

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ADIDAS AG and ADIDAS AMERICA, INC.,	)	
	)	
	)	
Plaintiffs,	)	
	)	
v.	)	C.A. No. _____
	)	
ASICS AMERICA CORPORATION and FITNESSKEEPER, INC.,	)	<b>JURY TRIAL DEMANDED</b>
	)	
	)	
Defendants.	)	

**COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiffs adidas AG and adidas America, Inc. (collectively “Plaintiff” or “adidas”) allege as follows:

**NATURE OF ACTION**

1. This is an action under the patent laws of the United States, 35 U.S.C. § 1, et seq., for infringement by Defendants Asics America Corporation (“Asics America”), and FitnessKeeper, Inc. (“FitnessKeeper”) (collectively, “Defendants”) of patents owned by adidas.

**THE PARTIES**

2. Plaintiff adidas AG is a corporation organized under the laws of the Federal Republic of Germany, with its principal place of business at Adi-Dassler-Strasse 1, 91074 Herzogenaurach, Germany.

3. Plaintiff adidas America, Inc. is a corporation organized under the laws of the State of Delaware, with its principal place of business at 5055 North Greeley Avenue, Portland, OR 97217-3524 USA.

4. Upon information and belief, Asics America is a corporation organized under the laws of the State of California with its principal place of business at 80 Technology Drive, Irvine, California 92618.

5. Upon information and belief, FitnessKeeper, Inc. is a corporation organized under the laws of the State of Delaware with its principal place of business at 60 Canal Street Boston, MA 02114, USA.

### **JURISDICTION AND VENUE**

6. This action arises under the patent laws of the United States, Title 35 of the United States Code. Accordingly, this Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7. Defendant Asics America's registered agent in Delaware is Registered Agent Solutions, Inc., located at 1679 S. Dupont Hwy., Ste. 100, Dover, DE 19901.

8. Defendant FitnessKeeper's registered agent in Delaware is The Corporation Trust Company, located at Corporation Trust Center, 1209 Orange St., Wilmington, DE 19801.

9. Defendant Asics America conducts substantial business in the State of Delaware, including (1) committing at least a portion of the infringing acts alleged herein and (2) regularly transacting business, soliciting business, and deriving revenue from the sale of goods and services, including infringing goods and services, to individuals in the State of Delaware. Thus, Asics America has purposefully availed itself of the benefits of the State of Delaware, and the exercise of jurisdiction over Asics America would not offend traditional notions of fair play and substantial justice.

10. Defendant FitnessKeeper is incorporated in Delaware and conducts substantial business in the State of Delaware, including (1) committing at least a portion of the infringing

acts alleged herein and (2) regularly transacting business, soliciting business, and deriving revenue from the sale of goods and services, including infringing goods and services, to individuals in the State of Delaware. Thus, FitnessKeeper has purposefully availed itself of the benefits of the State of Delaware, and the exercise of jurisdiction over FitnessKeeper would not offend traditional notions of fair play and substantial justice.

11. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400.

### **ADIDAS AND THE PATENTS**

12. adidas is one of the largest makers of sporting goods and apparel in the world. adidas has long had a culture of innovation, research and development. In its efforts to innovate sports and change the game through technology, adidas has made continuous investments in sports science, sensor technology, wearables and digital communication platforms. adidas was the first in the industry to comprehensively bring data analytics to athletes. For example, adidas launched miCoach, a running interactive training platform, to offer personal coaching services so athletes of all levels can get fitter, run faster and simply be better. adidas also acquired Runtastic, which was one of the most diverse global players in the health and fitness application market that operated a multi-application strategy with over 20 apps covering a wide variety of endurance, health and fitness activities. Through its highly engaged and active user base, adidas has established solid revenue and earnings streams and high user satisfaction in marketing a variety of digitally enabled products.

13. adidas's investments have been rewarded by the U.S. Patent and Trademark Office with multiple patents that cover various digital applications that improve athletic performance.

14. adidas AG owns United States Patent No. 8,068,858 (“the ’858 patent”), including the right to sue for past damages. The ’858 patent was duly and legally issued by the United States Patent and Trademark Office on November 29, 2011, is active, and is entitled “Methods and computer program products for providing information about a user during a physical activity.” A true and correct copy of the ’858 patent is attached hereto as Exhibit A.

15. adidas AG owns United States Patent No. 7,805,150 (“the ’150 patent”), including the right to sue for past damages. The ’150 patent was duly and legally issued by the United States Patent and Trademark Office on September 28, 2010, is active, and is entitled “Wireless device, program products and methods of using a wireless device to deliver services.” A true and correct copy of the ’150 patent is attached hereto as Exhibit B.

16. adidas AG owns United States Patent No. 7,805,149 (“the ’149 patent”), including the right to sue for past damages. The ’149 patent was duly and legally issued by the United States Patent and Trademark Office on September 28, 2010, is active, and is entitled “Location-aware fitness training device, methods, and program products that support real-time interactive communication and automated route generation.” A true and correct copy of the ’149 patent is attached hereto as Exhibit C.

17. adidas AG owns United States Patent No. 7,480,512 (“the ’512 patent”), including the right to sue for past damages. The ’512 patent was duly and legally issued by the United States Patent and Trademark Office on January 20, 2009, is active, and is entitled “Wireless device, program products and methods of using a wireless device to deliver services.” A true and correct copy of the ’512 patent is attached hereto as Exhibit D.

18. adidas AG owns United States Patent No. 9,415,267 (“the ’267 patent”), including the right to sue for past damages. The ’267 patent was duly and legally issued by the

United States Patent and Trademark Office on August 16, 2016, is active, and is entitled “Performance monitoring systems and methods.” A true and correct copy of the ’267 patent is attached hereto as Exhibit E.

19. adidas AG owns United States Patent No. 8,968,156 (“the ’156 patent”), including the right to sue for past damages. The ’156 patent was duly and legally issued by the United States Patent and Trademark Office on March 3, 2015, is active, and is entitled “Methods for determining workout plans and sessions.” A true and correct copy of the ’156 patent is attached hereto as Exhibit F.

20. adidas AG owns United States Patent No. 8,858,399 (“the ’399 patent”), including the right to sue for past damages. The ’399 patent was duly and legally issued by the United States Patent and Trademark Office on October 14, 2014, is active, and is entitled “Systems and methods for annotating information.” A true and correct copy of the ’399 patent is attached hereto as Exhibit G.

21. adidas AG owns United States Patent No. 8,814,755 (“the ’755 patent”), including the right to sue for past damages. The ’755 patent was duly and legally issued by the United States Patent and Trademark Office on August 26, 2014, is active, and is entitled “Performance information sharing systems and methods.” A true and correct copy of the ’755 patent is attached hereto as Exhibit H.

22. adidas AG owns United States Patent No. 8,725,276 (“the ’276 patent”), including the right to sue for past damages. The ’276 patent was duly and legally issued by the United States Patent and Trademark Office on May 13, 2014, is active, and is entitled “Performance Monitoring Methods.” A true and correct copy of the ’276 patent is attached hereto as Exhibit I.

