

The Honorable Benjamin H. Settle

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

EAGLE HARBOR HOLDINGS LLC, and
MEDIUSTECH LLC,

Plaintiffs,

v.

FORD MOTOR COMPANY,

Defendant.

Case No. 3:11-cv-05503-BHS

**SECOND AMENDED
COMPLAINT FOR PATENT
INFRINGEMENT AND DEMAND
FOR JURY TRIAL**

Plaintiffs Eagle Harbor Holdings, LLC and MediusTech, LLC, by and through the undersigned attorneys, hereby bring this Second Amended Complaint for patent infringement against Defendant Ford Motor Company, and allege as follows:

THE PARTIES

1. Eagle Harbor Holdings, LLC (“Eagle Harbor”) is a limited liability company duly organized under the laws of the state of Washington, with its principal place of business at 175 NE Parfitt Way, Suite S140, Bainbridge Island, Kitsap County, WA 98110. It is the owner of U.S. Patents Nos. 6,615,137, 6,629,033, 6,778,073, 7,146,260, 7,778,739, 7,793,136, 8,006,117, 8,006,118, 8,006,119, 8,020,028, and 8,027,268 (the “Patents in Suit”).

1 2. MediusTech, LLC (“MediusTech”) is a limited liability company duly
2 organized under the laws of the state of Washington, with its principal place of business at
3 175 NE Parfitt Way, Suite S140, Bainbridge Island, Kitsap County, WA 98110. It is the
4 exclusive licensee, from Eagle Harbor, of the Patents in Suit in the field of use in
5 automobiles.

7 3. On information and belief, Defendant Ford Motor Company (“Ford”) is a
8 Delaware corporation having its principal place of business at 1 American Road, Dearborn,
9 MI 48126.

10 **JURISDICTION AND VENUE**

11 4. This is an action for patent infringement arising under the patent laws of the
12 United States, Title 35 of the United States Code. This Court has subject matter jurisdiction
13 over this action under 28 U.S.C. §§ 1331 and 1338(a).
14

15 5. Venue is proper in this Federal Court pursuant to 28 U.S.C. §§ 1391(b)-(c)
16 and 1400(b) in that a substantial part of the events giving rise to the claims occurred in this
17 district and Ford has a regular and established practice of business in this district and has
18 committed acts of infringement in this district.
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20 **FACTUAL BACKGROUND**

21 6. Eagle Harbor’s predecessor Medius, Inc. (“Medius”) was founded in 2000 by
22 Dan Preston to develop technologies in the areas of information systems, communications,
23 and computer science. Dan Preston is an inventor of most of the Patents in Suit, and Medius
24 was the original assignee of U.S. Patent Nos. 6,615,137, 6,629,033, 6,778,073, 7,146,260,
25 and 7,778,739. Eagle Harbor, which was incorporated in 2010, is the successor-in-interest
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1 of Medius and the original assignee of U.S. Patent Nos. 7,793,136, 8,006,117, 8,006,118,
2 8,006,119, 8,020,028, and 8,027,268.

3 7. From 2002 to 2008, Dan Preston and other Medius personnel engaged in
4 numerous meetings and communications with representatives of Ford and Volvo (which was
5 then owned by Ford) regarding Medius's automotive systems technology and intellectual
6 property. In these meetings and communications, Medius discussed and made presentations
7 to Ford and Volvo describing and disclosing Medius's technology in the areas of telematics,
8 adaptive cruise control, lane departure warning, automated parking support, multimedia, and
9 infotainment.
10

