

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

LOGANTREE LP

Plaintiff,

v.

GARMIN INTERNATIONAL, INC.,
GARMIN USA, INC., and GARMIN, LTD.

Defendants.

CIVIL ACTION NO. 5:17-cv-98

JURY DEMAND

PLAINTIFF'S ORIGINAL COMPLAINT

1. Plaintiff LoganTree LP ("LoganTree") files this, its Original Complaint for patent infringement. Plaintiff asserts claims for patent infringement of U.S. Patent No. 6,059,576 ("the '576 Patent"), as reexamined, against Defendants Garmin International, Inc. ("Garmin Int'l"), Garmin USA, Inc. ("Garmin USA"), and Garmin, Ltd. (collectively, "Garmin"), under 35 U.S.C. § 271, *et seq.* In support thereof, LoganTree would respectfully show the Court the following:

PARTIES

2. Plaintiff LoganTree LP ("Plaintiff" or LoganTree") is a partnership organized under the laws of the state of Nevada. LoganTree's sole general partner is Gulfstream Ventures, LLC ("Gulfstream"), a limited liability company organized under the laws of the state of Nevada. Theodore and Anne Brann are the owners and sole managing members of Gulfstream, and they reside at P.O. Box 2345, Boerne, Texas 78006.

3. Upon information and belief, Defendant Garmin Int'l is a corporation organized and existing under the laws of the State of Kansas, with its principal place of business at 1200 East 151st Street, Olathe, Kansas 66062. Garmin Int'l may be served through its registered agent, David Ayres, at 1200 East 151st Street, Olathe, Kansas 66062.

4. Upon information and belief, Defendant Garmin USA is a corporation organized and existing under the laws of the State of Kansas, with its principal place of business at 1200 East 151st Street, Olathe, Kansas 66062. Garmin Int'l may be served through its registered agent, David Ayres, at 1200 East 151st Street, Olathe, Kansas 66062.

5. Upon information and belief, Defendant Garmin Ltd. is a company organized and existing under the laws of Switzerland with its principal place of business at Muhlenstalstrasse 2, 8200 Schaffhausen, Switzerland, and can be served at that address.

6. Upon information and belief, Garmin Int'l and Garmin USA are wholly-owned subsidiaries of Garmin Ltd.

7. Upon information and belief, Garmin sells and offers to sell products and services throughout the United States, including in this judicial district, and introduces products and services into the stream of commerce that incorporate infringing technology knowing that they would be sold in this judicial district and elsewhere in the United States.

JURISDICTION AND VENUE

8. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a).

9. On information and belief, this Court has general and specific personal jurisdiction over each of the Defendants because each Defendant is present within and/or has

sufficient minimum contacts with the State of Texas and the Western District of Texas pursuant to the Due Process Clause of the United States Constitution and Sections 17.041-117.045 of the Texas Civil Practice & Remedies Code; each Defendant has purposefully availed itself of the privileges of conducting business in the State of Texas and in the Western District of Texas; each Defendant has sought protection and benefit from the laws of the State of Texas; each Defendant regularly conducts business within the State of Texas and within the Western District of Texas; each Defendant has purposefully and voluntarily placed infringing products in the stream of commerce with the expectation that its products will be purchased by end users in the State of Texas and in the Western District of Texas; each Defendant has committed the tort of patent infringement within the State of Texas and within the Western District of Texas; and Plaintiff's causes of action arise directly from the Defendants' business contacts and other activities in the State of Texas and in the Eastern District of Texas.

10. More specifically, Garmin directly and/or through intermediaries (including distributors, retailers, and others) ships, distributes, offers for sale, sells, and/or advertises its products in the United States, the State of Texas, and the Western District of Texas, including but not limited to the Accused Products identified below. Garmin solicits customers in the State of Texas and in the Western District of Texas. Garmin has customers who are residents of the State of Texas and the Western District of Texas and who use Garmin's products and services, including the Accused Products, in the State of Texas and in the Western District of Texas. Garmin derives substantial revenue from goods and service provided to individuals in Texas and in the Western District of Texas.

