

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

OMNI MEDSCI, INC.,
Plaintiff,

v.

WHOOP, INC.,
Defendant.

C.A. No. 25-140-WCB

PLAINTIFF OMNI MEDSCI, INC.’S INFRINGEMENT CONTENTIONS

Pursuant to the Scheduling Order (D.I. 43), Plaintiff Omni MedSci, Inc. (“Plaintiff” or “Omni”) provides this disclosure of asserted claims and infringement contentions against Defendant WHOOP, Inc. (“Defendant” or “WHOOP”).

Plaintiff makes these disclosures based on information that is presently known and publicly available, without the benefit of discovery. Plaintiff has not completed its preparation for trial and has not received discovery from Defendant or third parties, particularly of confidential, proprietary, and/or non-public documents and information that describe the structure, function, and operation of the accused instrumentalities, or discovery on past, discontinued, or other instrumentalities reasonably similar to the presently accused instrumentalities.

Plaintiff’s investigations are ongoing. Plaintiff reserves the right to amend, supplement, or otherwise revise its asserted claims and infringement contentions, including but not limited to identification of infringed patents and claims and infringing instrumentalities.

I. IDENTIFICATION OF ASSERTED CLAIMS

Plaintiff identifies the following claims of each patent in suit as infringed by Defendant:

- U.S. Patent No. 9,055,868 (the “’868 Patent”): claims 7 and 9
- U.S. Patent No. 9,651,533 (the “’533 Patent”): claims 11 and 12

- U.S. Patent No. 10,874,304 (the “’304 Patent”): claims 12, 13, 25, and 26
- U.S. Patent No. 11,160,455 (the “’455 Patent”): claim 1
- U.S. Patent No. 12,193,790 (the “’790 Patent”): claim 7
- U.S. Patent No. 12,268,475 (the “’475 Patent”): claims 1, 5, 8, 11, 12, and 13

(collectively, the “Asserted Patents” and “Asserted Claims”). Plaintiff reserves the right to supplement its identification of Asserted Patents and Asserted Claims as discovery proceeds.

II. INFRINGEMENT CLAIM CHARTS

Plaintiff provides claim charts attached hereto as Exhibits 1-6 and which are incorporated by reference, as if fully set forth herein, identifying how each element of each Asserted Claim is found within the accused instrumentalities.

These claim charts are exemplary and are not meant to limit the evidence that Plaintiff will use to prove infringement by Defendant. Furthermore, the annotations to figures are provided for illustrative purposes. References and descriptions provided in conjunction with one claim within a chart are applicable to other claims within the chart with respect to the same or similar elements and limitations. Plaintiff intends to rely on information gathered from documents produced by Defendant to show infringement. Plaintiff reserves the right to use this information to show that certain accused instrumentalities are representative of other accused instrumentalities.

Plaintiff reserves the right to supplement its infringement contentions based on information learned through discovery, including information provided by Defendant and/or third parties. Plaintiff reserves the right and expects to rely on documents, testimony, and other evidence obtained through discovery to prove infringement in this case. Plaintiff reserves the right to rely on expert testimony to show infringement. These claim charts are not intended to and do not construe the claims of the Asserted Patents and do not limit Plaintiff’s contentions.

III. THEORIES OF INFRINGEMENT

Plaintiff contends that the accused instrumentalities literally infringe each limitations of each Asserted Patent. Plaintiff also contends that Defendant infringes under the doctrine of equivalents to the extent that Defendant contends any claim elements or limitations are not literally infringed. Defendant has not specifically identified which claim elements or limitations it contends are not literally met. Should Defendant contend that any element, step, or limitation is literally absent, Plaintiff contends and reserves the right to prove that at least the equivalent of the allegedly missing element, step, or limitation is nevertheless present and that the accused instrumentalities at least infringe under the doctrine of equivalents. Plaintiff anticipates that discovery will enable it to set forth the additional scope of equivalents, and therefore reserves the right to amend, supplement, or otherwise revise these contentions, and specifically as to the doctrine of equivalents.

