

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

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

**IPR2023-00424
U.S. Pat. No. 10,923,225**

**Patent-Owner's Presentation
April 16, 2024**

lululemon athletica inc. et al. v. Nike, Inc. IPR2023-00424 Patent No. 10,923,225 Demonstrative Ex. 2007



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2. Claim Construction

A. “data”

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

- A. Ground 1: lululemon Fails To Show That Acres Anticipates The Challenged Claims
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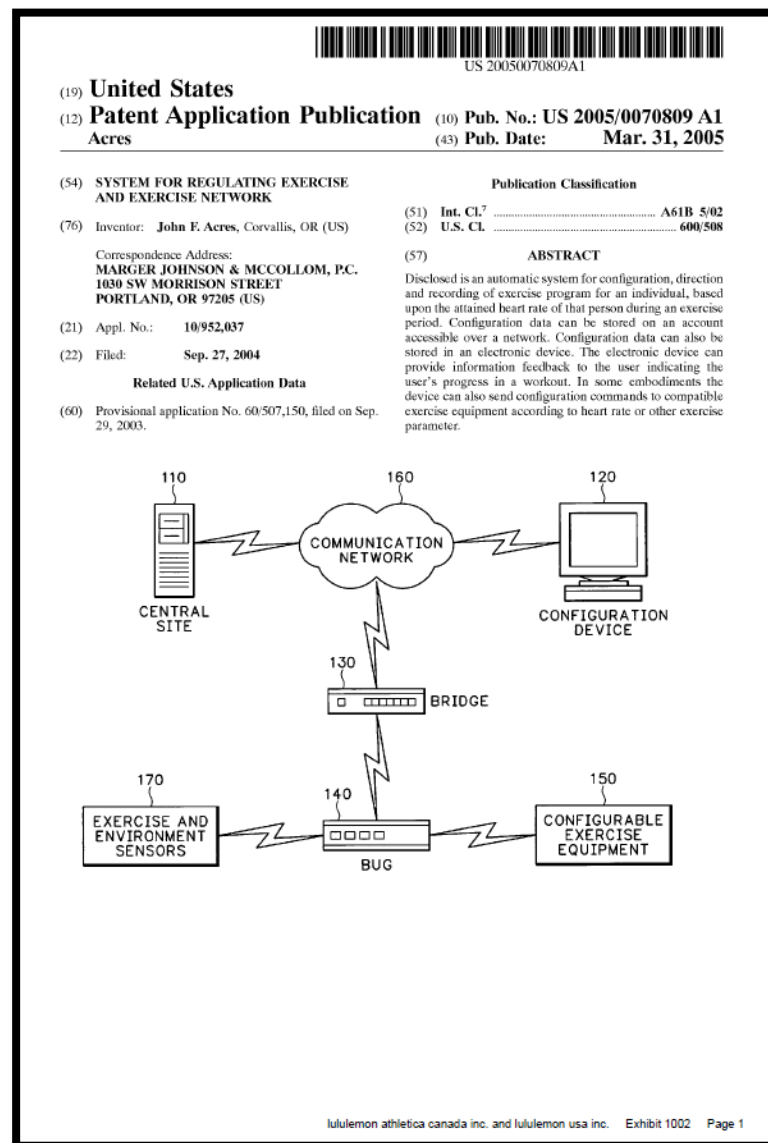
Overview of '225 Patent and Instituted Grounds





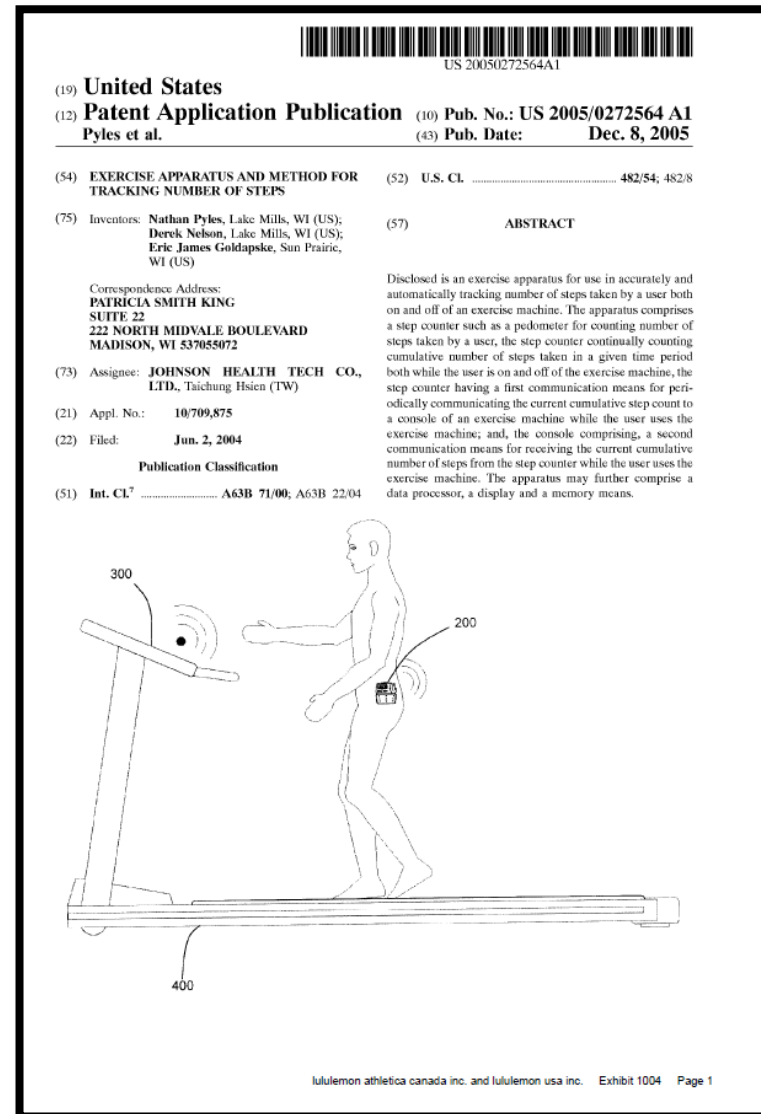
Ground	35 U.S.C. §	Claims	Reference(s)
1	102	1–8, 10, 12–17, 19	Acres
2	103	1–8, 10, 12–17, 19	Acres
3	103	9, 18	Acres, Pyles
4	103	1–5, 7, 10, 12–14, 16, 19	Abbondanza
5	103	9, 18	Abbondanza, Pyles

