

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FITBIT, INC.,
Petitioner,

v.

BODYMEDIA, INC.,
Patent Owner.

Case IPR2016-00545
Patent 8,073,707 B2

Before TREVOR M. JEFFERSON, MICHAEL J. FITZPATRICK, and
FRANCES L. IPPOLITO, *Administrative Patent Judges*.

FITZPATRICK, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
35 U.S.C. § 318(a)

I. INTRODUCTION

Petitioner, Fitbit, Inc., filed a Petition to institute an *inter partes* review of claims 1–24 of U.S. Patent No. 8,073,707 B2 (Ex. 1001, “the ’707 patent”) pursuant to 35 U.S.C. § 311(a). Paper 1 (“Pet.”). With our authorization to do so, Patent Owner, BodyMedia, Inc., filed a corrected Preliminary Response pursuant to 35 U.S.C. § 313. Paper 7 (“Prelim. Resp.”). In an August 8, 2016, Decision, we granted the Petition. Paper 8 (“Inst. Dec.”).

Patent Owner filed a Patent Owner Response (Paper 12, “PO Resp.”) to which Petitioner filed a Reply (Paper 18, “Reply”). Neither party requested a hearing for oral arguments, and none was held.

As discussed below, claims 1–18 and 20–22 are no longer at issue because they have been held unpatentable in a decision in a separate proceeding that is now final, and Petitioner has shown by a preponderance of the evidence that the remaining claims of the ’707 patent—claims 19, 23, and 24—are unpatentable.

A. Related Matters

The ’707 patent previously was subjected to an *inter partes* reexamination bearing Control No. 95/002,376 (“the ’376 reexamination”), during which claims 1–18 and 20–22 were finally rejected as anticipated by Amano ’342 (Ex. 1004).¹ A decision by the Board affirmed the final rejection. *See Basis Science, Inc. v. Bodymedia, Inc.*, Reexamination

¹ U.S. Patent No. 6,030,342, filed (under 35 U.S.C. § 371) Feb. 9, 1998, issued Feb. 29, 2000.

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Control No. 95/002,376 (PTAB Mar. 27, 2015). Claims 19, 23, and 24 were not subject to the '376 reexamination. *See id.* Patent Owner appealed the Board's decision to the Federal Circuit, which summarily affirmed. *See Bodymedia, Inc. v. Basis Science, Inc.*, No. 2015-1788 (Fed. Cir. July 12, 2016) (nonprecedential). The Federal Circuit's judgment is now final.

The parties identify the additional following matters involving the '707 patent: (1) *AliphCom d/b/a Jawbone and BodyMedia, Inc. v. Fitbit, Inc.*, 3:15-cv-02579 (N.D. Cal.); and (2) *Certain Activity Tracking Devices, Systems, and Components Thereof*, 337-TA-963 (ITC). Pet. 3–4; Paper 5, 1.

B. The '707 Patent

The '707 patent relates to “a system for monitoring health, wellness and fitness.” Ex. 1001, 1:15–18. In particular, it relates “to a system for collecting[, using a sensor device,] and storing at a remote site data relating to an individual's physiological state, lifestyle, and various contextual parameters, and making such data and analytical information based on such data available to the individual, preferably over an electronic network.” *Id.* at 1:18–23.

Figure 1 of the '707 patent is reproduced below.

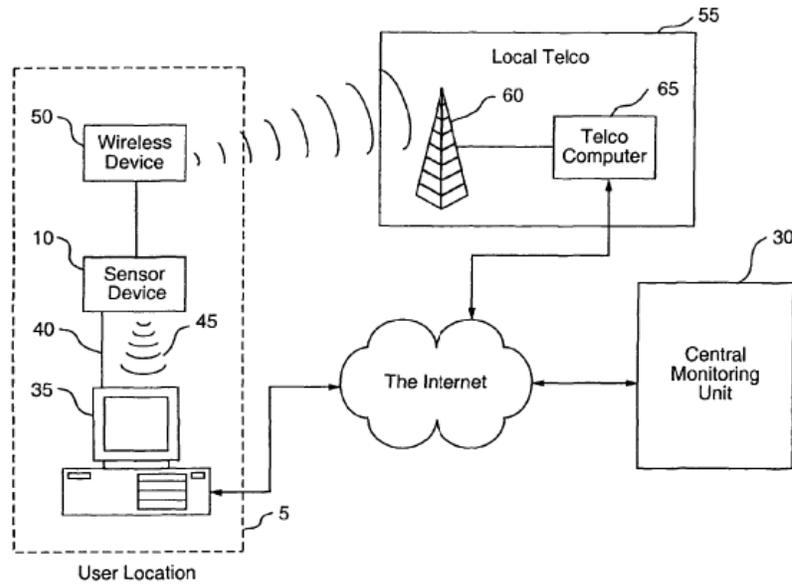


FIG. 1

Figure 1 shows “a system for monitoring physiological data and lifestyle over an electronic network according to the present [and challenged] invention.” *Id.* at 3:51–54. The system includes sensor device 10, which “is preferably worn by an individual user on his or her body.” *Id.* at 4:37–38. The sensor device generates data indicative of various physiological parameters of the individual, such as the individual’s heart rate, pulse rate, ECG, respiration rate, skin temperature, core body temperature, etc. *Id.* at 4:47–55. Data indicative of these physiological parameters either can be signals directly from the sensors or data calculated by a microprocessor based on such signals. *Id.* at 4:55–60. The “[m]ethods for generating data indicative of various physiological parameters and sensors to be used therefor are well known.” *Id.* at 4:60–62.

C. The Challenged Claims

The patentability of only claims 19, 23, and 24 remains in dispute. *See Basis Science, Inc. v. Bodymedia, Inc.*, Reexamination Control No.

95/002,376 (PTAB Mar. 27, 2015) (affirming final rejection of claims 1–18 and 20–22), *aff'd Bodymedia, Inc. v. Basis Science, Inc.*, No. 2015-1788 (Fed. Cir. July 12, 2016); *see also* PO Resp. 8–12 (arguing the patentability of only claims 19, 23, and 24 on Ground 1), 12–22 (arguing the patentability of only claims 1, 19, 23, and 24 on Ground 2).² Claims 19, 23, and 24 depend from claim 1. Claims 1, 19, 23, and 24 are reproduced below.

1. A system for detecting, monitoring, and reporting a status of an individual to a user, the system comprising:
 - a first sensor adapted to generate data indicative of a first physiological parameter of the individual if said first sensor is in proximity to the individual;
 - a second sensor adapted to generate data indicative of a second physiological parameter of the individual if said second sensor is in proximity to the individual;
 - a processing unit in electronic communication with said first sensor and said second sensor;
 - a central monitoring unit in electronic communication with at least one of said sensors and said processing unit; and
 - an output device in electronic communication with at least one of said processing unit and said central monitoring unit, wherein at least one of said processing unit and said central monitoring unit is programmed

² Although Patent Owner argues that claim 1 is patentable, it does not include any arguments specific to claim 1. PO Resp. 12–22. The only claim-specific arguments it presents are for claims 19, 23, and 24. *Id.* at 14–19.

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