IV. ACCUSED PRODUCTS AND REPRESENTATIVENESS

Plaintiff's infringement claim charts, appended hereto as Exhibits 1-6, identify and describe how the WHOOP 4.0 wearable device infringes the Asserted Claims of the Asserted Patents. Plaintiff's infringement contentions are not limited to the WHOOP 4.0 wearable device. Plaintiff contends that WHOOP's products, including, but not limited to, the WHOOP 1.0, WHOOP 2.0, WHOOP 3.0, WHOOP 4.0, WHOOP 5.0, and WHOOP MG products (each an "Accused Wearable Device" and, collectively, "Accused Wearable Devices"), also infringe the Asserted Claims of the Asserted Patents in the same or substantially the same way. The WHOOP 4.0 Accused Wearable Device is charted as representative of the Accused Wearable Devices. The WHOOP 4.0 Accused Wearable Device is representative of the Accused Wearable Devices, including because, on information and belief, (1) each Accused Wearable Device contains substantially the same structures, features, and/or other aspects for purposes of infringement, (2)

the aforementioned structures, features, and/or other aspects of the Accused Wearable Devices operate in materially the same way for purposes of infringement, and (3) discovery from WHOOP and/or third parties, including documents, source code, and other information produced during discovery, will confirm that the Accused Wearable Devices contain substantially the same aforementioned structures, features, and/or other aspects and that those structures, features, and/or other aspects of the Accused Wearable Devices operate in materially the same way for purposes of infringement.

For example, with respect to the '868 Patent, each Accused Wearable Device comprises at least the following structures that operate in materially the same way for purposes of infringement:

- a diagnostic system (to the extent the preamble of claim 7 is limiting);
- a light source;
- one or more semiconductor diodes and;
- a lens system.

With respect to the '533 Patent, each Accused Wearable Device comprises at least the following structures that operate in materially the same way for purposes of infringement:

- a measurement system (to the extent the preamble of claim 5 is limiting);
- a light source;
- a plurality of semiconductor sources;
- an apparatus comprising a plurality of lenses;
- a receiver;
- one or more filters; and
- one or more detectors.

With respect to the '304 Patent, each Accused Wearable Device comprises at least the following structures that operate in materially the same way for purposes of infringement:

- a measurement system (to the extent the preamble of claim 11 is limiting);
- a wearable measurement device;
- a light source;
- a plurality of semiconductor sources; and
- a receiver.

With respect to the '455 Patent, each Accused Wearable Device comprises at least the following structures that operate in materially the same way for purposes of infringement:

- a system for measuring one or more physiological parameters and for use with a smart phone or tablet (to the extent the preamble of claim 1 is limiting);
- a wearable device;
- a light source;
- a driver;
- a plurality of semiconductor sources;
- one or more lenses;
- a detection system comprising a plurality of detectors; and
- at least one analog to digital converter.

With respect to the '790 Patent, each Accused Wearable Device comprises at least the following structures that operate in materially the same way for purposes of infringement:

- an optical system (to the extent the preamble of claim 7 is limiting);
- a wearable device;
- a light source;

- a plurality of semiconductor diodes;
- one or more lenses;
- a detection system comprising a plurality of detectors; and
- at least one analog to digital converter.

With respect to the '475 Patent, each Accused Wearable Device comprises at least the following structures that operate in materially the same way for purposes of infringement:

- an apparatus (to the extent the preamble of claim 1 is limiting);
- one or more biosensors;
- a light source;
- a plurality of light emitting diodes;
- one or more lenses;
- a detection system comprising a plurality of detectors;
- at least one analog to digital converter; and
- a processor.

For the avoidance of doubt, the structures identified are present in each Accused Wearable Device and operate in materially the same way for purposes of infringement of each Asserted Patent. Any differences between any Accused Wearable Devices have no bearing on whether each Accused Wearable Device infringes each Asserted Claim of each Asserted Patent.

One or more Asserted Patents recite structural limitations that are not physically comprised in an Accused Wearable Device, the structural limitations including, for example, (1) “a software application capable of operating on a control system” ('868 Patent); (2) “a host” comprising “control logic” and “a memory storage device” ('868 Patent); (3) “a personal device” ('533 Patent); (4) “a remote device” ('533 Patent); (5) “a smart phone or tablet” ('304 Patent, '455 Patent); and/or

(6) “a cloud” (’304 Patent). Plaintiff’s infringement claim charts identify various smart phones, tablets, and clouds that meet one or more of the structural limitations recited above. Plaintiff’s infringement contentions are not limited to the smart phones, tablets, and/or clouds identified in Plaintiff’s infringement claim charts. For example, each Accused Wearable Device is configured to operate with one or more smart phones and/or tablets, including, but not limited to, smart phones and/or tablets manufactured by Samsung, Apple, OnePlus, and other iOS and Android OS devices. As another example, each Accused Wearable Device is configured to operate with one or more clouds, including, but not limited to, clouds provided by WHOOP, Strava, dbt Labs, and others. Plaintiff’s infringement contentions are not limited to the specific combinations identified in the Plaintiff’s infringement claim charts appended hereto as Exhibit 1-6.

