

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

iFIT, INC.,	)	
	)	
Plaintiff and	)	
Counterclaim Defendant,	)	
	)	C.A. No. 20-1386-RGA
v.	)	
	)	
PELOTON INTERACTIVE, INC.,	)	
	)	
Defendant and	)	
Counterclaim Plaintiff.	)	

**JOINT CLAIM CONSTRUCTION BRIEF**

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## I. Representative Claims

1. An exercise device configured to enable the interaction of a user, the exercise device comprising:

(a) an exercise mechanism comprising a movable element for movement in performance of exercise by a user, the exercise mechanism having one or more operating parameters;

(b) *interface means, communicating with the exercise mechanism, for gathering a first signal from the user;*

(c) *communicating means, communicating with the interface means, for receiving a packetized second signal from a remote source over a network, the packetized second signal including one or more packetized control signals; and*

(d) *means, responsive to the packetized second signal, for controlling the operating parameters of the exercise mechanism.*

29. An exercise device configured to enable interaction of a user, the exercise device comprising:

(a) an exercise mechanism comprising a movable element for movement in performance of exercise by a user, the exercise mechanism having one or more operating parameters;

(b) at least one user interface device, communicating with the exercise mechanism, the at least one interface device gathering a first signal from the user;

(c) a communicating mechanism, communicating with the user interface device, the communicating mechanism receiving a *packetized* second signal from a remote source over a network, the *packetized* second signal including one or more *packetized control signals*; and

(d) *a controller, responsive to the packetized second signal, configured to control the operating parameters of the exercise mechanism.*

49. An exercise device configured to enable a user to receive workout-related information, comprising:

(a) an exercise mechanism comprising a movable element for movement in performance of exercise by a user;

(b) a user interface device communicating with the exercise mechanism and configured to gather one or more user *control signals* from the user;

(c) a communicating mechanism in communication with the user interface device and adapted to enable transmission of the user *control signals* to a remote communication system, the communicating mechanism being further adapted to



receive a *packetized* second signal including synchronized *control signals* from the remote communication system;

(d) means for reproducing the second signal; and

(e) means, responsive to the synchronized control signals carried by the second signal, for controlling the operating parameters of the exercise mechanism.

78. An exercise device for enabling one or more users to select and perform an exercise program stored on a communication system, the exercise device comprising:

(a) an exercise mechanism comprising a movable element for movement in performance of exercise by a user, the exercise mechanism being configured to enable a user to exercise in response to an exercise program selected from one or more exercise programs stored on a remote communication system in network communication with the exercise mechanism; and

(b) control means, communicating with the exercise mechanism, for receiving one or more packetized control signals from the remote communication system indicative of the selected exercise program and for changing one or more operating parameters of the exercise mechanism based upon the selected exercise program and the one or more packetized control signals.

## **II. Introduction**

### **A. iFIT's Introduction**

#### **1. The '062 Patent**

The '062 Patent (JCCC Ex. A) is directed 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.” (JCCC Ex. A, 1:19–22.) The '062 Patent identifies objects of the invention as:

improv[ing] home exercise equipment by providing home exercise devices that are capable of simulating a group or class workout environment and synchronizing operation of the exercise devices with exercise programming;

provid[ing] an improved exercise machine that facilitates live, interactive communications between a treadmill user at home and a trainer or coach in a remote location, and which enables the trainer or coach to control the operating parameters of the user's treadmill on a live, real time basis.

(*Id.* at 2:28–32; 3:10–15.) The patent describes how the invention is “particularly well suited to devices that utilize one or more motors and/or other electrically driven actuators **that control** one or more operating parameters of a device, such as an exercise device.” (*Id.* at 3:22–25) (emphasis added). The patent also describes how **the present invention** of the ’062 Patent is specifically directed to controlling operating parameters via one or more motors or other electrically driven actuators (*Id.* at 5:66–6:2; 6:5–13).

## **B. Peloton’s Introduction**

iFIT commenced this action on October 15, 2020 and simultaneously filed for a preliminary injunction. (D.I. 1, 7-13.) iFIT argued it was entitled to injunctive relief due to Peloton’s alleged infringement of claim 47 of the ’062 Patent (which depends from claim 29). (D.I. 8.) Claim 29 recites “one or more packetized ***control signals***.” (JCCC Ex. A, , cl. 29(b).) Peloton opposed, arguing that claim 47 was invalid and not infringed. (D.I. 43-50.) As Peloton noted, iFIT and its expert took inconsistent positions with respect to the claimed “control signal” for purposes of infringement and invalidity. (D.I. 97 at 32:15-25, 33:1-3; D.I. 74 (“Easttom Declaration”), ¶¶ 85-86.) The prior art at issue was U.S. Patent No. 6,152,856 to Studor, which teaches an exercise bicycle that receives packetized “terrain data” containing information about the slope of the exercise course, which it converts to a local resistance value. (D.I. 169, Ex. K). iFIT’s expert, Dr. Easttom, opined that Studor’s “terrain data” failed to disclose the claimed “control signal” because the “control signal ... is ***not*** mere raw data that undergoes ***further calculation or processing locally*** before it can control operating parameters of an exercise device.” (Easttom Declaration, ¶¶ 85-86.) This Court agreed with Peloton that “Dr. Easttom’s invalidity analysis is inconsistent with the conclusion that the [operation of the accused product] can satisfy claim 29,” and denied iFIT’s request for preliminary injunction. (D.I. 103.)

On April 23, 2021, iFIT filed its Patent Owner Preliminary Response (“POPR”) to Peloton’s petition for *inter partes* review, challenging the validity of claim 47 (and 29) of the ’062 Patent based on Studor. In the POPR, iFIT doubled down on its narrow view of “control signal,” arguing that “the purportedly packetized ... ‘terrain data’ ... ***are not ‘control signals’ because this raw data is only later used locally to calculate a control signal*** (e.g., a resistance level), after the raw data has been unpackitized.” (D.I. 169 Ex. H (“POPR”), 25.) iFIT explained that unlike the claimed “control signal,” Studor’s terrain data could not “***on its own***” control the operating parameters:

[T]his ‘terrain data’ or ‘terrain characteristic information’ is not, ***on its own***, designed to control one or more operating parameters of an exercise device. Instead, Studor clearly teaches that this ‘terrain characteristic information’ or ‘terrain data’ is raw data .... ***The raw data***, after being received by the local computer system 16, ***must be first used in a local calculation by the local computer system 16 to generate a resistance level*** that can be used to control an exercise device.

(POPR, 24.). iFIT reiterated its narrow interpretation of “control signal” in its Patent Owner Response (“POR”), arguing Studor’s control data “***itself*** is not able to control operation of the exercise device.” (D.I. 169 Ex. I, (“POR”) 40; *id.*, 38.)

There are seven claim terms in dispute. Only Peloton’s proposed constructions are consistent with the claim language, the specification and file history, and accurately reflect the way a person of ordinary skill the art (“POSA”) would understand them.

### C. iFIT’s Reply Introduction

To try and justify Peloton’s unsupported positions, it relies on a 95 page, 222 paragraph expert declaration served with its Answer Brief, extending its page limit nearly 400% without permission. (*see* D.I. 103, p. 4 n.2 (wherein the Court indicated disapproval for extending page limits via expert declarations)). Peloton’s expert declaration is nothing more than an attempt to override what is disclosed in the intrinsic record, which the Federal Circuit has stressed repeatedly

is the best guide for claim construction. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1318 (Fed. Cir. 2005) (“a court should discount any expert testimony ‘that is clearly at odds with the claim construction mandated by the claims themselves, the written description, and the prosecution history, in other words, with the written record of the patent.’”)

#### D. Peloton Sur-Reply Introduction

iFIT wrongly argues that Peloton extended its “page limit” without permission, simply by providing an expert’s declaration. iFIT cites the Court’s earlier order admonishing iFIT for putting substantive arguments in expert declarations, submitting briefs with only “conclusory assertion[s] and no analysis.” (D.I. 103, 4.) Peloton has done nothing of the sort, having fully disclosed and explained its arguments in its briefing, supported properly by expert testimony.

### III. Agreed-Upon Constructions

Claims	Patents/Claims	The parties have agreed to the following construction:
A free weight assembly comprising	’211:1	Preamble is limiting
Means for reproducing the second signal	’062:21, 22, 23, 49, 59	Subject to 35 U.S.C. § 112 ¶ 6  <b>Function:</b> “reproducing the second signal”  <b>Structure:</b> output devices

### IV. Disputed Constructions

#### A. “Packetized”

Claim Term	iFIT’s Proposed Construction	Peloton’s Proposed Construction
“packetized”	“data that has been manipulated into one or more packets according to a packet switching protocol for transmission via a network”	“data that has been manipulated into one or more packets according to a packet switching protocol for transmission via network [16]”

## 1. Plaintiff's Opening Position

There is no real dispute that “packetized” means “data that has been manipulated into one or more packets according to a packet switching protocol for transmission via a network.” While Peloton insists that the construction refer to “transmission *via network [16]*,” this is a distinction without a difference. The specification makes clear that “network 16” can be any network:

[N]etwork 16 [] is a communication network that enables various hardware and software modules and devices to communicate with one another. ***Network 16, therefore, may be a local area network (LAN), wide area network (WAN), wireless network, packetized network, real-time network, and the like.***

(JCCC Ex. A, 6:29–34) (emphasis added). During the parties’ meet and confer, Peloton agreed that “packetized” should not be literally limited to the exemplary “network [16]” of the claims. Moreover, under Peloton’s proposed construction the fact finder would need to review the specification to define “network[16],” at which point they would arrive at iFIT’s proposed construction.

## 2. Defendant's Answering Position

The parties agree that the specification expressly defines “packetized.” (JCCC Ex. A, 16:42-47 (“The term ‘packetized’, ‘packetizing’, and the like, ***as used herein will mean*** data that has been manipulated into one or more packets according to a packet switching protocol for transmission via network 16”).) The sole dispute is whether the data is packetized for transmission over (1) ***any*** network, even a network different from the one required by the claims, as iFIT proposes (*Supra* Section IV.A.1,) or (2) the ***same*** network recited by the claims, as Peloton proposes by referring to “network [16].” Only Peloton’s construction naturally aligns with the claims and adopts the specification’s explicit (and controlling) definition: “data that has been manipulated into one or more packets according to a packet switching protocol for transmission

*via network 16.*”<sup>1</sup> (JCCC Ex. A, 16:42-47.) *Martek Biosciences Corp. v. Nutrinova, Inc.*, 579 F.3d 1363, 1380 (Fed. Cir. 2009) (“When a patentee explicitly defines a claim term in the patent specification, the patentee’s definition controls”).

“[N]etwork 16” is the only network referenced in the definition of “packetized” and the only network used to transmit the control signal from the remote source. (JCCC Ex. A, 16:49-17:6.) Thus, the correct construction, whether expressly including reference numeral 16 or not, must make clear that the data is manipulated into packets according to a packet switching protocol for transmission over the *same* network recited by the claim to transmit the control signal from the remote source. iFIT complains about the patent’s *own use* of “network 16” in its definition of “packetized,” but another acceptable way to construe the term would be to simply replace “network 16” with “the network that receives the second signal.” This would lead to the construction: “data that has been manipulated into one or more packets according to a packet switching protocol for transmission over *the network that receives the second signal.*” Either this construction or the patent’s express definition are acceptable to Peloton.

iFIT’s construction, in contrast, adds another unclaimed and never described “network” to claims that already recite “a network,” creating ambiguity by using the same term twice in a way that permits the data to be packetized according to a protocol for any network, even one different from the claimed network. Inserting iFIT’s construction into the claim reveals this:

(c) ... receiving a ~~packetized~~ data that has been manipulated into one or more packets according to a packet switching protocol for transmission via a network second signal from a remote source over a network...;

(JCCC Ex. A, cl. 1(c)) (annotated with iFIT’s proposed construction). The specification’s express definition and the claim language itself defy iFIT’s broader construction. A POSA would

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<sup>1</sup> All emphasis in quotes added unless otherwise noted.

understand, in light of the claims and specification, that the data is “packetized” according to the protocol for the same network over which it is received, and not a protocol for a different network, as iFIT’s construction would permit. (Ex. D1, ¶¶ 51–64.)

### **3. Plaintiff’s Reply Position**

#### **a. “Packetized”**

“Packetized” should be construed to provide meaning and understanding to a factfinder with respect to what the term means, consistent with the specification. By contrast, Peloton’s construction only adds ambiguity. For instance, Peloton does not appear to dispute that “packetized” should mean “data that has been manipulated into one or more packets according to a packet switching protocol for transmission.” Instead, Peloton argues that this mutually agreed understanding of “packetized” should be limited to a specific “network 16” or “the network that receives the second signal.” (Br. at 6–7.) To the extent Peloton intends to argue that, for something to be “packetized” it needs to utilize a packet switching protocol that is unique to said network (and not for example a more generally applicable protocol) there is no support in the specification for such an understanding. Indeed, a POSITA reading the claims would disagree with Peloton’s understanding, and would understand the term “packetized” consistent with iFIT’s proposed construction. (*See* Ex. P1, ¶¶ 44–53 (hereinafter “Bergeron”).)

Peloton criticizes the reading of the claim if iFIT’s proposed construction is substituted for the word “packetized,” yet approaching claim construction as a simple exercise of substituting language is improper. The readability of the claim fares no better if Peloton’s proposed construction were adopted—as it vaguely and confusingly adds not only iFIT’s proposal but an additional limitation tying packetized to an uncertain network. Perhaps recognizing the untenable position of arguing that “network [16]” should be read into the claims, Peloton now argues that alternatively the words “the network that receives the second signal” should take place of “network

[16].” However, this proposal is unsupported by the specification and it is unclear what it means for a network to “receive a second signal.” The specification discusses transmission of information over networks, but not the specific “receiving” of information by a network. Peloton’s proposal appears less driven by a desire to provide meaning to the term “packetized” and instead provide fodder for undisclosed non-infringement positions.

To the extent Peloton’s argument for limiting the construction to “network [16]” had any merit, the specification makes plain that “network 16” can be any network, and that is how a POSITA would understand it:

[N]etwork 16...’is a communication network that enables various hardware and software modules and devices to communicate with one another. Network 16, therefore, may be a local area network (LAN), wide area network (WAN), wireless network, packetized network, real-time network, and the like.

(JCCC Ex. A, 6:29–34) (Bergeron, ¶¶ 49–50.)

The specification provides the best guide for construing the term, and thus consideration of expert testimony is unnecessary. However, when Dr. Almeroth was pressed on the issue of what “network 16” meant, he was unable to provide a straightforward answer. (*See* Ex. P2, 40:2–6 (“Q: Is there a definition for network 16 in your declaration? A: I’m not sure what you mean—whether or not what’s included in the declaration would constitute a definition for network 16.”); *see also id.* at 39:18–22.

Additionally, were there any doubt that Peloton’s proposed construction is an attempt to hide the ball on non-infringement positions, Dr. Almeroth’s testimony made Peloton’s goal clear. When questioned whether “network 16” itself needed construction, Dr. Almeroth responded “I am not sure. I guess it would depend on whether or not—what iFIT would ultimately point to as network 16 in some sort of *infringement analysis*.” (Ex. P2, 42:9–11) (emphasis added). This admission that the definition of network 16 hinges on *infringement allegations* reveals the



impropriety of Peloton’s proposed construction. *Vita-Mix Corp. v. Basic Holding, Inc.*, 581 F.3d 1317, 1324 (Fed. Cir. 2009) (“Claims are properly construed without the objective of capturing or excluding the accused device.”)

