

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
(ALEXANDRIA DIVISION)**

FILED

2012 SEP 24 P 1:16

CLERK US DISTRICT COURT  
ALEXANDRIA, VIRGINIA

Erik B. Cherdak  
  
*Plaintiff, Pro Se,*  
  
v.  
  
Timex Group USA, Inc.  
  
*Defendant.*

Case No. 1:12-cv-873 (LO/jfa)

**PLAINTIFF'S FIRST  
AMENDED  
COMPLAINT FOR PATENT  
INFRINGEMENT**

**JURY TRIAL DEMANDED**

**PLAINTIFF'S FIRST AMENDED COMPLAINT**

Plaintiff Erik B. Cherdak (hereinafter "Plaintiff" or "Cherdak"), *Pro Se*, and in and for his First Amended Complaint against the above-named Defendant, states as follows:

**Background:**

This Plaintiff's First Amended Complaint replaces the Complaint originally filed in this case on August 6, 2012. Plaintiff has dismissed this case with prejudice as to Defendants Pear Sports, Inc. and Suunto USA. *See* ECF Nos. 6 and 7. Plaintiff has reached settlement agreements with Pear Sports, Inc. and Suunto USA and no longer advances claims and/or causes of action in this action against those parties. Defendant Timex, on the other hand, continues to sell foot pod units that are the same as or that are substantially similar to those which are sold by Pear Sports, for example, and which are already licensed products under the patents-in-suit. Despite Defendant Timex's knowledge of the patents-in-suit, its literal infringement of such patents, and the fact that it knows that substantially similar or like products are already licensed under the patents-in-suit, Timex continues to ignore the valid and enforceable rights of the Plaintiff. It is beyond dispute that Defendant Timex is a willful infringer.

## **PARTIES**

1. Plaintiff is an individual residing in Gaithersburg, Maryland at the address listed in the caption of this Complaint. At all times relevant herein, Plaintiff has been and is the named inventor in U.S. Patent Nos. 5,343,445 and 5,452,269 (hereinafter referred to as the “patents-in-suit”). Plaintiff owns all right, title and interest and to the patents-in-suit and, as such, has the full right to bring this action for patent infringement and to seek all remedies in law and in equity for acts of patent infringement occurring in the past, present and future.

2. On information and belief, Defendant Timex Group USA, Inc. (“Timex”) is a privately held company having a principal place of business as specified in the caption of this Complaint. Timex regularly sells infringing products and solicits business in this judicial district of Virginia, USA. Timex owns and operates a website at [www.timex.com](http://www.timex.com), that is accessible 24 hours per day, 7 days per week, and 365 days per year by citizens of this judicial district. Timex’s infringing products as specified herein are advertised and marketed, and offered for sale and sold to citizens in this judicial district and throughout the USA.

## **JURISDICTION AND VENUE**

3. This is an action for Patent Infringement of U.S. Patent Nos. 5,343,445 and 5,452,269 (per reexamination) to Cherdak under the Laws of the United States of America and, in particular, under Title 35 of the United States Code (Patents – 35 USC § 1, *et seq.*). Accordingly, Jurisdiction and Venue are properly based in accordance with Sections 1338(a), 1391(b) and (c), and/or 1400(b) of Title 28 of the United States Code.

4. Defendant, presently and has in the past engaged in the design, importation, distribution, sale, and offering for sale of products including, but not limited to, those which incorporate technologies and the use of methods covered and claimed by the patents-in-suit. At all times relevant herein, Defendant has engaged in the infringement of and/or induced the infringement of

and/or contributed to the infringement of the patents-in-suit patent throughout the United States, including, but not limited to, in this judicial district of Virginia, USA.

### FACTS

5. On July 6, 1993, Plaintiff filed a patent application entitled “Athletic Shoe with Timing Device” which resulted in the issuance of the U.S. Patent 5,343,445 on August 30, 1994. On August 29, 1994, Plaintiff filed a Continuation-type application also entitled “Athletic Shoe with Timing Device” which resulted in the issuance of the U.S. Patent No. 5,452,269 on September 19, 1995. The patents-in-suit cover and claim products like those used, made, imported, offered for sale, marketed, and sold by Defendants directly and indirectly under The U.S. Patent Act. The patents-in-suit have successfully gone through the USPTO’s expert review on two occasions: First, in the early 1990’s during initial examination proceedings and, again, during *ex parte* reexamination proceedings in the 2007-2008 time-frame. Those reexamination proceedings resulted, *inter alia*, in the confirmation of many claims without amendment. The patents-in-suit along with their reexamination certificates are attached hereto at **Exhibits 1 through 4**.

