

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MASA LLC,

Plaintiff,

v.

APPLE INC.,

Defendant.

Case No. 4:15-cv-889

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Masa LLC (“Masa”), for its Complaint against Defendant Apple Inc. (“Apple”), states as follows:

Parties

1. Plaintiff Masa LLC is a Missouri limited liability company with its principal place of business located at 731 Spiceberry Lane, Wildwood, Missouri 63005.

2. Defendant Apple is a California corporation with its principal place of business located at 1 Infinite Loop, Cupertino, California 95014. Apple has designated CT Corporation System, 120 South Central Ave., Clayton, Missouri 63105 as its agent.

Jurisdiction and Venue

3. This is an action for patent infringement under 35 U.S.C. § 271. The Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

4. The Court has personal jurisdiction over Apple because Apple conducts business in this district, has committed acts of patent infringement, and has induced acts of patent infringement by others in this district, out of which this cause of action arises.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b), (c), and (d), and § 1400(b), because Apple is subject to personal jurisdiction in this district, has regularly conducted business in this judicial district, and some of the infringing acts complained of herein occurred in this judicial district.

Patent-In-Suit

6. On August 27, 2013, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 8,519,834 (“the ‘834 patent”), entitled “Wrist Wound Vibrating Device” to co-inventors Andrea T. Jersa, Michael J. Jersa, III, and Avinash G. Bhardwaj (“Inventors”). A copy of the ‘834 patent is attached as Exhibit A.

7. Masa is the owner of the ‘834 patent and holds all rights to sue for past, present, and future infringement of the ‘834 patent.

Facts

8. The ‘834 patent contains three independent claims and eleven dependent claims. Independent claim 1, and the claims that depend from it, generally cover a method of receiving and transmitting electronic signals, such as text messages or phone calls, on a vibrating device that can be strapped to a user’s wrist, and alerting a user to the received electronic signal by vibrating the device.

9. Independent claims 6 and 10, and their dependent claims, generally claim a vibrating device worn on a user’s wrist that receives and sends electronic messages, and the vibrating device is actuated to alert a user that the user has received a message.

10. The claimed vibrating device may include a display panel that can display electronic signals, such as a text message and a phone number associated with an individual that sent a text message.

11. Apple—a global consumer electronics seller and manufacturer—makes, uses, imports, sells, and offers to sell, among other things, personal computers, tablet computers, and cellular telephones, specifically its iPhone products.

12. On April 24, 2015, Apple released its new line of wearable technology called the Apple Watch, Apple Watch Sport, and Apple Watch Edition (“Apple Watch Products”).

13. As shown by way of example in the photograph below, the Apple Watch Products are personal electronic devices that are coupled to a strap and designed to be worn on a user’s wrist like a wrist watch.

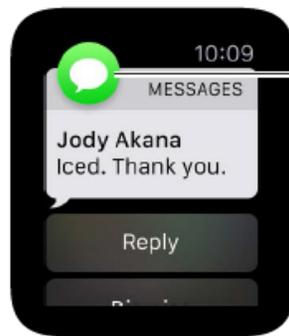


(Apple Watch Sport)



(Apple Watch Sport)

14. The Apple Watch Products are designed to be paired via Bluetooth® with Apple's iPhone products, and are designed to receive and respond to electronic signals such as text messages or phone calls that a user receives on his or her cellphone. This is depicted, for example, at page 27 of the Apple Watch User Guide Version 1.0¹ as shown below:



15. The Apple Watch Products can alert a user to the received electronic signal by creating a vibration on the user's wrist. A user can use a selector option switch (for example, the Apple Watch Products' Digital Crown) to select a stored phone number to send a pre-programmed text message in response.

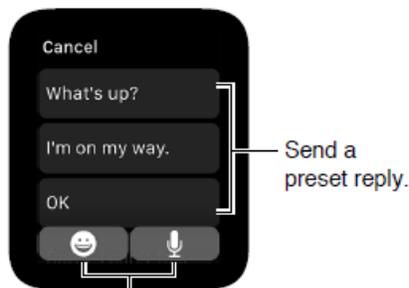


(Apple Watch Sport)
(red arrow added to identify Digital Crown)

¹ The Apple Watch User Guide Version 1.0 is accessible at https://manuals.info.apple.com/MANUALS/1000/MA1708/en_US/apple_watch_user_guide.pdf



(Apple Watch Sport)



(The Apple Watch User Guide Version 1.0 at 41)

16. The Apple Watch Products can also receive electronic signals and send notifications to a user regarding, among other things, date, time, calendar appointments, reminders, and emails.

17. Apple's customers and end-users of the Apple Watch Products perform the same methods claimed in the '834 patent and the Apple Watch Products have the same features claimed in the '834 patent.