Overview of Acres



Acres, Ex. 1002 at Cover

Overview of Pyles



Pyles, Ex. 1004 at Cover

Abbondanza, Ex. 1003 at Cover



Claim Construction



“data” (claims 1 and 12)



1. A method comprising:
establishing, by a sensor device, data communication with
a piece of workout equipment;
transmitting, by the sensor device and to the piece of
workout equipment, a first set of data for operating a
first function of the piece of workout equipment; and
transmitting, by the sensor device and to the piece of
workout equipment, a first set of activity data corre-
sponding to an activity performed by a user during a
first time period, wherein the piece of workout equip-
ment is configured to display the first set of activity
data.

'225 patent, Ex. 1001 at 45:8–20

Board asked the parties to submit proposed constructions of “data”



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.

IPR2023-00424
Patent 10,923,225 B2

Before JOSIAH C. COCKS, GEORGE R. HOSKINS, and
STEPHEN E. BELISLE, *Administrative Patent Judges*.

COCKS, *Administrative Patent Judge*.

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

In reviewing the parties’ briefings at this stage, we determine that it is necessary to address the meaning of the term “data” that appears in each of independent claims 1 and 12.

Institution Decision, Paper 11 at 9



Nike's Proposed Construction of "data"

ordinary & customary meaning

"factual information that is sensed or collected, and from which decisions or subsequent actions can be made"

Patent Owner's Response, Paper 19 at 14–19



The Claims

The claims support Nike's construction of "data"



1. A method comprising:
establishing, by a sensor device, data communication with a piece of workout equipment;
transmitting, by the sensor device and to the piece of workout equipment, a first set of data for operating a first function of the piece of workout equipment; and
transmitting, by the sensor device and to the piece of workout equipment, a first set of activity data corresponding to an activity performed by a user during a first time period, wherein the piece of workout equipment is configured to display the first set of activity data.

'225 Patent, Ex. 1001 at 45:8–20

12. An athletic activity tracking system comprising:
a piece of workout equipment comprising a display device; and
a first sensor to measure an athletic performance of a user, wherein the first sensor is programmed and adapted to:
establish data communication with the piece of workout equipment;
transmit, to the piece of workout equipment, a first set of data for operating a first function of the piece of workout equipment; and
transmit, to the piece of workout equipment, a first set of activity data corresponding to an activity performed by a user during a first time period, wherein the piece of workout equipment is configured to display, via the display device, the first set of activity data.

'225 Patent, Ex. 1001 at 46:9–24



The athletic performance data presented by the display system may include information based on output from the sensor (such as speed information, distance information, timing information, heart rate, pulse rate, etc.).

'225 Patent, Ex. 1001 at 5:27–30 (cited in Patent Owner's Response, Paper 19 at 15–16)

The claims support Nike's construction of "data"



5. The method of claim 3, wherein adjusting the one or more settings of the piece of workout equipment comprises one of:

increasing a time period associated with at least one workout activity in a workout routine; or
decreasing the time period associated with at least one workout activity in the workout routine.

7. The method of claim 3, wherein adjusting one or more settings of the piece of workout equipment comprises one of:

increasing a workout speed of the piece of workout equipment; or
decreasing the workout speed of the piece of workout equipment.

6. The method of claim 3, wherein adjusting one or more settings of the piece of workout equipment comprises one of:

increasing a resistance level of the piece of workout equipment for at least one workout activity in a workout routine; or
decreasing the resistance level of the piece of workout equipment for at least one workout activity in the workout routine.

8. The method of claim 3, wherein adjusting one or more settings of the piece of workout equipment comprises one of:

increasing an incline level of the piece of workout equipment; or
decreasing the incline level of the piece of workout equipment.

'225 Patent, Ex. 1001 at 45:30–59 (cited in Patent Owner's Response, Paper 19 at 16)



Nike's construction is not redundant of the dependent claims

9. The method of claim 1, wherein the first set of data comprises user identification information, and wherein the first function comprises associating activity data stored at the piece of workout equipment with the user.

'225 patent, Ex. 1001 at 45:60–63

18. The athletic activity tracking system of claim 12, wherein the first set of data comprise user identification information, and wherein the first function comprises associating activity data stored at the piece of workout equipment with the user.

'225 patent, Ex. 1001 at 46:59–63



Nike's expert, however,
believed that "factual information" excludes "identification information."
(Ex. 1014, 35:1-36:12 (Nike's expert testifying that the only data that the sensor
device senses or collects is performance data).)

Petitioner's Reply , Paper 25 at 7

Q. Okay. So, Dr. McLean, does the sensor
device collect only athletic performance data?

THE WITNESS: As I said, the sensor senses or
collects factual information about performance
data, or factual information about performance.

BY MS. NGUYEN:

Q. And in your opinion, is identification
information factual information about performance?

A. Can you just reask that question.

Q. Yes. In your opinion, is identification
information factual information about performance?

MR. BOWLING: Objection; form.

THE WITNESS: No.

