

No. 21-1491

IN THE
United States Court of Appeals
FOR THE FEDERAL CIRCUIT

INTERACTIVE WEARABLES, LLC,

Plaintiff-Appellant,

v.

POLAR ELECTRO OY AND POLAR ELECTRO INC.,

Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of New York,
No. 2:19-cv-03084, Judge Gary R. Brown

PLAINTIFF-APPELLANT
INTERACTIVE WEARABLES, LLC'S COMBINED PETITION
FOR PANEL REHEARING AND REHEARING EN BANC

Michael DeVincenzo
Charles Wizenfeld
KING & WOOD MALLESONS LLP
500 Fifth Avenue, 50th Floor
New York, New York 10110
212-319-4755

Counsel for Plaintiff-Appellant
Interactive Wearables, LLC

CERTIFICATE OF INTEREST

Counsel for Plaintiff-Appellant Interactive Wearables, LLC certifies the following:

1. Represented Entities.	2. Real Party in Interest.	3. Parent Corporations and Stockholders
Full name of all entities represented by undersigned counsel in this case.	Full name of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities.	Full name of all parent corporations for the entities and all publicly held companies that own 10% or more of stock in the entities
Interactive Wearables, LLC	None/Not Applicable	Poltorak Technologies LLC

4. Legal Representatives. List all law firms, partners, and associates that (a) appeared for the entities in the originating court, or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court: Counsel for Appellant was previously affiliated with the law firm of Mishcon de Reya New York LLP during the proceedings below.

5. Related Cases. The title and number of any case known to counsel to be pending in this or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal. Do not include the originating case number(s) for this case: None/Not Applicable.

6. Organizational Victims and Bankruptcy Cases. Provide any information required under Fed. R. App. P. 26.1(b) and 26.1(c): None/Not Applicable.

Date: November 15, 2021

by: /s/ Michael DeVincenzo
Michael DeVincenzo

*Counsel for Plaintiff-Appellant
Interactive Wearables, LLC*

TABLE OF CONTENTS

CERTIFICATE OF INTEREST	ii
TABLE OF AUTHORITIES	iv
RULE 35 STATEMENT OF COUNSEL.....	1
POINTS OF LAW OR FACT OVERLOOKED OR MISAPPREHENDED BY THE COURT.....	2
PRELIMINARY STATEMENT	3
ARGUMENT.....	6
I. The Panel’s Affirmance Endorses the District Court’s Legally Erroneous Use of the Specification in the Step 1 “Directed To” Analysis.....	6
A. The District Court’s “Directed To” Inquiry Improperly Began With the Specification Rather Than The Claims.....	7
B. The District Court Conducted an Improper Quasi-Enablement Analysis to Disregard Concretely-Recited Claim Elements.	12
II. The Panel’s Affirmance Endorses the District Court’s Improper Step 2 Factual Determination of Conventionality on a Motion to Dismiss.....	15
CONCLUSION	18

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Aatrix Software, Inc. v. Green Shades Software, Inc.</i> , 882 F.3d 1121 (Fed. Cir. 2018)	17
<i>Alice Corp. v. CLS Bank Int’l</i> , 573 U.S. 208 (2014).....	<i>passim</i>
<i>Am. Axle & Mfg., Inc. v. Neapco Holdings LLC</i> , 967 F.3d 1285 (Fed. Cir. 2020)	7, 13, 14
<i>Bilski v. Kappos</i> , 561 U.S. 593 (2010)	10
<i>Cellspin Soft, Inc. v. Fitbit, Inc.</i> , 927 F.3d 1306 (Fed. Cir. 2019).....	17
<i>ChargePoint, Inc. v. SemaConnect, Inc.</i> , 920 F.3d 759 (Fed. Cir. 2019).....	9, 10
<i>Coda Dev. S.R.O. v. Goodyear Tire & Rubber Co.</i> , 916 F.3d 1350 (Fed. Cir. 2019).....	16
<i>Friedl v. City of New York</i> , 210 F.3d 79 (2d Cir. 2000).....	16, 17
<i>McRO, Inc. v. Bandai Namco Games of Am Inc.</i> , 837 F.3d 1299 (Fed. Cir. 2016)	8
<i>Ultramercial, Inc. v. Hulu, LLC</i> , 772 F.3d 709 (Fed. Cir. 2014)	7, 8
<i>Visual Memory LLC v. NVIDIA Corp.</i> , 867 F.3d 1253 (Fed. Cir. 2017).....	13
Statutes	
35 U.S.C. § 101	<i>passim</i>