#### 4. Defendant’s Sur-Reply Position

iFIT avoids Peloton’s arguments, attacking strawmen. First, iFIT argues that Peloton’s construction requires “a packet switching protocol that is unique to said network.” (*Supra* Section IV.A.3.a.) But Peloton’s position is that the claimed “second signal” is “packetized” for the network *over which it is received*, i.e., the only network recited by the claims. The specification indisputably defines “packetized” as “data that has been manipulated into one or more packets according to a packet switching protocol for transmission *via network 16*,” not over “*a*” (any) network. (JCCC Ex. A, 16:42-47). Second, iFIT contends that Peloton adds “an additional limitation tying packetized to an uncertain network.” (*Supra* Section IV.A.3.a.) Not so. The claims, like Peloton’s construction, refer to one “network.” (Ex. D1, Almeroth, ¶¶ 54-63.) iFIT ignores the antecedent basis of “*the* network” and adds another “*a* network,” changing the claim’s scope. Third, iFIT argues that “it is unclear what it means for a network to ‘receive a second signal.’” (*Supra* Section IV.A.3.a.) But the claims require “receiving a packetized second signal from a remote source over a network,” whether iFIT finds that “unclear” or not. (JCCC Ex. A, Cl. 1.)

iFIT also argues the issue is moot because “network 16” can be any *type* of network. The parties are not disputing the *type* of network but whether the control signal is “packetized” for the network over which it is received. It is. The patent describes one network for transmitting the claimed control signal: “network 16.” Construing the signal as “packetized” for *any* other second network would incorrectly expand the claims. (Ex. D1, ¶¶ 55-57; Ex. P2, 36:18-37:22; 35:7-23.)

Finally, iFIT accuses Peloton of “hid[ing] the ball on non-infringement positions,” but these are not infringement proceedings, and it is iFIT that takes irreconcilable positions. (*Supra* Section IV.A.3.a.) For infringement, iFIT contends a single “network” satisfies the claims. Conversely, iFIT’s construction of “packetized” requires two different networks. (Ex. D3, 73:4-74:24.) iFIT cannot have it both ways.

## B. “Control signal”

Claim Term	iFIT’s Proposed Construction	Peloton’s Proposed Construction
“control signal”	“data for controlling the operating parameters of the exercise mechanism”	“signal that on its own controls operating parameters of an exercise device, such as speed, resistance, and the like”

### 1. Plaintiff’s Opening Position

#### a. The specification supports iFIT’s proposed construction

The specification unequivocally provides that a control signal is simply **data** for controlling the operating parameters. For example, the specification provides:

The control signals generated by control signal generator are carried on a two (2) kHz carrier signal, with each control signal consisting of two transmission bursts, each burst having three bytes of **data**...The first byte of **data** of each burst, generated by control signal generator, in this illustrative embodiment, **indicates the desired speed of the treadmill**, while the second byte of **data indicates the desired incline of the tread base**...For other exercise devices the first and second bytes may represent **other operating parameters**, like resistance of an elliptical device or cycle device.

(JCCC Ex. A, 20:59–21:5) (emphasis added). Peloton’s construction effectively excludes “data” for controlling operating parameters despite examples from the specification where such data is the relevant “control signal.” (*see e.g.*, JCCC Ex. A, 13:1–12; 16:27–17:6).

Peloton seeks a narrow construction of this term in an attempt to avoid infringement by arguing that in its system, packetized control signals do not “on their own” control the operating

parameters (and that the operating parameters are instead controlled by controllers such as motors). But the specification contains no such requirement. To the contrary, the specification is replete with embodiments where an intermediate computer receives a packetized control signal with data for controlling an operating parameter prior to a controller (e.g. motor, solenoid, or other actuator) controlling the operating parameters of a piece of equipment:

Following manipulation of the control signals to obtain the control instructions, treadmill processor 220 performs the control process on the various components of treadmill 12 as dictated by the control instructions. For example, treadmill processor 220 may cause motor 46 to speed up thereby accelerating belt 42 or alternatively cause motor 60 to rotate thereby raising or lowering tread base 26.

(*Id.* at 26:64–27:3).

**b. There is no basis for adding “on its own”**

Peloton’s proposed construction contradicts the disclosure of the specification and the context of the claims (which require a **packetized signal**).

It appears that Peloton intends to argue that “on its own” should be read into the claims based on iFIT’s discussion of the “Studor” prior art reference in the Patent Owner Preliminary Response (“POPR”) filed in the co-pending IPR against the ’062 Patent.<sup>2</sup> Specifically, iFIT explained how “Studor clearly teaches that this ‘terrain data’ or ‘terrain characteristic information’ is *not*, on its own, designed to *control* one or more operating parameters of an exercise device.” (JCCC Ex. H at 24) (emphasis in original).

This statement, however, was **not** made in the context of construing “control signal” and was simply an (accurate) characterization of Studor that is consistent with iFIT’s proposed construction here. Studor’s “terrain data” or “terrain characteristic information” is not “data for controlling the operating parameters of the exercise mechanism.” (JCCC Ex. I at 36–41). The point

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<sup>2</sup> Despite iFIT’s discussion of Studor in its POPR, the Board nonetheless instituted trial on the IPR.

made during the IPR is that the claimed “control signal” must reflect information **for controlling the operating parameters** of the exercise mechanism, and terrain data does not “on its own” reflect operating parameters. *See id.*

In the IPR, iFIT proposed construing “control signal” as a “signal to control operating parameters of an exercise device, such as speed, resistance, and the like,” which is consistent with its proposal here. (JCCC Ex. I at 7–11). However, before the PTAB there was no dispute between the parties that “data” would meet the “signal” limitation, and therefore no further construction was proposed for “signal.” Indeed, in the IPR Peloton argues that “terrain data” is a form of “control signal.” However, in this litigation Peloton has suggested that data reflecting resistance of the bike would not constitute a “signal,” (*see e.g.*, D.I. 44, ¶ 99) suggesting a present dispute not present in the IPR that must be resolved by the Court. *O2 Micro Int’l Ltd. v. Beyond Innovation Tech. Co., Ltd.*, 521 F.3d 1352, 1360 (Fed. Cir. 2008) (“[w]hen the parties raise an actual dispute regarding the proper scope of the claims, the court, not the jury, must resolve this dispute.”)

## **2. Defendant’s Answering Position**

There are two disputes as to this term: (1) whether the claimed “control signal” controls operating parameters “on its own,” mirroring iFIT’s file history disclaimer, and (2) whether the Court should replace “signal” with “data,” contrary to the specification and iFIT’s own statements.

### **a. The “control signal” controls the exercise device “on its own.”**

In an attempt to escape invalidity, iFIT clearly and unambiguously narrowed the scope of the claimed control signal to a signal that controls operating parameters “on its own.” Now to allege infringement, iFIT cannot recapture the same subject matter that it disclaimed. *Am. Calcar, Inc. v. Am. Honda Motor Co.*, 651 F.3d 1318, 1358-60 (Fed. Cir. 2011) (by distinguishing prior art where “identification ... is brought about in response to the user[’s action],” patentee disclaimed subject matter and “distinguish[ed] the claimed invention as one where the

identification of service providers is *solely* in response to a vehicle condition determined by a processor.”).

Peloton’s construction adopts iFIT’s very words to the Patent Office. iFIT distinguished the claimed “control signal” by requiring the signal to control operating parameters “*on its own*”:

[T]his ‘terrain data’ or ‘terrain characteristic information’ is not, *on its own*, designed to control one or more operating parameters of an exercise device.

(POPR, 24.) iFIT’s disclaimer was unmistakable. iFIT further argued that the “control signal” cannot be used locally to determine or calculate the operating parameter of resistance. (POPR, 25 (“[T]he purportedly packetized ... ‘terrain data’ ... *are not ‘control signals’ because this raw data is only later used locally to calculate a control signal* (e.g., a resistance level), after the raw data has been unpackitized.”).) Similarly, iFIT argued that the prior art “terrain data *itself* is not able to control operation of the exercise device.” (POR, 40; *id.* at 38.) iFIT accordingly disavowed claim scope that would extend beyond a control signal that acts on its own. *Aylus Networks, Inc. v. Apple Inc.*, 856 F.3d 1353, 1362 (Fed. Cir. 2017) (extending “prosecution disclaimer doctrine to IPR proceedings [to] ensure that claims are not argued one way in order to maintain their patentability and in a different way against accused infringers.”).

In an attempt to claw back the claim scope it disavowed, iFIT now argues that its statements to the Patent Office were “*not* made in the context of interpreting ‘control signal.’” (*Supra* Section IV.B.1.b (emphasis original).) Nonsense. iFIT narrowed the scope of “control signal” to distinguish the “terrain data” in Studor that combined with locally generated data to control the operating parameters of an exercise mechanism. (*See, e.g.*, POPR, 23-25.) iFIT told the Patent Office that “Studor fails to teach the *claimed control signal*,” arguing explicitly that the control signal “*itself*” must control the operation of the exercise device, and not be used locally to determine or calculate the operational parameter to control. (POR, 40.)

iFIT further argues it actually meant that Studor’s terrain data does not “on its own” “reflect” *operating parameters*—it did not intend to narrow the scope of “control signal.” (*Supra* Section IV.B.1.b (emphasis omitted).) More nonsense. iFIT expressly stated that the terrain data “is not, on its own, designed to *control* one or more operating parameters.” (POPR, 24 (emphasis original)). Regardless, only iFIT’s statements—not its intent—matter. *Tech. Properties Ltd. LLC v. Huawei Techs. Co.*, 849 F.3d 1349, 1359 (Fed. Cir. 2017) (“[T]he scope of surrender is not limited to what is absolutely necessary to avoid a prior art reference; patentees may surrender more than necessary.”).

iFIT also complains that Peloton’s construction would exclude embodiments in the specification “where an intermediate computer receives a packetized control signal.” (*Supra* Section IV.B.1.a.) First, claims need not encompass all embodiments, particularly where the patentees have disclaimed claim scope. *N. Am. Container, Inc. v. Plastipak Packaging*, 415 F.3d 1335, 1338 (Fed. Cir. 2005) (“[L]imitations may be construed to exclude a preferred embodiment if the prosecution history compels such a result.”). Second, nothing about Peloton’s construction would exclude an “intermediate computer” that receives the claimed control signal “prior to a controller (e.g. motor, solenoid, or other actuator) controlling the operating parameters.”<sup>3</sup> (*Supra* Section IV.B.1.a). Regardless of whether that signal is first received by an “intermediate computer,” that control signal “*on its own*” is what controls the operating parameters. (Ex. D1, ¶¶ 65-85.) Third, the embodiment iFIT relies on is inapposite. The control signal “manipulation” in iFIT’s quoted passage is performed by a “control signal decoder,” (JCCC Ex. A, 26:27-63), which

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<sup>3</sup> And as explained below, iFIT is wrong in its attempt to equate the claim term “controller”—a computer-implemented structure—with a mechanical device such as a “motor, solenoid, or other actuator.” *Infra* Section IV.G.2.

decodes (unpacks) the control signal into its constituent components (“control instructions”); it does not calculate or generate its own control signal. (*Id.*; Ex. D1, ¶¶ 86-92.)

**b. The “control signal” is not mere “data.”**

The Court should not replace the plain English word “signal” with “data.” First, the claim language repeatedly uses “control signal,” not “control data” or “data for controlling.” When the patentees intended to use “data” in the claims, they did—but they chose not to do so in selecting the term “control signal.” (JCCC Ex. A, cl. 85(c) (*e.g.*, “packetized data” and “remote system data”); *id.*, cls. 94, 96.) iFIT argues that “Peloton’s construction effectively excludes ‘data.’” (*Supra* Section IV.B.1.a.) Not so. The control signal may include or contain data for controlling—as Peloton’s construction allows—but the signal is not in and of itself “data for controlling.”

Second, the specification makes clear that a “signal” is not merely “data” and does not use them interchangeably. (*See, e.g.*, JCCC Ex. A, 16:48-58; Ex. D1, ¶¶ 98-101.) The specification explains that packetized signals **include** control data, among other things. (JCCC Ex. A, ’062 Patent, 16:48-49 (“Generally, the packet **contains** the destination address **in addition to the data**.”); Ex. D1, ¶ 98.) Thus, the patent distinguishes between the signal as a whole and the data included in it, describing signals as carrying data.<sup>4</sup> This is consistent with how a POSA would understand the term “signal,” which requires no further construction. (Ex. D1, ¶¶ 93-101.)

Third, iFIT’s statements to this Court and to the Patent Office in IPR confirm that the “control signal” is *not* merely “raw data.” As recited extensively above, iFIT argued that the control signal cannot be just “data” for controlling an exercise device. (POPR, 24 (“[T]here is no evidence or explanation of a communication mechanism in Studor that receives a **control signal** rather than raw data. ... The **raw data** ... must be first **used in a local calculation** by the local

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<sup>4</sup> iFIT concedes that the claims “require a packetized **signal**.” (*Supra* Section IV.B.1.b.)

computer system 16 to generate a resistance level that can be used to *control* an exercise device.”) (emphasis in original); Easttom Declaration, ¶¶ 85-86 (arguing “packetized **raw data**” are not “packetized control **signals**”).)

### 3. Plaintiff’s Reply Position

#### a. iFIT did not disclaim claim scope

For prosecution disclaimer to attach, “the alleged disavowing actions or statements made during prosecution [must] be both clear and unmistakable.” *Aylus Networks, Inc v. Apple Inc.*, 856 F.3d 1353, 1359 (Fed. Cir. 2017). Here, Peloton strategically misrepresents iFIT’s statements during the IPR proceedings, which do not amount to a disavowal. iFIT stated during the IPR that “Studor clearly teaches that this ‘terrain characteristic information’ or ‘terrain data’ is **raw data** such as “‘slope, altitude, temperature, wind speed, wind direction, current speed, current direction, and ground surface resilience.’” (JCCC Ex. H at 24.) The point made during the IPR is that the claimed “control signal” must reflect information **for controlling the operating parameters** of the exercise mechanism. (See Br. at 13.) But the terrain data in Studor does not, “on its own,” reflect any such operating parameters. For example, ground surface resilience cannot control operating parameters of an exercise mechanism because it does not *reflect* information for controlling the operating parameters. (Bergeron, ¶¶ 54–61.)

For disclaimer, the inquiry is “what a person of ordinary skill would understand the patentee to have disclaimed during prosecution.” *Tech. Props., Ltd. LLC v. Huawei Techs. Co.*, 849 F.3d 1349, 1359 (Fed. Cir. 2017). And a POSITA would understand iFIT’s statements made during the IPR to not disclaim any claim scope, but rather just an accurate characterization of Studor consistent with iFIT’s proposed construction. (Bergeron, ¶¶ 54–60, 63.)

Moreover, Peloton ignores that during the IPR, *Peloton* argued that data is a control signal. (See JCCC Ex. G at 55, “Studor teaches receiving control signals in the **form of terrain**



**characteristic data**”) (emphasis added) (*see also* Bergeron, ¶ 62.) When trying to invalidate the ’062 Patent, Peloton said a control signal *can* be data but when trying to avoid infringement, Peloton conveniently adopts the position that data *can not* constitute a control signal.

**b. The “control signal” may be data according to the intrinsic record**

Nothing in the specification supports that a “control signal” must be a “**signal that on its own controls** operating parameters of an exercise device, such as speed, resistance, and the like.” The only portions of the specification that Peloton cites to actually teach against its proposed construction because they demonstrate that the control signal constitutes data. (Bergeron, ¶¶ 64–67.) Furthermore, Peloton’s expert admits that “a signal may include data” but cannot point to what portion of the specification suggests that a control signal must be a signal that *on its own* controls operating parameters of an exercise device. (*See* D1 at ¶ 95); (*see also* Bergeron, ¶¶ 64–70.) “Claims must be read in view of the specification, of which they are a part” and iFIT’s constructions are rooted in the specification which is “the single best guide to the meaning of a disputed term.” *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996).

**4. Defendant’s Sur-Reply Position**

As the Court recognized, iFIT has proposed contradictory interpretations of this term when arguing for infringement or validity. (D.I. 103, 7.) Peloton’s construction holds iFIT to one position, consistent with its statements to the Patent Office.

