

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

**BLITZSAFE TEXAS, LLC,**

Plaintiff,

v.

**BAYERISCHE MOTOREN WERKE AG,  
and BMW OF NORTH AMERICA, LLC,**

Defendants.

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Case No. 2:17-CV-00418-JRG

**JURY TRIAL DEMANDED**

**PLAINTIFF’S FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff, Blitzsafe Texas, LLC (“Blitzsafe” or “Plaintiff”), files this First Amended Complaint against Defendants Bayerische Motoren Werke AG and BMW of North America, LLC (collectively, “Defendants”), for patent infringement under 35 U.S.C. § 271 and alleges as follows:

**THE PARTIES**

1. Plaintiff, Blitzsafe Texas, LLC, is a limited liability company organized and existing under the laws of the State of Texas, and maintains its principal place of business at 100 W. Houston Street, Marshall, Texas 75670. Blitzsafe sells automotive interface products that allow the end user to connect a third-party external audio device or multimedia device to a car stereo in order to play the content on the device through the car stereo system and speakers from its office in Marshall, Texas. Blitzsafe sells its products throughout the United States including

in this judicial district. Blitzsafe is the owner of all right, title, and interest in and to U.S. Patent No. 7,489,786 and U.S. Patent No. 8,155,342.

2. Upon information and belief, Defendant Bayerische Motoren Werke AG (“BMWAG”) is a German automotive corporation with a place of business at Petuelring 130, BMW Haus, Munich, 80788, Germany. On information and belief, BMWAG does business itself, or through its subsidiaries and affiliates, in the State of Texas and the Eastern District of Texas.

3. Upon information and belief, Defendant BMW of North America, LLC (“BMWNA”) is a Delaware corporation with a place of business at 300 Chestnut Ridge Road, Woodcliff Lake, NJ 07675, and may be served with process through its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201. Upon information and belief, BMWNA is the exclusive importer and distributor of BMW and MINI branded vehicles. BMWNA acquires these vehicles from BMWAG, imports them into the United States, and distributes them through BMW dealers throughout the United States. Upon information and belief, BMW maintains a Vehicle Distribution Center in Galveston, Texas and a Regional Parts Distribution Center in Lancaster, Texas.

4. Upon information and belief, BMWNA is registered to do business in Texas with the Secretary of State. The Texas Business Organizations Code (Bus. Org. § 9.001) requires all entities formed outside of the State of Texas to complete such registration in order to “transact business” in Texas. Upon information and belief, BMWNA is registered as taxable entity with the Texas Comptroller of Public Accounts in connection with its marketing and distribution activities, and its sales of BMW and MINI-branded vehicles through its relationships with BMW dealerships.

5. Upon information and belief, BMWNA engages in sales of products that infringe the patents-in-suit to three BMW dealerships and at least one MINI dealership in the Eastern District of Texas, including BMW of Beaumont,<sup>1</sup> BMW of Tyler,<sup>2</sup> Classic BMW,<sup>3</sup> and MINI of Plano.<sup>4</sup> Upon information and belief, BMWNA engages in marketing activities that promote the sale of BMW and MINI-branded products to customers and/or potential customers located in Texas and in the judicial Eastern District of Texas.

6. Upon information and belief, BMWNA has 20 employees in the State of Texas and one living in the Eastern District of Texas.

7. Upon information and belief, BMWNA employees work with the BMW and MINI dealerships in this District on issues related to sales, marketing, technical training, and the service of parts and accessories. Upon information and belief, BMWNA reimburses these employees for travel and personal expenses related to their job responsibilities.

8. Upon information and belief, the BMW and MINI dealers located within the Eastern District of Texas have executed dealer agreements with BMWNA. Upon information and belief, these dealer agreements set forth standards and requirements enumerated by Defendants that dealers are required to comply with. Upon information and belief, these standards and requirements are directed to at least the dealership facility, space, appearance, layout, and equipment.

9. Upon information and belief, BMWNA regularly, continuously, and systematically provides support to and control over the BMW and MINI dealerships located in the Eastern District of Texas. Upon information and belief, BMWNA employees regularly and

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<sup>1</sup> Located in Beaumont, Texas. *See* <http://www.bmwofbeaumont.com/>.

<sup>2</sup> Located in Tyler, Texas. *See* <http://www.bmwoftyler.com/>.

