

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

AUTOMOTIVE TECHNOLOGIES
INTERNATIONAL, INC.,

Plaintiff,

Case No. 08-11048

10-10647

v.

Hon. Robert H. Cleland

DELPHI CORP., DELPHI AUTOMOTIVE
SYSTEMS, L.L.C., DPH HOLDINGS, CORP.,
GENERAL MOTORS CORP., NISSAN NORTH
AMERICA, INC., FORD MOTOR CO., VOLVO
CARS OF NORTH AMERICA, INC., HYUNDAI
MOTOR AMERICA, MERCEDES-BENZ USA,
L.L.C., and FUJI INDUSTRIES USA, INC.,

Defendants,

and

DELPHI CORP., DELPHI AUTOMOTIVE
SYSTEMS, L.L.C., DPH HOLDINGS CORP.,
NISSAN NORTH AMERICA, INC., HYUNDAI
MOTOR AMERICA, MERCEDES-BENZ USA,
L.L.C., and FUJI HEAVY INDUSTRIES USA,
INC.,

Counter-Plaintiffs,

v.

AUTOMOTIVE TECHNOLOGIES
INTERNATIONAL, INC.,

Counter-Defendant.

**PLAINTIFF AUTOMOTIVE TECHNOLOGIES INTERNATIONAL, INC.'S
FOURTH AMENDED COMPLAINT [CORRECTED]**

**PLAINTIFF AUTOMOTIVE TECHNOLOGIES INTERNATIONAL, INC.’S
FOURTH AMENDED COMPLAINT [CORRECTED]**

Plaintiff Automotive Technologies International, Inc. (“ATI”), hereby submits its Fourth Amended Complaint against Defendants DPH HOLDINGS CORPORATION (“DPH Holdings”), DELPHI AUTOMOTIVE SYSTEMS, LLC (“Delphi”), GENERAL MOTORS LLC (“New GM”), MOTORS LIQUIDATION COMPANY formerly known as General Motors Corporation (“Motors”), NISSAN NORTH AMERICA, INC. (“Nissan”), FORD MOTOR COMPANY d/b/a LINCOLN and MERCURY (“Ford”), VOLVO CARS OF NORTH AMERICA, INC. (“Volvo”), HYUNDAI MOTOR AMERICA (“Hyundai”), MERCEDES-BENZ USA, LLC (“Mercedes”) and FUJI HEAVY INDUSTRIES USA, INC. (“FHI”) (collectively referred to herein as “Defendants”) and for its causes of action alleges:

The Parties

1. ATI is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 48 Hillcrest Road, Boonton, NJ 07005.
2. Delphi and DPH Holdings are the successors of bankrupt Delphi Corporation (“Old Delphi”). On October 8, 2005, Old Delphi filed for bankruptcy. On July 30, 2009, the Bankruptcy Court entered an order approving the reorganization plan. Defendant DPH Holdings, by agreement and as corporate successor, owns all of Old Delphi’s liabilities, including at least all liability for infringement occurring between October 8, 2005 and July 30, 2009. Defendant Delphi Automotive Systems, LLC is a newly-formed entity which currently owns the rights to the PODS products at issue in this lawsuit and, upon information and belief, manufactures and sells the PODS products at issue in this lawsuit.

3. On June 1, 2009, Motors filed for chapter 11 bankruptcy. On July 5, 2009 the Bankruptcy Court entered an Order approving the sale of substantially all of Motors's assets to New GM. Pursuant to the Order, Motors retained all of Motors's liabilities except for certain liabilities expressly assumed pursuant to the Master Sale and Purchase Agreement which governed the transaction. Motors changed its name from "General Motors Corporation" to "Motors Liquidation Company" on July 9, 2009. On July 10, 2009, New GM acquired substantially all of Motors's assets pursuant to the July 5 Order. Upon information and belief, New GM manufactures, sells and/or uses occupant and/or child seat and/or rear-facing child seat detection and/or position systems which incorporate the PODS products at issue in this lawsuit under at least the following brand names: Chevrolet and Cadillac.

4. Upon information and belief, DPH Holdings is a corporation organized and existing under the laws of the State of Delaware and is doing business in this judicial district and elsewhere.

5. Upon information and belief, Defendant Delphi is a limited liability company organized and existing under the laws of the State of Delaware and is doing business in this judicial district and elsewhere.

6. Upon information and belief, Nissan is a corporation organized and existing under the laws of the State of California and is doing business in this judicial district and elsewhere.

7. Upon information and belief, Ford is a corporation organized and existing under the laws of the State of Delaware and is doing business in this judicial district and elsewhere.

