

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION**

AFFINITY LABS OF TEXAS, LLC,)	
)	
Plaintiff,)	
)	
v.)	
)	Case No. _____
FORD MOTOR COMPANY,)	
)	
Defendant.)	JURY TRIAL DEMANDED
)	
)	
)	
)	

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Affinity Labs of Texas, LLC (“Affinity Labs”) for its causes of action against Defendant, Ford Motor Company (“Ford”), states and alleges on knowledge and information and belief as follows:

PARTIES

1. Plaintiff Affinity Labs is a Texas limited liability company having offices at 31884 RR 12, Dripping Springs, TX 78620.
2. On information and belief, Defendant Ford is a Delaware company having its principal place of business at 1 American Road, Ford World Headquarters, Dearborn, Michigan 48126. Ford has been authorized to do business in the State of Texas by the Texas Secretary of State. Furthermore, Ford has designated CT Corporation System, 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201 as its agent for service of process.

JURISDICTION

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a), in that this action arises under the federal patent statutes, 35 U.S.C. §§ 271 and 281-285.

4. This Court has personal jurisdiction over Defendant Ford. Upon information and belief, Ford has committed and continues to commit acts giving rise to this action within Texas and within this judicial district and Ford has established minimum contacts within the forum such that the exercise of jurisdiction over Ford would not offend traditional notions of fair play and substantial justice. For example, Ford has committed and continues to commit acts of infringement in this District, by among other things, offering to sell and selling products that infringe the Asserted Patents, including the Ford Explorer with Ford SYNC stereo system. In conducting its business in Texas and this judicial district, Ford derives substantial revenue from infringing products being sold, used, imported, and/or offered for sale or providing service and support to Ford's customers in Texas and this District, and will continue to do so unless enjoined by this Court.

VENUE

5. Venue in the Eastern District of Texas is proper pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b) because Ford has committed acts within this judicial district giving rise to this action, and Ford has and continues to conduct business in this judicial district, including one or more acts of selling, using, importing, and/or offering for sale infringing products or providing service and support to Ford's customers in this District.

6. Venue is further proper because Ford has been authorized to do business in the State of Texas by the Texas Secretary of State. Furthermore, Ford maintains a registered agent

for service of process in Texas. Moreover, Ford has a Texas website, www.texasford.com, which directs inquiries made by persons such as Affinity Labs to its Texas dealers, including dealers located in the Eastern District of Texas. Also, Affinity Labs maintains office space in Austin, Texas.

7. Venue in the Eastern District of Texas is also proper because this District is centrally located to resolve common issues of fact among Affinity Labs and the Defendant.

8. Venue in the Eastern District of Texas is also proper because of judicial economy. Judge Ron Clark presided over *Affinity Labs of Texas, LLC v. BMW North America, LLC, et al.*, Civil Action No. 9:08-cv-164. As part of that action the Court construed claims of the same patents asserted in the present action, U.S. Patent No. 7,324,833 and U.S. Patent No. 7,634,228, in the Orders Construing Claim Terms dated December 18, 2009 (Dkt. No. 326) and May 10, 2010 (Dkt. No. 386).

BACKGROUND

Affinity Labs

9. Affinity Labs restates and realleges each of the allegations set forth above and incorporates them herein.

10. Affinity Labs was founded in 2008 by Russell White and Harlie Frost.

11. Russell White is a successful entrepreneur and patent attorney. Mr. White grew up in Houston, Texas, and has an undergraduate degree in mechanical engineering from Texas A&M. Mr. White also graduated from the University of Temple Law School. After earning his law degree, Mr. White co-founded SBC Knowledge Ventures, an entity within AT&T.

12. Mr. White is also a prolific inventor. Mr. White is listed as an inventor on at least twenty-two separate United States patents.

13. On March 28, 2000, Mr. White and Kevin R. Imes filed a detailed patent application, No. 09/537,812 (“the ’812 application”) with the United States Patent and Trademark Office (“PTO”).

14. The ’812 application addressed the problem of navigating through and playing audio content stored on a portable electronic audio device, such as an MP3 player or cell phone, using a different electronic device.

15. The ’812 application disclosed the ability to connect a portable electronic device, such as an MP3 player or cell phone, to a second device such as an automobile with a display and sound system. As disclosed in the ’812 application, the music available on the portable device can then be displayed and selected using controls on an automobile stereo system, and played through the speakers.

16. Mr. White and Mr. Imes made this disclosure in the ’812 application over a year before the iPod was released in October 2001, and years before the functionality of having the music available on a portable device be displayed and selected using controls on an automobile stereo system and played through the speakers was available using an iPhone and some luxury vehicles.

17. On January 29, 2008, the PTO issued United States Patent No. 7,324,833, entitled “System and Method for Connecting a Portable Audio Player to an Automobile Sound System” (“the ’833 patent”), a copy of which is attached as Exhibit A. The ’833 patent was issued from a continuation application claiming priority to the ’812 application.

