

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

ICON HEALTH & FITNESS, INC.,	)	
	)	
Plaintiff,	)	
	)	C.A. No. 21-652-LPS
v.	)	
	)	JURY TRIAL DEMANDED
TONAL SYSTEMS, INC.,	)	
	)	
Defendant.	)	

**ICON HEALTH & FITNESS, INC.’S  
FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff ICON Health & Fitness, Inc. (“ICON”) hereby complains against defendant Tonal Systems, Inc. (“Tonal”) as follows:

**THE PARTIES**

1. ICON is a corporation duly organized and existing under the laws of Delaware with its principal place of business located at 1500 South 1000 West, Logan, Utah 84321.
2. Tonal is a Delaware corporation with its principal place of business located at 325 Vermont Street, San Francisco, California 94103.

**JURISDICTION AND VENUE**

3. This is a civil action for patent infringement under the patent laws of the United States, 35 U.S.C. § 271 *et seq.*
4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338.
5. Tonal is subject to general personal jurisdiction in this district because it is a Delaware corporation and thus resides in the District of Delaware.

6. This Court's exercise of personal jurisdiction over Tonal is consistent with the Constitutions of the United States and the State of Delaware.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)-(c).

## **INTRODUCTION**

### **ICON's History of Innovation**

8. ICON is an award-winning innovator in the field of exercise equipment, and it markets and sells a variety of exercise related products, including within the State of Delaware. ICON began building its business in 1977 upon creativity, investment, and hard work. This led to a stable, inventive, and diversified fitness company built upon hundreds of industry-leading patents and some of the most well-known brands in the industry, including NordicTrack®.

9. ICON maintains its position as one of the top innovators in the fitness industry by making substantial investments in the research, development, and acquisition of cutting-edge technologies. Many of ICON's technological innovations, including ICON's NordicTrack Fusion devices, are protected by a valuable and diverse intellectual property portfolio that includes patents, trademarks, trade dress, and copyrights.

10. ICON's heavy investment in innovation led to the development of its highly acclaimed and award-winning NordicTrack Fusion devices. Through this development, ICON created a new category of fitness equipment that combines aspects of strength-training and cardio fitness. ICON's NordicTrack Fusion devices are compact strength and cardio training systems that allow users to engage a wide range of the user's body including, but not limited to, arms, legs, core, back, chest, and shoulders. ICON's unique device allows users to simultaneously conduct both a strength and a cardio workout with a variety of engaged muscle groups.

11. ICON's NordicTrack Fusion devices, or embodiments similar thereto, are protected by several utility patents, including United States Patent Nos. 10,953,268 ("268 Patent"); and 10,967,214 ("214 Patent") (collectively, "Asserted Patents").

12. The '268 Patent generally discloses and claims a strength training apparatus and related methods that permits the performance of a variety of exercises such that it is able to integrate aerobic exercising with anaerobic exercising. The adjustability of the arms and pulleys in the apparatus and resistance mechanism provides a different form of flexible resistance than in conventional strength training exercises. The apparatus provides the ability to track one's progress during performance of these exercises.

13. Likewise, the '214 Patent generally discloses a cable exercise machine that incorporates an intuitive energy tracking device that permits a precise calculation of work performed during a workout. The system provides users with the flexibility of using multiple resistance cables in multiple configurations with varying levels of resistance.

#### **Tonal's Infringement of the Asserted Patents**

14. Tonal is in the business of manufacturing and selling, among other things, a strength training apparatus or cable exercise machine ("Tonal Device") for resistance training and associated hardware and software products that, among other features, permit customized strength training workout routines using the strength training apparatus.

15. Tonal also makes, uses, and offers associated hardware and software products with its Tonal Device that, among other features, permit a user to view, store, and display workout information and engage in customized strength training workout routines while using the Tonal Device.

16. Tonal imports, makes, uses, sells, or offers for sale the Tonal Device and the accompanying hardware and software products within the United States and within the State of Delaware, either directly or through established distribution channels.

17. The Tonal Device is a strength training apparatus with arms that are each selectively pivoted independent of each other at multiple angles. The Tonal Device has pulleys with cables extending through them that provide multiple levels of resistance when a user pulls on the cables. The Tonal Device also has a control panel that allows for control and display of the level of resistance.

18. The Tonal Device is a cable exercise machine with vertical guides. The Tonal Device has pull cables routed through pulleys and a control panel that allows for one or more levels of resistance to a user pulling on the pull cables. The Tonal Device also has a control panel that allows for display and adjustment of the level of resistance on the pull cables.

