

*Original*

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

**AUTOMOTIVE PRODUCTS (USA),  
INC., a Delaware Corporation,**

**Plaintiff,**

**v.**

**FTE AUTOMOTIVE GmbH,  
a Foreign Corporation;  
DANA CORPORATION,  
a Virginia Corporation, and  
GETRAG GmbH & CIE  
a Foreign Corporation,  
Defendants.**

**Civil Action No. 00-60347  
Hon. Marianne O. Battani**

**FILED**  
**2000 OCT 17 P 3:43**  
**U.S. DIST. COURT CLERK**  
**EAST DIST. MICHIGAN**  
**DETROIT**

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Thomas E. Bejin (P56854)  
Christian J. Garascia (P55556)  
YOUNG & BASILE, P.C.  
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Attorneys for Plaintiff

**FIRST AMENDED COMPLAINT AND JURY DEMAND**

NOW COMES Plaintiff, Automotive Products (USA), Inc., by and through its attorneys of record, to complain against Defendants FTE Automotive, Dana Corporation and Getrag GmbH & Cie as follows:

**PARTIES**

1. Plaintiff Automotive Products (USA) Inc. (hereinafter "AP USA") is a Delaware Corporation having its principal place of business at 4000 Pinnacle Court, Auburn Hills, MI 48326-1754, within this judicial district.

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LAW OFFICES YOUNG & BASILE, P.C., 3001 W. BIG BEAVER ROAD, SUITE 624, TROY, MICHIGAN 48064-3107 (248) 649-3333

2. On information and belief, Defendant FTE Automotive Systems GmbH (hereinafter "FTE") is a foreign corporation having a principal place of business at Andreas-Humann-Str. 2, Ebern 96106 in the Country of Germany, and having places of business at 1612 Union Valley Road, West Milford, NJ, and in this judicial district at 27404 Drake Road, Farmington Hills, MI 48331. FTE is otherwise doing business in this district.

3. On information and belief, Defendant Dana Corporation (hereinafter "Dana") is a Virginia Corporation having a principal place of business at 4500 Dorr Street, Toledo, OH 43615-4033, and having a place of business in this judicial district at 27404 Drake Road, Farmington Hills, MI 48331. Dana is otherwise doing business in this district.

4. On information and belief, on or about July 1998, Dana acquired FTE.

5. On information and belief, Defendant Getrag Getriebe-Und Zahnradfabrik Hermann Hagenmeyer GmbH & Cie (hereinafter "Getrag") (hereinafter collectively the "Defendants") is a foreign corporation having a principal place of business at Solitudeallee 24 D-7140 Ludwigsburg in Germany. Getrag owns, controls and operates subsidiary Getrag Gears of North America, Inc., a Delaware Corporation, having a principal place of business at 1848 Getrag Parkway, Newton, North Carolina, 28658-9418, having a place of business in this jurisdiction at 36200 Mound Road, Sterling Heights, Michigan 48310-4737 and is otherwise doing business in this judicial district.

### **JURISDICTION AND VENUE**

6. This action arises under the Patent Laws of the United States, 35 U.S.C. § 100 et. seq. and the common laws of Michigan.

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332, 1338 (a) (b) and 1367.

8. Venue is proper pursuant to 28 U.S.C. §§ 1391 (b), (c), (d) and 1400 (b).

### **ALLEGATIONS COMMON TO ALL COUNTS**

The allegations of the foregoing paragraphs 1 through 8 are incorporated herein by reference as if set forth in full.

9. On information and belief, FTE and Dana manufacture hydraulic clutch control components including master cylinders, slave cylinders and quick connect couplings and partially assemble the components into at least two modular units, the first including the master cylinder and the second including the slave cylinder.

10. On information and belief, FTE, Dana and Getrag import, or assist others to import, into the United States either or both of the modular hydraulic clutch units for sale to, and for use by, U.S. automobile manufacturers including General Motors Corporation.

11. On information and belief, on original equipment manufactured modules, FTE ships the slave cylinder module to Getrag in Modugno (Bari) Italy wherein the slave cylinder module is installed in a clutch housing manufactured by Getrag. Getrag ships the slave cylinder module and clutch housing assembly into the United States.