<sup>3</sup> Located in Plano, Texas. *See* <http://www.classicbmw.com/>.

<sup>4</sup> Located in Plano, Texas. *See* <http://www.miniofplano.com/>.

systematically work at the BMW and MINI dealerships in this District to educate dealership employees regarding features of the BMW and MINI accused products sold in this judicial district, including but not limited to features regarding audio and multimedia integration systems. Upon information and belief, various positions at BMWNA require working at the dealerships in this District.

10. Upon information and belief, BMWNA employees regularly travel to BMW and MINI dealers in this district in order to provide support and exercise control over the sales, marketing, and service of BMW and MINI automobiles in this District. As one example of BMWNA's support to and control over the dealerships, upon information and belief, BMW employees travel to the dealerships located in this District to provide training to service technicians employed by such dealership. BMWNA employs Customer Experience and Dealer Engagement Interns, who "support the Retail Leadership Training Manager to launch a new in-dealer training program called Customer Experience. This program was created to teach customer facing dealer personnel what our customer expect with our ever changing market. The intern will assist with logistics of the training as well as weekly requests from the training company. He or she will also do quality control checks by visiting local dealers when training is going on to assess the facilitators . . . Additionally, the intern will support the Retail Recruiting & Retention Manager in the launch of our BMW Dealer Careers website." *See* Exhibit A, *available at* [https://bmwgroup.jobs/en\\_us/job?ref=170002AC&default=true](https://bmwgroup.jobs/en_us/job?ref=170002AC&default=true).

11. Upon information and belief, while Defendants' employees are working at dealerships in this District, they have access to communication devices (cell phones, laptops, etc.) provided by Defendants on which they conduct business on behalf of Defendants. Upon

information and belief, Defendants' employees have access to their BMW e-mail accounts while they are present in dealerships in this District.

12. Upon information and belief, through its exclusive agents, instrumentalities and representatives, BMWNA provides new car warranty service within the district on the infringing products. Upon information and belief, BMWNA warrants to the original and each subsequent owner of new BMW and MINI vehicles that any authorized BMW or MINI dealer will make any repairs or replacements necessary to correct defects in material or workmanship arising during the warranty period. Upon information and belief, all such warranty work is paid for by BMWNA. Upon information and belief, there are four authorized dealers in the Eastern District of Texas, at the service departments at BMW of Beaumont, BMW of Tyler, Classic BMW, and MINI of Plano. Upon information and belief, service technicians employed at these four dealerships participate in BMWNA-sponsored training programs, schools, and events.

13. Upon information and belief, BMWNA provides Service and Warranty Information Booklets ("Booklets") to BMW and MINI customers, including those customers that purchase BMW and MINI vehicles in the Eastern District of Texas. The Booklets direct questions regarding warranty rights and responsibilities to BMWNA's Customer Relations and Services Department. Upon information and belief, the Booklets direct customers, including those customers that purchase BMW and MINI vehicles in the Eastern District of Texas, to provide direct, written notification of any alleged unrepaired defects or malfunctions and service difficulties to BMWNA's Customer Relations and Services Department, including notifications under applicable state laws.

14. Upon information and belief, the BMW and MINI dealerships located within this district are BMWNA's exclusive agents, instrumentalities, and representatives within this

judicial district for the provision within this District of all new warranty service for BMW and MINI vehicles sold both within the district and outside the district. Upon information and belief, if a BMW or MINI customer located within the district needs to have new car warranty repairs performed within the district, Defendants require the BMW or MINI customer to have the work performed at one of their authorized BMW dealers within the District.

15. Upon information and belief, the technicians employed by BMWNA including those that reside in the District, provide direct supervision and assistance within the District on a regular, ongoing, and continuous basis in connection with warranty repairs being performed within the district.

16. Upon information and belief, one or more Defendants regularly engage in marketing activities that promote the sale of BMW and MINI-branded products to customers and/or potential customers located in Texas and in the judicial Eastern District of Texas. Upon information and belief, Defendants maintain interactive commercial websites, accessible to residents of Texas and the Eastern District of Texas, through which Defendants promote their products that infringe the patents-in-suit. Upon information and belief, these interactive commercial websites direct customers as to where to buy BMW and MINI-branded vehicles with accused products, including the BMW and MINI dealerships within the Eastern District of Texas. Defendants' interactive commercial websites have submission forms that allow customers to schedule test drives with dealers in this District and view inventory at the dealers in this District. Defendants' interactive websites also provide service and care information, and materials about Defendants' products, including the accused products, such as "how to videos." Upon information and belief, Defendants attempt to sell their branded vehicles within the District, which include the infringing products, by causing advertisements for their vehicles to

appear on television and radio programs broadcast into the District and in local newspapers distributed within the District.

