

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

**XENNIAL IP LLC,**

Plaintiff,

v.

**FITBIT, INC.,**

Defendant.

Civil Action No.:

**TRIAL BY JURY DEMANDED**

**COMPLAINT FOR INFRINGEMENT OF PATENT**

Now comes, Plaintiff, Xennial IP LLC (“Plaintiff” or “Xennial”), by and through undersigned counsel, and respectfully alleges, states, and prays as follows:

**NATURE OF THE ACTION**

1. This is an action for patent infringement under the Patent Laws of the United States, Title 35 United States Code (“U.S.C.”) to prevent and enjoin Defendant Fitbit, Inc. (hereinafter “Defendant”), from infringing and profiting, in an illegal and unauthorized manner, and without authorization and/or consent from Plaintiff from U.S. Patent No. 9,792,409 (“the ‘409 Patent which is attached hereto as Exhibit A and incorporated herein by reference, and from U.S. Patent No. 10,664,571 (“the ‘571 Patent which is attached hereto as Exhibit B and incorporated herein by reference, collectively the “Patents-in-Suit”, and pursuant to 35 U.S.C. §271, and to recover damages, attorney’s fees, and costs.

**THE PARTIES**

2. Plaintiff is an Ohio limited liability company.

3. Upon information and belief, Defendant is a corporation organized under the laws of Delaware, with its principal place of business located at 405 Howard Street, San Francisco,

CA 94015. Fitbit, Inc.'s registered agent for service is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE, 19801.

4. Plaintiff is further informed and believes, and on that basis alleges, that Defendant operates the website [www.fitbit.com](http://www.fitbit.com), which is in the business of providing fitness accessories, amongst other things. Defendant derives a portion of its revenue from sales and distribution via electronic transactions conducted on and using at least, but not limited to, its Internet website located at [www.fitbit.com](http://www.fitbit.com), and its incorporated and/or related systems (collectively the "Fitbit Website"). Plaintiff is informed and believes, and on that basis alleges, that, at all times relevant hereto, Defendant has done and continues to do business in this judicial district, including, but not limited to, providing products/services to customers located in this judicial district by way of the Fitbit Website.

#### **JURISDICTION AND VENUE**

5. This is an action for patent infringement in violation of the Patent Act of the United States, 35 U.S.C. §§1 *et seq.*

6. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§1331 and 1338(a).

7. This Court has personal jurisdiction over Defendant by virtue of its systematic and continuous contacts with this jurisdiction and its residence in this District, as well as because of the injury to Plaintiff, and the cause of action Plaintiff has arisen in this District, as alleged herein.

8. Defendant is subject to this Court's specific and general personal jurisdiction pursuant to its substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; (ii) regularly doing or soliciting business, engaging in other

persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in this forum state and in this judicial District; and (iii) being incorporation in this District.

9. Venue is proper in this judicial district pursuant to 28 U.S.C. §1400(b) because Defendant resides in this District under the Supreme Court's opinion in *TC Heartland v. Kraft Foods Group Brands LLC*, 137 S. Ct. 1514 (2017) through its incorporation, and regular and established place of business in this District.

### **FACTUAL ALLEGATIONS**

10. Counsel for the patent owner notified Defendant's supplier of the accused products, Hidrate, Inc. via email and certified mail of patent owner's provisional rights under 35 U.S.C. §154(d) in U.S. Patent Application Serial No. 14/657,300 on July 14, 2015. On information and belief, this knowledge is, was, or should have been imparted to Defendant by and through its relationship with the supplier.

11. On October 17, 2017, the United States Patent and Trademark Office ("USPTO") duly and legally issued the '409 Patent, entitled "Communicative Water Bottle and System Thereof" after a full and fair examination. The '409 Patent is attached hereto as Exhibit A and incorporated herein as if fully rewritten.

12. Plaintiff is presently the owner of the '409 Patent, having received all right, title and interest in and to the '409 Patent from the previous assignee of record. Plaintiff possesses all rights of recovery under the '409 Patent, including the exclusive right to recover for past infringement.

13. To the extent required, Plaintiff has complied with all marking requirements under 35 U.S.C. § 287 with respect to the '409 patent.

14. Claim 1 of the '409 Patent states:

“1. A communicative sports water bottle comprising:

a bottle body having a base and an upwardly extending sidewall therein defining a fluid chamber and a first display coupled to the bottle body;

a sensor determining one or more of the following an amount of fluid in the fluid chamber, an amount of fluid being dispensed from the fluid chamber, and a physical movement of the bottle body;

fluid information logic electronically coupled with the sensor creating digital data associated with fluid in the chamber;

data transmission and reception logic configured to send the digital data to a remote device and receive digital data from the remote device, wherein the data transmission and reception logic monitors wireless input sources for incoming wireless packets and analyzes any received packets in order to detect a source of the packet transmission and decide whether to sync the digital data associated with fluid in the chamber with the source of the packet;

wherein the remote device is a wrist-worn health activity tracker including a second display that displays information associated with one or more of the following: the amount of fluid in the chamber, the amount of fluid dispensed from the chamber, an amount of time since fluid was last dispensed from the chamber, an amount of fluid dispensed over a given time period, a reminder notification if fluid has not been dispensed over a given time period, a reminder to consume an adjusted amount of fluid based, at least in part, on activity information obtained from the remote device;

network connectivity electronically connecting the data transmission and reception logic and the remote device, wherein in the network connectivity is selected from a group comprising of: Bluetooth connection, wireless internet connection, wired internet connection, internet, and 3G/4G connection; and

a record of information for a previous period at a fixed time interval;

artificial intelligence configured to learn the record of information to detect behavior signatures from the previous period, which is implemented to predict a likelihood of a subject has certain activity levels at a present time.” Ex. A, Col.14:24-67.

