're not proposing a construction  
13 of the terms "disposed on" or "support[ed]," why would  
14 "a POSA immediately understand that, in order for the  
15 running belt to be 'disposed on' or 'support[ed]' by a  
16 structure, that structure must be positioned below the  
17 running belt such that the structure supports and/or  
18 bears some of the weight of the running belt?"

19 A. It would have been obvious to a person of ordinary  
20 skill because of what would have been taught in the  
21 specification of the patent.

22 Q. Okay. And do the claims themselves recite these  
23 specific limitations regarding positioning and  
24 weightbearing?

25 A. Claim 17 --

1 Q. Okay.

2 A. -- states, "The treadmill of claim 10, wherein the  
3 rotational elements comprises a plurality of bearings  
4 coupled to the frame, the plurality of bearings at  
5 least partially supporting the running belt."

6 Q. Okay. So in your view does that include a specific  
7 position of the bearings relative to the belt?

8 A. And I should go on probably to the previous question,  
9 claim 18.

10 "Disposing a running belt on the plurality  
11 of bearings such that the curved top profile of the  
12 plurality of bearings define at least a portion of the  
13 curved running surface."

14 So yes.

15 Q. So what is the specific position required in -- of the  
16 bearings relative to the belt in claim 18?

17 A. Claim 18 says, "Disposing a running belt on the  
18 plurality of bearings such that the curved top profile  
19 of the plurality of bearings define at least a portion  
20 of the curved running surface of the running belt."

21 Q. Does it -- in your view, does disposing on mean  
22 disposing on the top of the bearings in this claim?

23 A. Certainly in light of the specification.

24 THE COURT REPORTER: I'm sorry, again.

25 THE WITNESS: Certainly in light of the

1 specification.

2 BY MR. TURNER:

3 Q. And does that term require a specific weightbearing  
4 relationship?

5 A. Which term are you asking about?

6 Q. The "disposing a running belt" limitation.

7 A. I guess I don't know that it requires it. It implies  
8 it.

9 Q. But in your view, a person of ordinary skill in the  
10 art would understand that there's a weightbearing  
11 relationship for this claim limitation based on the  
12 specification; is that correct?

13 A. Yes, based on the specification.

14 Q. All right. Can you turn to the prior page for claim  
15 1?

16 A. Okay.

17 Q. So the first limitation of claim 1 is a frame. Do you  
18 see that?

19 A. Yes.

20 Q. Would a person of ordinary skill in the art understand  
21 that the frame has a specific position as described in  
22 the '745 patent?

23 MS. JELENCHICK: Objection, form.

24 A. I think the -- as the frame standing alone in that  
25 line has not been -- through any other words has not

1       been combined yet in combination with anything else,  
2       it's more of a structural component that holds the  
3       whole system together.

4   BY MR. TURNER:

5   Q.   Okay.  Now, would the frame have a weightbearing  
6       relationship with any other limitations?

7   A.   Well, someone looking at the specification would  
8       assume that the frame is supporting the treadmill  
9       itself or all the other components itself and it's  
10      somehow being supported by the ground.

11  Q.   Okay.

12               So the next limitation is "a front running  
13      belt pulley coupled to the frame."

14               Do you see that?

15  A.   Yes.

16  Q.   So would a person of ordinary skill in the art  
17      understand that the front running belt pulley has  
18      specific position requirements based on the '745  
19      patent?

20  A.   Based on the specification, they would understand that  
21      the front running belt pulley is somehow attached to  
22      the front of the frame.

23  Q.   Would they understand a position of the pulley  
24      relative to the belt based on the '745 patent?

25  A.   Well --

1 MS. JELENCHICK: Object to form.

2 A. -- certainly if you skip about three lines down there,  
3 it talks about the "running belt being supported by at  
4 least one of the front running belt pulley and the  
5 rear running belt pulley."

6 BY MR. TURNER:

7 Q. So this reference to support, does that indicate a  
8 specific position of the front running belt pulley?

9 MS. JELENCHICK: Objection, form.

10 A. The sentence I just read said that the "running belt  
11 [is] partially supported by at least one of the front  
12 running belt pulley and the rear running belt pulley."

13 So that would imply that the front running  
14 belt pulley is toward the front of the treadmill, the  
15 rear one is toward the rear.

16 BY MR. TURNER:

17 Q. Okay. Would it also indicate a vertical position of  
18 the pulley relative to the belt? For example, if it  
19 was above or below the belt?

20 A. Well, it states that the running belt is partially  
21 supported and then one could look at the specification  
22 and figure out where those components are.

23 Q. So in your view if the claim term includes the word  
24 support, that indicates a position of the element  
25 relative to other elements that would be described in

1 more detail in the specification of the patent; is  
2 that correct?

3 A. Could you repeat that again, please?

4 Q. So in your view if a claim includes the word support,  
5 that indicates a position of the element it's  
6 describing relative to other elements, even if it's  
7 not expressly stated in the claim and for a person of  
8 ordinary skill in the art they would need to look at  
9 the specification to understand that position; is that  
10 correct?

