

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.

Case: IPR2023-00349
Patent No. 9,259,615

**PETITION FOR *INTER PARTES* REVIEW
OF U.S. PATENT NO. 9,259,615**

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Exhibit List for Inter Partes Review of U.S. Patent No. 9,259,615

Exhibit Description	Exhibit #
U.S. Patent No. 9,259,615 (“’615 patent”)	1001
U.S. Patent Publication No. 2011/0197157 (“Hoffman”)	1002
U.S. Patent Publication No. 2004/0152957 (“Stivoric”)	1003
U.S. Patent Publication No. 2006/0111944 (“Sirmans”)	1004
JP Patent Publication No. 2003-141260 and Certified English Translation of Same (“Kobayashi”)	1005
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August 11, 2015 Response to Restriction Requirement for Application No. 14/194,191	1009
October 2, 2015 Notice of Allowance for Application No. 14/194,191	1010
December 7, 2015 Amendment after Notice of Allowance for Application No. 14/194,191	1011
January 27, 2016 Issue Notification for Application No. 14/194,191	1012
U.S. Provisional Patent Application No. 61/240,185	1013
Motorola DROID PRO XT610 Description	1014
Lara Allet et al, Wearable Systems for Monitoring Mobility-Related Activities in Chronic Disease: A Systematic Review, Sensors 2010	1015
Praveen Kumar Diwakar et al, Personal Digital Exercise Trainer for Managing, Monitoring and Recording the Exercise, IEEE, September 1-4, 2005	1016

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Exhibit Description	Exhibit #
Nike + iPod web page , Internet Archive waybackmachine, http://www.apple.com/ipod/nike/	1017
Nike + iPod manual, 2009	1018
U.S. Patent No. 6,635,015 (“SageI”)	1019
U.S. Patent No. 6,898,550 (“Blackadar”)	1020
U.S. Patent No. 7,431,696 (“Brady”)	1021

lululemon athletica canada inc. and lululemon usa inc. (“Petitioner” or “lululemon”) petitions for *inter partes* review of claims 1-5, 7, 11, and 13 of U.S. Patent No. 9,259,615 (the “’615 patent” (Ex. 1001)) in accordance with 35 U.S.C. §§ 311-19 and 37 C.F.R. §§ 42.100 *et seq.*

I. INTRODUCTION

The ’615 patent’s challenged claims are directed to a simple concept: presenting a “streak reward” to a user for athletic activity that exceeds a goal for a consecutive number of days or other time periods. The claimed technique involves tracking, collecting, and analyzing data received from a device worn by a user during an athletic activity to determine when the user has earned the streak reward. The athletic activity goal (*e.g.*, exercising for at least 30 minutes) is received for an activity time period. The objective is to reward a user for completing activity goals associated with consecutive activity time periods.

Patent Owner’s earlier application, U.S. Patent Publication No. 2011/0197157 (“Hoffman”) (Ex. 1002), discloses the same simple concept. Hoffman describes monitoring a user’s exercise performance using a wearable sensor, which the ’615 patent expressly includes as one way to implement its alleged invention. Furthermore, like the ’615 patent, Hoffman assesses the information collected by the sensor, and subsequently rewards a user with tangible and/or intangible incentive products corresponding to the user’s performance

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during consecutive time periods. Thus, Hoffman addresses the same motivational problem as the '615 patent—incentivizing a user to perform athletic activity in consecutive time periods—in the same way. Hoffman thus anticipates claims 1-5, 7, 11, and 13 of the '615 patent.

Similarly, U.S. Patent Publication No. 2004/0152957 (“Stivorice”) (Ex. 1003) discloses techniques for tracking a user’s physiological characteristics using wearable sensors and providing feedback on whether the user is meeting activity goals. Additionally, U.S. Patent Publication No. 2006/0111944 (“Sirmans”) (Ex. 1004) teaches an incentive-based rewards system to encourage a user to exercise regularly and adopt a healthy lifestyle. Finally, Japanese Patent Publication No. JP 2003-141260 (“Kobayashi”) (Ex. 1005) places emphasis on continuity, specifically monitoring a user’s athletic activity and rewarding the user with bonus points for completing daily consecutive workouts. A person of ordinary skill in the art (“POSITA”) would have found claims 1-7 and 11-13 of the '615 patent obvious by the combination of Stivorice and Kobayashi and claims 1-5, 7, and 11 obvious by the combination of Sirmans and Kobayashi.

Therefore, for the reasons set forth in this Petition and the Declaration of Dr. Gregory S. Fischer (Ex. 1006), lululemon requests cancellation of claims 1-7 and 11-13 of the '615 patent.

II. BACKGROUND

A. Summary of the '615 Patent

The '615 patent describes a “wearable device assembly having athletic functionality and streak tracking.” (Ex. 1001 at Title.) As depicted in Figure 1 below, the wearable sensor device 10 combines with an activity tracking application on wearable device 3 to record activity data, goals, milestones, and other achievements. (*Id.* at 2:42-47, 8:24-35, 46:35-53.)

FIG. 1



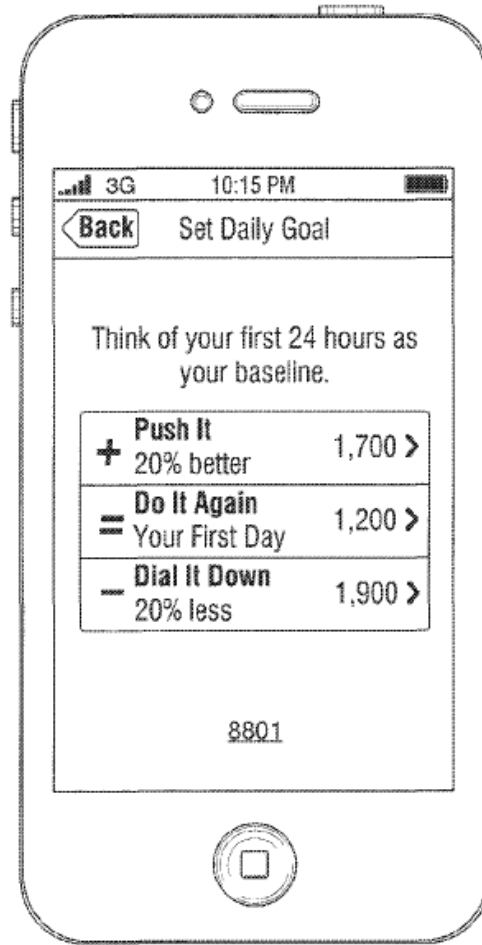
The patent alleges that prior athletic performance monitoring systems had limited ability to transfer sensor data to a computer or any other location for further analysis or could only monitor a single type of activity. (*Id.* at 1:59-67.) According to the '615 patent, these systems also failed to offer “sufficient and creative feedback” for recorded activities. (*Id.* at 2:1-2.) To overcome these

alleged problems, the '615 patent describes a wearable sensor that monitors athletic activity and communicates this information to an activity tracking application, which can record data for multiple activities, track activity streaks, and ultimately present rewards. (*Id.* at 2:21-47.)

The '615 patent's wearable electronic device assembly "may be worn in a variety of locations on a user's body including on a user's chest (*e.g.*, a chest strap), around a user's wrist, around a user's arm, on a user's head, on a user's ankle or thigh, and the like." (*Id.* at 7:59-63.) Importantly, the wearable electronic device assembly contains one or more sensors that "is capable of monitoring athletic activity or overall activity of the user." (*Id.* at 8:30-31.) The sensor primarily "detects movement corresponding to activity of the user wearing the device," and exemplary sensors include an accelerometer, a heart rate monitor, and a gyroscope. (*Id.* at 15:35-36.)

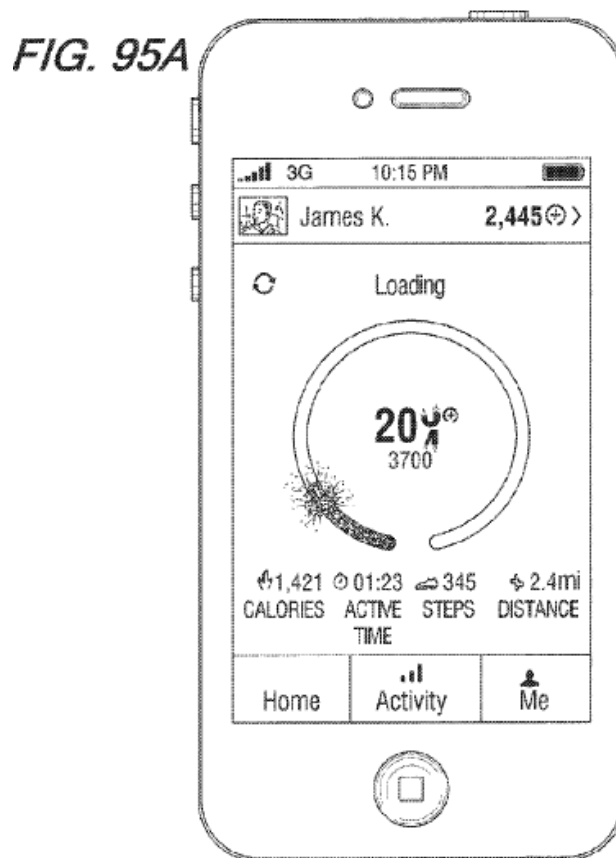
As depicted in Figure 88A below, in the '615 patent's activity tracking application, a user sets an activity goal to "complete a certain amount of activity" during a specific activity or goal time period. (*Id.* at 27:10-12, 51:1-28.)

FIG. 88A



(*Id.* at Fig. 88A.) Each activity time period may correspond to a single day and may be grouped into weeks, months, years, or other user-defined categories for subsequent analysis. (*Id.* at 61:15-22.) The activity tracking application provides “multiple predefined options for setting the goal,” which may include exceeding a target by a specified amount or percentage. (*Id.* at 51:11-20). A user’s progress towards the activity goal is then measured by the wearable device, which “detects and records the activity of the user as the user progresses through the day.” (*Id.* at 27:12-14.)

The data collected by the wearable sensor can include a variety of different parameters, such as “speed, distance, steps taken, and energy expenditure such as calories, heart rate and sweat detection,” and may be displayed on the activity tracking application as “activity points” or “currency earned by the user based on the activity of the user.” (*Id.* at 8:47-50.) The activity tracking application can thus provide real-time feedback using different visualizations to indicate a user’s progress towards one or more activity goals. (*Id.* at 56:20-29.) This feedback is illustrated in Figure 95A below.



(*Id.* at Fig. 95A.)

As depicted in Figure 98B below, the activity tracking application provides further feedback to a user by tracking and monitoring activity streaks.



(*Id.* at Fig. 98B.) The streaks can occur when the user has exceeded their predefined activity goals “for X number of consecutive goal time periods, where X may be any number greater than 1 (*e.g.*, greater than or equal to 2).” (*Id.* at 57:7-8.) In other words, a user begins a streak by exceeding their previously set activity goals for at least two consecutive daily workout periods. (*Id.*) Acknowledging a streak encourages the user to maintain consistency, as well as elevate his or her activity level and to meet all goals because the user “may be awarded with rewards or types of recognition including coupons, free products, virtual items including

virtual apparel, icons, images etc., services, event tickets and the like.” (*Id.* at 57:13-18.)

B. Prosecution History of the ’615 Patent

As originally filed, the application that would become the ’615 patent included 20 claims. (Ex. 1007, at [00119]-[00122] (Application No. 14/194,191 (Original Application)).) The Examiner issued a Restriction Requirement on June 12, 2015. (Ex. 1008.) In a response on August 11, 2015, the Patent Owner elected one alleged invention, directed to claims 1-10 and 17-20. (Ex. 1009.) The Examiner allowed the claims on October 2, 2015. (Ex. 1010.) Subsequently on December 7, 2015, the Patent Owner filed an amendment, inserting the missing word “and” into dependent claim 7. (Ex. 1011 at 7.) The ’615 patent subsequently issued.

C. The Prior Art

By November 2010, the earliest possible claimed priority date for the challenged claims,¹ tracking a user’s athletic activity and progress towards a goal

¹ While the earliest claim priority date on the face of the ’615 patent is November 1, 2011, the first paragraph of the specification refers to an application filed November 1, 2010, which is the earliest possible priority date assumed for purposes of this Petition. (’615 patent at 1:14-17.)

during a workout using sensors and subsequently rewarding the user for exceeding their goal in consecutive exercise sessions was well known.

1. Hoffman

Hoffman (Ex. 1002) discloses methods for tracking and monitoring a user's athletic activity using a wearable sensor and rewarding the user for completing specific goals, thereby motivating the user to continue exercising and leading a healthy lifestyle. (Ex. 1002 at Abstract.) Hoffman achieves this by using "one or more different athletic information monitoring devices [] to measure and record athletic data corresponding to athletic activity performed by a person." (*Id.* at [0055].) This recorded information is transferred to "one or more separate devices in order to view the recorded athletic data." (*Id.* at [0056].) User rewards include badges for achievements, such as achieving goals for consecutive days.

Badges may be awarded by the athletic activity tracking and monitoring site based on various achievements. For example, in the location themed workout plan, users may be awarded badges for each location that the user completes. . . . Badges may be defined for other types of achievements as well. For example, ***a badge may be awarded for a user completing 3 goals in 3 consecutive days***, completing 2 goals in a single day, being the first to complete a particular goal and the like. Upon being awarded a badge, the badge may be displayed in an alternate appearance. For example, the badge may be displayed in solid line form, with color, with writing, with texture and the like.

(*Id.* at [0198] (emphasis added).)

A user also may acquire virtual currency in accordance with their activity data that may ultimately be spent on various rewards, such as “actual products or services such as gift cards, gym memberships, digital music players, workout equipment and the like.” (*Id.* at [0232].)

a. Hoffman’s Prior Art Date is September 4, 2009, or at the Latest, August 11, 2011

Hoffman is prior art by at least its August 12, 2010 filing date. (Ex. 1002 at p. 1.) Under *Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, Hoffman is also prior art by September 4, 2009, the filing date of its earliest provisional Application No. 61/240,185 (“’185 Application”). *See* 800 F.3d 1375, 1382-83 (Fed. Cir. 2015). Although Petitioner is not required to prove Hoffman’s entitlement to that date at this stage, *id.* at 1381, it is entitled to the earlier date because the ’185 Application supports at least one of its claims:

<i>Hoffman’s Claim 1</i>	<i>’185 Application</i>
1[pre]: A method comprising	If limiting, the ’185 Application discloses a method. (<i>See, e.g.</i> , Ex. 1013, ¶¶ 146, 184, 198, 228.)

<i>Hoffman's Claim 1</i>	<i>'185 Application</i>
1[a]: displaying an athletic activity tracking and monitoring interface comprising a plurality of virtual objects corresponding to a plurality of athletic activity goals, wherein each of the plurality of virtual objects is different from the others;	The '185 Application discloses displaying a plurality of different virtual objects corresponding to a plurality of athletic activity goals. (See, e.g., <i>id.</i> , ¶¶ 9, 11, 174-176, 178-179, and 183.)
1[b]: receiving a user selection of a first virtual object corresponding to a first athletic activity goal;	The '185 Application discloses receiving a user selection of a virtual object corresponding to an athletic activity goal. (See, e.g., <i>id.</i> , ¶¶ 8, 9, 11, 118, 174-176, 177, 181, 184, and 185.)
1[c]: receiving data indicating an amount of athletic activity performed by a user; and	The '185 Application discloses receiving data indicating an amount of athletic activity performed by a user. (See, e.g., <i>id.</i> , ¶¶ 8, 9, 11, 75-81, 124, 174-176, 178-179, and 182.)
1[d]: modifying a visual appearance of the first virtual object in accordance with a progress made by the user in completing the first athletic activity goal, wherein the progress made by the user is defined by the amount of athletic activity performed by the user.	The '185 Application discloses modifying a visual appearance of the first virtual object in accordance with the athletic activity performed by the user. (See, e.g., <i>id.</i> , ¶¶ 8, 9, 10, 11, 124, 174-176, and 180.)

