

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

EMERGING AUTOMOTIVE LLC,

Plaintiff,

v.

TOYOTA MOTOR NORTH AMERICA
INC., TOYOTA MOTOR SALES, U.S.A.,
INC. and TOYOTA MOTOR
CORPORATION

Defendants.

Civil Action No. 2:23-cv-00434

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Emerging Automotive LLC (“Plaintiff” or “Emerging Auto”), through its attorneys, for its Complaint against Toyota Motor North America, Inc. (“TMNA”), Toyota Motor Sales, U.S.A., Inc. (“TMS”) and Toyota Motor Corporation (“TMC”) (collectively, “Defendant” or “Toyota”), demands a trial by jury and alleges as follows:

INTRODUCTION

1. This Complaint arises from Toyota’s unlawful infringement of the following United States Patents owned by Emerging Auto: United States Patent Nos. 10,407,026 (the “’026 patent”), 11,738,659 (the “’659 patent”), 9,365,188 (the “’188 patent”), 9,171,268 (the “’268 patent”) and 11,396,244 (the “’244 patent”) (collectively the “Asserted Patents”).

THE PARTIES

2. Emerging Auto is a California limited liability company with its principal place of business located at 5619 Scotts Valley Dr., Suite 280, Scotts Valley, CA 95066. Emerging Auto is

the sole owner by assignment of all rights, title and interest in the Asserted Patents, including the right to recover for past, present and future infringement and damages.

3. On information and belief, TMNA is a corporation organized and existing under the laws of California with its principal place of business in this District at 6565 Headquarters Dr., Plano, Texas 75024. TMNA may be served through its registered agent CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201. TMNA is currently registered to do business in the State of Texas. On information and belief, TMNA is responsible for importing, making, marketing, distributing, offering for sale and/or selling Toyota-branded and Lexus-branded automobiles throughout the United States, including in this District.

4. On information and belief, TMS is a corporation organized and existing under the laws of California with its principal place of business in this District at 6565 Headquarters Dr., Plano, Texas 75024. TMS may be served through its registered agent CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201. TMS is currently registered to do business in the State of Texas. On information and belief, TMS is responsible for importing, making, marketing, distributing, offering for sale and/or selling Toyota-branded and Lexus-branded automobiles throughout the United States, including in this District.

5. On information and belief, TMC is a Japanese Corporation headquartered at 1 Toyota-Cho, Toyota City, Aichi Prefecture 471-8571, Japan. On information and belief, TMC is responsible for importing, making, marketing, distributing, offering for sale and/or selling Toyota-branded and Lexus-branded automobiles throughout the United States, including in this District.

JURISDICTION AND VENUE

6. This action arises under the patent laws of the United States, Title 35 of the United States Code. Subject matter jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 and

1338(a).

7. This Court has personal jurisdiction over TMNA, TMS and TMC in this action because each has committed and continues to commit acts within this District giving rise to this action and have established minimum contacts with this forum such that the exercise of jurisdiction over each would not offend traditional notions of fair play and substantial justice. TMNA, TMS and TMC, directly and through subsidiaries or intermediaries, has committed and continues to commit acts of infringement in this District, by among other things, making, using, importing, offering to sell and selling Toyota-branded and Lexus-branded automobiles that infringe the Asserted Patents. TMNA, TMS and TMC have not contested personal jurisdiction in this Court in prior actions.

8. Venue is proper in this District pursuant to at least 28 U.S.C. §1391 and §1400(b). Upon information and belief, TMNA, TMS and TMC have a regular and established place of business in this District, including at 6565 Headquarters Dr., Plano, Texas 75024. Toyota has 4000 employees in Plano, Texas.¹ Toyota has not contested that this Court is a proper venue in prior actions. *See Foras Technologies Ltd. V. Toyota Motor North America, Inc. et. al.*, No. 2:23-cv-150, Dkt. 28 at ¶¶ 10-11, (E.D. Tex. July 10, 2023); *Fundamental Innovation Sys. Int’l LLC v. Toyota Motor Corp., et. al.*, No. 2:21-cv-281-JRG, Dkt. No. 51 at ¶ 23 (E.D. Tex. Nov. 15, 2021).

