

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ALIVECOR, INC.,
Petitioner,

v.

APPLE INC.,
Patent Owner.

IPR2023-01434
Patent 10,270,898 B2

Before KEN B. BARRETT, JOSIAH C. COCKS, and
SCOTT A. DANIELS, *Administrative Patent Judges*.

BARRETT, *Administrative Patent Judge*.

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

I. INTRODUCTION

A. *Background and Summary*

AliveCor, Inc. (“Petitioner”)¹ filed a Petition requesting *inter partes* review of U.S. Patent No. 10,270,898 B2 (“the ’898 patent,” Ex. 1001). Paper 1 (“Pet.”). The Petition challenges the patentability of claims 1–11, 16, 18, 20–23, 25–34, 41, and 43–45 of the ’898 patent. Apple Inc. (“Patent Owner”)² filed a Preliminary Response to the Petition. Paper 6 (“Prelim. Resp.”).

An *inter partes* review may not be instituted “unless . . . the information presented in the petition . . . 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) (2018). Having considered the arguments and evidence presented by Petitioner and Patent Owner, we determine that Petitioner has not demonstrated a reasonable likelihood of prevailing on at least one of the challenged claims of the ’898 patent. Accordingly, we do not institute an *inter partes* review of the challenged claims.

B. *Related Proceedings*

Both parties identify, as a matter involving or related to the ’898 patent, *Apple Inc. v. AliveCor, Inc.*, No. 4:22-cv-07608. Pet. 91; Paper 4. Petitioner additionally states that it “has filed petitions for IPR of related U.S. Patent No. 10,866,619 under the case headings IPR2023-00948 and IPR2023-00949 and U.S. Patent No. 10,076,257 under the case heading IPR2023-00950.” Pet. 91.

¹ Petitioner identifies AliveCor, Inc. as the real party-in-interest. Pet. 91.

² Patent Owner identifies Apple Inc. as the real party-in-interest. Paper 4.

C. The '898 Patent

The '898 patent pertains “generally to data management and, more specifically, to aggregating and sharing wellness data.” Ex. 1001, 1:20–24. The '898 patent explains that attempts have been made to improve individuals' health by providing them with tools to monitor and track wellness data. *Id.* at 1:32–34. “Wellness data can generally include any type of data associated with a person's health, such as their weight, heart rate, blood pressure, blood glucose level, medication compliance, activity level, or the like.” *Id.* at 1:34–38. Monitoring devices include “blood pressure cuffs, blood glucose monitors, electrocardiograms, step counters, and the like.” *Id.* at 1:38–40. “Software applications (e.g., Apps) associated with each of these devices have also been developed to allow users to track their wellness data over time.” *Id.* at 1:40–43. According to the '898 patent, “[w]hile each application can be used to view useful information about a user's health, current applications are limited in their ability to allow users to store, view, and share wellness data collected by different devices.” *Id.* at 1:43–47.

The '898 patent explains that “wellness data can be received by a user device from any number of sensors external or internal to the user device, from a user manually entering the wellness data, or from other users or entities.” *Id.* at 6:35–38. The '898 patent further explains that “[t]he user device can . . . display a user's wellness data in an aggregated view of different types of wellness data,” and that detailed views may be presented to allow the user to see, for example, “a graph representation of the sub-category of wellness data over time and a numerical daily value of the sub-category of wellness data.” *Id.* at 4:10–13, 6:43–45.

Figure 30 of the '898 patent is reproduced below.

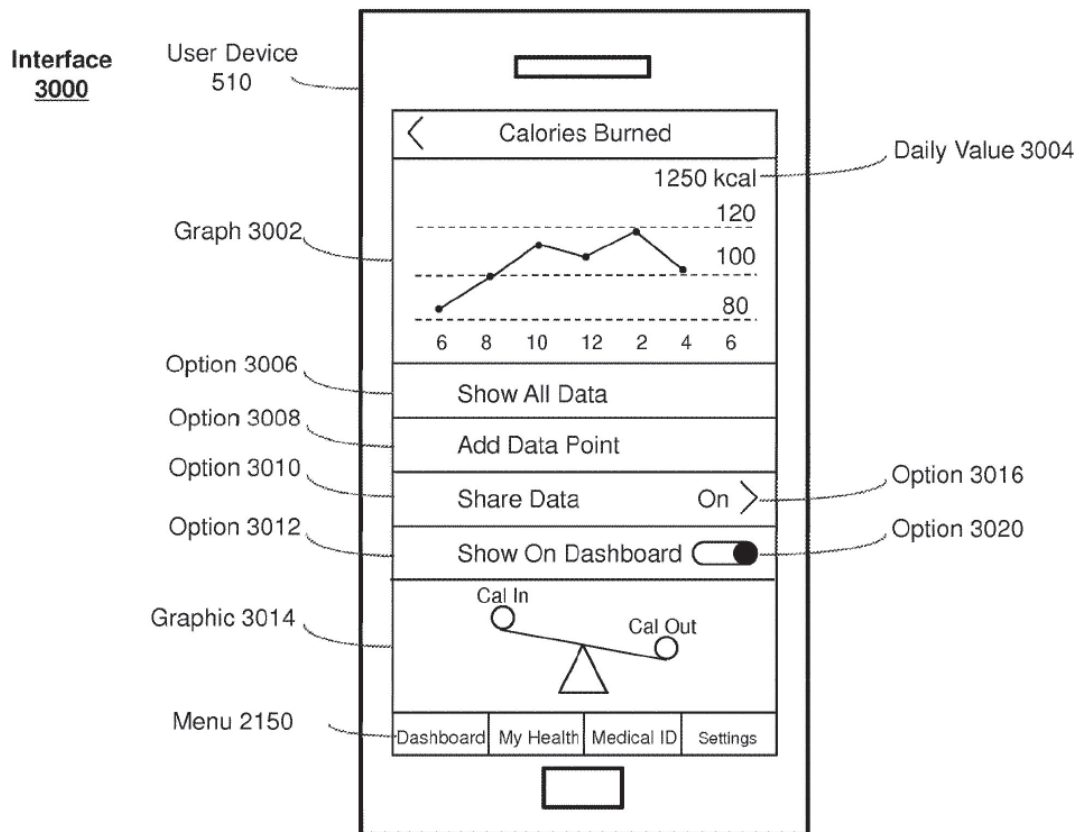


FIG. 30

Figure 30 illustrates an example interface for displaying wellness or non-wellness data. *See id.* at 6:1–3. “[A]ny of the sub-categories [of data] . . . can be selected to display a detailed view of the sub-category.” *Id.* at 55:42–44. “For example, FIG. 30 illustrates an example interface 3000 that can be displayed in response to a selection of ‘Calories Burned.’” *Id.* at 55:44–46. “[I]nterface 3000 can . . . include a current daily value 3004 of 1250 kcal and a graph representation 3002 showing the number of Calories burned over time throughout the day.” *Id.* at 55:54–56. “[I]nterface 3000 can further include ‘Share Data’ option 3010 having option 3016 for turning data sharing on or off.” *Id.* at 57:13–15. “Data sharing can represent the ability for other devices or applications to access a

user's wellness or non-wellness data (e.g., stored in wellness database 511).”
Id. at 57:15–18.

Figure 34 of the '898 patent is reproduced below.

