[redacted]

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

MEMORANDUM IN SUPPORT OF DEFENDANT FITBIT, LLC'S MOTION FOR SUMMARY JUDGMENT OF INVALIDITY OF U.S. PATENT NO. 8,277,377 UNDER 35 U.S.C. § 101

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I. INTRODUCTION

U.S. Patent No. 8,277,377 (the "'377 patent") contains routine claim elements that were combined, piecemeal, in a routine way to distinguish the prior art used by the patent examiner to reject the claims at least five times during prosecution, on multiple grounds each time. (*See, e.g.*, Ex. 8[1] at 1549-54, 1621-34, 1679-87, 1737-45, 1831-43.) As a result, these conventional claim elements make up claims that are directed to an abstract idea and supply no inventive concept.

This Court already determined that asserted claim 1 "is directed to the abstract concept of collecting, analyzing, and displaying exercise-related information" at *Alice* step one. (Dkt. 219 at 12.)[2] Fitbit's expert, Dr. Paradiso, concluded that asserted claims 4, 5, 6, 9, and 12, which depend from claim 1, are drawn to the same abstract concept and Philips' expert, Dr. Martin, does not challenge that conclusion.

While the Court noted that at the 12(b)(6) "stage, it is enough to find [the '377] patent, coupled with the plausible allegations of the complaint, sufficiently indicates that" the asserted claims contain an inventive concept at *Alice* step two, the Court also noted that "those allegations may well prove to be unsupported" because discovery may "reveal that the claims of the '377 patent do not in fact reveal an inventive concept." (Dkt. 219 at 15.) That is exactly what happened.

Fact and expert discovery revealed that the allegations Philips relied upon to overcome Fitbit's Rule 12(b)(6) motion are unsupported. The purported inventive concepts of the asserted claims are neither present in the claims nor inventive, but rather, are conclusory statements regarding conventional, routine, and well-understood applications in the art. Thus, the asserted claims also fail *Alice* step two and Fitbit requests summary judgment of § 101 invalidity.

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[1] All cited exhibits are attached to the Declaration of David J. Shaw, filed concurrently herewith.
[2] The briefing and ruling on Fitbit's Rule 12(b)(6) motion only addressed claim 1 because Fitbit's Rule 12(b)(6) motion argued that claim 1 is representative and Philips did not dispute that argument. (*See, e.g.*, Dkt. 219 at 9, n.3.) Fitbit reiterates that claim 1 is representative.

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