

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

FITISTICS, LLC,

Plaintiff,

v.

FOSSIL GROUP, INC., FOSSIL STORES I,  
INC., and FOSSIL PARTNERS, L.P.,

Defendants.

Civil Action No. 2:23-cv-00224

**JURY TRIAL DEMANDED**

**ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Fitistics, LLC (“Fitistics” or “Plaintiff”) files this Complaint against Defendants FOSSIL GROUP, INC. (“Fossil Group”), FOSSIL STORES I, INC. (“Fossil Stores”), and FOSSIL PARTNERS, L.P. (“Fossil Partners”) (collectively “Defendants”) alleging, based on its own knowledge as to itself and its own actions, and based on information and belief as to all other matters, as follows:

**NATURE OF THE ACTION**

1. This is a patent infringement action regarding Defendants’ infringement of the following United States Patents (the “Asserted Patents”) issued by the United States Patent and Trademark Office (“USPTO”), copies of are attached hereto as **Exhibit A**, **Exhibit B**, and **Exhibit C**:

	<b>U.S. Patent No.</b>	<b>Title</b>
A.	8,915,823	System And Method For Processing Information
B.	11,185,738	System And Method For Processing Information
C.	11,252,235	System And Method For Processing Information

2. Fitistics seeks injunctive relief and monetary damages.

## PARTIES

3. Plaintiff Fitistics, LLC is a limited liability company filed under the laws of the State of Connecticut, with its principal place of business in Connecticut.

4. Defendant Fossil Group, Inc. (“Fossil Group”) is a corporation organized under the laws of the State of Delaware.

5. Fossil Group has its principal place of business at 901 S. Central Expressway, Richardson, Texas 75080.

6. Fossil Group designs, manufactures, makes, uses, and/or imports into the United States watches with biometric monitoring capabilities.

7. Fossil Group’s watches are marketed, used, offered for sale, and/or sold throughout the United States, including within this District.

8. Defendant Fossil Stores I, Inc. (“Fossil Stores”) is organized under the laws of the State of Delaware.

9. Fossil Stores has its principal place of business at 901 S Central Expressway, Richardson, Texas 75080.

10. Fossil Stores is a wholly owned subsidiary of Fossil Group.

11. Fossil Stores pays sales tax on behalf of FOSSIL and WATCH STATION brand stores located in this State and District, including but not limited to stores located at 820 W Stacy Road, Allen, Texas 75013.<sup>1</sup>

12. Defendant Fossil Partners, L.P. (“Fossil Partners”) is a corporation organized under the laws of the State of Texas.

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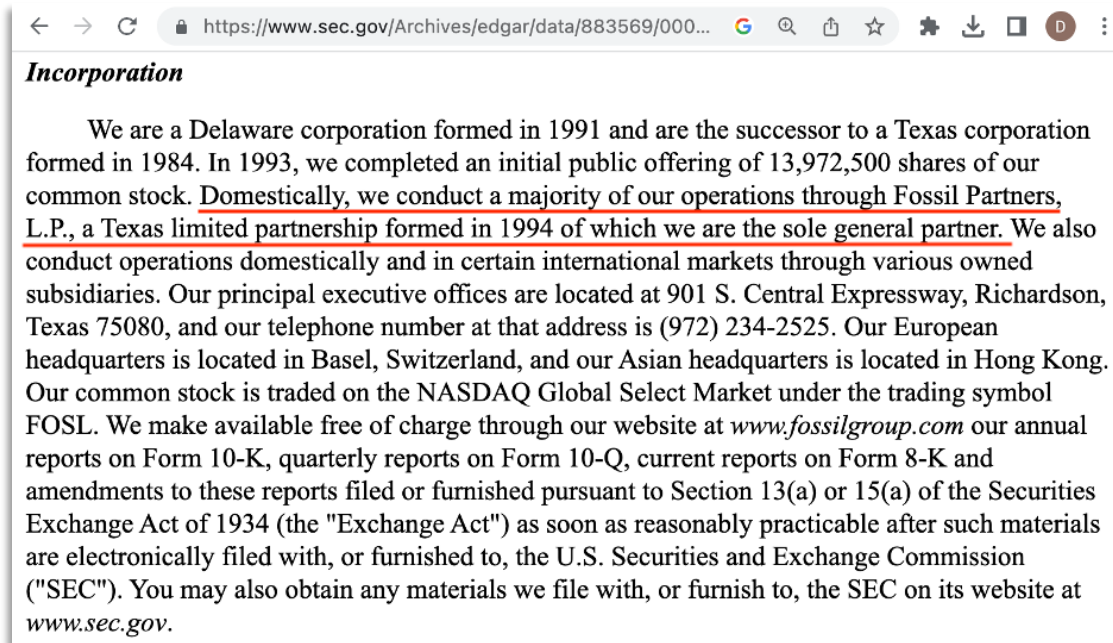
<sup>1</sup> See, e.g., <https://www.fossil.com/en-us/store-locator.html>.

13. Fossil Partners has its principal place of business at 901 S. Central Expressway, Richardson, Texas 75080.

14. Fossil Partners is a wholly owned subsidiary of Fossil Group.

15. Fossil Group is the sole general partner of Fossil Partners.<sup>2</sup>

16. Fossil Group conducts a majority of FOSSIL's U.S. operations through Fossil Partners.<sup>3</sup>



Source: <https://www.sec.gov/Archives/edgar/data/883569/000088356920000006/fosl-20191228x10k.htm>

17. Defendants can be served through their shared Registered Agent for Service, CT Corporation System, located at 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

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<sup>2</sup> See, e.g., <https://www.sec.gov/Archives/edgar/data/883569/000088356920000006/fosl-20191228x10k.htm>.

<sup>3</sup> See *id.*

## JURISDICTION AND VENUE

18. Plaintiff repeats and re-alleges the allegations in the Paragraphs above as though fully set forth in their entirety.

19. This is an action for infringement of United States patents arising under 35 U.S.C. §§ 271, 281, and 284–85, among others. This Court has subject matter jurisdiction of the action under 28 U.S.C. §§ 1331 and 1338(a).

20. Venue is proper in this district pursuant to 28 U.S.C. §§ 1400(b) and 1391(c).

21. Defendants are subject to this Court’s specific and general personal jurisdiction due at least to their substantial business in this forum, including (i) at least a portion of the infringements alleged herein; or (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, or deriving substantial revenue from goods and services provided to individuals in Texas and in this district.

22. Specifically, Defendants intend to do and do business in Texas, directly or through intermediaries and offer their products or services, including those accused herein of infringement, to customers and potential customers located in Texas, including in the Eastern District of Texas.

