

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LULULEMON ATHLETICA CANADA INC. and LULULEMON USA INC.,
Petitioner,

v.

NIKE, INC.,
Patent Owner.

IPR2023-00180
Patent No. 10,232,220

**PETITION FOR *INTER PARTES* REVIEW
OF U.S. PATENT NO. 10,232,220**

TABLE OF CONTENTS

	Page
I. Introduction.....	1
II. Background.....	2
A. Summary of the '220 Patent.....	2
B. Prosecution History of the '220 Patent	4
C. Prior Art.....	5
1. Johnson.....	5
a. Johnson Discloses the Same Hardware and Concepts as the '220 Patent.....	5
b. Johnson's Prior Art Date Is April 27, 2009, or at the Latest, April 27, 2010	9
c. Johnson Had a Different Inventive Entity than the '220 Patent	11
2. Sutton	11
3. Plus 3 Website Pages	17
a. The Plus 3 Website Pages Disclose Sutton's Social Network	17
b. The Plus 3 Website Is a Printed Publication.	18
4. Fry	21
III. Claim Construction.....	22
IV. Level of Ordinary Skill.....	22
V. Precise Reasons for Relief Requested	23
VI. Ground 1: Johnson Anticipates Claims 11-13 & 19.....	24
A. Claim 11	25
1. Element 11[pre].....	25
2. Element 11[A].....	25

TABLE OF CONTENTS
(continued)

	Page
3. Element 11[B]	26
4. Element 11[C]	27
5. Element 11[D]	29
6. Element 11[E]	32
a. Device 601 Performs the Steps in Element 11[E] in Response to All Four Sharing Option Selections	33
b. Device 601 Performs the Steps in Element 11[E] in Response to the Leaderboard Sharing Option Selection	33
c. Device 601 Performs the Steps in Element 11[E] in Response to the Blog Sharing Option Selection	36
B. Claim 12	38
C. Claim 13	39
D. Claim 19	40
VII. Ground 2: Sutton Anticipates Claims 11-12 & 19-20	42
A. Claim 11	42
1. Element 11[pre]	42
2. Element 11[A]	43
3. Element 11[B]	44
4. Element 11[C]	45
5. Element 11[D]	47
6. Element 11[E]	48
B. Claim 12	52
C. Claim 19	55
D. Claim 20	55
VIII. Ground 3: Claims 11-12 and 19-20 Are Obvious Over Sutton	57

TABLE OF CONTENTS
(continued)

	Page
A. Claim 11	57
1. Element 11[pre].....	57
2. Element 11[A].....	58
3. Element 11[B].....	59
4. Element 11[C].....	60
5. Element 11[D].....	61
6. Element 11[E]	65
B. Claim 12	66
C. Claim 19	66
D. Claim 20	67
IX. Ground 4: Claims 11-14 and 19-20 Are Obvious Over Sutton in View of the Plus 3 Website Pages.....	67
A. Claim 11	69
1. Element 11[D].....	69
2. Element 11[E]	70
B. Claim 13	70
C. Claim 14	71
D. Claim 19	72
X. Ground 5: Claim 12 Is Obvious Over Sutton in View of Fry	72
A. Claim 12	72
XI. Mandatory Notices.....	76
A. Real Party-in-Interest	76
B. Related Matters.....	76
C. Lead and Back-Up Counsel and Service Information	77
XII. Conclusion	78

Exhibit List for Inter Partes Review of U.S. Patent No. 10,232,220

Exhibit Description	Exhibit #
U.S. Patent No. 10,232,220 to Hoffman et al.	1001
Excerpts from Prosecution File History of U.S. Patent No. 10,232,220	1002
Declaration of Dr. Henry H. Houh	1003
U.S. Patent Application Publication No. 2010/0273610 (“Johnson”)	1004
U.S. Patent Application Publication No. 2009/0150178 (“Sutton”)	1005
Declaration of Nathaniel E. Frank-White	1006
Martha Fry (@MarthaFry), Twitter (January 5, 2009, 3:34 PM), https://twitter.com/MarthaFry/status/1098244147	1007
Scott Tousignant (@TheFitB), Twitter (Nov. 27, 2008, 9:27AM), https://twitter.com/TheFitB/status/1026679285	1008
David Marcus (@davidmarcus), Twitter (July 9, 2009, 6:56PM), https://twitter.com/davidmarcus/status/2560866346	1009
Martha Fry (@MarthaFry), Twitter (July 11, 2009, 5:11AM), https://twitter.com/MarthaFry/status/2582964533	1010
Mark Prasatik (@mprasatik), Twitter (July 18, 2009, 5:11AM), https://twitter.com/mprasatik/status/2705395365	1011
Printout of Wayback Machine General Information, Internet Archive (Oct. 3, 2022), https://help.archive.org/help/wayback-machine-general-information/	1012
Claire Cain Miller, <i>Popularity or Income? Two Sites Fight It Out</i> , The New York Times (Oct. 20, 2008), https://www.nytimes.com/2008/10/21/technology/start-ups/21twitter.html	1013
U.S. Provisional Patent Application No. 61/172,990	1014
U.S. Provisional Patent Application No. 61/183,172	1015

lululemon athletica canada inc. and lululemon usa inc. (collectively, “lululemon” or “Petitioner”) respectively petitions for *inter partes* review of claims 11-14 and 19-20 of U.S. Patent No. 10,232,220 (the “’220 patent” (Ex. 1001)) in accordance with 35 U.S.C. §§ 311-319 and 37 C.F.R. § 42.100 *et seq.*

I. INTRODUCTION

The ’220 patent’s challenged independent claim is directed to an apparatus for sending workout information to social media. In the purported invention, a computer records data for a workout, receives a selection to share workout information, and then transmits the workout information associated with the recorded data to a public page of a social networking website. The computer can also tag the workout information with the user’s location or other users’ information and can edit or remove the workout information.

The challenged claims never should have issued. Patent Owner separately filed U.S. Patent Application No. 12/768,168 (the “’168 application”) that claims priority to provisional applications more than a year before the ’220 patent’s earliest claimed priority date. The ’168 application contained, word-for-word, much of the ’220 patent’s written description and has only one named inventor (who is not listed on the ’220 patent). The ’168 application published as U.S. Patent Application Publication No. US 2010/0273610 (“Johnson” (Ex. 1004)) and anticipates claims 11-13 and 19.

The challenged claims are also invalid in view of U.S. Patent Application Publication No. 2009/0150178 (“Sutton” (Ex. 1005)), archived webpages from www.plus3network.com (“Plus 3 Website Pages”), and a tweet by Twitter user Martha Fry (“Fry”). More than a year before the ’220 Patent’s earliest claimed priority date, Sutton taught computers that recorded user athletic activity, received a command to share the data, and uploaded the data to a page of a social networking website, www.plus3networks.com. Separately, Fry taught tagging another person in a post about one’s own workout. These references anticipate or render obvious each of claims 11-14 and 19-20.

II. BACKGROUND

A. Summary of the ’220 Patent

The ’220 patent purports to solve the problem of motivating people to exercise. (*See* Ex. 1001, 1:24-51.) To that end, it discloses “an athletic information monitoring device 201” (depicted in Figure 2, reproduced below) that “measure[s] athletic information corresponding to a user’s athletic activity.” (*Id.*, 11:24-27.) Athletic information monitor device 201 includes music player 203, electronic interface device 205, and athletic parameter measurement device 207 that sends athletic data measured from a sensor (e.g., an accelerometer) to music player 203 via interface 205. (*Id.*, 11:27-43, Fig. 3.)

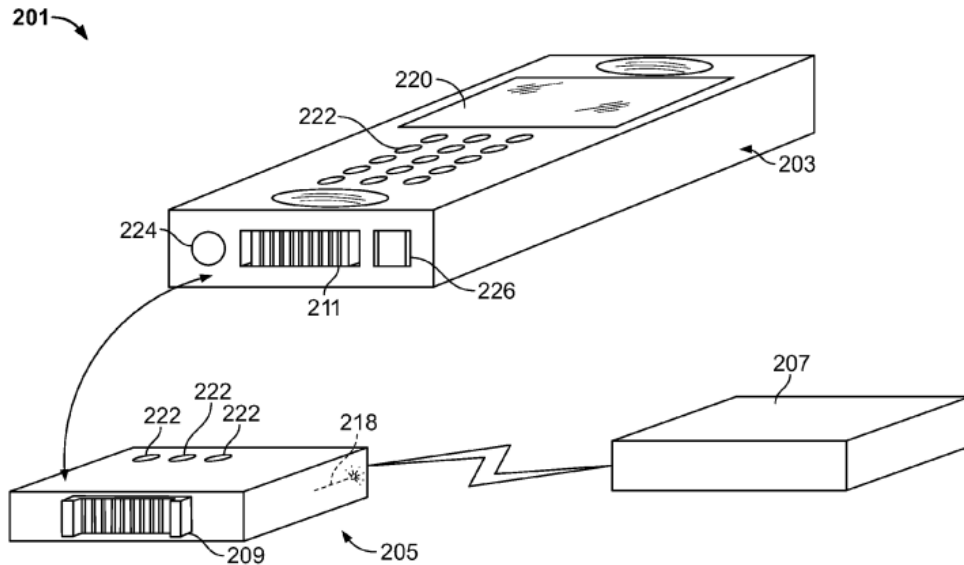


FIG.2

(*Id.*, Fig. 2.)

The '220 patent explains that “an athletic information collection and display device 501” can “collect and/or display [received] athletic data” “from the athletic information monitoring device 201” and is implemented using any “suitable variation” of a computing device. (*Id.*, 15:53-54, 16:4-6, Fig. 5.) The athletic information collection and display device 501 transmits athletic data to “an athletic data display configuration device 601,” which records it to memory “for future use,” such as for display to a user. (*Id.*, 17:47-53; *see also id.*, Fig. 6.)

Using the combination of devices 201, 501, and 601, users can record and upload their athletic activity data to social networking sites like Facebook and Twitter. (*Id.*, 45:55-64.) They can then share their workouts by, for example,

clicking “Share on ...” or by selecting “public,” as depicted in the below interfaces. (*Id.*, 45:55-64, 61:1-7, 61:22-38.)

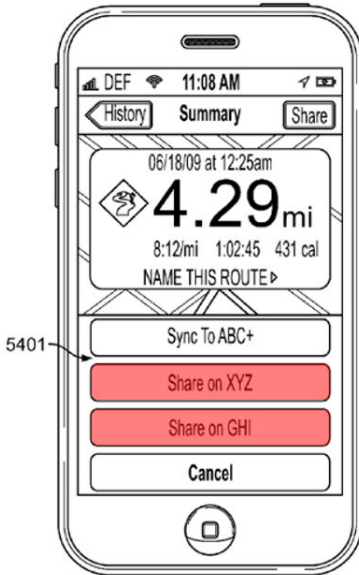


FIG. 54A

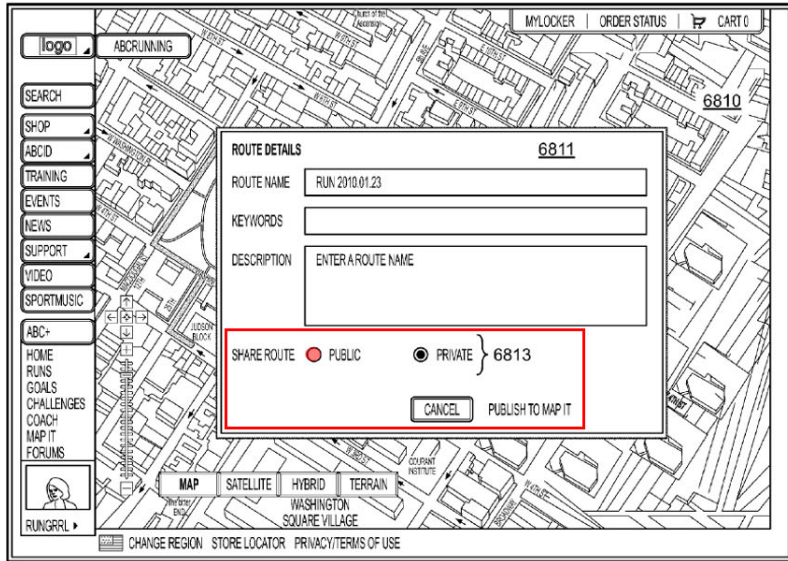


FIG. 68B

(*Id.*, Figs. 54A (annotated), 68B (annotated); *see also* Fig. 77.) Users can also “tag” others to “identify[] [them] as a participant in the workout,” (*id.*, 48:55-62; *see also id.*, 38:60-40:20, Figs. 32B-32D), or “enter tags based on a GPS-detected location,” (*id.*, 40:59-60.) They can comment on others’ activities. (*E.g., id.*, 46:37-42, Fig. 56.) And they can take down data after uploading it. (*Id.*, 49:54-64.)

B. Prosecution History of the '220 Patent

Patent Owner filed the '220 patent on October 9, 2017. (Ex. 1001, 1.) The examiner issued a double patenting rejection in view of U.S. Patent No. 9,808,670 on March 21, 2018, (Ex. 1002, 20), which Patent Owner overcame via terminal

disclaimer, (*id.* at 12.) The '220 patent issued on February 27, 2019, without further rejection. (*Id.* at 1.)

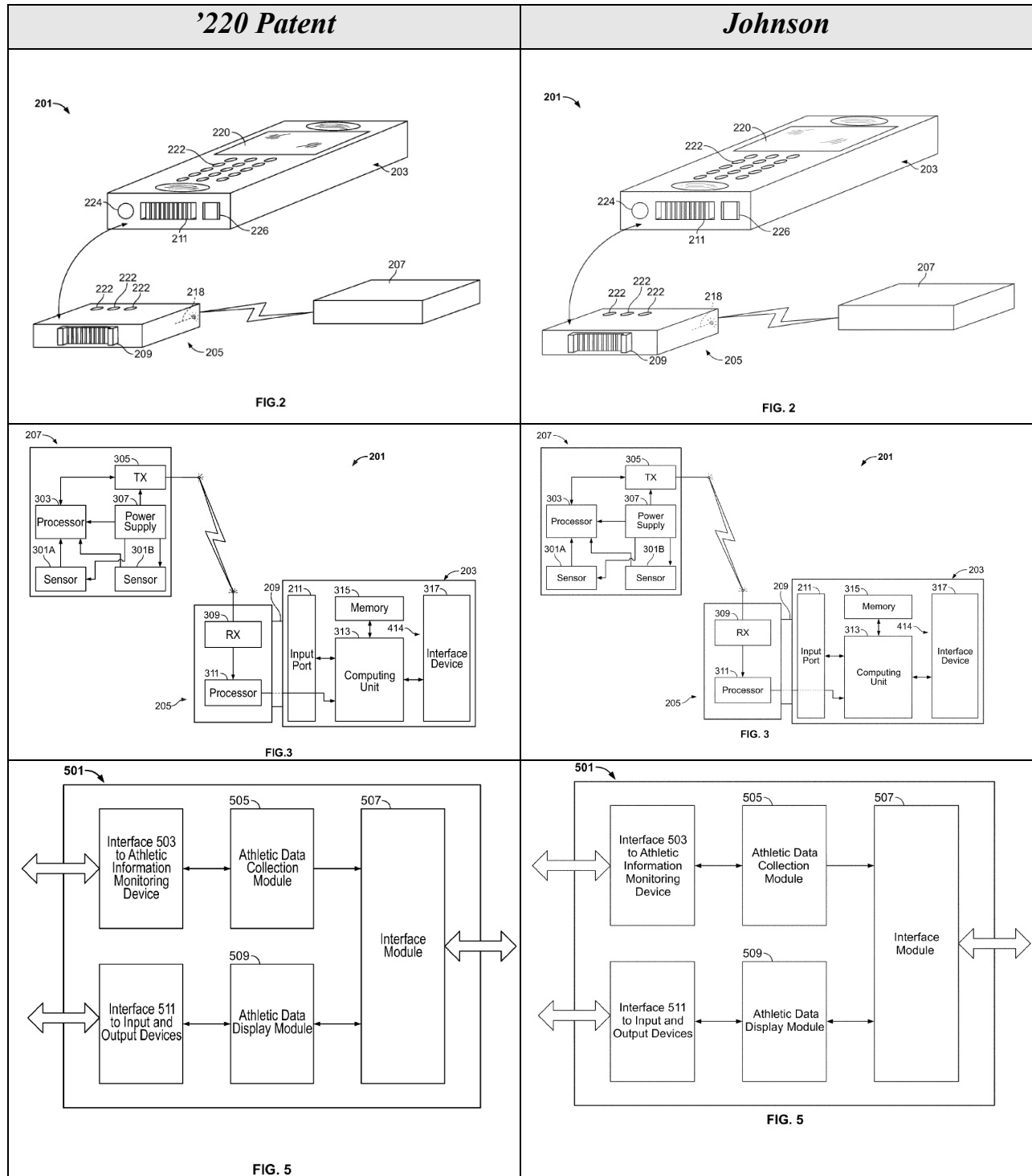
C. Prior Art

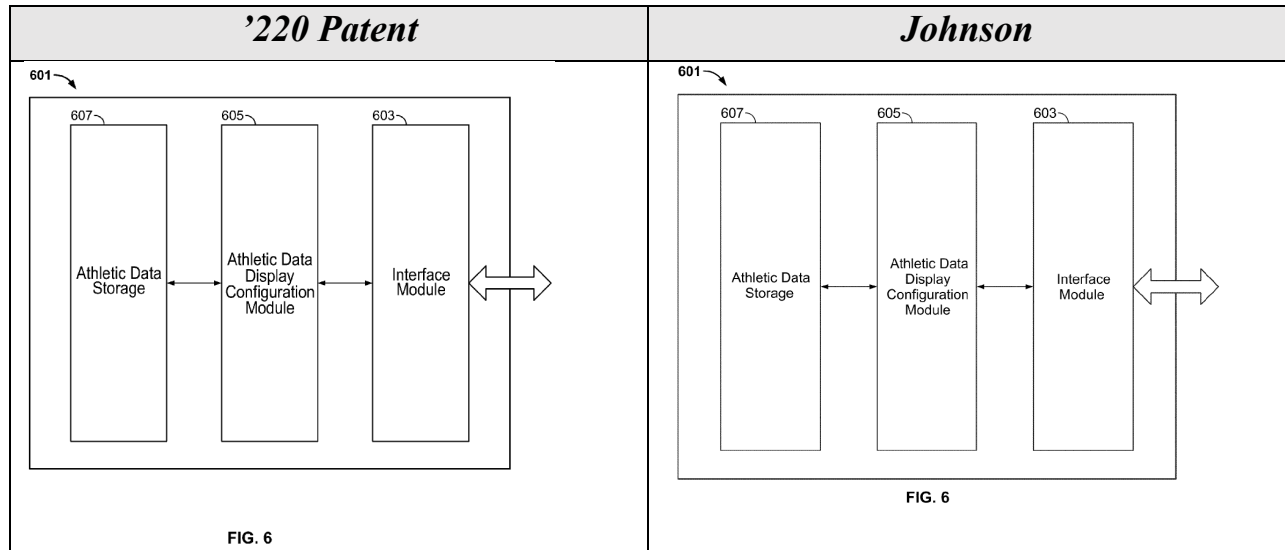
Recording athletic activity and then uploading it to social networking sites was well known by 2010:

1. Johnson

a. Johnson Discloses the Same Hardware and Concepts as the '220 Patent

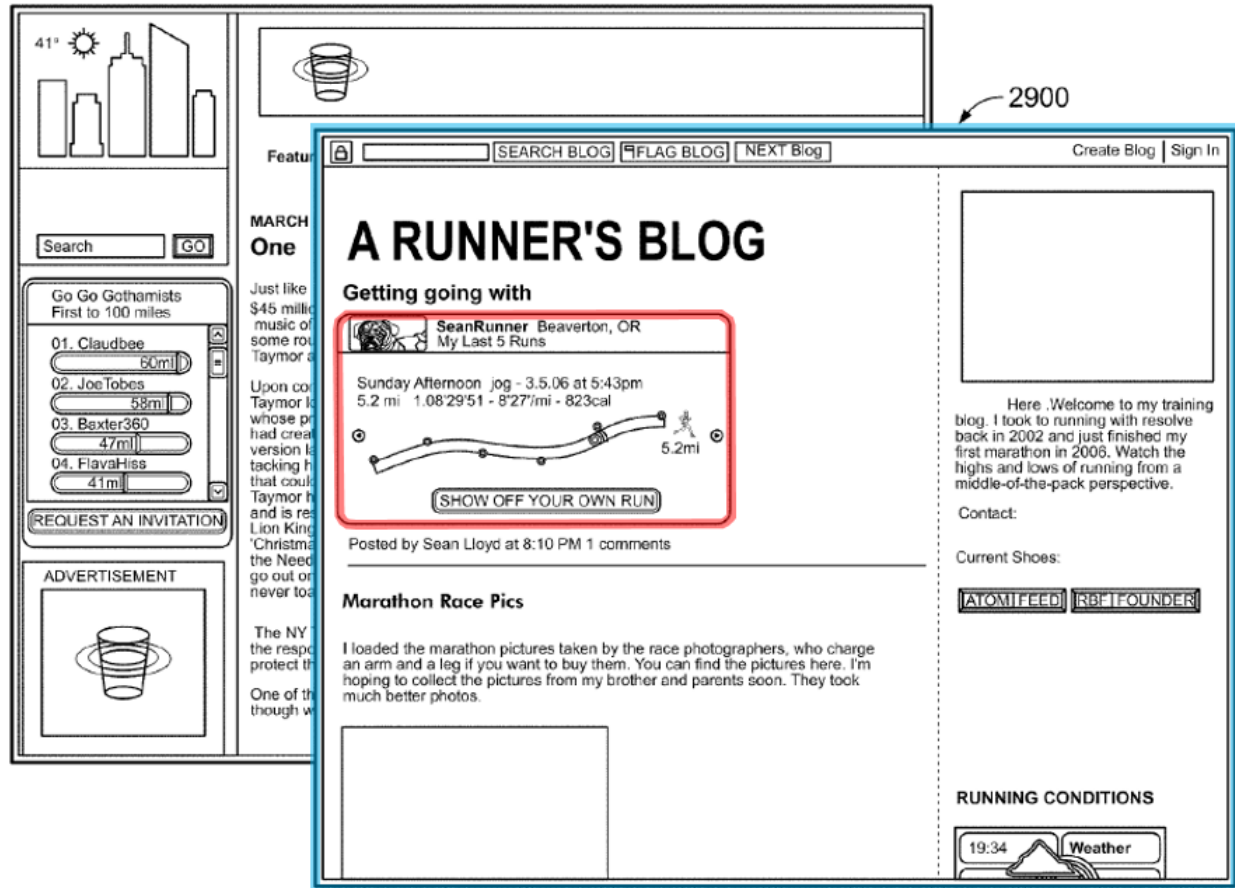
Johnson is a published patent application filed around three months before the '220 patent's earliest claimed priority date and claiming priority to provisional applications filed more than a year before the same. (Ex. 1004, 1.) Johnson has a different named inventor than the '220 patent but discloses the same hardware, including the same devices 201, 501, and 601. (*Compare* Ex. 1001, 8:43-18:67, Figs. 1-6 *with* Ex. 1004, ¶¶ 57-92, Figs. 1-6.) The '220 patent and Johnson's depictions of devices 201, 501, and 601 are shown below.





