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ICON HEALTH & FITNESS, INC.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION**

<p><b>ICON HEALTH &amp; FITNESS, INC.</b>, a Delaware corporation,</p> <p>Plaintiff,</p> <p>v.</p> <p><b>GARMIN LTD</b>, a Swiss corporation; <b>GARMIN INTERNATIONAL, INC.</b>, a Kansas corporation; and <b>GARMIN USA, INC.</b>, a Kansas corporation,</p> <p>Defendants.</p>	<p><b>SECOND AMENDED COMPLAINT</b></p> <p>Civil Action No. 1:11-cv-00166-RJS</p> <p>Honorable Judge Robert J. Shelby</p> <p>(Jury Demanded)</p>
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Plaintiff ICON HEALTH & FITNESS, INC. (“ICON” or “Plaintiff”) hereby complains against defendants GARMIN LTD, GARMIN INTERNATIONAL, INC., and GARMIN USA, INC. (collectively “Garmin” or “Defendants”) for the causes of action alleged as follows:

### **THE PARTIES**

1. ICON is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business located at 1500 South 1000 West, Logan, Utah 84321.

2. Garmin Ltd. is a corporation organized and existing under the laws of Switzerland, with its principal place of business located at Mühlentalstrasse 2, 8200 Schaffhausen, Switzerland.

3. Garmin International, Inc. is a corporation organized and existing under the laws of the State of Kansas, with its principal place of business located at 1200 E 151st Street, Olathe, Kansas 66062-3426.

4. Garmin USA, Inc. is a corporation organized and existing under the laws of the State of Kansas, with its principal place of business located at 1200 E 151st Street, Olathe, Kansas 66062-3426.

### **JURISDICTION AND VENUE**

5. This is a civil action arising under the patent laws of the United States, including, but not limited to, 35 U.S.C. § 271.

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338.

7. This Court has personal jurisdiction over Garmin because Garmin has purposely availed itself of the privileges and benefits of the laws of the State of Utah and has committed acts of patent infringement within this judicial district.

8. ICON alleges on information and belief that Garmin has sold or contracted for the sale of infringing goods within the State of Utah, to ICON's injury, which relate to the claims asserted by ICON, and out of which ICON's claims, in part, arise.

9. On information and belief, Garmin is the owner of the web site located at [www.garmin.com](http://www.garmin.com), which is available to persons within the State of Utah.

10. On information and belief, Garmin advertises, markets, sells, and offers its products through its web site, [www.garmin.com](http://www.garmin.com), which advertising, marketing, selling, and offering are available to the purchasing public in the State of Utah.

11. This Court's exercise of personal jurisdiction over Garmin is consistent with the Constitutions of the United States and the State of Utah.

12. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400.

## **FACTUAL BACKGROUND**

### **ICON's Patents**

13. ICON is an award-winning innovator in the field of exercise equipment and it markets and sells a variety of consumer products.

14. ICON came to its position of technological leadership through innovation and substantial investment in research, development and acquisition of cutting edge technologies. As a result of its endeavors, many of the technological innovations created and owned by ICON are protected by a valuable and diverse intellectual property portfolio that includes patents, trademarks, trade dress, and copyrights.

15. Many of ICON's technological innovations and acquisitions are protected, *inter alia*, by a portfolio of utility and design patents, including United States Patent Nos. 7,789,800

(the “’800 Patent”); 6,701,271 (the “’271 Patent”); 6,626,799 (the “’799 Patent”); and 6,921,351 (the “’351 Patent”), (collectively the “Asserted Patents”).

16. The ’800 Patent issued on September 7, 2010, with a filing date of December 21, 2005.

17. ICON is the owner by assignment of the ’800 Patent.

18. ICON has not licensed Garmin to practice the ’800 Patent, and Garmin does not have any right or authority to license others to practice the ’800 Patent.

19. The ’271 Patent issued on March 2, 2004, with a filing date of May 17, 2001.

20. ICON is the owner by assignment of the ’271 Patent.

21. ICON has not licensed Garmin to practice the ’271 Patent, and Garmin does not have any right or authority to license others to practice the ’271 Patent.

