

EXHIBIT 5

From: [Karim Oussayef](#)
To: RRodrigues@foley.com; [Okano, David](#); [Peterman, Chad](#)
Cc: BOSTEPPhilipsFitbit@foley.com; [Philips - Fitbit](#); [Fitbit Philips DC Service](#)
Subject: RE: [EXTERNAL] Re: Philips v. Fitbit - Scope of Review and Dr. Buy's contact information.
Date: Friday, March 26, 2021 3:17:07 PM

Hi Ruben,

Thanks for speaking with us. Here's a summary of our meet and confer. Please let me know if you believe there are any inaccuracies.

Interrogatories (15, 18, and 24)

- **Interrogatory 15 (Written Description and Enablement):** Philips agreed that it would supplement its response by Monday, 3/29, pursuant to the parties' prior agreement.
- **Interrogatory 18 (Third-Party Communications):** Philips agreed that it would supplement its response by Monday, 3/29, to identify the third-parties with which it communicated and the previously produced documents reflecting those communications. Philips further confirmed that all third-party communications had either been produced or were reflected in Philips's privilege log.
- **Interrogatory 24 (Validity Contentions):** The parties discussed the possibility of narrowing the issues. Philips indicated it would follow up with a proposal similar to the agreement it reached with Garmin, which Fitbit would consider. Philips also confirmed that, independent of the Markman ruling or an agreement to narrow claims, it had no intention of dropping any additional patents or claims from the case.

Requests for Production (13, 31, 52-53)

- Health Watch Post-Market Surveillance Reports
- Financial Projections and Sales for the Health Watch
- 2015 Customer Usability Study for the Health Watch
- Health Watch Development Plan
- Health Watch Device Description
- 2016 Consumer Electronics Show Documents
- MIO Alpha Validation Documents

Philips agreed to further investigate whether such documents existed, were archived, and were accessible, and to follow up with Fitbit after its investigation. Philips also confirmed that it was not relying on any secondary considerations of non-obviousness or that any of its own products practice the asserted claims.

Philips's Privilege Log

See the email I circulated earlier this afternoon, below. Note that we discussed entries 7, 61, and 226 (my early email said entries 7, 66, and 226).

Garmin Declaration

Philips maintains that it may object to the declaration as hearsay. The parties are at an impasse as to any stipulation of admissibility.

Philips's Motion to Amend Its Infringement Contentions to Include Additional Products

Fitbit confirmed that it would oppose any Philips motion to add new products to its infringement contentions. Fitbit may raise the issue of the '377 patent's expiration date in its opposition to any motion.

Supplemental Sales Information

Philips requested that Fitbit supplement its sales data to reflect the sales of: (1) the previously accused products through January 2021; and (2) the newly accused products (provided the Court allows Philips to amend its contentions) through January 2021. Fitbit indicated that it would consider Philips's requests and respond accordingly.

Best,
Karim

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Subject: RE: [EXTERNAL] Re: Philips v. Fitbit - Scope of Review and Dr. Buy's contact information.

Hi Ruben,

Here are the two cases I had in mind.

As we discussed, please confirm that Philips agrees to supplement its privilege log to include more detailed and/or corrected information for documents that it still contends are privileged and to produce documents that it no longer contends are privileged. Since that would likely take past Wednesday to complete, we would ask for a stipulation to extend the time to file discovery motions on this issue as part of this agreement.

As examples of the types of entries that raise concerns, we discussed entries 7, 66, and 226, which appear to relate to nonprivileged licensing strategy. Other entries that we would highlight include 46-49, 62-65, 128, 177, 262, 266, and 269.

Thanks,
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