

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LULULEMON ATHLETICA CANADA INC. AND LULULEMON USA INC.,

Petitioners,

v.

NIKE, INC.,

Patent Owner.

Case IPR2023-00180

Patent No. 10,232,220

PATENT OWNER'S PRESENTATION FOR ORAL ARGUMENT

**United States Patent and Trademark Office
Before the Patent Trial and Appeal Board**

***lululemon athletica inc. et al. v.
Nike, Inc***

**IPR2023-00180
U.S. Pat. No. 10,232,220**

**Patent-Owner's Presentation
February 14, 2023**

lululemon athletica inc. et al. v. Nike, Inc. IPR2023-00180 Patent No. 10,232,220 Demonstrative Ex. 2005



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- B. “in response to receiving the sharing option selection”

3. lululemon Failed to Prove Unpatentability by a Preponderance of the Evidence

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Overview of the '220 Patent and Instituted Grounds





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



Overview of Sutton



US 20090150178A1

(19) **United States**
(12) **Patent Application Publication** (10) **Pub. No.: US 2009/0150178 A1**
(43) **Pub. Date: Jun. 11, 2009**

(54) **METHOD AND SYSTEM FOR TRACKING PHYSICAL METRICS IN A SOCIAL COMMERCE SYSTEM**

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(21) **Appl. No.:** 12/329,320
(22) **Filed:** Dec. 5, 2008

Related U.S. Application Data
(60) Provisional application No. 60/992,552, filed on Dec. 5, 2007.

Publication Classification
(51) **Int. Cl.**
G06Q 50/00 (2006.01)
G06Q 90/00 (2006.01)
G06Q 30/00 (2006.01)
G01B 21/16 (2006.01)
G01C 22/00 (2006.01)
G01P 15/00 (2006.01)
G01P 11/00 (2006.01)
G01F 10/00 (2006.01)
G01C 21/00 (2006.01)
(52) **U.S. Cl.** 705/2; 705/1; 701/300; 705/14; 702/178; 702/158; 702/142; 702/160; 702/141

(57) **ABSTRACT**
A method and system for tracking physical metrics in a social commerce system is disclosed. According to one embodiment, the physical metric tracking system comprises a data registering unit that receives activity data by a user, a data processing unit that validates the activity data using a plurality of data validating algorithms and converts the validated data into a convertible value, and a storage that stores the activity data and the convertible value. The convertible value is traded with goods and services, or any other benefits in the social commerce system.

Flowchart 300:

```
graph TD
    301[Enter Activity Data 301] --> 302{User Data Device? 302}
    302 -- yes --> 310{Direct Connection? 310}
    302 -- no --> 303{Add Hand Traced Map? 303}
    303 -- yes --> 308[Trace Map 308]
    303 -- no --> 304[Edit Activity Data 304]
    308 --> 305[Enter Metrics 305]
    310 -- yes --> 311[Upload 311]
    310 -- no --> 312[Automatic Transfer 312]
    311 --> 305
    312 --> 305
    305 --> 304
    304 --> 305[Save Data 305]
    305 --> 306[Apply algorithms 306]
    306 --> 307[Communicate Information with User 307]
    307 --> 308[End 308]
```

lululemon athletica canada inc. and lululemon usa inc. Exhibit 1005 Page 1

Sutton, Ex. 1005



Claim Construction



“record”



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Patent 10,232,220 B2

Before MITCHELL G. WEATHERLY, CARL M. DeFRANCO, and
STEPHEN E. BELISLE, *Administrative Patent Judges*.

WEATHERLY, *Administrative Patent Judge*.

DECISION
Granting Institution of *Inter Partes* Review
35 U.S.C. § 314

Whether system 110 “records athletic activity” when it writes information about a user’s athletic activity into database 115 turns on the precise scope of “record” as recited in element 11C, and we invite both parties to brief the issue and identify probative evidence on the meaning of “record.”

Institution Decision, Paper 11, 12



11. An apparatus comprising:
a processor; and
a non-transitory, computer-readable medium storing computer-readable instructions that, when executed, cause the apparatus to:

record athletic activity performed by a user;
receive a sharing option selection configured to allow the recorded athletic activity to be shared; and
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.

'220 Patent, Ex. 1001, 68:15-27

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.

'220 Patent, Ex. 1001, 68:28-31



1. A method comprising:

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;

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

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.

'220 Patent, Ex. 1001, 67:10-26



BACKGROUND

While most people appreciate the importance of physical fitness, many have difficulty finding the motivation required to maintain a regular exercise program. Some people find it particularly difficult to maintain an exercise regimen that involves continuously repetitive motions, such as running, walking and bicycling. Additionally, oftentimes, 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 such as a number of miles run, a route run, an average heart rate and the like, into a database in order to track his or her progress. In another

'220 Patent, Ex. 1001, 1:29-35



BRIEF SUMMARY

According to one or more aspects, a user may record and track athletic activity using a mobile device having multiple types of location determination systems such as a global positioning system (GPS) and an accelerometer or other types of devices (e.g., pedometer) not dependent on remote systems. By 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. The mobile device may switch from using one device to the other device depending on the conditions. For example, if a GPS signal is lost, the accelerometer may be activated and used as back-up to provide workout related data. Once a GPS signal is reacquired, the system may begin recording the GPS data once again. The system may automatically switch

'220 Patent, Ex. 1001, 1:55-2:1

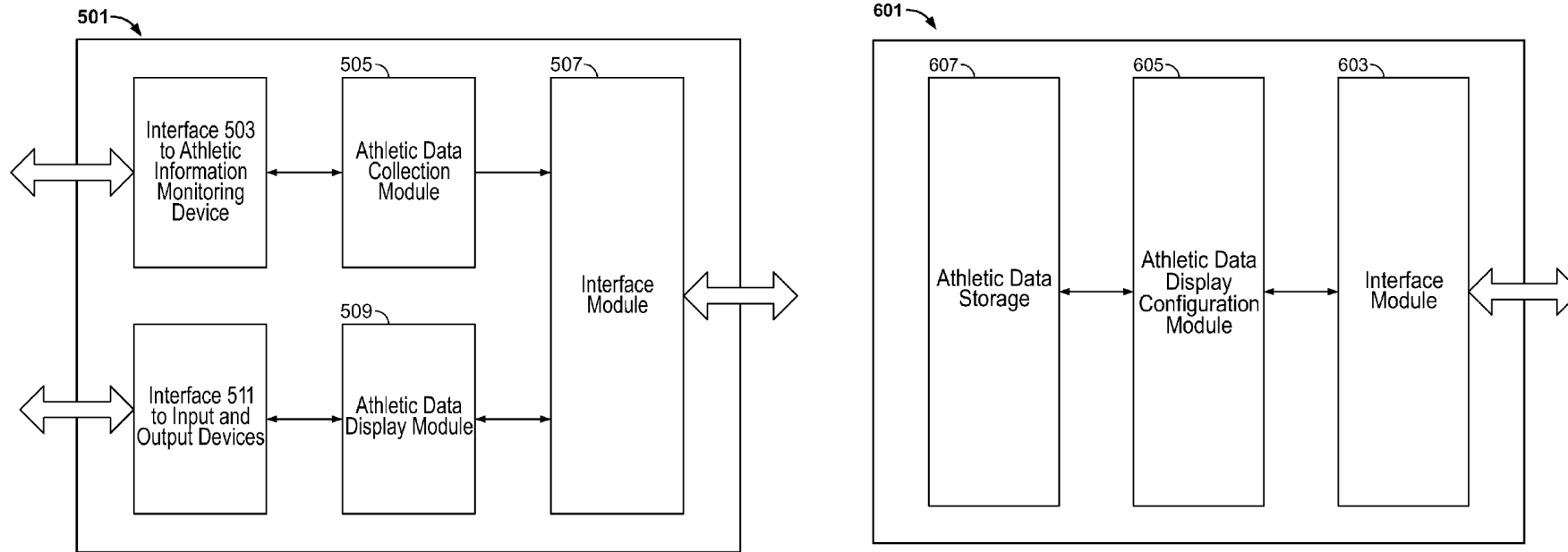


DETAILED DESCRIPTION

Athletic Activity Overview

Aspects of the disclosure relate to the measurement, collection, display and management of athletic and non-athletic information. As will be appreciated by those of ordinary skill in the art, athletic information must first be obtained from an individual person. With various implementations of the invention, one or more different athletic information monitoring devices may be used to measure and record athletic data corresponding to athletic activity performed by a person and convert that information into a form of currency. Typically, an athletic information monitoring device will incorporate a sensor or multiple sensors for measuring parameters relating to the person being monitored, and a computing device for processing the parameters measured by the sensor(s).

'220 Patent, Ex. 1001, 8:40-54

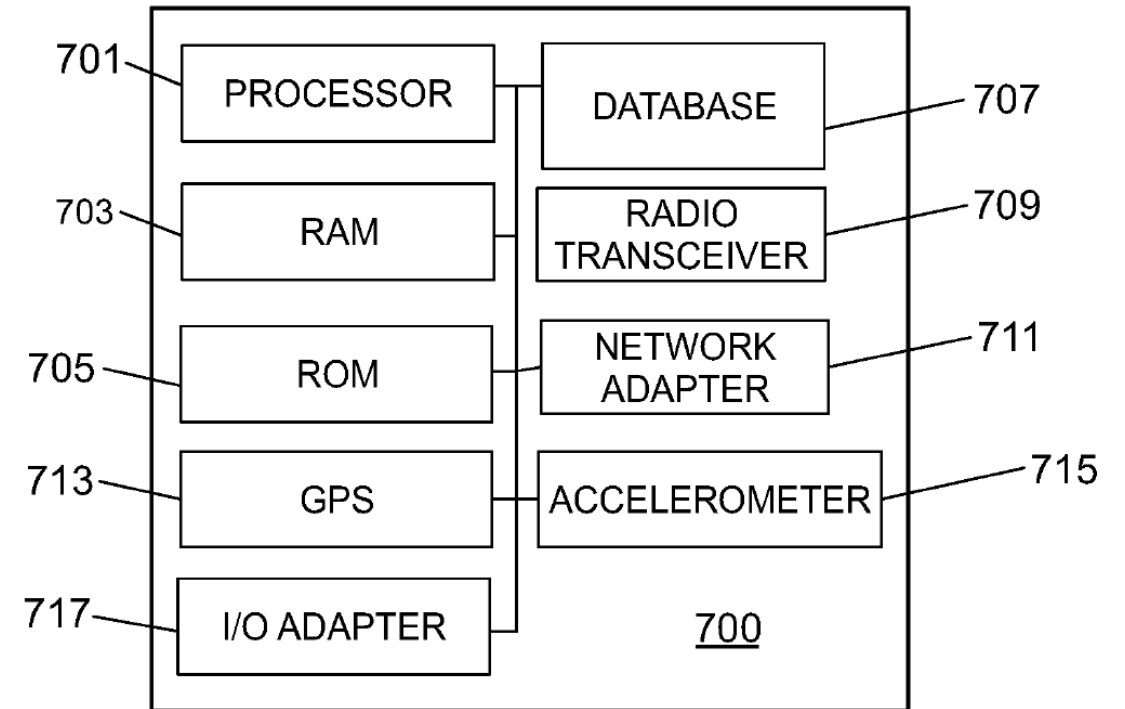


'220 Patent, Ex. 1001, Figs. 5, 6



The 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. For example, if an individual is running on a treadmill, GPS device 713 would likely be unable to detect or provide significant exercise data since the individual generally remains stationary and a GPS satellite signal may be unavailable. As such, the mobile device may instead use the accelerometer to determine a number of steps the individual

