

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

PHILIPS NORTH AMERICA LLC,

Plaintiff,

v.

FITBIT LLC,

Defendant.

Civil Action No. 1:19-cv-11586-FDS

**DECLARATION OF DAVID J. SHAW IN SUPPORT OF FITBIT LLC'S OPPOSITION
TO PHILIPS'S MOTION TO STRIKE FITBIT'S INEQUITABLE CONDUCT DEFENSE**

I, David J. Shaw, hereby declare:

1. I am an attorney at Desmarais LLP, counsel of record for Fitbit LLC ("Fitbit"). I am admitted *pro hac vice* to this Court. I have personal knowledge of the facts set forth herein and could competently testify to them if called as a witness.

2. I make this declaration in support of Fitbit's opposition to Philips's motion to strike Fitbit's inequitable conduct defense (D.I. 236).

3. Attached hereto as Exhibit 1 is a true and correct copy of Fitbit's Supplemental Objections and Responses to Philips's First Interrogatory, dated February 26, 2021.

4. Attached hereto as Exhibit 2 is a true and correct copy of an excerpt from the transcript of the hearing before Magistrate Judge Boal regarding Mr. Gerald Helget's motion to quash Fitbit's deposition subpoena in the matter *Gerald Helget v. Fitbit, Inc.*, Case No. 1:21-mc-91150 (D. Mass.), dated April 21, 2021.

5. Attached hereto as Exhibit 3 is a true and correct copy of Chapter 2000 of the Eighth Edition, Rev. 5, of the Manual of Patent Examining and Procedure (August 2006), also available

at https://www.uspto.gov/web/offices/pac/mpep/old/mpep_E8R5.htm, as visited on September 28, 2021.

6. Attached hereto as Exhibit 4 is a true and correct copy of an excerpt of Chapter 800 of the Eighth Edition, Rev. 5, of the Manual of Patent Examining and Procedure (August 2006), also available at https://www.uspto.gov/web/offices/pac/mpep/old/mpep_E8R5.htm, as visited on September 28, 2021.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge.

Executed September 28, 2021 in Washington, DC.

/s/ David J. Shaw _____
David J. Shaw (*pro hac vice*)

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been filed through the CM/ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on September 28, 2021.

/s/ Gregory F. Corbett

Gregory F. Corbett