

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) Exhibits 1, 2, and 5 filed in support of Plaintiff’s Motion to Preclude the Testimony of Dr. Joseph A. Paradiso Regarding the iFIT Prior Art System (ECF 305).

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 Exhibits 2 and 5 contains third party confidential business information. In response to a subpoena, Icon Health & Fitness (“Icon”), a third party to this matter, produced documents related to the design and operation of several of their fitness products and services and marked these documents as confidential under the Protective Order because Icon believed them to include confidential business information. Icon likewise designated the transcript of the deposition of one of their employees, Ms. Logan, as confidential under the Protective Order. Exhibit 5 is an excerpted version of this deposition. Exhibit 1 is Fitbit’s invalidity report that has been designated as Confidential by Fitbit under the Protective Order because it contains discussion of the

documents and transcript designated as confidential under the Protective Order by Icon. Exhibit 2 is an excerpted version of the deposition transcript of Fitbit's invalidity expert, Dr. Paradiso, which has been designated as Confidential by Fitbit under the Protective Order because it also contains discussion of the documents and transcript designated as confidential under the Protective Order by Icon.

Additionally, Philips has filed a redacted version of Exhibit 1 with redactions of only to the portions (only 56 pages out of 446 total pages) of Dr. Paradiso's report that discuss the material designated by Icon Health & Fitness as confidential.

For the foregoing reasons, Philips respectfully requests that the Court permit Philips to file under seal Philips's Exhibits 1, 2 and 5 in support of Philips's Motion. 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: February 9, 2022

Respectfully Submitted,

/s/ John W. Custer

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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: 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.

Dated: February 9, 2022

/s/ John W. Custer

John W. Custer