

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

CASE NO. \_\_\_\_\_

GPS INDUSTRIES LLC,

*Plaintiff,*

v.

DSG TAG SYSTEMS INC.,  
E-Z-GO (a division of TEXTRON, INC.), and  
YAMAHA GOLF-CAR COMPANY,

*Defendants.*

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**PLAINTIFF GPS INDUSTRIES LLC'S  
COMPLAINT FOR PATENT INFRINGEMENT**

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Plaintiff GPS Industries LLC files this Complaint for Patent Infringement and alleges as follows:

**THE PARTIES**

1. Plaintiff GPS Industries LLC (“GPSI”) is a Delaware limited liability company with a principal place of business located at 1074 North Orange Avenue, Sarasota, Florida 34236. GPSI manufactures, leases, and services GPS-based golf course management and information systems.

2. Defendant DSG Tag Systems Inc. (“DSG”) is a Nevada corporation with a principal place of business at 5455 152nd Street, Suite 214, Surrey, B.C., Canada V3S 5A5. DSG may be served with process by serving its registered agent, Val-U-Corp Services Inc., located at 1802 North Carson Street, Suite 108, Carson City, Nevada 89701.

3. Defendant E-Z-GO is a division of Textron, Inc. (“E-Z-GO”), with its principal

place of business at 1451 Marvin Griffin Road, Augusta Georgia 30906. Textron, Inc., is a Delaware corporation with a principal place of business at 40 Westminster Street, Providence, Rhode Island 02903. E-Z-GO may be served with process by serving Textron, Inc.'s registered agent in Florida, CT Corporation System, located at 1200 S. Pine Island Road, Plantation, Florida 33324.

4. Defendant Yamaha Golf-Car Company ("YAMAHA") is a Georgia corporation with a principal place of business at 1000 Georgia Highway 34 East, Newnan, Georgia 30265. YAMAHA may be served with process by serving its registered agent in Florida, Corporation Service Company, located at 1201 Hays Street, Tallahassee, Florida 32301.

5. DSG, E-Z-GO and YAMAHA are collectively referred to herein as "DEFENDANTS." The term "DEFENDANTS" also includes the DEFENDANTS' employees, agents, and all other persons or entities that the DEFENDANTS direct and/or control.

### **THE PATENTS**

#### **United States Patent No. 5,438,518**

6. On August 1, 1995, U.S. Patent No. 5,438,518, entitled "Player Positioning and Distance Finding System" ("the '518 patent") was duly and legally issued. A true and correct copy of the '518 patent is attached as Exhibit A.

7. On or about October 27, 2008, a reexamination of the '518 patent by the United States Patent and Trademark Office ("PTO") was requested by a third party. The PTO granted the request for reexamination and reexamined the '518 patent.

8. On or about October 6, 2010, the reexamination proceedings concluded with the PTO issuing a Notice of Intent to Issue a Reexamination Certificate confirming that all claims of

the '518 patent that were subject to the reexamination were determined to be patentable as amended.

9. On January 18, 2011, the PTO issued Ex Parte Reexamination Certificate (7989<sup>th</sup>) for U.S. Patent No. 5,438,518, entitled "Player Positioning and Distance Finding System." A true and correct copy of the Ex Parte Reexamination Certificate (along with a Certificate of Correction) is attached as Exhibit B.

10. Pursuant to 35 U.S.C. § 282, the '518 patent is presumed valid.

11. GPSI is the owner by assignment of the '518 patent and has all substantial rights in and to the '518 patent, including the right to sue and collect damages for past, present, and future infringement of the '518 patent.

12. The '518 patent generally relates to methods and systems for GPS-based golf course distance measuring and tracking.

#### **U.S. Patent No. 5,685,786**

13. On November 11, 1997, U.S. Patent No. 5,685,786, entitled "Passive Golf Information System and Method" ("the '786 patent" and collectively with the '518 patent, "the patents in suit") was duly and legally issued. A true and correct copy of the '786 patent is attached as Exhibit C.

