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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FLYWHEEL SPORTS, INC.,
Petitioner,

v.

PELOTON INTERACTIVE, INC.,
Patent Owner.

IPR2019-00564
Patent 9,861,855 B2

Before SCOTT A. DANIELS, RICHARD H. MARSCHALL, and ALYSSA A. FINAMORE, *Administrative Patent Judges.*

FINAMORE, *Administrative Patent Judge.*

DECISION
Institution of *Inter Partes* Review
35 U.S.C. § 314

I. INTRODUCTION

Petitioner filed a Petition (Paper 1, "Pet.") requesting an *inter partes* review of claims 1–20 of U.S. Patent No. 9,861,855 B2, hereinafter "the '855 patent." Pet. 1. Patent Owner filed a Preliminary Response (Paper 11, "Prelim. Resp.").

Petitioner requested a conference call to seek authorization to file additional briefing regarding Patent Owner's proposed claim constructions. The Board held a conference call with the parties on May 17, 2019, during which the Board authorized the additional briefing. Petitioner then filed a Reply (Paper 14, "Reply"), and Patent Owner filed a Surreply (Paper 15, "Sur-Reply").

We have authority, acting under the designation of the Director, to determine whether to institute an *inter partes* review. 35 U.S.C. § 314; 37 C.F.R. § 42.4(a). We may not authorize an *inter partes* review to be instituted "unless . . . the information presented in the petition filed under section 311 and any response filed under section 313 shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition." 35 U.S.C. § 314(a).

Upon consideration of the arguments and evidence presented by both parties, we determine Petitioner has demonstrated a reasonable likelihood that Petitioner would prevail with respect to at least one of the claims challenged in the Petition. Accordingly, we hereby institute an *inter partes* review of the challenged claims of the '855 patent.

II. BACKGROUND

A. Related Matters

The parties identify the following district court proceeding: *Peloton Interactive, Inc. v. Flywheel Sports, Inc.*, No. 2:18-cv-00390 (E.D. Tex. filed Sept. 12, 2018). Pet. 1; Paper 4, 1. There are also related proceedings before the Board, namely Case IPR2019-00294 (PTAB filed Nov. 15, 2018) (challenging U.S. Patent No. 9,174,085 B2) and Case IPR2019-00295 (PTAB filed Nov. 15, 2018) (challenging U.S. Patent No. 9,233,276 B1). Pet. 1; Paper 4, 1. The parties further identify: U.S. Patent No. 10,022,590 B2, issued July 17, 2018; U.S. Patent Application No. 16/036,894, filed July 16, 2018; U.S. Patent Application No. 16/412,327, filed May 14, 2019; and U.S. Design Patent Application No. 29/660,009, filed Aug. 14, 2018. Pet. 1; Paper 4, 1–2; Paper 17, 1.

B. The '855 patent (Ex. 1003)

According to the '855 patent, "the present invention comprises networked exercise systems and methods whereby one or more stationary exercise bicycles . . . are equipped with an associated local system that allows the user to fully participate in live instructor-led or recorded cycling classes from any location that can access a suitable communications network." Ex. 1003, 3:61–67. Figure 1 shows a local exercise system, and we reproduce Figure 1 below.

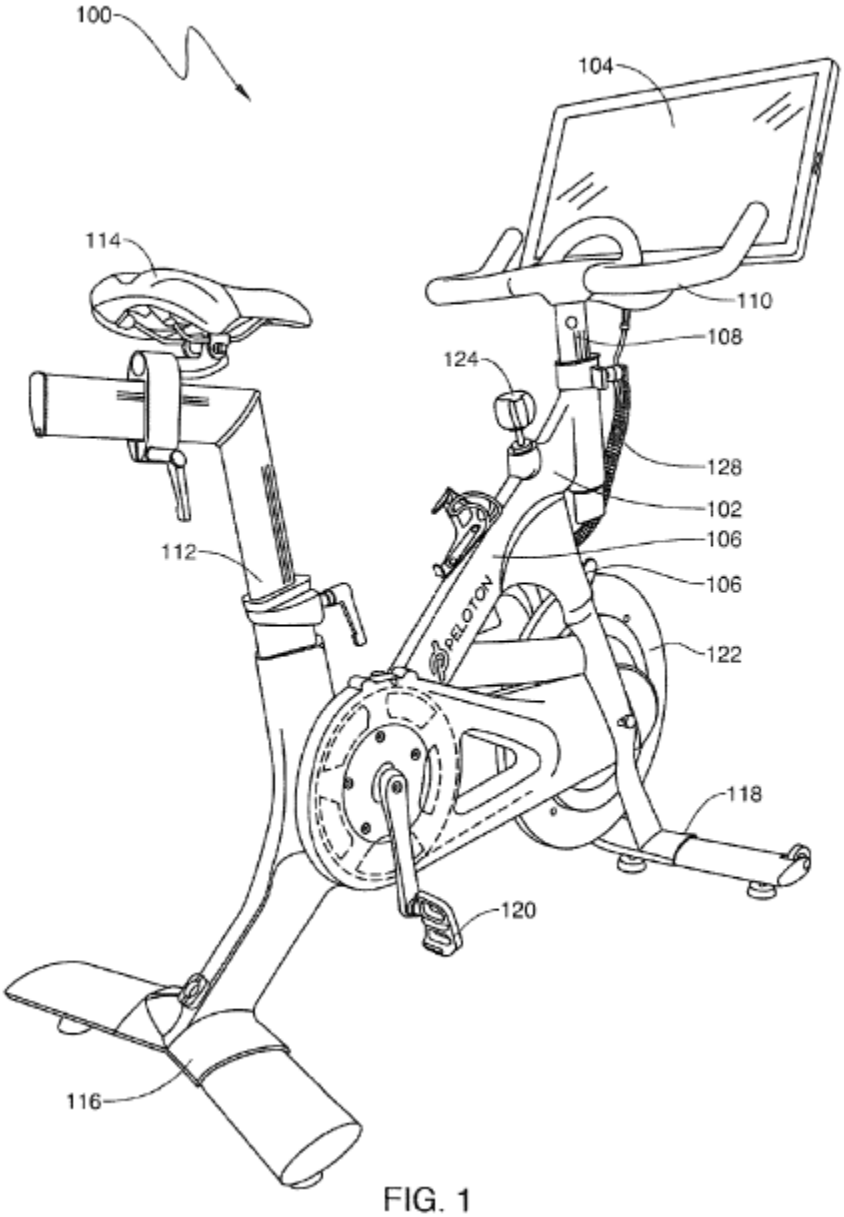

FIG. 1

Figure 1 shows local system 100 comprising stationary bike 102 with integrated or connected digital hardware including at least one display screen 104. *Id.* at 4:47–50. Bike 102 may also be equipped with various sensors to measure data relating to user performance metrics, such as speed, resistance, power, cadence, heart rate, and hydration level. *Id.* at 9:50–54.

User interface 104 may be presented on display screen 104 to allow the user to manage the experience, including selecting information to be displayed and arranging how much information is displayed on the system. Ex. 1003, 6:50–54. Figure 8, reproduced below, shows the user interface.

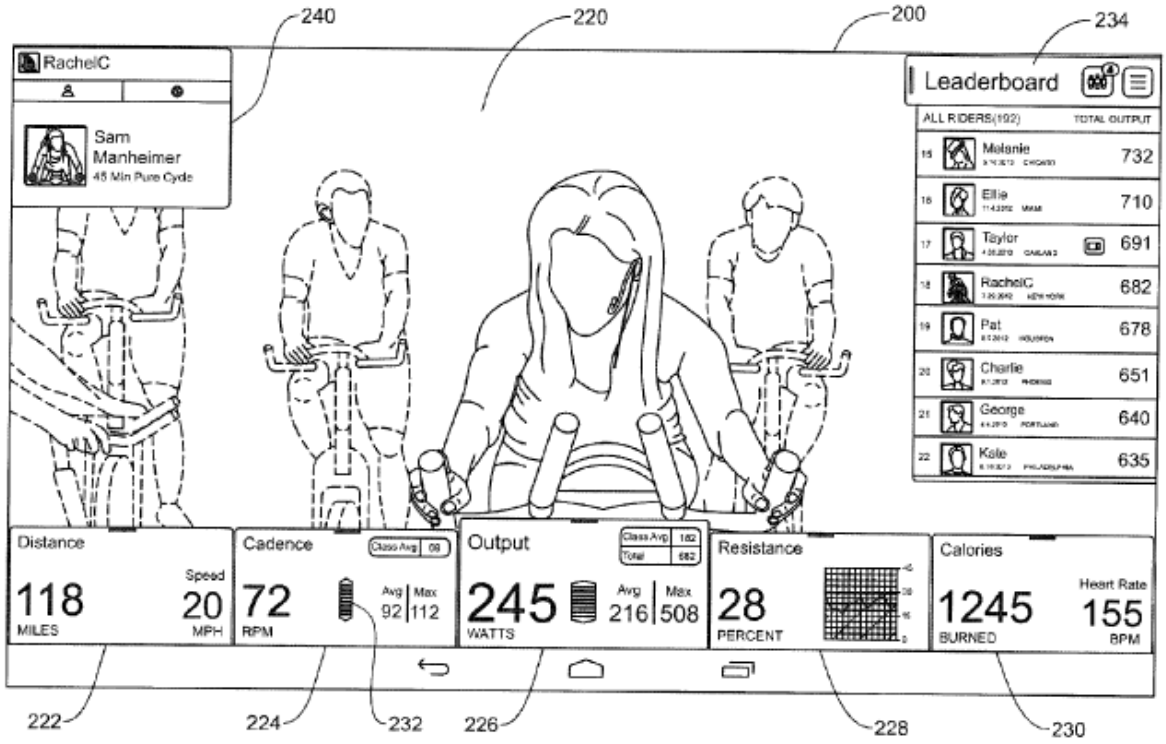

FIG. 8

Figure 8 is an illustration of a user interface screen displaying a live or on-demand cycling class underway. *Id.* at 3:17–19. Primary window 220 shows the live or archived class that the user selected. *Id.* at 7:57–58. Performance metric windows 222, 224, 226, 228, 230 show specific performance metrics for the user's current ride, past rides, or other performance information, including distance, pedal cadence, power output, resistance, calories burned, and heart rate. *Id.* at 7:58–8:7. Leaderboard 234 shows the user's performance in comparison to others taking the same class. *Id.* at 8:18–20. Secondary window 240 may display a range of information

and content, such as the name of the user and the name of the current class. *Id.* at 9:32–36.

