

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

LOGANTREE LP,

Plaintiff,

v.

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

Defendants.

Case No. 6:17-cv-01217

**PLAINTIFF'S REPLY IN SUPPORT OF ITS MOTION FOR LEAVE TO AMEND ITS
INFRINGEMENT CONTENTIONS**

LoganTree filed a motion for leave to amend its infringement contentions in accordance with this Court’s recommendation and out of an abundance of caution. Garmin’s arguments in opposition to LoganTree’s motion rely on the incorrect premise that Garmin Connect and Goal Streak are being offered in LoganTree’s infringement Expert Report (the “Expert Report”) to satisfy the “storing” and “detecting” limitations of LoganTree’s infringement theories. LoganTree strongly believes that its Expert Report is fully supported by its infringement contentions and merely offers additional evidentiary proof displaying that Garmin’s self-contained fitness tracking watches (the “Accused Products”) do in fact practice the limitations. However, to the extent the Court desires LoganTree’s infringement contentions fully reflect all information cited in its Expert Report, LoganTree expresses its desire and willingness to amend accordingly.

I. ARGUMENT

Garmin cleverly attempts to confuse and complicate the simple issue at bar by mischaracterizing the Expert Report’s mentions of Garmin Connect and Goal Streak as “new theories.” Instead, LoganTree’s Expert Report supports its existing theories with additional evidence that Garmin Connect and Goal Streak illustrate the Accused Products’ infringements.

A. The Expert Report Does Not Issue a New Theory Needing Amendment, But Is Simply an Identification of Additional Evidentiary Proof of Infringement.

Plaintiffs need not “prove up” their theories in their contentions; rather, the expert report can put forth additional evidence supporting those theories even when that includes identifying aspects of the accused products that exhibit the infringement contentions. *SOL IP, LLC v. AT&T Mobility LLC*, No. 2:18-cv-00526-RWS-RSP, 2020 WL 10045985, at *1-2 (E.D. Tex. April 23, 2020); *see also Finjan, Inc. v. Symantec Corp.*, No. 14-cv-02998-HSG (JSC), 2018 WL 620169, at *2 (N.D. Cal. Jan. 30, 2018). Thus, if the expert report merely provides additional evidentiary

support illustrating the infringement contention, then amendment to the infringement contentions is unnecessary as contentions do not require full evidentiary proof. *See cases supra.*

As its infringement contentions currently reflect, and as is further explained in its Expert Report, LoganTree relies solely on the microprocessor within the self-contained Accused Products. As stated throughout the Expert Report, the microprocessor in the Accused Products detects when a first user-defined event is met, and subsequently that microprocessor stores a timestamp in a .FIT file. The Expert Report merely utilizes Garmin Connect to visually display the information that was detected and stored on the Accused Products' microprocessor, as further proof that the Accused Products practice the "detecting" and "storing" limitations. *See* Dkt. 163-5 at 70. ("The step goal information *displayed* on the Garmin Connect app and the connect.garmin.com website are stored and transferred via .FIT files *first created and stored on the Garmin device.*" (Emphasis added)). Therefore, the Expert Report does not set forth a new theory needing an amendment to the infringement contentions.

B. LoganTree Reasonably Believed There Was No Reason To Amend Its Infringement Contentions, Yet Was Diligent Upon Advice of the Court

Further, Garmin incorrectly argues that LoganTree made no attempt to substantiate its reasonable belief that an amendment was not needed. LoganTree's belief was reasonable because its infringement contentions fully comply with the local rules. LoganTree's infringement contentions identify specifically "where each limitation of each asserted claim is found within each Accused Instrumentality" without amendment. *See* D. Kan. Pat. Rule 3.1(c).

Further, the scope of infringement contentions and expert reports are not co-extensive— infringement contentions "need not disclose specific evidence nor do they require plaintiff to prove its infringement case, whereas expert reports must include a complete statement of the expert's opinion" *Shurtape Techs., LLC v. 3M Co.*, No. 5:11-CV-17-RLV-DCK, 2011 WL 4750586,

at *2 (W.D. N.C. Oct. 7, 2011). LoganTree reasonably believed it was unnecessary to amend its infringement contentions because its Expert Report simply offers evidence proving its existing infringement theories.

Nonetheless, while maintaining its belief that it was in compliance with the local rules, LoganTree diligently heeded the advice of this Court by promptly filing a motion to amend its infringement contentions to reflect the additional evidence cited by its Expert Report.

C. Amendment Will Not Result in Prejudice To Garmin

Finally, Garmin cannot genuinely claim it is prejudiced by the additional evidence offered in the Expert Report. The amendment will not substantially change the asserted infringement theories, if at all. Further, to the extent that the theories are modified, the relevant consideration in deciding whether the other party will be unduly prejudiced is not simply the phase of litigation—it is whether the other party has been on sufficient notice to develop a line of defense. *See Karl Storz Endoscopy-Am., Inc. v. Stryker Corp.*, No. 14-CV-00876-RS (JSC), 2016 WL 2855260, at *8 (N.D. Cal. May 13, 2016). LoganTree does not need to offer evidence that it previously put Garmin on notice of Goal Streak—Garmin’s own actions demonstrate that it was on “sufficient notice to develop a line of defense” and has already done so in its supplemental interrogatory responses. *See id.*; Dkt. 163-4.

II. CONCLUSION

LoganTree wishes to heed the advice of the Court and amend its infringement contentions to reflect the additional proof cited by its expert’s report. Garmin’s argument that such amendment should be disallowed is entirely based on the incorrect premise that LoganTree submits new theories of infringement. Thus, LoganTree respectfully asks the Court to grant LoganTree’s motion for leave to amend its infringement contentions.

Dated: November 2, 2021

Respectfully submitted by:

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