12. On information and belief, the modular hydraulic clutch units are installed and

## COUNT II FOR PATENT INFRINGEMENT

The allegations of the foregoing paragraphs 1 through 18 are incorporated into this Count by reference as if set forth in full.

19. On December 25, 1990, United States Patent No. 4,979,366 entitled "Method of Providing Modular Prefilled Hydraulic Control Apparatus" was duly and legally issued to Automotive Products plc as original Assignee of the Inventors, David J. Compton et. al., a copy of which is included herewith as Exhibit B.

20. Plaintiff AP USA is presently the owner by assignment of all right and title in U.S. Patent No. 4,979,366 and has the exclusive right to exclude others from practicing the methods and importing products made from methods covered by the '366 patent in the United States.

21. On information and belief, Defendants FTE, Dana and Getrag within six (6) years prior to the filing of this Complaint, and without license or authority from AP USA have committed one or more of the following acts, each of which constitutes infringement under 35 U.S.C. § 271 (g):

A. offering for sale, importing into the U.S., and selling to U.S. automotive companies hydraulic clutch control devices made from one or more of the methods covered by the '366 patent;

B. manufacturing hydraulic clutch control devices using one or more methods covered by the '366 patent with knowledge and intent that such systems will be and are imported, offered for sale, sold and used in the United States; and

C. contributing to and/or inducing third parties to infringe one or more

methods of the '366 patent.

22. On information and belief, the infringing acts of the Defendants have been committed willfully and wantonly and with full knowledge by the Defendants of the existence of the '366 patent and of AP USA's rights therein and thereunder.

23. Plaintiff placed Defendant FTE on notice of its infringement at least as early as September 1997. Plaintiff has repeatedly warned Defendants of the existence of patents applicable to Defendants' products and have repeatedly entreated Defendant FTE to acquire a license under Plaintiffs' applicable patents. Despite such warnings and offers, Defendants have refused to acquire a license, have refused to negotiate for a license and, instead, have chosen to supply infringing product to american automobile companies without right or authority from Plaintiff and without assurances from any person that willful infringement would be excused or overlooked.

24. Plaintiff AP USA has been damaged and continues to be damaged by the infringing acts of the Defendants through loss of sales and through erosion of prices on sales not lost. AP USA's precise damages can only be determined through an accounting.

### **COUNT III FOR PATENT INFRINGEMENT**

The allegations of the foregoing paragraphs 1 through 24 are incorporated into this Count by reference as if set forth in full.

25. On May 28, 1991, United States Patent No. 5,018,352 entitled "Modular Prefilled Hydraulic Control Apparatus" was duly and legally issued to Automotive Products plc as original Assignee of the inventors, David J. Compton et. al., a copy of which is

included as Exhibit C.

26. Plaintiff AP USA is presently the owner by assignment of all right and title in United States Patent No. 5,018,352 and has the exclusive right to exclude others from manufacturing, offering for sale, selling, using and importing into the U.S. hydraulic control devices of the type covered by the '352 patent.

27. On information and belief, Defendants FTE, Dana and Getrag within six (6) years prior to the filing of this Complaint, and without license or authority from AP USA, have committed one or more of the following acts, each of which constitutes infringement under 35 U.S.C. § 271 (a) (b) and/or (c):

A. offering for sale, importing into the U.S. and selling to U.S. automotive companies hydraulic clutch control devices of the type covered by the '352 patent;

B. manufacturing one or more hydraulic clutch control devices of the type covered by the '352 patent with knowledge and intent that such devices will be and are imported, offered for sale, sold and used in vehicles in the United States; and

C. contributing to and/or inducing third parties to infringe one or more devices covered by the '352 patent.

28. On information and belief, the infringing acts of the Defendants have been committed willfully and wantonly and with full knowledge by Defendants of the existence of the '352 patent and of AP USA's rights therein and thereunder.

29. Plaintiff placed Defendant FTE on notice of its infringement at least as early as September 1997. Plaintiff has repeatedly warned Defendants of the existence of patents

applicable to Defendants' products and have repeatedly entreated Defendant FTE to acquire a license under Plaintiff's applicable patents. Despite such warnings and offers, Defendants have refused to acquire a license, have refused to negotiate for a license and, instead, have chosen to supply infringing product to american automobile companies without right or authority from Plaintiff and without assurances from any person that willful infringement would be excused or overlooked.

