

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*.

JUDGMENT
Final Written Decision
Determining All Challenged Claims Unpatentable
35 U.S.C. § 318(a)
Denying Petitioner's Motion to Exclude
37 C.F.R. § 42.64

I. INTRODUCTION

A. Background

Petitioner, lululemon athletica canada inc. and lululemon usa inc. (“Petitioner” or “lululemon”), filed a Petition (Paper 2, “Pet.”) requesting *inter partes* review of claims 1–10 and 12–19 (“the challenged claims”) of U.S. Patent No. 10,923,225 B2 (Ex. 1001, “the ’225 patent”). We instituted the petitioned review. Paper 11 (“Institution Decision” or “Inst. Dec.”).¹

Patent Owner, Nike, Inc. (“Patent Owner” or “Nike”), filed a Patent Owner Response (Paper 19, “PO Resp.”) to oppose the Petition. Petitioner filed a Reply (Paper 25, “Pet. Reply”) to the Patent Owner Response. Patent Owner filed a Sur-reply (Paper 29, “PO Sur-reply”) to the Reply. Petitioner also filed a Motion to Exclude. Paper 33. Patent Owner filed an Opposition to that motion (Paper 34), and Petitioner filed a Reply (Paper 35). We conducted an oral hearing on April 16, 2024. A transcript has been entered into the record. Paper 38 (“Tr.”).

We have jurisdiction under 35 U.S.C. § 6(b)(4) and § 318(a). This Decision is a final written decision under 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73 as to the patentability of claims 1–10 and 12–19 of the ’225 patent. We determine Petitioner has shown by a preponderance of the evidence that those claims are unpatentable.

¹ We note that prior to our Institution Decision, Patent Owner filed a Preliminary Response. Paper 10 (“Prelim. Resp”). That Preliminary Response is referenced in this Decision as to matters of claim construction.

B. Real Parties-In-Interest

Petitioner identifies the following as its real parties-in-interest: lululemon athletica inc., lululemon athletica canada inc., lululemon usa inc., and Curiouser Products, Inc. Pet. 46. Patent Owner identifies Nike, Inc. (i.e., itself) as the only real party-in-interest. Paper 4, 2.

C. Related Matters

The parties identify *Nike, Inc. v. lululemon athletica inc. et al.*, No. 1:22-cv-00082-AJN (S.D.N.Y) as a related matter. Pet. 47; Paper 4, 2.

D. The '225 Patent

The '225 patent is titled “Athletic Performance Sensing And/Or Tracking Systems and Methods.” Ex. 1001, code (54). The Abstract of the '225 patent reads as follows:

Athletic performance sensing and/or tracking systems include components for measuring or sensing athletic performance data and/or for storing and/or displaying desired information associated with the athletic performance to the user (or others). Such systems can allow users a wide variety of options in creating workouts, selecting and presenting media content during the athletic performance, etc., e.g., to help keep users entertained and motivated. In some instances, user feedback may be used, optionally in combination with objective data relating to a workout, to control features of the workout routine, to control the music or other media content selected and/or presented, and/or to control features of future workout routines and/or the presented media content.

Id. at code (57).

Figure 6 of the '225 patent is reproduced below:

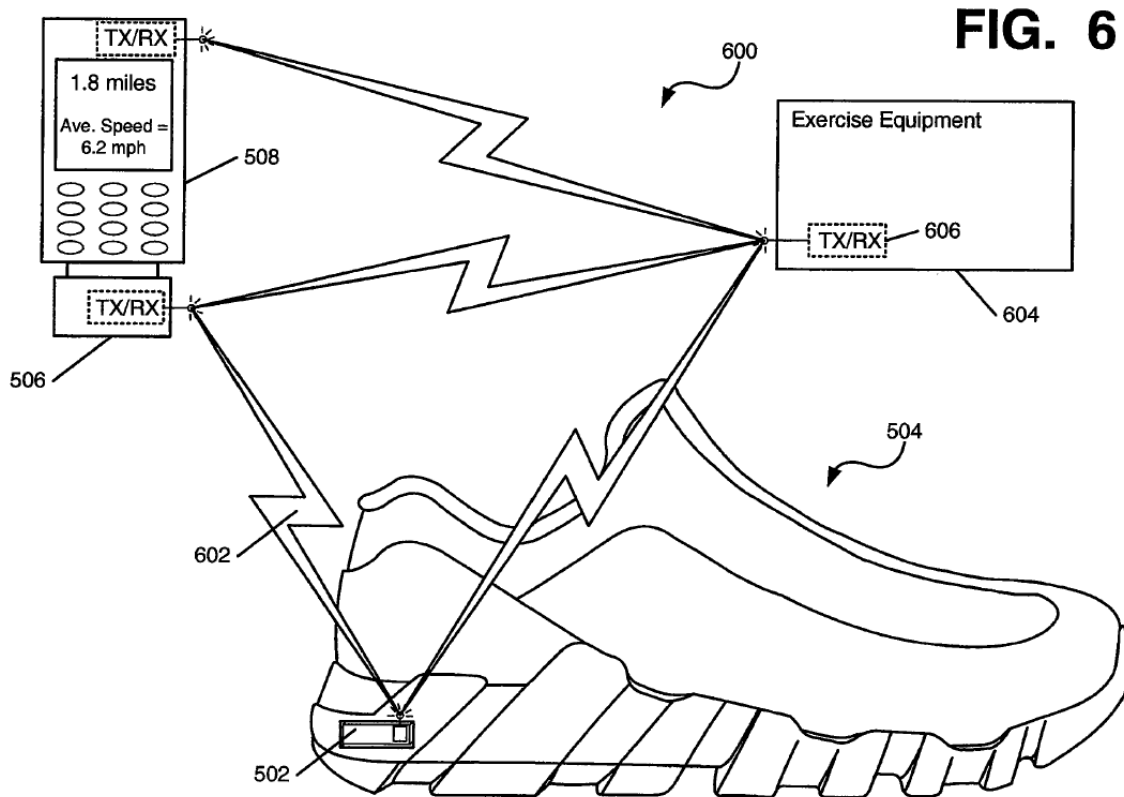


Figure 6 above “illustrates an example of electronic communications between athletic performance sensing systems in accordance with at least some examples of this invention and external equipment.” *Id.* at 3:44–47. As shown in Figure 6, article of footwear 504 includes athletic performance module 502, which, although not shown in Figure 6, contains, *inter alia*, athletic performance data sensors, a data transfer system, processing capabilities and a power supply. *Id.* at 16:52–58. Module 502 can electrically communicate with portable electronic device 508, such as a cellular telephone, and also with one or more pieces of athletic equipment 604, such as a treadmill, spinning machines, or weight lifting machines. *Id.* at 17:10–12, 17:44–66. That electronic communication may include

transmitting data, such as “user ID information,” or sensed data associated with a user’s workout. *Id.* at 19:34–40. Such data may be stored or used to control parameters of the athletic equipment (e.g., vary treadmill speed and incline settings, or change intensity or resistance levels). *Id.* at 19:41–65.

E. The Challenged Claims

Petitioner challenges claims 1–10 and 12–19 of the ’225 patent. Of those, claims 1 and 12 are independent. Claim 1 is representative and is reproduced below:

1. [1PRE] A method comprising:
 - [1A] establishing, by a sensor device, data communication with a piece of workout equipment;
 - [1B] 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
 - [1C] 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.

