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 MEMORANDUM IN OPPOSITION TO PHILIPS' MOTION TO PRECLUDE THE TESTIMONY OF DR. JOSEPH A. PARADISO REGARDING THE IFIT PRIOR ART SYSTEM (DKT. 305)

TABLE OF CONTENTS

Pages

I. INTRODUCTION 1

II. LEGAL STANDARD 1

III. ARGUMENT 2

A. Philips' Omissions And Inaccuracies Do Not Require PrecludingDr. Paradiso's Expert Testimony ConcerningiFit 2

1. The Documents And Other Evidence Dr. Paradiso Relies Upon Are Not Contradictory 3

2. The Testimony Of Colleen Logan, Icon's 30(b)(6) Corporate Representative, Is Reliable For The Purposes For Which Dr. Paradiso Used It 6

B. Philips' Complaints About Dr. Paradiso's Opinion That iFit Discloses Element 1.h Go To His Testimony's Weight, Not Its Admissibility 9

IV. CONCLUSION 9

TABLE OF AUTHORITIES

Pages

CASES

Abbott Biotech. Ltd. v. Centocor Ortho Biotech, Inc.,
No. 09-40089-FDS, Dkt. 457 at 10 (D. Mass. Dec. 19, 2014) 2, 9

Bogosian v. Mercedes-Benz of N. Am., Inc.,
104 F.3d 472 (1st Cir. 1996) 2, 9

Daubert v. Merrell Dow Pharms., Inc.,
509 U.S. 579 (1993) 1, 2, 6

EveryScape, Inc. v. Adobe Sys. Inc.,
No. 1-10-cv-11597-RGS, Dkt. 469 (D. Mass. Nov. 26, 2014) 5, 9

Finjan, Inc. v. Sophos, Inc.,
No. 14-cv-01197, 2016 WL 4268659 (N.D. Cal. Aug. 15, 2016) 8, 9

Guidroz-Brault v. Missouri Pac. R.R. Co.,
254 F.3d 825 (9th Cir. 2001) 8

Rambus Inc. v. Hynix Semiconductor Inc.,
254 F.R.D. 597, 608 (N.D. Cal. 2008) 8

Samaan v. St. Joseph Hosp.,
670 F.3d 21 (1st Cir. 2012) 2

RULES

Fed. R. Evid. 702 ..... passim

I. INTRODUCTION

Philips' Motion to Preclude the Testimony of Dr. Joseph A. Paradiso Regarding the iFit Prior Art System (Dkt. 305) is nothing more than a motion for summary judgment in disguise. While Philips disagrees with Dr. Paradiso's opinion that the iFit prior art system ("iFit") discloses claim element 1.h of U.S. Patent No. 8,277,377 (the "'377 patent"), that disagreement is not a proper basis for a *Daubert* motion.

Specifically, Fitbit's expert, Dr. Paradiso, opined that asserted claims 1, 4-6, 9, and 12 of the '377 patent are obvious in light of combinations of prior art which include the iFit system as the primary reference. Philips, however, disagrees with Dr. Paradiso regarding whether iFit disclosed '377 patent claim element 1.h as of the '377 patent's priority date.

Rather than appropriately leaving that issue for the jury to decide in light of competing expert testimony and facts, Philips asks this Court to step into the role of fact-finder via its *Daubert* motion. Philips' only support for such a departure from the norm are a host of omissions and mischaracterizations regarding Dr. Paradiso's Report and his deposition testimony. Dr. Paradiso's analysis comparing iFit to claim element 1.h, however, is neither flawed nor unreliable and is, in fact, based on substantial facts and data. These include, for example, documents from Icon Health and Fitness ("Icon"), the company that sold iFit, and the deposition testimony of Icon's 30(b)(6) designee, Ms. Colleen Logan who testified about the iFit system. Accordingly, this Court should deny Philips' Motion.

II. LEGAL STANDARD

The admission of expert testimony is governed chiefly by Federal Rule of Evidence 702, as explained in *Daubert v. Merrell Dow Pharmaceuticals, Inc*. *See U.S. v. Diaz*, 300 F.3d 66, 73 (1st Cir. 2002) (discussing *Daubert v. Merrell Dow Pharms., Inc*., 509 U.S. 579 (1993)). Under Rule 702, district courts "act as gatekeepers, ensuring that an expert's proffered testimony 'both

rests on a reliable foundation and is relevant to the task at hand.'" *Samaan v. St. Joseph Hosp.*, 670 F.3d 21, 31 (1st Cir. 2012) (quoting *Daubert*, 509 U.S. at 597). Under First Circuit precedent, courts must consider three issues as gatekeepers: (1) whether the proposed expert is qualified; (2) whether the proposed expert testimony concerns scientific, technical, or other specialized knowledge; and (3) "whether the testimony [will be] helpful to the trier of fact, i.e., whether it rests on a reliable foundation and is relevant to the facts of the case." *Bogosian v. Mercedes-Benz of N. Am., Inc.*, 104 F.3d 472, 476 (1st Cir. 1996).

"The focus of the Rule 702 inquiry is on the principles and methodology employed by the expert, not the ultimate conclusions. The court may not subvert the role of the fact-finder in assessing credibility or in weighing conflicting expert opinions." *Abbott Biotech. Ltd. v. Centocor Ortho Biotech, Inc.*, No. 09-40089-FDS, Dkt. 457 at 10 (D. Mass. Dec. 19, 2014) (citing *Daubert*, 509 U.S. at 595). On the other hand, "[v]igorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence." *Daubert, Inc.*, 509 U.S. at 596.

III. ARGUMENT

A. Philips' Omissions And Inaccuracies Do Not Require Precluding Dr. Paradiso's Expert Testimony Concerning iFit

Philips maintains that the Court should preclude Dr. Paradiso from testifying about iFit based on Philips' argument that the evidence Dr. Paradiso cites does not prove that iFit discloses claim element 1.h. (Memorandum at 5.) Specifically, Philips contends that iFit could not have disclosed element 1.h, because iFit could not have sent heart rate information from a treadmill to a server. But Philips' focus on element 1.h for this point is misguided, because it is element 1.g that requires "sending the exercise-related information to an internet server…" (Ex. 4 ('377 patent), cl. 1.) And the evidence cited by Dr. Paradiso in his discussion of element 1.g makes clear

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