IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

BLACKBIRD TECH LLC d/b/a BLACKBIRD TECHNOLOGIES, Plaintiff, v. WAHOO FITNESS L.L.C. Defendant.	C.A. No. 16-688-GMS JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Blackbird Tech LLC d/b/a Blackbird Technologies ("Blackbird Technologies") hereby alleges for its Complaint for Patent Infringement against Wahoo Fitness L.L.C. on personal knowledge as to its own activities and on information and belief as to all other matters, as follows:

THE PARTIES

1. Plaintiff Blackbird Technologies is a limited liability company organized under the laws of Delaware, with its principal place of business located at 200 Baker Avenue, Suite 203, Concord, MA 01742.

2. Defendant Wahoo Fitness L.L.C. is a Georgia limited liability company with its principal place of business at 90 W. Wieuca Rd., Suite 110, Atlanta, Georgia 30342.

3. Defendant transacts substantial business, either directly or through agents, on an ongoing basis in this judicial district and elsewhere in the United States.

JURISDICTION AND VENUE

4. This is an action for patent infringement arising under the provisions of the Patent Laws of the United States of America, Title 35, United States Code §§ 100, *et seq*.

5. Subject-matter jurisdiction over Blackbird Technologies' claims is conferred upon this Court by 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1338(a) (patent jurisdiction).

6. This Court has personal jurisdiction over Defendant because, inter alia, Defendant has established minimum contacts with this forum. Defendant regularly conducts business in the district, including by selling and/or offering to sell products, such as fitness trackers, in the state of Delaware. For example, Wahoo uses product dealers and distributors in the United States to offer to sell and sell fitness trackers in Delaware, among other states, including wahoofitness.com, amazon.com, Wooden Wheels and Brandywine Cyclery.

7. Defendant's actions constitute patent infringement in this District in violation of 35 U.S.C. § 271, and Defendant has placed infringing products into the stream of commerce, with the knowledge and understanding that such products are sold and/or offered for sale in this District. The acts by Defendant have caused injury to Blackbird Technologies within this District.

8. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 (b) and (c) and § 1400(b) and because Defendant transacts business within this District and has sold and/or offered for sale in this District products that infringe claims of U.S. Patent No. 6,434,212.

BACKGROUND

9. Defendant's product line includes the TICKR Run and the TICKR X.

10. Defendant's manufacture, use, import, offer for sale, and/or sales of the TICKR Run and the TICKR X infringe one or more claims of the Patent-in-Suit.

11. Blackbird Technologies' initial complaint was filed on August 9, 2016.

12. Defendant was served the initial complaint on August 30, 2016. On or about August 10, 2016, Blackbird Technologies sent a copy of the initial complaint, including a copy of the Patent-in-Suit, to Defendant via priority U.S. mail. Upon information and belief, Defendant received such correspondence.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 6,434,212

13. Blackbird Technologies reasserts and incorporates herein by reference the allegations of all preceding paragraphs of this Complaint as if fully set forth herein.

14. On August 13, 2002, U.S. Patent No. 6,434,212 (the "212 Patent") entitled "Pedometer," a true and correct copy of which is attached hereto as Exhibit 1, was duly and legally issued by the U.S. Patent and Trademark Office. Blackbird Technologies is the owner by assignment of all right, title, and interest to the 212 Patent, including all right to recover for any and all infringement thereof. The 212 Patent is valid and enforceable.

15. The 212 Patent concerns pedometers and exercise monitoring devices. A pedometer or other exercise monitoring device is not a general purpose computer. At the time of invention, those working in the field knew that it would be useful for pedometers and other exercise monitoring devices to track various fitness-related activities, such as the distance travelled by a person wearing or otherwise carrying the device while travelling by foot. However, although some exercise monitoring devices known at the time of invention could estimate distance travelled, they utilized many various designs to do so, with highly varying degrees of accuracy.

16. The designs claimed in the 212 Patent represent specific improvements to the exercise monitoring device itself – including, in Claim 6, a step counter, a transmitter, a mountable receiver, and a programmed data processor – as well as to the technological processes relied upon by such devices to estimate distance travelled.

