

1 LAMKIN IP DEFENSE
2 RDL@LamkinIPDefense.com
3 Rachael D. Lamkin (246066)
4 One Harbor Drive, Suite 304
5 Sausalito, CA 94965
6 (916) 747-6091 Telephone

7 Michelle L. Marriott (*pro hac vice*)
8 michelle.marriott@eriseip.com
9 Erise IP, P.A.
10 7015 College Blvd.
11 Suite 700
12 Overland Park, KS 66211
13 (913) 777-5600 Telephone
14 (913) 777-5601 Facsimile

15 *Attorneys for Defendants Garmin
16 International, Inc. and Garmin Ltd.*

17 **IN THE UNITED STATES DISTRICT COURT**
18 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

19 PHILIPS NORTH AMERICA LLC,
20 Plaintiff,
21 v.
22 GARMIN INTERNATIONAL, INC.
23 AND GARMIN LTD.,
24 Defendants.

25 Case No. 2:19-cv-06301-AB-KS
26 **DEFENDANTS' UNOPPOSED**
27 **REQUEST FOR LEAVE TO FILE**
28 **SUPPLEMENTAL EVIDENCE**
(PORTIONS OF INVENTOR
DEPOSITION TRANSCRIPT
RELEVANT TO CLAIM
CONSTRUCTION)

29 By and through its undersigned counsel, the Garmin Defendants respectfully
30 seek unopposed leave to submit supplemental evidence relevant to claim
31 construction, obtained after claim construction briefing was completed.
32

1 Claim construction briefing closed on July 9, 2020 when the Parties
2 submitted their Responsive Claim Construction Briefs, Dkt. Nos. 79 and 80. This
3 Honorable Court took the briefs under submission on July 28, 2020, Dkt. No. 86.
4 Frank Van Hoorn, a named inventor for asserted US Patent No. 6,013,007 was
5 deposed four (4) days ago, on August 21, 2020. Portions of his deposition
6 transcript are relevant to claim construction. Garmin seeks leave to submit said
7 evidence. Philips does not oppose.
8

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10 The relevant portions of the deposition of Frank Van Hoorn are submitted as
11 Exhibit A to the Lamkin Declaration filed concurrently herewith.
12

13 In brief, inventor testimony is relevant to claim construction. *See Phillips v.*
14 *AWH Corp.*, 415 F.3d 1303, 1317-18 (Fed. Cir. 2005) (“[Although we have
15 emphasized the importance of intrinsic evidence in claim construction, we have
16 also authorized district courts to rely on . . . expert and inventor testimony,” which
17 “can be useful to a court for a variety of purposes”); *Howmedica Osteonics Corp.*
18 *v. Wright Med. Tech. Inc.*, 540 F.3d 1337, 1347 & n. 5 (Fed. Cir. 2008)
19 (“testimony of an inventor, of course, may be pertinent as a form of expert
20 testimony . . . as to understanding the established meaning of particular terms in
21 the relevant art”) (citation omitted); *CCS Fitness, Inc. v. Brunswick Corp.*, 288
22 F.3d 1359, 1368 (Fed. Cir. 2002) (inventor testimony equal to expert testimony in
23 claim construction); *see also Phillips*, 415 F.3d, at 1313 (Fed. Cir. 2005) (*en banc*)
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1 (referring to the “well-settled understanding that inventors are typically persons
2 skilled in the field of the invention”).
3

4 Especially where , as here, Philips’ counsel hired Mr. Van Hoorn as an
5 expert on the asserted ’007 Patent. *See* Van Hoorn Tr. 12:10-13:13.
6

7 All of the submitted Van Hoorn testimony pertains to a single claim
8 construction limitation, “means for presenting the athletic performance feedback
9 data to the athlete” in limitation (c) of Claims 1 and 21. Garmin contends that the
10 means for presenting must be audio (with or without optional text or visual means)
11 and cannot be text or visual means alone. (Dkt. No. 73-2, at 2.) In his deposition,
12 Mr. Van Hoorn ultimately admits that text/visual performance feedback is
13 “inconsistent” with the teachings of the ’007 Patent because visual/text feedback
14 was dangerous while an athlete was running or skiing. For example, Mr Van
15 Hoorn testified:
16
17

18 Q. Okay. Let’s please, sir, return to the passages we discussed earlier, and
19 specifically in Column 1 starting at Line 53 [of the ’007 Patent]. And I want
20 to specifically call your attention to the specification, your specification,
21 where you say, “Current devices requires frequent visual interaction
22 compromising the safety and concentration of their user, making them
incompatible with exercise activities.”

23 Your specification in the ’007 says visual means of conveying information is
24 incompatible with exercise activities; is that correct?

25 A. It is, yes.

26 Q. So how can you have an embodiment that only communicates visually?
27
28

1 A. Yeah, I'm looking at this. That's not the best option.

2 Q. It's inconsistent with your patent's specification to have an embodiment
3 that only communicates performance data visually; is that correct?

4 A. That is correct.

5
6 (Van Hoorn Tr., 47:5-48:1.)

7 Garmin respectfully asks the Court to consider Exhibit A in its claim
8 construction adjudication.
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10
11 DATED: August 25, 2020

Respectfully submitted,

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13 By: Rachael D. Lamkin

14 Rachael D. Lamkin
15 Counsel for Defendants Garmin International,
16 Inc. and Garmin Ltd.
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CERTIFICATE OF SERVICE

On this date, August 25, 2020, I did personally serve upon counsel for Philips the following documents through the Court’s ECF system:

**DEFENDANTS’ UNOPPOSED REQUEST FOR LEAVE TO FILE
SUPPLEMENTAL EVIDENCE (PORTIONS OF INVENTOR DEPOSITION
TRANSCRIPTS RELEVANT TO CLAIM CONSTRUCTION)**

LAMKIN DECLARATION ISO

EXHIBIT A HERETO

By: *Rachael D. Lamkin*

Rachael D. Lamkin
*Counsel for Defendants Garmin International,
Inc. and Garmin Ltd.*