

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

METHODE ELECTRONICS, INC.,	:	
Plaintiff/Counter-Defendant,	:	
	:	Civil Action No.: 09-cv-13078
v.	:	District Judge Paul D. Borman
	:	Magistrate Judge Mona Majzoub
DPH-DAS LLC f/k/a DELPHI	:	
AUTOMOTIVE SYSTEMS LLC	:	
Defendant/Counter-Plaintiff,	:	
	:	
MARIAN, INC.,	:	
Defendant	:	
	:	
DELPHI TECHNOLOGIES, INC.	:	
Counter-Plaintiff	:	
	:	
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	:	
DELPHI AUTOMOTIVE SYSTEMS, LLC	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No.: 09-cv-14303
	:	
METHODE ELECTRONICS, INC.,	:	
Defendant.	:	<i>Jury Trial Demanded</i>
	:	

DELPHI AUTOMOTIVE SYSTEMS, LLC'S FIRST AMENDED COMPLAINT

Delphi Automotive Systems, LLC (“Delphi”), by and through its counsel, hereby states its First Amended Complaint (“Delphi’s Complaint”) against Defendant, Methode Electronics, Inc. (“Methode”), and its demand for trial by jury, alleging as follows:

PARTIES

1. Delphi is a limited liability company formed under the laws of the State of Delaware and has a principal place of business at 5725 Delphi Drive, Troy, Michigan 48098-2815. Delphi was incorporated on August 21, 2009.

2. Upon information and belief, Methode is a Delaware corporation with its principal place of business at 7401 West Wilson Avenue, Chicago, Illinois.

JURISDICTION AND VENUE

3. This action arises under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and the patent laws of the United States, Title 35 United States Code, as well as under the common law of the State of Indiana.

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338, and 1367.

5. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400(b).

ACTUAL CONTROVERSY

6. In 2001, DPH-DAS LLC (“DPH”), formerly known as Delphi Automotive Systems LLC, and the Defendant here, Methode, entered into a Long Term Contract such that Methode became the sole supplier of bladders used in DPH’s airbag actuation system called the Passive Occupant Detection System (“PODS”). PODS is a seat-occupant sensing technology that detects a child and/or small adult in vehicle front passenger seats and supplies information to a computer to permit the inflation of the airbag to be suppressed when suppression is needed for

safety. For many years, Methode enjoyed this sole-supplier arrangement, selling over 30 million PODS bladders to DPH. In early to mid-2008, however, Methode began taking advantage of its sole-supplier arrangement, by demanding, *inter alia*, that DPH pay drastically higher prices for the PODS bladders and in January 2009 by refusing, *inter alia*, to provide prototype bladders for new vehicle launches. Many of these prototypes were for launches for which DPH had already been awarded PODS contracts.

7. Unreasonable positions by Methode left DPH and its customers at risk. The customers depended exclusively on DPH for the PODS product and DPH bought the PODS bladder solely from Methode. By refusing to make prototype bladders for new vehicle launches, Methode put at risk the manufacture and sale of new vehicle models slated to lift vehicle sales in the depressed global automotive market. Because Methode's practices carried significant negative consequences for DPH, DPH's customers, and the vehicle buying public, DPH was left with no option but to seek out other sources of the prototype bladders that Methode had wrongfully refused to manufacture. DPH consulted with and provided information to an Indiana company, Marian, Inc., so that Marian, Inc. could provide limited prototypes of DPH's PODS bladders.

8. Based on Methode's bad faith actions, in October 2008, DPH was forced to bring suit against Methode in Michigan State Court in the 6th Judicial Circuit of Michigan, Oakland County Circuit Court (captioned *Delphi Automotive Systems LLC v. Methode Electronics, Inc.*, Case No. 08-095518-CK) (Ex. 1, Michigan State Court Action Complaint (without exhibits)), seeking, *inter alia*, return of drawings for the DPH owned tooling related to the PODS.