6. More recently, a third-party requestor initiated a second round of *Ex Parte* Reexamination Proceedings in connection with both patents-in-suit in USPTO Proceedings having Control Nos. 90/012,249 and 90/012,256, respectively. Examination on the merits in both *Ex Parte* Reexamination Proceedings has resulted to date in confirmation of all claims of the ‘445 and ‘269 without amendment and in the addition of claims to the ‘445 patent. *See Exhibits 5, 6 and 7, respectively*. Examination on the merits of both *Ex Parte* Reexamination Proceedings is now closed. The USPTO concluded that the claims added to the ‘445 patent-in-suit do not broaden the scope of the claims confirmed without amendment or the patents-in-suit. *Id.* At least some claims added by way of reexamination will be asserted in the instant action and have been *preliminarily* charted herein to advise Defendant Timex of its infringement *ipso facto*. The aforementioned more recent reexamination proceedings demonstrate that three (3)

times the USPTO and more than six senior patent examiners have considered the patentability of the patents-in-suit and have, on every occasion, found in favor of patentability and, most recently, without any amendment to any claims.

7. Defendant, has in the past imported, distributed, sold and offered for sale, and continue import, distribute, market, sell and offer for sale, infringing products in unauthorized ways in violation of the rights of the Plaintiff and on contravention to the patents-in-suit. By way of example, and not limitation, Timex sells IRONMAN wrist-worn activity monitors and related Foot Pod Sensors for sensing activity metrics related to foot action during activities. Such Foot Pod Sensors are sold, *inter alia*, to consumers and are intended by Defendant to be mounted within the laces of a person's shoe to transmit foot-related actions specifically contemplated and covered by the patents-in-suit. Discovery in this case will likely reveal additional products and goods sold by Defendant its own name or otherwise that are infringing articles.

#### **COUNT I – PATENT INFRINGEMENT**

Paragraphs 1 through 7 are hereby incorporated by reference as though completely set forth herein.

8. Given the validity and enforceability of the patents-in-suit against past, present, and future infringing acts and other activities prohibited under the U.S. Patent Act (35 USC § 1, *et seq.*), Plaintiff, *inter alia*, possesses the right to pursue a claim against Timex for its past, present, and future design, use, manufacture, importation, sale, offer for sale, and distribution of infringing products under 35 USC § 271(a) (direct infringement), (b) (induced infringement), and (c) (contributory infringement). Timex has infringed, contributed to the infringement of, and/or induced the infringement of the patents-in-suit in violation of 35 USC § 271(a), (b), and/or (c) by its design, use, manufacture, importation, distribution, sale, and offer for sale of products currently sold under the TIMEX, IRONMAN and FOOT POD SENSOR trademarks/trade identifiers. Such infringing products include the following articles:

