

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

SMARTWATCH MOBILECONCEPTS,
LLC.,
Plaintiff,

v.

TIMEX GROUP USA, INC.,
Defendant

Case No. 3:24-CV-1294

JURY TRIAL DEMANDED

COMPLAINT

SmartWatch Mobileconcepts LLC (“Plaintiff” or “Smartwatch”) files this Complaint alleging patent infringement of the claims of U.S. Patent No. 10,362,480 (“the ’480 patent”) (referred to as the “Patent-in-Suit”) by Timex Group USA, Inc. (“Defendant” or “Timex”).

PARTIES

1. Plaintiff is a Texas Limited Liability Corporation with its principal place of business located in Travis County, Texas.

2. On information and belief, Defendant is a Delaware corporation with a principal address at 555 Christian Road, Middlebury, CT 06762 and has a regular and established place of business at the same location. Defendant may be served via its registered agent Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware 19808, or wherever else they may be found.

JURISDICTION AND VENUE

3. This Court has original subject matter jurisdiction over the entire action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because Plaintiff’s claim arises under an Act of Congress relating to patents, namely, 35 U.S.C. § 271.

4. This Court has personal jurisdiction over Defendant because: (i) Defendant is present within or has minimum contacts within the State of Connecticut and this judicial district; (ii) Defendant has purposefully availed itself of the privileges of conducting business in the State of Texas and in this judicial district; and (iii) Plaintiff's cause of action arises directly from Defendant's business contacts and other activities in the State of Connecticut and in this judicial district.

5. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and 1400(b). Defendant has committed acts of infringement and has a regular and established place of business in this District. Further, venue is proper because Defendant conducts substantial business in this forum, directly or through intermediaries, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct and/or deriving substantial revenue from goods and services provided to individuals in Connecticut and this District.

NATURE OF THE CASE

6. Plaintiff is the owner of all right, title and interest in the Patent-in Suit and alleges infringement of at least claim 1 of the Patent-in-Suit by Defendant's Timex®FamilyConnect™ product, literally and/or under the doctrine of equivalents.

CAUSE OF ACTION **(Infringement of the '480 Patent)**

7. On July 23 2019, U.S. Patent No. 10,362,480 ("the '480 patent") entitled "Systems, methods and apparatuses for enabling wearable device user access to secured electronics systems" was duly and legally issued by the U.S. Patent and Trademark Office. A copy of the '480 Patent is annexed hereto as Exhibit A. Plaintiff owns the '480 patent by assignment.

8. The '480 patent relates to systems, methods, and apparatuses for enabling wearable device users access to secured electronic systems.

9. Defendant maintains, operates, and administers systems, products, and services that enable a wearable device to access secured electronic systems that infringe one or more of claims 1-9 of the '480 patent, literally or under the doctrine of equivalents. Defendant put the inventions claimed by the '480 Patent into service (i.e., used them). But for Defendant's actions, the claimed-invention embodiments involving Defendant's products and services would never have been put into service. Defendant's acts complained of herein caused those claimed-invention embodiments as a whole to perform, and Defendant's procured monetary and commercial benefit from it.

10. Initial infringement allegations may be found in the chart attached as Exhibit B. These allegations of infringement are preliminary and are therefore subject to change. The Accused products include the Timex watches found at <https://www.timex.com/browse/collections/family-connect/>.

11. Defendant has and continues to induce infringement of the Patent-in Suit. Defendant has actively encouraged or instructed others (e.g., its customers and/or the customers of its related companies), and continues to do so, on how to use its products and services (e.g., to make a systems, methods, and apparatuses to enable a wearable device to access secured electronic systems) such as to cause infringement of one or more of claims 1-9 of the '480 patent, literally or under the doctrine of equivalents. Moreover, Defendant has known of the '480 patent and the technology underlying it from at least the filing date of this lawsuit.¹ For clarity, direct infringement is previously alleged in this Complaint.

¹ Plaintiff reserves the right to amend and add inducement pre-suit if discovery reveals an earlier date of knowledge.

12. Defendant has and continues to contributorily infringe. Defendant has actively encouraged or instructed others (e.g., its customers and/or the customers of its related companies), and continues to do so, on how to use its products and services (e.g. to make a communication apparatus for providing an indication about a missed call) and related such as to cause infringement of one or more of claims 1-9 of the '480 patent, literally or under the doctrine of equivalents. Further, there are no substantial noninfringing uses for Defendant's accused products and services. Moreover, Defendant has known of the '480 patent and the technology underlying it from at least the filing date of this lawsuit.² For clarity, direct infringement is previously alleged in this complaint.