**a. iFIT cannot recapture claim scope it surrendered.**

iFIT contends it never disclaimed any claim scope, and that its words to the Patent Office were “just an accurate characterization of Studor.” (*Supra* Section IV.B.3.a.) iFIT now argues that the claimed control signal must “reflect” operating parameters, and Studor’s signal does not. *Supra* Section IV.B.3.a.) But if “reflecting” were a requirement of the claims, iFIT would have

argued in the IPR that the signal in Studor does not reflect operating parameters. Instead, iFIT argued that Studor’s signal is “*raw data ... used in a local calculation ... to generate a resistance level ... to control* an exercise device.” (POPR, 24; D4 (“POSR”))<sup>5</sup>, 6 (“[T]he ‘control signal’ is *not generated locally* at the exercise device .... Independent claim 29 *plainly requires this feature.*”); POSR, 16-17; POR, 10, 40.) iFIT argued that Studor’s signal is not the claimed “control signal” because it does “*not, on its own,*” control operating parameters. (POPR, 24.) At bottom, by distinguishing Studor from the claimed “control signal,” iFIT disclaimed any signal that does “*not, on its own*” control operating parameters. *Am. Calcar, Inc. v. Am. Honda Motor Co.*, 651 F.3d 1318, 1358-60 (Fed. Cir. 2011). iFIT cannot now recapture such signals through claim construction, which even Dr. Bergeron admits would be the result of iFIT’s construction. (Ex. D3, 189:16-23 (“Q. ... So the claimed control signal of the ’062 patent *under iFIT’s construction is data* that, after being received, *can be used in a local calculation to generate a resistance level* to control the device; is that correct? A. It can be, *yes.*”); *see also* Ex. D3, 107:1-108:9.)

**b. Attempting to avoid disclaimer, iFIT now advances a new construction.**

iFIT reimagines its statements to the Patent Office, inventing a requirement that the “control signal” must “reflect” operating parameters. That concept appears nowhere in the specification or the claims. (Ex. D2, ¶¶ 8-10.) Neither iFIT nor Dr. Bergeron explain how a signal “reflects” operating parameters. (*Supra* Section IV.B.3.a; Ex. P1, ¶¶ 60-63). Yet iFIT now contends this is a crucial feature of the claimed control signal—a *post hoc* attempt to obscure its clear and unmistakable disclaimer. (*See e.g.*, POR, 10 (arguing there is a “*direct correlation*”

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<sup>5</sup> Despite filing its Patent Owner’s Sur-Reply (“POSR”) seven days *after* Peloton’s Answer Brief, iFIT maintains its previous argument that Studor’s signal requires “local calculation.”

between “the control signal and the operation of the exercise machine.”)) Even Dr. Bergeron admits this is not a requirement of “control signal.” (Ex. D3, 182:25-183:3 (“Q. So to clarify, iFIT’s proposal, which is data for controlling operating parameters, does *not* have to reflect operating parameters, correct? A. Correct.”))

**c. The “control signal” is not merely “data.”**

iFIT argues that the “control signal” should be construed as mere data. This is wrong; a packetized control signal is not data alone. (JCCC Ex. A, 16:42-49 (each packetized signal “contains the destination address *in addition to the data*”); *id.*, 21:35-36; Ex. D1, ¶¶ 93-101.) iFIT complains, “Peloton said a control signal can be data but when trying to avoid infringement, Peloton conveniently adopts the position that data can not constitute a control signal.” (*Supra* Section IV.B.3.b.) However, the statements iFIT references describe signals in Studor that *include* data. (D.I. 169-G, 54-58.) The present dispute is what “control signal” means in the ’062 Patent. The intrinsic record is clear: a “signal” is more than “data.”

**C. “Interface means, communicating with the exercise mechanism, for gathering a first signal from the user”**

<b>Claim Term</b>	<b>iFIT’s Proposed Construction</b>	<b>Peloton’s Proposed Construction</b>
“interface means, communicating with the exercise mechanism, for gathering a first signal from the user”	<p>Means-plus-function limitation under 35 U.S.C. § 112 ¶ 6</p> <p>Function: gathering a first signal from the user</p> <p>Structure: user interface in communication with the exercise mechanism</p>	<p>Subject to 35 U.S.C. § 112 ¶ 6</p> <p>Function: “communicating with the exercise mechanism and gathering a first signal from the user”</p> <p>Structure: user interface</p>

**1. Plaintiff’s Opening Position**

**a. Peloton’s construction improperly expands the function**

Construing a means-plus-function term comprises two steps: (1) identifying the claimed function; and (2) determining what structure disclosed in the specification corresponds to the claimed function. *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1351 (Fed. Cir. 2015). The parties’ seemingly agree that at least a “user interface” is the corresponding structure. However, Peloton’s proposal improperly twists corresponding structure into function.

iFIT’s proposed construction, by contrast, is consistent with the specification’s teachings:

User interface is one structure capable of performing the function of interface means for gathering a first real-time signal from the user.

(JCCC Ex. A at 31:27–31.) In the claim, the language “communicating with the exercise mechanism” modifies the recited “interface means” **before** the word “for.” As a matter of grammar, the language “communicating with the exercise mechanism” is therefore describing the “interface means” itself (e.g. structure, which the parties agree is at least a user interface), rather than what the interface means **does**. What the interface means then **does** (its function) is recited after the word “for”, *i.e.*, “gathering a first signal from the user.”

The Federal Circuit, as well as other district Courts, have repeatedly concluded that language characterizing “means” recited before “for” do not constitute additional function. Consider for example *Transclean Corp. v. Bridgewood Services, Inc.*, 290 F.3d 1364 (Fed. Cir. 2002). The claim language at issue in *Transclean* was “means connected to said fluid receiver and said source of fresh fluid, for equalizing the fluid flow into said fluid receiver and out of said source of fluid.” *Id.* at 1368. The parties agreed that the recited function of this claim was the language that followed “for,” which was “equalizing the fluid flow.” *Id.* at 1372. Another claim at issue in *Transclean* was a dependent claim that provided “[t]he apparatus of claim 1 in which the means for equalizing the flow is comprised of means disposed intermediate the fluid receiver and source, said **means exhibiting resilient characteristics for** exerting a force, related to the pressure existing in the fluid circulation circuit of said transmission and said receiver, upon the fluid in said source.” *Id.* at 1375 (emphasis added). The Court held:

[it did] not share the dissent’s view that the phrase “exhibiting resilient characteristics” describes a function in a means-plus-function limitation....According to the claim language, the only function performed by that “means” is equalizing the flow.” The phrase “exhibiting resilient characteristics” is not a second function performed by that means”; rather, the phrase further defines characteristics of that “means.”

*Id.* Accordingly, in the present case the language “communicating with the exercise mechanism” describes the “interface means” itself, and is not a second function. *See also Input/Output, Inc. v. Sercel, Inc.*, CIV.A. 5:06-cv-236, 2008 WL 5427982, at \*5–7 (E.D. Tex. Apr. 28, 2008) (wherein the claim language at issue was “means responsive to said displacement signal for applying an electromagnetic feedback force as a function of time.” The Court agreed that the defendant was improperly lumping “responsive to said displacement signal” into the function, and that the “superfluous language [after “means” and before “for”] is merely a characteristic of the means and is not part of the function itself.”); *LG Elecs., Inc. v. Hitachi, Ltd.*, No. 5:07-cv-90 (DF), 2008 WL

5869671, at \*48–50 (E.D. Tex. Dec. 8, 2008) (wherein the claim at issue was “[A] image size/position control means [B] in electrical communication with said timing control means and [C] responsive to said column start, row start, column replicate, and row replicate control signals and said first control signals [D] for generating output column address control signals, output row address control signals for said memory system and [E] a pixel clock signal.” The Court construed the function to be elements [D] and [E] and viewed elements [B] and [C] as nonfunctional limitations to the means.)

Peloton’s proposal also demonstrates the flaw of attempting to shoehorn “communicating with the exercise mechanism” into function rather than structure, as the recited “communicating with the exercise mechanism” step in Peloton’s proposed function is completely divorced and unrelated to the element’s primary function of “gathering a first signal from the user.” There is no basis for adding an additional affirmative step to the claim. Had applicants intended to recite two discrete functional steps for the “interface means” they would have explicitly recited those two discrete steps after the word “for” in this term, instead of structurally describing what the “interface means” was communicating with.

The Federal Circuit has repeatedly stressed that “[t]he function is properly identified as the language after the ‘means for’ clause.” *Lockheed Martin Corp. v. Space Systems/Loral, Inc.*, 324 F.3d 1308, 1319 (Fed. Cir. 2003); *see also Monaghan Med. Corp. v. Smiths Med. ASD, Inc.*, No. 17-712-LPS-CJB, 2018 WL 3323823, at \*8 (D. Del. July 6, 2018) (citing *Lockheed Martin* for the notion that “function is properly identified as the language after the ‘means for’ clause.”) The disputed term is “[i]nterface means, communicating with the exercise mechanism, for gathering a first signal from the user.” (emphasis added). Accordingly, in the present case “gathering a first

signal from the user” is the function, as it follows “for” and describes what the claimed means does. See *Lockheed Martin*, 324 F.3d at 1319

## 2. Defendant’s Answering Position

The parties agree this is a means-plus-function term governed by 35 U.S.C. § 112, ¶ 6. However, the parties dispute whether the function of “communicating with the exercise mechanism” is part of the claimed *function*, as Peloton contends, or part of the claimed *structure*, according to iFIT. Only Peloton’s construction correctly identifies the structure as a “user interface” and the corresponding two functions as “communicating with the exercise mechanism” and “gathering a first signal from the user.”

### a. The claim recites two functions, not one.

The claim language mandates that the “interface means” serves two functions: (1) “communicating with the exercise mechanism” and (2) “gathering a first signal from the user.” (JCCC Ex. A, cl. 1; Ex. D1, ¶¶ 102-107.) Contrary to iFIT’s arguments, courts routinely treat functional language appearing between the words “means” and “for” as part of the functions performed by that means, where appropriate. *E.g.*, *Bennett Marine, Inc. v. Lenco Marine, Inc.*, 549 F. App’x 947, 953-54 (Fed. Cir. 2013) (construing “*means* coupled to said trimming means and to said engine, and responsive to removal of electrical power from said engine, *for* automatically moving” to include both functions of being “responsive to removal of electrical power” and “automatically moving”); *Netgear, Inc. v. Ruckus Wireless, Inc.*, 5 F. Supp. 3d 592, 611 (D. Del. 2013) (construing “*means*, responsive to said conditions, *for* selecting” to include both functions of “selecting” and “directing or determining in response to certain conditions”).

iFIT, however, ignores that the claim expressly recites a “communicating” function, and argues that the only function is “gathering a first signal.” It then identifies the corresponding structure as an “interface *in communication* with the exercise mechanism,” as though the act of

communicating were a physical structure. Only Peloton’s construction faithfully reflects the functional language of the claim. *See Baran v. Med. Device Techs., Inc.*, 616 F.3d 1309, 1317 (Fed. Cir. 2010) (holding “release means for retaining” recited not only the retaining function but also a “release function” because of the term’s “purely functional” nature).

**b. The specification confirms that communicating is a function, not a structure, of the interface means.**

The specification describes “communicating with the exercise mechanism” in functional, not structural, terms. (Ex. D1, ¶¶ 108-112.) The specification teaches that the function performed by the “interface means” includes “communicating with the exercise mechanism.” (*See, e.g.*, JCCC Ex. A, 12:3-7, 12:53-56, 29:14-31.) Likewise, it describes structures “capable of performing” this communicating “function.” (JCCC Ex. A, 12:53-56 (“These additional input devices are further examples of are [*sic*] *structures capable of performing the function of interface means, communicating with the exercise mechanism*, for gathering a first signal from the user”); Ex. D1, ¶¶ 109-110.) iFIT’s construction conflicts with the teachings of the specification.

**c. iFIT is wrong on the law.**

iFIT is wrong on the law of construing means-plus-function terms. iFIT erroneously suggests that there is some bright-line rule that claim language appearing between the words “means” and “for” can never be functional. (*Supra* Section IV.C.1.a.) But the courts in numerous cases conclude exactly the opposite. *See, e.g., Bennett Marine*, 549 F. App’x at 953; *Baran*, 616 F.3d at 1317 (construing claim language appearing before “means” and “for” as functional, not structural).

iFIT relies heavily on *Transclean*, arguing that claim language falling between the words “means” and “for” is never functional. (*Supra* Section IV.C.1.a.) But the *Transclean* court said



nothing of the sort. *Transclean* dealt with two claim terms unlike the one in dispute here. First, the court addressed an independent claim reciting a “means connected to said fluid receiver and said source of fresh fluid, for equalizing the fluid flow into said fluid receiver and out of said source of fluid.” *Transclean Corp. v. Bridgewood Servs. Inc.*, 290 F.3d 1364, 1368, 1371-72 (Fed. Cir. 2002). As iFIT admits, the parties **agreed** that the only function in this term was “equalizing the fluid flow.” (*Supra* Section IV.C.1.a.) There was no dispute to resolve about whether the language between the words “means” and “for” was functional or structural—unlike here, where a similar issue is disputed—so this part of *Transclean* offers no support to iFIT.<sup>6</sup> Next, the court construed the following term from a dependent claim:

[t]he apparatus of claim 1 in which the ***means for equalizing the flow*** is comprised of ***means*** disposed intermediate the fluid receiver and source, ***said means exhibiting resilient characteristics for exerting a force***, related to the pressure existing in the fluid circulation circuit of said transmission and said receiver, upon the fluid in said source.

*Transclean*, 290 F.3d at 1368, 1375. The court found that “exhibiting resilient characteristics” was not a second function in addition to the agreed-upon function of “equalizing the flow.” *Id.* at 1375. But “exhibiting resilient characteristics,” describes a structural attribute, resilience, not a functional one. This is entirely unlike the claim language at issue here, “communicating with the exercise mechanism,” which uses a verb in present participle form to describe the function of “communicating.” *Transclean* does not help iFIT.

Nor does *Lockheed* support iFIT’s position. (*Supra* Section IV.C.1.a.) There, the limitation at issue was “means for rotating said wheel ... whereby the attitude of said satellite is offset in response.” *Lockheed Martin Corp. v. Space Sys./Loral, Inc.*, 324 F.3d 1308, 1315 (Fed.

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<sup>6</sup> Moreover, the intervening language between “means” and “for”—“connected to said fluid receive and said source of fresh fluid”—arguably described a structural connection rather than a function, unlike the functional “communicating with” language at issue here.

Cir. 2003). The Federal Circuit excluded the “whereby” clause from the rotating function. *Id.* at 1319. As this Court has recognized, the *Lockheed* court “excluded the ‘whereby’ clause from the claimed function because it ‘merely states the result of the limitations in the claim,’” not because it appears after (or before) “means for.” *Home Semiconductor Corp. v. Samsung Elecs. Co.*, C.A. No. 13-2033-RGA, 2019 WL 3943334, at \*10 (D. Del. Aug. 21, 2019).

None of the other cases cited by iFIT support its construction. Like *Transclean* and *Lockheed*, the court in *Monaghan* did not exclude functional language that appeared between “means” and “for”; contrary to iFIT’s proposal, the court included the claim language in the function. *Monaghan Med. Corp. v. Smiths Med. ASD, Inc.*, C.A. No. 17-712-LPS-CJB, 2018 WL 3323823, at \*8 (D. Del. July 6, 2018). The court in *Input/Output* did not include the language between “means” and “for” in its construction because, as iFIT admits, it was “superfluous.” *Input/Output, Inc. v. Sercel, Inc.*, No. 5:06-CV-236, 2008 WL 5427982, at \*7 (E.D. Tex. Apr. 28, 2008). Like in *Transclean*, the parties in *LG Electronics* agreed that elements [B] and [C] were not part of the function. *LG Elecs., Inc. v. Hitachi, Ltd.*, No. 5:07-CV90(DF), 2008 WL 5869671, at \*48 (E.D. Tex. Dec. 8, 2008). iFIT presents no authority for excluding the function of “communicating” from the functions performed by the claimed “interface means.”

### **3. Plaintiff’s Reply Position**

#### **a. iFIT identified the proper function and structure**

The parties agree that the accompanying structure for this term at least includes a “user interface.” But the real dispute is what is function and what is structure. While Peloton offered expert opinion regarding what the function and structure is in the disputed means-plus-function claims, this is not an issue for an expert to opine on. Indeed, in the cases Peloton cites as to function versus structure, none turn on expert testimony. See *Bennet Marine, Inc. v. Lenco Marine, Inc.*, 549 Fed. Appx. 947, 952–54 (Fed. Cir. 2013); *Baran v. Medical Device Techs., Inc.*, 616 F.3d

1309, 1316–17 (Fed. Cir. 2010); *Netgear, Inc. v. Ruckus Wireless, Inc.*, 5 F. Supp. 3d 592, 611 (D. Del. 2013).

