

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PHILIPS NORTH AMERICA LLC,

Plaintiff,

v.

FITBIT, INC.,

Defendant.

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

ORAL ARGUMENT REQUESTED

**DECLARATION OF JOHN W. CUSTER IN SUPPORT OF
PHILIPS NORTH AMERICA LLC'S MOTION TO DISMISS CLAIMS
PERTAINING TO U.S. PAT. NO. 7,088,233 AND TO ENTER FINAL
JUDGMENT ON U.S. PAT. NOS. 8,277,377 AND 6,013,007**

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 to Dismiss Claims Pertaining to U.S. Pat. No. 7,088,233 and to Enter Final Judgment on U.S. Pat. No. 8,277,377 and 6,013,007.
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 1** is a true and correct copy of the Docketing Statement for Appellee Fitbit LLC filed by Fitbit LLC on August 30, 2023 in *Philips N.A., LLC v. Fitbit LLC*, CAFC-23-2286 (Fed. Cir.).
5. Attached as **Exhibit 2** is a true and correct copy of the Final Written Decision entered on October 4, 2021 by the United States Patent and Trademark Office in IPR202-00783.

6. Attached as **Exhibit 3** is a true and correct copy of the Judgment entered by the United States Court of Appeal for the Federal Circuit on April 6, 2023 in Case Nos. 2022-1223, 2022-1224, and 2022-1279.

7. Attached as **Exhibit 4** is a true and correct copy of the Mandate entered by the United States Court of Appeal for the Federal Circuit on May 15, 2023 in Case Nos. 2022-1223, 2022-1224, and 2022-1279.

I declare under penalty of perjury that the foregoing is true and correct.

Date: September 20, 2023

/s/ John W. Custer

John W. Custer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was filed with the Court through the ECF system and that a copy will be electronically served on registered participants as identified on the Notice of Electronic Filing.

Date: September 20, 2023

By: /s/ John W. Custer