The '185 Application also includes substantively the same disclosure from Hoffman cited in Ground 1, which is more than is required under *Dynamic Drinkware*. (Compare Ex. 1002, ¶¶ [0055]-[0058], [0071], [0078], [0084], [0100], [0106], [0123], [0125], [0129], [0179], [0180], [0184], [0190], [0198], [0199], [0232], Figs. 2, 5, 10, 11B, 12, 31, 43, with Ex. 1013, ¶¶ [0050]-[0054], [0067],

[0074], [0079], [0095], [0101], [0118], [0120], [0124], [0174], [0175], [0179], [0185], [0193], [0194], [0202], Figs. 2, 5, 10, 11B, 12, 31, 43.)

2. Stivoric

Stivoric discloses a method and apparatus for monitoring and tracking “caloric expenditure data that includes a sensor device and an I/O device in communication with the sensor device.” (Ex. 1003 at Abstract). Stivoric specifically teaches “one or more sensors for collecting data relating to an individual's physiological state and various contextual parameters and a data input and output device for enabling the individual to enter information and for displaying information to the individual.” (*Id.* at [0002]).

As shown in Figure 1 below, Stivoric describes a wearable sensor device 1201 that includes one or more sensors to “generate[] data indicative of various physiological parameters of an individual,” such as heart rate, pulse rate, respiration rate, skin temperature, core body temperature, blood pressure, oxygen consumption, glucose or blood sugar level, body position, and pressure on muscles or bones, among others. (*Id.* at [0064]-[0065].) The sensor device may be included in the user’s apparel (*e.g.*, “a form fitting shirt or as part of an arm band or the like”). (*Id.* at [0064].)

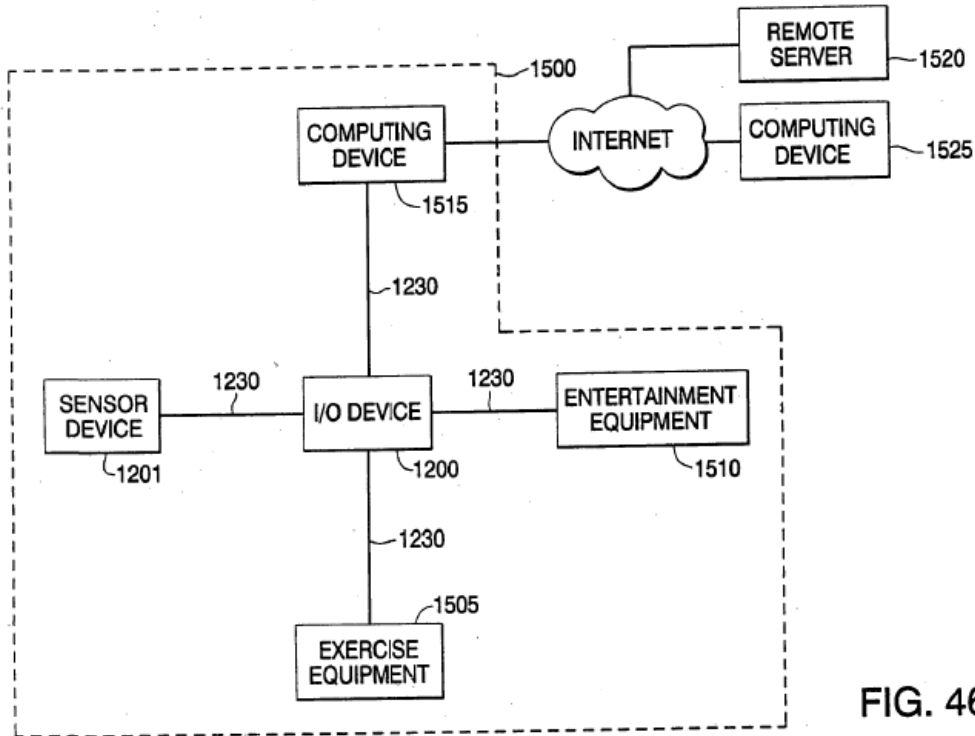


FIG. 46

(*Id.* at Fig. 46.) Stivoric further discloses an I/O device 1200 that “stores a program or regimen preferably including a set of goals that may be established by set by the user or a third party such as a trainer or care giver.” (*Id.* at [0218].) According to Stivoric, the I/O device communicates with the sensor device and is also programmed to control exercise equipment, such as a treadmill or weight machine. (*Id.*) The I/O device “tracks the user’s performance, preferably with respect to the program or regimen including goals.” (*Id.*) This tracking is based on parameters being measured by sensor device 1201 or information received from the exercise equipment, such as repetitions on a weight machine. (*Id.*)

Stivoric teaches that the I/O device include means for enabling the individual to enter information relating to an activity goal and time period (*e.g.*, burn 2,400 calories daily). (*Id.* at [0197].) According to Stivoric, data for an individual is collected by sensor device 1201 and subsequently presented by the I/O device on an LCD display. (*Id.* at [0197].) Stivoric further teaches that “this data is presented in a format that provides a comparison to a predetermined goal for each value.” (*Id.*)

Stivoric also discloses that feedback is provided to the user, such as by presenting a user with celebratory messages or other motivational content upon achieving their activity goals, *e.g.*, “BURN!” and “GOOD!”. (*Id.* at [0134], Fig. 43B-C.)

3. Sirmans

Sirmans (Ex. 1004) discloses “systems and methods for encouraging an individual to perform health-promoting measures.” (Ex. 1004 at [0029].) In particular, Sirmans presents a way “to promote behavioral modification by providing incentives for compliance in performing the health-promoting measures.” (*Id.*) Sirmans achieves this by tracking a user’s exercise regimen using a monitoring device (*e.g.*, a wearable sensor), recording this activity data, and assessing the recorded information in comparison to pre-established criteria to

determine a corresponding reward to encourage the user to maintain or increase their activity level. (*Id.* at [0036].)

An exemplary workflow according to Sirmans is depicted in Figure 1 below. Box 5 shows a user first receives “protocol criteria” for performing “health-promoting measures.” (*Id.* at [0058].) Protocol criteria are generally established by an entity familiar with health and well-being, such as an insurance carrier, a health professional, or a governmental entity. (*Id.*) Health-promoting measures include activities designed to improve user fitness and wellness, such as “exercise regimens (i.e., weight training, aerobic exercises (i.e., swimming, kickboxing, jogging, bicycling, dancing, brisk walking, playing sports, etc.)).” (*Id.* at [0031].) In Box 10, Sirmans describes a personal monitoring device, which includes at least one sensor to record a user’s physiological status during an exercise workout and a transmitter to communicate the recorded data to a central computer for further analysis. (*Id.* at [0047], [0060].) Then in Box 15, the central computer profiles, tracks, and stratifies the recorded data into a performance model and assesses a user’s compliance with the predefined protocol criteria. (*Id.* at [0060].) Finally, in Box 20, the member’s performance data is finally analyzed to determine the reward or points to be presented to the user according to their degree of performance. (*Id.* at [0063], [0066].) Rewards include “both tangible and intangible products/services.” (*Id.* at [0065].)

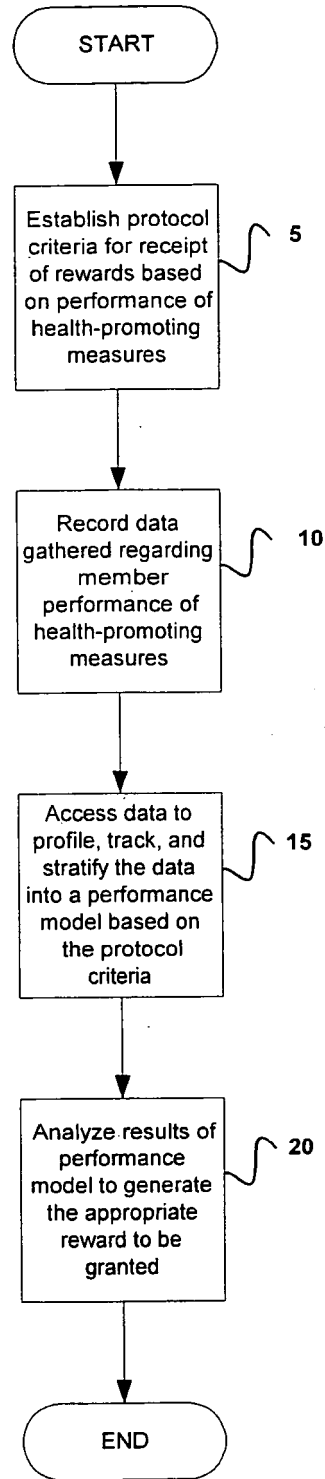


FIG. 1

4. Kobayashi²

Kobayashi generally relates to a “health points bank system” that can be used to “obtain predetermined products and services according to points accrued” based on the conversion of biological information associated with workouts into activity points. (Ex. 1005 at Abstract). The monitoring approach described in Kobayashi relates to exercise just like the challenged patent. Kobayashi notes that “in order to maintain and improve one’s health, self-management is necessary in daily life, and exercise is the most important item to consider,” which is then followed by “walking which includes jogging is popular because it is extremely easy to perform while performing self-control.” (*Id.* at [0002]). Thus, Kobayashi relates to monitoring walking and jogging, which are clearly exercise and considered athletic activity.

5. Brady

Brady describes a “monitoring device 20 preferably includes an article 25 and an attachment band 26” that attaches the monitoring device to a user’s wrist. (Ex. 1021 at 4:32-33, 5:8-9.) The device includes a sensor that is used to detect the user’s heart rate and other physiological parameters. (*Id.* at 5:16-41, 6:1-13.) The

² Exhibit 1005 includes both the original Japanese publication and a certified English translation. Citations in the Petition are to the English translation.

collected parameters and other information can be displayed on a display of the device. (*Id.* at 6:6-9, 6:14-42.)

III. LEVEL OF ORDINARY SKILL

A POSITA for the technology of the '615 patent would have had (1) a bachelor's degree in engineering, computer science, industrial design, biomechanics, or a related field, and (2) at least two years of experience researching, developing, designing, and/or testing fitness or physiological sensors, wearable devices, physiological or biomechanical devices, remotely controlled systems or interfaces, network-based applications and/or equipment, or the equivalent experience or education. (Ex. 1006, ¶ 42.)

IV. CLAIM CONSTRUCTION

Petitioner does not propose any terms for construction because no constructions are necessary to resolve any disputes identified in this Petition. *See Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999).³

³ If trial is instituted, Petitioner reserves its right to address construction of any terms raised at trial, or in the related district court action. Petitioner believes that the '615 patent claims are invalid under 35 U.S.C. §§ 101 and 112. Because those issues cannot be raised in an IPR, Petitioner has raised or reserves the right to raise those issues in the related district court action, *Nike, Inc. v. lululemon usa inc.*, No. 1:22-cv-00082-RA-OTW (S.D.N.Y.).

V. PRECISE REASONS FOR RELIEF REQUESTED

Pursuant to 37 C.F.R. § 42.104(b), Petitioner requests cancellation of claims 1-8 and 11-13 of the '615 patent based on the following references:

Prior Art Reference	Abbreviation
U.S. Patent Publication No. 2011/0197157	“Hoffman” (Ex. 1002)
U.S. Patent Publication No. 2004/0152957	“Stivorice” (Ex. 1003)
U.S. Patent Publication No. 2006/0111944	“Sirmans” (Ex. 1004)
JP Patent Publication No. 2003-141260	“Kobayashi” (Ex. 1005)
U.S. Patent No. 7,431,696	“Brady” (Ex. 1021)

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

All statutory citations are pre-AIA.

Hoffman was filed on August 12, 2010, and claims priority to a September 4, 2009 provisional application. Hoffman’s named inventors are Michael Hoffman, Kwamina Crankson, and Jason Nims. (Ex. 1002 at 1.) The '615 Patent’s named inventors are Aaron B. Weast and Jamian R. Cobbett. (Ex. 1001 at 1.) Thus, Hoffman was filed “by another.” *See* MPEP 2136.04 (an application is “by another” “if not all inventors are the same” as a previous application). Hoffman therefore qualifies as prior art under Section 102(e) based on the '615 patent’s November 1, 2011 priority claim listed on its face or even its earliest

possible priority date of November 1, 2010 listed in the first paragraph of the specification.

Stivorice was published on August 5, 2004. Stivorice therefore qualifies as prior art under Section 102(b) based on the '615 patent's earliest possible priority date of November 1, 2010.

Sirmans published on May 26, 2006. Sirmans therefore likewise qualifies as prior art under Section 102(b) based on the '615 patent's earliest possible priority date of November 1, 2010.

Kobayashi published on May 16, 2003. Kobayashi therefore qualifies as prior art under Section 102(b) based on the '615 patent's earliest possible priority date of November 1, 2010.

Brady published on October 7, 2008. Brady therefore qualifies as prior art under Section 102(b) based on the '615 patent's earliest possible priority date of November 1, 2010.

Ground	35 U.S.C. §	Claims	Prior Art References
1	102	1-5, 7, 11, and 13	Hoffman
2	103	1-5, 7, 11, and 13	Stivorice and Kobayashi
3	103	1-5, 7, 11, and 13	Sirmans and Kobayashi
4	103	3-5	Stivorice, Kobayashi, and Brady
5	103	3-5	Sirmans, Kobayashi, and Brady

VI. GROUND 1: CLAIMS 1-5, 7, 11, AND 13 ARE ANTICIPATED BY HOFFMAN

A. Method Claims 1-5 and 7

1. Claim 1

a. Element 1[pre]

A method comprising:

If limiting, Hoffman discloses a method for monitoring and tracking athletic activities, including challenges and goals. (Ex. 1002 at [0151] and [0189].)

b. Element 1[a]

receiving athletic activity data from a device configured to be worn by a user;

Hoffman discloses receiving athletic activity data from a wearable sensor device. Specifically, Hoffman teaches that “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.” (Ex. 1002 at [0055].) According to Hoffman, an “athletic information monitoring device will incorporate a sensor for measuring parameters relating to the person being monitored.” (*Id.*) Hoffman further teaches that “sensing devices may include various types of sensors including pedometers, accelerometers, pressure sensors and the like” and “may be included in apparel such as clothing and shoes” or “otherwise worn by the user.” (*Id.* at [0058], [0079].) Hoffman also discloses incorporating the sensing devices into a digital music player or other portal electronic device the processing

the sensor data. (*Id.* at [0091].) Thus, Hoffman's athletic information monitoring device containing a sensor may be worn by the user.

Hoffman also discloses that athletic activity data is received at an external computing device. Once a user's athletic activity has been recorded, "the user can then transfer the recorded athletic information to a local computing device." (*Id.* at [0057].) Moreover, Hoffman's device "will allow a person to record, collect and display athletic information using a group of computing devices communicating over a network, such as the Internet." (*Id.* at [0056].) Hoffman also teaches a "computing device for processing the parameters measured by the sensor." (*Id.* at [0055].) Thus, a computing device receives the athletic activity data.

Hoffman further discloses receiving athletic activity data from a device configured to be worn by a user. An "athletic parameter measurement device" and "electronic interface device" may be used to both track and present the athletic activity data corresponding to a user's exercise workout. (*Id.* at [0078].) The athletic parameter measurement device 207 is "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." (*Id.*) The athletic parameter measurement device "transmits signals to the electronic interface device 205 that correspond to the measured athletic parameter." (*Id.*)

Finally, the electronic interface device “receives the signals from the athletic parameter measurement device.” (*Id.*)

c. Element 1[b]

receiving an activity time period;

Hoffman discloses receiving an activity time period. For example, Hoffman describes a user input system 222 that “allow[s] a person to specify a goal related to an athletic activity [such as] a goal of running a specified total distance within a specified period of time.” (*Id.* at [0009].) The “specified period of time” is “an activity time period.”