14. On or about October 13, 2008, a reexamination of the '786 patent by PTO was requested by a third party. The PTO granted the request for reexamination and reexamined the '786 patent.

15. On or about January 11, 2010, the reexamination proceedings concluded with the PTO issuing a Notice of Intent to Issue a Reexamination Certificate confirming that all claims of the '786 patent that were subject to the reexamination were determined to be patentable as

amended.

16. On February 8, 2011, the PTO issued Ex Parte Reexamination Certificate (8011<sup>th</sup>) for U.S. Patent No. 5,685,786, entitled “Passive Golf Information System.” A true and correct copy of the Ex Parte Reexamination Certificate for the ‘786 patent is attached as Exhibit D.

17. Pursuant to 35 U.S.C. § 282, the ‘786 patent is presumed valid.

18. GPSI is the owner by assignment of the ‘786 patent and has all substantial rights in and to the ‘786 patent, including the right to sue and collect damages for past, present, and future infringement of the ‘786 patent.

19. The ‘786 patent generally relates to systems for GPS-based golf course distance measuring, tracking and advertising platforms.

#### **JURISDICTION AND VENUE**

20. This action arises under the patent laws of the United States, Title 35 United States Code, particularly §§ 271, 281, 283, 284 and 285. This Court has subject matter jurisdiction over this claim for patent infringement under 28 U.S.C. §§ 1331 and 1338(a). Venue is proper in this Court under Title 28 United States Code §§ 1391 and 1400(b).

21. The Court has personal jurisdiction over DSG, E-Z-GO and YAMAHA because, upon information and belief, each DEFENDANT has: minimum contacts within the State of Florida and the Southern District of Florida; purposefully availed itself of the privileges of conducting business in the State of Florida and in the Southern District of Florida; sought protection and benefit from the laws of the State of Florida; transacted business (and continues to transact business) within the State of Florida and within the Southern District of Florida, including but not limited to, making, using, selling, offering to sell, and/or leasing products as described and claimed in the patents in suit; and because GPSI’s causes of action arise directly

from DEFENDANTS' business contacts and other activities in the State of Florida and in the Southern District of Florida.

### **THE ACCUSED PRODUCTS**

22. DSG is an original design manufacturer and marketer of GPS/Wireless-based hardware and software, including GPS-based range finder and cart management systems marketed under the trade names of the "TAG TEXT" and the "TAG TOUCH" (collectively referred to herein as the "DSG Rangefinder Systems"). The "TAG TOUCH" also serves as an advertising platform for products and/or services.

23. Upon information and belief, E-Z-GO and YAMAHA have entered into strategic partnership agreements with DSG for the sale and co-marketing of the DSG Rangefinder Systems in the United States and globally.

### **COUNT 1 – PATENT INFRINGEMENT**

#### **DSG's Direct Infringement of the '518 Patent**

24. DSG has infringed and continues to directly infringe, either literally or by equivalents, at least claims 33 and 41 of the '518 patent by making, using, selling, offering to sell, leasing, offering to lease, importing, and/or exporting one or more of the DSG Rangefinder Systems.

#### **DSG's Inducement of Infringement of the '518 Patent**

25. In addition to its direct infringement of the '518 patent, DSG has infringed and continues to infringe the '518 patent by actively inducing direct infringement, either literally or by equivalents, of at least claims 33 and 41 of the '518 patent, by the public, DSG's distributors, DSG's retailers, DSG's partners, DSG's website users, customers, and/or end users who import,

export, make, use, sell, offer to sell, lease and/or offer to lease one or more of the DSG Rangefinder Systems.

26. DSG had actual knowledge of the '518 patent prior to the filing of this complaint.

27. DSG's Vice President of Sales, Robert Silzer, Jr., was formerly the President of ProShot Golf, Inc., a former owner of the rights, title and interest in and to the '518 patent. On December 20, 2001, Mr. Silzer, acting in his capacity of President for ProShot Golf, Inc., executed an assignment that assigned the rights, title and interest in and to the '518 patent (among other patents) to ProShot Investors, LLC. Mr. Silzer had actual knowledge of the '518 patent while employed at ProShot Golf, Inc.