Ex. 1001, 45:8–20.^{2,3}

² We reproduce claim 1 with similar feature identification numbering used in both the Petition and the Patent Owner Response (i.e., “[1PRE]” through “[1C]”).

³ Independent claim 12 is drawn to an “athletic activity tracking system” and includes features corresponding to those set forth in the method of claim 1. *See* Ex. 1001, 46:9–24.

F. Proposed Grounds of Unpatentability

Petitioner asserts the following grounds of unpatentability:

Claims Challenged	35 U.S.C. §	Reference(s)/Basis
1–8, 10, 12–17, 19	102 ⁴	Acres ⁵
1–8, 10, 12–17, 19	103	Acres
9, 18	103	Acres, Pyles ⁶
1–5, 7, 10, 12–14, 16, 19	103	Abbondanza ⁷
9, 18	103	Abbondanza, Pyles

Pet. 7.

G. Testimonial Evidence

In support of its proposed grounds of unpatentability, Petitioner relies on the Declaration (Ex. 1005) and Reply Declaration (Ex. 1015) of Dr. Henry H. Houh, Ph.D. In challenging the Petition, Patent Owner relies on the Declaration of Dr. Scott McLean, Ph.D. (Ex. 2004).

⁴ The Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112-29, 125 Stat. 284, 287–88 (2011), amended 35 U.S.C. §§ 102 and 103 effective on March 16, 2013. Neither party argues that the outcome of this case would differ based on applying the pre-AIA or post-AIA versions of these laws.

⁵ US Patent Application Publication No. 2005/0070809 A1 published Mar. 31, 2005 (Ex. 1002, “Acres”).

⁶ US Patent Application Publication No. 2005/0272564 A1 published Dec. 8, 2005 (Ex. 1004, “Pyles”).

⁷ US Patent No. 5,527,239 issued June 18, 1996 (Ex. 1003, “Abbondanza”).

II. ANALYSIS

A. Principles of Law

A petition must show how the construed claims are unpatentable under the statutory grounds it identifies. 37 C.F.R. § 42.104(b)(4).

A patent claim is unpatentable as anticipated under 35 U.S.C. § 102 “if each and every limitation is found either expressly or inherently in a single prior art reference.” *WhitServe, LLC v. Computer Packages, Inc.*, 694 F.3d 10, 21 (Fed. Cir. 2012) (quoting *Celeritas Techs., Ltd. v. Rockwell Int’l Corp.*, 150 F.3d 1354, 1361 (Fed. Cir. 1998)).

A claim is unpatentable under § 103(a) if the differences between the claimed subject matter and the prior art are such that the subject matter, as a whole, would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations, including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of skill in the art; and (4) when in evidence, objective indicia of non-obviousness (i.e., secondary considerations). *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).⁸

In an instituted *inter partes* review, a petitioner has the burden to show unpatentability by a preponderance of the evidence. 35 U.S.C. § 316(e). The burden of persuasion never shifts to Patent Owner. *Dynamic*

⁸ Neither party presents any objective indicia of non-obviousness.

Drinkware, LLC v. Nat’l Graphics, Inc., 800 F.3d 1375, 1378 (Fed. Cir. 2015).

We analyze the asserted grounds with the above-noted principles in mind.

B. Level of Ordinary Skill in the Art

In determining the level of skill in the art, we consider the type of problems encountered in the art, the prior art solutions to those problems, the rapidity with which innovations are made, the sophistication of the technology, and the educational level of active workers in the field. *Custom Accessories, Inc. v. Jeffrey-Allan Indus. Inc.*, 807 F.2d 955, 962 (Fed. Cir. 1986); *Orthopedic Equip. Co. v. U.S.*, 702 F.2d 1005, 1011 (Fed. Cir. 1983).

Petitioner presents the following assessment as to the level of skill in the art:

A POSITA^[9] for the technology of the ’225 patent would have had (1) a bachelor’s degree in engineering, computer science, industrial design, biomechanics, or a related field, and (2) at least two years of experience researching, developing, designing, and/or testing fitness or physiological sensors, wearable devices, physiological or biomechanical devices, remotely-controlled systems or interfaces, network-based applications and/or equipment, or the equivalent experience or education.

Pet. 5 (citing Ex. 1005, ¶¶ 43–44).

Patent Owner indicates that “[f]or purposes of this Response, Nike applies lululemon’s proposed level of skill in the art.” PO Resp. 14.

For purposes of this Decision, we adopt Petitioner’s proposal of the level of ordinary skill in the art as reasonable and consistent with the prior

⁹ Person of ordinary skill in the art.

art. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) (the prior art may reflect an appropriate level of skill in the art).

C. Claim Construction

We construe claims “using the same claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. 282(b), including construing the claim in accordance with the ordinary and customary meaning of such claim as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent.” 37 C.F.R. § 42.100(b) (2020); *see Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc).

In the Petition, Petitioner did not propose claim construction for any term. *See* Pet. 6.

1. “Data”

In our Institution Decision, we addressed the meaning of the term “data” that appears in each of claims 1 and 12. Inst. Dec. 9–10. In particular, we noted the following:

Patent Owner contends that “the ordinary and customary meaning of ‘data’ is factual information, from which decisions and subsequent actions can be made.” [Prelim. Resp.] 18. Patent Owner offers that meaning in an attempt to distinguish over a “command” action performed in the prior art. *Id.* at 17 (citing Ex. 2002, 3 (“defining ‘command’ as ‘[o]ne or more signals which actuate a device’ or ‘[a]n instruction that causes a computer action”)).

For the proposed meaning of “data,” Patent Owner also directs our attention to content of the ’225 patent describing exemplary types of “data” as being “user ID information” and “workout performance information” collected from sensors during a user’s workout. *Id.* at 18 (citing Ex. 1001, 19:38–40,

19:61). Based on that disclosure, Patent Owner expresses that a skilled artisan would have understood that “data” is “factual information.” *Id.*

On the current record before us, it is difficult to objectively conclude, as Patent Owner urges, that the ordinary meaning of “data” is so restrictive in its meaning that it necessarily excludes, for instance, the content of a transmitted command or signal to an exercise machine that includes content used to adjust parameters of that machine. Although those commands or signals may not incorporate the two types of example data discussed by Patent Owner from the ’225 patent, i.e., “user ID information” or “workout performance information,” it is not apparent that “data” excludes other types of information. In other words, even assuming that the term “data” designates some types of “factual information,” at this time, it is not immediately clear that such a command or signal is entirely devoid of content recognized as “factual information” so as to be beyond the contours of what a skilled artisan would regard as “data.” For the purposes of evaluating whether to institute *inter partes* review, we proceed with that understanding as to the meaning of “data.”

Id. at 9–10.

During trial, both parties have also now addressed the meaning of “data.” See PO Resp. 15–19; Pet. Reply 2–14; PO Sur-reply 2–9.

Patent Owner now contends that the ordinary meaning of “data” in the context of the ’225 patent is “factual information that is sensed or collected, and from which decisions or subsequent actions can be made.” PO Resp.

15. Patent Owner seemingly expresses that such data that is “sensed or collected” must be done so by a “sensor.” See *id.* at 15–16 (emphasis omitted). In Patent Owner’s view, that proposed meaning of “data” is supported by: (1) the language of the claims; (2) the specification of the ’225 patent; and (3) dictionary definitions (Exs. 2002, 2003) that Patent Owner has introduced into the record. *Id.* at 15–19; PO Sur-reply 2–9.

