1	Courtland L. Reichman (California Bar No. 268873)	
2	Jennifer P. Estremera (California Bar No. 251076) Bahrad A. Sokhansanj (California Bar No. 285185)	
3	MCKOOL SMITH PC	
	255 Shoreline Drive, Suite 510	
4	Redwood Shores, California 94065 Telephone: (650) 394-1400	
5	Facsimile: (650) 394-1422	
6	<u>creichman@mckoolsmith.com</u> <u>jestremera@mckoolsmith.com</u>	
7	bsokhansanj@mckoolsmith.com	
8	John B. Campbell (Admitted Pro Hac Vice)	
	Kathy H. Li (Admitted Pro Hac Vice)	
9	MCKOOL SMITH P.C.	
10	300 W. 6th Street, Suite 1700 Austin, Texas 78701	
11	Telephone: (512) 692-8700	
12	Facsimile: (512) 692-8744 jcampbell@mckoolsmith.com	
13	kli@mckoolsmith.com	
	Attorneys for Plaintiff	
14	Immersion Corporation	
15	UNITED STATES DIST	RICT COURT
16	NORTHERN DISTRICT C	
17		
18	SAN JOSE DIV	ISION
19	IMMERSION CORPORATION,	Case No. 5:17-cv-03886-LHK
	Plaintiff,	PLAINTIFF IMMERSION
20	v.)	CORPORATION'S CORRECTED PRELIMINARY CLAIM
21	FITBIT, INC.,	CONSTRUCTIONS AND EXTRINSIC EVIDENCE
22	\ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \	
23	Defendant.	DEMAND FOR JURY TRIAL
24	,	Judge: Honorable Lucy H. Koh
25		
26		
27		
28	-1-	IMMEDGIONIC CONDECTED DDEI IMMI DV
	Case No. 5:17-cv-03886-LHK	IMMERSION'S CORRECTED PRELIMINARY CLAIM CONSTRUCTIONS AND EXTRINSIC EVIDENCE

FITBIT 1014 Fitbit v. Immersion

PLAINTIFF IMMERSION CORPORATION'S CORRECTED PRELIMINARY CLAIM CONSTRUCTIONS AND EXTRINSIC EVIDENCE

- 1. Pursuant to Patent Local Rule 4-2(a) and (b) (Exchange of Preliminary Claim Constructions and Extrinsic Evidence) and the Court's October 10, 2017 Case Management Order (Dkt. No. 35), Plaintiff, Immersion Corporation ("Immersion") hereby provides its corrected preliminary proposed claim constructions for the following terms, phrases, and clauses for construction from the asserted U.S. Patent Nos. 8,059,105, 8,351,299, and 8,638,301 that parties have identified pursuant to Patent L.R. 4-1, and preliminary identification of extrinsic evidence that Immersion may rely on to support its proposed claim construction. Immersion reserves the right to amend its proposed claim constructions and its identification of extrinsic evidence.
- 2. Immersion may present evidence from one or more technical experts in support of Immersion's proposed constructions. Such expert evidence may address the relevant field of art, the level of ordinary skill in the art, and the meaning that certain claim terms would have to a person of ordinary skill in the art.
- 3. Immersion's list of proposed terms, clauses, or phrases for construction as well as Immersion's preliminary claim constructions and identification of extrinsic evidence were prepared in response to Defendant's Patent L.R. 4-1 disclosures. Immersion reserves the right to modify its list of terms for construction, preliminary proposed constructions, and identification of extrinsic evidence. In addition, Immersion's proposed constructions were compiled prior to receiving Defendant's proposed claim constructions. Accordingly, Immersion may modify the proposed constructions below and/or identify additional extrinsic evidence, including expert evidence, in light of Defendant's proposed claim constructions. Immersion anticipates that the parties may be able to narrow the list of terms and phrases to be construed or otherwise agree upon constructions during the process culminating in the preparation of a joint claim construction and prehearing statement pursuant to Patent L.R. 4-3 and the Court's Case Management Order entered in this case.
- 4. Subject to the foregoing, Immersion provides the following preliminary claim constructions and identification of extrinsic evidence.