As explained in the ’855 patent, “the system can provide for simultaneous participation by multiple users in a recorded class, synchronized by the system and allowing access to all of the same communication and data sharing features that are available for a live class.” *Id.* at 13:4–8. As a result, “the riders simultaneously participating in the same archived class can compete against each other, as well as against past performances or ‘ghost’ riders for the same class.” *Id.* at 13:9–12.

C. Challenged Claims

Petitioner challenges claims 1–20 of the ’855 patent. Pet. 1. Claims 1 and 9 are independent. Ex. 1003, 15:25–48, 16:6–30. Independent claim 1 is illustrative, and we reproduce it below, adding indentations and the parties’ labels a–g for the limitations.

> **1.** [a] A method for displaying live and archived cycling classes comprising:
>
> [b] displaying information about available live and archived cycling classes that can be accessed by a first user using a first stationary bike via a digital communication network on a display screen at a first location, whereby the first user can select either a live cycling class or select among a plurality of archived cycling classes;
>
> [c] receiving from the first user a selection of one of the available live or archived cycling classes;
>
> [d] outputting digital video and audio content comprising the selected cycling class at the first location to the first user;
>
> [e] detecting a plurality of performance parameters from the first stationary bike at the first location at a particular point in the selected cycling class;

> [f] displaying at least one of the plurality of performance parameters detected from the first stationary bike at the first location on the display screen;
>
> [g] displaying at least one of a plurality of performance parameters from a second stationary bike at a second location on the display screen at the first location such that at least one of the performance parameters from the first stationary bike at the particular point in the selected cycling class and at least one of the performance parameters from the second stationary bike at the same point in the selected cycling class are presented for comparison on the display screen at the first location.

Id. at 15:25–48.

D. Evidence

Petitioner relies on the following references in asserting that claims 1–20 of the '855 patent are unpatentable. Pet. 2.

Reference	**Exhibit No.**
U.S. Patent Application Publication No. 2009/0233769 A1 (published Sept. 17, 2009) ("Pryor")	1005
U.S. Patent No. 7,628,730 B1 (issued Dec. 8, 2009) ("Watterson")	1006
U.S. Patent No. 7,874,957 B2 (issued Jan. 25, 2011) ("Hurwitz")	1007
International Publication No. WO 2005/087323 A2 (published Sept. 22, 2005) ("Elshout")	1008
Flywheel webpage, available at http://web.archive.org/web/20120128121139/http://new-york.flywheelsports.com:80/performance-metrics ("the Flywheel publication")	1031

Petitioner relies on a Declaration of Dr. Bryan Bergeron (Ex. 1001). Pet. 3. Patent Owner relies on a Declaration of Mark Ehsani, Ph.D., P.E., L.F. IEEE (Ex. 2012). Prelim. Resp. 5.

E. Asserted Grounds of Unpatentability

Petitioner asserts the following grounds of unpatentability. Pet. 2–3.

Reference(s)	**Basis**[1]	**Claims**
Watterson and Hurwitz	35 U.S.C. § 103(a)	1–3 and 9–11
Watterson, Hurwitz, and Elshout	35 U.S.C. § 103(a)	4–8 and 12–20
Watterson, Hurwitz, and the Flywheel publication	35 U.S.C. § 103(a)	18 and 20
Pryor	35 U.S.C. § 102[2]	1–20
Pryor	35 U.S.C. § 103(a)	1–20
Pryor and the Flywheel publication	35 U.S.C. § 103(a)	18 and 20

III. ANALYSIS

A. Level of Ordinary Skill in the Art

Petitioner asserts a person of ordinary skill in the art would be "a person with a Bachelor's degree in electrical engineering, computer science, physics, or comparable academic experience and at least two years of

[1] For purposes of the Petition, Petitioner assumes all challenged claims are entitled to claim priority to provisional application number 61/677,985, filed July 31, 2012. Pet. 3. Based on this filing date, we understand Petitioner is relying on the pre-AIA versions of 35 U.S.C. §§ 102 and 103.
[2] Petitioner asserts Pryor qualifies as prior art under 35 U.S.C. § 102(b). Pet. 3.

practice experience in the design of network-based applications and/or equipment interface systems for providing multi-media content such as on-line exercise classes." Pet. 7 (citing Ex. 1001 ¶¶ 66–70). Patent Owner does not dispute Petitioner's proposed level of ordinary skill in the art. Based on the record at this stage in the proceeding, we adopt Petitioner's definition of the level of ordinary skill in the art for the purposes of this Decision.

B. Claim Construction

1. Overview

We interpret a claim "using the same claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. 282(b)." 37 C.F.R. § 42.100(b).[3] Under this standard, we construe the claim "in accordance with the ordinary and customary meaning of such claim as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent." *Id.* Furthermore, at this stage in the proceeding, we expressly construe the claims to the extent necessary to determine whether to institute *inter partes* review. *See Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co. Ltd.*, 868 F.3d 1013, 1017 (Fed. Cir.

[3] The Office has changed the claim construction standard in AIA proceedings to replace the broadest reasonable interpretation ("BRI") standard with the same claim construction standard used in a civil action in federal district court. *Changes to the Claim Construction Standard for Interpreting Claims in Trial Proceedings Before the Patent Trial and Appeal Board*, 83 Fed. Reg. 51340 (Oct. 11, 2018). The change applies to petitions filed on or after November 13, 2018. *Id.* The present Petition was filed on January 17, 2019, so we construe the claims in accordance with the federal district court standard, now codified at 37 C.F.R. § 42.100(b).

2017) ("[W]e need only construe terms 'that are in controversy, and only to the extent necessary to resolve the controversy.'" (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999))).

Beginning with Petitioner's claim construction, Petitioner argues the term "secondary window" in claims 4 and 12 means "viewing area on the display screen separate from the area in which the digital video content is displayed." Pet. 7. Patent Owner does not oppose Petitioner's construction at this stage of the proceeding.

Turning to Patent Owner's constructions, Patent Owner proposes a construction for the term "archived cycling class." Prelim. Resp. 28–35; Sur-Reply 1–2. Patent Owner also argues limitations d–g of independent claim 1 and the corresponding limitations of independent claim 9 must be performable on live and archived cycling classes. Prelim. Resp. 35–39; Sur-Reply 2–3. Petitioner asserts Patent Owner's proposed constructions are incorrect. Reply 1–6.

We discuss Patent Owner's proposed construction of "archived cycling class" in conjunction with the asserted grounds based on Pryor in section III.F.2.d. For purposes of deciding whether to institute *inter partes* review, however, we only need to address Patent Owner's assertion that limitations d–g must be performable on both live and archived cycling class.

2. Limitations d–g

Patent Owner contends limitations d–g "discuss method steps related to the selected cycling class," and "[i]t is thus clear that [limitations] d–g must be able to be performed on the selected cycling class, ***regardless of whether the selected class is live or archived***." Prelim. Resp. 35.

According to Patent Owner, its proffered construction is supported by the ordinary and customary meaning of the claim language for two reasons. *Id.* at 35–36. First, the ordinary and customary meaning of "select" is "presenting a choice of alternatives," and the use of "select," or some form thereof, throughout the claims indicates that either a live or archived cycling class can be selected and that the steps of the method must be performed on the selected class regardless of whether it is a live or archived. *Id.* (citing Ex. 2012 ¶¶ 30–31; *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1159 (Fed. Cir. 2007) (interpreting the claim term "selected")). Second, limitation g recites parameters "at the same point in the selected cycling class," which would be superfluous language if the limitations required only a live class. *Id.* at 36 (citing Ex. 2012 ¶ 32).

Patent Owner also argues that "the specification is fully consistent with the interpretation of [limitations] d–g as being performable on live ***and*** archived cycling classes—not live ***or*** archived cycling classes." *Id.* at 37 (citing Ex. 2012 ¶ 33). According to Patent Owner, for an archived cycling class, a time-superposition technique must be employed to result in parameters at the same point in the selected class, and the specification does not contemplate a system in which the time-shifting feature is excluded for live classes. *Id.* (citing Ex. 2012 ¶ 33); Sur-Reply 2–3.