RULE 35 STATEMENT OF COUNSEL

Based on my professional judgment, I believe this appeal requires an answer to one or more precedent-setting questions of exceptional importance:

1. Whether courts can analyze the specification to determine whether a claim is directed to an abstract idea before considering the language of the claim;
2. Whether courts can disregard the claim limitations based on a quasi-enablement examination of the specification; and
3. Whether, on a motion to dismiss, courts can disregard a plausibly and specifically pled inventive concept based on a factual determination that such inventive concept was well-understood, routine, and conventional at the time of the invention.

Date: November 15, 2021

by: /s/ Michael DeVincenzo
Michael DeVincenzo
*Counsel for Plaintiff-Appellant
Interactive Wearables, LLC*

**POINTS OF LAW OR FACT OVERLOOKED OR MISAPPREHENDED BY
THE COURT**

1. The Court overlooked or misapprehended precedent indicating that the abstract idea inquiry under Step 1 of the *Alice* test must begin with an analysis of the claim language itself.

2. The Court overlooked or misapprehended that the district court improperly disregarded concrete and unconventional claim limitations at Step 1 of the *Alice* test by engaging in a quasi-enablement examination of the specification.

3. The Court overlooked or misapprehended that the district court improperly made a factual determination that the alleged inventive concepts were well-understood, routine, and conventional on a motion to dismiss based on evidence outside of the pleadings.

PRELIMINARY STATEMENT

The panel affirmed under Fed. Cir. R. 36 the district court's invalidation—on a motion to dismiss—of the following claim as directed to ineligible subject matter under 35 U.S.C. § 101:

32. A content player comprising:

a receiver configured to receive content and together with the content information associated with the content;

a processor coupled to the receiver and configured to process the content and the information associated with the content;

memory coupled to the processor;

a first display coupled to the processor; and

playing device equipment coupled to the processor and configured to provide the content to a user of the content player, the playing device equipment comprising an audio player;

wherein the content player is a wearable content player configured to be controlled by a wireless remote control device comprising a second display,

the wireless remote control device being configured to receive commands directing operations of the wearable content player; and

wherein the wireless remote control device is configured to provide to the user at least a portion of the information associated with the content.

On its face, the foregoing claim is directed to an improved content-player device—one that, *inter alia*, has a display and a wirelessly-coupled remote-control with a second display so a user can view information associated with the content being played. The claimed remote is not merely a one-way device used to control a content-player; it is a two-way communication device that both controls a content-player and that also receives information for display from the content-player.

Based on a misplaced analysis of the specification, the district court declared that the claim is directed to the abstract idea of “providing information in conjunction with media content.” That is not an accurate or fair characterization of the claim. Indeed, the claim at issue contains *no limitations* directed to a device for “providing” information together with media content.¹

The district court found the *specification* controlled its determination, rather than the claim language itself. The district court focused on the *specification’s* description of a broadcasting system embodiment for “providing” content together with information about such content and declared that the *claim*—which is directed to a content-player that “receive[s]” such information and displays it on a remote-control—was directed to that idea. After finding an abstract idea in the specification, the district court turned to the claims and brushed aside *every single* concretely-recited claim limitation, and their unconventional arrangement, based on a misplaced quasi-enablement analysis directed to the level of detail in the *specification*. A cursory analysis of enablement cannot be used to change the fundamental nature of the claims.

