

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SMR PATENTS S.à.r.l.,
a foreign corporation, and
SMR AUTOMOTIVE SYSTEMS USA INC.,
a Michigan corporation,

Civil Action No.

Plaintiffs,

Honorable

v.

Magistrate Judge

MAGNA MIRRORS OF AMERICA, INC.,
a Michigan corporation; and
MAGNA INTERNATIONAL, INC.,
a foreign corporation,

JURY TRIAL DEMANDED

Defendants.

COMPLAINT AND JURY DEMAND

NOW COMES Plaintiffs SMR Patents S.à.r.l. and SMR Automotive Systems USA Inc. and for their Complaint against Defendants Magna Mirrors of America, Inc. and Magna International, Inc., state as follows:

THE PARTIES

1. Plaintiff SMR Patents S.à.r.l (hereinafter “SMR Patents” or “Plaintiff SMR Patents”) is a foreign corporation with its principal place of business located at 2-8, Avenue Charles De Gaulle, Luxembourg L-1653. SMR Patents S.à.r.l owns several patents relating to mirror assemblies.

2. SMR Automotive Systems USA Inc. (hereafter “SMR USA” or “Plaintiff SMR USA”) is a corporation organized and existing under the laws of the State of Michigan, having a registered address of 1855 Busha Highway, Marysville, Michigan 48040, and maintains offices

in Marysville, Michigan, and Troy, Michigan. SMR Automotive Systems USA Inc. is an operating subsidiary of SMR Automotive Mirror Parts and Holdings UK Limited. (“SMR Patents” and “SMR USA” may collectively be referred to hereafter as “Plaintiffs”)

3. Upon information and belief, Defendant, Magna Mirrors of America, Inc. (hereinafter “Magna Mirrors”) is a corporation organized under the laws of the State of Michigan, having a registered address at 30600 Telegraph Road, Bingham Farms, Michigan 48025. Upon information and belief, Magna Mirrors, by itself and/or through one or more entities, owned, controlled or otherwise affiliated with Magna Mirrors, conducts business in Michigan and in this District including, without limitation, promoting, distributing and selling a variety of products relating to mirror assemblies in this District.

4. Upon information and belief, Defendant Magna International, Inc. (hereinafter “Magna International”) is a foreign corporation having a registered address at 337 Magna Drive, Aurora, Ontario, Canada L4G 7K1. Upon information and belief, Magna International, by itself and/or through one or more entities, owned, controlled or otherwise affiliated with Magna International, conducts business in Michigan and in this District including, without limitation, promoting, distributing and selling a variety of products relating to mirror assemblies in this District. (“Magna Mirrors” and “Magna International” may collectively be referred to hereafter as “Defendants”)

5. Defendants make, use, sell, offer to sell or import mirror assemblies for, *inter alia*, the following vehicles:

- Ford Motor Company:
 - Mustang
 - Taurus
 - Flex
 - Edge
 - F150
 - Expedition/Navigator
 - MKS
 - MKT
 - MKX

- General Motors Corporation:
 - 900
 - G6
 - Corvette
 - Equinox
 - Malibu
 - Cadillac STS
 - Saturn Aura

- Chrysler:
 - Dodge Nitro/Liberty
 - PT Cruiser
 - Dodge Challenger
 - Dodge Ram Base
 - RT Van

- Toyota:
 - Tacoma
 - Matrix
 - Corolla
 - Tundra

- Honda:
 - Accord
 - Pilot
 - RDX
 - Civic
 - MDX
 - Odyssey

JURISDICTION AND VENUE

6. Counts 1-13 of this action are for patent infringement and false marking arising under the Patent Laws of the United States, 35 U.S.C. §1 *et seq.* Count 14 of this action arises under the Lanham Act, 15 U.S.C. §§1051 *et seq.* This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§1331, 1338 and 15 U.S.C. §1121.

7. Venue lies in this District pursuant to 28 U.S.C. §§1391, 1395 and 1400.

**COUNT I
INFRINGEMENT OF THE '471 PATENT**

8. Plaintiffs re-allege and incorporate by reference every allegation contained in paragraphs 1-7 of this Complaint.

9. On July 19, 1994, United States Patent No. 5,331,471 (the "'471 patent") entitled "Discrete Mirror Drive Assembly" was duly and legally issued.

10. Plaintiff SMR Patents currently owns all right, title and interest in and to the '471 patent. A copy of the '471 patent is appended as Exhibit A.

11. Defendants, by themselves and/or through their subsidiaries, affiliates, and/or agents have been, and are, infringing the '471 patent by making, using, offering to sell, selling and/or importing mirror drive assemblies embodying the patented inventions of the '471 patent within the United States and within this District.