18. On December 15, 2009, the PTO issued United States Patent No. 7,634,228, entitled “Content Delivery System and Method” (“the ’228 patent”), a copy of which is attached

as Exhibit B. The '228 patent was issued from a continuation application claiming priority to the '812 application.

19. The '833 and '228 patents (collectively, “the Asserted Patents”) are in the same patent family and both claim priority to the '812 application, which was filed with the PTO on March 28, 2000 and issued on March 6, 2007 as United States Patent No. 7,187,947 entitled “System and Method for Communicating Selected Information to an Electronic Device.”

20. The Asserted Patents have been cited by major businesses in the computer, software, communications, automotive, and mobile industries. The Asserted Patents have been cited in at least 38 patents and publications, with many of these patents assigned to corporations such as Apple, AT&T, Toyota, Google, Nokia, Bose, and Volkswagen.

21. Affinity Labs holds legal title, by assignment, to the Asserted Patents.

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22. On August 27, 2008, Affinity Labs sued a number of defendants, including Hyundai Motor America, Inc.; Hyundai Motor Manufacturing Alabama, LLC (collectively, “Hyundai”); Kia Motors America, Inc. (“Kia”); and Volkswagen Group of America (“Volkswagen”) in the Eastern District of Texas for infringement of the Asserted Patents. Affinity Labs alleged that Hyundai, Kia, and Volkswagen infringed the '228 and '833 patents by manufacturing, using, marketing, offering for sale, and/or selling of select automobiles with audio systems designed to integrate a portable digital media device with the automobile’s on-screen display and user interface.

23. The Court, the Honorable Ron Clark presiding, held a jury trial from October 18-22 and October 25-28, 2010 with defendants Hyundai, Kia, and Volkswagen.

24. During the trial Hyundai, Kia, and Volkswagen asserted that claims 28 and 35 of the '833 patent and claims 3, 22, and 28 of the '228 patent were invalid under 35 U.S.C. sections 102, 103 and/or 112.

25. On October 28, 2010, the jury by unanimous verdict found that Volkswagen and Hyundai directly and contributorily infringed and induced infringement of claims 28 and 35 of the '833 patent, and Volkswagen, Hyundai, and Kia directly and contributorily infringed and induced infringement of claims 3, 22, and 28 of the '228 patent. The jury awarded damages to Affinity Labs in the amount of \$12,986,530.

26. The jury rejected all of Volkswagen, Hyundai, and Kia's invalidity arguments and found that claims 28 and 35 of the '833 patent and claims 3, 22, and 28 of the '228 patent are not invalid.

27. The jury also found that claims 28 and 35 of the '833 patent and claim 22 of the '228 patent are not anticipated, and that claims 28 and 35 of the '833 patent, and claims 3, 22, and 28 of the '228 patent are not obvious.

28. On April 12, 2011, the Court ordered final judgment in favor of Affinity Labs in the amount of \$12,986,530 in damages, \$1,193,130 in pre-judgment interest, post-judgment interest calculated at the rate of 0.27%, and costs of court.

29. On information and belief, Ford manufactures, uses, sells, offers to sell, markets, imports, has manufactured, used, sold, offered to sell, marketed, and/or imported products that infringe or have infringed the '833 and '228 patents, such as automobiles equipped with Ford SYNC sound systems, like the Ford Explorer.

30. As a result, Affinity Labs brings this action to seek damages and injunctive relief arising out of Ford's infringing acts.

COUNT I

Infringement of U.S. Patent No. 7,324,833 by Ford

31. Affinity Labs restates and realleges each of the allegations set forth above and incorporates them herein.

32. Upon information and belief, in violation of 35 U.S.C. § 271(a), Ford has infringed, and if not enjoined, will continue to infringe the '833 patent by (1) manufacturing, using, marketing, selling, offering for sale, and/or importing, without authority, products and services that are covered by one or more claims of the '833 patent, literally and/or under the doctrine of equivalents; (2) inducing infringement of one or more claims of the '833 patent, in violation of 35 U.S.C. § 271(b); and/or (3) contributing to the infringement of one or more claims of the '833 patent, in violation of 35 U.S.C. § 271(c). In particular, Ford infringes one or more claims of the '833 patent directly and indirectly, literally and under the doctrine of equivalents, and by inducement and contributory infringement by (1) manufacture, use, marketing of, sale, offer for sale, and/or importation of Ford automobiles with sound systems, including at least the Ford Explorer; and (2) using Ford automobiles with sound systems, including at least the Ford Explorer, as part of the audio system and methods claimed in the '833 patent.

