

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 EXHIBIT**

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) Exhibit 1 filed in support of Plaintiff’s Sur-Reply Regarding Fitbit’s motion to Strike, In Part, the Infringement Expert Report and Opinions of Dr. Tom Martin Pursuant to Fed. R. Ci. P. 37(c)(1) and Local Rule 16.6(d) (ECF 315).

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 Exhibit 1 contains excerpts from the deposition of Fitbit’s technical expert, Dr. Joseph Paradiso that contains confidential information regarding operation of the accused Fitbit wearable devices, applications, and servers, and that has been designated Confidential Source Code—Attorneys’ Eyes Only Information under the Protective Order.

For the foregoing reasons, Philips respectfully requests that the Court permit Philips to file under seal Philips’s Exhibit 1 in support of Philips’s Sur-Reply. Philips further requests that this document remain impounded until further Order by the Court, and that upon expiration of the impoundment, this document be returned to Philips’s counsel.

Dated: February 22, 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: February 22, 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 22, 2022

/s/ John W. Custer

John W. Custer