I. <u>U.S. Patent No. 8,059,105 ('105 Patent)</u>

1

2	Claim Term	Claim(s)	Immersion's Proposed Construction
3	"haptic feedback device"	19, 20, 21	<u>Proposed Construction</u> :
4			A touch controlled device that provides haptic sensations in response to one or more events.
5			Intrinsic Evidence:
6 7			'105 Patent at 11:35–40; 12:35–39; 15:1–14; '105 Patent at Figures 1, 7, 8A, 8B.
8			Extrinsic Evidence:
9			Immersion may offer an expert declaration by Dr.
10			Sigurd Meldal as to how skilled artisans would have understood this term(s) in light of the patent
			specification, prosecution history and relevant standards at the time of the invention. Immersion may also offer
11			an expert declaration by Dr. Meldal as to the level of ordinary skill in the relevant art and the technology that
12			underlies the alleged inventions, as well as in rebuttal to any extrinsic evidence offered by Fitbit, including any
13			expert opinions.
14	"user-independent event"	19	Proposed Construction:
15 16			An event that is not caused by an immediately preceding user input.
17			<u>Intrinsic Evidence</u> :
18			'105 Patent at 12:50–54; 12:56–67; '105 Patent at Figures 1, 7, 8A, 8B.
19			Extrinsic Evidence:
20			Immersion may offer an expert declaration by Dr.
21			Sigurd Meldal as to how skilled artisans would have understood this term(s) in light of the patent
22			specification, prosecution history and relevant standards at the time of the invention. Immersion may also offer
23			an expert declaration by Dr. Meldal as to the level of ordinary skill in the relevant art and the technology that underlies the alleged inventions, as well as in rebuttal to
24 25			any extrinsic evidence offered by Fitbit, including any expert opinions.
26	"generate a force signal	19	Proposed Construction:
27	based on the input signal"		This claim term should be afforded its plain and
20			ordinary meaning. However, should the court decide to

-3-

Case No. 5:17-cv-03886-LHK

28

IMMERSION'S CORRECTED PRELIMINARY CLAIM CONSTRUCTIONS AND EXTRINSIC EVIDENCE

FITBIT 1014 Fitbit v. Immersion

1	Claim Term	Claim(s)	Immersion's Proposed Construction
2			construe this term, then Immersion proposes the following construction:
3			Generate a signal to an actuator that defines the form of a haptic effect, based at least in part on the input signal.
4			Intrinsic Evidence:
5			'105 Patent at 5:6–17; 13:36–39; '105 Patent at Figures
6			1, 7, 8A, 8B; cited U.S. Pat. No. 5,959,613 at 12:66–13:4; 14:30–56.
7			Extrinsic Evidence:
8			Immersion may offer an expert declaration by Dr.
9			Sigurd Meldal as to how skilled artisans would have understood this term(s) in light of the patent specification, prosecution history and relevant standards
11			at the time of the invention. Immersion may also offer an expert declaration by Dr. Meldal as to the level of
12			ordinary skill in the relevant art and the technology that underlies the alleged inventions, as well as in rebuttal to
13			any extrinsic evidence offered by Fitbit, including any expert opinions.
14	"one or more processors	19	Proposed Construction:
15	configured to receive an input signal and generate		Immersion maintains that this claim term should not be
16	a force signal based on the input signal, wherein the input signal is associated		governed by 35 U.S.C. § 112(6), despite Fitbit's suggestion otherwise. This claim term should be afforded its plain and ordinary meaning.
17	with a user-independent event"		However, should the court decide to construe this term,
18			then Immersion proposes the following construction:
19			Functions : receive an input signal and generate a force signal based on the input signal
20 21			Structure : '105 Patent at 5:6–17, 5:64–6:43, 15:1–14; and equivalents thereof.
22			Intrinsic Evidence:
23			'105 Patent at 5:6–17, 5:64–6:43, 15:1–14.
24			Extrinsic Evidence:
25			Immersion may offer an expert declaration by Dr.
26			Sigurd Meldal as to how skilled artisans would have understood this term(s) in light of the patent
27			specification, prosecution history and relevant standards at the time of the invention. Immersion may also offer

-4-

Claim Term	Claim(s)	Immersion's Proposed Construction
		an expert declaration by Dr. Meldal as to the level of ordinary skill in the relevant art and the technology that underlies the alleged inventions, as well as in rebuttal to any extrinsic evidence offered by Fitbit, including any expert opinions.