Additionally, Patent Owner alleges Applicants for the '855 patent disavowed methods that work with only live classes or only with archived classes. Prelim. Resp. 38 (citing Ex. 2012 ¶ 35); Sur-Reply 3. In particular, Patent Owner contends Applicants "successfully distinguished the prior art as: 'fail[ing] to disclose a method of providing live and/or archived cycling classes . . . wherein the system can measure a plurality of performance

parameters from [two users] at the same point in time in a particular class ***regardless of whether the two users are doing the class at the same time***.'" Prelim. Resp. 37–38 (quoting Ex. 1004, 137).

On the other hand, Petitioner argues that limitations d–g need not be performed on live and archived classes because the manner of performance of the steps recited in these limitations is contingent on the first user's class selection. Reply 4 (*citing Cybersettle, Inc. v. Nat'l Arbitration Forum, Inc.*, 243 F. App'x 603, 607 (Fed. Cir. 2007)). Petitioner also argues Patent Owner improperly injects a time-shifting requirement for archived classes into the claims. *Id.* at 5. Petitioner further asserts that Applicants' statements during prosecution do not amount to a disavowal of methods that work with only live classes or only archived classes because the statements are not "'both clear and unmistakable' disavowal," but instead merely provide Applicants' views on what the prior art does not disclose. *Id.* at 5–6 (quoting *Avid Tech., Inc. v. Harmonic, Inc.*, 812 F.3d 1040, 1045 (Fed. Cir. 2016)).

After considering both parties' arguments and evidence, we decline to adopt Patent Owner's proposed construction that limitations d–g must be performable, i.e., capable of being performed, for both live and archived cycling classes. Independent claims 1 and 9 are method claims, and limitations d–g recite method steps. Ex. 1003, 15:25–48, 16:6–30. A method claim requires performance of the recited steps, not simply the capability for performing the steps. For example, the Federal Circuit has explained:

> A patented method is a series of steps, each of which must be performed for infringement to occur. It is not enough that a claimed step be "capable" of being performed. *See Ormco Corp.*

> *v. Align Tech., Inc.*, 463 F.3d 1299, 1311 (Fed. Cir. 2006) (rejecting an argument that a claim requiring the replacement of appliances can be performed if the appliances are merely "capable of" being replaced); *NTP v. Research in Motion, Ltd.*, 418 F.3d 1282, 1318 (Fed. Cir. 2005) ("[T]he use of a [claimed] process necessarily involves doing or performing each of the steps cited.").

Cybersettle, 243 F. App'x at 606–07. Even if the claim language, specification, and prosecution history of the '855 patent provide support for an apparatus that is capable of performing limitations d–g with both live and archived classes, independent claims 1 and 9, as method claims, nonetheless require performance of the method steps recited in these limitations.

Furthermore, limitations d–g need not be performed for *both* live *and* archived classes. Limitations d–g recite method steps involving a "selected cycling class." Ex. 1003, 15:33–48, 16:14–30. As evidenced by the preceding limitations, "selected cycling class" means a live cycling class or an archived cycling class. Namely, limitation b recites "the first user can select *either* a live cycling class *or* select among a plurality of archived cycling classes," and limitation c recites "receiving from the first user a selection of *one* of the available live or archived cycling classes." *Id.* at 15:30–33, 16:11–14 (emphasis added). Given that "selected cycling class" means a live cycling class or an archived cycling class, limitations d–g require performance with a live cycling class or an archived cycling class.

To be sure, this interpretation does not make the recited parameters "at the same point in the selected class" superfluous language because such parameters are applicable at least when the selected class is an archived cycling class. For the same reason, we disagree the specification's alleged

failure to disclose a system without a time-superimposition technique for a live cycling class requires a deviation from the plain language of the claims.

Additionally, the cited statement by Applicants during prosecution is not a disavowal of this interpretation. As Petitioner correctly points out, for disavowal to attach to a statement made during prosecution, the statement must be a clear and unmistakable disavowal of claim scope. Reply 5–6 (citing *Avid Tech.*, 812 F.3d at 1045). Applicants' statement as to what the prior art fails to disclose does not address the full scope of the claims and, therefore, is not a clear and unmistakable disavowal of claim scope. That notwithstanding, the cited statement does not suggest that the claims require the recited steps to be performed for both live and archived classes, but rather that the claimed invention measures performance parameters independent of the selected cycling class being live or archived.

In view of the foregoing, for purposes of this Decision and on this record, we construe limitations d–g to require performance of the steps recited therein, not just the capability to perform the recited steps. We further construe these limitations to require performance of the recited steps with a live cycling class or an archived cycling class.

C. Obviousness Based on Watterson and Hurwitz

Petitioner challenges claims 1–3 and 9–11 of the '855 patent under 35 U.S.C. § 103(a) as unpatentable over Watterson and Hurwitz. Pet. 29–49. In contrast, Patent Owner argues the combination of Watterson and Hurwitz does not render the claimed subject matter obvious. Prelim. Resp. 47–50. We begin our analysis with an overview of Watterson and Hurwitz, and then discuss the parties' contentions for each of the claims.

1. Watterson (Ex. 1006)

The invention disclosed in Watterson "relates to exercise equipment and, more specifically, to systems and methods for providing improved exercise devices in combination with other users and/or a live or stored trainer via a communications network." Ex. 1006, 1:43–46. We reproduce Figure 1 of Watterson below.

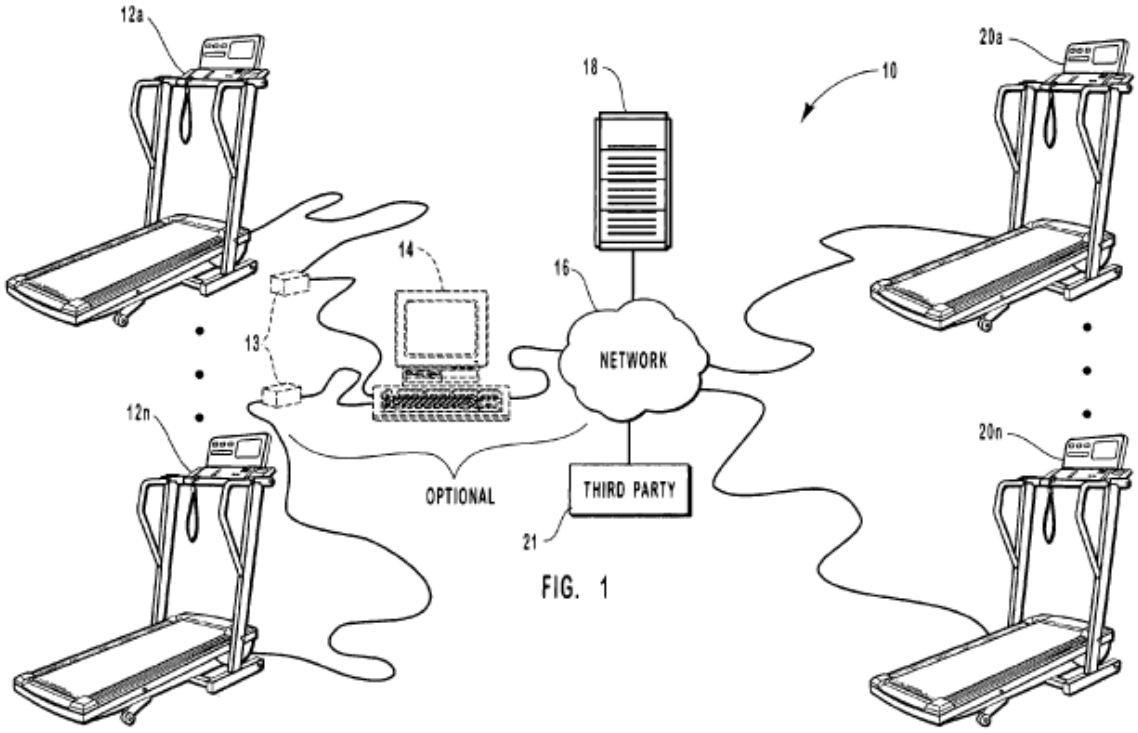

FIG. 1

Figure 1 depicts an exercise system. *Id.* at 5:7–8. Although Figure 1 shows treadmills, Watterson discloses that the exercises devices may be exercise cycles. *Id.* at 6:24–29.

System 10 enables exercise programming to be transmitted from a trainer at treadmill 20, or alternatively from communication system 18, to a user at treadmill 12. *Id.* at 7:19–22. The programming may include motivational content, which may be an audio/video presentation of a

personal trainer and others engaged in a series of exercises or a live-on-live, real-time exercise program presented by a trainer. *Id.* at 7:25–26, 37–46.

Treadmill 12 may include one or more sensors, such as belt speed sensor 230 and incline sensor 232. Ex. 1006, 24:56–57. Each sensor 230, 232 gathers a particular operating parameter of treadmill 12 such that control panel 22 may present outputs indicative of the present operating state of treadmill 12 at any given point in time. *Id.* at 24:56–62. Treadmill 12 may include other sensors that gather various other operating parameters, such as maximum pulse and heart rate, average pulse and heart rate, target heart rate, length of workout session, and the like. *Id.* at 24:62–66. Additionally, sensors 230, 232, optionally in combination with one or more of the other sensors, may deliver a feedback signal to processor 214 that informs communication system 18 and/or the trainer. *Id.* at 24:66–27:7.

Watterson further discloses that competition module 314 enables one or more individuals to engage in competitive exercise programming with one another, namely races. *Id.* at 39:37–40, 47–52. Competition module 314 retrieves stored statistical information of a user, such as the distance traveled by the user, and compares the stored statistical information against other competitors in the race. *Id. at* 39:64–40:5. Competition module 314 delivers the comparison data to communication module 254, which displays the comparison data to the user. *Id.* at 40:5–10.

