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17 **UNITED STATES DISTRICT COURT**  
18 **CENTRAL DISTRICT OF CALIFORNIA**

19 Philips North America, LLC, ) Case No. 2:19-cv-06301-AB (KSx)  
20 )  
21 Plaintiff, Counterclaim-Defendant )  
22 ) **DEFENDANTS' OPPOSITION**  
23 v. ) **TO PLAINTIFF'S RULE 54(B)**  
24 ) **MOTION**  
25 )  
26 Garmin International, Inc. and Garmin ) Hearing: 12/11/2020, at 10:00 am.  
27 LTD )  
28 )  
29 Defendants, Counterclaimants )  
30 )

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## I. SUMMARY OF PERTINENT FACTS & ARGUMENT

Philips asserted six patents against Garmin. (Dkt. No. 45, ¶48.) Only three remain. The '007 Patent was invalidated at claim construction (Dkt. No. 102), Philips disclaimed the asserted claims of the '958 Patent before the USPTO after Garmin plead in its claim construction briefing that the '958 claims cannot be asserted against fitness products, and Philips has voluntarily withdrawn its infringement allegations as to the '192 Patent. (Lamkin Decl., ¶¶4-6.) Only the '233 Patent (expired), the '377 Patent (expired), and the '542 Patent remain at-issue. Further, the Patent Trial and Appeal Board recently instituted an IPR challenge against all of the asserted claims of the '233 Patent, finding a “reasonable likelihood that Petitioner would prevail” in its invalidity challenge. (Lamkin Decl., ¶7.) Thus, what was once a six-patent case has been cut down to just three patents – and of those three, two are expired, and one is being challenged at the PTAB. On this record, Philips seeks to rush the expired '007 to appeal.

There is no credible reason to sever out the '007 Patent for a separate appeal while moving forward with litigation on the three remaining Patents-in-Suit. Although neither the '007 Patent nor the three remaining patents are related to each other, Philips is accusing largely the same Garmin products, with the same functionalities, across the remaining Patents-in-Suit. (Lamkin Decl., Exhs. B-C.) As Philips admits, “some of those functions [accused under the non-'007 Patents] may also exist in the same Garmin products that contain the accused ['007 Patent]

1 GPS-based athletic performance feedback functionality.” (Motion, Dkt. No. 110, at  
2 2:4-6.) And, Philips readily acknowledges that it asserted six patents together in this  
3 single lawsuit for “judicial efficiency”. (*Id.* at 10:13-14.) Yet, Philips now argues  
4 for piecemeal litigation and appeal of the ’007 Patent, a patent that Garmin has  
5 invalidated here, in the United Kingdom, and just last week, Germany. (Lamkin  
6 Decl., ¶¶8-9.) This is the opposite of judicial efficiency and serves no purpose other  
7 than to seek to multiply the cost and expense of the proceedings and permit Philips  
8 multiple bites at the same Garmin products. There is no legal or practical reason to  
9 sever the expired ’007 Patent for purposes of appeal while simultaneously  
10 proceeding with litigation on overlapping products with overlapping functionalities  
11 on the remaining asserted patents. All of the issues should first be resolved by this  
12 Court, from which a single appeal may be taken.

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17       Conversely, if this Honorable Court finds Philips’ claim for urgency credible,  
18 Garmin requests that this Court stay this matter pending said appeal of the ’007.  
19 Otherwise, if Philips’ request for a Rule 54(b) appeal is granted, the Parties will be  
20 litigating over the ’233 Patent here and before the PTAB, the Parties will be engaged  
21 in an appeal over the invalidation of the ’007 Patent before the CAFC, and the  
22 Parties will proceed here over the ’233, ’542, and the ’377 Patents even though each  
23 of these patents cover the same accused products and overlapping accused  
24 functionality. That would be the epitome of judicial inefficiency.

25  
26  
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28       All of this rendered messier by the fact that Philips chose to depose Garmin’s

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