II. <u>U.S. Patent No. 8,351,299 ('299 Patent)</u>

1

2

3

4

5

			<u></u>
6	Claim Term	Claim(s)	Immersion's Proposed Construction
7	"periodic"	14,15,16	Proposed Construction:
8 9			This claim term should be afforded its plain and ordinary meaning. However, should the court decide to construe this term, then Immersion proposes the following construction:
10			An output that occurs one or more times at a regular interval that may be adjustable.
11			Intrinsic Evidence:
12			'299 Patent at 8:41–47; 8:55–58; '299 Patent at Figure 5.
13			Extrinsic Evidence:
14 15			The Authoritative Dictionary of IEEE Standard Terms (7th ed. 2000) ("periodic check (test, measurement, and diagnostic equipment)").
			equipment)).
16 17			The Webster's Encyclopedic Unabridged Dictionary of the English Language (1996) ("periodic").
18			The American Heritage Dictionary (4th ed. 2001) ("periodic").
19			Immersion may offer an expert declaration by Dr. Sigurd
20			Meldal as to how skilled artisans would have understood this term(s) in light of the patent specification, prosecution history
21			and relevant standards at the time of the invention. Immersion may also offer an expert declaration by Dr. Meldal as to the
22			level of ordinary skill in the relevant art and the technology that underlies the alleged inventions, as well as in rebuttal to
23			any extrinsic evidence offered by Fitbit, including any expert opinions.
24	"a processing device	14	Proposed Construction:
25	that receives the sensor output and		Immersion maintains that this claim term should not be
26	accumulates counts associated with the		governed by 35 U.S.C. § 112(6), despite Fitbit's suggestion otherwise. This claim term should be afforded its plain and
27	sensor output, the processing device		ordinary meaning.

8 || Case No. 5:17-cv-03886-LHK

-5-

IMMERSION'S CORRECTED PRELIMINARY
CLAIM CONSTRUCTIONS AND EXTRINSIC
EVIDENCE
FITBIT 1014
Fitbit v. Immersion

1	Claim Term	Claim(s)	Immersion's Proposed Construction
	providing an output	Ciaiii(s)	However, should the court decide to construe this term, then
2	to the vibrotactile		Immersion proposes the following construction:
3	device once a threshold associated		Function : receive the sensor output, accumulate counts, and
4	with the accumulated counts is reached."		provide an output once a threshold associated with accumulated counts is reached
5			Structure : Processing device 22 in Fig. 2, Fig. 4, and Fig. 5, and equivalents thereof.
6			Intrinsic Evidence:
7			
8			'299 Patent at 4:42–54; 6:25–28; 7:4–12; '299 Patent at Figures 2, 3 (i.e. algorithm disclosed in Fig. 3), 4, and 5.
9			Extrinsic Evidence:
10			Immersion may offer an expert declaration by Dr. Sigurd Meldal as to how skilled artisans would have understood this
11			term(s) in light of the patent specification, prosecution history and relevant standards at the time of the invention. Immersion
12			may also offer an expert declaration by Dr. Meldal as to the level of ordinary skill in the relevant art and the technology
13			that underlies the alleged inventions, as well as in rebuttal to any extrinsic evidence offered by Fitbit, including any expert
14			opinions.
15	"a vibrotactile device	20	Proposed Construction:
16	that provides a haptic output based on the		Immersion maintains that this claim term should not be
17	sensor output if the vibrotactile device		governed by 35 U.S.C. § 112(6), despite Fitbit's suggestion otherwise. This claim term should be afforded its plain and
18	receives the sensor output before the		ordinary meaning.
19	timer output and provides the haptic output based on the		However, should the court decide to construe this term, then Immersion proposes the following construction:
20	timer output if the		Function : provide a haptic output based on the sensor output
21	vibrotactile device receives the timer		if the sensor output is received before the timer output and provide a haptic output based on the timer output if the timer
22	output before the sensor output."		output is received before the sensor output
23			Structure : Vibrotactile device 420 in Figs. 4 and 5, and equivalents thereof.
24			Intrinsic Evidence:
25			'299 Patent at 7:62–67; 8:14–17; '299 Patent at Figures 4 and 5.
26			Extrinsic Evidence:
27			

28 Case No. 5:17-cv-03886-LHK

-6-

IMMERSION'S CORRECTED PRELIMINARY
CLAIM CONSTRUCTIONS AND EXTRINSIC
EVIDENCE
FITBIT 1014

Fitbit v. Immersion

1	Claim Term	Claim(s)	Immersion's Proposed Construction
2			Immersion may offer an expert declaration by Dr. Sigurd Meldal as to how skilled artisans would have understood this term(s) in light of the patent specification, prosecution history
3			and relevant standards at the time of the invention. Immersion
4			may also offer an expert declaration by Dr. Meldal as to the level of ordinary skill in the relevant art and the technology
5			that underlies the alleged inventions, as well as in rebuttal to any extrinsic evidence offered by Fitbit, including any expert
6			opinions.