18. Apple instructs its customers and the end-users of the Apple Watch Products how to use the Apple Watch Products in an infringing manner. Apple's instructions are provided in at least Apple's online User Guide. For example, Apple instructs a user on how to use the Digital

Crown to select and send preset messages. Apple directs its customers to the online User Guide in the packaging of the Apple Watch Products. Exhibit B.²

19. In a letter dated February 5, 2014, counsel for the Inventors notified Apple of the ‘834 patent, and informed Apple that the Apple Watch Products contain many of the same features claimed in the ‘834 patent. Inventor’s counsel included a copy of the ‘834 patent in this letter to Apple.

COUNT I

Infringement of U.S. Patent No. 8,519,834 by Apple

20. Masa incorporates by reference Paragraphs 1 through 19 above, as if fully set forth herein.

21. Apple has directly infringed claims 1-14 of the ‘834 patent under 35 U.S.C. § 271(a) by making, using, selling, and/or offering to sell, its Apple Watch Products within the United States. Apple’s direct infringement is ongoing.

22. Apple has also indirectly infringed claims 1-5 of the ‘834 patent by inducing others to directly infringe the claimed methods.

23. Apple has induced its customers and end-users to directly infringe the ‘834 patent by using the Apple Watch Products and taking active steps, directly and/or through contractual relationships with others, with specific intent to cause the end-users to use the Apple Watch Products in a manner that infringes the ‘834 patent.

24. Such steps by Apple include, among other things, advising or directing customers and end-users to use the Apple Watch Products in an infringing manner, and/or distributing instructions that guide users to use the Apple Watch Products in an infringing manner. Apple’s

² The Apple Watch online User Guide can also be accessed at www.apple.com/support/manuals/watch. This link is included within the packaging of the Apple Watch Products. Exhibit B.

online User Guide for the Apple Watch Products specifically directs and instructs its end-users on how to use the Apple Watch Products in an infringing manner, and specifically on how to select and send a pre-programmed text message through the use of the Digital Crown. Apple's acts of inducing infringement are ongoing.

25. Upon information and belief, Apple possessed specific intent to induce direct infringement of the '834 patent by its customers and end-users that used the Apple Watch Products.

26. Apple was objectively aware of the '834 patent during the design phase of the Apple Watch Products at least as early as February 5, 2014. On February 5, 2014, counsel for the Inventors sent a copy of the '834 patent to Apple and informed Apple of the Inventors' belief that the Apple Watch Products would infringe the '834 patent upon publically available information about the anticipated design.

27. Apple has committed and continues to commit acts of infringement under 35 U.S.C. § 271(a) and (b) by making, using, importing, selling, and/or offering to sell its Apple Watch Products. In committing these acts of infringement, Apple acted despite an objectively high likelihood that its actions constituted infringement of at least one valid and enforceable claim, and Apple knew or should have known that its actions constituted an unjustifiably high risk of infringement of at least one valid and enforceable claim.

28. Apple's infringement has been knowing and willful as Apple knew of the '834 patent since at least when it received the Inventor's February 5, 2014 letter, before the final design and release of its Apple Watch Products.

29. Masa has been damaged as a result of Apple's infringing conduct.

Jury Demand

Under Rule 38(b) of the Federal Rules of Civil Procedure, Masa demands a trial by jury of all issues so triable.

Prayer for Relief

WHEREFORE, Masa requests that the Court enter judgment against Defendant Apple and respectfully prays that the Court enter an order:

- A. Finding that Defendant Apple has directly and/or indirectly infringed U.S. Patent No. 8,519,834 under 35 U.S.C. § 271(a) and (b);
- B. Finding that Defendant Apple's infringement has been willful;
- C. Awarding compensatory damages to Masa under 35 U.S.C. § 284;
- D. Trebling the damage award under 35 U.S.C. § 284;
- E. Awarding Masa pre-judgment and post-judgment interest;
- F. Finding this to be an exceptional case under 35 U.S.C. § 285 and awarding Masa its reasonable attorneys' fees and expenses in this action;
- G. Awarding Masa its costs in this action; and
- H. Awarding such other and further relief as the Court deems just and proper.

Dated: June 5, 2015

Respectfully submitted,

SENNIGER POWERS LLP

By: 

Robert M. Evans, Jr., #35613MO
Keith A. Rabenberg, #35616MO
Marc W. Vander Tuig, #52032MO
Elizabeth E. Fabick, #61749MO
Kyle G. Gottuso, #64869MO
100 N. Broadway, 17th Floor
St. Louis, MO 63102
(314) 345-7000
(314) 345-7600 Facsimile
revans@senniger.com
krabenberg@senniger.com
mvandertuig@senniger.com
efabick@senniger.com
kgottuso@senniger.com

Attorneys for Plaintiff