17. Upon information and belief, BMWAG owns BMW trademarks in the United States, including but not limited to BMW ConnectedRide, BMW ConnectedDrive, BMW 430, BMW M4, BMW i3, BMW i8, BMW M, and BMW Group.

### **JURISDICTION AND VENUE**

18. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 1, *et seq.* This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

19. This Court has personal jurisdiction over Defendants. Defendants conduct business and have committed acts of patent infringement and/or have induced acts of patent infringement by others in this judicial district and/or have contributed to patent infringement by others in this judicial district, the State of Texas, and elsewhere in the United States.

20. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1400(b) because, among other things, Defendants are subject to personal jurisdiction in this judicial district, each Defendant has a regular and established place of business in Texas and in this judicial district, Defendant have purposely transacted business involving the accused products in this judicial district, including sales to one or more customers in Texas, and certain of the acts complained of herein occurred in this judicial district.

21. Defendants are subject to this Court's jurisdiction pursuant to due process and/or the Texas Long Arm Statute due at least to its substantial business in this State and judicial district, including (a) at least part of its past infringing activities, (b) regularly doing or soliciting

business in Texas, and/or (c) engaging in persistent conduct and/or deriving substantial revenue from goods and services provided to customers in Texas.

### **PATENTS-IN-SUIT**

22. On February 10, 2009, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 7,489,786 (the “786 Patent”) entitled “Audio Device Integration System.”

23. On April 10, 2012, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 8,155,342 (the “342 Patent”) entitled “Multimedia Device Integration System.”

### **FACTUAL ALLEGATIONS**

24. The patents-in-suit generally cover systems for integrating third-party audio devices and multimedia devices with a car stereo.

25. Plaintiff has complied with the requirements of 35 U.S.C. § 287(a).

26. Defendants manufacture, import, and/or sell audio and multimedia integration systems which have been installed in BMW and MINI branded vehicles made in or imported into the United States since at least approximately 2011, including the “iDrive” and “Connected Drive,” as well as accessories to be installed at or after the time of delivery of the vehicle (hereinafter collectively referred to as “Infotainment Systems”). These Infotainment Systems include head units, extension modules, and iPod/iPhone and mp3 integration kits that BMW purchases from third-party suppliers including, but not limited to, Harman International Industries, Inc., Harman Becker Automotive Systems, Inc., Harman Kardon, Alpine Electronics Inc., and Alpine Electronics of America, Inc.



27. The BMW Infotainment Systems are sold in at least the following BMW vehicles during the period from 2011 to the present: 1 Series E81/E82/E87/E88/F20/F21; 2 Series F22/F23/F45/F46; 3 Series E90/E91/E92/E93/F30/F31/F2/F35; 4 Series F32/F33/F36; 5 Series E61/F10/F11/G30; 6 Series E63/E63/F12/F13/F06; 7 Series F01/F02/F03/F04/G11/G12; Z Series E89; 1 Series M E82 M; M2 F87; M3 E90/92/93 M, F80; M4 F82/F83; M5 F10 M5; M6 F06/12/13 M6; X1 E84/F48; X3 F25/G01; X4 F26; X5 E70/F15; X6 E71/E72/F16; 3 GT F34; 5 GT F07; i3 I01; i8 I12. A list of BMW models sold in the United States with the BMW Infotainment Systems during the period from 2011 through the present is attached hereto as Exhibit B, and by this reference is incorporated herein. The MINI Infotainment Systems are sold in at least the following MINI vehicles during the period from 2011 to the present: Cooper, Hatch, Cabrio, Coupe, Roadster, Countryman, Paceman, and Clubman.

28. The Infotainment Systems support the integration of third-party external audio and multimedia devices, such as MP3 players, with the car stereo. The Infotainment Systems permit an end user to connect a third-party external audio or multimedia device to the car stereo by wire, such as through a USB port or auxiliary port, or wirelessly, such as through Bluetooth. Once connected, the end user may control the third-party external audio or multimedia device using the car stereo's controls, and the audio from the external device may be played through the car stereo and speakers while text, pictures, visual images, and video may be displayed on the display screen of the car stereo.

