

IPR2023-00349
U.S. Patent No. 9,259,615

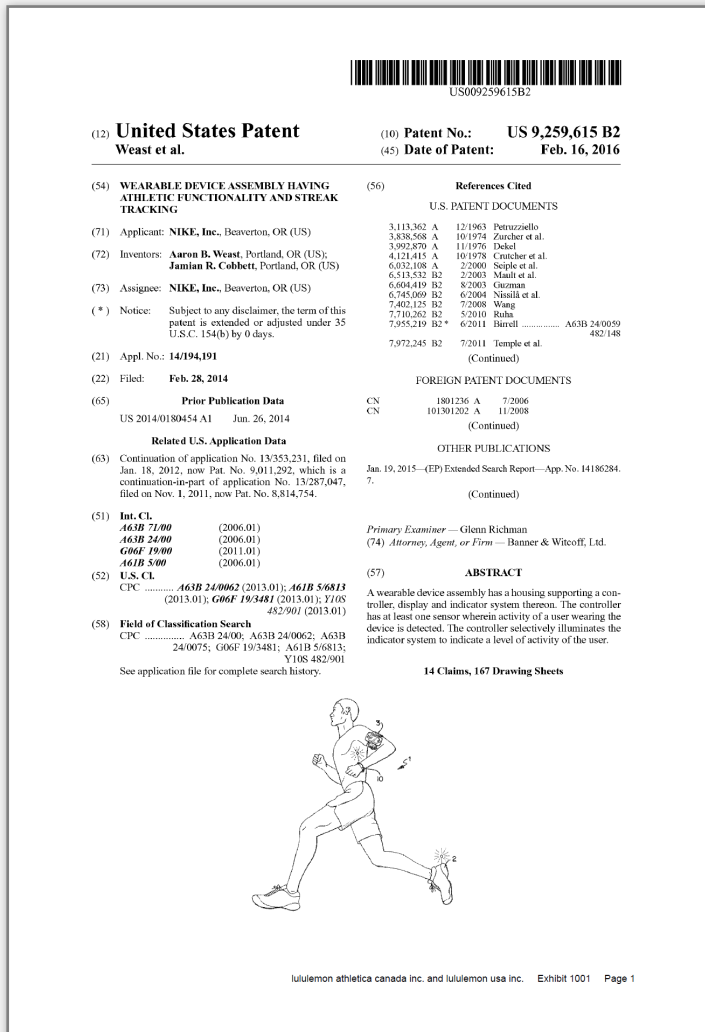
lululemon athletica canada inc. et al.

v.

Nike, Inc.

April 4, 2024

The '615 Patent (Independent Claim 1)



1. A method, comprising:
receiving athletic activity data from a device configured to be worn by a user;
receiving an activity time period;
receiving a first activity goal for the activity time period;
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
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.

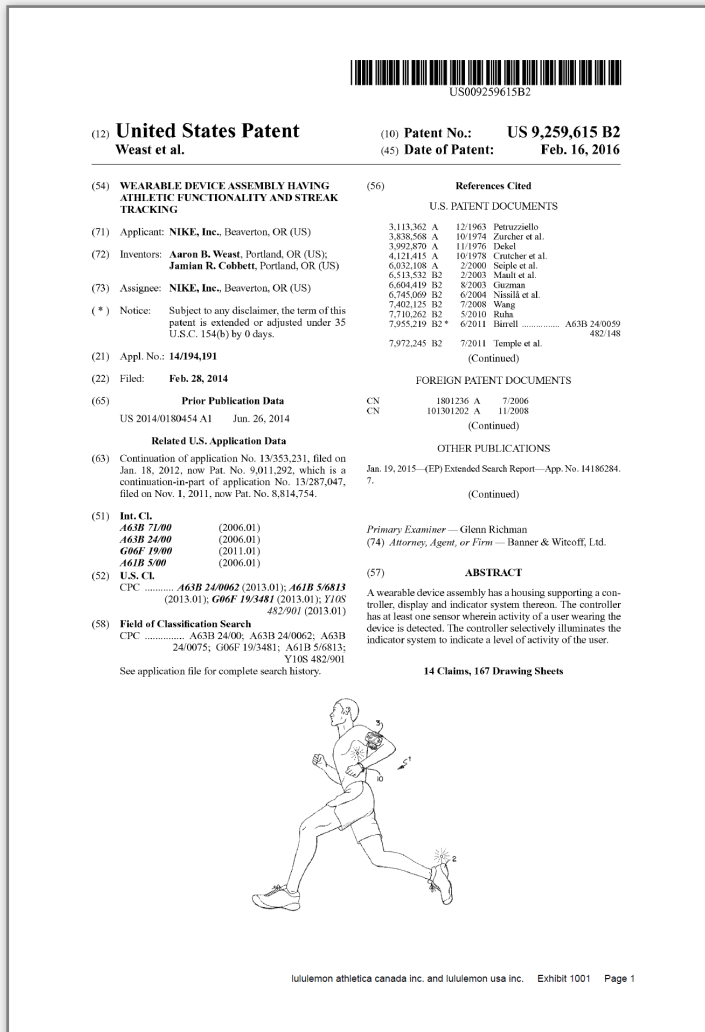
'615 Patent (Ex. 1001), Claim 1

Roadmap

- Claim Construction
- Sirmans + Kobayashi (Ground 3)
- Stivoric + Kobayashi (Ground 2)
- Hoffman (Ground 1)

Claim Construction

Claim Construction: “Receiving an Activity Time Period”



1. A method, comprising:
receiving athletic activity data from a device configured to
be worn by a user;
receiving an activity time period;
receiving a first activity goal for the activity time period;
determining, at a processor, whether the received athletic
activity data exceeds the first activity goal for a prede-
termined number of consecutive activity time periods;
and
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 peri-
ods.

'615 Patent (Ex. 1001), Claim 1

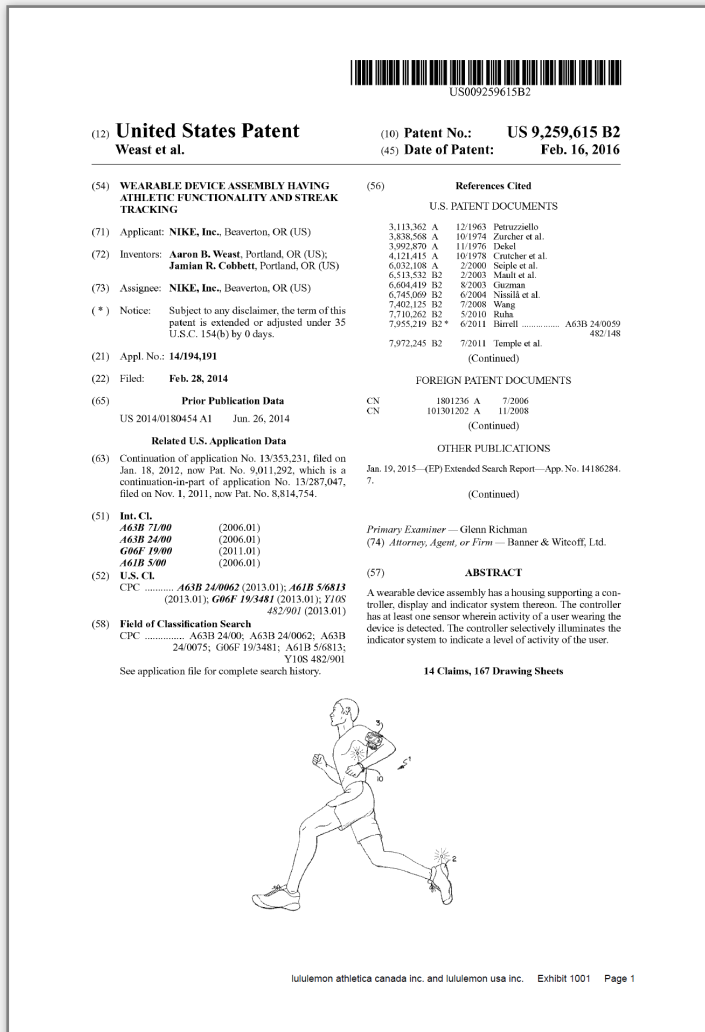
“Receiving an Activity Time Period”

Petitioner	Patent Owner
“receiving an activity time period”	“receiving an activity time period <u>[1] from a user</u> <u>[2] during a goal setting operation”</u>

“Receiving an Activity Time Period”

Petitioner	Patent Owner
“receiving an activity time period”	“receiving an activity time period [1] from a user [2] during a goal setting operation”

Claim Construction: The Claims



1. A method, comprising:
receiving athletic activity data from a device configured to
be worn by a user;
receiving an activity time period;
receiving a first activity goal for the activity time period;
determining, at a processor, whether the received athletic
activity data exceeds the first activity goal for a prede-
termined number of consecutive activity time periods;
and
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 peri-
ods.

'615 Patent (Ex. 1001), Claim 1

Claim Construction: The Claims

US009259615B2

(12) **United States Patent**
Weast et al.

(10) **Patent No.:** US 9,259,615 B2
(45) **Date of Patent:** Feb. 16, 2016

(54) **WEARABLE DEVICE ASSEMBLY HAVING ATHLETIC FUNCTIONALITY AND STREAK TRACKING**

(71) Applicant: NIKE, Inc., Beaverton, OR (US)

(72) Inventors: Aaron B. Weast, Portland, OR (US);
Jamian R. Cobbett, Portland, OR (US)

(73) Assignee: NIKE, Inc., Beaverton, OR (US)

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.

(21) Appl. No.: 14/194,191

(22) Filed: Feb. 28, 2014

(65) **Prior Publication Data**
US 2014/0180454 A1 Jun. 26, 2014

Related U.S. Application Data

(63) Continuation of application No. 13/353,231, filed on Jan. 18, 2012, now Pat. No. 9,011,292, which is a continuation-in-part of application No. 13/287,047, filed on Nov. 1, 2011, now Pat. No. 8,814,754.

(51) **Int. Cl.**
A63B 71/00 (2006.01)
A63B 24/00 (2006.01)
G06F 19/00 (2011.01)
A63B 5/00 (2006.01)

(52) **U.S. CL.**
CPC A63B 24/0062 (2013.01); A63B 5/6813 (2013.01); G06F 19/3481 (2013.01); 7/108 452/901 (2013.01)

(58) **Field of Classification Search**
CPC A63B 24/00; A63B 24/0062; A63B 24/0075; G06F 19/3481; A63B 5/6813; 7/108 452/901

See application file for complete search history.

(56) **References Cited**
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3,838,568 A 10/1974 Zurcher et al.
3,992,870 A 11/1976 Dekel
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6,032,108 A 2/2000 Seiple et al.
6,513,532 B2 2/2003 Maali et al.
6,604,419 B2 8/2003 Gutzman
6,745,009 B2 6/2004 Nissali et al.
7,402,125 B2 7/2008 Wang
7,710,262 B2 5/2010 Raha
7,955,219 B2* 6/2011 Birrell A63B 24/0059 482/148

7/2011 Temple et al.
(Continued)

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CN 101301202 A 11/2008
(Continued)

OTHER PUBLICATIONS

Jan. 19, 2015—(EP) Extended Search Report—App. No. 14186284.
7.
(Continued)

ABSTRACT

A wearable device assembly has a housing supporting a controller, display and indicator system thereon. The controller has at least one sensor wherein activity of a user wearing the device is detected. The controller selectively illuminates the indicator system to indicate a level of activity of the user.

14 Claims, 167 Drawing Sheets



lululemon athletica canada inc. and lululemon usa inc. Exhibit 1001 Page 1

11. A non-transitory computer-readable medium containing computer-executable instructions for causing a computer device to perform the steps of:

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

receiving an activity time period;

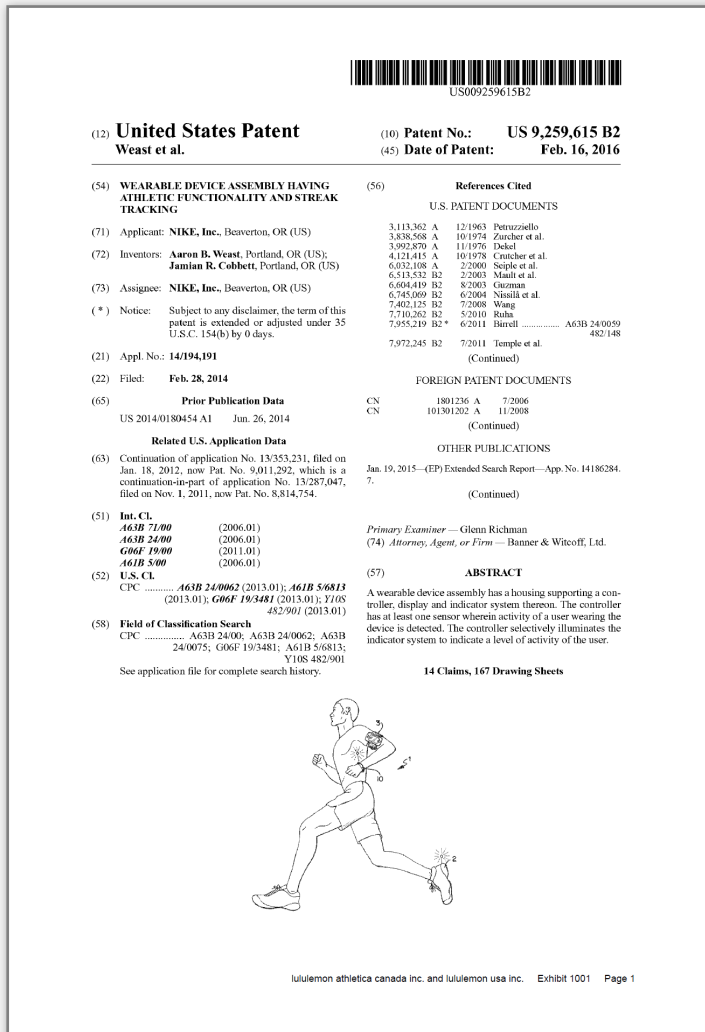
receiving an activity goal for the activity time period;

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

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

'615 Patent (Ex. 1001), Claim 11

Claim Construction: The Claims



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.

'615 Patent (Ex. 1001), Claim 2

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

'615 Patent (Ex. 1001), Claim 4

8. The method of claim 1, wherein presenting a streak
reward further comprises providing the user with at least one
of a new image, a new color, or a new function to be utilized
in accordance with and application interface.

'615 Patent (Ex. 1001), Claim 8

Claim Construction: The Claims

US009259615B2

(12) **United States Patent**
Weast et al.

(10) **Patent No.:** US 9,259,615 B2
(45) **Date of Patent:** Feb. 16, 2016

(54) **WEARABLE DEVICE ASSEMBLY HAVING ATHLETIC FUNCTIONALITY AND STREAK TRACKING**

(71) Applicant: **NIKE, Inc.**, Beaverton, OR (US)

(72) Inventors: **Aaron B. Weast**, Portland, OR (US);
Jamian R. Cobbett, Portland, OR (US)

(73) Assignee: **NIKE, Inc.**, Beaverton, OR (US)

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.