McLean Deposition, Ex. 1014 at 35:24-36:12



The Specification



The specification supports Nike's construction of "data"

The specification confirms "data" is factual information that is "sensed or collected"

Aspects of the present invention relate generally to systems and devices used for athletic performance sensing, e.g., to measure, process, store, and/or output physical and/or physiological data associated with an athletic event, an exercise routine, or other physical or athletic performance

As some more specific examples, in the environment illustrated in FIG. 1, sensors 102(a) and/or 102(b) may sense step count and data associated with such activities (e.g., for pedometer type speed and/or distance measuring), GPS data (e.g., location and/or altitude data, time data, etc.), step impact force data (e.g., for active impact attenuation control), jump height data, or the like. Sensor 102(c) may sense

Additional examples of potential types of data relating to an athletic performance that may be sensed and/or collected include, but are not limited to: route data; ambient temperature data; ambient humidity data; barometric pressure data; sole member compression data; air intake rate or volume data; air expel rate or volume data; EEG data; blood gas content data; and the like.



The specification confirms "data" is factual information
"from which decisions or subsequent actions can be made"

Data collected as a workout progresses (e.g., via module **502**, etc.) also may be used, if desired, to control the exercise equipment or other workout or athletic performance devices (e.g., to set or change intensity or resistance levels, to shorten or lengthen workout times, etc.).

'225 Patent, Ex. 1001 at 19:61–65 (cited in Patent Owner's Response, Paper 19 at 18)



A construction is favored when it “is better supported by the specification, and...provides the better description” of the claimed invention.

Osram GmbH v. Int’l Trade Comm’n, 505 F.3d 1351, 1357 (Fed. Cir. 2007)

Case referenced Patent Owner’s Sur-Reply, Paper 29 at 4



lululemon relies on portions of the specification consistent with Nike's construction

Data also may be transferred from the user's portable equipment (e.g., module **502**, interface device **506**, and/or electronic device **508**) to the exercise equipment or other workout or athletic performance setting **604**. For example,

'225 Patent, Ex. 1001 at 19:34–37 (cited in Patent Owner's Sur-Reply, Paper 29 at 5)

The specification supports Nike's construction of "data"



lululemon's cited examples of "data" are sensed or collected

If desired, the microprocessor on board the sensing system **408**, if any, may process the sensor data, change its form or format, or otherwise manipulate the data prior to sending it on to other parts of the system **400**.

'225 Patent, Ex. 1001 at 14:64–67 (cited in Patent Owner's Sur-Reply, Paper 29 at 6)

Any desired way of placing data derived from the physical or physiological data from the sensing devices **102(a)** through **102(d)** in the proper form or format for display

'225 Patent, Ex. 1001 at 12:13–16 (cited in Patent Owner's Sur-Reply, Paper 29 at 6)



Statements that distinguish the prior art on bases other than the disputed limitation are not relevant to the meaning of the disputed term.

In re Rambus Inc., 694 F.3d 42, 48 (Fed. Cir. 2012)

Case referenced Patent Owner's Sur-Reply, Paper 29 at 7



“By *abandoning its argument* . . . applicant acquiesced to the examiner’s views.”.

Malvern Panalytical Inc. v. TA Instruments-Waters LLC, 85 F.4th 1365 (Fed. Cir. 2023)

Case referenced Patent Owner’s Sur-Reply, Paper 29 at 7



Extrinsic Evidence

Extrinsic evidence supports Nike's construction of "data"



data 1. Factual information, such as that derived from observation, experimentation, or calculation, especially that which is used for processing and/or further analysis. 2. Information which is represented in a manner suitable for digital transmission or computer use. 3. Originally the plural form of the word **datum**, although **data** is commonly used in either the plural or singular form.

Wiley Dictionary, Ex. 2002 at 4 (cited in Patent Owner's Response, Paper 19 at 18)

data 1. *Information, in any form, on which computer programs operate. The distinction between program (instructions) and data is a fundamental one in computing (see VON NEUMANN MACHINE). It is in this fundamental sense that the word is used in terms such as *data, *data break, *data bus, *data cartridge, *data communications, *data compression, *data name, *data protection, *data subject, and *data type.

Oxford Dictionary of Computing, Ex. 2003 at 4
(cited in Patent Owner's Response, Paper 19 at 19)

"[I]n this type of machine, there are program instructions and -- and data upon which the program operates, and there is an important difference between the two. Because treating one as the other causes the machine not to work correctly. . ."

Houh Deposition, Ex. 2005 at 157:17–158:7 (cited in Patent Owner's Response, Paper 19 at 18)



“Dictionaries, and especially technical dictionaries . . . assist the court in determining the meaning of particular terminology to those of skill in the art of the invention.”

Phillips v. AWH Corp., 415 F.3d 1303, 1318 (Fed. Cir. 2005) (en banc).

Case referenced Patent Owner's Response, Paper 19 at 19



**Ground 1: lululemon Fails To Show That Acres Anticipates The
Challenged Claims**



Ground	35 U.S.C. §	Claims	Reference(s)
1	102	1–8, 10, 12–17, 19	Acres
2	103	1–8, 10, 12–17, 19	Acres
3	103	9, 18	Acres, Pyles
4	103	1–5, 7, 10, 12–14, 16, 19	Abbondanza
5	103	9, 18	Abbondanza, Pyles



lululemon Fails To Show That Acres Discloses Limitations [1B]/[12Cii]



Acres recognizes distinction between "data" and "commands"

If the Bug **601** senses, based upon the exerciser's heart rate, that exertion level should increase because the exerciser's heart rate is below the target, the Bug **601** sends a command to the treadmill **150** telling it to increase speed by a specific amount.

Acres, Ex. 1002 at ¶89 (cited in Patent-Owner's Response, Paper 19 at 22)



Acres recognizes distinction between "data" and "commands"

[0089] At the most elementary level, the Bug 601 takes control of compatible exercise machine parameters that determine exertion level. When the Bug 601 is used with a compatible treadmill 150, the treadmill speed is controlled by the Bug's own processor 420. If the Bug 601 senses, based upon the exerciser's heart rate, that exertion level should increase because the exerciser's heart rate is below the target, the Bug 601 sends a command to the treadmill 150 telling it to increase speed by a specific amount. After a time, for example 30 seconds, the Bug 601 again tests the exerciser's heart rate against the target. If the heart rate is still below target, the treadmill 150 is again instructed to increase speed by another amount.

