UNITED STATES PATENT AND TRADEMARK OFFICE
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BEFORE THE PATENT TRIAL AND APPEAL BOARD
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FITBIT, INC. and WAHOO FITNESS, LLC,
Petitioners,

v.

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

Case IPR2017-02012[1]
Patent 6,434,212 B2
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Record of Oral Hearing
Held: December 12, 2018
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Before DEBRA K. STEPHENS, THOMAS L. GIANNETTI, and
CHRISTA P. ZADO, *Administrative Patent Judges.*

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

Case IPR2017-02012
Patent 6,434,212 B2

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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     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.

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1   P R O C E E D I N G S

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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.

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