



**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 SUPPORT OF ITS MOTION FOR
SUMMARY JUDGMENT OF NONINFRINGEMENT OF U.S. PATENT NO. 8,277,377
BASED ON PLAINTIFF'S FAILURE OF PROOF**



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I. INTRODUCTION

In order to prove direct infringement, Philips must show that either: (1) at least one specific instance of direct infringement has occurred for each accused Fitbit wearable or (2) use of the accused Fitbit wearables necessarily infringes. Philips and its expert, Dr. Martin, do not cite to any evidence from which a reasonable juror could conclude that anyone has ever actually used eight of the nine accused Fitbit wearables to allegedly perform the patented method of U.S. Patent No. 8,277,377 (the “’377 patent”). Dr. Martin also admits that these devices do not necessarily infringe. Thus, summary judgment of noninfringement is warranted for these eight devices.¹

II. STATEMENT OF UNDISPUTED MATERIAL FACTS

Fitbit presents the following numbered statement of undisputed material facts pursuant to Local Rule 56.1 and Federal Rule of Civil Procedure 56(a). Fitbit may present additional undisputed material facts or reply to Philips’ allegations regarding Fitbit’s statement of undisputed material facts in its reply brief, if appropriate.

1. The ’377 patent is the only remaining, non-stayed asserted patent in this case. (*See, e.g.*, Dkt. 112 (Second Amended Complaint, asserting ’007, ’233, and ’377 patents); Dkt. 212 at 12-21 (finding asserted ’007 claims invalid as indefinite under 35 U.S.C. § 112); Dkt. 251 (stipulating to stay proceedings with respect to ’233 patent given PTAB’s final written decision that all asserted claims of the ’233 patent are unpatentable).)

2. ’377 patent claims 1, 4, 5, 6, 9, and 12 are the only remaining asserted claims in this case. (*See, e.g.*, Ex. 2,² ¶ 2.)

3. ’377 patent claim 1 is a method claim and the only remaining asserted independent

¹ The eight Fitbit wearables subject to this motion are the Alta HR, Blaze, Charge 3, Inspire HR, Ionic, Versa, Versa 2, and Versa Lite (the “eight Fitbit wearables”).

² All cited exhibits are attached to the Declaration of David J. Shaw, filed concurrently herewith.

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