9. Thereafter, on April 9, 2009, Methode filed suit against DPH and Marian, Inc. in the United States District Court for the Northern District of Illinois ("Methode Patent

Infringement Action”), alleging two counts of patent infringement based on U.S. Patent No. 5,975,568 (“‘568 Patent”) (Ex. 2). Count I of Methode’s Complaint in the Methode Patent Infringement Action alleges:

24. The claims of the [‘568 Patent] are directed, *inter alia*, to a [weight sensing bladder] for an automobile.

25. Methode is the owner by assignment of the [‘568 Patent], its subject matter, and the rights of recovery flowing therefrom.

26. On information and belief, [DPH] has manufactured and used, and continues to have manufactured and continues to use, [PODS bladder]s in the United States without authorization from Methode.

27. On information and belief, [DPH] has offered for sale, or intends to offer for sale and sell, [PODS bladder]s throughout the United States without authorization from Methode.

28. On information and belief, [DPH]’s [PODS bladder]s infringe, literally or by equivalents, one or more valid and enforceable claims of the [‘568 Patent].

29. [DPH] has infringed, and continues to infringe, directly or indirectly, the [‘568 Patent] by, *inter alia*, practicing or inducing or contributing to others practicing one or more valid and enforceable claims of the [‘568 Patent].

30. As a direct and proximate result of [DPH]’s acts of infringement of the [‘568 Patent], Methode has suffered injury and damages for which it is entitled to relief, including, but not limited to, monetary damages.

31. On information and belief, [DPH] has knowingly, willfully, and deliberately infringed the [‘568 Patent] in conscious disregard of Methode’s rights, making this case exceptional within the meaning of 35 U.S.C. § 285 and justifying treble damages pursuant to 35 U.S.C. § 284.

32. On information and belief, [DPH] will continue to infringe the [‘568 Patent], causing immediate and irreparable harm unless this Court enjoins and restrains its activities.

33. On information and belief, the infringement by [DPH] has deprived, and will further deprive, Methode of revenue which Methode would have made or would enjoy in the future; has injured Methode in other respects; and will cause Methode added injury and damage in the future unless [DPH] is enjoined from infringing the [‘568 Patent].

(See Ex. 3, Methode’s Complaint from the Methode Patent Infringement Action (without exhibits), ¶¶ 24-33).

10. In its Complaint in the Methode Patent Infringement Action, Methode seeks “a permanent injunction restraining [DPH], its directors, officers, agents,

employees, successors, subsidiaries, assigns, and affiliates, and all persons acting in privy or in concert or participation with any of them from” infringing the ‘568 Patent. (*See id.* ¶ G).

11. On July 13, 2009, Judge Coar of the United States District Court for Northern District of Illinois Ordered the Methode Patent Infringement Action transferred to the United States District Court for the Eastern District of Michigan.

12. The Methode Patent Infringement Action is currently pending in the United States District Court for the Eastern District of Michigan as Case No. 2:09-cv-13078-PDB-VMM.

13. On August 26, 2009, DPH provided Methode notice that effective September 10, 2009, DPH was terminating the parties’ supply agreement for PODS bladders based on at least the breach of contract and termination for convenience provisions of the Terms and Conditions included in the parties’ Supply Agreement.

14. On September 2, 2009, Methode filed a motion for preliminary injunction in the Michigan State Court Action seeking to effectively enjoin DPH from producing PODS bladders in-house. On September 10, 2009, citing Methode’s failure to adequately show either a likelihood of success on the merits or irreparable harm, the Michigan State Court denied Methode’s motion for a preliminary injunction.

15. On October 6, 2009, DPH emerged from bankruptcy.

16. In connection with DPH’s bankruptcy, Delphi purchased certain assets of DPH under the approval and order of the United States Bankruptcy Court for the Southern District of New York. The DPH assets purchased by Delphi include, *inter alia*, DPH’s production capabilities, parts, and products for manufacturing PODS and PODS bladders—the device Methode, in the ongoing Methode Patent Infringement Action, alleges infringes the ‘568 Patent.

17. As a result of its purchase of DPH assets, Delphi now owns all or substantially all of the PODS bladders that were previously in DPH's possession, as well as all or substantially all of DPH's production capabilities, parts, and products for manufacturing PODS bladders.

