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

Cir. 2021) and *Cooperative Entertainment v. Kollective Tech.*, 50 F.4th 127 (Fed. Cir. 2022)). These cases including *Cooperative Entertainment* are very recent explanations of the proper application of eligibility law demonstrating error in this Court's Opinion. Fitbit does not even cite these cases let alone attempt to reconcile this Court's Opinion with them. *See generally*, Dkt. 406.

B. The Court Can Reconsider its Decision and Should not "Ignore" Error as Fitbit Requests

Instead of disputing Philips's analysis of the relevant law, Fitbit asks this Court to simply "ignore" the Court's misapplication of *Berkheimer*. Dkt. 406 at 3 ("Philips's arguments should be ignored"). Fitbit advocates for a bright-line rule that legal "errors of reasoning" can never be reconsidered by the Court that made them as that does not constitute a "mistake" under Fed. R. Civ. P. 60(b)(1). *See* Dkt 406 at 2. However, Fitbit's argument ignores the fact that in addition to Rule 60(b)(1), Philips moved for reconsideration under both Fed. R. Civ. P. 60(b)(6) as well as this Court's inherent power to reconsider interlocutory orders. *See* Dkt. 404 at 1-2. Indeed, the First Circuit has explicitly **encouraged** district courts to make use of its inherent power when error is apparent. *Fernández–Vargas v. Pfizer*, 522 F.3d 55, 61 n.2 (1st Cir. 2008) ("While the Federal Rules do not provide for a "motion to reconsider", a district court has the inherent power to reconsider its interlocutory orders, and we encourage it to do so where error is apparent"). Further, this Court has previously granted motions for reconsideration based on "errors of reasoning". *See e.g. DeGrandis v. Children's Hosp. Boston*, No. 14-10416, 2015 WL 1959433, at *5 (D. Mass. Apr. 30, 2015) (reconsidering earlier ruling that repudiation was properly before the court as this was a manifest error of law); *Perfect Curve, Inc. v. Hat World, Inc.*, 988 F.Supp.2d 38, 59-60 (D. Mass. 2013) (reconsidering claim construction order).

Fitbit also does not dispute that it never relied on *Berkheimer* for the proposition that claims must recite the "reasons why" they are inventive. *See* Dkt. 404 at 6, n.7; Dkt. 406 at 5-6. And Fitbit

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