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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BLUE SKY NETWORKS, LLC, Plaintiff, vs. FITBIT, INC., Defendant.	CASE NO. 4:17-cv-06543-YGR **FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT** **DEMAND FOR JURY TRIAL**

Plaintiff Blue Sky Networks, LLC ("Blue Sky") files this First Amended Complaint against Fitbit, Inc. for infringement of U.S. Patents Nos. 6,484,027, 6,865,372, 8,346,169, and 8,792,828.

PARTIES

1. Blue Sky Networks, LLC is a limited liability company organized under the laws of the State of Texas with its headquarters and principal place of business at 1400 Preston Road, Suite 475, Plano, Texas 75093.

2. Defendant Fitbit, Inc. is a Delaware corporation with a principal place of business at 199 Fremont Street, 14th Floor, San Francisco, California.

3. Fitbit is registered to do business in California and may be served with process through its registered agent, CT Corporation System, 818 W 7th Street, Suite 930, Los Angeles, California 90017.

4. Fitbit was served with Plaintiff's Original Complaint on November 13, 2017, and has appeared through counsel of record.

JURISDICTION AND VENUE

5. Blue Sky brings this action for patent infringement under the patent laws of the United States, namely 35 U.S.C. §§ 271, 281, and 284-285, among others. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. Fitbit is subject to personal jurisdiction of this Court based upon its regularly conducted business in California and in this judicial district.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1400(b). Fitbit headquarters and principal executive offices are located in this judicial district, and Fitbit conducts business and has committed acts of infringement in this judicial district.

INTRADISTRICT ASSIGNMENT

8. Pursuant to Local Rule 3-2(c), this case is subject to district-wide assignment because it is an Intellectual Property Action.

THE BLUE SKY PATENTS-IN-SUIT

9. Blue Sky is the owner by assignment of all right, title, and interest in and to the following United States Patents infringed by Fitbit:

- No. 6,484,027 (the "'027 Patent");
- No. 6,865,372 (the "'372 Patent");
- No. 8,346,169 (the "'169 Patent"); and
- No. 8,792,828 (the "'828 Patent") (collectively, the "Asserted Patents").

10. True and correct copies of the Asserted Patents are attached as Exhibits A-D.

11. Blue Sky possesses all rights of recovery under the Asserted Patents.

12. Dan Mauney, Marc Sullivan, Charles Green, and Steve Harbin invented the claimed subject matter of the '027, '372, '169, and '828 Patents while working for SBC Technology Resources, Inc. in Austin, Texas.

13. SBC Technology Resources, later renamed SBC Laboratories in 2003, was the research and development arm of SBC Communications Inc., which acquired AT&T in 2005.

14. The Enhanced Handset Patents, titled "Enhanced Wireless Handset, Including Direct Handset-to-Handset Communication Mode," were duly and legally issued by the United States Patent and Trademark Office after full and complete examinations of each.

15. The Patent Examiner found each set of allowed claims to recite patentable subject matter and each respective application meeting all requirements for patentability.

16. The Asserted Patents are directed to wireless mobile devices such as handsets, peripherals, and computing devices that operate via wireless short-range direct communication with other wireless devices. Such devices may also be enabled for simultaneous operation on a wireless network (e.g., a cellular, PCS, or WiFi network) and wireless short-range direct communication with other wireless devices. Wireless devices within the scope of the claims include paging devices, handsets, peripherals, computing devices, and other objects enabled for direct handset-to-handset communication.

17. To facilitate set-up, the Asserted Patents describe find features (e.g., that assist a device operator in determining what objects, including other wireless devices and users, are located within the wireless network's operating range), memory for maintaining a list of available devices for communicating via the short-range wireless network, and short-range messaging.

18. In operation, devices and objects described in the Asserted Patents scan for, find, register, and communicate with available devices and may present to a user a list from which the user may select devices to pair with a device to enable two-way communication via the short-range wireless network independent of a cellular or other wireless network.

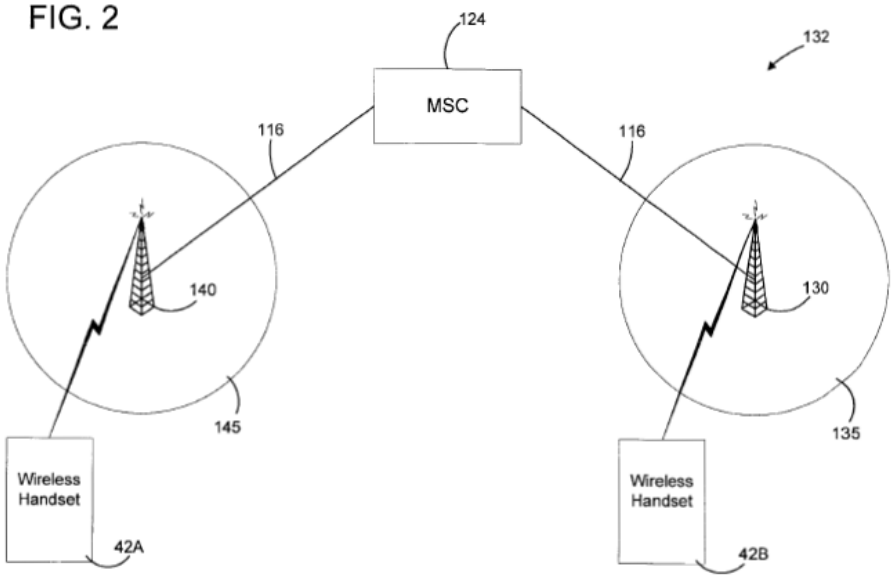
19. The Asserted Patents further describe how embodying devices such as wireless smartphones, tablets, computers, and other communication devices may simultaneously communicate on short range wireless network(s) and a wide-area wireless network such as cellular

or PCS systems, WiFi, or a satellite radio network.

20. The inventors of the Asserted Patents recognized and noted in the patent specification that then-existing cellular networks suffered from drawbacks, particularly in the context of short-range wireless communication, including the cost of conventional mobile network infrastructure that made use of the networks expensive to users even for short-range communications. '027 at 4:46-63, 13:1-7.

21. While conventional mobile networks at the time enabled mobile station users to roam over large geographic areas while maintaining immediate access to communication services ('027 at 2:5-7), in routine and normal operation, traffic between mobile devices traversed the conventional network architecture from handset to base station to mobile network switching center as shown in Figure 2, reproduced below (*see, e.g.*, '027 at 2:9-21, 33-42):

FIG. 2



WIRELESS COMMUNICATION VIA NETWORK INFRASTRUCTURE

22. Thus, even users in close proximity used the entirety of the wireless network infrastructure, which incurred expenses for airtime and necessitated mobile network operators to build out network infrastructure to handle traffic in densely populated areas. Those of skill in the art recognized at the time the challenge of cost-effectively deploying sufficient capabilities to handle peak network use.