12. Upon information and belief, Defendants make, import, sell, and/or offer to sell mirror assemblies and/or components thereof with knowledge and/or reckless disregard amounting to knowledge that said products and/or components thereof constitute a material part of the inventions of the '471 patent and that are especially made or especially adapted for use in infringement of the '471 patent, and said mirror drive assemblies and/or components thereof are not a staple article or commodity of commerce suitable for substantial non-infringing use. The actions of Defendants constitute contributory infringement of the patents-in-suit.

13. Upon information and belief, Defendants are actively inducing the infringement of the '471 patent.

14. Unless enjoined by the Court, Defendants will continue to infringe, contribute to the infringement of and/or induce the infringement of the '471 patent.

15. The Defendants' direct infringement of the '471 patent, and/or inducement of or contribution to the infringement of others, has injured SMR Patents and will continue to injure SMR Patents unless enjoined by the Court. SMR Patents is entitled to recover damages adequate to compensate for such infringement pursuant to 35 U.S.C. §284.

16. Upon information and belief, Defendants' infringement, contributory infringement and inducement have been willful.

**COUNT II
INFRINGEMENT OF THE '675 PATENT**

17. Plaintiffs re-allege and incorporate by reference every allegation contained in paragraphs 1-16 of this Complaint.

18. On May 8, 2001, United States Patent No. 6,227,675 B1 (the "'675 patent") entitled "Interior Rearview Mirror For Vehicles" was duly and legally issued.

19. Plaintiff SMR Patents currently owns all right, title and interest in and to the '675 patent. A copy of the '675 patent is appended as Exhibit B.

20. Defendants, by themselves and/or through their subsidiaries, affiliates, and/or agents have been, and are, infringing the '675 patent by making, using, offering to sell, selling and/or importing rearview mirror assemblies embodying the patented inventions of the '675 patent within the United States and within this District.

21. Upon information and belief, Defendants make, import, sell, and/or offer to sell rearview mirror assemblies and/or components thereof with knowledge and/or reckless disregard amounting to knowledge that said products and/or components thereof constitute a material part of the inventions of the '675 patent and that are especially made or especially adapted for use in infringement of the '675 patent, and said rearview mirror assemblies and/or components thereof

are not a staple article or commodity of commerce suitable for substantial non-infringing use. The actions of Defendants constitute contributory infringement of the patents-in-suit.

22. Upon information and belief, Defendants are actively inducing the infringement of the '675 patent.

23. Unless enjoined by the Court, Defendants will continue to infringe, contribute to the infringement of and/or induce the infringement of the '675 patent.

24. The Defendants' direct infringement of the '675 patent, and/or inducement of or contribution to the infringement of others, has injured SMR Patents and will continue to injure SMR Patents unless enjoined by the Court. SMR Patents is entitled to recover damages adequate to compensate for such infringement pursuant to 35 U.S.C. §284.

25. Upon information and belief, Defendants' infringement, contributory infringement and inducement have been willful.

**COUNT III
INFRINGEMENT OF THE '242 PATENT**

26. Plaintiffs re-allege and incorporate by reference every allegation contained in paragraphs 1-25 of this Complaint.

27. On July 3, 2001, United States Patent No. 6,254,242 B1 (the "'242 patent") entitled "Potentiometer For Motorized Mirror" was duly and legally issued.

28. Plaintiff SMR Patents currently owns all right, title and interest in and to the '242 patent. A copy of the '242 patent is appended as Exhibit C.

29. Defendants, by themselves and/or through their subsidiaries, affiliates, and/or agents have been, and are, infringing the '242 patent by making, using, offering to sell, selling

and/or importing mirror assemblies embodying the patented inventions of the '242 patent within the United States and within this District.

30. Upon information and belief, Defendants make, import, sell, and/or offer to sell mirror assemblies and/or components thereof with knowledge and/or reckless disregard amounting to knowledge that said products and/or components thereof constitute a material part of the inventions of the '242 patent and that are especially made or especially adapted for use in infringement of the '242 patent, and said mirror assemblies and/or components thereof are not a staple article or commodity of commerce suitable for substantial non-infringing use. The actions of Defendants constitute contributory infringement of the patents-in-suit.

31. Upon information and belief, Defendants are actively inducing the infringement of the '242 patent.

32. Unless enjoined by the Court, Defendants will continue to infringe, contribute to the infringement of and/or induce the infringement of the '242 patent.

33. The Defendants' direct infringement of the '242 patent, and/or inducement of or contribution to the infringement of others, has injured SMR Patents and will continue to injure SMR Patents unless enjoined by the Court. SMR Patents is entitled to recover damages adequate to compensate for such infringement pursuant to 35 U.S.C. §284.

34. Upon information and belief, Defendants' infringement, contributory infringement and inducement have been willful.

**COUNT IV
INFRINGEMENT OF THE '068 PATENT**

35. Plaintiffs re-allege and incorporate by reference every allegation contained in paragraphs 1-34 of this Complaint.

36. On August 28, 2001, United States Patent No. 6,280,068 B1 (the "'068 patent") entitled "Vehicle External Rearview Mirror With Rear Facing Blinker Light" was duly and legally issued.