33. Also on information and belief, Ford markets and sells Ford automobiles with sound systems, including at least the Ford Explorer. Ford markets and sells its Ford automobiles with sound systems to customers and potential customers that include, for example, dealerships and other companies in the vehicle industry in the United States, in addition to individual customers in the United States. Ford has been marketing and selling its Ford automobiles with

sound systems while also having knowledge of the '833 patent. Furthermore, Ford has had knowledge of the '833 patent at least as of the filing of this Complaint.

34. In addition, on information and belief, Ford has actively induced and is actively inducing others, such as Ford's customers, to directly infringe the '833 patent in this District and elsewhere in the United States in violation of 35 U.S.C. § 271(b). For example, on information and belief, Ford and/or its distributors or representatives have sold or otherwise provided Ford automobiles with sound systems—including for example, the Ford Explorer—to third parties, such as Ford's customers. Ford's customers, on information and belief, have directly infringed and are directly infringing the '833 patent. Moreover, Ford specifically intends for and encourages its customers to use the Asserted Patents' technology in violation of the '833 patent. For example, by marketing and selling its Ford automobiles with sound systems, Ford has encouraged and is encouraging its customers to use its Ford automobiles with sound systems and, thus, to directly infringe the '833 patent. Furthermore, Ford has had knowledge of the '833 patent at least as of the filing of this Complaint.

35. Furthermore, on information and belief, Ford has also contributed to and is contributing to direct infringement of the '833 patent by third parties, such as Ford's customers, in this District and elsewhere in the United States, in violation of 35 U.S.C. § 271(c). For example, on information and belief, Ford has contributed to and is contributing to infringement of the '833 patent by selling its customers Ford automobiles with sound systems, including for example, the Ford Explorer—the use of which by Ford's customers has directly infringed and is directly infringing the '833 patent. Furthermore, Ford has had knowledge of the '833 patent at least as of the filing of this Complaint.

36. Despite having knowledge of the '833 patent, Ford has knowingly and willfully made, used, offered for sale, sold, and/or imported products that infringe the '833 patent, such as Ford automobiles with sound systems, including at least the Ford Explorer, and has done so after receiving notice of the '833 patent, and Ford has taken these actions without authorization from Affinity Labs.

37. Prior to the filing of this Complaint, Affinity Labs informed Ford that one or more of Ford's automobiles with sound systems infringes the '833 patent and urged Ford to obtain a license to practice under the '833 patent.

38. To date, Ford has declined to take a license under the '833 patent.

39. Ford does not have a license or permission to use the claimed subject matter in the '833 patent.

40. Affinity Labs has been injured and has been caused significant financial damage as a direct and proximate result of Ford's infringement of the '833 patent.

41. Ford will continue to infringe the '833 patent, and thus cause irreparable injury and damage to Affinity Labs unless enjoined by this Court.

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

COUNT II

Infringement of U.S. Patent No. 7,634,228 by Ford

43. Affinity Labs restates and realleges each of the allegations set forth above and incorporates them herein.

44. Upon information and belief, in violation of 35 U.S.C. § 271(a), Ford has infringed, and if not enjoined, will continue to infringe the '228 patent by (1) manufacturing,

using, marketing, selling, offering for sale, and/or importing, without authority, products and services that are covered by one or more claims of the '228 patent, literally and/or under the doctrine of equivalents; (2) inducing infringement of one or more claims of the '228 patent, in violation of 35 U.S.C. § 271(b); and/or (3) contributing to the infringement of one or more claims of the '228 patent, in violation of 35 U.S.C. § 271(c). In particular, Ford infringes one or more claims of the '228 patent directly and indirectly, literally and under the doctrine of equivalents, and by inducement and contributory infringement by (1) manufacture, use, marketing of, sale, offer for sale, and/or importation of Ford automobiles with sound systems, including at least the Ford Explorer; and (2) using Ford automobiles with sound systems, including at least the Ford Explorer, as part of the audio system and methods claimed in the '228 patent.

45. Also on information and belief, Ford markets and sells Ford automobiles with sound systems, including at least the Ford Explorer. Ford markets and sells its Ford automobiles with sound systems to customers and potential customers that include, for example, dealerships and other companies in the vehicle industry in the United States, in addition to individual customers in the United States. Ford has been marketing and selling its Ford automobiles with sound systems while also having knowledge of the '228 patent. Furthermore, Ford has had knowledge of the '228 patent at least as of the filing of this Complaint.

46. In addition, on information and belief, Ford has actively induced and is actively inducing others, such as Ford's customers, to directly infringe the '228 patent in this District and elsewhere in the United States in violation of 35 U.S.C. § 271(b). For example, on information and belief, Ford and/or its distributors or representatives have sold or otherwise provided Ford automobiles with sound systems—including for example, the Ford Explorer—to third parties,

such as Ford's customers. Ford's customers, on information and belief, have directly infringed and are directly infringing the '228 patent. Moreover, Ford specifically intends for and encourages its customers to use the Asserted Patents' technology in violation of the '228 patent. For example, by marketing and selling its Ford automobiles with sound systems, Ford has encouraged and is encouraging its customers to use its Ford automobiles with sound systems and, thus, to directly infringe the '228 patent. Furthermore, Ford has had knowledge of the '228 patent at least as of the filing of this Complaint.

