

EXHIBIT E

From: [Karim Oussayef](#)
To: [Rodrigues, Ruben J.](#); [Peterman, Chad](#)
Cc: [BOST - F - Philips - Fitbit](#); [Philips - Fitbit](#); [Fitbit Philips DC Service](#)
Subject: RE: Philips v. Fitbit (D. Mass) - Contentions
Date: Thursday, March 11, 2021 12:26:53 PM

**** EXTERNAL EMAIL MESSAGE ****

Hi Ruben,

We are days away from the close of fact discovery. Could you please confirm what amendments you would like to make to Philips's infringement contentions?

And do you have any specific proposals for what limits you would propose for narrowing contentions? Happy to discuss.

Thanks,
Karim

Karim Z. Oussayef

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From: RRodrigues@foley.com <RRodrigues@foley.com>
Sent: Wednesday, March 10, 2021 4:37 PM
To: Peterman, Chad <chadpeterman@paulhastings.com>
Cc: BOSTFPhilipsFitbit@foley.com; Philips - Fitbit <Philips-Fitbit@paulhastings.com>; Fitbit Philips DC Service <FitbitPhilipsDCService@desmaraisllp.com>
Subject: [Ext] RE: Philips v. Fitbit (D. Mass) - Contentions

****EXTERNAL EMAIL** This email originated from outside the company. Do not click on any link unless you recognize the sender and have confidence the content is safe.**

Hi Chad,

I wanted to follow-up on the below, which I don't think we ever received a response on. We'd like to move ahead with a motion to amend Philips's infringement contentions, but, want to make sure we're on the same page with respect to the scope of the motion (and to the extent possible, would like to narrow the scope of the dispute). Let me know if we can reach agreement on #1 below. As for #2, perhaps we can agree to some bounds for narrowing each sides' contentions after claim construction, but prior to the service of expert reports.

Let me know if you'd like to discuss.

Regards,

-Ruben

From: Rodrigues, Ruben J.
Sent: Tuesday, February 2, 2021 4:31 PM
To: Peterman, Chad <chadpeterman@paulhastings.com>
Cc: BOST - F - Philips - Fitbit <BOSTFPhilipsFitbit@foley.com>; Philips - Fitbit <Philips-Fitbit@paulhastings.com>
Subject: RE: Philips v. Fitbit (D. Mass) - Contentions

Hi Chad,

Thanks, for providing a counterproposal. Here our current thoughts, let us know if we might have an agreement on some or all of this:

1.) We won't agree to not to include the Charge 4 product in the amendment, which was released just after Philips finalized its original contentions. The Charge 4 products infringes for the same reasons as all the other accused products and there is no prejudice to Fitbit in adding it to the contentions. That said, if we can reach agreement that Fitbit would not object on the basis of diligence with respect to Charge 4, we would not object to the proposed amendments concerning Gaukel.

2.) We are open to narrowing the asserted claims as part of an overall agreement to limit prior art. We think, however, that this limiting exercise should occur prior to the service of expert reports. If we agree to an overall extension of the schedule as proposed in my earlier e-mail, perhaps sit makes sense to include some deadlines for narrowing prior art and asserted claims prior to the service of expert reports? Is this something we should discuss?

Regards,

-Ruben

From: Peterman, Chad <chadpeterman@paulhastings.com>
Sent: Friday, January 15, 2021 1:15 PM
To: Rodrigues, Ruben J. <RRodrigues@foley.com>
Cc: BOST - F - Philips - Fitbit <BOSTFPhilipsFitbit@foley.com>; Philips - Fitbit <Philips-Fitbit@paulhastings.com>
Subject: RE: Philips v. Fitbit (D. Mass) - Contentions

**** EXTERNAL EMAIL MESSAGE ****

Ruben –

Thanks for your email. We offer the following in response:

- 1) We would agree that neither party shall object to any amendment on the basis of timeliness/diligence, except for Philips' attempt to add the Charge 4 product. The Charge 4 launched in April 2020 and Philips has not provided any justifiable reason for delay. If Philips agrees to the foregoing, we would also agree to withdraw the proposed amendment with respect to Gaukel.
- 2) We do not agree to your proposal for limiting the prior art. At a minimum, it is premature. Notably, there are pending motions and claim constructions that may impact the scope of the case and the parties' positions. These motions must be resolved before we could consider potential narrowing. Further, we could not possibly consider narrowing prior art positions without Philips narrowing the number of asserted claims in each patent.

Please let us know your positions in response.

Regards,
Chad

From: RRodrigues@foley.com <RRodrigues@foley.com>
Sent: Monday, January 11, 2021 10:47 AM
To: Peterman, Chad <chadpeterman@paulhastings.com>
Cc: BOSTFPhilipsFitbit@foley.com; Philips - Fitbit <Philips-Fitbit@paulhastings.com>
Subject: [EXT] Philips v. Fitbit (D. Mass) - Contentions

Hi Chad,

In order to move the ball forward with respect to both Philips's and Fitbit's proposed amendments to the contentions, Philips proposes that both parties agree that neither party shall object to any amendment on the basis of timeliness/diligence. After all, the materials Fitbit seeks to add to the invalidity contentions at this stage are all publicly available materials that it could have been identified earlier.

If agreement can be reached on that front, and assuming Fitbit agrees to additionally withdraw the proposed amendment with respect to Gaukel, a reference Fitbit had when it served its original contentions, Philips would further agree not to oppose the proposed amendments with respect to the Icon Health and Fitness charts.

That would leave the issue of Fitbit's proposed amendment with regards to the Teller, Maeda, Henderson, and "SmartClothing" references. Assuming agreement on the above, Philips would only oppose Fitbit's proposed amendments with respect to these references on the grounds that Fitbit has already served an unreasonable number of invalidity contentions, and now would be a good time to simplify the case and not further complicate the case. Specifically, with respect to the patents still at issue in this matter, and including the proposed amendment, Fitbit will have identified

more than 109 total prior art references and will have served 53 claim charts. Fitbit can't genuinely intend to pursue all these prior art references in this case, nor would it be reasonable to do so. Accordingly, we could agree to Fitbit's proposed amendment if Fitbit would agree to limit its contentions at this stage to five (5) prior art references against each patent still at issue (for a total of fifteen). Let us know if this might be agreeable.

We understand that even if we are able to agree with respect to the above, this would mean that Fitbit would continue to oppose Philips's amendment to its infringement contentions on the basis of Fitbit's theory that the '377 Patent is expired. As we've explained, we believe Fitbit's position to be without merit in view of the fact that no provisional application was converted to a non-provisional in under 37 C.F.R. 1.53, and the cited cases relied on by Fitbit are inapposite. We intend to file a motion to amend Philips's contentions as previously shared with Fitbit and believe our meet and confer requirements have been met. Please advise if you disagree or if Fitbit has changed its position.

Regards,

-Ruben

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