IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

BLACKBIRD TECH LLC d/b/a BLACKBIRD TECHNOLOGIES, Plaintiff, v. SONY MOBILE COMMUNICATIONS (USA), INC. Defendant.	C.A. No. 16-685-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 First Amended Complaint for Patent Infringement[1] against the above-named Defendant,[2] 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. Sony Mobile Communications (USA), Inc. is a Delaware Corporation with its principal place of business at 3333 Piedmont Road NE, Atlanta, Georgia 30305. Sony Mobile

[1] Plaintiff files this amended complaint pursuant to Federal Rule of Civil Procedure 15(a)(2). Defendant has provided written consent for plaintiff to amend.
[2] Plaintiff's original Complaint (D.I. 1) also included Sony Corporation and Sony Corporation of America as defendants. Sony Corporation and Sony Corporation of America were subsequently dismissed by plaintiff. D.I. 9.

Communications (USA), Inc.'s registered agent for service of process is Capitol Services, Inc., 1675 South State Street, Suite B, Dover, DE 19901.

JURISDICTION AND VENUE

3. 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*.

4. 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).

5. This Court has personal jurisdiction over Defendant because Defendant is subject to general and specific jurisdiction in the State of Delaware.

6. Defendant is a Delaware corporation.

7. Defendant regularly conducts business in the State of Delaware, including by selling and/or offering to sell products, such as fitness trackers, in the State of Delaware. Defendant has established minimum contacts with this forum. For example, Defendant uses product dealers and distributors in the United States to offer to sell and sell fitness trackers in Delaware, among other states, including amazon.com and newegg.com.

8. 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.

9. 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

10. Defendant's product line includes the SmartBand, the SmartBand 2, and the SmartBand Talk.

11. Defendant supplies applications that must be used in conjunction with the SmartBand, the SmartBand 2, and the SmartBand Talk, namely the SmartBand application, the SmartBand 2 application, and the SmartBand Talk application, respectively. Ex. 2 (SmartBand User Guide) at 6; Ex. 3 (SmartBand 2 User Guide) at 3; Ex. 4 (SmartBand Talk User Guide) at 3.

12. Defendant supplies an application called Lifelog. Ex. 11.

13. The SmartBand, SmartBand 2, and SmartBand Talk, with their associated applications including Lifelog, are complete and operable systems manufactured, imported. offered for sale, sold, and used by defendant.

14. Defendant's manufacture, use, importation, offer for sale, and/or sale of the SmartBand, the SmartBand 2, and the SmartBand Talk, with associated applications including Lifelog, infringe one or more claims of the Patent-in-Suit.

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

16. Defendant was served the initial complaint on August 30, 2016.

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

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

18. 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 rights, title, and interest to the 212 Patent, including all rights to recover for any and all infringement thereof. The 212 Patent is valid and enforceable.

19. 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.

20. 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 and, in Claims 2 and 5, a step counter and heart rate monitor joined to a strap used to releasably secure the exercise monitoring device to the user – as well as to the technological processes relied upon by such devices to estimate distance travelled.

21. 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.

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

Sony SmartBand

23. 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 SmartBand, which is covered by at least claim 6 of the 212 Patent.

24. The SmartBand is a device to be worn on the wrist to help a user track daily activities. Ex. 2 (SmartBand User Guide) at 3.

25. The SmartBand must be used in conjunction with an application made available by Defendant, namely the SmartBand application. Ex. 2 (SmartBand User Guide) at 6.

26. The SmartBand is designed to be used in conjunction with an application made available by Defendant, namely the Lifelog application. Ex. 2 (SmartBand User Guide) at 14.

27. According to Defendant, "for your SmartBand to work . . . the latest version[] of . . . the following applications must be installed on [your] Android device: . . . SmartBand and Lifelog." Ex. 2 (SmartBand User Guide) at 14.

28. Defendant instructs users of the SmartBand to download the SmartBand and Lifelog applications. Ex. 2 (SmartBand User Guide) at 7, 13.

29. As such, the SmartBand, the SmartBand application, and the Lifelog application are one complete and operable system manufactured, imported, offered for sale, sold, and used by defendant.

30. The SmartBand is a pedometer with a step counter. Ex. 2 (SmartBand User Guide) at 3, 7; Ex. 8 (SmartBand Whitepaper) at 5.

31. The SmartBand "collects information about [the user's] step count as well as data about [the user's] walking, running and sleeping." Ex. 2 (SmartBand User Guide) at 3.

32. The SmartBand tracks and stores "step count," 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 transmitted from the transmitter. Ex. 2 (SmartBand User Guide) at 3, 19.

33. The receiver is mountable on a user body portion, for example, the wrist. Ex. 2 (SmartBand User Guide) at 12.

34. The SmartBand, with its applications, includes a data processor programmed to calculate the distance travelled by the user. Ex. 2 (SmartBand User Guide) at 14; Ex. 8 (SmartBand Whitepaper) at 5.