23. adidas AG owns United States Patent No. 8,579,767 (“the ’767 patent”), including the right to sue for past damages. The ’767 patent was duly and legally issued by the United States Patent and Trademark Office on November 12, 2013, is active, and is entitled “Performance Monitoring Apparatuses, Methods, and Computer Program Products.” A true and correct copy of the ’767 patent is attached hereto as Exhibit J.

24. adidas America, Inc. holds an exclusive right in the United States to use, exploit, and sublicense those rights to the ’858 patent, ’150 patent, ’149 patent, ’512 patent, ’267 patent, ’156 patent, ’399 patent, ’755 patent, ’276 patent, and ’767 patent (collectively, the Patents-in-Suit”), and a right to exclude others from using and exploiting each of the Patents-in-Suit.

#### **GENERAL ALLEGATIONS**

25. Upon information and belief, Defendant Asics America makes, uses, imports, sells, or offers for sale mobile systems, software, or methods for detecting, evaluating, analyzing, storing, displaying, and sharing information about the activities, movement, and performance of a user, including at least the My Asics mobile application, its respective desktop, website, and server software and interfaces, and associated products sold by Asics America (collectively, the “Asics Accused Products”), together with related services (the “Asics Accused Services”). A compilation of screen shots describing Asics Accused Products is attached as Exhibit K.

26. In or around 2016, Asics acquired Defendant FitnessKeeper. Asics’s press release described FitnessKeeper as “the operator of fitness tracking app ‘Runkeeper’, an application that can track and record fitness activities such as running, walking and cycling through GPS on smartphone devices. ‘Runkeeper’ is a world-class leader in the fitness tracking app category and has over 33 million registered users in the U.S. and worldwide. It provides users with notifications of running distance and pace during exercise, as well as functions to

record, manage and analyze activities which help users visualize and achieve their fitness goals, and ultimately make sports more fun for the users.” *See* <http://corp.asics.com/en/press/article/2016-02-12-1>.

27. Upon information and belief, Defendant FitnessKeeper makes, uses, imports, sells, or offers for sale mobile systems, software, or methods for detecting, evaluating, analyzing, storing, displaying, and sharing information about the activities, movement, and performance of a user, including at least the RunKeeper mobile application, its respective desktop, website, and server software and interfaces, and associated products including but not limited to heart rate monitors and smart watches sold by RunKeeper (collectively, the “RunKeeper Accused Products”), together with related services (the “RunKeeper Accused Services”). A compilation of screen shots describing RunKeeper Accused Products is attached as Exhibit L.

28. The RunKeeper Accused Products and Services and the Asics Accused Products and Services (collectively “the Defendants’ Accused Products and Services”) include software for use on a mobile device with a global positioning system (GPS) receiver, as well as software to integrate and work with third party devices such as heart rate monitors, mobile phones and the like. *See, e.g.*, <https://support.runkeeper.com/hc/en-us/articles/201109376-About-Runkeeper> (“The Runkeeper App uses the GPS technology found in your phone to track your fitness activity. This means we can give you results comparable to an expensive GPS watch!”).

29. The Defendants’ Accused Products and Services include software and interfaces on one or more servers that are owned, operated, placed into service, or otherwise controlled by Defendants. The Defendants’ Accused Products and Services include the capability to receive and store information regarding users, including but not limited to location information at a

plurality of waypoints. The Defendants' Accused Products and Services allow for input of commands and information through touchscreen interfaces on mobile devices.

30. The Defendants' Accused Products and Services also include the capability to measure, capture, determine, store, display, transmit, and receive other information, including but not limited to athletic performance information based at least in part on user location at the waypoints. The Defendants' Accused Products and Services transmit data obtained during a user fitness activity wirelessly, including to a server. The Defendants' Accused Products and Services includes giving feedback during an athletic activity based on performance, as well as the ability to determine workout plans with different types of workouts, track performance with those plans, and modify workout plans. The Defendants' Accused Products and Services outputs comparisons of performance information gathered over time or between different individuals.

31. For example, the RunKeeper Accused Products and Services permit users to assign ratings to and/or annotate fitness routes. The RunKeeper Accused Products and Services include functionality for receiving and presenting predetermined routes of a fitness activity. The RunKeeper Accused Products and Services include the ability to receive data from another device, for example a heart rate monitor, and associate data from such device with other information regarding a fitness activity. The RunKeeper Accused Products and Services are especially designed, adapted, or configured to operate as described in this Complaint.

32. FitnessKeeper and Asics America encourage customers to use the features of both the RunKeeper Accused Products and Services and the Asics Accused Products and Services through encouraging the customers to use the products in an infringing manner and integrating the accused products and services. The Defendants have acted in concert in the fitness technology marketplace and supported and encourage the infringing activities of the other.



33. Defendants have had knowledge of the Patents-in-Suit and notice of their infringement at least as of the filing of this lawsuit. Upon information and belief, Defendants have also been aware of the Patents-in-Suit prior to the filing of this lawsuit. In February of 2014, adidas sued Under Armour, Inc. and MapMyFitness, Inc. in this district over some of the same patents asserted here. *See adidas AG v. Under Armour, Inc. and MapMyFitness, Inc.*, 1:14-cv-00130-GMS (Dist. Del. February 4, 2014) (“the Under Armour Action”). The Under Armour Action was widely reported in the general press and within the sporting goods industry, for example, in Bloomberg News, Reuters, The Wall Street Journal, SportTechie, Wearable Tech News, and other publications. The patents asserted in the Under Armour Action included some of the same patents asserted in this Complaint. For example, the ’149 patent, the ’858 patent, and the ’767 patent were asserted in the Under Armour Action and are being asserted in this Complaint. The other Patents-in-Suit are related to patents asserted in the Under Armour Action. Upon information and belief, Defendants were aware of the Patents-in-Suit at least in part based on their knowledge of the Under Armour Action.

**COUNT I**  
**(Infringement of United States Patent No. 8,068,858)**

34. adidas realleges and incorporates herein by reference the allegations set forth in the foregoing paragraphs of this Complaint.

35. Defendant FitnessKeeper directly infringes, literally or under the doctrine of equivalents, at least claims 1 and 11 of the ’858 patent by, without authority, making, using, importing, selling, or offering to sell, for example, the RunKeeper Accused Products and Services within the United States, in violation of 35 U.S.C. § 271(a).

36. For example, representative claim 1 of the ’858 patent recites, among other things, a method of providing information about a first user engaged in a physical activity that

includes receiving a user's location from a portable fitness device; receiving performance data from the portable fitness device while the user is engaged in physical activity; determining the users' location with respect to a route path, visually displaying on a remote system the first users' location and performance data.

37. Defendant FitnessKeeper's Runkeeper Accused Products practice the claimed methods of at least claims 1 and 11 of the '858 patent. For example, Defendant FitnessKeeper promotes and advertises a feature it describes as "Live Track" as follows:

### **Live Track**

Runkeeper's Live Track feature lets you stream your GPS tracked activities on Runkeeper.com, allowing others to watch how you're doing in real-time. Whether you're running a race or out for a morning run, your friends and loved ones can watch how you're doing the entire time, giving them peace of mind and the ability to cheer you on from anywhere in the world. Learn how to use Live Track [here!](#)

See <https://support.runkeeper.com/hc/en-us/articles/201109666-Runkeeper-Go-Features>.

