

**In The Matter Of:**

*Philips v.*

*Fitbit*

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*Thomas Martin, PH.D.*

*June 18, 2020*

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*Min-U-Script® with Word Index*

Page 1

1 UNITED STATES DISTRICT COURT  
 2 FOR THE DISTRICT OF MASSACHUSETTS  
 3  
 4  
 5 PHILIPS NORTH AMERICA LLC, ) Case No. 1:19-cv-11586-IT  
 6 Plaintiff, )  
 7 v. )  
 8 FITBIT, INC., )  
 9 Defendant. )  
 10 \_\_\_\_\_ )  
 11  
 12  
 13  
 14 REMOTE VIDEOTAPED DEPOSITION OF  
 15 THOMAS L. MARTIN, PH.D.  
 16 June 18, 2020  
 17 10:02 a.m. Eastern Standard Time  
 18 Blacksburg, Virginia  
 19  
 20  
 21  
 22  
 23 REPORTED BY:  
 24 Kristi Caruthers  
 25 CLR, CSR No. 10560

Page 2

1  
 2  
 3 Blacksburg, Virginia  
 4 June 18, 2020  
 5  
 6  
 7  
 8 REMOTE VIDEOTAPED DEPOSITION OF THOMAS L.  
 9 MARTIN, PH.D., located in Blacksburg, Virginia,  
 10 pursuant to agreement before Kristi Caruthers, a  
 11 California Shorthand Reporter of the State of  
 12 California.  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

Page 3

1 APPEARANCES:  
 2  
 3 For Plaintiff:  
 4 FOLEY & LARDNER LLP  
 5 BY: RUBEN J. RODRIGUES, ESQ.  
 6 111 Huntington Avenue  
 7 Suite 2500  
 8 Boston, Massachusetts 02199-7610  
 9 617.342.4000  
 10 rrodrigues@foley.com  
 11  
 12 For Defendant:  
 13 PAUL HASTINGS LLP  
 14 BY: CHAD PETERMAN, ESQ.  
 15 200 Park Avenue  
 16 New York, New York 10166  
 17 212.318.6797  
 18 chadpeterman@paulhastings.com  
 19  
 20 ALSO PRESENT:  
 21 Christian Ruiz, Videographer  
 22  
 23  
 24  
 25

Page 4

1 INDEX TO EXAMINATION  
 2 WITNESS: THOMAS L. MARTIN, PH.D.  
 3  
 4 EXAMINATION PAGE  
 5 By Mr. Peterman 8, 165  
 6 (AFTERNOON SESSION) 103  
 7 By Mr. Rodrigues 161, 167  
 8  
 9  
 10  
 11  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

Page 5

1 INDEX TO EXHIBITS

2 THOMAS L. MARTIN, PH.D.

3 Thursday, June 18, 2020

4 Kristi Caruthers, CLR, CSR 10560

5

6 MARKED:	DESCRIPTION:	PAGE:
7 Exhibit 1	Expert Disclosure of Thomas L. Martin, Ph.D.	17
8 Exhibit 2	Patent No. US 6,013,007	65
9 Exhibit 3	Geographical Information Systems FAQ	81
10 Exhibit 4	Patent No. US 7,088,233 B2	103
11 Exhibit 5	Patent No. US 6,976,958 B2	153
12 Exhibit 6	Patent No. US 8,277,377	159

13

14

15

16

17 QUESTIONS UNANSWERED BY DEPONENT:

18 PAGE:	LINE:
19 17	18
20 138	6

21

22

23

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25

Page 7

1 Lardner on behalf of -- on behalf of Philips and

2 Dr. Martin.

3 THE VIDEOGRAPHER: Our court reporter

4 today is Kristi Caruthers, representing Lexitas.

5 The court reporter will now swear in the witness.

6

7 THOMAS L. MARTIN, PH.D.,

8 called as a deponent and sworn in by

9 the deposition reporter, was examined

10 and testified as follows:

11

12 DEPOSITION REPORTER: Raise your right

13 hand, please.

14 Do you solemnly swear that the testimony

15 you are about to give in this matter shall be the

16 truth, the whole truth, and nothing but the truth,

17 so help you God?

18 THE WITNESS: Yes, I do.

19 DEPOSITION REPORTER: Please commence.

20 THE VIDEOGRAPHER: Thank you. Please

21 proceed.

22 ///

23 ///

24 ///

25 ///

Page 6

1 BLACKSBURG, VIRGINIA

2 THURSDAY, JUNE 18, 2020

3 10:06 A.M. EASTERN STANDARD

4 ---o0o---

5

6 THE VIDEOGRAPHER: We are now on the

7 record. Today's date is June 18, 2020, and the

8 time is 10:06 a.m. Eastern Standard time.

9 This is the video deposition of Dr. Thomas

10 L. Martin in the matter of "Philips North America

11 LLC versus Fitbit, Inc.," filed in the United States

12 District Court for the District of Massachusetts,

13 Case Number 1:19-cv-11586-IT.

14 This deposition is taking place via Web

15 video conference with all participants attending

16 remotely due to the Covid-19 pandemic.

