

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

| | | |
|---------------------------|---|----------------------------|
| PHILIPS NORTH AMERICA LLC |) | |
| |) | |
| Plaintiff, |) | |
| |) | C.A. No. 1:19-cv-11586-IT |
| v. |) | |
| |) | |
| FITBIT, INC., |) | JURY TRIAL DEMANDED |
| |) | |
| Defendant. |) | |
| |) | |
| |) | |
| |) | |

PLAINTIFF'S RESPONSIVE CLAIM CONSTRUCTION BRIEF

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I. INTRODUCTION

Plaintiff Philips North America, LLC (“Philips”) submits its responsive claim construction brief. As demonstrated below, Fitbit’s opening claim construction brief (Dkt. 73) fails to demonstrate, by clear and convincing evidence, the indefiniteness of any asserted claims. Fitbit further fails to justify why any of its proposed constructions—which not only lack support in the specifications but often contradict them—should be adopted by this Court. Philips’s proposed constructions are grounded in the intrinsic record and the plain meaning of various terms to a person of ordinary skill in the art and should be adopted.

II. PHILIPS’S POSITIONS ON CLAIM CONSTRUCTION SHOULD BE ADOPTED

A. ’007 Patent: “means for computing athletic performance feedback data from the series of time-stamped waypoints obtained by said GPS receiver”

As explained in Philips’s opening claim construction brief, and confirmed in Fitbit’s own brief, the structure and function for this claim element is largely undisputed. What is disputed is the construction of “athletic performance feedback data” and whether the specification supports the recited function. The claim construction dispute is summarized as follows:

| Philips’s Proposal | Fitbit’s Proposed Construction |
|---|---|
| Determining any of the following from a series of time-stamped waypoints obtained by said GPS receiver during an exercise session: elapsed distance of an athlete; current or average speed of an athlete; current or average pace of an athlete. | “athletic performance feedback data” means elapsed distance, current and average speeds and paces, calories burned, miles remaining and time remaining. |

i. “Athletic performance feedback data” does not include calories burned

The dispute as to this term boils down to one primary issue: whether the construction of “athletic performance feedback data” should include “calories burned.” Fitbit attempts to include “calories burned” in the construction of “athletic performance feedback data” in order to

buttress its indefiniteness argument because every other type of athletic performance feedback data simply utilize high school level math to determine some form of distance or speed from a series of time-stamped GPS waypoints, and comply with the requirements of Section 112, ¶¶2 and 6. (*See* Dkt. 73 at 7-10 and Dkt. 73-5, Martin Decl. ¶¶ 13-27.)

The written description of the specification only mentions calories twice. Once in describing how prior art treadmills displayed a measure of calories burned (*see* Dkt. 73-1 at 1:22-24), and again in characterizing how a number of items can constitute “athletic performance data” but never referring to calories burned as “athletic performance feedback data” (*see* Dkt. 73-1 at 7:44-47). Fitbit has failed to explain how or why “calories burned” should be included in the construction of “athletic performance feedback data” given such a limited and ambiguous disclosure, nor why or how one of ordinary skill in the art would have understood “athletic performance feedback data” as including calories burned. They would not have. To the contrary, and as explained in Philips’s opening brief the specification unambiguously confirms that elapsed distance of an athlete, current or average speed of an athlete, or current or average pace of an athlete, all constitute athletic performance feedback data determined from a series of time-stamped GPS waypoints. (*See* Dkt. 73-0 at 6-7.).

Philips’s original proposed construction did not include “miles remaining” and “time remaining” because those measures are not necessarily determined from a “series of time-stamped waypoints obtained by said GPS receiver” (as required by the claim language itself). Philips would not dispute that determinations of “miles remaining” and “time remaining” for an athlete that actually did rely on a “series of time-stamped waypoints obtained by said GPS receiver” would constitute “athletic performance feedback data” in the claim, as those items

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