18. Delphi is currently manufacturing PODS bladders using the production capabilities, parts, and products Delphi acquired from its purchase of assets from DPH.

19. Upon information and belief, Methode no longer supplies PODS bladders to any entity, including DPH.

20. Based on Methode's ongoing litigation in the Methode Patent Infringement Action against DPH; Methode's request in that Action for a permanent injunction "restraining [DPH], its directors, officers, agents, employees, successors, subsidiaries, assigns, and affiliates, and all persons acting in privy or in concert or participation with any of them from" infringing the '568 Patent; Methode's efforts to obtain a preliminary injunction in the Michigan State Court Action to enjoin DPH from producing PODS bladders in-house; the fact that Delphi now owns DPH's assets related to the PODS bladders; and the fact that Delphi is currently producing PODS bladders in-house—the same PODS bladders that are a subject of the Methode Patent Infringement Action and a subject of the Michigan State Court Action—an actual case or controversy exists between Delphi and Methode as to whether the manufacture, use, sale, or offer for sale of the PODS bladders by Delphi by use of its acquired assets infringes any valid and enforceable claim of the '568 Patent.

COUNT I - BREACH OF CONTRACT

21. Paragraphs 1-20 of Delphi's Complaint are re-alleged and reincorporated by reference as if fully set forth herein.

22. DPH's predecessor, Delco Electronics Corporation ("DPH/Delco"), a pioneer in automotive safety technologies, developed the PODS bladders used in PODS now manufactured by Delphi. In late 1996 and through 1997, employees at DPH/Delco, including Duane Fortune, Robert Myers, and Morgan Murphy, began working on a PODS bladder for use in PODS.

23. After months of testing, researching, and designing bladders, DPH/Delco approached Methode's predecessor, Automotive Components, Incorporated ("Methode/ACI"), to determine whether Methode/ACI could serve as a potential manufacturer for the PODS bladder. To that end, on or about May 23, 1997, Methode/ACI signed a General Nondisclosure Agreement with DPH/Delco, which became effective on or about May 28, 1997. Through the General Nondisclosure Agreement, Methode/ACI agreed to take certain measures to avoid dissemination of DPH/Delco's proprietary information relating to PODS bladder technology ("Proprietary Information") to any third party, and to use such Proprietary Information only for the benefit of DPH/Delco and only for the purpose of Developing and/or Quoting.

24. Thereafter, and pursuant to this General Nondisclosure Agreement, DPH/Delco began providing to Methode/ACI significant details of DPH/Delco's inventions and development work, including the Proprietary Information, so that Methode/ACI could evaluate and provide appropriate manufacturing prototypes and tooling to produce the bladders to be used in PODS products.

25. During the course of this development, Mr. Duane Fortune, Mr. Morgan Murphy, among others at DPH/Delco—but not Dr. Speckhart, Mr. Baker or anyone else at Methode/ACI—developed a PODS bladder with an array of circular cells. DPH/Delco subsequently shared these concepts and designs with Methode/ACI.

26. Around January 1998, DPH/Delco spun-off from General Motors Corporation and later became a wholly-owned subsidiary of DPH. On December 31, 2003, DPH/Delco converted and changed its name to Delco Electronics LLC. On September 30, 2005, Delco Electronics LLC merged by operation of law into DPH-DAS LLC. Accordingly, DPH/Delco's rights under the General Nondisclosure Agreement were assigned to DPH.

27. On February 18, 1998, DPH/Delco filed a patent application directed to a weight-sensing bladder that encompasses the bladder used in DPH's PODS. This patent application ultimately issued as U.S. Patent No. 6,101,436 ("436 Patent") on August 8, 2000.

28. Unbeknownst to DPH/Delco and months after DPH/Delco filed its patent application, Methode/ACI disclosed and utilized—and Methode continues to utilize—the Proprietary Information in violation of Methode/ACI's contractual obligations, including the obligations set forth in the General Nondisclosure Agreement.

