

**UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE**

SPORTBRAIN HOLDINGS INC.,

Plaintiff,

v.

WITHINGS, INC.,

Defendant.

Civil Action No. _____

JURY TRIAL DEMANDED

ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff SportBrain Holdings Inc. (“Plaintiff” or “SportBrain Holdings”), by and through its undersigned counsel, files this Original Complaint for Patent Infringement against Defendant Withings, Inc. (hereinafter, “Defendant”) as follows:

NATURE OF THE ACTION

1. This is a patent infringement action to stop Defendant's infringement of Plaintiff's United States Patent No. 7,454,002 entitled “*Integrating Personal Data Capturing Functionality Into a Portable Computing Device and a Wireless Communication Device*” (hereinafter, the “’002 Patent” or the “Patent-in-Suit”). A copy of the ‘002 Patent, is attached hereto as Exhibit A. Plaintiff seeks injunctive relief and monetary damages.

PARTIES

2. SportBrain Holdings is a corporation organized and existing under the laws of the State of Texas since November 19, 2010. Plaintiff maintains its principal place of business at 6700 Woodlands Parkway No. 230-181, The Woodlands, Montgomery County, Texas 77382-2575. Plaintiff is the exclusive licensee of the Patent-in-Suit, and possesses all rights thereto,

including the exclusive right to exclude the Defendant from making, using, selling, offering to sell or importing in this district and elsewhere into the United States the patented invention(s) of the Patent-in-Suit, the right to sublicense the Patent-in-Suit, and to sue the Defendant for infringement and recover past damages.

3. Upon information and belief, Withings, Inc. is organized under the laws of Delaware with its principal place of business located at 101 Main Street, Floor 14, Cambridge, Massachusetts, 02142¹ and may be served with process through its Registered Agent for Service, Harvard Business Services, Inc., 16192 Coastal Highway, Lewes, Delaware, 19958.

JURISDICTION AND VENUE

4. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. §§ 271, 281, 283, 284, and 285. This Court has subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 1331 and 1338(a).

5. The Court has personal jurisdiction over Defendant because: Defendant is present within or has minimum contacts within the State of Delaware and the District of Delaware; Defendant has purposefully availed itself of the privileges of conducting business in the State of Delaware and in the District of Delaware; Defendant has sought protection and benefit from the laws of the State of Delaware; Defendant regularly conducts business within the State of Delaware and within the District of Delaware, and Plaintiff's causes of action arise directly from Defendant's business contacts and other activities in the State of Delaware and in the District of Delaware.

¹ Withings, Inc. appears to also be registered with the Secretary of the Commonwealth of Massachusetts as a foreign corporation with its principal office located at 185 Alewife Brook Pkwy., STE 410, Cambridge, Massachusetts, 02138.

6. More specifically, Defendant, directly and/or through its intermediaries, makes, ships, distributes, uses, offers for sale, sells, and/or advertises (including via the provision of an interactive web page) its products and services in the United States, the State of Delaware, and the District of Delaware, which products and services infringe the '002 Patent. Upon information and belief, Defendant has committed patent infringement in the State of Delaware and in the District of Delaware. Defendant solicits customers for its products and services in the State of Delaware and in the District of Delaware. Defendant has many paying customers who are residents of the State of Delaware and the District of Delaware and who use Defendant's products and services in the State of Delaware and in the District of Delaware.

7. Venue is proper in the District of Delaware pursuant to 28 U.S.C. §§ 1391 and 1400(b).

COUNT I:
INFRINGEMENT OF U.S. PATENT NO. 7,454,002

8. Plaintiff re-alleges and incorporates by reference each of Paragraph 1-7 above.

9. The '002 Patent was duly and legally issued by the United States Patent and Trademark Office on November 18, 2008 after full and fair examination. Plaintiff is the exclusive licensee of the '002 Patent, and possesses all right, title and interest in the '002 Patent including the right to enforce the '002 Patent, and the right to sue Defendant for infringement and recover past damages. The '002 Patent is in full force and effect.

10. On information and belief, Defendant operates, advertises, implements, and controls its website, www.withings.com, to support its products and services that infringe the '002 Patent, including but not limited to: Pulse O2 and related app and/or website (hereinafter, the "Accused Products and Services").

11. Plaintiff is informed and believes that Defendant has infringed and continues to infringe the '002 Patent, either literally or under the doctrine of equivalents. Upon information and belief, Defendant has infringed and continues to infringe one or more claims of the '002 Patent by making, using, selling, providing, advertising and/or importing, directly or through intermediaries, in this district and elsewhere in the United States, devices for integrating a personal data capturing functionality into a wireless communication device and for analyzing and supplying feedback information to a user through the combined use of the personal parameter receiver, a wireless communication device, a network server, and website in this district and elsewhere in the United States through its website. Specifically, one or more of Defendant's Accused Products and Services, infringe one or more of the claims of the '002 Patent when used by the Defendant. Defendant's Accused Products and Services are available for sale on its website and through various retailers located in this district.

