

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE: PHILIPS RECALLED CPAP,)	
BI-LEVEL PAP, AND MECHANICAL)	Master Docket: Misc. No. 21-1230
VENTILATOR PRODUCTS)	
LITIGATION,)	MDL No. 3014
)	
This Document Relates to: <i>All Actions</i>)	

PRETRIAL ORDER #18 – APPENDIX

STIPULATED ORDER REGARDING PHILIPS DEFENDANTS’ SEARCH PROTOCOL

This Appendix to Pretrial Order # 18 (Stipulated Order regarding Discovery of Documents and Electronically Stored Information) shall govern the search protocol as referenced in Section IV.8 of Pretrial Order #18 with respect to Koninklijke Philips N.V., Philips North America LLC, Philips Holding USA Inc., Philips RS North America LLC, Philips RS North America Holding Corporation (collectively, “Philips Defendants”). To the extent bellwether Plaintiff discovery involves searches of emails and other discoverable ESI using search terms, the Parties will meet and confer regarding such processes, and will file a Stipulated Order Regarding Bellwether Plaintiffs’ Search Protocol, as appropriate.

1. **Search Methodology.** Philips Defendants are using key word searching to identify or cull potentially responsive materials, which are not already known to be responsive. Philips Defendants do not presently intend to use technology assisted review (“TAR”). Should any Philips Defendant later decide to use TAR, the Parties agree to meet and confer before its use regarding a protocol for doing so.

2. **Search Platform Information.** Philips Defendants will use Relativity Server 2022 and its dtSearch functionality to perform searches under this protocol.

3. **Initial agreement on search terms.** The Parties have negotiated in good faith and have reached an initial agreement on an initial set of search terms, and subsequently have agreed to modifications of those search terms..

4. **Subsequent modifications to or additional search terms.** A party shall have the right to propose modifications of the existing terms as well as additional search terms. Each party reserves the right to oppose any such proposed modifications or additions. In the event modifications are made to the existing agreed-to search terms or additional terms are added, Philips Defendants will run a Relativity Dictionary Search and Hit Report as described below:

a. **Identification of Search Term Variations.** Defendants will run a Relativity Dictionary Search on each proposed search term with the fuzziness level set to 3. Defendants will provide Plaintiffs with the resulting lists of terms and counts and Plaintiffs may request to add any listed terms to the set of search terms.

b. **Hit Reports.** Philips Defendants will provide a Relativity Server 2022 Search Terms Report (“Hit Report”) as applied against each deduplicated document collection. The Hit Report will also include: the total number of documents in the de-duplicated collection against which the search terms were applied; the total number of unique documents containing hits; and the total number of unique family members, including the documents with hits, of the unique documents with hits.

5. **Search Methodology Validation.** Philips Defendants will make reasonable efforts to ensure their search methodology is effective by employing quality control measures, including implementation of the following validation workflow.

The Parties shall confer on the appropriate timing of the implementation of the following validation workflow which is intended to validate Defendants' search terms. At that time, Defendants will:

a. Identify documents captured by the search terms, including family members ("Search Term Hit Population");

b. Estimate the number of responsive documents within the Search Term Hit Population as follows:

i. Generate a simple random sample (the "Search Term Hit Sample") of at least 1,000 documents pulled from the Search Term Hit Population;

ii. Review and code the random sample as described in Paragraph 5e.

iii. Based on the outcome of the review of the Search Term Hit Sample documents, estimate the number of responsive documents captured by the search terms ("Estimated Number of Responsive Documents Captured by Search Terms") as the proportion of the Search Term Hit Sample that was reviewed as responsive, times the size of the Search Term Hit Population.

c. Identify the NULL set (documents within the searchable set excluded from the Search Term Hit Population);

d. Estimate elusion (or the number of responsive documents not captured by the Search Terms and thus excluded from the Search Term Hit Population) as follows:

i. Generate a simple random sample of at least 2,000 documents (the "NULL Set Sample") pulled from the NULL set;

ii. Review and code the random sample as described in Paragraph 5e.

