

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 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)**

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 Motion to Strike, In Part, The Infringement Expert Report and Opinions of Dr. Tom Martin.

3. Attached hereto as Exhibit 1 is a true and correct copy (highlighted for clarity) of email correspondence between David J. Shaw (counsel for Fitbit) and John Custer (counsel for Philips), dated December 13, 2021.

4. Attached hereto as confidential Exhibit 2<sup>1</sup> is a true and correct copy (annotated for clarity) of the amended Infringement Expert Report of Dr. Tom Martin (the "Martin Report") and

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<sup>1</sup> Exhibits 2 and 15 are Confidential under the protective order and are being filed under seal, subject to the Court's ruling on Fitbit's forthcoming Motion to Seal/Impound.

Exhibit K to the Martin Report, served December 15, 2021. Exhibits A-J, L, and M to the Martin Report are omitted because they do not contain information subject to this motion. Exhibit 2 includes green redaction boxes to indicate the portions of the Martin Report that Fitbit requests be stricken.

5. Attached hereto as Exhibit 3 is a true and correct excerpt of Plaintiff Philips North America LLC's ("Philips") Responses to Fitbit's Interrogatory No. 9, served February 10, 2020.

6. Attached hereto as Exhibit 4 is a true and correct copy (highlighted for clarity) of correspondence between David Beckwith (counsel for Fitbit) and Ruben Rodrigues (counsel for Philips), dated February 14, 2020.

7. Attached hereto as Exhibit 5 is a true and correct copy (highlighted for clarity) of correspondence between David Beckwith (counsel for Fitbit) and Ruben Rodrigues (counsel for Philips), dated March 6, 2020.

8. Attached hereto as Exhibit 6 is a true and correct copy of correspondence between David Okano (counsel for Fitbit) and Ruben Rodrigues (counsel for Philips), dated November 5, 2020.

9. Attached hereto as Exhibit 7 is a true and correct copy of correspondence between David Okano (counsel for Fitbit) and Ruben Rodrigues (counsel for Philips), dated November 12, 2020.

10. Attached hereto as Exhibit 8 is a true and correct copy (highlighted for clarity) of correspondence between Yar Chaikovsky (counsel for Fitbit) and Eley Thompson (counsel for Philips), dated December 8, 2020.

11. Attached hereto as Exhibit 9 is a true and correct copy of the cover pleading to Philips' initial Local Rule 16.6(d) Infringement Contentions, served January 31, 2020.

12. Attached hereto as Exhibit 10 is a true and correct copy of the cover pleading to Philips' Supplemental Local Rule 16.6(d) Infringement Contentions, served March 17, 2020.

13. Attached hereto as Exhibit 11 is a true and correct copy of the cover pleading to Philips' First Supplemental Local Rule 16.6(d) Infringement Contentions, served May 15, 2020.

14. Attached hereto as Exhibit 12 is a true and correct copy of an exemplary claim chart served by Philips as Exhibit 24 to Philips' First Supplemental Local Rule 16.6(d) Infringement Contentions on May 15, 2020.

15. Attached hereto as Exhibit 13 is a true and correct copy of a document produced by Philips at Bates number PNA-FB0016597-600.

16. Attached hereto as Exhibit 14 is a true and correct copy of a document produced by Philips at Bates number PNA-FB0007214-17.

17. Attached hereto as Exhibit 15 is a true and correct excerpt of a document produced by Fitbit at Bates number Fitbit\_19-11586\_00049465.

18. Attached hereto as Exhibit 16 true and correct copy of an exemplary claim chart served by Philips as Exhibit 24 to Philips' initial Local Rule 16.6(d) Infringement Contentions on January 31, 2020.

19. Attached hereto as Exhibit 17 is a true and correct copy of U.S. Patent No. 8,277,377 as produced at Bates number CE-FB0000451-69.

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

Executed January 5, 2022 in Washington, D.C.

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