

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

Civil Action No. 1:13-cv-3388

MSPBO, LLC

Plaintiff,

v.

JURY TRIAL DEMANDED

GARMIN INTERNATIONAL, INC.,

Defendant.

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, MSPBO, LLC ("MSPBO"), brings this Complaint against Defendant Garmin International, Inc. ("Garmin") as follows:

NATURE OF LAWSUIT

1. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code § 1 *et seq.* This Court has exclusive jurisdiction over the subject matter of the Complaint under 28 U.S.C. §§ 1331 and 1338(a).

THE PARTIES AND THE PATENT

2. MSPBO is a Colorado limited liability company with its principal place of business in Centennial, Colorado.

3. MSPBO is in the business of commercializing patent rights directed to the measurement, determination and display of travel and fitness information, including U.S.

Patent No. 6,744,375, entitled “Device and Method for Determining and Displaying Travel or Fitness Quantities of a User of a Sports Equipment” (“the ‘375 patent”), which issued on June 1, 2004.

4. The named inventor on the ‘375 patent is Daniel Groos. Dr. Groos has commercialized the technology in the ‘375 patent in products sold through his company, Microsport, which is located in Munich, Germany.

5. Dr. Groos entered into an agreement with MSPBO under which MSPBO acquired all right, title and interest in, including the right to sue for past, ongoing and future infringement of, the ‘375 patent.

6. Neither MSPBO nor its Affiliates have granted rights under the ‘375 patent to Garmin or any third party.

7. Garmin International, Inc. is a Kansas corporation with its place of business at 1200 East 151st Street, Olathe, Kansas 66062. Garmin International, Inc. is registered to do business in the State of Colorado.

8. Garmin has conducted business in this judicial district; has purposefully availed itself of the privilege of conducting business with residents of this judicial district, including end users of the Garmin products accused of infringement; has established at least minimal contacts with the State of Colorado such that it should reasonably and fairly anticipate being brought into Court in Colorado; and has purposefully reached out to residents of Colorado through its marketing, provision and sale of products, including the Garmin products accused of infringement.

9. Garmin has committed acts of infringement in this judicial district, and

regularly transacts business in this judicial district, including marketing, providing and selling the Garmin products accused of infringement. Direct infringers of the '375 patent based on the Garmin products accused of infringement also reside in and practice the claimed inventions in this judicial district.

10. MSPBO has complied with the marking and notice requirements of 35 U.S.C. § 287.

11. On August 26, 2013, MSPBO asserted the '375 patent against Adidas North America, Inc. and Adidas America, Inc., in Civil Action No. 1:13-cv-02287 (D. Colo.) (the "*MSPBO v. Adidas* suit"), which is currently pending before Judge Phillip A. Brimmer and Magistrate Judge Kathleen Tafoya. Adidas is a customer of Garmin. The Adidas products accused of infringement in the *MSPBO v. Adidas* suit use transmission protocols and components supplied by Garmin.

12. In the *MSPBO v. Adidas* suit, Adidas alleged a Fourth Affirmative Defense that "MSPBO's claims are barred because, as a customer of Garmin International, Inc. ('Garmin'), Adidas has a sublicense, express, inherent or implied, as to the asserted patent via Garmin's license with PhatRat Technology, Inc." MSPBO disputes and opposes Adidas's defense, and has provided Adidas with documentation that refutes the defense.

13. The Court issued a Scheduling Order in the *MSPBO v. Adidas* suit on December 3, 2013, which sets deadlines through the filing of reply claim construction briefs on July 14, 2014. The parties have served and responded to initial discovery requests.

VENUE

14. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and 1400(b).

PATENT INFRINGEMENT

15. Through its wholly owned subsidiary, Dynastream Innovations, Inc., Garmin markets and provides the ANT and ANT+ transmission protocols to third parties. The ANT and ANT+ transmission protocols enable monitoring devices to communicate with one another. With the encouragement and assistance of Garmin, third parties have implemented the ANT and ANT+ transmission protocols into products such as sports watches, bike computers and sensors that obtain travel data and transmit the data to a receiver for processing and display.

16. For example, through Dynastream, Garmin owns and operates the www.thisisant.com website through which it markets the ANT and ANT+ transmission protocols and encourages and assists third parties to use these protocols in their products, and encourages consumers to purchase and use products that implement that ANT and ANT+ transmission protocols.

17. Garmin also sells components, including Foot Pods, which use the ANT and ANT+ transmission protocols. Garmin has encouraged and assisted third parties to incorporate these components in their products, and has encouraged and assisted consumers to purchase and use the components and products that incorporate them.

18. Separately, Garmin has made, used, offered for sale, sold and provided its own products that are covered by one or more claims of the '375 patent without

authorization from MSPBO. These products include at least the Edge 305, Edge 500, Edge 510, Edge 705, Edge 800, Edge 810, Speed/Cadence Sensor, Forerunner 50, Forerunner 210, Forerunner 220, Forerunner 305, Forerunner 405, Forerunner 405CX, Forerunner 410, Forerunner 610, Forerunner 620, FR 60, FR 70, Foot Pod, Forerunner 310XT and Forerunner 910XT (collectively, the “Garmin accused products”).