Peloton takes the incorrect position that “courts routinely treat functional language appearing between the words ‘means’ and ‘for’ as part of the functions performed by that means, where appropriate.” (Br. at 23.) What Peloton fails to consider is that “communicating with the exercise mechanism” is not functional language but rather language that modifies the structure. Thus in situations where the language between “means” and “for” is not functional but rather a modifier of structure (as is the case here), courts have found this language structural, not functional. *See Transclean Corp. v. Bridgewood Services, Inc.*, 290 F.3d 1364, 1375 (Fed. Cir. 2002) (holding that the phrase “exhibiting resilient characteristics” is not a second function performed by the means, but “further defines characteristics” of the means.)

Peloton further contends that “the act of communicating [cannot be] a physical structure.” But Peloton misses the mark. iFIT is not proposing that the act of communicating is a physical structure in and of itself, rather iFIT proposes that “in communication” denotes a physical relationship rather than a functional one. *See Regents of the Univ. of MN v. AGA Med. Corp.*, 660 F. Supp. 2d 1037, 1046 (D. Minn. 2009) (“But the word ‘communication,’ when used to denote a physical relationship, has a very particular meaning”), *aff’d*, 717 F.3d 929, 946 (Fed. Cir. 2013).

#### **b. The specification supports iFIT’s proposal**

Consistent with iFIT’s opening brief, the specification is the crux of iFIT’s analysis. “The descriptive part of the specification aids in ascertaining the scope and meaning of the claims inasmuch as the words of the claims must be based on the description. The specification is, thus, the primary basis for construing the claims.” *Phillips*, 415 F.3d at 1315 (citation omitted).

Peloton points to the specification, heavily relying on Dr. Almeroth to conclude that “communicating with the exercise mechanism” is functional, not structural. (Br. at 24.) Peloton

notes that “[t]he specification teaches that the function performed by the ‘interface means’ includes ‘communicating with the exercise mechanism’”—but this is flatly incorrect. (*Id.*) The specification provides:

The diagnostic control, audio input device and video input device, therefore, are **structures capable of performing the function of interface means, communicating with the exercise mechanism, for gathering a first signal from the user.**

(JCCC Ex. A, 12:3–7; *see also id.*, 12:53–56, 29:14–31). The language from the specification is essentially identical to that in the claim—it illustrates that “communicating with the exercise mechanism” denotes a physical relationship and the function is “gathering a first signal from the user.” (Bergeron, ¶¶ 71–75.)

Furthermore, Peloton’s construction for not just this means-plus-function claim but *all* the means-plus-function claims in dispute, effectively adds a new step to the claim that is inconsistent with its natural reading. Peloton identifies the two alleged functions of this claim to be “communicating with the exercise mechanism *and* gathering a first signal from the user.” Peloton’s proposal seemingly implies that there must be some communication with the exercise mechanism and then, separately, a communication that gathers a first signal from the user. That, however, is completely inconsistent with the specification which does not disclose such a two-step function. Indeed, under Peloton’s construction it is wholly unclear what the first “communication” is supposed to be.<sup>7</sup> This is precisely why iFIT proposes the only relevant function to be “gathering a first signal from the user,” consistent with the specification.

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<sup>7</sup> The importance of linking the relevant structure to the proper scope of function was made evident during Dr. Almeroth’s deposition. When presented with a simple circuit for a lightbulb, he was unable to delineate whether the entire circuit constituted a “means for providing light” or whether the lightbulb alone constituted such means apart from the means for providing power or means for switching the circuit on and off. (Ex. P2, 22:8–24:15, 25:7–28:22.)

#### 4. Defendant's Sur-Reply Position

iFIT declares that “‘communicating with the exercise mechanism’ is not functional but rather modifies the structure.” (*Supra* Section IV.C.3.a.) iFIT offers no explanation for **how** this language modifies a structure, or why “communicating” is not a function. iFIT never explains how “communicating” denotes some “physical relationship.” (*Supra* Section IV.C.3.b.) Nor could iFIT’s expert provide a coherent explanation for how “communicating” is structural. (Ex. P1, ¶¶ 71-75.) Even iFIT’s cited specification passages describe “communicating with the exercise mechanism” as a function. (JCCC Ex. A, 12:3-7) (Describing “structures capable of **performing the function** of interface means, communicating with the exercise mechanism, for gathering a first signal from the user.”) Put simply, iFIT’s theory that “communicating” describes a structure, not a function, makes no sense. (*Supra* Section IV.C.2.c.)

**D. “Communicating means, communicating with the interface means, for receiving a packetized second signal from a remote source over a network, the packetized second signal including one or more packetized control signals”**

<b>Claim Term</b>	<b>iFIT’s Proposed Construction</b>	<b>Peloton’s Proposed Construction</b>
“communicating means, communicating with the interface means, for receiving a packetized second signal from a remote source over a network, the packetized second signal including one or more packetized control signals”	<p>Means-plus-function limitation under 35 U.S.C. § 112 ¶ 6</p> <p>Function: receiving a packetized second signal from a remote source over a network, the packetized second signal including one or more packetized control signals</p> <p>Structure: a computer in communication with the interface means, and equivalents thereof.</p>	<p>Subject to 35 U.S.C. § 112 ¶ 6</p> <p>Function: “communicating with the interface means and receiving a packetized second signal from a remote source over a network, the packetized second signal including one or more packetized control signals”</p> <p>Structure: network interface or modem</p>

**1. Plaintiff’s Opening Position**

**a. Peloton incorrectly identifies the “function”**

As with “interface means” above (*see supra* Section IV.C), Peloton, again, improperly captures part of the corresponding structure in the function. The disputed term is: “communicating means, communicating with the interface means, **for** receiving a packetized second signal from a remote source over a network, the packetized second signal including one or more packetized control signals.” (emphasis added). Following *Lockheed Martin* and *Transclean*, the language *after* the “means for” clause is the function. *Lockheed Martin*, 324 F.3d at 1319; *Transclean Corp.*, 290 F.3d at 1375. Thus, it follows that the function for this term is “receiving a packetized second signal from a remote source over a network, the packetized second signal including one or more packetized control signals.”

**b. Peloton’s proposed structure is detached from the intrinsic evidence**

The corresponding structure for this function is “a computer in communication with the interface means, and equivalents thereof.” As the specification explains, a computer is an example “of a communicating mechanism, communicating with the interface means.” (JCCC Ex. A, 17:57–59.) And “communicating mechanisms are examples of structures capable of performing the function of communicating means, communicating with the interface means, for receiving a packetized second signal[.]” (JCCC Ex. A, 18:27–30.)

Peloton ignores the specification, asserting that the corresponding structure is a “network interface” or “modem.” But *none* of Peloton’s cited intrinsic evidence in the parties’ joint claim construction chart even utters the word “network interface” or “modem.” And the portions of the specification that do mention a “network interface” or “modem” do not perform the recited function. (*see* JCCC Ex. A, 16:10–39.) “[I]t is incorrect to construe claims contrary to the specification, and it is incorrect to construe terms in means-plus-function form as disembodied from the structure in the specification.” *C.R. Bard, Inc. v. M3 Sys., Inc.*, 157 F.3d 1340, 1361 (Fed. Cir. 1998).

**2. Defendant’s Answering Position**

With respect to this means-plus-function term, the parties again dispute (1) whether the function of “communicating” is part of the claimed function rather than the structure, and also (2) whether the corresponding structure is a “network interface or modem,” as Peloton proposes, or “a computer” as iFIT proposes. Only Peloton’s construction correctly identifies the *two* functions of “communicating with the interface means” and “receiving a packetized second signal,” and the corresponding structure as a “network interface or modem.”

**a. The claim recites two functions, not one.**

The claim requires a “communication means” that performs (1) “communicating with the interface means” and (2) “receiving a packetized second signal from a remote source over a network.” (JCCC Ex. A, cl. 1(c); Ex. D1, ¶¶ 113-118.) iFIT ignores the first “communicating” function, and argues that the only function is “receiving.” iFIT then identifies the corresponding structure as an “a computer in communication with the interface means, and equivalents thereof,” as though the act of communicating were a structural part of the “computer.” iFIT’s construction is at war with the claim language. *Supra* Section IV.C.2.a. As explained above, *Transclean* and *Lockheed* do not help iFIT. *Id.*; *see also Baran*, 616 F.3d at 1317 (holding that “release means for retaining” also performed a “vital” release function due to the purely functional nature of the term).

**b. The specification confirms that “communicating with the interface means” is functional, not structural.**

The specification describes “communicating with the interface means” in functional, not structural terms. (Ex. D1, ¶¶ 119-125.) The specification teaches that the function performed by the “communicating means” includes “communicating with the interface means.” (*See, e.g.*, JCCC Ex. A, 18:26-32, 24:66-25:4, 29:14-31.) Even iFIT acknowledges that “communicating” is a “function” according to the specification. (*Supra* Section IV.D.1.b (“communicating mechanisms are ... *capable of performing the function of communicating means, communicating with the interface means*, for receiving a packetized second signal[.]”) (citing JCCC Ex. A, 18:27-30).)

**c. The corresponding structure is not any general-purpose computer, but the network interface or modem described in the specification and their equivalents.**

In view of the claims and specification, a POSA would understand the structure of the claimed “communicating means” to be the network interfaces or modems described by the patent. For example, the specification identifies “communication *interface* 210” as “capable of



performing the function of communicating means, communicating with the interface means, for receiving a packetized second signal.” (JCCC Ex. A, , 24:66-25:4; Ex. D1, ¶¶ 126-130.) That network interface enables the exercise device “to transceive data, such as packetized data, via a communication line,” which is consistent with the claimed functions. (JCCC Ex. A, 24:10-29.) The specification further describes that this network interface “in one embodiment, is a *modem*.” (JCCC Ex. A, 24:13-14.) Only Peloton’s identification of the structure (“network interface or modem”) reflects the ones described in the specification as performing the claimed functions, “and their equivalents” as the law requires. *Ergo Licensing, LLC v. CareFusion 303, Inc.*, 673 F.3d 1361, 1364 (Fed. Cir. 2012).

By contrast, iFIT argues that the corresponding structure is simply “a computer.” (*Supra* Section IV.D.1.b.) However, as the specification teaches and as a POSA would understand, a computer only performs these network communication functions *by using a network interface or modem*. (JCCC Ex. A, 16:10-21 (“When used in a LAN networking environment, typically *computer 14* is connected to the local network 176 *through a network interface* or adapter 180 ... When used in a WAN networking environment ... *computer 14 may include a modem 182* ...”); *see also id.*, 14:39-44 (“*Computer 14 may, therefore, use various types of interfaces to communicate with treadmill 12 and network 16*. For example, the interface may be a wireless *interface* ... Alternatively, *the interface may be a modem*.”); *see also* Ex. D1, ¶ 131.) iFIT’s identification of any generic, multipurpose “computer” as the structure that performs the specifically claimed “communicating” and “receiving” functions makes no sense. It would encompass “computers”—and their equivalents—that lack the interfaces or modems that the specification teaches perform the claimed functions. (Ex. D1, ¶¶ 132-133.)

### 3. Plaintiff's Reply Position

#### a. Peloton is incorrect

Peloton again mistakenly identifies “communicating with the interface means” as part of the function rather than the structure. If the language between “means” and “for” is not functional, but instead modifies the structure, that language is considered structural rather than functional. (*See supra* Section IV.C.1.a.) The language between “means” and “for” in this claim, similar to *Transclean*, denotes structure. Additionally, and as also discussed above, Peloton’s recital of an additional “communicating” step is inconsistent with the specification.

#### b. The specification supports iFIT

iFIT’s interpretation of the claim is further supported by the specification. Again, Peloton takes the incorrect position that “communicating with the interface means” is described in functional terms. (*supra* Section IV.C.2) But the language from the specification is yet again essentially identical to that in the claim, signifying a *physical* relationship rather than a functional one. (*See* JCCC Ex. A, 18:26–32, 24:66–5) (Bergeron, ¶¶ 76–80.)

#### c. The corresponding structure is a computer in communication with the interface means, and equivalents thereof

Peloton’s proposed structure of a “network interface or modem” improperly limits its construction to a preferred embodiment.<sup>8</sup> “When multiple embodiments in the specification correspond to the claimed function, proper application of § 112, ¶ 6 generally reads the claim element to embrace each of those embodiments.” *Micro Chem., Inc. v. Great Plains Chem. Co., Inc.*, 194 F.3d 1250, 1258 (Fed. Cir. 1999). Peloton quotes the specification, noting “in *one* embodiment, [communication interface] is a modem.” (Br. at 33) (emphasis added). But this is

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<sup>8</sup> Portions of the specification Peloton points to in its Answering brief, including 29:14–31, 24:10–29, 24:13–14, 16:10–21, 14:39–44 for this claim were not listed as supporting intrinsic evidence in the JCC (*See* D.I. 168 at 6).

only *one* embodiment. The specification explicitly provides other embodiments wherein a computer is an example “of a communicating mechanism, communicating with the interface means.” (JCCC Ex. A, 17:57–59.) Peloton’s narrow construction effectively excludes “a computer in communication with the interface means, and equivalents thereof,” while iFIT’s proposed construction embraces all the embodiments in the specification. (Bergeron, ¶¶ 81–84.)

#### 4. Defendant’s Sur-Reply Position

iFIT again contends “communicating with the interface means” is not functional. (*Supra* Section IV.D.3.a.) As with “interface means,” (*supra* Section IV.D.4,) iFIT offers no explanation of *how* the language modifies the structure, and ignores the disclosures in the specification. (JCCC Ex. A, 24:66-25:4; *Supra* Section IV.D.2..) iFIT’s structure, “a computer,” improperly excludes embodiments from the specification. The specification identifies “communication interface 210” (24:66-25:4) and “interface module 270” (32:65-33:3) as structures for the “communicating means.” These are not generic “computers.” (Ex. D1, ¶¶ 128-132; Ex. D2, ¶¶ 25-27.) Only Peloton’s proposal properly embraces all the embodiments in the specification. (Ex. D1, ¶¶ 126-133.)<sup>9</sup>

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<sup>9</sup> iFIT’s hypothetical “means for providing light” is irrelevant. The structure in that hypothetical limitation could be either the “lightbulb” or “circuit,” but the act of “communicating with a circuit” is not a physical attribute of either structure, as asserted by iFIT.

**E. “Means, responsive to the [packetized second / synchronized control] signal[s], for controlling the operating parameters of the exercise mechanism”<sup>10</sup>**

<b>Claim Term</b>	<b>iFIT’s Proposed Construction</b>	<b>Peloton’s Proposed Construction</b>
“Means, responsive to the packetized second signal, for controlling the operating parameters of the exercise mechanism”	<p>Means-plus-function limitation under 35 U.S.C. § 112 ¶ 6</p> <p>Function: controlling the operating parameters of the exercise mechanism</p> <p>Structure: a controller (motor, solenoid, or other electrically driven actuator) that varies operating parameters, or equivalents thereof</p>	<p>Subject to 35 U.S.C. § 112 ¶ 6</p> <p>Function: “responding to the packetized second signal and controlling the operating parameters of the exercise mechanism”</p> <p>This term is indefinite.</p>
“Means, responsive to the synchronized control signals carried by the second signal, for controlling the operating parameters of the exercise mechanism”	<p>Means-plus-function limitation under 35 U.S.C. § 112 ¶ 6</p> <p>Function: controlling the operating parameters of the exercise mechanism</p> <p>Structure: a controller (motor, solenoid, or other electrically driven actuator) that varies operating parameters, or equivalents thereof</p>	<p>Subject to 35 U.S.C. § 112 ¶ 6</p> <p>Function: “responding to the synchronized control signals carried by the second signal and controlling the operating parameters of the exercise mechanism”</p> <p>This term is indefinite.</p>

**1. Plaintiff’s Opening Position**

**a. iFIT’s proposed function should be adopted**

Peloton and iFIT agree that the proposed function at least includes “controlling the operating parameters of the exercise mechanism.” Peloton has improperly additionally included “responsive to the packetized second signal.” *See Input/Output, Inc.*, 2008 WL 5427982, at \*5–7 (wherein the claim language at issue was “means responsive to said displacement signal for applying an electromagnetic feedback force as a function of time.” The Court held that the

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<sup>10</sup> The following two claim terms only differ in that they require a “packetized second signal” in one and a “synchronized control signal” in the other.