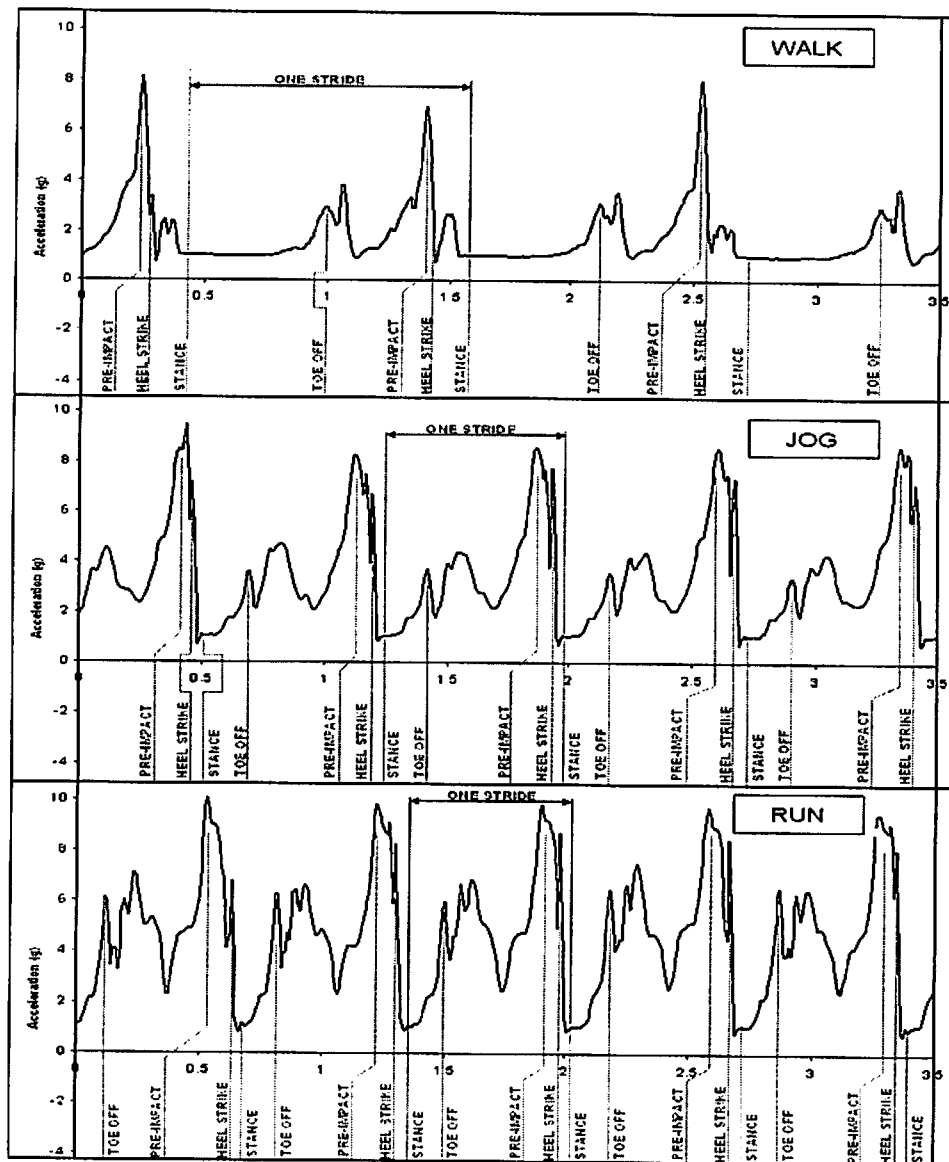


See **Exhibit 8**. The above-identified products are shown with their individual manufacturer suggested retail prices (MSRPs) as offered by sale by Timex at [www.timex.com](http://www.timex.com), which website permits web users to engage in e-commerce transactions related to the sale of infringing products in Virginia, USA and elsewhere throughout the USA.

9. The Foot Pod Sensor imported, marketed, offered for sale, and sold by Timex (as shown above) with an MSRP of \$80.00 USD is a product intended and sold by Timex to be worn by its customers on or in one of their shoes to facilitate tracking and measurement of activity related data including speed, distance traveled, activity duration, and other time-based metrics. See **Exhibit 9**. The Foot Pod Sensor is sold to co-operate with Timex’s Ironman Global Trainer GPS HRM (MSRP \$360.00) in addition to other similar or like wrist-worn devices.

10. The Timex Foot Pod Sensor imported, marketed, offered for sale, and sold by Timex operates based on sensing when a shoe leaves and returns to the ground – exactly how this Court has previously advised as to how the ‘445 patent operates. See **Exhibit 10** at p. 6.