8. Upon information and belief, Volvo is a corporation organized and existing under the laws of the State of Delaware and is doing business in this judicial district and elsewhere.

9. Upon information and belief, Hyundai is a corporation organized and existing under the laws of the State of Delaware and is doing business in this judicial district and elsewhere.

10. Upon information and belief, Mercedes is a limited liability company organized and existing under the laws of the State of Delaware and is doing business in this judicial district and elsewhere.

11. Upon information and belief, FHI is a corporation organized and existing under the laws of the country of Japan and is doing business in this judicial district and elsewhere.

12. Upon information and belief, New GM is a limited liability company organized and existing under the laws of the State of Delaware and is doing business in this judicial district and elsewhere.

13. Upon information and belief, Motors is a company organized and existing under the laws of the State of Delaware and is doing business in this judicial district and elsewhere.

Jurisdiction and Venue

14. This is an action for infringement of United States patents. Accordingly, this action arises under the patent laws of the United States of America, 35 U.S.C. § 1 et. seq. and jurisdiction is properly based on Title 35 United States Code, particularly § 271, and title 28 United States Code, particularly § 1338(a).

15. Venue is proper in this district under Title 28 United States Code §§ 1391(b-c) and 1400(b). Upon information and belief, Defendants have transacted business in this district or have committed and/or induced acts of patent infringement in this district.

Claim for Patent Infringement: Count I

16. On July 17, 2007, United States Patent No. 7,243,945 (“the ‘945 patent”), which is entitled “Weight Measuring Systems and Methods for Vehicles,” was duly and legally issued. A true and correct copy of the ‘945 patent is attached as **Exhibit A**.

17. Pursuant to 35 U.S.C. § 282, the ‘945 patent is presumed valid.

18. By assignment, ATI is the sole owner of the '945 Patent and has the exclusive right to enforce the '945 Patent.

19. Defendants manufacture, sell, offer to sell and/or use products, or have assumed the liability for such products, used in the area of automobile safety, including the Passive Occupant Detection System ("PODS") products which incorporate a bladder (including PODS I, II and other versions of the PODS system), embodying the patented invention, and will continue to do so unless enjoined by this Court. Defendants DPH Holdings and Delphi have manufactured and supplied, and continue to manufacture and supply at least the following original equipment manufacturers: New GM, Motors, Nissan, Ford, Volvo, Hyundai, Mercedes, and FHI (collectively referred to herein as the "OEM Defendants") with the PODS products. By manufacturing and selling these products, Defendants DPH Holdings and Delphi have in the past and continue to infringe, contribute to the infringement of, or induce the infringement of at least claims 1, 2, 3, 4 and 5 of the '945 Patent, either literally or under the doctrine of equivalents.

20. New GM and Motors have in the past and continue to manufacture, sell, and/or use occupant and/or child seat and/or rear-facing child seat detection and/or position systems which incorporate a bladder, embodying the patented invention, and will continue to do so unless enjoined by this Court. New GM and Motors have incorporated these systems within many of its automobiles (without limitation, but by way of example, 2003 Chevrolet pickup and 2005 Cadillac Escalade (GM P/N 10367091, DELPHI P/N 28069705)). By manufacturing and selling these products, New GM and Motors have in the past and continue to infringe, contribute to the infringement of, or induce the infringement of at least claims 1, 2, 3, 4 and 5 of the '945 patent, either literally or under the doctrine of equivalents.

21. Nissan manufactures, sells, and/or uses occupant and/or child seat and/or rear-facing

child seat detection and/or position systems which incorporate a bladder, embodying the patented invention, and will continue to do so unless enjoined by this Court. Nissan has incorporated this system within certain of its automobiles (without limitation, but by way of example, as follows: 2005 Nissan Maxima (P/N 87300-ZA401)). By manufacturing and selling these products, Nissan has in the past and continues to infringe, contribute to the infringement of, or induce the infringement of at least claims 1, 2, 3, 4 and 5 of the '945 patent, either literally or under the doctrine of equivalents.

22. Ford manufactures, sells, and/or uses occupant and/or child seat and/or rear-facing child seat detection and/or position systems which incorporate a bladder, embodying the patented invention, and will continue to do so unless enjoined by this Court. Ford has incorporated this system within certain of its automobiles (without limitation, but by way of example, as follows: 2005 Lincoln Navigator and 2005 Mercury Sable (P/N 603B02)). By manufacturing and selling these products, Ford has in the past and continues to infringe, contribute to the infringement of, or induce the infringement of at least claims 1, 2, 3, 4 and 5 of the '945 patent, either literally or under the doctrine of equivalents.