<u>U.S. Patent No. 8,638,301 ('301 Patent)</u>

8	Claim Term	Claim(s)	Immersion's Proposed Construction
9	"first data signal"	27	Proposed Construction:
10			A set of data that relates to a user interaction with a touch-sensitive interface of a mobile device.
11			Intrinsic Evidence:
12			'301 Patent at 25:6–14; '301 Patent at Figure 18;
13			Extrinsic Evidence:
14			The Signal Processing and Linear Systems (1998) ("signal").
15			Immersion may offer an expert declaration by Dr. Sigurd Meldal as to how skilled artisans would have understood this
16			term(s) in light of the patent specification, prosecution history and relevant standards at the time of the invention. Immersion
17			may also offer an expert declaration by Dr. Meldal as to the level of ordinary skill in the relevant art and the technology
18			that underlies the alleged inventions, as well as in rebuttal to any extrinsic evidence offered by Fitbit, including any expert
19			opinions.
20	"detect an interaction with the first mobile	27	Proposed Construction:
21	device"		Detect a communication between a computer system and a user with the first mobile device.
22			
23			Intrinsic Evidence:
24			'301 Patent at 24:36–50; '301 Patent at Figures 9, 13, 18;
25			Extrinsic Evidence:
26			The Authoritative Dictionary of IEEE Standard Terms (7th ed. 2000) ("user interaction").
27			Immersion may offer an expert declaration by Dr. Sigurd
28			_ 7 _

1	Claim Term	Claim(s)	Immersion's Proposed Construction
2			Meldal as to how skilled artisans would have understood this term(s) in light of the patent specification, prosecution history and relevant standards at the time of the invention. Immersion
3 4			may also offer an expert declaration by Dr. Meldal as to the level of ordinary skill in the relevant art and the technology that underlies the alleged inventions, as well as in rebuttal to
5			any extrinsic evidence offered by Fitbit, including any expert opinions.
6	"determine a change	27	Proposed Construction:
7	in a display signal"		This claim term should be afforded its plain and ordinary meaning. However, should the court decide to construe this
8			term, then Immersion proposes the following construction: Determine changes in a set of data sent to a display of a
9			mobile device.
10			<u>Intrinsic Evidence</u> :
11			'301 Patent at 24:51–62; '301 Patent at Figures 1, 9, 18;
12			Extrinsic Evidence:
13			The Signal Processing and Linear Systems (1998) ("signal").
14 15			The Authoritative Dictionary of IEEE Standard Terms (7th ed. 2000) ("display").
16			Immersion may offer an expert declaration by Dr. Sigurd Meldal as to how skilled artisans would have understood this
17			term(s) in light of the patent specification, prosecution history and relevant standards at the time of the invention. Immersion may also offer an expert declaration by Dr. Meldal
18 19			as to the level of ordinary skill in the relevant art and the technology that underlies the alleged inventions, as well as in rebuttel to any outringic avidence offered by Eithit including
20			rebuttal to any extrinsic evidence offered by Fitbit, including any expert opinions.
21	"second data signal"	31	Proposed Construction:
22			A set of data that relates to a user interaction and a movement of a mobile device.
23			Intrinsic Evidence:
24			'301 Patent at 24:3–25; '301 Patent at Figure 18;
25			Extrinsic Evidence:
26			The Signal Processing and Linear Systems (1998) ("signal").
27			Immersion may offer an expert declaration by Dr. Sigurd

1	Claim Term	Claim(a)	Immorgian's Duanogad Construction
	Claim Term	Claim(s)	Immersion's Proposed Construction Meldal as to how skilled artisans would have understood this
2			term(s) in light of the patent specification, prosecution history and relevant standards at the time of the invention.
3			Immersion may also offer an expert declaration by Dr. Meldal
4			as to the level of ordinary skill in the relevant art and the technology that underlies the alleged inventions, as well as in
			rebuttal to any extrinsic evidence offered by Fitbit, including
5			any expert opinions.
6	"a processor	27	Proposed Construction:
7	configured to: receive a first sensor		Immersion maintains that this claim term should not be
0	signal from a first		governed by 35 U.S.C. § 112(6), despite Fitbit's suggestion
8	sensor, the first sensor configured to		otherwise. This claim term should be afforded its plain and ordinary meaning.
9	detect a movement of		
10	a first mobile device; receive a second		However, should the court decide to construe this term, then Immersion proposes the following construction:
11	sensor signal from a		
	second sensor, the second sensor		Functions : receive a first sensor signal from a first sensor, and detect a movement of a first mobile device; receive a
12	configured to detect an interaction with		second sensor signal from a second sensor, and detect an interaction with the first mobile devices receive a first data
13	the first mobile		interaction with the first mobile device; receive a first data signal from a network interface, and receive signals
14	device; receive a first data signal from a		transmitted by a second mobile device; determine a change in a display signal based at least in part on the first data signal
	network interface,		and the second sensor signal; determine a haptic effect based
15	the network interface configured to receive		at least in part on the first data signal
16	signals transmitted		Structure : Processor 110 and equivalents thereof.
17	by a second mobile device; determine a		Intrinsic Evidence:
18	change in a display signal based at least		'301 Patent at 3:1–9; 14:19–28; 23:50–61; 24:20–35; 25:65–
	in part on the first		26:17; 24:3–25:5; 8:34–44; 7:35–39; 24:51–62; 3:58–60;
19	data signal and the second sensor signal;		3:65–67; 13:51–54; 11:63–12:5; 25:33–48; 18:21–23; 21:36–38; 25:49–56; '301 Patent at Figure 1;
20	determine a haptic		-
21	effect based at least in part on the first		Extrinsic Evidence:
22	data signal; and		The Authoritative Dictionary of IEEE Standard Terms (7th
	outputting the haptic effect."		ed. 2000) ("processor"; "configure").
23			The American Heritage Dictionary (4th ed. 2001) ("configure").
24			`
25			The Webster's Encyclopedic Unabridged Dictionary of the English Language (1996) ("configure").
26			
27			Immersion may offer an expert declaration by Dr. Sigurd Meldal as to how skilled artisans would have understood this term(s) in light of the patent specification, prosecution history
-			terming, in right of the putent specification, prosecution flistery

