

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PELOTON INTERACTIVE, INC.,
Petitioner,
v.
JOHNSON HEALTH TECH CO., LTD.,
Patent Owner.

IPR2023-01163 (Patent 10,032,227 B2)
IPR2023-01164 (Patent 10,796,375 B2)
IPR2023-01165 (Patent 11,227,340 B2)

Record of Oral Hearing
Held: September 5, 2024

Before JAMES P. CALVE, BART A. GERSTENBLITH, and
JULIET MITCHELL DIRBA, *Administrative Patent Judges*.

IPR2023-01163 (Patent 10,032,227 B2)
IPR2023-01164 (Patent 10,796,375 B2)
IPR2023-01165 (Patent 11,227,340 B2)

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IPR2023-01163 (Patent 10,032,227 B2)
IPR2023-01164 (Patent 10,796,375 B2)
IPR2023-01165 (Patent 11,227,340 B2)

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P-R-O-C-E-E-D-I-N-G-S

(1:00 p.m.)

JUDGE DIRBA: Good afternoon. This is the consolidated oral hearing for three *inter partes* review proceedings, IPR2023-01163 related to U.S. Patent No. 10,032,227, IPR2023-01164 related to U.S. Patent No. 10,796,375, and IPR2023-01165 related to U.S. Patent No. 11,227,340. This is Judge Dirba, and I'm joined today by my colleagues Judges Calve and Gerstenblith. We'll begin with appearances. Petitioner?

MR. TEHRANCHI: Good afternoon, Your Honor. I am Babak Tehranchi, representing Petitioner as the lead counsel. With me are Chris Hanewicz and Tyler Kendrick, and also on the public line is Janice Jabido from Peloton Interactive.

JUDGE DIRBA: Thank you, Mr. Tehranchi. And for Patent Owner? Counsel, you may be muted.

MR. TOROSSIAN: This is Charlie from VTC. If you can press star-six to unmute, thank you.

MR. BRUNNER: Can you hear me now?

JUDGE DIRBA: We can.

MR. BRUNNER: Okay, great. For Patent Owner, Johnson Health Tech, my name is Shane Brunner. With me is Michael Laing, Kevin Moran, and John Scheller.

JUDGE DIRBA: Thank you, Mr. Brunner. I'll begin with a few announcements and other information for you for the hearing today. Per the hearing order, each party will have 60 minutes of total argument time today. Petitioner has the ultimate burden of establishing unpatentability of the

1 challenged claims, so Petitioner will open the hearing with its arguments.
2 Petitioner may reserve rebuttal time, but no more than half of its total
3 argument time. Patent Owner will then respond to Petitioner's arguments,
4 and may reserve sur-rebuttal time, also not to exceed more than half of its
5 total argument time. Each side's rebuttal must respond to the immediately
6 preceding presentation, but otherwise, each side may use its allotted time to
7 discuss the case as it chooses, provided that the arguments that are presented
8 today were previously presented in the briefs. No new arguments are
9 permitted. Please hold any objections until it is your turn to speak. We will
10 take a five minute recess after each party's initial presentation. So after
11 Petitioner's opening statement we will take a five minute recess, and then
12 after Patent Owner's opening presentation we will take a five minute recess.

13 Note that the judges have reviewed the briefs and the evidence in this
14 case in preparation for today's hearing. We are familiar with the record.
15 We have the papers and exhibits available to us on our computers, and we
16 may refer to those documents during your presentation. If we look away
17 from the camera during the hearing, we may be consulting those documents
18 or taking notes. We have a number of important questions, and we may
19 direct you to answer those questions, because our questions and your
20 answers to them will help us decide the issues in this case.

21 Recording of any PTAB hearing is prohibited. The court reporter will
22 provide a transcript of the hearing that will become part of the record in the
23 proceeding at a later date. To ensure that the transcript of this hearing is
24 clear, we ask that you identify yourself before speaking and identify specific
25 slide numbers when referring to demonstratives. Also, when you are not

1 speaking, please mute yourself but remain on video if you are currently on
2 video. That allows us to ensure that everyone maintains a good internet
3 connection and remains present as part of the proceeding. There is no
4 confidential information in the record of these proceedings, and this is a
5 public hearing.

6 A few reminders for video, because this is a remote hearing conducted
7 by video, we may have an unexpected interruption in connection. If that
8 happens to one of the video participants or the court reporter, we will pause
9 the argument and resume once that connection can be reestablished. Please
10 interrupt the hearing if you have technical issues that materially impact your
11 ability to represent your client. If your connection is lost, please spend up to
12 five minutes or so attempting to reestablish the connection. If those attempts
13 are unsuccessful at that point, please rejoin the hearing by audio so we can
14 discuss how to proceed. Are there any housekeeping matters or questions
15 before we begin today? Mr. Tehranchi?

16 MR. TEHRANCHI: No, Your Honor.

17 JUDGE DIRBA: Mr. Brunner?

18 MR. BRUNNER: No, Your Honor.

19 JUDGE DIRBA: Alright. Thank you. As I mentioned, we'll begin
20 with Mr. Tehranchi. How long would you like to reserve for your rebuttal?

21 MR. TEHRANCHI: I'd like to reserve 15 minutes.

22 JUDGE DIRBA: Okay, and you may be --

23 MR. TEHRANCHI: I'm sorry, I was going to say that me and my
24 colleague Tyler Kendrick will be doing the presentation for our side. So
25 we'll split up the presentation, and I'll explain at which point.

1 JUDGE DIRBA: Understood. Mr. Tehranchi, you may begin when
2 you are ready.

3 MR. TEHRANCHI: Thank you, Your Honor. May I share the
4 demonstratives on the screen?

5 JUDGE DIRBA: Yes.

6 MR. TEHRANCHI: Okay. Please let me know if you can see the
7 screen.

8 JUDGE DIRBA: We can.

9 MR. TEHRANCHI: Great. Thank you, Your Honors. This is the
10 consolidated hearing for the three IPRs for the '227, '375, and '340 patents.
11 I'm on slide number two. This provides some of the topics that I'd like to
12 discuss. I'll talk about the background a little bit, then discuss claim
13 construction topics, and then discuss the Morris/Ray combination. My
14 colleague Tyler will resume the presentation with specific discussions of
15 '375, '340, and '227 items of interest, and discuss the combination of Morris
16 and Ray with Cox and the Yi ground, which is exclusive to the '340 patent.

17 Referring to slide three, we thought to kind of organize and separate
18 the grounds based on the combination of references. As you can see here,
19 our first set of grounds involves the combination of Morris and Ray, and that
20 is common between all three patents. Morris and Ray, they both describe
21 treadmills that generate certain exercise data and detect the user's presence.
22 Ray describes having an image of the user also presented on the screen that
23 changes based on exercise duration or intensity. And Cox is brought in for
24 some of the dependent claims, and Cox describes using a current sensor as a
25 way of detecting the user.

1 The second set of grounds, it's based on Ray in view of applicant
2 admitted prior art, and that also runs across all three patents. Cox and Daly
3 are also brought in for some dependent claims. Finally, a Yi reference is
4 used only in the '340 patents in an obviousness grounds against some of the
5 claims of that patent. My colleague Tyler Kendrick will discuss more details
6 about the Yi reference.

7 Moving to slide four, we thought to summarize the four major items
8 that we think are in dispute. The first item is what is -- what constitutes
9 exercise use data, and this is common across all three patents. We believe
10 our references describe exercise use data regardless of what construction is
11 used, and they describe even the most limited version of that construction,
12 which only includes time and distance, and we'll discuss more about this in
13 detail. The second item is whether our references describe generating
14 validated and non-validated data in response to the detection of the user
15 using a controller. And the third item is similar to number two, but it's
16 about exercise use data without any distinction between validated or non-
17 validated, and that's only the subjects of the '375 patent. And finally, the
18 fourth item is about some objections that the Patent Owner has raised about
19 motivation to combine the references, Morris and Ray with Cox.

20 Moving onto slide five, very quick background about what this patent
21 is about. The patent describes -- actually there are three patents at issue
22 here, all have the same detailed description and claims, they're all
23 continuations of one another, and they describe a motor-driven exercise
24 machine such as a treadmill that is shown in figures four and five. It has
25 basic components such as a belt, sensors to detect the user, a controller, and

1 a communication interface. What the patent starts on as a motivation is to
2 prevent fraud, and the idea is when the treadmill is running and generating
3 certain kinds of data, when the user is not on the treadmill, you don't want
4 the user to collect that data and then send it to his or her insurance company
5 to receive discounts and so on. This motivation and this idea of fraud
6 prevention doesn't appear in the claims, and on slide six here, we're actually
7 presenting the section of the '227 or these patents that is more relevant to the
8 claims, and that is, describes that generating and determining whether
9 exercise use data is valid or not based on detection of the user and
10 movement of the treadmill.

11 Going to slide seven, we thought to just have the relevant sections of
12 the claims on the screen so we can all look at it. On the left hand side, we
13 have an abbreviated version of Claim 1 of the '227, the relevant limitations
14 discussed, that a controller is configured to generate a non-validated exercise
15 use data in response to movement of the operating unit relative to the base
16 and the sensor does not detect engagement of the user, and then it further
17 says to generate validated exercise use data in response to movement of the
18 operating unit where the sensor does not detect engagement of the user.

19 And the last limitation, which we've highlighted, is there's a
20 controller that transmits the validated exercise use data to the
21 communication interface. If you contrast that to Claim 1 of the '375 patent,
22 in '375 claims there is no distinction of recitation of validated versus non-
23 validated, and the actions that are recited is reporting the exercise use data in
24 response to detecting the user and then stopping reporting of the exercise use
25 data when the user is not being detected.

1 Going to slide eight, the ‘340 claims are similar, have a similar type of
2 limitation, except that they’re actually broader. For example, Claim 1 of the
3 ‘340 patent just recites generating validated exercise use data in response to
4 detection of the user, and in the dependent Claim 2, the generation of non-
5 validated exercise use data comes into picture.

6 We realize that all these different terms could get confusing a little bit
7 among the three patents, so this table on slide nine is a way of kind of
8 summarizing the terms and identifying which patents they appear in, and
9 what are the actions associated with those terms. So for example, in the
10 column under the ‘227 patent, all of the claims in ‘227 patent recite
11 validated exercise use data, and Claim 1 recites non-validated exercise use
12 data, and the actions that are recited in those claims are generating,
13 recording, and transmitting the validated exercise use data, and the only
14 action that’s recited for non-validated data is to generate them.

15 In the ‘375 patent, the claims don’t recite validated versus non-
16 validated, all they recite is exercise use data, and the actions that are in those
17 claims are generating them, reporting them, and stopping to report them. If
18 we go to the ‘340 patent, which is on the right hand column, it is sort of a
19 combination. So in some claims, for example in claim set that starts with
20 Claim 1, it says generating validated exercise use data, and in dependent
21 Claim 2 as we showed before, it says generating non-validated exercise use
22 data, but when we go to other claims sets of the ‘340 patent, for example
23 Claims 8 and 13, it’s again -- it’s about exercise use data without
24 specification of validation or non-validation.

1 On slide 10, we just want to provide a very quick overview of Morris,
2 which is a motor-driven treadmill that detects presence of the user, and in
3 response to that detection, it provides certain information on the screen,
4 which is shown in annotated Figure 11, for example, pace, distance, heart
5 rate, footfall force, cadence, and so on. What's notable about Morris is that
6 it goes into detail about its user detection, so if you look at slide 11, figure
7 nine that we have annotated, there is a box that, it makes a decision whether
8 the user is detected or not, and depending on which direction you go,
9 whether user detected or not, it performs different operations. And Figure 6
10 of Morris which is annotated also on slide 11 goes into the details of the
11 internals of the processor and how its connected to the user detection sensors
12 and the motor control board and the display processor and how all of these
13 signals are generated and processed and then the data, the exercise data is
14 presented onto the screen.

15 Moving on to slide 12. This is a quick overview of Ray, which is also
16 a treadmill that detects the user's presence, and Ray uses a camera, and as
17 long as the user is exercising on the machine, the camera records images,
18 detects the movement, and then has the capability to send that data to a
19 doctor or wellness provider or to a remote storage server. What is also
20 interesting about Ray is that it also produces, in addition to calories, heart
21 rate, distance, and time, it also produces an image of the user that changes
22 according to the intensity or duration of the exercise. So the morphing of the
23 image is thinned based on the duration, intensity, and speed. And it also
24 says, once the user is no longer being detected, then the recording stops.
25 Another aspect of Ray is that it's also directed to fraud prevention, and it

1 also includes a validation procedure that validates the identity of the user
2 that's exercising, and at the same time, it confirms the exercise routine and
3 the data that's sent along with it. So it has that extra layer or validation and
4 confirmation. With that --

5 JUDGE DIRBA: Mr. Tehranchi, would you mind if I ask you about
6 the Morris/Ray combination? I see from this slide that you have another
7 slide later about that, but my question is, what aspects of Ray are you
8 proposing adding into Morris?

9 MR. TEHRANCHI: Thank you, Your Honor. The answer to that is,
10 all we are doing is, we're taking the camera that is in Ray and the associated
11 software that detects the user and performs the validation, we're taking those
12 and we're incorporating it into the Morris treadmill.

