

1 JOSH A. KREVITT (SBN 208552)
jkrevitt@gibsondunn.com
2 GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue, 47th Floor
3 New York, New York 10166
Tel: (212) 351-4000
4 Fax: (212) 351-4035

5 WAYNE M. BARSKY (SBN 116731)
wbarsky@gibsondunn.com
6 GIBSON, DUNN & CRUTCHER LLP
2029 Century Park East
7 Los Angeles, CA 90067-3026
8 Tel: (310) 552-8500
9 Fax: (310) 551-8741

10 FREDERICK S. CHUNG (SBN 183337)
fchung@gibsondunn.com
11 STUART M. ROSENBERG (SBN 239926)
srosenberg@gibsondunn.com
12 ALISON WATKINS (SBN 253023)
awatkins@gibsondunn.com
13 GIBSON, DUNN & CRUTCHER LLP
1881 Page Mill Road
14 Palo Alto, CA 94304
Tel: (650) 849-5300
15 Fax: (650) 849-5333

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 8. Venue is proper in this court pursuant to 28 U.S.C. §§ 1391(b), (c), and 1400(b).
2 Defendant AliphCom d/b/a Jawbone is a California corporation. Defendants have committed acts of
3 infringement within this district, and a substantial part of the events giving rise to the claim occurred
4 in this District.

PATENTS-IN-SUIT

5
6 9. U.S. Patent No. 9,048,923 (the “’923 patent”), entitled “System and Method for
7 Wireless Device Pairing,” was duly and legally issued by the U.S. Patent and Trademark Office on
8 June 2, 2015. The ’923 patent is assigned to Fitbit. A true and correct copy of the ’923 patent is
9 attached as Exhibit A.

10 10. U.S. Patent No. 9,026,053 (the “’053 patent”), entitled “System and Method for
11 Wireless Device Pairing,” was duly and legally issued by the U.S. Patent and Trademark Office on
12 May 5, 2015. The ’053 patent is assigned to Fitbit. A true and correct copy of the ’053 patent is
13 attached as Exhibit B.

14 11. U.S. Patent No. 9,106,307 (the “’307 patent”), entitled “System and Method for
15 Wireless Device Pairing,” was duly and legally issued by the U.S. Patent and Trademark Office on
16 August 11, 2015. The ’307 patent is assigned to Fitbit. A true and correct copy of the ’307 patent is
17 attached as Exhibit C.

18 12. The ’923 patent, ’053 patent, and ’307 patent are collectively referred to herein as the
19 “Patents-in-Suit.” By assignment, Fitbit owns all right, title, and interest in and to the Patents-in-Suit.
20 Fitbit has the right to sue and recover for the infringement of the Patents-in-Suit.

BACKGROUND

21
22 13. Fitbit, Inc. is a company that helps people lead healthier, more active lives by
23 empowering them with data, inspiration, and guidance to reach their goals. Fitbit is an innovator in
24 the health and fitness market, addressing key needs with advanced technology embedded in cutting-
25 edge but simple-to-use products and services. Since 2007, Fitbit has pioneered the connected health
26 and fitness market, growing rapidly into a leading global health and fitness brand.

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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

REQUESTED RELIEF

Fitbit respectfully seeks the following relief:

- a) The entry of judgment declaring that Defendants have infringed each of the Patents-in-Suit;
- b) An award of all available damages, including, but not limited to Fitbit's lost profits from Defendants' infringement of the Patents-in-Suit, but in any event not less than a reasonable royalty, together with pre-judgment and post-judgment interest;
- c) An injunction restraining Defendants and their affiliates, subsidiaries, officers, directors, agents, servants, employees, representatives, licensees, successors, assigns, and all those acting for them and on their behalf, from further infringement, further inducements of infringement, and further contributions to infringement of the Patents-in-Suit;
- d) The entry of an order declaring that this is an exceptional case and awarding Fitbit its costs, expenses, and reasonable attorney fees under 35 U.S.C. § 285 and all other applicable statutes, rules, and common law; AND
- e) An order awarding Fitbit any such other relief as the Court may deem just and proper under the circumstances.

Dated: September 8, 2015

Respectfully submitted,
 GIBSON, DUNN & CRUTCHER LLP
 By: _____ /s/ *Josh A. Krevitt*

Attorneys for Plaintiff
 FITBIT, INC.

JURY DEMAND

Plaintiff Fitbit, Inc. hereby demands a jury trial on all issues so triable.

Dated: September 8, 2015

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP

By: /s/ Josh A. Krevitt

Attorneys for Plaintiff

FITBIT, INC.

1 **CERTIFICATE OF SERVICE**

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

5
6 Dated: September 8, 2015.

7
8
9 By: /s/ Josh A. Krevitt