UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PHILIPS NORTH AMERICA LLC, Plaintiff, v. FITBIT, INC., Defendant.	Civil Action No. 1:19-cv-11586-IT

DEFENDANT FITBIT'S INVALIDITY AND NONINFRINGEMENT CONTENTIONS

Pursuant to Local Rule 16.6(d)(4) and in accordance with the deadlines agreed to and adopted by the Court in this action, Fitbit, Inc. ("Fitbit"), by and through its counsel, sets forth its Invalidity and Noninfringement Contentions. These contentions respond to the Infringement Disclosures of Plaintiff Philips North America LLC ("Philips"), served January 31, 2020. In its Infringement Contentions, Philips asserted the following patents and claims against Fitbit (collectively, the Asserted Patents):

U.S. Patent No.	Asserted Claims
6,013,007 ("the '007 patent")	7, 21, 22, 23, 24, 25, 26, 27, 28, 29
7,088,233 ("the '233 patent")	1, 7, 8, 9, 10, 13, 14, 15, 16, 22, 24, 25, 26
8,277,377 ("the '377 patent")	1, 4, 5, 6, 9, 12
6,976,958 ("the '958 patent")	15, 16, 17

I. Reservation of rights

Consistent with Local Rule 16.6, Fitbit reserves the right to amend these Invalidity and Noninfringement Contentions. Discovery is in its early stages, and Fitbit's prior art investigation

is not complete. Fitbit has not yet taken depositions or received discovery from third-parties. Fitbit reserves the right to revise, amend, or supplement its Invalidity and Noninfringement Contentions as it received information from parties and third parties, consistent with the Local Rules and the Federal Rules of Civil Procedure. In particular, Fitbit reserves its right to add to or amend our disclosures of system art once the Court-ordered stay on discovery is lifted and Fitbit is able to gather additional system art from third-parties.

Moreover, Fitbit reserves the right to revise, amend, or supplement its Invalidity and Noninfringement Contentions, which may change depending upon the Court's construction of claim terms and/or positions that Philips or its expert witnesses may take concerning claim interpretation, infringement, and/or invalidity issues. To the extent the following contentions reflect constructions of claim limitations consistent with or implicit in Philips' Infringement Contentions, no inference is intended nor should any be drawn that Fitbit agrees with Philips' claim constructions, and Fitbit expressly reserves the right to contest such claim constructions.

Fitbit offers these contentions in response to Philips' Infringement Contentions and without prejudice to any position Fitbit may ultimately take as to any claim construction issues. Fitbit has also met and conferred with Philips' concerning its deficient infringement contentions. Philips has agreed to amend those contentions to address those deficiencies no later than March 17, 2020. Fitbit's ability to respond to the infringement contentions and to identify relevant prior art has been prejudiced by Philips deficient infringement contentions and failure to provide required disclosures on conception and reduction to practice. Fitbit therefore reserves its rights to supplement these disclosures upon Philips' compliance with local rules. In addition, these contentions are in no way an endorsement of Philips' apparent infringement theories.

Fitbit reserves the right to rely on prior art included in its production (Fitbit_19-11586_00000001 – Fitbit_19-11586_00005313) whether or not it is charted. Prior art not included in this disclosure, whether known or not known to Fitbit, may later become relevant. In particular, Fitbit is currently unaware of the extent, if any, to which Philips will contend that limitations of the asserted claims are not disclosed in the prior art identified by Fitbit. To the extent that such an issue arises, Fitbit reserves the right to identify other references that would have made the addition of the allegedly missing limitation to the disclosed device or method obvious.

Depending on the Court's claim construction of claim terms, and/or positions that the parties or their expert witnesses may take concerning claim interpretation, infringement, and/or invalidity issues, different charted prior art references may be of greater or lesser relevance and different combinations of these references may be implicated. Given this uncertainty, the charts may reflect alternative applications of the prior art against the asserted claims.

