

HON. RICHARD A. JONES

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

GREGORY H. RICE and ERGOSPACE, CORP.,

Plaintiffs,

v.

DAIMLER AG AND MERCEDES-BENZ USA,
LLC.,

Defendants.

Cause No. 2:15-cv-904-RAJ

PLAINTIFF'S FIRST AMENDED
COMPLAINT FOR PATENT
INFRINGEMENT

DEMAND FOR JURY TRIAL

Plaintiffs Greg Rice ("Mr. Rice") and ErgoSpace, Corp., ("ErgoSpace", collectively "Plaintiffs") complain of Defendants Daimler AG ("Daimler AG") and Mercedes-Benz USA, LLC. ("Mercedes-Benz USA" collectively "Mercedes"), as follows:

NATURE OF LAWSUIT

1. This is a claim for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

THE PARTIES

2. Mr. Rice is an individual residing in this district at Mercer Island, WA. ErgoSpace is a Washington Corporation having a principal place of business in this district at Mercer Island, WA. Mr. Rice is the named inventor in, and owner of, U.S. Patents No. 5,433,407 (the '407 patent) issued July 18, 1995 and entitled "Palm Rest For Use With

1 Computer Pointing Devices” (copy attached as Exhibit A) and U.S. Patent No. 5,788,195 (the
2 '195 patent) issued August 4, 1998 and entitled “Ergonomic Data Entry Device” (copy
3 attached as Exhibit B). At all relevant times, Mr. Rice was the owner and held the entire right,
4 title and interest in both of the '407 and '195 Patents, including the right to sue for past
5 infringement. On or about April 23, 2015, Mr. Rice assigned all right, title and interest of the
6 '407 and '195 Patents including the right to sue for present infringement of the '407 and '195
7 Patents to ErgoSpace Corp. Accordingly, Plaintiffs have standing to sue for infringement of
8 U.S. Patents Nos. 5,433,407 and 5,788,195.

9 3. Upon information and belief, Defendant Daimler AG is a German Corporation
10 with a principal place of business at Stuttgart, Baden-Württemberg, Germany. Upon
11 information and belief, Daimler AG is in the business of developing, manufacturing, and
12 distributing automobiles and transacts business and has directly or indirectly sold and/or
13 caused to be distributed to customers in this judicial district and throughout the State of
14 Washington products that infringe one or more claims of the '407 and '195 Patents.

15 4. Upon information and belief, Defendant Mercedes-Benz USA is a limited
16 liability company formed under the laws of Delaware with a principal place of business in
17 Montvale New Jersey. Upon information and belief, Mercedes-Benz USA is licensed to do
18 business in the state of Washington. Upon information and belief, Daimler AG is in the
19 business of developing, manufacturing, and distributing automobiles and transacts business
20 and has directly or indirectly sold and/or caused to be distributed to customers in this judicial
21 district and throughout the State of Washington products that infringe one or more claims of
22 the '407 and '195 Patents.

23 **JURISDICTION AND VENUE**

24 5. This Court has exclusive jurisdiction over the subject matter of this Complaint
25 under 28 U.S.C. §§ 1338(a).

26 6. Personal jurisdiction over the Defendant is proper in this Court. Venue in this
27 judicial district is proper under 28 U.S.C. §§ 1391(b), (c) and/or 1400(b).

DEFENDANT'S ACTS OF PATENT INFRINGEMENT

7. Defendant Daimler AG is in the business of designing, manufacturing, exporting and selling a variety of popular, well-respected luxury automobiles including, but not limited to, the “S Class” and “CL Class” automobiles sold under the “Mercedes-Benz” name. Upon information and belief, Defendant Mercedes-Benz USA is in the business of importing S Class and CL Class Mercedes-Benz automobiles into the United States and offering them for retail sale to customers throughout the United States and the state of Washington. Representative depictions of the Accused Products embodied within the S Class and CL Class models is included for illustrative purposes as Exhibit D (Claim Chart of the '407 Patent) and Exhibit E (Claim Chart of the '195 Patent).