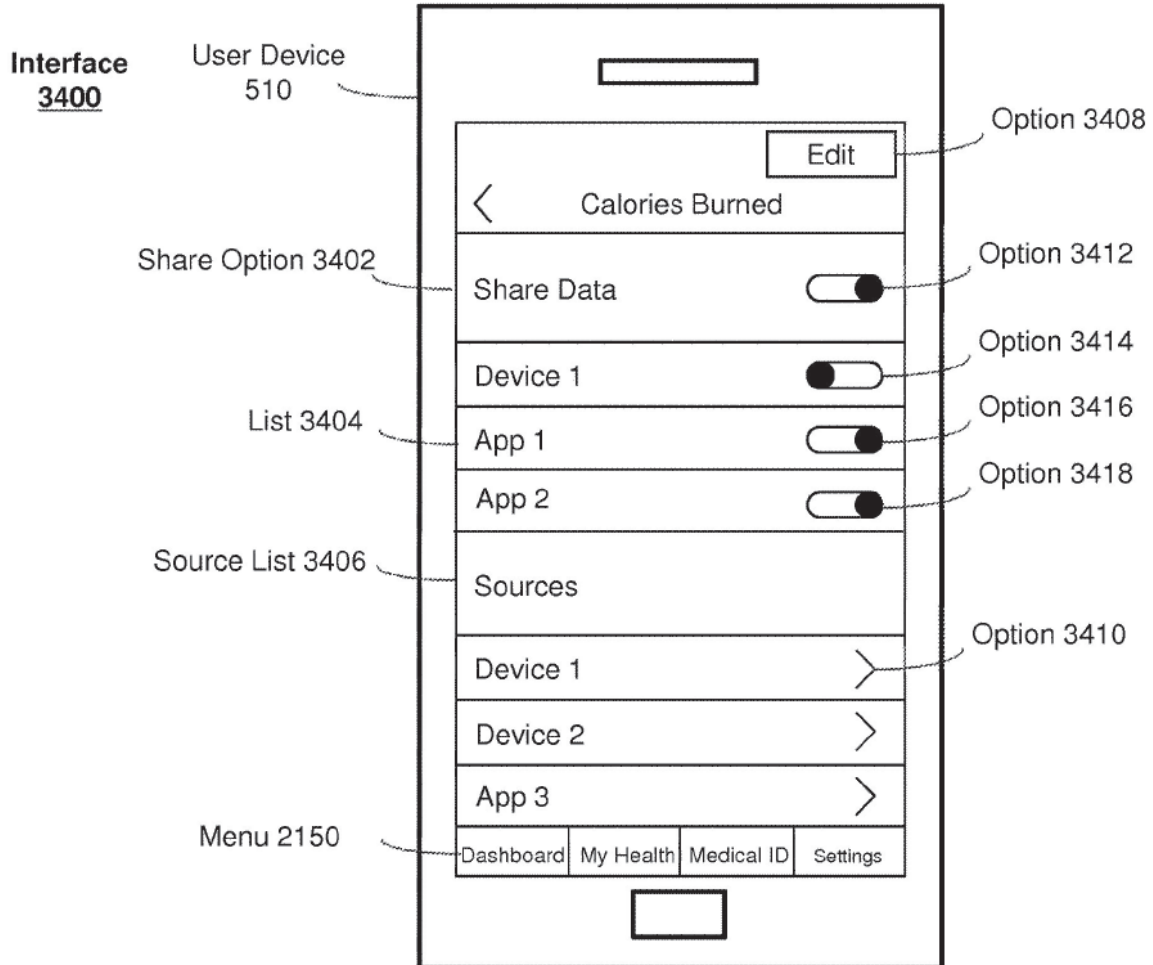


FIG. 34

Figure 34 “illustrates an example interface 3400 that can be displayed in response to a selection of option 3010 in interface 3000 [shown above].” *Id.* at 57:18–20. “As shown, interface 3400 can include share option 3402 having selectable option 3412.” *Id.* at 57:20–22. “The position of the switch of option 3412 can be used to turn data sharing on or off.” *Id.* at 57:22–23. “Interface 3400 can further include a list 3404 of known possible destinations of wellness or non-wellness data,” including “known

devices or software applications that can potentially receive a user's wellness or non-wellness data (e.g., stored in wellness database 511)." *Id.* at 57:28–32. "Interface 3400 can further include source list 3406 containing a list of known devices and applications that can potentially provide wellness or non-wellness data (e.g., to be stored in wellness database 511)." *Id.* at 57:58–61.

Figure 36 of the '898 patent is reproduced below.

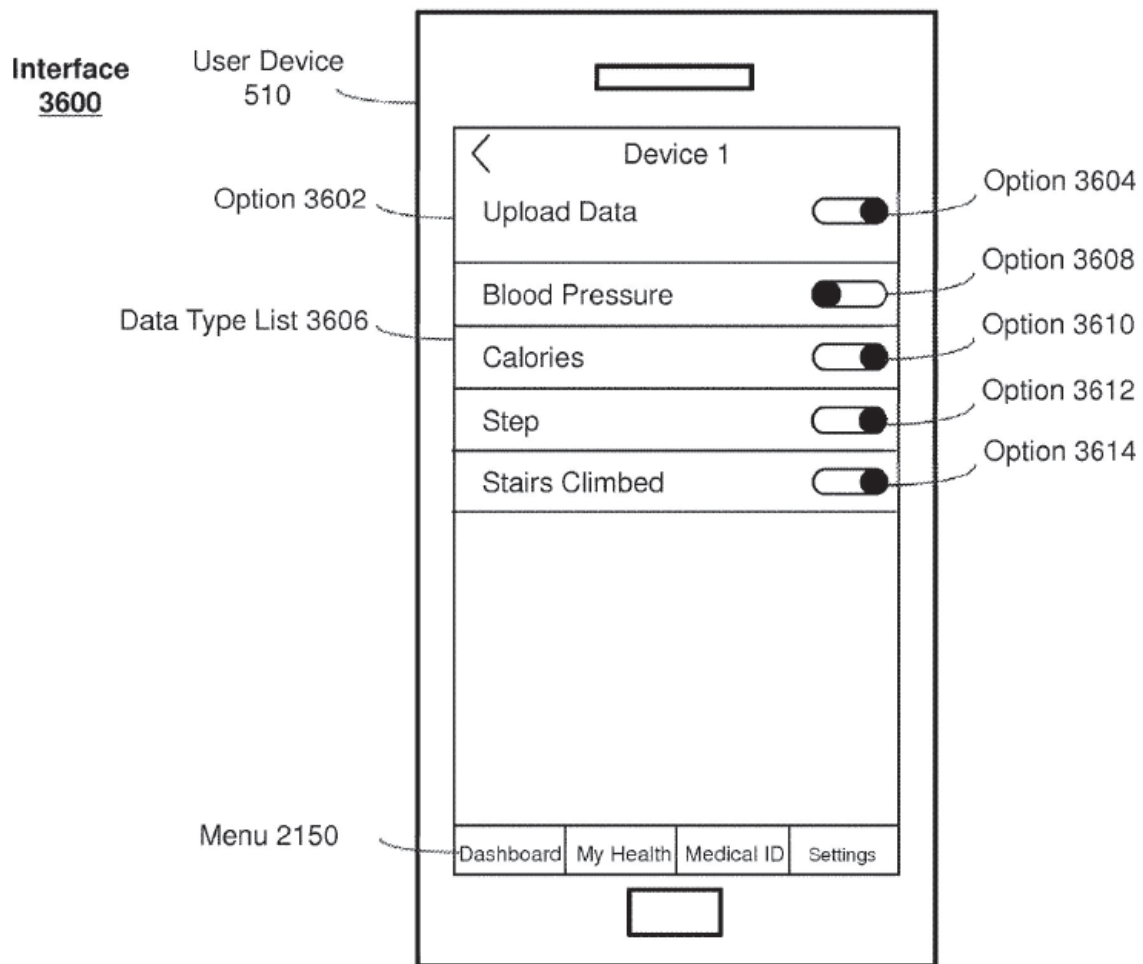


FIG. 36

Figure 36 "illustrates an example interface 3600 that can be displayed in response to a selection of . . . option 3410 in interface 3400 associated with Device 1." *Id.* at 58:40–43. "As shown, interface 3600 can include upload

option 3602 having selectable option 3604.” *Id.* at 58:43–45. “The position of the switch of option 3604 can be used to turn data uploading from the device or application on or off (e.g., to be stored in wellness data base 511).” *Id.* at 58:45–47. “Interface 3600 can further include a list 3606 of data types that can be provided by Device 1.” *Id.* at 58:52–53.

D. Illustrative Claim

Of the challenged claims of the ’898 patent, claims 1 and 23 are independent claims. Claim 1, reproduced below with emphasis added and Petitioner’s bracketed annotations inserted, is illustrative.

1. [Pre] A non-transitory computer-readable storage medium storing one or more programs, the one or more programs comprising instructions, which when executed by an electronic device with a display, cause the device to:
 - [1.a] receive information identifying a plurality of approved sources of wellness data, wherein the plurality of approved sources comprise an electronic device or software application;
 - [1.b] receive information identifying a plurality of approved destinations of wellness data, wherein the plurality of approved destinations comprise an electronic device or software application;
 - [1.c] *display a detailed view of a sub-category of wellness data, the detailed view comprising:*
 - [1.c.i] *a graph representation of the sub-category of wellness data that includes aggregated values of the sub-category of wellness data, wherein the sub-category of wellness data is from the plurality of approved sources for the sub-category of wellness data; and*
 - [1.c.ii] *a selectable data sharing option;*
 - [1.d] receive user selection of the selectable data sharing option; and
 - [1.e] in response to receiving the selection of the selectable data sharing option, display:
 - [1.e.i] the plurality of approved sources for the sub-category of wellness data, wherein the sub-category

of wellness data is approved to be received from the plurality of approved sources and stored in a wellness database; and

[1.e.ii] the plurality of approved destinations for the sub-category of wellness data, wherein the sub-category of wellness data is approved to be accessed from the wellness database by the plurality of approved destinations of wellness data.

Ex. 1001, 77:13–46 (emphasis added).

