

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS**

MAX OUT GOLF, LLC

*Plaintiff,*

v.

WORLDWIDE GOLF, INC.

*Defendant.*

Case Number:

Judge:

Magistrate Judge:

**COMPLAINT FOR PATENT  
INFRINGEMENT AND JURY  
DEMAND**

Plaintiff Max Out Golf, LLC, by and through its undersigned counsel, hereby complains of Defendant, WORLDWIDE GOLF, INC. as follows:

**NATURE OF LAWSUIT**

1. This is an action by Plaintiff Max Out Golf, LLC (“Plaintiff” or “Max Out Golf”) against Defendant Worldwide Golf, Inc. (“Worldwide” or “Defendant”) for infringement of United States Patent Nos. 8,696,497 and 7,967,695 (collectively, the “Max Out Golf Patents”).

**PARTIES AND PATENTS**

2. Max Out Golf is a limited liability company organized under the laws of California and having a principal place of business at 1775 York Avenue Suite 37-B, New York NY 10128.

3. Max Out Golf owns all rights, title, and interest in and has standing to sue for infringement of United States Patent No. 8,696,497 (“the ‘497 Patent”), entitled “System and Methods for Fitting Golf Equipment” (Exhibit A) and United States Patent No. 7,967,695 (“the ‘695 Patent”), entitled “System and Methods for Fitting Gold Equipment” (Exhibit B).

4. On information and belief, Defendant is a corporation existing under the laws of Delaware with a principle place of business of 2711 Centerville Road, Suite 400, Wilmington, Delaware, 19808.

5. On information and belief, Defendant does regular business in this Judicial District and conducts business leading to Defendant's acts of infringement in this Judicial District.

6. Defendant manufactures, assembles, uses, offers for sale and/or sells a golf equipment fitting system that uses advanced technology to identify optimum equipment for the golfer and correct swing flaws (the "Accused Product"). Upon information and belief, the Accused Product is made, used, offered for sale, and/or sold in the United States, including in the Eastern District of Texas.

#### **JURISDICTION AND VENUE**

7. This is a suit for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code § 1 *et seq.*

8. This Court has exclusive jurisdiction over the subject matter of the Complaint under 28 U.S.C. §§ 1331 and 1338(a).

9. This Court has personal jurisdiction over Defendant because it has engaged in continuous and systematic business in the Eastern District of Texas.

10. Upon information and belief, Defendant derives substantial revenues from commercial activities in Texas; and, upon information and belief, is operating and/or supporting products or services that fall within one or more claims of Max Out Golf's patents in this District.

11. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c) and 28 U.S.C. § 1400(b) at least because the claim arises in this Judicial District, Defendant may be found and transacts business in this Judicial District, and injuries suffered by Max Out Golf took place in this Judicial District.

12. Defendant is subject to the general and specific personal jurisdiction of this Court at least because of its minimum contacts with the State of Texas.

**DEFENDANT'S ACTS OF PATENT INFRINGEMENT**

13. Max Out Golf reiterates and reincorporates the allegations set forth in paragraphs 1 through 12 above as if fully set forth herein.

14. As a part of its business, Defendant owns, uses, and/or operates at least one golf equipment fitting system that uses advanced technology to identify optimum equipment for the golfer and to assist in correcting swing flaws.

**CLAIMS FOR RELIEF**

**COUNT I**

**(Patent Infringement of U.S. Patent No. 8,696,497 under 35 U.S.C. § 271 et seq.)**

15. Max Out Golf reiterates and reincorporates the allegations set forth in paragraphs 1 through 14 above as if fully set forth herein.

16. On April 15, 2014, the United States Patent and Trademark Office duly and legally issued United States Patent No. the '497 Patent, entitled "Systems and Methods for Fitting Golf Equipment." Max Out Golf is the owner of the entire right, title and interest in and to the '497 Patent. A true and correct copy of the '497 Patent is attached as Exhibit A to this Complaint.

17. Max Out Golf is the owner of the '497 Patent and has the right to enforce the '497 Patent.

18. The '497 Patent is valid and enforceable.

19. On information and belief, Defendant has infringed and continues to infringe one or more claims of the '497 Patent, literally and/or under the doctrine of equivalents in this District and elsewhere in the United States.

20. On information and belief, Defendant manufactures, offers to sale, sells and/or uses systems falling within the scope of one or more claims of the '497 Patent. As a result,

Defendant has infringed, continues to infringe, and/or threatens infringement of one or more of the claims of the '497 Patent.

21. On information and belief, Defendant has directly infringed and continues to directly infringe one or more claims of the '497 Patent, in violation of 35 U.S.C. § 271(a), by, among other things, making, using, offering for sale, and/or selling a golf equipment fitting system that uses advanced technology to objectively identify the optimum equipment for the golfer and correct swing flaws so that the golfer can achieved optimum performance on the golf course.

22. On information and belief, Defendant is contributorily infringing, will induce, is inducing and has induced infringement of one or more claims of the '497 Patent by offering to sell and selling golf club fitting services using GC2 and Foresight Sports' FSX FitModule, including current and preceding versions, to customers, buyers, sellers, users and others who directly infringe the '497 Patent.

23. On information and belief, Defendant has had knowledge of the '497 Patent at least as early as April 6, 2015, the day that it was served with a written invitation to license, which specifically identified the '497 Patent.