23. Volvo manufactures, sells, and/or uses occupant and/or child seat and/or rear-facing child seat detection and/or position systems which incorporate a bladder, embodying the patented invention, and will continue to do so unless enjoined by this Court. Volvo has incorporated this system within certain of its automobiles (without limitation, but by way of example, as follows: 2006 Volvo C70). By manufacturing and selling these products, Volvo has in the past and continues to infringe, contribute to the infringement of, or induce the infringement of at least claims 1, 2, 3, 4 and 5 of the '945 patent, either literally or under the doctrine of equivalents.

24. Hyundai manufactures, sells, and/or uses occupant and/or child seat and/or rear-facing child seat detection and/or position systems which incorporate a bladder, embodying the patented invention, and will continue to do so unless enjoined by this Court. Hyundai has incorporated this

system within certain of its automobiles (without limitation, but by way of example, as follows: 2007 Hyundai Santa Fe). By manufacturing and selling these products, Hyundai has in the past and continues to infringe, contribute to the infringement of, or induce the infringement of at least claims 1, 2, 3, 4 and 5 of the '945 patent, either literally or under the doctrine of equivalents.

25. Mercedes manufactures, sells, and/or uses occupant and/or child seat and/or rear-facing child seat detection and/or position systems which incorporate a bladder, embodying the patented invention, and will continue to do so unless enjoined by this Court. Mercedes has incorporated this system within certain of its automobiles (without limitation, but by way of example, as follows: 2008 Mercedes C Class (P/N 204-910-59-30-9D88 or DCX P/N 2048202385_0746, DELPHI P/N 28082162). By manufacturing and selling these products, Mercedes has in the past and continues to infringe, contribute to the infringement of, or induce the infringement of at least claims 1, 2, 3, 4 and 5 of the '945 patent, either literally or under the doctrine of equivalents.

26. FHI manufactures, sells, and/or uses occupant and/or child seat and/or rear-facing child seat detection and/or position systems which incorporate a bladder, embodying the patented invention, and will continue to do so unless enjoined by this Court. FHI has incorporated this system within certain of its automobiles (without limitation, but by way of example, as follows: 2007 Subaru Forester (Subaru P/N 98226SA011, DELPHI P/N 28052650)). By manufacturing and selling these products, FHI has in the past and continues to infringe, contribute to the infringement of, or induce the infringement of at least claims 1, 2, 3, 4 and 5 of the '945 patent, either literally or under the doctrine of equivalents.

27. The infringement of the '945 patent, as alleged in the preceding paragraph, has injured ATI, and ATI is entitled to recover damages in an amount that adequately compensates it for Defendants' infringement of the '945 patent, which in no event can be less than a reasonable royalty.

Claim for Patent Infringement: Count II

28. On December 21, 2004, United States Patent No. 6,833,516 (“the ‘516 patent”), which is entitled “Apparatus and Method for Controlling a Vehicular Component,” was duly and legally issued. A true and correct copy of the ‘516 patent is attached as **Exhibit B**.

29. Pursuant to 35 U.S.C. § 282, the ‘516 patent is presumed valid.

30. By assignment, ATI is the sole owner of the ‘516 patent and has the exclusive right to enforce the ‘516 patent.

31. Defendants Delphi and DPH Holdings have been and still are infringing the ‘516 patent in this judicial district and elsewhere, by making, importing, offering for sale, selling, and/or using PODS products which incorporate a bladder and a seat track sensor, which embody the patented invention and will continue to do so unless enjoined by this Court. By manufacturing and selling these products, Defendants Delphi and DPH Holdings have in the past and continue to infringe, contribute to the infringement of, or induce the infringement of the ‘516 patent.

32. Defendants New GM and Motors have been and still are infringing the ‘516 patent in this judicial district and elsewhere, by making, importing, offering for sale, selling, and/or using occupant and/or child seat and/or rear-facing child seat detection and/or position systems which incorporate a bladder and a seat track sensor, which embody the patented invention and will continue to do so unless enjoined by this Court. Without limitation, but by way of example, New GM and/or Motors incorporated within certain of its automobiles as follows: 2005 Cadillac Escalade. By manufacturing and selling these products, New GM and Motors have in the past and continue to infringe, contribute to the infringement of, or induce the infringement of the ‘516 patent.

