

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

LOGANTREE LP,

Plaintiff,

v.

GARMIN INTERNATIONAL, INC.,

Defendant.

Case No. 17-1217-EFM-ADM

**MEMORANDUM AND ORDER**

In this patent infringement case, plaintiff LoganTree LP (“LoganTree”) accuses dozens of models of defendant Garmin International, Inc.’s (“Garmin”) activity trackers of infringement. This matter is now before the court on the parties’ dispute over the scope of LoganTree’s infringement expert report, which Garmin contends advances new theories that LoganTree did not disclose in its infringement contentions. Garmin moves to strike these infringement theories. (ECF 157.) LoganTree disagrees and says the expert report does not disclose new infringement theories, but instead merely cites additional evidence to support LoganTree’s existing infringement theories. To the extent the court disagrees, LoganTree seeks to amend its infringement contentions so that its expert report is commensurate in scope. (ECF 162.) For the reasons explained below, the court finds that LoganTree’s expert relies on new infringement theories that LoganTree did not disclose in its infringement contentions, LoganTree has not shown good cause to amend its infringement contentions, and other considerations weigh against allowing LoganTree to belatedly add these new infringement theories. Accordingly, LoganTree’s motion to amend is denied, and Garmin’s motion to strike is granted.

## I. BACKGROUND

### A. The ‘576 Patent

LoganTree’s complaint alleges that it is the owner by assignment of all right, title, and interest in U.S. Patent No. 6,059,576, entitled “Training and Safety Device, System and Method to Aid in Proper Movement During Physical Activity.” (ECF 1 ¶¶ 12-15, at 4.) LoganTree alleges the patent generally relates to a device invented by Theodore Brann to measure, analyze, and record data about the wearer’s body movements using an accelerometer, programmable microprocessor, internal clock, and memory. (*Id.* ¶ 16, at 4.) Before LoganTree filed suit against Garmin, it initiated a reexamination of the patent. On March 17, 2015, the United States Patent & Trademark Office (“PTO”) issued a reexamination certificate with amended claims. (ECF 1-3.) The court will refer to the reexamined patent as “the ‘576 Patent.”

LoganTree asserts that Garmin infringes two independent claims—Claim 1, a device claim, and Claim 20, a method claim—and other claims that are dependent on Claims 1 and 20. Independent device Claim 1 is as follows:

1. A portable, self-contained device for monitoring movement of body parts during physical activity, said device comprising:
  - a movement sensor capable of measuring data associated with unrestrained movement in any direction and generating signals indicative of said movement;
  - a power source;
  - a microprocessor connected to said movement sensor and to said power source, said microprocessor capable of receiving, 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;*
  - at least one user input connected to said microprocessor for controlling operation of the device;

a real-time clock connected to said microprocessor; memory for storing said movement data; and  
 an output indicator connected to said microprocessor for signaling the occurrence of user-defined events;  
 wherein said movement sensor measures the angle and velocity of said movement.

(*Id.* at 3.) Independent method Claim 20 is as follows:

20. A method to monitor physical movement of a body part comprising the steps of:  
 attaching a portable, self-contained movement measuring device to said body part for measuring unrestrained movement in any direction;  
 measuring data associated with said physical movement; interpreting, *using a microprocessor included in the portable, self-contained movement measuring device*, said physical movement data based on user-defined operational parameters and a real-time clock;  
 storing said data in memory;  
*detecting, using the microprocessor, 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, in said memory, 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.*

(*Id.* (emphasis added).) LoganTree added the italicized language during reexamination.

## **B. The Parties' Infringement & Non-Infringement Contentions**

LoganTree's complaint accuses dozens of models of Garmin's wearable accelerometer-based activity trackers (the "Accused Products") of infringement. From the outset, one of Garmin's main non-infringement positions has focused on the claim language italicized above, which Garmin says LoganTree added during reexamination of the '576 Patent to narrow the claims to overcome the prior art. (ECF 11.) Specifically, LoganTree added the following language to both asserted independent claims:

- “detecting[, using the microprocessor,] 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[, in said memory,] 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.”