E. Evidence

Petitioner relies on the following references:

Name	Reference	Exhibit No.
Molettiere	US 8,849,610 B2; filed Feb. 11, 2014; issued Sept. 30, 2014	1005
Cohen	US 9,730,621 B2; filed Dec. 27, 2013; issued Aug. 15, 2017	1006
Yuen	US 9,173,576 B2; filed Apr. 24, 2014; issued Nov. 3, 2015	1007

Petitioner also relies on the declaration of Dr. Craig Rosenberg (Ex. 1003) in support of its arguments.

F. Asserted Grounds of Unpatentability

Petitioner asserts that the challenged claims are unpatentable on the following grounds:

Claim(s) Challenged	35 U.S.C. §³	Reference(s)/Basis
1–11, 18, 20–23, 25–34, 41, 43–45	102	Molettiere

³ The Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112-29, 125 Stat. 284, 287–88 (2011), includes revisions to 35 U.S.C. §§ 102 and 103 that became effective on March 16, 2013. Because the earliest filed application identified in the ’898 patent has a filing date of May 30, 2014 (Ex. 1001, code (65), 1:3–18), we apply the AIA-versions of 35 U.S.C. §§ 102 and 103. However, neither party argues, at least at this stage of the

Claim(s) Challenged	35 U.S.C. § ³	Reference(s)/Basis
1–11, 18, 20–23, 25–34, 41, 43–45	103	Molettiere
1, 3, 9, 10, 16, 18, 23, 26, 32, 33, 39, 41	103	Cohen
1, 9–11, 18, 20–23, 32–34, 41, 43–45	103	Yuen, Molettiere

II. ANALYSIS

A. Principles of Law

Petitioner bears the burden of persuasion to prove unpatentability of the claims challenged in the Petition, and that burden never shifts to Patent Owner. *Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015).

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros., Inc. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987); *see also Finisar Corp. v. DirecTV Group, Inc.*, 523 F.3d 1323, 1334 (Fed. Cir. 2008) (to anticipate a patent claim under 35 U.S.C. § 102, “a single prior art reference must expressly or inherently disclose each claim limitation”). Moreover, “[b]ecause the hallmark of anticipation is prior invention, the prior art reference—in order to anticipate under 35 U.S.C. § 102—must not only disclose all elements of the claim within the four corners of the document, but must also disclose those elements ‘arranged as in the claim.’” *Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359, 1369 (Fed. Cir. 2008) (quoting *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548 (Fed. Cir. 1983)). Whether a reference anticipates

proceeding, that the outcome of this case would differ based on applying the pre-AIA or AIA versions of the statutory provisions.

is assessed from the perspective of one of ordinary skill in the art. *See Dayco Prods., Inc. v. Total Containment, Inc.*, 329 F.3d 1358, 1368–69 (Fed. Cir. 2003) (“[T]he 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.” (second and third alterations in original) (quoting *In re Baxter Travenol Labs.*, 952 F.2d 388, 390 (Fed. Cir. 1991))).

Additionally, “[u]nder the principles of inherency, if the prior art necessarily functions in accordance with, or includes, the claimed limitations, it anticipates.” *MEHL/Biophile Int’l Corp. v. Milgraum*, 192 F.3d 1362, 1365 (Fed. Cir. 1999); *see In re Cruciferous Sprout Litig.*, 301 F.3d 1343, 1349–50 (Fed. Cir. 2002).

A patent claim is unpatentable under 35 U.S.C. § 103 “if the differences between the claimed invention and the prior art are such that the claimed invention as a whole would have been obvious before the effective filing date of the claimed invention to a person having ordinary skill in the art to which the claimed invention pertains.” 35 U.S.C. 103; *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of skill in the art; and (4), if present, any objective evidence of obviousness or non-obviousness. *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

B. The Level of Ordinary Skill in the Art

In determining the level of ordinary skill in the art, various factors may be considered, including the “type of problems encountered in the art;

prior art solutions to those problems; rapidity with which innovations are made; sophistication of the technology; and educational level of active workers in the field.” *In re GPAC Inc.*, 57 F.3d 1573, 1579 (Fed. Cir. 1995) (quoting *Custom Accessories, Inc. v. Jeffrey–Allan Indus., Inc.*, 807 F.2d 955, 962 (Fed. Cir. 1986)).

Petitioner contends that:

A person of ordinary skill in the art (“POSITA”) at the time of the alleged invention would have been a person with a working knowledge of physiological monitoring technologies and human interface design. That person would have had a Bachelor of Science degree in an academic discipline emphasizing the design of electrical, computer, or software technologies, in combination with training or at least one to two years of related work experience with capture and processing of data or information, including but not limited to physiological monitoring technologies and human interface design (Ex. 1003, ¶45). Alternatively, that person could have also had a Master of Science degree in a relevant academic discipline with less than a year of related work experience in the same discipline (Ex. 1003, ¶45). More education can supplement practical experience and vice versa (Ex. 1003, ¶45).

Pet. 5–6. Patent Owner does not address the level of ordinary skill in the art.

Petitioner’s definition is consistent with the level of ordinary skill reflected in the prior art references of record. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) (recognizing that the prior art itself may reflect an appropriate level of skill in the art). For purposes of this decision, we apply Petitioner’s definition of the person of ordinary skill in the art.

C. Claim Construction

We apply the same claim construction standard used in district court actions under 35 U.S.C. § 282(b), namely that articulated in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc). *See* 37 C.F.R. § 42.100(b).

In applying that standard, claim terms generally are given their ordinary and customary meaning as would have been understood by a person of ordinary skill in the art at the time of the invention and in the context of the entire patent disclosure. *Phillips*, 415 F.3d at 1312–13. “In determining the meaning of the disputed claim limitation, we look principally to the intrinsic evidence of record, examining the claim language itself, the written description, and the prosecution history, if in evidence.” *DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc.*, 469 F.3d 1005, 1014 (Fed. Cir. 2006) (citing *Phillips*, 415 F.3d at 1312–17). “[W]hile extrinsic evidence can shed useful light on the relevant art, . . . it is less significant than the intrinsic record in determining the legally operative meaning of claim language.” *Phillips*, 415 F.3d at 1317 (internal quotation marks omitted).

The parties’ contentions raise claim construction issues regarding “display a detailed view of a sub-category of wellness data” and “a selectable data sharing option.” *See, e.g.*, Ex. 3001 (Petitioner’s email to the Board identifying the claim construction of those two phrases as issues); Prelim. Resp. 3–6 (claim construction section). In that regard, independent claim 1 (which is directed to a computer-readable storage medium storing instructions) recites:

[1.c] display a detailed view of a sub-category of wellness data, the detailed view comprising:

[1.c.i] a graph representation of the sub-category of wellness data that includes aggregated values of the sub-category of wellness data, wherein the sub-category of wellness data is from the plurality of approved sources for the sub-category of wellness data; and

[1.c.ii] a selectable data sharing option;

Ex. 1001, 77:25–32. Independent method claim 23 contains a substantively similar recitation and the parties address the two independent claims without

drawing any distinction between them. *See* Ex. 1001, 80:5–12; Pet. 6 n.1; Prelim. Resp. 3–6. The portion of the above-quoted language pertinent to this decision provides: “display a detailed view . . . , the detailed view comprising: a graph representation . . . ; and a selectable data sharing option.”

Petitioner does not propose, in the “Claim Construction” section of the Petition, any explicit claim construction, asserting that every term should be given its plain and ordinary meaning. Pet. 4. In contending that the claims are anticipated by certain prior art references, Petitioner relies on one figure for the disclosure of a graph representation and a different figure for the selectable data sharing option. *See, e.g., id.* at 12–14. Accordingly, we understand Petitioner to impliedly construe the subject claim language as *not* requiring a “detailed view” containing both a graph representation and a selectable data sharing option.

In the Preliminary Response, Patent Owner argues that, “[b]ased on plain meaning, the above-referenced limitations require that the ‘detailed view’ comprise two elements—a ‘graph representation’ and a ‘selectable data sharing option.’” Prelim. Resp. 3. According to Patent Owner “displaying the claimed ‘detailed view’ requires display of a view comprising *both* constituent elements.” *Id.* at 1–2. Patent Owner further argues that Petitioner “improperly points to different user interfaces that are not part of the same detailed view.” *Id.* at 1–2.