FIRST COUNT

(INFRINGEMENT OF U.S. PATENT NO. 10,407,026)

9. Emerging Auto incorporates by reference the foregoing paragraphs as if fully set forth herein.

10. Emerging Auto 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. 10,407,026 titled

¹ <https://pressroom.toyota.com/celebrating-five-years-of-one-toyota-in-texas/>

“Vehicles And Cloud Systems For Assigning Temporary E-Keys To Access Use Of A Vehicle.” The ’026 patent was duly and legally issued by the United States Patent and Trademark Office on September 10, 2019. A true and correct copy of the ’026 Patent is attached as Exhibit A.

11. On information and belief, Toyota has directly infringed and continues to directly infringe one or more claims of the ’026 patent, including at least claim 1 of the ’026 patent, in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, making, using, selling, offering for sale, and/or importing into the United States products that embody one or more of the inventions claimed in the ’026 patent, including but not limited to the Accused Instrumentalities, including Toyota and Lexus vehicles that enable use via an electronic key. By way of example, the Accused Instrumentalities include Toyota’s Toyota and Lexus-branded vehicles that include Remote Connect and/or Digital Key, as well as all reasonably similar products, in violation of 35 U.S.C. § 271(a).

12. The ’026 Toyota Accused Instrumentalities satisfy all claim limitations of one or more claims of the ’026 patent. A claim chart comparing exemplary independent claim 1 of the ’026 patent to representative Accused Instrumentalities is attached as Exhibit B.

13. By making, using, offering for sale, selling and/or importing into the United States the Accused Instrumentalities, Toyota has injured Emerging Auto and is liable for infringement of the ’026 patent pursuant to 35 U.S.C. § 271(a).

14. In addition, and/or in the alternative to its direct infringement, Toyota has also infringed and continues to infringe the claims of the ’026 patent by, among other things, actively inducing others to use the Accused Instrumentalities. Toyota’s users, customers, consumers, agents, distributors, installers, and other third parties who use, sell, and/or offer to sell the Accused Instrumentalities in accordance with Toyota’s instructions infringe the claims of the ’026 patent, in

violation of 35 U.S.C. § 271(a). Toyota intentionally instructs its customers to infringe through support information such as websites, videos, demonstrations, support information and other published information. For example, Toyota's website instructs and encourages its customers to use, manage and control the infringing components and functionalities of the Accused Instrumentalities. *See, e.g.,* at https://support.toyota.com/s/article/How-do-I-setup-my-Digital-Key-Toyota?language=en_US; https://support.toyota.com/s/article/How-do-I-get-a-Digital-Key-Toyota?language=en_US; <https://www.toyota.com/connected-services/remote-connect>. Toyota also publishes videos to assist and encourage users to use and operate the infringing components and functionalities of the Accused Instrumentalities. *See, e.g.,* https://www.youtube.com/watch?v=QU0V8Q-wvkc&ab_channel=ToyotaUSA; https://www.youtube.com/watch?v=uV2Ll0aIUU8&ab_channel=ToyotaUSA; <https://www.youtube.com/watch?v=1mmN1wTTUdQ>; https://www.youtube.com/watch?v=mAf9uWFKLvo&ab_channel=ToyotaUSA; https://www.youtube.com/watch?v=qThp80RGjto&ab_channel=THEAFRICANCARGUY. Thus, Toyota actively instructs and directs its customers to infringe and actively encourages infringement by its customers. Toyota is thereby liable for infringement of the '026 patent under 35 U.S.C. § 271(b).

15. At a minimum, Toyota has had knowledge of the '026 patent since at least the filing and/or service date of the Complaint in this action. Despite this knowledge, Toyota has continued to engage in activities to encourage and assist its customers in the use of the Accused Instrumentalities. Thus, on information and belief, Toyota (1) had actual knowledge of the patent; (2) knowingly induced its customers to infringe the patent; and (3) had specific intent to induce the patent infringement.

16. Additionally, and/or alternatively, Toyota is liable as a contributory infringer of the '026 patent under 35 U.S.C. § 271(c) by having offered to sell, sold and imported and continuing to offer to sell, selling, and importing into the United States the Accused Instrumentalities and reasonably similar products, to be especially made or adapted for use in infringement of the '026 patent. The portions of the Toyota Accused Instrumentalities that enable use via electronic keys are a material component for use in practicing the '026 patent and are especially made and are not staple articles of commerce suitable for non-infringing use.

17. Emerging Auto complied with 35 U.S.C. § 287 because Emerging Auto does not make, offer for sale or sell products that practice the '026 patent during the relevant time period.

