

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

DREW TECHNOLOGIES, INC.,

Plaintiff,

v.

ROBERT BOSCH, L.L.C.,

Defendant.

Case No.

Judge:

COMPLAINT FOR DECLARATORY RELIEF

Plaintiff Drew Technologies, Inc. (“Drew”), for its complaint against Robert Bosch L.L.C. (“Bosch”), alleges as follows:

PARTIES

1. Plaintiff Drew is a corporation organized under the laws of the state of Michigan, with its principal place of business in Ann Arbor, Michigan.

2. On information and belief, Defendant Bosch is a company duly organized and existing under the laws of the State of Delaware, with its principal place of business in Farmington Hills, Michigan.

3. On information and belief, Bosch is the assignee and owner of U.S. Patent No. 6,782,313 (the “’313 patent”, attached as Exhibit A).

JURISDICTION

4. This is an action under the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202 for a declaration pursuant to the patent laws of the United States, 35 U.S.C. § 1 *et seq.* that Drew does not infringe the ‘313 patent and that the ‘313 patent is invalid.

5. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 (federal question) and 1338(a) (action arising under an Act of Congress relating to patents).

6. Defendant Bosch has its principal place of business in Michigan and has other Constitutionally sufficient contacts with Michigan to vest this Court with personal jurisdiction over Bosch. Bosch also contacted Drew in Michigan to assert that Drew is infringing the '313 patent and to offer a license to the '313 patent.

VENUE

7. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) & (c).

GENERAL ALLEGATIONS

8. The vehicle's Engine Control Unit ("ECU") controls the fuel injection, spark plugs and, indirectly, the vehicle's emissions. The software running on the ECU is sometimes referred to as firmware. Upgraded firmware can fix bugs and tighten emissions output long after a vehicle leaves the factory.

9. In 1990 TMC RP1210-0 was published as a specification for pass thru communications for diagnostics and reprogramming ECUs.

10. In 1994, the Environmental Protection Agency ("EPA") mandated that all light-duty vehicles manufactured by Original Equipment Manufacturers ("OEMs") have a standard connector for On-Board Diagnostics ("OBD"). The Society of Automotive Engineers ("SAE") created the OBD standard, also known as J1962. This standard specifies the size, position and design of the OBD connector. Anyone can plug a scan tool into the OBD connector to monitor the vehicles emissions and review any recent emission-related data.

11. In 1999, the EPA requested that SAE create the J2534 application programming interface (“API”). Starting with model year 2004, the EPA required that anyone should be able to upgrade firmware their vehicle’s ECUs using a J2534 API interface.

12. The EPA requires OEMs to release software that updates the firmware on their vehicles. The application must run on a Windows computer and use the J2534 API to communicate with the vehicle.

13. Since 1998, Plaintiff Drew has sold pass thru devices for use with automobiles. Drew has been selling a J2534 API interface under the “CarDAQ” brand name since 2000.

14. The CarDAQ interfaces are “pass thru” devices that sit between a personal computer (“PC”) and the vehicle and relay messages from one end to the other. Pass thru devices require a PC and software written by the OEM to be useful. A “pass thru” device by itself is incapable of doing anything without a PC and the PC software written by the OEMs. These “pass thru” devices carry signals that communicate ECU firmware status and updates, but cannot themselves update ECU firmware. The OEMs periodically issue updates to ECU firmware that specify how a given vehicle’s ECU firmware should be updated.

15. On September 20, 2011 Bosch filed a lawsuit against Snap-on Inc. (“Snap-on”) in the Central District of California, asserting that Snap-on’s “Pass Thru Pro II” system infringes the ‘313 patent. The lawsuit has been assigned case no. 11-CV-07784.

16. The ‘313 patent is entitled “Diagnostic Test Device for Motor Vehicle with Programmable Control Devices.” The ‘313 patent issued on August 24, 2004. A copy of the ‘313 patent is attached hereto as Exhibit A.

17. The Pass Thru Pro II system is manufactured by Drew and is nearly identical to the CarDAQ systems offered by Drew.

18. Drew manufactures and supplies a similar pass thru system for private labeling and resale by Bosch. Drew has been manufacturing this system for Bosch since 2008.

