

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

MICHIGAN MOTOR TECHNOLOGIES LLC,

Plaintiff,

v.

Bayerische Motoren Werke AG, and BMW
of North America, LLC,

Defendants.

C.A. No. 1:22-cv-3804

JURY TRIAL DEMANDED

THIRD AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Michigan Motor Technologies LLC (“MMT” or “Plaintiff”), for their Complaint against Defendants Bayerische Motoren Werke AG and BMW of North America, LLC (“Defendant”) alleges the following:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. § 1 et seq.

THE PARTIES

2. Plaintiff is a Limited Liability Company organized under the laws of the State of Michigan with a place of business at 2360 Orchard Lake Road, Suite 100, Sylvan Lake, Michigan 48320.

3. Upon information and belief, Defendant Bayerische Motoren Werke AG (“BMWAG”) is a corporation organized and existing under the laws of Germany with a principal place of business at Petuelring 130, 80809 München, Germany.

4. Upon information and belief, Defendant BMW of North America, LLC (“BMWNA”) is a corporation organized and existing under the laws of the State of Delaware with

a principal place of business at 300 Chestnut Ridge Road, Woodcliff Lake, NJ 07675. BMWNA is a wholly-owned subsidiary of Defendant BMWAG.

5. Upon information and belief, Since at least November 8, 2021, Defendant BMWNA is registered to do business in Illinois with the Secretary of State. BMWNA maintains a Certificate of Good Standing under File Number 00503606. BMWNA may be served with process through their registered agent, CT Corporation System, 208 S. LaSalle Street, Suite 814, Chicago IL 60604.

6. Upon information and belief, Defendants maintain offices in Schaumburg Illinois, within this Judicial District. This facility is “home to over 50 BMW associates who support Aftersales, Center Development, Marketing, MINI, Sales, Finance as well as Vehicle Administration for all other jobs in other regional locations.” (See Schaumburg Jobs | BMW Group, <https://www.bmwgroup.jobs/us/en/location/location-schaumburg.html> (last visited July 8, 2022).) The Schaumburg office supports all aspects of sales and on-going support for the Accused Instrumentalities.

7. Defendants opened their current Schaumburg office August 1989. (See Schaumburg Jobs | BMW Group, <https://www.bmwgroup.jobs/us/en/location/location-schaumburg.html> (last visited July 8, 2022).)

8. The building where Defendants’ Schaumburg office is located is owned by BMWNA and comprises a single 20,000 square foot floor. The building is divided between BMW’s Central Region Office and Technical Training for BMW and MINI dealers. (See Location Schaumburg, <https://www.bmwgroup.jobs/us-old/en/location/location-schaumburg.html#acc-135907035> (last visited July 8, 2022).)

JURISDICTION AND VENUE

9. This is an action for patent infringement arising under the Patent Laws of the United States, Title 35 of the United States Code.

10. This court has subject matter jurisdiction under 28 U.S.C. §§ 1331 (Federal Question) and 1338(a) (Patent Law).

11. Venue is proper in this judicial district under 28 U.S.C. § 1400(b). On information and belief, Defendants have committed acts of infringement in this Judicial District and have regular and established places of business within this District.

12. Defendants' unlawful infringement of MMT's patents was committed in this jurisdiction. Defendants maintain offices that support the sale and on-going support for the Accused Instrumentalities within this Judicial District thereby purposefully availing themselves of the laws of the State of Illinois and this Judicial District. As such, Defendants are subject to this Court's general and specific personal jurisdiction.

13. Defendants have sufficient minimum contacts within the State of Illinois and this Judicial District, pursuant to due process and/or 735 ILCS 5/2-209, as Defendants have purposefully availed themselves of the privileges of conducting business in the State of Illinois by regularly conducting and soliciting business within the State of Illinois and within this Judicial District, and because Plaintiff's causes of action arise directly from Defendants' business contacts and other activities in the State of Illinois and this Judicial District.

ACCUSED INSTRUMENTALITIES

14. Defendants make, use, import, and practice, now and within the past six years, the BMW 2.0L I4 N26 and the BMW B48 engines. ("Accused Instrumentality").

15. Upon information and belief, the BMW 2.0L I4 N26 engine have been installed in 2012-2016 BMW 2 Series, 2012-2016 BMW 3 Series, 2015-2016 BMW 4 Series vehicles.

16. Upon information and belief, the BMW B48 engine have been installed in 2016-2019 BMW 1 Series, 2016-present BMW 2 Series, 2015-present BMW Series 3, 2016-present BMW 4 Series, 2017-present BMW Series 5, 2017-2021 BMW Series 6, 2016-present BMW Series 7, BMW X3, 2018-presnt BMW X4, 2019-present MINI Cooper S Clubman, 2019-present MINI Countryman, 2020-present MINI John Cooper Works GP, 2019-present Toyota Supra, and 2020-present Morgan Plus Four vehicles .

17. Defendants make, use, import, and practice, now and within the past six years, the BMW 2.0L I4 N20 engine. (“HEV Accused Instrumentality”).