2. Hurwitz (Ex. 1007)

Hurwitz's invention "relates to methods and apparatus for measuring exercise performance on equipment that includes a rotating surface." Ex. 1007, 1:14–17. According to Hurwitz, a sensor device senses at least the

frictional force of a brake pad onto a wheel, and may also sense the frequency of rotation of the wheel, leaning, and heart rate. *Id.* at 2:64–3:3. The sensed parameters may be coupled to a visual feedback environment that informs the exerciser of his or her current performance, and possible performance parameters include relative location on a virtual course, time, power, cadence, heart rate, distance, velocity, and work. *Id.* at 3:3–8.

In one example, a group of people can be tracked, and they may be in the same room or in locations spread all over the world and connected over the Internet. *Id.* at 3:9–10, 17–19. Figure 2, reproduced below, shows a group environment. *Id.* at 3:30–31.

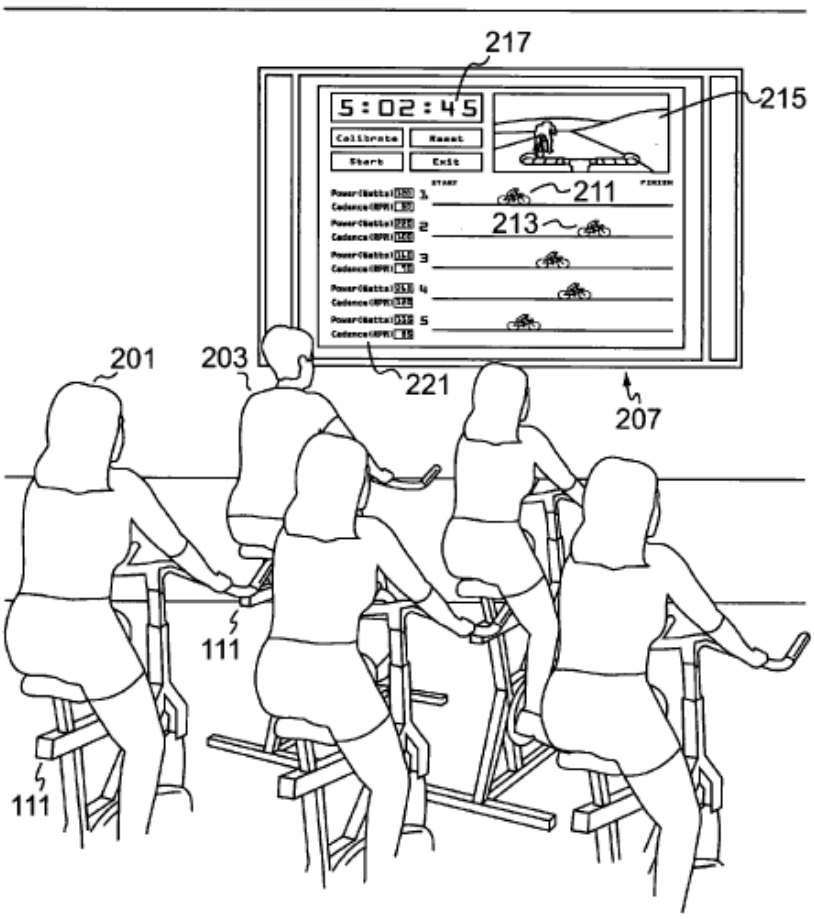

FIG. 2

Figure 2 shows a plurality of participants 201, 203 exercising together on exercise bicycles 111 provided with sensor devices. *Id.* at 4:4–6. Based on feedback from the sensor devices, display 207 shows each shows the participants a variety of information about the exercise session, including each participant's relative position. *Id.* at 4:7–17.

3. Independent Claim 1

a. Undisputed Limitations

The preamble, i.e., limitation a, of independent claim 1 recites "[a] method for displaying live and archived cycling classes." Ex. 1003, 15:25–26. Petitioner asserts "Watterson discloses a system that displays exercise programs, *i.e.*, classes, including motivational content to exercises devices." Pet. 34 (citing Ex. 1006, 7:19–28, 7:41–46, 19:25–35; Ex. 1001 ¶ 235). Petitioner further asserts the exercise devices may be stationary. *Id.* at 35 (citing Ex. 1006, 6:24–29, 28:37–41 (footnote omitted)). Petitioner also contends

> [t]he "motivational content" may be "stored in communication system 18 and includes an au[d]io/video presentation of a personal trainer and others engaged in a series of exercises," *i.e.*, **archived cycling classes**, or a "live-on-live, real-time exercise program presented by one or more personal trainers that is . . . broadcast or optionally 'webcast' to any user that may access [the] communication system," *i.e.*, **live cycling classes.**

Id. (quoting Ex. 1006, 7:37–46).

Limitation b recites

> displaying information about available live and archived cycling displaying information about available live and archived cycling classes that can be accessed by a first user using a first stationary bike via a digital communication network on a display screen at a first location, whereby the

> first user can select either a live cycling class or select among a plurality of archived cycling classes.

Ex. 1003, 15:26–31. For this limitation, Petitioner argues Watterson discloses that stationary bikes at remote locations are connected to websites maintained by communications system 18 and communication module 254, each providing the live and archived classes, as described with respect to limitation a. Pet. 35–36 (citing Ex. 1006, 3:37–42, 6:35–47, 10:15–22, 22:43–46, 28:22–27, 28:31–37, 28:67–29:7, 34:32–36, Figs. 1, 10 (footnote omitted)). Petitioner further argues "[t]he **display screen** is part of the stationary bike's control panel 22, which in turn is part of the bike's user **interface** 262." *Id.* at 38 (citing Ex. 1006, 9:22–26, 30:40–53). Petitioner additionally contends "Watterson discloses the information presented to the first user includes a list of available live and stored, *i.e.*, archived, classes from which **the first user can select**." *Id.* at 39–40 (citing Ex. 1006, 25:31–33, 29:11–14, 33:10–14, 37:41–50, 38:43–50, 46:17–19, Figs. 12, 16; Ex. 1001 ¶ 251).

Limitation c recites "receiving from the first user a selection of one of the available live or archived cycling classes." Ex. 1003, 15:31–33. Petitioner argues "[o]nce the first user makes the selection referenced in limitation[] 1b . . . the selection is 'received' by the interface, which includes control panel 22, via input devices associated with the first stationary bike." Pet. 40 (citing Ex. 1006, 12:35–49). Petitioner also argues Watterson discloses the selection is sent out over network 16 and received by communication system 18 or communication module 254, which, in turn, transmits the selected exercise class to the user. *Id.* at 41 (citing Ex. 1006, 10:15–27, 18:55–57, 19:26–34, 29:11–14, Figs. 1, 8; Ex. 1001 ¶¶ 257–58).

Limitation d recites the step of "outputting digital video and audio content comprising the selected cycling class at the first location to the first user." Ex. 1003, 15:33–35. For this limitation, Petitioner relies on Watterson's disclosure of providing motivational content, which may include a stored or live webcast audio/video presentation of a personal trainer and others engaged in a series of exercises. Pet. 41 (citing Ex. 1006, 7:19–33, 7:37–46, 11:66–12:2, 16:53–56, 37:41–51; Ex. 1001 ¶ 261). According to Petitioner, Watterson discloses the content is provided from communication system 18 or communication module 254 to computer 14 incorporated in exercise device 12, 252, and computer 14 forwards the content to control panel 22 or user interface 262 of the exercise device for display. *Id.* at 41–42 (citing Ex. 1006, 10:15–22, 12:67–13:4, 13:61–63, 22:37–43, 28:31–37, 29:1–2, 30:18–21, 30:43–52 31:9–12, 49:20–21, Figs. 1, 6, 8, 9, 11; Ex. 1001 ¶¶ 262–64).

Turning to limitation e, this limitation recites "detecting a plurality of performance parameters from the first stationary bike at the first location at a particular point in the selected cycling class." Ex. 1003, 15:35–37. Petitioner contends Watterson discloses an exercise device includes one or more sensors that detect operating parameters, such as maximum pulse and heart rate, target heart rate, length of workout session, speed, inclination, resistance, blood pressure, distance traveled, and calories used. Pet. 42–43 (citing Ex. 1006, 7:63–8:4, 13:51–56, 24:56–66; Ex. 1001 ¶ 269 (footnote omitted)).

Limitation f recites "displaying at least one of the plurality of performance parameters detected from the first stationary bike at the first location on the display screen." Ex. 1003, 15:38–40. For this limitation,

Petitioner relies on Watterson's disclosure of control panel 22 including one or more operating parameters displays. Pet. 43–44 (citing Ex. 1006, 13:4–10, 13:49–60; Ex. 1001 ¶¶ 273–74).

Patent Owner does not dispute Petitioner's contentions with respect to claim limitations a–f. Based on this record and for purposes of this Decision, Petitioner has demonstrated persuasively that Watterson discloses these limitations.

b. Limitation g

Limitation g recites

> displaying at least one of a plurality of performance parameters from a second stationary bike at a second location on the display screen at the first location such that at least one of the performance parameters from the first stationary bike at the particular point in the selected cycling class and at least one of the performance parameters from the second stationary bike at the same point in the selected cycling class are presented for comparison on the display screen at the first location.

