

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

LOGANTREE LP,

Plaintiff,

v.

OMRON HEALTHCARE, INC.,

Defendant.

Civil Action No. 18-1617-MN

Jury Trial Demanded

**PLAINTIFF'S AMENDED COMPLAINT**

1. Plaintiff LoganTree LP (“Plaintiff” or “LoganTree”) files this, its Amended Complaint for patent infringement. Plaintiff asserts claims for patent infringement of U.S. Patent No. 6,059,576 (“the ‘576 Patent”), as reexamined, against Defendant Omron Healthcare, Inc. (“Defendant” or “Omron”), under 35 U.S.C. § 271, *et seq.* In support thereof, LoganTree would respectfully show the Court the following:

**PARTIES**

2. Plaintiff LoganTree LP is a partnership organized under the laws of the state of Nevada. LoganTree’s sole general partner is Gulfstream Ventures, LLC (“Gulfstream”), a limited liability company organized under the laws of the state of Nevada. Theodore and Anne Brann are the owners and sole managing members of Gulfstream, and their address is P.O. Box 2345, Boerne, Texas 78006.

3. Defendant Omron Healthcare, Inc., is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in the State of Illinois and located at 1925 West Field Court, Suite 100, Lake Forest, Illinois 60045. Omron may be served through its registered agent, the Corporation Trust Company, located at 1209 Orange Street, Wilmington, Delaware 19801.

## **JURISDICTION AND VENUE**

4. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has general personal jurisdiction over Omron because Omron is organized and existing under the laws of the State of Delaware.

6. Venue is proper in the District of Delaware under 28 U.S.C. § 1400(b) because Omron is incorporated in the State of Delaware and the District of Delaware is the sole judicial district within the State of Delaware. *See TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 137 S. Ct. 11514 (2017) (holding that, “[a]s applied to domestic corporations, ‘reside[nce]’ in § 1400(b) refers only to the State of incorporation”).

## **THE PATENT-IN-SUIT**

7. On May 9, 2000, the United States Patent and Trademark Office (“PTO”) duly and lawfully issued the ‘576 Patent, entitled “Training and Safety Device, System and Method to Aid in Proper Movement During Physical Activity,” after a full and fair examination. A true and correct copy of the ‘576 Patent is attached hereto as Exhibit A.

8. On March 17, 2015, following a reexamination requested by LoganTree, the PTO issued a reexamination certificate for the ‘576 Patent, bearing U.S. Patent No. 6,059,576 C1 (“the ‘576 Reexamination Certificate”). A true and correct copy of the ‘576 Reexamination Certificate is attached hereto as Exhibit B. The ‘576 Patent as reexamined is referred to as the “Reexamined ‘576 Patent.”

9. The named inventor of the ‘576 Patent is Theodore L. Brann.

10. Mr. Brann assigned all right, title, and interest in the ‘576 Patent to LoganTree.

LoganTree possess all rights of recovery under the ‘576 Patent and the Reexamined ‘576 Patent, including the exclusive right to sue for infringement and recover past damages.

### **THE REEXAMINATION**

11. The ‘576 Patent sets forth three independent claims – one each for the device, system, and method of the invention described above – along with twenty-six dependent claims. (*Id.* at 17-18). On March 17, 2015, following a reexamination requested by LoganTree, the PTO issued a reexamination certificate for the ‘576 Patent (“the ‘576 Reexamination Certificate”) reaffirming the patentability of all of the ‘576 Patent claims, as amended, and further determining that an additional 156 dependent claims are patentable, for a total of 185 patented claims. (Ex. B). Claims 1, 13, and 20 of the Reexamined ‘576 Patent are independent claims, and the remaining 182 claims are dependent on Claims 1, 13, or 20.