Hoffman also discloses receiving activity time periods with respect to display of activity data. (*Id.* at [0161] (“The step tracker 2105 may be configured to display the number of steps taken on other time scales such as per minute, per 30 minutes, per 2 hours, per day and the like.”), [0211] (“Additionally, a leaderboard 7705 may be displayed to identify individuals having earned the most fuel or other activity metric over a specified time period (*e.g.*, a week, a month, a day, etc.).”).) Hoffman’s “activity time period” thus includes many time periods, such as an one-day time period, which matches the disclosure of the ’615 patent (Ex. 1001 at 51:1-8.)

d. Element 1[c]

receiving a first activity goal for the activity time period;

Hoffman discloses receiving a first activity goal for the activity time period. Hoffman specifically teaches “permit[ting] a user to set a goal relating to his or her athletic activities.” (*Id.* at [0123].) Hoffman further discloses prompting “the user to select a desired goal relating to his or her athletic activities,” including “a goal to walk a certain number of steps or burn a number of calories by walking” in a day. (*Id.* at [0123], [0009], Figs. 20C-D (“DAILY STEP COUNT”).) For example, “FIG. 37 illustrates a method by which a user may create and/or define goals and create a workout plan.” (*Id.* at [0189].) This method uses a web page to prompt a user to enter, for example, a desired number of calories to burn or steps to take. (*Id.* at [0189]-[0190].)

A user’s goal history and progress are displayed in an interface, such as interface 2100 in Figure 21A below.

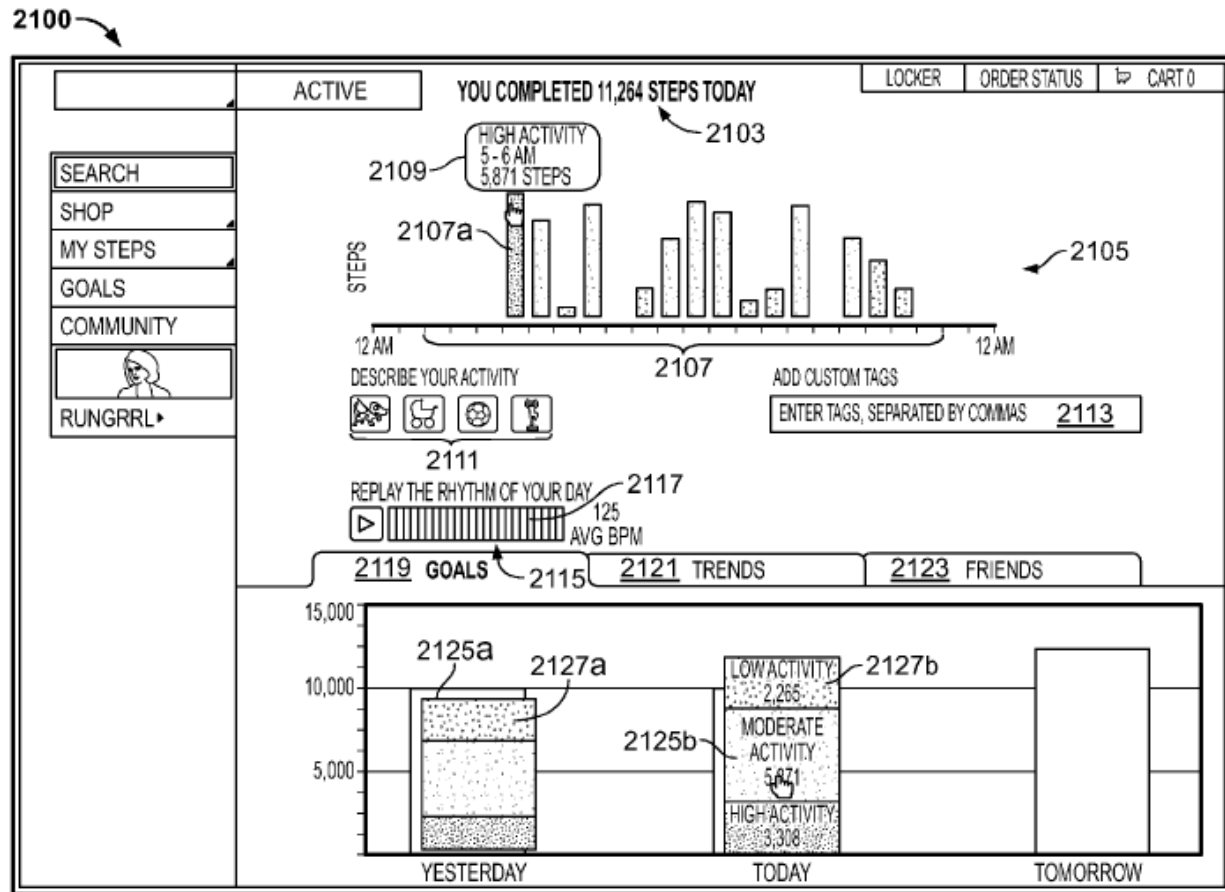


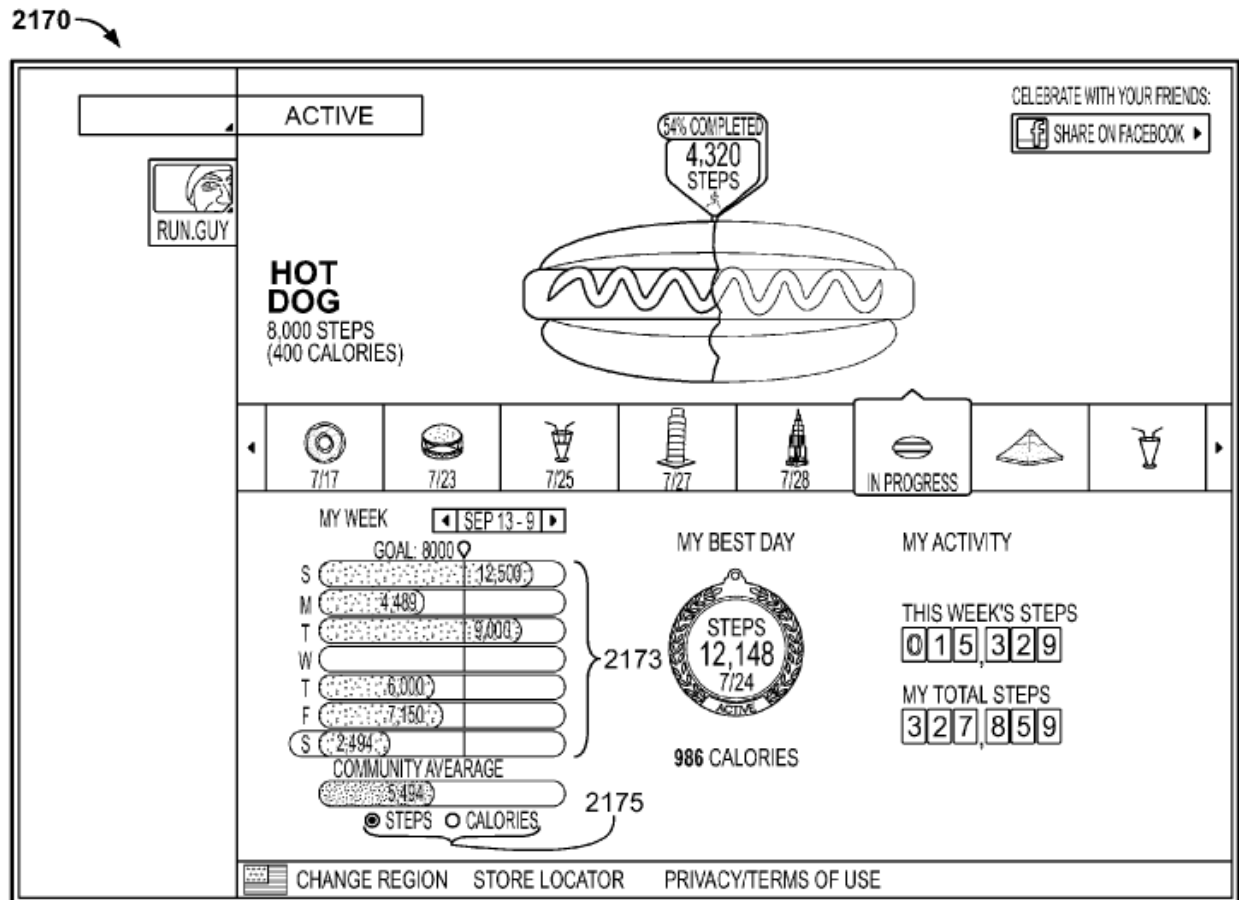
FIG. 21A

With respect to Figure 21A, Hoffman explains that:

Goals 2119 may be used to display a user's level of activity as compared to a defined goal. Goals may be represented by blocks 2125 while a user's actual level of activity may be represented by blocks 2127. Blocks 2127 may further display a breakdown of the level of activity performed including low, moderate and high activity. The level of activity may be determined based on a specified type of activity performed and/or a number of steps taken over a specified amount of time.

(*Id.* at [0163].) Figure 21A thus discloses activity goals “a specified amount of time,” such as one-day time periods.

Figures 21B-C include similar interfaces. For example, Figure 21C below shows an 8000-step daily goal and allows a user to switch to calorie goals using option 2175. (*Id.* at [0165].)



Referring back to the example described above for Element 1[b], Hoffman also describes a user input system 222 that “allow[s] a person to specify a goal related to an athletic activity [such as] a goal of running a specified total distance within a specified period of time.” (*Id.* at [0107].) In this example, the “first activity goal” is “a specified total distance” for the “specific period of time,” which is the recited “activity time period.” Hoffman further discloses that goals may be

specific on a per-day basis. (*Id.* at [0198] (“[A] badge may be awarded for a user completing 3 goals in 3 consecutive days, completing 2 goals in a single day.”))

e. Element 1[d]

determining, at a processor, whether the received athletic activity data exceeds the first activity goal for a predetermined number of consecutive activity time periods; and

Hoffman discloses determining, at a processor, whether the received athletic activity data exceeds the first activity goal for a predetermined number of consecutive activity time periods. Hoffman discloses that a computing unit “may operate on the processed signals provided by the athletic information monitoring device” in order to “generate a set of athletic data corresponding to the athletic activity performed by the user.” (*Id.* at [0084].) When the athletic information monitoring device includes an accelerometer for measuring the user’s movement, Hoffman’s computing unit may “analyze the processed signals from the athletic information monitoring device,” thereby generating “a set of athletic data describing the user’s speed at specific instances during the user’s athletic activity.” (*Id.*) Hoffman’s computing unit thus constitutes a processor for analyzing the received athletic activity data.

Hoffman further teaches that a computing unit recognizes when a user has performed “in excess” of a goal. (*Id.* at [0184].) Hoffman discloses that a computing unit “may roll over calories burned and steps performed exceeding the

required amount to complete a previous goal.” (*Id.*) Hoffman explains that “if 1500 steps are required to complete goal 3209 and the user performs 1955 steps, the extra 455 steps may be applied to new goal.” (*Id.* at [0184].)

Hoffman’s computing unit also determines when a user has exceeded an activity goal for consecutive activity time periods. In particular, Hoffman discloses that its computing unit recognizes when a user has completed “3 goals in 3 consecutive days.” (*Id.* at [0198].) In this example, completing three goals exceeds a first activity goal, and three consecutive days constitute the predetermined number of consecutive active time periods.

f. Element 1[e]

presenting a streak reward to the user when the received athletic activity data exceeds the first activity goal for the predetermined number of consecutive activity time periods.

Hoffman discloses presenting a streak reward to the user when the received athletic activity data exceeds the first activity goal for the predetermined number of consecutive activity time periods. Hoffman specifically teaches that “badges may be awarded by the athletic activity tracking and monitoring site based on various achievements.” (*Id.*) In Hoffman, badges are displayed and users may be presented with a badge for each goal that is completed. (*Id.*) According to Hoffman, “a badge may be awarded for a user completing 3 goals in 3 consecutive days.” (*Id.*) In this example, completing three goals exceeds a first activity goal,

and three consecutive days constitute the predetermined number of consecutive active time periods. Annotated Figure 43 below shows an interface in which a badge is displayed on a computing device to the user (see red inlay).

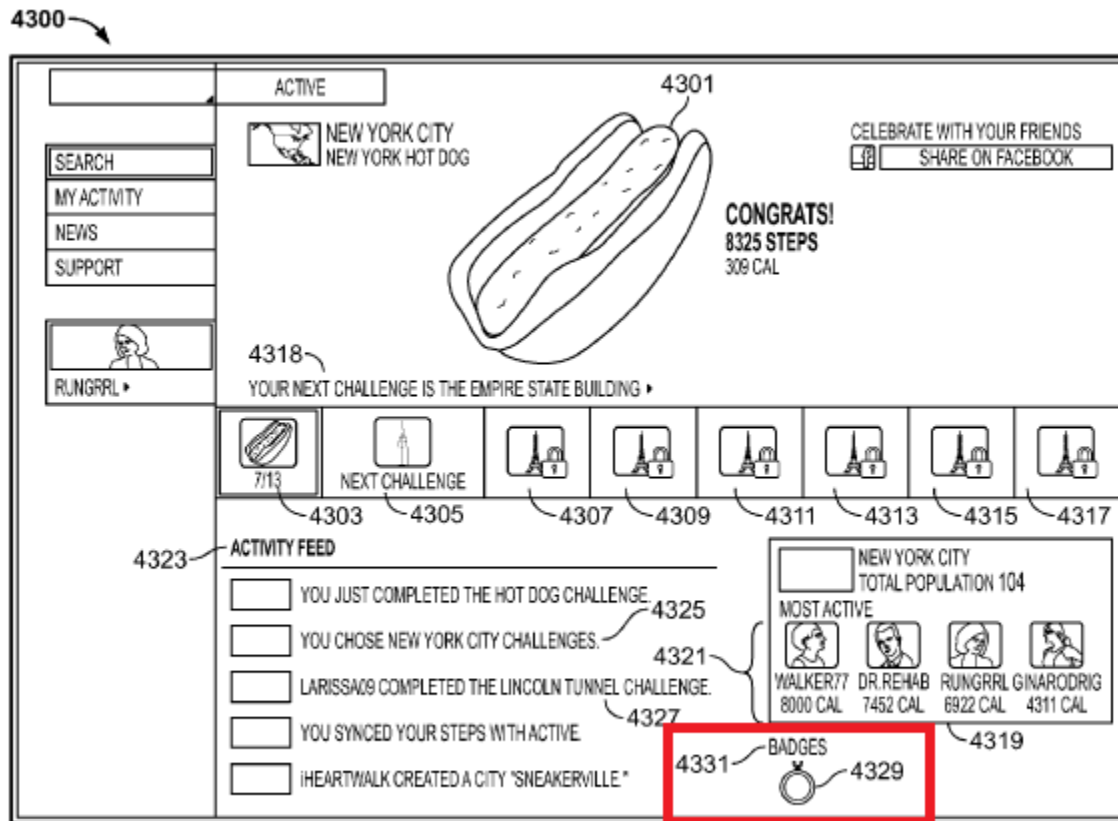


FIG. 43

2. Claim 2

The method of claim 1, further comprising: determining a number of activity points earned by the user in accordance with the received athletic activity data.

Hoffman discloses the additional limitations of claim 2. In Hoffman, a user may earn virtual currency associated with their athletic activity, which is a form of an activity point. (*Id.* at [0180].) Hoffman teaches that “the amount of virtual currency achieved or gained may be determined based on a formula that is based

on calories, steps or a combination thereof.” (*Id.* at [0232].) For example, “the virtual currency may be linearly correlated to a metric such as calories since this is a measure of human energy expenditure.” (*Id.* at [0233].) Additionally, “other factors may similarly be used in determining an amount of virtual currency to award.” (*Id.* at [0232].) Virtual currency can be used “to purchase actual products or services such as gift cards, gym memberships, digital music players, workout equipment and the like.” (*Id.*) A currency meter may be displayed on a computing device “to indicate an amount of currency the user has accumulated thus far” in proportion to a user’s athletic activity. (*Id.*)

Hoffman also teaches “fuel points” as another metric of activity points associated with a user’s collected activity data. The user interface of a computing device may “indicate the progress made and encourage the user to reach a next goal by indicating the number of fuel points that must be earned to reaching the next goal.” (*Id.* at [0215].) The computing device may determine that “the user has earned 375 fuel points (based on a conversion rate of 1 calorie=1 fuel point).” (*Id.* at [0229].)

3. Claim 3

The method of claim 1, wherein the device is a wrist-worn monitoring device.

