

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MELEA LIMITED, a Gibraltar corporation,
PLASTIC MOLDED TECHNOLOGIES, INC.,
a Michigan corporation, and **FERROMATIK
MILACRON MASCHINENBAU GMBH**, a
German corporation,

Plaintiffs,

vs.

**HONORABLE BERNARD A. FRIEDMAN
MAGISTRATE JUDGE VIRGINIA MORGAN
CIVIL ACTION NO. 2:09-CV-10500**

BMW OF NORTH AMERICA, LLC,
a Delaware limited liability company, and
BAVARIAN MOTOR VILLAGE, LTD,
a Michigan corporation,

Defendants.

JURY TRIAL DEMANDED

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**FIRST AMENDED COMPLAINT
FOR PATENT INFRINGEMENT
AND JURY DEMAND**

I. THE PARTIES

1. Plaintiff, Melea Limited (“Melea”) is a Gibraltar corporation, having an address at First Floor Suites, 38, Irish Town, P.O. Box 466, Gibraltar.

2. Plaintiff, Plastic Molded Technologies, Inc. (“PMT”), is a Michigan corporation, having an address at 51341 Celeste Drive, Shelby Township, Michigan 48315. PMT does business as “GAIN Technologies” and its business includes products and services in the field of gas-assisted plastic injection molding technology. www.gaintechnologies.com.

3. Plaintiff, Ferromatik Milacron Maschinenbau GmbH (“Ferromatik”), is a German corporation, having an address at Riegeler Straße 4, D-79364 Malterdingen, Germany.

4. Defendant, BMW of North America, LLC (“BMW NA”), is a Delaware limited liability company, having an address at 300 Chestnut Ridge Road, Woodcliff, NJ 07675.

5. Defendant BMW NA is qualified to do business in the State of Michigan under ID No. B93291, and has appointed The Corporation Company, 30600 Telegraph Road, Bingham Farms, Michigan 48025, as its registered agent for service of process.

6. Defendant, Bavarian Motor Village, Ltd. (“Bavarian”), is a Michigan corporation, having its registered office at 45550 Dequindre Road, Shelby Township, Michigan 48317.

7. Defendant Bavarian has appointed Eitel S. Dahm as its registered agent for service of process.



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II. JURISDICTION

8. The federal claims pleaded herein arise under the Patent Act, 35 U.S.C. § 1
et seq.

9. Subject matter jurisdiction for the federal claims is conferred upon the Court
by 28 U.S.C. § 1338(a).



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III. PATENT INFRINGEMENT

10. On April 20, 1993, U. S. Patent No. 5,204,051 (“the ‘051 patent”) was duly and lawfully issued to Christoph Jaroschek for “Process For The Injection Molding Of Fluid-Filled Plastic Bodies.” A true and correct copy of the ‘051 patent is attached as Exhibit A.

11. Ferromatik is the owner by assignment of the ‘051 patent, as evidenced by the records of the Assignment Branch of the United States Patent and Trademark Office.

12. Ferromatik has empowered Melea and PMT (as the authorized representative of Melea) to enforce the ‘051 patent, including recovery of damages for past infringement of such patents.

13. On September 21, 1993, U.S. Patent 5,246,646 (“the ‘646 patent”) was duly and lawfully issued to Indra R. Baxi for “Injection Molding Method.” A true and correct copy of the ‘646 patent is at Exhibit B.

14. Melea Limited is the owner by assignment of the ‘646 patent, as evidenced by the records of the Assignment Branch of the United States Patent and Trademark Office.

15. On May 5, 1992, U.S. Patent 5,110,533 (“the ‘533 patent”) was duly and lawfully issued to James W. Hendry for “Method For The Use Of Gas Assistance In The Molding Of Plastic Articles To Enhance Surface Quality.” A true and correct copy of the ‘533 patent is at Exhibit C.

16. Melea Limited is the owner by assignment of the ‘533 patent, as evidenced by the records of the Assignment Branch of the United States Patent and Trademark Office.



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17. On May 19, 1992, U.S. Patent 5,114,660 (“the ‘660 patent”) was duly and lawfully issued to James W. Hendry for “Method Of Injection Molding.” A true and correct copy of the ‘660 patent is at Exhibit D.

18. Melea Limited is the owner by assignment of the ‘660 patent, as evidenced by the records of the Assignment Branch of the United States Patent and Trademark Office.

19. On August 22, 1995, U.S. Patent 5,443,087 (“the ‘087 patent) was duly and lawfully issued to Colin K. Myles for “Method And System For Controlling A Pressurized Fluid And Valve Assembly For Use Therein.” A true and correct copy of the ‘087 patent is at Exhibit E.

