

IN THE 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

ASSENTED-TO MOTION TO IMPOUND/SEAL DESIGNATED MATERIAL

Pursuant to Local Rule 7.2 and the Order Adopting Discovery Stipulation and Modified Protective Order in this case (“Protective Order”), ECF No. 59, Defendant Fitbit, Inc. (“Fitbit”), respectfully requests the Court to impound (seal) Exhibit 7 filed in support of ECF No. 265, Fitbit’s Memorandum in Opposition to Philips’ Motion to Strike Portions of the November 16, 2021 Expert Report of Joseph A. Paradiso. Philips does not oppose this Motion to Impound/Seal.

The Protective Order allows parties to designate discovery material that contains or constitutes confidential business information as “CONFIDENTIAL.” As grounds for this Motion, Fitbit states that Exhibit 7 comprises Fitbit’s supplemental objections and responses to Plaintiff Philips North America LLC’s (“Philips”) Interrogatories (Nos. 1-11). Fitbit’s interrogatory responses in Exhibit 7 detail factual information regarding some of Fitbit’s invalidity, non-infringement, and damages contentions regarding multiple patents, Fitbit’s internal market research function, Fitbit’s product development process, Fitbit’s internal data tracking procedures, and other Fitbit commercial processes regarding patent evaluation.

Fitbit's interrogatory responses contain confidential business information that "concerns or relates to the trade secrets, processes, operations, style of work, or apparatus" of Fitbit. ECF No. 59-2, ¶ 1. Disclosure of these confidential details is likely to cause substantial harm to Fitbit's competitive position in the market for the accused products. ECF No. 59-2, ¶ 1. As an example, Fitbit's non-infringement contentions disclose various highly confidential details about the operation of Fitbit's accused smart watch and fitness tracker products.

Further, Fitbit's invalidity contentions disclose various information designated confidential by third parties regarding prior art products. And Fitbit's damages contentions disclose various information designated confidential by Philips regarding its patent licenses and licensing practices.

Sealing this information will not undermine the public's right to access because only 3/121 pages in Exhibit 7 are cited in Fitbit's opposition brief (ECF No. 265). None of the other information in Exhibit 7 is relevant to the determination of Philips' Motion to Strike (ECF No. 259).

For the foregoing reasons, Fitbit respectfully requests that the Court permit Fitbit to file under seal Exhibit 7 filed in support of ECF No. 265, Fitbit's Memorandum in Opposition to Philips' Motion to Strike Portions of the November 16, 2021 expert Report of Joseph A. Paradiso. Fitbit further requests that the documents remain impounded until further Order by the Court, and that upon expiration of the impoundment, the documents be returned to Fitbit's counsel.

Date: January 5, 2022

Respectfully Submitted,

/s/ David J. Shaw

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Counsel for Fitbit, Inc.

LOCAL RULE 7.1(a)(2) CERTIFICATION

I hereby certify that counsel for FitBit conferred with Plaintiff's counsel in a good-faith attempt to resolve or narrow the issue raised by this motion. Philips's counsel indicated that Philips does not oppose the relief requested by this Motion.

/s/ David J. Shaw
David J. Shaw

CERTIFICATE OF SERVICE

I certify that this document is being filed through the Court's electronic filing system, which serves counsel for other parties who are registered participants as identified on the Notice of Electronic Filing (NEF). Any counsel for other parties who are not registered participants are being served by first class mail on the date of electronic filing.

/s/ Elizabeth A. DiMarco
Elizabeth A. DiMarco