

In the Matter Of:

FITBIT INC. vs

PHILIPS NORTH AMERICA LLC

THOMAS MARTIN, M.D.

April 05, 2021



1 UNITED STATES PATENT AND TRADEMARK OFFICE
2
3 BEFORE THE PATENT TRIAL AND APPEAL BOARD
4
5 FITBIT INC.
6 Petitioner
7
8 v.
9
10 PHILIPS NORTH AMERICA LLC
11 Patent owner
12
13 IPR2020-00783
14 Patent No. 7,088,233 B2
15
16 REMOTE EXAMINATION of THOMAS MARTIN, M.D.
17
18 TAKEN ON
19 MONDAY, APRIL 5, 2021
20
21
22
23 CERTIFIED STENOGRAPHER:
24 JESSIE WAACK, RDR, CRR, CCRR, CCR-NJ, CSR-WA,
25 NYACR, NYRCR, REALTIME SYSTEMS ADMINISTRATOR
JOB NO.: 784491

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2
3
4 REMOTE EXAMINATION of THOMAS
5 MARTIN, M.D., taken before
6 JESSICA R. WAACK, Registered Professional
7 Reporter, Registered Merit Reporter,
8 Certified Realtime Reporter, Registered
9 Diplomat Reporter, California Certified
10 Realtime Reporter, Certified Court Reporter
11 in New Jersey, Certified Shorthand Reporter
12 in Washington, New York Association
13 Certified Reporter, New York Realtime Court
14 Reporter and Notary Public of the State of
15 New York, all participants attending
16 remotely, on Monday, April 5, 2021,
17 commencing at 9:34 a.m. EDT and concluding
18 at 6:36 p.m. EDT.
19
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21
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23
24
25

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5

1 A L S O P R E S E N T

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3 DEANE CARSTENSEN, videographer/doc tech

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1 INDEX TO PREVIOUSLY MARKED EXHIBITS

2 WITNESS: THOMAS MARTIN, M.D.

3 Monday, April 5, 2021

4 MARKED DESCRIPTION PAGE

5 Exhibit 1001 U.S. Patent 7,088,233 11

6 Exhibit 1005 U.S. Patent 6,918,394 11

7 Exhibit 1006 U.S. Patent 6,175,752 12

8 Exhibit 1075 Plaintiff Philips North 232

9 America LLC'S L.R.

10 16.6(d)(1) disclosures

11 Exhibit 2026 Dr. Martin's declaration 12

12

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1 INDEX TO EXAMINATION

2 WITNESS: THOMAS MARTIN, M.D.

3 EXAMINATION PAGE

4 BY MR. OKANO 8

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6 -o0o-

7 INFORMATION REQUESTED

8 None

9

10

11 WITNESS INSTRUCTED NOT TO ANSWER

12 None

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17 ** All original exhibits were attached to

18 the original transcript **

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1 *****

2 PROCEEDINGS

3 April 5, 2021, 9:34 a.m.

4 New York, New York

5 *****

6 THOMAS MARTIN, PhD

7 called as a witness herein,

8 having been first duly sworn on

9 oath, was examined and testified

10 as follows:

