

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ICON HEALTH & FITNESS, INC.,
Petitioner,

v.

NAUTILUS, INC.,
Patent Owner.

Case IPR2017-00495
Patent 8,323,155 B2

Before BARRY L. GROSSMAN, BART A. GERSTENBLITH, and
ROBERT L. KINDER, *Administrative Patent Judges*.

GERSTENBLITH, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

A. Background

ICON Health & Fitness, Inc. (“Petitioner”) filed a Petition (Paper 1, “Pet.”) requesting institution of *inter partes* review of claims 1–16 of U.S. Patent No. 8,323,155 B2 (Ex. 1001, “the ’155 patent”). Nautilus, Inc. (“Patent Owner”) filed a Preliminary Response (Paper 8) to the Petition.

Pursuant to 35 U.S.C. § 314(a), an *inter partes* review may be instituted only if “the information presented in the petition . . . and any [preliminary] response . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” *See* 37 C.F.R. § 42.108(c).

For the reasons given below, on this record, Petitioner has not established a reasonable likelihood that it would prevail in showing the unpatentability of claims 1–16 of the ’155 patent. Accordingly, we deny the Petition and do not institute an *inter partes* review of the ’155 patent.

B. Related Proceedings

The parties indicate that the ’155 patent is asserted in *Nautilus, Inc. v. ICON Health & Fitness, Inc.*, No. 3:16-cv-05393 (W.D. Wash.). Pet. 1; Paper 4, 1. Petitioner challenges three patents related to the ’155 patent via continuation applications in three other proceedings: IPR2017-00490 (US Patent No. 6,689,019 B2); IPR2017-00493 (US Patent No. 7,341,542 B2); and IPR2017-00494 (US Patent No. 7,632,219 B2). Pet. 1; Paper 4, 1.

C. Real Parties in Interest

The Petition identifies “ICON Health & Fitness, Inc.” as the sole real party in interest. Pet. 1. Patent Owner identifies “Nautilus, Inc.” as the sole real party in interest. Paper 4, 1.

D. The References

Petitioner relies on the following references:

U.S. Patent No. 6,206,804 B1, issued March 27, 2001 (Ex. 1003, “Maresh-I”);

U.S. Patent No. 5,857,941, issued January 12, 1999 (Ex. 1004, “Maresh-II”); and

U.S. Patent No. 6,171,215 B1, issued January 9, 2001 (Ex. 1005, “Stearns”).

E. The Asserted Grounds of Unpatentability

Petitioner challenges the patentability of claims 1–16 of the ’155 patent on the following grounds:

References	Basis	Claims Challenged
Maresh-I and Maresh-II	§ 103(a)	1–4, 6, 8–11, 13, 15, and 16
Maresh-I, Maresh-II, and Stearns	§ 103(a)	5, 7, 12, and 14
Stearns and Maresh-II	§ 103(a)	1–3, 5, 7–10, 12, and 14–16
Stearns, Maresh-II, and Maresh-I	§ 103(a)	4, 6, 11, and 13

Petitioner supports its challenge with a Declaration by Scott Ganaja dated November 17, 2016 (Ex. 1006).

F. The ’155 Patent

The ’155 patent is directed to exercise equipment and, in particular, “to stationary elliptical motion striding equipment.” Ex. 1001, 1:19–21. As explained in the Abstract:

An exercise device providing a fore and aft horizontal component of striding motion that is dynamically user-defined, while providing a vertical component of the motion that is maintained on a predetermined vertically reciprocating path in

some embodiments. The exercise device guides the user's foot in a pseudo-elliptical stride path, while providing a dynamically variable stride length that allows the user to move with a natural stride length. The exercise device allows tall and short users to extend or curtail the stride length to match their natural stride lengths. The length of the reciprocating path is dynamically adjusted during the exercise operation without equipment adjustments by changes in the length of the stride input by the user at a pair of foot engagement pads disposed on laterally spaced apart foot support members.