'220 Patent, Ex. 1001, 19:59-66

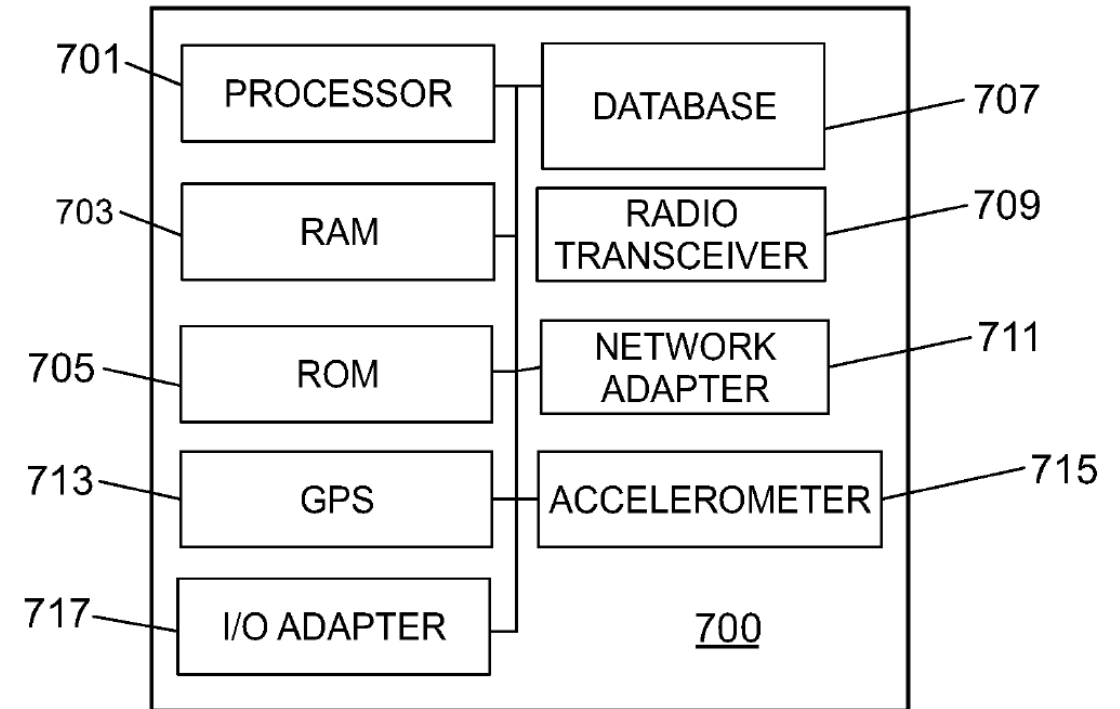


'220 Patent, Ex. 1001, Fig. 7



and the like. For example, if a GPS signal is low (e.g., below 50% strength, below 30% strength, below 10% strength, etc.), mobile device **700** may operate (e.g., record data from) both GPS device **713** and accelerometer **715** so that the accelerometer **715** data may supplement any potentially missing or inaccurate GPS information. Alternatively or

'220 Patent, Ex. 1001, 20:31-36



'220 Patent, Ex. 1001, Fig. 7



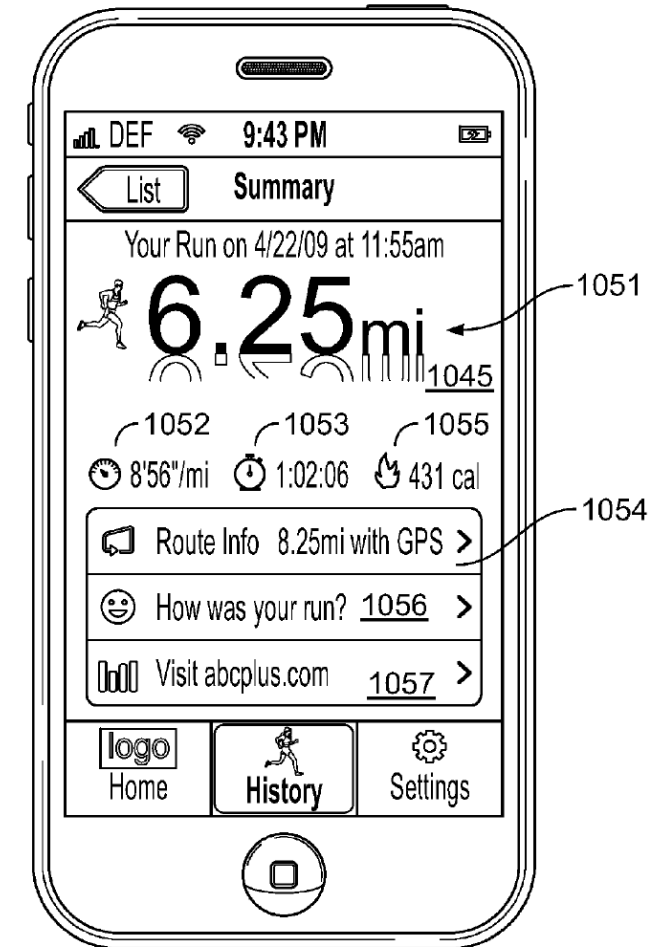
outdoor runs) and the like. As noted herein, in some arrangements, both accelerometer and GPS systems may be used to track various workout statistics if the workout allows for the use of GPS while only non-GPS devices may be used for indoor workouts. Using a device may include recording data from that device and instructing the device to communicate data at specified times (or continuously). Repeating a last

'220 Patent, Ex. 1001, 22:11-13



In FIG. 10E, interface **1045** displayed a workout summary upon completion or ending of the run. For example, summary interface **1045** includes a total distance run **1051**, pace **1052**, time spent running **1053** and calories burned **1055**. Interface **1045** may further display option **1054** for displaying a route that the user run if the run was recorded using a GPS device. Other options may include an option **1056** to

'220 Patent, Ex. 1001, 26:7-9

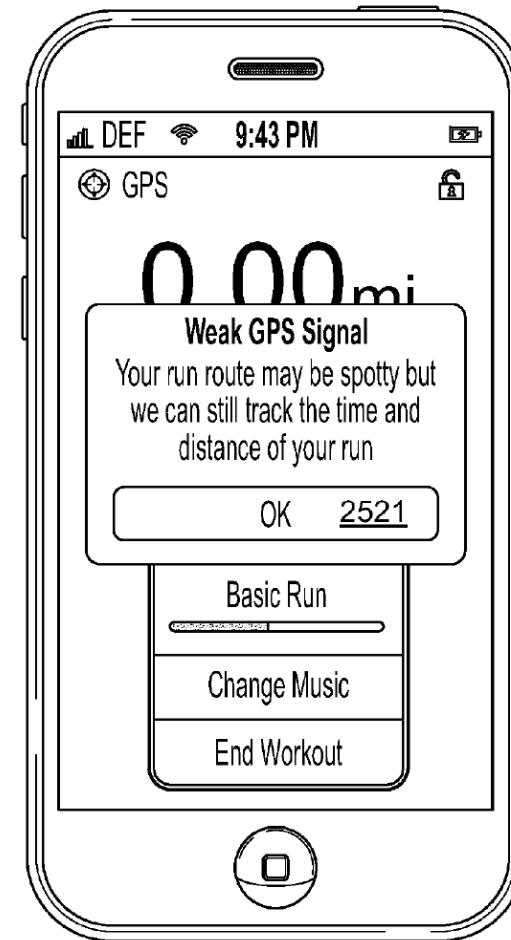


'220 Patent, Ex. 1001, Fig. 10E



In one or more arrangements, if the GPS signal is weak, a message may be displayed notifying the user of the same. For example, interface 2520 of FIG. 25E displays message 2521 that indicates the GPS signal is weak and that the time and distance of the run may still be tracked. For example, instead of using GPS data when it is unavailable, the device may activate and/or begin recording accelerometer data. In one or more arrangements, use of an accelerometer or other sensor (e.g., cellular triangulation) may also be indicated visually in an interface (e.g., using an icon, word, or the like).

'220 Patent, Ex. 1001, 36:22-32

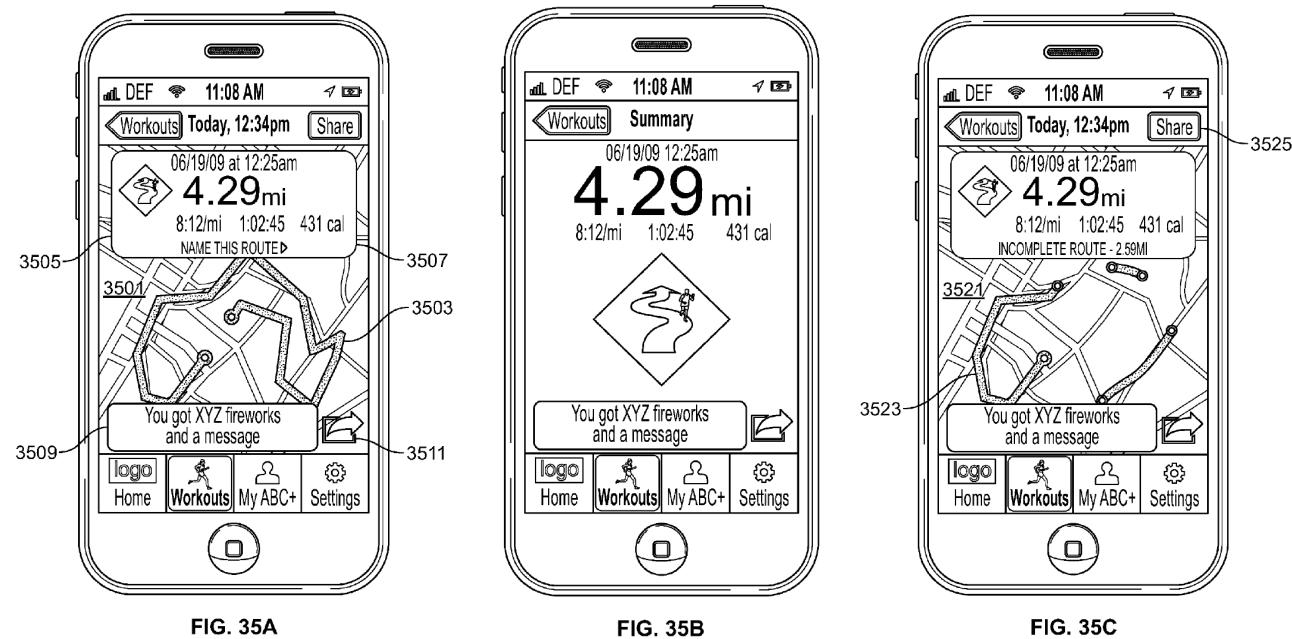


'220 Patent, Ex. 1001, Fig. 25E



FIGS. 35A-35C illustrate example route summary interfaces in which a map may be displayed if the run was recorded using a GPS or other location determination system while non-GPS recorded runs might not include a map. For

