EXHIBIT 10

CONFIDENTIAL - ATTORNEYS' EYES ONLY

Page 1

1   IN THE UNITED STATES DISTRICT COURT

2   FOR THE DISTRICT OF MASSACHUSETTS

3

4

5   PHILIPS NORTH AMERICA   )

       LLC,   )

6   )

            Plaintiff,   )

7   )

            vs.   )   Case No.

8   )   1:19-cv-11586-IT

       FITBIT, INC.,   )

9   )

            Defendant.   )

10

11

            CONFIDENTIAL - ATTORNEYS' EYES ONLY

12

13   Videotaped Deposition of

14   THOMAS L. MARTIN, Ph.D.

15   Conducted Remotely

16   Tuesday, February 1, 2022

17   8:59 a.m. EST

18

19

20

21

22

23

24   Job No. CS5029507

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1   phone were not able to receive that at

2   least -- receive that physiologic status at

3   least partially while the subject is

4   exercising, then it wouldn't meet this claim

5   element.

6   BY MR. SHAW:

7   Q.   That's what I'm asking. So let

8   me just ask that so we get a clean question

9   and answer.

10   So if a web-enabled wireless

11   phone were not able to receive the

12   physiologic status at least partially while

13   the subject is exercising, then that would

14   not meet claim 1. Right?

15   MR. CUSTER: Objection. Calls

16   for a legal conclusion.

17   A.   So, yes, if the phone couldn't

18   receive the physiologic status at least

19   partially while the subject was exercising,

20   it wouldn't meet the requirements of

21   claim 1.f.

22   THE DEPONENT: Actually, I'd

23   just like to point out: It's 12:30, and we

24   had said earlier we would break for lunch

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1   for a legal conclusion.

2   A.   So 1.h. does say that the

3   calculated response is from the server and

4   the calculation performed by the server.

5   BY MR. SHAW:

6   Q.   And so you agree with me, then,

7   that if a calculated response is associated

8   with a calculation -- let me start over.

9   You would agree with me, then,

10   that if a calculated response is associated

11   with only calculations performed by devices

12   that are not servers, then that would not

13   practice claim element 1.h.

14   MR. CUSTER: Objection to form.

15   Calls for a legal conclusion.

16   A.   So if the calculation were

17   performed by something other than a server,

18   then it wouldn't meet the -- it wouldn't be

19   what's stated in 1.h.

20   BY MR. SHAW:

21   Q.   And you agree with me that the

22   Fitbit wearable devices accused of

23   infringement in this case are not servers.

24   Right?

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 1              A.      I'm sorry David.  Can you
 2       repeat that question?
 3              Q.      Yeah.
 4                      You agree with me that the
 5       Fitbit wearable devices accused of
 6       infringement in this case are not servers.
 7       Right?
 8              A.      Right.  The word "wearable"
 9       dropped out of that.  I was trying to figure
10       out what devices you were talking about.
11                      So the -- I would not consider
12       the Fitbit wearable device to be a server.
13              Q.      Okay.  So turning to '377,
14       claim element 1.i., which reads, "using the
15       application, displaying the response."
16                      And I just want to confirm
17       something that I think you said before, which
18       is:  It's the mobile phone that uses the
19       application to display the response in '377,
20       element 1.i.  Right?
21              A.      It's the -- yes, the
22       web-enabled wireless phone, using the
23       application, displays the response.
24              Q.      Right.
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