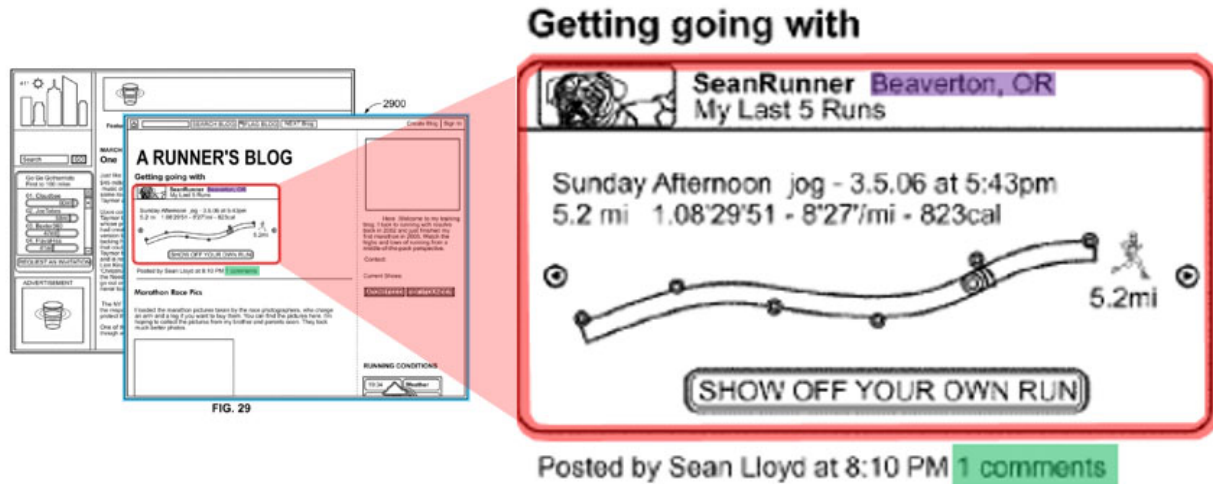
(Ex. 1001, Figs. 3, 5, 6; Ex. 1004, Figs. 3, 5, 6.)

Like the '220 patent, Johnson discloses uploading recorded data to social networking sites. Its users can share their data in “lists,” i.e., leaderboards, if they “agree in advance to have their data shared with others” (Ex. 1004, ¶ 135; *see also id.*, ¶ 134; Fig. 14A.) They can share that they recorded running 500 miles by selecting “BRAG TO FRIENDS” in an interface. (*Id.*, ¶ 159; Fig. 21.) And they can share recorded athletic activity after each workout and/or promote it on their blogs by clicking on “SHARE THIS RUN” or “Blog Promotion” buttons. (*Id.*, ¶ 183, Fig. 43.) Johnson depicts a blog (blue) displaying recorded user athletic activity (red) in Figure 29:



(*Id.*, Fig. 29 (annotated).)

Johnson also discloses commenting on and tagging posts. It discloses tagging a user's athletic activity with a "500 Mile Club" identifier after the user records running 500 miles. (*Id.*, ¶¶ 159-160, Fig. 23.) It also discloses commenting on (green) and tagging other users' activities with their locations (purple):



(*Id.*, Fig. 29 (annotated and enlarged); *see also id.*, ¶ 167, Fig. 14A.)

b. Johnson’s Prior Art Date Is April 27, 2009, or at the Latest, April 27, 2010

Johnson is prior art by at least April 27, 2010. (Ex. 1004, 1.) Under *Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, Johnson is also prior art by April 27, 2009, the filing date of its earliest provisional application (No. 61/182,990 (“’990 application”)). 800 F.3d 1375, 1382-83 (Fed. Cir. 2015). Although Petitioner is not required to prove Johnson’s entitlement to that date at this stage, *id.* at 1381, it is entitled to the April 27, 2009, date because the ’990 application supports at least one of its claims:

<i>Johnson’s Claim 1</i>	<i>’990 application</i>
1[pre] A system comprising:	If limiting, the ’990 application discloses a system. (<i>See, e.g.</i> , Ex. 1014, ¶¶ 50-87 (describing same hardware as Johnson), Figs. 1-7.)
1[A] a processor; and	(<i>See, e.g., id.</i> , ¶ 54 (computer 101 includes a “processing unit 105”).)

<i>Johnson's Claim 1</i>	<i>'990 application</i>
1[B] memory operatively coupled to the processor and storing computer readable instructions that, when executed, provide:	(<i>See, e.g., id.</i> , ¶ 54 (“[T]he computer 101 has a computing unit 103 ... includ[ing] a processing unit 105 and a system memory 107. The processing unit may be any type of processing device for executing software instructions ... the [memory] may store software instructions for execution by the processing unit 105”), Fig. 1.)
1[C] a training program generator module configured to: receive a user-specified training parameter, and generate an athletic activity training schedule for a user based on the user-specified training parameter; and	(<i>See, e.g., id.</i> , ¶¶ 160 (“Fig. 34 illustrates a running regimen generator interface 3400 through which an athlete may specify parameters and request an automatically generated schedule in accordance with those parameters”), 11 (“a training schedule may be automatically generated based on a user’s desired goal, desired length of run, preference between speed and endurance, amount of time, intensity level and/or calories to be burned”), 44-48, 161-168, Figs. 34-38.)
1[F] a music playlist generator module configured to automatically select one or more songs for a music playlist to be played during an athletic workout corresponding to the training schedule.	(<i>See, e.g., id.</i> , ¶¶ 12 (“[A] music playlist generator may be used to automatically select music for a training program. Music selection may be based on factors such as an intensity of a particular segment of the training, training duration, a training trend ... and the like.”), 44-48, 169-178, Figs. 34-38.)

The '990 application also includes substantively the same disclosure from Johnson cited in Ground 1, which is more than is required under *Dynamic Drinkware*. (*Compare* Ex. 1004, ¶¶ 29, 59-61, 68, 69, 82, 86-88, 90-92, 132, 134, 135, 138, 146, 159, 160, 167, Figs. 1, 3, 6, 14A, 17, 21, 23, 29 *with* Ex. 1014, ¶¶

28, 52-54, 61, 62, 75, 79-81, 83-85, 125, 127, 128, 131, 138, 151, 152, 159, Figs. 1, 3, 6, 14A, 17, 21, 23, 29.) Additionally, the remaining cited disclosure from Johnson (which is relied upon as an alternative) was added to its June 2, 2009, provisional application No. 61/183,172, which also includes the material from the '990 application. (*Compare* Ex. 1004, ¶ 183, Fig. 43 *with* Ex. 1015, ¶ 180, Fig. 43.)

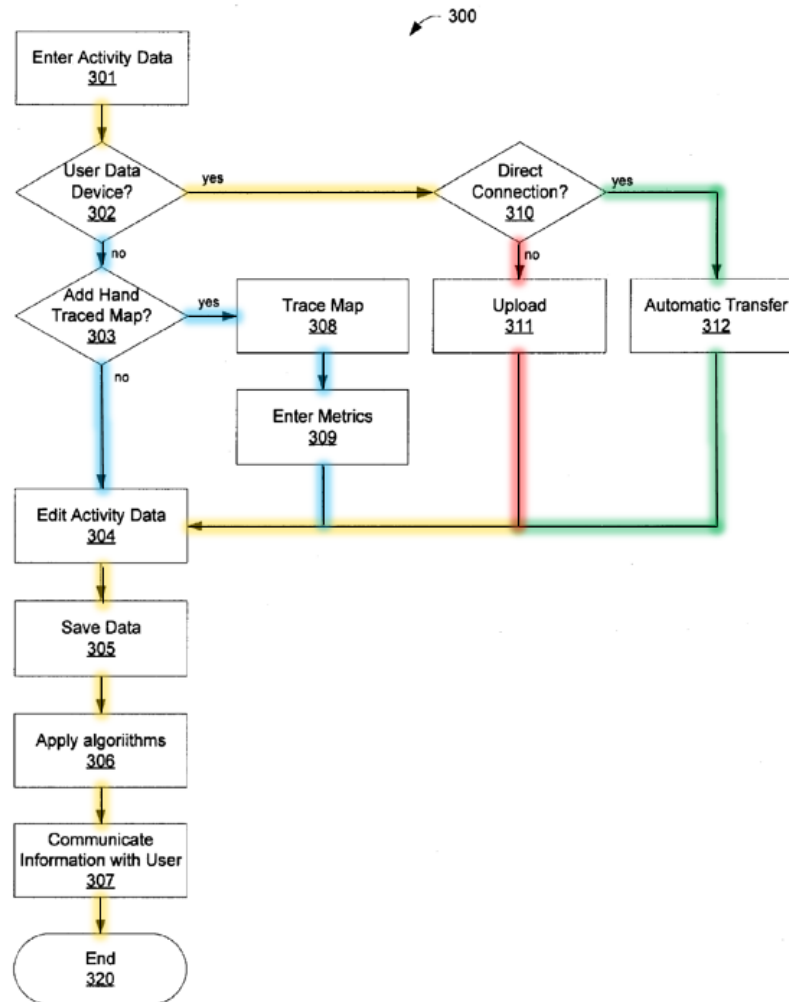
c. Johnson Had a Different Inventive Entity than the '220 Patent

Johnson's sole named inventor is Omar Johnson. (Ex. 1004, 1.) The '220 patent's named inventors are Michael Hoffman, Kwamina Crankson, Jason Nims, Michael Orenstein, and Kristen White. (Ex. 1001, 1.) Because Johnson's inventor and the '220 patent's inventors are not the same (in fact, they have no common named inventors), Johnson was filed "by another." *See* MPEP 2136.04 (an application is "by another" "if not all inventors are the same" as a previous application).

2. Sutton

Sutton discloses a system for recording athletic activity data and uploading it to a social networking site, "www.plus3network[.com]." (Ex. 1005, Fig. 4.) It teaches three ways (each depicted in annotated Figure 3 below) to upload the data:

“[1] manual transfer (blue), [2] manual device transfer (red), and [3] automatic device transfer (green).” (*Id.*, ¶ 60.)



(*Id.*, Fig. 3 (annotated).)

In the manual transfer pathway, a “[u]ser 101 may use a PC, a phone or any other data entry device to enter his/her activity data.” (*Id.*, ¶ 73.) This involves completing a form with “Public” and “Private” sharing options, as shown in annotated Figure 9:

900

Enter Activity By Hand

Activity Name: Morning Run

Start Date / Time: 11/20/2008 09:30 AM

Sport: Running

Total Time (hours: minutes: seconds): 00:35:00

Description: A five mile run from the house into the park and around the school yard.

Total Distance: 5 miles

Course Rating: ★★☆☆

Privacy: ☒ Public (visible to the Plus 3 Network community) ☐ Private (only visible to me)

Save activity Back to my activities

(*Id.*, Fig. 9 (annotated).) Sutton also discloses the user entering other usernames in the description field, (*see id.*, ¶ 84, Figs. 5, 10), and uploading a “traced map” showing where the user exercised, (*see id.*, ¶¶ 60, 63, Fig. 5.)

Alternatively, in the manual device transfer and automatic device transfer pathways, a user can record athletic activity with a device 104 (purple in cropped and annotated Figure 1B reproduced below). (*Id.*, ¶ 30.) Device 104 is a computer with a processor and memory storing computer-readable instructions. (*See id.*, ¶¶ 26, 28, 30, 94, 95, 98; Ex. 1003, ¶ 81.) It has “Track” and “Record” functions (green) and can display “elapsed time,” “current speed, average speed, distance, altitude, climb, [and] calories.” (Ex. 1005, ¶ 30.)



(*Id.*, Fig. 1B (cropped and annotated).) Device 104 can track the user's physical location and generate a traced map. (*See id.*, ¶¶ 55, 60, 63, 82, Fig. 5.)

As depicted in Figure 1A (annotated below), in all three transfer pathways, a system 110 (red) receives the user data over a network 150 (orange). (*Id.*, ¶ 28.) “The user provided data is stored in database 115[,]” (green) which is part of system 110. (*Id.*, ¶ 61; *see also id.*, ¶¶ 28, 30.) System 110 also includes a server 111 (blue), which “represents a collection of servers, for example, a Web server, a file server, a data aggregation server, a data processing server, etc.” (*Id.*, ¶ 28.)

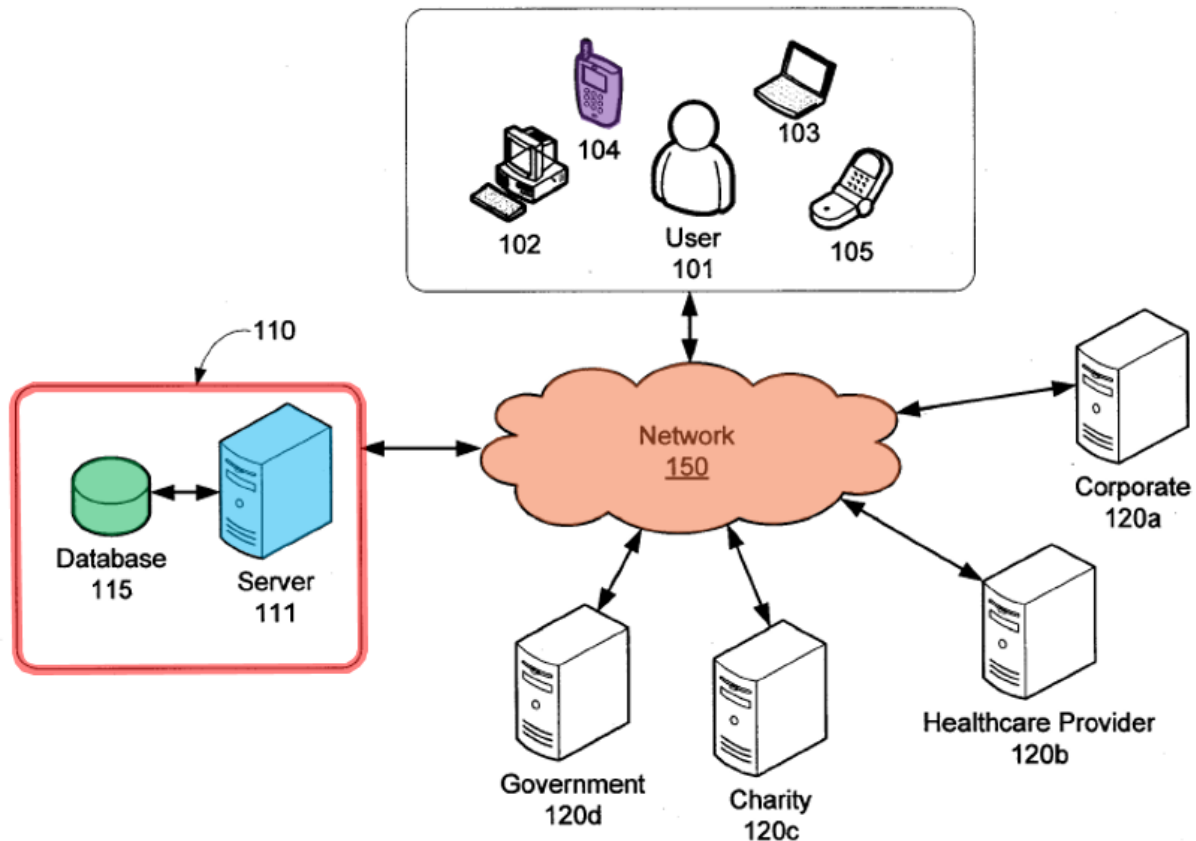


FIG. 1A

(*Id.*, Fig. 1A (annotated).) Like device 104, system 110 can include a processor and memory storing computer-readable instructions. (*Id.*, ¶¶ 26, 94, 95, Fig. 11.)

After the user data is stored in database 115, “server 111 [can] communicate[] with user 101 to ask for confirmation of data upload and transfer.” (*Id.*, ¶ 61; *see also id.*, ¶ 60.) Server 111 then transmits the user’s data to a “page at <http://www.plus3networks.com> [*sic*, <http://www.plus3network.com>.],” (*id.*, Fig. 4; *see also id.*, ¶ 62), which was (and still is) a social networking site, (*see*

Ex. 1006,9). The user's data can then "be presented or displayed to members, sponsors, and benefactors using a Web browser." (Ex. 1005, ¶ 92.)

Sutton discloses users editing their data before and after posting it. Before posting a workout, Sutton's users can "correct and edit [their] entered activity data" (*Id.*, ¶ 61.) They can identify other users in connection with their workout data and provide a map showing where they exercised:

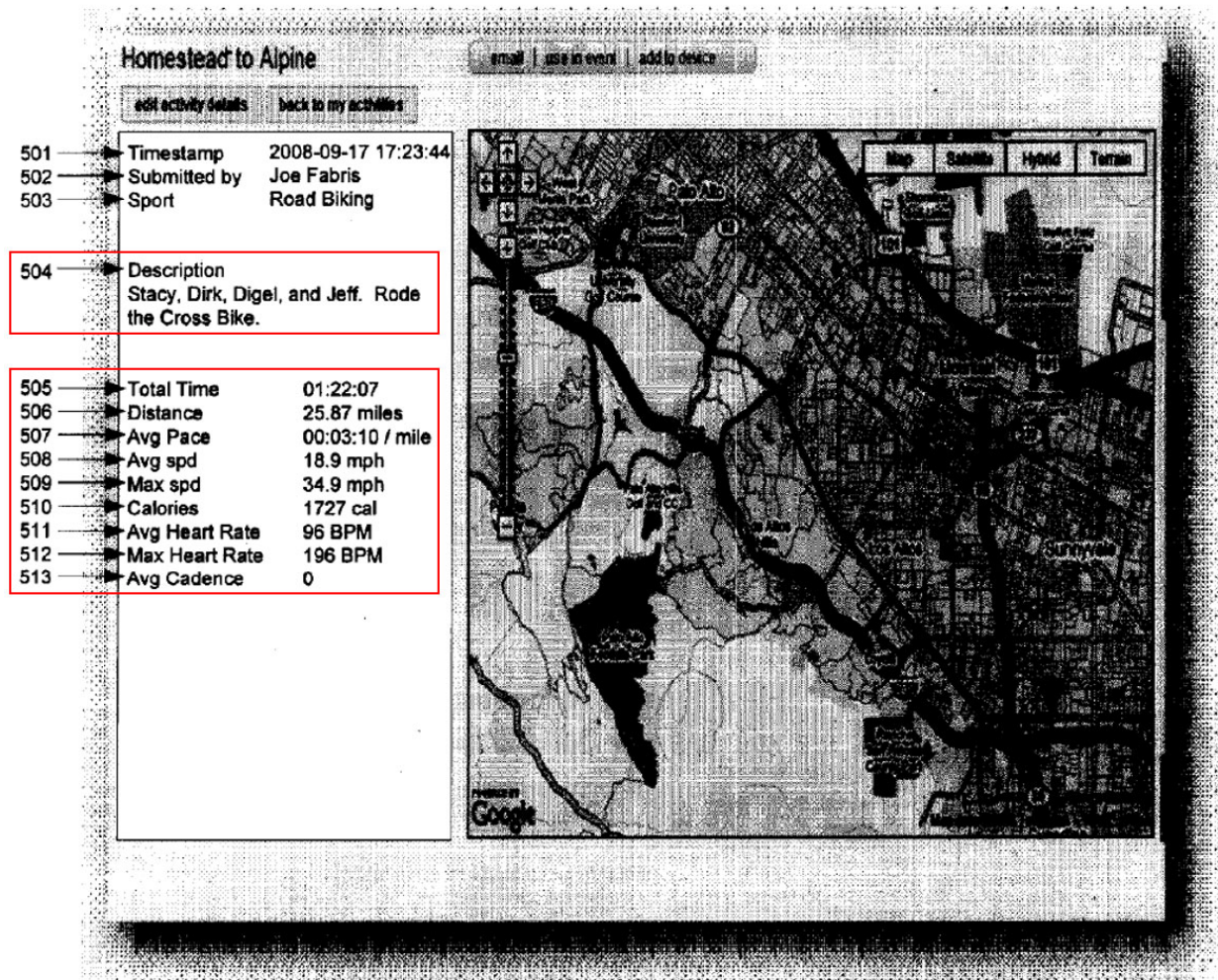


FIG. 5

(*Id.*, Fig. 5 (annotated); *see also id.*, ¶¶ 60, 63.) Users can also edit their uploaded data after posting it to the social networking site, “if a correction for the previously entered data is required.” (*Id.*, ¶ 63.)

