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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

<p>POSITION LOGIC, LLC,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>PATENT LICENSING ALLIANCE, LLC,</p> <p>PATENT PORTFOLIO MANAGEMENT, LLC,</p> <p>VIRTUAL FLEET MANAGEMENT, LLC,</p> <p style="text-align: center;">and</p> <p>JOHN/JANE DOES 1 - X,</p> <p style="text-align: center;">Defendants.</p>	<p>CASE NO. 2:16-cv-01288-TS</p> <p>JUDGE TED STEWART</p> <p>DEMAND FOR JURY TRIAL</p>
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FIRST AMENDED COMPLAINT

Pursuant to Fed. R. Civ. P. 15(a)(1)(B), this First Amended Complaint is being filed as a matter of course within twenty-one (21) days of service of Defendant Patent Portfolio Management, LLC's motion to dismiss Plaintiff's fifth and sixth causes of action. (ECF #18). As a result of the amendments made herein to the fifth and sixth causes of action, Defendant's

motion to dismiss is now moot.

Plaintiff Position Logic, LLC (“Position Logic”), for its First Amended Complaint against Defendants Patent Licensing Alliance, LLC (“PLA”), Patent Portfolio Management, LLC (“Patent Portfolio Management”), Virtual Fleet Management, LLC (“Virtual Fleet Management”), and John/Jane Does 1-X alleges and states as follows:

INTRODUCTION

1. This is an action for violation of Florida’s deceptive and unfair trade practices act and civil conspiracy to commit such unlawful practices through sham accusations and threatened litigation for patent infringement. Defendants conspired to assert claims of patent infringement against Position Logic, knowing that their claims of infringement are frivolous and untenable, in order to extract a nuisance value settlement payments from Position Logic.

2. This is also an action for declaratory relief regarding U.S. Patent No. 6,958,701 (“the ‘701 patent”) to Storkamp et al., entitled *Transportation Monitoring System For Detecting The Approach Of A Specific Vehicle* (Ex. 1).

3. Position Logic is seeking a declaration that its GPS tracking software platform does not infringe upon any valid claims of the ‘701 patent.

4. Position Logic is also seeking a declaration that the claims of the ‘701 patent are invalid. In particular, Position Logic contends that at least claims 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17 of the ‘701 patent are anticipated and/or obvious in light of the prior art.

PARTIES

5. Position Logic is a limited liability company organized and existing under the laws of the State of Florida, with a principal place of business at 2343 Vanderbilt Beach Road, Suite 616, Naples, Florida 34109.

6. Upon information and belief, PLA is a limited liability company organized and existing under the laws of the State of Utah, with a principal place of business at 5251 South Green Street, Suite 350, Murray, Utah 84123.

7. According to PLA's articles of organization filed with the Department of Commerce of the State of Utah, the sole manager of PLA is James Bennett whose listed address is 5248 South Pinemot Drive, Suite C110, Murray, Utah 84123.

8. Upon information and belief, Patent Portfolio Management is a limited liability company organized and existing under the laws of the State of Nevada, with a principal place of business at 1810 E. Sahara Avenue, Suite 571, Las Vegas, Nevada 89104.

9. According to the Initial/Annual List Of Managers Or Managing Members And State Business License Application of Patent Portfolio Management, filed with the Nevada Secretary of State's office on December 9, 2016, the sole manager of Patent Portfolio Management is James Bennett whose listed address is 5251 South Green Street, Suite 350, Murray, Utah 84123.

10. Upon information and belief, Virtual Fleet Management is a limited liability company organized and existing under the laws of the State of Texas, with a principal place of business at 525 Mist Flower Drive, Little Elm, Texas 75068-4973.

11. According to Virtual Fleet Management's Certificate of Formation filed with the Office of the Secretary of State of Texas, the sole manager of Virtual Fleet Management is Patent Portfolio Management.

12. Upon information and belief, Virtual Fleet Management was organized on January 21, 2016 for the sole purpose of asserting the '701 patent.

13. Upon information and belief, John/Jane Does 1 – X are individuals who have

conspired with and/or shielded their liability through Defendants PLA, Patent Portfolio Management, and Virtual Fleet Management to assert the '701 patent against Position Logic, its customers, and others, even though Defendants know or should have known that the claims of infringement of the '701 patent are unfounded, are brought in bad faith, and that the '701 patent is invalid and unenforceable.

JURISDICTION AND VENUE

14. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a)(1) as there is complete diversity of citizenship and the amount in controversy exceeds the sum or value of \$75,000 exclusive of interest and costs, and is between citizens of different states.