18. As a result of Toyota's direct and indirect infringement of the '026 patent, Emerging Auto is entitled to monetary damages (past, present and future) in an amount adequate to compensate for Toyota's infringement, but in no event less than a reasonable royalty for the use made of the invention by Toyota, together with interest and costs as fixed by the Court.

19. On information and belief, despite having knowledge of the '026 patent and knowledge that it is directly and/or indirectly infringing one or more claims of the '026 patent, Toyota has nevertheless continued its infringing conduct and disregarded an objectively high likelihood of infringement. Toyota's infringing activities relative to the '026 patent have been, and continue to be, willful, wanton, malicious, deliberate, consciously wrongful, and an egregious case of misconduct beyond typical infringement such that Emerging Auto is entitled to enhanced damages under 35 U.S.C. § 284 up to three times the amount found or assessed.

20. Toyota's acts of direct and indirect infringement have caused and continue to cause damage to Emerging Auto. Emerging Auto is entitled to damages in accordance with 35 U.S.C. §§ 271, 281, and 284 sustained as a result of Toyota's wrongful acts in an amount to be proven at trial.

SECOND COUNT

(INFRINGEMENT OF U.S. PATENT NO. 11,738,659)

21. Emerging Auto incorporates by reference the foregoing paragraphs as if fully set forth herein.

22. Emerging Auto 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. 11,738,659 titled “Vehicles And Cloud Systems For Sharing E-Keys To Access And Use Vehicles.” The ’659 patent was duly and legally issued by the United States Patent and Trademark Office on August 29, 2023. A true and correct copy of the ’659 Patent is attached as Exhibit C.

23. On information and belief, Toyota has directly infringed and continues to directly infringe one or more claims of the ’659 patent, including at least claims 1 and 18 of the ’659 patent, in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, making, using, selling, offering for sale, and/or importing into the United States products that embody one or more of the inventions claimed in the ’659 patent, including but not limited to the Accused Instrumentalities, including Toyota and Lexus vehicles that enable use via an electronic key. By way of example, the Accused Instrumentalities include Toyota’s Toyota and Lexus-branded vehicles that include Remote Connect and/or Digital Key, as well as all reasonably similar products, in violation of 35 U.S.C. § 271(a).

24. The Accused Instrumentalities satisfy all claim limitations of one or more claims of the ’659 patent. A claim chart comparing exemplary independent claims 1 and 18 of the ’659 patent to representative Accused Instrumentalities is attached as Exhibit D.

25. By making, using, offering for sale, selling and/or importing into the United States the Accused Instrumentalities, Toyota has injured Emerging Auto and is liable for infringement of the

'659 patent pursuant to 35 U.S.C. § 271(a).

26. In addition, and/or in the alternative to its direct infringement, Toyota has also infringed and continues to infringe the claims of the '659 patent by, among other things, actively inducing others to use the Accused Instrumentalities. Toyota's users, customers, consumers, agents, distributors, installers, and other third parties who use, sell, and/or offer to sell the Accused Instrumentalities in accordance with Toyota's instructions infringe the claims of the '659 patent, in violation of 35 U.S.C. § 271(a). Toyota intentionally instructs its customers to infringe through support information such as websites, videos, demonstrations, support information and other published information. For example, Toyota's website instructs and encourages its customers to use, manage and control the infringing components and functionalities of the Accused Instrumentalities. *See, e.g.,* at https://support.toyota.com/s/article/How-do-I-setup-my-Digital-Key-Toyota?language=en_US; https://support.toyota.com/s/article/How-do-I-get-a-Digital-Key-Toyota?language=en_US; <https://www.toyota.com/connected-services/remote-connect>. Toyota also publishes videos to assist and encourage users to use and operate the infringing components and functionalities of the Accused Instrumentalities. *See, e.g.,* https://www.youtube.com/watch?v=QU0V8Q-wvkc&ab_channel=ToyotaUSA; https://www.youtube.com/watch?v=uV2Ll0aIUU8&ab_channel=ToyotaUSA; <https://www.youtube.com/watch?v=1mmN1wTTUdQ>; https://www.youtube.com/watch?v=mAf9uWFKLvo&ab_channel=ToyotaUSA; https://www.youtube.com/watch?v=qThp80RGjto&ab_channel=THEAFRICANCARGUY. Thus, Toyota actively instructs and directs its customers to infringe and actively encourages infringement by its customers. Toyota is thereby liable for infringement of the '659 patent under 35 U.S.C. § 271(b).

