

**IN THE 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

**DEFENDANT'S OPPOSITION TO PLAINTIFF'S  
MOTION FOR LEAVE TO AMEND L.R. 16.6(d)(1) INFRINGEMENT CONTENTIONS**

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## INTRODUCTION

Plaintiff Philips North America LLC (“Philips”) asks the Court to ignore its lack of diligence and expand the case to include additional accused products after the close of fact discovery. Specifically, Philips seeks to amend its infringement contentions after the close of fact discovery to accuse four additional products released by Defendant Fitbit, Inc. (“Fitbit”) in *April and September 2020* of infringing U.S. Patent No. 8,277,377 (the “377 Patent”). See D.I. 168 (“Motion”) at 1. Philips does not provide any credible justification for its significant delay and does not establish good cause for expanding the scope of the accused Fitbit products at this late stage. Philips’s Motion should be denied for three reasons.

*First*, Philips’s failure to diligently pursue its infringement claims alone warrants denial of its Motion. Philips waited to request leave to add its infringement contentions for the Charge 4 product until almost *one year* after its release and waited to request leave to add its infringement contentions for the Versa 3, Inspire 2, and Sense products until approximately *six months* after their release. Philips cannot justify that extended delay and fails to carry its burden to show that it acted diligently. The Court should deny the Motion on that basis alone.

*Second*, Philips fails to apprise the Court and Fitbit of its proposed amendments to its contentions and thus cannot demonstrate that the amendments will not prejudice Fitbit. In particular, Philips’s Motion does not attach any claim charts for the Versa 3, Inspire 2, and Sense products that Philips now seeks to accuse of infringement. And the sole claim chart that Philips did submit with its Motion for the Charge 4 product differs in material respects from the chart Philips previously provided to Fitbit. Adding four new products and infringement claims that were not explored during discovery, and have still not been fully disclosed, would significantly prejudice Fitbit. Philips’s incomplete and unspecified amendments should not be allowed.

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