

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

PHILIPS NORTH AMERICA LLC,)	
)	
Plaintiff,)	
)	C.A. No. 1:19-cv-11586-FDS
v.)	
)	
FITBIT, LLC.)	
)	
Defendant.)	
)	

**JOINT STATUS REPORT IN RESPONSE TO DKT. 61 AND DISPUTED PROPOSAL
FOR CASE SCHEDULE THROUGH PRETRIAL CONFERENCE**

Plaintiff Philips North America LLC (“Philips”) and Defendant Fitbit LLC¹ (“Fitbit”) jointly file this status report in response to the Court’s order on April 8, 2020 as reflected in Dkt. 61, which requested that the parties submit a briefing schedule on Fitbit’s Motion for Partial Summary Judgment (Dkt. 43) with regards to the validity of U.S. Patent No. 6,013,007 (“the ’007 Patent”) upon a ruling on Fitbit’s Motion to Dismiss (Dkt. 33). This Court’s Claim Construction Order (Dkt. 212) construed the language “means for computing athletic performance feedback data from the series of time-stamped waypoints obtained by said GPS receiver” and determined that the ’007 patent does not include any structure thereby rendering the following claims indefinite: claims 7, 21, 23, 24, 25, 26, 28, and 29. As explained in more detail below, the parties believe that the Court’s indefiniteness finding renders Fitbit’s Motion for Partial Summary Judgment (Dkt. 43) moot and that all asserted claims of the ’007 Patent have been presently held invalid in this proceeding, and are therefore presently no longer at issue in this proceeding.

The parties have met and conferred with respect to the case schedule going forward and submit the following disputed proposal with regards to the case schedule, the bases for which are explained in the parties’ respective positions below:

Event	Current Deadlines	Philips’s Proposed Dates	Fitbit’s Proposed Dates
Joint Status Report regarding ’233 Patent IPR outcome	/	Not necessary.	November 1, 2021

¹ Effective July 21, 2021, Fitbit converted from Fitbit, Inc. to Fitbit LLC. See (D.I. 226-227).

Opening expert reports regarding issues as to which a party bears the burden	September 27, 2021 (Dkt. 209)	September 27, 2021	November 29, 2021 ^{2,3}
Last day for PTAB to issue a Final Written Decision in '233 Patent IPR	October 27, 2021		
Rebuttal expert reports	November 8, 2021 (Dkt. 209)	November 8, 2021	January 10, 2022
Close of expert discovery, including expert depositions	December 6, 2021 (Dkt. 209)	December 6, 2021	February 7, 2022
Deadline for expert discovery motions, including Daubert motions	December 13, 2021 (Dkt. 209)	December 13, 2021	February 14, 2022
Dispositive motions, such as motions for summary judgment or partial summary judgment and motions for judgment on the pleadings	June 24, 2021 (Dkt. 126/127)	January 12, 2022	March 16, 2022

² Consistent with its request below, Fitbit's suggested deadlines reflect a proposed schedule for Section 101-specific expert discovery, expert motion practice, and dispositive motion practice, with general expert discovery and dispositive motions to follow immediately thereafter if any valid, enforceable claims remain. To the extent the Court determines that Section 101-specific discovery is unnecessary, the suggested deadlines set forth in Fitbit's proposed schedule should instead be the deadlines for all expert discovery and dispositive motions in order to account for the '233 Patent IPR and pending discovery motions discussed in Fitbit's explanation of its position below.

³ Philips views on scheduling and its response to Fitbit's footnote are set forth below in the scheduling explanations. Philips believes that the basis for the scheduling proposals is not well suited to arguments in footnotes.

Joint Pretrial Memorandum		March 24, 2022	May 26, 2022 ^{4,5}
Motions in Limine		April 7, 2022	June 9, 2022
Oppositions to Motions in Limine		April 14, 2022	June 16, 2022
Final Pretrial Conference		April 28, 2022	On or about June 30, 2022 subject to the Court's schedule

The parties' respective positions on the current status of the case, and how the case should proceed, are set out below.

Philips's Position

Effect of Claim Construction Order: Philips believes that the motion for summary judgment as to the Root '007 patent is moot, but reserves its rights to argue that the Court improperly determined issues of material fact in contravention of FED. R. CIV. P. 56, including without limitation:

1. That the specification includes, among others, the formula for pace specifying that Pace = Time/Distance. See e.g., '007 Patent at Fig. 11 ("Current Pace: ? Minutes per Mile"); see also unrebutted Martin Decl. ¶ 24, et seq.
2. That the specification states that the formula Pace = Time/Distance (which is similar to the Ohms Law equation of Current = Voltage/Impedance) is to employ a "series of time-

⁴ If the Court orders a dedicated Section 101 expert discovery period and dispositive motions practice and valid, enforceable claims remain after that expert discovery period and motions practice, Fitbit proposes that the parties should serve opening expert reports on other issues as to which the party bears the burden of proof on May 26, 2022 with subsequent deadlines occurring at intervals consistent with the schedule above and local practice and rules.

⁵ Philips views on scheduling and its response to Fitbit's footnote are set forth below in the scheduling explanations. Philips believes that the basis for the scheduling proposals is not well suited to arguments in footnotes.

stamped waypoints” in the equation $Pace = Time/Distance$. See e.g., ‘007 Patent at 7:40-50; see also unrebutted Martin Decl. ¶ 17, et seq.

Schedule: This dispute began with a notice of infringement first served on Fitbit in 2016 which, despite Philips’s best efforts to reach settlement, led to the initiation of this lawsuit in July of 2019. This case has now been pending for more than two years, and as is sometimes common among defendants, Fitbit has sought to maximize delay, multiply the proceedings and frustrate the progress of this case to trial. Now, in spite of Fitbit’s 101 eligibility defense having been its main defense in the case since the beginning, Fitbit now suggests that it has not taken the necessary discovery and wishes to expand the prior expert schedule to delay this case in expert discovery. Fitbit also suggests that this court should extend the case so Fitbit can convert its failed 101 eligibility motion into a motion for summary judgment which is also without merit.

On top of Fitbit’s attempts to rehash its failed 101 eligibility defense, Fitbit has attempted to raise a late and previously waived inequitable conduct defense, which is without plausible basis to proceed under *Iqbal/Twombly* and the heightened pleading requirements of *Exergen*. Fitbit not only chose to withhold the unfounded defense during discovery, but Fitbit continued in spite the fact that this issue came up before Magistrate Judge Boal with regards to Fitbit’s Motion to Compel discovery from prosecution counsel (discussed in more detail below). Now, Fitbit now attempts to leverage its decision to withhold the defense to attempt to derail this case’s progress to pretrial hearing.

Fitbit’s position in this case is similarly inconsistent in view of the fact that it has advocated for a very different approach in the retaliatory patent infringement suit that it filed against Philips that is presently pending in this district before the Hon. Judge W. Young and which is tentatively set for trial in June of 2022, despite IPRs having been instituted against **all** the patents in that case. See *Fitbit, LLC v. Koninklijke Philips N.V., et al*, No. 1:20-cv-11613-

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