Petitioner proposes that the term “data” should not be limited in scope in the manner urged by Patent Owner. Pet. Reply 2. To that end, Petitioner contends that term means simply “information.” *Id.* As a part of that contention, Petitioner disagrees that there is any requirement that emerges from the claims themselves or the specification of the ’225 patent that conveys that data must be either sensed or collected by a sensor. Petitioner argues that its proposed construction is consistent: (1) with the language in the claims themselves; (2) with the specification of the ’225 patent; and (3) with the prosecution history. Pet. Reply 2–14.

At the outset, we note that Patent Owner’s assertion that the claimed “data” is “sensed or collected by a ‘sensor’” is not substantiated by intrinsic evidence. *See* PO Resp. 15 (emphasis omitted). The only intrinsic support offered by Patent Owner for that assertion is a general citation to the entirety of the language of each of claims 1 and 12 (i.e., Ex. 1001, 45:9–20, 56:9–24). *See id.* We agree with Petitioner that there is no explicit claim language that mandates that the recited “data” only be content that is sensed or collected by a sensor. *See* Pet. Reply 7.

As Patent Owner observes, the specification of the ’225 patent does include some examples and description of particular types of data that are sensed or collected via a sensor. *See, e.g.,* PO Resp. 17 (citing Ex. 1001, 4:13–17, 9:31–36, 9:43–49). It follows logically that certain types of data associated with a user’s activity, e.g., data pertaining to “step count,” “step impact,” and “jump height,” may very well be regarded as data that is sensed and then transmitted by the sensor device. *See* Ex. 1001, 4:13–17, 9:31–36, 9:43–49. Yet, the existence of such sensed and transmitted data does not, itself, convey that all “data,” or, specifically the “first set of data” that is

claimed, is restricted only to information that is sensed. Indeed, the specification of the '225 patent refers expressly to “sensed data.” *See, e.g.*, Ex. 1001, 23:8. The express use of the qualifier “sensed” with the term “data” readily conveys that the '225 patent contemplates that there exists some data that is not sensed, but still constitutes “data.” It also demonstrates that the patentee could have referred expressly to “sensed data” in claim 1 if it had intended the claim to be limited to sensed data, but did not do so and instead defined the claimed data more broadly as “data for operating a first function” of the workout equipment. Ex. 1001, 45:12–14.

Furthermore, as we observed in the Institution Decision, Patent Owner held out certain examples of “data” from the specification of the '225 patent as the type of data set forth by the challenged claims. *See* Inst. Dec. 9 (referencing Prelim. Resp. 18). One such example cited by Patent Owner was “user ID information.” *See* Prelim. Resp. 18 (citing Ex. 1001, 19:38–40). We also note that claims 9 and 18, which depend from claims 1 and 12 respectively, make explicit that the “first set of data comprises user identification.” Ex. 1001, 45:60–61, 46:60–61. It is not apparent from the specification of the '225 patent, however, why one of ordinary skill in the art would regard “user ID information” or “user identification information” as only information that is sensed by a sensor. Although Patent Owner addresses the matter of “user identification information” (*see, e.g.*, PO Sur-reply 2–4), left unexplained is why a skilled artisan would view user identification information as only information that is sensed by a sensor.

Moreover, we note that while claims are read in light of the specification, limitations from the specification should not be read into the claims. *Teleflex, Inc. v. Ficosa North America Corp.*, 299 F.3d 1313, 1326

(Fed. Cir. 2002). Even if the Specification of the '225 patent does describe that some data may be sensed by a sensor and then transmitted, that does not impute a meaning to the general claim recitation of a “first set of data” as excluding any or all data that is not sensed. Although each of claims 1 and 12 sets forth a first set of data that is transmitted by a sensor to a workout machine, neither claim mandates that the data that is transmitted be sensed by the sensor.

Patent Owner’s proffered construction of the claim term “data” would require the data to be “sensed *or* collected.” PO Resp. 15 (emphasis added). To the extent “collected” is meant to be a synonym of “sensed,” our foregoing discussion of the intrinsic evidence still applies. At the same time, the term “collected” may have broader connotations than “sensed.” For example, claim 1 requires that the first set of data is transmitted by the sensor device to the workout equipment, which means that the data must first be “collected” by the sensor device (in some sense) in order for the data to be transmitted by the sensor device. We discern nothing in the intrinsic evidence, however, that requires any specific sort of data collection (such as sensing) to the exclusion of any other specific sort of data collection.

Patent Owner’s reliance on extrinsic evidence in the form of two dictionary definitions (Exs. 2002, 2003) provides little clear or meaningful support for the position that Patent Owner now takes on the meaning of “data.” Exhibit 2002 is an excerpt from “Wiley Electrical and Electronics Engineering Dictionary.” One definition of “data” from Exhibit 2002 that Patent Owner relies on is “[f]actual information, such as that derived from observation, experimentation, or calculation, especially that which is used for processing and/or further analysis.” Ex. 2002, 4. Patent Owner does not

meaningfully explain why that definition sets forth any requirement that “data” be something that is sensed or collected in any specific other way by a sensor. To the extent that Patent Owner is relying on the description that the factual information is “derived from observation, experimentation, or calculation” to somehow support its view, we take note that the “such as” qualifier in the proffered dictionary definition conveys that the listed “derived from . . .” statement is merely exemplary and not limiting. We conclude that Exhibit 2002 does not substantiate Patent Owner’s view that the claimed “data” must only be informational content that is sensed or collected in any other specific way by a sensor.

Exhibit 2003 fares no better in substantiating the meaning of “data” as it appears in the claims of the ’225 patent. Exhibit 2003 is titled “A Dictionary of Computing” and states that data is “[i]nformation, in any form on which computer programs operate.” Ex. 2003, 4. The exhibit also states “[t]he distinction between program (instructions) and data is a fundamental one in computing (see VON NEUMANN MACHINE).” *Id.* There is nothing explicit or intrinsic in those statements that conveys that “data” must be something sensed or collected in any other specific way by a sensor. Furthermore, contrary to Patent Owner’s view (*see, e.g.*, PO Resp. 18–19), there is no basis in those statements from which to extrapolate the general theory that “data” is entirely distinct from any informational content that may include “instructions” in some form.

Moreover, as Petitioner and Petitioner’s declarant, Dr. Houh, observe, record evidence aptly conveys that “‘data’ comprises both instruction data and non-instruction data.” *See* Pet. Reply 13–14; Ex. 1015 ¶¶ 21–22 (citing Ex. 2005, 158:8–13); *see* Pet. Reply 13–14 (“Crucially there is *no*

distinction between instructions and data in the von Neumann architecture. *For all intents and purposes, instructions are data.*” (quoting Ex. 1016, 2)). We agree with Petitioner in that regard, and credit Dr. Houh’s testimony (*see, e.g.*, Ex. 1015 ¶¶ 21–22) as it is in accord with record evidence as to what a skilled artisan would regard as “data.”

