

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PHILIPS NORTH AMERICA LLC,

Plaintiff,

v.

FITBIT, INC.,

Defendant.

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

JURY TRIAL DEMANDED

**PHILIPS’S RESPONSE TO FITBIT’S MOTION FOR LEAVE TO SUBMIT
SUPPLEMENTAL AUTHORITY ON CLAIM CONSTRUCTION**

Philips North America LLC (“Philips”) submits this Response to Fitbit Inc.’s (“Fitbit”) Motion for Leave to Submit Supplemental Authority on Claim Construction filed on March 4, 2021. Doc. No. 160. As discussed briefly below, while Philips does not oppose making the Court aware of the Federal Circuit’s decision in *Rain Computing*, Philips also does not believe the decision is germane to the dispute pending before the Court with respect to the ’007 Patent.

The patent owner in *Rain Computing* appears to have conceded that no supporting algorithm was disclosed in the specification, and this appears to have been dispositive of the issue as described by the Federal Circuit’s brief 5-page opinion. *Rain Computing, Inc. v. Samsung Elecs. Am., Inc.*, No. 2020-1646, -- F.3d --, 2021 WL 786361, at *4 (Fed. Cir. Mar. 2, 2021). As explained in the extensive briefing on the subject in this case (*See* Dkt. 73 at 5-11 and Dkt. 77 at 1-8), the supporting declaration of Dr. Tom Martin (*See* Dkt. 73-5 at 7-12), and as discussed during the claim construction hearing (*See* Aug. 5, 2020 Hearing Tr. at 23-47), a person of ordinary skill in the art reviewing the disclosure of the ’007 Patent would understand that an algorithm for

computing athletic performance feedback data of distance, speed, and pace was disclosed, and that the function of the claim must be interpreted commensurate with the scope of the supported structure disclosed in the specification.

Dated: March 8, 2021

Respectfully Submitted,

/s/ Ruben J. Rodrigues

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above document was served on March 8, 2021 on counsel for Defendant via the Court's ECF system.

By: /s/ John W. Custer
John W. Custer