37. Plaintiff SMR Patents currently owns all right, title and interest in and to the '068 patent. A copy of the '068 patent is appended as Exhibit D.

38. Defendants, by themselves and/or through their subsidiaries, affiliates, and/or agents have been, and are, infringing the '068 patent by making, using, offering to sell, selling and/or importing mirror assemblies embodying the patented inventions of the '068 patent within the United States and within this District.

39. Upon information and belief, Defendants make, import, sell, and/or offer to sell mirror assemblies and/or components thereof with knowledge and/or reckless disregard amounting to knowledge that said products and/or components thereof constitute a material part of the inventions of the '068 patent and that are especially made or especially adapted for use in infringement of the '068 patent, and said mirror assemblies and/or components thereof are not a staple article or commodity of commerce suitable for substantial non-infringing use. The actions of Defendants constitute contributory infringement of the patents-in-suit.

40. Upon information and belief, Defendants are actively inducing the infringement of the '068 patent.

41. Unless enjoined by the Court, Defendants will continue to infringe, contribute to the infringement of and/or induce the infringement of the '068 patent.

42. The Defendants' direct infringement of the '068 patent, and/or inducement of or contribution to the infringement of others, has injured SMR Patents and will continue to injure SMR Patents unless enjoined by the Court. SMR Patents is entitled to recover damages adequate to compensate for such infringement pursuant to 35 U.S.C. §284.

43. Upon information and belief, Defendants' infringement, contributory infringement and inducement have been willful.

**COUNT V
INFRINGEMENT OF THE '192 PATENT**

44. Plaintiffs re-allege and incorporate by reference every allegation contained in paragraphs 1-43 of this Complaint.

45. On July 9, 2002, United States Patent No. 6,416,192 B2 (the "'192 patent") entitled "Trailer Tow Mirror" was duly and legally issued.

46. Plaintiff SMR Patents currently owns all right, title and interest in and to the '192 patent. A copy of the '192 patent is appended as Exhibit E.

47. Defendants, by themselves and/or through their subsidiaries, affiliates, and/or agents have been, and are, infringing the '192 patent by making, using, offering to sell, selling and/or importing mirror assemblies embodying the patented inventions of the '192 patent within the United States and within this District.

48. Upon information and belief, Defendants make, import, sell, and/or offer to sell mirror assemblies and/or components thereof with knowledge and/or reckless disregard amounting to knowledge that said products and/or components thereof constitute a material part of the inventions of the '192 patent and that are especially made or especially adapted for use in infringement of the '192 patent, and said mirror assemblies and/or components thereof are not a

staple article or commodity of commerce suitable for substantial non-infringing use. The actions of Defendants constitute contributory infringement of the patents-in-suit.

49. Upon information and belief, Defendants are actively inducing the infringement of the '192 patent.

50. Unless enjoined by the Court, Defendants will continue to infringe, contribute to the infringement of and/or induce the infringement of the '192 patent.

51. The Defendants' direct infringement of the '192 patent, and/or inducement of or contribution to the infringement of others, has injured SMR Patents and will continue to injure SMR Patents unless enjoined by the Court. SMR Patents is entitled to recover damages adequate to compensate for such infringement pursuant to 35 U.S.C. §284.

52. Upon information and belief, Defendants' infringement, contributory infringement and inducement have been willful.

**COUNT VI
INFRINGEMENT OF THE '822 PATENT**

53. Plaintiffs re-allege and incorporate by reference every allegation contained in paragraphs 1-52 of this Complaint.

54. On November 5, 2002, United States Patent No. 6,474,822 B2 (the "'822 patent") entitled "Potentiometer For Motorized Mirror" was duly and legally issued.

55. Plaintiff SMR Patents currently owns all right, title and interest in and to the '822 patent. A copy of the '822 patent is appended as Exhibit F.

56. Defendants, by themselves and/or through their subsidiaries, affiliates, and/or agents have been, and are, infringing the '822 patent by making, using, offering to sell, selling

and/or importing mirror assemblies embodying the patented inventions of the '822 patent within the United States and within this District.

57. Upon information and belief, Defendants make, import, sell, and/or offer to sell mirror assemblies and/or components thereof with knowledge and/or reckless disregard amounting to knowledge that said products and/or components thereof constitute a material part of the inventions of the '822 patent and that are especially made or especially adapted for use in infringement of the '822 patent, and said mirror assemblies and/or components thereof are not a staple article or commodity of commerce suitable for substantial non-infringing use. The actions of Defendants constitute contributory infringement of the patents-in-suit.

