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16 Attorneys for Plaintiff  
FITBIT, INC.

17 UNITED STATES DISTRICT COURT  
18 NORTHERN DISTRICT OF CALIFORNIA  
19

20 FITBIT, INC.,

21 Plaintiff,

22 v.

23 ALIPHCOM D/B/A JAWBONE and  
24 BODYMEDIA, INC.,

25 Defendants.

**COMPLAINT FOR PATENT  
INFRINGEMENT**

**[DEMAND FOR JURY TRIAL]**

1 **COMPLAINT FOR PATENT INFRINGEMENT**

2 Plaintiff Fitbit, Inc. (“Fitbit”), by and through its attorneys, for its complaint against  
3 AliphCom d/b/a Jawbone and BodyMedia, Inc. (“Defendants”), hereby alleges as follows:

4 **THE PARTIES**

5 1. Fitbit is a Delaware corporation with its principal place of business located at 405  
6 Howard Street, San Francisco, CA 94015.

7 2. On information and belief, AliphCom is a California corporation with its principal  
8 place of business located in San Francisco, California.

9 3. On information and belief, BodyMedia, Inc., is a Delaware corporation with its  
10 principal place of business located in Pittsburgh, Pennsylvania.

11 4. On information and belief, BodyMedia is a wholly owned subsidiary of AliphCom.

12 **JURISDICTION AND VENUE**

13 5. This action for patent infringement arises under federal law, and this Court has  
14 jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338 and the Patent Laws of the United States, 35 U.S.C.  
15 § 1, *et seq.*

16 6. This Court has personal jurisdiction over Defendant AliphCom because, *inter alia*,  
17 AliphCom is a California corporation and maintains continuous and systematic contacts with this  
18 judicial district. Either directly, or through its subsidiaries, agents, and/or affiliates, AliphCom has  
19 conducted and continues to conduct business in this judicial district, including by manufacturing,  
20 marketing, and selling infringing products throughout the United States and in California. These acts  
21 cause injury to Fitbit within this judicial district.

22 7. This Court has personal jurisdiction over Defendant BodyMedia, Inc. because, *inter*  
23 *alia*, BodyMedia maintains continuous and systematic contacts with this judicial district. Either  
24 directly, or through its subsidiaries, agents, and/or affiliates, BodyMedia has conducted and continues  
25 to conduct business in this judicial district, including by manufacturing, marketing, and selling  
26 infringing products throughout the United States and in California. These acts cause injury to Fitbit  
27 within this judicial district.



1 14. Fitbit wearable devices track sleep, activity, and other health and fitness data. The  
2 Fitbit product line includes the Fitbit Zip, Fitbit One, Fitbit Flex, Fitbit Charge, Fitbit Charge HR,  
3 and Fitbit Surge.

4 15. Defendants manufacture, market, and sell activity trackers—including the UP Move,  
5 UP2, UP3, and UP4—that infringe one or more of the Patents-in-Suit. Defendants’ activity trackers  
6 are used in conjunction with the UP App, made available by Defendants as part of the “UP System.”

7 16. On information and belief, AliphCom acquired BodyMedia, Inc. in April 2013 and  
8 incorporated BodyMedia’s “multi-sensor approach” to physiological data collection and other  
9 BodyMedia technology into subsequent products. Products incorporating multiple sensors, such as  
10 temperature sensors and bioimpedance sensors, include at least the UP3 and UP4. On information  
11 and belief, BodyMedia has contributed to the design, development, manufacture, marketing, and/or  
12 sale of at least the UP Move, UP3, and UP4 devices.

13 **COUNT I**

14 **(Infringement of U.S. Patent No. 9,048,923)**

15 17. Fitbit realleges paragraphs 1 through 16 as though fully set forth herein.

16 18. In violation of 35 U.S.C. § 271, Defendants have infringed and continue to infringe  
17 the ’923 patent in this judicial district and elsewhere in the United States, both literally and under the  
18 doctrine of equivalents. Defendants have infringed and have continued to infringe through the  
19 manufacture, use, offer for sale, sale, and/or importation of products, associated software, and  
20 components, including, without limitation, the UP Move, UP2, UP3, and UP4 and the UP App  
21 software interface.

