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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

BURRIS COMPANY, INC., a Delaware
corporation,

Plaintiff,

v.

GARMIN INTERNATIONAL, INC., a
Kansas corporation,

Defendant.

Case No. 18-cv-00700-AA

**FIRST AMENDED COMPLAINT
FOR PATENT INFRINGEMENT**

DEMAND FOR JURY TRIAL

WRITTEN CONSENT PURSUANT TO FED. R. CIV. P. 15(a)(2)

Counsel for Plaintiff and counsel for Defendant conferred regarding this First Amended Complaint on September 19, 2018 and Defendant provided Plaintiff with written consent pursuant to Fed. R. Civ. P. 15(a)(2) on September 19, 2018.

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Burris Company, Inc. (“Plaintiff” or “Burris”), for its First Amended Complaint and Jury Demand against Defendant Garmin International, Inc. (“Defendant” or “Garmin”), states and alleges:

INTRODUCTION

1. Burris was founded in 1971 by Don Burris who was previously a design engineer with a Colorado-based optics company.
2. Burris develops and sells scopes, sights, and reticles for rifles and handguns, mounting systems for rifles and handguns, and binoculars and spotting scopes.
3. Burris has been continually developing and selling scopes for rifles and handguns since 1971. Burris developed and offered the first American made scopes with multi-coated lenses to optimize light transmission in 1980. Burris introduced the industry’s first variable power handgun scope in 1983 and the industry’s first Scout Scope in 1988. Burris developed and patented the Posi-Lock® system in 1993, which eliminates any binding or thread backlash in the adjustment system for scopes. In 2006, Burris developed and introduced the Laser Scope for rifles and handguns. Burris released the Burris Eliminator in 2010, a revolutionary hunting scope with a laser rangefinder and bullet drop compensation (BDC) capabilities.
4. In April, 2014, Burris decided to enter the archery market by developing an intelligent bow sight for archers.

5. In March, 2015, Burris obtained an exclusive license to United States Patent No. 8,316,551 (the “’551 patent”) from its owner, Wisconsin Archery Products, LLC (“WAP”).

6. WAP was developing its own bow sight when Burris obtained an exclusive license to the ’551 patent in March, 2015. WAP’s bow sight was never commercialized.

7. WAP worked with PulsedLight under the protection of a non-disclosure agreement between a WAP principal and a PulsedLight licensee, Pacer International, while developing its own bow sight but ultimately discontinued working with PulsedLight before 2015.

8. Defendant purchased PulsedLight in 2016 after WAP ended its working relationship with PulsedLight.

9. In 2016, Burris began developing its patented and proprietary bow sight, named “Oracle,” which it commercially released in the summer of 2018. Burris’ patented and proprietary bow sight is a bow-mounted auto-ranging sight that automatically measures distance and angle to a target and provides a precise LED pin for the shot. Burris’ bow sight is covered by the ’551 patent.

10. Burris’ Oracle bow sight and its method of use are patented and proprietary, and Burris has invested substantial amounts of time and resources in developing the Oracle bow sight. Due to Burris’ efforts and patent protection, Burris anticipates that the Oracle will be the market leader in this new product category.

11. This action arises out of Garmin’s infringing use of Burris’ patented technology in its released Xero™ A1 and A1i bow sights (collectively, “Accused Products”) that directly compete with Burris’ Oracle bow sight.

12. Garmin’s actions have inflicted substantial and irreparable harm on Burris. In addition to damages, Burris seeks a preliminary and permanent injunction to prevent any further

irreparable harm to Burris' goodwill and market share that will result from Garmin's continued patent infringement.

THE PARTIES

13. Plaintiff is a Delaware corporation with its principal place of business at 331 E. 8th Street, Greeley, Colorado 80631.

14. Defendant is a Kansas corporation with its principal place of business at 1200 E. 151st Street, Olathe, KS 66062-3426.

15. Defendant acquired PulsedLight in 2016. (*See* Exhibit A or <http://cascadebusnews.com/garmin-completes-acquisition-pulsedlight-based-bend-oregon-developer-optical-distance-measurement-technology/>.) PulsedLight was a privately held company that designed optical distance measurement technology in Bend, Oregon.

16. Defendant retained PulsedLight's Bend, Oregon employees and office space who are now Defendant's employees with a regular and established place of business at 700 NW Hill Street, Bend, Oregon 97701.

17. According to Garmin, the technology developed and owned by PulsedLight is incorporated into the Accused Products: "We purchased a laser range finding company . . . anytime Garmin purchases a company there is a darn good reason for it . . . 2.5 years later we came up with the Xero™ bow sight." (*See* <http://www.grittybowmen.com/gritty-podcasts-blog/2018/2/21/episode-321-garmin-xero-sight-with-garmin-engineering> at 4:20-4:50.)

JURISDICTION AND VENUE

18. This is an action for patent infringement under the patent laws of the United States, 35 U.S.C. §§ 271 and 281, *et seq.* This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

19. Venue is proper in this district under 28 U.S.C. §§ 1391(b)-(c) and 1400(b).

20. Defendant is subject to this Court's specific and general personal jurisdiction pursuant to the Oregon Long Arm Statute, Or. R. Civ. P. 4, which is coextensive with the limits of the Due Process Clause. On information and belief, Defendant has engaged in substantial business in this forum, including: (i) operating a regular and established place of business in Bend, Oregon, which developed technology that was incorporated into the Accused Products; (ii) committing acts of patent infringement alleged herein; (iii) targeting business activities towards consumers in the United States, including Oregon, through at least fully interactive commercial Internet sites and stores; and/or (iv) regularly doing or soliciting business, engaging in other persistent courses of conduct, or deriving substantial revenue from goods and services provided to individuals in Oregon.