'220 Patent, Ex. 1001, 41:3-6



'220 Patent, Ex. 1001, Figs. 35A-35C



FIG. 36 illustrates an example route naming interface. In some examples, the route naming interface might only be provided if the user's workout route was recorded using GPS information. Otherwise, there might not be enough

'220 Patent, Ex. 1001, 41:21-24



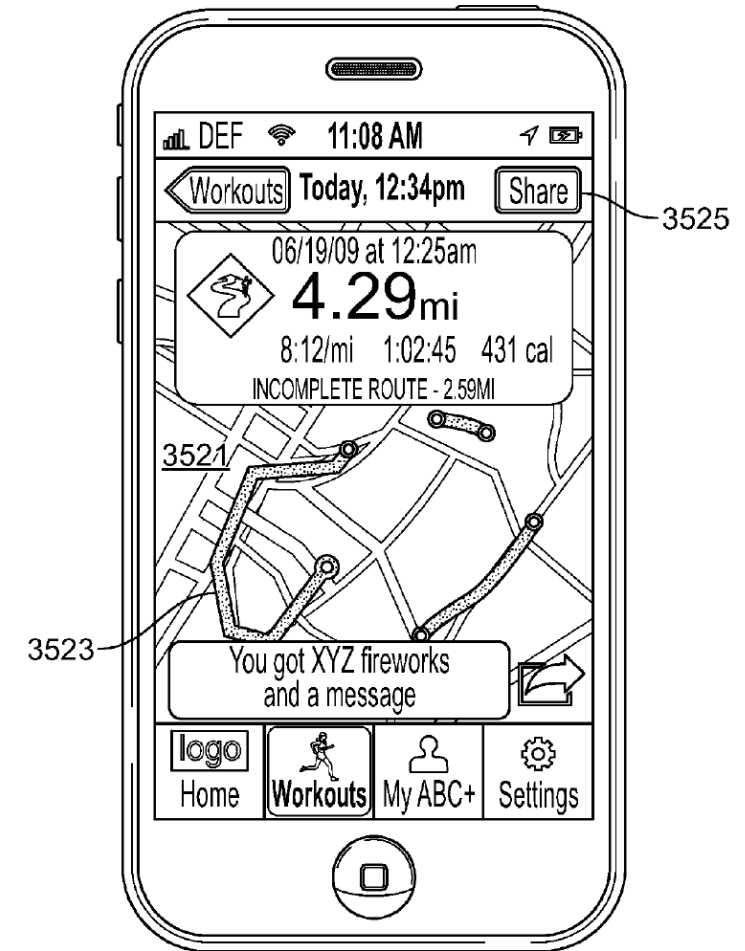
'220 Patent, Ex. 1001, Fig. 36

“record”



Portions of a route (e.g., route 3523) that are measured using cellular triangulation and accelerometer systems may be displayed differently (e.g., different color, different pattern) than portions of the route recorded using GPS data.

'220 Patent, Ex. 1001, 41:56-59



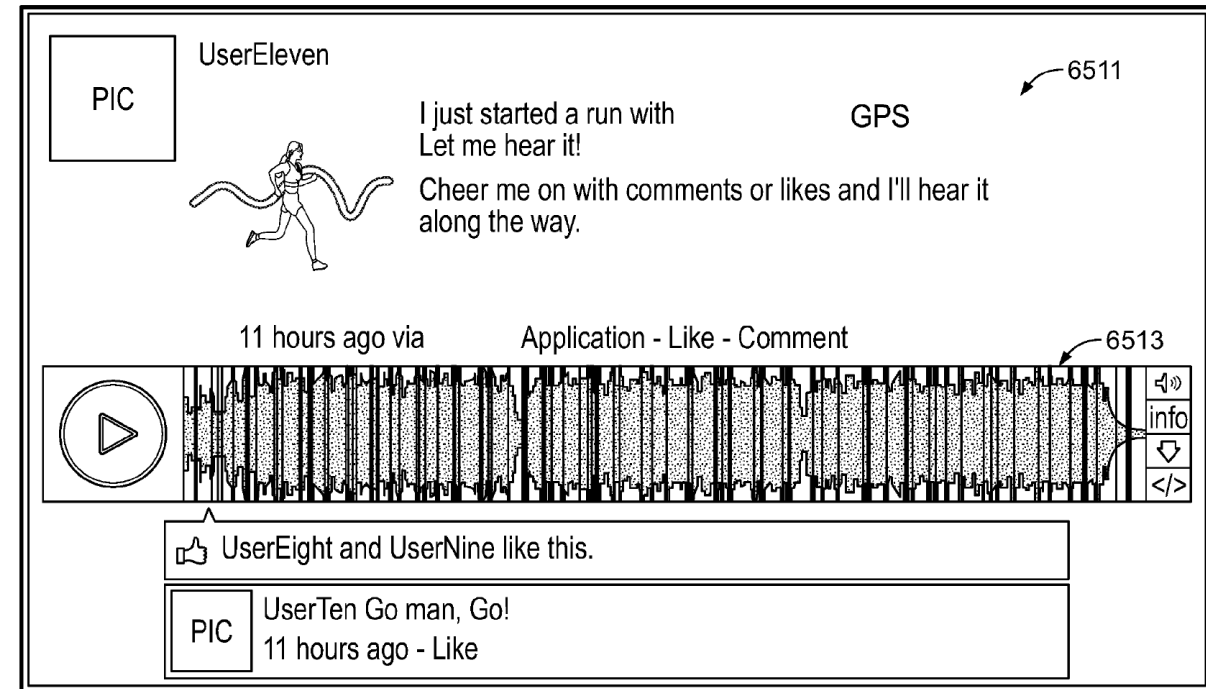
'220 Patent, Ex. 1001, Fig. 35C

“record”



FIG. 65D illustrates another example workout announcement with associated friend or other user feedback. Instead 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 to the user. In announcement 6511, for example, a friend has recorded an audio message 6513 in response to the announcement 6511. The audio

'220 Patent, Ex. 1001, 57:21-28



'220 Patent, Ex. 1001, Fig. 65D



record ^{1 of 4} verb

re·cord (ri-'kôrd )

recorded; recording; records

Synonyms of *record* >

transitive verb

1 a (1) : to set down in writing : furnish written evidence of

(2) : to deposit an authentic official copy of
record a deed

b : to state for or as if for the record

voted in favor but *recorded* certain reservations

c (1) : to register permanently by mechanical means

earthquake shocks *recorded* by a seismograph

(2) : **INDICATE, READ**

the thermometer *recorded* 90°

2 : to give evidence of

3 : to cause (sound, visual images, data, etc.) to be registered on something (such as a disc or magnetic tape) in reproducible form



“in response to receiving the sharing option selection”

“in response to receiving the sharing option selection”



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STEPHEN E. BELISLE, *Administrative Patent Judges*.

WEATHERLY, *Administrative Patent Judge*.

DECISION
Granting Institution of *Inter Partes* Review
35 U.S.C. § 314

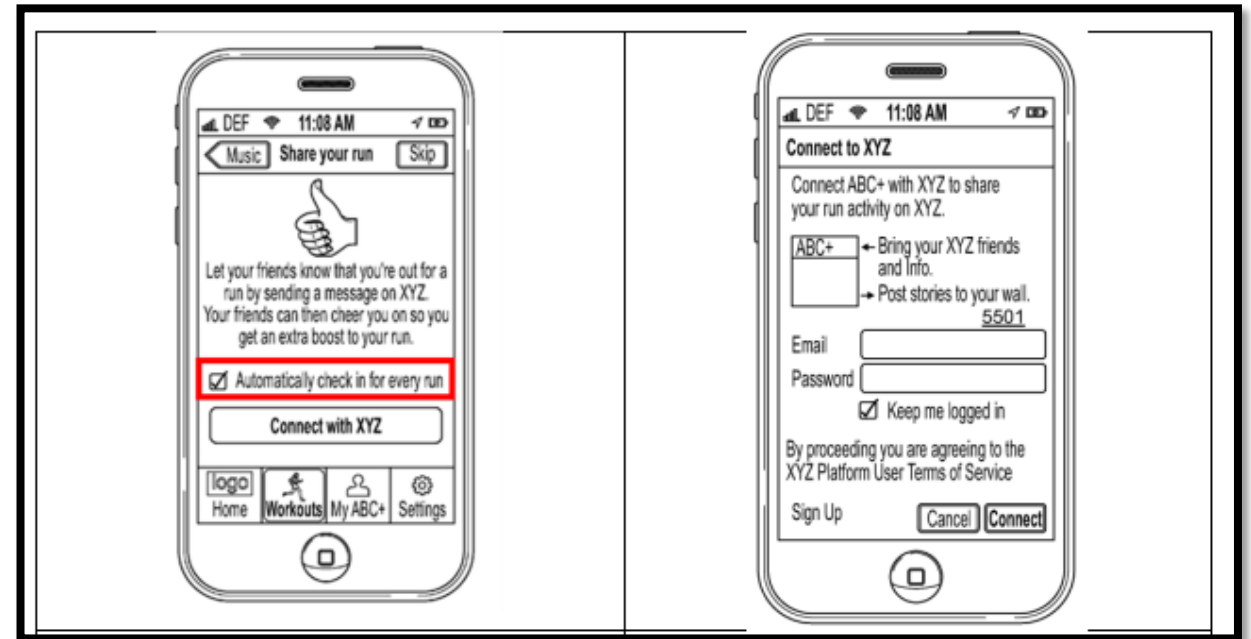
We invite both parties to expressly address at trial
the proper interpretation of “in response to receiving the sharing option
selection” as it appears in element 11E.

Institution Decision, Paper 11, 20

“in response to receiving the sharing option selection”



FIGS. 55A and 55B illustrate other example interfaces for sharing workout/run information. Interface 5501 of FIG. 55B, for example, allows the user to enter login information for a social networking site or other information outlet. The login information may be stored and used in association with a fitness monitoring service provider to synchronize and publish data automatically to the information outlet. Once the user is logged in, the system may automatically share new run information through the information outlet. In some arrangements, the information might only be shared in response to receiving a user command or confirmation.



