

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FITBIT, INC.¹
Petitioner

v.

PHILIPS NORTH AMERICA LLC
Patent Owner

Case No. IPR2020-00783²
Patent No. 7,088,233

PETITIONERS' NOTICE OF CROSS-APPEAL

¹ Fitbit, Inc. is now Fitbit LLC.

² Garmin International, Inc., Garmin USA, Inc., and Garmin Ltd. (collectively, "Garmin"), who filed a petition in IPR2020-00910, have been joined as petitioners in this proceeding.

Notice is hereby given, pursuant to 37 C.F.R. § 90.2(a), that Petitioners Fitbit LLC (“Fitbit”) and Garmin International, Inc., Garmin USA, Inc., and Garmin Ltd. (collectively, “Garmin”) cross-appeals to the United States Court of Appeals for the Federal Circuit from the Final Written Decision entered on October 4, 2021 (Paper 34) (the “Final Written Decision”) by the United States Patent and Trademark Office, Patent Trial and Appeal Board (the “Board”), and from all underlying orders, decisions, rulings, and opinions. A copy of the Final Written Decision is attached.

This Notice of Cross-Appeal is timely because it was filed within 14 days after the date when Patent Owner Philips North America LLC’s December 3, 2021 Notice of Appeal (Paper 35) was filed. *See* 37 C.F.R. § 90.3(a)(1); Fed. R. App. P. 4(a)(3).

In accordance with 37 C.F.R. § 90.2(a)(3)(ii), Fitbit and Garmin indicate that the issues on cross-appeal include, but are not limited to, the Board’s ruling that Fitbit and Garmin did not prove by a preponderance of the evidence that claim 14 of U.S. Patent No. 7,088,233 is unpatentable over the prior art, and any findings or determinations supporting or related to that ruling including, without limitation, the Board’s construction and application of the claim language, the Board’s interpretation of the prior art, and the Board’s interpretation of the evidence.

Simultaneous with this submission, a copy of this Notice of Cross-Appeal is being filed with the Board. In addition, the Notice of Cross-Appeal and the required fee are being filed electronically with the Clerk of Court for the United States Court of Appeals for the Federal Circuit.

Respectfully submitted,

Dated: December 17, 2021

By: /Naveen Modi/
Naveen Modi (Reg. No. 46,224)
Paul Hastings LLP

Counsel for Fitbit LLC

By: /Adam P. Seitz/
Adam P. Seitz (Reg. No. 52,206)
Erise IP, P.A.

Counsel for Garmin International, Inc.,
Garmin USA, Inc., and Garmin Ltd.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FITBIT LLC,
Petitioner,

v.

PHILIPS NORTH AMERICA LLC,
Patent Owner.

IPR2020-00783¹
Patent No. 7,088,233 B2

Before STACEY G. WHITE, MICHELLE N. WORMMEESTER,
and NORMAN H. BEAMER, *Administrative Patent Judges*.

BEAMER, *Administrative Patent Judge*.

JUDGMENT
Final Written Decision
Determining Some Claims Unpatentable
35 U.S.C. § 318(a)

¹ Garmin International, Inc., Garmin USA, Inc., and Garmin Ltd., filed a petition in IPR2020-00910 and have been joined as petitioner in this proceeding.

I. INTRODUCTION

In response to a Petition filed by Fitbit, Inc. (“Petitioner”), now Fitbit LLC, we instituted *inter partes* review of claims 1, 7–10, 13–16, 22, and 24–26 of U.S. Patent No. 7,088,233 B2 (“the ’233 patent”). Paper 1 (“Pet.”); Paper 12 (“Dec.”); Paper 33. Philips North America LLC (“Patent Owner”) filed a Response to the Petition, Petitioner filed a Reply, and Patent Owner filed a Sur-Reply. Paper 17 (“PO Resp.”); Paper 22 (“Reply”); Paper 24 (“Sur-Reply”).

An oral hearing took place on July 29, 2021. The Hearing Transcript (“Tr.”) is included in the record as Paper 32. After considering the parties’ arguments and supporting evidence, we determine that Petitioner has demonstrated by a preponderance of the evidence that claims 1, 7–10, 13, 15, 16, 22, and 24–26 are unpatentable. Claim 14 has not been proven to be unpatentable.

II. BACKGROUND

A. The ’233 Patent

The ’233 patent, titled “Personal Medical Device Communication System and Method,” was filed on June 7, 2002, issued on August 8, 2006, and recites various continuation-in-part and continuation applications as related. Ex. 1001, codes (54), (22), (45), (63), (60).² The patent also states that it is related to “[p]rovisional application No. 60/135,862, filed on May

² The ’233 patent states that it is a “[c]ontinuation-in-part of application No. 09/956,474, filed on Sep. 19, 2001, which is a continuation of application No. 09/384,165, filed on Aug. 27, 1999, now Pat. No. 6,356,192, application No. 10/165,624, which is a continuation-in-part of application No. 10/112,669, filed on Mar. 28, 2002, and a continuation-in-part of application No. PCT/US01/18734, filed on Jun. 8, 2001.” *Id.* at code (63).

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