PATENT-IN-SUIT

21. U.S. Patent No. 8,316,551 (the "'551 patent") is entitled "Auto-Correcting Bow Sight" and issued on November 27, 2012. The '551 patent was filed on November 9, 2009 and claims priority to U.S. Provisional Application No. 61/112,835, filed on November 10, 2008. A true and correct copy of the '551 patent is attached hereto as Exhibit B.

22. The '551 patent is owned by Wisconsin Archery Products, LLC. Burriss is the exclusive, worldwide licensee of the '551 patent. Under its exclusive license, Burriss has the right to make, have made, use, sell, offer for sale, and otherwise commercialize, exploit and enjoy any products, articles or devices that incorporate the inventions disclosed by the '551 patent. Burriss' rights include the exclusive right to enforce the '551 patent against infringers.

23. The '551 patent discloses an auto-correcting bow sight for mounting on a bow that:

“allows an archer to take ‘dead aim’ or aim directly at a target, at all times, by illuminating or otherwise displaying an aim indicator(s) that is positioned so as to compensate for situation-specific shooting and environmental factors that influence arrow flight. This can be all done while the bow is at full draw and ready for the shot.” (Exhibit B at Col. 2, ll. 49-55.)

24. The disclosed bow sight can include a range finder, inclinometer, and a processor that communicate with each other to provide an LED aim indicator in a see-through panel to allow a user (e.g., hunter) to hit a desired target point. (Exhibit B at Col. 2, ll. 56-65, Col. 5, ll. 2-5.)

25. The disclosed auto-correcting bow sight also has a display system for displaying shooting distance and shooting angle, and controls that include a trigger button for initiating the auto-correcting bow sight. (Exhibit B at Col. 9, ll. 57-63, Col. 10, ll. 15-16.)

26. The ’551 patent issued with 26 claims directed to the disclosed auto-correcting bow sights and methods of using the same. Independent claim 1 is directed to an auto-correcting bow sight. Claims 2-12 depend from independent claim 1. Independent claim 13 is directed to a method of displaying an aim indicator in a bow sight to compensate for situation-specific shooting factors. Claims 14-22 depend from independent claim 13. Independent claim 23 is directed to an auto-correcting bow sight. Claims 24-26 depend from independent claim 23.

THE INFRINGING PRODUCTS

27. Garmin advertises the Garmin Xero™ A1 and A1i bow sights as “groundbreaking,” “first-of-their-kind” and a “game-changer in the archery world”:

a. “We are excited to announce the Xero A1 and A1i, two groundbreaking auto-ranging digital laser bow sights that automatically measure the distance to a target and provide a precise, virtual lighted pin for the shot. The first-of-their-kind Xero bow sights are being announced in conjunction with the 2018 Archery Trade Association (ATA) Trade Show in Indianapolis, and can be seen at the Garmin booth (#4035).” (*See*

Exhibit C or <https://www.garmin.com/en-US/blog/fishandhunt/garmin-xero-auto-ranging-digital-bow-sight/>).

b. “‘The Xero bow sight is truly a game-changer in the archery world. It helps take the guesswork out of ranging a target,’ said Dan Bartel, vice president of worldwide sales. ‘When that buck of a lifetime walks by, knowing your precise yardage and having the exact pin to shoot is often the difference between making that shot or going home empty-handed.’” (See Exhibit C or <https://www.garmin.com/en-US/blog/fishandhunt/garmin-xero-auto-ranging-digital-bow-sight/>).

28. Garmin touts the Accused Products as the “the first bow-mounted digital laser range finders and targeting display systems” that allow a user (e.g., hunter) to “Range, Sight, and Shoot the Exact Pin”:

“Know the range, and shoot the exact pin with minimal movement using Xero bow sights. They’re the first bow-mounted digital laser range finders and targeting display systems that measure the angle-compensated distance to your target and provide an LED pin for the shot — even on those “in-between” yardages. LED pins automatically adjust brightness to conditions and allow you to see your target, unobstructed by physical pins. A single-button trigger lets you range at rest or full draw to game up to 100 yards away or to reflective targets up to 300 yards. Both Xero A1 and A1i are customizable for single-pin and multi-pin configurations or manual pin selection.” (See <https://buy.garmin.com/en-US/US/p/573347/pn/010-01781-01#overview>.)

29. The Accused Product have an “All-in-one Design” for direct mounting to a bow:

“Xero bow sights mount directly to your bow, providing a highly accurate laser range finder that calculates the exact LED pin to use for the shot. There’s no need to fumble with a separate range finder or guess which pin to use.” (See <https://buy.garmin.com/en-US/US/p/573347/pn/010-01781-01#overview>.)

30. The Accused Products have “LED Pins” that are customizable:

a. “The beauty of using bright LED pins is that you can clearly see them over your target, unobstructed by physical pins. Xero A1 utilizes red LEDs while A1i gives you the option to use red or green LEDs.” (See <https://buy.garmin.com/en-US/US/p/573347/pn/010-01781-01#overview>.)

b. “You can customize your Xero bow sight for single-pin and multi-pin configurations, or if you have certain favorite yardages, you can

specify manual pin selections. Easily toggle between fixed pin mode and single-pin mode.” (See <https://buy.garmin.com/en-US/US/p/573347/pn/010-01781-01#overview>.)

31. The Accused Products have a “Silent Button Trigger” for activation at rest or full draw:

“When stealth and stillness are critical, Xero bow sights require minimal movement, at rest or full draw. You mount the button in the most convenient location for your grip so that 1 finger can silently trigger the laser range finder to give you the distance and exact pin you need for the shot.” (See <https://buy.garmin.com/en-US/US/p/573347/pn/010-01781-01#overview>.)

32. A Garmin employee stated that he has “never ever been as busy as [he] was th[e] two days” at the Archery Trade Show (“ATA”) when Garmin exhibited the Accused Products. (See <http://www.grittybowmen.com/gritty-podcasts-blog/2018/2/21/episode-321-garmin-xero-sight-with-garmin-engineering> at 5:00-5:30.)