'220 Patent, Ex. 1001, 46:20-30

Patent Owner Response, Paper 17, 20 (citing '220 Patent, Figs. 55A-B)



lululemon Failed to Prove Unpatentability by a Preponderance of the Evidence



Ground 1: lululemon failed to prove Johnson anticipates claims 11-13, 19



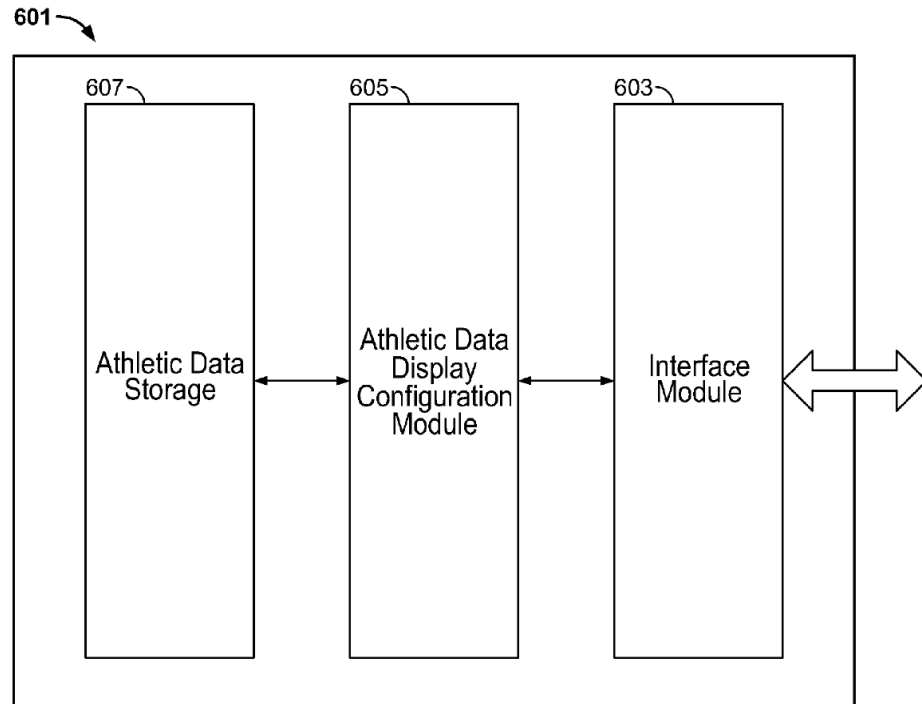
11. An apparatus comprising:
a processor; and
a non-transitory, computer-readable medium storing computer-readable instructions that, when executed, cause the apparatus to:
record athletic activity performed by a user;
receive a sharing option selection configured to allow the recorded athletic activity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

'220 Patent, Ex. 1001, 68:15–27



Device 601 records user athletic activity by writing it to memory.

Petition, Paper 2, 28



Johnson, Ex. 1004, Fig. 6

[0088] The athletic data display configuration device 601 also includes an athletic data display configuration module 605, and an athletic data storage 607. When the interface 603 of the athletic data display configuration device 601 receives athletic data from the athletic information collection and display device 501, it provides the received athletic data to the athletic data display configuration module 605. The athletic data display configuration module 605 may then store the athletic data in the athletic data storage 607 for future use. As will be discussed in more detail below, the athletic data display configuration module 605 also will retrieve athletic data from the athletic data storage 607, and configure the retrieved athletic data for display through one or more user interfaces in a manner that is meaningful to a user.

Johnson, Ex. 1004, ¶ 88



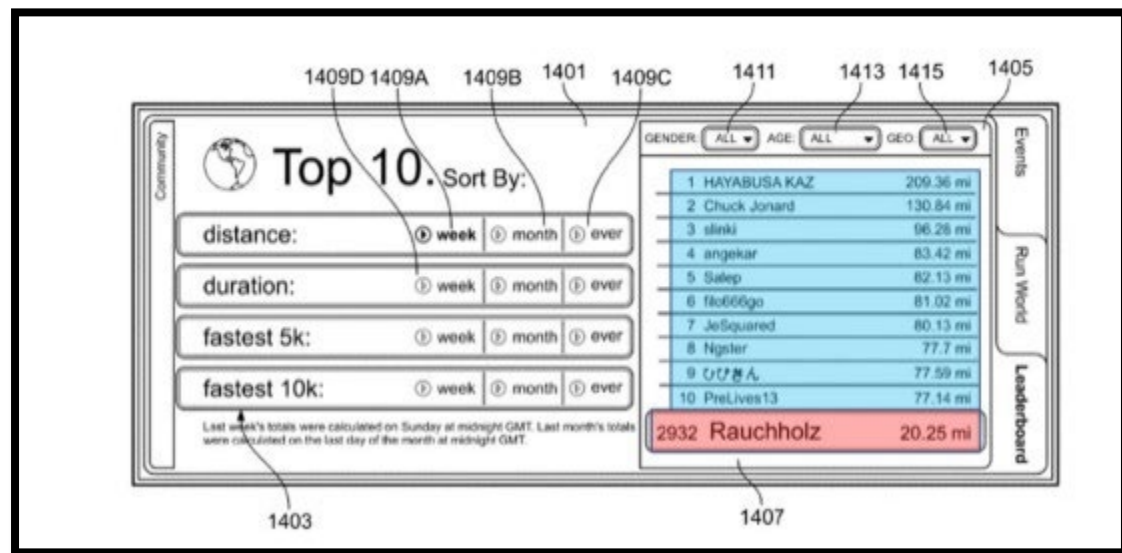
lululemon contends that “device 601 performs this [11E] limitation in response to all four sharing options”: (1) a “Leaderboard”, (2) a “Brag to Friends” option, (3) a “Share This Run” option, and (4) a “Blog Promotion” option. Petition, 32–38. lululemon’s position is flawed because it fails to show that any of the four options discloses transmitting workout information “in response to” receiving the sharing option selection under the proper construction.

Declaration of Dr. Stone, Ex. 2001, ¶ 66



68. **“Leaderboard” Option:** lululemon argues that users can share data to the Leaderboard if they “agree in advance to have their data shared with others.” Petition, 33 (citing Ex. 1004, ¶ 135). As explained above, “in response to receiving

Stone Declaration, Ex. 2001, ¶ 67



Patent-Owner’s Sur-Reply, Paper 26, 12 (annotating Johnson, Ex. 1004, Fig. 14A)

[0135] With some implementations of the invention, the participating users will be any user who provides athletic data to the athletic data storage 607 (or to an affiliated athletic data storage). For still other implementations of the invention, however, the participating users may be a subset of the all of the users who provide athletic data to the athletic data storage 607 or to an affiliated athletic data storage. For example, 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. Of course, still other criteria may be used to determine which users will be treated as participating users.

Johnson, Ex. 1004, ¶ 135



69. *“Brag to Friends,” “Share this Run,” Options:* In my opinion, lululemon fails to provide with particularity any evidence or argument that the alleged transmission of workout information occurs “in response to receiving” a sharing option selection. Petition, 32–38. |

Stone Declaration, Ex. 2001, ¶ 69



70. **Blog Post Option:** lululemon's only argument for Johnson's "Blog Post" option relates to whether the "Blog Promotion" text in Figure 43 or the "blog 2900" of Figure 29 identifies "a social networking site viewable by one or more other users." *Id.*, 37–38. lululemon provides no evidence or argument that the

Stone Declaration, Ex. 2001, ¶ 70

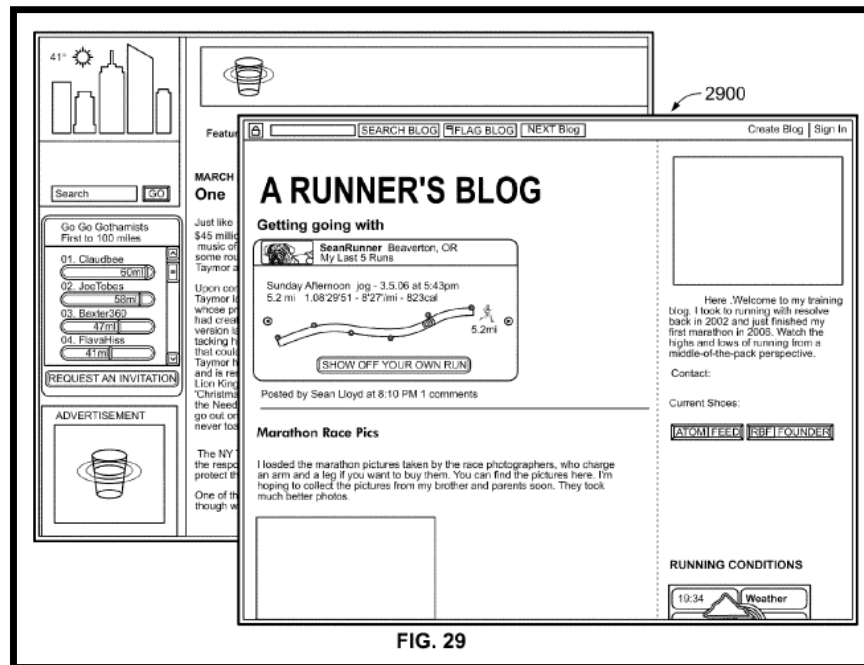


FIG. 29

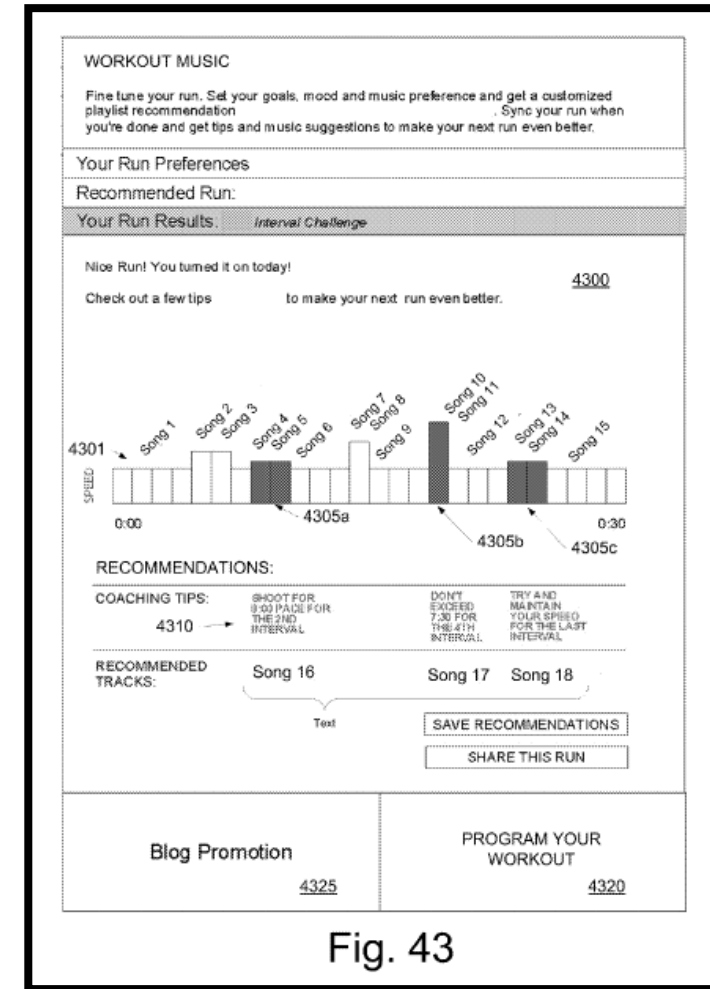


Fig. 43

Johnson, Ex. 1004, Figs. 29, 43



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.

'220 Patent, Ex. 1001, 68:28–31

lululemon failed to prove Johnson anticipates claim 12



(*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.