23. Venue is proper against the Defendants in this District pursuant to 28 U.S.C. § 1400(b) because they reside in Texas, have maintained established and regular places of business in this District and have committed acts of patent infringement in the District. *See In re: Cray Inc.*, 871 F.3d 1355, 1362-63 (Fed. Cir. 2017); *TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 581 U.S. 258, 262 (2017).

24. Defendants maintain, own, direct, operate, and/or control FOSSIL brand and WATACH STATION brand stores located in this State and District, including but not limited to stores located at 820 W. Stacy Road, Suite 634, Allen, Texas 75013; and 820 West Stacey Road,

Suite 651, Allen, Texas 75013, from which infringing products are sold and infringing activities are conducted.<sup>4</sup>

25. Defendants sell the Accused Products (defined below) through the FOSSIL and WATCH STATION storefronts located in Allen, Texas.

26. Defendants currently employ and contract with individuals who reside and work within the District and commit acts of infringement in the District.<sup>5</sup>

### **THE TECHNOLOGY**

27. Fitistics repeats and re-alleges the allegations in the Paragraphs above as though fully set forth in their entirety.

28. The Asserted Patents” are generally directed to innovations in using smart devices to assist in processing and displaying recorded biometric data, including, but not limited to, data generated during exercise.

29. Fitistics was founded by Robert Nutini and Sean McKirdy, the co-inventors of the Asserted Patents.

30. Mr. Nutini received a B.S. in Engineering from University of Connecticut in 1999 and a M.B.A from the University of Phoenix in 2007.

31. Mr. McKirdy attended Central Connecticut State University in the Industrial Technology program with a specialization in Electrical Systems.

32. Mr. Nutini and Mr. McKirdy first met in 1998 during their respective internships at Pratt & Whitney, one of the world’s leading commercial and military aircraft engine manufacturers.

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<sup>4</sup> See, e.g., <https://www.fossil.com/en-us/store-locator.html>

<sup>5</sup> See, e.g., <http://www.linkedin.com/in/randy-hyne-ba6aa274>

33. Mr. Nutini and Mr. McKirdy conceived the idea of capturing data from devices such as exercise equipment and biological monitoring devices and began researching the fitness and healthcare industries to see what solutions existed and formed Fitistics to pursue research and development and commercialization of their ideas.

34. Fitistics eventually began developing system specification documents that would be used as a basis for system development of an interface device hardware and supporting website and data upload software that would be used to track data by future customers.

### **THE ACCUSED PRODUCTS**

35. Fitistics repeats and re-alleges the allegations in the Paragraphs above as though fully set forth in their entirety.

36. Defendants own, make, use, sell, offer for sale, and/or import smart watches and wearables under the brand names FOSSIL, SKAGEN, and MISFIT.<sup>6</sup> Defendants also own, make, use, sell, offer for sale, license, and/or import smart watches and wearables under the brand names MICHAEL KORS, DIESEL, and PUMA.<sup>7</sup>

37. Defendants have infringed and continue to infringe the Asserted Patents by making, using (including by testing and developing), selling, offering for sale, and/or importing smart watch devices, and associated hardware, software, and functionalities that practice each and every limitation of the Asserted Patents. Exemplary smart watch devices include, but are not limited to, the FOSSIL Gen 6, the FOSSIL Gen 6 Wellness, the FOSSIL Gen 6 Hybrid, the FOSSIL Stella Gen 6 Hybrid, the FOSSIL Neutra Gen 6 Hybrid, the FOSSIL Machine Gen 6 Hybrid, the FOSSIL

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<sup>6</sup> See, e.g., <https://www.sec.gov/Archives/edgar/data/883569/000088356923000010/fosl-20221231.htm>

<sup>7</sup> See *id.*

Carlie Gen 6 Hybrid, the FOSSIL Gen 5, the FOSSIL Gen 5E, the FOSSIL Gen 5 LTE, the FOSSIL Sport Smartwatch, the FOSSIL Carlyle HR (Gen 5), the FOSSIL Julianna HR (Gen 5), the FOSSIL Garrett HR (Gen 5), the FOSSIL Explorist HR (Gen 4), the FOSSIL Venture HR (Gen 4), the FOSSIL Control (Gen 3), the MISFIT Vapor Watch, the SKAGEN Falster Gen 6, the SKAGEN Jorn Gen 6 Hybrid, the MICHAEL KORS Gen 6 Camille Pavé, the MICHAEL KORS Gen 6 Bradshaw, the MICHAEL KORS Access Gen 5E MKGO, the MICHAEL KORS Gen 5E Darci Pavé, the MICHAEL KORS Runway, the DIESEL Griffed (Gen 6) Smartwatch, and the PUMA Smartwatch (including PT9101 and PT9102). *See, e.g., Exhibit D; Exhibit E; and Exhibit F.* These products are further used in association with hardware, software, and functionalities provided by the Defendants for use with third-party smartphones and tablets via the use of applications including, but not limited to, the Fossil Smartwatches App,<sup>8</sup> the Fossil Wellness App,<sup>9</sup> the DieselOn App,<sup>10</sup> the Skagen Smartwatches App,<sup>11</sup> the Mistfit Training App,<sup>12</sup> and other applications that facilitate transfer of information between the accused smart watch devices, the Defendants, and/or their affiliates, and third-party smartphones, tablets, computers, and servers including, but not limited to, cloud servers and systems that store, process, and gather information from third-party smartphones, tablets, computers. *See, e.g., Exhibit G.* The devices, applications, and functionalities described in this paragraph will be referred to herein as the Accused Products.

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<sup>8</sup> *See, e.g.,* <https://www.sec.gov/Archives/edgar/data/883569/000088356920000006/fosl-20191228x10k.htm>

<sup>9</sup> Available at <https://play.google.com/store/apps/details?id=com.fossil.wearables.healthtracker>

<sup>10</sup> Available at <https://play.google.com/store/apps/details?id=com.fossil.wearables.healthtracker>

<sup>11</sup> Available at <https://play.google.com/store/apps/details?id=com.fossil.wearables.healthtracker>

<sup>12</sup> Available at <https://play.google.com/store/apps/details?id=com.fossil.wearables.healthtracker>

38. The Defendants’ core global business is the sale and license of watches, including the smart watches accused of infringement.<sup>13</sup> For instance, Defendants’ watch sales accounted for the overwhelming majority of their consolidated net sales since (at least) fiscal year 2020.<sup>14</sup>



Source: <https://play.google.com/store/apps/details?id=com.fossil.wearables.healthtracker>

39. In a press release discussing their smartwatch technologies’ recent success, the Defendants represented to the public that “Fossil Group [grossed] over \$400 million in wearable device sales in 2018. . . .” **Exhibit H**, at H-2.

