

UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

LOGANTREE LP,

Plaintiff,

vs.

GARMIN INTERNATIONAL, INC.,
GARMIN USA, INC., and GARMIN, LTD,

Defendants.

Case No. 6:17-cv-01217

**GARMIN’S MEMORANDUM OF LAW IN SUPPORT OF ITS
MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(B)(6)**

The current lawsuit is LoganTree’s third attempt to set forth a complaint that identifies a plausible claim of patent infringement against Garmin International, Inc. and Garmin, USA, Inc. (“Garmin”).¹ Unfortunately, it fares no better and continues a troubling pattern of LoganTree failing to set forth any good faith basis for its allegations. LoganTree previously filed suit against Garmin in the Western District of Texas. In that complaint, LoganTree failed to provide any allegations as to how Garmin’s products allegedly infringed the below key limitation of the patent—as required by Federal Circuit precedent:

- “storing . . . the first *time stamp* information reflecting a time at which the *movement data causing the first user-defined event* occurred.”

After a telephone conference between the parties, LoganTree admitted it could not provide the required details on how Garmin’s products infringed this limitation of the ‘576 patent. Garmin was then forced to file a Motion to Dismiss LoganTree’s initial complaint

¹ As used in this motion, “Garmin” refers to Garmin International, Inc. and Garmin USA, Inc. Named defendant Garmin, Ltd. has not been served and is not voluntarily appearing in this lawsuit through this motion.

detailing how LoganTree’s complaint ignored this critical limitation. After LoganTree was unable to provide those critical details in its responsive brief, Garmin noted in its Reply brief that LoganTree’s position raised serious concerns that it had failed to conduct an adequate pre-suit investigation, as required by Rule 11. While the Western District of Texas never had a chance to rule on that Motion,² LoganTree implicitly acknowledged the merit of Garmin’s position when it refiled its Complaint in the present action (“Complaint”) by attempting to cover up its prior shortcomings.

Unfortunately, while LoganTree’s complaint is long on words and charts, it still fails to explain how Garmin’s products allegedly infringe this key limitation. The inclusion of claim charts is a new development, presumably done to give the appearance that LoganTree did, in fact, have a viable infringement theory. But LoganTree’s claim chart is still silent on how Garmin’s products are “storing” as required by the asserted patent claims. The charts simply do not provide any details whatsoever on where or how Garmin’s products store a time stamp reflecting a time at which the movement data causing the first user-defined event occurred.

LoganTree’s third bite at the apple raises significant questions as to its good faith basis to bring this suit. In two separate briefs to the court, Garmin identified this very same key limitation from the asserted patent claims and LoganTree still cannot identify how Garmin’s accused products infringe (or meet) that key “storing” limitation. Garmin should not be forced to repeatedly expend its time and resources defending infringement claims that LoganTree knows, or should know, lack any plausible basis for infringement. Accordingly, Garmin respectfully requests this Court dismiss LoganTree’s Complaint with prejudice.

² The Case was dismissed for improper venue and then, after a significant delay, was refiled in Kansas.

I. LEGAL STANDARDS

A complaint should be dismissed pursuant to Rule 12(b)(6) when it fails to plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A “mere possibility” is not enough. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). A complaint demonstrates plausibility when “the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678.

Prior to December of 2015, to sufficiently plead direct infringement, a Plaintiff needed only comply with the minimal requirements of Form 18, which set forth a sample direct infringement pleading. These requirements included:

- (1) an allegation of jurisdiction;
- (2) a statement that the plaintiff owns the patent;
- (3) a statement that defendant has been infringing the patent “by making, selling, and using [the device] embodying the patent”;
- (4) a statement that the plaintiff has given the defendant notice of its infringement; and
- (5) a demand for an injunction and damages.

Lyda v. CBS Corp., 838 F.3d 1331, 1338 (Fed. Cir. 2016). However, Form 18 was abrogated in December of 2015, and since then courts have consistently held that a Plaintiff pleading direct infringement has the burden of meeting the standards set forth by the Supreme Court in *Iqbal* and *Twombly*. See, e.g., *Gracernote, Inc. v. Sorenson Media, Inc.*, No. 2:16-cv-950 CW, 2017 WL 2116173 at *2 (D. Utah May 15, 2017) (noting that the case law following the abrogation of Form 18 strongly suggested that the *Iqbal* and *Twombly* standard applied to the pleading of direct infringement).