33. Garmin is currently offering the Xero™ A1 bow sight for sale at \$799.99 and the Xero™ A1i bow sight for sale at \$999.99 with an “[e]stimated availability in 5-8 weeks” as of at least April 1, 2018.

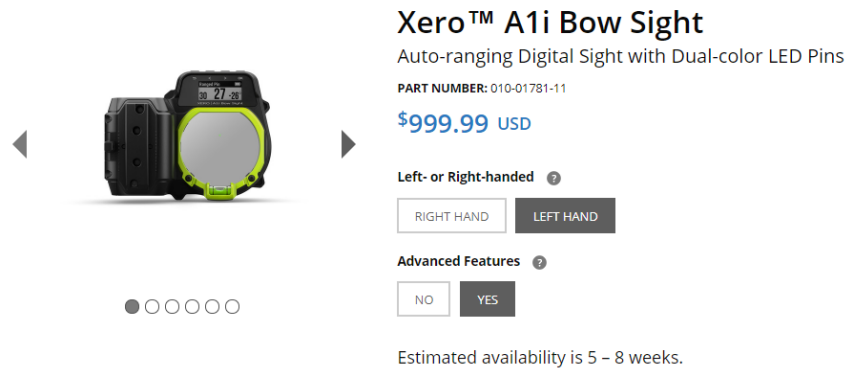
Xero™ A1 Bow Sight
 Auto-ranging Digital Sight
 PART NUMBER: 010-01781-01
\$799.99 USD

Left- or Right-handed ⓘ

Advanced Features ⓘ

Estimated availability is 5 - 8 weeks.

(See <https://buy.garmin.com/en-US/US/p/573347/pn/010-01781-01#>.)



(See <https://buy.garmin.com/en-US/US/p/613654/pn/010-01781-11#>.)

COUNT I: INFRINGEMENT OF THE '551 PATENT

34. Burris repeats, realleges, and incorporates hereunder by reference the allegations contained in paragraph 1 through 33 above.

35. Garmin has infringed and continues to infringe under at least 35 U.S.C. §§ 271(a)-(c) by using its Accused Products in a manner that infringes the '551 patent and specifically intending that its customers, employees, engineers, product testers, as well other Garmin spokespersons and/or archery professionals (hereinafter "Users") directly infringe one or more claims of the '551 patent.

A. Induced Infringement under 35 U.S.C. § 271(b)

36. Garmin is actively inducing direct infringement by Users of one or more of claims 1-2, 4-9, 12-15, and 20-26 of the '551 patent.

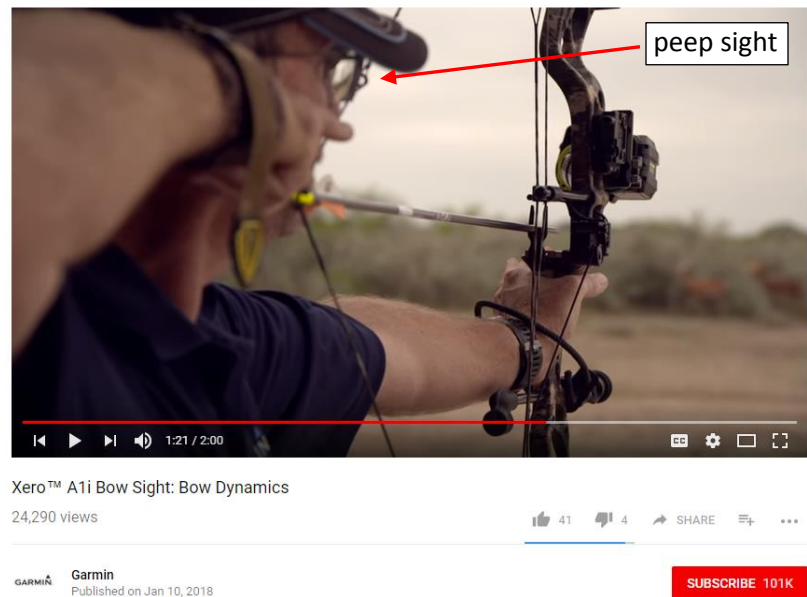
37. Since at least January, 2014, Garmin has had actual knowledge of the '551 patent. Since at least April 23, 2018 and potentially as early as January, 2014, Garmin has had knowledge that its Accused Products are used to directly infringe the '551 patent.

38. With this knowledge, Garmin knowingly has induced, and continues to induce, direct infringement by Users who purchase and mount the Accused Products to bows and/or

bows in combination with peep sights and use the Accused Products with bows and/or bows in combination with peeps sights as required by one or more of claims 1-2, 4-9, 12-15, and 20-26 of the '551 patent. Garmin knowingly offers for sale and sells the Accused Products for use with a bow:

“A silent, single-button trigger **mounted on the bow’s grip** lets the archer range targets at rest or at **full draw**, virtually eliminating distance estimation and hunter movement – two of the biggest challenges in archery hunting. **The laser range finder instantly provides the precise angle-compensated distance** – up to 100 yards on game or 300 yards on reflective targets. The Xero then projects a **precise, virtual LED pin that is only visible to the archer**, and without the clutter of multiple physical pins.” (See <https://www.garmin.com/en-US/blog/fishandhunt/garmin-xero-auto-ranging-digital-bow-sight/> (emphasis added).)

39. Garmin knowingly offers for sale and sells the Accused Products for use with a bow and a peep sight, as demonstrated by a Garmin spokesperson in an online video:





Xero™ A1i Bow Sight: Bow Dynamics

24,331 views

41 4 SHARE



Garmin

Published on Jan 10, 2018

SUBSCRIBE 101K

The Xero bow-mounted, auto-ranging digital sight automatically measures distance to the target and provides an LED pin for your shot. Learn how the bow dynamics feature – available only on the A1i model – can help improve your shot accuracy and more.

(See <https://youtu.be/kuuTQirwB-E> (last visited March 31, 2018); *see also*

<https://youtu.be/NRu3wlxHJ0M>.)

