

FILED
8/8/2017

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

THOMAS G. BRUTON
CLERK, U.S. DISTRICT COURT

EASTERN DIVISION

_____)	
VELOCITY PATENT LLC,)	
)	
<i>Plaintiff,</i>)	Civil Action No. 1:13-cv-8419
)	
v.)	Hon. Thomas M. Durkin
)	
FCA US LLC,)	JURY TRIAL DEMANDED
)	
<i>Defendant.</i>)	
_____)	

SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Velocity Patent LLC (“Velocity”) for its complaint against Defendant FCA US LLC (“FCA”) hereby demands a jury trial and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*

THE PARTIES

2. Plaintiff Velocity is a limited liability corporation organized and existing under the laws of Illinois and having a principal business address at 2323 Victory Avenue, Suite 700, Dallas, TX 75219.

3. On information and belief, Defendant FCA is a corporation organized under the laws of the state of Delaware with an office and principal place of business located at 1000 Chrysler Dr., Auburn Hills, MI 48326.

4. FCA advertises, markets, and distributes automobiles throughout the United States including automobiles under the Chrysler, Ram, Dodge, Jeep, Fiat, and SRT brands.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over FCA because FCA has committed, and continues to commit, acts of patent infringement in Illinois, including in this judicial district, and otherwise transacts business in the state of Illinois, including in this district.

7. Venue is proper in this District under 28 U.S.C. §§ 1391(b)-(d) and 1400(b) because FCA is subject to personal jurisdiction in this judicial district and has committed, and continues to commit, acts of patent infringement giving rise to the claims alleged herein within this judicial district.

THE PATENT-IN-SUIT

8. On September 21, 1999, U.S. Patent No. 5,954,781 (“the ’781 Patent”), entitled “METHOD AND APPARATUS FOR OPTIMIZING VEHICLE OPERATION” (Exhibit A), duly and legally issued.

9. Velocity owns all rights, title, and interest in and to the ’781 Patent and has the right to sue and recover for past, present, and future infringement.

COUNT I - INFRINGEMENT OF THE ’781 PATENT

10. Paragraphs 1 through 9 are incorporated by reference as though fully stated herein.

11. FCA manufactures, uses, imports, exports, offers for sale, and sells automobiles that include radar equipment and radar-based safety features, along with ultrasonic and other

safety features, including, for example, automobiles equipped with Adaptive Cruise Control, Rear Cross Path, Blind Spot Monitoring, Parksense Rear Assist, and/or Forward Collision Warning systems.

12. FCA also manufactures, uses, imports, exports, offers for sale, and sells automobiles with information displays that provide drivers with information regarding, for example, fuel consumption, efficiency of operation, and safety.

13. Additionally, FCA manufactures, uses, imports, exports, offers for sale, and sells automobiles that include engines that operate in different cylinder modes, which, for example, allows the engine to switch between a mode in which all of the engine cylinders are active, and a mode where only a portion of the engine cylinders are active.

14. Furthermore, FCA manufactures, uses, imports, exports, offers for sale, and sells automobiles that include manual gear shifting features including, for example, automobiles equipped with the AutoStick feature.

15. By manufacturing, using, importing, exporting, offering for sale, and selling automobiles equipped with one or more of the features described above, FCA has directly infringed, and continues to infringe, either literally or under the doctrine of equivalents, at least claim 17 of the '781 Patent in violation of 35 U.S.C. § 271.

16. Velocity has been damaged by FCA's infringement of the '781 Patent.

FCA'S WILLFUL INFRINGEMENT

17. Neither Velocity nor the previous owner of the '781 Patent, TAS Distributing Company, Inc. ("TAS"), have practiced the invention covered by the patent.

18. Neither Velocity nor TAS compete or competed with FCA or its predecessors Fiat and Chrysler.

19. FCA became aware of the '781 Patent no later than November 21, 2013, the filing date of the original Complaint against FCA alleging direct infringement of the '781 Patent. (D.I. 1.)

