

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

**DECLARATION OF LESLIE M. SPENCER IN SUPPORT OF DEFENDANT FITBIT  
LLC'S MOTION TO STRIKE PORTIONS OF THE EXPERT REPORT AND EXCLUDE  
CERTAIN OPINIONS AND TESTIMONY OF DR. MICHAEL P. AKEMANN**

I, Leslie M. Spencer, hereby declare:

1. I am an attorney at Desmarais LLP, counsel of record for Fitbit LLC ("Fitbit"). I am admitted *pro hac vice* to this Court. I have personal knowledge of the facts set forth herein and could competently testify to them if called as a witness.

2. I make this declaration in support of Defendant Fitbit LLC's Motion to Strike Portions of the Expert Report and Exclude Certain Opinions and Testimony of Dr. Michael P. Akemann.

3. Attached hereto as Exhibit 1<sup>1</sup> is a true and correct copy of the Expert Report of Dr. Michael P. Akemann, served November 16, 2021.

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<sup>1</sup> Exhibits 1-8 are Confidential under the protective order and are being filed under seal, subject to the Court's ruling on Fitbit's forthcoming Motion to Seal/Impound.

4. Attached hereto as Exhibit 2 is a true and correct copy of the License Agreement between Symcare Personalized Health Solutions, Inc. and Koninklijke Philips Electronics N.V. produced by Philips at Bates number PNA-FB0004196.

5. Attached hereto as Exhibit 3 is a true and correct copy of the License Agreement between LifeScan, Inc. and Koninklijke Philips Electronics N.V. produced by Philips at Bates number PNA-FB0003484.

6. Attached hereto as Exhibit 4 is a true and correct copy of the Patent License Agreement between LifeScan Global Corporation and Koninklijke Philips N.V. produced by Philips at Bates number PNA-FB0003471.

7. Attached hereto as Exhibit 5 is a true and correct excerpted copy of the Expert Report of Joseph A. Paradiso, Ph.D. Concerning Non-Infringement of U.S. Patent No. 8,277,377, served December 22, 2021.

8. Attached hereto as Exhibit 6 is a true and correct excerpted copy of the Deposition Transcript from the deposition of Dr. Michael P. Akemann taken on January 28, 2022.

9. Attached hereto as Exhibit 7 is a true and correct excerpted copy of the Rebuttal Expert Report of Lauren R. Kindler served December 22, 2021.

10. Attached hereto as Exhibit 8 is a true and correct excerpted copy of the Deposition Transcript from the deposition of Dr. Thomas Martin taken on February 1, 2022.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge.

Executed February 9, 2022 in New York, NY.

/s/ Leslie M. Spencer  
Leslie M. Spencer (*pro hac vice*)