

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

<p>PHILIPS NORTH AMERICA LLC,</p> <p style="padding-left: 40px;">Plaintiff,</p> <p style="text-align: center; padding-left: 20px;">v.</p> <p>FITBIT, INC.,</p> <p style="padding-left: 40px;">Defendant.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Civil Action No. 19-11586-FDS</p>
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MEMORANDUM AND ORDER ON CLAIM CONSTRUCTION

SAYLOR, C.J.

This is an action for patent infringement. Plaintiff Philips North America LLC has sued defendant Fitbit, Inc., asserting claims under 35 U.S.C. § 271 for infringement of three patents of which Philips is the owner and assignee. The patents at issue concern technology related to connected-health products, such as wearable fitness trackers.

The case is at the claim-construction stage. The parties have submitted proposed construction for six disputed terms: (1) “means for computing athletic performance feedback data from the series of time-stamped waypoints obtained by said GPS receiver,” (2) “means for suspending and resuming operation of said means for computing when a speed of the athlete falls below a predetermined threshold,” (3) “governing information transmitted between the first personal device and the second device,” (4) “first personal device,” (5) “wireless communication,” and (6) “indicating a physiologic status of a subject.”¹

¹ The parties proposed construction of four additional terms that are in U.S. Patent No. 6,976,958. Philips has since withdrawn its allegations of infringement of that patent. The Court will therefore not address those terms.

I. Background

A. Factual Background

Philips North America LLC develops, among other things, connected-health technologies and related products, such as wearable fitness trackers that monitor and analyze personal health and fitness information. (Second Am. Compl. ¶¶ 2, 4-7, 12, 24-25). Its patent portfolio includes more than 60,000 patents. (*Id.* ¶ 8). It licenses its patented technologies to companies in the connected-health field. (*Id.* ¶¶ 6, 8).

Fitbit, Inc. develops, manufactures, and sells connected-health products. (*Id.* ¶¶ 13, 29-30).

B. Patents in Suit

The second amended complaint alleges that Fitbit infringes on three patents owned by Philips: U.S. Patent No. 6,013,007 (“the ’007 patent”), U.S. Patent No. 7,088,233 (“the ’233 patent”), and U.S. Patent No. 8,277,377 (“the ’377 patent”). The patents concern technology related to connected-health products, including GPS/audio athletic training, security mechanisms for transmitting personal data, wearable-technology products, and handling interrupted connections. (*Id.* ¶¶ 9, 12, 37).

1. The ’007 Patent

The ’007 patent is titled “Athlete’s GPS-Based Performance Monitor.” (’007 patent at Title). The patent concerns applying “Global Positioning System (GPS) technology for the personal performance monitoring of outdoor athletes, . . . and providing the athlete with real-time performance feedback and optional long-term trend analysis.” (*Id.* col. 1 ll. 8-13). It identifies “a need for a portable GPS unit that is small and light enough to be carried or worn by an outdoor athlete which incorporates real-time athletic performance algorithms for continuously monitoring the athlete’s progress and reporting his/her progress periodically during the exercise

session.” (*Id.* col. 1 ll. 59-64). According to the patent, “[r]eal-time audio reports would assist and motivate the athlete to improve his/her performance without any visual distractions” and “[a]n integrated radio can provide the athlete with entertainment.” (*Id.* col. 1 ll. 64-67).

The patent states that “the GPS-based performance monitor and feedback device of the present invention can be used to provide an outdoor athlete with continuous, consistent, and accurate real-time performance feedback, independent of his/her outdoor location in the world.” (*Id.* col. 9 ll. 63-67). It further states that “[t]he data presentation method of using an audio module eliminates the exclusive use of large, power-consuming, cumbersome, and visually distracting displays and leaves the athlete free to concentrate on his/her exercise, safety, and surroundings.” (*Id.* col. 9 l. 67; *id.* col. 10 ll. 1-4).

The patent provides for, among other things, a “portable feedback system providing regular updates on an athlete’s performance” comprising:

- a global positioning system GPS receiver for obtaining a series of time-stamped waypoints;
- means for computing athletic performance feedback data from the series of time-stamped waypoints obtained by said GPS receiver; and
- means for presenting the athletic performance feedback data to an athlete.

