

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

AFFINITY LABS OF TEXAS, LLC,)
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 Plaintiff,)
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 v.)
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 ROBERT BOSCH LLC)
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 Defendant.)
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Case No. 14-cv-396

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Affinity Labs of Texas, LLC (“Affinity Labs”) for its causes of action against Defendant, Robert Bosch LLC (“Bosch”), states and alleges on knowledge and information and belief as follows:

PARTIES

1. Plaintiff Affinity Labs is a Texas limited liability company having offices at 31884 RR 12, Dripping Springs, TX 78620.
2. On information and belief, Bosch is a Michigan company organized under the laws of Delaware with its principal place of business at 3800 Hills Tech Drive, Farmington Hills, Michigan, 48331. Further on information and belief, Bosch is a subsidiary of a German corporation, Robert Bosch GmbH. Bosch is registered and actively engaged in business within the State of Texas, and maintains an agent for service of process

at Corporation Service Company, dba, SCS Lawyers Inc., 701 Brazos Suite 1050, Austin, Texas 78701.

JURISDICTION

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a), in that this action arises under the federal patent statutes, 35 U.S.C. §§ 271 and 281-285.

2. This Court has personal jurisdiction over Bosch. Upon information and belief, Bosch has committed and continues to commit acts giving rise to this action within Texas and within this judicial district and Bosch has established minimum contacts within the forum such that the exercise of jurisdiction over Bosch would not offend traditional notions of fair play and substantial justice. For example, Bosch has committed and/or contributed to and continues to commit and/or contribute to acts of patent infringement in this judicial district. In conducting its business in Texas and this judicial district, Bosch derives substantial revenue from infringing products being sold, used, imported, and/or offered for sale.

VENUE

3. Venue in the Western District of Texas is proper pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b) because Bosch has committed acts within this judicial district giving rise to this action, and Bosch has and continues to conduct business in this judicial district, including one or more acts of selling, using, importing, and/or offering for sale infringing products or providing service and support to Bosch's customers in this District.

4. Venue in the Western District of Texas is further proper because Affinity Labs is headquartered in this District in Dripping Springs, Texas.

5. Venue in the Western District of Texas is further proper because the majority of Affinity Labs' documents and relevant evidence is located at Affinity Labs' headquarters within this District and numerous witnesses are also located within this District.

6. Venue in the Western District of Texas is also proper because Affinity Labs is organized and governed by the limited liability company laws of Texas and is subject to taxes in Texas. Affinity Labs maintains a registered agent for service of process in Texas.

7. Venue in the Western District of Texas is also proper because of judicial economy. Magistrate Judge Jeffrey Manske presided over the following seven Affinity Labs matters for the same Asserted Patents, the '191 and '680 patents: *Affinity Labs of Texas, LLC v. Ford Motor Company*, Civil Action No. 6:13-cv-00363; *Affinity Labs of Texas, Inc. v. General Motors*, Civil Action No. 6:13-cv-00379; *Affinity Labs of Texas, Inc. v. Nissan*, Civil Action No. 6:13-cv-00369; *Affinity Labs of Texas, Inc. v. Toyota*, Civil Action No. 6:13-cv-00365; *Affinity Labs of Texas, Inc. v. Honda*, Civil Action No. 6:13-cv-00367; *Affinity Labs of Texas, Inc. v. Jaguar*, Civil Action No. 6:13-cv-00368; *Affinity Labs of Texas, Inc. v. Volvo*, Civil Action No. 6:13-cv-00366.

BACKGROUND

Affinity Labs

8. Affinity Labs restates and realleges each of the allegations set forth above and incorporates them herein.

9. Affinity Labs was founded in 2008 by Russell White and Harlie Frost.

10. Russell White is a successful entrepreneur and patent attorney. Mr. White grew up in Houston, Texas, and has an undergraduate degree in mechanical engineering

from Texas A&M. Mr. White also graduated from the University of Temple Law School. After earning his law degree, Mr. White co-founded SBC Knowledge Ventures, an entity within AT&T.

11. Mr. White is also a prolific inventor. Mr. White is listed as an inventor on at least thirty-two separate United States patents.

12. On March 28, 2000, Mr. White and Kevin R. Imes filed a detailed patent application, No. 09/537,812 (“the ’812 application”) with the United States Patent and Trademark Office (“PTO”).

13. The ’812 application broadly addressed the problem of accessing, managing, and communicating digital audio and video content. In doing so, the ’812 application disclosed a number of inventions relating to creating a new media ecosystem with a portable electronic audio device such as a smartphone at its center.

