

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

FORAS TECHNOLOGIES LTD.,

Plaintiff,

v.

BAYERISCHE MOTOREN WERKE AG and
ROBERT BOSCH GMBH,

Defendants.

Case No. 6:23-cv-386

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

This is an action for patent infringement arising under the Patent Laws of the United States of America, 35 U.S.C. § 1 *et seq.*, in which Plaintiff Foras Technologies Limited (“Plaintiff” or “Foras”) makes the following allegations against Defendants Bayerische Motoren Werke AG (“BMW”) and Robert Bosch GmbH (“Bosch”) (collectively, “Defendants”):

INTRODUCTION

1. This complaint arises from Defendants’ unlawful infringement of the following United States patents owned by Plaintiff, which relate to lockstep processing technology: United States Patent No. 7,502,958 (“the ’958 Patent”) (collectively, the “Asserted Patent”).

PARTIES

2. Plaintiff Foras Technologies Limited is a private company limited by shares organized and existing under the law of Ireland, with its principal place of business at The Hyde Building, Suite 23, The Park, Carrickmines, Dublin 18, Ireland. Foras is the sole owner by

assignment of all right, title, and interest in the Asserted Patent, including the right to recover for past, present, and future infringement.

3. Defendant Bayerische Motoren Werke AG (“BMW”) is a corporation organized and existing under the laws of Germany, with a place of business at Petuelring 130, 80809, Munich, Germany. On information and belief, BMW does business itself, or through its subsidiaries, affiliates, and agents, in the State of Texas and the Western District of Texas. On information and belief, BMW is responsible for importing, making, marketing, distributing, offering for sale, and/or selling BMW-branded automobiles in the United States (directly or through its wholly-owned subsidiaries), including in this District.

4. Defendant Robert Bosch GmbH (“Bosch”) is a corporation organized and existing under the laws of Germany, with a place of business at Robert-Bosch-Platz 1, 70839, Gerlingen, Germany. On information and belief, Bosch does business itself, or through its subsidiaries, affiliates, and agents, in the State of Texas and the Western District of Texas. On information and belief, Bosch is responsible for importing, making, marketing, distributing, offering for sale, and/or selling Bosch components (such as electronic control units (“ECU”)) included in BMW-branded automobiles in the United States (directly or through its wholly-owned subsidiaries), including in this District.

5. Defendants induce their subsidiaries, affiliates, retail partners, and customers in the making, using, selling, offering for sale, and/or importing throughout the United States, including within this District, infringing products (such as BMW-branded automobiles) and placing such automobiles into the stream of commerce via established distribution channels knowing or understanding that such products would be sold and used in the United States, including in

the Western District of Texas. Defendants purposefully direct the Accused Products into established distribution channels within this District and the U.S. nationally.

6. On information and belief, BMW maintains a corporate presence in the United States via at least its wholly-owned U.S.-based subsidiary BMW of North America, LLC (“BMW NA”). *See* Ex. 1 (2022 BMW AG Financial Statement) at 18, 27. BMW NA is a Delaware corporation with a principal place of business at 300 Chestnut Ridge Road, Woodcliff, New Jersey 07675. BMW NA is registered to do business in the state of Texas and may be served through CT Corporation System, 1999 Bryan St., Ste. 900, Dallas, Texas, 75201. BMW NA is “the exclusive importer and distributor of BMW products in the U.S.” *Scramoge Tech. Ltd. v. Bayerische Motoren Werke AG*, 2:22-cv-00472-JRG-RSP, Dkt. No. 18 at 1 (E.D. Tex. Mar. 10, 2023). As such, BMW NA is an agent of BMW. At the direction and control of BMW, U.S.-based subsidiaries, including BMW NA, make, use, import, offer to sell, and/or sell BMW-branded automobiles that infringe the Asserted Patent.