28. DSG's Chief Executive Officer, Robert Silzer, Sr., was employed by GPS Industries, Inc. from approximately 1997 to 2007, and served as GPS Industries, Inc.'s Chief Executive Officer from 2001 to November 2007. On or about July 11, 2006, Mr. Silzer, acting in his capacity of Chief Executive Officer of GPS Industries, Inc., acquired the '518 patent from ProShot Investors, LLC. GPS Industries, Inc. became the owner of the rights, title and interest in and to the '518 patent during the time Mr. Silzer was employed with GPS Industries, Inc. Mr. Silzer had actual knowledge of the '518 patent while employed at GPS Industries, Inc.

29. DSG's President, Mr. Alex Doaga, was employed by GPS Industries, Inc., from approximately 2001 to July 2008. Mr. Doaga served as the Executive Vice President, Chief Technology Officer of GPS Industries, Inc. Mr. Doaga had actual knowledge of the '518 patent while employed at GPS Industries, Inc.

30. DSG has, since its inception and by virtue of its employment of Mr. Silzer and/or Mr. Doaga, been aware of and had actual knowledge of the '518 patent. Despite this knowledge, DSG has continued to intentionally, actively, knowingly and willfully advertise

about, import, export, sell, offer to sell, lease, and/or offer to lease one or more of the DSG Rangefinder Systems in or into the United States, at least through its own website, <http://www.dshtag.com/index.html>, and its strategic sales and co-marketing partners, including but not limited to, E-Z-GO and YAMAHA.

31. Since becoming aware of the '518 patent, DSG's advertising and sales of one or more of the DSG Rangefinder Systems have intentionally, actively, knowingly and willfully contained and continue to contain instructions, directions, suggestions, and/or invitations that intentionally, actively, knowingly and willfully invite, entice, lead on, influence, prevail on, move by persuasion, cause, and/or influence the public, DSG's distributors, DSG's retailers, DSG's strategic partners, including but not limited to, E-Z-GO and YAMAHA, DSG's website users, customers, and/or end users to import, export, make, use, sell, offer to sell, lease, and/or offer to lease one or more of the DSG Rangefinder Systems, and/or use one or more of the DSG Rangefinder Systems to practice the inventions claimed in the '518 patent, and thus directly infringe the '518 patent, either literally or by equivalents.

32. Since becoming aware of the '518 patent, DSG was willfully blind, knew, or should have known that its distributors', retailers', strategic partners', including but not limited to, E-Z-GO and YAMAHA, website users', customers', end users', and/or the public's acts relative to importing, exporting, making, using, selling, offering to sell, leasing, and/or offering to lease one or more of the DSG Rangefinder Systems, and/or using one or more of the DSG Rangefinder Systems to practice the inventions claimed in the '518 patent, directly infringe the '518 patent, either literally or by equivalents. For these reasons, DSG is liable for inducing infringement of the '518 patent.

### **DSG's Contributory Infringement of the '518 Patent**

33. The DSG Rangefinder Systems and the components thereof imported, exported, sold, made, operated, and/or serviced by DSG constitute a material part of the inventions claimed in the '518 patent and are not staple articles or commodities of commerce suitable for substantial non-infringing use.

34. Since becoming aware of the '518 patent, DSG was willfully blind, knew, or should have known that the DSG Rangefinder Systems and the components thereof were especially made and/or especially adapted for use in infringing the '518 patent.

35. Since becoming aware of the '518 patent, DSG was willfully blind, knew, or should have known that the DSG Rangefinder Systems and the components thereof were not a staple article or commodity of commerce suitable for substantial noninfringing use.

36. By selling, offering to sell, leasing, offering to lease, or importing into the United States one or more of the DSG Rangefinder Systems and the components thereof, DSG has contributed to the infringement of distributors, retailers, strategic partners, including but not limited to, E-Z-GO and YAMAHA, customers, and/or end-users who import, export, sell, offer for sale, lease, offer to lease, purchase, make, and/or use one or more of the DSG Rangefinder Systems to practice the inventions claimed in the '518 patent, and thus directly infringe these patents, either literally or by the doctrine of equivalents.

