

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FITBIT, INC.,
Petitioner,

v.

ALIPHCOM, INC., d/b/a JAWBONE,
Patent Owner.

Case IPR2016-00714
Patent 8,446,275 B2

Record of Oral Hearing
Held: June 13, 2017

Before BRYAN F. MOORE, TREVOR M. JEFFERSON, and
MIRIAM L. QUINN, *Administrative Patent Judges*.

Case IPR2016-00714
Patent 8,446,275 B2

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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ON BEHALF OF PATENT OWNER:

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The above-entitled matter came on for hearing on Tuesday, June 13, 2017, commencing at 10:00 a.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

1 P R O C E E D I N G S

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3 JUDGE MOORE: Good morning. We are here for the
4 hearing in IPR2016-00714. I am Judge Moore and with me today
5 are Judges Jefferson and, remotely, Judge Quinn.

6 Starting with the Petitioner, who do we have here
7 today?

8 MR. OKANO: David Okano with Paul Hastings for
9 Fitbit, Incorporated.

10 MR. HENDERSHOT: Michael Hendershot of Paul
11 Hastings for Petitioner Fitbit.

12 MR. MODI: Good morning, Your Honors, Naveen
13 Modi on behalf of Fitbit as well.

14 JUDGE MOORE: And for Patent Owner?

15 MR. TORCZON: Richard Torczon for Aliphcom,
16 doing business as Jawbone. With me Wes Derryberry, and
17 shadowing from our office we have Shan Liu.

18 JUDGE MOORE: Thank you.

19 Petitioner has the burden, Petitioner will go first, will
20 have 30 minutes with an opportunity to reserve time for rebuttal,
21 and following your opening presentation, Patent Owner will have
22 30 minutes.

23 Unless there's any questions, Petitioner, you may begin.

24 MR. OKANO: Your Honors, may I approach?

25 JUDGE MOORE: Certainly.

1 MR. OKANO: One quick question before we start.
2 Will there be a timer for me to see my remaining time or is that
3 something I will need to keep track of on my own?

4 JUDGE MOORE: Yeah, I think you need to take care
5 of that. We have something here, but I think the only thing that
6 they can see is the lights.

7 MR. OKANO: Okay.

8 JUDGE MOORE: So, yeah, the best for you is going to
9 be to keep the time yourself. I certainly can --

10 MR. OKANO: That's fine, as long as I know.

11 JUDGE MOORE: I certainly can let you know once
12 you tell me how much time you're going to take for your opening,
13 I can let you know when you're close.

14 MR. OKANO: I would like to reserve 10 minutes for
15 rebuttal.

16 JUDGE MOORE: Ten minutes.

17 MR. HENDERSHOT: I have a watch, Your Honor,
18 you won't be offended if I pass him a note to let him know the
19 time?

20 JUDGE MOORE: Certainly, you can pass notes.

21 MR. HENDERSHOT: Very much appreciate it.

22 JUDGE MOORE: Sure. And any time you're ready.

23 MR. OKANO: Okay, again, I'm David Okano of Paul
24 Hastings for Fitbit, Incorporated, and the patent we are
25 challenging today issued without the benefit of its claims being

1 properly shaped by a relevant prior art reference. This reference,
2 of course, is Hoffman, which is Exhibit 1003 in the record.

3 Our papers highlight the teachings of this reference,
4 which is assigned to Nike and is entitled an athletic activity user
5 experience and environment. In response, the Patent Owner
6 advances a broadest reasonable interpretation of the phrase
7 "target score" that is inconsistent with the language of the
8 independent claims, inconsistent with the language of the
9 dependent claims, inconsistent with the teachings of the
10 specification, and also inconsistent with an agreed-upon
11 construction in a related proceeding.

12 On the other hand, the Board's preliminary construction
13 of "target score" under its ordinary meaning to encompass a goal
14 is consistent with the intrinsic evidence. That being said, in our
15 papers, we submit that we have shown that even under the
16 affirmative portion of Patent Owner's narrow construction,
17 Hoffman anticipates the relevant challenged claims of the '275
18 patent.

19 So, in my opening time here, I plan to discuss the
20 disputed "target score" term, as that is kind of the center of the
21 parties' dispute, and perhaps provide a more full and accurate
22 characterization of the Hoffman reference than is in Patent
23 Owner's response. And, of course, I'm happy to answer any
24 questions from the panel.

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