

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**VEHICLE INTELLIGENCE AND SAFETY
LLC,**

Plaintiff,

v.

**MERCEDES-BENZ USA, LLC and DAIMLER
AG,**

Defendants.

Case No. 1:13-cv-04417

PATENT CASE

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT

Vehicle Intelligence and Safety LLC (“VIS”) files this First Amended Complaint (“FAC”) against Mercedes-Benz USA, LLC and Daimler AG (collectively, “Defendants”) for infringement of United States Patent No. 7,394,392 (hereinafter “the ‘392 Patent”).

THE PARTIES

1. Vehicle Intelligence and Safety LLC is a limited liability company organized and existing under the laws of the State of Nevada with its principal place of business at 155 E. Campbell Avenue, Suite 203, Campbell, California 95008.

2. Mercedes-Benz USA, LLC (“Mercedes-Benz”) is a Delaware limited liability company with a principal place of business at One Mercedes Drive, Montvale, New Jersey 07675. This Court has personal jurisdiction over Defendant, because Defendant has committed, and continues to commit, acts of infringement in this district, has multiple business establishments in this district, has conducted business in this district, and/or has engaged in continuous and systematic activities in this district.

3. Daimler AG (“Daimler”) is a German corporation with a principal place of business at 137 Mercedes Street, Stuttgart, Germany 70327. This Court has personal jurisdiction

over Defendant, because Defendant has committed, and continues to commit, acts of infringement in this district, has conducted business in this district, and/or has engaged in continuous and systematic activities in this district.

JURISDICTION AND VENUE

4. This is an action for patent infringement under Title 35 of the United States Code. VIS is seeking injunctive relief as well as damages.

5. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 (Federal Question) and 1338(a) (Patents) because this is a civil action for patent infringement arising under the United States patent statutes, 35 U.S.C. § 101 *et seq.*

6. Venue is proper under 28 U.S.C. §§ 1391(c) and 1400(b) because Defendants have committed acts of infringement in this district and/or is deemed to reside in this district.

7. This Court has personal jurisdiction over Defendants and venue is proper in this district because Defendants have committed, and continue to commit, acts of infringement in this district and/or have engaged in continuous and systematic activities in this district.

8. Defendants have imported, used, sold, and offered to sell various models of vehicles within this judicial district, including the vehicles accused of infringement in this case.

9. Mercedes-Benz's Central Region office is located at 9399 West Higgins Avenue, Ste. 210, Rosemont, Illinois 60018. Mercedes-Benz operates a Learning & Performance Center at 295 Spring Lake Drive, Itasca, Illinois 60143. Mercedes-Benz operates a Parts Distribution Center at 100 Mercedes Drive, Carol Stream, Illinois 60188.

COUNT I

(INFRINGEMENT OF U.S. PATENT NO. 7,394,392)

10. VIS incorporates paragraphs 1 through 9 herein by reference.

11. This cause of action arises under the patent laws of the United States, and in particular, 35 U.S.C. §§ 271, *et seq.*

12. VIS is the assignee of the '392 Patent, entitled "Expert System Safety Screening of Equipment Operators," with all substantial rights in the '392 Patent, including the right to exclude others and to enforce, sue and recover damages for past and future infringement. A true and correct copy of the '392 Patent is attached as Exhibit A.

13. The '392 Patent is valid and enforceable and was duly issued in full compliance with Title 35 of the United States Code.

14. VIS has been damaged as a result of Defendants' infringing conduct described in this Count. Defendants are, thus, liable to VIS in an amount that adequately compensates it for Defendants' infringement, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

15. On May 25, 2012, Mr. Kevin Roe, the inventor of the '392 Patent, wrote a letter addressed to Mr. Stephan Cannon, CEO of Mercedes-Benz USA, informing Mercedes-Benz of the '392 Patent. A copy of Mr. Roe's letter to Mercedes-Benz is attached as Exhibit B.

16. Mercedes-Benz has been on notice of the '392 Patent since at least the date of receipt of Mr. Roe's May 25, 2012 letter. On June 6, 2012, Mercedes-Benz responded to Mr. Roe's May 25, 2012 letter. A copy of Mercedes-Benz's letter is attached as Exhibit C.

17. On May 25, 2012, Mr. Roe wrote a letter addressed to Dr. Dieter Zetsche, CEO and Chairman of the Management Board of Daimler AG, informing Daimler of the '392 Patent. A copy of Mr. Roe's letter to Daimler is attached as Exhibit D.

18. Daimler has been on notice of the '392 Patent since at least the date of receipt of Mr. Roe's May 25, 2012 letter. On July 25, 2012, Daimler responded to Mr. Roe's May 25, 2012 letter. A copy of Daimler's letter is attached as Exhibit E.

Direct Infringement

19. Defendants have directly infringed, and continue to directly infringe, one or more claims of the '392 Patent in this judicial district and elsewhere in the United States, including at least claim 8, without the consent or authorization of VIS, by or through its importing, selling, and/or offering to sell vehicles in the United States, including but not limited to each Mercedes-Benz vehicle that incorporates ATTENTION ASSIST, that infringe at least claim 8 of the '392 Patent, by practicing each and every element of that claim.