22 19. On information and belief, at least from the service of this Complaint, Defendants will  
23 contributorily infringe and/or actively induce infringement of the ’923 patent in violation of 35  
24 U.S.C. § 271(b)-(c), with knowledge of or willful blindness to the existence of the ’923 patent, with  
25 specific intent to contributorily infringe and/or to induce infringement, and with knowledge or willful  
26 blindness that the induced acts would constitute patent infringement. On information and belief, each  
27 of the UP Move, UP2, UP3, and UP4, each sold or offered for sale by Defendants, is not a staple  
28 article of commerce, is a component of a patented combination and material to practicing the

1 invention in the claims of the '923 patent, and has no substantial non-infringing uses. These products  
2 are sold directly to customers and used by customers to track and record physical activity in  
3 conjunction with the UP App in a manner that infringes the '923 patent.

4 20. AliphCom's indirect infringement will occur by AliphCom's engaging in at least the  
5 following activities: designing and manufacturing the UP Move, UP2, UP3, and UP4 devices and  
6 their components specifically for sale and use in the United States, including California; selling and  
7 offering to sell these devices and their components in the United States or importing these devices  
8 and their components into the United States, including California; and soliciting, encouraging, and  
9 enabling infringing activity in the United States, including California, through promotional and  
10 instructional materials, websites (including support information, video instructions, tutorials, and  
11 frequently asked questions that direct customers to use the devices in an infringing manner), activities  
12 relating to activity monitors or the UP Move, UP2, UP3, and UP4 devices, and by providing access to  
13 and encouraging use of the UP App and promoting the use of third-party applications.

14 21. BodyMedia's indirect infringement will occur by BodyMedia's engaging in at least  
15 the following activities: designing and manufacturing at least the UP Move, UP3, and UP4 devices  
16 and their components specifically for sale and use in the United States, including California; and  
17 selling and offering to sell these devices and their components in the United States or importing these  
18 devices and their components into the United States, including California.

19 22. Defendants' acts of infringement of the '923 patent have caused and will continue to  
20 cause Fitbit substantial and irreparable injury, for which Fitbit is entitled to receive injunctive relief  
21 and damages adequate to compensate Fitbit for such infringement.

22 23. This case is exceptional, and therefore, Fitbit is entitled to attorneys' fees pursuant to  
23 35 U.S.C. § 285.

24 24. Fitbit is also entitled to damages under 35 U.S.C. § 284 for Defendants' infringement  
25 of one or more claims of the '923 patent.

26 **COUNT II**

27 **(Infringement of U.S. Patent No. 9,026,053)**

28 25. Fitbit realleges paragraphs 1 through 24 as though fully set forth herein.

1           26.     In violation of 35 U.S.C. § 271, Defendants have infringed and continue to infringe  
2 the '053 patent in this judicial district and elsewhere in the United States, both literally and under the  
3 doctrine of equivalents. Defendants have infringed and have continued to infringe through the  
4 manufacture, use, offer for sale, sale, and/or importation of products, associated software, and  
5 components, including, without limitation, the UP Move, UP2, UP3, and UP4 activity trackers and  
6 the UP App software interface.

7           27.     On information and belief, at least from the service of this Complaint, Defendants will  
8 contributorily infringe and/or actively induce infringement of the '053 patent in violation of 35  
9 U.S.C. § 271(b)-(c), with knowledge of or willful blindness to the existence of the '053 patent, with  
10 specific intent to contributorily infringe and/or to induce infringement, and with knowledge or willful  
11 blindness that the induced acts would constitute patent infringement. On information and belief, each  
12 of the UP Move, UP2, UP3, and UP4, each sold or offered for sale by Defendants, is not a staple  
13 article of commerce, is a component of a patented combination and material to practicing the  
14 invention in the claims of the '053 patent, and has no substantial non-infringing uses. These products  
15 are sold directly to customers and used by customers to track and record physical activity in  
16 conjunction with the UP App in a manner that infringes the '053 patent.

17           28.     AliphCom's indirect infringement will occur by AliphCom's engaging in at least the  
18 following activities: designing and manufacturing the UP Move, UP2, UP3, and UP4 devices and  
19 their components specifically for sale and use in the United States, including California; selling and  
20 offering to sell these devices and their components in the United States or importing these devices  
21 and their components into the United States, including California; and soliciting, encouraging, and  
22 enabling infringing activity in the United States, including California, through promotional and  
23 instructional materials, websites (including support information, video instructions, tutorials, and  
24 frequently asked questions that direct customers to use the devices in an infringing manner), activities  
25 relating to activity monitors or the UP Move, UP2, UP3, and UP4 devices, and by providing access to  
26 and encouraging use of the UP App and promoting the use of third-party applications.