58. Upon information and belief, Defendants are actively inducing the infringement of the '822 patent.

59. Unless enjoined by the Court, Defendants will continue to infringe, contribute to the infringement of and/or induce the infringement of the '822 patent.

60. The Defendants' direct infringement of the '822 patent, and/or inducement of or contribution to the infringement of others, has injured SMR Patents and will continue to injure SMR Patents unless enjoined by the Court. SMR Patents is entitled to recover damages adequate to compensate for such infringement pursuant to 35 U.S.C. §284.

61. Upon information and belief, Defendants' infringement, contributory infringement and inducement have been willful.

**COUNT VII
INFRINGEMENT OF THE '227 PATENT**

62. Plaintiff re-alleges and incorporates by reference every allegation contained in paragraphs 1-61 of this Complaint.

63. On February 11, 2003, United States Patent No. 6,517,227 B2 (the "'227 patent") entitled "Exterior Rear View Mirror Integral Warning Light" was duly and legally issued.

64. Plaintiff SMR Patents currently owns all right, title and interest in and to the '227 patent. A copy of the '227 patent is appended as Exhibit G.

65. Defendants, by themselves and/or through their subsidiaries, affiliates, and/or agents have been, and are, infringing the '227 patent by making, using, offering to sell, selling and/or importing mirror assemblies embodying the patented inventions of the '227 patent within the United States and within this District.

66. Upon information and belief, Defendants make, import, sell, and/or offer to sell mirror assemblies and/or components thereof with knowledge and/or reckless disregard amounting to knowledge that said products and/or components thereof constitute a material part of the inventions of the '227 patent and that are especially made or especially adapted for use in infringement of the '227 patent, and said mirror assemblies and/or components thereof are not a staple article or commodity of commerce suitable for substantial non-infringing use. The actions of Defendants constitute contributory infringement of the patents-in-suit.

67. Upon information and belief, Defendants are actively inducing the infringement of the '227 patent.

68. Unless enjoined by the Court, Defendants will continue to infringe, contribute to the infringement of and/or induce the infringement of the '227 patent.

69. The Defendants' direct infringement of the '227 patent, and/or inducement of or contribution to the infringement of others, has injured SMR Patents and will continue to injure SMR Patents unless enjoined by the Court. SMR Patents is entitled to recover damages adequate to compensate for such infringement pursuant to 35 U.S.C. §284.

70. Upon information and belief, Defendants' infringement, contributory infringement and inducement have been willful.

**COUNT VIII
INFRINGEMENT OF THE '465 PATENT**

71. Plaintiffs re-allege and incorporate by reference every allegation contained in paragraphs 1-70 of this Complaint.

72. On February 24, 2004, United States Patent No. 6,695,465 B2 (the "'465 patent") entitled "Exterior Rearview Mirror For Vehicles, In Particular, For Motor Vehicles" was duly and legally issued.

73. Plaintiff SMR Patents currently owns all right, title and interest in and to the '465 patent. A copy of the '465 patent is appended as Exhibit H.

74. Defendants, by themselves and/or through their subsidiaries, affiliates, and/or agents have been, and are, infringing the '465 patent by making, using, offering to sell, selling and/or importing exterior rearview mirror assemblies embodying the patented inventions of the '465 patent within the United States and within this District.

75. Upon information and belief, Defendants make, import, sell, and/or offer to sell exterior rearview mirror assemblies and/or components thereof with knowledge and/or reckless disregard amounting to knowledge that said products and/or components thereof constitute a material part of the inventions of the '465 patent and that are especially made or especially

adapted for use in infringement of the '465 patent, and said exterior rearview mirror assemblies and/or components thereof are not a staple article or commodity of commerce suitable for substantial non-infringing use. The actions of Defendants constitute contributory infringement of the patents-in-suit.

76. Upon information and belief, Defendants are actively inducing the infringement of the '465 patent.

77. Unless enjoined by the Court, Defendants will continue to infringe, contribute to the infringement of and/or induce the infringement of the '465 patent.

78. The Defendants' direct infringement of the '465 patent, and/or inducement of or contribution to the infringement of others, has injured SMR Patents and will continue to injure SMR Patents unless enjoined by the Court. SMR Patents is entitled to recover damages adequate to compensate for such infringement pursuant to 35 U.S.C. §284.

79. Upon information and belief, Defendants' infringement, contributory infringement and inducement have been willful.

COUNT IX
INFRINGEMENT OF THE '235 PATENT

80. Plaintiffs re-allege and incorporate by reference every allegation contained in paragraphs 1-79 of this Complaint.

81. On June 14, 2005, United States Patent No. 6,905,235 B2 (the "'235 patent") entitled "Exterior Rear View Mirror Integral Warning Light" was duly and legally issued.

82. Plaintiff SMR Patents currently owns all right, title and interest in and to the '235 patent. A copy of the '235 patent is appended as Exhibit I.

