

**IN THE 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-FDS

**DECLARATION OF DAVID J. SHAW IN SUPPORT OF FITBIT, INC.'S MOTION TO
COMPEL THE PRODUCTION OF CERTAIN OF MR. ARIE TOL'S EMAIL
COMMUNICATIONS**

I, David J. Shaw, hereby declare:

1. I am an attorney at Desmarais LLP, counsel of record for Fitbit, Inc. ("Fitbit"). I am admitted *pro hac vice* to this Court. I have personal knowledge of the facts set forth herein and could competently testify to them if called as a witness.

2. I make this declaration in support of Fitbit's Motion to Compel the Production of Certain of Mr. Arie Tol's Email Communications.

3. Attached hereto as Exhibit A is a true and correct redacted copy of Philips North America LLC's ("Philips") Supplemental Confidential Privilege Log for the emails of Arie Tol, dated April 16, 2021.

4. Attached hereto as Exhibit B is a true and correct copy of correspondence between Philips and Fitbit, dated April 13, 2017 and produced at PNA-FB0012463-PNA-FB0012470.

5. Attached hereto as Exhibit C is a true and correct copy of email correspondence between Philips and Fitbit, dated April 21, 2017 through December 12, 2017 and produced at PNA-FB0006567-PNA-FB0006575.

6. Attached hereto as Exhibit D is a true and correct copy of email correspondence between Philips and Fitbit, dated August 21, 2018 through February 21, 2019 and produced at PNA-FB0006725-FB0006737.

7. Attached hereto as Exhibit E is a true and correct copy of an excerpt from the deposition transcript of Mr. Arie Tol, dated January 13, 2021.

8. Attached hereto as Exhibit F is a true and correct copy of Philips's Initial Disclosures, dated January 10, 2020.

9. Attached hereto as Exhibit G is a true and correct copy of Philips's First Supplemental Initial Disclosures, dated January 22, 2021.

10. Attached hereto as Exhibit H is a true and correct copy of correspondence between counsel for Fitbit and counsel for Philips, dated January 26, 2021.

11. Attached hereto as Exhibit I is a true and correct copy of email correspondence between counsel for Philips and counsel for Fitbit, dated February 9, 2021.

12. Attached hereto as Exhibit J is a true and correct redacted copy of Philips's Confidential Privilege Log for the emails of Arie Tol, dated March 23, 2021.

13. Attached hereto as Exhibit K is a true and correct copy of email correspondence between counsel for Philips and counsel for Fitbit, dated April 20, 2021 to May 11, 2021.

14. Attached hereto as Exhibit L is a true and correct redacted copy of Philips's Supplemental Confidential Privilege Log for the emails of Arie Tol, dated May 28, 2021.

15. Attached hereto as Exhibit M is a true and correct redacted copy of Philips's Second Supplemental Confidential Privilege Log for the emails of Arie Tol, dated June 11, 2021.

16. Attached hereto as Exhibit N is a true and correct copy and sworn translation of an official summary of the Dutch case *Bruil v. Tital International*, Rechtbank Zutphen [District Court of Zutphen], 1 May 1988, ECLI:NL:RBZUT:1988:AB8996 (Neth.).

17. Attached hereto as Exhibit O is a true and correct copy of email correspondence between counsel for Philips and counsel for Fitbit, dated May 28, 2021.

18. Attached hereto as Exhibit P is a true and correct copy of email correspondence between counsel for Philips and counsel for Fitbit, dated June 16, 2021.

19. Attached hereto as Exhibit Q is a true and correct copy of email correspondence between counsel for Philips and counsel for Fitbit, dated June 17, 2021

20. Attached hereto as Exhibit R is a true and correct copy of Philips's Supplemental Responses to Fitbit's First Interrogatories, dated January 22, 2021.

21. Attached hereto as Exhibit S is a true and correct copy of excerpts of the Dutch Patent Act, available at <https://wetten.overheid.nl/BWBR0007118/2020-04-01>, as visited upon June 18, 2021.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge.

Executed June 18, 2020 in Washington, DC.

/s/ David J. Shaw

David J. Shaw (*pro hac vice*)

CERTIFICATE OF SERVICE

I hereby certify that, on June 18, 2021, I electronically filed the foregoing with the Clerk's Office using the Court's CM/ECF system, which will send notification of this filing (NEF) to all registered participants, and paper copies will be sent to those indicated as non-registered participants.

Dated: June 18, 2021

/s/ Gregory F. Corbett

Gregory F. Corbett