23. Although alternatives to conventional wireless networks existed in 1998, they too had drawbacks that made them unsuitable for certain kinds of communication. For example, localized or private wireless networks introduced compatibility and access problems because equipment used proprietary protocols and unlicensed bands. *Id*. at 4:64-5:13.

24. Cordless phone systems suffered from having (1) limited range; (2) no support for direct handset-to-handset communications, since all calls are handled through the cordless phone base station; and (3) limited capabilities and operating features. *See id*. at 5:14-30.

25. Other alternatives such as land mobile radio systems, CB radios, walkie-talkies had other problems, such as lack of privacy due to broadcasting over a shared medium, and such devices only provide half-duplex communications and require that users manually select similar operating channels. *Id*.

26. Another alternative at the time were Personal Handyphone Systems (PHS), but these suffered from limited handset features and limited commercial success in the U.S. Since these also require network infrastructure, this causes incomplete coverage. *Id*. at 5:31-44.

27. In looking to solve these problems and other shortcomings of prior two-way wireless network architectures and devices, the inventors recognized a need for full-featured wireless devices capable of operating within a wireless network as well as operating in a direct handset-to-handset mode within a limited range but without having to access and utilize the conventional wireless network (e.g., a cellular network). *Id*. at 5:45-58.

28. The inventive solution enables short-range, ad hoc, direct peer-to-peer wireless communication that avoided reliance on expensive and crowded cellular networks.

29. Those of skill in the art would recognize that the claimed subject matter marks significant improvement in short-range wireless communication systems at the time of the invention. They would recognize that the claimed direct, handset-to-handset communication system would reduce the traffic burden on existing wireless networks while providing reliable short-range communication independent of cellular networks. And those of ordinary skill in the art in 1998 understood that conventional wireless networks could not deliver ad hoc, peer-to-peer communicability described, enabled, and claimed in the Asserted Patents.

30. The inventors also recognized and claimed a full-featured wireless handset capable of operating within a wireless network (such as a cellular phone, PCS or PHS network), as well as operating in a direct handset-to-handset mode within a limited range but without the utilization of a wireless network. Since direct handset-to-handset calls avoid the use of the cellular wireless network, users would be provided with the benefit of being able to place calls free of the wireless network and with little or no airtime charges.

31. Recognizing that the wireless systems of the time relied on assigned cellular numbers to identify and communicate with mobile devices and users, the inventors described and claimed enhanced features such as handset locating capabilities and device identification and specification capabilities that could be used in ad hoc peer-to-peer communication as claimed. *See id*. at 5:62-6:29.

32. The technical solutions of the Asserted Patents eliminate the need for users to prearrange or manually select operating channels (which is a common drawback in other short-range peer-to-peer radio systems such as CB radios) and provide full duplex communication free of a communication network and without incurring substantial airtime charges. These technical solutions were, at the time, not well-understood, routine, or conventional activity.

33. Another inventive and unconventional technical solution claimed in the Asserted Patents to address problems in the prior art is find features for locating objects, including other wireless handsets, paging devices and beeping devices or clips attached to items (such as keys, tools, pets, etc.), that are within range of the wireless handset.

34. In order to provide such features and to overcome the prior art problems, the Asserted Patents disclose and claim inventive and unconventional wireless devices that initiate a find feature to determine if specified objects are within range. The Asserted Patents describe and claim a memorize feature for exchanging information with objects, including other wireless handsets that are capable of operating in a communication mode with the wireless handset. This technical solution was, at the time, not well-understood, routine, or conventional activity.

35. The claimed subject matter of the Asserted Patents presents advancements in the wireless communication field at the time of the inventions, enabling ad hoc, short-range, peer-to-

peer wireless communication links that provided functionality, cost-effective use, and usability that was unavailable in routine use of conventional wireless networks at the time.

United States Patent No. 6,484,027

36. Blue Sky incorporates by reference the preceding discussion about the advancements, inventive technical solutions and concepts, and tangible improvements disclosed, enabled, and claimed in the Asserted Patents, paragraphs 9-35, and re-alleges them as if stated here.

37. The United States Patent and Trademark Office issued the ’027 Patent on November 19, 2002, after a complete examination and upon finding the claimed subject matter novel and the application meeting all requirements for patentability.

38. The ’027 Patent is valid and enforceable.

39. The ’027 Patent claims a method and a wireless handset including features for locating objects, including other wireless handsets that are within range of the wireless handset. The claimed subject matter marks a significant technological improvement over the prior art.

40. At the time of the invention of the ’027 Patent, it was a novel technological solution to combine detecting, indicating, and recording information in a found list to display the found objects of the claimed method and wireless handset to create a system including the claimed enhanced object location feature. This technological solution was not well-understood, routine, or conventional activity at the time of the invention of the ’027 Patent.

41. A copy of the ’027 Patent is attached at Exhibit A.

United States Patent No. 6,865,372

42. Blue Sky incorporates by reference the preceding discussion about the advancements, inventive technical solutions and concepts, and tangible improvements disclosed, enabled, and claimed in the Asserted Patents, paragraphs 9-35, and re-alleges them as if stated here.

43. The United States Patent and Trademark Office issued the ’372 Patent on March 8, 2005, after a complete examination and upon finding the claimed subject matter novel and the application meeting all requirements for patentability.

44. The ’372 Patent issued from a division of application No. 09/094,600 from which the ’027 Patent issued.

45. The ’372 Patent is valid and enforceable.

46. The ’372 Patent claims a method and electronic device including features for identifying proximally located objects within a proximity wireless coverage area. The claimed subject matter marks a significant technological improvement over the prior art.

47. At the time of the invention of the ’372 Patent, short range wireless communication did not conventionally or routinely operate to combine a short-range wireless transmitter to transmit an inquiry data packet on a first and second frequency and a receiver to receive responsive data packages to dynamically generate a list of detected objects located within the proximity wireless coverage area. This technological solution was not well-understood, routine, or conventional activity at the time of the invention of the ’372 Patent.

48. A copy of the ’372 Patent is attached at Exhibit B.

United States Patent No. 8,346,169

49. Blue Sky incorporates by reference the preceding discussion about the advancements, inventive technical solutions and concepts, and tangible improvements disclosed, enabled, and claimed in the Asserted Patents, paragraphs 9-35, and re-alleges them as if stated here.

