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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

PHILIPS NORTH AMERICA, LLC,  
et al.,

Plaintiffs,

v.

SUMMIT IMAGING INC., et al.,

Defendants.

CASE NO. C19-1745JLR

ORDER GRANTING IN PART  
AND DENYING IN PART  
PLAINTIFFS' MOTION TO  
DISMISS COUNTERCLAIMS

Before the court is Plaintiffs Philips North America, LLC, Koninklijke Philips N.V., and Philips India, Ltd.'s (collectively, "Philips") motion to dismiss Defendants Summit Imaging Inc. and Lawrence R. Nguyen's (collectively, "Summit") counterclaims pursuant to Federal Rule of Civil Procedure 12(b)(6). (Mot. (Dkt. # 50).) Summit opposes Philips's motion. (Resp. (Dkt. # 53).) Philips filed a reply. (Reply (Dkt. # 54).) The court granted Summit's motion to file a surreply. (Order Granting Surreply (Dkt. # 65); Surreply (Dkt. # 70).) Having considered the motion, the parties' submissions

1 regarding the motion, the relevant portions of the record, and the applicable law,<sup>1</sup> the  
2 court GRANTS in part and DENIES in part Philips's motion to dismiss.

### 3 I. BACKGROUND

#### 4 A. Factual Background

5 Summit "provides maintenance, repair and related services for medical equipment,  
6 including ultrasound and mammography equipment." (Counterclaims (Dkt. # 41 at  
7 30-48) ¶ 11.) Summit is an "independent service organization," or "ISO," that specializes  
8 in servicing medical equipment manufactured and sold by other companies. (*Id.* ¶ 12.)  
9 Summit's customers include healthcare facilities (such as hospitals) and other entities in  
10 the United States and Canada that own and operate medical equipment, including  
11 ultrasound equipment. (*Id.* ¶ 14.) Summit alleges that its customers "highly value and  
12 prefer" Summit because of its "ability to minimize costly downtimes of vital medical  
13 equipment," its "top-quality customer service and diagnostic and repair services," and  
14 "the lower cost of Summit's services relative to its original equipment manufacturer  
15 ('OEM') competitors in the service market." (*Id.* ¶¶ 15-17.)

16 One type of medical equipment that Summit services is ultrasound machines  
17 manufactured by Philips. (*Id.* ¶ 18.) Philips's ultrasound machines are "expensive and  
18 complex equipment that include both mechanical and computer software components."  
19 (*Id.* ¶ 19.) Although Philips's ultrasound machines have a long lifespan, they require

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21 <sup>1</sup> The parties have requested oral argument. (*See* Mot. at 1, Resp. at 1.) The court finds  
22 oral argument would not be helpful to the disposition of this motion, and therefore declines to  
hold oral argument. *See* Local Rules W.D. Wash. LCR 7(b)(4).

1 frequent maintenance, repair, and other servicing. (*Id.*) In addition to manufacturing and  
2 selling its ultrasound machines, Philips provides maintenance and repair services for the  
3 machines. (*Id.* ¶ 23.) As a result, Philips competes with Summit and other ISOs for  
4 business in the market for maintenance and repair services for Philips’s ultrasound  
5 machines. (*Id.* ¶ 24.)

6 Summit alleges that the software included on Philips’s ultrasound machines “is  
7 necessary for both operating the equipment and for properly diagnosing, troubleshooting,  
8 and correcting” technical issues with the machines. (*Id.* ¶ 20.) Summit further alleges  
9 that Philips “regulates and restricts access to and operation of” this software by  
10 individuals and entities outside of Philips, including the purchasers of the machines and  
11 ISOs such as Summit that provide maintenance and repair services. (*Id.* ¶ 21.)

