

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 DESIGNATED
MATERIAL**

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) Plaintiff’s Memorandum in Opposition to Fitbit’s Motion to Strike, in Part, the Infringement Expert Report and Opinions of Dr. Tom Martin Pursuant to Fed. R. C. P. 37(c)(1) and Local Rule 16.6(d) (“Philips’s Opposition”) as well as Exhibit 10 filed in support thereof.

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 Philips’s Opposition contains discussion of Fitbit’s confidential business information. Specifically, Philips’s Opposition discusses the contents of an internal Fitbit technical document that Fitbit designated as confidential under the protective order and filed under seal as Exhibit 15 to its 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). *See* ECF Nos. 268, 270-15, 271. In its motion to seal that this exhibit “is an internal Fitbit document describing confidential business information relating to certain features of Fitbit’s accused smart watch and fitness tracker

products.” ECF No. 271 at 1-2. Philips further states that Ex. 10 filed in support of Philips’s Opposition is an excerpt from the deposition of Mr. Gilles Boccon-Gibbod, which was designated by Fitbit as confidential under the protective order, and which discusses this same internal Fitbit technical document filed under seal by Fitbit.

Additionally, Philips has filed a redacted version of Philips’s Opposition (ECF No. 286) with redactions of only the two sentences of Philips’s Opposition that discuss internal Fitbit technical document filed under seal by Fitbit.

For the foregoing reasons, Philips respectfully requests that the Court permit Philips to file under seal Philips’s Opposition and Exhibit 10 in support of Philips’s Opposition. Philips further requests that these documents remain impounded until further Order by the Court, and that upon expiration of the impoundment, these documents be returned to Philips’s counsel.

Dated: January 19, 2022

Respectfully Submitted,

/s/ John W. Custer

Lucas I. Silva (BBO 673,935)
Ruben J. Rodrigues (BBO 676,573)
John Custer (BBO 705,258)
FOLEY & LARDNER LLP
111 Huntington Avenue
Suite 2500
Boston, MA 02199-7610
Phone: (617) 342-4000
Fax: (617) 342-4001
lsilva@foley.com
rrodrigues@foley.com
jcuster@foley.com

Eley O. Thompson (*pro hac vice*)
FOLEY & LARDNER LLP
321 N. Clark Street
Suite 2800
Chicago, IL 60654-5313
Phone: (312) 832-4359
Fax: (312) 832-4700

ethompson@foley.com

*Counsel for Plaintiff
Philips North America LLC*

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 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.

Dated: January 19, 2022

/s/ John W. Custer _____

John W. Custer