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

LOGANTREE LP, Plaintiff, vs. GARMIN INTERNATIONAL, INC., Defendant.	Case No. 6:17-cv-01217

GARMIN'S TRIAL BRIEF

Pursuant to this Court's Trial Scheduling Order (ECF No. 229), Garmin submits its Trial Brief in support of the case it will present at trial, and to aid the Court with the relevant history of the case and to make it aware of serious concerns Garmin has that LoganTree will introduce new theories and evidence, which includes theories already stricken by this Court.

I. LOGANTREE'S STRICKEN INFRINGEMENT THEORIES AND EVIDENCE AND SUBSEQUENT ATTEMPTS TO REINTRODUCE THEM

This Court already concluded that LoganTree repeatedly attempted to skirt this Court's rules and orders. Specifically, the Court's order provided a comprehensive history of LoganTree's antics and the resulting harm it caused to Garmin and this case. *See generally* ECF Nos. 138; 186. Below, Garmin highlights the relevant aspects of that history here.

As the Court knows, the local rules require a plaintiff to disclose their infringement theory early in the case and, in this case, provided for "final" infringement contentions. L.P.R. 3-1. The purpose of these requirements is to force the plaintiff to explain their infringement theory, so the parties can focus discovery and expert reports on the correct theory of infringement. Significantly, this means the parties do not play hide the ball regarding the infringement theory. Unfortunately,

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LoganTree ignored these requirements and is now attempting to change its position after 5 years of litigation.

LoganTree's infringement theory in this case had always been the same, at least until it served LoganTree's expert report of Mr. Monty Myers. Prior to Myers' report, LoganTree's infringement theory was solely based on when users set a manual step goal. Myers' report attempted to inject new theories centered around Garmin's goal streak feature (how many days in a row the user meets their step goal) and the related step goal multiples (when a user meets their step goal multiple times in a single day). Myers also attempted to interject new theories of infringement based on functions performed by a separate software, the Garmin Connect app. ECF No. 186, at 12.

The ***reasons*** LoganTree made these last-minute changes are clear. First, LoganTree repeatedly characterized the scope of the invention in a narrow manner in order to survive challenges to the '576 Patent's validity by Garmin at the PTAB, and in the District of Delaware. Specifically, LoganTree argued the claims required a ***single*** microprocessor that performed all the relevant claim limitations. Second, rather than conducting discovery to support its infringement theory, LoganTree sat on its hands. LoganTree did not even attempt to review Garmin's source code or talk to Garmin's engineers about the microprocessor(s) in Garmin's products. Notably, the source code (i.e., the "instructions" explain how the Accused Products are programmed) is **required** to prove the microprocessor limitation. Those failures are especially critical here. The asserted claims set forth ***specific*** requirements as to what the Accused Products' microprocessors must perform. But ***what*** functions those microprocessors perform and ***how*** they perform those functions are dictated by the source code. Here, the Accused Products' source code completely

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failed to evidence LoganTree's infringement theory. Thus, LoganTree had no choice but to try to change its infringement theory at the 11th hour.

And the Court agreed that LoganTree wrongly attempted to change its theories and it was unfair to Garmin. For example, Garmin asked the Court to strike LoganTree's new mapping of the Goal Streak and Multiple Daily Step Goals:

> First, to the extent LoganTree is arguing Goal Streak merely "demonstrates" the operation of Step Goal, this is false. ***Goal Streak***, unlike Daily Step Goals, ***is not a "user-defined" event*** based on "user-defined parameters" as the claim requires. It is simply a "counter" that a user can *never* adjust or set. A non-user defined functionality cannot be "demonstrative" of a user-defined functionality. And, Mr. Myers does far more than use Goal Streak as an example of Step Goal. Instead, ***he includes an extensive discussion of the Goal Streak source code*** and its (alleged) timestamps ***and maps Goal Streak to the claims***. Mr. Myers relies on Goal Streak to meet the limitations of the claims, not merely as an example of Step Goal.

ECF No. 169, at 1–2 (bold italics added); *see also* ECF No. 158, at 3–6.

