

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

AFFINITY LABS OF TEXAS, LLC,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 9:08-cv-164-RC
)	
BMW NORTH AMERICA, LLC; <i>et al.</i>)	
Defendants.)	
)	
)	JURY TRIAL DEMANDED
)	

THIRD AMENDED COMPLAINT

Now comes Plaintiff Affinity Labs of Texas, LLC before this Court and amends its complaint and petition for relief against each and all of the Defendants as follows:

PARTIES

1. Plaintiff Affinity Labs of Texas, LLC (“Affinity”) is a Texas limited liability corporation having offices at 3838 River Place Blvd., Austin, Texas 78730.

2. Upon information and belief, BMW North America, LLC is a Delaware corporation having its offices located at 300 Chesnut Ridge Road, Woodcliff Lake, New Jersey 07677-7731. Upon information and belief, Defendant BMW Manufacturing Co., LLC is a Delaware corporation having its offices located at 1400 Highway 101S, Greer, South Carolina 29651-6731. Defendant BMW North America, LLC and Defendant BMW Manufacturing Co. LLC shall be referred to collectively herein as the “BMW Defendants.”

3. Upon information and belief, Defendant Hyundai Motor America, Inc. is a California corporation having its offices located at 10550 Talbert Avenue, Fountain Valley, California 92728. Upon information and belief, Defendant Hyundai Motor Manufacturing

Alabama, LLC is a Delaware corporation having its offices located at 700 Hyundai Boulevard, Montgomery, Alabama 36105. Upon information and belief, Defendant Kia Motors America, Inc. is a California corporation having its offices located at 111 Peters Canyon Road, Irvine, California 92606. Defendant Hyundai Motor America, Inc., Defendant Hyundai Motor Manufacturing Alabama, LLC, and Defendant Kia Motors America, Inc. shall be referred to collectively herein as the “Hyundai Defendants.”

4. Upon information and belief, Defendant Mercedes-Benz USA, LLC is a Delaware corporation having its offices located at 1 Mercedes Drive, Montvale, New Jersey 07645. Upon information and belief, Defendant Mercedes-Benz U.S. International, Inc. is a Alabama corporation having its offices located at 1 Mercedes Drive, Vance, Alabama 35490. Defendant Mercedes-Benz USA, LLC and Defendant Mercedes-Benz U.S. International, Inc. shall be referred to collectively herein as the “Mercedes Defendants.”

5. Upon information and belief, Defendant Volkswagen Group Of America, Inc. (“Volkswagen”) is a New Jersey corporation having its offices located at 3800 Hamlin Road, Auburn Hills, Michigan 48326-2829.

JURISDICTION AND VENUE

6. These claims arise under the Patent Laws of the United States, 35 U.S.C. §101 *et seq.*, in that each is a claim for infringement of a United States patent. The jurisdiction of this Court is founded upon 28 U.S.C. §§ 1331 and 1338(a).

7. This Court has personal jurisdiction over the Defendants. Upon information and belief, each of the Defendants has transacted business in this judicial district and/or has committed, contributed to, and/or induced acts of patent infringement in this judicial district.

8. Venue within this District is proper under 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

COUNT I: PATENT INFRINGEMENT OF THE '833 PATENT

9. The allegations of paragraphs 1-8 are incorporated herein by reference.

10. Plaintiff Affinity is the sole owner by assignment of United States Patent No. 7,324,833 (“the ‘833 Patent”), which issued on January 29, 2008 and is entitled “System and Method for Connecting a Portable Audio Player to an Automobile Sound System.”

11. Upon information and belief, the Defendants have infringed and, if not enjoined, will continue to infringe one or more claims of the ‘833 Patent by performing, without authority, one or more of the following acts: (a) making, using, offering for sale, or selling within the United States the invention as claimed in one or more claims of the ‘833 Patent, in violation of 35 U.S.C. § 271(a); (b) importing into the United States the invention as claimed in one or more claims of the ‘833 Patent, in violation of 35 U.S.C. § 271(a); (c) inducing infringement of one or more claims of the ‘833 Patent, in violation of 35 U.S.C. § 271(b); and/or (d) contributing to the infringement of one or more claims of the ‘833 Patent, in violation of 35 U.S.C. § 271(c) (the “acts of infringement of the ‘833 Patent”).

