

**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 DAVID J. SHAW IN SUPPORT OF DEFENDANT FITBIT LLC'S
MOTIONS FOR SUMMARY JUDGMENT**

I, David J. Shaw, hereby declare:

1. I am an attorney at Desmarais LLP, counsel of record for Defendant 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 Motions For Summary Judgment of (1) Noninfringement of U.S. Patent No. 8,277,377 (2) No Joint or Induced Infringement of U.S. Patent No. 8,277,377, (3) Noninfringement of U.S. Patent No. 8,277,377 Based on Plaintiff's Failure of Proof, and (4) Invalidity of U.S. Patent No. 8,277,377 Under 35 U.S.C. § 101.

3. Attached hereto as Exhibit 1 is a true and correct copy of the CONFIDENTIAL deposition transcript of Thomas L. Martin, Ph.D., dated February 1, 2022.

4. Attached hereto as Exhibit 2 is a true and correct copy of the CONFIDENTIAL [Corrected] Amended Expert Report Of Tom Martin Concerning Infringement, dated December 12, 2021 and served on January 21, 2022.

5. Attached hereto as Exhibit 3 is a true and correct copy of U.S. Patent No. 8,277,377 to Quay, produced bearing Bates Nos. CE-FB0000451-469.

6. Attached hereto as Exhibit 4 is a true and correct copy of the CONFIDENTIAL Declaration of Gilles Boccon-Gibod in Support of Defendant Fitbit LLC's Motions for Summary Judgment, dated March 2, 2022.

7. Attached hereto as Exhibit 5 is a true and correct copy of the CONFIDENTIAL deposition transcript of Gilles Boccon-Gibod, dated January 22, 2021.

8. Attached hereto as Exhibit 6 is a true and correct copy of the CONFIDENTIAL Expert Report Of Dr. Michael P. Akemann, dated November 16, 2021.

9. Attached hereto as Exhibit 7 is a true and correct copy of the CONFIDENTIAL deposition transcript of Michael P. Akemann, Ph.D., dated January 28, 2022.

10. Attached hereto as Exhibit 8 is a true and correct copy of the certified file history of U.S. Patent No. 8,277,377, dated January 6, 2020 and produced bearing Bates Nos. PNA-FB0001473-1994.

11. Attached hereto as Exhibit 9 is a true and correct copy of the CONFIDENTIAL Rebuttal Expert Report of Dr. Thomas Martin, dated December 22, 2021.

12. Attached hereto as Exhibit 10 is a true and correct copy of the CONFIDENTIAL Expert Report of Joseph A. Paradiso, Ph.D. Concerning Non-Infringement of U.S. Patent 8,277,377 dated December 22, 2021.

13. Attached hereto as Exhibit 11 is a true and correct copy of a document produced bearing Bates Nos. PNA-FB0016597-600.

14. Attached hereto as Exhibit 12 is a true and correct copy of a CONFIDENTIAL document bearing Bates Nos. Fitbit_19-11586_00049489-492, which was marked as Exhibit 7 to the January 22, 2021 deposition of Gilles Boccon-Gibod.

15. Attached hereto as Exhibit 13 is a true and correct copy of the CONFIDENTIAL deposition transcript of Roger J. Quy, dated September 1, 2020.

16. Attached hereto as Exhibit 14 is a true and correct copy of Provisional Application 60/172486 produced bearing Bates Nos. Fitbit_19-11586_00000047-52.

17. Attached hereto as Exhibit 15 is a true and correct copy of the CONFIDENTIAL Expert Report of Joseph A. Paradiso, Ph.D. Regarding Invalidity Of U.S. Patent No. 8,277,377, dated November 16, 2021.

18. Attached hereto as Exhibit 16 is a true and correct copy of the deposition transcript of Maria S. Redin, dated February 2, 2021.

19. Attached hereto as Exhibit 17 is a true and correct copy of U.S. Patent No. 6,587,684 to Hsu et al. produced bearing Bates Nos. Fitbit_19-11586_00002582-599.

20. Attached hereto as Exhibit 18 is a true and correct copy of a CONFIDENTIAL document produced bearing Bates Nos. Fitbit_19-11586_00058796-804, which was marked as Exhibit 4 to the January 22, 2021 deposition of Gilles Boccon-Gibod.

21. Attached hereto as Exhibit 19 is a true and correct copy of a document produced bearing Bates Nos. PNA-FB0016617-626.

22. Attached hereto as Exhibit 20 is a true and correct copy of a document produced bearing Bates Nos. PNA-FB0000294-333.

23. Attached hereto as Exhibit 21 is a true and correct copy of a document produced bearing Bates Nos. PNA-FB0000457-501.

24. Attached hereto as Exhibit 22 is a true and correct copy of a document produced bearing Bates Nos. PNA-FB0000777-834.

25. Attached hereto as Exhibit 23 is a true and correct copy of a document produced bearing Bates Nos. PNA-FB0000149-226.

26. Attached hereto as Exhibit 24 is a true and correct copy of a document produced bearing Bates Nos. PNA-FB0001103-1187.

27. Attached hereto as Exhibit 25 is a true and correct copy of a document produced bearing Bates Nos. PNA-FB0000959-1038.

28. Attached hereto as Exhibit 26 is a true and correct copy of a document produced bearing Bates Nos. PNA-FB0001039-1102.

29. Attached hereto as Exhibit 27 is a true and correct copy of the CONFIDENTIAL deposition transcript of Ryan Krems, dated January 20, 2021.

30. Attached hereto as Exhibit 28 is a true and correct copy of a CONFIDENTIAL document produced bearing Bates Nos. Fitbit_19-11586_00053545-580.

31. Attached hereto as Exhibit 29 is a true and correct copy of a document produced bearing Bates Nos. PNA-FB0016672-677.

32. Attached hereto as Exhibit 30 is a true and correct copy of a document produced bearing Bates Nos. PNA-FB0016682-688.

33. Attached hereto as Exhibit 31 is a true and correct copy of a document produced bearing Bates Nos. PNA-FB0016665-667.

34. Attached hereto as Exhibit 32 is a true and correct copy of a document produced bearing Bates Nos. PNA-FB0016689-695.

35. Attached hereto as Exhibit 33 is a true and correct copy of a document produced bearing Bates Nos. PNA-FB0016696-703.

36. Attached hereto as Exhibit 34 is a true and correct copy of a CONFIDENTIAL document produced bearing Bates Nos. Fitbit_19-11586_00075235-274.

37. Attached hereto as Exhibit 35 is a true and correct copy of a CONFIDENTIAL document produced bearing Bates Nos. Fitbit_19-11586_00056948-970.

38. Attached hereto as Exhibit 36 is a true and correct copy of a document produced bearing Bates Nos. PNA-FB0000545-613.

39. Attached hereto as Exhibit 37 is a true and correct copy of a document produced bearing Bates Nos. Fitbit_19-11586_0082606-662, which was marked as Exhibit 1 to the February 2, 2021 deposition of Maria S. Redin.

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

Executed March 2, 2022 in Washington, DC.

/s/ David J. Shaw
David J. Shaw (*pro hac vice*)

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