

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

LOGANTREE LP,

Plaintiff,

vs.

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

Defendants.

Case No. 6:17-cv-01217

**DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR  
MOTION FOR PROTECTIVE ORDER TO PREVENT UNNECESSARY PRINTING OF  
COMPLETE BLOCKS OF GARMIN'S SOURCE CODE**

LoganTree accused forty-one (41) of Garmin's popular activity and fitness tracking watches of infringement. The only functionality LoganTree accused of infringement is the manual step goal set by the user and the associated step-counting. Garmin made the entirety of its source code for all 41 accused products available for inspection, which LoganTree's expert reviewed for over 45 hours. After a dispute arose regarding whether LoganTree's request for printed source code was reasonably necessary under the parties' Stipulated Protective Order (Dkt. 51, 8), the parties discussed the dispute with the Court. During that hearing, Garmin raised a number of concerns regarding LoganTree's print request because it sought printing of 75 files of complete source code modules comprising more than 2,600 pages of printed source code. Many of these files were irrelevant, and it was clear that LoganTree was simply requesting printed copies for purposes of reviewing blocks of source code, which is prohibited by the protective order. *Id.* LoganTree was unable to respond to any of the issues raised by Garmin, and simply argued its expert needed all the requested pages printed. In response to questions from the Court, Garmin then agreed to print the relevant pages of the code and produce them to LoganTree. Dkt. 116.

Per the Court’s Order, Garmin worked with its software engineer responsible for this code to identify and print the portions of the code relevant to the accused functionality.<sup>1</sup> After verifying it had identified the relevant portions of the code, Garmin then promptly printed and sent the printed pages of code to LoganTree. *See* Dkt. 120, ¶ 5. Despite receiving the relevant code, LoganTree repeated its original request for printing of all 75 files of complete source code modules—over 2,600 pages of printed code. LoganTree’s voluminous print request includes functionalities within Garmin’s watches that are not accused of infringement—heartrate tracking, distance calculations, calorie tracking, sleep tracking, and simulation code for testing—as well as code relating to unaccused products. LoganTree cannot plausibly contend this code is “reasonably necessary” for the preparation of its expert report. And this is why LoganTree (and, apparently, its expert) broadly contends the code is necessary for some unspecified “context” without explaining why the step-counting code Garmin printed is insufficient or lacking. Accordingly, pursuant to this Court’s Order (Dkt. 122), Garmin moves for a protective order and requests this Court deny LoganTree’s request to print unnecessary, voluminous pages of whole source code modules.

## I. ARGUMENT

### A. Garmin Printed the Relevant Code

In compliance with the Court’s Order, Garmin provided LoganTree with print outs of the code related to the only functionality accused of infringement, namely, Garmin’s step-counting functionality. **Ex. A**, Appendix A to Final Infringement Contentions, at 9–17. To accomplish this task Garmin enlisted the assistance of its 30(b)(6) code designee, Robert Blair, to help identify the

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<sup>1</sup> This Garmin engineer was the same witness that Garmin designated as its 30(b)(6) witness regarding the source code, and the same witness LoganTree deposed. Notably, at that deposition, LoganTree failed to ask Garmin’s witness to identify the relevant portions of the code or even ask any questions about the source code at all.

relevant code. Mr. Blair is one of Garmin’s high-level software engineers responsible for writing and maintaining the activity tracking modules within the source code that are responsible for the step-counting logic. **Ex. B**, Robert Blair Deposition Transcript, 8:2–9:23. Given Mr. Blair’s intimate knowledge of the code, Mr. Blair helped Garmin verify the portions it slated for printing were the portions of the code relating to the step-counting functionality (including the writing of timestamps). This code was then printed and provided to LoganTree.<sup>2</sup> Notably, LoganTree does not dispute the relevant disclosure of the step-counting and timestamp code produced by Garmin. This is likely because the timestamps do not implicate much volume of source code, which is not disputed by LoganTree. **Ex. C**, Transcript of June 8, 2021 Discovery Hearing, 16:1–11; 19–21.

