

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 1:12-cv-24465-MIDDLEBROOKS/BRANNON

GPS INDUSTRIES LLC,

Plaintiff,

v.

CADDYTRONIC, L.L.C.

Defendant.

**PLAINTIFF GPS INDUSTRIES LLC'S
FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff GPS Industries LLC files this First Amended Complaint for Patent Infringement and alleges as follows:

THE PARTIES

1. Plaintiff GPS Industries LLC ("GPSI") is a Delaware limited liability company with a principal place of business located at 1074 North Orange Avenue, Sarasota, Florida 34236. GPSI manufactures, leases, and services GPS-based golf course management and information systems.

2. Defendant CaddyTronic, L.L.C. ("CADDYTRONIC") is an Arizona limited liability company with a principal place of business at 2025 S. Airport Boulevard, Chandler, Arizona 85249. CADDYTRONIC was served with process and GPSI's original Complaint for Patent Infringement by having served its registered agent, Mr. Steve Fisher, located at 2025 S. Airport Boulevard, Chandler, Arizona 85249. Counsel for CADDYTRONIC, Mr. Robert J. DuComb, Jr., has agreed to accept service of GPSI's First Amended Complaint for Patent

Infringement.

3. The term “CADDYTRONIC” also includes CADDYTRONIC’s employees, agents, and all other persons or entities that CADDYTRONIC directs and/or controls.

THE PATENTS

United States Patent No. 5,438,518

4. On August 1, 1995, U.S. Patent No. 5,438,518, entitled “Player Positioning and Distance Finding System” (“the ‘518 patent”) was duly and legally issued. A true and correct copy of the ‘518 patent is attached as Exhibit A.

5. On or about October 27, 2008, a reexamination of the ‘518 patent by the United States Patent and Trademark Office (“PTO”) was requested by a third party. The PTO granted the request for reexamination and reexamined the ‘518 patent.

6. On or about October 6, 2010, the reexamination proceedings concluded with the PTO issuing a Notice of Intent to Issue a Reexamination Certificate confirming that all claims of the ‘518 patent that were subject to the reexamination were determined to be patentable as amended.

7. On January 18, 2011, the PTO issued Ex Parte Reexamination Certificate (7989th) for U.S. Patent No. 5,438,518, entitled “Player Positioning and Distance Finding System.” A true and correct copy of the Ex Parte Reexamination Certificate (along with a Certificate of Correction) is attached as Exhibit B.

8. Pursuant to 35 U.S.C. § 282, the ‘518 patent is presumed valid.

9. GPSI is the owner by assignment of the ‘518 patent and has all substantial rights in and to the ‘518 patent, including the right to sue and collect damages for past, present, and future infringement of the ‘518 patent.

10. The '518 patent generally relates to methods and systems for GPS-based golf course distance measuring and tracking.

JURISDICTION AND VENUE

11. This action arises under the patent laws of the United States, Title 35 United States Code, particularly §§ 271, 281, 283, 284 and 285. This Court has subject matter jurisdiction over this claim for patent infringement under 28 U.S.C. §§ 1331 and 1338(a). Venue is proper in this Court under Title 28 United States Code §§ 1391 and 1400(b).

12. The Court has personal jurisdiction over CADDYTRONIC because, upon information and belief, CADDYTRONIC has: minimum contacts within the State of Florida and the Southern District of Florida; purposefully availed itself of the privileges of conducting business in the State of Florida and in the Southern District of Florida; sought protection and benefit from the laws of the State of Florida; transacted business (and continues to transact business) within the State of Florida and within the Southern District of Florida, including but not limited to, making, using, selling, offering to sell, and/or leasing products as described and claimed in the patents in suit; and because GPSI's causes of action arise directly from CADDYTRONIC's business contacts and other activities in the State of Florida and in the Southern District of Florida.

THE ACCUSED PRODUCTS

13. CADDYTRONIC is an original design manufacturer and marketer of GPS/Wireless-based hardware and software, including GPS-based range finder systems marketed under the trade name of the "CaddyTronic" (referred to herein as the "CaddyTronic Rangefinder Systems"). The CaddyTronic also serves as an advertising platform for products and/or services.

COUNT 1 – PATENT INFRINGEMENT

CADDYTRONIC’s Direct Infringement of the ‘518 Patent

14. CADDYTRONIC has infringed and continues to directly infringe, either literally or by equivalents, at least claims 33 and 41 of the ‘518 patent by making, using, selling, offering to sell, leasing, offering to lease, importing, and/or exporting one or more of the CaddyTronic Rangefinder Systems.

