

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. IPR2023-01165

U.S. Patent No. 11,227,340

**PATENT OWNER'S RESPONSE TO PETITION FOR *INTER PARTES*
REVIEW OF U.S. PATENT NO. 11,227,340**

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I. INTRODUCTION

Petitioner challenges claims 1-20 (“Challenged Claims”) of U.S. Patent No. 11,227,340 (“the ’340 Patent,” Ex.1010) on three grounds of obviousness. Petitioner’s Grounds do not render the Challenged Claims obvious because, among other things, they misconstrue and misapply “exercise use data,” “validated exercise use data,” and “non-validated exercise use data,” and fail to identify prior art disclosing a controller configured to generate validated and non-validated exercise use data *in response to* the sensor detecting or not detecting a user engaged with the operating unit of the exercise apparatus. Furthermore, Petitioner improperly relies on alleged “Applicant Admitted Prior Art” in Grounds 1 and 2. Based on these shortcomings and more, Petitioner has failed to establish any of the Challenged Claim are unpatentable for obviousness.

II. OVERVIEW OF THE ’340 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 ’340 patent is generally directed to exercise equipment with a motor-driven operating member, like a treadmill, that has a controller that validates exercise use data for the user and/or third parties by determining whether the

exercise use data is valid based on a sensor detecting user engagement with an operating unit, like a treadmill belt.

Before the inventions of the '340 patent, health insurance companies offered customers premium discounts if the customer could demonstrate regular exercise. Ex.1010 at 1:18-20. The underlying rationale for the insurer is that regular exercisers have better health and thus have lower insurance payouts. *Id.* at 1:20-29. 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 1:29-63.

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 1:57-64. 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 2:6-14.

Before the inventions of the '340 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 2:7-10. 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 based on the movement of the operating member and reported to the user and/or the third party was valid or not. *Id.* at 2:19-26. The '340 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 2:30-43.

Claim 1 of the '340 patent is directed to a motor-driven exercise apparatus. The exercise apparatus includes “a base,” “an operating unit movable relative to the base,” “a motor coupled to the operating unit,” “a sensor operable to detect engagement of a user with the operating unit,” and “a controller in communication with the operating unit and the sensor.” *Id.* at claim 1. The “controller” is “configured to generate a validated exercise use data in response to movement of the operating unit relative to the base and the sensor does detect engagement of the user with the operating unit.” *Id.* In some claims, after the controller determines from information received from the sensor which exercise use data is validated and which exercise use data is non-validated. *Id.* Validated exercise use data is reported

to the communication interface. *Id.* Other claims in the '340 patent cover slightly different aspects of the invention with different claim language.

III. CLAIM CONSTRUCTION

The claim terms “exercise use data,” “validated exercise use data,” and “non-validated exercise use data” need 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).

A. “Exercise use data” means “data that would represent an amount of exercise of the user.”

In order to understand the meaning of “validated exercise use data” and “non-validated exercise use data” as used in the claims of the '340 patent, one must first understand “exercise use data.” Ex.2004, ¶ 32. “Exercise use data” is “data that would represent an amount of exercise of the user.” *Id.*

The specification and claims define “exercise use data.” The specification states that “exercise use data would represent an exercise **amount** of the user.” Ex.1010 at 1:43-46 (emphasis added). The specification explains that “exercise use data” includes “an amount of time” or “distance traveled (or equivalent of distance traveled).” *Id.* at 6:33-45. The independent and dependent claims also specify

“time” and “distance” as “exercise use data.” *Id.* at claims 4, 5, 17. Time and distance represent amounts of exercise. Ex.2004, ¶ 33.

“Exercise use data” is not inherently validated or non-validated. *Id.*, ¶ 34. Instead, “exercise use data” alone is an apparent amount of exercise based on the movement of the operating unit/endless belt of the exercise apparatus/treadmill without regard to whether a user is actively engaged with the operating unit. *Id.* It is only through the communication between the controller and sensor detecting the user's presence or absence is “exercise use data” validated or non-validated. *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 24-25. 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 25-26; Ex.2005 (Rawls Dep. Tr.) at 16:22-17:7 (defining “exercise use data” as “data accumulated while the machine is running”). 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. Ex.2004,

¶ 35. Those metrics might be broadly characterized as “exercise data,” but they are not “exercise use data” as used in the ’340 patent. *Id.*

B. “Validated exercise use data” is “exercise use data that has been determined to have occurred by the controller in response to the sensor detecting a user engaging the moving operating unit (or member).”

The term “validated exercise use data” is recited in claim 1 and the claims that depend from it as well as claim 19. “Validated exercise use data” means “exercise use data that has been determined to have occurred by the controller in response to the sensor detecting a user engaging the moving operating unit/member.” Ex.2004, ¶ 36.

The ’340 patent specification and claims provide that “the controller is . . . configured to generate a validated exercise use data in response to movement of the operating unit relative to the base and the sensor does detect engagement of the user with the operating unit.” Ex.1010 at 2:54-58, claim 1.¹ The role of the controller in determining from sensor information whether the “exercise use data” is valid is explained in connection with the flow chart shown in Figure 6.

¹ Claim 1 is representative of the other claims of the ’340 patent as it relates to the construction of “validated exercise use data.”

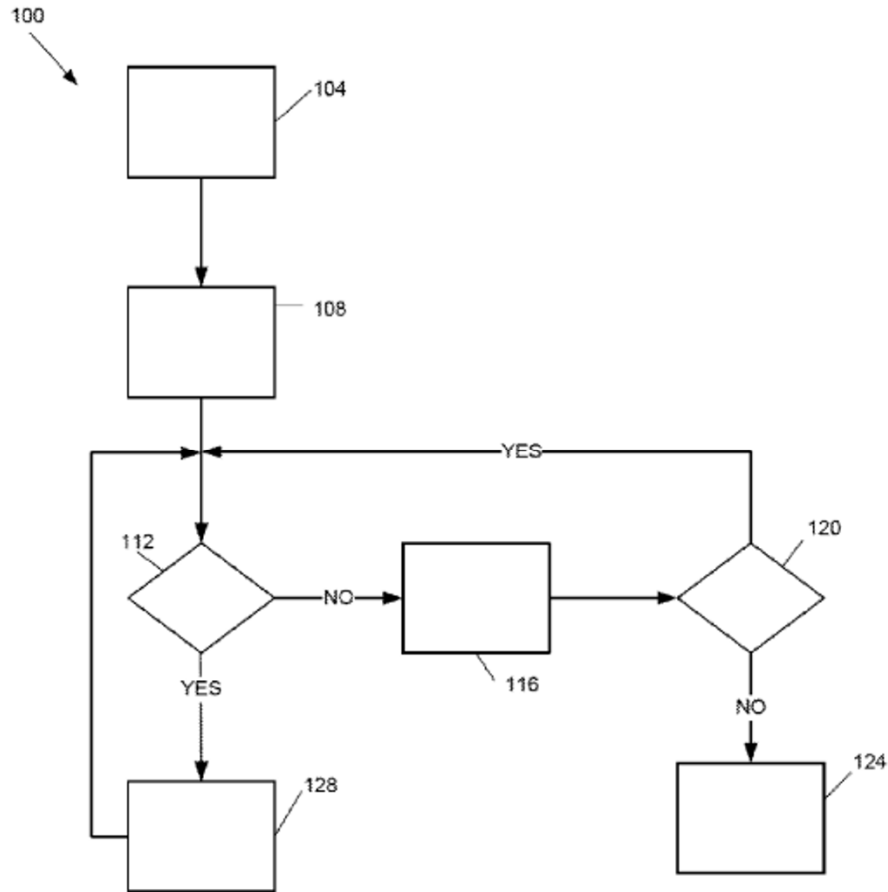


FIG. 6

As shown in Figure 6, “at step 108 the controller 40 receives data from the sensor configured to detect user engagement with the exercise apparatus.” Ex.1010 at 7:46-48. Next, at “step 112, the controller 40 analyzes the data from the sensor to detect whether a user is actively engaging the motor-driven operating member 20.” *Id.* at 7:53-55. “If the analysis [by the controller] results in a ‘no,’ there is no user detected . . . [and] the process proceeds to step 116. If the analysis [by the

controller] results in a ‘yes,’ there is a user detected . . . [then] the process proceeds to step 128.”