38. The features of Live Track are encompassed by the elements of at least claims 1 and 11 of the '858 patent as they perform the method of visually displaying performance data and location data of a user while that user is engaged in a physical activity. Defendant FitnessKeeper has known of the '858 patent, as well as the fact that its customers use the RunKeeper Accused Products and Services in a manner that infringes one or more claims of the '858 patent, in accordance with the allegations set forth herein or at least since the date of service of the Complaint.

39. Defendant FitnessKeeper indirectly infringes the '858 patent within the United States by inducement under 35 U.S.C. § 271(b). For example, since learning of the '858 patent and by failing to cease offering the RunKeeper Accused Products and Accused Services, Defendant FitnessKeeper has knowingly and intentionally induced users of the RunKeeper

Accused Products and Services to directly infringe one or more claims of the '858 patent. It does so, inter alia, by (1) providing instructions or information, for example on its publicly available websites (*see, e.g.*, <http://www.runkeeper.com>, <http://support.runkeeper.com>, and other linked pages), to explain how to use the RunKeeper Accused Products and Services in an infringing manner, including the use of the RunKeeper Accused Products and Services in manners described in the foregoing paragraphs, which are expressly incorporated herein and (2) touting these infringing uses of the RunKeeper Accused Products and Services in advertisements including but not limited to those on its websites and other mobile app marketplace websites.

40. Defendant FitnessKeeper indirectly infringes the '858 patent by contributing to the direct infringement of end users under 35 U.S.C. § 271(c) by providing the RunKeeper Accused Products and Services, which, as evidenced by Defendant FitnessKeeper's websites and advertisements (*see, e.g.*, <http://www.runkeeper.com> and linked pages), are especially made for use in a manner infringing one or more claims of the '858 patent as described herein and have no substantial non-infringing uses.

41. adidas has been and continues to be injured by Defendant FitnessKeeper's infringement of the '858 patent. adidas is entitled to recover damages adequate to compensate it for Defendant FitnessKeeper's infringing activities in an amount to be determined at trial but in no event less than a reasonable royalty.

42. Unless enjoined by this Court, Defendant FitnessKeeper's acts of infringement will continue to damage adidas irreparably.

**COUNT II**  
**(Infringement of United States Patent No. 7,805,150)**

43. adidas realleges and incorporates herein by reference the allegations set forth in the foregoing paragraphs of this Complaint.

44. Defendants directly infringe, literally or under the doctrine of equivalents, at least one or more claims 1, 17, 24, and/or 26 of the '150 patent by, without authority, making, using, importing, selling, or offering to sell, for example, the Defendants' Accused Products and Services within the United States, in violation of 35 U.S.C. § 271(a).

45. For example, representative claim 1 of the '150 patent recites, among other things, a method for providing audio content on a mobile device that involves detecting proximity of the mobile device to a point on a route and presenting an audio track from a playlist based on an association of an audio track to or with locations on a route.

46. Defendant FitnessKeeper promotes and advertises an audio coaching feature that practices claim 1 of the '150 patent, which discusses "detecting that the mobile device is proximate to a point on a route path; accessing a playlist that associates audio tracks with locations on the route path; determining whether the playlist indicates that one of the audio tracks is associated with the point; and in response to detecting that the mobile device is proximate to the point and a determination that the audio track is associated with the point, presenting the audio track." The features of claim 1 are practiced in the Defendants' Accused Products and Services, as shown, for example, at <https://support.runkeeper.com/hc/en-us/articles/201109376-About-Runkeeper> and <https://support.runkeeper.com/hc/en-us/articles/201109396-The-Audio-Cue-Guide>.

47. Defendants have known of the '150 patent, as well as the fact that its customers use the Defendants' Accused Products and Services in a manner that infringes one or more claims of the '150 patent, in accordance with the allegations set forth in the foregoing paragraphs or at least since the date of service of the Complaint.

48. Defendant Asics America indirectly infringes the '150 patent within the United States by inducement under 35 U.S.C. § 271(b). For example, since learning of the '150 patent and by failing to cease offering the Asics Accused Products and Accused Services, Defendant Asics America has knowingly and intentionally induced users of the Asics Accused Products and Services to directly infringe one or more claims of the '150 patent. It does so, *inter alia*, by (1) providing instructions or information, for example on its publicly available websites (*see, e.g.*, <http://my.asics.com> and other linked pages), to explain how to use the Asics Accused Products and Services in an infringing manner, including the use of the Asics Accused Products and Services in manners described in the foregoing paragraphs, which are expressly incorporated herein and (2) touting these infringing uses of the Asics Accused Products and Services in advertisements including but not limited to those on its websites and other mobile app marketplace websites.

49. Defendant FitnessKeeper indirectly infringes the '150 patent within the United States by inducement under 35 U.S.C. § 271(b). For example, since learning of the '150 patent and by failing to cease offering the RunKeeper Accused Products and Services, Defendant FitnessKeeper has knowingly and intentionally induced users of the RunKeeper Accused Products and Services to directly infringe one or more claims of the '150 patent. It does so, *inter alia*, by (1) providing instructions or information, for example on its publicly available websites (*see, e.g.*, <http://www.runkeeper.com>, <http://support.runkeeper.com>, and other linked pages), to explain how to use the RunKeeper Accused Products and Services in an infringing manner, including the use of the RunKeeper Accused Products and Services in manners described in the foregoing paragraphs, which are expressly incorporated herein and (2) touting these infringing

uses of the RunKeeper Accused Products and Services in advertisements including but not limited to those on its websites and other mobile app marketplace websites.

50. Defendants indirectly infringe the '150 patent by contributing to the direct infringement of end users under 35 U.S.C. § 271(c) by providing the RunKeeper Accused Products and Services, which, as evidenced by Defendants websites and advertisements (*see, e.g.,* <http://www.runkeeper.com> and linked pages), are especially made for use in a manner infringing one or more claims of the '150 patent as described in the foregoing paragraphs above and have no substantial non-infringing uses.

51. adidas has been and continues to be injured by Defendants' infringement of the '150 patent. adidas is entitled to recover damages adequate to compensate it for Defendants' infringing activities in an amount to be determined at trial but in no event less than a reasonable royalty.

52. Unless enjoined by this Court, Defendants acts of infringement will continue to damage adidas irreparably.

**COUNT III**  
**(Infringement of United States Patent No. 7,805,149)**

53. adidas realleges and incorporates herein by reference the allegations set forth in the foregoing paragraphs of this Complaint.

54. Defendants directly infringe, literally or under the doctrine of equivalents, one or more of at least claims 1, 5, 9, 10, 14, 18-21, and/or 30-31 of the '149 patent by, without authority, making, using, importing, selling, or offering to sell, for example, the Defendants' Accused Products and Services within the United States, in violation of 35 U.S.C. § 271(a).