Subsequently, Petitioner, in an email to the Board, requested authorization to file a reply to Patent Owner’s Preliminary Response. Ex. 3001. Petitioner asserted that “[t]he good cause basis of Petitioner’s request is to address the unforeseeable new claim construction of ‘display a

detailed view of a sub-category of wellness data’ and ‘a selectable data sharing option,’ in view of at least Figure 36 of the patent at issue and its corresponding description in the specification.” *Id.* Petitioner also indicated that it was requesting a reply brief “to address . . . how the claims are anticipated and/or rendered obvious by the cited prior art even under [Patent Owner] Apple’s proposed construction of the claims.” *Id.*

The Board conducted a telephone conference with the parties to discuss Petitioner’s request. *See* Paper 7 (Order summarizing the telephone call), 1. On the call, Petitioner argued that Patent Owner’s proposed claim construction is incorrect, and specifically argued that the indefinite article “a,” in the recited “a detailed view,” means one or more. *Id.* at 3. Petitioner also pointed to certain figures in the challenged patent, including Figures 30 and 34, and asserted that those support Petitioner’s implied construction and are not consistent with Patent Owner’s proposed construction. *See id.* We determined that Patent Owner’s proposed claim construction was foreseeable and declined to allow Petitioner to file reply brief. *Id.* at 3–4. However, we acknowledged Petitioner’s claim construction positions as set out in the email and on the phone call, *id.* at 4, and we address those herein along with Petitioner’s implied proposed claim construction as reflected in the Petition’s mapping of claim limitations to the prior art.

We first turn to the claim language itself. As mentioned, the pertinent claim phrase is “display a detailed view . . . , the detailed view comprising: a graph representation . . . ; and a selectable data sharing option.” Ex. 1001, 77:25–32. As also mentioned above, Patent Owner argues that this phrase requires a detailed view that has both listed elements—a graph representation and a selectable data sharing option. *See* Prelim. Resp. 3. On

the call, Petitioner argued that Patent Owner’s proposed claim construction is incorrect, and specifically argued that “a,” in the recited “a detailed view,” means one or more. *See* Paper 7, 3.

The general rule is that “the indefinite article ‘a’ means ‘one or more’ in open-ended claims containing the transitional phrase ‘comprising.’” *Salazar v. AT&T Mobility LLC*, 64 F.4th 1311 (2023); *see also Baldwin Graphic Sys., Inc. v. Siebert, Inc.*, 512 F.3d 1338, 1342–43 (Fed. Cir. 2008) (“An exception to the general rule that ‘a’ . . . means more than one only arises where the language of the claims themselves, the specification, or the prosecution history necessitate a departure from the rule.”). And, the use of “the” (as in “the detailed view”) indicates that the recited part of the claim is a reference back to the corresponding part of a previous recitation (i.e., “a detailed view”). *Finjan LLC v. SonicWall, Inc.*, 84 F.4th 963, 974 (Fed. Cir. 2023) (“Similar to this court’s holding that ‘said’ indicates part of a claim limitation refers to the corresponding part of a previously claimed limitation, . . . , the use of ‘the’ also indicates the claimed term refers to an antecedent term.”). However, whether “a detailed view” means “one or more detailed views” is a separate issue from whether the claims require the same detailed view to have both of the recited components. *See Finjan*, 84 F.4th at 974 (“[T]hat is a separate issue from whether the claims require the same component to perform multiple functions or satisfy multiple limitations of a claim.”).

The plain language of “a detailed view” followed by the recitation of “the detailed view” comprising two components suggests that the “detailed view” must be tied to both of those components. *See id.* (“In [*Traxcell Techs., LLC v. Nokia Sols. & Networks Oy*, 15 F.4th 1136, 1143–44 (Fed.

Cir. 2021)], we explained that “[a]s a matter of plain language, reciting ‘a computer’ (or a ‘first computer’) that performs a function, and then further reciting that ‘the computer’ (or ‘said first computer’) performs multiple additional functions, suggests that such ‘computer’ must be tied to all those functions.’ . . . This same rationale is relevant in analyzing the claims here.”); *see also id.* (The court agreeing with SonicWall’s argument “that even if the reference to ‘a computer’ may mean ‘one or more computers,’ the subsequent references to ‘the computer’ can only be satisfied by the same ‘one or more computers’ that satisfied the first limitation.”); *Salazar*, 64 F.4th at 1317 (“We agree with the district court that while the claim term ‘a microprocessor’ does not require there be only one microprocessor, the subsequent limitations referring back to ‘said microprocessor’ require that at least one microprocessor be capable of performing each of the claimed functions.”). We determine that, even if plural detailed views are allowed, the claim requires a single one of those views to have both a graph representation and a selectable data sharing option.

As to the recited “selectable data sharing option,” the language of subsequent limitations indicates that selection of that option causes the display of lists of approved sources and of destinations for data. *See* Ex. 1001, 77:35–46 (“in response to receiving the selection of the selectable data sharing option, display: the plurality of approved sources for the sub-category of wellness data . . . and the plurality of approved destinations for the sub-category of wellness data . . .”).

Patent Owner argues that the Specification is consistent with the plain language of the claims, and that Figure 30 of the ’898 patent is an example of the recited “detailed view” having both recited components. Prelim.

Resp. 4–6. On the call, Petitioner pointed to certain figures (including Figure 34) in the challenged patent and asserted that those support Petitioner’s implied construction and are not consistent with Patent Owner’s proposed construction. *See* Paper 7, 3; *see also* Ex. 3001 (Petitioner referring to Figure 36).

Patent Owner’s annotated version of Figure 30 is reproduced below.

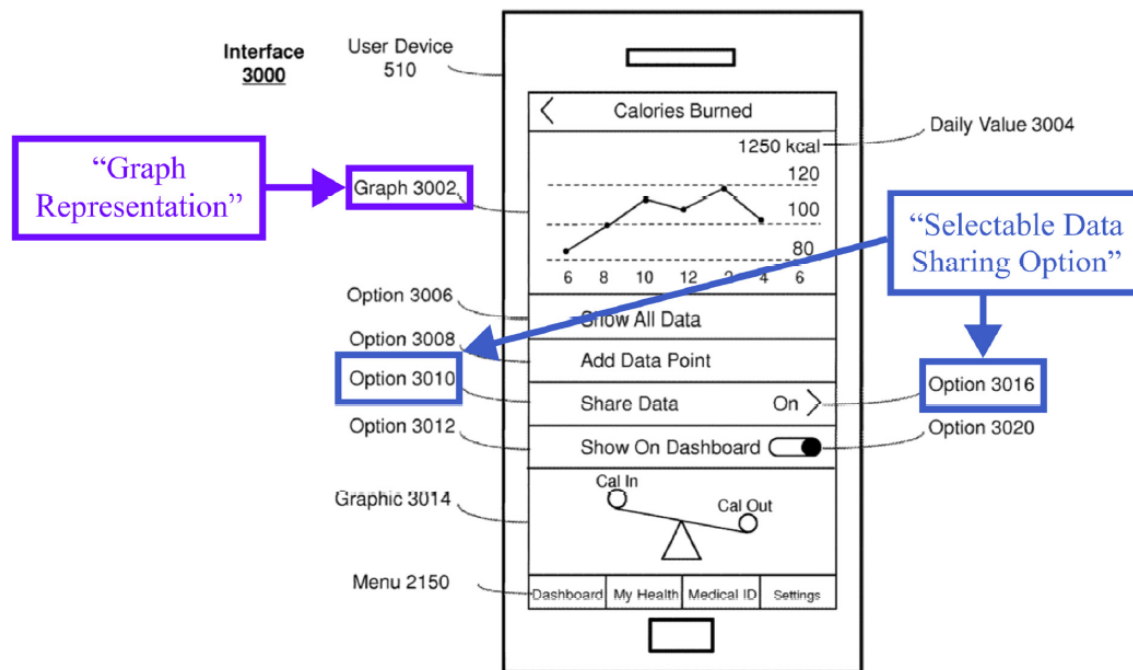


FIG. 30

Above is Figure 30 of the '898 patent, which illustrates an example interface for displaying wellness or non-wellness data (Ex. 1001, 6:1–3), with Patent Owner’s annotations showing its mapping of the recited “graph representation” to the figure’s Graph 3002 (purple) and “selectable data sharing option” to the figure’s Option 3010 and Option 3016 (blue). Prelim. Resp. 5. The Specification explains that interface 3000 of Figure 30 depicts a “detailed view,” *see* Ex. 1001, 55:42–49, and that interface 3000 includes “graph representation 3002,” *id.* at 55:54–57. The Specification also explains that “interface 3000 can further include ‘Share Data’ option 3010

having option 3016 for turning data sharing on or off.” *Id.* at 57:13–15. Additionally, selection of “Share Data” option 3010 sends the user to interface 3400 (Figure 34), which includes source list 3406 of known devices and applications that can provide data and list 3404 of known possible destinations of data. *Id.* at 57:18–20, 57:28–32, 57:58–61. In light of the description, we agree with Patent Owner that Figure 30 is consistent with the claims’ requirement of a single detailed view having both a graph representation and a selectable data sharing option.

Petitioner’s annotated version of Figure 34 is reproduced below.

