EXHIBIT 2

DECLARATION

I, Willem A. Hoyng, state as follows:

I. Introduction

1. I am an attorney-at-law in the Netherlands since 1973 and I am one of the founders of the law firm HOYNG ROKH MONEGIER with offices in the Netherlands, Belgium, France, Germany and Spain.

2. My practice primarily consists of litigating in the field of intellectual property law, in particular in national and international patent disputes. I practice before all Dutch courts (the courts of first instance, the courts of appeal and the Supreme Court) and I litigate before the Court of Justice of the European Union ("CJEU") and the European Patent Office.

3. Since 1988, I have been a professor of civil law, especially intellectual property law, at the University of Tilburg in the Netherlands. I am the former President of the European Patent Lawyers Association ("EPLAW"), the former President of the Dutch group of the International Association for the Protection of Intellectual Property ("AIPPI"), a former member of the Committee which advises the government in patent matters, the former chairman of the advisory committee on IP matters of the Dutch Bar and former President of the VIEPA (Association of IP litigation lawyers). I have also been a member of the government appointed Examination Board for the Dutch patent attorney exam for many years and co-chairman of the patent law educational program for Dutch patent attorneys. I am currently a member of the Drafting Committee of the Rules of Procedure of the Unified Patent Court and a member of the committee advising the Preparatory Committee for the Unified Patent Court. I attach my cv as **Exhibit A**.

II. The Present Assignment

4. I understand Philips North America LLC ("Philips") and Fitbit Inc. ("Fitbit") are involved in patent infringement proceedings before the United States District Court for the District of Massachusetts.

5. I have been retained as an expert in these proceedings on behalf of Philips. I understand that this declaration will be submitted in the proceedings between Philips and Fitbit. I understand that I have a duty to the Court to help it with matters within my area of expertise. The facts stated in this report are true to the best of my knowledge and belief and the opinions stated herein are truly held. I submit this declaration under penalty of

perjury under the laws of the United States of America and affirm that the contents herein are true and correct, and am prepared to confirm the contents of this declaration under oath.

6. U.S. counsel acting for Philips have provided me with Fitbit's "Motion to compel the production of Certain of Mr. Arie Tol's email communications" dated 18 June 2021 (the "Motion") and the accompanying "Memorandum of law in support of its Motion to compel the production of certain of Mr. Arie Tol's email communications" (the "Memorandum") and have asked me to consider the allegations made therein and provide my opinions relating thereto. In particular, they have asked me to respond to allegations that relate to whether certain communications at issue may be privileged or protected from discovery under Dutch Law.

III. General Remarks On Disclosure Under Dutch Law

7. The Dutch legal system does not provide for a pre-trial discovery phase comparable to the U.S. legal system.[1] Dutch procedural law merely creates a duty to produce documents that are relevant to the outcome of the case. Article 21 of the Dutch Code of Civil Procedure ("DCCP") provides that the parties are obliged to present the facts relevant to the decision in a complete and truthful manner. As also follows from article 24 DCCP, this obligation is limited to those facts that are relevant to the resolution of the dispute. A party may select the facts that it deems relevant to his case and interpret them from his own perspective.

8. Dutch law sets forth specific requirements for litigants who seek to obtain evidence from an opponent in advance of trial. These requirements are further discussed in this declaration. The requirements for a party seeking pre-trial discovery in the Netherlands are, in general, more strict than those in the United States.

9. Dutch procedural law provides for a number of possible measures that can be used to obtain pre-trial evidence. The most important measures concern provisional examination of witnesses (article 186 et seq. DCCP), a provisional report of examination of an expert or a provisional site inspection (both article 202 et seq. DCCP) and a claim seeking exhibition of documents (to be discussed under Section IV below).