At step 116, because the controller determined from information provided by the sensor that no user was actively engaging the operating member/treadmill belt, the controller generates “non-validated exercise use data.” At step 128, because the controller determined from information provided by the sensor that a user was engaging the operating member/treadmill belt, the controller generates “validated exercise use data.” *Id.* at 8:15-21. Thus, as explained by the ’340 patent specification, “validated exercise use data” is “exercise use data that has been determined to have occurred by the controller in response to the sensor detecting a user engaging the moving operating unit (or endless belt).” Ex.2004, ¶ 39.

Petitioner asserts that it does not offer a construction for “validated exercise use data,” but in fact argues about the meaning of the term (*see, e.g.*, Pet. at 22-24) and implies a construction in its application of the references to the claims (*see, e.g.*, Pet. at 24-30). Petitioner argues that “the ’340 patent and its claims describe ‘validated exercise use data’ as exercise data that is generated *while* the user is actually exercising on the exercise machine—i.e., when the user is engaged with the operating unit that is moving” Pet. at 22 (emphasis added); *see also*

Ex.2005 at 17:13-16 (defining “validated exercise use data” as “exercise use data generated while the user is detected as being present”).

Similarly, when applying references to the claim element, Petitioner contends Ray discloses “validated exercise use data” when “exercise information such as time and distance, would be generated *while* the treadmill belt (operating unit) was moving, and the exercising user was being detected.” Pet. at 28 (emphasis added). In other words, Petitioner argues that, so long as exercise use data is being generated *while* the sensor detects engagement of a user with the operating unit, that data is “validated exercise use data.”

Petitioner's construction is wrong because it ignores the role of the controller described in the specification and required by the claims. Ex.2004, ¶ 42. As stated above, the specification explains, and the claims require, that the controller generates validated exercise use data *in response* to the sensor detecting user engagement with the moving operating unit. That is, the controller determines from information received from the sensor whether to generate “validated exercise use data.” *Id.*

Under Petitioner's incorrect construction, however, the controller does not validate the exercise use data *in response* to information received from the sensor. Ex.2004, ¶ 43. Instead, according to Petitioner, exercise use data becomes

“validated exercise use data” by virtue of exercise use data being generated *while* a sensor detects a user's engagement with the operating unit. *Id.* Petitioner's construction does not require communication between the controller and sensor or determination by the controller in response to information received from the sensor. Pet. at 22-23.

Petitioner's interpretation of “validated exercise use data” is not “validated exercise use data,” but instead is an example of the problem in the prior art solved by the '340 patent. Ex.2004, ¶ 44. Indeed, before the '340 patent, exercise use data was generated when the treadmill belt was moving, regardless of whether a user was actually exercising or not, because the controller did not determine whether that exercise use data was valid in response to the sensor detecting engagement by a user. *Id.*; Ex.1010 at 2:11-14.

Petitioner's proposed construction is also inconsistent with the purpose of the invention. Ex.2004, ¶ 45. The purpose of validating the exercise use data is to prevent a user from falsifying his or her amount of exercise by merely turning on the treadmill and allowing exercise use data, like time and distance, to accumulate and be reported to the treadmill's display or to a third party. *Id.* But according to Petitioner's construction, where validated exercise use data does not require a determination of validity by the controller in response to information from the

sensor, the exercise use data generated by the controller is merely exercise use data with no indication as to whether it is valid or not. *Id.*

In sum, the claims and specification make clear that “validated exercise use data” is “exercise use data that has been determined to have occurred by the controller in response to the sensor detecting a user engaging the moving operating unit/member.” Ex.2004, ¶ 46.

C. “Non-validated exercise use data” means “exercise use data that has been determined to have occurred by the controller in response to the sensor not detecting a user engaging the moving operating unit (or member).”

The term “non-validated exercise use data” is recited in claim 2 and its dependent claims. “Non-validated exercise use data” means “exercise use data that has been determined to have occurred by the controller in response to the sensor not detecting a user engaging the moving operating unit/member.” Ex.2004, ¶ 47.

“Non-validated exercise use data” is very similar to the “validated exercise use data,” but it is generated (or recorded) by the controller when it determines from the sensor information that a user was not engaged with the operating unit. *Id.*, ¶ 48. Like with “validated exercise use data,” Petitioner argues ““non-validated exercise use data” is exercise data generated while “the user is not detected” but the operating unit is moving. Pet. at 22. In other words, Petitioner contends “non-validated exercise use data” is merely exercise use data that is generated *while* the

operating member is moving, but no user is detected by the sensor to be engaged with the operating unit. *See* Ex.2005 at 18:4-8 (defining “non-validated exercise use data” as “exercise use data that’s collected or generated when the user . . . is not present”).

Again, Petitioner is wrong because it ignores that the claim language and specification require the controller to generate non-validated exercise use data *in response* to movement of the operating unit and no detection of user engagement with the operating unit by the sensor. Ex.2004, ¶ 49. Like with “validated exercise use data,” the key is that the controller determines whether the exercise use data is not valid *in response* to information received from the sensor. *Id.* The process for this determination is explained in the discussion of Figure 6, above. If no determination is made by the controller as to whether the exercise use data is validated or non-validated, then the exercise use data generated is merely “exercise use data” based on the movement of the operating unit and without regard for whether a user is engaged. *Id.*

Petitioner’s construction is further understood by its application of Morris, Ray and alleged applicant admitted prior art (“AAPA”) to “non-validated exercise use data.” In that context, Petitioner argues that “exercise use data,” “would be generated in the absence of a user . . . while the user was not being detected” and

that “would be non-validated exercise use data.” Pet. at 31. Petitioner also argues that the ‘340 patent specification – AAPA – discloses that “treadmills could generate (non-validated) exercise data automatically and could continue generating such data when left unattended.” Pet. at 59.

Petitioner's application, however, misconstrues “non-validated exercise use data” because “non-validated exercise use” data is not merely the generation of exercise use data when the user is not present. Ex.2004, ¶ 51. The claim requires the controller to generate non-validated exercise use data *in response* to the sensor not detecting engagement of the user with the moving operating member. *Id.* Thus, “non-validated exercise use data” is “exercise use data that has been determined by the controller to have occurred while the sensor did not detect a user actively engaging the moving operating unit.” *Id.*

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, ¶ 52. 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,” “non-validated

exercise use data,” and “validated exercise use data,” and misapplies its references to those the claim elements. When the correct construction of those terms is applied, none of Petitioner's references alone or in combination teach or suggest the inventions of the Challenged Claims.

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

1. Claim 1

Petitioner fails to show that the Morris and Ray combination teaches or suggests element 1[e] – “validated exercise use data” because both references lack a “controller configured to generate a validated exercise use data in response to detecting engagement of the user with the operating unit and movement of the operating unit relative to the base.”

Morris does not teach or suggest validated exercise used data.

With respect to Morris, 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 24. Petitioner further asserts that Morris generated “exercise use data such as *footfall force*” and “*a user's cadence*.” Pet. at 33. Of those metrics, only distance is “exercise use data” because the others do not represent an *amount* of exercise. Ex.2004, ¶ 56.

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, and were therefore validated exercise use data.” Pet. at 34. That pace and cadence have time and/or distance as component does not make them “exercise use data.” Ex.2004, ¶ 57.

Pace is a unit of time per a unit of distance, and cadence is “generally expressed as steps per minute.” Ex.1006 at [0053]; Ex.2004, ¶ 58. 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 provide the user’s time or distance. Ex.2004, ¶ 58. For example, a user can have an 8:00 minute per mile pace or a 45 steps per minute cadence over *any* time or distance. *Id.* Thus, pace and cadence do not represent an **amount** of exercise by the user. *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 validated by a controller in response to the sensor detecting a user engaged with the operating unit. Ex.2004, ¶ 59. Petitioner puts forth no evidence or argument to the contrary. Notably, there is no reason or need to have a controller to validate 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 can only be generated when a user's foot contacts the treadmill belt. *Id.* Thus, cadence and footfall force are inherently valid, similar to "exercise use data" generated on equipment with a user-driven operating unit, such as the stationary bike and elliptical trainer discussed in the background of the '340 patent. Ex.1001 at 1:57-64; Ex.2004, ¶ 59.