15. On May 26, 2020, the USPTO duly and legally issued the '571 Patent, entitled “Communicative Water Bottle and System Thereof” after a full and fair examination. The '571 Patent is attached hereto as Exhibit B and incorporated herein as if fully rewritten.

16. Plaintiff is presently the owner of the '571 Patent, having received all right, title and interest in and to the '571 Patent from the previous assignee of record. Plaintiff possesses all rights of recovery under the '571 Patent, including the exclusive right to recover for past infringement.

17. To the extent required, Plaintiff has complied with all marking requirements under 35 U.S.C. § 287 with respect to the '571 Patent.

18. Claim 10 of the '571 Patent states:

“10. A communicative sports water bottle system comprising:  
a bottle body having a base and an upwardly extending sidewall therein defining a fluid chamber and a first display coupled to the bottle body;  
a sensor determining one or more of the following an amount of fluid in the fluid chamber, an amount of fluid being dispensed from the fluid chamber, and a physical movement of the bottle body;  
fluid information logic electronically coupled with the sensor creating digital data associated with fluid in the chamber;  
data transmission and reception logic configured to send the digital data to a remote device and receive digital data from the remote device, wherein the data transmission and reception logic monitors wireless input sources for incoming wireless packets and analyzes any received packets in order to detect a source of the packet transmission and decide whether to sync the digital data associated with fluid in the chamber with the source of the packet;  
wherein the remote device is a wrist-worn health activity tracker including a second display that displays information associated with one or more of the following: the amount of fluid in the chamber, the amount of fluid dispensed from the chamber, an amount of time since fluid was last dispensed from the chamber, an amount of fluid dispensed over a given time period, a reminder notification if fluid has not been dispensed over a given time period, a reminder to consume an adjusted amount of fluid based, at least in part, on activity information obtained from the remote device;  
network connectivity electronically connecting the data transmission and reception logic and the remote device, wherein in the network connectivity is selected from a group comprising of: Bluetooth connection, wireless internet connection, wired internet connection, internet, and 3G/4G connection;

a record of information for a previous period at a fixed time interval, and the record of information is displayed in one of the first display and the second display; and

bottle body sensor placement-specific algorithms executed by the fluid information logic to determine the one or more of the following the amount of fluid in the fluid chamber, the amount of fluid dispensed from the fluid chamber, the physical movement of the bottle body, the amount of time since fluid was last dispensed from the chamber, the amount of fluid dispensed over a given time period, and the reminder notification if fluid has not been dispensed over a given time period; and

adaptive filtering logic to cancel out excessive movements of the bottle.”  
Ex. B, Col.16:5-58.

19. Claim 12 of the ‘571 Patent states:

“12. A method for displaying fluid consumption by a human comprising:  
generating digital data associated with fluid in a communicative bottle via fluid information logic electronically coupled with a first sensor carried by the communicative bottle;

sending digital data via data transmission and reception logic to the wrist-worn remote device and receiving digital data from the remote device, wherein the data transmission and reception logic monitors wireless input sources for incoming wireless packets and analyzes any received packets in order to detect a source of the packet transmission and decide whether to sync the digital data associated with fluid in the chamber with a source of the packet;

displaying digital data associated with a first amount of fluid within the communicative bottle in a first display integrated in a wrist-worn remote electronic device distinct from the communicative bottle;

wherein the wrist-worn remote device is a wrist-worn health activity tracker that displays information, in the first display, associated with one or more of the following: the amount of fluid in the chamber, the amount of fluid dispensed from the chamber, an amount of time since fluid was last dispensed from the chamber, an amount of fluid dispensed over a given time period, a reminder notification if fluid has not been dispensed over a given time period, a reminder to consume an adjusted amount of fluid based, at least in part, on activity information obtained from the remote device;

connecting the data transmission and reception logic and the wrist-worn remote device via electronic network connectivity, wherein in the network connectivity is selected from a group comprising of: Bluetooth connection, wireless internet connection, wired internet connection, internet, and 3G/4G connection;

recording the data associated with the first amount of fluid;

predicting, via artificial intelligence configured to learn the recorded data associated with the first amount of fluid to detect behavior signatures, which is implemented in one or more processors, a likelihood of a subject has certain activity levels at a present time;

recognizing an adjustment of the first amount of fluid in the communicative bottle by one of the following (a) fluid dispensed from the communicative bottle and (b) fluid added to the communicative bottle;

sensing the amount of adjusted fluid with the first sensor coupled to the communicative bottle to create data associated with a second amount of fluid within the communicative bottle;

sending data associated with the second amount of fluid to the first display in the wrist-worn remote electronic device;

displaying data associated with the second amount of fluid within the communicative bottle in the first display integrated in the wrist-worn remote electronic device distinct from the communicative bottle;

displaying an amount of water to be consumed determined by a difference of the data associated with the second amount of data from the predicted activity levels at the present time.” Ex. B, Col.16:59-18:4.