11. Venue is proper in the Western District of Texas under 28 U.S.C. §§ 1391(b) and 1400. On information and belief, Garmin has transacted business in this district, and has directly and/or indirectly committed and/or induced acts of patent infringement in this district.

THE PATENT-IN-SUIT

12. On May 9, 2000, the United States Patent and Trademark Office (“PTO”) duly and lawfully issued the ‘576 Patent, entitled “Training and Safety Device, System and Method to Aid in Proper Movement During Physical Activity,” after a full and fair examination. A true and correct copy of the ‘576 Patent is attached hereto as Exhibit A.

13. On March 17, 2015, following a reexamination requested by LoganTree, the PTO issued a reexamination certificate for the ‘576 Patent, bearing U.S. Patent No. 6,059,576 C1 (“the ‘576 Reexamination Certificate”). A true and correct copy of the ‘576 Reexamination Certificate is attached hereto as Exhibit B. The ‘576 Patent as reexamined is referred to as the “Reexamined ‘576 Patent.”

14. The named inventor of the ‘576 Patent is Theodore Brann.

15. Mr. Brann assigned all right, title, and interest in the ‘576 Patent to LoganTree.

16. LoganTree possess all rights of recovery under the ‘576 Patent and the Reexamined ‘576 Patent, including the exclusive right to sue for infringement and recover past damages.

17. The ‘576 Patent generally relates to systems and methods for monitoring movement of body parts during physical activity using a movement sensor, in which a user-defined event can be detected and event information related to the detected user-defined event can be stored along with time stamp information reflecting a time at which the user-defined event occurred. The ‘576 summarizes the invention as follows:

An electronic device, system, and method to monitor and train an individual on proper motion during physical movement. The system employs an electronic device which tracks and monitors an individual's motion through the use of an accelerometer capable of measuring parameters associated with the individual's movement. The device also employs a user-programmable microprocessor which receives, interprets, stores and responds to data relating to the movement parameters The downloadable, self-contained device can be worn at various positions along the torso or appendages being monitored depending on the specific physical task being performed. The device also detects the speed of movements made while the device is being worn

18. The Reexamined '576 Patent sets forth 185 separate claims, of which three are independent claims.

19. Claim 1 (the "Device Claim") of the Reexamined '576 Patent is for: "A portable, self-contained device for monitoring movement of body parts during physical activity, said device comprising:

- a. A movement sensor capable of measuring data associated with unrestrained movement in any direction and generating signals indicative of said movement;
- b. A power source;
- c. A microprocessor connected to said movement sensor and to said power source, said microprocessor capable of receiving, interpreting, storing and responding to said movement data based on user-defined operational parameters, detecting a first user-defined event based on the movement data and at least one of the user-defined operational parameters regarding the movement data, and storing first event information related to the selected first user-defined event along with the first time stamp information reflecting a time at which the movement data causing the first user-defined event occurred;

- d. At least one user input connected to said microprocessor for controlling the operation of said device;
- e. A real-time clock connected to said microprocessor; memory for storing said movement data; and
- f. An output indicator connected to said microprocessor for signaling the occurrence of user-defined events;
- g. Wherein said movement sensor measures the angle and velocity of said movement.”

20. Claim 13 (the “System Claim”) of the Reexamined ‘576 Patent is for: “A system to aid in training and safety during physical activity, said system comprising:

- a. A portable, self-contained movement measuring device, said movement measuring device further comprising:
 - i. A movement sensor capable of measuring data associated with unrestrained movement in any direction and generating signals indicative of said movement;
 - ii. A power source;
 - iii. A microprocessor connected to said movement sensor and to said power source, said microprocessor capable of receiving, interpreting, storing and responding to said movement data based on user-defined operational parameters, detecting a first user-defined event based on the movement data and at least one of the user-defined operational parameters regarding the movement data, and storing first event information related to the selected first user-

defined event along with the first time stamp information reflecting a time at which the movement data causing the first user-defined event occurred;

