

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

Patent No. 11,227,340

**PETITIONER PELOTON INTERACTIVE, INC.'S REPLY TO PATENT
OWNER'S RESPONSE TO PETITION FOR *INTER PARTES* REVIEW OF
U.S. PATENT NO. 10,796,340**

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. CLAIM CONSTRUCTION	1
A. Exercise Use Data	1
1. PO’s Construction Improperly Imports Limitations and Is Not Supported by Intrinsic Evidence	2
2. Ray’s Thinning Image, Pace, Etc. Are Exercise Use Data	5
B. Validated Exercise Use Data.....	6
C. Non-validated Exercise Use Data	8
III. GROUNDS FOR CHALLENGE	9
A. Ground 1	9
1. Limitation 1[e]	10
a. PO Relies on Improper Claim Construction.....	10
b. The <i>Combination</i> ’s Description of Distance and Time Renders the Challenged Claims Obvious.....	11
c. PO Ignores the <i>Combination</i> of Morris and Ray	13
2. Claim 2	17
3. Claim 7	19
4. Claim 9	21
5. Claim 13	22
6. Claim 15	22
B. Ground 2	23

TABLE OF CONTENTS
(continued)

	Page
1. Claim 1	23
2. Claim 2	23
3. Claim 9	25
C. Ground 3	25
1. Claim 1	26
2. Claim 6	27
3. Claim 8	28
4. Claim 9	28
IV. THE VAN DER WEIDE DECLARATION SHOULD BE AFFORDED LITTLE WEIGHT	28
V. CONCLUSION	29

EXHIBIT LIST

Exhibit	Description
1001	U.S. Patent No. 11,227,340 (“’340 Patent”)
1002	Declaration And Curriculum Vitae Of Lee Rawls (“Rawls”)
1003	File History of U.S. Patent No. 11,227,340
1004	U.S. Patent No. 9,785,827 (“Ray”)
1005	Reserved
1006	U.S. Patent App. Pub. No. 2010/0160115 A1 (“Morris”)
1007	Reserved
1008	U.S. Patent No. 6,638,198 (“’198 Patent”)
1009	File History of U.S. Patent No. 10,796,375
1010	Reserved
1011	Reserved
1012	U.S. Patent App. Pub. No. 2009/0176629 (“Yi”)
1013	U.S. Patent No. 6,575,878 (“Choy”)
1014	U.S. Patent No. 8,690,735 (“Watterson”)
1015	Affidavit of Ashlee E. Sherman
1016	CORRECTED Affidavit of Christopher G. Hanewicz
1017	U.S. Patent No. 8,287,434 (“’434 patent”)
1018	JHT’s Opening Exchange of Claim Terms and Proposed Constructions
1019	Vidal, Updated Guidance on the Treatment of Statements of the Applicant in the Challenged Patent in Inter Partes Reviews Under § 311 (June 9, 2022), <i>available at</i> https://www.uspto.gov/sites/default/files/documents/2022060912updatedAAPAmemo.pdf
1020	Exhibit C to JHT’s June 9, 2023 Infringement Contentions
1021	Peloton’s Unopposed Motion to Stay District Court Proceedings
1022	<i>Sotera</i> Stipulation filed in the U.S. District Court

I. INTRODUCTION

Patent owner's response (POR) fails to rebut Petitioner's showing and suffers many flaws. Instead of considering the teachings of the prior art in combination, patent owner (PO) focuses on each reference in isolation. Even then, PO ignores the explicit disclosure of the prior art or takes a narrow interpretation of that disclosure. Realizing that its approach is insufficient, PO proposes "constructions" that arbitrarily exclude certain elements from the scope of the claims. PO's unsupported positions should be rejected.

II. CLAIM CONSTRUCTION

PO's constructions for "exercise use data," "validated exercise use data," and "non-validated exercise use data" (POR, 4-13) are flawed because they are contradicted by the record and/or incorporate requirements that are already present in the claims, rendering the claim language superfluous. *See Deere & Co. v. Bush Hog, LLC*, 703 F.3d 1349, 1354 (Fed. Cir. 2012) ("[A] claim construction must not import limitations from the specification into the claims."). But, even if the Board accepts PO's constructions, the prior art invalidates each challenged claim for the reasons stated in the Petition and herein.

A. Exercise Use Data

PO proposes "exercise use data" is "data that would represent an amount of exercise of the user" (POR, 4), and then further limits this construction as covering

only two types of exercise data—time and distance. *Id.*, 5-6. But this overly narrow construction finds no support in the record and arbitrarily excludes other forms of “exercise use data” recognized by a POSITA. *Id.*, 4-5. However, even under PO’s proposed construction, Morris and Ray both disclose “exercise use data.”

1. PO’s Construction Improperly Imports Limitations and Is Not Supported by Intrinsic Evidence

The specification does not limit exercise use data to a specific amount of exercise as PO proposes, nor does it identify certain metrics to the exclusion of others that constitute “exercise use data,” or draw the distinction between time and distance versus other metrics that PO attempts to do here.

Notably, in discussing a “conventional exercise apparatus” and what exercise use data it can provide, the ’340 patent teaches exercise use data is used to “demonstrate his (or her) exercise habit and exercise use to their insurance company.” EX-1001, 1:43-46. The broad usage of “exercise use data” to demonstrate “exercise habits” is repeated in the specification (*id.*, 2:13-26, 2:41-43, (“...the faked exercise use data shouldn’t represent the exercise habit or amount of user exercise to the insurance companies”). A POSITA would understand that “exercise habit,” as used in the ’340 patent, would correspond to a user’s exercise pattern. Rawls, ¶¶114-15. And a POSITA would understand information, such as

heart rate, pace and other metrics disclosed in the prior art, are exercise use data that can show an exercise habit. *E.g.*, Rawls, Appendix K, ¶0026.