(*Id.* col. 2 ll. 56-67). It further provides for a “system for comparing an athlete’s performance with the performance of other athletes” comprising the same components plus “a modem for transmitting the athletic performance feedback data to a remote computer for comparison with athletic performance feedback data of other athletes.” (*Id.* col. 2 ll. 65-67; *id.* col. 3 ll. 1-10).

2. The '233 Patent

The '233 patent is titled “Personal Medical Device Communication System and Method.” ('233 patent at Title). It generally concerns a “bi-directional personal and health-wellness

provider communication system.” (*Id.* col. 1 ll. 21-23). More particularly, it concerns “a personal communication system suitable for use with children, vulnerable adults (such as those in assisted living situations), and more specifically, medically distressed persons and those in whom a[] personal medical device has been deployed, for medical testing, and for other life enhancements.” (*Id.* col. 1 ll. 23-28).

According to the patent, personal medical devices are devices that may either “monitor” or “provide” body functions. (*Id.* col. 2 ll. 2-3, 5). They may be used “to deliver drugs, heart defibrillation, or other treatment” or “to enhance wellness, test drug therapies, monitor patient health, deliver long-term care, or treat acute conditions.” (*Id.* col. 2 ll. 7-10). They take “many forms” and may be “surgically implanted, strapped externally to the body, carried in a pocket, transported in a carrying case, or installed as a home appliance.” (*Id.* col. 1 ll. 63-67).

The patent describes “a device and method to couple with [personal medical devices] to provide wireless communication and locating functions.” (*Id.* col. 2 ll. 11-12). Such communication may be used, among other things, “to provide health care professionals with access to information for remote diagnostic capabilities; to provide notification of acute conditions possibly requiring immediate assistance, transportation to a medical center, or remote treatment action; to provide a location information of mobile persons for caregivers; to notify responsible parties of the occurrence of a medical condition; and to provide remote intervention assistance by caregivers through verbal or visual interaction.” (*Id.* col. 2 ll. 14-22).

3. The '377 Patent

The '377 patent is titled “Method and Apparatus for Monitoring Exercise with Wireless Internet Connectivity.” ('377 patent at Title). It concerns “monitoring of living subjects.” (*Id.* col. 1 ll. 35-36). More particularly, it concerns “health-monitoring of persons where measured or input health data is communicated by a wireless device to and from a software application

running on an internet-connected server and where the same may be studied and processed by the software application, a health professional, or the subject.” (*Id.* col. 1 ll. 36-41).

The patent provides for a “method and apparatus . . . for wireless monitoring of exercise, fitness, or nutrition by connecting a web-enabled wireless phone to a device which provides exercise-related information, including physiological data and data indicating an amount of exercise performed.” (*Id.* at Abstract). It further provides that “[a]n application for receiving the exercise-related information and providing a user interface may be downloaded to the web-enabled wireless phone from an internet server” and that “[t]he exercise-related information may be transmitted to an internet server, and the server may calculate and return a response.” (*Id.*).

The patent identifies two “complementary” systems that embody the invention. (*Id.* col. 2 l. 64). The first embodiment may be employed “to manage the disease state or condition of a patient” by “employ[ing] a health monitoring device.” (*Id.* col. 2 l. 67; *id.* col. 3 ll. 1-2). That device would provide data by a wireless connection “for processing via the internet[,] including a review by a physician or other health care professional if required.” (*Id.* col. 3 ll. 1-2). For example, a diabetic could connect a blood-glucose monitor to a wireless web device, download data to a diabetes-management company’s server, and receive guidance concerning his next meal. (*Id.* col. 3 ll. 14-20).

The second embodiment enables implementation of a “health or lifestyle management plan” by allowing “[v]arious health parameters, such as those relating to nutrition or exercise, [to] be entered into a health monitoring device” and to be wirelessly communicated to a server. (*Id.* col. 3 ll. 6-11). In this embodiment, the system “may be employed to monitor the physiologic status of a healthy subject while eating, exercising, or performing other activities.” (*Id.* col. 3 ll. 34-36). For example, an individual following an exercise program could attach a

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