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

| | |
|---|---|
| PHILIPS NORTH AMERICA LLC,<br><br>Plaintiff,<br><br>v.<br><br>FITBIT LLC,<br><br>Defendant. | Civil Action No. 1:19-cv-11586-FDS |

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

# TABLE OF CONTENTS

# TABLE OF AUTHORITIES

**Page(s)**

## CASES



## STATUTES

Defendant Fitbit LLC ("Fitbit") requests that the Court resolve a claim construction dispute. The parties dispute whether claim 1 of U.S. Patent No. 8,277,377 (the "'377 patent") encompasses one, two, three, or an unlimited number of servers. This dispute is material to non-infringement and invalidity because, if the claim encompasses one server (or two), then Fitbit's accused devices cannot infringe any asserted claim, and if the claim encompasses more than one server, then all asserted claims are invalid under 35 U.S.C. § 112.

## I. THE TERMS MUST BE CONSTRUED TO DETERMINE NON-INFRINGEMENT AND INVALIDITY

Claim 1 of the '377 patent is the only asserted independent claim—the other asserted claims 4, 5, 6, 9, and 12 all depend from claim 1, either directly or indirectly. (*See* D.I. 270, Ex. 17.) '377 patent claim 1 uses three different terms that include the word "server":

> ***
>
> a. downloading an application to a web-enabled wireless phone directly from **a remote server** over the internet;
>
> ***
>
> g. sending the exercise-related information to **an internet server** via a wireless network;
>
> h. receiving a calculated response from **the server**, the response associated with a calculation performed by **the server** based on the exercise-related information.

(*Id.* at claim 1 (emphasis added).) The parties dispute the number of distinct servers that may be used to practice claim 1 with respect to both non-infringement and invalidity.

### 1. Philips Believes That Claim 1 May Encompass An Unlimited Number Of Different Servers

Philips' expert witness, Dr. Martin, argues that claim 1 may encompass any number of distinct servers; he does not believe that the claim is limited to one, two, or even three servers.

With respect to infringement of element 1.a, Dr. Martin attempts to identify the "remote

server" as follows: "I understand that one of Fitbit's engineers, Mr. Boccon-Gibod, has testified that in order to download the Fitbit App, a user typically downloaded it from the Google Play Store or the Apple App Store (both of which are remote servers)." (*See* D.I. 270, Ex. 2 at ¶ 55.) While Dr. Martin does not identify any specific "remote server" or expressly say so, it appears that he is pointing to Apple and Google servers as the "remote server" for element 1.a.

With respect to infringement of element 1.g, Dr. Martin attempts to identify an undefined number of different "Fitbit servers" as the "internet server" as follows: "…Fitbit notes that when its devices sync, data is uploaded to Fitbit servers…." (*Id.* at ¶ 127; *see also id.* at ¶¶ 126, 128, 129, 130 (referring generically to Fitbit "servers").) While Dr. Martin does not identify any specific "internet server," he points to a seemingly unlimited number of "Fitbit servers," which are different than the Apple and Google servers on which he relied for element 1.a.

Finally, with respect to infringement of element 1.h, Dr. Martin attempts again to identify an undefined number of "Fitbit servers" as "the server" as follows:

> …when a '377 Device syncs with a web-enabled wireless phone through the Fitbit App, exercise-related data is uploaded to Fitbit's servers. This data is then processed by the servers. …The Fitbit App then receives the processed data back from the servers, which includes the results of calculations performed by the server based on the exercise-related information.

(*Id.* at ¶ 133; *see also id.* at ¶¶ 136, 139 (referring generically to Fitbit "servers").) While Dr. Martin again does not identify any specific "server," he again points to a seemingly unlimited number of "Fitbit servers," which again are different than the Apple and Google servers on which he relies for element 1.a. [redacted]

[redacted]

[redacted]

[redacted]

DOCKET ALARM

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

**LAW FIRMS**
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

**FINANCIAL INSTITUTIONS**
Litigation and bankruptcy checks for companies and debtors.

**E-DISCOVERY AND LEGAL VENDORS**
Sync your system to PACER to automate legal marketing.