

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PHILIPS NORTH AMERICA LLC,

Plaintiff,

v.

FITBIT LLC,

Defendant.

Civil Action No. 1:19-cv-11586-FDS

**PHILIPS'S REPLY IN SUPPORT OF MOTION TO DISMISS CLAIMS PERTAINING
TO U.S. PAT. NO. 7,088,233 AND TO ENTER FINAL JUDGMENT ON
U.S. PAT. NOS. 8,277,377 AND 6,013,007**

Fitbit's Opposition to Philips' Motion for Final Judgment does not dispute that all claims have been resolved and that this Court should "enter a final judgment that disposes of all claims and counterclaims." Dkt. 420 at 1 (emphasis supplied). Fitbit's Opposition is premised solely on a mistaken assertion that this Court no longer has jurisdiction. However, Philips only filed its Motion for Final Judgment after Fitbit claimed in its Docketing Statement that the Federal Circuit lacks jurisdiction. *See* Ex. 1 at 1 (Dkt. 419-1) ("[T]his appeal should be dismissed because the Federal Circuit lacks jurisdiction."). Thus, under Fitbit own view of the case, this Court, not the Federal Circuit, has jurisdiction and can enter Final Judgment.

Fitbit's contention in the Federal Circuit is the reason this motion was filed to clarify the record and put an end to Fitbit's erroneous argument. Indeed, while Fitbit's Opposition cites to *Griggs*, the Supreme Court in that case confirmed that even if a notice of appeal is filed prematurely (as Fitbit has erroneously alleged has occurred here¹) then the notice is considered a

¹ Philips maintains that its original Notice of Appeal was timely as all issues had been disposed of. *See* Dkt. 418 at 2-3. However, in an effort to moot Fitbit's unfounded jurisdictional concerns, Philips filed its Motion for Final Judgment and plans to file as necessary an additional Notice of Appeal following an entry of Final Judgment "in

“nullity” and the lower court retains jurisdiction. *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 61 (1982). Further, in accordance with Federal Rule of Appellate Procedure 4(a)(2), the Federal Circuit has routinely maintained appeals where lower Courts entered final judgment after an allegedly premature Notice of Appeal was filed. *See, e.g., PODS, Inc. v. Porta Stor, Inc.*, 484 F.3d 1359, 1365 (Fed. Cir. 2007); *ABC Corp. I v. P’ship & Unincorporated Ass’ns Identified on Schedule “A”*, 52 F.4th 934, 940 n.6 (Fed. Cir. 2022); *Peralta v. Cal. Franchise Tax Bd.*, 673 Fed.Appx. 975, 977 (Fed. Cir. 2016); *J.G. Peta, Inc. v. Club Protector, Inc.*, 65 Fed.Appx. 724, 725 (Fed. Cir. 2003); *see also Pause Tech. LLC v. TiVo Inc.*, 401 F.3d 1290, 1295 (Fed. Cir. 2005) (granting Appellant leave to seek remedial action with the District Court to obtain final judgment).

Respectfully Submitted,

Dated: September 28, 2023

/s/ Eley O. Thompson

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order to avoid any doubts over [appellate] jurisdiction.” *Clausen v. Sea-3 Inc.*, 21 F.3d 1181, 1183-84 (1st Cir. 1994).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was filed with the Court through the ECF system and that a copy will be electronically served on registered participants as identified on the Notice of Electronic Filing.

By: /s/ John W. Custer
John W. Custer