

# EXHIBIT 6

**From:** [Peterman, Chad](#)  
**To:** [RRodrigues@foley.com](mailto:RRodrigues@foley.com)  
**Cc:** [BOSTFPhilipsFitbit@foley.com](mailto:BOSTFPhilipsFitbit@foley.com); [Philips - Fitbit](#)  
**Subject:** RE: Philips v. Fitbit - Meet and Confer  
**Date:** Monday, December 28, 2020 8:51:05 AM

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Ruben,

Regardless of what the file history shows, it cannot be disputed that the patent itself states that U.S. Patent No. 6,602,191, an application to which the '377 patent claims priority, "is a conversion of Provisional Application Ser. No. 60/172,486, filed Dec. 17, 1999." '377 patent, 1:19–22.

The Federal Circuit has made clear that "[t]he patentee is the person best suited to understand the genealogy and relationship of her applications; a requirement for her to clearly disclose this information should present no hardship." *Medtronic CoreValve v. Edwards Lifesciences Corp.*, 741 F.3d 1359, 1366 (Fed. Cir. 2014). Forcing the public to delve into the prosecution history "improperly places the burden of deciphering a priority claim upon the reader or the public." *Id.*

In view of the controlling case law, Fitbit reiterates its position that the '377 patent's term expired in January 2020 due to the patent's specific reference to a conversion application in its priority chain in the "cross-references to related applications" section of the specification. Thus, as we explained during the meet and confer on Tuesday, we will oppose Philips' motion to supplement its Local Rule disclosures on the basis that the '377 patent expired before the launch of the new Fitbit products that Philips seeks to accuse of infringement.

We also await your position on whether Philips will oppose Fitbit's supplement to its invalidity contentions.

Regards,  
Chad

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**From:** [RRodrigues@foley.com](mailto:RRodrigues@foley.com) <[RRodrigues@foley.com](mailto:RRodrigues@foley.com)>  
**Sent:** Thursday, December 24, 2020 9:26 AM  
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**Cc:** [BOSTFPhilipsFitbit@foley.com](mailto:BOSTFPhilipsFitbit@foley.com); [Philips - Fitbit](#) <[Philips-Fitbit@paulhastings.com](mailto:Philips-Fitbit@paulhastings.com)>  
**Subject:** [EXT] RE: Philips v. Fitbit - Meet and Confer

Hi Chad,

With respect to the expiration date of the '377 Patent and whether U.S. Pat. App. No. 09/738,270 was a "conversion" of U.S. Provisional Application No. 60/172,486, I'd refer you to Philips's supplemental response to Interrogatory No. 13 served on November 13, 2020 wherein we explain that this non-provisional application was not actually a conversion but rather an independent non-provisional filing claiming the benefit of provisional applications 60/172,486, as demonstrated in the file history produced at PNA-FB0006868-7173. Also, there was no request for conversion filed in the provisional application, as would have been required to effectuate a conversion.

Let me know if you have any further questions and whether Fitbit will continue to maintain that the '377 Patent is expired based on the incorrect understanding that the above-referenced non-provisional application was a conversion of the above-referenced provisional application.

Regards,

-Ruben

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**From:** Peterman, Chad <[chadpeterman@paulhastings.com](mailto:chadpeterman@paulhastings.com)>  
**Sent:** Wednesday, December 23, 2020 8:22 PM  
**To:** Rodrigues, Ruben J. <[RRodrigues@foley.com](mailto:RRodrigues@foley.com)>  
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**Subject:** Philips v. Fitbit - Meet and Confer

**\*\* EXTERNAL EMAIL MESSAGE \*\***

Ruben –

I write to memorialize the action items and agreements from our meet and confer on 12/22.

- 1) Infringement Contentions: Philips and Fitbit discussed Philips's proposed motion for leave to amend its infringement contentions to add additional products launched beginning in April 2020 of this year. Fitbit requested Philips's position on the expiration date of the '377 patent due to the conversion identified in the priority chain of the specification. Philips stated that it would review the conversion issue and provide a written response on its position. Fitbit will provide a further response after receiving Philips' position.
- 2) Invalidity Contentions: Philips and Fitbit discussed Fitbit's proposed motion for leave to amend its invalidity contentions. Philips provided a preliminary positions that it was not opposed to the additions of the material related to ICON Health production and deposition. The parties discussed the additional prior art in the proposed supplement that was discovered as part of Philips' September 10, 2020 production. Fitbit indicated it was open to revisiting the addition of the Gaukel reference.
- 3) Document Production:
  - a. In connection with Philips's request for production of the additional license identified during Mr. Hudson's deposition, Fitbit agreed to provide additional assurances in support of its position that the agreement is not responsive to Philips's RFPs or relevant to Philips claims in this case. To this end, we have reviewed all of Philips's discovery responses where it identified

accused products and have confirmed that the license agreement does not cover any of the products or technologies accused by Philips. Moreover, Fitbit has not paid and is not obligated to pay any royalties under this license agreement for the accused products (including on the currently accused products, the products that Philips is seeking to add to the case, or in connection with the Fitbit app).

b. In connection with documents requested by Fitbit:

- i. Philips agreed to produce the agreements we requested (Apple, MIO, and Garmin)
- ii. Per your email of 12/22, we will await production of the Philips Health Watch, Health Suite, and Health Band documents that were produced in the Garmin litigation. However, it is our position that merely producing documents sufficient to show the operational details of the Philips Health Watch, Health Suite, and Health Band is not sufficient. Philips must also produce documents relevant to Fitbit's Request for Production Nos. 13 (finance/marketing), 27 (objective indicia), 31 (R&D), 37 (source code), and 52-53 (finance/marketing/technical) as it relates to these products. As you note, Philips admits that these products practice one or more asserted patents. Thus, the information requested is, at least, relevant to damages (including consideration of the *Georgia-Pacific* factors) and objective indicia of nonobviousness. Please confirm that you will produce the requested information.

- 4) ESI Custodian Info: Fitbit will determine whether the ESI production included custodian information. If the information was not included, Fitbit will endeavor to provide the information or a chart that identifies custodians by Bates range.

We appreciate your prompt attention to these open matters.

Regards,  
Chad

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