Petition, Paper 2, 39

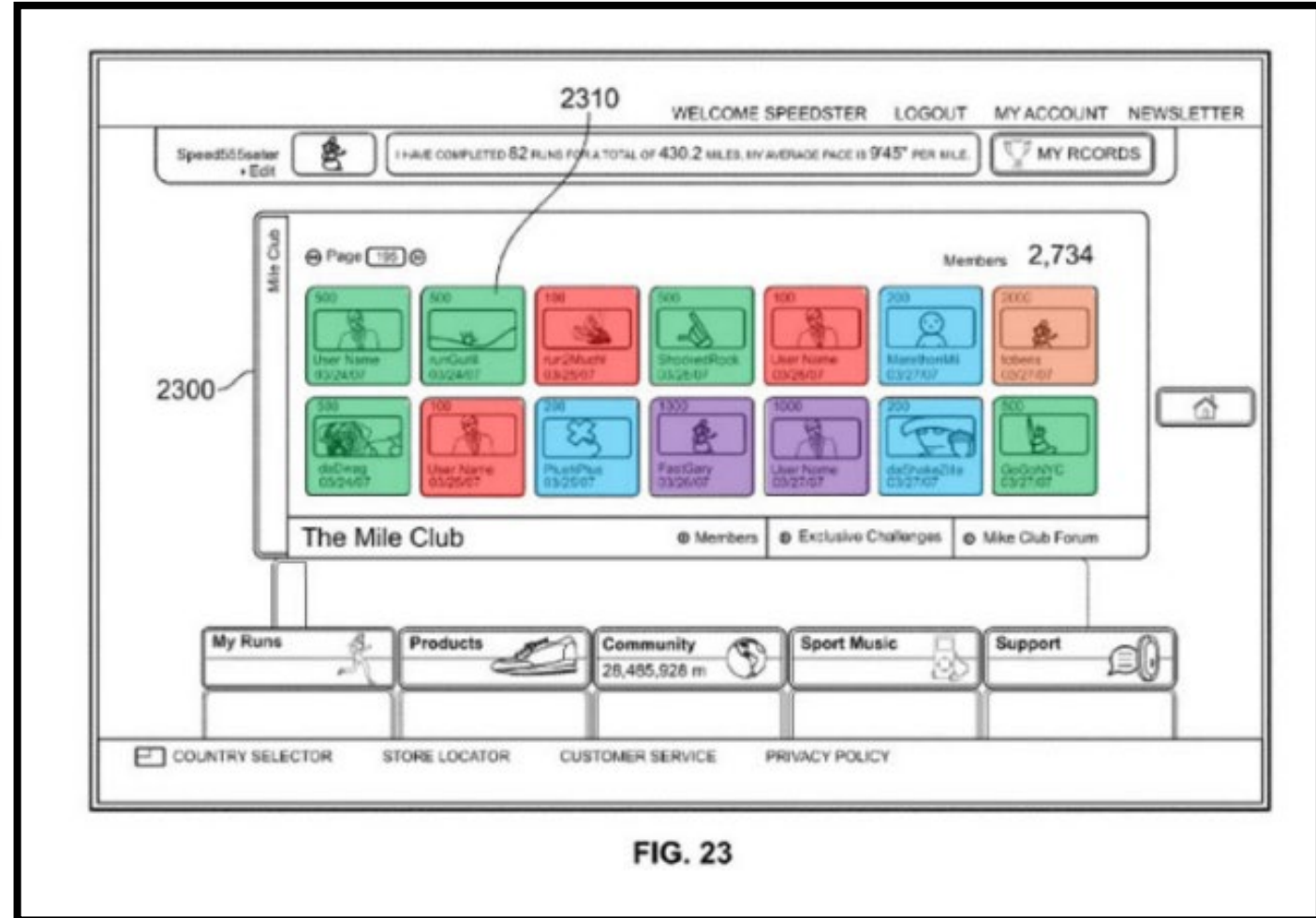


FIG. 23

Petition, Paper 2, 39 (annotating Johnson, Ex. 1004, Fig. 23)



Ground 2: lululemon failed to prove Sutton anticipates claims 11, 12, 19, 20



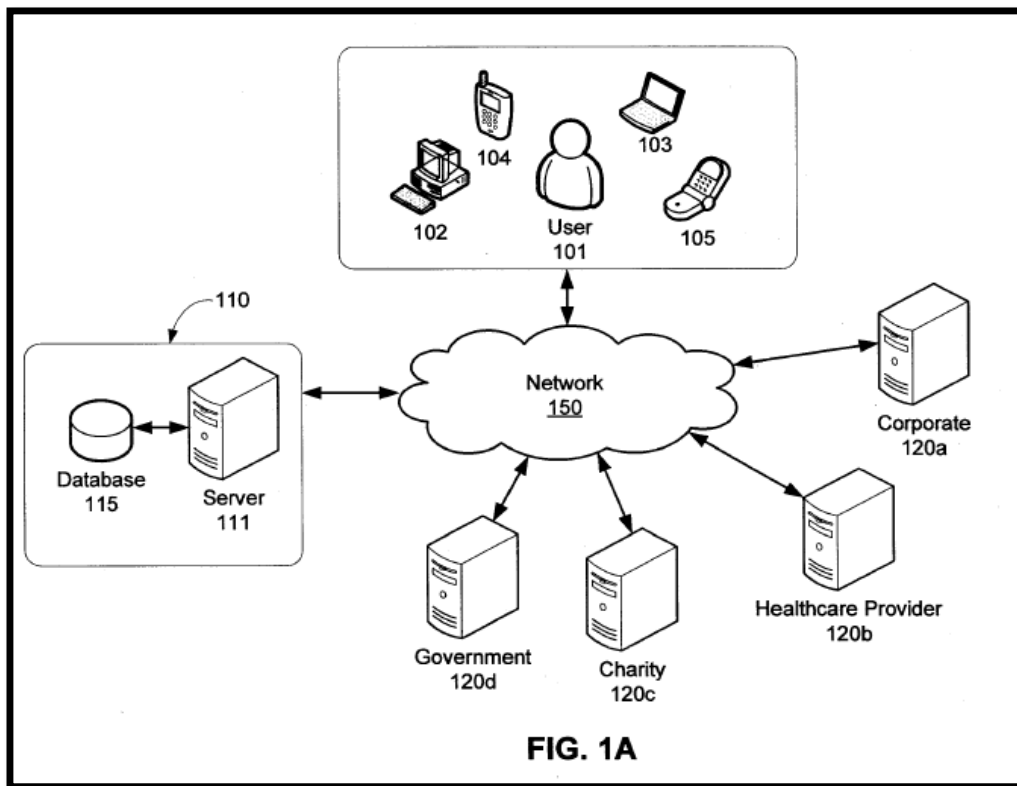
11. An apparatus comprising:
a processor; and
a non-transitory, computer-readable medium storing computer-readable instructions that, when executed, cause the apparatus to:
record athletic activity performed by a user;
receive a sharing option selection configured to allow the recorded athletic activity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

'220 Patent, Ex. 1001, 68:15–27

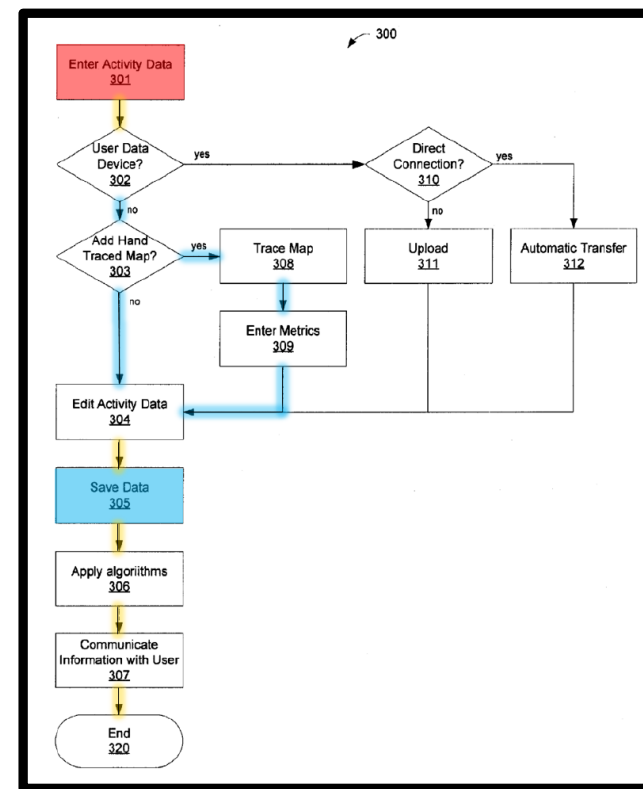


System 110 records athletic activity by writing user exercise and activity data to memory in database 115.

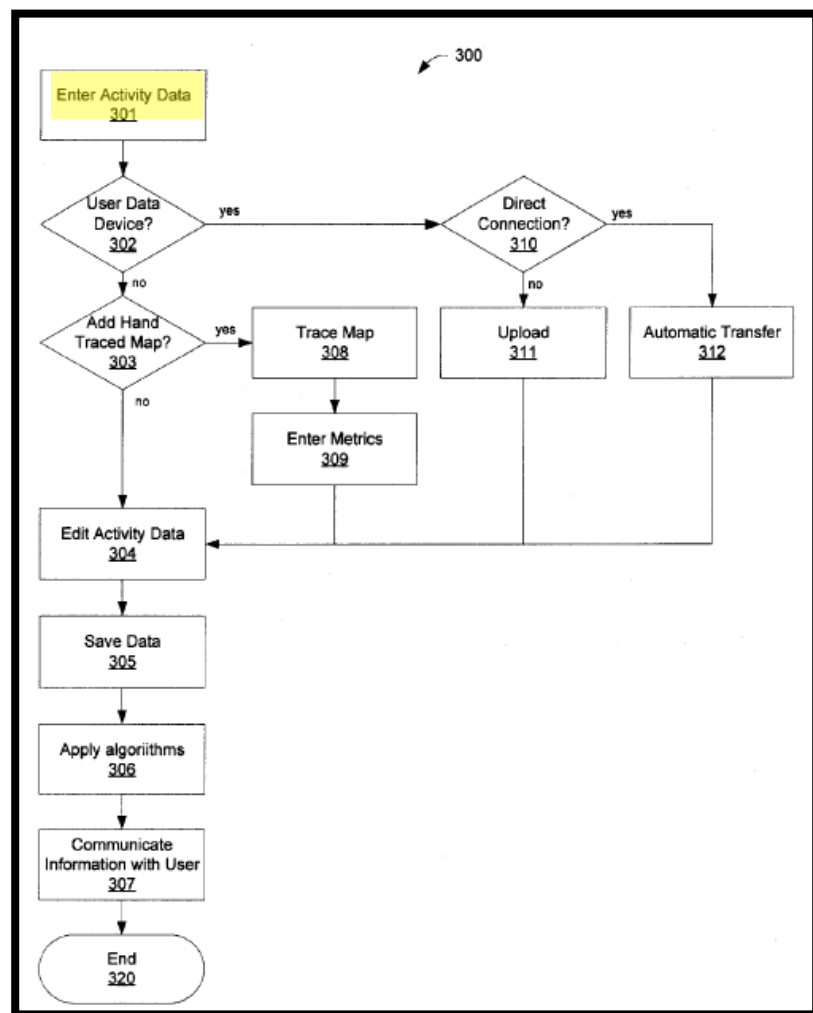
Petition, Paper 2, 46



Sutton, Ex. 1005, Fig. 1A



Petition, Paper 2, 46 (annotating Johnson, Ex. 1004, Fig. 3)