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(51) **Int. Cl.**
A63B 71/00 (2006.01)
A63B 24/00 (2006.01)
G06F 19/00 (2011.01)
A63B 5/00 (2006.01)

(52) **U.S. Cl.**
CPC **A63B 24/0062** (2013.01); **A63B 5/6813** (2013.01); **G06F 19/3481** (2013.01); **Y108 452/901** (2013.01)

(58) **Field of Classification Search**
CPC A63B 24/00; A63B 24/0062; A63B 24/0075; G06F 19/3481; A63B 5/6813; Y108 452/901

See application file for complete search history.

(56) **References Cited**
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6,513,532 B2 2/2003 Maali et al.
6,604,419 B2 8/2003 Gutzman
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7,402,125 B2 7/2008 Wang
7,710,262 B2 5/2010 Raha
7,955,219 B2* 6/2011 Birrell A63B 24/0059 482/148

7,972,245 B2 7/2011 Temple et al. (Continued)

FOREIGN PATENT DOCUMENTS

CN 1801236 A 7/2006
CN 101301202 A 11/2008 (Continued)

OTHER PUBLICATIONS

Jan. 19, 2015—(EP) Extended Search Report—App. No. 14186284.7.
(Continued)

(74) **Attorney, Agent, or Firm**—Banner & Witcoff, Ltd.

(57) **ABSTRACT**

A wearable device assembly has a housing supporting a controller, display and indicator system thereon. The controller has at least one sensor wherein activity of a user wearing the device is detected. The controller selectively illuminates the indicator system to indicate a level of activity of the user.

14 Claims, 167 Drawing Sheets



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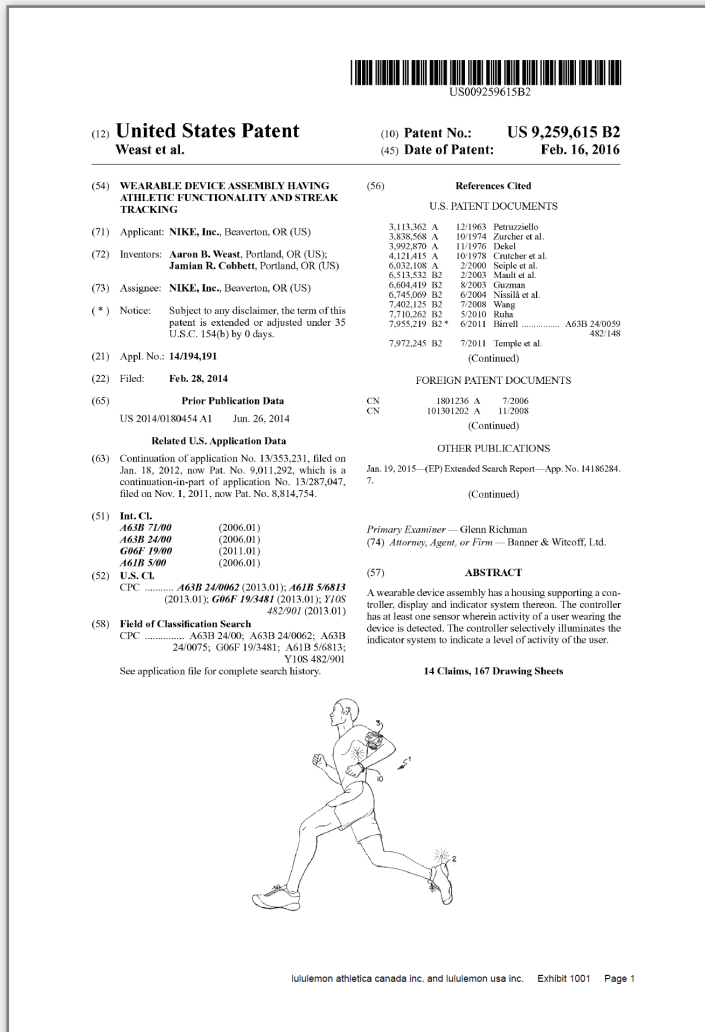
9. The method of claim 4, wherein the first application interface is further configured to communicate content to the user indicating that a streak reward is available upon performing a specified athletic activity.

'615 Patent (Ex. 1001), Claim 9

10. The method of claim 1, wherein presenting a streak reward to the user further comprises:
transmitting, to the device, content indicating that an activity streak has been achieved or extended by the user.

'615 Patent (Ex. 1001), Claim 10

Claim Construction: The Claims



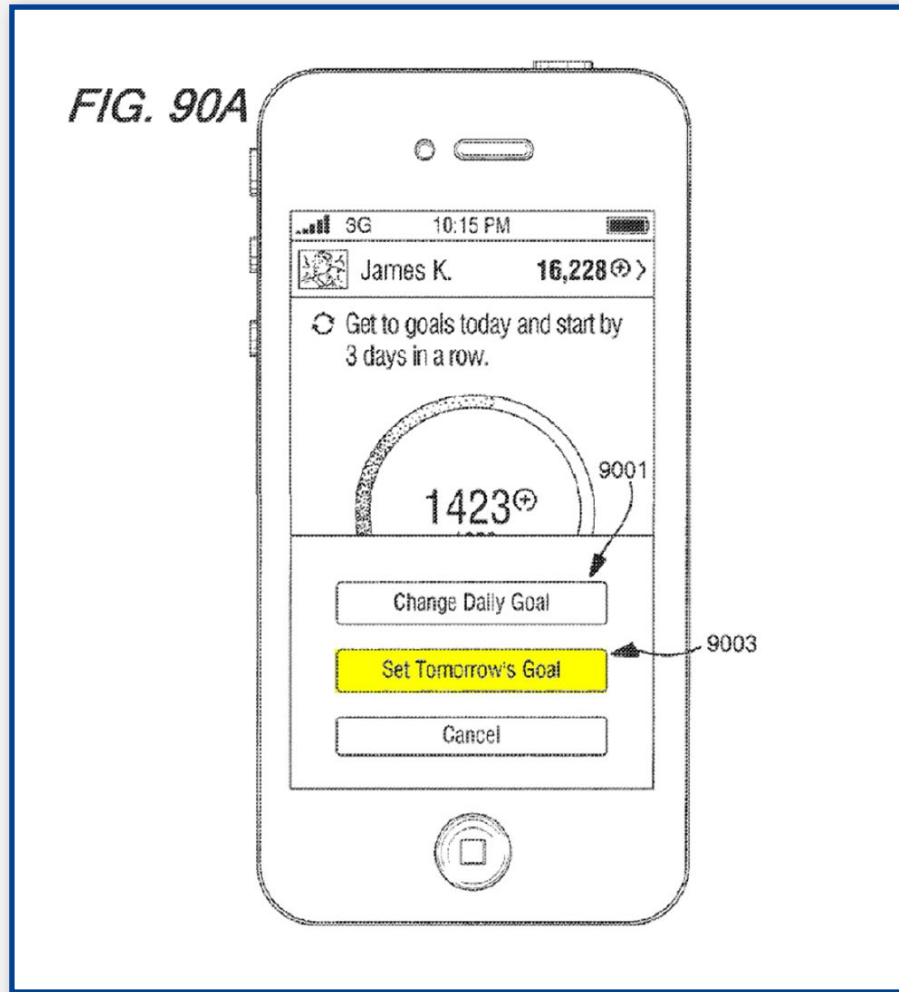
12. The computer-readable medium of claim 11, further containing computer-executable instructions to cause the computer device to provide a first application interface configured to communicate athletic activity data to the user, wherein a portion of the first application interface is configured to provide a visualization of athletic activity, and wherein different visualizations are provided in accordance with a user's progress toward achieving or extending an activity streak.

'615 Patent (Ex. 1001), Claim 12

14. The computer-readable medium of claim 11, wherein presenting a streak reward to the user includes transmitting, to the device, content indicting that an activity streak has been achieved or extended by the user.

'615 Patent (Ex. 1001), Claim 14

Claim Construction: The Specification



'615 Patent (Ex. 1001), Fig.90A

FIG. 90A illustrates an example interface by which a user may activate a goal modification or setting function. The user may activate goal option menu 9001 by selecting a displayed option and/or by interacting with the display device in a specified manner. For example, the user may be required to depress a button for a predefined amount of time to activate the goal option menu 9001. In another example, the user may activate the goal option menu 9001 by entering a gesture on a touch sensitive display device. The goal option menu 9001 may include an option for modifying a current goal or for setting a future goal. The device may automatically select a time period for the future goal based on a first time period for which a goal has not been defined. For example, if a goal has been defined for each of the next 2 days, the device and/or application may define the future goal option 9003 as being directed to the third day. In some arrangements, activity

'615 Patent (Ex. 1001), 54:27-42

Claim Construction: The Specification

Patent Owner:

“The immediately preceding disclosure explains that Figure 90A relates to an ‘example interface’ in which ‘**a user**’ modifies a goal or sets another goal for a goal time period of their choosing ... The next passage ... merely describes a scenario in which **the user’s** selection of a ‘future goal’ is automatically applied to the next available time period.”

As described herein, a user may define a goal to which the user’s activity is compared. Once a goal is set, in some arrangements, the user may modify the goal or set another goal for the same time period or another time period (e.g., the next day, a next week, the weekend, etc.). For example, during the course of a day or other time period, the user may realize that he or she is on track to exceed the currently set goal. Accordingly, the user may wish to modify the goal to a more challenging setting. In another example, if a user realizes that he or she is unlikely to complete a currently set goal, the user may modify the goal to be less challenging. The user may also be allowed to set additional goals without having to wait for a current goal or goal time period to expire. For example, while resting during a first day of activity, the user may set a goal for the next day or an upcoming week or the like.

FIG. 90A illustrates an example interface by which a user may activate a goal modification or setting function. The user

Claim Construction: Expert Testimony

Petitioner's Expert:

Q. And when is that received from the user?
Is that before the activity is performed?

A. So you added a word in there 'from the user.' You know, my opinions are based on the claim language, and the claim language notes an element of 'receiving an activity time period.' I don't believe it restricts it to receiving an activity time period from the user.

9/18/2023 Fischer Tr. (Ex.2003), 93:20-94:5 (objections omitted)

Page 1

VOLUME: I
PAGES: 1-109
EXHIBITS: 1-7

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

IPR No. 2023-00349
Patent 9,259,615

LULULEMON ATHLETICA CANADA, INC.)
and LULULEMON USA, INC.,)
Petitioner,)
vs.)
NIKE, INC.,)
Patent Owner.)

VIDEOTAPED DEPOSITION OF GREGORY
S. FISCHER, PhD, called as a witness by and on
behalf of the Patent Owner, pursuant to the
applicable provisions of the United States patent
Office Patent Trial and Appeal Board, before P.
Jodi Ohnemus, RPR, RMR, CRR, CA-CSR #13192, NH-LSR
#91, MA-CSR #123193, and Notary Public, within and
for the Commonwealth of Massachusetts, at Morrison
Foerster, 200 Clarendon Street, Boston,
Massachusetts, on Monday, 18 September, 2023,
commencing at 9:12 a.m.

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Exhibit 2003 - Page 1 of 149

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IPR2023-00349
Patent No. 9,259,615
Ex. 2003
888-391-5376

Claim Construction: Expert Testimony

Page 1

VOLUME: I
PAGES: 1-109
EXHIBITS: 1-7

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

IPR No. 2023-00349
Patent 9,259,615

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and LULULEMON USA, INC.,)
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#91, MA-CSR #123193, and Notary Public, within and
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Foerster, 200 Clarendon Street, Boston,
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lululemon v. NIKE, Inc.
IPR2023-00349
Patent No. 9,259,615
Ex. 2003

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888-391-5376

Exhibit 2003 - Page 1 of 149

Petitioner's Expert:

Q. But Stivorice only discloses the intervals – if we're looking at these figures – of day, week, and month; right?

A. ... And I also don't believe that that time period necessarily has to be set before, during, or after. I believe all of those can be options.

9/18/2023 Fischer Tr. (Ex.2003), 101:13-102:7 (objection omitted)

Sirmans + Kobayashi (Ground 3)

Sirmans: Three Limitations Are in Dispute

1

1. A method, comprising:
receiving athletic activity data from a device configured to be worn by a user;
receiving an activity time period;
receiving a first activity goal for the activity time period;
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
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.

'615 Patent (Ex. 1001), Claim 1

2

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

'615 Patent (Ex. 1001), Claim 3

3

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.

'615 Patent (Ex. 1001), Claim 7

Sirmans: “receiving an activity time period” (Claims 1, 11)

(19) United States

(12) Patent Application Publication (10) Pub. No.: US 2006/0111944 A1
(43) Pub. Date: May 25, 2006

(54) SYSTEM AND METHOD FOR ENCOURAGING PERFORMANCE OF HEALTH-PROMOTING MEASURES

Publication Classification

(51) Int. Cl. 46B 5/00 (2006.01)
G07G 1/14 (2006.01)

(76) Inventors: James R. Sirmans JR., Gainesville, FL (US); Kristofer F. Jurski, Fort McCoy, FL (US)

(57) ABSTRACT

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SALIWANCHIK LLOYD & SALIWANCHIK
A PROFESSIONAL ASSOCIATION
PO BOX 142950
GAINESVILLE, FL 32614-2950 (US)

(21) Appl. No.: 11/293,702

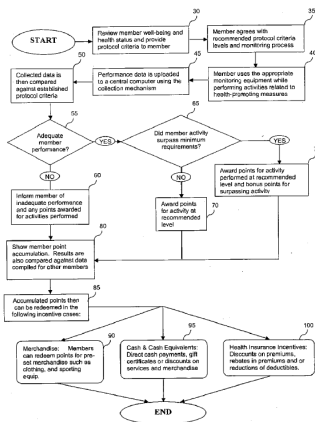
(22) Filed: Dec. 2, 2005

Related U.S. Application Data

(63) Continuation-in-part of application No. 10/974,186, filed on Oct. 27, 2004.

(60) Provisional application No. 60/516,075, filed on Oct. 31, 2003.

The present invention relates to systems and methods for monitoring and promoting behavioral modification with regard to an individual's health. In particular, the present invention provides a means for monitoring an individual's performance of health-promoting measures and, based on the member compliance to health-promoting measures, issuing tangible and/or intangible incentive products. In one embodiment, exercise/activity monitors are worn by members to verify their identity and to record and transmit member compliance in performing health-promoting measures (i.e., heart rate, type of exercise, exercise intensity and duration). All health-related information, including physical examination results and recorded participation in health-promoting measures, are used to determine appropriate incentives (i.e., subsidize membership fees for health club) to be rewarded to said member.



