

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

CHARLES C. FREENY III, BRYAN E.
FREENY, and JAMES P. FREENY,

Plaintiffs,

v.

FOSSIL GROUP, INC.,

Defendant.

Case No. 2:18-cv-00049-JRG-RSP

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs Charles C. Freeny III, Bryan E. Freeny, and James P. Freeny (collectively “Plaintiffs”), for their First Amended Complaint against Defendant Fossil Group, Inc., hereby allege as follows:

THE PARTIES

1. Plaintiff Charles C. Freeny III is an individual residing in Flower Mound, Texas.
2. Plaintiff Bryan E. Freeny is an individual residing in Ft. Worth, Texas.
3. Plaintiff James P. Freeny is an individual residing in Spring, Texas.
4. On information and belief, Defendant Fossil Group, Inc. (“Fossil”) is a corporation duly organized and existing under the laws of the State of Delaware, having its principal place of business at 901 S. Central Expressway, Richardson, Texas 75080. On information and belief, Fossil may be served via its registered agent, CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201-3136.

5. Fossil owns and operates retail stores throughout the United States at which Fossil sells a variety of products, including watches, bags, wallets, and jewelry. Fossil’s retail stores

include two stores located at 2601 Preston Road, Frisco, Texas 75034, and 820 West Stacy Road, Suite 651, Allen, Texas 75013, which are within this judicial district.

JURISDICTION AND VENUE

6. This is an action for patent infringement arising under the Patent Act, 35 U.S.C. §§ 101 et seq. This Court has jurisdiction over Plaintiffs' federal law claims under 28 U.S.C. §§ 1331 and 1338(a).

7. This Court has specific and/or general personal jurisdiction over Defendant Fossil because it has committed acts giving rise to this action within this judicial district and/or has established minimum contacts within Texas and within this judicial district such that the exercise of jurisdiction over it would not offend traditional notions of fair play and substantial justice.

8. Venue is proper in this District pursuant to 28 U.S.C. § 1400(b) because Fossil has committed acts of patent infringement within this judicial district giving rise to this action and Fossil has a regular and established place of business within this judicial district.

COUNT I

(INFRINGEMENT OF U.S. PATENT NO. 6,490,443)

9. Plaintiffs re-allege and incorporate by reference the allegations set forth in the Paragraphs above as if fully set forth herein.

10. On December 3, 2002, the United States Patent and Trademark Office duly and lawfully issued United States Patent Number 6,490,443 ("the '443 patent"), entitled "Communication and Proximity Authorization Systems." A true and correct copy of the '443 patent is attached hereto as **Exhibit A**.

11. The named inventor of the '443 patent is Charles C. Freeny, Jr., who is now deceased.

12. Plaintiffs are the sons of Charles C. Freeny, Jr., and Plaintiffs are the owners and assignees of all right, title and interest in and to the '443 patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

13. The '443 patent describes, among other things, novel systems in which electronic devices can communicate wirelessly to provide and/or receive services from other electronic devices when they are within proximity of each other. These communications can occur over multiple communication signals and with the use of authorization codes.

14. The '443 patent is based on and claims priority to a provisional United States patent application filed on September 2, 1999, several years before the explosion of the wireless industry.

15. At the time of the invention in 1999, wireless communication devices were severely limited in their ability to communicate securely with other electronic devices operating in different networks and utilizing different communication signals and/or protocols. Cellular telephones, for example, were limited to communications within a particular cellular network, using a particular frequency band and a particular cellular communications protocol. Other devices such as desktop and laptop computers faced similar limitations regarding the networks and communication signals and/or protocols over which they could communicate. Charles C. Freeny, Jr. recognized this problem and sought to solve it by developing a portable wireless device that could communicate with multiple types of service units to access services on those units through an authorization/activation process that was both secure as well as interoperable with many different communication signals and protocols.

16. The '443 patent specification, for example, describes some of the advantages and improvements of the '443 invention over the state of the art as follows:

The present invention also relates to a master proximity signaling unit MPSU (also referred to herein as a proximity authorization unit). The MPSU is an alternative to having to pay for high power wireless communication devices and/or services, such as a cell phone or pager or hand held computer with wireless communication features just to get the convenience of a single device handling most of the proximity services people use in their daily lives. The MPSU incorporates multiple low power type signaling capability into a low cost device specifically designed to allow all the multiple proximity services authorization devices to be incorporated into a single unit. The single unit can deliver the information to the proximity service provider machine (also referred to herein as a proximity service unit) in a much simpler and more convenient manner than done with existing devices and at less cost.