11 A. Yeah, I would agree with that.

12 Q. Okay.

13 Now, further down in the claim there's a  
14 limitation that's "a support element coupled to the  
15 frame."

16 Do you see that?

17 A. Yes.

18 Q. So this limitation also includes the term support. So  
19 how would a person of ordinary skill in the art  
20 understand the location of this support element as  
21 used in claim 1?

22 A. Initially they have to read through the rest of the  
23 claim and find out what the support element is  
24 supporting, because the next line says "a safety  
25 device coupled to the running belt, the safety device



1 at least partially supported by the support element."

2 Q. So would that indicate that the support element is  
3 located above or below the safety device?

4 A. The person reading that claim in a vacuum would  
5 understand that the support element is somehow  
6 supporting the safety device, yes.

7 Q. So would a person of ordinary skill in the art  
8 understand a specific location of the support element  
9 relative to the safety device or relative to the belt  
10 based on that term, support?

11 MS. JELENCHICK: Objection, form.

12 A. Yeah, I would say in this case that the person of  
13 ordinary skill would be referring to the specification  
14 to understand the configuration of the components.

15 BY MR. TURNER:

16 Q. Okay.

17 All right, can you turn to paragraph 123 of  
18 your declaration, please?

19 A. Okay.

20 Q. All right, so in this section you're analyzing the  
21 motivation to combine; is that correct?

22 A. No, I think we're looking at the modified version of  
23 the Schöenberger proposed by the Petitioner in this  
24 section.

25 Q. Okay. Okay.

1 All right, so can you turn to paragraph  
2 126, please?

3 A. Okay.

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

6 A. Okay.

7 Q. So in paragraph 126 you refer to a "usable surface."  
8 Do you see that?

9 A. Yes.

10 Q. What is a usable surface?

11 A. Well, in the context of the patents and everything  
12 we're discussing here, it would be the surface on  
13 which the -- a person exercising would place their  
14 feet during exercise.

15 Q. Okay. So in the figures that you include on page 70,  
16 the figure on the right which has the annotation  
17 curved running surface, is it your view that the  
18 curved running surface is not the usable surface?

19 A. The figure on the right that indicates curved running  
20 surface came from the Petitioner's proposed  
21 modification.

22 Q. Okay.

23 A. And yeah, that could be -- that could be the usable  
24 surface.

25 Q. Okay. So here you say, "the usable surface would

1           still be flat."

2                       In your view is the usable surface on the  
3           right side of this image flat?

4   A.   No.   I'm referring to figure -- the figure on the  
5           following page.

6   Q.   Okay.   So by the figure on the following page, this is  
7           on the top of page 71 of your declaration; is that  
8           correct?

9   A.   That's correct.

10   Q.   All right.   And are you referring to the image on the  
11          left or the right?

12   A.   So the image on the right is in my opinion how the  
13          running belt would actually be configured if we  
14          followed the modification proposed by the Petitioner.

15   Q.   Okay.   So does this image include a usable surface?

16   A.   Yes, the flat part in the center.

17   Q.   Okay.   So in your view a user would not use any of the  
18          outer portion of the running surface?

19                       MS. JELENCHICK:   Objection, form.

20   A.   Yes, in paragraph 127, right below that figure, I  
21          state that "a person of ordinary skill would not  
22          understand the resulting running surface to be  
23          curved."

24                       And by the resulting running surface to be  
25          curved here, I'm talking about the way the Petitioner

1 has claimed it.

2 And I go forward then, "As can be seen in  
3 the Petitioner's modified Figure 12, where the rollers  
4 are lower than rollers 12a, the usable running surface  
5 is still flat -- not curved."

6 And then further down, I talk about -- in  
7 paragraph 128, I say, "a person of ordinary skill  
8 would have understood that Petitioner's proposed  
9 modification is too steep near the pulley rollers 10  
10 [colored] (in light blue) to constitute a running  
11 surface."

12 BY MR. TURNER:

13 Q. Okay. In paragraph 127 you say that "A person of  
14 ordinary skill in the art would not understand  
15 Petitioner's modified figures for Schönerberger to be  
16 compatible with each other."

17 A. Yes.

18 Q. Which modified figures are you referring to?

19 A. I am -- if we go to Exhibit 1003, which is  
20 Dr. Giachetti's declaration.

21 Q. Okay. Just a minute, please.

22 A. Yes.

23 Q. Okay. I'm ready.

24 A. So Figure 1 is the Schönerberger treadmill as shown in  
25 Figure 1.

1 Q. Okay, are you referring to a specific page in Exhibit  
2 1003?

3 A. Yes, I'm sorry, yes, page 145.

4 Q. Okay.

5 A. And then --

6 Q. Okay.

7 A. -- on the following pages, the modified version shown,  
8 which I've replicated on my -- in my declaration, and  
9 that is the right side of the top of page 71, and my  
10 opinion is what I'm stating here is on the bottom of  
11 page 70 of my declaration, that the surface that's  
12 represented on the right side of Figure 1 is not  
13 actually the way the surface would show up on the  
14 treadmill if the modifications were made as suggested  
15 by the Petitioner.

16 Q. Okay.

17 A. You wouldn't get the curved -- nice, curved running  
18 surface that's shown, you would get the very steep  
19 parts at the end and then the flat surface in the  
20 middle.

