

Exhibit 1

Eric Speckhard

From: David Shaw
Sent: Monday, October 4, 2021 10:00 PM
To: Rodrigues, Ruben J.
Cc: BOST - F - Philips - Fitbit; Fitbit Philips DC Service
Subject: RE: Philips v. Fitbit (D. Mass) - Motion for Leave to File a Reply Brief
Attachments: 2021-10-05 Fitbit Am. Answer to Philips 2nd Am. Compl. (redline).docx

Hi Ruben,

We have a couple additional points to add.

First, as discussed on Friday, we disagree with Philips's argument that Fitbit's infectious unenforceability allegation "was not made in the pleadings." However, we are willing to amend our answer tomorrow to moot the dispute. A proposed amended answer is attached with redlines shown. We believe that we can file this by right under Rule 15(a)(1)(B). However, if you disagree, then we ask for Philips to provide written consent to us filing the attached under Rule 15(a)(2). Please also confirm that this amendment will moot Philips's argument that Fitbit's infectious unenforceability allegation "was not made in the pleadings." We understand Philips will still argue that the allegation is "incorrect as a matter of law," although we disagree. And as also discussed Friday, we can agree that the filing of this amended answer will not reset briefing deadlines on the motion to strike—the parties would still finish briefing Philips's motion to strike as proposed, with Philips replying on Wednesday 10/6 and Fitbit sur-replying on Wednesday 10/13.

Second, I'm sure you saw that the PTAB found that all remaining asserted claims of the '233 Patent are unpatentable earlier today. Given that finding, we assume that the parties can agree not to address the '233 Patent in any upcoming expert discovery, just as we previously agreed not to address the '007 Patent in expert discovery given Judge Saylor's invalidity finding for that patent in the claim construction order. In other words, expert reports served on November 12 would only need to address the '377 Patent.

If these are acceptable to Philips, then we have an agreement. If you'd like to discuss, I'm generally free tomorrow morning. Otherwise please send over a draft joint request/stipulation as proposed in your email below.

Thank you,
David

David J. Shaw

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From: Rodrigues, Ruben J. <RRodrigues@foley.com>
Sent: Monday, October 4, 2021 5:02 PM
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Cc: BOST - F - Philips - Fitbit <BOSTFPhilipsFitbit@foley.com>; Fitbit Philips DC Service <FitbitPhilipsDCService@desmaraisllp.com>
Subject: [Ext] RE: Philips v. Fitbit (D. Mass) - Motion for Leave to File a Reply Brief