

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FITBIT, INC. and WAHOO FITNESS LLC,
Petitioner

v.

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

Case IPR2017-02012¹
Patent 6,434,212 B2

**PATENT OWNER BLACKBIRD TECH LLC'S
NOTICE OF APPEAL**

¹ IPR2018-00275 has been joined to this proceeding.

Pursuant to 35 U.S.C. §§ 141, 142, and 319, and in accordance with 37 C.F.R. §§ 90.2-90.3, Patent Owner Blackbird Tech LLC d/b/a Blackbird Technologies (“Blackbird” or “Patent Owner”) appeals to the United States Court of Appeals for the Federal Circuit from the *Final Written Decision* of the Patent Trial and Appeal Board entered on March 11, 2019 in IPR2017-02012 (Paper 28), and from all underlying findings, determinations, orders, decisions, rulings and opinions regarding the *inter partes* review of U.S. Patent No. 6,434,212 (“the ’212 patent”).

For the limited purpose of providing the Director with the information requested in 37 C.F.R. § 90.2(a)(3)(ii), Patent Owner anticipates that the issues on appeal may include, but are not limited to, the following, as well as any underlying findings, determinations, orders, decisions, rulings, opinions, or other related issues:

- Whether the Patent Trial and Appeal Board’s decision finding that claim 6 of the ’212 patent is unpatentable was “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; ... in excess of statutory jurisdiction, authority or limitations, or ... without observance of procedure required by law; [or] unsupported by substantial evidence” 5 U.S.C. § 706(2)(A)-(E);

- Whether the Order to correct an improper institution by the Patent Trial and Appeal Board was untimely under 35 U.S.C. § 314(b)(1) and in violation of the Patent and Trademark Office (PTO) Director's obligation to engage in formal rulemaking under 35 U.S.C. § 316; and
- Whether *inter partes* review by the PTO to analyze the validity of a pre-America Invents Act (AIA) patent violates the Constitution by retroactively subjecting Patent Owner's vested patent rights to new qualifications.

Simultaneous with the electronic submission of this Notice of Appeal to the Patent Trial and Appeal Board, a copy of this Notice of Appeal is being filed with the United States Patent and Trademark Office by way of hand delivery to the Office of General Counsel to:

Office of the General Counsel
United States Patent and Trademark Office
Madison East, Room 10B20
600 Dulany Street, Alexandria, Virginia 22314

In addition, consistent with Federal Circuit Rules 15(a)(1) and 25(b)(1), this Notice of Appeal, along with the required docketing fees and copies of the decisions of the agency for which review is sought, are being filed electronically

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with the United States Court of Appeals for the Federal Circuit, and one paper copy of the Notice of Appeal is being provided to the Clerk's Office:

Clerk of Court
United States Court of Appeals for the Federal Circuit
717 Madison Place, NW, Room 401
Washington, DC 20439

Any required fees to the United States Patent and Trademark Office may be charged to Deposit Account No. 50-1860.

Dated: May 13, 2019

Respectfully submitted,

By: /s/ Walter D. Davis, Jr.
Walter D. Davis, Jr. (Reg. No. 45,137)
Davidson Berquist Jackson & Gowdey, LLP
8300 Greensboro Drive, Suite 500
McLean, VA 22102
Telephone: 571-765-7700
Fax: 571-765-7200
Email: wdavis@dbjg.com
Lead Counsel for Patent Owner

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CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2019, a true and correct copy of the foregoing *Patent Owner's Notice of Appeal* was served via email, by consent, to Petitioner by serving the correspondence email addresses of record as follows:

Harper Batts (Reg. No. 56,160)
Chris Ponder (Reg. No. 77,167)
Sheppard, Mullin, Richter & Hampton LLP
379 Lytton Avenue
Palo Alto, CA 94301
HBatts@sheppardmullin.com
CPonder@sheppardmullin.com
LegalTM-Fitbit-BB-IPRs@sheppardmullin.com

By: /s/ Walter D. Davis, Jr.
Registration No. 45,137
Counsel for Patent Owner