UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PHILIPS NORTH AMERICA LLC,	
Plaintiff,	Civil Action No. 1:19-cv-11586-IT
v.	**Oral argument requested**
FITBIT, INC.,	
Defendant.	

FITBIT, INC.'S MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT OF INVALIDITY UNDER 35 U.S.C. § 112

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I.   INTRODUCTION

Fitbit Inc.'s ("Fitbit") motion requests the Court to make three legal determinations: (1) the asserted claims of U.S. Patent No. 6,013,007 ("the '007 patent") recite a "means-plus-function" limitation invoking 35 U.S.C. § 112, ¶ 6[1]; (2) the specification indicates a general-purpose processor or computer is used to perform the claimed function; and (3) the specification does not disclose or describe an "algorithm" in form of a step-by-step procedure the processor or computer would use to perform the claimed function—whether described as a mathematical formula, in prose, as a flow chart, or any other manner that provides sufficient disclosure of an algorithm. Importantly, the Federal Circuit has repeatedly instructed that expert testimony cannot be used to replace disclosure of such an algorithm in the specification, meaning there is no need to wait until after fact or expert discovery closes to rule on this motion.

Based on these three discrete legal determinations, the asserted claims of the '007 patent are invalid as indefinite as a matter of law under 35 U.S.C. § 112, ¶ 2. Fitbit thus moves the Court pursuant to Rule 56 of the Federal Rules of Civil Procedure for an order of partial summary judgement that asserted claims 7 and 21–29 of the '007 patent are invalid as indefinite.

II.   BACKGROUND

The '007 patent is directed to a GPS-based system for computing and comparing outdoor athletic performance. The patent contends that known GPS devices were not designed for use by an outdoor athlete and "do not include real-time athletic performance algorithms" to compute athletic performance feedback. '007 patent, 1:46–48. The patent seeks to address this shortcoming by disclosing a "GPS-based performance monitor" device that includes a "central processing unit (CPU)" that "controls the operation of the device." *Id.* at 5:36–40. Connected to

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[1] Because the '007 patent was filed before September 16, 2012, the pre-America Invents Act version of 35 U.S.C. § 112(f) applies.

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