Under *Iqbal/Twombly*, establishing a plausible basis for infringement requires Plaintiff to show how the Accused Products infringe ***each limitation of at least one claim*** of the asserted patent. See e.g., *Atlas IP, LLC v. Exelon Corp.*, 189 F.Supp.3d 768, 775 (N.D. Ill. May 17, 2016)

(requiring factual allegations that allow a court to infer that the accused product meets each limitation of at least one claim to meet the standards set forth under *Iqbal* and *Twombly*). The “limitations” are the distinct parts or steps that describe the patented invention, and which are recited within the patent’s claims. *See, e.g., Duz-Mor, Inc. v. Hein-Werner Corp.*, No. 87-1643-MLB, 1994 WL 715628, *4 (D. Kan. Dec. 2, 1994). Accordingly, to comply with the pleading standard established by the Supreme Court in *Iqbal/Twombly*, the Plaintiff must show that the Accused Products contain each and every one of the distinct parts or steps set forth in at least one of the asserted claims. If even a single limitation is missing, the Plaintiff has failed to comply with its burden. *Id.*

PROCEDURAL BACKGROUND

A. The Reexamined ‘576 Patent

The ‘576 patent, which is entitled “Training and Safety Device, System and Method To Aid In Proper Movement During Physical Activity,” originally issued on May 9, 2000 with 29 claims. Dkt. 1 Ex. A. Each of those claims required a “portable, self-contained’ device capable of measuring data associated with “unrestrained movement in any direction.” *See id.*, independent claims 1 and 13.

Fourteen years later, on April 4, 2014, LoganTree filed a reexamination request with the United States Patent and Trademark Office. Dkt. 1 Ex. B. *None* of the 29 originally-issued claims survived the reexamination. *Id.* Instead, through the reexamination process, LoganTree was forced to add narrowing limitations to argue around the prior art. In particular, LoganTree added the following two limitations to all of the claims:

- “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 . . . the first *time stamp* information reflecting a time at which the *movement data causing the first user-defined event* occurred.”

Dkt. 1 ¶ 25 (reciting above-referenced limitations in “Claim 1 (the ‘Device Claim’)”, ¶ 28 (reciting above-referenced limitations in “Claim 13 (the ‘System Claim’), and ¶ 30 (reciting above-referenced limitations in “Claim 20 (the ‘Method Claim’);” *see also* Dkt. 1 Ex. B (emphasis added). All 185 claims of the Reexamined ‘576 patent include these limitations. Dkt. 1 Ex. B.

Explicit in the claim language is the requirement that the “user-defined event” must be *caused by* movement data (such as the angle and velocity of the user’s movement, *see* Dkt. 1 Ex. B, Reexamined ‘576 patent claim 1) *and* at least one of the other user-defined operational parameters (such as, for example, the “angular levels at which notices will be generated,” ‘576 patent at 7:11-14). Then, a “time stamp” is stored that reflects the time when the user-defined event occurs.

As is evident from the prosecution history, LoganTree added these limitations as “clarifying amendments” to “tie the claimed first time stamp information such that it reflects a time at which the movement data causing the first user-defined event occurred.” Ex. A (Response to Ex Parte Reexamination Final Office Action, Jan. 9, 2015, p. 48).³ The following example provided by LoganTree during the reexamination is instructive:

³ In deciding a Rule 12(b)(6) motion, a court may take judicial notice of the prosecution histories, which are “public records.” *Won-Door Corp. v. Cornell Iron Works, Inc.*, No. 2:13-CV-331 TS, 2014 WL 119320 at *2 (D. Utah Jan. 13, 2014) (noting that in the Tenth Circuit, district courts are allowed “to take judicial notice of patent documents such as the patent’s prosecution history.”); *Fin. Acquisition Partners LP v. Blackwell*, 440 F.3d 278, 286 (5th Cir. 2006) (“[i]n ruling on Rule 12(b)(6) motions,” courts are permitted “to rely on matters of public record”); *Genetic Techs. Ltd. v. Bristol-Myers Squibb Co.*, 72 F. Supp. 3d 521, 526 (D. Del. 2014) (noting that patent prosecution histories are “public records”).

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