

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.

Patent No. 10,232,220

Inter Partes Review No. IPR2023-00180

REPLY DECLARATION OF DR. HENRY H. HOUH, PH.D.

Table of Contents

	Page
I. INTRODUCTION.....	1
A. Independent Claims	2
II. REBUTTAL OPINIONS	3
A. Claim Construction.....	4
1. Nike’s and Dr. Stone’s Proposed Construction of “record”	4
B. A POSITA would have understood “record” means “save”	5
1. The language of claim 1 does not support Dr. Stone’s construction..	8
2. The purpose of the invention does not support Dr. Stone’s construction.....	12
C. Nike’s and Dr. Stone’s Proposed Construction of “in response to receiving the sharing option selection”	13
1. A POSITA would have understood “in response to receiving a sharing option selection” means a selection of whether to share	13
III. JOHNSON.....	18
A. Johnson Teaches “record athletic activity performed by a user” (Element [11C]).....	18
B. Johnson Teaches “in response to receiving the sharing option selection” (Element [11E])	19
C. Johnson Teaches “a social networking site viewable by one or more users” (Element [11E])	22
D. Johnson Teaches “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” (Claim 12)	25
IV. SUTTON	26
A. Sutton Teaches “record athletic activity performed by a user” (Element [11C]).....	26
B. Sutton Teaches “transmit[ting] workout information associated with the recorded athletic activity” (Element [11E])	28
C. Sutton Teaches “identifiers of one or more other users” (Claim 12).....	28
D. Sutton Teaches “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” (Claim 19)	31
E. Sutton Teaches “wherein transmitting the workout information includes modifying the social network message based on a received user edit” (Claim 20).....	32
F. Sutton Renders Obvious Claim 11	32
G. Sutton Renders Obvious Claims 12, 19, and 20.....	33
V. SUTTON AND PLUS 3.....	33
A. Sutton and Plus 3 Render Obvious Claim 11	33
B. Sutton and Plus 3 Render Obvious Claim 14.....	34
C. Sutton and Plus 3 Render Obvious Claims 12, 19, and 20	35
VI. SUTTON AND FRY	35

I, Henry Houh, make this reply declaration in connection with the proceeding identified above.

I. INTRODUCTION

1. I have been retained by counsel for lululemon athletica canada inc. and lululemon usa inc. (collectively, “lululemon” or “Petitioner”) as a technical expert in connection with the proceeding identified above. I submit this reply declaration in support of lululemon’s Reply to Nike’s Patent Owner Response in the *Inter Partes* Review of U.S. Patent No. 10,232,220 (“the ’220 patent”) (Ex. 1001). I described my qualifications in detail in my opening declaration dated November 6, 2022, which I understand is Exhibit 1003 to this proceeding.

2. I have been asked to consider Nike’s Patent Owner Response (POR (Paper 17)) and the August 7, 2023 Declaration of Dr. Robert Stone (Ex. 2001 (Aug. 7, 2023, Stone Decl.)) and provide rebuttal opinions regarding the same. In performing my analysis in this proceeding, I have considered the ’220 patent, its prosecution history, and Exhibit Nos. 1001-1020 and 2001-2003.

3. I am being compensated at my standard consulting rate. I am also being reimbursed for expenses that I incur during my work. My compensation does not depend on the results of my study and analysis, the substance of my opinions, or the outcome of any proceeding involving the Challenged Claims. I

have no personal or financial interest in the outcome of this matter or in any litigation involving the '220 patent.

4. I have personal knowledge of the facts and opinions set forth in this declaration and believe them to be true. If called upon to do so, I would testify competently thereto. I have been warned that willfully false statements and the like are punishable by fine or imprisonment, or both.

5. Although I am not a lawyer and will not provide any legal opinions, I have been advised to apply certain legal standards in forming my opinions. I set forth my understanding of those legal standards in my opening declaration.

(Ex. 1003 (Nov. 6, 2022, Houh Decl.), ¶¶31-36.)

A. Independent Claims

6. The '220 patent has two independent claims, specifically, claims 1 and 11. I understand that claim 11 is challenged in this proceeding and claim 1 is not challenged. However, since Patent Owner and its expert, Dr. Stone, discuss claim 1 in the Patent Owner Response and Dr. Stone's declaration, I provide it below.

7. Unchallenged Claim 1

[1Pre]. A method comprising:
[1A]. receiving, from an athletic activity monitoring system, athletic activity data recorded during an athletic activity performed by a first user, the athletic activity data including route information;

- [1B]. generating, on a network page of a social networking site, an athletic activity entry associated with the athletic activity, wherein the athletic activity entry and the network page are viewable by a second user; and
- [1C]. generating, within the athletic activity entry and based on the route information, a map indicating a route of the first user, wherein a performance of the first user during the athletic activity is identified in the map, and wherein the route information is downloadable to the second user and is configured to specify a workout route for the second user.

(Ex. 1001, 67:11-26 (labels added).)

8. Challenged Claim 11

- [11Pre]. An apparatus comprising:
- [11A]. a processor; and
- [11B]. a non-transitory, computer-readable medium storing computer-readable instructions that, when executed, cause the apparatus to:
- [11C]. record athletic activity performed by a user;
- [11D]. receive a sharing option selection configured to allow the recorded athletic activity to be shared; and
- [11E]. 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.

(*Id.*, 68:16-28 (labels added).)

II. REBUTTAL OPINIONS

9. I understand that Nike and/or Dr. Stone have argued that the prior art does not teach certain limitations of the Challenged Claims of the '220 patent, including under their proposed constructions of “record” and “in response to receiving a sharing option selection.” I offer the following opinions in response.

A. Claim Construction

10. I understand that Nike and Dr. Stone have proposed constructions for “record.” This term is part of the limitation “record athletic activity performed by a user,” which I refer to as “element [11C].” (Ex. 1001, 68:21.) This limitation appears in claim 11 of the ’220 patent.

1. Nike’s and Dr. Stone’s Proposed Construction of “record”

11. I understand that Nike proposes construing “record” as “measure or capture, and then save.” (POR, 2.) I understand that Nike’s expert, Dr. Stone, may be proposing the same construction for this term. (Ex. 2001, ¶48.) I agree with the Board that “store data in memory” (*i.e.*, save) is a form of “record[ing].” (Paper 11 (Decision on Institution), 12.)

12. I note however that Dr. Stone seems to suggest a different construction “measure or capture” without “saving.” For instance, in his declaration, Dr. Stone states: “[A]thletic activity data [is] **recorded**’ by the athletic information monitoring device 201.” (*Id.*, ¶53 (emphasis added).) Then, Dr. Stone concludes “[t]hus, it is my opinion that a POSITA would understand in view of the specification that it is the ‘athletic data display configuration device’ (601), **not the ‘athletic monitoring system’ (201) that writes athletic data to memory.**” (*Id.* (emphasis added).) Irrespective of the conflicting opinions, as I explain in paragraphs 13-29 below, I disagree with Nike and Dr. Stone’s construction(s).

B. A POSITA would have understood “record” means “save”

13. I understand that Dr. Stone (in some instances) proposes construing “record” as “measure or capture, then save.” (Ex. 2001, ¶48.) That is, Dr. Stone proposes narrowing “record” to additionally require “measure or capture.”

14. I disagree with Dr. Stone’s construction of “record” because it conflicts with the specification. The ’220 specification uses the word “record” when discussing saving or storing. As the ’220 specification explains:

some data may be *stored locally in the user’s mobile device* and supplemented with data from a remote network site (e.g., the athletic activity monitoring service provider). Further, *data recorded by the mobile device* (e.g., GPS data or accelerometer data) may be synchronized with the remote network site to *alleviate storage requirements of the mobile device*.

