

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

**ORAL ARGUMENT REQUESTED**

**PHILIPS NORTH AMERICA LLC'S MOTION FOR RECONSIDERATION  
OF THE MEMORANDUM AND ORDER ON CROSS-MOTIONS FOR  
SUMMARY JUDGMENT (Dkt. 401)**

Plaintiff Philips North America LLC ("Philips") respectfully moves the Court to reconsider its Memorandum and Order on Cross-Motions for Summary Judgment (Dkt. 401) granting Defendant Fitbit LLC's ("Fitbit") Motion for Summary Judgment of Invalidity (Dkt. 333) and finding the claims of U.S. Patent No. 8,277,377 (the "'377 Patent") invalid under 35 U.S.C. § 101.

Based on the reasons set out in the accompanying memorandum in support of this motion, Philips respectfully requests that the Court GRANT this motion, deny Fitbit's motion for summary judgment of invalidity (Dkt. 333), and resolve on the merits the motions for summary judgment and motions to strike that were denied as moot. *See* Dkt. 401 at 26.

**REQUEST FOR ORAL ARGUMENT**

Pursuant to Local Rule 7.1(d), Philips requests the Court entertain oral argument on this motion, as Philips believes it will assist the Court.

Dated: October 21, 2022

Respectfully Submitted,

/s/ Eley O. Thompson

Lucas I. Silva (BBO 673,935)  
Ruben J. Rodrigues (BBO 676,573)  
John W. Custer (BBO 705,258)  
FOLEY & LARDNER LLP  
111 Huntington Avenue  
Suite 2500  
Boston, MA 02199-7610  
Phone: (617) 342-4000  
Fax: (617) 342-4001  
lsilva@foley.com  
rrodrigues@foley.com  
jcuster@foley.com

Eley O. Thompson (*pro hac vice*)  
FOLEY & LARDNER LLP  
321 N. Clark Street  
Suite 2800  
Chicago, IL 60654-5313  
Phone: (312) 832-4359  
Fax: (312) 832-4700  
ethompson@foley.com

Michelle A. Moran (*pro hac vice*)  
FOLEY & LARDNER LLP  
777 East Wisconsin Avenue  
Milwaukee, WI 53202  
Phone: (414) 271-2400  
Fax: (414)297-4900  
mmoran@foley.com

*Counsel for Plaintiff*  
*Philips North America LLC*

**LOCAL RULE 7.2 CERTIFICATION**

I, John W. Custer, counsel for Philips North America LLC, hereby certify that we have conferred with counsel for Fitbit, Inc. to resolve the issues presented in this motion, but after a good faith attempt to reach agreement, the parties did not do so..

Dated: October 21, 2022

/s/ John W. Custer

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing document was filed with the Court through the ECF system and that a copy will be electronically served on registered participants as identified on the Notice of Electronic Filing.

Dated: October 21, 2022

/s/ John W. Custer