20. The original Complaint filed on November 21, 2013 against Chrysler identified accused features of FCA's Chrysler, Ram, Dodge, Jeep, and SRT branded vehicles. *Id.* On January 27, 2014, FCA answered the Complaint and admitted that the accused features were included in the accused vehicles. (D.I. 24.) Despite being on notice of allegations of infringement on November 21, 2013, FCA continued to market, sell, and export accused vehicles that included the accused features identified in the Complaint after November 21, 2013.

21. Velocity provided FCA with detailed preliminary infringement contentions on March 12, 2014. The infringement contentions identified accused vehicles and features that were marketed, sold, and exported by FCA from 2007-2014. Despite being on notice of detailed allegations of infringement as of March 12, 2014, FCA continued to market, sell, and export accused vehicles identified in the preliminary infringement contentions and the Complaint after March 12, 2014.

22. In 2014, on information and belief, Fiat purchased stock shares of Chrysler from the United Auto Workers to become the sole owner of Chrysler and merged Fiat and Chrysler into a new company called Fiat Chrysler Automobiles (FCA). On information and belief, as part of its diligence investigation prior to acquiring Chrysler and forming the new company, Fiat investigated pending litigation against Chrysler and gained knowledge of the '781 patent, this lawsuit, and the accused features and Chrysler vehicles covered by allegations of infringement. On information and belief, Fiat also obtained knowledge that Fiat vehicles fall within the alleged

scope of infringement of the '781 patent. Fiat vehicles include similar features to the accused features identified in the original Complaint and infringement contentions.

23. On information and belief, FCA introduced 2015 model year vehicles, including Fiat and Chrysler models at the end of 2014. Many of the 2015 model year vehicles introduced included the accused features identified in the Complaint and March 12, 2014 infringement contentions or similar features. Despite being on notice of detailed allegations of infringement on March 12, 2014, FCA marketed, sold, and exported model year 2015 vehicles with features that were identical or similar to accused features identified in the preliminary infringement contentions and the Complaint after March 12, 2014.

24. On September 16, 2014, FCA joined its Co-Defendants' request to stay the litigation pending resolution of post-grant proceedings at the USPTO that challenged the validity of the '781 Patent, resulting in considerable delay to the resolution of the litigation.

25. During the stay, FCA's Co-Defendants filed a reexamination request and three petitions for *inter partes* review against the '781 Patent in 2014 and 2015. In the first half of 2015, the USPTO disposed of all four challenges to the validity of the '781 Patent, and found that the asserted claims were valid. On July 7, 2015, the USPTO issued a reexamination certificate for the '781 Patent, confirming validity of original claims 1, 2, 4, 5, 7, 8, 10, 12, 13, 15 and 17-30, and issuing new claims 33-89.

26. On information and belief, prior to July 7, 2015, FCA became aware that the USPTO confirmed validity of original claims 1, 2, 4, 5, 7, 8, 10, 12, 13, 15 and 17-30, and allowed new claims 33-89.

27. Although FCA could have ceased its infringing activities, it continued to market, sell, and export the accused automobiles implementing the accused features even after it knew that the USPTO had confirmed the validity of the original claims and allowed new claims added during reexamination on or about July 7, 2015.

28. On information and belief, on or about June 1, 2015, FCA became aware that the USPTO denied or dismissed each of the requests for *inter partes* reviews filed by FCA's Co-Defendants against the '781 Patent.

29. Although FCA could have ceased its infringing activities, it continued to market, sell, and export the accused automobiles implementing the accused features even after it knew that the USPTO denied or dismissed each of the requests for *inter partes* reviews against the '781 Patent, confirmed the validity of the original claims and allowed new claims added during reexamination on or about July 7, 2015. Velocity provided FCA with updated preliminary infringement contentions on October 2, 2015 that included contentions for original claims 1, 7, 13, 17-20, 23, 26, and 28, and new claims 33-34, 40-42, 46, 53, 56, 58-59, 60, 64, 66, 69, 75-76, and 88. These updated infringement contentions identified 2007-2014 model year vehicles previously accused, as well as 2015 model year vehicles that were marketed, sold, and exported by FCA in 2014 and 2015. The contentions also added Fiat brand automobiles with similar accused features to the previously accused Chrysler vehicle models. Despite being on notice of the USPTO's confirmation of the validity of the asserted claims of the '781 Patent, including original and new claims, and having updated, detailed allegations of infringement on October 2, 2015, FCA continued to market, sell, and export accused vehicles with accused features identified in the March 12, 2014 and October 2, 2015 infringement contentions and the Complaint after October 2, 2015.

