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5
6 UNITED STATES DISTRICT COURT
7 NORTHERN DISTRICT OF CALIFORNIA
8 SAN FRANCISCO DIVISION
9

10 AVOCET SPORTS TECHNOLOGY, INC., No. 3:11-cv-04049-JW

11 Plaintiff,

**SECOND AMENDED COMPLAINT
FOR PATENT INFRINGEMENT**
[JURY TRIAL DEMANDED]

12 v.

13 GARMIN INTERNATIONAL, INC.,

14 Defendant.
15 _____/

16
17 Plaintiff AVOCET SPORTS TECHNOLOGY, INC. ("Avocet") files this Second
18 Amended Complaint for patent infringement against defendant GARMIN
19 INTERNATIONAL, INC. ("Garmin").

20 **CLAIM FOR PATENT INFRINGEMENT**

21 **JURISDICTION**

22 1. Jurisdiction is pursuant to 28 U.S.C. § 1338, allowing original jurisdiction in
23 this court for patent cases.

24 **VENUE**

25 2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(c) in
26 that defendant, Garmin International, Inc., is subject to personal jurisdiction in this district
27 as it regularly transacts and transacted business here.

1 **INTRADISTRICT ASSIGNMENT**

2 3. Because this case is an Intellectual Property Action, it is not subject to
3 assignment to a particular location or division of the Court under Local Rule 3-2(c).

4 **NATURE OF THE ACTION**

5 4. This is an action brought against Defendant Garmin for its past infringement
6 of the United States Patent No. 5,058,427, Claims 17-20, inclusive (“the ‘427 Patent”),
7 methods for selectively accumulating altitude changes.

8 5. On October 22, 1991, United States Patent No. 5,058,427 was duly and
9 legally issued and its current assignee is plaintiff Avocet Sports Technologies, Inc. A true
10 and correct copy of the patent, as duly assigned, is attached hereto as Exhibit 1 and is
11 incorporated herein by reference. Said patent is issued for altimeter devices as more
12 extensively and precisely described in the attached patent.

13 **FACTUAL BACKGROUND**

14 **I. THE ASSERTED ‘427 PATENT**

15 6. At all times relevant, Avocet is and was the owner of the ‘427 Patent and has
16 and had the rights thereunder. Through years of marketing and sales, plaintiff’s patent
17 was well known to defendant Garmin at all times relevant hereto.

18 **II. GARMIN’S INFRINGEMENT OF THE ‘427 PATENT**

19 **A. THE GARMIN ACCUSED PRODUCTS**

20 7. Garmin tested, demonstrated, provided instructions for, provided training
21 for, marketed, made, used, offered to sell, sold, and/or imported into the United States
22 devices that contain an accumulating altimeter that included a programmable
23 accumulator which selectively accumulates altitude changes from a reference altitude in
24 accordance with accumulation thresholds as taught by the ‘427 patent. The model
25 name/numbers of the Garmin selectively accumulating altimeter devices (hereinafter
26 “Garmin Devices”) include, without limitation, Garmin Model Name/Numbers Colorado
27 300, Colorado 400t, Colorado 400i, Colorado 400c, Edge 305, Edge 705, GPSMAP
28 60CSx, GPSMAP 76CSx, Oregon 300, Oregon 400t, Oregon 400i, Oregon 400c, Rino

1 530, Dakota 20, Edge 500, Edge 800, eTrex Summit HC, eTrex Vista H, eTrex Vista
2 Hcx, GPSMAP 62S, GPSMAP 62ST, GPSMAP 78S, GPSMAP 78SC, Oregon 450,
3 Oregon 450T, Oregon 550, Oregon 550T, and Rino 530HCx.

4 **B. GARMIN'S DIRECT INFRINGEMENT OF THE '427 PATENT**

5 8. During the period commencing August 18, 2005, and ending upon the
6 expiration of the '427 Patent, Garmin directly infringed one or more of the Method Claims
7 of the '427 Patent under 35 U.S.C. § 271(a) because it has used, tested, and/or
8 demonstrated the altitude accumulator aspects of the Garmin Devices by using one or
9 more of plaintiff's Method Claims. In order to have used, tested, and/or demonstrated the
10 altitude accumulator aspect of the Garmin Devices, Garmin had to utilize one or more of
11 plaintiff's Method Claims of the '427 Patent. Garmin could not have implemented the
12 accumulating altitude change features of the Garmin Devices without infringing the
13 Method Claims of the '427 Patent.

14 **C. GARMIN'S INDUCED INFRINGEMENT OF THE '427 PATENT**

15 9. Garmin is liable for indirect infringement under 35 U.S.C. § 271(b) because
16 it has knowingly induced the direct infringement of one or more of the Method Claims of
17 the '427 Patent by Garmin's customers, end-users and other third parties.

