

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

WISCONSIN ARCHERY PRODUCTS, LLC,)	
)	
Plaintiff,)	
)	
v.)	
)	
GARMIN INTERNATIONAL, INC.,)	
)	
Defendant.)	

Case No. 2:24-cv-02076

COMPLAINT

Plaintiff Wisconsin Archery Products, LLC (“Wisconsin Archery”), for its complaint against defendant Garmin International, Inc. (“Garmin”), alleges as follows:

Parties

1. Plaintiff Wisconsin Archery is a Wisconsin company with its principal place of business at W1734 Lee Road, Hayward, Wisconsin 54843. Among other things, Wisconsin Archery is engaged in the business of developing and selling archery equipment and accessories.
2. Defendant Garmin is a Kansas company with a principal place of business at 1200 East 151st Street, Olathe, Kansas 66062.

Nature of Action

3. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. § 100 *et seq.*
4. Wisconsin Archery is the owner of all right, title and interest in U.S. Patent 8,316,551 (“the ‘551 patent”) entitled *Auto-Correcting Bow Sight*, originally issued on November 27, 2012, a copy of which is attached as Exhibit A. An *ex parte* reexamination

certificate for the '551 patent issued on November 3, 2020, a copy of which is attached as Exhibit B.

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332(a)(1), and 1338(a).

6. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(c) and 1400(b).

BACKGROUND

7. In and around 2008, the named inventors of the '551 patent, Timothy Gorsuch and James Buckley, developed a new and novel auto-correcting archery bow sight. Generally speaking, the inventive bow sight provides the hunter with an adjusted aiming point that accounts for various environmental conditions that may affect the flight of an arrow, such as wind, angle of inclination, and distance to target. The hunter can activate the system while a bow is at full draw, thus ensuring an accurate aiming point while the bow is in the shooting position.

8. Stated another way, a hunter aims the aiming point at the target and draws the bow. The hunter initiates the sequence by actuating an input device, such as a trigger or button, attached to the bow at a location that can be easily accessed while the blow is at full draw. The bow sight then automatically measures various environmental conditions and generates an aim indicator. The hunter then aligns the new aim indicator with the target and releases the arrow.

9. Mr. Buckley assigned his rights in the '551 patent to Mr. Gorsuch on November 7, 2012. Mr. Gorsuch subsequently assigned his rights in the '551 patent – constituting all right title and interest in the '551 patent – to Wisconsin Archery on February 1, 2014. Thus, as of February 1, 2014, Wisconsin Archery owned all right and title to the '551 patent.

10. In and around 2008, Wisconsin Archery developed a prototype of the novel bow sight disclosed in the '551 patent. However, Wisconsin Archery's attempts to commercialize its own product ultimately proved unsuccessful. Accordingly, Wisconsin Archery sought a partner to develop and commercialize the bow sight claimed and disclosed in the '551 patent.

11. Around 2014, Burriss Company, Inc. ("Burriss") approached Wisconsin Archery regarding the possibility of commercializing the technology in the '551 patent. Upon information and belief, Burriss had been developing its own auto-correcting bow sight and asked Wisconsin Archery for a license to the '551 patent. Wisconsin Archery agreed to grant Burriss a license for the '551 patent, as well as for Wisconsin Archery's know-how and the technology it had developed, such as Wisconsin Archery's prototype.

12. Wisconsin Archery and Burriss memorialized their business relationship in a License Agreement, *see* Exhibit A, which was fully executed on March 11, 2015.

13. As part of the License Agreement, Wisconsin Archery granted Burriss the exclusive right to enforce the patent against infringers. Burriss exercised this right by filing a lawsuit for patent infringement against Garmin on April 20, 2018, in the United States District Court for the District of Oregon – Eugene Division, captioned *Burriss Company, Inc. v. Garmin International, Inc.*, Case No. 6:18-cv-00700-AA ("the Burriss Lawsuit"). Wisconsin Archery was not a named party to the Lawsuit, nor did it participate in the Lawsuit.