Acres, Ex. 1002 at ¶89 (cited in Patent-Owner's Response, Paper 19 at 22)

Q Right. Okay. Can you help me understand the difference between the exercise information that's input into the bug, on the one hand, and the commands that are sent from the bug to the exercise machine, on the other hand?

A Some of the -- one example of what's input into the -- the bug is -- is -- is described in 84 where the input are these pulses received from the heart rate sensor 610, of Acres, in this particular example.

And in this case, in the middle of 89, one example is that the bug sends a command to the treadmill, telling it to increase speed by a specific amount, so -- and, of course, there's a condition under which it does that, which is described earlier.

So that's -- that's the input to the bug. That -- that -- and the output of the bug commanding the exercise device, in this case, the treadmill, to increase the speed by a specific amount.

Houh Deposition,
Ex. 2005 at 108:12–16,
21–25, 109:16–25



Dr. Houh recognizes Acres' distinction between "data" and "commands"

Q: Right. Okay. Can you help me understand the difference between the exercise information that's input into the Bug, on the one hand, and the commands that are sent from the Bug to the exercise machine, on the other hand?

[clarifying questions omitted]

A: . . . the input are the pulses received from the heart rate sensor, 610 in Acres in this particular example. . . . the input is used to count pulses, count the pulse inputs and they're filtered and whatnot is described and then the output is generated—different outputs are generated, you know, commanding the treadmill to increase speed by a specific amount or maintain speed or to slow by a given amount. And there's some processing involved to determine which of these commands to issue.

Houh Deposition, Ex. 2005 at 108:12—110:21 (cited in Patent-Owner's Response, Paper 19 at 22—23)



lululemon argues that the "combined sensor device" transmits a first set of data

If the Bug 601 senses, based upon the exerciser's heart rate, that exertion level should increase because the exerciser's heart rate is below the target, the Bug 601 sends a command to the treadmill 150 telling it to increase speed by a specific amount.

Acres, Ex. 1002 at ¶89 (cited in Patent-Owner's Response, Paper 19 at 22)



Acres fails to show that "decisions or subsequent actions can be made" from data

[0089] At the most elementary level, the Bug 601 takes control of compatible exercise machine parameters that determine exertion level. When the Bug 601 is used with a compatible treadmill 150, the treadmill speed is controlled by the Bug's own processor 420. If the Bug 601 senses, based upon the exerciser's heart rate, that exertion level should increase because the exerciser's heart rate is below the target, the Bug 601 sends a command to the treadmill 150 telling it to increase speed by a specific amount. After a time, for example 30 seconds, the Bug 601 again tests the exerciser's heart rate against the target. If the heart rate is still below target, the treadmill 150 is again instructed to increase speed by another amount.

Acres, Ex. 1002 at [0089]

[0096] Many treadmills 150 offer incline controls as well as speed. Higher inclines offer greater exercise intensity. The exerciser can choose to use the incline control just by pressing the incline buttons on the treadmill 150. If the exerciser's heart rate increases past the target zone, the Bug 601 can reduce treadmill speed to compensate. Alternatively, the Bug 601 can control both speed and incline to match the fitness goals of the exerciser. The Bug 601 can be configured to control any number of machine parameters.

Acres, Ex. 1002 at [0096]



Acres' commands are not data

Second, Nike is wrong to argue that Acres commands are not "data" because they are processed. (POR, 24 (Nike arguing that new commands cannot be generated prior to transmission), 24-25 (Nike arguing that the "data" itself must "operate[] a first function of the piece of workout equipment").) As discussed

Petitioner's Reply, Paper 25 at 18



Ground 2: lululemon Fails To Show That Acres Renders Obvious the Challenged Claims



Ground	35 U.S.C. §	Claims	Reference(s)
1	102	1–8, 10, 12–17, 19	Acres
2	103	1–8, 10, 12–17, 19	Acres
3	103	9, 18	Acres, Pyles
4	103	1–5, 7, 10, 12–14, 16, 19	Abbondanza
5	103	9, 18	Abbondanza, Pyles



lululemon doesn't provide any new arguments for independent claims 1 and 12

VIII. GROUND 2: CLAIMS 1-8, 10, 12-17, AND 19 ARE OBVIOUS OVER ACRES

A. Claims 1-4, 6-8, 12, 13, and 15-17

As described above, Acres anticipates claims 1-4, 7, 12, 13, and 16 of the '225 patent. For the same reasons, Acres renders these claims obvious. *See, e.g., Realtime Data, LLC v. Iancu*, 912 F.3d 1368, 1373 (Fed. Cir. 2019) (“[I]t is well settled that a disclosure that anticipates under § 102 also renders the claim invalid under § 103, for anticipation is the epitome of obviousness.” (internal quotations and citation omitted)).

Petition, Paper 2 at 23



“But conclusory statements and unspecific expert testimony regarding searches in general are precisely what the Board relied upon in drawing its conclusion that it would have been “common sense” . . . And these errors were particularly problematic . . .”

Arendi S.A.R.L. v. Apple Inc., 832 F.3d 1355, 1362 (Fed. Cir. 2016)

Case referenced Patent Owner's Response, Paper 19 at 27



**Ground 3: lululemon Fails To Show That The Acres-Pyles
Combination Renders Obvious the Challenged Claims**



Ground	35 U.S.C. §	Claims	Reference(s)
1	102	1–8, 10, 12–17, 19	Acres
2	103	1–8, 10, 12–17, 19	Acres
3	103	9, 18	Acres, Pyles
4	103	1–5, 7, 10, 12–14, 16, 19	Abbondanza
5	103	9, 18	Abbondanza, Pyles



lululemon Fails To Show That The Acres-Pyles Combination Teaches or Suggests Claims 9 and 18



9. The method of claim 1, wherein the first set of data comprises user identification information, and wherein the first function comprises associating activity data stored at the piece of workout equipment with the user.

'225 patent, Ex. 1001 at 45:60–63

18. The athletic activity tracking system of claim 12, wherein the first set of data comprise user identification information, and wherein the first function comprises associating activity data stored at the piece of workout equipment with the user.