12. As stated in Claim No. 1 of ‘576 Reexamination Certificate, the patented “device” provides for:

a portable, self-contained device for monitoring movement of body parts during physical activity, said device comprising:

a movement sensor capable of measuring data associated with unrestrained movement in any direction and generating signals indicative of said movement;

a power source;

a microprocessor connected to said movement sensor and to said power source, said microprocessor capable of receiving, interpreting, storing and responding to said movement data based on user-defined operational parameters, *detecting a first user-defined event based on the movement data and at least one of the user-defined operational parameters regarding the movement data, and storing first event information related to the selected first user-defined event along with the first time stamp information reflecting a time at which the movement data causing the first user-defined event occurred;*

at least one user input connected to said microprocessor for controlling the operation of said device;

a real-time clock connected to said microprocessor; memory for storing said movement data; and

an output indicator connected to said microprocessor for signaling the occurrence of user-defined events;

wherein said movement sensor measures the angle and velocity of said movement.

(*Id.* at 3).<sup>1</sup>

13. Claim 13 (the “System Claim”) defines the patented “system” to comprise the Claim 1 device when connected via a “download device” to “a computer running a program capable of interpreting” the data gathered by the Claim 1 device.

14. Claim 13 of the Reexamined ‘576 Patent is for: “A system to aid in training and safety during physical activity, said system comprising:

a portable, self-contained movement measuring device, said movement measuring device further comprising:

a movement sensor capable of measuring data associated with unrestrained movement in any direction and generating signals indicative of said movement;

a power source;

a microprocessor connected to said movement sensor and to said power source, said microprocessor capable of receiving, interpreting, storing and responding to said movement data based on user-defined operational parameters, detecting a first user-defined event based on the movement data and at least one of the user-defined operational parameters regarding the movement data, and storing first event information related to the selected first user-defined event along with the first time stamp information reflecting a time at which the movement data causing the first user-defined event occurred;

at least one user input connected to said microprocessor for controlling the operation of said device;

a real-time clock connected to said microprocessor; memory for storing said movement data; and

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<sup>1</sup> The text in italics “indicates additions made to the patent” as a result of the reexamination. (*Id.* at 3).

at least one input/output port connected to said microprocessor for downloading said data and uploading said operational parameters;

an output indicator connected to said microprocessor;

a computer running program capable of interpreting and reporting said movement data based on said operational parameters; and

a download device electronically connected to said movement measuring device and said computer for transmitting said movement data and operational parameters between said movement measuring device and said computer for analysis, reporting and operating purposes;

wherein said movement sensor measures the angle and velocity of said movement.

15. Claim 20 (the “Method Claim”) provides a parallel definition for the patented “method.”

16. Claim 20 is for: “A method to monitor physical movement of a body part comprising the steps of:

attaching a portable, self-contained movement measuring device to said body part for measuring unrestrained movement in any direction;

measuring data associated with said physical movement; interpreting, using a microprocessor included in the portable, self-contained measuring device, said physical movement data based on user-defined operational parameters and a real-time clock; [and]

storing said data in memory;

detecting, using the microprocessor, a first user-defined event based on the movement data and at least one of the user-defined operational parameters regarding the movement data; and

storing, in said memory, first event information related to the detected first user-defined event along with first time stamp information reflecting a time at which the movement data causing the first user-defined event occurred.

**COUNT ONE: INFRINGEMENT OF THE REEXAMINED ‘576 PATENT**

17. Plaintiff realleges paragraphs 1 through 16 herein.

18. On information and belief, Omron, directly or through intermediaries, makes, made, has made, used, imported, manufactured, provided, supplied, distributed, sold, and/or offered for sale to customers within the United States accelerometer-based activity monitoring devices that infringe the Reexamined ‘576 Patent, including but not limited to the following models of wearable accelerometer-based activity tracker (collectively “Accused Products”): Alvita Wireless Activity Tracker, Alvita USB Pedometer with Four Activity Modes, Alvita Ultimate Pedometer, and Alvita Optimized Pedometer with Four Activity Modes.

