IN THE UNITED STATES DISTRICT COURT

GARMIN LTD.,

Plaintiff,

v.

TOMTOM, INC.,

Defendant.

Civil Case No. 2-06CV-338-LED

Summary of Expert Report on Behalf of Plaintiff Garmin Ltd. Regarding Damages

Expert Background

1. I am a partner in the Atlanta office of Economic Experts, Inc. ("EEI"). In the course of my work, I provide services relating to the valuation of intellectual property. EEI charges $500 per hour for my work.

Overview of Parties

2. Garmin is the undisputed leader in providing revolutionary, award-winning global positioning technology for the consumer market. Garmin has revolutionized the field of personal navigation devices, empowering ordinary consumers with the ability to employ satellite technology to assist their everyday travels. Garmin sold in excess of $660 million of Garmin's GPS products in the U.S. in 2007. The average price of a Garmin GPS device is $250. Route recalculation was a feature of the Garmin GPS products.

3. TomTom (Garmin's closest competitor), had approximately $30 million in U.S. sales in 2006. TomTom's UNav 1.0 products did not have the route recalculation feature. The UNav 1.0 product sold for $125.

4. In 2007, TomTom introduced the UNav 2.0 product and discontinued sales of all previous models. TomTom's UNav 2.0 product, with route recalculation feature, sold more than 250,000 devices in 2007 alone. TomTom's UNav 2.0 product sells for $200. TomTom's profits from the UNav 2.0 products in 2007 and 2008 were roughly $50 million. In 2009, TomTom's profits from the UNav 2.0 product dropped to $30 million.

Royalty Rate Resulting From Hypothetical Negotiation

5. I have determined that Garmin would have accepted, and TomTom would have been willing to pay, a per-unit royalty of $10 on its sales of product containing the route recalculation feature. Based on the financial records that TomTom produced in this

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action, which show that TomTom sold or distributed 650,000 products containing the route recalculation, remote server, and adjusting the starting point features during the relevant period, a reasonable royalty for TomTom's use of the '378 patent during the infringing period would amount to $6.5 million.

Sales of Accused Product Driven by Invention

6. Based on the evidence above, there is strong evidence that route recalculation was an important feature in a consumer's decision to purchase UNav 2.0. At a minimum, there is clear evidence that it was one of 4 features marketed by TomTom in support of the sale of the accused products. Furthermore, one cannot reasonably consider a "new look and feel" to be a feature driving new sales, as such the contribution of that feature to the entire market value of the product must be adjusted downward. In contrast, there is evidence that route recalculation was a feature that drove sales. *See* GC0005697. As such, an upward adjustment to the royalty base should be made. While one can make a credible argument that the route recalculation feature drove demand for the entire $200 product; I am taking a more conservative approach by only attributing the route recalculation to the $75 difference in price between the UNav 1.0 and UNav 2.0 models. Further, to account for the other marketed features, I am conservatively estimating that the route recalculation can be attributed to at least $50 to the entire market value of the UNav 2.0 product.

Garmin Licenses

7. 2006 Garmin license of the '378 patent to TrekGPS. In this license, which was not the product of litigation, TrekGPS obtained a fully paid-up, non-exclusive license to incorporate the '378 patent technology into its TrekMate product, in exchange for a lump-sum payment of $250,000. From 2006 through 2009, when the product was discontinued, TrekMate sold and distributed approximately 22,000 TrekMate units. This translates to a per-unit royalty of approximately $11.36.

8. Early 2009 Garmin and Magellan Settlement Agreement. This was an agreement to settle Garmin's claim that Magellan infringes the '378 patent. The agreement, which was signed after approximately 10 months of discovery and shortly before the claim construction and summary judgment hearing in that case, included the following terms:
    a) a release for infringement of the '378 patent;
    b) a fully-paid up, non-exclusive license for Magellan to practice the '378 patent; and
    c) a projection that Magellan's ongoing use of the '378 patent would amount to the sale of approximately 20,000 accused product per year during the term of the license, which runs through the patent's expiration in 2018; and
    d) a one-time, $1.2 million payment from Magellan to Garmin.

9. Although it involves rights to the patent-in-suit, this agreement is not probative of the value of a reasonable royalty for the use of that patent. Because the agreement effects a litigation settlement, it reflects the manner in which each party valued its litigation risks

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and not the value of the '378 patent itself. Moreover, it does not reflect the value of a license entered into by a willing licensee and a willing licensor, who both assume that the patent is valid and infringed. Finally, the agreement was executed approximately three years after the hypothetical negotiation in this case would have occurred. As such, I gave this agreement little weight in my analysis.

TomTom Licenses

10. 2005 agreement between TomTom and POI. POI provided code for suggesting points of interest in TomTom's UNav 1.0 product, as well as a non-exclusive license to practice POI's point of interest related patents, in exchange for a per-unit royalty of $19 for each product sold under the agreement. Because POI actually supplied the code for the UNav 1.0 product, some portion of this royalty is attributable to the services aspects of this agreement. The agreement does not allocate value between the license and the services, but in my experience patent rights are considered to be much more valuable than other services typically included in licenses. However, to be conservative in my calculations, I have allocated it evenly. Accordingly, I have determined that this license reflects a $9.50 per unit royalty in conducting my analysis.

11. 2004 cross license between TomTom and Magellan. TomTom provided a non-exclusive license to 9 of its GPS patents, Magellan contributed a non-exclusive license to 10 of its software patents, and TomTom agreed to pay Magellan a $10.25 per unit royalty on the relevant product, for a period of 5 years. Because it is not directly analogous, I have given this license slightly less weight. Nonetheless, this license points to a per-patent royalty of approximately $10 per unit, which is further evidence of the value that the parties would have placed on the '378 patent during a hypothetical negotiation occurring in 2007.

Rule of Thumb Corroboration of Royalties

12. As a "check" upon my royalty valuations I have applied a commonly accepted rule of thumb, also known as the 25% rule. The TomTom UNav 2.0 product sells for $75 more than the previous version and contained four separate features that may be viewed as the basis for customer demand to upgrade from version 1.0. In my experience, GPS companies can make as much as 80% profits on their products, after market saturation. Applying the 25% Rule to the gross profits derived from the sale of TomTom's UNav 2.0, divided amongst the 4 features, results in a royalty of approximately $15.

Totality of the Evidence

13. As discussed above, each of the categories of evidence discussed in this report, when considered independently and properly weighed, point to a per unit royalty of $10. The fact that multiple independent sources of information each point to a similar royalty rate further supports the accuracy of my opinion regarding the value of a reasonable royalty for use of the '378 patent.

Conclusion

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14. For the reasons discussed above, a reasonable royalty for TomTom's infringing use of the '378 patent would be $10 per unit containing the route recalculation feature that is sold or distributed in the United States. This would amount to a total royalty of $6.5 million through 2009.

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