

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

LOGANTREE LP

Plaintiff,

v.

GARMIN INTERNATIONAL, INC.

Defendant.

CIVIL ACTION NO. 6:17-CV-01217

**MEMORANDUM IN SUPPORT
OF PLAINTIFF LOGANTREE LP'S MOTION IN LIMINE**

I. Introduction

Plaintiff LoganTree LP (“LoganTree”) files this memorandum in support of its motion for an order *in limine* excluding evidence of and references to the following allegations and matters:

1. Argument, evidence, testimony, or suggestion that there is any difference in the operation of the step goal and step counting features between any of the Accused Products.
2. Argument, evidence, testimony, or suggestion that Garmin’s products do not infringe because they do not record “a time stamp reflecting the time at which a user achieved his or her user-defined step goal.”
3. Argument, evidence, or testimony of any comparison between the accused products to prior art.
4. Argument, evidence, testimony, or suggestion that the asserted claims of the ’576 patent are limited to workers compensation claims, back angles on lifting heavy objects, or the BackTalk device, or that Garmin does not infringe because Garmin’s Accused Products are different from the BackTalk device.
5. Argument, evidence, testimony, or suggestion that LoganTree took contradictory positions between its statements to the patent office and its infringement contentions in this litigation.
6. Argument, evidence, testimony, or reference to any alleged improprieties in LoganTree’s, or any of its affiliates’, dealings with the IRS or SEC.

For the reasons stated herein, LoganTree respectfully request that the Court grant these motions in *limine* during the trial in this case.

II. Argument and Authorities

Motions in *limine* allow the Parties to make efficient use of the Court’s time, minimize trial interruptions, avoid wasting the jury’s time, and assist trial counsel to prepare witnesses. *See Hibu, Inc. v. Peck*, No. 16-1055-JTM, 2018 WL 372437, at *1 (D. Kan. Jan. 11, 2018) (“The purpose of an in limine motion is to aid the trial process by enabling the Court to rule in advance of trial on the relevance of certain forecasted evidence, as to issues that are definitely set for trial, without lengthy argument at, or interruption of, the trial.” (citation omitted)).

MIL No. 1: The Court should exclude any argument or evidence suggesting there is difference in the operation of the step-goal or step-counting features amongst the Accused Products because Garmin repeatedly represented no such difference exists.

Parties should be held to factual statements they make in Court, particularly when seeking to use those factual statements to their advantage.

During the hearing on Garmin's Motion for Summary Judgment, Garmin's counsel unequivocally represented to the Court that there was no difference between how the step-goal and step-counting functionality operated between the Garmin Accused Products at issue.

... We're seeking summary judgment on all of them because in all of the products, as they add different features and different functionalities that might charge, you know, more money for different features, **there's one operation that's consistent between them, and that is the step goal and the step counting. So that functionality is the same between the products.**

They split up into different buckets. The five buckets is how the plaintiff analyzed them in their expert -- or in their expert report on infringement, but **there's no dispute between the parties that the operation of the products as it relates to step counting, step goal, et cetera, is the same between all of them.**

See Ex. 1, Excerpt from Summary Judgment Hearing Transcript, at 6:6–19 (emphasis added).

Presumably, Garmin was not misleading the Court. And, in reliance on Garmin's factual representation, the Court made that finding a basis of its summary judgment ruling. *See* Doc. 227, Memorandum and Order, at 3, n.2 (“During oral argument, the parties agreed that the operation of the step goal and step counting features are the same throughout all of the Accused Products.”)

“Formal admissions” made in court, such as the admissions above, constitute judicial admissions that “have the effect of withdrawing a fact from issue and dispensing wholly with the need for proof of the fact.” *See, e.g., Grynberg v. Bar S Servs., Inc.*, 527 F. App'x 736, 739 (10th Cir. 2013); *see also Wells Fargo Bank, N.A. v. Mesh Suture, Inc.*, 31 F.4th 1300, 1313 (10th Cir.