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[1] See e.g. Asser/Vranken Algemeen deel** 1995/21, no. 21 (**Exhibit B**): *"There is no duty to provide information in Dutch procedure that is comparable with the English or American system of discovery."*

10. Such provisional measures should be explicitly requested. Since the ruling of the Supreme Court in *Frog People Mover/Floriade*[2], a request for any of these provisional measures for obtaining evidence that otherwise meets the conditions for awarding it, can nevertheless be dismissed by the court on the basis of one of the following grounds: (i) the petitioner does not have a sufficient interest in the respective provisional measure for obtaining evidence as meant in Article 3:303 Dutch Civil Code ("DCC")[3]; (ii) the power to use any of these provisional measures for obtaining evidence is abused, which may apply if, e.g. the measure is intended to obtain trade secrets while the applicant has no reasonable cause of action against the respondent[4] or (iii) the request is contrary to good procedural order, or should be dismissed on the basis of another objection which according to the judge is serious. Also in view of these grounds for refusal, these provisional measures for obtaining evidence are rarely used in patent infringement matters in the Netherlands.

11. Advocate General Huydecoper noted in an opinion[5] before a Supreme Court ruling[6] that such provisional measures should not amount to fishing expeditions, because that would be contrary to the principle of Dutch law that one cannot simply obtain information which is in someone else's possession. Huydecoper also explicitly notes that the Anglo-Saxon "discovery" system is incompatible with the principles governing access to information under Dutch law (my translation):

> *"12) (…) That* [a sufficiently clear description of the intended investigation, WAH] *is also relevant because it is indeed considered burdensome (something that I heartily endorse) that preliminary measures of inquiry should be applied, that the petitioner obtains the space to go gather (all kinds of) information (pleasing to him) according to his own discretion to the detriment of his counterparty (from Anglo-Saxon legal practice, we know the evocative expression "fishing expedition" (7)).*

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2 Supreme Court 11 February 2005, ECLI:NL:HR:2005:AR6809, NJ 2005/442 (*Frog People Mover/Floriade*) (**Exhibit C**).

3 Article 3:303 DCC reads as follows: "*No person has a right of action without sufficient interest.*" In Dutch: *"Zonder voldoende belang komt niemand een rechtsvordering toe."*

4 A request for a provisional means to obtain evidence may be abused for fishing, for example to trade secrets while no claim can be filed against the other party (e.g. Supreme Court 11 March 1988, ECLI:NL:HR:1988:AC1916, NJ 1988/747) (**Exhibit D**).

5 After the parties have made their arguments in a case before the Supreme Court the advocate general gives his opinion (to which the parties can react) in a in general very elaborate opinion discussing all aspects of the case and the applicable law. In about 90% of the cases this opinion is followed by the Supreme Court.

6 Opinion Advocate General Huydecoper in Supreme Court 24 December 2004, ECLI:NL:PHR:2004:AR4980, pars. 12 and 13 (**Exhibit E**).

> *13) Why this last item should not be granted can be explained as follows: something like this would not be compatible with the starting point accepted under Dutch law that one cannot "casually" demand access to all information at the disposal of another (partly for this reason, Dutch law does not accept the principles on which Anglo-Saxon "discovery"(8) is based) (9)."* [emphasis added, WAH]

12. These considerations also apply with respect to obtaining access to documents, as I will discuss below.

IV. A Claim for the Production of Documents Under Dutch Law

IV.1. General

13. The legal basis for a claim for "production" or "exhibition" of documents (i.e. inspection or obtaining a copy or extract of such documents) is Article 843a DCCP, in combination with Article 1019a DCCP if the documents are relevant to an intellectual property infringement.

14. Article 843a DCCP reads as follows (**Exhibit F**):

> *Article 843a*
>
> *1. A party that has a relevant legitimate interest may claim at its own expense inspection, a copy or an extract of, specific documents concerning a legal relationship to which that party or its legal predecessors are party, from the party who has the documents at its disposal or in its custody. Documents are understood to include: information stored on a data carrier.*
>
> *2. If necessary, the court will determine the manner in which inspection, a copy or an extract will be provided.*
>
> *3. A party that is obliged to observe confidentiality pursuant to its office, profession or position is not obliged to satisfy this claim if the documents have been placed at its disposal or in its custody exclusively in that capacity.*
>
> *4. The party who has the documents at its disposal or in its custody is not obliged to satisfy this claim if there are serious reasons not to do so or if it can be reasonably assumed that the proper administration of justice is also served if the information requested is not provided.* [emphasis added, WAH]

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