12. Upon information and belief, Defendant has knowingly and intentionally induced and continues to induce infringement of one or more claims of the '002 Patent in this district and elsewhere in the United States, by its intentional acts which have successfully, among other things, encouraged, instructed, enabled, aided, abetted and otherwise caused its customers to use Defendant's devices for integrating a personal data capturing functionality into a wireless communication device and for analyzing and supplying feedback information to a user through the combined use of the personal parameter receiver, a wireless communication device, a network server, and website in this district and elsewhere in the United States through its website. Defendant has had knowledge of its infringement upon filing of the original complaint at the very latest. Upon information and belief, Defendant has specifically intended that its customers use the Accused Products and Services that infringe the '002 Patent by, at a minimum,

providing access to, support for, training and instructions for, the Accused Products and Services to its customers to enable said customers to use said apparatus, products and services in such a way that infringes the '002 Patent; and Defendant knew that these actions, would induce, have induced, and will continue to induce infringement by its customers. Even where performance of the steps required to infringe one or more claims of the '002 Patent is accomplished by the Defendant and Defendant's customer jointly, Defendant's actions have intentionally and solely caused all of the steps to be performed.

13. Upon information and belief, Defendant has contributed to and continues to contribute to the infringement of one or more claims of the '002 Patent in this district and elsewhere in the United States, by its intentional acts which have successfully, among other things, encouraged, instructed, enabled and otherwise caused its customers to use the Accused Products and Services that have been provided by Defendant to its customers for the primary purpose of causing infringing acts by said customers by importing, offering to sell, and/or selling (directly or through intermediaries), to its customers, the Accused Products and Services covered by the '002 Patent, which Accused Products and Services constitute a material part of the invention, and further that Defendant's customers have utilized said systems in a manner that infringes one or more claims of the '002 Patent. Defendant has had knowledge of its infringement upon filing of the original complaint at the very latest. Upon information and belief, Defendant has specifically intended and/or specifically intends that its customers use the Accused Products and Services in such a way that infringes the '002 Patent by, at minimum, providing access to, support for, and training and instructions for said apparatus, products, systems and services, that infringe the '002 Patent, and knew and/or knows that its transaction security apparatus and the Accused Products and Services are especially made and/or adapted for

user(s) to infringe one or more claims of the '002 Patent and, therefore, are not staple articles or commodities of commerce suitable for a substantial non-infringing use. Even where performance of the steps required to infringe one or more claims of the '002 Patent is accomplished by the Defendant and Defendant's customer jointly, Defendant's actions have intentionally and solely caused all of the steps to be performed.

14. Defendant's aforesaid activities have been without authority and/or license from Plaintiff.

15. Despite its knowledge of the '002 Patent, and without a reasonable basis for continuing its infringing activities, on information and belief, Defendant continues to willfully infringe the '002 Patent.

16. Plaintiff is entitled to recover from Defendant the damages sustained by Plaintiff as a result of Defendant's wrongful acts in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

17. Defendant's infringement of Plaintiff's rights under the '002 Patent will continue to damage Plaintiff, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

JURY DEMAND

18. Plaintiff demands a trial by jury on all issues.

PRAYER FOR RELIEF

19. Plaintiff respectfully requests the following relief:

- A. An adjudication that one or more claims of the Patent-in-Suit has been infringed, either literally and/or under the doctrine of equivalents, by the Defendant;
- B. An adjudication that Defendant has induced infringement of one or more claims of the Patent-in-Suit by Defendant's customers;
- C. An adjudication that Defendant has contributed to infringement of one or more claims of the Patent-in-Suit by Defendant's customers;
- D. An award of damages to be paid by Defendant adequate to compensate Plaintiff for its past infringement and any continuing or future infringement up until the date such judgment is entered, including interest, costs, and disbursements as justified under 35 U.S.C. § 284 and, if necessary to adequately compensate Plaintiff for Defendant's infringement, an accounting of all infringing sales including, but not limited to, those sales not presented at trial;
- E. A grant of permanent injunction pursuant to 35 U.S.C. § 283, enjoining the Defendant from further acts of infringement with respect to the claims of the Patent-in-Suit;
- F. That this Court declare this to be an exceptional case and award Plaintiff its reasonable attorneys' fees and costs in accordance with 35 U.S.C. § 285; and,
- G. Any further relief that this Court deems just and proper.

Dated: April 25, 2014

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