

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WAHOO FITNESS LLC.,
Petitioner,
v.

BLACKBIRD TECH LLC.,
Patent Owner.

Case IPR. No. **Unassigned**
Patent 6,434,212 B2
Title: PEDOMETER

**PETITIONER WAHOO FITNESS LLC'S MOTION FOR JOINDER
UNDER 35 C.F.R. § 315(c) AND 37 C.F.R. §§ 42.22 AND 42.122(b) TO
RELATED *INTER PARTES* REVIEW NO. IPR2017-02012**

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I. STATEMENT OF PRECISE RELIEF REQUESTED

Pursuant to 35 U.S.C. § 315(c) and 37 C.F.R. §§ 42.22 and 42.122(b), petitioner Wahoo Fitness LLC (“Wahoo”) requests that it be joined as a party to the following pending (but not yet initiated) *inter partes* review proceeding concerning the same patent-at-issue here, U.S. Patent No. 6,434,212 (“the ‘212 Patent.”): *Fitbit Inc. v. Blackbird Tech LLC.*, Case IPR2017-02012 (filed August 29, 2017) (the “Fitbit IPR”). Concurrently herewith, Wahoo has filed a “Petition for *Inter Partes* Review of Claims 2, 5, and 6 of U.S. Patent No. 6,434,212 (the “Wahoo IPR”). The Wahoo IPR presents the same grounds of invalidity as have been raised in the Fitbit IPR. In addition, the Petition filed by Wahoo is identical to the Fitbit IPR Petition in all substantive respects, including reliance on the same exhibits and reliance on the same expert declaration testimony. The only differences relate to the identification of the correct Petitioner, mandatory notices, and other non-substantive matter. Fitbit does not oppose this motion.

Wahoo’s request for joinder is timely because it was filed prior to one month after the institution date of the *inter partes* review for which joinder is requested. 37 C.F.R. § 42.122(b). More specifically, this filing is timely because it is filed before the institution date of the Fitbit IPR. *See Mercedes-Benz USA, LLC v. Innovative Display Techs. LLC*, Case IPR2015-00360, slip. op. at 4 (PTAB May

22, 2015) (Paper 22) (holding joinder motion timely, as Petition was filed before the institution date of the proceeding to which joinder was sought); *Taiwan Semiconductor Mfg. Co. v. Zond, LLC*, Case IPR2014-00781, slip. op. at 4 (PTAB May 29, 2014) (Paper 5) (explaining that pre-institution joinder movant “should indicate whether it would withdraw non-instituted grounds of unpatentability should the Board institute an inter partes review with less than all of the asserted grounds of unpatentability in [the earlier-filed, not-yet-instituted IPR] proceedings”).

In addition to being timely, Petitioner respectfully submits that joinder of these proceedings is warranted. Joinder will not impact the Board’s ability to complete its review in the statutorily-prescribed timeframe. As mentioned, the unpatentability grounds raised in this proceeding are identical to the unpatentability grounds raised in the Fitbit IPR. Also, Petitioner requests that the institution of its Petition be limited solely to the grounds instituted in the Fitbit IPR. Further, if joined, Petitioner agrees to adhere to all applicable deadlines in the Fitbit IPR and coordinate all filings with the Petitioner in the Fitbit IPR (“Fitbit Petitioner”). The Fitbit Petitioner will maintain the lead role in the proceedings so long as Fitbit is a party to the proceedings. Lastly, the Board can implement procedures that are designed to minimize any impact to the schedule of the Fitbit IPR, including, for example, consolidation of filings and coordination among

petitioners. To that end, Wahoo is willing to serve in a limited “understudy” role to streamline discovery and briefing.

Petitioner Wahoo therefore requests that joinder be granted.

II. STATEMENT OF MATERIAL FACTS

1. On August 9, 2016, Blackbird Technologies LLC (“Blackbird”) filed complaints in the United States District Court for the District of Delaware accusing Petitioner and six other parties of infringing the ‘212 Patent. *See, e.g., Blackbird Tech LLC d/b/a Blackbird Technologies v. Wahoo Fitness, LLC*, 1-16-cv-00688 (August 9, 2016, D. Del.).

2. In its Complaint, Blackbird purports to be the owner of the ‘212 Patent. *See id.*

3. On August 29, 2017, Fitbit timely filed a petition seeking *inter partes* review of Claims 2, 5 and 6 of the ‘212 Patent. The Petition was accorded Case No. IPR2017-02012.

4. The Fitbit IPR Petition asserts the following grounds of unpatentability:

a. Ground 1: Claims 2 and 5 are anticipated pursuant to § 102 by

Amano;

b. Ground 2: Claims 2 and 5 are obvious pursuant to § 103 in light of

Amano; and

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