With respect to Morris's disclosure of distance and time, Petitioner does not argue that Morris's controller validates distance or time *in response* to the sensor detecting engagement by the user with the moving operating unit. Ex.2004, ¶ 60. Rather, Petitioner incorrectly argues the claim element is satisfied because "exercise use data obtained from the sensor readings were generated *while* the belt (operating unit) was moving." Pet. at 25 (emphasis added). Petitioner's argument disregards the controller and its role in determining whether exercise use data is valid *in response* to the sensor detecting a user engaged with the moving operating unit. Ex.2004, ¶ 60. A controller's generation of exercise use data *while* a sensor detects a user engaged with the operating unit (such as for detecting footfall force or for stopping the treadmill belt for safety) but not "in response" to the sensor detecting engagement of the user is the problem in the prior art solved by the '340 patent. *Id.*

Ray does not teach or suggest validated exercise use data.

Ray also lacks claim element 1[e]. Ex.2004, ¶ 61. Petitioner concludes with no citation to supporting evidence that “Ray made explicit that validated exercise use data would only be produced while the user was being detected exercising.” Pet. at 25. To the extent Petitioner means that Ray teaches or suggests “validated exercise use data,” Petitioner is wrong. Ex.2004, ¶ 61.

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 25-26. As an initial matter, “exercise data” is not in the claims and it is not the same as “exercise use data.” Ex.2004, ¶ 62. Heart rate is not “exercise use data” because it does not represent an **amount** of exercise. *Id.* Likewise, Ray's “virtual image of the user” is not “exercise use data” because it also does not represent an **amount** of exercise by the user. *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 it as the “validated exercise use data” of the Ray and Morris combination (and Ray alone for Ground 2). Pet. at 52-56.

Petitioner urges that Ray's virtual image is "exercise use data." This argument should be rejected for several reasons. First, Petitioner incorrectly argues that "the '340 patent explained that exercise use data can be 'a multimedia content, such as an image and/or sound." Pet. at 26 n.2. The '340 patent does not state this. Instead, the portion of the '340 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.1010 at 6:57-59 (emphasis added). For example, a user's distance could be graphically displayed as a bar chart for every mile ran or exercise time ran could be shown in a colorful, flashing font with celebratory music. Ex.2004, ¶ 63. Thus, the '340 patent teaches that "validated 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 26. But morphing the virtual image based on underlying data that may be "exercise use data" does not make the virtual image "exercise use data." Ex.2004, ¶ 64. As Petitioner's and Patent Owner's experts agree, one cannot determine time,

distance, or any other measure of an ***amount*** of exercise performed by the user from viewing the virtual image regardless of the inputs that causes it to morph. *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” as Petitioner contends.

Notably, Petitioner muddles Ray’s validation feature with Ray’s virtual image. Ex.2004, ¶ 65. To be clear, Ray’s “validation feature” is different from the virtual image that Petitioner contends is “exercise use data.” *Id.* 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 data. *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 (Ppetitioner’s alleged “exercise use data”) is validated by a third-party, let alone by a controller as required by the claim. Ex.2004, ¶ 65; Ex.2005 33:8-22.

Nonetheless, Petitioner concludes that “generation and reporting of the user’s thinning image, and stopping the reporting once the user could not be detected, satisfied limitation 1[e].” Pet. at 29. Again, this conclusion is incorrect

because the virtual image is not “exercise use data.” Ex.2004, ¶ 66. It is a motivational image that does not represent an amount of exercise. *Id.*; *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.”).

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 . . . configured to generate a validated exercise use data [i.e., validated time, distance or calories] *in response* to the sensor detecting engagement of the user with the operating unit and movement of the operating unit relative to the base.” Ex.1010 at claim 1 (emphasis added); Ex.2004, ¶ 67. While Ray mentions that the camera stops recording images when the user is not detected, it says nothing about the controller determining the validity of time, distance, or calories *in response* to a sensor not detecting a user engaged with the moving operating unit. Ex.2004, ¶ 67. 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 determination by the controller whether or what portion of the exercise data is valid or not. *Id.*; Ex.2005 32:4-7, 38:19-39:2.

Petitioner’s misinterpretation of “validated exercise use data” is highlighted in its discussion of distance and time in claims 4 and 5. Regarding “duration of the

exercise” in claim 4, Petitioner argues it would be “validated exercise use data because it was detected *while* the user was engaged with the treadmill as detected and confirmed via images of the exercising user.” Pet. at 35-36 (emphasis added). Again, Petitioner has ignored the claimed interaction between the controller and sensor. Ex.2004, ¶ 68. Merely having a sensor and/or a third party detect a user exercising via images while the controller generates time, without the controller determining the validity of the time *in response* to the sensor the detecting the user, is not “validated exercise use data.” *Id.*

As far as “distance” in claim 5, Petitioner advances the same incorrect argument. Ex.2004, ¶ 69. Contrary to Petitioner’s argument, distance is not “validated exercise use data” simply because it was collected *during* the user’s exercise and reported to a third party. Pet. at 36 (emphasis added); Ex.2004, ¶ 69. Validated exercise use data requires a determination by the controller *in response* to information obtained from the sensor. Ex.2004, ¶ 69. Petitioner fails to even argue that Ray’s or Morris’s controller validates time or distance. *Id.*

Thus, Petitioner fails to show that the combination of Morris and Ray teaches or suggests element 1[e].

2. Dependent Claim 2

Claim 2 depends from claim 1 and adds “the controller is further configured to generate non-validated exercise use data in response to the sensor detecting the user not engaged with the operating unit and movement of the operating unit relative to the base.” Ex.1010 at claim 2. Neither Morris nor Ray teaches or suggests claim 2. Ex.2004, ¶ 71.

Petitioner argues that Morris discloses “non-validated exercise use data” during the slowdown period when the treadmill generates time for the 6 to 8 seconds between when the user's absence is detected and when the treadmill belt stops for safety purposes. Pet. at 30-31. Petitioner's argument is misplaced because it ignores that the claim requires the controller generate “non-validated exercise use data” *in response* to the sensor detecting the user not engaged with the operating unit and movement of the operating unit relative to the base. In other words, to satisfy “non-validated exercise use data” of claim 2, the “exercise use data” must be “determined by the controller to have occurred while the sensor did not detect a user actively engaging the moving operating unit.” Ex.2004, ¶ 72.

Nothing in Petitioner's argument or evidence demonstrates that the controller of Morris makes any determination or does any analysis about the validity of the time data generated during the slowdown period. Ex.2004, ¶ 73.

Instead, according to Morris, time and distance data would continue to be generated and accumulate without the user being detected by the sensor – in the same way it did when the user was detected by the sensor. *Id.* Thus, in Morris, there is no indication that any time or distance data that is generated by the controller is in response to the sensor not detecting a user during the slowdown period. *Id.* Thus, it is not “non-validated exercise use data.” *Id.*

Also, Petitioner has failed to establish obviousness of dependent claim 2 because it failed to establish obviousness of claim 1. *See* Section VI.A.1; Ex.2004, ¶ 74; *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. Dependent claim 3

Claim 3 depends from claim 2. Claim 3 is not obvious because claim 2 is not obvious. *See* Section VI.A.2; Ex.2004, ¶ 75; *In re Fritch*, 972 F.2d at 1267.

4. Dependent claims 4 and 5

Claims 4 and 5 each depend from claim 1 and specify “time” and “distance” as the “validated exercise use data.” For the reasons stated above for claim 1, the Ray and Morris combination does not teach or suggest a controller that generates: (1) validated time data defined by the duration of time that the sensor detects a user engaged with the moving operating unit; or (2) validated distance traveled data, which is defined by the distance incurred while the sensor detects engagement of the user with the operating unit. Ex.1010 at claims 4 and 5. Also, claims 4 and 5 are not obvious because claim 1 is not obvious. *See* Section VI.A.1; Ex.2004, ¶ 76; *In re Fritch*, 972 F.2d at 1267.

5. Dependent claim 6

Claim 6 depends from claim 1. Claim 6 is not obvious because claim 1 is not obvious. *See* Section VI.A.1; Ex.2004, ¶ 77; *In re Fritch*, 972 F.2d at 1267.