37. DSG was willfully blind, knew, or should have known that its actions would contribute to the direct infringement, either literally or by equivalents, of at least claims 33 and 41 of the '518 patent by distributors, retailers, customers, strategic partners, including but not limited to, E-Z-GO and YAMAHA, and/or end-users who import, export, sell, offer for sale,

lease, offer to lease, purchase, make, and/or use one or more of the DSG Rangefinder Systems. For these reasons, DSG is liable for contributing to the infringement of the '518 patent.

### **E-Z-GO's Direct Infringement of the '518 Patent**

38. E-Z-GO has infringed and continues to directly infringe, either literally or by equivalents, at least claims 33 and 41 of the '518 patent by making, using, selling, offering to sell, leasing, offering to lease, importing, and/or exporting one or more of the DSG Rangefinder Systems.

### **E-Z-GO's Inducement of Infringement of the '518 Patent**

39. In addition to its direct infringement of the '518 patent, E-Z-GO has infringed and continues to infringe the '518 patent by actively inducing direct infringement, either literally or by equivalents, of at least claims 33 and 41 of the '518 patent, by the public, E-Z-GO's distributors, E-Z-GO's retailers, E-Z-GO's strategic partners, including but not limited to DSG, E-Z-GO's customers, and/or end users who import, export, make, use, sell, offer to sell, lease and/or offer to lease one or more of the DSG Rangefinder Systems.

40. E-Z-GO had actual knowledge of the '518 prior to the filing of this complaint.

41. E-Z-GO entertained the notion of acquiring ParView, Inc., in 2000, a former owner of all rights, title and interest in and to the '518 patent. As part of E-Z-GO's diligence, E-Z-GO requested assignments of the '518 patent and other documents related to the '518 patent. E-Z-GO requested this information by and through Mr. Bill Robson, E-Z-GO's Director of Marketing. ParView provided E-Z-GO with the information E-Z-GO requested regarding the '518 patent. E-Z-GO had actual knowledge of the '518 patent as early as May 2000.

42. E-Z-GO has, since at least 2000, been aware of the '518 patent and has continued to intentionally, actively, knowingly, and willfully advertise about, import, export, sell, or offer

to sell, lease, and/or offer to lease one or more of the DSG Rangefinder Systems in or into the United States, at least through its direct marketing efforts and those of its strategic partners, including but not limited to, DSG.

43. Since becoming aware of the '518 patent, E-Z-GO's advertising and sales of one or more of the DSG Rangefinder Systems have intentionally, actively, knowingly, and willfully contained and continue to contain instructions, directions, suggestions, and/or invitations that intentionally, actively, knowingly, and willfully invite, entice, lead on, influence, prevail on, move by persuasion, cause, and/or influence the public, E-Z-GO's distributors, E-Z-GO's retailers, E-Z-GO's strategic partners, including but not limited to, DSG, E-Z-GO's customers, and/or end users to import, export, make, use, sell, offer to sell, lease and/or offer to lease one or more of the DSG Rangefinder Systems, and/or using one or more of the DSG Rangefinder Systems to practice the inventions claimed in the '518 patent, and thus directly infringe these patents, either literally or by equivalents.

44. Since becoming aware of the '518 patent, E-Z-GO was willfully blind, knew, or should have known that its distributors', retailers', strategic partners', including but not limited to, DSG, customers', end users', and/or the public's acts relative to importing, exporting, making, using, selling, and/or offering to sell one or more of the DSG Rangefinder Systems, and/or using one or more of the DSG Rangefinder Systems to practice the inventions claimed in the '518 patent, directly infringe the '518 patent, either literally or by equivalents. For these reasons, E-Z-GO is liable for inducing infringement of the '518 patent.