40. Garmin knowingly instructs Users to mount the Accused Products to a bow through its Owner's Manual for the Accused Products:

Mounting the Sight on a Bow

- 1 Insert the curved rail mount ① from the back of the bow sight into the grooves at the front of the mount assembly ②.



- 2 Align the arrow on the mount with the center arrow on the curved rail.
- 3 Using a 7/64 inch hex wrench, tighten the screw at the front of the rail mount ③ to a maximum torque specification of 2.2 N-m (20 lbf-in).
- 4 Align the large holes on the mount ④ with the mounting holes on the side of your bow.



TIP: The mount contains three sets of mounting holes. Mount the sight in a location that functions best with your peep sight aperture. Mounting the sight closer to the bow may allow a better fit in some bow cases.

- 5 Using a 1/8 inch hex wrench, secure the mount using the included mounting screws ⑤.
 - 6 Tighten the mounting screws to a maximum torque specification of 6.7 N-m (60 lbf-in).
- NOTE:** Do not exceed the bow manufacturer's recommended torque values.

(Exhibit F at pp. 1-2.)

41. Garmin knowingly instructs Users to use the peeps sights with the Accused Products through its Owner's Manual for the Accused Products:

Aligning the Rangefinder with the Primary Pin

The circular rangefinder reticle indicates the direction the laser rangefinder is pointing. For best accuracy, you must align the circular rangefinder reticle with the primary pin.

- 1 Nock an arrow.
- 2 **Bring the bow to full draw, and align the peep sight with the sight housing ring.**
- 3 Observe the arrows ① on the rangefinder reticle.
The arrows indicate the direction you must move the curved adjustments on the mount. Each arrow in the optic corresponds with one degree of adjustment on the curved rails.

(Exhibit F at p. 3 (emphasis added).)

42. Garmin knowingly instructs Users to use the Accused Products at full draw through its Owner's Manual for the Accused Products:

Using the Bow Sight

Before you can use the bow sight, you must calibrate it for your bow and arrow combination (*Calibrating the Bow Sight*, page 2).

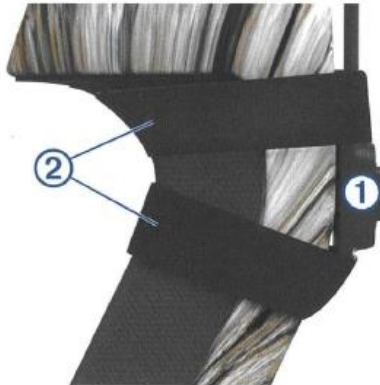
- 1 Draw your bow.
- 2 Hold the laser rangefinder trigger.
- 3 Align the primary pin with the ranging reticle, and aim at the target.
- 4 While holding the reticle on the target, release the laser rangefinder trigger.
The bow sight displays the measured range and projects a new pin.
- 5 Using the new pin, aim at the target, and shoot the bow.

(Exhibit F at p. 4 (emphasis added).)

Securing the Trigger

- 1 Position the ranging trigger ① on the grip of your bow where you can comfortably activate it at full draw.

NOTE: You should confirm the trigger and the trigger cable are positioned so they do not interfere with the operation of the bow.



- 2 Secure the trigger to the bow using the included tape ②.
TIP: You can use the extra piece of tape to secure the trigger cable to the riser.

(Exhibit F at p. 2 (emphasis added).)

43. Garmin's Senior Project Manager in charge of the Xero™ bow sight project specifically states that the User should range at full draw every time the device is used to ensure

accuracy: “if you just get in the habit of taking a quick squeeze [of the trigger button] at full draw every time . . . [it] lets everyone who shot [the Xero™] group tighter than they ever have before.” (<http://www.grittybowmen.com/gritty-podcasts-blog/2018/2/21/episode-321-garmin-xero-sight-with-garmin-engineering> at 27:20-27:50.)

44. Consequently, Garmin is intentionally causing, urging, encouraging and/or aiding action by Users to infringe the '551 patent resulting in direct infringement.

45. Since at least April 23, 2018 and potentially as early as January, 2014, Garmin has had, and continues to have, the specific intent that Users infringe the '551 patent. According to Garmin, the Accused Products are the “The first-of-their-kind [] bow sights.” The purpose of Garmin’s Accused Products—to provide consumers with a “first-of-their-kind [] bow sight” for use at “full draw”—would be frustrated if the customers did not mount the Accused Products to a bow and use the Accused Products with a bow and/or a peep sight as required by one or more of the '551 patent claims. The purpose of the Accused Products therefore confirms Garmin’s intent that customers infringe the claims of the '551 patent.

46. Garmin’s knowing and intended direction to others, including Users, is inducing infringement under 35 U.S.C. § 271(b) of one or more of claims 1-2, 4-9, 12-15, and 20-26 of the '551 patent.

B. Contributory Infringement Under 35 U.S.C. § 271(c)

47. Garmin is contributorily infringing one or more of claims 1-2, 4-9, 12-15, and 20-26 of the '551 patent under 35 U.S.C. § 271(c) by offering to sell and eventually selling within the United States the Accused Products as a component of the patented auto-correcting bow sight and for use in practicing the patented method of displaying an aim indicator in a bow sight to compensate for situation-specific shooting factors.

48. The Accused Products constitute a material part of the claimed auto-correcting bow sight and method of displaying an aim indicator in a bow sight to compensate for situation-specific shooting factors.

49. Since at least January, 2014, Garmin has had actual knowledge of the '551 patent. Since at least April 23, 2018 and potentially as early as January, 2014, Garmin has had actual knowledge that its Accused Products are used to directly infringe the '551 patent knowing the Accused Products to be especially made or especially adapted for use in the infringement of the '551 patent, and not a staple article or commodity of commerce suitable for substantial noninfringing use.