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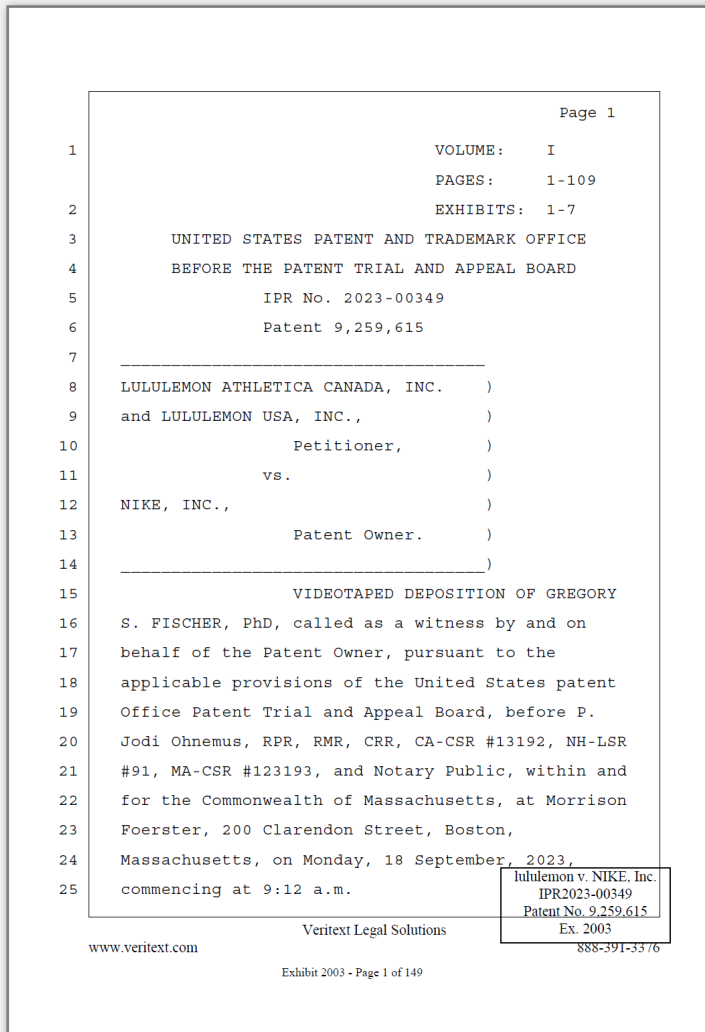
established 5. Protocol criteria can be established by any entity that has appropriate knowledge or access to knowledge regarding human well-being and health including, but not limited to, an employer, an insurance carrier, a health professional, a governmental entity, self insured entity or any combination thereof.

Sirmans (Ex.1004), ¶ 58

[0084] In one embodiment, a member will pay a monthly fee to an organization to receive a personal body monitor and access to a website portal. 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). Members can

Sirmans (Ex.1004), ¶ 84

Sirmans: “receiving an activity time period” (Claims 1, 11)



Petitioner's Expert:

Q. Okay. Same question but now we want to talk about express disclosures in Sirmans of the user establishing protocol criteria. If you could point me to specific paragraphs.

...

A. ...I don't believe there is anything in here [Sirmans, ¶ 58] that precludes the user. In fact, I think it would be quite clear that Sirmans envisions the user could be one of the sources for establishing protocol criteria.

9/18/2023 Fischer Tr. (Ex.2003), 64:7-23 (objection omitted)

Sirmans: “receiving an activity time period” (Claims 1, 11)



US 20060111944A1

(19) **United States**

(12) **Patent Application Publication** (10) Pub. No.: US 2006/0111944 A1
Sirmans, JR. et al. (43) Pub. Date: May 25, 2006

(54) SYSTEM AND METHOD FOR ENCOURAGING PERFORMANCE OF HEALTH-PROMOTING MEASURES

Publication Classification

(51) **Int. Cl.**
A61B 5/00 (2006.01)
G07G 1/14 (2006.01)

(76) Inventors: **James R. Sirmans JR.**, Gainesville, FL (US); **Kristofer F. Jurski**, Fort McCoy, FL (US)

(52) U.S. Cl. 705/3; 705/14

(57) **ABSTRACT**

Correspondence Address:
SALIWANCHIK LLOYD & SALIWANCHIK
A PROFESSIONAL ASSOCIATION
PO BOX 142950
GAINESVILLE, FL 32614-2950 (US)

(21) Appl. No.: 11/293,702

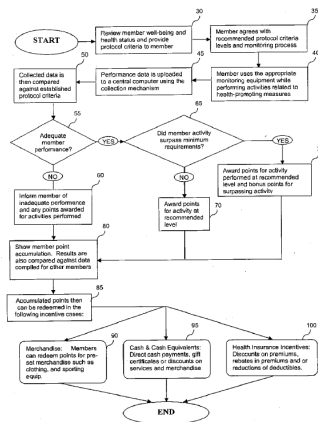
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[0068] Once the protocol criteria are established, they are presented to the member for member acceptance of both the protocol criteria as well as surveillance of member activity relating to health-promoting measures 35. For example, where the health-promoting measure is exercise and the surveillance constitutes monitoring equipment (such as a personal monitoring device or an exercise machine that includes a monitoring system), the member can agree to both the recommended/minimal level of exercise to be performed as well as appropriate use of the monitoring equipment.

Sirmans (Ex.1004), ¶ 68

Sirmans: “receiving an activity time period” (Claims 1, 11)

Patent Owner’s Argument:

or setting another goal. Ex. 1001, 54:12–28. As the specification makes clear, “the user” of interface 90A could have previously chosen time period of a day, week, or weekend. See Ex. 1001, 54:12–26. In other words, the interface described in Figure 90A is user-driven from beginning to the end, and the “activity time period” is received from the user. See Ex. 1001, 54:12–28 (“*a user* may define a goal”; “*the user* may modify the goal”; “*a user* may activate a goal modification”). Sirmans, on the other hand, merely presents pre-established protocols—such as the CDC recommended level of exercise—to the user for “acceptance.” Ex. 1004, ¶68.

Sur-Reply (Paper 24), 21-22

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LULULEMON ATHLETICA CANADA INC. and LULULEMON USA INC.
Petitioners

v.

NIKE, INC.
Patent Owner

Case IPR2023-00349
Patent 9,259,615

PATENT OWNER’S SUR-REPLY

Sirmans: “receiving an activity time period” (Claims 1, 11)

1 UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE PATENT TRIAL AND APPEAL BOARD
3 ----- X
4 LULULEMON ATHLETICA CANADA INC.
5 and LULULEMON USA INC.
6 Petitioner,
7 vs. PATENT NO.: 9,259,615
8 NIKE, INC., IPR 2023-00349
9 Patent Owner.
10 ----- X
11 November 16, 2023
12 Washington, D.C.
13 VIDEOTAPED DEPOSITION OF:
14 ROBERT STONE, PH.D.
15 was called for examination by counsel for the
16 Petitioner,, pursuant to notice, taken at Morrison &
17 Foerster, LLP, 2100 L Street, N.W., Suite 900,
18 Washington, D.C., commencing at 9:06 a.m., before
19 Misty Klapper, a Notary Public in and for the
20 District of Columbia, when were present on behalf of
21 the respective parties:
22

Page 1

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Calendar-CA@veritext.com 866-299-5127
lululemon athletica canada inc. and lululemon usa inc. Exhibit 1025 Page 1
lululemon athletica canada inc. and lululemon usa inc. v. Nike, Inc. IPR2023-00349

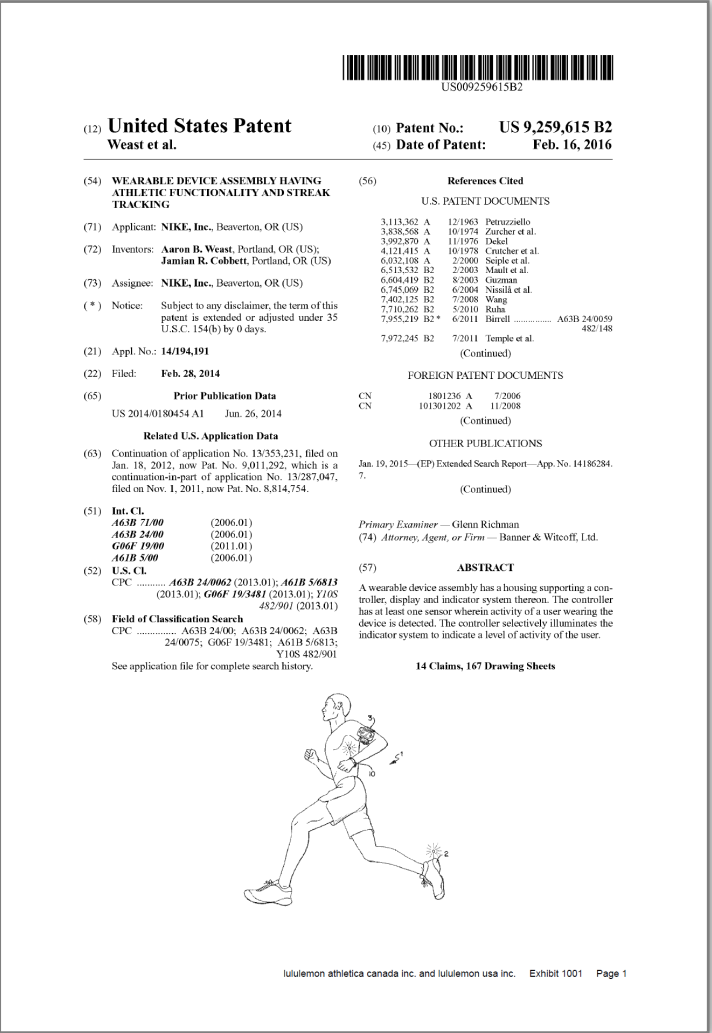
Patent Owner's Expert:

Q. Is the passage at column 51, lines 1 through 8, of the '615 patent an example of what satisfies the receiving an activity time period limitation?

A. Yes.

11/16/2023 Stone Tr. (Ex.1025), 36:21-37:3

Sirmans: “receiving an activity time period” (Claims 1, 11)



From the detailed information display, the user may select a goal setting option 8713. The goal may correspond to a specified amount of time such as a day, an hour, a week, a month or the like. In some arrangements, the goal time period may correspond to the evaluation time period. For example, if the evaluation time period was 1 day, the goal time period may be defined as 1 day. Alternatively, the user may define his or her own goal time period.

'615 Patent (Ex. 1001), 51:1-8

Sirmans: “a wrist-worn monitoring device” (Claim 3)

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LULULEMON ATHLETICA CANADA INC. and LULULEMON USA INC.
Petitioners

v.

NIKE, INC.
Patent Owner

Case IPR2023-00349
Patent 9,259,615

PATENT OWNER’S SUR-REPLY

V.

GROUND 3: LULULEMON FAILS TO DEMONSTRATE THAT THE COMBINATION OF SIRMANS AND KOBAYASHI RENDERS OBVIOUS CLAIMS 1–5, 7, 11 and 13

20

A.

lululemon Fails To Show That the Sirmans-Kobayashi Combination Teaches or Suggests “receiving an activity time period” (Limitations 1[B]/11[B])

21

B.

lululemon Fails To Show That the Sirmans-Kobayashi Combination Teaches or Suggests “receiving a second activity goal for the activity time period” (Claim 7)

22

VI.

GROUND 4: LULULEMON FAILS TO DEMONSTRATE THAT STIVORIC AND KOBAYASHI AND BRADY RENDER OBVIOUS CLAIMS 3–5

23

Sur-Reply (Paper 24), ii

Sirmans: “a wrist-worn monitoring device” (Claim 3)

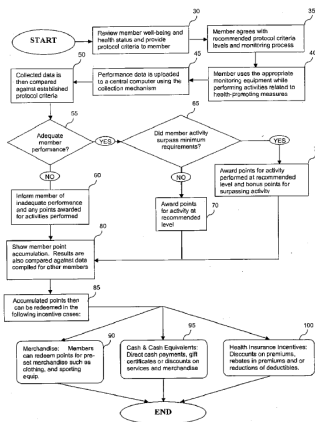
(19) United States
(12) Patent Application Publication (10) Pub. No.: US 2006/0111944 A1
Sirmans, JR. et al. (43) Pub. Date: May 25, 2006

(54) SYSTEM AND METHOD FOR ENCOURAGING PERFORMANCE OF HEALTH-PROMOTING MEASURES
(51) Int. Cl. 461B 5/00 (2006.01)
G07G 1/14 (2006.01)
(52) Inventors: James R. Sirmans JR., Gainesville, FL (US); Kristofer F. Jurski, Fort McCoy, FL (US)
(57) U.S. CL. 705/3; 705/14

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PO BOX 142950
GAINESVILLE, FL 32614-2950 (US)

(21) Appl. No.: 11/293,702
(22) Filed: Dec. 2, 2005

Related U.S. Application Data
(63) Continuation-in-part of application No. 10/974,186, filed on Oct. 27, 2004.
(60) Provisional application No. 60/516,075, filed on Oct. 31, 2003.



lululemon athletica canada inc. and lululemon usa inc. Exhibit 1004 Page 1

[0089] All patents, patent applications, provisional applications, and publications referred to or cited herein are incorporated by reference in their entirety, including all figures and tables, to the extent they are not inconsistent with the explicit teachings of this specification.

Sirmans (Ex.1004), ¶ 89

of steps taken. The sensor(s) for monitoring physiological status data of an individual and the means for recording the identity of the individual can be based on known monitoring devices and sensors, such as those disclosed in U.S. Pat. Nos. 6,635,015; 6,605,038; 6,595,929; and 6,527,711 (collectively assigned to BodyMedia, Inc.).

Sirmans (Ex.1004), ¶ 48

Sirmans: “a wrist-worn monitoring device” (Claim 3)

(12) United States Patent Sagel

(10) Patent No.: US 6,635,015 B2
(45) Date of Patent: *Oct. 21, 2003

(54) BODY WEIGHT MANAGEMENT SYSTEM

(75) Inventor: Paul Joseph Sagel, Maineville, OH (US)

(73) Assignee: The Procter & Gamble Company, Cincinnati, OH (US)

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 9 days.

This patent is subject to a terminal disclaimer.

(21) Appl. No.: 09/839,740

(22) Filed: Apr. 20, 2001

(65) Prior Publication Data

US 2002/0156351 A1 Oct. 24, 2002

(51) Int. Cl. A61B 5/00

(52) U.S. Cl. 600/300; 128/903; 128/904; 128/921

(58) Field of Search 600/300, 301, 600/531; 128/921; 705/2, 3; 708/131, 133; 177/245, 264, 25, 16; 434/127; 424/439

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* cited by examiner

Primary Examiner—Eric F. Winakur

Assistant Examiner—David J. McCroskey

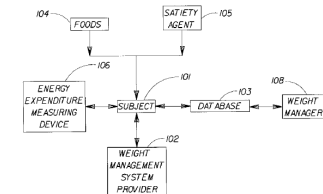
(74) Attorney, Agent, or Firm—Kelly L. McDow-Dunham;

John M. Howell

(57) ABSTRACT

The invention relates to body weight management systems for subjects including humans and domestic animals. Such systems utilizes devices and compositions to shift the energy balance of the user in the direction wherein the calories burned due to the user's activity is greater than the calories consumed by that user. These devices include a diet-tracking system, devices for estimating energy expenditure of the subject and a satiety agent. Such systems have a variety of uses including, but not limited to body weight maintenance, reduction or gain; reduction of body fat and, or gain in muscle mass and improvement of a subject's fitness.