“superfluous language [after “means” and before “for”] is merely a characteristic of the means and is not part of the function itself.”)

iFIT identifies the function as simply “controlling the operating parameters of the exercise mechanism” because that is what the claim recites. *See Lockheed Martin*, 324 F.3d at 1319 (“[t]he function is properly identified as the language after the ‘means for’ clause.”)

**b. The specification discloses a controller for accomplishing the recited function, and the term is not indefinite**

Peloton argues that the claim is indefinite, but has not elaborated on why. Yet, when one looks to the specification, it repeatedly provides ample structure for “controlling the operating parameters of the exercise mechanism”—namely, a controller such as a motor, solenoid, or other electronic actuator. Peloton cannot simply turn a blind eye towards the specification and then argue that the claims are indefinite.

To begin with, the specification repeatedly recites that a required element of the “present invention” is a controller, such as a motor, solenoid, or electronic actuator that controls the operating parameters of the exercise mechanism:

[t]he present invention is particularly well suited to devices that utilize one or more **motors and/or other electronically driven actuators that control one or more operating parameters of a device**, such as an exercise device.

(JCCC Ex. A, 3:21–24) (emphasis added).

[t]he present invention is directed to devices that include one or more **motors or other electrically driven actuators used to control one or more operating parameters of the device**...the present invention can be readily adapted to any motorized device or any other device that utilizes **motors, solenoids, or any other electrically driven actuators to control any operating parameter of the device**, such as speed, resistance, incline, time, temperature, or other similar operating parameters. The term “device” or “devices” shall refer broadly to any type of apparatus that includes one or more stepper **motors, solenoids, or other electronically driven actuators or controllers**.

(*Id.* at 5:66–6:13) (emphasis added).

“When a patent ... describes the features of the ‘present invention’ as a whole,” as opposed to exemplary embodiments thereof, “this description limits the scope of the invention.” *Regents of Univ. of Minn. v. AGA Med. Corp.*, 717 F.3d 929, 936 (Fed. Cir. 2013) (quoting *Verizon Servs. Corp. v. Vonage Holdings Corp.*, 503 F.3d 1295, 1308 (Fed. Cir. 2007); *see also Trading Techs. Int’l Inc. v. eSpeed, Inc.*, 595 F.3d 1340, 1353–54 (Fed. Cir. 2010). Accordingly, a controller (motor, solenoid, or other electronically driven actuator) that actually controls the operating parameters of the exercise machine is a requirement of the claims—and is what is intended to be covered by this claim limitation.

While the specification may refer to other components of exemplary embodiments as “controllers” or “control means,” including—for example—components that include a computer or components that take input from a user—those exemplary structures are utilized to accomplish different and more complicated functions than simply “controlling the operating parameters of the exercise mechanism”—the function at issue here and which is the exclusive purview of the motor, solenoid, or electronically driven actuator of any exercise mechanism. For example, Section F below discusses the “control means” element of Claim 78 which recites a different, more complicated, function that includes the step of receiving a packetized control signal, which the function of the present element does not require, and which accordingly requires a different structure than a mere controller (motor, solenoid, or other actuator).<sup>11</sup> The specification describes

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<sup>11</sup> As discussed above, the language “responsive to the packetized second signal” should not be incorporated into any construction of function. *See Input/Output, Inc.*, 2008 WL 5427982, at \*5–7 (Court holding that the “superfluous language [after “means” and before “for”] is merely a characteristic of the means and is not part of the function itself.”) However, with such language included, it would not substantively change the scope of the function here such that a different structure would be required to fulfill said function. The claim would not require the actual receiving of a packetized control signal or second signal by the relevant structure. The claim would simply require that the recited “controlling the operating parameters of the exercise machine” occur in a manner that would be responsive to the packetized control signals. A motor, solenoid,

how the claimed controller would receive instructions from other parts of the system that may themselves receive and approve control signals, before the controller (motor, solenoid, or actuator) controls the underlying operating parameter:

[T]he control signals are detectable by computer 14 or treadmill 12, that verifies the control signal has the proper 2kHz carrier frequency, checks to make sure that the control signals otherwise properly formatted, and check for errors. If the signal is approved, the signal is delivered to the appropriate controllers for varying the operating parameters of treadmill 12.

(JCCC Ex. A, 21:46–52).

## 2. Defendant’s Answering Position

The issues are: (1) whether the function of responding, or being responsive to, the packetized second signal (or synchronized control signal) is part of the claimed function, and (2) whether, under either side’s proposed function, the specification discloses sufficient structure. It does not and therefore the claims are indefinite.

### a. The claims recite two functions, not one.

The claim language requires a means that performs two functions: (1) being “responsive,” *i.e.*, responding to, “the packetized second signal” or “synchronized control signal” and (2) “controlling the operating parameters.” *Bennett Marine* is instructive, because the court construed the phrase “responsive to,” in a similar means-plus-function claim formulation. The term at issue was “*means ... responsive to* removal of electrical power ..., *for automatically moving* said trimming means.” The court found that including the function of being “responsive” in its construction was necessary to “fully identify the function” apart from the structure. *Bennett Marine*, 549 F. App’x at 954; *see also Netgear*, 5 F. Supp. 3d at 611. Likewise, the claim language

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or other actuator that controls the operating parameters of the exercise machine in accordance with the claims would still perform such “controlling” in a manner responsive to the respective signals—even if it does not itself receive, for example, a “packetized signal.”

here makes clear that the “means ... for controlling” performs both the functions of responding to a signal, as well as controlling operating parameters. (Ex. D1, ¶¶ 134-136.) The specification similarly describes in functional terms examples of “a controller, *responsive to* the packetized second signal.” (JCCC Ex. A, 27:41-46; *id.*, 18:46-54.) Peloton’s construction stays true to the claim language and specification and follows the Federal Circuit’s guidance in *Bennett Marine*.<sup>12</sup> (Ex. D1, ¶¶ 137-141.) iFIT’s proposal would read the function of being “responsive” out of the claims entirely, and thus cannot be correct.

**b. The claims and specification confirm that the corresponding structure includes a general-purpose computer or processor.**

The claimed “means ... for controlling” includes a general-purpose computer or processor. The specification definitively states so, expressly identifying processors and computers as the structures for the recited functions:

A processor, [1] responsive to a control signal [2] is configured to control the operating parameters of the exercise mechanism in real-time.

(JCCC Ex. A, 3:49-51; *see also* 23:52-57 (identifying processor 214 as “capable of performing the function for means for controlling”); 24:59-65 (identifying treadmill processor 220 as “capable of performing the function the means for controlling”).) The specification also describes “computer 14” as another example of a “structure” capable of performing the claimed functions. (JCCC Ex. A, 18:46-54; Ex. D1, ¶¶ 146-147.) And, the specification explicitly teaches that “computer 14 is a *general-purpose-computing device*,” or “*personal computer*.” (JCCC Ex. A, 14:53-55, 13:65-14:5; Ex. D1, ¶ 152.)

The specification also provides several examples of general-purpose processors that may implement “processor 214” and “treadmill processor 220,” for example, a “central processing unit

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<sup>12</sup> As explained above, *Transclean* and *Lockheed* do not support the proposition advanced by iFIT. *Supra* Section IV.C.2.



(CPU)” or “micro-controller.” (JCCC Ex. A, 23:52-57, 24:59-65.) The specification also states that “processor 214” and “treadmill processor 220” may be incorporated within “*personal computer* 14.” (JCCC Ex. A, 17:8-18, 22:59-65, 8:60-62, Fig. 9; Ex. D1, ¶¶ 148-158.)

The claims further confirm that the structure corresponding to the claimed “means ... for controlling” includes a general-purpose computer or processor. For example, dependent claims 64 and 65 refer back to the “means ... for controlling” of claim 49, which can comprise “one or more processors.” (JCCC Ex. A, cl. 64, 65.) An independent claim, claim 49 must be broad enough to encompass the “one or more processors” recited in the dependent claims. *Wright Med. Tech., Inc. v. Osteonics Corp.*, 122 F.3d 1440, 1445 (Fed. Cir. 1997). As a POSA would appreciate from this claim structure (and the specification as discussed below), a general-purpose computer encompasses the generic “processors” recited in dependent claims 64 and 65. (Ex. D1, ¶¶ 142-145.)

**c. The lack of algorithmic disclosure in the specification renders the claims indefinite.**

Where the claimed function of a means-plus-function term “is performed by a general-purpose computer or microprocessor,” the law “requires that the specification disclose the algorithm that the computer performs to accomplish that function” as the corresponding structure. *Rain Computing, Inc. v. Samsung Elecs. Am., Inc.*, 989 F.3d 1002, 1007 (Fed. Cir. 2021) (citing *Aristocrat Techs. Austl. Pty Ltd. v. Int’l Game Tech.*, 521 F.3d 1328, 1333 (Fed. Cir. 2008)); *WMS Gaming Inc. v. Int’l Game Tech.*, 184 F.3d 1339, 1349 (Fed. Cir. 1999). Here, a POSA would need some form of algorithm to program the computer to perform the claimed functions. *Ergo Licensing*, 673 F.3d at 1365. (Ex. D1, ¶¶ 159-160.) iFIT, however, has failed to identify any such algorithm, and none exists in the specification. (Ex. D1, ¶ 161.) The claims, therefore, are indefinite.

The specification discusses “computer 14,” “processor 214,” and “treadmill processor 220,” generically, referring to them simply as “structure[s]” capable of “performing functions.” (JCCC Ex. A, 18:46-54, 24:1-3, 24:41-43.) But it never explains *how* these general-purpose computers perform the claimed functions. It provides no algorithms, formulae, prose, flow charts, etc., that would teach and describe to a POSA how to program the general-purpose computer to achieve those functions. (Ex. D1, ¶¶ 162-163.) *Finisar Corp. v. DirecTV Group, Inc.*, 523 F.3d 1323, 1340 (Fed. Cir. 2008). The absence of any structures or algorithms to perform the claimed functions renders the claims indefinite.

**d. iFIT’s attempt to limit the corresponding structure to specific mechanical devices, as opposed to a computer, is unavailing.**

Recognizing the indefiniteness problem it faces, iFIT makes a drastic pivot. iFIT tries to narrow its claimed “means” to physical, electromechanical devices, as though it had not purported to invent and claim a *computer*-implemented exercise device. But the specification resoundingly confirms that the claimed “means ... for controlling the operating parameters” is performed by a general-purpose computer.

iFIT argues that the structure corresponding to the claimed means is “*a controller such as a motor, solenoid, or other electronic actuator.*” (*Supra* Section IV.E.1.b.) iFIT then highlights select specification passages it claims support the notion that these devices, not a computer, are “controllers” that “control one or more operating parameters.” (*Id.* (citing JCCC Ex. A, 3:21-24, 5:66-6:13).) iFIT’s selected quotes, however, confirm that its computer-implemented invention merely “uses” or “utilizes” or “includes” devices like motors and solenoids, not that it is restricted to them, to the exclusion of a general-purpose computer. (*Id.*) And even if it were restricted to a hardware-based implementation, this term is nevertheless indefinite. *See Sony Corp. v. Iancu*, 924 F.3d 1235, 1240 (Fed. Cir. 2019) (“the reproducing means is necessarily construed as computer-

implemented based on the specification” even if it “need not necessarily be computer-implemented” and “is more likely implemented in hardware.”).

To the contrary, the specification repeatedly equates “**controller**”—in the context of controlling operating parameters—with a **general-purpose computer** and its components, which are distinct from the machinery, such as a motor, that the computer is connected to and controls:

“Motor 46 is optionally electrically coupled to a treadmill **controller** 56 **that controls the operation of motor** 46, and thus the speed of belt 42, **in response** to various user inputs or other **control signals**. As shown, treadmill **controller** 56 is incorporated within tread base 26; however, it may be appreciated by one skilled in the art that treadmill **controller** 56 may be incorporated within control panel 22 or alternatively **within personal computer** 14.”

(JCCC Ex. A, 8:55-62; *see also id.*, 9:10-12, 20:33-40, 24:51-65, 27:41-47, 33:21-25; Ex. D1, ¶¶ 164-170.)

iFIT’s reliance on passages about “the present invention” using motors and solenoids does not support excluding general-purpose computers from the claimed means. (*Supra* Section IV.E.1.b.) The specification also describes “the present invention” in terms that make its computer-implemented nature abundantly clear.<sup>13</sup> (*See, e.g.*, JCCC Ex. A, 3:16-21 (“**The present invention** is directed to devices, systems, methods, **programs, computer products, computer readable media** ....”); *see also id.*, 4:41-45, 8:55-62, 28:2-5; 9:10-12 20:33-40, 24:51-65, 27:41-47, 33:21-25.)

iFIT also argues that the “controllers” and “control means” described in the specification “are utilized to accomplish different and more complicated functions” than “controlling the operating parameters of the exercise mechanism.” (*Supra* Section IV.E.1.b.) But even if such

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<sup>13</sup> iFIT’s reliance on *Regents of Univ. of Minn. and Trading Techs. Int’l* is misplaced. (*Supra* Section IV.G.1.b(2).) The ’062 Patent never suggests, let alone expressly states (as these cases require), that the “present invention” defines the claimed “controller” as a “motor,” “solenoid,” or “actuator” to the exclusion of the general-purpose computer or processor.

controllers are also capable of performing additional functions, iFIT offers the Court no reason to exclude general-purpose computers from the structures that control operating parameters. *Infra* Sections IV.G.2.c-IV.G.2.d.

Moreover, “controlling the operating parameters of the exercise mechanism” is ***not***, as iFIT argues, the “exclusive purview” of a “motor,” “solenoid,” or “actuator.” (*Supra* Section IV.E.1.b.) First, construing the “means ... for controlling” to exclude “processors” cannot be reconciled with the explicit definition in the specification and dependent claims 64 and 65 that identify processors, and is wrong for that reason alone. *Supra* Section IV.E.2.b. Second, these dependent claims state that the “means ... for controlling” ***may include*** “speed,” “incline,” and “resistance” “actuators” ***along with*** the required “one or more processors configured to operate” those “actuators.” The claims nowhere suggest that the claimed means excludes a processor or other general-purpose computer as iFIT implies. Third, no part of the specification “exclusively” links the “controlling” function to only a motor, solenoid or actuator. *Micro Chem., Inc. v. Great Plains Chem. Co.*, 194 F.3d 1250, 1258 (Fed. Cir. 1999) (holding district court erred by “overlook[ing] alternative embodiments of the invention” when identifying corresponding structure). Rather, as shown above, the specification states that “computer 14,” “treadmill processor 220,” and “processor 214” (i.e., general-purpose computers) are structures capable of “controlling the operating parameters of the exercise mechanism.” (JCCC Ex. A, 18:46-54, 24:1-3, 24:41-43, 27:42-46.) The specification links a general-purpose computer, not solely a motor, solenoid, or actuator, to “controlling the operating parameters of the exercise mechanism.”

iFIT’s remaining arguments fail. iFIT argues that “[t]he specification describes how the claimed controller would receive instructions from other parts of the system.” (*Supra* Section IV.E.1.b (citing JCCC Ex. A, 21:46–52).) However, the part of the specification iFIT relies on

confirms that the “*computer* 14,” not a “motor,” receives and verifies a “control signal” before delivering it to hardware for “varying the operating parameters of treadmill 12.” (JCCC Ex. A, 21:46-52.) iFIT also states, without explanation or evidentiary support, that “a motor” would still be “responsive to the respective signals—even if it does not itself receive [the packetized signal].” (*Supra* Section IV.E.1.b.) But a POSA could not program the “motor” described in the specification to be “responsive to” a packetized signal, let alone do so if it never receives the signal, especially when there is no explanation of how to perform this feat in the specification. (Ex. D1, ¶¶ 171-173.)

### 3. Plaintiff’s Reply Position

#### a. The claims recite one function

Like the other means-plus-function claims, Peloton misidentifies the functions. The language of “responsive to the [packetized second/synchronized control] signal” is a modifier of “means,” but not a second function. *Input/Output, Inc. v. Sercel, Inc.* is instructive here. The claim language in *Input/Output* similarly utilized the “responsive to” language, providing: “means responsive to said displacement signal for applying an electromagnetic feedback force as a function of time.” CIV.A. 5:06-cv-236, 2008 WL 5427982, at \*5 (E.D. Tex. Apr. 28, 2008). Peloton attempts to dismiss *Input/Output* by misrepresenting the holding of this case, claiming that the court found the language between “means” and “for” in *Input/Output* as merely “superfluous.” But Peloton purposefully left out the portion wherein the court determined the language between “means” and “for” as a “*characteristic of the means and is not part of the function itself.*” *Id.* at \*7. The same logic applies here.