- iv. At least one user input connected to said microprocessor for controlling the operation of said device;
 - v. A real-time clock connected to said microprocessor; memory for storing said movement data; and
 - vi. At least one input/output port connected to said microprocessor for downloading said data and uploading said operational parameters;
 - vii. An output indicator connected to said microprocessor;
 - viii. A computer running program capable of interpreting and reporting said movement data based on said operational parameters; and
- b. A download device electronically connected to said movement measuring device and said computer for transmitting said movement data and operational parameters between said movement measuring device and said computer for analysis, reporting and operating purposes;
- c. Wherein said movement sensor measures the angle and velocity of said movement.”

21. Claim 20 (the “Method Claim”) is for: “A method to monitor physical movement of a body part comprising the steps of:

- a. Attaching a portable, self-contained movement measuring device to said body part for measuring unrestrained movement in any direction;

- b. Measuring data associated with said physical movement; interpreting, using a microprocessor included in the portable, self-contained measuring device, said physical movement data based on user-defined operational parameters and a real-time clock; [and]
- c. Storing said data in memory;
- d. Detecting, using the microprocessor, a first user-defined event based on the movement data and at least one of the user-defined operational parameters regarding the movement data; and
- e. Storing, in said memory, first event information related to the detected first user-defined event along with first time stamp information reflecting a time at which the movement data causing the first user-defined event occurred.”

22. The remaining 182 claims of the Reexamined ‘576 Patent are dependent on Claims 1, 13, or 20.

COUNT ONE: INFRINGEMENT OF THE REEXAMINED ‘576 PATENT

23. Plaintiff realleges paragraphs 1 through 22 herein.

24. On information and belief, Garmin, directly or through intermediaries, makes, made, has made, used, imported, manufactured, provided, supplied, distributed, sold, and/or offered for sale to customers within the United States accelerometer-based activity monitoring devices that infringe the Reexamined ‘576 Patent, including but not limited to the following models of wearable accelerometer-based activity tracker (collectively “Accused Products”): vivofit model family (vivofit 3, vivofit jr., etc.), vivosmart model family, vivoactive model family, vivomove model family, Fenix model family, Forerunner model family, Epix model

family, Tactix model family, Quatix model family, D2 model family, Approach model family, Foretrex model family, TruSwing model family, and the Swim model family.

25. On information and belief, the Accused Products infringe the Reexamined '576 Patent because each of the accused products is a portable, self-contained device that uses an accelerometer to measure the angle and velocity of body movements and a microprocessor to analyze that data and provide feedback to the wearer – precisely what the Reexamined '576 Patent protects.

26. Garmin even markets products that constitute specific applications of the patented invention foreseen in the '576 Patent itself. For example, the '576 Patent specifically contemplates an application for the invention to help golfers improve their swing:

The device also has application in the area of sports. For example, it may be worn by a golfer in order to monitor torso, waist, shoulder, and arm movement during various drives and putts. The data collected by the device may then be used as a tool to aid in the analysis and improvement of the individual's stroke technique.

On information and belief, Garmin now manufactures and markets exactly such a product using the patented accelerometer-based technology, the TruSwing device, which Garmin's website describes as follows:

For golfers who want to improve their shot-making consistency, the easy-to-use TruSwing sensor provides the accurate metrics needed to identify and correct any faulty swing mechanics.

27. On information and belief, the Accused Products infringe the Device Claim of the Reexamined '576 Patent, and other claims dependent on the Device Claim, in that each of the Accused Products:

- a. Is a portable, self-contained devices for monitoring body movements during physical activity;

- b. Contains a movement sensor – specifically, a 3-axis accelerometer – capable of measuring data associated with body movements and generating signals indicative of such movements, and which measures the angle and velocity of such movements;
- c. Contains a power source – specifically, a rechargeable internal battery;
- d. Contains a microprocessor connected to the movement sensor and power source capable of receiving, interpreting, storing, and responding to movement data generated by the accelerometer based on user-defined operational parameters (*e.g.*, a goal of 10,000 steps, the user's height, distance traveled, calories burned, etc.);
- e. Contains user inputs (*e.g.*, buttons, touch screen, etc.) connected to the microprocessor for controlling the device;
- f. Contains a real-time clock and memory for storing movement data; and
- g. Includes an output indicator (*e.g.*, screen, LED readout, colored lights, etc.) connected to said microprocessor for signaling the occurrence of user-defined events.

