

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LIFECORE FITNESS, LLC d/b/a
ASSAULT FITNESS,

Petitioner,

v.

WOODWAY USA, INC.

Patent Owner.

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

PATENT OWNER'S NOTICE OF CROSS-APPEAL

NOTICE OF CROSS-APPEAL TO THE FEDERAL CIRCUIT

Notice is hereby given pursuant to 35 U.S.C. §§ 141, 142, and 319 and 37 C.F.R. §§ 1.983, 90.2, and 90.3 that Patent Owner Woodway USA, Inc. hereby cross-appeals to the United States Court of Appeals for the Federal Circuit from the Final Written Decision entered on October 22, 2024 (Paper 44), the subsequent Errata to Final Written Decision entered on November 20, 2024 (Paper 46), and from all underlying orders, decisions, rulings, and opinions regarding the *inter partes* review of U.S. Patent No. 9,039,580 (“the ’580 Patent”) in Case No. IPR2023-00836 (“the IPR”). Petitioner filed an initial Notice of Appeal on December 23, 2024. Provided that Petitioner’s Notice of Appeal is not premature, this cross-appeal is timely under 37 C.F.R. § 90.3(a) and Rule 4(a)(3) of the Federal Rules of Appellate Procedure. More specifically, Petitioner filed a Request for Rehearing in the IPR on November 21, 2024 (Paper 47), which has not yet been decided and remains pending. Accordingly, Patent Owner maintains that the Final Written Decision in this IPR is not currently a final Board decision subject to appeal. By extension, Petitioner’s Notice of Appeal is premature, and its appeal should be dismissed. Patent Owner submits this Notice of Cross-Appeal out of an abundance of caution to preserve its rights and further reserves the right to appeal any future final decision.

In accordance with 37 C.F.R. § 90.2(a)(3)(ii), Patent Owner further states that the issues on appeal are anticipated to include, but are not limited to:

(1) Whether the Board erred in concluding that claims 1-5, 10, 11, 14, and 18 of the '580 Patent are unpatentable as obvious over Chickering and Magid.

(2) Whether the Board erred in concluding that claims 1-12, 14, and 18 of the '580 Patent are unpatentable as obvious over Chickering, Magid, and Sclater.

(3) Whether, in arriving at its decisions, the Board acted in a manner that was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, was in excess of statutory limitations and without observance of procedure required by law, or was based on findings unsupported by substantial evidence.

Concurrently with this submission, a copy of this Notice of Cross-Appeal is being filed with the Patent Trial and Appeal Board, and a copy is being filed electronically with the United States Court of Appeals for the Federal Circuit along with the required docketing fee.

Dated: January 6, 2025

Respectfully submitted,

/R.J. McKenna/
Richard J. McKenna
Registration No. 35,610
Counsel for Patent Owner

CERTIFICATE OF SERVICE AND FILING

The undersigned hereby certifies that a copy of the foregoing **PATENT OWNER'S NOTICE OF CROSS-APPEAL** was served on January 6, 2025, by email to Petitioner's counsel of record:

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The undersigned certifies that, in addition to being filed electronically through the Patent Trial and Appeal Board End to End (PTAB E2E) system on January 6, 2025, a true and correct copy of the foregoing **PATENT OWNER'S NOTICE OF CROSS-APPEAL** was served on January 6, 2025, on the Director of the United States Patent and Trademark Office via electronic mail at the following email address:

efileSO@uspto.gov

The undersigned also certifies that a true and correct copy of the foregoing **PATENT OWNER'S NOTICE OF CROSS-APPEAL** was filed by Kadie M. Jelenchick on January 6, 2025, with the United States Court of Appeals for the Federal Circuit.

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

Patent Owner's Notice
of Cross-Appeal

Dated: January 6, 2025

/s/ Kadie M. Jelenchick

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