LoganTree instead contended that Garmin failed to include information about from where code originated, and that it could not determine to what the lines of printed code related. But this contention is not accurate. First, Garmin included file path information on each page of printed code. An example of the file paths on a few pages from Garmin’s printed source code are reproduced and included in sealed **Ex. D** (file path annotated in red). Second, LoganTree’s expert should have notes from his lengthy review on why each module of code is necessary and relevant, which is why the Protective Order allows note taking during code review. Dkt. 51, at ¶ 7(c)(12). If not, and he is seeking to do another in-depth review, then LoganTree is seeking to do precisely what the Protective Order says it cannot do—use paper copies of block of code to review. Dkt 51, 8 (party “*shall not* request paper copies for the purpose of reviewing blocks of the Source Code”). Finally, as explained in more detail below, LoganTree had the opportunity to ask Garmin’s 30(b)(6) witness any questions it had about Garmin’s source code. LoganTree chose not to ask a

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<sup>2</sup> Garmin will make its printed portions of source code available to the Court for an *in camera* review if necessary.

single question about the actual source code during the deposition. **Ex. B.** Garmin should not be forced to print voluminous copies of its source code so LoganTree can answers questions it should have addressed through other, less prejudicial means of discovery.

**B. LoganTree had Ample Time to Review the Code, Depose Garmin’s Witness, and Identify the “Targeted Lines of Code” it Believes are Missing**

LoganTree served its final infringement contentions and deposed Garmin’s 30(b)(6) source code witness without having ever reviewed Garmin’s source code that was available for inspection starting in November 2019, some 20 months before LoganTree reviewed it. **Ex E,** Garmin’s Objections and Responses to First Set of Requests for Production, 7. It was not until 12 days before the end of discovery that LoganTree finally decided to review Garmin’s source code. After a 45-hour review of Garmin’s source code files, LoganTree’s expert, Mr. Myers, completed his review of the code and did not request any further code review.

As noted above, Garmin produced Mr. Blair as its corporate designee regarding the design, development, functionality, operation of the Accused Products. **Ex. B,** 10:19–21; *id.* at Ex. A (Topics 1–3). Mr. Blair was prepared to answer questions regarding Garmin’s source code. *Id.* at 6:19–25 (noting Mr. Blair had reviewed source code to prepare for his deposition). If LoganTree had questions about the code, LoganTree was free to raise those issues during Mr. Blair’s deposition. That would have been the appropriate time for LoganTree to ensure it had identified the code necessary for preparing its expert report and clarifying any confusion it may have about how Garmin’s code works.<sup>3</sup> Inexplicably, LoganTree did not ask Mr. Blair a single question about

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<sup>3</sup> The timing of LoganTree’s code review and Mr. Blair’s deposition is a problem of LoganTree’s own making. Given LoganTree’s silence, Garmin had to raise the issue of Garmin’s witness depositions in April 2021. **Ex. F,** 4/12/21 M. Redmond Email to C. Barkley. The source code has been available since November 2019 (**Ex. E**) and could have been reviewed well in advance of Mr. Blair’s deposition, though LoganTree chose to wait until May 2021 to request a review of the

the source code files, never asked for help in identifying the relevant files, and did not even use the source code as an exhibit. **Ex. B.** Despite these opportunities to obtain the information LoganTree contends it needs, it failed to do so. Now LoganTree appears to be attempting to circumvent the Protective Order to improperly conduct a review via paper copies of the code.

The Protective Order requires that printed copies of source code shall only be of “limited portions of Source Code that are reasonably necessary for the preparation of ... expert reports.” Dkt. 51, 8. And during the last hearing, the Court instructed LoganTree that its expert would need to “come back and identify more targeted lines of code that he really does believe are necessary.” **Ex. C**, 19:4–6 (“[Mr. Meyers] is going to have to come back and identify more targeted lines of code that he really does believe are necessary”). To date, LoganTree has been unable to identify the targeted portions of code it believes are missing from the printed files provided by Garmin. LoganTree’s failure to specifically identify what it needs is not for lack of opportunity.

LoganTree’s renewed request repeats the same generic request for code. Despite having many chances to identify the specific portions of code it believes are necessary, LoganTree broadly renews its request for the same 75 files of complete source code modules. Dkt. 120-2, ¶ 1. LoganTree explains its request as “limited in nature taking into account the millions of lines of source code produced by Garmin for review” and that they are necessary for “context.” *Id.*, at ¶¶ 6, 10–11. But this “context” does not explain why LoganTree or its expert needs code relating to unaccused functionalities and unaccused products. And LoganTree provided no detail, let alone the detail requested by the Court, as to why all this code was reasonably necessary. **Ex. C**, 18:24–19:22.

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code. **Ex. G**, 5/3/21 C. Barkley Email to C. Brazen. Similarly, LoganTree could have deposed Mr. Blair after concluding its code review.

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