#### **EXAMPLES OF FOSSIL’S MARKETING OF THE ACCUSED PRODUCTS AND FEATURES**

40. Fitistics repeats and re-alleges the allegations in the Paragraphs above as though fully set forth in their entirety.

41. The Accused Products have features, including, but not limited to, at least the following: workout tracking, heart rate monitoring, SpO2 monitoring, sleep monitoring, and/or VO2 max monitoring (the “Features”). *See, e.g., Ex. D.*<sup>15</sup> The Accused Products also have components that support these features, including, but not limited to, processor chips, connectivity systems, and biometric tracking sensors. *See, e.g., Ex. D; Exhibit I.*


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<sup>13</sup> Available at <https://play.google.com/store/apps/details?id=com.fossil.wearables.healthtracker>

<sup>14</sup> Available at <https://play.google.com/store/apps/details?id=com.fossil.wearables.healthtracker>


<sup>15</sup> Available at <https://play.google.com/store/apps/details?id=com.fossil.wearables.healthtracker>




**FOSSIL** WOMENS MENS WATCHES BAGS WALLETS JEWELRY SALE **OUTLET** FEATURED 




**Gen 6 Hybrid**



**GEN 6 & Gen 6 Wellness**



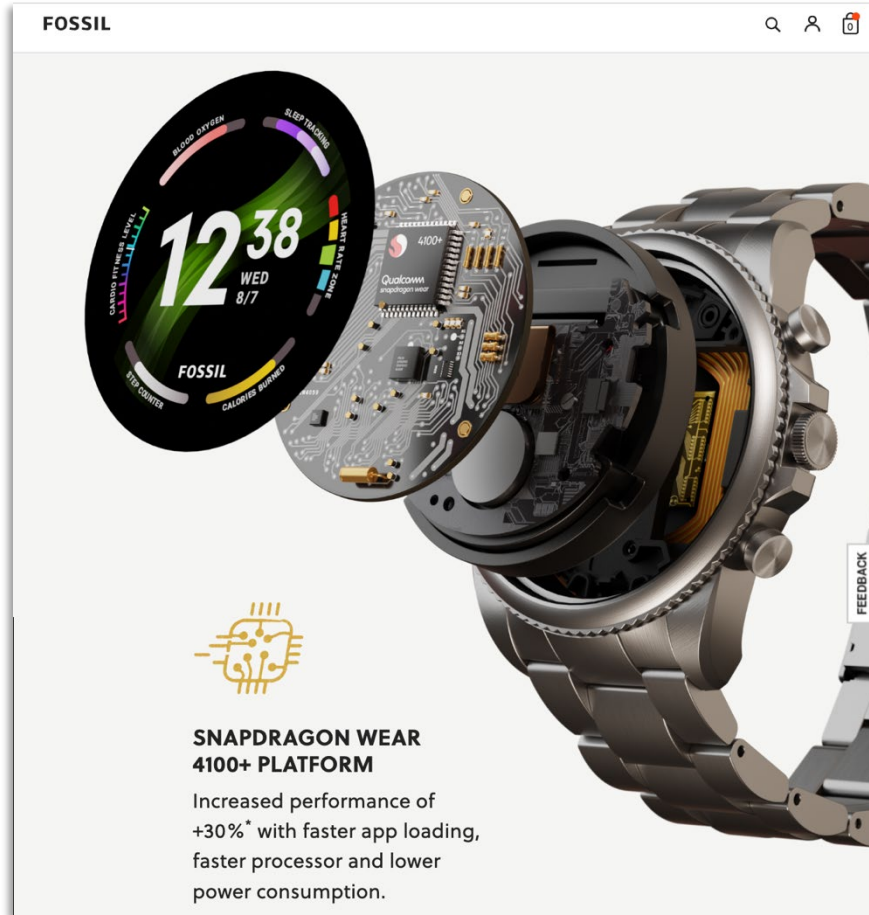
**Gen 5E**



**Gen 5 LTE**

ANSWER CALLS	PREVIEW ONLY	<b>TETHERED</b> Watch must be within Bluetooth® range of phone to make and/or take calls.	<b>TETHERED</b> Watch must be within Bluetooth® range of phone to make and/or take calls.	<b>UNTETHERED</b> For users with Android™ phones powered by Verizon.
PROCESSOR	POWER-EFFICIENT PROCESSOR	QUALCOMM® SNAPDRAGON™ WEAR 4100+	QUALCOMM® SNAPDRAGON™ WEAR 3100	QUALCOMM® SNAPDRAGON™ WEAR 3100
SMARTPHONE NOTIFICATIONS	X	X	X	X
SPO2	X	X		
VO2 MAX	X	X	X	
HEART RATE & ACTIVITY TRACKING	X	X	X	X

Source: Ex. D at p. D-1



**FOSSIL**

**SNAPDRAGON WEAR 4100+ PLATFORM**

Increased performance of +30%\* with faster app loading, faster processor and lower power consumption.