PO's limited construction is further belied by the two patents explicitly referenced in the specification (U.S. Patent Nos. 8,287,434 and 6,638,198) that include "an exercise use data reporting function...that can provide exercise use data therefrom for a user." EX-1001, 1:41-56.¹ Both patents describe exercise-related data, produced by the exercise apparatus while a user is exercising, including heart rate, calories, time, etc.; neither support the arbitrary limitations proposed by PO.²

Based at least on the '198 and '434 patents—documents expressly referenced in the '340 patent as reporting exercise use data—a POSITA understand that "exercise use data" is not limited to only distance or time—nor to an amount of exercise as PO proposes—but can include other information generated by the exercise machine. *E.g.*, Rawls, Appendix K, ¶0025 (identifying exercise results including distances, heart rates, duration, and the like.)

¹ The term "exercise use data" is not found in either patent. EX-1008, *passim*; EX-1017, *passim*.

² PO's exclusion of heart rate from exercise use data contradicts its own infringement contentions accusing Petitioner's product of producing exercise use data such as "heart rate." EX-1020, C-24.

The '198 patent's exercise machine displays "various information such as "elapsed exercise time, the exercise level, the difficulty level, number of calories burned, pulse rate" (EX-1008, 7:7-14), and "desired exercise data" can include "exercise time, pulse rate at one or more times during the exercise, etc." *Id.*, 17:31-37. It also teaches the importance of pulse rate information that "permits a determination of whether the exerciser's pulse rate is generally within a range appropriate for achieving the exerciser's goals." *Id.*, 22:63-23:23; *see also id.*, 25:32-54 (describing pulse rate's importance for a third-party fitness consultant). Thus, the '198 patent recognizes a wide range of "exercise use data."

The '434 patent similarly does not limit "exercise use data" to certain metrics, and instead teaches "information about exercise" can include "number of reps performed, energy used, distance between handles, the pulse, position and velocity from the accelerometer." EX-1017, 15:33-37.

PO's construction is also contradicted by the prosecution history of the related '375 patent. Notably, in response to examiner's rejections based on Yi's disclosure of a treadmill that calculated and stored the pace speed of a user (EX-1009, 43-48; EX-1012, Abstract), Applicant did not dispute that Yi disclosed "exercise use data." EX-1009, 61-62.

Finally, PO's construction, which excludes pace, contradicts its own infringement contentions where PO accuses Petitioner's products of producing

exercise use data including “pace.” EX-1020, C-24. For these reasons, PO’s construction fails.

2. Ray’s Thinning Image, Pace, Etc. Are Exercise Use Data

Even if PO’s proposed construction is adopted, Ray’s thinning image, Morris’ pace, footfall force, etc. meet PO’s construction because they “represent an amount of exercise of the user.” Notably, Ray’s thinning image reflects the intensity, speed and/or duration of a user’s workout, i.e., an amount of exercise of the user. Ray, Abstract, 5:44-46, 5:23-29, 10:59-67. Ray’s image is generated in real-time and changes based on the user’s workout—the faster, longer or more intensely the user exercised, the thinner the user’s image became. *Id.*; Rawls, ¶¶167-69.

Similarly, Morris’ pace, footfall force, etc. are displayed to inform the user about his/her current workout. Morris, [0050]. A POSITA would understand that pace, footfall force and cadence represent the amount of exercise of the user: the pace run during their exercise, amount of force being exerted by the user’s footfalls, and “steps per minute...measured based on the detection of each impact over a period of time.” Morris, [0053]; Pet., 25; Rawls, ¶¶164-73.

PO’s additional arguments also fail. PO argues that you cannot determine “any other measure of an amount of exercise from viewing the virtual image alone.” POR, 20-21. This is factually incorrect because Ray’s thinning image is based on,

and represents, information about the user’s workout, including an intensity, speed or duration. Ray, Abstract, 5:44-46, 5:23-29, 10:59-67; Rawls, ¶¶167-69.

PO further argues that Ray’s virtual image cannot be exercise use data because it is multimedia content. POR, 20. But neither PO’s construction, nor the ’340 patent prohibit multimedia content from constituting exercise use data. *See* EX-1001, 6:57-7:3.

PO also attempts to mischaracterize Mr. Rawls’ testimony that Ray’s thinning image “is not a precise measurement.” POR, 20-21. But neither PO’s construction of “exercise use data” nor the ’340 patent requires a precise amount of exercise be represented. And, Mr. Rawls never testified that exercise use data requires a precise measurement. PO, in fact, appears to contradict itself both in its POR and district court contentions, stating exercise data be an *apparent* amount of exercise.³ POR, 5; EX-1018.

B. Validated Exercise Use Data

PO construction for “validated exercise use data” (POR, 6-11) should be rejected because it renders other claim terms superfluous,⁴ and is inconsistent with

³ All emphasis added by Petitioner unless otherwise indicated.

⁴ PO argues 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

PO's proposed district court construction. However, even under PO's construction, the challenged claims are invalid because PO's construction merely brings in existing claim limitations that are addressed in each ground.