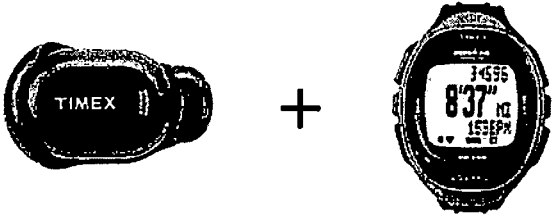

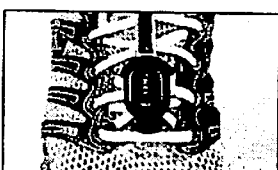
11. The Timex Foot Pod Sensor operates exactly in accordance with the patents-in-suit. Through investigation of publicly available information, Plaintiff has uncovered documents that depict the following operational characteristics of the Timex Foot Pod Sensor product when sensing that a shoe leaves and returns to the ground during different phases of human movement:



12. As shown in the timing diagrams above, the Timex Foot Pod Sensor senses, for example, when a shoe leaves the ground at a “TOE OFF” point in time and returns to the ground at “HEEL STRIKE” point in time during at least one stride (step) of a walking, jogging, or running regimen. The Timex Foot Pod Sensor is intended to be worn on one foot by being attached to or within the laces at a tongue area of one of a person’s shoes. Such attachment of the Foot Pod Sensor is realized by mounting that device to shoe laces of a single shoe. The graphs depicted in the diagrams shown above demonstrate signaling states and characteristics of a sensor over time and in relation to the action of one foot during an activity. Timex admits that its Foot Pod Sensor “is ready to send data as soon as you install it, and it senses movement.” See Exhibit 9 at p. 2.

For example, movement results from pressure (force over area) being imparted to a shoe by a person's foot on which the shoe is worn.

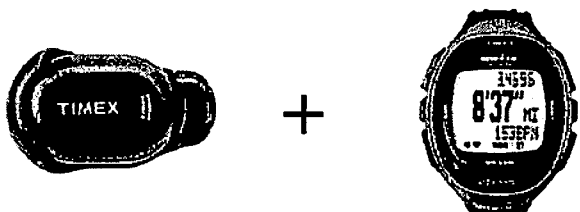

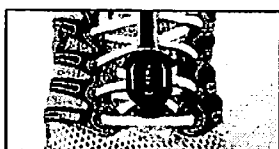
13. The Timex Foot Pod Sensor together with any one of the wrist-worn receiver products identified and shown in paragraph 8, above, infringe both of the patents-in-suit and, in particular, at least, the following claims:

Claim 10 of U.S. Patent No. 5,343,445 C1	Timex Products - Exemplary Infringement Situation
<p>10. A method for measuring and indicating hang time off the ground and in the air during a jump by a person wearing an athletic shoe, said method comprising the steps of:</p>	<div style="text-align: center;">  </div> <p><b>According to Timex:</b></p> <p><b>Installation</b> Prior to installation, detach the Foot Pod sensor from the Lace Clip. Hold the Foot Pod in one hand and press down on the small tab of the Lace Clip (on the Arrow) to disengage the two parts.</p> <p><b>Installing on Shoe Laces</b></p> <div style="display: flex; justify-content: space-around;">   </div> <ol style="list-style-type: none"> <li>1. Slip the Lace Clip under the lowest two crossed laces, with the Arrow indicator pointing toward the front (toe) of your shoe.</li> <li>2. Tie your laces securely to keep the Lace Clip (and Foot Pod sensor) from shifting during use.</li> <li>3. Snap the Foot Pod into the Lace Clip, so the words "STRIDE SENSOR" printed on the sensor are closest to the front of the shoe.</li> </ol> <p style="text-align: right;">1</p> <p><b>Alternatively, Timex states:</b></p> <p><b>Installing under Insole – for use with Compatible Shoes</b></p> <ol style="list-style-type: none"> <li>1. Lift the insole and remove any insert material from the shoe pocket.</li> <li>2. Place the Foot Pod into the pocket with the ANT+ logo (battery hatch) facing UP and the Notch in the case pointed toward the front (toe) of the shoe.</li> </ol> <p><b>Activation and Power</b> The Foot Pod sensor has no ON/OFF switch. It is ready to send data as soon as you install it, and it senses movement. After 30 minutes of inactivity, the Foot Pod powers down to save the battery. To further conserve battery life, remove the installed Foot Pod when you do not need to capture data.</p>
<p>(a) measuring in the shoe elapsed time between the shoe leaving the ground and returning to the ground;</p>	<p>This claimed method step literally reads on the Timex Products. Elapsed time is measured between the shoe leaving the ground and returning to the ground. The timing graphs discussed in Paragraph 12 illustrate and explain such operation.</p>

