

EXHIBIT 4

CONFIDENTIAL - ATTORNEYS' EYES ONLY

Page 1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PHILIPS NORTH AMERICA)
LLC,)

Plaintiff,)

vs.)

FITBIT, INC.,)

Defendant.)

Case No.
1:19-cv-11586-IT

CONFIDENTIAL - ATTORNEYS' EYES ONLY

Videotaped Deposition of
THOMAS L. MARTIN, Ph.D.
Conducted Remotely
Tuesday, February 1, 2022
8:59 a.m. EST

Job No. CS5029507

CONFIDENTIAL - ATTORNEYS' EYES ONLY

Page 2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

The videotaped deposition of
THOMAS L. MARTIN, Ph.D., conducted remotely,
was stenographically reported by Lisa A.
Knight, Registered Diplomate Reporter,
Certified Realtime Reporter, and Realtime
Systems Administrator.

CONFIDENTIAL - ATTORNEYS' EYES ONLY

Page 3

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

A P P E A R A N C E S
(Appearing remotely)

ON BEHALF OF THE PLAINTIFF:
JOHN W. CUSTER, ESQUIRE
FOLEY & LARDNER LLP
111 Huntington Avenue
Suite 2500
Boston, Massachusetts 02199
617.226.3148
jcuster@foley.com

ON BEHALF OF THE DEFENDANT:
DAVID J. SHAW, ESQUIRE
DESMARAIS LLP
1701 Pennsylvania Avenue NW
Suite 200
Washington, District of Columbia 20006
202.451.4900
dshaw@desmaraisllp.com

HENRY L. ARD, ESQUIRE
DESMARAIS LLP
230 Park Avenue
New York, New York 10169
212.351.3400
hard@desmaraisllp.com

ALSO PRESENT:
MICHAEL BARANKOVICH, Videographer

CONFIDENTIAL - ATTORNEYS' EYES ONLY

Page 306

1 substantially similar to each other. So the
2 tech -- sorry. Technically comparable
3 without being substantially similar.

4 MR. CUSTER: Okay. I have no
5 further questions.

6 FURTHER EXAMINATION

7 BY MR. SHAW:

8 Q. As you've used the phrase
9 "technically comparable" in your opinion that
10 the '191 and '377 patents are technically
11 comparable, what does the phrase "technically
12 comparable" mean in that context, Doctor?

13 MR. CUSTER: Objection to the
14 extent it calls for a legal conclusion.

15 A. So, you know, as I've laid out
16 in the expert report, those two patents
17 used -- they were a continuation of the same
18 application. The specifications were nearly
19 identical, in terms of both the text and
20 drawings. And they were directed towards the
21 same general type of technology, in terms of
22 monitoring health and exercise parameters.

23 (Simultaneous crosstalk.)

24 Q. You -- oh, I'm sorry. Go