

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ICON HEALTH & FITNESS, INC.

Petitioner,

v.

NAUTILUS, INC.,

Patent Owner.

U.S. Patent No. 8,323,155 B2

Inter Partes Review No. IPR2017-00495

**PETITIONER'S REQUEST FOR REHEARING
PURSUANT TO 37 C.F.R. § 42.71(d)**

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 B. The Board has either misapprehended or overlooked that the *explicit teaching* in Maresh-II to make the proposed modification is itself a reason with rational underpinning for making the modification.....8

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The Board's Decision Denying Institution of *Inter Partes* Review dated July 6, 2017 (Paper 9) (the "Decision") denied all grounds (Grounds 1-4) proposed in the Petition. (Paper 1). The Decision focuses its analysis on independent claims 1 and 9, and more specifically elements 1d and 9c (hereafter "the cam limitations") because, according to the Board, "consideration of those claim limitations is dispositive." (Decision at 12, FN 1).

Petitioner ICON Health and Fitness, Inc. ("Petitioner") proposes two separate rejections for claims 1 and 9. The first (contained in Ground 1 of the Petition) is based on Maresh-I in view of Maresh-II. The second (contained in Ground 3 of the Petition) is based on Stearns in view of Maresh-II. In each of Grounds 1 and 3, the Petitioner relies on Maresh-II for disclosure relating to the cam limitations. Specifically, Petitioner asserts that one of ordinary skill in the art would have found it obvious to modify the elliptical machines taught in Maresh-I and Stearns to have the recited cams based on a similar modification *explicitly taught* by Maresh-II. (Petition at 15-20, 27-32).

With regard to both Grounds 1 and 3, the Decision holds that Petitioner failed to establish a reasonable likelihood of showing that the claimed cam limitations result from "combining a known technique to a known device ready for improvement to yield predictable results." (Decision at pp. 16, 25). According to the Decision, the "Petitioner does not explain and has *not* established *any reason* as to why one of

ordinary skill in the art would have combined and modified and the teachings as proposed.” (Decision at 16, 25-26 (emphasis added)).

Petitioner respectfully requests that the Board rehear its Decision denying institution with regard to Grounds 1-4 because it appears that the Board has misapprehended or overlooked the reasons provided in the Petition as to why one of ordinary skill in the art would have combined and modified the teachings as proposed.

I. PRECISE RELIEF REQUESTED

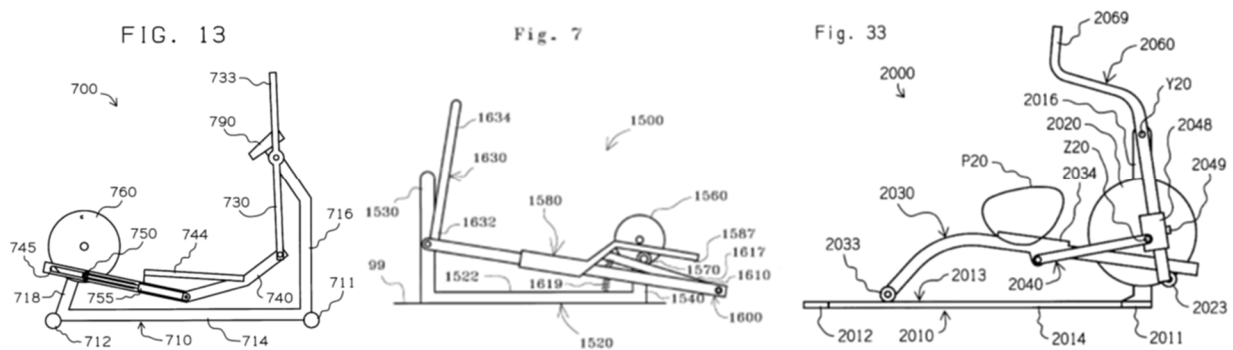
Petitioner respectfully requests rehearing of the Board’s Decision denying Grounds 1-4 of the petition and requests that the Board institute a trial on Grounds 1-4.

Petitioner sets forth the detailed basis for this Request for Rehearing below, as well as “the place where each matter was previously addressed” as required by 37 C.F.R. § 42.71(d). This Request for Rehearing is timely filed. This Request for Rehearing is authorized under 37 C.F.R. §§ 42.71(c) and 42.71(d) without prior authorization of the Board.

II. BACKGROUND

Maresh-I, Maresh-II, and Stearns each disclose very similar elliptical-type exercise devices. (Petition at pp. 6-14, 25-26). While the Stearns machine positions the flywheel towards the front of the machine, a POSITA would recognize each of

these devices as elliptical-type exercise devices. (Petition at pp. 23-24, 34-36). Indeed, many of the same components and features are shared between the machines disclosed in each of these references. (Petition at pp. 6-13). For example, each of these references discloses (in at least one embodiment) force receiving members that are flat and straight and that roll along the top of a roller. *Id.* These flat force receiving members are identified by the numerals in the figures reproduced from each of the references below (745 in Figure 13 of Maresh-I, 1580 in Figure 7 of Maresh-II, and 2030 in Figure 33 of Stearns):



(*Id.* at pp. 6, 8, and 11).

Maresh-II contains *explicit teaching* that its flat force receiving member 1580 may be replaced with a curved force receiving member 3310. (Petition at pp. 10, 16-19, 29-31 (citing to Maresh-II, 10:16-19)). An exemplary curved force receiving member 3310 is illustrated in FIG. 23 of Maresh-II:

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