

EXHIBIT 4

PAUL HASTINGS

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February 14, 2020

94143.00004

Ruben J. Rodrigues
Senior Counsel
Foley & Lardner LLP
111 Huntington Avenue, Suite 2500
Boston, Massachusetts 02199-7610

Re: *Philips v. Fitbit*

Dear Ruben:

I write to request a meet and confer regarding the deficient interrogatory responses provided by Philips in response to Fitbit's Interrogatories 1-9.

Interrogatory 1:

Fitbit is entitled to the evidentiary support for conception and reduction to practice. Indeed Local Rule 16.6(d)(1)(B) requires the patentee to provide documents concerning conception and reduction to practice as part of the initial disclosure. Philips' response that information "may be found pursuant to FRCP 33(d)" in the file histories is not a proper response. It is not Fitbit's duty to guess what in the file histories Philips may contend is evidence of conception and reduction to practice for each asserted patent. Moreover reliance on Rule 33(d) as part of a discovery response requires a particularized identification of exactly where in the document production the requested information may be found. Philips' response that each patent was conceived and reduced to practice "at least as early as..." is a non-sequitur. The interrogatory seeks the evidentiary facts and circumstances concerning the actual conception and reduction to practice. The current response is evasive as it leaves open the possibility that Philips may assert a date of conception that predates the actual filing date of the patent application. Philips' initial disclosures indicate that the named inventors are represented by your firm. You have an obligation to obtain the information from your clients and provide complete, non-evasive responses.

Interrogatory 2:

Philips objects to the interrogatory on the basis that a protective order has not been entered in the case. I will provide edits to the proposed protective order your office offered. Please confirm that entry of a protective order will resolve all of Philips' objections and a complete response will be provided to interrogatory 2.

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Interrogatory 3:

Philips response to interrogatory 3 suffers a flaw similar to the response to No. 1, having responding with a date “at least by...” This is an evasive response as it does not provide the earliest date of Philips’ knowledge for each asserted patent.

Interrogatory 4:

Philips’ “interpretation” of this interrogatory is incorrect. Fitbit is entitled to learn the identity of any system or product that was ever made, sold, offered for sale, licensed, offered for license, or imported for any Philips entity **or anyone else acting with the consent of Philips**. This includes any licensees, and also includes any historic sales (it is not limited to current products). In addition, Philips’ Complaint alleges “the patented technologies asserted in this action enable and enhance customer demand for products such as, for example GPS/audio athletic training, security mechanisms for transmission of personal data, connected wearable/online products and handling of interrupted connections.” The Complaint also references Actiwatch family of devices and the MIO Alpha fitness tracker watch. Is it now Philips’ position that none of the products it identified in its Complaint or First Amended Complaint practice any of the asserted claims? Or that Philips’ Health Watch and HealthSuite health app did not practice, or enable users to practice, any of the asserted claims?

Interrogatory 5:

Fitbit is entitled to Philips’ contentions concerning the written description support for each asserted claim, forming the basis for Philips’ claim to the benefit of priority to any and all provisional patent applications. For example, the ‘233 patent purports to claim priority to three provisional applications, through two continuation-in-part applications. The claimed priority range is between 1998 and 2002. Philips must provide a disclosure charting what it contends provides written description support in the provisional applications for each of the asserted claims. Likewise, the ‘377 patent, filed in 2008, claims priority to a 1999 provisional application. Fitbit need not guess what portions of the Provisionals are relied upon by Philips to satisfy the written description requirement to establish a right to priority for the asserted claims.

Interrogatory 6, 7 and 9:

Fitbit is entitled to the evidentiary facts supporting Philips’ contentions regarding induced, contributory and joint infringement. Philips’ current responses simply parrot the claim language and regurgitate legal

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standards. Philips must provide all evidentiary facts supporting its contentions, not simply restate those contentions. For example but without limitation, what evidentiary facts does Philips rely on for its contention that the accused products have no substantial non-infringing use? Philips must provide the evidentiary basis for all of its contentions upon which it bases its inducement, contributory and joint infringement claims, or concede that it had no Rule 11 basis for its contentions.

Interrogatory 8:

Fitbit is entitled to all evidentiary facts upon which Philips contends the patents-in-suit are not obvious. This includes all evidentiary facts relevant to objective indicia of non-obviousness including commercial success, long felt need, failure of others, copying, unexpected benefits, awards or praise, surprise expressed by others, or any other facts upon which Philips may rely.

I am available to discuss these deficiencies at your earliest convenience.

Sincerely,

/s/David Beckwith
Dave Beckwith
for PAUL HASTINGS LLP

DB:ac