

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NAUTILUS, INC.,
Petitioner,

v.

ICON HEALTH & FITNESS INC.,
Patent Owner.

Case IPR2017-01408
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 1–20 (“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
Wu ¹ and Jones ²	§ 103(a)	1–4, 10
Wu and Webb ³	§ 103(a)	5, 6
Wu, Watson ⁴ , and Jones	§ 103(a)	7–9, 11–20
Zhou ⁵ and Jones	§ 103(a)	1–4, 10
Zhou and Webb	§ 103(a)	5, 6
Zhou, Loach ⁶ , and Jones	§ 103(a)	7–9, 11–20

On September 5, 2017, ICON Health & Fitness Inc. (“Patent Owner”) filed a Preliminary Response (Paper 6, “Prelim. Resp.”).

¹ U.S. Patent Application Publication No. 2003/0171192 A1, pub. Sept. 11, 2003 (Ex. 1002).

² U.S. Patent No. 4,798,378, iss. Jan. 17, 1989 (Ex. 1005).

³ U.S. Patent Application Publication No. 2003/0017918 A1, pub. Jan. 23, 2003 (Ex. 1003).

⁴ U.S. Patent Application Publication No. 2006/0234840 A1, pub. Oct. 19, 2006 (Ex. 1004).

⁵ U.S. Patent No. 8,517,899 B2, iss. Aug. 27, 2013 (Ex. 1006).

⁶ W.O. Patent Application Publication No. 2007/015096 A2, pub. Feb. 8, 2007 (Ex. 1007).

On December 4, 2017, the Board instituted an *inter partes* review. Paper 7 (“Dec.”). We initially instituted review for a subset of the asserted claims and asserted grounds. *See* Dec. 32. Specifically, we determined based on the preliminary record that Petitioner had demonstrated a reasonable likelihood of prevailing in its challenge to claims 1–4 and 10 as obvious over Wu and Jones; claims 5 and 6 as obvious over Wu and Webb; claims 7, 9, and 11–20 as obvious over Wu, Watson, and Jones; claim 8 as obvious over Wu, Watson, Jones, and Street⁷; claims 1–4 and 10 as obvious over Zhou and Jones; and claims 5 and 6 as obvious over Zhou and Webb. Dec. 32.

Also on December 4, 2017, we issued a Scheduling Order for the proceeding. Paper 8.

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 19) 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 17, “Mot. Amend”) on March 5, 2018. On May 7, 2018, we issued an Order (Paper 20) authorizing a 10-page extension of the page limit for Petitioner’s opposition to the Motion to Amend and deferred action on a

⁷ U.S. Patent No. 4,625,962, iss. Dec. 2, 1986 (Ex. 1008, Appendix V, “Street”).

request by Petitioner for authorization for surreplies. On June 4, 2018, Petitioner filed an Opposition to Patent Owner’s Motion to Amend (Paper 21, “Opposition” or “Opp.”). Patent Owner obtained authorization from the 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 28, “Motion Reply”).⁸

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 32. On July 20, 2018, we issued an Order (Paper 35) 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 36)⁹ 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 38) on August 7, 2018, striking portions of the Motion Surreply as contrary to the stipulation of the parties. Paper 38, 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 39.

⁸ 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.

⁹ Petitioner’s Motion Surreply applies to both IPR2017-01407 and -1408.

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On August 10, 2018, Patent Owner filed a Motion to Exclude Evidence (Paper 42, “Mot. Excl.”). On August 21, 2018, Petitioner filed an Opposition to Patent Owner’s Motion to Exclude (Paper 44). On August 22, 2018, Patent Owner filed a Reply to Petitioner’s Opposition to Patent Owner’s Motion to Exclude (Paper 46).

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 50 (“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 1–20 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 IPR2017-01407, 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.*

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