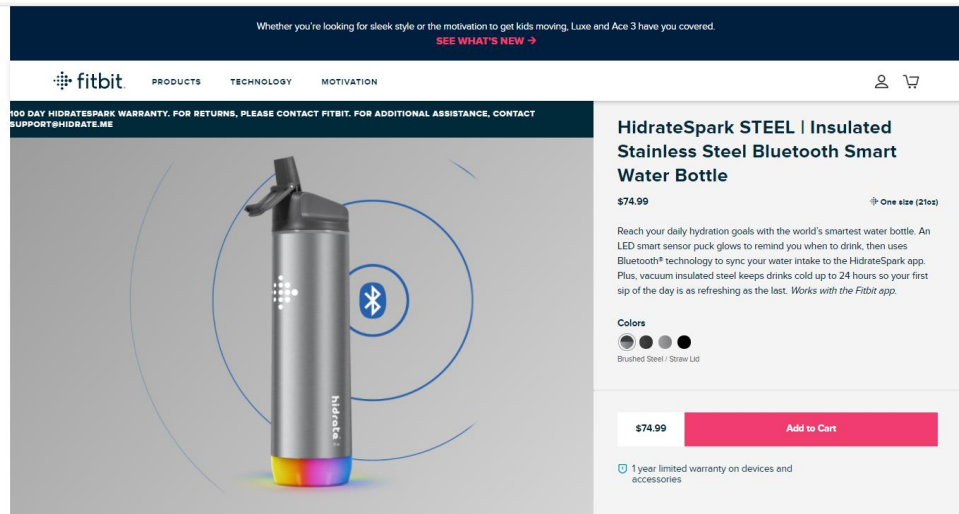
20. Defendant commercializes, inter alia, devices, systems, and/or methods that perform all the steps recited in at least one claim of the ‘409 Patent and/or the ‘571 Patent. More particularly, Defendant commercializes, inter alia, systems that meets all elements of Claim 1 of the ‘409 Patent and Claim 10 of the ‘571 Patent and methods that perform all the steps recited in Claim 12 of the ‘571 Patent. Specifically, Defendant makes, uses, sells, offers for sale, or imports a device, system, and/or method that encompasses that which is covered by Claim 1 of the ‘409 Patent, and Claims 10 and 12 of the ‘571 Patent.

## **DEFENDANT’S PRODUCT(S)**

21. Defendant offers solutions, such as the FitBit wrist-worn device in communication with smart water bottles from Hidrate Spark STEEL (collectively the “Accused Instrumentality”)<sup>1</sup> that enables a communicative sports water bottle system.

22. A system effectuated by the Accused Instrumentality includes a bottle body having a base and an upwardly extending sidewall therein defining a fluid chamber and a first display coupled to the bottle body, as shown below.

<https://www.fitbit.com/global/us/products/apparel/hidrate-spark?sku=995HSSTSR>



Source: <https://www.fitbit.com/global/us/products/apparel/hidrate-spark?sku=995HSSTSR>

23. The system effectuated by the Accused Instrumentality includes a sensor determining one or more of the following an amount of fluid in the fluid chamber, an amount of fluid being dispensed from the fluid chamber, and a physical movement of the bottle body, as shown below.

<sup>1</sup> The Hidrate Spark smart water bottles that effectuate the Accused Instrumentality is just one of the products provided by Defendant, and Plaintiff’s investigation is on-going to additional products to be included as a Product that meets the Accused Instrumentality that may be added at a later date.



## Features

- The LED smart sensor puck on the bottom of the bottle glows to remind you to drink throughout the day and can be customized by pattern and color
- The LED smart sensor puck tracks water intake, syncs via Bluetooth® technology to the free HidrateSpark app, and is interchangeable between bottles
- The HidrateSpark app is available on iOS and Android
- To sync water intake data with the Fitbit app, open the HidrateSpark app, tap settings > goal, then click on the Fitbit icon
- Includes rechargeable battery and fast charging cable
- Stainless steel vacuum insulation keeps drinks cold for up to 24 hours, prevents sweating and allows for a pure water taste
- BPA free
- Protective spout cover locks keep out dirt & germs and prevent spills
- Clinically proven accuracy of sips taken within 3% of manual readings through Mayo Clinic trials
- Carry loop makes it easy to bring with you on the go
- Choose from two lid styles—a convenient straw or a wide-mouth chug lid—that are interchangeable between bottles