(Ex. 1001, 2:28-34 (emphases added).)

15. The ’220 specification uses a different word “measure” when discussing the sensors.

- “a sensor or multiple sensors for *measuring* parameters relating to the person being monitored” (Ex. 1001, 8:51-53 (emphasis added));
- “one or more sensors 301 for *measuring* an athletic parameter” (*id.*, 11:61-62 (emphasis added));
- “accelerometers . . . for *measuring* the acceleration of the athletic parameter measurement device” (*id.*, 11:65-67 (emphasis added));
- “*accelerometers for measuring* the movement of the user’s foot” (*id.*, 13:5-6 (emphasis added));

- “the athletic parameter measurement device 207 may be a heart rate monitor, a blood oxygen monitor, a satellite positioning device (e.g., a ***Global Positioning Satellite (GPS) navigation device***) or other location determination system, a ***device for measuring*** the electrical activity of the user (e.g., an EKG monitor), or any other ***device that measures*** one or more physical parameters of the user.” (*id.*, 15:18-24 (emphases added));
- “accelerometers, a satellite positioning device, or any other desired device for ***measuring*** athletic activity” (*id.*, 15:41-45 (emphasis added)).

The use of “measure”—and not “record”—when discussing the sensors means that the two have different meanings.

16. The ’220 specification also uses the term “record” to describe a GPS device that records data separately from measuring/capturing it. “For example, if a GPS signal is lost, the accelerometer may be activated and used as a back-up to provide workout related data. ***Once a GPS signal is reacquired***, the system may ***begin recording*** the GPS data again.” (Ex. 1001, 1:64-2:1 (emphasis added).)

17. A GPS device is a type of sensor that determines location by communicating with GPS satellites that circle the Earth. The GPS satellites send GPS satellite signals, and the GPS device senses the satellite signals. (Ex. 1018.) Signals from at least three GPS satellites are required in order to determine a usable location on Earth. (Ex. 1019.) If the GPS device is able to receive satellite signals from at least three satellites, then it determines the location based on the sensed satellite signals along with knowledge about the surface of the earth,

although adding signals from a fourth satellite will produce a more accurate determination. If the GPS device is unable to receive satellite signals from at least three satellites, then the GPS signal is lost. (Ex. 1020.) The GPS device cannot calculate a location, but the GPS device may still be measuring signals from one or two satellites.

18. In the '220 patent, when the GPS signal is lost (*e.g.*, the GPS device is not receiving signals from at least three satellites), there is no recording of GPS data. However, the GPS device will continue measuring/capturing. It is not until the satellite signals from at least three satellites have been acquired that the system is able to record GPS data.

19. The '220 specification provides another description of a GPS device. “If, on the other hand, the individual is running outdoors such that the individual moves from one location to another, the GPS device 713 or recording of data therefrom (*e.g.*, ***GPS device is always active, but recording is turned on and off***) may be activated and used instead.” (Ex. 1001, 20:2-6 (*emphasis added*).) The GPS device being active means it is measuring or capturing. The GPS device being always active while the recording is sometimes turned off, means that “record” does not include measuring or capturing.

1. The language of claim 1 does not support Dr. Stone's construction

20. Dr. Stone argues that the language of claim 1 informs the meaning of “record.” (Ex. 2001, ¶¶49-50.) I disagree. Element [1A] recites: “receiving, from an athletic activity monitoring system, athletic activity data **recorded** during an athletic activity performed by a first user, the athletic activity data including route information.” Although this limitation recites “athletic activity data” having been “recorded,” the language of the claim 1 does not recite what previously recorded the athletic activity data. All that is recited regarding the “athletic activity data recorded” is that this previous recording be “during an athletic activity performed by a first user.”

21. Dr. Stone points to passages in the specification, language outside of claim 1, for supporting their argument. (Ex. 2001, ¶50.) However, the passages that Nike and Dr. Stone point to are not helpful because they are not part of the claim and they do not use the word “record.”

- “athletic information [is] **obtained** from an individual person” (Ex. 1001, 8:44-45 (emphasis added));
- “a sensor or multiple sensors **measuring** parameters” (*id.*, 8:50-53 (emphasis added)); and
- “athletic information monitoring device 201 that may be employed . . . to **measure** athletic information corresponding to a user’s athletic activity” (*id.*, 11:24-27 (emphasis added)).

22. Dr. Stone further argues that claim 1 must include “measuring parameters” using “a sensor or multiple sensors.” (Ex. 2001, ¶50.) But that is not what either claim 1 or claim 11 requires.

23. Furthermore, claim 1’s “recorded” differs from claim 11’s “record.” “recorded” (claim 1) is recited in the past tense, and “record” (claim 11) is recited in the present tense. A word used in the past tense may have a different meaning than the same word used in the present tense. Dr. Stone agrees. (Ex. 1016, 33:5-15.)

24. Dr. Stone cites other disclosures in the specification, which do not inform of the meaning of “record.” (Ex. 2001, ¶¶51-53.) The passage at 11:44-48 states “[t]he athletic parameter measurement device 207 may be worn or carried by the user while he or she is performing an athletic activity, and *measures* one or more athletic parameters relating to the athletic performance being performed by the user.” (emphasis added). But this sentence does not use the word “record,” “recorded,” or “recording.”

25. The passage at 1:60-62 states “[b]y using both a GPS device and an accelerometer, the mobile device may record workout data for both indoor (e.g., stationary) workouts and outdoor workouts.” This sentence discusses the mobile device having two types of sensors (accelerometer and GPS) so that it can record workout data for multiple workout settings (indoor and outdoor). This

sentence does not inform what “record” means or which component within the mobile device is performing the recording. The passage at 19:59-61 is similar, stating “[t]he inclusion of GPS device 713 and accelerometer 715 in a single mobile device 700 allows device 700 to record athletic activity data in multiple workout settings.”

26. The passage at 57:22-26 discusses audio/video messages, not athletic activity: “[i]nstead of or in addition to submitting textual comments and/or approval indicators in response to the workout announcement, friends and other users may also record audio and/or video messages to be played by the user.” The passage at 59:6-9 (“[i]n some arrangement, this additional information might only be provided or recorded if a user selected a particular mode for the recordation of the workout or for viewing workout data.”) uses the word “record,” but for discussing a mode of recordation. This passage does not provide any information regarding the meaning of “record.”

27. Dr. Stone also relies on passages that discuss “using” a sensor device or “using” sensor information/data. (Ex. 2001, ¶52.) However, “using” a sensor device means the sensor device (which measures/captures) does not perform the recording. As a result, “record” does not include “measure or capture.” As explained by the ’220 patent, “[u]sing a device may include recording data from that device and instructing the device to communicate data at specified times (or

continuously).” (Ex. 1001, 22:11-13.) Thus, “using a GPS device” means “recording data from that [GPS] device.” (*Id.*) The GPS device communicates the GPS data, which is then recorded by another device. “[T]he run was recorded using a GPS device” (26:7-9), “the run was recorded using a GPS device” (41:3-6), “recorded using GPS information” (41:21-24), and “portions of the route recorded using GPS data” (41:56-59) mean the GPS data is from, not recorded by, the GPS device. Similarly, “activate and/or begin recording accelerometer data” (36:26-32) means the accelerometer data is from, not recorded by, the accelerometer. Further, “associate a corresponding monitoring device” (51:62-65) does not provide any information about the meaning of “record.”

