

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 SUR-REPLY TO PETITIONER'S REPLY TO
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's Reply boils down to rehashing the arguments raised in its Petition, injecting new arguments to fill the Petition's acknowledged shortcomings, and mischaracterizing PO's arguments and the evidence to mislead the Board. Underlying the entirety of Petitioner's arguments is its willful blindness to the '340 Patent's express definition of "exercise use data," and the claim language requiring "validated exercise use data," and "non-validated exercise use data" be generated in response to the sensor detecting the user engaged with the operating unit. Petitioner has thus failed to establish any of the Challenged Claim are unpatentable.

II. CLAIM CONSTRUCTION

A. "Exercise use data"

The '340 patent provides an express definition for "exercise use data," and neither Ray's virtual image nor Morris' pace, footfall force, and cadence satisfy that express definition.

1. PO's construction is supported by the intrinsic evidence.

Petitioner argues that PO's "construction [of "exercise use data"] finds no support in the record" (Reply at 2) but ignores that PO's construction is the express definition of "exercise use data" in the specification. Indeed, the specification defines "exercise use data" as data that "represents an exercise *amount* of the

user,” (Ex.1001 at 1:43-45, emphasis added) and that construction is supported by expert testimony. Ex.2004, ¶¶32-35.

PO also does not limit “exercise use data” to time and distance. Instead, time and distance are two examples of “exercise use data” recited in the specification and claims. Ex.1001 at 6:33-45, claims 4, 5, 17; Ex.2004, ¶33. “Exercise use data” also includes any other metric that represents an **amount** of exercise by the user, like calories. POR at 22. The exclusion of “pace, heart rate footfall force, cadence and Ray’s virtual image” from “exercise use data” is not “arbitrary.” None of those metrics represent an **amount** of exercise by the user, and Petitioner has no evidence or argument to the contrary. *See* Ex.2004, ¶¶35, 56-58; Ex.2005 at 16:22-17:7, 59:17-60:11 (Petitioner’s expert admitting that pace, cadence, and gait do not represent an amount of exercise the user has performed).

With no evidence to support its position, Petitioner makes a new argument trying to equate “exercise habit” to “exercise use data.” Reply at 2. For this argument, Petitioner purports to quote “EX-1001, 1:43-46,” but conspicuously omits the express definition of “exercise use data” included in the cited text. The specification makes clear that the two terms are different. *See, e.g.*, Ex.1001 at 1:43-56, 2:12-26, 2:36-43. Rather than equate “exercise habit” and “exercise use data,” the ’340 patent explains that a “user could use this exercise use data to demonstrate his (or her) exercise habit.” Ex.1001 at 1:53-54. Nonetheless, the ’340

patent never says that “pace, heart rate, footfall force, cadence, and Ray’s virtual image” would constitute “exercise use data.”

In grasping for support, Petitioner argues that a “POSITA would understand that ‘exercise habit,’ as used in the ’340 patent, would correspond to a user’s exercise pattern” and cites “Rawls, ¶¶114-115”. Reply at 2. Rawls does not say this. And whether an “exercise habit” corresponds to “a user’s exercise pattern” has nothing to do with the meaning of the claim term “exercise use data.”

Petitioner confirms the weakness of its argument when citing “Rawls, Appendix K, ¶0026” for the proposition that “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.” Reply at 2-3. “Rawls, Appendix K” is a patent application without any relationship to PO or the ’340 patent, was not cited in the Petition, and never uses the term “exercise use data.” *Trs. of Columbia Univ. in City of N.Y. v. Symantec Corp.*, 811 F.3d 1359, 1369 (Fed. Cir. 2016) (finding error in affording similar construction of term used in unrelated patents). Therefore, it is irrelevant and does not help Petitioner avoid the express definition of “exercise use data” in the ’340 patent. *See Bell Atl. Network Servs., Inc. v. Covad Commc’ns Grp., Inc.*, 262 F.3d 1258, 1268 (Fed. Cir. 2001) (The “specification acts as a dictionary when it expressly defines terms used in the claims.”).

