

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

PHILIPS NORTH AMERICA LLC,

Plaintiff,

v.

FITBIT LLC,

Defendant.

Civil Action No. 1:19-cv-11586-FDS

**DEFENDANT FITBIT LLC'S MOTION FOR THE CONSTRUCTION
OF THREE RELATED CLAIM TERMS**

Pursuant to District of Massachusetts Local Rule 7.1 and as discussed during the Court's December 15, 2021 status conference in the above-captioned proceeding, Defendant Fitbit LLC ("Fitbit") respectfully requests that the Court construe three related claim terms appearing in U.S. Patent No. 8,277,377 (the "'377 patent") and conduct necessary additional claim construction proceedings to enable that construction, including permitting the parties to submit additional claim construction briefing regarding the meaning of the three related claim terms at issue. Specifically, Fitbit requests that:

- The Court construe the related claim terms "a remote server," "an internet server," and "the server" (the "disputed server terms"), which appear in elements 1.a, 1.g, and 1.h of the '377 patent.
- At the Court's discretion, the Court hold a supplemental *Markman* hearing limited to the proper construction of the disputed server terms.
- The Court set a briefing schedule requiring the parties to submit simultaneous opening briefs of no more than ten (10) pages, followed by simultaneous responsive briefs of no more than five (5) pages one week later. The briefing shall be limited to the proper construction of the disputed server terms.

In support of this Motion, Fitbit relies on the accompanying Memorandum in Support of its Motion for the Construction of Three Related Claim Terms and the Declaration of David. J. Shaw, including attached exhibits, submitted herewith. Good cause for the relief requested exists for the reasons set forth in these accompanying materials.

Dated: January 7, 2022

By: /s/ David J. Shaw

David J. Shaw (*pro hac vice*)
dshaw@desmaraisllp.com
DESMARAIS LLP
1701 Pennsylvania Ave., NW, Suite 200
Washington, D.C. 20006
Telephone: (202) 451-4900
Facsimile: (202) 451-4901

Karim Z. Oussayef (*pro hac vice*)
koussayef@desmaraisllp.com
Leslie M. Spencer (*pro hac vice*)
lspencer@desmaraisllp.com
Brian D. Matty (*pro hac vice*)
bmatty@desmaraisllp.com
Henry Ard (*pro hac vice*)
hard@desmaraisllp.com
Eric G. Speckhard
especkhard@desmaraisllp.com
DESMARAIS LLP
230 Park Avenue
New York, NY 10169
Telephone: (212) 351-3400
Facsimile: (212) 351-3401

Ameet A. Modi (*pro hac vice*)
amodi@desmaraisllp.com
DESMARAIS LLP
101 California Street
San Francisco, CA 94111
Telephone: (415) 573-1900
Facsimile: (415) 573-1901

Gregory F. Corbett (BBO #646394)
gcorbett@wolfgreenfield.com
Elizabeth A. DiMarco (BBO #681921)
edimarco@wolfgreenfield.com
WOLF, GREENFIELD & SACKS, P.C.
600 Atlantic Avenue
Boston, MA 02110
Telephone: (617) 646-8000
Facsimile: (617) 646-8646

Attorneys for Defendant Fitbit LLC

CERTIFICATE PURSUANT TO LOCAL RULE 7.1(A)(2)

The undersigned hereby certifies that counsel for Fitbit conferred with counsel for Philips and attempted in good faith to resolve or narrow the issues in dispute, but was unable to do so.

/s/ David J. Shaw

David J. Shaw

CERTIFICATE PURSUANT TO LOCAL RULE 37.1

The undersigned hereby certifies that counsel for Fitbit has complied with the provisions of Local Rule 37.1.

/s/ David J. Shaw

David J. Shaw

CERTIFICATE OF SERVICE

I certify that this document is being filed through the Court's electronic filing system, which serves counsel for other parties who are registered participants as identified on the Notice of Electronic Filing (NEF). Any counsel for other parties who are not registered participants are being served by first class mail on the date of electronic filing.

/s/ Elizabeth A. DiMarco

Elizabeth A. DiMarco