

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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SPLIT PIVOT, INC.,

Plaintiff,

v.

Civil Action No. 12-cv-639

TREK BICYCLE CORPORATION,

Defendant.

**FIRST AMENDED COMPLAINT**  
**JURY TRIAL DEMANDED**

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Plaintiff Split Pivot, Inc. (“Split Pivot”), for its First Amended Complaint against Defendant Trek Bicycle Corporation (“Trek”), alleges and states as follows:

**JURISDICTION AND VENUE**

1. This is an action for patent infringement under the patent laws of the United States of America, 35 U.S.C. § 1, *et seq.*, and for breach of contract and violation of the Wisconsin Uniform Trade Secrets Act, Wisc. Stat. § 134.90, as hereinafter more fully appears.

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1332, and 1338(a). The amount in controversy exceeds the sum of \$75,000 exclusive of interest and costs. This Court also has supplemental subject matter jurisdiction over certain causes of action asserted in this action pursuant to 28 U.S.C. § 1367.

3. This Court has personal jurisdiction over Trek. Trek is a Wisconsin corporation and has its principal place of business in Waterloo, Wisconsin. Trek, either directly or through its distributors and retailers or others, manufactures, imports, ships, distributes, offers for sale, sells, and/or advertises its products in the United States, the State of Wisconsin, and within this judicial district.

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b), (c), and 1400(b).

### **PARTIES**

5. Split Pivot is a corporation organized and existing under the laws of the Commonwealth of Massachusetts, having its principal place of business in Edgartown, Massachusetts.

6. Trek is a corporation organized and existing under the laws of the State of Wisconsin, having its principal place of business in Waterloo, Wisconsin.

### **FACTS**

7. Split Pivot is the owner by assignment of all the rights and interests in and to United States Patent No. 7,717,212 (the “‘212 Patent”), which was duly and legally issued by the United States Patent Office on May 18, 2010. A copy of the ‘212 Patent is attached as Exhibit 1.

8. Split Pivot is the owner by assignment of all the rights and interests in and to United States Patent No. No. 8,002,301 (the “‘301 Patent”), which was duly and legally issued by the United States Patent and Trademark Office on August 23, 2011. A copy of the ‘301 Patent is attached as Exhibit 2. The ‘212 and ‘301 Patents are collectively referred to as the “Split Pivot Patents” in this Complaint.

9. Upon information and belief, Trek first became aware of the suspension system ultimately patented in the ‘212 Patent in March 2007. During January and February 2007, the inventor of the Split Pivot Patents, Dave Weagle, communicated with Trek employees, Dylan Howes, Jose Gonzalez, and Joe Vadeboncoeur about potential product collaboration between Weagle and Trek. Those discussions resulted in Weagle and Trek entering a fully-executed Mutual Confidentiality Agreement on or about March 12, 2007.

10. The Mutual Confidentiality Agreement, *inter alia*, obligated the parties to protect “Proprietary information,” including “areas of that party’s research, development, manufacturing, marketing, sales, customers and other business activities.”

11. On or about March 12, 2007, after Trek signed the Mutual Confidentiality Agreement, Weagle sent Trek a PowerPoint presentation via email describing the suspension design later patented in the Split Pivot Patents. Weagle had designated the PowerPoint presentation as confidential pursuant to the non-disclosure agreement. Among other things, the Split Pivot PowerPoint described the new technology used by the Split Pivot suspension system, identified its performance features, identified three alternative design mock-ups, and included a diagram labeled “Patent Pending Design” that was ultimately published as “FIGURE 3” in each of the Split Pivot Patents.

12. Among topics specifically discussed with Trek personnel during the meeting held after execution of the Mutual Confidentiality Agreement were leverage rates and leverage rate curves and the advantages of certain leverage ratios, and the separation of anti-squat, brake squat, and leverage rates. Other topics discussed included, *inter alia*, air springs, coil springs, position sensitive damping, location of derailleur hangers, shock orientations, and marketing issues, including specific existing products in the marketplace.

13. Some of Trek’s bicycles utilize extended inner race 6903 bearings and MR1728 bearings at the rear dropout that were developed by Weagle and sourced from an independent supplier.

14. On April 16, 2007, more than one month after receiving the Split Pivot PowerPoint presentation from Weagle, Trek filed patent application serial no. 11/735,816, which later issued as United States Patent No. 7,837,213.