13 JUDGE DIRBA: Are there any other aspects of Ray that you are
14 incorporating into the Morris treadmill in your proposed combination? For
15 example, transmitting to the third party --

16 MR. TEHRANCHI: Yes, yes, that's correct, and that's in our papers.
17 So that image verification, image production, it also has that, we're also
18 including the transmission capability, access to the internet, and access to
19 providing the data to the doctor and to the wellness planner and remote
20 storage server.

21 JUDGE DIRBA: Okay, so to summarize, you're proposing adding
22 Ray's camera, the associated software for the camera, so the software that
23 would see the user and create the thinner image of the user, you're also
24 proposing adding the transmission capability that Ray talks about, where
25 Ray will send its information, the image and what have you to the server, et

1 cetera, et cetera. Are there any other aspects of Ray that you are proposing
2 adding into that combination? That you're including in that combination, or
3 that you're proposing adding to Morris?

4 MR. TEHRANCHI: I don't believe so, Your Honor, I think those are
5 the only ones that we have.

6 JUDGE DIRBA: Okay, thank you.

7 JUDGE GERSTENBLITH: Counsel, just to be clear, you're also --
8 and this may have been included in what you were saying, but you're also
9 relying on what Ray is specifically transmitting. In other words, it's not just
10 transmitting alone, but what is actually being transmitted. And I'm looking
11 at -- I apologize, because I'm focused on the 65 case, but I'm looking in the
12 petition there at page 28 to 29, which talks about -- and specifically going
13 down to 29 -- that Ray's exercise use data, which includes the motivational
14 image and other exercise data, that it's validated because it was produced in
15 response to detecting. So I was understanding, but tell me if I'm wrong, that
16 you're also relying on the fact that Ray transmits the image and other
17 exercise data, which would include time and distance that somebody was
18 using Ray's device.

19 MR. TEHRANCHI: That's correct, Your Honor, and some of those
20 exercise data, such as, I believe heart rate and distance, are also discussed in
21 Morris, so it would be similar there, but definitely we are also relying on the
22 ability of the data that is produced in Morris' patent, in terms of the image
23 and calories and heart rate and distance and time that are also validated that
24 are being sent out.

25 JUDGE GERSTENBLITH: You just said Morris, but you meant Ray.

1 MR. TEHRANCHI: Ray, I meant Ray, I apologize.

2 JUDGE GERSTENBLITH: Yeah, okay, thank you.

3 JUDGE DIRBA: And real quick, I'll just interrupt and make sure,
4 Mr. Brunner, I see your image is appearing and then disappearing. Is your
5 internet connection stable? Are you able to hear all of the hearing?

6 MR. BRUNNER: Yes Your Honor, I can hear. I was moving away
7 from the camera, so I turned it off, so I apologize.

8 JUDGE DIRBA: Okay, please do keep it on, just so that we're sure
9 that you're still able to hear us. It's fine if you need to go off screen for a
10 second. Thank you for that interruption. Mr. Tehrani, go ahead and
11 continue.

12 MR. TEHRANCHI: Thank you, Your Honor. So let's move on to
13 slide 14, which is about exercise use data and the claim construction for it.
14 Patent Owner's construction is data that would represent an amount of
15 exercise of the user. We are okay with that construction, the problem is,
16 Patent Owner further adds explanations and limitations on that, by saying
17 that distance and time, and then later on in their sur-reply, they added
18 calories, those are the only items that supposedly qualify under that
19 definition. We certainly disagree, but before explaining why the items on
20 the right hand column on slide 14 are also exercise use data, we'd like to say
21 that as we just talked about this, our references, Morris and Ray, they
22 discuss generating distance and time, and then in the combination, that
23 information is validated and sent out to the doctor, for example. So even
24 under Patent Owner's very limited construction, our references cover this.

1 JUDGE GERSTENBLITH: Counsel, before you go forward, I just
2 want to be clear. You just said at the beginning of this that you don't
3 disagree with Patent Owner's construction. Is that what you're telling us? I
4 just want to be sure, because I thought in the briefs, Petitioner sounded like
5 they were, it was disagreeing. But now you just said you don't disagree. So
6 I just want to be clear, does Petitioner agree with the construction that's on
7 this slide at the top?

8 MR. TEHRANCHI: So Your Honor, the answer to that question is
9 we do not disagree with that, what I have in the quotations, which is "data
10 that would represent an amount of exercise of the user." However, that's not
11 what the Patent Owner states. They go later on, based on that, they add
12 further limitations to it. And we also think that that construction is okay
13 with us, we think that you don't need to make a construction for this term,
14 because in either, under any construction, the data that is produced by our
15 references cover the full gambit.

16 JUDGE GERSTENBLITH: Okay, thank you, I just wanted to be
17 clear about the construction.

18 MR. TEHRANCHI: Yes. And going to that construction, Your
19 Honor, it's very -- I'd like to emphasize that, it says "the data that would
20 represent an amount of exercise of the user," it doesn't say that it's equal to
21 an exact amount or precise amounts, and all of the items that are listed on
22 the right hand side here, on slide 14, Ray's thinning image, it represents an
23 amount of exercise of the user, Ray is very explicit that it's thinned
24 according to the duration of the exercise, the intensity, and the speed of the
25 exercise, one of those things or all of them together. So it is representative

1 of an amount of exercise of the user. So is pace, pace is how fast the user is
2 running over a period of time, heart rate shows a level of exercise. So if a
3 heart rate is reached to a certain level, that means certain amount of exercise
4 has been conducted, and keep that in mind that in our combination, these are
5 all generated when the user is exercising on the machine. Footfall force is
6 the amount of force that is exerted on the treadmill that is measured and it's
7 sustained and it's shown on the screen as well, and cadence is footsteps per
8 minute determined over a period of time.

9 JUDGE GERSTENBLITH: So Counsel, just to be clear, I just want
10 to ask you about heart rate. So for example, if I say okay, my heart rate got
11 up to 120, it represents some amount, because I had to do something to get it
12 there, but it doesn't -- this claim language doesn't require that we be able to
13 determine the exact amount, just that it represent some amount, that some
14 amount has happened.

15 MR. TEHRANCHI: That's correct, Your Honor, and you can even go
16 to time and distance, it doesn't tell you whether somebody ran or jogged
17 during that time or distance, so those are also representing some amount of
18 exercise, not an exact amount.

19 JUDGE DIRBA: Mr. Tehranchi, I'd like to ask you more about that.
20 And I'll use cadence as the example on the right hand side that I want to drill
21 into a little bit more. I understand that cadence is going to be indicative, is
22 going to represent the intensity of exercise, but it's not abundantly clear to
23 me, and I'd like to hear more from you about, how cadence represents the
24 amount of exercise. I guess, are we saying that cadence is indicative that the
25 user did some exercise? In other words, cadence shows us like binary, yes,

1 the user did something? I don't -- there's a difference, I suppose, between
2 the intensity of exercise and the amount of exercise that somebody performs,
3 and I'd like you to talk a little bit more about that.

4 MR. TEHRANCHI: So Your Honor, cadence, Morris defines
5 cadence as steps per minute calculated over a period of time. So if you, for
6 example, if you can sustain a cadence at a certain level, I don't know, 100
7 steps per minute, for example, versus 50 steps per minute, those are
8 indicative of different levels of exercise, different amounts of exercise, so
9 they are representative of an amount of exercise based on the definition.

10 JUDGE DIRBA: So what you're saying is, even though -- so for
11 example, if I were to tell you I went for a run this morning and my cadence
12 was 160 steps per minute and I asked you how much exercise did I do, you
13 can't answer that question with just that information, obviously. Bt it's your
14 position that the way the Patent Owner has framed this construction, by
15 saying that this data is data that would represent an amount of exercise, that
16 that's basically too squishy -- it's not meaning to tell us how much exercise
17 there was, it can just be data that kind of relates to exercise or the amount of
18 exercise in some way?

19 MR. TEHRANCHI: It's representative of an amount of exercise, yes,
20 Your Honor, and in some of the later slides, if we need to go there, if you
21 look at the actual detailed description and the patents that are referenced in
22 the detailed description, if you look at intrinsic and extrinsic records, Patent
23 Owner's prior statements, none of them require to have an exact precise
24 amount, and as you said distance and time also, they are amounts, but

1 they're not indicative of, you know, you could be jogging or walking, and
2 distance and time would not be able to tell you the difference there.

3 JUDGE DIRBA: Well, I think there's a little bit of a difference that
4 I'd like to drill into a little bit more. So cadence, footfall force, heart rate,
5 these are telling me, at a point in time, the intensity level of someone's
6 exercise, but they're not telling me how much exercise that person did over a
7 period of time, correct?

8 MR. TEHRANCHI: Perhaps, but cadence is defined as determination
9 of the footsteps over a period of time, so it is some sort of an averaging over
10 a period of time, that's in there.

11 JUDGE DIRBA: But by the same token, speed is the distance over a
12 period of time. Cadence is no different than speed in its context, and
13 knowing someone's instantaneous speed, cadence, pace, what have you, is
14 really only telling me for that one instant in time -- it's giving me kind of the
15 slope of the graph, the derivative, what have you, rather than the area under
16 the curve, how much work this person has done, how much exercise they've
17 done over a period of time. In other words, part of my hesitation with
18 agreeing with you on the point that you're making here is cadence, footfall
19 force, heart rate, these don't tell me how much exercise someone did in the
20 same way that distance, time, or calories would.

21 MR. TEHRANCHI: We agree with Your Honor. It's none of these
22 provide, you know, there are holes in all of these in terms of the exact
23 amount of an exercise. So the patent itself talks about showing to the
24 insurance provider your exercise habits. So it is -- the language in the actual

1 patent is looser than an exact amount, which I don't think even this
2 construction requires an exact amount. So we agree with you, Your Honor.

3 JUDGE DIRBA: Well yeah, and I suppose the point, just to make
4 sure to be clear. The point that I'm making is there's a difference between
5 requiring an exact amount and specifying amount, right? So if I say, how
6 much exercise did you do in the last week? You could give me -- it would
7 be difficult for you to provide, you would need to provide a lot of
8 information in order to be very specific about exactly how much exercise
9 you did. You probably wouldn't tell me distance and time and what you
10 were doing, et cetera, in order to really be specific. But that's not the issue
11 or that's not the point that I'm making or the issue that I'm going into. The
12 point that I'm making is, if you told me I ran 10 miles, then that's telling me
13 how much exercise you did in, in way that you telling me, my steps per
14 minute was 160 steps per minute, that doesn't give me the same information,
15 because I don't know whether you did that for one second, or an instance, or
16 whether you did that over a longer period of time. In other words, I'm trying
17 to use sort of a map analogy here, it's giving me the speed that a car traveled
18 rather than the distance that that car traveled over time.

19 MR. TEHRANCHI: We don't disagree, Your Honor, those are good
20 points. Again, what I'd like to point to is that our references describe
21 sending all of these plus distance and time. So using all that information,
22 that exercise routine and the exercise amount is verified, so you can have a
23 verified amount. So perhaps each individual one of these are not an exact
24 amount, distance, time, calories, heart rate, but the references describe
25 sending all of these.

1 JUDGE DIRBA: I understand. That's helpful, thank you.

2 MR. TEHRANCHI: Thank you Your Honor. So I don't want to
3 belabor the point, we explained some of the rationale behind why we think
4 exercise use data should not be limited to time and distance, and I'll skip
5 some of the slides here. Slide 15 is about intrinsic evidence, and it's all in
6 our papers. Slide 16 is a reproduction of that Claim 1 of '375 where it
7 generically says generate exercise use data and then time and distance, they
8 come in dependent claims. So again, it goes to show that it should not be
9 limited to time and distance only. I'll skip slide 17. And slide 18, just a
10 quick note, Patent Owner's preliminary infringement contentions included
11 pace and heart rate as exercise use data when they accused Peloton's product
12 of infringing this claim limitation. These are all in our records, and slide 19
13 shows Patent Owner's preliminary district court claim construction where
14 they used the term "apparent" amount of exercise in defining exercise use
15 data.

16 Our references, this is on slide 20, we discussed this a little bit, the
17 thinning image in Ray is changed according to the duration and intensity or
18 speed of the exercise. It also generates additional exercise use data such as
19 calories, heart rate, and distance, and time, and all of these are verified and
20 then sent to the doctor or wellness provider in real time. Slide 21 is -- again
21 shows some of the exercise use data that's generated by Morris reference,
22 we talked about footfall force, cadence, pace, heart rate, distance, that's in
23 there. And slide 21 is again, brings up the point that if even if everything
24 else is discarded, the two references, Morris and Ray, they describe
25 generating distance and time. And Morris is very clear that those are

1 verified and sent out to the wellness doctor or stored in a remote storage
2 device.

3 JUDGE DIRBA: Mr. Tehranchi, I'm not sure whether this is a good
4 place to ask you this question, so I'll give you the option to either answer it
5 now or answer it later in your presentation. But I'd like to drill down with
6 you a little bit more into your specific contentions about the specific kinds of
7 exercise use data, and specifically whether or not that exercise use data or
8 what data is generated in response to the sensor detecting the user. I have a
9 number of questions about that. Looks like you kind of talked about that a
10 little bit, but if you prefer to address that later on in your presentation, then
11 that's fine as well.

12 MR. TEHRANCHI: Actually, that dovetails into the next topic,
13 which is the claim construction for validated and non-validated exercise use
14 data. On slide 24, we have the proposed construction, Patent Owner's
15 proposed construction, which we think it basically regurgitates what is
16 already in the claim. And one of the things that's in the claim is that the data
17 is generated in response to movement of the operating unit and the sensor
18 detecting the movement of the user. So Your Honor, I'll skip to -- let's see,
19 to slide 36.