In our Institution Decision, we observed that Patent Owner, in its Preliminary Response, advocated that the ordinary and customary meaning of “data” is “factual information, from which decisions and subsequent actions can be made.” Inst. Dec. 9 (quoting Prelim. Resp. 18). As discussed above, we do not accept Patent Owner’s revised meaning that the “data” must also be information that is sensed or collected. But, we are not of the view that Patent Owner’s prior proposed meaning of “data” was in error. Rather, we simply were not persuaded at the institution stage that the “factual information” nature of “data” was so restrictive as to preclude informational content that includes a command or a signal as a part of the data. *Id.* We also note that Patent Owner expressed during oral argument that “factual information” and “information” have effectively the same meaning, i.e., the term “factual” does not offer some type of distinction in connection with “information.” *See* Tr. 33:6–11.¹⁰

Considering the discussion above, we conclude that the meaning of “data” previously offered by Patent Owner as “factual information, from

¹⁰ [JUDGE]: Counsel, let me borrow my colleague’s question. Maybe I’m belaboring this, but in your view, information that is sensed or collected or factual information that is sensed or collected, that’s effectively the same thing; and this case does not distinguish between factual information in that context and just information?

[COUNSEL FOR PATENT OWNER]: Yes. That’s correct, Your Honor.

which decisions and subsequent actions can be made” finds support in the record, and also is in accord with the meaning of “data” as “information” that is offered by Petitioner (*see, e.g.*, Pet. Reply 2).¹¹ Accordingly, we adopt the meaning of “data” that Patent Owner offered in its Preliminary Response as “factual information, from which decisions and subsequent actions can be made.” *See* Prelim Resp. 18. In doing so, we reiterate and restate our view from the Institution Decision that the record does not lend itself to a conclusion that such a meaning of “data” is so restrictive as to convey that any instructions, commands, or signals are “entirely devoid of content recognized as ‘factual information’ so as to be beyond the contours of what a skilled artisan would regard as ‘data.’” *See* Inst. Dec. 9.

2. *Remaining Claim Terms*

We conclude that it is unnecessary to make explicit the meaning of any other claim term. *See Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co. v. Matal*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (“we need only construe terms ‘that are in controversy, and only to the extent necessary to resolve the controversy’” (quoting *Vivid Techs, Inc. v. Am. Sci & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999))).

¹¹ Petitioner characterizes the phrase “from which decisions or subsequent actions can be made” as “redundant” and not offering any clarity to the meaning of “data.” Pet. Reply 8. Indeed, we note that each of claims 1 and 12 explicitly characterizes the “first set of data” as “for operating a first function of the piece of workout equipment.” Ex. 1001, 45:12–13, 46:17–18. Even if some redundancy exists, in this case, we do not regard it as rendering unclear the understanding of what “data” encompasses.

D. Overview of Prior Art

1. Summary of Acres

Acres is titled “System for Regulating Exercise and Exercise Network.” Ex. 1002, code (54). Acre’s Abstract is reproduced below:

Disclosed is an automatic system for configuration, direction and recording of exercise program for an individual, based upon the attained heart rate of that person during an exercise period. Configuration data can be stored on an account accessible over a network. Configuration data can also be stored in an electronic device. The electronic device can provide information feedback to the user indicating the user’s progress in a workout. In some embodiments the device can also send configuration commands to compatible exercise equipment according to heart rate or other exercise parameter.

Id. at code (57).

Acres's Figure 12 is reproduced below:

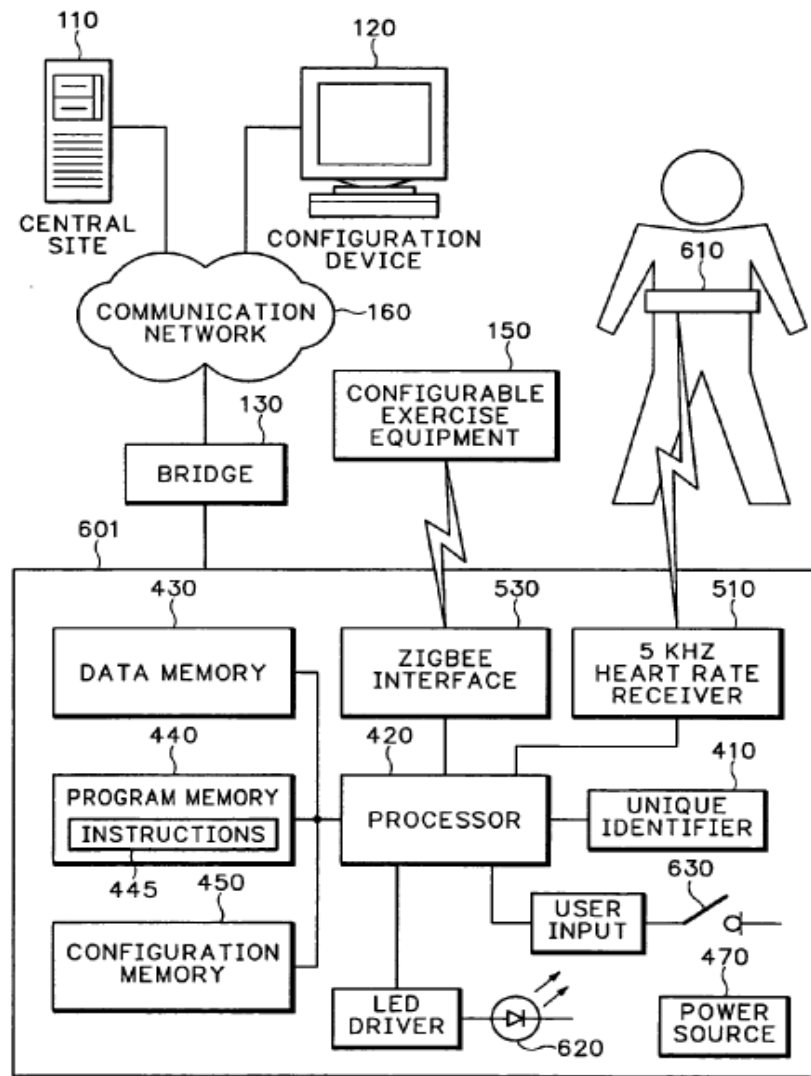


FIG.12

Figure 12 above shows a functional block diagram of an example exercise network according to an embodiment of Acres. *Id.* ¶ 20. The system includes, *inter alia*, heart rate monitor 610, “Bug” 601, and configurable exercise machine or equipment 150. *Id.* ¶ 69. A “Bug” is a portable electronic circuit that may be worn on clothing or held in a pocket of an exerciser (*id.* ¶ 47) and that “transmits signals to the exercise machine to increase or decrease the workload in accordance with the dictates of the

exercise program it carries and the current heart rate of the exerciser” (*id.* ¶ 29). For instance, where the exercise equipment is a treadmill, based on a user’s sensed heart rate, Bug 601 may send “a command to the treadmill 150 telling it to increase speed by a specific amount.” *Id.* ¶ 89.

2. Summary of Pyles

Pyles is titled “Exercise Apparatus and Method for Tracking Number of Steps.” Ex. 1004, code (54). A portion of Pyles’s Abstract reads “[d]isclosed is an exercise apparatus for use in accurately and automatically tracking number of steps taken by a user both on and off of an exercise machine.”