(Exhibit A, at 2:21-37).

In summary, the heart of the PPS communication operation is the ability to handle many types of wireless devices **5a**, **5b**, **5c** and **5d**, (or **40a**, **40b**, **40c** and **40d**) both in terms of device signaling frequencies and in terms of device protocols. The device protocol capability is discussed in more detail in connection with FIG. **6**.

As discussed in connection with the prior art there has been very little done to service multiple wireless devices even in the private market because there is very little incentive for a wireless LAN (WLAN) vendor to have multiple capability within the same customer complex. It is much easier to tell the customer to use the same type of WLAN than trying to anticipate the different types of wireless devices **5a**, **5b**, **5c** and **5d** a customer might purchase. Thus the advantage of designing a multiple wireless signal type interface (WLAN) unit for the public market is that the consumer has already demonstrated the willingness to pay for wireless interconnect convenience.

(Exhibit A, at 7:48-65).

17. The '443 patent thereafter discloses an improved wireless communications system in which a portable wireless device can use multiple different communication signals and/or protocols to request and activate services on different types of service units, through an improved and secure user authorization method that involves the use of "request authorization codes." The '443 patent also describes and claims the different types of wireless devices that exist within this improved communications system.

18. For example, claim 90 of the '443 patent is directed to the portable wireless

device (called a “proximity authorization unit” by the inventor) that requests services from other “proximity service units,” and recites:

90. A proximity authorization unit for use with proximity service units, some of the proximity service units being capable of receiving information via a first signal and some of the proximity service units being capable of receiving information via a second signal, the second signal being different from the first signal, and each of the proximity service units providing a predetermined service when activated in response to receiving a request authorization code, the proximity authorization unit comprising:

a portable housing;

a computer unit supported by the housing and having the request authorization code stored therein; and

a communication unit supported by the housing, the computer unit retrieving the request authorization code and the communication unit outputting the request authorization code on the first signal for communication to the proximity service units capable of receiving the first signal, and the communication unit outputting the request authorization code via the second signal to the proximity service units capable of receiving the second signal.

(Exhibit A, at 49:36-56).

19. The ‘443 patent also discloses a novel method of activating the proximity service units from the portable wireless device through a specific process involving the use of a “request authorization code” that is inventive and unconventional compared to the existing technology at the time of the invention. For example, the ‘443 patent specification states:

The invention also relates to a unique method for activating proximity service units **2920** wherein each proximity service unit **2920** provides a predetermined service in response to receiving a request authorization code. A plurality of the proximity authorization units **2910** are provided. Each proximity authorization unit **2910** is capable of storing the request authorization code and a preamble code, and outputting the request authorization code and the preamble code. The preamble code includes a request for application program code. The preamble code is output by one of the proximity authorization units **2910**. The preamble code outputted by one of the proximity authorization units **2910** is received by at least one of the proximity service units **2920**. The proximity service unit **2920**, which received the preamble code, outputs the application program code stored by the proximity service unit **2920** in response to receiving

the preamble code. The application program code is received by the proximity authorization unit **2910** outputting the preamble code. The proximity authorization unit **2910** then outputs the request authorization code using the application program code received by the proximity authorization unit **2910**.

(Exhibit A, at 31:60-32:14). This particular method of activating proximity service units through the use of request authorization codes disclosed in the ‘443 patent was inventive and unconventional at the time of the invention in 1999 and an improvement over the prior art, as it provided a way (not previously available) for a single wireless device to efficiently and securely authorize and activate services on other devices operating in different types of networks.

20. Thus, claim 90 of the ‘443 patent represents a combination of elements to create a portable wireless communications device with functionality for securely authorizing and activating services on proximity service units using multiple different communication signals that was inventive and unconventional at the time of the invention.

21. As a point of comparison, for example, it was not until 2003 – four years after the ‘443 invention – that the first dual-band wireless communication devices (*i.e.*, devices that can transmit and receive data over two separate 2.4 GHz and 5 GHz frequency bands) became available in the market. In March 2003, for example, the wireless router manufacturer Netgear, Inc. issued a press release in which it stated:

At the CeBIT 2003 trade show, NETGEAR, Inc., a worldwide provider of easy-to-use, high performance networking products, is showcasing next-generation wireless products including its new, industry-first dual band 802.11a/b/g wireless PC card and other products based on the draft 802.11g specification for wireless networking. . . . At CeBIT, NETGEAR will publicly debut its Dual Band 802.11a/g Wireless PC Card (WAG511), an industry first. The WAG511 is designed to enhance the productivity and flexibility of mobile workers by providing a single-card solution to enable Internet access and resource-sharing through 802.11a, 802.11b and 802.11g-based wireless networks in the home, office, and a growing number of Wi-Fi “hotspots” worldwide.

