

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.

PTAB Case No. IPR2023-01164

U.S. Patent No. 10,796,375

**PATENT OWNER'S RESPONSE TO PETITION FOR *INTER PARTES*
REVIEW OF U.S. PATENT NO. 10,796,375**

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I. INTRODUCTION

Petitioner challenges claims 1-20 (“Challenged Claims”) of U.S. Patent No. 10,796,375 (“the ’375 Patent,” Ex.1001) on four grounds of obviousness.

Petitioner’s grounds do not render the Challenged Claims obvious because, among other things, they misconstrue and misapply “exercise use data” and fail to identify prior art disclosing a controller configured to report or stop reporting exercise use data *in response* to the sensor detecting or not detecting a user engaged with the operating member of the exercise apparatus. Furthermore, several of Petitioner’s Grounds fail to identify where the claim elements are found in the references, are based on unsound reasons to combine, and improperly rely on alleged “Applicant Admitted Prior Art.” Based on these shortcomings and more, Petitioner has failed to establish any of the Challenged Claim are unpatentable.

II. OVERVIEW OF THE ’375 PATENT TECHNOLOGY

Patent Owner, Johnson Health Tech, Ltd., is the largest specialty fitness retailer in the United States and offers award winning fitness and wellness products under its various brands, including Matrix Fitness, Vision Fitness, and Horizon Fitness.

The ’375 patent is generally directed to exercise equipment with a motor-driven operating member, like a treadmill, that has a controller that reports exercise use data for the user and/or third parties by determining whether to report, or not

report, the exercise use data based on a sensor detecting user engagement with the operating member, like a treadmill belt.

Before the inventions of the '375 patent, health insurance companies offered customers premium discounts if the customer could demonstrate regular exercise. Ex.1001 at 1:21-23. The underlying rationale for the insurer is that regular exercisers have better health and thus have lower insurance payouts. *Id.* at 1:23-32. Insurance companies, however, need verifiable exercise use data or else premium discounts could be given to customers who faked exercising and thus did not reduce insurance payouts. *Id.* at 1:32-66.

Because of this, insurance companies restricted customers to reporting exercise use data from exercise equipment with a user driven operating member, like a stationary bike or an elliptical trainer. *Id.* at 1:32-56. With user driven equipment, the user powers the operating member, such as the pedals. Thus, exercise cannot be faked on user-driven equipment because users must move the operating member themselves. *Id.* at 1:54-66.

Before the inventions of the '375 patent, insurance companies did not typically accept exercise use data from exercise equipment with a motor-driven operating member, such as a treadmill or a motorized stair climber, because users could easily falsify exercise use data by “turning on a motorized treadmill, causing the running belt to move, and letting the treadmill run until the treadmill controller

had recorded a large distance traveled by the running belt” without the user actually exercising. *Id.* at 1:66-2:22. In other words, prior art exercise equipment with a motor-driven operating member suffered from a technological problem—it did not determine whether the exercise use data generated by the controller and reported to the user and/or the third party was actually performed by the user (validated) or not (non-validated). *Id.* at 1:54-2:22. The '375 patent inventions allow users to rely upon and third parties, such as insurers, to credit exercise use data from motor-driven exercise equipment for insurance discounts. *Id.* at 2:26-39.

Claim 1 of the '375 patent is directed to a motor-driven exercise apparatus. The exercise apparatus includes “a motor,” “an operating member driven by the motor,” “a sensor operable to detect engagement of a user with the operating member,” “a controller in communication with the operating member and the sensor,” and “a communication interface.” *Id.* at claim 1. The “controller” is “configured to generate exercise use data when the operating member is driven by the motor,” and “configured [to] determine whether the user is engaged with the operating member in response to movement of the operating member and the sensor detecting engagement of the user with the operating member.” *Id.* In response to the controller “determining that the user is engaged with the operating member,” the “controller” is “configured to report the exercise use data to the communication interface.” In response to the controller “determining that the user

is not engaged with the operating member,” the “controller” is “configured to stop reporting the exercise use data to the communication interface.” *Id.* The “communication interface” is “configured to communicate the reported exercise use data to a third party.” *Id.* Other claims in the '375 patent cover slightly different aspects of the invention with different claim language.

III. CLAIM CONSTRUCTION

The claim term “exercise use data” needs to be construed to resolve the issues raised by Petitioner. The standard for claim construction set forth in *Phillips v. AWH Corp.* applies to this proceeding. 415 F.3d 1303, 1312-13 (Fed. Cir. 2005) (*en banc*); 37 C.F.R. § 42.100(b).

“Exercise use data” is “data that would represent an amount of exercise of the user.” Ex.2004, ¶ 29.

The specification and claims define “exercise use data.” The specification states that “exercise use data would represent an exercise **amount** of the user.” Ex.1001 at 1:40-41 (emphasis added); Ex.2004, ¶ 30. The specification explains that “exercise use data” includes “an amount of time” or “distance traveled (or equivalent of distance traveled).” Ex.1001 at 5:63-6:8; Ex.2004, ¶ 30. The claims also specify “time” and “distance” as “exercise use data.” Ex.1001 at claims 2, 3; Ex.2004, ¶ 30. Time and distance represent amounts of exercise. Ex.2004, ¶ 30.