27. At a minimum, Toyota has had knowledge of the '659 patent since at least the filing and/or service date of the Complaint in this action. Despite this knowledge, Toyota has continued to engage in activities to encourage and assist its customers in the use of the Accused Instrumentalities. Thus, on information and belief, Toyota (1) had actual knowledge of the patent; (2) knowingly induced its customers to infringe the patent; and (3) had specific intent to induce the patent infringement.

28. Additionally, and/or alternatively, Toyota is liable as a contributory infringer of the '659 patent under 35 U.S.C. § 271(c) by having offered to sell, sold and imported and continuing to offer to sell, selling, and importing into the United States the Accused Instrumentalities and reasonably similar products, to be especially made or adapted for use in infringement of the '659 patent. The portions of the Toyota Accused Instrumentalities that enable use via electronic keys are a material component for use in practicing the '659 patent and are especially made and are not staple articles of commerce suitable for non-infringing use.

29. Emerging Auto complied with 35 U.S.C. § 287 because Emerging Auto does not make, offer for sale or sell products that practice the '659 patent during the relevant time period.

30. As a result of Toyota's direct and indirect infringement of the '659 patent, Emerging Auto is entitled to monetary damages (past, present and future) in an amount adequate to compensate for Toyota's infringement, but in no event less than a reasonable royalty for the use made of the invention by Toyota, together with interest and costs as fixed by the Court.

31. On information and belief, despite having knowledge of the '659 patent and knowledge that it is directly and/or indirectly infringing one or more claims of the '659 patent, Toyota has nevertheless continued its infringing conduct and disregarded an objectively high likelihood of infringement. Toyota's infringing activities relative to the '659 patent have been, and continue to be,

willful, wanton, malicious, deliberate, consciously wrongful, and an egregious case of misconduct beyond typical infringement such that Emerging Auto is entitled to enhanced damages under 35 U.S.C. § 284 up to three times the amount found or assessed.

32. Toyota's acts of direct and indirect infringement have caused and continue to cause damage to Emerging Auto. Emerging Auto is entitled to damages in accordance with 35 U.S.C. §§ 271, 281, and 284 sustained as a results of Toyota's wrongful acts in an amount to be proven at trial.

THIRD COUNT

(INFRINGEMENT OF U.S. PATENT NO. 9,365,188)

33. Emerging Auto incorporates by reference the foregoing paragraphs as if fully set forth herein.

34. Emerging Auto 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. 9,365,188 titled "Methods and Systems For Using Cloud Services To Assign E-Keys To Access Vehicles." The '188 patent was duly and legally issued by the United States Patent and Trademark Office on June 14, 2016. A true and correct copy of the '188 Patent is attached as Exhibit E.

35. On information and belief, Toyota has directly infringed and continues to directly infringe one or more claims of the '188 patent, including at least claim 1 of the '188 patent, in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, making, using, selling, offering for sale, and/or importing into the United States products that embody one or more of the inventions claimed in the '188 patent, including but not limited to the Accused Server Instrumentalities, including servers that enable use of Toyota and Lexus-branded vehicles via electronic keys. By way of example, the Accused Server Instrumentalities include servers that implement, support, and/or direct the Remote Connect and/or Digital Key functionality of Toyota

and Lexus-branded vehicles, as well as all reasonably similar products, in violation of 35 U.S.C. § 271(a).

36. The Accused Server Instrumentalities satisfy all claim limitations of one or more claims of the '188 patent. A claim chart comparing exemplary independent claim 1 of the '188 patent to representative Accused Server Instrumentalities is attached as Exhibit F.

37. By making, using, offering for sale, selling and/or importing into the United States the Accused Server Instrumentalities, Toyota has injured Emerging Auto and is liable for infringement of the '188 patent pursuant to 35 U.S.C. § 271(a).

