UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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NIKE, INC.,
Petitioner,

v.

MAYFONK ATHLETIC, LLC,
Patent Owner.

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Case IPR2015-00655
Patent 8,860,584 B1

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Before SALLY C. MEDLEY, KARL D. EASTHOM,
and JASON J. CHUNG, *Administrative Patent Judges.*

EASTHOM, *Administrative Patent Judge.*

DECISION
Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

Petitioner filed a Petition requesting an *inter partes* review of claims 3–27 of U.S. Patent No. 8,860,584 B1 (Ex. 1001, "'854 patent"). Paper 1 ("Pet."). Patent Owner filed a Preliminary Response. Paper 6 ("Prelim. Resp."). We have jurisdiction under 35 U.S.C. § 314.

Under 35 U.S.C. § 314(a) ("*Threshold*"), "the Director may not authorize an *inter partes* review . . . unless the Director determines . . . there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition." Considering the Petition and Preliminary Response, we determine that Petitioner has met the threshold by establishing a reasonable likelihood of prevailing in showing the unpatentability of challenged claims. Accordingly, we institute *inter partes* review of claims 3–27.

A. Related Proceedings

According to Petitioner, Patent Owner asserts infringement by Petitioner of claims in the '584 patent and a related parent patent, U.S. Patent No. 8,253,586 B2, in *Mayfonk, Inc. v. Nike*, Inc. No. 3:14–cv–00423– MO (D. Ore.). *See* Pet. 1. Petitioner also filed a petition seeking *inter partes* review of claims 3, 4, 6–13, 15–27 of the '584 patent in Case IPR2015-00656, a decision for which issues concurrently herewith.

B. The '584 Patent

The '584 patent describes network systems for tracking and sharing athletic data. Ex. 1001, Abstract. In one embodiment, the system involves the following major components: sensor 440 and computing unit 430 that an athlete may wear for gathering and transmitting athletic data, an external personal computing device 410 communicating with sensor 440 and

computing unit 430, and "Mayfunk" website 400 communicating with multiple external personal computing devices for sharing data from various athletes. *See id*. at Fig. 4, 7:14–47.
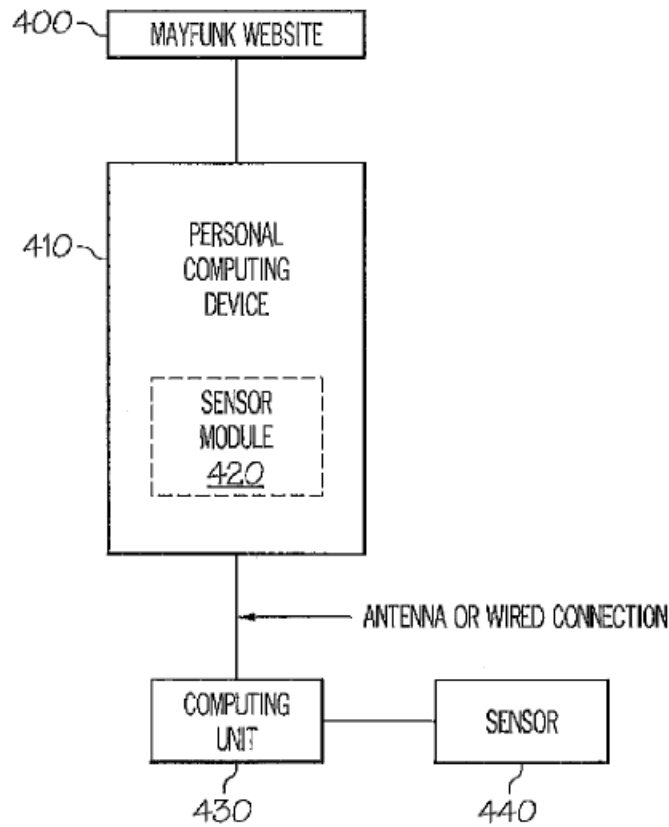
Figure 4 of the '584 patent follows:

FIG. 4

Figure 4 depicts sensor 440, computing unit 430, external computing unit 430, and Mayfunk website 400.

In a general reading of some elements of claim 3 (listed below) on Figure 4, "computing unit" 430 is "configured to transmit and receive electrical signals relating to athletic performance parameters" that "at least one sensor" 440 is "configured to generate." "[C]omputing unit" 430 is "specifically paired" with "external computing device" 410. Finally,

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"remote server" 400 connects to "external computing device" 410 and stores

"activity data" uploaded therefrom.

C. Challenged Claims 3 and 21

3. A system for tracking athletic movements comprising:

computing unit configured to transmit and receive electrical signals relating to athletic performance parameters;

at least one sensor configured to generate electrical signals relating to athletic performance parameters from physical movement, wherein said at least one sensor and said computing unit are communicatively connected to enable the computing unit to receive electrical signals generated by said at least one sensor in real time;

at least one external computing device configured to communicate electrical signals relating to athletic performance parameters with said computing unit, wherein said at least one external computing device and said computing unit are specifically paired, defined by at least one of a wired serial connection and wireless bonding which enables the computing unit to authenticate the identity of the external computing device prior to communicating electrical signals therewith; and

a remote server communicatively connected to said external computing device through a computer network, wherein said external computing device is operable to automatically upload activity data, defined as data generated from electrical signals relating to athletic performance parameters from the physical movement of the at least one sensors, over said network and said server stores said activity data, enabling interactive subscriber communication whereby uploaded activity data can be retrieved over the computer network.

21. A social networking system for the sharing of athletic statistics comprising:

a plurality of measurement apparatus, each a having computing unit which is associated with one or more sensors,

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wherein said computing unit is configured to control the operation of associated sensors and acquire athletic statistic data defined as electrical signals relating to the physical movement or orientation of associated sensors;

a server connected to a computer network, wherein said service is configured to provide for real time automated storage of athletic statistic data acquired by a plurality of computing units and retrieval;

at least one personal processing unit configured to receive athletic statistic data relating to a plurality of measurement apparatus from the server over the computer network, wherein the at least one personal processing unit is configured to receive stored athletic statistic data through a personal computing client software application; and

wherein the personal computing client software application additionally enables the at least one personal processing unit to be operable to configure at least one of said computing units to control the operation of associated sensors and acquire athletic statistic data through the uploading of activity programs to said computing units.

D. Claim Challenges—35 U.S.C. § 103(a)

Petitioner challenges the claims of the '584 patent on the following pre-AIA grounds.[1] *See* Pet. iii.

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[1] The Leahy-Smith America Invents Act ("AIA"), Pub. L. No. 112-29, 125 Stat. 284 (2011), revised 35 U.S.C. §§ 102 and 103, effective March 16, 2013, after the effective filing date of the '584 patent.

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