Pyles’s Figure 2 is reproduced below:

Fig. 2

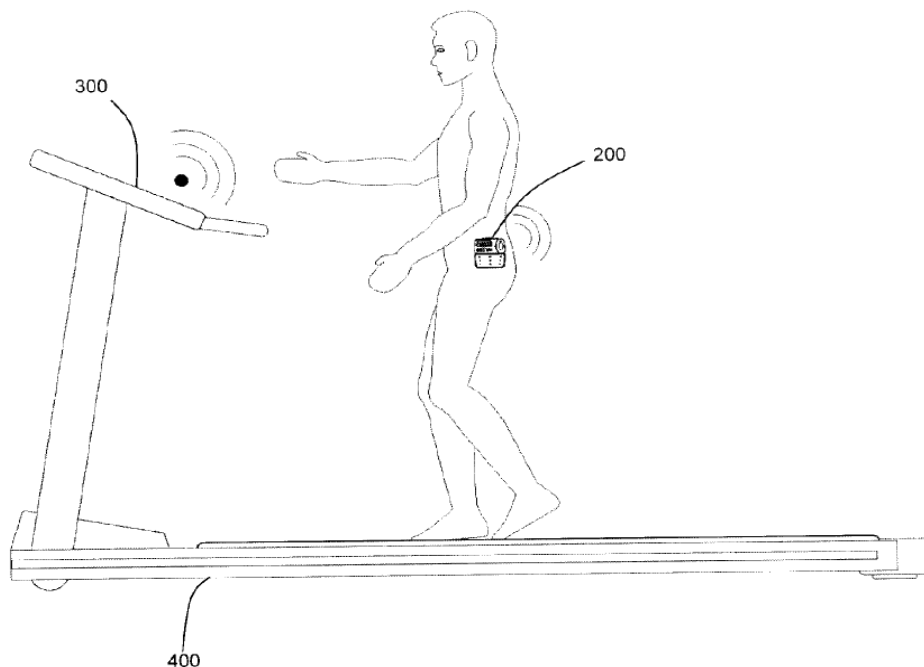


Figure 2 above “shows a version of the exercise apparatus in use with a treadmill [400] and where communication between the console [300] and step counter [200] is wireless.” *Id.* ¶¶ 17, 29.

3. Summary of Abbondanza

Abbondanza is titled “Pulse Rate Controlled Exercise System.”

Ex. 1003, code [54]. Abbondanza’s Abstract reads in part as follows:

A pulse controlled exercise system is disclosed which incorporates an exercise device, a monitor capable of displaying images formed from television signals, a pulse rate sensor for sensing the pulse rate of a user of the pulse controlled exercise system, and a controller. The controller is coupled to the pulse rate sensor, to the exercise device, and to the monitor. The controller is used to control the exercise device’s speed and other states and to cause the pulse rate of the user to be displayed on the monitor as the user progresses through his or her exercise regimen.

Id. at code [57].

Abbondanza’s Figure 3 is reproduced below:

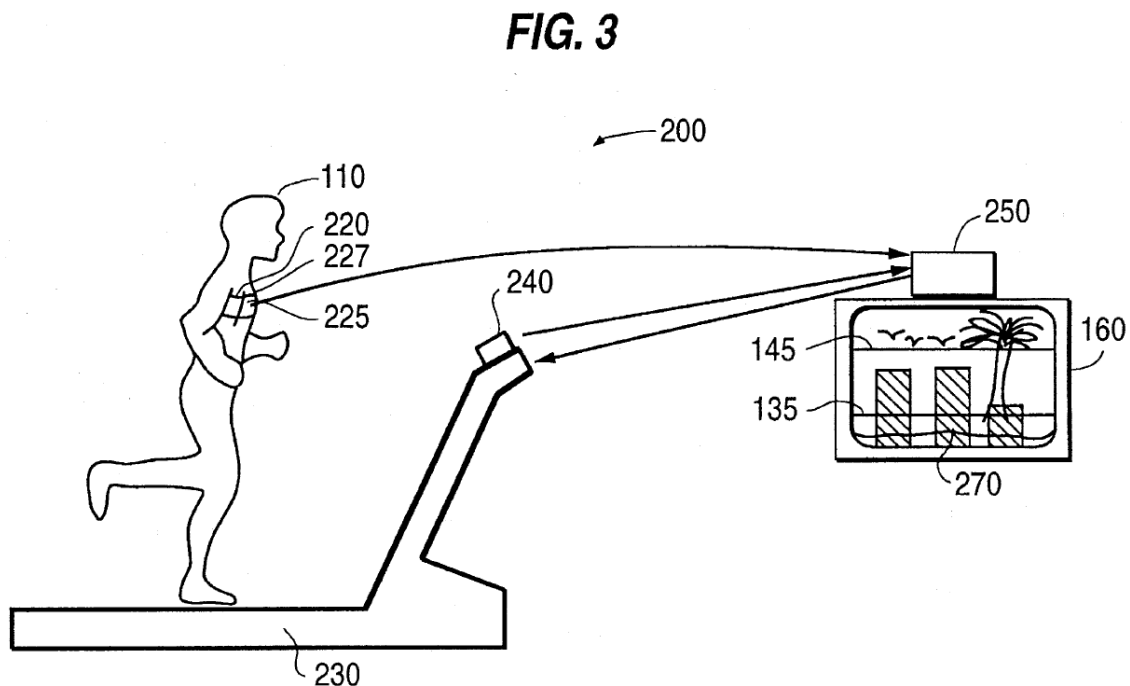


Figure 3 above is a system diagram of an embodiment of the invention in which a user strides on a treadmill which is controlled according to the user's pulse rate. *Id.* at 6:8–11. System 200 includes, *inter alia*, treadmill device 230, pulse rate sensor device 225 attached to user 110, transmitter 227, control center 240, base unit 250, and monitor 160. *Id.* at 10:56–11:10. Abbondanza further sets forth the following as to the operation of its system:

Base unit 250 is shown 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 controller 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.

Id. at 11:16–24.

E. Asserted Grounds of Unpatentability Based on Acres

Petitioner contends that each of claims 1–8, 10, 12–17, and 19 is either anticipated by Acres or would have been obvious based on Acres. Petitioner also contends that claims 9 and 18 would have been obvious over Acres and Pyles.

1. Petitioner's Arguments

Petitioner lays out in detail where it believes all the features of claims 1–8, 10, 12–17, and 19 are disclosed in Acres. Pet. 9–23. For instance, with respect to claim 1, Petitioner explains how Acres discloses a method in which Acres's Bug and its associated sensors operate in establishing data communication with a piece of workout equipment. *Id.* at 9–10. Petitioner also contends that Acres discloses a step of transmitting by the sensor device a first set of data for operating a first function of the workout equipment. *Id.* at 11–12. In that respect, Petitioner points to Acres's disclosure of Bug 601 sending commands to an exercise machine, e.g., a treadmill, to control parameters of the machine, including speed and incline, based on a user's heart rate. *Id.* Lastly, Petitioner contends that Acres discloses a step of transmitting, by a sensor device, a set of activity data to a piece of workout equipment and displaying that activity data. *Id.* at 12–13. Specifically, Petitioner relies on Acres's disclosure that its Bug transmits heart rate data to the treadmill and provides for the display of that heart rate data. *Id.* (citing Ex. 1005 ¶¶ 49–51).

Petitioner provides further assessment: (1) as to how Acres discloses the features set forth in claims 2–8, 10, 12–17, and 19 (*id.* at 13–23); (2) that claims 5, 10, 14, and 19 alternatively would have been obvious in view of Acres's teachings (*id.* at 24–27); and (3) that claims 9 and 18 would have been obvious in view of the combined teachings of Acres and Pyles (*id.* at 28–31).