<p>(b) from the elapsed time measured in step (a), determining in said shoe whether said person has jumped off the ground or taken a walking or running step; and</p>	<p>This claimed method step literally reads on the Timex Products. Circuitry within the Timex Foot Pod Sensor determines whether a person has jumped off the ground, taken a walking step or a running step. The timing graphs discussed in Paragraph 12 illustrate and explain such operation.</p>
<p>(c) upon determining in step (b) that the person has jumped off the ground, providing an indication at said shoe, perceptible to said person, of the elapsed time measured in step (a).</p>	<p>This claimed method step literally reads on the Timex Products. Upon determining in step (b) the person has jumped off the ground (e.g., during a running sequence, etc.), the Timex products will provide an indication at (in, on or near) the shoe of the elapsed time measured in step (a). The infringing combination of Timex Products utilize close-proximity radio frequency technologies that call for the Foot Pod Sensor and the wrist worn visual display device to be near each other to realize effective communications. The Foot Pod Sensor will determine many activity-based metrics over time (e.g., pace and other time-based data). The wrist-worn component of the infringing combination provides a visual indication that is perceptible (visible) to the person.</p>

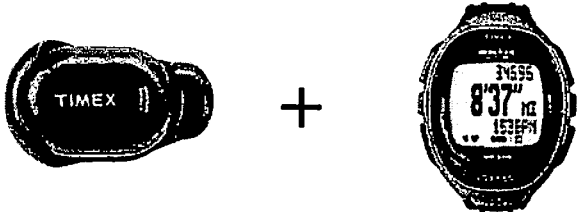
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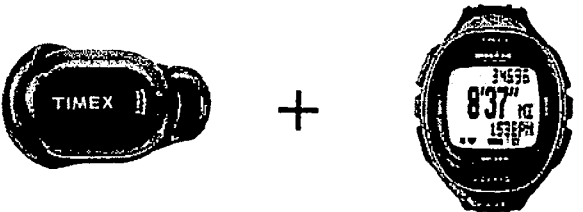


Claim 25 of U.S. Patent No. 5,343,445 C2 <sup>1</sup>	Timex Products - Exemplary Infringement Situation
<p>25. A method for indicating time off the ground and in the air during an activity including a jump, a walking step, a running step, or a skating lift by a person wearing an athletic shoe suitable to said activity, said method comprising the steps of:</p>	<div style="text-align: center;">  </div> <p><b>According to Timex:</b></p> <p><b>Installation</b>            Prior to installation, detach the Foot Pod sensor from the Lace Clip. Hold the Foot Pod in one hand and press down on the small tab of the Lace Clip (on the Arrow) to disengage the two parts.</p> <p><b>Installing on Shoe Laces</b></p> <div style="display: flex; justify-content: space-around;">   </div> <ol style="list-style-type: none"> <li>1. Slip the Lace Clip under the lowest two crossed laces, with the Arrow indicator pointing toward the front (toe) of your shoe.</li> <li>2. Tie your laces securely to keep the Lace Clip (and Foot Pod sensor) from shifting during use.</li> <li>3. Snap the Foot Pod into the Lace Clip, so the words "STRIDE SENSOR" printed on the sensor are closest to the front of the shoe.</li> </ol> <p><b>Alternatively, Timex states:</b></p> <p><b>Installing under Insole – for use with Compatible Shoes</b></p> <ol style="list-style-type: none"> <li>1. Lift the insole and remove any insert material from the shoe pocket.</li> <li>2. Place the Foot Pod into the pocket with the ANT+ logo (battery hatch) facing UP and the Notch in the case pointed toward the front (toe) of the shoe.</li> </ol> <p><b>Activation and Power</b>            The Foot Pod sensor has no ON/OFF switch. It is ready to send data as soon as you install it, and it senses movement. After 30 minutes of inactivity, the Foot Pod powers down to save the battery. To further conserve battery life, remove the installed Foot Pod when you do not need to capture data.</p>
<p>(a) sensing, within said shoe, pressure imparted to said shoe when said leaves the ground during said activity;</p>	<p>This claimed method step literally reads on the Timex Products. As noted above, Timex instructs that the Foot Pod Sensor is placed on or in the athletic shoe such as in a pocket formed in a sole member of the shoe or within the laces of the shoe. The Foot Pod Sensor senses the existence of pressure (force over area) imparted to the shoe when the shoe leaves the ground (e.g., at a toe-off point in time) during an activity such as during a walking or running step, for example. <i>See para. 12, supra.</i></p>
<p>(b) sensing, within said shoe, pressure imparted to said shoe when said shoe returns to the ground at the end of said activity; and</p>	<p>This claimed method step literally reads on the Timex Products. The Foot Pod Sensor senses the existence of pressure (force over area) imparted to the shoe when the shoe returns to the ground (e.g., at</p>