38. In addition, and/or in the alternative to its direct infringement, Toyota has also infringed and continues to infringe the claims of the '188 patent by, among other things, actively inducing others to use the Accused Server Instrumentalities. Toyota's users, customers, consumers, agents, distributors, installers, and other third parties who use, sell, and/or offer to sell the Accused Server Instrumentalities in accordance with Toyota's instructions infringe the claims of the '188 patent, in violation of 35 U.S.C. § 271(a). Toyota intentionally instructs its customers to infringe through support information such as websites, videos, demonstrations, support information and other published information. For example, Toyota's website instructs and encourages its customers to use, manage and control the infringing components and functionalities of the Accused Server Instrumentalities. *See, e.g.*, at https://support.toyota.com/s/article/How-do-I-setup-my-Digital-Key-Toyota?language=en_US; https://support.toyota.com/s/article/How-do-I-get-a-Digital-Key-Toyota?language=en_US; <https://www.toyota.com/connected-services/remote-connect>. Toyota also publishes videos to assist and encourage users to use and operate the infringing components and functionalities of the Accused Server Instrumentalities. *See, e.g.*, https://www.youtube.com/watch?v=QU0V8Q-wvkc&ab_channel=ToyotaUSA;

https://www.youtube.com/watch?v=uV2Ll0aIUU8&ab_channel=ToyotaUSA;

<https://www.youtube.com/watch?v=1mmN1wTTUdQ;>

https://www.youtube.com/watch?v=mAf9uWFKLvo&ab_channel=ToyotaUSA;

https://www.youtube.com/watch?v=qThp80RGjto&ab_channel=THEAFRICANCARGUY. Thus, Toyota actively instructs and directs its customers to infringe and actively encourages infringement by its customers. Toyota is thereby liable for infringement of the '188 patent under 35 U.S.C. § 271(b).

39. Toyota has had knowledge of the '188 patent at least as early as April 4, 2018, when it identified the '188 patent to the United States Patent and Trademark Office in a filing in connection with its patent application number 15/945,360. Toyota has also had knowledge of the '188 patent since at least the filing and/or service date of the Complaint in this action. Despite this knowledge, Toyota has continued to engage in activities to encourage and assist its customers in the use of the Accused Server Instrumentalities. Thus, on information and belief, Toyota (1) had actual knowledge of the patent; (2) knowingly induced its customers to infringe the patent; and (3) had specific intent to induce the patent infringement.

40. Additionally, and/or alternatively, Toyota is liable as a contributory infringer of the '188 patent under 35 U.S.C. § 271(c) by having offered to sell, sold and imported and continuing to offer to sell, selling, and importing into the United States the Accused Instrumentalities and reasonably similar products, to be especially made or adapted for use in infringement of the '188 patent. The portions of the infringing servers that enable use of Toyota and Lexus vehicles via electronic keys are a material component for use in practicing the '188 patent and are especially made and are not staple articles of commerce suitable for non-infringing use.

41. Emerging Auto complied with 35 U.S.C. § 287 because Emerging Auto does not

make, offer for sale or sell products that practice the '188 patent during the relevant time period.

42. As a result of Toyota's direct and indirect infringement of the '188 patent, Emerging Auto is entitled to monetary damages (past, present and future) in an amount adequate to compensate for Toyota's infringement, but in no event less than a reasonable royalty for the use made of the invention by Toyota, together with interest and costs as fixed by the Court.

43. On information and belief, despite having knowledge of the '188 patent and knowledge that it is directly and/or indirectly infringing one or more claims of the '188 patent, Toyota has nevertheless continued its infringing conduct and disregarded an objectively high likelihood of infringement. Toyota's infringing activities relative to the '188 patent have been, and continue to be, willful, wanton, malicious, deliberate, consciously wrongful, and an egregious case of misconduct beyond typical infringement such that Emerging Auto is entitled to enhanced damages under 35 U.S.C. § 284 up to three times the amount found or assessed.

44. Toyota's acts of direct and indirect infringement have caused and continue to cause damage to Emerging Auto. Emerging Auto is entitled to damages in accordance with 35 U.S.C. §§ 271, 281, and 284 sustained as a results of Toyota's wrongful acts in an amount to be proven at trial.

FOURTH COUNT

(INFRINGEMENT OF U.S. PATENT NO. 9,171,268)

45. Emerging Auto incorporates by reference the foregoing paragraphs as if fully set forth herein.

46. Emerging Auto 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. 9,171,268 titled "Methods and Systems For Setting And Transferring User Profiles To Vehicles And Temporary Sharing of User Profiles To Shared-Use Vehicles." The '268 patent was duly and legally issued by

the United States Patent and Trademark Office on October 27, 2015. A true and correct copy of the '268 Patent is attached as Exhibit G.