12 Summit alleges that access to the diagnostic software is “vital to competition” in  
13 the market for servicing Philips’s ultrasound machines because it provides access to tools  
14 that “are essential for diagnosing, troubleshooting, and correcting technical problems or  
15 issues with” the machines. (*Id.* ¶ 34; *id.* ¶¶ 35-37 (describing alleged features of Philips’s  
16 diagnostic software that are unavailable to competitors, such as the ability to translate  
17 error codes, correct errors, and display temperature sensor data).) Philips “does not and  
18 will not provide access to the Diagnostic Software” to its competitors in the Philips  
19 ultrasound machine service market, including Summit. (*Id.* ¶ 40.) Indeed, Philips has  
20 never granted access to the diagnostic software to Summit. (*Id.* ¶ 41.) Summit asserts  
21 that Philips’s refusal to provide access to the diagnostic software has impaired or  
22

1 prevented Summit and Philips’s other competitors from performing certain maintenance  
2 and repair services for their customers. (*Id.* ¶¶ 42-43.)

3 In an effort to “find ways to work around its lack of access to the Philips  
4 Diagnostic Software,” Summit developed its own “proprietary software” to enable it to  
5 service Philips’s ultrasound machines. (*Id.* ¶ 44.) Summit states that its software has a  
6 “commercially significant, useful and lawful purpose” and “does not circumvent any  
7 purported technological measure that Philips might include in its software, falsify or  
8 remove any purported copyright information, or otherwise violate the DMCA or infringe”  
9 Philips’s copyrights in any way. (*Id.* ¶¶ 44, 57.)

10 Summit alleges that Philips has engaged in anticompetitive conduct in order to  
11 increase its share of the market for repair and maintenance of its ultrasound machines,  
12 control prices, and exclude competitors from the market. (*Id.* ¶ 25.) This anticompetitive  
13 conduct includes Philips’s refusal to provide its competitors access to diagnostic software  
14 installed on its ultrasound machines and Philips’s efforts to enforce its copyrights on that  
15 software. (*See, e.g., id.* ¶¶ 33-34, 40, 47, 49, 51, 57, 74-75.) Summit also alleges that  
16 Philips’s refusal to license its copyrights in the diagnostic software, and its enforcement  
17 or threatened enforcement of those copyrights (as in this lawsuit, which seeks to prevent  
18 Summit from using its proprietary software) is anticompetitive conduct. (*See, e.g., id.*  
19 ¶¶ 54, 57-58.) Summit asserts that Philips’s refusal to license its copyrights and its  
20 enforcement actions are motivated not by a legitimate desire to protect its copyrights but  
21 rather by Philips’s goal to exclude competition in the market for repair and servicing of  
22 its ultrasound machines. (*Id.* ¶¶ 51-57.)

**B. Procedural Background**

Philips filed its initial complaint in this action on October 29, 2019. (Compl. (Dkt. # 1).) It filed an amended complaint on December 20, 2019. (Am. Compl. (Dkt. # 23).) Philips's claims against Summit arise from its allegation that Summit hacks into Philips's ultrasound systems using a program Summit developed in order to enable features or options in the ultrasound systems for which Philips's customers have not paid. (Am. Compl. ¶¶ 4-6.) Philips also alleges that Summit wrongfully advertises that its software is a "legal solution" or "legal alternative" to working with Philips in order to enable features and options in the ultrasound systems. (*See id.* ¶ 8.)

The court granted in part and denied in part Summit's subsequent motion to dismiss Philips's claims. (3/30/2020 Order (Dkt. # 35).) Specifically, the court dismissed, without prejudice and with leave to amend, Philips's claims against Summit for modifying copyright management information in violation of the Digital Millennium Copyright Act ("DMCA"), 17 U.S.C. § 1202; false advertising in violation of the Lanham Act, 15 U.S.C. § 1125(a); and unfair competition in violation of Washington's Consumer Protection Act ("CPA"), ch. 19.86 RCW. (3/30/2020 Order at 20-21.) The court denied Summit's motion to dismiss Philips's claims for circumventing a technological measure in violation of the DMCA; trade secret misappropriation in violation of the Defend Trade Secrets Act, 18 U.S.C. § 1836, and Uniform Trade Secrets Act, ch. 19.108 RCW; and for contributory copyright infringement in violation of the Copyright Act, 17 U.S.C. §§ 101, 501. (3/30/2020 Order at 20-21.)

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