#### **E-Z-GO's Contributory Infringement of the '518 Patent**

45. The DSG Rangefinder Systems and the components thereof imported, exported, sold, offered for sale, leased, offered for lease, made, operated, and/or serviced by E-Z-GO

constitute a material part of the inventions claimed in the '518 patent and are not staple articles or commodities of commerce suitable for substantial non-infringing use.

46. Since becoming aware of the '518 patent, E-Z-GO was willfully blind, knew, or should have known that the DSG Rangefinder Systems and the components thereof were especially made and/or especially adapted for use in infringing the '518 patent.

47. Since becoming aware of the '518 patent, E-Z-GO was willfully blind, knew, or should have known that the DSG Rangefinder Systems and the components thereof were not a staple article or commodity of commerce suitable for substantial noninfringing use.

48. By selling, offering to sell, leasing, offering to lease, importing into the United States or exporting from the United States, one or more of the DSG Rangefinder Systems and the components thereof, E-Z-GO has contributed to the infringement of distributors, retailers, strategic partners, including but not limited to, DSG, customers, and/or end-users who import, export, sell, offer for sale, lease, offer for lease purchase, make, and/or use one or more of the DSG Rangefinder Systems, and/or using one or more of the DSG Rangefinder Systems to practice the inventions claimed in the '518 patent, and thus directly infringe these patents, either literally or by the doctrine of equivalents.

49. E-Z-GO was willfully blind, knew, or should have known that its actions would contribute to the direct infringement, either literally or by equivalents, of at least claims 33 and 41 of the '518 patent by distributors, retailers, customers, strategic partners, including but not limited to, DSG, and/or end-users who import, export, sell, offer for sale, lease, offer for lease, purchase, make, and/or use one or more of the DSG Rangefinder Systems. For these reasons, E-Z-GO is liable for contributing to the infringement of the '518 patent.

### **YAMAHA's Direct Infringement of the '518 Patent**

50. YAMAHA has infringed and continues to directly infringe, either literally or by equivalents, at least claims 33 and 41 of the '518 patent by making, using, selling, offering to sell, leasing, offering to lease, importing, and/or exporting one or more of the DSG Rangefinder Systems.

### **YAMAHA's Inducement of Infringement of the '518 Patent**

51. In addition to its direct infringement of the '518 patent, YAMAHA has infringed and continues to infringe the '518 patent by actively inducing direct infringement, either literally or by equivalents, of at least claims 33 and 41 of the '518 patent, by the public, YAMAHA's distributors, YAMAHA's retailers, YAMAHA's strategic partners, including but not limited to, DSG, YAMAHA's customers, and/or end users who import, export, make, use, sell, offer to sell, lease, and/or offer to lease one or more of the DSG Rangefinder Systems.

52. YAMAHA had actual knowledge of the '518 prior to the filing of this complaint.

53. YAMAHA entertained the notion of acquiring ParView, Inc., in 2001, a former owner of all rights, title and interest in and to the '518 patent. As part of YAMAHA's diligence, it was made aware of the entirety of ParView's patent portfolio, including the '518 patent.

54. YAMAHA has, since at least 2001, been aware of the '518 patent and has continued to intentionally, actively, knowingly, and willfully, advertise about, import, export, sell, offer to sell, lease, and/or offer to lease one or more of the DSG Rangefinder Systems in or into the United States, at least through its direct marketing efforts and those of its strategic partners, including but not limited to, DSG.

55. Since becoming aware of the '518 patent, YAMAHA's advertising and sales of one or more of the DSG Rangefinder Systems have intentionally, actively, knowingly and

willfully contained and continue to contain instructions, directions, suggestions, and/or invitations that intentionally, actively, and knowingly invite, entice, lead on, influence, prevail on, move by persuasion, cause, and/or influence the public, YAMAHA's distributors, YAMAHA's retailers, YAMAHA's customers, and/or end users to import, export, make, use, sell, offer to sell, lease and/or offer to lease one or more of the DSG Rangefinder Systems to practice the inventions claimed in the '518 patent, and thus directly infringe these patents, either literally or by equivalents.

