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Paper No. 8
Entered: March 12, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FITBIT, INC.,
Petitioner,

v.

BLACKBIRD TECH, LLC d/b/a BLACKBIRD TECHNOLOGIES, LLC
Patent Owner.

Case IPR2017-02012
Patent 6,434,212

Before DEBRA K. STEPHENS, THOMAS L. GIANNETTI, and CHRISTA P. ZADO, *Administrative Patent Judges.*

STEPHENS, *Administrative Patent Judge.*

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

I. INTRODUCTION

Fitbit, Inc. ("Petitioner") filed a Petition requesting an *inter partes* review of claims 2, 5, and 6 of U.S. Patent No. 6,434,212 B2 (Ex. 1001, "the '212 patent") (Paper 1 ("Pet.")). Blackbird Tech LLC ("Patent Owner") filed a Preliminary Response (Paper 7 ("Prelim. Resp.")).

We have authority to determine whether to institute an *inter partes* review under 35 U.S.C. § 314, which provides that an *inter partes* review may not be instituted unless the information presented in the petition "shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition."

For the reasons set forth below, we institute an *inter partes* review of claims 2, 5, and 6 of the '212 patent.

II. BACKGROUND

A. *Related Matters*

The parties advise us that the '212 patent is at issue in the following:

Blackbird Tech LLC d/b/a Blackbird Technologies v. Sony Corp. et al., Case No. 16-CV-685 (D. Del.),

Blackbird Tech LLC d/b/a Blackbird Technologies v. Timex Group USA, Inc., Case No. 16-CV-686 (D. Del.),

Blackbird Tech LLC d/b/a Blackbird Technologies v. TomTom, Inc., Case No. 16-CV-687 (D. Del.),

Blackbird Tech LLC d/b/a Blackbird Technologies v. Wahoo Fitness, Inc., Case No. 16-CV-688 (D. Del.)

Blackbird Tech LLC d/b/a Blackbird Technologies v. Garmin International, Inc. and Garmin USA, Inc., Case No. 16-CV-689 (D. Del.),

Blackbird Tech LLC d/b/a Blackbird Technologies v. Fitbit, Inc., Case No. 16-CV-683 (D. Del.), and

Blackbird Tech LLC d/b/a Blackbird Technologies v. Aliphcom d/b/a Jawbone, Case No. 16-CV-684 (D. Del.),

(Pet. 4–5; Paper 4, 2).

Additionally, the '212 patent is at issue in IPR2017-01058 (*Garmin International, Inc. v. Blackbird Tech LLC d/b/a Blackbird Technologies*), now terminated; and IPR2017-02023 and IPR2017-02025 (*TomTom, Inc. v. Blackbird Tech LLC d/b/a Blackbird Technologies*).

B. *The '212 Patent*

The '212 patent, entitled "Pedometer," relates to a "pedometer having improved accuracy by calculating actual stride lengths of a user based on relative stride rates" ('212 patent, Abstract). More particularly, the patent relates to "pedometers having a waist mounted stride-counting device and transmitter, and a wrist-mounted receiver and display" (*id.* at 1:9–11). The device calculates a distance walked or run based on converting a base stride length and a base stride rate to an actual stride length and using that to calculate distance traveled (*id.* at 1:12–16).

Specifically, a step counter which is an inertia device, counts the number of steps a user takes (*id.* at 3:7–8). A data processor includes a data archive that stores historic data on stride length and pace and closed loop or fuzzy logic programming that continually or periodically replaces the base

stride rate and length with recently calculated stride rates and lengths (*id.* at 3:39–47).

The pedometer of the ’212 patent may optionally require the user to operate a “sampling mode” (*id.* at 3:56–57). In this mode, a user walks or runs a predetermined distance with the distance then divided by the number of strides counted (*id.* at 3:58–62). The result is the average stride length, which is stored in the data archive as the “Base Stride Length” (*id.* at 3:62–64). The data processor further divides the number of strides by the time of the run or walk to calculate a “Base Stride Rate” (*id.* at 3:65–67). According to the ’212 patent, using a fixed average stride length does not account for changes in the user’s pace or improved performance (*id.* at 4:19–29). To correct for this, a “Use Mode” is activated that causes the data processor to calculate an “Actual Stride Rate” (*id.* at 4:30–33). The “Actual Stride Rate” is calculated periodically, based on data from the stride counter and the clock (*id.* at 4:30–36). An “Actual Stride Length” is calculated by determining a percentage change between the Actual Stride Rate and the Base Stride Rate (*id.* at 4:36–38). More specifically, the Actual Stride Length is calculated by:

> Actual Stride Length=Base Stride Length + Base Stride Length *(((Actual Stride Rate-Base Stride Rate)N)/Base Stride Rate)
>
> Where: N=1 When Actual Stride Rate is less than or equal to Base Stride Rate multiplied by 1.02, and N=3 When Actual Stride Rate is greater than Base Stride Rate multiplied by 1.02, although other N values in the range of one to three can be used

(*id.* at 4:50–58). To further improve accuracy, an N value is derived for the user by using a number of samples to establish Stride Length and N (*id.* at 5:1–6:9).

> Once the actual stride length is calculated for a given period of time, the value can be multiplied by the number of strides in that period to obtain a total distance for that period to be stored in a data archive file for that particular walk or run and added to other actual stride lengths or distances for other periods in which stride length was calculated

(*id.* at 6:34–38).

C. *Challenged Claims*

Petitioner challenges independent claims 2, 5, and 6 of the '212 patent (Pet. 6–7). Claim 2 is illustrative of the challenged claims and is reproduced below:

> 2. An exercise monitoring device comprising:
>
> a strap for releasably securing the exercise monitoring device to a user;
>
> a step counter joined to the strap;
>
> a heart rate monitor joined to the strap; and
>
> a data processor programmed to calculate a distance traveled by multiplying a number of steps counted by the step counter by a stride length that varies in accordance with a stride rate, wherein the stride length is determined with reference to a plurality of calibrations that each calculate a stride length as a function of a known stride rate.

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