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 NO JOINT OR INDUCED INFRINGEMENT OF U.S. PATENT NO. 8,277,377

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TABLE OF CONTENTS

Pages

I. INTRODUCTION 1

II. STATEMENT OF UNDISPUTED MATERIAL FACTS 2

A. Facts Pertinent To The Entire Motion 2

B. Facts Pertinent To No Joint Infringement....................3

C. Facts Pertinent To No Induced Infringement....................4

III. LEGAL STANDARD FOR SUMMARY JUDGMENT....................5

IV. FITBIT IS ENTITLED TO SUMMARY JUDGMENT OF NO DIVIDED INFRINGEMENT BECAUSE FITBIT DOES NOT CONDITION A BENEFIT ON PERFORMANCE OF THE ACTS ACCUSED OF INFRINGEMENT 6

A. Relevant Legal Standards For Divided Infringement 6

B. Argument 7

C. Conclusion 8

V. FITBIT IS ENTITLED TO SUMMARY JUDGMENT OF NO INDUCED INFRINGEMENT BECAUSE FITBIT'S USERS DO NOT DIRECTLY INFRINGE....................9

A. Relevant Legal Standards For Induced Infringement 9

B. Argument 9

C. Conclusion 11

VI. CONCLUSION....................11

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TABLE OF AUTHORITIES

Pages

Cases

Akamai Techs., Inc. v. Limelight Networks, Inc.,
797 F.3d 1020 (Fed. Cir. 2015).. 6, 9

Anderson v. Liberty Lobby, Inc.,
477 U.S. 242 (1986).. 6

Arthur A. Collins, Inc. v. N. Telecom Ltd.,
216 F.3d 1042 (Fed. Cir. 2000).. 6

Celotex Corp. v. Catrett,
477 U.S. 317 (1986).. 5

DSU Med. Corp. v. JMS Co., Ltd.,
471 F.3d 1293 (Fed. Cir. 2006).. 9, 10

ESW Holdings, Inc. v. Roku, Inc.,
2021 WL 1069047 (W.D. Tex. Mar. 18, 2021).. 7

Joy Techs., Inc. v. Flakt, Inc.,
6 F.3d 770 (Fed. Cir. 1993).. 9, 10

Medgraph, Inc. v. Medtronic, Inc.,
843 F.3d 942 (Fed. Cir. 2016).. 8

Medtronic, Inc. v. Mirowski Fam. Ventures, LLC,
571 U.S. 191 (2014).. 6

Nalco Co. v. Chem-Mod, LLC,
883 F.3d 1337 (Fed. Cir. 2018).. 7

Sapphire Crossing LLC v. Abbyy USA Software House, Inc.,
497 F. Supp. 3d 762 (N.D. Cal. 2020).. 7

Telemac Cellular Corp. v. Topp Telecom, Inc.,
247 F.3d 1316 (Fed. Cir. 2001).. 5

Traxcell Techs., LLC v. Sprint Commc'ns Co. LP,
15 F.4th 1121 (Fed. Cir. 2021).. 6

Statutes

35 U.S.C. § 112.. 2

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TABLE OF AUTHORITIES (cont'd)

Pages

Rules

Fed. R. Civ. P. 56(a) 2, 5

Fed. R. Civ. P. 56(c) 5

Local Rule 56.1 2

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I. INTRODUCTION

While Philips presents a joint infringement theory and an induced infringement theory for U.S. Patent No. 8,277,377 (the "'377 patent"), its own technical expert, Dr. Martin, admitted during his deposition that Philips is entirely lacking evidence of at least one essential element of each theory. Therefore, Fitbit requests summary judgment of no joint infringement and summary judgment of no induced infringement.

With respect to joint infringement, Dr. Martin tacitly admitted at his deposition that Philips' theory does not meet the applicable legal test, which requires, among other things, proof that the alleged infringer has conditioned participation in an activity or receipt of a benefit on practicing the infringing method. Specifically, Dr. Martin acknowledged that Fitbit's users can participate in or obtain the only allegedly conditioned activity or benefit in Philips' joint infringement theory—viewing Fitbit metrics referred to as "Cardio Fitness Score" and "Cardio Fitness Level"—without practicing the method of claim 1. Therefore, Dr. Martin's opinion does satisfy the legal test for joint infringement because the allegedly conditioned participation in an activity or receipt of a benefit can be obtained without practicing the allegedly infringing method. Since Philips cannot satisfy this essential element of joint infringement, Fitbit is entitled to summary judgment.

With respect to Philips' theory of induced infringement, Dr. Martin tacitly admitted at his deposition that there is no underlying act of direct infringement supporting this theory. In particular, while Dr. Martin's expert report generally alleged that Fitbit's users perform the underlying acts of direct infringement supporting Philips's induced infringement theory, Dr. Martin admitted at deposition that Fitbit (via the Fitbit application), and not Fitbit's users, allegedly practice claim element 1.c—"rendering a user interface." Because an underlying act of direct infringement is an essential element of induced infringement, and Dr. Martin tacitly admitted that

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