14. The ’812 application also disclosed the ability to download music and playlists from an online store, or stream Internet radio, to the portable electronic device, and then connect the device to a second device such as an automobile with a display. As disclosed in the ’812 application, the music available on the portable device can then be displayed and selected using controls on an automobile stereo system, and played through the speakers.

15. Mr. White and Mr. Imes made this disclosure in the ’812 application over a year before the iPod was released in October 2001, approximately 3 years before the iTunes Store sold its first song, 7 years before the first iPhone was sold, 8 years before the App Store was launched, and 8 years before the functionality of having the music available on a portable device be displayed and selected using controls on an automobile stereo system and

played through the speakers was available using an iPhone and some luxury vehicles. This same connective functionality did not become available on Android phones until more than 9 years after Mr. White and Mr. Imes filed the '812 application.

16. On November 19, 2013, the PTO issued United States Patent No. 8,588,680, entitled "System and Method to Communicate Targeted Information" ("the '680 patent"), a copy of which is attached as Exhibit A. The '680 patent was issued from a continuation application claiming priority to the '812 application, which was filed with the PTO on March 28, 2000 and issued on March 6, 2007 as the '947 patent..

17. On October 8, 2013, the PTO issued United States Patent No. 8,554,191, entitled "System and Method for Managing Media" ("the '191 patent"), a copy of which is attached as Exhibit B. The '191 patent was issued from a continuation application claiming priority to the '812 application, which was filed with the PTO on March 28, 2000 and issued on March 6, 2007 as the '947 patent.

18. The '680 and '191 patents (collectively, "the Asserted Patents") and other patents in the same patent family, have been cited by major businesses in the computer, software, communications, automotive, and mobile industries.

19. Affinity Labs holds legal title, by assignment, to the Asserted Patents.

Affinity Labs of Texas, LLC v. Nissan

20. On November 21, 2013, Affinity Labs filed a Complaint in the Western District of Texas, Waco Division, against Nissan North America Inc. and Nissan Motor Co., Ltd. (collectively, "Nissan"). Affinity Labs' Complaint alleged that Nissan infringed Affinity Labs' patents, U.S. Patent No. 8,554,191 and U.S. Patent No. 8,588,680. (Case No. 6:13-cv-369). In that matter, on September 30, 2014, the Court partially granted a Federal

Rule of Civil Procedure 12(c) motion filed by Nissan as to Bosch products. *See* Exhibit C (publicly filed docket text for Dkt. No. 84).

21. Affinity Labs had previously entered into an agreement with Nissan related to Nissan's then future use of components to be supplied by Bosch. That Agreement included a limited covenant-not-to-sue to Nissan. Under the Agreement, Affinity Labs expressly maintained all rights to sue Bosch based on infringement by Nissan vehicles with Bosch-supplied components:

To the extent that Affinity alleges in the future that the automobiles referenced in paragraph (h) above infringe the '833 Patent [U.S. Patent No. 7,324,833] or U.S. Patent No. 7,486,926 ("the '926 Patent"), Affinity covenants that it will not sue Nissan and/or a parent/subsidiary/affiliate of Nissan based on that alleged infringement nor seek to recover any remedy from Nissan and/or a parent/subsidiary/affiliate of Nissan for that alleged infringement, on the condition that Affinity maintains all rights to sue Bosch (which Affinity represents has not entered into any type of license or agreement with Affinity) for any such alleged infringement and that Affinity may recover all remedies against Bosch the same as if this covenant did not exist. Nothing about this covenant is intended to nor should be construed as granting any rights (by waiver, exhaustion, license, or otherwise) to Bosch, and nothing about this covenant is intended to nor should be construed as a license or waiver of any rights that would diminish Affinity's ability to pursue and secure the same remedies against Bosch as if this covenant did not exist.

Exhibit D, ¶ 2 (emphasis added).

22. As a result, and because on information and belief, Bosch manufactures, uses, sells, offers to sell, markets, imports, has manufactured, used, sold, offered to sell, marketed, and/or imported products that infringe and/or contributorily infringe or have infringed and/or contributorily infringed the Asserted Patents, Affinity Labs brings this action to seek damages and injunctive relief arising out of Bosch's infringing acts.