iii. Based on the outcome of the review of the NULL Set Sample documents, estimate the number of responsive documents not captured by the search terms (“Estimated Number of Responsive Documents Eluded by Search Terms”) as the proportion of the NULL Set Sample that was determined to be responsive times the size of the NULL Set Population.

e. Combine the Search Term Hit Sample and the NULL Set Sample for review. During the course of the review, the documents will be presented to the reviewer(s) in random or arbitrary (e.g., by MD5 hash value) order, i.e., not ordered by any other process or grouped by subset. The reviewer(s) shall not be provided with any information concerning the subcollections, the samplings, the prior coding of any document by any process, whether any document contained a search term, whether any document comes from the NULL set or the Search Term Hit Population, or whether any document had previously been reviewed.

f. Estimate the richness of the entire document set, as the number of relevant documents in the Search Term Hit Population (paragraph 5(b)(iii) above) plus the number of relevant documents in the NULL set (paragraph 5(d)(iii) above), divided by the total number of documents in the entire document set.

g. Compare the elusion rate to the overall richness (percent responsiveness) of the entire document set and qualitatively evaluate relevant documents from the NULL set sample to determine their importance and uniqueness;

h. Estimate recall as follows: $\text{Recall} = \frac{\text{Estimated Number of Responsive Documents Captured by Search Terms}}{\text{Estimated Number of Responsive Documents Captured by Search Terms} + \text{Estimated Number of Responsive Documents Eluded by Search Terms}}$;

i. Report to the Plaintiffs the following statistics:

- i. The size of the Search Term Hit Population.
- ii. The size of the Search Term Hit Sample.
- iii. The number of responsive documents in the Search Term Hit Sample.
- iv. The size of the NULL Set Population.
- v. The size of the NULL Set Sample.
- vi. The number of responsive documents in the Null Set Sample.
- vii. Estimated richness of the entire document set as calculated in Paragraph 5(f).
- viii. Estimated elusion as calculated in Paragraph 5(d).
- ix. Estimated recall as calculated in Paragraph 5(h).

j. Provide the Plaintiffs with the relevant, non-privileged documents found in the Search Term Hit sample, and in the NULL set sample, and identify for each document which sample it was found in.

k. The Parties will then meet and confer to determine if any additional terms, or modifications to existing terms, are needed to ensure that substantive, responsive documents are not missed, within reason. If the Parties are unable to resolve any disagreements then the Parties will seek a directive from the Special Master subject to appeal to the Court.

l. Only the Philips Defendants will participate in conducting and overseeing its validation workflow. No reporting or other documentation (other than as anticipated by Paragraph 5(i) and 5(j), above) need be provided by the Philips Defendants to Plaintiffs absent agreement or a separate order from the Court.

6. **Reassessment.** After the completion of the search methodology meet and confer sessions, the Philips Defendants may encounter the need to reassess search terms, or the search methodology and/or validation process and, in such case, the Philips Defendants will notify the Plaintiffs, and the Parties will meet and confer to address any issues in a reasonable and timely manner.

7. **Good faith.** The Parties will act in good faith and use these procedures to identify and reduce the potential for disputes that may arise in connection with the search and/or review methodologies selected by the Philips Defendant.

8. **Continuing Obligations.** The Parties recognize that discovery shall be an iterative and cooperative process. The Parties will continue to meet and confer regarding any issues as necessary and appropriate. This Order does not address or resolve any objections to the scope of the Parties' respective discovery requests.

9. **Reservation of Rights.** The Parties retain the right, upon reviewing any productions made by another Party in this action or conducting other investigation and discovery, to request that documents or ESI from additional non-custodial data sources and custodians be produced or that additional search terms or identification methodologies be applied to the document collection to which search terms were applied. The Parties will meet and confer regarding such request(s) prior to any search or production related thereto. The Parties also reserve the right to bring any disagreements arising hereunder to the Special Master for resolution.

IT IS SO ORDERED.

Dated: January 4, 2023

s/Joy Flowers Conti
Joy Flowers Conti
Senior United States District Judge

SO STIPULATED AND AGREED.

DATED: December 23, 2022

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