PO's further imports impermissible narrowing limitations by arguing that cadence/footfall are not validated exercise use data because they are "inherently valid," can only be generated when a user is engaged with the treadmill, and thus do not require validation. POR, 17-18.

First, PO's construction (*see* footnote 4) does not exclude or mention "inherently valid" data. Second, inherently valid data is not in the claims or the detailed description. PO's argument that pace and footfall are "inherently valid" is also inconsistent with the purported purpose of the invention to prevent a person from faking exercise use data. EX-1001, 2:10-13. Notably, both pace and footfall data can be faked if a user asks a friend to exercise for the user, and then to transmit "inherently valid" data to an insurance company as proof of exercise. Finally, the claim merely requires generating validated data in response to detection of the user's

the moving operating unit." POR, 6. Claim 1 already requires the "controller is further configured to generate a validated exercise 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-1001, 8:36-41.

engagement and movement of the belt, and does not preclude generating inherently valid data as part of validated exercise use data.

PO's construction emphasizing "in response to" instead of "while" (POR, 18) also materially differs from its preliminary construction in district court,⁵ which states "exercise use data that has been determined to have occurred *while* the user is exercising." EX-1018.

C. Non-validated Exercise Use Data

PO's proposes "non-validated exercise use data" to mean "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 endless belt)." This construction, similar to PO's other constructions, includes limitations that are inconsistent with the specification and PO's position in district court. But even

⁵ The parties' opening exchange of claim terms and proposed constructions occurred on August 25, 2023, after Peloton filed its Petition. The district court litigation was stayed before the parties exchanged final constructions. EX-1021. Petitioner also filed a *Sotera* stipulation. EX-1022.

under PO's construction, the challenged claims are invalid because PO's construction merely brings in existing claim limitations.⁶

PO's construction further imports additional limitations that impermissibly narrow the scope of the claims by requiring three types of "exercise use data"—validated, non-validated and data where no determination is made. POR, 12-13. PO then argues that non-validated exercise use data is not AAPA. *Id.* PO is wrong.

The specification acknowledges only two types of exercise use data—validated and non-validated. *E.g.*, EX-1001, 5:19-23, 6:46-50. It never refers to a third type, which is neither validated nor non-validated. PO's position also contradicts its district court construction, which proposes non-validated exercise use data to be "exercise use data that is not validated exercise use data." (EX-1018).

III. GROUNDS FOR CHALLENGE

A. Ground 1

PO neither disputes the motivation to combine Morris and Ray, nor that the combination teaches limitations 1[pre] through 1[d]. Instead, PO focuses on limitation 1[e]. PO's analysis is flawed, because (1) it relies on flawed constructions of the claim terms; (2) even under those flawed constructions, the claims are

⁶ Claim 2 already recites the same requirements as PO's proposed construction, rendering it superfluous. EX-1001, 8:42-46.

rendered obvious; and (3) PO only addresses each prior art in isolation. *See In re Merck*, 800 F.2d 1091, 1097 (Fed. Cir. 1986) (“Non-obviousness cannot be established by attacking references individually where the rejection is based upon the teachings of a combination of references.”). Claim 1 and its dependents are invalid.⁷

1. Limitation 1[e]

a. PO Relies on Improper Claim Construction

Considering Morris alone, PO first argues that Morris’ disclosure of footfall force, cadence, and pace are not “exercise use data.” POR, 16-17. But PO’s exclusion of information such as pace contradicts the ’340 patent’s description, the prosecution history of the related ’375 patent, and PO’s infringement contentions. EX-1020, C-14; Section II.A, *supra*.

⁷ PO’s arguments for claims 8 and 13 should be rejected because they are the same as those for claim 1. POR, 29, 34. Except for claims 2, 7 and 9, PO does not separately address other dependent claims.

Considering Ray alone, PO argues heart rate and Ray’s virtual image are not exercise use data because they do not represent an amount of exercise.⁸ PO’s construction should be rejected, as explained in Section II.A, *supra*.

Morris and Ray describe exercise use data generated in response to detection of the user, including at least pace, cadence, footfall force, and Ray’s thinning image. PO’s arguments fail even when Morris and Ray are considered separately.

b. The *Combination*’s Description of Distance and Time Renders the Challenged Claims Obvious

Even if PO’s construction that limits exercise use data to time and distance is accepted, Morris and Ray describe other exercise data, i.e., distance and time. Pet., 24-30; Morris, Fig. 11; Ray, Fig. 1.

⁸ PO’s argument that Petitioner muddles Ray’s validation feature and virtual image (POR, 21) is incorrect. Ray’s thinning image is generated based on, e.g., the duration of a user’s exercise as detected by its camera and can be broadcast to a display. Ray, 13:50-14:5. Claim 1 does not require exercise data to be “validated” by a third party.