17 Claims, 8 Drawing Sheets



lululemon athletica canada inc. and lululemon usa inc. Exhibit 1019 Page 1

The basis of the calorie burn estimation is the monitoring of the activities of the user. The activity monitoring is derived from odometer readings, pulse meter pedometer readings and exercise machine time/calorie counters. For example, U.S. Pat. No. 4,159,416 to Brajnik et al. disclose a monitor in the form of a wristwatch capable of converting the wearer's pulse to determine the user's number of calories expended. In light of pulse conversion being considered relatively inaccurate, other devices have been developed. These include belt or pocket-worn device that measure the individual's caloric output and continuously accumulates expended calories; see U.S. Pat. No. 4,192,000 to Elmer P. Lipsey.

'015 Patent (Ex.1019), 8:3-15

Sirmans: “receiving a second activity goal for the activity time period” (Claim 7)

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LULULEMON ATHLETICA CANADA INC. and LULULEMON USA INC.
Petitioners

v.

NIKE, INC.
Patent Owner

Case IPR2023-00349
Patent 9,259,615

PATENT OWNER RESPONSE UNDER 37 C.F.R. § 42.120

Patent Owner’s Argument:

As discussed above in Section VIII.A, Sirmans does not disclose “receiving an activity time period,” as recited in limitations 1[B]/11[B]. Ex. 2002, ¶59. For at least that reason, lululemon fails to show by a preponderance of the evidence that the Sirmans-Kobayashi combination teaches or suggests the additional limitation of claim 7, which recites receiving a “second activity goal” during the same “activity time period.”

POR (Paper 17), 33; Sur-Reply (Paper 24), 22-23 (similar)

Stivoric + Kobayashi (Ground 2)

Stivoric/Kobayashi: Three Limitations Are in Dispute

1. A method, comprising:
receiving athletic activity data from a device configured to be worn by a user;
receiving an activity time period;
receiving a first activity goal for the activity time period;
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
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.

'615 Patent (Ex. 1001), Claim 1

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.

'615 Patent (Ex. 1001), Claim 7

Stivoric: “receiving an activity time period” (Claims 1, 11)



US009259615B2

(12) **United States Patent**

Weast et al.

(10) Patent No.:

US 9,259,615 B2

(45) Date of Patent:

Feb. 16, 2016

(54) **WEARABLE DEVICE ASSEMBLY HAVING ATHLETIC FUNCTIONALITY AND STREAK TRACKING**

(71) Applicant:

NIKE, Inc., Beaverton, OR (US)

(72) Inventors:

Aaron B. Weast, Portland, OR (US);
Jamian R. Cobbett, Portland, OR (US)

(73) Assignee:

NIKE, Inc., Beaverton, OR (US)

(*) Notice:

Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.

(21) Appl. No.:

14/194,191

(22) Filed:

Feb. 28, 2014

(65) **Prior Publication Data**

US 2014/0180454 A1 Jun. 26, 2014

Related U.S. Application Data

(63) Continuation of application No. 13/353,231, filed on Jan. 18, 2012, now Pat. No. 9,011,292, which is a continuation-in-part of application No. 13/287,047, filed on Nov. 1, 2011, now Pat. No. 8,814,754.

(51) **Int. Cl.**

A63B 71/00 (2006.01)

A63B 24/00 (2006.01)

G06F 19/00 (2011.01)

A63B 5/00 (2006.01)

(52) **U.S. Cl.**

CPC

A63B 24/0062 (2013.01); A63B 5/6813 (2013.01); G06F 19/3481 (2013.01); Y108 482/901 (2013.01)

(58) **Field of Classification Search**

CPC

A63B 24/00; A63B 24/0062; A63B 24/0075; G06F 19/3481; A63B 5/6813; Y108 482/901

(56) **References Cited**

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(Continued)

(74) **Attorney, Agent, or Firm**

Banner & Witcoff, Ltd.

(57) **ABSTRACT**

A wearable device assembly has a housing supporting a controller, display and indicator system thereon. The controller has at least one sensor wherein activity of a user wearing the device is detected. The controller selectively illuminates the indicator system to indicate a level of activity of the user.

See application file for complete search history.

14 Claims, 167 Drawing Sheets



lululemon athletica canada inc. and lululemon usa inc. Exhibit 1001 Page 1

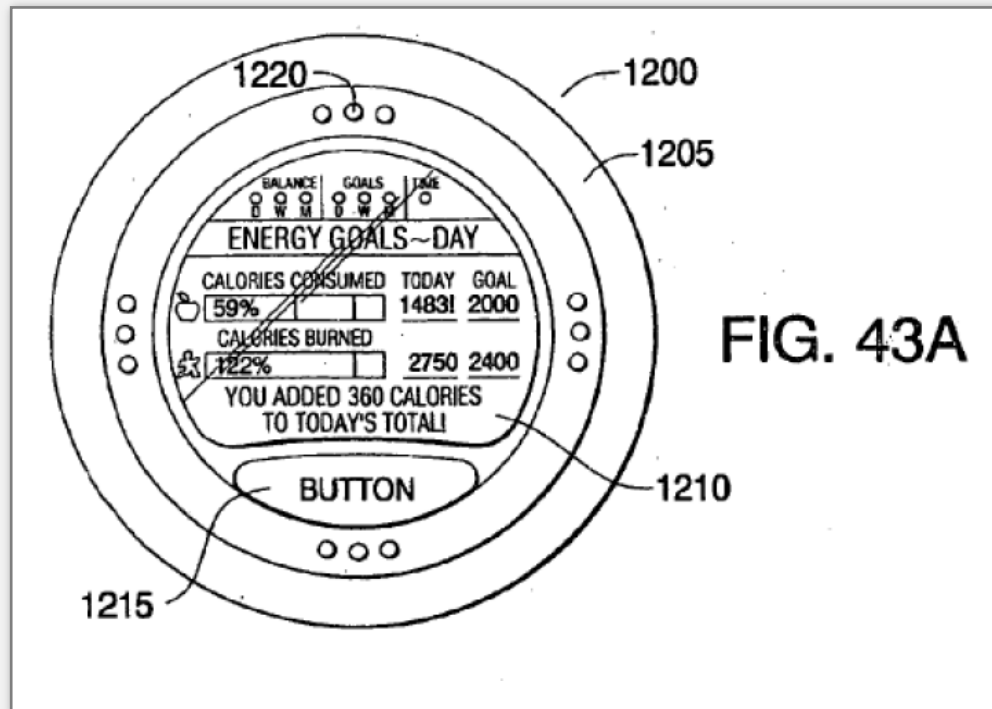
1. A method, comprising:
receiving athletic activity data from a device configured to be worn by a user;
receiving an activity time period;
receiving a first activity goal for the activity time period;
determining, at a processor, whether the received athletic activity data exceeds the first activity goal for a predetermined number of consecutive activity time periods; and
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.

'615 Patent (Ex. 1001), Claim 1

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

30

Stivoric: “receiving an activity time period” (Claims 1, 11)



Stivoric (Ex.1003), Fig. 43A

displayed by I/O device 1200 on LCD 1210. 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. 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

Stivoric (Ex.1003), ¶ 197

Stivoric: “receiving an activity time period” (Claims 1, 11)

Petitioner’s Expert:

- Q. So you just said that in Stivoric there’s one example of the system receiving a time period prior to the start of activities. **Where is that disclosed?**
- A. So **within paragraph 197** I know there’s a sentence that says (as read): “... a daily goal of 2,000 calories was consumed was set by the individual ...the daily goal of 2,400 calories burned was set by the individual...”

9/18/2023 Fischer Tr. (Ex.2003), 90:13-91:3

Page 1

VOLUME: I
PAGES: 1-109
EXHIBITS: 1-7

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

IPR No. 2023-00349
Patent 9,259,615

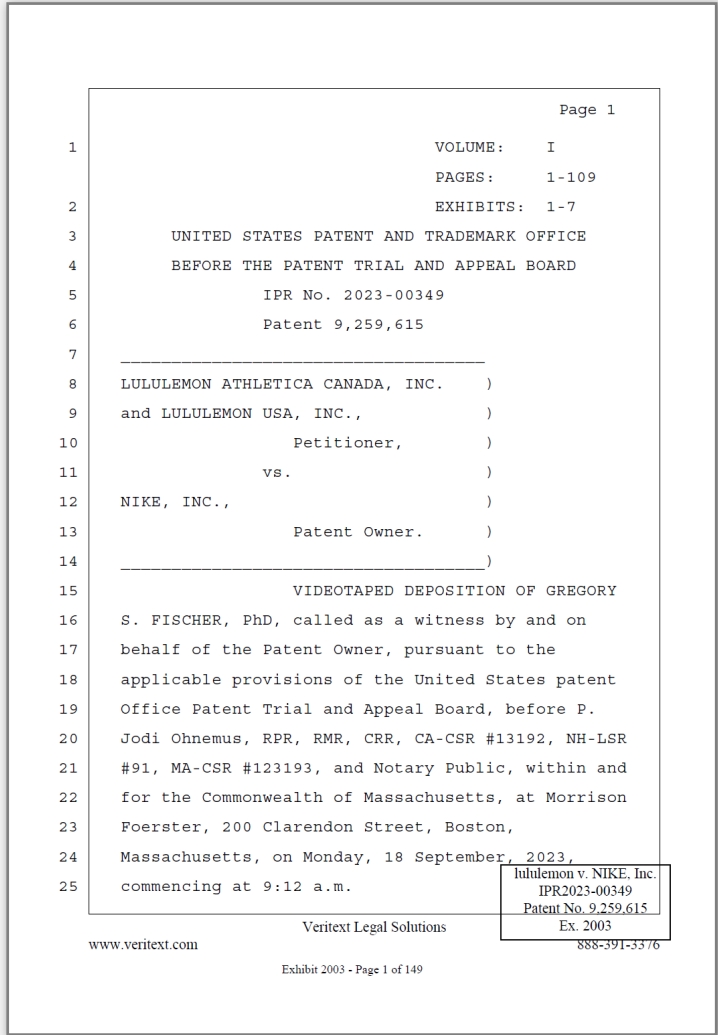
LULULEMON ATHLETICA CANADA, INC.)
and LULULEMON USA, INC.,)
Petitioner,)
vs.)
NIKE, INC.,)
Patent Owner.)

VIDEOTAPED DEPOSITION OF GREGORY
S. FISCHER, PhD, called as a witness by and on
behalf of the Patent Owner, pursuant to the
applicable provisions of the United States patent
Office Patent Trial and Appeal Board, before P.
Jodi Ohnemus, RPR, RMR, CRR, CA-CSR #13192, NH-LSR
#91, MA-CSR #123193, and Notary Public, within and
for the Commonwealth of Massachusetts, at Morrison
Foerster, 200 Clarendon Street, Boston,
Massachusetts, on Monday, 18 September, 2023,
commencing at 9:12 a.m.

lululemon v. NIKE, Inc.
IPR2023-00349
Patent No. 9,259,615
Ex. 2003

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Exhibit 2003 - Page 1 of 149

Stivoric: “receiving an activity time period” (Claims 1, 11)



Petitioner’s Expert:

- Q.** But isn’t Stivoric monitoring that time period regardless of what the user selects?
- A.** Well, it notes that “a daily goal of 2,400 calories burned was set by the individual.” So therefore the individual has the ability to set [a] daily goal, which could be another time period, and 2,400 calories burned, which would be the actual goal.

9/18/2023 Fischer Tr. (Ex.2003), 91:11-19 (objection omitted)

Stivoric: “receiving an activity time period” (Claims 1, 11)

'615 Patent:

Other types of registration processes may also be used including those with more or less options as desired by an activity tracking service and/or the user. In some examples, portions of the registration process may be optional (e.g., setting a daily goal, display setup, etc.).

'615 Patent (Ex.1001), 46:59-63

Patent Owner's Expert:

Q. Is the passage that you cited at column 46, lines 61 through 63, an example of what you believe meets the receiving an activity time period limitation?

A. Yes.

*11/16/2023 Stone Tr. (Ex.1025)
35:2-7 (objection omitted)*

Stivoric: “receiving an activity time period” (Claims 1, 11)

Patent Owner’s Expert:

- Q.** How does the passage at column 46, lines 61 through 63, of the '615 patent support your opinion as to the meaning of receiving an activity time period?
- A.** The very last line reads, Setting a daily goal. So setting a daily goal is a time period in which it must be accomplished. And the goal, whatever it is that you’re setting, is what he’s in the process of putting in.

11/16/2023 Stone Tr. (Ex.1025), 37:8-16

1 UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE PATENT TRIAL AND APPEAL BOARD
3 ----- X
4 LULULEMON ATHLETICA CANADA INC.
5 and LULULEMON USA INC.
6 Petitioner,
7 vs. PATENT NO.: 9,259,615
8 NIKE, INC., IPR 2023-00349
9 Patent Owner.
10 ----- X
11 November 16, 2023
12 Washington, D.C.
13 VIDEOTAPED DEPOSITION OF:
14 ROBERT STONE, PH.D.
15 was called for examination by counsel for the
16 Petitioner,, pursuant to notice, taken at Morrison &
17 Foerster, LLP, 2100 L Street, N.W., Suite 900,
18 Washington, D.C., commencing at 9:06 a.m., before
19 Misty Klapper, a Notary Public in and for the
20 District of Columbia, when were present on behalf of
21 the respective parties:
22

Page 1

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lululemon athletica canada inc. and lululemon usa inc. Exhibit 1025 Page 1
lululemon athletica canada inc. and lululemon usa inc. v. Nike, Inc. IPR2023-00349

Stivoric: “receiving an activity time period” (Claims 1, 11)

'615 Patent:

Other types of registration processes may also be used including those with more or less options as desired by an activity tracking service and/or the user. In some examples, portions of the registration process may be optional (e.g., setting a daily goal, display setup, etc.).