21 Q. Okay. All right, so you're saying they're not  
22 compatible. So the modified Figure 1, that's what has  
23 the nice, curved running surface, but the modified  
24 Figure 12 does not have a nice, curved running  
25 surface? Is that correct?

1 A. Correct. So I don't -- yes, the modified Figure 1  
2 does not accurately represent the running surface as  
3 it would end up based on the Petitioner's  
4 modifications to Schönenberger.

5 Q. Okay. And does Dr. Giachetti describe these as being  
6 the same modification or different modifications?

7 MS. JELENCHICK: Object to form.

8 A. Yeah, I don't understand your question there.

9 BY MR. TURNER:

10 Q. So your position is these two modified figures are not  
11 compatible with each other. Does Dr. Giachetti  
12 describe these as being the same embodiment or  
13 different embodiments?

14 A. So the way I understood Dr. Giachetti's report is that  
15 the figure following paragraph 246 on page 146 is the  
16 proposed modification to Schönenberger. It's also my  
17 understanding of that proposed modification to  
18 Schönenberger the Petitioner is proposing, that would  
19 end up as a nice, smooth, curved running surface as  
20 indicated on the right of Figure 1.

21 Q. Okay.

22 A. And as noted here in my declaration, the -- the  
23 proposed modification presented by Giachetti on page  
24 146 would actually result in -- actually if you look  
25 at the way the running belt is lined, it's actually a

1 flat curved surface in the middle so it would not --  
2 sorry, not a flat curved surface, that's a flat  
3 surface in the middle by a steep ramp on the front and  
4 rear, and so the figure to the right of top of the  
5 page of 71 in my declaration is not compatible with  
6 the proposed way the surface would be proposed by the  
7 Petitioner on the right figure in the bottom of the  
8 figure on page 70.

9 Q. Okay.

10 THE WITNESS: Would you mind pausing for a  
11 quick bathroom break?

12 MR. TURNER: Oh, sure. Sure, yeah.

13 THE WITNESS: Thank you.

14 MR. TURNER: Five minutes, ten minutes?

15 THE WITNESS: Five's good.

16 MR. TURNER: Okay. All right.

17 THE WITNESS: Thank you.

18 MR. TURNER: No problem.

19 (A brief recess was taken.)

20 MR. TURNER: Welcome back.

21 THE WITNESS: Thank you.

22 BY MR. TURNER:

23 Q. All right, so we were discussing modified  
24 Schönenberger before the break, and let's see, can you  
25 turn to paragraph 129 of your declaration, please?

1 A. Okay.

2 Q. And can you read 129 and let me know when you're done?

3 A. Okay.

4 Q. All right. Now, you have an image at the end of  
5 paragraph 129. Do you see that?

6 A. Yes.

7 Q. What is shown in this image?

8 A. It's giving a representation of the steepness of the  
9 angle that the running surface or the belt would be at  
10 around the front pulleys or around either pulley,  
11 front or rear, with the proposed modification -- or  
12 the -- with the Petitioner's proposed modification.

13 Q. Okay. And how do you determine where to put the  
14 protractor in this image?

15 A. I put it roughly at the -- where the steepness of the  
16 curve started.

17 Q. Okay. And how do you describe the shape of the  
18 running surface to the left of your -- at your center  
19 point on your protractor?

20 A. Yeah, as -- you look at the top of the figure on the  
21 previous page, the right side, you describe it as flat  
22 until it gets to the pulley on the other side and then  
23 it would be steep again.

24 Q. All right, so you're saying that the shape of the  
25 running surface is flat to the left of your center



1 point on your protractor?

2 A. Not immediately to the left, but shortly there to the  
3 left. You can see where it flattens out.

4 Q. Okay. So what would happen to your angle if you move  
5 the protractor to the left -- to the left of your  
6 enlarged image on paragraph 129?

7 A. Well, the angle would get less, but I position the  
8 origin of the protractor roughly -- roughly no further  
9 in front of that point would I want my toes to get if  
10 I were using the treadmill.

11 Q. Okay. So the portion of the running belt that's just  
12 to the left of your center point of your protractor,  
13 would you consider that to be a curved surface?

14 A. Just that little bit -- piece right there before it  
15 totally flattens, yes.

16 Q. And would you consider that part of the usable surface  
17 or the nonusable surface?

18 A. It's right at the edge.

19 Q. So it's at the edge of the usable surface?

20 A. Yes.

21 Q. Okay.

22 All right, can you turn to paragraph 131 of  
23 your declaration, please?

24 A. Okay.

25 Q. Now, you have another annotated figure here. What are

1           you showing in this annotation?

2   A.   Effectively the same thing that I was showing on the  
3       image on the previous page, this just shows the entire  
4       cross-section.

5   Q.   Okay. So you have a portion in the middle that you  
6       refer to as a flat running surface and then the angled  
7       piece is on the side, which you have annotated as too  
8       steep; is that correct?

9   A.   Yes.

10   Q.   All right. And now there's a gap between the flat  
11       running surface and these angled portions. Do you see  
12       those?