20 JUDGE GERSTENBLITH: Counsel?

21 MR. TEHRANCHI: Yes, Your Honor.

22 JUDGE GERSTENBLITH: I would encourage you to first talk about
23 how the patent, pick any of them, how the patent itself makes this
24 determination, and then go to the combination that you're presenting, if you
25 don't mind.

1 MR. TEHRANCHI: Okay, that sounds good, Your Honor. So -- I
2 can use this slide, I believe this is the right slide for this, slide 30. I
3 apologize, let me make sure that's the one. This should do. So this is a
4 discussion about whether there are more than two types of data or not, but
5 everything in the patent itself talks about just having two data. If the user is
6 being detected, then the data is validated exercise use data, if the user is not
7 being detected, it's non-validated, or in some cases, as it is in slide 29, it
8 calls it un-validated exercise use data.

9 If you go to slide 30 and the flow charts there, that essentially
10 describes how the data is generated. When the exercise machine is running,
11 the controller determines whether a user is being detected or not. If the user
12 is not being detected, then data that's generated is non-validated, and then it
13 does a check to see whether the motor is still running, and then goes back
14 and loops around. If the user detection sensor indicates and the controller
15 determines that the user is being detected, then the data that's generated is
16 validated exercise use data. So this is the way the patent itself describes
17 generating validated and non-validated, and the operations that are described
18 in Figure 6, this is how it explains that, in response to detection of the user,
19 these two types are generated.

20 JUDGE GERSTENBLITH: So Counsel, in the patent on that figure
21 that you just were showing us, is there some sort of special thing that
22 happens? Or is it just hey, I go through this flow chart, if I don't detect the
23 user from the sensor, I call it non-validated, what I was already measuring
24 this data, I don't detect the user, guess what, it's non-validated? If I do
25 detect the user, now I call it validated? It's literally that simple. There is a

1 very short description of it in the '340 Patent, it's on column eight, just a few
2 sentences. There's no sort of special thing that the controller or otherwise is
3 doing besides for simply getting that information from the sensor and then
4 picking a path on this flow chart?

5 MR. TEHRANCHI: That's right, Your Honor. If it is just the data
6 that's being generated, it's non-validated or un-validated and if the user is
7 being detected then the data becomes validated exercise use.

8 JUDGE GERSTENBLITH: Okay thank you, you can keep going
9 where you were going, I just wanted to make sure I was correct about that.

10 MR. TEHRANCHI: Thank you, Your Honor. So in slide 36, I think
11 the question is whether in our references is the controller actually responding
12 to the detection of the user based on the user detection sensor, and whether
13 based on that it's generating the data. And we believe the answer is yes.
14 What we're showing here on slide 36 is Figure 9 of Morris. There's
15 definitely a user detection decision point, and right away, Figure 9 are the
16 operations that are conducted by Morris' processor. And depending whether
17 the user is detected or not, it goes into different parts of that flow chart.

18 If you look at the Morris reference, it goes probably about half of that
19 patent publication, and even the title is about detecting the user and the
20 actions that are taken in response to detecting that user. And it's also very
21 specific that, for example, on slide 37, Figure 6 of Morris, the user detection
22 sensor provides the signals that are perhaps analog signals are translated or
23 cleaned up, they go into the FIT processor that makes a decision whether the
24 user is there or not there, and based on that decision that it determines
25 cadence, footfall force and other types of data, and then it sends that data to

1 the display for processing. So we believe everything that is in Morris, and
2 similarly in Ray, Ray also has a processor, and it actually says you -- record
3 images of the user, and if the user is being detected exercising, then you
4 generate the morphed image and transmit it to the doctor and so on. So we
5 think our papers clearly show that it's the controller that in response to
6 detecting the user that generates this kind of data.

7 JUDGE CALVE: Mr. Tehranchi, one question, with regard to Ray.
8 Then at the time that Ray reports out this image based on detecting the user,
9 then Ray also reports out the time, the distance, and the other exercise use
10 data with the image?

11 MR. TEHRANCHI: That's correct. So Ray is specifically, it
12 explicitly says that the duration of the exercise -- the time and duration of
13 exercise are transmitted along with that verification, but as you can see on
14 the screen, their other information, distance and heart rate and so on are also
15 provided. So our position about the other data other than time is that it
16 would be obvious that all of those would also be reported.

17 JUDGE CALVE: Thank you, and then you're proposing to provide or
18 incorporate or add this capability to Morris to report out Morris' exercise use
19 data, which is also time and distance plus footfall force and cadence along
20 with this image and other exercise use data of Ray, is that correct?

21 MR. TEHRANCHI: That's correct, Your Honor.

22 JUDGE DIRBA: Mr. Tehranchi, to warn you, you have five minutes
23 remaining in the time that you had reserved for your opening. And I have a
24 few questions about this as well, as I had mentioned. My questions aren't so
25 much directed to whether it's the controller that's generating this data or

1 whatever, but instead is the data being generated in response to the user
2 being detected. And I know some of the claims are different on this point,
3 so I'll look at the claims in the '227 Patent for example. So those claims
4 require, I'll take Claim 1, requires that -- generating this validated exercise
5 use data in response to, among other things, detecting engagement of the
6 user with the sensor. So if we were to look at specifically, and I'd like to
7 walk through the specific kinds of data that you say is exercise use data, and
8 hear your position about where these references are teaching, or is your
9 position that they're suggesting -- where are they teaching or suggesting that
10 those specific kinds of data are being generated in response to detecting the
11 user?

12 MR. TEHRANCHI: Yes Your Honor. So the very clear cut answer
13 to that is Ray's thinning image. Ray is very clear that it captures a live
14 image of the user, and if it detects the user that's moving, exercising, then it
15 generates the data. So that is -- you know, our view, unequivocally done in,
16 generated in response to detecting the user. And Ray is also very clear that
17 when it detects that the user stops exercising, then it stops recording the
18 images. So that's --

19 JUDGE DIRBA: What about the other kinds of exercise -- so that
20 portion of your argument makes a lot of sense to me. What about the other
21 pieces of exercise use data that you pointed to? For example, Ray's time
22 and distance? Where is that, or how do we know -- are the references telling
23 us explicitly, or are the references suggesting that that data is generated in
24 response to detecting the user? Can you talk to me more about that?

1 MR. TEHRANCHI: Yes, so the other kinds of data, footfall force,
2 cadence, pace, these are certainly -- they require detection of the user. So
3 they must be generated in response to detection of the user, if the user is not
4 detecting then there's no cadence, there's no footfall force, et cetera. So that
5 covers the second category. The third category is, perhaps time and
6 distance, maybe calories, and we haven't kind of looked at that level of
7 detail, but our position is, because everything else is being generated in
8 response and is being sent to the user, the time and distance and all other
9 exercise use data that is in that third bucket, if you want to call it, it's
10 obvious that those would be sent as well. And to that point, Ray is very
11 clear that says the time and duration of user's exercise is sent along with
12 user's identity and is verified. So that by itself, if not explicit, it definitely
13 suggests that the time is also verified and it's in response to detection of the
14 user that is exercising that is being sent out.

15 JUDGE DIRBA: Okay, so for Ray's time and distance, let's take
16 those specifically, because everyone agrees that those are exercise use data,
17 so it makes it a little easier to talk about that in that sense. Is your position
18 that Ray either teaches or suggests it? And you referred to that, if I'm
19 understanding what you're referring to, there's that passage in column 11 of
20 Ray where it talks about -- I don't have it front of me right now, but it's
21 something to the effect of, it talks about the camera collecting the user's
22 image and then it also talks about that that's sent to a server as well as time
23 and distance of the exercise by the user, something like that. Are there other
24 parts of Ray that also support that interpretation, or is it really just that

1 column 13 that's telling us that time and distance are generated in response
2 to the user being detected?

3 MR. TEHRANCHI: There are other sections Your Honor, and I can
4 provide that. For example, column six, lines 63 to 66, it says this
5 information can be sent to someone in the medical industry or wellness
6 manger to confirm the user's amount of exercise and validating the user's
7 identity. So that's another section that talks about sending the data, the
8 amount of exercise of the user. There is column eight, lines 26 through 28
9 that says using the validation process of the invention, the patient's identity
10 and exercise routine are confirmed simultaneously. It's not explicit what the
11 exercise routine is, but if you look at the other sections of Ray, it talks about
12 having the time and distance and exercise data in there as well. And then
13 moving down to column eight, lines 40 to 45, it discusses that all or part of
14 the comprised aggregate data such as user's identity, duration of exercise,
15 calories burned, and heart rate level are -- and so on, they are transferred to
16 the doctor. So there are other sections of Ray that, if not explicit, they are
17 very close to saying that everything is verified and transmitted to the doctor,
18 and it would be obvious to do so.

19 JUDGE DIRBA: Okay, and then one other question along this same
20 line. One of Patent Owner's argument is that your reliance on Morris for
21 this concept in the reply was improper. Was that argued in the petition? Are
22 you instead saying that that's a fair response to Patent Owner's claim
23 construction? What is your position on Patent Owner's argument in that
24 regard?

1 MR. TEHRANCHI: Your Honor, we believe we have addressed all
2 of those in the petition. I'll be happy, if you have the exact section -- so
3 okay, let me answer it this way. We believe everything is in our petition,
4 and to the extent that we've added anything in our reply, first, I don't think
5 we've added any new sections of Ray or any new arguments, but those
6 arguments are all in response to Patent Owner's arguments there.

7 JUDGE DIRBA: And I apologize, I think I misspoke or might have
8 been unclear with my question. So sort of switching gears to a different
9 argument, which is one of the first things that you said in this line of
10 discussing this limitation, when you talked about Morris, and how Morris is
11 similar to what's in these challenged patents. One of Patent Owner's
12 arguments, or one of the arguments I understood them to be making in their
13 sur-reply -- I think it was in the 1163 case, it was Patent Owner's sur-reply
14 page 13 -- they argued that your reliance on Morris for this aspect of the
15 claim in the reply was improper because it wasn't in your petition. My
16 question to you is, for your response to that. Was that argument about
17 Morris and how Morris is showing in response to, was that in your petition
18 or are you saying instead it might not have been in your petition, but it's fair
19 because it's a response to Patent Owner's argument?

20 MR. TEHRANCHI: Your Honor, I apologize, I don't have the direct
21 answer to you, it's one or the other. And I can look that up and provide it to
22 you, but what I know we've done in our reply is we have done our best not
23 to add any new arguments, new evidence in there, so I think everything that
24 we say in our reply is also supported by the petition, but I could dig up the
25 sections and provide that for you during the rebuttal if needed. But in any

1 case, any arguments that we've made in the reply, everything has been in
2 reply to Patent Owner's assertions, so we haven't gone outside of that for
3 sure.

4 JUDGE DIRBA: It'd be helpful, if you want to address that on your
5 rebuttal that's fine, it would be helpful to have a specific response to that.
6 And I have a few -- I understand that you're already into your rebuttal time,
7 I'll give you more time to answer, because I do have a few additional
8 questions about the limitation that's in, I guess it's independent Claim 1 of
9 the '227 patent, and claim --

10 JUDGE CALVE: Judge Dirba, can I just interrupt please, real quick,
11 just a follow up to your very excellent question. Mr. Tehranchi, when you
12 gather this information for Judge Dirba and the panel, would you please --
13 I'm on the 1164, but all of the IPRs cite back to like paragraphs 45, 44, and
14 et cetera in Morris, where Morris broadly discloses that when the machine
15 detects the user presence it starts the start-up routine, which of course
16 ultimately leads to recording and reporting out exercise use data including
17 time and distance, and then 45 of course talks about the time out procedure,
18 right, as long as it continues to detect the presence of the user, continues to
19 report out this exercise use data, when the user is no longer detected, it says
20 please return to the machine and executes time out, at which point, at some
21 point, eight seconds or what have you, it stops recording. So that sort of
22 data would be helpful, to myself at least. And I'm sorry to interrupt, but if
23 you could do that please, thank you.

24 MR. TEHRANCHI: Thank you, Your Honor. Judge Dirba, I did not
25 write down the sections of the reply that you are referring to.

1 JUDGE CALVE: I think you were talking, certainly you discussed in
2 the IPR 1164 paragraphs 45, 44 talk about the start-up procedure, and
3 anything thereafter. There were some sections where you were addressing,
4 in the 1164, I think it was limitation 1h, when you stopped recording, that
5 sort of context, to the extent that was presented in the other IPRs. But I'd
6 like to at least hear that for mine as well, please. And that was to follow
7 along to Judge Dirba's question because I was very interested in the line of
8 questioning that she was pursuing, and I thought that might complement it.
9 That's all.

10 JUDGE DIRBA: And to answer your question, Mr. Tehranchi, that
11 the portions of your reply that Patent Owner took issue with were, and I'm
12 looking at the 1163 case, but page 14 of your reply through page 17 of your
13 reply.

14 MR. TEHRANCHI: Thank you, Your Honor, I'll dig that up and
15 provide that in the rebuttal. If you don't have any further questions about
16 these items, I'll actually turn --

17 JUDGE CALVE: Mr. Tehranchi, yeah, if it wasn't clear, paragraph
18 44 and 45, again, I think we got that, but 44 is the start-up program, starts up
19 and it detects, 45 continues along that line that as long as the user is detected
20 it continues to report out exercise use data, and then it has the stand down
21 procedure. And anything, you pulled together some nice citations on that in
22 the 1164, that seems pertinent to the issue that we're discussing, because it
23 seems that Morris largely deals with a lot of these phenomenon, it does not
24 necessarily clearly put it to a communication interface if it goes to a third
25 party, although it actually does communicate to a computer and a memory.