19. On information and belief, the Accused Products infringe the Reexamined ‘576 Patent because each of the accused products is a portable, self-contained device that uses an accelerometer to measure the angle and velocity of body movements, a microprocessor capable of recognizing and analyzing data generated by the accelerometer, and internal memory and a clock for storing the data along with the time at which the detected events occurred.

20. On information and belief, the Accused Products infringe the Device Claim of the Reexamined ‘576 Patent, and other claims dependent on the Device Claim, in that each of the Accused Products:

- a. Is a portable, self-contained devices for monitoring body movements during physical activity;
- b. Contains a movement sensor – specifically, a “Tri-axis 3D smart sensor” – capable of measuring data associated with body movements and generating signals indicative of such movements, and which measures the angle and velocity of such movements;

- c. Contains a power source – specifically, an internal lithium battery;
- d. Contains a microprocessor connected to the movement sensor and power source capable of receiving, interpreting, storing, and responding to movement data generated by the Tri-axis 3D smart sensor based on user-defined operational parameters (*e.g.*, the user's height, weight, stride length, etc.), and detecting a first user-defined event based on the movement data and at least one of the user-defined operational parameters regarding the movement data (*e.g.*, steps and/or aerobic steps taken, miles traveled, calories burned, etc.);
- e. Contains user inputs (*e.g.*, touch screen, buttons, etc.) connected to the microprocessor for controlling the device;
- f. Contains a real-time clock and memory for storing movement data; and
- g. Includes an output indicator (*e.g.*, screen, LED readout, etc.) connected to said microprocessor for signaling the occurrence of user-defined events.

21. As reflected in the chart attached hereto as Exhibit C, the information Omron makes public about the Accused Products further demonstrates how they infringe the Device Claim of the Reexamined '576 Patent. (Ex. C). While Exhibit C demonstrates the element-by-element infringement of one specific Accused Product (*i.e.*, the "Alvita Wireless Activity Tracker"), on information and belief, all of Omron's Accused Products incorporate equivalent body motion-tracking technology and design, and all infringe the Device Claim of the Reexamined '576 Patent.

22. On information and belief, each of the Accused Products is designed to be and is cable of being connected to an external computer (such as a laptop or smart phone) and/or

computer network operating software capable of accessing and downloading stored data from the Accused Products, analyzing that data, and presenting the data to the user in different forms. When so connected, each of the Accused Products infringes the System Claim in of the Reexamined ‘576 Patent, and other claims dependent on the System Claim, in that the Accused product so connected:

- a. Is a system to aid in training and safety during physical activity;
- b. Contains a portable, self-contained movement measuring device of the kind described in Paragraph 12, *supra* (e.g., the Accused Product itself);
- c. Contains a computer (e.g., a personal computer or smart phone) running a program capable of interpreting and reporting movement data collected by the device;
- d. Contains a download device (e.g., cord, USB dongle, Bluetooth transmitter, etc.) electronically connected to the movement measuring device and the computer for transmitting data between the movement device and the computer for analysis.

23. On information and belief, Omron induced infringement, under 35 U.S.C. § 271(b), of the Method Claim of the Reexamined ‘576 Patent, and other claims dependent on the Method Claim, by way of its customers. In particular, when used by its customers as intended and instructed by Omron, each of the Accused Products infringes the Method Claim of the Reexamined ‘576 Patent, and other claims dependent on the Method Claim, in that the Accused Product, so used:

- a. Is a method to monitor physical movement of a body part comprising the steps of:



- b. Attaching a portable, self-contained movement measuring device (e.g., the Accused Product itself) to said body part for measuring unrestrained movement in any direction;
- c. Measuring data associated with physical movement of the body part (using the Tri-axis 3D smart sensor described above);
- d. Interpreting said data using a microprocessor contained in the self-contained movement measuring device based on user-defined operational parameters and a real-time clock;
- e. Storing said data in memory;
- f. Detecting, using the microprocessor, a first user-defined event based on the movement data and at least one of the user-defined operational parameters regarding the movement data; and
- g. Storing, in said memory, first event information related to the detected first user-defined event along with first time stamp information reflecting a time at which the movement data causing the first user-defined event occurred.