“Exercise use data” is not inherently validated (i.e., where the controller determines that the user is engaged with the operating member) or non-validated (i.e., where the controller determines that the user is not engaged with the operating member). Ex.2004, ¶ 34. Instead, “exercise use data” alone is an apparent amount of exercise based on the movement of the operating member/endless belt of the exercise apparatus/treadmill without regard to whether a user is actively engaged with the operating member. *Id.* In other words, “exercise use data” is data, such as time and distance, based on the movement of the operating member without regard to whether a person was engaged with the operating member or not. *Id.*

Petitioner does not propose a construction for “exercise use data,” but its construction can be derived from the application of its references to the claims. For example, Petitioner argues that Morris discloses “exercise use data including ‘information such as pace, heart rate (when available), incline, distance, program profile’” as well as “footfall force” and “cadence.” Pet. at 26-27. Likewise, Petitioner argues Ray discloses “exercise use data” including “calories, heart rate, distance and time,” as well as a “virtual image of the user.” Pet. at 28-29. Contrary to Petitioner’s implied construction, pace, heart rate, incline, footfall force, cadence, and a virtual image of the user are not “exercise use data” because they do not represent an ***amount*** of exercise. See Ex.2004, ¶ 35; see also Ex.2005 (Rawls

Dep. Tr.) at 16:22-17:7 (defining “exercise use data” as “data accumulated while the machine is running”). Those metrics might be broadly characterized as “exercise data,” but they are not “exercise use data” as used in the ’375 patent. Ex.2004, ¶ 32.

IV. PETITIONER’S REFERENCES

A. Ray

U.S. Patent No. 9,785,827 (“Ray”) is entitled “Process to Aid in Motivation of Personal Fitness, Health Monitoring and Validation of User.” Ray discloses the use of a camera to take videos or images of a user for validating the identity of the user and to create a “thinner representation of the user” for motivation. Ex.1004 at Abstract, 4:66-5:3.

Ray explains that it is possible to control the machine through a computer device like a tablet which allows the user “to move between exercise machines and have data from the user’s exercise routine automatically entered into the computer device such as heart rate, duration and calories burned.” Ex.1004 at 5:52-58.

Ray states that “as long as exercise data 24 is being produced by the exercise machine 40, the camera can be instructed to capture the user’s image every 10 minutes.” Ex.1004 at 14:35-38. Notably, Ray does not teach or suggest a controller that generates validated or non-validated exercise use data in response to the sensor and controller detecting user engagement with the operating unit, but instead, relies

on the transmission of the user's image and data to a third party to confirm the user's "identity and exercise routine." Ex.1004 at 8:27-29; Ex.2004, ¶ 28.

B. Morris

U.S. Patent Publication No. 2010/0160115 A1 ("Morris") is entitled "User Detection for Exercise Equipment." Morris discloses the use of a sensor to indicate whether a user "has mounted the treadmill belt." Ex.1006 at Abstract. Morris was directed at determining when a user wants to stop exercising for a short time "but leaves the belt running at speed." Ex.1006 at Summary, 0006.

Morris discloses that when a user steps off a treadmill, "it is advantageous to alert the user to reengage or halt the belt movement." Ex.1006 at Summary, 0006. When a user is not detected on the machine, Morris discloses using one or more sensors to detect when the user departs the treadmill and pausing or stopping the treadmill after the user has been off the treadmill "for a certain period of time." Ex.1006 at Summary, 0008. Morris also discloses using sensors to determine footfall, cadence, impact variance and the like. Ex.1006 at Summary, 0009. Morris does not teach or suggest a controller that generates validated or non-validated exercise use data in response to the sensor and controller detecting user engagement with the operating unit. Ex.2004, ¶ 30.

V. LEVEL OF ORDINARY SKILL

As of the December 2014 priority date, a person of ordinary skill in the art (POSITA) is a person having: (i) a bachelor's degree in an exercise related field or mechanical or electrical engineering and (ii) three to five years of experience in analyzing and/or designing exercise equipment (such as treadmills, bicycles, steppers, ellipticals) or in a similar field. Ex.2004, ¶ 36. A POSITA could substitute additional education for experience (e.g., substituting an advanced degree relating to the design of exercise equipment or biomechanics, for industry experience in a related field and vice versa). *Id.*

VI. THE PETITION FAILS TO SHOW THAT THE CHALLENGED CLAIMS ARE OBVIOUS

Petitioner fails to show the Challenged Claims are unpatentable because, among other things, it neglects to construe “exercise use data,” fails to point out where the prior art discloses a controller configured to report (or not report) exercise use data in response to the controller determining that the user is engaged (or not engaged) with the operating member, and misapplies its references to those claim elements. When the correct construction of “exercise use data” is applied, none of Petitioner's references alone or in combination disclose or make obvious the inventions of the Challenged Claims because, among other things, the combinations lack a controller that determines whether to report exercise use data

in response to the sensor's detection of user engagement with the operating member.