18. Upon information and belief, the BMW 2.0L I4 N20 engine have been installed in 2015-2018 BMW X5 xDrive40e vehicles.

PATENTS IN SUIT

19. Plaintiff is the owner by assignment of a portfolio of patents, including the six patents described in detail in the counts below (collectively “the Asserted Patents”).

20. U.S. Patent Nos. 6,557,540 (“the ’540 patent”), 6,581,565 (“the ’565 patent”), 6,581,574 (“the ’574 patent”), 6,588,260 (“the ’260 patent”), 6,736,122 (“the ’122 patents”) and 8,909,482 (“the ’482 patent”) were assigned to Plaintiff, MMT on August 28, 2017.

21. MMT is the rightful owner of the Asserted Patents and hold the entire right, title and interest in the Asserted Patents.

22. On April 16, 2015, the then-current owner of the Asserted Patents, Visteon Global Technologies, Inc. assigned its rights in the patents to Godo Kaisha IP Bridge (“IP Bridge”). The Asserted Patents were assigned to Michigan Automotive Technologies, LLC in 2016, then to MMT in 2017.

23. On March 4, 2015, IP Bridge, the then-current owner of the Asserted Patents, sent a letter BMWAG offering to license 42 patents. A true and correct copy of the March 4, 2015, letter is attached as Exhibit 18. The 42 patents include all of the currently Asserted patents.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 6,557,540 (DISMISSED)

24. The allegations set forth in the foregoing paragraphs 1 through 20 are incorporated into this Claim for Relief.

25. On May 6, 2003, the '540 patent entitled "Method of Calculating a Valve Timing Command for an Engine," was duly and legally issued from U.S. Patent Application No. 10/014,286 filed on December 11, 2001. A true and correct copy of the '540 patent is attached as Exhibit 1.

26. Michigan Motor is the assignee and owner of the right, title and interests in and to the '540 patent, including the right to assert all causes of action arising under said patents and the right to any remedies for infringement of them.

27. Upon information and belief, Defendants have directly infringed at least claim 1 of the '540 patent by making, using, importing, and practicing, the Accused Instrumentality that infringes the patented methods as explained in attached Exhibits 2 and 3.

28. Defendants were made aware of the '540 patent and their infringement thereof at least as early as the date of filing of this Complaint.

29. Plaintiff have been harmed by Defendants' Infringing activities.

COUNT II – INFRINGEMENT OF U.S. PATENT NO. 6,581,565

30. The allegations set forth in the foregoing paragraphs 1 through 29 are incorporated into this Claim for Relief.

31. On June 24, 2003, the '565 patent entitled "Engine Torque Controller" was duly and legally issued from U.S. Patent Application No. 10/191,641 filed on July 9, 2002. A true and correct copy of the '565 patent is attached as Exhibit 4.

32. Michigan Motor is the assignee and owner of the right, title and interests in and to the '565 patent, including the right to assert all causes of action arising under said patents and the right to any remedies for infringement of them.

33. Upon information and belief, Defendants have directly infringed at least claim 7 of the '565 patent by making, using, importing, and practicing the Accused Instrumentality that infringes the patented device as explained in attached Exhibits 5 and 6.

34. Defendants were made aware of the '565 patent and their infringement thereof by correspondence on March 15, 2015, as discussed in paragraph 23 above.

35. Defendants were made aware of the '565 patent and their infringement thereof at least as early as the date of filing of this Complaint.

36. Plaintiff have been harmed by Defendants' Infringing activities.

COUNT III – INFRINGEMENT OF U.S. PATENT NO. 6,581,574

37. The allegations set forth in the foregoing paragraphs 1 through 36 are incorporated into this Claim for Relief.

38. On June 24, 2003, the '574 patent entitled "Method of Controlling Fuel Rail Pressure," was duly and legally issued from U.S. Patent Application No. 10/108,093 filed on March 27, 2002. A true and correct copy of the '547 patent is attached as Exhibit 7.

39. Michigan Motor is the assignee and owner of the right, title and interests in and to the '547 patent, including the right to assert all causes of action arising under said patents and the right to any remedies for infringement of them.

40. Upon information and belief, Defendants have directly infringed at least claim 1 of the '574 patent by making, using, importing, and practicing the Accused Instrumentality that infringe the patented methods as explained in attached Exhibits 8 and 9.

41. Defendants were made aware of the '574 patent and their infringement thereof by correspondence on March 15, 2015, as discussed in paragraph 23 above.

42. Defendants were made aware of the '574 patent and their infringement thereof at least as early as the date of filing of this Complaint.

43. Plaintiff have been harmed by Defendants' Infringing activities.

COUNT IV – INFRINGEMENT OF U.S. PATENT NO. 6,588,260 (DISMISSED)

44. The allegations set forth in the foregoing paragraphs 1 through 38 are incorporated into this Claim for Relief.

45. On July 8, 2003, the '260 patent entitled "Electronic Throttle Disable Control Test System" was duly and legally issued from U.S. Patent Application No. 09/695,165 filed on October 24, 2000. A true and correct copy of the '260 patent is attached as Exhibit 10.

