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17 **UNITED STATES DISTRICT COURT**  
18 **CENTRAL DISTRICT OF CALIFORNIA**  
19 **WESTERN DIVISION**

20 Philips North America LLC,

21 *Plaintiff,*

22 vs.

23  
24 Garmin International, Inc. and  
Garmin Ltd.,

25 *Defendants.*  
26  
27  
28

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

**PHILIPS NORTH AMERICA LLC's  
REPLY IN SUPPORT OF ITS  
MOTION TO DISMISS IN THE  
ALTERNATIVE**

Date: August 28, 2020

Time: 10:00 A.M.

Courtroom: 7B

Hon. André Birotte Jr.

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## I. INTRODUCTION

Plaintiff Philips North America, LLC (“Philips”) hereby respectfully submits this short Reply in support of its Motion in the Alternative to Dismiss (Dkt. 87). Prior briefing addressed Garmin’s Motion to Amend and futility of Garmin’s deficient allegations of inequitable conduct with respect to U.S. Patent No. 9,314,192 (“’192 Patent”). The parties stipulated as part of their request to the Court to extend the deadline for Garmin to move to amend that Philips be afforded this opportunity to submit a Reply in support of its Motion in the Alternative to Dismiss. (Dkt. 78.) This Reply also responds to Garmin’s new request in its last submission for leave to further amend its pleadings.

To be sure, as argued in its prior submission (Dkt. 87), Philips believes that Garmin’s Motion to Amend should simply be denied on grounds of futility, with no need to consider the Motion to Dismiss in the alternative. While Philips believes that the futility of amendment standard under Fed. R. Civ. P. 15 should exactly mirror the standard that would be applied under Fed. R. Civ. P. 12(b)(6) as to the sufficiency of the pleadings in this case, Philips made a simultaneous Motion in the Alternative to Dismiss (Dkt. 87) in the event that the Court were to disagree with this premise, so as to save the parties and the Court the added delay and cost of a second round of briefing and a second hearing on a follow-on Motion to Dismiss.<sup>1</sup> This short Reply further shows that, even if amendment were allowed, the pleadings would nonetheless be deficient under Rule 12(b)(6) in view of the *Exergen* pleading requirements.

Finally, Garmin’s new request for leave to further amend its inequitable conduct pleadings should be denied. The deadline to amend has now long since passed, and Garmin shows no good cause to further modify the case schedule under Rule 16(b), nor has Garmin explained how any further amendment would not be futile.

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<sup>1</sup> Simultaneously opposing amendment while alternatively seeking dismissal is a known procedure, and an efficient way to avoid delay. *See, e.g., Wolde-Giorgis v. Dillard*, No. CV 06-0289-PHX-MHM, 2006 U.S. Dist. LEXIS 71356, at \*6-7 (D. Ariz. Sep. 22, 2006); *Atwell v. Lisle Park Dist.*, 00 C 7267, 2001 U.S. Dist. LEXIS 6550, at \*4 (N.D. Ill. May

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