Source: Ex. I at p. I-2



Qualcomm QPA8675, Qualcomm QPA8685, Qualcomm QETA101

Qualcomm PMW3101, Qualcomm PMW3102

Qualcomm WCN3620, Qualcomm WCN3660B

Qualcomm WCN3610, Qualcomm WCN3980

Qualcomm Adreno A504

ISP (x2), SEE

Cortex-A53, Qualcomm SDM429w, Qualcomm SDM429w

LPDDR3 @750MHz

ADSP, MDSP

Qualcomm WTR2965, Qualcomm WGR7640

NQ330, NQ440

Cortex-M0, Memory, PMU, DSP, SEE

Qualcomm QCC1110

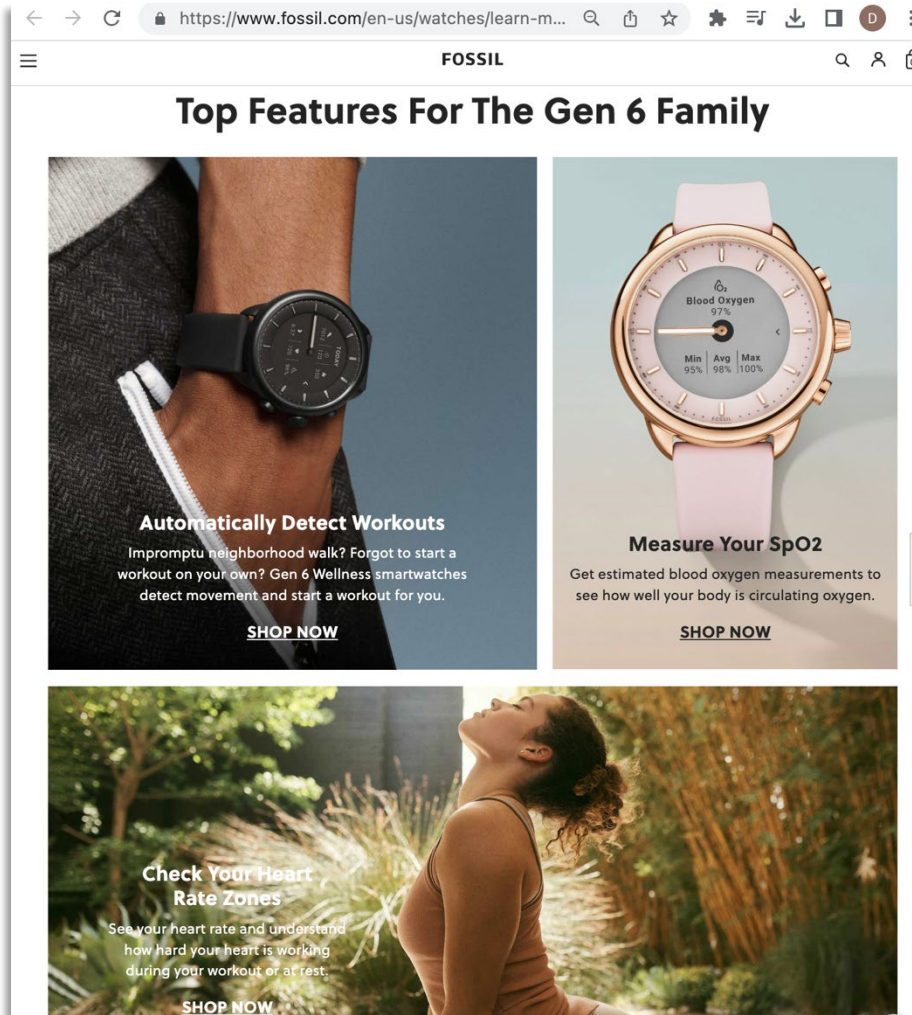
IMAGE: QUALCOMM

MR MOBILE

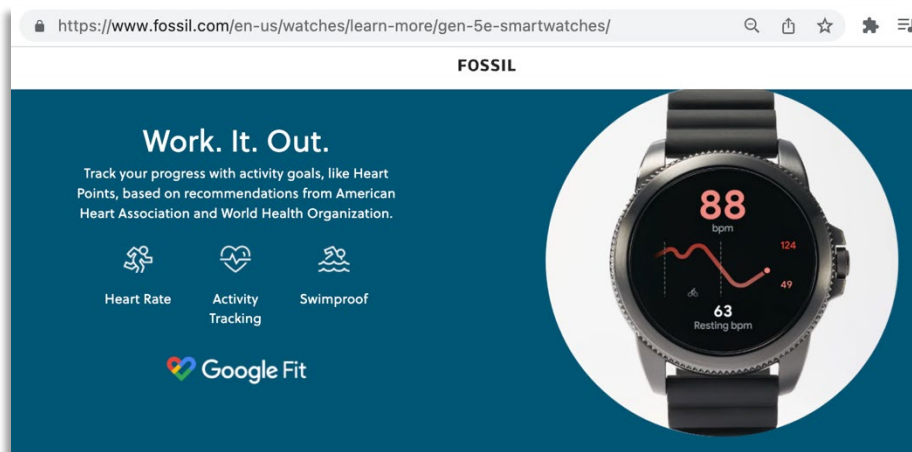
Fossil Gen 6 Review: High Speeds, Hard Specs, Soft Wear

Source: [https://www.youtube.com/watch?v=9WASn5j\\_Xxk](https://www.youtube.com/watch?v=9WASn5j_Xxk)

42. The features drive the popularity and sales of the Accused Products.

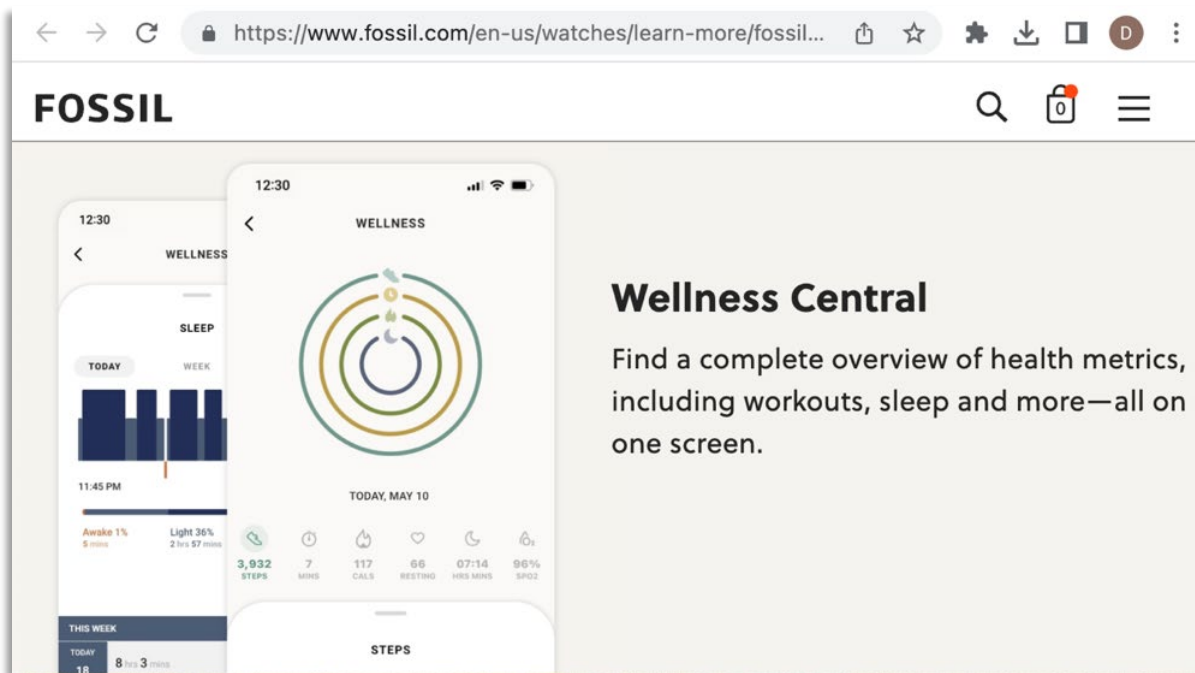


Source: <https://www.fossil.com/en-us/watches/learn-more/gen-6-smartwatches/>



Source: <https://www.fossil.com/en-us/watches/learn-more/gen-5e-smartwatches/>

43. For instance, the Defendants market the Accused Products, including but not limited to products using the “wellness central” feature in the Fossil Smartwatches App, as providing “a complete overview of health metrics, including workouts, sleep and more—all on one screen,” as described in the following screenshot from Fossil Group’s website.<sup>16</sup>



Source: <https://www.fossil.com/en-us/watches/learn-more/fossil-smartwatch-app>

44. The Accused Products cause biometric and health-related data to be transferred between the Defendants’ smart watches to third-party mobile phones and tablets with, for example, but not limited to, the Fossil Smartwatches App, as well as cloud-based servers. *See, e.g., Ex. I; Exhibit J.* Defendants’ smart watch devices and applications also communicate with and can be used in conjunction with third-party smartphones and tablets.