Ex. 1003, 15:40–48. For this limitation, Petitioner relies on the combined teachings of Watterson and Hurwitz. Pet. 44–48. Beginning with Watterson, Petitioner relies on competition module 314, which allows users to compete in races. *Id.* at 44 (citing Ex. 1006, 10:15–17, 34:28–36, 39:35–40, 39:45–48, Fig. 12). According to Petitioner, one race type is a personalized race, which may be live or time-adjusted. *Id.* Petitioner contends

> [i]n live personalized races, "two or more individuals schedule a live on live session . . . where they may race one against the other, while viewing graphical representations of the distance, time, and speed of the other competitors," *i.e.*, **a plurality of**

> **performance parameters**, at the same point in the live race, are displayed for comparison on each user's display.

Id. at 44 (quoting Ex. 1006, 40:55–61) (citing Ex. 1001 ¶ 277). Petitioner similarly asserts:

> In time-adjusted personalized races "two or more individuals may schedule a race where the start time is adjusted based upon the particular location of the competitors." . . . Communication module 254 then stores "real-time representations" . . . of the races of individuals that have completed the race and rebroadcasts the stored races to others in time zones further west. . . . , *i.e.*, performance parameters at the same point in the stored or archived race are displayed for comparison on each user's display.

Id. at 45 (quoting Ex. 1006, 40:61–63, 41:50) (citing Ex. 1006, 40:20–21, 41:26–32, 41:55–59; Ex. 1001 ¶¶ 278–64).

Petitioner acknowledges "Watterson does not explicitly disclose that synchronized performance data displayed during races could also be displayed during trainer-led live and archived cycling classes." *Id.* Turning to Hurwitz, Petitioner argues "Hurwitz discloses competitive stationary bike classes in which the performance data of class participants, *e.g.*, power output and pedal cadence, is displayed in real-time to all class participants." *Id.* at 46 (citing Ex. 1007, Abstract, 4:3–9, 4:31–33, 8:46–54, Figs. 2, 15). Petitioner then argues "[a]ugmenting Watterson's provision of selected live and archived cycling classes to remote users to include Hurwitz's display of competitive performance data of others at the same point in the cycling class would have been obvious to a [person of ordinary skill in the art]." *Id.* at 47 (citing Ex. 1001 ¶ 289).

In contrast, Patent Owner contends Watterson and Hurwitz fail to render obvious a leaderboard as set forth in limitation g. Prelim. Resp. 5,

47–49. According to Patent Owner, "[limitation] g must be performable during an archived cycling class." *Id.* at 47. Patent Owner then alleges: "Hurwitz simply does not disclose archived classes. Instead, Hurwitz is focused on live classes." *Id.* at 48. Patent Owner further asserts "[a]t best, Hurwitz would suggest to one skilled in the art to modify Watterson to show relative performance during a ***live*** class or race, but not during an ***archived*** class." *Id.* at 49.

Patent Owner's argument is not convincing because it is not commensurate with the scope of independent claim 1. To wit, Patent Owner's argument is based on its proffered claim construction that limitations d–g must be performable for live and archived cycling classes, which we decline to adopt for the reasons above in section III.B.2. As also set forth above in section III.B.2, limitations d–g require performance with either a live or an archived cycling class. Patent Owner acknowledges Hurwitz would have suggested to a person of ordinary skill in the art to modify Watterson's disclosure to show relative performance parameters during a live class so as to meet limitation h. *Id.* at 49. Therefore, on the record at this stage of the proceeding, Petitioner has shown sufficiently that the combination of Watterson and Hurwitz would result in limitation g.

c. Reason to Combine

In addition to identifying the limitations of independent claim 1 in Watterson and Hurwitz, Petitioner asserts

> [t]eachings in both Watterson and Hurwitz provide the motivation to modify Watterson to provide competitive performance data to class participants while displaying cycling classes, *i.e.*, to supplement Watterson's disclosed display of live

> and archived cycling class instructors and one's own performance data with the display of performance data from other class participants **at the same point in the selected cycling class**.

Pet. 46. According to Petitioner, "Watterson, for example, teaches that providing cycling classes to remote users extends 'the benefits of a group exercise session in a home environment'" (*id.* (quoting Ex. 1006, 3:41–42)), and "Hurwitz extends these teachings by noting that the user engagement may be enhanced with the presentation of performance data from a group of class participants at the same point in the selected cycling class" (*id.* at 47 (citing Ex. 1007, 1:52–62; Ex. 1001 ¶ 288)). Petitioner also argues:

> [A person of ordinary skill in the art] would have understood that Watterson's system could easily and predictably have been modified to provide the functionality of limitation[] 1g . . . since it is already capable of displaying live and stored performance data of others to remote users for synchronized comparison. . . . Only routine and predictable software modification would have been required.

Id. at 47–48 (citing Ex. 1001 ¶¶ 290–94 (footnote omitted)).

On the other hand, Patent Owner argues Petitioner's proposed combination of Watterson and Hurwitz is an impermissible hindsight reconstruction of the claimed invention. Prelim. Resp. 5–6, 49–50. In particular, Patent Owner alleges "neither Watterson nor Hurwitz teaches display of time-adjusted performance parameters for an archived cycling class," and "[t]o the extent that the Petition attempts to stretch Watterson and Hurwitz to reach that result, that would be a post-hoc, hindsight-fueled modification of the references to reach [Patent Owner's] invention." *Id.* at 49–50.

Like its contention in regard to limitation g, Patent Owner's hindsight argument is based on Patent Owner's incorrect claim construction that limitations d–g must be performable for live and archived cycling classes, and it is not commensurate with the scope of the claim. Given that limitations d–g require performance with either a live or an archived cycling class as set forth above in section III.B.2, we determine, on this record, that Petitioner has provided a persuasive reason why a person of ordinary skill would have combined the teachings of Watterson and Hurwitz in the manner set forth in the Petition.

d. Conclusion

In view of the foregoing, Petitioner has shown persuasively each limitation of independent claim 1 in Watterson and Hurwitz. Petitioner also has articulated sufficient reasoning for why a person of ordinary skill would have combined the teachings of Watterson and Hurwitz in the manner set forth in the Petition. Based on this record, Petitioner has shown a reasonable likelihood that Petitioner would prevail in demonstrating independent claim 1 is unpatentable under 35 U.S.C. § 103(a) based on the combination of Watterson and Hurwitz.

4. Independent Claim 9

Independent claim 9 is similar to independent claim 1. *Compare* Ex. 1003, 16:6–30, *with id.* at 15:25–48. Petitioner's contentions regarding independent claim 9 are substantively similar to its contentions regarding independent claim 1. Pet. 34–48.

Patent Owner relies on the same arguments as independent claim 1 for independent claim 9. Prelim. Resp. 47–50. On the current record, these arguments are likewise unconvincing for independent claim 9 because they are beyond the scope of independent claim 9 for the same reasons they are beyond the scope of independent claim 1 as set forth in sections III.C.3.b–c.

5. Dependent Claims 2, 3, 10, and 11

In addition to its contentions for the independent claims, Petitioner asserts Watterson discloses each limitation of these dependent claims. Pet. 48–49. At this stage of the proceeding, Patent Owner does not raise arguments for these dependent claims separate from those discussed above with respect to independent claim 1 in sections III.C.3.b–c.

D. Obviousness Based on Watterson, Hurwitz, and Elshout

Petitioner challenges claims 4–8 and 12–20 of the '855 patent under 35 U.S.C. § 103(a) as unpatentable over Watterson, Hurwitz, and Elshout. Pet. 50–63. As Watterson and Hurwitz are discussed above in sections III.C.1–2, respectively, we begin with an overview of Elshout. We then turn to the parties' contentions for the claims.

1. Elshout (Ex. 1008)

Elshout's invention provides "sports training equipment that can offer someone at home a more exciting exercise experience by enabling them to race against other virtual or real competitors to whom they are connected over a telecommunications network." Ex. 1008, 2:13–15. According to Elshout:

> the invention provides sports training equipment comprising a stationary training device, one or more sensors for collecting performance data from the training device and/or the operator of the device, an interface connected to the one or more sensors, and a computer connected to the interface, the computer including means for connecting to a telecommunications network so that performance data from it can be communicated to one or more other computers connected to the telecommunications network.

Id. at 2:17–22.

Figure 15, reproduced below, shows the user interface screen as a race time approaches. *Id.* at 6:31, 10:31.