27           29.     BodyMedia's indirect infringement will occur by BodyMedia's engaging in at least  
28 the following activities: designing and manufacturing at least the UP Move, UP3, and UP4 devices

1 and their components specifically for sale and use in the United States, including California; and  
2 selling and offering to sell these devices and their components in the United States or importing these  
3 devices and their components into the United States, including California.

4 30. Defendants' acts of infringement of the '053 patent have caused and will continue to  
5 cause Fitbit substantial and irreparable injury, for which Fitbit is entitled to receive injunctive relief  
6 and damages adequate to compensate Fitbit for such infringement.

7 31. This case is exceptional, and therefore, Fitbit is entitled to attorneys' fees pursuant to  
8 35 U.S.C. § 285.

9 32. Fitbit is also entitled to damages under 35 U.S.C. § 284 for Defendants' infringement  
10 of one or more claims of the '053 patent.

11 **COUNT III**

12 **(Infringement of U.S. Patent No. 9,106,307)**

13 33. Fitbit realleges paragraphs 1 through 32 as though fully set forth herein.

14 34. In violation of 35 U.S.C. § 271, Defendants have infringed and continue to infringe  
15 the '307 patent in this judicial district and elsewhere in the United States, both literally and under the  
16 doctrine of equivalents. Defendants have infringed and have continued to infringe through the  
17 manufacture, use, offer for sale, sale, and/or importation of products, associated software, and  
18 components, including, without limitation, the UP Move, UP2, UP3, and UP4 and the UP App  
19 software interface.

20 35. On information and belief, at least from the service of this Complaint, Defendants will  
21 contributorily infringe and/or actively induce infringement of the '307 patent in violation of 35  
22 U.S.C. § 271(b)-(c), with knowledge of or willful blindness to the existence of the '307 patent, with  
23 specific intent to contributorily infringe and/or to induce infringement, and with knowledge or willful  
24 blindness that the induced acts would constitute patent infringement. On information and belief, each  
25 of the UP Move, UP2, UP3, and UP4, each sold or offered for sale by Defendants, is not a staple  
26 article of commerce, is a component of a patented combination and material to practicing the  
27 invention in the claims of the '307 patent, and has no substantial non-infringing uses. These products  
28

1 are sold directly to customers and used by customers to track and record physical activity in  
2 conjunction with the UP App in a manner that infringes the '307 patent.

3 36. AliphCom's indirect infringement will occur by AliphCom's engaging in at least the  
4 following activities: designing and manufacturing the UP Move, UP2, UP3, and UP4 devices and  
5 their components specifically for sale and use in the United States, including California; selling and  
6 offering to sell these devices and their components in the United States or importing these devices  
7 and their components into the United States, including California; and soliciting, encouraging, and  
8 enabling infringing activity in the United States, including California, through promotional and  
9 instructional materials, websites (including support information, video instructions, tutorials, and  
10 frequently asked questions that direct customers to use the devices in an infringing manner), activities  
11 relating to activity monitors or the UP Move, UP2, UP3, and UP4 devices, and by providing access to  
12 and encouraging use of the UP App and promoting the use of third-party applications.

13 37. BodyMedia's indirect infringement will occur by BodyMedia's engaging in at least  
14 the following activities: designing and manufacturing at least the UP Move, UP3, and UP4 devices  
15 and their components specifically for sale and use in the United States, including California; and  
16 selling and offering to sell these devices and their components in the United States or importing these  
17 devices and their components into the United States, including California.

18 38. Defendants' acts of infringement of the '307 patent have caused and will continue to  
19 cause Fitbit substantial and irreparable injury, for which Fitbit is entitled to receive injunctive relief  
20 and damages adequate to compensate Fitbit for such infringement.

21 39. This case is exceptional, and therefore, Fitbit is entitled to attorneys' fees pursuant to  
22 35 U.S.C. § 285.

23 40. Fitbit is also entitled to damages under 35 U.S.C. § 284 for Defendants' infringement  
24 of one or more claims of the '307 patent.

25 **JURY DEMAND**

26 41. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Fitbit respectfully  
27 requests a trial by jury on all issues.





**CERTIFICATE OF SERVICE**

I hereby certify that on September 8, 2015, I caused to be electronically filed the foregoing Complaint with the Clerk of the Court via CM/ECF. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing systems.

Dated: September 8, 2015.

By: /s/ Josh A. Krevitt