

THE HONORABLE MARSHA J. PECHMAN

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

VECTRA FITNESS, INC.,
a Washington corporation,

Plaintiff,

v.

BRUNSWICK CORPORATION,
a Delaware corporation,
and its division, LIFE FITNESS, INC.,

Defendant.

Civil Action No. CVO4-2306P

**FIRST AMENDED COMPLAINT
FOR PATENT INFRINGEMENT**

Plaintiff, Vectra Fitness, Inc. ("Vectra"), for its complaint against defendant Brunswick Corporation and its division, Life Fitness, Inc. (collectively, "Brunswick"), alleges as follows:

I. NATURE OF ACTION

1. This action is based on the Patent Laws of the United States, 35 U.S.C. § 100 *et seq.*

2. This action arises out of defendant's making, using, selling, and/or offering for sale exercise equipment that infringes a valid patent owned by plaintiff.

II. THE PARTIES

3. Vectra is a Washington corporation with its principal place of business at 7901 S. 190th Street, Kent, Washington 98032.

1 4. Upon information and belief, defendant Brunswick is a Delaware corporation,
2 with a place of business at 1 N. Field Court, Lake Forest, Illinois 60045.

3 **III. JURISDICTION AND VENUE**

4 5. This action arises under the Patent Act, 35 U.S.C. § 271 *et seq.* The Court has
5 original jurisdiction of such claims pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6 6. Personal jurisdiction over the defendant is proper in this Court. Venue in this
7 judicial district is proper under 28 U.S.C. §§ 1391(b), (c) and/or 1400(b).

8 **IV. FACTS**

9 7. On March 29, 1994, United States Reissue Patent No. Re. 34,572 (hereinafter “the
10 ‘572 patent”), entitled *Exercise Machine With Multiple Exercise Stations*, was lawfully issued to
11 Vectra. The ‘572 patent is a reissue of United States Patent No. 4,809,972 (hereinafter “the ‘972
12 patent”), issued March 7, 1989. Vectra is the assignee and sole owner of the ‘972 patent and of
13 the ‘572 patent, a copy of which is attached hereto as Exhibit A.

14 8. Vectra is in the business of designing, manufacturing, marketing and selling
15 various exercise machines including exercise machines covered by one or more claims of the
16 ‘572 patent.

17 **V. DEFENDANT AND ITS UNLAWFUL ACTIVITIES**

18 9. On information and belief, Brunswick has been, and is, infringing both literally
19 and under the doctrine of equivalents, one or more claims of the ‘572 patent by manufacturing,
20 using, selling, offering to sell, causing to be manufactured, used, sold and/or offered for sale,
21 exercise products covered by the ‘572 patent in the United States and in this judicial district.

22 10. On information and belief, Brunswick has actual and constructive notice of
23 Vectra’s rights respecting the ‘572 patent.
24
25

VI. CLAIM -- PATENT INFRINGEMENT

11. Vectra repeats and realleges each of the allegations contained in the paragraphs above as if fully set forth herein.

12. On information and belief, Brunswick has been, and is, infringing directly, by inducement, and/or under the doctrine of contributory infringement and/or the doctrine of equivalents, one or more claims of the '572 patent by manufacturing, using, selling, and/or offering for sale exercise equipment, and/or related products in the United States and in this Judicial District.

13. By infringing directly, by inducement and/or under the doctrine of contributory infringement and/or the doctrine of equivalents, one or more claims of the '572 patent, Brunswick has unfairly reaped a substantial commercial advantage and savings in research and development time and cost, all to Vectra's detriment.

14. Brunswick's activities with respect to its exercise equipment, and related products constitute willful infringement of one or more claims of the '572 patent. Brunswick has been informed of its infringing conduct but, nevertheless, continues its infringement.

15. Vectra has been, and will continue to be, damaged by such infringement in an amount to be proven at trial, and in a manner and amount that cannot be fully measured or compensated in economic terms and for which there is no adequate remedy at law. The actions of Brunswick have damaged, and will continue to damage, Vectra's business, market, reputation, and goodwill. Such irreparable damage will continue unless the acts of Brunswick are enjoined during the pendency of this action and thereafter. Vectra is, therefore, entitled to the remedies provided by 35 U.S.C. §§ 283-285.

VII. PRAYER FOR RELIEF

WHEREFORE, Vectra requests the following relief:

1 1. Brunswick and its officers, directors, agents, servants, employees, attorneys,
2 confederates, and all persons acting for, with, by, through, or under them or any of them, be
3 permanently enjoined:

4 (a) From infringing any claim of the '572 patent, either directly or
5 contributing to the infringement; and

6 (b) From inducing others to infringe any claim of the '572 patent.

7 2. Brunswick be required to deliver up to the Court the following items in
8 Brunswick's possession, custody or control: any and all exercise machines which infringe any
9 claim of the '572 patent in suit and parts thereof and all machinery, tooling, and dies and any
10 other equipment used in the manufacture, finishing or refinement of any of the above items or
11 products.

12 3. Brunswick be required to prepare and deliver to Vectra a complete list of entities
13 from whom defendant purchased, and to whom they distributed or sold, products which infringe
14 any claim of the '572 patent.

15 4. Brunswick, within thirty days after service of judgment, with notice of entry
16 thereof upon it, be required to file with the Court and serve upon Vectra's counsel a written
17 report under oath setting forth in detail the manner in which defendant has complied with
18 Paragraphs 1 through 3 hereof.

19 5. Brunswick account for and pay over to Vectra such damages as Vectra has
20 sustained and adequate to compensate for the patent infringement, including Vectra's lost
21 profits, but in no event less than a reasonable royalty, as provided by 35 U.S.C. § 284.

22 6. Brunswick's infringement of Vectra's patent be found willful and that treble
23 damages, together with interest and costs, be awarded under 35 U.S.C. § 284.

24 7. The present case be found exceptional and that attorneys' fees be awarded to
25 Vectra under 35 U.S.C. § 285 or as otherwise permitted by law.

1 8. Brunswick be ordered to pay prejudgment interest on all sums awarded as allowed
2 by law.

3 9. Vectra have such other and further relief as the Court may deem just and proper.

4 **DEMAND FOR JURY**

5 Vectra hereby demands a trial by jury as to all issues so triable.

6
7 DATED this 11th day of March, 2005.

8 Respectfully submitted,
9 DORSEY & WHITNEY LLP

10
11 /s/ Paul T. Meiklejohn —
12 Paul T. Meiklejohn WSBA No.17477
13 U.S. Bank Centre
14 1420 Fifth Avenue, Suite 3400
15 Seattle, WA 98101
16 Telephone: (206) 903-8800
17 Facsimile: (206) 903-8820

18 Jose L. Sanchez WSBA No. 27187
19 Vectra Fitness, Inc.
20 7901 S. 190th Street
21 Kent, WA 98032
22 Telephone: (425) 291-9550
23 Facsimile: (425) 291-9560

24 Attorneys for Plaintiff
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