Peloton relies on *Bennet Marine* because it similarly utilizes “responsive to.” However, there is one important difference in the claim language in *Bennet Marine* as compared to this disputed claim language:

Means coupled to said trimming means and to said engine, **and** responsive to removal of electrical power from said engine, for automatically moving said trimming means to a predetermined position with respect to said hull upon removal of power at said engine.

549 Fed. Appx. 947, 925–53 (Fed. Cir. 2013) (emphasis added). The disputed claim in *Bennet Marine* included an “and” before “responsive to”—“and” is absent in the claim language here and in *Input/Output*. But this addition of “and” before “responsive to” changes the effect of the language to be functional in nature, rather than structural.

There is no dispute that this claim lacks the word “and” before “responsive to.” And there should be no dispute that the “responsive to” language acts as a characteristic to the means rather than a second function. Moreover, to the extent the specification in *Compare Bennet* supported the conclusions in that case, Peloton’s proposed construction is not supported by the specification in this case.

**b. The specification confirms iFIT’s construction**

In an attempt to reach its indefiniteness conclusion, Peloton diminishes the importance of the specification’s description of the present invention as a whole. The law is clear that “[w]hen a patent...describes the features of the ‘present invention’ as a whole,” as opposed to exemplary embodiments thereof, “this description limits the *scope* of the invention.” *Regents of Univ. of Minn. v. AGA Med. Corp.*, 717 F.3d 929, 936 (Fed. Cir. 2013) (emphasis added) (citation omitted). Peloton claims that iFIT’s reliance on this case law is “misplaced” because “the ’062 Patent never suggests let alone expressly states (**as these cases require**), that the ‘present invention’ defines the claimed ‘controller’ as a ‘motor,’ ‘solenoid,’ or ‘actuator’ to the exclusion of the general-purpose computer or processor.” (Br. at 43, n.13) (emphasis added). Yet, none of the cited cases has any such affirmative requirement of some sort of express exclusionary statement. *See Regents of Univ. of Minn.*, 717 F.3d at 936; *GPNE Corp. v. Apple Inc.*, 830 F.3d 1365, 1371 (Fed. Cir,

2016) (Court limiting “node” to what the patent describes as the present invention as a whole even though the “present invention” statement never explicitly defined “node” nor included exclusionary language). “When a patentee ‘describes the features of the ‘present invention’ as a whole,’ he alerts the reader that ‘this description limits the scope of the invention.” *Pacing Techs., LLC v. Garmin Int’l, Inc.*, 778 F.3d 1021, 1025 (Fed. Cir. 2015).

Peloton points to a portion of the specification that discusses the present invention’s “computer-implemented nature.” (Br. at 43.) But Peloton conveniently omits the *very next* sentence:

The **present invention is particularly well suited** to devices that utilize **one or more motors and/or other electrically driven actuators that control one or more operating parameters of a device, such as an exercise device.**

(JCCC Ex. At, 3:21–24) (emphasis added). And the specification also provides:

The **present invention is directed to** devices that include one **or more motors or other electrically driven actuators used to control one or more operating parameters of the device.**... the present invention can be readily adapted to any motorized device or any other device that utilizes **motors, solenoids, or any other electrically driven actuators to control any operating parameter of the device,** such as speed, resistance, incline, time, temperature, or other similar operating parameters. The term “device” or “devices” shall refer broadly to any type of apparatus that includes one or more stepper **motors, solenoids, or other electrically driven actuators or controllers.**

(*Id.*, 5:66–6:13) (emphasis added). The disclosures of the specification as to what the present invention with respect to means for controlling the operating parameters of the exercise mechanism is cannot be overlooked. (*See* Bergeron, ¶¶ 85–89.) It is also worth noting that the portions of the above cited language regarding the present invention is found in the “detailed description of the invention.” Courts in this district have found that disclosures in the detailed description of the invention should be considered when it “describes, in detail, the disclosed invention.” *Techno View IP, Inc. v. Oculus VR, LLC*, No. 17-386-VAC-CJB, 2018 WL 4141032, at \*3–4 (D. Del. Aug. 30, 2018).

Additionally, to the extent Peloton’s argument is that the specification requires that the “present invention” also requires some utilization of a computer, iFIT’s proposals for other elements (*see infra* § IV.F.1.b) do indeed introduce a computer into the overall claim. iFIT’s argument is that the specification explicitly requires that the “present invention” additionally have means for controlling operating parameters such as a motor, solenoid, or other electrically driven actuator which is the focus of **this claim element**.

It cannot be ignored that the function of “controlling the operating parameters of the exercise mechanism” is “clearly link[ed]” to the structure of a motor, solenoid, or other electrically driven actuator. *Rain Comput., Inc. v. Samsung Elecs. Am., Inc.*, 989 F.3d 1002, 1007 (Fed. Cir. 2021) (holding that “structure disclosed in the specification is corresponding structure only if the specification or prosecution history clearly links or associates the structure to the function recited in the claim.”). The specification provides that “motors or other electrically driven actuators” are “used to control one or more operating parameters of the device.” (JCCC Ex. A, 3:22–24, 5:66–6:2) A clearer “link” could not have been provided. (Bergeron, ¶ 89, 92.)

**c. iFIT’s corresponding structure is commensurate in scope to the identified function**

iFIT noted that corresponding structure must be commensurate in scope to the recited function. (*Supra* Section IV.E.1.b.) For example, the specification makes clear that the claimed controller would receive instructions from other parts of the system that may themselves receive and approve control signals *before* the controller (motor, solenoid, or other electronically driven actuator) controls the underlying operating parameter:

[T]he control signals are detectable by computer 14 or treadmill 12, that verifies the control signal has the proper 2kHz carrier frequency, checks to make sure that the control signals otherwise properly formatted, and check for errors. If the signal is approved, the **signal is delivered to the appropriate controllers for varying the operating parameters** of treadmill 12.



(JCCC Ex. A, 21:46–52) (emphasis added). In response, Peloton states that this argument fails because the part of the specification iFIT relies upon mentions a “computer” and not a “motor” that receives the control signal. (*Supra* Section IV.E.2.b.) But this is iFIT’s point exactly—the specification is clear that it is not the *computer* that varies the operating parameters but the controller. The recited function at issue is “controlling the operating parameters of the exercise mechanism” and this above cited portion of the specification makes clear that it is the controller (i.e., motor, solenoid, or other electronically driven actuator) that varies the operating parameters—not the computer. Peloton’s suggested structure of a computer fails to be commensurate in scope to the recited function of controlling the operating parameters—the computer merely detects a control signal but does not itself vary parameters.

Moreover, in the context of the overall claim (and with reference to the other elements of the claim) the operation of a controller (i.e., motor, solenoid, or other electronically driven actuator) would still be “responsive to” the second control signal even if the controller itself does not receive a “packetized” signal. *See Am. Calcar, Inc. v. Am. Honda Motor Co., Inc.*, 651 F.3d 1318, 1340 (Fed. Cir. 2011) (holding that “in response to” connotes that the “second event occur in reaction to the first event.”); *see also Optis Wireless Tech. LLC. V. Huawei Device Co. Ltd.*, No. 2:17-cv-123-JRG-RSP, 2018 WL 476054, at \*35–36 (E.D. Tex. Jan. 18, 2018) (clarifying that the holding in *Am. Calcar* regarding “in response to” does *not* mean that “the second event occurs in reaction to the first event and no other event may intervene, or have any impact whatsoever on, the occurrence of the second event.”) For example, if a computer receives the packetized control signal as is required by *other* claim elements of claim 49, and then the controller operates *in response to that*, that does not require that the controller receive the packetized signal that was already handled by the earlier elements. (Bergeron, ¶¶ 91)

**d. The '062 Patent is not indefinite and is dissimilar to Peloton's cases**

In support of its indefiniteness argument, Peloton cites to several cases wherein the Court found terms indefinite where the function was performed by a general purpose computer or processor without a disclosed algorithm. (*See supra* Section IV.E.2.c.) However, the '062 Patent differs from these cases in one significant way—those cases dealt with specifications that *only* disclosed a general purpose computer or microprocessor as the corresponding structure. *See Rain Comput., Inc. v. Samsung Elecs. Am., Inc.*, 989 F.3d 1002, 1007 (Fed. Cir. 2021) (confirming that the structural examples clearly linked to the function was a general purpose computer); *Aristocrat Techs. Austl. Pty Ltd. V. Int'l Game Tech.*, 521 F.3d 1328, 1333 (Fed. Cir. 2008) (holding that for “*only* [disclosing] a general purpose computer as the structure designed to perform that function amounts to pure functional claiming.” (emphasis added)); *WMS Gaming Inc. v. Int'l Game Tech.*, 184 F.3d 1339, 1349 (Fed. Cir. 1999) (noting the patent is “almost completely devoid of any structure to support” a means-plus-function claim). But here, the specification does not *only* disclose a general purpose computer or microprocessor. To the contrary, the specification discloses that the “present invention” includes means for controlling operating parameters of an exercise mechanism that are clearly linked to the structure of a motor, solenoid, or other electrically driven actuator. (*See supra* Section IV.E.1.b.)

**4. Defendant's Sur-Reply Position**

**a. iFIT's construction reads “responsive to” out of the claim.**

iFIT's proposed function and structure would eliminate the concept of being “responsive” from the claim, and cannot be correct. iFIT attempts to distinguish *Bennett Marine* by arguing that “an ‘and’ before [the] ‘responsive to’” clause changes the “effect of the language to be functional in nature.” (*Supra* Section IV.E.3.a.) However, the Federal Circuit made no distinction about the

word “and,” stating only that the district court’s “failure to fully identify the functions” led it to identify the wrong structure. *Bennett Marine*, 549 F. App’x at 953. iFIT never explains why “and” changes the “nature” of the claim term. The claim language requires a means that is being “responsive,” i.e., responding to the signal. (*Supra* Sections IV.C.4, IV.D.4; Ex. D1, ¶¶ 136-141.)

iFIT is incorrect that *Input/Output* justifies reading “responsive to” out of the claim. That holding was limited to “*the context of the claim language itself*,” and is not a generalizable legal principle with any applicability here. *Input/Output, Inc. v. Sercel, Inc.*, 2008 WL 5427982, at \*5 (E.D. Tex. Apr. 28, 2008).

**b. The intrinsic record supports Peloton’s construction.**

As discussed above, dependent claims 64 and 65 reference the “means ... for controlling” of claim 49, and further comprises “one or more processors.” (*Supra* Section IV.E.2.b; JCCC Ex. A, cl. 64, 65.) iFIT’s narrow construction equates “means” with any basic “motor,” improperly excluding “one or more processors,” and thus cannot be correct. *Wright Med. Tech., Inc. v. Osteonics Corp.*, 122 F.3d 1440, 1445 (Fed. Cir. 1997).

iFIT also contends that the specification “describes the features of the ‘present invention’ as a whole,” and “limits the scope of the invention.” (*Supra* Section IV.E.3.b.) Then, iFIT argues the specification limits the “*claimed controller*” to “a ‘motor,’ ‘solenoid,’ or ‘actuator.’” *Id.* First, iFIT misstates the claim: iFIT’s *construction* uses the term “controller,” not the claim language (“means”). Second, iFIT is incorrect that the “‘present invention’ as a whole” “limits the scope of the invention” to only motors. Even Dr. Bergeron admits as much. (Ex. D3, 146:2-11 (“Q. So the present invention is *not* limited to devices that utilize one or more motors or electrically driven actuators to control operating parameters, correct? A. I believe that’s the case.”))

iFIT’s cited cases focus on the consistent use of claim terms in specifications, and construe those terms accordingly, in contrast to the claim terms here. In *Regents*, the court construed a

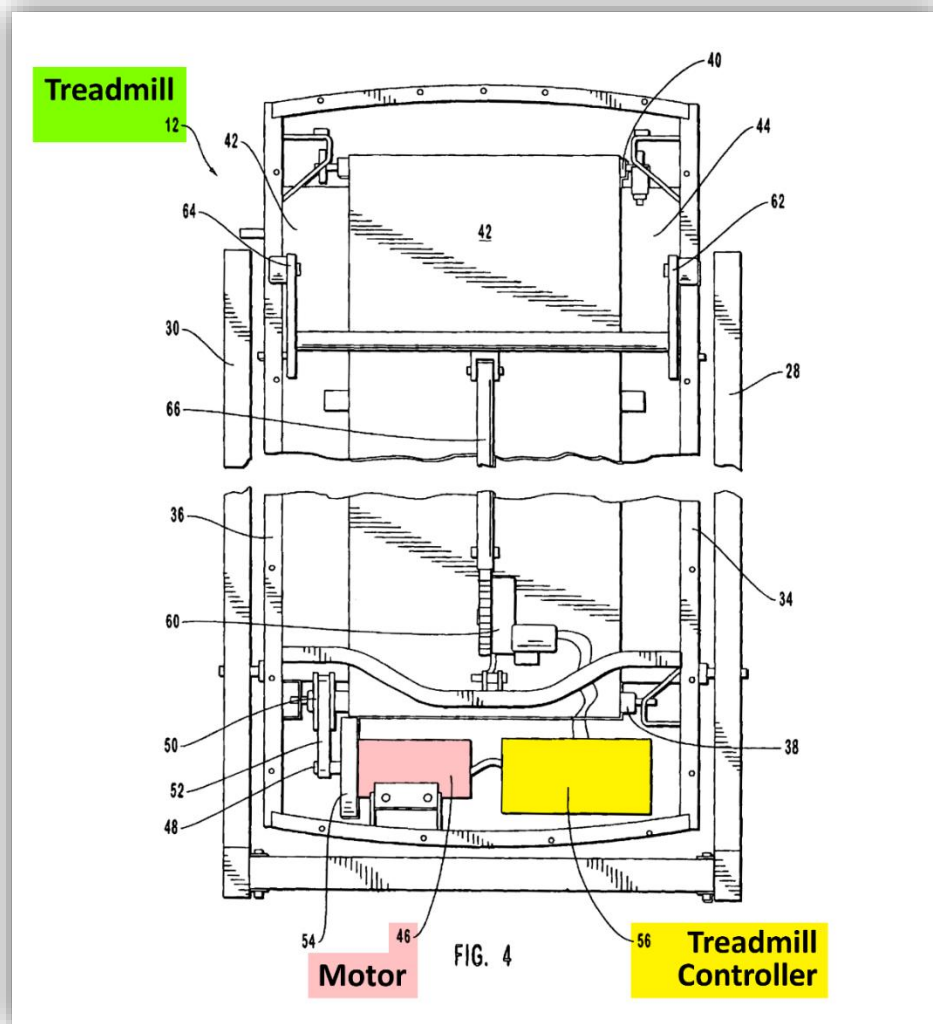
claim as requiring two disks to be separate. It explained, the “specification *never teaches* an embodiment constructed as a single piece” and that “*every single* embodiment disclosed ... is made up of two separate disks.” *Regents of Univ. of Minn. v. AGA Med. Corp.*, 717 F.3d 929, 936 (Fed. Cir. 2013). In *GPNE*, the patent “repeatedly and consistently” characterized “node” in a particular way, so it was “proper to construe the claim term in accordance with that characterization.” *GPNE Corp. v. Apple Inc.*, 830 F.3d 1365, 1370 (Fed. Cir. 2016). By contrast, iFIT’s specification refers to a “*controller*” in many different ways (*Infra* Section IV.G.2.a) but clearly links the claim to a *general-purpose computer* and many of its components, which are distinct from the machinery, such as a motor. (*Supra* Section IV.E.2.d; Ex. D1, ¶¶ 164-170.)<sup>14</sup> Dr. Bergeron admits this. (Ex. D3, 159:10-17 (“Q. And it *identifies processor 214 as a controller* responsive to a packetized second signal *configured to control operating parameters*, correct? A. *That’s correct.* Q. *Is processor 214 a computer?* A. Let me see what 214 is in the documents. It appears to be, *yes.*); *id.*, 158:7-161:23.)