A. Ground 1: Morris and Ray do not render Claims 1-7, 10-20 obvious.

1. Claim 1

- a. Petitioner fails to show that the Morris and Ray combination discloses elements 1[g]-1[h] – “in response to the controller determining that the user is [or is not] engaged with operating member, the controller is configured to report [or stop reporting] the exercise use data.”**

Petitioner has failed to show that Morris and Ray, alone or in combination, teach or suggest elements 1[g] and 1[h]¹ because both lack a “controller” that is “configured to report the exercise use data” “*in response to* the controller determining that the user is engaged with the operating member” and a “controller” that is “configured to stop reporting the exercise use data” “*in response to* the controller determining that the user is not engaged with the operating member.” Ex.2004, ¶ 39.

¹ Patent Owner is using the same claim element numbering convention as Petitioner. Pet. at 94-99.

Morris does not teach or suggest reporting exercise use data in response to the controller determining that the user is engaged with the operating member.

With respect to Morris and claim element 1[g], Petitioner argues that Morris has a display “showing exercise use data including ‘information such as pace, heart rate (when available), incline, **distance**, program profile, and/or the like.’” Pet. at 26. Petitioner further claims that Morris generated “exercise use data such as **footfall force**” and “**a user’s cadence**.” Pet. at 27. Of those metrics, only distance is “exercise use data” because the others do not represent an **amount** of exercise. Ex.2004, ¶ 40.

Petitioner attempts to tie “exercise use data,” like time and distance, to pace and cadence by arguing that “pace and the user’s cadence were tied to time spent, or distance traveled, while the user was exercising on a moving treadmill.” Pet. at 28. That pace and cadence have time and/or distance as an input does not make them “exercise use data.” Ex.2004, ¶ 41.

Pace is a unit of time per a unit of distance, and cadence is steps per a unit of time. *Id.*, ¶ 42. For example, if the treadmill shows a user’s pace to be 8:00 minutes per mile or cadence to be 45 steps per minute, that information does not disclose the user’s time or distance. *Id.* Indeed, a user can have an 8:00 minute per mile pace or a 45 steps per minute cadence over **any** amount of time or distance. *Id.* Thus, pace and cadence do not represent an **amount** of exercise. *See id.*; *see also*

Ex.2005 at 59:17-60:11 (admitting that pace, cadence, and gait do not represent an amount of exercise the user has performed).

Regardless, pace, cadence, and footfall force in Morris are not reported by a controller in response to the controller determining that the user is engaged with the operating member. Ex.2004, ¶ 43. Petitioner puts forth no evidence or argument to the contrary. Notably, there is no reason or need to have a controller to report cadence and footfall force based on the sensor detecting a user. *Id.* Unlike “exercise use data,” like time and distance, a user cannot fake cadence and footfall force by merely turning on the treadmill belt. *Id.* Cadence and footfall force data is generated only when a user's foot contacts the treadmill belt. *Id.*

With respect to Morris's disclosure of distance and time, Petitioner does not argue that Morris's controller reports distance or time *in response* to the controller determining that the user is engaged with the operating member. *Id.*, ¶ 44. Rather, Petitioner incorrectly argues the claim element is satisfied because Morris's controller “allowed the exercise use data associated with a user exercising on the treadmill to be reported.” Pet. at 37. Petitioner's argument disregards the controller's role in determining whether to report exercise use data *in response* to the controller determining that the user is engaged with the operating member. Ex.2004, ¶ 44. A controller's reporting of exercise use data *while* a controller determines that a user is engaged with the operating member (such as for detecting

footfall force or for stopping the treadmill belt for safety) is not the same as being “in response” to the controller determining that a user is engaged with the operating member. *Id.*

Ray does not teach or suggest reporting exercise use data in response to the controller determining that the user is engaged with the operating member.

Ray also lacks claim element 1[g]. Petitioner argues that Ray's “exercise data” is “calories, heart rate, distance and time” as well as “a virtual image of the user.” Pet. at 28. As an initial matter, “exercise data” is not in the claims. Heart rate is not “exercise use data” because it does not represent an **amount** of exercise. Ex.2004, ¶ 45. Likewise, Ray's “virtual image of the user” is not “exercise use data” because it also does not represent an **amount** of exercise. *See id.*; *see also* Ex.2005 at 22:12-24:14 (Ray's thinning image is “not a precise measurement”; “just an artist representation”; “I don't know that it really depicts much of anything”; “the details of the thinning image are somewhat vague”). The virtual image not being “exercise use data” is significant because Petitioner relies heavily on the virtual image being the “reported exercise use data” of the Ray and Morris combination. Pet. at 38.

Petitioner urges that Ray's virtual image is somehow “exercise use data.” This argument should be rejected. First, Petitioner incorrectly argues that the '375 patent explained “that exercise use data can be ‘a multimedia content, such as a media image and/or a sound.” Pet. at 28 n.4; Ex.2004, ¶ 46. The '375 patent does

not state this. Instead, the portion of the '375 patent cited by Petitioner states that “[t]he validated exercise use data is substantially packaged in a computer file that can be accessed or processed *to show the validated exercise use data as a multimedia content, such as the media image and/or the sound.*” Ex.1001 6:29-33 (emphasis added). For example, a user’s distance could be graphically displayed as a bar chart for every mile ran or time ran could be shown in a colorful, flashing font with celebratory music. Ex.2004, ¶ 47. Thus, the '375 patent teaches that “reported exercise use data” can be shown as multimedia content, not that any multimedia content is “exercise use data.” *Id.*

Second, Petitioner claims that Ray’s virtual image is “exercise use data” because the image morphs to become “thinner, healthier and more aesthetically pleasing . . . based on the intensity, speed and/or duration of the user’s workout.” Pet. at 28. But morphing the virtual image based on underlying “exercise use data,” among other things, does not make the virtual image “exercise use data.” Ex.2004, ¶ 48. As Petitioner’s and Patent Owner’s experts agree, one cannot determine time, distance, or any other measure of an *amount* of exercise from viewing the virtual image alone regardless of whether it morphs based on “exercise use data” inputs. *See id.*; *see also* Ex.2005 at 22:6-7 (“I don’t know that the image is going to give

me a precise piece of information.”). Thus, Ray’s virtual image is not “exercise use data.”

