Exhibit C

In The Matter Of:

Philips v.
Fitbit

Thomas Martin, PH.D.
June 18, 2020

LEXITAS ™

Min-U-Script® with Word Index

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 1              UNITED STATES DISTRICT COURT
 2            FOR THE DISTRICT OF MASSACHUSETTS
 3
 4
 5   PHILIPS NORTH AMERICA LLC,  ) Case No. 1:19-cv-11586-IT
 6           Plaintiff,         )
 7       v.                     )
 8   FITBIT, INC.,              )
 9           Defendant.         )
10   _____)
11
12
13
14           REMOTE VIDEOTAPED DEPOSITION OF
15               THOMAS L. MARTIN, PH.D.
16                   June 18, 2020
17            10:02 a.m. Eastern Standard Time
18                 Blacksburg, Virginia
19
20
21
22
23   REPORTED BY:
24   Kristi Caruthers
25   CLR, CSR No. 10560
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 3                 Blacksburg, Virginia
 4                   June 18, 2020
 5
 6
 7
 8          REMOTE VIDEOTAPED DEPOSITION OF THOMAS L.
 9   MARTIN, PH.D., located in Blacksburg, Virginia,
10   pursuant to agreement before Kristi Caruthers, a
11   California Shorthand Reporter of the State of
12   California.
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 1   APPEARANCES:
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 3       For Plaintiff:
 4           FOLEY & LARDNER LLP
             BY:  RUBEN J. RODRIGUES, ESQ.
 5           111 Huntington Avenue
             Suite 2500
 6           Boston, Massachusetts 02199-7610
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 7           rrodrigues@foley.com
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 9       For Defendant:
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11           200 Park Avenue
             New York, New York 10166
12           212.318.6797
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13
14       ALSO PRESENT:
15           Christian Ruiz, Videographer
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1   MR. RODRIGUES: Objection to form.
2   THE WITNESS: Again, it's my opinion that
3 would be obvious to somebody, you know, skilled in
4 the art.
5   BY MR. PETERMAN:
6 Q. And you keep using the term it would be
7 obvious to someone of skill in the art.
8   What does -- what does that mean?
9 A. Well, as I've detailed in the report, I'm
10 assuming somebody with a degree in electrical
11 engineering or computer engineering or computer
12 science, some related field, related knowledge, you
13 know, from practice in the field.
14 Q. Were you finished or -- I wasn't sure if
15 you were finished with your answer.
16 A. Yes, I'm finished.
17 Q. So your opinion is is that all of these
18 calculations that are called for in the claims would
19 have been obvious for someone of skill in the art to
20 implement?
21   MR. RODRIGUES: Objection to form.
22   THE WITNESS: Yes. It would have been
23 obvious to someone skilled in the art.
24   BY MR. PETERMAN:
25 Q. So we've talked a lot about distance.

1   Would it also have been obvious to
2 determine the current or average speed of an
3 athlete?
4 A. Well, as I've described in my report, once
5 you have the distance and you know the -- and you
6 would have been keeping track of the time, then
7 average speed is just the distance divided by the
8 time, again, a calculation that someone in grade
9 school would be able to do.
10 Q. Is there an algorithm for calculating
11 average sp.eed that's disclosed in the patent
12 specification?
13   MR. RODRIGUES: Objection to form.
14   THE WITNESS: It's my opinion that just
15 stating -- you know, finding the average speed would
16 be sufficient.
17   BY MR. PETERMAN:
18 Q. And is that your same opinion also for
19 finding the current speed?
20   MR. RODRIGUES: Objection to form.
21   THE WITNESS: Yes.
22   BY MR. PETERMAN:
23 Q. So I'd like to understand this a little
24 bit more, and I know we're talking about the '007
25 patent, and you've identified a processor as being

1 the structure in connection with the function of
2 computing athletic performance feedback data from a
3 series of time-stamped waypoints obtained by a GPS
4 receiver; is that correct?
5   MR. RODRIGUES: Objection to form.
6   THE WITNESS: And I'm sorry, Chad. Would
7 you repeat that again? You broke up in the middle.
8   BY MR. PETERMAN:
9 Q. Sure. I'd like to just direct your
10 attention to Exhibit 1, Paragraph 13 of your report.
11 A. Let me -- let me scroll back. You said
12 Paragraph 13?
13 Q. Correct.
14 A. Okay. I'm looking at it.
15 Q. Okay. And why don't you read it to
16 yourself. I'm going to ask you some questions about
17 that paragraph.
18   (Document reviewed by witness.)
19   THE WITNESS: Okay. I've read it to
20 myself.
21   BY MR. PETERMAN:
22 Q. Okay. So do you agree with Philips's
23 proposed construction for the term means for
24 computing athletic performance feedback data from
25 the series of time-stamped waypoints obtained by

