

**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) Exhibits 2 and 15 filed in support of ECF No. 268, Fitbit’s Motion to Strike, in Part, the Infringement Expert Report and Opinions of Dr. Tom Marin Pursuant to Fed. R. Civ. P. 37(C)(1) and Local Rule 16.6(D). 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 Exhibits 2 and 15 contain sensitive confidential business information. Exhibit 2 is Philips’s infringement report, which contains confidential information regarding the operation of the accused Fitbit wearable devices, applications, and servers, including descriptions of Fitbit source code, that has been designated Confidential Source Code—Attorneys’ Eyes Only Information under the Protective Order. (D.I. 59, 70.) Exhibit 15 is an internal Fitbit document describing confidential business information relating to certain features of Fitbit’s accused smart

watch and fitness tracker products. Exhibit 15 has been designated Confidential under the Protective Order (D.I. 59).

For the foregoing reasons, Fitbit respectfully requests that the Court permit Fitbit to file under seal Exhibits 2 and 15 filed in support of ECF No. 268, Fitbit's Motion to Strike, in Part, the Infringement Expert Report and Opinions of Dr. Tom Marin Pursuant to Fed. R. Civ. P. 37(C)(1) and Local Rule 16.6(D). 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 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 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