Sutton, Ex. 1005, Fig. 3

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)

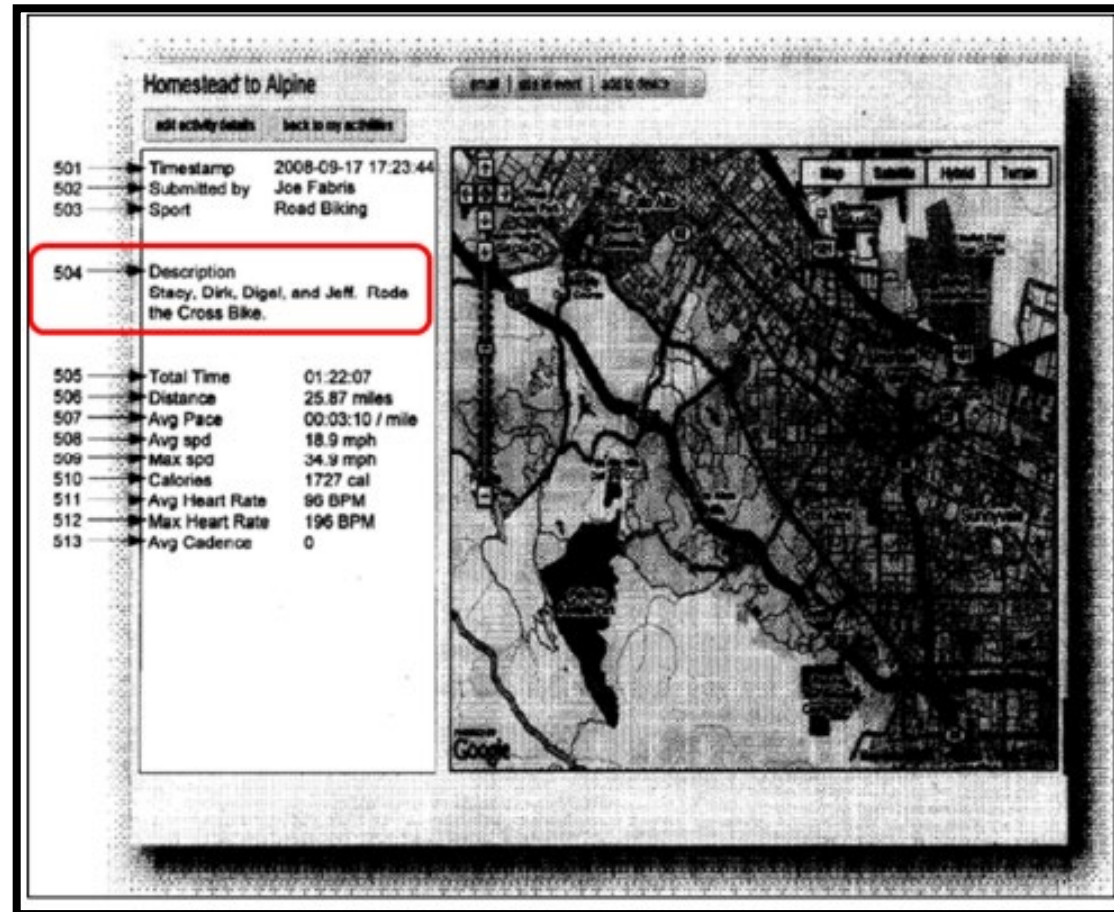
Save activity Back to my activities

Sutton, Ex. 1005, Fig. 9

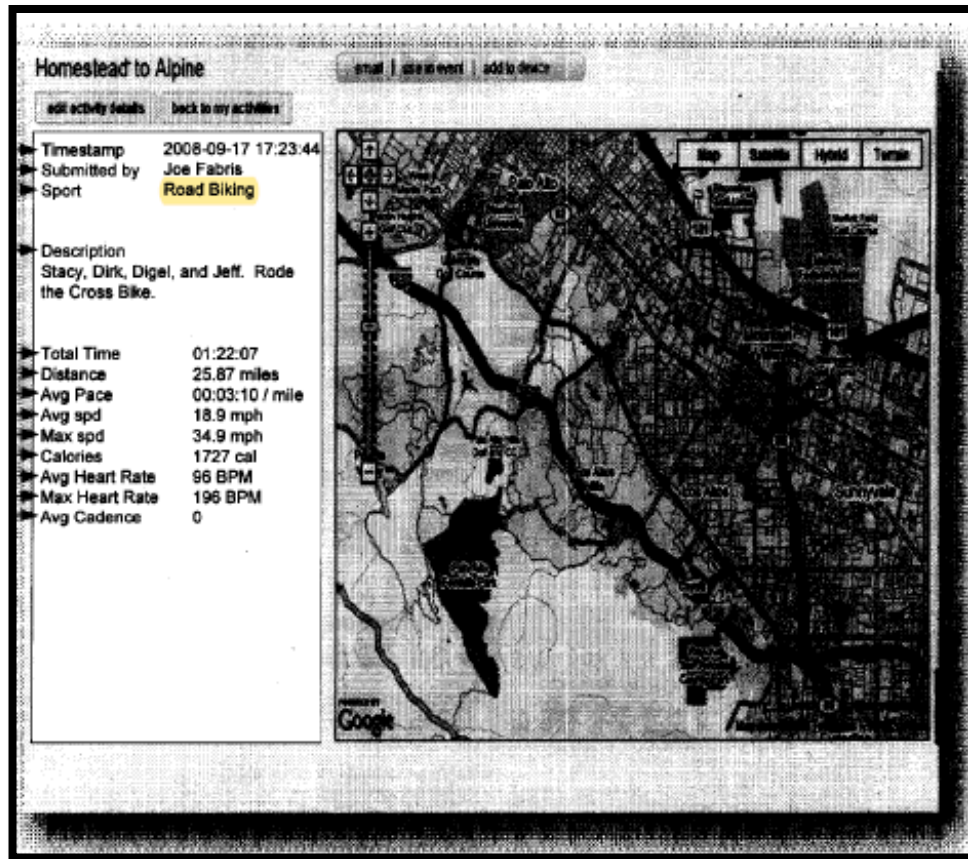


12. The apparatus of claim **11**, wherein the apparatus is further caused to tag a summary of one or more metrics from the recorded athletic activity with identifiers of one or more other users.

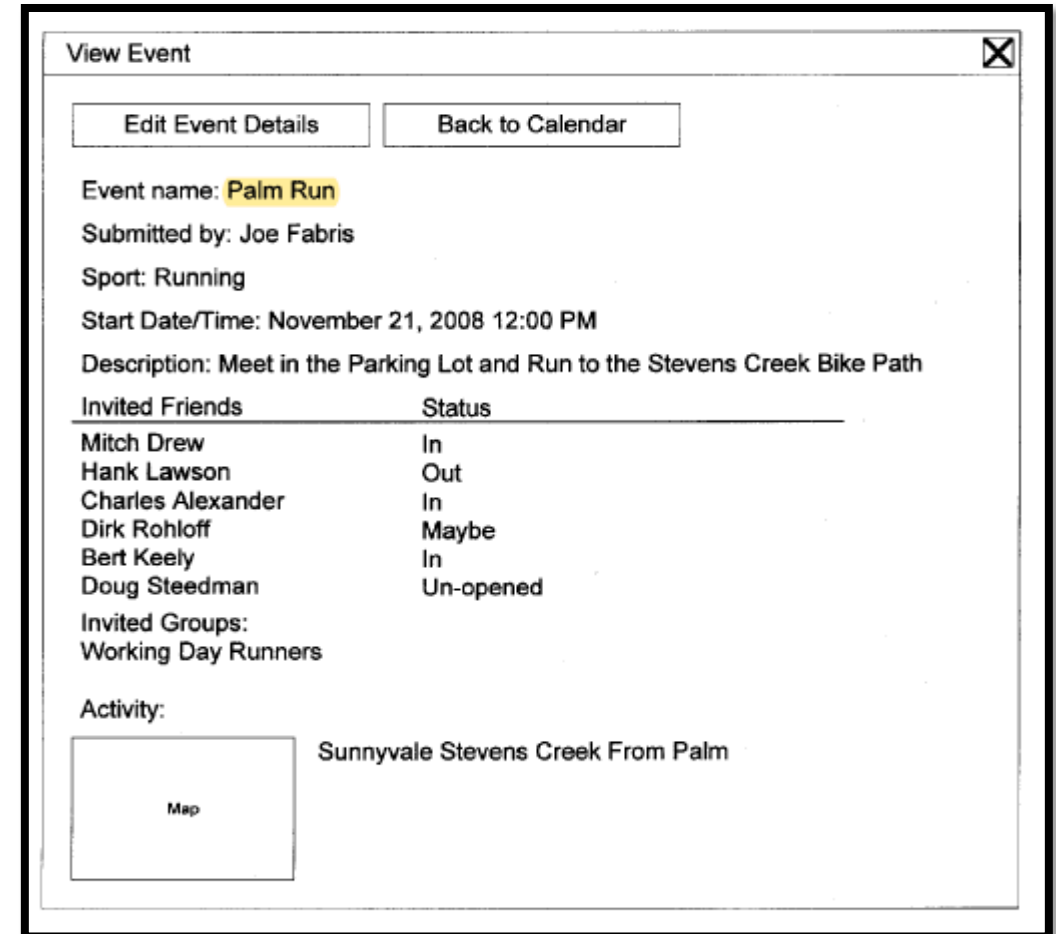
'220 Patent, Ex. 1001, 68:28–31



Patent Owner's Response, Paper 22, 37 (citing '220 patent, Ex. 1001, Fig. 5)



Sutton, Ex. 1005, Fig. 5



Sutton, Ex. 1005, Fig. 10



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.

