

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NAUTILUS, INC.,
Petitioner,

v.

ICON HEALTH & FITNESS, INC.,
Patent Owner.

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

Record of Oral Hearing
Held: August 29, 2018

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

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

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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The above-entitled matter came on for hearing on Wednesday, August 29, 2018, commencing at 1:00 p.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

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P R O C E E D I N G S

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2 JUDGE WORTH: Good afternoon. Please be seated.

3 JUDGE GOODSON: Welcome to the Patent Trial and Appeal
4 Board. This is the hearing for Case [IPR2017-0]1363 involving Patent
5 Number 9,403,047 and Cases IPR2017-01407 and 1408, both of which
6 involve Patent Number 9,616,276. I'm Judge Goodson and I'm appearing
7 remotely from the San Jose Regional Office. Judge Hoskins is also
8 participating remotely and Judge Worth is there with you in Alexandria.

9 Can we begin with introductions from counsel, starting with
10 counsel for Petitioner?

11 MR. McBRAYER: Good afternoon or good morning as the case
12 may be, Your Honor. I'm Ryan McBrayer of Perkins Coie for Petitioner
13 Nautilus. With me today are my several colleagues who have been involved
14 in the IPR and one who is observing here, Lane Polozola and Stephanie
15 Nelson who have been with me as counsel in the matter and then Dr. Karen
16 Lisko, jury trial consultant, who wanted to take the opportunity to observe a
17 PTAB hearing and is here today observing.

18 JUDGE GOODSON: Thank you. And, Mr. McBrayer, are you
19 going to be doing the presentation in all three cases today?

20 MR. McBRAYER: Yes, Your Honor.

21 JUDGE GOODSON: Okay. Thank you.

22 And counsel for Patent Owner?

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1 MR. SMOOT: Thank you, Your Honors. Adam Smoot
2 representing Patent Owner ICON Health and Fitness. I will be discussing
3 IPR2017-01363 and then the Motion to Exclude in the other two IPRs.

4 MR. GADD: Good afternoon. My name is John Gadd, also here
5 for Patent Owner ICON Health and Fitness, and I will be discussing the
6 Motion to Amend in the two IPRs.

7 JUDGE GOODSON: Okay. Thank you.

8 I'll also go over some reminders from our trial hearing order of
9 August 14, 2018. Please indicate the slide number or the page number of
10 the -- from the record that you're referring to during your presentations.
11 That will help Judge Hoskins and I and will also clarify the record in the
12 transcript.

13 If during the argument today either party believes that something
14 the other party is saying is improper in any way, please just save that issue
15 and raise it during your presentation as opposed to interrupting the other
16 party's presentation to object. Each party will have 90 minutes of total time
17 to present arguments.

18 Have the parties agreed to an allocation of time as between the
19 proceedings?

20 MR. McBRAYER: Your Honor, we conferred about it and were
21 unable to come to an agreement, other than we both anticipate taking less
22 than the 30 minutes the Board allotted in its order as the default for the 1363
23 proceeding. So we fully intend both of us to wrap up before the 30-minute
24 point and can take whatever break, or if the Board wants to roll right into the

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1 1407 and 1408 IPRs, but we didn't have a limit that we agreed to less than
2 30 minutes.

3 JUDGE GOODSON: All right. Well, that will make the
4 housekeeping a little more complicated since we would like for the parties to
5 have the same allocation of time as between the two cases. So do you intend
6 to reserve some rebuttal time for your presentation?

7 MR. McBRAYER: I intend to reserve a small amount of rebuttal
8 time in our presentation. If the Court needs the parties to agree on a single
9 limit, I think we can agree on 25, although -- is that correct?

10 MR. SMOOT: Uh-huh.

11 MR. McBRAYER: I'll let -- I think Judge Worth can see counsel
12 nodding at the table, you know, 25, but I think we both fully intend to take
13 less than that.

14 JUDGE GOODSON: Okay. So we'll shoot for 25 minutes and
15 we'll keep our time accordingly, and we'll begin with the 1363 case.
16 Petitioner will go first to present its case and then the Patent Owner will
17 respond. The Petitioner can reserve time and Patent Owner can reserve
18 sur-rebuttal time.

19 So, Mr. McBrayer, you'd like to reserve -- how many minutes
20 would you like us to have you reserve for rebuttal time?

21 MR. McBRAYER: Here five minutes, Your Honor.

22 JUDGE GOODSON: Five minutes. Okay.

23 MR. McBRAYER: Thank you.

24 JUDGE GOODSON: And, Mr. Smoot, how many minutes of
25 sur-rebuttal time would you like us to reserve for you?

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