28. “Using” GPS data meaning recording data from the GPS device is consistent with disclosures in the ’220 specification that suggest recording occurs after—and thus is done separately from—the sensor measures or captures data. 20:10-15 states “accelerometer 715 or ***recording data therefrom***,” 20:31-36 states “(e.g., ***record data from***) both GPS device 713 and accelerometer 715), and 22:11-12 states “[u]sing a device may include ***recording data from that [sensor] device***” (emphases added). In other words, “record” does not include “measure or capture.”

2. The purpose of the invention does not support Dr. Stone's construction

29. Dr. Stone alleges that the '220's express purpose of the invention is "to measure athletic activity and thereby motivate the user." (Ex. 2001, ¶¶54-56.)

I do not agree. The purpose of the '220 invention is to motivate the user to exercise. As the specification explains, "[p]roviding an activity monitoring system and environment having one or more of the features described herein provides a user with an immersive experience that will encourage and motivate the user to engage in athletic activities and improve his or her fitness." (Ex. 1001, 66:63-67.)

The specification continues with several (of the many) examples of how to motivate the user:

[b]y *encouraging the user* to exceed previous statistics set in other runs, the *user may be motivated* by the improvements he or she is able to make. Additionally, users may be able to *use a single device* for both indoor and outdoor workouts and are thus able to aggregate workout data on a single device. Further, users may be motivated to exercise by being able to *issue live challenges* to other users. Accordingly, the users may feel as if they are working out with other users even though they are physically running by themselves.

(*Id.*, 66:67-67:9 (emphases added).) There are many other examples described throughout the 67 columns of text and 287 figures of the '220 specification that cannot be ignored.

C. Nike's and Dr. Stone's Proposed Construction of "in response to receiving the sharing option selection"

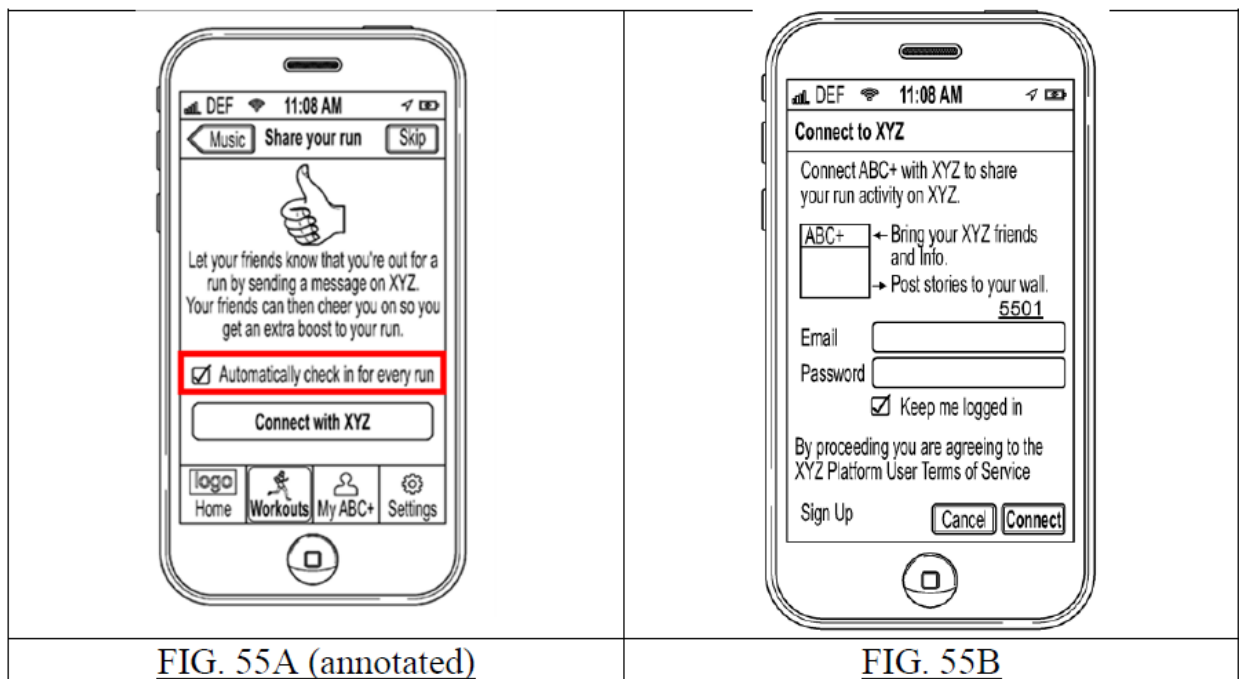
30. I understand that Nike proposes construing "in response to receiving the sharing option selection" as "in response to receiving an individual user command or confirmation to share the recorded athletic activity." (POR, 19.) I understand that Nike's expert, Dr. Stone, proposes the same construction for this term. (Ex. 2001, ¶57.) In other words, Nike and Dr. Stone propose replacing "sharing option selection" with "individual user command or confirmation to share the recorded athletic activity."

31. I understand that Dr. Stone obtained his construction from one instance in the specification that states, "in response to receiving a user command or confirmation." (*Id.*, ¶58 (citing Ex. 1001, 46:26-30).) Dr. Stone does not state where he obtained the term "individual" from. As explained in paragraphs 32-34 below, I disagree with Nike and Dr. Stone's construction.

1. A POSITA would have understood "in response to receiving a sharing option selection" means a selection of whether to share

32. It is my opinion that "in response to receiving a sharing option selection" should be given its ordinary and customary meaning, which is a selection of whether to share. For example, Figs. 54A, 55A-B, and 68B (below) (and Figs. 53F, 53V, 54C, 77, 78B, and 82) of the '220 patent show sharing option selections; the user makes a selection (*e.g.*, clicking on a box) of whether to share.

Element [11D] requires that the sharing option selection received be “configured to allow the recorded athletic activity to be shared.” Both the “automatic” sharing and the sharing “in response to receiving a user command or confirmation” are sharing option selections that may be “configured to allow the recorded athletic activity to be shared.” The sharing option selections shown below in Figs. 54A, 55A-B, and 68B allow the recorded athletic activity to be shared. Figure 55A in particular shows a sharing option selection for “every run.” “[E]very run” includes individual future runs.