17 My name is Christian Ruiz. I am the

18 videographer representing Lexitas.

19 Would counsel on the conference please

20 identify yourselves and state whom you represent,

21 beginning with the questioning attorney.

22 MR. PETERMAN: Good morning. Chad

23 Peterman of Paul, Hastings on behalf of Defendant

24 Fitbit.

25 MR. RODRIGUES: Ruben Rodrigues of Foley &

Page 8

1 EXAMINATION

2 BY MR. PETERMAN:

3 Q. Good morning, Dr. Martin. A pleasure to

4 meet you virtually.

5 A. Good morning.

6 Q. As you know, you're here for your

7 deposition today and we'll go through the ground

8 rules of it.

9 You know, I know that we are in a

10 different technological environment doing this

11 remotely. So, obviously, if there's any technical

12 difficulties or you can't hear something that I've

13 said or there's background noise or anything like

14 that, please speak up or flag me down, and we'll

15 certainly work -- work through that.

16 I know that dealing with exhibits is a

17 little bit more difficult in a situation like this,

18 and so, obviously, we will work through those

19 issues, and to the extent, you know, you need more

20 time for any additional documentation from me,

21 please let me know.

22 Is that fair?

23 A. That's fine.

24 Q. Would you please state your name for the

25 record.

Page 9

1 A. Thomas L. Martin.  
 2 Q. And what city and state do you live in?  
 3 A. I live in Blacksburg, Virginia.  
 4 Q. Are you currently employed?  
 5 A. Yes, I am.  
 6 Q. Who are you employed by?  
 7 A. Virginia Tech.  
 8 Q. And what is your position at Virginia  
 9 Tech?  
 10 A. I'm a professor in electrical and computer  
 11 engineering.  
 12 Q. And do you have any field of specialty  
 13 within electrical and computer engineering?  
 14 A. My field of specialty is wearable  
 15 computing and technologies, electronic textiles,  
 16 basic computing environments and interdisciplinary  
 17 design teams.  
 18 Q. What does wearable computing mean?  
 19 A. Wearable computing is any sort of  
 20 computing technology, sensing technology, that's  
 21 meant to be worn.  
 22 Q. Is a Fitbit watch wearable computing  
 23 technology?  
 24 A. I would consider it to be, yes.  
 25 Q. What other examples of wearable computing

Page 10

1 technologies are you aware of now?  
 2 A. So there's a lot of work in smart garments  
 3 where the electronics and technology is in the  
 4 garment itself.  
 5 I've been working in wearable computing  
 6 since the early '90s and, you know, we built fanny  
 7 pack computers and things like that. So any sort of  
 8 technology that you would wear on your person.  
 9 Q. You said you started with wearable  
 10 computing technology in the 1990s.  
 11 Can you just give me a little bit of  
 12 background for what work you were doing in the 1990s  
 13 in that field?  
 14 A. Sure. So when I went to graduate school  
 15 at Carnegie Mellon in 1992, I was brought in to work  
 16 on a wearable computing project. That involved --  
 17 it had a couple of applications. One was for making  
 18 wiring harnesses for Boeing for the workers who did  
 19 the wiring harnesses, and the other was a campus  
 20 tour guide to guide people around the Carnie Mellon  
 21 campus.  
 22 Q. And in the 1998 time frame, what was your  
 23 experience at that point with wearable computing?  
 24 A. I'm sorry. Did you say 1998?  
 25 Q. Yes.

Page 11

1 A. Okay. So I was still in graduate school  
 2 then, still working on wearable computing, and --  
 3 sorry. When I asked what year, what was my  
 4 involvement? Was that the question?  
 5 Q. Yes. What was your -- I guess the level  
 6 of your expertise, your involvement in wearable  
 7 computing by 1998.  
 8 A. Yes. So --  
 9 MR. RODRIGUES: Objection.  
 10 You may answer.  
 11 THE WITNESS: Okay. So I was still in  
 12 graduate school. I was in one of the two groups in  
 13 the United States working on wearable computing.  
 14 I was already becoming involved with the  
 15 International Symposium on Wearable Computers, which  
 16 is the leading symposium on wearable computing, and  
 17 I had worked on a variety of systems at Carnegie  
 18 Mellon. And by systems, I mean wearable computing  
 19 systems.  
 20 BY MR. PETERMAN:  
 21 Q. Had you worked on any wearable computing  
 22 systems related to exercise back in 1998?  
 23 A. Not exercise by 1998.  
 24 Q. Had you been involved in wearable  
 25 computing relating to health monitoring back in