15. Trek actively monitored the prosecution of the patent applications that ultimately issued as the '212 and '301 Patents. In February 2010, Trek's patent counsel sent an email to the prosecuting attorney on the Split Pivot Patents. Trek's counsel's email explained that he represented Trek and "ha[d] been following your client, Dave Weagle's patent applications on his Split Pivot bike . . . ." Trek's counsel then explained that the purpose of his email was to bring certain alleged prior art to Split Pivot's attention. As an attachment to his email, Trek's counsel provided Split Pivot's prosecuting attorney with several pages from a catalog relating to the 1994 Crestone Peak Super Active Suspension bike that, according to Trek's counsel, disclosed a concentric rear pivot.

16. After receiving and reviewing this communication from Trek's patent counsel, Split Pivot's patent counsel, out of an abundance of caution, disclosed the Crestone Peak reference to the Examiner. The patent applications filed by Split Pivot ultimately issued over the Crestone Peak reference.

17. Split Pivot has fully complied with the marking requirements of 35 U.S.C. § 287 with respect to the Split Pivot Patents.

**COUNT I: INFRINGEMENT OF THE '212 PATENT**

18. Split Pivot realleges and incorporates by reference paragraphs 1 through 17 as if fully stated herein.

19. Trek has infringed and continues to infringe the '212 Patent by manufacturing, using, importing, offering for sale, and/or selling bikes incorporating Trek's Active Braking Pivot (or "ABP") and Full Floater™ features, including, but not necessarily limited to, bikes within the Top Fuel, Fuel EX, Remedy, Scratch, Session 88, and Superfly product lines, that

include the structures recited in at least one claim of the '212 Patent in violation of 35 U.S.C. § 271(a).

20. Upon information and belief, Trek's infringement of the '212 Patent has been willful.

21. Split Pivot has suffered and will continue to suffer monetary damages as a result of Trek's infringement and willful infringement of the '212 Patent in an amount to be determined at trial, but in no event less than a reasonable royalty.

22. Split Pivot has suffered irreparable harm and will continue to suffer irreparable harm as a result of Trek's infringement and willful infringement of the '212 Patent unless Trek is enjoined from infringing the '212 Patent.

#### **COUNT II: INFRINGEMENT OF THE '301 PATENT**

23. Split Pivot realleges and incorporates by reference paragraphs 1 through 22 as if fully stated herein.

24. Trek has infringed and continues to infringe the '301 Patent by manufacturing, using, importing, offering for sale, and/or selling bikes incorporating Trek's Active Braking Pivot (or "ABP") and Full Floater™ features, including, but not necessarily limited to, bikes within the Top Fuel, Fuel EX, Remedy, Scratch, Session 88, and Superfly product lines of bikes, that include the structures recited in one or more claims of the '301 Patent in violation of 35 U.S.C. § 271(a).

25. Upon information and belief, Trek's infringement of the '301 Patent has been willful.

26. Split Pivot has suffered and will continue to suffer monetary damages as a result of Trek's infringement and willful infringement of the '301 Patent in an amount to be determined at trial, but in no event less than a reasonable royalty.

27. Split Pivot has suffered irreparable harm and will continue to suffer irreparable harm as a result of Trek's infringement and willful infringement of the '301 Patent unless Trek is enjoined from infringing the '301 Patent.

### **COUNT III: BREACH OF CONTRACT**

28. Split Pivot realleges and incorporates by reference paragraphs 1 through 27 as if fully stated herein.

29. Trek has used proprietary information it received from Dave Weagle in breach of the Mutual Confidentiality Agreement between it and Weagle.

30. Split Pivot has suffered and will continue to suffer monetary damages as a result of Trek's breach of the Mutual Confidentiality Agreement in an amount in excess of \$75,000, the precise amount to be determined at trial.

### **COUNT IV: VIOLATION OF WISCONSIN UNIFORM TRADE SECRETS ACT**

31. Split Pivot realleges and incorporates by reference paragraphs 1 through 30 as if fully stated herein.

32. Trek has violated the Wisconsin Uniform Trade Secrets Act, Wis. Stat. § 134.90, by misappropriating to its benefit, by improper means, without express or implied consent, trade secrets of Split Pivot.