3. Plus 3 Website Pages

a. The Plus 3 Website Pages Disclose Sutton’s Social Network

The Plus 3 Website Pages closely relate to Sutton. They are images of www.plus3network.com that the Internet Archive’s Wayback Machine captured on December 26, 2008, including Login, Sign Up, About, Privacy, and Terms of Use pages. (Ex 1006, 5-19.) Sutton refers to that URL and identifies the social network by name. (*See* Ex. 1005, Fig. 4 (“<http://www.plus3networks.com>” [*sic*] and “Every day, you and all of Plus 3 are Making It Count”); Fig. 9 (“the Plus 3 Network community”).) Sutton’s inventors, Rick Sutton and Joseph Fabris, were also Plus 3 Network’s “Founder / President & CEO” and “Founder / Product Marketing,” respectively. (Ex. 1006, 9; Ex. 1001, 1.)

The Plus 3 Website Pages disclose an athletic-themed social network. According to the About page, “Plus 3 Network is a mobile, GPS-enhanced social network that connects people with corporate sponsors and worthwhile causes on a lasting journey of personal fitness and charitable giving.” (Ex. 1006, 9.) The Plus 3 Website Pages teach a “plan to collect exercise activities from all kinds of

devices ... from hand-entered to GPS to pedometers, treadmills, and cell phones” (*Id.*) They explain: “Plus 3 Network will count millions of daily rides, runs, walks, or swims as mileage-rewarded fundraising.” (*Id.*)

The Plus 3 Website Pages also disclose conventional social network features. Users can “Sign Up” and “Login.” (*Id.* at 5, 7.) They can “upload, publish or display ... or transmit to or share with other Users ...” content. (*Id.* at 17.) And they can post “Location Data” showing “the route you have covered,” (*id.* at 12), as well as “comments on another member’s site, or provide feedback, etc[,]” (*id.*)

Finally, the Plus 3 Website Pages disclose sharing options. If a user uploads athletic activity data to the Plus 3 website, the website will “display the information [the user] have provided on their profile on the Site.” (*Id.*) Users can “make [their] profile Public or Private.” (*Id.*) A “Public” profile can be seen by other users whereas a “Private” profile cannot. (*Id.*) Likewise, users can “set an Activity to Public or Private.” (*Id.*) Public activities “can be viewed ... by all Users” whereas “Private” activities are “not displayed to other Users” (*Id.*)

b. The Plus 3 Website Is a Printed Publication.

“For a reference to qualify as a printed publication, before the critical date the reference must have been sufficiently accessible to the public interested in the art.” *Valve Corp. v. Ironburg Inventions Ltd.*, 8 F.4th 1364, 1373 (Fed. Cir.

2021).¹ At the institution stage, a petitioner only needs to show that there is a reasonable likelihood that it can prove at trial that a reference is a printed publication. *Hulu, LLC v. Sound View Innovations, LLC*, IPR2018-01039, Paper 29 at 12-13 (P.T.A.B. Dec. 20, 2019) (precedential).

There is ample evidence that the Plus 3 Website Pages were publicly accessible in 2008. First, as the Internet Archive declarant explained, the Internet Archive images webpages and assigns each imaged page an “extended URL” that states when it was imaged. (Ex. 1006, 1.) The Plus 3 Website Pages’ URLs show that the Internet Archive imaged them on December 26, 2008, (Ex. 1006, 4, 6, 8, 11, 15), which was more than a year before the ’220 patent’s earliest claimed priority date, (Ex. 1001, 1.) The Internet Archive’s website confirms that it only “collects web pages that are publicly available.” (Ex. 1012, 2.) The Board, patent examiners, and Federal Circuit Court of Appeals have all accepted Internet Archive imaging as evidence of public accessibility. *See, e.g., Hulu*, Paper 29 at 18; *VidStream LLC v. Twitter, Inc.*, 981 F.3d 1060, 1065-67 (Fed. Cir. 2020); *Valve*, 8 F.4th at 1374-75.

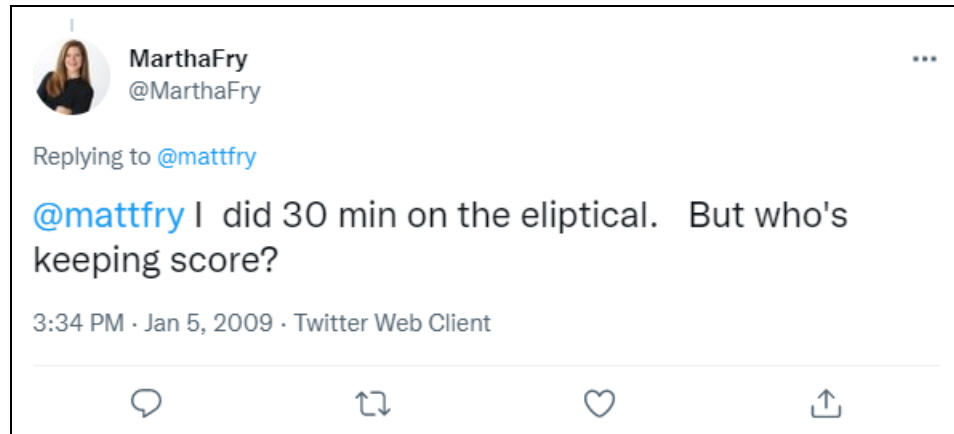
¹ All internal citations and quotation marks are omitted and all emphasis is added unless otherwise stated.

Second, as Dr. Houh explains, a POSITA interested in social networks relating to athletic activity would have had no difficulty accessing the Plus 3 Website Pages in 2008. (Ex. 1003, ¶¶ 109-115.) The archived webpages were parts of www.plus3network.com that anyone could access without logging in. (Ex. 1003, ¶ 112.) A POSITA would have located the archived webpages by searching the Internet for “Plus 3 Network” after reading Sutton’s references to the Plus 3 Network. (Ex. 1003, ¶¶ 113,114.) The Board has previously found that a combination of webpages captured by the Internet Archive and similar expert testimony showed public accessibility. *See Sandoz Inc. v. Abbvie Biotechnology Ltd.*, IPR2018-00156, Paper 11 at 8-13 (P.T.A.B. June 5, 2018) (informative).

Third, and finally, the contents of the Plus 3 Website Pages support public accessibility. Each webpage has a copyright date of 2008, (Ex. 1006, 5, 7, 10, 14, 19), which is an indicium of public accessibility as of that date, *Hulu*, Paper 29 at 17-18. Further, the Plus 3 Network’s operators would have intended the Plus 3 Network website to reach a wide audience to increase the number of Plus 3 Network users and, as a corollary, its value. (Ex. 1003, ¶ 115 (citing Ex. 1013, 3).) The fact that a reference “was intended to reach the general public ... [to] promote [someone’s] business” is “strong evidence” of public accessibility. *Valve*, 8 F.4th at 1374.

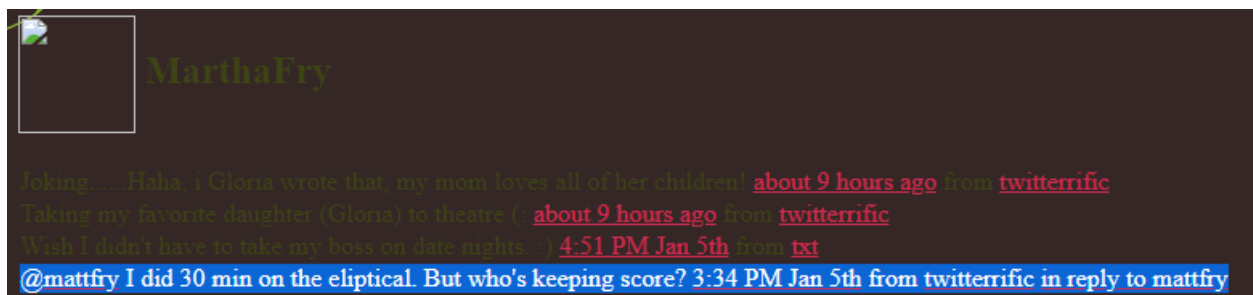
4. Fry

Fry is a tweet that teaches tagging workout length with another user's Twitter handle:



(Ex. 1007.) Fry is dated January 5, 2009, (*id.*), well before the earliest possible critical date of August 9, 2009, (Ex. 1001, 1-2).

Three pieces of evidence show Fry was publicly accessible by January of 2009, and that it therefore qualifies as a printed publication. First, the Internet Archive captured Ms. Fry's Twitter feed on January 7, 2009, including Fry:



(Ex. 1006, 26-27 (highlighted).)

Second, by 2008, anyone could use Twitter’s search functions to find tweets, including Fry. (Ex. 1006, 22-25.) A POSITA would have located Fry by searching Twitter for “score” or “30 min.” (Ex. 1003, ¶ 117.) The fact that Fry was stored in a searchable database further supports public accessibility. *See Voter Verified, Inc. v. Premier Election Solutions, Inc.*, 698 F.3d 1374, 1380 (Fed. Cir. 2012).

Third, the fact that Fry is a tweet supports public accessibility. Twitter was (and still is) a free service for publishing messages online. (*See, e.g.*, Ex. 1006, 20-21.) Ms. Fry’s decision to tweet Fry is “strong evidence” of public accessibility because it shows that she intended to publicize it. *See Valve*, 8 F.4th at 1374.

III. CLAIM CONSTRUCTION

Although Petitioner believes no claim construction is necessary for the purposes of this Petition, Petitioner reserves the right to respond to any constructions advanced by Patent Owner.

IV. LEVEL OF ORDINARY SKILL

A POSITA for the technology of the ’220 patent would have had at least a (1) bachelor’s degree in engineering, computer science, industrial engineering, biomechanics, or a related field, and (2) at least two years of experience researching, developing, designing and/or testing fitness or physiological sensors, wearable devices, physiological or biomechanical devices, remotely-controlled

systems or interfaces, and/or network-based applications and/or equipment, or the equivalent experience or education.

V. PRECISE REASONS FOR RELIEF REQUESTED

Pursuant to 37 C.F.R. § 42.104(b), Petitioner requests cancellation of claims 11-14, 19, and 20 of the '220 patent based on the following references:

Prior Art Reference	Abbreviation
U.S. Patent Application Publication No. US 2010/0273610 A1	“Johnson” (Ex. 1004)
U.S. Patent Application Publication No. US 2009/0150178 A1	“Sutton” (Ex. 1005)
www.plus3network.com website pages archived by the Internet Archive’s Wayback Machine on December 26, 2008	“Plus 3 Website Pages” (Ex. 1006, 5, 7, 9-10, 12-14, 16-19)
Martha Fry (@MarthaFry), Twitter (January 5, 2009, 3:34 PM), https://twitter.com/MarthaFry/status/1098244147	“Fry” (Ex. 1007)

The statutory grounds for the challenge to each claim are set forth below.

All statutory citations are pre-AIA. Johnson was filed on April 27, 2010 and is entitled to the April 27, 2009 filing date of U.S. Provisional Patent Application No. 61/172,990. (*See supra* § II.C.1.b.) Johnson has a different inventive entity as the '220 patent and thus qualifies as prior art under at least section 102(e) for anticipation purposes. Sutton was filed and published December 5, 2008 and June 11, 2009, respectively, and qualifies as prior art under sections 102(a), (b), and (e).

(Ex. 1005, 1.) The Plus 3 Website Pages and Fry were published and publicly available by December 26, 2008 and January 5, 2009, respectively, making them prior art under at least sections 102(a) and (b). (Ex. 1006, 1-19, 26, 27; Ex. 1007; *see also* Ex. 1003, ¶¶ 109-115, 117.)

Ground	35 U.S.C. §	Claims	Prior Art References
1	102	11-13, 19	Johnson
2	102	11-12, 19-20	Sutton
3	103(a)	11-12, 19-20	Sutton
4	103(a)	11-14, 19-20	Sutton, Plus 3 Website Pages
5	103(a)	12	Sutton, Fry

Section 325(d) is inapplicable here because the Petition does not raise substantially the same art or arguments in the same way as the examination of the '220 patent. *Advanced Bionics, LLC v. MED-EL Elektromedizinische Gerate GmbH*, IPR2019-01469, Paper 6 at 7-11 (P.T.A.B. Feb. 13, 2020) (precedential). The examiner did not consider any of the asserted references during prosecution.

VI. GROUND 1: JOHNSON ANTICIPATES CLAIMS 11-13 & 19

Johnson mirrors the '220 patent by disclosing identical hardware and equivalent software. (*Supra* §§ II.A, II.C.1.a.) As shown below, there is simply no daylight between Johnson's disclosure and the challenged claims.

A. Claim 11

1. Element 11[pre]

An apparatus comprising:

If limiting, Johnson’s “athletic data display configuration device 601”

(“device 601”) is an apparatus. (*See, e.g.*, Ex. 1004, ¶ 87, Fig. 6.)

2. Element 11[A]

a processor; and

Device 601 includes a processor. Johnson discloses: “[T]he display device ... may be implemented using one or more application-specific integrated circuits ... more typically, however, components of various examples of the invention will be implemented using a programmable computing device” (Ex. 1004, ¶ 60.) Specifically, “a computer 101 ... can be used to implement various embodiments” (*Id.*, ¶ 61; *see also id.*, ¶ 59.) Computer 101 includes “processing unit 105” (red), which “may be any type of processing device for executing software instructions, but will conventionally be a microprocessor device.” (*Id.*, ¶ 61.)

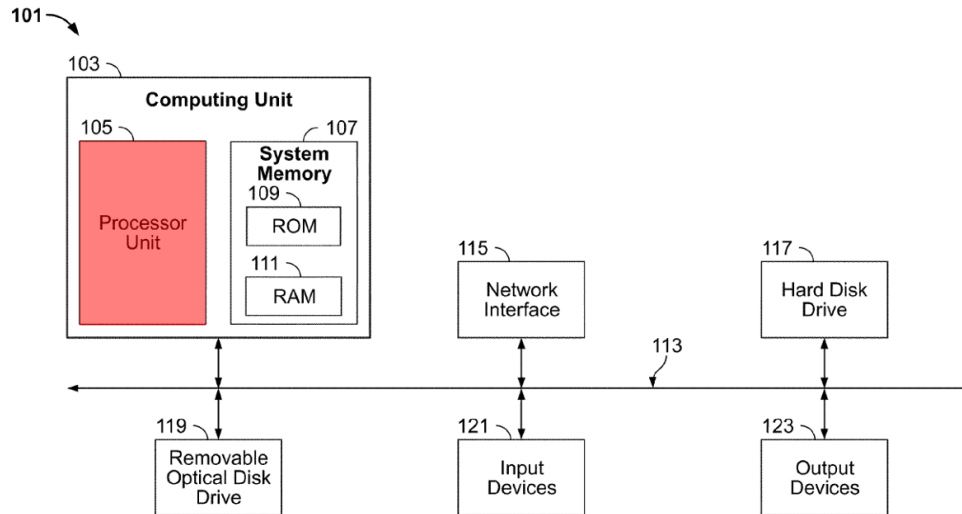


FIG. 1

(*Id.*, Fig. 1 (annotated).)

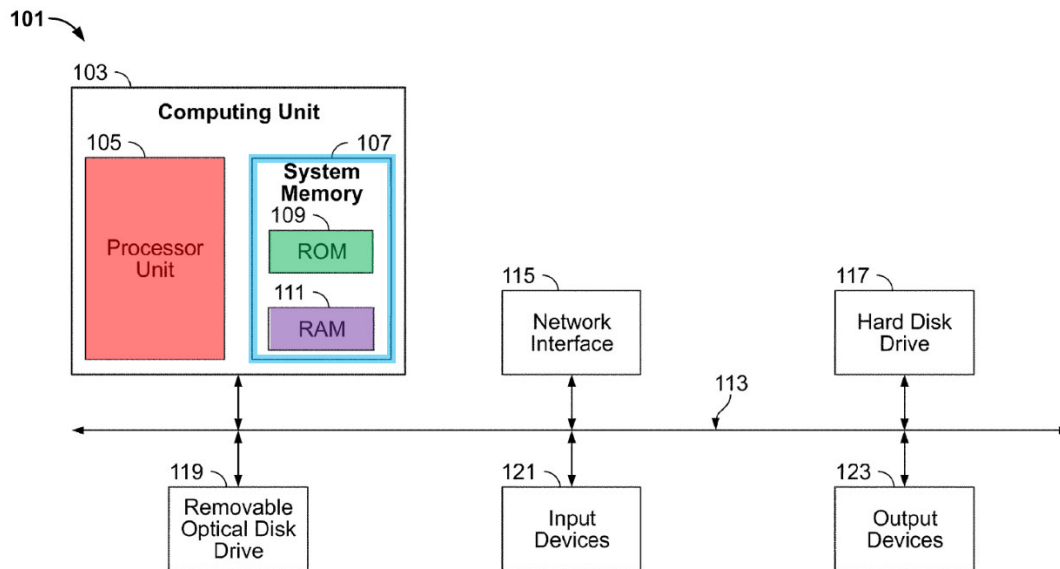
Johnson also inherently discloses a processor. As explained below, device 601 can write data to memory, receive a sharing option selection, and transmit data to a webpage. (*Infra* §§ VI.A.4-VI.A.6.) Device 601 requires a processor to perform these functions. (Ex. 1003, ¶ 58.)

3. Element 11[B]

a non-transitory, computer-readable medium storing computer-readable instructions that, when executed, cause the apparatus to:

Device 601 includes computer memory storing computer-readable instructions that cause the apparatus to perform the claimed functions. Johnson discloses “implement[ing]” “the display device ... using a programmable computer device executing firmware or software instructions” (Ex. 1004, ¶ 60.) It

discloses storing the “software instructions for execution by the processing unit 105” in system memory 107’s (blue) read-only memory (ROM) 109 (green) and random access memory (RAM) 111 (purple). (*Id.*, ¶ 61.)



(*Id.*, Fig. 1 (annotated).)

Johnson also discloses that device 601 includes memory storing computer-readable instructions causing device 601 to perform various functions. As explained below, device 601 can write data to memory, receive a sharing option selection, and transmit data to a webpage. (*Infra* §§ VI.A.4-VI.A.6.) Device 601 requires computer-readable instructions stored in memory to perform those functions. (*See* Ex. 1003, ¶ 58.)

4. Element 11[C]

record athletic activity performed by a user;

Device 601 records user athletic activity by writing it to memory. Johnson discloses that device 201 “measure[s] athletic information corresponding [to] a user’s athletic activity.” (Ex. 1004, ¶ 68; *see also id.*, ¶ 69, Fig. 3.) Device 201 transmits the measured data to device 501, (*id.*, ¶ 82), which then transmits it to device 601 (red), (*id.*, ¶ 86.) Device 601 includes an “athletic data display configuration module 603 [blue] [that] may ... store the athletic data in the athletic data storage 607 [green]” (*Id.*, ¶ 88.)