15. This action also arises under the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et. seq.* and the Patent Laws of the United States, 35 U.S.C. ¶ 101, *et. seq.* An actual, substantial and continuing justiciable controversy exists between Position Logic and Defendants that requires a declaration and determination of rights by this Court.

16. Defendants have accused Position Logic of infringing the '701 patent by offering its GPS tracking software platform and threatened to file suit against Position Logic if it refuses to license the '701 patent. As a result, an actual, substantial and continuing justiciable controversy exists between Position Logic and Defendants.

17. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202.

18. This Court has also subject matter jurisdiction over the state and tort law claims pursuant to 28 U.S.C. § 1367.

19. This Court has personal jurisdiction over the Defendants because they have

purposefully availed themselves of Utah law by establishing and/or maintaining and operating businesses within the State of Utah. Defendants also perpetrated torts against Plaintiff from the State of Utah.

20. This Court has personal jurisdiction over Defendants Patent Portfolio Management and Virtual Fleet Management because these entities are merely alter egos of PLA and therefore PLA's substantial contacts with Utah are attributed to these shell limited liability companies.

21. On information and belief, Patent Portfolio Management and Virtual Fleet Management are merely instrumentalities of PLA and/or John/Jane Does formed in order to assert unfounded and sham claims of patent infringement against companies like Position Logic.

22. On information and belief, these limited liability companies are being used as facades for PLA to shield it from potential liability in PLA's pursuit of promoting injustice and/or fraud on the public through sham claims of patent infringement.

23. On information and belief, John/Jane Does are using PLA, Patent Portfolio Management, and Virtual Fleet Management as their alter egos in order to shield themselves from personal liability for their unlawful conduct.

24. Venue is proper in this District under 28 U.S.C. § 1391(b)(1) and (2) because Defendants actually reside or are deemed to reside in this District and/or a substantial part of the events or omissions by Defendants giving rise to the claims occurred in this District.

FACTUAL ALLEGATIONS

25. Based in Naples, Florida, Position Logic is a leading business-to-business ("B2B") location-based services provider. Position Logic's GPS tracking software platform integrates GPS tracking devices into a scalable web-based software hub from which the devices

can be monitored in real time. Position Logic provides tracking solutions for a number of industries including transportation, government, utilities, and cable and telecom.

26. Upon information and belief, Defendant Virtual Fleet Management is the legal owner by assignment of U.S. Patent No. 6,958,701 (“the ‘701 patent”), which issued on October 25, 2005 to John D. Storkamp, Mark A. Storkamp, and Ronald H. Menzhuber, entitled *Transportation Monitoring System for Detecting the Approach of a Specific Vehicle*. (Ex. 1).

27. Upon information and belief, Defendant Virtual Fleet Management was organized on January 21, 2016 and purports to be a successor in interest to Proximity Monitoring Innovations, LLC, the previous owner of the ‘701 patent.

28. According to Texas Secretary of State records, Defendant Virtual Fleet Management’s registered address is a personal residence located in Little Elm (a Dallas suburb), Texas, and its manager is a limited liability company which purports to be based in Las Vegas, Nevada.

29. Upon information and belief, Defendant is a shell entity which is attempting to shield the beneficial owner(s) of the ‘701 patent.

30. Upon information and belief, PLA formed Patent Portfolio Management, which in turn formed Virtual Fleet Management in order to shield the beneficial owner(s) of the ‘701 patent.

31. Upon information and belief, PLA and/or John/Jane Does are the beneficial owners of the ‘701 patent.

32. Position Logic received correspondence dated November 7, 2016 with accompanying documents, which are attached hereto as Ex. 8, from PLA. (the “PLA Letter and Documents”). The PLA Letter and Documents were mailed to Position Logic from PLA’s

headquarters in Murray, Utah. The PLA Letter and Documents were sent by Kyla Welch, the Vice President of Technology Licensing of PLA.

33. The PLA Letter and Documents indicate that they were sent on behalf of Defendant Virtual Fleet Management and represent that the '701 patent was "assigned to Virtual Fleet Management, LLC this year."

34. The PLA Letter and Documents allege that the "Position Logic GPS" employs the technology claimed and disclosed in the '701 patent and state that Defendant Virtual Fleet Management is enforcing its intellectual property rights as a result of ever increasing instances of improper use of its technology without a license.

35. The PLA Letter and Documents also assert that the '701 patent "requires a license if you [Position Logic] intend to continue to sell these products."

36. The attachments which accompany the letter are identified as constituting a "Notice" and purportedly describe the technology of the '701 patent.

