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[REDACTED]

AGIS's opposition argues that LG Korea cannot prove that AGIS failed to properly mark its LifeRing products with the numbers for the '055, '251 and '838 Patents (the "Location Sharing Patents") because AGIS did not sell any of its LifeRing product between issuance of the '055 Patent and commencement of this action. *See, e.g.*, D.I. 189 at 5. AGIS misstates its burden with respect to Section 287, focusing only on "sales" and ignoring that "making" and "offering for sale" also trigger its marking obligation. And even if AGIS's sales claim were true, AGIS has failed to submit any evidence to support it. As the party with the burden to prove marking, AGIS must put forth evidence showing that a reasonable trier of fact could find that it complied with Section 287. AGIS has not done so. Accordingly, the motion should be granted.

**I. AGIS, NOT LG KOREA, BEARS THE BURDEN OF DEMONSTRATING COMPLIANCE WITH § 287**

The patentee has the burden to prove that it complied with Section 287. *Maxwell v. J. Baker, Inc.*, 86 F.3d 1098, 1111 (Fed. Cir. 1996); *Nike Inc. v. Wal-Mart Stores*, 138 F.3d 1437, 1446 (Fed. Cir.1998). Further, a party opposing a motion for summary judgment on an issue for which it bears the burden of proof must come forward with admissible evidence upon which a reasonable trier of fact could find in its favor on the issue in question. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256-257 (1986). In a fatal move, AGIS has ignored both its burden with respect to the ultimate issue, and its burden to put forth evidence to defeat the summary judgment motion. AGIS does not dispute that it "made" and "offered for sale" LifeRing products during the relevant time period, and admits that it did not properly mark its products or its website for months after the '055 Patent issued. D.I. 189, Counter-Statement of Undisputed Material Facts ("CUMF") at ¶ 2. This concession means summary judgment should be granted.

AGIS criticizes LG Korea for alleged failure to adduce testimony [REDACTED]

[REDACTED] AGIS also argues

[REDACTED]

[REDACTED]

[REDACTED] But AGIS submits no declarations from any witnesses—or evidence in any form—supporting its claim that it did not make any LifeRing sales during the relevant time period. AGIS never proffers the purported sales and marketing evidence showing marking. AGIS also offers no evidence to support its assertion that “[t]he software for the LifeRing product has been marked with the patent numbers of the Location Sharing Patents since at least March 26, 2017.” *Id.* at 2. Finally, while AGIS criticizes LG Korea for [REDACTED] [REDACTED]

[REDACTED] LG Korea put forth evidence that AGIS did not comply with its marking obligation for the Location Sharing Patents (*see* D.I. 117, at 7-8), shifting the burden to AGIS. AGIS’s failure to proffer rebuttal evidence means LG Korea’s motion should be granted.

**II. AGIS ADMITS THAT IT FAILED TO PROPERLY MARK THE LIFERING PRODUCT**

AGIS does not contest that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Therefore, there is no material issue of fact as to whether the versions of the LifeRing product that were in use after the issuance of the Location Sharing Patents practice at least the '055 and '838 patents.

AGIS also admits that it did not mark its software with the '055 Patent until March 26, 2017, more than eight months after the issuance of the '055 Patent. *See* D.I. 189, CUMF at ¶ 2.

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<sup>1</sup> [REDACTED]  
[REDACTED] with full knowledge that its failure to mark was an issue in this case. [REDACTED], AGIS should have produced them but did not.

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