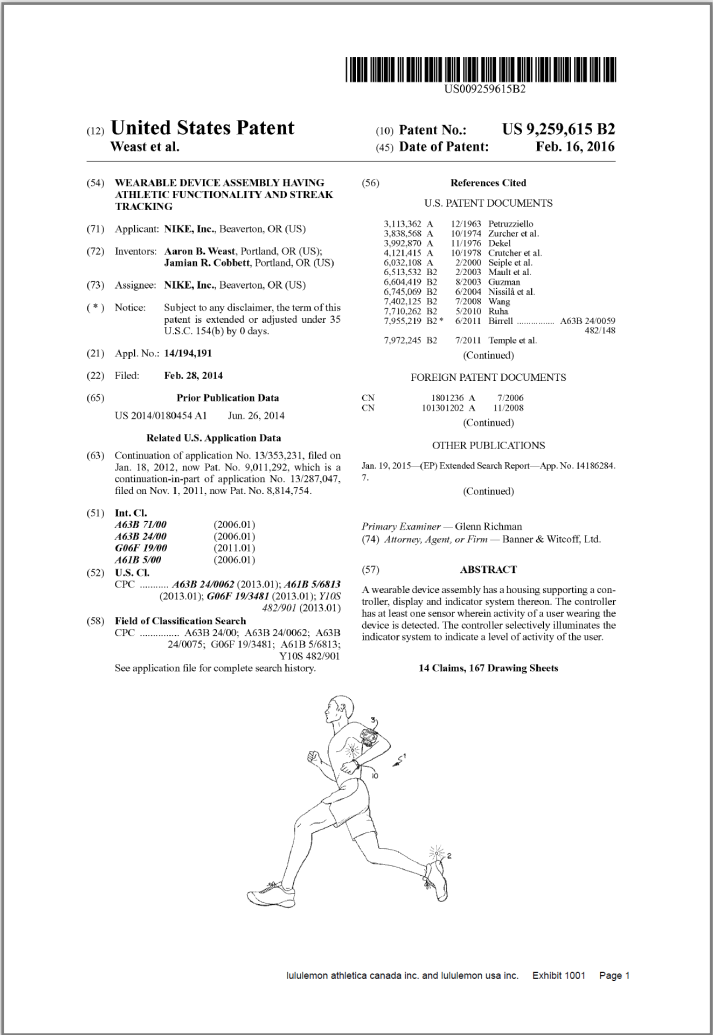
'615 Patent (Ex.1001), 46:59-63

Stivoric:

displayed by I/O device 1200 on LCD 1210. 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. 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

Stivoric (Ex.1003), ¶ 197

Stivoric / Kobayashi: Reasonable Expectation (Claims 1, 11)



What is claimed is:

1. A method, comprising:

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

receiving an activity time period;

receiving a first activity goal for the activity time period;

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

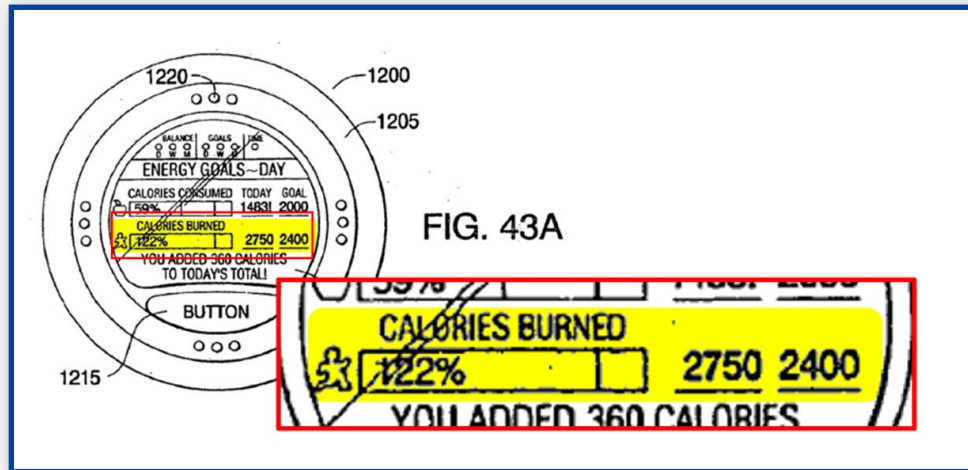
and

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.

'615 Patent (Ex. 1001), Claim 1

Stivoric / Kobayashi: Reasonable Expectation (Claims 1, 11)

Stivoric:



Stivoric (Ex.1003), Fig. 43A



Kobayashi:

[0142] Additionally, as shown in Fig. 12-(b) and (c), 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 and penalties such as -3 points for a day off or -10 points for two consecutive days off. Another example may be adding 3 points when the total steps per day surpasses 10,000 steps.

Kobayashi (Ex.1005), ¶ 142

(b) 10 consecutive days	—————▶	5 point
20 consecutive days	—————▶	10 point

Kobayashi (Ex.1005), Fig. 12(b)

Stivoric / Kobayashi: Reasonable Expectation (Claims 1, 11)

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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v.

NIKE, INC.
Patent Owner

Case IPR2023-00349
Patent 9,259,615

PATENT OWNER RESPONSE UNDER 37 C.F.R. § 42.120

Patent Owner's Argument:

no more than parrot this point. Ex. 1006, ¶115. Both lululemon and Dr. Fischer overlook that **changing the actual hardware** of Stivoric's device could not be resolved by "basic programming skills." Ex. 2002, ¶49. Thus, lululemon has not

POR (Paper 17), 28

Stivoric / Kobayashi: Reasonable Expectation (Claims 1, 11)

Petitioner's Argument:

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.*)

Petition (Paper 2), 47

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

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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

Stivoric / Kobayashi: Reasonable Expectation (Claims 1, 11)

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

NIKE, INC.,
Patent Owner.

Patent: 9,259,615

DECLARATION OF DR. GREGORY S. FISCHER

lululemon athletica canada inc. and lululemon usa inc. Exhibit 1006 Page 1

Petitioner's Expert:

of daily activity periods (*i.e.*, a streak reward). Indeed, it would be simple to implement Kobayashi's exemplary bonus points for completing an activity goal over consecutive activity time periods into Stivoric's workouts, requiring nothing more but basic programming skills. This would yield a predictable result of providing an additional incentive to maintain a daily exercise regimen and rewarding a user for doing so.

Fischer Decl. (Ex.1006), ¶ 115

Stivoric / Kobayashi: Reasonable Expectation (Claims 1, 11)

Patent Owner's Expert:

Q. In the program shown in Exhibit 1023, if a user enters Monday for variable A and Tuesday for variable B, then according to the if statement, the program will print, quote, a streak reward backslash N, end quote, correct?

A. That is correct.

```
18 //process variables
19 if ((a == "Monday") && (b == "Tuesday")) {
20
21     std::cout << "A Streak Reward\n";
22
23 }
```

Cross-Exam. Demonstrative (Ex.1023)

11/16/2023 Stone Tr. (Ex.1025), 25:6-11

Stivoric / Kobayashi: Reasonable Expectation (Claims 1, 11)

Patent Owner's Expert:

Q. Fair to say this is a pretty basic computer program?

A. It's a basic computer program.

Q. A person of ordinary skill in the art as of 2011, having a degree in computer science, could have written this program, correct?

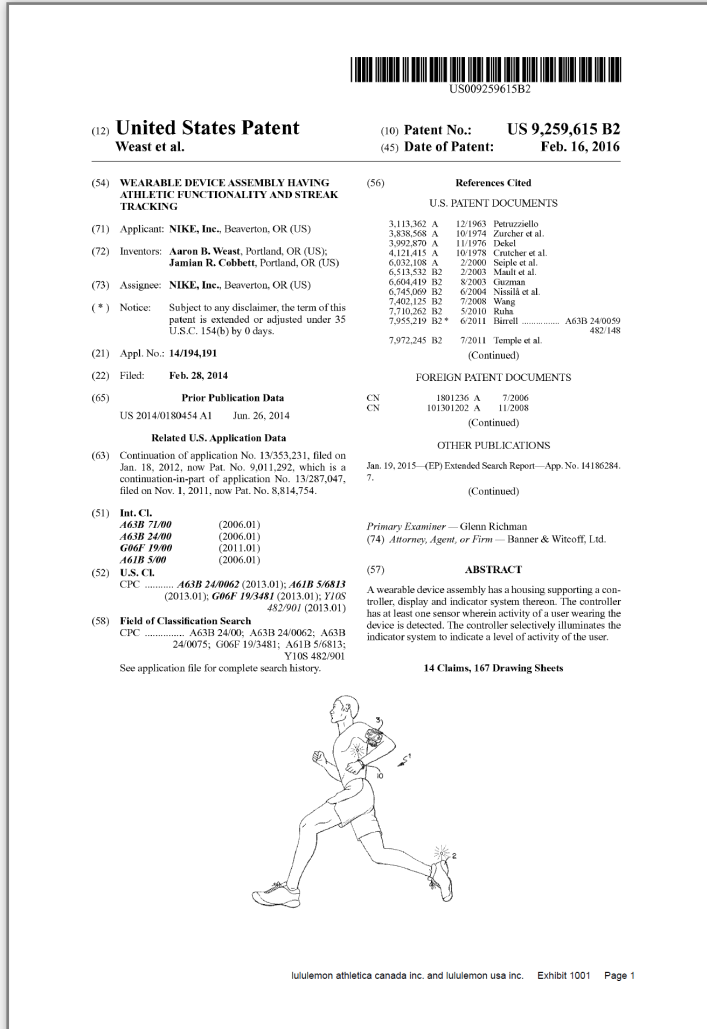
A. Correct.

```
18 //process variables
19 if ((a == "Monday") && (b == "Tuesday")) {
20
21     std::cout << "A Streak Reward\n";
22
23 }
```

Cross-Exam. Demonstrative (Ex.1023)

11/16/2023 Stone Tr. (Ex.1025), 25:12-18

Stivoric/Kobayashi: “receiving a second activity goal for the activity time period” (Claim 7)



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 pre-determined number of consecutive activity time periods.

'615 Patent (Ex. 1001), Claim 7

Stivoric/Kobayashi: “receiving a second activity goal for the activity time period” (Claim 7)

[0218] According to one aspect of the present invention, I/O device 1200 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. I/O device

Stivoric (Ex.1003), ¶ 218

exercise, sleep, lying down, sitting, standing, ambulation, running, walking, biking, stationary biking, road biking, lifting weights, aerobic exercise, anaerobic exercise, strength-building exercise, mind-centering activity, periods of intense emotion, relaxing, watching TV, sedentary, REM detector, eating, in-the-zone, interruptible, general activity detection, sleep stage, heat stress, heat stroke, amenable to teaching/learning, bipolar decompensation, abnormal events (in heart signal, in activity level, measured by the user, etc), startle level, highway driving or riding in a car, airplane travel, helicopter travel, boredom events, sport detection (football, baseball, soccer, etc), studying, reading, intoxication, effect of a drug

Stivoric (Ex.1003), ¶ 227 (Table 3: Durative Measurements)

Stivoric/Kobayashi: “receiving a second activity goal for the activity time period” (Claim 7)

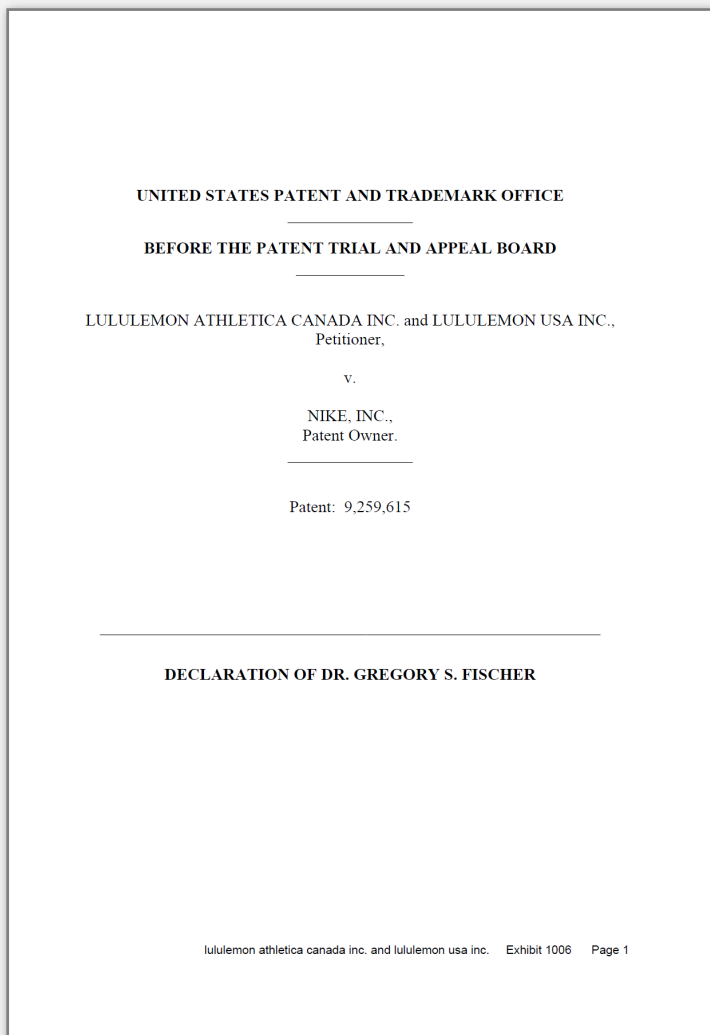
Petitioner’s Expert:

122. Both Stivoric and Kobayashi are in the same field of personal health and fitness monitoring and are solving the same problem. Thus, there would be a strong motivation to combine these teachings to further incentivize regular exercise with a high likelihood of success. As previously noted, the framework for defining

• • •

framework of activity goals, workouts, and feedback. Moreover, it would be simple to incorporate the identifying and assessing of a second activity goal for a predetermined number of consecutive activity time periods of Kobayashi into the framework of Stivoric, with a high likelihood of success. In view of the combined

Fischer Decl. (Ex.1006), ¶ 122



Stivoric/Kobayashi: “receiving a second activity goal for the activity time period” (Claim 7)

US 2004/0152957 A1

(19) United States
(12) Patent Application Publication (10) Pub. No.: US 2004/0152957 A1
(43) Pub. Date: Aug. 5, 2004

(54) APPARATUS FOR DETECTING, RECEIVING, DERIVING AND DISPLAYING HUMAN PHYSIOLOGICAL AND CONTEXTUAL INFORMATION

(76) Inventors: John Stivoric, Pittsburgh, PA (US); Christopher Pacione, Pittsburgh, PA (US); Eric Teller, Pittsburgh, PA (US); David Andre, Pittsburgh, PA (US); Christopher Kasabach, Pittsburgh, PA (US); Scott Boehmke, Wexford, PA (US); Suresh Vishnuhatha, Wexford, PA (US); Scott Saffier, Pittsburgh, PA (US); Jonathan Farrington, Pittsburgh, PA (US); Raymond Pelletier, Pittsburgh, PA (US)

Correspondence Address: Philip E. Levy, Esq., Metz Lewis LLC, 18th Floor, 11 Stanwix Street, Pittsburgh, PA 15222 (US)

(21) Appl. No.: 10/682,759
(22) Filed: Oct. 9, 2003

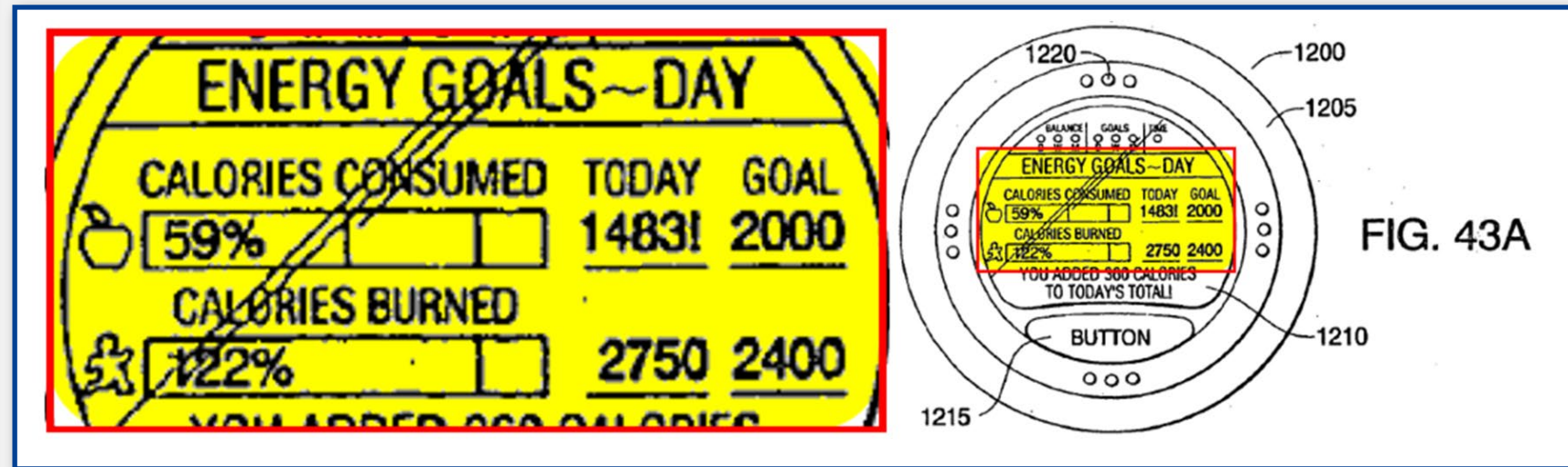
Related U.S. Application Data
(63) Continuation-in-part of application No. 09/923,181, filed on Aug. 6, 2001, now abandoned, which is a continuation-in-part of application No. 09/602,537, filed on Jun. 23, 2000, now Pat. No. 6,605,038, which is a continuation-in-part of application No. 09/595,660, filed on Jun. 16, 2000.

