

# EXHIBIT C

Serial No.: 12/211,033

### **REMARKS**

Claims 1-18 were pending in this application. Claims 1-3, 7-9, 12, 14, 15, and 17 have been amended, claim 5 has been cancelled, and claims 19-21 have been added. Support for these amendments is described below. Reconsideration and allowance of all pending claims are respectfully requested.

#### **Interview**

Applicant would first like to thank the Examiner for the courtesy of an interview conducted March 8, 2010. The amendments to the claims were discussed, particularly the distinction between physiologic data and data indicating an amount of exercise performed, and the Examiner noted that Applicant's suggested claim amendments would further clarify what Applicant regards as the invention, obviating the definiteness rejections. The corresponding amendments are found in the independent claims, as well as in dependent claims 7 and 12. Dependent claim 17 was also discussed, and an amendment has been made (and new claim 19 added) to address the rejection. In the discussion of the prior art, Applicant noted how Brown failed to disclose a system and method where data indicating a physiologic status of a subject is received while the subject is exercising, and the Examiner indicated that this would likely be a patentable distinction, and that the same would also likely overcome the double-patenting rejection. The Examiner noted the importance for such amendments that the same be supported by the original disclosure. Additional specific discussions are referenced in the remarks below.

Applicant has made the claim amendments noted, and further pointed out where the same are based on the original disclosure. Consequently, Applicant submits that all the claims are currently in condition for allowance.

#### **Objection to the Information Disclosure Statement**

In the current Office Action, the Examiner states that the information disclosure statement filed May 11, 2009 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

Serial No.: 12/211,033

The Examiner's direction is brought to the transmittal letter which was filed along with the Information Disclosure Statement on May 11, 2009 wherein Applicant noted that all of the references cited therein (for which a copy was not provided) were filed in one of the following four parent applications: 11/649,703, 10/418,845, 09/738,270, 11/184,274. For this reason, copies of the non-US and NPL references were not required. The Examiner is therefore requested to consider the Information Disclosure Statement filed May 11, 2009.

### **Objection due to informalities**

Claim 15 is objected to because in line 1 there is an extra space between "medium" and the comma. The examiner suggestion removing the extra character space from the claim to read, e.g. "medium,". This informality has been obviated by amendment.

### **Rejection under 35 U.S.C. 101**

Claims 8-15 are rejected under 35 U.S.C. 101 because the claims recite a computer readable medium, and the phrase "computer readable medium" was allegedly never explicitly defined in the specification. This subject was discussed in the interview, and the Examiner noted the letter issued by the Director on January 26, 2010, regarding "Subject Matter Eligibility of Computer-Readable Media". Applicant has amended the claims to more specifically recite and define the claimed computer-readable media. These amendments find support in the originally-filed specification as follows. The amendment to claim 8 finds support at, at least, paragraphs [0026] and [0062], which discusses a software program physically resident on a server. The amendments to claims 14 and 15 find support at, at least, paragraph [0025], which discusses the use of memory for storage of applications within a wireless web device.

### **Rejections under 35 U.S.C. 112, second paragraph**

Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

Applicant has made further amendments to clarify the distinction between the two types of data, data indicating a physiologic status of a subject and data indicating an amount of exercise performed by the subject, as well as clarifying that the data indicating a physiologic status of a subject is received at least partially while the subject is exercising. The data indicating a physiologic status of a subject is exemplified in new dependent claims 20 and 21,

Serial No.: 12/211,033

and data indicating an amount of exercise performed by the subject is exemplified in amended dependent claims 7 and 12. By way of support, Applicant notes that plural types of data are noted in several locations, e.g., paragraphs [0013] (“Various health parameters... may be entered into a health monitoring device...”), [0016] (“...the system may be employed to monitor the physiologic status of a healthy subject while eating, exercising...”, emphasis added), [0063] (“In a highly interactive embodiment, a patient may have numerous HMDs 11 connected via optional adaptors to a WWD 12, and wireless application 70 may correspondingly send a large amount of health data to server application 62.”)<sup>1</sup>, and [0075] (“Referring to FIG. 6, an example is given for a system of health, nutrition, and/or exercise management.”, emphasis added).

Regarding other second paragraph rejections, an amendment to claim 17 removes the offending Bluetooth® term, the amendment finding support in paragraph [0052], and Bluetooth® per se is replaced by 802.15, which is the protocol associated with the Bluetooth® specification. In addition, Applicant has amended claim 2, this amendment finding support in paragraph [0076].

Applicant submits that the above claim amendments better clarify what he regards as the invention, and respectfully requests that the 35 U.S.C. §112 ¶2 rejections of these claims be withdrawn.

### **Rejection under 35 U.S.C. 102(b)**

Claims 1-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Brown US Patent Number 5,997,476. This rejection is traversed with respect to the amended claims as follows, this traversal tracking the arguments Applicant made in the interview.

Applicant first submits that the Brown reference is deficient as an anticipatory reference because the same fails to disclose monitoring exercise data. While Brown discloses that the reference is broader than just medical monitoring (4:23-35), the reference never discloses any use of the device in the exercise field. Applicant next submits that while the Brown reference discloses receiving data from more than one health monitor (device jacks 68A-C), it fails to disclose receiving data indicating a physiologic status of a subject at least partially while the subject is exercising (and where data indicating an amount of exercise performed by the subject is also being received). At most, Brown discloses receiving data with “*multiple device*

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<sup>1</sup> Note that the teachings of the “medical” embodiment were extended to the “exercise” embodiment in paragraph [0081].

Serial No.: 12/211,033

*interfaces to accommodate monitoring devices which have different connection standards.”*  
(6:47-50).

In fact, Applicant submits that even if systems were developed that modeled exercise data in a better way based on physiologic data, the same would require additional data inputs, e.g., type of exercise performed, that Brown fails to disclose.

For at least these reasons, Applicant submits that the claims are not anticipated by Brown, and further respectfully requests that the 35 U.S.C. §102 rejections of these claims be withdrawn.

### **Nonstatutory Double Patenting Rejection**

Claims 1-12 are rejected under the judicially created doctrine of obviousness-type double patenting as being allegedly unpatentable over claims 3-6, and 33-43 of U.S. Patent No. 6,602,191. In particular, the Examiner states that although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been allegedly obvious to one of ordinary skill in the art at the time of the invention to implement the method of the patent in the manner set forth in the instant application since the claims of the instant application are allegedly merely different renditions of the patented method and computer readable medium.

This rejection is traversed with respect to the amended claims as follows, this traversal again tracking the arguments Applicant made in the interview. Applicant submits that the current claims are nonobvious over the claims noted for many of the same reasons they distinguish from Brown. In particular, the claims noted fail to disclose receiving data indicating a physiologic status of a subject at least partially while the subject is exercising (and where data indicating an amount of exercise performed by the subject is also being received).

For at least these reasons, Applicant submits that the claims are not obvious over the noted claims of U.S. Patent No. 6,602,191, and further respectfully requests that the double-patenting rejections of these claims be withdrawn.

### **Conclusion**

Should the Examiner be of the view that an interview would expedite consideration of the application, request is made that the Examiner telephone the Applicants' attorney at (619) 818-4615 in order that any outstanding issues be resolved.

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