Agreeing with Garmin, the Court went even further, concluding "there is no explanation for LoganTree's new infringement theories other than that they appear to have been motivated by gamesmanship." ECF No. 186, at 29. And the Court's resulting order on what it was striking was unambiguous:

> LoganTree's infringement contentions did not provide Garmin with reasonable notice that LoganTree was relying on any user-defined functionality ***other than the user's daily step-count goal***. Those contentions identified the user's daily step-count goal set via the user's Garmin Connect account—***and only this daily step-count goal***—as the 'first user-defined event.' If LoganTree was going to rely on any other user-defined functionality, ***LoganTree was required*** to identify all Accused Instrumentalities (*e.g.*, Garmin Connect) with specificity . . . LoganTree's contentions ***did not identify the number of consecutive days a user meets their daily step-count goal (Goal Streak) or the number of times the user meets the daily step count goal in a given day*** as 'user-defined events.' ***These features are not even user defined.*** They are built-in automatic counting features. . . . These features are therefore not 'demonstrative' of the user meeting the daily step-count goal, nor are they user-defined functionality[.]
>
> . . .

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> The court strikes ***all theories relying on Goal Streak and all theories relying on Garmin Connect*** as they relate to the "detecting" and "storing" limitations.

ECF No. 186, at 17–18, 35 (emphasis added).

Garmin also informed LoganTree's new counsel about these issues. In fact, Garmin explained the proceedings in the case, how LoganTree continually stalled, delayed, blew through deadlines, and ignored the Court's rules and order. LoganTree ignored this and the gamesmanship continued. At the summary judgment hearing, LoganTree presented stricken source code to the Court as alleged evidence in support of its infringement theory. *09/01/2022 MSJ Hr'g Trans*, at 57:13–58:8, 76:25–77:11. And in preparation for trial, LoganTree filed its exhibit list and doubled-down on its intent to ignore the Court's order striking its improper infringement theories by including on its trial exhibit list dozens of exhibits that were ***the exact evidence*** this Court had already stricken from Myers' report. ECF Nos. 253-3, 253-4.

Finally, with just 11 days until trial, LoganTree continues to press forward with its stricken theories. LoganTree ignores the Court's prior order and contends it did not apply to ANY functionality on the device. This is false. The Court's own language makes it abundantly clear; the Court struck all Goal Streak and Garmin Connect theories outright. **Hard stop!** As the Court observed, LoganTree ***never*** disclosed Goal Streak or Garmin Connect as part of its infringement theory and was barred from raising these theories.

The introduction of these new theories and evidence at trial violates this Court's local rules, this Court's prior order, and is enormously prejudicial to Garmin. The introduction of this evidence will warrant setting aside the jury verdict, a new trial, or reversal at the Federal Circuit. LoganTree should be ordered to do what it should have done of its own accord already—abide by the Court's prior rulings.

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II. LOGANTREE WILL NOT BE ABLE TO MEET ITS BURDEN OF PROVING DAMAGES

"The burden of proving damages falls on the patentee." *Lucent Techs., Inc. v. Gateway, Inc.*, 580 F.3d 1301, 1324 (Fed. Cir. 2009). LoganTree contends it is "entitled to an award of damages in the amount of not less than a reasonable royalty." ECF No. 187, at 34. In such cases, the Federal Circuit's "law recognizes that a reasonable royalty award 'must be based on the incremental value of that the invention adds to the end product.'" *Exmark Mfg. Co. Inc. v. Briggs & Stratton Power Prods. Grp., LLC*, 879 F.3d 1332, 1348 (Fed. Cir. 2018) (quoting *Ericsson, Inc. v. D-Link Sys., Inc.*, 773 F.3d 1201, 1226 (Fed. Cir. 2014)). Garmin will establish at trial that, as a matter of fact and law, LoganTree wholly failed all the basic LEGAL requirements of patent damages:

- Apportionment – Required as a matter of law.
- Technical and economic comparability – Required as a matter of law.
- Royalty is to the incremental value of the manual step goal functionality – Required as a matter of law.
- Plucking royalty rates out of thin air – Barred as a matter of law.
- Showing entire revenue amounts – Barred as a matter of law.

First, Volkov admits he did not apportion. This means his opinions are clear error and contrary to the Federal Circuit authority. This is one of the most frequent reasons the Federal Circuit reverses jury verdicts. Despite this, Volkov refused to perform this basic requirement. As background, "apportionment" refers to the Supreme Court's mandate that the patentee must, in every case, "separate" out its damages from the value of all the unpatented components and features of the Accused Products to ***ensure*** the patentee is only compensated for the value of the claimed invention, and nothing more. *Power Integrations, Inc. v. Fairchild Semiconductor Int'l,*

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