50. The United States Patent and Trademark Office issued the ’169 Patent on January 1, 2013, after a complete examination and upon finding the claimed subject matter novel and the application meeting all requirements for patentability.

51. The ’169 Patent issued from a continuation of the application related to the ’027 and ’372 Patents.

52. The ’169 Patent is valid and enforceable.

53. The ’169 Patent claims a method and apparatus for short range wireless communication including features for adding a nearby found object to an authorized found list upon receiving user acceptance of a request. The claimed subject matter marks a significant technological improvement over the prior art.

54. At the time of the invention of the ’169 Patent, short range wireless communication did not conventionally or routinely operate to combine receiving a request from an object operating in a find state and prompting a user on a display to add the object to an authorized found list to add

the object to the authorized found list upon receiving user acceptance of the request. This technological solution was not well-understood, routine, or conventional activity at the time of the invention of the '169 Patent.

55. A copy of the '169 Patent is attached at Exhibit C.

United States Patent No. 8,792,828

56. Blue Sky incorporates by reference the preceding discussion about the advancements, inventive technical solutions and concepts, and tangible improvements disclosed, enabled, and claimed in the Asserted Patents, paragraphs 9-35, and re-alleges them as if stated here.

57. The United States Patent and Trademark Office issued the '828 Patent on July 29, 2014, after a complete examination and upon finding the claimed subject matter novel and the application meeting all requirements for patentability.

58. The '828 Patent issued from a continuation of the application from which the '169 Patent issued.

59. The '828 Patent is valid and enforceable.

60. The '828 Patent claims a method and apparatus for short range wireless communication including features for detecting other objects in nearby proximity and allowing a user to provide input to send or receive information to the other nearby object. The claimed subject matter marks a significant technological improvement over the prior art.

61. At the time of the invention of the '828 Patent, short range wireless communication did not conventionally or routinely operate to combine detecting a second apparatus in close proximity, receiving a user input configured to direct the apparatus to send or receive information to or from the second apparatus; and sending or receiving information to or from the second apparatus in response to user input. This technological solution was not well-understood, routine, or conventional activity at the time of the invention of the '828 Patent.

62. A copy of the '828 Patent is attached at Exhibit D.

63. As the owner of the Asserted Patents, Blue Sky Networks, LLC, holds all substantial rights in and under the '027, '372, '169, and '828 Patents including the right to grant sublicenses, exclude others, and to enforce, sue, and recover damages for past and future infringement.

FITBIT PRODUCTS

64. Fitbit makes, uses, sells, offers for sale, distributes, imports, licenses, makes, and/or supports Bluetooth-enabled fitness tracking products.

65. Fitbit focuses on ensuring that Fitbit devices and Fitbit application software are compatible with a broad range of mobile devices and operating systems.

66. Fitbit connected health and fitness trackers wirelessly sync with Fitbit's online dashboard and mobile applications through Bluetooth low-energy technology.

67. Bluetooth enables Fitbit devices to sync with Fitbit mobile applications automatically so Fitbit is able to provide users with real-time feedback and notifications.

68. For syncing fitness trackers with computers, Fitbit includes a Bluetooth wireless sync dongle that plugs into any computer's USB port with its fitness trackers.

69. Fitbit cites its device's Bluetooth-enabled wireless connectivity as a differentiator between Fitbit's products and products from its competitors.

70. Fitbit requires end users to agree to Fitbit's Terms of Sale.

71. Fitbit's Terms of Sale state that software in Fitbit products is licensed to end users and is owned by Fitbit:

> SOFTWARE LICENSE
>
> Fitbit grants to you a nonexclusive, nontransferable license to use the Software, in executable form, solely as embedded in the Products, solely for your internal, non-commercial use. You may not copy or modify the Software. You acknowledge that the Software contains trade secrets of Fitbit, and, in order to protect such trade secrets, you agree not to disassemble, decompile or reverse engineer the Software nor permit any third party to do so, except to the extent such restrictions are prohibited by law. Fitbit reserves all rights and licenses in and to the Software not expressly granted to you under this Agreement.

72. Fitbit devices employ a syncing process to transfer data.

73. The following instructional information describes how Fitbit devices use Bluetooth connectivity.

WHAT IS SYNCING?

Syncing is the process that transfers the data your device collects to your Fitbit dashboard. The dashboard is where you can track your progress, see how you slept, set goals, log food and water, challenge friends, and much more. Fitbit trackers and watches use Bluetooth Low Energy (BLE) technology to sync with phones, tablets, and certain computers. Fitbit scales use Wi-Fi to connect directly to your router. The instructions in How do I set up my Fitbit device? explain how to make sure your device can sync to your Fitbit dashboard.

74. Fitbit Bluetooth-enabled devices include wristbands & clips (Zip, Flex, Flex2, Alta, One), heartrate monitors (Alta HR, Charge, Charge 2), Watches (Blaze, Ionic, Surge), Headphones (Flyer) (collectively, "Accused Devices").

75. All Accused Devices include Bluetooth functionality.

76. At least the Fitbit Alta, Blaze, Charge, Flex, Surge, One, and Zip devices ship with a Bluetooth dongle for establishing Bluetooth connectivity.

77. Fitbit instructs and encourages users to connect the Accused Devices with various peripherals.

78. The dongle is provided by Fitbit to enable Bluetooth functionality on devices that otherwise are not Bluetooth capable, such as certain computers, to encourage users to connect the Accused Devices with Bluetooth capable devices (e.g. mobile phones, tablets, laptops, or computers running the Fitbit application).

When do I need the wireless sync dongle?

The wireless sync dongle is the small USB device that comes with some Fitbit devices. The dongle allows your device and computer to communicate with one another.

WHEN DO I NEED TO USE THE DONGLE?

If you only sync your Fitbit device with a phone, you don't need the dongle. Some computers that can communicate with the device over Bluetooth also don't need the dongle. However, because a computer's Bluetooth signal can occasionally be weak or problematic, it's a good idea to keep the dongle nearby even if you usually sync without it.

The Bluetooth-equipped computers that don't generally require a dongle are:

- Macs with Fitbit Connect software installed
- Windows 10 PCs with the Fitbit app for Windows 10 installed

79. The Fitbit Blaze, for example, contains a Bluetooth 4.0 radio transceiver.

80. Fitbit provides instructions for pairing a Fitbit device.

81. Fitbit uses the Bluetooth standard for syncing data collected by the Accused Devices to the user's computer, tablet, or mobile phone.

