

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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PHILIPS NORTH AMERICA LLC,

Plaintiff,

v.

FITBIT, INC.,

Defendant.

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Civil Action No. 1:19-cv-11586-FDS

**DECLARATION OF JOHN W. CUSTER IN SUPPORT OF  
PLAINTIFF'S MOTION TO STRIKE PORTIONS OF FITBIT'S  
EXPERT REBUTTAL REPORTS**

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 Motion to Strike Portions of Fitbit's Expert Rebuttal Reports.
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 **Exhibit 1** is a true and correct copy of Philips North America LLC's Notice of Deposition To Defendant Fitbit, Inc., dated August 24, 2020.
5. Attached as **Exhibit 2** is a true and correct copy of Fitbit, Inc.'s Objections and Responses To Plaintiff's 30(B)(6) Notice of Oral and Videotaped Deposition, dated September 4, 2020.
6. Attached as **Exhibit 3** is a true and correct copy of the Amended Expert Report of Tom Martin Concerning Infringement, dated December 12, 2021.

7. Attached as **Exhibit 4** is a true and correct copy of the Expert Report of Joseph A. Paradiso, Ph.D. Regarding Invalidity of U.S. Patent No. 8,277,377, dated November 16, 2021.
8. Attached as **Exhibit 5** is a true and correct copy of the Expert Report of Joseph A. Paradiso, Ph.D. Concerning Non-Infringement of U.S. Patent No. 8,277,377, dated December 22, 2021.
9. Attached as **Exhibit 6** is a true and correct copy of excerpts from the deposition transcript of Gilles Boccon-Gibod, dated January 22, 2021.
10. Attached as **Exhibit 7** is a true and correct copy of the Rebuttal Expert Report of Lauren R. Kindler, dated December 22, 2021.
11. Attached as **Exhibit 8** is a true and correct copy of the Expert Report of Dr. Michael Akemann, dated November 16, 2021.
12. Attached as **Exhibit 9** is a true and correct copy of an email from David Okano to Ruben Rodrigues, dated January 12, 2021.

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

Date: February 9, 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