1 So the teachings seem to fit nicely, but whether you view this 44, 45 as the
2 hook that pulls in Ray, I realize that's your primary reference you're relying
3 on, or whether you use them both, complementary, I would just like to see
4 where you put that out there.

5 MR. TEHRANCHI: Will do, Your Honor.

6 JUDGE CALVE: Okay cool, thank you.

7 MR. TEHRANCHI: And I'd like to turn the presentation over to my
8 colleague, Tyler, to very quickly -- I realize we are probably out of time, but
9 if we're running into our rebuttal time, we'd appreciate if we could extend
10 that a little bit so Tyler can discuss the presentation.

11 JUDGE DIRBA: We can do that. I do have a question for you first,
12 Mr. Tehranchi, about the limitation that's in Claim 1 of the '227 patent, and
13 Claim 2 of the '340 patent, and that's the limitation that requires generating
14 non-validated exercise use data in response to not detecting the user. And
15 there's been a lot of discussion about what validated and non-validated
16 exercise use data is. I suppose my question is, is your position that we
17 ascribe meaning to those terms, validated and non-validated? Or are those
18 just designators, like first and second data?

19 MR. TEHRANCHI: In our view, the patent itself, as we went
20 through, does not provide any kind of a specific identification means or way
21 of saying it's validated or non-validated, and in fact, it describes that the
22 default data is un-validated or non-validated. We, basically for non-
23 validated exercise use data, it's just the data that's produced when the user is
24 not being detected and the treadmill is running, there is no special treatment

1 associated with it, none of the claims require anything other than generating
2 it. So it's just generating those while the user is not on the treadmill.

3 JUDGE DIRBA: And I suppose maybe we're getting close to the net
4 question that I have on this. So you point to, for those limitations you're
5 pointing to the data that's generated by Morris in that shutdown time period,
6 the six to eight seconds between when the user leaves the treadmill, Morris
7 enters that mode where it's checking in for that user before it shuts the
8 treadmill down, right? I think it's a message on the screen or what have you.
9 And you're saying that the data that's being generated at that time is non-
10 validated exercise use data, but why isn't that validated exercise use data or
11 just exercise use data? In other words, it doesn't seem that Morris -- I didn't
12 see anything in Morris, and I didn't see anything in what you pointed to, that
13 distinguished that data from any other data that was generated by Morris'
14 treadmill. Is it your position that it doesn't matter that that's not
15 distinguished? Or are you saying that Morris does distinguish it? Can you
16 address that?

17 In other words, I'll try to phrase that question a little more clearly. In
18 Morris, it seems that this data is being generated during that shutdown time
19 period, and it's just data. It's not treated any differently than the data that
20 was created beforehand. And what I'm trying to understand is why is that
21 non-validated exercise use data, when the data that was created beforehand
22 is validated exercise use data? How do we know that, and how can we come
23 to that conclusion?

24 MR. TEHRANCHI: So Your Honor, I think the missing link here is
25 actually we need to look at the combination. So in the combination which

1 relies on Ray, Ray is very clear that as long as the user is exercising, it
2 produces the data, sends it to the third party, the doctor, et cetera, and when -
3 - and it's subjected to that validation process. So all of the data that's
4 generated in the combination, all of the data that's generated during that time
5 when the user is being detected would be validated exercise use data that is
6 reported out or saved. But when the user stops exercising, then the position
7 is, during that time when the user is not being detected and the message
8 flashes on the screen that says oh, come back, the treadmill is still running,
9 that's very clear in Morris. And the position is, well, during that time it
10 would be obvious that the data that doesn't depend on the user's presence
11 such as time, distance, or speed perhaps, that kind of data is still being
12 generated. So the claims are very specific, they say only generate non-
13 validated data, and that data is not subject to the validation process of Ray,
14 and it's not being reported out anywhere, to the doctor, so that data is non-
15 validated data that's being generated.

16 JUDGE DIRBA: So are you saying that that concept is taught or
17 suggested by these references, or are you instead saying that that would be
18 an obvious modification given what the references tell us?

19 MR. TEHRANCHI: It is taught or suggested. Morris does not say
20 whether -- explicitly doesn't say when the user is not being detected and the
21 treadmill is running whether time and distance are still being displayed on
22 the screen for example, but our position is that it's one of the two. Certainly
23 nothing is being reported out to the doctor, but the question is whether it's
24 obvious that time and distance would still be generated while the treadmill is
25 running, and there's only two choices, it is generated or it's not generated,

1 and it doesn't really make sense that the controller would stop, shut down
2 generating the data, because the user could come back and they could
3 resume the exercise, and also maybe it's reporting on the screen, perhaps,
4 when the user sees it and comes back. So it's the obviousness position more
5 than explicit explanation in Morris about generating that data.

6 JUDGE GERSTENBLITH: And Counsel, I have a question for you
7 on this. I think, tell me if I'm missing something here, but I think what
8 you're saying or at least part of what you might be saying is that Morris has
9 the step of checking whether it's getting information from its sensor and it's
10 generating this user data by the machine running, and when it gets the
11 answer from the sensor hey, we're getting a signal that suggests somebody is
12 on this, and it's still generating exercise data. It gets that signal, that data
13 that's generated can be called validated. In other words it's not changing the
14 substance of the data, unless we're talking about cadence, okay, and things
15 like that, let's just focus on distance and time, that the machine is running
16 and the sensor comes back, I don't see a person, I don't have a user, so it's
17 still generating the same data that was generated before distance and time,
18 it's just what label is somebody going to put on that data? And the patents
19 decided to call that data non-validated, because the user sensor didn't say
20 yes. And in the same context in Morris, when it goes to that user sensor, if
21 the user sensor says yes, we do see signs that somebody is there, that same
22 data is being generated in response to that detection, just like it is in response
23 to the other detection. There is still data, but now we're going to call it with
24 a label, because the patents use a name for it. It's the same data, it just has a

1 name, all we're talking about is a semantic name that says it's now
2 validated. Am I missing something in what I'm saying?

3 MR. TEHRANCHI: No, Your Honor, you're absolutely correct, but
4 what I would add on top of that is, when you bring in Ray, Ray is very
5 explicit, right? So it says you add a signature or a verification that this in
6 fact the user that did the performance and the exercise data corresponding to
7 that. So all of your assessment about Morris is correct, but I think our case
8 is doubly strong because now we have Morris on top of all of this that is
9 very explicit about validation.

10 JUDGE GERSTENBLITH: Right, Ray on top of it, is what you're --

11 MR. TEHRANCHI: Ray, Ray, I apologize.

12 JUDGE GERSTENBLITH: Okay, thank you.

13 MR. TEHRANCHI: Okay. Your Honors, is there time for Tyler to
14 maybe for five minutes discuss a couple of items?

15 JUDGE DIRBA: Yes, why don't we -- we will give you some
16 additional time to make up for the number of questions that we asked you
17 today. This was a very helpful discussion for us, and your answers were
18 very helpful. We'll also give a corresponding amount of time to Patent
19 Owner. The panel will confer about that during our recess after the end of
20 your presentation, but you can take up to, let's say, five minutes now to
21 continue discussing.

22 MR. TEHRANCHI: Thank you very much.

23 MR. KENDRICK: Thank you, Your Honor. And as Mr. Tehranchi
24 said, I'll be discussing some additional grounds. And, unless the Board has
25 any additional questions, I'll start with ground two, which adds Cox to the

1 combination of Morris and Ray, and I'll share my screen so the Board can
2 see this. So ground two in the '227 and '375 patents adds Cox's current
3 sensor to the combination of Morris and Ray that Mr. Tehranchi has been
4 discussing.

5 Cox teaches that a current sensor that's located between the power
6 source and the motor of a standard treadmill that includes an ESA tool or
7 system that allows the sensor to analyze a user's gait or running form and
8 provide feedback to the user. It is able to detect small variations in the
9 user's running form so that it can very accurately provide feedback to the
10 user. Outside of its arguments for ground one that Mr. Tehranchi's been
11 addressing, Patent Owner does not dispute that Cox in combination with
12 Morris and Ray discloses the challenged claims for ground two in the '227
13 and '375 petitions. Instead, Patent Owner's arguments are limited to
14 whether a person of skill would be motivated to combine Cox with Morris
15 and Ray, as shown on slide 55 here. And Patent Owner's arguments for
16 motivation is that a person of skill would not be motivated to combine an
17 expensive sensor of Cox into Morris and Ray because that would be
18 unnecessary redundancy. Petitioner respectfully disagrees and believes that
19 a person of skill would be motivated to add Cox's current sensor to the
20 combination of Morris and Ray for at least three reasons, summarized here
21 and discussed at length in our papers.

22 The first is that Ray and Morris disclose that a treadmill can have
23 multiple sensors and that multiple sensors can provide benefit to the user and
24 that it improves the feedback that the systems will provide and the analytical
25 capabilities of these systems. Specifically, a person of skill would be

1 motivated to look at Cox's current sensor and its ability to detect small
2 variations in the user's workout so that it can enhance Ray's thinning image
3 and how accurate Ray's thinning image is in providing feedback to the user
4 based on their intensity, duration, and speed of their exercise. And Cox
5 teaches that -- such that a person of skill would recognize that adding a
6 current sensor could be done with a reasonable expectation of success here,
7 given that all three references disclose the use of multiple sensors.
8 Moreover, Morris and Cox both discuss gait analysis at length, where Cox
9 harps on the importance of gait analysis to somebody in physical medicine
10 and how important that feedback is for the user. A person of skill would
11 notice these teachings in Cox and Morris and be motivated to include Cox's
12 current sensor so that a user can receive better and more enhanced feedback
13 through Cox's ESA tool so that they can improve their gait and running form
14 as they exercise.

15 JUDGE CALVE: Mr. Tyler, if I could just interrupt real quick,
16 please, I apologize.

17 MR. KENDRICK: Yes, Your Honor.

18 JUDGE CALVE: Your first point, that these sensors of Cox can
19 prove accuracy and add redundancy, where's the delineation? At some point
20 I think you're saying that Cox's sensor has more sensitivity or determines
21 gait problems as opposed to physical issues that the base reference wouldn't,
22 the foot fall force. So that seems to be an improvement that's not found in
23 Morris. Is that correct, and if so, where is that overlap or redundancy? I'm
24 not sure you need both, but I'm just curious how you delineate the two?

1 MR. KENDRICK: I think that Cox is, the benefit there would be Cox
2 has a single sensor, and if you look at table one in the Cox reference
3 discussed the ability to show a user's running speed, if they're walking,
4 jogging, or running, and the incline that they're running at, and so I agree
5 with Your Honor, you would have that increased sensitivity that would
6 allow you provide more enhanced accurate feedback that Morris' pressure
7 sensors may not be able to provide.

8 JUDGE CALVE: That's right. There was an issue or some language
9 you pointed to in Morris that said on an incline perhaps Morris' footfall
10 sensor wouldn't work optimally or as accurately, so that is part of your
11 redundancy improvement, additionally right?

12 MR. KENDRICK: That's correct, Your Honor.

13 JUDGE CALVE: Okay, thank you, I apologize for interrupting.
14 Your points are well taken.

15 MR. KENDRICK: No problem, thank you, Your Honor. And one
16 final point on Cox is that Cox teaches that its current sensor and ESA system
17 could be fully integrated into a standard treadmill and that there's no
18 sophisticated implementation required, no risk to the user, and that it's
19 solution would be inexpensive, and so we believe for those reasons a person
20 of skill would be motivated to include Cox's current sensor in the Morris
21 Ray combination that Mr. Tehranchi discussed at length. Unless Your
22 Honors have any additional questions we will use the rest of our time for
23 rebuttal, thank you.

1 JUDGE DIRBA: Thank you all. As I mentioned before, we'll take a
2 brief five-minute recess. I have the time as 2:23 p.m. eastern, we will
3 resume in five minutes. We're adjourned for now.

4
5 (Whereupon, the above-entitled matter went off the record at
6 2:23 p.m. and returned at 2:29 p.m.)

7
8 JUDGE DIRBA: Before we begin again -- so we're back on
9 the record now -- Mr. Tehranchi, is there anyone else that we're waiting on,
10 on Petitioner's side?

11 MR. TEHRANCHI: No Your Honor, I believe Mr. Hanewicz is also
12 on the line.

13 JUDGE DIRBA: Excellent, and then Mr. Brunner, is there anyone
14 we're waiting on for Patent Owner's side?

15 MR. BRUNNER: No, we're ready.

16 JUDGE DIRBA: All right, we will give each party an additional 23
17 minutes to accommodate the number of questions that we asked of
18 Petitioner's counsel. So Mr. Brunner, that will bring you to a total of 83
19 minutes, you can choose how to divide into your primary and your rebuttal
20 as you choose, provided that it's half and half between the two, and
21 Petitioner you will have 15 minutes for your rebuttal. Are there any
22 questions from either side regarding that? Hearing none, Mr. Brunner, how
23 much time would you like to reserve for your rebuttal?