29. Methode/ACI disclosed DPH/Delco's Proprietary Information at least in United States Patent Application Serial No. 29/085,897 ("the '897 application"), United States Patent Application Serial No. 09/072,833 ("the '833 application"), and United States Application Serial No. 09/146,677 ("the '677 application")—the application that eventually became the '568 Patent—in violation of Methode/ACI's contractual obligations, including the obligations set forth in the General Nondisclosure Agreement.

30. Upon information and belief, Methode/ACI used the Proprietary Information to prepare the '897 application, the '833 application, and the '677 application. Upon information and belief, these activities commenced before September 3, 1998, and continued thereafter.

31. By using the Proprietary Information to prepare the '897 application, the '833 application, and the '677 application, Methode/ACI used the Proprietary Information for

purposes other than Developing and/or Quoting and for purposes other than the benefit of DPH/Delco in violation of Methode/ACI's contractual obligations.

32. Upon information and belief, on or about 2001, Methode/ACI sold substantially all of its assets to Methode including, but not limited to, equipment, technology/know-how, and intellectual property.

33. Upon information and belief, Methode/ACI no longer exists.

34. Upon information and belief, after having acquired Methode/ACI, Methode filed patent applications including, but not limited to, United States Application Serial No. 09/998,206 ("the '206 application") that contained the Proprietary Information. Methode used the Proprietary Information for purposes other than Developing and/or Quoting and for purposes other than the benefit of DPH/Delco.

35. Methode is liable as a successor to Methode/ACI for Methode/ACI's contractual obligations set forth in the General Nondisclosure Agreement, and any breach thereof. Methode purchased substantially all of Methode/ACI's assets which resulted in a *de facto* merger and/or Methode becoming a mere continuation of Methode/ACI because, on information and belief, Methode has, among other things, maintained continuity of Methode/ACI's corporate entity based on, among other things and on information and belief, Methode's hiring of Methode/ACI management and personnel, and Methode's use of Methode/ACI's physical operations.

36. In connection with the consummation of DPH's Modified Plan of Reorganization and under a Master Disposition Agreement, Delphi purchased the vast majority of DPH's assets which included an assignment of the General Nondisclosure Agreement. This transaction was effective October 6, 2009.

37. By reason of the foregoing acts and conduct of Methode/ACI and Methode, Delphi has suffered and will continue to suffer great harm and damage.

38. Delphi is entitled to recover from Methode the gains, profits, advantages, and unjust enrichment Methode and Methode/ACI obtained as a result of Methode/ACI's and Methode's wrongful acts as hereinabove alleged. Delphi is further entitled to recover from Methode the damages sustained by it as a result of Methode/ACI's and Methode's wrongful acts as hereinabove alleged. Delphi is further entitled to a constructive trust on all patent rights and interests in the '568 Patent, and its associated family of patent applications and patents (hereafter called "the 568 Patent Family of Applications and Patents") as a result of Methode/ACI's and Methode's wrongful acts as hereinabove alleged. Delphi is further entitled to assignment of all rights and title to the '568 Patent Family of Applications and Patents.

39. Delphi is entitled to an injunction restraining Methode from reaping any additional commercial advantage from Methode/ACI's and Methode's violation of their contractual obligations set forth herein.

**COUNT II - DECLARATION OF
INVALIDITY OF THE '568 PATENT**

40. Paragraphs 1-39 of Delphi's Complaint are re-alleged and reincorporated by reference as if fully set forth herein.

41. The '568 Patent was issued by the U.S. Patent and Trademark Office ("USPTO") on November 2, 1999. Methode, in paragraphs 11 and 26 of its Complaint in the Methode Patent Infringement Action, claims to own all rights in and to the '568 Patent.

42. In the Methode Patent Infringement Action, Methode claims that certain acts of DPH infringed the '568 Patent.

43. Delphi has purchased assets of DPH including DPH's production capabilities, parts, and products for manufacturing PODS and PODS bladders.

44. Delphi is currently manufacturing PODS bladders using the production capabilities, parts, and products Delphi acquired from DPH.