30. On October 21, 2015, Velocity filed the First Amended Complaint naming FCA as a defendant. (D.I. 59.) FCA was aware of the '781 Patent and newly issued reexamination claims 33-89 prior to the filing of the First Amended Complaint. (D.I. 1.) Despite being on notice of the USPTO's confirmation of the validity of the asserted claims of the '781 Patent, including original and new claims, and having updated, detailed allegations of infringement on October 2, 2015, FCA continued to market, sell, and export accused vehicles with accused features identified in the March 12, 2014 and October 2, 2015 infringement contentions and the Complaint after October 21, 2015.

31. On information and belief, FCA introduced 2016 model year vehicles at the end of 2015. Many of the 2016 model year vehicles introduced included the accused features identified in the Complaint and infringement contentions of March 12, 2014 and October 2, 2015, or similar features. Despite being on notice of the USPTO's confirmation of the validity of the asserted claims, detailed allegations of infringement on March 12, 2014 and October 2, 2015, and the Complaint and First Amended Complaint, FCA continued to market, sell, and export model year 2016 vehicles with features that were identical or similar to accused features previously identified after October 2 and October 21, 2015.

32. On December 23, 2015, FCA filed a motion for summary judgment of indefiniteness and non-infringement. (D.I. 80, 81.) FCA's motion identified the claimed "fuel overinjection notification" limitation as dispositive to the case, and moved for summary judgment of indefiniteness and non-infringement of that element. (*Id.*)

33. During depositions related to FCA's summary judgment motions, FCA's expert, Ralph V. Wilhelm, Ph.D., supported infringement by admitting that the claimed fuel

overinjection notification circuit informs a driver to take his foot off the gas. (Deposition Transcript of Ralph V. Wilhelm (January 14, 2016) at 91:12-93:17.) He also admitted that features accused of practicing the claimed fuel overinjection notification circuit inform the driver to take his foot off the gas. (*Id.* at 166:18-167:11; 175:23-178:1.)

34. Despite being on notice of the USPTO's confirmation of the validity of the asserted claims, detailed allegations of infringement on March 12, 2014 and October 2, 2015, the Complaint and First Amended Complaint, and Dr. Wilhelm's January 14, 2016 testimony, FCA continued to market, sell, and export model year 2016 vehicles with features that were identical or similar to accused features previously identified over the course of this litigation.

35. On September 21, 2016, this Court denied FCA's motion for summary judgment of indefiniteness and non-infringement. (D.I. 115, 116.) Despite being on notice of the USPTO's confirmation of the validity of the asserted claims and detailed allegations of infringement on March 12, 2014 and October 2, 2015, the Complaint and First Amended Complaint, Dr. Wilhelm's January 14, 2016 testimony, and this Court's denial of summary judgment of indefiniteness and non-infringement, FCA continued to market, sell, and export model year 2016 vehicles with features that were identical or similar to accused features identified in Velocity's infringement contentions and Complaints after September 21, 2016.

36. On October 21, 2016, Velocity identified various models of FCA vehicles that had been released since Velocity's October 2, 2015 infringement contentions that Velocity intended to accuse of infringement, including the 2016 models of Chrysler 200, Chrysler 300, Chrysler Town & Country, Dodge Challenger, Dodge Challenger SRT, Dodge Charger, Dodge Charger SRT, Dodge Dart, Dodge Durango, Dodge Grand Caravan, Dodge Viper, Dodge

Journey, Jeep Cherokee, Jeep Grand Cherokee, Jeep Grand Cherokee SRT, Jeep Compass, Jeep Patriot, Jeep Renegade, Jeep Wrangler, Ram 1500/2500/3500, Ram ProMaster, Ram ProMaster City, Ram Chassis Cab, Fiat 500c, Fiat 500e, Fiat 500L, Fiat 500X, Fiat 500 Abarth, and Fiat Spider. Despite being on notice of the USPTO's confirmation of the validity of the asserted claims, detailed allegations of infringement on March 12, 2014 and October 2, 2015, the Complaint and First Amended Complaint, Dr. Wilhelm's January 14, 2016 testimony, this Court's denial of summary judgment of indefiniteness and non-infringement, and Velocity's October 21, 2016 identification of accused model year 2016 vehicles, FCA continued to market, sell, and export model year 2016 vehicles with features that were identical or similar to accused features identified in Velocity's infringement contentions and Complaints after September 21, 2016.