56. Since becoming aware of the '518 patent, YAMAHA was willfully blind, knew, or should have known that its distributors', retailers', strategic partners', including but not limited to, DSG, customers', end users', and/or the public's acts relative to importing, exporting, making, using, selling, offering to sell, leasing, and/or offering to lease one or more of the DSG Rangefinder Systems, and/or using one or more of the DSG Rangefinder Systems to practice the inventions claimed in the '518 patent, directly infringe the '518 patent, either literally or by equivalents. For these reasons, YAMAHA is liable for inducing infringement of the '518 patent.

#### **YAMAHA's Contributory Infringement of the '518 Patent**

57. The DSG Rangefinder Systems and the components thereof imported, sold, made, operated, and/or serviced by YAMAHA constitute a material part of the inventions claimed in the '518 patent and are not staple articles or commodities of commerce suitable for substantial non-infringing use.

58. Since becoming aware of the '518 patent, YAMAHA was willfully blind, knew, or should have known that the DSG Rangefinder Systems and the components thereof were especially made and/or especially adapted for use in infringing the '518 patent.

59. Since becoming aware of the '518 patent, YAMAHA was willfully blind, knew,

or should have known that the DSG Rangefinder Systems and the components thereof were not a staple article or commodity of commerce suitable for substantial noninfringing use.

60. By selling, offering to sell, leasing, offering to lease, importing into the United States or exporting from the United States, one or more of the DSG Rangefinder Systems and the components thereof, YAMAHA has contributed to the infringement of distributors, retailers, strategic partners, including, but not limited to, DSG, customers, and/or end-users who import, sell, offer for sale, lease, offer for lease, purchase, make, and/or use one or more of the DSG Rangefinder Systems to practice the inventions claimed in the '518 patent, and thus directly infringe these patents, either literally or by the doctrine of equivalents.

61. YAMAHA was willfully blind, knew, or should have known that its actions would contribute to the direct infringement, either literally or by equivalents, of at least claims 33 and 41 of the '518 patent by distributors, retailers, customers, strategic partner, including, but not limited to, DSG, and/or end-users who import, export, sell, offer for sale, lease, offer for lease, purchase, make, and/or use one or more of the DSG Rangefinder Systems. For these reasons, YAMAHA is liable for contributing to the infringement of the '518 patent.

## **COUNT 2 – PATENT INFRINGEMENT**

### **DSG's Direct Infringement of the '786 Patent**

62. DSG has infringed and continues to directly infringe, either literally or by equivalents, at least claims 7 and 8 of the '786 patent by making, using, selling, offering to sell, leasing, offering to lease, importing, and/or exporting one or more of the TAG TOUCH DSG rangefinding systems.

### **DSG's Inducement of Infringement of the '786 Patent**

63. In addition to its direct infringement of the '786 patent, DSG has infringed and continues to infringe the '786 patent by actively inducing direct infringement, either literally or by equivalents, of at least claims 7 and 8 of the '786 patent, by the public, DSG's distributors, DSG's retailers, DSG's partners, DSG's website users, customers, and/or end users who import, export, make, use, sell, offer to sell, lease and/or offer to lease one or more of the TAG TOUCH DSG rangefinding systems.

64. DSG had actual knowledge of the '786 patent prior to the filing of this complaint.

65. On or about August 31, 2007, GPS Industries, Inc., entered into an Asset Purchase Agreement with Uplink Corporation ("Uplink") to acquire Uplink's assets, including Uplink's intellectual property, which included the '786 patent. Prior to the execution of the Asset Purchase Agreement, Uplink was the owner of the rights, title and interest in and to the '786 patent.

66. DSG's Vice President of Sales, Robert Silzer, Jr., was the Chief Executive Officer of GPS Industries, Inc., at the time GPS Industries, Inc., entered into the Asset Purchase Agreement with Uplink to acquire Uplink's assets, including Uplink's intellectual property, which included the '786 patent.