Petitioner's reliance on U.S. Patent Nos. 8,287,434 and 6,638,198 is misplaced. Reply at 3. As Petitioner admits, neither patent uses the term "exercise use data." *Id.* at n.1. However, as noted in the '340 patent, both patents disclose types of "exercise use data," including time, calories, and distance. Other metrics disclosed in the '198 and '434 patents, like pulse rate and velocity, are not "exercise use data" because they do not represent an amount of exercise. Ex.2004, ¶¶35.

Petitioner argues that the '375 patent file history contradicts PO's construction of "exercise use data" because "Applicant did not dispute that Yi disclosed 'exercise use data.'" Reply at 4. PO did not dispute that Yi discloses "exercise use data" because it discloses "exercise distance, [and] exercise time."¹ Ex.1009 at 38; Ex.1012 at [0039]. Thus, contrary to Petitioner's argument, PO did not contradict its construction of "exercise use data" during prosecution of the '375 patent.

Finally, PO's reliance on Petitioner's "Preliminary Infringement Contentions" is misplaced. Reply at 4-5. Petitioner did not contend that "pace" or "heart rate" were "exercise use data.". Rather, PO contended that Petitioner's

¹ To be clear, PO acknowledged during prosecution that Yi discloses "exercise information such as exercise distance, time and speed tracking a user's footsteps." Ex.1009 at 38. Of those types of "exercise information," only distance and time are "exercise use data," and PO never stated otherwise.

product satisfied the “exercise use data” element of claim 1 because it disclosed “Total Output (kJ), Distance (mi), and Calories (kcal)” which represent amounts of exercise. Ex.1020 at C-5.

Petitioner seizes on a mistake in the “communication interface in communication with the controller” element of claim 8. There, PO mistakenly stated “[t]he Accused Products’ controller communicates with the current sensor and operating unit to gather exercise use data, including pace, incline, output, and mileage.” Ex.1020 at C-14. Clearly, “exercise use data” in that sentence should be “exercise data” because if PO meant to assert “pace” (or “incline”) as “exercise use data,” it would have said that “pace” satisfies the “exercise use data” element in its contentions. It did not. Ex.1020 at C-5, *see also*, claim 8 at C-14.

Notably, PO “reserve[d] the right to supplement or modify [its Preliminary Infringement Contentions] at any time.” Ex.2007 at 1²; *Intex Recreation Corp. v. Bestway (USA), Inc.*, IPR2019-00454, Paper 34, 25 (PTAB Jun. 22, 2020) (relying on PO’s “reserv[ation of] all rights to amend, supplement, and/or modify its Contentions” in deciding “not [to] regard the infringement contentions in the District Court as a claim construction proposed by Patent Owner in the proceeding

² This exhibit was authorized by the Board during the July 2, 2024, teleconference under 37 CFR § 42.23(b).

before us”). The mistake will be corrected in PO’s “Final Infringement Contentions” when the litigation stay is lifted.

Even if PO’s initial contentions were based on a different claim construction for “exercise use data” (which they were not), the Board has reasoned that there is no “controlling authority that prevents a [party] from advancing one construction in District Court Litigation ... and a different construction ... before the Board.” *Frameless Hardware Co. v. C.R. Laurence Co.*, IPR 2022-00356, Paper 55, 15-16 (PTAB Jul. 5, 2022). The Board’s role is to construe the claims under the same standard as the district court. 37 C.F.R. § 42.100. When the district court has not construed the claims and the litigation is stayed, like here, there is no risk of inconsistent claim constructions.

2. Ray’s virtual image and Morris’ pace, footfall force, and cadence are not “exercise use data.”

Petitioner argues that even if PO’s construction were adopted, “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,” relying upon “Rawls, ¶¶167-69.” Reply at 5. Rawls does not opine that Ray’s thinning image represents an amount of exercise anywhere in his declaration. Ex.1002. Thus, Petitioner has no evidence that Ray’s virtual image represents an amount of exercise of the user.