Source: <https://www.fitbit.com/global/us/products/apparel/hidrate-spark?sku=995HSSTSR>

## Care

- Lids are dishwasher safe and all bottle bodies are hand wash only
- LED sensor puck must be removed prior to cleaning your HidrateSpark Steel water bottle and wiped only with a damp cloth
- Do not submerge LED sensor puck in water or place in dishwasher
- Do not use this product with hot liquids, which can create internal pressure resulting in discharge of hot liquids that can cause injury

## Specs

### • Bottle Weight

HidrateSpark Steel 21oz Chug - 1.04lbs

HidrateSpark Steel 21oz Straw - 1.06lbs

### • App Requirements

The HidrateSpark App works with Apple iOS 11.3 or higher, Apple watchOS 4.3 or higher and Android 5.0 (Lollipop) or higher

For more information about supported devices, please visit: <https://hidratespark.com/pages/supported-devices>

- Warranty: 100 day warranty for HidrateSpark Steel water bottle

Source: <https://www.fitbit.com/global/us/products/apparel/hidrate-spark?sku=995HSSTSR>

24. The system effectuated by the Accused Instrumentality includes fluid information logic electronically coupled with the sensor creating digital data associated with fluid in the chamber, as shown below.

HidrateSpark

HOME SHOP EXPLORE CORPORATE GIFTS REWARDS

HidrateSpark STEEL - Insulated Stainless Steel Bluetooth Smart Water Bottle & Free Hydration Tracker App

★★★★★ 1,315 Reviews

\$64.99

HidrateSpark STEEL, the world's smartest water bottle ever created. Stainless steel vacuum insulated keeps drinks cold up to 24 hours. LED smart sensor "puck" glows to remind you when it's time to drink and tracks your water intake by syncing via bluetooth to the Hidrate app. Choose from 2 size and lid options and make it your own with custom glow colors in the app. Prices are in USD. **BACK IN STOCK! Orders will be processed in 1-3 business days & then shipped!**

Pay in full or in 4 interest-free installments of \$16.24 with shopify [Learn more](#)

Size  17oz  21oz

Lid  Chug  Straw

Colors  Black  Blue  Pink  Teal

Limited Edition  Red  Orange  Silver  Blue

1

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**WHY TO BUY**

Experience life fully hydrated thanks to our Hydration Equation that calculates your daily water goal using personal factors unique to you, like age, height, weight, sex, elevation, exercise and more. The FREE HidrateSpark App syncs with your smart water bottle to track how much you drink, send glowing reminders and text notifications keeping your hydration on track each day. Plus, the app keeps track of where your bottle was last synced, so you don't have to worry about it going missing. Join our Community of more than 550,000 HidrateSpark customers who experience optimal health thanks to proper hydration.

Source: <https://hidratespark.com/products/hidratespark-steel>

25. The system effectuated by the Accused Instrumentality includes data transmission and reception logic configured to send the digital data to a remote device and receive digital data from the remote device, wherein the data transmission and reception logic monitors wireless input sources for incoming wireless packets and analyzes any received packets in order to detect

a source of the packet transmission and decide whether to sync the digital data associated with fluid in the chamber with the source of the packet, as shown below.

**HidrateSpark** HOME SHOP EXPLORE CORPORATE GIFTS REWARDS

### Fitness Integrations (OPTIONAL)

Apple Health Fitbit Google Fit Garmin Connect Health Mate Under Armour Record

Free App

Apple Watch Devices

Garmin Devices

Fitbit Devices

HidrateSpark STEEL - Insulated Stainless Steel Bluetooth Smart Water Bottle & Free Hydration Tracker App

★★★★★ 1315 Reviews

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Size: 17oz 21oz

Lid: Chug Straw

Colors: Black

Limited Edition

1 ADD TO CART BUY IT NOW

Share on: f t p t

WHY TO BUY

THE DETAILS

COMPARE

**HOW DOES HIDRATESPARK COMPARE TO STANDARD WATER BOTTLES**

	HidrateSpark STEEL	HidrateSpark 3	HidrateSpark 2.0	STANDARD WATER BOTTLES
HYDRATION APP	✓	✓	✓	✗
DAILY HYDRATION EQUATION GOALS	✓	✓	✓	✗
BLUETOOTH SYNCING	✓	✓	✓	✗
CONNECTS TO OTHER FITNESS TRACKERS	✓	✓	✓	✗
GLOW REMINDERS	✓	✓ GREEN OR RED	✓ GREEN OR RED	✗
GLOW CUSTOMIZATION	✓	---	---	✗
SENSOR STORAGE	✓	---	✓	✗
WATCH FRIENDS	✓	✓	✓	✗
RECHARGEABLE BATTERY	✓	---	---	✗
BPA FREE	✓	✓	✓	---
INSULATED STAINLESS STEEL	✓	---	---	---
COLD WATER RETENTION	✓	---	---	---
SPOUT COVER	✓	✓	✓	---
BUTTON LOCK	✓	---	---	---
DISHWASHER SAFE	✓	---	---	---
BOTTLE LIDS	✓	✓ BOTTLE LID	✓ BOTTLE LID	---

Source: <https://hidratespark.com/products/hidratespark-steel>

26. The system effectuated by the Accused Instrumentality includes wherein the remote device is a wrist-worn health activity tracker including a second display that displays information associated with one or more of the following: the amount of fluid in the chamber, the amount of fluid dispensed from the chamber, an amount of time since fluid was last dispensed from the chamber, an amount of fluid dispensed over a given time period, a reminder notification if fluid has not been dispensed over a given time period, a reminder to consume an adjusted amount of fluid based, at least in part, on activity information obtained from the remote device, as shown below.