19. The Garmin accused products use the ANT or ANT+ transmission protocols.

20. The Garmin accused products are compatible with products that use the ANT or ANT+ transmission protocols.

21. The Foot Pod product uses the ANT or ANT+ transmission protocols.

22. The Foot Pod product is compatible with watches, wrist displays and other devices that use the ANT or ANT+ transmission protocols.

23. When used with the Foot Pod, each of the Forerunner 50, Forerunner 210, Forerunner 220, Forerunner 305, Forerunner 405, Forerunner 405CX, Forerunner 410, Forerunner 610, Forerunner 620, FR 60, FR70, Forerunner 310XT and Forerunner 910XT determines and displays a user’s speed, pace and distance traveled.

24. When used with the Foot Pod, in each of the Forerunner 50, Forerunner 201, Forerunner 200, Forerunner 305, Forerunner 405, Forerunner 405CX, Forerunner 410, Forerunner 610, Forerunner 620, FR 60, FR70, Forerunner 310XT and Forerunner 910XT, data representing a user’s speed, pace and distance traveled is wirelessly transmitted from a transmitter in the Foot Pod to a receiver in the Forerunner.

25. Each of the Forerunner 50, Forerunner 201, Forerunner 200, Forerunner

305, Forerunner 405, Forerunner 405CX, Forerunner 410, Forerunner 610, Forerunner 620, FR 60, FR70, Forerunner 310XT and Forerunner 910XT receives and processes data representing a user's speed, pace and distance traveled.

26. When used with a Foot Pod, in each of the Forerunner 50, Forerunner 210, Forerunner 220, Forerunner 305, Forerunner 405, Forerunner 405CX, Forerunner 410, Forerunner 610, Forerunner 620, FR 60, FR70, Forerunner 310XT and Forerunner 910XT, the receiver in the Forerunner is synchronized with the transmitter in the Foot Pod such that the receiver is switched on only when the transmitter is expected to transmit data to the receiver and switched off when a transmission is not expected from the transmitter.

27. The Speed/Cadence Sensor uses the ANT or ANT+ transmission protocols.

28. The Speed/Cadence Sensor is compatible with devices that use the ANT or ANT+ transmission protocols.

29. When used with the Speed/Cadence Sensor, each of the Edge 305, Edge 500, Edge 510, Edge 705, Edge 800 and Edge 810 determines and displays a user's speed, cadence and distance traveled.

30. When used with the Speed/Cadence Sensor, in each of the Edge 305, Edge 500, Edge 510, Edge 705, Edge 800 and Edge 810, data representing a user's speed, cadence and distance traveled is wirelessly transmitted from a transmitter in the Speed/Cadence Sensor to a receiver in the Edge.

31. Each of the Edge 305, Edge 500, Edge 510, Edge 705, Edge 800 and

Edge 810 receives and processes data representing a user's speed, cadence and distance traveled.

32. When used with a Speed/Cadence Sensor, in each of the Edge 305, Edge 500, Edge 510, Edge 705, Edge 800 and Edge 810, the receiver in the Edge is synchronized with the transmitter in the Speed/Cadence Sensor such that the receiver is switched on only when the transmitter is expected to transmit data to the receiver and switched off when a transmission is not expected from the transmitter.

33. Garmin has sold the Garmin accused products in the United States.

34. Garmin has used the Garmin accused products in the United States.

35. Third parties have used the Garmin accused products in the United States.

36. Garmin has infringed at least claims 1 and 9 of the '375 patent under 35 U.S.C. §271(a) by using the Edge 305, Edge 500, Edge 510, Edge 705, Edge 800, Edge 810, Speed/Cadence Sensor, Forerunner 50, Forerunner 210, Forerunner 220, Forerunner 305, Forerunner 405, Forerunner 405CX, Forerunner 410, Forerunner 610, FR 60, FR 70, Foot Pod, Forerunner 310XT and Forerunner 910XT.

37. Garmin has actively induced infringement of at least claims 1, 9 and 10 of the '375 patent under 35 U.S.C. § 271(b) by providing, and encouraging others to use, the Edge 305, Edge 705, Edge 800, Edge 810, Speed/Cadence Sensor, Forerunner 50, Forerunner 210, Forerunner 220, Forerunner 305, Forerunner 405, Forerunner 405CX, Forerunner 410, Forerunner 610, FR 60, FR 70, Foot Pod, Forerunner 310XT and Forerunner 910XT. Such direct infringers include purchasers of these products.

38. Garmin had knowledge of its infringement of the '375 patent before this suit was filed, and has acted with specific intent to induce infringement. Specifically, Garmin was contacted regarding the '375 patent and its relevance to the accused products in July 2012. Garmin declined to acquire rights under the '375 patent but continued to sell and provide the accused products, and to encourage and assist purchasers of the products to use them in infringing manner through the www.thisisant.com website and in marketing and sales materials.

