

January 2nd, 2018

Federal Rule of Evidence 408 Settlement Communication

Motiv, Inc.
Mike Strasser
Chief Executive Officer
179 11th Street, 3rd Floor
San Francisco, CA 94103

Re: Motivational Health Messaging LLC
United States Patent Nos. **9,069,648** et al.

Dear Mr. Strasser:

Our law firm represents Motivational Health Messaging LLC (“Motivational Messaging”) a research, development and product deployment company located at 711 SW 24th, Boynton Beach, Florida 33435. We are contacting Motiv, Inc. (“Motiv” or “you”) regarding the licensing and enforcement of Motivational Messaging’s intellectual property including: U.S. Pat. No. 9,069,648 (“the ‘648 patent”) (the “Motivational Messaging Patent”).

The inventor of this Motivational Messaging patent innovated unique solutions to maximize the effectiveness of “health trackers” (i.e. wearables, apps in smartphones and other devices). The inventor determined a necessity to increase productive nature of health trackers through the use of advanced-communication we call “Suggestive Messaging” or “Motivational Messaging.” Sensor data from accelerometers, gyroscopes, magnetometers, photo plethysmography (PPG) and measurements for EKG/ECG, skin temperature and others may be advanced by enhanced algorithms and mathematical computations (formulas) to understand exactly what activity, technique and level of engagement the user is experiencing. Suggestive messages improve, encourage and increase the effectiveness of the Motiv Ring health monitor and its ability to assist people with increased health risks. See **Exhibit A** attached for more information regarding health trackers.

The inventor spent many years designing algorithms and mathematical equations and pioneering this area of technological advancements – his work started in early 2007, before the first iPhone was released.

The precise and, more importantly, motivational feedback provides Motiv Ring health monitor users with the biggest dividends on their investment (i.e. better health, lifestyle and energy). If the Motiv Ring health monitor were limited to just a heart-rate monitor without messaging important health information, sales for Motiv Ring health monitor would be very limited.

The suggestive messaging features of Motiv Ring health monitor infringe claims of the Motivational Messaging Patent. For more information regarding patent infringement *See **Exhibit B***. Companies like Motiv have increased sales and increased “brand-value” through the use of the ‘648 patent. When it comes to Motiv Ring health monitor with the connected Smartphone App, suggestive messaging has been engaged to increase the usefulness and not just display historical health metrics as many other competitors did and still do. Attached to this letter is a detailed claim infringement chart demonstrating how the Motiv Ring health monitor with connected Smartphone App infringe a representative claim of the ‘648 patent. *See **Exhibit C***.

Motivational Messaging’s License Proposal

The inventor spent years designing the technologies for determining human activities and to be able to provide suggestive messaging to make products like Motiv’s Ring health monitor better. We seek cooperative business discussions and to answer any questions that you may have. We encourage the continued use of Motivational Messaging’s patented technology; Motivational Messaging is offering a lump sum fee of \$35,000 in exchange for a paid-up one-time license. Please contact us for further discussions.

This proposed license fee, of course, is subject to early discussions and good faith communications toward a patent license. If litigation is required to enforce Motivational Messaging’s rights, the upfront discounted license offer is obviously removed.

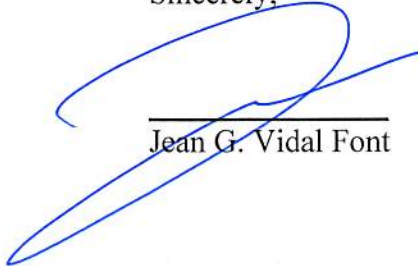
Conclusion

We have provided Motiv Ring health monitor with all of the materials necessary to undertake a thorough review of this matter. Our efforts to clarify patentable subject matter were also disclosed to you. We expect that, upon review, you will acknowledge that Motiv’s Ring health monitor practices the invention disclosed in the ‘648 patent and will enter into licensing discussions. In the event Motiv concludes that it does not desire a license to the ‘648 patent, we expect to receive from you within fourteen (14) days responsive claim charts showing why Motiv’s Ring health monitor does not infringe the patent, along with copies of the system documentation, manuals and any other materials that describe the components and functionality of the Motiv Ring health monitor system, including those materials you reviewed in the course of your investigation.