14. In response to the Lawsuit, Garmin filed a Petition for *inter partes* review of the '551 patent on May 29, 2018, in the United States Patent and Trademark Office ("the USPTO"), captioned *Garmin International, Inc., v. Wisconsin Archery Products LLC*, Case No. IPR2018-01137 ("the IPR"). Wisconsin Archery was named as a party to the IPR because Wisconsin Archery owns the '551 patent, and the IPR must be brought against the owner of the challenged

patent. Garmin filed an unopposed motion to stay the Burriss Lawsuit pending the outcome of the IPR, which the district court granted, thus staying the Burriss Lawsuit.

15. Burriss engaged Merchant & Gould P.C. (“Merchant & Gould”) to file a Preliminary Response on behalf of Wisconsin Archery in the IPR on September 14, 2018. Merchant and Gould also represented Burriss in the Burriss Lawsuit. The USPTO instituted the IPR in an Institution Decision dated December 11, 2018.

16. Shortly after entry of the Institution Decision, Burriss informed Wisconsin Archery that Burriss would no longer defend the IPR on behalf of Wisconsin Archery.

17. Due to Burriss’ withdrawal, and in an effort to preserve the ’551 patent, Wisconsin Archery engaged its own counsel, Boyle Fredrickson, S.C. (“Boyle Fredrickson”), to represent Wisconsin Archery in the IPR. Boyle Fredrickson subsequently appeared in the IPR on behalf of Wisconsin Archery and Merchant & Gould withdrew from the IPR.

18. Wisconsin Archery, via Boyle Fredrickson, defended the IPR to conclusion, which resulted in a Final Written Decision finding the challenged claims, i.e., 1, 2, 4, 5, 7-9, 12, 12, and 20-26, unpatentable.

19. Dissatisfied with the Final Written Decision issued by the Board in the IPR, Wisconsin Archery initiated an *ex parte* reexamination of the ’551 patent within the United States Patent and Trademark Office, i.e., Reexamination Request No. 90/014,450, on February 11, 2020. During prosecution of the reexamination proceeding, Wisconsin Archery proposed amended claims that were ultimately allowed over the prior art considered during the IPR and over additional prior art that was not considered during the IPR. A reexamination certificate ultimately issued. *See* Exhibit B.

20. On February 11, 2020, Wisconsin Archery sent an email to Burris formally terminating the License Agreement.

21. On February 17, 2020, Burris' (via its counsel, Merchant & Gould) emailed Wisconsin Archery (via its counsel Boyle Fredrickson) indicating that Burris planned to dismiss the Burris Lawsuit against Garmin with prejudice. Wisconsin Archery did not consent to the dismissal, and Burris proceeded with dismissing the Burris Lawsuit with prejudice. The district court entered judgment dismissing the Burris Lawsuit with prejudice on April 2, 2020.

22. Wisconsin Archery, the sole owner of the '551 patent, was not a party to the Burris Lawsuit.

23. Moreover, the License Agreement was not tantamount to an assignment of the '551 patent to Burris for at least the following reasons: (i) the License Agreement explicitly states that Wisconsin Archery is the owner of the '551 patent; (ii) the License Agreement only allows for "limited sublicenses;" (iii) the License Agreement required Burris to pay Wisconsin Archery a percentage of any recovery resulting from Burris' enforcement of the '551 patent; (iv) the License Agreement obligated Wisconsin Archery to "lend its name to the lawsuit if required by law," indicating that the parties did not consider the License Agreement to be a full assignment of the '551 patent to Burris; and (v) the License Agreement required Wisconsin Archery to pay maintenance fees for the '551 patent. Thus, Burris did not have standing to bring the Burris Lawsuit without the inclusion of Wisconsin Archery.

24. Since Wisconsin Archery was never named as a party to the Burris Lawsuit, the district court did not have subject matter jurisdiction over the Burris Lawsuit, and the judgment is null and void.

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