

FRANK VAN HOORN 8/21/2020

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<p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE CENTRAL DISTRICT OF CALIFORNIA 3 PHILIPS NORTH AMERICA, LLC,) 4 Plaintiff,) 5 v.) Case No. 6) 2:19-cv-06301-AB-KS 7) 8 GARMIN INTERNATIONAL, INC.,) and GARMIN, LTD.) 9) 10 Defendant.) 11 _____) 12 13 14 REMOTE VIDEO DEPOSITION OF FRANK VAN HOORN 15 Taken on Behalf of Defendant 16 Friday, August 21, 2020 17 18 19 20 21 22 23 24 25</p>	<p>1 INDEX OF EXHIBITS (cont.) 2 EXHIBITS PAGE 3 No. 12 - Communication from Mr. van Hoorn to Mr. Sony/Panasonic 53 4 5 No. 13 - The GPS CrossTracker flyer 54 6 7 No. 14 - Rough Draft uncertified transcript of Frank van Hoorn, 8-19-20 56 8 9 No. 15 - Press Release from Liquid Spark, LLC, 5-03-00. 57 10 11 No. 16 - Photographs of Mr. Root, the wood mock-up, a drawing of the prototype. . . 58 12 13 oOo 14 15 (Exhibits electronically attached to the transcript.) 16 17 18 19 20 21 22 23 24 25</p>
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<p>1 INDEX OF EXAMINATION 2 FRANK VAN HOORN PAGE 3 Examination by Ms. Lamkin. 7 4 5 oOo 6 7 INDEX OF EXHIBITS 8 EXHIBITS PAGE 9 No. 1- Letter, Foley & Lardner/Eley O. Thompson, to Mr. Frank van Hoorn, 8-12-19. 11 10 No. 2 - United States Patent 6,013,007, January 11, 2000 13 11 12 No. 3 - "A New Digital Consumer Electronic Device" presentation to Sony Electronic. 23 13 14 No. 4 - "The GPS CrossTracker" presentation to imagiworks. 29 15 No. 5 - Garmin GPS II Plus owner's manual. . . 35 16 No. 6 - Photo of Mr. van Hoorn running with the device in Fiji 39 17 18 No. 7 - "The Ironman Performance Monitor" presentation to KLH Audio Systems. . . 40 19 No. 8 - "The Nike CrossTracker" presentation to Nike. 42 20 21 No. 9 - The Runner's GPS - Preliminary Specifications, 7-25-97. 48 22 No. 10 - The Personal Tracker - Preliminary Specifications, 8-04-97. 51 23 24 No. 11 - Communication from Mr. van Hoorn to Erik 51 25</p>	<p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE CENTRAL DISTRICT OF CALIFORNIA 3 PHILIPS NORTH AMERICA, LLC,) 4 Plaintiff,) 5 v.) Case No. 6) 2:19-cv-06301-AB-KS 7) 8 GARMIN INTERNATIONAL, INC.,) and GARMIN, LTD.) 9) 10 Defendant.) 11 _____) 12 13 14 15 REMOTE VIDEO DEPOSITION OF FRANK VAN 16 HOORN, produced, sworn and examined on Friday, 17 August 21, 2020, between the hours of 8:54 a.m. and 18 10:53 a.m., Pacific Standard Time, of that day, via 19 Zoom, before Connie McCarthy, CCR, RMR, CRR. 20 21 22 23 24 25</p>

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1 right in the middle of a series of questions that are
 2 building on each other, what we call in music riffs,
 3 then I'll ask to finish the riff before we break. Is
 4 that okay?
 5 A. That's okay, yes.
 6 Q. And I'm a very straightforward attorney.
 7 I'm not going to play games with you. So I'll ask a
 8 direct, non-evasive question, and I expect a direct
 9 non-evasive answer. Is that acceptable?
 10 A. Of course.
 11 Q. At any point if you don't understand my
 12 question – for example, you have a deep engineering
 13 background. I do not. I majored in philosophy. So
 14 if you don't understand my question, will you please
 15 ask me to clarify?
 16 A. I will.
 17 Q. Okay. Did you meet with – and don't give
 18 me the substance of the conversation – but did you
 19 meet with Foley in preparation for your deposition on
 20 Wednesday?
 21 A. I did.
 22 Q. How many hours did you meet with Foley in
 23 preparation for your deposition on Wednesday?
 24 A. Three hours, more or less.
 25 Q. Did you look at any documents during your

