

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

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**AGREED JURY INSTRUCTION NO. 1**

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Plaintiff LoganTree LP and Defendant Garmin International, Inc. hereby jointly submit the attached Agreed Jury Instruction, in place of Plaintiff's Proposed Instruction No. 1 (Doc. 259 at 2) and Defendant's Proposed Instruction No. 1 (Doc. 260-2 at 3-4).

Respectfully submitted by:

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### **CERTIFICATE OF SERVICE**

I hereby certify that on October 12, 2022, I electronically filed a copy of the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel of record for all parties in the case.

/s/ Clayton J. Kaiser  
Clayton J. Kaiser, #24066

**Instruction No. \_\_**

In determining the reasonable royalty, you should consider all the facts known and available to the parties at the time the infringement began. Some of the kinds of factors that you may consider in making your determination are:

- (1) The royalties received by the patentee for licensing of the patents-in-suit proving or tending to prove an established royalty;
- (2) The rates paid by the licensee for the use of other patents comparable to the Patent-in-Suit;
- (3) The nature and scope of the license as exclusive or non-exclusive or as restricted or non-restricted in terms of territory or with respect to the parties to whom the manufactured products may be sold;
- (4) Whether the patent owner had an established policy of granting licenses or retaining the patented invention as its exclusive right or whether the patent owner had a policy of granting licenses under special conditions designed to preserve its monopoly;
- (5) The nature of the commercial relationship between the patent owner and the licensee, such as whether they are competitors, in the same territory, in the same line of business, or whether their relationship was that of an inventor and a promoter;
- (6) The effect of selling the patented specialty in promoting sales of other products of the licensee, the existing value of the invention to the licensor as a generator of sales of his non-patented items, and the extent of such as derivative or collateral sales;
- (7) The duration of the patent and the term of the license;
- (8) The established profitability of the product made under patent, its commercial success, and its current popularity attributable to the patent;
- (9) The utility and advantages of the patented invention over the old modes or devices, if any, that had been used for achieving similar results;
- (10) The nature of the patented invention, the character of the commercial embodiment of it as owned and produced by the licensor, and the benefits to those who have used the invention;
- (11) The extent to which the infringer has made use of the invention and any evidence probative of the value of that use;

(12) The portion of the profit or of the selling price that may be customary in the particular business or in comparable business to allow for the use of the invention or analogous inventions;

(13) The portion of the realizable profits that should be credited to the invention as distinguished from non-patented elements, the manufacturing process, business risks, or significant features or improvements added by the infringer;

(14) The opinion and testimony of qualified experts; and

(15) The amount that a licensor and a licensee would have agreed upon at the time the infringement began if both sides had been reasonably and voluntarily trying to reach an agreement; that is, the amount which a prudent licensee who desired, as a business proposition, to obtain a license to manufacture and sell a particular article embodying the patented invention would have been willing to pay as a royalty and yet be able to make a reasonable profit and which amount would have been acceptable to a prudent patentee who was willing to grant a license.

While this is a list of factors that may inform your analysis, these factors do not form a test for royalty calculations. No one factor is dispositive and you can and should consider the evidence that has been presented to you in this case on each of these factors. You may also consider any other factors which in your mind would have increased or decreased the royalty the alleged infringer would have been willing to pay and the patent holder would have been willing to accept, acting as normally prudent business people.