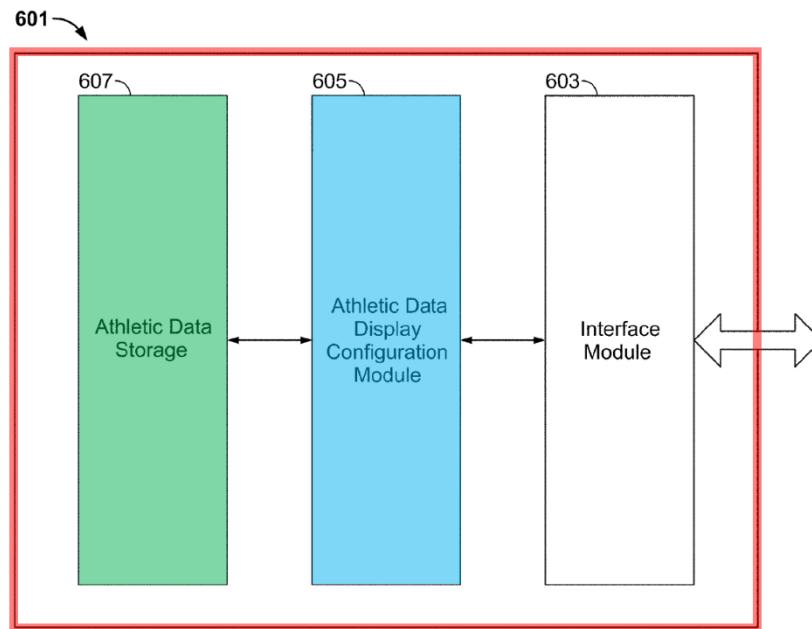


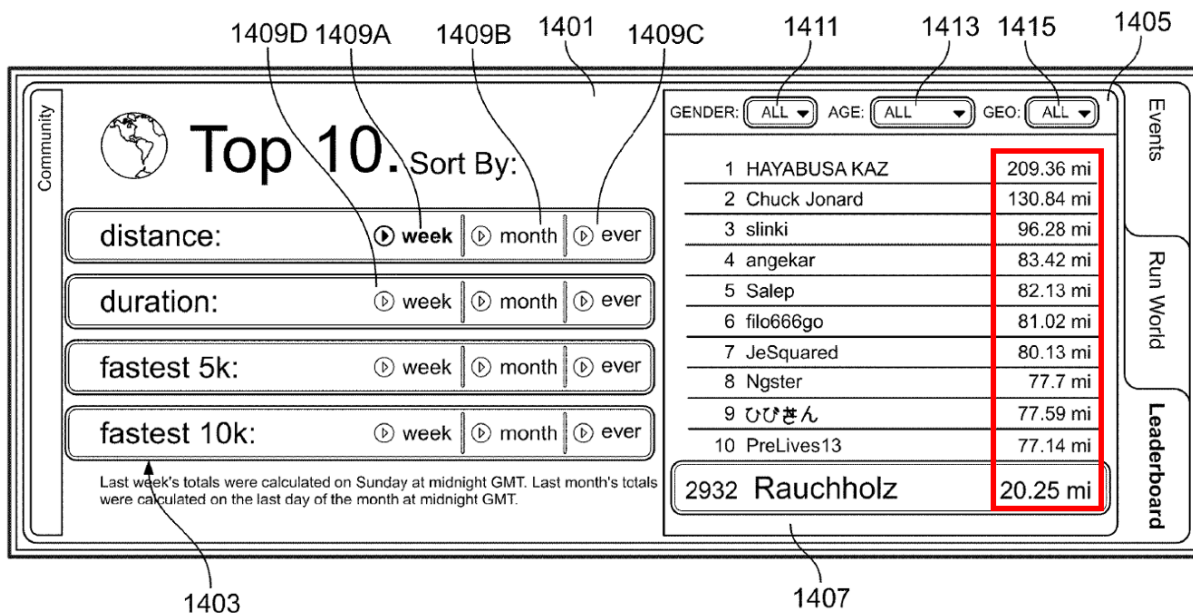
FIG. 6

(*Id.*, Fig. 6 (annotated).) By storing information about an athletic activity—a run, for example—device 601 also records that a user performed the athletic activity. (See also, e.g., *id.*, Fig. 43 (“SHARE THIS RUN”).)

5. Element 11[D]

receive a sharing option selection configured to allow the recorded athletic activity to be shared; and

Johnson discloses four sharing options configured to allow the recorded athletic activity to be shared. First, users have the option to share their recorded athletic activity in “lists,” i.e., leaderboards. Device 601 may only populate the leaderboards with data from “users who agree in advance to have their data shared with others” (Ex. 1004, ¶ 135; *see also id.*, ¶ 134.) The leaderboards display, for example, the number of miles users recorded in a preceding week. (*Id.*, ¶ 134.)



(*Id.*, Fig. 14A (annotated).)

Second, users can share that they recorded running 500 miles by clicking on “BRAG TO FRIENDS” in interface 1700, shown below. (*Id.*, ¶ 159.)

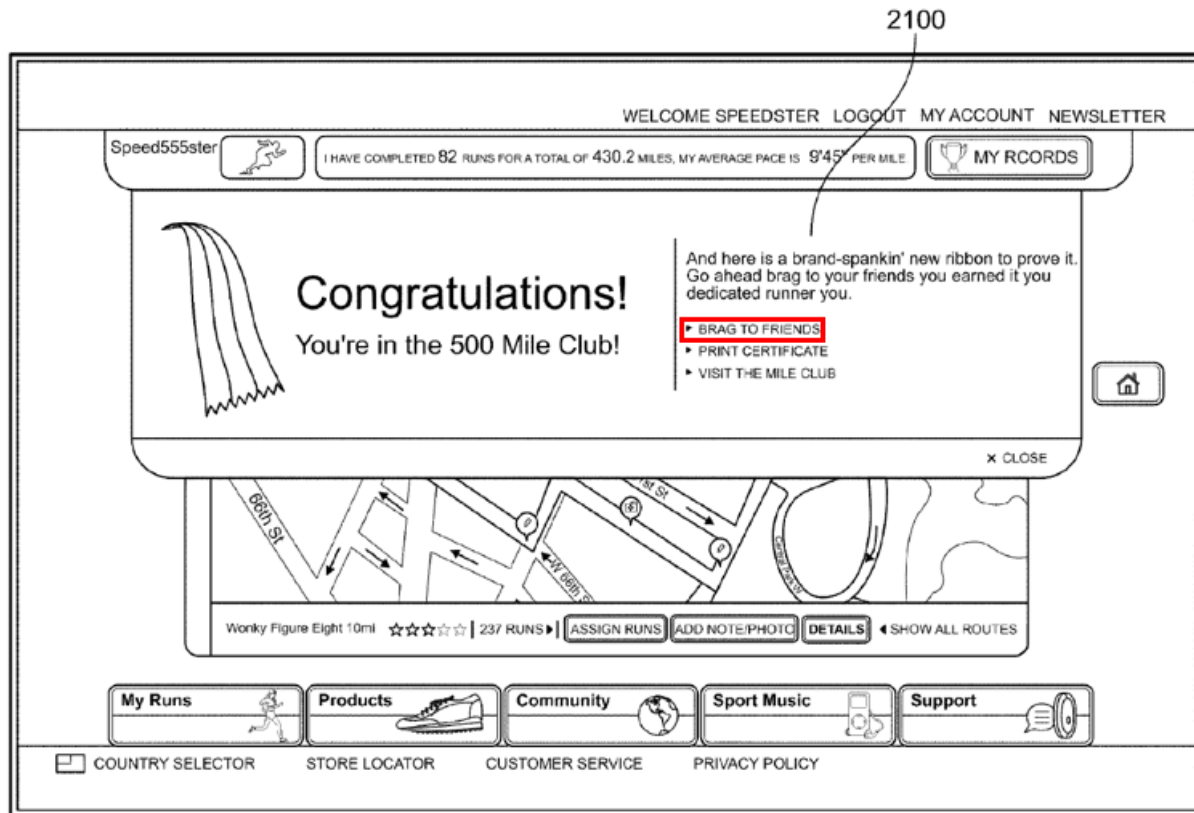
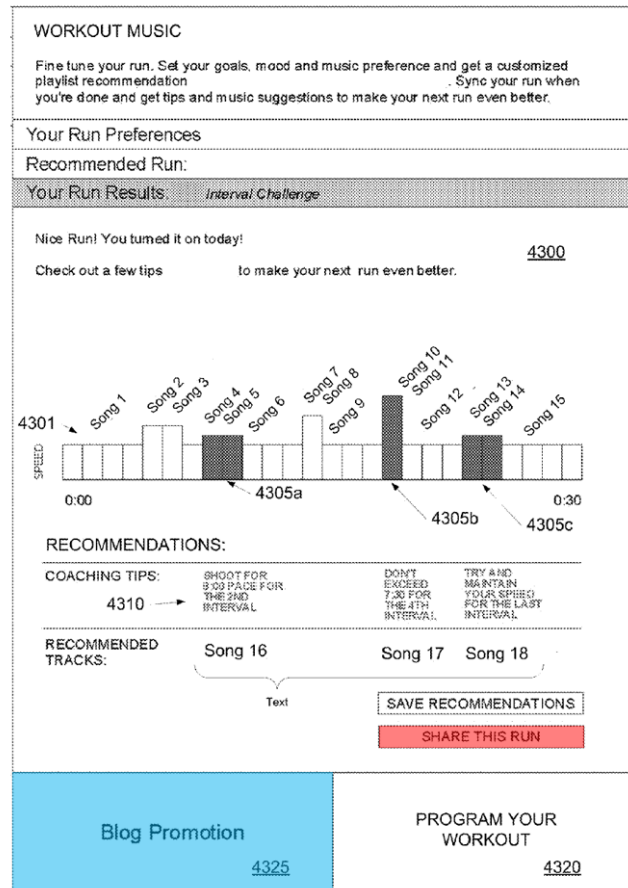


FIG. 21

(*Id.*, Fig. 21 (annotated).)

Third and fourth, users can share athletic activity after each workout and/or promote it on their blogs by clicking “SHARE THIS RUN” (red) or “Blog Promotion” (blue) in interface 4300, shown below. (*Id.*, ¶ 183.) Johnson explains: “The user may further be provided options 4320 and 4325 to program a workout (e.g., a new workout) or to post comments or a report about the completed workout, respectively.” (*Id.*)



(*Id.*, Fig. 43 (annotated).)

A POSITA would have understood that device 601 receives each sharing option selection. Device 601 receives the leaderboard sharing option selection where “athletic data display configuration module 605 generate[s] and display[s] the user interface 1401 illustrated in FIG 14A.” (*Id.*, ¶ 132.) Specifically, a POSITA would have understood that module 605, which is part of device 601, receives information about which users “agree in advance to have their data shared” (*Id.*, ¶ 135; *see also* Ex. 1003, ¶ 66.)

Device 601 receives all four sharing option selections. Johnson discloses that device 501's software, athletic data display module 509, can be configured as a "simple browser" that "serve[s] as a 'thin client' for the athletic data display configuration module 605" (Ex. 1004, ¶ 92.) In that embodiment, "all of the data display configuration functions may be performed by the athletic data display configuration module 605 [and] [t]he athletic data display module 509 will then only display the information provided to it." (*Id.*) Where data display module 509's only role is to display information that module 605 provides, module 605 performs every other aspect of the interfaces, including receiving the user sharing option selections. (Ex. 1003, ¶¶ 66, 69, 71.)

6. Element 11[E]

in response to receiving the sharing option selection, transmitting workout information associated with the recorded athletic activity to a network page of a social networking site viewable by one or more other users.

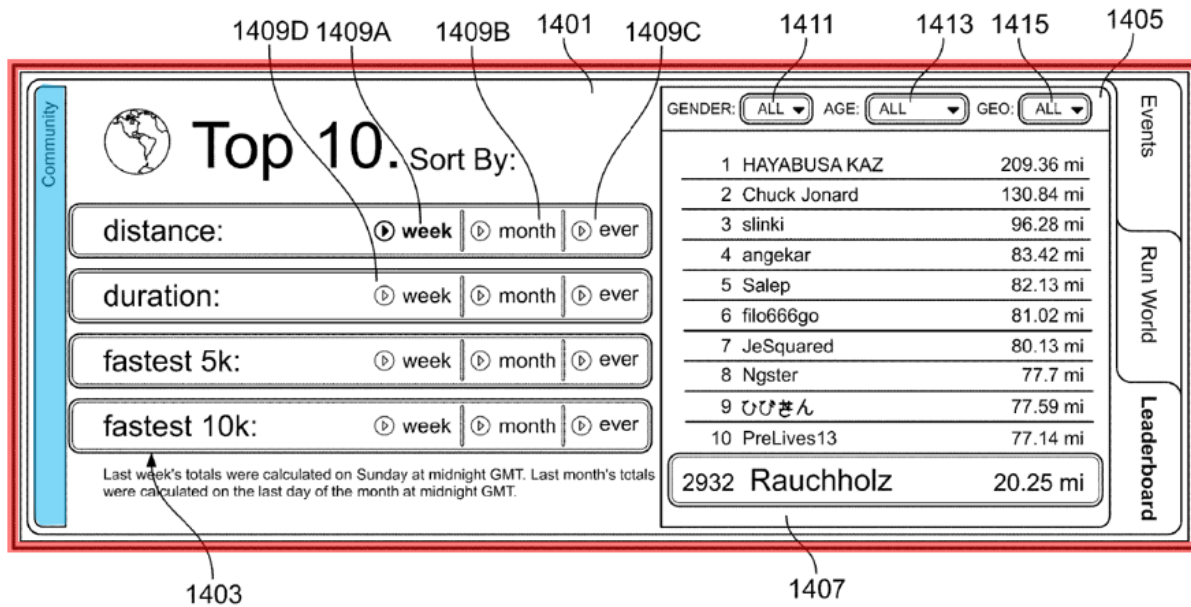
Johnson discloses that device 601 performs this step in response to receiving sharing option selections. It discloses, first, that device 601 performs this limitation in response to all four sharing options. It discloses, second and third, that device 601 specifically performs this limitation in response to the leaderboard and blog sharing option selections.

a. Device 601 Performs the Steps in Element 11[E] in Response to All Four Sharing Option Selections

Johnson discloses: “[I]t is to be understood that any athletic information described herein may be provided to the user, athlete, or runner as part of their personal web page or social network page.” (Ex. 1004, ¶ 167.) As explained above, device 601 stores user athletic information in memory. (*Id.*, ¶ 88.) For that information to reach a user’s “social network page,” device 601 transmits it from memory to that page. (*See* Ex. 1003, ¶ 60; *see also* Ex. 1004, ¶ 88.) A POSITA would have understood that the “social network page[s]” were viewable by one or more other users because the point of posting information on a social network page was (and still is) to share it with other users. (Ex. 1003, ¶ 61.)

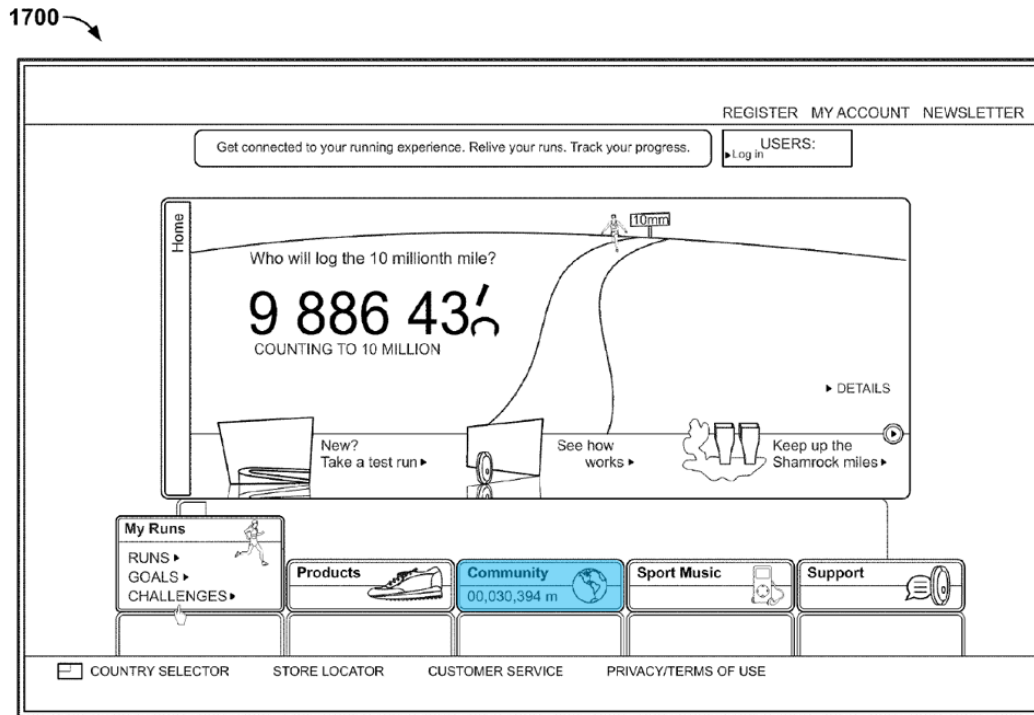
b. Device 601 Performs the Steps in Element 11[E] in Response to the Leaderboard Sharing Option Selection

As explained above, device 601 may only populate the leaderboards with data from “users who agree in advance to have their data shared with others” (Ex. 1004, ¶ 135; *see also id.*, ¶ 134.) In response to that affirmative sharing option selection, device 601 configures interface 1401 (red) to display a leaderboard showing recorded miles run. (*Id.*, ¶¶ 134, 135; *see also* Ex. 1003, ¶ 67.) To do so, Device 601 transmits recorded workout information from storage in memory, (Ex. 1004, ¶ 88), to interface 1401, (*see* Ex. 1003, ¶¶ 60, 67.)



(Ex. 1004, Fig. 14A.)

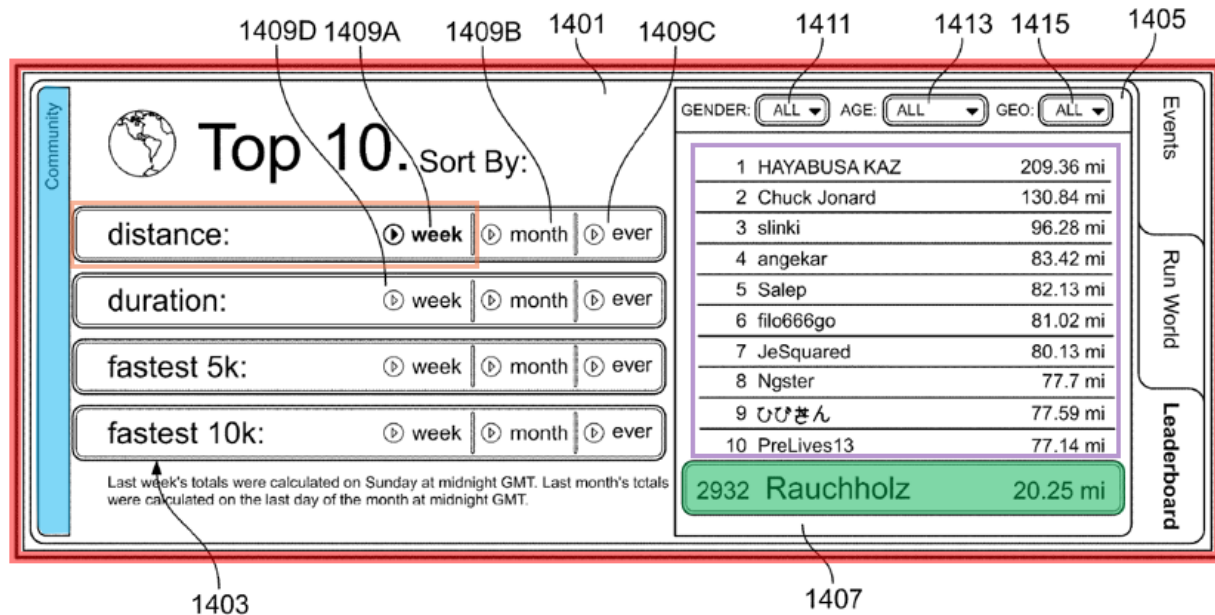
Interface 1401 is a network page. A POSITA would understand that Johnson's interfaces are websites because Johnson discloses viewing them through "conventional browser program[s], such as Microsoft Internet Explorer, Mozilla Firefox, or Opera" (*Id.*, ¶ 90; *see also id.*, ¶¶ 91, 92.) Interface 1401, specifically, is the "community" (blue) page of a website including interface 1700, below. (*See id.*, Figs. 14A, 17; Ex. 1003, ¶ 64.)



(Ex. 1004, Fig. 17 (annotated).)

