

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NAUTILUS, INC.,
Petitioner,

v.

ICON HEALTH & FITNESS INC.,
Patent Owner.

Case IPR2017-01407
Patent 9,616,276 B2

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

WORTH, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
35 U.S.C. § 318(a) and 37 C.F.R. § 42.73

I. INTRODUCTION

On May 12, 2017, Nautilus, Inc. (“Petitioner”) filed a Petition (Paper 2, “Pet.”) requesting *inter partes* review of claims 1–4 and 7–10 (“the challenged claims”) of U.S. Patent No. 9,616,276 B2 (Ex. 1001, “the ’276 patent”) on the following grounds:

References	Basis	Claims challenged
Sawicky ¹ and Wu ²	§ 103(a)	1–4, 10
Sawicky, Wu, and Watson ³	§ 103(a)	7–9
Sawicky and Zhou ⁴	§ 103(a)	1–4, 10
Sawicky, Zhou, and Loach ⁵	§ 103(a)	7–9

ICON Health & Fitness Inc. (“Patent Owner”) did not file a Preliminary Response.

On December 4, 2017, the Board instituted an *inter partes* review. Paper 6 (“Dec.”). We initially instituted review for a subset of the asserted claims and asserted grounds. *See* Dec. 26. Specifically, we determined based on the preliminary record that Petitioner had demonstrated a reasonable likelihood of prevailing in its challenge to claims 1, 2, and 10 as

¹ U.S. Patent No. 5,042,798, iss. Aug. 27, 1991 (Ex. 1011).

² U.S. Patent Application Publication No. 2003/0171192 A1, pub. Sept. 11, 2003 (Ex. 1002).

³ U.S. Patent Application Publication No. 2006/0234840 A1, pub. Oct. 19, 2006 (Ex. 1004).

⁴ U.S. Patent No. 8,517,899 B2, iss. Aug. 27, 2013 (Ex. 1006).

⁵ W.O. Patent Application Publication No. 2007/015096 A2, pub. Feb. 8, 2007 (Ex. 1007).

obvious over Sawicky and Wu; claims 7 and 9 as obvious over Sawicky, Wu, and Watson; claim 8 as obvious over Sawicky, Wu, Watson, and Street⁶; and claims 1, 2, and 10 as obvious over Sawicky and Zhou. *See* Dec. 26. We determined based on the preliminary record that Petitioner had not demonstrated a reasonable likelihood of prevailing in its challenge to claims 3 and 4 as obvious over Sawicky and Wu, nor over Sawicky and Zhou. Dec. 17, 23.

Also on December 4, 2017, we issued a Scheduling Order for the proceeding. Paper 7.

Subsequently on April 27, 2018, pursuant to the holding in *SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348, 1355–57 (2018), we issued an Order (Paper 18) modifying our institution decision to institute on all of the challenged claims and all of the grounds presented in the Petition.

After institution of trial, Patent Owner did not file a Patent Owner Response to the Petition. Petitioner did not seek to address further any of the claims or grounds from the Petition added to the proceeding pursuant to SAS.

However, during the proceeding, Patent Owner filed a Motion to Amend (Paper 16, “Mot. Amend”) on March 5, 2018. On May 7, 2018, we issued an Order (Paper 19) authorizing a 10-page extension of the page limit for Petitioner’s opposition to the Motion to Amend and deferred action on a request by Petitioner for authorization for surreplies. On June 4, 2018, Petitioner filed an Opposition to Patent Owner’s Motion to Amend (Paper 20, “Opposition” or “Opp.”). Patent Owner obtained authorization from the

⁶ U.S. Patent No. 4,625,962, iss. Dec. 2, 1986 (Ex. 1008, Appendix V, “Street”).

Board, by email, for a corresponding 10-page extension for Patent Owner's reply thereto. On July 5, 2018, Patent Owner filed a Reply to Petitioner's Opposition to Patent Owner's Motions to Amend (Paper 27, "Motion Reply").⁷

On July 12, 2018, after conferring with the Board, the parties filed a joint stipulation for amending the scheduling order to provide for further briefing by Petitioner. Paper 31. On July 20, 2018, we issued an Order (Paper 34) authorizing Petitioner to file a limited Motion Surreply with the deposition transcript of Dr. Ganaja according to the stipulation of the parties. On August 1, 2018, Petitioner filed a Motion Surreply (Paper 35)⁸ and the deposition transcript of Dr. Ganaja (Ex. 1020).

After a further conference call with the parties on August 3, 2018 held at the request of Patent Owner, we issued an Order (Paper 37) on August 7, 2018, striking portions of the Motion Surreply as contrary to the stipulation of the parties. Paper 37, 3–4. Also pursuant to the Order, Patent Owner filed a list of purportedly improper arguments in the Motion Surreply on August 8, 2018. Paper 38.

On August 10, 2018, Patent Owner filed a Motion to Exclude Evidence (Paper 41, "Mot. Excl."). On August 21, 2018, Petitioner filed an Opposition to Patent Owner's Motion to Exclude (Paper 43). On August 22,

⁷ Patent Owner filed a separate Motion to Amend in each of Cases IPR2017-01407 and -1408, in each case proposing substitute claims numbered 21 and 22. Petitioner filed the same Opposition and Patent Owner filed the same Motion Reply in each of IPR2017-01407 and -1408. We have written separate opinions in order to avoid confusion, e.g., because the proposed substitute claims in IPR2017-01407 and -1408 have overlapping numbering.

⁸ Petitioner's Motion Surreply applies to both IPR2017-01407 and -1408.

IPR2017-01407
Patent 9,616,276 B2

2018, Patent Owner filed a Reply to Petitioner's Opposition to Patent Owner's Motion to Exclude (Paper 45).

On August 29, 2018, the Board held a single oral hearing covering IPR2017-01407, IPR2017-01408, and IPR2017-01363, a transcript of which has been entered in the record. Paper 49 ("Tr.").

We have authority under 35 U.S.C. § 6(c). This Final Written Decision is issued pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73.

For the reasons that follow, we determine that Petitioner has shown by a preponderance of the evidence that claims 1, 2, and 7–10 of the '276 patent are unpatentable. The motion to amend is denied.

A. *Related Proceedings*

The parties state that there are no related district court proceedings. Pet. 2; *see also* Paper 3, 1. The parties note as related IPR2017-01408, which also challenges the '276 patent. Pet. 2–3; Paper 3, 1. In addition, Petitioner identifies as related for case management purposes IPR2017-01363. *Id.*

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.