

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

PROXIMITY MONITORING INNOVATIONS
LLC

Plaintiff,

-against-

MERCEDES-BENZ USA, LLC

Defendant.

Civil Action No.: 14-cv-576-SLR

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Proximity Monitoring Innovations LLC (“PMI”), as and for its First Amended Complaint against Defendant Mercedes-Benz USA, LLC (“Mercedes-Benz”), hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action under the patent laws of the United States, 35 U.S.C. §§ 1, *et seq.*, for infringement by Mercedes-Benz of claims of U.S. Patent No. 6,958,701.

PARTIES

2. Plaintiff PMI is a limited liability company organized and existing under the laws of the State of Delaware, having its principal place of business at One Commerce Center – 1201 Orange St., #600, Wilmington, Delaware 19899.

3. Upon information and belief, defendant Mercedes-Benz is a limited liability company organized and existing under the laws of the State of Delaware, having its principal place of business at 1 Mercedes Drive, Montvale, NJ 07645.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and

1338(a).

5. This Court has personal jurisdiction over Mercedes-Benz because, *inter alia*, Mercedes-Benz is a Delaware limited liability company, Mercedes-Benz has done and continues to do business in the State of Delaware, and upon information and belief, Mercedes-Benz has committed and continues to commit acts of patent infringement in the State of Delaware.

6. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b) because, *inter alia*, both Plaintiff PMI and Defendant Mercedes-Benz are Delaware limited liability companies, Plaintiff's principal place of business is located in this judicial district, the Patent-in-Suit, as defined below, is assigned to Plaintiff, Defendant is subject to personal jurisdiction in this district, and, upon information and belief, Defendant has committed and continues to commit acts of patent infringement in this district.

PATENT-IN-SUIT

7. On October 25, 2005, the United States Patent and Trademark Office duly and lawfully issued U.S. Patent No. 6,958,701 (the "'701 Patent" or the "Patent-in-Suit"), entitled "Transportation Monitoring System For Detecting The Approach Of A Specific Vehicle," based upon an application filed by inventors John D. Storkamp, Mark A. Storkamp, and Ronald H. Menzhuber. A true and correct copy of the '701 Patent is attached hereto as Exhibit A.

8. The '701 Patent generally relates to systems for detecting approach or proximity of vehicles and/or transmitters.

9. PMI is the owner of the '701 Patent and has the right to sue and recover damages for infringement thereof.

NOTICE

10. On May 1, 2014, PMI commenced this action in the United States District Court for the District Of Delaware.

11. On May 2, 2014, Mercedes-Benz was served with a copy of the original complaint in this action.

12. The original complaint in this action set forth the claims asserted against Mercedes-Benz and identified Mercedes-Benz's accused products, services, and systems, including "Mercedes-Benz vehicles equipped with mbrace2 systems," which as of the date of the original complaint included "model year 2013 C, E, ML, GL, GLK, G, CLS, SL, and SLK class vehicles, and model year 2014 CLA, C, E, S, CLS, GLK, M, GL, G, SLK, and SL class vehicles" which infringe "at least claims 1-2 and 4-17 of the '701 Patent."

13. Accordingly, Mercedes-Benz has received notice of the '701 Patent, and of Mercedes-Benz's infringement thereof, at least as early as May 2, 2014.

FACTUAL ALLEGATIONS

14. As referred to in this Complaint, and consistent with 35 U.S.C. § 100 (c), the "United States" means "the United States of America, its territories and possessions."

15. Upon information and belief, including based on the products identified on Mercedes-Benz websites and described in Mercedes-Benz manuals, Mercedes-Benz makes, uses, sells, and/or offers for sale in the United States, and/or imports into the United States, products, services, and systems made in accordance with the '701 Patent, including, but not limited to, Mercedes-Benz vehicles equipped with mbrace2 systems and accompanying services.

