IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

LOGANTREE LP,

Plaintiff,

vs.

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

Defendants.

Case No. 17-1217-EFM-KGS

MEMORANDUM AND ORDER

Plaintiff LoganTree LP has sued Defendants Garmin International, Inc. and Garmin U.S.A., Inc. (collectively "Garmin") for patent infringement of U.S. Patent No. 6,059,576 ("the '576 Patent"), as reexamined. Garmin moves to dismiss LoganTree's infringement claim pursuant to Fed. R. Civ. P. 12(b)(6) and asks the Court for a hearing on its motion. Because LoganTree pled its infringement claim in sufficient detail, the Court denies Garmin's Motion to Dismiss as well as its motion for a hearing.

I. Factual and Procedural Background

LoganTree is a partnership organized under Nevada law. LoganTree's sole general partner is Gulfstream Ventures, LLC, which is owned and managed by Theodore and Anne Brann. Theodore Brann is the named inventor of the '576 Patent, which was issued by the United States

Patent and Trademark Office ("PTO") on May 9, 2000. Brann assigned all right, title and interest in the '576 Patent to LoganTree.

The '576 Patent generally relates to a device worn by an individual that measures, analyzes, and records data about the individual's body movements using an accelerometer, programmable microprocessor, internal clock, and memory. One of the preferred embodiments for the device consists of a "self-contained movement measuring device" that can be attached to the individual in a "variety of positions based on the specific movement being observed" and the "particular application in which the device is used." The '576 Patent notes that the invention could be useful "for any number of sports, including football, baseball, basketball, or tennis" due to the variety of ways that the microprocessor can be programmed to operate.

On March 17, 2015, following a reexamination requested by LoganTree, the PTO issued a reexamination certificate for the '576 Patent, bearing U.S. Patent No. 6,059,576 C1 (the "reexamined '576 Patent"). The reexamined '576 Patent contains 185 claims. Claims 1, 13, and 20 are independent claims, and the remaining 182 claims are dependent on Claims 1, 13, or 20. Claim 1 is a "device" claim that sets forth the elements of the patented device. This claim provides for:

> 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, 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 selected first user-defined event along with the 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 the operation of said 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 measure the angle and velocity of said movement.

Claim 13 defines the patented "system" to comprise the claim 1 device when connected via a "download service" to "a computer running a program capable of interpreting" the data gathered by the claim 1 device. And, claim 20 is a method claim, setting forth "[a] method to monitor physical movement of a body part."

LoganTree alleges that Garmin is making, selling, and offering to sell to customers within the United States accelerometer-based activity monitoring devices that infringe the reexamined '576 Patent. Specifically, LoganTree alleges that the following models of wearable accelerometer-based activity trackers infringe its patent: vivofit model family, vivosmart model family, vivoactive model family, vivomove model family, Fenix model family, Forerunner model family, Epix model family, Tactix model family, Quatix model family, D2 model family, Approach model family, Foretrex model family, TruSwing model family, and the Swim model family (collectively, the "Accused Products").

LoganTree initially filed suit in the Western District of Texas, but that suit was dismissed without prejudice on venue grounds. On August 23, 2017, LoganTree filed suit in this Court alleging infringement of each of the 185 claims in the reexamined '576 Patent. LoganTree's

Complaint contains a description of the '576 Patent, sets forth the three independent claims of the '576 Patent, and attaches a chart detailing how three of Garmin's Accused Products allegedly incorporate the elements of claim 1 of the reexamined '576 Patent. LoganTree seeks an award of damages to compensate it for Garmin's alleged infringement, a permanent injunction prohibiting Garmin from infringing the reexamined '576 Patent, attorneys' fees, and costs. Garmin has filed a Motion to Dismiss LoganTree's Complaint for failure to state a claim (Doc. 10) and a Motion for Hearing on its Motion to Dismiss (Doc. 19). LoganTree opposes Garmin's Motion to Dismiss, but in the alternative, moves to amend its Complaint (Doc. 15).

II. Legal Standard

Before December of 2015, a plaintiff only needed to comply with Form 18 to sufficiently plead a claim of direct patent infringement. Form 18 sets forth fairly simple pleading elements, only requiring:

> (1) an allegation of jurisdiction; (2) a statement that the plaintiff owns the patent; (3) a statement that defendant has been infringing the patent by "making, selling, and using [the device] embodying the patent"; (4) a statement that the plaintiff has given the defendant notice of its infringement; and (5) a demand for an injunction and damages.[1]

But in December of 2015, Form 18 was eliminated from the Federal Rules of Civil Procedure.[2] Since then, the Federal Circuit has applied the *Twombly* and *Iqbal* pleading standards to claims for direct patent infringement.[3] Under these standards, to survive a motion to dismiss, a complaint

[1] *Lyda v. CBS Corp*., 838 F.3d 1331, 1338 (Fed. Cir. 2016) (citations omitted).

[2] *See Gracenote, Inc. v. Sorenson Media, Inc*., 2017 WL 2116173, at *2 (D. Utah 2017) (citation omitted).

[3] *Lifetime Indus., Inc. v. Trim-Lok, Inc*., 869 F.3d 1372, 1376-77 (Fed. Cir. 2017); *see Artrip v. Ball Corp.*, 2018 WL 2329742, at *5 n.4 (Fed Cir. 2018) (stating that the plausibility standard applies to direct infringement claims); *Disc Disease Solutions, Inc. v. VGH Solutions, Inc*., 888 F.3d 1256, 1260 (Fed. Cir. 2018) (concluding that a complaint met the requirements of *Iqbal/Twombly*).

must contain sufficient factual matter, accepted as true, "to 'state a claim for relief that is plausible on its face.' "[4] A claim is facially plausible if the plaintiff pleads facts sufficient for the court to reasonably infer that the defendant is liable for the alleged misconduct.[5] "Merely pleading facts that are consistent with liability or stating legal conclusions is not sufficient."[6]

III. Analysis

Garmin challenges the sufficiency of the factual support in LoganTree's Complaint. Garmin argues that for LoganTree to establish a plausible basis for infringement, it must show how the accused products infringe each limitation of at least one claim of the asserted patent. According to Garmin, if a single limitation is missing from the Complaint, then LoganTree has not met its burden under *Iqbal*/*Twombly*.

The Court, however, is not persuaded that LoganTree must meet such a stringent standard to state a claim for direct infringement. Garmin's argument is based on a non-binding opinion from the Northern District of Illinois.[7] Furthermore, two recent Federal Circuit decisions indicate that such detailed pleading is not necessary for a patent infringement claim to survive a Rule 12(b)(6) motion. In *Disc Disease Solutions, Inc. v. VGH Solutions, Inc*., the defendant sought to dismiss the plaintiff's claim for direct infringement on the basis that it did not meet the *Iqbal*/*Twombly* pleading standard.[8] The plaintiff in that case filed its complaint one day before

[4] *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

[5] *Iqbal*, 556 U.S. at 678.

[6] *Artrip*, 2018 WL 2329742, at *5 (citing *Iqbal*, 556 U.S. at 678).

[7] *Atlas IP, LLC v. Exelon Corp*., 189 F. Supp. 3d 768 (N.D. Ill. 2016).

[8] 888 F.3d at 1258-59.

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