

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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SPLIT PIVOT, INC.,

Plaintiff,

v.

Civil Action No. 12-cv-639

TREK BICYCLE CORPORATION,,

Defendant.

**COMPLAINT**

**JURY TRIAL DEMANDED**

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Plaintiff Split Pivot, Inc. (“Split Pivot”), for its Complaint against Defendant Trek Bicycle Corporation (“Trek”), alleges and states as follows:

**JURISDICTION AND VENUE**

1. This is an action for patent infringement under the patent laws of the United States of America, 35 U.S.C. § 1, *et seq.*

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1332, and 1338(a).

3. This Court has personal jurisdiction over Trek. Trek is a Wisconsin corporation and has its principal place of business in Waterloo, Wisconsin. Trek, either directly or through its distributors and retailers or others, manufactures, imports, ships, distributes, offers for sale, sells, and/or advertises its products in the United States, the State of Wisconsin, and within this judicial district.

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b), (c), and 1400(b).

## PARTIES

5. Split Pivot, Inc. (“Split Pivot”) is a corporation organized and existing under the laws of the Commonwealth of Massachusetts, having its principal place of business in Edgartown, Massachusetts.

6. Trek is a corporation organized and existing under the laws of the State of Wisconsin, having its principal place of business in Waterloo, Wisconsin.

## FACTS

7. Split Pivot is the owner by assignment of all the rights and interests in and to United States Patent No. 7,717,212 (the “‘212 Patent”), which was duly and legally issued by the United States Patent Office on May 18, 2010. A copy of the ‘212 Patent is attached as Exhibit 1.

8. Split Pivot is the owner by assignment of all the rights and interests in and to United States Patent No. No. 8,002,301 (the “‘301 Patent”), which was duly and legally issued by the United States Patent and Trademark Office on August 23, 2011. A copy of the ‘301 Patent is attached as Exhibit 2. The ‘212 and ‘301 Patents are collectively referred to as the “Split Pivot Patents” in this Complaint.

9. Upon information and belief, Trek first became aware of the suspension system ultimately patented in the ‘212 Patent in March 2007. During January and February 2007, the inventor of the Split Pivot Patents, Dave Weagle, communicated with Trek employees, Dylan Howes, Jose Gonzalez, and Joe Vadeboncoeur about potential product collaboration between Weagle and Trek. Those discussions resulted in Weagle and Trek entering a non-disclosure agreement on or about March 1, 2007.

10. On or about March 12, 2007, after Trek signed the non-disclosure agreement, Weagle sent Trek a PowerPoint presentation via email describing the suspension design later patented in the Split Pivot Patents. Weagle had designated the PowerPoint presentation as

confidential pursuant to the non-disclosure agreement. Among other things, the Split Pivot PowerPoint described the new technology used by the Split Pivot suspension system, identified its performance features, identified three alternative design mock-ups, and included a diagram labeled “Patent Pending Design” that was ultimately published as “FIGURE 3” in each of the Split Pivot Patents.

11. On April 16, 2007, more than one month after receiving the Split Pivot PowerPoint presentation from Weagle, Trek filed patent application serial no. 11/735,816, which later issued as United States Patent No. 7,837,213.

12. Trek actively monitored the prosecution of the patent applications that ultimately issued as the ‘212 and ‘301 Patents. In February 2010, Trek’s patent counsel sent an email to the prosecuting attorney on the Split Pivot Patents. Trek’s counsel’s email explained that he represented Trek and “ha[d] been following your client, Dave Weagle’s patent applications on his Split Pivot bike . . . .” Trek’s counsel then explained that the purpose of his email was to bring certain alleged prior art to Split Pivot’s attention. As an attachment to his email, Trek’s counsel provided Split Pivot’s prosecuting attorney with several pages from a catalog relating to the 1994 Crestone Peak Super Active Suspension bike that, according to Trek’s counsel, disclosed a concentric rear pivot.