55. For example, claim 1 of the '149 patent recites a mobile phone comprising a GPS receiver, a wireless wide area network, a processing unit coupled to same, wherein the

processing unit is capable of receiving from said GPS receiver data describing waypoints within a route of a fitness activity, determining athletic performance information associated with multiple of the waypoints, and outputting at least some of the data describing the waypoints and at least some of the athletic performance to said wireless communication network via said wireless wide-area network transmitter; and a wireless wide-area network receiver, coupled to said processing unit, capable of receiving communication from said wireless communication network.

56. The features of claim 1 are practiced in the Defendants' Accused Products and Services, as shown, for example, at <https://support.runkeeper.com/hc/en-us/articles/201109376-About-Runkeeper> and <https://support.runkeeper.com/hc/en-us/articles/201109436-Available-Mobile-Platforms>.

57. Additionally, Defendants promote and advertise features of its applications that collect and transmit fitness activity information, send predetermined routes to mobile devices and provide training plans, goals and prescribed workouts, all of which features practice one or more claims of the '149 patent.

58. Defendants have known of the '149 patent, as well as the fact that its customers use the Defendants' Accused Products and Services in a manner that infringes one or more claims of the '149 patent, in accordance with the allegations set forth in the foregoing paragraphs or at least since the date of service of the Complaint.

59. Defendant FitnessKeeper indirectly infringes the '149 patent within the United States by inducement under 35 U.S.C. § 271(b). For example, since learning of the '149 patent and by failing to cease offering the RunKeeper Accused Products and Accused Services, Defendant FitnessKeeper has knowingly and intentionally induced users of the RunKeeper

Accused Products and Services to directly infringe one or more claims of the '149 patent. It does so, inter alia, by (1) providing instructions or information, for example on its publicly available websites (*see, e.g.*, <http://www.runkeeper.com>, <http://support.runkeeper.com>, and other linked pages), to explain how to use the RunKeeper Accused Products and Services in an infringing manner, including the use of the RunKeeper Accused Products and Services in manners described in the foregoing paragraphs, which are expressly incorporated herein and (2) touting these infringing uses of the RunKeeper Accused Products and Services in advertisements including but not limited to those on its websites and other mobile app marketplace websites.

60. Defendant FitnessKeeper indirectly infringes the '149 patent by contributing to the direct infringement of end users under 35 U.S.C. § 271(c) by providing the RunKeeper Accused Products and Services, which, as evidenced by Defendant FitnessKeeper's websites and advertisements (*see, e.g.*, <http://www.runkeeper.com> and linked pages), are especially made for use in a manner infringing one or more claims of the '149 patent as described herein and have no substantial non-infringing uses.

61. Defendant Asics America indirectly infringes the '149 patent within the United States by inducement under 35 U.S.C. § 271(b). For example, since learning of the '149 patent and by failing to cease offering the Asics Accused Products and Accused Services, Defendant Asics America has knowingly and intentionally induced users of the Asics Accused Products and Services to directly infringe one or more claims of the '149 patent. It does so, inter alia, by (1) providing instructions or information, for example on its publicly available websites (*see, e.g.*, <http://my.asics.com> and other linked pages), to explain how to use the Asics Accused Products and Services in an infringing manner, including the use of the Asics Accused Products and Services in manners described in the foregoing paragraphs, which are expressly incorporated



herein and (2) touting these infringing uses of the Asics Accused Products and Services in advertisements including but not limited to those on its websites and other mobile app marketplace websites.

62. Defendant Asics America indirectly infringes the '149 patent by contributing to the direct infringement of end users under 35 U.S.C. § 271(c) by providing the Asics Accused Products and Services, which, as evidenced by Defendant Asics America's websites and advertisements (*see, e.g.*, <http://my.asics.com> and linked pages), are especially made for use in a manner infringing one or more claims of the '149 patent as described herein and have no substantial non-infringing uses.

63. adidas has been and continues to be injured by Defendants' infringement of the '149 patent. adidas is entitled to recover damages adequate to compensate it for Defendants' infringing activities in an amount to be determined at trial but in no event less than a reasonable royalty.

64. Unless enjoined by this Court, Defendants' acts of infringement will continue to damage adidas irreparably.

**COUNT IV**  
**(Infringement of United States Patent No. 7,480,512)**

65. adidas realleges and incorporates herein by reference the allegations set forth in the foregoing paragraphs of this Complaint.

66. Defendants directly infringe, literally or under the doctrine of equivalents, one or more claims of at least claims 1-3 and 11-13 of the '512 patent by, without authority, making, using, importing, selling, or offering to sell, for example, the Defendants' Accused Products and Services within the United States, in violation of 35 U.S.C. § 271(a).

67. For example, Defendants promote features of their applications such as training plans, goals and prescribed workouts that practice one or more of the claims identified above. As a further example, claim 1 of the '512 patent recites a data processing method comprising storing a training plan in data storage, wherein the training plan includes a plurality of workouts each describing a prospective human physical activity to be performed, and wherein said training plan includes a distance-based performance goal for at least one of said workouts; permitting selection of the training plan in the data storage by any of a plurality of users; in response to a user among said plurality of users selecting said training plan, electronically transmitting data describing at least one workout in said training plan that is to be performed to a client device associated with the user; and automatically customizing at least one prospective workout of the training plan in response to one or more inputs indicating actual measured performance of the user in the human physical activity. The features of claim 1 are practiced in the Defendants' Accused Products and Services, as shown, for example, at <https://support.runkeeper.com/hc/en-us/articles/205204595-Prescribed-Workouts> and in the application itself.

68. Defendants have known of the '512 patent, as well as the fact that its customers use the Defendants' Accused Products and Services in a manner that infringes one or more claims of the '512 patent, in accordance with the allegations set forth in the foregoing paragraphs or at least since the date of service of the Complaint.

69. Defendant FitnessKeeper indirectly infringes the '512 patent within the United States by inducement under 35 U.S.C. § 271(b). For example, since learning of the '512 patent and by failing to cease offering the RunKeeper Accused Products and Accused Services, Defendant FitnessKeeper has knowingly and intentionally induced users of the RunKeeper Accused Products and Services to directly infringe one or more claims of the '512 patent. It does

so, inter alia, by (1) providing instructions or information, for example on its publicly available websites (*see, e.g.*, <http://www.runkeeper.com>, <http://support.runkeeper.com>, and other linked pages), to explain how to use the RunKeeper Accused Products and Services in an infringing manner, including the use of the RunKeeper Accused Products and Services in manners described in the foregoing paragraphs, which are expressly incorporated herein and (2) touting these infringing uses of the Runkeeper Accused Products and Services in advertisements including but not limited to those on its websites and other mobile app marketplace websites.

70. Defendant FitnessKeeper indirectly infringes the '512 patent by contributing to the direct infringement of end users under 35 U.S.C. § 271(c) by providing the RunKeeper Accused Products and Services, which, as evidenced by Defendant FitnessKeeper's websites and advertisements (*see, e.g.*, <http://www.runkeeper.com> and linked pages), are especially made for use in a manner infringing one or more claims of the '512 patent as described in the foregoing paragraphs and have no substantial non-infringing uses.