Notably, Petitioner muddles Ray’s validation feature with Ray’s virtual image. Ex.2004, ¶ 49. To be clear, there is no correlation or relationship between Ray’s “validation feature” and Ray’s virtual image that Petitioner contends is “exercise use data.” Ray’s validation feature transmits videos or images of the user taken from a camera to a third-party person for validation/confirmation of the user’s identity and exercise routine. *Id.* Ray explains that “[t]hrough a unique interface of the camera on the computer device and exercise machine, the user’s identification and method of exercise is confirmed during the exercise routine” by “someone in the medical industry or wellness manager.” Ex.1004 at 6:43-47, 63-66. Nothing in Ray suggests the virtual image is validated. Ex.2005 at 33:8-22.

As for the potential “exercise use data” disclosed in Ray, such as time, distance, and calories, Ray does not teach or suggest, and Petitioner does not identify, a “controller” that is “configured to report the exercise use data [i.e., time, distance, or calories]” “*in response* to the controller determining that the user is engaged with the operating member.” Ex.1001 at claim 1; Ex.2004, ¶ 50. While Ray mentions that the camera stops recording images when the user is not detected, it says nothing about the operation of the controller changing or making a determination to report time, distance, or calories in response to a controller

determining that the user is engaged with the operating member. Ex.2004, ¶ 50.

Indeed, Ray teaches that, as long as the treadmill belt is moving and regardless of whether the user is on the treadmill, exercise data accumulates with no decision to report exercise use data based on the controller determining that the user is engaged with the operating member. *See id.*; Ex.2005 at 32:4-7, 38:19-39:2.

Petitioner's misinterpretation of "reported exercise use data" is highlighted in discussion of distance and time in claims 2 and 3. Regarding "distance" in claim 2, Petitioner argues it "when a user was exercising on a treadmill, the user can 'view on the display her exercise data such as . . . distance advanced.'" Pet. at 41. Again, Petitioner has ignored the claimed role of the controller. Merely detecting a user exercising while the controller generates distance, without the controller determining whether to report the data in response to the controller detecting the user, is not "reported exercise use data." Ex.2004, ¶ 51.

As far as "time" in claim 3, Petitioner makes the same incorrect argument as with distance. Contrary to Petitioner's argument, time is not "reported exercise use data" simply because "time spent exercising was part of the exercise data displayed on the screen *while* the user was exercising." Pet. at 42 (emphasis added); Ex.2004, ¶ 52. Reported exercise use data requires a determination by the controller *in response* to information obtained from the sensor. Ex.2004, ¶ 52. Petitioner fails to

even argue that Ray's or Morris's controller chooses whether to report exercise used data, like time or distance.

Neither Morris nor Ray teaches or suggests stopping reporting exercise use data in response to the controller determining that the user is not engaged with the operating member.

Petitioner fails to establish that Morris or Ray, alone or combination, teach or suggest element 1[h]. Ex.2004, ¶ 53. Petitioner argues that Morris “suggested this limitation” during the slowdown period when the user's absence is detected that “exercise use data that depended on the presence of the user, such as footfall force and cadence would not be reported.” Pet. at 38-39. Petitioner also argues that Ray “made clear that the virtual image was only reported out to the user while the person was exercising.” Pet. at 39. Aside from cadence, footfall force, and a virtual image not being “exercise use data,” as explained above, Petitioner's argument is misplaced because it ignores that the claim requires the controller report “exercise use data” *in response to* the controller determining the absence of a user on the operating member. Ex.2004, ¶ 53. In other words, to satisfy “element 1[h], the “exercise use data” must be determined by the controller to have occurred while a user was not actively engaging the operating member. *Id.*

Nothing in Petitioner's argument or evidence demonstrates that the controller of Morris or camera of Ray makes any determination or does any analysis about the validity of the time or distance data generated during the

slowdown period. Ex.2004, ¶ 54. Instead, according to Morris and Ray, time data would continue to be generated and accumulate without the user being detected by the sensor – just as it did when the user was detected by the sensor. *Id.* Thus, in Morris and Ray, there is no indication that time or distance data generated while a user is not engaged with the operating member stops being reported, and thus Petitioner's argument fails. *Id.*

Nonetheless, Petitioner concludes that “stopping the reporting of the user's virtual image . . . suffices to render limitation 1[h] obvious.” Pet. at 38-39. Again, this conclusion is incorrect because the virtual image is not “exercise use data.” Ex.2004, ¶ 55. It is a motivational image that does not represent an amount of exercise. *See* Ex.2004, ¶ 55; *see also* Ex.2005 at 24:3-5 (“It doesn't tell you precisely how much you've done, but it tells you you've done more, you keep getting thinner.”).