### Fitness Integrations

(OPTIONAL)



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Lid  Chug  Straw

Colors  Black  Grey  Blue  Pink  Teal

Limited Edition  Red  Orange  Silver  Blue

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Share on: [f](#) [t](#) [p](#) [e](#)

WHY TO BUY

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CONNECTS TO OTHER FITNESS TRACKERS	✓	✓	✓	✗
GLOW REMINDERS	✓	✓ GREEN OR RED	✓ GREEN OR RED	✗
GLOW CUSTOMIZATION	✓	✓	✓	✗
SENSOR STORAGE	✓	✓	✓	✗
WATCH FRIENDS	✓	✓	✓	✗
RECHARGEABLE BATTERY	✓	✓	✓	✗
BPA FREE	✓	✓	✓	✗
INSULATED STAINLESS STEEL	✓	✓	✓	✗
COLD WATER RETENTION	✓	✓	✓	✗
SPOUT COVER	✓	✓	✓	✗
BUTTON LOCK	✓	✓	✓	✗
DISHWASHER SAFE	✓ BOTTLE LIDS	✓ BOTTLE LID	✓ BOTTLE LID	✗

Source: <https://hidratespark.com/products/hidratespark-steel>

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Size: 17oz, 21oz

Lid: Chug, Straw

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1 ADD TO CART BUY IT NOW

Share on: f t p t

#### WHY TO BUY

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Source: <https://hidratespark.com/products/hidratespark-steel>

27. The system effectuated by the Accused Instrumentality includes fluid information logic electronically coupled with the sensor creating digital data associated with fluid in the chamber, as shown below.

28. The system effectuated by the Accused Instrumentality includes network connectivity electronically connecting the data transmission and reception logic and the remote device, wherein in the network connectivity is selected from a group comprising of: Bluetooth

connection, wireless internet connection, wired internet connection, internet, and 3G/4G connection, as shown below.

The screenshot displays the HidrateSpark website's product page for the HidrateSpark STEEL. At the top, the HidrateSpark logo is on the left, and navigation links for HOME, SHOP, EXPLORE, CORPORATE GIFTS, and REWARDS are on the right. The main content area features a 'Fitness Integrations' section with icons for Apple Health, Fitbit, Google Fit, Garmin Connect, Health Mate, and Under Armour Record. Below this is a 'Free App' section showing a smartphone and several smartwatches. The product title is 'HidrateSpark STEEL - Insulated Stainless Steel Bluetooth Smart Water Bottle & Free Hydration Tracker App', with a price of \$64.99 and 1315 reviews. The description highlights the bottle's 24-hour insulation and LED sensor. Below the description are options for size (17oz, 21oz), lid (Chug, Straw), and color (Black, Blue, Pink, Teal). A 'Limited Edition' section shows red, orange, and purple options. At the bottom of the product area are 'ADD TO CART' and 'BUY IT NOW' buttons, along with social sharing icons for Facebook, Twitter, Pinterest, and Tumblr.

WHY TO BUY

THE DETAILS

COMPARE

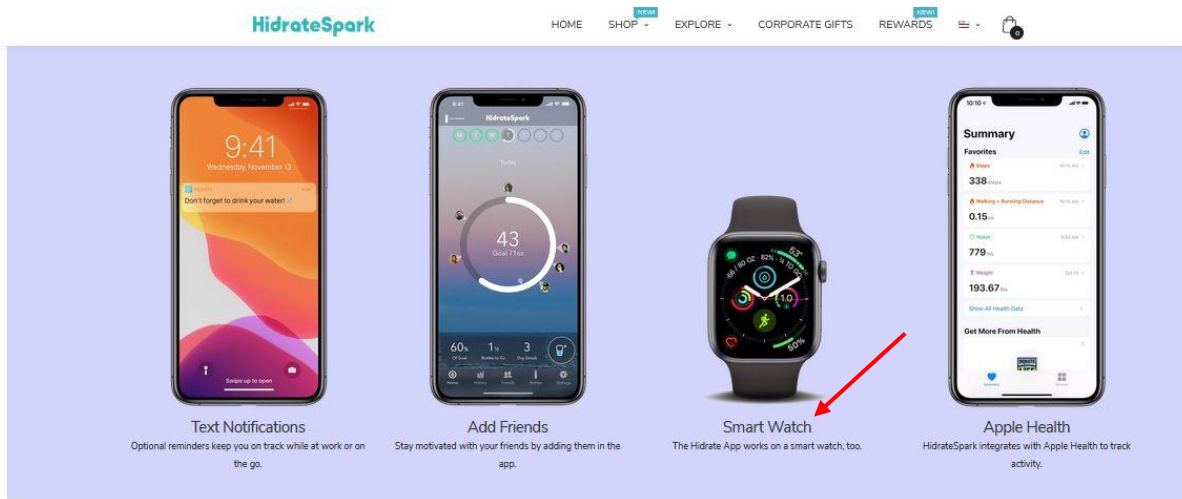
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GLOW REMINDERS	✓	GREEN OR RED	GREEN OR RED	✗
GLOW CUSTOMIZATION	✓	—	—	✗
SENSOR STORAGE	✓	✓	✓	✗
WATCH FRIENDS	✓	✓	✓	✗
RECHARGEABLE BATTERY	✓	—	—	✗
BPA FREE	✓	✓	✓	—
INSULATED STAINLESS STEEL	✓	—	—	—
COLD WATER RETENTION	✓	—	—	—
SPOUT COVER	✓	✓	✓	—
BUTTON LOCK	✓	—	—	—
DISHWASHER SAFE	✓	—	—	—
BOTTLE LIDS	✓	✓	✓	—