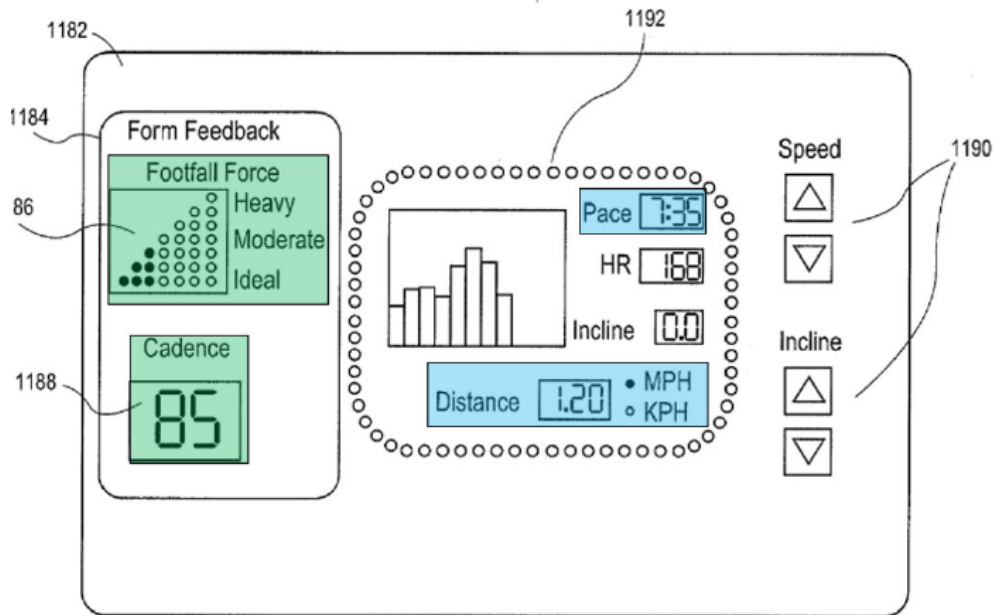


FIG. 11
(Annotated)

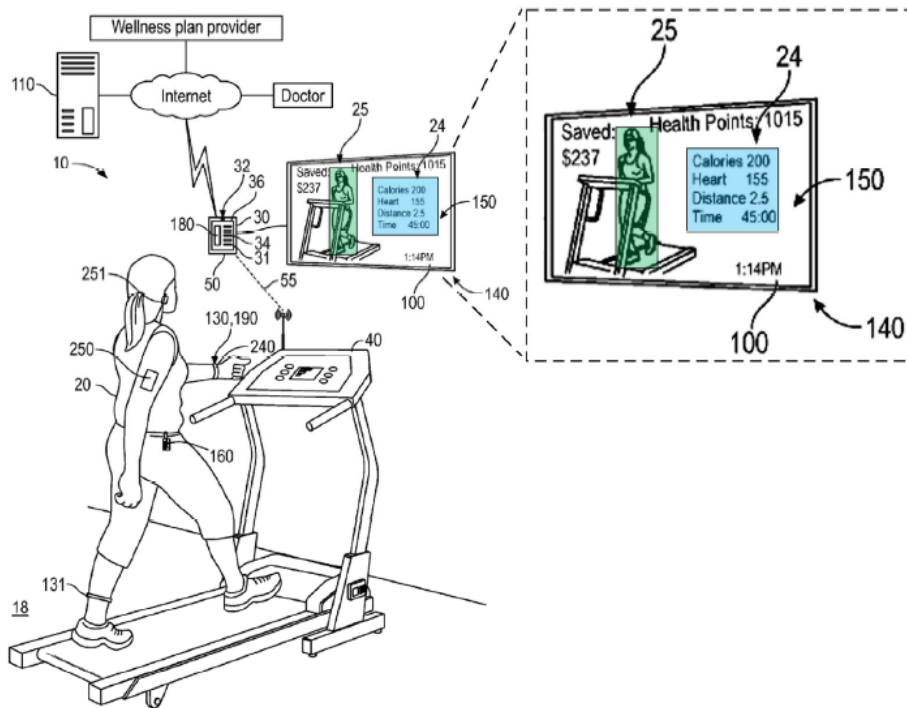


FIG. 1 (Annotated and Display Area Enlarged)

Notably, Ray's camera takes a user's real-time image only as long as the user is exercising (Ray, 6:54-57; Pet., 37) and transmits time and duration of the user's exercise to the server. Ray, 13:24-30; Pet., 37. PO ignores the reporting of time and duration of exercise described in Ray, and Petitioner's explanations that, in the combination, it would have been obvious to a POSITA that other exercise use data, including time and/or distance would also be reported along with user's thinning image. Pet., 28-30.

c. PO Ignores the *Combination* of Morris and Ray

PO argues that Morris' and/or Ray's controller does not validate distance and time "in response to" the sensor detecting engagement of the user. POR, 18. But PO ignores Petitioner's obviousness combination and Morris' explicit teachings.

Ray's treadmill displays exercise use data (*see* Figure 1 below), including distance, time, and the user's virtual/thinning image, the latter generated based on the intensity, speed, and/or duration of a user's exercise. Ray, 5:44-47; Pet., 25-28. Ray explains that its camera detects a user on the moving belt and that the thinning image is generated and displayed only if a user is detected. *Id.*, 28; Ray, 6:53-57, 14:6-14, 14:41-46; *see also* Ray, claim 14 (claiming displaying the thinning image only while a user is detected). As explained in subsection (b) above and in the Petition, a POSITA would have found it obvious that Ray's other exercise use data,

e.g., distance and time, would be transmitted along with Ray's thinning image only when a user is detected. Pet., 28-30; Rawls, ¶169.