83. Defendants, by themselves and/or through their subsidiaries, affiliates, and/or agents have been, and are, infringing the '235 patent by making, using, offering to sell, selling and/or importing mirror assemblies embodying the patented inventions of the '235 patent within the United States and within this District.

84. Upon information and belief, Defendants make, import, sell, and/or offer to sell mirror assemblies and/or components thereof with knowledge and/or reckless disregard amounting to knowledge that said products and/or components thereof constitute a material part of the inventions of the '235 patent and that are especially made or especially adapted for use in infringement of the '235 patent, and said mirror assemblies and/or components thereof are not a staple article or commodity of commerce suitable for substantial non-infringing use. The actions of Defendants constitute contributory infringement of the patents-in-suit.

85. Upon information and belief, Defendants are actively inducing the infringement of the '235 patent.

86. Unless enjoined by the Court, Defendants will continue to infringe, contribute to the infringement of and/or induce the infringement of the '235 patent.

87. The Defendants' direct infringement of the '235 patent, and/or inducement of or contribution to the infringement of others, has injured SMR Patents and will continue to injure SMR Patents unless enjoined by the Court. SMR Patents is entitled to recover damages adequate to compensate for such infringement pursuant to 35 U.S.C. §284.

88. Upon information and belief, Defendants' infringement, contributory infringement and inducement have been willful.

COUNT X
INFRINGEMENT OF THE '089 PATENT

89. Plaintiffs re-allege and incorporate by reference every allegation contained in paragraphs 1-88 of this Complaint.

90. On March 7, 2006, United States Patent No. 7,008,089 B1 (the "'089 patent") entitled "Exterior Rear View Mirror Having A Chin Strap And A Repeater" was duly and legally issued.

91. Plaintiff SMR Patents currently owns all right, title and interest in and to the '089 patent. A copy of the '089 patent is appended as Exhibit J.

92. Defendants, by themselves and/or through their subsidiaries, affiliates, and/or agents have been, and are, infringing the '089 patent by making, using, offering to sell, selling and/or importing mirror assemblies embodying the patented inventions of the '089 patent within the United States and within this District.

93. Upon information and belief, Defendants make, import, sell, and/or offer to sell mirror assemblies and/or components thereof with knowledge and/or reckless disregard amounting to knowledge that said products and/or components thereof constitute a material part of the inventions of the '089 patent and that are especially made or especially adapted for use in infringement of the '089 patent, and said mirror assemblies and/or components thereof are not a staple article or commodity of commerce suitable for substantial non-infringing use. The actions of Defendants constitute contributory infringement of the patents-in-suit.

94. Upon information and belief, Defendants are actively inducing the infringement of the '089 patent.

95. Unless enjoined by the Court, Defendants will continue to infringe, contribute to the infringement of and/or induce the infringement of the '089 patent.

96. The Defendants' direct infringement of the '089 patent, and/or inducement of or contribution to the infringement of others, has injured SMR Patents and will continue to injure SMR Patents unless enjoined by the Court. SMR Patents is entitled to recover damages adequate to compensate for such infringement pursuant to 35 U.S.C. §284.

97. Upon information and belief, Defendants' infringement, contributory infringement and inducement have been willful.

**COUNT XI
INFRINGEMENT OF THE '756 PATENT**

98. Plaintiffs re-allege and incorporate by reference every allegation contained in paragraphs 1-97 of this Complaint.

99. On November 28, 2006, United States Patent No. 7,140,756 B2 (the "'756 patent") entitled "Exterior Rear View Mirror Having A Chin Strap And A Repeater" was duly and legally issued.

100. Plaintiff SMR Patents currently owns all right, title and interest in and to the '756 patent. A copy of the '756 patent is appended as Exhibit K.

101. Defendants, by themselves and/or through their subsidiaries, affiliates, and/or agents have been, and are, infringing the '756 patent by making, using, offering to sell, selling and/or importing mirror assemblies embodying the patented inventions of the '756 patent within the United States and within this District.

102. Upon information and belief, Defendants make, import, sell, and/or offer to sell mirror assemblies and/or components thereof with knowledge and/or reckless disregard amounting to knowledge that said products and/or components thereof constitute a material part of the inventions of the '756 patent and that are especially made or especially adapted for use in

infringement of the '756 patent, and said mirror assemblies and/or components thereof are not a staple article or commodity of commerce suitable for substantial non-infringing use. The actions of Defendants constitute contributory infringement of the patents-in-suit.

103. Upon information and belief, Defendants are actively inducing the infringement of the '756 patent.

104. Unless enjoined by the Court, Defendants will continue to infringe, contribute to the infringement of and/or induce the infringement of the '756 patent.