28. On information and belief each of the Accused Products is designed to be and is cable of being connected to an external computer (such as a laptop or smart phone) and/or computer network operating software capable of accessing and downloading stored data from the Accused Products, analyzing that data, and presenting the data to the user in different forms. When so connected, each of the Accused Products infringes the System Claim in of the Reexamined '576 Patent, and other claims dependent on the System Claim, in that the Accused product so connected:

- a. Is a system to aid in training and safety during physical activity;
- b. Contains a portable, self-contained movement measuring device of the kind described in Paragraph 25, *supra* (e.g., the Accused Product itself);
- c. Contains a computer (e.g., a personal computer or smart phone) running a program capable of interpreting and reporting movement data collected by the device;
- d. Contains a download device (e.g., cord, USB dongle, Bluetooth transmitter, etc.) electronically connected to the movement measuring device and the computer for transmitting data between the movement device and the computer for analysis.

29. On information and belief, when used as intended and instructed by Garmin, each of the Accused Products infringes the Method Claim of the Reexamined '576 Patent, and other claims dependent on the Method Claim, in that the Accused Product, so used:

- a. Is a method to monitor physical movement of a body part comprising the steps of:
- b. Attaching a portable, self-contained movement measuring device (e.g., the Accused Product itself) to said body part;
- c. Measuring data associated with physical movement of the body part (using the accelerometer described above);
- d. Interpreting said data using a microprocessor contained in the movement measuring device based on user-defined parameters and a real-time clock;
- e. Storing said data in memory;

- f. Detecting, using the microprocessor, a first user-defined event based on the movement data and at least one of the user-defined operational parameters regarding the movement data; and
- g. Storing, in said memory, first event information related to the detected first user-defined event along with first time stamp information reflecting a time at which the movement data causing the first user-defined event occurred.

30. The infringing actions of Garmin are and have at all times been without the consent of, authority of, or license from Plaintiff.

31. As a direct and proximate result of the infringement of the Reexamined '576 Patent by Garmin, Plaintiff has suffered damages in an amount that cannot yet be fully ascertained, which will be proven at trial.

32. Garmin's infringement of Logantree's exclusive rights under the Reexamined '576 Patent will continue to damage Logantree, causing irreparable harm for which there is no adequate remedy at law. Unless enjoined by this Court, Garmin will continue to infringe the Reexamined '576 Patent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff LoganTree requests that the Court grant the following relief:

- a) enter judgment that Defendants infringe and have directly infringed the Reexamined '576 Patent under 35 U.S.C. § 271(a);
- b) order Defendants to pay damages adequate to compensate Plaintiff for Defendants' infringement of the Reexamined '576 Patent pursuant to 35 U.S.C. §

284, together with pre-judgment and post-judgment interests, in an amount according to proof;

- c) enter a permanent injunction enjoining Defendants and their officers, agents, servants, employees, and attorneys, and all other persons and entities acting in concert or participation with them, from infringing the Reexamined '576 Patent.
- d) in the event a permanent injunction is not granted, determine the conditions for future infringement or grant such other relief as the Court deems appropriate;
- e) enter judgment that this case is exceptional under 35 U.S.C. § 285 and award Plaintiffs reasonable attorneys' fees and costs incurred in this action; and
- f) award such other and further relief, at law or in equity, as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff respectfully requests a trial by jury on all issues so triable, pursuant to Fed. R. Civ. P. 38.

DATED: February 10, 2017

Respectfully submitted,

MCCATHERN, P.L.L.C.

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