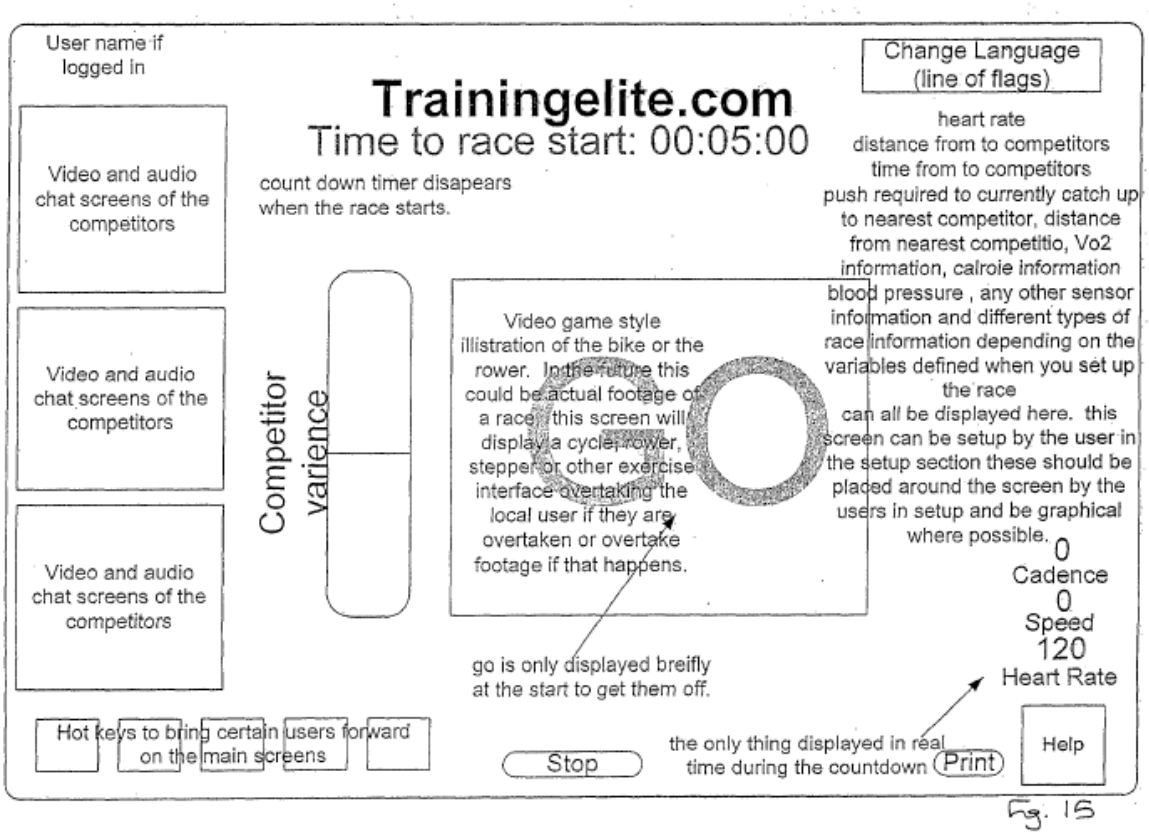

Figure 15 depicts the screen when the allotted race time draws near. *Id.* at 10:31. The user's heart rate is displayed, and performance data, such as cadence and speed, are displayed adjacent the graphics window. *Id.* at 10:32, 35–36.

2. Dependent Claims 4–8 and 12–20

Petitioner contends each limitation of claims 4–8 and 12–20 is found in a combination of Watterson, Hurwitz, and Elshout. Pet. 52–63. Petitioner also asserts a reason why a person of ordinary skill in the art would have combined the teachings of these references. *Id.* at 53–56.

Patent Owner argues this asserted ground based on Watterson, Hurwitz, and Elshout suffers from the same alleged deficiencies as the asserted ground based on Watterson and Hurwitz. Prelim. Resp. 51–52. We address these alleged deficiencies above in sections III.C.3.b–c with respect to the asserted ground based on Watterson and Hurwitz.

E. Obviousness Based on Watterson, Hurwitz, and the Flywheel Publication

Petitioner challenges claims 18 and 20 of the '855 patent under 35 U.S.C. § 103(a) as unpatentable over Watterson, Hurwitz, and Elshout. Pet. 50–63. As Watterson and Hurwitz are discussed above in sections III.C.1–2, respectively, we begin with an overview of the Flywheel publication, and then turn to the parties' contentions for the claims.

1. The Flywheel Publication (Ex. 1031)

According to the Flywheel publication, "Flywheel is equipped with technology that sets a new standard for indoor cycling." Ex. 1031, 1. In particular, the Flywheel publication teaches: "Every Flywheel studio features two Torqboards - large screens that display leaderboards a few times during each class. So if you're at all competitive, you may opt in to participate in our Torqboards and find out how you rank against other riders." *Id.* at 2.

3. Dependent Claims 18 and 20

Petitioner contends each limitation of claims 18 and 20 is found in a combination of Watterson, Hurwitz, and the Flywheel publication. Pet. 63–64. Petitioner also asserts a reason why a person of ordinary skill in the art would have combined the teachings of these references. *Id.*

Patent Owner argues this asserted ground based on Watterson, Hurwitz, and the Flywheel publication suffers from the same alleged deficiencies as the asserted ground based on Watterson and Hurwitz. Prelim. Resp. 51–52. We address these alleged deficiencies above in sections III.C.3.b–c with respect to the asserted ground based on Watterson and Hurwitz.

F. Anticipation Based on Pryor

Petitioner challenges claims 1–20 of the '855 patent under 35 U.S.C. § 102 as anticipated by Pryor. Pet. 8–26. In contrast, Patent Owner argues Pryor does not anticipate the claims because it fails to disclose certain claim limitations. Prelim. Resp. 5, 39–45. We begin our analysis of this asserted ground with an overview of Pryor, and then discuss the parties' contentions for each of the claims.

1. Pryor (Ex. 1005)

According to Pryor,

> [t]he invention is generally in the field of exercise related equipment and systems, particularly those using at least in part, one or more electro-optical sensors such as a TV camera to determine actions of a user and/or equipment such as exercise machines which in turn may control or otherwise be inputted to

> a program for the purposes of gaming, physical rehabilitation, assessment, diagnostics, training, health maintenance purposes and the like.

Ex. 1005 ¶ 4. Figure 1*b* of Pryor illustrates an exercise bicycle embodiment of the invention, and we reproduce Figure 1*b* below. *Id.* ¶¶ 34–35.

figure 1 b

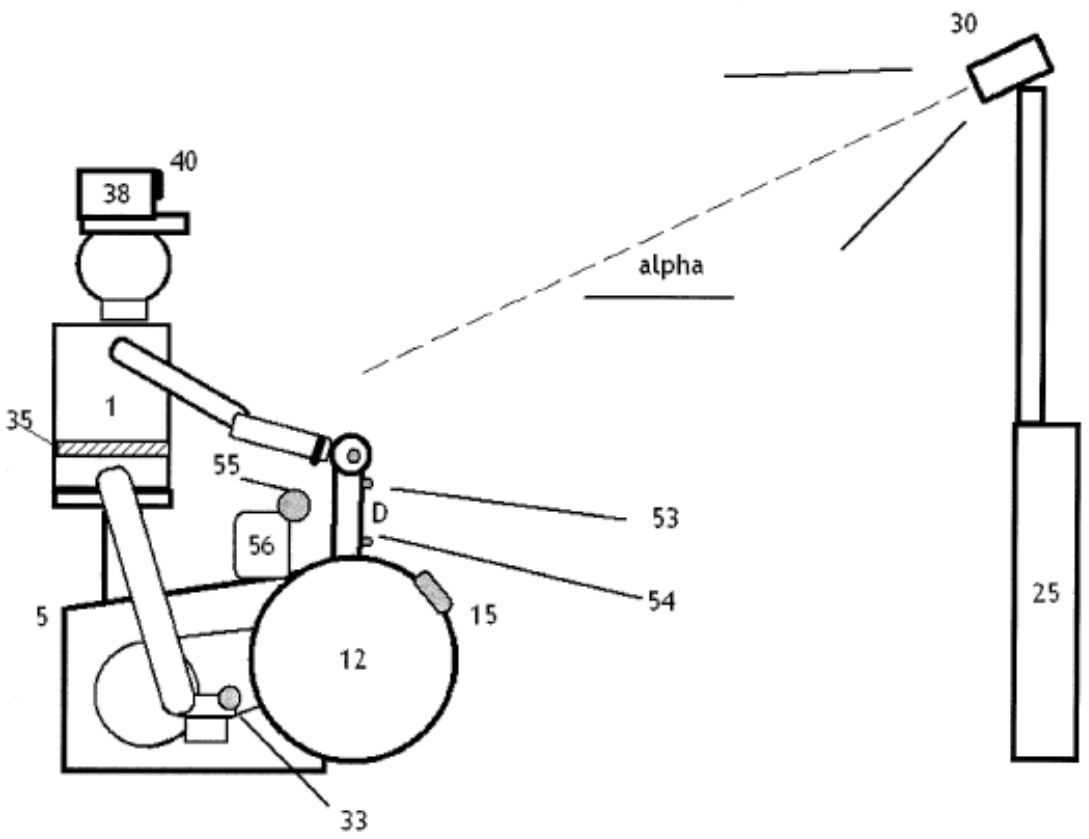

Figure 1*b* is a side view showing an exercise bicycle embodiment. *Id.* ¶¶ 34–35. The invention may be used to monitor the position of one or both pedals, a member moving with them, or the feet of user to determine the rate at which the wheel is rotating. *Id.* ¶ 48. The invention may also monitor other exercise machine-related variables, including resistance. *Id.* In addition to machine-related variables, the invention may monitor person variables, such as head location and orientation, lean of the person, hand

position, arm state, e.g., straight or bent, and the orientation of certain body parts, such as neck, waist, knee, and feet. *Id.*

As shown in Figure 1*b*, person 1 is seated on bike 5. *Id.* ¶ 57. Person 1 is equipped with retro reflective targets, namely target wristband 36 and targeted hat 38 having three or four target set 40 facing forward toward camera and light source 30. *Id.* PC 25 processes images from camera 30, which monitors points on the person and points on the bike to provide information to the software and images for display on screen 24. *Id.* ¶ 52.

The ’855 patent also describes a social embodiment of the invention, and we reproduce Figure 6 below. Ex. 1005 ¶ 44.