iFIT argues that the “means ... for controlling” cannot be a computer because the “computer merely detects a control signal but does not itself vary parameters.” (*Supra* Section IV.E.3.c (emphasis in original).) iFIT takes out of context a single passage from the specification which states that computer 14 delivers a control signal “to the *appropriate controllers* for varying the operating parameters of *treadmill 12*.” (JCCC Ex. A, 21:46–52.) iFIT ignores that the specification also explains that “treadmill 12” includes a module named “treadmill *controller 56*” that “controls the operation of motor 46.” (JCCC Ex. A, 8:55-57.) A POSA would understand the

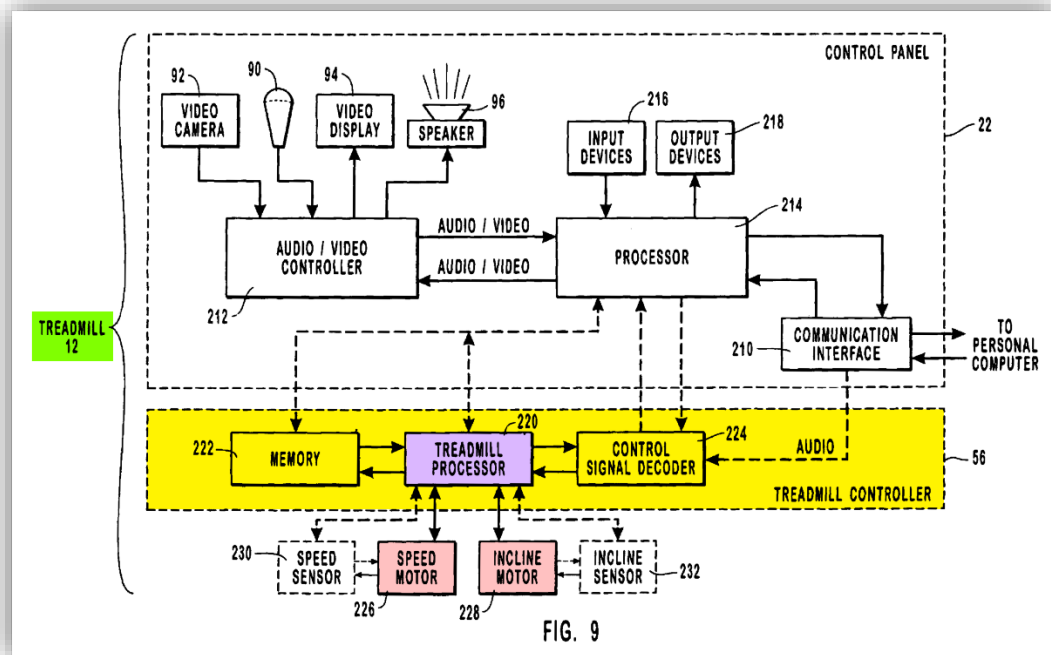
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<sup>14</sup> iFIT also argues that its constructions for other claim elements include a “computer”; therefore, the “means ... for controlling” is not a computer. (*Supra* Section IV.E.3.c.) iFIT’s argument ignores the specification and claims which link the “means ... for controlling” with a computer.

“controller” referred to in iFIT’s citation to be “treadmill controller 56,” which is distinct from a motor. (Ex. D1, ¶ 167; JCCC Ex. A, Fig. 4 (annotated).)



As shown below, “treadmill controller” *includes* “treadmill processor,” which Dr. Bergeron admits is a computer. (Ex. D3, 159:24-25.) Further, the specification explicitly states that treadmill controller 56 may be incorporated into general-purpose computer 14. (*Supra* Section IV.E.2.d; Ex. D1, ¶¶ 164-170).



(JCCC Ex. A, Fig. 9 (annotated).) The specification shows the central role of the general-purpose computer in varying the operating parameters of the exercise device.

Finally, iFIT argues that a computer-implemented claim term subject to § 112, ¶ 6 will be found indefinite if “only” a general-purpose computer is disclosed. This is not the law. In *Rain Computing* the Federal Circuit held that where a computer is “clearly linked” with the claimed function, the computer is the corresponding structure and the specification must disclose an algorithm to avoid indefiniteness. *Rain Computing, Inc. v. Samsung Elecs. Am., Inc.*, 989 F.3d 1002, 1007 (Fed. Cir. 2021); *see also Sony Corp. v. Iancu*, 924 F.3d 1235, 1240 (Fed. Cir. 2019). The specification clearly links the claimed function with a general-purpose computer but fails to disclose an algorithm, rendering the claim indefinite. (*Infra* Section IV.F.2.c.)

- F. “Control means, communicating with the exercise mechanism, for receiving one or more packetized control signals from the remote communication system indicative of the selected exercise program and for changing one or more**

**operating parameters of the exercise mechanism based upon the selected exercise program and the one or more packetized control signals”**

<b>Claim Term</b>	<b>iFIT’s Proposed Construction</b>	<b>Peloton’s Proposed Construction</b>
“Control means, communicating with the exercise mechanism, for receiving one or more packetized control signals from the remote communication system indicative of the selected exercise program and for changing one or more operating parameters of the exercise mechanism based upon the selected exercise program and the one or more packetized control signals”	<p>Means-plus-function limitation under 35 U.S.C. § 112 ¶ 6</p> <p>Function: receiving one or more packetized control signals from the remote communication system indicative of the selected exercise program and changing one or more operating parameters of the exercise mechanism based upon the selected exercise program and the one or more packetized control signals</p> <p>Structure: a computer in communication with the exercise mechanism, and equivalents thereof</p>	<p>Subject to 35 U.S.C. § 112 ¶ 6</p> <p>Function: “communicating with the exercise mechanism and receiving one or more packetized control signals from the remote communication system indicative of the selected exercise program and changing one or more operating parameters of the exercise mechanism based upon the selected exercise program and the one or more packetized control signals”</p> <p>This term is indefinite.</p>

**1. Plaintiff’s Opening Position**

**a. Peloton’s identified function is inconsistent with Federal Circuit precedent**

The parties agree that the proposed function should at least include “receiving one or more packetized control signals from the remote communication system indicative of the selected exercise program and changing one or more operating parameters of the exercise mechanism based upon the selected exercise program and the one or more packetized control signals.” Similar to the other means-plus-function terms, Peloton improperly adds in “communicating with the exercise mechanism” into the function of this term. *See Lockheed Martin.*, 324 F.3d at 1319; *see also Input/Output, Inc.*, 2008 WL 5427982, at \*5–7; *Transclean Corp.*, 290 F.3d at 1375.

**b. iFIT’s identified structure is supported by the specification**

iFIT identifies “a computer in communication with the exercise mechanism” as the corresponding structure and this is expressly supported by the specification as the structure associated with the recited function:

*Additionally, [a] computer... are examples of structures capable of performing the function of control means, communicating with the exercise mechanism, for receiving one or more packetized control signals from the communication system indicative of the selected exercise program and for changing one or more operating parameters of the exercise mechanism based upon the selected exercise program and the one or more packetized control signals.*

(See JCCC Ex. A, 18:47–55; see also *id.*, 21–34.)

Peloton, on the other hand, simply states “the term is indefinite.”<sup>15</sup> Yet, the structure disclosed in the specification is essentially verbatim to iFIT’s proposed structure. Peloton ignores the specification entirely.

**2. Defendant’s Answering Position**

The parties agree that “control means” is subject to 35 U.S.C. § 112, ¶ 6. However, iFIT again improperly excludes the function of “communicating with the exercise mechanism” from the claimed function. Under either side’s proposed function, the specification does not disclose sufficient structure to perform that function, rendering this claim indefinite.

**a. The claim recites three functions, not two.**

As before, the issue is whether “communicating with the exercise mechanism” is part of the claimed function. The claim language itself mandates that the “control means” performs three

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<sup>15</sup> Since Peloton has not identified any structure, iFIT assumes that Peloton’s position will be that there is no corresponding structure in the specification for the recited function. To the extent Peloton shifts its position to argue in its brief that the corresponding structure is a general purpose computer/processor lacking algorithmic structure, iFIT reserves its right to further respond to such arguments. Regardless, to the extent any algorithm would even be required it is at least provided by the recited function of the claim language itself.



functions: (1) “communicating with the exercise mechanism,” (2) receiving one or more packetized control signals ...” and (3) “changing one or more operating parameters ....” *Supra* Sections IV.C.2.a, IV.D.2.a, IV.E.2.a; *Bennett Marine*, 549 F. App’x at 953. (Ex. D1, ¶¶ 174-176.) Contrary to this claim language, iFIT excludes the function of “communicating” from its identification of the claimed functions.

The specification also describes the first function of “communicating with the exercise mechanism” clause in functional terms. (JCCC Ex. A, 18:46-54; Ex. D1, ¶¶ 177-178.) By contrast, in describing the “control means,” the specification states the “computer” or “processor” are “*structures* capable of performing the function of control means, communicating with the exercise mechanism.” (JCCC Ex. A, 18:46-55, 24:1-9, 24:41-50.) The claims and specification confirm that “communicating” is one of the functions the “control means” performs. *Supra* Sections IV.C.2.a, IV.D.2.a, IV.E.2.a. (Ex. D1, ¶ 179.)

**b. The claims and specification confirm that the corresponding structure is a general-purpose computer.**

The parties agree that the structure corresponding to the claimed “control means” is a computer. (*Supra* Section IV.E.1.b (identifying “a computer” as the corresponding structure.) This is consistent with the specification: “*computer* 14” is a “structure[] capable of performing the function of control means”; “computer 14 is a *general-purpose-computing device*,” or “*personal computer*.” (JCCC Ex. A, 13:65-14:5, 14:53-55, 18:46-55; Ex. D1, ¶¶ 180-183.<sup>16</sup>)

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<sup>16</sup> A POSA would understand “Processor 214” and “Treadmill Processor 220” are general-purpose computers. *Supra* Section IV.E.2.b. (JCCC Ex. A, 23:52-57, 24:59-65; Ex. D1, ¶¶ 183, 152-158).

**c. The lack of algorithmic disclosure in the specification renders the claims indefinite.**

As was the case above, iFIT's specification describes "computer 14" only in functional terms, and does not disclose the requisite algorithmic support. *Supra* Section IV.E.2.c-IV.E.2.D. The specification does not provide any formulae, prose, flow charts, etc., teaching a POSA *how* to program "computer 14" to perform the claimed functions. *See Finisar*, 523 F.3d at 1340. (Ex. D1, ¶¶ 184-186.) Therefore, the claim is indefinite.

Even under iFIT's construction, "control means" is indefinite. iFIT agrees that the corresponding structure is a "computer." (*Supra* Section IV.E.1.b.) Regardless of whether the Court construes the claimed function to include "communicating with the exercise mechanism" or not, the specification fails to disclose the necessary algorithm for performing the claimed function. (Ex. D1, ¶¶ 187-188.) iFIT merely argues that "the structure disclosed in the specification is essentially verbatim to iFIT's proposed structure," which is "a computer." (*Supra* Section IV.E.1.b.) This is not the test. Where corresponding structure is simply a computer, the specification must include an algorithm by which that computer performs the claimed function, and it fails to do so. *WMS Gaming*, 184 F.3d at 1349. iFIT does not even attempt to point the Court to such algorithmic support, as the specification indisputably lacks one. (Ex. D1, ¶¶ 188-189.) The Court should find this claim indefinite under either party's construction. *See Aristocrat*, 521 F.3d at 1338.

**3. Plaintiff's Reply Position**

**a. The claim recites two functions**

Similar to the other means-plus-function claims, Peloton incorrectly claims that the structural language in this claim is functional. But as already detailed, this language between

“means” and “for” is not functional but structural. (*See supra* Section IV.C.1.a); (Bergeron, ¶¶ 93–97). Nor does it make sense to add an additional “communicating” function.

**b. The specification supports iFIT**

The corresponding structure of this claim is a “computer in communication with the exercise mechanism and equivalents thereof.” Peloton’s position is that because the corresponding structure is a computer it must disclose an algorithm in order to avoid indefiniteness and the specification fails to disclose any such algorithm<sup>17</sup>—but this is incorrect. Peloton failed to address the fact that the **claim language itself** provides the algorithm via the recited function in the claim language. A POSITA, reviewing the claim language, would understand that the corresponding algorithm is provided by the recited steps of the claim language itself. (Bergeron, ¶¶ 98–101.)

The algorithm as claimed is fairly straightforward: the computer receives one or more packetized control signals indicative of a selected exercise program and then instructs the changing of one or more operating parameters based upon said received information. (JCCC Ex. A, 55:32–39, “receiving one or more packetized control signals from the remote communication system indicative of the selected exercise program and for changing one or more operating parameters of the exercise mechanism based upon the selected exercise program and the one or more packetized control signals.”) *See StrikeForce Techs. Inc. v. PhoneFactor Inc.*, 2015 WL 5708577 at \*1 (D. Del. Sept. 29, 2015) (adopting magistrate’s recommendation that means-plus-function limitations had adequately disclosed algorithms, and stating that “[t]hey are simple algorithms, but there is no requirement that the algorithms be complicated”). There are no algorithmic steps “missing” from

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<sup>17</sup> Peloton’s position in the JCC was “the term is indefinite” indicating no corresponding structure in the specification. Peloton now shifts to argue that the corresponding structure is a general purpose computer/processor lacking algorithmic structure.

this claim so as to render it indefinite—the computer receives a program, and then issues instructions in accordance therewith.

#### 4. Defendant’s Sur-Reply Position

iFIT again wrongly argues that the act of “communicating with the exercise mechanism” is a structure, not a function. (*Supra* Sections IV.C.4, IV.D.4, IV.E.4.a; *Supra* Section IV.C.2.c.) And for the first time in reply, iFIT argues “the *claim language* itself provides the algorithm” needed to perform the computer-implemented function.<sup>18</sup> (*Supra* Section IV.F.3.b.) *Novosteel SA v. United States*, 284 F.3d 1261, 1273-74 (Fed. Cir. 2002) (“Raising the issue for the first time in a reply brief does not suffice.”). But the claims merely “describe an outcome”—changing the operating parameter—“not a means for achieving that outcome.” *Aristocrat Techs. Austl. Pty Ltd. v. Int’l Game Tech.*, 521 F.3d 1328, 1334 (Fed. Cir. 2008). Like the specification, the claims do not explain any steps or processes for “changing” operating parameters “*based upon the selected exercise program and the one or more packetized control signals.*” A POSA would not understand how to program a computer to change parameters without an algorithm. (Ex. D2, ¶¶ 40-44.) The claim is indefinite.

#### G. “A controller, responsive to the packetized second signal, configured to control the operating parameters of the exercise mechanism.”

Claim Term	iFIT’s Proposed Construction	Peloton’s Proposed Construction
“a controller, responsive to the packetized second signal, configured to control the operating parameters of the exercise mechanism”	Not subject to 35 U.S.C. 112 ¶ 6. However, to the extent the Court is inclined to construe the term in accordance with 35 U.S.C. ¶ 6, iFIT would propose the following:	Subject to 35 U.S.C. § 112 ¶ 6  Function: “responsive to the packetized second signal, to control the operating

<sup>18</sup> iFIT contends that Peloton shifts position to argue the claims lack algorithmic support. (*Supra* Section IV.F.3.b.) Not so. In the JCCS, Peloton clearly identified that this computer-implemented term is governed by § 112 ¶ 6 and is “indefinite”; it would have been improper to include legal arguments addressing *why* the claims were indefinite. iFIT never suggested it did not understand Peloton’s position. Any implication that iFIT has been unfairly surprised is false.

	Function: controlling the operating parameters of the exercise mechanism  Structure: motor, solenoid, other electrically driven actuator, or equivalents thereof	parameters of the exercise mechanism”  This term is indefinite.
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## 1. Plaintiff’s Opening Position

### a. This term is not a means-plus-function term

iFIT does not believe that this term is subject to 35 U.S.C. § 112 ¶ 6. This term does not include the word “means” and thus “there is a rebuttable presumption that § 112 ¶ 6 does not apply.” *Rain Computing, Inc. v. Samsung Elecs. Am., Inc.*, 989 F.3d 1002, 1006 (Fed. Cir. 2021). “Means-plus-function claiming applies only to purely functional limitations that do not provide the structure that performs the recited function.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1311 (Fed. Cir. 2005). As the term and specification make clear, the term “controller” refers to a particular physical structure. To the extent further construction is necessary, the term should be given its plain and ordinary meaning, as described by the specification, which is a “motor, solenoid, or any other electrically driven actuator.” (*See* JCCC Ex. A, 3:21–24, 5:66–6:13.)

