

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

**UNOPPOSED MOTION TO IMPOUND/SEAL EXHIBIT 3 FILED
WITH ECF NO. 261**

Pursuant to Local Rule 7.2 and the Order Adopting Discovery Stipulation and Modified Protective Order in this case (ECF No. 59, the “Protective Order”), Plaintiff Philips North America LLC (“Philips”) respectfully requests the Court to impound (seal) Exhibit 3 filed with ECF No. 261 (Declaration of John W. Custer in Support of Plaintiff’s Motion to Strike Portions of November 16, 2021 Expert Report of Joseph A. Paradiso as to Previously Withheld Prior Art and Indefiniteness Defense).

The Protective Order allows parties to designate discovery material that contains or constitutes confidential business information as “CONFIDENTIAL.” As grounds for this Motion, Philips states that Exhibit 3 contains third party confidential business information. In response to a subpoena, Icon Health & Fitness (“Icon”), a third party to this matter, produced documents related to the design and operation of several of their fitness products and services and marked these documents as confidential under the Protective Order because Icon believed them to include confidential business information. Icon likewise designated the transcript of the deposition of one of their employees, Ms. Logan, as confidential under the Protective Order. Exhibit 3 is Fitbit’s invalidity report that has been designated as Confidential by Fitbit under the Protective Order

because it contains discussion of the documents and transcript designated as confidential under the Protective Order by Icon.

Additionally, Philips has filed a redacted version of Exhibit 3 with redactions of only the portions (only 56 pages out of 446 total pages) of Dr. Paradiso's report that discuss the material designated by Icon Health & Fitness as confidential.

For the foregoing reasons, Philips respectfully requests that the Court permit Philips to file under seal Exhibit 3 filed in support of ECF No. 261. Philips further requests that this document remain impounded until further Order by the Court, and that upon expiration of the impoundment, this document be returned to Philips's counsel.

Dated: January 6, 2022

Respectfully Submitted,

/s/ John W. Custer

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LOCAL RULE 7.2 CERTIFICATION

I, John W. Custer, counsel for Philips North America LLC, hereby certify that counsel for Philips has conferred with counsel for Fitbit, Inc. to resolve the issues presented in this motion and that counsel for Fitbit indicated that Fitbit does not oppose the relief requested by this motion.

Dated: January 6, 2022

*/s/ John W. Custer*_____

John W. Custer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was filed with the Court through the ECF system and that a copy will be electronically served on registered participants as identified on the Notice of Electronic Filing.

Dated: January 6, 2022

*/s/ John W. Custer*_____

John W. Custer