Both the Supreme Court and this Court have made clear that the proper analysis of what a claim is directed to at Step 1 must remain focused on the claim language itself, and ultimately consider whether the *claim* as a whole, not

¹ The claim contains one limitation directed to a receiver for *receiving* content together with information about content.

statements in the *specification*, poses a risk of pre-empting an abstract idea. Here, the district court wrongly determined the claim is directed to an abstract idea despite recognizing that the claim does not pre-empt its stated abstract idea.

If the panel's affirmance is allowed to stand, this Court will effectively endorse an approach to the Step 1 analysis that allows district courts to disregard claims directed to an unconventional arrangement of physical components by mining the specification for an abstract idea and declaring that the specification insufficiently describes such components. Neither the Supreme Court nor this Court has ever endorsed such an approach to Step 1. Widespread application of such an approach to determining what a claim is directed to—an approach that is largely untethered to the claim language itself—will make the current confusion regarding the proper application of the *Alice* test look tame by comparison.

At Step 2, the district court made procedural errors that should have precluded affirmance on a motion to dismiss. The district court impermissibly ignored plausible and specific allegations that the claimed two-way remote-control with a display component supplied an inventive concept, as well as evidence from the intrinsic record supporting a finding that the remote-control component was not well-understood, routine, and conventional at the time of the invention. On a motion to dismiss, those allegations and evidence were required to be accepted as true. Compounding its error, the district court relied on extrinsic evidence it

obtained from *its own* Internet search to support a factually erroneous finding that the remote-control component was conventional. The district court plainly erred by weighing Interactive Wearables' intrinsic evidence of unconventionality against the results of its own Internet search on a motion to dismiss.

The panel's adoption of the district court's fundamentally flawed Step 2 analysis conflicts with this Court's precedent mandating that the conventionality inquiry is a question of fact that cannot be determined as a matter of law on a motion to dismiss. Sanctioning such an approach would effectively allow district courts to make an end-run around precedent by ignoring well-pled allegations of an inventive concept on a motion to dismiss and even encourage courts to justify a conventionality determination with their own search for evidence.

ARGUMENT

I. The Panel's Affirmance Endorses the District Court's Legally Erroneous Use of the Specification in the Step 1 "Directed To" Analysis.

It is undisputed that the claimed content-player/remote-control combination qualifies as a "machine" or "manufacture" per the statutory language of Section 101. The district court found the claims patent ineligible based on the judicially crafted exception to Section 101 for "abstract ideas." In making its determination, the district court conducted a faulty Step 1 analysis of what the claim is directed to that failed to focus on the claim language itself, and improperly relied on the level

of detail in the specification's disclosure, in direct conflict with both Supreme Court precedent and this Court's precedent.

A. The District Court's "Directed To" Inquiry Improperly Began With the Specification Rather Than The Claims.

In *Alice Corporation Pty. Ltd. v. CLS Bank International*, the Supreme Court made clear that the Step 1 analysis must be centered on what is recited on the face of the claims themselves:

"On their face, the claims before us are drawn to the concept of intermediated settlement... 'a fundamental economic practice long prevalent in our system of commerce.'...[which], is an 'abstract idea' beyond the scope of § 101."

573 U.S. 208, 219 (2014) (citation omitted) (emphasis added). In other words, the *Alice* Court determined what the claims were directed to at Step 1 by looking to the language of the *claims* in the first instance and characterizing the claims as a whole. In *Alice*, it was clear from the face of the claims that all the recited method steps collectively were directed to the concept of intermediated settlement.²

Likewise, this Court has stated that Step 1's "directed to" inquiry must start and remain centered on the claims. *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 714 (Fed. Cir. 2014) ("We first examine the claims because claims are the definition of what a patent is intended to cover."); *see also Am. Axle & Mfg., Inc. v.*

² Even the patent owner in *Alice* conceded the claims were properly characterized as directed to "intermediated settlement" and simply disputed whether that represented an abstract concept. *See id.* at 220.