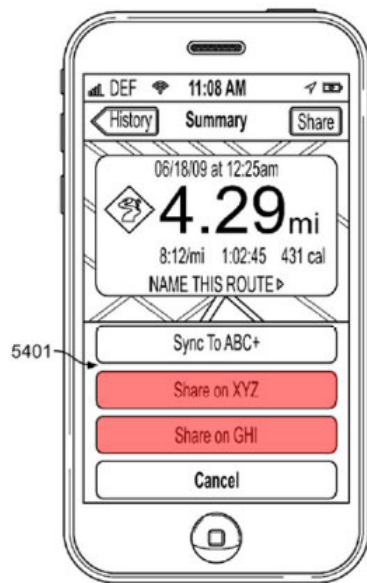


FIG. 54A

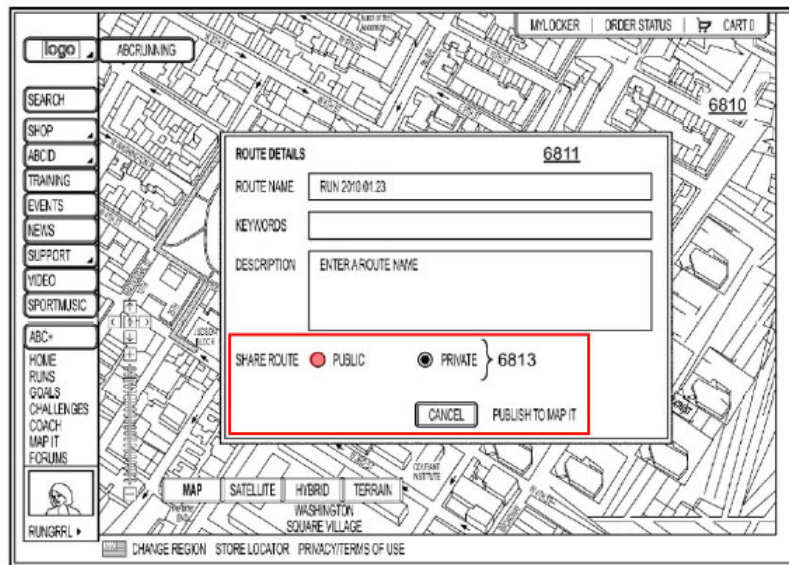


FIG. 68B

33. There are several other figures and passages that describe sharing option selections:

- “Additionally, a user may be able to select privacy settings in the interface of FIG. 53F. . . . If, on the other hand, a public setting is selected, other users may be able to publicly search for the user and view various types of information about the user. The public setting may also allow for sharing information on other sites such as social network sites and news feeds.” (*id.*, 45:22-30);
- “FIG. 53S illustrates that workout information may be sent directly to a news feed automatically upon the user logging into the news feed service. The logging into the news feed service may correspond to approval of the automatic sharing feature.” (*id.*, 45:31-38);
- “FIG. 53V, on the other hand, may allow the user to set various settings for information sharing on a network site such as a social network site like FACEBOOK. In particular, the user may be able to enable or disable activity broadcasts. Activity broadcasts may include the automatic sharing of completed runs, goals, and challenges.” (*id.*, 45:39-44);

- “Sharing workout data through a news feed surface such as TWITTER may be performed through an interface such as interface 5420 of FIG. 54C. In particular, interface 5420 may require a user’s login and password information to automatically access the news feed service. The news feed message may be an automatically generated message that includes workout and/or route information. For example, the message may be automatically generated based on one or more metrics recorded, a type of athletic activity performed and/or a location of the athletic activity performance. The user may be allowed to edit the message and/or create his or her own message.” (*id.*, 46:6-17);
- “FIG. 77 illustrates an example synchronization setting interface through which a user may configure the application to automatically share certain types of information. Option 7701 specifies whether automatic sharing and synchronization of workouts in general is to be performed while options 7703 and 7705 allow the user to individually configure sharing of specific types of information such as map information and pace data. . . . In some instances, when auto share option 7701 is turned off, the information specific options 7703 and 7705 may be turned off automatically as well. Similarly, if the auto share option 7701 is turned on, the information specific sharing options 7703 and 7705 may be turned on automatically in response. By allowing the setting of automatic sharing options, not only might the user be able to share information without having to manually designate every workout, but the user is able to customize the shared information and features.” (*id.*, 47:67-48:3);
- “FIG. 82 illustrates an example application configuration interface 8201 that may be used to modify sharing parameters and to confirm sharing permissions. . . . Several options may be prepopulated in section 8203 including public (e.g., everyone on the social networking site or community system), friends of friends, friends and the social networking system and friends. . . . For example, a user may define his or her own groups and categorize other users (e.g., friends) in those groups. The user may then select sharing permissions or parameters based on the user-defined groups.” (*id.*, 53:27-52);

- Figs. 53F, 53S, 53V, 54C, 77, and 82 (below).

These sharing option selections would be excluded under Nike's and Dr. Stone's constructions.

Excluded under Nike's construction



FIG. 53F



FIG. 53S



FIG. 53V



FIG. 54C

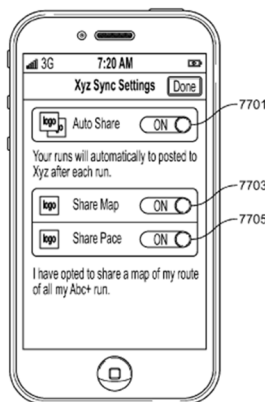


FIG. 77

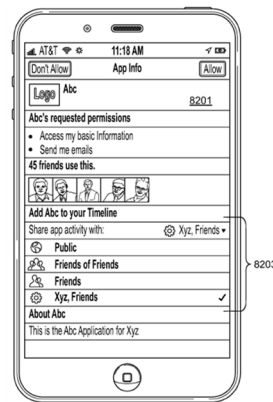


FIG. 82

34. Dr. Stone argues that the '220 discloses “two distinct types” of sharing option selections: an “automatic” sharing and a sharing “in response to receiving a user command or confirmation.” (Ex. 2001, ¶59.) I disagree. The '220 specification discloses multiple types of sharing option selections. Dr. Stone alleges that the specification discusses “in response to receiving” once, as part of the discussion of Figs. 55A and 55B. (Ex. 2001, ¶58.) But nothing in the specification, including the claims, or Figs. 55A and 55B themselves and their discussion, suggests that “automatic” is distinct from “in response to receiving a sharing option.”

III. JOHNSON

A. Johnson Teaches “record athletic activity performed by a user” (Element [11C])

35. Dr. Stone argues that Johnson does not teach element [11C] based on his construction of “record.” (Ex. 2001, ¶¶64-65.) But as discussed in paragraphs 13-29, “record” for the '220 patent means save. Johnson discloses saving athletic activity performed by a user. (Petition, 28; Ex. 1003, ¶55.) Nike and Dr. Stone agree. (POR, 23; Ex. 2001, ¶¶61, 63, 64.) Thus, Johnson discloses element [11C].

36. Dr. Stone states that Johnson’s athletic data display configuration device 601 “only receives and displays athletic activity data that it ‘receives’ from a separate ‘collection’ device.” (Ex. 2001, ¶64.) However, Figure 6 (below) and

[0088] of Johnson show and describe device 601 (green) as storing (recording) athletic data.