2. Patent Owner's Arguments

Patent Owner disputes that Acres discloses aspects of feature 1B (and also the corresponding limitation of claim 12) pertaining to the “first set of

data.” PO Resp. 20–25. In that respect, Patent Owner contends that Acres “does not disclose a system that transmits ‘data’ from a ‘sensor’ to a piece of workout equipment.” *Id.* at 20. According to Patent Owner, “Acres merely describes ‘commands’ that adjust parameters of an exercise machines. But Acres’s ‘commands’ are not sense or collected.” *Id.* at 21; *see also id.* at 21–22 (“The ‘commands’ in Acres are not transmitted by the sensor, as the claims required.”). Thus, Patent Owner premises its dispute as to limitation 1B (and the corresponding limitation of claim 12) on its claim construction position that the “first set of data” must be content that is sensed or collected by a sensor.

Patent Owner also argues that Acres does not anticipate claims 5 and 14, which ultimately depend, respectively, from claims 1 and 12 and add “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.” PO Resp. 25–26; Ex. 1001, 45:30–36; 46:30–35.

Patent Owner further argues that none of claims 1–8, 10, 12–17, and 19 would have been obvious based on Acres, and that neither claim 9 nor claim 18 would have been obvious based on Acres and Pyles. PO Resp. 26–28.

We consider Patent Owner’s arguments below.

3. *Discussion*

a) *Anticipation By Acres*

i. *Claims 1–4, 6–8, 10, 12, 13, 15–17, and 19*

Each of independent claims 1 and 12 includes a requirement that a “first set of data” be transmitted from a sensor for operating a function of a piece of workout equipment. Ex. 1001, 45:12–13, 46:16–18. As we noted in the Institution Decision (Inst. Dec. 15–16), Acres describes the following in connection with the operation of its system:

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.

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.

Ex. 1002 ¶¶ 89, 96.

Thus, Acres discloses that, based upon an exerciser’s heart rate, Bug 601 operates to send or transmit commands to treadmill 150 to control operational parameters of the treadmill, such as its speed and incline. Petitioner contends that “Acres’s Bug and its associated sensors are together a sensor device.” *See, e.g.*, Pet. 9–10. Patent Owner does not dispute that contention. Patent Owner’s dispute arises from its position that Acres’s transmitted commands do not amount to the claimed “first set of data.” *See*

PO Resp. 21–25; PO Sur-reply 10–14. That dispute is premised on Patent Owner’s proposed claim construction, which requires that the claimed “data” be only information that is sensed or collected in some other specific way by a sensor. As discussed above in our Claim Construction section (§ II.C.1), however, we do not agree that the record substantiates such a narrow meaning for the term “data.” It is difficult to conclude that a command that is generated based on a user’s heart rate that operates to control the functionality of a piece of workout equipment is not readily viewed as “factual information, from which decisions or subsequent actions can be made,” which, as discussed above, is a meaning of “data” that reasonably emerges to one of ordinary skill in the art based on record evidence.¹²

In its Sur-reply, Patent Owner also briefly states that Acres does not show that “decisions or subsequent actions can be made” from “data.” PO Sur-reply 12–13. It is apparent, however, that Patent Owner does not dispute that decisions or subsequent actions may be made based on the commands transmitted from Acres’s Bug. *Id.* at 13 (“lululemon has only established that Acres teaches that decisions or subsequent actions are made based on commands transmitted from the Bug.”). Indeed, no dispute is credible because, as noted above, Acres clearly describes the commands the Bug sends operate to control operation of workout equipment, such as increasing its speed. *See* Ex. 1002 ¶ 89. Rather, Patent Owner simply parallels its prior arguments that a deficiency arises because, in Patent

¹² We again note that “factual information, from which decisions or subsequent actions can be made” was the meaning of “data” advocated by Patent Owner as a part of its Preliminary Response. *See* Prelim. Resp. 18.

Owner's view, the commands do not encompass "data." As discussed above, we do not agree with that contention.

Patent Owner does not contend that any other feature of independent claims 1 and 12 is absent from Acres. Patent Owner also does not contend that any features added by dependent claims 2–4, 6–8, 10, 13, 15–17, and 19 are missing from Acres. Having reviewed the entirety of the record before us, we find that Petitioner has shown by a preponderance of the evidence that claims 1–4, 6–8, 10, 12, 13, 15–17, and 19 are anticipated by Acres. *See* Pet. 7–23.

ii. Claims 5 and 14

Claim 5 depends from claim 3, which depends from claim 1. Claim 14 depends from claim 13, which depends from claim 12. Claims 3 and 13 recite that the first function of the workout equipment is adjustment of one or more settings of the equipment. Each of claims 5 and 14 further adds the following limitation:

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.

Ex. 1001, 45:30–36, 46:30–35.

Petitioner argues that the added features of claims 5 and 14 are accounted for in Acres's disclosure that a user may terminate a workout program if desired, and that Acres's Bug may send a "stop exercise" command based on "user-actuated inputs." Pet. 17 (citing Ex. 1002 ¶¶ 29,

48, 62)). Petitioner contends that “[s]topping an exercise session decreases the time period for at least one workout activity in a workout routine.” *Id.*

Patent Owner challenges the above-noted positions of Petitioner. In particular, Patent Owner urges the following:

To meet this limitation, lululemon points to a “stop exercise” command in Acres that is provided from the Bug to the user. *See* Petition 17, 23. Ex. 1002, ¶48 (“FIG. 3 illustrates a functional block diagram of an example Bug 400. The Bug 400 includes . . . a mechanism 495 to communicate information to **the user**. Communicated information can include . . . coaching commands such as . . . [‘]stop exercise.”). But lululemon’s argument fails because the “stop exercise” command is not “transmit[ed] by the sensor device and to the piece of workout equipment,” as required by the claims. Ex. 1001, 45:12–14. Instead, the “stop exercise” command is transmitted by the “Bug” to the user. Ex. 1002, ¶48.

PO Resp. 26.

Patent Owner then summarizes its view with “[i]n other words, the command identified by lululemon is not transmitted ‘to the piece of workout equipment.’” *Id.* (citing Ex. 1001, 45:12–14). Patent Owner offers no further arguments in its Sur-reply.

It is apparent that Patent Owner ties its arguments as to claims 5 and 14 with the requirement of claims 1 and 12 that data for operating functions of a piece of workout equipment specifically must be transmitted “to the piece of workout equipment.” Ex. 1001, 45:11–12, 46:16.

