

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

LOGANTREE LP,

Plaintiff,

v.

GARMIN INTERNATIONAL, INC.,

Defendant.

Case No. 17-1217-EFM-ADM

**MEMORANDUM IN SUPPORT OF
GARMIN'S MOTION FOR SUMMARY JUDGMENT**

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LoganTree’s allegations of infringement revolve around the ability of certain Garmin fitness watches to accumulate and track a user’s steps throughout the day. According to LoganTree, Garmin’s products allegedly infringe because they store a time stamp in memory that records the time at which the user reached a user-defined step goal. This is demonstrably incorrect. As Garmin explained many times to LoganTree, the evidence relied upon by LoganTree for the time stamp showed an entry that was recorded *before* the step goal of 2,500 steps was reached:

The screenshot shows a 'Garmin Fenix 5' data export. At the top, there is a text input field containing '917545200' and a green 'CONVERT' button. Below this, the local time is 'Sun Jan 27 2019 12:40:00 GMT-0500 (Eastern Standard Time)' and the GMT time is 'Sun, 27 Jan 2019 17:40:00 GMT'. A source URL is provided: <http://www.nvocables.com/blog/?p=969>.

The data table includes columns for timestamp, distance, cycles, steps, current_activity, activity_type, active_time, and timestamp_16. A red box highlights the 'steps' column with the value '2445 steps'. Another red box highlights the 'active_time' column with the value '1232 s'. A third red box highlights the 'timestamp_16' column with the value '42460 s'. A red arrow points from the 'steps' box to the 'active_time' box, and another red arrow points from the 'active_time' box to the 'timestamp_16' box.

Annotations in red boxes state: 'Only 2,445 steps recorded by Garmin' and 'Time stamps for 2,445 steps, not 2,500 steps'. A red arrow points from the first annotation to the 'steps' value, and another red arrow points from the second annotation to the 'active_time' and 'timestamp_16' values.

Comment: The Garmin Fenix 5 stores step data (cell H278, 2445 steps), active_time data (cell K278, 1232 s) and timestamp_16 data (cell Q278, 42460 s). The active_time of 1232 seconds associated with steps data of 2445 steps, converts to 20.53 minutes. The timestamp_16 data is a time stamp referenced to a time within the current day.

(ECF 158-2, at 2).

LoganTree, however, contends that the time stamp does not need to reflect the time at which the user actually met their step goal, as long as it was merely “associated” with the steps. This was the key issue Garmin asked the Court to resolve during claim construction—what level of precision is required for the time stamp. As this Court recently noted, “[t]he Court largely agreed with Garmin’s proposed construction” and found the time stamp must record information “*reflecting the time recorded or noted by the system at which*” the user-defined step goal is met. Shortly after this order, Garmin again pointed out the flaws in LoganTree’s case and asked it to dismiss the case in light of the court’s claim construction. ECF 186, at 7. LoganTree refused.

Despite Garmin’s explanation for how LoganTree lacked a good faith basis to proceed in view of the Court’s claim construction, “LoganTree doubled down on its existing infringement theories” and served final infringement contentions that were materially identical. *Id.*, at 8. LoganTree’s final contentions continued to advance the same infringement theories, relying on the same time stamp that appears *before* the user met their step goal. *Id.*

LoganTree then had its expert conduct hundreds of tests on Garmin’s Accused Products trying to find a single time stamp that recorded the time “*at which*” the user met the step goal and not before. After hundreds of tests and countless hours, LoganTree’s expert’s own testing revealed the Accused Products *never* record a time stamp when the user achieves their user-defined step goal—precisely what Garmin has been telling LoganTree for well over two years. After all this testing, the closest LoganTree could get to a time stamp “reflecting a time *at which* the movement data causing the first user-defined event (*i.e.* step goal) **occurred**” was always *before* the user defined step goal, and in some cases still hundreds of steps away from the purported test step goal of 750:

Tested Accused Product	Step Goal	Step number LoganTree Contends is Infringing	Total Steps away from the user-defined goal
Forerunner 235	750	208	542
Forerunner 25	750	238	512
Vivofit 3	750	290	460
Fenix 5	750	687	63
Vivosport	750	704	46

SOF ¶ 9. Despite these results, LoganTree has inexplicably maintained its position that a time stamp that appears, for example, 542 steps *before* the step goal is reached is a time stamp reflecting “the time at which” the step goal was met. This isn’t surprising. This is how Garmin’s products were designed to work.

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