13   A.   Yes.

14   Q.   Would you consider the portion of the running belt  
15       within those gaps to be curved surface?

16   A.   Well, just where the annotations are. The one on the  
17       left, looks like there may be a little curve here.  
18       The one on the right actually is quite flat.

19   Q.   Okay. Would you consider the portion of the running  
20       belt within the left gap on this image in paragraph  
21       131 to be part of the usable running surface?

22   A.   If a user, you know, could probably start their foot  
23       plant there potentially, but typically the user will  
24       be centering themselves on the treadmill and spending  
25       their time on the flat surface.

1 Q. Okay. All right, and can you turn to paragraph 134 of  
2 your declaration, please?

3 A. Yes.

4 Q. All right. Now, you have some additional images here.  
5 What is shown in these images that are on the top of  
6 page 77 of your declaration?

7 A. Yes, so furthering our discussion earlier, if we go  
8 back to page 70 of my declaration, and we have the  
9 right side figure, that's the same as the left side  
10 figure at the top of page 77. So that figure shows  
11 the Petitioner's proposed modification and how they  
12 think -- how the Petitioner thinks that the running  
13 surface would be shaped. The figure on the right of  
14 page 77 is based on the -- the cross-section from the  
15 previous page, which actually represents the  
16 Petitioner's proposed modification, and so actually --  
17 so basically the figure on the right side is how the  
18 proposed modification the Petitioner would actually  
19 look as part of the entire treadmill.

20 Q. Okay, so this figure on the right side, which is kind  
21 of a modified version of Figure 1 of Schöenberger, in  
22 your view that's how Petitioner's proposed  
23 modification would look; is that correct?

24 A. Yes.

25 Q. And how would you describe this running belt as shown

1 in the right figure in paragraph 134?

2 A. What do you mean how would I describe the running  
3 belt?

4 Q. The shape of the running belt.

5 A. I would describe the running surface or the usable  
6 running surface as I noted in paragraph 131, "The only  
7 surface that a runner would effectively be capable of  
8 using to safely make contact with while in operation  
9 would be the flat portion of the Petitioner's proposed  
10 modification in Figure 12."

11 Q. All right. So in your version of the modified Figure  
12 1, would that be the same running surface that passes  
13 over both the central portion and kind of the outer  
14 cylindrical portions?

15 A. It's the same physical belt.

16 Q. Okay. So do you agree that the figure on the top left  
17 portion of page 77 in your declaration illustrates a  
18 curved running surface?

19 A. What I -- I'm sorry, can you say that again? I got --  
20 I'm not sure -- just please repeat the question.

21 Q. Okay.

22 So I'm referring to the -- the figure on  
23 the top left portion of page 77, and it's a figure  
24 that you have labeled as "Petitioner's misleading  
25 modified Figure 1."

1                   So for that figure, do you agree that it  
2                   illustrates a curved running surface?

3       A.     That's certainly what the Petitioner put forth, yes.

4       Q.     Okay. Now, does the shape of that curved running  
5                   surface correspond to the shape of the running surface  
6                   in the Socwell patent?

7                   MS. JELENCHICK: Objection, form.

8       A.     Well, again, I don't think that that is the -- the  
9                   modification wouldn't result in that surface, the  
10                  modification as proposed would not result in that  
11                  surface. However, that surface on the left figure at  
12                  the top of page 77 is actually similar in shape to the  
13                  Socwell reference.

14    BY MR. TURNER:

15    Q.     Okay. Now, does the image on the top right that's  
16                  labeled as modified Fig 1 corresponding to  
17                  Petitioner's modified Figure 12, does the shape of the  
18                  running surface in that image correspond to the shape  
19                  of the running surface in Figure 1 of the Socwell  
20                  patent?

21    A.     No, the running surface on the right side of where it  
22                  is flat, as indicated in my declaration.

23    Q.     So then it wouldn't correspond to the shape of the  
24                  Socwell treadmill; is that correct?

25    A.     That's correct.

1 Q. Okay.

2 All right, can you turn to paragraph 139 of  
3 your declaration, please?

4 A. Yes.

5 Q. Now, at the end of paragraph 139 you include Figure 9  
6 of the Schöenberger patent; is that correct?

7 A. Yes.

8 Q. What is shown in -- what is illustrated in Figure 9 of  
9 the Schöenberger patent?

10 A. It's the cross-section of one of the -- one of the  
11 versions of the Schöenberger invention.

12 Q. All right.

13 Now, does reference numeral 8, does that  
14 refer to a slat or one of the slats of this treadmill?

15 A. Column 4, line 48 of the Schöenberger patent states,  
16 "The slats 4 have a generally T-shaped cross-section  
17 and have a center web 8."

18 Q. Okay. So these are the slats is what's illustrated  
19 here in Figure 9; is that correct?

20 A. No, the slats 4 --

21 Q. Okay.

22 A. -- and the T-section 8.

23 Q. Okay, so reference numeral 4 refers to the slats in  
24 Figure 9; correct?

25 A. Yes.

1 Q. So how big is this gap between the slats on the top of  
2 the treadmill?

3 A. Well, there's no specific dimensions provided. A  
4 person of ordinary skill would understand that it  
5 needs to be small enough such that it doesn't cause  
6 discomfort or injury to the person using it.