50. With this knowledge, Garmin knowingly has contributed to, and continues to contribute to, direct infringement by Users who will purchase and mount the Accused Products to bows and/or bows in combination with peep sights and use the Accused Products with bows and/or bows in combination with peeps sights as required by one or more of claims 1-2, 4-9, 12-15, and 20-26 of the '551 patent. Garmin knowingly offers for sale and sells the Accused Products for use with a bow:

“A silent, single-button trigger **mounted on the bow’s grip** lets the archer range targets at rest or at **full draw**, virtually eliminating distance estimation and hunter movement – two of the biggest challenges in archery hunting. **The laser range finder instantly provides the precise angle-compensated distance** – up to 100 yards on game or 300 yards on reflective targets. The Xero then projects **a precise, virtual LED pin that is only visible to the archer**, and without the clutter of multiple physical pins.” (See <https://www.garmin.com/en-US/blog/fishandhunt/garmin-xero-auto-ranging-digital-bow-sight/> (emphasis added).)

51. Garmin knowingly offers for sale and sells the Accused Products for use with a bow and a peep sight, as demonstrated by a Garmin spokesperson in an online video:



Xero™ A1i Bow Sight: Bow Dynamics

24,290 views

41 4 SHARE

Garmin
Published on Jan 10, 2018

SUBSCRIBE 101K



Xero™ A1i Bow Sight: Bow Dynamics

24,331 views

41 4 SHARE

Garmin
Published on Jan 10, 2018

SUBSCRIBE 101K

The Xero bow-mounted, auto-ranging digital sight automatically measures distance to the target and provides an LED pin for your shot. Learn how the bow dynamics feature – available only on the A1i model – can help improve your shot accuracy and more.

(See <https://youtu.be/kuuTQirwB-E> (last visited March 31, 2018); *see also* <https://youtu.be/NRu3wlxHJ0M>.)

52. Garmin knowingly instructs Users to mount the Accused Products to a bow through its Owner's Manual for the Accused Products:

Mounting the Sight on a Bow

- 1 Insert the curved rail mount ① from the back of the bow sight into the grooves at the front of the mount assembly ②.



- 2 Align the arrow on the mount with the center arrow on the curved rail.
- 3 Using a 7/64 inch hex wrench, tighten the screw at the front of the rail mount ③ to a maximum torque specification of 2.2 N-m (20 lbf-in).
- 4 Align the large holes on the mount ④ with the mounting holes on the side of your bow.



TIP: The mount contains three sets of mounting holes. Mount the sight in a location that functions best with your peep sight aperture. Mounting the sight closer to the bow may allow a better fit in some bow cases.

- 5 Using a 1/8 inch hex wrench, secure the mount using the included mounting screws ⑤.
 - 6 Tighten the mounting screws to a maximum torque specification of 6.7 N-m (60 lbf-in).
- NOTE:** Do not exceed the bow manufacturer's recommended torque values.

(Exhibit F at pp. 1-2.)

53. Garmin knowingly instructs Users to use the peeps sights with the Accused Products through its Owner's Manual for the Accused Products:

Aligning the Rangefinder with the Primary Pin

The circular rangefinder reticle indicates the direction the laser rangefinder is pointing. For best accuracy, you must align the circular rangefinder reticle with the primary pin.

- 1 Nock an arrow,
- 2 **Bring the bow to full draw, and align the peep sight with the sight housing ring.**
- 3 Observe the arrows ① on the rangefinder reticle.

The arrows indicate the direction you must move the curved adjustments on the mount. Each arrow in the optic corresponds with one degree of adjustment on the curved rails.

(Exhibit F at p. 3 (emphasis added).)

54. Garmin knowingly instructs Users to use the Accused Products at full draw through its Owner's Manual for the Accused Products:

Using the Bow Sight

Before you can use the bow sight, you must calibrate it for your bow and arrow combination (*Calibrating the Bow Sight, page 2*).

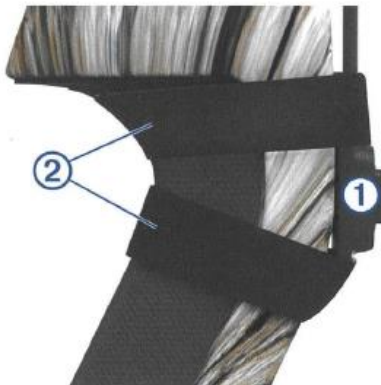
- 1 **Draw your bow.**
- 2 **Hold the laser rangefinder trigger.**
- 3 Align the primary pin with the ranging reticle, and aim at the target.
- 4 While holding the reticle on the target, release the laser rangefinder trigger.
The bow sight displays the measured range and projects a new pin.
- 5 Using the new pin, aim at the target, and shoot the bow.

(Exhibit F at p. 4 (emphasis added).)

Securing the Trigger

- 1 Position the ranging trigger ① on the grip of your bow where you can comfortably activate it at full draw.

NOTE: You should confirm the trigger and the trigger cable are positioned so they do not interfere with the operation of the bow.



- 2 Secure the trigger to the bow using the included tape ②.

TIP: You can use the extra piece of tape to secure the trigger cable to the riser.

(Exhibit F at p. 2 (emphasis added).)

55. Garmin’s Senior Project Manager in charge of the Xero™ bow sight project specifically states that the User should range at full draw every time the device is used to ensure accuracy: “if you just get in the habit of taking a quick squeeze [of the trigger button] at full draw every time . . . [it] lets everyone who shot [the Xero™] group tighter than they ever have before.” (<http://www.grittybowmen.com/gritty-podcasts-blog/2018/2/21/episode-321-garmin-xero-sight-with-garmin-engineering> at 27:20-27:50.)