24 MR. BRUNNER: Yeah, given this, I'll say 15 minutes.

25 JUDGE DIRBA: Okay, and you may begin when you're ready.

1 MR. BRUNNER: Thank you, Your Honor. So my name is Shane
2 Brunner, I will address the claim construction issues and Mr. Laing will
3 address the application to the grounds. So we'll bring up our presentation
4 here. So as far as the claim construction issues, obviously we all know what
5 those issues -- what the three are, it's exercise use data, validated exercise
6 use data, and non-validated exercise use data. Going to the first term,
7 exercise use data. It's a term in every claim at issue here. Our construction
8 is exercise use data is data that would represent an amount of exercise of the
9 user. At least in briefing, Petitioner had no construction, they were just
10 offering criticisms. It sounds like now they agree with the construction that
11 the Patent Owner has proposed, but they still seem to take issue with the
12 scope and what that means. So I'll provide our points on this.

13 A notable thing here is that neither side has argued that this is a term
14 of art or there's some accepted plain and ordinary meaning outside of the
15 scope, outside of the patents, so, you know, we look to the specification first.
16 And the specification supports the Patent Owner's position on this. Again,
17 we looked at the definition that's provided in the specification where it says
18 the exercise data would represent the amount of exercise of the user. The
19 specification goes on to describe then the two types -- gives examples of two
20 types of exercise use data. So it discusses the amount of time and distance,
21 but those are just examples. We're not trying to limit exercise use data to
22 just time and distance, as is applicable to the art that's been raised, calories
23 was an example of another metric that is exercise use data, because it
24 represents an amount of exercise. And further, I wouldn't say that it's even

1 limited to that, there may be other metrics that represent an amount of
2 exercise. For example, total steps may represent an amount of exercise.

3 It looks like that the Petitioner is now taking issue with ‘represents an
4 amount,’ so they’re construing the construction a bit here. An amount is a
5 total number, it’s a quantity, an amount isn’t just something, it is a total
6 number and quantity, something that’s quantifiable in an amount of exercise.
7 And then I also heard that there’s -- and this almost seems like a new
8 argument, so I’m not sure this was briefed, but represents, represents
9 somehow broadens this. Well, what is it to represent? It’s something that
10 represents something and corresponds to or signifies, so I don’t see that
11 ‘amount’ or ‘represents’ somehow turns things like pace, heart rate, cadence,
12 footfall force, I don’t see how those get turned into an amount of exercise
13 based on represent.

14 Now I think another thing that’s important to look at here is the
15 context of the patent. Obviously the claim construction doesn’t take place in
16 a vacuum. The Patent Owner’s patents are about validating an amount of
17 exercise and providing that to a third party, and because of that, the insurer
18 would be providing a benefit to the user, and maybe a reduction in premiums
19 for performing an amount of exercise. So metrics such as pace, cadence,
20 footfall force, heart rate, those don’t convey an amount of exercise. The
21 point was brought up, does it convey that there was some exercise? At best.
22 If I say that my heart rate is 120, I could have generated that on my couch.
23 If my cadence is 50 steps per minute, that could be generated over one step.

24 JUDGE GERSTENBLITH: Counsel, on your couch, how are you
25 going to get your heart rate up to 120 without doing any type of exercise?

1 MR. BRUNNER: Well I think we have to define who the person is,
2 because I know some people in the condition that if they sat up from the
3 couch, their heart rate would go up to 120, so --

4 JUDGE GERSTENBLITH: But isn't standing up exercise?

5 MR. BRUNNER: Is standing up exercise? Well, that's not the type
6 of exercise that --

7 JUDGE GERSTENBLITH: You're disputing and discussing what
8 could represent an amount, yet you have not quantified -- you haven't
9 described what 'amount' means, number one. If I just say I have a time of
10 one hour, what amount of exercise is that? How are you going to define
11 that? That doesn't mean anything without any other data points. I could
12 have been sitting on my butt for an hour, is that exercise? Does that
13 represent an amount of exercise? I could be walking a distance of a mile,
14 what amount of exercise is that, compared to if I'm running a mile? All of
15 these points are individual data points, they don't specifically give you a
16 quantifiable -- if you're saying an amount of exercise, you have to know,
17 what is exercise? Movement?

18 In that example you gave me, sitting on the couch and the person gets
19 up, they just moved, so that's exercise. And like you said, for some people
20 just standing up and sitting down would count as exercise. So I'm having a
21 hard time understanding the distinction you're drawing, but I'll leave you
22 with this. Do you agree that Ray's image of the user, as it thins, represents
23 an amount of exercise because it is based on an intensity level and other
24 underlying data that Ray must somehow have code to determine okay, how
25 much are we going to adjust this image based on what we are measuring in

1 terms of data? So under your definition, doesn't Ray's image change
2 represent an amount of exercise?

3 MR. BRUNNER: Your Honor, I disagree with you on that, and you
4 brought up several points that I'd like to address. To address the last one
5 first. Ray's virtual image does not represent an amount of exercise. Again,
6 at best it may represent that there was exercise, but we don't have a scale
7 that says if the body reduces in size by 30 percent that reflects a mile of
8 running or 10 minutes of running on Ray's treadmill. There's no scale to
9 say what the amount of exercise is. Now, you said before, well you could
10 say one hour and sit on the couch. That's exactly the problem that the
11 patents seek to solve, which is you can turn on the treadmill, or a motor
12 powered operating unit such as a treadmill, maybe other exercise equipment
13 has that as well, and you can generate the data, you can show an hour, and
14 that does not reflect -- and that one hour would be exercise use data, but
15 what the invention does is it validates it, it says yes someone was actually
16 running to generate that on the -- running on the treadmill, that was
17 validated, it was verified by the treadmill controller. So --

18 JUDGE GERSTENBLITH: So Counsel, let me take you backwards
19 for one second. I understand what you're saying about the amount and the
20 purpose of the invention. Wouldn't you agree that Ray must have some
21 underlying code that corresponds and correlates the intensity to how the
22 image is changed? In other words, how would Ray do this? Don't you think
23 it would have to have some programming that's based on that? Even if it
24 doesn't tell us what it is, it's there. Or you tell me, how is Ray doing this if
25 it doesn't have some type of scale that relates some of these data points to

1 the image, and maybe there's more than one, maybe there's multiple factors,
2 we don't know, but I'd like to know how you could say it doesn't do that,
3 and yet it does it, it changes the image.

4 MR. BRUNNER: Well Your Honor, first thing I'll start off is that
5 Petitioner didn't argue this, and their expert said nothing about this. And in
6 fact, there is no testimony in the declaration or in the deposition where their
7 expert says that Ray's virtual image represents an amount of exercise. He
8 simply calls it exercise use data under their previous understanding, which
9 exercise use data encompassed things like pace and footfall force. So we'll
10 start there. What the underlying --

11 JUDGE GERSTENBLITH: Counsel, let me take one of your points at
12 a time. First, there was no way for Petitioner to do that in the petition,
13 because the construction was proposed in your Patent Owner response. So
14 nobody would expect Petitioner to be describing the word amount when this
15 didn't come up until the response. Second, if I go to the petition, on page 26
16 of the petition in the 65 case, in talking about Ray's exercise use data with a
17 virtual image, Petitioner specifically says the image was thinned based on
18 the intensity, speed, and/or duration of the user's workout. So to me, that's a
19 specific argument that's explaining how is the image being thinned, it says
20 based on those things.

21 So I don't agree with either of the two things you just said. Now you
22 can go onto the next thing you want, that's fine, or you can respond to this,
23 not a big deal. Not trying to give you a hard time, I just want to point out, if
24 I see it there, it's there, and if you argue that they didn't argue something

1 before they were responding to an argument that you all raised, then I'm
2 going to point that out too. Go ahead.

3 MR. BRUNNER: Yeah, and my point is that there is no evidence in
4 the record that Ray's virtual image represents an amount of exercise. I
5 understand and don't disagree that Ray says that the image thins and become
6 more aesthetically pleasing based upon the duration and intensity, but that
7 does not represent an amount of exercise. The type of amount of exercise
8 that's relevant in the context of this patent is a number or a quantity that can
9 be verified and validated. The virtual image, as Ray says, is for motivation,
10 that's what it's for, it's for motivation. It's not to convey the amount of
11 exercise done to the user or to a third party. In fact, that's why it shows on
12 the screen next to the virtual image time and distance, because the virtual
13 image doesn't tell you the amount of exercise.

14 JUDGE GERSTENBLITH: Go ahead. I don't need to keep pushing
15 the same thing, whether I agree or disagree.

16 JUDGE CALVE: Counsel, this is Judge Calve, are you then asserting
17 an interpretation that excludes live feeds of exercise data? Are you reading
18 into the claims that this validated exercise data has to be stored somewhere
19 and then in the quantum, once the exercise is finished it's then reported out,
20 is that why you're arguing about an amount? It can never be a real-time feed
21 that's showing people exercising, it has to be once it's all done? Because I
22 don't see that in the claims.

23 MR. BRUNNER: We are not arguing for anything that is not in the
24 claims, so that is not the point. The point is that exercise use data is an
25 amount of exercise, and nothing more than what the claims require.

1 JUDGE CALVE: So it could be an amount of exercise is the virtual
2 image moving for one second, that's one second of a person exercising, why
3 is that not an amount? And there's no units given in the claim for what this
4 exercise use data comprises in terms of amounts, is there?

5 MR. BRUNNER: Well you just -- so Your Honor, you just said, one
6 second, so you just quantified the amount. So yes, one second is an amount,
7 but the virtual image alone is not an amount. So I'm trying to -- maybe I'm
8 misunderstanding your point.

9 JUDGE CALVE: No, no, the virtual image would be frames per
10 second, but the virtual image, I think in Petitioner's contentions, the virtual
11 image is accompanied by time data, so the virtual image, if not timestamped
12 at least is coordinated with time data during which the user is engaged, so
13 it's offered up with distance and time. You're saying that's not an amount?

14 MR. BRUNNER: Correct, the virtual image is not an amount. Time
15 and distance is amount, and Mr. Laing will get into the point of it's not
16 validated or non-validated, but one other point I want to bring up regarding
17 the virtual image being an amount, Mr. Rawls was asked at his deposition,
18 point blank, does the virtual image convey an amount of exercise, and he
19 couldn't answer that yes, because the virtual image alone does not provide
20 an amount of exercise.

21 JUDGE GERSTENBLITH: So Counsel, if you take a look at Ray
22 column six, line 63, I can give you a second to get there before I say
23 anything about it.

24 MR. BRUNNER: Okay, I have it, Your Honor.

1 JUDGE GERSTENBLITH: Okay, so in this paragraph, this
2 paragraph is talking about the interface on the camera, exercise machine, et
3 cetera, method of exercise is confirmed, and then if you get to line 63, it says
4 this information can be sent to someone in the medical industry or wellness
5 manager to confirm the user's amount of exercise and validating the user's
6 identity. And when it refers to this information, part of that information at
7 least is what's discussed in that paragraph just before, which is about using
8 the camera to have the image of the person there. So I think you would at
9 least agree that in this sentence, whatever this information is in Ray that's
10 being sent to the third party, it at a minimum represents an amount of
11 exercise. And remember, we are talking about represents an amount,
12 nobody is saying it has to be an amount, it just needs to represent an amount.
13 But I wanted to draw your attention to this disclosure, which seems to speak
14 specifically to 'amount,' just in case that was a sticking point.

15 MR. BRUNNER: Yeah, well Your Honor, I mean our position on
16 this, we don't disagree that Ray talks about transmitting the data that
17 accumulated that would include the time and distance. But again, and Mr.
18 Laing can address this in more detail, but there's no mechanism in Ray that
19 validates the time and distance or non-validates the time and distance. So
20 when it says it confirms the amount of exercise, it's really the same as the
21 problem in the prior art. If the treadmill is running, time and distance are
22 being generated and accumulated and there's no distinction between whether
23 the person is on the treadmill or off the treadmill, and there's no disclosure
24 in Ray that says when the camera stops, that the treadmill belt stops. It
25 doesn't say that. So we can get -- the time and distance could continue to be

1 generated, and there's no mechanism that says hey, wait, nobody's here, the
2 sensor says nobody's here but the belt's running, and then the controller says
3 alright, we have to non-validate this, that mechanism is not present in Ray
4 either. So if this passage that you referred to, it validates the identity of the
5 user, but it is not in the context of the patents at issue here performing a
6 validation.

7 So I'll move on to the validated exercise use data and what that means
8 so we can at least make sure there's clarity on our position. So we go to our
9 first slide here, that's slide eight, again, our position is that validated
10 exercise use data is where the controller is configured to generate validated
11 exercise use data -- or the claim language, I'm sorry. The controller is
12 configured to generate validated exercise use data, and the key, in response
13 to movement of the operating unit relative to the base, and the sensor does
14 detect engagement of the user with the operating unit. Our construction of
15 that is exercise use data that has been determined to have occurred by the
16 controller in response to the sensor detecting a user engaging with the
17 moving belt. Again, the Petitioner had offered no construction here, no one
18 contends that validated exercise use data is a particular term of art. Again,
19 so we look at the specification.

20 JUDGE DIRBA: Mr. Brunner, apologies. An additional question
21 about your construction for this term, are you construing just the term
22 'validated exercise use data' or are you construing the phrase as it appears in
23 these patents?

24 MR. BRUNNER: It's really the phrase, because -- and the point is,
25 we felt that 'in response to' was being read out of the claim language in the

1 Petitioner's application of the prior art. So we wanted to make sure that was
2 in our construction, because that is the point of emphasis here. So it's really
3 the phrase, the phrase in the claim language. So if we go to the next slide,
4 go to one more slide after this.