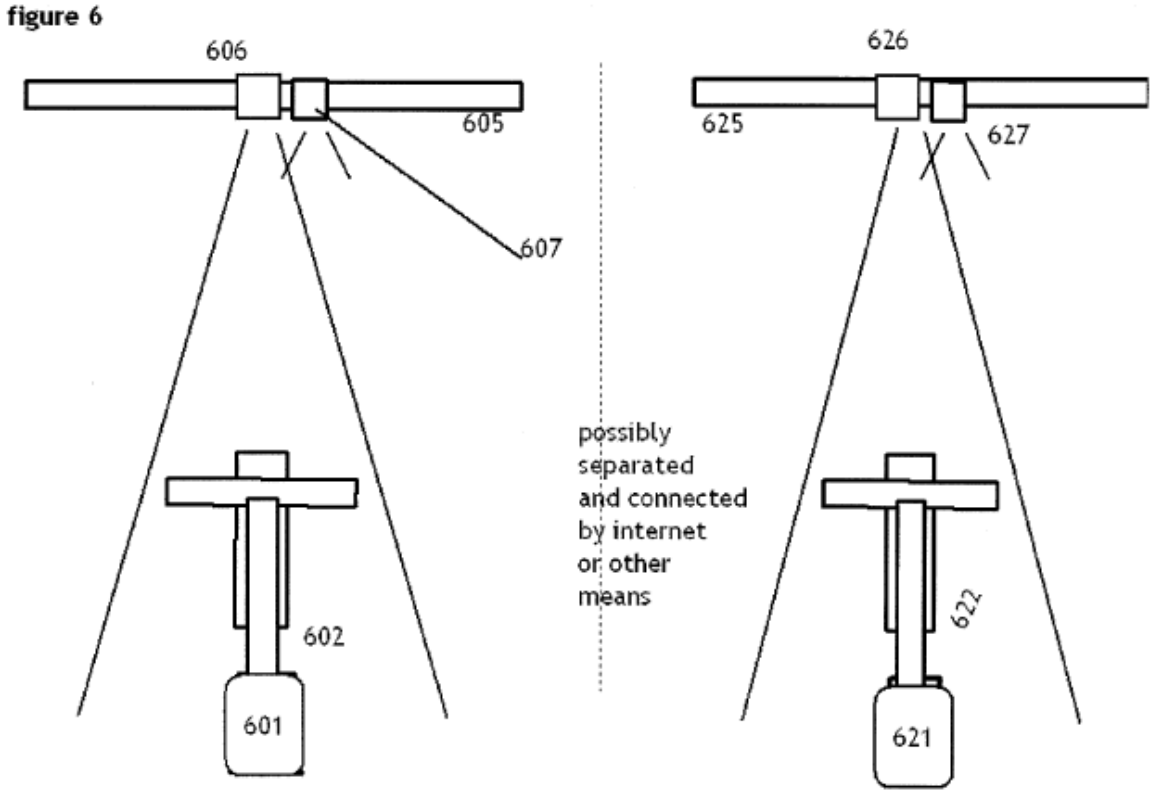

Figure 6 illustrates a social embodiment of the invention. *Id.* ¶ 44. Molly 601 is on exercise bike 602 in front of display 605, IR sensing camera 606, and web cam 607. *Id.* ¶ 187. Similarly, Judy 621 is on exercise

bike 622 in front of display 625, IR sensing camera 626, and web cam 627. *Id.* Judy's image is shown on Molly's display 605 in real time. *Id.* Both Molly and Judy can ride their bikes, and their data can be displayed to them, and, if desired, to the other(s), as well as the video image. *Id.*

A spinning instructor is also shown on both displays 605 and 625. *Id.* The instructor can be presented in three forms. *Id.* ¶ 188. First, the instructor can be presented as a live image of a real spinning instructor instructing a class. *Id.* Second, the instructor can be a combination of a live instructor whose video appears on riders' screens, and then assistance could be done by the computer analyzing the positions, heart rate, or any other data from each person and providing information individually to the person. *Id.* Third, the instructor can be a computerized instructor, whereby his image is either pulled from video clips or generated from 3-D graphics. *Id.* ¶ 189.

2. Independent Claim 1

Petitioner contends Pryor discloses each limitation of independent claim 1. Pet. 10–19. In contrast, Patent Owner argues Pryor does not disclose certain claim limitations, namely: (a) limitation e; (b) limitation g; and (d) "archived cycling classes." Prelim. Resp. 39–45. We discuss each of the disputed limitations in turn below.

a. Limitation e

Limitation e recites "detecting a plurality of performance parameters from the first stationary bike at the first location *at a particular point in the selected cycling class*." Ex. 1003, 15:35–37 (emphasis added). Petitioner asserts Pryor discloses this limitation. Pet. 16. Specifically, Petitioner

contends Pryor discloses detecting a plurality of performance parameters, such as the position of one or both pedals, the rate at which the wheel is being turned by the user, wheel speed, resistance, heart rate, pedal speed, rotation rate, cadence, rate of motion, energy burned, and caloric burn rate, from all bikes participating in the class. *Id.* (citing Ex. 1005 ¶¶ 48, 61, 64, 75, 79, 81, 108, 145, 236–37). Petitioner further contends Pryor discloses there can be many class participants. *Id.* (citing Ex. 1005 ¶¶ 187–88, 194; Ex. 1001 ¶¶ 152–54).

Patent Owner argues Pryor does not expressly disclose simultaneously detecting plural parameters at the first bike, as limitation e requires. Prelim. Resp. 43. According to Patent Owner, "[w]hile Pryor says that different performance parameters can be measured, nothing in Pryor describes when such parameters are measured, and Pryor certainly does not state that plural parameters are detected simultaneously at the same point in a class." *Id.* at 44. Patent Owner also asserts Pryor does not inherently disclose this feature because performance parameters could be detected at the same or different times during class. *Id.*

When evaluating a single prior art reference in the context of anticipation, the reference must be "considered together with the knowledge of one of ordinary skill in the pertinent art." *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994) (quoting *In re Samour*, 571 F.2d 559, 562 (CCPA 1978)). Accordingly, "'the dispositive question regarding anticipation [i]s whether *one skilled in the art* would reasonably understand or infer from the [prior art reference's] teaching' that every claim element was disclosed in that single reference." *Dayco Prods., Inc. v. Total Containment, Inc.*, 329

F.3d 1358, 1368 (Fed. Cir. 2003) (alterations in original) (quoting *In re Baxter Travenol Labs.*, 952 F.2d 388, 390 (Fed. Cir. 1991)).

Pryor may not disclose when the performance parameters for each bike are detected. Nonetheless, from Pryor's teaching of detecting a plurality of performance parameters for each bike in a cycling class, a person of ordinary skill in the art may reasonably infer that Pryor discloses simultaneously detecting the performance parameters at the first bike, i.e., "detecting a plurality of performance parameters from the first stationary bike at the first remote location at a particular point in the selected cycling class," as limitation e requires.

b. Limitation g

Patent Owner argues that "[limitation] g must be able to be performed on the selected cycling class *regardless* of whether it is a live or archived class," and that Pryor does not disclose archived classes at all. Prelim. Resp. 45. Like its argument for this limitation with respect to the asserted ground based on the combination of Watterson and Hurwitz, the argument is based on Patent Owner's incorrect claim construction that limitations d–g must be performable for live and archived cycling classes. As set forth above in section III.B.2, limitations d–g require performance with either a live or an archived cycling class, and, therefore, Patent Owner's argument is not commensurate with the scope of the claim.

c. "archived cycling classes"

Limitations a–c recite "archived cycling classes." Ex. 1003, 15:25–33. Petitioner asserts Pryor discloses spinning lessons that can be

"'pulled from video clips of [the instructor] giving the actual lesson' at a prior time." Pet. 10 (quoting Ex. 1005 ¶ 189). Petitioner also asserts Pryor discloses the image of a spinning master or instructor can come from a pre-stored program. *Id.* (citing Ex. 1005 ¶ 75).

Patent Owner argues Pryor's "'pre-stored program' refers to a 'virtual instructor' that monitors a user's performance and responds interactively with pre-set commands." Prelim. Resp. 40 (quoting Ex. 1005 ¶ 75). Patent Owner further argues Pryor's "'video clips' refer to multiple small clips that are incorporated into a 'completely computerized instructor' and allow the instructor to 'react to particular moves that one of the players might make.'" *Id.* (quoting Ex. 1005 ¶ 189). According to Patent Owner, "[n]either Pryor's 'video clips' nor 'pre-stored program' are archived cycling classes in the context of the '855 Patent because they are not stored recordings of at least an entire cycling class." *Id.*

Patent Owner's argument is based on its proposed claim construction that "archived cycling class" means a stored recording of at least an entire cycling class (*id.* at 28–35). On this record, we disagree with this proposed construction, as it unnecessarily reads the limitation "entire" into the claim. *See, e.g.*, *Superguide Corp. v. DirecTV Enters., Inc.*, 358 F.3d 870, 875 (Fed. Cir. 2004) ("Though understanding the claim language may be aided by explanations contained in the written description, it is important not to import into a claim limitations that are not a part of the claim.").

That notwithstanding, we agree with Patent Owner that the portions of Pryor on which Petitioner relies for allegedly disclosing "archived cycling classes" relate to a computerized instructor. At this stage of the proceeding,

Petitioner has not explained persuasively how Pryor's computerized instructor discloses an "archived cycling class."