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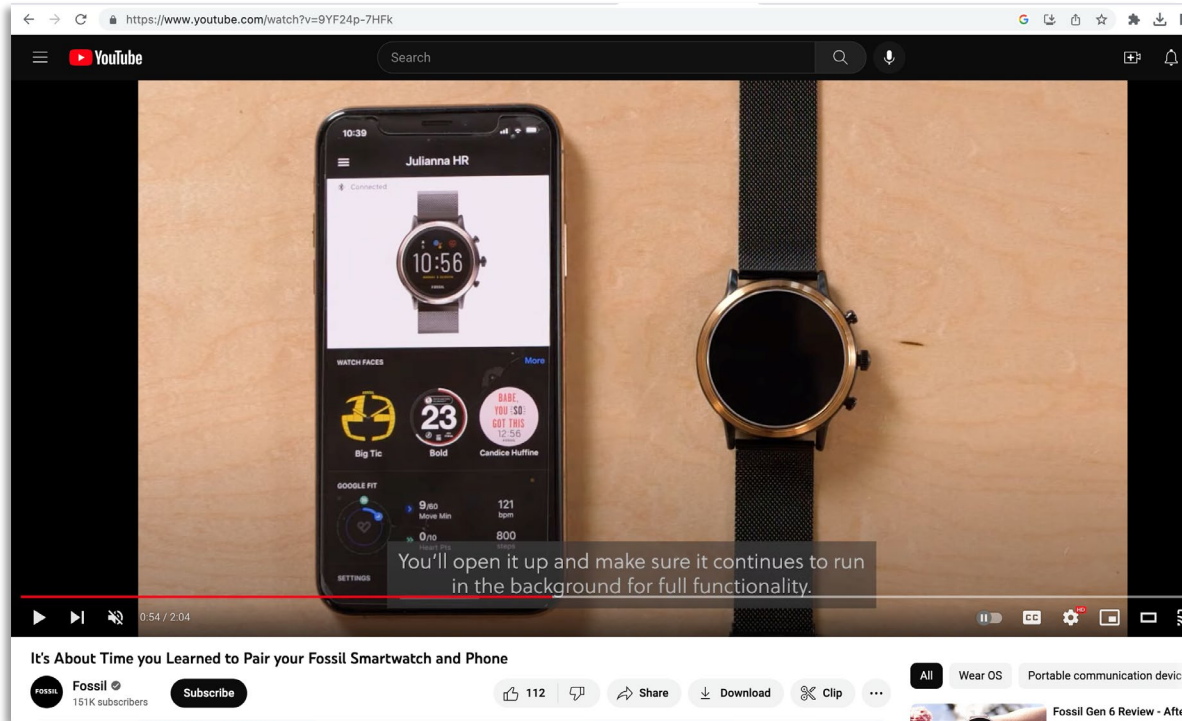
<sup>16</sup> Available at <https://www.fossil.com/en-us/watches/learn-more/fossil-smartwatch-app>

**FOSSIL** 🔍 📄 ☰

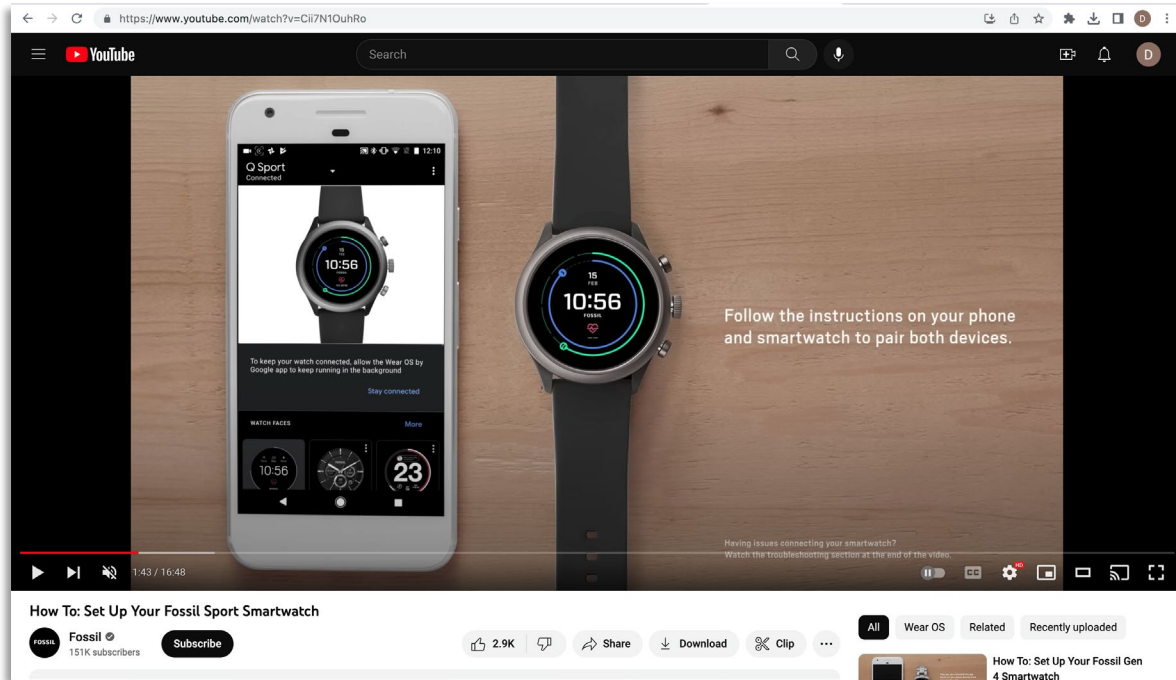
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Android™, Google Play and Wear OS by Google™ are trademarks of Google LLC.  
Fossil Smartwatches work with phones running the latest version of Android or iOS. Supported features may vary between countries with compatibility subject to change.