7 Q. So how would that gap between the slats cause  
8 discomfort or injury?

9 A. Well, if you stepped on the gap and it was far enough  
10 apart, you could sprain a foot.

11 Q. Okay. So those gaps look like they're -- would you  
12 agree that the gaps are at least as big as the  
13 diameter of the rollers 12 in Figure 9?

14 MS. JELENCHICK: Objection, form.

15 A. According to that illustration, yes.

16 BY MR. TURNER:

17 Q. Does Schönenberger describe what the diameter of these  
18 rollers 12 are in the patent, in the Schönenberger  
19 patent?

20 A. Well, he does, as I note on page -- I'm sorry, in  
21 paragraph 140 in my declaration, "Schönenberger talks  
22 about how the width of the slats --" wait a minute  
23 here. Schönenberger teaches that the width of one  
24 slat covers two or three of its rollers.

25 Q. Okay.

1                   The Schöenberger patent does not describe  
2           the diameter of these rollers in the patent; is that  
3           correct?

4                   MS. JELENCHICK: Object to form.

5   A.   They're certainly not a detailed engineering drawing  
6           with specific dimensions on them, but it does talk  
7           about relative to the size of other components.

8   BY MR. TURNER:

9   Q.   So do you think Figure 9 is drawn to scale?

10   A.   Well, from an engineering term, I think we talked  
11           about this a little bit yesterday, drawn to scale  
12           usually means that it is some specified -- I hate to  
13           use the word scale, but specified scale of reality, so  
14           like an inch to a foot or a foot to a mile or whatever  
15           that looks like. You know, a person of ordinary skill  
16           would often look at a figure in a patent and would  
17           expect, unless otherwise described, that the relative  
18           sizes of the various components are at least for  
19           illustrative purposes relatively close.

20   Q.   All right, can you turn to paragraph 148 of your  
21           declaration?

22   A.   Okay.

23   Q.   Can you read 148 and let me know when you're done?

24   A.   Okay.

25   Q.   So in this paragraph Schöenberger is referencing a



1           springy feel. Do you see that?

2   A.   Yes.

3   Q.   Why is this springy feel important to Schönenberger?

4                   MS. JELENCHICK: Form.

5   BY MR. TURNER:

6   Q.   I guess let me rephrase that.

7                   Does Schönenberger describe this springy  
8   feel as an important feature?

9   A.   Well, on the bottom of column 1 in the Schönenberger  
10   patent, starting at line 63, said, "It is an object of  
11   the present invention to provide a movable surface  
12   apparatus typically for physical exercise and training  
13   which is safe in operation and requires little  
14   operating power, has low noise level in operation, and  
15   provides a pleasant, springy feel when being stepped  
16   on or jumped on without, however, being excessively  
17   stressed by bending or bowing so that the surface  
18   which is engaged by the foot of the user will have  
19   essentially the characteristics of a yielding yet firm  
20   support similar, for example, to walking on moss  
21   covered ground or a needle covered path."

22   Q.   Okay. And how does Schönenberger provide this  
23   pleasant, springy feel?

24   A.   Going to column 5, line 51, "The spacing between the  
25   upper surface of the support belt 13 and the lower

1 surface 14 of the step slats 4 is so selected in the  
2 area, where the V-belt or support belt 13 is  
3 positioned over the rollers, that a small distance in  
4 the order of, for example, about 1/2 millimeter  
5 preferably is left when the surface 1 is unloaded.  
6 Upon loading, for example, by the user stepping on the  
7 slats 4, the flat underside 14 of the respective slat  
8 4 will engage the support belt 13, 13'. Support belt  
9 13, 13' is carried along in the direction of the arrow  
10 when engaged by the lower surface of the respective  
11 step slat 4 so that, as a consequence, the support  
12 rollers 12 will rotate."

13 And I'm kind of skipping ahead here to the  
14 top of column 6, line 1. "Thus the surface is  
15 practically flat while being slightly springy and  
16 resembles that of natural soft grass, or other  
17 soft-surface athletic track."

18 Q. Okay, so in that section it referenced a half -- a 1/2  
19 millimeter gap. So is that when that gap of the belt  
20 deflects to account for that 1/2 millimeter gap and  
21 that's what provides this springy feel?

22 A. Yes, that's part of it.

23 Q. Do you think a person of ordinary skill in the art  
24 would have understood that a belt deflecting 1/2 of a  
25 millimeter would be perceptible to a user?

1 A. Certainly a person of ordinary skill would recognize  
2 that Schönenberger thought that it would be.

3 Q. So what is the benefit of having a springy feel in a  
4 treadmill running surface?

5 A. It's a softer landing point for the user.

6 Q. Now, would that reduce the impact on the user's  
7 joints?

8 A. Well, it's a lot more complicated than that, because  
9 the biomechanics have a lot to do with exactly how  
10 much springiness is added, but I mean, I guess if you  
11 compared that to running on a concrete sidewalk, there  
12 would definitely be a change in the way the joint  
13 loads are run through the body.