'220 Patent, Ex. 1001, 68:59-62

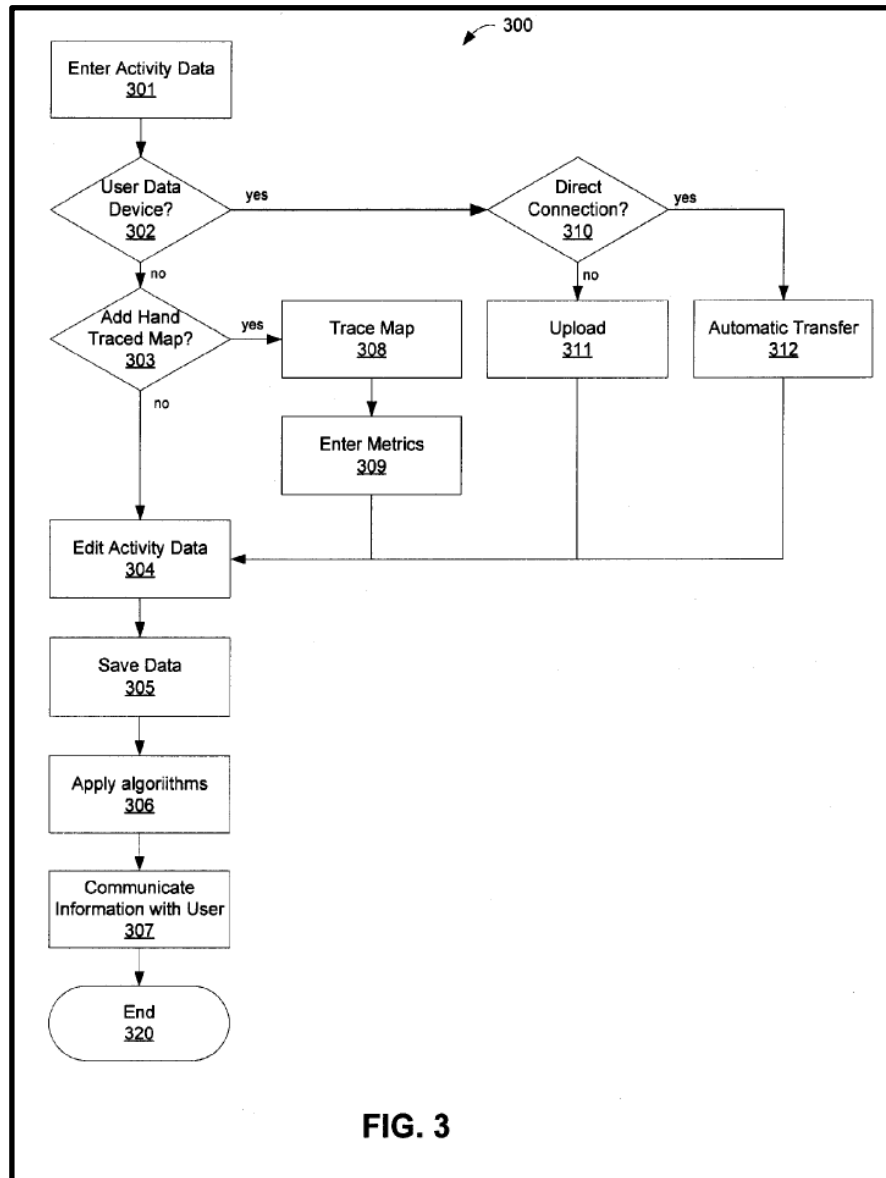


[0060] FIG. 3 illustrates a block diagram for exemplary data transfer methods, according to one embodiment. Data transfer methods are categorized into three main themes: manual transfer, manual device transfer, and automatic device transfer. First, user 101's activity data is entered (301). The user-provided data is checked to determine whether or not it is received from a user 101's device (302). If the user-provided data is manually entered by user 101, the data is checked to determine whether it includes a traced map (303).

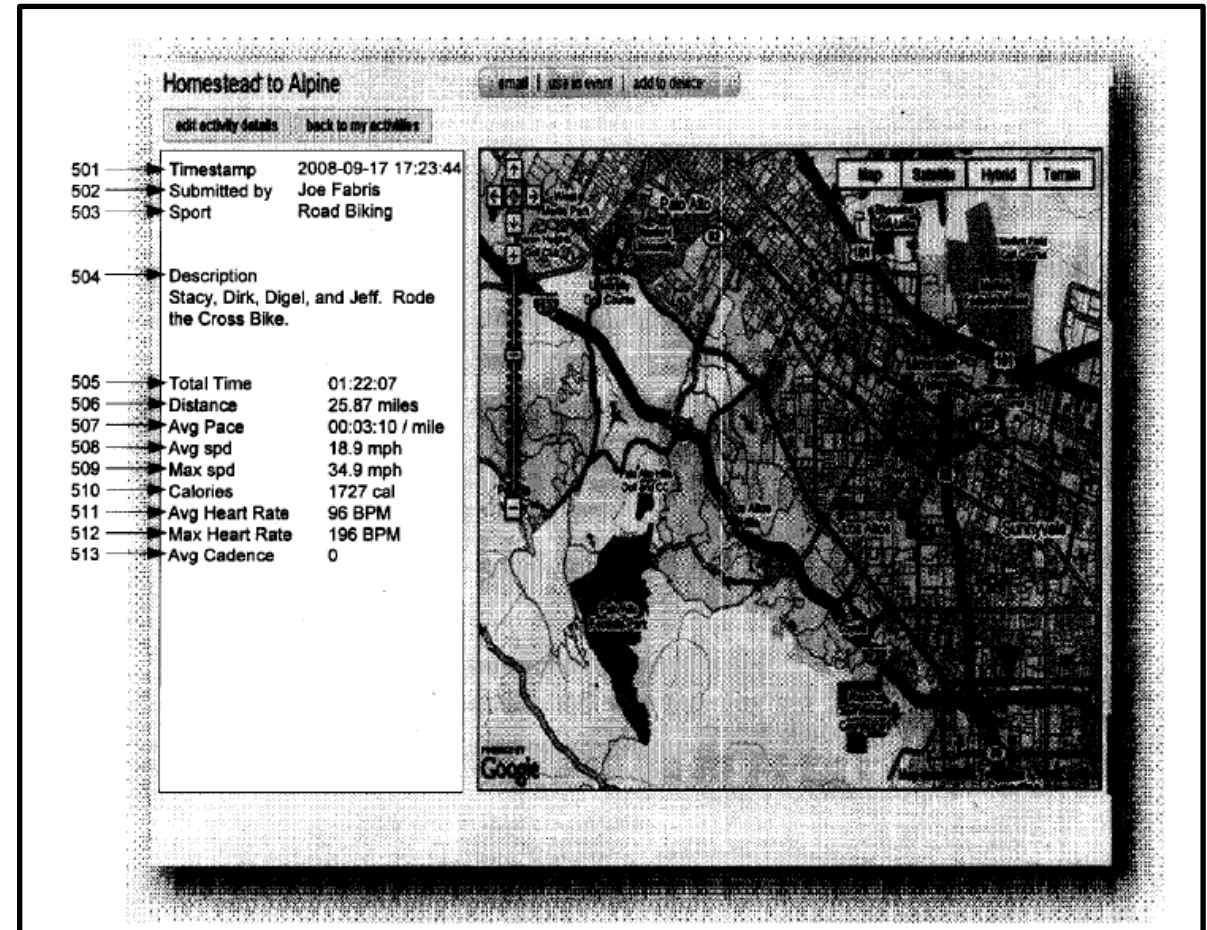
Sutton, Ex. 1005, ¶ 60

[0063] FIG. 5 illustrates a trace map of a user activity, according to one embodiment. User 101 may edit the traced map when entering the data or at a later opportunity if a correction for the previously entered data is required. User 101 may enter the associated data with an activity displayed on a map including but not limited to time stamp 501, user name 502, type of sport 503, description of the activity 504, total time 505, distance 506, average pace 507, average speed 508, maximum speed 509. Other information such as calories 510, average heart rate 511, maximum heart rate 512, and average cadence 513 may be entered by user 101 or calculated by activity and biometric tracking system 110 based on the user-provided data.

Sutton, Ex. 1005, ¶ 63



Sutton, Ex. 1005, Fig. 3



Sutton, Ex. 1005, Fig. 5

lululemon failed to prove Sutton anticipates claim 19



First, the Petition did not rely on Sutton’s hand-traced map for both “workout information” (element [11E]) and “social network message” (claim 19). (POR, 39.) To the contrary, the Petition maps Sutton’s user-provided data to the “workout information” and hand-traced map to the “social network message.”

Petitioner’s Reply, Paper 22, 25

First, lululemon’s allegation that its Petition mapped “Sutton’s user-provided data to the ‘workout information’ and hand-traced map to the ‘social network message’” is wrong. Reply, 25. lululemon admits that “the map is part of the user’s activity data” (Petition, 55), and that “Sutton’s ‘user-provided data’ is the ‘workout information’ of element [11E] (EX1017, ¶57). The Petition confirms that the “user-provided data” is the user’s “activity data.” Petition, 49. Thus, the map is at best “workout information.” EX2001, ¶¶94–95.

Patent Owner’s Sur-Reply, Paper 26, 21–22

lululemon failed to prove Sutton anticipates claim 19



Second, claim 19 does not require the “social network message” be *‘generate[d]’ ‘based on* a location at which the athletic activity was performed by the user’,” as Nike argues. (POR, 40-41 (emphasis added).) Claim 19 recites: “to generate a social network message on the network page.” It further requires that the social network message is “based on a location at which the athletic activity was performed by the user.” In other words, the “social network message”—not the “generat[ion of] a social network message”—is based on location.