17. With respect to foot travel, the length of a person's stride (stride length) generally varies with how many strides the person is taking over a given period of time (stride rate). Moreover, the relationship between stride length and stride rate itself varies from person to person. Improvements claimed in the 212 Patent resulted from the inventor conceiving of specific design configurations for pedometers and other exercise monitoring devices that could effectively utilize these relationships to improve the accuracy of distance calculations by enabling the device to efficiently account for changes in a user's pace during a workout without losing accuracy in distance calculation. For example, pedometers and other exercising monitoring devices claimed in the 212 Patent include data processors, step counters, transmitters, and receivers arranged and programmed in specific ways in order to apply the relationship between stride length and stride rate and to accommodate the varying nature of that relationship across individuals, and ultimately in order to improve accuracy. Pedometers and other exercising monitoring devices claimed in the 212 Patent optionally further include componentry for supporting, performing, and utilizing a calibration function that effectuates the inventor's recognitions about variations in stride by analyzing input signals and performing calculations based on those signals.

18. Advantages for the user of pedometers embodying the claimed designs include convenience and accuracy. For the manufacturer, such advantages include lower costs of manufacturing.

TICKR Run

19. Defendant has infringed literally and/or under the doctrine of equivalents one or more of the claims of the 212 Patent by making, using, importing, selling and/or offering to sell, in this judicial district and/or elsewhere in the United States, the TICKR Run, which is covered by at least claim 6 of the 212 Patent.

20. The TICKR Run is a pedometer with a step counter. Ex. 2 (Wahoo TICKR web page); Ex. 8 (TICKR Run Features); Ex. 6 (TICKR Run FAQ).

21. The TICKR Run provides "strideCount," therefore it must include a transmitter in communication with the step counter to generate a step count signal corresponding to each step and transmit the step count signal as well as a receiver to receive the step count signal from the transmitter. Ex. 2 (Wahoo TICKR web page); Ex. 3 (App Screen Grab 1); Ex. 6 (TICKR Run FAQ); Ex. 11 (Wahoo Fitness API web page).

22. The receiver is mountable on a user body portion. Ex. 2 (Wahoo TICKR web page).

23. The TICKR Run includes a data processor programmed to calculate the distance travelled by the user. Ex. 2 (Wahoo TICKR web page); Ex. 3 (App Screen Grab 1); Ex. 5 (TICKR Run Instructions).

24. For instance, the TICKR Run calculates distance data on a treadmill after a calibration. Ex. 2 (Wahoo TICKR web page); Ex. 3 (App Screen Grab 1).

25. The TICKR Run data processor, a "footpod sensor" worn on a user's chest, adheres to the Wahoo Fitness API. Ex. 10 (Wahoo Fitness API web page for "moduleLocation").

26. The TICKR Run provides "strideCount" data. Ex. 11 (Wahoo Fitness API web page).

27. The TICKR Run provides "cadence" data, which is stride rate measured in strides per minute. Ex. 11 (Wahoo Fitness API web page).

28. The TICKR Run computes "distance" data. Ex. 11 (Wahoo Fitness API web page).

29. The distance computations by the TICKR Run, at least in treadmill mode, are "more accurate" if the user calibrates the device. Ex. 3 (App Screen Grab 1), Ex. 4 (App Screen Grab 2).

30. Wahoo recommends a 6-minute calibration, including 2 minutes at an easy pace, 2 minutes at a moderate pace, and 2 minutes at a fast pace, as "more accurate." Ex. 3 (App Screen Grab 1), Ex. 4 (App Screen Grab 2).

31. "Easy pace," "moderate pace," and "fast pace" represent different rates at which steps are taken (different stride rates).

32. On information and belief, the TICKR Run calibration of at least three different stride rates consists of determining a range of stride lengths calculated from the range of corresponding stride rates.

33. As such, on information and belief, the TICKR Run data processor measures the number of steps counted by the step counter (stride count) as well as stride rate (cadence) data and calculates a distance travelled based on multiplying that stride count by a stride length which varies based on the stride rate, at least when the user has calibrated the device as instructed.

34. As such, on information and belief, the device, at least in treadmill mode, multiplies the number of steps counted by the step counter by a stride length that varies in

accordance with a stride rate and is further programmed to derive an actual stride length from a range of stride lengths calculated from a range of corresponding stride rates.