Petitioner continues with arguing that “other exercise use data—distance, pace, footfall force, cadence, and/or time—would also cease to be reported when the user was no longer exercising because the user had finished exercising, or had left the premises, which makes the reporting of such information unnecessary.”²

² The detection of footsteps is not relevant to pace because pace is a unit of time divided by a unit of distance. Ex.2004, ¶ 56 n.3. Time and distance data can be generated on a treadmill without a person engaged with the belt. In any event, as explained above, pace is not “exercise use data.” *Id.*

Pet. at 40. Pace, footfall force, and cadence, however, are not “exercise use data,” as explained above. Ex.2004, ¶ 56. Furthermore, Petitioner’s assertion that reporting time and distance would have been “unnecessary” in the user absence makes no sense and is beside the point. *Id.* The point of having a controller determine whether to report or not report exercise use data is that with prior art treadmills users would fake exercise by operating the treadmill belt in the user’s absence. *Id.* Thus, Petitioner’s argument about reporting time and distance being unnecessary in no way supports element 1[h] being obvious.

b. Petitioner fails to show that the Morris and Ray combination discloses element 1[i] – “configured to communicate the reported exercise use data to a third party.”

Petitioner argues that the Morris-Ray combination discloses “wherein the communication interface is configured to communicate the reported exercise use data to a third party” because “the virtual image [was sent] out as a live feed to third parties such as insurance programs, trainers, and physicians.” Pet. at 40. Even if Ray’s virtual image were “exercise use data,” which it is not, the evidence cited by Petitioner does not support that the *virtual image* is transmitted to third parties. *Id.* Instead of transmitting the virtual image, Petitioner’s cited evidence merely discloses the transmission of the user’s actual image to a third party to validate the user’s identity. *See, e.g.*, Ex.1004 at 6:49-51. Of course, transmission of a morphed image of the user would not be helpful for a third party validating the user’s

identity because it would not look like the user. Ex.2004, ¶ 57. Thus, Petitioner has failed to show that the Morris-Ray combination discloses element 1[i] or that claim 1 of the '375 patent is obvious.

2. Dependent Claims 2-7, 10-15

Petitioner has failed to establish obviousness of dependent claims 2-7 and 10-15 for the same reasons it failed to establish obviousness of claim 1. *See* Section VI.A.1.a. and b.; Ex.2004, ¶ 58; *In re Fritch*, 972 F.2d 1260, 1267 (Fed. Cir. 1992) (“Since dependent claims are nonobvious if the independent claims from which they depend are nonobvious, the Board’s affirmance of the rejection of dependent claims 2-7, 9-12, 14-23, and 30 is also reversed.”); *In re Fine*, 837 F.2d 1071, 1076 (Fed. Cir. 1988) (“A claim that depends from a non-obvious independent claim is non-obvious because it contains all the limitations of the independent claim, plus a further limitation.”); *Hartness Int’l. Inc. v. Simplimatic Eng’g Co.*, 819 F.2d 1100, 1108 (Fed. Cir. 1987) (“the district court was correct in holding that independent claim 1 was nonobvious. *A fortiori*, dependent claim 3 was nonobvious (and novel) because it contained all the limitations of claim 1 plus a further limitation. The district court’s holding that claim 3 was invalid is reversed.”).

3. Claim 16

Petitioner argues that claim 16 is obvious for the same reasons as it asserts for claim 1. Petitioner has failed to prove obviousness of claim 16 for the same reasons it fails to prove obviousness of claim 1. Ex.2004, ¶ 59. Specifically, Petitioner fails to establish that Morris and/or Ray disclose elements 16[pre], 16[e], 16[f], and 16[g] for the reasons they do not disclose element 1[g], 1[h], and 1[i]. See Section VI.A.1.a. and b.; Ex.2004, ¶ 59. Notably, for 16[e] and 16[f], Petitioner relies exclusively on its arguments for elements 1[g] and 1[h] respectively. Pet. at 53. Petitioner's arguments for 1[g] and 1[h], however, never address the "in response to the comparison step" aspect of elements 16[e] and 16[f]. Ex.2004, ¶ 59. For that reason, Petitioner has failed to show that Ray and/or Morris teach or suggest elements 16[e] and 16[f]. Thus, Petitioner has failed to prove obviousness of claim 16.

4. Dependent Claims 17-20

Petitioner has failed to establish obviousness of dependent claims 17-20 for the same reasons it failed to establish obviousness of claim 16. Ex.2004, ¶ 60. Specifically, Petitioner fails to establish that Morris and/or Ray disclose elements 16[pre], 16[e], 16[f], and 16[g] for the reasons they do not disclose element 1[g], 1[h], and 1[i]. See Section VI.A.3; Ex.2004, ¶ 60.