With no evidence, Petitioner claims Ray's virtual image is "exercise use data" because it morphs based on "intensity, speed and/or duration of a user's workout." Reply at 5. The virtual image does not represent an **amount** of exercise by the user. Ex.2004, ¶¶62, 65. For example, if Ray's virtual image thinned the user's image by 50% during a workout session, there is no way to know from the thinned image what amount of exercise, such as time, distance, and/or calories, the user performed. *Id.*; Ex.2005 at 22:6-7.

Petitioner next argues that Morris' disclosure of "pace, footfall force and cadence represent the amount of exercise of the user," but fails to explain how any of these metrics represent an **amount** of exercise. Reply at 5. Petitioner's misleading citation to "Morris [0053]" and "Rawls, ¶¶164-73" provides zero support for the proposition that pace and footfall force represent an amount of exercise. Reply at 5. Indeed, Petitioner's explanation of pace ("the pace run during their exercise"), footfall force ("amount of force being exerted by the user's footfalls"), and cadence ("steps per minute") confirm that they do not represent an **amount** of exercise. Reply at 5.

Petitioner mischaracterizes PO's position on multimedia content. Reply at 6. PO countered Petitioner's argument that multimedia media content **is** exercise use data by explaining that, according to the '340 patent, "exercise use data" **can be shown** as a multimedia content but multimedia content itself is not "exercise use

data.” Petitioner’s mischaracterization is merely an attempt to avoid the real issue, which is whether Ray’s virtual image represents an amount of exercise. The evidence shows it does not.

Petitioner’s next argument that “exercise use data” need not be a precise measurement is beside the point. Reply at 6. Not only is Ray’s thinning image not a precise measurement, it simply does not represent an amount of exercise.

Finally, PO also did not contradict itself with its construction of “exercise use data” in the district court litigation. Reply at 6. PO explained there (and here) that “exercise use data” is an apparent amount of exercise unless it is validated or non-validated by the controller. POR at 5; Ex.2004, ¶34.

B. “Validated exercise use data”

Petitioner criticizes PO’s construction of validated exercise use data but does not propose another construction or offer evidence in support of one. Reply at 6-7. Petitioner argues that PO’s construction “merely brings in existing claim limitations.” Reply at 7. The claims require that the “controller ... generate 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.” *See, e.g.,* Ex.1001 at claim 1. Thus, “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.” There is nothing improper about PO’s construction.

Petitioner also mischaracterizes PO’s argument about footfall force and cadence being inherently valid. Reply at 7-8. The evidence shows that cadence and footfall force are not “exercise use data” Ex.2004, ¶¶56-59. Even if they were, Petitioner has not offered evidence showing that Morris discloses that either footfall force or cadence “has been determined to have occurred by the controller in response to the sensor detecting a user engaging the moving operating unit/member.”³ Ex.2004, ¶59.

Finally, Petitioner contends that PO’s arguments here are inconsistent with its preliminary claim construction in the district court because it emphasized “in response to.” Reply at 8. Notwithstanding that PO’s district court construction was preliminary and should not be considered here, PO emphasizes “in response to” because it is explicitly recited in the claims and because Petitioner attempted to read out that claim language. Indeed, Petitioner took the untenable position that, so long as the controller generated “exercise use data” *while* a person was exercising,

³ Petitioner’s argument that footfall force and cadence can be faked if a person’s friend performs the exercise for them misses the point. Reply at 7. The ’340 patent does not purport to prevent *all* ways of faking exercise. Instead, the patent is directed to preventing a user from turning on motor-driven exercise equipment and taking credit for “exercise use data” for exercise that was not performed. Ex.2004, ¶¶22-24.

regardless of whether that “exercise use data” was generated by the controller *in response to* sensor detecting user engagement, it was “validated exercise use data.” Pet. at 22-23. When proposing its district court construction, PO could not anticipate Petitioner would attempt to read “in response to” out of the claims.

C. “Non-validated exercise use data”

Like with “validated exercise use data,” Petitioner criticizes PO’s construction of “non-validated exercise use data,” but does not propose another construction or offer evidence in support of a different construction. Reply at 8-9.