Source: <https://hidratespark.com/products/hidratespark-steel>

29. The system effectuated by the Accused Instrumentality includes a record of information for a previous period at a fixed time interval, and the record of information is displayed in one of the first display and the second display, as shown below.





### INTEGRATES WITH FITNESS TRACKERS

Fitbit, Apple Watch & More

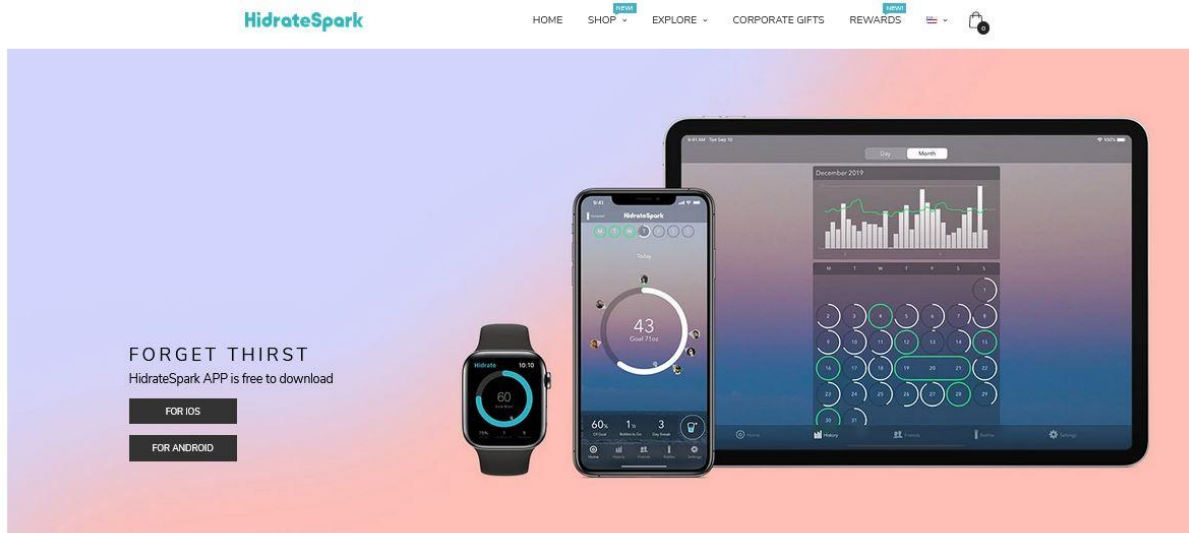
The Hidrate app works with a variety of popular fitness trackers and apps to keep you motivated and fully aware of your progress each day. It's the easiest and most convenient way to ensure your hydration matches your activity level.

DOWNLOAD FOR IOS

DOWNLOAD FOR ANDROID



Source: <https://hidratespark.com/pages/app>



Source: <https://hidratespark.com/pages/app>

30. The system effectuated by the Accused Instrumentality includes bottle body sensor placement-specific algorithms executed by the fluid information logic to determine the one or more of the following the amount of fluid in the fluid chamber, the amount of fluid dispensed from the fluid chamber, the physical movement of the bottle body, the amount of time since fluid was last dispensed from the chamber, the amount of fluid dispensed over a given time period, and the reminder notification if fluid has not been dispensed over a given time period, as shown below.

## Features

- The LED smart sensor puck on the bottom of the bottle glows to remind you to drink throughout the day and can be customized by pattern and color
- The LED smart sensor puck tracks water intake, syncs via Bluetooth® technology to the free HidrateSpark app, and is interchangeable between bottles
- The HidrateSpark app is available on iOS and Android
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- Choose from two lid styles—a convenient straw or a wide-mouth chug lid—that are interchangeable between bottles

Source: <https://www.fitbit.com/global/us/products/apparel/hidrate-spark?sku=995HSSTSR>

31. The system effectuated by the Accused Instrumentality includes adaptive filtering logic to cancel out excessive movements of the bottle, inasmuch as movements of the bottle are not recorded as “drinking events” or otherwise do not affect the amount of fluid sensed to have been consumed.

