

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

NOVELPOINT TRACKING LLC

Plaintiff,

Case No. 2:13-CV-699-JRG

v.

PATENT CASE

MERCEDES-BENZ USA, LLC

JURY TRIAL DEMANDED

Defendant.

FIRST AMENDED COMPLAINT

NovelPoint Tracking LLC files this Complaint against Mercedes-Benz USA, LLC for infringement of United States Patent No. 6,442,485.

THE PARTIES

1. Plaintiff NovelPoint Tracking LLC (“NPT”) is a Texas limited liability company with its principal place of business at 1300 Ballantrae Drive, Allen, Texas 75013 in the Eastern District of Texas.

2. Defendant Mercedes-Benz USA, LLC (“Defendant”) is a Delaware limited liability company with its principal place of business at 1 Mercedes Drive, Montvale, New Jersey 07645. Defendant’s Registered Agent in the State of Texas is CT Corporation System located at 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201-4234.

3. Defendant does business in the District. Specifically, Defendant has dealerships throughout the District, including but not limited to dealerships in Plano, Texas; Beaumont, Texas; Tyler, Texas; and Texarkana, Texas. Defendant’s products—including the infringing products—are sold and offered for sale at these dealerships. Defendant’s website directs inquiries from persons located in Plaintiff’s zip code (Allen, Texas 75013) to the Plano

dealership listed above when they access the “find a dealer near” function on the “Schedule a Text Drive” page of Defendant’s website.

NATURE OF THE ACTION

4. This is a civil action for infringement of United States Patent No. 6,442,485 (the “Patent-in-Suit”), arising under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 (Federal Question) and 1338(a) (Patents).

6. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and 1400(b) because Defendant has committed acts of infringement in the United States, including use and offers for sale directed to this District. Additional acts of infringement have occurred within this District, in that Defendant and its affiliates sell Defendant’s products—including the infringing products—in this District and elsewhere in the State of Texas and are deemed to reside in this District for purposes of this action.

7. This Court has personal jurisdiction over Defendant and venue is proper in this district because Defendant has committed, and continues to commit, acts of infringement in and directed toward the State of Texas, including in this district and/or has engaged in continuous and systematic activities in the State of Texas, including in this District, as have its affiliates.

THE PATENT-IN-SUIT

8. The Patent-in-Suit, entitled “Method and Apparatus for an Automatic Vehicle Location, Collision Notification, and Synthetic Voice,” was duly and legally issued by the United States Patent and Trademark Office on August 27, 2002. A copy of the Patent-in-Suit is attached hereto as Exhibit A.

9. NPT is the exclusive owner of all rights, title, and interest in the Patent-in-Suit, including the right to exclude others and to enforce, sue and recover damages for past and future infringement thereof.

INFRINGEMENT OF THE PATENT-IN-SUIT

10. NPT incorporates paragraphs 1 through 9 by reference as if fully stated herein.

11. The Patent-in-Suit is valid and enforceable.

12. Defendant has directly infringed, and continues to directly infringe, one or more claims of the Patent-in-Suit under 35 U.S.C. § 271(a), either literally and/or under the doctrine of equivalents, by making, using, selling, offering for sale, and/or importing products and/or methods encompassed by those claims.

13. Third parties, including Defendant's affiliates, agents, and dealers have infringed, and continue to infringe, one or more claims of the Patent-in-Suit under 35 U.S.C. § 271(a), either literally and/or under the doctrine of equivalents, by using, selling, and/or offering for sale in the United States, and/or importing into the United States, products supplied by Defendant.

14. Defendant's COMAND® is an example of an infringing product and/or method.

15. NPT has been and continues to be damaged by Defendant's infringement of the Patent-in-Suit.

16. Defendant's actions complained of herein are causing irreparable harm and damages to NPT and will continue to do so unless and until Defendant is enjoined and restrained by the Court.

17. Defendant's conduct in infringing the Patent-in-Suit renders this case exceptional within the meaning of 35 U.S.C. § 285.

JURY DEMAND

18. Plaintiff NPT hereby demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, NPT prays for judgment as follows:

- A. That Defendant has infringed one or more claims of the patent-in-suit;
- B. That Defendant account for and pay all damages necessary to adequately compensate NPT for infringement of the patent-in-suit, such damages to be determined by a jury, and that such damages be awarded to NPT with pre-judgment and post-judgment interest;
- D. That Defendant and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in concert or actively participating with them, be permanently enjoined from directly or indirectly infringing the patent-in-suit; or, in the alternative, judgment that Defendant account for and pay to NPT an ongoing post-judgment royalty reflecting Defendant's deliberate continuing infringement;
- E. That this case be declared an exceptional case within the meaning of 35 U.S.C. § 285 and that NPT be awarded the attorney fees, costs, and expenses that it incurs prosecuting this action; and
- F. That NPT be awarded such other and further relief as this Court deems just and proper.

DATED: November 14, 2013

Respectfully submitted,

/s/ Craig L. Uhrich

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ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this document has been served via the Court's CM/ECF to all counsel of record in accordance with the Federal Rules of Civil Procedure on November 14, 2013.

/s/ Craig L. Uhrich
Craig L. Uhrich