Claim for Patent Infringement: Count III

33. On November 19, 2002, United States Patent No. 6,484,080 B2 (“the ‘080 patent”), which is entitled “Method and Apparatus for Controlling a Vehicular Component,” was duly and legally issued. A true and correct copy of the ‘080 patent is attached as **Exhibit C**. The ‘080 Patent has been reexamined and confirmed by the United States Patent Office. **Exhibit D**.

34. Pursuant to 35 U.S.C. § 282, the ‘080 patent is presumed valid.

35. By assignment, ATI is the sole owner of the ‘080 patent and has the exclusive right to enforce the ‘080 patent.

36. Defendants Delphi and DPH Holdings have been and still are infringing the ‘080 patent in this judicial district and elsewhere, by making, importing, offering for sale, selling, and/or using PODS products which incorporate a bladder, which embody the patented invention and will continue to do so unless enjoined by this Court.

37. The OEM Defendants have been and are still infringing the ‘080 Patent in this judicial district and elsewhere, by making, importing, offering for sale, selling and/or using occupant and/or child seat and/or rear-facing child seat detection and/or position systems which incorporate a bladder, which embody the patented invention and will continue to do so unless enjoined by this Court.

38. Upon information and belief, each of the Defendants also infringe the ‘080 patent as contributory infringers and by active inducement of infringement.

Claim for Patent Infringement: Count IV

39. On August 5, 2008, United States Patent No. 7,407,029 B2 (“the ‘029 patent”), which is entitled “Weight Measuring Systems and Methods For Vehicles,” was duly and legally issued. A true and correct copy of the ‘029 patent is attached as **Exhibit E**.

40. Pursuant to 35 U.S.C. § 282, the ‘029 patent is presumed valid.

41. By assignment, ATI is the sole owner of the '029 patent and has the exclusive right to enforce the '029 patent.

42. Defendants Delphi and DPH Holdings have been and still are infringing the '029 patent in this judicial district and elsewhere, by making, importing, offering for sale, selling, and/or using PODS products which incorporate a bladder, which embody the patented invention and will continue to do so unless enjoined by this Court.

43. The OEM Defendants have been and are still infringing the '029 Patent in this judicial district and elsewhere, by making, importing, offering for sale, selling and/or using occupant and/or child seat and/or rear-facing child seat detection and/or position systems which incorporate a bladder, which embody the patented invention and will continue to do so unless enjoined by this Court.

44. Upon information and belief, each of the Defendants also infringe the '029 patent as contributory infringers and by active inducement of infringement.

DEMAND FOR JURY TRIAL

ATI demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, ATI prays for entry of judgment:

A. That Defendants have directly infringed, have actively induced others to infringe and/or have contributed in the infringement of the '945 patent;

B. That Defendants Delphi, DPH Holdings, New GM and Motors have directly infringed, have actively induced others to infringe and/or have contributed in the infringement of the '516 patent;

C. That Defendants have directly infringed, have actively induced others to infringe and/or have contributed in the infringement of the '080 patent;

D. That Defendants have directly infringed, have actively induced others to infringe and/or have contributed in the infringement of the '029 patent;

E. That Defendants account for and pay to ATI all damages caused by the infringement of the patents-in-suit, which by statute can be no less than a reasonable royalty;

F. That Defendants, their officers, agents, servants, employees and attorneys, and other persons in active concert or participation with either of them be preliminarily and then permanently enjoined from further infringement of the patents-in-suit;

G. That Defendants be ordered to deliver to Plaintiff for destruction all infringing products and systems in their possession;

H. That this case be declared an exceptional case under 35 U.S.C. §285 and that Plaintiff be awarded its attorney fees incurred in this action;

I. For an award of Plaintiff's costs of this action, interest on the award and other charges to the maximum extent permitted; and

J. For such other future relief as the Court deems just and proper under the circumstances.

Respectfully submitted,

/s/ Lisa Rycus Mikalonis (P39485)

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Dated: March 25, 2010

PROOF OF SERVICE

I certify that on March 25, 2010, I electronically filed Plaintiff Automotive Technologies International, Inc.'s Fourth Amended Complaint [Corrected] with the Clerk of the Court using the ECF system which will send notification of such filing to the following: William Cosnowski, Jr., John R. Hutchins, Peter J. Brennan, Gretchen Colter, Sidney L. Frank, Edward W. Goldstein, Reginald J. Hill, Gregory A. Lewis, Lawrence C. Mann, George D. Moustakas, Matthew J.M. Prebeg, and David M. Schnorrenberg.

I certify that on March 25, 2010, I served Plaintiff Automotive Technologies International, Inc.'s Fourth Amended Complaint [Corrected] via electronic mail upon the following non-ECF participants:

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