11 8. In 2002, in response to a request from Motorola to demonstrate to Ford a
12 low-cost adaptive cruise control based on Medius's proprietary technology, Medius
13 developed and demonstrated a working prototype of a multi sensor fusion system in support
14 of adaptive cruise control. On September 5, 2002, Medius personnel met and communicated
15 directly with Ford personnel about Medius, its intellectual property, and its automotive
16 technologies, including autonomous and adaptive cruise control, automated parking support,
17 and collision warning, mitigation and avoidance. Also in 2002, a former Ford executive
18 joined Medius's Board of Advisors.
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21 9. Beginning in 2004 and continuing to 2008, Dan Preston and other Medius
22 personnel conducted meetings with and gave presentations to Volvo personnel regarding
23 Medius's technology and intellectual property relating to adaptive cruise control, lane
24 departure warning, automated parking support, and other automotive systems. On
25 information and belief, Volvo provided all of Medius's presentations to Ford.
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1 10. From 2004 until 2008, Medius also conducted meetings and direct
2 communications with Ford personnel to discuss Medius's automotive systems technology
3 and intellectual property, and Medius directly provided to Ford the presentations it had
4 prepared for and delivered to Volvo. For example:

5 a. On July 12, 2004, Medius provided Ford with access to an FTP
6 download site containing presentations and technical materials that Medius had prepared for
7 and shared with Volvo, and Ford personnel subsequently acknowledged obtaining materials
8 from the site;

9 b. On July 20 and 21, 2004, Medius communicated with Ford about its
10 automotive systems technology and notified Ford of its U.S. Patent No. 6,615,137;

11 c. On August 20, 2004, Medius communicated with Ford and suggested
12 that Ford could directly license Medius's technology;

13 d. On October 1, 2004, Medius provided to Ford a system reference
14 presentation describing hardware, software, buses, and system architecture for various
15 vehicle applications, including multimedia and infotainment and associated controls and
16 consumer interfaces.

17 11. By 2008, Ford halted its direct communications with Medius, although
18 Medius's communications with Volvo continued into and beyond 2008.

19 12. No later than January 2009, Medius notified Ford that Ford's automotive
20 audio systems, including Ford SYNC, infringed Medius's patents, specifically including one
21 of the Patents in Suit, United States Patent No. 6,778,073.

22 13. No later than March 2010, Medius notified Ford that Ford's automotive
23 electronics systems, including Ford SYNC, infringed Medius's patents, including five of the
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1 Patents in Suit, United States Patent Nos. 6,778,073, 6,629,033, 7,146,260, 7,778,739
2 (which was then a pending application under notice of allowance, number 11/462,958), and
3 7,793,136 (which was then a pending application, number 11/616,650).

4 14. Despite these notifications and Medius's education of Ford on the automotive
5 systems described herein, Ford has refused to license Medius's patents and has continued to
6 infringe the Patents in Suit by making, selling, offering for sale, and/or actively inducing
7 others to use in an infringing manner, the automotive systems in Ford, Lincoln, and Mercury
8 vehicles, as further set forth in this complaint.
9

10 15. Despite its awareness of the Patents in Suit, Ford has filed patent applications
11 relating to in-vehicle device connectivity without disclosing the Patents in Suit. For
12 instance, on August 10, 2010, Ford Global Technologies, LLC was named as assignee on
13 United States Patent Application number 12/854,010, titled "Method and System for In-
14 Vehicle Wireless Connectivity" ("the '010 Application"). At the time of filing, Ford was
15 aware of no less than five of the Patents in Suit: United States Patent Nos. 6,778,073,
16 6,629,033, 7,146,260, 7,778,739 (which was then a pending application under notice of
17 allowance, number 11/462,958), and 7,793,136 (which was then a pending application,
18 number 11/616,650). One or more of these Medius patents is material to the prosecution of
19 the '010 Application. Despite the materiality of these references and Ford's knowledge of
20 them, these references were not disclosed in the '010 Application.
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23 16. Similarly, on May 27, 2010, Ford Global Technologies, LLC was named as
24 assignee on United States Patent Application number 12/788,811, titled "Methods and
25 Systems for Interfacing with a Vehicle Computing System over Multiple Data Transport
26 Channels" ("the '811 Application"). At the time of filing, Ford was aware of no less than
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1 five of the Patents in Suit: United States Patent Nos. 6,778,073, 6,629,033, 7,146,260,
 2 7,778,739 (which was then a pending application under notice of allowance, number
 3 11/462,958), and 7,793,136 (which was then a pending application, number 11/616,650).
 4 One or more of these Medius patents is material to the prosecution of the ‘811 Application.
 5 Despite the materiality of these references and Ford’s knowledge of them, these references
 6 were not disclosed in the ‘811 Application.
 7