67. DSG's President, Mr. Alex Doaga, was employed by GPS Industries, Inc., from approximately 2001 to July 2008. Mr. Doaga served as the Executive Vice President, Chief Technology Officer of GPS Industries, Inc. Mr. Doaga had actual knowledge of the '786 patent while employed at GPS Industries, Inc.

68. DSG has, since its inception and by virtue of its employment of Mr. Silzer and/or Mr. Doaga, been aware of and had actual knowledge of the '786 patent. Despite this knowledge,

DSG has continued to intentionally, actively, knowingly and willfully advertise about, import, export, sell, offer to sell, lease, and/or offer to lease one or more of the TAG TOUCH DSG rangefinding systems in or into the United States, at least through its own website, <http://www.dshtag.com/index.html>, and its strategic sales and co-marketing partners, including but not limited to, E-Z-GO and YAMAHA.

69. Since becoming aware of the '786 patent, DSG's advertising and sales of one or more of the TAG TOUCH DSG rangefinding systems have intentionally, actively, knowingly and willfully contained and continue to contain instructions, directions, suggestions, and/or invitations that intentionally, actively, knowingly and willfully invite, entice, lead on, influence, prevail on, move by persuasion, cause, and/or influence the public, DSG's distributors, DSG's retailers, DSG's strategic partners, including but not limited to, E-Z-GO and YAMAHA, DSG's website users, customers, and/or end users to import, export, make, use, sell, offer to sell, lease, and/or offer to lease one or more of the TAG TOUCH DSG rangefinding systems, and/or use one or more of the TAG TOUCH DSG rangefinding systems to practice the inventions claimed in the '786 patent, and thus directly infringe the '786 patent, either literally or by equivalents.

70. Since becoming aware of the '786 patent, DSG was willfully blind, knew, or should have known that its distributors', retailers', strategic partners', including but not limited to, E-Z-GO and YAMAHA, website users', customers', end users', and/or the public's acts relative to importing, exporting, making, using, selling, offering to sell, leasing, and/or offering to lease one or more of the TAG TOUCH DSG rangefinding systems, and/or using one or more of the TAG TOUCH DSG rangefinding systems to practice the inventions claimed in the '786 patent, directly infringe the '786 patent, either literally or by equivalents. For these reasons, DSG is liable for inducing infringement of the '786 patent.

### **DSG's Contributory Infringement of the '786 Patent**

71. The TAG TOUCH DSG rangefinding system and the components thereof imported, exported, sold, made, operated, and/or serviced by DSG constitute a material part of the inventions claimed in the '786 patent and are not staple articles or commodities of commerce suitable for substantial non-infringing use.

72. Since becoming aware of the '786 patent, DSG was willfully blind, knew, or should have known that the TAG TOUCH DSG rangefinding system and the components thereof were especially made and/or especially adapted for use in infringing the '786 patent.

73. Since becoming aware of the '786 patent, DSG was willfully blind, knew, or should have known that the TAG TOUCH DSG rangefinding system and the components thereof were not a staple article or commodity of commerce suitable for substantial noninfringing use.

74. By selling, offering to sell, leasing, offering to lease, or importing into the United States one or more of the TAG TOUCH DSG rangefinding systems and the components thereof, DSG has contributed to the infringement of distributors, retailers, strategic partners, including but not limited to, E-Z-GO and YAMAHA, customers, and/or end-users who import, export, sell, offer for sale, lease, offer to lease, purchase, make, and/or use one or more of the TAG TOUCH DSG Rangefinding systems to practice the inventions claimed in the '786 patent, and thus directly infringe these patents, either literally or by the doctrine of equivalents.

DSG was willfully blind, knew, or should have known that its actions would contribute to the direct infringement, either literally or by equivalents, of at least claims 7 and 8 of the '786 patent by distributors, retailers, customers, strategic partners, including but not limited to, E-Z-GO and YAMAHA, and/or end-users who import, export, sell, offer for sale, lease, offer to lease, purchase, make, and/or use one or more of the TAG TOUCH DSG rangefinding systems. For

these reasons, DSG is liable for contributing to the infringement of the '786 patent.

