

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

KCG TECHNOLOGIES, LLC,

Plaintiff,

V.

Civil Action No.

CARMAX AUTO SUPERSTORES, INC.;
CARMAX FUNDING SERVICES, LLC;
CARMAX FUNDING SERVICES II, LLC;
CARMAX BUSINESS SERVICES, LLC.

Defendants.

Complaint

Plaintiff, KCG Technologies, LLC (“KCG”) brings this action for patent infringement against Defendants CarMax Auto Superstores, Inc., CarMax Funding Services, LLC, CarMax Funding Services II, LLC, and CarMax Business Services, LLC (“Defendants”) and alleges as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement under 35 U.S.C. §§ 271, *et seq.*, by KCG against Defendant.

PARTIES

2. KCG incorporated in the Commonwealth of Massachusetts and has a business headquarters at One Boston Place, Suite 2600, Boston, MA 02108. KCG is the owner of United States Patent No. 9,671,955 (“the ’955 patent”) by way of assignment executed on August 3, 2016 and filed at the United States Patent and Trademark Office (“USPTO”) on August 9, 2016 at Reel/Frame No. 039385/0965. The ’955 patent is entitled “Virtual Smart Phone” and lists Michael Rogler Kildevaeld (“Kildevaeld”) as the sole inventor. *See* Exhibit 1.

3. Upon information and belief, CarMax Auto Superstores, Inc. is a corporation organized and existing under the laws of Delaware with a principal place of business at 12800 Tuckahoe Creek Parkway, Richmond, VA 23238. Upon information and belief, CarMax Auto Superstores, Inc. is registered as a foreign corporation in the Commonwealth of Massachusetts, has a regular place of business in the Commonwealth of Massachusetts, and is in the business, at least in pertinent part, of selling used automobiles in the Commonwealth of Massachusetts.

4. Upon information and belief, CarMax Funding Services, LLC is a corporation organized and existing under the laws of Delaware with a principal place of business at 12800 Tuckahoe Creek Parkway, Richmond, VA 23238. Upon information and belief, CarMax Funding Services, LLC is registered as a foreign corporation in the Commonwealth of Massachusetts, has a regular place of business in the Commonwealth of Massachusetts, and is in the business, at least in pertinent part, of selling and/or facilitating the sale of used automobiles in the Commonwealth of Massachusetts.

5. Upon information and belief, CarMax Funding Services II, LLC is a corporation organized and existing under the laws of Delaware with a principal place of business at 12800 Tuckahoe Creek Parkway, Richmond, VA 23238. Upon information and belief, CarMax

Funding Services II, LLC is registered as a foreign corporation in the Commonwealth of Massachusetts, has a regular place of business in the Commonwealth of Massachusetts, and is in the business, at least in pertinent part, of selling and/or facilitating the sale of used automobiles in the Commonwealth of Massachusetts.

6. Upon information and belief, CarMax Business Services, LLC is a corporation organized and existing under the laws of Delaware with a principal place of business at 12800 Tuckahoe Creek Parkway, Richmond, VA 23238. Upon information and belief, CarMax Business Services, LLC is registered as a foreign corporation in the Commonwealth of Massachusetts, has a regular place of business in the Commonwealth of Massachusetts, and is in the business, at least in pertinent part, of selling and/or facilitating the sale of used automobiles in the Commonwealth of Massachusetts.

JURISDICTION AND VENUE

7. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338 because KCG asserts claims for patent infringement arising under the patent laws of the United States of America, Title 35 of the United States Code, including 35 U.S.C. § 271. Venue is proper in this Court under 28 U.S.C. §§ 1391 and 1400(b).

8. Defendants are subject to this Court's personal jurisdiction because it has purposefully availed itself of the rights and benefits of the laws of Massachusetts, and their activities in Massachusetts give rise to KCG's claims.

9. Upon information and belief, Defendants regularly and continuously transact business within the Commonwealth of Massachusetts, including availing themselves of the privilege of conducting business in the Commonwealth of Massachusetts by marketing, offering for sale, and/or selling its products there for use by Massachusetts citizens. Upon information

and belief, Defendants derive substantial revenue from its sales including residents in the Commonwealth of Massachusetts. For instance, Defendants offer their products for sale online and at their locations within Massachusetts to customers, including customers in Massachusetts. *See* <https://www.carmax.com/stores/ma>.

