

Exhibit H

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January 26, 2021

VIA EMAIL

Eley O. Thompson
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Mr. Thompson:

We write regarding the deposition of Mr. Arie Tol on January 13, 2021, and the improper privilege objections that prevented Fitbit from obtaining answers to questions that are not protected by any applicable privilege. Please provide your availability for a meet and confer at your earliest convenience to discuss Mr. Tol's continued deposition and whether Philips intends to continue shielding Mr. Tol's testimony through these improper objections, several examples of which are detailed below.

In particular, as I stated during the deposition, a "yes or no" question whether Philips' Intellectual Property and Standards ("IP&S") business unit has internal licensing royalty target numbers or ranges when it initiates a licensing campaign against a third-party is not covered by any applicable privilege. This information is relevant to Fitbit's notice to Philips that it intends to seek attorneys' fees under 35 U.S.C. § 285 in this action. None of these questions sought information protected by the attorney-client or work product privilege, something I made clear during the deposition. Foley's attempt to shield this business information from disclosure through a privilege objection is improper.

I highlight two illustrative examples of the improper objections made during Mr. Tol's deposition below:

Jan. 13, 2021 Tol Tr. at 59:3–62:1:

Q. Okay. And as of today, in your position at Philips, is there a goal or outcome that you were expected to achieve on the Fitbit project?

MR. THOMPSON: I'm going to object and instruct not to answer as the goals and -- of this case, with a person who is in the day-to-day group relating to the case, who has advice by Foley and a whole bunch of other attorneys, is attorney work product and attorney-client privilege so I instruct him not to answer.

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MR. CHAIKOVSKY: And just for that instruction, Mr. Thompson, and the earlier instruction that you provided with respect to the prior questions, can you state the basis for the privilege on the record?

MR. THOMPSON: I just did.

MR. CHAIKOVSKY: No, you did not. You stated that, "has advice by Foley and a whole bunch of other attorneys, is attorney work product and attorney-client privilege so I instruct him not to answer."
And what I'm saying is -- you know, Foley is not internal to Fitbit. You know, you don't exist internal -- sorry, to Philips. You don't exist internally to Philips, and so when Philips creates its kind of outcome with respect to what its goals and its projects are, whether it's Fitbit, Garmin or other projects, you know, Foley & Lardner is not there. And so what I'm asking for is what's the basis of the privilege -- all of those questions I asked before the break, on any project, Fitbit, Garmin or otherwise, how is that privileged?

MR. THOMPSON: Well, sure. So you asked what's the goal or outcome of the case; so, I mean, I'll outline it but I think this will be familiar to you because I'm sure that you do the same thing in other cases. So when you assess a case, right, you look at the actions of the defendant. Here, Fitbit, right. You look at how long they've infringed the patents and the situation in which they infringe the patents, which leads to damages to Philips. You assess that and then when you assess that, then it goes into what would be the, as you characterized it, goal or outcome of the litigation. That is all part of the assessment of the case and it's also part of attorney-client privilege.

MR. CHAIKOVSKY: Okay. And so let's refer not to the Fitbit matter. Let's refer to any project within IP&S. And any project in IP&S, you can't make that representation, and so -- and, in fact, I would assume -- and I'll ask the question, I would assume outside counsel's not involved in many of the IP&S' projects. And so the questions I asked prior to the break were not tied to Fitbit at all. They were -- you know, they were asking about projects within the group and compensation with respect to those projects and targets, and so that answer or that response you just gave me with respect to privilege wouldn't apply -- I can have a debate about whether it even applies to Fitbit even. But let's focus on the broader notion of targets on any projects and what the basis of that privilege is. How is that privileged?

MR. THOMPSON: I don't think -- first off, I don't agree with your characterization of there being targets. What there is, especially in regards to Fitbit, is a course of action taken by Fitbit where they willfully disregarded the patent rights of Philips. They caused tremendous damage to Philips that led to Philips seeking redress in this case. So that is -- that's what's going on here.

Jan. 13, 2021 Tol Tr. at 50:19–54:22, 57:7–18:

BY MR. CHAIKOVSKY:

Q. And then, so that same question: During the course of talking to a licensee where Philips is -- I'm sorry, Fitbit is one example, does the expectation of the

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[REDACTED]

amount of royalties change given the results of the discussion or the results of any litigation, for example?

