

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

PRECOR INCORPORATED, a Delaware  
corporation, and LARRY D. MILLER, an  
individual,

Plaintiffs,

v.

YOWZA FITNESS, LLC, a Florida Limited  
Liability Company; and

YOWZAFITNESS.COM, LLC, a Florida  
Limited Liability Company,

Defendants.

No.

COMPLAINT FOR PATENT  
INFRINGEMENT

**JURY TRIAL REQUESTED**

Plaintiff Precor Incorporated (“Precor”) and Plaintiff Larry Miller (“Miller”), by their  
attorneys, complain of Yowza Fitness, LLC and Yowzafitness.com, LLC as follows:

**PARTIES**

1. Plaintiff Precor is a corporation organized and existing under the laws of the State of  
Delaware. Precor maintains a principal place of business at 20031 142<sup>nd</sup> Ave. NE, P.O. Box  
7202, Woodinville, WA 98072-4002.

2. Plaintiff Miller is an individual residing in Michigan. Miller joins Precor in the  
allegations asserted in this action.

1 3. Upon information and belief, Yowza Fitness, LLC is a Florida limited liability  
2 company with a principal place of business at 2705 Olde Cypress Drive, Naples, FL 34119.  
3 Upon information and belief, Yowzafitness.com, LLC is a Florida limited liability company  
4 with a principal place of business at 2705 Olde Cypress Drive, Naples, FL 34119. Upon  
5 information and belief, the managing member of Yowza Fitness, LLC and Yowzafitness.com,  
6 LLC is Joseph Alter. Yowza Fitness, LLC and Yowzafitness.com, LLC will hereinafter be  
7 referred to as the Yowza Defendants.

#### 8 JURISDICTION AND VENUE

9 4. This is a civil action for patent infringement arising under the patent laws of the  
10 United States, 35 U.S.C. § 101 *et. seq.* Jurisdiction is proper under 28 U.S.C. §§ 1331  
11 and 1338(a) and (b). The Yowza Defendants have and continue to import or manufacture,  
12 offer for sale, and/or sell products which infringe Precor's and Miller's patent rights in the  
13 State of Washington and elsewhere throughout the United States.

#### 14 BACKGROUND

15 5. On January 24, 1995, the United States Patent and Trademark Office granted U.S.  
16 Patent No. 5,383,829 entitled "Stationary Exercise Device" ("the '829 Patent") to inventor  
17 Larry D. Miller. A copy of the '829 Patent is attached as Exhibit A. The '829 Patent  
18 encompasses proprietary technology hereinafter referred to as the "elliptical cross-trainer."  
19 The patent is both valid and enforceable.

20 6. Precor is the exclusive licensee of the '829 Patent and all of the elliptical cross-trainer  
21 technology it encompasses. Precor has the right to manufacture, use, offer for sale and sell  
22 products that incorporate the technology of the '829 Patent.

23 7. On or about May 15, 1998, the first of five reexamination requests of the '829 Patent  
24 were filed in the United States Patent and Trademark Office pursuant to 37 C.F.R. §1.510.

8. Despite the five reexamination proceedings, the United States Patent and Trademark Office upheld the validity of the '829 Patent in light of both the art considered during the original prosecution and the art cited by Precor's competitors.

9. The United States Patent and Trademark Office issued a Reexamination Certificate for U.S. Patent No. 5,383,829 on March 5, 2002, which is attached as Exhibit B. The Reexamination Certificate states that: "The patentability of claims 1-6 is confirmed. Claim 7 is determined to be patentable as amended. New claims 8-75 are added and determined to be patentable." The Reexamined '829 Patent remains both valid and enforceable.

### **PATENT INFRINGEMENT**

10. Upon information and belief, the Yowza Defendants currently manufacture, cause to be manufactured, import, offer for sale and/or sell elliptical cross-trainer products, including but not limited to the Pompano, Navarre, Sanibel, Captive, and Largo Elliptical Trainers that infringe at least Claims 17, 18, 19, 20, 21, 22, and 23 of the '829 Patent under 35 U.S.C.



§ 271.

### **Representative Image of the Navarre**

11. Upon information and belief, the Yowza Defendants were at all relevant times aware of the '829 Patent and Precor's proprietary "elliptical cross-trainer" technology. The managing member of both Yowza Defendants is Joseph Alter. Mr. Alter was the CEO of a

1 previous defendant sued by Precor and Miller for infringement of the '829 Patent. Despite Mr.  
2 Alter being personally aware of the '829 Patent and Precor's proprietary "elliptical cross-  
3 trainer" technology, and despite the lack of a license agreement under the '829 Patent, the  
4 Yowza Defendants nevertheless deliberately and willfully infringed and continue to infringe  
5 the '829 Patent, thereby causing irreparable harm and damage to Precor and Miller.

6 **JURY TRIAL**

7 12. Precor and Miller respectfully request a jury trial on the merits.

8 **REQUESTED RELIEF**

9 Wherefore, Precor and Miller jointly request the following relief:

10 (A) That the Court preliminarily and permanently enjoin the Yowza Defendants, its  
11 officers, agents, servants, employees and attorneys, and all persons in active concert or  
12 participation with any of them from any act of infringement, inducement of infringement, or  
13 contributory infringement of the '829 Patent, pursuant to 35 U.S.C. § 283.

14 (B) That the Court order the Yowza Defendants to deliver up for destruction any  
15 and all of their products that infringe any claim of the '829 Patent, pursuant to 35 U.S.C.  
16 § 283.

17 (C) That the Court order the Yowza Defendants to compensate Precor and Miller  
18 for all damages suffered as a result of the infringement of the '829 Patent, including direct and  
19 consequential damages and all other damages, to the fullest extent of the law, pursuant to  
20 35 U.S.C. § 284.

21 (D) That the Court find this is an exceptional case against the Yowza Defendants,  
22 and award Precor and Miller their attorneys' fees, costs and expenses in bringing and  
23 prosecuting this lawsuit, pursuant to 35 U.S.C. § 285.

24 (E) That the Court award Precor and Miller treble damages against the Yowza  
25 Defendants pursuant to 35 U.S.C. § 284.

1 (F) That Precor and Miller have such further and other relief as this Court may  
2 deem just.

3  
4 Dated this 16<sup>th</sup> day of September, 2011.

5  
6  
7 FOX LAW GROUP, LLC

8 /s/ Bradley T. Fox  
9 Bradley T. Fox, WSBA #30,697  
10 Attorney for Precor Incorporated  
11 747 Cascadilla St.  
12 P.O. Box 4002  
13 Crested Butte, CO 81224  
14 Telephone: (206) 217-2230  
15 Facsimile: (866) 348-4107  
16 brad@foxgroupllc.com  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27