As noted above in connection with claim 1, Patent Owner does not dispute that Acres’s “Bug” constitutes part of a sensor device. *See supra* § II.E.3.a).i. As best we can determine, the thrust of Patent Owner’s arguments is that the reference in Acres’s paragraph 48 that information from Bug 400 is transmitted “to the user” means that the information is not

transmitted to the workout equipment, i.e., a treadmill, that the user is using. Thus, Patent Owner envisions some sort of separate and distinct transmission scheme directed on the one hand to the user and on the other hand to the treadmill. Yet, left unexplained is how transmission “to the user” is accomplished in some fashion different from, or beyond, transmitting content to the workout equipment. Patent Owner points to no disclosure in Acres, and we do not see any, of a separate transmission from Acres’s Bug “to the user” that is independent from transmission to the workout equipment, e.g., a treadmill. We simply do not discern that Patent Owner’s argument is consistent with Acres’s disclosure. As Petitioner points out (Pet. 17), Acres clearly provides that its Bug transmits signals to an exercise machine to increase or decrease exercise workload. Ex. 1002 ¶ 29. Acres also sets forth that a user may direct control of the machine to modify exercise intensity, including terminating or stopping the exercise. *Id.* ¶¶ 29, 48. Acres further contemplates that “user-actuated inputs” may be transmitted by the Bug. *Id.* ¶ 62. In our view, Acres’s teachings, including those noted above, reasonably account for what is required by claims 5 and 14.

Accordingly, we have considered Patent Owner’s arguments, but find that Petitioner has established adequately by a preponderance of the evidence that claims 5 and 14 are anticipated by Acres.

iii. Summary of Anticipation of the Challenged Claims by Acres

Having considered the respective positions of the parties, including their briefings and supporting evidence, we find that the record establishes

that Petitioner has shown by a preponderance of the evidence that claims 1–8, 10, 12–17, and 19 are anticipated by Acres.

b) Obviousness Based On Acres

i. Claims 1–8, 10, 12–17, and 19

Petitioner also contends that claims 1–8, 10, 12–17, and 19 would have been obvious based on Acres. Pet. 23–27.

With respect to claims 1–4, 6–8, 12, 13, and 15–17, Petitioner expresses that those claims are unpatentable for obviousness for the same reasons that were advanced in connection with the anticipation ground based on Acres. Pet. 23 (citing *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))). Patent Owner contends that the “same reasons” it offers in challenging Petitioner’s anticipation ground based on Acres apply to the obviousness ground based on the reference. PO Resp. 26–27. As discussed above, we do not agree with Patent Owner as to the alleged deficiencies of Acres’s teachings. We, thus, agree with Petitioner that claims 1–4, 6–8, 12, 13, and 15–17 are unpatentable for obviousness based on Acres.

With regard to claims 5 and 14, Petitioner expresses that, to the extent Patent Owner argues that the added features of those claims are not expressly disclosed in Acres, those claims would have been obvious to a skilled artisan. In particular, Petitioner argues that, based on Acres’s disclosures, “a POSITA would have recognized from [cited Acres’s] disclosure that Acres is modifiable to have the Bug modify warm-up or cool-

down periods (or the durations of other parts of an exercise sessions [sic]) based on the needs of the user.” Pet. 25 (citing Ex. 1005 ¶¶ 62–65).

Petitioner also reasons that a skilled artisan would have had adequate reason to so modify Acres’s teachings. *Id.* (citing 1005 ¶¶ 62, 63). Patent Owner does not offer any arguments disputing Petitioner’s contention of obviousness as to claims 5 and 14. We find credible Petitioner’s position, and agree with Petitioner, that claims 5 and 14 would have been obvious to one of ordinary skill in the art based on Acres.

In connection with claims 10 and 19, Petitioner alternatively argues that those claims would have been obvious based on Acres. Pet. 25–26. Patent Owner does not offer any specific challenges to Petitioner’s contentions as to the obviousness of those claims. We also conclude that Petitioner’s alternative theory as to the obviousness claims 10 and 19 based on Acres has merit.

Accordingly, based on the record before us, we conclude that Petitioner has established by a preponderance of the evidence that claims 1–8, 10, 12–17, and 19 would have been obvious to a person of ordinary skill in the art based on Acres’s teachings.

ii. Claims 9 and 18

Petitioner contends that claims 9 and 18 would have been obvious based on Acres and Pyles. Claim 9 depends from claim 1 and claim 18 depends from claim 12. Each of claims 9 and 18 adds the following limitation: “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.” Ex. 1001, 45:60–64, 46:60–64.

Petitioner relies on Pyles’s teachings to account for the requirement that the specific type of data that is transmitted is “user identification information.” Pet. 28–29. Petitioner also relies on Pyles for its approach to storing a user’s data at a piece of workout equipment. Specifically, Petitioner points to Pyles’s teachings of communicating “‘a unique user identification (or, user ID)’ to a treadmill’s console, which has a memory means that stores ‘user-specific historical data.’” *Id.* at 28 (citing Ex. 1004 ¶¶ 47–50).

Petitioner also reasons that one of ordinary skill in the art would have had adequate reason to combine Pyles’s teachings with those of Acres. Pet. 29–31. Specifically, Petitioner sets forth that a motivation to combine Acres and Pyles arises because: (1) a skilled artisan would have recognized that data storage may be done locally at a piece of workout equipment, as described in Pyles, as opposed to a central site as in Acres (*id.* at 30 (citing Ex. 1004 ¶¶ 50, 52; Ex. 1005 ¶¶ 68–69)); (2) such local data storage “offers a simplified structure by reducing the number of separate components and eliminates the need to transfer activity data over an internet connection (*id.* (citing Ex. 1005 ¶¶ 72–73)); (3) “Acres and Pyles are in the same field of invention: exercise monitoring device” and are of such similarity that “a POSITA would have understood that Acres could be easily modified to incorporate the teachings of Pyles” (*id.* at 30–31 (citing Ex. 1002 ¶¶ 35, 47, 88, 89; Ex. 1004 ¶¶ 5, 32, 33, 47; Ex. 1005 ¶ 70)); and (4) a system that locally stores exercise data would be simpler, less expensive, and “appealing to customers who do not have consistent access to the internet” (*id.* at 31

(citing Ex. 1005 ¶¶ 72–73)). *See also* Pet. Reply 19–21 (further explaining the proposed reasons to combine Acres and Pyles).

Patent Owner challenges Petitioner’s proffered reasoning to combine Acres and Pyles “for at least three reasons” as follows:

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. [Ex.2004] ¶ 65. In other words, 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. *Id.* As a result, a POSITA would understand that by storing the data at the level of the exercise machine, the utility of those data beyond that that [sic] machine is lost. *Id.* Second, by storing data on a single piece of equipment versus a central site, a POSITA would understand that the risk of data loss is increased, since it is directly dependent on the integrity and security of that machine. *Id.*, ¶66. Third, a POSITA would understand that data aggregation and storage on such a central cite promotes broader data access to more pieces of equipment and more people. *Id.*, ¶67.

PO Resp. 28; *see also* PO Sur-reply 14–17 (further challenging Petitioner’s proposed reasoning to combine).

We observe that Patent Owner does not dispute Petitioner’s contention that Acres and Pyles are in the same field of “exercise monitoring device[s].” *See* Pet. 30. Patent Owner also does not dispute that, in such a field, both local data storage and centralized data storage are known approaches for the purpose of storing information and data. Patent Owner further does not dispute that one of ordinary skill in the art would have appreciated the benefits that Petitioner and Dr. Houh reason would result from combining Acres and Pyles. In effect, Patent Owner’s challenges to Petitioner’s reasoning to combine rest solely on the theory that Petitioner has

not shown a suitable reason to combine Acres and Pyles because some disadvantages may arise in implementing principles of local data storage in lieu of centralized data storage.

