

## SportBrain Steps into Another Patent Suit over Line of Guess Smartwatches



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Friday, August 11, 2017

Guess?, Inc. ("Guess") is the next checkpoint on SportBrain Holdings LLC's ("SportBrain") run of patent infringement suits. The clothing and accessory company was hit with a lawsuit in the U.S. District Court for the Northern District of Illinois on July 4, 2017, one of a flurry of suits filed by SportBrain concerning its data collection technology patent. (*SportBrain Holdings LLC v. Guess?, Inc.*, No. 17-04957 (N.D. Ill. filed July 4, 2017)). The complaint alleges that the Guess Connect Watch and Watch 2 (and related software and apps) infringe upon SportBrain's United States Patent No. 7,454,002 (the "'002 Patent"). The patent describes a system for monitoring a user's physical data (such as heart rate and the number of steps taken in a given day) via a portable device, and then wirelessly transmitting the data from the device to a server that provides feedback information to the user. SportBrain claims this system made it possible to provide users access to information about their activities, thus assisting them in monitoring their daily exercise.

Specifically, the complaint alleges that Guess has infringed the '002 Patent by making, using, selling, providing, advertising and/or importing, directly or through

intermediaries, 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 a website.

In tracking the legal movements of SportBrain over the past few years, it seems they have increased their pace significantly as of late and have established themselves as a frequent filer of patent infringement suits. After filing only a few lawsuits in prior years, an analysis by *Law360* concluded that SportBrain filed a total of 75 suits in 2016 (all of which allege infringement of the '002 Patent), which was good enough for a bronze medal among the list of that year's most active patent plaintiffs. The suits have targeted various watchmakers, such as Timex Group USA Inc. and Tag Heuer USA Inc., and makers of wearable devices, such as Garmin International Inc. and Fitbit Inc., among others.

SportBrain initially set out to market a "personal fitness assistant" and pedometer in the early 2000s, but never met their goal of becoming an industry leader in the increasingly popular field of wearable activity trackers. In an attempt to stay in shape, in 2016 the company altered its business strategy to enforcing its '002 Patent by shifting their patents into a separate holding company and aggressively enforcing its IP; indeed, SportBrain's founder once was quoted as expressing frustration for being muscled out of the wearables market by the big tech companies, and promising to "slingshot our IP at all the offenders and unleash the full extent of the law until justice is served." SportBrain has maintained its quick pace of lawsuits in the current year, having filed more than two dozen of them according to court records.

Earlier this year, and before the race against Guess was underway, the patent at the heart of SportBrain's litigation routine was challenged in the USPTO by a third party via an inter partes review (IPR). In a decision released in February, the Patent Trial and Appeal Board (PTAB) stated that the petitioner had demonstrated a reasonable likelihood that it would prevail in establishing the unpatentability of all asserted claims of the '002 Patent and instituted the IPR.

Moving forward, it remains to be seen how things will work out as SportBrain puts Guess through its paces over its smartwatch technology. If we know one thing for sure, it's that all interested parties will continue to monitor the movements of SportBrain and the endurance of the '002 Patent in the coming weeks and months.

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