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1 preparation?
 2 A. Only the GPS patent.
 3 Q. Okay. Your patent that we'll call in this
 4 deposition the '007 patent?
 5 A. Yes.
 6 Q. And did you meet with Foley in between your
 7 last deposition and this deposition?
 8 A. I did, yes.
 9 Q. How long did you meet with Foley between
 10 Wednesday and this morning?
 11 A. About a half hour.
 12 Q. Did you look at any documents during that
 13 deposition – sorry, during that preparation?
 14 A. I did not.
 15 Q. Okay. What we're going to do during this
 16 deposition, Mr. Van Hoorn, is I'm going to put drag
 17 and drop documents into the Chat function on Zoom,
 18 and those documents will go to both you and your
 19 attorney. Is that what happened last Wednesday?
 20 A. Yes and no. I mean they had them in Chat,
 21 but then the videographer pulled them out onto the
 22 screen.
 23 Q. That's normally how this service does it.
 24 I don't like to do it that way because I feel like I
 25 have an ethical obligation to allow you to look at

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1 anything in the document you want to look at. So I'm
 2 not going to have them pull up the screen and do the
 3 fancy pull-around. Because again, I want you to be
 4 able to look at anything in the document you want to
 5 look at. Okay?
 6 A. Okay.
 7 Q. I'm going to mark, I hope – yeah. This
 8 might be slow, but I think you'll prefer to have it
 9 in your hands.
 10 (Whereupon, Exhibit No. 1 was marked for
 11 identification)
 12 BY MS. LAMKIN:
 13 Q. I'm going to mark as Exhibit 1 a document
 14 bearing Bates range GAR 0009521 to 9526.
 15 Mr. van Hoorn, please take a look at that
 16 document. Take as long as you want. And when you're
 17 ready to answer questions about that document, let me
 18 know.
 19 A. Okay.
 20 Q. It should be in your Chat folder.
 21 A. I have to download to open it, correct?
 22 Q. Correct.
 23 J.P., if you ever don't get a document,
 24 please just indicate and I can email it or find
 25 another way.

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1 MR. CIARDULLO: Sure, that's fine. I'm
 2 downloading it myself.
 3 BY MS. LAMKIN:
 4 Q. This way takes a little longer. But again,
 5 I think it's more fair to the deponent to be able to
 6 look at the whole document. No criticism of the depo
 7 service intended.
 8 A. Okay.
 9 Q. What is this document, Mr. van Hoorn?
 10 A. This is the agreement between myself and
 11 the counsel.
 12 Q. And when was it signed?
 13 A. About a year ago, October 27th –
 14 August 27th, 2019.
 15 Q. Okay. Regarding Provision 1, the scope of
 16 your engagement, what do you understand the scope of
 17 your engagement to be?
 18 A. I just advise the lawyers about my
 19 involvement on the patent development, how it came
 20 about.
 21 Q. Just to make sure I understand, you
 22 understand your role to be advising your lawyers
 23 about a patent and how it came about?
 24 A. Yes.
 25 Q. Do you understand you have any other duties

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1 in the scope of your engagement than advising about
 2 the '007 patent?
 3 A. I am to testify or be deposed or whatever
 4 was required for this potential lawsuit.
 5 Q. On any other subjects other than the '007?
 6 Are you to testify or provide advice on anything
 7 other than the '007?
 8 A. No.
 9 Q. And if you look on the last page of this
 10 document, Mr. van Hoorn, ending in 9526, your fee
 11 schedule, do you understand Foley to be paying you
 12 \$375 an hour to advise regarding the '007 patent?
 13 A. That's my understanding, yes.
 14 (Whereupon, Exhibit No. 2 was marked for
 15 identification)
 16 BY MS. LAMKIN:
 17 Q. I'm going to mark as Exhibit 2 a
 18 document -- a patent document with the
 19 number 6,013,007 for the '007 patent.
 20 Same here, Mr. van Hoorn: Just download
 21 the document. Take your time. When you're ready to
 22 answer questions about the document, let me know.
 23 A. Okay.
 24 Q. Mr. van Hoorn, do you recognize this
 25 document?

