IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

BLACKBIRD TECH LLC d/b/a BLACKBIRD TECHNOLOGIES,	:	
Plaintiff,	:	
v.	:	C. A. No. 16-683-GMS CONSOLIDATED
FITBIT, INC.,	:	
Defendant.	:	

ORDER

At Wilmington this **4th** day of **April, 2017**

A teleconference regarding mediation was held on Tuesday, April 4, 2017 in these consolidated matters. As a result, IT IS ORDERED as follows:

1. On or before **Thursday, April 20, 2017,** each party or each party group shall email to Magistrate Judge Thynge, with a copy to her Judicial Administrator, Cathleen Kennedy, the following information:

a. Whether any discussions have occurred between plaintiff and a defendant/defendant group regarding settlement; roughly when those discussions occurred; who was included/involved in those discussions (e.g., principals or party representations, in house counsel, outside counsel, etc.); status of the settlement discussions; and, if applicable, the party's understanding why discussions ended, or why they have not occurred. Plaintiff will need to address this provision for each defendant or each defendant group.

b. Timing of when a party believes mediation would be most beneficial/productive (e.g., pre- or post-claims construction briefing after *Markman* but before any decisions, after a Markman decision is rendered, before expert reports, etc.) and a brief explanation why.[1] When referencing events in the scheduling order, include dates.

c. Whether there are additional matters/issues (e.g. indemnity from non-parties, related matters in this or other jurisdictions) of which the court should be aware affecting a party's position on mediation and the timing of mediation.[2]

d. For each defendant or defendant group who has received a settlement demand or engaged in settlement discussions where settlement numbers were raised, a summary of its impressions/comments/thoughts regarding plaintiff's proposal for settlement, or its counterproposal. Each defendant/defendant group shall advise if any follow up teleconferences are to occur whether they wish them to be confidential and the order not docketed.

e. If not included in the header of the email (e.g. the "To" or "CC" sections), counsel are to provide in their respective email responses, the email addresses of those who are to be included or copied on any subsequent responses by the court.

f. Whether a follow-up teleconference regarding mediation is desired, the timing of this teleconference and whether the teleconference should be

[1] Depending on the information in response to paragraph 1, plaintiff may need to address this provision for each defendant or each defendant group.

[2] Depending on the information in response to the previous paragraphs, plaintiff may need to address this provision for each defendant or each defendant group.

limited to plaintiff and counsel for the specific defendant.

2. No less than 24 hours before any further teleconferences are held regarding mediation, the participating parties shall advise counsel initiating the teleconference of the names of the participants. Counsel for the party initiating any such teleconference shall provide that list of participants to Judge Thynge no less than five (5) hours before the teleconference.

3. The emails are confidential and copying other parties in this litigation is not required.

4. In composing their email submissions, the parties should consider that the purpose for the information ordered is to enable the court to determine whether, when and with whom follow up discussions regarding mediation should occur.

Local counsel are reminded of their obligations to inform out-of-state counsel of this order. To avoid imposition of sanctions, counsel shall advise the Court immediately of any problems regarding compliance with this Order.

/s/ Mary Pat Thynge
Chief U.S. Magistrate Judge