

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 OPPOSITION TO DEFENDANT'S MOTION
CONCERNING THE CONSTRUCTION OF "SERVER" CLAIM
TERMS (DKT. 275.)**

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I. INTRODUCTION

Plaintiff Philips North America LLC (“Philips”) respectfully submits this Opposition to Defendant Fitbit LLC’s (“Fitbit”) Motion for the Construction of Three Related Claim Terms (Dkt. 275.) Philips opposes Fitbit’s efforts to insert additional claim construction briefing for the terms “a remote server,” “an internet server,” and “the server” (collectively, “the server terms”) in claim 1 of U.S. Patent No. 8,277,377 (“the ’377 patent”) in view of the swiftly approaching deadline for dispositive motions.

Philips agrees that when parties have a **genuine** dispute as to the meaning of a claim term, the Court must resolve it. However, Philips disagrees that there is any merit to Fitbit’s desperate and belated effort to avoid infringement with newly concocted claim construction theories.

That the present dispute was manufactured and not genuine is demonstrated by the fact that Fitbit’s arguments violate multiple fundamental tenets of claim construction. Fitbit’s argument ignores that when a claim uses **different words** to describe **different things**, they should not be interpreted as necessarily referring to the same thing. (e.g. “a remote server” and “an internet server”). *Bd. of Regents of the U. of Texas System v. BENQ Am. Corp.*, 533 F.3d 1362, 1371 (Fed. Cir. 2008) (“Different claim terms are presumed to have different meanings.”). Fitbit’s argument also ignores that using “an indefinite article ‘a’ or ‘an’ in patent parlance carries the meaning of ‘one or more’ in open-ended claims containing the transitional phrase ‘comprising.’” *Baldwin Graphic Sys., Inc. v. Siebert, Inc.*, 512 F.3d 1338, 1342 (Fed. Cir. 2008) (quoting *KCJ Corp. v. Kinetic Concepts, Inc.*, 223 F.3d 1351, 1356 (Fed. Cir. 2000)).

Fitbit’s purported justification for raising this issue so late in the case also suggest that this dispute was manufactured and not genuine. While Fitbit argues that Philips did not accuse multiple servers of infringing until the service of opening expert reports, the record unequivocally demonstrates the falsity of that assertion. The reality is that Fitbit has been on notice of Philips’s

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