Hoffman discloses that the device is a wrist-worn monitoring device. In describing athletic information monitoring device 201, Hoffman explains that its

computing unit 313 analyzes signals from an accelerometer to determine activity information, such as user speed and total distance. (*Id.* at [0084].) Hoffman also explains that device 203 of athletic information monitoring device 201 itself can include an accelerometer. (*Id.* at [0094].)

In describing how to use accelerometer signals, Hoffman incorporates by reference U.S. Patent No. 6,898,550. (*Id.*) As depicted in Figure 3A below, this patent discloses a wrist-mounted unit 104 for monitoring user activity by receiving and analyzing activity data from a sensor worn by the user. (Ex. 1020 at 20:57-21:12, 22:63-23:8.) Wrist mounted unit 104 may also include sensors itself that monitor a user's workout. (*Id.* at 22:8-11.) The wrist-mounted unit 104 corresponds to Hoffman's computing unit 313 that receives data from an accelerometer and determines activity data, such as speed and distance. Hoffman, through its incorporated teachings, thus discloses that its athletic information monitoring device 201 (and particularly device 203, which incorporates computing unit 313) is wrist mounted.

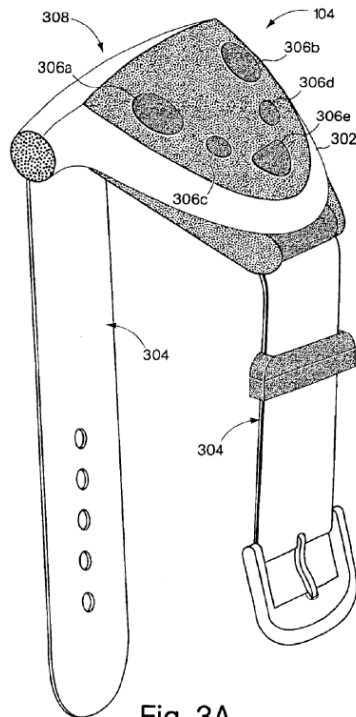


Fig. 3A

4. Claim 4

The method of claim 1, further comprising: providing a first application interface configured to communicate athletic activity data to the user, wherein the interface includes one or more functions configured to be invoked for at least the device.

Hoffman discloses providing an application interface configured to communicate athletic activity data to the user. Hoffman's broad application interface includes physical inputs (*see, e.g. id.* at [0087], Fig. 2), display on the monitoring device itself (*see, e.g. id.*), and display external to the monitoring device, such as "an athletic information collection and display device 501 that may be employed to collect and/or display athletic data" (*see, e.g. id.* at [0092], [0155]). This application interface is consistent with the '615 patent's disclosure of physical

inputs (*see, e.g.*, Ex. 1001 at 16:32-55), display on the monitoring device (*see, e.g., id.* at 16:56-17:33, Figs. 47A-47B), and display external to the monitoring device (*see, e.g., id.* at 78A-78G, 83A-83H).

As shown in Figure 5 below, “when a user wishes to view information relating to his or her athletic activities,” the user can submit a display request to the athletic information collection and display device 501, which is then provided to an athletic data display module 509 through an input/output interface 511. (*Id.* at [0100].) The input/output interface may be implemented using various “hardware and software components, such as conventional application programming interfaces (APIs).” (*Id.*) In response to receiving a request to review a user’s athletic activity data, the athletic data display configuration module “will prepare a user interface for displaying the requested athletic data, and transmit the user interface with the athletic data to the athletic data display module 509 for display to the user.” (*Id.* at [0106].)

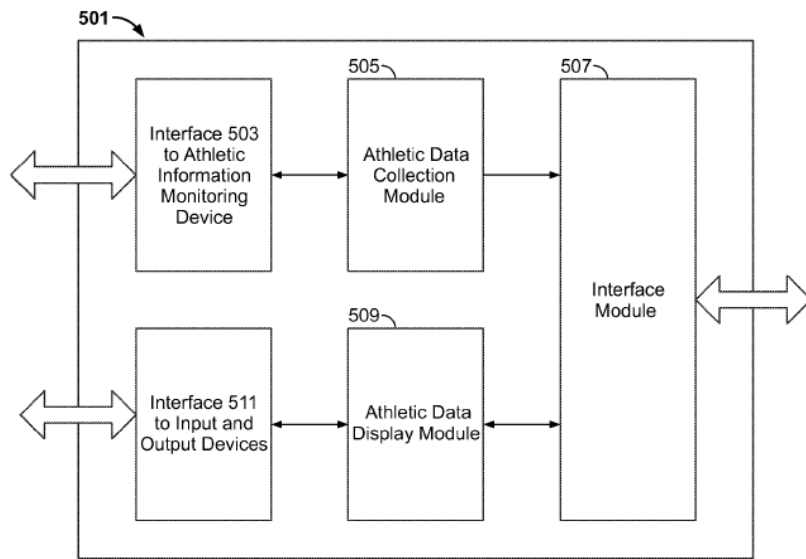


FIG. 5

An example of the application interface is depicted in Figure 20A below. It “communicate[s] athletic activity data to the user” (“YOU COMPLETED 11,624 STEPS TODAY”). It also includes functions to be invoked for the device, such as setting weekly and monthly goals (see element 2009).

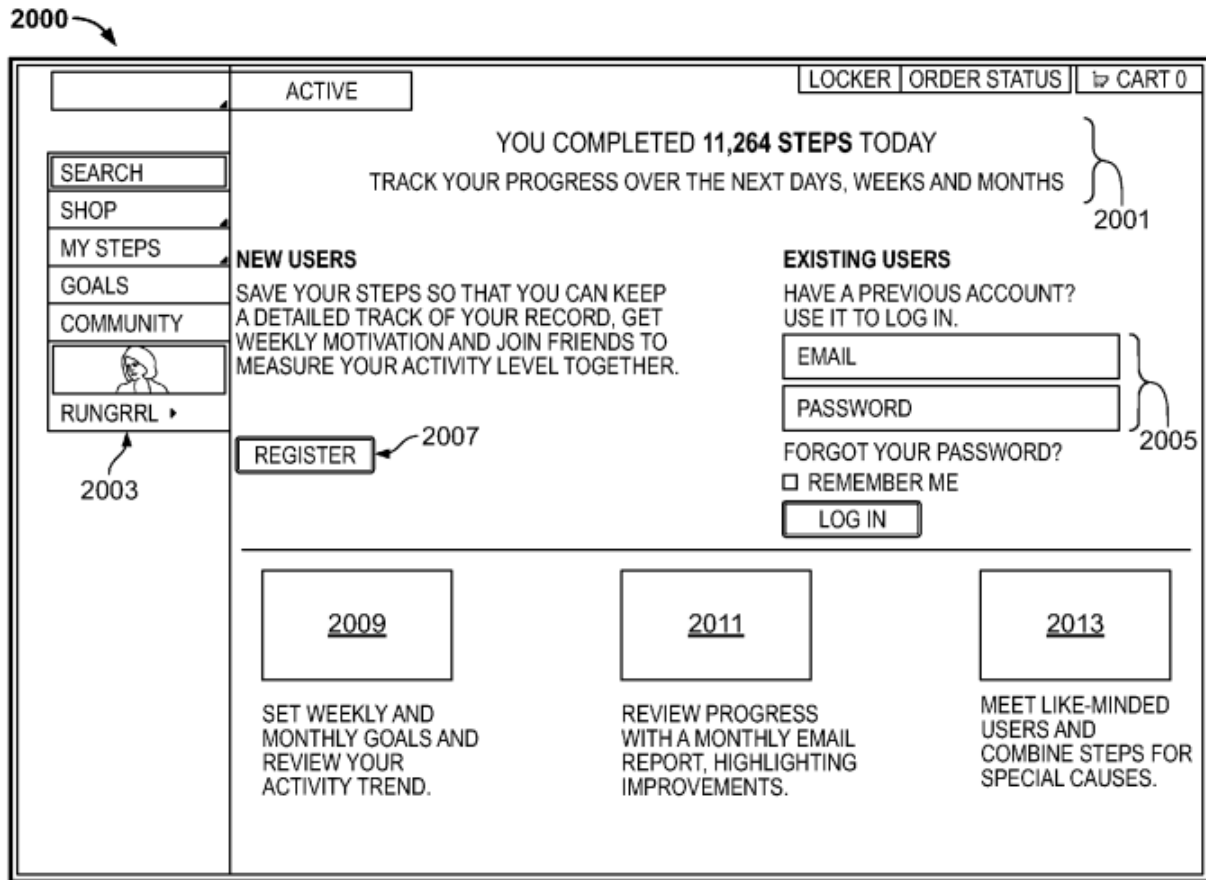


FIG. 20A

As depicted in Figure 22 below, Hoffman also discloses that its application interface includes a sync function to be invoked for the device.

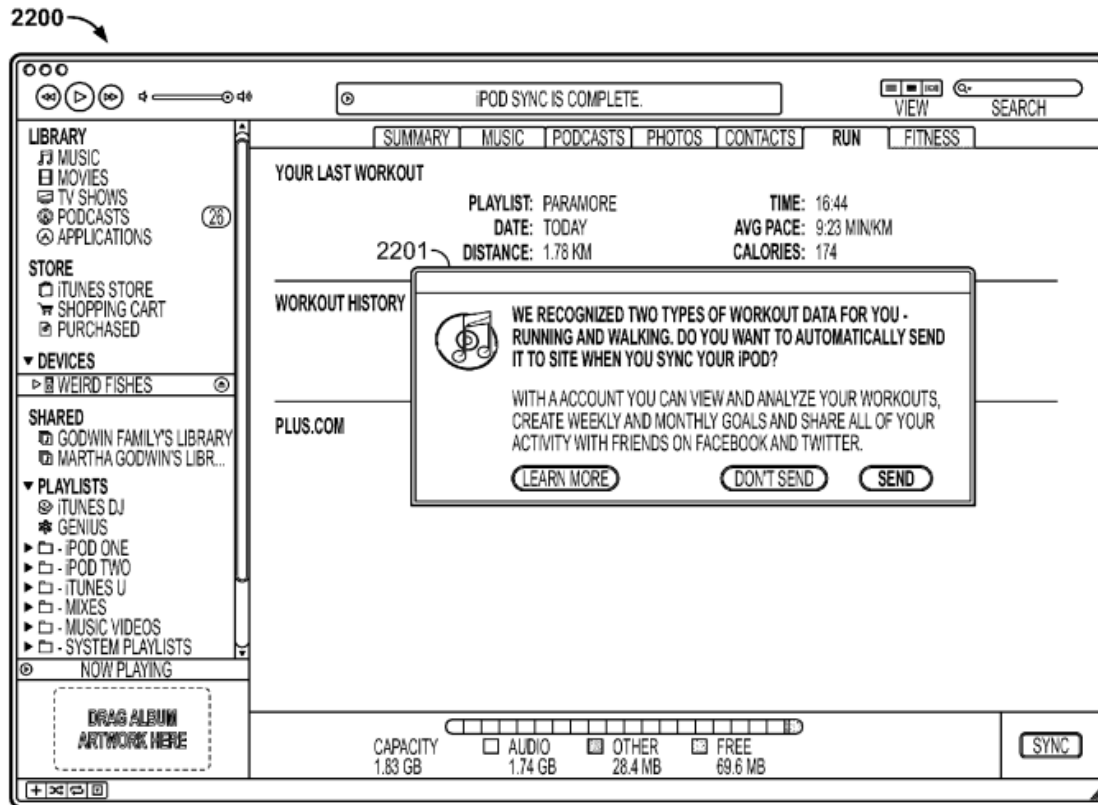


FIG. 22

Hoffman further discloses that its application interface includes one or more functions configured to be invoked for the athletic monitoring device. Hoffman discloses an electronic interface device 205 that includes a display 220 and a user input system 222 having buttons “to control the athletic parameter measurement device 207.” (*Id.* at [0087], Fig. 2.) The display 220 shows “information relating to the athletic information signals” collected by athletic parameter measurement device 207.

5. Claim 5

The method of claim 4, wherein a portion of the first application interface is configured to provide a visualization of athletic activity data, and wherein

different visualizations are provided in accordance with a user's progress toward completing the first activity goal.

Hoffman discloses the additional limitation in claim 5. Hoffman “permit[s] a user to set a goal relating to his or her athletic activities, and then view one or more images graphically illustrating the user’s progress toward accomplishing those goals.” (*Id.* at [0123].) Hoffman specifically describes that “after the user has specified a desired goal, the athletic data display configuration module 605 will monitor the athletic data collected.” (*Id.* at [0129].) To view the progress toward achieving the specified goal, the user may select the “Goals” tab on the athletic data display configuration module. (*Id.*) The athletic data display configuration module will subsequently “aggregate the relevant data from the collected athletic data set and configure a user interface graphically displaying the user's progress toward the specified goals.” (*Id.*) The progress is displayed as a bar graph as shown in Figure 12 below wherein “a portion of the bar graph corresponding to the user’s progress is marked with fill 1203,” indicating that “the user has accomplished more than 50% of the athletic activity required to complete his or her goal.” (*Id.*)

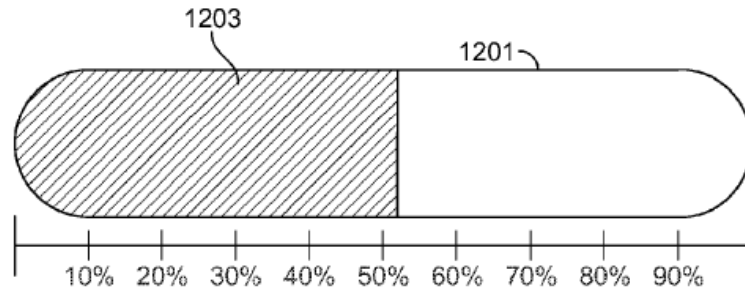


FIG. 12

Hoffman also teaches that a user's progress towards their goal may be visualized by the appearance of specific icons. As shown in Figure 31 below, "building 3105 may be shaded, colored or otherwise modified appearance-wise depending on the progress of the user." (*Id.* at [0179].) Here, "if the user has only completed 33% of the goal, building 3105 may be shaded 33% of the way to the top. Alternatively, if the user has completed the entire goal (as illustrated), building 3105 may be entirely shaded." (*Id.*) The shading depending on the user's progress "permits the user to differentiate and visualize" an amount completed and an amount remaining of a goal. (*Id.* at [0199].)

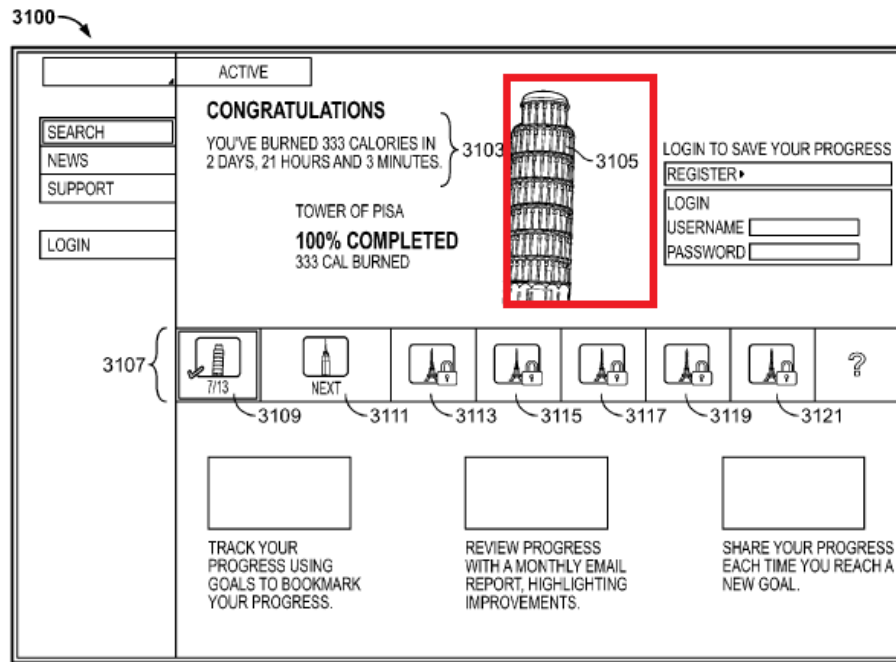


FIG. 31

Figure 21C provides similar visualizations corresponding to a user's progress toward completing the first activity goal. (*Id.* at [0165].) Daily activity breakdown display 2173 shows which days a user achieved the goal. The interface also shows how close the user is for the current day.