45. The '568 Patent is invalid for failure to satisfy one or more of the conditions for patentability specified in Title 35 of the United States Code, including but not limited to 35 U.S.C. §§ 102, 103 and 112, and/or for being in violation of one or more of the sections of Parts I, II, and III of Title 35 of the United States Code, and/or for being anticipated by prior art patent '436 Patent, and/or prior invention by DPH/Delco personnel.

46. By reason of the foregoing, there is an actual and justiciable controversy between Delphi on the one hand, and Methode on the other, and Delphi is entitled to a decree that the '568 Patent is invalid.

**COUNT III - DECLARATION OF
UNENFORCEABILITY OF THE '568 PATENT**

47. Paragraphs 1-46 of Delphi's Complaint are re-alleged and reincorporated by reference as if fully set forth herein.

48. For the reasons set forth below, the '568 Patent is unenforceable.

49. The '568 Patent was issued by the USPTO on November 2, 1999. Methode, in paragraphs 11 and 26 of its Complaint, claims to own all rights in and to the '568 Patent.

50. Methode claims that certain acts of Delphi's infringe the '568 Patent.

51. The '568 Patent is invalid and unenforceable for failure to satisfy one or more of the conditions for patentability specified in Title 35 of the United States Code, including but not limited to 35 U.S.C. §§ 102, 103 and 112, and/or for being in violation of one or more of the

sections of Parts I, II, and III of Title 35 of the United States Code, and/or for being anticipated by the prior art '436 Patent, and/or DPH/Delco's prior invention.

52. The '568 Patent, and its associated family of patent applications and patents (hereafter called "the 568 Patent Family of Applications and Patents") began pending at the United States Patent and Trademark Office in 1998 and continue to pend there through the present. During prosecution of the '568 Patent Family of Applications and Patents, beginning upon the first filing of the first application, Methode/ACI's prosecuting attorneys, alleged inventors and others involved with the filing and prosecution of the '568 Patent Family of Applications and Patents (hereafter "the '568 Patent Family Applicants") owed duties of candor to the USPTO.

53. During prosecution of the '568 Patent Family of Applications and Patents beginning upon the first filing of the first application, and continuing until events of this litigation forced their hand otherwise, the '568 Patent Family Applicants violated their duties of candor and deliberately engaged in a pattern of inequitable conduct that was misleading and calculated to mislead the USPTO into granting the '568 Patent Family of Applications and Patents, and to grant them a coverage of rights to which they were not and are not entitled.

54. The '568 Patent Family Applicants involved in these actions included at least the following individuals, all of whom were involved with the filing and prosecution of the '568 Patent Family of Applications and Patents: Robert E. Pitts, John L. Capone, Raymond E. Stephens, Charles R. Wolfe, Jr., Tara L. Marcus, Frank Speckhart, Scott Baker, Robert A. Baker, and Timothy Wyrick.

55. The '568 Patent Family Applicants filed and prosecuted all the claims and limitations of the '568 Patent Family of Applications and Patents directed to subject matter that

the named inventors Speckhart and Baker (the “Named Inventors”) either did not invent or which was not patentable over the prior art known to the ‘568 Patent Family Applicants during the course of the filing and the prosecution of the ‘568 Patent Family of Applications and Patents. Delphi incorporates by reference its 102(f), 102(g), and 103/102(f) and (g) allegations in Defendants’ Preliminary Invalidation Contentions and any amendments thereto.

56. In addition, as to all the claims and limitations of the ‘568 Patent Family of Applications and Patents, the ‘568 Patent Family Applicants deliberately concealed from the USPTO material non-cumulative prior art and other material information, including the inventions, designs, offers for sales, and other information regarding the design and development of DPH/Delco’s PODS products, including DPH/Delco’s PODS bladders with two sheets, perimeter welds, multiple cells, interconnections between cells, fluids, noncompressible fluids, low freezing point fluids, silicone, securement regions, spot welds, and circular cells formed by a hexagonal geometry of welds, as well as other occupant sensing designs and technologies disclosed by DPH/Delco to the ‘568 Patent Family Applicants, and/or the bladders and seat suspension/attachment mechanisms manufactured and/or sold by ACI to various customers, in an effort to mislead the USPTO.