Claim Term	Claim(s)	Immersion's Proposed Construction
		and relevant standards at the time of the invention. Immersion may also offer an expert declaration by Dr. Meldal as to the level of ordinary skill in the relevant art and the technology that underlies the alleged inventions, as well as in rebuttal to any extrinsic evidence offered by Fitbit, including any expert opinions.

IV. Immersion's Preliminary Identification of Extrinsic Evidence¹

Immersion identifies the following extrinsic evidence upon which it may rely to support its claim construction positions:

A. References

- 1. The American Heritage Dictionary (4th ed. 2001).
- 2. The Authoritative Dictionary of IEEE Standard Terms (7th ed. 2000).
- 3. Signal Processing and Linear Systems (1998).
- 4. The Webster's Encyclopedic Unabridged Dictionary of the English Language (1996).

These References are produced by Immersion bearing Bates numbers IMMER00007528–IMMER00007568.

B. Expert Testimony

Immersion may offer the testimony (through a declaration or at claim construction hearing) of one or more experts. Said expert may include Dr. Sigurd Meldal. Dr. Meldal may provide testimony regarding the technology that underlies the alleged inventions, how the patent, claims and intrinsic or extrinsic evidence would be understood by one of ordinary skill in the art, and the meaning of the disputed claim terms, phrases, and clauses to one of ordinary skill in the art, or any other opinions or testimony useful to the Court in conducting the requisite claim construction. Dr. Meldal may also rebut any extrinsic evidence offered by Fitbit, including any expert opinions.

2627

28

¹ Immersion discloses that all references cited within the specifications and file histories of the asserted patents are intrinsic evidence and may be relied on for claim construction in this case.

-10-

1	DATED: January 25, 2018	Respectfully submitted,
2		MCKOOL SMITH, P.C.
3		
4		By: /s/ Courtland L. Reichman
		Courtland L. Reichman (California Bar No. 268873)
5		Jennifer P. Estremera
6		(California Bar No. 251076)
_		Bahrad A. Sokhansanj
7		(California Bar No. 285185)
8		McKool Smith, P.C. 255 Shoreline Drive, Suite 510
Δ		Redwood Shores, California 94065
9		Telephone: (650) 394-1400
10		Facsimile: (650) 394-1422
11		creichman@mckoolsmith.com
11		jestremera@mckoolsmith.com
12		bsokhansanj@mckoolsmith.com
13		John B. Campbell (Admitted Pro Hac Vice)
		Kathy H. Li (Admitted Pro Hac Vice)
14		MCKOOL SMITH P.C. 300 W. 6th Street, Suite 1700
15		Austin, Texas 78701
		Telephone: (512) 692-8700
16		Facsimile: (512) 692-8744 jcampbell@mckoolsmith.com
17		kli@mckoolsmith.com
18		Attorneys for Plaintiff
19		IMMERSION CORPORATION
20		
21		
22		
23		
24		
25		
26		
27		
28		-11 -

Case No. 5:17-cv-03886-LHK

IMMERSION'S CORRECTED PRELIMINARY CLAIM CONSTRUCTIONS AND EXTRINSIC EVIDENCE

FITBIT 1014 Fitbit v. Immersion