EXHIBIT A

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 REPLY BRIEF IN SUPPORT OF ITS MOTION FOR RECONSIDERATION (Dkt. 403)

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I. Introduction

As explained in Philips's Motion, Philips seeks reconsideration because the Court appears to have misunderstood *Berkheimer v. HP Inc.*, 881 F.3d 1360 (Fed. Cir. 2018) as requiring that the "reasons why" an inventive concept is inventive be explicitly recited in a claim in addition to the inventive concept itself. *See* Dkt. 404 at 5-9. While Fitbit opposes the Motion, its Opposition (Dkt. 406) only serves to reinforce the fact that reconsideration is appropriate. Fitbit's Opposition is devoid of any rebuttal to Philips's argument that *Berkheimer* was misapplied. Instead, Fitbit's brief largely focuses on the purported reasons why the Court's decision should be sustained **even if** the Court misapplied *Berkheimer*. Essentially, Fitbit asks that the Court "ignore" its error and sustain its earlier decision on alternative grounds not fully reached in the Court's original opinion—which would be improper.

II. Argument

A. Fitbit Does Not Defend the Court's Misinterpretation of *Berkheimer*

In resignation to the truth, Fitbit does not even attempt to defend the Court's misapplication of *Berkheimer*, and provides **no rebuttal** to Philips's explanation that *Berkheimer* did not (as this Court held) require that claims recite *ipsis verbis* the "reasons why" inventive concepts are inventive. *See* Dkt. 404 at 5-8.[1] Nor does Fitbit dispute that applying this Court's test would have led to the **opposite** result in *Berkheimer*. *See* Dkt. 404 at 8-9.

Further, Fitbit did not dispute that the Federal Circuit has consistently found claims patent eligible that do not explicitly recite the "reasons why" they are unconventional, and failed to address cases like *Cosmo Key* and *Cooperative Entertainment* discussed in Philips's brief. *See* Dkt. 404 at 9-12 (discussing *Cosmo Key Sols. GmbH & Co. KG v. Duo Sec. LLC*, 15 F.4th 1091 (Fed.

[1] The closest Fitbit ever comes to a response to Philips's arguments concerning the Court's misapplication of *Berkheimer* consist of simply interjecting the words "and it did not", in a conclusory fashion, in the following sentence: "Thus, even if the Court did misapply *Berkheimer* in finding that the alleged inventive concepts are not

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