

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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APPLE INC.,  
Petitioner,

v.

UNILOC LUXEMBOURG, S.A.,  
Patent Owner.

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Case IPR2018-00294  
Patent 6,736,759 B1

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Before SALLY C. MEDLEY, JOHN F. HORVATH, and  
SEAN P. O'HANLON, *Administrative Patent Judges*.

O'HANLON, *Administrative Patent Judge*.

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

## I. INTRODUCTION

Apple Inc. (“Petitioner”) filed a Petition for *inter partes* review of U.S. Patent No. 6,736,759 B1 (Ex. 1001, “the ’759 patent”). Paper 1 (“Pet.”), 1. Uniloc Luxembourg S.A. (“Patent Owner”) filed a Preliminary Response. Paper 6 (“Prelim. Resp.”).

Institution of an *inter partes* review is authorized by statute only when “the information presented in the petition . . . and any response . . . 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). For the reasons set forth below, upon considering the Petition, Preliminary Response, and evidence of record, we conclude the information presented shows there is a reasonable likelihood that Petitioner would prevail in establishing the unpatentability of at least one claim of the ’759 patent.

### A. Related Matters

The parties indicate that the ’759 patent is the subject of the following litigation: *Uniloc USA, Inc. v. Apple Inc.*, No. 2-17-cv-00708 (E.D. Tex. filed Oct. 20, 2017). Pet. 5; Paper 4, 2.

Petitioner also states that the ’759 patent was previously at issue in *Paragon Solutions, LLC v. Timex Corp.*, No. 1:06-cv-677 (S.D. Ohio 2008), *vacated*, 566 F.3d 1075 (Fed. Cir. 2009). Pet. 5–6.

### B. The Challenged Patent

The ’759 patent discloses a monitoring system including an electronic positioning device and a physiological monitor for use in a variety of

physical activities. Ex. 1001, 1:8–15, 6:37–60. Figure 3, shown below, illustrates an embodiment of the monitoring system. *Id.* at 8:49–51.

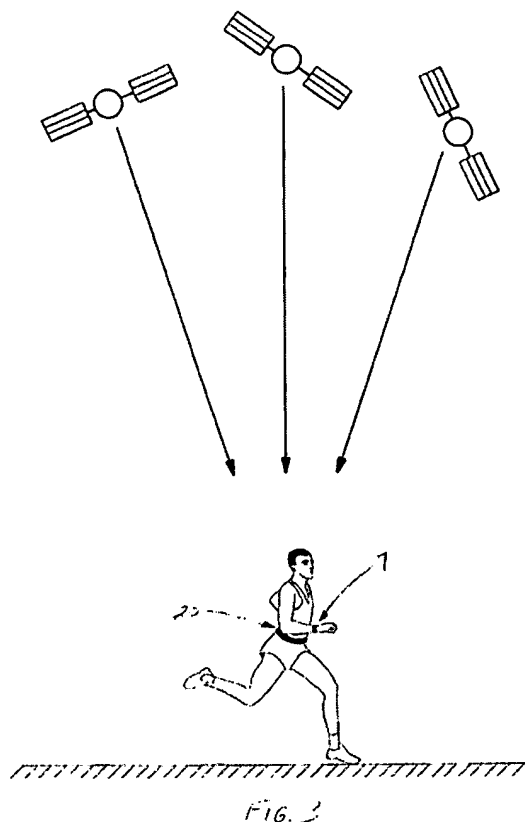


Figure 3 “depicts a human subject performing a physical activity using one embodiment of a monitoring system of the present invention,” including display unit 7 and data acquisition unit 20. *Id.* at 2:17–19, 8:51–55.

The electronic positioning device, which may be a global positioning system (“GPS”) device, receives electromagnetic signals from three or more sources to track at least one of the user’s location, altitude, heading, velocity, pace, or distance traveled. *Id.* at 3:8–10, 7:35–39, 9:16–39. The physiological monitor, which may be an oximeter or a heart rate monitor, acquires physiological data from the user, such as the user’s blood oxygen

level or heart rate. *Id.* at 6:56–60, 9:40–67. The determined position and physiological data are transmitted to a separate display unit for real-time display to the user or other individual monitoring the user’s performance of a physical activity. *Id.* at 6:39–41, 7:43–46, 51–54. The display unit may include one or more alarms that are activated if a measured data value departs from a predetermined limit or range. *Id.* at 16:39–67.

### *C. The Challenged Claims*

Petitioner challenges claims 1–32 (all claims) of the ’759 patent. Claims 1 and 29 are independent. Claim 1 is illustrative of the challenged claims and is reproduced below:

1. An exercise monitoring system, comprising:
  - (a) a data acquisition unit comprising an electronic positioning device and a physiological monitor, said data acquisition unit configured to be worn by a subject performing a physical activity; and
  - (b) a display unit configured for displaying real-time data provided by said electronic positioning device and said physiological monitor, said display unit separate from said data acquisition unit;wherein said display unit is configured to be worn by the subject, worn by someone other than the subject, or attached to an apparatus associated with the physical activity being performed by the subject so as to be visible to the subject while performing the physical activity, and  
further wherein said system is configured such that said display unit displays real-time data comprising at least one of a subject’s location, altitude, velocity, pace, and distance traveled.

### *D. Asserted Grounds of Unpatentability*

Petitioner asserts the following grounds of unpatentability:

References	Basis <sup>1</sup>	Challenged Claim(s)
Fry <sup>2</sup> and Newell <sup>3</sup>	35 U.S.C. § 103(a)	1–7, 9, 12, 14, 17–22, and 26
Fry, Newell, and Arcelus <sup>4</sup>	35 U.S.C. § 103(a)	20 and 22–23
Fry, Newell, and Richardson <sup>5</sup>	35 U.S.C. § 103(a)	9 and 29–31 <sup>6</sup>
Fry, Newell, Richardson, and Arcelus	35 U.S.C. § 103(a)	32
Fry, Newell, and Chance <sup>7</sup>	35 U.S.C. § 103(a)	4, 13, 15, 16, 27, and 28
Fry, Newell, and French <sup>8</sup>	35 U.S.C. § 103(a)	24 and 25
Vock <sup>9</sup> and Arcelus	35 U.S.C. § 103(a)	1–5, 8–12, 14, 17, and 19–26
Vock, Arcelus, and Richardson	35 U.S.C. § 103(a)	6

<sup>1</sup> The '759 patent was filed on November 9, 1999, prior to the date when the Leahy-Smith America Invents Act ("AIA") took effect.

<sup>2</sup> US 6,002,982 (filed Nov. 1, 1996, issued Dec. 14, 1999) (Ex. 1004, "Fry").

<sup>3</sup> US 6,466,232 B1 (filed Dec. 18, 1998, issued Oct. 15, 2002) (Ex. 1005, "Newell").

<sup>4</sup> US 6,149,602 (filed Mar. 29, 1997, issued Nov. 21, 2000) (Ex. 1008, "Arcelus").

<sup>5</sup> US 5,976,083 (filed July 30, 1997, issued Nov. 2, 1999) (Ex. 1007, "Richardson").

<sup>6</sup> Although claim 32 is listed as being included in this grounds (Pet. 8), the claim is not addressed in the analysis section (*see id.* at 32–38).

<sup>7</sup> US 5,564,417 (issued Oct. 15, 1996) (Ex. 1009, "Chance").

<sup>8</sup> WO 97/17598 (published May 15, 1997) (Ex. 1010, "French").

<sup>9</sup> US 6,539,336 B1 (filed June 2, 1998, issued Mar. 25, 2003) (Ex. 1006, "Vock").

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