Neapco Holdings LLC, 967 F.3d 1285, 1298 (Fed. Cir. 2020) (“This holding as to step 1 of *Alice* extends only where, as here, a claim on its face clearly invokes” unpatentable subject matter.). For example, in *Ultramercial*, this Court at Step 1 conducted “[a]n examination of the claim limitations of the [asserted] patent [which] show[ed] that claim 1 includes eleven steps for displaying an advertisement in exchange for access to copyrighted media.” 772 F.3d at 714. Based on its analysis of the claim language, the Court determined that the claim was directed to an abstract idea at Step 1 because “the concept embodied by the majority of the limitations describes only the abstract idea of showing an advertisement before delivering free content.” *Id.* at 715; *see also McRO, Inc. v. Bandai Namco Games of Am Inc.*, 837 F.3d 1299, 1313 (Fed. Cir. 2016) (“[I]n determining the patentability of a method, a court must look to the claims as an ordered combination, without ignoring the requirements of the individual steps.”).

Here, the district court did not conduct its “directed to” analysis based on a review of the claim language itself and its numerous limitations together. Had the district court done so, it could only have concluded that the claims are directed to a content-player/remote-control combination comprising numerous concretely-recited components. Instead, the district court looked first to the *specification*, for statements about the goals of the invention, to determine to what the *claim* is directed. *See* Appx000010 (“Ultimately, neither party accurately captures what the

claims are directed to. A closer examination of the *specification* helps to clarify the inquiry....” (emphasis added).). In particular, the district court latched onto a description of the broadcasting system described for sending information to the described content players and declared that the claims are directed to “providing information in conjunction with media content.” Appx000010 (citing Appx000036 (2:37–55)).

In analyzing the specification for an abstract idea, the district court relied extensively on *ChargePoint, Inc. v. SemaConnect, Inc.*, 920 F.3d 759 (Fed. Cir. 2019). However, *ChargePoint* did not suggest that the “directed to” inquiry is determined by the specification’s teachings. Rather, the *ChargePoint* Court began its “directed to” inquiry by first “turn[ing] to the claims at issue.” *Id.* at 766. The Court then analyzed the claim language and stated, “[i]t is clear from the language of claim 1 that the claim *involves* an abstract idea—namely, the abstract idea of communicating requests to a remote server and receiving communications from that server.” *Id.* The identified abstract idea concerned all the claim limitations save one. *Id.* As such, the Court consulted the specification for confirmation that the claim could be classified as one directed to an abstract idea and not merely involving an abstract idea. *Id.* at 766–67. After consulting the specification, the Court “return[ed] to the claim language itself to consider the extent to which the claim would preempt building blocks of science and technology.” *Id.* at 768. Only

after determining that “based on the claim language, claim 1 would preempt the use of any networked charging stations,” did this Court find the claim directed to an abstract idea at Step 1. *Id.* at 769. *ChargePoint*’s finding is consistent with the Supreme Court’s statements that the judicially created exception to patentability for abstract ideas is rooted in the language of the claims and the concern of pre-emption. *Alice*, 573 U.S. at 216 (“We have described the concern that drives this exclusionary principle as one of pre-emption.”); *Bilski v. Kappos*, 561 U.S. 593, 612 (2010) (upholding the patent “would pre-empt use of this approach in all fields, and would effectively grant a monopoly over an abstract idea”).³

Contrary to the framework articulated in *ChargePoint*, the district court did not begin with the language of the claim and identify any abstract idea that the claim allegedly involved, let alone was directed to. Instead, the district court jumped straight into an examination of the specification to find any alleged abstract idea discussed therein, ultimately latching onto the specification’s description of a broadcasting system for “providing information in conjunction with media content.” Appx000010 (citing Appx000036 (2:37–55)). Yet, the claim language itself is not even directed to a broadcasting system. The claim is directed

³ The Supreme Court has cautioned that the judicial exception for abstract ideas should be only narrowly applied “lest it swallow all of patent law.” *Alice*, 573 U.S. at 217. While the Supreme Court has invoked the judicial exception to exclude from patent protection business methods, such as in *Bilski* and *Alice*, it has not applied it so broadly as to strike down claims directed to improved hardware and electronics devices.

to a content-player/two-way remote-control combination, which, at best, is tangentially related to the stated idea.

