**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

LOGANTREE LP,

                           Plaintiff,

vs.

                                 Case No. 6:17-cv-01217

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

                         Defendants.

DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION TO AMEND

The timing of LoganTree's motion to amend speaks volumes about the true reason behind

LoganTree's attempt to amend its contentions at this late stage of the case.

- **August 2017** — LoganTree originally accused Garmin Connect when it filed this lawsuit in August 2017. *See* ECF No. 1-4. LoganTree specifically relied on the processor of the Garmin Connect servers, in addition to the processor of the accused watches, to satisfy the "storing" limitation.

- **November 2018** —LoganTree dropped its allegations against Garmin Connect in its Initial Infringement Contentions and relied solely on the processor within the accused watches. ECF No. 158-6.

- **December 2018** —To avoid a finding of invalidity before the Patent Office and the Federal Circuit, LoganTree argued the claims were focused on a single processor located within the "portable self-contained movement measuring device" of the claims. ECF No. 158-8, at 1–2.

- **April 15, 2020** — LoganTree maintained its position regarding the processor in the portable, self-contained device to the Federal Circuit in April 15, 2020. **Ex. A**, *Garmin Int'l, Inc. v. LoganTree, LP*, Appeal No. 2020-1108, ECF No. 23, at 15–16 (noting the microprocessor of claim 1 "must be included in a portable, self-contained device and be connected to a movement sensor and a power source also included in the portable, self-contained device," while the processor of claim 20 "must be included in the portable, self-contained movement measuring device attached to a body part.").

- **March 2021** — LoganTree served its final infringement contentions in March 2021 where it continued to ignore Garmin Connect and only focus on the single processor within the watch. ECF No. 158-5.

- **May 10, 2021** — Fossil files a motion to dismiss challenging the '576 Patent as invalid under § 101 in the District of Delaware. *LoganTree LP v. Fossil Grp., Inc.*, No. 1:21-cv-00385-LPS, ECF Nos. 10-11 (D. Del. May 10, 2021).

- **June 2, 2021** — LoganTree files opposition to Fossil's motion, arguing claimed invention is not abstract based on unique, improved relationship between the claimed device's internal movement sensor and microprocessor. ECF No. 158-9, at 8–9.

- **July 1, 2021** — LoganTree files a motion to extend its expert report deadline for infringement. *See* ECF No. 123.

- **July 2, 2021** — District of Delaware sides with LoganTree rejecting § 101 challenge because "the claim is directed to a physical device" "having both a motion sensor and a microprocessor," and that "[t]he specific arrangement between the sensor and the microprocessor" was important for patentability. ECF No. 158-10, at 10.

- **October 2021** — Having survived its invalidity challenges by focusing on the single processor within the portable, self-contained device, LoganTree serves its expert report on infringement adding the processor of the Garmin Connect servers to the "detecting" and "storing" limitations. ECF No. 160.

LoganTree abandoned its early accusations against Garmin Connect in order to make the arguments necessary to save the validity of its patent in multiple forums. LoganTree argued over and over that its claims were new and unique because of the processor and sensor contained within the portable, self-contained unit. Numerous courts and parties have spent thousands of hours and millions of dollars relying on these statements. Having secured the validity of the '576 Patent, LoganTree now changes its position to buttress its infringement allegations. This type of gamesmanship should not be rewarded by the Court by allowing the requested amendment.

No extension of time can cure the prejudice caused by LoganTree. No new expert reports on invalidity can undo what has been done. No number of additional depositions can rectify the inconsistencies caused by LoganTree. And no action this Court can take will allow the Patent Office, the Federal Circuit, and the District of Delaware to reexamine their rulings in light of LoganTree's shifting sands approach to its processor mapping. The Court should end LoganTree's games and hold it to the statements it has told the world and to the original theories it expressed in this case by denying its requested amendments.

I.   ARGUMENT

The question of when amendments to infringement contentions should be allowed under the Kansas Local Patent Rules has been addressed by this Court. "[I]ssues concerning the validity and interpretation of local patent rules that are likely to directly affect the substantive patent law theories that may be presented at trial are "intimately involved in the substance of enforcement of the patent right" and must be governed by the law of the Federal circuit." *Digital Ally, Inc. v. Taser Int'l, Inc.*, No. 16-cv-2032-CM-TJJ, 2018 WL 1138283, at *3-4 (D. Kan. Mar. 2, 2018) (*citing O2*
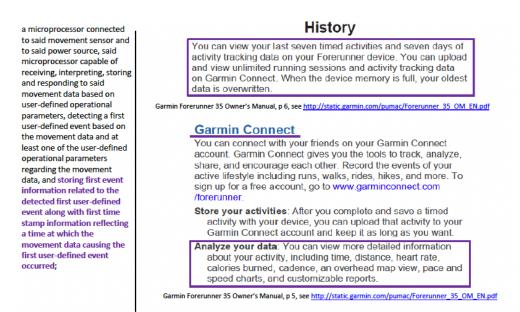
Micro Int'l Ltd. V. Monolithic Power Sys., Inc., 467 F.3d 1355, 1364 (Fed. Cir. 2006)). "The Court will therefore apply Federal Circuit law in determining whether Defendant has shown good cause under D. Kan. Pat. Rule 3.5(b) to amend its invalidity contentions in this case." *Id.* In this regard, "[d]iligence is the critical issue in the good cause" showing that must be made before being allowed to amend contentions. *Id.*, at *4.

