

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

LOGANTREE LP,

Plaintiff,

v.

FITBIT, INC.,

Defendant.

Case No. 2:15-cv-01575-JRG

JURY TRIAL DEMANDED

**DEFENDANT FITBIT, INC.'S ANSWER, AFFIRMATIVE DEFENSES, AND
COUNTERCLAIMS TO PLAINTIFF'S ORIGINAL COMPLAINT**

Defendant Fitbit, Inc. ("Fitbit"), by and through their undersigned counsel, responds to Plaintiff LoganTree LP's ("Plaintiff" or "LoganTree") Original Complaint ("the Complaint") as follows:

ANSWER

1. Fitbit admits that this action purports to be one for patent infringement against Fitbit arising under Title 35 of the United States Code. Fitbit admits that LoganTree purports to assert the reexamined U.S. Patent No. 6,059,576 ("the Reexamined '576 Patent") against Fitbit. Except as so expressly admitted, denied.

PARTIES

2. Fitbit lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2 of the Complaint and therefore denies those allegations.

3. Admitted.

JURISDICTION AND VENUE

4. Fitbit admits that this action purports to be an action for patent infringement arising under Title 35 of the United States Code. Fitbit admits that this Court has jurisdiction over the

allegations in the Complaint as pleaded under 28 U.S.C. §§ 1331 and 1338(a). Except as so expressly admitted, denied.

5. Fitbit admits that this Court has personal jurisdiction over it with respect to the asserted claims. Fitbit denies all other allegations in Paragraph 5 of the Complaint.

6. Fitbit admits that it has previously been subject to personal jurisdiction in this Court in *Sportbrain Holdings, Inc. v. Fitbit, Inc.*, Civil Action No. 2:13-00212-JRG-RSP (E.D. Tex.); *FEGO Precision Industrial Co, Ltd. v. Fitbit, Inc.*, No. 2:14-cv-40 (E.D. Tex.); and *Olivistar, LLC v. Fitbit, Inc.*, No. 2:14-cv-536 (E.D. Tex.). Fitbit denies all other allegations in Paragraph 6 of the Complaint.

7. Fitbit denies that venue is proper in the Eastern District of Texas under 28 U.S.C. §§ 1391(b) and 1400. Fitbit denies all other allegations in Paragraph 7 of the Complaint.

THE PATENT-IN-SUIT

8. Fitbit admits that LoganTree purports to have attached to its Complaint as Exhibit A a true and correct copy of the as-issued U.S. Patent No. 6,059,576 (“the ’576 Patent”) titled “Training and Safety Device, System and Method to Aid in Proper Movement During Physical Activity.” Except as so expressly admitted, denied.

9. Fitbit admits that LoganTree purports to have attached to its Complaint as Exhibit B a true and correct copy of a reexamination certificate for the ’576 Patent. Except as so expressly admitted, denied.

10. Fitbit admits that the Exhibit A, on its face, states that one of the inventors of the ’576 Patent is named Theodore L. Brann. Except as so expressly admitted, denied.

11. Fitbit lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 11 of the Complaint and therefore denies those allegations.

12. Fitbit lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 12 of the Complaint and therefore denies those allegations.

13. Fitbit responds that the reexamination certificate for the '576 Patent, which LoganTree purports to have attached to the Complaint as Exhibit B, is a document that speaks for itself. Fitbit denies all other allegations in Paragraph 13 of the Complaint.

COUNT ONE: ALLEGED INFRINGEMENT OF THE REEXAMINED '576 PATENT

14. Fitbit incorporates by reference its responses to the foregoing paragraphs.

15. Denied.

16. Denied.

17. Denied.

18. Denied.

19. Denied.

PLAINTIFF'S PRAYER FOR RELIEF

Fitbit denies that LoganTree is entitled to any of the relief it requests.