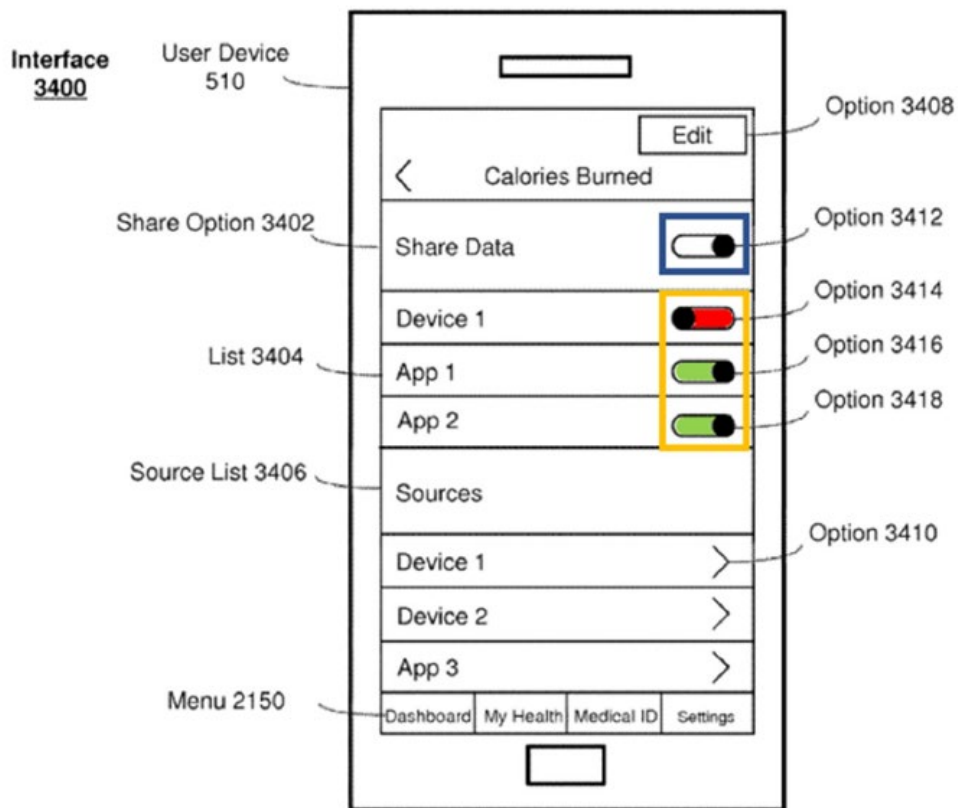


FIG. 34

Above is Figure 34 of the '898 patent, which illustrates an example interface 3400 (Ex. 1001, 57:18–20), with Petitioner’s annotations of a blue box around Option 3412 and an orange box around destination device/app

selectable Options 3414 (red), 3416 (green), and 3418 (green). Pet. 3; *see* Ex. 1001, 57:37–40. The Specification explains that interface 3400 has “share option 3402 having selectable option 3412.” Ex. 1001, 57:20–22. “When option 3412 of share option 3402 is moved to the on position, selectable options 3414, 3416, and 3418 associated with the destinations in list 3404 can be displayed or made selectable.” *Id.* at 57:37–40. Petitioner, citing to the Specification’s discussion of Figure 36, which depicts another interface having option switches, contends that, “[i]n the same way, the specification describes that the user can control the types of data accessible to a destination.” Pet. 3 (citing Ex. 1001, 58:40–51; Ex. 1003 ¶ 68); *see also* Ex. 1001, 58:43–47 (“[I]nterface 3600 can include upload option 3602 having selectable option 3604. The position of the switch of option 3604 can be used to turn data uploading from the device or application on or off (e.g., to be stored in wellness data base 511).”).

Petitioner contends that “*Molettiere’s* selectable options are identical to the selectable options described in the ’898 Patent.” *Id.* at 14 (citing Ex. 1003 ¶¶ 141–142; Pet. § IV.A). We understand Petitioner to be asserting that Figure 36 of the ’898 patent depicts the recited “selectable data sharing option.” *See id.* (relying on Dr. Rosenberg discussion of Figure 36 at Ex. 1003 ¶¶ 141–142). Petitioner, in the Cohen Ground, makes a similar assertion regarding Figure 34 of the ’898 patent. *See id.* at 48 (“*Cohen’s* trend graph permission 1504 tab is identical to the selectable options described and depicted in the ’898 Patent” (citing Ex. 1003 ¶¶ 381–382; Pet. § IV.A).

Even if—as Petitioner appears to contend—Figures 34 and 36 depict views each having a selectable data sharing option but no graph

representation, this would not negate the disclosure of both components in the interface of Figure 30 and would not be inconsistent with the claim requiring a detailed view having both components in the same view.

We construe independent claims 1 and 23 as requiring the “detailed view” to have both a graph representation and a selectable data sharing option.

D. The Alleged Unpatentability of Claims 1–11, 18, 20–23, 25–34, 41, and 43–45 as Anticipated by or Obvious over Molettiere

Petitioner alleges that claims 1–11, 18, 20–23, 25–34, 41, and 43–45 of the ’898 patent are anticipated by or would have been obvious over Molettiere. *See* Pet. 6–18 (addressing claim 1). Patent Owner argues that the Petition relies on two different views in Molettiere for the “detailed view” requirement and therefore is deficient. *See* Prelim. Resp. 6–11.

1. Molettiere (Ex. 1005)

Molettiere pertains to “methods, devices, systems, and computer programs for analyzing data, and more particularly, methods, devices, systems, and computer programs for consolidating overlapping data provided by multiple devices.” Ex. 1005, 2:15–19. Molettiere discloses a “computer-readable storage medium [that] includes program instructions for receiving a plurality of activity data streams from a plurality of devices, each activity data stream being associated with physical activity data of a user.” *Id.* at 3:26–29.

2. Discussion

As mentioned, independent claim 1 recites, in pertinent part: “[1.c] display a detailed view . . . , the detailed view comprising: [1.c.i] a graph representation . . . ; and [1.c.ii] a selectable data sharing option.” Ex. 1001, 77:25–32 (Petitioner’s element designations added). Independent

claim 23 contains a substantive similar recitation. *See id.* at 80:5–12 (the method step of “displaying a detailed view”).

Petitioner, for the recited “display a detailed view” (element 1.c), relies on Molettiere’s Figures 8 and 18, and, for “a graph representation” (element 1.c.i), relies again on Figure 8. Pet. 10–13. Petitioner’s annotated version of Figure 8 is reproduced below.

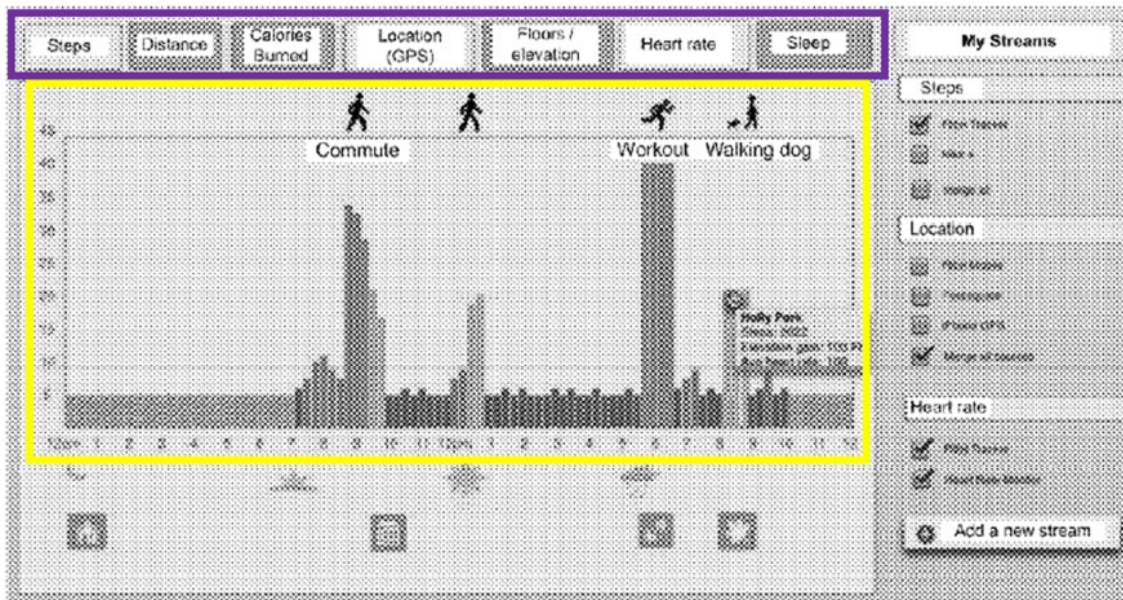


Fig. 8

Above is Molettiere’s Figure 8, which is “a user interface screen showing data from all sources merged and displayed as a graph” (Ex. 1005, 12:14–15), with Petitioner’s annotations. Pet. 11. According to Petitioner, “Figure 8 contains options for the user to select between sub-categories, such as ‘Steps’ and ‘Distance,’ as depicted in PURPLE,” and “[a] representation of the user’s activity information (e.g., a sub-category of wellness data) is annotated in YELLOW.” *Id.* (citing Ex. 1001, 12:18–25; Ex. 1003 ¶ 126); *see also id.* at 12 (Petitioner relying only on Figure 8 for the “graph representation” of element 1.c.1). Although Petitioner asserts

that there are, within the purple box, sub-category options for the user to select, Petitioner does not assert that this is a disclosure or suggestion of the recited “selectable data sharing option.” *See id.*; *see also* Ex. 1005, 12:22–25 (Molettiere identifying the buttons at the top for selection of the metric to be displayed on the user interface screen).

