

# EXHIBIT A

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**From:** Rodrigues, Ruben J. <RRodrigues@foley.com>  
**Sent:** Friday, September 3, 2021 10:21 AM  
**To:** Eric Speckhard; Custer, John W.  
**Cc:** BOST - F - Philips - Fitbit; Fitbit Philips DC Service  
**Subject:** [Ext] RE: Philips v. Fitbit - June 11, 2021 Supplemental Privilege Log

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Hi Eric,

We recall from the hearing that Magistrate Judge Dein instructed Fitbit to reconsider some of its unreasonable demands for production of documents that involved the legal advice of Philips's U.S. Attorneys. There was no suggestion that the declaration of Arie Tol was somehow deficient with respect to the below identified documents, or that further information from Philips was necessary. Philips has repeatedly sought to provide more detail with regards to its various privilege claims over the past few months in response to Fitbit's request for the same and in the hopes of narrowing this dispute, yet in the briefing before Judge Dein Fitbit spun those efforts as somehow necessitating in camera review and Philips is not inclined to provide yet another declaration that Fitbit would likely only use as pretext to argue some form of inconsistency as it has in the past.

That said, in light of your message below, we have taken another look at the identified e-mails in view of Mr. Tol's declaration and can confirm that we believe that Mr. Tol's declaration accurately and sufficiently describes the nature of the communications sufficient to enable Fitbit to assess Philips's claim in accordance with Rule 26(b)(5), including with respect to the involvement of U.S. Attorneys on said communications.

With respect to entry nos. **19-21, 24, 30-31, 35-37, 42-43, 46-47, 60-64, 71-73**, and consistent with Mr. Tol's declaration, we would stress and confirm that Mr. Schilowitz was already involved in advising Mr. Tol and Mr. Pastink with regards to providing Fitbit with notice of infringement prior to Entry No. 19.

With respect to entry nos. **244-248**, and as consistent with Mr. Tol's declaration, we would stress that Mr. Blocker was included on this series of messages from the very beginning, and would otherwise refer you to Mr. Tol's declaration with regards to these messages.

With respect to **299-301, 408, 412-420, 422-23, 425-31, 437-38, 440-41, 443, 450-51, 458-60, 463-64**, as stressed and confirmed in Mr. Tol's declaration, these communications all relate to Lifescan's breach and the settlement of that dispute, and not what Fitbit purports to characterize as some form of separate "renegotiation" of the Lifescan license.

Regards,

-Ruben

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**From:** Eric Speckhard <ESpeckhard@desmaraisllp.com>  
**Sent:** Tuesday, August 31, 2021 6:12 PM  
**To:** Custer, John W. <jcuster@foley.com>; Rodrigues, Ruben J. <RRodrigues@foley.com>  
**Cc:** BOST - F - Philips - Fitbit <BOSTFPhilipsFitbit@foley.com>; Fitbit Philips DC Service

<FitbitPhilipsDCService@desmaraisllp.com>

**Subject:** RE: Philips v. Fitbit - June 11, 2021 Supplemental Privilege Log

**\*\* EXTERNAL EMAIL MESSAGE \*\***

Hi Ruben,

You may recall that during the August 24 hearing, Magistrate Judge Dein requested that the parties further consider their positions regarding Fitbit's motion to compel Arie Tol's emails. Given the additional information that Philips did not include in its privilege logs, but instead provided for the first time in Arie Tol's declaration attached to Philips's opposition, we have a few follow up questions regarding Mr. Tol's declaration.

**Entries 19-21, 24, 30-31, 35-37, 42-43, 46-47, 60-64, 71-73**, discussed in paragraphs 18, 19, 21, 22, 23, 26, 29, and 30 of Mr. Tol's declaration, generally relate to the drafting of Philips's October 2016 letter to Fitbit. Mr. Tol generally describes that these communications were made in furtherance of seeking Elias Schilowitz's legal advice. However, in contrast to, for example, entry 299—where Mr. Tol describes that Ed Blocker's alleged legal advice was sought regarding a license dispute and a potential breach of contract claim—Mr. Tol does not provide any detail regarding the legal issue on which advice was sought from Mr. Schilowitz regarding the October 2016 letter. For example, do these entries seek Mr. Schilowitz's legal advice on the strength of Philips's infringement allegation in the letter; or the potential validity of the patents enumerated in the letter; or some other issue? Further, do these entries *exclusively* seek or contain the alleged legal advice such that they must be withheld entirely rather than redacted? To be clear, we aren't asking for the substance of the alleged advice at this point, merely the legal issue on which advice was sought, which will allow us to fully assess the claim of privilege.

Additionally, *at the time the communications in these entries were made* between Philips's Dutch Patent Attorneys—*i.e.*, Arie Tol, Erik Pastink, and Jako Eleveld—did these Dutch Patent Attorneys know that they were communicating for the purpose of seeking legal advice from Mr. Schilowitz? Or was it only later decided that these communications would be used to seek Mr. Schilowitz's legal advice? Similarly with respect to **entries 244-248**—at the time that Mr. Tol made these communications, was he communicating for the purpose of seeking legal advice from Mr. Blocker? Or was it only later decided that these communications would be used to seek Mr. Blocker's legal advice?

**Entries 299-301, 408, 412-420, 422-23, 425-31, 437-38, 440-41, 443, 450-51, 458-60, 463-64**, discussed in paragraphs 37, 38, 41, 42, and 43 of Mr. Tol's declaration, generally relate to Philips's license dispute and renegotiation with Lifescan. Do these entries *exclusively* relate to Lifescan's alleged breach of the original license and a potential litigation regarding that breach, or do these communications also include discussions regarding the renegotiation of the license? Can you confirm these communications contain *no discussions* regarding (a) the business terms of the renegotiation of the license, or (b) how to characterize or compute the payments to be received under the revised agreement?

Philips has already amended its logs numerous times, and too much time has passed while the parties tried to resolve this dispute. Therefore, we propose that Philips provide this requested information by 5pm ET on Friday, September 3, 2021 in the form of a declaration sworn under penalty of perjury under U.S. law and signed by either Mr. Tol or one of Philips's outside U.S. attorneys from Foley. With that information, we can promptly determine whether to reconsider and alter the scope of documents we are seeking to compel.

We are happy to meet and confer anytime on Wednesday, September 1, except from 1-2pm ET. We can also talk tonight if necessary.

Best,  
Eric