29. BMW's user manuals, instructional videos, websites, and other information demonstrate to the BMW users, customers, and prospective customers how an external audio device and external multimedia device may be connected to the car stereo by wire to, for

example, a USB port or wirelessly by Bluetooth, and how the external device may be controlled by the car stereo's controls. For example, the Owner's Manual for the 2012 BMW 5 Series Sedan, downloaded from <https://carmanuals2.com/get/bmw-535i-2012-owner-s-manual-54870>, "Online Edition for Part no. 01 40 2 607 879-09 11 490," instructs:

## **USB audio interface/mobile phone audio interface**

### **At a glance**

It is possible to connect external audio devices. They can be operated via iDrive. The sound is output on the vehicle loudspeakers.

### **Connectors for external devices**

- ▶ Connection via USB audio interface: Apple iPod/iPhone, USB devices, e.g., MP3 play-

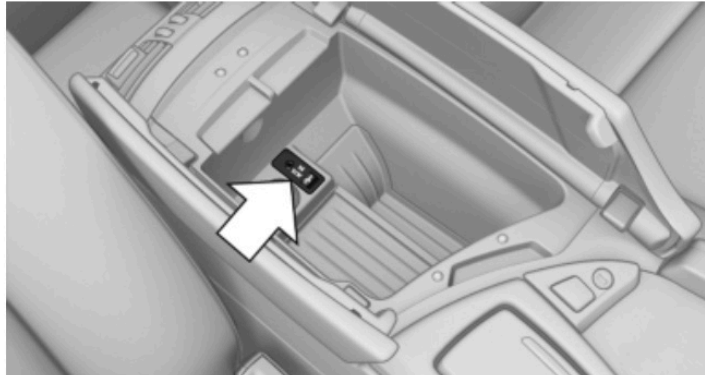
ers, USB flash drives, or mobile phones that are supported by the USB audio interface.

- ▶ Connection via snap-in adapter when equipped with extended connectivity of the music player in the mobile phone: Apple iPhone or mobile phones.

Due to the large number of different audio devices available on the market, it cannot be ensured that every audio device/mobile phone is operable on the vehicle.

Ask your service center about suitable audio devices/mobile phones.

## Connection of Apple iPod/iPhone via USB audio interface



USB audio interface is located in the center armrest.

## Bluetooth audio

### At a glance

- ▶ Music files on external devices such as audio devices or mobile phones can be played back via Bluetooth.  
Use of a mobile phone as an audio source, refer to page [231](#).
- ▶ The sound is output on the vehicle loudspeakers.
- ▶ The volume of the sound output is dependent on the device. If necessary, adjust the volume on the device.
- ▶ Up to four external devices can be paired with the vehicle.

## **Playback**

### **General information**

- ▶ The display of music track information depends on the device.
- ▶ Operation can take place on the device or iDrive.
- ▶ Playback is interrupted when data is exchanged via a mobile phone connected via Bluetooth.

### **Starting playback**

1. Connect the device.
2. "CD/Multimedia"
3. "External devices"

30. MINI's user manuals, instructional videos, websites, and other information demonstrate to the MINI users, customers, and prospective customers how an external audio device and external multimedia device may be connected to the car stereo by wire to, for example, a USB port or wirelessly by Bluetooth, and how the external device may be controlled by the car stereo's controls. For example, the Owner's Manual for the 2014 MINI Coupe Roadster," instructs:

### **USB audio interface/music interface for smartphones**

#### **At a glance**

It is possible to connect external audio devices. They are operated via the onboard monitor. The sound is output on the vehicle loudspeakers.

#### **Connectors for external devices**

- ▷ Connection via USB audio interface: Apple iPod/iPhone, USB devices, e.g., MP3 players, USB flash drives, or mobile phones that are supported by the USB audio interface.
- ▷ Connection via snap-in adapter, when equipped with the music interface for smartphones: Apple iPhone or mobile phones.

Playback is only possible if no audio device is connected to the analog AUX-IN port.

Due to the large number of different audio devices available on the market, it cannot be ensured that every audio device/mobile phone is operable on the vehicle.

Ask your service center about suitable audio devices/mobile phones.

## Connecting



The USB audio interface is in the center console.

