

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

**FITBIT'S RESPONSIVE CLAIM CONSTRUCTION BRIEF**

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**Cases**

<i>Abbott Labs. v. Sandoz, Inc.</i> , 566 F.3d 1282 (Fed. Cir. 2009).....	15
<i>Alfred E. Mann Found. for Sci. Research v. Cochlear Corp.</i> 841 F.3d 1334 (Fed. Cir. 2016).....	6, 7
<i>Aristocrat Techs. Australia Pty. Ltd. v. Int’l Game Tech.</i> , 521 F.3d 1328 (Fed. Cir. 2008).....	1, 8
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<i>B. Braun Med., Inc. v. Abbott Labs.</i> , 124 F.3d 1419 (Fed. Cir. 1997).....	4, 12
<i>Biomedino, LLC v. Waters Techs. Corp.</i> , 490 F.3d 946 (Fed. Cir. 2007).....	5, 6
<i>BlackBoard, Inc. v. Desire2Learn, Inc.</i> , 574 F.3d 1371 (Fed. Cir. 2009).....	3
<i>Default Proof Credit Card System, Inc. v. Home Depot USA, Inc.</i> , 412 F.3d 1291 (Fed. Cir. 2005).....	3
<i>EON Corp. IP Holdings LLC v. AT&amp;T Mobility LLC</i> , 785 F.3d 616 (Fed. Cir. 2015).....	3, 4, 12
<i>Finisar Corp. v. DirectTV Grp., Inc.</i> , 523 F.3d 1323 (Fed. Cir. 2008).....	5, 6
<i>Function Media, LLC v. Google, Inc.</i> , 708 F.3d 1310 (Fed. Cir. 2013).....	3, 8
<i>GPNE Corp. v. Apple, Inc.</i> , 830 F.3d 1365 (Fed. Cir. 2016).....	14, 19
<i>Harris Corp. v. Ericsson Inc.</i> , 417 F.3d 1241 (Fed. Cir. 2005).....	2
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<i>Oatey Co. v. IPS Corp.</i> , 514 F.3d 1271 (Fed. Cir. 2008).....	16, 18, 20
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<i>S3 Inc. v. NVIDIA Corp.</i> , 259 F.3d 1364 (Fed. Cir. 2001).....	5
<i>SkinMedica, Inc. v. Histogen Inc.</i> , 727 F.3d 1187 (Fed. Cir. 2013).....	16
<i>Ventana Med. Sys. v. BioGenex Labs., Inc.</i> , 473 F.3d 1173 (Fed. Cir. 2006).....	15
<i>Williamson v. Citrix Online, LLC</i> , 792 F.3d 1339 (Fed. Cir. 2015).....	1, 2, 9, 12
<i>WMS Gaming, Inc. v. Int’l Game Tech.</i> , 184 F.3d 1339 (Fed. Cir. 1999).....	7, 8
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35 U.S.C. § 112.....	7

Fitbit's claim constructions are supported by Federal Circuit law and intrinsic record. Philips' constructions rely on expert testimony to rewrite claim language, skirt statutory disclosure requirements, and contradict file history admissions. The case law is decidedly on Fitbit's side; even Philips' legal authorities support Fitbit's positions.

**I. U.S. PATENT NO. 6,013,007**

**A. “means for computing athletic performance feedback data from the series of time-stamped waypoints obtained by said GPS receiver” (Claims 1, 21)**

**1. Philips' admissions compel a finding of indefiniteness**

The law of indefiniteness pertaining to a computer-implemented function of a means-plus-function (“MPF”) is straightforward. Such claim terms are indefinite if the patent specification fails to disclose a linked algorithm, as is the case here. *See Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1351-52 (Fed. Cir. 2015); D.I. 72 at 2-5; D.I. 44 at 9-15.<sup>1</sup> As detailed in subsection I.A.2 below, Philips' opening brief grossly misstates the relevant law. Indeed, the cases Philips relies on recognize the MPF disclosure requirements and support indefiniteness here.<sup>2</sup>

In an attempt to supply the missing algorithm, Philips supplements the '007 patent disclosure with testimony from its expert, Dr. Martin. This strategy is inappropriate because the content of the specification controls. *See Harris Corp. v. Ericsson Inc.*, 417 F.3d 1241, 1253

<sup>1</sup> The '007 patent's failure to disclose the necessary algorithm is not surprising given that it was filed in 1998 and issued in 2000. It was not until years later that the Federal Circuit provided guidance that “[t]he corresponding structure for a § 112, ¶ 6 claim for a computer-implemented function is the algorithm disclosed in the specification.” *Aristocrat Techs. Australia Pty. Ltd. v. Int'l Game Tech.*, 521 F.3d 1328, 1333 (Fed. Cir. 2008).

<sup>2</sup> Philips argued in the parties' joint status report that indefiniteness should be addressed during claim construction (D.I. 60 at 2-3, 7-9). Now Philips takes the inconsistent position that the Court should delay addressing indefiniteness until after claim construction (D.I. 73 at 8). Indefiniteness for failure to disclose an algorithm is commonly determined in the context of claim construction. *E.g., Williamson v. Citrix Online LLC*, 792 F.3d 1339, 1345-46, 1351-55 (*en banc*) (affirming finding of indefiniteness in claim construction order).

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