Petitioner’s annotated version of Figure 18 is reproduced below.

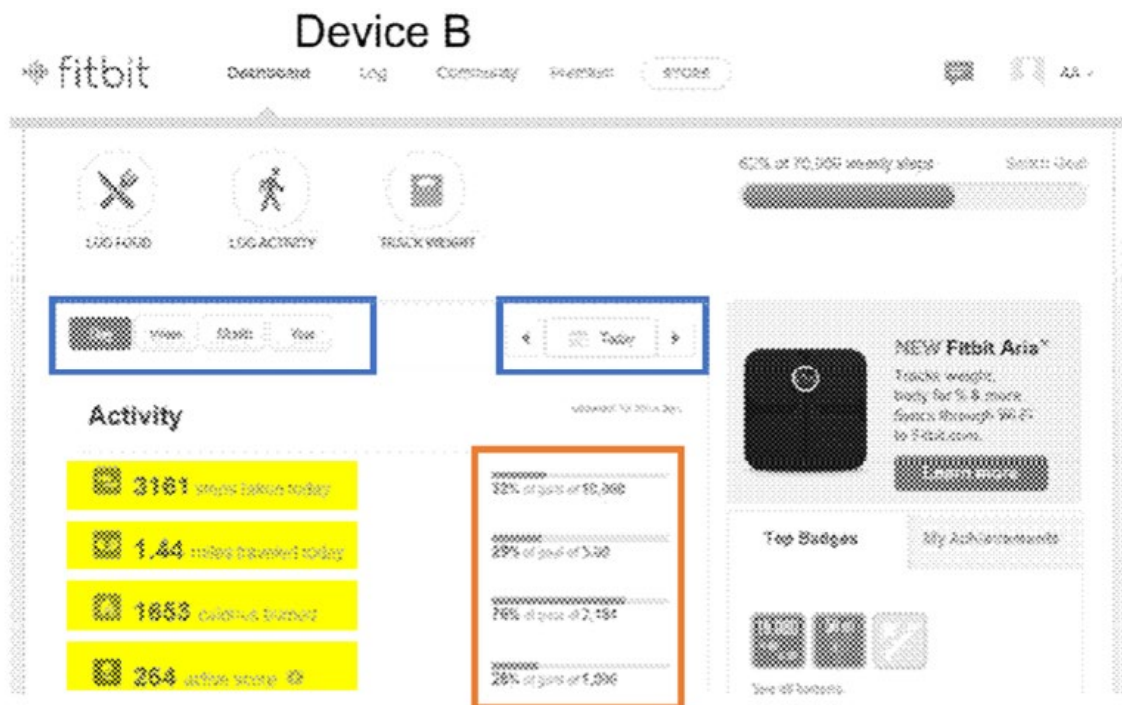


Fig. 18

Above is Molettiere’s Figure 18, which is “a diagram of a website page for a device (e.g., a weight scale) which cannot track the number of floors climbed” (Ex. 1005, 24:1–3), with Petitioner’s annotations. Pet. 12. According to Petitioner, “Figure 18 illustrates the user’s ‘steps taken,’ ‘miles traveled,’ ‘calories burned,’ and ‘active score’ highlighted in YELLOW and a graphical depiction highlighted in ORANGE.” *Id.* at 11 (citing Ex. 1005, 21:13–23; Ex. 1003 ¶ 127). The Petition does not indicate the significance of the annotations in the form of blue boxes. *See id.* at 11–12.

Petitioner, for “a selectable data sharing option” (element 1.c.ii), turns to Molettiere’s Figure 16. Pet. 13–14. Petitioner’s annotated version of Figure 16 is reproduced below.

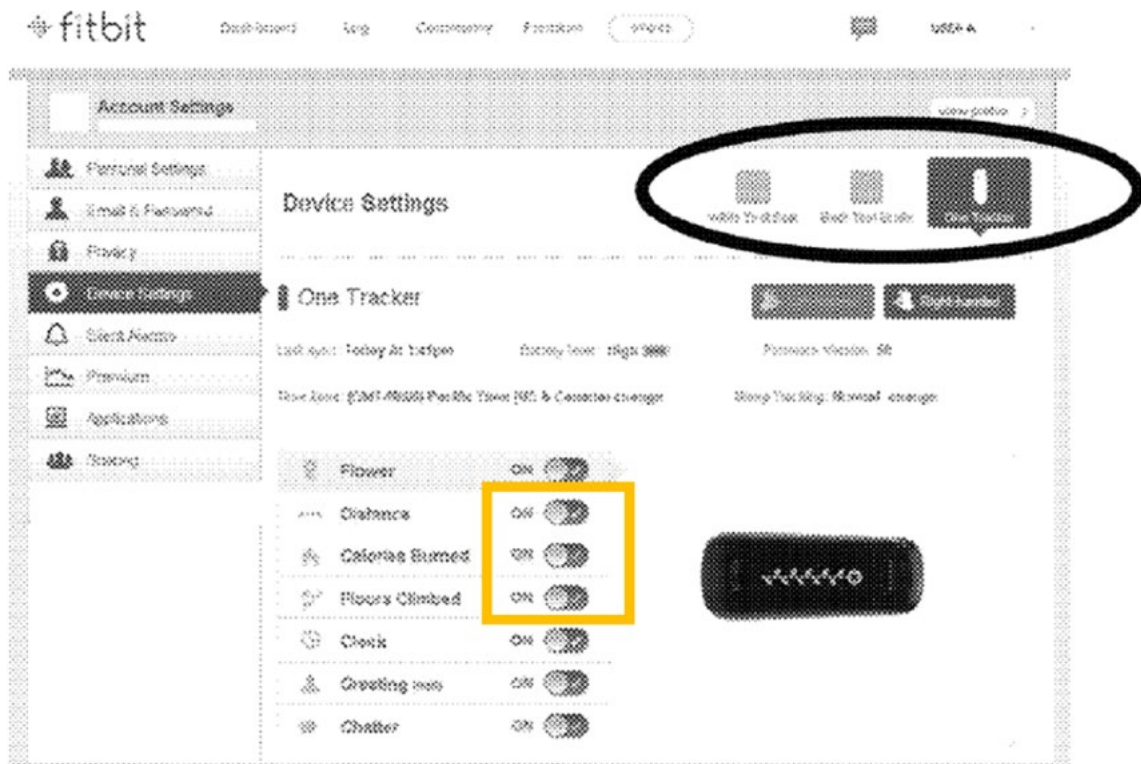


Fig. 16

Above is Molettiere’s Figure 16, which “illustrates an interface for managing a device on the web service” (Ex. 1005, 22:24–25), with Petitioner’s annotation of an orange box around the on/off switches for Distance, Calories Burned, and Floors Climbed. Pet. 13.⁴ Petitioner contends that the orange box indicates how “*Molettiere* discloses a selectable data sharing option.” *Id.* According to Petitioner:

Fig. 16 allows the user to select a device from a list of devices (e.g., the list displayed in Fig. 15) to view the profile

⁴ The black circle is in the original document and is not Petitioner’s annotation. See Ex. 1005, Fig. 16.

information or device settings for that device (Ex. 1005, 22:6–14, 22:24–31; Ex. 1003, ¶139). The interface provides selectable options for each type of information tracked or collected (Ex. 1005, 21:64–65, 22:32–39; Ex. 1003, ¶139). A POSITA would have understood that by selecting “ON”, the device is configured to collect information about that specific metric (Ex. 1003, ¶140). Further, *Molettiere*’s selectable options are identical to the selectable options described in the ’898 Patent (Ex. 1003, ¶¶141–142; see § IV.A).

Id. at 13–14; *see* Ex. 1003 ¶ 141 (Dr. Rosenberg opining that “the selectable data sharing options of *Molettiere* are identical to the selectable options described in the ’898 Patent and depicted in Figure 36.”).

For independent claim 23, Petitioner relies on its contentions made for the corresponding elements of independent claim 1. *See* Pet. 34–35.

