

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.

IPR2023-00836
U.S. Patent No. 9,039,580

PATENT OWNER'S MOTION TO FILE UNDER SEAL

Pursuant to 37 C.F.R. §42.54, Woodway USA, Inc. (“Patent Owner”) hereby submits this Motion to Seal the Patent Owner Response and Exhibits 2020, 2032, 2033, 2034, and 2038. Filed herewith are (i) a redacted version of the Patent Owner Response designated as available to the public, (ii) a redacted version of Exhibit 2020 designated as available to the public, and (iii) unredacted versions of the Patent Owner Response and Exhibits 2020, 2032, 2033, 2034, and 2038 designated as available to the Filing Party and Board only. It is understood that, once a protective order has been entered, both parties will be provided with access to the confidential information, subject to the provisions of the protective order. Patent Owner’s Proposed Protective Order has been filed as Exhibit 2073, with a version showing redlines as against the Board’s Default Protective Order filed as Exhibit 2074. Petitioner consents to Patent Owner’s Proposed Protective Order.

I. Good Cause Exists for Sealing Certain Confidential Information

The Office Patent Trial Practice Guide provides that “the rules aim to strike a balance between the public’s interest in maintaining a complete and understandable file history and the parties’ interest in protecting truly sensitive information.” 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012). These rules “identify confidential information in a manner consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information.” *Id.* (citing 37 C.F.R. § 42.54).

Here, good cause exists to support the sealing of the Patent Owner Response and Exhibits 2020, 2032, 2033 2034, and 2038, as detailed below.

A. Exhibits 2032, 2033, 2034, and 2038 – Documents Containing Confidential Business and Financial Information of Patent Owner

Exhibits 2032, 2033, 2034, and 2038 are documents that describe confidential, sensitive, and proprietary business and financial information. Patent Owner asserts that the entirety of these documents comprise confidential information, and as such, redacted public versions have not been submitted. More specifically, Exhibit 2032 is a copy of a spreadsheet reflecting unit sales, revenue, and costs for certain of Patent Owner's treadmill products from Patent Owner's fiscal years 2010 through 2024. Similarly, Exhibits 2033 and 2034 are copies of spreadsheets reflecting the units, sale prices, costs, and customer information of certain of Patent Owner's treadmill products shipped during Patent Owner's fiscal years 2009 and 2010. Finally, Exhibit 2038 is a copy of a spreadsheet showing the costing for certain of Patent Owner's treadmill products from Patent Owner's fiscal years 2008 through 2024.

Thus, Exhibits 2032, 2033, 2034, and 2038 each contain confidential, sensitive, and proprietary business and financial information, including information relating to Patent Owner's sales, profits, and customers for certain of Patent Owner's treadmill products. Such information could be improperly used by competitors to gain unfair business and competitive advantage with customers in the marketplace,

including using details of Patent Owner's sales, costing, profits, and customers for developing and manufacturing competitive commercial products. Moreover, such information fits squarely within the kinds of materials that the Board considers to be "confidential information," such as "confidential research, development, or commercial information." Patent Trial and Appeal Board Consolidated Trial Practice Guide (November 2019), 19.

B. Exhibit 2020 – Certain Portions of the Declaration of Eric A. Weber

Exhibit 2020 is the declaration of Eric A. Weber, Patent Owner's Director of Sales and Marketing. Mr. Weber's declaration describes and contains excerpts of Patent Owner's confidential, sensitive, and proprietary business and financial information, including information relating to Patent Owner's sales, profits, costing, and customers. A redacted public version of Mr. Weber's declaration is submitted herewith.

Portions of Exhibit 2020 show and describe confidential commercial, sales, and customer information that Patent Owner maintains as trade secrets. Specifically, Mr. Weber's declaration references and incorporates confidential information from Exhibits 2032, 2033, 2034, and 2038. These portions of Mr. Weber's declaration should remain confidential for the reasons stated above with respect to Exhibits 2032, 2033, 2034, and 2038.

C. Certain Portions of Patent Owner Response

Certain portions of the Patent Owner Response show and describe confidential commercial, sales, and customer information that Patent Owner maintains as trade secrets. Specifically, portions of the Patent Owner Response reference and incorporate confidential information from Exhibits 2020, 2032, 2033, 2034, and 2038, including the information described above. These portions of the Patent Owner Response should remain confidential for the reasons stated above with respect to Exhibits 2020, 2032, 2033, 2034, and 2038. A redacted public version of the Patent Owner Response is submitted herewith.

II. Certification of Non-Publication

On behalf of Patent Owner, the undersigned counsel certifies that, to the best of his knowledge, the information sought to be sealed by this Motion to Seal has not been published or otherwise made public. Efforts to maintain the confidentiality of this information have also been undertaken by Patent Owner in related district court proceedings in *Woodway USA, Inc. v. LifeCORE Fitness, Inc.*, Case No. 3:22-cv-00492-JO-BLM (S.D. Cal.).

In the district court proceeding, information of the kind that Patent Owner now moves to seal has been produced pursuant to a Stipulated Protective Order agreed upon by the Patent Owner and Petitioner, and entered by the district court.

Such information has been designated as “Confidential” or “Confidential – For Counsel Only” pursuant to that Stipulated Protective Order.

III. Proposed Protective Order

Patent Owner proposes that the confidential information referenced herein be subject to the Proposed Protective Order attached hereto as Exhibit 2073. The Proposed Protective Order includes modifications to the Default Protective Order from the Trial Practice Guide. A version of the Proposed Protective Order showing redline changes as compared to the Board default protective order is provided as Exhibit 2074. Petitioner consents to Patent Owner’s Proposed Protective Order.

IV. Certification of Conference with Opposing Party Pursuant to 37 C.F.R. § 42.54

Patent Owner has conferred with Petitioner, and Petitioner has agreed to entry of the Proposed Protective Order and has not expressed an intent to oppose this motion to seal.

V. Conclusion

For the foregoing reasons, Patent Owner respectfully requests that the unredacted Patent Owner Response and Exhibits 2020, 2032, 2033, 2034, and 2038 remain under seal.

Dated: January 31, 2024

Respectfully submitted,

/R.J. McKenna/

Richard J. McKenna

Registration No. 35,610

Counsel for Patent Owner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **MOTION TO FILE UNDER SEAL** was served on January 31, 2024, by email to Petitioner's counsel of record:

jhalan@brookskushman.com

aturner@brookskushman.com

rcantor@brookskushman.com

kkonz@brookskushman.com

LCF0112IPR@brookskushman.com

Dated: January 31, 2024

/R.J. McKenna/

Richard J. McKenna

Registration No. 35,610

Counsel for Patent Owner