

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

LeROY G. HAGENBUCH,

Plaintiff,

v.

TOYOTA MOTOR SALES, U.S.A., INC.,

Defendant.

Civil Action No. 1:13-cv-6713

JURY TRIAL DEMANDED

COMPLAINT

This is an action for patent infringement in which Plaintiff, LeRoy G. Hagenbuch (“Hagenbuch”), complains against the Defendants Toyota Motor Sales, U.S.A., Inc. (“Toyota”), as follows:

PARTIES

1. Plaintiff Hagenbuch is an Illinois resident with an address at 1425 East Glen Avenue, Peoria Heights, Illinois 61616.
2. Hagenbuch is the named inventor on, and owner of, a substantial number of patents, including patents disclosing and claiming certain types of methods and apparatuses for monitoring and storing data related to vehicle performance and collision detection.
3. On information and belief, Defendant Toyota is a California corporation and a citizen of California, with its principal place of business at 19001 S. Western Avenue in Torrance, California.

4. On information and belief, Toyota is engaged in the business, *inter alia*, of serving as Toyota Motor Corporation's United States sales and marketing arm, overseeing sales, including the sales of Toyota and Scion vehicles and other operations.
5. On information and belief, Toyota has a registered agent for service of process located at 208 South LaSalle Street, Suite 814, Chicago, Illinois 60604, and a place of business located at 2350 Sequoia Drive, Aurora, Illinois 60506.
6. On information and belief, Toyota operates a regional office and parts distribution center in Aurora, Illinois to coordinate vehicle sales, parts and service for Toyota, Scion and Lexus dealers.

JURISDICTION AND VENUE

7. This action arises under the patent laws of the United States, Title 35 of the United States Code.
8. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).
9. On information and belief, Defendant is subject to this Court's general and specific personal jurisdiction, pursuant to due process and the Illinois Long Arm Statute, respectively.
10. On information and belief, Defendant is subject to the Court's general personal jurisdiction because, *inter alia*, it has purposefully availed itself of the benefits and protections of Illinois law by regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to persons or entities in Illinois and in this Judicial District, and all of

Defendant's contacts with the State of Illinois are systematic, continuous and substantial.

11. On information and belief, Defendant is subject to the Court's specific personal jurisdiction because Defendant has committed tortious acts, including committing acts of patent infringement in violation of 35 U.S.C. § 271 that it knew or should have known would cause injury to Hagenbuch in the State of Illinois.
12. Venue is proper in this District under at least 28 U.S.C. §§ 1391 and 1400(b) because Defendant is subject to personal jurisdiction in this District, and because Defendant has committed one or more acts of patent infringement at issue in this case within this Judicial District.

COUNT I

INFRINGEMENT OF U.S. PATENT NO. 8,014,917 B2

13. Plaintiff re-alleges paragraphs 1-12 as if fully incorporated herein.
14. Hagenbuch is the inventor and owner of United States Patent No. 8,014,917 B2 ("the '917 Patent") entitled "Apparatus for Tracking and Recording Vital Signs and Task-Related Information of a Vehicle to Identify Operating Patterns." The '917 Patent was duly and legally issued by the United States Patent & Trademark Office on September 6, 2011. A true and correct copy is attached hereto at Exhibit 1.
15. On information and belief, Defendant has been infringing the '917 Patent in the State of Illinois, in this Judicial District, and elsewhere in the United States.
16. Defendant's infringements include, without limitation, making, using, distributing, importing, leasing, selling and/or offering to sell vehicles equipped with an event data recorder ("EDR") and automatic collision notification ("ACN") system.

17. For purposes of illustration, and not limitation, an example of Defendant's infringing vehicles is the 2012 Toyota Camry HV, the manual for which states that "[t]his vehicle is equipped with an event data recorder (EDR)," which is designed to record "in certain crash or near crash-like situations," *inter alia*, "[w]hether or not the driver and passenger safety belts were buckled," "[h]ow far (if at all) the driver was depressing the accelerator and/or brake pedal," and "[h]ow fast the vehicle was traveling."
18. In addition, the 2012 Toyota Camry HV is marketed by Defendant as having the option of the "Safety Connect" system, which "is designed to send an emergency call to the response center, notifying them of the vehicle's location" in the event that "the SRS airbags deploy or in the event of a severe rear-end collision...."
19. Under Title 49 of the Code of Federal Regulations, Section 563.1 *et seq.*, "specifies uniform, national requirements for vehicles equipped with event data recorders (EDRs) concerning the collection, storage, and retrievability of onboard motor vehicle crash event data" (hereinafter, "EDR Regulations"). 49 C.F.R. § 563.1.
20. The EDR Regulations apply "to the following vehicles manufactured on or after September 1, 2012, if they are equipped with an event data recorder: passenger cars, multipurpose passenger vehicles, trucks, and buses with a GVWR of 3,855 kg (8,500 pounds) or less and an unloaded vehicle weight of 2,495 kg (5,500 pounds) or less, except for walk-in van-type trucks or vehicles designed to be sold exclusively to the U.S. Postal Service." 49 C.F.R. § 563.3.
21. Pursuant to the EDR Regulations, vehicles subject to those regulations must "record" for a period of time preceding detection of a crash, *inter alia*, vehicle speed, throttle position, on/off service brake status and safety belt status. 49 C.F.R. § 563.7(a).