30. Plaintiff AP USA has been damaged and continues to be damaged by the infringing acts of the Defendants through loss of sales and through erosion of prices on sales not lost. AP USA's precise damages can only be determined through an accounting.

#### **COUNT IV TORTIOUS INTERFERENCE WITH A BUSINESS RELATIONSHIP OR EXPECTANCY**

The allegations of the foregoing paragraphs 1 through 30 are incorporated into this Count be reference as if set forth in full.

31. Plaintiff and its employees have enjoyed and benefitted from a long and mutually satisfying business relationship with american automobile companies including Ford, General Motors Corporation and other customers based on the development, improvement and supply of hydraulic clutch control systems and components. Plaintiff has been the leading innovator in the field of hydraulic clutch actuators as evidenced by its many patents on such devices and the commercial success these devices have enjoyed over a period of nearly twenty years.

32. On information and belief, Defendants had knowledge of Plaintiff's mutually beneficial business relationships with the american automobile companies in the supply of

innovative hydraulic clutch control systems and of Plaintiff's reasonable expectancies of future business from these companies.

33. On information and belief, Defendants intentionally and improperly interfered with Plaintiff's business relationships and/or expectancies with both Ford and General Motors Corporation by offering for sale, manufacturing, importing and selling products to these customers that Defendants knew would infringe one or more of Plaintiff's United States Patents.

34. Despite Plaintiff's offer to grant limited license rights to FTE, FTE and Dana have refused to even open negotiations and have, on information and belief, embarked on a propaganda campaign to make Plaintiff appear unreasonable in the assertion of their duly issued U.S. patents and the expectation that the innovative designs would not be willfully pirated by others who wish to please the automotive companies. FTE and Dana's calculated strategy has resulted in damage to Plaintiff's reputation among the american automobile companies and has disrupted their business relations to the point that Plaintiff has lost the business from several vehicle lines at GM and Ford and fear that it will lose additional business to Defendants and others who are blatant infringers.

35. The intentional and improper interference and disruption by the Defendants in offering for sale, manufacturing, selling and importing products or using methods that infringe Plaintiff's patents has severely injured the Plaintiff as explained above and will continue to do so unless enjoined by this Court.



### PRAYER FOR RELIEF

Plaintiff AP USA prays for judgment in its favor specifically for the following relief:

- A. for a preliminary and permanent injunction enjoining Defendants FTE, Dana, and Getrag and their officers, employees, agents, successors, and others acting in privity therewith from infringing, contributing to infringement and inducing others to infringe United States Patent No.'s Re 34,987; 4,979,366; and 5,018,352.
- B. for an order of accounting to determine damages, including interest and costs, to be paid by the Defendants to the Plaintiff for and as a result of the acts of infringement and intentional interference complained of herein pursuant to 35 U.S.C. § 284 and the common laws;
- C. for an order trebling such damages pursuant to 35 U.S.C. § 284 as a result of the willful and wanton nature of the Defendants' actions;
- D. for an order finding this to be an "exceptional" case under 35 U.S.C. § 285 and awarding the Plaintiff reasonable attorneys fees as a result thereof;
- E. for an order awarding damages recoverable under Michigan law for tortious interference; and
- F. for such further relief as the Court may see fit to grant.

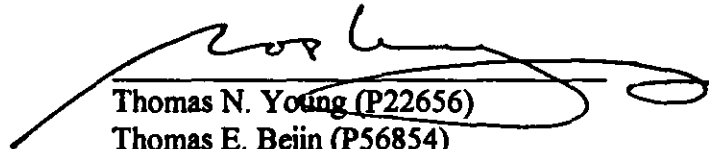
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**JURY DEMAND**

Plaintiff AP USA by and through its attorneys, hereby requests a trial by jury of all issues so triable.

Respectfully submitted,

YOUNG & BASILE, P.C.



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Attorney for Plaintiff

Dated: October 17, 2000

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### CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of FIRST AMENDED COMPLAINT AND JURY DEMAND was served hand delivery on this 17th day of October, 2000 to the following counsel of record:

Michael B. Stewart  
RADER, FISHMAN & GRAUER  
1533 N. Woodward Ave. #140  
Bloomfield Hills, MI 48304-2820



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