Source: **Ex. I** at I-12



Source: <https://www.youtube.com/watch?v=9YF24p-7HFk>



Source: <https://www.youtube.com/watch?v=Cii7N1OuhRo>

### **COUNT I: INFRINGEMENT OF U.S. PATENT NO. 8,915,823**

45. Fistic repeats and re-alleges the allegations in the Paragraphs above as though fully set forth in their entirety.

46. The USPTO duly issued U.S. Patent No. 8,915,823 (the “’823 patent”) on December 23, 2014 after a full and fair examination of Application No. 13/350,790, which was filed on January 15, 2012. A copy of the ’823 patent is attached as **Ex. A**.

47. Fistic owns all substantial rights, interest, and title in and to the ’823 patent, including the sole and exclusive right to prosecute this action and enforce the ’823 patent against infringers, and to collect damages for all relevant times.

48. The ’823 patent describes a system and method for using a biometric monitoring device such that the user may process and display recorded exercise workout session data.

49. The claims of the ’823 patent are not directed to an abstract idea.

50. Defendants have directly infringed and continue to directly infringe on one or more claims of the '823 patent by making, using, selling, offering for sale, and importing the Accused Products.

51. Defendants have directly infringed (literally or under the doctrine of equivalents) at least claim 1 of the '823 patent.

52. For example, Defendants perform, including, but not limited to, by using and testing Accused Products, a method for managing communications between a cardio exercise device including a treadmill, a stationary bicycle, a stepper machine, an elliptical machine, a spin bike or a rowing machine, and a portable storage device, the method comprising: establishing a communication link between the exercise device and the portable storage device; transferring data between the portable storage device and the exercise device via the communication link; generating workout data via a processor which is configured to receive sensor data from at least one of a body sensor configured to sense a body parameter of a user and a cardio exercise device sensor configured to sense an operation of the cardio exercise device; and communicating the workout data to the portable storage device for storage in at least one of the portable storage device and a remote storage medium.

53. Plaintiff has been damaged and continues to be damaged as a result of the infringing conduct by Defendants alleged above. Thus, Defendants are liable to Plaintiff in an amount that compensates it for such infringements, which by law cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

54. Plaintiff has satisfied all statutory obligations required to collect pre-filing damages for the full period allowed by law for infringement of the '823 patent.

55. Plaintiff has not offered for sale nor sold any product implicated by 35 U.S.C. § 287 with respect to the '823 patent.

56. Defendants have had knowledge of the '823 patent and their infringement at least as of July 12, 2019, when they were notified of their infringing activity.

57. Defendants have also indirectly infringed and continue to indirectly infringe one or more claims of the '823 patent by inducing others to directly infringe the '823 patent. Defendants have induced end-users and other third parties to directly infringe (literally or under the doctrine of equivalents) the '823 patent by using the Accused Products. Defendants have taken active steps, directly or through contractual relationships with others, with the specific intent to cause them to use the Accused Products in a manner that infringes one or more claims of the '823 patent, including, for example, claim 1 of the '823 patent. Such steps by Defendants have included, among other things, advising or directing end-users and other third parties to use the Accused Features in the Accused Products in an infringing manner; advertising and promoting the use of the Accused Products in an infringing manner; or distributing instructions that guide end-users and other third parties to use the Accused Products in an infringing manner. *See, e.g., Ex. I; Ex. J.* Defendants have performed and continue to perform these steps, which constitute induced infringement with the knowledge of the '823 patent and with the knowledge that the induced acts constitute infringement. Defendants were aware that the normal and customary use of the Accused Products by others would infringe the '823 patent. Defendants' direct infringement of the '823 patent has been and continues to be willful, intentional, deliberate, or in conscious disregard of Plaintiff's rights under the patent.

58. Since at least as early as July 12, 2019, Defendants have also indirectly infringed and continue to indirectly infringe by contributing to the infringement of the '823 patent. The



Defendants have contributed and continue to contribute to the direct infringement of the '823 patent by personnel, contractors, customers, and other end users by encouraging them to use the Accused Products as described in one or more claims of the '823 patent. The Accused Products have special features that are specially designed to be used in an infringing way and that have no substantial uses other than ones that infringe one or more claims of the '823 patent, including, for example, claim 1 of the '823 patent. The special features include, for example, the method recited in claim 1, including all intermediary steps that allow the claimed method to be performed. The special features constitute a material part of the invention of one or more of the claims of the '823 patent and are not staple articles of commerce suitable for substantial non-infringing use. Defendants' contributory infringement is ongoing.

59. Furthermore, on information and belief, Defendants have a policy or practice of not reviewing the patents of others, including instructing its employees to not review the patents of others, and thus have been willfully blind of Plaintiff's patent rights.

60. Plaintiff has been damaged and continues to be damaged as a result of the infringing conduct by Defendants alleged above. Thus, Defendants are liable to Plaintiff in an amount that compensates it for such infringements, which by law cannot be 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. 11,185,738**

61. Fitistics repeats and re-alleges the allegations in the Paragraphs above as though fully set forth in their entirety.

62. The USPTO duly issued U.S. Patent No. 11,185,738 (the "'738 patent") on November 30, 2021 after a full and fair examination of Application No. 15/809,174, which was filed on November 10, 2017. A copy of the '738 patent is attached as **Ex. B**.

63. Fitistics owns all substantial rights, interest, and title in and to the '738 patent, including the sole and exclusive right to prosecute this action and enforce the '738 patent against infringers, and to collect damages for all relevant times.

64. The '738 patent describes a system and method for using a biometric monitoring device such that the user may process and display recorded exercise workout session data.

65. The claims of the '738 patent are not directed to an abstract idea.

66. Defendants have directly infringed and continue to directly infringe on one or more claims of the '738 patent by making, using, selling, offering for sale, and importing the Accused Products.

67. Defendants have directly infringed (literally or under the doctrine of equivalents) at least claim 15 of the '738 patent.