57. In addition, as to all the claims and limitations of the ‘568 Patent Family of Applications and Patents, the ‘568 Patent Family Applicants with deliberate decision to deceive the USPTO, concealed the known contributions of the true inventors to the subject matters of all of the claims and limitations of the ‘568 Patent Family of Applications and Patents, namely at least one or more of Duane Fortune, Robert Myers, Morgan Murphy and/or other DPH/Delco employees (collectively the “Delco Engineers”), concealed the inventive contribution attributable to the Delco Engineers to the subject matters claimed in the ‘568 Patent Family of Applications

and Patents and/or incorrectly named inventors in an unlawful effort to disenfranchise the Delco Engineers from their rights to the subject matters claimed in the '568 Patent Family of Applications and Patents and to mislead the USPTO.

58. The Named Inventors did not begin their involvement with respect to the subjects of '568 Patent or more generally, occupant sensing bladder technologies, until at least May 28, 1997, after Methode/ACI executed DPH/Delco's NDA. By at least that date, May 28, 1997, the Delco Engineers had already conceived of a substantial majority of the claimed elements of the '568 patent. The Delco Engineers communicated their conceptions to Methode/ACI and specifically, the Named Inventors, in mid-1997 pursuant to a Non-Disclosure Agreement ("NDA") that DPH/Delco first had Methode/ACI and its agent R. Baker sign.

59. In mid-2000, DPH/Delco provided to Stephens and Pitts a July 18, 1997 drawing by Fortune of a weld pattern sketch identifying Fortune as inventor of the circular pattern or array shown in the sketch. The July 18, 1997 Fortune drawing was known to and/or in the possession of the '568 Patent Family Applicants and specifically Stephens, Pitts and Wolfe as of its receipt and always thereafter.

60. Further, in mid-2000, DPH/Delco also notified Stephens and Pitts that DPH/Delco's own patent application directed to the very subject matter disclosed in the '568 Patent was then pending at the USPTO. DPH/Delco's patent issued in mid-2000, and was known always thereafter to the '568 Patent Family Applicants.

61. In a signed 2004 Affidavit, Speckhart himself confirms that, prior to beginning any work on DPH/Delco's occupant sensing bladder development project, he first received some of the Delco Engineers' occupant sensing bladder conceptions. Indeed, Speckhart admits that he visited DPH/Delco in 1997 and met DPH/Delco's "personnel to discuss the work [the

DPH/Delco personnel] had done.” Further, Speckhart admits that DPH/Delco employees—not Speckhart or S. Baker—had, at the time of his initial meeting with them, already conceived of and developed DPH/Delco’s 80-Cell EDU Bladder which disclosed almost all the limitations of ‘568 Patent claims—e.g. a weight sensing pad in an automobile airbag control system comprising a bladder member having a compressible interior volume defined by first and second sheets perimetrically bonded together, wherein said bladder member is subdivided into a plurality of . . . cells in fluid communication with each other by a plurality of small, . . . regions of bonding between said first and second sheets, etc.

62. Speckhart further admits in his 2004 Affidavit that the first work he did regarding the occupant sensing bladder project was to test the DPH/Delco 80-Cell EDU Bladder with a DPH/Delco pressure transducer in fluid communication with the bladder member.

63. Speckhart additionally admits in an attachment to his 2004 Affidavit that DPH/Delco had communicated to him a concept of an array of cells in the form of circles, and that DPH/Delco had communicated to him that the circles served to eliminate a “corner effect” and stress on the material, and that, after receiving this information from DPH/Delco, he believed in the potential for bladder design implementing an array of cells that were “close[] to a circle” in shape.

64. Speckhart’s 2004 Affidavit—along with his confirmation of facts regarding DPH/Delco’s design work—was in the possession of the ‘568 Patent Family Applicants and specifically Wolfe as of its creation and always thereafter. That Wolfe was aware of the Speckhart Affidavit at the time of its creation is evidenced by the fact that, at that time, Wolfe represented Methode in its intellectual property matters including prosecution of patent

applications and, specifically, the '568 Family of Applications and Patents, and that the Speckhart Affidavit bears the client number "115716" which corresponds to Wolfe's law firm.