Motivational Messaging’s proposed license fee, of course, is subject to early discussions and good faith communications toward a patent license. If litigation is required to enforce Motivational Messaging’s rights, the upfront discounted license offer is obviously removed.

Thank you in advance for considering Motivational Messaging’s licensing proposal. I look forward to hearing from you. You may also contact Motivational Messaging directly by calling Mr. Edward Turnbull at (778) 991-6208.

Sincerely,



Jean G. Vidal Font

Enclosures:

- Exhibit A – Health Trackers Information
- Exhibit B – Patent Information
- Exhibit C – Claim Chart
- Exhibit D – The '648 Patent

cc:

Edward Turnbull, Motivational Messaging licensing and enterprise sales

Exhibit A – Health Trackers Information

THE BACKGROUND AND EVOLUTION

Wearable health trackers and smartphone apps have recently gained a new level of popularity due to their ambient data gathering and analysis. The increased messaging and live feedback from the gathered data and analysis has started a trend toward self-efficacy and increased motivation among users of these devices. For consumers looking to improve their health, today's health trackers offer a way to readily gain motivation via the personal data-based insights from motivational messages.

Most importantly, the user experience (UX) that accompanies wearables is critical to helping users interpret, understand, gain motivation and act on their data. Health tracking and wearable applications collect a broad range of data such as type of human activity, posture, quality of movement, sleep, steps taken, heartbeat, breath quality, water consumption, and even meditation and mood monitoring.

In general, people use health trackers to get feedback.

At the same time, some reports point out that approximately one third of devices are not used after a period within 6–12 months. In one of the few studies investigating the reasons for abandonment, outlined barriers to engagement but the most important factor concluded inaccurate and little or no informative messaging during the activity. On the other hand, motivation is one of the highest factors for using health trackers and more enhanced health trackers that provide more motivational messages seem to keep users longer.

A healthTracker Can Be Good Motivation

<https://www.consumerreports.org/fitness-trackers/fitness-tracker-can-be-good-exercise-motivation/>

Taking activity tracking to the next level, real time health coaching

<http://gadgetsandwearables.com/2017/03/24/coaching-fitness-tracker/>

9 Surprising Things Your healthTracker Knows About You

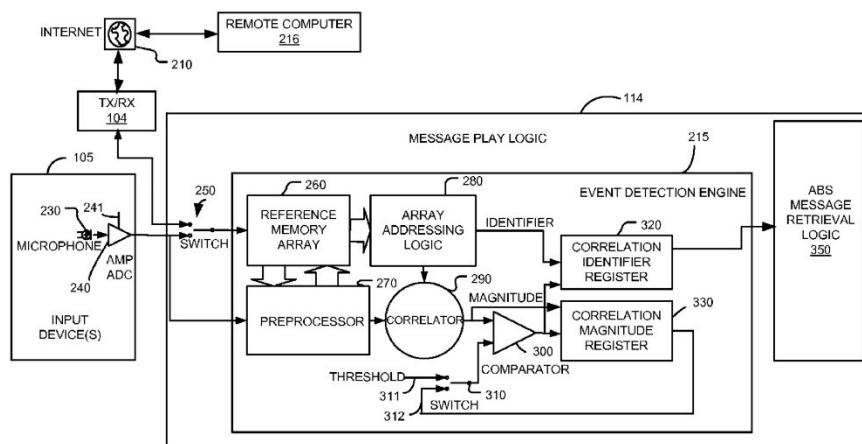
<http://www.rd.com/health/fitness/fitness-tracker-knows/>

Exhibit B – Patent Information

The ‘648 patent has a priority date of 2012 and addresses systems and methods for delivering activity based suggestive (ABS) messages. The innovations allow sensor data from accelerometers, gyroscopes, magnetometers, photo plethysmography (PPG) to be advanced by enhanced algorithms and mathematical computations (formulas) to understand exactly what activity, technique and level of engagement the user is experiencing. The ‘648 patented technology improves, encourages and increases the effectiveness of health trackers and how they the benefit consumers.