82. Syncing is accomplished by "pairing" the user's computer, tablet, or mobile phone with the Fitbit tracker, which thereafter allows the computer and the Fitbit tracker to exchange data.

83. To pair the devices, Fitbit instructs the user to download a Fitbit application onto the computer, tablet, or mobile phone.

84. The Fitbit application controls the computer's, tablet's, or mobile phone's Bluetooth capability to detect the Fitbit tracker, and prompts the user on the computer to pair the computer with the Fitbit tracker.

85. All Accused Devices perform this functionality.

86. The Fitbit Ionic is capable of pairing with peripheral devices such as headphones or speakers.

87. Fitbit uses the Bluetooth capability on the Fitbit Ionic to detect the peripheral and use its display to display a prompt for the user to select which peripheral to pair the tracker with.

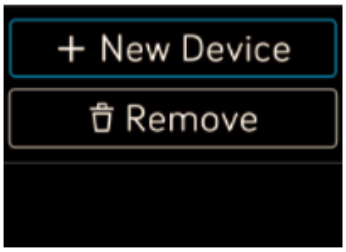
88. For example, the instructions below are provided by Fitbit to encourage users to carry out the pairing process on the Fitbit Ionic.

HOW DO I PAIR AN AUDIO DEVICE TO MY FITBIT WATCH?

When you add a new Bluetooth audio device for the first time, make sure both the device and your watch are in pairing mode.

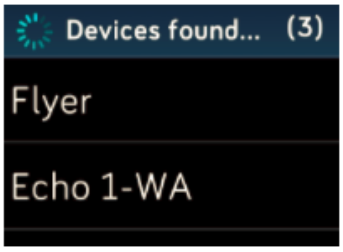
To pair a new Bluetooth audio device, follow the steps below or scroll down to watch the video (English only):

1. Start by activating pairing mode on your Bluetooth headphones, speaker, or other audio device.
2. On your watch, open the **Settings** app (⚙) and then scroll down and tap **Bluetooth**.
3. Tap **+ New Device**. Your watch searches for nearby devices.



89. When a Fitbit Ionic locates a nearby Bluetooth-enabled object, it displays a list of devices within range.

4. When your watch finds nearby Bluetooth audio devices, it shows a list on the screen. Tap the name of the device you want to pair.



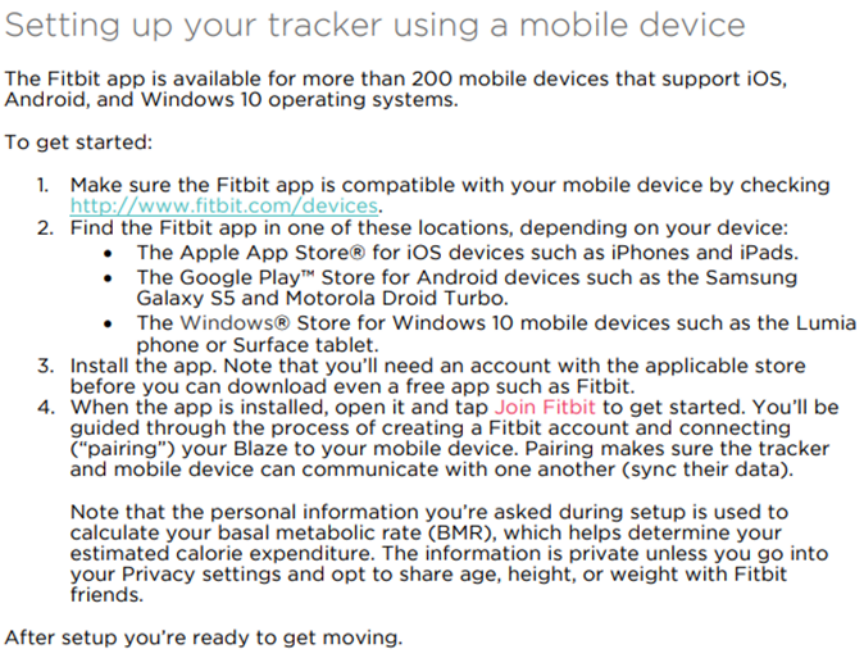
When pairing is complete, a check mark appears on the screen.

90. Fitbit's video tutorial explains and shows the pairing process, and object-location and display functions on the Fitbit Ionic:

91. Fitbit Bluetooth-enabled devices and Fitbit devices used in conjunction with Bluetooth-enabled devices running Fitbit application software (e.g., a mobile phone, laptop, or computer running the Fitbit application) (and optionally, the Fitbit Bluetooth dongle) are capable of being used to configure and pair a Fitbit device and Bluetooth-enabled communication device.

92. Fitbit Bluetooth-enabled devices and Bluetooth-enabled devices running Fitbit application software (and optionally, the Fitbit Bluetooth dongle) are designed and intended to function together as an integrated system.

93. Fitbit instructs end users to download and install the Fitbit software application.



Setting up your tracker using a mobile device

The Fitbit app is available for more than 200 mobile devices that support iOS, Android, and Windows 10 operating systems.

To get started:

1. Make sure the Fitbit app is compatible with your mobile device by checking http://www.fitbit.com/devices.
2. Find the Fitbit app in one of these locations, depending on your device:
   - The Apple App Store® for iOS devices such as iPhones and iPads.
   - The Google Play™ Store for Android devices such as the Samsung Galaxy S5 and Motorola Droid Turbo.
   - The Windows® Store for Windows 10 mobile devices such as the Lumia phone or Surface tablet.
3. Install the app. Note that you'll need an account with the applicable store before you can download even a free app such as Fitbit.
4. When the app is installed, open it and tap Join Fitbit to get started. You'll be guided through the process of creating a Fitbit account and connecting ("pairing") your Blaze to your mobile device. Pairing makes sure the tracker and mobile device can communicate with one another (sync their data).

   Note that the personal information you're asked during setup is used to calculate your basal metabolic rate (BMR), which helps determine your estimated calorie expenditure. The information is private unless you go into your Privacy settings and opt to share age, height, or weight with Fitbit friends.

After setup you're ready to get moving.

