

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FITBIT, INC. and WAHOO FITNESS LLC.

Petitioner,

v.

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

Case IPR2018-00275
Patent 6,434,212

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

STEPHENS, *Administrative Patent Judge*.

ORDER

Conduct of the Proceeding
37 C.F.R. § 42.5

On April 24, 2018, the Supreme Court held that a decision to institute under 35 U.S.C. § 314 may not institute on less than all claims challenged in the petition (*SAS Inst., Inc. v. Iancu*, 2018 WL 1914661, at *10 (U.S. Apr. 24, 2018)). In our Decision on Institution, we determined that Petitioner

demonstrated a reasonable likelihood that it would establish that at least one of the challenged claims of U.S. Patent 6,434,212 ('212 patent) is unpatentable (Paper 8, 28). Specifically, Petitioner challenged claims 2, 5, and 6 in the Petition on the following grounds:

| Claim(s) | Basis | References |
|----------|-------|---|
| 2 and 5 | § 102 | Amano (US 6,241,684 B1) (Ex. 1003) (“Amano”) |
| 2 and 5 | § 103 | Amano |
| 6 | § 103 | Kato (US 5,033,013) (Ex. 1004) (“Kato”) and Amano |

(Paper 1, 6–7) We instituted on:

| Claim(s) | Basis | References |
|----------|-------|----------------|
| 2 and 5 | § 103 | Amano |
| 6 | § 103 | Kato and Amano |

(Paper 8, 28). We modify our institution decision to institute on all of the challenged claims and all of the grounds presented in the Petition. Specifically, we modify our decision to include the Petitioner’s asserted ground that claims 2 and 5 are anticipated by Amano under 35 U.S.C. § 102(e).

The parties shall confer to discuss the impact, if any, of this Order on the current schedule. If, after conferring, the parties wish to change the schedule or submit further briefing due to this Order, the parties must, within one week of the date of this Order, request a conference call with the panel to seek authorization for such changes or briefing.

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In consideration of the foregoing, it is hereby:

ORDERED that our institution decision is modified to include review of all challenged claims and all grounds presented in the Petition, specifically,

Claims 2 and 5 under 35 U.S.C. § 102(e) as anticipated by Amano;
Claims 2 and 5 under 35 U.S.C. § 103(a) as obvious over Amano; and
Claim 6 under 35 U.S.C. § 103(a) as obvious over Kato and Amano;
and

FURTHER ORDERED that Petitioner and Patent Owner shall confer to determine whether they desire any changes to the schedule or any further briefing, and, if so, shall request a conference call with the panel to seek authorization for such changes or briefing within one week of the date of this Order.

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