On the matter of reasoning to combine Acres and Pyles, we do not agree with Patent Owner (*see, e.g.*, PO Resp. 27–28; PO Sur-reply 14–17), but rather agree with Petitioner (*see, e.g.*, Pet. 29–31; Pet. Reply 19–21). The record does not demonstrate that there is some type of fundamental dichotomy between local data storage of activity at a piece of workout equipment and remote, central data storage of such activity that prohibits or precludes combining teachings directed to each approach. Rather, the record readily conveys that each type of data storage approach was recognized as known and viable. Even if there may have been some disadvantages with one or both approaches, the obviousness inquiry does not somehow mandate that a combination of teachings must result in something that is free of imperfection.

As suggested by Petitioner, a skilled artisan readily would have recognized some benefits accrue to the local data storage approach advocated by Pyles. Even if there may have been some disadvantages to that approach, that does not nullify appreciation of the benefits that may offset such disadvantages. *See, e.g., Winner Int’l Royalty Corp. v. Wang*, 202 F.3d 1340, 1349 n.8 (Fed. Cir. 2000) (“[t]he fact that the motivating benefit comes at the expense of another benefit . . . should not nullify its use as a basis to modify the disclosure of one reference with the teachings of another”). Indeed, as argued by Petitioner, and as attested to by Dr. Houh, the record reasonably establishes that a skilled artisan would have evaluated potential benefits and detriments as part of various data storage approaches

in the area of workout equipment in assessing obviousness. *See, e.g.*, Pet. 29–31; Pet. Reply 19–21; Ex. 1005 ¶¶ 68–73; Ex. 1015 ¶ 31. The obviousness inquiry demands as much.

Patent Owner’s declarant, Dr. McLean, postulates, without record citation, that some detriments may possibly arise in implementing data storage at an exercise machine, as in Pyles, in lieu of central site storage as in Acres. *See, e.g.*, Ex. 2004 ¶¶ 64–68. Yet, even if such less-than-desirable characteristics may result, neither Dr. McLean nor Patent Owner offers any cogent explanation as to why recognition of those characteristics undermines a determination of obviousness. In particular, Dr. McLean does not dispute that local storage would have the benefits discussed by Dr. Houh (a simplified, less expensive structure with a reduced number of components, which do not need to be connected to the internet), albeit along with the disadvantages discussed by Dr. McLean. Indeed, Dr. McLean and Patent Owner do not explain why a skilled artisan would not reasonably have evaluated any detriments alongside the potential benefits as a part of the obviousness inquiry. The test for obviousness is what the combined teachings of the references would have suggested to those of ordinary skill in the art. *In re Young*, 927 F.2d 588, 591 (Fed. Cir. 1991). That test does not objectively fail if a skilled artisan would have recognized some disadvantages in combining the prior art teachings. *See, e.g., Medichem, S.A. v. Rolabo, S.L.*, 437 F.3d 1157, 1165 (Fed. Cir. 2006) (“a given course of action often has simultaneous advantages and disadvantages, and this does not necessarily obviate motivation to combine.”).

We have fully considered Patent Owner’s arguments (and Dr. McLean’s testimony), but conclude that Petitioner (*see, e.g.*, Pet. 29–31; Pet.

Reply 19–21) and Dr. Houh (*see, e.g.*, 1005 ¶¶ 68–73; Ex. 1015 ¶ 31) have the better view as to what the combined teachings of Acres and Pyles would have conveyed to a person of ordinary skill in the art, and that there would have been adequate reason to combine those teachings. Accordingly, we conclude that Petitioner has established by a preponderance of the evidence that claims 9 and 18 are unpatentable based on Acres and Pyles.

F. Asserted Grounds of Unpatentability Based on Abbondanza

Petitioner contends that claims 1–5, 7, 10, 12–14, 16, and 19 would have been obvious in view of Abbondanza. Pet. 32–44. Petitioner also contends that claims 9 and 18 would have been obvious over Abbondanza and Pyles. *Id.* at 45–46. As discussed above, we conclude that all of the challenged claims (*i.e.*, claims 1–10 and 12–19) are accounted for based on the grounds involving Acres. Therefore, resolution of this proceeding does not require additional assessment of the grounds involving Abbondanza. *See SAS Inst. Inc. v. Iancu*, 138 S. Ct. 1348, 1359 (2018) (holding that a petitioner “is entitled to a final written decision addressing all of the claims it has challenged”); *Bos. Sci. Scimed, Inc. v. Cook Grp. Inc.*, 809 F. App’x 984, 990 (Fed. Cir. 2020) (non-precedential) (recognizing that the “Board need not address issues that are not necessary to the resolution of the proceeding” and, thus, agreeing that the Board has “discretion to decline to decide additional instituted grounds once the petitioner has prevailed on all its challenged claims”). Accordingly, we do not reach the grounds involving Abbondanza.

G. Petitioner’s Motion to Exclude

Petitioner seeks to exclude Exhibit 2003. *See* Paper 33. Exhibit 2003 includes a dictionary definition of the term “data” that was offered by Patent Owner in support of its claim construction of the term “data.” We have considered Exhibit 2003 but conclude that it does not support the narrow or restricted meaning of “data” that is offered by Patent Owner. *See, e.g., supra* § II.C.1. As a result, we conclude that it is unnecessary to further consider whether the exhibit should be excluded because exclusion, or not, of the Exhibit 2003 has no bearing on the outcome of this proceeding. As such, we *deny* Petitioner’s Motion to Exclude (Paper 33) as moot.

III. CONCLUSION

In summary, we determine that a preponderance of the evidence establishes that claims 1–10 and 12–19 of the ’225 patent are unpatentable. That determination is shown in the following table:¹³

Claim(s)	35 U.S.C. §	Reference(s)/Basis	Claims Shown Unpatentable	Claims Not Shown Unpatentable
1–8, 10, 12–17, 19	102	Acres	1–8, 10, 12–17, 19	

¹³ Should Patent Owner wish to pursue amendment of the challenged claims in a reissue or reexamination proceeding subsequent to the issuance of this decision, we draw Patent Owner’s attention to the April 2019 *Notice Regarding Options for Amendments by Patent Owner Through Reissue or Reexamination During a Pending AIA Trial Proceeding*. *See* 84 Fed. Reg. 16,654 (Apr. 22, 2019). If Patent Owner chooses to file a reissue application or a request for reexamination of the challenged patent, we remind Patent Owner of its continuing obligation to notify the Board of any such related matters in updated mandatory notices. *See* 37 C.F.R. §§ 42.8(a)(3), (b)(2).

1–8, 10, 12–17, 19	103	Acres	1–8, 10, 12–17, 19	
9, 18	103	Acres, Pyles	9, 18	
1–5, 7, 10, 12– 14, 16, 19	103	Abbondanza ¹⁴		
9, 18	103	Abbondanza, Pyles ¹⁵		
Overall Outcome			1–10, 12–19	

IV. ORDER

It is

ORDERED that claims 1–10 and 12–19 have been shown to be unpatentable; and

FURTHER ORDERED that, because this is a final written decision, parties to the proceeding seeking judicial review of the decision must comply with the notice and service requirements of 37 C.F.R. § 90.2.

¹⁴ We do not reach the ground based on Abbondanza as to claims 1–5, 7, 10, 12–14, 16, and 19 because we determined those claims are unpatentable based on the Acres grounds.

¹⁵ We do not reach the ground based on Abbondanza and Pyles as to claims 9 and 18 because we determined those claims are unpatentable based Acres and Pyles.

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