'225 patent, Ex. 1001 at 46:59–63



65. First, lululemon's proposed modification would render the claimed method and system less portable by tying the user, through their data, to a specific piece of workout equipment. Put another way, lululemon's proposed modification eliminates the ability to port data from that piece of equipment to other pieces of equipment, or similarly integrate and aggregate data from different pieces of workout equipment. As a result, it is my opinion that a POSITA in 2006 would understand that by storing the data at the level of the exercise machine, the utility of those data beyond that machine is lost.

66. Second, by storing data on a single piece of equipment versus a central site, it is my opinion that a POSITA in 2006 would understand that the risk of data corruption or loss is increased, since it is directly dependent on the integrity and security of that machine.

67. Third, in my opinion, a POSITA in 2006 would understand that data aggregation and storage on such a central cite promotes broader data access to more pieces of equipment and more people.

McLean Declaration, Ex. 2004 at ¶¶ 65–67 (cited in Patent Owner's Response, Paper 19 at 28)



A POSITA would not have combined the references because “based on the stated importance of low impedance as ‘key’ to [the amplifier], negating this benefit during ‘the majority of the operation’ would have outweighed any reason to combine.”

Intel Corp. v. Qualcomm Inc., 21 F.4th 784, 795–6 (Fed. Cir. 2021)

Case referenced Patent Owner’s Sur-Reply, Paper 29 at 16



**Ground 4: lululemon Fails To Show That Abbondanza Renders
Obvious the Challenged Claims**



Ground	35 U.S.C. §	Claims	Reference(s)
1	102	1–8, 10, 12–17, 19	Acres
2	103	1–8, 10, 12–17, 19	Acres
3	103	9, 18	Acres, Pyles
4	103	1–5, 7, 10, 12–14, 16, 19	Abbondanza
5	103	9, 18	Abbondanza, Pyles



**lululemon Fails To Show That Abbondanza Renders Obvious
Claims 1 and 12**



Abbondanza doesn't teach a "sensor device"



What is claimed is:

1. A method comprising:
establishing, by a **sensor device**, data communication with
a piece of workout equipment;
transmitting, by the **sensor device** and to the piece of
workout equipment, a first set of data for operating a
first function of the piece of workout equipment; and
transmitting, by the **sensor device** and to the piece of
workout equipment, a first set of activity data corre-
sponding to an activity performed by a user during a
first time period, wherein the piece of workout equip-
ment is configured to display the first set of activity
data.

'225 patent, Ex. 1001 at 45:8–20

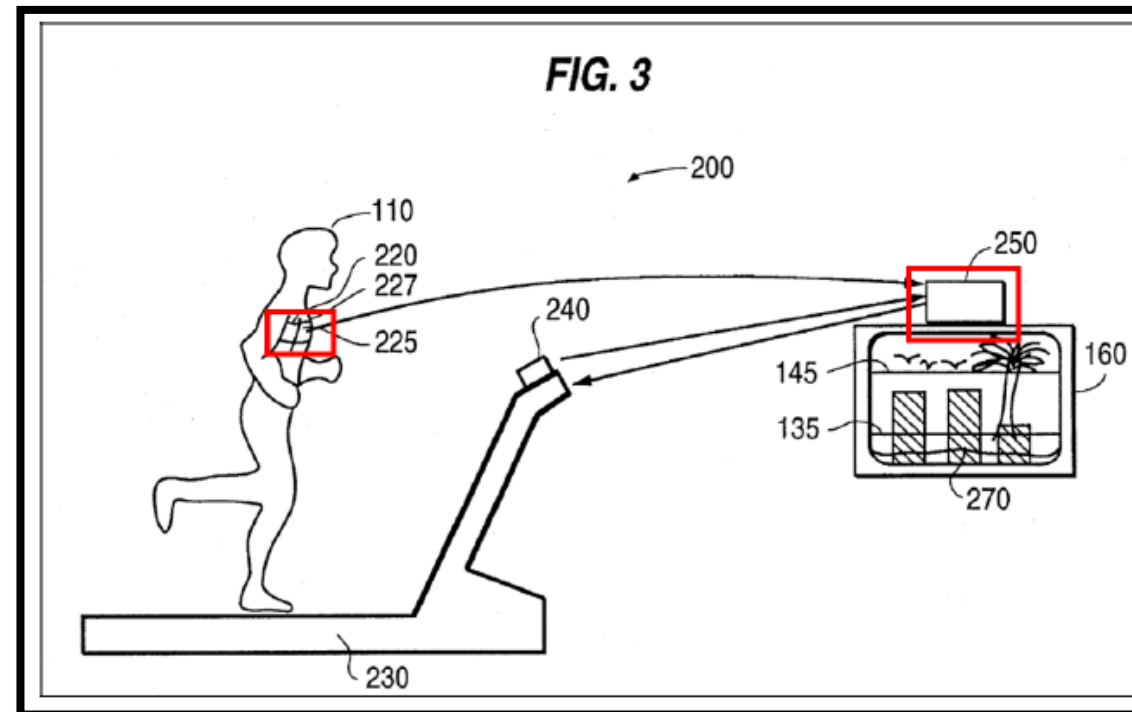
12. An athletic activity tracking system comprising:
a piece of workout equipment comprising a display
device; and
a first **sensor** to measure an athletic performance of a user,
wherein the first **sensor** is programmed and adapted to:
establish data communication with the piece of work-
out equipment;
transmit, to the piece of workout equipment, a first set
of data for operating a first function of the piece of
workout equipment; and
transmit, to the piece of workout equipment, a first set
of activity data corresponding to an activity per-
formed by a user during a first time period, wherein
the piece of workout equipment is configured to
display, via the display device, the first set of activity
data.

'225 patent, Ex. 1001 at 46:9–24

lulu relies on Abbondanza' pulse rate sensor & base unit "working together"

As the Petition explained, Abbondanza's pulse rate sensor and base unit sensor are together a sensor device. (Petition, 34.)