3. Independent Claim 9

Petitioner's contentions regarding anticipation of independent claim 9 by Pryor are substantively similar to its contentions regarding independent claim 1. Pet. 10–19. Patent Owner relies on the same arguments as independent claim 1 for independent claim 9 (Prelim. Resp. 39–45), which we discuss above with respect to independent claim 1 in sections III.F.2.a–c.

4. Dependent Claims 2–8 and 10–20

In addition to its contentions for the independent claims, Petitioner asserts Pryor discloses each limitation of these dependent claims. Pet. 19–26. At this stage of the proceeding, Patent Owner does not raise arguments for these dependent claims separate from those discussed above with respect to independent claim 1 in sections III.F.2.a–c.

G. Obviousness Based on Pryor

Petitioner challenges claims 1–20 of the '855 patent under 35 U.S.C. § 103(a) as unpatentable over Pryor. Pet. 8–26. Patent Owner argues this asserted ground suffers from the same alleged deficiencies as the anticipation ground based on Pryor. Prelim. Resp. 46. On this record, Patent Owner's alleged deficiencies in the anticipation ground based on Pryor appear to similarly apply to this obviousness ground based on Pryor, and we discuss the alleged deficiencies with respect to the anticipation ground in sections III.F.2.a–c.

H. Obviousness Based on Pryor and the Flywheel Publication

Petitioner challenges claims 18 and 20 of the '855 patent under 35 U.S.C. § 103(a) as unpatentable over Pryor and the Flywheel publication. Pet. 26–29. Patent Owner argues this asserted ground suffers from the same alleged deficiencies as the anticipation ground based on Pryor. Prelim. Resp. 46. On this record, Patent Owner's alleged deficiencies in the anticipation ground based on Pryor appear to similarly apply to this obviousness ground based on Pryor, and we discuss the alleged deficiencies with respect to the anticipation ground in sections III.F.2.a–c.

I. 35 U.S.C. § 325(d)

We have discretion to deny a petition when "the same or substantially the same prior art or arguments previously were presented to the Office." 35 U.S.C. § 325(d). In evaluating whether to exercise our discretion under § 325(d), we weigh the following non-exclusive factors ("the *Becton* factors):

> (a) the similarities and material differences between the asserted art and the prior art involved during examination; (b) the cumulative nature of the asserted art and the prior art evaluated during examination; (c) the extent to which the asserted art was evaluated during examination, including whether the prior art was the basis for rejection; (d) the extent of the overlap between the arguments made during examination and the manner in which Petitioner relies on the prior art or Patent Owner distinguishes the prior art; (e) whether Petitioner has pointed out sufficiently how the Examiner erred in its evaluation of the asserted prior art or arguments; (f) the extent to which additional evidence and facts presented in the Petition warrant reconsideration of prior art or arguments.

Becton, Dickinson & Co. v. B. Braun Melsungen AG, 2017 WL 6405100, at *6 (PTAB Dec. 15, 2017) (informative) (citations omitted); *see also NHK Spring Co. v. Intri-Plex Techs., Inc.*, Case IPR2018-00752, slip op. at 11–12 (PTAB Sept. 12, 2018) (Paper 8) (precedential) (adopting and applying *Becton* factors).

Petitioner argues we should not exercise discretion under § 325(d). Pet. 65–67. In particular, Petitioner asserts "[t]he unpatentability arguments presented in grounds 1-6 of this petition are based on disclosures in Pryor, Watterson, and Hurwitz that have never been addressed by the Patent Office ('Office'), and are accompanied by new evidence, including the declaration of Dr. Bergeron, Elshout and the Flywheel publication." *Id.* at 65. According to Petitioner, "though Watterson, Pryor, and Hurwitz were of record during prosecution of the '855 patent, they were never substantively discussed." *Id.* Petitioner further contends the Examiner cited Pryor '219,[4] which is a continuation of Pryor, for only its disclosure of monitoring pedal cadence. *Id.*

In contrast, Patent Owner argues that we should exercise discretion under § 325(d) to deny institution. Prelim. Resp. 6, 52–64. According to Patent Owner, the *Becton* factors support denial of institution. Namely, Patent Owner contends:

> Under [*Becton*] factor [(a)], many of the same references were already considered. Additionally, the similarities . . . between Hickman[5] and the asserted references—Pryor, Watterson, and Hurwitz—indicate that the teachings of the

[4] U.S. Patent No. 8,892,219 B2, issued Nov. 18, 2014.
[5] U.S. Patent Application Publication No. 2009/0258758 A1, published Oct. 15, 2009 (cited during prosecution to reject the claims of the application for '276 patent).

> references now asserted have already been considered, and the Petition does not identify any relevant differences between the asserted references and Hickman. With respect to factor [(b)], Pryor and the combination of Watterson and Hurwitz are each cumulative to Hickman in their technological teachings, which is not disputed in the Petition. Under factor [(c)], Pryor was the basis for a rejection and Watterson and Hurwitz were evaluated during examination. Under factors [(d)] and [(e)], the Petition explains the teachings of Pryor, Watterson, and Hurwitz, but fails to point out how the three asserted references lead to a different argument or reasoning than that previously advanced by Primary Examiner Richman with respect to Hickman or how he erred in evaluating Pryor, Watterson, and Hurwitz to begin with. Regarding factor [(f)], as noted above, neither the Petition nor its almost-verbatim supporting declaration specifically identify additional evidence and facts warranting reconsideration of the prior art or arguments.

Id. at 54–55.

We disagree with Patent Owner that the *Becton* factors support denial of institution. The ’855 patent issued from application number 14/992,032, hereinafter “the ’032 application.” Ex. 1003, (21). During prosecution, the Examiner did not reject the claims of the ’032 application. *See generally* Ex. 1030.

The ’032 application claims priority as a continuation to application number 14/930,398, hereinafter “the ’398 application.” Ex. 1003, (63). During prosecution of the ’398 application, the Examiner did not reject the claims. *See generally* Ex. 1029.

The ’032 application also claims priority as a continuation to application number 13/956,087, hereinafter “the ’087 application.” Ex. 1003, (63). During prosecution of the ’087 application, the Examiner rejected claims 1–12 and 15 under 35 U.S.C. § 102(b) as anticipated by Hickman, claim 13 under 35 U.S.C. § 103(a) as unpatentable over Hickman

and Pryor '219, and claims 14 and 16–18 under 35 U.S.C. § 103(a) as unpatentable over Hickman and other references. Ex. 1004, 112–115. Applicants amended the claims to recite live and archived cycling classes and to add limitations similar to limitations b and e–g. *Id.* at 133–136. With these amendments, Applicants argued

> Hickman discloses an exercise system and method wherein exercise programs in the form of "scripts" of particular exercises can be provided to a remote user, along with encouragement from a "virtual trainer" based on performance information provided by a computer on an exercise machine used by the remote user. Hickman fails to disclose a method of providing live and/or archived cycling classes for display to remote users on a display screen associated with a stationary bike at the location of the remote user, wherein the system can measure a plurality of performance parameters from a first user and a second user at the same point in time in a particular class regardless of whether the two users are doing the class at the same time, and display those performance parameters on a display screen associated with the stationary bike at the first location for comparison of their relative performance at that point in the class.

Id. at 137. The Examiner then allowed the claims. *Id.* at 152.

In the Petition, Petitioner argues Pryor discloses the features missing from Hickman, namely: providing live and archived classes for display to remote users on a display screen associated with a stationary bike at the location of the remote user, i.e., limitation b; measuring a plurality of performance parameters from a first user at a particular point in time in a class, i.e., limitation e; and displaying to the first user a second user's performance parameter at the same point in the cycling class such that the performance parameters are presented for comparison, i.e., limitation g. Pet. 11–14, 16, 18–19. Petitioner also argues the combination of Watterson

and Hurwitz renders obvious the missing features. *Id.* at 35–40, 42–48. Accordingly, factors (a), (b), (d), and (e) do not weigh in favor of denying institution.

Moreover, as Petitioner points out, Applicants relied upon Pryor '219 only for its disclosure of monitoring pedal cadence, and Watterson and Hurwitz were never discussed substantively. Pet. 65; Ex. 1004, 114. Consequently, factor (c) does not support denial of institution.

In view of the foregoing, we determine that, on balance, the *Becton* factors do not support a discretionary denial of the Petition. We, therefore, decline to exercise our discretion to do so.

IV. CONCLUSION

For the reasons set forth above, Petitioner has demonstrated a reasonable likelihood of prevailing with respect to at least one of the challenged claims of the '855 patent, and we institute an *inter partes* review based on the asserted grounds of unpatentability set forth in the Petition. *SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348, 1359–60 (2018); *PGS Geophysical AS v. Iancu*, 891 F.3d 1354, 1360 (Fed. Cir. 2018) (indicating that a decision whether to institute an *inter partes* review "require[s] a simple yes-or-no institution choice respecting a petition, embracing all challenges included in the petition"). At this stage of the proceeding, however, we have not made a final determination as to the patentability of any challenged claim or any underlying factual or legal issue.

V. ORDER

In consideration of the foregoing, it is:

ORDERED that, pursuant to 35 U.S.C. § 314(a) and 37 C.F.R. § 42.4, an *inter partes* review of the ’855 patent is hereby instituted with respect to claims 1–20 of the ’855 patent, on all grounds presented in the Petition; and

FURTHER ORDERED that, pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4(b), notice is hereby given of the institution of a trial, which will commence on the entry date of this Decision.

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