

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

JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT

Pursuant to the Court’s Scheduling Order (Dkt. 54), Plaintiff Philips North America LLC (“Philips”) and Defendant Fitbit, Inc. (“Fitbit”) jointly submit this claim construction and prehearing statement.

I. List of Claim Terms

The parties’ have attached as **Exhibit A** is a chart listing 10 proposed claim constructions in the order of importance as agreed to by the parties.¹

Separately, Fitbit has attached as Exhibit B a chart with 4 additional claim terms that are the subject of Fitbit’s petition to the Court to construe 4 terms beyond the 10 identified in the agreed chart. Philips opposes the Petition.

II. CLAIM CONSTRUCTION HEARING

A. Timing and Order of Claim Construction Hearing

The parties do not agree on the anticipated length of time necessary for the hearing, and state as follow:

¹ In an effort to narrow the issues raised during the meet and confer process on claim construction, Philips has withdrawn its assertion of Claim 22 of the ’007 Patent.

Philips Position: Philips believes that 2.5 hours should suffice if only 10 terms are construed, and agrees that a 10 minute introduction followed argument on each term is appropriate. However, Philips believes that some terms may require more time than others and there for does not believe that a strict time limit on argument for each term would be appropriate or necessary.

Fitbit Position: Fitbit believes that the hearing will require four hours, given the additional time typically required to address 14 terms and explain and discuss the unique attributes of the 4 means-plus-function claim limitations. Each party will have an allotted 10 minute introduction and then 8 minutes per term.

The parties otherwise propose to present their arguments by grouping the disputed terms by patent, and proceeding with the argument term-by term, with the party advocating for a particular construction going first. The parties further propose to present the patents in this order: '007, '958, '233, and '377.

1. Live Witnesses

The Parties do not intend to call live witnesses at the Claim Construction hearing. However, Philips could make any expert witnesses that it may rely on in briefing available at the claim construction hearing if the Court finds that it would be helpful to do so.

Dated: May 14, 2020

PHILIPS NORTH AMERICA LLC,

FITBIT, INC.

By its attorneys,

By Its Attorneys,

/s/ Ruben J. Rodrigues

/s/ David Beckwith

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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: May 14, 2020

By: /s/ Ruben J. Rodrigues