B. Ground 2: Morris, Ray, and Cox do not render Claims 8-9 and 18 obvious.

1. Petitioner fails to specify where each element of Claims 8-9 and 18 is found in Morris, Ray, and Cox.

Petitioner bears the burden to “specify where each element of the claim is found in the prior art patents or printed publications relied upon,” and “identif[y] specific portions of the evidence that support the challenge.” *Sandbox Med. v. Neotech Prods., Inc.*, IPR2019-00246, Paper 22, at *33-34 (P.T.A.B. May 6, 2020) (quoting 37 C.F.R. § 42.104(b)(4), (5)); *Microsoft Corp. v. FG SRC, LLC*, 860 F. App’x 708, 712-13 (Fed. Cir. 2021) (quoting 37 C.F.R. § 42.104) (“[T]he petitioner is the ‘master of its complaint,’ and as such, ‘[i]t is of the utmost importance that petitioners adhere to the requirement that the initial petition identify ‘with particularity’ the evidence that supports the grounds for the challenge to each claim.’”). “It is not the Board’s job to cobble together assertions from different sections of a petition or citations of various exhibits in order to infer every possible permutation of a petitioner’s arguments. Arguments in a petition must be made with particularity, not opacity.” *Microsoft*, 860 F. App’x at 713 (Fed. Cir. 2021).

Contrary to established law, Petitioner jumps directly into arguing that the claim elements added in dependent claims 8, 9, and 18 are found in Cox but fails to specify where the other elements of the claims are found. Ex.2004, ¶ 62. Indeed, in

applying its references to the elements of claims 8, 9, and 18, Petitioner does not even refer to or incorporate an element-by-element analysis from other Grounds.

Id. Thus, Ground 2 fails to specify where the claim elements are found in the references and should be rejected on that basis alone. *Id.*; Sandbox, IPR2019-00246, Paper 22, at 29 (“We decline Petitioner’s implicit invitation to incorporate Petitioner’s citations and analysis from Grounds 1-3 into this Ground.

Accordingly, we determine that Petitioner has failed to show unpatentability of claims 1-10 under Ground 4.”).

2. Petitioner fails to show a reason for a POSITA to combine Cox with Ray and Morris.

Petitioner adds Cox’s current sensor to the Morris-Ray combination because neither Morris nor Ray disclose a current sensor. Petitioner argues that a POSITA would have added Cox’s current sensor to the Ray and Morris combination because (1) it would “provide an improved motivational image to the user of the exercise apparatus disclosed in Ray and Morris;” (2) it “would have provided redundancy and accuracy”; and (3) “the presence of the user could be detected collaboratively using the three techniques of Ray, Morris and Cox. Pet. at 54-57. A POSITA would not have been motivated to combine Cox with Ray and Morris for any of these reasons. Ex.2004, ¶ 63.

First, Petitioner identifies nothing in Ray or any other reference suggesting that Ray needed improvements to its motivational image. *Id.*, ¶ 64. Nor does

Petition explain how having a current sensor added to Ray's camera and Morris's reluctance sensor would improve the motivational image. *Id.* To the extent that having additional sensors would improve Ray's motivational virtual image, Petitioner's proposed combination of Ray with Morris already provided an additional sensor to the combined apparatus. *Id.* Petitioner fails to identify any reason why a POSITA would add Cox's current sensor and the associated costs to improve a feature was not known to need improving. *Id.*; *Kinetic Concepts, Inc. v. Smith & Nephew, Inc.*, 688 F.3d 1342, 1369 (Fed. Cir. 2012) ("both of these references independently accomplish similar functions Because each device independently operates effectively, a person having ordinary skill in the art . . . would have no reason to combine the features of both devices into a single device.").

Second, Petitioner identifies nothing in Morris or any other reference suggesting that Morris needed another sensor to improve its ability to analyze gait. Ex.2004, ¶ 62. Petitioner's arguments that Cox also analyzes gait and that Morris teaches that detection techniques can be used to analyze gait are not reasons to add another, redundant sensor and its associated costs. *Id.*

Third, Petitioner fails to provide any plausible reason why a POSITA would be motivated to implement "three techniques" for detecting the presence of a user. Ex.2004, ¶ 63. According to Petitioner, the proposed Ray and Morris combination

would already provide two independent ways to detect the presence of a user—a camera (Ray) and reluctance sensor (Morris). Petitioner fails to explain why a POSITA would add a third costly sensor for a third level of redundancy that no reference suggests is needed or even helpful. *Id.*

Thus, Petitioner fails to establish any sound rationale for a POSITA to combine Cox with Morris and Ray. Ex.2004, ¶ 64. On that basis alone, Ground 2 fails to establish obviousness of claims 8-9 and 18.

3. Dependent Claims 8-9 and 18

Claims 8-9 depend directly or indirectly from Claim 1 and are therefore nonobvious for the same reasons Claim 1 is nonobvious as stated in Ground 1. Ex.2004, ¶ 68. Claim 18 depends from Claim 16 and is therefore nonobvious for the same reasons Claim 16 is nonobvious as stated in Ground 1. *See* Section VI.A.3.; Ex.2004, ¶ 68; *In re Fritch*, 972 F.2d at 1266 (“[D]ependent claims are nonobvious if the independent claims from which they depend are nonobvious.”).

