

# EXHIBIT 1

**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 ARIE TOL IN SUPPORT OF PLAINTIFF'S  
OPPOSITION TO DEFENDANT'S MOTION TO COMPEL DISCOVERY OF CERTAIN  
DOCUMENTS IN THE ARIE TOL PRIVILEGE LOG.**

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I, Arie Tol, hereby declare:

1. I am a registered Dutch Patent Attorney, and have been since 2000. I have also been a registered European Patent Attorney since 2003. I am currently employed as a Principal Licensing Counsel for the Philips Intellectual Property & Standards (“IP&S”) organization of Koninklijke Philips N.V. (“Philips”) in the Netherlands, where I have worked since 1995. I have personal knowledge of the facts set forth herein and declare under penalty of perjury under the laws of the United States that these facts are true and correct.

2. I understand that Fitbit has sought discovery of particular communications that I either sent or received between June 2, 2014 and December 17, 2019 that generally relate to disputes between Philips on the one hand and Fitbit, Garmin, and/or Lifescan on the other involving the patents in suit. I understand that in response, Philips maintains that these materials are privileged and/or work product in anticipation of discovery or otherwise immune from discovery”. I have reviewed the documents that Fitbit seeks to compel the production of, and can confirm (as described in more detail below) that all the communications are confidential communications that fall within the scope of my work as a Dutch Patent Attorney for Philips, and further than many of the communications include work product prepared in anticipation of litigation against Fitbit and/or Garmin.

3. Philips’s approach to licensing almost always starts with identifying infringers of Philips’s patent rights in anticipation of having to enforce those patent in court. To this end, the beginning of such licensing activities in this instance first involves identifying products that infringe Philips’s patents, and working up a case against the accused infringer. Next, Philips puts the infringer on notice of their infringement in view of pursuing enforcement actions for damages and/or an injunction against the infringers. Depending on the patent rights at issue, this may include an enforcement action in one or more of the United States, Europe, or Asia (or

anywhere in which Philips's patent rights may be enforced). While Philips is of course willing to enter into licensing discussion upon providing notice of infringement in order to settle disputes with accused infringers, the focus throughout is to develop and enforce Philips's patent rights through legal action as necessary. As described in more detail below, this approach, which anticipates litigation with an accused infringer from the very beginning and is necessitated by the reluctance of the infringers to recognize legitimate patent rights, was the approach taken when Philips's sought to enforce certain patents that related to activity monitoring technology against both Fitbit and Garmin.

4. In 2015, Philips began evaluating whether certain Fitbit and Garmin products infringed certain Philips-owned patents related to activity trackers (also sometimes referred to as "fitness trackers"). I was involved in this project from the very beginning, and am presently the primary patent attorney responsible for managing Philips's enforcement of patents in this field against Fitbit and Garmin. Because of similarities across the infringing Garmin and Fitbit products, and overlap in the patents to be asserted against each, this enforcement effort focused on both Garmin and Fitbit from the very beginning (even though litigation with Garmin was instituted earlier than litigation with Fitbit). Because of this overlap, much of the correspondence at issue concerns pre-suit analysis against both of Fitbit and Garmin.

5. The initial work of this enforcement campaign against Fitbit and Garmin focused on reviewing and analyzing Philips's patent rights to evaluate which patents rights might be infringed by Fitbit and Garmin. While this work involved the work of both Dutch and U.S. patent attorneys, at the time Mr. Erik Pastink, who is also a Dutch Patent Attorney, was primarily responsible for directing this work.

6. With regards to Garmin, this work from 2015 through 2016 led to a letter from Erik Pastink on February 17, 2016 that notified Garmin of infringement of various Philips patents in various regions across the world, a true and accurate copy of which is attached as Exhibit 1.A.

7. With regards to Fitbit, this work led to a letter from Philips's U.S. in-house counsel Elias Schilowitz (an attorney licensed to practice in the State of New York) to Fitbit on October 10, 2016 notifying Fitbit of its infringement of various Philips patents in various regions across the world, a true and accurate copy of which is attached as Exhibit 1.B.

8. While Philips thereafter engaged in discussions with Fitbit and Garmin in an effort to settle the dispute through licensing, Philips continued to anticipate the need to enforce its patents in Court against both entities, both in the United States and abroad and, in view of Garmin and Fitbit's continued infringement, filed suit against both Garmin and Fitbit in Germany in 2017. The German infringement suit against Garmin on European Patent No. EP 1 076 806 was filed on September 27, 2017 and a German infringement suit against Garmin on European Patent No. EP1 247 229 was filed on October 27, 2017 while the German infringement suit against Fitbit on the same patents was filed on December 4, 2017 for EP 1 247 229 and on December 12, 2017 for EP 1 076 806.

9. During this same period of time, Garmin initiated a revocation proceeding against European Patent No. EP 1 076 806 in the United Kingdom, which was filed on October 20, 2017. Philips subsequently counterclaimed for infringement of this patent by Garmin on December 1, 2017 and Garmin eventually further initiated a nullity proceedings in Germany against this Patent on January 25, 2018.

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