

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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PHILIPS NORTH AMERICA LLC,

Plaintiff,

v.

FITBIT, INC.,

Defendant.

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Civil Action No. 1:19-cv-11586-FDS

**DECLARATION OF JOHN W. CUSTER IN SUPPORT OF  
PLAINTIFF'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR  
PARTIAL SUMMARY JUDGMENT OF DIRECT INFRINGEMENT AND  
NO INVALIDITY ON iFIT PRIOR ART**

I, John W. Custer, declare as follows:

1. I am an attorney at Foley & Lardner LLP, counsel to Plaintiff Philips North America, LLC ("Philips").
2. I make this declaration in support of Philips's Motion For Partial Summary Judgment of Direct Infringement and No Invalidity of iFIT Prior Art Pursuant to Fed. R. Civ. P. 37(c)(1) and Local Rule 16.6(d).
3. I have personal knowledge of the facts set forth herein and, if called to testify in this matter, could and would testify to the following facts.
4. Attached as **Exhibit A** is a true and correct copy of the Amended Expert Report of Tom Martin Concerning Infringement, dated December 12, 2021.
5. Attached as **Exhibit B** is a true and correct copy of Fitbit Ionic User Manual, Version 1.1 bearing Bates Nos. PNA-FB0000149-226.

6. Attached as **Exhibit C** is a true and correct copy of Fitbit Versa User Manual, Version 1.0 bearing Bates Nos. PNA-FB0001103-1187.
7. Attached as **Exhibit D** is a true and correct copy of Fitbit Versa2 User Manual, Version 1.0 bearing Bates Nos. PNA-FB0000959-1038.
8. Attached as **Exhibit E** is a true and correct copy of Fitbit Versa Lite Edition User Manual, Version 1.0 bearing Bates Nos. PNA-FB0001039-1102.
9. Attached as **Exhibit F** is a true and correct copy of Fitbit Charge2 User Manual, Version 1.1 bearing Bates Nos. PNA-FB0000502-544.
10. Attached as **Exhibit G** is a true and correct copy of Fitbit Charge 3 User Manual, Version 1.0 bearing Bates Nos. PNA-FB0000545-613.
11. Attached as **Exhibit H** is a true and correct copy of Fitbit Inspire User Manual, Version 2.0 bearing Bates Nos. PNA-FB0000777-834.
12. Attached as **Exhibit I** is a true and correct copy of Fitbit Alta Product Manual, Version 1.0 bearing Bates Nos. PNA-FB000294-333.
13. Attached as **Exhibit J** is a true and correct copy of Fitbit Blaze Product Manual, Version 1.1 bearing Bates Nos. PNA-FB000457-501.
14. Attached as **Exhibit K** is a true and correct copy of excerpts from the deposition of Ryan Krems, dated January 20, 2021.
15. Attached as **Exhibit L** is a true and correct copy of the Rebuttal Expert Report of Joseph A. Paradiso, dated December 22, 2021.
16. Attached as **Exhibit M** is a true and correct copy of excerpts from the deposition of Gilles Boccon-Gibod, dated January 22, 2021.

17. Attached as **Exhibit N** is a true and correct copy of excerpts from the deposition of Joseph Paradiso, dated February 2, 2022.

18. Attached as **Exhibit O** is a true and correct copy of excerpts from the deposition of Thomas L. Martin, dated February 1, 2022.

19. Attached as **Exhibit P** is a true and correct copy of Fitbit's Meson Superstar Pluto Pop Lookbook bearing Bates Nos. Fitbit\_19-11586\_00070683-70724, dated December 15, 2017.

20. Attached as **Exhibit Q** is a true and correct copy of Fitbit's Fall 2019 Pop Lookbook bearing Bates Nos. Fitbit\_19-11586\_70725-70752, dated May 17, 2019.

21. Attached as **Exhibit R** is a true and correct copy of Fitbit's Atom Launch Pop Lookbook bearing Bates Nos. Fitbit\_19-11586\_00070757-70791.

22. Attached as **Exhibit S** is a true and correct copy of Fitbit's Spring 2020 Pop Lookbook Final bearing Bates Nos. Fitbit\_19-11586\_00070792-70826, dated January 9, 2020.