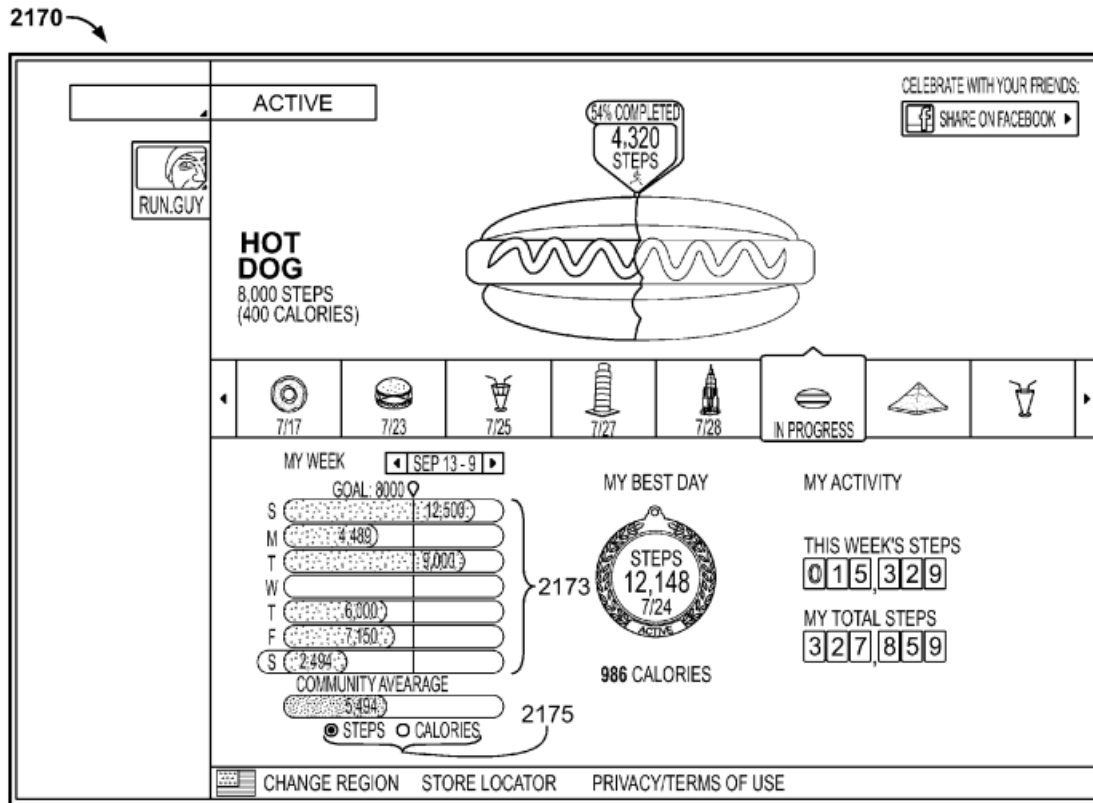


FIG. 21C

6. Claim 7

The method of claim 1, further comprising: receiving a second activity goal for the activity time period; and determining, at a processor, whether the received athletic activity data exceeds the second activity goal for a predetermined number of consecutive activity time periods.

Hoffman discloses the additional limitations of claim 7. As explained above, Hoffman discloses monitoring and tracking “a series of goals” for an activity time period, including “a number of calories, a distance to run, a number of steps to walk and the like.” (*Id.* at [0195].) If “number of calories” in “an activity time period” is the first activity goal, then “a number of steps to walk” in a day is

“a second activity goal for the activity time period.” Figure 21C shows option element 2175 that allows the user to switch between these two activity goals. (*Id.* at Fig. 21C, [0165].)

Additionally, Hoffman discloses that “the user may further be permitted to specify an order in which goals in a workout plan are arranged and presented to the user for completion.” (*Id.* at [0190].) As shown in step 3735 of Figure 37 below, Hoffman allows the user to enter multiple goals. As explained above with respect to elements 1[d] and 1[e], Hoffman’s computing unit can recognize when a user has completed “3 goals in 3 consecutive days.” (*Id.*)

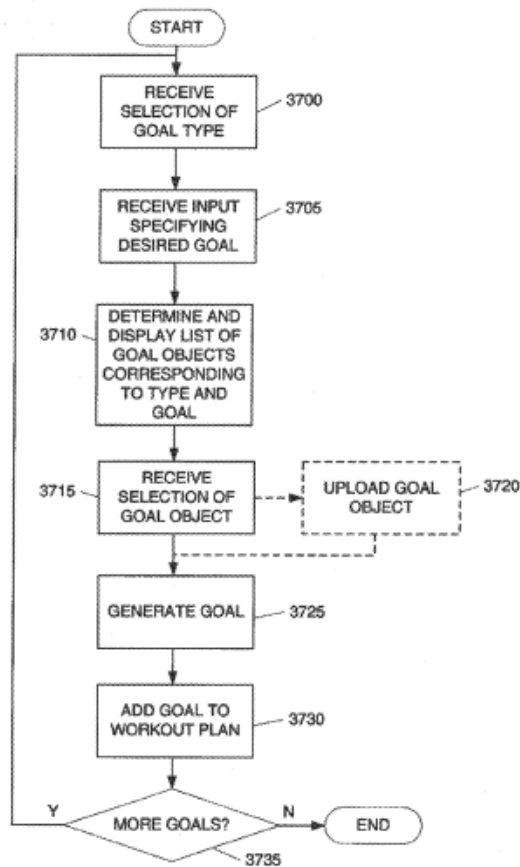


FIG. 37

B. Computer Readable Medium Claims 11 and 13

1. Claim 11

Independent claim 11 includes the same limitations as independent claim 1, but is directed to “a non-transitory computer readable medium” as opposed to a method. Hoffman discloses that its method can be implemented on a computing device. (Ex. 1002 at [0071].) In particular, the computing device includes “a processing unit 105 and a system memory 107.” (*Id.*) The processing unit may be “any type of processing device for executing software instructions, but will conventionally be a microprocessor device.” (*Id.*) Moreover, the system memory may “include both a read-only memory (ROM) 109 and a random access memory (RAM) 111.” (*Id.*) Hoffman notes that “both the read-only memory (ROM) 109 and the random access memory (RAM) 111 may store software instructions for execution by the processing unit 105.” (*Id.*) Thus, for the same reasons explained with respect to claim 1, Hoffman discloses the limitations of claim 11.

2. Claim 13

The computer-readable medium of claim 11, further containing computer-executable instructions to cause the computer device to determine whether the received athletic activity data exceeds the activity goal for a greater number of consecutive activity time periods than the predetermined number of consecutive activity time periods.

Hoffman discloses the additional limitations of claim 13. As explained above with respect to element 1[d], Hoffman discloses determining whether the athletic activity data exceeds the activity goal for more than 2 days. (*Id.* at [0198].)

VII. GROUND 2: CLAIMS 1-5, 7, 11, AND 13 ARE RENDERED OBVIOUS BY STIVORIC IN VIEW OF KOBAYASHI

A. Method Claims 1-5 and 7

1. Claim 1

a. Element 1[pre]

A method comprising:

If limiting, Stivoric discloses a “method for tracking caloric consumption and/or calorie expenditure of an individual. (Ex. 1003 at [0002].) The method utilizes a sensor worn on the body that monitors a user’s physiological status and provides information to the user about the progress made towards health goals.

(*Id.* at [0010].)

b. Element 1[a]

receiving athletic activity data from a device configured to be worn by a user;

Stivoric discloses several sensor devices for detecting information about a user wearing the sensor.

Sensor device 1201 detects human physiological and/or contextual parameters, and may be any one of sensor device 400 shown in FIGS. 12-17, stand alone sensor device 700 shown in FIG. 21, or sensor device 800 shown in FIGS. 22-26.

(*Id.* at [0185].) Sensor devices 400, 700, and 800 are each worn on the user using, e.g., an elastic strap. (*Id.* at [0115], [0116], [0143], and [0150].) These sensors detect athletic activity data, such as calories burned, start/end times, heart rates,

and muscular activity of the wearer. (*Id.* at [0131], [0134], [0141], [0142], [0146], [0160], [0161], [0167], and [0179].) A processor receives this data for analysis. (*Id.* at [0132]-[0133], [0142]-[0145] (computing device 750), [0161] (processing unit 900), [0185] (I/O device 1200).) Stivorice further discloses that its sensor can monitor any number of personal characteristics, including several exercise-related measurements. (*Id.* at Table 3.)

c. Element 1[b]

receiving an activity time period;

Stivorice discloses receiving an activity time period. I/O (“data input and output”) device 1200 includes physical input interfaces, such as buttons and dials, and a display, such as an LCD display. (*Id.* at [0180], [0185]-[0187].) The input devices allow I/O device 1200 to receive activity time periods, such as “a day, a week or a month”:

As seen in FIGS. 43A-C, the energy related data may include calories consumed and calories burned by the individual over ***specific time periods such as a day, a week or a month***. In FIG. 43A, this data is presented in a format that provides a comparison to a predetermined goal for each value.

(*Id.* at [0197] (emphasis added).) The different time periods are received from a user via a selection made “by rotating dial 1220” or “pressing button 1215.” (*Id.*) Physiological parameters, such as calories consumed and calories expended are tracked for each activity time period. (*Id.*) The activity time periods and related

parameters are depicted in Figures 43A-C (reproduced below). Note “BALANCE” and “GOALS” at the top with “D W M” indicator corresponding to day, week, and month activity time periods, respectively.

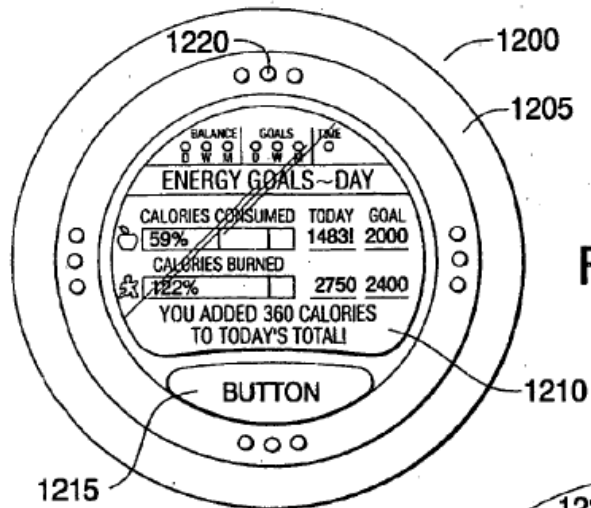


FIG. 43A

FIG. 43B

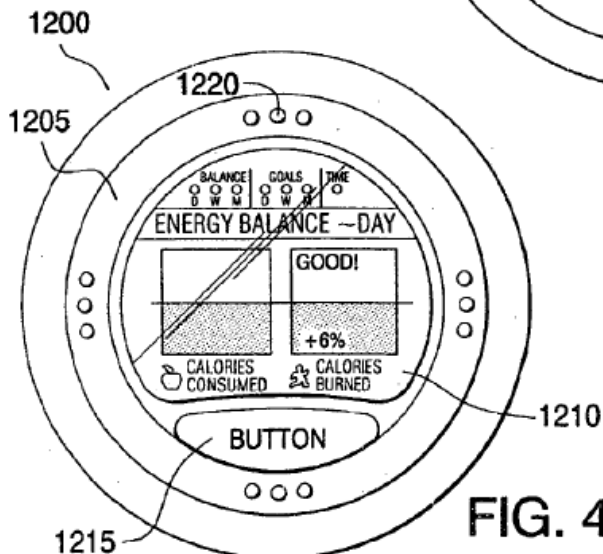
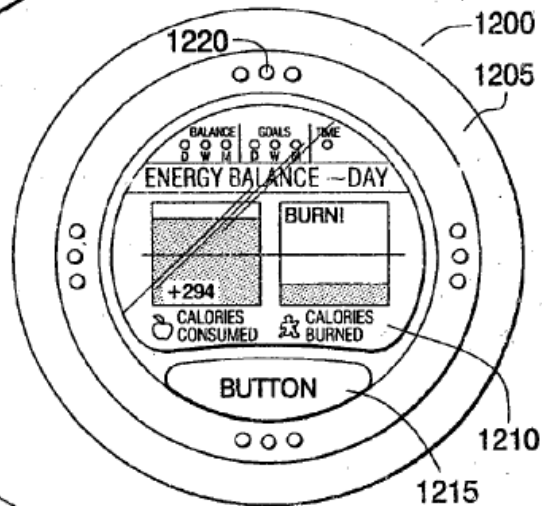


FIG. 43C

d. Element 1[c]

receiving a first activity goal for the activity time period;

For each of the activity time periods, Stivorice discloses receiving activity goals, such as calories consumed and calories burned.

The example shown in FIG. 43A shows that ***a daily goal of 2000 calories consumed was set by the individual*** and that the individual has consumed 1,483 calories on the day in question, and that ***a daily goal of 2,400 calories burned was set by the individual*** and that the individual has burned 2,750 calories on the day in question.

Referring to FIGS. 43B and C, the data is presented in a format referred to as energy balance in which the amount of calories consumed by the individual is compared to the amount of calories expended or burned by the individual for daily, weekly or monthly periods.

(*Id.* (emphasis added).) Stivorice also discloses that goals may be received from a third party. (*Id.* at [0218] (“a set of goals that may be established by set by the user or a third party such as a trainer or care giver”).)

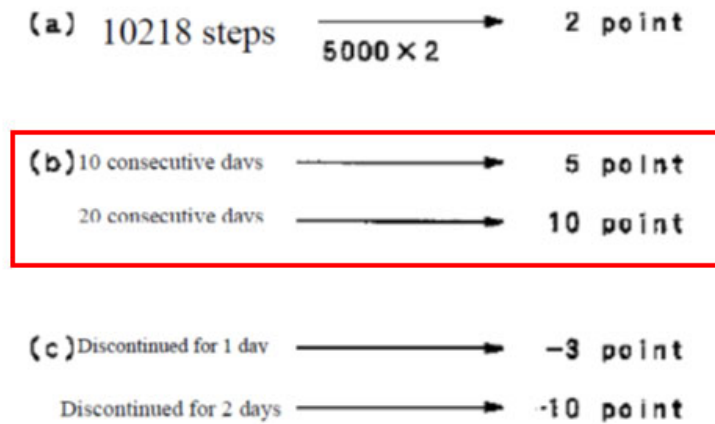
e. Element 1[d]

determining, at a processor, whether the received athletic activity data exceeds the first activity goal for a predetermined number of consecutive activity time periods; and

Stivorice discloses that a processing unit 1300 of I/O device 1200. (*Id.* at [0213].) Processing unit 1300 is “programmed to generate and display the information shown in FIGS. 43A-C,” which includes determinations of whether goals relating to calories consumed and calories expended are met. (*Id.* at [0215]; *see also id.* at [0197], [0199].)

Kobayashi teaches recognizing and rewarding “consecutive days of reaching the goal[.]” (Ex. 1005 at [0142].) As shown in Figure 12 below, Kobayashi determines when a user has completed an activity goal for 10 or 20 consecutive days. Given that both Stivoric and Kobayashi are in the same field of personal health monitoring, a POSITA would have been motivated to combine these teachings to further incentivize regular exercise. (Ex. 1006, ¶¶ 112-115.) Such a modification would have been well within the skill of a POSITA, who would have had a high likelihood of success making this modification. (*Id.*) Indeed, it would have been a simple modification to include Kobayashi’s recognition of consecutive activity time periods into Stivoric’s device meant to improve a user’s physical health. (*Id.*) In view of the combined teachings of Stivoric and Kobayashi, it would have been well within the skill of a POSITA to implement determining whether the received athletic activity data exceeds the first activity goal for a predetermined number of consecutive activity time periods. (*Id.*) Such a modification would have taken nothing more than basic programming skills that would be part of any introductory programming course. (*Id.*)

[Figure 12]



f. Element 1[e]

presenting a streak reward to the user when the received athletic activity data exceeds the first activity goal for the predetermined number of consecutive activity time periods.