<sup>1</sup> The Reexamination Certificate that will soon issue from the USPTO will likely bear the number 5,343,445-C2 to indicate the official issuance of a second reexamination certificate.

	<p>a heel strike) during an activity such as during a walking or running step, for example. <i>See</i> para. 12, <i>supra</i>.</p>
<p>(c) activating, within said shoe, a messaging device in relation to the time interval between said shoe leaving and returning to the ground as sensed in steps (a) and (b), respectively, said messaging device providing an indication related to said time interval in a manner perceptible to said person.</p>	<p>This claimed method step literally reads on the Timex Products. Timing circuitry/processes within the Timex Foot Pod Sensor activate (e.g., send data, signals, commands for operation, etc.) a messaging device that may be located at the shoe or otherwise. The messaging device is the watch unit and is configured to provide an indication related to said time interval occurring between when the shoe leaves and later returns to the ground. As stated next to the preamble section of this Claim 25, "The Foot Pod sensor has no ON/OFF switch...It is ready to send data as soon as you install it, and it senses movement." Movement of the shoe (and, hence, the installed Foot Pod Sensor) can not occur unless pressure (force over area) is imparted to the shoe to make it move.</p>

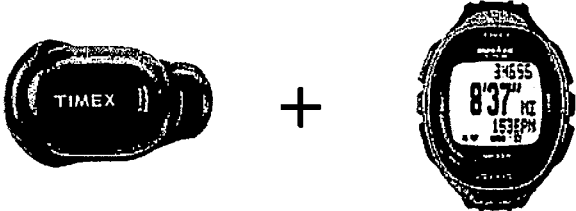
<p>Claim 28 of U.S. Patent No. 5,343,445 C2</p>	<p>Timex Products - Exemplary Infringement Situation</p>
<p>28. The method according to claim 25, wherein said messaging device activated during said activating step (c) is worn on said person and remotely from said shoe.</p>	<div style="text-align: center;">  <p>The diagram shows a Timex Foot Pod Sensor shoe insert on the left, a plus sign in the center, and a Timex digital watch on the right. The watch display shows the time 8:37 and other data.</p> </div> <p>The messaging device is located on a watch device to be worn on the wrist of its user and is activated during the activating step (c) of Claim 25. In radio-communication with the Foot Pod Sensor, the messaging device is located remotely from the shoe.</p>

<p>Claim 29 of U.S. Patent No. 5,343,445 C2</p>	<p>Timex Products - Exemplary Infringement Situation</p>
<p>29. The method according to claim 25, wherein said activating step involves transmitting a signal to a receiver coupled to said messaging device to cause said messaging device to provide a message related to said activity to said person.</p>	<div style="text-align: center;">  <p>The diagram shows a Timex Foot Pod Sensor shoe insert on the left, a plus sign in the center, and a Timex digital watch on the right. The watch display shows the time 8:37 and other data.</p> </div> <p>The messaging device is located on a watch device to be worn on the wrist of its user and is activated</p>

	<p>during the activating step (c) of Claim 25. In radio-communication with the Foot Pod Sensor, the messaging device is located remotely from the shoe. Data visually displayed on the wrist worn device is related to the activity engaged in by the wearer.</p>
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<p><b>Claim 12 of U.S. Patent No. 5,452,269 C1</b></p>	<p><b>Timex Products - Exemplary Infringement Situation</b></p>
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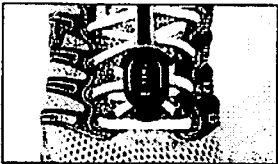
12. The method of measuring hang time off the ground and in the air of an individual, said method comprising the steps of:



**According to Timex:**

**Installation**  
 Prior to installation, detach the Foot Pod sensor from the Lace Clip. Hold the Foot Pod in one hand and press down on the small tab of the Lace Clip (on the Arrow) to disengage the two parts.