18 **1. METHOD CLAIMS**

19 **a. Underlying Direct Infringement by Garmin's Customers,**
20 **End-Users and Third Parties**

21 10. During the period commencing August 18, 2005, and ending upon the
22 expiration of the '427 Patent, its customers, end-users and other third parties directly
23 infringed one or more of the Method Claims of the '427 Patent by using the Garmin
24 devices.

25 **b. Active Steps to Induce Infringement**

26 11. During said time period, Garmin knowingly took active steps to induce end-
27 users and other third parties in the United States to engage in direct infringement of the
28 Method Claims of the '427 Patent. For example, Garmin provided, sold, or promoted the

1 Garmin Devices to customers, end-users or other third parties along with specific
2 instructions or training regarding the use of those devices, which instructions or training
3 actively induced said customers, end-users and other third parties to practice the '427
4 Patent Method Claims and said instructions or training caused direct infringement of the
5 '427 Patent Method Claims.

6 **c. Specific Intent to Induce Infringement**

7 12. During said time period, Garmin possessed the specific intent to induce
8 infringement of the Method Claims of the '427 Patent by customers, end-users and other
9 third parties which intent was manifested, *inter alia*, by its instructions or training for using
10 the Garmin devices and advertising, marketing and promotion of said devices with
11 specific reference to the accumulating altimeter function of said devices.

12 13. During said time period, Garmin had knowledge of the '427 Patent and
13 knowledge that the use of the Garmin Devices per its instructions and/or training infringed
14 the Method Claims of the '427 Patent. In addition, during said time period, Garmin knew
15 or should have known that its actions would and did induce infringement of the Method
16 Claims by its customers, end-users and other third party users. Garmin had actual
17 knowledge of the '427 Patent *inter alia* due to (1) its active participation and competition
18 in the altimeter market, including but not limited to trade shows, where Garmin discussed
19 with plaintiff, saw, read, and observed plaintiff's patented accumulating altimeter devices
20 and promotional materials, packaging and instruction pertaining thereto, all of which
21 provided notice of and identified the subject '427 Patent, (2) Garmin's altimeter market
22 research, (3) Garmin's research and development of the Garmin devices, (4) Garmin's
23 numerous patents concerning altimeter devices, (5) Garmin's patent searches, and prior
24 art searches pertaining to patent applications and patent acquisition concerning *inter alia*
25 altimeter devices, and (6) Garmin's exercise of due diligence pertaining to intellectual
26 property purchase and acquisition.

27 14. During said time period, Garmin knew or should have known that testing,
28 demonstrating, marketing, making, using, offering to sell, selling, and/or importing into the

1 United States the Garmin Devices constituted infringement of the Method Claims of the
2 '427 Patent, based on, among other things, Garmin's participation in the altimeter market
3 in general, and its direct competition with plaintiff.

4 15. During said time period, Garmin knowingly took active steps to induce end-
5 users, including its customers, and other third parties to engage in direct infringement of
6 the Method Claims of the '427 Patent and did so with an affirmative intent to cause such
7 direct infringement and/or with purposeful, culpable expression and conduct to encourage
8 and in fact cause such direct infringement. Garmin's specific intent to induce
9 infringement is evidenced by, among other things, (1) by Garmin advertising, marketing,
10 promoting, and selling said Garmin Devices with infringing accumulating altimeter
11 functions, by making special and detailed reference in its marketing, advertising, and
12 promotion to the altimeter accumulating feature of said Garmin Devices that infringed,
13 embodied, and utilized the '427 Method Claims and; (2) by Garmin providing specific and
14 detailed instructions and training to its customers, end users and/or other third parties on
15 the use of the infringing accumulating altimeter feature of said Garmin Devices. Garmin
16 knew that in order to activate and use the accumulating altimeter function of its said
17 devices, end users, customers, and third parties needed to use and follow Garmin's
18 instructions and/or training pertaining to said function. Garmin also knew that the use of
19 the accumulating altimeter function of its devices pursuant to its instructions and/or
20 training necessarily and inherently required the use of the '427 Method Claims and
21 necessarily and inherently resulted in the direct infringement of the '427 Method Claims
22 by such customers, end users, and other third parties. Garmin knew that its said acts of
23 advertising, marketing, and providing specific instructions and training as alleged above,
24 would and did in fact necessarily induce its customers, end users, and other third parties
25 to use the Garmin Devices in a fashion and manner which directly infringed the Method
26 Claims of the '427 Patent, since the following of Garmin's instructions and training
27 automatically resulted in the use of the '427 Method Claims and was necessary in order
28 to operate the accumulating altimeter function of Garmin's devices. Defendant Garmin