Stivorice discloses displaying motivational messages to a user about whether health goals are achieved. (Ex. 1003, FIG. 43A (“YOU ADDED 360 CALORIES TO TODAY’S GOAL!”), FIG. 43B (“BURN!”), FIG. 43C (“GOOD!”).) Stivorice also recognizes the benefit of providing other motivational feedback. (*Id.* at [0078], [0134], [0211], [0219], Claim 22.)

As described above (*see* VII.A.1.e), Kobayashi teaches that “if continuity is considered important,” “additional points may be given for consecutive days of reaching the goal: for example, 5 points on the 10th consecutive day or 10 points on the 20th consecutive day.” (Ex. 1005 at [0141]-[0142].) In view of Kobayashi’s teachings, it would have been obvious for a POSITA to configure

Stivoric's feedback structure to provide a reward for meeting an activity goal over a predetermined consecutive set of daily activity periods (*i.e.*, a streak reward).

(Ex. 1006, ¶¶ 112-115.) Indeed, it would be simple to add Kobayashi's exemplary bonus points for completing an activity goal over consecutive activity time period into Stivoric's workouts. (*Id.*) This would yield a predictable result of providing an additional incentive to maintain a daily exercise regimen and rewarding a user for doing so. (*Id.*)

2. Claim 2

The method of claim 1, further comprising: determining a number of activity points earned by the user in accordance with the received athletic activity data.

Stivoric discloses determining "activity points" based on a user's "athletic activity data" in the form of a "Health Index":

Located on the opening Health Manager web page 150 is Health Index 155. Health Index 155 is a graphical utility used to measure and provide feedback to member users regarding their performance and the degree to which they have succeeded in reaching a healthy daily routine suggested by central monitoring unit 30. Health Index 155 thus provides an indication for the member user to track his or her progress. Health Index 155 includes six categories relating to the user's health and lifestyle: Nutrition, **Activity Level**, Mind Centering, Sleep, Daily Activities and How You Feel.

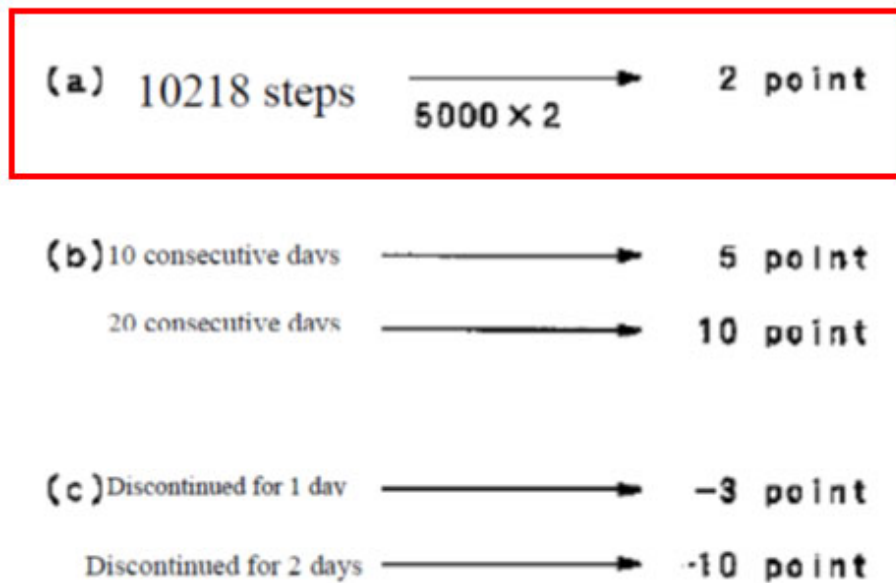
...

The Activity Level category relates to how much a person moves around.

(*Id.* at [0094] (emphasis added).) The “Activity Level” is an index that is based on “athletic activity data” from the sensor that the user wears. (*Id.* at [0099]-[0101] (“Parameters utilized in the calculation of the relevant piston level include the amount of time spent exercising aerobically or engaging in a vigorous lifestyle activity as input by the user and/or sensed by sensor device 10, and the number of calories burned above pre-calculated energy expenditure parameters.”).) Stivoric’s “Activity Level” is a number of “activity points” in accordance to “athletic activity data” that is received from a sensor that the user wears.

To the extent Patent Owner argues that Stivoric fails to disclose the additional limitation of claim 2, a POSITA would have found it obvious to modify Stivoric to use Kobayashi’s teaching of “activity points.” Kobayashi discloses conversion of athletic activity data (*e.g.*, step count) into points, as shown in Figure 12 below (annotated). (Ex. 1005 at [0139].) Kobayashi teaches that “there may be many different patterns” of converting the number of steps into points (*e.g.*, 5,000 steps in a day equals 1 point). (*Id.* at [0140].) A user “who recorded 10,218 steps, for example, can convert the steps into 2 points.” (*Id.*) Both Stivoric and Kobayashi are in the field of personal fitness monitoring, and it would be a simple modification to include Kobayashi’s point system into Stivoric’s device to incentivize further a user to maintain or increase their level of exercise. (Ex. 1006, ¶¶ 116-117.)

[Figure 12]



3. Claim 3

The method of claim 1, wherein the device is a wrist-worn monitoring device.

Stivorice discloses that its sensors that monitor a user's physiological status, such as sensors 700 and 1201, may be attached to a corresponding computing device. (*Id.* at [0185] (describing I/O device 1200 as “attached to sensor device 1201”).) These computing devices, such as devices 750 and 1200, are worn on a user's wrist. (*Id.* at [0161] (device 750 is “a computing device worn on the wrist”), [0185] (I/O device 1200 is “a watch-like form adapted to be worn on the wrist”), [0216] (I/O device 1200 is “a watch-like device that is worn by the user on his or her wrist”).)

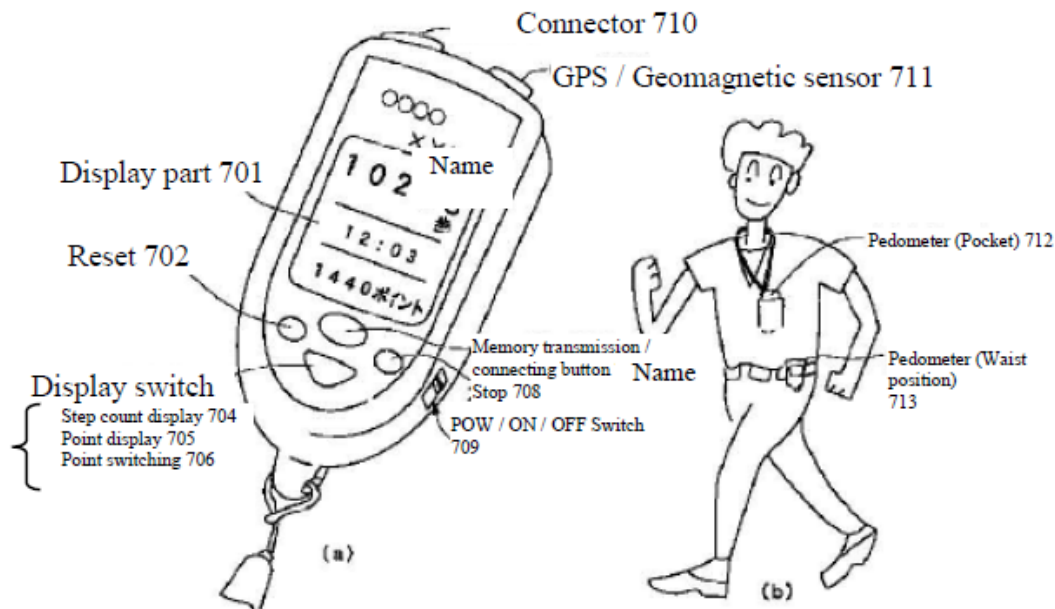
4. Claim 4

The method of claim 1, further comprising: providing a first application interface configured to communicate athletic activity data to the user, wherein the interface includes one or more functions configured to be invoked for at least the device.

In Figures 43A-F, Stivorice shows that its I/O device 1200 includes a display that provides application interfaces that communicate athletic activity data to the user in the form of data such as calories burned, which includes calories burned during exercise. (*Id.* at [0099]-[0101], Figs. 43A-F, [0197], [0199].) Stivorice application interfaces for its system also include functions configured to be invoked for the device, including timestamps and activation functions (*id.* at [0140]), and inputting or configuring goals (*id.* at [0195]-[0197]).

To the extent Patent Owner argues that Stivorice fails to disclose this limitation, a POSITA would have found it obvious to modify Stivorice's system such that its sensor includes a display and inputs as taught in Kobayashi. Specifically, Kobayashi's discloses a pedometer sensor that includes a display and user inputs. (Ex. 1005 at [0088].) The display shows "athletic activity data" such as step count. (*Id.* at [0089].) The user inputs include a display switch that invokes different functional displays to appear and a reset input for resetting the device. (*Id.* at [0088]-[0099].) This is further depicted in Figure 7 below.

[Figure 7]



A POSITA would have found it obvious to incorporate Kobayashi's teachings above into Stivorik. (Ex. 1006, ¶¶ 118-119.) Such a modification would have provided the well-recognized benefits of additional feedback about a user's workout and additional flexibility in how a user interacts with the sensor. (*Id.*) A POSITA could have easily made such a modification with a reasonable expectation of success. (*Id.*)

5. Claim 5

The method of claim 4, wherein a portion of the first application interface is configured to provide a visualization of athletic activity data, and wherein different visualizations are provided in accordance with a user's progress toward completing the first activity goal.

Stivorik's application interfaces depicted in Figures 43A-C provide different visualizations based on a user's progress towards completing activity goals. (*Id.* at

Figs. 43A-C at [0197] (“The example shown in FIG. 43A shows that a daily goal of 2000 calories consumed was set by the individual and that the individual has consumed 1,483 calories on the day in question, and that a daily goal of 2,400 calories burned was set by the individual and that the individual has burned 2,750 calories on the day in question.”).) Kobayashi also discloses progress toward completing a first activity goal in that it displays data such as step count, points, and conversion data. (Ex. 1005 at [0088].) As explained with respect to claim 4, a POSITA would have found it obvious to incorporate Kobayahsi’s teachings into Stivorice.

6. Claim 7

The method of claim 1, further comprising: receiving a second activity goal for the activity time period; and determining, at a processor, whether the received athletic activity data exceeds the second activity goal for a predetermined number of consecutive activity time periods.

Stivorice describes that its device can be used with any “set of goals that may be established [] by the user or a third party.” (*Id.* at [0218].) Stivorice discloses dozens of potential “specific personal characteristics, continual measurements, durative measurements, instantaneous events, and cumulative conditions” that its device can track. (Ex. 1003 at [0227], Table 3.) Many of these well-known parameters represent “athletic activity data,” including: “steps per time period” and “durative measurements” like “running, walking, biking, stationary biking, road biking, lifting weights, aerobic exercise, anaerobic exercise, strength-building

exercise.” (*Id.*) Stivoric also discloses tracking other daily activity information, such as “duration of aerobic activity.” (*Id.* at [0101]; *see also id.* at [0216].) A POSITA would have found it obvious to add the ability to set and track goals for any of these other parameters, in the same manner as Stivoric as modified by Kobayahsi already discloses for calories consumed and calories expended. (Ex. 1006, ¶¶ 120-122.)

B. Computer Readable Medium Claims 11 and 13

1. Claim 11

Independent claim 11 includes the same limitations as independent claim 1, but is directed to “a non-transitory computer readable medium” as opposed to a method. Stivoric discloses that its method can be implemented on a computing device. (Ex. 1003 at [0007] (explaining that its method may be implemented with “any computing device that has access to and that can transmit and receive data through the electronic network, such as, for example, a personal digital assistant.”)) Stivoric describes that a computing device “may be connected to an electronic network, such as the Internet, to enable it to communicate with central monitoring unit 30 or the like,” process the received sensor information, and generate analytical status data may. (*Id.* at [0147].) The computing device includes “non-volatile program storage device 1310, such as a FLASH ROM chip, for storing the programs required for operation of I/O device 1200.” (*Id.* at [0213]; *see also id.* at

[0137] (“Finally, memory functionality is provided for armband sensor device 400 by SRAM 610, which stores data relating to the wearer of armband sensor device 400, and flash memory 615, which stores program and configuration data, provided on PCB 445.”).) For the same reasons explained with respect to claim 1, Stivoric in view of Kobayashi discloses the limitations of claim 11 and renders it obvious.

2. Claim 13

The computer-readable medium of claim 11, further containing computer-executable instructions to cause the computer device to determine whether the received athletic activity data exceeds the activity goal for a greater number of consecutive activity time periods than the predetermined number of consecutive activity time periods.

Stivoric combined with Kobayashi discloses the additional limitations of claim 13. As explained above with respect to elements 1[d] and 1[e], Stivoric as modified by Kobayashi discloses determining whether the athletic activity data exceeds the activity goal for more than a set number of consecutive days (*e.g.*, 10 or 20). (Ex. 1005 at [0141]-[0142].)

VIII. GROUND 3: CLAIMS 1-5, 7, 11, AND 13 ARE RENDERED OBVIOUS BY SIRMANS IN VIEW OF KOBAYASHI

A. Method Claims 1-5 and 7

1. Claim 1

a. Element 1[pre]

A method comprising:

Sirmans discloses “methods for monitoring and promoting behavioral modification with regard to an individual's health.” (Ex. 1004 at Abstract.)

b. Element 1[a]

receiving athletic activity data from a device configured to be worn by a user;

Sirmans discloses receiving athletic activity data from a wearable sensor device. Sirmans describes monitoring “health-promoting measures,” such as various exercise regimens, which involves tracking “the intensity and duration of the exercise activity, as well as physiological conditions such as heart rate or blood pressure, caloric energy expended, or number of steps taken.” (*Id.* at [0031], [0046].)

Sirmans explains that “a monitoring device (such as a personal monitoring device or monitoring system at a health-promoting location) is provided that observes and records the individual’s (hereinafter also referred to as a ‘member’) efforts to perform health-promoting measures.” (*Id.* at [0013].) Sirmans further notes that “the data from the monitoring device is received via a data communication channel and automatically mapped and incorporated” into a user’s profile stored in a database. (*Id.*)

Sirmans further discloses that an “individual wears a member monitoring device which uniquely identifies the individual, then gathers and relays data on member compliance and performance with regard to the chosen health promoting

regimens (*i.e.*, exercise regimens).” (*Id.* at [0020].) The “data from a personal monitoring device can then be relayed to a gatekeeper/database (such as an insurance provider) for monitoring and tracking member performance.” (*Id.* at [0020].)