6. Dependent claim 7

Claim 7 depends from claim 1. Claim 7 adds that “the controller is configured to establish communication with a remote location, and wherein the

controller is configured to maintain communication between the exercise apparatus and the remote location while the user is determined by the controller not to be engaged with the operating member.” Ex.1010 at claim 7. Petitioner argues that this claim is satisfied because “Ray illustrated the electronic device communicated via the internet and had ‘at least periodic access to the Internet or other large area network.” Pet. at 37. Petitioner never mentions a controller in Ray that performs the claimed functions. *Id.* at 37-39. Instead, the only “controller” Petitioner mentions is in context of independent claim 1. Pet. at 20-21. There, Petitioner relies exclusively on Morris’s “FIT processor,” but does not assert that Morris’s FIT processor can perform any of the functions of claim 7. *Id.*

Furthermore, even if Petitioner had identified a controller in Ray, Ray does not teach or suggest a controller that maintains communication between the exercise apparatus and the remote location while the user is determined by the controller not to be engaged with the operating member. Ex.2004, ¶ 79. Contrary to Ray having a controller that has the functionality required by claim 7, Petitioner previously asserted that Ray teaches that “[o]nce the user was no longer exercising on the treadmill, the generation and reporting of the user’s image would have stopped” and that Ray “stop[ed] the reporting once the user could not be detected.”

Pet. at 29. Petitioner cannot reasonably argue that Ray both maintains and does not maintain a connection when no user is detected. Ex.2004, ¶ 79.

Despite Ray teaching away from maintaining a connection with the remote location when the user is not detected, Petitioner argues that it would have been obvious to do so to “avoid delays in trying to re-establish the connection.” Pet. at 39. Petitioner fails to point to anything in the prior art suggesting that there would be delays in reconnecting to the remote location if the user returned to exercise. Ex.2004, ¶ 80. Thus, this argument is unsupported and an improper attempt to satisfy the claim element with hindsight when the Ray reference taught away. *Id.*

Furthermore, Petitioner argues claim 7 would be satisfied by Morris displaying its “user return” message on a wall-mounted television while the user is not detected. Pet. at 39. As an initial matter, Morris already displays this message on its treadmill console display screen. Ex.1006 at [0045]. There is no good reason for a POSITA to duplicate this on a wall-mounted television. Ex.2004, ¶ 81.

Nevertheless, a wall-mounted television connected to the treadmill display is not a communication with a “remote location” as required by claim 7. Ex.2004, ¶ 82. According to the '340 patent, a “remote location” is a location remote from the exercise apparatus such as “a web portal, web site, local area network, or generally over the Internet.” Ex.1010 at 7:35-37. The dictionary definition of

“remote” is “far removed in space, time or relation.” Ex.2006 (“remote” dictionary definition). As explained above, the purpose of the ’340 patent is to provide an exercise validation function where the “validated exercise use data” is transmitted to third parties, like insurers, for credit. Thus, a wall-mounted television merely displaying what Morris already displayed on its treadmill console screen is not a communication with a “remote location.” Ex.2004, ¶ 82. Thus, Ray and Morris do not teach or suggest claim 7 and do not render it obvious.

Finally, claim 7 is not obvious because claim 1 is not obvious. *See* Section VI.A.1; Ex.2004, ¶ 83; *In re Fritch*, 972 F.2d at 1267.

7. Claim 8

Petitioner fails to show that the Morris and Ray combination teaches or suggests element 8[g] because both references lack a “controller . . . configured to report exercise use data to the communication interface in response to the controller determining that the user is engaged with the operating member.” Ex.2004, ¶ 84.

To argue that Morris and Ray satisfy element 8[g], Petitioner relies exclusively on its arguments for elements 1[e] and 8[e]. For the reasons stated above for claim 1[e], Morris and Ray do not teach or suggest element 8[g]. Ex.2004, ¶ 85. Specifically, to the extent any “exercise use data” is reported in

Morris and Ray, it is ***not*** reported ***in response*** to the controller determining the user is engaged with the operating member. *Id.* There is no teaching or suggestion in Ray that a controller ever determines a user is engaged with the member, much less that a controller reports “exercise use data” ***in response*** to determining engagement by the user. *Id.* Regarding Morris, there is no teaching or suggestion that its controller reports “exercise data” ***in response*** to determining engagement by the user. *Id.* Thus, Morris and Ray do render claim 8 obvious.

8. Dependent claim 9

Claim 9 depends from claim 8 and adds that “the controller is configured to stop reporting the exercise use data to the communication interface in response to the controller determining that the user is not engaged with the operating member and the operating member is driven by the motor.” Ex.1010 at claim 9. Morris and Ray do not teach or suggest claim 9. Ex.2004, ¶ 86.

Petitioner cites its arguments for element 1[e], but that element is different and has nothing to do with the controller ***stopping reporting***. Petitioner goes on to argue that “[t]his limitation was explicitly described in Ray, which made clear that the virtual image (exercise use data) was only reported out to the user while the person was exercising.” Pet. at 43. As stated above for claim 1[e], Ray’s “virtual image” is not “exercise use data.” Ex.2004, ¶ 87.

Furthermore, for its proposition that the “virtual image” stops being reported, Petitioner cites Ray at 6:55-57. But as stated above regarding element 1[e], this section of Ray does not relate to the “virtual image.” Ex.2004, ¶ 88. It relates to the camera taking videos or photos of the user that are transmitted to the third-party for validating the user's identity. Ex.1004 at 6:43-66; *see also* Ex.2004, ¶ 88. Petitioner does not contend the user's actual image is “exercise use data.” Thus, even if Ray's “virtual image” were “exercise use data,” which it is not, Ray does not teach or suggest claim 9. Ex.2004, ¶ 88.

Also, Ray states that “as long as the treadmill is moving the camera will operate to take their real time image while exercising.” Ex.1004 at 6:53-55; *see also* Ex.2004, ¶ 89. Thus, when the treadmill is moving and no user is on it, the camera continues to operate. Ex.2004, ¶ 89. To the extent Petitioner contends that camera operation controls the transmission of exercise data to the communication, then Ray does not stop reporting exercise use data when the user is determined not to be engaged with the operating member. *Id.*

Next, Petitioner argues that “[i]t would have been obvious to a POSITA that in the Morris-Ray combination, failure to detect an exercising user would cause the reporting of the exercise use data (the user's virtual image and associated data) to the doctor or wellness trainer to cease.” Pet. at 44. However, neither Morris nor

Ray teaches or suggests a controller stopping the reporting of “exercise use data” when the controller determines no user is engaged. Ex.2004, ¶ 90. Petitioner’s expert agrees with this argument but fails to explain why this element would be obvious to a POSITA without any teaching or suggestion in the prior art. Ex.1002 at ¶ 199. Thus, Petitioner’s argument and its expert’s conclusory opinion can only be explained by the improper use hindsight and *ex post* reasoning. Ex.1002 at 73:3-9; *TQ Delta, LLC v. Cisco Sys.*, 942 F.3d 1352, 1359 (Fed. Cir. 2019) (reversing Board’s obviousness determinations and holding that Board’s conclusory “finding, without more, tracks the *ex post* reasoning KSR warned of”).

Finally, claim 9 is not obvious because claim 8 is not obvious. *See* Section VI.A.7; Ex.2004, ¶ 90; *In re Fritch*, 972 F.2d at 1267.

9. Dependent claim 10

Claim 10 depends from claim 8 and adds that “the controller is in communication with the communication interface while the operating member is driven by the motor and the user is determined by the controller not to be engaged with the operating member.” Ex.1010 at claim 10. Petitioner relies exclusively on its argument from claim 7 to support its position on claim 10. Pet. at 45. Likewise, claim 10 is not obvious for the reasons state above in claims 7 and 9, and because

claim 8 is not obvious. *See* Section VI.A.7; Ex.2004, ¶ 92; *In re Fritch*, 972 F.2d at 1267.

10. Dependent claim 11

Claim 11 depends from claim 10 and adds that “the communication interface is in communication with a remote storage device while the operating member is driven by the motor and the user is determined by the controller not to be engaged with the operating member.” Ex.1010 at claim 11. For the reasons stated with respect to claims 7, 9, and 10, claim 11 would not have been obvious. Claim 11 is also not obvious because claim 10 is not obvious. *See* Section VI.A.9; Ex.2004, ¶ 93; *In re Fritch*, 972 F.2d at 1267.

