

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

**FITBIT'S MOTION FOR LEAVE TO EXCEED PAGE LIMIT FOR FITBIT'S  
OPENING CLAIM CONSTRUCTION BRIEF**

Fitbit, Inc. ("Fitbit" or "Defendant") files this Motion for Leave to Exceed Page Limits for Fitbit's Opening Claim Construction Brief and seeks leave to file a brief in excess of the 20-page limit set forth in the Local Rules. *See* L.R. 16.6(e)(5) (providing that absent leave of court, the page limits of L.R. 7.1(b)(4) shall apply to briefs). Specifically, Fitbit seeks leave to file an opening brief up to 10 pages in excess of the limit, for a total of no more than 30 pages.

Good cause exists for Fitbit's request. Fitbit has identified 14 terms for construction from 59 limitations over 31 asserted claims from four different patents in three different families. Fitbit has an outstanding petition to construe the additional four terms, beyond the ten typically allowed under the Local Rules. D.I. 63. The additional pages that Fitbit requests for its claim construction brief are necessary to adequately present evidence and argument applicable to each disputed claim term. For example, with 14 terms in dispute, Fitbit will need additional pages to provide sufficient context for each of those terms and the dispute over each. Moreover, four different terms in dispute invoke means-plus-function analysis under pre-AIA 35 U.S.C. 112(6). *See* D.I. 65. The briefing on these terms will require additional pages to address the case law unique to means-plus-function analysis, the proper construction of the function of terms, and the

identification of corresponding structure in the specification that is used to perform the claimed functions. *See* pre-AIA 35 U.S.C. 112(6). This is a more consuming process than construction of a typical claim element.<sup>1</sup> In addition, lengthened briefing on the disputed claim terms is warranted by the fact that the four asserted patents include lengthy disclosures, numerous figures, and, at least for some, extensive file histories. These factors warrant additional pages for Fitbit's opening claim construction brief.

Fitbit offered Philips the opportunity to join this motion, which Philips rejected. In an attempt to minimize disputes, Fitbit then offered Philips the opportunity to join this motion on a contingent basis: Philips could assent only to the extent Fitbit's request for four additional claim terms was granted. Philips again rejected Fitbit's effort to compromise. Philips stated that instead, it would oppose Fitbit's motion, while similarly requesting additional pages in its own opposition.

For the reasons above, Fitbit respectfully requests that the Court grant leave for Fitbit to file up to a 30-page opening claim construction brief. If this motion is granted, Fitbit will nonetheless endeavor to avoid all unnecessary verbiage and redundant arguments, and, where possible, file a brief shorter than the maximum allowed.

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<sup>1</sup> In addition to the two means-plus-function terms Fitbit identified in its petition for leave to construe four additional claim terms, the parties identified two means-plus-function terms in their ten terms allowed under the Local Rules. *See* D.I. 65-2, 65-3. Thus, additional pages are required even if Fitbit's petition for leave to construe four additional claim terms is denied.

Dated: May 22, 2020

FITBIT, INC.

By Its Attorneys,

/s/ David Beckwith

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**LOCAL RULE 7.1 CERTIFICATION**

I, David Beckwith, counsel for Defendant Fitbit, Inc., hereby certify that we have conferred with counsel for Philips North America, LLC to resolve the issues presented in this motion, but after a good faith attempt to reach agreement, the parties did not do so.

Dated: May 22, 2020

By: /s/ David Beckwith  
David Beckwith (*Pro Hac Vice*)

**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 22, 2020

By: /s/ Nanette Cosentino  
Nanette Cosentino