UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FITBIT, INC. and WAHOO FITNESS, LLC,

v.

Petitioners,

BLACKBIRD TECH LLC d/b/a BLACKBIRD TECHNOLOGIES, Patent Owner.

Case IPR2017-02012¹
Patent 6,434,212 B2

Record of Oral Hearing Held: December 12, 2018

Before DEBRA K. STEPHENS, THOMAS L. GIANNETTI, and CHRISTA P. ZADO, *Administrative Patent Judges*.

¹ Wahoo Fitness LLC, which filed a petition in IPR2018-00275, has been joined as a petitioner in this proceeding.



APPEARANCES:

ON BEHALF OF THE PETITIONER:

HARPER BATTS, ESQ. CHRISTOPHER PONDER, ESQ. Sheppard Mullin Richter & Hampton, LLP 379 Lytton Avenue Palo Alto, CA 94301-1479 (650) 815-2673

ON BEHALF OF THE PATENT OWNER:

WALTER DAVIS, ESQ. ALDO NOTO, ESQ. Davidson Berquist Jackson & Gowdey, LLP 8300 Greensboro Drive, Suite 500 McLean, VA 22102 (571) 765-7709

The above-entitled matter came on for hearing on Wednesday, December 12, 2018, commencing at 2:01 p.m. at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.



1	PROCEEDINGS
2	
3	JUDGE GIANNETTI: So, let's get started. First of all, welcome to
4	everyone.
5	We are here for a final hearing in IPR2017-02012, Fitbit v.
6	Blackbird Tech, LLC. In this hearing, we also will be addressing a joined
7	case, IPR2018-00275, Wahoo Fitness v. Blackbird Tech.
8	So, let me start by introducing the panel. I'm Judge Giannetti. I will
9	be presiding today. And on the monitors to my left and to my right are my
10	colleagues, Judge Zado and Judge Stephens, who are participating in this
11	hearing remotely today.
12	Let me, next, get the appearances of counsel. Who's appearing today
13	for Petitioner?
14	MR. BATTS: Good afternoon, Your Honors. Harper Batts from the
15	Law Firm of Sheppard Mullin is representing the Petitioner. As to the
16	grounds that we are addressing today, I will split my argument with my
17	colleague, Mr. Ponder, if the panel wishes to hear any of the constitutionality
18	or SAS-related issues. Otherwise, we don't mind addressing them more.
19	JUDGE GIANNETTI: Well, I will leave that up to you, but I think I
20	speak for the panel when I say we are more interested in hearing about the
21	merits of the case today.
22	MR. BATTS: Right. Thank you.
23	JUDGE GIANNETTI: All right. Mr. Davis, you're appearing again
24	today?



1	MR. DAVIS: Yes, Your Honor. Good to see you again.
2	JUDGE GIANNETTI: All right.
3	MR. DAVIS: Good afternoon. Walter Davis from Davidson
4	Berquist Jackson & Gowdey on behalf of patent owner Blackbird. With me
5	today is Aldo Noto.
6	JUDGE GIANNETTI: All right. Thank you very much.
7	All right. So, let me just go over some of the procedures we're going
8	to be following today. Each side has 60 minutes to present argument.
9	Petitioner may reserve time for rebuttal. I assume that both of you will be
10	using demonstratives. Both sides will be using demonstratives today. We
11	have copies of those, and our remote judges also have them.
12	I will point out that demonstratives are not evidence in this case. If
13	you want to have something be on the record during this procedure, you
14	should make it part of the oral record and not rely on the demonstratives.
15	They are aids to argument and not evidence.
16	And while we're on the subject of demonstratives, please be careful
17	when you are using demonstratives, to point out what slide number you are
18	referring to. Our remote judges have the demonstratives and can follow
19	along, but you have to give them the number, so that they can do that.
20	Finally, we have been having some microphone problems here. So,
21	make sure that, when you speak, you are close to the microphones, so that
22	not only can I hear you, but also the remote judges.
23	Any questions before we get into this? Mr. Batts? Is it Batts?
24	MR. BATTS: Batts.



1	No, Your Honor.
2	JUDGE GIANNETTI: Batts?
3	MR. BATTS: Mr. Batts, and no questions, Your Honor.
4	JUDGE GIANNETTI: Okay, Mr. Batts.
5	And, Mr. Davis, any questions?
6	MR. DAVIS: No, Your Honor.
7	JUDGE GIANNETTI: All right. Let me just set the clock here. Do
8	you want rebuttal time, Mr. Batts?
9	MR. BATTS: Yes, I'd like to reserve 20 minutes, please.
10	JUDGE GIANNETTI: Twenty minutes, okay.
11	MR. BATTS: May I approach with a copy of the demonstratives?
12	JUDGE GIANNETTI: That's fine. You may hand those up. We
13	already have copies, but this is helpful. Thank you.
14	All right. Let me just take a minute to set the clock.
15	All right, Mr. Batts, you may proceed whenever you're ready.
16	STATEMENT ON BEHALF OF PETITIONER
17	MR. BATTS: Thank you, Your Honor.
18	I just want to confirm, good afternoon and good morning.
19	Judge Stephens and Judge Zado, can you hear me?
20	JUDGE STEPHENS: Yes. Yes, I can.
21	JUDGE ZADO: I can hear you as well. Thank you.
22	JUDGE GIANNETTI: Okay. We're off to a good start.



DOCKET

Explore Litigation Insights



Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time** alerts and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.