1 issued its instructions and training for the express purpose of facilitating, enabling and
2 implementing the customers', end users', and third parties' use of the accumulating
3 altimeter features in said Garmin Devices with the full knowledge of plaintiff's '427 Method
4 Claims and with the full knowledge that following the Garmin instructions and training
5 would and did cause and result in infringement of plaintiff's '427 Method Claims by the
6 customers, end users, and third parties and knowing it caused the customers, end users,
7 and third parties to infringe the '427 Method Claims. When a customer, end user, or third
8 party utilized the accumulating altimeter function of Garmin's devices pursuant to the
9 instructions provided by Garmin, Garmin knew that the only possible way for the
10 accumulating altimeter feature aspect of its said devices to operate, was to infringe on the
11 Method Claims of the '427 Patent. Garmin provided specific instructions and/or training
12 concerning the accumulating altimeter function of its devices to customers, end users,
13 and/or other third parties knowing that its acts would induce and encourage such
14 customers, end-users, and other third parties to use the Garmin Devices accumulating
15 altimeter and by so doing, Garmin knew it would cause and encourage the end users,
16 customers, or third parties to use the accumulating altimeter function of the Garmin
17 Devices (which function Garmin knew embodied and implemented the '427 Patent and its
18 Method Claims) to directly infringe the Method Claims of the '427 Patent, and thus
19 Garmin knew and intended that said Method Claims would be infringed when its
20 customers, end users, or third parties used the Garmin Device's accumulating altimeter
21 function.

22 **D. GARMIN'S CONTRIBUTORY INFRINGEMENT OF THE '427 PATENT**

23 16 During said time period, Garmin is liable for indirect infringement under 35
24 U.S.C. § 271(c) because it contributed to the direct infringement of the Method Claims of
25 the '427 Patent by end-users, its customers, and other third parties.

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1 **1. METHOD CLAIMS**

2 **a. Underlying Direct Infringement by End-Users**

3 17. During said time period, end-users directly infringe one or more of the
4 Method Claims of the '427 Patent by using the Garmin Devices.

5 **b. Garmin Had Knowledge of the '427 Patent and of Its**
6 **Contribution to the Infringement of the Method Claims of**
7 **the '427 Patent**

8 18. During said time period, Garmin had knowledge of the '427 Patent and that
9 the Garmin Devices infringed the Method Claims of the '427 Patent.

10 19. During said time period, Garmin had knowledge that the Garmin Devices
11 were especially made or especially adapted for use in an infringement of the '427 Method
12 Claims based on, among other things, its knowledge of plaintiff's patent as alleged above
13 and the accumulating altimeter function of said Garmin Devices could not be performed
14 without practicing the '427 Method Claims.

15 **c. Material Part of the Patented Invention**

16 20. During said time period, the Garmin accumulating altimeter devices were a
17 material part of inventions as reflected in the '427 Method Claims in that such devices
18 uniquely enabled the practice of and required employment of the '427 Method Claims by
19 Garmin's customers, end users and other third parties.

20 **d. No Substantial Non-Infringing Use**

21 21. During said time period, the Garmin accumulating altimeter devices were
22 not a staple article or commodity of commerce suitable for substantial non-infringing use.
23 During said time period the Garmin accumulating altimeter devices were suitable for use
24 only in a manner that infringed the Method Claims of the '427 Patent. In particular, the
25 only substantial use for the Garmin accumulating altimeter devices was to operatively
26 perform the method embodied in the Method Claims of the '427 Patent. Such use
27 infringed the Method Claims of the '427 Patent.

1 22. As a result of Garmin's infringement of plaintiff's '427 Patent as set forth
2 above, plaintiff is entitled to damages in an amount according to proof and because
3 Garmin's infringement of the '427 Patent was willful and deliberate and without a
4 reasonable basis for believing that its conduct was lawful, plaintiff is entitled to treble
5 damages under 35 U.S.C. § 284 and to attorney's fees and costs incurred in prosecuting
6 this action under 35 U.S.C. § 285.

7 **WHEREFORE** plaintiff demands judgment as follows:

- 8 1. That defendant render an accounting for all profits defendant received by
9 infringing said patent;
- 10 2. For damages against defendant sufficient to compensate plaintiff pursuant
11 to 35 U.S.C. § 284, in an amount according to proof.
- 12 3. For treble damages;
- 13 4. For costs and reasonable attorney fees of the subject litigation and interest
14 as allowable by law; and
- 15 5. For such other and further relief as the court may deem just and proper.

16 DATED: June 22, 2012

17
18 /s/ Frear Stephen Schmid
19 Frear Stephen Schmid, Attorney for Plaintiff
AVOCET SPORTS TECHNOLOGY, INC.

20 **DEMAND FOR JURY TRIAL**

21 Plaintiff hereby demands a jury trial pursuant to Federal Rules of Civil Procedure
22 38.

23 DATED: June 22, 2012

24
25 /s/ Frear Stephen Schmid
26 Frear Stephen Schmid, Attorney for Plaintiff
27 AVOCET SPORTS TECHNOLOGY, INC.
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