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1 A. Yes, I do.
 2 Q. What is it?
 3 A. This is the official patent '007.
 4 Q. Okay. And is this the patent that Foley
 5 hired you as a consultant to provide advice
 6 regarding?
 7 A. Yes, it is.
 8 Q. Mr. van Hoorn, if you please look at
 9 Figures 1A and 1B, who drew those figures?
 10 A. I did.
 11 Q. And if you look please at Figures 2 and 3,
 12 did you also draw Figures 2 and 3?
 13 A. Yes, I did.
 14 Q. If you please turn to Figure 2,
 15 Mr. van Hoorn. We see in Figure 2, I believe, the
 16 device, what you would later call the Athlete's GPS,
 17 marked 101; is that correct?
 18 A. That is correct.
 19 Q. And then at the top you see headphones
 20 marked 202; is that correct?
 21 A. That is correct.
 22 Q. What is the purpose of the baseball cap
 23 marked 201?
 24 A. To keep the sun out of her face.
 25 Q. Any other purpose?

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1 A. We were also looking at embedding the
 2 antenna in the baseball cap unit.
 3 Q. The GPS unit?
 4 A. Excuse me?
 5 Q. I'm sorry, I spoke over you. You thought
 6 about embedding the GPS antenna in the baseball cap?
 7 A. That's correct.
 8 Q. And if you look at Figure 3, what is the
 9 purpose of the device labeled 301?
 10 A. 301 is the top of the antenna, and in this
 11 case, it's mounted on top of the headset.
 12 Q. What is the reason that you -- the figures
 13 depict mounting the GPS receiver antenna on top of
 14 the runner's head?
 15 A. The idea behind that was that the head is a
 16 very stable platform.
 17 Q. What does that mean, the head is a stable
 18 platform?
 19 A. It doesn't move around as much as, for
 20 instance, your hands or your feet or --
 21 Q. You obviously haven't seen me run.
 22 If you will, could you please flip to the
 23 specification? When I say flip to the specification,
 24 do you know what part I mean?
 25 A. Yes, with the columns?

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1 Q. Yes. If you please, Mr. van Hoorn, look at
 2 Column 1, Lines 53 to 58, and let me know after
 3 you've read Column 1, Lines 53 to 58.
 4 A. I may have to change my glasses. It's a
 5 little better.
 6 Okay.
 7 Q. What did you mean when you wrote, making
 8 them incompatible with exercise activities?
 9 A. I'll just find it again.
 10 The idea was that the -- using a screen as
 11 a potential of distraction during your exercise.
 12 Q. In other words, if, while I'm running, I
 13 have to look down at the device to read it, that
 14 that's distracting?
 15 A. That's correct, yes.
 16 Q. Then at that same column, Mr. van Hoorn, if
 17 you could please read Lines 64 to 67?
 18 A. Okay.
 19 Q. Could you please explain a little bit more
 20 about what that passage means?
 21 A. It's as to the visual display on the
 22 screen, that's an alternative to using the audio
 23 feedback to your headset.
 24 Q. So you're talking about real-time audio
 25 reports. What would be the reports?

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1 A. Depending on the settings, but mostly the
 2 miles traveled, average pace, average speed, current
 3 speed. Things like that. Performance feedback.
 4 **Q. Got it. So the real-time performance
 5 feedback goes through audio, not visual, so the
 6 athlete isn't distracted. Am I understanding that?**
 7 A. Yes, the audio was one of the embodiments,
 8 yes.
 9 **Q. So let's talk about that for a second. You
 10 say the audio was one of the embodiments, but nothing
 11 in this passage is referencing an embodiment, right?**
 12 A. Not in this section, no.
 13 **Q. Not in this section of the patent?**
 14 A. Correct.
 15 **Q. Correct. This section of the patent is
 16 the -- called the background art, correct?**
 17 A. Correct.
 18 **Q. And so what you're talking about here are
 19 the problems in the background art you're trying to
 20 solve, correct?**
 21 A. Correct.
 22 **Q. And so one of the problems you're trying to
 23 solve is the visual distraction caused by text only
 24 reporting of performance data, correct?**
 25 A. Correct.