37. The attachments to the letter also contain what is referred to as a "Preliminary Investigation Claim Chart" which purports to compare claims 10 and 14 of the '701 patent with an "Accused Product(s)," which is identified as being "Position Logic GPS."

38. The exhibits to the claim chart purport to demonstrate how Position Logic's products infringe at least claims 10 and 14 of the '701 patent.

39. The allegations in the PLA Letter and Attachments, including the letter, exhibits, claim chart, and "Notice" sections state, imply or otherwise indicate that Defendant Virtual Fleet Management will sue Position Logic for patent infringement if Position Logic refuses to license the '701 patent.

40. Additionally, Position Logic received a letter dated November 8, 2016, attached

as Ex. 9, from the law firm of Pia Anderson Dorius Reynard & Moss in Salt Lake City, Utah, which states, *inter alia*, that it represents Defendant Virtual Fleet Management with regard to the ‘701 patent and that following receipt of additional information, PLA will call Position Logic to engage in discussions (the “Pia Anderson Correspondence”).

41. The Pia Anderson Correspondence states that Defendant Virtual Fleet Management has two approaches in seeking “market compliance” for the ‘701 patent, the first being “sue for patent infringement against companies that it believes are unlikely to engage in meaningful licensing negotiations.” The letter also states that “[i]f you [Position Logic] are non-responsive, or those efforts fail, the matter will be moved back to our office for additional consideration.” The Pia Anderson Correspondence is clearly threatening to sue Position Logic if it refuses to take a license to the ‘701 patent.

Defendants Know That Position Logic Does Not Infringe Upon The ‘701 Patent

42. By letter dated November 30, 2016, attached as Ex. 10 (“the KORE Letter”), KORE Wireless, the parent company to Position Logic, responded to the PLA Letter and Documents.

43. The KORE Letter was addressed to Kyla Welch of PLA and informed her that the Position Logic GPS tracking software platform implements geo-fencing in an entirely different manner than that described in the ‘701 patent.

44. The KORE Letter also informed Ms. Welch that the ‘701 patent itself distinguishes and disclaims as prior art GPS based vehicle tracking systems. Specifically, the KORE Letter states:

Finally, the description of related art describes a system comprising a vehicle equipped with a GPS transmitter and passengers that subscribe to a system provider that notifies the passenger. This definition of related art is basically describing how normal geo-fence systems, including the Position Logic platform,

work. The description of prior art in your own patent acknowledges that technology like ours was already in use and is therefore not covered by the 6,958,701 patent.

45. By email dated December 1, 2016, attached as Ex. 11, Ms. Welch responds to the KORE Letter by arguing that the term “receiver” recited in each of the independent claims of the ‘701 patent should be construed to broadly include the Position Logic computer servers. More specifically, Ms. Welch, who is not an attorney and who is not authorized to practice law, argues:

With respect to the minor challenge you make of claim construction of the terms receiver and the transmitter, it doesn’t appear to address ordinary usage of these terms in the industry. For example, and without limitation or restriction, one definition of a receiver is a device or apparatus that receives electrical signals, waves or the like, and renders them perceptible to the senses. A server for a vehicle tracking system does receive electrical signal and renders them perceptible visually through its vehicle monitoring platform which includes a means to prevent a match signal.

46. The legal patent claim construction and infringement arguments asserted by Ms. Welch are incorrect, completely disregard the specification and claim language of the ‘701 patent, and disregard the arguments made by the former patent owner before the Patent Trial and Appeal Board, as set forth below, which the current patent owners, legal and beneficial, are aware of and bound by.

47. Ms. Welch’s email continues by arguing that “[o]ne embodiment of the invention includes GPS tracking, where the receiver is triggered when the transmitter is close enough to the cellular tower to allow the signal to be transmitted.” This legal patent claim construction argument completely ignores the express teaching of the ‘701 patent that it does not cover GPS based system. See, *infra*, paragraph 58.

48. In particular, Position Logic’s GPS tracking software platform does not infringe claims 10 or 14, as specifically alleged by Defendant, because, *inter alia*, it does not include the recited “means to prevent at least one of said plurality of stored values from being included in

said match signal generating.”

49. On July 17, 2015 the Patent Trial and Appeal Board (“PTAB”) instituted an *Inter Partes Review* (“IPR”) of the ‘701 patent. See 7/17/2015 Decision Institution of *Inter Partes Review* 37 C.F.R. § 42.108 (“IPR Order”), *Mercedes-Benz USA, LLC, et al. v. Proximity Monitoring Innovations, LLC*, Case IPR2015-00397 (Ex. 2).

