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## Jump-Rope Maker Gets PTAB To Nix Rival's Handle Patents

By **Britain Eakin**

Law360 (July 20, 2020, 6:13 PM EDT) -- Rogue Fitness has scored a pair of victories at the Patent Trial and Appeal Board, wiping out two of a rival's patents covering jump-rope handles that the inventors credit with creating the fastest jump-rope in the world.

But Friday's decisions said the technology was obvious because skilled artisans would have been motivated to combine elements of existing technology to arrive at Colorado-based Jump Rope System LLC's claimed inventions. The decisions could mark the end of the road for Jump Rope System's infringement suit against Rogue Fitness, since the nixed patents are the only two at stake in the parallel litigation.

In its bid to fight off Rogue Fitness' challenges, Jump Rope Systems contested its rival's argument that combining the prior art would have solved an existing problem of the rope twisting up on itself with technology that allows the rope to pivot and swivel. Jump Rope Systems said the risk of twist was a nonissue in the prior art and so it shouldn't have been considered in relation to a motivation to combine.

But the board disagreed, saying in its decision on Jump Rope Systems' U.S. Patent No. 7,789,809 that it was persuaded by the testimony of Rogue Fitness' expert that a skilled artisan would have recognized that combining a 1978 German patent application with a 1979 French patent application would ameliorate that problem.

"We find that petitioner has articulated sufficient reasoning with rational underpinnings to support the combination," the decision said. "Thus, we conclude that a person of ordinary skill would have had reason to combine the teachings."

The board reached the same conclusion on the motivation to combine the prior art in its other decision on Jump Rope Systems' U.S. Patent No. 8,136,208.

Louis DiSanto of Banner and Witcoff Ltd., who represents Rogue Fitness, told Law360 he was "pleased with the decision" and added that "the PTAB properly invalidated the challenged claims."

Counsel for Jump Rope Systems did not immediately respond to a request for comment Monday.

Jump Rope Systems sued Rogue Fitness in Ohio federal court in July 2018, alleging that Coulter Ventures LLC, which operates as Rogue Fitness, was selling and importing 14 types of speed jump-ropes that step on its patented technology.

The suit said the claimed inventions improved conventional jump-ropes, which were limited in how fast the rope could be spun, by developing a handle that allows the rope to pivot and swivel. According to court records, that case was paused pending the PTAB's review of the patents.

In the PTAB cases, Jump Rope Systems tried to persuade the board that the inventions were nonobvious by citing a statistic that 79% of all event winners in national and international jump-rope competitions between 2013 and 2016 used ropes incorporating the claimed technology.

But the board said the evidence Jump Rope Systems put forth was insufficient because it wasn't clear if the jump-ropes the athletes used in the competitions were Jump Rope Systems models or were made by rivals it has accused of copying its products.

"More importantly, there is no evidence indicating whether any of those jump-ropes 'using [Jump Rope Systems] technology' are coextensive with, or even covered by, any claim of the ... patent," one of the decisions said.

Jump Rope Systems asserted the same patents against another rival, Chinese company Suzhou Everise Trading Co. Ltd., in **a 2017 suit** filed in Colorado federal court. According to court records, Jump Rope Systems voluntarily dismissed the suit in March 2019.

The patents-in-suit are U.S. Patent Nos. 8,136,208 B2 and 7,789,809 B2.

Administrative Patent Judges Linda E. Horner, Barry L. Grossman and Richard J. Smith sat on the panel for the Patent Trial and Appeal Board.

Rogue Fitness is represented by Louis DiSanto, Eric Hamp, Brian Apel and Camille Sauer of Banner & Witcoff Ltd.

Jump Rope Systems is represented by Gregory F. Ahrens and Charles D. Pfister of Wood Herron & Evans LLP.

The cases are Coulter Ventures LLC dba Rogue Fitness v. Jump Rope Systems LLC, case numbers IPR2019-00587 and IPR2019-00586, before the Patent Trial and Appeal Board.

--Editing by Stephen Berg.

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