47. On information and belief, Toyota has directly infringed and continues to directly infringe one or more claims of the '268 patent, including at least claim 10 of the '268 patent, in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, making, using, selling, offering for sale, and/or importing into the United States products that embody one or more of the inventions claimed in the '268 patent, including but not limited to the Accused Server Instrumentalities. By way of example, the Accused Server Instrumentalities include servers that are associated with receiving, maintaining, and/or storing User Profile information and/or communicating User Profile and/or setting information for Toyota and Lexus-branded vehicles to be programmed remotely based on user profiles, as well as all reasonably similar products, in violation of 35 U.S.C. § 271(a).

48. Accused Server Instrumentalities satisfy all claim limitations of one or more claims of the '268 patent. A claim chart comparing exemplary independent claim 10 of the '268 patent to representative Accused Server Instrumentalities is attached as Exhibit H.

49. By making, using, offering for sale, selling and/or importing into the United States the Accused Server Instrumentalities, Toyota has injured Emerging Auto and is liable for infringement of the '268 patent pursuant to 35 U.S.C. § 271(a).

50. In addition, and/or in the alternative to its direct infringement, Toyota has also infringed and continues to infringe the claims of the '268 patent by, among other things, actively inducing others to use the Accused Server Instrumentalities. Toyota's users, customers, consumers, agents, distributors, installers, and other third parties who use, sell, and/or offer to sell the Accused Server Instrumentalities in accordance with Toyota's instructions infringe the claims of the '268

patent, in violation of 35 U.S.C. § 271(a). Toyota intentionally instructs its customers to infringe through support information such as websites, videos, demonstrations, support information and other published information. For example, Toyota's website instructs and encourages its customers to use, manage and control the infringing components and functionalities of the Accused Server Instrumentalities. *See, e.g.,* at https://support.toyota.com/s/article/Toyota-App-User-Profile-10735?language=en_US#:~:text=a%20User%20Profile%3F-,A%20User%20Profile%20is%20created%20when%20you%20register%20an%20account,to%20customize%20their%20driving%20experience;https://toyotaaudioandconnectedservicessupport.com/toyota/feature/Toyota%20User%20Profile%20/52ba95c0-3376-11ec-bd3d-9d7b70ae271f?model=bZ4X&year=2023;https://lexusconnectedtechnologysupport.com/lexus/feature/User%20Profile/6ba8b100-0929-11ed-a686-85aa58672a6c?model=UX%20250H&year=2024;https://support.toyota.com/s/article/How-can-I-add-my-User-Profile-to-a-vehicle-Toyota?language=en_US#:~:text=enter%20the%20vehicle.-,The%20Toyota%20app%20must%20be%20open%20and%20signed%20in%2C%20and,desired%20profile%20for%20the%20driver. Toyota also publishes videos to assist and encourage users to use and operate the infringing components and functionalities of the Accused Server Instrumentalities. *See, e.g.,* https://www.youtube.com/watch?v=IBS6mlpArFQ&ab_channel=ToyotaUSA; https://www.youtube.com/watch?v=OWLkSJkb8Bc&ab_channel=ToyotaUSA. Thus, Toyota actively instructs and directs its customers to infringe and actively encourages infringement by its customers. Toyota is thereby liable for infringement of the '268 patent under 35 U.S.C. § 271(b).

51. Toyota has had knowledge of the '268 patent at least as early as December 8, 2020, when it identified the '268 patent to the United States Patent and Trademark Office in a filing in

connection with its patent application number 15/632,854. Toyota has also had knowledge of the '268 patent since at least the filing and/or service date of the Complaint in this action. Despite this knowledge, Toyota has continued to engage in activities to encourage and assist its customers in the use of the Accused Server Instrumentalities. Thus, on information and belief, Toyota (1) had actual knowledge of the patent; (2) knowingly induced its customers to infringe the patent; and (3) had specific intent to induce the patent infringement.

52. Additionally, and/or alternatively, Toyota is liable as a contributory infringer of the '268 patent under 35 U.S.C. § 271(c) by having offered to sell, sold and imported and continuing to offer to sell, selling, and importing into the United States the Accused Server Instrumentalities and reasonably similar products, to be especially made or adapted for use in infringement of the '268 patent. The portions of the infringing servers that enable Toyota and Lexus vehicles to be programmed remotely based on user profiles are a material component for use in practicing the '268 patent and are especially made and are not staple articles of commerce suitable for non-infringing use.