50. In the IPR, the PTAB construed “means to prevent at least one of said plurality of stored values from being included in said match signal generating” to: (1) be a means-plus-function limitation requiring construction under 35 U.S.C. § 112 ¶ 6; (2) that the function of this means-plus-function clause is “to prevent at least one said plurality of stored values from being included in said match signal generating”; and (3) that the corresponding structure is microprocessor 220” in Fig. 2 of the ‘701 patent. (IPR Order, p. 15-16).

51. When properly construed, it is clear that to meet this limitation of independent claim 10 the function must be carried out by a microprocessor in the receiver. (*Id.*) (“Patent Owner agrees with Petitioner that the corresponding structure for this means-plus-function clause is microprocessor 220 in receiver 200.”) (emphasis added); see also Fig. 2 of the ‘701 patent.

52. Furthermore, independent claim 10 requires that the “transmitter and receiver [are] tuned to a common transmission signal.” The only transmitter and receiver that are tuned to a common transmission signal as part of the Position Logic GPS tracking software platform are the GPS tracking devices and the receivers in local cellular telephone towers.

53. However, the microprocessor running the Position Logic GPS tracking software platform, which Defendant has accused of performing the function of “prevent[ing] at least one of said plurality of stored values from being included in said match signal generating,” is not in the receiver of the cellular telephone tower.

54. As such, the last element of independent claim 10 is completely missing from the Position Logic GPS tracking software platform, and therefore it cannot infringe claim 10 literally or under the doctrine of equivalents.

55. Because claim 14 depends from independent claim 10, and therefore must include all of the elements of claim 10, claim 14 cannot and is not infringed, literally or under the doctrine of equivalents.

56. The charge of alleged infringement against Position Logic has created an actual, substantial, and continuing justiciable case or controversy between Position Logic and Defendants regarding infringement of the '701 patent in connection with Position Logic's GPS tracking software platform services and product offerings.

57. For at least the foregoing reasons, Position Logic is entitled to a judicial determination that its GPS tracking software platform services and product offerings do not infringe any valid, properly construed claim of the '701 patent.

58. On information and belief, Defendant is aware that GPS based tracking systems that communicate with GPS tracking devices over cellular telephone systems do not infringe any of the claims of the '701 patent.

59. Even the background section of the '701 patent, as referenced in the KORE Letter, clearly establishes that its claims do not cover cellular telephone based GPS tracking systems. Specifically, the '701 patent states:

One approach which avoids the false triggering is illustrated, for exemplary purposes, by Jones et al. Using this system, a transportation vehicle is provided with relatively advanced electronics that may, for example, employ position detection systems such as GPS, Loran or the like, together with various sensors to detect the status of the transit vehicle. The transit vehicle may then be monitored for movement, and an arrival schedule predicted with some reliability...

The relatively high capital cost of the equipment is limited to the transit vehicles, and not further multiplied by any passenger equipment. Unfortunately, when

volumes of passengers increase, the amount of time required for timely notification also increases. Said another way, while everything is conveniently centralized, the load upon the central system may increase to a level which is greater than that which may be managed. Consequently, as the numbers of subscribing passengers increase, the system becomes substantially more expensive and more difficult to operate and maintain.

In all of these prior art systems, there is little in the way of flexibility provided to the subscriber, beyond how much advance notice the subscriber wishes to receive. Consequently, these systems are optimized for mass transit systems which are simply announcing the anticipated arrival of the transit vehicle at a particular stop.

(Ex. 1 - '701 Patent, col. 2, ln. 54 – col. 3, ln. 17) (emphasis added).'

60. The foregoing description of the prior art describes how cellular telephone based GPS tracking systems, including Position Logic's GPS tracking software platform, operate. The '701 patent acknowledges that technology, like Position Logic's that is accused of infringement, were already in use before the '701 patent and are therefore not covered by the claims of the '701 patent.

61. Despite the foregoing, Defendants continue to assert infringement of the '701 patent against companies, including Position Logic, that are using cellular telephone based GPS tracking systems.