### Connection of Apple iPod/iPhone via USB audio interface

To connect the iPod, use the special cable adapter for the Apple iPod. Additional information can be obtained from the service center or on the Internet: [www.mini.com/connectivity](http://www.mini.com/connectivity).

Connect the Apple iPod/iPhone with the AUX-IN port and USB interface.

The Apple iPod/iPhone menu structure is supported by the USB audio interface.

## **COUNT I** **(Infringement of the '786 Patent)**

31. Paragraphs 1 through 30 are incorporated herein by reference as if fully set forth in their entireties.

32. Blitzsafe has not licensed or otherwise authorized Defendants to make, use, offer for sale, sell, or import any products that embody the inventions of the '786 Patent.

33. Defendants have and continue to directly infringe one or more claims of the '786 Patent, including claim 57, either literally or under the doctrine of equivalents, by making, using, offering to sell, selling, and/or importing into the United States infringing Infotainment Systems without authority and in violation of 35 U.S.C. § 271.

34. Defendants have and continue to indirectly infringe one or more claims of the '786 Patent by knowingly and intentionally inducing others to directly infringe, either literally or under the doctrine of equivalents, by making, using, offering to sell, selling, and/or importing

into the United States the infringing Infotainment Systems. For example, Defendants, with knowledge that the Infotainment Systems infringe the '786 Patent at least as of the date of the original Complaint, knowingly and intentionally induced, and continue to knowingly and intentionally induce, direct infringement of the '786 Patent by providing Infotainment System user manuals, product manuals, instructional videos, website information, and documentation that instruct end users how to use the Infotainment Systems, including specifically how to connect their external third-party audio and multimedia devices to the car stereo and how to control the external device using the car stereo's controls. Defendants induced infringement by others, including end users, with the intent to cause infringing acts by others or, in the alternative, with the belief that there was a high probability that others, including end users, infringe the '786 Patent, but while remaining willfully blind to the infringement.

35. Defendants have and continue to indirectly infringe one or more claims of the '786 Patent by contributing to the direct infringement, either literally or under the doctrine of equivalents, by others, including end users, by offering to sell, selling, and/or importing into the United States the infringing Infotainment Systems and with the knowledge, at least as of the date of the original Complaint, that the Infotainment Systems contain components that constitute a material part of the inventions claimed in the '786 Patent. Such components include, for example, interfaces that permit an end user to use a car stereo's controls to control an external third party audio device and multimedia device. Defendants know that these components are especially made or especially adapted for use in an infringement of the '786 Patent and that these components are not a staple article or commodity of commerce suitable for substantial non-infringing use. Alternatively, Defendants believed there was a high probability that others would infringe the '786 Patent, but remained willfully blind to the infringing nature of others' actions.

36. Blitzsafe has suffered damages as a result of Defendants' direct and indirect infringement of the '786 Patent in an amount to be proved at trial.

37. Blitzsafe has suffered, and will continue to suffer, irreparable harm as a result of Defendants' infringement of the '786 Patent for which there is no adequate remedy at law, unless Defendants' infringement is enjoined by this Court.

38. Defendants have committed and continue to commit acts of infringement that Defendants actually knew or should have known constituted an unjustifiably high risk of infringement of at least one valid and enforceable claim of the '786 Patent. Prior to the filing of the original Complaint, Blitzsafe's CEO had both oral and written communications with one or more of the Defendants and put Defendants on notice of the filing of the patent application from which the '786 Patent issued. In addition, thereafter, upon information and belief, Defendants had actual knowledge of the '786 Patent from prior litigations accusing products made by Infotainment System suppliers of Defendants, prior litigations in which Infotainment System suppliers of Defendants were involved as third parties, and from prior litigations involving Defendants themselves. Defendants' infringement of the '786 Patent has been and continues to be willful, entitling Blitzsafe to an award of treble damages, reasonable attorney fees, and costs in bringing this action.

**COUNT II**  
**(Infringement of the '342 Patent)**

39. Paragraphs 1 through 30 are incorporated herein by reference as if fully set forth in their entirety.

40. Blitzsafe has not licensed or otherwise authorized Defendants to make, use, offer for sale, sell, or import any products that embody the inventions of the '342 Patent.



41. Defendants have and continue to directly infringe one or more claims of the '342 Patent, including claim 49, either literally or under the doctrine of equivalents, by making, using, offering to sell, selling, and/or importing into the United States infringing Infotainment Systems without authority and in violation of 35 U.S.C. § 271.