COUNT I

Infringement of U.S. Patent No. 8,554,191 by Bosch

23. Affinity Labs restates and realleges each of the allegations set forth above and incorporates them herein.

24. In violation of 35 U.S.C. § 271, Bosch has infringed, and if not enjoined, will continue to infringe the '191 patent by (1) manufacturing, using, marketing, selling, offering for sale, and/or importing, without authority, products and services that are covered by one or more claims of the '191 patent, literally and/or under the doctrine of equivalents, in violation of 35 § 271(a); and/or (2) actively contributing to the infringement and actively continuing to commit such contributory infringement of the '191 patent in this District and elsewhere in the United States in violation of 35 U.S.C. § 271(c). In particular, Bosch infringes one or more claims of the '191 patent directly, literally and under the doctrine of equivalents, and/or by contributory infringement with the (1) manufacture, use, marketing of, sale, offer for sale, and/or importation of Bosch's Integrated Head Unit (IHU) technology, including at least the Bosch LCN2 IHU, and (2) using Bosch's Integrated Head Unit (IHU) technology, including at least the Bosch LCN2 IHU, as part of the audio system and methods claimed in the '191 patent.

25. Bosch directly infringes one or more claims of the '191 patent at least by making, using, selling and offering to sell Bosch's Integrated Head Unit (IHU) technology, including at least the Bosch LCN2 IHU. Bosch markets and sells its IHU technology to customers and potential customers that include, for example, car manufacturers in the vehicle industry in the United States, such as, for example, Nissan Motor Co.

26. Bosch markets and sells Integrated Head Unit (IHU) technology containing a Bluetooth compliant communication module.

27. On information and belief, Bosch had actual knowledge of the '191 patent since at least January 15, 2014, when Bosch received a third-party subpoena specifically referencing Affinity Labs' patent litigations regarding the Asserted Patents, including for the '191 patent. Such notice included at least that Bosch's technology was accused in Affinity Labs' litigation against General Motors (*Affinity Labs of Texas, LLC v. General Motors LLC*, Case No. 1:12-cv-582 (E.D. Tex.)). Moreover, Bosch has had notice of the '191 patent at least as of the filing date of this Complaint.

28. Furthermore, on information and belief, Bosch, with actual knowledge of the '191 patent before the filing of this complaint, actively contributed to the infringement and actively continues to commit such contributory infringement of the '191 patent in this District and elsewhere in the United States in violation of 35 U.S.C. § 271(c). For example, on information and belief, Bosch has contributed to and is contributing to infringement of the '191 patent by selling Bosch's Integrated Head Unit (IHU) technology to its customers, including for example the Bosch LCN2 IHU, used at least within the Nissan Rogue—the use of which by Bosch's customers has directly infringed and is directly infringing the '191 patent.

29. Upon information and belief, at least Bosch's LCN2 IHU technology, including for example, the ability to pair wirelessly with a portable device, such as a smartphone, constitutes a material part of the inventions claimed in the '191 patent, and has no substantially non-infringing uses.

30. Bosch's actions of, inter alia, making, importing, using, offering for sale, and/or selling such products constitutes infringement of the '191 patent, which was duly issued by the United States Patent and Trademark Office and is presumed valid.

31. Bosch continues to specifically intend for and encourage its customers and end-users to use its products in a manner that directly infringes the claims of the '191 patent.

32. Bosch has been aware since at least January 15, 2014 that its actions constitute infringement of the '191 patent, and that the '191 patent is valid. Despite Bosch's knowledge, on information and belief, Bosch has not made any changes, to date, to the functionality, operations, marketing, advertising, sales, or technical support for the relevant operation of its accused products, and has not provided its users and/or customers with instructions on how to avoid infringement of the '191 patent. Instead, Bosch has continued to, and still is continuing to, make, use, offer for sale, and/or sell accused products that when used as Bosch specifically instructs and intends, practice claims of the '191 patent.

33. Upon information and belief, Bosch's infringement of the '191 patent has been, and continues to be willful, deliberate, and intentional by continuing its acts of infringement with knowledge of the '191 patent and thus acting in reckless disregard of Affinity Labs' patent rights.

34. Bosch does not have a license or permission to use the claimed subject matter in the '191 patent.

35. Affinity Labs has been injured and has been caused significant financial damage as a direct and proximate result of Bosch's infringement of the '191 patent.

36. Bosch will continue to infringe the '191 patent, and thus cause irreparable injury and damage to Affinity Labs unless enjoined by this Court.

37. Affinity Labs is entitled to recover from Bosch the damages sustained by Affinity Labs as a result of Bosch's wrongful acts in an amount subject to proof at trial.