11. Dependent claim 12

Claim 12 depends from claim 8 and adds that “the controller is configured to report the exercise use data to the communication interface only in response to the controller determining that the user is engaged with the operating member and the operating member is being driven by the motor.” Petitioner relies upon its argument with respect to element 1[e]. Pet. at 46. Likewise, claim 12 is not obvious for the reasons state above regarding elements 1[e] and 8[g] and because claim 8 is not obvious. *See* Section VI.A.7; Ex.2004, ¶ 94; *In re Fritch*, 972 F.2d at 1267.

12. Claim 13

Petitioner fails to show that the Morris and Ray combination teaches or suggests element 13[e] – “reporting, by the controller, the exercise use data to a communication interface in response to the comparison step indicating that the user is engaged with the operating member.” Ex.2004, ¶ 95.

Petitioner relies upon its arguments for element 8[e], but element 8[e] does not include “exercise use data” like claim 13[e]. *Id.*, ¶ 96. Moreover, as explained above with respect to element 1[e] and 8[g], the proposed Morris-Ray controller does not report “exercise use data” to the communication interface *in response* to anything other than the movement of the operating unit. *Id.* Regarding element 13[e], Petitioner argues that in the “Morris-Ray combination, the exercise use data would be reported to the communication interface” Pet. at 48-49. Tellingly, Petitioner does not argue, let alone show, that the Morris-Ray combination teaches or suggests reporting “exercise use data,” like time or distance, to the communication interface *in response* to the comparison step indicating the user is engaged with the operating member. Pet. at 48; Ex.2004, ¶ 96. Thus, Petitioner has failed to show that claim 13 is obvious.

13. Dependent claim 14

Claim 14 depends on claim 13. Petitioner's sole argument is incorporating its argument from claim 9. Pet. at 49. Claim 14 is not obvious for the reasons stated above for claim 9. Claim 14 is also not obvious because claim 13 is not obvious. *See* Section VI.A.12; Ex.2004, ¶ 97; *In re Fritch*, 972 F.2d at 1267.

14. Dependent claim 15

Claim 15 depends from claim 13 and adds “generate the exercise use data in response to the determination that the user is engaged with the operating member and in response to the determination that the user is not engaged with the operating member while the operating member is being driven by the motor.” Ex.1010 at claim 15. Petitioner argues that claim 15 is obvious for reasons it presented for claims 2, 9, and elements 1[e] and 13[e]. Pet. at 49. Claim 15 is not obvious for the reasons provided above for claims 2, 9, and elements 1[e] and 13[e]. Ex.2004, ¶ 98. Specifically, as stated in those sections, Morris and Ray do not teach or suggest generating exercise use data *in response* to the determination that user is engaged with the driven operating member and *in response* to the determination that the user is not engaged. *Id.*

In addition, Petitioner asserts that claim 15 is obvious based upon alleged applicant admitted prior art (“AAPA”). Pet. at 49-50. Petitioner, however, did not

identify AAPA as a reference for Ground 1 and reliance on AAPA is not permitted 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 use of AAPA as improper where “Petitioner’s reliance on AAPA as to several structural and functional limitations for a cochlear implant system, and reliance on [asserted prior art] for only an additional electrical system, support[ed]” the Board’s determination that AAPA was the “basis” of the 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>.

Also, Petitioner argues that AAPA disclosed that “treadmills were known to generate exercise use data, regardless of whether or not a user was being detected.” Pet. at 49. But that disclosure does not teach or suggest claim 15 because it says nothing about prior art treadmills generating exercise use data *in response* to the user being determined to be engaged with the driven operating member and *in response* to the user determined to not to be engaged. Ex.2004, ¶ 100. Therefore, claim 15 is not obvious based on Morris and Ray (and AAPA).

Claim 15 is also not obvious because claim 13 is not obvious. *See* Section VI.A.12; Ex.2004, ¶ 101; *In re Fritch*, 972 F.2d at 1267.

15. Dependent claim 16

Claim 16 depends from claim 13 and adds “reporting, by the controller, the exercise use data to the communication interface only in response to the controller determining that the user is engaged with the operating member.” Ex.1010 at claim 16. Petitioner argues that claim 16 is obvious for reasons it presented for claim 12 and elements 1[e] and 13[e]. Pet. at 50. Claim 16 is not obvious for the reasons provided above for claim 12 and elements 1[e], 8[g] and 13[e]. Ex.2004, ¶ 102. Claim 16 is also not obvious because claim 13 is not obvious. *See* Section VI.A.12; Ex.2004, ¶ 102; *In re Fritch*, 972 F.2d at 1267.

16. Dependent claim 17

Claim 17 depends from claim 13 and adds “determining, by the controller, an amount of user exercise time defined by a duration that the sensor detects engagement of the user with the operating member during movement of the operating member.” Ex.1010 at claim 17. Petitioner relies solely on its argument for claim 4. Pet. at 50. Claim 17 is not obvious for the same reasons stated above for claim 4. Claim 17 is also not obvious because claim 13 is not obvious. *See* Section VI.A.12; Ex.2004, ¶ 103; *In re Fritch*, 972 F.2d at 1267.

17. Dependent claim 18

Claim 18 depends from claim 13 and adds “wherein the known data parameter is recognized by the controller during operational use of the operating member.” Ex.1010 at claim 18. Petitioner relies on its argument for element 13[e]. Pet. at 50. Claim 18 is not obvious for the same reasons stated above for element 13[e]. Claim 18 is also not obvious because claim 13 is not obvious. *See* Section VI.A.12; Ex.2004, ¶ 104; *In re Fritch*, 972 F.2d at 1267.

18. Dependent claim 19

Claim 19 depends from claim 13 and adds “wherein the reported exercise use data is defined as validated exercise use data.” Ex.1010 at claim 19. Petitioner relies on its argument for element 1[e] and claim 16. Pet. at 50. Claim 19 is not obvious for the same reasons stated above for element 1[e] and claim 16. Ex.2004, ¶ 105. Claim 19 is also not obvious because claim 13 is not obvious. *See* Section VI.A.12; Ex.2004, ¶ 105; *In re Fritch*, 972 F.2d at 1267.

19. Dependent claim 20

Claim 20 depends from claim 13 and adds “connecting the exercise apparatus with a remote location, communicating the exercise use data to the remote location, and maintaining communication between the exercise apparatus and a remote location while the operating member is driven by the motor and the

user is determined by the controller not to be engaged with the operating member.”

Ex.1010 at claim 20. Petitioner relies on its argument for claim 7. Pet. at 51. Claim 20 is not obvious for the same reasons stated above for claim 7 and 11. Ex.2004, ¶ 106. Claim 20 is also not obvious because claim 13 is not obvious. *See* Section VI.A.12; Ex.2004, ¶ 106; *In re Fritch*, 972 F.2d at 1267.

B. Ground 2: Ray and AAPA do not render claims 1-17 and 19-20 obvious.

1. Petitioner impermissibly relies on AAPA.

Petitioner asserts that claims 1-17 and 19-20 are obvious based on the combination of Ray and AAPA. Petitioner's reliance on AAPA 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 use of AAPA as improper where “Petitioner's reliance on AAPA as to several structural and functional limitations for a cochlear implant system, and reliance on [asserted prior art] for only an additional electrical system, support[ed]” the Board's determination that AAPA was the “basis” of the 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/2022060912_updatedAAPAmemo.pdf.

Here, Petitioner improperly cites AAPA as a basis for Ground 2 and to satisfy many claim elements including 1[pre], 1[a], 1[b], 1[c], 1[e]. Pet. at 52-59; Ex.2004, ¶ 108. Therefore, Petitioner admits that Ray is missing claim elements and that those claim elements are supplied by the AAPA. For this reason alone, Ground 2 fails to render the claims 1-17 and 19-20 obvious.

2. Claim 1

Petitioner fails to show that the Ray and AAPA combination teaches or suggests element 1[e] – “a controller configured to generate a validated exercise use data in response detecting engagement of the user with the operating unit and movement of the operating unit relative to the base.” Ex.2004, ¶ 109.