AFFIRMATIVE DEFENSES

First Affirmative Defense (Invalidity)

20. Fitbit incorporates by reference its responses to the foregoing paragraphs.

21. The claims of the Reexamined '576 Patent are invalid for failure to comply with one or more of the requirements of Title 35 of the United States Code including, but not limited to, Sections 101, 102, 103, 111, 112, 115, 116, and 256.

22. For instance, one or more claims of the Reexamined '576 Patent are invalid in view of the prior art. For instance, the following prior art references anticipate, either expressly or inherently, or render obvious, alone or in combination with one another, one or more claims of the

Reexamined '576 Patent: (1) Canadian Patent No. 1,296,426, titled "Impact Detection Apparatus"; (2) EP No. 0779058, titled "Patient Activity Monitoring Device"; (3) U.S. Patent No. 5,640,971, titled "Back Movement Monitor and Warning Device"; and (4) Christopher Verplatese, *Inertial Proprioceptive Devices: Self-Motion-Sensing Toys And Tools* (1996).

Second Affirmative Defense (Failure to Mark)

23. Fitbit incorporates by reference its responses to the forgoing paragraphs.

24. LoganTree's claims are barred in whole or in part by its failure to provide adequate notice under 35 U.S.C. § 287. For instance, LoganTree is not entitled to recover pre-suit damages to the extent it failed to provide notice of actual infringement to Fitbit and failed to mark any product it contends practiced one or more claims of the '576 Patent or the Reexamined '576 Patent, including but not limited to the BackTalk device developed and sold by Theodore Brann and/or Bio Kinetics Corporation.

Third Affirmative Defense (Non-Infringement)

25. Fitbit incorporates by reference its responses to the forgoing paragraphs.

26. Fitbit has not infringed and does not infringe directly, jointly, contributory, literally, by the doctrine of equivalents or by inducement, any valid and enforceable claim of the Reexamined '576 Patent.

27. LoganTree alleges that Fitbit has infringed and is currently infringing the Reexamined '576 Patent by making, using, offering for sale, or selling products including but not limited to the Fitbit Zip, Fitbit One, Fitbit Flex, Fitbit Charge, Fitbit Charge HR, and Fitbit Surge ("the Accused Devices").

28. Fitbit denies LoganTree's allegations of infringement.

29. No product Fitbit makes, markets, distributes, sells, or offers to sell, including but

not limited to the Accused Devices, infringes the Reexamined '576 Patent. As properly construed, at least claim 1 of the Reexamined '576 Patent requires a movement sensor which measures the angle of a movement. None of the Accused Devices practice, implement, or otherwise incorporate the use of a movement sensor which measures the angle of a movement.

Fourth Affirmative Defense (Prosecution History Estoppel / Disclaimer)

30. Fitbit incorporates by reference its responses to the forgoing paragraphs.

31. By reasons of the proceedings in the USPTO, including the prosecution of the applications that resulted in the asserted patents, LoganTree is estopped from construing one or more claims of the Reexamined '576 Patent to cover and include any product service or activity of Fitbit and/or is prevented from asserting infringement under the doctrine of equivalents, and is further estopped from construing one or more claims of the Reexamined '576 Patent to claim scope ceded during the prosecution of the '576 Patent and Reexamined '576 Patent in order to, for example, avoid prior art.

32. For instance, LoganTree is estopped from construing one or more claims of the Reexamined '576 Patent in a way that is inconsistent with the amendments offered by the applicant in amendments submitted to the Patent Office on November 22, 1999, to traverse the prior art relied upon by the Examiner in Office Action Final Rejection dated July 20, 1999.

Fifth Affirmative Defense (No Right to Injunctive Relief)

33. Fitbit incorporates by reference its responses to the forgoing paragraphs.

34. LoganTree is not entitled to injunctive relief at least because: (1) LoganTree has not suffered nor will it suffer irreparable harm as a result of Fitbit's conduct; (2) any harm suffered by LoganTree if an injunction were not granted would be outweighed by harm to Fitbit if an injunction were granted; (3) LoganTree would have an adequate remedy at law if it were to prevail

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