The good cause analysis "has two subparts: (1) diligence in discovering the basis for amendment; and (2) diligence in seeking amendment once the basis for amendment has been discovered." *Id*. As to the former, LoganTree cites nothing but its allegedly reasonable belief that an amendment was not needed. But that is no substitute for diligence and LoganTree cites no authority for excusing a lack of diligence based on its own subjective belief. And even if a reasonable belief were an excuse for diligence, LoganTree made no attempt to substantiate that belief—it did not submit a declaration explaining the basis for its belief, it did not identify any evidence that would suggest it had such a belief, and it has not explained how any such belief should be seen as reasonable. Instead, LoganTree hinges its request on conclusory attorney argument. ECF No. 163, at 4. LoganTree's own prior actions belie its current arguments.

A. **LoganTree Initially Pled, then Withdrew, Infringement Allegations that Relied Upon Garmin Connect, Thus Leading Garmin to Believe the Theory Had Been Abandoned**

There is no colorable argument that LoganTree could have believed, reasonably or otherwise, that it did not need to amend its contentions to provide Garmin with notice of its allegations against Garmin Connect. Its own Complaint shows why. After dismissal of the Western District of Texas case, and in response to Garmin's challenges to the sufficiency of its allegations, LoganTree provided a claim chart with its Kansas Complaint. *See* ECF No. 1-4. In that chart, LoganTree expressly mapped Garmin Connect for the "storing" limitation:

a microprocessor connected to said movement sensor and to said power source, said microprocessor capable of receiving, interpreting, storing and responding to said movement data based on user-defined operational parameters, 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 first event information related to the detected first user-defined event along with first time stamp information reflecting a time at which the movement data causing the first user-defined event occurred;**

History

You can view your last seven timed activities and seven days of activity tracking data on your Forerunner device. You can upload and view unlimited running sessions and activity tracking data on Garmin Connect. When the device memory is full, your oldest data is overwritten.

Garmin Forerunner 35 Owner's Manual, p 6, see http://static.garmin.com/pumac/Forerunner_35_OM_EN.pdf

Garmin Connect

You can connect with your friends on your Garmin Connect account. Garmin Connect gives you the tools to track, analyze, share, and encourage each other. Record the events of your active lifestyle including runs, walks, rides, hikes, and more. To sign up for a free account, go to www.garminconnect.com/forerunner.

Store your activities: After you complete and save a timed activity with your device, you can upload that activity to your Garmin Connect account and keep it as long as you want.

Analyze your data: You can view more detailed information about your activity, including time, distance, heart rate, calories burned, cadence, an overhead map view, pace and speed charts, and customizable reports.

Garmin Forerunner 35 Owner's Manual, p 5, see http://static.garmin.com/pumac/Forerunner_35_OM_EN.pdf

Id. at 11. LoganTree's mapping of Garmin Connect was a focal point in Garmin's initial motion to dismiss, where it explained "[t]here is absolutely no identification of where or how Garmin Connect would 'stor[e] . . . the first *time stamp* information reflecting a time at which the *movement data causing the first user-defined event* occurred." ECF No. 11, at 9. Garmin expressly criticized the sufficiency of this chart, arguing that "LoganTree must identify some feature in Garmin's Accused Products—in this example, *the Forerunner device*—showing that time stamp information is stored[.]" *Id.* at 11 (emphasis added).

Given the co-pending arguments it needed to make to sustain validity (as described above), LoganTree removed Garmin Connect from the "storing" limitation in its Initial Infringement Contentions. ECF No. 158-6. Nor did LoganTree map it for the "detecting" limitation. Instead of the processor on Garmin Connect, LoganTree now relied solely on the processor within the self-contained watches that creates and stores a "FIT file" on the watches themselves. *See* ECF No. 158-6, at 10–17. LoganTree had abandoned its theory that Garmin Connect was involved in the "storing" limitation, and never suggested it was involved in the "detecting" limitation. This theory, with the emphasis on the watch's internal microprocessor, became the central focus of this

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