Contrary to Petitioner’s argument, “exercise use data” can be neither “validated exercise use data” nor “non-validated exercise use data.” Indeed, that is a problem with the prior art solved by the ’340 patent. Claim 2, for example, requires that “non-validated exercise use data” be generated by the controller in response to the sensor not detecting engagement by the user. *See e.g.*, Ex.1001 at Claim 2. PO already explained this with reference to Figure 6 and the associated description. POR at 6-8; Ex.1001 at Figure 6; Ex.2004, ¶¶37-39. Thus, if the controller generates “exercise use data” without basing it on the sensor detecting or not detecting a user (*i.e.*, the prior art), then the “exercise use data” is not “non-validated.” Ex.2004, ¶34.

Petitioner misleadingly cites “EX-1001 at 5:19-23, 6:46-50” as support for its position that all “exercise use data” is either “validated exercise use data” or

“non-validated exercise use data.” Reply at 9. The cited text says nothing of the sort. Rather, with prior art motor-driven exercise equipment there was a question as to the validity of the exercise use data. Ex.1001 at 2:15-19. The validity of the “exercise use data” was in “question” because it was not generated by the controller “*in response to*” the user being detected or not detected by the sensor. Thus, the “exercise use data” generated in prior art equipment was neither “validated” nor “non-validated.”

Finally, Petitioner incorrectly argues that PO’s preliminary claim construction in district court is inconsistent with its construction here. Reply at 9. Notwithstanding that PO’s district court construction was preliminary and should not be considered here, as with “validated exercise use data” above, PO’s arguments here are not inconsistent. *See* Section II.B.

III. GROUNDS FOR CHALLENGE

A. Ground 1

1. Element 1[e]

Ray’s virtual image, footfall force, cadence, and pace are not “exercise use data” because they do not represent an amount of exercise, and the Morris-Ray combination therefore does not teach or suggest “validated exercise use data.”⁴

⁴ Petitioner argues it has not muddled Ray’s validation feature and virtual thinning image because “Ray’s thinning image ... can be broadcast to a display.” Reply at 11 n.8. Petitioner has muddled the two and misses the point. Ray validates a

Petitioner argues that the Morris-Ray combination discloses time and distance. Reply at 13. PO does not dispute this. Petitioner, however, still fails to address element 1[e]'s requirement that exercise use data be determined by the controller to have occurred in response to the sensor detecting a user engaging the moving operating unit.

Petitioner argues that PO ignored the *combination* of Morris and Ray, but that is not true. Reply at 13-17. In its Response, PO explained that neither Ray nor Morris taught or suggested “validated exercise use data.” POR at 16-23. Petitioner did not articulate a combination of Morris and Ray different from Morris or Ray alone to satisfy the “validated exercise use data” element. Pet. at 24-30.

Although Petitioner asserted that Morris' controller “communicated with the user detect sensor” (Pet. at 22), Petitioner never argued in the Petition, let alone provided evidence, that Morris' controller determines “exercise use data” to have occurred in response to the sensor detecting a user engaging the moving operating unit. To the extent Petitioner is making that argument now (Reply 14-17), it is for the first time, unsupported, based on hindsight, and incorrect. *See* POR at 16-18.

person's identity and method of exercise by transmitting an actual image of the person to a third party. Ex.1004 at 8:27-29; Ex.2004, ¶28. Ray's virtual thinning image is not validated by anyone or anything, let alone a controller in response to a sensor detecting a user. Ex.2004, ¶65. The virtual image in Ray is only for motivating the user. Ex.2004, ¶66; Ex.2005 at 24:3-5.

Arguments made for the first time in Reply that could have been made in the Petition are improper. *See Consolidated Trial Practice Guide* (Nov. 2019), at 73 (“Petitioner may not submit new evidence or argument in reply that it could have presented earlier, e.g. to make out a prima facie case of unpatentability.”); *see also In re NuVasive*, 842 F.3d 1376, 1380-81 (Fed. Cir. 2016).

