

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

LOGANTREE LP

Plaintiff,

v.

GARMIN INTERNATIONAL, INC.

Defendants.

CIVIL ACTION NO. 6:17-CV-01217

**PLAINTIFF LOGANTREE'S RESPONSE IN OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

LoganTree, LP (“Plaintiff” or “LoganTree”) submits this response in opposition to Garmin International, Inc. (the “Defendant” or “Garmin”) Motion for Summary Judgment. For the reasons stated below, Garmin’s motion should be denied in its entirety.

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I. Introduction

Garmin has asserted that it should be granted summary judgment on LoganTree's infringement claim and claims invalidity due to indefiniteness. However, when the evidence is viewed in the light most favorable to LoganTree, as it must be for summary judgment, and when the proper case law is applied, it is clear that Garmin's motion for summary judgement should be wholly denied.

II. Statement of Facts

A. Response to Garmin's Statement of Facts

Pursuant to Local Rule of Civil Procedure 56.1, Garmin was to submit a statement of undisputed material facts in support of its motion for summary judgment. LoganTree responds to Garmin's statement of facts as follows:

- 1-2. LoganTree does not dispute ¶¶ 1-2 of Garmin's Statement of Facts.
3. LoganTree does not dispute ¶ 3 of Garmin's Statement of Facts, subject to clarification. LoganTree contends that the Accused Products record a timestamp for a step count at a second interval when activity occurs, but the recorded timestamp is tied to a "minute boundary". ECF 187, at 8; **Ex. A**, *Myers Report*, at 72-75 and 120; **Ex. B**, *Myers' Depo. Trans.*, at 38:6 – 44:19; **Ex. C**, *Blair Depo. Trans.*, at 24:16 – 25:2 and 33:7-17; **Ex. D**, *Michalson Report*, at 104-15.
4. LoganTree does not dispute ¶ 4 of Garmin's Statement of Facts.
5. LoganTree does not dispute ¶ 5 of Garmin's Statement of Facts, subject to clarification. LoganTree contends that Garmin's Accused Products measure and record information on a "per second basis", but further contends that that recorded timestamp is then tied to what is called a "minute boundary." ECF 187, at 8; **Ex. A**, *Myers Report*, at 72-75 and 120; **Ex.**

B, *Myers' Depo. Trans.*, at 38:6 – 44:19; **Ex. C**, *Blair Depo. Trans.*, at 24:16 – 25:2 and 33:7-17; **Ex. D**, *Michalson Report*, at 104-15.

6. LoganTree does not dispute ¶ 6 of Garmin's Statement of Facts, subject to clarification. LoganTree does not dispute that Garmin's Accused Products store time stamps at certain time intervals or at the nearest minute boundary after the device detects a change in activity. However, LoganTree disputes any suggestion that Garmin's Accused Products store time stamps in **only** these instances. LoganTree contends that Garmin's Accused Products also store timestamps reflecting the time recorded or noted by the system at which the movement data causing the first user-defined event occurred. ECF 187, at 8; **Ex. A**, *Myers Report*, at 72-75 and 120; **Ex. B**, *Myers' Depo. Trans.*, at 38:6 – 44:19; **Ex. C**, *Blair Depo. Trans.*, at 24:16 – 25:2 and 33:7-17; **Ex. D**, *Michalson Report*, at 104-15.

7. Denied. LoganTree observed that Garmin's Accused products' use of the minute boundary is a design choice of precision of the system, presumably because the user does not need to know the exact second of the day the user met their daily step goal. ECF 187, at 8.

8. Denied. LoganTree does not dispute that its expert, Myers, performed extensive testing on the Accused Products, however, these tests consistently showed timestamps corresponding with the noted time of the step goal being met. ECF 187, at 7; **Ex. A**, *Myers Report*, at 72-75 and 120; **Ex. B**, *Myers' Depo. Trans.*, at 38:6 – 44:19; **Ex. D**, *Michalson Report*, at 104-15. LoganTree agrees that "750 is never recorded with a timestamp" because the Accused Products record all timestamps tied to a minute boundary. **Ex. A**, *Myers Report*, at 72-75 and 120; **Ex. B**, *Myers' Depo. Trans.*, at 38:6 – 44:19; **Ex. D**, *Michalson Report*, at 104-15. After moving the timestamp to the minute boundary, the Accused Products record the number of steps that correspond with that minute boundary, which is why the recorded step counts are near, but never

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