

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

**DECLARATION OF RUBEN J. RODRIGUES IN SUPPORT OF
PLANTIFF'S MOTION TO STRIKE AFFIRMATIVE DEFENSES**

I, Ruben J. Rodrigues, declare as follows:

1. I am an attorney at Foley & Lardner LLP, counsel to Plaintiff Philips North America, LLC ("Philips").
2. I make this declaration in support of Philips's Motion to Strike Affirmative Defenses.
3. I have personal knowledge of the facts set forth herein and, if called to testify in this matter, could and would testify to the following facts.
4. Attached as **Exhibit A** is a true and correct copy of U.S. Patent No. 7,138,902, titled "Precision Medical Device Communication System and Method."
5. Attached as **Exhibit B** is a true and correct copy of Search Notes from the prosecution history file for U.S. Patent No. 7,138,902, (Application No. 10/490,330).
6. Attached as **Exhibit C** is a true and correct copy of an Office Action Summary from the prosecution history file for U.S. Patent No. 7,138,902, (Application No. 10/490,330), dated March 28, 2005.

7. Attached as **Exhibit D** is a true and correct copy of Notice of Abandonment from the prosecution history file for U.S. Patent No. 7,088,233, (Application No. 10/165,624), dated May 4, 2005.

8. Attached as **Exhibit E** is a true and correct copy of Notice of Allowability from the prosecution history file for U.S. Patent No. 7,138,902, (Application No. 10/490,330), dated June 12, 2006.

9. Attached as **Exhibit F** is a true and correct copy of Response to Rule 312 Communication, entering a final amendment from the prosecution history file for U.S. Patent No. 7,088,233, (Application No. 10/165,624), dated June 23, 2006.

10. Attached as **Exhibit G** is a true and correct copy of a DO/EO Worksheet from the prosecution history file for U.S. Patent No. 7,138,902, (Application No. 10/490,330).

11. Attached as **Exhibit H** is a true and correct copy of Chapter 800 of the Manual of Patent Examining Procedure, Eighth Edition, dated August 2001.

12. Attached as **Exhibit I** is a true and correct copy of Chapter 800 of the Manual of Patent Examining Procedure, Eighth Edition Third Revision, dated August 2005.

13. Attached as **Exhibit J** is a true and correct copy of Chapter 800 of the Manual of Patent Examining Procedure, Eighth Edition Fifth Revision, dated August 2006.

14. Attached as **Exhibit K** is a true and correct copy of Notice of Allowance from the prosecution history file for U.S. Patent No. 7,088,233, (Application No. 10/165,624), dated June 14, 2004.

15. Attached as **Exhibit L** is a true and correct copy of Notice of Allowance from the prosecution history file for U.S. Patent No. 7,138,902, (Application No. 10/490,330), dated June 12, 2006.

I declare under penalty of perjury that the foregoing is true and correct.

Date: September 14, 2021

/s/ Ruben J. Rodrigues

Ruben J. Rodrigues

CERTIFICATE OF SERVICE

The undersigned hereby certifies that 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.

By: /s/ Eley O. Thompson