(See <http://files.shareholder.com/downloads/NTGR/0x0x92003/FA800A2D-76DC-4316-A2FA->

8B1F12D05537/NTGR_News_2003_3_12_General.pdf).

22. As another point of comparison, the first commercial products to employ any version of the Bluetooth wireless communications standard, such as Bluetooth-enabled phones and headsets, did not become available in the market until 2000 at the earliest – one year after the '443 invention. (See <https://www.bluetooth.com/about-us/our-history>).

23. Plaintiffs have complied with the requirements of 35 U.S.C. § 287 with respect to the '443 patent.

24. Fossil manufactures and sells smartwatches under the Fossil brand as well as other brands that Fossil either owns or licenses, including the Michael Kors, Misfit, Skagen, Diesel, Emporio Armani, and Kate Spade brands. These smartwatches include the Fossil Q Explorist, Fossil Q Venture, Fossil Q Founder, Fossil Q Wander, Fossil Q Control, Fossil Q Marshal, Michael Kors Access Sofie, Michael Kors Access Grayson, Michael Kors Access Bradshaw, Misfit Vapor, Skagen Falster Smartwatch, Diesel On Full Guard Touchscreen Smartwatch, Emporio Armani Touchscreen Smartwatch, and Kate Spade Scallop Touchscreen Smartwatch products (“the accused Fossil products”). The accused Fossil products are designed to be worn by the user, for example on the user’s wrist, and to exchange data with smartphones, tablets, and other wireless communication devices such as wireless routers.

25. For example, on its website at www.fossil.com, Fossil advertises with respect to the Fossil Q Explorist smartwatch:



NOTIFICATIONS

Our smartwatches use Bluetooth® technology to connect to your phone. When a notification or alert arrives, a gentle buzz lets you know right away.

Source: <https://www.fossil.com/us/en/products/gen-3-smartwatch-q-explorist-smoke-stainless-steel-sku-ftw4001p.html>

26. On its website, Fossil also states with respect to the Fossil Q Explorist smartwatch:

How do I connect the smartwatch to wi-fi?

If your watch is paired with an Android phone and has Wi-Fi, your watch can automatically connect to saved Wi-Fi networks when it loses the Bluetooth connection with your phone. This lets your watch and phone to automatically stay synced at any distance over the Internet. That way, you can get notifications and use voice search on your watch throughout your home and work even when you leave your phone in a different room.

- Press the middle pusher button to power up display.
- Press the middle pusher button to enter app menu.
- Scroll and tap on Settings.
- Tap on Connectivity.
- Tap on Wi-Fi.
- Tap on Wi-Fi off, to turn it on. When on, the Wi-Fi should say Automatic.
- If Wi-Fi is set to Automatic, your watch will automatically connect to any known, available network when your watch does not have a Bluetooth connection to your phone.
- Tap on Add network.
- Scroll to find your network, and tap.
- Power on phone and start Android Wear app.
- Tap Enter on phone to complete password entry.
- Enter password on phone.

Source: <https://www.fossil.com/us/en/wearable-technology/fossil-q/wearable-faq/q-faq-explorerist.html>

27. The accused Fossil products are portable electronic devices that can communicate wirelessly over multiple communication signals with other devices such as smartphones, tablets, and wireless routers when they are within proximity to such devices, and with the use of authorization codes. For example, the accused Fossil products include functionality for transmitting data to smartphones, tablets, and wireless routers over Bluetooth and/or Wi-Fi communication signals, both of which require the use of an authorization code (such as a Bluetooth pairing code, device identification data, and/or password) stored within the smartwatch to permit the exchange of data between the devices.

28. On information and belief, Fossil has directly infringed and continues to directly infringe one or more claims of the '443 patent, including at least claim 90 of the '443 patent, in the State of Texas, in this judicial district, and elsewhere in the United States, by making, using, importing, offering for sale, and/or selling products that embody one or more of the inventions claimed in the '443 patent, including but not limited to the accused Fossil products, and all reasonably similar products, in violation of 35 U.S.C. § 271(a).