14 Q. Can you turn to Schönenberger at column 4 around lines  
15 57?

16 A. Okay.

17 Q. Let's see. Do you see the sentence starting with "The  
18 upper surface of the slats?"

19 A. Yes.

20 Q. All right. Could you read that sentence, please?

21 A. Okay. As in okay I've read it.

22 Q. Okay. Now, so Schönenberger is referencing this  
23 reduction of stress on the joints and ligaments. Is  
24 this due to this springy feel?

25 A. Well, certainly -- yes, I mean, that's what he's

1 teaching here. He's starting at 57 where you noted,  
2 "The upper surface of the slats 4 is covered with an  
3 impact-reducing cover 16 to provide for soft initial  
4 engagement when stepping on the surface and to provide  
5 a pleasant yielding top surface and to reduce stress  
6 on joints and ligaments."

7 Q. Okay. All right, can you turn to the Socwell patent?

8 A. Okay.

9 Q. All right, and can you turn to column 3 starting at  
10 line 1?

11 A. Okay.

12 Q. All right. And can you read to yourself the paragraph  
13 beginning at column 3, line 1? "Another meaningful  
14 disadvantage."

15 A. Okay.

16 Q. So is Socwell describing this same concern with impact  
17 on the knees of the user that was described in  
18 Schönenberger?

19 MS. JELENCHICK: Objection, form.

20 A. Yes, he describes here, he says, "inability to reduce  
21 physical impact to joints and muscles of a user  
22 conducting general exercise routines." And he said,  
23 "an exercise treadmill which is capable of reducing  
24 the physical impact on the knees and back of a user  
25 will resolve several barriers left unsolved by known

1 prior art devices."

2 BY MR. TURNER:

3 Q. Okay, so Socwell is referencing prior art devices and  
4 he's saying that this is kind of a known problem that  
5 treadmills could have this impact to the joints and  
6 muscles of the user during use; is that correct?

7 MS. JELENCHICK: Objection, form.

8 A. He's starting right off at the top of column 3 says,  
9 "Another meaningful disadvantage of prior art exercise  
10 treadmills is their general inability to reduce the  
11 physical impact to the joints."

12 BY MR. TURNER:

13 Q. Okay.

14 All right, can you turn to Socwell column  
15 13. Let's see, the paragraph beginning with line 31,  
16 starts with "Unlike the prior art."

17 A. I'm reading it now.

18 Q. Okay. All right, thank you.

19 A. Okay.

20 Q. So here Socwell says that "The novel configuration of  
21 the present invention."

22 Is he referring to the novel configuration  
23 being the curved deck of this curved deck treadmill?  
24 Do you agree with that?

25 A. Yes, column 13, line 33, it says, "Unlike the prior

1 art, the curved deck treadmill of the present  
2 invention."

3 Q. Okay. So when he says that the present invention is  
4 capable of reducing physical impact -- physical impact  
5 to the joints and muscles, is he describing just the  
6 curved shape of the manual treadmill, "the curved  
7 shape itself is capable of reducing the physical  
8 impact to the joints?"

9 A. Down in line 47 of column 13, he says, "These  
10 objectives may be achieved by forming the deck with a  
11 curvature corresponding to a radius of about 3 to 20  
12 feet and ideally about 4 to 10 feet. With a radius of  
13 this range, in a deck of a length of about 4 feet."

14 Well, more dimensional information. But  
15 yes, he is referring to the aid of the curved -- the  
16 shape of the deck.

17 Q. Okay. So would you agree that the curved shape of the  
18 treadmill as described in Socwell and the springy feel  
19 of the deck of the treadmill as described in  
20 Schönenberger are two options to address the same  
21 concern of impact to the runner?

22 A. That's the way a person of ordinary skill would  
23 understand it, reading the specifications for each of  
24 those two references.

25 Q. So would that person of ordinary skill in the art

1 understand that by combining these references, by  
2 combining Schöenberger's deck and modifying it to  
3 provide a curved running surface, that it would no  
4 longer need this springy feel because the curved  
5 running surface would provide that solution?

6 MS. JELENCHICK: Objection to form.

7 A. Without any -- I mean, I think a person of ordinary  
8 skill would not necessarily want -- know that one  
9 negates the need of the other.

10 BY MR. TURNER:

11 Q. But both features address the same problem; is that  
12 correct?

13 MS. JELENCHICK: Object to form.

14 A. Yes, each feature -- or the construction of the  
15 Schöenberger in using -- to getting deflection on a  
16 flat surface and the shape of the treadmill surface in  
17 Socwell are both after trying to solve the same -- or  
18 different approaches to trying to solve the same  
19 problem.

20 BY MR. TURNER:

21 Q. Okay.

22 Now, if we go back to that -- the paragraph  
23 in Socwell that -- in column 13, line 33 that starts,  
24 "Unlike the prior art" that we were just referencing a  
25 few minutes ago.

1 A. Yes.

2 Q. About halfway through the paragraph, Socwell describes  
3 that this novel configuration and then later in that  
4 same sentence, "Providing an operative device having  
5 rehabilitative functionality."