Petitioner further argues that 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.” Reply at 13. On this basis, Petitioner claims that “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.” Reply at 13-14 (citing Ex.1002 (Rawls), ¶169). But the cited paragraph actually states: “it would have been obvious to a POSITA that Ray’s other types of exercise data (such as time and distance) would be generated ***while the belt was moving*** because that information would be computed ***based on the movement of the belt.***” Ex.1002, ¶169 (emphasis added). Thus, Rawls does not support Petitioner’s argument that Ray’s other types of exercise data would only be transmitted when the user is detected. Rather, Rawls description of Ray illustrates the problem in the prior art that the ’340 patent addressed. Ray, like other prior art, generates time and distance based on the movement of the belt without validation by the controller in response to the sensor detecting engagement by the user.

Although Ray “explained that the movement of the treadmill could trigger the camera’s operation” (*id.*), it says nothing about the operation of the controller determining the validity of time, distance, or calories in response to a sensor 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 validated. Ex.2004, ¶67; Ex.2005 32:4-7, 38:19-39:2. This is exactly what the claimed invention solves—the prior art’s accumulation of exercise use data without the controller determining whether a user engaged (or not engaged) with the treadmill.

Petitioner relies on Figure 9 in Morris to argue that it discloses that its “controller generates validated exercise use data ‘in response to’ detection of the user by the sensor and movement of the tread.” Reply at 16. For this proposition, Petitioner provides another misleading citation to “Morris [0021]; Pet. 8-9; Rawls, ¶¶123-25.” “Morris [0021]” is a “Brief Description” of Figure 9; “Pet. 8-9” describes how Morris initiates a controlled slowdown when the user was not detected; and Rawls ¶¶123-25 describes Morris’ detection mechanism for enabling the treadmill’s “kill function.” None of Petitioner’s cited evidence discloses a “controller [that] generates validated exercise use data ‘in response to’ detection of the user by the sensor and movement of the tread.”

Petitioner also relies on Figure 9 in Morris to argue that Morris' controller "calculates various parameters (i.e., exercise use data), manages the motor driver, and outputs parameters to the display"; "adjusts the display in response to the user detection sensor's signal"; and "may also affect a workout program (including information on duration, distance, incline, intensity, and the like; in response to detection of the absence of a user." Reply at 16-17. Petitioner's arguments are again misleading. Morris discloses that, when a user steps off the treadmill while the belt is running, the display "alert[s] the user to reengage" and the "workout program" is affected only by entering a slowdown period. Ex.1006 (Morris) at [0036]. 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 exercise use data generated during the slowdown period. In fact, Petitioner's expert admits that during the slowdown period when the user is not on the machine, the exercise use data continues to accumulate. Ex.2005 at 56:1-5.

2. Dependent claim 2

Petitioner argues that PO's construction requires "three types of exercise use data." Reply at 18. As explained above, not all "exercise use data" is either "validated" or "non-validated." "Exercise use data," such as time or the distance, can exist without a controller determining that the "exercise use data" is validated or non-validated in response to a user being detected or not detected.

With reference to Morris, Petitioner argues that 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.” Reply at 18. In Morris, this data is simply “exercise use data” that is neither “validated” nor “non-validated.” POR at 18; Ex.2004, ¶¶59-60. Petitioner’s argument proves PO’s position that the combination of Morris and Ray does not teach or suggest “non-validated exercise use data.”

Nothing in Petitioner’s argument or evidence demonstrates that the controller of Morris makes any determination or does any analysis about the validity or non-validity of the distance or time data generated during the slowdown period or when the user is alerted to reengage. Ex.2004, ¶73. Instead, according to Morris, time data would continue to be generated and accumulate without the user being detected by the sensor—just as it did when the user was detected by the sensor. *Id.* There is no indication in Morris that distance or time generated during the slowdown period is “non-validated exercise use data.”

3. Dependent claim 7

Petitioner argues “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 and never asserts that Morris' FIT processor can perform any of the functions of claim 7. *Id.* at 37-39.

