

Peloton Workaround for Workout Ban?

What can you do if a competitor has a patent in a field that you want to be active in?
Design around the patent.

Patent scope is defined in the claims. Claims are an essential and highly technical component of a patent, and proper understanding of a set of claims can help you understand what your competitor has protected and, often more importantly, what is not protected. The rest of the patent is context for the claims, and may give competitors an artificially broad conception of what they are unable to do. A patent is only infringed if each element of a claim is practiced. Therefore, each word of each claim has weight and limits the protection afforded by the patent.

Engaging a patent attorney to review the claims of a competitor's patent and separate the context from the enforceable scope can protect your freedom to operate in a field that is critical to your business. A patent attorney can help you parse the claim language and identify elements that you don't need to implement. Omitting claimed elements from your product can mean the difference between infringing and not infringing.

An example of this principle is the reaction of Peloton to the March 2023 finding of infringement of Dish Network's patent against it in the International Trade Commission. Peloton's senior vice president of global communications, Ben Boyd, promptly announced that Peloton has developed new video streaming technology for Bike, Bike+, Tread, Tread+, Row, and Guide to work around the infringement. This will be provided by an update incorporating the new video streaming technology. New products have already been updated, and existing products will be provided with an update with the new video streaming technology. While this doesn't address past infringement, if Peloton has truly designed around the Dish Patents, they will not be put out of business.

Another important lesson can be learned from the Peloton case. Specifically, it is important to consult a patent attorney and seek advice before launching a new product. Designing around a competitor's patent from the beginning can save money and headaches. Furthermore, design arounds based on advice of counsel can be the basis for defending against subsequent accusations of willful infringement and the enhanced damages that come with them.

Design arounds can be part of analyzing a single patent that you already know about. Searching for potentially problematic patents and, if needed, designing around those patents, is one way to ensure a smooth product launch. However, discovery of a problematic patent at this stage of development can lead to costly redesigns and launch delays. Instead, rather than waiting until a product is ready for launch, savvy

businesspeople will sometimes commission patent landscape searches even before engaging in product development. This allows them to investigate and identify holes in competitor's patents, and to design their products to exploit those holes.

It can therefore be prudent to contact a patent attorney before committing to a new product design, both to mitigate risk and to identify business opportunities by fully understanding your competitor's patent protection.

This general information is provided as a courtesy to the public by the law firm of Maine Cernota & Rardin, is not intended to be relied on as a statement of law or fact, is subject to change at any time, does not constitute legal advice, is not a solicitation for legal services, and is not intended to interfere with any existing business or legal relationship. Please communicate any errors or omissions in the information to Administrator, info@mcr-ip.com or call (603) 886-6100.

Copyright © 2023 by Vernon C. Maine, PLLC