DSG’s Inducement of Infringement of the ‘518 Patent

15. In addition to its direct infringement of the ‘518 patent, CADDYTRONIC has infringed and continues to infringe the ‘518 patent by actively inducing direct infringement, either literally or by equivalents, of at least claims 33 and 41 of the ‘518 patent, by the public, CADDYTRONIC’s distributors, CADDYTRONIC’s retailers, CADDYTRONIC’s partners, CADDYTRONIC’s website users, customers, and/or end users who import, export, make, use, sell, offer to sell, lease and/or offer to lease one or more of the CaddyTronic Rangefinder Systems.

16. CADDYTRONIC had actual knowledge of the ‘518 patent prior to the filing of this complaint.

17. CADDYTRONIC’s Chief Executive Officer, Mr. Steven D. Fisher, was formerly the Chairman of the Board of Directors for ProLink Holdings Corp., the parent company of its wholly owned subsidiary, ProLink Solutions, LLC.

18. In June 2006, ProLink Solutions, LLC purported to assign a security interest to Comerica Bank in and to an alleged license it held to the ‘518 patent.

19. In documents filed with the Securities and Exchange Commission in April 2007, ProLink Holdings Corp., held itself out as either owning or having licensed a number of United

States patents, including the '518 patent. When these representations were made, Mr. Fisher was the Chairman of the Board of Directors for ProLink Holdings Corp.

20. In August 2007, ProLink Solutions, LLC represented that it owned the '518 patent and purported to assign a security interest in the '518 patent to Calliope Capital Corp.

21. Neither ProLink Solutions, LLC nor ProLink Holdings Corp., has ever owned the '518 patent or any rights in the '518 patent.

22. On or about July 16, 2008, ProLink Solutions, LLC and ProLink Holdings Corp., were sued by GPS Industries, Inc., the then owner of the rights, title and interest in and to the '518 patent, for the infringement of the '518 patent. *GPS Industries, Inc. v. ProLink Solutions, LLC, et al.*, Cause No. 08CV4028, in the United States District Court for the Northern District of Illinois, Eastern Division. When this suit was filed, Mr. Fisher was the Chairman of the Board of Directors for ProLink Holdings Corp.

23. On or about October 27, 2008, ProLink Solutions, LLC, submitted a request for *ex parte* reexamination of the '518 patent with the United States Patent and Trademark Office.

24. CADDYTRONIC has, since its inception and by virtue of Mr. Fisher's knowledge, been aware of and had actual knowledge of the '518 patent. Despite this knowledge, CADDYTRONIC has continued to intentionally, actively, knowingly and willfully advertise about, import, export, sell, offer to sell, lease, and/or offer to lease one or more of the CADDYTRONIC Rangefinder Systems in or into the United States, at least through its own website, <http://www.caddytronic.com/>

25. Since becoming aware of the '518 patent, CADDYTRONIC's advertising, user manuals, and sales of one or more of the CADDYTRONIC Rangefinder Systems have intentionally, actively, knowingly and willfully contained and continue to contain instructions,

directions, suggestions, and/or invitations that intentionally, actively, knowingly and willfully invite, entice, lead on, influence, prevail on, move by persuasion, cause, and/or influence the public, CADDYTRONIC's distributors, CADDYTRONIC's retailers, CADDYTRONIC's partners, CADDYTRONIC's website users, customers, and/or end users to import, export, make, use, sell, offer to sell, lease, and/or offer to lease one or more of the CADDYTRONIC Rangefinder Systems, and/or use one or more of the CADDYTRONIC Rangefinder Systems to practice the inventions claimed in the '518 patent, and thus directly infringe the '518 patent, either literally or by equivalents.

26. Since becoming aware of the '518 patent, CADDYTRONIC was willfully blind, knew, or should have known that its distributors', retailers', partners', website users', customers', end users', and/or the public's acts relative to importing, exporting, making, using, selling, offering to sell, leasing, and/or offering to lease one or more of the CADDYTRONIC Rangefinder Systems, and/or using one or more of the CADDYTRONIC Rangefinder Systems to practice the inventions claimed in the '518 patent, directly infringe the '518 patent, either literally or by equivalents. For these reasons, CADDYTRONIC is liable for inducing infringement of the '518 patent.

CADDYTRONIC's Contributory Infringement of the '518 Patent

27. The CADDYTRONIC Rangefinder Systems and the components thereof imported, exported, sold, offered for sale, made, operated, and/or serviced by CADDYTRONIC constitute a material part of the inventions claimed in the '518 patent and are not staple articles or commodities of commerce suitable for substantial non-infringing use because the systems and the components thereof have no other purpose other than to facilitate and enable the make, use, sale, offer for sale, or importation of the CADDYTRONIC Rangefinder Systems that directly

infringe the '518 patent.

