



arguments and issues raised by Garmin in the Central District of California, which in many respects differ from the issues presented to this Court.

For example, with respect to the '233 Patent, the Central District of California noted that it was not addressing the merits of Garmin's non-infringement argument that its devices do not constitute "medical devices" because they were not FDA approved. (*See* Dkt. 98-1 at 18, n. 5.) The order also includes some aspects that will need to be reconsidered so as to avoid reversible error, including the Court's improper disregard for expert testimony as to the '007 patent. *Amtel Corp. v. Information Storage Devices, Inc.*, 198 F.3d 1374, 1382 (Fed. Cir. 1999) (reversing grant of summary judgment of indefiniteness of means-plus-function claim for failing to consider un rebutted expert testimony with regard to the appropriate structure).

Accordingly, the Court is not, and should not be, bound by the decision and should continue to assess the issues on the record before it.

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Respectfully Submitted,

/s/ Eley O. Thompson

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above document was served on September 2, 2020 on counsel for Defendant via electronic mail.

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