33. Such trade secrets include, but are not necessarily limited to, information provided to Trek by Split Pivot pursuant to the Mutual Confidentiality Agreement, viz., information relating to leverage rates and leverage rate curves and the advantages of certain

leverage ratios; the separation of anti-squat, brake squat, and leverage rates; air springs; coil springs; position sensitive damping; location of derailleur hangers; shock orientations; and marketing information.

34. This information possessed independent economic value, was not generally known or knowable by proper means, and was the subject of reasonable efforts to maintain its secrecy, including execution of the Mutual Confidentiality Agreement.

35. As a result of Trek's violation of the Wisconsin Uniform Trade Secrets Act, Split Pivot has suffered damages in an amount believed to be in excess of \$75,000, the precise amount to be determined at trial. Trek also has been unjustly enriched as a result of its wrongful conduct in an amount to be determined at trial which amount should be awarded to Split Pivot. At a minimum, and alternatively, Split Pivot is entitled to an award of a reasonable royalty.

36. Upon information and belief, Trek's violation of the Wisconsin Uniform Trade Secrets Act was willful, deliberate, and malicious, thereby entitling Split Pivot to an award of punitive damages in an amount not exceeding twice the award of any damages and further entitling Split Pivot to an award of its reasonable attorneys' fees.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Split Pivot, Inc. respectfully requests this Court to enter judgment against Defendant Trek Bicycle Corporation as follows:

A. That Trek has infringed the '212 and '301 Patents in violation of 35 U.S.C. § 271(a);

B. Enjoining Trek and its respective officers, agents, servants, employees, and attorneys, and all persons in active concert or participation with any of the foregoing from

infringing the '212 and '301 Patents in violation of 35 U.S.C. § 271(a) or from selling colorable imitations of their infringing products;

C. Awarding Split Pivot damages in amounts sufficient to compensate it for Trek's infringement of the '212 and '301 Patents, but in no event less than a reasonable royalty, the precise amounts to be determined at trial;

D. Awarding increased damages pursuant to 35 U.S.C. § 284 as a result of Trek's willful infringement of the Split Pivot Patents, the precise amount to be determined;

E. Declaring this case to be exceptional under 35 U.S.C. § 285 and awarding Split Pivot its attorneys' fees, expenses, and costs incurred in this action;

F. Awarding damages for Trek's breach of the Mutual Confidentiality Agreement, the precise amount to be determined at trial;

G. Awarding actual and unjust enrichment damages for Trek's violation of the Wisconsin Uniform Trade Secrets Act, Wisc. Stat. § 134.90, the precise amount to be determined at trial;

H. Awarding punitive damages in an amount not to exceed twice the amount of damages awarded for Trek's violation of the Wisconsin Uniform Trade Secrets Act, and Split Pivot's reasonable attorneys' fees;

I. Awarding pre-judgment and post-judgment interest on all sums awarded and costs; and

J. Awarding Split Pivot such other and further relief as this Court deems just and equitable.



**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff Split Pivot, Inc. respectfully requests a trial by jury of any and all issues on which a trial by jury is available under applicable law.

Dated: November 21, 2012.

s/Alan M. Anderson

Alan M. Anderson (admitted *pro hac vice*)  
Aaron C. Nyquist (admitted *pro hac vice*)  
Alan Anderson Law Firm LLC  
Suite 1260 The Colonnade  
5500 Wayzata Blvd.  
Minneapolis, MN 55416  
Telephone: 612-756-7000  
Fax: 612-756-7050  
aanderson@anderson-lawfirm.com  
anyquist@anderson-lawfirm.com

and

Christopher A. Young (admitted *pro hac vice*)  
Briggs and Morgan, P.A.  
2200 IDS Center  
80 South Eighth Street  
Minneapolis, Minnesota 55402-2157  
Telephone: 612-977-8400  
cyoung@briggs.com

and

Joseph A. Ranney (Wis. Bar No. 1005007)  
Joseph T. Leone (Wis. Bar No. 1018149)  
DeWitt Ross & Stevens S.C.  
Two East Mifflin Street, Suite 600  
Madison, WI 53703-2865  
Telephone: 608-283-5612  
Fax: 608-252-9243  
jar@dewittross.com  
jtl@dewittross.com

Attorneys for Plaintiff Split Pivot, Inc.