22. The ’799 Patent issued on September 30, 2003, with a filing date of August 20, 2001.

23. ICON is the owner by assignment of the ’799 Patent.

24. ICON has not licensed Garmin to practice the ’799 Patent, and Garmin does not have any right or authority to license others to practice the ’799 Patent.

25. Garmin has had knowledge of the existence of the ’799 Patent since at least as early as February 3, 2011.

26. The ’351 Patent issued on July 26, 2005, with a filing date of October 19, 2001.

27. ICON is the owner by assignment of the ’351 Patent.

28. ICON has not licensed Garmin to practice the ’351 Patent, and Garmin does not have any right or authority to license others to practice the ’351 Patent.

29. On information Garmin has, and has had, knowledge of the existence of the '800 Patent and '271 Patent since at least as early as the filing of the original Complaint in this lawsuit on November 18, 2011.

30. Garmin has had knowledge of the existence of the '351 Patent since at least as early as November 2011.

### **Garmin's Infringement of the Asserted Patents**

31. Garmin is in the business of manufacturing and selling various electronic devices and systems, most of which incorporate satellite navigation technology. Many of Garmin's devices and systems are designed for use during or in relation to fitness related activities.

32. Garmin's fitness monitoring devices and systems include, but are not limited to, personal global positioning system ("GPS") devices and systems, heart rate monitoring devices and systems, and other related monitoring devices systems. Garmin makes, imports, or sells in the United States a wide variety of these fitness monitoring devices and systems.

33. Garmin's fitness monitoring systems include, but are not limited to, wrist-worn devices (e.g., wrist-worn GPS or other monitoring devices), bicycle computers (e.g., portable, GPS enabled computers for attachment to bicycles), heart rate sensors (e.g., heart rate straps), and motion sensors (e.g., foot pods or accelerometers), for sensing and tracking users biological parameters (e.g., heart rate, movements, etc.) during fitness activities.

34. Some of Garmin's devices also include memory for storing data associated with sensed biological parameters and physical activity. The stored data can be uploaded from the training computers to users' personal computers or to a website for review and analysis.

35. At least on its website and in the user manuals of many of Garmin's infringing devices, such as the Edge 800, Garmin teaches and induces users to use the infringing devices in connection with a bicycle.

36. For example, on its website, Garmin teaches that the Edge 800 is "the first touchscreen GPS bike computer. Providing navigation and performance monitoring, Edge 800 is ideal for touring, commuting, competitive cycling and mountain biking."

37. In many instances, Garmin's infringing products are sold with a bicycle mount and instructions are provided to induce a user to mount a cycling computer to their bicycle.

38. For example, as seen on Garmin's website, "bike mounts" are included in the box, and sold with, the Edge 800.

39. Garmin operates and maintains a website with the domain name connect.garmin.com ("Garmin Connect Website") for use by users of Garmin's personal devices and systems.

40. Garmin allows and induces users to upload data from their Garmin fitness monitoring devices and systems to the Garmin Connect Website, access data uploaded to the Garmin Connect Website, share data with other users of the Garmin Connect Website, generate reports associated with the data, or otherwise evaluate and interact with the data.

41. For example, on its Garmin Connect website, Garmin instructs users to "[k]eep all of your workout data stored at Garmin Connect for comprehensive analysis. Garmin Connect presents your data in clear and easy to understand evaluation."

42. Many of Garmin's devices also communicate with sensors and other devices through a wireless communication protocol known as ANT or ANT+ (collectively, "ANT Protocol").

43. Garmin allows and induces user to use their Garmin fitness monitoring devices to communicate using the ANT Protocol.

44. For example, on its website, Garmin teaches and instructs its users that "[o]nce you've logged the miles, innovative ANT + wireless technology automatically transfers data to your computer when Forerunner is in range. No cables, no hookups. The data's just there, ready for you to analyze, categorize, and share through our online community, Garmin Connect."

45. ICON alleges upon information and belief that Garmin imports, makes, uses, sells, or offers for sale within the United States and within the State of Utah, either directly or through established distribution channels, fitness-related devices, including wrist-worn devices designated as, *inter alia*, FR70, and cycling computers designated as, *inter alia*, Edge 800.

