

# EXHIBIT 1

## Eric Speckhard

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**From:** David Shaw  
**Sent:** Monday, December 13, 2021 5:50 PM  
**To:** Custer, John W.  
**Cc:** BOST - F - Philips - Fitbit; Fitbit Philips DC Service  
**Subject:** RE: Philips v. Fitbit 1:19-cv-11586

Hi John,

I'm writing to recap our meet and confer of Friday, December 10 regarding the parties' threatened motions to strike expert opinions.

First, we asked if Philips would be willing to extend the rebuttal expert report deadline to give Fitbit more time to investigate Philips's new theories. While we don't think an extension can alleviate all of the prejudice to Fitbit, it may potentially mitigate some of that prejudice. You indicated that Philips was unlikely to agree to any extension, but wanted to check with your team and client. You confirmed on December 13 that Philips will not agree to any extension.

Second, we asked you to please confirm that Philips never supplemented its response to Fitbit's Interrogatory No. 9 after February 10, 2020. You thought that was true, but again you wanted to double-check with your team and case file. Please let us know ASAP.

Third, we suggested that Fitbit might be willing to withdraw Dr. Paradiso's references to the Filangeri, Kumar, Modney, Averbuch, Wecker, and McLain references if Philips was willing to withdraw any of the new infringement theories addressed in my November 29 letter or agree not to move regarding any of the other invalidity issues raised in your November 19 and 24 letters. You agreed to talk with your team and see whether Philips was willing to discuss any such compromise. You confirmed on December 13 that Philips will not agree to, or even discuss, such a compromise.

Fourth, we discussed Philips's proposed removal of certain instances of the phrase "Active Zone Minutes" from Dr. Martin's report in response to my November 29 letter. Specifically, we discussed Philips's refusal to remove the discussion of "Active Zone Minutes" from paragraph 64 of Dr. Martin's report, despite the fact that you confirmed that Philips will abide by its prior representation to the Court and not accuse "Active Zone Minutes" of infringement. You argued that it is important for Dr. Martin to explain that Fitbit's devices used to track "Active Minutes" but now track "Active Zone Minutes" instead. I asked why that was important since neither "Active Zone Minutes" nor "Active Minutes" are accused of infringement, but you could not explain. Your only suggestion was that we ask Dr. Martin at deposition whether or not he is accusing "Active Zone Minutes" of infringement, but opening the door for yet another new opinion at Dr. Martin's deposition is not an acceptable compromise. Please either agree to remove reference to "Active Zone Minutes" from paragraph 64 of Dr. Martin's opening report or explain why you will not agree to do so.

Best,  
David

**David J. Shaw**

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**From:** Custer, John W. <jcuster@foley.com>  
**Sent:** Monday, December 13, 2021 4:52 PM  
**To:** David Shaw <DShaw@desmaraisllp.com>  
**Cc:** BOST - F - Philips - Fitbit <BOSTFPhilipsFitbit@foley.com>; Fitbit Philips DC Service <FitbitPhilipsDCService@desmaraisllp.com>  
**Subject:** [Ext] Philips v. Fitbit 1:19-cv-11586

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Hey David,

I can confirm that Philips does not agree with either of your two proposals discussed on the meet & confer last Friday (specifically your proposal that Fitbit drops some of the prior art in exchange for Philips dropping something and your proposal to extend the schedule). We plan to file our motion to strike portions of Dr. Paradiso's report later this evening.

Best,

**John Custer**

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*Pronouns: He/Him/His*



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