Ex. 1001, [57].

Figure 1 of the '155 patent is reproduced below:

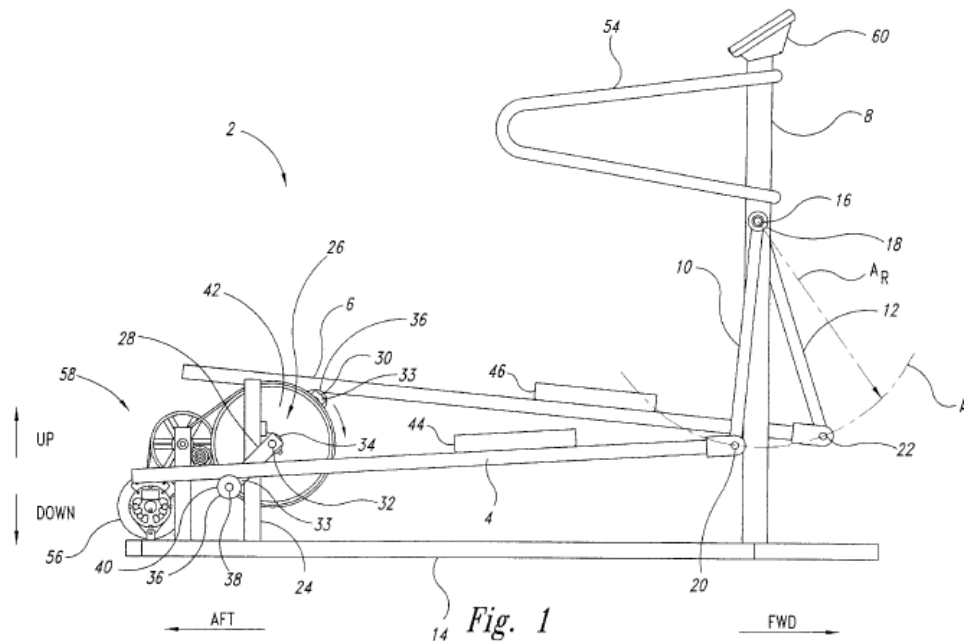


Figure 1 of the '155 patent illustrates one embodiment of the exercise device, which includes “two foot links pivotally suspended at a forward end from an upright pedestal by respective swing arms and rollably supported at a rearward end by rollers on crank arms, with a resistance device resisting the vertical component of the foot link motion via the rotating crank arms.” *Id.* at 3:17–23.

As shown in Figure 1, swing arms 10 and 12 guide the front end portions of foot links 4 and 6 in a pendulous swinging motion through an arcuate path “A.” *Id.* at 5:50–52. The rearward end portions of foot links 4 and 6 each rollingly rest atop roller 36, rotatably mounted on pin 38 attached to distal end 33 of a corresponding one of crank arms 28 and 30. *Id.* at 6:7–9, 12–15. Rollers 36 are shaped to laterally retain foot links 4 and 6 thereon as the foot links reciprocally move freely rearward and forward relative to the rollers during use of exercise machine 2. *Id.* at 6:17–21. The ’155 patent explains that “[t]his arrangement allows the user to use a stride length during the exercise and change stride length without any machine adjustments while the exercise is in progress.” *Id.* at 6:21–24.

G. Illustrative Claim

Claims 1 and 9 are the only independent claims of the ’155 patent.

Claim 1 is illustrative of the claimed subject matter and is reproduced below:

1. A striding exercise device, comprising:
 - a frame;
 - right and left elongate stride members supported on the frame and each including first and second opposed ends and a foot engagement pad positioned therebetween;
 - right and left crank arms operatively associated with the frame and configured to rotate about a crank axis, the right and left crank arms including right and left supports, respectively;
 - and
 - right and left downward-facing cams adjacent the respective first ends of the right and left elongate stride members, the right and left downward-facing cams riding on the right and left supports, respectively.

Id. at 22:19–33.

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