24. On information and belief, Defendant has not changed or modified its infringing behavior since April 6, 2015 and said infringement is committed with full knowledge of Plaintiff's rights under the '497 Patent and in willful and wanton disregard thereof, rendering this an exceptional case under 35 U.S.C. § 285.

25. On information and belief, despite Defendant's knowledge of the '497 Patent, Defendant has continued and is continuing to sell and offer to sell the GolfMart fitting service, including use of GC2 and Foresight Sports' FSX FitModule club fitting software, to third parties

with the object of promoting their use to infringe, as shown by Defendant's clear expression and other affirmative steps taken to foster infringement by their customers.

26. Defendant's aforesaid infringing activity has directly and proximately caused damage to Plaintiff Max Out Golf, including loss of profits from sales and/or licensing revenues it would have made but for the infringements. Unless enjoined, the aforesaid infringing activity will continue and will cause irreparable injury to Max Out Golf, for which there is no adequate remedy at law.

**COUNT II**  
**(Patent Infringement of U.S. Patent No. 7,967,695**  
**Under 35 U.S.C. § 271 et seq.)**

27. Max Out Golf reiterates and reincorporates the allegations set forth in paragraphs 1 through 26 above as if fully set forth herein.

28. On June 28, 2011, the United States Patent and Trademark Office duly and legally issued the '695 Patent entitled "Systems and Methods for Fitting Golf Equipment." Max Out Golf is the owner of the entire right, title and interest in and to the '695 Patent. A true and correct copy of the '695 Patent is attached as Exhibit B to this Complaint.

29. Max Out Golf is the owner of the '695 Patent and has the right to enforce the '695 Patent.

30. The '695 Patent is valid and enforceable.

31. On information and belief, Defendant has infringed and continues to infringe one or more claims of the '695 Patent, literally and/or under the doctrine of equivalents in this District and elsewhere in the United States.

32. On information and belief, Defendant manufactures, offers to sale, sells and/or uses systems falling within the scope of one or more claims of the '695 Patent. As a result,

Defendant has infringed, continues to infringe, and/or threatens infringement of one or more of the claims of '695 Patent.

33. On information and belief, Defendant has directly infringed and continues to directly infringe one or more claims of the '695 Patent, in violation of 35 U.S.C. § 271(a), by, among other things, making, using, offering for sale, and/or selling a golf equipment fitting system that uses advanced technology to objectively identify the optimum equipment for the golfer and correct swing flaws so that the golfer can achieved optimum performance on the golf course.

34. On information and belief, Defendant is contributorily infringing, will induce, is inducing and has induced infringement of one or more claims of the '695 Patent by offering to sell and selling golf fitting services using GC2, Foresight launch monitor, FSX FitModule, Foresight Performance Simulation, and/or Foresight Game Changer, including current and preceding versions, to customers, buyers, sellers, users and others who directly infringe the '695 Patent.

35. On information and belief, Defendant has had knowledge of the '695 Patent at least since April 6, 2015, the day that it was served with a written invitation to license, which specifically identified the '695 Patent.

36. On information and belief, Defendant has not changed or modified its infringing behavior since April 6, 2015 and said infringement is committed with full knowledge of Plaintiff's rights under the '695 Patent and in willful and wanton disregard thereof, rendering this an exceptional case under 35 U.S.C. § 285.

37. On information and belief, despite Defendant's knowledge of the '4695 Patent, Defendants have continued and are continuing to sell and offer to sell golf club fitting services

using GC2 and Foresight Sports' FSX FitModule to third parties with the object of promoting their use to infringe, as shown by Defendant's clear expression and other affirmative steps taken to foster infringement by their customers.

38. Defendant's aforesaid infringing activity has directly and proximately caused damage to Plaintiff Max Out Golf, including loss of profits from sales and/or licensing revenues it would have made but for the infringements. Unless enjoined, the aforesaid infringing activity will continue and will cause irreparable injury to Max Out Golf, for which there is no adequate remedy at law.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Max Out Golf respectfully requests that this Court enter judgment against Defendant and its subsidiaries, affiliates, agents, servants, employees and all persons in active concert or participation with it, granting the following relief:

1. A judgment that Defendant has infringed one or more of the claims of the '495 Patent and the '695 Patent, either directly, contributorily, and/or by inducement, either literally and/or under the doctrine of equivalents;

2. A preliminary and permanent injunction against Defendant, its respective officers, agents, servants, employees, attorneys, parent and subsidiary corporations, assigns and successors in interest, and those persons in active concert or participation with them, enjoining them from direct and indirect infringement of each and every one of the Max Out Golf Patents;

3. Judgment in favor of Max Out Golf in the amount of its actual damages caused by Defendant's infringing activities, including lost profits and/or a reasonable royalty rate, together with prejudgment interest from the date infringement of the Max Out Golf Patents began, and trebling of the same by reason of the willful, wanton and deliberate nature of the infringement;

4. Judgment that this is an exceptional case and an award of Plaintiff's reasonable attorneys' fees and costs pursuant to 35 U.S.C. § 295;

5. An award to Max Out Golf of all remedies available under 35 U.S.C. §§ 284 and 285; and,
6. Such other and further relief as this Court or a jury may deem proper and just.

**JURY DEMAND**

Max Out Golf demands a trial by jury on all issues so triable pursuant to Federal Rule of Civil Procedure 38.

Dated: July 10, 2015

Respectfully submitted,

          /s/ David C. Van Dyke          

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