MR. THOMPSON: You know, I think at this point, the nature of your question, you're asking a person within the litigation group, outside of a 30(b)(6) topic, the discussions that the outside counsel and they have relating to the liability because of Fitbit's wilful infringement of the patents owned by Philips, and that assessment, as you know, Yar, is privileged on a number of levels: it's privileged at the work-product level; it's privileged at the attorney-client privilege level. And so I think that when you ask your question like this, to the extent that there's something that would be outside that, and I can't envision what it would be, he can answer. But as far as the discussions that happened between -- and the work that's done relative to this case in addressing the wilful infringement by Fitbit and the monies that Fitbit has made without paying a license to Philips, then that's just not -- that's privileged and so I'll instruct him not to answer in that regard.

MR. CHAIKOVSKY: I don't disagree that any discussions had with you, Eley -- or, Mr. Thompson -- are privileged and any discussions with you are work product. I disagree with you that any discussions internally with Philips with respect to their IP licensing business and the revenue expectations, whether that's an absolute number or a range, are privileged. I don't believe they're privileged, I don't believe the judge will find them privileged and, again, we will -- you know, to the extent this witness doesn't answer today, we'll just be bringing him back after speaking to the Court about it.

BY MR. CHAIKOVSKY:

Q. So, again, I will ask the question one more time. You know, is there an absolute number or a range of numbers that Philips expects to receive from a licensee such as Fitbit and does that number change over time based on the negotiations and/or litigation; yes or no?

MR. THOMPSON: The details relating to the assessment of the damages caused by Fitbit's wilful infringement and what that would be liability-wise, and then, of course, thereby resulting in the settlement negotiations that Arie has been involved in -- and so have I, and so have you, as a matter of fact -- along the way are privileged and so I instruct him not to answer on that.

MR. CHAIKOVSKY: I, again, am not asking Mr. Tol for any damage calculation or any number that you would put forward in a litigation and in a court in the United States that is developed by your firm, and, let's say, that could be work product. I'm asking for internal calculations done within Philips, for example internal calculations that would have been done even before you likely were hired, Mr. Thompson, and Foley & Lardner was engaged for this matter. I'm asking for those numbers. They're not privileged, they won't be privileged. Again, if Mr. Tol's not willing to provide them today, we'll just raise it with Mr. Talwani.

BY MR. CHAIKOVSKY:

Q. So, Mr. Tol, are you not willing to answer my question?

MR. THOMPSON: That's not what he said, and that -- I told you that we would discuss it. But I think that if you could ask a particular question in that regard

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[REDACTED]

where you're trying to -- I guess you're trying to get as close to privileged and work-product information that you can. I appreciate that that's fine, Yar, but I think you need to ask a specific question so we can discuss it.

BY MR. CHAIKOVSKY:

Q. And I think one example, although there are several in the realtime transcript, is: Does Philips maintain an absolute number or a range of numbers that it expects to receive from any licensee? One example of that is Fitbit. And does that number change over time based on the course of negotiations and/or the results of litigation?

MR. THOMPSON: I think, by its own nature, your question asks for work product and privileged information.

MR. CHAIKOVSKY: Okay. I disagree because it's Philips' business unit, the IP business unit that's doing that. You know, happy to have the dispute about that. Now would be a good time to have a break, you can have a discussion with your client, but that's something we're going to raise with Judge Talwani because I think it's very clear that that business information of Philips, in its IP unit, is not privileged in any way.

...

MR. CHAIKOVSKY: Okay. If you assessed the privilege, what was the outcome of your assessment, Mr. Thompson?

MR. THOMPSON: The outcome of my assessment was that what I had said earlier on the record was accurate.

MR. CHAIKOVSKY: Okay. So just so I understand, the witness will not be answering the questions that were posed just prior to the break based on your instruction not to answer as privileged, correct?

MR. THOMPSON: That's right.

In addition to the above two example, improper privilege objections were made to similar questions seeking simple “yes or no” answers not protected by privilege at least at 48:16–49:1, 86:2–88:19, 92:23–96:14, 106:5–23, 107:20–108:7, 111:17–112:3, 153:11–154:10, 155:6–157:14, 170:13–175:2.

Indeed, even when I posed a question specifically requesting answer outside the scope of Foley and Lardner’s involvement in this case, Mr. Tol was still instructed not to answer based on “attorney-client privilege and work product.” This instruction is not proper.

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