C. Ground 3: Ray and applicant admitted prior art (AAPA) do not render Claims 1-3, 6-7, 10-16, and 19-20 obvious.

1. Petitioner impermissibly relies on AAPA.

Petitioner asserts that claims 1-3, 6-7, 10-16, and 19-20 are obvious based on the combination of Ray and AAPA. This reliance on AAPA, however, is not permitted because AAPA may not be used as the basis or a reference for a Ground. *Med-El Elektromedizinische Gerate Gest. M.B.H. v. Advanced Bionics AG*,

IPR2020-01016, Paper 42 (holding the use of AAPA was improper because “Petitioner’s reliance on AAPA as to several structural and functional limitations for a cochlear implant system, and reliance on Peterson for only an additional electrical system, supports our determination that AAPA is the ‘basis’ of this ground”); USPTO Memorandum, Updated Guidance on the Treatment of Statements of the Applicant in the Challenged Patent in Inter Partes Reviews under § 311 (June 9, 2022), *available at* <https://www.uspto.gov/sites/default/files/documents/2022060912updatedAAPAmemo.pdf>.

Here, Petitioner improperly cites AAPA as a basis for Ground 3 and to satisfy many claim elements including 1[pre], 1[a], 1[b], 1[d], and 1[g]. Pet. at 65-66, 73; Ex.2004, ¶ 70; Ex.2005 at 100:6-15 (AAPA used by Mr. Rawls as “part of the basis” for Grounds 3 and 4). Therefore, Petitioner admits that Ray is missing claim elements and that those claim elements are supplied by the AAPA. Ex.2004, ¶ 70. For this reason alone, Ground 3 fails to render the claims 1-3, 6-7, 10-16, and 19-20 obvious.

2. Claim 1

- a. Petitioner fails to show that the Ray and AAPA combination discloses elements 1[g]-1[h] – “in response to the controller determining that the user is [or is not] engaged with operating member, the controller is configured to report [or stop reporting] the exercise use data.”**

Ray does not teach or suggest reporting exercise use data in response to the controller determining that the user is engaged with the operating member.

Petitioner relies on its argument in Ground 1 for Ray disclosing element 1[g]. For the reasons stated in Ground 1, Ray does not disclose element 1[g]. *See* Section VI.A.1.a.; Ex.2004, ¶ 71.

AAPA does not teach or suggest reporting exercise use data in response to the controller determining that the user is engaged with the operating member.

Petitioner argues that “reporting exercise use data while a user was exercising was known to a POSITA per AAPA.” Pet. at 73. Petitioner’s support for this argument is that the ’375 patent discloses that “conventional exercise equipment included an operating member and a controller that collected exercise use data and reported it to the user.” Pet. at 63-64 (citing Ex.1001 at 1:38-50). Again, Petitioner’s argument disregards the controller’s role in determining whether to report exercise use data *in response to* the controller determining that the user is engaged with the operating member. Ex.2004, ¶ 72. A controller’s reporting of exercise use data but not “in response” to the controller determining

that a user is engaged with the operating member is the problem in the prior art solved by the '375 patent, not a disclosure of the invention. *Id.*

Neither Ray nor AAPA teaches or suggests stopping reporting exercise use data in response to the controller determining that the user is not engaged with the operating member.

Petitioner relies on Ray alone and its argument in Ground 1 for disclosing element 1[h]. For the reasons stated in Ground 1, Ray does not disclose element 1[h]. *See* Section VI.A.1.a.; Ex.2004, ¶ 73.

b. Petitioner fails show the Ray and AAPA combination discloses element 1[i] – “configured to communicate the reported exercise use data to a third party.”

Petitioner relies entirely on its argument in Ground 1 for the disclosure of element 1[i] in Ground 3. Element 1[i] is not disclosed in the Ray-AAPA combination for the same reasons provided for element 1[i] in Ground 1. *See* Section VI.A.1.b.; Ex.2004, ¶ 74.

3. Dependent Claims 2-3, 6-7, 10-15

Claims 2-3, 6-7, and 10-15 depend directly or indirectly from claim 1. Petitioner has failed to establish obviousness of dependent claims 2-3, 6-7, and 10-15 for the same reasons it failed to establish obviousness of claim 1. *See* Section VI.A.1.a. and b.; Ex.2004, ¶ 75; *In re Fritch*, 972 F.2d 1260, 1267 (Fed. Cir. 1992).

4. Claim 16

Petitioner argues that claim 16 is obvious for the same reasons as it asserts for claim 1. Petitioner has failed to prove obviousness of claim 16 for the same reasons it fails to prove obviousness of claim 1. Ex.2004, ¶ 76. Specifically, Petitioner fails to establish that Ray discloses elements 16[pre], 16[e], 16[f], and 16[g] for the reasons they do not disclose element 1[g], 1[h], and 1[i]. *See* Section VI.A.1.a. and b.; Ex.2004, ¶ 76. Notably, for 16[e] and 16[f], Petitioner relies exclusively on its arguments for elements 1[g] and 1[h] respectively. Pet. at 53. Petitioner's arguments for 1[g] and 1[h], however, never address the "in response to the comparison step" aspect of elements 16[e] and 16[f]. Ex.2004, ¶ 76. For that reason, Petitioner has failed to show that Ray and/or Morris teach or suggest elements 16[e] and 16[f]. *Id.* Thus, Petitioner has failed to prove obviousness of claim 16.

5. Dependent Claims 19-20

Claims 19-20 depend from claim 16. Petitioner has failed to establish obviousness of dependent claims 19-20 for the same reasons it failed to establish obviousness of claim 16. *See* Section VI.A.3.; Ex.2004, ¶ 77; *In re Fritch*, 972 F.2d 1260, 1267 (Fed. Cir. 1992).