II. Priority dates of the Asserted Patents

Philips has made no specific disclosure regarding conception and reduction to practice of the Asserted Patents, despite representing all of the inventors of the Asserted Patents. Philips' Infringement Contentions do not identify the priority dates for the Asserted Patents. Thus, Philips appears to be relying upon the filing date of the Asserted Patents, and not an earlier date, as the priority date.[1]

Fitbit has not yet had an opportunity to depose Philips or the inventors and, therefore, Fitbit is unable at this time to evaluate any claim by Philips with respect to conception or

[1] For example, to the extent Philips believes the '958 patent is entitled to a filing date earlier than February 6, 2004, it is Philips' burden to establish this earlier filing date. Philips has not satisfied this burden. So, for purpose of these contentions, Fitbit has assumed (without conceding) that the claims of the '958 patent are entitled to a priority date of February 6, 2004.

reduction to practice dates for the Asserted Patents and/or their file histories. Therefore, Fitbit is unable to determine the critical date(s) with respect to earlier invention by other parties under 35 U.S.C. § 102(g). Fitbit accordingly relies on references that qualify as prior art based on the priority dates identified on the face of the Asserted Patents, and reserves its right to amend these Invalidity Contentions to account for any allegations by Philips of an earlier priority date.

III. Invalidity contentions

A. Identification of each prior art reference

Subject to Fitbit's reservation of rights, and pursuant to Local Rule 16.6(d)(4)(E), attached are claim charts (Exs. A1-19, B1-15, C1-16, D1-16) detailing the invalidity of each Asserted Patent. In addition, Fitbit incorporates the papers, prior art references, and other exhibits and arguments in any *inter partes* review(s) that any party may file challenging any claims of the Asserted Patents. Fitbit also incorporates all materials filed in connection with the EP 1247299 Evocation Proceeding, the German Nullity Action for European patent EP 1 076 806, and the UK Case No. HP-2017-000068

Fitbit identifies at least the following prior art now known to anticipate and/or render obvious the Asserted Claims, either expressly, implicitly, or inherently as understood by a POSITA:

1. Prior art to the '233 patent

The following prior art patents, publications, and publically disclosed systems are prior art to the Asserted Claims of the '233 patent under at least 35 U.S.C. §§ 102(a), (b), (e), (g), and/or 35 U.S.C. § 103, as indicated in at least the attached charts and prose set forth below.

Patent / Application No.	Country	Filing Date	Issue / Publication Date
U.S. Patent No. 6,171,237 ("Avitall")	U.S.	March 30, 1998	January 9, 2001

U.S. Patent No. 5,416,468 (“Baumann”)	U.S.	October 29, 1993	May 16, 1995
U.S. Patent No. 5,752,976 (“Duffin”)	U.S.	June 23, 1995	May 19, 1998
U.S. Patent No. 6,160,986 (“Gabai”)	U.S.	May 19, 1998	December 12, 2000
U.S. Patent No. 6,366,871 (“Geva”)	U.S.	March 3, 1999	April 2, 2002
U.S. Patent No. 6,447,448 (“Ishikawa”)	U.S.	December 30, 1999	September 10, 2002
U.S. Patent No. 6,198,394 (“Jacobsen”)	U.S.	December 5, 1996	March 6, 2001
U.S. Patent No. 5,950,632 (“Reber 632”)	U.S.	March 3, 1997	September 14, 1999
U.S. Patent No. 5,961,451 (“Reber 451”)	U.S.	April 7, 1997	October 5, 1999
U.S. Patent No. 6,175,752 (“Say”)	U.S.	April 30, 1998	January 16, 2001
U.S. Patent No. 5,319,355 (“Russek”)	U.S.	July 10, 1991	June 7, 1994
International Pub. No. WO 00/32258 (“Aasmul”)	WO	November 30, 1999	June 8, 2000
U.S. Patent No. 5,822,715 (“Worthington”)	U.S.	April 18, 1997	October 13, 1998
U.S. Patent No. 5,574,979 (“West 979”)	U.S.	June 3, 1994	November 12, 1996
U.S. Patent No. 5,828,751 (“Walker”)	U.S.	April 8, 1996	October 27, 1998
U.S. Patent No. 6,255,800 (“Bork”)	U.S.	January 3, 2000	July 3, 2001
U.S. Patent No. 6,602,191 (“Quy”)	U.S.	December 15, 2000	August 5, 2003
U.S. Patent No. 5,530, 702 (“Palmer”)	U.S.	May 31, 1994	June 25, 1996
U.S. Patent No. 5,945,920 (“Maletsky”)	U.S.	December 10, 1997	August 31, 1999
U.S. Patent No. 5,963,144 (“Kruest”)	U.S.	May 30, 1997	October 5, 1999
International Pub. No. WO 98/24358 (“Fenson”)	WO	December 2, 1997	June 11, 1998

Title	Date Published	Publisher
“Personal Area Networks (PAN): Near-Field Intra-Body Communication”	September 1995	Massachusetts Institute of Technology

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