Patent infringement is the making, using or selling of a patented invention.

The Abstract description of this patent / innovation (taken word-by-word from this U.S. patent ‘648) includes; *“A personal electronic device (PED) is provided with a system for delivering activity based suggestive (ABS) messages (e.g., a motivational message, etc.) to a user based upon the current or anticipated activity of the user. In some embodiments, the user can define user preferences, which determine when and how ABS messages are initiated. In some embodiments, the message selection is based upon a detected activity, location, or speed of the user. In some embodiments, the message selection is based upon a detection of a local environmental event.”*



MOTIV

“Every day is different, so your goals should be flexible. Motiv adjusts daily targets based on your week so far – keeping you motivated to achieve your weekly goals. Miss a day? No problem. The remaining days in your week automatically adjust to meet your weekly goal. Alternatively if you beat your goal, any extra active minutes are subtracted from your weekly goal, and your remaining daily goals will be reduced by the same amount. View your week at a glance to see your progress throughout the week. You can always raise or lower your weekly active minute goals to fit your lifestyle. If you wish to adjust your weekly Active Minute goal tap on the Motiv Ring icon in the upper left corner and select your profile. Then tap Weekly Goal to set a new weekly Active Minute goal.”

Avoid gripping treadmill handlebars or side rails while walking or running as it can impact our ability to track steps (as your hands aren't moving). Gripping strollers, pushcarts, etc. can also limit signal.



Choose Your Color:

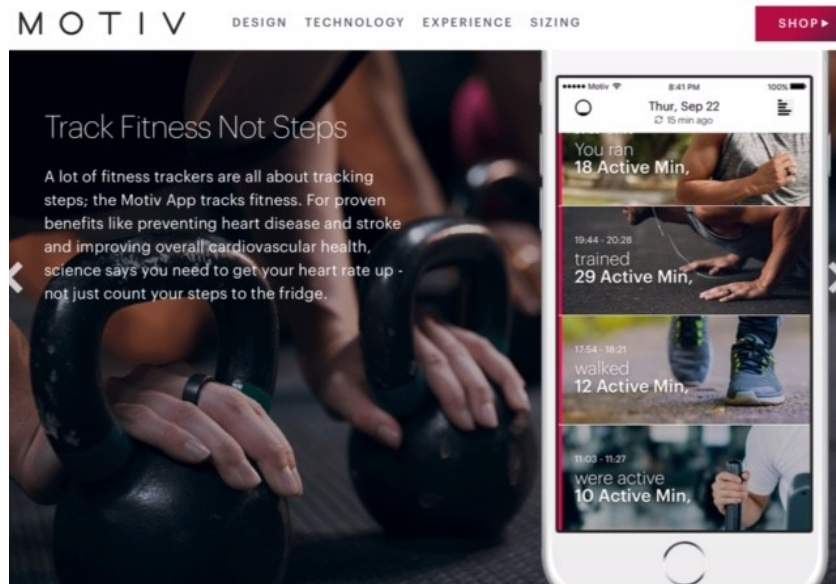
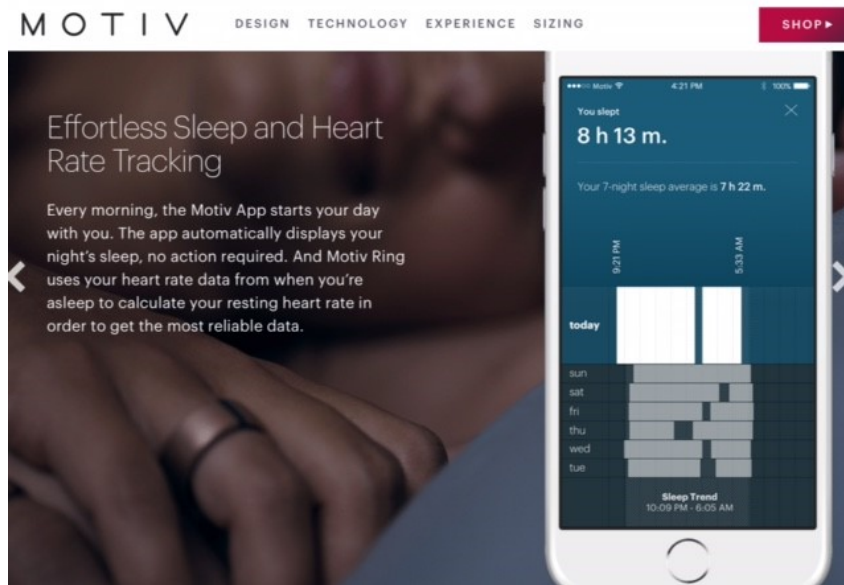
- SLATE GRAY
- ROSE GOLD