Petitioner first asserts that AAPA teaches or suggests this element. Petitioner states that the ‘340 patent admitted that “a controller that communicated with the motor that ran the belt, and a conventional treadmill generated and reported exercise data.” Pet at 57. Even if this were admitted in the ‘340 patent, it does not teach or suggest “a controller configured to generate a *validated exercise use data in response* detecting engagement of the user with the operating unit and movement of the operating unit relative to the base.” Ex.2004, ¶ 110. Instead, it is merely the generation of the “exercise use data” that is neither validated nor non-

validated and not *in response* to detecting engagement by the user with the moving operating unit. *Id.*

Petitioner also cites a passage from the prosecution history of the related '375 patent stating that the prior art teaches “distance, time and speed may be displayed on the display unit . . . while a user is on the belt . . . and exercising.” Pet. at 53. Petitioner fails to explain the significance of this passage to Ground 2. Pet. at 52-66. Patent Owner does not dispute the statement or its disclosure in the prior art, but that statement in no way admits that the prior art disclosed the generation of “validated exercise use data” or “non-validated exercise use data” or elements 1[e] and claim 2, respectively. Ex.2004, ¶ 111.

Petitioner also argues that Ray taught or suggested element 1[e]. As stated above in Ground 1, Ray does not disclose element 1[e]. *See* Section VI.A.1; Ex.2004, ¶ 112. Therefore, claim 1 is not obvious in view Ray and AAPA.

3. Dependent claim 2

Claim 2 depends from claim 1 and adds “the controller is further configured to generate non-validated exercise use data in response to the sensor detecting the user not engaged with the operating unit and movement of the operating unit relative to the base.” Ex.1010 at claim 2. Neither Ray nor AAPA teaches or suggests claim 2. Ex.2004, ¶ 113.

Regarding the alleged AAPA, Petitioner argues that the '340 patent admits that "treadmills could generate (non-validated) exercise data automatically and could continue generating such data when left unattended." Pet. at 59. This is not true. Ex.2004, ¶ 114. The portion of the '340 patent cited by Petitioner is the problem in the prior art where a person could turn on the treadmill belt and allow the controller to record large distances without the person exercising on the treadmill. Pet. at 59; Ex.1010 at 2:2-6. This passage neither teaches or suggests anything about the controller generating non-validated exercise use data *in response* to the sensor detecting the user not engaged with the operating unit and movement of the operating unit relative to the base. Ex.2004, ¶ 114.

Petitioner argues that "continuing to generate or not continuing to generate treadmill-related information, such as elapsed time, were the only two known alternatives in this situation, and thus selecting one or the other would have been obvious." Pet. at 60. Petitioner further argues that "a POSITA would have found it advantageous to continue generating and displaying information, such as elapsed time, on the treadmill (or wall-mounted) display for at least some period of time because it would have alerted the user that the treadmill was still running" Pet. at 60. Petitioner's arguments, however, are premised on an incorrect construction of "non-validated exercise use data" and they fail to apply the claim

language. Ex.2004, ¶ 115. As stated before, a controller merely generating exercise use data for a “period of time” while the operating unit is moving but the user is not engaged with the operating unit is not the generation of “non-validated exercise use data.” *Id.* Ray does not teach or suggest element 1[e] for the reasons stated above in Ground 1 regarding element 1[e]. *Id.* Thus, Ray and AAPA do not render claim 2 obvious. Claim 2 is also not obvious because claim 1 is not obvious. *See* Section VI.B.2; Ex.2004, ¶ 115; *In re Fritch*, 972 F.2d at 1267.

4. Dependent claims 3-7

Petitioner asserts that Ray teaches or suggest the elements of claims 3-7 and refers to its arguments for those claims in Ground 1. Claims 3-7 are not obvious for the reasons states above in Ground 1 for claims 3-7. *See* Sections VI.A.3-6; Ex.2004, ¶ 116. Claims 3-7 is also not obvious because claims 1 and 2 are not obvious. *See* Sections VI.B.2-3; Ex.2004, ¶ 116; *In re Fritch*, 972 F.2d at 1267.

5. Claim 8

Petitioner fails to show that the Ray-AAPA combination teaches or suggests element 8[g] because both lack a “controller . . . configured to report exercise use data to the communication interface in response to the controller determining that the user is engaged with the operating member.” For this element, Petitioner relies exclusively on Ray and the arguments it made for element 1[e] in Ground 1. Pet. at

61. Ray does not disclose element 1[e] for reasons stated above in Ground 1 for elements 1[e] and 8[g]. Ex.2004, ¶ 117. In sum, Ray does not teach or suggest a controller that reports exercise use data to the communication interface *in response* to the controller determining that the user is engaged with the operating member. *Id.* Thus, claim 8 is not obvious based on Ray and AAPA.

6. Dependent claim 9

Claim 9 depends from claim 8 and adds that “the controller is configured to stop reporting the exercise use data to the communication interface in response to the controller determining that the user is not engaged with the operating member and the operating member is driven by the motor.” Ex.1010 at claim 9. Ray does not teach or suggest claim 9 for the reasons stated above in Ground 1 for element 1[e] and claim 9. *See* Sections VI.A.1, 8; Ex.2004, ¶ 118. Also, AAPA does not teach or suggest claim 9 because contrary to Petitioner's argument, an admission that “conventional motor-driven treadmills could continue running without a user being present” (Pet. at 62), does not satisfy claim 9. Indeed, such a disclosure teaches nothing about stopping reporting “exercise use data” in response to the user not being detected. Ex.2004, ¶ 118. Thus, Ray and AAPA do not render claim 9 obvious. Claim 9 is also not obvious because claim 8 is not obvious. *See* Section VI.B.5; Ex.2004, ¶ 118; *In re Fritch*, 972 F.2d at 1267.

7. Dependent claim 10

Claim 10 depends from claim 8 and adds that “the controller is in communication with the communication interface while the operating member is driven by the motor and the user is determined by the controller not to be engaged with the operating member.” Ex.1010 at claim 10. Petitioner relies on Ray and its argument from claims 7 and 10 from Ground 1 to support its position on claim 10. Pet. at 62. Likewise, claim 10 is not obvious for the reasons stated above in Ground 1 for claims 7 and 9, and because claim 8 is not obvious. *See* Sections VI.A.6, 8, B.5; Ex.2004, ¶ 119; *In re Fritch*, 972 F.2d at 1267.

8. Dependent claim 11

Claim 11 depends from claim 10 and adds that “the communication interface is in communication with a remote storage device while the operating member is driven by the motor and the user is determined by the controller not to be engaged with the operating member.” Ex.1010 at claim 11. Petitioner relies on Ray and its arguments in Ground 1 for claim 11. Pet. at 62. For the reasons stated above in Ground 1 for claims 7, 9, 10, and 11, claim 11 would not have been obvious. *See* Sections VI.A.6, 8, 9, 10; Ex.2004, ¶ 120. Claim 11 is also not obvious because claim 10 is not obvious. *See* Section VI.B.7; Ex.2004, ¶ 120; *In re Fritch*, 972 F.2d at 1267.

9. Dependent claim 12

Claim 12 depends from claim 8 and adds that “the controller is configured to report the exercise use data to the communication interface only in response to the controller determining that the user is engaged with the operating member and the operating member is being driven by the motor.” Petitioner relies upon its argument with respect to element 1[e] and claim 9 and claim 12 in Ground 1. Pet. at 63. Likewise, claim 12 is not obvious for the reasons stated above regarding elements 1[e] and 8[g], claim 9 and claim 12 in Ground 1. *See* Sections VI.A.1, 7, 8, 11; Ex.2004, ¶ 121. Claim 12 is also not obvious because claim 8 is not obvious. *See* Section VI.B.5; Ex.2004, ¶ 121; *In re Fritch*, 972 F.2d at 1267.

10. Claim 13

Petitioner fails to show that the Ray-AAPA combination teaches or suggests element 13[e] – “reporting, by the controller, the exercise use data to a communication interface in response to the comparison step indicating that the user is engaged with the operating member.” Ex.1010 at claim 13; Ex.2004, ¶ 122. Petitioner relies exclusively on its arguments for element 8[g]. Pet. at 65. As explained above for elements 1[e] and 8[g], Ray's controller does not report “exercise use data” to the communication interface *in response* to anything other than the movement of the operating unit. *See* Sections VI.B.2, 5; Ex.2004, ¶ 122.

Thus, Ray and AAPA do not teach or suggest element 13[e] and do not render claim 13 obvious. Ex.2004, ¶ 122.

