

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

CHARLES C. FREENY III, BRYAN E.  
FREENY, and JAMES P. FREENY,

Plaintiffs,

v.

ALIPHCOM D/B/A JAWBONE,

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GOPRO, INC.

Case No. 2:16-cv-00674-JRG-RSP

CONSOLIDATED

Case No. 2:16-cv-00672-JRG-RSP

**FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT AGAINST  
DEFENDANT GOPRO, INC.**

Plaintiffs Charles C. Freeny III, Bryan E. Freeny, and James P. Freeny (collectively “Plaintiffs”), for their First Amended Complaint against Defendant GoPro, Inc., hereby allege as follows:

**THE PARTIES**

1. Plaintiff Charles C. Freeny III is an individual residing in Flower Mound, Texas.
2. Plaintiff Bryan E. Freeny is an individual residing in Ft. Worth, Texas.
3. Plaintiff James P. Freeny is an individual residing in Spring, Texas.
4. On information and belief, Defendant GoPro, Inc. (“GoPro”) is a corporation duly organized and existing under the laws of the State of Delaware, having its principal place of business at 3000 Clearview Way, San Mateo, California 94402. On information and belief, GoPro may be served via its registered agent, Corporation Service Company dba CSC – Lawyers Incorporating Service Company, at 211 E. 7th Street, Suite 620, Austin, Texas 78701-3218.

**JURISDICTION AND VENUE**

5. This is an action for patent infringement arising under the Patent Act, 35 U.S.C. §§101 et seq. This Court has jurisdiction over Plaintiffs' federal law claims under 28 U.S.C. §§1331 and 1338(a).

6. This Court has specific and/or general personal jurisdiction over Defendant GoPro because it has committed acts giving rise to this action within this judicial district and/or has established minimum contacts within Texas and within this judicial district such that the exercise of jurisdiction over it would not offend traditional notions of fair play and substantial justice.

7. Venue is proper in this District pursuant to 28 U.S.C. §§1391(b)-(c) and 1400(b) because GoPro has committed acts within this judicial district giving rise to this action, and continues to conduct business in this district, and/or has committed acts of patent infringement within this District giving rise to this action.

**COUNT I**

**(INFRINGEMENT OF U.S. PATENT NO. 6,490,443)**

8. Plaintiffs re-allege and incorporate by reference the allegations set forth in the Paragraphs above as if fully set forth herein.

9. On December 3, 2002, the United States Patent and Trademark Office duly and lawfully issued United States Patent Number 6,490,443 ("the '443 patent"), entitled "Communication and Proximity Authorization Systems." A true and correct copy of the '443 patent is attached hereto as **Exhibit A**.

10. The '443 patent describes, among other things, novel systems in which electronic devices can communicate wirelessly to provide and/or receive services from other electronic devices when they are within proximity of each other. These communications can occur over

multiple communication signals and with the use of authorization codes.

11. The named inventor of the '443 patent is Charles C. Freeny, Jr., who is now deceased.

12. Plaintiffs are the sons of Charles C. Freeny, Jr., and Plaintiffs are the owners and assignees of all right, title and interest in and to the '443 patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

13. Plaintiffs have complied with the requirements of 35 U.S.C. § 287 with respect to the '443 patent.

14. GoPro manufactures and sells portable video cameras, including the GoPro Hero 4 Session, Hero 4 Black, Hero 4 Silver, Hero+, and Hero+LCD (“the accused GoPro products”).

15. The accused GoPro products can communicate with other electronic devices such as smartphones, tablets, computers, and remote control devices via Bluetooth and Wi-Fi communication signals, which are different types of wireless communication signals. For example, on its website at the URL <http://shop.gopro.com/hero4/hero4-black/CHDHX-401.html>, GoPro advertises that the Hero 4 Black device provides users with the ability to control the device as well as view and share video files remotely from a phone, tablet, or remote control via Bluetooth and Wi-Fi signals:



## Control, view and share with built-in Wi-Fi + Bluetooth®.

HERO4 Black features built-in Wi-Fi and Bluetooth, allowing you to connect to the GoPro App for mobile and Smart Remote.<sup>2</sup> The GoPro App transforms your phone or tablet into a live video remote for your camera, offering full control of all functions and settings, easy shot preview and playback, plus sharing via text, email, Facebook and more. The Smart Remote allows you to control multiple GoPro cameras from distances of up to 600' (180m).