19. Below is an exemplary image of the Tonal Device, available on Tonal's website, <http://www.tonal.com/>.



**COUNT I**

**(Infringement of U.S. Patent No. 10,953,268)**

20. By this reference ICON realleges and incorporates the foregoing paragraphs as though fully set forth herein.

21. The '268 Patent was filed on December 8, 2020 and issued March 23, 2021. ICON is the owner by assignment of all rights, title, and interest in the '268 Patent. The '268 Patent is valid and enforceable. ICON has not licensed Tonal to practice the '268 Patent. A copy of the '268 Patent is attached hereto as Exhibit A.

22. In violation of 35 U.S.C. § 271(a), Tonal makes, uses, offers to sell, and sells its Tonal Device, including associated hardware and software, and appurtenant products and services, and thereby has and continues to directly infringe the '268 Patent. The Tonal Device is a strength training apparatus comprising (1) a first arm and a second arm each being configured to be selectively pivoted independent of each other at multiple angles relative to each other; (2) a first pulley coupled to an end of the first arm; (3) a first cable extending through the first arm and the first pulley; (4) a second pulley coupled to an end of the second arm; (5) a second cable extending through the second arm and the second pulley; and (6) an electronic control panel configured to allow for multiple levels of resistance to a user pulling on the first cable and/or the second cable, the electronic control panel including: a processor and a memory configured to control a current level of resistance, an electronic input device configured to allow the user to set the current level of resistance, and an electronic output device configured to display the current level of resistance.

23. The Tonal Device and associated hardware and software and appurtenant products and services satisfy each and every limitation of at least claim 1 of the '268 Patent. Tonal thereby directly infringes one or more claims of the '268 Patent.

24. In violation of 35 U.S.C. § 271(b), Tonal has been and continues to actively induce others to infringe the '268 Patent by making, offering to sell, and selling its Tonal Device, including associated hardware and software, and appurtenant products and services, and thereby has been and continues to indirectly infringe the '268 Patent.

25. ICON alleges on information and belief that users of the Tonal Device infringe and continue to infringe one or more claims of the '268 Patent by using within the United States the Tonal Device, including associated hardware and software, and appurtenant products and services, which embody one or more of the claims of the '268 Patent.

26. ICON alleges on information and belief, that Tonal possessed specific intent to encourage users' infringement of one or more claims of the '268 Patent, including Tonal's instructions to users of the Tonal Device, by user manuals and online instructions through Tonal's websites, how to use the Tonal Device in a manner embodied by one or more of the claims of the '268 Patent, providing evidence of an affirmative intent to induce infringement. Furthermore, because the Tonal Device has no substantial non-infringing use, Tonal intends for the Tonal Device to directly infringe the '268 Patent.

27. ICON alleges on information and belief that Tonal had knowledge of the '268 Patent and knowledge that it infringes one or more claims of the '268 Patent via the Tonal Device since at least the date the present action was filed. On information and belief, despite having such knowledge, Tonal continues to knowingly engage in its infringing conduct, including by directly infringing the '268 Patent and by actively inducing infringement of the '268 Patent by others.

28. Despite being on notice of its infringement of the '268 Patent since the date the present action was filed, Tonal continues to make, offer for sale, and sell the Tonal Device and its associated hardware and software, and appurtenant products and services and continues to

instruct users how to use the Tonal Device in a manner embodied by one or more of the claims of the '268 Patent with the knowledge that its conduct amounts to infringement of the '268 Patent.

29. Tonal's infringement of the '268 Patent will continue to damage ICON's business, causing irreparable harm, for which there is no adequate remedy at law, unless it is enjoined by this Court.

30. Tonal's conduct constitutes willful infringement of the '268 Patent, entitling ICON to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

31. Tonal's acts of infringement have caused damage to ICON. Thus, in addition to injunctive relief, ICON is entitled to recover the damages sustained as a result of Tonal's wrongful acts in an amount subject to proof at trial.

32. By reason of the foregoing, ICON is entitled to relief against Tonal, pursuant to at least 35 U.S.C. §§ 283–85.

## COUNT II

### **(Infringement of U.S. Patent No. 10,967,214)**

33. By this reference ICON realleges and incorporates the foregoing paragraphs as though fully set forth herein.

34. The '214 Patent was filed on December 8, 2020 and issued April 6, 2021. ICON is the owner by assignment of all rights, title, and interest in the '214 Patent. The '214 Patent is valid and enforceable. ICON has not licensed Tonal to practice the '214 Patent. A copy of the '214 Patent is attached hereto as Exhibit B.

35. In violation of 35 U.S.C. § 271(a), Tonal makes, uses, offers to sell, and sells its Tonal Device, including associated hardware and software, and appurtenant products and

services, and thereby has and continues to directly infringe the '214 Patent. The Tonal Device is a cable exercise machine comprising (1) a first vertical guide; (2) a first pull cable routed through a first pulley, the first pulley movable along a length of the first vertical guide; (3) a second vertical guide; (4) a second pull cable routed through a second pulley, the second pulley movable along a length of the second vertical guide; and (5) an electronic control panel configured to: electronically allow for one or more levels of resistance to a user pulling on the first pull cable and/or the second pull cable, electronically allow for adjustment of the level of resistance to the user pulling on the first pull cable and/or the second pull cable, and electronically present the adjusted level of resistance to the user.