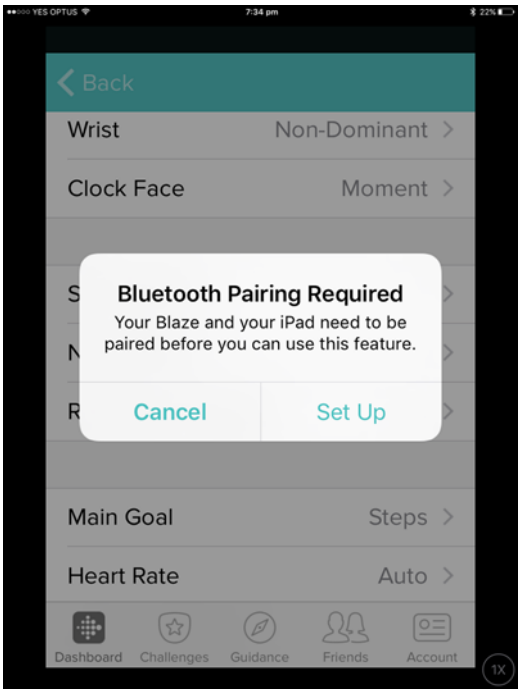
94. Fitbit encourages and instructs end users to use the Fitbit application software to pair and communicate with a Fitbit device to practice the Blue Sky patents.

95. Fitbit Bluetooth-enabled devices and Bluetooth-enabled devices running Fitbit application software (e.g., a mobile phone, laptop, or computer running the Fitbit application) (and optionally, the Fitbit Bluetooth dongle) are capable of being used to configure and pair a Fitbit device and Bluetooth-enabled communication device.

96. Fitbit instructs and directs end users to install a Bluetooth dongle to enable Bluetooth functionality.

97. The dongle is provided by Fitbit to enable Bluetooth functionality on devices that otherwise are not Bluetooth capable, such as certain computers, to encourage users to connect the Accused Devices with Bluetooth capable devices (e.g. mobile phones, tablets, laptops, or computers running the Fitbit application).

98. Bluetooth enabled devices running the Fitbit software application (and optionally, the Fitbit Bluetooth dongle) provide an interactive pairing menu for users to enable and connect with Fitbit devices.



99. Fitbit encourages and instructs end users to use Bluetooth enabled devices running the Fitbit application software (and optionally, the Fitbit Bluetooth dongle) to pair and communicate with the Accused Devices to practice the Blue Sky patents.

100. Fitbit has been on notice of the Asserted Patents at least as of Nov. 10, 2017, the filing date of the original complaint.

COUNT I
INFRINGEMENT OF U.S. PATENT NO. 6,484,027

101. Blue Sky incorporates by reference paragraphs 1-100 and re-alleges them as if stated here.

102. Fitbit directly and indirectly infringes at least claims 5, 6, 7, and 8 of the '027 Patent.

103. Fitbit makes, uses, sells, offers for sale, and/or imports Bluetooth-enabled devices that embody the asserted claims of the '027 Patent.

104. The Fitbit Ionic is a wireless handset with enhanced operating features including the ability to locate other devices within range and pair or communicate with at least two distinct Bluetooth devices using two frequency channels.

105. In normal operation, the Fitbit Ionic initiates a find feature to discover any Bluetooth enabled devices (e.g., peripherals, phones, computers, etc.) within range.

106. The Fitbit Ionic enters a page sub-state to determine whether available devices are within range and may transmit a train of page messages until a response is received from a potential target device.

107. The Fitbit Ionic detects any response messages from available Bluetooth devices (e.g., a Bluetooth headset or speaker) and collects and stores information received within the inquiry response messages for use in compiling a list of discovered or available Bluetooth devices.

108. When a connectable device receives a page request on its page scan channel from the Fitbit Ionic, it enters into a sequence of exchanges and the Fitbit Ionic enters into a master response routine.

109. A link key is created and exchanged during the pairing process. Once a Fitbit Ionic is paired with a connectable device, higher level initialization procedures are invoked to update a stored list of paired devices.

110. The Fitbit Ionic lists "available" devices that are detected to be within range.

111. The user selects an "available" device for connection.

112. Once a connectable device is connected to the Fitbit Ionic, it is designated as a "paired" device.

113. Bluetooth enabled devices running the Fitbit application software (and optionally, the Fitbit Bluetooth dongle) are wireless handsets with enhanced operating features including the ability to locate other devices within range and pair or communicate with at least two distinct Bluetooth devices using two frequency channels.

114. In normal operation, Bluetooth enabled devices running the Fitbit application software (and optionally, the Fitbit Bluetooth dongle) initiate a find feature to discover any Bluetooth enabled devices (e.g., peripherals, phones, computers, etc.) within range.

115. Bluetooth enabled devices running the Fitbit application software (and optionally, the Fitbit Bluetooth dongle) enter a page sub-state to determine whether available devices are within range and may transmit a train of page messages until a response is received from a potential

target device.

116. Bluetooth enabled devices running the Fitbit application software (and optionally, the Fitbit Bluetooth dongle) detect any response messages from available Bluetooth devices (e.g., a Bluetooth headset or speaker) and collect and store information received within the inquiry response messages for use in compiling a list of discovered or available Bluetooth devices.

117. When a connectable device receives a page request on its page scan channel from the Bluetooth enabled devices running the Fitbit application software (and optionally, the Fitbit Bluetooth dongle), it enters into a sequence of exchanges and the Bluetooth enabled devices running the Fitbit application software enters into a master response routine.

118. A link key is created and exchanged during the pairing process. Once a Bluetooth enabled devices running the Fitbit application software (and optionally, the Fitbit Bluetooth dongle) is paired with a connectable device, higher level initialization procedures are invoked to update a stored list of paired devices.

119. Bluetooth enabled devices running the Fitbit application software (and optionally, the Fitbit Bluetooth dongle) list "available" devices that are detected to be within range.

120. The user selects an "available" device for connection.

121. Once a connectable device is connected to a Bluetooth enabled device running the Fitbit application software (and optionally, the Fitbit Bluetooth dongle), it is designated as a "paired" device.

122. Through online technical support and publication of instructional information, Fitbit encourages, aids, and directs end users of the Accused Devices to use and operate them, consistent with Fitbit's instructions, to perform the asserted method claims.

123. Fitbit is on notice of the infringing products, features, and how end users of the Accused Devices operate them to perform the claimed methods and use the claimed apparatuses.

124. Fitbit's infringing conduct has damaged Blue Sky Networks.

125. Fitbit is liable to Blue Sky Networks in an amount that adequately compensates it for Defendants' infringement, which, by law, can be no less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

COUNT II
INFRINGEMENT OF U.S. PATENT NO. 6,865,372

126. Blue Sky incorporates by reference paragraphs 1-125 and re-alleges them as if stated here.

127. Fitbit directly and indirectly infringes all claims of the '372 Patent.

128. Fitbit uses, makes, sells, offers for sale, and/or imports Bluetooth-enabled devices that practice and are used to practice the '372 Patent.

129. Fitbit infringes at least claims 3, 8, 13 and 18 of the '372 Patent with respect to the Accused Devices that include a display such as the Fitbit Ionic.