10. Specifically, Defendants presently offer for sale and sell used automobiles that include Carplay®, NissanConnect®, Android Auto, and/or Toyota Sync/Entune™ technologies. Furthermore, Defendants purposefully and voluntarily directly infringe the claims of the '955 patent through their actions within the District of Massachusetts.

11. Defendants also induce the direct infringement of claims of the '955 patent through the offer for sale and selling of used automobiles within the District of Massachusetts having Carplay®, NissanConnect®, Android Auto, and/or Toyota Sync/Entune™ technologies. Upon information and belief, Defendants offer for sale and sell automobiles including owner's manuals instructing customers on how to use Carplay®, NissanConnect®, Android Auto, and/or Toyota Sync/Entune™ technologies. Such instructions actively induce and/or contribute to the infringement of the claims of the '955 patent.

12. In addition to Defendants' continuously and systematically conducting business in Massachusetts, the causes of action against Defendants are connected (but not limited) to Defendants' purposeful acts committed in the Commonwealth of Massachusetts including Defendants' sale of vehicles comprising the virtual smartphone technology, as described in the '955 Patent.

13. Defendants are companies that have a regular and established presence in the district and sell and/or offer for sale a product that comprises virtual smartphone technology. *See* Exhibit 2. In particular, Defendants have offered for sale on their website a vehicle that includes

Honda Ridgeline, including RTL-T trim line. *Id.* According to CarMax, the RTL-T “features everything found on the RTL trim as well as Honda LaneWatch™, Apple CarPlay™ and Android Auto™, LED daytime running lights, and more!” *Id.* CarMax also advertises that it will deliver the vehicle to Massachusetts if it is not found directly on a lot in Massachusetts. *Id.* (“Price assumes that final purchase will be made in the State of MA, unless vehicle is non-transferable. Vehicle subject to prior sale. Applicable transfer fees are due in advance of vehicle delivery and are separate from sales transactions.”).

14. For the reasons set forth above, venue is proper in this judicial district pursuant to 28 U.S.C. § 1400(b) because Defendants have committed acts of infringement in this judicial district and have a regular and established place of business in this judicial district.

BACKGROUND

15. The '955 patent claims both a virtual smart phone and a method of accessing features of a smart phone in an automobile.

16. Claim 1 recites a virtual smart phone comprising a screen mounted in an automobile; a processor, a non-transitory memory, and a power port mounted in the automobile; a software application executing on the processor to control image display on the screen and emulate features of a handheld device; a visual representation of a plurality of features of the handheld device on the screen; and an interactive element, wherein the interactive element allows access to the plurality of features of the handheld device, wherein the plurality of features of the handheld device comprises volume control, messages, phone call, email, internet browser, music player, calendar, Global Positioning System, contacts, and maps.

17. Claims 2, and 4-13 also depend from claim 1, directly or indirectly.

18. Claim 3 recites a method of accessing features of a smart phone in an automobile. Claim 3 recites that the method comprises receiving at a processor in an automobile information representative of a smart phone user interface, including features thereof; receiving at a processor in an automobile information representative of data associated with the smart phone; displaying an image representative of the smart phone including actionable elements based on the data; and facilitating, with the processor, access to at least one feature of the smart phone in response to a user interacting with at least one of the actionable elements independent of access to the smart phone, wherein the actionable elements comprise volume control, messages, phone call, email, internet browser, music player, calendar, Global Positioning System, contacts, and maps.

19. The claims of the '955 patent are valid.

20. Mr. Kildevaeld is the sole inventor of the technology described and claimed in the '955 patent. Mr. Kildevaeld had an insight relating to cell phone technology and its potential for misuse, even as people used this technology more frequently. Mr. Kildevaeld realized that cell phone technology could be dangerous when used in a moving vehicle.

21. Mr. Kildevaeld sought to decrease a driver's need to operate a small cell phone while attempting to drive through a new device – a virtual smart phone. The virtual smart phone would be able to emulate the features of a cell phone from the touch screen in an automobile. The driver would not have to operate the cell phone and its small touch screen or buttons. Instead, the driver would be able to access many of the features of the cell phone on the automobile dash. Thus, the driver maintains greater focus on the road rather than on their cell phone.