Petitioner argues that it would have been obvious to maintain a connection with the remote location when the user is not detected "so that an exercise can be quickly resumed." Reply at 20. Petitioner fails to point to anything suggesting that there would be delays in reconnecting to the remote location if the user returned. 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.*

Next, Petitioner argues that "a POSITA [would] understand that the Morris-Ray treadmill could be in communication with a remote wall-mounted TV," and a wall-mounted TV is "similar" to "a local area network." Reply at 20-21. This argument is illogical. 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 duplicating the treadmill's console screen is not a communication with a "remote location." Ex.2004, ¶82.

4. Dependent claim 9

Petitioner argues that Ray "discloses that its thinning image is displayed (i.e., reported) only when a user is detected" and that 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.” Reply at 22.

As explained above, (1) Ray’s thinning image is not “exercise use data”; and (2) 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. 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*

5. Claim 13

Petitioner notes a typo in its Reply where its analysis for element 13[e] should refer back to element 8[g] instead of 8[e]. Reply at 22. But, as with element 8[g], Petitioner still fails to 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.

6. Dependent claim 15

Petitioner does not list “AAPA” as a reference for Ground 1 (Morris-Ray), like Ground 2 does (Ray-AAPA). It is unclear whether and when Petitioner picks and chooses AAPA to fill the gaps in its obviousness combinations. Regardless,

Petitioner's argument that AAPA discloses the "in response to" requirement of claim 15 is erroneous.

Petitioner argues it was known that "exercise[] apparatus[es] would generate exercise use data both if a user was present on the device and if a user was not present." Reply at 23. In other words, time and distance would continue to accrue when the user steps off the treadmill and the belt continues to run. Again, this is precisely one of the problems with the prior art solved by the '340 patent—the prior art generated time and distance based on the movement of the belt without validation by the controller in response to the sensor detecting engagement by the user. Therefore, even if Petitioner's argument is true, AAPA does not disclose a controller generating validated (or non-validated) exercise use data *in response to* the sensor detecting engagement by the user.

B. Ground 2

1. Petitioner's reliance on AAPA as a "basis" for Ground 2 is not permissible.

"Section 311(b) limits the prior art that may be used as 'the basis' of an IPR proceeding to 'patents or printed publications.'" Ex.1019 at 2. Petitioner improperly uses AAPA as a "basis" for Ground 2 to satisfy many claim elements. Pet. at 53, 57; Ex.2004, ¶108. Petitioner's expert confirms this. Ex.2005 at 100:6-15 (AAPA used by Rawls as "part of the basis" for Ground 2).

2. Claim 1

As stated above in Ground 1, Ray does not disclose element 1[e].

Petitioner states that the '340 patent admitted that “an exercise apparatus with a controller in communication with a belt was known to a POSITA.” Reply at 23. This comes nowhere close to teaching or suggesting the claimed “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.” Ex.2004, ¶110.

3. Dependent claim 2

Petitioner asserts that “PO is incorrect” 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.” Reply at 23. But Petitioner does not attempt to explain why.

With respect to Ray, Petitioner argues that a “POSITA [would] 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.” Reply at 24. 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. 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.*

4. Dependent claim 9

Recognizing that neither Ray nor AAPA teach the elements in claim 9, Petitioner resorts to arguing that the knowledge of a POSITA would fill the gap because it would have been obvious that Ray's treadmill “would still *generate* exercise use data but stop *reporting* exercise data in response to a user not being detected.” Reply at 25. Again, this argument fails to address that the claim requires exercise use data be reported *in response to* a user not being detected.

C. Ground 3

Petitioner does not dispute that Yi was before the examiner during prosecution of the application for the '340 patent. Reply at 25-26. Petitioner's added burden of showing invalidity is therefore especially difficult. As Petitioner acknowledges, unlike original claim 1 of the '925 application, claim 1 of the '340 patent requires generating “*validated* exercise use data.” Ex.2004, ¶131.

1. Claim 1

Petitioner's argument that “pace distance” and “pace time” are exercise use data fails because it is based on an erroneous understanding of the term “exercise use data.” *See* Section II.A, above. Neither the average length between the user's footfalls (“pace distance”) nor the average time between the user's footfalls (“pace time”) represent an *amount* of exercise of the user. Ex.2004, ¶134.

