

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
PHILIPS NORTH AMERICA LLC,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	19-11586-FDS
FITBIT LLC,)	
)	
Defendant.)	
_____)	

MEMORANDUM AND ORDER ON
CROSS-MOTIONS FOR SUMMARY JUDGMENT

SAYLOR, C.J.

This is an action for patent infringement. Plaintiff Philips North America LLC has sued defendant Fitbit LLC, asserting claims under 35 U.S.C. § 271 for infringement of three patents of which Philips is the owner and assignee. The patents at issue concern technology related to connected-health products, such as wearable fitness trackers. The scope of the case has been narrowed to Claims 1, 4, 5, 6, 9, and 12 of Patent 8,277,377 (“the ’377 patent”).¹

The parties have cross-moved for summary judgment. Philips has moved for partial summary judgment of direct infringement by Fitbit’s customers and on the ground that the patent is not rendered obvious based on prior art. Fitbit has moved for summary judgment of noninfringement, invalidity, and lack of joint or induced infringement. The parties have also

¹ In addition to the ’377 patent, this case originally concerned infringement of three other patents owned by Philips: U.S. Patent Nos. 6,013,007 (“the ’007 patent”); 7,088,233 (“the ’233 patent”); and 6,976,958 (“the ’958 patent”). Philips has since withdrawn its allegations of infringement of the ’958 patent. The Court’s claim-construction order rendered invalid all asserted claims of the ’007 patent. And proceedings related to the ’233 patent are stayed pending any appeal of the PTAB decision. Therefore, only the ’377 patent is currently at issue.

filed several motions to strike. For the following reasons, Fitbit’s motion for summary judgment of invalidity will be granted, and the remaining motions for summary judgment and motions to strike will be denied as moot.

I. Background

The following facts are undisputed except as otherwise noted.

A. Factual Background

1. The Parties

Philips North America LLC is the owner of several patents concerning connected-health technologies. (’377 patent). Fitbit LLC develops, manufactures, and sells connected-health products.

2. The ’377 Patent

The ’377 patent is titled “Method and Apparatus for Monitoring Exercise with Wireless Internet Connectivity.” (’377 patent at Title). It concerns “monitoring of living subjects.” (*Id.* col. 1 ll. 35-36). More particularly, it concerns “health-monitoring of persons where measured or input health data is communicated by a wireless device to and from a software application running on an internet-connected server and where the same may be studied and processed by the software application, a health professional, or the subject.” (*Id.* col. 1 ll. 36-41).

The patent provides for a “method and apparatus . . . for wireless monitoring of exercise, fitness, or nutrition by connecting a web-enabled wireless phone to a device which provides exercise-related information, including physiological data and data indicating an amount of exercise performed.” (*Id.* at Abstract). It further provides that “[a]n application for receiving the exercise-related information and providing a user interface may be downloaded to the web-enabled wireless phone from an internet server” and that “[t]he exercise-related information may be transmitted to an internet server, and the server may calculate and return a response.” (*Id.*).

The patent identifies two “complementary” systems that embody the invention. (*Id.* col. 2 ll. 64). The first embodiment “may be employed to manage the disease state or condition of a patient” by “employ[ing] a health monitoring device.” (*Id.* col. 2 ll. 66-67; *id.* col. 3 ll. 1-2). That device would provide data by a wireless connection “for processing via the internet[,] including a review by a physician or other health care professional if required.” (*Id.* col. 3 ll. 3-5). For example, a diabetic could connect a blood-glucose monitor to a wireless web device, download data to a diabetes-management company’s server, and receive guidance concerning his next meal. (*Id.* col. 3 ll. 14-20).

The second embodiment enables implementation of a “health or lifestyle management plan” by allowing “[v]arious health parameters, such as those relating to nutrition or exercise, [to] be entered into a health monitoring device” and to be wirelessly communicated to a server. (*Id.* col. 3 ll. 6-11). In this embodiment, “the system may be employed to monitor the physiologic status of a healthy subject while eating, exercising, or performing other activities.” (*Id.* col. 3 ll. 33-36). For example, an individual following an exercise program could attach a wireless web device to an exercise machine, send data from that machine over the Internet to the server of a health and fitness company, and receive personalized responses from that company. (*Id.* col. 3 ll. 21-27).

The claimed priority date for the ’377 patent is December 17, 1999.

As the litigation has progressed, the claims have narrowed to encompass only Claims 1, 4, 5, 6, 9, and 12 of the ’377 patent. The parties agree that Claim 1 is a method claim and the only remaining independent claim in this case. (*Id.* col. 13). Claims 4, 5, 6, 9, and 12 are method claims that depend, directly or indirectly, on Claim 1. (*Id.* cols. 13-14). Claim 1 is as follows:

1. A method for interactive exercise monitoring, the method comprising the steps of:
 - a. downloading an application to a web-enabled wireless phone directly from a remote server over the internet;
 - b. coupling the a [sic] web-enabled wireless phone to a device which provides exercise-related information;
 - c. rendering a user interface on the web-enabled wireless phone;
 - d. using the application, receiving data indicating a physiologic status of a subject;
 - e. using the application, receiving data indicating an amount of exercise performed by the subject;
 - f. wherein at least one of the data indicating a physiologic status of a subject or the data indicating an amount of exercise performed by the subject is received from the device which provides exercise-related information, and wherein the data indicating a physiologic status of a subject is received at least partially while the subject is exercising;
 - g. sending the exercise-related information to an internet server via a wireless network;
 - h. receiving a calculated response from the server, the response associated with a calculation performed by the server based on the exercise-related information; and
 - i. using the application, displaying the response.

(*Id.* col. 13 ll. 23-47).

In its claim-construction order, the Court ruled that the phrase “indicating a physiologic status of a subject” would be construed according to its plain and ordinary meaning. (Order at 34).

3. The Accused Products

The accused products are the Fitbit Alta HR, Blaze, Charge 2, Charge 3, Inspire HR,

Ionic, Versa, Versa 2, and Versa Lite.²

B. Procedural Background

On July 22, 2019, Philips filed this action against Fitbit. The second amended complaint asserts three counts of patent infringement under 35 U.S.C. § 271, involving the '007 patent (Count 1); the '233 patent (Count 2); and the '377 patent (Count 3).

On July 22, 2021, the Court issued its memorandum and order on claim construction. In that decision, it concluded, among other things, that a means-plus-function claim term in the '007 patent—“means for computing athletic performance feedback data from the series of time-stamped waypoints obtained by said GPS receiver”—is indefinite under 35 U.S.C. § 112 for lack of corresponding structure for the claimed function.

Fitbit moved to dismiss the complaint for failure to state a claim upon which relief can be granted. On August 10, 2021, the Court denied the motion to dismiss. On August 24, 2021, Fitbit filed its answer and asserted six counterclaims, seeking declaratory judgments of invalidity and non-infringement.

Philips and Fitbit have now cross-moved for summary judgment. Philips has moved for partial summary judgment of direct infringement by Fitbit's customers and a finding that the patent is not rendered obvious based on prior art. Fitbit has moved for summary judgment of noninfringement, invalidity, and lack of joint or induced infringement.

The parties have also filed various motions to strike relating to the motions for summary judgment. Philips has moved to strike portions of the expert report of Dr. Joseph A. Paradiso and Fitbit's expert rebuttal reports. It has also moved to preclude the testimony of Dr. Paradiso

² The Court denied Philips's motion for leave to file supplemental infringement contentions to cover four new products: the Charge 4, Versa 3, Inspire 2, and Sense.

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