

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’S MOTION FOR LEAVE TO FILE A REPLY BRIEF IN SUPPORT OF
ITS RULE 12(b)(6) MOTION TO DISMISS THE AMENDED COMPLAINT**

COMES NOW Defendant Fitbit, Inc. (“Fitbit” or “Defendant”) pursuant to Local Rule 7.1(b)(3), and respectfully request that the Court grant Defendant leave to file the attached proposed page reply brief in support of its Rule 12(b)(6) Motion to Dismiss the Amended Complaint (attached hereto as Exhibit A).

In support hereof, Fitbit states that Plaintiff’s responsive filings contained in ECF 36 contain new issues, arguments, and factual assertions which require response by Fitbit herein. In particular, the proposed reply brief, attached, addresses, among other issues:

(i) the opposition’s mischaracterization of the applicable legal standards relevant to Defendant’s Motion to Dismiss;

(ii) the opposition’s almost exclusive reliance on conclusory allegations in the amended complaint, to the exclusion of the text of the patent claims or specifications;

(iii) the opposition’s almost exclusive reliance on allegations in the amended complaint that contradict the clear language of the patent claims and admission made in the specifications;

(iv) why cases cited by Plaintiff are readily distinguishable; and

(v) misstatements in the opposition concerning facts alleged in the amended complaint.

A reply is appropriate to address the factual and legal arguments raised in Plaintiff's opposition brief, and will materially assist the Court in addressing the issues raised in the Motion to Dismiss. *See Sunrise Techs., Inc. v. SELC Ir., Ltd.*, 2016 U.S. Dist. LEXIS 83978 at *24 (D. Mass. Jun. 14, 2016); *Napert v. Gov't Employees Ins. Co.*, 2013 WL 3989645, at *2 n.4 (D. Mass. Aug. 1, 2013).

The Court has not yet scheduled a date to hear the parties' oral argument in Defendant's Motion to Dismiss and any such date need not be impacted by the allowance of this motion. No party will be prejudiced by the relief requested.

REQUEST FOR ORAL ARGUMENT

In accordance with Local Rule 7.1 (d), Defendant respectfully requests oral argument on this motion, as it believes that oral argument may assist the Court in its consideration of the merits hereof.

LOCAL RULE 7.1(a)(2) CERTIFICATE

The undersigned counsel certify that they have conferred with counsel for the Plaintiff who informed the undersigned that the Plaintiff Philips North America LLC did not consent to the relief requested in this motion.

Dated: January 14, 2020

FITBIT, INC.

By Its Attorneys,

/s/ Yar R. Chaikovsky

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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: January 14, 2020

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