

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-IT

NOTICE OF SCHEDULING CONFERENCE

September 17, 2019

In accordance with Fed. R. Civ. P. 16(b) and Local Rules 16.1¹ (as modified by this order) and 16.6 (for patent cases),² **an initial scheduling conference will be held in Courtroom 9 on the 3rd floor of the John Joseph Moakley United States Courthouse in Boston, Massachusetts on November 4, 2019, at 2:30 p.m.**

The court considers attendance of lawyers ultimately responsible for the case to be of the utmost importance. Counsel for the plaintiff(s) is responsible for ensuring that all parties and/or their attorneys who have not filed an answer or appearance with the court are notified of the date of the scheduling conference.

The court expects compliance with sections (b), (c), and (d) of L.R. 16.1 and L.R. 16.6 (for patent cases) as modified below:

1. **Scheduling Order:** In most cases, the court will issue a scheduling order at the conference in the form attached hereto. The court may depart from the form in cases of relative complexity or simplicity or otherwise if justice so requires. The parties should attempt to agree on the relevant dates for discovery and motion practice. In a case of ordinary complexity, the parties should propose a schedule that calls for the completion of fact discovery, expert discovery, and motion

practice less than one calendar year from the date of the scheduling conference. The dates of the status conference and pretrial conference will be set by the court.

2. **Settlement Proposals:** Each defendant shall present to the plaintiff(s) a written response to the plaintiff(s)' settlement proposal(s) no later than seven days prior to the scheduling conference.
3. **Initial Disclosures:** In addition to the information required by Fed.R.Civ.P. 26(a)(1) and L.R. 26.2, initial disclosures shall include:
 - a. Sworn statements disclosing the information set forth in L.R. 26.1(B)(1)(b)-(d) and (2)(a)-(c);
 - b. A copy of, or a description by category and location of, all documents, data compilations, and tangible things in the possession, custody, or control of the party with substantial relevance to disputed facts alleged with particularity in the pleadings.
4. **Pending Motions:** The parties' joint statement shall identify all pending motions. Counsel shall be prepared to argue pending motions at the scheduling conference.
5. **Reassignment to a Magistrate Judge:** The parties' joint statement shall indicate whether all parties consent to reassignment of the case to a magistrate judge for all purposes. If all parties consent, the parties should also jointly file a completed "Consent/Refusal of Magistrate Judge Jurisdiction" form available at <http://www.mad.uscourts.gov/resources/forms-local.htm>.

6. **Client Signatures:** Clients should hand sign the certificate of consultation filed pursuant to Local Rule 16.1(d)(3). Counsel may sign with a typed signature so long as counsel is registered to use the court's CM/ECF system.

Indira Talwani
United States District Judge

By: **/s/Gail A. MacDonald Marchione**
Courtroom Deputy Clerk

Date: September 17, 2019

¹ These sections of Local Rule 16.1 provide:

(b) Obligation of Counsel to Confer. Unless otherwise ordered by the judge, counsel for the parties must, pursuant to Fed. R. Civ. P. 26(f), confer at least 21 days before the date for the scheduling conference for the purpose of:

- (1) preparing an agenda of matters to be discussed at the scheduling conference,
- (2) preparing a proposed pretrial schedule for the case that includes a plan for discovery, and
- (3) considering whether they will consent to trial by magistrate judge.

(c) Settlement Proposals. Unless otherwise ordered by the judge, the plaintiff shall present written settlement proposals to all defendants no later than 14 days before the date for the scheduling conference. Defense counsel shall have conferred with their clients on the subject of settlement before the scheduling conference and be prepared to respond to the proposals at the scheduling conference.

(d) Joint Statement. Unless otherwise ordered by the judge, the parties are required to file, no later than seven (7) days before the scheduling conference and after consideration of the topics contemplated by Fed. R. Civ. P. 16(b) & (c) and 26(f), a joint statement containing a proposed pretrial schedule, which shall include:

- (1) a joint discovery plan scheduling the time and length for all discovery events,

that shall

(a) conform to the obligation to limit discovery set forth in Fed. R. Civ. P. 26(b), and

(b) take into account the desirability of conducting phased discovery in which the first phase is limited to developing information needed for a realistic assessment of the case and, if the case does not terminate, the second phase is directed at information needed to prepare for trial; and

(2) a proposed schedule for the filing of motions; and

(3) certifications signed by counsel and by an authorized representative of each party affirming that each party and that party's counsel have conferred:

(a) with a view to establishing a budget for the costs of conducting the full course—and various alternative courses—of the litigation; and

(b) to consider the resolution of the litigation through the use of alternative dispute resolution programs such as those outlined in LR 16.4.

² These sections of Local Rule 16.6 provide:

In addition to the parties' obligations under Fed. R. Civ. P. 26 (f) and LR 16.1, the parties in cases raising issues of patent infringement shall consider and address in their joint statement under L.R. 16.1 the following issues:

- (1) The timing for disclosing initial infringement and invalidity positions;
- (2) The process for identifying disputed claim terms, exchanging proposed claim constructions, and claim construction briefing;
- (3) The timing of and procedure for the claim construction hearing, including:
 - (a) whether the Court will decide claim construction through live testimony at a hearing or based on the papers and attorney argument; and
 - (b) the timing of claim construction relative to summary judgment, expert discovery, and the close of fact discovery.
- (4) The need for tutorials on the relevant technology, including:
 - (a) the form and scope of any such tutorials; and

(b) the timing for such tutorials.

(5) The identification of dispositive issues that may lead to an early resolution of the litigation.

(6) Whether the court should authorize the filing under seal of any documents that contain confidential information.

(7) Procedures for, and limits (if any) to be placed on, the preservation and discovery of electronically stored information, including:

(a) whether preservation and discovery of electronically stored information should be limited to that located on the parties' active computer systems or extended to backup systems;

(b) the identification of key persons, if any, who should have their electronically stored information produced;

(c) whether production of electronically stored information should be limited to discrete time periods;

(d) whether costs of producing electronically stored information should be shifted, particularly costs of preserving and producing information stored on backup systems.

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