32. The system effectuated by the Accused Instrumentality includes artificial intelligence configured to learn the record of information to detect behavior signatures from the previous period, which is implemented to predict a likelihood of a subject has certain activity levels at a present time. For example, as shown below, the Accused Instrumentality uses the “Hydration Equation” to learn the record of information. One scenario pertains to activity levels to be learned, especially for pregnant women, as stated in the Patents-in-Suit.

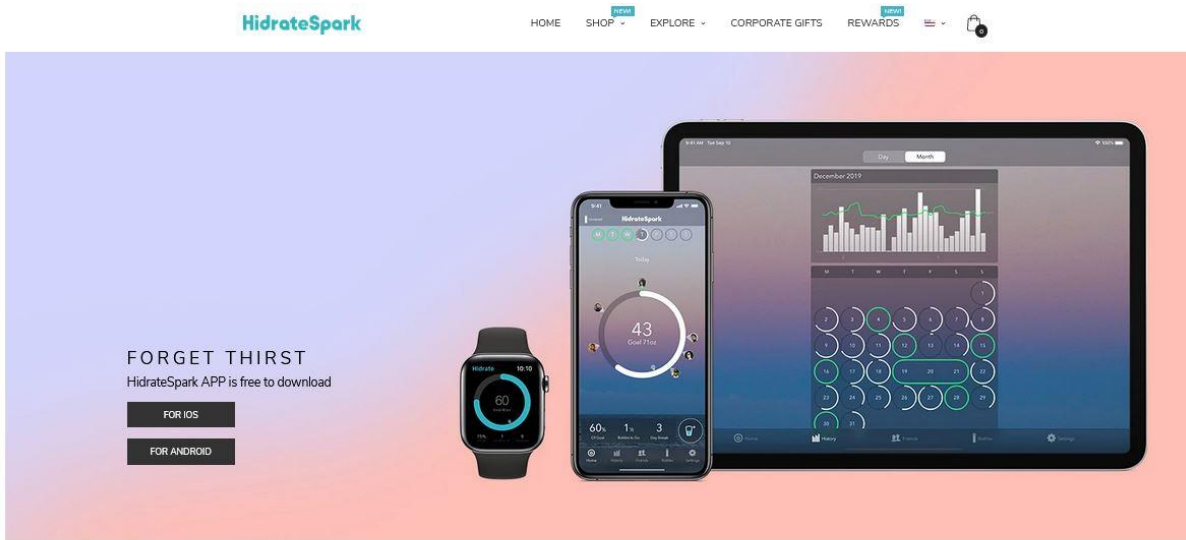
33. Hidrate’s Website indicates:

*“Your Daily Goal Calculated By The Hidrate App*

*Your unique information like height, weight, activity level and more, are all used in the calculation daily to create your daily water intake goal.*

*Women who are nursing or pregnant require more water during these times—our hydration equation takes these into account to give you an accurate goal each day.”*

Source: <https://hidratespark.com/pages/app>



Source: <https://hidratespark.com/pages/app>

**COUNT 1: INFRINGEMENT OF THE U.S. PATENT NO. 9,792,409**

34. Plaintiff realleges and incorporates by reference all of the allegations set forth in the preceding paragraphs

35. In violation of 35 U.S.C. § 271, Defendant is now, and has been directly infringing, either literally or under the doctrine of equivalents, the '409 Patent.

36. Defendant has had knowledge of infringement of the '409 Patent at least as of the service of the present Complaint. Upon information and belief, Plaintiff further alleges that Defendant had knowledge of infringement as early as July 14, 2015 through its relationship with its supplier of the accused products.

37. **Direct Infringement.** Defendant has directly infringed and continues to directly infringe at least one claim, particularly Claim 1, of the '409 Patent by making, using, at least through internal testing or otherwise, offering to sell, selling and/or importing, without limitation, the Accused Instrumentality without authority in the United States, and will continue to do so unless enjoined by this Court. As a direct and proximate result of Defendant's direct infringement of the '409 Patent, Plaintiff has been and continues to be damaged.

38. **Induced Infringement.** Defendant has induced others to infringe at least Claim 1 of the '409 Patent by encouraging infringement, knowing that the acts Defendant induced constituted patent infringement, and its encouraging acts actually resulted in direct patent infringement either literally or under the doctrine of equivalents.

39. **Contributory Infringement.** Defendant actively, knowingly, and intentionally has been and continues materially contribute to their own customers' infringement of the '409 Patent, literally or by the doctrine of equivalents, by selling the Accused Instrumentality to their customers for use in end-user products in a manner that infringes one or more claims, particularly Claim 1, of the '490 Patent. Moreover, the Accused Instrumentality is not a staple article of commerce suitable for substantial non-infringing use.