8 17. Absent fraud, Ford could only have failed to disclose the Medius patents in
 9 the prosecution of the ‘010 and ‘811 Applications and other Ford patent applications –
 10 despite its obligation to do so – as a result of willful blindness about the scope of the Medius
 11 patents.
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13 **COUNT I: INFRINGEMENT OF U.S. PATENT NO. 6,615,137**

14 18. Plaintiffs reallege and incorporate by reference paragraphs 1-17.

15 19. On September 2, 2003, United States Patent No. 6,615,137 (“the ‘137
 16 patent”), attached as Exhibit A, was duly and legally issued for an invention entitled
 17 “Method and Apparatus for Transferring Information Between Vehicles.”
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19 20. On information and belief, Ford has infringed and continues to infringe one
 20 or more claims of the ‘137 patent. Ford is liable for inducing infringement of the ‘137 patent
 21 under 35 U.S.C. § 271 by users of its vehicles by making, selling, and/or offering for sale at
 22 least Ford, Lincoln, and/or Mercury branded vehicles equipped with Active Park Assist that
 23 directly infringe the ‘137 patent in the course of their ordinary operation as designed, and/or
 24 by providing instructions to users of such vehicles through user manuals and/or instructions
 25 on Ford’s web site to use such vehicles in an infringing manner.
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1 21. Ford has had actual knowledge of the ‘137 patent since at least July 20, 2004,
2 when Medius disclosed it to Ford as described above. On information and belief, Ford has
3 known and intended that the actions of the users of at least Ford, Lincoln, and/or Mercury
4 branded vehicles equipped with Active Park Assist as designed and according to Ford’s
5 instructions would result in infringement, or Ford deliberately failed to investigate and
6 thereby remained willfully blind of this fact.
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8 22. Ford has actual knowledge of the ‘137 patent and its infringement is willful.

9 **COUNT II: INFRINGEMENT OF U.S. PATENT NO. 6,629,033**

10 23. Plaintiffs reallege and incorporate by reference paragraphs 1-17.

11 24. On September 30, 2003, United States Patent No. 6,629,033 (“the ‘033
12 patent”), attached as Exhibit B, was duly and legally issued for an invention entitled “Open
13 Communication System for Real-Time Multiprocessor Applications.”
14

15 25. On information and belief, Ford has infringed and continues to infringe one
16 or more claims of the ‘033 patent. Ford is liable for infringing the ‘033 patent under 35
17 U.S.C. § 271 by making, selling, and/or offering for sale at least Ford, Lincoln, and/or
18 Mercury branded vehicles equipped with Integrated Control System for Stability Control as
19 disclosed in U.S. Patent Application No. 11/468,598, however branded.
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21 26. Ford has actual knowledge of the ‘033 patent and its infringement is willful.

22 **COUNT III: INFRINGEMENT OF U.S. PATENT NO. 6,778,073**

23 27. Plaintiffs reallege and incorporate by reference paragraphs 1-17.

24 28. On August 17, 2004, United States Patent No. 6,778,073 (“the ‘073 patent”),
25 attached as Exhibit C, was duly and legally issued for an invention entitled “Method and
26 Apparatus for Managing Audio Devices.”
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1 29. On information and belief, Ford has infringed and continues to infringe one
2 or more claims of the '073 patent. Ford is liable for infringing the '073 patent under 35
3 U.S.C. § 271 by making, selling, and/or offering for sale at least Ford, Lincoln, and/or
4 Mercury branded vehicles equipped with SYNC and associated head unit and/or instrument
5 panel displays.

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7 30. Ford has actual knowledge of the '073 patent and its infringement is willful.

8 **COUNT IV: INFRINGEMENT OF U.S. PATENT NO. 7,146,260**

9 31. Plaintiffs reallege and incorporate by reference paragraphs 1-17.

