

**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

**DEFENDANT FITBIT LLC'S MOTION TO STRIKE, IN PART, THE INFRINGEMENT  
EXPERT REPORT AND OPINIONS OF DR. TOM MARTIN PURSUANT TO FED. R.  
CIV. P. 37(C)(1) AND LOCAL RULE 16.6(D)**

Pursuant to Federal Rules of Civil Procedure 37(c)(1) and District of Massachusetts Local Rule 16.6(d), Defendant Fitbit, Inc. ("Fitbit") respectfully requests that the Court enter an order striking, in part, the Infringement Expert Report and Opinions of Dr. Tom Martin (the "Martin Report"). Specifically, Fitbit requests that the Court: (1) strike Plaintiff Philips North America LLC's ("Philips") three new infringement theories as identified in the portions of the Martin Report indicated by green redaction boxes in Exhibit 2 to the accompanying Declaration of David J. Shaw and in Fitbit's Memorandum of Law in support of this motion; and (2) bar Philips from presenting those new infringement theories, and all other opinions and evidence related to them, in any other motion, hearing or at trial.

In support of this Motion, Fitbit relies on the Memorandum of Law and the Declaration of David J. Shaw, including attached exhibits, submitted herewith.

Dated: January 5, 2022

By: /s/ David J. Shaw

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*Attorneys for Defendant Fitbit, Inc.*

**CERTIFICATE PURSUANT TO LOCAL RULE 7.1(A)(2)**

The undersigned hereby certifies that counsel for Fitbit conferred with counsel for Philips and attempted in good faith to resolve or narrow the issues in dispute, but was unable to do so.

*/s/ David J. Shaw*

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David J. Shaw

*Counsel for Defendant Fitbit, Inc.*

**CERTIFICATE PURSUANT TO LOCAL RULE 37.1**

The undersigned hereby certifies that counsel for Fitbit has complied with the provisions of Local Rule 37.1.

*/s/ David J. Shaw*

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David J. Shaw

*Counsel for Defendant Fitbit, Inc.*

**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