

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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PHILIPS NORTH AMERICA LLC,

Plaintiff,

v.

FITBIT, INC.,

Defendant.

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Civil Action No. 1:19-cv-11586-IT

**OPPOSITION TO MOTION FOR LEAVE TO FILE SUPPLEMENTAL AUTHORITY  
ON FITBIT'S RULE 12(b)(6) MOTION TO DISMISS UNDER 35 U.S.C. § 101**

Plaintiff Philips North America LLC (“Philips”) respectfully submit this Opposition to Fitbit’s Motion for Leave to File Supplemental Authority, (Dkt. 130), regarding the Federal Circuit decision in *Simio LLC v. Flexsim Software Prods. Inc.*, No. 2020-1171, -- F.3d --, 2020 WL 7703014 (Fed. Cir. 2020).

Contrary to Fitbit’s assertion that *Simio* is relevant to the issues in the present case, the Federal Circuit’s decision in *Simio* merely applies the uncontroversial proposition that when the parties agree that the claims are directed to the mere application of a preexisting “object-oriented” programming language without improvement, the step 1 analysis may be done as a matter of law, and that “conclusory allegations” that “just repackage assertions of non-abstractness” are insufficient. The claims at issue in *Simio* have no resemblance to the claims at issue in this case, and parties in this case hotly contest whether the claims are directed to the application of a preexisting operation. *See CardioNet, LLC v. InfoBionic Inc.*, 955 F.3d 1358 (Fed. Cir. 2020)(reversing because prior practice was in dispute).

As the Court noted in *Simio*, the claims were admittedly directed merely to “the decades-old computer programming practice of substituting text[-]based coding with graphical

processing.” *Id.* at \*2. Additionally, in *Simio*, there was no dispute that the “practice of using graphics instead of programming to the environment of object-oriented simulations” was “widespread,” while *Simio* failed to “show how claim 1 is directed to improving a computer’s functionality.” *Id.* at \*4-5. As explained in Philips’s Opposition and Sur-Reply, the claims at issue here are not comparable in any way to those at issue in *Simio*, and Philips’s complaint recites significant relevant facts—not conclusory allegations—that at least put into dispute the background level of technology, Fitbit’s characterization thereof, and further demonstrates myriad improvements to the art. (See Dkts. 36 and 51.) Indeed, at the end of the day, *Simio* reinforces the fact that a well-plead complaint that puts facts into dispute—much like Philips’s complaint and the facts to be established at trial, should prevent the grant of any motion to dismiss. See *id.* at \*9 (“This is therefore not a case in which a complaint’s allegations ‘prevent resolving the eligibility question as a matter of law’”) (quoting *Aatrix Software, Inc. v. Green Shades Software, Inc.*, 882 F.3d 1121, 1125 (Fed. Cir. 2018)).

The Court should deny Fitbit’s Motion for Leave to File Supplemental Authority as *Simio* provides no additional relevant authority for the issues in front of this Court.

Dated: January 19, 2021

PHILIPS NORTH AMERICA LLC,

By Its Attorneys,

/s/ Eley O. Thompson

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**CERTIFICATE OF SERVICE**

I certify that a true copy of the above document was served on the attorney of record for each party via the Court's CM/ECF system, which will send notification of this filing (NEF) to all registered participants, and paper copies will be sent to those indicated as nonregistered participants.

Dated: January 19, 2021

By: /s/ Eley O. Thompson  
Eley O. Thompson