

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 REPLY BRIEF IN SUPPORT OF ITS RULE 12(b)(6)
MOTION TO DISMISS THE AMENDED COMPLAINT**

**LEAVE TO FILE GRANTED ON JANUARY 17, 2020
[Docket No. 38]**

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I. INTRODUCTION

Philips' opposition clings to its amended complaint's conclusory allegations as the foundation for its defense of the Asserted Patents, ignoring the Federal Circuit's instruction that the *claims*, not the complaint, control the Supreme Court's *Mayo/Alice* inquiry. *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1149 (Fed. Cir. 2016) ("The § 101 inquiry must focus on the language of the Asserted Claims"). Philips' near-silence on the claims and specification of the Asserted Patents evidences the weakness of its opposition and affirms the Asserted Patents cannot survive Fitbit's motion to dismiss under Supreme Court and Federal Circuit precedent. If the allegations of the amended complaint were supported by the claim language, Philips would have relied on the claims and not the amended complaint. Reliance on mere allegations, untethered to the claim language, is legally deficient.

Philips begins by mischaracterizing the scope and reach of *Berkheimer* and *Aatrix*. *Berkheimer* explicitly states patent eligibility "has in many cases been resolved on motions to dismiss," and "[n]othing in this decision should be viewed as casting doubt on the propriety of those cases." *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1368 (Fed. Cir. 2018), cert. denied. Ineligibility can be shown on a motion to dismiss by "[r]elying on the specification alone" "where, as in *Mayo*, the specification *admits*" claim elements were well-understood, routine, and conventional. *Berkheimer v. HP Inc.*, 890 F.3d 1369, 1371 (Fed. Cir. 2018) (Moore, Circuit Judge; *denial of reh'g en banc*) (emphasis original). Indeed, as in *Mayo*, the specifications of Philips' Asserted Patents admit the claims recite known and conventional technology and no particular solutions. Notably, Philips' opposition fails to address these admissions.

Instead, the opposition relies solely on amended complaint allegations "wholly divorced from the claims or the specification," which cannot defeat a motion to dismiss. *See Cellspin Soft*,

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