Page 12

1 1998?  
 2 A. No.  
 3 Q. Approximately when was the first time that  
 4 you had direct experience in wearable computing for  
 5 exercise?  
 6 A. It would have been around the time I went  
 7 to Huntsville, which was '99 or 2000.  
 8 Q. And at that point, what experience did you  
 9 get in wearable computing for exercise?  
 10 A. We were looking at heart rate monitoring.  
 11 Q. When did the first heart rate monitor for  
 12 wearable computing come out?  
 13 MR. RODRIGUES: Objection to form.  
 14 THE WITNESS: There -- off the top of my  
 15 head, people were already -- I'd have to look back  
 16 and see, but people were already doing like heart  
 17 rate straps and things like that for exercise at the  
 18 time I started working in it.  
 19 BY MR. PETERMAN:  
 20 Q. Prior to 1998, were there already heart  
 21 rate straps for exercise?  
 22 MR. RODRIGUES: Objection.  
 23 THE WITNESS: I'm sorry. Heart rate --  
 24 BY MR. PETERMAN:  
 25 Q. Prior to 1998, was there already heart

Page 13

1 rate monitors using straps for exercises?  
2 MR. RODRIGUES: Same objection.  
3 THE WITNESS: (Inaudible.)  
4 BY MR. PETERMAN:  
5 Q. I didn't hear you, Doctor. I note  
6 Mr. Rodrigues's objection, but I didn't hear your  
7 answer.  
8 A. I believe there were. I'd have to go back  
9 to look to be sure, but I believe there were.  
10 Q. Have you ever been deposed before?  
11 A. No, I have not.  
12 Q. So, as you've already surmised and I'm  
13 sure you've been prepped, I'm just going to be  
14 asking you a series of questions today. If you  
15 don't understand my question, certainly ask me for  
16 clarification, and I'll do my best to clarify.  
17 From time to time, your counsel may raise  
18 an objection, but if your counsel does not instruct  
19 you not to answer, then I still expect an answer for  
20 my question.  
21 A. Okay.  
22 Q. If you respond to my question, I will  
23 assume that you have understood it, and if you need  
24 to take a break at any point in time, please let me  
25 know and we'll certainly go off the record.

Page 14

1 Is that fair?  
2 A. That's fair.  
3 Q. And I know you haven't testified at  
4 deposition before.  
5 Have you ever testified at a trial before?  
6 A. No, I have not.  
7 Q. Have you ever submitted an expert  
8 declaration or report in any other litigation  
9 besides the current litigation that we're in this  
10 deposition for?  
11 A. Yes, I have.  
12 Q. And in what matter did you submit an  
13 expert declaration or report?  
14 A. It was -- the law firm was Baker  
15 something, and it was -- I'd have to go back and  
16 look. It was TomTom versus Smart Wearable  
17 Technology. It's some little company that I hadn't  
18 heard of.  
19 Q. And that report that you submitted, was  
20 that in connection with an interparty's review on a  
21 patent?  
22 A. Yes, it was.  
23 Q. Other than that report in connection with  
24 an interparty's review on a patent for TomTom, have  
25 you ever submitted another expert report in a patent

Page 15

1 matter?  
2 A. No, I have not.  
3 Q. Do you generally call -- generally recall  
4 what the subject of your expert report in the TomTom  
5 matter was?  
6 A. It was about whether you could calculate  
7 distance from accelerometers and other sorts of  
8 inertial measurements.  
9 Q. And did you reach a conclusion as to  
10 whether or not you could calculate distance from  
11 accelerometers in that report?  
12 A. I'd have to go back to look to give the  
13 exact conclusion, but my conclusion was that getting  
14 the exact distances as specified in that patent  
15 wouldn't have been possible with accelerometers.  
16 Q. And did you prepare that report and file  
17 it in 2017?  
18 A. I believe that's correct, yes.  
19 Q. Did you sit for a deposition in connection  
20 with that report?  
21 A. No, I did not.  
22 Q. Do you know what became of the matter  
23 between TomTom and the company that you hadn't heard  
24 of before?  
25 A. Actually, I don't.

Page 16

1 Q. And is the -- the company that was on the  
2 other side of TomTom, was that Smart Wearable  
3 Technologies?  
4 A. I'd have to go back and look at it. I  
5 think that was the name, yes.  
6 Q. And after you filed that report in  
7 connection with TomTom versus Smart Wearable  
8 Technologies, did you discover any errors or  
9 corrections that you wanted to make in that report?  
10 A. No.  
11 Q. So in the documents that I sent you via  
12 chat, the first document was titled  
13 "Martindisclosure.pdf."  
14 Do you see that?  
15 A. Yes, and I've opened it.  
16 THE VIDEOGRAPHER: Counsel, would you like  
17 me to share it on the screen?  
18 MR. PETERMAN: All right. Shortly, yeah.  
19 Yeah, I guess just be prepared to do it.  
20 THE VIDEOGRAPHER: Okay. I am.  
21 MR. PETERMAN: Thank you. I'd like the  
22 court reporter to mark the Martindisclosure.pdf as  
23 Exhibit 1.  
24 ///  
25 ///

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