35. As such, at least claim 6 of the 212 Patent reads on the TICKR Run.

TICKR X

36. Defendant has infringed literally and/or under the doctrine of equivalents one or more of the claims of the 212 Patent by making, using, importing, selling and/or offering to sell, in this judicial district and/or elsewhere in the United States, the TICKR X, which is covered by at least claim 6 of the 212 Patent.

37. The TICKR X is a pedometer with a step counter. Ex. 2 (Wahoo TICKR web page); Ex. 7 (TICKR X Features); Ex. 9 (TICKR X Instructions).

38. The TICKR X generates "strideCount," therefore it must include a transmitter in communication with the step counter to generate a step count signal corresponding to each step and transmit the step count signal as well as a receiver to receive the step count signal from the transmitter. Ex. 2 (Wahoo TICKR web page); Ex. 3 (App Screen Grab 1); Ex. 11 (Wahoo Fitness API web page).

39. The receiver is mountable on a user body portion. Ex. 2 (Wahoo TICKR web page).

40. The TICKR X includes a data processor programmed to calculate the distance travelled by the user. Ex. 2 (Wahoo TICKR web page); Ex. 3 (App Screen Grab 1); Ex. 9 (TICKR X Instructions).

41. For instance, the TICKR X calculates distance data on a treadmill after a calibration. Ex. 2 (Wahoo TICKR web page); Ex. 3 (App Screen Grab 1).

42. The TICKER X data processor, a "footpod sensor" worn on the user's chest, adheres to the Wahoo Fitness API. Ex. 10 (Wahoo Fitness API web page for "module location").

43. The TICKR X provides provides "strideCount" data. Ex. 11 (Wahoo Fitness API web page).

44. The TICKR Run provides "cadence" data, which is stride rate measured in strides per minute. Ex. 11 (Wahoo Fitness API web page).

45. The TICKR X computes "distance" data. Ex. 11 (Wahoo Fitness API web page).

46. The distance computations by the TICKR X, at least in treadmill mode, are "more accurate" if the user calibrates the device. Ex. 3 (App Screen Grab 1), Ex. 4 (App Screen Grab 2).

47. Wahoo recommends a 6-minute calibration, including 2 minutes at an easy pace, 2 minutes at a moderate pace, and 2 minutes at a fast pace, as "more accurate." Ex. 3 (App Screen Grab 1), Ex. 4 (App Screen Grab 2).

48. "Easy pace," "moderate pace," and "fast pace" represent different rates at which steps are taken (different stride rates).

49. On information and belief, the TICKR X calibration of at least three different stride rates consists of determining a range of stride lengths calculated from the range of corresponding stride rates.

50. As such, on information and belief, the TICKR X data processor measures the number of steps counted by the step counter (stride count) as well as stride rate (cadence) data and calculates a distance travelled based on multiplying that stride count by a stride length which varies based on the stride rate, at least when the user has calibrated the device as instructed.

51. As such, on information and belief, the device, at least in treadmill mode, multiplies the number of steps counted by the step counter by a stride length that varies in accordance with a stride rate and is further programmed to derive an actual stride length from a range of stride lengths calculated from a range of corresponding stride rates.

52. As such, at least claim 6 of the 212 Patent reads on the TICKR X.

Induced Infringement

53. Blackbird Technologies reasserts and incorporates herein by reference the allegations of all preceding paragraphs of this Complaint as if fully set forth herein.

54. In addition, Wahoo has actively induced infringement of the 212 Patent by instructing end users of the TICKR Run and TICKR X devices to use those devices. As explained above, these devices are covered by at least claim 6 of the 212 Patent. Accordingly, end users' use of these devices is an act of direct infringement. Wahoo actively induces this direct infringement by instructing and encouraging end users to use these devices, including the calibration feature described in detail above.

55. For example, regarding the TICKR Run, Defendant's literature instructs that end users should "use the calibration function when on a treadmill to enable your TICKR Run to accurately measure your running speed and distance when performing a treadmill workout." Ex. 5 (TICKR Run Instructions) states that "after a brief calibration on a treadmill, TICKR Run can measure your running speed and distance indoors," and further that a 6-minute calibration, including 2 minutes at each of three stride rates, is "more accurate." *See also* Ex. 3 (App Screen Grab 1); Ex. 4 (App Screen Grab 2). Wahoo's inducement also included instructions to users as to "How to Calibrate Your TICKR Run for Treadmill Workouts." Ex. 5 (TICKR Run Instructions). Wahoo's inducement further included provision of the RunFit application,

including instructions to "use the calibration function when on a treadmill to enable your TICKR X to accurately measure your running speed and distance when performing a treadmill workout." Ex. 12 (RunFit web page).

