

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 NOTICE OF SPECIFIC UNMARKED PATENTED ARTICLES
SUBJECT TO 35 U.S.C. § 287**

In *Arctic Cat Inc. v. Bombardier Recreational Prod. Inc.*, the Federal Circuit held that an alleged infringer challenging a patentee’s compliance with 35 U.S.C. § 287 bears only “an initial burden of production to articulate the products it believes are unmarked ‘patented articles’ subject to § 287.” 876 F.3d 1350, 1368 (Fed. Cir. 2017). The Federal Circuit further held that an alleged infringer meets this burden by putting “the patentee on notice that he or his authorized licensees sold specific unmarked products which the alleged infringer believes practice the patent.” *Id.* Once this burden—“a low bar”—is met, “the patentee bears the burden to prove the products identified do not practice the patented invention.” *Id.*

Defendant Fitbit, Inc. (“Fitbit”) provides notice to Plaintiff Philips North America LLC (“Philips”) that Defendant contends that the following products are “patented articles” that practice the inventions of U.S. Patent Nos. 6,013,007, 7,088,233, 8,277,377, and/or 6,976,958 for which Philips bears the burden of proving compliance with 35 U.S.C. § 287.

Fitbit identifies at least the following products it believes are “patented articles” sold by Philips or its licensees, as identified by Fitbit in its correspondence to Ruben Rodrigues dated February 14, 2020:

Philips Products:

- Actiwatch product line
- HealthSuite health application
- Health watch

MIO Products:

- Alpha fitness tracker watch

Dated: April 10, 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: April 10, 2020

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

CERTIFICATE OF SERVICE

I, Alice Cameron, hereby certify that the attached document has been served upon the following parties as indicated below on April 10, 2020.

*

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/s/ Alice Cameron

Alice Cameron