

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re The Patent Application Of:	)	
	)	Group Art Unit: 3716
Winsper et al.	)	
	)	Examiner: Steve Rowland
Appln. No. 15/675,895	)	
	)	Confirmation No.: 4692
Filed: August 14, 2017	)	
	)	Atty Docket No.:
	)	215127.02293/120323US09CON
For: COMBINATORY SCORE HAVING A FITNESS	)	
SUB-SCORE AND AN ATHLETICISM	)	
SUB-SCORE	)	

RESPONSE TO OFFICE ACTION MAILED JUNE 19, 2018

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This paper is filed in response to the Non-Final Office Action mailed June 19, 2018, in connection with the above-identified patent application. Applicant's undersigned representative authorizes the charging of Deposit Account No. 19-0733 for any fee that might be due upon entry and full consideration of this amendment.

Listing of the Claims begins on page 2 of this paper.

Remarks/Arguments begin on page 7 of this paper.

This listing of claims will replace all prior versions, and listings of claims in the application:

Listing of Claims:

What is claimed is:

1. (Currently Amended) A computer-implemented method comprising:
providing first instructions to a user to perform a first athletic movement;
receiving, from a sensor, first activity data representing the first athletic movement;
calculating with a processor, based on the first activity data, a first combinatory fitness-athleticism score;
providing, in response to a triggering event, second instructions to the user to perform a second athletic movement[[,]];
receiving, from the sensor, second activity data representing the second athletic movement;
calculating, with the processor, based on the second activity data, a second combinatory fitness-athleticism score,
wherein the first and the second combinatory fitness-athleticism scores each comprise a fitness sub-score and a separate athleticism sub-score of the user,
wherein the fitness sub-score is calculated, by the processor, using one or more of an endurance fitness attribute, a flexibility fitness attribute and a strength fitness attribute of the user, and
wherein the athleticism sub-score is calculated, by the processor, using one or more of a speed athleticism attribute, an agility athleticism attribute, a reaction athleticism attribute, a power athleticism attribute and a balance athleticism attribute of the user.
2. (Original) The method of claim 1, wherein the triggering event is based on a detected heart rate of the user.
3. (Original) The method of claim 1, wherein the triggering event is based on a detected geographic location of the user.

4. (Original) The method of claim 1, further comprising:
providing an indication of an activity that the user can perform that will not cause injury, based upon the first and second combinatory fitness-athleticism scores for the user.
5. (Original) The method of claim 1, wherein the first athletic movement comprises predefined criteria, the method further comprising:
providing the first instructions to the user to perform, during a first time period, the first athletic movement.
6. (Original) The method of claim 1, wherein the first instructions and the second instructions include a plurality of drills configured to test a plurality of fitness attributes of the user and a plurality of athleticism attributes of the user.
7. (Original) The method of claim 1, wherein the first instructions and the second instructions include a predefined ordering of drills that are configured to be provided to the user during a single workout session.
8. (Original) The method of claim 1, wherein the fitness sub-score is based upon a percentile rank of the user within a population of users.
9. (Original) The method of claim 1, wherein the athleticism sub-score is based upon a percentile rank of the user within a population of users.
10. (Original) The method of claim 5, wherein at least one of the endurance fitness attribute, the flexibility fitness attribute and the strength fitness attribute and at least one of the speed athleticism attribute, the agility athleticism attribute, the reaction athleticism attribute, the power athleticism attribute and the balance athleticism attribute is determined by calculating an energy expenditure estimate during a performance by the user of at least a portion of the criteria.

11. (Original) The method of claim 10, wherein the energy expenditure estimate is determined utilizing a metabolic equivalent of task (MET) table for a type of an exercise that the user performs during an athletic performance by the user.
12. (Original) The method of claim 1, wherein the sensor comprises an accelerometer.
13. (Original) An apparatus configured to be worn by a user, comprising:
 - a structure configured to be worn around an appendage of a user comprising a sensor configured to capture movement data from the appendage of the user;
 - a processor; and
 - a non-transitory computer-readable medium comprising computer-executable instructions that when executed by a processor cause the processor to perform at least:
 - providing first instructions to the user to perform a first athletic movement;
 - receiving first movement data captured from the sensor during the first athletic movement of the user;
 - calculating, from the received first movement data, a first combinatory fitness-athleticism score;
 - providing, in response to a triggering event, second instructions to the user to perform a second athletic movement;
 - receiving second movement data captured from the sensor during the second athletic movement of the user; and
 - calculating, from the received second movement data, a second combinatory fitness-athleticism score,
- wherein the first and second combinatory fitness-athleticism score each comprise a fitness sub-score and a separate athleticism sub-score of the user;
- wherein the fitness sub-score is calculated using one or more of an endurance fitness attribute, a flexibility fitness attribute and a strength fitness attribute of the user, and
- wherein the athleticism sub-score is calculated using one or more of a speed athleticism attribute, an agility athleticism attribute, a reaction athleticism attribute, a power athleticism attribute and a balance athleticism attribute of the user.