**Installing on Shoe Laces**

1. Slip the Lace Clip under the lowest two crossed laces, with the Arrow indicator pointing toward the front (toe) of your shoe.
2. Tie your laces securely to keep the Lace Clip (and Foot Pod sensor) from shifting during use.
3. Snap the Foot Pod into the Lace Clip, so the words "STRIDE SENSOR" printed on the sensor are closest to the front of the shoe.

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**Alternatively, Timex states:**

**Installing under Insole - for use with Compatible Shoes**

1. Lift the insole and remove any insert material from the shoe pocket.
2. Place the Foot Pod into the pocket with the ANT+ logo (battery hatch) facing UP and the Notch in the case pointed toward the front (toe) of the shoe.

**Activation and Power**  
 The Foot Pod sensor has no ON/OFF switch. It is ready to send data as soon as you install it, and it senses movement. After 30 minutes of inactivity, the Foot Pod powers down to save the battery. To further conserve battery life, remove the installed Foot Pod when you do not need to capture data.

(a) providing in an athletic shoe a selectively actuatable timing device;

This claimed method step literally reads on the Timex Products. As noted above, Timex instructs that the Foot Pod Sensor is placed on or in the athletic shoe such as in a pocket formed in a sole member of the shoe.

(b) actuating said timing device to measure elapsed time in response to said athletic shoe leaving the ground and elevating into the air;

This claimed method step literally reads on the Timex Products. Timing circuitry/processes within the Timex Foot Pod Sensor is actuated to measure

	<p>elapsed time in response to an athletic shoe leaving the ground and elevating into the air. <i>See</i> para. 12, <i>supra</i>. The timing graphs discussed in Paragraph 12 illustrate and explain such operation.</p>
<p>(c) deactuating said timing device in response to said athletic shoe returning to the ground; and</p>	<p>This claimed method step literally reads on the Timex Products. Timing circuitry/processes within the Timex Foot Pod Sensor is deactuated upon the athletic shoe returning the ground. <i>See</i> para. 12, <i>supra</i>. The timing graphs discussed in Paragraph 12 illustrate and explain such operation.</p>
<p>(d) providing an indication at said athletic shoe representing the time interval between actuation of said timing device in step (b) and deactuation of said timing device in step (c).</p>	<p>The Timex Products provide an indication (e.g., pace, etc.) at (in, on or near) the athletic shoe. The indication is a visible indication and represents the time interval between actuation and deactuation of timing device circuitry within the Foot Pod Sensor.</p>

14. Claims 25, 28, and 29, among others, were brought to the attention of Defendant Timex after commencement of the instant action. Notwithstanding, Timex simply chose to ignore the same and continue to willfully infringe the patents-in-suit. The U.S. Patent and Trademark Office and, in particular, a panel of three (3) senior patent examiners concluded that claims 24-29 do not broaden the patents-in suit. *See Exhibit 5* at p. 2 (three senior patent examiners in charge of reexamination concluding that “no new matter has been introduced into these claims and these claims do not broaden the scope of the patented claims.”). Accordingly, such claims were duly and properly issued by the USPTO as a result of reexamination and will be asserted in this action.

15. Discovery in this case likely will reveal additional instances of infringement such as may be related to additional products and claims of the patents-in-suit.

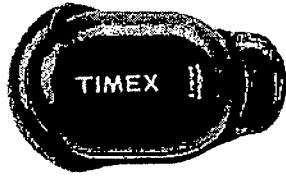
16. Defendant Timex’s products infringe the patents-in-suit both directly and indirectly under 35 USC §§ 271(a), (b) and (c) literally and/or under the Doctrine of Equivalents. Given the sole and intended purpose of Defendant’s Foot Pod Sensors to measure and determine time-based foot-action metrics during activities in which a person’s foot leaves and returns to the ground, Defendant’s products are specifically designed to operate in non-staple infringing ways. And, on

information and belief, Defendant has infringed the patents-in-suit in violation of 35 USC § 271(b) by actively inducing distributors, customers, and/or other retailers to infringe the patents-in-suit.