20. Melea Limited is the owner by assignment of the ‘087 patent, as evidenced by the records of the Assignment Branch of the United States Patent and Trademark Office.

21. PMT has been appointed by Melea as the non-exclusive representative of Melea to act on Melea’s behalf with respect to the marketing and licensing of Melea’s patents. A copy of the License Agreement (with redactions) between Melea and PMT, dated June 24, 2008, is at Exhibit F.

22. Under the License Agreement of Exhibit F, PMT is perpetually authorized by Melea to:

- negotiate the terms, condition and pricing of any sublicense agreement for the [licensed] Gain Technology - ¶4 a.
- execute any sublicense agreement for the Gain Technology - ¶4 b.
- participate in technology transfers with sublicensees of Gain Technology - ¶4 c.



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- review molding samples and documentation to make infringement studies related to the Gain Technology - ¶4 d.
- conduct audits at facilities of sublicensees of the Gain Technology to ensure payment and compliance - ¶4 e.
- enforce breaches of sublicense agreements for the Gain Technology- ¶4 f.
- advance payments for obligations of Melea related to licensing and sublicensing of the Gain Technology - ¶4 g.
- commence and prosecute legal proceedings to protect the Gain Technology - ¶4 h.
- defend legal proceedings against Melea related to the Gain Technology - ¶4 i.
- settle claims related to the Gain Technology - ¶4 j.
- file patent applications, secure patents, and maintain patents relating to the Gain Technology - ¶4 k.
- prepare, execute and file documents with any governmental agency or body - ¶4 l.
- retain professional and business advisors, including attorneys, accountants and consultants necessary for PMT to carry out its responsibilities - ¶4 m.

23. Upon information and belief, subject to the procedure of 35 U.S.C. §295 and other case investigation and discovery, BMW NA imports into the United States, and sells, and offers to sell within the United States, automobiles fitted with plastic articles molded with processes covered by one or more of the claims of the '051 patent, the '646 patent, the '533 patent, the '660 patent, and the '087 patent, without authority of plaintiffs, in violation of 35 U.S.C.



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§ 271(g), including BMW Part Nos. 51 16 9 143 528 (interior assist handle); 51 21 7 207 561 (exterior handle); and 51 27 7 207 551 (exterior handle).

24. Upon information and belief, subject to the procedure of 35 U.S.C. §295 and other case investigation and discovery, Bavarian sells and offers to sell within the United States, automobiles fitted with plastic articles molded with processes covered by one or more of the claims of the '051 patent, the '646 patent, the '533 patent, the '660 patent, and the '087 patent, without authority of plaintiffs, in violation of 35 U.S.C. § 271(a), including BMW Part Nos. 51 16 9 143 528 (interior assist handle); 51 21 7 207 561 (exterior handle); and 51 27 7 207 551 (exterior handle).

25. Plaintiffs have been harmed, both pecuniarily and irreparably, by the infringing conduct of defendants.

26. Defendants' infringing conduct will continue unless enjoined by the Court.



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IV. DEMAND FOR RELIEF

WHEREFORE, plaintiffs demand entry of judgment against defendants granting relief as follows:

- A. A determination that defendants have infringed the '051 patent, the '646, the '533 patent, the '660 patent, and the '087 patent, by the acts complained of herein;
- B. An award of damages adequate to compensate for such infringement;
- C. An enhancement of the compensatory damages, up to three (3) times, if such infringement is found to have been willful;
- D. A determination that this case is "exceptional," in the sense of 35 U.S.C. § 285;
- E. An order preliminarily and permanently enjoining defendants, their officers, agents, servants, employees, contractors, suppliers and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, from committing further acts of infringement of the '051 patent, the '646, the '533 patent, the '087 patent, and the '660 patent;
- F. An award in favor of plaintiffs, and against defendants, for the costs incurred in bringing and maintaining this action, including reasonable attorneys' fees; and
- G. Such other, further, and different relief as may be just and equitable on the proofs.



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V. JURY DEMAND

Plaintiffs demand trial by jury for all issues so triable.

Respectfully submitted,

By: /s/ Robert C.J. Tuttle

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Dated: April 2, 2009



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CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on April 2, 2009, I electronically filed the foregoing **FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT AND JURY DEMAND** with the Clerk of the Court for the Eastern District of Michigan using the ECF System which will send notification to the following registered participants of the ECF System as listed on the Court's Notice of Electronic Filing: David M. Schnorrenberg and . I also certify that I have mailed by United States Postal Service the paper to the following non-participants in the ECF System: None.

BROOKS KUSHMAN P.C.

By: /s/ Robert C.J. Tuttle

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