105. The Defendants' direct infringement of the '756 patent, and/or inducement of or contribution to the infringement of others, has injured SMR Patents and will continue to injure SMR Patents unless enjoined by the Court. SMR Patents is entitled to recover damages adequate to compensate for such infringement pursuant to 35 U.S.C. §284.

106. Upon information and belief, Defendants' infringement, contributory infringement and inducement have been willful.

**COUNT XII
INFRINGEMENT OF THE '328 PATENT**

107. Plaintiffs re-allege and incorporate by reference every allegation contained in paragraphs 1-106 of this Complaint.

108. On October 10, 2006, United States Patent No. RE39,328 E (the "'328 patent") entitled "Mirror Carrier Mounting Arrangement For A Vehicle Rear View Mirror" was duly and legally issued.

109. Plaintiff SMR Patents currently owns all right, title and interest in and to the '328 patent. A copy of the '328 patent is appended as Exhibit L.

110. Defendants, by themselves and/or through their subsidiaries, affiliates, and/or agents have been, and are, infringing the '328 patent by making, using, offering to sell, selling and/or importing rear view mirror assemblies embodying the patented inventions of the '328 patent within the United States and within this District.

111. Upon information and belief, Defendants make, import, sell, and/or offer to sell rear view mirror assemblies and/or components thereof with knowledge and/or reckless disregard amounting to knowledge that said products and/or components thereof constitute a material part of the inventions of the '328 patent and that are especially made or especially adapted for use in infringement of the '328 patent, and said rear view mirror assemblies and/or components thereof are not a staple article or commodity of commerce suitable for substantial non-infringing use. The actions of Defendants constitute contributory infringement of the patents-in-suit.

112. Upon information and belief, Defendants are actively inducing the infringement of the '328 patent.

113. Unless enjoined by the Court, Defendants will continue to infringe, contribute to the infringement of and/or induce the infringement of the '328 patent.

114. The Defendants' direct infringement of the '328 patent, and/or inducement of or contribution to the infringement of others, has injured SMR Patents and will continue to injure SMR Patents unless enjoined by the Court. SMR Patents is entitled to recover damages adequate to compensate for such infringement pursuant to 35 U.S.C. §284.

115. Upon information and belief, Defendants' infringement, contributory infringement and inducement have been willful.

**COUNT XIII
FALSE MARKING**

116. Plaintiffs re-allege and incorporate by reference every allegation contained in paragraphs 1-115 of this Complaint.

117. Defendant Magna Mirrors of America, Inc. has violated 35 U.S.C. §292(a) by marking unpatented articles with the purpose of deceiving the public.

A. THE POLICY OF THE PATENT MARKING STATUTES

118. The patent marking statute (35 U.S.C. §287(a)) and the false patent marking statute (35 U.S.C. §292) exist to insure that the public has accurate information on the existence of patent rights in articles

119. Plaintiffs, on their own behalf and on behalf of the United States, seeks an award of monetary damages of not more than \$500 for each of Magna Mirrors' violations of 35 U.S.C. §292(a), one-half of which shall be paid to the United States pursuant to 35 U.S.C. §292(b).

120. The several purposes of the patent marking statute were explained by the Federal Circuit in *Nike, Inc. v. Wal-Mart Stores, Inc.*, 138 F.3d 2437, 1443 (Fed.Cir.1998), as: (1) helping to avoid innocent infringement; (2) encouraging patentees to give notice to the public that the article is patented; and (3) aiding the public to identify whether an article is patented.

121. When the Patent Act of 1952 was enacted, false patent marking was punishable as a criminal offense under Title 18 of the United States Code.

122. The Patent Act of 1952 retained a *qui tam* cause of action on behalf of the public to fine the offender in an amount up to \$500 for each offense, with half going to the use of the United States, and the other half going to the person bringing the action.

123. P.J. Federico, one of the principal drafters of the Patent Act of 1952, wrote a “Commentary on the New Patent Act,” explaining a *qui tam* action under 35 U.S.C. §292:

Section 292 is divided into two subsections, subsection (a) is written in the same form as the sections of the criminal code (Title 18, U.S.C.A.) establishing criminal offenses and the offense of false marking is now an ordinary criminal offense which can be prosecuted in the same manner as others. However, subsection (b) of section 292 retains the informer (*qui tam*) action as additional, presumably alternative, to the criminal action.

124. False marking of unpatented articles as “patented” is injurious to the public interest, as explained by the United States Court of Appeals, in at least the following ways:

- Acts of false marking deter innovation and stifle competition in the marketplace.
- False marks may deter scientific research when an inventor sees a mark and decides to forgo continued research to avoid possible infringement.
- False marking can cause unnecessary investment in design around or costs incurred to analyze the validity or enforceability of a patent whose number has been marked upon a product with which a competitor would like to compete.

125. Additionally, a consumer seeing an article marked as “patented” is likely to infer the article possesses design or utilitarian features that are unique to such article, and not available in substitute articles from other producers, thus inducing consumer demand for the marked article.

