

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

**DECLARATION OF JOHN W. CUSTER IN SUPPORT OF PHILIPS'S OPPOSITION
TO FITBIT'S MOTION TO STRIKE, IN PART, THE INFRINGEMENT EXPERT
REPORT AND OPINIONS OF DR. TOM MARTIN PURSUANT TO FED. R. CIV. P.
37(c)(1) AND LOCAL RULE 16.6(d)**

I, John W. Custer, declare as follows:

1. I am an attorney at Foley & Lardner LLP, counsel to Plaintiff Philips North America, LLC ("Philips").
2. I make this declaration in support of Philips's Opposition to Fitbit's Motion to Strike, in Part, the Infringement Expert Report and Opinions of Dr. Tom Martin Pursuant to Fed. R. Civ. P. 37(c)(1) and Local Rule 16.6(d).
3. I have personal knowledge of the facts set forth herein and, if called to testify in this matter, could and would testify to the following facts.
4. Attached as **Exhibits 1-9** are true and correct copies of claim charts served with Philips's First Supplemental L.R. 16.6(d)(1) Disclosures served on May 15, 2020.
5. Attached as **Exhibit 10** is a true and correct copy of an excerpt of the Deposition Transcript from the deposition of Gilles Boccon-Gibod taken on January 22, 2021.

I declare under penalty of perjury that the foregoing is true and correct.

Date: January 19, 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.

By: /s/ John W. Custer