46. Garmin has sold products that infringe the Asserted Patents including, but not limited to, the wrist-worn device designated as FR70; the cycling computer designated as Edge 800; or other devices that communicate using the ANT Protocol.

47. Garmin's infringing products, as designed, manufactured, and used, infringe the Asserted Patents. These infringing Garmin products have no substantial non-infringing uses.

48. By continuing to sell these infringing products with full knowledge of the Asserted Patents, Garmin has, and has had, specific intent to induce its users to infringe the Asserted Patents.

**FIRST CLAIM FOR RELIEF**  
**(Infringement of the '799 Patent)**

49. By this reference ICON realleges and incorporates the foregoing paragraphs as though fully set forth herein.

50. Garmin has infringed and continues to infringe one or more claims of the '799 Patent by making, using, selling, offering for sale within the United States, or importing into the United States products, systems, or services, including, but not limited to, the FR70 or Edge 800 devices, related devices, the Garmin Connect Website, or other devices that communicate using the ANT Protocol, which embody one or more of the claims of the '799 Patent, or by contributing to the infringement, inducing others to infringe, or carrying out acts constituting infringement of the '799 Patent under 35 U.S.C. § 271.

51. Garmin has induced and continues to induce others to infringe one or more claims of the '799 Patent by the manufacture, use, sale, offer for sale, importation, and instruction provided in connection with the FR70 or Edge 800 devices, related devices, the Garmin Connect Website, or other devices that communicate using the ANT Protocol.

52. To the extent that Garmin has sold or used infringing products, including, for example, the FR70 or Edge 800 devices, related devices, the Garmin Connect Website, or other devices that communicate using the ANT Protocol subsequent to receiving notice of the initiation of this action, Garmin has, and has had, the specific intent to induce others to infringe one or more claims of the '799 Patent by the aforesaid conduct.

53. Garmin has contributed and continues to contribute to the infringement of one or more claims of the '799 Patent by the manufacture, use, sale, offer for sale and importation of the FR70 or Edge 800 devices, related devices, the Garmin Connect Website, or other devices that



communicate using the ANT Protocol. Such devices and systems constitute a material part of the invention and are not staple articles or commodities of commerce suitable for substantial noninfringing uses. To the extent that Garmin has sold or used infringing products, including, for example, the FR70 or Edge 800 devices, related devices, the Garmin Connect Website, or other devices that communicate using the ANT Protocol subsequent to receiving notice of the initiation of this action, Garmin has done so with knowledge that such devices and systems constitute a material part of the invention.

54. The conduct of Garmin as set forth hereinabove gives rise to a cause of action for infringement of the '799 Patent, pursuant to at least 35 U.S.C. §§ 271 and 281.

55. On information and belief, Garmin has sold infringing products despite an objectively high likelihood that its actions constitute infringement.

56. Garmin's acts of infringement have caused damage to ICON, and ICON is entitled to recover the damages sustained as a result of Garmin's wrongful acts in an amount subject to proof at trial.

57. Garmin's infringement of the '799 Patent will continue to damage ICON's business, causing irreparable harm, for which there is no adequate remedy at law, unless it is enjoined by this Court.

58. To the extent that Garmin has sold or used infringing products, including, for example, the FR70 or Edge 800 devices, related devices, the Garmin Connect Website, or other devices that communicate using the ANT Protocol subsequent to receiving notice of the initiation of this action, despite an objectively high likelihood that its actions constitute infringement, Garmin has willfully and deliberately infringed the '799 Patent.

59. By reason of the foregoing, ICON is entitled to relief against Garmin, pursuant to at least 35 U.S.C. §§ 283–85, as more fully set forth herein below.

**SECOND CLAIM FOR RELIEF  
(Infringement of the '351 Patent)**

60. By this reference ICON realleges and incorporates the foregoing paragraphs as though fully set forth herein.

61. Garmin has infringed and continues to infringe one or more claims of the '351 Patent by making, using, selling, offering for sale within the United States, or importing into the United States products, systems, or services, including, but not limited to, the Edge 800 device, related devices, or the Garmin Connect Website, which embody one or more of the claims of the '351 Patent, or by contributing to the infringement, inducing others to infringe, or carrying out acts constituting infringement of the '351 Patent under 35 U.S.C. § 271.