46. Michigan Motor is the assignee and owner of the right, title and interests in and to the '260 patent, including the right to assert all causes of action arising under said patents and the right to any remedies for infringement of them.

47. Upon information and belief, Defendants have directly infringed at least claim 11 of the '260 patent by making, using, importing, and practicing, the Accused Instrumentality that infringes the patented apparatus as explained in attached Exhibits 11 and 12.

48. Defendants were made aware of the '260 patent and their infringement thereof at least as early as the date of filing of this Complaint.

49. Plaintiff have been harmed by Defendants' Infringing activities.

COUNT V – INFRINGEMENT OF U.S. PATENT NO. 6,736,122

50. The allegations set forth in the foregoing paragraphs 1 through 49 are incorporated into this Claim for Relief.

51. On May 29, 2004, the '122 patent entitled “Motor Vehicle Engine Synchronization,” was duly and legally issued from U.S. Patent Application No. 10/104,153 filed on March 22, 2002. A true and correct copy of the '122 patent is attached as Exhibit 13.

52. Michigan Motor is the assignee and owner of the right, title and interests in and to the '122 patent, including the right to assert all causes of action arising under said patents and the right to any remedies for infringement of them.

53. Upon information and belief, Defendants have directly infringed at least claim 2 of the '122 patent by making, using, selling, importing, offering for sale, providing, practicing, and causing to be used the Accused Instrumentality that infringe the patented apparatus as explained in attached Exhibits 14 and 15.

54. Defendants were made aware of the '122 patent and their infringement thereof by correspondence on March 15, 2015, as discussed in paragraph 23 above.

55. Defendants were made aware of the '122 patent and their infringement thereof at least as early as the date of filing of this Complaint.

56. Plaintiff have been harmed by Defendants' Infringing activities.

COUNT VI – INFRINGEMENT OF U.S. PATENT NO. 8,909,482 (DISMISSED)

57. The allegations set forth in the foregoing paragraphs 1 through 50 are incorporated into this Claim for Relief.

58. On December 9, 2014, patent entitled “Device for Measuring Power Consumption and Performance with Respect to the Environment of a Power-Consuming Unit,” was duly and

legally issued from U.S. Patent Application No. 13/054,355 filed on July 20, 2009. A true and correct copy of the '482 patent is attached as Exhibit 16.

59. Michigan Motor is the assignee and owner of the right, title and interests in and to the '482 patent, including the right to assert all causes of action arising under said patents and the right to any remedies for infringement of them.

60. Upon information and belief, Defendants have directly infringed at least claim 1 of the '482 patent by making, using, selling, importing, offering for sale, providing, practicing, and causing to be used the HEV Accused Instrumentality that infringes the patented device as explained in attached Exhibit 17.

61. Upon information and belief, these HEV Accused Instrumentality is used, marketed, provided to, and/or used by or for the Defendants' partners, clients, and customers across the country and in this District.

62. Defendants were made aware of the '482 patent and their infringement thereof at least as early as the date of filing of this Complaint.

63. Upon information and belief, Defendants have induced and continue to induce others to infringe at least claim 1 of the '482 patent under 35 U.S.C. § 271(b) by, among other things, and with specific intent or willful blindness, actively aiding and abetting others to infringe, including, but not limited to Defendants' partners, clients and customers, whose use of the HEV Accused Instrumentality constitutes direct infringement of at least claim 1 of the '482 patent.

64. In particular, the Defendants' actions that aid and abet others such as their partners, clients and customers to infringe include advertising and distributing the HEV Accused Instrumentality and providing instruction materials and services regarding the HEV Accused Instrumentality.

65. Any party, including Defendants' partners, clients and customers using the HEV Accused Instrumentality necessarily infringes the '482 patent. Defendants thus induce others to infringe the '482 patent. Defendants have knowingly induced infringement since at least the filing of this Complaint when Defendants were first made aware of the '482 patent.

66. Upon information and belief, the Defendants are liable as a contributory infringer of the '482 patent under 35 U.S.C. § 271(c) by offering to sell, selling and importing into the United States the HEV Accused Instrumentality that infringes the patented methods, to be especially made or adapted for use in an infringement of the '482 patent. The HEV Accused Instrumentality is a material component for use in practicing the '482 patent and is specifically made and is not a staple article of commerce suitable for substantial non-infringing use.

67. Plaintiff have been harmed by Defendants' Infringing activities.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury on all issues triable as such.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment for itself and against Defendants as follows:

- A. An adjudication that Defendants have infringed the '565, '574, and '122 patents;
- B. An award of damages to be paid by Defendants adequate to compensate Plaintiff for Defendants' past infringement of the '565, '574, and '122 patents including interest, costs, expenses and an accounting of all infringing acts including, but not limited to, those acts not presented at trial;
- C. A declaration that this case is exceptional under 35 U.S.C. § 285, and an award of Plaintiff's reasonable attorneys' fees; and

D. An award to Plaintiff of such further relief at law or in equity as the Court deems just and proper.

Dated: September 8, 2023

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