Patent Owner argues that “[Petitioner] AliveCor’s mapping to *Molettiere* implicates Figure 8 (or Figure 18) for the recited ‘graph representation,’ but refers only to Figure 16 for the recited ‘selectable data sharing option.’” Prelim. Resp. 9. Patent Owner further argues that “[s]uch a mapping is inconsistent with the plain meaning of the ‘detailed view’ feature . . . , as the two recited elements are not part of the same detailed view of a sub-category of wellness data.” *Id.*

We agree with Patent Owner. For the reasons discussed above, we construe independent claims 1 and 23 as requiring the “detailed view” to have both a graph representation and a selectable data sharing option. *See supra* Section II.C. Petitioner does not identify adequately any disclosure in *Molettiere* of displaying a single view having both components. Thus, Petitioner has not shown adequately that *Molettiere* is anticipatory. Additionally, we agree with Patent Owner’s argument that Petitioner does not articulate adequately any obviousness contentions regarding how or why

a person of ordinary skill in the art would have combined the relied-on figures of Molettiere to arrive at the recited detailed view having both components. *See* Prelim. Resp. 9–10; Pet. 10–14.

Accordingly, we determine that Petitioner has not demonstrated a reasonable likelihood of prevailing on its challenge to independent claim 1 and independent claim 23 as anticipated by or obvious over Molettiere. For the same reasons, we determine that Petitioner has not demonstrated a reasonable likelihood of prevailing in its challenge to dependent claims 2–11, 18, 20–22, 25–34, 41, and 43–45 as anticipated by or obvious over Molettiere.

E. The Alleged Unpatentability of Claims 1, 3, 9, 10, 16, 18, 23, 26, 32, 33, 39, and 41 as Obvious over Cohen

Petitioner alleges that claims 1, 3, 9, 10, 16, 18, 23, 26, 32, 33, 39, and 41 of the '898 patent would have been obvious over Cohen. *See* Pet. 39–52 (addressing claim 1). Patent Owner argues that this Cohen ground is defective because Petitioner again is relying on two distinct views for the recited “detailed view.” *See* Prelim. Resp. 11–14.

1. Cohen (Ex. 1006)

Cohen pertains to remote monitoring of analyte data. Ex. 1006, 1:22–23. Cohen discloses “a system for one or more caretakers (e.g., a parent, spouse or healthcare practitioner) to remotely monitor health characteristics of one or more hosts.” *Id.* at 6:22–25. “The health characteristics can include an analyte concentration of a host, such as glucose, or a bodily function, such as heart rate, blood pressure, or temperature, and the like.” *Id.* at 6:25–28.

2. Discussion

For this Cohen ground, Petitioner, like the Molettiere ground discussed above, relies on two separate figures for the components of the “detailed view.” See Pet. 43–48. Specifically, Petitioner relies on Cohen’s Figure 19 for the “graph representation” (element 1.c.i) and on Figure 15 for the “selectable data sharing option” (element 1.c.ii). See *id.* Reproduced below are Petitioner’s annotated versions of Cohen’s Figures 19 and 15.

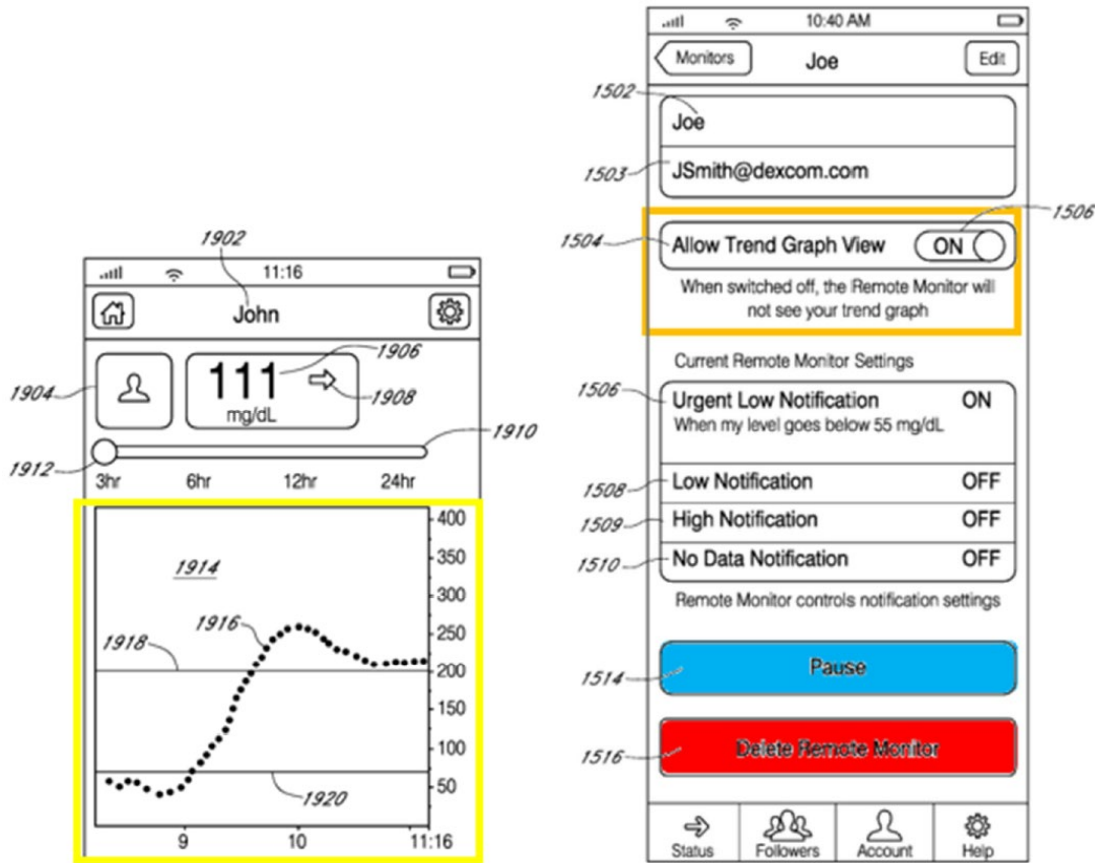


FIG. 19

FIG. 15

Above, on the left, is Cohen’s Figure 19, which is “an exemplary page that provides a trend graph 1914 of a host’s monitored analyte concentration” (Ex. 1006, 50:18–19), with Petitioner’s annotation of a yellow box around trend graph 1914. Pet. 45. Above, on the right, is Cohen’s Figure 15, which

is “[a]n exemplary settings display page 1500” (Ex. 1006, 47:24), with an orange box around trend graph permission 1504 tab. Pet. 47 (citing Ex. 1006, 47:30–33). Petitioner contends that “Cohen’s trend graph permission 1504 tab is identical to the selectable options described and depicted in the ’898 Patent.” *Id.* at 48 (citing Ex. 1003 ¶¶ 381–382, Pet. § IV.A); *see* Ex. 1003 ¶ 381 (Dr. Rosenberg comparing Cohen’s Figure 15 to Figure 34 of the ’898 patent). Petitioner further contends that “Cohen also discloses a ‘pause/resume control button 1514’ and a ‘delete remote monitor control button 1516’ (highlighted in BLUE and RED), that ‘allow a user of the host monitoring application to pause and cancel capabilities of remote monitor 114A monitoring the host 199.’” Pet. 48 (citing Ex. 1006, 47:48–48:1; Ex. 1003 ¶¶ 383–384).

For independent claim 23, Petitioner relies on its contentions made for the corresponding elements of independent claim 1. *See* Pet. 59–60.

We agree with Patent Owner’s argument that Petitioner maps the recited “graph representation” and “selectable data sharing option” to two different figures of Cohen and fails to “provide any contention or evidence regarding combinability of the user interfaces of Cohen’s Figures 15 and 19 to arrive at a single view comprising the mapped user interface elements.” Prelim. Resp. 11–13 (citing Pet. 43–48).

Accordingly, we determine that Petitioner has not shown adequately how Cohen renders obvious the claimed subject matter having a detailed view comprising both recited components. We determine that Petitioner has not demonstrated a reasonable likelihood of prevailing on its challenge to independent claim 1 and independent claim 23 as obvious over Cohen. For the same reasons, we determine that Petitioner has not demonstrated a

reasonable likelihood of prevailing in its challenge to dependent claims 3, 9, 10, 16, 18, 26, 32, 33, 39, and 41 as obvious over Cohen.

F. The Alleged Unpatentability of Claims 1, 9–11, 18, 20–23, 32–34, 41, and 43–45 as Obvious over Yuen and Molettiere

Petitioner alleges that claims 1, 9–11, 18, 20–23, 32–34, 41, and 43–45 of the '898 patent would have been obvious over Yuen and Molettiere. *See* Pet. 61–77 (addressing claim 1). Patent Owner argues that Petitioner does not rely on Yuen in any manner that would cure the deficiency of the Molettiere ground. *See* Prelim. Resp. 14–17.