B. FEDERAL PATENT POLICY

126. The Supreme Court stated in *Precision Instrument Mfg. Co. v. Automotive Maintenance Machinery*, 324 U.S. 806, 816 (1945) that patents by their very nature are affected with a public interest:

The possession and assertion of patent rights are ‘issues of great moment to the public.’ [Citations omitted.] A patent by its very nature is affected with a public interest. As recognized by the Constitution, it is a special privilege design to serve the public purpose of promoting the ‘Progress of Science and useful Arts.’ At the same time, a patent is an exception to the general rule against monopolies and to the right to access to a free and open market.

127. “A patent by its very nature is affected with a public interest.” 37 C.F.R. §1.56(a).

128. Due to the public’s interest in the patent system, Congress has empowered “any person” to file a false marking action in Federal Court under 35 U.S.C. §292 or request reexamination of any claim of an enforceable patent (35 U.S.C. §302 (*ex parte*) and 35 U.S.C. §311 (*inter partes*)), whether or not the person acting is involved in a substantial controversy with the patentee or has adverse legal interests to the patentee or has sustained an injury-in-fact.

129. The Supreme Court has stated:

- “An unpatentable article, like an article on which the patent has expired, is in the public domain and may be made and sold by whoever chooses to do so.” *Sears Roebuck & Co. v. Stiffel Co.*, 376 U.S. 225 (1964); *Compco Corp. v. Day-Brite Lighting*, 376 U.S. 234 (1964);
- “...federal law requires that all ideas in general circulation be dedicated to the common good unless they are protected by a valid patent.” *Lear, Inc. v. Adkins*, 395 U.S. 653, 668 (1969); and
- “In general, unless an intellectual property right such as a patent or copyright protects an item, it will be subject to copying.” *TrafFix Devices, Inc. v. Marketing Displays, Inc.*, 523 U.S. 23, 29 (2001).

130. False patent marking is an impediment to those basic federal policies.

C. MAGNA MIRRORS AND ITS FALSE MARKING

131. Magna Mirrors has an extensive patent portfolio. Many of its patents have now expired.

132. Magna Mirrors makes and sells a variety of products, which it marks with patent numbers that are expired.

133. An exemplary same of Magna Mirrors products that are falsely marked include the mirror assemblies for the Ford Mustang, Ford MKT, GM Acadia, GM 900, GM Corvette, and Toyota Tundra/Sequoia.

134. The above instances of false marking are representative and not exhaustive.

D. MAGNA MIRRORS' INTENT TO FALSELY MARK

135. Magna Mirrors did not have, and could not have had, a reasonable belief that its products were properly marked with unexpired patents.

136. A representative example of expired patents currently marked on Magna Mirrors products are United States Patent Nos:

- 5,066,112 (the “112 patent”) entitled “Perimeter Coated, Electro-Optic Mirror” issued November 19, 1991;
- 5,073,012 (the “012 patent”) entitled “Anti-Scatter, Ultraviolet Protected, Anti-Misting, Electro-Optical Assemblies” issued December 17, 1991; and
- 4,915,493 (the “493 patent”) entitled “Automotive Rear View Mirror Assembly” issued April 10, 1990.

137. The ‘112 patent is falsely marked on, *inter alia*, Magna Mirrors assemblies for the Ford Taurus, Ford MKT, GM Acadia, and GM Corvette.

138. The '012 patent is falsely marked on, *inter alia*, Magna Mirrors assemblies for the Ford MKT, GM Acadia, and GM Corvette.

139. The '493 patent is falsely marked on, *inter alia*, Magna Mirrors assemblies for the GM 900, Toyota Tundra, and Toyota Tundra/Sequoia.

140. Magna Mirrors knew, or should have known, that many of the patents marked on its products are expired and should no longer be used as a deterrent to competition.

141. Each false marking on the products identified in this Complaint is likely to, or at least has the potential to, discourage or deter persons and companies from commercializing competing products.

142. Magna Mirrors' false marking of its products has wrongfully quelled competition with respect to such products thereby causing harm to Plaintiffs, the United States, and the public.

143. Magna Mirrors has wrongfully and illegally advertised patent monopolies which it does not possess and, as a result, has benefited by maintaining a substantial market share with respect to the products referenced in this Complaint.

E. MAGNA MIRRORS' LIABILITY AND PUBLIC HARM

144. Magna Mirrors' false marking of its products, coupled with its intended purpose in deceiving the public, is injurious to the public.