65. Despite everything the '568 Patent Family Applicants knew during the period from 1997 through at least early 2010, not until events of this litigation forced their hand, did any of the '568 Patent Family Applicants inform the USPTO of the Delco Engineers' conceptions and communications—including for example, DPH/Delco's 80-Celled EDU Bladder that included virtually all of the limitations of at least the independent claims of the '568 patent prior to the Named Inventors even beginning any work on an occupant sensing bladder project—or what the 2004 Speckhart Affidavit or its attachments disclosed and admitted. Had this information been disclosed, it would have wholly undermined the '568 Patent Family of Applications and Patents and the claims to coverage the '568 Patent Family Applicants were making in the '568 Patent Family of Applications and Patents.

66. The Named Inventors even based their '568 patent drawings on the Delco Engineers' design drawings without ever informing the USPTO.

67. Meanwhile, and for ten years, while the USPTO was unaware of the concealed information, the following nine Methode/ACI and Methode patent applications of the Family were continuously improperly pending and the following noted three patents improperly issued:

- U.S. Patent Application No. 11/541,670, filed 10-03-2006 (currently pending);
- U.S. Patent Application No. 11/362,745, filed 02-28-2006 (Patented, U.S. 7,237,443);
- U.S. Patent Application No. 11/110,718 filed 04-21-2005;
- U.S. Patent Application No.10/677,360, filed 10-03-2003;
- U.S. Patent Application No. 09/988,206, filed 11-19-2001;
- U.S. Patent Application No. 09/368,113, filed 08-04-1999;

- U.S. Patent Application No. 09/146,677, filed 09-03-1998 (Patented, the '568 Patent);
- U.S. Patent Application No. 09/072,833, filed 05-05-1998; and
- U.S. Patent Application No. 29/085,897 filed 04-01-1998 (Patented, U.S. D409935).

68. Notably, the '568 Patent Family Applicants had numerous incentives driving them to withhold from the USPTO the above material information during the period from 1997 to 2010. Methode/ACI and Methode, moreover, were the sole supplier to DPH/Delco and DPH of occupant sensing bladders, and together they made and sold roughly 30 million units of such bladders which resulted in hundreds of millions of dollars of revenues and profit.

69. With tens of millions of dollars in personal and corporate fortunes to motivate them, with their prosecution of patent applications being in private and conducted with an unaware and reliant government agency to present them with opportunities, with highly material information in hand and well known to them, and with the '568 Patent Family Applicants not satisfying their multiple duties of candor, the most reasonable inference is that the '568 Patent Family Applicants intended to deceive the Patent Office, put ACI and Methode in possession of patent rights by which they could maintain and preserve the flow of tens of millions of dollars, and put themselves in positions of substantial financial reputational, and success gains.

70. The foregoing activities include omissions that were material because but-for the omission, the PTO would not have allowed the '568 Patent to issue. The foregoing activities also constitute affirmative acts of egregious misconduct. These acts and omissions were intended by the '568 Patent Family Applicants to mislead and deceive the USPTO. As a result, the '568 Patent and all patents in its Family are unenforceable by reason of inequitable conduct.

71. Absent a declaration that the '568 Patent is invalid and/or unenforceable, Methode will continue to wrongfully assert the '568 Patent against Delphi in violation of the laws and

contrary to the public policy of the United States of America, and will thereby continue to cause Delphi irreparable injury and damage.

72. By reason of the foregoing, there is an actual and justiciable controversy between Delphi on the one hand, and Methode on the other, and Delphi is entitled to a decree that the '568 Patent is unenforceable.