(60) Provisional application No. 60/417,163, filed on Oct. 9, 2002.

Publication Classification
(51) Int. Cl.⁷ A61B 5/00
(52) U.S. Cl. 600/300; 128/903

(57) ABSTRACT
A monitoring apparatus that includes a sensor device and an I/O device in communication with the sensor device that generates derived data using the data from the sensor device. The derived data cannot be directly detected by the associated sensors. Alternatively, an apparatus that includes a wearable sensor device and an I/O device in communication with the sensor device that includes means for displaying information and a dial for entering information. Alternatively, an apparatus for tracking caloric consumption and caloric expenditure data that includes a sensor device and an I/O device in communication with the sensor device. The sensor device includes a processor programmed to generate data relating to caloric expenditure from sensor data. Alternatively, an apparatus for tracking caloric information for an individual that utilizes a plurality of classification identifiers for classifying meals consumed by the individual, each of the classification identifiers having a corresponding caloric amount.

lululemon athletica canada inc. and lululemon usa inc. Exhibit 1003 Page 1



Stivoric (Ex.1003), Fig.43A

Hoffman (Ground 1)

Hoffman: Four Limitations Are in Dispute

1. A method, comprising:
receiving athletic activity data from a device configured to be worn by a user;
receiving an activity time period;
receiving a first activity goal for the activity time period;
1 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
2 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.

'615 Patent (Ex. 1001), Claim 1

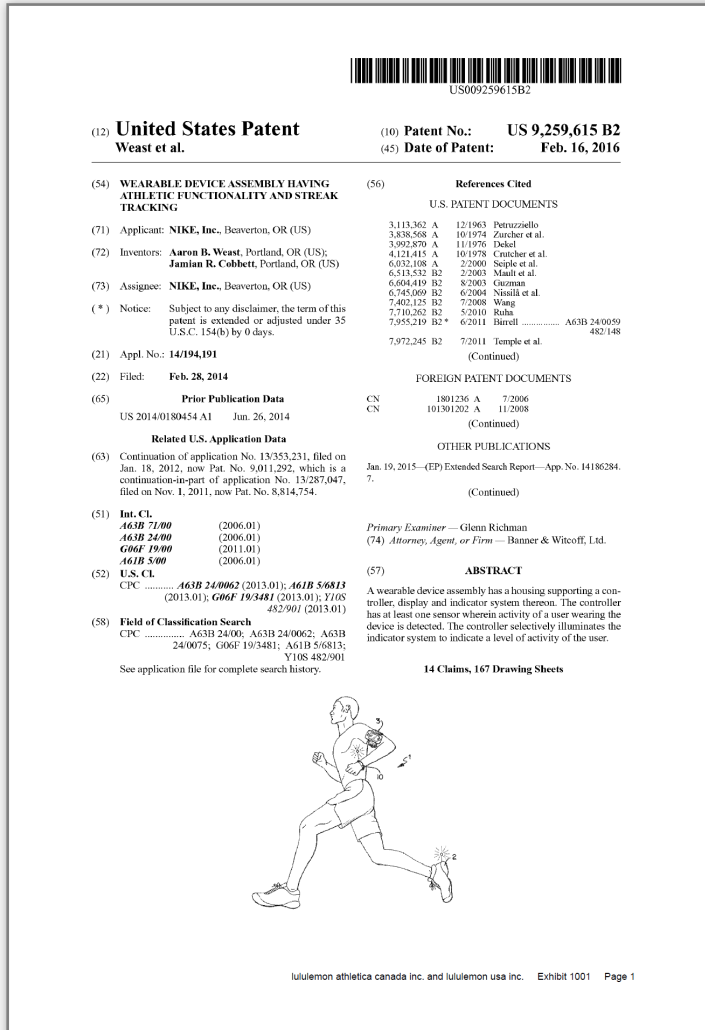
- 3** 7. The method of claim 1, further comprising:
receiving a second activity goal for the activity time period;
and
determining, at a processor, whether the received athletic activity data exceeds the second activity goal for a predetermined number of consecutive activity time periods.

'615 Patent (Ex. 1001), Claim 7

- 4** 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.

'615 Patent (Ex. 1001), Claim 13

① Hoffman: “consecutive activity time periods” (Claims 1/11)



What is claimed is:

1. A method, comprising:
receiving athletic activity data from a device configured to be worn by a user;
receiving an activity time period;
receiving a first activity goal for the activity time period;
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
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.

'615 Patent (Ex. 1001), Claim 1

Hoffman: “consecutive activity time periods” (Claims 1/11)

Patent Owner’s Expert:

Q. Do you understand that phrase to mean one goal in each of three consecutive days?

A. Actually, by looking at the context, they could complete two goals in a single day, three goals in three consecutive days, so it becomes a little bit strange as to whether they mean three goals in each of three days or if it would be one goal in each of those days, based on the following statement of completing two goals in a single day.

11/16/2023 Stone Tr. (Ex.1025), 49:9-20 (objection omitted)

1 UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE PATENT TRIAL AND APPEAL BOARD
3 ----- X
4 LULULEMON ATHLETICA CANADA INC.
5 and LULULEMON USA INC.
6 Petitioner,
7 vs. PATENT NO.: 9,259,615
8 NIKE, INC., IPR 2023-00349
9 Patent Owner.
10 ----- X
11 November 16, 2023
12 Washington, D.C.
13 VIDEOTAPED DEPOSITION OF:
14 ROBERT STONE, PH.D.
15 was called for examination by counsel for the
16 Petitioner,, pursuant to notice, taken at Morrison &
17 Foerster, LLP, 2100 L Street, N.W., Suite 900,
18 Washington, D.C., commencing at 9:06 a.m., before
19 Misty Klapper, a Notary Public in and for the
20 District of Columbia, when were present on behalf of
21 the respective parties:
22

Page 1

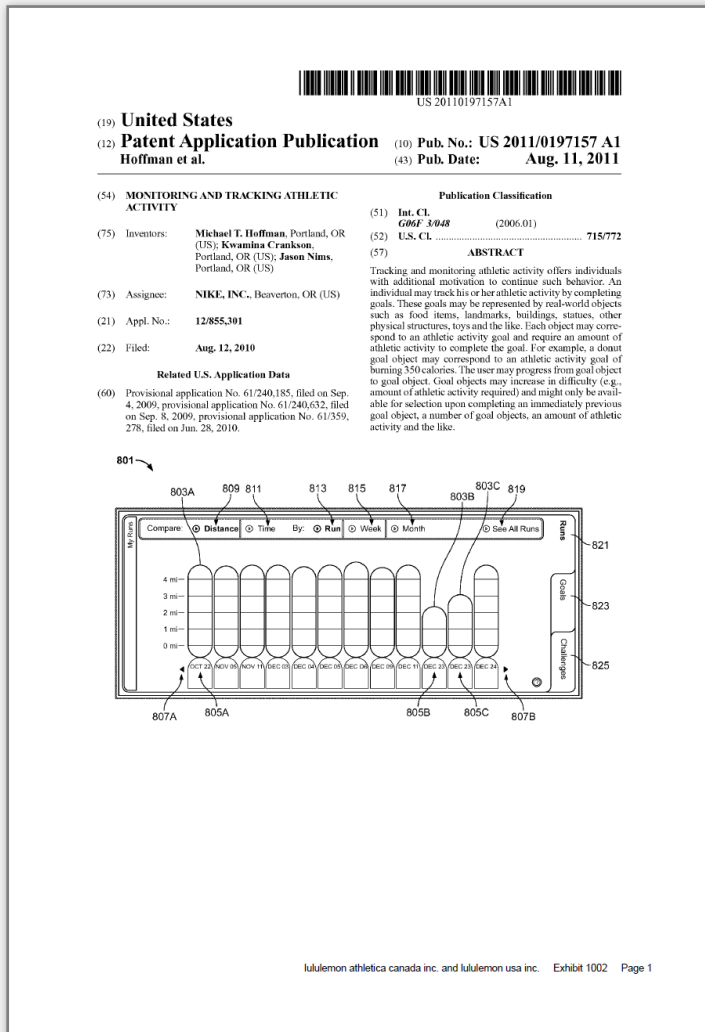
Veritext Legal Solutions
Calendar-CA@veritext.com 866-299-5127
lululemon athletica canada inc. and lululemon usa inc. Exhibit 1025 Page 1
lululemon athletica canada inc. and lululemon usa inc. v. Nike, Inc. IPR2023-00349

Hoffman: “consecutive activity time periods” (Claims 1/11)

#	Day 1	Day 2	Day 3
1	1	1	1
2	3	0	0
3	0	3	0
4	0	0	3
5	2	1	0
6	2	0	1
7	1	2	0
8	0	2	1
9	1	0	2
10	0	1	2

Reply (Paper 22), 20-21

Hoffman: “consecutive activity time periods” (Claims 1/11)



Paragraph 198:

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,

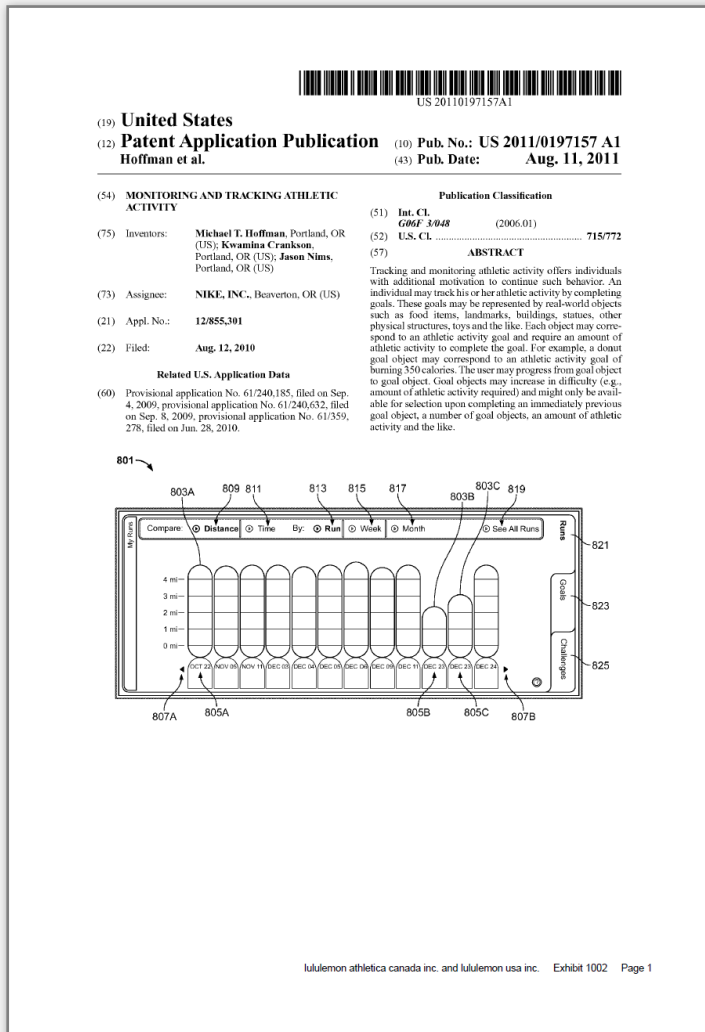
Hoffman (Ex.1002), ¶ 198

Paragraph 9:

[0009] In addition, some examples of the invention may allow a person to specify a goal related to an athletic activity. A person may, e.g., set a goal of running a specified total distance within a specified period of time. With these imple-

Hoffman (Ex.1002), ¶ 9

Hoffman: “consecutive activity time periods” (Claims 1/11)



Paragraph 198:

[0198] Badges may be awarded by the athletic activity tracking and monitoring site based on various achievements.

...
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,

Hoffman (Ex.1002), ¶ 198

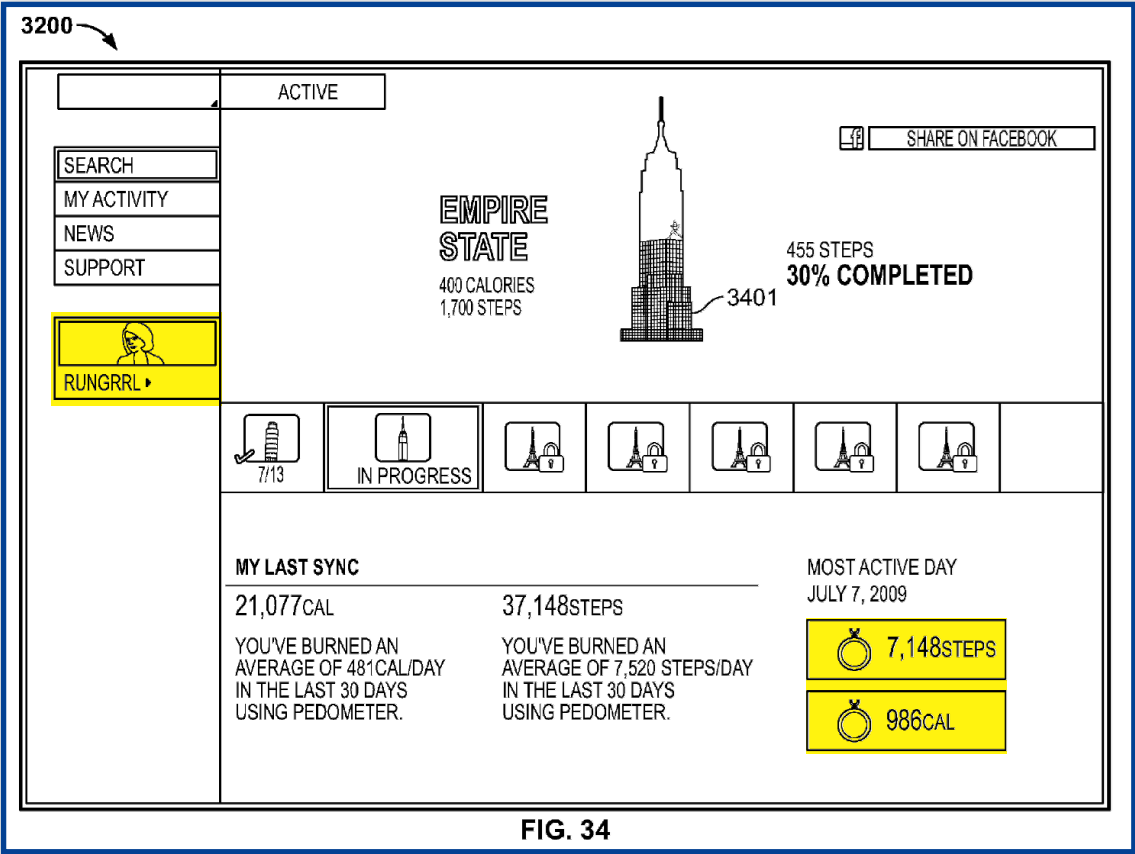
Paragraph 184:

previous goal. Accordingly, the network site may roll over calories burned and steps performed exceeding the required amount to complete a previous goal. For example, if 1500