71. Defendant Asics America indirectly infringes the '512 patent within the United States by inducement under 35 U.S.C. § 271(b). For example, since learning of the '512 patent and by failing to cease offering the Asics Accused Products and Accused Services, Defendant Asics America has knowingly and intentionally induced users of the Asics Accused Products and Services to directly infringe one or more claims of the '512 patent. It does so, inter alia, by (1) providing instructions or information, for example on its publicly available websites (*see, e.g.*, <http://my.asics.com> and other linked pages), to explain how to use the Asics Accused Products and Services in an infringing manner, including the use of the Asics Accused Products and Services in manners described in the foregoing paragraphs, which are expressly incorporated herein and (2) touting these infringing uses of the Asics Accused Products and Services in

advertisements including but not limited to those on its websites and other mobile app marketplace websites.

72. Defendant Asics America indirectly infringes the '512 patent by contributing to the direct infringement of end users under 35 U.S.C. § 271(c) by providing the Asics Accused Products and Services, which, as evidenced by Defendant Asics America's websites and advertisements (*see, e.g.*, <http://my.asics.com> and linked pages), are especially made for use in a manner infringing one or more claims of the '512 patent as described in the foregoing paragraphs and have no substantial non-infringing uses.

73. adidas has been and continues to be injured by Defendants' infringement of the '512 patent. adidas is entitled to recover damages adequate to compensate it for Defendants' infringing activities in an amount to be determined at trial but in no event less than a reasonable royalty.

74. Unless enjoined by this Court, Defendants' acts of infringement will continue to damage adidas.

**COUNT V**  
**(Infringement of United States Patent No. 9,415,267)**

75. adidas realleges and incorporates herein by reference the allegations set forth in the foregoing paragraphs of this Complaint.

76. Defendant FitnessKeeper directly infringe, literally or under the doctrine of equivalents, one or more claims including at least claim 12-16 of the '267 patent by, without authority, making, using, importing, selling, or offering to sell, for example, the Defendant FitnessKeeper's Accused Products and Services within the United States, in violation of 35 U.S.C. § 271(a).

77. For example, Defendants promote features of their applications, including run rank, fitness reports; RunKeeper FitnessFeed and activity logs that practice claim 12 of the '267 patent. As a further example, claim 12 recites a method of electronically providing comparative health coaching information to a user, the method comprising: collecting first electronic user performance data related to a first fitness activity of a first type on a portable electronic device, the portable electronic device including a microprocessor, a display screen, a user input, a satellite positioning system receiver, an accelerometer, a memory, and a wireless communication transceiver, the electronic user performance data being stored in the memory; collecting second electronic user performance data related to a second fitness activity of the first type on the portable electronic device, the second electronic user performance data being stored in the memory; collecting third electronic user performance data related to a first activity of a second type on the portable electronic device, the third electronic user performance data being stored in the memory; collecting fourth electronic user performance data related to a second completed activity of the second type on the portable electronic device, the fourth electronic user performance data being stored in the memory; generating first electronic comparison data by comparing the first electronic user performance data and the second electronic user performance data; generating second electronic comparison data by comparing the third electronic user performance data and the fourth electronic user performance data; and displaying the first electronic comparison data on the display screen. The features of claim 1 are practiced in the RunKeeper Accused Products and Services, as shown, for example, at <https://support.runkeeper.com/hc/en-us/articles/205204595-Prescribed-Workouts> and in the application itself.

78. Defendant FitnessKeeper has known of the '267 patent, as well as the fact that its customers use the RunKeeper Accused Products and Services in a manner that infringes one or more claims of the '512 patent, in accordance with the allegations set forth in the foregoing paragraphs or at least since the date of service of the Complaint.

79. Defendant FitnessKeeper indirectly infringes the '267 patent within the United States by inducement under 35 U.S.C. § 271(b). For example, since learning of the '267 patent and by failing to cease offering the RunKeeper Accused Products and Accused Services, Defendant FitnessKeeper has knowingly and intentionally induced users of the RunKeeper Accused Products and Services to directly infringe one or more claims of the '512 patent. It does so, *inter alia*, by (1) providing instructions or information, for example on its publicly available websites (*see, e.g.*, <http://www.runkeeper.com>, <http://support.runkeeper.com>, and other linked pages), to explain how to use the RunKeeper Accused Products and Services in an infringing manner, including the use of the RunKeeper Accused Products and Services in manners described in the foregoing paragraphs, which are expressly incorporated herein and (2) touting these infringing uses of the RunKeeper Accused Products and Services in advertisements including but not limited to those on its websites and other mobile app marketplace websites.

80. Defendant FitnessKeeper indirectly infringes the '267 patent by contributing to the direct infringement of end users under 35 U.S.C. § 271(c) by providing the RunKeeper Accused Products and Services, which, as evidenced by Defendant FitnessKeeper's websites and advertisements (*see, e.g.*, <http://www.runkeeper.com> and linked pages), are especially made for use in a manner infringing one or more claims of the '512 patent as described in the foregoing paragraphs and have no substantial non-infringing uses.

81. adidas has been and continues to be injured by Defendant FitnessKeeper's infringement of the '267 patent. adidas is entitled to recover damages adequate to compensate it for Defendants' infringing activities in an amount to be determined at trial but in no event less than a reasonable royalty.

82. Unless enjoined by this Court, Defendant FitnessKeeper's acts of infringement will continue to damage adidas.

**COUNT VI**  
**(Infringement of United States Patent No. 8,968,156)**

83. adidas realleges and incorporates herein by reference the allegations set forth in the foregoing paragraphs of this Complaint.

84. Defendants directly infringe, literally or under the doctrine of equivalents, one or more claims, including at least claims 1-3, 5-8, and/or 12-21, of the '156 patent by, without authority, making, using, importing, selling, or offering to sell, for example, the Defendants' Accused Products and Services within the United States, in violation of 35 U.S.C. § 271(a).

85. For example, Defendants promote features of their applications such as training plans, goals and prescribed workouts that practice one or more of the claims identified above. As a further example, representative claim 1 of the '156 patent recites a method of determining a workout plan for an individual, the method comprising: receiving an input from the individual; determining a first type of workout based on the input from the individual; determining a plurality of workout sessions for the first type of workout for the workout plan; determining a second type of workout that is different than the first type of workout based on the input from the individual; determining a plurality of workout sessions for the second type of workout for the workout plan; and storing data describing the workout plan in a memory accessible by a server computer system, wherein the data describing the workout plan includes data describing the

plurality of workout sessions for the first type of workout and data describing the plurality of workout sessions for the second type. The features of claim 1 are practiced in the RunKeeper Accused Products and Services, as practiced in the Runkeeper Training Plans, as shown, for example, at <https://support.runkeeper.com/hc/en-us/articles/201110326-How-To-Sign-Up-For-A-Training-Plan>. <https://support.runkeeper.com/hc/en-us/articles/201110256-Available-Training-Plans> and <https://support.runkeeper.com/hc/en-us/articles/205204595-Prescribed-Workouts>.

86. Defendants have known of the '156 patent, as well as the fact that its customers use the Defendants' Accused Products and Services in a manner that infringes one or more claims of the '156 patent, in accordance with the allegations set forth in the foregoing paragraphs or at least since the date of service of the Complaint.

87. Defendant FitnessKeeper indirectly infringes the '156 patent within the United States by inducement under 35 U.S.C. § 271(b). For example, since learning of the '156 patent and by failing to cease offering the RunKeeper Accused Products and Accused Services, Defendant FitnessKeeper has knowingly and intentionally induced users of the RunKeeper Accused Products and Services to directly infringe one or more claims of the '156 patent. It does so, *inter alia*, by (1) providing instructions or information, for example on its publicly available websites (*see, e.g.*, <http://www.runkeeper.com>, <http://support.runkeeper.com>, and other linked pages), to explain how to use the RunKeeper Accused Products and Services in an infringing manner, including the use of the RunKeeper Accused Products and Services in manners described in the foregoing paragraphs, which are expressly incorporated herein and (2) touting these infringing uses of the RunKeeper Accused Products and Services in advertisements including but not limited to those on its websites and other mobile app marketplace websites.



88. Defendant FitnessKeeper indirectly infringes the '156 patent by contributing to the direct infringement of end users under 35 U.S.C. § 271(c) by providing the RunKeeper Accused Products and Services, which, as evidenced by Defendant FitnessKeeper's websites and advertisements (*see, e.g.*, <http://www.runkeeper.com> and linked pages), are especially made for use in a manner infringing one or more claims of the '156 patent as described in the foregoing paragraphs and have no substantial non-infringing uses.

89. Defendant Asics America has known of the '156 patent, as well as the fact that its customers use the Asics Accused Products and Services in a manner that infringes one or more claims of the '156 patent, in accordance with the allegations set forth in the foregoing paragraphs or at least since the date of service of the Complaint.

90. Defendant Asics America indirectly infringes the '156 patent within the United States by inducement under 35 U.S.C. § 271(b). For example, since learning of the '156 patent and by failing to cease offering the Asics Accused Products and Accused Services, Defendant Asics America has knowingly and intentionally induced users of the Asics Accused Products and Services to directly infringe one or more claims of the '156 patent. It does so, *inter alia*, by (1) providing instructions or information, for example on its publicly available websites (*see, e.g.*, <http://my.asics.com> and other linked pages), to explain how to use the Asics Accused Products and Services in an infringing manner, including the use of the Asics Accused Products and Services in manners described in the foregoing paragraphs, which are expressly incorporated herein and (2) touting these infringing uses of the Asics Accused Products and Services in advertisements including but not limited to those on its websites and other mobile app marketplace websites.

91. Defendant Asics America indirectly infringes the '156 patent by contributing to the direct infringement of end users under 35 U.S.C. § 271(c) by providing the Asics Accused Products and Services, which, as evidenced by Defendant Asics America's websites and advertisements (*see, e.g.*, <http://my.asics.com> and linked pages), are especially made for use in a manner infringing one or more claims of the '156 patent as described in the foregoing paragraphs and have no substantial non-infringing uses.

92. adidas has been and continues to be injured by Defendants' infringement of the '156 patent. adidas is entitled to recover damages adequate to compensate it for Defendants' infringing activities in an amount to be determined at trial but in no event less than a reasonable royalty.

93. Unless enjoined by this Court, Defendants' acts of infringement will continue to damage adidas irreparably.

**COUNT VII**  
**(Infringement of United States Patent No. 8,858,399)**

94. adidas realleges and incorporates herein by reference the allegations set forth in the foregoing paragraphs of this Complaint.

95. Defendant FitnessKeeper directly infringes, literally or under the doctrine of equivalents, one or more claims, including at least claims 12-19 and/or 21-25, of the '399 patent by, without authority, making, using, importing, selling, or offering to sell, for example, the RunKeeper Accused Products and Services within the United States, in violation of 35 U.S.C. § 271(a).

96. For example, Defendants promote features of their applications such as the RunKeeper FitnessFeed, activity logs, and friends sharing that practice one or more of the claims identified above. As a further example, representative claim 12 of the '399 patent recites a

method of annotating information collected about an individual engaged in a physical activity that includes receiving information collected from a remote computing device; receiving an annotation associated with the information collected; generating visual display data to a second remote computing device for generating an output at the second remote computing device. Defendants' RunKeeper FitnessFeed, activity logs, and friends sharing perform the claimed methods by annotating information collected about its users and generating visual display data to remote computing devices.

97. Defendant FitnessKeeper has known of the '399 patent, as well as the fact that its customers use the RunKeeper Accused Products and Services in a manner that infringes one or more claims of the '399 patent, in accordance with the allegations set forth in the foregoing paragraphs or at least since the date of service of the Complaint.

98. Defendant FitnessKeeper indirectly infringes the '399 patent within the United States by inducement under 35 U.S.C. § 271(b). For example, since learning of the '399 patent and by failing to cease offering the RunKeeper Accused Products and Accused Services, Defendant FitnessKeeper has knowingly and intentionally induced users of the RunKeeper Accused Products and Services to directly infringe one or more claims of the '399 patent. It does so, *inter alia*, by (1) providing instructions or information, for example on its publicly available websites (*see, e.g.*, <http://www.runkeeper.com>, <http://support.runkeeper.com>, and other linked pages), to explain how to use the RunKeeper Accused Products and Services in an infringing manner, including the use of the RunKeeper Accused Products and Services in manners described in the foregoing paragraphs, which are expressly incorporated herein and (2) touting these infringing uses of the RunKeeper Accused Products and Services in advertisements including but not limited to those on its websites and other mobile app marketplace websites.

99. Defendant FitnessKeeper indirectly infringes the '399 patent by contributing to the direct infringement of end users under 35 U.S.C. § 271(c) by providing the RunKeeper Accused Products and Services, which, as evidenced by Defendant FitnessKeeper's websites and advertisements (*see, e.g.*, <http://www.runkeeper.com> and linked pages), are especially made for use in a manner infringing one or more claims of the '399 patent as described in the foregoing paragraphs and have no substantial non-infringing uses.

100. adidas has been and continues to be injured by Defendant FitnessKeeper's infringement of the '399 patent. adidas is entitled to recover damages adequate to compensate it for Defendant FitnessKeeper's infringing activities in an amount to be determined at trial but in no event less than a reasonable royalty.

101. Unless enjoined by this Court, Defendant FitnessKeeper's acts of infringement will continue to damage adidas irreparably.

**COUNT XIII**  
**(Infringement of United States Patent No. 8,814,755)**

102. adidas realleges and incorporates herein by reference the allegations set forth in the foregoing paragraphs of this Complaint.

103. Defendants directly infringe, literally or under the doctrine of equivalents, at least claims 1, 2, 4-5, and 13-14 of the '755 patent by, without authority, making, using, importing, selling, or offering to sell, for example, the Defendants' Accused Products and Services within the United States, in violation of 35 U.S.C. § 271(a).

104. For example, Defendants promote and advertise features of its applications that collect and transmit fitness activity information, provide activity charts, provide RunKeeper FitnessFeed, Activity Logs, and Friends Sharing, as well as fitness reports and workout comparisons, all of which features practice one or more claims of the '755 patent. As a further

example, representative claim 1 of the '755 patent recites a method for sharing information about an individual who has engaged in physical activity, including determining performance information using a processor of a first portable performance monitoring system that is carried with the first individual; wirelessly transmitting the performance information; receiving the performance information by a computing device not carried by the individual; and generating a visual display based on the performance information.

105. Defendants have known of the '755 patent, as well as the fact that its customers use the Defendants' Accused Products and Services in a manner that infringes one or more claims of the '755 patent, in accordance with the allegations set forth in the foregoing paragraphs or at least since the date of service of the Complaint.

106. Defendant FitnessKeeper indirectly infringes the '755 patent within the United States by inducement under 35 U.S.C. § 271(b). For example, since learning of the '755 patent and by failing to cease offering the RunKeeper Accused Products and Accused Services, Defendant FitnessKeeper has knowingly and intentionally induced users of the RunKeeper Accused Products and Services to directly infringe one or more claims of the '755 patent. It does so, inter alia, by (1) providing instructions or information, for example on its publicly available websites (*see, e.g.*, <http://www.runkeeper.com>, <http://support.runkeeper.com>, and other linked pages), to explain how to use the RunKeeper Accused Products and Services in an infringing manner, including the use of the RunKeeper Accused Products and Services in manners described herein and (2) touting these infringing uses of the RunKeeper Accused Products and Services in advertisements including but not limited to those on its websites and other mobile app marketplace websites.

107. Defendant FitnessKeeper indirectly infringes the '755 patent by contributing to the direct infringement of end users under 35 U.S.C. § 271(c) by providing the RunKeeper Accused Products and Services, which, as evidenced by Defendant FitnessKeeper's websites and advertisements (*see, e.g.*, <http://www.runkeeper.com> and linked pages), are especially made for use in a manner infringing one or more claims of the '755 patent as described herein and have no substantial non-infringing uses.

108. Defendant Asics America indirectly infringes the '755 patent within the United States by inducement under 35 U.S.C. § 271(b). For example, since learning of the '755 patent and by failing to cease offering the Asics Accused Products and Accused Services, Defendant Asics America has knowingly and intentionally induced users of the Asics Accused Products and Services to directly infringe one or more claims of the '755 patent. It does so, *inter alia*, by (1) providing instructions or information, for example on its publicly available websites (*see, e.g.*, <http://my.asics.com> and other linked pages), to explain how to use the Asics Accused Products and Services in an infringing manner, including the use of the Asics Accused Products and Services in manners described herein and (2) touting these infringing uses of the Asics Accused Products and Services in advertisements including but not limited to those on its websites and other mobile app marketplace websites.

109. Defendant Asics America indirectly infringes the '755 patent by contributing to the direct infringement of end users under 35 U.S.C. § 271(c) by providing the Asics Accused Products and Services, which, as evidenced by Defendant Asics America's websites and advertisements (*see, e.g.*, <http://my.asics.com> and linked pages), are especially made for use in a manner infringing one or more claims of the '755 patent as described herein and have no substantial non-infringing uses.

110. adidas has been and continues to be injured by Defendants' infringement of the '755 patent. adidas is entitled to recover damages adequate to compensate it for Defendants' infringing activities in an amount to be determined at trial but in no event less than a reasonable royalty.

111. Unless enjoined by this Court, Defendants' acts of infringement will continue to damage adidas.

**COUNT IX**  
**(Infringement of United States Patent No. 8,725,276)**

112. adidas realleges and incorporates herein by reference the allegations set forth in the foregoing paragraphs of this Complaint.

113. Defendants directly infringe, literally or under the doctrine of equivalents, one or more claims, including at least claim 10 and 16 of the '276 patent by, without authority, making, using, importing, selling, or offering to sell, for example, the Defendants' Accused Products and Services within the United States, in violation of 35 U.S.C. § 271(a).

114. For example, Defendants promote features of their applications that provide Route and fitness activity data collection, correlation and display that practice one or more claims of the '276 patent. As a further example, claim 16 of the '276 patent recites a method of displaying athletic performance information, comprising: receiving data relating to a route; receiving with a position monitor position data relating to a position of an individual during traversal of the route by the individual; receiving with a performance monitor performance data about the individual during the traversal of the route; correlating the performance data with the position data with at least one processor; and simultaneously displaying the position data and the performance data over a graphical representation of the route data during the traversal of the route with a display screen. The features of claim 16 are practiced in the RunKeeper Accused

Products and Services, as practiced in the Runkeeper application as combined with various heart rate monitors per Defendant's instructions, as shown, for example, at <https://support.runkeeper.com/hc/en-us/articles/201109376-About-Runkeeper>; <https://support.runkeeper.com/hc/en-us/articles/203496577-How-To-Pair-Your-Heart-Rate-Monitor>; <https://support.runkeeper.com/hc/en-us/articles/201110496-How-To-Create-A-Route-And-Use-It>; and in the application itself.

115. Defendants have known of the '276 patent, as well as the fact that its customers use the Defendants' Accused Products and Services in a manner that infringes one or more claims of the '276 patent, in accordance with the allegations set forth in the foregoing paragraphs or at least since the date of service of the Complaint.

116. Defendant FitnessKeeper indirectly infringes the '276 patent within the United States by inducement under 35 U.S.C. § 271(b). For example, since learning of the '276 patent and by failing to cease offering the RunKeeper Accused Products and Accused Services, Defendant FitnessKeeper has knowingly and intentionally induced users of the RunKeeper Accused Products and Services to directly infringe one or more claims of the '276 patent. It does so, inter alia, by (1) providing instructions or information, for example on its publicly available websites (*see, e.g.*, <http://www.runkeeper.com>, <http://support.runkeeper.com>, and other linked pages), to explain how to use the RunKeeper Accused Products and Services in an infringing manner, including the use of the RunKeeper Accused Products and Services in manners described in the foregoing paragraphs, which are expressly incorporated herein and (2) touting these infringing uses of the RunKeeper Accused Products and Services in advertisements including but not limited to those on its websites and other mobile app marketplace websites.



117. Defendant FitnessKeeper indirectly infringes the '276 patent by contributing to the direct infringement of end users under 35 U.S.C. § 271(c) by providing the RunKeeper Accused Products and Services, which, as evidenced by Defendant FitnessKeeper's websites and advertisements (*see, e.g.*, <http://www.runkeeper.com> and linked pages), are especially made for use in a manner infringing one or more claims of the '276 patent as described in the foregoing paragraphs and have no substantial non-infringing uses.

118. Defendant Asics America indirectly infringes the '276 patent within the United States by inducement under 35 U.S.C. § 271(b). For example, since learning of the '276 patent and by failing to cease offering the Asics Accused Products and Accused Services, Defendant Asics America has knowingly and intentionally induced users of the Asics Accused Products and Services to directly infringe one or more claims of the '276 patent. It does so, *inter alia*, by (1) providing instructions or information, for example on its publicly available websites (*see, e.g.*, <http://my.asics.com> and other linked pages), to explain how to use the Asics Accused Products and Services in an infringing manner, including the use of the Asics Accused Products and Services in manners described in the foregoing paragraphs, which are expressly incorporated herein and (2) touting these infringing uses of the Asics Accused Products and Services in advertisements including but not limited to those on its websites and other mobile app marketplace websites.

119. Defendant Asics America indirectly infringes the '276 patent by contributing to the direct infringement of end users under 35 U.S.C. § 271(c) by providing the Asics Accused Products and Services, which, as evidenced by Defendant Asics America's websites and advertisements (*see, e.g.*, <http://my.asics.com> and linked pages), are especially made for use in a

manner infringing one or more claims of the '276 patent as described in the foregoing paragraphs and have no substantial non-infringing uses.

120. adidas has been and continues to be injured by Defendants' infringement of the '276 patent. adidas is entitled to recover damages adequate to compensate it for Defendants' infringing activities in an amount to be determined at trial but in no event less than a reasonable royalty.

121. Unless enjoined by this Court, Defendants' acts of infringement will continue to damage adidas.

**COUNT X**  
**(Infringement of United States Patent No. 8,579,767)**

122. adidas realleges and incorporates herein by reference the allegations set forth in the foregoing paragraphs of this Complaint.

123. Defendant FitnessKeeper directly infringes, literally or under the doctrine of equivalents, one or more claims, including at least claims 2, 8, and/or 11 of the '767 patent by, without authority, making, using, importing, selling, or offering to sell, for example, the RunKeeper Accused Products and Services within the United States, in violation of 35 U.S.C. § 271(a).

124. For example, Defendant FitnessKeeper promotes features of its application including Collection, display, and transmission of fitness data; Audio Cues & Coaching; RunKeeper FitnessFeed and activity logs that practice one or more claims of the '767 patent. As a further example, claim 2 of the '767 patent recites a method of monitoring an individual's performance during a physical activity with a portable performance monitoring device, the method comprising: obtaining position points using a satellite positioning system receiver of the portable performance monitoring device during the physical activity; determining performance

information for the individual based on the position points using a processor of the portable performance monitoring device during the physical activity; conveying at least some of the performance information to the individual using an output device of the portable performance monitoring device during the physical activity; transmitting at least some of the performance information to a remotely located device using a wireless wide-area network transceiver of the portable performance monitoring device, and wherein the performance information comprises speed or pace information. The features of claim 2 are practiced via use of the Accused Products and Services, as practiced in the Runkeeper application, as shown, for example, at <https://support.runkeeper.com/hc/en-us/articles/201109476-How-to-Send-Resend-Activities-from-App-to-Website>; <https://support.runkeeper.com/hc/en-us/articles/201109396-The-Audio-Cue-Guide>; <https://support.runkeeper.com/hc/en-us/articles/201109676-How-are-Calories-Burned-calculated>; <https://support.runkeeper.com/hc/en-us/articles/201109376-About-Runkeeper>; and in the application itself.

125. Defendant FitnessKeeper has known of the '767 patent, as well as the fact that its customers use the RunKeeper Accused Products and Services in a manner that infringes one or more claims of the '767 patent, in accordance with the allegations set forth in the foregoing paragraphs or at least since the date of service of the Complaint.

126. Defendant FitnessKeeper indirectly infringes the '767 patent within the United States by inducement under 35 U.S.C. § 271(b). For example, since learning of the '767 patent and by failing to cease offering the RunKeeper Accused Products and Accused Services, Defendant FitnessKeeper has knowingly and intentionally induced users of the RunKeeper Accused Products and Services to directly infringe one or more claims of the '767 patent. It does so, inter alia, by (1) providing instructions or information, for example on its publicly available

websites (*see, e.g.*, <http://www.runkeeper.com>, <http://support.runkeeper.com>, and other linked pages), to explain how to use the RunKeeper Accused Products and Services in an infringing manner, including the use of the RunKeeper Accused Products and Services in manners described in the foregoing paragraphs above, which are expressly incorporated herein and (2) touting these infringing uses of the RunKeeper Accused Products and Services in advertisements including but not limited to those on its websites and other mobile app marketplace websites.

127. Defendant FitnessKeeper indirectly infringes the '767 patent by contributing to the direct infringement of end users under 35 U.S.C. § 271(c) by providing the RunKeeper Accused Products and Services, which, as evidenced by Defendant FitnessKeeper's websites and advertisements (*see, e.g.*, <http://www.runkeeper.com> and linked pages), are especially made for use in a manner infringing one or more claims of the '767 patent as described in the foregoing paragraphs and have no substantial non-infringing uses.

128. Defendant Asics America indirectly infringes the '767 patent within the United States by inducement under 35 U.S.C. § 271(b). For example, since learning of the '767 patent and by failing to cease offering the Asics Accused Products and Accused Services, Defendant Asics America has knowingly and intentionally induced users of the Asics Accused Products and Services to directly infringe one or more claims of the '767 patent. It does so, *inter alia*, by (1) providing instructions or information, for example on its publicly available websites (*see, e.g.*, <http://my.asics.com> and other linked pages), to explain how to use the Asics Accused Products and Services in an infringing manner, including the use of the Asics Accused Products and Services in manners described in the foregoing paragraphs, which are expressly incorporated herein and (2) touting these infringing uses of the Asics Accused Products and Services in

advertisements including but not limited to those on its websites and other mobile app marketplace websites.

129. Defendant Asics America indirectly infringes the '767 patent by contributing to the direct infringement of end users under 35 U.S.C. § 271(c) by providing the Asics Accused Products and Services, which, as evidenced by Defendant Asics America's websites and advertisements (*see, e.g.*, <http://my.asics.com> and linked pages), are especially made for use in a manner infringing one or more claims of the '767 patent as described in the foregoing paragraphs and have no substantial non-infringing uses.

130. adidas has been and continues to be injured by Defendants' infringement of the '767 patent. adidas is entitled to recover damages adequate to compensate it for Defendants' infringing activities in an amount to be determined at trial but in no event less than a reasonable royalty.

131. Unless enjoined by this Court, Defendants' acts of infringement will continue to damage adidas.

### **PRAYER FOR RELIEF**

WHEREFORE, adidas respectfully prays that this Court:

- a. Enter a judgment that Defendants have infringed one or more of the Patents-in-Suit.
- b. Grant a permanent injunction restraining and enjoining Defendants and their officers, directors, agents, servants, employees, successors, assigns, parents, subsidiaries, affiliated or related companies, and attorneys from directly or indirectly infringing one or more of the Patents-in-Suit;

- c. Award adidas damages in an amount sufficient to compensate adidas for Defendants' infringement of the Patents-in-Suit, but not less than a reasonable royalty, together with interests and costs;
- d. Award adidas enhanced damages under 35 U.S.C. § 285;
- e. Award prejudgment interest to adidas under 35 U.S.C. § 284;
- f. Grant such other and further relief as this Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

adidas hereby demands a jury trial on all issues appropriately triable by a jury.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

*/s/ Jack B. Blumenfeld*

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