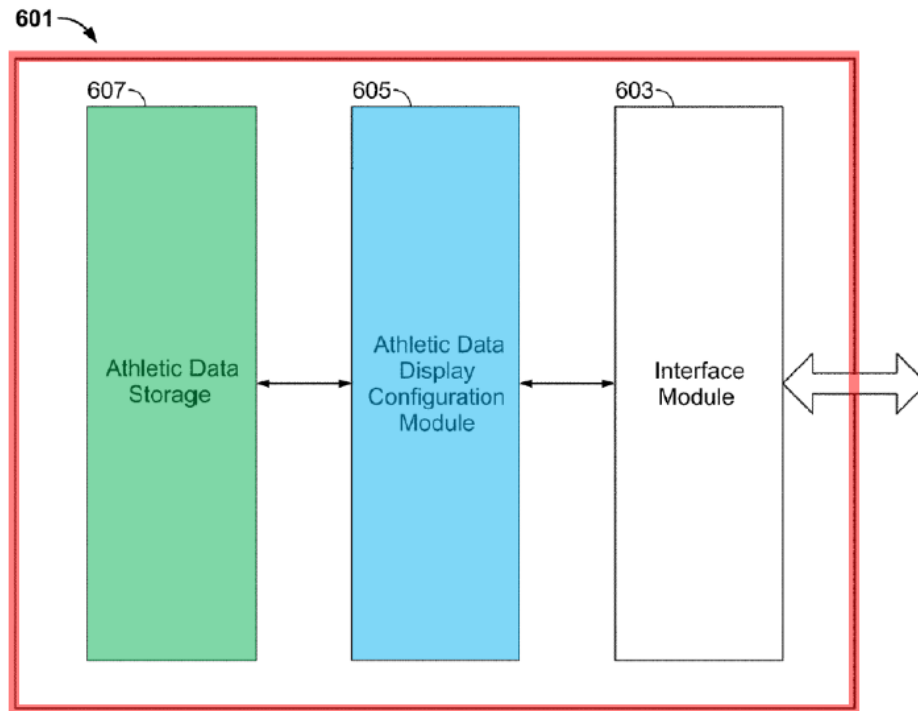


FIG. 6

B. Johnson Teaches “in response to receiving the sharing option selection” (Element [11E])

37. Dr. Stone argues that Johnson does not teach “in response to receiving the sharing option selection” (part of element [11E]) based on his construction of the term. (Ex. 2001, ¶68.) But as discussed in paragraphs 30-34, “in response to receiving the sharing option selection” for the ’220 patent includes an automatic sharing option selection. Johnson discloses an automatic sharing option selection. (Petition, 29-31; Ex. 1003, ¶¶66, 67, 69-72.) Nike and Dr. Stone agree. (POR, 25-27; Ex. 2001, ¶68.) Thus, Johnson discloses element [11E].

38. Johnson also teaches “in response to receiving the sharing option selection” under Dr. Stone’s construction. Johnson discloses three sharing option selection buttons that the user clicks on. For example, the “Brag to Friend” interface includes a “BRAG TO FRIENDS” (red) button (Figure 21 (below)) that the user clicks on. (Ex. 1003, ¶¶69.) And the interface 4300 (Figure 43 (below)) includes a “Share this Run” (red) button and a “Blog Promotion” 4325 (blue) button that the user clicks on. (Ex. 1003, ¶¶70-71.) These buttons are sharing option selections because they provide the user with a selection of whether to share. I understand that Dr. Stone does not dispute that a button that the user clicks on is a “sharing option selection.”

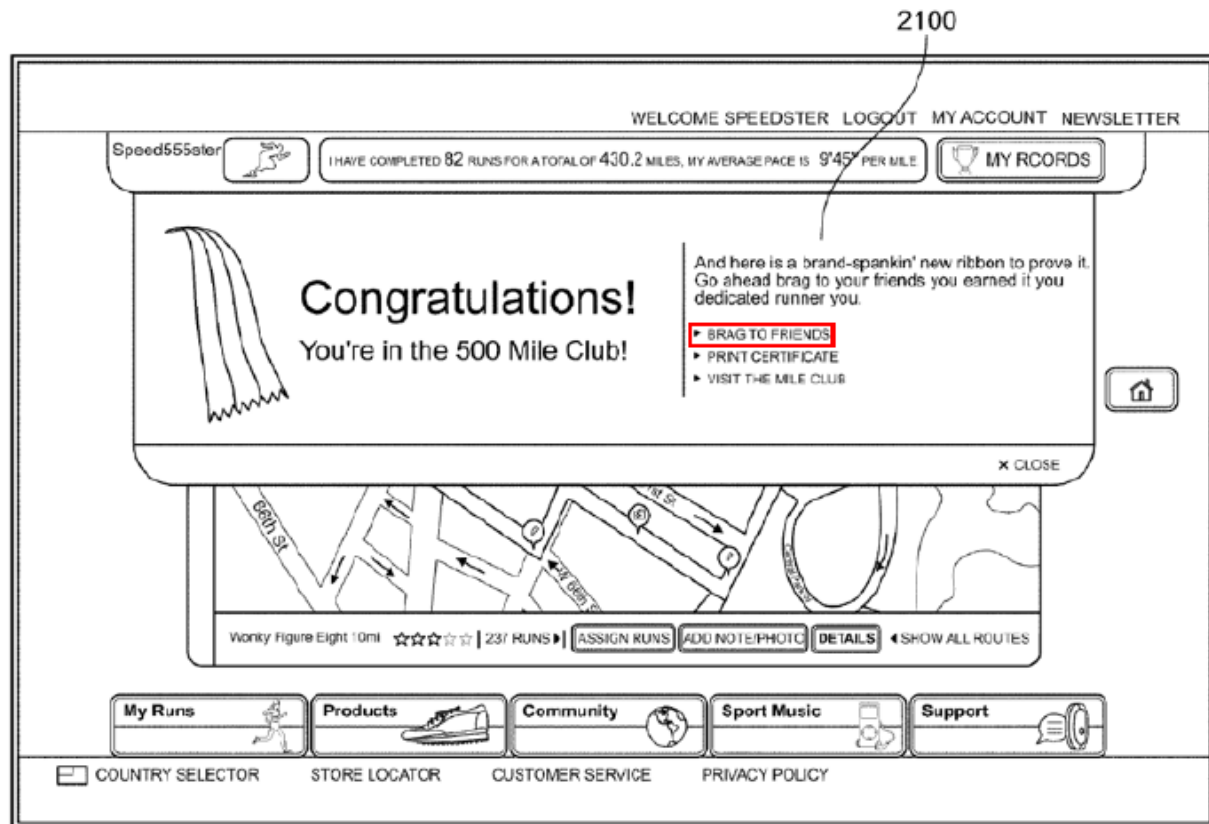
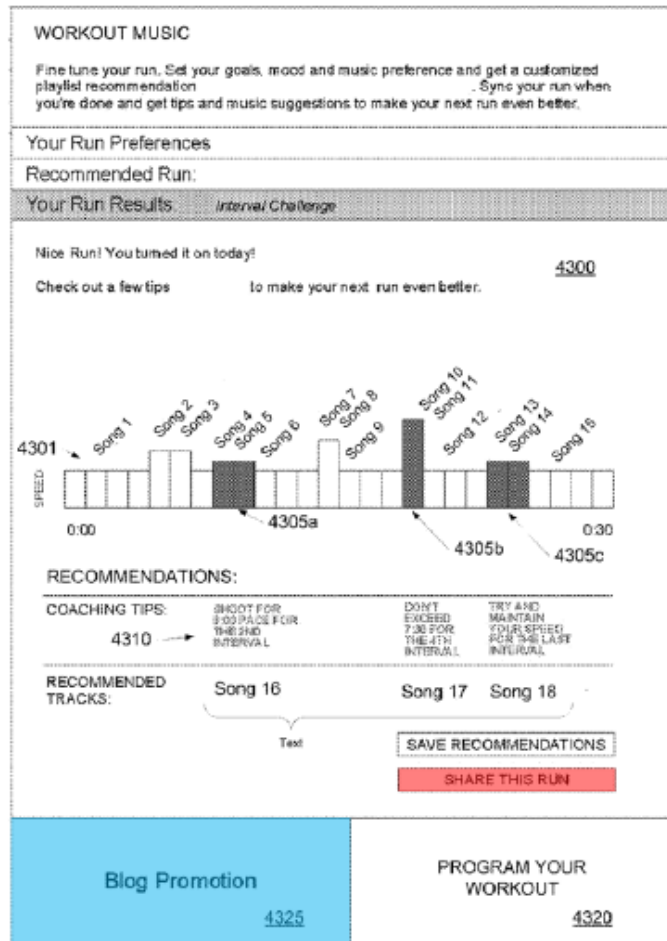


FIG. 21



39. For the Leaderboard interface, Johnson discloses “the participating users may be only those users who agree in advance to have their data shared with other users, or those users who do not specifically indicate that they wish for their athletic data to be private.” (Ex. 1004, [0135]; Ex. 1003, ¶66.)