1 said GPS receiver?
2 A. I agree.
3 Q. Part of that construction is a processor.
4   Do you see that?
5 A. Yes, I do.
6 Q. What is meant by "processor" here?
7   MR. RODRIGUES: Objection to form.
8   THE WITNESS: It means a computational
9 element, you know, a microcontroller or a
10 microprocessor.
11   BY MR. PETERMAN:
12 Q. So, for example, an Intel chip would be an
13 example of a microprocessor?
14 A. Yes, an Intel chip would be an example of
15 a microprocessor.
16 Q. Do microprocessors need to be programmed
17 with algorithms in order to perform?
18   MR. RODRIGUES: Objection to form.
19   THE WITNESS: Yes, they need to be
20 programmed.
21   BY MR. PETERMAN:
22 Q. Does an Intel chip off the shelf know how
23 to calculate distance between two waypoints?
24   MR. RODRIGUES: Objection to form.
25   THE WITNESS: No. An Intel processor off

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1 the shelf would not be able to find the distance
2 between two points. It also wouldn't be able to do
3 anything else.
4 BY MR. PETERMAN:
5 Q. Would any processor off the shelf be able
6 to find the distance between two waypoints?
7 MR. RODRIGUES: Objection to form.
8 THE WITNESS: I'm not a lawyer -- I'm
9 sorry. What was that?
10 MR. RODRIGUES: I was just saying
11 objection to form.
12 You can answer.
13 THE WITNESS: Okay. I'm not a lawyer, but
14 it is entirely possible that somebody could have
15 made a processor that's dedicated to find distances
16 between latitude and longitude points.
17 BY MR. PETERMAN:
18 Q. But in the 1998 to, you know, 2002 time
19 frame, what processors were you aware of off the
20 shelf that could find distance between two GPS
21 waypoints?
22 A. Well, almost any processor that somebody
23 programmed to find those -- those waypoints would be
24 able to do it.
25 Q. But the key is that someone would need to

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1 program those off-the-shelf processors; correct?
2 A. That is correct.
3 Q. And the same is true for the current or
4 average speed of an athlete; correct? That would
5 need to be programmed by someone?
6 A. So the average speed would have to be
7 programmed, but the '007 patent actually stated that
8 the GPS unit could provide current speed.
9 Q. Would the average pace of an athlete need
10 to be programmed into an off-the-shelf
11 microprocessor?
12 MR. RODRIGUES: Objection to form.
13 THE WITNESS: Someone would have to write
14 a program to do that, yes.
15 BY MR. PETERMAN:
16 Q. And it's your opinion that it would just
17 be obvious to write a program to do these
18 calculations; correct?
19 MR. RODRIGUES: Objection to form.
20 THE WITNESS: That is correct.
21 BY MR. PETERMAN:
22 Q. Just want to shift gears a little bit,
23 still sticking with your expert declaration. And I
24 also know that we've been going a little bit over an
25 hour. If you'd like to take a break at this point,

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1 I'm happy to do it. I'm also happy to keep pushing
2 through. Whatever your preference is, sir.
3 A. I'm good. We can keep going.
4 Q. So your report, Paragraph 11, you lay out
5 your understanding of what a person of ordinary
6 skill in the art is.
7 A. Okay. I'm there.
8 Q. How did you come up with this construction
9 of a person of ordinary skill in the art?
10 A. It's based upon my experience as -- as a
11 professor and as a graduate student in the field.
12 Q. So just tracking through your opinion. So
13 you say:
14 "A person of ordinary skill
15 in the art of patent inventions
16 as of the earliest claim priority
17 date on the face of each patent."
18 I just want to understand what your
19 understanding is of the earliest claim priority date
20 means.
21 A. It's -- it's when the patent was first
22 filed.
23 Q. And you determined when the patent was
24 filed by looking at the face of each of the
25 respective patents?

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1 A. Yes, I did.
2 Q. You continue in Paragraph 11 saying:
3 "It's an individual with at
4 least a bachelor's degree in
5 electrical engineering, computer
6 engineering or computer science."
7 Correct?
8 A. That's correct.
9 Q. And then you go on to say:
10 "Some experience with
11 activity and/or health-monitoring
12 technologies or the equivalent
13 thereof."
14 Do you see that?
15 A. I see that.
16 Q. In your opinion, what counts as some
17 experience with activity or health-monitoring
18 technologies?
19 A. It would be some work with the type of
20 embedded system that is typically used for -- for
21 the wearable devices and some of the sensing
22 technologies around that.
23 Q. Okay. So it's not just wearing a activity
24 or health-monitoring tracker; correct?
25 A. Sorry. I'm not sure what you're asking.

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