The following emphasized limitations from the exemplary claim from the Asserted Patents play *no role* in the district court’s articulation of the abstract idea:

32. *A content player comprising:*
a receiver configured to receive content and together with the content information associated with the content,
a processor coupled to the receiver and configured to process the content and the information associated with the content,
memory coupled to the processor,
a first display coupled to the processor, and
playing device equipment coupled to the processor and configured to provide the content to a user of the content player,
the playing device equipment comprising an audio player;
wherein the content player is a wearable content player configured to be controlled by a wireless remote control device comprising a second display,
the wireless remote control device being configured to receive commands directing operations of the wearable content player, and
wherein the wireless remote control device is configured to provide to the user at least a portion of the information associated with the content.

Appx000048 (26:7–27).⁴ Focusing on the claim language, one cannot reasonably conclude that the claim, on its face, is directed as a whole to “providing information in conjunction with media content.”

Further, unlike in *ChargePoint*, the claim language here is not drafted so broadly as to pose a risk of pre-empting the alleged abstract idea, and the district

⁴ To wit, the court ignored 112 out of 145 words or 77% of the claim’s language.

court did not find otherwise. Rather the claim recites a specific combination of a content-player and a special two-way remote-control with numerous subcomponents (Appx000048 (26:7–9, 26:15–20)), which poses no danger of preempting the entirely disembodied abstract idea of “providing information in conjunction with media content,” or any other alleged “building block[] of human ingenuity.” *Alice*, 573 U.S. at 217 (internal quotation marks and citation omitted). Quite the contrary, the district court itself recognized that the claims “would not cover *any* content player capable of providing information alongside content” because the claimed combination requires a content-player that can be “controlled by another device with a display.” Appx000015. Even the district court was forced to acknowledge what is clear from the face of the claims—that the narrowly claimed content-player/two-way remote-control combination does not pre-empt its purported abstract idea.

B. The District Court Conducted an Improper Quasi-Enablement Analysis to Disregard Concretely-Recited Claim Elements.

The district court’s Step 1 analysis was further infected by its legally erroneous use of the specification to erase every claimed physical component individually, as well as the unconventional arrangement of physical components collectively, from the “directed to” inquiry. Specifically, with respect to the claimed two-way remote-control with a display, the district court determined that the *specification* failed to describe such component in enough detail and, therefore,

it could be disregarded from the “directed to” inquiry. *See, e.g.*, Appx000010 (n.6) (“[T]he specification goes to great lengths to avoid any specifics in describing the components.”). Such a quasi-enablement analysis as to the level of description in the *specification* of a component recited in the *claims* has no place in the Section 101 analysis. *See Visual Memory LLC v. NVIDIA Corp.*, 867 F.3d 1253, 1261 (Fed. Cir. 2017) (recognizing enablement plays no role in whether a claim satisfies Section 101).

As this Court has explained, there are “two different ‘how’ requirements in patent law.” *Am. Axle*, 967 F.3d at 1302. Section 101 has a “how” requirement “that the *claim* itself ... must go beyond stating a functional result; it must identify ‘how’ that functional result is achieved by limiting the claim scope to structures specified at some level of concreteness.” *Id.* (emphasis added). The other “distinct ‘how’ requirement” relates to enablement and analyzes whether the *specification* “set[s] forth enough information for a relevant skilled artisan to be able to make and use the claimed structures or perform the claimed actions.” *Id.*

Here, the district court did not find that the claims fail to specify the relevant components “at some level of concreteness.” It is indisputable that the claims on their face recite such components in a sufficiently concrete manner. Instead, the district court focused on the separate enablement inquiry concerning the specification’s level of detail of such components’ operation. That was legal error.