22. Pursuant to the EDR Regulations, vehicles subject to those regulations must “record” for a period of time following detection of a crash, *inter alia*, “Delta-V, longitudinal.” 49 C.F.R. § 563.7(a). The term “Delta-V, longitudinal means the cumulative change in velocity, as recorded by the EDR of the vehicle, along the longitudinal axis...” *Id.* at § 563.5.
23. Pursuant to the EDR Regulations, the term “[r]ecord means the process of saving captured EDR data into a non-volatile device for subsequent retrieval,” while the term “[c]apture means the process of buffering EDR data in a temporary, volatile storage medium where it is continuously updated at regular time intervals.” 49 C.F.R. § 563.5(b).
24. On information and belief, all of Defendant’s passenger vehicles imported into, or sold in, the United States are compliant with the EDR Regulations.
25. In view of the foregoing, and based on other information and belief, all of Defendant’s passenger vehicles that are equipped with an EDR and ACN system, and that were manufactured after September 1, 2012, are covered by at least claim 26 of the ‘917 patent.
26. On information and belief, all of Defendant’s passenger vehicles that record how far (if at all) the driver was depressing brake pedal also are covered by at least claim 9 of the ‘917 patent.
27. Defendant is thus liable for infringement of the ‘917 Patent pursuant to 35 U.S.C. § 271.
28. As a direct and proximate result of Defendant’s infringing conduct, Defendant should be held liable to Hagenbuch in an amount that adequately compensates Hagenbuch for its infringement, which, by law, can be no less than a reasonable royalty.

29. On information and belief, Defendant has had knowledge that Hagenbuch owns patents relevant to compliance with the EDR Regulations since on or around August 17, 2010.
30. On information and belief, Defendant has had knowledge of the application for the '917 Patent (application serial no. 12/727,537, published Nov. 11, 2010) since on or around March 10, 2011.
31. On information and belief, Defendant has had knowledge of the allowed claims for the '917 Patent since on or around July 25, 2011.
32. On information and belief, Defendant has had knowledge of the '917 Patent since on or around its date of issuance on September 6, 2011.
33. On information and belief, on or around July 31, 2013, Defendant's parent company, Toyota Motor Corporation ("TMC") filed with the United States Patent & Trademark Office a document entitled "Petition for *Inter Partes* Review of U.S. Patent No. 8,014,917 under 35 U.S.C. § 312 and 37 C.F.R. § 42.104" ("TMC's Petition"). TMC's Petition does not allege invalidity of claims 9 or 26 of the '917 Patent.
34. On information and belief, Defendant's infringement of the '917 Patent has been and continues to be willful, because, *inter alia*, its infringement is clear and, at a minimum, such continued infringement would necessarily be an objectively reckless act.

COUNT II

INFRINGEMENT OF U.S. PATENT NO. 8,532,867 B1

35. Plaintiff re-alleges paragraphs 1-34 as if fully incorporated herein.
36. Hagenbuch is the inventor and owner of United States Patent No. 8,532,867 ("the '867 Patent") entitled "Apparatus for Tracking and Recording Vital Signs and Task-Related Information of a Vehicle to Identify Operating Patterns." The '867 Patent was duly and

legally issued by the United States Patent & Trademark Office on September 10, 2013.

A true and correct copy is attached hereto at Exhibit 2.

37. On information and belief, Defendant has been and now is infringing the '867 Patent in the State of Illinois, in this judicial district, and elsewhere in the United States.
38. Defendant's infringements include, without limitation, making, using, distributing, importing, leasing, selling and/or offering to sell vehicles equipped with an EDR and ACN system.
39. In view of the foregoing, including allegations set forth in Count I, and based on other information and belief, all of Defendant's passenger vehicles that are equipped with an EDR and ACN system, and that were manufactured after September 1, 2012, are covered by at least claim 15 of the '867 patent.
40. Defendant is thus liable for infringement of the '867 Patent pursuant to 35 U.S.C. § 271.
41. As a direct and proximate result of Defendant's infringing conduct, Defendant should be held liable to Hagenbuch in an amount that adequately compensates Hagenbuch for its infringement, which, by law, can be no less than a reasonable royalty.
42. On information and belief, Defendant has had knowledge of the application for the '867 Patent (application serial no. 13/864,090) since on or around June 4, 2013.
43. On information and belief, Defendant has had knowledge of the '867 Patent since on or around its date of issuance on September 10, 2013.
44. On information and belief, Defendant's infringement of the '867 Patent has been and continues to be willful, because, *inter alia*, its infringement is clear and, at a minimum, such continued infringement would necessarily be an objectively reckless act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Hagenbuch respectfully requests that this Court enter:

- a. A judgment in favor of Hagenbuch declaring Defendant has infringed the '917 and '867 Patents;
- b. A judgment that the Defendant's infringement of the '917 and '867 Patents is and has been willful;
- c. A permanent injunction enjoining Defendant, and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from direct and/or indirect infringement of the '917 and '867 Patents;
- d. A judgment and order requiring Defendant to pay Hagenbuch his damages, costs, expenses, and prejudgment and post-judgment interest for Defendant's infringement of the '917 and '867 Patents as provided under 35 U.S.C. § 284;
- e. An award to Hagenbuch for enhanced damages as provided under 35 U.S.C. § 284;
- f. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Hagenbuch his reasonable attorneys' fees; and
- g. Any and all other relief to which Hagenbuch may show himself to be entitled.

DEMAND FOR JURY TRIAL

Plaintiff LeRoy G. Hagenbuch, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

Respectfully submitted,

Dated: September 18, 2013

By: /s/ Jacob D. Koering
One of His Attorneys

Michael D. Freeborn
Joseph L. Fogel
Jonathan Hill
Jacob D. Koering
Freeborn & Peters LLP
311 S. Wacker Drive
Chicago, IL 60606
Telephone: 312/360-6000
Facsimile: 312/360-6250
Email: jhill@freebornpeters.com

Attorneys for Plaintiff
LeRoy G. Hagenbuch