2022) (judicial admissions “include intentional and unambiguous waivers that release the opposing party from its burden to prove the facts necessary to establish the waived conclusion of law”).

As such, there is no need to litigate the fact issue of whether there is a difference between the step-goal and step-counting functionalities of the Accused Products. Doing so would be a waste of the juror’s valuable time when Garmin has already represented to this Court that the Accused Products operate no differently in that respect. Further, Garmin can point to no “exceptional circumstance that would warrant relief from [its] judicial admission.” *Id.* at 1314. Like the defendant in *Wells Fargo*, Garmin “relied” on its admission “to argue” that it was entitled to summary judgment on all products—its “admission was not the result of [its] being defrauded or reasonably mistaken.” *Id.* Accordingly, the Court should hold Garmin to its representations, and forbid Garmin from introducing evidence or argument about alleged differences in the operation of the step-goal or step-counting features of the Accused Products, after Garmin expressly disclaimed the existence of such differences in an effort to dispose of the case.

MIL No. 2: The Court should exclude any argument or evidence suggesting that the asserted claims require recording “a time stamp reflecting the time at which a user achieved his or her user-defined step goal” because, as the Court already held, that argument impermissibly removes words from the Court’s claim construction.

Whether the Asserted Claims require recording of a timestamp “at the time *at which* a user achieved his or her user-defined step goal” is a question of claim scope. Questions of claim scope — *i.e.*, what a claim does or does not cover — are questions of law. *See Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 384-385 (1996). And the Court has already decided this question of law, holding that Garmin’s argument about the scope of the Asserted Claim is incorrect. *See* Doc. 227 at 10 (“Garmin’s argument impermissibly eliminates the phrases ‘recorded or noted by the system’ and ‘the movement data causing’ from the Court’s claim construction. Thus, the Court cannot accept Garmin’s argument that the claim only requires ‘a time stamp reflecting the time at

which a user achieved his or her user-defined step goal.”); *see id.* at 9-10 (citing *Promos Techs., Inc. v. Samsung Elecs. Co., Ltd.*, 809 F. App’x 825, 834 (Fed. Cir. 2020); *Warner-Jenkinson Co., Inc. v. Hilton Davis Chem. Co.*, 520 U.S. 17, 29 (1997)).

Garmin opposes this proposed *limine* because it wants to present a non-infringement argument to the jury that “impermissibly eliminates . . . phrases . . . from the Court’s claim construction.” But, as the Court recognized in denying Garmin’s motion for summary judgment, Garmin cannot make arguments that contradict the Court’s claim construction. That is true whether the argument is to the Court or to be made in front of a jury.

The language of the Asserted Claims, as construed by the Court, and, as re-affirmed by the Court’s summary judgment ruling, does not require a time stamp at the exact time when a user met his or her defined step goal. Instead, LoganTree only needs to show that the Accused Products store a timestamp “reflecting the time *recorded or noted by the system* at which the *movement data causing*” the step goal occurred. *See* Doc. 227 at 11 (emphasis added); *cf.* Doc. 106 at 9.

MIL No. 3: The Court should exclude any argument or evidence comparing the Accused Products and prior art.

The Court should exclude any references, evidence, testimony, arguments comparing the accused devices to prior art. It would be improper for Garmin to argue that the accused product does not infringe merely because they practice the prior art as there is no “practicing the prior art” defense under the Federal Circuit law. *Zenith Elecs. Corp. v. PDI Comm. Sys.*, 522 F.3d 1348, 1363 (Fed. Cir. 2008) (citing *Tate Access Floors, Inc. v. Interface Architectural Resources, Inc.*, 279 F.3d 1357, 1367 (Fed. Cir. 2002), and stating that it had previously held that “defense of noninfringement cannot be proved by comparing an accused product to the prior art”). Further, to establish infringement there is no requirement that Garmin’s “accused devices must not be an adoption of the combined teachings of the prior art.” *Baxter Healthcare Corp. v. Spectramed, Inc.*,

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