62. Garmin has induced and continues to induce its customers to infringe one or more claims of the '351 Patent by the manufacture, use, sale, offer for sale, importation, and instruction provided in connection with the Edge 800 device, related devices, or the Garmin Connect Website.

63. To the extent that Garmin has sold or used infringing products, including, for example, the Edge 800 device, related devices, or the Garmin Connect Website subsequent to receiving notice of the initiation of this action, Garmin has, and has had, the specific intent to induce others to infringe one or more claims of the '351 Patent by the aforesaid conduct.

64. Garmin has contributed and continues to contribute to the infringement of one or more claims of the '351 Patent by the manufacture, use, sale, offer for sale, and importation of the Edge 800 device, related devices, or the Garmin Connect Website. Such devices and systems

constitute a material part of the invention and are not staple articles or commodities of commerce suitable for substantial noninfringing uses. To the extent that Garmin has sold or used infringing products, including, for example, the Edge 800 device, related devices, or the Garmin Connect Website subsequent to receiving notice of the initiation of this action, Garmin has done so with knowledge that such devices and systems constitute a material part of the invention.

65. The conduct of Garmin as set forth hereinabove gives rise to a cause of action for infringement of the '351 Patent, pursuant to at least 35 U.S.C. §§ 271 and 281.

66. On information and belief, Garmin has sold infringing products despite an objectively high likelihood that its actions constitute infringement.

67. Garmin's acts of infringement have caused damage to ICON, and ICON is entitled to recover the damages sustained as a result of Garmin's wrongful acts in an amount subject to proof at trial.

68. Garmin's infringement of the '351 Patent will continue to damage ICON's business, causing irreparable harm, for which there is no adequate remedy at law, unless it is enjoined by this Court.

69. To the extent that Garmin has sold or used infringing products, including, for example, the Edge 800 device, related devices, or the Garmin Connect Website after November 2011, despite an objectively high likelihood that its actions constitute infringement, Garmin has willfully and deliberately infringed the '351 Patent.

70. By reason of the foregoing, ICON is entitled to relief against Garmin, pursuant to at least 35 U.S.C. §§ 283–85, as more fully set forth herein below.

**PRAYER FOR RELIEF**

WHEREFORE, ICON prays for judgment as follows:

- A. A judgment finding Garmin liable for infringement of one or more of the claims of the '799 Patent and the '351 Patent.
- B. Orders of this Court temporarily, preliminarily, and permanently enjoining Garmin, its agents, servants, and any and all parties acting in concert with any of them, from directly or indirectly infringing in any manner any of the claims of the '799 Patent and the '351 Patent, pursuant to at least 35 U.S.C. § 283;
- C. A judgment finding Garmin liable for willful infringement of one or more of the claims of the '799 Patent and the '351 Patent.
- D. An award of damages to ICON for infringement of the '799 Patent and the '351 Patent, in an amount to be proved at trial, pursuant to all applicable law, including at least 35 U.S.C. § 283;
- E. An award of treble damages to ICON , pursuant to all applicable law, including at least 35 U.S.C. § 284;
- F. A declaration that this case is an exceptional case;
- G. An award of ICON's costs in bringing this action, pursuant to all applicable law, including at least 35 U.S.C. § 384;
- H. An award of ICON's attorneys' fees in this action, pursuant to all applicable law, including at least 35 U.S.C. § 285;
- I. Imposition of a constructive trust on, and an order requiring a full accounting of, the sales made by Garmin as a result of its wrongful or infringing acts alleged herein;

- J. Pre-judgment interest, pursuant to at least 35 U.S.C. § 284;
- K. Post-judgment interest, pursuant to at least 28 U.S.C. § 1961(a); and
- L. An award of any other and further relief as the Court deems just and equitable.

**DEMAND FOR JURY TRIAL**

ICON demands trial by jury on all claims and issues so triable.

DATED: December 19, 2013.

MASCHOFF BRENNAN

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