10 32. On December 5, 2006, United States Patent No. 7,146,260 (“the ‘260
11 patent”), attached as Exhibit D, was duly and legally issued for an invention entitled
12 “Method and Apparatus for Dynamic Configuration of Multiprocessor System.”

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14 33. On information and belief, Ford has infringed and continues to infringe one
15 or more claims of the '260 patent. Ford is liable for infringing the '260 patent under 35
16 U.S.C. § 271 by making, selling, and/or offering for sale at least Ford, Lincoln, and/or
17 Mercury branded vehicles equipped with SYNC and associated head unit and/or instrument
18 panel displays, and/or with MyKey system.

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20 34. Ford has actual knowledge of the '260 patent and its infringement is willful.

21 **COUNT V: INFRINGEMENT OF U.S. PATENT NO. 7,778,739**

22 35. Plaintiffs reallege and incorporate by reference paragraphs 1-17.

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24 36. On August 17, 2010, United States Patent No. 7,778,739 (“the ‘739 patent”),
25 attached as Exhibit E, was duly and legally issued for an invention entitled “Method and
26 Apparatus for Dynamic Configuration of Multiprocessor System.”

1 37. On information and belief, Ford has infringed and continues to infringe one
2 or more claims of the '739 patent. Ford is liable for infringing the '739 patent under 35
3 U.S.C. § 271 by making, selling, and/or offering for sale at least Ford, Lincoln, and/or
4 Mercury branded vehicles equipped with SYNC and associated head unit and/or instrument
5 panel displays.

6 38. Ford is liable for inducing infringement of the '739 patent under 35 U.S.C.
7 § 271 by users of its vehicles by making, selling, and/or offering for sale at least Ford,
8 Lincoln, and/or Mercury branded vehicles equipped with SYNC and associated head unit
9 and/or instrument panel displays that directly infringe the '739 patent in the course of their
10 ordinary operation as designed, and/or by providing instructions to users of such vehicles
11 through user manuals and/or instructions on Ford's web site to use such vehicles in an
12 infringing manner.

13 39. Ford has had actual knowledge of the '739 patent since at least August 17,
14 2010, when the '739 patent issued after Medius had notified Ford of the allowed application
15 for that patent in March 2010. On information and belief, Ford has known and intended that
16 the actions of the users of at least Ford, Lincoln, and/or Mercury branded vehicles equipped
17 with SYNC and associated head unit and/or instrument panel displays as designed and
18 according to Ford's instructions would result in infringement, or Ford deliberately failed to
19 investigate and thereby remained willfully blind of this fact.

20 40. Ford has actual knowledge of the '739 patent and its infringement is willful.

21 **COUNT VI: INFRINGEMENT OF U.S. PATENT NO. 7,793,136**

22 41. Plaintiffs reallege and incorporate by reference paragraphs 1-17.

1 42. On September 7, 2010, United States Patent No. 7,793,136 (“the ‘136
2 patent”), attached as Exhibit F, was duly and legally issued for an invention entitled
3 “Application Management System With Configurable Software Applications.”

4 43. On information and belief, Ford has infringed and continues to infringe one
5 or more claims of the ‘136 patent. Ford is liable for infringing the ‘136 patent under 35
6 U.S.C. § 271 by making, selling, and/or offering for sale at least Ford, Lincoln, and/or
7 Mercury branded vehicles equipped with SYNC and associated head unit and/or instrument
8 panel displays.
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10 44. Ford is liable for inducing infringement of the ‘136 patent under 35 U.S.C.
11 § 271 by users of its vehicles by making, selling, and/or offering for sale at least Ford,
12 Lincoln, and/or Mercury branded vehicles equipped with SYNC and associated head unit
13 and/or instrument panel displays that directly infringe the ‘136 patent in the course of their
14 ordinary operation as designed, and/or by providing instructions to users of such vehicles
15 through user manuals and/or instructions on Ford’s web site to use such vehicles in an
16 infringing manner
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18 45. Ford has had actual knowledge of the ‘136 patent since at least September 7,
19 2010, when the ‘136 patent issued after Medius had notified Ford of the pending application
20 for that patent in March 2010. On information and belief, Ford has known and intended that
21 the actions of the users of at least Ford, Lincoln, and/or Mercury branded vehicles equipped
22 with SYNC and associated head unit and/or instrument panel displays as designed and
23 according to Ford’s instructions would result in infringement, or Ford deliberately failed to
24 investigate and thereby remained willfully blind of this fact.
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27 46. Ford has actual knowledge of the ‘136 patent and its infringement is willful.
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COUNT VII: INFRINGEMENT OF U.S. PATENT NO. 8,006,117