56. Since at least April 23, 2018 and potentially as early as January, 2014, Garmin has had, and continues to have, knowledge its Accused Products have no substantial non-infringing use and that Users infringe the ’551 patent. According to Garmin, the Accused Products are the “The first-of-their-kind [] bow sights.” The purpose of Garmin’s Accused Products—to provide consumers with a “first-of-their-kind [] bow sight” for use at “full draw”—would be frustrated if Users did not mount the Accused Products to a bow and use the Accused

Products with a bow and/or a peep sight as required by one or more of the '551 patent claims. The sole purpose of the Accused Products therefore confirms Garmin's knowledge that Users infringe the claims of the '551 patent.

57. Consequently, Garmin is intentionally offering for sale, selling, and importing Accused Products with no substantial noninfringing use, and causing, urging, encouraging and/or aiding action by Users to infringe the '551 patent resulting in direct infringement.

58. Since at least April 23, 2018 and potentially as early as January, 2014, Garmin has had, and continues to have, the specific intent that Users infringe the '551 patent. According to Garmin, the Accused Products are the "The first-of-their-kind [] bow sights." The purpose of Garmin's Accused Products—to provide consumers with a "first-of-their-kind [] bow sight" for use at "full draw"—would be frustrated if Users did not mount the Accused Products to a bow and use the Accused Products with a bow and/or a peep sight as required by one or more of the '551 patent claims. The purpose of the Accused Products therefore confirms Garmin's intent that Users infringe the claims of the '551 patent.

59. Garmin's offer for sale, sale, and importation of the Accused Products that have no substantial noninfringing use and its knowing and intended direction to others, including Users, constitutes contributory infringement under 35 U.S.C. § 271(c) of one or more of claims 1-2, 4-9, 12-15, and 20-26 of the '551 patent.

C. Direct Infringement Under 35 U.S.C. § 271(a) by Garmin and Garmin Users

60. Garmin, through its engineers or employees, has directly infringed one or more of claims 1-2, 4-9, 12-15, and 20-26 of the '551 patent. Garmin engineers or employees mount the Accused Products to bows and/or bows in combination with peep sights and use the Accused

Products with bows and/or bows in combination with peep sights as required by one or more of claims 1-2, 4-9, 12-15, and 20-26 of the '551 patent.

61. Garmin's direct infringement is confirmed by its spokesperson's use of the Accused product with bows and/or bows in combination with peep sights in an online video:



Xero™ A1i Bow Sight: Bow Dynamics

24,290 views

41 4 SHARE ...

Garmin
Published on Jan 10, 2018

SUBSCRIBE 101K



Xero™ A1i Bow Sight: Bow Dynamics

24,331 views

41 4 SHARE ...

Garmin
Published on Jan 10, 2018

SUBSCRIBE 101K

The Xero bow-mounted, auto-ranging digital sight automatically measures distance to the target and provides an LED pin for your shot. Learn how the bow dynamics feature – available only on the A1i model – can help improve your shot accuracy and more.

(See <https://youtu.be/kuuTQirwB-E> (last visited March 31, 2018; *see also* <https://youtu.be/NRu3wlxHJ0M>.)

62. With Garmin’s knowledge and under Garmin’s direction, Garmin’s Users have also directly infringed, and continue to directly infringe, literally and/or under the doctrine of equivalents, one or more of claims 1-2, 4-9, 12-15, and 20-26 of the ’551 patent under 35 U.S.C. § 271(a).

i. Claim 1

63. For example, Garmin’s Users have directly infringed, and continue to directly infringe, literally and/or under the doctrine of equivalents, claim 1 of the ’551 patent.

64. The Accused Products are auto-correcting bow sights. Garmin advertises the Accused Products as an “Auto-ranging digital bow sight [that] automatically measures distance to the target and provides an LED pin for the shot.” (Exhibit D at 2; Exhibit E at 2.)

65. The Accused Products have a range finder supported on a bow incorporating the auto-correcting bow sight, the range finder determining a range to a target. Garmin advertises the Accused Products as “the first bow-mounted digital laser range finders and targeting display systems that measure the angle-compensated distance to your target and provide an LED pin for the shot — even on those ‘in-between’ yardages.” (Exhibit D at 2; Exhibit E at 2.)

66. Garmin instructs Users to mount the Accused Products, which include a range finder, to a bow through its Owner’s Manual for the Accused Products:

Mounting the Sight on a Bow

- 1 Insert the curved rail mount ① from the back of the bow sight into the grooves at the front of the mount assembly ②.



- 2 Align the arrow on the mount with the center arrow on the curved rail.
- 3 Using a 7/64 inch hex wrench, tighten the screw at the front of the rail mount ③ to a maximum torque specification of 2.2 N-m (20 lbf-in).
- 4 Align the large holes on the mount ④ with the mounting holes on the side of your bow.



TIP: The mount contains three sets of mounting holes. Mount the sight in a location that functions best with your peep sight aperture. Mounting the sight closer to the bow may allow a better fit in some bow cases.

- 5 Using a 1/8 inch hex wrench, secure the mount using the included mounting screws ⑤.
 - 6 Tighten the mounting screws to a maximum torque specification of 6.7 N-m (60 lbf-in).
- NOTE:** Do not exceed the bow manufacturer's recommended torque values.

(Exhibit F at pp. 1-2.)

67. The Accused Products have an inclinometer supported on the bow that determines an angle of inclination of the bow. Garmin advertises the Accused Products as measuring angle-compensated distance: “the first bow-mounted digital laser range finders and targeting display systems that measure the angle-compensated distance to your target and provide an LED pin for the shot — even on those ‘in-between’ yardages.” (Exhibit D at 2; Exhibit E at 2.)

68. The Accused Products have a processor supported on the bow that receives information from the range finder and the inclinometer relating to the range to target and the angle of inclination of the bow, respectively. The Accused Products have a processor that converts the range to target and angle compensation information into a LED pin for the shot as advertised: “Know the range, and shoot the exact pin with minimal movement using Xero bow sights. They’re the first bow-mounted digital laser range finders and targeting display systems that measure the angle-compensated distance to your target and provide an LED pin for the shot — even on those ‘in-between’ yardages.” (Exhibit D at 2; Exhibit E at 2.)