130. Fitbit accused products communicate with peripherals using Bluetooth short-range technologies.

131. In accordance exemplary claim 1 of the '372 Patent, the Fitbit Ionic pairs or communicates with at least two distinct Bluetooth peripherals using two frequency channels and receive an identifier (e.g., name) from each paired (or available) peripheral.

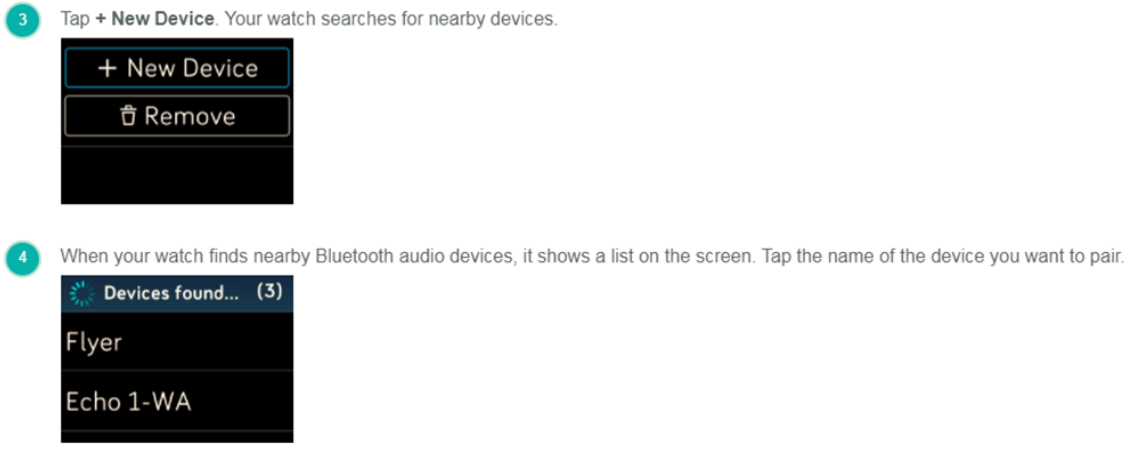
How do I connect Bluetooth audio devices to my Fitbit watch?

Connect up to 8 Bluetooth audio devices to your Fitbit watch, including Fitbit Flyer headphones, to listen to playlists on your watch.

132. The Fitbit Ionic includes a screen which displays the identifier in a list of paired or available devices.

133. The Fitbit Ionic contains short-range wireless transmitters for short-range communications.

134. The Fitbit Ionic enters into the inquiry substate and transmits inquiry messages (e.g., inquiry data packets) as part of the discovery and pairing process with nearby compatible Bluetooth devices (e.g., wireless headsets, Bluetooth speakers, smartphones, etc.).



135. The Fitbit Ionic consecutively transmits, to two Bluetooth peripherals, inquiry messages over at least two frequency channels. Based on Bluetooth protocols, the Fitbit Ionic may determine the frequency channels by an inquiry hopping sequence.

136. If discoverable, an object may receive the inquiry messages from the Fitbit Ionic in the page substate and in turn generates responses. Accordingly, a Fitbit Ionic contains a receiver to receive the inquiry response messages from Bluetooth peripherals within range.

137. According to Bluetooth protocols, a peripheral's response message may contain information including device address, clock, class of device, and device name.

138. After receiving the response messages, the Fitbit Ionic dynamically creates and updates a list of detected objects within range. The list may include identifiers (e.g., names) for detected (e.g., available or paired) objects. The list may include the first object identifier and the second object identifier (e.g., two device names) for cases in which inquiry packets are sent over two frequency channels to two separate objects, and the two objects send response data packets including corresponding object identifiers (e.g., a device name).

139. The Fitbit Ionic is used to practice claim 16 of the '372 Patent.

140. The Fitbit Ionic includes Bluetooth radios for transmitting inquiry data packets according to the Bluetooth wireless protocol and technical specification. *See, e.g.*, Bluetooth 4.0 Core Specification at https://www.bluetooth.com/specifications/bluetooth-core-specification.

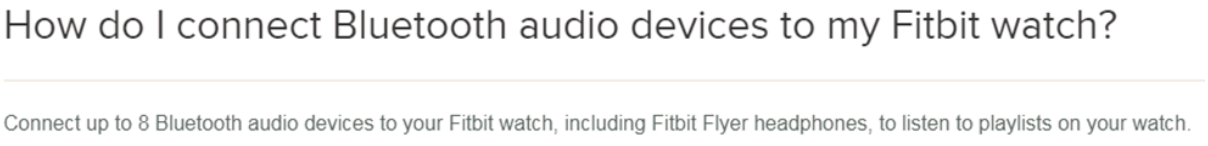
141. In the paging substate, according to the Bluetooth specification, peripherals transmit inquiry data packets using a first and second channel of a frequency channel sequence and receive

response packets identifying proximate objects.

142. During the pairing and bonding process, peripherals store object identifiers associated with the proximally located object.

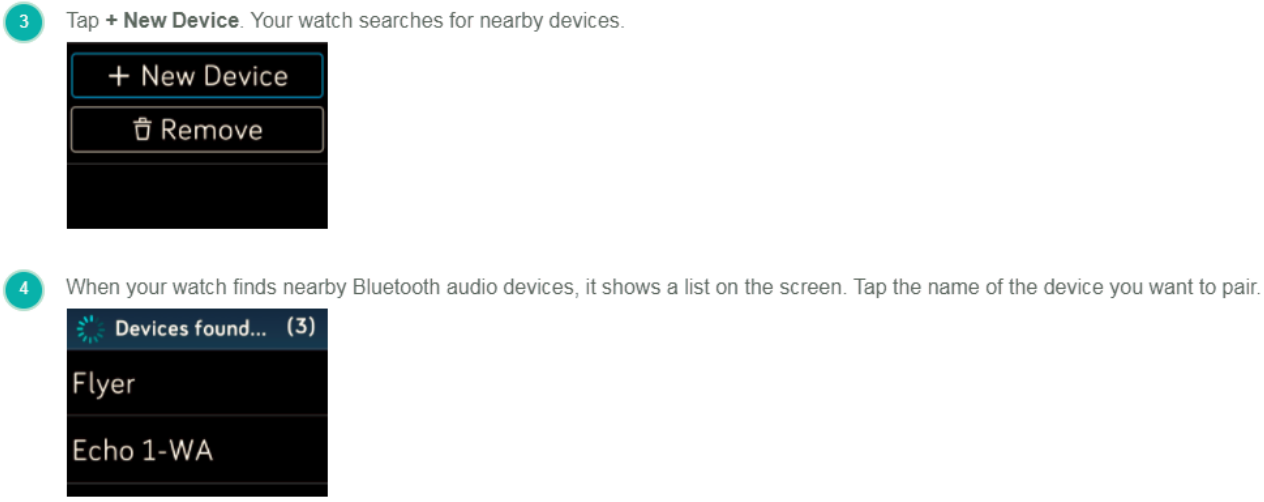
143. The bonding process creates a relation between the peripheral and the object to which it is connecting (e.g., a smartphone or computer). The relation is based on a common link key that is created and exchanged during the bonding process. The common link key is stored by the peripheral to be used for future authentication.