Sirmans also teaches that a computer system is performing the “receiving” step. Specifically, data from a personal monitoring device is “transmitted to a central computer of the invention.” (*Id.* at [0036].) According to Sirmans, a central computer “records and processes data provided by the monitoring device and/or exercise machine worn by the user.” (*Id.*) A statistical data management continuum program of the central computer is subsequently “initiated upon receipt of recorded member data,” which subsequently tracks and compares the data to pre-established protocol criteria. (*Id.*)

c. Element 1[b]

receiving an activity time period;

Sirmans discloses receiving an activity time period. Sirmans explains that a user may wear a personal monitor and follow protocol criteria “established by any entity that has appropriate knowledge or access to knowledge regarding human well-being and health, including, but not limited to, an employer, an insurance carrier, a health professional, a governmental entity, self-insured entity, or any combination thereof. (*Id.* at [0058].) An entity familiar with health and fitness,

such as the Center for Disease Control, can thus set an exercise regimen for the user to adopt. (*Id.* at [0084].) A user “will be asked to perform the Center for Disease Control recommended levels of exercise (*i.e.*, moderate intensity for 30 minutes a day 5 days a week and/or vigorous intensify for 20 minutes a day 3 days a week).” (*Id.*) Sirmans thus teaches a daily activity time period that is received by a computer system tracking a user’s performance. (Ex. 1006, ¶¶ 77-78.)

d. Element 1[c]

receiving a first activity goal for the activity time period;

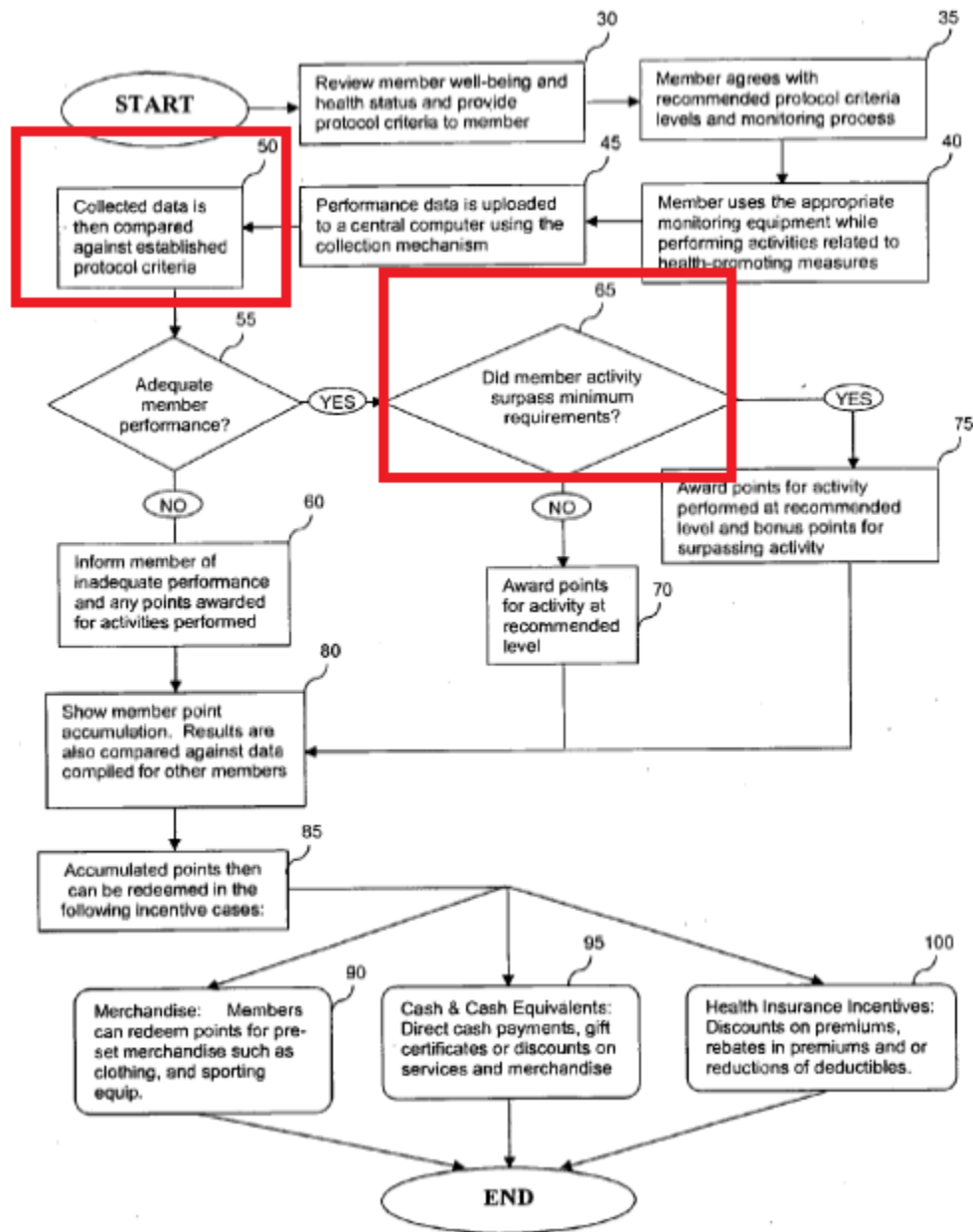
Sirmans discloses receiving a first activity goal for the activity time period. Sirmans specifically describes an activity goal in terms of “protocol criteria.” Once the protocol criteria is established as described above, (*see* VIII.A.1.c), it is “presented to the member for member acceptance of both the protocol criteria as well as surveillance of member activity relating to health-promoting measures.” (*Id.* at [0068].) Sirmans explains that a user “can agree to both the recommended/minimal level of exercise to be performed as well as appropriate use of the monitoring equipment.” (*Id.*) The activity goal that is received by a computer system is a baseline against which a user’s athletic performance is measured. (Ex. 1006, ¶¶ 77-78.) As described above, “wearing the body monitor, the member will be asked to perform the Center for Disease Control recommended

levels of exercise (*i.e.*, moderate intensity for 30 minutes a day 5 days a week and/or vigorous intensity for 20 minutes a day 3 days a week).” (Ex. 1004 at [0084].) The recommended level of exercise (*e.g.*, 30 minutes a day for five days per week) constitutes a first activity goal.

e. Element 1[d]

determining, at a processor, whether the received athletic activity data exceeds the first activity goal for a predetermined number of consecutive activity time periods; and

Sirmans discloses a processor determining whether the received athletic activity data exceeds the first activity goal for a predetermined number of consecutive activity time periods. For example, a central computer “records and processes data provided by the monitoring device and/or exercise machine worn by the user.” (Ex. 1004 at [0036].) The central computer contains a database that “profiles, tracks, and stratifies the recorded data into a performance model based on previously established protocol criteria regarding health-related measures.” (*Id.* at [0036].) Collected data is then compared against established protocol criteria, which is illustrated in (50) of Figure 2 below. (*Id.* at [0071]). Next, the collected data is specifically assessed to identify whether the established recommended/minimum level of performance was accomplished as shown in (65) of Figure 2 below (emphasis added).



(*Id.* at Fig. 2 (annotated).)

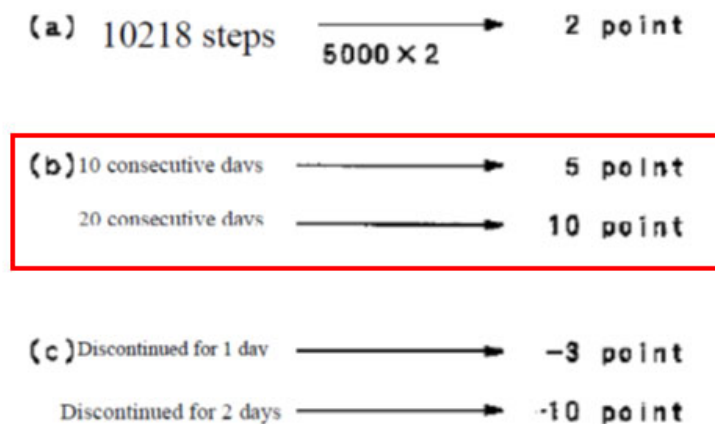
Sirmans discloses that “wearing the body monitor, the member will be asked to perform the Center for Disease Control recommended levels of exercise (*i.e.*, moderate intensity for 30 minutes a day 5 days a week and/or vigorous intensity for 20 minutes a day 3 days a week).” (*Id.* at [0084].) Sirmans further explains,

“should the member’s performance meet the established recommended/minimum level of performance, a further assessment on whether member’s performance exceeds minimum requirements is then performed.” (*Id.* at [0072].) This step requires comparing whether the user exceeded an activity goal (*e.g.*, moderate intensity exercise for 30 minutes) for predetermined consecutive activity periods (*e.g.*, daily workouts occurring 5 days per week.) (Ex. 1006, ¶¶ 79-81.)

To the extent that Patent Owner contends that Sirmans does not disclose determining whether the received athletic activity data exceeds the first activity goal for a predetermined number of consecutive activity time periods, Kobayashi discloses this limitation. Kobayashi teaches recognizing and rewarding “consecutive days of reaching the goal.” (Ex. 1005 at [0142].) As shown in Figure 12 below, Kobayashi determines when a user has completed an activity goal for 10 or 20 consecutive days. Given that both Sirmans and Kobayashi are in the same field of personal fitness monitoring, there would be a strong motivation to combine these teachings to further incentivize regular exercise with a high likelihood of success. (Ex. 1006, ¶¶ 124-128.) Indeed, it would be a simple modification to include Kobayashi’s recognition of consecutive activity time periods into Sirmans’ protocol criteria. (*Id.*) In view of the combined teachings of Sirmans and Kobayashi, it would be easy to implement determining whether the

received athletic activity data exceeds the first activity goal for a predetermined number of consecutive activity time periods. (*Id.*)

[Figure 12]



(Ex. 1005 at Fig. 12 (annotated).)

f. Element 1[e]

presenting a streak reward to the user when the received athletic activity data exceeds the first activity goal for the predetermined number of consecutive activity time periods.

Sirmans discloses presenting a streak reward to the user when the received athletic activity data exceeds the first activity goal for the predetermined number of consecutive activity time periods. Sirmans specifically distinguishes between when a user meets the established activity goal for a predefined workout regimen and when a user exceeds the goal. For example, “should the member’s performance only meet the established protocol criteria, the points established in the protocol criteria are awarded to the member.” (Ex. 1004 at [0072].) However,

“should the member’s performance exceed minimum requirements, the points established in the protocol criteria as well as bonus points are awarded to the member.” (*Id.*)

Sirmans describes that a “point system is assigned to performance data.” (*Id.* at [0085].) A computer system according to Sirmans “can calculate how many points a member has earned for each day of exercise.” (*Id.*) As an example, “if a member was 100% compliant for the day, the member would receive 100 points. Accordingly, the more active a member is, the more points a member can in turn accumulate.” Sirmans also describes that there are “bonus points that can be assigned for various activities (such as bonus points for vigorous exercise; or if a member is compliant in performing health promoting measures for the week, points are doubled).” (*Id.*) A user is instructed to exercise at moderate intensity for 30 minutes a day 5 days a week. The computer system will award bonus points to the user for completing this regimen for the week. (Ex. 1006, ¶ 82.) This is consistent with the ’615 patent, which explains that a streak begins with completing an activity goal for at least two consecutive workouts. (*See, e.g.*, Ex. 1001 at 57:6-8.) Ultimately, a computer system presents respective incentives to the user based on the number of accumulated points, including a reward associated with a streak according to the ’615 patent. (Ex. 1004 at [0017].)

To the extent that Patent Owner contends that Sirmans does not disclose presenting a streak reward for exceeding a first activity goal for consecutive activity time periods, Kobayashi discloses this limitation. As described above (*see* VIII.A.1.d), Kobayashi teaches that “if continuity is considered important” “additional points may be given for consecutive days of reaching the goal: for example, 5 points on the 10th consecutive day or 10 points on the 20th consecutive day.” (Ex. 1005 at [0141]-[0142].) In view of Kobayashi’s teachings, Sirmans’ reward structure could readily be configured to provide a reward for meeting an activity goal over a predetermined consecutive set of daily activity periods (*i.e.*, a streak reward). (Ex. 1006, ¶¶ 124-128.) Indeed, it would be simple to add Kobayashi’s exemplary bonus points for completing an activity goal over consecutive activity time period into Sirmans’ predetermined protocol criteria. (*Id.*) This would yield a predictable result of providing an additional incentive to maintain a daily exercise regimen and rewarding a user for doing so. (*Id.*)

2. Claim 2

The method of claim 1, further comprising: determining a number of activity points earned by the user in accordance with the received athletic activity data.

Sirmans discloses the additional limitation of claim 2. Specifically, Sirmans discloses determining a number of activity points earned by the user in accordance with the received athletic activity data as noted in (70) and (75) of Figure 2 below.

For example, “points are issued for any health-promoting measures performed by a member.” (*Id.* at [0055].) Sirmans explains that “a point system is assigned to performance data.” (*Id.* at [0085].) In particular, a computer can calculate the number of points a user has earned for each day of exercise. (*Id.*) Sirmans notes that if a user was 100% compliant for the day (*i.e.*, met the activity goal), the member would receive 100 points. (*Id.*) In other words, “the more active a member is, the more points a member can in turn accumulate.” (*Id.*) Sirmans also discloses a subset of activity points, termed “bonus points,” that can be “assigned for various activities (such as bonus points for vigorous exercise; or if a member is compliant in performing health-promoting measures for the week, points are doubled).” (*Id.*)

3. Claim 3

The method of claim 1, wherein the device is a wrist-worn monitoring device.

Sirmans discloses a personal monitoring device is “equipped with a means for continuous monitoring of member physiological status.” (*Id.* at [0016].) Such physiological parameters include “body core temperature, galvanic skin response, pulse, blood pressure, respiration, activity, heat flow, and certain electrical currents associated with electrocardiogram and electroencephalograph measurements.” (*Id.*) To the extent that Patent Owner contends that Sirmans does not disclose this limitation, it would have been obvious to implement Sirmans as a wrist-worn

monitoring device. (Ex. 1006, ¶¶ 86-87.) Kobayashi, for example, discloses a pedometer that “can be worn on any position of the human body.” (Ex. 1005 at [0095].) Additionally, sensors in wrist watches were well known at the time of the earliest priority date of the ’615 patent. (Ex. 1006, ¶ 86-87 citing Ex. 1019.) A POSITA looking to implement Sirmans and Kobayashi would have been motivated to use an existing sensor to be worn on the wrist (*e.g.*, a watch-like device) with a high likelihood of success as an obvious choice, thereby allowing a user to easily monitor their performance and check their progress while exercising. (*Id.*)

4. Claim 4

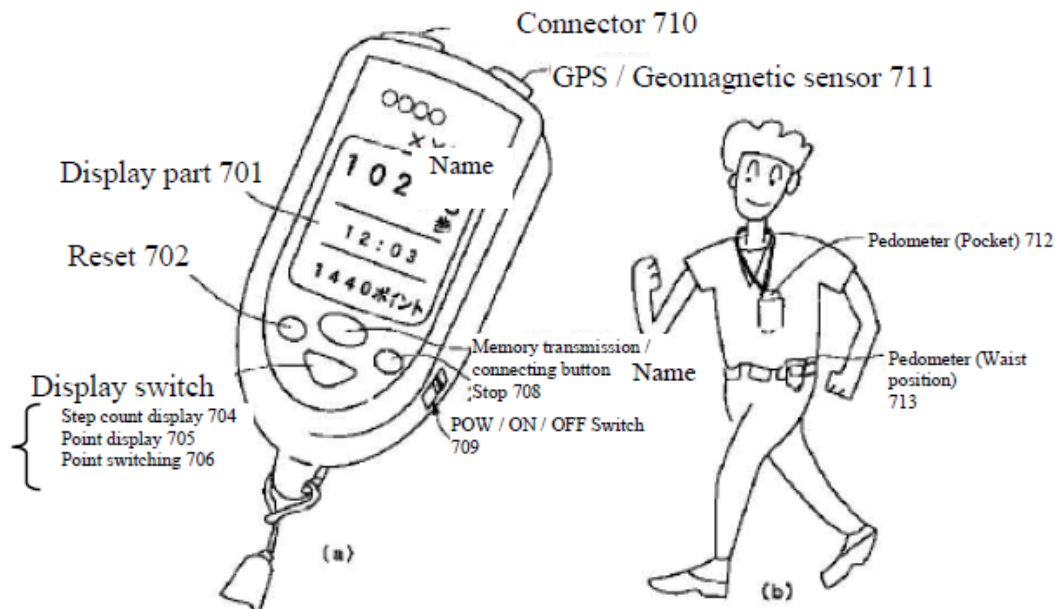
The method of claim 1, further comprising: providing a first application interface configured to communicate athletic activity data to the user, wherein the interface includes one or more functions configured to be invoked for at least the device.