69. The Accused Products have multiple aim indicators being operably connected to the processor, wherein the processor controls which of the multiple aim indicators is displayed at a given time based on at least one of (i) the range to target, and (ii) the angle of inclination of the bow, information. Garmin advertises the Accused Products as providing an LED pin from among multiple available LED pins based on the angle-compensated range to target: “They’re the first bow-mounted digital laser range finders and targeting display systems that measure the angle-compensated distance to your target and provide an LED pin for the shot — even on those ‘in-between’ yardages.” (Exhibit D at 2; Exhibit E at 2.)

70. The Accused Products have a manually actuated input device that is operably connected to the processor and that can be actuated for beginning an evaluation by the processor that determines which of the multiple aim indicators to display based on the at least one of the range to target and the angle of inclination of the bow, and wherein the manually actuated input device is arranged upon the bow to allow actuation of the input device by an archer when the bow is in a fully drawn position. Garmin advertises that a user (e.g., hunter) can initiate the Accused Product at full draw using a Silent Trigger Button: “Silent Button Trigger [-] When

stealth and stillness are critical, Xero bow sights require minimal movement, at rest or full draw. You mount the button in the most convenient location for your grip so that 1 finger can silently trigger the laser range finder to give you the distance and exact pin you need for the shot.”

(Exhibit D at 3; Exhibit E at 2.)

71. Garmin specifically instructs Users to actuate the Accused Products at full draw though its Owner’s Manual for the Accused Products:

Using the Bow Sight

Before you can use the bow sight, you must calibrate it for your bow and arrow combination (*Calibrating the Bow Sight*, page 2).

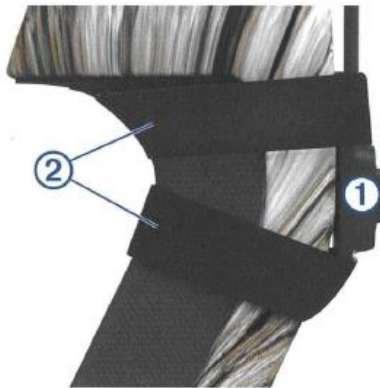
- 1 Draw your bow.
- 2 Hold the laser rangefinder trigger.
- 3 Align the primary pin with the ranging reticle, and aim at the target.
- 4 While holding the reticle on the target, release the laser rangefinder trigger.
The bow sight displays the measured range and projects a new pin.
- 5 Using the new pin, aim at the target, and shoot the bow.

(Exhibit F at p. 4 (emphasis added).)

Securing the Trigger

- 1 Position the ranging trigger ① on the grip of your bow where you can comfortably activate it at full draw.

NOTE: You should confirm the trigger and the trigger cable are positioned so they do not interfere with the operation of the bow.



- 2 Secure the trigger to the bow using the included tape ②.
TIP: You can use the extra piece of tape to secure the trigger cable to the riser.

(Exhibit F at p. 2 (emphasis added).)

ii. Claim 13

72. Burris repeats, realleges, and incorporates hereunder by reference the allegations contained in paragraph 63 through 71 above.

73. For example, Garmin's Users have directly infringed, and continue to directly infringe, literally and/or under the doctrine of equivalents, claim 13 of the '551 patent.

74. The Accused Products display an aim indicator in a bow sight to compensate for situation-specific shooting factors. Garmin advertises the Accused Products as providing an LED pin based on an angle-compensated distance to target: "Know the range, and shoot the exact pin with minimal movement using Xero bow sights. They're the first bow-mounted digital laser range finders and targeting display systems that measure the angle-compensated distance to your target and provide an LED pin for the shot — even on those 'in-between' yardages." (Exhibit D at 2; Exhibit E at 2.)

75. The Accused Products evaluate a shooting distance defined between a bow and a target. Garmin advertises the Accused Product as including a range finder for evaluation of distance between a bow and a target: "Laser Range Finder [-] No more guessing about yardages in between pins. Xero A1 and A1i bow sights instantly provide the precise angle-compensated distance to game up to 100 yards away or up to 300 yards on reflective targets, at rest or full draw." (Exhibit D at 2; Exhibit E at 2.)

76. The Accused Products evaluate a vertical shooting angle of the bow. Garmin advertises the Accused Products as evaluating the angle compensated distance between the bow and target: "Laser Range Finder [-] No more guessing about yardages in between pins. Xero A1 and A1i bow sights instantly provide the precise angle-compensated distance to game up to 100

yards away or up to 300 yards on reflective targets, at rest or full draw.” (Exhibit D at 2; Exhibit E at 2.)

77. The Accused Products determine a precise aiming position based on the shooting distance and the vertical shooting angle of the bow. Garmin advertises the Accused Products as automatically determining a precise aiming position based on an angle-compensated distance to the target: “Know the range, and shoot the exact pin with minimal movement using Xero bow sights. They’re the first bow-mounted digital laser range finders and targeting display systems that measure the angle-compensated distance to your target and provide an LED pin for the shot — even on those “in-between” yardages.” (Exhibit D at 2; Exhibit E at 2.)



(Exhibit D at 3; Exhibit E at 2.)

78. The Accused Products display an aim indicator at the determined precise aiming position so as to compensate for the vertical shooting angle of the bow in a manner that allows an archer to take dead aim at the target with the aim indicator that is displayed at the precise aiming position. Garmin advertises the Accused Products as providing a LED pin based on the angle-compensated target distance that allows an archer to take dead aim at a target: “Know the range, and shoot the exact pin with minimal movement using Xero bow sights. They’re the first bow-mounted digital laser range finders and targeting display systems that measure the angle-

compensated distance to your target and provide an LED pin for the shot — even on those ‘in-between’ yardages.” (Exhibit D at 2; Exhibit E at 2.)



(Exhibit D at 3; Exhibit E at 2.)