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1 **Q. Now, sir, I'm going to ask you to look at
 2 Column 2 entitled Summary of the Invention. Do you
 3 see that?**
 4 A. Yes.
 5 **Q. Okay. And under the Summary of Invention,
 6 could you please look at Lines 21 to 25?**
 7 A. Okay.
 8 **Q. And is it fair to read that as the summary
 9 of your invention as your solution to the problems
 10 being described in the background of the invention,
 11 the background art?**
 12 A. Can you repeat that, please?
 13 **Q. Unlikely. It was a terribly-worded
 14 question.**
 15 **Would it be fair to read in the Summary of
 16 Invention, Lines 21 to 26, that an important part of
 17 your invention was audio signals that reduce
 18 distractions?**
 19 A. Oh, yeah, there was -- that's correct.
 20 **Q. And that would improve the safety of the
 21 athlete. That's one of the reasons it's important to
 22 your invention, the safety of the athlete?**
 23 A. Yes.
 24 **Q. Mr. van Hoorn, if you could please turn to
 25 the Claims, and I'm going to ask you specifically to**

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1 **look at Column 11, Claim 1. Please review Claim 1
 2 and let me know after you've reviewed it.**
 3 A. Okay.
 4 **Q. Okay. If you look at what we call
 5 Limitation C, Mr. van Hoorn, that is, Column 11,
 6 Lines 15 and 16, it says, means for presenting the
 7 athletic performance feedback data to an athlete.
 8 Do you see that?**
 9 A. I do.
 10 **Q. What is the means for presenting
 11 performance feedback data to the athlete?**
 12 MR. CIARDULLO: Objection, to the extent
 13 that the witnesses is not a patent attorney. But you
 14 can go ahead and answer the question.
 15 THE WITNESS: It provides me a small
 16 display as well as the headset for audio feedback.
 17 BY MS. LAMKIN:
 18 **Q. Okay. The means for presenting here, is
 19 all I'm asking you, if you read this claim -- not
 20 what you built -- if you read this claim, what is the
 21 means for presenting the athletic performance
 22 feedback data to the athlete claimed in your patent?**
 23 A. It's either on the screen or the audio
 24 feedback.
 25 **Q. Either the screen or the audio feedback**

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1 **could satisfy that limitation?**
 2 MR. CIARDULLO: Still the same objection.
 3 But go ahead and answer the question to your ability.
 4 THE WITNESS: I believe it does, yes.
 5 BY MS. LAMKIN:
 6 **Q. Okay. So let's talk about that. It's your
 7 opinion, as the inventor of this patent and someone
 8 hired as an expert on this patent for Foley, it's
 9 your opinion that means for presenting could be via
 10 text or visual?**
 11 A. Correct.
 12 **Q. Okay. You didn't invent presenting
 13 performance feedback data to an athlete by a visual
 14 means, did you?**
 15 A. I'm not sure about that.
 16 **Q. Okay. You ran with the Garmin device, the
 17 GPS II Plus, prior to filing this patent, correct?**
 18 A. I did that, using the device as a Black
 19 Box.
 20 **Q. Okay. For example, you ran the Houston
 21 Marathon in January of 1998 using a Garmin GPS II
 22 device?**
 23 A. I did, yes.
 24 **Q. Okay. And on the Garmin GPS II device, you
 25 could look at that device and see, for example, how**