### **DAMAGES**

75. The infringement of the patents in suit as alleged above has injured, and continues to injure, GPSI. GPSI is thus entitled to recover damages adequate to compensate for the DEFENDANTS' infringement, including its lost profits, but which in no event can be less than a reasonable royalty.

76. DEFENDANTS have failed to obtain a license to practice the '518 patent, and have willfully and deliberately infringed the '518 patent.

77. DSG has failed to obtain a license to practice the '786 patent, and has willfully and deliberately infringed the '786 patent.

78. DEFENDANTS' infringement of the '518 patent is and has been willful and deliberate. Each DEFENDANT'S inducement and contributory infringement of the '518 patent is and has been willful and deliberate. Each of the DEFENDANTS have acted with knowledge of the '518 patent as alleged above. Each of the DEFENDANTS acted to infringe the '518 patent despite an objectively high likelihood that their actions constituted infringement of a valid patent. As a result, GPSI is entitled to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

79. DSG's infringement of the '786 patent is and has been willful and deliberate. DSG's inducement and contributory infringement of the '786 patent is and has been willful and deliberate. DSG has acted with knowledge of the '786 patent as alleged above. DSG has acted to infringe the '786 patent despite an objectively high likelihood that their actions constituted infringement of a valid patent. As a result, GPSI is entitled to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C.

§ 285.

80. DEFENDANTS' infringement of GPSI's exclusive rights under the '518 patent will continue to damage GPSI, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

81. DSG's infringement of GPSI's exclusive rights under the '786 patent will continue to damage GPSI, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

**PRAYER FOR RELIEF**

WHEREFORE, GPSI prays for the following relief:

- A. An adjudication that DEFENDANTS have infringed and continue to infringe one or more claims of the '518 patent;
- B. An adjudication that DSG has infringed and continue to infringe one or more claims of the '786 patent;
- C. An adjudication that DEFENDANTS must account for and pay to GPSI all damages caused by the infringement of the '518 patent, which by statute can be no less than a reasonable royalty, together with pre-judgment interest;
- D. An adjudication that DSG must account for and pay to GPSI all damages caused by the infringement of the '786 patent, which by statute can be no less than a reasonable royalty, together with pre-judgment interest;
- E. An award of GPSI's enhanced damages, up to and including trebling of GPSI's damages pursuant to 35 U.S.C. § 284, for DEFENDANTS' willful infringement of the '518 patent;

- F. An award of GPSI's enhanced damages, up to and including trebling of GPSI's damages pursuant to 35 U.S.C. § 284, for DSG's willful infringement of the '786 patent;
- G. An award of GPSI's pre-judgment and post-judgment interest on the damages caused to it by reason of the DEFENDANTS' infringement of the '518 patent;
- H. An award of GPSI's pre-judgment and post-judgment interest on the damages caused to it by reason of the DSG's infringement of the '786 patent;
- I. The DEFENDANTS be required to account to GPSI for all gains and profits derived by DEFENDANTS from the described infringing acts;
- J. An award of GPSI's costs of suit and reasonable attorneys' fees pursuant to 35 U.S.C. § 285 due to the exceptional nature of this case, or as otherwise permitted by law;
- K. A grant of a permanent injunction pursuant to 35 U.S.C. § 283, enjoining DEFENDANTS from further acts of (1) infringement, (2) contributory infringement, and (3) actively inducing infringement with respect to the claims of the '518 patent;
- L. A grant of a permanent injunction pursuant to 35 U.S.C. § 283, enjoining DSG from further acts of (1) infringement, (2) contributory infringement, and (3) actively inducing infringement with respect to the claims of the '786 patent; and
- M. That GPSI be granted such other and further relief that is just and proper under the circumstances.

**DEMAND FOR JURY TRIAL**

GPSI demands a jury trial on all claims and issues so triable, including DEFENDANTS'

affirmative defenses and counterclaims, if any.

Dated: December 19, 2012

Respectfully submitted,

**FELDMAN GALE, P.A.**

BY: /s/ Javier Sobrado

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