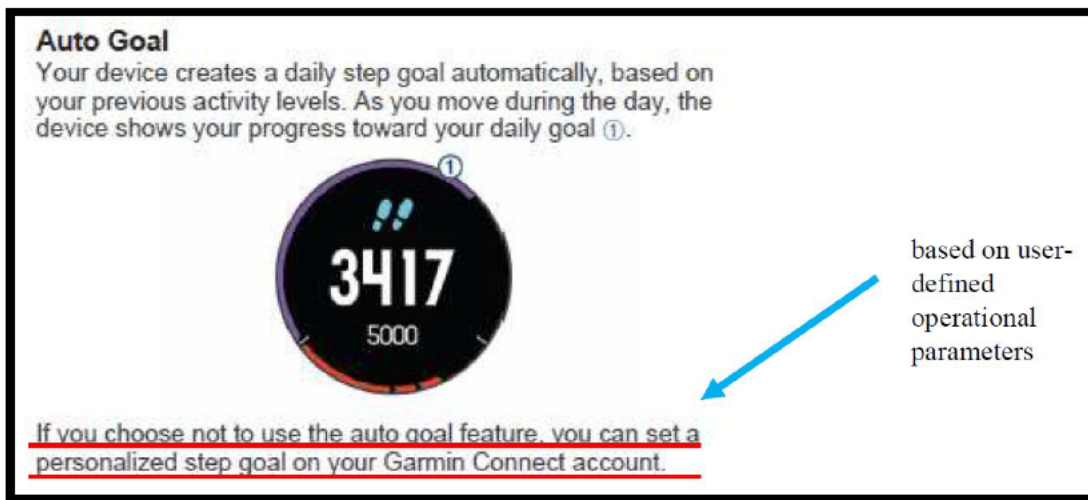
(ECF 11, at 4-5 (bracketed language in Claim 20 but not in Claim 1).)

Garmin initially moved to dismiss LoganTree’s complaint under Federal Rule of Civil Procedure 12(b)(6) on the grounds that LoganTree had not adequately pleaded that the Accused Products plausibly meet the so-called “storing” limitation—*i.e.*, that the microprocessor in the portable, self-contained device (the Accused Products) records a time stamp when the first user-defined event occurs. (ECF 10.) Garmin pointed out that the claim chart attached to LoganTree’s complaint referred to Garmin Connect as a program that allows a user to review time data but did not identify any way in which the Accused Products store a time stamp when a particular activity (*i.e.*, “movement data causing the first user-defined event”) occurs. (*Id.* at 10-11.) The court ultimately denied Garmin’s Rule 12(b)(6) motion on the grounds that LoganTree’s allegations were sufficient to meet *Iqbal/Twombly* pleading standards. (ECF 22.)

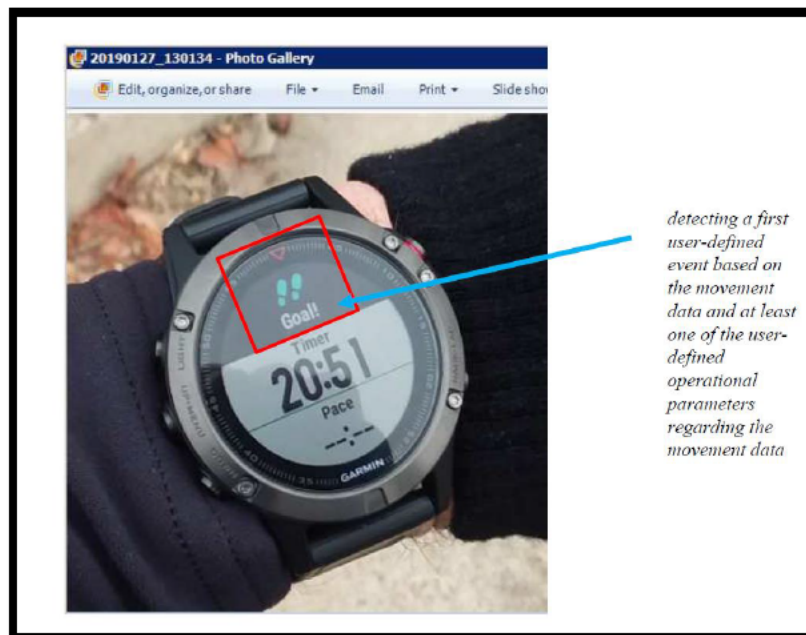
Meanwhile, Garmin filed a petition for inter partes review (“IPR”) of the ‘576 Patent, which the Patent Trial and Appeal Board (“PTAB”) granted on August 30, 2018. (ECF 33-1.) The court then stayed this case pending IPR through most of 2019. (ECF 37.)

After the IPR proceedings were complete, discovery opened on October 1, 2019. *See* FED. R. CIV. P. 26(d)(1) (parties may seek discovery after the Rule 26(f) conference). (ECF 42 (setting October 1 as the deadline for the Rule 26(f) conference).) The scheduling order required LoganTree to serve its infringement contentions on November 1, 2019. (ECF 48, at 3.) When LoganTree did so, it omitted any reference to Garmin Connect for the “storing” limitation. (ECF 158-6.) The contentions referred to Garmin Connect to set the “user-defined operational

parameters” by pointing out that a user who did not want to use the automatic daily-step-goal feature could instead set a personalized goal via the user’s Garmin Connect account.



(*Id.* at 18.) But LoganTree’s contentions no longer referred to Garmin Connect for the “detecting” and “storing” limitations. (*Id.* at 19-26.) Instead, LoganTree claimed that the “detecting a first user-defined event” limitation was met by showing an Accused Product display monitor showing the user had met his or her daily step-count goal:



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