

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 JOHN W. CUSTER IN SUPPORT OF
PLANTIFF'S MOTION TO STRIKE PORTIONS OF NOVEMBER 16, 2021 EXPERT
REPORT OF JOSEPH A. PARADISO AS TO PREVIOUSLY WITHHELD PRIOR ART
AND INDEFINITENESS DEFENSE**

I, John W. Custer, 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 Portions of November 16, 2021 Expert Report of Joseph A. Paradiso As To Previously Withheld Prior Art And Indefiniteness Defense.
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 1** is a true and correct copy of Fitbit's Invalidity and Non-Infringement Contentions served on March 13, 2020.
5. Attached as **Exhibit 2** is a true and correct copy of Fitbit's Amended Invalidity and Non-Infringement Contentions served on December 21, 2020.
6. Attached as **Exhibit 3** is a true and correct copy of the Expert Report of Joseph A. Paradiso, Ph.D. Regarding Invalidity of U.S. Patent No. 8,277,377.

7. Attached as **Exhibit 4** is a true and correct copy of Exhibit 24 to 2020-01-31 Plaintiff Philips North America LLC's L.R. 16.6(d)(1) Disclosures.

8. Attached as **Exhibit 5** is a true and correct copy of Exhibit 24 to 2020-05-15 Plaintiff Philips North America LLC's First Supplemental L.R. 16.6(d)(1) Disclosures.

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

Date: December 13, 2021

/s/ John W. Custer
John W. Custer

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/ John W. Custer