

## PTAB Gives Peloton 2nd Chance To Knock Out Rival's Bike IP

By Britain Eakin

*Law360 (April 12, 2022, 4:47 PM EDT)* -- The Patent Trial and Appeal Board has agreed to review two Mad Dogg Athletics exercise bike patents, giving Peloton another chance to invalidate them after getting a Texas infringement suit over the technology dismissed last year.

The PTAB agreed to review the patents in two decisions granting inter partes review that were handed down Friday. Mad Dogg had sued Peloton in Texas federal court for infringing the patents, but U.S. District Judge Rodney Gilstrap tossed the suit in September after finding the patents were directed to an abstract idea under the first step of the Alice test.

The U.S. Supreme Court's landmark Alice decision laid out a two-part test for determining patent subject matter eligibility under Section 101 of the Patent Act. But Judge Gilstrap said he could not determine whether the patents contained an inventive concept under the second part of the Alice test that would transform them into something patent-eligible because Mad Dogg's complaint was "devoid of factual allegations to support the factual inquiry."

He dismissed the suit on that basis without prejudice, meaning Mad Dogg isn't barred from filing suit again. Peloton lodged the inter partes reviews at the PTAB in October, contending that the patents are obvious in light of various combinations of existing technology. The board determined preliminarily that Peloton was likely to at least partially prevail.

"Upon consideration of the arguments and evidence presented by petitioner, we are persuaded that petitioner has demonstrated ... a reasonable likelihood that it would prevail in showing the unpatentability of at least one challenged claim," the decisions said.

Both Mad Dogg patents describe a programmed exercise bike with computer assisted guidance. In PTAB filings, Mad Dogg claims to have created indoor cycling in the 1990s with its Spinner stationary bikes, which it said allowed groups of at-home riders to be led through classes by instructors at fitness facilities. It contends that prior to its invention, there were no home exercise bikes with computers attached that allowed users to access classes via the internet.

Mad Dogg had urged the board to use its discretion to deny both petitions on the basis that the U.S. Patent and Trademark Office considered the same prior art during the patent's examination. However, the board determined that the patent office did not look at whether the prior art at issue contains certain elements of Mad Dogg's patents, including if it measures the power a rider is exerting.

According to the board's decisions, Mad Dogg had to add the "power" element to the patents to overcome an examiner's rejection while the patents were being prosecuted. The board said the examiner did not consider if the power element was in the prior art and that Peloton showed in its petitions that the examiner erred in a way that impacts the ultimate question of patentability. A second look is therefore warranted now, the board concluded.

But the board did side with Mad Dogg in rejecting one of Peloton's invalidity arguments. The issue was over what filing date Mad Dogg was entitled to for its patents, with Peloton arguing that Mad Dogg's original 2005 patent applications don't provide adequate written description support for the claims being challenged now.

Written description support requires patents to convey with reasonable certainty to skilled artisans that the inventors were in possession of a claimed invention. Petitioners, as Peloton did here, will sometimes dispute the filing date of a patent because only prior art that predates a patent's earliest filing date can be used to render it invalid.

The patents Peloton is challenging were eventually issued from 2015 versions of Mad Dogg's applications, with Peloton arguing that's the earliest filing date they were entitled to. But the board found otherwise, saying the 2005 applications appear on their face to provide written description support for the claims being challenged now.

The board, however, will still be reviewing all the claims Peloton challenged, minus two that Mad Dogg voluntarily disclaimed, under the other invalidity theories Peloton put forth in both petitions.

Counsel for the parties did not immediately return a request for comment Tuesday.

The patents-in-suit are U.S. Patent Nos. 9,694,240 and 10,137,328.

Administrative Patent Judges Hubert C. Lorin, Jason W. Melvin and Brent M. Dougal sat on the panels.

Peloton is represented by Bob Steinberg, Gabriel Gross and Kimberly Q. Li of Latham & Watkins LLP.

Mad Dogg is represented by Ted Maceiko of Maceiko IP.

The cases are Peloton Interactive Inc. v. Mad Dogg Athletics Inc., case numbers IPR2022-00016 and IPR2022-00017, at the Patent Trial and Appeal Board.

—Additional reporting by Dave Simpson. Editing by Kelly Duncan.