Hoffman (Ex.1002), ¶ 184

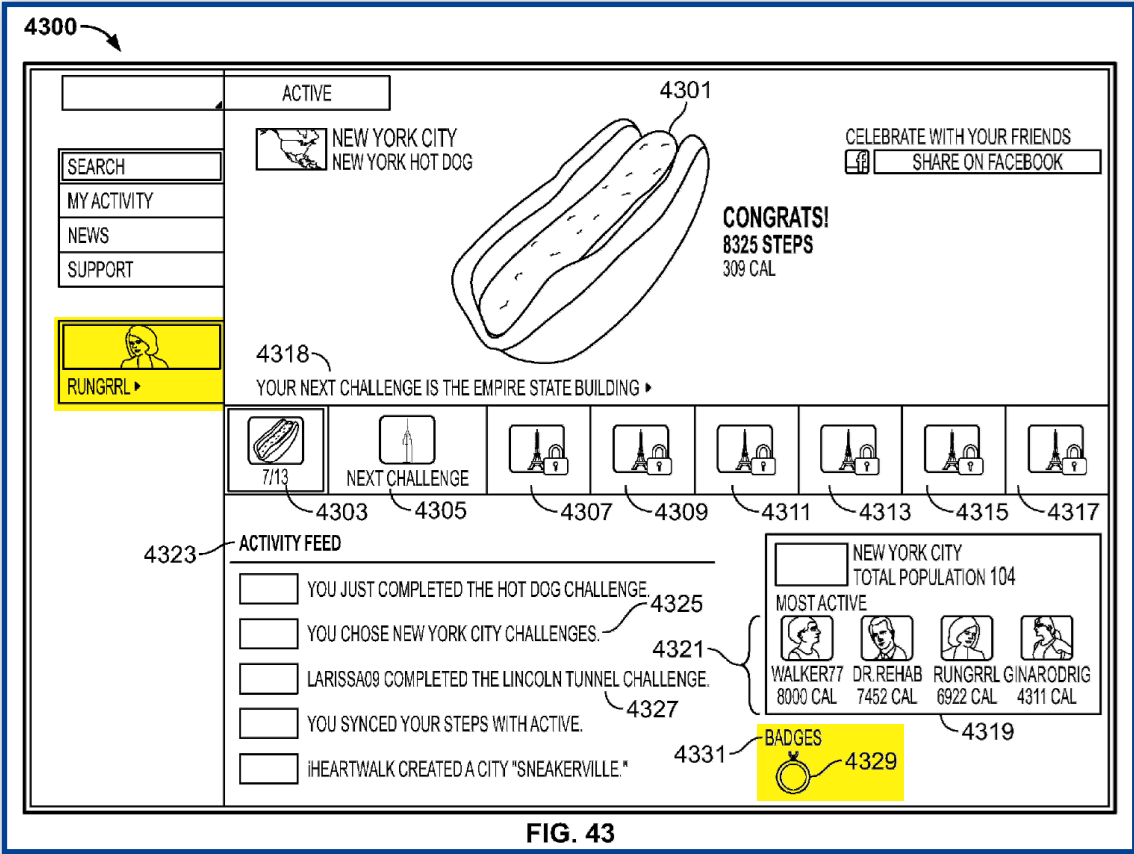
Hoffman: “consecutive activity time periods” (Claims 1/11)

Associated w/ Paragraph 184:



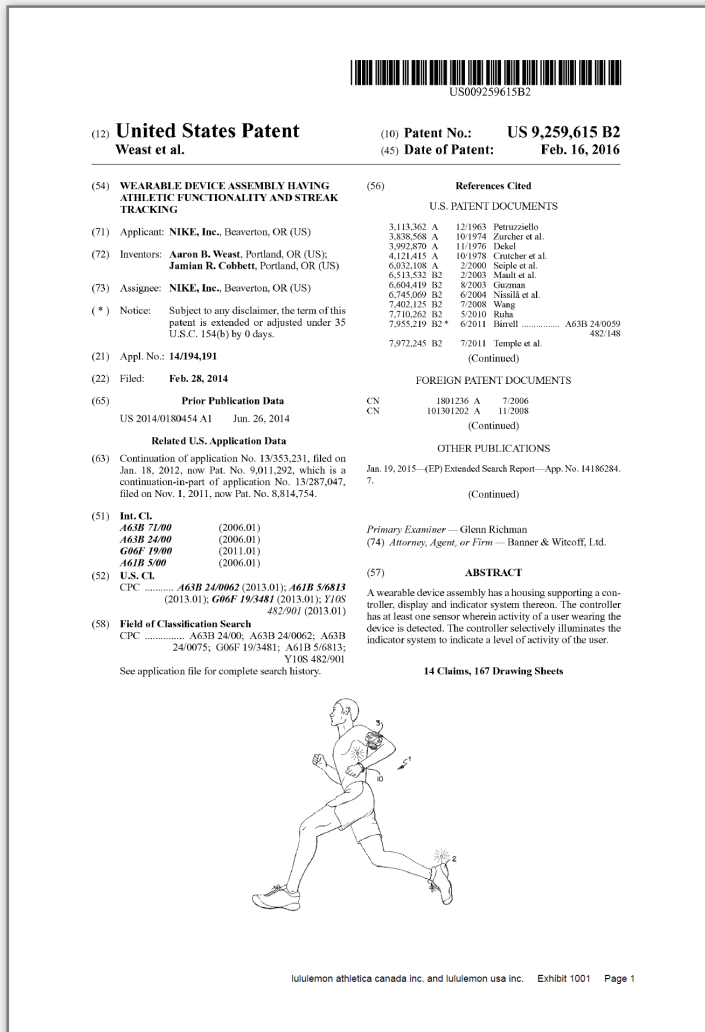
Hoffman (Ex.1002), Fig. 34

Associated w/ Paragraph 198:



Hoffman (Ex.1002), Fig. 43

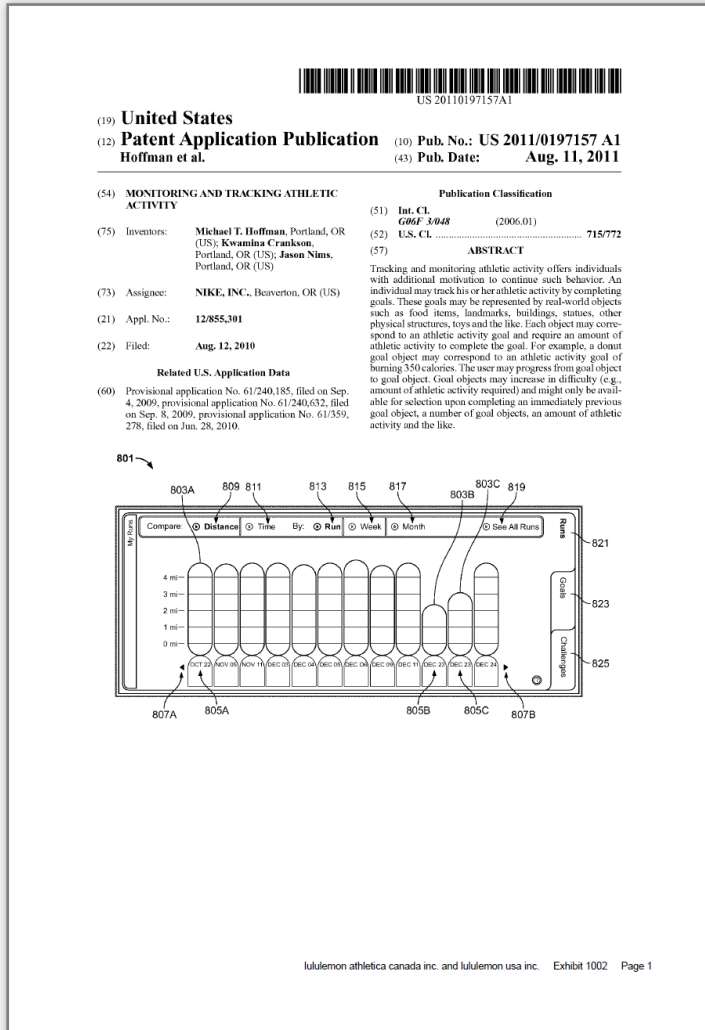
Hoffman: “presenting a streak reward” (Claims 1/11)



1. A method, comprising:
receiving athletic activity data from a device configured to be worn by a user;
receiving an activity time period;
receiving a first activity goal for the activity time period;
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
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.

'615 Patent (Ex. 1001), Claim 1

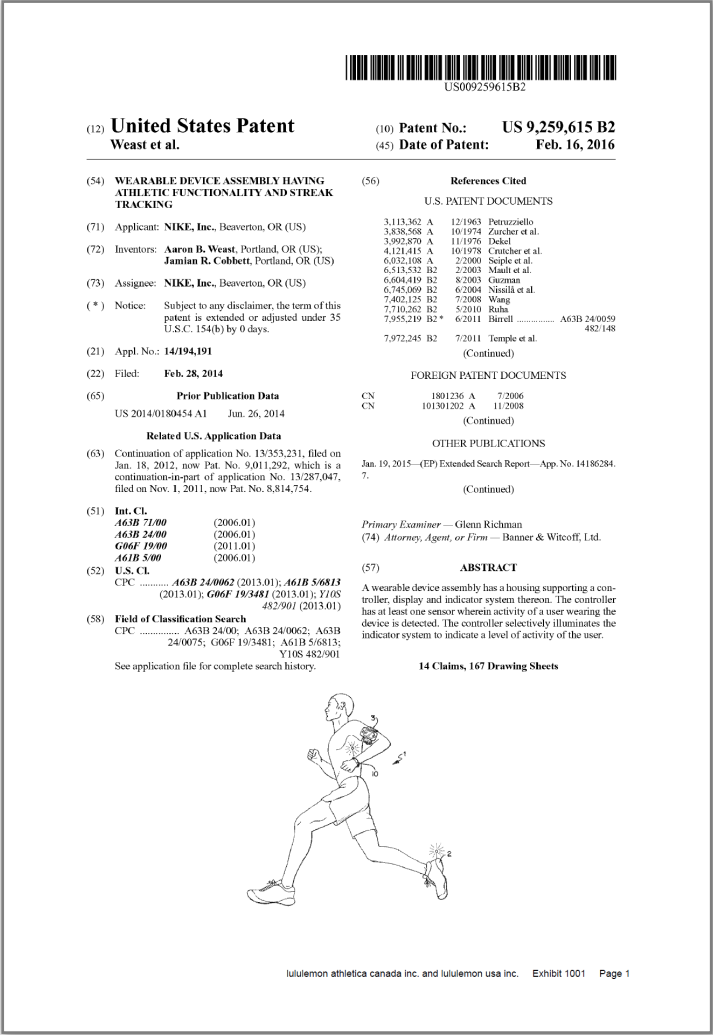
Hoffman: “presenting a streak reward” (Claims 1/11)



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,

Hoffman (Ex.1002), ¶ 198

Hoffman: “receiving a second activity goal for the activity time period” (Claim 7)



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 pre-
determined number of consecutive activity time periods.

'615 Patent (Ex. 1001), Claim 7

Hoffman: “receiving a second activity goal for the activity time period” (Claim 7)

Paragraph 9:

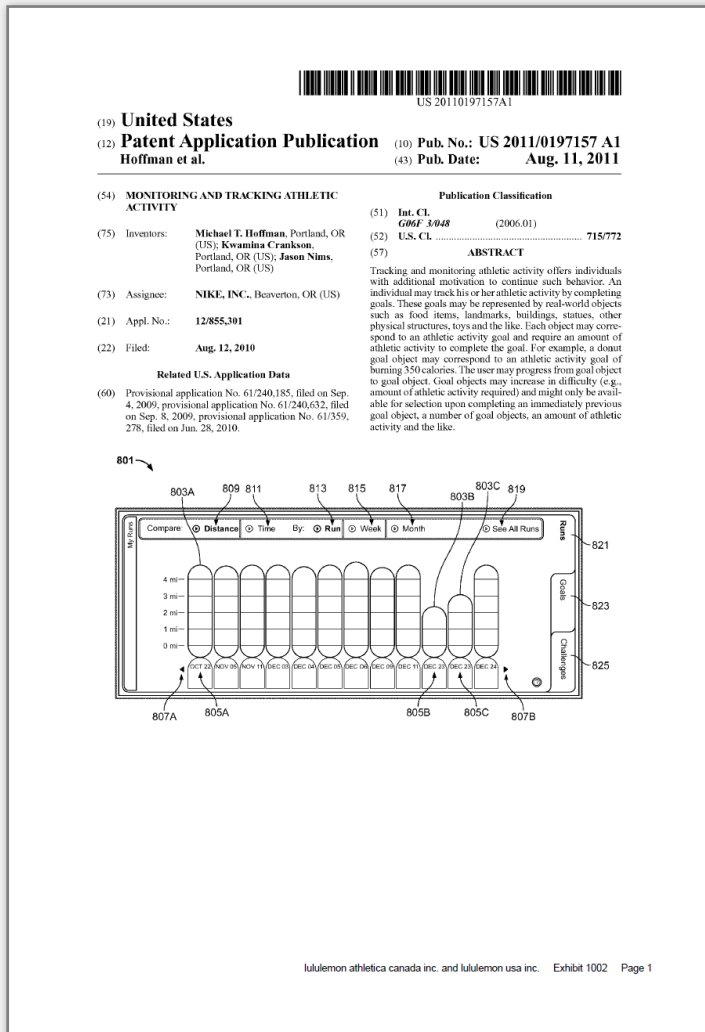
[0009] In addition, some examples of the invention may allow a person to specify a goal related to an athletic activity. A person may, e.g., set a goal of running a specified total distance within a specified period of time. With these imple-