23. Attached as **Exhibit T** is a true and correct copy of Fitbit's Spring 2019 Pop Lookbook bearing Bates Nos. Fitbit\_19-11586\_00070827-70862, dated December 20, 2018.

24. Attached as **Exhibit U** is a true and correct copy of Fitbit Charge 2 brochure bearing Bates Nos. Fitbit\_19-11586\_00051769-51770.

25. Attached as **Exhibit V** is a true and correct copy of Fitbit's Ionic document regarding getting started bearing Bates Nos. Fitbit\_19-11586\_00058982.

26. Attached as **Exhibit W** is a true and correct copy of Fitbit Charge 3 document regarding getting started bearing Bates Nos. Fitbit\_19-11586\_00059004.

27. Attached as **Exhibit X** is a true and correct copy of Fitbit products bearing Bates Nos. Fitbit\_19-11586\_00070678-70682.

28. Attached as **Exhibit Y** is a true and correct copy of Fitbit blog “Get a Clear Snapshot of Your Fitness with the New Fitbit Cardio Fitness Level” bearing Bates Nos. PNA-FB0016580-16582.
29. Attached as **Exhibit Z** is a true and correct copy of Fitbit app users and devices by first usage date bearing Bates Nos. Fitbit\_19-11586\_00087283.
30. Attached as **Exhibit AA** is a true and correct copy of Exhibit B to the Amended Expert Report of Tom Martin Concerning Infringement, dated December 12, 2021
31. Attached as **Exhibit AB** is a true and correct copy of Fitbit webpage regarding What Are Active Zone Minutes or active minutes on my Fitbit device? bearing Bates Nos. Fitbit\_19-11586\_0016561-16568, dated November 1, 2021.
32. Attached as **Exhibit AC** is a true and correct copy of document showing user activity bearing Bates Nos. PNA-FB0000252-259.
33. Attached as **Exhibit AD** is a true and correct copy of Fitbit Presentation “Fitbit CSAT Survey Interim Wave” bearing Bates Nos. PNA-FB0000252-259, dated December 2016.
34. Attached as **Exhibit AE** is a true and correct copy of Fitbit Presentation “Versa Experience/CSAT” bearing Bates Nos. Fitbit\_19-11586\_00075235-75274.
35. Attached as **Exhibit AF** is a true and correct copy of document showing user activity bearing Bates Nos. Fitbit\_19-11586\_00056948-56970.
36. Attached as **Exhibit AG** is a true and correct copy of excerpts from the deposition of Preethi Mukundan, dated December 8, 2020.
37. Attached as **Exhibit AH** is a true and correct copy of Fitbit Community page bearing Bates Nos. PNA-FB0016665-16667.

38. Attached as **Exhibit AI** is a true and correct copy of Fitbit Community page bearing Bates Nos. PNA-FB0016668-16671.
39. Attached as **Exhibit AJ** is a true and correct copy of Fitbit Community page bearing Bates Nos. PNA-FB0016689-16695.
40. Attached as **Exhibit AK** is a true and correct copy of Fitbit Community page bearing Bates Nos. PNA-FB0016696-16703.
41. Attached as **Exhibit AL** is a true and correct copy of Assessing the ability of the Fitbit Charge 2 to accurately predict VO2max bearing Bates Nos. PNA-FB0016682-16688, dated September 7, 2019.
42. Attached as **Exhibit AM** is a true and correct copy of article by Klepin, et al, titled ‘Validity of Cardiorespiratory Fitness Measured with Fitbit Compared to VO2max’ bearing Bates Nos. PNA-FB0016672-16677.
43. Attached as **Exhibit AN** is a true and correct copy of Heathrider Softstrider S300i User’s Manual bearing Bates Nos. ICON000331-360.
44. Attached as **Exhibit AO** is a true and correct copy of Heathrider Softstrider S700i User’s Manual bearing Bates Nos. ICON000361-394.
45. Attached as **Exhibit AP** is a true and correct copy of What is iFit.com? bearing Bates Nos. ICON000316-317.
46. Attached as **Exhibit AQ** is a true and correct copy of a video from <https://www.youtube.com/watch?app=desktop&v=3k3DNT54NkA>.
47. Attached as **Exhibit AR** is a true and correct copy of a video from <https://www.youtube.com/watch?v=PxxpRoWmjQ8>.

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