

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION**

SMART WEARABLE TECHNOLOGIES
INC.,

Plaintiff,

v.

TOMTOM, INC.,

Defendant.

§
§
§
§
§
§
§
§
§
§

Case No. 3:16-CV-00049

JURY TRIAL DEMANDED

PLAINTIFF’S ORIGINAL COMPLAINT

Plaintiff SMART WEARABLE TECHNOLOGIES INC. files its Complaint against Defendant TOMTOM, INC., alleging as follows:

THE PARTIES

1. Plaintiff SMART WEARABLE TECHNOLOGIES INC. (“Smart Wearables”) is a corporation organized and existing under the laws of the State of Delaware. Smart Wearables is the owner of the patented technology that is the subject of this law suit. The inventors of such patented technology reside in and have their principle places of business in the Western District of Virginia.

2. Upon information and belief, TOMTOM, INC. (“TomTom”) is a Massachusetts corporation organized and existing under the laws of California, with its principal place of business at 2400 District Avenue, Suite 410, Burlington, MA 01803-5227. TomTom may be served with process through the Clerk of the Commonwealth of Virginia’s State Corporation Commission who will transmit by first-class mail a copy of the Summons and Complaint to TomTom’s registered agent National Registered Agents, Inc. at 155 Federal Street, Suite 700, Boston, MA 02110.

JURISDICTION AND VENUE

3. This is an action for infringement of United States patents. This Court has exclusive jurisdiction of such action under Title 28 U.S.C. § 1338(a).

4. Upon information and belief, TomTom is subject to personal jurisdiction by this Court. TomTom has committed such purposeful acts and/or transactions in the State of Virginia that it reasonably knew and/or expected that it could be hailed into a Virginia court as a future consequence of such activity. TomTom makes, uses, and/or sells infringing products within the Western District of Virginia and has a continuing presence and the requisite minimum contacts with the Western District of Virginia, such that this venue is a fair and reasonable one. Upon information and belief, TomTom has transacted and, at the time of the filing of this Complaint, is continuing to transact business within the Western District of Virginia. For all of these reasons, personal jurisdiction exists and venue is proper in this Court under 28 U.S.C. §§ 1391(b)(1), (2) and (c)(2) and 28 U.S.C. § 1400(b).

PATENT-IN-SUIT

5. On February 14, 2006, United States Patent No. 6,997,882 B1 (“the ‘882 Patent”) was duly and legally issued for “6-DOF SUBJECT MONITORING DEVICE AND METHOD.” A true and correct copy of the ‘882 Patent is attached hereto as Exhibit A and made a part hereof.

6. As it pertains to this lawsuit, the ‘882 Patent, very generally speaking, relates to systems and methods of monitoring a subject using acquired six degree-of-freedom (“6-DOF”) data regarding the subject as well as acquired physiological data of the subject. Specifically, certain claims of the ‘882 Patent disclose the use of an acceleration module to obtain 6-DOF data descriptive of the movement of a subject. The 6-DOF data is synchronized with obtained physiological data, such as the sensed, detected, or measured heart rate of the subject, for example. The synchronized 6-DOF and physiological data is then displayed.

FIRST CLAIM FOR RELIEF

(Patent Infringement)

7. Smart Wearables repeats and realleges every allegation set forth above.

8. Smart Wearables is the owner of the '882 Patent with the exclusive right to enforce the '882 Patent against infringers, and collect damages for all relevant times, including the right to prosecute this action.

9. TomTom has had knowledge of, or was willfully blind to, the existence of the '882 Patent since the filing of this Complaint, if not earlier.

10. Upon information and belief, TomTom is liable under 35 U.S.C. §271(a) for direct infringement of the '882 Patent because it manufactures, makes, has made, uses, practices, imports, provides, supplies, distributes, sells, and/or offers for sale products and/or systems that practice one or more claims of the '882 Patent.

11. Upon information and belief, TomTom is also liable under 35 U.S.C. §271(b) for inducing infringement of, and under 35 U.S.C. §271(c) for contributory infringement of the '882 Patent because it manufactures, makes, has made, uses, practices, imports, provides, supplies, distributes, sells, and/or offers for sale products and/or systems that practice one or more claims of the '882 Patent.

