

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

**AMERICAN VEHICULAR SCIENCES  
LLC**

**Plaintiff,**

**V.**

**KIA MOTORS AMERICA, INC., et al.**

**Defendants.**

**S**

**Civil Action Nos.**

**6:13-cv-00147-MHS-JDL (Lead)**

**6:13-cv-00150-MHS-JDL (Consolidated)**

## JURY TRIAL

# PLAINTIFF'S FIRST AMENDED COMPLAINT

Plaintiff American Vehicular Sciences LLC (“AVS”) files this First Amended Complaint for patent infringement against Defendants Kia Motors America, Inc. and Kia Motor Manufacturing Georgia, LLC (collectively “Kia”).

**PARTIES**

1. Plaintiff AVS is a limited liability company existing under the laws of Texas with its principal place of business at 2400 Dallas Parkway, Suite 200, Plano, Texas 75093.

2. On information and belief, Defendant Kia Motors America, Inc. is a California corporation with a place of business at 111 Peters Canyon Road, Irvine, California 92606.

3. On information and belief, Defendant Kia Motors Manufacturing Georgia, Inc. is a Delaware corporation with its principal place of business at 7777 Kia Parkway, West Point, Georgia 31833.

### **JURISDICTION AND VENUE**

4. This is an action for patent infringement under the Patent Laws of the United States, 35 U.S.C. § 271.

5. This court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over Kia. On information and belief, Kia, either directly or through intermediaries, regularly sells products and services into this judicial district and manufactures products intended to be sold and in fact sold into and within this judicial district. Additionally, on information and belief, this Court has personal jurisdiction over Kia because Kia has committed, aided, abetted, contributed to, induced, and/or participated in the commission of acts within this judicial district giving rise to this action.

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

### **SUMMARY**

8. Dr. David Breed is one of the leading inventors in the field of automotive technology in the world today.

9. Dr. Breed is an inventor on more than 300 United States patents relating to automotive technologies, including airbags, navigation systems, vehicle diagnostics, crash sensors, vehicle communications, systems monitoring, theft protection, and collision avoidance.

10. Dr. Breed has a Ph.D. in Mechanical Engineering from Columbia University as well as Bachelors' and Masters' degrees from the Massachusetts Institute of Technology.

11. Dr. Breed has received the National Highway Traffic Safety Administration's Award for Safety Engineering and the prestigious H.H. Bliss award for his contributions to the

development of the airbag.

12. Dr. Breed is a member of the Tau Beta Pi and Pi Tau Sigma engineering honors societies and has published numerous peer-reviewed articles.

**COUNT I: INFRINGEMENT OF U.S. PATENT NO. 7,413,048**

13. AVS incorporates the foregoing paragraphs as if fully set forth here.

14. On August 19, 2008, the USPTO duly and legally issued United States Patent No. 7,413,048 B2 (“the ’048 Patent”), entitled “Weight Measuring Systems And Methods For Vehicles.” AVS owns the ’048 Patent and holds the right to sue and recover damages for infringement thereof.

15. On information and belief, Kia has been and now is directly infringing, and/or inducing infringement by others, and/or contributing to the infringement by others of the ’048 Patent in the state of Texas, in this judicial district, and elsewhere within the United States by, among other things, making, using, offering for sale, selling, or importing vehicles that include occupant classification systems/functionality, including the use of strain measuring transducers, that infringe or the use of which infringe one or more claims of the ’048 Patent, all to the injury of AVS. Kia is thus liable for infringement of the ’048 Patent pursuant to 35 U.S.C. § 271.

16. As a result of its infringement of the ’048 Patent, Kia has damaged AVS. Kia is liable to AVS in an amount to be determined at trial that adequately compensates AVS for the infringement, which by law can be no less than a reasonable royalty.

17. AVS intends to seek discovery on the issue of willfulness and reserves the right to seek a willfulness finding relative to pre-suit infringement and/or post-suit infringement of the ’048 Patent.

18. As a result of Kia's infringement of the '048 Patent, AVS has suffered and will continue to suffer loss and injury unless Kia is enjoined by this Court.

19. At least as early as its receipt of this Complaint, Kia has had knowledge of the '048 Patent and written notice of the infringement.

**COUNT II: INFRINGEMENT OF U.S. PATENT NO. 8,235,416**

20. AVS incorporates the foregoing paragraphs as if fully set forth here.

21. On August 7, 2012, the USPTO duly and legally issued United States Patent No. 8,235,416 B2 ("the '416 Patent"), entitled "Arrangement for Sensing Weight of an Occupying Item in a Vehicular Seat." AVS owns the '416 Patent and holds the right to sue and recover damages for infringement thereof.

22. On information and belief, Kia has been and now is directly infringing, and/or inducing infringement by others, and/or contributing to the infringement by others of the '416 Patent in the state of Texas, in this judicial district, and elsewhere within the United States by, among other things, making, using, offering for sale, selling, or importing vehicles that include an occupant sensor system configured to obtain an indication of weight applied by the occupant to the seat that infringe or the use of which infringe one or more claims of the '416 Patent, all to the injury of AVS. Kia is thus liable for infringement of the '416 Patent pursuant to 35 U.S.C. § 271.

23. As a result of its infringement of the '048 Patent, Kia has damaged AVS. Kia is liable to AVS in an amount to be determined at trial that adequately compensates AVS for the infringement, which by law can be no less than a reasonable royalty.

24. AVS intends to seek discovery on the issue of willfulness and reserves the right to

seek a willfulness finding relative to pre-suit infringement and/or post-suit infringement of the '416 Patent.

25. As a result of Kia's infringement of the '416 Patent, AVS has suffered and will continue to suffer loss and injury unless Kia is enjoined by this Court.

26. At least as early as its receipt of this Complaint, Kia has had knowledge of the '416 Patent and written notice of the infringement.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff AVS pray for the following relief:

27. A judgment in favor of AVS that Kia has infringed AVS's '048 and '416 patents;

28. A permanent injunction, enjoining Kia along with its officers, directors, agents, servants, employees, affiliates, divisions, branches, subsidiaries, and parents from infringing AVS's '048 and '416 patents;

29. A judgment and order requiring Kia to pay AVS damage for its infringement of AVS's '048 and '416 patents, together with interest (both pre- and post-judgment), costs and disbursements as fixed by this Court under 35 U.S.C. § 284;

30. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to AVS its reasonable attorney's fees; and

31. Such other and further relief in law or in equity to which AVS may be justly entitled.

**DEMAND FOR JURY TRIAL**

32. Plaintiff demands a trial by jury of any and all issues triable of right before a jury.

Dated: July 22, 2013

Respectfully submitted,

/s/ Brian E. Simmons

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document has been filed electronically in compliance with Local Rule CV-5(a). Therefore, this document was served on all counsel deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-5(d) and (e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by mail on this the 22nd day of July, 2013.

/s/ *Brian E. Simmons*

Brian E. Simmons