144. In accordance with exemplary claim 1 of the '372 Patent, Bluetooth-enabled devices running Fitbit application software (and optionally, the Fitbit Bluetooth dongle) pair or communicate with at least two distinct Bluetooth peripherals using two frequency channels and receive an identifier (e.g., name) from each paired (or available) peripheral.



145. The Bluetooth-enabled devices running Fitbit application software (and optionally, the Fitbit Bluetooth dongle) display the identifier in a list of paired or available devices.

146. The Bluetooth-enabled devices running Fitbit application software (and optionally, the Fitbit Bluetooth dongle) contain short-range wireless transmitters for short-range communications.



147. The Bluetooth-enabled devices running Fitbit application software (and optionally,

the Fitbit Bluetooth dongle) enter into the inquiry substate and transmit inquiry messages (e.g., inquiry data packets) as part of the discovery and pairing process with nearby compatible Bluetooth devices (e.g., wireless headsets, Bluetooth speakers, smartphones, etc.).

148. The Bluetooth-enabled devices running Fitbit application software (and optionally, the Fitbit Bluetooth dongle) consecutively transmit, to two Bluetooth peripherals, inquiry messages over at least two frequency channels. Based on Bluetooth protocols, the devices may determine the frequency channels by an inquiry hopping sequence.

149. If discoverable, an object may receive the inquiry messages from the Bluetooth-enabled devices running Fitbit application software (and optionally, the Fitbit Bluetooth dongle) in the page substate and in turn generate responses. Accordingly, the Bluetooth-enabled devices running Fitbit application software (and optionally, the Fitbit Bluetooth dongle) contain a receiver to receive the inquiry response messages from Bluetooth peripherals within range.

150. According to Bluetooth protocols, a peripheral's response message may contain information including device address, clock, class of device, and device name.

151. After receiving the response messages, the Bluetooth-enabled devices running Fitbit application software (and optionally, the Fitbit Bluetooth dongle) dynamically create and update a list of detected objects within range. The list may include identifiers (e.g., names) for detected (e.g., available or paired) objects. The list may include the first object identifier and the second object identifier (e.g., two device names) for cases in which inquiry packets are sent over two frequency channels to two separate objects, and the two objects send response data packets including corresponding object identifiers (e.g., a device name).

152. The Bluetooth-enabled devices running Fitbit application software (and optionally, the Fitbit Bluetooth dongle) are used to practice claim 16 of the '372 Patent.

153. The Bluetooth-enabled devices running Fitbit application software (and optionally, the Fitbit Bluetooth dongle) include Bluetooth radios for transmitting inquiry data packets according to the Bluetooth wireless protocol and technical specification. *See, e.g.*, Bluetooth 4.0 Core Specification at https://www.bluetooth.com/specifications/bluetooth-core-specification.

154. In the paging substate, according to the Bluetooth specification, peripherals transmit

inquiry data packets using a first and second channel of a frequency channel sequence and receive response packets identifying proximate objects.

155. During the pairing and bonding process, peripherals store object identifiers associated with the proximally located object.

156. The bonding process creates a relation between the peripheral and the object to which it is connecting (e.g., a smartphone or computer). The relation is based on a common link key that is created and exchanged during the bonding process. The common link key is stored by the peripheral to be used for future authentication.

157. Through online technical support and publication of instructional information, Fitbit encourages, aids, and directs end users of the Accused Devices to use and operate them, consistent with Fitbit's instructions, to perform the asserted method claims.

158. Fitbit is on notice of the infringing products, features, and how end users of the Accused Devices operate them to perform the claimed methods and use the claimed apparatuses.

159. Fitbit's infringing conduct has damaged Blue Sky Networks.

160. Fitbit is liable to Blue Sky Networks in an amount that adequately compensates it for Defendants' infringement, which, by law, can be no less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

COUNT III
INFRINGEMENT OF U.S. PATENT NO. 8,346,169

161. Blue Sky incorporates by reference paragraphs 1-160 and re-alleges them as if stated here.

162. Fitbit directly and indirectly infringes at least claims 1, 2, 3, 5, 6, 8, 9, 10, 12, 13, and 15 of the '169 Patent.

163. Fitbit makes, uses, sells, offers for sale, and/or imports Bluetooth-enabled devices that practice or are used to practice the '169 Patent.

164. The Fitbit Ionic communicates with objects using Bluetooth short-range technologies embodying the asserted claims of the '169 Patent.

165. The Fitbit Ionic communicates using relevant short-range technologies including but

not limited to Bluetooth Basic Rate/Enhanced Data Rate (BR/EDR) and pair with Fitbit and/or third-party peripherals and add selected peripherals to a list of paired devices stored in the Fitbit device.

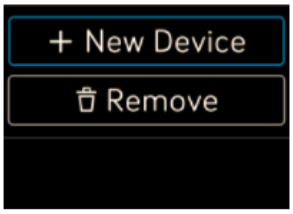
166. Fitbit provides instructions to end users of the Fitbit Ionic directing how to practice the '169 Patent:

HOW DO I PAIR AN AUDIO DEVICE TO MY FITBIT WATCH?

When you add a new Bluetooth audio device for the first time, make sure both the device and your watch are in pairing mode.

To pair a new Bluetooth audio device, follow the steps below or scroll down to watch the video (English only):

1. Start by activating pairing mode on your Bluetooth headphones, speaker, or other audio device.
2. On your watch, open the **Settings** app (⚙) and then scroll down and tap **Bluetooth**.
3. Tap **+ New Device**. Your watch searches for nearby devices.



167. By way of example, in a typical scenario, a user presses and temporarily holds a button (e.g., the call control/power button on a Bluetooth headset) to initiate pairing with a Fitbit Ionic while it scans for available nearby devices.

