

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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NAUTILUS, INC.,  
Petitioner,

v.

ICON HEALTH & FITNESS INC.,  
Patent Owner.

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Case IPR2017-01363 (Patent 9,403,047 B2);  
Case IPR2017-01407 (Patent 9,616,276 B2);  
Case IPR2017-01408 (Patent 9,616,276 B2)<sup>1</sup>

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Before GEORGE R. HOSKINS, TIMOTHY J. GOODSON, and  
JAMES A. WORTH, *Administrative Patent Judges*.

GOODSON, *Administrative Patent Judge*.

ORDER  
Conduct of the Proceedings  
*37 C.F.R. § 42.5*

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<sup>1</sup> This Order applies to all three proceedings. These proceedings have not been consolidated. The parties may use a consolidated caption only if a paper contains a footnote indicating that the identical paper has been filed in each proceeding.

IPR2017-01363 (Patent 9,403,047 B2)  
IPR2017-01407 (Patent 9,616,276 B2)  
IPR2017-01408 (Patent 9,616,276 B2)

On April 24, 2018, the Supreme Court held that a final written decision under 35 U.S.C. § 318(a) must decide the patentability of all claims challenged in the petition. *SAS Inst., Inc. v. Iancu*, 2018 WL 1914661, at \*10 (U.S. Apr. 24, 2018). In our Decisions on Institution in these proceedings, we determined that Petitioner demonstrated a reasonable likelihood that it would establish that at least one of the challenged claims of the challenged patent is unpatentable. Case IPR2017-01363, Paper 7, 18; Case IPR2017-01407, Paper 6, 16; Case IPR2017-01408, Paper 7, 16. Pursuant to the holding in *SAS*, we modify our institution decisions to institute on all of the challenged claims and all of the grounds presented in the Petitions.

The parties remain free to stipulate to changes in the schedule under the terms of the Scheduling Order. If, after conferring, the parties wish to otherwise change the schedule or submit briefing not set forth in the Scheduling Order, the parties must, within one week of the date of this Order, request a conference call with the panel to seek authorization for such changes or briefing.

#### ORDER

In consideration of the foregoing, it is hereby:

ORDERED that we modify our institution decisions in these proceedings, which were issued pursuant to 35 U.S.C. § 314(a), to include review of all challenged claims and all grounds presented in the Petition for that proceeding; and

FURTHER ORDERED that Petitioner and Patent Owner shall confer to determine whether they desire any changes to the schedule or briefing not

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already permitted under the Scheduling Order, and, if so, request a conference call with the panel to seek authorization for such changes or briefing within one week of the date of this Order.

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