Defendants Know That The '701 Patent Is Invalid

62. Although the IPR was settled before a final decision, in instituting the IPR the PTAB found that the Petitioner had demonstrated a reasonable likelihood of the following:

- a. Claims 1-2, 4-5, 10-14, and 16 of the '701 patent are anticipated by U.S. Patent No. 6,700,506 to Winkler et al. (Ex. 3) (IPR Order, p. 35);
- b. Claims 1-2, 4-5, 10-14, and 16 of the '701 patent would have been obvious in view of U.S. Patent No. 6,700,506 to Winkler et al. and International Publication No. WO 93/13503 to Dulaney et al. (Ex. 4) (IPR Order, p. 37);

- c. Claims 1-2, 4-5, 10-14, and 16 of the '701 patent would have been obvious in view of U.S. Patent No. 6,714,142 to Porter et al. (Ex. 5) and International Publication No. WO 93/13503 to Dulaney et al. (IPR Order, p. 26);
- d. Claim 5 of the '701 patent would have been obvious in view of U.S. Patent No. 6,714,142 to Porter et al. and U.S. Patent No. 6,636,160 to Brei (Ex. 6) (IPR Order, p. 28);
- e. Claim 5 of the '701 patent would have been obvious in view of U.S. Patent No. 6,700,506 to Winkler et al. and U.S. Patent No. 6,636,160 to Brei (IPR Order, p. 37);
- f. Claims 6-9 and 15 of the '701 patent would have been obvious in view of U.S. Patent No. 6,714,142 to Porter et al., International Publication No. WO 93/13503 to Dulaney et al., and U.S. Patent No. 6,636,160 to Brei (IPR Order, p. 28);
- g. Claims 6-9 and 15 of the '701 patent would have been obvious in view of U.S. Patent No. 6,700,506 to Winkler et al. and U.S. Patent No. 6,636,160 to Brei (IPR Order, p. 37);
- h. Claim 17 of the '701 patent would have been obvious in view of U.S. Patent No. 6,714,142 to Porter et al., International Publication No. WO 93/13503 to Dulaney et al., and U.S. Patent No. 5,311,172 to Sadamori (Ex. 7) (IPR Order, p. 30); and
- i. Claim 17 of the '701 patent would have been obvious in view of U.S. Patent No. 6,700,506 to Winkler et al. and U.S. Patent No. 5,311,172 to Sadamori (IPR Order, p. 38).

63. Upon information and belief, Defendants were aware of the IPR Order prior to sending the PLA Letter and Documents to Position Logic.

64. Upon information and belief, Defendants were aware of the IPR Order prior to the assignment of the '701 patent to Defendant Virtual Fleet Management.

COUNT I

VIOLATION OF FLORIDA'S DECEPTIVE AND UNFAIR TRADE PRACTICES ACT

65. Position Logic repeats and realleges each of the allegations in the foregoing paragraphs as if fully set forth herein.

66. Through the conduct described above, Defendants have engaged in unfair and deceptive business practices, contrary to Florida law and in violation of Fla. Stat. § 501.204.

67. As evidenced by this intentional conduct, Defendants have engaged in unfair and deceptive business practices to the detriment and damage of Position Logic.

68. As a result of the Defendants' unfair and deceptive practices, Position Logic has been damaged.

69. An actual and justiciable case or controversy exists between Position Logic and Defendants as to whether Defendants' conduct constitutes unfair and deceptive practices under Fla. Stat. § 501.204.

70. Based on the foregoing, Position Logic is entitled to a declaration that Defendants' conduct constitutes unfair and deceptive practices under Fla. Stat. § 501.204.

71. Based on the foregoing, Position Logic is entitled to its damages in an amount adequate to compensate it for Defendant's unfair and deceptive practices, plus interest, costs, attorneys' fees, punitive damages upon a proper showing, and any and all other relief, including injunctive relief, as the Court deems appropriate.

COUNT II

(DECLARATORY JUDGMENT OF NON-INFRINGEMENT – ‘701 PATENT)

72. Position Logic repeats and realleges each of the allegations in the foregoing paragraphs as if fully set forth herein.

73. Defendant Virtual Fleet Management claims to own all right, title, and interest in and to the ‘701 patent and accuses Position Logic of infringing at least claims 10 and 14 of the ‘701 patent.

74. Position Logic’s manufacture, use, offer for sale, sale, and/or importation into the United States of its GPS tracking software platform services and product offerings do not infringe any valid claim of the ‘701 patent, directly or indirect, literally or under the doctrine of equivalents.

75. An actual and justiciable case or controversy exists between Position Logic and Defendants as to whether one or more claims of the ‘701 patent are infringed.

76. Based on the foregoing, Position Logic is entitled to a declaration that its GPS tracking software platform services and product offerings do not infringe any valid claim of the ‘701 patent.

77. This case is an exceptional one, and Position Logic is entitled to an award of its reasonable attorneys’ fees and costs under 35 U.S.C. § 285.

COUNT III

(DECLARATORY JUDGMENT OF INVALIDITY – ‘701 PATENT)

78. Position Logic repeats and realleges each of the allegations in the foregoing paragraphs as if fully set forth herein.

