

**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) an un-redacted copy of (1) Fitbit’s Reply (Dkt. 372) In Support Of Its Motion For Summary Judgment Of Noninfringement Of U.S. Patent No. 8,277,377 (Dkt. 329) (“Noninfringement Reply”), (2) Fitbit’s Reply (Dkt. 374) In Support Of Its Motion For Summary Judgment Of Invalidity Of U.S. Patent No. 8,277,377 Under 35 U.S.C. § 101 (Dkt. 333) (“101 Reply”) (collectively, “Reply Briefs”), and (3) Exhibit 1 filed in support of Fitbit’s 101 Reply (Dkt. 375-1) (“Exhibit 1”), and allow Fitbit to file redacted public versions of Fitbit’s Reply Briefs. 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 Reply Briefs discuss and cite to

confidential information in previously filed and sealed exhibits and briefs and in Exhibit 1. Thus, Fitbit's reply briefs contain and discuss (1) sensitive business information designated Confidential under the Protective Order by Fitbit, Philips, and third parties, and/or (2) confidential information regarding the operation of the accused Fitbit wearable devices, applications, and 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 by Fitbit. Public disclosure of the Fitbit Confidential or Confidential Source Code—Attorneys' Eyes Only Information would risk competitive harm to Fitbit.

Exhibit 1 is a copy of Dr. Roger Quay's deposition transcript from *Philips North Am., LLC v. Garmin Int'l, Inc.*, No. 2:19-cv-06301-AB-KS (C.D. Cal. 2019), which was designated Confidential by third-party Dr. Quay in that separate and distinct case.

Additionally, Fitbit has filed redacted versions of the Reply Briefs, which redact discussions of the same Fitbit confidential information and Fitbit source code discussed above and included in some of the aforementioned documents, public disclosure of which would risk competitive harm to Fitbit. Fitbit's redacted Reply briefs also redact certain Philips and third party information that was designated Confidential under the Protective Order by Philips and/or third parties

For the foregoing reasons, Fitbit respectfully requests that the Court permit Fitbit to file both a public redacted version of the Reply Briefs, and an un-redacted version of the Reply Briefs under seal. Fitbit also requests that the Court permit it to file Exhibit 1 under seal. Fitbit further requests that the above remain impounded until further Order by the Court, and that upon expiration of the impoundment, the document be returned to Fitbit's counsel.

Dated: April 13, 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 April 13, 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: April 13, 2022

/s/ Alexandra K. Kim
Alexandra K. Kim