16. GoPro also manufactures and sells remote control devices, such as the GoPro Smart Remote, that can be used to control the functions of the accused GoPro products remotely using Bluetooth and/or Wi-Fi communication signals.

17. On information and belief, the accused GoPro products are portable electronic devices that can communicate wirelessly over multiple communication signals with other devices such as smartphones, tablets, computers, and remote control devices when they are within proximity to such devices, and with the use of authorization codes. For example, the accused GoPro products include functionality for exchanging data with other devices such as smartphones, tablets, computers, and remote control devices over Bluetooth and Wi-Fi communication signals, both of which require the use of authorization codes (such as, for example, Bluetooth pairing codes, Wi-Fi network authentication/authorization data, device identification names and/or numbers, and passwords) to permit the exchange of data between the devices.

18. For example, as described on GoPro's website at the URL <https://gopro.com/help/articles/Block/How-to-Reset-the-Camera-s-Wi-Fi-Name-and-Password>, each accused GoPro product has a Wi-Fi name and password that is required to establish a wireless communications link to the product:

# Forgot Your Password? Here's How to Change Your Camera's Wi-Fi Name & Password

This article describes the process to change your camera's Wi-Fi Name and Password. Please follow the instructions for your camera model below:

- [HERO4](#)
- [HERO Session / HERO4 Session](#)
- [HERO+ LCD](#)
- [HERO+](#)
- [HERO3+](#)
- [HERO3](#)
- [HD HERO2](#)

19. As another example, Bluetooth is a communications protocol that requires devices to be paired to one another before data can be freely transmitted between the devices. This pairing process includes the exchange of a pairing code to authorize communications between the devices. As described on GoPro's website at the URL <https://gopro.com/support/articles/how-to-pair-the-camera-with-the-gopro-app>, for example, a unique "PIN" number is required to establish a Bluetooth pairing relationship between the accused GoPro products and other devices:

# How to Pair the Camera with the GoPro App

## HERO4 pairing process

Video Tutorial: [HERO4 Pairing Video](#)

### Pairing HERO4 Black or HERO4 Silver with the GoPro App for the First Time

1. Open the GoPro App and complete these steps:
  - o Tap "Connect Your Camera."
  - o Tap "Add New Device."
  - o Tap "HERO4."
2. On your camera, complete these steps:
  - o Press the mode button to power on your camera.
  - o Press the mode button until you see "Setup."
  - o Press the shutter button to open "Setup."
3. On the app, tap Continue.
4. On the camera, complete these steps:
  - o Press the shutter button twice to turn on Wi-Fi.
  - o Press the mode button to highlight "Pair," then press the shutter button to select it.
5. On the app, tap Continue.
6. On the camera, press the shutter button to select "GoPro App."
7. On the app, complete these steps:
  - o Tap "Continue."
  - o Enter the PIN that is listed on the camera's LCD screen, then tap "Pair."
  - o Enter a name and password for your camera.
  - o Tap "Update Your Camera."

20. On information and belief, GoPro has directly infringed and continues to directly infringe one or more claims of the '443 patent, including at least claim 90 of the '443 patent, in the State of Texas, in this judicial district, and elsewhere in the United States, by making, using, importing, offering for sale, and/or selling products that embody one or more of the inventions claimed in the '443 patent, including but not limited to the GoPro Hero 4 Session, Hero 4 Black, Hero 4 Silver, Hero+, Hero+LCD, and all reasonably similar products, in violation of 35 U.S.C. § 271(a).

21. For example, claim 90 of the '443 patent is directed to "[a] proximity authorization unit for use with proximity service units, some of the proximity service units being capable of receiving information via a first signal and some of the proximity service units being capable of receiving information via a second signal, the second signal being different from the

first signal, and each of the proximity service units providing a predetermined service when activated in response to receiving a request authorization code . . . .”