Am. Axle, 967 F.3d at 1302 (Section 101 is not concerned with “whether the specification has adequately described how to make and use the concretely claimed structures.”).

Precedent offers no support for the proposition that a claim, which on its face is directed to a combination of concrete components, can be transformed into an abstract idea merely by looking to the specification’s level of detail regarding such components. In fact, if the specification were *silent* about each of the claimed components, that might mean that the claim lacks adequate support under Section 112, but that should have no bearing on whether the claim satisfies Section 101. It certainly could not transform the claimed unconventional arrangement of concrete components into an abstract idea.

* * *

At bottom, it was wrong for the panel to affirm the district court’s Step 1 inquiry, which failed to begin with the claim language in determining what the claims are directed to, and which further disregarded each of the concretely-claimed components based on a quasi-enablement analysis of the specification. The panel’s summary affirmance risks encouraging courts to turn Step 1 into an analysis that primarily looks to sound bites from the specification at the expense of considering the actual claim language and its impact on pre-emption and should not stand.

II. The Panel’s Affirmance Endorses the District Court’s Improper Step 2 Factual Determination of Conventionality on a Motion to Dismiss.

The panel further erred in affirming the district court’s Step 2 finding, because the district court improperly made factual determinations of conventionality on a motion to dismiss and relied on evidence outside of the pleadings in doing so.

Before the district court, Interactive Wearables alleged that the claimed two-way remote-control with a display comprises an inventive concept at Step 2, and cited evidence that such component was not well-understood, routine, and conventional as of the 2002 date of invention. Appx000205–000207 (distinguishing prior art for lacking claimed remote-control with display for providing information about content); Appx000262 (same); Appx000082–000084 (¶¶ 17–18) (alleging claimed remote-control provided inventive concept). Nevertheless, the district court found that the claimed two-way remote-control failed to supply an inventive concept because it was conventional in 2002. Appx000019; Appx000022. The district court did not make such finding based on any admission in the intrinsic record that the claimed two-way remote-control was conventional or based on any prior art or other evidence submitted by Polar demonstrating it was conventional. Polar submitted no such evidence to the district court and did not identify any admissions of conventionality in the intrinsic record. Instead, the *only* “evidence” the district court relied on to support its

factual finding of conventionality is a website link the court discovered through an Internet search outside of the pleadings. Appx000018 (n.9), Appx000022 (n.14).

Accordingly, Interactive Wearables urged on appeal that the district court erred because on a motion to dismiss it (1) improperly relied on evidence outside the pleadings, and (2) failed to review the evidence in the light most favorable to Interactive Wearables. *See* Opening Appeal Br. at 51–53, 55–58; Reply Br. at 26–27, 29–31. With respect to the first argument, there was no dispute before the panel that the district court was wrong to rely on evidence outside the pleadings in support of its finding that the remote-control was conventional. *See* Opening Appeal Br. at 51–53; *see* Reply Br. at 26–27 (citing *Friedl v. City of New York*, 210 F.3d 79, 84 (2d Cir. 2000) (finding vacatur of 12(b)(6) dismissal required because “the district court plainly relied on a matter outside the pleadings”); *Coda Dev. S.R.O. v. Goodyear Tire & Rubber Co.*, 916 F.3d 1350, 1360 (Fed. Cir. 2019) (reversing 12(b)(6) dismissal and holding district court erred in considering material outside the pleadings, that was not subject to judicial notice, without converting to a summary judgment motion)); *see generally* Resp. Br. (no mention of Internet search.). Remarkably, Polar entirely *ignored* Interactive Wearables’ arguments with respect to the district court’s reliance on its own Internet search

throughout this appeal, never mentioning the search in its briefing or at oral arguments. *See generally* Resp. Br. (no mention of Internet search.).⁵

With respect to Interactive Wearables’ second argument, it is well-settled that a district court may not weigh evidence of unconventionality against the non-moving party on a motion to dismiss. *Cellspin Soft, Inc. v. Fitbit, Inc.*, 927 F.3d 1306, 1317–18 (Fed. Cir. 2019) (“Cellspin made specific, plausible factual allegations about why aspects of its claimed inventions were not conventional” and “[t]he district court erred by not accepting those allegations as true.”); *Aatrix Software, Inc. v. Green Shades Software, Inc.*, 882 F.3d 1121, 1125 (Fed. Cir. 2018) (finding dismissal at pleading stage appropriate “only when there are no factual allegations that, taken as true, prevent resolving the eligibility question as a matter of law”).

