

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, INC.'S RENEWED RULE 12(b)(6) MOTION TO DISMISS
PLAINTIFF PHILIPS NORTH AMERICA LLC'S FIRST AMENDED COMPLAINT
UNDER 35 U.S.C. § 101**

Defendant Fitbit, Inc. ("Fitbit") files this renewed motion to dismiss Plaintiff Philips North America, LLC's ("Philips") first amended complaint with prejudice under Rule 12(b)(6) of the Federal Rules for Civil Procedure. Philips opposes this motion.

The claims of U.S. Patent Nos. 6,013,007, 6,976,958, 7,088,233, and 8,277,377 (collectively, "the Asserted Patents") are invalid as directed to patent-ineligible subject matter under 35 U.S.C. § 101. Philips' new allegations in its first amended complaint cannot overcome admissions in the specification or rewrite the claims. Thus, for at least these reasons, Philips' first amended complaint (Dkt. 25) fails to allege a claim of infringement of the Asserted Patents on which relief can be granted. In support, Fitbit relies on the memorandum submitted with this renewed motion, the accompanying declaration and exhibits, and any further briefing and argument permitted by the Court.

Fitbit respectfully requests the Court to GRANT this renewed motion and DISMISS Philips' first amended complaint (Dkt. 25) with prejudice.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(d), Fitbit requests the Court entertain oral argument on this motion, as Fitbit believes oral argument will assist the Court.

Dated: December 10, 2019

Respectfully submitted,

FITBIT, INC.

By Its Attorneys,

/s/ Yar R. Chaikovsky

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LOCAL RULE 7.1 CERTIFICATION

I, Yar R. Chaikovsky, counsel for Defendant Fitbit, Inc., hereby certify that we have conferred with counsel for Philips North America, LLC to resolve the issues presented in this motion, but after a good faith attempt to reach agreement, the parties did not do so.

Dated: December 10, 2019

By: /s/ Yar R. Chaikovsky
Yar R. Chaikovsky (*Pro Hac Vice*)

CERTIFICATE OF SERVICE

I certify that a true copy of the above document was served on the attorney of record for each party via the Court's CM/ECF system, which will send notification of this filing (NEF) to all registered participants, and paper copies will be sent to those indicated as nonregistered participants.

Dated: December 10, 2019

By: /s/ Yar R. Chaikovsky
Yar R. Chaikovsky (*Pro Hac Vice*)

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Leave to file excess pages granted
on December 10, 2019

**DEFENDANT FITBIT INC.'S MEMORANDUM IN SUPPORT OF ITS RENEWED
RULE 12(b)(6) MOTION TO DISMISS PLAINTIFF PHILIPS NORTH AMERICA
LLC'S FIRST AMENDED COMPLAINT UNDER 35 U.S.C. § 101**

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