COUNT II

Contributory Infringement of U.S. Patent No. 8,588,680 by Bosch

38. Affinity Labs restates and realleges each of the allegations set forth above and incorporates them herein.

39. On information and belief, Bosch had actual knowledge of the '680 patent since at least January 15, 2014, when Bosch received a third-party subpoena specifically referencing Affinity Labs' patent litigations regarding the Asserted Patents, including for the '680 patent. Such notice included at least that Bosch's technology was accused in Affinity Labs' litigation against General Motors (*Affinity Labs of Texas, LLC v. General Motors LLC*, Case No. 1:12-cv-582 (E.D. Tex.)). Moreover, Bosch has had notice of the '680 patent at least as of the filing date of this complaint.

40. In addition, on information and belief, Bosch, with actual knowledge of the '680 patent before the filing of this complaint, actively contributed to the infringement and actively continues to commit such contributory infringement of the '680 patent in this District and elsewhere in the United States in violation of 35 U.S.C. § 271(c). For example, on information and belief, Bosch has contributed to and is contributing to infringement of the '680 patent by selling Bosch's Bosch's Integrated Head Unit (IHU) technology to its customers, including for example the Bosch LCN2 IHU used at least within the Nissan Rogue—the use of which by Bosch's customers has directly infringed and is directly infringing the '680 patent.

41. Upon information and belief, at least Bosch's LCN2 IHU technology, including for example, the ability to pair wirelessly with a portable device, such as a smartphone, constitutes a material part of the inventions claimed in the '680 patent, and has no substantially non-infringing uses.

42. Bosch's actions of, inter alia, making, importing, using, offering for sale, and/or selling such products constitutes infringement of the '680 patent, which was duly issued by the United States Patent and Trademark Office and is presumed valid.

43. Bosch continues to specifically intend for and encourage its customers and end-users to use its products in a manner that directly infringes the claims of the '680 patent.

44. Bosch has been aware since at least January 15, 2014 that its actions constitute infringement of the '680 patent, and that the '680 patent is valid. Despite Bosch's knowledge, on information and belief, Bosch has not made any changes, to date, to the functionality, operations, marketing, advertising, sales, or technical support for the relevant operation of its accused products, and has not provided its users and/or customers with instructions on how to avoid infringement of the '680 patent. Instead, Bosch has continued to, and still is continuing to, make, use, offer for sale, and/or sell accused products that when used as Bosch specifically instructs and intends, practice claims of the '680 patent.

45. Upon information and belief, Bosch's infringement of the '680 patent has been, and continues to be willful, deliberate, and intentional by continuing its acts of infringement with knowledge of the '680 patent and thus acting in reckless disregard of Affinity Labs' patent rights.

46. Bosch does not have a license or permission to use the claimed subject matter in the '680 patent.

47. Affinity Labs has been injured and has been caused significant financial damage as a direct and proximate result of Bosch's infringement of the '680 patent.

48. Bosch will continue to infringe the '680 patent, and thus cause irreparable injury and damage to Affinity Labs unless enjoined by this Court.

49. Affinity Labs is entitled to recover from Bosch the damages sustained by Affinity Labs as a result of Bosch's wrongful acts in an amount subject to proof at trial.

DEMAND FOR TRIAL BY JURY

Affinity Labs demands a jury trial on all issues so triable, pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Affinity Labs prays for the following relief:

1. A declaration that Bosch has infringed and is infringing the '680 and '191 patents and is liable to Affinity Labs for infringement;
2. An order enjoining Bosch from infringing the '680 and '191 patents;
3. If a permanent injunction is not granted, a judicial determination of the conditions for future infringement such as a royalty bearing compulsory license or such other relief as the Court deems appropriate;
4. An award of damages, including pre-judgment and post-judgment interest, in an amount adequate to compensate Affinity Labs for Bosch's infringement of the '680 and '191 patents, and that the damages be trebled pursuant to 35 U.S.C. § 284;
5. An equitable accounting of damages owed by Bosch for the period of infringement of the '680 and '191 patents, following the period of damages established by Affinity Labs at trial;
6. A finding that this case is exceptional and an award of attorneys' fees pursuant to 35 U.S.C. § 285;
7. An award of costs, expenses, and disbursements; and

8. Such other and further relief as the Court deems Affinity Labs may be entitled to in law and equity.

Dated: October 1, 2014

Respectfully submitted,

By: /s/ David Henry

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CERTIFICATE OF SERVICE

I hereby certify that on October 1, 2014, I caused a true and correct copy of this document (Complaint for Patent Infringement) to be served on all counsel of record via Electronic Case Filing (ECF) pursuant to Local Rule CV-5(a).

Dated: October 1, 2014

/s/ David Henry
David Henry