



**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 INVALIDITY OF U.S. PATENT NO. 8,277,377
UNDER 35 U.S.C. § 101 (DKT. 333)**



TABLE OF CONTENTS

	<u>Pages</u>
I. INTRODUCTION	1
II. FITBIT DID NOT IGNORE THE ORDERED COMBINATION OF ELEMENTS OR EVIDENCE THAT THE CLAIMED INVENTION IS NOT CONVENTIONAL, WELL-KNOWN, OR ROUTINE—FITBIT ADDRESSED THE ONLY ALLEGED INVENTIVE CONCEPTS RAISED BY PHILIPS AND DR. MARTIN	2
A. Philips and Dr. Martin’s Factual Allegations Contradict the Evidence.....	3
B. Philips And Dr. Martin’s Arguments Are Contrary To The Law.....	3
III. PHILIPS’ RESPONSES TO FITBIT’S SUF ¶¶ 6-15 MINCE WORDS WITHOUT MEANINGFULLY DISPUTING FITBIT’S FACTUAL STATEMENTS.....	5
IV. PHILIPS’ IMPROPER RELIANCE ON THE PREVIOUSLY UNDISCLOSED CONCEPT OF AN IMPROVED “NETWORK PLATFORM ARCHITECTURE” SHOULD BE IGNORED	9
V. <i>ELECTRIC POWER GROUP</i> REMAINS THE MOST ON POINT CASE	10
VI. CONCLUSION.....	12

[REDACTED]

TABLE OF AUTHORITIES

	<u>Pages</u>
<u>Cases</u>	
<i>Abiomed v. Maquet Cardiovascular</i> , 2021 WL 4477432 (D. Mass. Sept. 30, 2021)	10
<i>Am. Axle & Mfg., Inc. v. Neapco Holdings LLC</i> , 967 F.3d 1285 (Fed. Cir. 2020).....	4, 10
<i>Amdocs (Israel) Ltd. v. Openet Telecom, Inc.</i> , 841 F.3d 1288 (Fed. Cir. 2016).....	11
<i>Anderson v. Kimberly–Clark Corp.</i> , 570 F.App’x 927 (Fed. Cir. 2014)	7
<i>BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC</i> , 827 F.3d 1341 (Fed. Cir. 2016).....	4, 11
<i>BSG Tech LLC v. Buyseasons, Inc.</i> , 899 F.3d 1281 (Fed. Cir. 2018).....	4, 12
<i>Cellspin Soft, Inc. v. Fitbit, Inc.</i> , 927 F.3d 1306 (Fed. Cir. 2019).....	4, 12
<i>CosmoKey Sols. GmbH & Co. KG v. Duo Sec. LLC</i> , 15 F.4th 1091 (Fed. Cir. 2021)	11
<i>Diamond v. Diehr</i> , 450 U.S. 175 (1981).....	5
<i>Electric Power Grp., LLC v. Alstom S.A.</i> , 830 F.3d 1350 (Fed. Cir. 2016).....	8, 11
<i>Innovation Sci., LLC v. Amazon.com, Inc.</i> , No. 4:18-cv-474, 2021 WL 2075677 (E.D. Tex. May 24, 2021)	3, 7
<i>Intellectual Ventures I LLC v. Capital One Fin. Corp.</i> , 850 F.3d 1332 (Fed. Cir. 2017).....	6
<i>Mayo Collaborative Servs. v. Prometheus Labs., Inc.</i> , 566 U.S. 66 (2012).....	5
<i>Monsanto Co. v. Syngenta Seeds, Inc.</i> , 503 F.3d 1352 (Fed. Cir. 2007).....	9

[REDACTED]

TABLE OF AUTHORITIES (cont'd)

	<u>Pages</u>
<i>Palomar Tech., Inc. v. MSRI Sys., LLC</i> , No. 18-10236-FDS (D. Mass. May 28, 2020)	6
<i>Parker v. Flook</i> , 437 U.S. 584 (1978).....	5
<i>Pernix Ir. Pain DAC v. Alvogen Malta Operations, Ltd.</i> , No. 16-139-WCB, 2018 WL 2225113, 2018 U.S. Dist. LEXIS 81419 (D. Del. May 15, 2018).....	10
<i>Philips North Am., LLC v. Garmin Int'l, Inc.</i> , No. 2:19-cv-06301-AB-KS (C.D. Cal. 2019).....	8
<i>Prism Techs. LLC v. T-Mobile USA, Inc.</i> , 696 F.App'x 1014 (Fed. Cir. 2017)	4, 7
<i>Rothschild Dig. Confirmation, LLC v. Skedulo Holdings Inc.</i> , No. 3:19-cv-02659-JD, 2020 U.S. Dist. LEXIS 47914 (N.D. Cal. Mar. 19, 2020).....	7
<i>Secured Mail Sols., LLC v. Universal Wilde, Inc.</i> , 873 F.3d 905 (Fed. Cir. 2017).....	7
<i>Two-Way Media Ltd v. Comcast Cable Commc'ns, LLC</i> , 874 F.3d 1329 (Fed. Cir. 2017).....	4, 5
 <u>Statutes</u>	
35 U.S.C. § 101.....	2, 5
 <u>Rules</u>	
Fed. R. Civ. P. 56(c)(1).....	6



I. INTRODUCTION

Philips' Opposition (Dkt. 361) does not meaningfully dispute any relevant material fact or raise any legal argument sufficient to defeat Fitbit's request for summary judgment.

With respect to the ordered combination of elements, Philips ignores the arguments in Fitbit's opening brief (Dkt. 334). For example, Philips claims that Fitbit never addressed the alleged inventiveness of the ordered combination of elements, but Fitbit extensively addressed and rebutted the only alleged inventive concepts Philips and its expert raised. (Dkt. 334 at 8-18.) Similarly, Philips claims that Fitbit ignored the named inventor's testimony from another case not involving Fitbit and regarding the alleged inventive concept of mobility, but again, Fitbit addressed that concept (Dkt. 334 at 11-14) and the testimony is inadmissible hearsay because Fitbit did not attend and thus, had no opportunity to cross-examine.

Fitbit's SUF ¶¶ 6-13 establish that the claimed components and concepts are all generic and conventional. Similarly, Fitbit's SUF ¶¶ 14-15 establish that Philips' claimed inventive concepts were not actually inventive and/or claimed. Philips' "denials" of Fitbit's SUF ¶¶ 6-15 do not actually deny the facts stated by Fitbit. Rather, Philips' responses pick out individual words such as "generic" or "conventional" and deny that the cited evidence uses those exact words. But this Court's own case law shows that claim elements are generic or conventional based on their character, not the specific words in the evidence. Philips also argues that its expert opined that the individual claim elements were not conventional or well-known. But Philips' expert played similar word games that did not address the actual opinions of Fitbit's expert. Most notably, Philips' expert emphasized at deposition that the individual elements do *not* supply an inventive concept, but rather, the inventive concepts *only* arise from the ordered combination of elements.

Further, Philips again improperly attempts to insert new, undisclosed contentions (this time regarding an improved "network platform architecture") to overcome summary judgment.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.