12. More specifically, TomTom infringes the '882 Patent because it makes, uses, sells, and offers for sale at least the Spark Cardio + Music products. These products monitor a subject using acquired 6-DOF data regarding the subject as well as acquired physiological data of the subject. Upon information and belief, TomTom's Spark Cardio + Music fitness tracker is attachable to the wrist of a user and include at least an accelerometer and gyroscope for providing data from which 6-DOF movement information descriptive of the movement of the user is obtained. Upon information and belief, TomTom's Spark Cardio + Music fitness tracker includes, at least, a heart rate sensor for obtaining physiological data of the user. These products synchronize the 6-DOF data with obtained physiological data of the subject and display the synchronized 6-DOF and physiological data and display the synchronized data on, at least, the

display of the Spark Cardio + Music fitness tracker. Additionally, or alternatively, the synchronized data is displayed on an external device, such as a smart phone, tablet, or computer, via TomTom's MySports software application. By way of example only, at least TomTom's Spark Cardio + Music fitness tracker products in the past directly infringed and continue to directly infringe at least claim 8 of the '882 Patent.

13. By providing at least the Spark Cardio + Music fitness tracker, TomTom has, in the past and continues to induce its customers and/or end users to infringe at least claim 8 of the '882 Patent. For example, end users of at least the Spark Cardio + Music fitness tracker directly infringes at least claim 8 of the '882 Patent when using the Spark Cardio + Music fitness tracker to, at least, monitor their heart rate, active minutes, calories burned, and/or heart rate zone training.

14. On information and belief, TomTom possessed a specific intent to induce infringement by at a minimum, providing user guides and other sales-related materials, and by way of advertising, solicitation, and provision of product instruction materials, that instruct its customers and end users on the normal operation of at least the Spark Cardio + Music fitness tracker including heart rate monitoring, active minutes monitoring, calories burned monitoring, and/or heart rate zone training features that infringe the '882 Patent.

15. By providing the Spark Cardio + Music fitness tracker, TomTom has, in the past and continues to contribute to the infringement of their customers and/or end users of at least claim 8 of the '882 Patent.

16. Upon information and belief, the heart rate monitoring, active minutes monitoring, calories burned monitoring, and/or heart rate zone training features of the Spark Cardio + Music fitness tracker have no substantial non-infringing uses, and TomTom knows that these features are especially made or especially adapted for use in a product that infringes the '882 Patent.

17. Smart Wearables has been damaged as a result of TomTom's infringing conduct. TomTom, thus, is liable to Smart Wearables in an amount that adequately compensates Smart

Wearables for TomTom's infringement, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

PRAYER FOR RELIEF

Smart Wearables requests that the Court find in its favor and against TomTom, and that the Court grant Smart Wearables the following relief:

- a. Judgment that one or more claims of the '882 Patent have been infringed, either literally and/or under the doctrine of equivalents, by TomTom;
- b. Judgment that TomTom account for and pay to Smart Wearables all damages to and costs incurred by Smart Wearables because of TomTom's infringing activities and other conduct complained of herein;
- c. That TomTom, its officers, agents, servants and employees, and those persons in active concert and participation with any of them, be permanently enjoined from infringement of the '882 Patent. In the alternative, if the Court finds that an injunction is not warranted, Smart Wearables requests an award of post judgment royalty to compensate for future infringement;
- d. That Smart Wearables be granted pre-judgment and post-judgment interest on the damages caused to it by reason of TomTom's infringing activities and other conduct complained of herein;
- e. That this Court declare this an exceptional case and award Smart Wearables its reasonable attorney's fees and costs in accordance with 35 U.S.C. § 285; and
- f. That Smart Wearables be granted such other and further relief as the Court may deem just and proper under the circumstances.

JURY DEMAND

Plaintiff hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Dated: July 13, 2016

SMART WEARABLE TECHNOLOGIES, INC.
By Counsel

/s/ Mark D. Obenshain
Mark D. Obenshain (VSB # 27476)
Justin M. Wolcott (VSB # 83367)
OBENSHAIN LAW GROUP
420 Neff Avenue, Suite 130
Harrisonburg, Virginia 22801
Telephone: (540) 208-0727
Facsimile: (540) 266-3568
Email: mdo@obenshainlaw.com
Email: jmw@obenshainlaw.com
Counsel for Plaintiff

Of Counsel:

Jonathan T. Suder
Corby R. Vowell
Richard A. Wojcio Jr.
FRIEDMAN, SUDER & COOKE
Tindall Square Warehouse No. 1
604 East 4th Street, Suite 200
Fort Worth, Texas 76102
Telephone: (817) 334-0400
Facsimile: (817) 334-0401
Email: jts@fsclaw.com
Email: vowell@fsclaw.com
Email: wojcio@fsclaw.com