C. Johnson Teaches “a social networking site viewable by one or more users” (Element [11E])

40. Dr. Stone argues that lululemon did not show that Johnson’s “Brag to Friends” and “Share this Run” interfaces are “social networking site[s] viewable by one or more other users.” (Ex. 2001, ¶72.) However, I discussed these interfaces

at ¶¶69-71 of my opening declaration (Ex. 1003). I also provided testimony about the “Share this Run” interface, where “clicking on either button, device 601 would transmit the user’s data from memory to a public page of the social networking site.” (Ex. 2002, 201:22-202:3.)

41. For the “Blog Promotion” interface, Dr. Stone argues that blog 2900 in Figure 29 is separate and different from a social networking page. (Ex. 2001, ¶73.) I disagree. Johnson discloses “a user, athlete, or runner may include a blog 2900 in their . . . social networking page.” (Ex. 1004, [0067].) Reading this passage, a POSITA would expect, that once the user decides to share via a sharing option selection, the blog 2900 would be in their social network page.

42. Dr. Stone also argues that Figure 29 is a different embodiment than Figure 43. (Ex. 2001, ¶73.) I disagree. As discussed in my opening declaration, blog 2900 is “the blog in Figure 29 that device 601 has transmitted user data from storage to the user’s blog.” (Ex. 1003, ¶72.) I further explain that Johnson discloses “[t]he user may further be provided option[] . . . 4325 . . . to post comments or a report about the completed workout.” (*Id.*, ¶72 (citing Ex. 1004, [0183]).) Option 4325 in Figure 43 is a sharing option selection that leads to the blog 2900 in Figure 29 (once the user decides to share), so the two figures are connected together as an example of Johnson’s invention.

43. Even if Figures 43 and 29 are different embodiments (they are not), a POSITA would have considered combining them. In Johnson’s description of Figure 29, it discloses “[t]hough described with reference [to] 2900, it 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, [0167].) In Johnson’s description of Figure 43, it discloses “[t]he user may further be provided option[] 4325 . . . to post comments or a report about the completed workout.” (*Id.*, [0183].) A POSITA would understand that “[a]ny athletic information described herein” (Figure 29) refers to the “completed workout” (Figure 43). Thus, it would have been readily apparent to combine Figures 43 and 29. I explained this combination during my deposition: “when the user clicks on 4325 [in Figure 43], it’s about a blog, promoting the run on the blog. And -- and, really the only figure, I believe, that -- that taught -- that shows the blog interface is Figure 29.” (Ex. 2002, 202:14-17.)

44. For the Leaderboard option, Dr. Stone argues that lululemon does not show that Rauchholz’s workout information is shared on “a social networking site viewable by one or more other users.” (Ex. 2001, ¶74.) But I explained this in my opening declaration and during my deposition. Johnson’s Leaderboard shows an “interactive comparison[] of a user’s athletic data with other users.” (Ex. 1003, ¶¶65-66; Ex. 2002, 205:22-206:1 (“so it’s clear that somebody’s sharing

information. If no one was sharing information, . . . you’d just see Rauchholz. But you clearly see other people in this top ten list.”.) “[I]nteractive comparison” means both the user (e.g., Rauchholz) and the “other users” are sharing workout information with each other. So, Rauchholz can see workout information shared by others, and others can see workout information shared by Rauchholz.

D. Johnson Teaches “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” (Claim 12)

45. Dr. Stone argues that Johnson does not teach claim 12 because each (what he refers to as) “tile” lists only one user. (Ex. 2001, ¶78.) But Dr. Stone is mischaracterizing the mapping laid out in the Petition. The 500-Mile Club is mapped to the “summary of one or more metrics from the recorded athletic activity.” Without agreeing with what a “tile” is, each “tile” is mapped to an “identifier[] of . . . [a] user[],” not a summary.

46. Johnson discloses a 500-Mile Club (summary), which a user becomes a member of when once the user runs 500 miles. (Petition, 38.) Figure 23 of Johnson shows 14 “tiles.” The 500-Mile Club (summary) is tagged with green tiles, such as “daDwag” (bottom left) as one identifier of a user, “User name” (top left) and “GoGoNYC” (bottom right) as identifiers of one or more other users. I understand that Dr. Stone agreed that “daDwag” and other tiles are tagged to the

500-Mile Club. (Ex. 1016, 70:24-72:16.) Since there are multiple (five) green tiles, Johnson discloses “identifiers of one or more other users.”

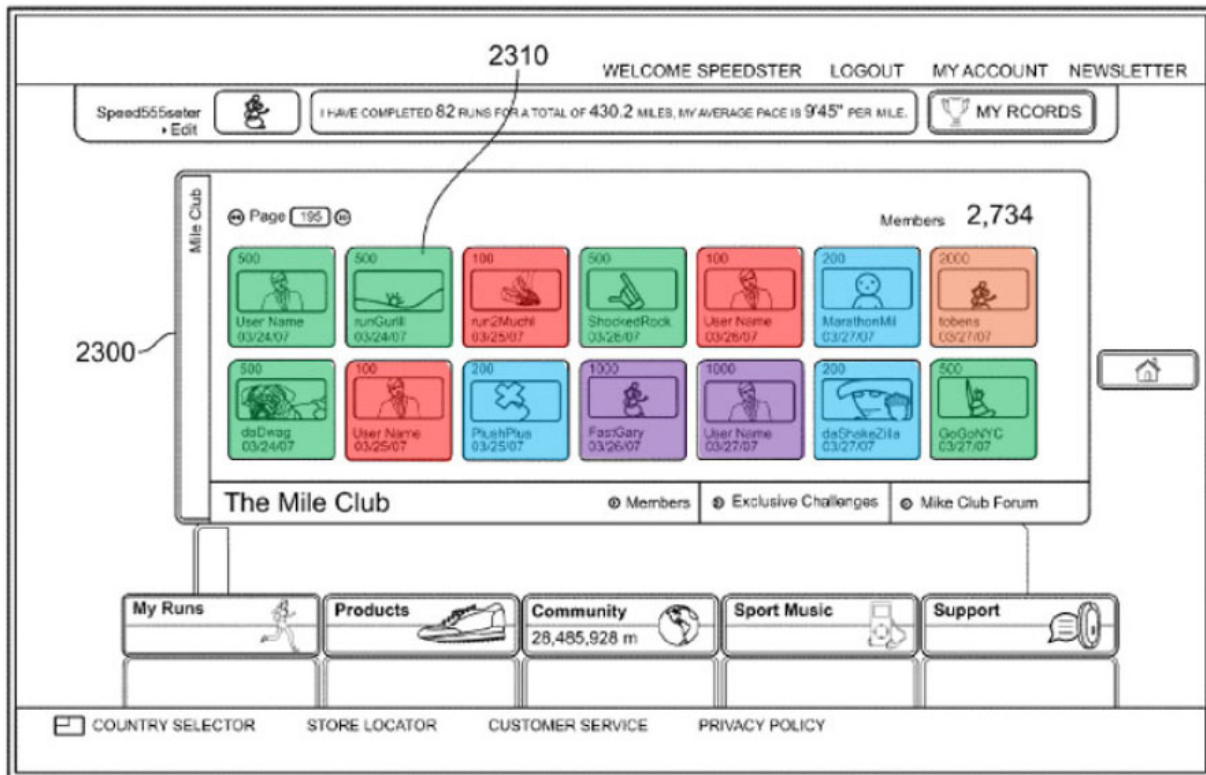


FIG. 23

IV. SUTTON

A. Sutton Teaches “record athletic activity performed by a user” (Element [11C])

47. Dr. Stone argues that Sutton does not teach element [11C] based on his construction of “record.” (Ex. 2001, ¶83.) But as discussed in paragraphs 13-29, “record” for the ’220 patent means save. Sutton discloses saving athletic activity performed by a user. (Petition, 46-47; Ex. 1003, ¶¶77, 89.) Nike and Dr.