Petitioner's Reply, Paper 25 at 22 (citing Petition, Paper 2 at 34)



Abbondanza, Ex. 1003, FIG 3 (annotated) (cited in Patent Owner's Sur-Reply, Paper 29 at 19)



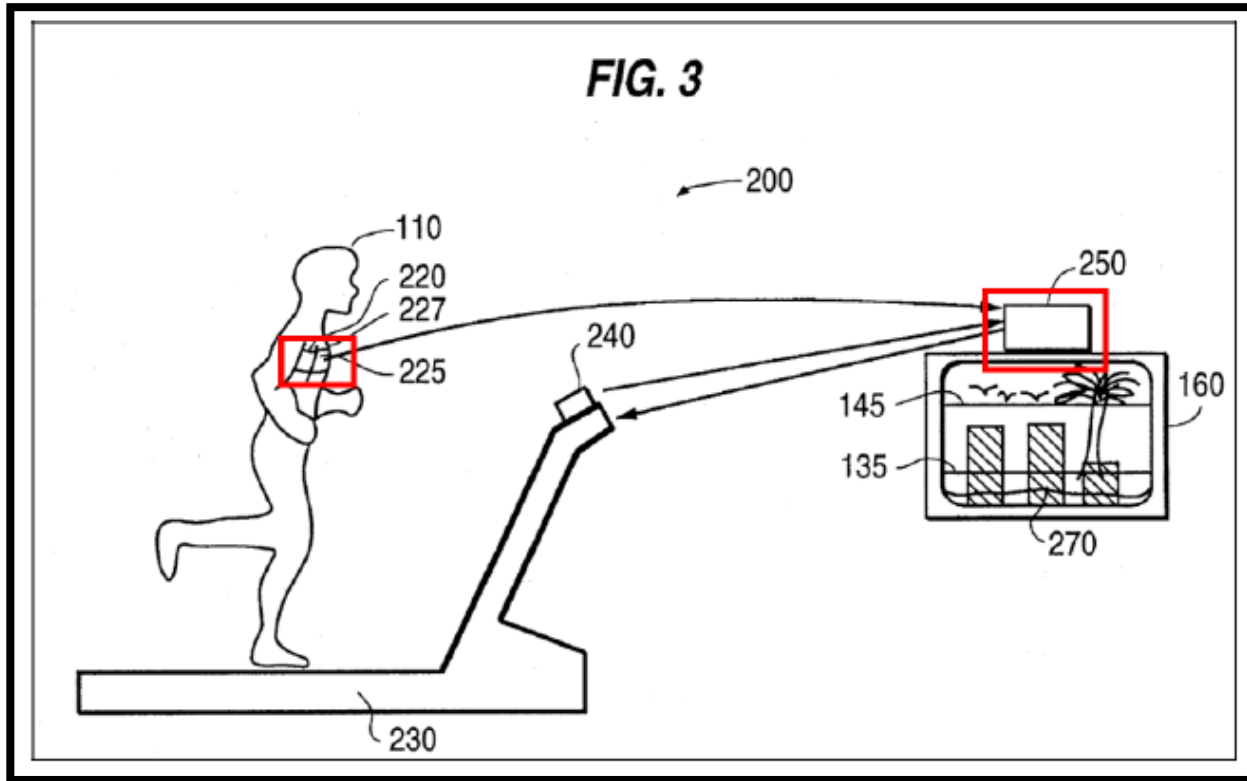
“Where a claim lists elements separately, ‘the clear implication of the claim language’ is that those elements are ‘distinct component[s]’ of the patented invention.”

Becton, Dickinson & Co. v. Tyco Healthcare Grp., LP, 616 F.3d 1249, 1254 (Fed. Cir. 2010)

Case referenced Patent Owner's Response, Paper 19 at 34



Abbondanza' pulse rate sensor & base unit are separate components



Base unit 250 is shown to be resting on monitor 160 and is equipped with a transmitter (not shown), a receiver (not shown), a controller (not shown), and a video interface (not shown). The controller that resides in base unit 250 processes the machine states received from control center 240 and the user's pulse rate received via infrared pulse rate transmitter 227. Base unit 250's controller is equipped in such a way that it determines if the user's pulse rate is within that user's target heart rate range and instructs treadmill device 230 to either speed-up or slow-down ultimately to cause the user to either work harder (i.e. run faster on treadmill device 230) or work softer (e.g. run slower on treadmill device 230) respectively. Additionally, base unit 250's controller will cause the user's pulse rate to be displayed on monitor 160.

Abbondanza, Ex. 1003, FIG 3 (annotated) (cited in Patent Owner's Sur-Reply, Paper 29 at 19)

Abbondanza, Ex. 1003 at 11:14 –23
(cited in Patent Owner's Sur-Reply, Paper 29 at 19)



UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LULULEMON ATHLETICA CANADA INC.
and LULULEMON USA INC.,
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IPR2023-00424
Patent 10,923,225 B2

Before JOSIAH C. COCKS, GEORGE R. HOSKINS, and
STEPHENE E. BELISLE, *Administrative Patent Judges*.

COCKS, *Administrative Patent Judge*.

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

A

reasonable question arises as to why base unit 250, which is not described as performing any sensing operation, nevertheless is viewed as forming part of a "sensor device."

Institution Decision, Paper 11, at 22



Abbondanza doesn't teach "data"



What is claimed is:

1. A method comprising:

establishing, by a sensor device, data communication with a piece of workout equipment;
transmitting, by the sensor device and to the piece of workout equipment, a first set of data for operating a first function of the piece of workout equipment; and
transmitting, by the sensor device and to the piece of workout equipment, a first set of activity data corresponding to an activity performed by a user during a first time period, wherein the piece of workout equipment is configured to display the first set of activity data.