79. The claims of the ‘701 patent, including but not limited to claims 10 and 14, are

invalid for failure to comply with the requirements of patentability specified in Title 35 of the United States Code, including but not limited to 35 U.S.C. §§ 101, 102, 103, 112, 116 and/or 120, and/or based on other judicially-created bases for invalidation.

80. An actual and justiciable case or controversy exists between Position Logic and Defendants as to whether one or more claims of the '701 patent are invalid.

81. Based on the foregoing, Position Logic is entitled to a declaration that the claims of the '701 patent are invalid.

82. On information and belief, Defendants are aware of the prior art patent references above and the invalidity of the '701 patent by virtue of the prior IPR proceedings before the PTAB, which sought to challenge the validity of the '701 patent.

83. This case is an exceptional one, and Position Logic is entitled to an award of its reasonable attorneys' fees and costs under 35 U.S.C. § 285.

COUNT IV

CIVIL CONSPIRACY

84. Position Logic repeats and realleges each of the allegations in the foregoing paragraphs as if fully set forth herein.

85. Defendants PLA, Patent Portfolio Management, and Virtual Fleet Management are, for all practical purposes, one and the same as a single individual, James Bennett, is the sole member of and controls Defendants PLA and Patent Portfolio Management, with Patent Portfolio Management being the sole member of Virtual Fleet Management. (See paragraphs 6 – 12 above).

86. The combination of defendants PLA, Patent Portfolio Management, Virtual Fleet Management, and potentially one or more John/Jane Does, conspired to intentionally commit

unfair and deceptive practices by bringing false accusations of patent infringement and filing sham patent infringement litigation against Position Logic and other third parties.

87. Position Logic received correspondence from PLA (the PLA Letter and Documents) and its attorneys (the Pia Anderson Correspondence) that both falsely claim that Position Logic is infringing the '701 patent.

88. In its November 7, 2016 correspondence, PLA states that “[y]our Position Logic GPS employs the technology claimed and disclosed in United States Patent 6,958,701.” (See Ex. 8). PLA knew at the time of its letter that its claim was frivolous and without merit as, *inter alia*, the '701 patent itself disclaims the use of GPS as part of the claimed invention. (See paragraphs 42 – 61 above). PLA also knew at that time that the claims of the '701 patent were invalid based upon prior art. (See paragraphs 61 – 64 above).

89. In its November 8, 2016 correspondence, its counsel stated that Virtual Fleet Management “has asked PLA to reach out [to Position Logic]” as part of Virtual Fleet Management’s strategy of either suing for patent infringement or extracting a licensing fee. (See Ex. 9). Virtual Fleet Management knew at the time of its letter that its claim for infringement of the '701 patent was frivolous and without merit as, *inter alia*, the '701 patent itself disclaims the use of GPS as part of the claimed invention. (See paragraphs 42 – 61 above). Virtual Fleet Management also knew at the time of its letter that the claims of the '701 patent were invalid based upon prior art. (See paragraphs 61 – 64 above).

90. Defendant Virtual Fleet Management’s sole member is Defendant Patent Portfolio Management, whose sole member is James Bennett. James Bennett is also the sole member of Defendant PLA, which claims to be the agent of Defendant Virtual Fleet Management. (See Ex. 9) (“...discussions through Virtual Fleet’s agent PLA with companies...”) (emphasis added).

91. On January 5, 2017, Virtual Fleet Management, which is controlled by its sole member Patent Portfolio Management, filed suit against Position Logic in the Eastern District of Texas alleging infringement of the '701 patent. Virtual Fleet Management knew at the time of filing suit that its claims of infringement were frivolous and without merit. (See paragraphs 42 – 61 above). Virtual Fleet Management also knew at the time of filing suit that the claims of the '701 patent were invalid based upon prior art. (See paragraphs 61 – 64 above).

92. Defendants' conduct described above, i.e., knowingly making false claims of patent infringement and attempting to extract licensing fees from Position Logic based on a known invalid patent, and subsequently filing sham patent infringement litigation against Position Logic, was deliberate and intentional, and Defendants PLA, Patent Portfolio Management, and Virtual Fleet Management, all controlled by the same sole member, had a meeting of the minds in advance to accomplish the unlawful conduct.

93. Defendants PLA and Virtual Fleet Management, as directed by its sole controlling member Patent Portfolio Management, worked directly together to falsely accuse Position Logic of infringement of the '701 patent despite the fact that all three knew that the claims were frivolous and without merit.