6 Do you see that?

7 A. Yes.

8 Q. What does Socwell mean by rehabilitative  
9 functionality?

10 MS. JELENCHICK: Objection, form.

11 A. Well, it's not explicitly clear, but if you read to  
12 the following sentences, he says, "the present  
13 invention provides a continuous, smooth exercising  
14 motion capable of providing meaningful exercise  
15 comfort, thereby facilitating an upper surface which  
16 supportably provides for a longer stride with more  
17 flexibility."

18 BY MR. TURNER:

19 Q. So by rehabilitative functionality, would a person of  
20 ordinary skill in the art understand that this smooth  
21 exercising motion would be helpful for somebody  
22 rehabilitating an injury?

23 A. I think a person of ordinary skill will look at this  
24 and determine that, you know, there is an appropriate  
25 point in time where it might be appropriate.



1 Q. Would that appropriate time include rehabilitating an  
2 injury -- from an injury?

3 A. Well, I meant an appropriate point in time in the  
4 rehabilitation process.

5 Q. Okay.

6 A. The person contemplating that would want to be under  
7 advisement of, you know, the relative -- or the  
8 appropriate medical advice and/or physical therapist  
9 or some other professional in that field.

10 Q. So would a person of ordinary skill in the art  
11 understand that Socwell's treadmill could be used for  
12 therapeutic purposes?

13 A. Again, in the appropriate point in the process, of the  
14 therapy process, depending on what they're recovering  
15 from.

16 Q. Okay. All right, can you turn to paragraph 179 of  
17 your declaration?

18 A. Okay.

19 Q. All right, so here you reference these safety  
20 standards and you say, "None of the safety standards  
21 Dr. Giachetti cites call for a one-way bearing or any  
22 other means for restricting the movement of the belt  
23 in a given direction."

24 Do you see that?

25 A. Yes.

1 Q. And then you reference a couple exhibits here. This  
2 is 1007, 1019 and 1020; is that correct?

3 A. Yes.

4 Q. Do you know what these exhibits are?

5 A. Well, 1007, as we talked about earlier, is the  
6 Australian Competition and Consumer Commission Product  
7 Safety Supply -- Treadmill Supplier Guide.

8 Nineteen is the ASTM standard specification  
9 for motorized treadmills.

10 And 20 is the ISO international standard  
11 for stationary training equipment, part 6, treadmills,  
12 additional specific safety requirements and test  
13 methods.

14 Q. Okay. And do you have copies of all these documents  
15 in your binder? Is that what you were referencing?

16 A. Yes.

17 Q. Are you familiar with these standards?

18 A. I read through them as part of my process here.

19 Q. Okay.

20 All right, can you turn to Exhibit 1020,  
21 please?

22 All right. Can you turn to page 4 of this  
23 document, please?

24 A. Okay.

25 Q. It's numbered page 4.

1 A. Okay, yep.

2 Q. And do you see in the middle of this there's a section  
3 that's called terms and definitions; do you see that?

4 A. Yes.

5 Q. All right, and can you read the definition of  
6 treadmill out loud? Sorry, go ahead.

7 A. "Training equipment with the unidirectional moving  
8 surface on which walking or running activity can take  
9 place where feet are free to leave the moving  
10 surface."

11 Q. So now they're defining a treadmill as having a  
12 unidirectional moving surface. What do they mean by a  
13 unidirectional moving surface?

14 MS. JELENCHICK: Objection, form.

15 A. They don't explicitly state it in here.

16 BY MR. TURNER:

17 Q. What is your understanding of the term unidirectional?

18 A. I think a person of ordinary skill would look at this  
19 and understand that the device is designed to be only  
20 walked on or run on in one direction.

21 Q. So would you understand this standard as calling for  
22 means for restricting the movement of the belt to one  
23 direction of this treadmill?

24 MS. JELENCHICK: Objection, form.

25 A. No. There's no explicit requirement or test

1 requirement in this standard that restricts that  
2 motion.

3 BY MR. TURNER:

4 Q. So the definition that requires unidirectional motion  
5 does not call for restricting movement to one  
6 direction?

7 MS. JELENCHICK: Objection, form.

8 A. No, it does not.

9 BY MR. TURNER:

10 Q. Why doesn't it, in your opinion?

11 A. Well, I can't anticipate what the -- in my opinion, I  
12 can't anticipate what the organizing committee around  
13 the ISO would be contemplating here.

14 Q. All right. The next definition here for running  
15 surface, do you see the running surface is defined as  
16 "The length of the usable part of the moving surface?"

17 A. Yes.

18 Q. All right, and this references Figure 1; do you see  
19 that?

20 A. Yes.

21 Q. So Figure 1, if you could turn to the next page.

22 A. Yes.

23 Q. All right. So there's -- what do you see on -- this  
24 would be page 5 -- or I guess this is -- it's labeled  
25 as Figure 1; do you see that?

1 A. Yes.

2 Q. All right, so where is the running surface illustrated  
3 in Figure 1?

4 A. It's located on -- actually from the top view, so  
5 there's three figures on -- sorry, there's three  
6 images on Figure 1. The lower left shows -- the  
7 script letter L shows the visible part of the running  
8 belt there and that shows that's where that is. It's  
9 also shown from a side-view on the right side in the  
10 figure L.