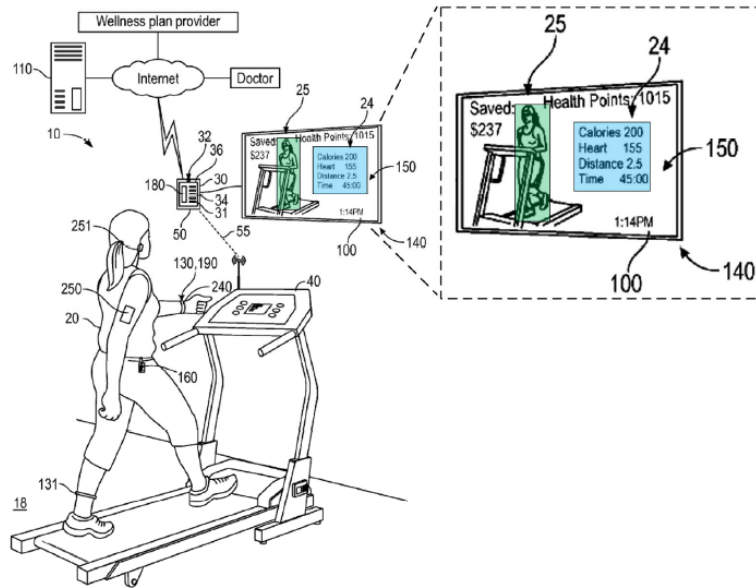
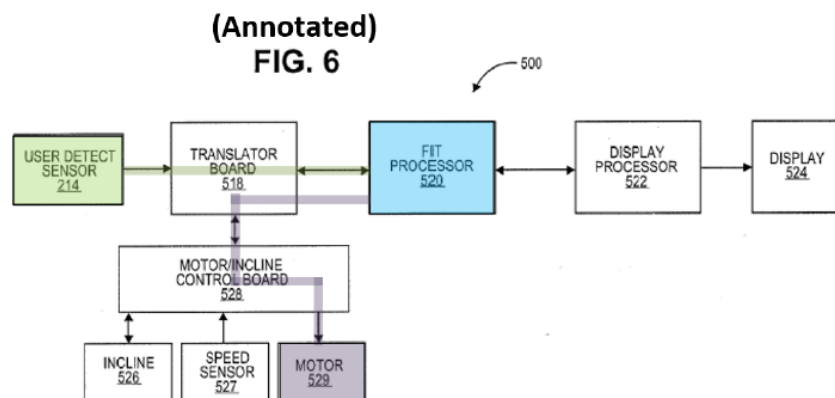


FIG. 1 (Annotated and Display Area Enlarged)

As the Petition explains, Morris' FIT processor (Figure 6 below) receives information from the user detect sensor. Pet., 20-22. In the combination, Morris' FIT processor and/or translator board ("controller") would receive signals from the user detect sensor that includes Ray's camera, and the controller would interpret signals that it receives from the sensor(s). Pet., 20-22, 28-30.



A POSITA would have understood that, in the combination, Ray’s exercise use data would be generated by Morris’ controller in response to detection of the user via receipt of camera signals and movement of the tread belt. Pet., 28-30. Thus, the exercise use data generated would be validated exercise use data.⁹

PO relies on Figure 6 of the ’340 patent to discuss the controller’s generation of validated exercise use data “in response to” detection of a user and movement of

⁹ Ray provides an additional layer of validation of both the user’s identity and exercise routine simultaneously. Ray, 8:26-28, 13:24-30; Pet., 59. PO mischaracterizes Ray by selectively quoting one section where someone in the medical industry validates the user’s identity. POR, 22. Ray, however, elsewhere discloses identity verification by the electronic device of the treadmill *during exercise*, using facial recognition routines included in the “set of instructions” in the memory of *electronic device 30*. Ray, 13:7-30, 14:6-30, 15:15-25.

the operating unit. POR, 6-8. But Morris discloses a similar flow chart in its Figure 9 (below), where its controller generates validated exercise use data “in response to” detection of the user by a sensor and movement of the tread. Morris, [0021], Pet., 8-9; Rawls, ¶¶123-25.

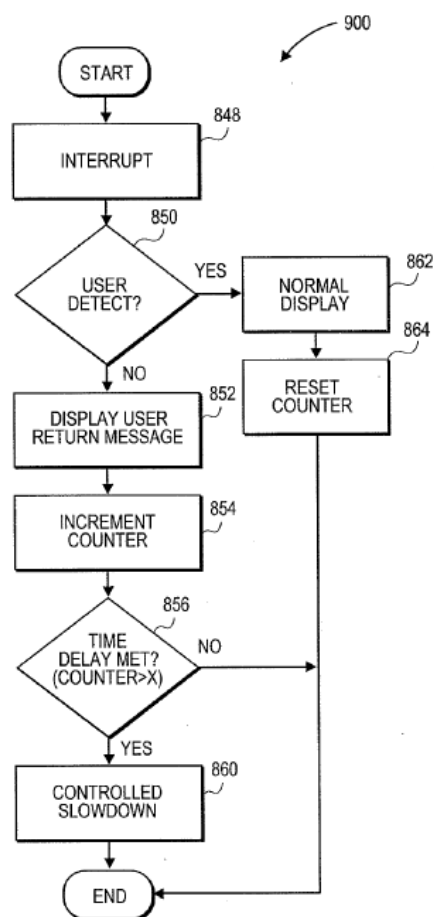


FIG. 9

At step 850, Morris’ user detection sensor (including an optical sensor; Morris [0033]) detects whether a user is on the treadmill and sends signals to the FIT processor/translation board (controller). *Id.*, [0045]; Pet., 8. Based on those signals,

Morris' controller calculates various parameters (i.e., exercise use data), manages the motor driver, and outputs parameters to the display. Morris, [0032]; Rawls, ¶¶139-40; Pet., 17-22. Morris' controller also adjusts the display in response to the user detection signal. Pet., 21-22; Morris, [0045]. When a user is detected, the program operates as normal. Morris, [0045]; Pet., 8. But if a user is not detected, Morris alters the display and triggers a controlled slowdown period. Morris, [0045]; Pet., 8. Morris' controller may also affect a workout program (including information on duration, distance, incline, intensity, and the like; Morris, [0035]) in response to detection of the absence of a user. *Id.*, [0036]; Rawls, ¶¶139-40; Pet., 8-9. Accordingly, validated exercise use data in the Morris-Ray combination is produced by the controller *in response* to detection of the user.

