

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GARMIN INTERNATIONAL, INC.,
Petitioner

v.

CARDIACSENSE LTD.,
Patent Owner

Inter Partes Review Case No. IPR2025-00195
U.S. Patent No. 7,980,998

**PETITIONER'S REPLY TO PATENT OWNER'S PRELIMINARY
RESPONSE**

Patent Owner's Preliminary Response ("POPR") (Paper 6) argues that the '998 Patent should be entitled to the priority date of the '422 Application. This argument contradicts the '998 Patent and '422 Application disclosures and is advanced as attorney argument without supporting evidence.

I. THE POPR MISCHARACTERIZES THE '998 PATENT AND '422 APPLICATION DISCLOSURES

The crux of the POPR's claim is that a POSITA would have understood the '422 Application requires a compass to measure swimming direction. From this, PO argues it teaches the '998 Patent's claims. POPR, 10, 13. PO relies entirely on Fig. 6 of the '422 Application in support. Fig. 6 depicts a swimming pool showing X, Y, and Z axes. Based solely on this depicted coordinate system, PO argues "that *measuring swimming direction is part of the tracking device* and that measurement of direction, before the addition of a gyroscope . . . *requires a compass*." POPR, 12 (emphasis added). However, the '422 Application does not discuss determining a true direction or "swimming direction," and it does not mention a "compass" at all. The discussion of Fig. 6 makes clear that the depicted coordinates are used to determine which accelerometer will take a given measurement. For example, the discussion of the "X [axis] pointing in the swimming direction" cited by the POPR merely provides the necessary context that the X-axis accelerometer will be used because it is the accelerometer aligned with the swimming direction and can sense movement *only* along this axis. Ex. 1004, 8:16-25 (describing how an X-axis

accelerometer alone can measure the “number of strokes” and “end of lane time”). Similarly, if the user wants to measure the height of the swimmer’s hand, “the Y axis accelerometer measurements will be used.” *Id.*, 2:25-28. Put simply, the ’422 Application does not discuss calculating true direction (e.g., North, South, East, or West) in the context of Fig. 6 or anywhere else. Further, the ’422 Application is clear that the contemplated measurements are provided by accelerometers and gyroscopes. *Id.*, 2:3-3:3.

Indeed, the first discussion of “compass” was introduced as new matter in the ’214 Application, which issued as the ’998 Patent. Petition, 4-5; Ex. 1001, 10:50-53 (teaching that the compass provides “measurements ... relative to the earth electromagnetic field”). If, as PO suggests, a “compass” was already disclosed in the ’422 Application, such new material would have been unnecessary to introduce in a continuation-in-part. The fact that PO made this “compass” addition in the ’214 Application disproves its POPR arguments.

Moreover, PO’s arguments are belied by the ’998 Patent, which describes an embodiment ***without a compass*** that can “measure, during the activity, parameters P that characterize the movement of the corresponding body part ***relative to its initial location and orientation.***” Ex. 1001, 10:20-22 (emphasis added), 10:30-40 (describing that an embodiment without a compass can measure parameters P along three orthogonal axes), Fig. 2B (showing orthogonal axes relative to the orientation

of the sensor). Because movement along all three axes can be determined *without a compass*, the POPR cannot be correct that Fig. 6 in the '422 Application teaches a compass simply by depicting a three-axis coordinate system.

II. THE POPR'S CLAIM THAT A POSITA WOULD HAVE UNDERSTOOD THE NEED FOR A COMPASS FROM FIG. 6 IS WHOLLY UNSUPPORTED

PO's priority argument relies exclusively on how a *POSITA* would interpret Fig. 6. POPR, 11-13 (arguing (1) what the '422 application "conveys to one skilled in the art," (2) what "[o]ne of ordinary skill [in the art] would also recognize," (3) how a POSITA would have connected certain disclosures, and (4) whether the connection "would [] have required undue experimentation"). Yet the POPR cites no expert testimony in support of these allegations. *Id.* Instead, PO relies solely on attorney argument. In this context, attorney argument has no evidentiary value. *See Unified Patents, LLC v. Sovereign Peak Ventures, LLC*, No. IPR2021-00852, Paper 28, at 34 (PTAB October 3, 2022) (citing *Icon Health & Fitness, Inc. v. Strava Inc.*, 849 F.3d 1034, 1046 (Fed. Cir. 2017) for the proposition that "[a]ttorney argument is not evidence or explanation in support of a conclusion") and *Invitrogen Corp. v. Clontech Lab., Inc.*, 429 F.3d 1052, 1068 (Fed. Cir. 2005) for the proposition that "[u]nsubstantiated attorney argument regarding the meaning of technical evidence is no substitute for competent, substantiated expert testimony"). Here too, the Board should decline to credit the POPR's unsupported attorney argument.

Respectfully submitted,

Dated: March 28, 2025

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COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE ON PATENT OWNER
UNDER 37 C.F.R. § 42.105

Pursuant to 37 C.F.R. §§ 42.6(e) and 42.105, the undersigned certifies that on March 28, 2025, a true and correct copy of the foregoing Petitioner's Reply to Patent Owner's Preliminary Response was served electronically on counsel for Patent Owner at the following address:

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