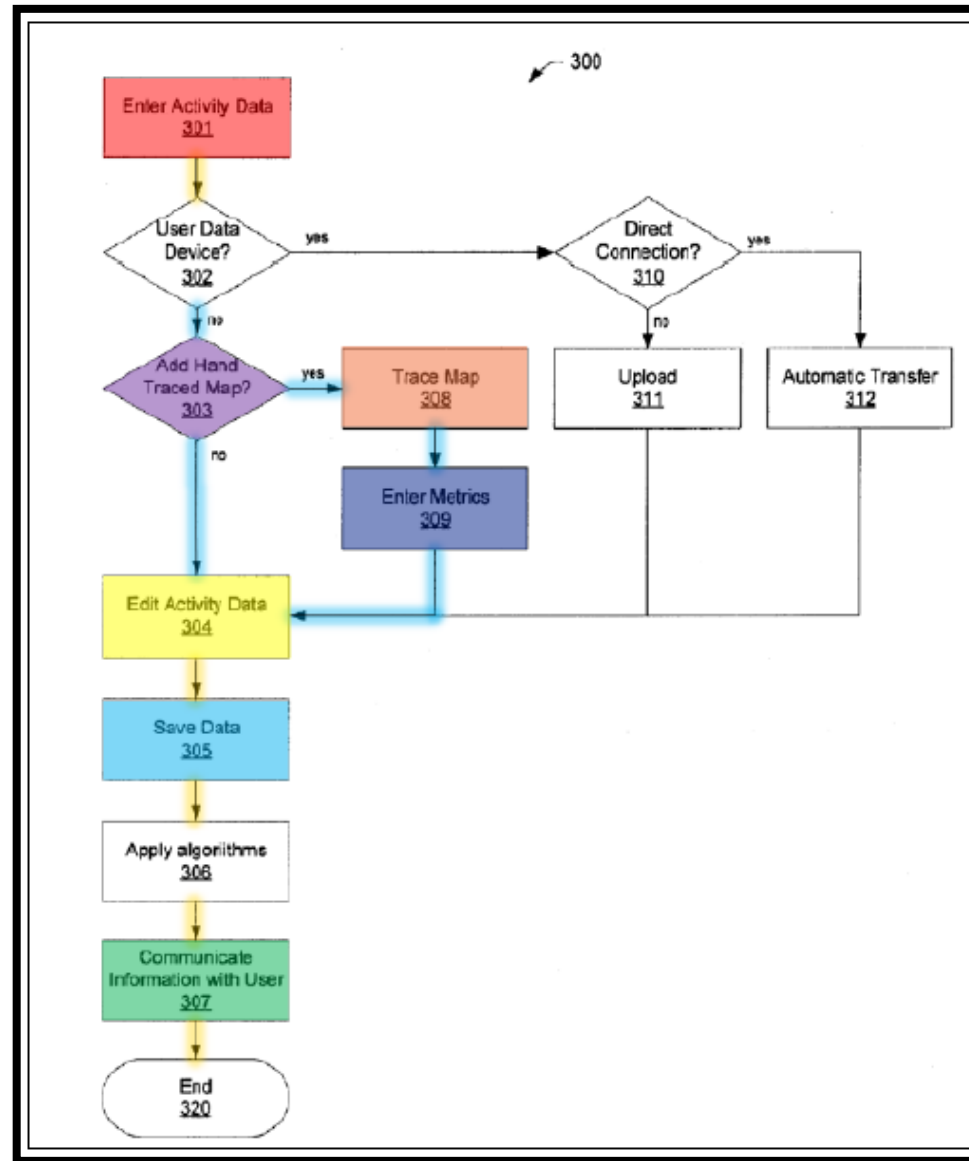
Petitioner’s Reply, Paper 22, 25–26

Second, lululemon alleges that claim 19 requires the “social network message,” not the “generation of a social network message,” to be based on location. Reply, 26 (citing EX1017, ¶55.). lululemon’s reading is belied by the plain language of the claim. EX2001, ¶¶93–96. But even if lululemon’s reading were correct (it is not), lululemon’s argument still fails because the hand-traced map is not a “social network message.” POR, 40–41; EX2001, ¶¶96–97.



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

'220 Patent, Ex. 1001, 68:62–64



Petition, Paper 2, 57 (annotating Sutton, Ex. 1005, Fig. 3)

lululemon failed to prove Sutton anticipates claim 20



Nike's argument for claim 20 fails because it assumes that information cannot be a "social network message" until it is posted on a social network.

Petitioner's Reply, Paper 22, 26

By definition, a social network message does not exist until it is posted on a social network. The plain language of the claims confirms Nike's position. Claim 20 depends from claim 19 and further recites "wherein transmitting the workout information includes modifying *the social network message* based on a received user edit." EX1001, 68:63–65 (emphasis added). And Claim 19 recites "the apparatus is further caused to generate *a social network message on the network page*." *Id.*, 68:59–61 (emphasis added).

Patent Owner's Sur-Reply, Paper 26, 22



Ground 3: lululemon failed prove Sutton renders obvious claims 11, 12, 19, 20



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

'220 Patent, Ex. 1001, 68:15–27

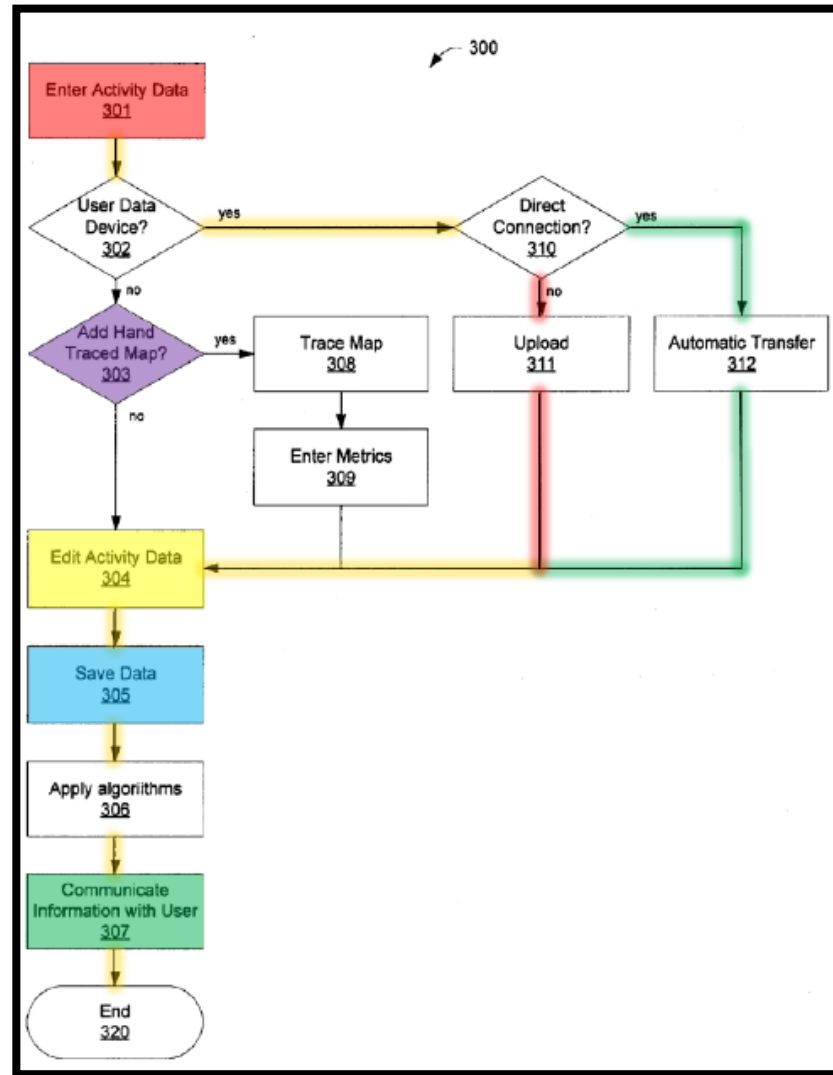


102. lululemon’s obviousness argument for Sutton is similar to what lululemon argued for anticipation by Sutton with respect to element [11E]. Petition, 47–52, 61–65. Again, lululemon identifies the “Public” option in Figure 9 as its “sharing option.” Petition, 61–65.

Declaration of Dr. Stone, Ex. 2001, ¶ 102

103. In Ground 2, lululemon relies on Sutton’s system (110). In ground 3, lululemon relies to Sutton’s device (104) as the claimed “apparatus.” Petition, 58. lululemon argues that “it would have been obvious” to configure the apparatus (i.e., device (104)) in two ways because Sutton’s device (104) lacks “a sharing option.”

Declaration of Dr. Stone, Ex. 2001, ¶ 103



lululemon failed prove Sutton renders obvious claims 11, 12, 19, 20



Second, citing page 63 of the Petition, Nike alleges that the Petition modifies Sutton's automatic device transfer pathway by presenting Figure 9 to the user on two separate occasions for each workout: one before and one after the workout. (POR, 46.) However, there is no mention whatsoever in the Petition of presenting Figure 9 twice or after the workout. (Ex. 1017, ¶60.)

Petitioner's Reply, Paper 22, 26

if Sutton's "automatic device transfer" was modified with Figure 9's alleged sharing option, the user would indeed need to interact with Figure 9 on two separate occasions for each workout: once before their workout solely to receive the "sharing option," (*see* Reply, 29 (admitting that "Figure 9 should be presented before the workout")) and then again after their workout to manually enter other information related to that workout because Figure 9 only pertains to manually entered data—not "recorded" data.

Patent Owner's Sur-Reply, Paper 26, 24



Ground 4: lululemon failed to prove Sutton and Plus 3 render obvious claims 11-14, 19, 20

The Plus 3 website pages do not address the deficiencies in Sutton



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

'220 Patent, Ex. 1001, 68:15–27

111. For claim 11, lululemon relies on the Plus 3 Website Pages to show elements of limitations [11D] and [11E]. Petition, 69–70.

Declaration of Dr. Stone, Ex. 2001, ¶ 111



First, lululemon relies on the Plus 3 Network Privacy Policy to show that the Plus 3 Network website allows a user's activity to be viewed publicly: "If the Activity is set to Public it can be viewed, with your name attached, by all Users." Petition, 69, 70 (citing Ex. 1006 at 12). Second, lululemon relies on the Plus 3 Website Pages to show that the Plus 3 Network is a "social network." *Id.*, 70 (citing Ex. 1006, 9, 12).

Declaration of Dr. Stone, Ex. 2001, ¶ 111



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.

'220 patent, Ex. 1001, 68:37–42



114. First, lululemon cites to disclosure that does not teach that the claimed “apparatus” “receive[s] a request to deactivate sharing of the workout information.”
Ex. 1001, 68:40–41.

Declaration of Dr. Stone, Ex. 2001, ¶ 114



lululemon does not show that either Sutton or the Plus 3 Website pages discloses or teaches deactivating the “sharing of the workout information” that has *already been shared* as required by limitation [11E]. lululemon cites the Plus 3 Website pages’ disclosure that “[i]f an Activity is set to Private, it is not displayed to other Users and only you can see it.”

Stone Declaration, Ex. 2001, ¶ 115



Nike argues that it is “ambiguous” from Plus 3’s website whether shared activity is removed from the social networking site. (POR, 50.) There is no ambiguity: Plus 3’s website states “[u]sers can also ‘*remove* [their] User Content *from the Site* at any time.’” (Petition, 71 (citing Ex. 1006, 17); Ex. 1017, ¶¶63-65.) The Board should cancel claim 14 as set forth in the Petition.

Petitioner’s Reply, Paper 22, 30



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.

'220 Patent, Ex. 1001, 68:58–61



117. As I discuss above, claim 19 requires a “social network message” that is (1) *generated further* to the workout information transmitted in limitation [11E] and (2) “*based on*” “a location at which the athletic activity was performed by the user.” lululemon makes essentially the same arguments presented in Ground 2. *See* Petition, 72. That is, lululemon argues that the Plus 3 Website Pages disclosure of a user’s route information satisfies the additional requirements of claim 19. *See id.*

Declaration of Dr. Stone, Ex. 2001, ¶ 117



- **Activities - Geographic Data:** Please be aware that when you post an activity, either one you have uploaded from a data collection device, such as a GPS, or one that you have entered by hand (collectively "Location Data"), Users may see the route you have covered, including your start and end points, which may include your residence or place of work.

Plus 3 Website Pages, Ex. 1006, 12



Ground 5: lululemon failed to prove Sutton and Fry render obvious claim 12



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.

'220 Patent, Ex. 1001, 68:28–31



lululemon does not assert that Fry teaches any of the claim elements of claim 11. *See id.* Notably, Fry does not cure lululemon's identification of an alleged "sharing option" for manually entered workout information as opposed to "record[ed] athletic activity."

Patent Owner's Response, Paper 17, 52

Dated: February 12, 2024

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CERTIFICATE OF SERVICE

The undersigned hereby certifies service on the Petitioner, pursuant to 37 C.F.R. § 42.6(e) and by agreement of counsel, by electronic (e-mail) delivery of a true copy of the foregoing **PATENT OWNER'S PRESENTATION FOR ORAL ARGUMENT** was served on February 12, 2024 to the following Counsel for Petitioner via e-mail:

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