

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-FDS

**PLAINTIFF’S MOTION TO STRIKE PORTIONS OF NOVEMBER
16, 2021 EXPERT REPORT OF JOSEPH A. PARADISO AS TO
PREVIOUSLY WITHHELD PRIOR ART AND INDEFINITENESS
DEFENSE**

Plaintiff Philips North America LLC (“Philips”) respectfully moves to strike certain portions of the Expert Report of Joseph A. Paradiso, PH.D. Regarding Invalidity of U.S. Patent No. 8,277,377 (“Paradiso Report”) dated November 16, 2021. More specifically, Philips seeks to strike paragraphs 169-170, 207-216, 237-238, 246-250, 302-307, 489-494, 727, 730-732, 747, 755-757, 987, 1031 as well as the fourth row of the table in paragraph 318 and the seventh row of the table that appears on page 146 of the Paradiso Report as these portions of the Paradiso Report include discussion of prior art and invalidity theories that were not properly disclosed by Defendant Fitbit, Inc. (“Fitbit”) in accordance with Local Rule 16.6(d)(4). Philips also asks the Court to preclude Fitbit from alleging any invalidity theories based on the previously undisclosed prior art and from alleging that any of the asserted claims of the ’377 Patent are invalid as indefinite.

Based on the reasons set out in the accompanying memorandum in support of this motion, Philips respectfully requests that the Court GRANT this motion.

Dated: December 13, 2021

Respectfully Submitted,

/s/ Eley O. Thompson

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LOCAL RULE 7.2 CERTIFICATION

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

Dated: December 13, 2021

/s/ John W. Custer

John W. Custer

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