Interface 1700 is, in turn, a social networking site. Figure 17 discloses that users can "REGISTER," visit "MY ACCOUNT," and "Log in." (*Id.*) It shows a "My Runs" tab with user specific content and a "Community" tab indicating that the network has 30,394 members. (*Id.*) Based on these indicia, a POSITA would have recognized interface 1700 as a social networking site. (Ex. 1003, ¶ 63.)

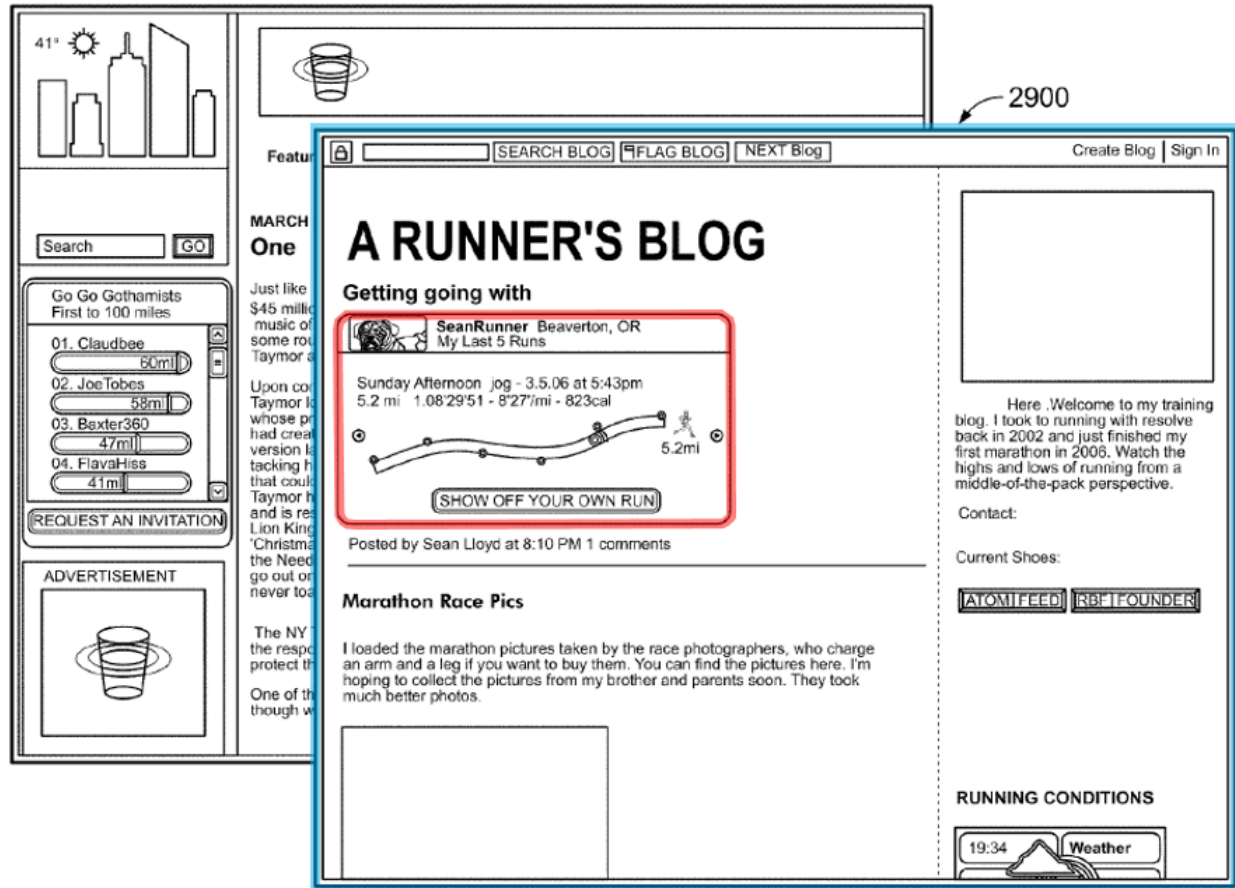
Finally, multiple users can view interface 1401. Figure 14A depicts a user "Rauchholz" (green) viewing the recorded data of ten athletes (purple) who ran the most miles in the last week (orange).



(Ex. 1004, Fig. 14A (annotated).)

c. Device 601 Performs the Steps in Element 11[E] in Response to the Blog Sharing Option Selection

As explained above, device 601 can receive a sharing option selection to share recorded athletic activity on a blog. (*Supra* § VI.A.5.) Johnson illustrates a shared blog (red) embedded in a blog 2900 (blue):



(*Id.*, Fig. 29 (annotated).)

Johnson discloses that “a user, athlete, or runner may include a blog 2900 in their ... social networking page [and] ... it is to be understood that any athletic information described herein may be provided to the user, athlete, or runner as part of their ... social network page.” (*Id.*, ¶ 167.) Thus, Johnson discloses that device 601 (because it stores the user’s data) transmits workout information from memory, (*id.*, ¶ 88), to a user’s blog on a social networking page, (Ex. 1003, ¶ 72.) Johnson further discloses sharing blogs in response to a user’s sharing option selection: “The user may further be provided options 4320 and 4325 [“Blog

Promotion”] to program a workout (e.g., a new workout) or to post comments or *a report* about the completed workout, respectively.” (Ex. 1004, ¶ 183 (emphasis added); *see also id.*, Fig. 43.)

Johnson’s blogs are viewable by one or more other users: “Blog 2900 may include ... the ability for blog 2900 *viewers* to post feedback.” (*Id.*, ¶ 29 (emphasis added); *see also id.*, Fig. 29.) A POSITA also would have understood from the “sign in” button in blog 2900’s upper right hand corner that the blog can be viewed by anyone, including by other users. (*Id.*, Fig. 29; Ex. 1003, ¶ 73.)

B. Claim 12

The apparatus of claim 11, wherein the apparatus is further caused to tag a summary of one or more metrics from the recorded athletic activity with identifiers of one or more other users.

Johnson discloses this additional limitation. When “a user ... run[s] a relatively large total distance, such as 100 kilometers, 100 miles, 250 kilometers, 250 miles, etc. ... [then,] [i]n response, the athletic data display configuration module 605 [part of device 601] may record that milestone achievement” (Ex. 1004, ¶ 146.) For example, once a user runs 500 miles, “they become a member of the 500 Mile Club” (*Id.*, ¶ 159.)

The “500 Mile Club” tag is an identifier of one or more other users. As shown in Figure 23, below, Johnson discloses identifying users according to

whether they are members of various mile clubs, including 100 (red), 200 (blue), 500 (green), 1000 (purple), and 2000 (orange) mile clubs. (See *id.*, ¶ 160.)

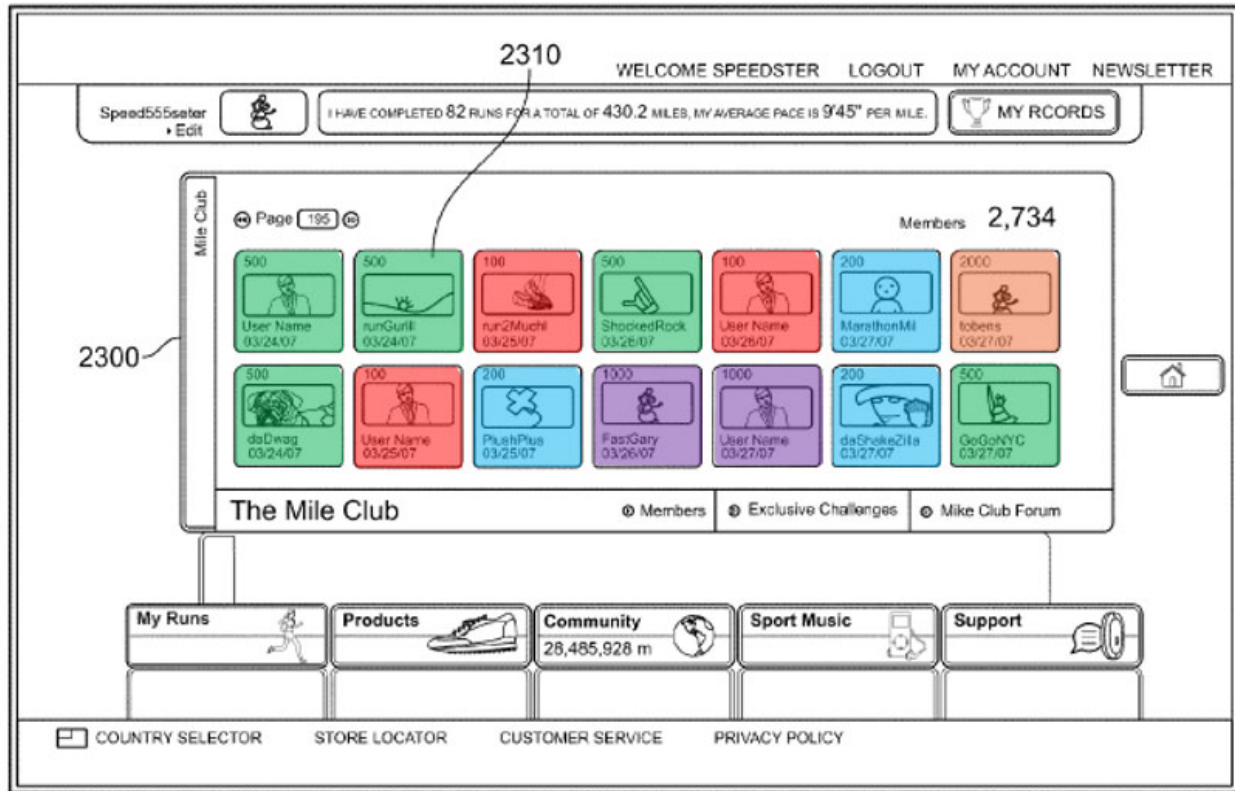


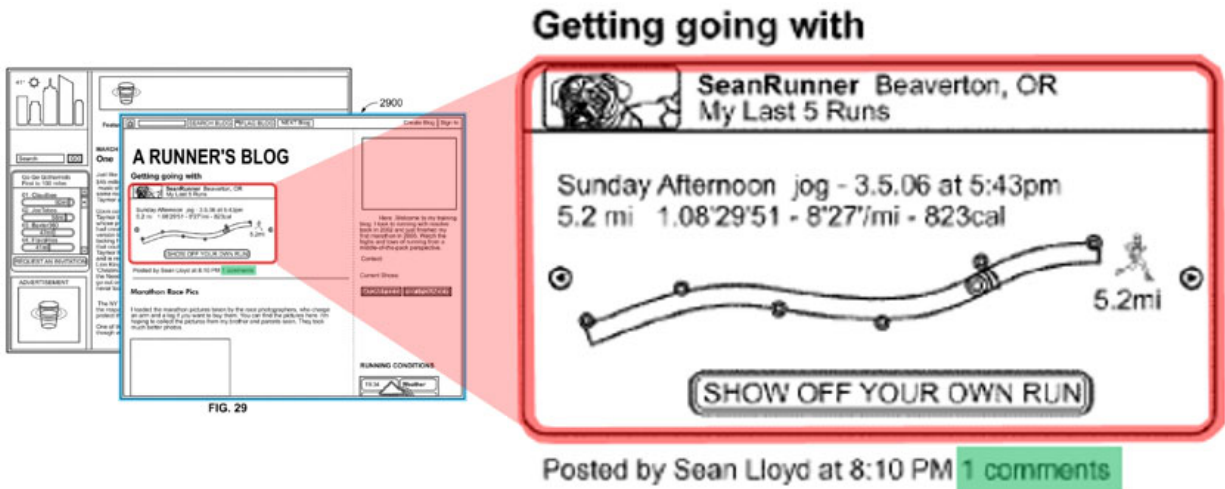
FIG. 23

(*Id.*, Fig. 23 (annotated).) Thus, by recording a user's membership in the 500 Mile Club, device 601 tags a summary of the user's recorded athletic activity with an identifier of other one or more other users.

C. Claim 13

The apparatus of claim 11, wherein the apparatus is further caused to include a message prompt on the network page, the message prompt configured to receive a message to be presented to the one or more other users on the social networking site.

Johnson discloses that “Blog 2900 may include ... the ability for blog 2900 viewers to post feedback.” (Ex. 1004, ¶ 167.) In Figure 29, it depicts a “comments” field (green) beneath the blog promotion (red):



(*Id.*, Fig. 29 (annotated).) A POSITA would have understood that the blog has a “message prompt configured to receive a message” in order for viewers to comment on it. (Ex. 1003, ¶¶ 74, 75.) Device 601 configures that prompt, at least in the embodiment in which module 605 performs “all of the data display configuration functions” (Ex. 1004, ¶ 92.)

D. Claim 19

The apparatus of claim 11, wherein the apparatus is further caused to generate a social network message on the network page based on a location at which the athletic activity was performed by the user.

Johnson discloses claim 19’s additional limitation in both its leaderboard and blog embodiments.

First, Johnson discloses that module 605 (part of device 601) “generate[s] and display[s] the user interface 1401 illustrated in FIG. 14A” in response to a user’s “request.” (Ex. 1004, ¶ 132.) Module 605 generates a social network message—the ranked list of ten users (purple)—on interface 1401, (*id.*, ¶ 134), which is a network page, (*supra* § VI.A.6.b). A user can cause module 605 to generate the list according to the location at which each user performed the athletic activity using “GEO” filter control 1415 (navy). (*See* Ex. 1004, ¶ 138.)

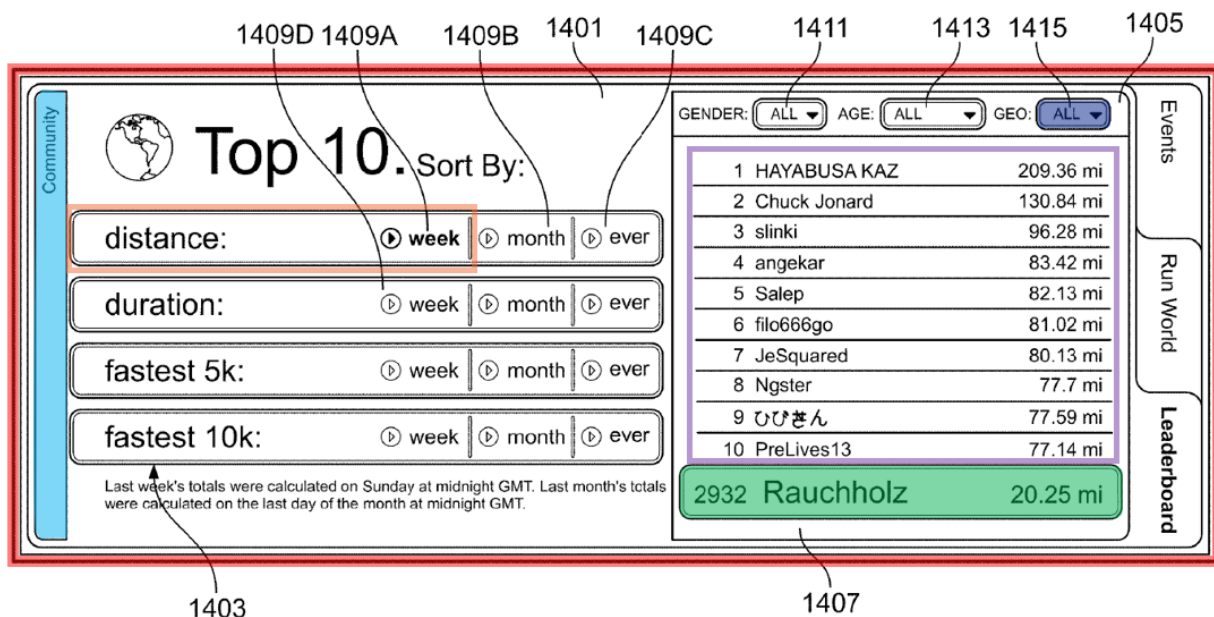
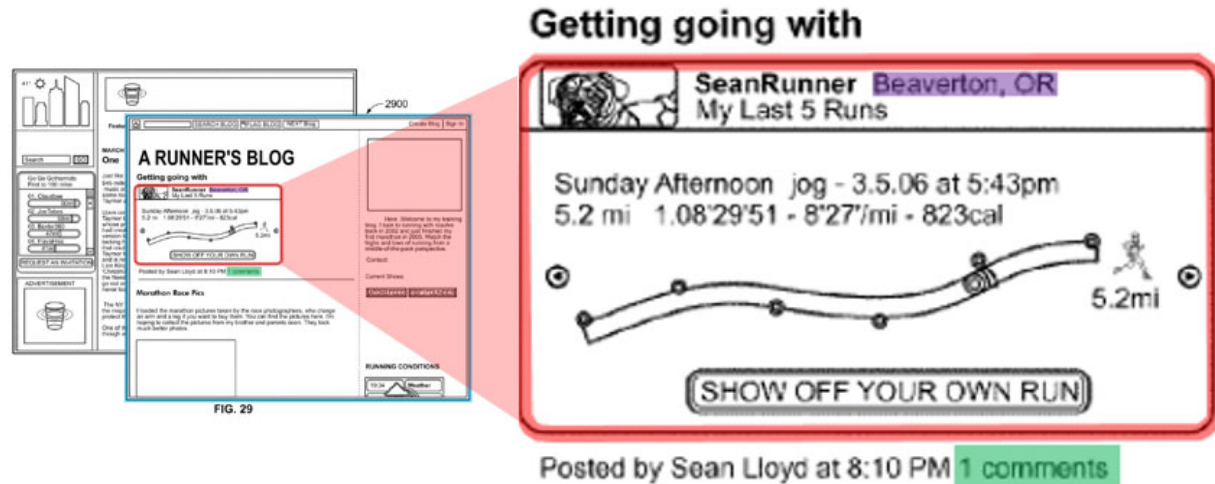


FIG. 14A

(*Id.*, Fig. 14A (annotated).)

Second, Johnson discloses that “Blog 2900 may include ... details of [a user’s] most recent run” (*Id.*, ¶ 167.) Figure 29 depicts, for example, details of

user SeanRunner's recent run of 5.2 miles and identifies the location of the run (purple) as "Beaverton, OR":



(*Id.*, Fig. 29 (annotated).) As explained above, device 601 transmits the blog to the network page, (*supra* § VI.A.6.c), and thereby “generate[s] [the] social network message on the network page,” (*see also* Ex. 1004, ¶ 92.)

VII. GROUND 2: SUTTON ANTICIPATES CLAIMS 11-12 & 19-20

A. Claim 11

1. Element 11[pre]

An apparatus comprising:

If limiting, Sutton’s “activity and biometric tracking system 110” (red) is an apparatus. (Ex. 1005, ¶ 28.) System 110 includes “a server 111 [blue] and a database 115 [green].” (*Id.*) Server 111 can include “a collection of servers, for example, a Web server, a file server, a data aggregation server, a data processing server, etc.” (*Id.*)

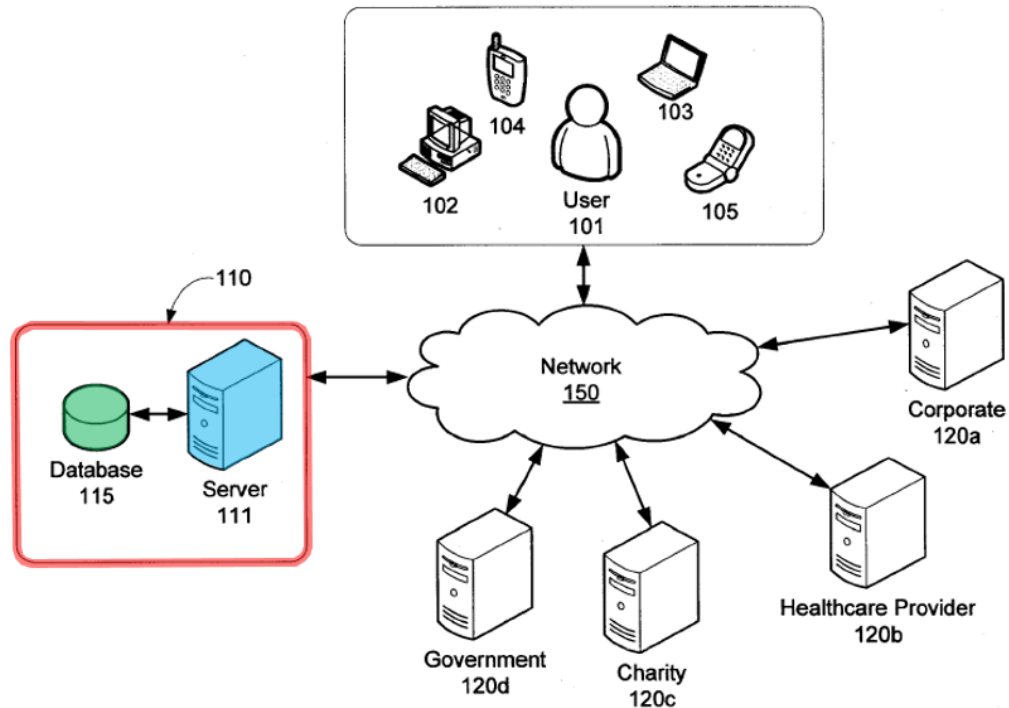


FIG. 1A

(*Id.*, Fig. 1A (annotated).)