29. For example, claim 90 of the '443 patent is directed to “[a] proximity authorization unit for use with proximity service units, some of the proximity service units being capable of receiving information via a first signal and some of the proximity service units being capable of receiving information via a second signal, the second signal being different from the first signal, and each of the proximity service units providing a predetermined service when activated in response to receiving a request authorization code”

30. The accused Fossil products constitute proximity authorization units that can

communicate with proximity service units (such as smartwatches, tablets, and wireless routers) over different signals to receive predetermined services from the proximity service units when activated in response to receiving a request authorization code. For example, upon receiving a request authorization code from an accused Fossil product transmitted via a Bluetooth or Wi-Fi signal, a smartphone, tablet, or wireless router can transmit notifications such as incoming phone calls, text messages, and event reminders to the accused Fossil product.

31. On information and belief, Fossil is inducing and/or has induced infringement of one or more claims of the '443 patent, including at least claim 90, as a result of, among other activities, instructing, encouraging, and directing its customers on the use of the accused Fossil products in an infringing manner in violation of 35 U.S.C. § 271(b). On information and belief, Fossil has had knowledge of the '443 patent since at least the date of service of the original Complaint in this action. Despite this knowledge of the '443 patent, Fossil has continued to engage in activities to encourage and assist its customers in the use of the accused Fossil products.

32. For example, through its website at www.fossil.com, Fossil advertises the accused Fossil products and provides instructions and technical support on the use of the accused products. As set forth in the paragraphs above, on its website Fossil advertises the benefits of using the Bluetooth and Wi-Fi functionality in the accused Fossil products, as well as provides instructions on how to set up and use the Bluetooth and Wi-Fi functionality in the accused Fossil products.

33. On information and belief, by using the accused Fossil products as encouraged and assisted by Fossil, Fossil's customers have directly infringed and continue to directly infringe one or more claims of the '443 patent, including at least claim 90. On information and

belief, Fossil knew or was willfully blind to the fact that its activities in encouraging and assisting customers in the use of the accused Fossil products, including but not limited to the activities set forth above, would induce its customers' direct infringement of the '443 patent.

34. On information and belief, Fossil will continue to infringe the '443 patent unless enjoined by this Court.

35. Fossil's acts of infringement have damaged Plaintiffs in an amount to be proven at trial, but in no event less than a reasonable royalty. Fossil's infringement of Plaintiffs' rights under the '443 patent will continue to damage Plaintiffs, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully request that this Court enter judgment against Fossil as follows:

- a. For judgment that Fossil has infringed and continues to infringe the claims of the '443 patent;
- b. For a permanent injunction against Fossil and its respective officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from infringement of the '443 patent;
- c. For an accounting of all damages caused by Fossil's acts of infringement;
- d. For a judgment and order requiring Fossil to pay Plaintiffs' damages, costs, expenses, and pre- and post-judgment interest for its infringement of the '443 patent as provided under 35 U.S.C. § 284;

- e. For a judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Plaintiffs their reasonable attorneys' fees; and
- f. For such other relief at law and in equity as the Court may deem just and proper.

DEMAND FOR A JURY TRIAL

Plaintiffs demand a trial by jury of all issues triable by a jury.

Dated: May 10, 2018

Respectfully submitted,

/s/ Christopher D. Banys
Christopher D. Banys - *Lead Attorney*

BANYS, P.C.
Christopher D. Banys SBN: 230038 (California)
Richard C. Lin SBN: 209233 (California)
Jennifer L. Gilbert SBN: 255820 (California)
1030 Duane Avenue
Santa Clara, CA 95054
Tel: (650) 308-8505
Fax: (650) 353-2202
cdb@banyspc.com
rcl@banyspc.com
jlg@banyspc.com

Local Counsel:

TRUELOVE LAW FIRM, PLLC
Kurt Truelove
Texas Bar No. 24013653
100 West Houston
P.O. Box 1409
Marshall, Texas 75671
Telephone: (903) 938-8321
Facsimile: (903) 215-8510
Email: kurt@truelovelawfirm.com

**ATTORNEYS FOR PLAINTIFFS
CHARLES C. FREENY III, BRYAN E. FREENY,
AND JAMES P. FREENY**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was filed electronically on May 10, 2018 in compliance with Local Rule CV-5(a). Therefore, this document was served on all counsel who are deemed to have consented to electronic service.

/s/ Richard C. Lin
Richard C. Lin