68. For example, the Defendants perform, including, but not limited to, by using and testing the Accused Products, a method for managing communications between a handheld biometrically secured personal content device, a remote website database, and at least one of a cardio exercise machine and a body monitoring device worn by a user of the handheld biometrically secured personal content device, the method comprising; establishing a first communications link between the handheld biometrically secured personal content device and at least one of the cardio exercise machine and the body monitoring device; establishing a second communications link between the handheld biometrically secured personal content device and the remote website database; generating exercise session data via a processor associated with at least one of the cardio exercise machine and the body monitoring device, wherein the body monitoring device processor is configured to receive sensor data from at least one of a body sensor configured to sense a body parameter of the user of the body monitoring device, and wherein the cardio

exercise machine processor is configured to receive sensor data from a cardio exercise machine sensor configured to sense at least one of the operation of the cardio exercise machine and a body parameter of the user of the cardio exercise machine; transferring the exercise session data between the handheld biometrically secured personal content device and at least one of the cardio exercise machine and the body monitoring device via the first communications link; storing the exercise session data on the handheld biometrically secured personal content device, wherein the handheld biometrically secured personally content device software and circuitry is configured to process the received exercise session data; upload at least one of the generated exercise session data and the processed exercise session data to the remote website database associated with predetermined website information stored within the handheld biometrically secured personal content device via the second communications link; protect at least one of the exercise session data and the processed exercise session data with biometric data security of the person who performed the workout using a biometric sensor associated with the handheld biometrically secure personal content device; and display at least one of the exercise session data and the processed exercise session data on a display associated with the handheld biometrically secured personal content device.

69. Plaintiff has been damaged and continues to be damaged as a result of the infringing conduct by Defendants alleged above. Thus, Defendants are liable to Plaintiff in an amount that compensates it for such infringements, which by law cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

70. Plaintiff has satisfied all statutory obligations required to collect pre-filing damages for the full period allowed by law for infringement of the '738 patent.

71. Plaintiff has not offered for sale nor sold any product implicated by 35 U.S.C. § 287 with respect to the '738 patent.

72. Defendants have had knowledge of the '738 patent (and their infringing activity) at least as of November 30, 2021, when the '738 patent issued. Defendants had knowledge of the '738 patent's portfolio and of their infringing activity at least as of July 12, 2019.

73. Defendants have also indirectly infringed and continue to indirectly infringe one or more claims of the '738 patent by inducing others to directly infringe the '738 patent. Defendants have induced end-users and other third parties to directly infringe (literally or under the doctrine of equivalents) the '738 patent by using the Accused Products. Defendants have taken active steps, directly or through contractual relationships with others, with the specific intent to cause them to use the Accused Products in a manner that infringes one or more claims of the '738 patent, including, for example, claim 15 of the '738 patent. Such steps by Defendants have included, among other things, advising or directing end-users and other third parties to use the Accused Features in the Accused Products in an infringing manner; advertising and promoting the use of the Accused Products in an infringing manner; or distributing instructions that guide end-users and other third parties to use the Accused Products in an infringing manner. *See, e.g., Ex. I; Ex. J.* Defendants have performed and continue to perform these steps, which constitute induced infringement with the knowledge of the '738 patent and with the knowledge that the induced acts constitute infringement. Defendants were aware that the normal and customary use of the Accused Products by others would infringe the '738 patent. Defendants' direct infringement of the '738 patent has been and continues to be willful, intentional, deliberate, or in conscious disregard of Plaintiff's rights under the patent.

74. Since at least as early as November 30, 2021, Defendants have also indirectly infringed and continue to indirectly infringe by contributing to the infringement of the '738 patent. Defendants have contributed and continue to contribute to the direct infringement of the '738

patent by personnel, contractors, customers, and other end users by encouraging them to use the Accused Products as described in one or more claims of the '738 patent. The Accused Products have special features that are specially designed to be used in an infringing way and that have no substantial uses other than ones that infringe one or more claims of the '738 patent, including, for example, claim 15 of the '738 patent. The special features include, for example, the method recited in claim 15 to be performed. The special features constitute a material part of the invention of one or more of the claims of the '738 patent and are not staple articles of commerce suitable for substantial non-infringing use. Defendants' contributory infringement is ongoing.

75. Furthermore, on information and belief, Defendants have a policy or practice of not reviewing the patents of others, including instructing its employees to not review the patents of others, and thus have been willfully blind of Plaintiff's patent rights.

76. Plaintiff has been damaged and continues to be damaged as a result of the infringing conduct by Defendants alleged above. Thus, Defendants are liable to Plaintiff in an amount that compensates it for such infringements, which by law cannot be 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. 11,252,235**

77. Fitistics repeats and re-alleges the allegations in the Paragraphs above as though fully set forth in their entirety.

78. The USPTO duly issued U.S. Patent No. 11,252,235 (the "'235 patent") on February 15, 2022 after a full and fair examination of Application No. 16/570,424, which was filed on September 13, 2019. A copy of the '235 patent is attached as **Ex. C**.

79. Fitistics owns all substantial rights, interest, and title in and to the '235 patent, including the sole and exclusive right to prosecute this action and enforce the '235 patent against infringers, and to collect damages for all relevant times.

80. The '235 patent is titled "System And Method For Processing Information." The '235 patent describes a system and method for using a biometric monitoring device such that the user may detect, record, and process personal biometric data.

81. The claims of the '235 patent are not directed to an abstract idea.

82. Defendants have directly infringed and continue to directly infringe on one or more claims of the '235 patent by making, using, selling, offering for sale, and importing the Accused Products.

83. Defendants have directly infringed (literally or under the doctrine of equivalents) at least claim 1 of the '235 patent.

84. For example, the Accused Products include a biological monitoring device. The biological monitoring device of the Accused Products comprises: (a) at least one sensor, included within the biological monitoring device, configured to obtain heart rate data associated with a person wearing the biological monitoring device; (b) at least one processor in signal communication with the at least one sensor; (c) communication circuitry configured for bi-directional wireless communication with an external bio-metrically secure remote processing mobile device; d) memory, included within the biological monitoring device, associated with one or more of the at least one processor and configured to store software instructions, which, when executed by the one or more of the at least one processor, cause the one or more of the at least one processor to perform operations comprising; (i) establish, via the biological monitoring device processor, a bidirectional wireless communication link with the external biometrically secure remote processing mobile device; (ii) obtain, via the biological monitoring device processor from the external bio-metrically secure remote processing mobile device, biological monitoring device configuration information; (iii) obtain data, via the biological monitoring device processor, from

the at least one sensor included within the biological monitoring device on at least one of an active or passive basis; (iv) generate, via the at least one biological monitoring device processor, heart rate data responsive to the obtained sensor data; (v) process, via the biological monitoring device processor, the heart rate data, wherein the processing of the heart rate data includes analyzing the heart rate data to detect at least one of an irregular heart rate, an abnormal heart rate, and an irregular heart rhythm; (vi) generate, via the at least one biological monitoring device processor, resultant data based on the processing of at least one of the heartrate data, the irregular heart rate, the abnormal heart rate, and the irregular heart rhythm wherein the generated resultant data is at least one of a notification associated with a health condition of the person wearing the biological monitoring device and heart rate profile data of the person wearing the biological monitoring device; (vii) display, via the biological monitoring device display, at least one of the generated resultant data and the processed heart rate data; (viii) store, via the biological monitoring device memory, at least one of the heart rate data, the processed heart rate data, and the generated resultant; (ix) communicate, via the biological monitoring device wireless communication circuitry, at least one of the heart rate data, the processed heart rate data, and the generated resultant data to the external bio-metrically secure remote processing mobile device, wherein the biological monitoring device configuration information received from the external biometrically secure remote processing mobile device is used to control at least one of the functionality and display of the biological monitoring device.