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1 **fast you were running, correct?**
 2 A. If I had access to it, yes.
 3 **Q. What do you mean, if you had access to it?**
 4 A. During my runs, the GPS was stuck into a
 5 fanny pack, and the only thing that came out was the
 6 cord for the antenna.
 7 **Q. If you pulled the device out of your fanny**
 8 **pack and looked at it, you could see how fast you**
 9 **were running, correct?**
 10 **A. You can. You could.**
 11 **Q. So you didn't invent performance feedback**
 12 **data by visual means, did you?**
 13 MR. CIARDULLO: Just an objection about the
 14 term "invent" being a legal term of art. But go
 15 ahead and answer the question to your ability.
 16 BY MS. LAMKIN:
 17 **Q. Mr. van Hoorn, you didn't come up with the**
 18 **idea of feedback data being communicated by visual**
 19 **means, did you?**
 20 A. Well, but we came up with the idea for
 21 using it for the athlete's performance feedback.
 22 **Q. Stay with me. When you're running the**
 23 **Houston Marathon, you're doing athletic performance,**
 24 **correct?**
 25 A. Correct.

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1 **Q. And the speed that you're running is**
 2 **performance feedback data, right?**
 3 A. It's just about a couple hours later, after
 4 downloading all the wave points.
 5 **Q. Just answer my question, sir. The speed**
 6 **that you're running is athletic performance feedback**
 7 **data, correct?**
 8 **A. Correct.**
 9 **Q. And if you would have pulled the GPS II out**
 10 **of your fanny pack and looked at it, you would have**
 11 **seen how fast you were running, right?**
 12 **A. That's correct.**
 13 **Q. Okay. So you didn't invent the idea of**
 14 **performance data being communicated to the runner by**
 15 **visual means?**
 16 MR. CIARDULLO: Object to form. But answer
 17 to your ability.
 18 **THE WITNESS: If you put it that way, yes.**
 19 BY MS. LAMKIN:
 20 **Q. No, you did not. You did not invent that**
 21 **idea, correct?**
 22 **A. Correct.**
 23 **Q. Okay. So now, with that admission in mind,**
 24 **returning to Claim 1, knowing that before you filed**
 25 **this patent, you ran with the GPS II, do you still**

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1 **believe that the means for presenting can be text**
 2 **alone?**
 3 MR. CIARDULLO: Object to form again. But
 4 answer to your ability.
 5 THE WITNESS: Can be text alone? That's
 6 possible. That's not the safest way, but that's
 7 possible, yeah.
 8 BY MS. LAMKIN:
 9 **Q. But it's not the safest, as you've**
 10 **discussed multiple times in your patent. Picking up**
 11 **the GPS II to look at it while you're running is not**
 12 **a safe thing to do? That's what your patent**
 13 **communicates, correct?**
 14 A. Correct.
 15 **Q. I'm going to mark as Exhibit 3 a document**
 16 **bearing Bates range GAR 0000852 to 873.**
 17 **(Whereupon, Exhibit No. 3 was marked for**
 18 **identification)**
 19 BY MS. LAMKIN:
 20 **Q. Same thing, Mr. van Hoorn: Please review**
 21 **the document. Take your time. Let me know after**
 22 **you've reviewed it.**
 23 **J.P., same thing. If you don't have it,**
 24 **let me know, I'll email it to you.**
 25 MR. CIARDULLO: Coming out okay at my end.

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1 I'll just note that the PDFs as they come up have a
 2 different numbering file name. So for example, you
 3 were referring to this as Exhibit 3, the file name
 4 says Exhibit 5B. But, yeah.
 5 MS. LAMKIN: The reporter will re-mark
 6 them, J.P., when they come through.
 7 MR. CIARDULLO: That's fine. I just wanted
 8 to make sure you were aware.
 9 THE WITNESS: I am looking over this here,
 10 quickly.
 11 BY MS. LAMKIN:
 12 **Q. Take your time. You don't need to go**
 13 **quickly, Mr. van Hoorn. Let me know when you're**
 14 **ready.**
 15 A. I think I'm ready.
 16 **Q. Okay. Do you recognize this document,**
 17 **Mr. van Hoorn?**
 18 A. Well, recognize is a big word, I guess, but
 19 it's vaguely familiar.
 20 **Q. It's vaguely familiar to you?**
 21 A. Yes.
 22 **Q. What is this document, sir?**
 23 A. It looks like a presentation we did to Sony
 24 to sell the patent.
 25 **Q. Okay. And did you draft or create part of**

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