11 Q. Okay. So L represents the length of the running  
12 surface in these figures; is that correct?

13 A. That's what the -- that's what the dimensions -- or  
14 that's what the indication is at the bottom of Figure  
15 1 -- bottom of the page with Figure 1 on it.

16 Q. So do you agree that the running surface is described  
17 as the entire upper surface of the treadmill in  
18 Figure 1?

19 MS. JELENCHICK: Objection, form.

20 BY MR. TURNER:

21 Q. Of the running belt in this treadmill?

22 A. In this flat surface treadmill, it is.

23 Q. Okay. Is it your understanding that the running  
24 surface would be different for a curved treadmill?

25 A. Well, this standard only applies to the illustrations

1 of the flat one.

2 Q. Is this standard specific to certain shapes of  
3 treadmills, certain shaped treadmills?

4 A. Well, the definition of this -- the definitions  
5 appearing in the standard are all based on a  
6 flat-surfaced treadmill.

7 Q. Do you know if there's a separate standard for curved  
8 treadmills?

9 A. I am not aware of one.

10 Q. So if there's not a separate standard for a manual  
11 treadmill -- or for a curved treadmill, would this  
12 standard be applicable to a curved treadmill?

13 MS. JELENCHICK: Object to form, scope.

14 A. I think a person of skill -- a person of ordinary  
15 skill would look at these relevant standards and  
16 determine which aspects of these standards are  
17 applicable for the product that they are working on or  
18 designing to, and so if you go on further in the  
19 standard, they're talking about squeeze and shear  
20 points, transmission elements and rotating parts, how  
21 much temperature rise you can manage, having an  
22 emergency stop, side rails, stability, static loading,  
23 all those kinds of things.

24 So you look at the applicable aspects of  
25 the standard what they're recommending and if you're

1 designing something that's different but not  
2 explicitly called, you'll use the relevant parts of  
3 the standard in your considerations for your design as  
4 well; or not you, a person of ordinary skill would.

5 BY MR. TURNER:

6 Q. So in your experience does a designer of a treadmill  
7 typically determine which standards apply to their  
8 treadmill?

9 MS. JELENCHICK: Objection, form, scope.

10 A. I guess you -- somebody certainly before they take a  
11 product to market will investigate what standards  
12 might be applicable to them in the marketplace and  
13 consider what those standards are. It may not be a  
14 designer, it may be a safety person, it may be  
15 somebody else in the development stage, but that's  
16 part of the development process before you take a  
17 product to market is determine what relevant standards  
18 need to be followed or should be followed.

19 BY MR. TURNER:

20 Q. Okay.

21 MR. TURNER: All right, do you guys want to  
22 either break for lunch -- or actually, Kadie, I think  
23 I'm just going to review my notes, but I think I'm  
24 about done here, so if you want -- do you want to come  
25 back in five minutes or you just want to break for

1 lunch then we can decide, but I think I'm -- I just  
2 want to review my notes, but I might be done here.

3 MS. JELENCHICK: Yeah, so why don't you  
4 take a look at your notes and then we'll talk in a few  
5 minutes and then depending on how much more you may  
6 have, we may break for lunch or we may just muscle  
7 through.

8 MR. TURNER: Okay, so be back in five?  
9 How's that?

10 MS. JELENCHICK: Sounds good.

11 MR. TURNER: Okay, thanks.

12 (A brief recess was taken.)

13 MR. TURNER: So I do not have any further  
14 questions for Dr. Blair, so turn over the witness.

15 MS. JELENCHICK: I have no redirect.

16 MR. TURNER: Okay.

17 THE COURT REPORTER: May I ask if counsel  
18 need the rough draft today?

19 MR. TURNER: I would like the rough draft  
20 today and then I would like a final draft in a week.

21 THE COURT REPORTER: Okay.

22 MR. TURNER: And I don't need any of the  
23 exhibits, they're already on the record, and I don't  
24 need links to any exhibits in the transcript.

25 THE COURT REPORTER: All righty.



1 MS. JELENCHICK: I do not need a rough. I  
2 will take a copy, normal delivery time.

3 THE COURT REPORTER: Okay.

4 MS. JELENCHICK: I don't need any of the  
5 exhibits, just the transcript.

6 THE COURT REPORTER: Thank you.

7 MS. JELENCHICK: Thank you.

8 (Deposition concluded at 12:12 p.m.)

9 \* \* \*

1 State of Michigan)

2 County of Oakland)

3 Certificate of Notary Public

4 I do hereby certify that the witness, whose testimony  
5 was taken in the above-entitled matter, was first duly sworn  
6 to tell the truth; the testimony contained herein was  
7 reduced to writing by means of stenography; afterwards  
8 transcribed; and is a true and complete transcript of the  
9 testimony given by the witness.

10 I further certify that I am not connected by blood or  
11 marriage with any of the parties; their attorneys or agents;  
12 and that I am not interested, directly, indirectly or  
13 financially, in the matter of controversy.

14 In witness whereof, I have hereunto set my  
15 hand this 14th day of April, 2024.

16  
17  
18 *Jeanette M. Fallon*  
19 \_\_\_\_\_

20 Jeanette M. Fallon, CRR/RMR/CLR/CSR-3267

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