14. (Original) The apparatus of claim 13, wherein the triggering event is based on a detected heart rate of the user.

15. (Original) The apparatus of claim 13, wherein the triggering event is based on a detected geographic location of the user.

16. (Original) The apparatus of claim 13, wherein the sensor is a first sensor and the apparatus further comprises a second sensor configured to capture movement data and the computer-readable medium further comprises computer-executable instructions that when executed by the processor cause the processor to perform at least:

utilizing movement data from the second sensor in the calculation of the first and second combinatory fitness-athleticism scores.

17. (Original) The apparatus of claim 13, wherein the sensor is a first sensor and the computer-readable medium further comprises computer-executable instructions that when executed by the processor cause the processor to perform at least:

utilizing movement data captured from a second sensor that is located externally from the apparatus in the calculation of the first and second combinatory fitness-athleticism scores.

18. (Original) The apparatus of claim 13, wherein the sensor is a first sensor and the computer-readable medium further comprises computer-executable instructions that when executed by the processor cause the processor to perform at least:

receiving the movement data from a second sensor located externally from the apparatus;
and

based upon the movement data from the second sensor, instructing the user to perform an athletic movement with a predefined criterion.

19. (Original) The apparatus of claim 13, wherein the sensor is an accelerometer.

20. (Original) The apparatus of claim 13, wherein the computer-readable medium further comprises computer-executable instructions that when executed by the processor cause the processor to perform at least:

providing an indication of an activity that the user can perform that will not cause injury, based upon the first and second combinatory fitness-athleticism scores for the user.

REMARKS

The Non-Final Office Action (“Action”) of June 19, 2018, has been reviewed and the comments therein were carefully considered. Claims 1–20 are pending, with claims 1 and 13 being independent. Claim 1 have been amended to address a typographical error. No new subject matter has been added. Applicant respectfully submits that all claims are in condition for allowance and respectfully requests such notification.

Double Patenting

Claims 1-20 are rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 1-19 (U.S. Patent No. 9,744,428).

A terminal disclaimer is submitted herewith to overcome these rejections. The submission of the terminal disclaimer should not be construed as an admission that Applicant agrees with or acquiesces in these rejections. Rather, it is presented simply to expedite prosecution and to facilitate the allowance of this application. Applicant reserves all rights to challenge the assertions made and/or the Office’s position as described in this rejection in the future, in any applicable forum.

Allowable Subject Matter

Claims 1-20 are indicated as allowable if the rejection under the non-statutory double-patenting doctrine set forth in this office action is overcome.

Conclusion

Applicant respectfully submits that the pending claims are in condition for allowance. Favorable reconsideration of this application is respectfully requested. The Examiner is invited to contact the undersigned should it be deemed necessary to facilitate prosecution of the application.

Respectfully submitted,

BANNER & WITCOFF, LTD.

Dated: **Sept. 13, 2018**

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Doc Code: DIST.E.FILE Document Description: Electronic Terminal Disclaimer - Filed		PTO/SB/26 U.S. Patent and Trademark Office Department of Commerce	
Electronic Petition Request	TERMINAL DISCLAIMER TO OBIATE A DOUBLE PATENTING REJECTION OVER A "PRIOR" PATENT		
Application Number	15675895		
Filing Date	14-Aug-2017		
First Named Inventor	Paul Winsper		
Attorney Docket Number	215127.02293/120323US09CO		
Title of Invention	Combinatory Score Having a Fitness Sub-Score and an Athleticism Sub-Score		
☒ Filing of terminal disclaimer does not obviate requirement for response under 37 CFR 1.111 to outstanding Office Action ☒ This electronic Terminal Disclaimer is not being used for a Joint Research Agreement.			
Owner		Percent Interest	
NIKE, Inc.		100%	
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☐ I certify, in accordance with 37 CFR 1.4(d)(4), that the terminal disclaimer fee under 37 CFR 1.20(d) required for this terminal disclaimer has already been paid in the above-identified application.

Applicant claims the following fee status:

- ☐ Small Entity
- ☐ Micro Entity
- ☒ Regular Undiscounted

I hereby 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 further that these statements were made with the 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 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

I certify, in accordance with 37 CFR 1.4(d)(4) that I am:

- ☒ An attorney or agent registered to practice before the Patent and Trademark Office who is of record in this application
- Registration Number 51393
- ☐ A sole inventor
- ☐ A joint inventor; I certify that I am authorized to sign this submission on behalf of all of the inventors as evidenced by the power of attorney in the application
- ☐ A joint inventor; all of whom are signing this request

Signature	/William J. Allen/
Name	William J. Allen

*Statement under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner).
Form PTO/SB/96 may be used for making this certification. See MPEP § 324.