42. Defendants have and continue to indirectly infringe one or more claims of the '342 Patent by knowingly and intentionally inducing others to directly infringe, either literally or under the doctrine of equivalents, by making, using, offering to sell, selling, and/or importing into the United States the infringing Infotainment Systems. For example, Defendants, with knowledge that the Infotainment Systems infringe the '342 Patent, at least as of the date of the original Complaint, knowingly and intentionally induced, and continue to knowingly and intentionally induce, direct infringement of the '342 Patent by providing Infotainment System operating manuals, product manuals, instructional videos, website information, and documentation that instruct end users how to use the Infotainment Systems, including specifically how to connect external third-party audio and multimedia devices to the car stereo and how to control the external device using the car stereo's controls. Defendants induced infringement by others, including end users, with the intent to cause infringing acts by others or, in the alternative, with the belief that there was a high probability that others, including end users, infringe the '342 Patent, but while remaining willfully blind to the infringement.

43. Defendants have and continue to indirectly infringe one or more claims of the '342 Patent by contributing to the direct infringement, either literally or under the doctrine of equivalents, by others, including end users, by offering to sell, selling, and/or importing into the United States infringing Infotainment Systems, with the knowledge, at least as of the date of the original Complaint, that the Infotainment Systems contain components that constitute a material

part of the inventions claimed in the '342 Patent. Such components include, for example, interfaces that permit an end user to use a car stereo's controls to control an external third-party audio device. Defendants know that these components are especially made or especially adapted for use in an infringement of the '342 Patent and that these components are not a staple article or commodity of commerce suitable for substantial non-infringing use. Alternatively, Defendants believed there was a high probability that others would infringe the '342 Patent, but remained willfully blind to the infringing nature of others' actions.

44. Blitzsafe has suffered damages as a result of Defendants' direct and indirect infringement of the '342 Patent in an amount to be proved at trial.

45. Blitzsafe has suffered, and will continue to suffer, irreparable harm as a result of Defendants' infringement of the '342 Patent for which there is no adequate remedy at law, unless Defendants' infringement is enjoined by this Court.

46. Defendants have committed and continue to commit acts of infringement that Defendants actually knew or should have known constituted an unjustifiably high risk of infringement of at least one valid and enforceable claim of the '342 Patent. Prior to the filing of the original Complaint, Blitzsafe's CEO had both oral and written communications with one or more of the Defendants and put Defendants on notice of the filing of the patent application from which the '786 Patent issued. In addition, thereafter, upon information and belief, Defendants had actual knowledge of the '342 Patent from prior litigations accusing products made by Infotainment System suppliers of Defendants, prior litigations in which Infotainment System suppliers of Defendants were involved as third parties, and from prior litigations involving Defendants themselves. Upon information and belief, Defendants were also on notice of the '342 Patent from prior litigations involving Defendants themselves. Defendants' infringement of

the '342 Patent has been and continues to be willful, entitling Blitzsafe to an award of treble damages, reasonable attorney fees, and costs in bringing this action.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury for all issues so triable.

**PRAYER FOR RELIEF**

WHEREFORE, Blitzsafe prays for relief against Defendants as follows:

a. Entry of judgment declaring that Defendants have directly and/or indirectly infringed one or more claims of each of the patents-in-suit;

b. Entry of judgment declaring that Defendants' infringement of the patents-in-suit has been willful and deliberate;

c. An order pursuant to 35 U.S.C. § 283 permanently enjoining Defendants, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them, from further acts of infringement of the patents-in-suit;

d. An order awarding damages sufficient to compensate Blitzsafe for Defendants' infringement of the patents-in-suit, but in no event less than a reasonable royalty, together with interest and costs;

e. An order awarding Blitzsafe treble damages under 35 U.S.C. § 284 as a result of Defendants' willful and deliberate infringement of the patents-in-suit;

f. Entry of judgment declaring that this case is exceptional and awarding Blitzsafe its costs and reasonable attorney fees under 35 U.S.C. § 285; and

g. Such other and further relief as the Court deems just and proper.

Dated: September 18, 2017

Respectfully submitted,

/s/ Alfred R. Fabricant

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**ATTORNEYS FOR PLAINTIFF,  
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62822496 v4

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on September 18, 2017, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3).

*/s/ Alfred R. Fabricant*

Alfred R. Fabricant