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. 6:17-cv-01217

GARMIN'S RESPONSE TO LOGANTREE'S MOTION TO PARTIALLY EXCLUDE CERTAIN OPINIONS OF WILLIAM R MICHALSON UNDER RULE 702

LoganTree argues to exclude certain opinions of Garmin's non-infringement expert, Dr. Bill Michalson, under the theory Dr. Michalson's opinions are "legally irrelevant" and "cannot help the trier of fact." Dkt. 216, at 4. Specifically, LoganTree seeks to exclude Dr. Michalson's opinion that Garmin's accused products practice (or "use") Garmin's own patented technology because it believes this evidence is "irrelevant." But LoganTree's motion rests on legally erroneous arguments and an apparent misunderstanding of the purpose of Dr. Michalson's testimony, a purpose that LoganTree never explains to the Court. When a proper understanding of the use of Dr. Michalson's opinion is applied, the law fully supports Garmin's position and Dr. Michalson's opinion.

The Garmin watches involved in this litigation include many features unrelated to LoganTree's patent and the accused step counting functionality. For example, Garmin's watches can measure your heartrate, calculate your stress levels, receive satellite signals to determine your location, show a map, navigate you to your destination, let you compete against "virtual" opponents, calculate your altitude using pressure sensors, provide weather updates, and literally a thousand other functions. As one would suspect, Garmin has many of its own patents on a number of these critical features. LoganTree is using its patent—allegedly covering recording the precise time when a user meets his or her daily step goal—to attempt to collect ~$9M from Garmin for the alleged infringement. Because the value of the step goal feature is relatively small, LoganTree's expert has sought to collect damages on the value of the entire watch, including Garmin's own patented features for which LoganTree has no claim of infringement. LoganTree must not be allowed to claim money on Garmin's own inventions. This is precisely why the Federal Circuit requires Logantree's damages to be "apportioned" to the value (if any) of its own patent. *Exmark Mfg. Co. v. Briggs & Stratton Power Prods. Grp.*, LLC, 879 F.3d 1332, 1347–48 (Fed. Cir. 2018) ("It is well-settled law that a damages expert must "apportion the value of the patentee's invention in comparison to the value of the whole [accused product]."). Dr. Michaelson is certainly entitled

to opine on how Garmin uses its own patents, and Garmin's economic expert is then entitled to critique LoganTree for seeking damages on Garmin's own inventions. Dr. Michalson's opinion on how Garmin uses its own patents is fundamental to this analysis and weighs directly on apportionment and the value of Logantree's patent.

LoganTree has requested upwards of $9 million for its alleged damages, an absurd amount under any theory for a patent that amounts to little more than counting steps. To support this bloated request, LoganTree proffered an opinion from its damages expert, Nik Volkov, that seek damages on the entire watch, not just the portion of the product that relates to the accused step counting functionality. In his deposition, Dr. Volkov then admitted he performed no "apportionment analysis" to determine what portion of the value of Garmin's watches is tied to the step counting functionality. Ex. A (Volkov Dep.), 9:12-18; 9:25-10:8; 18:24-19:3. This is flatly against Federal Circuit precedent.

It is well-settled law that a damages expert must "apportion the value of the patentee's invention in comparison to the value of the whole [accused product]." *Exmark*, 879 F.3d at 1347–48. Proper apportionment analysis necessitates accounting for a defendant's own patents that cover the accused products where those patents contribute to the overall value of the accused product. *Id.* at 1350. As far back as *Blake v. Robertson*, the Supreme Court held a "complainant was [] entitled to only nominal damages" where he had not shown what portion of his lost profits was due to "other patents embraced in [the] machines" he sold. 94 U.S. 728, 733–34 (1876). And the Federal Circuit has found that "the basic principle of apportionment . . . applies in all of patent damages." *Mentor Graphics Corp. v. EVE-USA, Inc.*, 851 F.3d 1275, 1283 n. 3 (Fed. Cir. 2017). Further, the Federal Circuit has repeatedly overturned damages verdicts that failed to distinguish between value allocated to patents found to be infringed, and those found not to be infringed. *Ferguson Beauregard/Logic Controls, Div. of Dover Res., Inc. v. Mega Sys., LLC*, 350 F.3d 1327, 1345–46 (Fed. Cir. 2003) (overturning district court damages award that failed to distinguish

allocation of profits attributable to the infringed '376 Patent versus the not infringed '991 Patent); *Verizon Servs. Corp. v. Vonage Holdings Corp.*, 503 F.3d 1295, 1309–10 (Fed. Cir. 2007) (granting new damages trial where the jury failed to indicate apportionment of damages between multiple patents, and one patent was sent for retrial on infringement).

This is precisely how Dr. Michalson's opinions properly fit into this case. One way of performing the required apportionment analysis is to "itemiz[e] the relative value" of the other patented components. *Exmark*, 879 F.3d at 1350. Dr. Michalson is a technical expert. He analyzed Garmin's own patents and determined whether Garmin's own patented technology was being used in the accused watches. Garmin's economic expert, Mr. Finch, then relied on Dr. Michalson's technical analysis of Garmin's own patents to analyze and critique LoganTree's damages request for seeking damages on Garmin's own patented inventions. Ex. B (Report of Chuck Finch), at ¶¶ 60-63.

The Federal Circuit has expressly found such an analysis proper. For example, in *Arctic Cat Inc. v. Bombardier Recreational Products Inc.*, the Federal Circuit found it proper for Bombardier's economic expert to rely upon Bombardier's separate technical expert's analysis of the comparability of alternative technologies in performing his damages analysis. 876 F.3d 1350, 1369–70 (Fed. Cir. 2017). And in *Apple Inc. v. Motorola, Inc.*, the Federal Circuit found Apple's economic expert provided sufficient factual support for his opinions where he relied, in part, on Apple's technical expert's opinion regarding the similarity of certain touchpad gestures to the claimed features of the asserted patent. 757 F.3d 1286, 1316, 1319–20 (Fed. Cir. 2014), *overruled on other grounds by Williamson v. Citrix Online, LLC*, 792 F.3d 1339 (Fed. Cir. 2015) (*en banc*). The *Apple* court further clarified that any dispute as to the accuracy of the Apple's expert's opinion on accurate damages benchmarks goes to the weight, and not the admissibility, of the evidence. *Id.* at 1319. This maxim holds equally true in this case, where Dr. Michalson's opinions will weigh directly on the issue of damages and proper apportionment. If LoganTree wishes to argue that it is

entitled to damages on Garmin's entire product, including features invented solely by Garmin, LoganTree is entitled to challenge Dr. Michalson's and Mr. Finch's opinions through cross examination.

Accordingly, Garmin respectfully requests that the Court deny LoganTree's Motion to Exclude Dr. Michalson from opining at trial that Garmin's accused products practice Garmin's own patents.

Dated: September 8, 2022

Respectfully submitted,

ERISE IP, P.A.

/s/ Adam P. Seitz

Adam P. Seitz, KS Bar #21059
Megan J. Redmond, KS Bar #21999
Carrie A Bader, KS Bar #24436
Clifford T. Brazen, KS Bar #27408
ERISE IP, P.A.
7015 College Blvd., Suite 700
Overland Park, Kansas 66211
Telephone: (913) 777-5600
Facsimile: (913) 777-5601
adam.seitz@eriseip.com
megan.redmond@eriseip.com
carrie.bader@eriseip.com
cliff.brazen@eriseip.com

Attorneys for Defendants Garmin International, Inc. and Garmin USA, Inc.

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.