17. On information and belief, Defendants have made and continue to make (and/or have had made on their behalf) infringing products and have and continue to market the same throughout the U.S. and, in particular, in this judicial district of Virginia, USA.

18. Because of Defendant's infringing activities in the marketplace, Plaintiff has been and continues to be injured. Thus, the U.S. Patent Act mandates that Plaintiff be granted remedies including, but not limited to, equitable relief to inhibit prospective infringement and damages for past infringement in an amount of no less than a reasonable royalty.

19. Because of the subjectively willful nature of Defendants' infringing activities in violation of 35 USC § 271 (a), (b) and (c), Plaintiff is entitled to enhanced damages of no less than trebled damages as permitted by the U.S. Patent Act (35 USC § 1, *et. seq.*), along with attorneys fees and costs of suit. In particular, Timex (1) has acted despite an objectively high likelihood that its actions constitute infringement of the valid, enforceable patents-in-suit, and (2) Timex has so acted despite an objectively high risk of infringement that was known or was so obvious that it should have been known Timex. Timex has had ample time to put forth a basis for a defense to infringement and to present the same to Plaintiff, yet, to date, has failed to do so. Instead, Timex continues to sell watches, other wrist-worn devices and foot pod sensor units it knows are already licensed products sold by Pear Sports, LLC, for example, and which it knows are infringing products. The following pictures illustrate that Timex's unlicensed products are the same as those sold under license by Pear Sports, LLC, for example:



Timex's  
Foot Pod  
(Unlicensed)



Pear Sports'  
Foot Pod  
(Licensed)

20. Except for the screen-printed markings on the sensors themselves (one says "TIMEX" and the other says "PEAR"), they have the same structure, operate in the same ways, and perform substantially the same functions.

#### **PRAYER FOR RELIEF**

*WHEREFORE*, Plaintiff Cherdak prays for judgment and relief against Defendant Timex as follows:

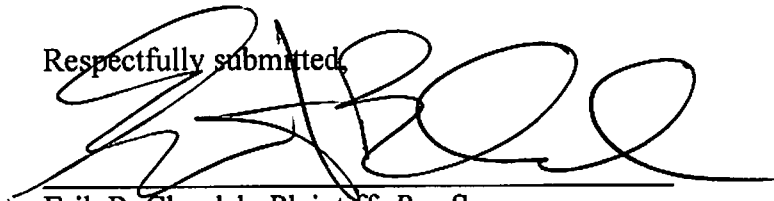
- A. For a judgment that the Cherdak patents-in-suit are infringed by Defendant, including, but not limited to, its subsidiaries, predecessors-in-interest and business units however and wherever formed, etc. each standing alone as described herein as they have and continue to act independently or in any collaborative way to bring to market and encourage the infringing use of products within Defendant's respective product lines;
- B. That permanent injunctions be issued against continued infringement of the patents-in-suit by Defendant and its parents, subsidiaries, sister companies, officers, directors, employees, affiliates, representatives and agents, and all those acting in concert with or through Defendants, directly or indirectly, including, but not limited to, distributors, customers, and other retailers where applicable;

- C. That an accounting be had for damages to Plaintiff by Defendant's acts in violation of the U.S. Patent Act (35 USC § 1, *et seq.*) together with pre-judgment and post-judgment interest and costs of suit;
- D. That damages be assessed at no less than a reasonable royalty in regard to the acts of infringement by Defendant as complained of herein and in accordance with established royalty rates for products that are the same as or that are substantially similar to those now being sold in commerce;
- E. That any damages awarded in accordance with any prayer for relief be enhanced and, in particular, trebled in accordance with the U.S. Patent Act (35 USC § 1, *et seq.*) for Defendant's acts which are found to be willful and deliberate acts of patent infringement; and
- F. Such other and further relief as this Court shall deem just and proper.

**DEMAND FOR TRIAL BY JURY**

The Plaintiff hereby demands a TRIAL BY JURY on all issues so triable.

Respectfully submitted,



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September 21, 2012