'225 patent, Ex. 1001 at 45:8–20

12. An athletic activity tracking system comprising:

a piece of workout equipment comprising a display device; and
a first sensor to measure an athletic performance of a user, wherein the first sensor is programmed and adapted to:
establish data communication with the piece of workout equipment;
transmit, to the piece of workout equipment, a first set of data for operating a first function of the piece of workout equipment; and
transmit, to the piece of workout equipment, a first set of activity data corresponding to an activity performed by a user during a first time period, wherein the piece of workout equipment is configured to display, via the display device, the first set of activity data.

'225 patent, Ex. 1001 at 46:9–24



lululemon relies on data sent by Abbondanza's combined sensor base unit

Both parties agree that Abbondanza's pulse rate sensor senses or collects pulse rate data, and Abbondanza's base unit transmits instructions to the exercise equipment. (POR, 32; Ex. 1014, 74:15-17, 76:9-12.) Thus, Abbondanza's pulse rate sensor and base unit, **working together**, transmit factual information, that has been sensed or collected, to a piece of workout equipment. (Ex. 1015, ¶¶34-35.)

Petitioner's Reply, Paper 25 at 24



Abbondanza doesn't teach "data" [Claims 1/12]

Abbondanza's combined sensor receives a "first set of data" and sends a "second set of data"

For example, Abbondanza discloses that base unit and an associated pulse rate sensor work together to control the speed of a treadmill. The base unit receives a user's pulse rate from a pulse rate sensor (Ex. 1003 at 10:62-63.) and then "determines if the user's pulse rate is within that user's target heart rate range and instructs treadmill device 230 to either speed-up or slow-down ultimately to cause the user to either work harder . . . or work softer" (*id.* at 11:17-22.)

Petition, Paper 2 at 33 (citing Abbondanza, Ex. 1003 at 10:62-63, 11:17-22)

user **110** is wearing a chest belt **220** which is equipped with a pulse rate sensor device **225** and a infrared pulse rate transmitter **227**. Pulse rate sensor **225** senses user **110**'s pulse rate and infrared pulse rate transmitter **227** transmits user **110**'s pulse rate to base unit **250**.

Abbondanza, Ex. 1003 at 10:62-63 (cited in Petition, Paper 2 at 33)

Base unit **250**'s controller is equipped in such a way that it determines if the user's pulse rate is within that user's target heart rate range and instructs treadmill device **230** to either speed-up or slow-down ultimately to cause the user to either work harder (i.e. run faster on treadmill device **230**) or work softer (e.g. run slower on treadmill device **230**) respectively.

Abbondanza, Ex. 1003 at 11:17-22 (cited in Petition, Paper 2 at 33)



Abbondanza doesn't teach "data" [Claims 1/12]

lululemon relies solely on its expert to claim "data" means "information"

Furthermore, instructions are factual information because they include informational content that informs of the corresponding subsequent action, *e.g.*, whether to speed up or slow down. (Ex. 1015, ¶36.) Additionally, informational content such as a target parameter is collected and used to instruct the treadmill to speed up or slow down. (*Id.*; Ex. 2005, 43:17-45:13; Ex. 1002, [0085], [0089]-[0090].)

Petitioner's Reply, Paper 25 at 24 (citing Houh Declaration, Ex. 1015; Houh Deposition, Ex. 2005)

36. And instructions are factual information because they include informational content that provides information regarding the corresponding subsequent action to be taken. For example, an instruction that tells a treadmill to speed up or slow down includes informational content that provides information regarding whether to speed up or slow down. Further, the command includes informational content such as a target parameter that is collected. (Ex. 2005, 43:17-45:13.)

Houh Declaration, Ex. 1015 at ¶ 36 (cited in Petitioner's Reply, Paper 25 at 24)

"It's saying, well, you have a target for a parameter and -- and you can increase when it's -- increase or decrease the speed, you know, depending on whether you want the user to work harder or -- or not as hard." – Dr. Houh

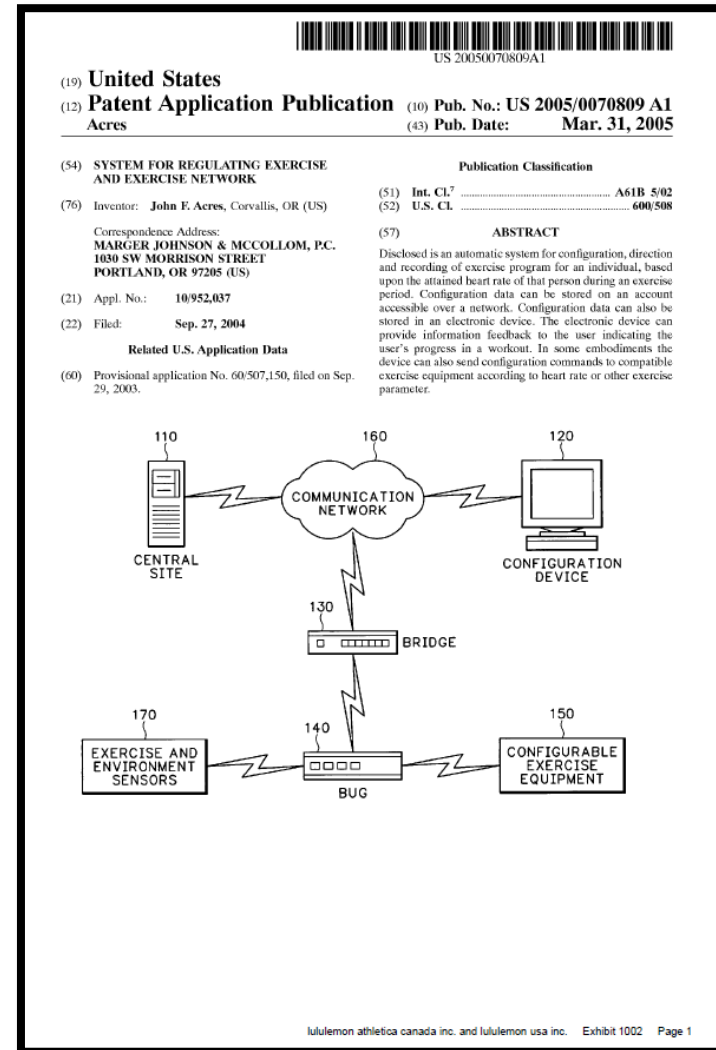
Houh Testimony, Ex. 2005 at 43:20–24 (cited in Petitioner's Reply, Paper 25 at 24)