168. In response, the device receives a pair request message (e.g., a paging message request) over a channel shared with other Bluetooth devices (e.g., a time-division multiplexed channel). In response to the pair request, the Fitbit Ionic prompts a user to add the Bluetooth peripheral to a list of authorized devices. If the user approves pairing the Fitbit Ionic with the peripheral, the user accepts the pair request and adds the peripheral to a list of authorized devices on the Fitbit Ionic. In some instances, the user is required to enter a PIN or code to authorize pairing.

169. Bluetooth-enabled devices running Fitbit application software (and optionally, the Fitbit Bluetooth dongle) communicate with objects using Bluetooth short-range technologies

embodying the asserted claims of the '169 Patent.

170. Bluetooth-enabled devices running Fitbit application software (and optionally, the Fitbit Bluetooth dongle) communicate using relevant short-range technologies including but not limited to Bluetooth Basic Rate/Enhanced Data Rate (BR/EDR) and pair with Fitbit peripherals and add selected peripherals to a list of paired devices.

171. Fitbit provides instructions to end users of the Bluetooth-enabled devices running Fitbit application software (and optionally, the Fitbit Bluetooth dongle) directing how to practice the '169 Patent.

172. By way of example, in a typical scenario a user presses and temporarily holds a button (e.g., the call control/power button on a Bluetooth headset) to initiate pairing with a Bluetooth-enabled devices running Fitbit application software (and optionally, the Fitbit Bluetooth dongle) while the Bluetooth-enabled devices running Fitbit application software (and optionally, the Fitbit Bluetooth dongle) scans for available nearby devices.

173. In response, the nearby device receives a pair request message (e.g., a paging message request) over a channel shared with other Bluetooth devices (e.g., a time-division multiplexed channel). In response to the pair request, the Bluetooth-enabled devices running Fitbit application software (and optionally, the Fitbit Bluetooth dongle) prompt a user to add the Bluetooth peripheral to a list of authorized devices. If the user approves pairing the Bluetooth-enabled devices running Fitbit application software (and optionally, the Fitbit Bluetooth dongle) with the peripheral, the user accepts the pair request and adds the peripheral to a list of authorized devices on the Bluetooth-enabled devices running Fitbit application software (and optionally, the Fitbit Bluetooth dongle). In some instances, the user is required to enter a PIN or code to authorize pairing.

174. Through online technical support and publication of instructional information, Fitbit encourages, aids, and directs end users of the Accused Devices to use and operate them, consistent with Fitbit's instructions, to perform the asserted method claims.

175. Fitbit is on notice of the infringing products, features, and how end users of the Accused Devices operate them to perform the claimed methods and use the claimed apparatuses.

176. Fitbit's infringing conduct has damaged Blue Sky Networks.

177. Fitbit is liable to Blue Sky Networks in an amount that adequately compensates it for Defendants' infringement, which, by law, can be no less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

COUNT IV

INFRINGEMENT OF U.S. PATENT NO. 8,792,828

178. Blue Sky incorporates by reference paragraphs 1-177 and re-alleges them as if stated here.

179. Fitbit directly and indirectly infringes at least claims 3, 4, 12, 13, and 17 of the '828 Patent.

180. Fitbit makes, uses, sells, offers for sale, and/or imports Bluetooth-enabled devices that practice or are used to practice the '828 Patent.

181. The Fitbit Ionic communicates with a second apparatus using Bluetooth short-range technologies embodying the '828 Patent.

182. In normal operation, for example during the Bluetooth discovery process, the Fitbit Ionic detects other Bluetooth-enabled objects in close proximity and may display the objects that are available for pairing.

183. When a user provides input directing the Fitbit Ionic to send or receive information (e.g., MAC address, identifying information, etc.) to/from the second apparatus, the pairing or bonding process continues, and the objects exchange data.

184. Such information exchanged between the Fitbit Ionic and Bluetooth-enabled object includes identifying information about each device that is used to create and exchange link keys to "bond" the devices. *See* Bluetooth Core Specification v.4.0.

185. The Bluetooth-enabled devices running Fitbit application software (and optionally, the Fitbit Bluetooth dongle) communicate with a second apparatus using Bluetooth short-range technologies embodying the '828 Patent.

186. In normal operation, for example during the Bluetooth discovery process, the Bluetooth-enabled devices running Fitbit application software (and optionally, the Fitbit Bluetooth

dongle) detect other Bluetooth-enabled objects in close proximity and may display the objects that are available for pairing.

187. When a user provides input directing the Bluetooth-enabled devices running Fitbit application software (and optionally, the Fitbit Bluetooth dongle) to send or receive information (e.g., MAC address, identifying information, etc.) to/from the second apparatus, the pairing or bonding process continues, and the objects exchange data.

188. Such information exchanged between the Bluetooth-enabled devices running Fitbit application software (and optionally, the Fitbit Bluetooth dongle) and Bluetooth-enabled object includes identifying information about each device that is used to create and exchange link keys to "bond" the devices. *See* Bluetooth Core Specification v.4.0.

189. Through online technical support and publication of instructional information, Fitbit encourages, aids, and directs end users of the Accused Devices to use and operate them, consistent with Fitbit's instructions, to perform the asserted method claims.

190. Fitbit is on notice of the infringing products, features, and how end users of the accused devices operate them to perform the claimed methods and use the claimed apparatuses.

191. Fitbit's infringing conduct has damaged Blue Sky Networks.

192. Fitbit is liable to Blue Sky Networks in an amount that adequately compensates it for Defendants' infringement, which, by law, can be no less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

NOTICE

193. Blue Sky Networks has complied with the notice requirement of 35 U.S.C. § 287 and does not currently distribute, sell, offer for sale, or make products embodying the asserted Blue Sky Patents.

PRAYER FOR RELIEF

Blue Sky Networks prays for the following relief:

a) A judgment be entered that Fitbit has directly and indirectly infringed one or more claims of the Asserted Patents;

b) A judgment be entered that the Asserted Patents are valid and enforceable;

c) Blue Sky Networks be awarded damages adequate to compensate for Fitbit's infringement up until the date such judgment is entered, including prejudgment and post-judgment interest, costs, and disbursements as justified under 35 U.S.C. § 284 and, if necessary to adequately compensate Blue Sky for Fitbit's infringement, an accounting;

d) A judgment that Blue Sky Networks be awarded attorneys' fees, costs, and expenses incurred in prosecuting this action; and

e) A judgment that Blue Sky Networks be awarded such further relief at law or in equity as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Blue Sky Networks, LLC demands trial by jury for all issues so triable pursuant to Fed. R. Civ. P. 38(b) and Civil L.R. 3-6(a).

Dated: February 15, 2017

By /s/ *Marc Belloli*
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