20. Defendants are thereby liable for direct infringement of the '392 Patent pursuant to 35 U.S.C. § 271.

21. Defendants' actions complained of herein will continue unless Defendants are enjoined by this Court.

Indirect Infringement – Inducement

22. Based on information presently available to VIS and pursuant to Fed. R. Civ. P. 11(b)(3), VIS contends that Defendants have indirectly infringed, and continue to indirectly infringe, one or more claims of the '392 Patent, including at least claim 8, by inducing others, such as Defendants' customers, to operate vehicles in the United States, including but not limited to each Mercedes-Benz vehicle that incorporates ATTENTION ASSIST. *See Akamai*

Technologies, Inc. v. Limelight Networks, Inc., 692 F.3d 1301, 1308-09 (Fed. Cir. 2012).

Defendants' customers include but are not limited to end users who operate the Mercedes-Benz vehicles that incorporate ATTENTION ASSIST.

23. Defendants have had knowledge of the '392 Patent since receiving Mr. Roe's May 25, 2012 letters to Mercedes-Benz and Daimler, attached as Exhibits B and D, or prior to receiving Mr. Roe's letters but have since continued to cause Defendants' customers to practice, or use or operate vehicles that practice, one or more steps of the patented methods of the '392 Patent, to the extent Defendants do not directly perform such step or steps.

24. Since Defendants have had knowledge of the '392 Patent, each Defendant has had the specific intent to induce and encourage others to practice one or more steps of the patented methods of the '392 Patent. For example, Defendants encourage vehicle operators to infringe the '392 Patent, Defendants knew or should have known that vehicles with ATTENTION ASSIST infringe at least claim 8 of the '392 Patent, Defendants instruct vehicle operators how to operate the vehicle, and Defendants know that ATTENTION ASSIST observes driver behavior at the start of every trip. Defendants' respective intent may be established through circumstantial evidence. *See Broadcom Corp. v. Qualcomm, Inc.*, 543 F.3d 683, 699 (Fed. Cir. 2008). In addition, "this intent may be established where an alleged infringer who *knew or should have known* his actions would induce actual infringement, is shown to have induced infringing acts through [its] actions." *Id.* (internal quotations omitted). In accordance with Fed. R. Civ. P. 11(b)(3), VIS will likely have additional evidentiary support after a reasonable opportunity for further investigation or discovery on this issue.

25. Since Defendants have been on notice of the '392 Patent, each Defendant knew or should have known that its actions would induce actual infringement of the '392 Patent, including

at least claim 8 of the '392 Patent. In accordance with Fed. R. Civ. P. 11(b)(3), VIS will likely have additional evidentiary support after a reasonable opportunity for discovery on this issue.

26. Defendants have provided, and continue to provide, operating instructions and manuals and support to their customers who operate vehicles in the United States, including but not limited to Mercedes-Benz vehicles that incorporate ATTENTION ASSIST. Defendants have instructed, supported, and aided such customers to practice, or use or operate vehicles that practice, one or more steps of the patented methods of the '392 Patent, including at least the patented method of claim 8. In accordance with Fed. R. Civ. P. 11(b)(3), VIS will likely have additional evidentiary support after a reasonable opportunity for discovery on this issue.

27. To the extent Defendants do not directly perform each step of the patented methods of the '392 Patent, including at least the patented method of claim 8, Defendants' customers who operate the Mercedes-Benz vehicles that incorporate ATTENTION ASSIST directly infringe by practicing, or using or operating vehicles that practice, such step or steps of the patented methods of the '392 Patent.

28. Defendants have not conducted any investigation or design around with respect to the '392 Patent and have not taken any remedial action after becoming aware of '392 Patent, such as advising its customers how to avoid infringement. In accordance with Fed. R. Civ. P. 11(b)(3), VIS will likely have additional evidentiary support after a reasonable opportunity for discovery on this issue.

29. Defendants have not produced or relied upon an opinion of counsel related to the '392 Patent. In accordance with Fed. R. Civ. P. 11(b)(3), VIS will likely have additional evidentiary support after a reasonable opportunity for discovery on this issue.

30. Defendants are thereby liable for indirect infringement of the '392 Patent pursuant to 35 U.S.C. § 271.

Willful Infringement

31. Defendants were on notice of the '392 Patent beginning on or before receiving Mr. Roe's May 25, 2012 letters to Mercedes-Benz and Daimler, attached as Exhibits B and D. Plaintiff intends to take discovery on the issue of willful infringement. Plaintiff will seek to allege willful infringement pursuant to 35 U.S.C. § 284 and add additional allegations concerning willful infringement if warranted after discovery.

JURY DEMAND

VIS hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

VIS requests that this Court find in its favor and against Defendants, and that this Court grant VIS the following relief:

- a. Enter judgment for VIS on this Complaint;
- b. Enter judgment that one or more claims of the '392 Patent has been infringed by Defendants;
- c. Enter judgment that Defendants account for and pay to VIS all damages to and costs incurred by VIS because of Defendants' infringing activities and other conduct complained of herein;
- d. Award VIS damages resulting from Defendants' infringement in accordance with 35 U.S.C. § 284;

- e. Enter a permanent injunction enjoining Defendants and their offices, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert or participation with Defendants, from infringing the '392 Patent, or, in the alternative, judgment that Defendants account for and pay to VIS a reasonable royalty and an ongoing post judgment royalty because of Defendants' past, present and future infringing activities and other conduct complained of herein;
- f. That VIS be granted pre-judgment and post-judgment interest on the damages caused by Defendants' infringing activities and other conduct complained of herein;
- g. That VIS be granted such other and further relief as the Court may deem just and proper under the circumstances.

DATED: September 23, 2013

Respectfully submitted,

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***ATTORNEYS FOR PLAINTIFF
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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was served on all parties of record on September 23, 2013 via the Court's CM/ECF system.

/s/ Benjamin R. Askew
Benjamin R. Askew