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2 47. Plaintiffs reallege and incorporate by reference paragraphs 1-17.

3 48. On August 23, 2011, United States Patent No. 8,006,117 (“the ‘117 patent”),
4 attached as Exhibit G, was duly and legally issued for an invention entitled “Method for
5 Multi-tasking Multiple Java Virtual Machines in a Secure Environment.”
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7 49. On information and belief, Ford has infringed and continues to infringe one
8 or more claims of the ‘117 patent. Ford is liable for infringing the ‘117 patent under 35
9 U.S.C. § 271 by making, selling, and/or offering for sale at least Ford and Lincoln branded
10 vehicles equipped with SYNC and associated head unit and/or instrument panel displays.
11

12 **COUNT VIII: INFRINGEMENT OF U.S. PATENT NO. 8,006,118**

13 50. Plaintiffs reallege and incorporate by reference paragraphs 1-17.

14 51. On August 23, 2011, United States Patent No. 8,006,118 (“the ‘118 patent”),
15 attached as Exhibit H, was duly and legally issued for an invention entitled “System and
16 Method for Application Failure Detection.”
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18 52. On information and belief, Ford has infringed and continues to infringe one
19 or more claims of the ‘118 patent. Ford is liable for infringing the ‘118 patent under 35
20 U.S.C. § 271 by making, selling, and/or offering for sale at least Ford and Lincoln branded
21 vehicles equipped with SYNC and associated head unit and/or instrument panel displays.
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23 53. Ford is liable for inducing infringement of the ‘118 patent under 35 U.S.C.
24 § 271 by users of its vehicles by making, selling, and/or offering for sale at least Ford,
25 Lincoln, and/or Mercury branded vehicles equipped with SYNC and associated head unit
26 and/or instrument panel displays that directly infringe the ‘118 patent in the course of their
27 ordinary operation as designed, and/or by providing instructions to users of such vehicles
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1 through user manuals and/or instructions on Ford's web site to use such vehicles in an
2 infringing manner.

3 54. Ford has had actual knowledge of the '118 patent since at least October 20,
4 2010, when MediusTech asserted the '118 patent in its Amended Complaint in this action.
5 On information and belief, Ford has known and intended that the actions of the users of at
6 least Ford, Lincoln, and/or Mercury branded vehicles equipped with SYNC and associated
7 head unit and/or instrument panel displays as designed and according to Ford's instructions
8 would result in infringement, or Ford deliberately failed to investigate and thereby remained
9 willfully blind of this fact.
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11 **COUNT IX: INFRINGEMENT OF U.S. PATENT NO. 8,006,119**

12 55. Plaintiffs reallege and incorporate by reference paragraphs 1-17.

13 56. On August 23, 2011, United States Patent No. 8,006,119 ("the '119 patent"),
14 attached as Exhibit I, was duly and legally issued for an invention entitled "Application
15 Management System."
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17 57. On information and belief, Ford has infringed and continues to infringe one
18 or more claims of the '119 patent. Ford is liable for infringing the '119 patent under 35
19 U.S.C. § 271 by making, selling, and/or offering for sale at least Ford and Lincoln branded
20 vehicles equipped with SYNC and associated head unit and/or instrument panel displays.
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22 58. Ford is liable for inducing infringement of the '119 patent under 35 U.S.C.
23 § 271 by users of its vehicles by making, selling, and/or offering for sale at least Ford,
24 Lincoln, and/or Mercury branded vehicles equipped with SYNC and associated head unit
25 and/or instrument panel displays that directly infringe the '119 patent in the course of their
26 ordinary operation as designed, and/or by providing instructions to users of such vehicles
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1 through user manuals and/or instructions on Ford's web site to use such vehicles in an
2 infringing manner.