5 JUDGE CALVE: Mr. Laing, before you segue into this next topic,
6 this is all very helpful, back to the image issue. I just wanted your thoughts
7 on this one point. So, I have the '375 patent, but I assume they all have
8 similar descriptions of, in the background that U.S. Patent 8,287,434 and the
9 other '198 patent disclose apparatus that provide exercise use data for a user,
10 and I just wanted your thoughts on the '434 patent, which in the 1164, I
11 think it is Exhibit 1017. At column 15 -- and you may, if you don't have
12 time now, you can certainly pull this in in your rebuttal, at column 15 lines
13 14 to 17 it talks about video games showing the user a real-time better way
14 to perform exercise at the same time to adjust resistance level of exercise to
15 maintain the heart beat in a safe range. That sounds a lot like -- the prior art
16 that you referenced as illustrating exemplary exercise use data itself seems to
17 encompass or include some form of images of users exercising as exercise
18 use data. What is your position on that?

19 MR. BRUNNER: So getting back to what the reference in the '375
20 patent says about the -- it was the '434 patent that you were referring to
21 here?

22 JUDGE CALVE: Yes, correct, the '434, and it was Exhibit 1017 in
23 the 1164 IPR.

24 MR. BRUNNER: Yeah, so what the Petitioner's argument here was
25 is that -- we didn't deny that that discloses exercise use data. And in fact,

1 that reference, I mean it does disclose exercise use data, it talks about time
2 and distance. So that is exercise use data. And it also discloses other
3 exercise information that is not exercise use data, it's not an amount of
4 exercise, but it's exercise information. So they're referring to an image in a
5 video game is not exercise use data. And I'll say, I won't profess to be the
6 expert on the '434 patent because we've only looked at it to the extent to
7 which Petitioner argued about it, but, you know, to the extent it is similar to
8 a Ray, where it's just an image of someone's that exercised, where it's
9 unscaled and you can't determine the amount, then that might be exercise
10 information, but it is not exercise use data.

11 JUDGE CALVE: Okay, thank you, and there's one other point that
12 I'm a little confused on, this is in the patent itself, this is the '375 patent. In
13 your Patent Owner response you talked about exercise use data being
14 apparent, I understand that. When I look at column five, starting about line
15 63, you talk about validated exercise use data being an amount of time that
16 the user is detected as engaging, I understand that too.

17 But is the amount of time, when the user is no longer detected -- my
18 question is, how can you have exercise use data that encompasses non-
19 validated situations? You seem to have illustrated or described exercise use
20 data as a time when user is detected exercising, so it seems like you
21 wouldn't have, they can't be detected or they can't use the equipment when
22 they're not detected. So are you limiting time just to validate it, or can there
23 be non-validated time? See, the other way to look at time is you're just
24 looking at how long the motor is running, but that's not what you're saying

1 here, you're tying time to detection of the user using the equipment, that
2 confuses me.

3 MR. BRUNNER: Right, so I mean maybe a way to think about this is
4 through a Venn diagram. So you have a large circle that's exercise
5 information, within that large circle you have exercise use data that's an
6 amount of exercise, within exercise use data you have our invention, you've
7 got validated exercise use data and non-validated exercise use data, but those
8 two don't take up all of exercise use data, there's also just exercise use data
9 that has been neither validated nor non-validated.

10 And that's really what Figure 6 in the patent shows, is that there is
11 that -- and that's the prior art, the prior art is all exercise use data. It doesn't
12 distinguish between, you know, the controller doesn't distinguish and make
13 a determination as to when the user was exercising and when the user was
14 not exercising, and therefore a person could just sit idly by as their treadmill
15 ran and you could accumulate time and distance, exercise use data, but it
16 was not validated. So the risk of cheating existed. So if I look to, and you
17 know, maybe getting into validated exercise use data, and what's stated in
18 Figure 6, and I think --

19 JUDGE CALVE: Before you jump into Figure 6, you're right, in the
20 prior art, as you described in the background, the time and the distance seem
21 to be measured off of the function of the motor's operation as interpreted by
22 the controller, I understand that. So you're inferring, the person turns on a
23 routine and runs it and leaves, and it generates a distance and it generates a
24 time, neither of which involve the user, I understand that. When I turn now
25 to your actual invention, you now seem to be changing horses and calling

1 time of use, limiting it strictly to when the user is engaged with the
2 equipment, it's measuring how much the user uses this equipment, it's no
3 longer measured by the operation of the motor, right? So that seems to be
4 right there, you're having two different uses within exercise use data, and
5 that seems to be a little unusual, where you have two different approaches.

6 MR. BRUNNER: Your Honor, I mean maybe I can best explain this
7 by going through Figure 6.

8 JUDGE CALVE: Okay.

9 MR. BRUNNER: So in Figure 6 we start off at 104, 104 is the
10 treadmill turned on to its operational state, and the belt is running. When we
11 get to then 108, that's the controller -- 108, the controller receives the sensor
12 data regarding user engagement with the moving belt. At 112 the controller
13 is analyzing that data, and it says okay, belt is moving, person is detected, I
14 will call that validated -- I will generate validated exercise use data, so a
15 determination is made by the controller at 112.

16 JUDGE CALVE: You've explained, I think I understand it, it's what
17 Judge Gerstenblith was saying. You have the controller generating exercise
18 use data of time and distance while the motor is running, and then when the
19 user is detected you now slap a label on it and says that's validated, and
20 when the user isn't detected that time and distance are non-validated, I think
21 that's been your position, that's probably.

22 MR. BRUNNER: It's not, I guess it's not necessarily slapping a label
23 on it. I mean the controller is taking that data from the sensor and saying
24 okay, user detected during this period of time, I'm going to validate that
25 exercise use data. Or to the contrary, if the belt is running and the sensor

1 says I'm not detecting somebody right now, the controller says okay I'm
2 making a determination, that's non-validated exercise use data. But in the
3 prior art, what happens is that it's neither validated nor non-validated, it's
4 just exercise use data, and that is the problem. So there is a determination
5 being made here by the controller. It isn't just a world where if you're
6 exercising, if the person is actually exercising, well then that's exercise use
7 data, that's validated exercise use data, and if a person is not exercising but
8 the belt's moving well that's just non-validated exercise use data. But that's
9 not it. It is the controller making a determination based upon the
10 information that it's receiving from the sensor.

11 JUDGE CALVE: And what is the evidence of the validation? It's
12 that it includes that validated exercise use data is subsequently reported to a
13 communication interface? Is that the evidence of the validation, or is there
14 something else that identifies the thing?

15 MR. BRUNNER: Certainly it can be, and you know again I think we
16 have to go back to the claims, the various claims say various things as to
17 where the data is transmitted, and it doesn't necessarily need to be
18 transmitted anywhere, in, I guess in the way I would say it is, some of it may
19 be a backend -- something taking place at the controller never getting
20 reported. For example, the non-validated exercise use data portion may
21 never end up at a display. It could if you wanted to. It may never get
22 transmitted to a third party, but you could if you wanted to. But at the
23 controller level what's going on is that it is considered -- the controller
24 determines that that data, that time, that distance, those calories, that would
25 otherwise be accumulating is non-validated and shouldn't be added to the

1 validated amount which would be important to the user or to the third party,
2 the insurer, or any other interested party that might be applicable to these
3 claims.

4 JUDGE CALVE: Okay, thank you.

5 MR. BRUNNER: I'm looking here if there's any other -- oh, so I did
6 want to make the point on the, you know, Judge you had said that you
7 understood the 'apparent amount,' I just want to make that clear what we
8 said, and we say it in our briefs regarding the apparent amount of -- that
9 exercise use data is an apparent amount of exercise, it is, that's not wrong. It
10 is -- it would otherwise be exercise use data, but it's not validated or non-
11 validated, so we don't really know if there's been exercise or whether it
12 hasn't been exercise, it's just apparently exercise until it goes through the
13 process where the sensor and the controller communicate and either validate
14 it or non-validate it.

15 So that is all that I have on the claim construction portion, unless Your
16 Honors have any questions, I can turn it over to Mr. Laing.

17 JUDGE DIRBA: Question related somewhat related to claim
18 construction, although it might sort of slide into the discussion of how this
19 applies to the art. When we're looking at validated exercise use data and
20 non-validated exercise use data, is it your position that basically the patents
21 are requiring the controller to create two buckets of data? So the same data
22 split into two separate buckets? So we have a distance that's validated and a
23 distance that's non-validated, or a time that's validated and a time that's
24 non-validated. Is that what you're getting at with the constructions that you

1 have of validated and non-validated? Do you agree with that?I Is that not
2 what you're saying? Can you talk to me about that?

3 MR. BRUNNER: Yeah, so if I'm understanding your question
4 correctly, I agree with it. I mean the exercise use data is coming in and then
5 the sensor detects the movement and the user engagement, if the person is
6 there, that's reported to the controller, the controller puts it into the validated
7 exercise use bucket. If the treadmill belt is moving but the sensor does not
8 detect a person present, the controller says well then that's non-validated
9 exercise use data. Now I guess the one thing to note is, when you ask this
10 question, it depends on the claim as well. Some claims have non-validated
11 exercise use data and validated exercise use data, some just have validated
12 exercise use data.

13 In the context of the '375, it looks at, it doesn't use the terms validated
14 exercise use data and non-validated exercise use data, but it does still use
15 that same action by the controller to make the determination in response to
16 the information received from the sensor. So yes, it is putting these things in
17 buckets, but it depends upon the claim, to say if there's two buckets or if
18 there's just one bucket.

19 JUDGE DIRBA: And is it possible to have -- I suppose, would it be
20 possible for the exercise use data that's -- so for claims let's say that's have
21 the two buckets, right -- for the exercise use data to be different, I suppose?
22 In other words, could you have distance that's validated and it puts it in the
23 validated bucket, and then it puts time in the non-validated bucket? I guess
24 part of the question is, how squishy are these terms and how squishy is your
25 position about these terms? Are you saying that what the claims are

1 requiring, when the claim requires validated and non-validated data, and I
2 guess they're really kind of the two claims, the independent claim and the
3 dependent claim that we're talking about that fall into that bucket. But when
4 the claim requires validated and non-validated, is it your position that the
5 patents and that claim in particular is requiring the controller to take one
6 type of data and either put it in the validated bucket or put it in the un-
7 validated bucket based on whether or not the sensor has detected the user?

8 MR. BRUNNER: So yes, in the apparatus, you could have
9 alternatives. Again, I guess I'm going back to the claim language. You
10 could have a situation where the maker of the exercise equipment finds it
11 important to validate distance but is not concerned with validating time. So
12 you can have validated and non-validated exercise use data as it relates the
13 distance, and I suppose if you wanted to program it in such a way that you
14 didn't care about time, time never got validated or non-validated, it would
15 just remain as exercise use data. To satisfy the claim you would only need
16 one of those exercise use data to be validated, have the validation and non-
17 validation mechanism.

18 JUDGE DIRBA: Would it be fair -- I guess, could you map the claim
19 on something that -- if it had validated distance and non-validated time,
20 would that be -- in other words, if all the other claim limitations were
21 satisfied and there was validated distance that met all the claim limitations,
22 non-validated time that met all the claim limitations, would that work?
23 Would that meet the claim limitations, or would that not meet the claim
24 limitations?

1 MR. BRUNNER: So yeah, I agree with you that you could map the
2 claim onto an app, a treadmill for example, that did the validation and non-
3 validation with respect to distance, but did not do the validation or non-
4 validation with respect to time.

5 JUDGE DIRBA: My question is a little a bit different, so if you could
6 map the claim and assume -- like I said, assume all the claim limitations
7 meet for this -- could you point to distance as being validated exercise use
8 data and time as being non-validated exercise use data?

9 MR. BRUNNER: I think to -- well, that has not been part of the
10 arguments, and our expert has not opined on that, so it's one of those things
11 that at this point I don't know that I can give you an answer because I think
12 it's something I might need to consult with an expert on because it hasn't
13 been raised before. If I'm looking at -- if you want it off the cuff from me, I
14 would say that you want to have the, just from a practical standpoint you
15 would want to have validated and the non-validated be the same exercise use
16 data metric, because you then have a solid number as to what was performed
17 and what was not performed, but as far as the different possible
18 permutations, I've not considered that.

19 JUDGE DIRBA: And I ask the question not so -- I don't think it's the
20 type of thing that requires an expert opinion on it. I asked the question so
21 that I can best understand or better understand the constructions that you're
22 proposing for those two terms, or those two phrases.

23 MR. BRUNNER: Yeah, I think if you can give me a minute to
24 address that in the sur-rebuttal?

25 JUDGE DIRBA: Sure.

1 MR. BRUNNER: Okay, thank you. Okay, if there are no other
2 questions on claim construction, Mr. Laing will address the grounds.

3 MR. LAING: Good afternoon, I am Michael Laing and I'll be
4 addressing Petitioner's grounds. So Petitioner challenges the '227 patent on
5 six grounds, the '375 patent on four grounds, and the '340 patent on three
6 grounds. As my Co-Counsel stated, exercise use data is data that would
7 represent an amount of exercise, and validated and non-validated exercise
8 use data must be determined by the controller to have occurred or not in
9 response to detecting the user.