79. A User (e.g., hunter) using the Accused Products fully draws the bow and while the bow is in a fully drawn position, manually actuates an input device that initiates at least one of the steps of evaluating the shooting distance, evaluating the vertical shooting angle, and determining the precise aiming position. Garmin advertises and instructs users to place the trigger on the bow for manual activation while at full draw, which triggers initiation of all of the above steps and results in the display of an LED pin for a dead aim shot: “**Silent Button Trigger** [-] When stealth and stillness are critical, Xero bow sights require minimal movement, at rest or **full draw**. You mount the button in the most convenient location for your grip so that **1 finger can silently trigger the laser range finder** to give you the distance and exact pin you need for the shot.” (Exhibit D at 3; Exhibit E at 2 (emphasis added).)



iii. Claim 23

80. Burris repeats, realleges, and incorporates hereunder by reference the allegations contained in paragraph 63 through 71 above.

81. For example, Garmin's Users have directly infringed, and continue to directly infringe, literally and/or under the doctrine of equivalents, claim 23 of the '551 patent.

82. The Accused Products are auto-correcting bow sights. Garmin advertises the Accused Products as automatically measuring distance and angle to a target and then providing a LED pin for the shot: "Know the range, and shoot the exact pin with minimal movement using Xero bow sights. They're the first bow-mounted digital laser range finders and targeting display systems that measure the angle-compensated distance to your target and provide an LED pin for the shot — even on those 'in-between' yardages." (Exhibit D at 2; Exhibit E at 2.)

83. The Accused Products have a sensor system that is mounted to a bow and that is configured to determine both of a range to a target and an angle of inclination of the bow. Garmin advertises the Accused Products as having a bow-mounted range finder and inclinometer that automatically determine the angle-compensated distance to the target: "They're the first bow-mounted digital laser range finders and targeting display systems that measure the angle-compensated distance to your target and provide an LED pin for the shot — even on those 'in-between' yardages." (Exhibit D at 2; Exhibit E at 2.)

84. The Accused Products have multiple aim indicators that are mounted on the bow and are operably connected to the sensor system so that the ones of the multiple aim indicators can be selectively displayed based at least in part on both of the range to target and the angle of inclination of the bow. Garmin advertises the Accused Products as calculating and providing a bow mounted LED pin based on the angle-compensated range to the target: “They’re the first bow-mounted digital laser range finders and targeting display systems that measure the angle-compensated distance to your target and provide an LED pin for the shot — even on those ‘in-between’ yardages” and have an “All-in-One Design [-] Xero bow sights mount directly to your bow, providing a highly accurate laser range finder that calculates the exact LED pin to use for the shot.” (Exhibit D at 2; Exhibit E at 2.)

85. The Accused Products have a manually actuated input device that is operably connected to the sensor system and that is configured so that actuating the input device can initiate an evaluation of which ones of the multiple aim indicators can be selectively displayed based at least in part on both of the range to target and the angle of inclination of the bow, wherein the input device is configured to allow actuation of the input device by an archer when the bow is in a fully drawn position so as to permit the initiation of the evaluation while the bow is in the fully drawn position. Garmin advertises the Accused Products as selecting and providing an LED Pin after actuation of the trigger button at fully draw position based on the range to target and the angle of inclination: “They’re the first bow-mounted digital laser range finders and targeting display systems that measure the angle-compensated distance to your target and provide an LED pin for the shot — even on those ‘in-between’ yardages” and “Silent Button Trigger [-] When stealth and stillness are critical, Xero bow sights require minimal movement, at rest or full draw. You mount the button in the most convenient location for your grip so that 1

finger can silently trigger the laser range finder to give you the distance and exact pin you need for the shot.” (Exhibit D at 2-3; Exhibit E at 2.)

D. Willful Infringement, Damages, and Injunctive Relief

86. The infringement of the '551 patent by Garmin has been, since at least January, 2014, and continues to be, deliberate, willful, and knowing, or with deliberate indifference, entitling Burris to treble damages. With knowledge of the '551 patent since January, 2014, Garmin deliberately continued to develop, test, market, offer to sell, and sell its Accused Products.

87. Burris has been, and continues to be, damaged and irreparably harmed by the infringement of Garmin, which will continue unless this Court preliminarily and permanently enjoins Garmin and those acting on its behalf or under its control.

88. Burris, under 35 U.S.C. § 284, seeks damages adequate to compensate for the infringement of Garmin.

89. As a consequence of Garmin's willful infringement of the '551 patent, Burris is entitled to enhanced damages pursuant to 35 U.S.C. § 284.

90. The Court should declare this an exceptional case under 35 U.S.C. § 285, entitling Burris to recover attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter:

1. A decree preliminarily and permanently enjoining Defendant, its principals, officers, directors, employees, agents, successors, assigns, and all persons in active concert with it:

- a. from infringing, and contributing to or inducing others to infringe, the '551 patent including, without limitation immediately ceasing any and all manufacture, use, sales, offers for sale, and importation of the Garmin Xero™ A1 and A1i bow sights and any other products or methods protected as inventions by the '551 patent, pursuant to 35 U.S.C. § 283.
2. A judgment in favor of Plaintiff that Defendant has infringed, contributed to, and/or induced the infringement of one or more claims of each of the '551 patent;
3. A judgment and order requiring Defendant to pay Plaintiff its damages, costs, expenses, and prejudgment and post-judgment interest for Defendant's infringement of the '551 patent as provided under 35 U.S.C. § 284;
4. An award to Plaintiff for enhanced damages resulting from the knowing, deliberate, and willful nature of Defendant's prohibited conduct with notice being made at least as early as the date of the filing of this Complaint, as provided under 35 U.S.C. § 284;
5. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Plaintiff its reasonable attorneys' fees;
6. Such other and further relief which the Court deems appropriate in the circumstances.

DEMAND FOR JURY TRIAL

Plaintiff, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

DATED this 20th day of September, 2018.

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