13. After receiving and reviewing this communication from Trek’s patent counsel, Split Pivot’s patent counsel, out of an abundance of caution, disclosed the Crestone Peak reference to the Examiner. The patent applications filed by Split Pivot ultimately issued over the Crestone Peak reference.

14. Split Pivot has fully complied with the marking requirements of 35 U.S.C. § 287 with respect to the Split Pivot Patents.

**COUNT I: INFRINGEMENT OF THE '212 PATENT**

15. Split Pivot realleges and incorporates by reference paragraphs 1 through 14 as if fully stated herein.

16. Trek has infringed and continues to infringe the '212 Patent by manufacturing, using, importing, offering for sale, and/or selling bikes incorporating Trek's Active Braking Pivot (or "ABP") and Full Floater™ features, including, but not necessarily limited to, bikes within the Top Fuel EX, Remedy, Scratch, Session 88, and Superfly product lines, that include the structures recited in at least one claim of the '212 Patent in violation of 35 U.S.C. § 271(a).

17. Upon information and belief, Trek's infringement of the '212 Patent has been willful.

18. Split Pivot has suffered and will continue to suffer monetary damages as a result of Trek's infringement and willful infringement of the '212 Patent in an amount to be determined at trial, but in no event less than a reasonable royalty.

19. Split Pivot has suffered irreparable harm and will continue to suffer irreparable harm as a result of Trek's infringement and willful infringement of the '212 Patent unless Trek is enjoined from infringing the '212 Patent.

**COUNT II: INFRINGEMENT OF THE '301 PATENT**

20. Split Pivot realleges and incorporates by reference paragraphs 1 through 19 as if fully stated herein.

21. Trek has infringed and continues to infringe the '301 Patent by manufacturing, using, importing, offering for sale, and/or selling bikes incorporating Trek's Active Braking Pivot (or "ABP") and Full Floater™ features, including, but not necessarily limited to, bikes within the Top Fuel EX, Remedy, Scratch, Session 88, and Superfly product lines of bikes, that

include the structures recited in one or more claims of the '301 Patent in violation of 35 U.S.C. § 271(a).

22. Upon information and belief, Trek's infringement of the '301 Patent has been willful.

23. Split Pivot has suffered and will continue to suffer monetary damages as a result of Trek's infringement and willful infringement of the '301 Patent in an amount to be determined at trial, but in no event less than a reasonable royalty.

24. Split Pivot has suffered irreparable harm and will continue to suffer irreparable harm as a result of Trek's infringement and willful infringement of the '301 Patent unless Trek is enjoined from infringing the '301 Patent.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Split Pivot, Inc. respectfully requests this Court to enter judgment against Defendant Trek Corporation as follows:

A. That Trek has infringed the '212 and '301 Patents in violation of 35 U.S.C. § 271(a);

B. Enjoining Trek and its respective officers, agents, servants, employees, and attorneys, and all persons in active concert or participation with any of the foregoing from infringing the '212 and '301 Patents in violation of 35 U.S.C. § 271(a) or from selling colorable imitations of their infringing products;

C. Awarding Split Pivot damages in amounts sufficient to compensate it for Trek's infringement of the '212 and '301 Patents, but in no event less than a reasonable royalty, the precise amounts to be determined at trial;

D. Awarding increased damages pursuant to 35 U.S.C. § 284 as a result of Trek's willful infringement of the Split Pivot Patents, the precise amount to be determined;

E. Declaring this case to be exceptional under 35 U.S.C. § 285 and awarding Split Pivot its attorneys' fees, expenses, and costs incurred in this action;

F. Awarding pre-judgment and post-judgment interest and costs; and

G. Awarding Split Pivot such other and further relief as this Court deems just and equitable.

### **DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff Split Pivot, Inc. respectfully requests a trial by jury of any and all issues on which a trial by jury is available under applicable law.

Dated: August 31, 2012.

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