11 *****

12 EXAMINATION

13 BY MR. OKANO:

14 **Q. Good morning, Dr. Martin.**

15 A. Good morning.

16 **Q. This is David Okano for**

17 **Petitioner Fitbit Inc. With me is our --**

18 **are Joseph Palys also from Paul Hastings,**

19 **Brian Matty, and we may have someone else**

20 **joining us. If she does, I will announce**

21 **at the time.**

22 **Dr. Martin, could you state and**

23 **spell your name for the record.**

24 A. My name is Thomas Leonard Martin.

25 T-h-o-m-a-s. L-e-o-n-a-r-d. Martin,

9

1 M-a-r-t-i-n.
 2 **Q. And what is your address, home**
 3 **address, please.**
 4 A. 502 Stonegate Drive, Blacksburg,
 5 Virginia, 20460.
 6 **Q. And, Dr. Martin, you are employed**
 7 **where?**
 8 A. By Virginia Tech.
 9 **Q. You understand -- sorry. In what**
 10 **department are you employed by Virginia**
 11 **Tech?**
 12 A. Electrical and computer
 13 engineering.
 14 **Q. And what is your title at**
 15 **Virginia Tech?**
 16 A. I'm a professor -- I'm sorry.
 17 I'm a professor.
 18 **Q. Dr. Martin, you understand today**
 19 **that you are under oath?**
 20 A. Yes, I do.
 21 **Q. Is there anything today that**
 22 **would prevent you from giving truthful and**
 23 **honest testimony?**
 24 A. No.
 25 **Q. How many times have you been**

10

1 **deposed before?**
 2 A. Two times.
 3 **Q. And what -- can you tell me what**
 4 **matters those depositions occurred in?**
 5 A. They were related to this case.
 6 **Q. And "this case" you're talking**
 7 **about Philips' lawsuit against Fitbit in**
 8 **the district court?**
 9 MR. RODRIGUES: Objection to
 10 form.
 11 THE WITNESS: Actually, I think
 12 one was Fitbit and one was Garmin.
 13 BY MR. OKANO:
 14 **Q. Okay. So you have been deposed**
 15 **once in a case between Philips and Fitbit**
 16 **in the district court and once in a case**
 17 **between Philips and Garmin in a district**
 18 **court?**
 19 A. I believe that's correct, yes.
 20 **Q. And when did the depositions**
 21 **occur?**
 22 A. The first one was last June, last
 23 summer. And the second one was last month.
 24 **Q. Okay. In this deposition I'm**
 25 **going to use some shorthand. So before we**

11

1 **go in, I want to make sure we can all agree**
 2 **that we know what -- you know, when I refer**
 3 **in shorthand to an exhibit or a document,**
 4 **we can all agree what I'm referring to. Is**
 5 **that going to be all right with you?**
 6 A. That's fine with me.
 7 **Q. Okay. Well, let's start with**
 8 **some of the shorthand.**
 9 **Exhibit 1002 in this case -- let**
 10 **me make sure I have this right. Now,**
 11 **apologies. Exhibit 1001 in this case is**
 12 **U.S. Patent No. 7,088,233. Are you**
 13 **familiar with Exhibit 1001?**
 14 A. The '233 patent, yes.
 15 **Q. Yes. And so in this deposition**
 16 **if I refer to the '233 patent, will you**
 17 **understand that I'm referring to**
 18 **Exhibit 1001?**
 19 A. Yes. And I'm smiling, because I
 20 nodded and I know better than to nod.
 21 Sorry, Jessie.
 22 **Q. The -- I guess there is an**
 23 **Exhibit 1005 that is a reference to an**
 24 **inventor named Jacobsen that is U.S. Patent**
 25 **No. 6,918,394. If I call that Jacobsen,**

12

1 **will you understand that I'm referring to**
 2 **Exhibit 1005?**
 3 A. Yes, I will.
 4 **Q. And Exhibit 1006 in this**
 5 **proceeding is a U.S. Patent with a first**
 6 **inventor named Say, S-a-y. It's U.S.**
 7 **Patent No. 6,175,752. And will you**
 8 **understand that I'm referring to the Say**
 9 **reference when -- I'm referring to 1006**
 10 **when I talk about the Say reference?**
 11 A. Yes.
 12 **Q. If I say "Fitbit," I'm talking**
 13 **about Fitbit Inc. Is that okay? Will you**
 14 **understand that?**
 15 A. Yes.
 16 **Q. And if I say "Philips," I'm**
 17 **referring to Philips North America LLC.**
 18 **Can we agree to that?**
 19 A. Yes.
 20 **Q. And if I'm talking about your**
 21 **declaration, that is Exhibit 2026 in this**
 22 **proceeding. Will you understand if I refer**
 23 **to your declaration in some form, that we**
 24 **were talking about Exhibit 2026 in this**
 25 **proceeding?**