The citations to evidence contained within Plaintiff’s infringement claim charts (Exhibits 1-6) are illustrative and should not be considered limiting. Plaintiff expressly reserves the right to rely upon additional or different evidence, or to rely on additional citations to the evidence already cited therein.

For the avoidance of doubt, Plaintiff’s infringement contentions, and the scope of WHOOP’s infringement, are not limited to the exemplary Accused Wearable Device, exemplary structures or operation within the Accused Wearable Device, or exemplary evidentiary citations provided in Plaintiff’s infringement claim charts appended hereto as Exhibit 1-6.

V. PRIORITY DATE

Plaintiff identifies the priority dates to which each of the Asserted Patents are entitled that claim priority to earlier applications:

Asserted Patent	Priority Claims
’868 Patent	Provisional application No. 60/408,025, filed on Sep. 3, 2002 and drafted at least as early as Sept. 1, 2002.

'533 Patent	Provisional application No. 61/747,487, filed on Dec. 31, 2012 and drafted at least as early as Oct. 10, 2012.
'304 Patent	Provisional application No. 61/747,477, filed on Dec. 31, 2012 and drafted at least as early as Dec. 24, 2012; provisional application No. 61/754,698, filed on Jan. 21, 2013 and drafted at least as early as Aug. 10, 2012; provisional application No. 61/747,472, filed on Dec. 31, 2012 and drafted at least as early as Aug. 3, 2012; provisional application No. 61/747,553, filed on Dec. 31, 2012 and drafted at least as early as Dec. 21, 2012; provisional application No. 61/747,485, filed on Dec. 31, 2012 and drafted at least as early as Sept. 30, 2012; and provisional application No. 61/747,487, filed on Dec. 31, 2012 and drafted at least as early as Oct. 10, 2012.
'455 Patent	Provisional application No. 61/747,472, filed on Dec. 31, 2012 and drafted at least as early as Aug. 3, 2012; provisional application No. 61/747,553, filed on Dec. 31, 2012 and drafted at least as early as Dec. 21, 2012; provisional application No. 61/747,485, filed on Dec. 31, 2012 and drafted at least as early as Sept. 30, 2012; provisional application No. 61/747,487, filed on Dec. 31, 2012 and drafted at least as early as Oct. 10, 2012; provisional application No. 61/747,477, filed on Dec. 31, 2012 and drafted at least as early as Dec. 24, 2012; and provisional application No. 61/754,698, filed on Jan. 21, 2013 and drafted at least as early as Aug. 10, 2012.
'790 Patent	Provisional application No. 61/754,698, filed on Jan. 21, 2013 and drafted at least as early as Aug. 10, 2012; provisional application No. 61/747,477, filed on Dec. 31, 2012 and drafted at least as early as Dec. 24, 2012; provisional application No. 61/747,472, filed on Dec. 31, 2012 and drafted at least as early as Aug. 3, 2012; provisional application No. 61/747,485, filed on Dec. 31, 2012 and drafted at least as early as Sept. 30, 2012; provisional application No. 61/747,487, filed on Dec. 31, 2012 and drafted at least as early as Oct. 10, 2012; and provisional application No. 61/747,553, filed on Dec. 31, 2012 and drafted at least as early as Dec. 21, 2012.
'475 Patent	Provisional application No. 61/747,477, filed on Dec. 31, 2012 and drafted at least as early as Dec. 24, 2012; provisional application No. 61/754,698, filed on Jan. 21, 2013 and drafted at least as early as Aug. 10, 2012; provisional application No. 61/747,472, filed on Dec. 31, 2012 and drafted at least as early as Aug. 3, 2012; provisional application No. 61/747,553, filed on Dec. 31, 2012 and drafted at least as early as Dec. 21, 2012;

	provisional application No. 61/747,485, filed on Dec. 31, 2012 and drafted at least as early as Sept. 30, 2012; and provisional application No. 61/747,487, filed on Dec. 31, 2012 and drafted at least as early as Oct. 10, 2012.
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Plaintiff's investigation is ongoing. Plaintiff reserves the right to supplement its priority claim dates (and to assert any applicable prior invention dates).

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