56. By way of further example, the TICKR X literature instructs that end users should "use the calibration function when on a treadmill to enable your TICKR X to accurately measure your running speed and distance when performing a treadmill workout." Ex. 9 (TICKR X Instructions). Wahoo's inducement also includes instructions to users as to "How to Calibrate Your TICKR X for Treadmill Workouts." Ex. 9 (TICKR X Instructions). Wahoo's inducement further included provision of the RunFit application, including instructions to "use the calibration function when on a treadmill to enable your TICKR X to accurately measure your running speed and distance when performing a treadmill workout." Ex. 12 (RunFit web page).

57. Defendant markets and otherwise touts the accuracy of the devices in question, which is based on an infringing design. Defendant actively induces these actions while knowing that the induced acts constitute infringement of the 212 Patent, which for example has been detailed in both the original complaint and this amended complaint. Defendant has had actual knowledge of the 212 Patent since at least on or about August 10, 2016, when a copy of the original complaint as well as a copy of the 212 Patent were provided to Defendant via letter correspondence and, since that time, has been aware that the TICKR RUN and TICKR X devices infringe the 212 Patent. Accordingly, since at least that time and upon information and belief, Wahoo has specifically intended its customers to infringe the 212 Patent and has known that its customers' acts constitute infringement.

Willful Infringement

58. Blackbird Technologies reasserts and incorporates herein by reference the allegations of all preceding paragraphs of this Complaint as if fully set forth herein.

59. Defendant's infringement of at least claim 6 of the 212 Patent has been and continues to be willful. Defendant has had notice of the 212 Patent since at least on or about August 10, 2016, when a copy of the original complaint as well as a copy of the 212 Patent were provided to Defendant via letter correspondence and, since at least that time, has had knowledge of the objectively high likelihood of infringement.

Damages

60. Blackbird Technologies is informed and believes, and on that basis alleges, that Defendant gained profits by virtue of infringement of the 212 Patent.

61. Blackbird Technologies has sustained damages as a direct and proximate result of Defendant's infringement of the 212 Patent.

62. As a consequence of Defendant's infringement of the 212 Patent, Blackbird Technologies is entitled to recovery of damages in the form of, at a minimum, a reasonable royalty.

63. As a consequence of Defendant's willful infringement of the 212 Patent, Blackbird Technologies is entitled to enhanced damages pursuant to 35 U.S.C. § 284.

PRAYER FOR RELIEF

WHEREFORE, Blackbird Technologies respectfully requests that this Court enter judgment against Defendant, as follows:

A. Adjudging that the 212 Patent is valid and enforceable;

B. Adjudging that Defendant has infringed one or more claims of the 212 Patent, literally and/or under the doctrine of equivalents, in violation of 35 U.S.C. § 271;

C. An award of damages to be paid by Defendant adequate to compensate Blackbird Technologies for its past infringement and any continuing or future infringement up until the date such judgment is entered, and in no event less than a reasonable royalty, including interest, costs, and disbursements as justified under 35 U.S.C. § 284 and, if necessary to adequately compensate Blackbird Technologies for Defendant's infringement, an accounting of all infringing sales including, but not limited to, those sales not presented at trial;

D. Ordering Defendant to continue to pay royalties to Blackbird Technologies for any continuing or future infringement of the 212 Patent on a going-forward basis;

E. Awarding Blackbird Technologies pre-judgment and post-judgment interest at the maximum rate permitted by law on its damages;

F. Enhancement and/or trebling of Plaintiff's damages pursuant to 35 U.S.C. § 284; and

G. Blackbird Technologies be granted such further relief as this Court deems just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Blackbird Technologies demands a trial by jury on all claims and issues so triable.

Dated: November 14, 2016

STAMOULIS & WEINBLATT LLC

/s/ Stamatios Stamoulis

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