13

1 A. Yes.
2 **Q. And if there's -- you know, I**
3 **understand you have submitted other**
4 **declarations. To the extent I am**
5 **referencing another declaration, I will**
6 **make that clear; is that fair?**
7 A. Yes, that's fair.
8 **Q. Okay. And, Dr. Martin, are**
9 **you -- you've been deposed two times. Are**
10 **you familiar with the ground rules for**
11 **depositions, or do you want me to go over**
12 **them or can we proceed?**
13 A. We can proceed.
14 **Q. It seems to me that you've done**
15 **at least one deposition over Zoom -- or**
16 **maybe both depositions over Zoom; is that**
17 **correct?**
18 A. Yes. Both depositions have been
19 over Zoom. And actually I should state
20 right here, I told Jessie earlier, I have a
21 beagle hound mutt upstairs who's going to
22 go nuts at some point, so I apologize in
23 advance for that. I can hear him making
24 rumbling noises right now.
25 **Q. That is fine. We will**

14

1 **accommodate the pets.**
2 **So I'm going to place in the chat**
3 **paper No. 21 in this proceeding. And**
4 **that's IPR2020-783. And take your time to**
5 **download that.**
6 A. I've downloaded it.
7 **Q. Paper No. 21 is a notice of**
8 **deposition to yourself, Dr. Martin. Have**
9 **you seen this before, Dr. Martin?**
10 A. I don't recall seeing this, no.
11 **Q. That's fine. You're here today,**
12 **so I assume the relevant information was**
13 **conveyed to you nevertheless.**
14 **What did you do to prepare for**
15 **this deposition today?**
16 MR. RODRIGUES: I'm just going to
17 caution the witness not to reveal the
18 substance of any communications with
19 counsel.
20 THE WITNESS: I reviewed my
21 declaration. I reviewed some of the
22 documents it referred to, and I met
23 with counsel.
24 BY MR. OKANO:
25 **Q. And when you say some of the**

15

1 **documents you referred to, are you talking**
2 **to exhibits in this proceeding?**
3 A. Yes, I am.
4 **Q. Did you review any documents that**
5 **are not currently exhibits in this**
6 **proceeding?**
7 A. I believe they were all exhibits
8 with my declaration.
9 **Q. Did you perform any independent**
10 **analysis or review of documents outside of**
11 **anything that was requested by your counsel**
12 **or went over with by your counsel?**
13 MR. RODRIGUES: Objection to
14 form.
15 THE WITNESS: I'm sorry. Can you
16 repeat that again?
17 BY MR. OKANO:
18 **Q. Did you perform any independent**
19 **analysis or review of any documents outside**
20 **of what you discussed with counsel?**
21 MR. RODRIGUES: Objection to
22 form.
23 THE WITNESS: No, not that I
24 recall.
25 ///

16

1 BY MR. OKANO:
2 **Q. Did anything that you reviewed**
3 **during your preparation refresh your**
4 **recollection about something you had not**
5 **remembered at the time?**
6 MR. RODRIGUES: Objection to
7 form.
8 THE WITNESS: I'm sorry.
9 Remembered at the time of what?
10 BY MR. OKANO:
11 **Q. Of your -- that you looked at the**
12 **document.**
13 A. Yes. I mean, it had been a while
14 since my declaration had been submitted;
15 so...
16 **Q. What refreshed -- what, in**
17 **particular, refreshed your recollection?**
18 **Do you recall?**
19 A. I mean, it's like I said, it had
20 been a while since I submitted the
21 declaration, so re-reading it brought it
22 back to mind. I hadn't thought about it
23 for a while. It would be hard for me to
24 give particulars.
25 **Q. Anything in particular -- I mean,**

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