35. According to the SmartBand User Guide, the SmartBand with its associated applications, "uses the number of steps you have taken and your stride length to calculate the distance you have walked or run." Ex. 2 (SmartBand User Guide) at 14.

36. Stride length can be adjusted for increased accuracy for both walking and running stride lengths. Ex. 2 (SmartBand User Guide) at 14.

37. Defendant instructs users to adjust the stride length for walking by accessing the Lifelog application, choosing to change their profile settings, which include stride length, by "unmarking" the "automatic [stride length] checkbox, and scrolling up or down to adjust the walking stride length settings. Ex. 2 (SmartBand User Guide) at 14.

38. Defendant instructs users to adjust the stride length for running by accessing the Lifelog application, choosing to change their profile settings, which include running stride length, by "unmarking" the "automatic [stride length] checkbox, and scrolling up or down to adjust the running stride length settings. Ex. 2 (SmartBand User Guide) at 14.

39. "Walking" and "running" represent different stride rates.

40. As such, the SmartBand, at least when used with its associated applications, multiplies the number of steps counted by the step counter by a stride length that varies in accordance with a stride rate.

41. Thus, the device calculates a distance travelled by multiplying a number of steps counted by a stride length that varies according to a rate at which steps are taken, and is further

programmed to derive an actual stride length from a range of stride lengths calculated from a range of corresponding stride rates, at least whenever a user utilizes this feature.

42. As such, at least claim 6 of the 212 Patent reads on the SmartBand, at least when used with its associated applications.

Sony SmartBand2

43. Further, 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 SmartBand 2, which is covered by at least claim 6 of the 212 Patent.

44. The SmartBand 2 is a device to be worn on the wrist to monitor body movements. Ex. 3 (SmartBand 2 User Guide) at 3.

45. The SmartBand 2 must be used in conjunction with an application made available by Defendant, namely the SmartBand 2 application. Ex. 3 (SmartBand 2 User Guide) at 3.

46. The SmartBand 2 is designed to be used in conjunction with an application made available by Defendant, namely the Lifelog application. Ex. 3 (SmartBand 2 User Guide) at 7, 8, 11, 16-19.

47. According to Defendant, "For your SmartBand 2 to work properly, you must install the latest version of the SmartBand 2 application . . . [and] the Lifelog application . . ." Ex. 3 (SmartBand 2 User Guide) at 7.

48. Defendant instructs users of the SmartBand 2 to download the SmartBand 2 and Lifelog applications. Ex. 3 (SmartBand 2 User Guide) at 7, 16.

49. As such, the SmartBand 2, the SmartBand 2 application, and the Lifelog application are one complete and operable system manufactured, imported, offered for sale, sold, and used by Defendant.

50. The SmartBand 2 is a pedometer with a step counter. Ex. 3 (SmartBand 2 User Guide) at 3.

51. For example, according to the SmartBand 2 User Guide, the SmartBand 2 "counts your steps and records data." Ex. 3 (SmartBand 2 User Guide) at 3.

52. The SmartBand 2 can provide data on "steps," 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 transmitted from the transmitter. Ex. 6 (SmartBand 2 API Info).

53. The receiver is mountable on a user body portion, for example, the wrist. Ex. 3 (SmartBand 2 User Guide) at 14.

54. The SmartBand 2, with its applications, includes a data processor programmed to calculate the distance travelled by the user. Ex. 3 (SmartBand 2 User Guide) at 19.

55. According to the SmartBand 2 User Guide, the SmartBand 2 with its associated applications, "uses the number of steps you have taken and your stride length to calculate the distance you have walked or run." Ex. 3 (SmartBand 2 User Guide) at 19.

56. Stride length can be adjusted for increased accuracy for both walking and running stride lengths. Ex. 3 (SmartBand 2 User Guide) at 19.

57. Defendant instructs users to adjust the stride length for walking by accessing the Lifelog application, choosing to change their profile settings, which include stride length, by

"unmarking" the "automatic [stride length] checkbox, and scrolling up or down to adjust the walking stride length settings. Ex. 3 (SmartBand 2 User Guide) at 17.

58. Defendant instructs users to adjust the stride length for running by accessing the Lifelog application, choosing to change their profile settings, which include running stride length, by "unmarking" the "automatic [stride length] checkbox, and scrolling up or down to adjust the running stride length settings. Ex. 3 (SmartBand 2 User Guide) at 17.

59. "Walking" and "running" represent different stride rates.

60. As such, the SmartBand 2, at least when used with its associated applications, multiplies the number of steps counted by the step counter by a stride length that varies in accordance with a stride rate.

61. Thus, the device calculates a distance travelled by multiplying a number of steps counted by a stride length that varies according to a rate at which steps are taken, and is further programmed to derive an actual stride length from a range of stride lengths calculated from a range of corresponding stride rates, at least whenever a user utilizes this feature.

62. As such, at least claim 6 of the 212 Patent reads on the SmartBand 2, at least when used with its associated applications.

Sony SmartBand Talk

63. Further, 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 SmartBand Talk, which is covered by at least claim 6 of the 212 Patent.