12. Despite having knowledge of the ‘833 Patent for almost a full year, the Defendants have knowingly and willfully continued to make, use, offer for sale, sell, and/or import products that infringe the ‘833 Patent and have made, used, offered for sale, sold, and/or imported new model years of infringing automobiles after receiving notice of the ‘833 patent and without authorization from Affinity.

13. The BMW Defendants’ acts of infringement of the ‘833 Patent include the manufacturing, using, marketing, offering for sale, and/or selling of BMW branded automobiles

with audio systems designed to integrate a portable digital media device with the automobile's on-screen display and user interface.

14. The Hyundai Defendants' acts of infringement of the '833 Patent include the manufacturing, using, marketing, offering for sale, and/or selling of Hyundai and Kia branded automobiles with audio systems designed to integrate a portable digital media device with the automobile's on-screen display and user interface.

15. The Mercedes Defendants' acts of infringement of the '833 Patent include the manufacturing, using, marketing, offering for sale, and/or selling of Mercedes-Benz branded automobiles with audio systems designed to integrate a portable digital media device with the automobile's on-screen display and user interface.

16. Nissan's acts of infringement of the '833 Patent include the manufacturing, using, marketing, offering for sale, and/or selling of Infiniti and Nissan branded automobiles with audio systems designed to integrate a portable digital media device with the automobile's on-screen display and user interface.

17. Volkswagen's acts of infringement of the '833 Patent include the manufacturing, using, marketing, offering for sale, and/or selling of Audi, Bentley, and Volkswagen branded automobiles with audio systems designed to integrate a portable digital media device with the automobile's on-screen display and user interface.

18. Upon information and belief, Defendants will continue to infringe the '833 Patent unless enjoined by this Court.

19. As a result of Defendants' infringement, Affinity has suffered and will continue to suffer damages.

20. Affinity is entitled to recover from Defendants the damages sustained by Affinity as a result of Defendants' wrongful acts in an amount subject to proof at trial.

COUNT II: PATENT INFRINGEMENT OF THE '228 PATENT

21. The allegations of paragraphs 1-20 are incorporated herein by reference.

22. Plaintiff Affinity is the sole owner by assignment of United States Patent No. 7,634,228 ("the '228 Patent"), which issued on December 15, 2009 and is entitled "Content Delivery System and Method."

23. Upon information and belief, the Defendants have infringed and, if not enjoined, will continue to infringe one or more claims of the '228 Patent by performing, without authority, one or more of the following acts: (a) making, using, offering for sale, or selling within the United States the invention as claimed in one or more claims of the '228 Patent, in violation of 35 U.S.C. § 271(a); (b) importing into the United States the invention as claimed in one or more claims of the '228 Patent, in violation of 35 U.S.C. § 271(a); (c) inducing infringement of one or more claims of the '228 Patent, in violation of 35 U.S.C. § 271(b); and/or (d) contributing to the infringement of one or more claims of the '228 Patent, in violation of 35 U.S.C. § 271(c) (the "acts of infringement of the '228 Patent").

24. Despite having knowledge of the claims contained in the '228 Patent since at least October 7, 2009, the Defendants have knowingly and willfully continued to make, use, offer for sale, sell, and/or import products that infringe the '228 Patent and have made, used, offered for sale, sold, and/or imported new model years of infringing automobiles after receiving notice of the '228 Patent and without authorization from Affinity.

25. The BMW Defendants' acts of infringement of the '228 Patent include the manufacturing, using, marketing, offering for sale, and/or selling of BMW branded automobiles

with audio systems designed to integrate a portable digital media device with the automobile's on-screen display and user interface.

26. The Hyundai Defendants' acts of infringement of the '228 Patent include the manufacturing, using, marketing, offering for sale, and/or selling of Hyundai and Kia branded automobiles with audio systems designed to integrate a portable digital media device with the automobile's on-screen display and user interface.

