

# Exhibit F

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

PHILIPS NORTH AMERICA LLC	)	
	)	
Plaintiff,	)	
	)	C.A. No. 1:19-cv-11586-IT
v.	)	
	)	
FITBIT, INC.,	)	<b>JURY TRIAL DEMANDED</b>
	)	
Defendant.	)	
	)	
	)	
	)	

**PLAINTIFF'S RESPONSIVE CLAIM CONSTRUCTION BRIEF**

c) **To the extent an algorithm is required, a person of ordinary skill would understand the specification as disclosing one.**

In an effort analogize this dispute to cases that Fitbit would like to rely on, Fitbit alleges that during the meet and confer “Philips stated that one skilled in the art would know how to use the processor to perform the claimed function.” (Dkt. 72 at 5.) That has never been Philips’s contention and Fitbit’s use of a full page in its brief to describe cases where such an argument failed is a red herring. (*See* Dkt. 72 at 5.)

Rather, as explained in Philips’s opening brief, a person of ordinary skill in the art would understand that an **algorithm is disclosed** in the specification—namely, calculating athletic performance feedback data (elapsed distance, average or current speed, or current or average pace) from a series of GPS waypoints obtained from a GPS receiver. (*See* Dkt. 73 at 7-10 (explaining the applicable legal standards, and how well-known and basic formulas—even when forming part of algorithm—need not be expressly disclosed if a person of ordinary skill in the art would understand them from the disclosure).) This is consistent with the Federal Circuit’s instruction that a specification need only “disclose, at least to the satisfaction of one of ordinary skill in the art, enough of an algorithm to provide the necessary structure under § 112 ¶ 6,” and that the algorithm can be expressed “in any understandable terms including as a mathematical formula, in prose, or as a flow chart, or in any other manner that provides sufficient structure.” *Finisair Corp. v. DirecTV Grp., Inc.*, 523 F.3d 1323, 1340 (Fed. Cir. 2008) (internal citation omitted).

Here, the formulas for calculating distance, speed, and pace from a series of points—all of which involves high school level math—are not expressly disclosed in the specification, but are aspects of the algorithm that a POSITA would nevertheless be well aware of. *See Alfred E. Mann Found. for Sci. Research v. Cochlear Corp.*, 841 F.3d 1334, 1345 (Fed. Cir. 2016) (finding