28. The CADDYTRONIC Rangefinder Systems are apparatuses used in practicing at least method Claim 41 in the '518 patent because the CADDYTRONIC Rangefinder Systems enables a user to directly infringe Claim 41 by enabling a use of the claimed method.

29. Since becoming aware of the '518 patent, CADDYTRONIC was willfully blind, knew, or should have known that the CADDYTRONIC Rangefinder Systems and the components thereof were especially made and/or especially adapted for use in infringing the '518 patent.

30. Since becoming aware of the '518 patent, CADDYTRONIC was willfully blind, knew, or should have known that the CADDYTRONIC Rangefinder Systems and the components thereof were not a staple article or commodity of commerce suitable for substantial noninfringing use.

31. By selling, offering to sell, leasing, offering to lease, or importing into the United States one or more of the CADDYTRONIC Rangefinder Systems and the components thereof, CADDYTRONIC has contributed to the infringement of distributors, retailers, partners, customers, and/or end-users who import, export, sell, offer for sale, lease, offer to lease, purchase, make, and/or use one or more of the CADDYTRONIC Rangefinder Systems to practice the inventions claimed in the '518 patent, and thus directly infringe these patents, either literally or by the doctrine of equivalents.

32. CADDYTRONIC was willfully blind, knew, or should have known that its actions would contribute to the direct infringement, either literally or by equivalents, of at least claims 33 and 41 of the '518 patent by distributors, retailers, customers, partners, and/or end-users who import, export, sell, offer for sale, lease, offer to lease, purchase, make, and/or use one

or more of the CADDYTRONIC Rangefinder Systems. For these reasons, CADDYTRONIC is liable for contributing to the infringement of the '518 patent.

DAMAGES

33. The infringement of the '518 patent as alleged above has injured, and continues to injure, GPSI. GPSI is thus entitled to recover damages adequate to compensate for the CADDYTRONIC's infringement, including its lost profits, but which in no event can be less than a reasonable royalty.

34. CADDYTRONIC has failed to obtain a license to practice the '518 patent, and has willfully and deliberately infringed the '518 patent.

35. CADDYTRONIC's infringement of the '518 patent is and has been willful and deliberate. CADDYTRONIC's inducement and contributory infringement of the '518 patent is and has been willful and deliberate. CADDYTRONIC has acted with knowledge of the '518 patent as alleged above. CADDYTRONIC acted to infringe the '518 patent despite an objectively high likelihood that their actions constituted infringement of a valid patent. As a result, GPSI is entitled to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

36. CADDYTRONIC's infringement of GPSI's exclusive rights under the '518 patent will continue to damage GPSI, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, GPSI prays for the following relief:

- A. An adjudication that CADDYTRONIC has infringed and continues to infringe one or more claims of the '518 patent;

- B. An adjudication that CADDYTRONIC must account for and pay to GPSI all damages caused by the infringement of the '518 patent, which by statute can be no less than a reasonable royalty, together with pre-judgment interest;
- C. An award of GPSI's enhanced damages, up to and including trebling of GPSI's damages pursuant to 35 U.S.C. § 284, for CADDYTRONIC's willful infringement of the '518 patent;
- D. An award of GPSI's pre-judgment and post-judgment interest on the damages caused to it by reason of CADDYTRONIC's infringement of the '518 patent;
- E. That CADDYTRONIC be required to account to GPSI for all gains and profits derived by CADDYTRONIC from the described infringing acts;
- F. An award of GPSI's costs of suit and reasonable attorneys' fees pursuant to 35 U.S.C. § 285 due to the exceptional nature of this case, or as otherwise permitted by law;
- G. A grant of a permanent injunction pursuant to 35 U.S.C. § 283, enjoining CADDYTRONIC from further acts of (1) infringement, (2) contributory infringement, and (3) actively inducing infringement with respect to the claims of the '518 patent; and
- H. That GPSI be granted such other and further relief that is just and proper under the circumstances.

DEMAND FOR JURY TRIAL

GPSI demands a jury trial on all claims and issues so triable, including CADDYTRONIC's affirmative defenses and counterclaims, if any.

Dated: March 12, 2013

Respectfully submitted,

FELDMAN GALE, P.A.

BY: /s Javier Sobrado

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Certificate of Service

I HEREBY certify that on this 12th day of March, 2013, I electronically filed the foregoing document with the Clerk of the Court using its CM/ECF system. I also certify that the foregoing document is being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by this Court's CM/ECF system or in some other authorized manner for those counsel or parties who are not authorized to electronically receive Notices of Electronic Filing.

/s Javier Sobrado