IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
**Judge Philip A. Brimmer**

Civil Action No. 13-cv-02287-PAB-KMT

MSPBO, LLC,

Plaintiff,

v.

ADIDAS NORTH AMERICA, INC. and
ADIDAS AMERICA, INC.,

Defendants.

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**ORDER**

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This matter is before the Court on MSPBO LLC's Unopposed Motion to Consolidate Cases Under Fed. R. Civ. P. 42(a) [Docket No. 35] filed by plaintiff MSPBO, LLC. Plaintiff seeks an order consolidating this case with a related case, *MSPBO, LLC v. Garmin International, Inc.*, 13-cv-03388-MSK-CBS, pending in this District before Chief Judge Marcia S. Krieger. Defendants Adidas North America, Inc. and Adidas America, Inc. ("Adidas") have indicated that they do not oppose consolidating the two actions. Docket No. 37 at 1. After review of the pleadings in each of these cases, the Court concludes that consolidation is appropriate under Federal Rule of Civil Procedure 42(a).

## I. BACKGROUND

On August, 26, 2013, plaintiff MSPBO, LLC filed the complaint in this action. Docket No. 1. Plaintiff alleges that it acquired the rights to U.S. Patent No. 6,744,375, entitled "Device and Method for Determining and Displaying Travel or Fitness

Quantities of a User of a Sports Equipment." Docket No. 1 at 1-2, ¶¶ 3, 5. Plaintiff claims that Adidas made and sold products covered by U.S. Patent No. 6,744,375 and has infringed patent claims 1, 9, and 10. Docket No. 1 at 3-5.

In plaintiff's related case, *MSPBO, LLC v. Garmin International, Inc.*, 13-cv-03388-MSK-CBS, filed on December 16, 2013, plaintiff alleges that defendant Garmin International, Inc. ("Garmin") infringed claims 1, 9, and 10 of U.S. Patent No. 6,744,375. 13-cv-03388-MSK-CBS (Docket No. 1 at 7, ¶¶ 36-37). Plaintiff also alleges that the "Adidas products accused of infringement in the *MSPBO v. Adidas* suit use transmission protocols and components supplied by Garmin." *Id.* (Docket No. 1 at 3 ¶ 11).

## II. ANALYSIS

Rule 42(a) of the Federal Rules of Civil Procedure provides that "[i]f actions before the court involve a common question of law or fact, the court may . . . consolidate the actions." Fed. R. Civ. P. 42(a)(2). Pursuant to Local Rule 42.1, the judge assigned to the lowest numbered case decides whether consolidation is warranted. D.C.COLO.LCivR 42.1. The decision whether to consolidate actions involving common questions of law or fact is committed to the sound discretion of the district court. *Shump v. Balka*, 574 F.2d 1341, 1344 (10th Cir. 1978). The purpose of Rule 42(a) is "to give the court broad discretion to decide how cases on its docket are to be tried so that the business of the court may be dispatched with expedition and economy while providing justice to the parties." *Breaux v. American Family Mut. Ins. Co.,* 220 F.R.D. 366, 367 (D. Colo. 2004) (quoting 9 C. WRIGHT & A. MILLER, FEDERAL

PRACTICE & PROCEDURE § 2381 at 427 (2nd ed. 1995)). Therefore, the Court will consider both judicial economy and fairness to the parties in exercising its discretion under Rule 42(a). *See Harris v. Illinois-California Express, Inc.*, 687 F.2d 1361, 1368 (10th Cir. 1982).

Both of the cases in question involve the same patent and patent claims and seek to answer the same question: whether U.S. Patent No. 6,744,375 has been infringed. Moreover, plaintiff alleges that Adidas' infringing products are composed of infringing protocols and components supplied by Garmin. Defendants in both cases are represented by several of the same attorneys, defendant Garmin has not objected to consolidation, and the present case is the lower numbered case. Therefore, because the cases involve common questions of law and fact, *MSPBO, LLC v. Adidas North America, Inc. et al*, 13-cv-02287-PAB-KMT, and *MSPBO, LLC v. Garmin International, Inc.*, 13-cv-03388-MSK-CBS, shall be consolidated.

**III. CONCLUSION**

Accordingly, it is

**ORDERED** that MSPBO LLC's Unopposed Motion to Consolidate Cases Under Fed. R. Civ. P. 42(a) [Docket No. 35] is **GRANTED**. It is further

**ORDERED** that, pursuant to Fed. R. Civ. P. 42(a) and D.C.COLO.LCivR 42.1, Civil Action Nos. 13-cv-02287-PAB-KMT and 13-cv-03388-MSK-CBS shall be consolidated for all purposes. It is further

**ORDERED** that, as of the date of this Order, all future pleadings and other filings shall be filed in this case only and shall be captioned as shown below:

Civil Action No. 13-cv-02287-PAB-KMT
(Consolidated with Civil Action No. 13-cv-03388-PAB-KMT)

DATED January 30, 2014.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge