

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

VENUS LOCATIONS LLC

Plaintiff

vs.

FITNESSKEEPER, INC.

Defendant

CIVIL ACTION NO. 17-11529 ()

JURY TRIAL DEMANDED

COMPLAINT FOR INFRINGEMENT OF PATENT

COMES NOW, Plaintiff Venus Locations LLC (“Venus” or “Plaintiff”), through the undersigned attorneys, and respectfully alleges, states, and prays as follows:

I. NATURE OF THE ACTION

1. This is an action for patent infringement under the Patent Laws of the United States, Title 35 United States Code (“U.S.C.”) to prevent and enjoin defendant FitnessKeeper, Inc. (“Defendant”) from infringing and profiting, in an illegal and unauthorized manner and without authorization and/or of the consent from Venus, from U.S. Patent No. 6,442,485 (the “485 patent”, attached hereto and incorporated as Exhibit A) pursuant to 35 U.S.C. § 271, and to recover damages, attorney’s fees, and costs.

II. THE PARTIES

2. Plaintiff Venus is a Texas entity with its principal place of business at 6860 North Dallas Parkway, Suite 200, Plano, Texas 75024.

3. Upon information and belief, Defendant is a corporation organized and existing under the laws of the state of Delaware, with a principal place of business at 580 Harrison Avenue, Suite 12, 4th Floor, Boston MA 02118. Upon information and belief, Defendant may be served

with process at The Corporation Trust Company, Corporation Trust Center 1209 Orange Street, Wilmington DE 19801.

III. JURISDICTION AND VENUE

4. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because the action arises under the Patent Laws of the United States, 35 U.S.C. §§ 1 *et seq.*

5. This Court has *in personam* jurisdiction over Defendant by virtue of its systematic and continuous contacts with this jurisdiction, including having the right to transact business in Massachusetts. The injury to Venus and Venus' cause of action have risen in Massachusetts.

6. Defendant is subject to this Court's *in personam* jurisdiction pursuant to due process, due at least to its substantial business and purposeful availment of this forum, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Massachusetts and in this judicial district.

7. Upon information and belief, Defendant directly and/or through its employees or agents, and/or its customers, makes and uses products, as defined below, that perform each and every step of at least one claim of the '485 patent with the knowledge and/or understanding that such products are used or will be used in this District. For example, Defendant uses the accused product for automatic positional location.¹ Upon information and belief, Defendant has engaged in substantial and not isolated activity within this District. Therefore, exercise of jurisdiction over Defendant will not offend traditional notions of fair play and substantial justice.

8. Defendant has conducted and does conduct business within Massachusetts, directly

¹ <https://runkeeper.com/>

or through intermediaries, or offers and advertises products or services, or uses services or products in Massachusetts, including this judicial district, in a manner that infringes the '485 patent.

9. Specifically, Defendant solicits business from and markets its services to consumers within Massachusetts by providing a product for automatic positional location, as described in the '485 patent.

10. In addition to Defendant's continuously and systematically conducting business in Massachusetts, the causes of action against Defendant are connected (but not limited) to Defendant's purposeful acts committed in Massachusetts, including Defendant's use of an article of manufacture for an automatic location tracking, as described in the '485 patent.

11. Upon information and belief, Defendant is a company that has a regular and established presence in this District and makes and uses a product that is an article of manufacture which causes a response to a global positioning system's navigational signal.

12. Upon information and belief, Defendant's activity with the accused product within this district causes a computer to selectively translate said global positioning navigational signal.

13. Upon information and belief, Defendant's activity with the accused product within this district causes a computer to selectively translate navigational position derived from selected global positioning data.

14. Upon information and belief, Defendant's activity with the accused product within this district causes a computer to compare said global positioning system's navigational signal and said selectively translated navigational position derived from selected global positioning data.

15. Upon information and belief, Defendant's activity with the accused product within this district causes a computer to indicate a logically true condition between such global

positioning system's navigational signal and such selectively translated navigational position derived from selected global positioning data.

16. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1400(b) because Defendant has committed acts of infringement and has a regular and established place of business in this district.

IV. ALLEGATIONS

17. On August 27, 2002, the United States Patent and Trademark Office ("USPTO") duly and legally issued the '485 patent, entitled "Method and apparatus for an automatic vehicle location, collision notification, and synthetic voice" after a full and fair examination. See Exhibit A attached hereto and incorporated into the pleadings of the foregoing complaint.

18. Venus is presently the owner of such patent, having received all right, title and interest in and to the '485 patent from the previous assignee of record. Venus possesses all rights of recovery under the '485 patent, including the exclusive right to recover for past infringement.

19. The '485 patent contains four (4) independent claims and twenty three (23) dependent claims. Defendant commercializes, *inter alia*, devices that include each and every element of at least one claim of the '485 patent.