D. Ground 4: Ray, AAPA, and Cox do not render Claims 8-9 and 18 obvious.

1. Petitioner fails to specify where each element of Claims 8-9 and 18 is found in Ray, AAPA, and Cox.

As with Ground 2, Petitioner fails to “specify where each element of the claim is found in the prior art patents or printed publications relied upon,” and “identif[y] specific portions of the evidence that support the challenge.” Ex.2004, ¶ 78; *Sandbox*, IPR2019-00246, Paper 22, at *33-34 (quoting 37 C.F.R. § 42.104(b)(4), (5)); *Microsoft*, 860 F. App’x at 712-13. Specifically, Petitioner jumps directly into arguing that the claim elements added in dependent claims 8-9 and 18 are found in Cox but fails to specify where the other elements of those claims are found. Ex.2004, ¶ 78. Petitioner does not even refer to or incorporate an element-by-element analysis from other Grounds. *Id.* Thus, Ground 4 fails to specify where the claim elements are found in the references and should be rejected on that basis alone. *Id.*; *Sandbox*, IPR2019-00246, Paper 22, at 29.

2. Petitioner impermissibly relies on AAPA.

Petitioner has impermissibly relied upon AAPA for the same reasons as stated in Ground 3. Ex.2004, ¶ 79. Therefore, Ground 4 should be denied on that basis alone.

3. Petitioner fails to show a reason for a POSITA to combine Cox with Ray and AAPA.

Petitioner adds Cox's current sensor to the Ray-AAPA combination.

Petitioner argues that a POSITA would have added Cox's current sensor to Ray because (1) it would "provide an improved motivational image to the user of the exercise apparatus disclosed in Ray;" and (2) it would "provide redundancy and accuracy of user detection." Pet. at 81. A POSITA would not have been motivated to combine Cox with Ray and AAPA for these reasons. Ex.2004, ¶ 80.

First, Petitioner identifies nothing in Ray or any other reference suggesting that Ray needed improvements to its motivational virtual image. *Id.*, ¶ 81. Nor does Petitioner explain how having a current sensor added to the Ray's camera sensor would improve the motivational virtual image. *Id.* Petitioner fails to identify any reason why a POSITA would add Cox's current sensor and the associated costs to improve a feature that needs no improving. *Id.*; *Kinetic Concepts*, 688 F.3d at 1369 ("both of these references independently accomplish similar functions Because each device independently operates effectively, a person having ordinary skill in the art . . . would have no reason to combine the features of both devices into a single device.").

Second, Petitioner fails to provide any plausible reason why a POSITA would be motivated to implement another sensor for redundancy for detecting the presence of a user or for additional accuracy. Ex.2004, ¶ 82. According to

Petitioner, Ray already included a person detection sensor that accurately captured videos or images for a third-party to verify. Petitioner fails to explain why a POSITA would add another sensor for unneeded redundancy and accuracy of its person detection feature. *Id.* Thus, Petitioner has failed to articulate a legitimate reason to combine Cox with Ray and AAPA.

4. Dependent Claims 8-9 and 18

Petitioner's only argument for obviousness of claims 8-9 and 18 in Ground 4 incorporates its rationale for these claims in Ground 2. Petitioner, however, argued in Ground 2 that claims 8-9 and 18 were obvious in view of *Morris*, Ray, and Cox, whereas it argues in Ground 4 that claims 8-9 and 18 are obvious based on Ray, *AAPA*, and Cox. Pet. at 58-63. Thus, the same rationale cannot apply because for claims 8-9 and 18 Petitioner relies upon *Morris* to satisfy many of the elements of independent claim 1, including a base, an operating unit, a controller, and a sensor, among other things. Pet. at 19-40; Ex.2004, ¶ 83. Therefore, Petitioner's incorporation of its obviousness arguments for claims 8-9 and 18 from Ground 2 is fatally flawed and fails to support Ground 4.

Also, claims 8-9 and 18 are not obvious for the same reason claims 1 and 16 are not obvious provided in Ground 3. *See* Section VI.C.2.a. and b. and 4.; Ex.2004, ¶ 84; *In re Fritch*, 972 F.2d 1260, 1267 (Fed. Cir. 1992).

VII. CONCLUSION

The Board should find that the Petition has failed to demonstrate the unpatentability of any of the Challenged Claims.

Respectfully submitted,

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Dated: March 5, 2024

CERTIFICATION OF WORD COUNT UNDER 37 CFR § 42.24(d)

Under 37 C.F.R. § 42.24(d), the undersigned certifies that the word count for this Patent Owner Response totals 7,110, excluding the parts exempted by 37 C.F.R. § 42.24(a), (b)(2). The word count was made using the build-in word count function in the Microsoft® Word software used to prepare this document.

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CERTIFICATION OF SERVICE

The undersigned hereby certifies that “PATENT OWNER’S RESPONSE TO PETITION FOR *INTER PARTES* REVIEW OF U.S. PATENT NO. 10,796,375, DECLARATION OF DANIEL VAN DER WEIDE, EX2004, EX 2005 and PATENT OWNER’S EXHIBIT LIST” for the above-captioned matter(s) was served in its entirety on March 5, 2024, upon the following parties via email at the below email addresses:

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