40. By engaging in the conduct described herein, Defendant has injured Plaintiff and is thus liable for infringement of the '409 Patent, pursuant to 35 U.S.C. § 271.

41. Defendant has committed these acts of infringement without license or authorization.

42. As a result of Defendant's infringement of the '409 Patent, Plaintiff has suffered monetary damages and is entitled to a monetary judgment in an amount adequate to compensate for Defendant's past infringement, together with interests and costs.

43. Plaintiff will continue to suffer damages in the future unless Defendant's infringing activities are enjoined by this Court. As such, Plaintiff is entitled to compensation for any continuing and/or future infringement up until the date that Defendant is finally and permanently enjoined from further infringement.

**COUNT 2: INFRINGEMENT OF U.S. PATENT NO. 10,664,571**

44. Plaintiff realleges and incorporates by reference all of the allegations set forth in the preceding paragraphs

45. In violation of 35 U.S.C. § 271, Defendant is now, and has been directly infringing, either literally or under the doctrine of equivalents, the '571 Patent.

46. Defendant has had knowledge of infringement of the '571 Patent at least as of the service of the present Complaint. Upon information and belief, Plaintiff further alleges that Defendant had knowledge of infringement as early as July 14, 2015 through its relationship with its supplier of the accused products.

47. **Direct Infringement.** Defendant has directly infringed and continues to directly infringe at least one claim, particularly Claims 10 and 12, of the '571 Patent by making, using, at least through internal testing or otherwise, offering to sell, selling and/or importing, without

limitation, the Accused Instrumentality without authority in the United States, and will continue to do so unless enjoined by this Court. As a direct and proximate result of Defendant's direct infringement of the '571 Patent, Plaintiff has been and continues to be damaged.

48. **Induced Infringement.** Defendant has induced others to infringe the '571 Patent by encouraging infringement, knowing that the acts Defendant induced constituted patent infringement of at least Claims 10 and 12, and its encouraging acts actually resulted in direct patent infringement either literally or under the doctrine of equivalents.

49. **Contributory Infringement.** Defendant actively, knowingly, and intentionally has been and continues materially contribute to their own customers' infringement of at least Claims 10 and 12 of the '571 Patent, literally or by the doctrine of equivalents, by selling the Accused Instrumentality to their customers for use in end-user products in a manner that infringes one or more claims of the '571 Patent. Moreover, the Accused Instrumentality is not a staple article of commerce suitable for substantial non-infringing use.

50. By engaging in the conduct described herein, Defendant has injured Plaintiff and is thus liable for infringement of the '571 Patent, pursuant to 35 U.S.C. § 271.

51. Defendant has committed these acts of infringement without license or authorization.

52. As a result of Defendant's infringement of the '571 Patent, Plaintiff has suffered monetary damages and is entitled to a monetary judgment in an amount adequate to compensate for Defendant's past infringement, together with interests and costs.

Plaintiff will continue to suffer damages in the future unless Defendant's infringing activities are enjoined by this Court. As such, Plaintiff is entitled to compensation for any

continuing and/or future infringement up until the date that Defendant is finally and permanently enjoined from further infringement.

53. Plaintiff reserves the right to modify its infringement theories as discovery progresses in this case; it shall not be estopped for infringement contention or claim construction purposes by the claim charts that it provides with this Complaint. The claim chart depicted in Exhibit B is intended to satisfy the notice requirements of Rule 8(a)(2) of the Federal Rule of Civil Procedure and does not represent Plaintiff's preliminary or final infringement contentions or preliminary or final claim construction positions.

**DEMAND FOR JURY TRIAL**

54. Plaintiff demands a trial by jury of any and all causes of action.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for the following relief:

a. That Defendant be adjudged to have directly infringed the '409 Patent and the '571 Patent either literally or under the doctrine of equivalents;

b. An accounting of all infringing sales and damages including, but not limited to, those sales and damages not presented at trial;

c. That Defendant, its officers, directors, agents, servants, employees, attorneys, affiliates, divisions, branches, parents, and those persons in active concert or participation with any of them, be permanently restrained and enjoined from directly infringing the '409 Patent and the '571 Patent;

d. An award of damages pursuant to 35 U.S.C. §284 sufficient to compensate Plaintiff for the Defendant's past infringement and any continuing or future infringement up until the date



that Defendant is finally and permanently enjoined from further infringement, including compensatory damages;

e. An assessment of pre-judgment and post-judgment interest and costs against Defendant, together with an award of such interest and costs, in accordance with 35 U.S.C. §284;

f. That Defendant be directed to pay enhanced damages, including Plaintiff's attorneys' fees incurred in connection with this lawsuit pursuant to 35 U.S.C. §285; and

g. That Plaintiff be granted such other and further relief as this Court may deem just and proper.

Dated: July 21, 2021

Respectfully submitted,

Together with:

CHONG LAW FIRM PA

SAND, SEBOLT & WERNOW CO., LPA

/s/ Jimmy Chong

Andrew S. Curfman  
(*pro hac vice forthcoming*)

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ATTORNEYS FOR PLAINTIFF