64. The SmartBand Talk is a device to be worn on the wrist to monitor a user's body movements and . . . count [a user's] steps and record[] data about [the user's] physical state." Ex. 4 (SmartBand Talk User Guide) at 3.

65. The SmartBand Talk must be used in conjunction with an application made available by Defendant, namely the SmartBand Talk application. Ex. 4 (SmartBand Talk User Guide) at 3.

66. The SmartBand Talk is designed to be used in conjunction with an application made available by Defendant, namely the Lifelog application. Ex. 4 (SmartBand Talk User Guide) at 3, 7, 8, 15, 18-21.

67. According to Defendant, "For your SmartBand Talk to work properly, you must install the latest version of the SmartBand Talk application . . . [and] the Lifelog application . . ." Ex. 4 (SmartBand Talk User Guide) at 7.

68. Defendant instructs users of the SmartBand Talk to download the SmartBand Talk and Lifelog applications. Ex. 4 (SmartBand Talk User Guide) at 7.

69. As such, the SmartBand Talk, the SmartBand Talk application, and the Lifelog application are one complete and operable system manufactured, imported, offered for sale, sold, and used by Defendant.

70. The SmartBand Talk is a pedometer with a step counter. Ex. 4 (SmartBand Talk User Guide) at 3; Ex. 9 (SmartBand Talk Specs) at 1.

71. The SmartBand Talk can display step count, 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 transmitted from the transmitter. Ex. 5 (SmartBand Talk Web Site).

72. The receiver is mountable on a user body portion, for example, the wrist. Ex. 4 (SmartBand Talk User Guide) at 12.

73. The SmartBand Talk, with its applications, includes a data processor programmed to calculate the distance travelled by the user. Ex. 4 (SmartBand Talk User Guide) at 19.

74. According to the SmartBand Talk User Guide, the SmartBand Talk with its associated applications "uses the number of steps you have taken and your stride length to calculate the distance you have walked or run." Ex. 4 (SmartBand Talk User Guide) at 19.

75. Stride length can be adjusted for increased accuracy for both walking and running stride lengths. Ex. 4 (SmartBand Talk User Guide) at 19.

76. Defendant instructs users to adjust the stride length for walking by accessing the Lifelog application, choosing to change their profile settings, which include stride length, by "unmarking" the "automatic [stride length] checkbox, and scrolling up or down to adjust the walking stride length settings. Ex. 4 (SmartBand Talk User Guide) at 19.

77. Defendant instructs users to adjust the stride length for running by accessing the Lifelog application, choosing to change their profile settings, which include running stride length, by "unmarking" the "automatic [stride length] checkbox, and scrolling up or down to adjust the running stride length settings. Ex. 4 (SmartBand Talk User Guide) at 19.

78. "Walking" and "running" represent different stride rates.

79. As such, the SmartBand Talk, at least when used with its associated applications, multiplies the number of steps counted by the step counter by a stride length that varies in accordance with a stride rate.

80. Thus, the device calculates a distance travelled by multiplying a number of steps counted by a stride length that varies according to a rate at which steps are taken, and is further

programmed to derive an actual stride length from a range of stride lengths calculated from a range of corresponding stride rates, at least whenever a user utilizes this feature.

81. As such, at least claim 6 of the 212 Patent reads on the SmartBand Talk, at least when used its associated applications.

Induced Infringement

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

83. In addition, Defendant has actively induced infringement of the 212 Patent by instructing end users of the of the SmartBand, SmartBand 2, and SmartBand Talk to use those devices with associated applications including Lifelog. As explained above, these devices are covered by at least claim 6 of the 212 Patent. Accordingly, end users' use of these devices, at least when used with associated applications including Lifelog, is an act of direct infringement. Defendant actively induces this direct infringement by instructing and encouraging end users to use these devices, including the applications and features described in detail above. For example, Defendant's literature instructs users how to adjust the stride lengths for both walking and running utilized to calculate the distance walked or run. Ex. 2 (SmartBand User Guide) at 14; Ex. 3 (SmartBand 2 User Guide) at 19; Ex. 4 (SmartBand Talk User Guide) at 19. 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 has been detailed in both the original and this amended complaint. Defendant has had actual knowledge of the 212 Patent since at least August 30, 2016, when served the original complaint as well as a copy of the 212 Patent and, since that time, have been aware that the SmartBand, SmartBand 2, and SmartBand Talk infringe the 212

Patent. Accordingly, since at least that time and upon information and belief, Defendant has specifically intended its customers to infringe the 212 Patent and known that its customers' acts constitute infringement.

Willful Infringement

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

85. 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 30, 2016, when a copy of the original complaint as well as a copy of the 212 Patent were served to Defendant and, since at least that time, has had knowledge of the objectively high likelihood of infringement.

Damages

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

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

88. 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.

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

PRAYER FOR RELIEF

90. 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 for Defendant's willful infringement of the 212 Patent 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 17, 2016

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