94. All three defendants, PLA, Patent Portfolio Management, and Virtual Fleet Management, are directly and/or indirectly controlled by the same individual and all three worked together, and had a meeting of the minds in advance, to knowingly make false claims of patent infringement against Position Logic, attempt to extract licensing fees from Position Logic based on a known invalid patent, and subsequently filing sham patent infringement litigation against Position Logic.

95. Defendants PLA, Patent Portfolio Management, and Virtual Fleet Management

are engaged in a campaign of sham litigation against multiple companies. Virtual Fleet Management has filed eight lawsuits against companies offering GPS based services. (See Eastern District of Texas Docket Listing, attached hereto as Ex. 12).

96. On information and belief, four of the lawsuits filed by Virtual Fleet Management settled in less than three months from their filing dates and for amounts far below the cost of defense. (See Ex. 12).

97. In addition, PLA and Virtual Fleet Management have sent numerous letters to other companies making the same false allegations of infringement and trying to extract nuisance value settlements. (See, e.g., Ex. 3 to the February 14, 2017 Complaint for Declaratory Relief, *Veracity Wireless, Inc. v. Virtual Fleet Management, LLC*, attached hereto as Ex. 13).

98. In this example in Ex. 13, without any information as to Veracity Wireless' sales, Virtual Fleet Management's initial offer to settle its infringement claims under the '701 patent was \$77,000. (See Ex. 6 to Complaint for Declaratory Relief, attached hereto as Ex. 13) ("Your proposed licensing fees; Attached to this email is a draft perpetual, paid-in full license agreement with the license fee of \$11,000 per year for the remaining life of the patent, 7 years.").

99. Virtual Fleet Management even qualified its own initial settlement offer by indicating that it would take less than \$77,000. *Id.* ("Virtual Fleet will consider a counter offer...").

100. Defendants' willingness to settle infringement claims of the '701 patent for far below the cost of defense is indicative of sham patent infringement litigation. See *Iris Connex, LLC v. Dell, Inc.*, 2017 U.S. Dist. LEXIS 10146, *43-45 (E.D. Texas 2017) ("Dell argues that \$80,000 is a nuisance settlement which evidences bad faith because it is below the cost of defense...Either Iris Connex was trying to obtain settlements driven by litigation costs rather

than the merits of this case, or it realized that its infringement position was extraordinarily weak.”).

101. Through their conduct described above, Defendants PLA, Patent Portfolio Management, and Virtual Fleet Management engaged in a pattern of behavior to intentionally commit unfair and deceptive practices, make false accusations of patent infringement, and file sham patent infringement litigation against Position Logic.

102. As a result of Defendants’ unlawful conduct, Position Logic has suffered injuries in an amount to be determined at trial including, but not limited to, having to incur substantial attorneys’ fees to defend against Defendants’ sham accusations of patent infringement.

COUNT V

ALTER EGO / PIERCE THE CORPORATE VEIL

103. Position Logic repeats and realleges each of the allegations in the foregoing paragraphs as if fully set forth herein.

104. Defendants Patent Licensing Alliance, LLC and Patent Portfolio Management, LLC are both single member LLC’s, each of whose sole and controlling member is James Bennett. Defendant Virtual Fleet Management, LLC is a single member LLC whose sole and controlling member is Patent Portfolio Management, LLC.

105. There is unity of interest and ownership by James Bennett in all three defendants as all three are controlled directly (i.e., Patent Licensing Alliance, LLC and Patent Portfolio Management, LLC) or indirectly (i.e., Virtual Fleet Management, LLC controlled by Patent Portfolio Management, LLC) by Mr. Bennett.

106. Defendants Patent Licensing Alliance, LLC, Patent Portfolio Management, LLC, and Virtual Fleet Management, LLC’s unlawful conduct, i.e., making knowingly false assertions

of patent infringement (see paragraphs 32 – 61 above) and enforcing a knowingly invalid patent (see paragraphs 62 – 64 above) to extract licensing royalties from Position Logic and others (see paragraphs 32 – 41 and 95 – 100 above), and to then file sham patent infringement litigation against Position Logic (see paragraph 91 above) and others, would sanction a fraud, promote injustice, and result in an inequitable result if the corporate form of any of the defendants were observed.

107. Defendant Patent Licensing Alliance, LLC has also failed to observe corporate formalities, providing another basis for piercing the corporate veil.

