

Local Rule 56-1 Separate Statement (Corrected)
Garmin Summary Judgment Motion
Philips v. Garmin, Case No. 2:19-cv-06301-AB-KS

Garmin herein submits this Corrected Separate Statement, originally filed as Dkt. No. 134-3.

¶	Undisputed Fact	Evidence
Garmin Does Not Infringe the '542 Patent		
1	The alleged “statistical analyzer” in the Accused Devices is not trained by the end-user.	Martin Depo Tr., 195:24-197:19 Dkt No. 134-4
2	The alleged “statistical analyzer” in the Accused Devices was trained by First Beat.	Martin Depo Tr., 195:24-197:19 Dkt No. 134-4 Martin Inf. Rpt., ¶¶358-59, n. 34 Dkt No. 134-5
3	According to Philips, '542 Limitation (a) is met whenever a user wears an Accused Device.	Martin Inf. Rpt., ¶336 Dkt No. 134-5
4	Dr. Martin testified, “Yeah. As I’ve outlined in my report, I don’t think that the algorithm is – the algorithm is trained by the -- the user.”	Martin Depo Tr., 197:17-19 Dkt No. 134-4
5	According to Philips, the statistical analyzer is not trained by the user.	Martin Depo Tr., 195:24-197:19 Dkt No. 134-4 Martin Inf. Rpt., ¶¶358-59, n. 34 Dkt No. 134-5
6	The statistical analyzer was trained in Finland by FirstBeat.	Heikes Depo Tr., 107:13-108:20 Dkt No. 134-6 Martin Depo Tr., 196:14-197:19 Dkt No. 134-4 Martin Inf. Rpt., ¶¶358-59, n. 34 Dkt No. 134-5
Philips Failed to Evidence That Any Person or Entity Actually Performed the Steps of Claim 1 of the '377 Patent		
7	'377 Claim 1 requires the phone application to receive “physiologic	'377, 13:39-41 Claim Construction Order, at 34

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	status” data from Accused Devices while the user is exercising.	
8	The Accused Devices (the watches) show real time activity such as heart rate and steps on their watch face.	<i>See, e.g.</i> , Fenix 6 Manual, at 36 ¹ Dkt No. 134-7
9	Viewing real time data on an Accused Device alone—without using a phone application—does not infringe the claims of the ’377 Patent	’377, Claim 1 lims(a)-(f), (i)
10	The Accused Devices cannot sync with the Garmin Connect Mobile Application when an Accused Device is “in Activity” mode.	Martin Depo Tr., 138:24-139:4, 142:17-19, 143:23-144:2 Dkt No. 134-4 Martin Inf. Rpt. ¶196 Dkt No. 134-5
11	Syncs cannot occur when an Accused Device is “in Activity” mode.	Martin Depo Tr., 138:24-139:4, 142:17-19, 143:23-144:2 Dkt No. 134-4 Martin Inf. Rpt. ¶196 Dkt No. 134-5
12	Syncing is required to infringe Claim 1 of the ’377 Patent	Martin Depo Tr., 142:20-22 Dkt No. 134-4 Martin Inf. Rpt., ¶¶180-182 Dkt No. 134-5
13	For the limitation 1(f)(ii)—“and wherein the data indicating a physiologic status of a subject is received at least partially while the subject is exercising,” Dr. Martin opines on that limitation at ¶¶199-209 of his Infringement Report.	Martin Inf. Rpt., ¶¶199-209 Dkt No. 134-5

¹ Philips has accused nearly one hundred (100) Garmin devices. Garmin cites a few exemplary devices herein but can file any or all manuals for the accused devices upon request or should Philips contest that an Undisputed Fact applies to all devices/manuals.