8. As an example but not limitation, and as shown in Exhibit C, Claims 1, 2, 4, 5, 13, 14, 23, 24, and 25 of the '407 Patent generally describe an apparatus to minimize the stress associated with using a computer pointing device. The apparatus comprises of an upper surface for the computer pointing device, and a palm support section for supporting a user's palm. The palm support extends in such a way to allow a part of the computer pointing device to be positioned between the palm support section and the upper surface of the base. Likewise, Mercedes S Class and CL Class vehicles from at least as early as model year 2009 incorporate a palm rest which extends over a portion of the computer pointing device as depicted in Exhibit C.

9. As an example but not limitation, and as depicted in Exhibit D, Claims 8 and 12 of the '195 Patent generally describe a palm support section which directly overlies a portion of a work surface to allow a portion of the data entry device to be positioned directly underneath a portion of the palm support. The device further comprises of a “base component” for supporting the palm support section in such a position to permit the manipulation of the data entry device. Likewise, Mercedes S and CL class vehicles from at least as early as model year 2009 incorporate palm rests positioned over a data entry device as depicted in Exhibit D. For example but not limitation, the 2013 C Class Vehicles incorporate a

1 palm support connected to a base component in such a manner to permit a user to manipulate
2 the data entry device.

3 10. The S Class and CL Class automobiles made, imported, offered for sale and
4 sold in the United States are provided with palm rests which infringe at least Claims 1, 2, 4, 5,
5 13, 14, 23, 24, and 25 of the '407 Patent, and Claims 8 and 12 of the '195 Patent (“Asserted
6 Claims”) under 35 U.S.C. §271(a) by providing to customers, including customers in this
7 judicial district. In particular, Mercedes has been and continues to directly infringe the
8 Asserted Claims under 35 U.S.C. §271(a) by making, offering for sale, selling, using and/or
9 importing such automobiles in and/or into the United States. Upon information and belief,
10 infringing devices made, offered for sale, sold, or imported into the United States by
11 Mercedes includes, by way of example but not limitation, the various palm rests utilized in the
12 Mercedes S Class and CL Class series of automobiles.

13 11. Mercedes has also infringed the Asserted Claims under 35 U.S.C. §271(b) by
14 knowingly and actively inducing others to infringe through the sale, distribution and use of
15 such automobiles incorporating the above-mentioned limitations as described in Paragraphs 7
16 through 10.

17 12. Mercedes' direct infringement and inducement to infringe have been willful
18 and have deliberately injured and will continue to injure Plaintiffs unless and until the Court
19 enters an injunction prohibiting further infringement and, specifically, enjoining further
20 manufacture, use, importation, sale and/or offer for sale of products that fall within the scope
21 of the claims of '407 and '195 Patents.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs ask this Court to enter judgment against Defendants and against their subsidiaries, affiliates, agents, servants, employees and all persons in active concert or participation with them, granting the following relief:

A. An award of damages adequate to compensate Plaintiffs for the infringement that has occurred, together with prejudgment interest from the date infringement of the '407 and '195 Patents began;

B. Increased damages as permitted under 35 U.S.C. § 284;

C. A finding that this case is exceptional and an award to Plaintiffs of their attorneys' fees and costs as provided by 35 U.S.C. § 284;

D. Such other and further relief as this Court or a jury may deem proper and just.

JURY DEMAND

Plaintiffs demand trial by jury on all issues presented in this Complaint.

Dated this 22nd day of June, 2015.

Respectfully submitted,

/s/ Philip P. Mann

Philip P. Mann

Philip P. Mann, WSBA No: 28860
Timothy J. Billick, WSBA No. 46690
MANN LAW GROUP
Seattle Tower
1218 Third Avenue, Suite 1809
Seattle, Washington 98101
(206) 436-0900
Fax (866) 341-5140
phil@mannlawgroup.com
tim@mannlawgroup.com
Attorneys for Plaintiffs