**COUNT IV - DECLARATION OF
NON-INFRINGEMENT OF THE '568 PATENT**

73. Paragraphs 1-72 of Delphi's Complaint are re-alleged and reincorporated by reference as if fully set forth herein.

74. Delphi has not infringed, and does not infringe any valid, enforceable claim of the '568 Patent, either directly, indirectly, contributorily, through the doctrine of equivalents, or otherwise, and has not induced others to infringe the '568 Patent.

75. By reason of the foregoing, there is an actual and justiciable controversy between Delphi on the one hand, and Methode on the other, and Delphi is entitled to a decree that Delphi does not infringe the '568 Patent.

COUNT V – EQUITABLE ASSIGNMENT

76. Paragraphs 1-75 of Delphi's Complaint are re-alleged and reincorporated by reference as if fully set forth herein.

77. Principles of equity dictate that the '568 Patent and any other patent or patent application in the '568 Patent Family of Applications and Patents be assigned to Delphi.

78. Delphi is entitled to an Order assigning Delphi all rights and title to the '568 Patent Family of Applications and Patents.

COUNT VI – CORRECTION OF INVENTORSHIP
PURSUANT TO 35 U.S.C. § 256

79. Paragraphs 1-78 of Delphi's Complaint are re-alleged and reincorporated by reference as if fully set forth herein.

80. The failure to name the correct inventor(s) of the subject matter claimed in the '568 Patent was in error, without deceptive intention on Delphi's or the Delco Engineers' part, and requires a certificate of correction issued by the Director of the USPTO pursuant to 35 U.S.C. § 256.

81. This Court has authority to order correction of the patent on notice and a hearing pursuant to 35 U.S.C. § 256.

JURY DEMAND

Delphi demands a trial by jury on all issues so triable.

RELIEF REQUESTED

WHEREFORE, Delphi respectfully requests the following relief:

- A. A judgment that the '568 Patent is invalid and unenforceable;
- B. A judgment that Delphi has not infringed and is not infringing, either literally or under the doctrine of equivalents, any valid and enforceable claim of the '568 Patent, and that Delphi has not contributed to or induced and is not contributing to or inducing infringement of any valid and enforceable claim of the '568 Patent;
- C. A judgment that Delphi has authority by license, assignment, waiver, covenant not to sue and/or otherwise to practice the claimed subject matter of the '568 Patent;

- D. A judgment that Methode and Methode/ACI breached and/or violated their contractual obligations set forth in the General Nondisclosure Agreement;
- E. A judgment that Methode is liable for Methode/ACI's obligations under the General Nondisclosure Agreement and any breach thereof;
- F. A judgment awarding Delphi the gains, profits, advantages, and unjust enrichment Methode and Methode/ACI obtained as a result of Methode/ACI's and Methode's actions;
- G. A judgment awarding Delphi damages determined to be sustained by Delphi as a result of Methode's actions;
- H. A judgment imposing a constructive trust on all patent rights and interests in the '568 Patent Family of Applications and Patents arising from Methode/ACI's actions and Methode's actions;
- I. A judgment assigning Delphi all rights and title to the '568 Patent Family of Applications and Patents;
- J. In the alternative:
 - a. a declaration that the '568 Patent fails to name the correct inventor(s) of the subject matter claimed in the '568 Patent; and
 - b. a Court Order for correction of inventorship of the '568 Patent on notice and hearing of all parties concerned and directing the Director of the USPTO to issue a certificate in accordance with 35 U.S.C. § 256;
- K. A judgment finding that Methode's actions were willful and/or in bad faith entitling Delphi to enhanced damages including punitive damages;

- L. A judgment awarding pre-litigation and pre-award interest on all damages at the maximum legally allowable rate of interest;
- M. A judgment that this case is an exceptional case and awarding Delphi its costs, expenses and reasonable attorneys' fees pursuant to 35 U.S.C. § 285 and as otherwise permitted by law; and
- N. Any and all other relief to which Delphi may be entitled or which this Court deems just and proper.

Respectfully submitted,

Dated: March 13, 2012

By: /s/ Timothy J. Rechten

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of March, 2012, I electronically filed the foregoing **DELPHI AUTOMOTIVE SYSTEMS, LLC'S FIRST AMENDED COMPLAINT** with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

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