As it stands, neither the panel nor Polar has articulated any reasonable basis for affirming the district court’s decision to interpret the discovered evidence in a manner directly adverse to Interactive Wearables on a motion to dismiss. The panel’s summary affirmance of the district court’s decision effectively condones district courts to make factual determinations of conventionality at Step 2 on a

⁵ Notably, the Second Circuit “do[es] not apply a ‘harmless error analysis’ with respect to matters outside the pleadings on a motion to dismiss. *Friedl*, 210 F.3d at 84. Instead, when such materials are considered, the district court decision must be vacated. *Id.* (recognizing remand required because otherwise court “cannot be certain that the district court’s apparent [erroneous determination] ... did not color its analysis of the merits.”).

motion to dismiss in direct contravention of this Court's precedent, even relying on extrinsic evidence outside of the record to do so. The panel's decision cannot be allowed to stand.

CONCLUSION

The Court should grant rehearing or rehearing en banc and rehear this appeal.

Dated: November 15, 2021

Respectfully submitted,

KING & WOOD MALLESONS LLP

/s/ Michael DeVincenzo

Michael DeVincenzo

Charles Wizenfeld

500 5th Avenue, 50th Floor

New York, New York 10110

(212) 319-4755

michael.devincenzo@us.kwm.com

charles.wizenfeld@us.kwm.com

*Counsel for Plaintiff-Appellant
Interactive Wearables, LLC*

ADDENDUM

NOTE: This disposition is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

INTERACTIVE WEARABLES, LLC,
Plaintiff-Appellant

v.

POLAR ELECTRO OY, POLAR ELECTRO INC.,
Defendants-Appellees

2021-1491

Appeal from the United States District Court for the Eastern District of New York in No. 2:19-cv-03084-GRB, Magistrate Judge Gary R. Brown.

JUDGMENT

MICHAEL DEVINCENZO, King & Wood Mallesons LLP, New York, NY, argued for plaintiff-appellant. Also represented by CHARLES WIZENFELD.

ANTHONY J. FUGA, Holland & Knight LLP, Chicago, IL, argued for defendants-appellees. Also represented by JOHN P. MORAN, Washington, DC.

THIS CAUSE having been heard and considered, it is

ORDERED and ADJUDGED:

PER CURIAM (LOURIE, O'MALLEY, and STOLL, *Circuit Judges*).

AFFIRMED. See Fed. Cir. R. 36.

ENTERED BY ORDER OF THE COURT

October 14, 2021
Date

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

PROOF OF SERVICE

I, Michael DeVincenzo, hereby certify that on November 15, 2021, I caused one copy of the document listed below:

Plaintiff-Appellant Interactive Wearables, LLC's Combined Petition for Panel Rehearing and Rehearing En Banc

to be electronically filed using the CM/ECF system, which sent a notice of electronic filing to all ECF registered participants.

Date: November 15, 2021

by: */s/ Michael DeVincenzo*
Michael DeVincenzo

*Counsel for Plaintiff-Appellant
Interactive Wearables, LLC*

CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. This brief complies with the type-volume limitation of the Federal Rules of Appellate Procedure and the Rules of this Court because it contains 3,809 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and Fed. Cir. R. 32(b).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type styles requirements of Fed. R. App. P. 32(a)(6), because it has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14 point Times New Roman font.

Date: November 15, 2021

by: /s/ Michael DeVincenzo
Michael DeVincenzo
Counsel for Plaintiff-Appellant
Interactive Wearables, LLC