47. Furthermore, on information and belief, Ford has also contributed to and is contributing to direct infringement of the '228 patent by third parties, such as Ford's customers, in this District and elsewhere in the United States, in violation of 35 U.S.C. § 271(c). For example, on information and belief, Ford has contributed to and is contributing to infringement of the '228 patent by selling its customers Ford automobiles with sound systems, including for example, the Ford Explorer—the use of which by Ford's customers has directly infringed and is directly infringing the '228 patent. Furthermore, Ford has had knowledge of the '228 patent at least as of the filing of this Complaint.

48. Despite having knowledge of the '228 patent, Ford has knowingly and willfully made, used, offered for sale, sold, and/or imported products that infringe the '228 patent, such as Ford automobiles with sound systems, including at least the Ford Explorer, and has done so after receiving notice of the '228 patent, and Ford has taken these actions without authorization from Affinity Labs.

49. Prior to the filing of this Complaint, Affinity Labs informed Ford that one or more of Ford's automobiles with sound systems infringes the '228 patent and urged Ford to obtain a license to practice under the '228 patent.

50. To date, Ford has declined to take a license under the '228 patent.

51. Ford does not have a license or permission to use the claimed subject matter in the '228 patent.

52. Affinity Labs has been injured and has been caused significant financial damage as a direct and proximate result of Ford's infringement of the '228 patent.

53. Ford will continue to infringe the '228 patent, and thus cause irreparable injury and damage to Affinity Labs unless enjoined by this Court.

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

DEMAND FOR TRIAL BY JURY

Affinity Labs demands a jury trial on all issues so triable, pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Affinity Labs prays for the following relief:

1. A declaration that Ford has infringed and is infringing the '833 and '228 patents, and is liable to Affinity Labs for infringement;
2. A declaration that Ford's infringement of the '833 and '228 patents has been willful;
3. An order enjoining Ford from infringing the '833 and '228 patents;
4. If a permanent injunction is not granted, a judicial determination of the conditions for future infringement such as a royalty bearing compulsory license or such other relief as the Court deems appropriate;

5. An award of damages, including pre-judgment and post-judgment interest, in an amount adequate to compensate Affinity Labs for Ford's infringement of the '833 and '228 patents, and that the damages be trebled pursuant to 35 U.S.C. § 284;

6. An equitable accounting of damages owed by Ford for the period of infringement of the '833 and '228 patents, following the period of damages established by Affinity Labs at trial;

7. A finding that this case is exceptional and an award of attorneys' fees pursuant to 35 U.S.C. § 285;

8. An award of costs, expenses, and disbursements; and

9. Such other and further relief as the Court deems Affinity Labs may be entitled to in law and equity.

Dated: December 6, 2012

Respectfully submitted,

By: /s/ Charles W. Goehring Jr.

Germer Gertz, L.L.P.

Lawrence Louis Germer
(TX Bar # 07824000)
Charles W. Goehring, Jr.
(TX Bar # 00793817)
550 Fannin, Suite 400
P.O. Box 4915
Beaumont, Texas 77701
Telephone: (409) 654-6700
Telecopier: (409) 835-2115
llgermer@germer.com
cwgoehring@germer.com

Robins, Kaplan, Miller & Ciresi L.L.P.

Ronald J. Schutz (MN Bar No. 130849)
(Eastern District of Texas Member)
(Lead Counsel)
Cyrus A. Morton (MN Bar No. 287325)
(Eastern District of Texas Member)
Daniel R. Burgess (MN Bar No. 389976)
(Eastern District of Texas Member)

Shira T. Shapiro (MN Bar No. 390508)

(pro hac vice to be submitted)

Kristine Weir (MN Bar No. 393477)

(pro hac vice to be submitted)

800 LaSalle Avenue, Suite 2800

Minneapolis, Minnesota 55402

Telephone: (612) 349-8500

Facsimile: (612) 339-4181

RJSchutz@rkmc.com

CAMorton@rkmc.com

DRBurgess@rkmc.com

STShapiro@rkmc.com

KAWeir@rkmc.com

**Attorneys for Plaintiff Affinity Labs of Texas,
LLC**

CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2012, I caused a true and correct copy of this document (Complaint for Patent Infringement) to be served on all counsel of record via Electronic Case Filing (ECF) pursuant to Local Rule CV-5(a).

Dated: December 6, 2012

/s/ Charles W. Goehringer, Jr.
Charles W. Goehringer, Jr.