53. Emerging Auto complied with 35 U.S.C. § 287 because Emerging Auto does not make, offer for sale or sell products that practice the '268 patent during the relevant time period.

54. As a result of Toyota's direct and indirect infringement of the '268 patent, Emerging Auto is entitled to monetary damages (past, present and future) in an amount adequate to compensate for Toyota's infringement, but in no event less than a reasonable royalty for the use made of the invention by Toyota, together with interest and costs as fixed by the Court.

55. On information and belief, despite having knowledge of the '268 patent and knowledge that it is directly and/or indirectly infringing one or more claims of the '268 patent, Toyota has nevertheless continued its infringing conduct and disregarded an objectively high likelihood of

infringement. Toyota's infringing activities relative to the '268 patent have been, and continue to be, willful, wanton, malicious, deliberate, consciously wrongful, and an egregious case of misconduct beyond typical infringement such that Emerging Auto is entitled to enhanced damages under 35 U.S.C. § 284 up to three times the amount found or assessed.

56. Toyota's acts of direct and indirect infringement have caused and continue to cause damage to Emerging Auto. Emerging Auto is entitled to damages in accordance with 35 U.S.C. §§ 271, 281, and 284 sustained as a results of Toyota's wrongful acts in an amount to be proven at trial.

FIFTH COUNT

(INFRINGEMENT OF U.S. PATENT NO. 11,396,244)

57. Emerging Auto incorporates by reference the foregoing paragraphs as if fully set forth herein.

58. Emerging Auto 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. 11,396,244 titled "Methods For Transferring User Profiles Between Vehicles Using Cloud Services." The '244 patent was duly and legally issued by the United States Patent and Trademark Office on July 26, 2022. A true and correct copy of the '244 Patent is attached as Exhibit I.

59. On information and belief, Toyota has directly infringed and continues to directly infringe one or more claims of the '244 patent, including at least claim 1 of the '244 patent, in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, making, using, selling, offering for sale, and/or importing into the United States products that embody one or more of the inventions claimed in the '244 patent, including but not limited to the Accused Server Instrumentalities, including servers that are associated with receiving, maintaining, and/or storing User Profile information and/or communicating User Profile and/or setting information for

Toyota and Lexus-branded vehicles to be programmed remotely based on user profiles, as well as all reasonably similar products, in violation of 35 U.S.C. § 271(a).

60. Accused Server Instrumentalities satisfy all claim limitations of one or more claims of the '244 patent. A claim chart comparing exemplary independent claim 1 of the '244 patent to representative Accused Server Instrumentalities is attached as Exhibit J.

61. By making, using, offering for sale, selling and/or importing into the United States the Accused Server Instrumentalities, Toyota has injured Emerging Auto and is liable for infringement of the '244 patent pursuant to 35 U.S.C. § 271(a).

62. In addition, and/or in the alternative to its direct infringement, Toyota has also infringed and continues to infringe the claims of the '244 patent by, among other things, actively inducing others to use the Accused Server Instrumentalities. Toyota's users, customers, consumers, agents, distributors, installers, and other third parties who use, sell, and/or offer to sell the Accused Server Instrumentalities in accordance with Toyota's instructions infringe the claims of the '244 patent, in violation of 35 U.S.C. § 271(a). Toyota intentionally instructs its customers to infringe through support information such as websites, videos, demonstrations, support information and other published information. For example, Toyota's website instructs and encourages its customer to use, manage and control the infringing components and functionalities of the Accused Server Instrumentalities. *See, e.g.,* at https://support.toyota.com/s/article/Toyota-App-User-Profile-10735?language=en_US#:~:text=a%20User%20Profile%3F-,A%20User%20Profile%20is%20created%20when%20you%20register%20an%20account,to%20customize%20their%20driving%20experience;https://toyotaaudioandconnectedservicessupport.com/toyota/feature/Toyota%20User%20Profile%20/52ba95c0-3376-11ec-bd3d-9d7b70ae271f?model=bZ4X&year=2023;

<https://lexusconnectedtechnologysupport.com/lexus/feature/User%20Profile/6ba8b100-0929-11ed-a686-85aa58672a6c?model=UX%20250H&year=2024>; https://support.toyota.com/s/article/How-can-I-add-my-User-Profile-to-a-vehicle-Toyota?language=en_US#:~:text=enter%20the%20vehicle.-,The%20Toyota%20app%20must%20be%20open%20and%20signed%20in%2C%20and,desired%20profile%20for%20the%20driver. Toyota also publishes videos to assist and encourage users to use and operate the infringing components and functionalities of the Accused Server Instrumentalities. See, e.g., https://www.youtube.com/watch?v=IBS6mlpArFQ&ab_channel=ToyotaUSA; https://www.youtube.com/watch?v=OWLkSJKb8Bc&ab_channel=ToyotaUSA. Thus, Toyota actively instructs and directs its customers to infringe and actively encourages infringement by its customers. Toyota is thereby liable for infringement of the '244 patent under 35 U.S.C. § 271(b).

