UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

PHILIPS NORTH AMERICA LLC,	
Plaintiff,	: <i>)</i> :)
V) Civil Action No. 1:19-cv-11586-IT
v.	
FITBIT, INC.,	JURY TRIAL DEMANDED
Defendant.	;) ;)
	i')

PLAINTIFF PHILIPS NORTH AMERICA LLC'S UNOPPOSED MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT TO WITHDRAW COUNT IV OF THE PATENT INFRINGEMENT

Plaintiff Philips North American LLC ("Philips") respectfully moves the Court under Fed. R. Civ. P 15(a)(2) and 16(b)(4) for leave to amend its First Amended Complaint to withdraw all allegations of infringement of U.S. Patent No. 6,976,958 ("the '958 patent"). Attached as Exhibit A is a copy of Philips's Proposed Second Amended Complaint. The only change between Philips's First Amended Complaint and Philips's Proposed Second Amended Complaint is that all references to the '958 Patent have been removed. On August 10, 2020 Philips filed a disclaimer of all the asserted claims of the '958 patent with the U.S. Patent and Trademark Office. (See Exhibit B.) As a result of this disclaimer, those claims can therefore no longer be asserted against Fitbit or any other parties. Accordingly, Philips good cause exists to allow the requested amendment.

Philips has conferred with counsel for Fitbit, Inc. ("Fitbit") and Fitbit has indicated that while it does not oppose the requested amendment, Fitbit reserves all rights to seek an award of attorney fees and costs incurred in responding to Philips's claims based on the '958 patent. Fitbit



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states that it may also rely on the circumstances surrounding Philips's assertion, and subsequent dismissal of the '958 patent, as evidence that this case is exceptional under 35 U.S.C § 285. Philips disagrees that the assertion of the '958 Patent has any bearing on any request by Fitbit for Attorneys' Fees and Costs, or to any request under 35 U.S.C. 285, however, will address the same if an when Fitbit brings those issues to the Court.

Philips respectfully requests that the Court grant this Motion.



Dated: September 2, 2020 Respectfully Submitted,

/s/Ruben J. Rodrigues

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Counsel for Plaintiff
Philips North America LLC



LOCAL RULE 7.1 CERTIFICATION

Pursuant to Local Rule 7.1(a)(2), the undersigned conferred with counsel for Fitbit, Inc. and Fitbit, Inc. does not oppose this motion.

By: <u>/s/Ruben J. Rodrigues</u>
Ruben J. Rodrigues

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above document was served on September 2, 2020 on counsel for Defendant via electronic mail.

By: <u>/s/Ruben J. Rodrigues</u> Ruben J. Rodrigues