Additionally, Petitioner's analysis for claims 4 and 5 do not support PO's argument that Petitioner ignores the role of the controller in the Morris-Ray combination.

2. Claim 2

Morris teaches that when a user is not detected and fails to return within a period of time (e.g., 6-8 seconds), a controlled slowdown of the treadmill is triggered. Morris, [0045], Fig. 8; Pet., 30-31. PO argues that Morris does not make any determination or do any analysis about the validity of the time data generated during the slowdown period. POR, 24-25. Instead, according to PO, it continues to

generate and accumulate without the user being detected by the sensor. *Id.* PO's argument rests on improper claim construction theory and ignores Petitioner's obviousness argument.

As explained in Section II.C, PO's assertions about three types of exercise use data are not part of the claims, are not supported by the intrinsic record including the '340 patent's description, and even contradict PO's own proposed district court construction.

As the Petition explains, a POSITA would have found it obvious that exercise use data that did not depend on the user's presence, such as time, would continue to be generated in the user's absence. Pet., 31. Morris recognizes this, and finds it "advantageous to alert the user to reengage or halt the belt movement" when the user stops using the treadmill but leaves the belt running. Morris, [0006]. When the user departs without stopping the belt, the user's absence is detected, the FIT processor displays an alert message and continues to check for the user detect signal; if the user does not return after a certain period, the treadmill slows down as part of a controlled slowdown phase before ultimately stopping. Morris, [0045]; Pet., 30-31. Notably, Morris teaches that the belt continues to run before the timer expires and the slowdown period starts. Pet., 31; Rawls, ¶¶174-75.

A POSITA would also recognize that non-validated exercise use data, such as time or distance, would still be generated during this period because it would alert

the user that the treadmill was still running so they needed to reengage with caution, and it would allow generation of validated data to be readily resumed without delay when the user returned. Pet., 31; Rawls, ¶174. In fact, in the absence of the user, continuing or not continuing to generate exercise use data while the treadmill was running amounted to only two options, where choosing to continue generating would be an obvious alternative to a POSITA. Rawls, ¶175. In the Morris-Ray combination, the data generated by the processor when the belt was running without the user would be non-validated by Morris' controller because it would not be subject to Ray's validation process. Pet., 40; Rawls, ¶¶174-75; Ray, 6:53-57, 14:6-14, 14:41-46; Morris, [0045], Fig. 9.

3. Claim 7

Claim 7 relates to the controller establishing communication with a remote location.

PO appears to argue that Petitioner cannot rely on Ray because Morris' FIT processor is used for the "controller" portion of limitation 1[e]. POR, 27. PO, however, does not dispute motivations to combine Morris and Ray, which augments Morris' treadmill with Ray's Internet connection capability. Pet., 13-15; Ray, 12:61-64; Rawls, ¶¶139-41. Maintaining communication capability with a remote location was well-known and obvious to a POSITA well before the priority date. Pet., 14-15; Rawls, ¶142.

PO next argues that Ray does not teach a controller that maintains communication with a remote location while the user is not engaged with the treadmill, contending that Ray cannot teach both stopping generation and reporting of the thinning image and maintaining a remote connection when a user is not detected. POR, 27-28. PO improperly equates generation and reporting of exercise use data with maintaining a connection with a remote location.

A POSITA would be motivated to keep communication with a remote location, such as a storage device, even when a user was not detected so that an exercise can be quickly resumed. Pet., 38-39; Rawls, ¶¶184-86. It would not make sense to sever the remote connection if the user may return within a short period. Pet., 38-39; Rawls, ¶186; Morris, [0045] (displaying a return message for the user and saving program data for a specific amount of time in case the user returns).

Alternatively, a POSITA understand that the Morris-Ray treadmill could be in communication with a remote wall-mounted TV. Pet., 39; Rawls, ¶187; Ray, 12:65-67. PO argues a wall-mounted TV is not a “remote location” because it is too close to the treadmill. POR, 28-29. Ray teaches that its exercise use data can be displayed on a wall-mounted TV, where data is transmitted over a wireless network. *E.g.*, Ray, Figure 1 (showing interface 55 for transmitting exercise use data); Pet., 41-42. The ’340 patent similarly describes transmitting information to a “remote location” via a local area network (i.e., a wireless network) (EX-1001, 7:34-37),

which is similar to a wall-mounted TV that is at a distance from the treadmill. A POSITA would be motivated to maintain communication with this wall-mounted TV so that a user return message, e.g., can be shown to the user. Pet., 39; Rawls, ¶187.

4. Claim 9

PO argues that Petitioner's reliance on its discussion of the prior art with respect to limitation 1[e] is improper. But Petitioner's analysis of claim 9 is not limited to a reference back to limitation 1[e]. Pet., 43-45. Instead, Petitioner refers to limitation 1[e] for its discussion of reporting/validating exercise use data.

