

**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

**UNOPPOSED MOTION TO IMPOUND/SEAL DESIGNATED MATERIAL**

Pursuant to Local Rule 7.2 and the Order Adopting Discovery Stipulation and Modified Protective Order in this case (“Protective Order”), ECF No. 59, Defendant Fitbit LLC (“Fitbit”), respectfully requests the Court to impound (seal) the following material:

1. an un-redacted copy of Defendant Fitbit LLC’s Opposition To Philips’ Motion For Partial Summary Judgment Of Direct Infringement And No Invalidity (Dkt. 335) (“Opposition”);
2. an un-redacted copy of Fitbit’s Responses To Philips’ Statement Of Facts In Support Of Its Motion For Partial Summary Judgment Of Direct Infringement And No Invalidity On iFit Prior Art (Dkt. 341) And Fitbit’s Responsive Statements Of Fact For Which Fitbit Contends There Is A Genuine Issue For Trial (“RSUF”); and
3. Exhibits 1-3 and 6 filed in support of the Opposition.

Plaintiff Philips North America LLC (“Philips”) does not oppose this Motion to Impound/Seal.

The Protective Order allows parties to designate material that contains or constitutes confidential business information as “CONFIDENTIAL.” The Protective Order also allows parties to designate material that contains or discusses proprietary source code as “Confidential Source Code—Attorneys’ Eyes Only Information.” Fitbit’s Opposition, RSUF, and Exhibits 1-3 and 6 contain either (1) sensitive business information designated Confidential under the Protective Order, public disclosure of which would risk competitive harm to Fitbit, Philips, and/or third parties and/or (2) confidential information regarding the operation of the accused Fitbit wearable devices, Fitbit application, and Fitbit back-end servers, including descriptions of Fitbit source code, that has been designated either Confidential or Confidential Source Code—Attorneys’ Eyes Only Information under the Protective Order.

Exhibits 1, 2, and 6 contain Fitbit confidential business information. Exhibit 1 is a copy of the Declaration of Gilles Boccon-Gibod, a Senior Staff Software Engineer at Google who was a Fitbit employee until Google recently acquired Fitbit. Exhibit 2 is the deposition transcript of Fitbit’s technical expert, Dr. Joseph Paradiso. Exhibit 6 is an excerpted copy of Defendant Fitbit, Inc.’s Supplemental Responses And Objections To Plaintiff Philips North America LLC’s Interrogatories (Nos. 1-11). These exhibits each contain confidential information regarding the operation of the accused Fitbit wearable devices, application, and servers, and that has been designated Confidential under the Protective Order.

Exhibits 2 and 3 contain third party confidential business information. In response to a subpoena from Fitbit, third party Icon Health & Fitness (“Icon”) produced documents related to the design and operation of several of their products and services, and marked these documents Confidential under the Protective Order. Icon likewise designated the deposition transcript of their corporate representative in response to Fitbit’s subpoena, Ms. Colleen Logan, Confidential under

the Protective Order. Exhibit 3 is Ms. Logan's Confidential deposition transcript. Exhibit 2, Dr. Paradiso's deposition transcript has also been designated Confidential under the Protective Order because it contains discussion of the Icon documents and Logan transcript designated Confidential under the Protective Order by Icon.

Additionally, the Opposition and RSUF contain discussions of the aforementioned Fitbit Confidential information and source code, the aforementioned Icon Confidential information, and various other Fitbit Confidential information and source code that were discussed in Philips' opening brief and responded to in the Opposition and RSUF. Fitbit has filed a redacted version of its Opposition, which redacts, to the least extent possible, discussions of the aforementioned Fitbit Confidential information and source code—public disclosure of which would risk competitive harm to Fitbit—and the aforementioned Icon Confidential information.

For the foregoing reasons, Fitbit respectfully requests that the Court permit Fitbit to file a public redacted version of the Opposition. Further, Fitbit respectfully requests that the Court permit Fitbit to file un-redacted copies of the Opposition and RSUF, along with Exhibits 1-3 and 6 under seal. Fitbit further requests that the documents remain impounded until further Order by the Court, and that upon expiration of the impoundment, the documents be returned to Fitbit's counsel.

Dated: March 30, 2022

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**CERTIFICATE PURSUANT TO LOCAL RULE 7.1(A)(2)**

The undersigned hereby certifies that counsel for Fitbit conferred with counsel for Philips and attempted in good faith to resolve or narrow the issues in dispute on March 30, 2022.

/s/ David J. Shaw  
David J. Shaw

**CERTIFICATE PURSUANT TO LOCAL RULE 37.1**

The undersigned hereby certifies that counsel for Fitbit has complied with the provisions of Local Rule 37.1.

/s/ David J. Shaw  
David J. Shaw

**CERTIFICATE OF SERVICE**

I certify that this document is being filed through the Court's electronic filing system, which serves counsel for other parties who are registered participants as identified on the Notice of Electronic Filing (NEF). Any counsel for other parties who are not registered participants are being served by first class mail on the date of the electronic filing.

Dated: March 30, 2022

/s/ Alexandra K. Kim  
Alexandra K. Kim