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14	Dr. Martin does not identify any specific physiologic status data at ¶¶199-209 of his Infringement Report.	Martin Inf. Rpt., ¶¶199-209 Dkt No. 134-5
15	The data sent from an Accused Device to Garmin's phone application and servers upon a sync is all data since the last sync.	Martin Depo Tr., 178:1-10 Dkt No. 134-4
16	Real time data such as heart rate can be seen directly on an Accused Device.	<i>See, e.g.</i> , Fenix 6 Manual, at 36. Dkt No. 134-7
17	Real time data does not get sent to Garmin's servers.	Henderson Depo Tr., 22:15-24:19 Dkt No. 134-8
18	Audio prompts occur when the user is in Activity	<i>See, e.g.</i> , Fenix 6 Manual, at 7. Dkt No. 134-7
19	Audio prompts do not require a mobile phone	<i>See, e.g.</i> , Fenix 6 Manual, at 7. Dkt No. 134-7
20	You can listen to music on the Accused Devices (watches) without a mobile phone.	<i>See, e.g.</i> , Fenix 6 Manual, at 35; Dkt No. 134-7 Forerunner 245 Music, at 46. Dkt No. 134-9
21	The only evidence cited by Dr. Martin of an actual person or entity performing Claim 1 limitation (f) is at footnote 23 of his infringement report.	Martin Inf. Rpt., n. 23 (p. 105) Dkt No. 134-5 Martin Depo Tr., 146:6-150:21, at 150:16-21 Dkt No. 134-4
22	The date of any alleged activity cited by Dr. Martin at footnote 23 is unknown.	Martin Depo Tr., 148:19-24 Dkt No. 134-4 Martin Inf. Rpt., n. 23 (p. 105) Dkt No. 134-5
23	The post at footnote 23 actually states that he recorded three separate Activities.	Martin Inf. Rpt., n. 23 Dkt No. 134-5 Martin Depo Tr., 147:22-24 Dkt No. 134-4

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24	There is no evidence that the post at footnote 23 involved performance of all limitations of Claim 1	Martin Depo Tr., 146:6-148:24 Dkt No. 134-4
25	The data gathered by the Accused Devices can be divided into two categories: data gathered when the watch is “in Activity” mode and data gathered when not “in Activity” mode (or all day data).	Martin Depo Tr. 152:21-25 Dkt No. 134-4 Henderson Depo Tr., 111:1-10 Dkt No. 134-8
26	There is no physiological status data associated with a Move IQ event.	Martin Depo Tr., 164:19-23 Dkt No. 134-4
27	Philips has not pointed to a specific instruction whereby Garmin instructs its users to exercise when the Accused Devices are not “in Activity” mode.	Martin Depo Tr., 168:6-175:6 Dkt No. 134-4
28	Not all walking can be considered exercise.	Martin Depo Tr., 34:10-36:3 Dkt No. 134-4
29	Not all walking is activity requiring physical effort carried out to sustain or improve health and fitness.	Martin Depo Tr., 34:10-36:3 Dkt No. 134-4
30	LiveTrack does not involve the sending of data from an Accused Device to the Garmin Connect Mobil Application to Garmin’s servers and back to the Application.	Heikes Depo Tr., 39:23-41:25 Dkt No. 134-10
31	The user has to be in Activity mode to use LiveTrack	<i>See, e.g.,</i> Fenix 6 Manual, at 29; Dkt No. 134-7 Heikes Depo Tr., 39:23-41:25 Dkt No. 134-10
32	Many Garmin customers want to leave their phone at home when they train.	Heikes Depo Exh. 6, at 5. Dkt No. 134-11

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		Exh J - https://youtu.be/VhJ_017Szv0 ² <i>See also</i> GARMIN_FT_00077575, 77546, 13189, 21482, 25694, 53171 ³
33	Real time data is never sent to Garmin's servers	Henderson Depo Tr., 22:12-24:25 Dkt No. 134-8
34	The Insights feature is not on by default. Users have to opt in to Insights.	Henderson Depo Tr., 85:1-86:14 Dkt No. 134-48
35	Move IQ events are not captured in Insights	Henderson Depo Tr., 93:6-8 Dkt No. 134-8
Garmin Does Not Have the Specific Intent to Induce Infringement		
36	None of the user manuals for the Accused Devices tell a customer that the Garmin Connect Mobil Application is the only way to send data from the watch to Garmin's servers.	Martin Depo Tr., 60:3-10, 67:1-23 Dkt No. 134-4 Lamkin Decl., Exh K – (Martin Depo Exh. 3) Dkt No. 134-12 <i>See, e.g.,</i> Fenix 6 Manual, at 28 Dkt No. 134-7 Forerunner 245 Music, at 52 Dkt No. 134-9 Martin Inf. Rpt., ¶212 (customers can use Garmin Express: USB + desktop computer) Dkt No. 134-5
37	Garmin does not instruct its customers to exercise when not in Activity mode.	Martin Depo Tr., 60:3-10, 67:1-5 Dkt No. 134-4

² Courtesy copies of Exhibit J and the Separate Statement with hyperlinks to evidence was provided to the Court on 2/22/22.

³ The Garmin_FT documents are highly confidential but if Philips denies that these documents (and about 52 other confidential documents produced) stand for the proposition that many customers want to leave their phone at home, Garmin will file under seal.

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