Petitioner's analysis continues with a discussion of Ray and how it stops reporting its thinning image when a user was not detected. Pet., 43-44; Ray, 6:17-20, 6:55-57, 13:50-56. PO argues that Ray only discloses stopping a validation process, not display of a virtual image. POR, 31. PO confuses Ray's teachings. Ray explicitly discloses that its thinning image is displayed (i.e., reported) only when a user is detected. *E.g.*, Ray, claim 14 (displaying thinning image only while exercise session detected), 6:53-56 ("If the user stops exercising, the camera will no longer record images."); Pet., 43-44.

Finally, PO disagrees that it would be obvious to stop reporting exercise use data to a doctor/trainer when a user is not detected. PO argues that neither Ray nor Morris teaches this, and that Petitioner is engaging in hindsight bias. POR, 31-32.

PO ignores the Petition's and Mr. Rawls's explanations. Pet., 44-45; Rawls, ¶¶195-99. A POSITA would understand that there would be no reason to continue reporting exercise use data to the doctor to monitor if the user stepped off the exercise apparatus. Notably, when Ray's camera *is no longer recording* images in response to not detecting the user (Ray, 6:53-56), there would be no reason to send any images. Pet., 44-45; Rawls, ¶¶195-99.

5. Claim 13

PO argues that Morris and Ray do not disclose element 13[e]'s reporting exercise use data in response to the comparison step. POR, 34. Petitioner notes a typo, where its analysis should refer back to limitation 8[g] instead of 8[e], which demonstrates how the Morris-Ray combination teaches reporting exercise use data in response to determining a user is engaged was taught by the prior art. Pet., 48-49. *See Milwaukee Electric Tool Corp. v. Irwin Industrial Tool Co.*, IPR2015-01462, Paper 13 at 2 (Jan. 15, 2016) (disregarding Petitioner's typo because Petitioner's explanations and supporting evidence established reasonable likelihood of prevailing).

6. Claim 15

PO argues that Petitioner cannot rely on AAPA to support that exercise use data is generated. POR, 35-36. PO is incorrect, and contradicts Director Vidal's memorandum, which allows on AAPA to be used in combination with another prior

art. EX-1019, 3-4; *Qualcomm Inc. v. Apple Inc.*, 24 F.4th 1367, 1376-77 (Fed. Cir. 2022).

PO also argues that AAPA does not disclose the “in response to” requirement of claim 15. The ’340 patent discloses, however, that sensors for user detection were known and that exercises apparatus would generate exercise use data both if a user was present on the device and if a user was not present. Pet., 49-50; EX-1001, 1:64-2:16, 4:49-54. AAPA supports the conclusion that claim 15 is obvious.

B. Ground 2

1. Claim 1

PO argues that limitation 1[e] is not disclosed because AAPA does not teach the “in response to” requirement, and Ray does not teach element 1[e]. PO’s argument for Ray relies on its argument in Ground 1 but is incorrect for the reasons stated above. *See* Section III.A.1. And per AAPA, an exercise apparatus with a controller in communication with a belt was known to a POSITA. Pet., 57.

2. Claim 2

PO argues that AAPA does not disclose generating non-validated exercise use data by the controller *in response to* movement of the operating unit and the sensor not detecting a user. POR, 42-43. PO is incorrect.

PO does not dispute that Ray’s controller generates exercise use data, such as time, that is related to treadmill functions and not to user detection. When Ray’s

camera does not detect a user (e.g., when the treadmill is initially turned on or if the user steps off), this data would still be generated but would not be transmitted to third party and would not be subject to Ray's validation process. Pet., 59-60; Rawls, ¶240. Whether or not to continue generating the data, even when a user is not detected, was one of two known alternatives, and obvious to try. Pet., 59-60. A POSITA find it advantageous to continue generating non-validated exercise use data because it would notify the user that the treadmill is still running so a user could cautiously resume exercising. Pet., 59-60; Rawls, ¶241.

PO argues the existence of two known alternatives in the AAPA should be ignored because Ray's controller purportedly does not generate "non-validated exercise use data" in response to the sensor not detecting the user. POR, 42-43. PO's proposed construction should be rejected. Section II.C.

Even if PO's construction is adopted, Ray in view of AAPA still teaches or suggests claim 2. PO does not dispute that Ray's electronic device includes a processor (controller) in communication with the belt and sensor, and is responsible for generating exercise use data. Pet., 57. A POSITA would have understood that Ray's *controller* would generate validated exercise use data (including images/video/live feed) in response to its camera detecting a user exercising and movement of the belt. Ray, 6:53-55; Pet., 57-59. If Ray's camera did not detect a user's engagement, it would stop recording (Ray, 6:55-57), but Ray is silent as to

whether the remaining tread-only related data, e.g., time, would still be *generated* in response to not detecting the user. A POSITA would find it advantageous for Ray's controller to continue generating exercise use data, such as time, in response to the sensor not detecting a user, as one of the two known alternatives already described by numerous prior art references and AAPA, and because of the safety advantage it provided. Pet., 59-60.

3. Claim 9

PO argues AAPA does not teach claim 9 because a conventional motor-driven apparatus that could continue running without a user does not satisfy claim 9. POR, 44. PO ignores Petitioner's argument that it would be obvious to a POSITA that Ray's treadmill, in view of the knowledge of a POSITA and AAPA, would still *generate* exercise use data but stop *reporting* exercise data in response to a user not being detected. Pet., 61-62.