Hoffman (Ex.1002), ¶ 9

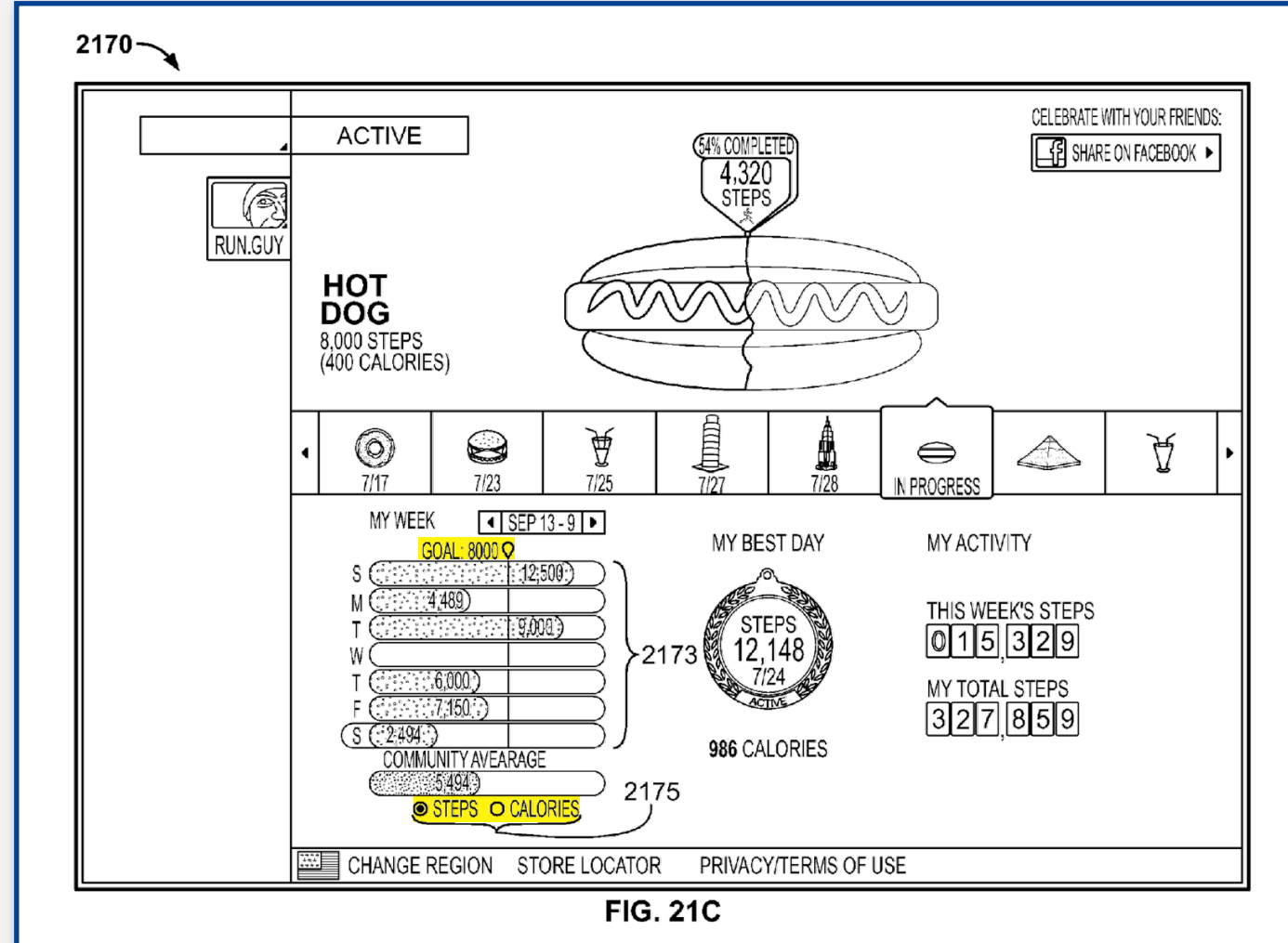
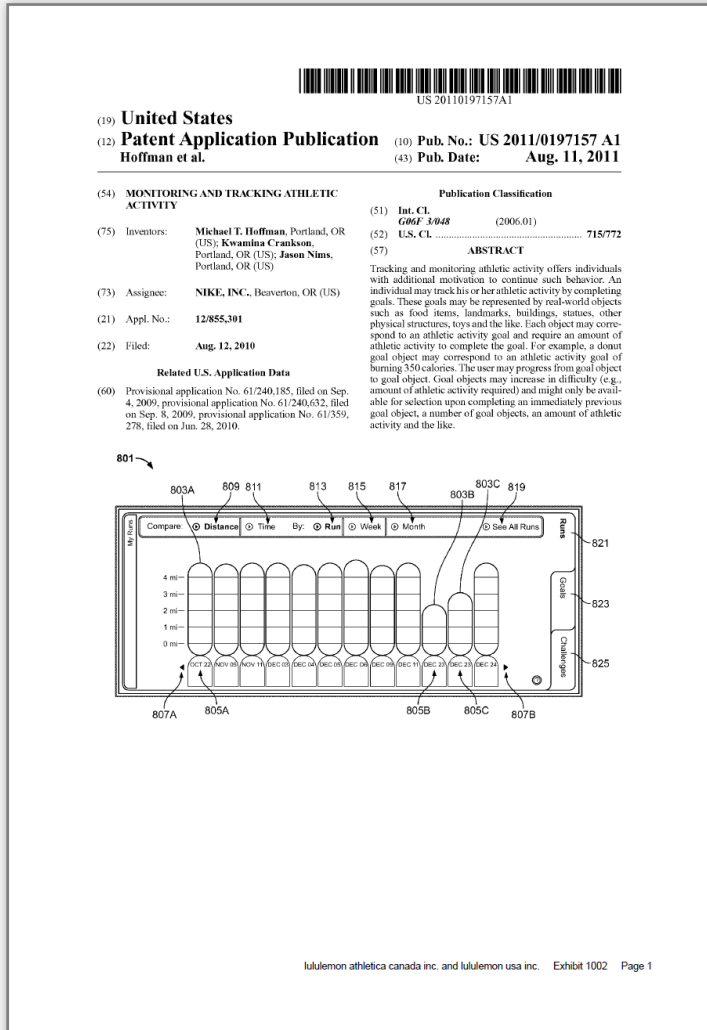
Patent Owner’s Argument:

or routine.” Ex. 1002, ¶¶190, 195. Paragraph 165 is also unrelated to any “activity time period,” as it merely discloses an interface whereby a user can toggle between daily steps taken and daily calories burned. *Id.*, ¶165. lululemon’s attempt to cobble

Sur-Reply (Paper 24), 14



Hoffman: “receiving a second activity goal for the activity time period” (Claim 7)



Hoffman (Ex.1002), Fig. 21C

Hoffman: “receiving a second activity goal for the activity time period” (Claim 7)

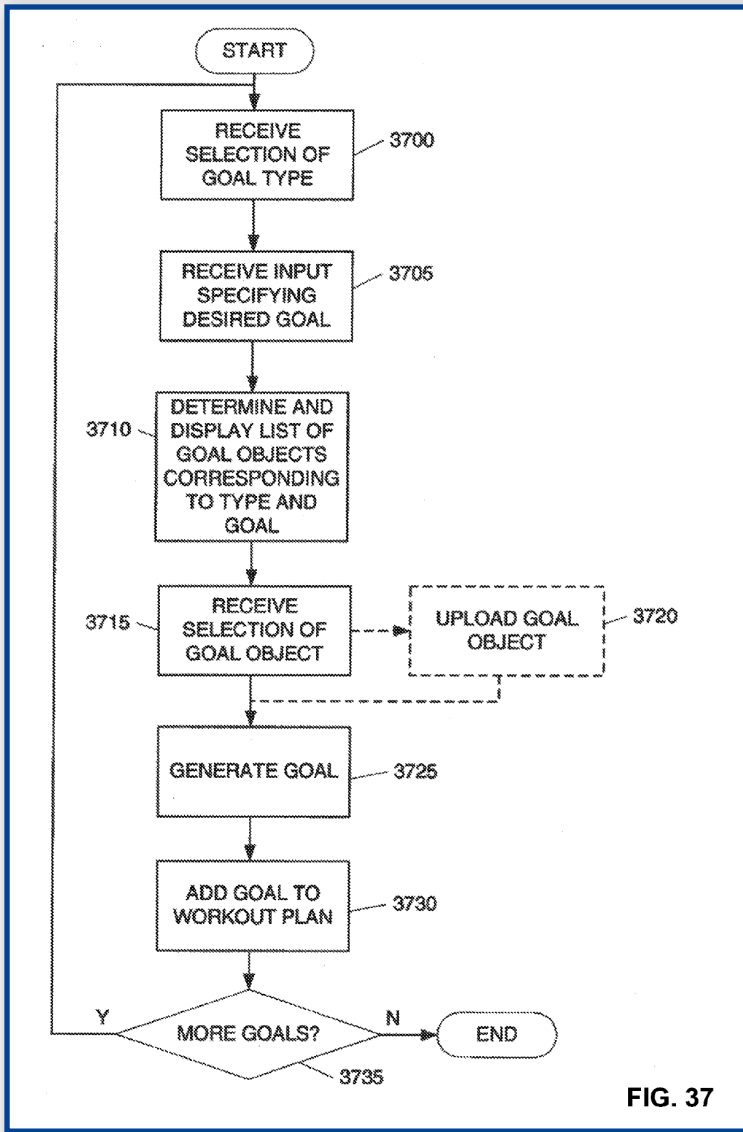
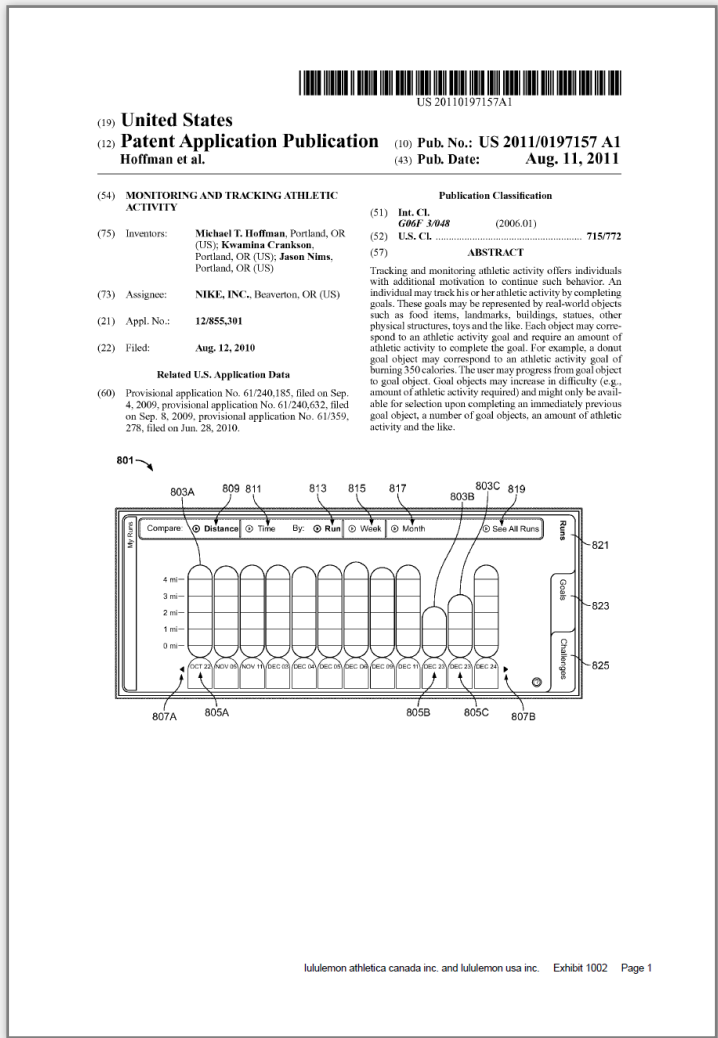
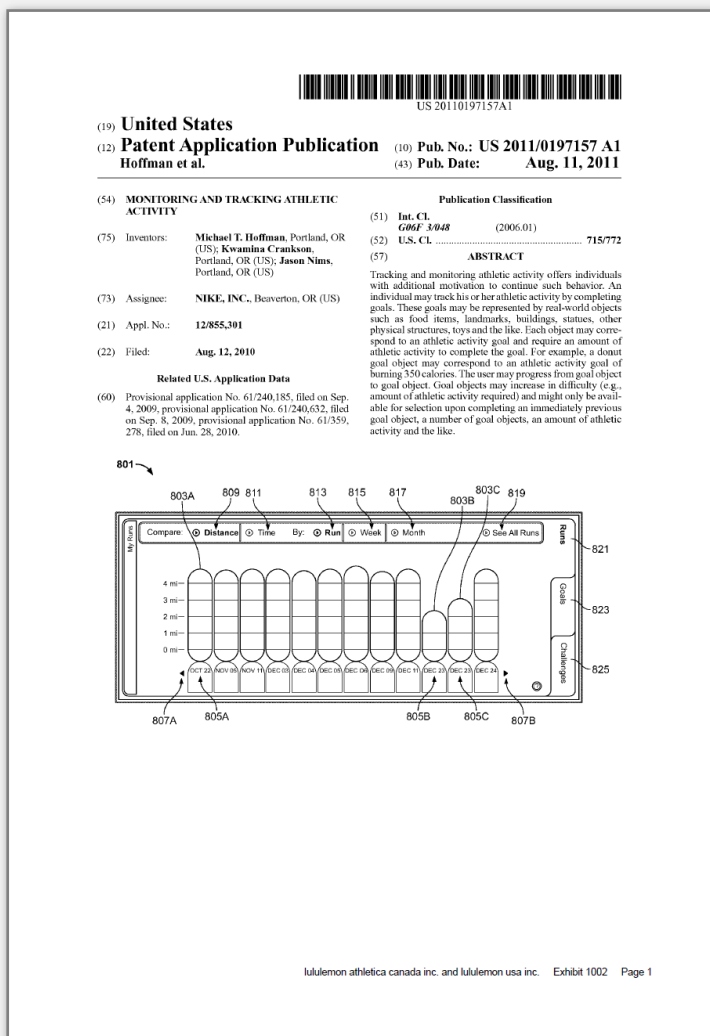


FIG. 37

Hoffman (Ex.1002),
Fig. 37

Hoffman: “receiving a second activity goal for the activity time period” (Claim 7)



[0009] In addition, some examples of the invention may allow a person to specify a goal related to an athletic activity. A person may, e.g., set a goal of running a specified total distance within a specified period of time. With these imple-

Hoffman (Ex.1002), ¶ 9

[0195] FIG. 42 illustrates an athletic tracking and monitoring interface 4200 that provides goals or a series of goals that correspond to a particular theme. In the illustrated example,

...

including vegetables, meats, dairy, fruits and the like. Each category may include one or more food goal objects that correspond to a number of calories, a distance to run, a number of steps to walk and the like. The number of calories,

Hoffman (Ex.1002), ¶ 195

Hoffman (Claim 13)

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LULULEMON ATHLETICA CANADA INC. and LULULEMON USA INC.
Petitioners

v.

NIKE, INC.
Patent Owner

Case IPR2023-00349
Patent 9,259,615

PATENT OWNER RESPONSE UNDER 37 C.F.R. § 42.120

Patent Owner's Argument:

D. Hoffman does not disclose “determin[ing] 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” (Claim 13)

Claim 13 recites “determin[ing] 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.” ’615 patent, 82:10–15. Hoffman fails to disclose this limitation for the same reasons that it fails to disclose limitation 11[D] discussed above in Section VI.A. More specifically, for

POR (Paper 17), 22

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

I hereby certify that the attached PETITIONER'S DEMONSTRATIVES
was served as of the below date via e-mail (by agreement) to the following counsel
of record for the Patent Owner:

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Dated: April 2, 2024

/Forrest McClellen/
Forrest McClellen