22. Mr. Kildevaeld's idea was disclosed to the USPTO as Provisional Patent Appl. Ser. No. 61/324,614, which was filed on April 15, 2010. Mr. Kildevaeld obtained the '955 patent on June 6, 2017.

United States Patent No. 9,671,955

23. On June 6, 2017, the USPTO issued the '955 patent to Mr. Kildevaeld, after a lengthy, thorough, and fair examination of the contents and claims of the application giving rise to the '955 patent.

24. As shown in Exhibit 1, the '955 patent is broadly directed to a virtual smart phone and methods of accessing features of a smart phone remotely. This averment is not meant to limit the scope of the invention in any way.

25. KCG is the sole legal owner of the '955 patent.

26. The '955 patent is enforceable.

27. Defendant has knowledge of the '955 patent and that its activities are infringing the claims of the '955 patent at least from the service of this Complaint.

Infringement of the '955 Patent

28. One or more of the Defendants offers for sale and sells vehicles that infringe at least claim 1 of the '955 patent. *See* Exhibit 2. According to Apple's website, more than 500 models of cars include Carplay® and every major automobile manufacturer currently offers models that support Carplay®. *See* <https://www.apple.com/ios/carplay/available-models/> (last visited May 2, 2019). According to the Android website, more than 400 models support Android Auto. *See* https://www.android.com/intl/en_ca/auto/ (last visited May 1, 2019). Defendants individually or jointly offer for sale and sell vehicles that includes Carplay®, NissanConnect®, Android Auto, and/or Toyota Sync/Entune™ according to information from the manufacturer of

said car. These vehicles include a screen mounted in the vehicle, a processor, a non-transitory memory, and a power port mounted. *See* Exhibit 2. These vehicles also include a software application executing on the processor to control image display on the screen and emulate features of a handheld device. *Id.* The image display provides a visual representation of a plurality of features of the handheld device on its touch screen, which is an interactive element that allows access to the plurality of features of the handheld device. *Id.*

29. As shown in Exhibit 2, Defendants sell and/or offer for sale vehicles that allow for accessing features of a smart phone in an automobile. Defendants offer for sale and/or sell vehicles comprising Carplay®, NissanConnect®, Android Auto, and/or Toyota Sync/Entune™. These systems perform the steps of receiving at a processor in an automobile information representative of a smart phone user interface, including features thereof; receiving at a processor in an automobile information representative of data associated with the smart phone; displaying an image representative of the smart phone including actionable elements based on the data; and facilitating, with the processor, access to at least one feature of the smart phone in response to a user interacting with at least one of the actionable elements independent of access to the smart phone, wherein the actionable elements comprise volume control, messages, phone call, email, internet browser, music player, calendar, Global Positioning System, contacts, and maps.

30. The above allegations set forth Defendants' direct infringement of the claims of the '955 patent. In addition, Defendants' continued offering for sale and sale of infringing vehicles is willful at least from the service of this Complaint.

31. Furthermore, Defendants' induce infringement of their customers of at least claim 1 of the '955 claims. *See* Exhibit 2. Upon information and belief, Defendants provide instructions such as manuals and verbal instructions to their customers regarding how to use the

invention claimed and disclosed in the '955 patent. Upon information and belief, Defendants provide instructions on how to use Carplay®, NissanConnect®, Android Auto, and/or Toyota Sync/Entune™. As shown in Exhibit 2, the systems include the steps of receiving at a processor in an automobile information representative of a smart phone user interface, including features thereof; receiving at a processor in an automobile information representative of data associated with the smart phone; displaying an image representative of the smart phone including actionable elements based on the data; and facilitating, with the processor, access to at least one feature of the smart phone in response to a user interacting with at least one of the actionable elements independent of access to the smart phone, wherein the actionable elements comprise volume control, messages, phone call, email, internet browser, music player, calendar, Global Positioning System, contacts, and maps.

32. The above allegations set forth Defendants' indirect infringement of the claims of the '955 patent due to their customers directly infringing through their inducement and/or contributory infringement. In addition, Defendants' continued offering for sale and sale of infringing vehicles is willful at least from the service of this Complaint.

