

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

PHILIPS NORTH AMERICA LLC,)	
)	
Plaintiff,)	
)	C.A. No. 1:19-cv-11586
v.)	
)	
FITBIT, INC.)	
)	
Defendant.)	
)	

PROPOSED STIPULATION ON DISCOVERY

Plaintiffs Philips North America, LLC (“Philips”) and Defendant Fitbit, Inc. (“Fitbit”), by and through their respective counsel, hereby stipulate and agree as follows.

i. Service and Delivery of Documents

Absent other agreement of the parties, documents and written discovery responses in this action will be served by electronic means on an attorney of record, and in all instances be accompanied by an email confirmation to the e-mail addresses listed below.

Party	Designated Email Addresses
Philips	BOSTFPhilipsFitbit@foley.com
Fitbit	Philips-fitbit@paulhastings.com

The parties agree that only individuals permitted access to documents containing confidential business information pursuant to the Protective Order will be included in the above email distribution addresses.

When the size of the file containing any such document is larger than 20 MB, and

cannot be practicably transmitted in a smaller zipped file, same day service of the documents in electronic form shall be made via secure file transfer over FTP, extranet, or hand delivery of electronic media. Parties may also serve hard copies of documents if necessary for timely service, provided that electronic copies of those documents also shall be provided to the other parties.

Discovery requests or responses sent by email on or before 7 p.m. EDT/EST shall be deemed to have been served on the day sent. Discovery requests or responses sent by email after 7 p.m. EDT/EST shall be deemed to have been served on the following day. Discovery requests and discovery responses shall be served in searchable .PDF format by electronic service and, in addition to the .PDF format, the parties shall exchange copies of discovery requests in Microsoft Word format.

ii. Privilege Logs

The parties agree that absent a showing of good cause, communications with, and attorney work product of, trial counsel in this case need not be identified on a privilege log. Nor is it necessary for the parties to log any communications with any counsel seeking or receiving legal advice concerning the subject matter of the pending lawsuit if such communications happened after the commencement of the lawsuit. Absent a showing of good cause, no party is required to identify on its respective privilege log any communications with counsel or experts in connection with any foreign patent matters involving the Parties hereto or their affiliates or parent companies.

iii. Inadvertent Production of Privileged Information

If a document or information inadvertently produced in discovery is subject to a claim of privilege, immunity or of protection as work product (“privileged information”), the

inadvertent production of that privileged information shall not be deemed to constitute a waiver of any applicable privileges or protections consistent with Rule 26(b)(5)(B), F.R.C.P. Likewise, consistent with Federal Rule of Evidence 502(d), the inadvertent production of a privileged or work product protected ESI is not a waiver in the pending case or in any other federal or state proceeding. For example, the production of privileged information in this case as part of a production by a party is not itself a waiver of any privilege or protection in this matter or any other federal or state proceeding.

When a receiving party identifies potentially privileged information that may have been inadvertently produced, it shall promptly notify the producing party. When the party that produced the privileged information becomes aware that privileged information was produced, it shall promptly provide notice to any party that received the privileged information that:

(a) identifies the privileged information; (b) specifies the claimed privilege or protection; and (c) explains the basis for the claimed privilege or protection. After receiving such a notice, or after identifying on its own potentially privileged information that may have been inadvertently produced, the receiving party shall (a) promptly from service of the notice, return or destroy the specified privileged information along with any copies it has of the document or information; (b) not use or disclose the document or information until the claim is resolved; and (c) within seven days of service of the notice, take reasonable steps to retrieve the document or information if the person disclosed it to others before being notified and inform the producing party of that fact.

Such return or destruction shall not preclude the receiving party from subsequently seeking to compel production of the privileged information. The person that produced the document must preserve the document or information until the claim of privilege or

protection is resolved.

iv. Discovery of Expert Materials

The parties agree to be bound by Federal Rule of Civil Procedure 26(b)(4) as to discovery of expert materials.

Notwithstanding the above, the parties shall identify and produce copies of any documents relied upon by the expert as a basis for the opinions set forth in his or her report, declaration, affidavit, and/or testimony, including witness statements and live testimony. Furthermore, nothing in this agreement is intended to restrict discovery relating to: (a) the compensation paid to an expert; and (b) any assumptions that counsel provided and that the expert relied on in forming the opinions to be expressed.

The parties agree that retained experts and consultants may not share any confidential business information received under the Protective Order with any other individual, including non-clerical assistants or support staff for the expert or consultant, unless that individual has subscribed to the Protective Order.

v. Inadvertent Failure to Designate Confidential Business Information

A party which inadvertently fails to designate information as confidential may promptly notify the other parties that such information should have been designated confidential and should be treated as confidential after reasonable steps by receiving parties have been taken as specified below. Where appropriate, the designating party shall provide replacement copies of such materials bearing the appropriate confidentiality designation. Upon being notified that the information was inadvertently not designated as confidential, the receiving parties shall take reasonable steps to retrieve the information from any recipients of such information who previously had been provided the confidential information and who are not authorized to access

such confidential information under the Protective Order. If the receiving party has reason to believe that the information has been disseminated to persons from whom it has not been able to retrieve the information through reasonable steps, it shall inform the producing party of that fact.

No party shall argue that another party is in breach of the Protective Order for any use of confidential information during the time that the information was not designated as confidential or before receiving parties complete the reasonable steps specified above.

vi. Third-Party Confidentiality

To the extent the following is not inconsistent with confidentiality obligations in, for example, an applicable non-disclosure or other agreement, the parties agree as follows:

The parties shall take reasonable steps to ensure that the existence of confidentiality or non-disclosure agreements with non-parties (“Non-Party Confidentiality Agreements”) do not significantly delay the production of any such documents that a party has agreed to produce. The parties further agree that those reasonable steps shall include notice from the producing party to any non-parties with whom they have any applicable confidentiality or non-disclosure agreement that allows the non-party a period of 10 days, or other time period set forth in an applicable non-disclosure or other agreement, to provide a written objection to the producing party. The written notice to the non-party shall state that the information or documents will be produced if the non- party does not respond in writing within the allocated time period. If the non-party does not object to the production within 10 days or such other prescribed period, the documents subject to the non-disclosure or other applicable agreement shall be produced. The 10-day period may be extended by an additional 5 days if notice is to be sent to a company outside the United States.

If a non-party raises a timely objection to production, the producing party objects

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