7. On information and belief, BMW and its U.S.-based subsidiaries (which act as part of a global network of sales and manufacturing subsidiaries) operate as agents of one another and vicariously as parts of the same business group to work in concert together. For example, BMW, alone and through at least the activities of their U.S.-based sales subsidiaries (including BMW NA), conduct business in the United States, including importing, distributing, and selling infringing products, in Texas and this District. *See, e.g.*, Exs. 2, 3 & 4 (BMW dealerships and/or service centers at 7011 McNeil Dr, Austin, TX 78729; 6318 Montana Ave, El Paso, TX 79925; 15507 I-10, San Antonio, TX 78249). For example, BMW AG identifies U.S.-based sales in its financial statements as part of its revenues:

NOTES TO THE INCOME STATEMENT

16. Revenues

in € million	2022	2021
Automobiles	82,984	74,234
Motorcycles	2,315	1,881
Other revenues	13,508	12,411
Revenues	98,807	88,526

in € million	2022	2021
Germany	14,393	13,918
China	17,562	19,559
USA	23,019	17,814
Rest of Europe	27,382	23,511
Rest of Asia	10,081	8,330
Rest of the Americas	3,490	2,894
Other regions	2,880	2,500
Revenues	98,807	88,526

The line item Rest of the Americas comprises the markets in North America, Central America and South America, but excluding the USA. The markets in Africa, Australia and Oceania are aggregated in the line item Other regions.

Ex. 1 (2022 BMW Financial Statement) at 18. BMW AG also identifies BMW NA in its list of “Affiliated Companies (Subsidiaries)” and shows its capital investment in BMW NA at 100%. *Id.* at 27. On information and belief, BMW, alone and through its U.S.-based subsidiaries (such as BMW NA), place such infringing products into the stream of commerce via established distribution channels knowing or understanding that such products would be sold and used in the United States, including in the Western District of Texas.

8. On information and belief, BMW does business itself, or through their subsidiaries, affiliates, and agents, in the State of Texas and the Western District of Texas. BMW has placed or contributed to placing infringing products, such as BMW-branded automobiles, into the stream

of commerce via established distribution channels knowing or understanding that such products would be sold and used in the United States, including in the Western District of Texas. On information and belief, BMW has derived substantial revenue from infringing acts in the Western District of Texas, including from the sale and use of infringing products.

9. On information and belief, Bosch maintains a corporate presence in the United States via at least its wholly-owned U.S.-based subsidiary Robert Bosch LLC (“RB LLC”). RB LLC is a corporation organized under the laws of Delaware, with a principal place of business at 3800 Hills Tech Drive, Farmington Hills, Michigan, 48331. Upon information and belief, Bosch maintains a corporate presence in Texas, including this judicial District. *See* <https://careers.smartrecruiters.com/BoschGroup/us> Ex. 5 (identifying jobs in Austin, Texas); <https://www.loc8nearme.com/texas/el-paso/robert-bosch-corporation/3094645/> Ex. 6 (Bosch LLC El Paso warehouse). RB LLC is registered to do business in the state of Texas and may be served through CSC - Lawyers Incorporating Service Company, 701 Brazos, Suite 1050, Austin, TX 78701. As such, RB LLC is an agent of Bosch. At the direction and control of Bosch, U.S.-based subsidiaries, including RB LLC, make, use, import, offer to sell, and/or sell Bosch components included in BMW-branded automobiles that infringe the Asserted Patent.

10. On information and belief, Bosch does business itself, or through their subsidiaries, affiliates, and agents, in the State of Texas and the Western District of Texas. Bosch has placed or contributed to placing infringing products, such as BMW-branded automobiles, into the stream of commerce via established distribution channels knowing or understanding that such products would be sold and used in the United States, including in the Western District of Texas. On information and belief, Bosch has derived substantial revenue from infringing acts in the Western District of Texas, including from the sale and use of infringing products.

JURISDICTION AND VENUE

11. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

12. This Court has personal jurisdiction over Defendants in this action because Defendants have committed acts within this District giving rise to this action and have established minimum contacts with this forum such that the exercise of jurisdiction over Defendants would not offend traditional notions of fair play and substantial justice. Defendants, directly and through subsidiaries or intermediaries, have committed and continue to commit acts of infringement in this District by, among other things, making, using, importing, offering to sell, and selling BMW-branded automobiles containing Bosch components that infringe the Asserted Patent.

13. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400(b). Upon information and belief, Defendants have transacted business in this District and have committed acts of direct and indirect infringement in this District by, among other things, making, using, importing, offering to sell, and selling products that infringe the Asserted Patent. Venue is proper as to BMW and Bosch because they are foreign corporations organized under the laws of Germany and suits against foreign entities are proper in any judicial district. *See* 28 U.S.C. § 1391(c)(3); *In re HTC Corp.*, 889 F.3d 1349 (Fed. Cir. 2018).

14. BMW and Bosch may be joined in this action because (1) any right to relief is asserted against Defendants jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences relating to the making, using, importing into the United States, offering for sale, or selling of the same accused products

(i.e., BMW-branded automobiles with Bosch components that infringe the Asserted Patent); and (2) questions of fact common to Defendants will arise in this action.

COUNT I

INFRINGEMENT OF U.S. PATENT NO. 7,502,958

15. Plaintiff realleges and incorporates by reference the foregoing paragraphs as if fully set forth herein.

16. Plaintiff owns by assignment all rights, title, and interest, including the right to recover damages for past, present, and future infringement, in U.S. Patent No. 7,502,958, titled “System and method for providing firmware recoverable lockstep protection.” The ’958 Patent was duly and legally issued by the United States Patent and Trademark Office on March 10, 2009. A true and correct copy of the ’958 Patent is attached as Exhibit 7.

17. On information and belief, Defendants have and continue to make, use, offer for sale, sell, and/or import certain products and services, including without limitation the BMW X3, X4, and X5, which include a Bosch Electronic Control Unit (containing Infineon TriCore TC29XX chipsets) (“Accused Products”), that directly infringe, literally and/or under the doctrine of equivalents, one or more claims of the ’958 Patent. Identification of the Accused Products will be provided in Plaintiff’s infringement contentions disclosed pursuant to the Court’s scheduling order.

18. The Accused Products satisfy all claim limitations of one or more claims of the ’958 Patent. A claim chart comparing exemplary independent claim 19 of the ’958 Patent to representative Accused Products are attached as Exhibit 8.

19. By making, using, offering for sale, selling and/or importing into the United States the Accused Products, BMW and Bosch have injured Plaintiff and are liable for infringement of the '958 Patent pursuant to 35 U.S.C. § 271.

20. On information and belief, Plaintiff (including its predecessors and any licensees) complied with 35 U.S.C. §287 at least prior to June 30, 2022 because Plaintiff, its predecessors, and any licensees did not make, offer for sale, or sell products that practice(d) the '958 Patent during the relevant time period or were not otherwise required to mark during the relevant time period.

21. As a result of Defendants' direct infringement of the '958 Patent, Plaintiff is entitled to monetary damages (past, present, and future) in an amount adequate to compensate for Defendants' infringement, but in no event less than a reasonable royalty for the use made of the invention by BMW and Bosch, together with interest and costs as fixed by the Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter:

a. A judgment in favor of Plaintiff that Defendants have infringed, either literally and/or under the doctrine of equivalents, the '958 Patent;

b. A judgment and order requiring Defendants to pay Plaintiff its damages (past, present, and future), costs, expenses, and pre-judgment and post-judgment interest for their infringement of the '958 Patent;

c. A judgment and order requiring Defendants to pay Plaintiff compulsory ongoing licensing fees, as determined by the Court;

d. A judgment and order requiring Defendants to provide an accounting and to pay supplemental damages to Plaintiff, including without limitation, pre-judgment and post-judgment

interest and compensation for infringing products released after the filing of this case that are not colorably different from the Accused Products;

e. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Plaintiff its reasonable attorneys' fees against Defendants; and

f. Any and all other relief as the Court may deem appropriate and just under the circumstances.

DEMAND FOR JURY TRIAL

Plaintiff, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

Dated: May 19, 2023

Respectfully submitted,

/s/ Brett E. Cooper

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