COUNT I

(DIRECT INFRINGEMENT OF THE '955 PATENT BY DEFENDANTS)

33. Each of the preceding paragraphs 1 through 32 are realleged and incorporated as if fully set forth.

34. Defendants are directly infringing, either literally and/or under the doctrine of equivalents, at least claim 1 of the '955 patent, by among other things, offering for sale and selling vehicles having Carplay®, NissanConnect®, Android Auto, and/or Toyota Sync/Entune™. Defendants did not obtain, and has never obtained, authority or license from KCG for such activities.

35. Defendants had actual notice that their conduct and the conduct of their customers infringes the claims of the '955 patent at least from the service of this Complaint.

36. As a result of Defendants' direct infringement of the '955 patent, KCG has suffered, and continues to suffer damages in an amount not yet determined, of at least a reasonable royalty due to the infringing acts of the Defendants.

37. As a result of Defendants' direct infringement of the '955 patent, KCG has been irreparably harmed. Unless such infringing acts are enjoined by this Court, KCG will continue to suffer additional irreparable injury.

38. Upon information and belief, Defendant's direct and indirect infringement of the '955 patent has been intentional, deliberate, and willful at least since the service of this Complaint.

COUNT II

(INDIRECT INFRINGEMENT OF THE '955 PATENT BY DEFENDANTS)

39. Each of the preceding paragraphs 1 through 38 are realleged and incorporated as if fully set forth.

40. In violation of, at least, 35 U.S.C. §§ 271, Defendant is now, and has been indirectly infringing the '955 patent.

41. Defendants are indirectly infringing, either literally and/or under the doctrine of equivalents, at least claim 1 of the '955 patent, by among other things, inducing and/or contributorily infringing at least claim of the '955 patent. Defendants instruct their customers, either individually or jointly, on how to use Carplay®, NissanConnect®, Android Auto, and/or Toyota Sync/Entune™, such that their customers directly infringe at least claim 1 of the '955 patent. Neither Defendants nor their customers have obtained authority or license from KCG for such activities.

42. As a result of Defendants' indirect infringement of the '955 patent, KCG has suffered, and continues to suffer damages in an amount not yet determined, of at least a reasonable royalty due to the infringing acts of the Defendants.

43. As a result of Defendants' indirect infringement of the '955 patent, KCG has been irreparably harmed. Unless such infringing acts are enjoined by this Court, KCG will continue to suffer additional irreparable injury.

44. Upon information and belief, Defendant's direct and indirect infringement of the '955 patent has been intentional, deliberate, and willful at least since the service of this Complaint.

DEMAND FOR JURY TRIAL

45. In accordance with Rule 38 of the Federal Rules of Civil Procedure and Local Rule, Plaintiff respectfully demands a jury trial of all issues triable to a jury in this action.

PRAYER FOR RELIEF

WHEREFORE, KCG prays for judgment as follows:

- (a) A declaration that Defendant directly infringes literally or under the doctrine of equivalents the '955 patent under 35 U.S.C. § 271, and a final judgment incorporating the same;
- (b) A declaration that Defendants are inducing and has induced infringement of the '955 patent under 35 U.S.C. § 271, and a final judgment incorporating the same;
- (c) Equitable relief under 35 U.S.C. § 283, including, but not limited to an injunction that enjoins Defendant and any of its officers, agents, employees, assigns,

representatives, privies, successors, and those acting in concert or participation with them from infringing and/or inducing infringement of the '955 patent;

- (d) An award of damages sufficient to compensate KCG for infringement of the '955 patent by Defendant, together with prejudgment, post-judgment interest, and costs under 35 U.S.C. § 284;
- (e) An accounting of damages;
- (f) An order compelling Defendant to compensate KCG for any ongoing and/or future infringement of the '955 patent, in an amount to be determined;
- (g) A judgment holding that this is an exceptional case under 35 U.S.C. § 285 awarding KCG its reasonable attorneys' fees and expenses; and
- (h) A judgment that Defendant's conduct was willful and an increase in damages up to three times the amount found or assessed under 35 U.S.C. § 284; and
- (i) Such other and further relief as this Court deems just and proper.

Respectfully submitted,

Date: May 13, 2019

/s/ /David A Chavous/
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