Stone agree. (POR, 33; Ex. 2001, ¶¶83, 85.) Thus, Sutton discloses element [11C].

48. Dr. Stone contends that Sutton does not satisfy element [11C] (“record athletic activity”) because manually entered workout information is not workout information associated with “record[ed] athletic activity.” (Ex. 2001, ¶¶83-84.) I disagree. Like the ’220 specification, Sutton discloses manually entering activity data as recording athletic activity. For example, the ’220 specification discloses: “[t]he user location may automatically be determined using GPS (e.g., location, signal strength) *or based on manual input.*” (Ex. 1001, 20:52-54 (emphasis added).) As another example, the ’220 specification discloses “the note may be entered after the run and the location *manually specified by the user* using GPS coordinates.” (*Id.*, 40:65-67 (emphasis added).) In yet another example, “individuals might not be as motivated to exercise because of the extra effort that may be required in *recording and tracking workout results. For example, an individual may be required to manually enter workout information . . . into a database in order to track his or her progress.*” (Ex. 1001, 1:29-35 (emphasis added).) This passage means that “manually enter[ing] working information” is an “example” of “recording and tracking workout results.” Thus, Sutton discloses element [11C] just like how the ’220 discloses element [11C].

B. Sutton Teaches “transmit[ing] workout information associated with the recorded athletic activity” (Element [11E])

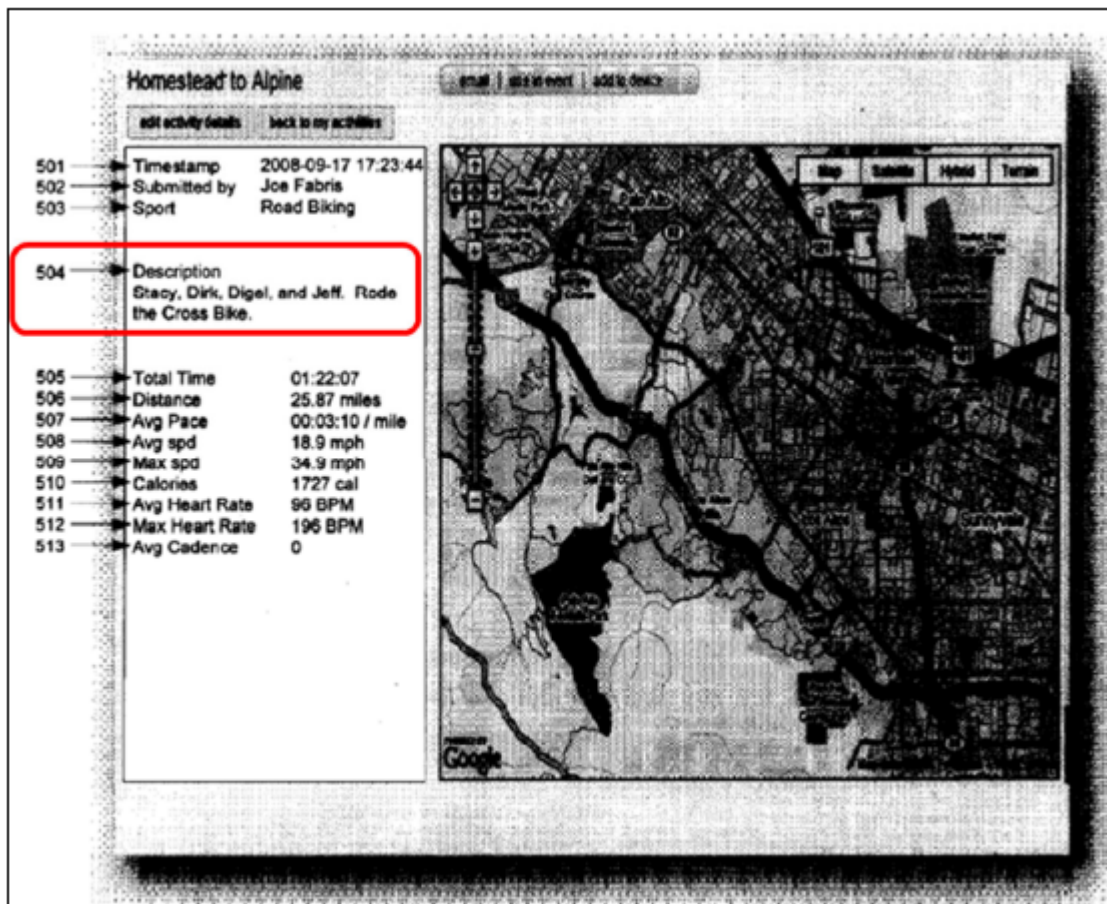
49. Dr. Stone admits that Sutton transmits workout information to a network page of a social networking site viewable by one or more other users (part of element [11E]). Dr. Stone’s argument regarding element [11E] is that Sutton’s manually entered workout information does not meet element [11C] (“record athletic activity data”). (Ex. 2001, ¶¶86-88.) As discussed in paragraph 48, Sutton discloses element [11C], and thus, element [11E].

C. Sutton Teaches “identifiers of one or more other users” (Claim 12)

50. Dr. Stone asserts that the people listed in Figure 5 (below) of Sutton are not “identifiers of . . . users.” (Ex. 2001, ¶89.) However, names are identifiers. Dr. Stone agrees. (Ex. 1016, 6:3-6.) As the ’220 specification explains, “if a user performed a run with a friend, the user may tag the run with the friend’s information.” (Ex. 1001, 39:51-52.) “The username or identifier may correspond to an identifier registered with an athletic tracking and monitoring service, a social networking site, a phone number, a nickname specified in a user’s phonebook or the like.” (*Id.*, 39:52-58.) Hence, according to the ’220 specification, a user’s information, such as name, phone number, nickname, etc. are identifiers.

51. Additionally, Sutton discloses its “invention relates generally to a computer system and method for capturing *users*’ activity.” (Ex. 1005, [0002])

(emphasis added); *see also id.*, [0004].) The trace map of Figure 5 captures the activity of the individuals listed, specifically, the road biking activity of Joe Fabris (user name 502), Stacy, Dirk, Digel, and Jeff. (*Id.*, Fig. 5.) Hence, a POSITA would have understood that the individuals listed in the trace map of Figure 5 are users.



52. Sutton further describes “FIG. 10 illustrates an exemplary data entry form for generating group commitments and tracking, according to one embodiment. User 101 may create an event for *other users* to join.” (Ex. 1005, [0084] (emphasis added).) In Figure 10, the “group event may show a trace map

1005 to give an overview of the course that the group will be hiking, riding, running, etc.” (Ex. 1005, [0084].) That is, Figure 10 depicts a data entry form for generating a group event. The data entry form allows a user of the group event to tag identifiers of other users. (*Id.*, Fig. 10.) In the example of Figure 10, Joe Fabris submitted the data entry form and tagged other users: Mitch Drew, Hank Lawson, Charles Alexander, Dirk Rohloff, Bert Keely, and Doug Steedman. Joe Fabris and Dirk [Rohloff] are identifiers of users tagged in both Figs. 5 and 10. Dr. Stone argued that the names do not overlap in his declaration, but then named “Dirk” as an overlapping name when asked during his deposition. (Ex. 2001, ¶91; Ex. 1016, 73:16-75:15.)