13. Defendant has caused and will continue to cause Plaintiff damage by directly and indirectly infringing (including inducing infringement of) the claims of the '480 patent.

14. Plaintiff has never sold a product. Upon information and belief, Plaintiff's predecessors-in-interest have never sold a product. Plaintiff is a non-practicing entity, with no products to mark. Under the rule of reason analysis, Plaintiff has taken reasonable steps to ensure marking by any licensee producing an article that practices the '480 patent ("patented article").

15. Plaintiff has pled all statutory requirements to obtain pre-suit damages. Further, all conditions precedent to recovery are met.

16. Plaintiff and its predecessors-in-interest have entered into settlement licenses with several defendant entities in other cases, but none of the settlement licenses were to produce a patented article, for Plaintiff or under its patents. Duties of confidentiality prevent disclosure of settlement licenses and their terms in this pleading but discovery will show that Plaintiff and its predecessors-in-interest have substantially complied with Section 287(a). Furthermore, each of

² Plaintiff reserves the right to amend and add inducement pre-suit if discovery reveals an earlier date of knowledge.

the defendant entities in the settlement licenses did not agree that they were infringing any of Plaintiff's patents, including the Patent-in-Suit, and thus were not entering into the settlement license to produce a patented article for Plaintiff or under its patents.

17. Further, to the extent necessary, Plaintiff has limited its claims of infringement to method claims, thereby removing any requirement for marking.

18. To the extent Defendant identifies an alleged unmarked product produced for Plaintiff or under its patents, Plaintiff will develop evidence in discovery to either show that the alleged unmarked product does not practice the Patent-in-suit or that Plaintiff has substantially complied with the marking statute.

19. Defendant has failed to identify any alleged patented article for which Section 287(a) would apply. Further, Defendant has failed to allege that any other defendant entity has produced a patented article.

20. The policy of § 287 serves three related purposes: (1) helping to avoid innocent infringement; (2) encouraging patentees to give public notice that the article is patented; and (3) aiding the public to identify whether an article is patented. These policy considerations are advanced when parties are allowed to freely settle cases without admitting infringement and thus not require marking. All settlement licenses were to end litigation and thus the policies of §287 are not violated.

21. Such a result is further warranted by 35 U.S.C. §286 which allows for the recovery of damages for six years prior to the filing of the complaint.

22. For each previous settlement license, Plaintiff understood that (1) the settlement license was the end of litigation between the defendant entity and Plaintiff and was not a license where the defendant entity was looking to sell a product under any of Plaintiff's patents; (2) the

settlement license was entered into to terminate litigation and prevent future litigation between Plaintiff and the defendant entity for patent infringement; (3) the defendant entity did not believe it produced any product that could be considered a patented article under 35 U.S.C. §287; and, (4) Plaintiff believes it has taken reasonable steps to ensure compliance with 35 U.S.C. §287 for each prior settlement license.

23. Each settlement license that was entered into between another defendant entity and Plaintiff was negotiated in the face of continued litigation and while Plaintiff believes there was infringement, no defendant entity agreed that it was infringing. Thus, each prior settlement license reflected a desire to end litigation and as such the policies of §287 are not violated.

JURY DEMAND

Plaintiff hereby requests a trial by jury on issues so triable by right.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

- a. enter judgment that Defendant has infringed the claims of the '480 patent;
- b. award Plaintiff damages in an amount sufficient to compensate it for Defendant's infringement of the Patent-in-Suit in an amount no less than a reasonable royalty or lost profits, together with pre-judgment and post-judgment interest and costs under 35 U.S.C. § 284;
- c. declare this case to be "exceptional" under 35 U.S.C. § 285 and award Plaintiff its attorneys' fees, expenses, and costs incurred in this action;
- d. declare Defendant's infringement to be willful and treble the damages, including attorneys' fees, expenses, and costs incurred in this action pursuant to 35 U.S.C. § 284;

- e. a decree enjoining Defendant and its agents, servants, employees, affiliates, divisions, and subsidiaries, and those in association with Defendant from infringing the claims of the Patents-in-Suit in the future; and
- f. award Plaintiff such other and further relief as this Court deems just and proper.

Respectfully submitted,

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