10 Starting with Morris and Ray which is ground one of each of the three
11 petitions, Petitioner argues that Morris' time, distance, footfall force,
12 cadence, pace, and heart rate are exercise use data, but of these only time
13 and distance are exercise use data. If a friend or an insurance carrier or
14 whoever came up to me and asked how much did you work out today? And
15 my answer was, during my run, my foot falls were 130 pounds, or my
16 cadence was 85 steps per minute, or my heart rate was 168, or my pace was
17 seven minute miles, that would not answer the question of the amount of
18 exercise I performed. Those metrics are simply not exercise use data as
19 defined by the specification.

20 Morris does not distinguish between data generated while a user is
21 detected to be present from the data generated when a user is detected not to
22 be present, including during the slow down period. Petitioner argues that it
23 would have been obvious that exercise use data not dependent on the user's
24 presence, for example, time and distance, would continue to generate and be
25 transmitted in the absence of a user, but time and distance in Morris are

1 treated the same. Whether someone is running on the treadmill or not, that
2 time and distance continues to accumulate, they are not therefore validated
3 or non-validated exercise use data, because they're generated simply while
4 the belt was moving, not time and distance actually ran by the user.

5 And indeed, Petitioner's expert states it would have been obvious to a
6 POSITA that certain exercise information that did not depend on the user's
7 presence, e.g., the elapsed time, would continue to be generated in the
8 absence of a user during the slow down -- the user, until the slow down
9 occurred, this is paragraph 186, therefore time continues to run and there's
10 no validation made. Contrary to Petitioner's argument, as Mr. Brunner had
11 talked about, exercise use data can be neither validated nor non-validated
12 exercise use data. If I think about my treadmill at home, it does not have
13 any sensors or controllers. If I'm running that treadmill belt for 10 minutes,
14 it doesn't know whether or not I'm running on it or not running on it. The
15 exercise use data would be 10 minutes. Now if I have a treadmill that
16 implements the claimed invention and it knows whether I'm on the
17 treadmill, say I run for eight minutes and I'm off the treadmill for two
18 minutes, the validated exercise use data is eight minutes of running, the non-
19 validated exercise use data is two minutes of not running. Exercise use data
20 can be different than validated and non-validated exercise use data.

21 Mr. Brunner also discussed Ray's thinning image in detail so I won't
22 harp on it too much, but Petitioner argues that Ray's exercise use data is
23 time, distance, calories, heart rate, and the thinning image, but the only
24 exercise use data disclosed in Ray is time, distance, and calories. Again,
25 when asked how much I worked out today and I said my run was really

1 intense, it looked like I got skinnier, that would not answer the question of
2 the amount of exercise I performed. Ray's thinning image simply represents
3 that some exercise was performed, but it does not represent an amount of
4 exercise. Regardless of whether the thinning image morphs based on
5 underlying data, one cannot determine, just as Mr. Rawls, Petitioner's expert
6 testified, you cannot determine the time, distance, or any other amount of
7 exercise from viewing the virtual image alone.

8 Petitioner also argues that in the Morris and Ray combination distance
9 and time would be generated only when a user is detected, like Ray's
10 thinning image, but their own expert admits in paragraph 179 of his expert
11 report, time and distance in Ray would be generated while the belt was
12 moving, because that information would be computed based on the
13 movement of the belt. Ray, just like the other prior art, generates time and
14 distance based on movement of the belt, regardless of whether there is
15 engagement by the user. The only reason time and distance would not be
16 generated in Ray, like its virtual image, is if the treadmill belt stops moving.
17 With respect to the Morris and Ray combination therefore, Petitioner has
18 failed to show that Morris and Ray alone or in combination teach or suggest
19 any of these claim elements.

20 The next combination is Morris, Ray, and Cox, which is ground two
21 of the '227 and '375 patents. Petitioner argues that a POSITA would have
22 been motivated to combine Cox's current sensor with Morris' reluctance
23 sensor and Ray's optical sensor, because it provided an improved
24 motivational image to the user and provided redundancy attitudes. To the
25 extent that having additional sensors would improve Ray's motivational

1 image, Petitioner itself explains in the reply of 26 that Morris and Ray
2 already provided sensors to achieve this result.

3 The next combination is Ray and AAPA, which is ground three of the
4 ‘227 and ‘375 patents, and ground two of the ‘340 patent. Petitioner relies
5 solely on Ray for disclosing validated exercise use data, and as I’ve
6 explained, Ray does not teach or suggest validated exercise use data.
7 Petitioner then relies solely on AAPA for disclosing non-validated exercise
8 use data, but Petitioner cites the portion of the specification discussing the
9 problem in the prior art where a person could simply turn on the treadmill
10 belt and allow the controller to generate large amounts of distances or times
11 without the person actually exercising on the treadmill. Petitioner’s use of
12 AAPA here highlights the fact that Petitioner fails to understand the scope of
13 the claims. AAPA is the prior art. It does not disclose validated or non-
14 validated exercise use data, because those must be generated in response to
15 whether a user is detected or not. A controller’s generation of exercise use
16 data while a user is not engaged with the operating member, or treadmill, is
17 not non-validated exercise use data.

18 With respect to element 1(i) in the ‘227 patent and -- excuse me the
19 ‘227 patent, wherein the controller transmits the validated exercise use data,
20 Petitioner relies exclusively on Morris’ controller from ground one as the
21 claimed controller, but Morris is not part of this ground. This is a prime
22 example of why it is important that the Petitioner specify with particularity
23 specific portions of the evidence that support the challenge. As is prevalent
24 throughout the petitions, Petitioner’s grounds failed to specify where each
25 element is found in the prior art. Moreover, Petitioner’s reliance on AAPA

1 as a basis for its grounds is not permissible. In this ground, Petitioner relies
2 entirely on AAPA for disclosing an important element, non-validated
3 exercise use data, therefore not permissible.

4 JUDGE DIRBA: Question about that admitted prior art issue. In
5 your Patent Owner response, you cited the Director's 2022 memo, and that
6 memo, I'd have to pull it up to know exactly what it says, but that memo
7 basically says that as long as the Petitioner relies on AAPA in combination
8 with a reference, that the AAPA does not constitute a ground. And that it's
9 permissible to combine AAPA and a reference. Can you explain why you
10 think that, or how you think the memo supports your position?

11 MR. LAING: Yeah, so the memo explains that AAPA can be used as
12 background knowledge of a person of ordinary skill, and it explicitly states
13 that it cannot be used as a basis for the ground. Now, Petitioner's expert in
14 deposition was asked the question, was AAPA used as a basis for his
15 grounds, he answered yes. So according to Director Vidal's memorandum,
16 Petitioner has used AAPA as a basis for the ground.

17 JUDGE DIRBA: But we don't usually look to technical experts to
18 give us the understanding of legal terms. In other words, the issue is the
19 meaning of the term 'basis' in the context of the statute, and we don't look at
20 technical expert's testimony to determine the legal meaning of terms in
21 statutes, right? So I'm not sure that the expert's testimony moves the needle
22 at all, because that's not the question. In other words, he used basis in a
23 vernacular way that's different than, or potentially different than, the way
24 that we're using it as attorneys. And the memo says, as you said, it did say
25 that the patentee's admissions can be used to supply, or for context on the

1 background of the art, but I thought there was a portion of that memo where
2 the Director was very clear that as long as a petitioner was combining a
3 reference with that AAPA, that that was sufficient so that the reference was
4 not a basis. In other words, maybe setting aside what the expert, as I said,
5 I'm not persuaded by your citation of what an expert is talking about,
6 because an expert is not a legal expert. I would like to understand better
7 how you think that memo supports your position, because the memo seems
8 to say the opposite.

9 MR. LAING: Yes, AAPA is used in combination in the ground,
10 however when I look at how Petitioner uses AAPA here, it uses solely
11 AAPA to satisfy an important element of the claims, and my understanding
12 is that that would be a basis, AAPA is used as a basis, and only AAPA was
13 used as a basis to satisfy that claim.

14 JUDGE DIRBA: So the memo says, a patentee's admissions
15 regarding the scope and content of the prior art under section 103 can be
16 used to supply missing claim limitations that were generally known in the art
17 prior to the effective filing date of the claimed invention, with some ellipses
18 in the middle of what I just read. Doesn't that directly contradict what
19 you're arguing?

20 MR. LAING: I disagree that non-validated exercise use data was
21 known in the prior art, that's a big part of the invention here is validated and
22 non-validated exercise use data. Neither of those things were --

23 JUDGE DIRBA: Whether it was known in the art is different -- I
24 have understood your argument to be that the use of AAPA in this context
25 was impermissible. In other words, Petitioner can't use that AAPA because

1 there's a legal reason that they can't even go there, they can't even look at it.
2 That's different than saying hey, even looking at that, it still doesn't teach
3 the claim limitations, which is what I hear you to be saying now.

4 MR. LAING: I view a -- I also agree that AAPA does not teach non-
5 validated exercise use data, but I still believe that using it as the basis for
6 filling in something that was not known in the prior art is improperly using it
7 as a basis.

8 JUDGE DIRBA: Do you contest, or I guess -- Director Vidal's memo
9 says that it can supply missing claim limitations. And you're saying that --
10 you're not saying that there's anything wrong with the memo? You're just
11 saying that the way that they're using it is not consistent with what's
12 provided by that memo, is that correct?

13 MR. LAING: Correct.

14 JUDGE DIRBA: Okay.

15 MR. LAING: So the next combination is Ray, AAPA, and Cox,
16 which is ground four of the '227 and '375 patents. For the reasons I
17 explained earlier, a POSITA would not be motivated to add Cox's current
18 sensor, and like the previous ground, Petitioner relies exclusively on Morris'
19 controller, but Morris is not a part of this ground. And again, Petitioner's
20 reliance on AAPA is impermissible for the reasons that I just explained.

21 The next ground is Ray, AAPA, and Daly, which is ground five of the
22 '227 patent. Again, similarly, a POSITA would not be motivated to
23 combine both -- excuse me, Daly's pressure sensor for the same reasons a
24 POSITA would not be motivated to combine Cox's pressure sensor. Like

1 the previous ground, Petitioner fails to identify each element in the prior art,
2 and its reliance on AAPA as a basis is impermissible.

3 The next is Ray, AAPA, Daly, and Cox, which is ground six of the
4 '227 patent. Again, Petitioner fails to identify a reason why a POSITA
5 would combine both Daly's pressure sensor with Cox's current sensor, the
6 petition fails to identify each element of the prior art and its use of AAPA is
7 impermissible, for similar reasons that I've explained.

8 Ground three of the '340 patent is Yi alone. Yi was before the
9 examiner during prosecution of the '340 patent application, and the burden
10 of showing invalidity is especially difficult when the prior art reference was
11 before the examiner during prosecution. Yi is directed to a treadmill with
12 pressure sensors that are used to automatically control the speed of the
13 treadmill belt, for example when a user is running too fast and they're in the
14 front, they'll slow it down, when the user is running too slow and nearing
15 the back of the belt, it will speed up.

16 Even without Petitioner's heightened burden of proving obviousness
17 here, its arguments fail. Pace distance, pace time, and pace speed are not
18 exercise use data. Again, if I were asked how much I worked out today and
19 my answer was, my average stride length was four feet, half a second, and
20 eight miles per hour, that wouldn't answer the question of the amount of
21 exercise I performed. Therefore, Petitioner has failed to show that Yi
22 teaches or suggests any of these claim elements and the Board should find
23 that the Petitioner has failed to demonstrate the unpatentability of any of the
24 challenged claims. Unless there are questions from the Board, we can
25 reserve any time for a brief sur-rebuttal.

1 JUDGE DIRBA: Thank you.

2 MR. LAING: Thank you.

3 JUDGE DIRBA: I think as a result, you have 10 minutes that
4 remained in your opening, we'll add that to your rebuttal presentation, so
5 you'll have 25 minutes for your sur-rebuttal. And Mr. Tehranchi, you can
6 begin when you're ready, you have 15 minutes in your rebuttal.

7 MR. TEHRANCHI: Thank you, Your Honor. If I could share my
8 screen.

9 JUDGE DIRBA: Oh, I apologize. My colleague just reminded me,
10 we will take a short five minute break as I had promised before your
11 presentation, Mr. Tehranchi. So if I can get the time correct this time, it's
12 3:19 p.m. eastern time, and we will resume at 3:24 p.m. eastern time. Thank
13 you all, we're off the record.

14
15 (Whereupon, the above-entitled matter went off the record at
16 3:19 p.m. and returned at 3:24 p.m.)

17
18 JUDGE DIRBA: Hello, this is Judge Dirba. We're back on the
19 record. I see Mr. Tehranchi on the line, I see Mr. Laing on the line, Mr.
20 Kendrick, and Mr. Brunner. Is there anyone else that we're waiting for
21 Petitioner's side, Mr. Tehranchi?

22 MR. TEHRANCHI: No, Your Honor.

23 JUDGE DIRBA: And Mr. Brunner, are we waiting on anyone for the
24 Patent Owner's side?

25 MR. BRUNNER: No, Your Honor.

1 JUDGE DIRBA: Alright, thank you. And as I mentioned before the
2 break, Mr. Tehranchi you'll have 15 minutes for your rebuttal. You may
3 begin when you're ready.

