[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

FITBIT'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT OF NONINFRINGEMENT OF U.S. PATENT NO. 8,277,377 (DKT. 329)

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I. INTRODUCTION

Philips' Opposition (Dkt. 362) does not raise any material factual dispute with Fitbit's showing that there is no single server or server array in the entire Fitbit system that is involved in all three steps of elements 1.g and 1.h: (1) sending the "exercise-related information" to ***an internet server*** via a wireless network, (2) receiving a calculated response from ***the server***, and (3) the [calculated] response associated with a calculation performed by ***the server*** based on the exercise-related information. Instead, Philips resorts to unfounded attacks on Fitbit's 30(b)(6) witness and declarant, and again changes its infringement argument to go even further beyond anything that was identified or disclosed in fact discovery or by its expert. In short, Philips refuses to accept that the single server system described and claimed in the now-expired '377 patent in 2000 (and its provisional in 1999) are fundamentally different than the complex and technologically advanced system used by market-leader Fitbit twenty years later.

Additionally, Philips does not dispute any material fact with respect to Fitbit not calculating its Resting Heart Rate Cardio Fitness Score based on any exercise-related information. Philips merely repeats an argument addressed in Fitbit's opening brief, asserting that when the accused Fitbit system [redacted] and ***then*** calculates resting heart rate using [redacted], that calculation is somehow "based on [] exercise-related information" under element 1.h.

Philips' arguments are meritless. Summary judgment of noninfringement is appropriate.

II. THE ACCUSED FITBIT SYSTEM DOES NOT IMPLEMENT THE "SERVER" REQUIRED BY CLAIM ELEMENTS 1.G AND 1.H

Fitbit's undisputed evidence conclusively establishes that the [redacted] to which exercise-related information is allegedly sent in element 1.g is [redacted] from which the alleged calculated response is received under element 1.h. (Dkt. 330, SUF ¶¶ 21-31.)

[redacted]

Philips' expert, Dr. Martin, admitted that he has no infringement opinion based on the interpretation that elements 1.g. and 1.h. use different arrays of servers. (Dkt. 330, SUF ¶ 19 (quoting Dkt. 338-1 at 145:2-9).) Thus, Philips has no evidence, expert or otherwise, that the actual operation of the accused Fitbit system infringes the asserted claims.

Philips does not present any contrary evidence to overcome this clear case of noninfringement. Instead, Philips resorts to unsupported attacks on Fitbit's 30(b)(6) witness and moves the goalposts by inserting yet another brand new legal theory that was never previously disclosed. Philips does not raise a material dispute of fact, and summary judgment is appropriate.

A. Fitbit's Declaration Is Not Contradicted By Its Prior 30(b)(6) Testimony

Under Rule 56, Philips was required to dispute Fitbit's factual statements by either particularly citing to materials in the record that establish a genuine dispute or showing that the materials cited by Fitbit do not establish the absence of a genuine dispute. Fed. R. Civ. P. 56(c)(1). Philips' Opposition does neither, yet Philips purports to dispute Fitbit's SUF ¶¶ 18-19 and 21-31.

Fitbit's SUF ¶ 18 quoted Dr. Martin's report stating that claim 1 requires the same server or ***server array*** to perform elements 1.g and 1.h. (Dkt. 330, SUF ¶ 18.) Philips' only response is to claim that Dr. Martin did not admit that these elements "require[] a single server." (Dkt. 362 at 2.) But that response does not address Fitbit's statement of fact, which accounted for Dr. Martin's (faulty) opinion that a single ***server array*** can satisfy those elements. Thus, Philips did not genuinely dispute Fitbit's SUF ¶ 18. Similar, Fitbit's SUF ¶ 19 is a direct quote from Dr. Martin's deposition, and Philips does not dispute that the quote is accurate. (Dkt. 330, SUF ¶ 19; Dkt. 362 at 2.) Thus, Fitbit's SUF ¶¶ 18-19 conclusively establish undisputed facts.

With respect to Fitbit's SUF ¶¶ 21-31, Philips uses similar misdirection in order to claim that there is a material dispute of fact without presenting any contrary facts in the record or undermining the veracity of Fitbit's evidence. (*See* Dkt. 362 at 2.) Philips never genuinely

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