2. Element 11[A]

a processor; and

Sutton’s “apparatus ... may comprise a general-purpose computer” (Ex. 1005, ¶ 25.) Specifically, “[c]omputer architecture 1100 may be used to implement activity and biometric tracking system 110 with all or a part of the components shown in FIG. 1.” (*Id.*, ¶ 94.) That architecture includes “processor 1110” (red). (*Id.*)

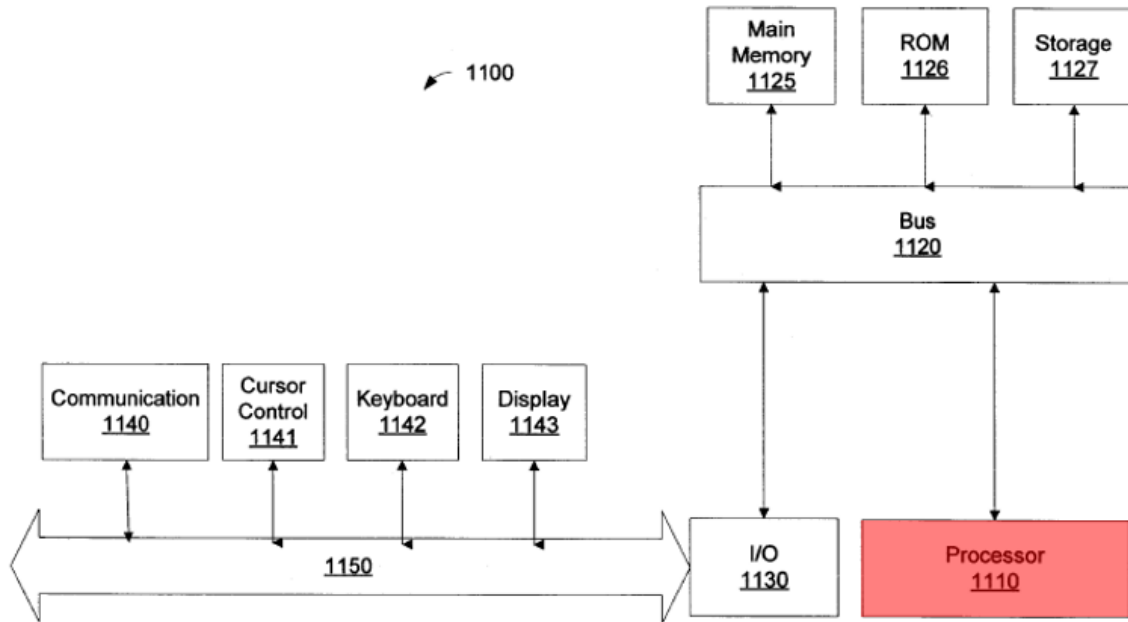


FIG. 11

(*Id.*, Fig. 11 (annotated).)

3. Element 11[B]

a non-transitory, computer-readable medium storing computer-readable instructions that, when executed, cause the apparatus to:

Sutton’s “general-purpose computer [is] selectively activated or reconfigured by a computer program stored in a computer readable medium”

(Ex. 1005, ¶ 25.) Specifically, Sutton’s computer architecture 1100 includes:

- “a random access memory (RAM) or dynamic storage device 1125 [blue] (referred to herein as main memory) ... for storing information and instructions to be executed by processor 1110,” (*id.*, ¶ 94);

- “a read only memory (ROM) [green] ... for storing static information and instructions used by processor 1110,” (*id.*); and
- “[a] data storage device 1127 [purple] such as a flash memory, a magnetic disk or optical disc and its corresponding drive [that] may also be coupled to computer system 1100 for storing information and instructions,” (*id.*, ¶ 95).

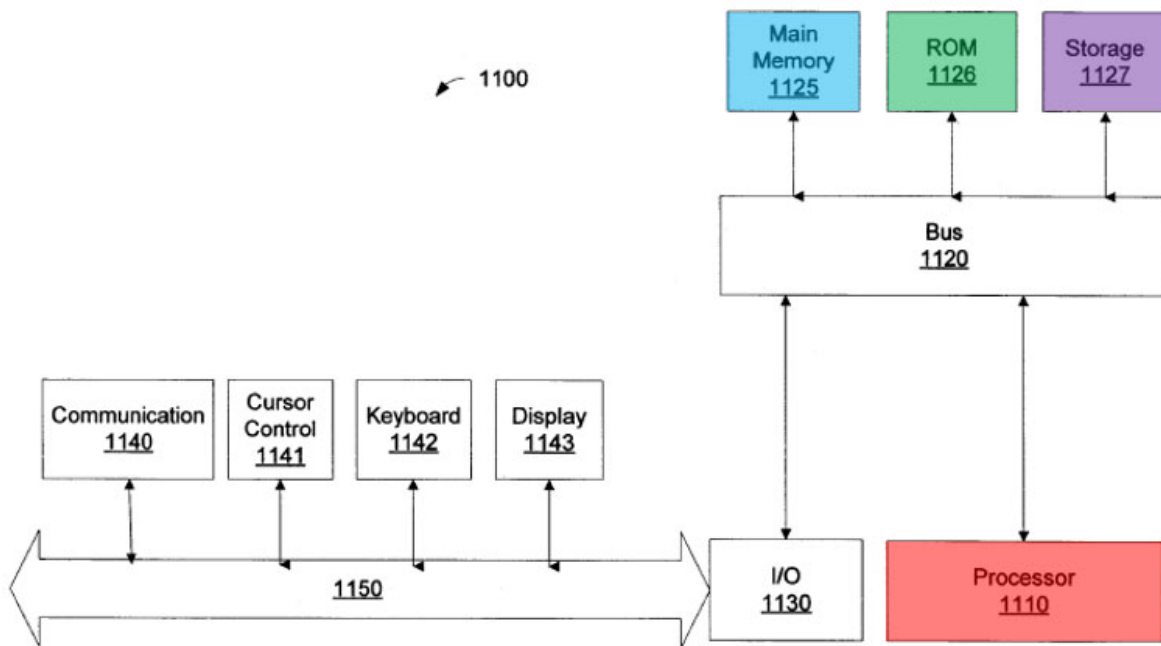


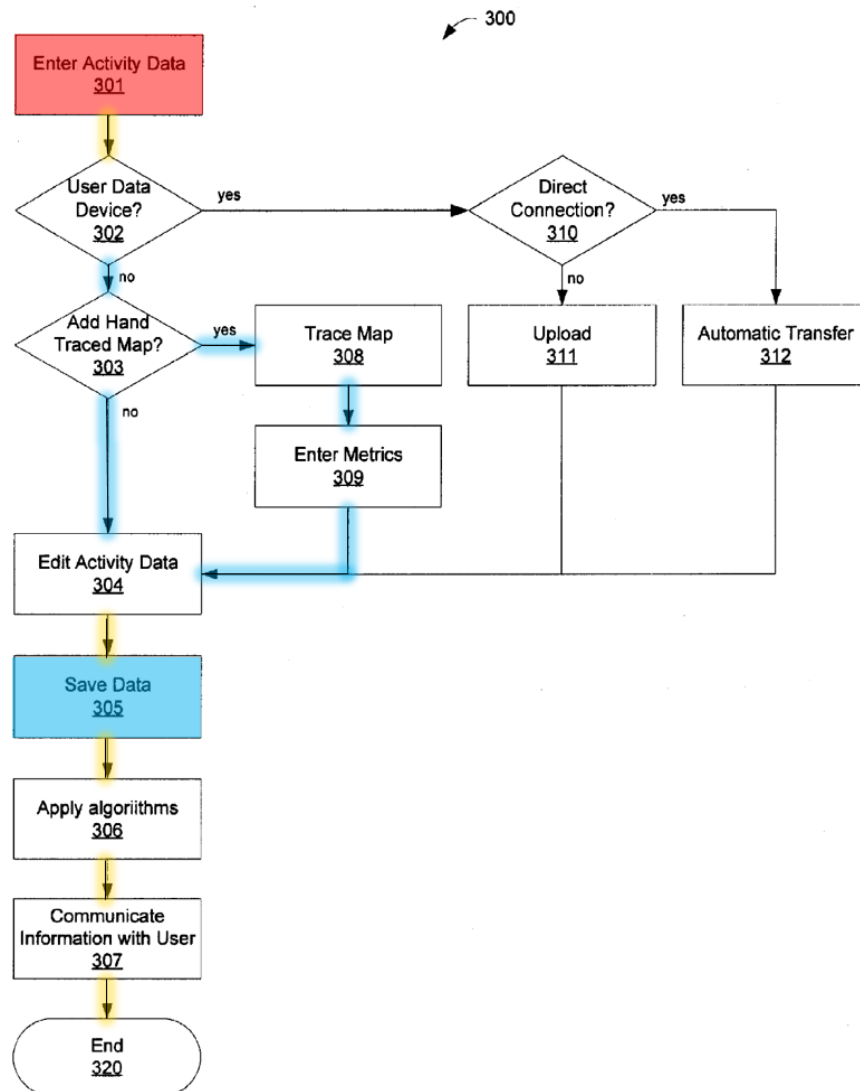
FIG. 11

(*Id.*, Fig. 11 (annotated).) The stored instructions cause the computer to perform its functions: “[A] variety of programming languages may be used *to implement* the teachings of the invention as described herein.” (*Id.*, ¶ 26 (emphasis added); see also Ex. 1003, ¶¶ 83-84.)

4. Element 11[C]

record athletic activity performed by a user;

System 110 records athletic activity by writing user exercise and activity data to memory in database 115. “First, user 101’s activity data is entered ([in step] 301 [red]).” (Ex. 1005, ¶ 60.) In Sutton’s manual transfer embodiment, a “[u]ser 101 may use a PC, a phone or any other data entry device to enter his/her activity data.” (*Id.*, ¶ 73.)



(*Id.*, Fig. 3 (annotated).) At step 305 (blue), “[t]he user-provided data is stored in database 115” (*Id.*, ¶ 60; *see also id.*, ¶¶ 28, 31, 34.)

5. Element 11[D]

receive a sharing option selection configured to allow the recorded athletic activity to be shared; and

Sutton discloses a sharing option selection configured to allow the athletic activity to be shared. Sutton’s users can manually enter activity data via an “exemplary data entry form” shown in Figure 9. (Ex. 1005, ¶ 73; *see also id.*, ¶¶ 61, 85.) The form includes sharing options boxed in red:

↖ 900

Enter Activity By Hand	
Activity Name Morning Run	Start Date / Time: 11/20/2008 09:30 AM ▼
Sport Running ▼	Total Time (hours: minutes: seconds) 00 ▼ 35 ▼ 00 ▼
Description A five mile run from the house into the park and around the school yard.	Total Distance 5 miles ▼
	Course Rating ★★☆☆
	Privacy ☒ Public (visible to the Plus 3 Network community) ☐ Private (only visible to me)
Save activity	Back to my activities

(*Id.*, Fig. 9 (annotated).) The sharing option selection in that form is configured to allow the recorded athletic activity to be shared because it is set to “Public,” meaning that data will be “visible to the Plus 3 Network community.” (*Id.*)

System 110 receives the sharing option selection. Sutton's users can complete Figure 9's form using "a PC, a phone, or any other data entry device [collectively, purple]" (*Id.*, ¶ 73.) Those devices "communicate with activity and biometric tracking system 110 [red] via network 150 [orange]." (*Id.*, ¶ 28.) "The user provided data is stored in database 115[,]" which is part of system 110. (*Id.*, ¶ 61; *see also id.*, ¶¶ 28, 30.) System 110 thus receives the completed data entry form, including the user's sharing option selection of "Public." (*Id.*)

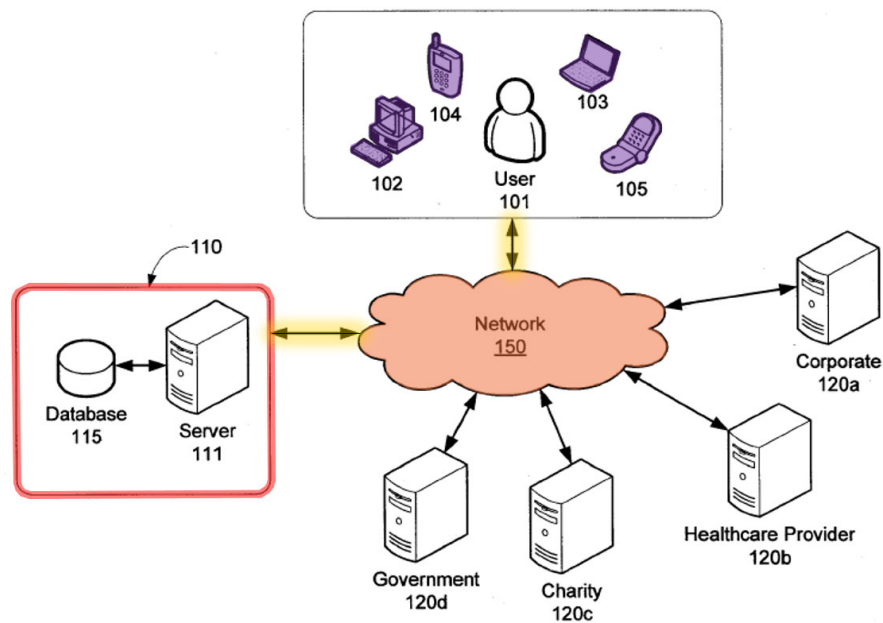


FIG. 1A

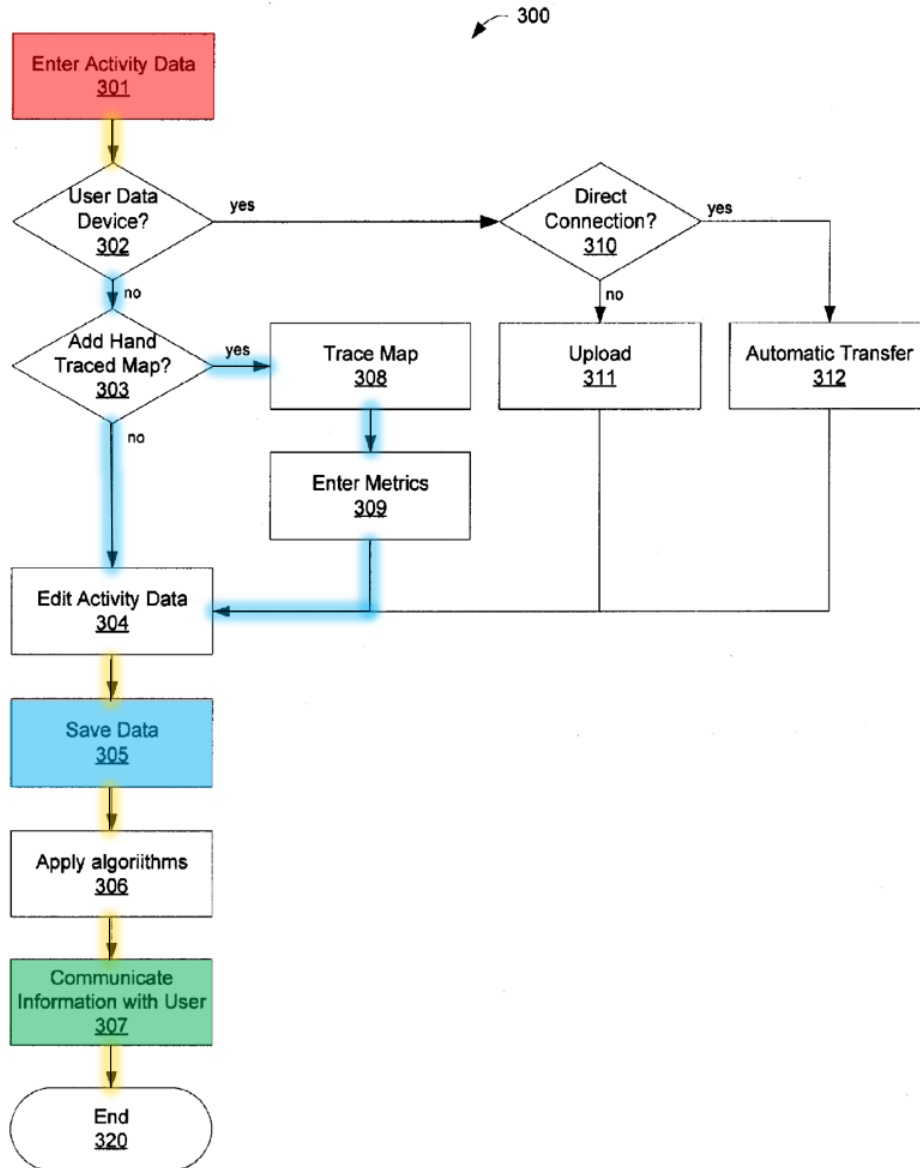
(*Id.*, Fig. 1A (annotated).)

6. Element 11[E]

in response to receiving the sharing option selection, transmitting workout information associated with the recorded athletic activity to a network page of a social networking site viewable by one or more other users.

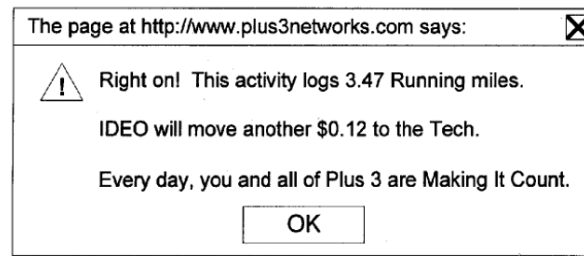
Sutton discloses each of Element 11[E]’s limitations.

Sutton discloses that system 110 transmits workout information associated with the recorded activity. Sutton illustrates “a block diagram for exemplary data transfer methods” in its Figure 3, shown below. (Ex. 1005, ¶ 60.) It explains that “user-provided data is stored in database 115 ...” in step 305 (blue). (*Id.*) Then, **after** storing the activity data in database 115, in step 307 (green), “server 111 [can] communicate[] with user 101 to ask for confirmation of data upload and transfer” (*Id.*, ¶ 61.) Thus, Sutton discloses an embodiment in which server 111 “upload[s] and transfer[s],” i.e., transmits, user data from database 115 to another location. (Ex. 1003, ¶ 89.)



(Ex. 1005, Fig. 3 (annotated).)

Server 111 transmits a user's workout information, specifically, to a "page at <http://www.plus3networks.com>" (*Id.*, Fig. 4, ¶ 62.)



(*Id.*, Fig. 4 (annotated); *see also id.*, Fig. 9 (“Plus 3 Network”).)

“www.plus3networks.com” [*sic*, www.plus3network.com]² was a website for “a mobile, GPS-enhanced social network” called Plus 3 Network. (Ex. 1006, 9 (“Plus 3 Network is a mobile, GPS-enhanced social network that connects people with corporate sponsors and worthwhile causes on a lasting journey of personal fitness and charitable giving”).) Plus 3 Network provided users with “Profile Pages” that “display[ed] the information you have ... provided ...[,]” (*id.* at 12), including “any activities you may have added” (*Id.*) Sutton discloses that if a user selects the “Public” sharing option, the transmitted workout information becomes “visible to the Plus 3 Network community.” (Ex. 1005, Fig. 9; *see also* Ex. 1006, 12.) Otherwise, it would “only be visible to me.” (Ex. 1005, Fig. 9.) Thus, Sutton discloses server 111 transmitting workout information to a profile

² <http://www.plus3networks.com> actually referred to <http://www.plus3network.com>, which was the URL of the Plus 3 Network referenced in Sutton’s Figure 9. (See Ex. 1003, ¶¶ 90, 123; Ex. 1005, Figs. 4, 9; Ex. 1006, 12.)

page on the Plus 3 Network site viewable by other users in response to receiving a user's sharing option selection of "Public." (*See also id.*, ¶ 86.)

Alternatively, even setting aside Figure 4's reference to "www.plus3networks.com," a POSITA still would have understood Sutton's system transmits user data to a profile page of a social networking site. For instance, Sutton states: "The present system and method provides tools for interactive connections with other users, sharing activities, comparing activities, posting virtual competitions and results, and other leaderboards." (*Id.*, ¶ 85; *see also id.*, ¶¶ 86-93, Figs. 4, 5, 9, 10.) Users would "create[] a personal profile and upload[] his/her GPS tracked exercise efforts." (*Id.*, ¶ 90.) Sutton emphasizes that users "can be dynamically tracked and connected *if they desire.*" (*Id.*, ¶ 86; *see also* ¶ 87, 92.) Thus, a POSITA would have understood that system 110 would publicize a user's workout information on their social network profile page in response their sharing option selection of "Public." (*See also* Ex. 1003, ¶¶ 87-91.)