19. Upon information and belief, Bosch has known that Drew supplies the CarDAQ systems to Snap-on, other OEMs and other customers since at least 2002.

20. After Bosch sued Drew's customer Snap-on, representatives of Drew met with representatives of Bosch on numerous occasions in September and October of 2011 concerning Bosch's suit against Snap-on and the '313 patent. The meetings, both in person and over the telephone, were held on September 29, September 30, October 3 and October 24. The parties discussed the '313 patent and the lawsuit asserted against Snap-on in the Central District of California.

21. In one or more of those meetings, Bosch accused at least Drew's CarDAQ systems of infringing the '313 patent. Bosch also offered to license the '313 patent to Drew in order for Drew to make, use, sell and/or offer for sale the CarDAQ systems in the United States. Drew denied that it infringes the '313 patent and refused Bosch's offer for a license.

22. On November 2, 2011, representatives from Drew met again with representative from Bosch in Las Vegas, Nevada, at the Specialty Equipment Market Association tradeshow. During their meeting, Bosch continued to assert its position that Drew infringes the '313 patent and again initiated licensing discussions with Drew relative to the '313 patent. Drew continued to deny that its pass thru systems infringe any claim of the '313 patent.

23. There exists a substantial controversy between Drew and Bosch that is of an immediate nature.

24. Drew has invested substantial resources in developing, manufacturing, marketing and selling its CarDAQ pass thru systems. By asserting infringement of the '313 patent, Bosch

has placed a cloud of uncertainty over the continued manufacture and sale of Drew's pass thru systems.

25. An actual and justiciable controversy exists between the parties concerning whether Drew infringes the '313 patent. Drew now seeks a declaratory judgment that it does not infringe any valid claim of the '313 patent.

COUNT I
Declaratory Judgment of Non-Infringement of the '313 Patent

26. Drew incorporates by reference paragraphs 1 through 25 above as though fully set forth herein.

27. Bosch has alleged that Drew is infringing the '313 patent.

28. Drew does not infringe any valid claim of the '313 patent, either directly, indirectly by contributing to or inducing infringement, either literally or by application of the doctrine of equivalents.

29. Drew seeks a declaratory judgment from the Court under Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. § 2201 declaring that Drew has not infringed and is not infringing the '313 patent and granting Drew all other declaratory relief to which it may be entitled.

COUNT II
Declaratory Judgment of Invalidity of the '313 Patent

30. Drew incorporates by reference paragraphs 1 through 29 above as though fully set forth herein.

31. On information and belief, and based on Drew's ongoing investigation to date, the claims of the '313 patent are invalid because they fail to comply with one or more requirements

of the Patent Laws of the United States, 35 U.S.C. § 101 et. seq., including but not limited to §§ 102, 103, and/or 112.

32. On information and belief, and based on Drew's ongoing investigation to date, the claims of the '313 patent are invalid under §§ 102 and/or 103 because the claimed subject matter is anticipated by and/or obvious.

33. Drew seeks a declaratory judgment from the Court under Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. § 2201 declaring that the claims of the '313 patent are invalid and/or unenforceable for reasons including but not limited to failure to comply with one or more of §§ 102, 103, and/or 112, and granting Drew all other declaratory relief to which it may be entitled.

PRAYER FOR RELIEF

WHEREFORE, Drew prays for relief against Bosch as follows:

1. Judgment declaring that Drew has not and is not infringing, contributing to the infringement of, or inducing infringement of any valid claim of the '313 patent;
2. Judgment enjoining Bosch from enforcing the '313 patent against any of Drew's current or future customers;
3. Judgment declaring that the claims of the '313 patent are invalid and/or unenforceable under 35 U.S.C. § 101 et. seq.;
4. A declaration that this case is "exceptional" under 35 U.S.C. § 285;
5. An award to Drew of its costs and expenses in this action, including reasonable attorneys' fees;
6. An award of further necessary and proper relief under 28 U.S.C. § 2202; and
7. Such other relief as the Court may deem just and proper.

Dated: November 16, 2011

/s/ James K. Cleland

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