

Filed on behalf of Valencell, Inc.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FITBIT, INC.,
Petitioner,

v.

VALENCELL, INC.,
Patent Owner.

Case IPR2017-01553
U.S. Patent No. 8,989,830

**PATENT OWNER PRELIMINARY RESPONSE PURSUANT TO
35 U.S.C. § 313 and 37 C.F.R. § 42.107**

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TABLE OF EXHIBITS

Exhibit No.	Description
2001	S. LeBoeuf, et al., Earbud-Based Sensor for the Assessment of Energy Expenditure, HR, and VO2max, OFFICIAL J. AM. C. SPORTS M., 2014, 1046–1052
2002	Biometrics Lab: Performance of Leading Optical Heart Rate Monitors During Interval Exercise Conditions
2003	Valencell website (http://valencell.com/customers/)
2004	CTA - It Is Innovation (i3) Magazine 2016 Innovation-Entrepreneur Awards

I. INTRODUCTION

Patent Owner Valencell, Inc. (“Patent Owner” or “Valencell”) respectfully submits this Preliminary Response in accordance with 35 U.S.C. § 313 and 37 C.F.R. § 42.107, responding to the Petition for *Inter Partes* Review (the “Petition”) filed by Fitbit, Inc. (“Petitioner” or “Fitbit”) regarding the claims of U.S. Patent No. 8,989,830 (the “’830 patent”) to LeBoeuf *et. al*, provided as Petitioner’s Exhibit 1001.

The Board has discretion to “deny some or all grounds for unpatentability for some or all of the challenged claims.” 37 C.F.R. § 42.108(b); *see* 35 U.S.C. § 314(a). Petitioner bears the burden of demonstrating that there is a reasonable likelihood that at least one of the claims challenged in the petition is unpatentable. 37 C.F.R. § 42.108(c). Although Patent Owner is not required to file a Preliminary Response to the Petition (37 C.F.R. § 42.107(a)), Valencell takes this opportunity to point out substantive and procedural reasons for denying institution of trial. Valencell submits this Preliminary Response subject and without prejudice to its opposition to Petitioner’s Motion for Joinder (Paper 7).

This Preliminary Response is timely under 35 U.S.C. § 313 and 37 C.F.R. §§ 1.7, 42.107(b), as it is filed on or before the next business day following three months from the June 16, 2017 mailing date of the Notice of Filing Date Accorded to Petition and Time for Filing Patent Owner Preliminary Response. Paper 4 at 1. For purposes

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