108. On May 10, 2016, PLA filed a change to its corporate records to indicate that its registered agent was still the Pia Anderson law firm, but now at its current address of 136 E. South Temple, Suite 1900, Salt Lake City, UT 84111. (See Summary of Online Changes, attached as Ex. 14). The lower right hand corner of the amendment indicates it was prepared and filed by “Annelie Furner, 5/10/16”. *Id.*

109. Despite having just updated PLA’s corporate records nine months ago, Annelie Furner, who works for the Pia Anderson law firm, has now testified that the law firm is not PLA’s registered agent for service of process. (See Declaration of Annelie Furner in Support of Motion to Quash Plaintiff’s Service Pursuant to Rule 12(b)(5) as to Patent Licensing Alliance, LLC, ECF #20-1, in this action).

110. PLA not only refuses to observe the corporate form and its representations to the Department of Commerce of the State of Utah, but it has now gone so far as to try to avoid service of process in the instant case by alleging that only attorney Joseph Pia is the statutory agent and that he was never personally served in the case. (See Motion to Quash Plaintiff’s Service Pursuant to Rule 12(b)(5) as to Patent Licensing Alliance, LLC, ECF #20, at paragraph

6, in this action) (“No one at the law firm of Pia Anderson is a registered agent for PLA besides Mr. Pia.”).

111. PLA, through its counsel, refused to obey the requirements of the Department of Commerce of the State of Utah when its registered agent, the Pia Anderson law firm, sought to avoid service of process upon PLA.

112. Furthermore, PLA has misrepresented itself to this Court in an attempt to quash service of process that was lawfully executed on PLA’s registered agent, the Pia Anderson law firm. The same conduct is a violation of PLA’s duty under Fed. R. Civ. P. 4 to avoid unnecessary expenses of serving the summons.

113. Defendants’ collective conduct permits Position Logic to pierce the corporate veil, and hold Defendants John/Jane Does personally liable for Defendants’ unlawful conduct.

114. On information and belief, one or more John/Jane Does consist of the individuals that are the beneficial owners of the ‘701 patent, i.e., those individuals that ultimately receive the unlawful licensing royalties and/or settlement payments from the ‘701 patent.

115. On information and belief, one such John Doe is James Bennett, the sole manager of PLA and Patent Portfolio Management.

116. On information and belief, one such Jane Doe is Kyla Welch, the Vice President of Licensing for PLA.

117. Effectively, Defendants have employed PLA, Patent Portfolio Management, and Virtual Fleet Management as their individual alter egos, and have used these companies to shield themselves from any potential liability.

118. Upon information and belief, at least the following factors, without limitation, justify disregarding the corporate veils: the LLCs are being used by the individual John/Jane

Does as a facade for operations of the dominant stockholder or stockholders and the LLCs are being used in promoting injustice or fraud.

119. The individual John/Jane Does should be held personally liable because allowing the LLCs to shield Defendants' unlawful conduct would promote injustice and effectively sanction Defendants' unlawful conspiracy.

120. Based on at least the foregoing, the Court should pierce the corporate veil of PLA, Patent Portfolio Management, and Virtual Fleet Management and hold the individual John/Jane Does personally liable for the defendants' unlawful conduct.

JURY DEMAND

Pursuant to Rules 38 and 57 of the Federal Rules of Civil Procedure, Position Logic demands trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Position Logic prays that the Court enter judgment in its favor and against Defendants as follows:

- A. Finding and declaring that Defendants have committed unfair and deceptive practices in violation of Fla. Stat. § 501.204;
- B. Awarding Position Logic damages in an amount adequate to compensate it for Defendant's unfair and deceptive practices in violation of Fla. Stat. 501.204, plus interest, costs, attorneys' fees, and punitive damages;
- C. Finding and declaring that Position Logic's GPS tracking software platform has not and does not infringe any valid claim of the '701 patent;
- D. Finding and declaring that the claims of the '701 patent are invalid;
- E. Finding and declaring that the claims of the '701 patent are unenforceable;

- F. Finding and declaring that Defendants have engaged in a civil conspiracy in committing unlawful acts of unfair and deceptive practices by bringing sham accusations of patent infringement and threats of patent infringement litigation against Position Logic;
- G. Finding and declaring that the facts warrant the Court piercing the corporate veil of PLA, Patent Portfolio Management, and Virtual Fleet Management to hold the individual owners, managers, and other individual John/Jane Does personally liable for the unlawful acts of unfair and deceptive practices;
- H. Granting Position Logic judgment in its favor on its claims;
- I. Awarding Position Logic its costs and reasonable attorneys' fees pursuant to Fla. Stat. § 501.2105;
- J. Finding this case exceptional under 35 U.S.C. § 285 and awarding Position Logic its costs and reasonable attorneys' fees; and
- K. Awarding such further relief as the Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on February 20, 2017 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system.

By: /s/ R. Eric Gaum
One of the Attorneys for
Plaintiff Position Logic, LLC