3 59. Ford has had actual knowledge of the '119 patent since at least October 20,
4 2010, when MediusTech asserted the '119 patent in its Amended Complaint in this action.
5 On information and belief, Ford has known and intended that the actions of the users of at
6 least Ford, Lincoln, and/or Mercury branded vehicles equipped with SYNC and associated
7 head unit and/or instrument panel displays as designed and according to Ford's instructions
8 would result in infringement, or Ford deliberately failed to investigate and thereby remained
9 willfully blind of this fact.
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11 **COUNT X: INFRINGEMENT OF U.S. PATENT NO. 8,020,028**

12 60. Plaintiffs reallege and incorporate by reference paragraphs 1-17.

13 61. On September 13, 2011, United States Patent No. 8,020,028 ("the '028
14 patent"), attached as Exhibit J, was duly and legally issued for an invention entitled
15 "Application Management System for Mobile Devices."
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17 62. On information and belief, Ford has infringed and continues to infringe one
18 or more claims of the '028 patent. Ford is liable for infringing the '028 patent under 35
19 U.S.C. § 271 by making, selling, and/or offering for sale at least Ford and Lincoln branded
20 vehicles equipped with SYNC and associated head unit and/or instrument panel displays.
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22 63. Ford is liable for inducing infringement of the '028 patent under 35 U.S.C.
23 § 271 by users of its vehicles by making, selling, and/or offering for sale at least Ford,
24 Lincoln, and/or Mercury branded vehicles equipped with SYNC and associated head unit
25 and/or instrument panel displays that directly infringe the '028 patent in the course of their
26 ordinary operation as designed, and/or by providing instructions to users of such vehicles
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1 through user manuals and/or instructions on Ford's web site to use such vehicles in an
2 infringing manner.

3 64. Ford has had actual knowledge of the '028 patent since at least October 20,
4 2010, when MediusTech asserted the '028 patent in its Amended Complaint in this action.
5 On information and belief, Ford has known and intended that the actions of the users of at
6 least Ford, Lincoln, and/or Mercury branded vehicles equipped with SYNC and associated
7 head unit and/or instrument panel displays as designed and according to Ford's instructions
8 would result in infringement, or Ford deliberately failed to investigate and thereby remained
9 willfully blind of this fact.
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11 **COUNT XI: INFRINGEMENT OF U.S. PATENT NO. 8,027,268**

12 65. Plaintiffs reallege and incorporate by reference paragraphs 1-17.

13 66. On September 27, 2011, United States Patent No. 8,027,268 ("the '268
14 patent"), attached as Exhibit K, was duly and legally issued for an invention entitled
15 "Method and Apparatus for Dynamic Configuration of Multiprocessor System."
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17 67. On information and belief, Ford has infringed and continues to infringe one
18 or more claims of the '268 patent. Ford is liable for infringing the '268 patent under 35
19 U.S.C. § 271 by making, selling, and/or offering for sale at least Ford and Lincoln branded
20 vehicles equipped with SYNC and associated head unit and/or instrument panel displays.
21

22 **JURY DEMAND**

23 68. Pursuant to Rule 38(b) of the Federal Rule of Civil Procedure, Plaintiffs
24 respectfully request a trial by jury on all issues properly triable by jury.
25

26 **PRAYER FOR RELIEF**

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Counsel for plaintiffs

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CERTIFICATE OF SERVICE

I hereby certify that on February 24, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record who receives CM/ECF notification.

DATED: February 24, 2012

By: /s/ Parker C. Folse, III
Parker C. Folse III (WSBA No. 24895)