53. Dr. Stone argues that Figures 5 and 10 are “distinct embodiments.” (Ex. 2001, ¶91.) Figure 10 is for generating the group event including tagging identifiers of users before the group event. Figure 5 shows the activity performed by the group (whose identifiers are tagged) after the group event. The two figures follow the natural timeline of a group event (like a party). Thus, a POSITA would read the figures together.

54. The details such as the “Sport: Running” activity depicted in Figure 10 is just one example of a data entry form, which may show a proposed “trace map . . . that the group will be hiking, riding, running, etc.” (Ex. 1005, [0084].) The details such as the “Cross Bike” activity depicted in Figure 5 is just one

example of a completed “trace map of a user activity.” (*Id.*, [0063].) Given that Figure 10 occurs before the group event and Figure 5 occurs after, a POSITA would have combined the two figures since Sutton’s proposed trace map and completed trace map are directly related.

D. Sutton Teaches “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” (Claim 19)

55. Dr. Stone argues that Sutton does not teach claim 19, based on his understanding of the claim language, which I disagree with. (Ex. 2001, ¶93.) The plain language of the claim requires that the “social network message” (not its generation) be “based on a location at which the athletic activity was performed by the user.”

56. Sutton discloses generating a social network message based on a hand-traced map. (Ex. 1003, ¶131.) A map is based on location. Sutton discloses “*user 101 enters metrics* on a traced map (308, 309) to *complete the map data* along with the associated metrics.” (Ex. 1005, [0060].) Thus, the user is entering metrics to form the “hand-traced map,” as Sutton describes. Location information is needed to complete the map data, so the user enters location-based metrics. As a result, Sutton’s hand-traced map is based on location.

57. Dr. Stone argues that the Petition relies on Sutton’s generation of a map for meeting both the “workout information” of element [11E] and the “social

network message” of claim 19. (Ex. 2001, ¶95.) But Dr. Stone misunderstands the Petition. Sutton’s “user-provided data” is the “workout information” of element [11E] and the map is the “social network message” of claim 19. (Petition, 49, 55.)

E. Sutton Teaches “wherein transmitting the workout information includes modifying the social network message based on a received user edit” (Claim 20)

58. Dr. Stone allege that claim 20 requires a modification of a social network message after its creation. (Ex. 2001, ¶98.) I disagree with Dr. Stone’s understanding of claim 20. Claim 20 recites “wherein transmitting the workout information includes modifying,” which means “modifying the social network message” (claim 20) occurs as part of the transmission. (*See, e.g.*, Ex. 1001, 2:50-3:24, 62:9-33, 62:43-53, Figs. 70A, 70C.) Claim 20 depends from claim 19 due to both claims referring to the same “social network message,” where claim 19 relates to its generation and claim 20 relates to its modification.

F. Sutton Renders Obvious Claim 11

59. Dr. Stone argues that Sutton does not render obvious element [11E] based on his construction of “record” excluding manually entered workout information. (Ex. 2001, ¶¶102-109.) As discussed in paragraph 48, manually entered workout information satisfies element [11C]. Dr. Stone admits that Sutton discloses manually entered workout information. (*Id.*, ¶86.) Thus, Sutton renders obvious element [11E].

60. Dr. Stone also makes arguments related to Sutton’s automatic device transfer pathway, but these arguments are based on a mischaracterization of the Petition. Dr. Stone argues that the Petition alleges that a POSITA would have been motivated to show Figure 9 to the user on two separate occasions: before the workout and again after the workout. (Ex. 2001, ¶107.) Specifically, Dr. Stone alleges “[t]hen, after performing the activity, the user would have to return to the form to manually enter other information related to that workout,” but then fails to identify where this second occasion/after workout discussion came from. (Ex. 2001, ¶¶108-109.) The Petition does not mention showing Figure 9 to the user twice or after the workout. (Petition, 63.)

G. Sutton Renders Obvious Claims 12, 19, and 20

61. I understand that Nike’s arguments for Sutton obviousness of claims 12, 19, and 20 are the same as for Sutton anticipation. (POR, 47.) As discussed in paragraphs 50-58, Sutton teaches claims 12, 19, and 20, and thus renders obvious claims 12, 19, and 20.

V. SUTTON AND PLUS 3

A. Sutton and Plus 3 Render Obvious Claim 11

62. Dr. Stone’s arguments regarding the Sutton and Plus 3 combination and claim 11 are based on the same arguments that I discussed in paragraphs 47-49, 59, and 60. (Ex. 2001, ¶¶111-112.) As discussed, manually entered workout information satisfies element [11E] of claim 11. Dr. Stone admits that

Sutton discloses manually entered workout information. (Ex. 2001, ¶86.) Thus, Sutton and Plus 3 render obvious claim 11.

B. Sutton and Plus 3 Render Obvious Claim 14

63. Claim 14 requires the apparatus be 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.” Thus, the claim requires the apparatus “transmit a modification request,” but what the apparatus is not required to do is itself “remove the workout information from the social networking site,” as Dr. Stone argues. (Ex. 2001, ¶¶114-115.)

64. Dr. Stone argues that it is unclear from Plus 3’s website whether the shared activity is removed retroactively or prospectively. (Ex. 2001, ¶115.) I disagree. The Plus 3 website has a section titled “User Content Posted on the Site” including two paragraphs. (Ex. 1006, 17.) As the Plus 3 website explains, in the first paragraph, the user is “solely responsible for all content that you upload, publish or display (hereinafter, ‘post’) on or through the Services or the Site, or transmit to or share with other Users (collectively the ‘User Content’).” (*Id.*) So, Plus 3 allows user to post content (User Content) on their website.

65. In the middle of the second paragraph, it states that the user “may remove your User Content from the Site at any time.” (*Id.*) If the user posted User

Content on their website, then removing the User Content means the already posted and shared workout information is removed from the social networking site. The user removes User Content from the Site by having the apparatus transmit a modification request to the Plus 3 Network website to remove the workout information from the Plus 3 Network website (social networking site). (Ex. 1003, ¶¶129-130.)

C. Sutton and Plus 3 Render Obvious Claims 12, 19, and 20

66. For claims 12, 19, and 20 and the Sutton-Plus 3 combination, Dr. Stone makes the same arguments that were made with respect to Sutton. (Ex. 2001, ¶¶117, 118.) As discussed in paragraphs 50-58, Sutton discloses claims 12, 19, and 20. Thus, Sutton and Plus 3 render obvious claims 12, 19, and 20.

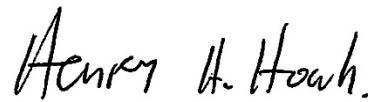
VI. SUTTON AND FRY

67. For claim 11 and the Sutton-Fry combination, Nike makes the same arguments that were made with respect to Sutton. (POR, 52.) As discussed in paragraph 48, manually entered workout information satisfies claim 11 of the '220 patent. Dr. Stone admits that Sutton discloses manually entered workout information. (Ex. 2001, ¶86.) Sutton satisfies claim 11. Thus, Sutton and Fry render obvious claim 11.

* * *

I declare that all statements made herein of my own knowledge are true and

that all statements made on information and belief are believed to be true, and that these statements were made with knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code.

A handwritten signature in black ink, reading "Henry H. Houh". The signature is written in a cursive style with a horizontal line underneath.

Dated: November 6, 2023

Dr. Henry H. Houh