63. Toyota has been aware of the '244 patent at least as early as January 3, 2023, when it was identified to Toyota by the United States Patent Office in connection with U.S. Patent Application No. 17/092,993. On April 3, 2023, Toyota discussed the contents of the '244 patent in a filing with the Patent Office in connection with that application. At a minimum, Toyota has had knowledge of the '244 patent since at least the filing and/or service date of the Complaint in this action. Despite this knowledge, Toyota has continued to engage in activities to encourage and assist its customers in the use of the Accused Server Instrumentalities. Thus, on information and belief, Toyota (1) had actual knowledge of the patent; (2) knowingly induced its customers to infringe the patent; and (3) had specific intent to induce the patent infringement.

64. Additionally, and/or alternatively, Toyota is liable as a contributory infringer of the '244 patent under 35 U.S.C. § 271(c) by having offered to sell, sold and imported and continuing to offer to sell, selling, and importing into the United States the Accused Server Instrumentalities and

reasonably similar products, to be especially made or adapted for use in infringement of the '244 patent. The portions of the infringing servers that enable Toyota and Lexus-branded vehicles to be programmed remotely based on user profiles are a material component for use in practicing the '244 patent and are especially made and are not staple articles of commerce suitable for non-infringing use.

65. Emerging Auto complied with 35 U.S.C. § 287 because Emerging Auto does not make, offer for sale or sell products that practice the '244 patent during the relevant time period.

66. As a result of Toyota's direct and indirect infringement of the '244 patent, Emerging Auto is entitled to monetary damages (past, present and future) in an amount adequate to compensate for Toyota's infringement, but in no event less than a reasonable royalty for the use made of the invention by Toyota, together with interest and costs as fixed by the Court.

67. On information and belief, despite having knowledge of the '244 patent and knowledge that it is directly and/or indirectly infringing one or more claims of the '244 patent, Toyota has nevertheless continued its infringing conduct and disregarded an objectively high likelihood of infringement. Toyota's infringing activities relative to the '244 patent have been, and continue to be, willful, wanton, malicious, deliberate, consciously wrongful, and an egregious case of misconduct beyond typical infringement such that Emerging Auto is entitled to enhanced damages under 35 U.S.C. § 284 up to three times the amount found or assessed.

68. Toyota's acts of direct and indirect infringement have caused and continue to cause damage to Emerging Auto. Emerging Auto is entitled to damages in accordance with 35 U.S.C. §§ 271, 281, and 284 sustained as a results of Toyota's wrongful acts in an amount to be proven at trial.

PRAYER FOR RELIEF

Emerging Auto respectfully requests that the Court find in favor of Emerging Auto and against

Toyota, and the Court grant Emerging Auto the following relief:

A. For judgment that Toyota is liable for infringement of one or more claims of the Asserted Patents, directly and/or indirectly, either literally and/or under the doctrine of equivalents;

B. For judgment that Toyota has willfully infringed one or more claims of the Asserted Patents;

C. For an accounting of all damages sustained by Emerging Auto as the result of Toyota's acts of infringement, including compensatory damages in an amount according to proof, and in no event less than a reasonable royalty;

D. For a mandatory future royalty payable on each and every future sale by Toyota of a product that is found to infringe one or more of the Asserted Patents and on all future products which are reasonably similar to those products found to infringe;

E. For a judgment and order requiring Toyota to pay Emerging Auto's damages, costs, expenses, and pre- and post-judgment interest for its infringement of the Asserted Patents as provided under 35 U.S.C. § 284;

F. For a judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Emerging Auto its reasonable attorneys' fees; and

G. For such other and further relief in law and in equity as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Emerging Auto hereby demands a trial by jury of this action.

Dated: September 20, 2023

Respectfully submitted,

/s/ Marc Belloli w/permission Andrea L. Fair

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