22. The accused GoPro products constitute proximity authorization units that can communicate with proximity service units (such as smartphones, tablets, computers, and remote control devices) over different signals to receive predetermined services from the service units when activated in response to receiving a request authorization code. For example, upon receiving a request authorization code (such as a Bluetooth pairing code, device identification name/number, and/or password) from an accused GoPro product transmitted via a Bluetooth signal, a smartphone, tablet, computer, or remote control device can provide predetermined services to the user such as remote control functions over the accused GoPro product and video viewing and sharing services. Similarly, upon receiving a request authorization code (such as Wi-Fi network authentication/authorization data, a device identification name/number, and/or password) from an accused GoPro product transmitted via a Wi-Fi signal, another smartphone, tablet, computer, or remote control device can provide predetermined services to the user such as remote control functions over the accused GoPro product and video viewing and sharing services.

23. On information and belief, GoPro is inducing and/or has induced infringement of one or more claims of the '443 patent, including at least claim 90, as a result of, among other activities, instructing, encouraging, and directing its customers on the use of the accused GoPro products in an infringing manner in violation of 35 U.S.C. § 271(b). On information and belief, GoPro has had knowledge of the '443 patent since at least the date of service of the original Complaint in this action. Despite this knowledge of the '443 patent, GoPro has continued to engage in activities to encourage and assist its customers in the use of the accused GoPro

products.

24. For example, through its website at [www.gopro.com](http://www.gopro.com), GoPro advertises the accused GoPro products and provides instructions and technical support on the use the accused GoPro products. On its website, GoPro advertises the benefits of using the accused Bluetooth and Wi-Fi functionality in the accused GoPro products, and provides instructions on how to set up and use the Bluetooth and Wi-Fi functionality in the accused GoPro products. For example, on its website at the URL <https://gopro.com/support/articles/how-to-pair-the-camera-with-the-gopro-app>, GoPro provides step-by-step instructions on how to set up Bluetooth and Wi-Fi connections between a GoPro accused product and a smartphone, tablet, or other computing device.

25. On information and belief, by using the accused GoPro products as encouraged and assisted by GoPro, GoPro's customers have directly infringed and continue to directly infringe one or more claims of the '443 patent, including at least claim 90. On information and belief, GoPro knew or was willfully blind to the fact that its activities in encouraging and assisting customers in the use of the accused GoPro products, including but not limited to the activities set forth above, would induce its customers' direct infringement of the '443 patent.

26. On information and belief, GoPro will continue to infringe the '443 patent unless enjoined by this Court.

27. GoPro's acts of infringement have damaged Plaintiffs in an amount to be proven at trial, but in no event less than a reasonable royalty. GoPro's infringement of Plaintiffs' rights under the '443 patent will continue to damage Plaintiffs, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.



**PRAYER FOR RELIEF**

Wherefore, Plaintiffs respectfully request that this Court enter judgment against GoPro as follows:

- a. For judgment that GoPro has infringed and continues to infringe the claims of the '443 patent;
- b. For a permanent injunction against GoPro and its respective officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from infringement of the '443 patent;
- c. For an accounting of all damages caused by GoPro's acts of infringement;
- d. For a judgment and order requiring GoPro to pay Plaintiffs' damages, costs, expenses, and pre- and post-judgment interest for its infringement of the '443 patent as provided under 35 U.S.C. § 284;
- e. For a judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Plaintiffs their reasonable attorneys' fees; and
- f. For such other relief at law and in equity as the Court may deem just and proper.

**DEMAND FOR A JURY TRIAL**

Plaintiffs demand a trial by jury of all issues triable by a jury.

Dated: September 22, 2016

Respectfully submitted,

/s/ Christopher D. Banys

Christopher D. Banys - *Lead Attorney*

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**ATTORNEYS FOR PLAINTIFFS**

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**AND JAMES P. FREENY**

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was filed electronically on September 22, 2016 in compliance with Local Rule CV-5(a). Therefore, this document was served on all counsel who are deemed to have consented to electronic service.

/s/ Tiffany Dang  
Tiffany Dang