145. Magna Mirrors is liable to the United States and Plaintiffs for false marking under 35 U.S.C. §292(b).

146. The public interest requires that Magna Mirrors be enjoined from further acts of false marking.

COUNT XIV
VIOLATION OF §43(a) OF THE LANHAM ACT

147. Plaintiffs re-allege and incorporate by reference every allegation contained in paragraphs 1-147 of this Complaint.

148. Defendants have, in contravention of 15 U.S.C. §1125(a)(1), made false and misleading descriptions of fact regarding their products and in advertising their products as being patented when, in fact, they are not.

149. The false and misleading descriptions of fact by Defendants actually deceived or have the capacity to deceive a substantial segment of their intended recipients.

150. The false and misleading descriptions of fact by Defendants were material, and likely to influence the purchasing decisions of their recipients to the detriment of Plaintiff SMR USA.

151. Defendants have caused their falsely advertised goods to enter into interstate commerce.

152. SMR USA has and continues to incur damage as a result of the false and misleading descriptions of fact made by Defendants.

153. Defendants' aforementioned actions have been willful and intentional.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs hereby requests entry of a judgment against Defendants Magna Mirrors of America, Inc. and Magna International, Inc. as to all Causes of Action as follows:

A. Permanently enjoining Defendants Magna Mirrors of America, Inc. and Magna International, Inc. their officers, agents, servants, employees, attorneys, and all those person in privity or in active concert or participation with them, from further manufacture, importation, sale, offer for sale, and/or use of a product which infringes, contributorily infringes, or induces infringement of the patents-in-suit;

B. Permanently enjoining Defendants Magna Mirrors of America, Inc. and Magna International, Inc. and their officers, agents, servants, employees, attorneys, and all those persons in privity or in active concert or participation with them, from further acts of infringement of the patents-in-suit;

C. Ordering an accounting;

D. Awarding damages in an amount to be determined at trial, but adequate to compensate SMR Patents S.à.r.l. for Defendants Magna Mirrors of America, Inc.’s and Magna International, Inc.’s infringement, contributory infringement, and inducement of infringement of the patents-in-suit;

E. Increasing the damages up to three time the amount found or assessed for Defendants Magna Mirrors of America, Inc.’s and Magna International, Inc.’s willful acts of infringement;

F. A determination that Defendant Magna Mirrors of America, Inc. has violated 35 U.S.C. §292 by falsely marking its unpatented articles as “patented” for the purpose of deceiving the public;

G. An order finding Magna Mirrors of America, Inc. for false marking of its products in an amount which is reasonable in light of the total revenue and gross profit derived from the sale of falsely marked goods and the degree of intent to falsely mark which is proven, with half of the fine going to the use of the United States and the other half going to Plaintiffs;

H. An order preliminarily and permanently enjoining Magna Mirrors of America, Inc. and all of its officers, agents, servants, employee, contractors, suppliers, and attorneys, and all other persons who are in active concert or participation with them or who receive actual notice of the order by personal service or otherwise, from committing new acts of false patent marking and ceasing all existing acts of false patent marking within 90 days;

I. That Plaintiff SMR USA asks this Court to enter judgment in favor of it and against Defendants that Defendant Magna Mirrors of America has violated §43(a) of the Lanham Act;

J. Awarding Plaintiff SMR USA monetary damages and profits as set forth in 15 U.S.C. §1117 occasioned by Defendants' false and misleading descriptions of fact;

K. Enjoining Defendants from making false and misleading descriptions of fact to potential customers and to the consuming public;

L. Awarding prejudgment interest and costs;

M. Finding this to be an exceptional case and awarding reasonable attorneys' fees to Plaintiffs;

N. An award in favor of Plaintiffs and against Magna Mirrors of America, Inc. for the costs incurred by Plaintiffs in bringing and maintaining this action, including reasonable attorneys' fees; and

O. Such other and further relief as this Court deems necessary and appropriate.

Respectfully submitted,

by /s/Richard W. Hoffmann
DAVID J. SIMONELLI (P47221)
RICHARD W. HOFFMANN (P42352)
Reising Ethington PC
755 West Big Beaver Road, Suite 1850
PO Box 4390
Troy, Michigan 48099-4390
Telephone: 248-689-3500
Facsimile: 248-689-4071
Email: simonelli@reising.com
 hoffmann@reising.com

Counsel for Plaintiff SMR Patents S.à.r.l. and SMR Automotive Systems USA Inc.

Date: April 6, 2010

JURY DEMAND

Plaintiffs hereby demand a trial by jury.

Respectfully submitted,

by /s/Richard W. Hoffmann
DAVID J. SIMONELLI (P47221)
RICHARD W. HOFFMANN (P42352)
Reising Ethington PC
755 West Big Beaver Road, Suite 1850
PO Box 4390
Troy, Michigan 48099-4390
Telephone: 248-689-3500
Facsimile: 248-689-4071
Email: simonelli@reising.com
 hoffmann@reising.com

Counsel for Plaintiff SMR Patents S.à.r.l. and SMR Automotive Systems USA Inc.

Date: April 6, 2010