

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-IT

**DEFENDANT FITBIT, INC.'S MOTION TO DISMISS PLAINTIFF PHILIPS NORTH
AMERICA LLC'S COMPLAINT UNDER RULE 12(b)(6)**

Defendant Fitbit, Inc. ("Fitbit") files this motion to dismiss Plaintiff Philips North America, LLC's ("Philips") complaint with prejudice. Philips opposes this motion.

The claims of U.S. Patent Nos. 6,013,007, 6,976,958, 7,088,233, and 8,277,377 (collectively, "the Asserted Patents") are invalid as directed to patent-ineligible subject matter under 35 U.S.C. § 101. Thus, for at least this reason, Philips' complaint fails to allege a claim of infringement of the Asserted Patents on which relief can be granted. In support, Fitbit relies on the memorandum submitted with this motion, the accompanying declaration and exhibits, and any further briefing and argument permitted by the Court.

Fitbit respectfully requests the Court to GRANT this motion and DISMISS Philips' complaint with prejudice.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(d), Fitbit requests the Court entertain oral argument on this motion, as Fitbit believes oral argument will assist the Court.

Dated: November 13, 2019

Respectfully submitted,

FITBIT, INC.

By Its Attorneys,

/s/ Yar R. Chaikovsky

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LOCAL RULE 7.1 CERTIFICATION

I, Yar R. Chaikovsky, counsel for Defendant Fitbit, Inc., hereby certify that we have conferred with counsel for Philips North America, LLC to resolve the issues presented in this motion, but after a good faith attempt to reach agreement, the parties did not do so.

Dated: November 13, 2019

By: /s/ Yar R. Chaikovsky
Yar R. Chaikovsky (*Pro Hac Vice*)

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: November 13, 2019

By: /s/ Yar R. Chaikovsky
Yar R. Chaikovsky (*Pro Hac Vice*)