Petitioner also argues that Yi's "pace distance and pace time" as well as "other exercise use data" would be calculated "'based on' detection of a user." Reply at 26. However, Petitioner does not attempt to tie the controller's generation of "exercise use data" to a response to the sensor detecting engagement of the user with the operating unit. Ex.2004, ¶135. In fact, Yi merely mentions the display of 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.

Finally, Petitioner's argument that "[a] POSITA would understand that detection of a user's foot strike equates to detection of a user" is also unavailing. Reply at 27. Yi simply determines where and when a user's foot strikes the treadmill belt. Ex.2004, ¶137. There is no teaching or suggestion in Yi that its controller generates validated time, distance, or calories *in response to* the sensors detecting whether a user is engaged with the treadmill belt. *Id.*

2. Dependent claim 6

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. Reply at 27. Petitioner argues that it identified "*speed* as exercise use data disclose[d] by Yi." Reply at 27 n.11. "Speed" and "pace speed" are not the same. "Speed" is belt speed; "pace speed" is

the user's pace speed. Ex.1012 at [0012]-[0016]. Therefore, Petitioner's application of Yi to claim 6 is fatally inconsistent with its application in claim 1.

Regardless, "pace speed" is not "exercise use data." Ex.2004, ¶141.

3. Claim 8

For the reasons explained above in Sections II.A and III.C.2, "pace speed" and "heart rate" are not "exercise use data." And as explained above in Section III.C.1, Yi does not report exercise use data "in response to" detection of a user.

4. Dependent claim 9

Recognizing that Yi does not disclose anything about the controller stopping the reporting of exercise use data in response to the controller determining the user is not engaged with the motor driven operating member, Petitioner argues—with no explanation or support—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." Reply at 28.

Petitioner is incorrect. As explained above, "pace speed" is not "exercise use data." *See* Section III.C.2. Even if it was, when a user is not engaged with the operating member, "pace speed" *cannot* be computed because there are no footsteps. Ex.1002, ¶291. Petitioner ignores claim 9's requirement that the controller is configured to stop reporting the exercise use data *in response to* the controller determining that the user is not engaged.

IV. DR. VAN DER WEIDE'S DECLARATION SHOULD BE AFFORDED FULL WEIGHT.

Petitioner argues that Dr. van der Weide's declaration should be afforded little weight because it tracks the POR and is conclusory. Reply at 28-29. That the POR tracks Dr. van der Weide's declaration is irrelevant because neither the declaration nor the POR are conclusory or improper.

Petitioner's reliance on *Xerox Corp. v. Bytemark, Inc.*, IPR2022-00624, Paper 9 at 15 (PTAB, Aug. 24, 2022) is misplaced. *Xerox* did not hold that expert declarations that track the POR should be afforded little weight. *Id.* Rather, it held that "conclusory and unsupported" expert declarations should be afforded "little weight." *Id.* "[T]he weight to be given to an expert's opinions focuses on the degree to which those opinions are supported by technical reasoning and evidence, rather than focusing on a word-by-word comparison of the declaration with the accompanying brief to determine how many words overlap." *Roku Inc. v. Universal Electronics, Inc.*, IPR2022-01289, Paper 28, at 77 (PTAB, Mar. 20, 2024). Dr. van der Weide's opinions are not conclusory and are supported by evidence and technical reasoning.

If closely tracking the brief were the standard for affording an expert declaration little weight, then Rawls' declaration would be entitled to little weight as illustrated, for example, by the verbatim copying of Rawls declaration into the Petition. *See, e.g.*, Pet. at 29-30 and Ex.1002, ¶173.

V. CONCLUSION

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

Respectfully submitted,

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Dated: July 8, 2024

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

Under 37 C.F.R. § 42.24(d), the undersigned certifies that the word count for this Patent Owner Sur-Reply totals 5,587, 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 SUR-REPLY TO PETITIONER'S REPLY TO PATENT OWNER'S RESPONSE TO PETITION FOR INTER PARTES REVIEW OF U.S. PATENT NO. 11,227,340 for the above-captioned matter(s) was served in its entirety on July 8, 2024, upon the following parties via email at the below email addresses:

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