11. Dependent claim 14

Claim 14 depends on claim 13. Petitioner's sole argument is incorporating its argument from claim 9. Pet. at 65. Claim 14 is not obvious for the reasons stated above for claim 9. *See* Section VI.B.6; Ex.2004, ¶ 123. Claim 14 is also not obvious because claim 13 is not obvious. *See* Section VI.B.10; Ex.2004, ¶ 123; *In re Fritch*, 972 F.2d at 1267.

12. Dependent claim 15

Claim 15 depends from claim 13 and adds “generate the exercise use data in response to the determination that the user is engaged with the operating member and in response to the determination that the user is not engaged with the operating member while the operating member is being driven by the motor.” Ex.1010 at claim 15. Petitioner argues that claim 15 is obvious for reasons it presented for claims 2, 9, and element 1[e]. Pet. at 65. Claim 15 is not obvious for the reasons provided above for claims 2, 9, and elements 1[e] and 13[e]. *See* Sections VI.B.2, 3, 6, 10; Ex.2004, ¶ 124. Specifically, as stated in those sections, Ray does not teach or suggest generating exercise use data *in response* to the determination that user is engaged with the driven operating member and *in response* to the

determination that the user is not engaged. *Id.* Claim 15 is also not obvious because claim 13 is not obvious. *See* Section VI.B.10; Ex.2004, ¶ 124; *In re Fritch*, 972 F.2d at 1267.

13. Dependent claim 16

Claim 16 depends from claim 13 and adds “reporting, by the controller, the exercise use data to the communication interface only in response to the controller determining that the user is engaged with the operating member.” Ex.1010 at claim 16. Petitioner argues that claim 16 is obvious for reasons it presented for claim 12 and elements 1[e] and 13[e]. Pet. at 65-66. Claim 16 is not obvious for the reasons provided above for claim 12 and elements 1[e], 8[g] and 13[e]. *See* Sections VI.B.2, 5, 9, 10; Ex.2004, ¶ 125. Claim 16 is also not obvious because claim 13 is not obvious. *See* Section VI.B.10; Ex.2004, ¶ 125; *In re Fritch*, 972 F.2d at 1267.

14. Dependent claim 17

Claim 17 depends from claim 13 and adds “determining, by the controller, an amount of user exercise time defined by a duration that the sensor detects engagement of the user with the operating member during movement of the operating member.” Ex.1010 at claim 17. Petitioner relies solely on its argument for claim 4. Pet. at 66. Claim 17 is not obvious for the same reasons stated above for claim 4. *See* Section VI.B.4; Ex.2004, ¶ 126. Claim 17 is also not obvious

because claim 13 is not obvious. *See* Section VI.B.10; Ex.2004, ¶ 126; *In re Fritch*, 972 F.2d at 1267.

15. Dependent claim 19

Claim 19 depends from claim 13 and adds “wherein the reported exercise use data is defined as validated exercise use data.” Ex.1010 at claim 19. Petitioner relies on its argument for claim 19 in Ground 1. Pet. at 66. Claim 19 is not obvious for the same reasons stated above for claim 19 in Ground 1. *See* Section VI.A.18; Ex.2004, ¶ 127. Claim 19 is also not obvious because claim 13 is not obvious. *See* Section VI.B.10; Ex.2004, ¶ 127; *In re Fritch*, 972 F.2d at 1267.

16. Dependent claim 20

Claim 20 depends from claim 13 and adds “connecting the exercise apparatus with a remote location, communicating the exercise use data to the remote location, and maintaining communication between the exercise apparatus and a remote location while the operating member is driven by the motor and the user is determined by the controller not to be engaged with the operating member.” Ex.1010 at claim 20. Petitioner relies on its argument for claim 7 in Ground 1. Pet. at 66. Claim 20 is not obvious for the same reasons stated above for claims 7 and 11 and claim 20 in Ground 1. *See* Sections VI.A.19, B.4, 8; Ex.2004, ¶ 128. Claim

20 is also not obvious because claim 13 is not obvious. *See* Section VI.B.10; Ex.2004, ¶ 128; *In re Fritch*, 972 F.2d at 1267.

C. Ground 3: Yi does not render claims 1, 4-6, 8-9, and 12 obvious.

Petitioner contends that Yi renders claims 1, 4-6, 8-9, and 12 obvious. Yi was before the examiner during prosecution of the application for the '340 patent. Ex.1003 at 97; Pet. at 68 n.4. “[T]he burden of showing invalidity is ‘especially difficult’ when the prior art reference was before the examiner during prosecution.” *Liebel-Flarsheim Co. v. Medrad, Inc.*, 481 F.3d 1371, 1381 (Fed. Cir. 2007); *Tokai Corp. v. Easton Enterprises, Inc.*, 632 F.3d 1358, 1367 (Fed. Cir. 2011); *PowerOasis, Inc. v. T-Mobile USA, Inc.*, 522 F.3d 1299, 1304 (Fed. Cir. 2008) (noting the “added burden of overcoming the deference that is due to a qualified government agency presumed to have properly done its job”).

Yi is directed to a treadmill with pressure sensors that are used to automatically control the speed of the treadmill belt. Ex.1012 at Abstract, [0009]; *see also* Ex.2004, ¶ 130. In general, Yi uses an array of sensors to determine the user's “exercise center” and “pace.” “[W]hen exercise center is detected near the front portion of the walking belt and the variation in the rate of exercise is high, the control unit 40 accelerates the walking belt.” Ex.1012 at [0062]; Ex.2004, ¶ 130. “[W]hen the exercise center is detected on the rear portion of the walking belt and the variation rate of the exercise is low, the control unit 40 decelerates the walking

belt.” Ex.1012 at [0062]; Ex.2004, ¶ 130. According to Yi, the automatic speed adjustment addressed the inconvenience and danger of manually adjusting the treadmill speed. Ex.1012 at [0004]; Ex.2004, ¶ 130.

In a misplaced attempt to argue that claim 1 of the '340 patent was implicitly found unpatentable by the examiner in a related patent application, Petitioner asserts claim 1 of the '340 patent is “strikingly similar” to the original claim 1 of the priority '925 application, which was rejected based on Yi and other references. Pet. at 66-67. Without getting into the lack of merit to the '925 application rejection, claim 1 of the '340 patent included a significant difference from the rejected claim. Ex.2004, ¶ 131. Unlike original claim 1 of the '925 application, claim 1 of the '340 patent claims generating “*validated* exercise use” data. *Id.* Yi does not teach or suggest that element, among other elements of claims 1, 4-6, 8-9 and 12. *Id.* Thus, as explained below, Yi does render those claims as obvious.

1. Claim 1

Yi does not teach or suggest element 1[e] - “a controller configured to generate validated exercise use data in response to the sensor detecting engagement of the user with the operating unit and movement of the operating unit relative to the base.” Ex.2004, ¶ 132.

Petitioner contends that Yi teaches element 1[e] because Yi “detected the user’s presence *while* the user was moving on the treadmill, and its control unit calculated a *pace distance* and a *pace time* (validated exercise use data) based on detected footsteps on the moving belt.” Pet. at 71 (emphasis added). This, however, is not a disclosure of “validated exercise use data” and does not satisfy element 1[e] for several reasons. Ex.2004, ¶ 133.

First, “pace distance” and “pace time” are not “exercise use data” because they do not represent the *amount* of exercise by the user. Ex.2004, ¶ 134. Instead, “pace distance” is a calculated measure of “distance between paces.” Ex.1012 at [0012], [0047]. Figure 5 shows pace distance 53. *Id.* at Fig. 5, [0047]. “Pace distance” is calculated based on the average foot lifting position and the average foot stepping position. *Id.* at [0047]. “Pace time” a calculated measure of time from when the user’s foot is lifted from the treadmill belt until it lands back on the belt while walking or running. *Id.* at [0052]. “Pace time” is calculated based on the average lifting time point and the average stepping time point. *Id.* Neither “distance pace” nor “pace time” would represent the *amount* of exercise of the user. Ex.2004, ¶ 134. Instead, they are calculations based on averages of user stepping data and would provide the amount of exercise performed by the user. *Id.*

Second, Petitioner suggests that other types “exercise information” is “exercise use data,” including heart rate, speed, exercise distance, exercise time, and calories consumed. Pet. at 71. Heart rate and speed are not “exercise use data” because they do not represent an amount of exercise. Ex.2004, ¶ 135. Regarding exercise distance, exercise time, and calories consumed, Petitioner never even attempts to tie the controller’s generation of that data to a response to the sensor detecting engagement of the user with the operating unit. *Id.* In fact, Yi merely mentions the display exercise distance, exercise time, and calories in a single paragraph with no further details. Ex.1012 at [0039]; Ex.2004, ¶ 135. Therefore, they cannot be “validated exercise use data.” Ex.2004, ¶ 135.

