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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

Philips North America LLC,

Plaintiff,

v.

Garmin International, Inc.
and Garmin Ltd.,

Defendants.

Case No. 2:19-cv-06301-AB-KS

[PROPOSED]

**ORDER ON
ELECTRONIC DISCOVERY**

1 Plaintiffs Philips North America, LLC (“Philips”) and Defendant Garmin
 2 International, Inc. and Garmin Ltd. (“Garmin”), by and through their respective counsel,
 3 hereby stipulate and agree as follows.

4 **1. Service and Delivery of Documents**

5 Absent other agreement of the parties, documents and written discovery responses
 6 in this action will be served by electronic means on an attorney of record, and in all
 7 instances be accompanied by an email confirmation to the e-mail addresses listed below.

Party	Designated Email Addresses
Philips	BOSTFPhilipsGarmin@foley.com
Garmin	rdl@lamkinipdefense.com

8
 9
 10
 11
 12
 13 The parties agree that only individuals permitted access to documents containing
 14 confidential business information pursuant to the Protective Order will be included in the
 15 above email distribution addresses.

16 When the size of the file containing any such document is larger than 20 MB, and
 17 cannot be practicably transmitted in a smaller zipped file, same day service of the
 18 documents in electronic form shall be made via secure file transfer over FTP, extranet, or
 19 hand delivery of electronic media. Parties may also serve hard copies of documents if
 20 necessary for timely service, provided that electronic copies of those documents also shall
 21 be provided to the other parties.

22 Discovery requests or responses sent by email on or before 7 p.m. PDT/PST shall be
 23 deemed to have been served on the day sent. Discovery requests or responses sent by email
 24 after 7 p.m. PDT/PST shall be deemed to have been served on the following day.
 25 Discovery requests and discovery responses shall be served in searchable .PDF format by
 26 electronic service and, in addition to the .PDF format, the parties shall exchange copies of
 27 discovery requests in Microsoft Word format.
 28

2. Privilege Logs

1 The parties agree that absent a showing of good cause, communications with, and
2 attorney work product of, trial counsel in this case need not be identified on a privilege
3 log. Nor is it necessary for the parties to log any communications with any counsel
4 seeking or receiving legal advice concerning the subject matter of the pending lawsuit if
5 such communications happened after the commencement of the lawsuit. Absent a
6 showing of good cause, no party is required to identify on its respective privilege log any
7 communications with counsel or experts in connection with any foreign patent matters
8 involving the Parties hereto or their affiliates or parent companies.
9

3. Inadvertent Production of Privileged Information

10 If a document or information inadvertently produced in discovery is subject to a
11 claim of privilege, immunity or of protection as work product (“privileged information”),
12 the inadvertent production of that privileged information shall not be deemed to constitute
13 a waiver of any applicable privileges or protections consistent with Rule 26(b)(5)(B),
14 F.R.C.P. Likewise, consistent with Federal Rule of Evidence 502(d), the inadvertent
15 production of a privileged or work product protected ESI is not a waiver in the pending
16 case or in any other federal or state proceeding. For example, the production of privileged
17 information in this case as part of a production by a party is not itself a waiver of any
18 privilege or protection in this matter or any other federal or state proceeding.
19

20 When a receiving party identifies potentially privileged information that may have
21 been inadvertently produced, it shall promptly notify the producing party. When the party
22 that produced the privileged information becomes aware that privileged information was
23 produced, it shall promptly provide notice to any party that received the privileged
24 information that: (a) identifies the privileged information; (b) specifies the claimed
25 privilege or protection; and (c) explains the basis for the claimed privilege or protection.
26 After receiving such a notice, or after identifying on its own potentially privileged
27 information that may have been inadvertently produced, the receiving party shall (a)
28 promptly from service of the notice, return or destroy the specified privileged information

1 along with any copies it has of the document or information; (b) not use or disclose the
2 document or information until the claim is resolved; and (c) within seven days of service
3 of the notice, take reasonable steps to retrieve the document or information if the person
4 disclosed it to others before being notified and inform the producing party of that fact.

5 Such return or destruction shall not preclude the receiving party from subsequently
6 seeking to compel production of the privileged information. The person that produced the
7 document must preserve the document or information until the claim of privilege or
8 protection is resolved.

9 **4. Discovery of Expert Materials**

10 The parties agree to be bound by Federal Rule of Civil Procedure 26(b)(4) as to
11 discovery of expert materials.

12 Notwithstanding the above, the parties shall identify and produce copies of any
13 documents relied upon by the expert as a basis for the opinions set forth in his or her report,
14 declaration, affidavit, and/or testimony, including witness statements and live testimony.
15 Furthermore, nothing in this agreement is intended to restrict discovery relating to: (a) the
16 compensation paid to an expert; and (b) any assumptions that counsel provided and that
17 the expert relied on in forming the opinions to be expressed.

18 The parties agree that retained experts and consultants may not share any
19 confidential business information received under the Protective Order with any other
20 individual, including non-clerical assistants or support staff for the expert or consultant,
21 unless that individual has subscribed to the Protective Order.

22 **5. Inadvertent Failure to Designate Confidential Business** 23 **Information**

24 A party which inadvertently fails to designate information as confidential may
25 promptly notify the other parties that such information should have been designated
26 confidential and should be treated as confidential after reasonable steps by receiving parties
27 have been taken as specified below. Where appropriate, the designating party shall provide
28 replacement copies of such materials bearing the appropriate confidentiality designation.

1 Upon being notified that the information was inadvertently not designated as confidential,
2 the receiving parties shall take reasonable steps to retrieve the information from any
3 recipients of such information who previously had been provided the confidential
4 information and who are not authorized to access such confidential information under the
5 Protective Order. If the receiving party has reason to believe that the information has been
6 disseminated to persons from whom it has not been able to retrieve the information through
7 reasonable steps, it shall inform the producing party of that fact.

8 No party shall argue that another party is in breach of the Protective Order for any
9 use of confidential information during the time that the information was not designated as
10 confidential or before receiving parties complete the reasonable steps specified above.

11 **6. Third-Party Confidentiality**

12 To the extent the following is not inconsistent with confidentiality obligations in, for
13 example, an applicable non-disclosure or other agreement, the parties agree as follows:

14 The parties shall take reasonable steps to ensure that the existence of confidentiality
15 or non-disclosure agreements with non-parties (“Non-Party Confidentiality Agreements”)
16 do not significantly delay the production of any such documents that a party has agreed to
17 produce. The parties further agree that those reasonable steps shall include notice from the
18 producing party to any non-parties with whom they have any applicable confidentiality or
19 non-disclosure agreement that allows the non-party a period of 10 days, or other time
20 period set forth in an applicable non-disclosure or other agreement, to provide a written
21 objection to the producing party. The written notice to the non-party shall state that the
22 information or documents will be produced if the non-party does not respond in writing
23 within the allocated time period. If the non-party does not object to the production within
24 10 days or such other prescribed period, the documents subject to the non-disclosure or
25 other applicable agreement shall be produced. The 10-day period may be extended by an
26 additional 5 days if notice is to be sent to a company outside the United States.

27 If a non-party raises a timely objection to production, the producing party objects to
28 the production based on obligations in a non-disclosure or other applicable agreement that

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