Sirmans discloses the additional limitation of claim 4. Specifically, Sirmans describes a first application interface configured to communicate athletic activity data to the user, wherein the interface includes one or more functions configured to be invoked for at least the device. For example, Sirmans’ device includes “a communications interface for receiving data input (*i.e.*, from a sensor) regarding member activity, a database or other storage means, a display device and a processor unit.” (Ex. 1004 at [0022].) This display device has “a plurality of display areas (windows).” (*Id.*)

According to Sirmans, a central computer “records and processes data provided by the monitoring device and/or exercise machine worn by the user.” (*Id.* at [0036].) The output can be “continuously accessed” to track and stratify the data into a performance model based on preestablished criteria for health-promoting measures. (*Id.*) Sirmans further explains that an internet “browser interface, for example, NETSCAPE NAVIGATOR or INTERNET EXPLORER,” can also be incorporated into communications software to view the transmitted data. (*Id.* at [0057].) Sirmans further teaches that the recorded data regarding the user’s performance can be displayed to the user on a website. (*Id.* at [0084].)

To the extent that Patent Owner contends that Sirmans does not disclose an application interface that includes one or more functions configured to be invoked for the athletic monitoring device, Kobayashi teaches this limitation. Kobayashi discloses a pedometer that displays the user’s athletic activity data (*e.g.*, step count) and allows user inputs. (Ex. 1006, ¶ 129.) As shown in Figure 7 below, Kobayashi includes a display unit 701 for displaying various information, a reset switch 702, and a display switch button 703. (Ex. 1005 at [0088].) A POSITA would understand that a reset switch constitutes a function that can be invoked for the pedometer. (Ex. 1006, ¶¶ 97-98.) Such an application interface could readily be implemented on Sirmans’ computing device and would be a simple addition to the interface described in Sirmans.

[Figure 7]



(Ex. 1005 at Fig. 7.)

5. Claim 5

The method of claim 4, wherein a portion of the first application interface is configured to provide a visualization of athletic activity data, and wherein different visualizations are provided in accordance with a user's progress toward completing the first activity goal.

Sirmans discloses the additional limitation of claim 5. Sirmans' application interface is also configured to provide a visualization of athletic activity data, and different visualizations are provided in accordance with a user's progress toward completing the first activity goal. (See Ex. 1004 at [0022], [0063], and [0076].) As noted previously, Sirmans' display device has a plurality of display areas (windows). (*Id.* at [0022].) Cumulative results from the user's performance data are summarized in one visualization (*i.e.*, "Protocol Compliant Assessment

Summary”) in order “to assess if and how much of a reward/incentive or points will be provided” to the user. (*Id.* at [0063].) Sirmans notes that “this summary can be generated by the central processing unit of a centralized computer,” which can “periodically transmit a continuous profile assessment.” (*Id.*) The “continuous profile assessment can then be communicated to interested parties,” including the user. (*Id.*) A POSITA would understand that in providing a continuous profile assessment, Sirmans includes different visualizations to track a user’s exercise regimen. (Ex. 1006, ¶¶ 89-91.)

Sirmans teaches that the protocol criteria for exercise and corresponding incentives are determined at the onset or prior to member performance of any health-promoting activities. (Ex. 1004 at [0076].) Accordingly, once the user begins the established exercise regimen, “the performance summary tracks how close the member is to receiving the selected incentive product.” (*Id.*) Thus, a POSITA would understand this to include different visualizations tracking the user’s activity data and how close the user is to achieving the activity goal. (Ex. 1006, ¶¶ 89-91.)

To the extent that Patent Owner contends that Sirmans does not disclose providing a visualization or progress toward a user’s goal, Kobayashi teaches this limitation. Kobayashi discloses a display wherein “display switch button 703 can be used to switch between the step count display 704, the points display 705, and

the points conversion 706.” (Ex. 1005 at [0089]). Kobayashi thus describes a progress indicator (step count or point) as a visualization tracking the user’s athletic activity. (Ex. 1006, ¶¶ 95-103.)

Both Sirmans and Kobayashi are in the field of personal fitness monitoring. The user interface described in Sirmans is readily customizable, and thus it would be obvious to implement Sirmans with various means of visualizing progress towards goals as taught by Kobayashi with a high likelihood of success.

6. Claim 7

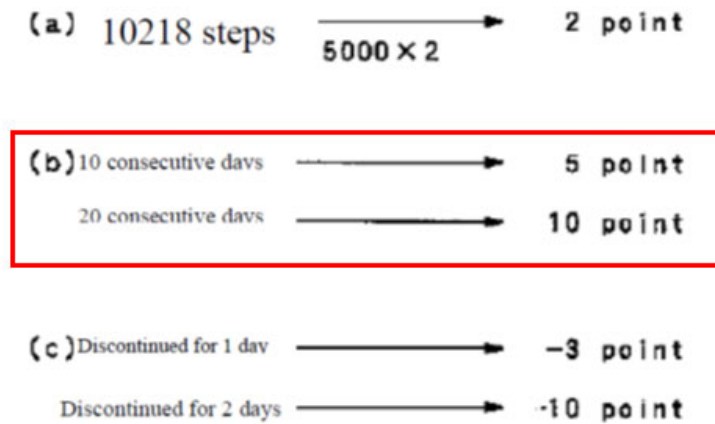
The method of claim 1, further comprising: receiving a second activity goal for the activity time period; and determining, at a processor, whether the received athletic activity data exceeds the second activity goal for a predetermined number of consecutive activity time periods.

Sirmans discloses the additional limitation of claim 7. Sirmans teaches that “wearing the body monitor, the member will be asked to perform the Center for Disease Control recommended levels of exercise (*i.e.*, moderate intensity for 30 minutes a day 5 days a week and/or vigorous intensity for 20 minutes a day 3 days a week).” (*Id.* at [0084].) According to Sirmans, “should the member’s performance meet the established recommended/minimum level of performance, a further assessment on whether member’s performance exceeds minimum requirements is then performed.” (*Id.* at [0072].) A POSITA would understand that this exercise regimen sets two activity goals for a user to follow: (1) moderate intensity for 30 minutes a day 5 days a week, and (2) vigorous intensity for 20

minutes a day 3 days a week. (Ex. 1006, ¶ 130.) Sirmans thus requires comparing whether the user exceeded each of the two activity goals for predetermined consecutive activity periods (*e.g.*, daily workouts). (*Id.*)

To the extent that Patent Owner contends that Sirmans does not disclose determining whether the received athletic activity data exceeds the second activity goal for a predetermined number of consecutive activity time periods, Kobayashi discloses this limitation. Kobayashi teaches recognizing and rewarding “consecutive days of reaching the goal.” (Ex. 1005 at [0142].) As shown in Figure 12 below, Kobayashi determines when a user has completed a first activity goal for 10 consecutive days and a second activity goal for 20 consecutive days. (Ex. 1006, ¶¶ 95-103.) Given that both Sirmans and Kobayashi are in the same field of personal fitness monitoring, there would be a strong motivation to combine these teachings to further incentivize regular exercise with a high likelihood of success. (*Id.*, ¶ 130) Indeed, it would be a simple modification to include Kobayashi’s recognition of consecutive activity time periods for a second activity goal into Sirmans’ protocol criteria. (*Id.*) In view of the combined teachings of Sirmans and Kobayashi, it would be easy to implement determining whether the received athletic activity data exceeds the second activity goal for a predetermined number of consecutive activity time periods. (*Id.*)

[Figure 12]



(Ex. 1005 at Fig. 12 (annotated).)

B. Computer Readable Medium Claims 11 and 13

1. Claim 11

Independent claim 11 includes the same limitations as independent claim 1 but is directed to a non-transitory computer readable medium as opposed to a method. Sirmans discloses that its method can be implemented in a computer readable medium. (Ex. 1004, [0024] (explaining that its method of collecting physiological status data and statistically analyzing such data can be incorporated in a computer readable medium, or a data structure tangibly fixed in a computer readable memory).) And for the same reasons explained with respect to claim 1, Sirmans, whether on its own or as modified by a POSITA, discloses the limitations of claim 11 and renders it obvious.

2. Claim 13

Sirmans combined with Kobayashi discloses the additional limitations of claim 13. As explained above with respect to elements 1[d] and 1[e], Sirmans as modified by Kobayashi discloses determining whether the athletic activity data exceeds the activity goal for more than a set number of consecutive days (*e.g.*, 10 or 20). (Ex. 1005 at [0141]-[0142].)

IX. GROUNDS 4 AND 5: CLAIMS 3-5 ARE RENDERED OBVIOUS BY STIVORIC OR SIRMANS IN VIEW OF KOBAYASHI AND BRADY

To the extent Patent Owner argues that the combination of Stivorice with Kobayashi and the combination of Sirmans with Kobayashi fail to render claims 3-5 obvious, these claims are rendered obvious by either of these combination in further view of Brady, which discloses the additional limitations in these claims.

A. Claim 3

Brady discloses “a wrist-worn monitoring device,” as recited in claim 3. As depicted in Figure 1 below, Brady describes a “monitoring device 20 preferably includes an article 25 and an attachment band 26” that attaches the monitoring device to a user’s wrist. (Ex. 1021 at 4:32-33, 5:8-9.) The device includes a sensor that is used to detect the user’s heart rate and other physiological parameters. (*Id.* at 5:16-41, 6:1-13.) The collected parameters can be displayed on a display of the device. (*Id.* at 6:6-9, 6:14-42.)

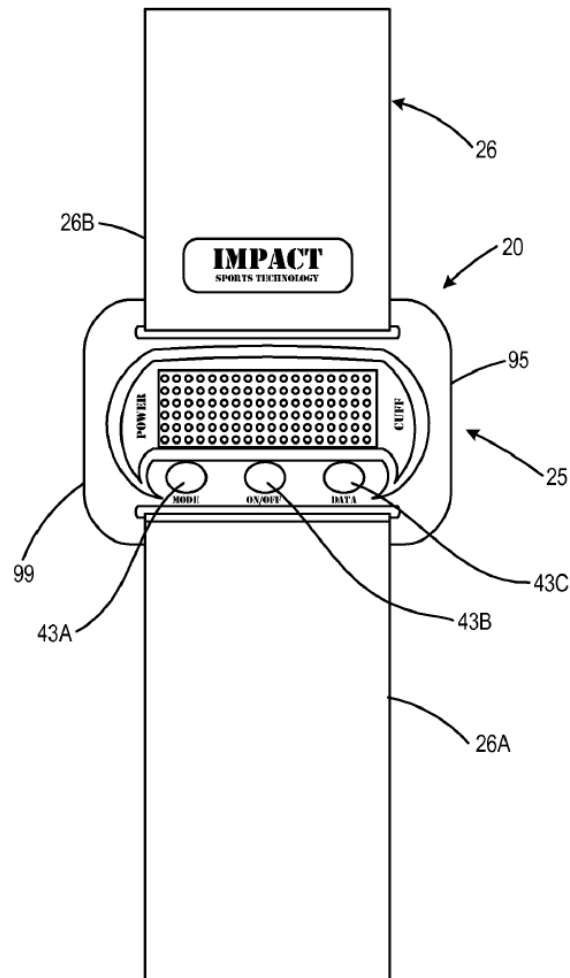


FIGURE 1

B. Claim 4

Brady discloses the application interface recited in claim 4. Specifically, monitoring device 20 includes a display 40 (*id.* at 6:14-35) that is configured to display athletic activity data to the user, such as “pulse rate, blood oxygenation levels, calories expended by the user of a pre-set time period, target zone activity, time and dynamic blood pressure.” (*Id.* at 6:7-9, 6:36-39 (“As shown in FIG. 9, a microprocessor 41 processes the signal generated from the optical sensor 30 to

generate the plurality of vital sign information for the user which is displayed on the display member 40.”), 8:46-9:4.)

The monitoring device’s application interface also includes one or more functions configured to be invoked for the device. For example, there are “control buttons” that allow the device to provide user feedback, to be activated and deactivate, and to switch between different modes of the device. (*Id.* at 8:5-17.) The buttons also can be used to enter user information, view collected data, and perform many other operations. (*Id.* at 8:25-9:4.) These are each functions of the device.

C. Claim 5

Brady discloses the application interface recited in claim 5. For example, Brady discloses that its monitoring device will track, store, and display “daily calories burned,” which corresponds to the goal set forth in Stivoric. (*Id.* at 8:21-24, 8:39-41, 9:2-4 (“The Summary of daily calories burned (displayed as ‘cal’) displays the daily calories burned.”).) Brady also discloses its device “allows for other fitness monitoring features to be displayed” (*id.* at 8:16-17), which a POSITA would understand includes things like the number of minutes spent exercising in different heart rate zones, which corresponds to the exercise goals set forth in Sirmans.

D. Ground 4: Stivorice in view of Kobayashi and Brady Renders Claims 3-5 Obvious

A POSITA would have been motivated to use Brady's monitoring device with Stivorice's goal setting and tracking system. As described above, Brady provides for a convenient wrist-worn monitoring device with an extensive user interface and display that provides feedback to the user. The combination of Stivorice's sensor and computing device provide similar functionality. (Ex. 1006, ¶¶ 132-138.) Both Brady and Stivorice are thus directed to analogous technology areas. (*Id.*) A POSITA would have been motivated to substitute Stivorice's sensor device with Brady's monitoring device so that Stivorice's goal setting and tracking system could be used without a user having to wear the computing unit while still being provided visual feedback on Brady's monitoring device. (*Id.*) Such a substitution would have provided the benefit of a user still having access to the display on Brady's monitoring device even when Stivorice's computing device with its display is not being worn. (*Id.*) This modification would be nothing more than substituting one known device from Brady's for another known device in Stivorice to produce predictable and useful results. (*Id.*)

E. Ground 5: Sirmans in view of Kobayashi and Brady Renders Claims 3-5 Obvious

A POSITA would have been motivated to use Brady's monitoring device with Sirmans' goal setting and tracking technique. Sirmans describes "a

monitoring device (such as a personal monitoring device or monitoring system at a health-promoting location) is provided that observes and records the individual's (hereinafter also referred to as a 'member') efforts to perform health-promoting measures.” (*Id.* at [0013].) Sirmans, however, does not provide specific disclosure as to which monitoring device could be used. (Ex. 1006, ¶¶ 132-135, 139-141.) A POSITA would look to other prior art references, such as Brady, that describe monitoring devices to determine a suitable device to use. (*Id.*) Brady provides one such device. (*Id.*) A POSITA would understand that Brady's monitoring device includes the tracking features needed to monitor the types of parameters that Sirmans tracks. (*Compare* Ex. 1004 at [0048] with Ex. 1021 at 6:6-9; Ex. 1006, ¶ 139-141.) Brady's monitoring device also includes a display for use with Sirmans assessment and tracking information. (*Id.*, ¶ 140.)

X. MANDATORY NOTICES

A. Real Party-in-Interest

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

B. Related Matters

Pursuant to 37 C.F.R. § 42.8(b)(2), Petitioner identifies the following related matter: *Nike, Inc. v. lululemon usa inc., et al.*, S.D.N.Y. Case No. 1:22-cv-00082-RA-OTW. Patent Owner is asserting the '615 patent against Petitioner in that case.

Pursuant to 37 C.F.R. § 42.104(a), Petitioner certifies that the '615 patent is available for *inter partes* review. Petitioner also certifies that it is not barred or estopped from requesting an *inter partes* review challenging the patent claims on the grounds identified in this Petition.

C. Lead and Back-Up Counsel and Service Information

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

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

The USPTO is authorized to charge any required fees, including the fee as set forth in 37 C.F.R. § 42.15(a) and any excess claim fees, to Deposit Account No. 03-1952 referencing Docket No. 57931-00000.12.

XI. CONCLUSION

Because there is a reasonable likelihood that lululemon will prevail on at least one asserted ground with respect to at least one claim, lululemon requests that the Board institute *inter partes* review of claims 1-5, 7, 11, and 13 of the '615 patent.

Dated: January 3, 2023

Respectfully submitted,

/s/ Diek O. Van Nort

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

I hereby certify that this Petition for *Inter Partes* Review has 13,639 words (as counted by the “Word Count” feature of the Microsoft Word™ word-processing system), exclusive of “a table of contents, a table of authorities, mandatory notices under §42.8, a certificate of service or word count, or appendix of exhibits or claim listing.”

Dated: January 3, 2023

By: /s/ Diek O. Van Nort

Diek O. Van Nort

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

I hereby certify that the attached Petition for *Inter Partes* Review and supporting materials were served as of the below date by UPS, on the Patent Owner at the correspondence address indicated for U.S. Patent No. 9,259,615.

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Dated: January 3, 2023

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