

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FITBIT, INC.,
Petitioner,

v.

ALIPHCOM, INC.,
Patent Owner.

Case IPR2016-00714
Patent 8,446,275 B2

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

MOORE, *Administrative Patent Judge*.

DECISION
Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

Fitbit, Inc. (“Petitioner”) filed a Petition (Paper 1, “Pet.”) to institute an *inter partes* review of claim claims 1–5, 8–10, 13–15, and 18–19 of U.S. Patent No. 8,446,275 (Ex. 1001, “the ’275 patent”) pursuant to 35 U.S.C. §§ 311–319. AliphCom, Inc., . (“Patent Owner”) filed a Preliminary Response to the Petition. (Paper 7, “Prelim. Resp.”). We have jurisdiction under 35 U.S.C. § 314(a). Section 314(a) provides that an *inter partes* review may not be instituted “unless . . . there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” After considering the Petition, the Preliminary Response, and associated evidence, we conclude that Petitioner has demonstrated a reasonable likelihood that it would prevail in showing unpatentability of claims 1–5, 8–10, 13–15, 18, and 19.

A. Related Proceedings

The parties state that the ’275 patent has been asserted in *AliphCom d/b/a Jawbone and BodyMedia, Inc. v. Fitbit, Inc.*, No 3:15-cv-02579 (N.D. Cal.), and *Certain Activity Tracking Devices, Systems, and Components Thereof*, Inv. No. 337-TA-963 (ITC). Pet. 2; Paper 5, 2. Petitioner also has filed petitions for *inter partes* review challenging claims 1–26 of the U.S. Patent No. 8,529,811 patent and claim 2 of U.S. Patent No. 8,793,522 patent, *Fitbit, Inc. v. AliphCom, Inc.*, Nos. IPR2016-00607 and IPR2016-00658.

B. The ’275 Patent

The ’275 patent relates to a health and wellness monitoring system and device. Ex. 1001, Abstract. The system claims to be a “general health

and wellness management” device and system which receives “user data” from the user that includes “profile” and “preferences” information (*id.* at 20:62–64), tracks the user’s activity using wearable devices having sensors (*id.* at Abstract), and then rewards a user’s activity with “points” determined based on “reference values” that define activity to-point conversion rates. (*id.* at 44:6–12). The system can also set a “target score” for a user as a means of increasing user motivation to reach health and wellness goal. *Id.* at 38:58–59.

C. Challenged Claim

Independent claim 2 is reproduced below (Ex. 1001, 30:41–31:7):

1. A method comprising:
 - receiving data representing a profile defining parameters upon which a target score is established based on one or more health-related activities;
 - acquiring data representing one or more subsets of acquired parameters based on one or more sensors disposed in a wearable computing device;
 - determining data representing values for the one or more subsets of the acquired parameters based on reference values for the parameters set forth in the profile;
 - calculating at a first processor a score based on data representing the values, the score representing an attained portion of the one or more health-related activities;
 - causing presentation of a representation of the score relative to the target score; and
 - adjusting a determination upon which to modify the target score,wherein the target score is indicative of one or more standards against which to compare one or more groups of the values aggregated to form the score.

D. Asserted Grounds of Unpatentability

The information presented in the Petition sets forth proposed grounds of unpatentability for the claims of the '275 patent as follows (Pet. 3):

Reference[s]	Basis	Claims
Hoffman ¹	35 U.S.C. § 102	1–5, 8–9, 13–15, and 19
Hoffman and Gilley ²	35 U.S.C. § 103	10, 18, and 19

II. ANALYSIS

A. Claim Interpretation

In an *inter partes* review, claim terms in an unexpired patent are given their broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b); *Cuozzo Speed Techs., LLC v. Lee*, 579 U.S. ____ (2016), No. 15-446, slip op. 13 (June 20, 2016). (upholding the use of the broadest reasonable interpretation standard as the claim interpretation standard to be applied in *inter partes* reviews). Under this standard, we interpret claim terms using “the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant’s specification.” *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997). We presume that claim terms

¹ U.S. Patent Application Pub. No. 2012/0041767 published Feb. 16, 2012 (“Hoffman”) (Ex. 1003).

² U.S. Patent Application Pub. No. 2008/0076637 published Mar. 27, 2008 (“Gilley”) (Ex. 1004).

have their ordinary and customary meaning. *See Trivascular, Inc. v. Samuels*, 812 F.3d 1056, 1062 (Fed. Cir. 2016) (“Under a broadest reasonable interpretation, words of the claim must be given their plain meaning, unless such meaning is inconsistent with the specification and prosecution history.”); *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007) (“The ordinary and customary meaning is the meaning that the term would have to a person of ordinary skill in the art in question.” (internal citation and quotation marks omitted)). A patentee, however, may rebut this presumption by acting as his or her own lexicographer, providing a definition of the term in the specification with “reasonable clarity, deliberateness, and precision.” *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994). Only those terms that are in controversy need to be construed, and only to the extent necessary to resolve the controversy. *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999).

Neither party provides any express claim constructions for terms in the challenged claims. Pet. 7–9; Prelim. Resp. 4. Patent Owner notes generally that “[t]he specification also explains that the target score corresponds to a health and wellness goal.” Prelim. Resp. 7. However, Patent Owner does not offer an express construction of the term “target score.” Patent Owner further contends that Petitioner’s failure to construe the claims is a sufficient basis for the Board to deny institution. *Id.* at 6–7. We disagree. Petitioner has stated that the terms of the challenged claims should be given their plain and ordinary meaning. Pet. 9. And we need not construe any particular term in order to determine whether to institute. *Vivid Techs., Inc. v. Am. Science & Eng’g, Inc.*, 200 F.3d 795, 803, (Fed. Cir. 1999) (“[O]nly those terms

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