27. The Mercedes Defendants' acts of infringement of the '228 Patent include the manufacturing, using, marketing, offering for sale, and/or selling of Mercedes-Benz branded automobiles with audio systems designed to integrate a portable digital media device with the automobile's on-screen display and user interface.

28. Volkswagen's acts of infringement of the '228 Patent include the manufacturing, using, marketing, offering for sale, and/or selling of Audi, Bentley, and Volkswagen branded automobiles with audio systems designed to integrate a portable digital media device with the automobile's on-screen display and user interface.

29. Upon information and belief, Defendants will continue to infringe the '228 Patent unless enjoined by this Court.

30. As a result of Defendants' infringement, Affinity has suffered and will continue to suffer damages.

31. Affinity is entitled to recover from Defendants the damages sustained by Affinity as a result of Defendants' wrongful acts in an amount subject to proof at trial.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38 and the Seventh Amendment of the United States Constitution, Affinity hereby demands a jury trial on all issues triable to a jury.

REQUEST FOR RELIEF

WHEREFORE, Affinity petitions this Court and requests that a judgment be entered and relief be granted as follows:

A. Declaring that each of the Defendants have infringed the '833 Patent as alleged herein (directly, by inducement, and/or contributorily);

B. Declaring that each of the Defendants' infringement of the '833 Patent is willful;

C. Permanently enjoining, restraining, and prohibiting each of the Defendants, and any party acting through, for, or in concert with the Defendants from further infringing (directly, by inducement, or contributorily) any claim of the '833 Patent;

D. Awarding to Affinity such monetary or compensatory damages as may be found or deemed adequate to fully compensate Affinity for each of the Defendants' acts of infringement of the '833 Patent and/or any other injury suffered by Affinity due to the Defendants' acts of infringement of the '833 Patent;

E. Awarding to Affinity treble damages, pursuant to 35 U.S.C. § 284, and based on Defendants' willful infringement of the '833 patent;

F. Declaring that each of the Defendants have infringed the '228 Patent as alleged herein (directly, by inducement, and/or contributorily);

G. Declaring that each of the Defendants' infringement of the '228 Patent is willful;

H. Permanently enjoining, restraining, and prohibiting each of the Defendants, and any party acting through, for, or in concert with the Defendants from further infringing (directly, by inducement, or contributorily) any claim of the '228 Patent;

I. Awarding to Affinity such monetary or compensatory damages as may be found or deemed adequate to fully compensate Affinity for each of the Defendants' acts of

infringement of the '228 Patent and/or any other injury suffered by Affinity due to the Defendants' acts of infringement of the '228 Patent;

J. Awarding to Affinity treble damages, pursuant to 35 U.S.C. § 284, and based on Defendants' willful infringement of the '228 patent;

K. Declaring this case exceptional and awarding to Affinity its attorneys' fees, pursuant to 35 U.S.C. § 285;

L. Awarding to Affinity its costs; and

M. Awarding to Affinity such other, further, or general relief as this Court may deem proper.

Respectfully submitted,

Dated: December 15, 2009

By: /s/Matthew C. Gaudet

Thomas W. Sankey
TX Bar No. 17635670
twisankey@duanemorris.com

Duane Morris LLP
3200 Southwest Freeway, Suite 3150
Houston, TX 77027-7534
Tel.: 713.402.3900
Fax: 713.402.3901

L. Norwood Jameson
(admitted *pro hac vice*)
wjameson@duanemorris.com
Matthew C. Gaudet
(admitted *pro hac vice*)
mcgaudet@duanemorris.com
Stephanie A. Hansen
(admitted *pro hac vice*)
sahansen@duanemorris.com

Duane Morris LLP

1180 West Peachtree Street, Suite 700

Atlanta GA 30309-3448

Tel.: 404.253.6900

Fax: 404.253.6901

Brian McQuillen

(admitted *pro hac vice*)

bmcquillen@duanemorris.com

Duane Morris LLP

1540 Broadway

New York, NY 10036-4086

Tel.: 212.692.1000

Fax: 212.692.1020

ATTORNEYS FOR PLAINTIFF
AFFINITY LABS OF TEXAS, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on December 15, 2009. Any other counsel of record will be served by First Class U.S. mail on this same date.

/s/ Matthew C. Gaudet