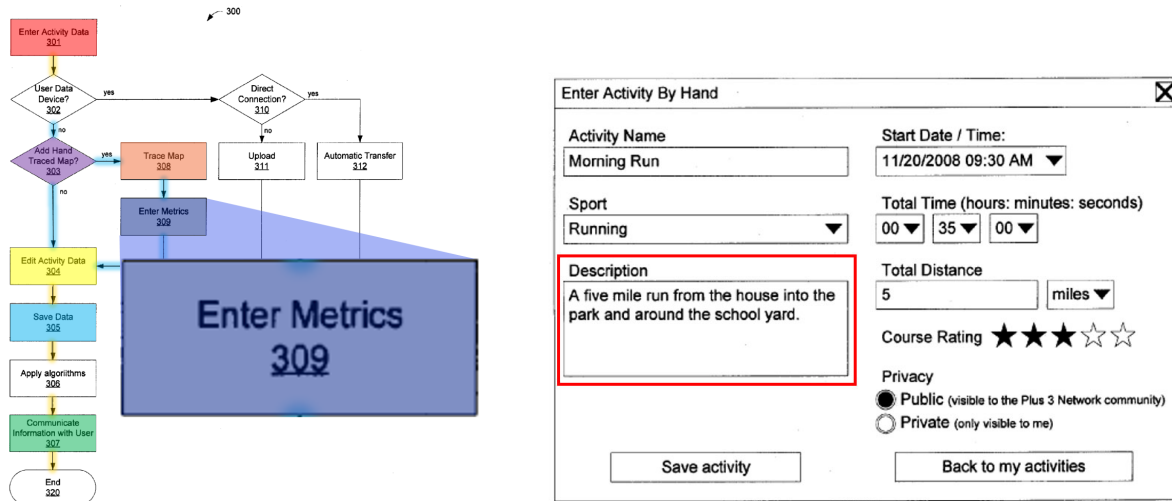
B. Claim 12

The apparatus of claim 11, wherein the apparatus is further caused to tag a summary of one or more metrics from the recorded athletic activity with identifiers of one or more other users.

Sutton discloses each additional limitation in Claim 12.

Sutton discloses tagging summaries of athletic activity metrics with user identifiers during data transfer. In data transfer step 309 ([navy](#)), users can "enter[]

metrics on a traced map” (Ex. 1005, ¶ 60.) A user can enter “metrics” through the “Description” and other fields (e.g., “Total Distance” and “Total Time”) shown in Figure 9. (*Id.*, ¶ 74; Ex. 1003, ¶ 88.)



(Ex. 1005, Figs. 3, 9 (annotated).) Sutton’s Figure 5 depicts such a map including user-entered data, such as “description of the activity 504, total time 505, distance 506, average pace 507, average speed 508, [and] maximum speed 509.” (*Id.*, ¶ 63.)

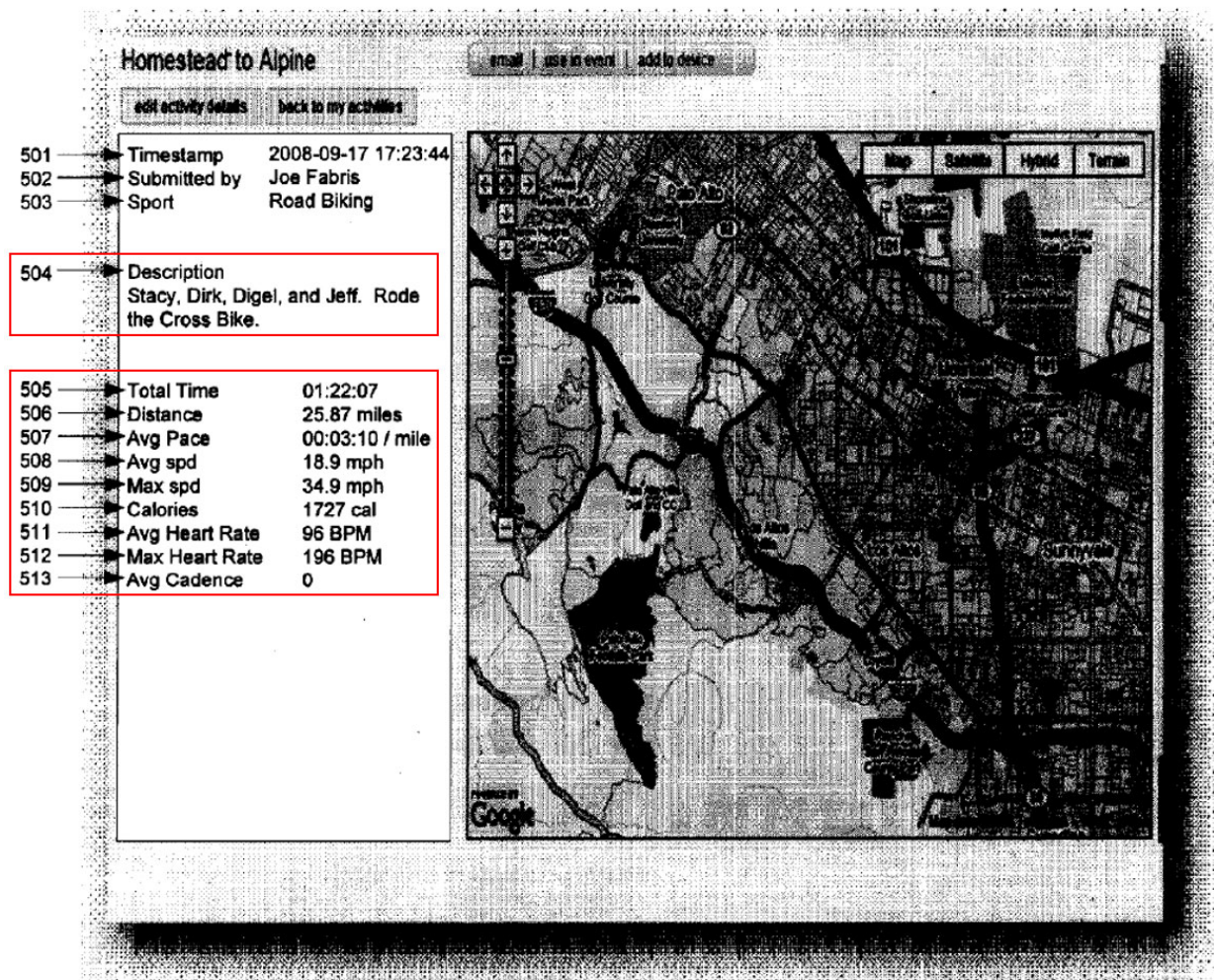


FIG. 5

(*Id.*, Fig. 5 (annotated).) Description field 504 includes the names of athletes Stacy, Dirk, Digel, and Jeff and, below them, summaries of metrics of athletic activity. (*Id.*) At least “Dirk” is another “user.” (See *id.*, ¶ 84, Fig. 10.) Thus, Sutton discloses tagging summaries of metrics of athletic activity with at least one identifier of another user.

System 110 is the part of Sutton’s system that “is caused to tag” the summaries of metrics of athletic activity. System 110 records the user’s entries

Figure 9's form, including any identifiers of other users in the description field, to database 115 at save data step 305. (*Id.*, ¶ 60, Fig. 3.) Alternatively, Sutton discloses that a user can "edit the traced map when entering data or at a later opportunity if a correction for the previously entered data is required." (*Id.*, ¶ 63.) The user can edit the "description of the activity 504," which includes the user identifier tags. (*Id.*, ¶ 63, Fig. 5.) If a user edits that field after server 111 stores the field contents in database 115, then by receiving the user's new input including one or more tags, system 110 again is "caused to tag" the summaries.

C. Claim 19

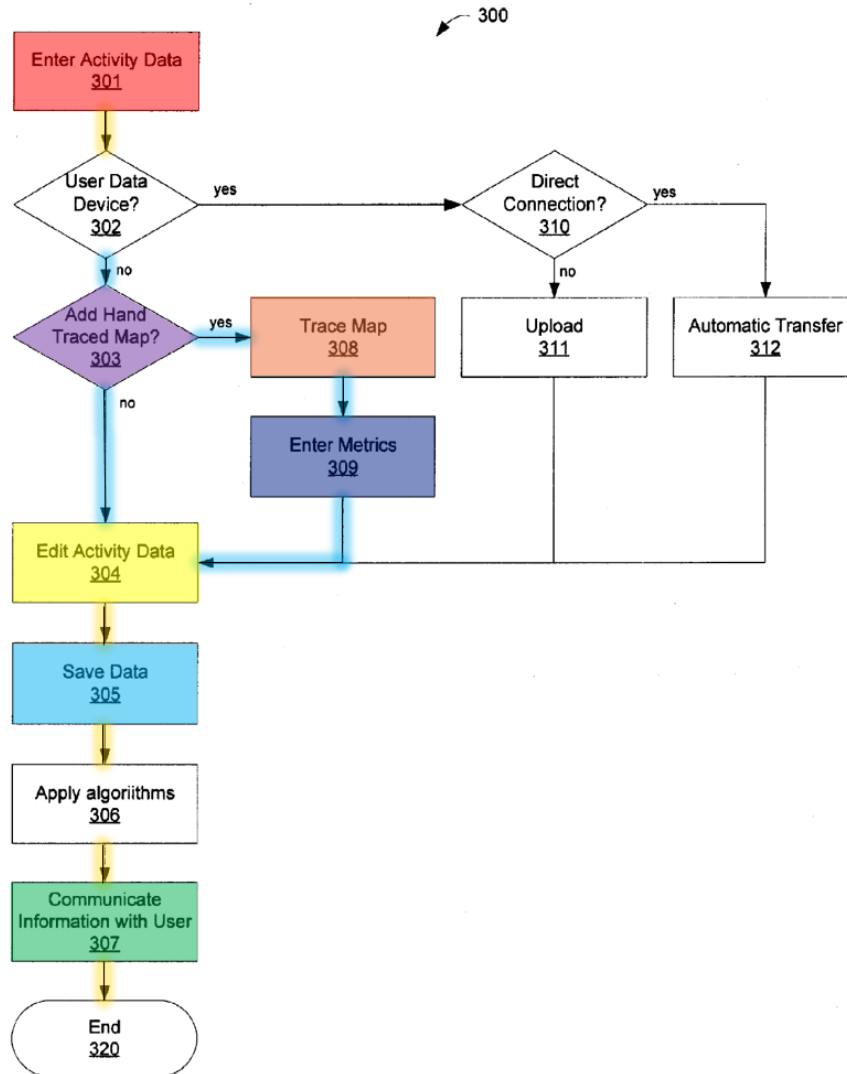
The apparatus of claim 11, wherein the apparatus is further caused to generate a social network message on the network page based on a location at which the athletic activity was performed by the user.

Sutton discloses each additional limitation in claim 19. Sutton discloses a social network message in the form of a hand-traced map. (Ex. 1005, ¶ 60, Figs. 3, 5.) The map reflects "user activity," i.e., where the user exercised. (*Id.*, ¶ 63.) The map is part of the user's "activity data," (*id.*, ¶ 60), which system 110 transmits to a network page of a social networking site, (*see supra* § VII.A.6.)

D. Claim 20

The apparatus of claim 19, wherein transmitting the workout information includes modifying the social network message based on a received user edit.

Sutton discloses modifying the social network message based on a user edit during data transfer. At step 301 (**red**) of data transfer, a user enters their activity data, including filling out the description field in Figure 9's form. (Ex. 1005, ¶¶ 60, 73.) At steps 308 (**orange**) and 309 (**navy**), a user can "enter[] metrics on a traced map ... to complete the map data" (*Id.*, ¶ 60.) Next, at step 304 (**yellow**), the user "ha[s] an opportunity to correct and edit the entered activity data" (*Id.*) The description field, map, and other activity data are all part of the social network message uploaded to a social networking site, as discussed above. (*Supra* § VII.A.6; *see also* Ex. 1005, ¶ 62, Figs. 4, 5.)



(Id., Fig. 3 (annotated).)

VIII. GROUND 3: CLAIMS 11-12 AND 19-20 ARE OBVIOUS OVER SUTTON

A. Claim 11

1. Element 11 ``` [pre] ```

An apparatus comprising:

If limiting, Sutton’s “portable device 104” (purple) is an apparatus. (Ex. 1005, ¶ 28.)

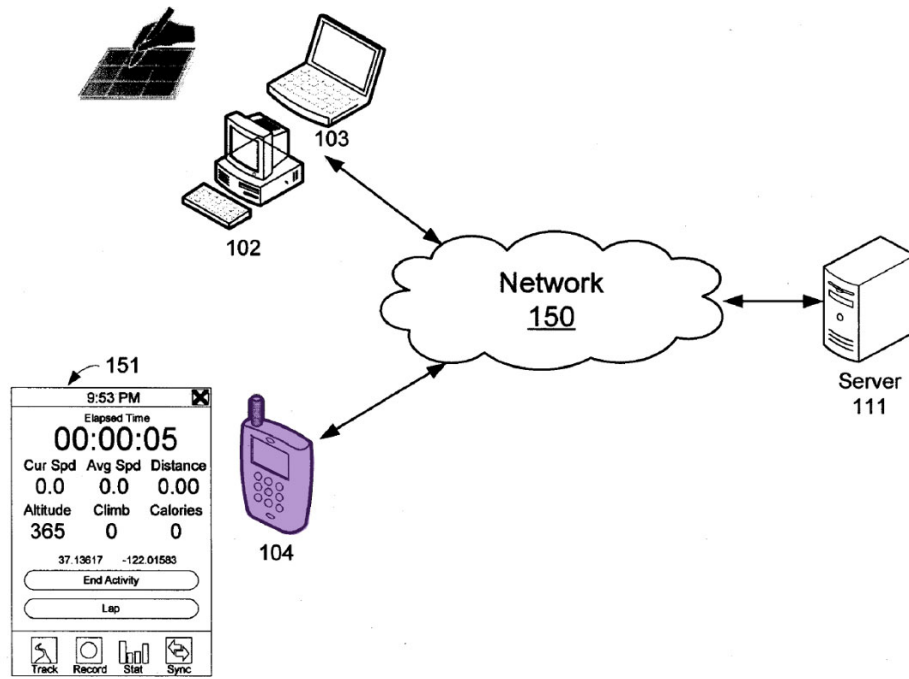


FIG. 1B

(*Id.*, Fig. 1B (annotated).)

2. Element 11[A]

a processor; and

Device 104 includes a processor. Sutton’s “exemplary computer architecture 1100 for use with the present system” includes a “processor 1110” (Ex. 1005, ¶ 94.) Sutton discloses computer architecture 1100 “*may* be used to implement activity and biometric tracking system 110[,]” but does not limit it to that system. (*Id.*, ¶ 94 (emphasis added).) A POSITA reading Sutton would have recognized that device 104 is a computer because it records, displays, and

transmits data. (*See id.*, ¶¶ 28, 30; Ex. 1003, ¶ 80.) Thus, Sutton discloses that device 104 includes a processor 1110. (Ex. 1003, ¶ 81.)

Alternatively, Sutton discloses that device 104 includes a processor. As shown below, device 104 writes data to memory, receives a sharing option selection, and transmits data to a webpage. (*Infra*, §§ VIII.A.4-VIII.A.6.) Device 104 requires a processor to perform each function. (Ex. 1003, ¶ 84.)

3. Element 11[B]

a non-transitory, computer-readable medium storing computer-readable instructions that, when executed, cause the apparatus to:

Device 104 includes computer memory storing computer-readable instructions that, when executed, cause the device to perform the claimed functions. As explained above, a POSITA would have recognized that device 104 can include computer architecture 1100. (*Supra* § VIII.A.2.) That architecture includes “random access memory (RAM) or dynamic storage device 1125[,]” “read only memory and/or other static storage device 1126[,]” and “data storage device 1127” (*Id.*, ¶¶ 94, 95.) Each of those memory types stores “instructions[,]” including “to be executed by processor 1110.” (*Id.*) The stored instructions cause device 104 to perform its functions: “[A] variety of programming languages may be used *to implement* the teachings of the invention as described herein.” (*Id.*, ¶ 26; *see also* Ex. 1003, ¶ 83.)

Alternatively, Sutton discloses that device 104 meets this limitation. As shown below, device 104 writes data to memory, receives a sharing option selection, and transmits data to a webpage. (*Infra* §§ VIII.A.4-VIII.A.6.) It requires software stored in memory to perform each function. (Ex. 1003, ¶ 84.)

4. Element 11[C]

record athletic activity performed by a user;

“[D]evice 104 ... captures user 101’s activity and biometric data” (Ex. 1005, ¶ 30.) It has a “Track” and “Record” functions (green) and records sufficient activity and biometric data to calculate and display “elapsed time,” “current speed, average speed, distance, altitude, climb, [and] calories.” (*Id.* ¶ 30, Fig. 1B.)

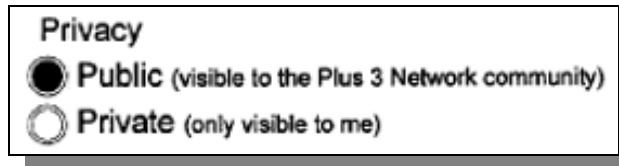


(*Id.*, Fig. 1B (cropped and annotated).) Sutton’s “[d]ata capturing devices capture and record a user’s activity into their on-board memory” (*Id.*, ¶ 55.)

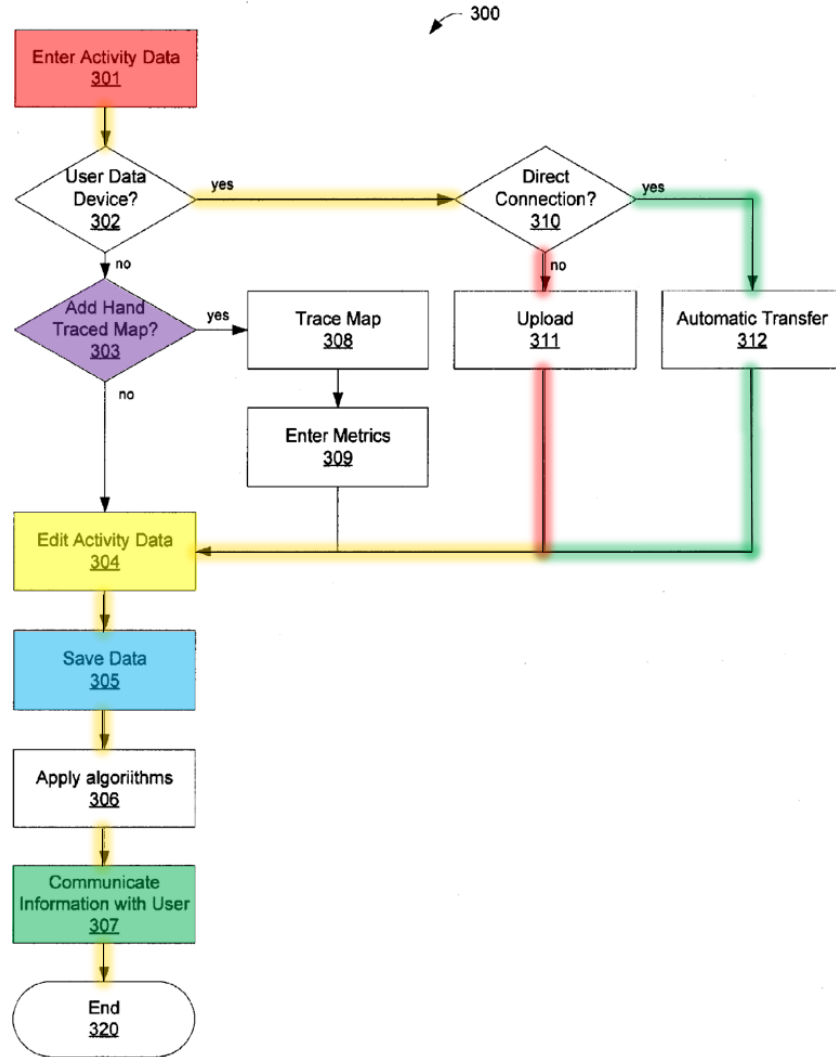
5. Element 11[D]

receive a sharing option selection configured to allow the recorded athletic activity to be shared; and

As explained in Ground 2, system 110 receives Figure 9's sharing option selection of "Public" (shown below) during manual transfer. (*Supra* § VII.A.5.)



(Ex. 1005, Fig. 9 (excerpted).) It would have been obvious to configure device 104 to receive that sharing option selection during both the manual device transfer (red path) and automatic device transfer (green path) to allow for communication of workout data. (*See id.*, ¶ 60.)



(*Id.*, Fig. 3 (annotated).)