4 MR. TEHRANCHI: Thank you, Your Honor. If I may share my
5 screen here. So the first thing I wanted to discuss were in response to your
6 questions about whether we've added new material or new arguments in our
7 reply on pages 14 through 17, and I thought the easiest way is for us to go
8 through this and, you know, obviously we have pointed in the actual petition
9 in terms of the FIT processor having connections to the signal detector and
10 how it detects the signal and how in the combination that detection
11 functionality and responsiveness of the processor would be incorporated,
12 Ray's camera would be incorporated in here.

13 So the other section about this, which is more specific about Figure 9
14 and that decision point, that was also in our petition. We elaborated more on
15 that in our reply, because that was the point that the Patent Owner raised in
16 its Patent Owner response. And as you can see, these are the sections
17 relevant to that claim limitation and we have many citations to the original
18 petition and our arguments there.

19 JUDGE DIRBA: Mr. Tehranchi, I noticed several of the citations that
20 you have on the screen are to pages eight and nine of the petition. The
21 question is not did you mention anywhere that Morris had these disclosures,
22 the question is more specifically did you rely on this aspect of Morris for
23 this claim limitation in your petition? And I can go back and look at those
24 citations to answer my own question, but I suppose the other part of my
25 question was, is it your position that to the degree that you were making a

1 new argument that that was sort of in response to the claim construction
2 position that Patent Owner put forward? Or do you have another -- in other
3 words, if I go back and look at the record and I decide that it was not
4 sufficiently presented in your petition, do you have a justification for
5 bringing that up in your response? For example, you know, a response to
6 the claim construction?

7 MR. TEHRANCHI: Yes, Your Honor, so the part that was not
8 directly in that relevant section of the claim was Figure 9. So Figure 9, we
9 discussed it before, we've discussed how Morris performs user detection,
10 but when it came to that element, in terms of in response to, we did not point
11 to this figure. However, in our reply, we went back to this figure and said
12 well, it is in there. We actually had said in our original petition that based
13 on what is shown in Figure 6, for example, things are done in response to
14 receiving a user detection signal. However, the elaboration that came in the
15 reply was in response to Patent Owner that said well, you need to -- it needs
16 to be not when the user is detected, and that was really the argument that we
17 are saying when the user is detected you generate the data in this way, and
18 you have to say 'in response to.' The controller does this 'in response to.'
19 And in our view, it's more of a semantics, it's not substantive that says when
20 you detect the user, you generate this data, when you don't detect the user,
21 you generate that data. So that was changed to 'in response to,' which is
22 part of the claim language that you have in there.

23 JUDGE DIRBA: Thank you.

24 MR. TEHRANCHI: Thank you. And Judge Calve, I went and looked
25 at the original petition and the limitation at issue, and as you mentioned

1 when we're talking about Morris, the 1164 patent, the '375 patent, is a little
2 bit different because it doesn't use validated versus non-validated, it's just
3 that in response to detecting a user the exercise use data is being reported
4 versus it stops being reported when the user is not detected. And we have
5 referenced in various sections, and this is the original petition, that we talk
6 about how cadence and other information from Morris is displayed to the
7 user and it's predicated based on detection of user's footsteps, and so those
8 are generated in response to. And then when the user is not being detected,
9 our primary argument -- well, we made the argument that Morris suggests
10 this because it included that slow down process, but it said please come
11 back, and then that's when it failed to detect the user. So we were very
12 specific about the detection of the user or not detection of the user. And in
13 addition to that, I don't want to belabor the point, we were also in that
14 combination relying on Ray, which is very specific that if you detect the
15 user, you produce the images and if you don't, then you don't record
16 anymore.

17 So unless there are any questions on this topic, I just want to point out
18 very quickly, and I know the Board is very well aware of this, if you look at
19 the claim language, it doesn't say validating the data or non-validating the
20 data, as Patent Owner characterized it in their opening. It just says
21 generating validated exercise use data. So it's not a validation process, it's
22 just generating validated exercise use data and generating non-validated
23 exercise use data. So there is no concept of validating it or non-validating it,
24 and I'm not sure even what non-validating means. What the patent says, and
25 we've seen this before, it says the data is being generated and if you detect

1 the user then you put it in the validated bucket, and if you don't detect it, it's
2 a non-validated bucket, and it's as simple as that.

3 And my final point, if I may share -- okay, here it is, it's about AAPA
4 and let me go to slide 71 of our demonstratives which we reproduce Director
5 Vidal's memo, parts of it. And certainly it says that you can supply missing
6 claim limitations based on generally known, that were generally known in
7 the prior art, and demonstrate knowledge of a person of ordinary skill in the
8 art. And if you go through our petition, in every case we haven't said AAPA
9 is the basis for the claim or even for that limitation. In every case we've said
10 Ray describes it, and in view of AAPA it would be obvious that it would
11 include a motor or a controller, a belt, and that sort of thing. And when it
12 gets to non-validated exercise use data, the prior art described it as well, and
13 we also have an excerpt of why that would be obvious based on Ray. With
14 that, unless the Board has any other questions, we will rest.

15 JUDGE DIRBA: Mr. Tehranchi, I do have a couple of additional
16 questions, just to make sure that I'm fully understanding your position on
17 some of the terms in this claim and what they mean. So we talked a lot
18 about 'in response to,' and what that means, and I've been assuming that that
19 means that there's a causality required. That 'in response to' requires A to
20 cause B, right, rather than both A and B happening at the same time, or B
21 happening while A is happening, or something like that. Would you agree?
22 Or I should say maybe, for purposes of this proceeding, has Petitioner
23 operated under that same assumption?

24 MR. TEHRANCHI: Yes, Your Honor, but we also think that's not
25 controlling, because the data is being generated, and if you detect the user

1 while the data is being generated, in either case it's one or the other, it's
2 either validated or non-validated, and what makes that distinction is the
3 presence of the user, assuming that the belt is running, so that's always
4 there. So it's not that -- it is one or the other, and the data is being either
5 considered validated, or considered not validated.

6 JUDGE DIRBA: The reason I asked the question is, imagine a
7 system where data was being generated while the user was present, the
8 controller that's generating this data doesn't necessarily know that the user is
9 present, that would mean that the user is present while the data is being
10 generated, both of those things are happening at the same time, even though
11 the controller doesn't know, but it wouldn't necessarily mean that the data
12 was being generated in response to the user being present, if we assume a
13 causality between those two things. Does that make sense?

14 MR. TEHRANCHI: Yes, Your Honor, I think it makes sense. The
15 data is being generated regardless of whether the user is there or not, it's just
16 that the presence of the user says okay, we bucket-ize the data into, we
17 throw that into a validated bucket. So I mean I don't to provide an analogy,
18 but think of kind of a water stream that's going, and then if you put a
19 diversion that says okay, you divert here, if the user is being detected you
20 throw it into this bucket, and the user is not being detected, the water goes as
21 it should have been going.

22 JUDGE DIRBA: Okay.

23 JUDGE GERSTENBLITH: Let me just jump in, Judge Dirba, to just
24 add to your question, and I think maybe the issue is, so in these claims, at
25 least some of them, they're apparatus claims, and they have a sensor that's

1 operable to detect engagement of a user, and the distinction being made by
2 the controller is simply a controller configured to generate validated data in
3 response to the sensor detecting engagement, or the opposite to generate
4 non-validated in response to the sensor not detecting. So if there were no
5 sensor, we'd have a different situation. So I think your hypothetical in that
6 there's a person there but is it a causality thing, the causality is the sensor
7 detecting a signal and sending it to the controller, that to me is the critical
8 piece. Now I'll let Petitioner's counsel say what he would like, but in the
9 claims, the critical piece is the sensor sensing, generating that signal, and
10 sending it to the controller.

11 MR. TEHRANCHI: We agree, Your Honor, that the sensor definitely
12 has a critical role, because it's based on the detection of the user and the
13 analysis of those signals.

14 JUDGE DIRBA: And then my last question, Mr. Tehranchi is, it
15 sounded, from what you said, that you agree that the claims require, or I
16 suppose I'm specifically thinking about the claims that recite validated
17 exercise use data and non-validated exercise use data, and you've been very
18 clear that you disagree with the construction that patent owner is proposing.
19 But would you agree that the claim requires that the controller be putting
20 that data into two separate buckets? Or would you say instead that those are
21 the validated, non-validated is really just a name, be it first and second, what
22 have you?

23 MR. TEHRANCHI: So Your Honor, the claim, I think we just need
24 to look at the claims. When the claim is reciting validated exercise use data,
25 it's very specific on what it does with that data. It either generates it,

1 obviously, it either records it or transmits it, so these are the three actions,
2 and we have that summary table. So when the data is considered to be
3 validated, and the claims don't require any specific validating procedure
4 other than detection of the user, when that is detected, when that condition is
5 satisfied, which is done, that assessment is done by the processor based on
6 receiving the signals from the sensor, then in that case the data is transmitted
7 or recorded, what the claims say. But when you look at the treatment of
8 non-validated exercise use data, is that when the sensor does not detect the
9 user, then non-validated user data is generated, there is no special treatment
10 associated with the non-validated. It doesn't say you need to store it, you
11 need to tag it, label it, send it to the doctor. So it's just generating it, and
12 then goes back to transmitting, storing, et cetera, for the non-validated.

13 JUDGE DIRBA: So I take your point about what the claim is
14 requiring as far as what needs to happen with that non-validated data. I
15 suppose my question was -- I didn't hear any answer to my question --
16 which is does the controller need to create this data in such a way that
17 distinguishes the validated from the non-validated data, or can it all be in
18 one kind of -- or are we just naming it validated data when it meets those
19 requirements, and we're naming it non-validated data when it doesn't meet
20 those requirements?

21 MR. TEHRANCHI: So Your Honor, maybe I'm a little confused. So
22 if we think about the hardware, right, we have the processor, that it receives
23 the signal from the user detection, and it receives signals from the motor and
24 the timer and all of that stuff, so based on that the processor is going to
25 generate some kind of data, and whether it categorizes it -- if I'm not

1 mistaken, you're asking if there's any kind of labeling that occurs here. The
2 patent doesn't describe, the detailed description, it doesn't describe and the
3 claims don't require. So it's just the same data that's bucket-ized in a
4 different way. And one additional, and I apologize if I'm repeating myself,
5 but the claim itself specifies the treatment for the validated exercise use data,
6 which is to transmit it or store it.

7 JUDGE DIRBA: Okay, I understand. Do any of my colleagues have
8 any further questions? That is all, thank you, Mr. Tehranchi.

9 MR. TEHRANCHI: Thank you.

10 JUDGE DIRBA: And Mr. Brunner, you have, I believe, 25 minutes
11 for your rebuttal, for your sur-rebuttal.

12 MR. BRUNNER: Yes thank you, Your Honor, I don't think we're
13 going to use all that time. I did want to answer your question from before as
14 to whether different exercise use data can be the validated exercise use data
15 and the non-validated exercise use data. So for example, I think you were
16 saying could the process validate time and then non-validate a distance.
17 Looking at, so for example Claim 1 of the '227, I would say that falls within
18 the scope of the claim. There may not be a good reason to do that, but I
19 would say that falls within the scope of the claim.

20 JUDGE DIRBA: Thank you, that's helpful.

21 MR. BRUNNER: That is all that I wanted to address, I will turn it
22 over to Mr. Laing unless there are questions for me.

23 MR. LAING: And I just have two quick points, one on Morris and
24 Ray that I heard Mr. Tehranchi discuss. Hearing that in Morris data is
25 generated in response to the user's footsteps, but that is not true. If you look

1 at Morris, the time and distance are treated the same both during and after
2 the slow down period, and time and distance continue to accrue whether or
3 not the person is on the treadmill or not on the treadmill. They are generated
4 while the belt is moving, not time and distance actually ran by the user.

5 And with respect to Ray, Mr. Tehranchi argued that when a user is not
6 detected, the camera turns off and the image goes away. We agree with that,
7 the image goes away, but nothing in Ray suggests or discloses that the
8 calories, heart rate, distance, or time goes away. In fact, time and distance in
9 Ray as Petitioner's expert admits, would continue to be generated while the
10 belt was moving based on the movement of the belt. And unless there are
11 any questions, that's all I have.

12 JUDGE DIRBA: No further questions. Thank you Mr. Brunner and
13 Mr. Laing, we appreciate your presentation today. We appreciate all
14 counsels' presentation today, and your answers to our questions have been
15 very helpful to the panel. We will review, confer, and issue a decision in
16 due course. Before I wrap up today, I'd like to make two requests. First, I'd
17 like to ask all counsel to remain on the line after we conclude so that if the
18 court reporter has any questions regarding spelling or the like that you will
19 be able to answer those questions for her. And then also, I'll ask each party
20 whether there's any other matters that you would like to discuss before we
21 wrap up today. Mr. Tehranchi, anything else to discuss or raise?

22 MR. TEHRANCHI: No, Your Honor, thank you.

23 JUDGE DIRBA: Thank you. Mr. Brunner?

24 MR. BRUNNER: Nothing from us, Your Honor. Thank you.

IPR2023-01163 (Patent 10,032,227 B2)

IPR2023-01164 (Patent 10,796,375 B2)

IPR2023-01165 (Patent 11,227,340 B2)

1 JUDGE DIRBA: Excellent, thank you everyone. Have a wonderful
2 afternoon, and we are adjourned.

3 (Whereupon, the above-entitled matter went off the record at 3:45
4 p.m.)

IPR2023-01163 (Patent 10,032,227 B2)
IPR2023-01164 (Patent 10,796,375 B2)
IPR2023-01165 (Patent 11,227,340 B2)

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