

# EXHIBIT I

**From:** [RRodrigues@foley.com](mailto:RRodrigues@foley.com)  
**To:** [Peterman, Chad](#)  
**Cc:** [BOSTFPhilipsFitbit@foley.com](mailto:BOSTFPhilipsFitbit@foley.com); [Philips - Fitbit](#)  
**Subject:** [EXT] RE: [EXTERNAL] Re: Philips v. Fitbit - Scope of Review and Dr. Buy's contact information.  
**Date:** Tuesday, February 9, 2021 3:44:25 PM

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**--- External Email: Do not open attachments or click links from unknown senders ---**

Hi Chad,

We're somewhat surprised that Fitbit would object to an extension of fact discovery when, late last week, it served a new subpoena on a third party for document and depositions, and where said deposition would be beyond the 10 allowed to be taken without leave of court under the rules. We also can't agree to simply extend source code review without knowing if all the code has been made available, and whether depositions of additional witnesses might be necessary. Additional time will also be needed to complete the Cerian document production and make Mr. Sagi available for his deposition.

That said, we have no intention of taking off calendar the depositions that are presently scheduled (Missan, Herkenman, and Park), nor would that be the purpose of the extension.

Additionally, Fitbit remains deficient in its discovery responses. For example, Fitbit has repeatedly put off identifying whether or not it will be relying on any opinions of counsel in this case, avoided producing any such opinions, and avoided designating any witnesses on said opinions, on the basis that said discovery would be premature. It is inconceivable that such discovery could, at this point, be premature. Please confirm that Fitbit will not be relying on any opinions of counsel or, alternatively, produce said opinions and supporting materials, and supplement Fitbit's response to interrogatory No. 3 accordingly. We need this confirmation and discovery prior to deposing Mr. Missan.

Fitbit also has failed to produce information relating to its customer's actual use of the accused products, while coaching its witnesses to gratuitously and repeatedly (though not credibly) disclaim knowledge with respect to what its customers do. Accordingly, and in view of Fitbit's refusal to cooperate in discovery on this point, Philips demands that Fitbit make available for inspection all logs and user data from which Philips can determine the frequency of synchs between users' devices and Fitbit's servers, the information exchanged during said synchs, as well as user data reflecting cardio fitness scores for users and the underlying databases used to determine cardio fitness scores, and the information exchanged during said synchs. According to Mr. Boccon-Gibbod's depositions, Fitbit maintains this sort of information in databases that are under its control, and this information would be responsive to at least RFPs Nos. 71, 72, 73, and 74, as well as Interrogatory No. 9. Furthermore, Mr. Thompson sent a letter to Mr. Chaikovsky early in this case, on January 9<sup>th</sup>, 2020, demanding that such information be preserved and not destroyed.

With regards to Mr. Tol, Mr. Tol was made available and already deposed both in his personal capacity and as a 30(b)(6) witness on a number of topics, and he will not be made available again. For the sake of convenience and for the purposes of limiting the number of deponents, Phillips also identified Mr. Tol for topic 11 concerning MIO. However, Fitbit elected **not to question him**, on topic 11 because certain Mio documents had been produced only the day before the deposition. That was Fitbit's choice, and we will not be making Mr. Tol available again on that topic. Instead, Mr. Ridgeway will be further prepared and identified for Topic 11.

Philips will not waive the right to seek additional deposition time with any witness in view of Fitbit's refusal to produce documents and make source code available to date. We have no desire to take any such additional

deposition unless necessary, but cannot at this point make any agreement to make such a waiver or commitment.

Philips also does not agree to your proposal that the parties effectively stay the case indefinitely until the Court rules on claim construction. While we are willing to join an overall request that pushes out the schedule in a reasonable manner and that accommodates the Court, we believe the most prudent route, consistent with the local rules and schedules governing patent cases in the District of Massachusetts, would be to enter an overall case schedule.

In view of Fitbit's refusal to agree to a potential change in the overall schedule that would also extend the fact discovery deadline, we intend to file an opposed motion requesting that the Court extend the fact discovery cutoff by two months, as well as all subsequent deadlines by a commensurate period of time. Let me know if you think further discussion or potential agreement is possible on that front, or whether you have an alternative proposal that you would advocate for such that a joint filing with competing proposals might make sense. Either way, we anticipate filing on these points later this week or early next week.

Regards,

-Ruben

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**From:** Peterman, Chad <chadpeterman@paulhastings.com>

**Sent:** Friday, February 5, 2021 4:19 PM

**To:** Rodrigues, Ruben J. <RRodrigues@foley.com>

**Cc:** BOST - F - Philips - Fitbit <BOSTFPhilipsFitbit@foley.com>; Philips - Fitbit <Philips-Fitbit@paulhastings.com>

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

**\*\* EXTERNAL EMAIL MESSAGE \*\***

Ruben –

With respect to the schedule, a 90 day extension of fact discovery of the scope you are suggesting is unwarranted for the reasons explained in my February 3 e-mail. Given the discovery that has occurred to date, including the completion of numerous 30(b)(6) depositions, there is very little discovery outstanding. We will not agree to reopen closed 30(b)(6) topics nor will we subject witnesses that have already been deposed to further depositions. We propose the following:

- (1) The depositions of James Park and Andy Missan should go on as scheduled. Mr. Park is designated for 30(b)(6) Topics 6, 7, and 15. Mr. Missan is not designated for any topics. The deposition of Arie Tol will also continue as scheduled. Please make sure Mr. Tol is prepared to testify on his 30(b)(6) topics in light of Philips' revised initial damages disclosures.
- (2) The deposition of Buddy Herkenham should go on as scheduled on February 17. He will be designated for Topics 1 for certain factual bases; 5 as to noninfringing alternatives; 21, 22, 26, 27, and 28 with respect to firmware on the accused products; and 35 and 38 as to technical documentation for topics on which Mr. Herkenham is designated. To the extent Philips wants to use source code with Mr. Herkenham, it has sufficient time to review in advance of his deposition.
- (3) We are amenable to allowing Dr. Buy to continue to access the source code until the end of March.