39. Separately, Garmin had knowledge of its infringement of the '375 patent from the filing *MSPBO v. Adidas* suit. And on October 22, 2013, MSPBO sent Garmin a letter asserting that the accused products infringe the '375 patent and informing Garmin that it requires a license. Garmin again declined to acquire rights under the '375 patent and has continued to sell and provide the accused products, and to encourage and assist purchasers of the products to use them in an infringing manner through the www.thisisant.com website and in marketing and sales materials.

40. Garmin has contributed to infringement of at least claims 1, 9 and 10 of the '375 patent under 35 U.S.C. § 271(c) by making offering for sale, selling and providing the Edge 305, Edge 705, Edge 800, Edge 810, Speed/Cadence Sensor, Forerunner 50, Forerunner 210, Forerunner 220, Forerunner 305, Forerunner 405, Forerunner 405CX, Forerunner 410, Forerunner 610, FR 60, FR 70, Foot Pod, Forerunner 310XT and Forerunner 910XT. These products are not staple articles or commodities of commerce capable of substantial non-infringing use. Furthermore, Garmin engaged in the recited activities knowing that the products were especially

made or adapted for use in an infringing manner.

41. Garmin has actively induced infringement at least claims 1, 9 and 10 of the '375 patent under 35 U.S.C. § 271(b) by marketing, offering for sale, selling and providing the ANT and ANT+ transmission protocols and Foot Pods, and encouraging and assisting its customers to implement the ANT and ANT+ transmission protocols and Foot Pods into their products to determine and display travel data such as speed and distance. These products are identified, for example, at the www.thisisant.com website.

42. As stated in paragraphs 38-39 above, Garmin had knowledge of its infringement of the '375 patent before this suit was filed, and could have but did not take a license under the '375 patent or take steps to avoid infringement. However, Garmin has continued to act with specific intent to induce infringement.

43. Garmin has contributed to the infringement of at least claims 1, 9 and 10 of the '375 patent under 35 U.S.C. § 271(c) by making, offering for sale, selling and providing components, including at Foot Pods, for the Adidas products accused of infringement. These components are not staple articles or commodities of commerce suitable for non-infringing use. Furthermore, Garmin engaged in the recited activities knowing that the components were especially made or adapted for use in an infringing manner.

44. Garmin has benefitted from MSPBO's patented technology. The Garmin accused products comprise the bulk of Garmin's "Fitness" segment. Garmin's most recent SEC Form 10-K states that Garmin generated \$321,788,000 in revenue and \$204,615,000 in gross profits from sales of products in the Fitness segment in the fiscal

year ended December 29, 2012; \$298,163,000 in revenue and \$181,759,000 in gross profits from sales of products in the Fitness segment in the fiscal year ended December 31, 2011; and \$240,474,000 in revenue and \$149,744,000 in gross profits from sales in the Fitness segment in the fiscal year ended December 25, 2010. The success of the Garmin accused products is considerably attributable to the technology protected by the '375 patent which MSPBO owns and has not authorized Garmin to use without the payment of a royalty.

45. Garmin's infringement has injured, and continues to injure, MSPBO.

46. Garmin has continued its infringing and inducing activities even after becoming aware of the '375 patent and its relevance to the Garmin accused products and third-party products that implement Garmin components and the ANT or ANT+ transmission protocols.

47. Garmin's infringement has been willful and deliberate. Garmin has acted with at least reckless disregard for MSPBO's patent rights.

48. MSPBO is entitled to recover damages adequate to compensate MSPBO for Garmin's infringement in an amount no less than a reasonable royalty, under 35 U.S.C. § 284.

49. Because Garmin's infringement has been willful and deliberate, this case is exceptional and MSPBO is entitled to enhanced damages and attorney fees.

PRAYER FOR RELIEF

WHEREFORE, MSPBO asks this Court to enter judgment against Garmin and its subsidiaries, affiliates, agents, servants, employees and all persons in active concert or participation with them, granting the following relief:

A. An award of damages adequate to compensate MSPBO for the infringement that has occurred, together with prejudgment interest from the date infringement of the '375 patent began;

B. An award to MSPBO of all remedies available under 35 U.S.C. § 284;

C. A permanent injunction against further infringement, inducement of infringement and contributory infringement of the '375 patent;

D. An award to MSPBO of all remedies available under 35 U.S.C. § 285;

E. Such other and further relief as this Court or a jury may deem proper and just.

JURY DEMAND

MSPBO demands a trial by jury on all issues so triable.

Date: December 16, 2013

Respectfully submitted,

/s/ David J. Sheikh

David J. Sheikh
NIRO, HALLER & NIRO
181 West Madison Street, Suite 4600
Chicago, Illinois 60602-4515
Phone: (312) 236-0733
Fax: (312) 236-3137
Email: sheikh@nshn.com

Alexander Clayden
LATHROP & GAGE LLP
950 17th Street, Suite 2400
Denver, Colorado 80202
(720) 931-3200
Fax: (720) 931-3201
Email: aclayden@lathropgage.com

Attorneys for Plaintiff MSPBO, LLC