1. Yuen (Ex. 1007)

Yuen pertains to “a biometric monitoring device to calculate, measure, assess and/or determine physiologic data using data from one or more sensors including a personal weight sensor or scale, to measure the weight of a user.” Ex. 1007, 1:23–27. “The biometric monitoring device . . . further includes a user interface to input data/commands and display physiologic information including, for example, current information, historical information and/or current information in view of historical information.” *Id.* at 1:27–31.

2. Discussion

In its analysis, Petitioner divides the subject “detailed view” claim recitations into three elements: “[1.c] display a detailed view . . . , the detailed view comprising: [1.c.i] a graph representation . . . ; and [1.c.ii] a selectable data sharing option.” *See* Pet. 68–73. As with the grounds discussed above, Petitioner addresses each element in isolation. In this ground, Petitioner’s contentions for each element utilize the same format. Specifically, Petitioner, for each element, contends that “[primary reference] *Yuen* discloses” the element and, “[t]o the extent that *Yuen* does not disclose

[the element] a POSITA would have turned to *Molettiere* which specifically discloses [the element]” followed by an assertion that a person of ordinary skill in the art would have been motivated to combine the references’ features to arrive at the element. *See id.* In using this format for three elements, Petitioner offers several permutations rather than an adequate explanation of a specific proposed combination. *See Trend Micro, Inc. v. Open Text Inc.*, IPR2023-00692, Paper 8 at 27 (PTAB Nov. 6, 2023) (“[W]e agree that the Board tends to reject a ‘pick-and-choose’ approach to the presentation of evidence, which is ‘challenging to follow and makes it difficult to piece together in order to understand Petitioner’s proposed combination or modification.’”); *cf. Microsoft Corp. v. FG SRC, LLC*, 860 F. App’x 708, 713 (Fed. Cir. 2021) (non-precedential) (“It is not the Board’s job to cobble together assertions from different sections of a petition or citations of various exhibits in order to infer every possible permutation of a petitioner’s arguments. Arguments in a petition must be made with particularity, not opacity.”).

However, regardless as to Petitioner’s specific proposed combination of prior art teachings, the Petition provides, at most, contentions that each separate element would have been obvious rather than addressing the claimed subject matter as a whole. *See, e.g., Pet. 70* (“*Yuen* in view of *Molettiere* renders obvious [the graph representation of element 1.c.1].”); *see Unigene Labs, Inc. v. Apotex, Inc.*, 655 F.3d 1352, 1360 (Fed. Cir. 2011) (“Obviousness requires more than a mere showing that the prior art includes separate references covering each separate limitation in a claim under examination. Rather, obviousness requires the additional showing that a person of ordinary skill at the time of the invention would have selected and

combined those prior art elements in the normal course of research and development to yield the claimed invention.” (citations omitted)). We determine that Petitioner does not articulate clearly and adequately a proposed combination having both components in the same “detailed view,” and does not provide an adequate reason why a person of ordinary skill in the art would have made any such combination.

For the “graph representation” of element 1.c.i, Petitioner relies on Yuen’s Figure 7B. Pet. 70–71; *see also id.* at 69 (relying on Figure 7B for element 1.c); *id.* at 70 (for element 1.c, also referring to Figures 7A, 7C, and 7D, which depict graphs somewhat similar to that in Figure 7B). Petitioner’s annotated version of Figure 7B is reproduced below.

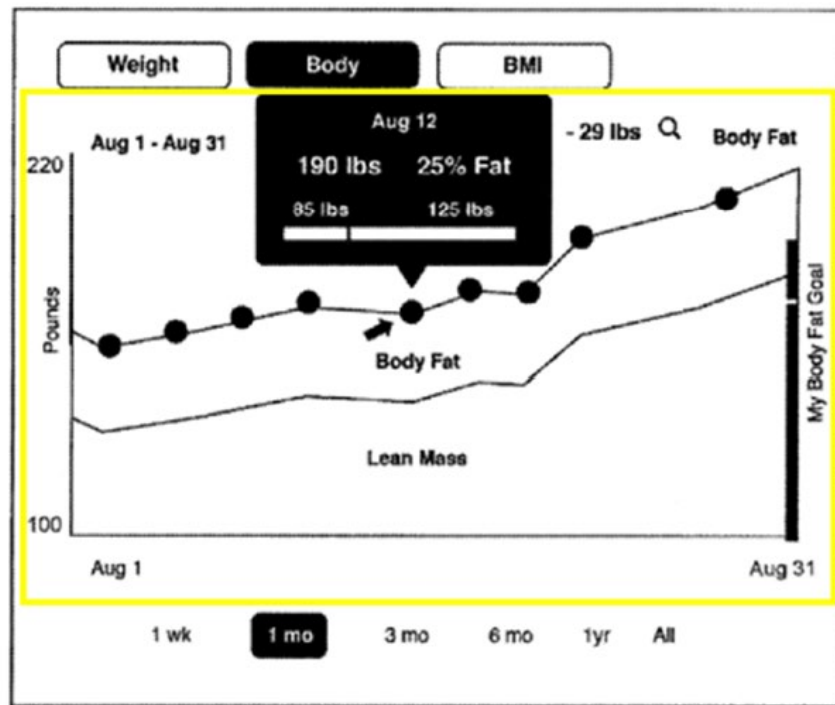


FIGURE 7B

Above is Yuen’s Figure 7B, which is an illustration of a format and presentation of biometric-type data and content in a user interface (Ex. 1007,

5:15–17), with Petitioner’s annotation of a yellow box around what Petitioner contends is “a graph representation of a sub-category of wellness data.” Pet. 69, 71. In the alternative, Petitioner, relying on its contentions made in the first ground, asserts that Molettiere discloses, via Figure 8, “that the data collected from an activity monitoring device may be graphically displayed in a user interface.” *Id.* at 69 (citing Pet. §VII.A.1.iv; Ex. 1003 ¶¶ 499–500); *see* Ex. 1003 ¶ 499 (Dr. Rosenberg opining that Molettiere’s Figure 8 discloses the recited graph representation).

For the “selectable data sharing option” of element 1.c.ii, Petitioner contends that Yuen discloses, through the text of its specification, enabling and disabling the ability to collect data and the ability for destinations to receive data, and further contends that, “[a]ccordingly, a POSITA would have understood that the user could control the type of physiologic information collected and/or shared by the biometric device via use of a ‘selectable data sharing option.’” Pet. 72–73 (citing Ex. 1003 ¶¶ 513–517; Ex. 1007, 10:30–40, 12:24–33). Petitioner does not cite to any figure of Yuen for the “selectable data sharing element.” *See id.* In the alternative, Petitioner, again relying on its contentions made in the first ground, asserts that Molettiere discloses, via Figure 16, “user interfaces for configuring a device to collect data that include selectable data sharing options.” *Id.* at 73 (citing Pet. §VII.A.1.vi; Ex. 1003 ¶ 519–524); *see* Ex. 1003 ¶ 519 (Dr. Rosenberg opining that Molettiere’s Figure 16 discloses the recited selectable data sharing option).

For independent claim 23, Petitioner relies on its contentions made for the corresponding elements of independent claim 1. *See* Pet. 85–86.

Patent Owner persuasively argues that Petitioner is “[f]ocusing on Yuen’s general capability to share monitoring data” rather than a particular interface, and that “[Petitioner] never explains how any of the alleged sharing and/or control capabilities are present in Yuen’s Figure 7B interface—the interface [Petitioner] contends shows the recited ‘detailed view’ feature and ostensibly includes the recited ‘graph representation.’” Prelim. Resp. 15–16. We agree with Patent Owner’s argument that Petitioner does not show adequately how Yuen discloses or suggests an interface with a single detailed view having both a graph representation and a selectable data sharing option. *Id.* at 16. And, as discussed above, Petitioner has not shown adequately that Molettiere discloses or suggests the recited “detailed view.” *See supra* Section II.D.2; *see also* Prelim. Resp. 16–17. We also agree with Patent Owner’s argument that Petitioner “fails to explain why or how a POSITA would have been motivated to combine Yuen and Molettiere in a way that would address this aspect of the claim language.” Prelim. Resp. 16–17 (citing Pet. 61–65).

Accordingly, we determine that Petitioner has not shown adequately how Yuen in light of Molettiere renders obvious the claimed subject matter having a detailed view comprising both recited components. We determine that Petitioner has not demonstrated a reasonable likelihood of prevailing on its challenge to independent claim 1 and independent claim 23 as obvious over Yuen and Molettiere. For the same reasons, we determine that Petitioner has not demonstrated a reasonable likelihood of prevailing in its challenge to dependent claims 9–11, 18, 20–22, 32–34, 41, and 43–45 as obvious over Yuen and Molettiere.

III. CONCLUSION

Petitioner has not demonstrated that there is a reasonable likelihood of establishing the unpatentability of any of the challenged claims of the '898 patent.

IV. ORDER

For the foregoing reasons, it is

ORDERED that the Petition is *denied* and no trial is instituted.

IPR2023-01434
Patent 10,270,898 B2

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