

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

**PLAINTIFF'S ASSENTED TO MOTION FOR LEAVE TO FILE A SUR-REPLY TO
FITBIT, INC.'S REPLY IN SUPPORT OF ITS MOTION TO COMPEL THE
PRODUCTION OF CERTAIN OF MR. ARIE TOL'S EMAIL COMMUNICATIONS
(DKT. NO. 213)**

Pursuant to Local Rule 7.1(b)(3), Plaintiff Philips North America LLC (“Philips”) through its counsel hereby respectfully requests leave to file a sur-reply brief of no more than six (6) pages and a rebuttal declaration of no more than ten (10) pages¹ in order to respond to certain arguments and evidence raised in Fitbit, Inc.’s (“Fitbit”) Reply In Support of Its Motion to Compel the Production of Certain of Mr. Arie Tol’s Email Communications (“Reply”). (Dkt. No. 213.) Counsel for Philips has met and conferred with counsel for Fitbit and Fitbit does not oppose this motion. Per the agreements of the parties, Philips’s sur-reply will specifically address the following:

- Generally, a response to Mr. Gerritzen’s declaration (Dkt. 214-1) not included in Fitbit’s original motion and the arguments made and positions taken therein.
- Response to arguments concerning “professional charter” registration under Dutch Law.
- Response to arguments premised on Dutch cases not raised in the original Motion (such as *In re X/Stichting, Rechtbank, Shell et. al.*).
- Response to arguments premised on U.S. Cases not raised in the original Motion (such as *Align Tech, Anwar, Cadence Pharms*).

Philips has narrowly tailored its requested relief to seek leave to file a brief sur-reply of no more than six (6) pages, and an supplemental expert declaration on Dutch law of no more than ten (10) pages (using similar formatting to the original expert declaration that Philips submitted at Dkt. 210-4), which Philips reasonably believes to be as short as possible to address the arguments and evidence that Philips believes was raised for the first time in Fitbit’s Reply. It should be noted, however, that Fitbit disagrees that its reply brief and supporting declaration raise any issues that

¹ For this declaration, Philips would use the same format and spacing used in Professor Hoyng’s original declaration (Dkt. No. 210-4) and Mr. Gerritzen’s declaration (Dkt. No. 214-1).

should have been in Fitbit's opening papers, notwithstanding its agreement to Philips's requested relief.

WHEREFORE, Philips hereby respectfully requests leave of this Honorable Court to file a sur-reply brief of no more than six (6) pages along with a supporting declaration of no more than ten (10) pages by no later than August 11, 2021.

Dated: August 3, 2021

Respectfully Submitted,
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LOCAL RULE 7.1(a)(2) STATEMENT

Pursuant to Local Rule 7.1(a)(2), Plaintiff's counsel hereby certifies that on August 3, 2021 in good faith conferred with Counsel for Defendant in an effort to resolve or narrow the issues presented in this motion, and that Fitbit has no opposition to Plaintiff's request for leave to file a sur-reply brief in accordance with the foregoing motion.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 3, 2021 a copy of the foregoing document was filed with the Court through the ECF system and that a copy will be electronically served on registered participants as identified on the Notice of Electronic Filing.

/s/ Ruben J. Rodrigues
Ruben J. Rodrigues