lululemon cites "target parameters" from unrelated prior art reference

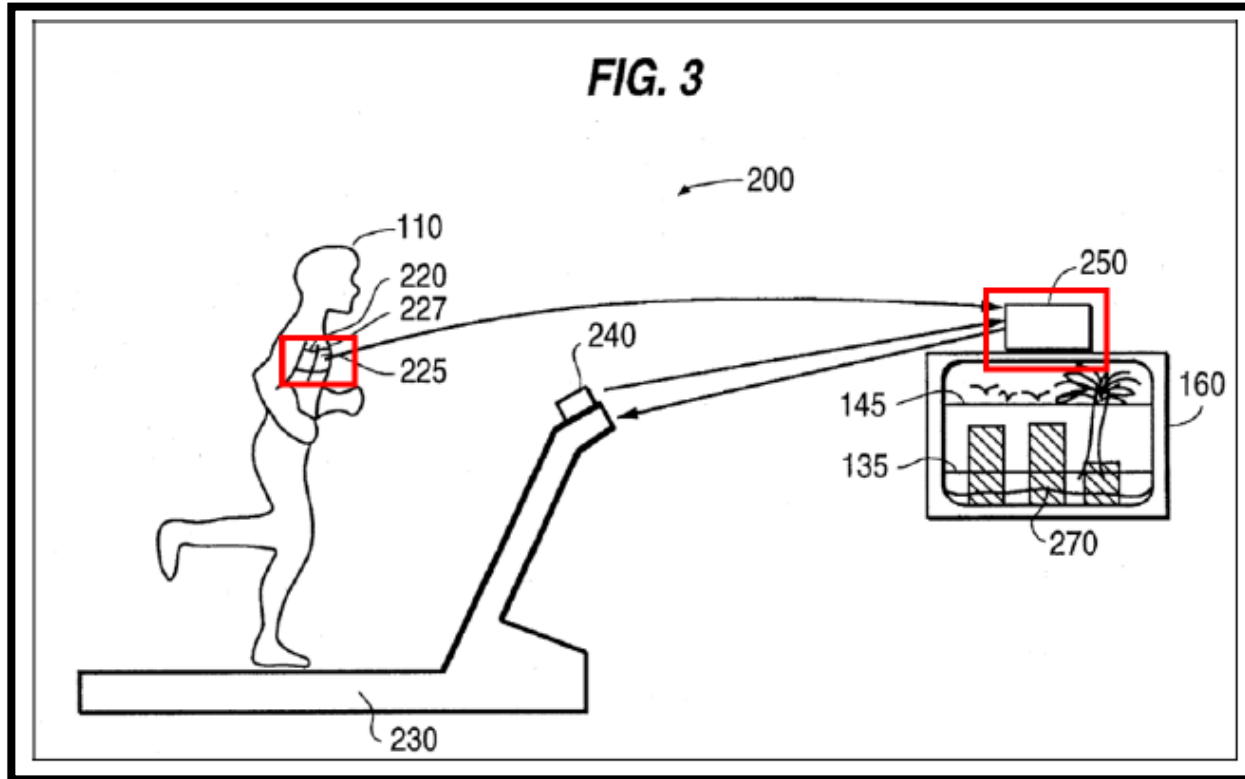
Additionally, informational content such as a target parameter is collected and used to instruct the treadmill to speed up or slow down. (*Id.*; Ex. 2005, 43:17-45:13; Ex. 1002, [0085], [0089]-[0090].)

Petitioner's Reply, Paper 25 at 24 (citing Acres, Ex. 1002 at [0085], [0089]-[0090])





Abbondanza's base unit doesn't sense or collect "data"



Abbondanza, Ex. 1003, FIG 3 (annotated) (cited in Patent Owner's Sur-Reply, Paper 29 at 19)

Base unit 250 is shown to be resting on monitor 160 and is equipped with a transmitter (not shown), a receiver (not shown), a controller (not shown), and a video interface (not shown). The controller that resides in base unit 250 processes the machine states received from control center 240 and the user's pulse rate received via infrared pulse rate transmitter 227. Base unit 250's controller is equipped in such a way that it determines if the user's pulse rate is within that user's target heart rate range and instructs treadmill device 230 to either speed-up or slow-down ultimately to cause the user to either work harder (i.e. run faster on treadmill device 230) or work softer (e.g. run slower on treadmill device 230) respectively. Additionally, base unit 250's controller will cause the user's pulse rate to be displayed on monitor 160.

Abbondanza, Ex. 1003 at 11:14 –23
(cited in Patent Owner's Sur-Reply, Paper 29 at 19)



**Ground 5: lululemon Fails To Show That The Abbondanza-Pyles
Combination Renders Obvious the Challenged Claims**



Ground	35 U.S.C. §	Claims	Reference(s)
1	102	1–8, 10, 12–17, 19	Acres
2	103	1–8, 10, 12–17, 19	Acres
3	103	9, 18	Acres, Pyles
4	103	1–5, 7, 10, 12–14, 16, 19	Abbondanza
5	103	9, 18	Abbondanza, Pyles



**Iululemon Fails To Show That The Abbondanza-Pyles Combination
Renders Obvious Claims 9 and 18**



9. The method of claim 1, wherein the first set of data comprises user identification information, and wherein the first function comprises associating activity data stored at the piece of workout equipment with the user.

'225 patent, Ex. 1001 at 45:60–63

18. The athletic activity tracking system of claim 12, wherein the first set of data comprise user identification information, and wherein the first function comprises associating activity data stored at the piece of workout equipment with the user.

'225 patent, Ex. 1001 at 61:59–63