First, it would have been obvious to configure device 104 to receive Figure 9’s sharing option selection during manual device transfer at Edit Activity Data step 304 (yellow). At step 304, “[u]ser 101 enters sport category *and other required or optional fields* to complete data entry.” (*Id.*, ¶ 61 (emphasis added).) It would have been trivial for a POSITA to include Figure 9’s “Privacy” field as

one such field. (Ex. 1003, ¶ 93.) For instance, the user could view the Privacy field on device 104's display and fill it out using device 104's buttons. (*Id.*)



(Ex. 1005, Fig. 1B (cropped).)

Second, it would have been obvious to configure device 104 to receive Figure 9's sharing option selection in the automatic device transfer pathway before the user started their workout. Sutton discloses that the automatic device transfer can include "real-time" data transfer and sharing. (*Id.*, ¶¶ 75, 87.) A POSITA would have recognized that a user should make a sharing option selection before starting real-time transfer and sharing. (Ex. 1003, ¶ 94.) A POSITA therefore would have required a user to fill out Figure 9's form before starting their workout, except that the POSITA would omit the "Start Data / Time," "Total Time," "Total Distance," and "Course Rating" fields from the form because the user would not yet have performed the activity. (*Id.*)

900

Enter Activity By Hand

Activity Name
Morning Run

Sport
Running

Description
A five mile run from the house into the park and around the school yard.

Start Date / Time:
11/20/2008 09:30 AM

Total Time (hours: minutes: seconds)
00 35 00

Total Distance
5 miles

Course Rating ★★☆☆

Privacy
☒ Public (visible to the Plus 3 Network community)
☐ Private (only visible to me)

Save activity Back to my activities

(Ex. 1005, Fig. 9 (annotated).) Device 104 would receive the user's sharing option selection for the same reasons as in the manual device transfer pathway.

A POSITA would have been motivated to configure device 104 to receive the sharing option selection in both transfer pathways to implement Sutton's feature of allowing users to "be dynamically tracked and connected *if they desire.*" (*Id.*, ¶ 86 (emphasis added).) Sutton's repeated references to sharing option selections would have impressed upon a POSITA that allowing users to choose whether to share their athletic activity via the user interface was an important feature. (*See id.*, ¶ 86, Fig. 9; Ex. 1003, ¶ 97.) A POSITA would have been motivated to display the sharing option selection and allow the user to make their

sharing option selection via device 104 because that configuration would be convenient to the user. (*Id.*)

6. Element 11[E]

in response to receiving the sharing option selection, transmitting workout information associated with the recorded athletic activity to a network page of a social networking site viewable by one or more other users.

If device 104 received user sharing option selections during automated and manual device transfer, then it would also practice this limitation. Device 104 would upload the sharing option selection that it received to system 110 at either of transfer step 304 in a manual device transfer or at transfer step 312 in an automatic device transfer. (Ex. 1005, ¶¶ 60, 61.) By uploading the sharing option selection to system 110, device 104 would instruct server 111 to transmit workout information from database 115 to a network page as described in Ground 2. (*See supra* § VII.A.6; Ex. 1003, ¶ 95.)

Device 104 causing server 111 to send the workout information to the network page is “transmission” by device 104. As Dr. Houh explains, a POSITA would understand that device 104 “transmits” the workout information to the network page in the same way that a laptop transmits an email to a recipient, even if the email passes through intermediary servers. (Ex. 1003, ¶ 96.)

B. Claim 12

The apparatus of claim 11, wherein the apparatus is further caused to tag a summary of one or more metrics from the recorded athletic activity with identifiers of one or more other users.

As explained above, it would have been obvious to present a user with most of Figure 9's exemplary data entry form during manual device transfer and before automatic device transfer. (*Supra* § VIII.A.5.) Also as explained above, Sutton discloses tagging summaries of one or metrics of athletic activity by entering other users' names in to the "description" field of that form. (*Supra* § VII.B.) If a user entered user identifiers in the description field during manual device transfer or before automatic device transfer, then device 104 would "tag" the other metrics with the user identifiers by saving them to database 115 along with the other user data. (See Ex. 1005, ¶ 61.)

C. Claim 19

The apparatus of claim 11, wherein the apparatus is further caused to generate a social network message on the network page based on a location at which the athletic activity was performed by the user.

Sutton discloses each additional limitation in claim 19. Sutton discloses a social network message in the form of a traced map which is based on a location at which a user performs athletic activity. (Ex. 1005, ¶ 63, Fig. 5.) The map reflects "user activity," i.e., where the user exercised, (*id.*, ¶ 63), and is thus part of the

user's "activity data," (*id.*, ¶ 60.) As explained above, device 104 would transmit that data to a network page of a social networking site. (*See supra* § VIII.A.6.)

D. Claim 20

The apparatus of claim 19, wherein transmitting the workout information includes modifying the social network message based on a received user edit.

Sutton discloses modifying the social network message based on a user edit during data transfer. At step 304 in the manual device transfer pathway, the user "ha[s] an opportunity to correct and edit the entered activity data" (Ex. 1005, ¶ 61.) The activity data, including a map, (*id.*, ¶ 55), is part of the social network message that would be uploaded to a social networking site, (*see supra* §§ VII.A.6, VIII.A.6; Ex. 1005, ¶¶ 60-62, Figs. 3-4.)

IX. GROUND 4: CLAIMS 11-14 AND 19-20 ARE OBVIOUS OVER SUTTON IN VIEW OF THE PLUS 3 WEBSITE PAGES

A POSITA would have been motivated to combine Sutton and the Plus 3 Website Pages because both references describe the same system. For instance, Sutton refers to the Plus 3 Network website three times. First, in Figure 4 Sutton refers to "http://www.plus3networks.com," which is a misspelling of the Plus 3 Network's website's www.plus3network.com URL. (Ex. 1005, Fig. 4; Ex. 1006, 12 ("www.Plus3Network.com").) Second, Sutton states, "Every day, you and all of Plus 3 are Making It Count." (Ex. 1005, Fig. 4.) Third, Sutton discloses that if

a user sets an activity to “Public,” then the activity will be “visible to the Plus 3 Network community.” (*Id.*, Fig. 9.) Thus, Sutton repeatedly directed a POSITA to the Plus 3 Network website embodied, in part, by the Plus 3 Website Pages.

The Plus 3 Website Pages confirm the connection with Sutton. The About page identifies Rick Sutton and Joe Fabris as “Founder / President & CEO” and “Founder / Product Marketing,” respectively. (Ex. 1006, 9.) Rick Sutton and Joe Fabris are Sutton’s inventors. (Ex. 1005, 1.) The Plus 3 Website pages also refer to an idiosyncratic concept of collecting user information with “data collection device[s]” and then using that information to “raise funds for charitable causes.” (Ex. 1006, 12, 13.) So does Sutton. (*See e.g.*, Ex. 1005, ¶ 42.) A POSITA would have had no doubt that both references described the same system and therefore would have freely drawn from both. (Ex. 1003, ¶¶ 122-125.)

Additionally, a POSITA would have been motivated to combine Sutton and the Plus 3 Website Pages because such a combination would have provided the additional benefits of the features present depicted in the Plus 3 Website Pages. The benefits include, for example, (1) improving communication between users by letting users to “post comments[] on another member’s site” and (2) improving user privacy by giving users “the ability to make [their] profile[s] Public or Private.” (Ex. 1006, 12.)

A POSITA would have reasonably expected the combination to succeed because they would have understood that it already had. Sutton was filed on December 5, 2008, and the Plus 3 website pages were online by December 26, 2008. (Ex. 1004, 1; Ex. 1006, 1, 4-19.) A POSITA would have reasonably concluded that Sutton and the Plus 3 Website pages describe how the Plus 3 Network’s website and system worked by December 2008. (*Id.*; *see also* Ex. 1003, ¶ 125.)

In view of the foregoing, the following disclosures from the Plus 3 Website render each of claims 11-14 and 19-20 obvious in combination with the disclosures and modifications already identified above in Grounds 2 and 3.

A. Claim 11

1. Element 11[D]

receive a sharing option selection configured to allow the recorded athletic activity to be shared; and

The Plus 3 Website Pages disclose a “Public” sharing option selection configured to allow recorded athletic activity to be shared: “You also have the ability to set an Activity to Public or Private. If the Activity is set to Public it can be viewed, with your name attached, by all Users” (Ex. 1006, 12.) A POSITA would have added a “Public” sharing option selection to Sutton’s manual device transfer and automatic device transfer embodiments as discussed above. (*Supra* § VIII.A.5; *see also* Ex. 1003, ¶¶ 92-96, 127.)

2. Element 11[E]

in response to receiving the sharing option selection, transmitting workout information associated with the recorded athletic activity to a network page of a social networking site viewable by one or more other users.

The Plus 3 Website Pages disclose sharing user athletic activity in response to an affirmative sharing option selection: “If the Activity is set to Public it can be viewed, with your name attached, by all Users” (Ex. 1006, 12.) That activity is shared to a network page: “Plus 3 will display the information you have provided on your profile on the Site.” (*Id.*) The Plus 3 Network website, www.plus3network.com, was the website for “Plus 3 Network[,] ... a mobile, GPS-enhanced social network” (*Id.*, 9, 12.) A POSITA would have added sharing workout information to a network page of a social networking site in response to a “Public” sharing option selection to Sutton’s manual device transfer and automatic device transfer embodiments as discussed above. (*Supra* § VIII.A.6.)

B. Claim 13

The apparatus of claim 11, wherein the apparatus is further caused to include a message prompt on the network page, the message prompt configured to receive a message to be presented to the one or more other users on the social networking site.

Claim 13’s additional limitation would have been obvious over the combination of the Plus 3 Website Pages and Sutton’s manual transfer embodiment. The Plus 3 Website Pages disclose that users can “post comments[]

on another member's site." (Ex. 1006, 12.) It would have been obvious to implement this feature by providing a message prompt on a user's profile page in which another user could input a message. (Ex. 1003, ¶ 128.) A POSITA would have readily configured a Web server 111 hosting the Plus 3 Network website to include such a message prompt. (*Id.*)

C. Claim 14

The apparatus of claim 11, wherein the apparatus is further caused to receive a request to deactivate sharing of the workout information; and transmit a modification request to remove the workout information from the social networking site.

The Plus 3 Website pages disclose that users can deactivate sharing of workout information: "You ... have the ability to set an Activity to Public **or Private** ... If an Activity is set to Private, it is not displayed to other Users and only you can see it." (Ex. 1006, 12.) Users can also "remove [their] User Content from the Site at any time," where "User Content" included "all content that you upload, publish or display ... on or through the Services or the Site, or transmit to or share with other Users" (*Id.*, 17). Removing shared workout information is a natural extension of Sutton's disclosure that users can edit their data "if a correction of the previously entered data is required." (Ex. 1005, ¶ 63.)

It would have been obvious to configure the same apparatus that received a user's sharing option selection to also receive a request to deactivate sharing. (Ex.

1003, ¶¶ 129-130.) It further would have been obvious to configure the apparatus to then transmit the request to the Plus 3 Network website so that the website could remove the data. (*See id.*)

D. Claim 19

The apparatus of claim 11, wherein the apparatus is further caused to generate a social network message on the network page based on a location at which the athletic activity was performed by the user.

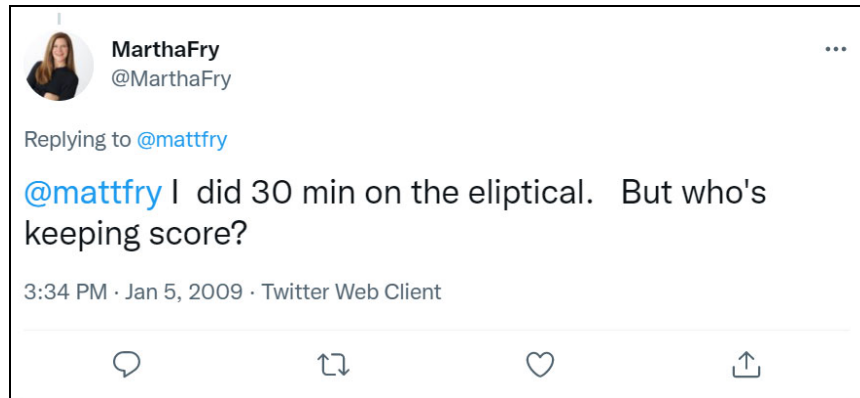
If Patent Owner disputes that Sutton discloses this additional limitation, then the Plus 3 Website Pages disclose it: “[W]hen you post an activity ... Users may see the route you have covered, including your start and end points, which may include your residence or place of work.” (Ex. 1006, 12.) It would have been trivial for a POSITA to add this limitation to Sutton’s system because, as discussed above, Sutton discloses and renders obvious sharing maps of where a user worked out. (*See supra* §§ VII.C, VIII.C; *see also* Ex. 1003, ¶ 131.)

X. GROUND 5: CLAIM 12 IS OBVIOUS OVER SUTTON IN VIEW OF FRY

A. Claim 12

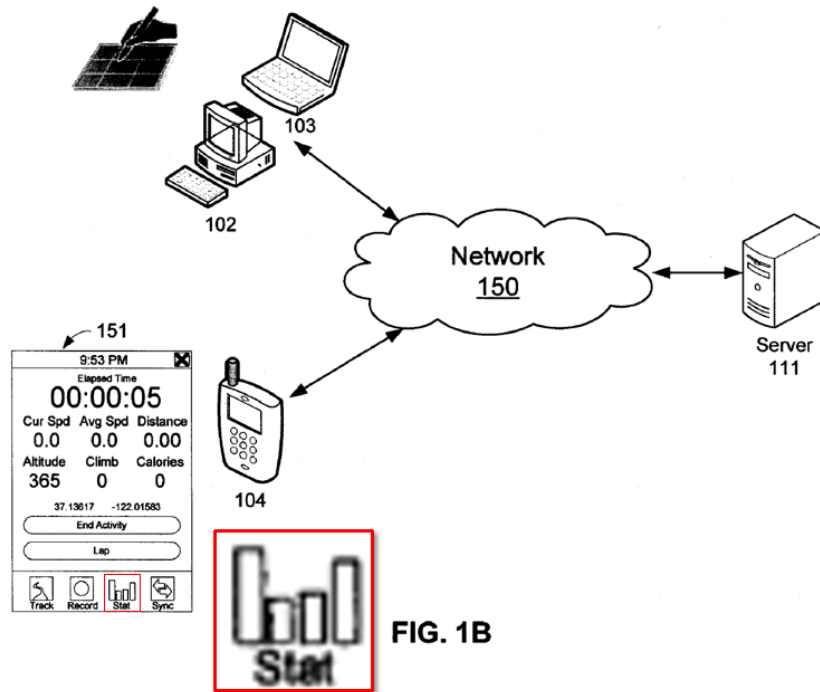
The apparatus of claim 11, wherein the apparatus is further caused to tag a summary of one or more metrics from the recorded athletic activity with identifiers of one or more other users.

Fry discloses tagging a summary of a user’s athletic activity with an identifier of another user:



(Ex. 1007.)

If Patent Owner contends that Sutton does not disclose or render obvious this claim, then it would have been obvious to modify Sutton’s device 104 and system 110 to tag a summary of a user’s recorded athletic activity with another user’s username, as in Fry. Sutton already discloses “an exemplary data entry form” with a “Description” field in which users can enter text in Figure 9 alongside athletic activity metrics. (Ex. 1005, ¶ 73, Fig. 9.) It also discloses a device 104, which is a “data entry device [for] enter[ing] his/her activity data.” (*Id.*, ¶ 73.) As shown below, device 104 includes a display, buttons for entering data, and a connection to server 111. (*See id.*, ¶ 30.) Device 104 displays a user’s workout data on its screen and includes an option for a user to view workout “Stat[istics],” which a POSITA would have understood refers to summaries of past workouts. (*Id.*, Fig. 1B; *see also* Ex. 1003, ¶ 79.)



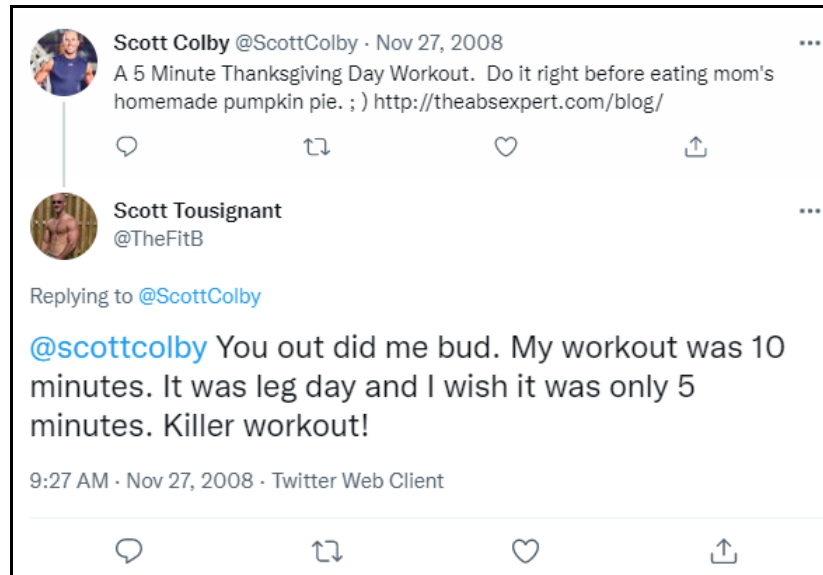
(Ex. 1005, Fig. 1B (annotated and enlarged).)

With these features already available in Sutton, a user could tag another user via Sutton's hardware by, for example, typing the other user's username on a keyboard in the manual transfer embodiment or on device 104's keys in the manual device transfer and automatic data transfer embodiments. A POSITA would have had no difficulty configuring Sutton's system to transmit the tag along with all the other workout data to a network page of a social networking site. (See Ex. 1005, ¶¶ 30, 62, Figs. 4, 5, 9; Ex. 1003, ¶ 134.)

A POSITA would have been motivated to combine Sutton and Fry to provide for more efficient communication between users, which many Tweets show is a desirable feature. Out of all the messages that Ms. Fry could have

Inter Partes Review of USP 10,232,220

tweeted at 3:34PM on January 5, 2009, she chose to tweet the duration of her workout and Mr. Fry's Twitter handle. (Ex. 1007.) In fact, she and many others tweeted similar content in 2008 and 2009, some examples of which are shown below:





(Exs. 1008-1011.) Thus, a POSITA would have known that identifying other users while posting about one’s own workout was desirable and would have added that feature to Sutton’s system. (Ex. 1003, ¶ 133.)

XI. MANDATORY NOTICES

A. Real Party-in-Interest

Pursuant to 37 C.F.R. § 42.8(b)(1), the real parties-in-interest in this proceeding are lululemon athletica inc., lululemon athletica canada inc., lululemon usa inc., and Curiouser Products, Inc. Only Petitioner has funded this Petition and has full and exclusive control over this proceeding.

B. Related Matters

Pursuant to 37 C.F. R. § 42.8(b)(2), Petitioner identifies *Nike, Inc. v. lululemon athletica inc. et al.*, S.D.N.Y. Case No. 1:22-cv-00082-AJN as a related matter. Patent Owner is asserting the ’220 patent against Petitioner in that case.

Pursuant to 37 C.F.R. § 42.104(a), Petitioner certifies that the ’220 patent is available for *inter partes* review. Petitioner also certifies that it is not barred or

estopped from requesting an *inter partes* review challenging the patent claims on the grounds identified in this Petition.

C. Lead and Back-Up Counsel and Service Information

Pursuant to 37 C.F.R. § 42.8(b)(3), Petitioner identifies the following counsel (and a power of attorney accompanies this Petition).

Lead Counsel for Petitioner	Backup Counsel for Petitioner
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Pursuant to 37 C.F.R. § 42.8(b)(4), service information for lead and back-up counsel is provided above. Petitioner consents to electronic service by email to lululemon-Nike-IPR@mofo.com.

The USPTO is authorized to charge any required fees, including the fee as set forth in 37 C.F.R. § 42.15(a) and any excess claim fees, to Deposit Account No. 03-1952 referencing docket no. 57931-00000.10.

XII. CONCLUSION

For the reasons set forth above, Petitioner requests judgment cancelling claims 11-14 and 19-20 of U.S. Patent No. 10,232,220.

Dated: November 9, 2022

Respectfully submitted,

/Diek O. Van Nort/

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Certification of Word Count (37 C.F.R. §42.24)

I hereby certify that this Petition for *Inter Partes* Review has 11,138 words (as counted by the “Word Count” feature of the Microsoft Word™ word-processing system), exclusive of “a table of contents, a table of authorities, mandatory notices under § 42.8, a certificate of service or word count, or appendix of exhibits or claim listing.”

Dated: November 9, 2022

By: /Diek O. Van Nort/
Diek O. Van Nort

Inter Partes Review of USP 10,232,220

Certificate of Service (37 C.F.R. §42.6(e)(4) and 42.205(a))

I hereby certify that the attached Petition for *Inter Partes* Review and supporting materials were served as of the below date by UPS, on the Patent Owner at the correspondence address indicated for U.S. Patent No. 10,232,220.

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