### b. In the alternative, if the Court decides this term is subject to § 112 ¶ 6, this term is not indefinite

#### (1) iFIT’s proposed function is consistent with precedent

In the event the Court is inclined to construe the term in accordance with 35 U.S.C. 112 ¶ 6, iFIT proposes that the function is “controlling the operating parameters of the exercise mechanism.” If the Court found that this was a means-plus-function term, the parties generally agree that “controlling the operating parameters of the exercise mechanism” should be included in the function, but Peloton takes the position that “responsive to the packetized second signal” should also be included in the function.

Although there is no “means for” type clause within this term, the precedent set by *Lockheed Martin* and *Transclean* still apply. The “configured to” language would act as the equivalent to “means for” and everything proceeding that language would constitute the function. *See Lockheed Martin*, 324 F.3d at 1319; *Transclean Corp.*, 290 F.3d at 1375. “Responsive to the packetized second signal” is not a second function that is performed by the controller, rather this is a further characteristic of the controller. *See Transclean Corp.*, 290 F.3d at 1375.

**(2) iFIT’s identified structure is supported by the specification**

Peloton ignores the specification and claims that this term is indefinite without elaborating or identifying corresponding structure. The specification, however, discloses the corresponding structure—a requirement of the “present invention”—as a motor, solenoid, other electrically driven actuator, or equivalents thereof:

[t]he present invention is particularly well suited to devices that utilize one or more **motors and/or other electronically driven actuators that control one or more operating parameters of a device**, such as an exercise device.

(JCCC Ex. A, 3:21–24) (emphasis added).

[t]he present invention is directed to devices that include one or more **motors or other electrically driven actuators used to control one or more operating parameters of the device**...the present invention can be readily adapted to any motorized device or any other device that utilizes **motors, solenoids, or any other electrically driven actuators to control any operating parameter of the device**, such as speed, resistance, incline, time, temperature, or other similar operating parameters. The term “device” or “devices” shall refer broadly to any type of apparatus that includes one or more stepper **motors, solenoids, or other electronically driven actuators or controllers**.

(*Id.* at 5:66–6:13) (emphasis added).

When describing the features of the present invention as a whole, instead of exemplary embodiments, “this description limits the scope of the invention.” *Regents of Univ. of Minn.*, 717 F.3d at 936; *see also Trading Techs. Int’l.*, 595 F.3d at 1353–54. It thus follows that the controller

(i.e., motor, solenoid, or other electronically driven actuator) that actually controls the operating parameters of the exercise machine is the corresponding structure.

As already discussed, the specification may refer to other components of exemplary embodiments as “controllers” or “control means,” but those exemplary structures refer to more complicated functions than “controlling the operating parameters of the exercise mechanism.” (*See supra* Section IV.E.1.b.) When discussing the function of “controlling the operating parameters of the exercise mechanism,” the specification only refers to the motor, solenoid, or electronically driven actuator. Despite the disclosures provided by the specification, Peloton ignores these disclosures and does not identify any structure, simply stating “this term is indefinite.”

## **2. Defendant’s Answering Position**

This is a means-plus-function term, in which the nonce word “controller” is used instead of “means,” and it should be construed under § 112, ¶ 6. Because the specification does not disclose any corresponding structure for performing the function, the claim is indefinite.

### **a. Section 112, ¶ 6 applies.**

“Controller ... configured to control” should be construed under 35 U.S.C. § 112, ¶ 6. Because this claim term does not literally use the word “means,” there is a presumption that the means-plus-function statute does not apply, but as the Federal Circuit has made clear, that presumption is no longer “strong” or “heightened.” And it is easily overcome when “the claim term fails to ‘recite sufficiently definite structure’ or else recites ‘function without reciting sufficient structure for performing that function.’” *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1349 (Fed. Cir. 2015) (citation omitted). Until *Williamson*, many patentees carefully avoided using the word “means” in their claims to avoid the application of § 112, ¶ 6, but instead selected equally generic, functional terms devoid of structural meaning. This “resulted in a proliferation of functional claiming untethered to § 112, para. 6 and free of the strictures set forth

in the statute.” *Id.* iFIT obtained its patent in the pre-*Williamson* era, and its “controller ... configured to control” is precisely the type of functional claiming the court warned against.

The Court should apply *Williamson* and construe “controller ... configured to control” as a means-plus-function term. In *Improved Search*, this Court found “dialectal controller” a “nonce” term because it was “consistent with traditional means-plus-function claim limitations” and because the “dialectal controller” was not limited to itself “but also encompasses the function.” *Improved Search LLC v. Microsoft Corp.*, 2018 WL 1583975, at \*7 (D. Del. Mar. 30, 2018). The same reasoning applies here. The claims recite a generic “controller ... configured to control” and the term encompasses its function, “to control.” (Ex. D1, ¶¶ 190-195.) The specification imposes no structural restrictions on the “controller,” and describes it functionally as virtually any device that performs the claimed functions. And, a POSA would not understand the “controller” to be the “name for structure.” *See Grecia v. Samsung Elecs. Am. Inc.*, 780 F. App’x 912, 914 (Fed. Cir. 2019); *MTD Prod. Inc. v. Iancu*, 933 F.3d 1336, 1343 (Fed. Cir. 2019) (“mechanical control assembly ... configured to actuate” was a nonce term); (Ex. D1, ¶ 196.)

The specification describes the “controller ... configured to control” using a “generic box with no indication of any structure.” *Fiber, LLC v. Ciena Corp.*, 792 F. App’x 789, 795 (Fed. Cir. 2019). This is similar to *Fiber*, where the patent depicted an “optic unit’s sensing control system” as “a generic box with no indication of any structure,” and the court held that § 112, ¶ 6 applied. *Id.* Likewise, the ’062 Patent generically describes the “controller ... configured to control” as simply “a structure capable of performing the function of control means,” or, as a number of generic boxes that “collectively and individually” are examples of a controller. (JCCC Ex. A, 27:41-55; Fig. 9 (annotated).) In other words, the specification defines this term by its function and with generic boxes devoid of any structure. (Ex. D1, ¶¶ 197-200.)



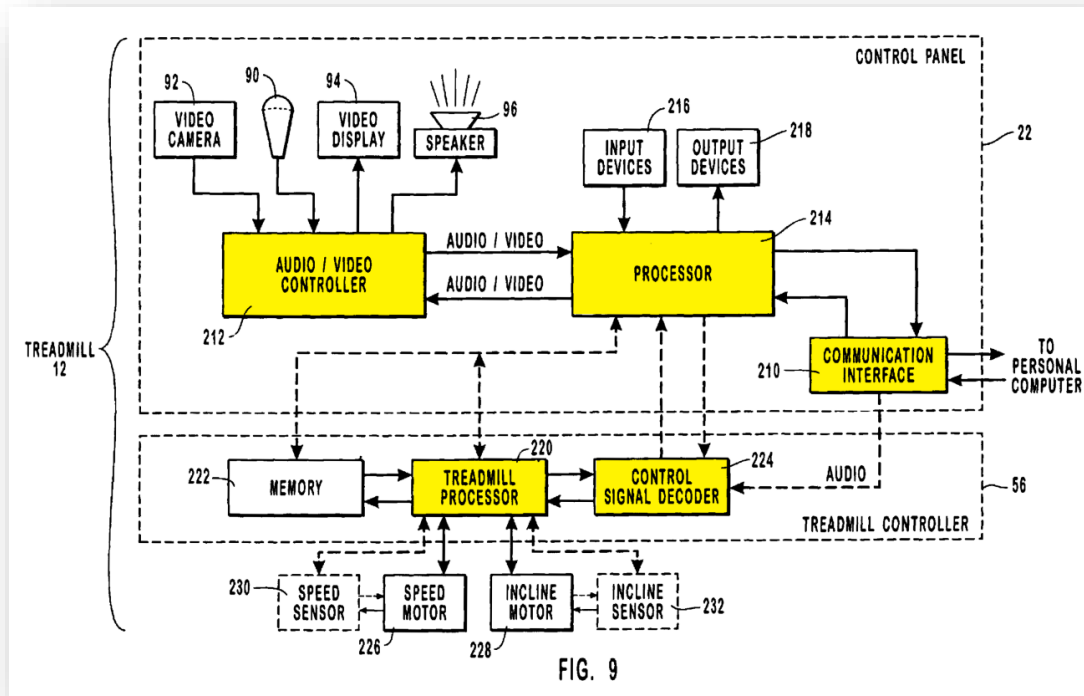


FIG. 9

The specification also uses the term “controller” broadly and inconsistently, confirming that it conveys no specific structure. *See Anchor Wall Sys., Inc. v. Rockwood Retaining Walls, Inc.*, 340 F.3d 1298, 1308 (Fed. Cir. 2003); *MonkeyMedia, Inc. v. Apple, Inc.*, 2013 WL 12076550, at \*5 (W.D. Tex. Feb. 22, 2013). The specification refers to a “treadmill controller,” “memory controller,” “micro-controllers,” “software-based controllers,” “audio/video controller,” “other controllers known ... to manipulate data,” and any “other controllers known ... to generate one or more control signal.” (JCCC Ex. A, 8:55-58, 14:58-61, 19:57-58, 19:60, 23:21-22, 19:61-63, 20:37-39.) A POSA would not understand the “controller ... configured to control” to denote any specific “name for structure,” when the specification describes it in a myriad of different and inconsistent ways. (Ex. D1, ¶¶ 201-202.)

**b. The claim recites two functions, not one.**

As with the “means ... for controlling” term above, the parties dispute whether responding, or being “responsive to the packetized second signal,” is part of the claimed function. For the same reasons, the claim language mandates that it is. *Supra* Sections IV.C.2, IV.E.2.a. The claims recite two functions: (1) responding, i.e., being “responsive to the packetized second signal,” and (2) controlling, i.e., being “configured to control,” not just one. (Ex. D1, ¶¶ 208-210.)

**c. The claims and specification confirm that the corresponding structure is a general-purpose computer.**

The “controller ... configured to control” includes a general-purpose computer—not merely a motor or solenoid or other electromechanical device as iFIT now argues. The specification states, “communication interface 210, *processor* 214, audio/video controller 212, treadmill *processor* 220, and/or control signal decoder 224,” are “collectively and individually examples of *a controller*, responsive to the packetized second signal, *configured to control* the operating parameters of the exercise mechanism.” (JCCC Ex. A, 27:44-46.) Figure 9 shows that each of these devices is a sub-module of “Control Panel 22” and “Treadmill Controller 56.” *Supra* Section IV.E.2.b. (JCCC Ex. A, Fig. 9.) And, as explained above, *supra* Section IV.E.2.b, the specification states that “treadmill *controller* 56” and “*control panel* 22” may be integrated with, or incorporated into, “*computer* 14”; and that all three devices are individually general-purpose-computing devices. (JCCC Ex. A, 14:53-55, 13:65-14:5, 18:46-54; Ex. D1, ¶¶ 214-215, 152-158.) The specification “clearly link[s]” the general-purpose computer with the claimed functions. *See Rain Computing*, 989 F.3d at 1007. (Ex. D1, ¶¶ 211-215.)

As with the “means ... for controlling,” iFIT again argues that the corresponding structure is merely “a motor, solenoid, [or] other electronic actuator”<sup>19</sup> rather than a computer. (*Supra* Section IV.E.1.b.)<sup>20</sup> This argument fails for the same reasons. *Supra* Sections IV.E.2.b, IV.I.2.D. (JCCC Ex. A, 6:5-18.) iFIT also ignores how the specification uses the claim language verbatim to “clearly link[]” the “**controller**, responsive to the packetized second signal, **configured to control** the operating parameters of the exercise mechanism,” with a “**computer 14**” and a “**processor 214**” (i.e., all general-purpose computers). *Supra* Section IV.G.2.a; *Rain Computing*, 989 F.3d at 1007. (JCCC Ex. A, 18:46-54, 24:1-3, 24:41-43, 27:44-46; Ex. D1, ¶¶ 216-217.)

**d. The lack of algorithmic disclosure in the specification renders the claims indefinite.**

As explained above in Sections IV.E.2.c and IV.F.2.c, the specification never explains or provides any algorithms, formulae, prose, flow charts, etc., teaching a POSA *how* to program “computer 14” to perform the claimed functions. *See Finisar*, 523 F.3d at 1340. *Supra* Sections IV.E.2.c and IV.F.2.c. (Ex. D1, ¶¶ 218-222.) Therefore, the Court should find this claim term indefinite. *See Aristocrat*, 521 F.3d at 1338

**3. Plaintiff’s Reply Position**

**a. 35 U.S.C. § 112, ¶ 6 does not apply**

Peloton has not overcome the rebuttable presumption that § 112 ¶ 6 does not apply since the word “means” is absent from this claim. *See Rain Comput., Inc. v. Samsung Elecs. Am., Inc.*, 989 F.3d 1002, 1006 (Fed. Cir. 2021). The term “controller” has been defined in the context of what constitutes the “present invention.” (*Supra* Section IV.E.1.b) (Bergeron, ¶¶ 102–105.) In

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<sup>19</sup> Even if the “responsive to the packetized second signal” clause is not part of the claimed function, then it describes part of the “structure.” *Supra* Sections IV.C.2, IV.E.2.a. iFIT attempts to read this clause out of the claim entirely.

<sup>20</sup> As explained above, *supra* Section IV.E.2.d, iFIT’s reliance on *Regents of Univ. of Minn. and Trading Techs. Int’l.* is misplaced.

situations wherein the specification makes clear that a term refers to a particular structure and “is not simply a general description of any structure that will perform a particular function,” the term is not considered a means-plus-function term. *See Phillips*, 415 F.3d at 1311. Similar to *Phillips*, the term “controller” clearly refers to a motor, solenoid, or other electronically driven actuator in the specification and is thus not subject to § 112 ¶ 6. (*See JCCC Ex. A*, 3:21–24, 5:66–6:13.) (Bergeron, ¶¶102–105.)

**b. If the Court decides this is a means-plus-function term, the term is not indefinite**

**(1) Peloton misidentifies structural language as functional**

In the event the Court finds this term to be subject to 35 U.S.C. § 112 ¶ 6, the parties agree that “controlling the operating parameters of the exercise mechanism” should be included in the function. But Peloton once again improperly identifies language that is indicative of structure as being functional. (*Supra* Sections IV.C.1 and IV.E.1) “Responsive to the packetized second signal” is a characteristic of the means, and not part of the function. *See Input/Output, Inc.*, 2008 WL 5427982, at \*7. The corresponding structure is a motor, solenoid, or other electronically driven actuator.

Peloton again entirely ignores the “present invention” language within the specification to argue indefiniteness. (*see supra* Section IV.E.1.b.) Because the ’062 Patent “describes the features of the ‘present invention’ as a whole,” the reader is clearly alerted that “this description limits the scope of the invention” to a motor, solenoid, other electronically driven actuator, or equivalents thereof controlling the operating parameters of the exercise mechanism. *Techs., LLC v. Garmin Int’l, Inc.*, 778 F.3d 1021, 1025 (Fed. Cir. 2015); (*see supra* Section IV.E.1.b.); (Bergeron, ¶¶106–110.)

#### 4. Defendant's Sur-Reply Position

iFIT argues that § 112 ¶ 6 does not apply, yet fails to rebut Peloton's arguments. iFIT's single response is that "controller" refers to a motor. (*Supra* Section IV.G.3.a.) However, as previously explained (*supra* Section IV.G.2.a), a POSA would not understand the "***controller ... configured to control***" to denote any specific "name for structure." (Ex. P2, ¶¶ 201-202.) iFIT also refers to the same arguments it made with respect to the "means ... for controlling" term. For the same reasons as above, iFIT is incorrect. (*Supra* Section IV.E.4; *Supra* Section IV.G.2.a.)

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