36. The Tonal Device and associated hardware and software and appurtenant products and services satisfy each and every limitation of at least claim 1 of the '214 Patent. Tonal thereby directly infringes one or more claims of the '214 Patent.

37. In violation of 35 U.S.C. § 271(b), Tonal has been and continues to actively induce others to infringe the '214 Patent by making, offering to sell, and selling its Tonal Device, including associated hardware and software, and appurtenant products and services, and thereby has been and continues to indirectly infringe the '214 Patent.

38. ICON alleges on information and belief that users of the Tonal Device infringe and continue to infringe one or more claims of the '214 Patent by using within the United States the Tonal Device, including associated hardware and software, and appurtenant products and services, which embody one or more of the claims of the '214 Patent.

39. ICON alleges on information and belief, Tonal possessed specific intent to encourage users' direct infringement of one or more claims of the '214 Patent, including because Tonal provides and continues to provide instructions to users of the Tonal Device, by user manuals and online instructions through Tonal's websites, that instruct how to use the Tonal



Device in a manner embodied by one or more of the claims of the '214 Patent, providing evidence of an affirmative intent to induce infringement. Furthermore, because the Tonal Device has no substantial noninfringing use, Tonal intends for the Tonal Device to directly infringe the '214 Patent.

40. ICON alleges on information and belief that Tonal had knowledge of the '214 Patent and knowledge that it infringes one or more claims of the '214 Patent via the Tonal Device by at least the date in which the present action was filed. On information and belief, despite having such knowledge, Tonal continues to knowingly engage in its infringing conduct, including by directly infringing the '214 Patent and by actively inducing infringement of the '214 Patent by others.

41. Despite being on notice of its infringement of the '214 Patent by at least the date of the original filing of this action, Tonal continues to make, offer for sale, and sell the Tonal Device and its associated hardware and software, and appurtenant products and services and continues to instruct users how to use the Tonal Device in a manner embodied by one or more of the claims of the '214 Patent with the knowledge that its conduct amounts to infringement of the '214 Patent.

42. Tonal's infringement of the '214 Patent will continue to damage ICON's business, causing irreparable harm, for which there is no adequate remedy at law, unless it is enjoined by this Court.

43. Tonal's conduct constitutes willful infringement of the '214 Patent, entitling ICON to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

44. Tonal's acts of infringement have caused damage to ICON. Thus, in addition to injunctive relief, ICON is entitled to recover the damages sustained as a result of Tonal's wrongful acts in an amount subject to proof at trial.

45. By reason of the foregoing, ICON is entitled to relief against Tonal, pursuant to at least 35 U.S.C. §§ 283–85.

### **PRAYER FOR RELIEF**

WHEREFORE, ICON prays for judgment against Tonal as follows:

1. A judgment finding Tonal liable for infringement of one or more of the claims of the Asserted Patents, including that Tonal willfully engaged in infringement the Asserted Patents;
2. Orders of this Court temporarily, preliminarily, and permanently enjoining Tonal, its agents, servants, and any and all parties acting in concert with any of them, from directly or indirectly infringing in any manner any of the claims of the Asserted Patents, pursuant to at least 35 U.S.C. § 283;
3. An award of damages to ICON for infringement of the Asserted Patents, in an amount to be proved at trial, pursuant to all applicable law, including at least 35 U.S.C. § 284;
4. An award of treble damages to ICON, pursuant to all applicable law, including at least 35 U.S.C. § 284;
5. A declaration that this case is an exceptional case;
6. An award of ICON's costs in bringing this action, pursuant to all applicable law, including at least 35 U.S.C. § 284;
7. An award of ICON's attorneys' fees in this action, pursuant to all applicable law, including at least 35 U.S.C. § 285;

8. Imposition of a constructive trust on, and an order requiring a full accounting of, the sales made by Tonal as a result of its wrongful or infringing acts alleged herein;
9. Pre-judgment interest, pursuant to at least 35 U.S.C. § 284;
10. Post-judgment interest, pursuant to at least 28 U.S.C. § 1961(a); and
11. An award of any other and further relief as the Court deems just and equitable.

**DEMAND FOR JURY TRIAL**

ICON demands a trial by jury for all causes and issues so triable.

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Dated: May 24, 2021

**CERTIFICATE OF SERVICE**

I hereby certify that on May 24, 2021, true and correct copies of the foregoing document were served as follows on the following:

**VIA EMAIL AND FIRST CLASS MAIL**

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