Third, none of the exercise data disclosed in Yi is “validated exercise use data.” Ex.2004, ¶ 136. Petitioner seems to believe that so long as exercise data is being generated at the same time that the user’s presence is detected, the exercised use data is validated. For example, Petitioner asserts that “pace distance” and “pace time” are validated exercise use data because “Yi detected a user’s presence *while* the user was moving on the treadmill and the control unit calculated a pace distance and a pace time.” Pet. at 71 (emphasis added). Similarly, Petitioner argues that “heart rate, exercise time, [and] calories generated *contemporaneously* with the detected footsteps” are validated exercise used data. Pet. at 71 (emphasis

added). Claim element 1[e], however, requires a “controller configured to generate validated exercise use data *in response* to the sensor detecting engagement of the user with the operating unit and movement of the operating unit relative to the base.” Ex.1010 at claim 1 (emphasis added); Ex.2004, ¶ 136. Nothing in Yi teaches or suggests this.

In fact, Yi does not detect a user's presence on the treadmill belt and never says otherwise. Ex.2004, ¶ 137. As described above, Yi determines where and when a user's foot strikes the treadmill belt. *Id.* The sensors send this information to the controller which makes calculations from that information and adjusts the treadmill belt speed accordingly. *Id.* There is no teaching or suggestion in Yi that its sensors and controller affirmatively detect when a user is engaged with the treadmill belt, especially with respect to time, distance, or calories. *Id.* That Yi does not detect a user's presence is when a user is not on the treadmill, but the belt is moving. *Id.* In that case, Yi makes no determination as to whether a user is present or not. *Id.* Thus, Yi does not render claim 1 obvious.

2. Claims 4 and 5

Claim 4 and claim 5 depend from claim 1. Claim 4 adds that the “validated exercise use data includes an amount of user exercise time defined by a duration that the sensor detects engagement of the user with the operating unit during

movement of the operating unit relative to the base.” Ex.1010 at claim 4. Claim 5 adds that “validated exercise use data includes a distance traveled by the user, wherein the distance traveled is defined while the sensor detects engagement of the user with the operating member.” Ex.1010 at claim 5.

To argue for obviousness of claims 4 and 5, Petitioner relies solely on its arguments relating to Yi's disclosure of “exercise time” and “exercise distance” in claim 1. Pet. at 72. With respect to “exercise time” and “exercise distance,” as pointed out for claim 1, there is no disclosure or teaching in Yi that the “controller configured to generate validated exercise use data [i.e., exercise distance or exercise time] *in response* to the sensor detecting engagement of the user with the operating unit and movement of the operating unit relative to the base.” Ex.1010 at claim 1 (emphasis added); Ex.2004, ¶ 139. As a result, when viewing the time and distance data in Yi, there would be no way to determine whether or not that data corresponds with the user actually exercising. Ex.2004, ¶ 139. Thus, claim 4 and 5 are not obvious. Claims 4 and 5 are also not obvious because claim 1 is not obvious. *See* Section VI.C.1; Ex.2004, ¶ 139; *In re Fritch*, 972 F.2d at 1267.

3. Claim 6

Claim 6 depends on claim 1 and adds that “the controller is further configured to record the validated exercise use data in response to the sensor

detecting engagement of the user with the operating unit.” Ex.1010 at claim 6.

Accordingly, “the validated exercise use data” that must be recorded is “*the* validated exercise use data” from claim 1. Ex.2004, ¶ 140. Petitioner relies upon “pace speed” as the “validated exercise use data” of claim 6. Pet. at 72. However, Petitioner did not assert “pace speed” as the “validated exercise use data” for claim 1. Pet. at 70-72. Thus, Petitioner’s application of Yi to claim 6 is fatally inconsistent with its application in claim 1.

Even if Petitioner’s application of Yi were not fatally inconsistent, “pace speed” is not “exercise use data.” Ex.2004, ¶ 141. Yi defines “pace speed” as “pace distance” divided by the “pace time period.” Ex.1012 at [0057]. The meaning of “pace distance” and “pace time” are discussed above for claim element 1[e]. “Pace speed” does not represent an *amount* of exercise by the user. Ex.2004, ¶ 141. Thus, “pace speed” cannot be the “validated exercise use data.” *Id.*

Claim 6 is also not obvious because claim 1 is not obvious. *See* Section VI.C.1; Ex.2004, ¶ 141; *In re Fritch*, 972 F.2d at 1267.

4. Claim 8

Element 8[g] requires a “controller . . . configured to report exercise use data to the communication interface in response to the controller determining that the user is engaged with the operating member.” Ex.1010 at claim 8. Petitioner argues

for element 8[g] that the “exercise use data” of Yi is “pace speed and its variations.” Pet. at 74. “Pace speed,” however, is not “exercise use data” because it does not represent an ***amount*** of exercise, as explained for claim 6, above.

Ex.2004, ¶ 143.

Petitioner offers an alternative argument – that it “would have been obvious to a POSITA that heartrate (and other exercise data such as speed, distance, calories, and time) would be generated in response to a determination user was exercising, such as when footsteps were being detected” and the data was displayed. Pet. at 74. As explained above for claim 1, heartrate and speed are not “exercise use data” because they do not represent an ***amount*** of exercise. Ex.2004, ¶ 144. Moreover, Petitioner fails to identify any disclosure or teaching in Yi where the controller reports distance, time, or calories to the communication interface ***in response to the controller determining that the user is engaged with the operating member. Id.*** In Yi, time, distance and/or calories are reported based on movement of the operating member without determining whether the user is engaged with the operating member. *Id.*; Ex.1012 at [0039]. Therefore, Yi fails to teach or suggest element 8[g] and does not render claim 8 obvious.

5. Claim 9

Claim 9 depends from claim 8 and requires that “the controller is configured to stop reporting the exercise use data to the communication interface in response to the controller determining that the user is not engaged with the operating member and the operating member is driven by the motor.” Ex.1010 at claim 9. To satisfy claim 9, Petitioner relies solely upon “pace speed” as the alleged “exercise use data.” As stated above in claim 6, “pace speed” in Yi is not “exercise use data.” Ex.2004, ¶ 145. Furthermore, Yi says nothing about the controller stopping the reporting of time, distance, or calories in response to the controller determining the user is not engaged with the motor driven operating member. *Id.*; Ex.1012 at [0039]. Thus, Yi does not render claim 9 obvious. Ex.2004, ¶ 146.

Also, claim 9 is not obvious because claim 8 is not obvious. *See* Section VI.C.4; Ex.2004, ¶ 146; *In re Fritch*, 972 F.2d at 1267.

6. Claim 12

Claim 12 depends from claim 8 and requires that “the controller is configured to report the exercise use data to the communication interface only in response to the controller determining that the user is engaged with the operating member and the operating member is being driven by the motor.” Ex.1010 at claim 12. Petitioner argues Yi meets this element because when a person is not on the

treadmill “a load could not be detected . . . and thus the pace information that depended on load detection signals, would also not be reported.” Pet. at 75. Again, Petitioner relies exclusively on “pace” as being the alleged “exercise use data.” As stated above for claims 1, 6, 8 and 9, “pace” is not “exercise use data.” Ex.2004, ¶ 147. Thus, Yi fails to render claim 12 obvious. *Id.*

Also, claim 12 is not obvious because claim 8 is not obvious. *See* Section VI.C.4; Ex.2004, ¶ 148; *In re Fritch*, 972 F.2d at 1267.

VII. CONCLUSION

For the foregoing reasons, Petitioner has failed to meet its burden to show that any of the Challenged Claims are unpatentable.

Respectfully submitted,

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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 13,295, 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. 11,227,340, DECLARATION OF DANIEL VAN DER WEIDE, EX2004, EX2005, EX2006 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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