20. The invention claimed in the '485 patent comprises a system for automatic positional location including detection of a nearest location.

V. DEFENDANT'S PRODUCTS

21. Defendant's products, such as the "RunKeeper" application (the "Accused Product"), is an article of manufacture. For example, the Accused Product comprises an article of manufacture with computer-readable program code embodied therein suitable for Android and iOS platforms.

22. The Accused Product causes a response to a global positioning system's navigational signal, as specified in the first element of Claim 27 of the '485 Patent. For example, the Accused Product uses a global positioning system ("GPS") device to determine the position of the device².

23. The Accused Product causes a computer to selectively translate said global positioning navigational signal, as specified in the second element of Claim 27 of the '485 Patent. For example, the Accused Product determines points of interest based on the GPS position of the device.³

24. The Accused Product causes a computer to selectively translate navigational position derived from selected global positioning data, as specified in the third element of Claim 27 of the '485 Patent. For example, the Accused Product translates its current location into points or places of interest that are close to the current location of the Accused Product.⁴

25. The Accused Product causes a computer to compare such global positioning system's navigational signal and such selectively translated navigational position derived from selected global positioning data, as specified in the fourth element of Claim 27 of the '485 Patent. For example, the Accused Product compares current location to nearby points of interest.⁵

26. The Accused Product causes a computer to indicate a logically true condition between such global positioning system's navigational signal and such selectively translated navigational position derived from selected global positioning data, as specified in the fifth element of Claim 27 of the '485 Patent. For example, if a particular point of interest (e.g., a

²<https://blog.runkeeper.com/8/the-beginners-guide-to-tracking-your-first-workout-in-runkeeper/>

³ *Id.*

⁴ <https://support.runkeeper.com/hc/en-us/articles/201110496-How-To-Create-A-Route->

⁵ *Id.*

restaurant) exists, the Accused Product lists other places related to the particular point of interest (e.g., other restaurants).⁶

27. The elements described in paragraphs 21-26 are covered by at least claim 27 of the '485 patent. Thus, Defendant's use, manufacture, sale and offers for sale of the Accused Product is enabled by the device described in the '485 patent.

VI. INFRINGEMENT OF THE '485 PATENT

28. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1 to 27.

29. In violation of 35 U.S.C. § 271, Defendant is now, and has been directly infringing the '485 patent.

30. Defendant has had knowledge of infringement of the '485 patent at least as of the service of the present complaint.

31. Defendant has directly infringed and continues to directly infringe at least claims 27 of the '485 patent by using, making, selling and/or offering to sell the Accused Product without authority in the United States, and will continue to do so unless enjoined by this Court. As a direct and proximate result of Defendant's direct infringement of the '485 patent, Plaintiff has been and continues to be damaged.

32. By engaging in the conduct described herein, Defendant has injured Venus and is thus liable for infringement of the '485 patent, pursuant to 35 U.S.C. § 271.

33. Defendant has committed these acts of infringement without license or authorization.

⁶ *Id.*

34. As a result of Defendant's infringement of the '485 patent, Venus has suffered monetary damages and is entitled to a monetary judgment in an amount adequate to compensate for Defendant's past infringement, together with interests and costs.

35. Venus continues and will continue to suffer damages in the future unless Defendant's infringing activities are enjoined by this Court. As such, Venus is entitled to compensation for any continuing and/or future infringement up until the date that Defendant is finally and permanently enjoined from further infringement.

V. DEMAND FOR JURY TRIAL

36. Venus demands a trial by jury of any and all causes of action.

VI. PRAYER FOR RELIEF

WHEREFORE, Venus prays for the following relief:

a. that Defendant be adjudged to have infringed the '485 patent directly, either literally or under the doctrine of equivalents;

b. that Defendant, its officers, directors, agents, servants, employees, attorneys, affiliates, divisions, branches, parents, and those persons in active concert or participation with any of them, be permanently restrained and enjoined from directly infringing the '485 patent;

c. an award of damages pursuant to 35 U.S.C. § 284 sufficient to compensate Venus for the Defendant's past infringement and any continuing or future infringement up until the date that Defendant is finally and permanently enjoined from further infringement, including compensatory damages;

d. an assessment of pre-judgment and post-judgment interest and costs against Defendant, together with an award of such interest and costs, in accordance with 35 U.S.C. § 284;

e. that Defendant be directed to pay enhanced damages, including Venus's attorneys' fees incurred in connection with this lawsuit pursuant to 35 U.S.C. § 285; and

f. that Venus be granted other and further relief as this Court may deem just and proper.

Dated: August 16, 2017.

Respectfully Submitted,

By: /s/ Gustavo A. Chico-Barris

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