C. Ground 3

Yi was used for anticipation and obviousness rejections during prosecution of the related '375 patent. Pet., 66-68. PO is correct that rejected claim 1 of the '925 application does not include the term "validated" (POR, 51) but ignores that rejected claim 1 recited the same "in response to" language that PO relies on to argue that Yi does not render the challenged claims of the '340 patent obvious. Pet., 66-67.

Further, Yi was not relied on by the examiner as a basis of invalidity and should be considered by the Board. *See Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH*, IPR2019-01469, Paper 6 at 9-11 (Feb. 13, 2020) (precedential).

1. Claim 1

PO relies solely on limitation 1[e] to argue that Yi's pace distance and pace time are not exercise use data because they do not represent an amount of exercise. POR, 52. PO is incorrect. *See* Section II.A.

PO also argues that Yi's other exercise use data is not tied to the controller's generation of data in response to detecting a user. POR, 53-54. But PO ignores Yi's disclosure that its control unit calculates pace distance and pace time "based on" load detection signals (i.e., detection of a user). Pet., 70-71; Yi, [0046]; Rawls, ¶¶277-78. Yi also discusses generating and displaying other exercise use data. Pet., 71. A POSITA would understand that this data is also "based on" detection of a user. Pet., 70-72; Yi, [0039]-[0040], [0046]; Rawls, ¶¶277-79. PO's disagreement with Petitioner's word choice of "while" aside (which contradicts PO's district court

position, EX-1018), Yi’s controller does generate validated exercise use data “based on” (in response to) detection of a user.¹⁰ Pet., 70-71; Yi, [0046].

Finally, PO’s argument that Yi does not detect a user’s presence, even though PO admits that Yi detects a user’s foot strike, is nonsensical. POR, 54. A POSITA would understand that detection of a user’s foot strike equates to detection of a user. Pet. 71; Rawls, ¶¶277-80. PO appears to agree when it argues that Morris’ footfall data is “inherently valid” because it requires the presence (and detection) of a user. POR, 17-18.

2. Claim 6

Claim 6 recites the controller records the validated exercise use data. Yi discloses that its pace speed, for example, is recorded. Yi, [0045], [0060]. PO disagrees, arguing that “pace speed¹¹” is not exercise use data. POR, 55-56. PO is wrong. *See* Section II.A. Notably, PO does not disagree that Yi reports exercise

¹⁰ For these reasons, Yi also renders claims 4 (exercise time) and 5 (exercise distance) obvious.

¹¹ PO’s argument that “pace speed” was not identified as validated exercise use data” in claim 1 ignores the Petition, which identifies speed as exercise use data disclose by Yi. Pet., 71.

data—it merely disagrees whether the data that Yi reports qualifies as “exercise use data.” POR, 55-56.

3. Claim 8

PO argues that claim 8 is not obvious because Yi’s pace speed and heart rate are not exercise use data. POR, 56-57. But this argument is wrong. *See* Section II.A. PO also argues that Yi does not report exercise use data “in response to” detection of a user. As discussed in Section III.C.1, PO is incorrect. Yi’s controller generates validated exercise use data “based on” detection of a user. Pet. 70-71.

4. Claim 9

PO argues that Yi is silent about its controller stopping to report exercise use data. POR, 58. PO ignores, and therefore does not refute, Petitioner’s argument that it would be obvious to a POSITA that, in the absence of detecting a user’s footsteps, Yi’s sensor would not report a load and therefore would not report pace speed or other exercise use data. Pet., 74-75; Rawls, ¶291.

IV. THE VAN DER WEIDE DECLARATION SHOULD BE AFFORDED LITTLE WEIGHT

Under 37 C.F.R. § 42.65(a), “[e]xpert testimony that does not disclose the underlying facts or data on which the opinion is based is entitled to little or no weight.” The conclusory and unsupported statements in the van der Weide Declaration should be afforded little weight because they merely parrot the POR’s

conclusory statements without adding any facts or data to support the view of a POSITA.¹²

Notably, PO in arguing that the Morris-Ray combination does not render claim 9 obvious (POR, 30-32), relies on paragraphs 86-91 of the van der Weide Declaration. A comparison confirms that Dr. van der Weide parrots the POR by merely swapping “Petitioner” for “Mr. Rawls,” and omitting case law and declaration citations. *Compare* POR, 30-32, *with* EX-2004, ¶¶86-91. A comparison of the remaining portions of Dr. van der Weide’s Declaration draws the same conclusion—he does not offer additional supporting evidence or any technical reasoning to support his conclusory statements. Accordingly, the van der Weide Declaration should be afforded little weight. *See Xerox Corp. v. Bytemark, Inc.*, IPR2022-00624, Paper 9 at 15 (PTAB 2022) (precedential).

V. CONCLUSION

Petitioner requests the Board find claims 1-20 of the ’340 patent unpatentable.

¹² The parties’ definitions of a POSITA are similar. *Compare* Rawls, ¶33, *with* EX-2004, ¶52. The challenged claims are invalid under either definition.

Dated: May 24, 2024

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CERTIFICATE OF WORD COUNT UNDER 37 C.F.R. § 42.24(d)

Under 37 C.F.R. § 42.24(d), the undersigned certifies that the word count for this Reply to Patent Owner Response totals 5,598.

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that I caused to be served a true and correct copy of the foregoing: **PETITIONER PELOTON INTERACTIVE, INC.'S REPLY TO PATENT OWNER'S RESPONSE TO PETITION FOR *INTER PARTES* REVIEW OF U.S. PATENT No. 10,796,340 AND SUPPORTING MATERIALS** by email to the electronic service addresses for Patent Owner:

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