16. Upon information and belief, including based on the products identified on Mercedes-Benz websites and described in Mercedes-Benz manuals, vehicles comprising mbrace2 systems, as of the date of this Complaint, include Mercedes-Benz model year 2013 C, E, ML, GL, GLK, G, CLS, SL, and SLK class vehicles, and model year 2014 CLA, C, E, S, CLS, GLK, M, GL, G, SLK, and SL class vehicles.

17. Upon information and belief, Mercedes-Benz actively and knowingly directs, causes, induces and encourages others, including, but not limited to, its dealers, distributors, maintenance professionals, customers, and end users, to make, use, sell, and/or offer to sell in the United States, and/or import into the United States, products, services, and systems, made in accordance with the '701 Patent, including, but not limited to, Mercedes-Benz vehicles equipped with mbrace2 systems and accompanying services, by, among other things, providing instructions, manuals, and technical assistance relating to the installation, set up, use, operation, and maintenance of the accused products, services, and systems.

COUNT I: INFRINGEMENT OF THE '701 PATENT

18. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

19. Upon information and belief, defendant Mercedes-Benz has infringed at least claims 1-2 and 4-17 of the '701 Patent pursuant to 35 U.S.C. § 271 (a) by making, using, offering to sell, and/or selling in the United States, and/or importing into the United States vehicles equipped with mbrace2 systems. Upon information and belief, Mercedes-Benz's infringement pursuant to 35 U.S.C. § 271 (a) is ongoing.

20. Upon information and belief, Mercedes-Benz has induced infringement of one or more claims of the '701 Patent pursuant to 35 U.S.C. § 271(b), by actively and knowingly inducing, directing, causing, and encouraging others, including, but not limited to, its dealers,

distributors, maintenance professionals, customers, and end users, to make, use, sell, and/or offer to sell in the United States, and/or import into the United States, products, services, and systems, made in accordance with the '701 Patent, including, but not limited to vehicles equipped with mbrace2 systems and accompanying services, by, among other things, providing instructions, manuals, and technical assistance relating to the installation, set up, use, operation, and maintenance of the accused products, services, and systems. Upon information and belief, Mercedes-Benz's inducement of infringement pursuant to 35 U.S.C. § 271(b) is ongoing.

21. Upon information and belief, defendant Mercedes-Benz has committed the foregoing infringing activities without license from PMI.

22. As a result of Mercedes-Benz's infringement of the '701 Patent, PMI has suffered monetary damages and is entitled to a money judgment in an amount adequate to compensate for Mercedes-Benz's infringement, but in no event less than a reasonable royalty, together with interest and costs.

PRAYER FOR RELIEF

WHEREFORE, PMI prays for judgment in its favor against Mercedes-Benz granting PMI the following relief:

- A. Entry of judgment in favor of PMI against Mercedes-Benz on all counts;
- B. Entry of judgment that Mercedes-Benz has infringed the '701 Patent;
- C. Award of compensatory damages adequate to compensate PMI for Mercedes-Benz's infringement of the '701 Patent, in no event less than a reasonable royalty;
- D. PMI's costs;
- E. Pre-judgment and post-judgment interest on PMI's award; and
- F. All such other and further relief as the Court deems just or equitable.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Fed. R. Civ. P., PMI hereby demands trial by jury in this action of all claims so triable.

Dated: July 8, 2014

Respectfully submitted,

FARNAN LLP

/s/ Brian E. Farnan
Brian E. Farnan (#4089)
919 North Market St., 12th Floor
Wilmington, DE 19801
Tel. (302) 777-0300
Fax (302) 777-0301
bfarnan@farnanlaw.com

Dmitriy Kheyfits (admitted *pro hac vice*)
Michael James Maloney (admitted *pro hac vice*)
Kheyfits & Maloney LLP
1140 Avenue of the Americas
9th Floor
New York, New York 10036
Tel. (212) 203-5399
Fax. (212) 203-6445
dkheyfits@kheyfitsmaloney.com
mmaloney@kheyfitsmaloney.com

*Attorneys for Proximity Monitoring Innovations
LLC.*