

**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

**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 LLC (“Fitbit”), respectfully requests the Court to impound (seal) an unredacted version of Fitbit’s Memorandum (ECF No. 276) in Support of its Motion (ECF No. 275) for the Construction of Three Related Terms and Exhibit 1 filed in support of ECF Nos. 275 and 276, Fitbit’s Motion for the Construction of Three Related Claim Terms. Philips does not oppose this Motion to Impound/Seal.

The Protective Order in this case allows parties to designate discovery material that contains or constitutes confidential business information as “CONFIDENTIAL.” *See* D.I. 59. As grounds for this Motion, Fitbit states that it filed a redacted public version of its Memorandum (ECF No. 276) in Support of its Motion for the Construction of Three Related Terms. The redacted portions contain material that has been designated Confidential pursuant to the Protective Order, including block quotes of excerpts from Exhibit 1, the confidential Expert Report of Joseph A. Paradiso, Ph.D. Exhibit 1 contains material that has been designated Confidential pursuant to the Protective Order. Specifically, as noted, Exhibit 1 is a copy of the Expert Report of Joseph A. Paradiso, Ph.D. Concerning Non-Infringement of U.S. Patent No. 8,277,377 and contains

descriptions and analyses of Fitbit products, applications, and servers that have been designated Confidential Source Code—Attorneys’ Eyes Only under the Protective Order.

For the foregoing reasons, Fitbit respectfully requests that the Court permit Fitbit to file under seal an unredacted version of Fitbit’s Memorandum in Support of its Motion (ECF No. 275) for the Construction of Three Related Terms and Exhibit 1 filed in support of ECF Nos. 275 and 276. Fitbit further requests that the document remains impounded until further Order by the Court, and that upon expiration of the impoundment, the document be returned to Fitbit’s counsel.

Date: January 7, 2022

Respectfully Submitted,

/s/ David J. Shaw

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*Counsel for Defendant Fitbit LLC*

**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