85. Plaintiff has been damaged and continues to be damaged as a result of the infringing conduct by Defendants alleged above. Thus, Defendants are liable to Plaintiff in an amount that adequately compensates it for such infringements, which by law cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

86. Plaintiff has satisfied all statutory obligations required to collect pre-filing damages for the full period allowed by law for infringement of the '235 patent.

87. Plaintiff has not offered for sale nor sold any product implicated by 35 U.S.C. § 287 with respect to the '235 patent.

88. Defendants have had knowledge of the '235 patent (and their infringing activity) at least as of February 15, 2022, when the '235 patent issued. Defendants had knowledge of the '738 patent's portfolio and of their infringing activity at least as of July 12, 2019.

89. Defendants have also indirectly infringed and continue to indirectly infringe one or more claims of the '235 patent by inducing others to directly infringe the '235 patent. Defendants have induced end-users and other third parties to directly infringe (literally or under the doctrine of equivalents) the '235 patent by using the Accused Products. Defendants have taken active steps, directly or through contractual relationships with others, with the specific intent to cause them to use the Accused Products in a manner that infringes one or more claims of the '235 patent, including, for example, claim 1 of the '235 patent. Such steps by Defendants have included, among other things, advising or directing end-users and other third parties to use the Accused Products in an infringing manner; advertising and promoting the use of the Accused Products in an infringing manner; or distributing instructions that guide end-users and other third parties to use the Accused Products in an infringing manner. *See, e.g., Ex. I; Ex. J.* Defendants have performed and continue to perform these steps, which constitute induced infringement with the knowledge of the '235 patent and with the knowledge that the induced acts constitute infringement. Defendants were aware that the normal and customary use of the Accused Products by others would infringe the '235 patent. Defendants' direct and indirect infringement of the '235 patent has been and continues to be willful, intentional, deliberate, or in conscious disregard of Plaintiff's rights under the patent.



90. Since at least as early as February 15, 2022, Defendants have also indirectly infringed and continue to indirectly infringe by contributing to the infringement of the '235 patent. Defendants have contributed and continue to contribute to the direct infringement of the '235 patent by personnel, contractors, customers, and other end users by encouraging them to use the Accused Products as described in one or more claims of the '235 patent. The Accused Products have special features that are specially designed to be used in an infringing way and that have no substantial uses other than ones that infringe one or more claims of the '235 patent, including, for example, claim 1 of the '235 patent. The special features include, for example, the at least one sensor, as recited in claim 1, included within the biological monitoring device, configured to obtain heart rate data associated with a person wearing the biological monitoring device. The special features constitute a material part of the invention of one or more of the claims of the '235 patent and are not staple articles of commerce suitable for substantial non-infringing use. Defendants' contributory infringement is ongoing.

91. Furthermore, on information and belief, Defendants have a policy or practice of not reviewing the patents of others, including instructing its employees to not review the patents of others, and thus have been willfully blind of Plaintiff's patent rights.

92. Plaintiff has been damaged and continues to be damaged as a result of the infringing conduct by Defendants alleged above. Thus, Defendants are liable to Plaintiff in an amount that compensates it for such infringements, which by law cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

### **JURY DEMAND**

93. Fitistics hereby requests a trial by jury on all issues so triable by right.

**PRAYER FOR RELIEF**

94. Fitistics requests that the Court find in its favor and against Defendants, and that the Court grant Fitistics the following relief:

- A. Judgment that one or more claims of the Asserted Patents have been infringed, either literally or under the doctrine of equivalents, by Defendants or all others acting in concert therewith;
- B. Judgment that Defendants accounts for and pays to Fitistics all damages to and costs incurred by Fitistics because of Defendants' infringing activities and other conduct complained of herein;
- C. Judgment that Defendants' infringements be found willful, and that the Court award treble damages for the period of such willful infringement pursuant to 35 U.S.C. § 284;
- D. Pre-judgment and post-judgment interest on the damages caused by Defendants' infringing activities and other conduct complained of herein;
- E. That this Court declare this an exceptional case and award Fitistics its reasonable attorneys' fees and costs in accordance with 35 U.S.C. § 285; and
- F. All other and further relief as the Court may deem just and proper under the circumstances.

Dated: May 20, 2023

Respectfully submitted,

By: /s/ C. Matthew Rozier

C. Matthew Rozier (CO 46854)\*  
**ROZIER HARDT MCDONOUGH PLLC**  
2590 Walnut Street, Suite 10  
Denver, Colorado 80205  
Telephone: (720) 820-3006  
Email: matt@rhmtrial.com

Jonathan L. Hardt (TX 24039906)\*  
**ROZIER HARDT MCDONOUGH PLLC**  
712 W. 14<sup>th</sup> Street, Suite C  
Austin, Texas 78701  
Telephone: (210) 289-7541  
Email: hardt@rhmtrial.com

James F. McDonough, III\*  
**ROZIER HARDT MCDONOUGH PLLC**  
3621 Vinings Slope, Suite 4300  
Atlanta, Georgia 30339  
Telephone: (470) 480-9505  
Email: jim@rhmtrial.com

*Attorneys for Plaintiff FITISTICS, LLC*

\*Admitted to the Eastern District of Texas

**List Of Exhibits**

- A. U.S. Patent No. 8,915,823
- B. U.S. Patent No. 11,185,738
- C. U.S. Patent No. 11,252,235
- D. Fossil Website - Smart Watch Comparison Chart
- E. Fossil Website - Fossil Group Launches New Heart Rate Tracking Smartwatches
- F. Watch Station Website - Smart Watches: Designer Smartwatches For Android & iPhone
- G. Fossil Website - Fossil Smart Watch App
- H. Fossil Website - Fossil Group Debuts Hybrid HR Smartwatch Technology
- I. Fossil Website - Gen 6 Smartwatches: Discover Our Most Advanced Smart Watch Release
- J. Fossil Website - Wear OS by Google: Getting Started Guide