

**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

**DEFENDANT FITBIT LLC'S RESPONSE TO PHILIPS NORTH AMERICA LLC'S
MOTION TO DISMISS AND TO ENTER FINAL JUDGMENT**

Fitbit LLC ("Fitbit") does not dispute Philips North America LLC's ("Philips") summary of the current posture of its claims in this case. Fitbit agrees that Philips' claims for patent infringement of all three asserted patents have been defeated on their merits:

- The asserted claims of U.S. Patent No. 6,013,007 were held invalid as indefinite under 35 U.S.C. § 112 in this Court's Memorandum and Order on Claim Construction, issued on July 22, 2021. (ECF No. 212.)
- The asserted claims of U.S. Patent No. 8,277,377 were held invalid as directed to unpatentable subject matter under 35 U.S.C. § 101 in this Court's Memorandum and Order on Cross-Motions for Summary Judgment, issued on September 1, 2022. (ECF No. 401.) That Order was confirmed by this Court's denial of Philips' motion for reconsideration on July 13, 2023. (ECF No. 414.)
- The asserted claims of U.S. Patent No. 7,088,233 were held unpatentable in a final written decision by the Patent Trial and Appeal Board on October 4, 2021, which was affirmed by the U.S. Court of Appeals for the Federal Circuit on April 6, 2023.

Fitbit also agrees with Philips that, before any further appellate review can proceed at the Federal Circuit on any of the above issues, this Court must enter a final judgment that disposes of all claims and counterclaims. *See, e.g., SafeTCare Mfg. v. Tele-Made, Inc.*, 497 F.3d 1262, 1267 (Fed. Cir. 2007); *Nystrom v. TREX Co.*, 339 F.3d 1347, 1350 (Fed. Cir. 2003).

However, Philips already filed a notice of appeal to the Federal Circuit. (See ECF No. 415.) “The filing of a notice of appeal is an event of jurisdictional significance -- it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.” *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982); see also *United States v. George*, 841 F.3d 55, 71 (1st Cir. 2016) (“[W]e start with the abecedarian principle that once a notice of appeal is filed, the district court is divested of ‘authority to proceed with respect to any matter touching upon, or involved in, the appeal.’”) (quoting *United States v. Brooks*, 145 F.3d 446, 455 (1st Cir. 1998)). The pendency of Philips’ appeal thus calls into question this Court’s jurisdiction to take the actions that Philips requests in its motion.

This jurisdictional problem is of Philips’ own making—Philips prematurely filed its notice of appeal before this Court entered a final judgment disposing of all claims and counterclaims. And now, before the Court can take further action in this case, including entering the final judgment that Philips requests, Philips must take action to restore this Court’s jurisdiction. To that end, Fitbit requested that Philips clear the jurisdictional roadblock by moving to dismiss the prematurely-filed appeal, but Philips has refused to do so. (See Ex. 1.)

At bottom, Fitbit has no objection to joining—at the appropriate time after the appeal is dismissed—a request for this Court to enter a final judgment that would dispose of all claims and create a clear pathway for Philips to seek appellate review at the Federal Circuit. But as it currently stands, this case is a paradigmatic example of the type of confusion that courts have attempted to avoid by establishing that only one court—either the district court or the appellate court—can have jurisdiction at any given time. See *George*, 841 F.3d at 71 (“This principle ‘derives from the notion that shared jurisdiction almost always portends a potential for conflict and confusion.’”) (quoting

Brooks, 145 F.3d at 455). Because this Court should not take any action until its jurisdiction has been clearly restored through the dismissal of the pending appeal, Fitbit opposes Philips' motion.

Dated: September 25, 2023

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CERTIFICATE OF SERVICE

I certify that this document is being filed through the Court's electronic filing system, which serves counsel for other parties who are registered participants as identified on the Notice of Electronic Filing (NEF). Any counsel for other parties who are not registered participants are being served by first class mail on the date of the electronic filing.

/s/ Elizabeth A. DiMarco _____
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