An Activity Tracker That's Always On

Your Motiv Ring is specially sized for your finger. Buy now and we'll first send you a sizing kit to make sure your ring is so comfortable you'll never want to take it off. We also back every ring with a 45-day money-back guarantee, one-year limited warranty and free shipping.

- Durable and waterproof
- Battery life typical use 3 days
- Activity tracking, adding and editing





Source: <http://support.mymotiv.com/about-motiv-ring/weekly-goals>

Included in Exhibit C is a detailed claim infringement chart demonstrating how the Motiv Ring health monitor with connected Smartphone App infringes a representative claim of the '648 patent.

Exhibit C – Claim Chart

The Systems and Methods at Issue

Systems And Methods For Delivering Activity Based Suggestive (ABS) Messages

<p><i>U.S. Patent 9,069,648</i></p> <p><i>Claim 22.</i> A method for delivering messages in a personal electronic device (PED), comprising:</p>	<p>Motiv Ring uses an accelerometer sensor for determining activity's and optical heart rate sensor for determining heart rate to provide messages to the user via the Connected Smartphone App, comprising:</p> <p>“The small but mighty Heart Rate sensor. Motiv is the first company to fit an optical heart rate sensor in a ring this size.”</p> <p>“Sensors: 3-axis accelerometer Smart LED Optical Heart Rate Sensor”</p> <p>“Measures: Active Minutes Activity Types Sleep Duration Steps Distance”</p>
<p>performing, with the PED, a first electronic based intelligence function;</p>	<p>Motiv Ring uses computer programming code to allow the user to select health preferences so the Motiv Ring app may identify “goals within the user’s activity level, heart rate ranges within an activity, and others” in the first electronic based function;</p>
<p>And performing, with the PED, a second electronic based intelligence function, comprising:</p>	<p>Motiv Ring uses computer programming code to monitor “the wearable” device sensors (accelerometer and heart rate);</p>
<p>receiving conditions associated with one or more messages, the conditions including a selection condition and an output condition;</p>	<p>Motiv Ring App are programmed with conditions for activity's and heart rate minimums/range/high (heart rate, steps, activity, activity level, etc..) by the user and these conditions, when met will select an output (messages for the user);</p>

<p>sensing a signal in a local environment associated with the PED; converting the signal to sensed data; detecting an event, at least in part, by comparing the sensed data with reference data that corresponds to the event;</p>	<p>Motiv Ring wearable provides accelerometer data and light sensor data that's converted to sensed data that detects an event (movement, activity, heart rate conditions, etc..) that is compared to reference data;</p>
<p>selecting a message from among the one or more messages based on the at least one selection condition and the event; and initiating output of the message from the PED in response to the event meeting the output condition.</p>	<p>The Motiv Ring App selects a message from one or more existing messages based on the selection condition and the event (goals reached, heart health, etc.); and initiates a message from the personal communication device (smartphone app) in response to the event meeting the output condition.</p>

Exhibit D – The ‘648 Patent