24. As reflected in the chart attached hereto as Exhibit D, the information Omron makes public about the Accused Products further demonstrates how the use thereof infringes the Method Claim of the Reexamined '576 Patent. (Ex. D). While Exhibit D demonstrates the element-by-element infringement of the use of one specific Accused Product (*i.e.*, the "Alvita Wireless Activity Tracker"), on information and belief, all of Omron's Accused Products incorporate equivalent body motion-tracking technology and methodology, and all infringe the Method Claim of the Reexamined '576 Patent.

25. On information and belief, Omron induced infringement of the Reexamined ‘576 Patent by its customers, and intended to do so, through its marketing materials, product manuals, and other materials such as its websites, <https://omronhealthcare.com/> and <https://www.omronwellness.com/Home/Landing>, and its mobile application, Omron Fitness Mobile App. Omron had knowledge of the Reexamined ‘576 Patent as early as October 26, 2017, when LoganTree mailed a certified letter notifying Omron of the Reexamined ‘576 Patent and indicating that Omron’s Activity Trackers and Pedometers infringe the Reexamined ‘576 Patent. See Cease and Desist Letter attached as Exhibit E. With knowledge of the Reexamined ‘576 Patent and knowledge of the infringement by Omron’s Activity Trackers on the Reexamined ‘576 Patent, Omron encouraged and induced, using its website <https://www.omronwellness.com> and Fitness Mobile App, its customers to use Omron’s Activity Trackers in the infringing manner and Omron knew of its customers’ infringing use of Omron’s Activity Trackers by at least through the participation of customers on its website and mobile app and collecting data of said infringing use on its website and mobile app.

26. The infringing actions of Omron are and have at all times been without the consent of, authority of, or license from Plaintiff.

27. As a direct and proximate result of the infringement of the Reexamined ‘576 Patent by Omron, Plaintiff has suffered damages in an amount that cannot yet be fully ascertained, which will be proven at trial.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff LoganTree requests that the Court grant the following relief:

- a) enter a judgment that Defendant has directly infringed the Reexamined ‘576 Patent under 35 U.S.C. § 271(a);

- b) order Defendant to pay damages adequate to compensate Plaintiff for Defendant's infringement of the Reexamined '576 Patent pursuant to 35 U.S.C. § 284, together with pre- and post-judgment interest, in an amount according to proof;
- c) enter judgment that this case is exceptional under 35 U.S.C. § 285 and award Plaintiff's reasonable attorneys' fees and costs incurred in this action; and
- d) award such other and further relief, at law or in equity, as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff respectfully requests a trial by jury on all issues so triable, pursuant to Fed. R. Civ.

P. 38(b).

<p>Dated: October 10, 2019</p> <p>MCCATHERN, PLLC</p> <p>Arnold Shokouhi Christopher M. Barkley James E. Sherry Regency Plaza 3710 Rawlins Street, Suite 1600 Dallas, TX 75219 (214) 741-2662 arnolds@mccathernlaw.com cbarkley@mccathernlaw.com jsherry@mccathernlaw.com</p>	<p><b>CHIPMAN BROWN CICERO &amp; COLE, LLP</b></p> <p><u>/s/ Stephanie H. Dallaire</u> Gregory E. Stuhlman (No. 4765) Stephanie H. Dallaire (No. 5184) Hercules Plaza 1313 North Market Street, Suite 5400 Wilmington, DE 19801 (302) 295-0191 stuhlman@chipmanbrown.com dallaire@chipmanbrown.com</p> <p><i>Attorneys for Plaintiff LoganTree LP</i></p>
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