37. On information and belief, FCA introduced 2017 model year vehicles at the end of 2016. Many of the 2017 model year vehicles introduced include the accused features identified in the Complaint and infringement contentions of March 12, 2014 and October 2, 2015 or similar features. Despite being on notice of the USPTO's confirmation of the validity of the asserted claims, detailed allegations of infringement on March 12, 2014 and October 2, 2015, the Complaint and First Amended Complaint, Dr. Wilhelm's January 14, 2016 testimony, this Court's denial of summary judgment of indefiniteness and non-infringement, and Velocity's October 21, 2016 identification of accused model year 2016 vehicles, FCA continued to market, sell, and export model year 2017 vehicles with features that were identical or similar to accused features identified in Velocity's infringement contentions and Complaints after September 21, 2016.

38. The vehicles introduced, marketed, and sold by FCA after November 21, 2013, incorporate features that infringe the claims of the '781 Patent, including the ECO message, Fuel Saver Mode, different color displays for fuel efficiency, gauges for fuel efficiency, numerical displays for fuel efficiency, Performance Shift Indicator, Gear Shift Indicator, upshift and downshift messages, Skip Shift, Paddleshift, Electronic Range Select, Autostick, Adaptive Cruise Control, Forward Collision Warning, Rear Cross Path, Blind Spot Monitoring, and Parksense Rear Assist identified in Velocity's complaints and infringement contentions.

39. According to representations made during discovery in this litigation, FCA did not modify the accused features in relevant part to the '781 patent in 2014 or any time thereafter and has not implemented any design-around.

40. Despite these facts (17-39), FCA did not cease its infringing activities and continued to introduce new infringing vehicle models year after year.

41. FCA's post-suit conduct of continuing to introduce, market, sell, and export infringing 2014-2017 model year vehicles after repeated notifications of infringement, litigation delay, confirmation of the validity of the asserted claims by the USPTO, and denial of summary judgment of indefiniteness and non-infringement is conduct that is egregious and that is "willful, wanton, malicious, bad-faith, deliberate, consciously wrongful, flagrant, or [] characteristic of a pirate." *Halo Elecs., Inc. v. Pulse Elecs., Inc.*, 136 S. Ct. 1923, 1932 (2016). Such conduct goes beyond typical infringement and is evidence of escalated infringing activities after receipt of the original Complaint in 2013.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Velocity prays that this Court:

- A. Enter a judgment that FCA has infringed the '781 Patent;
- B. Award Velocity damages in an amount sufficient to compensate Velocity for FCA's infringement of the '781 Patent, but not less than a reasonable royalty;
- C. Award Velocity treble damages for willful infringement of the '781 Patent pursuant to 35 U.S.C. § 284;
- D. Award Velocity prejudgment interest pursuant to 35 U.S.C. § 284; and
- E. Grant Velocity such other and further relief as this Court may deem just and proper.

JURY DEMAND

Velocity hereby demands a jury trial on all issues appropriately triable by a jury.

Dated: June 7, 2017

Respectfully submitted,

James Shimota
Howard Levin
Aaron Taggart
Braden Tilghman
HAYNES AND BOONE, LLP
180 N. LaSalle St., Suite 2215
Chicago, IL 60601
Tel: 312-216-1620
Fax: 312-216-1621

Nicholas Martini (admitted *pro hac vice*)
Nicole Johnson (admitted *pro hac vice*)
HAYNES AND BOONE, LLP
525 University Ave., Suite 400
Palo Alto, CA 94301
Tel: 650-687-8800
Fax: 650-687-8801

By /s/ James A. Shimota
Attorneys for Plaintiff Velocity Patent, LLC