

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION**

AFFINITY LABS OF TEXAS, LLC,)	
)	
Plaintiff,)	
)	Case No. 6:13-cv-366
v.)	
)	JURY TRIAL DEMANDED
VOLVO CARS OF NORTH AMERICA, LLC;)	
AB VOLVO,)	
)	
Defendants.)	
)	
)	

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Affinity Labs of Texas, LLC (“Affinity Labs”) for its causes of action against Defendants, Volvo Cars of North America, LLC and AB Volvo (collectively, “Volvo”), 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 Volvo Cars of North America, LLC is a Delaware limited liability company with its principal place of business located at 1 Volvo Dr., Rockleigh, New Jersey 07647.
3. On information and belief, Defendant AB Volvo is a Swedish company with its principal place of business located at Taxistopp 1, VHK, Amazonvagen, Göteborg, 40508.

JURISDICTION

4. 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.

5. This Court has personal jurisdiction over Defendants. Upon information and belief, Volvo has committed and continues to commit acts giving rise to this action within Texas and within this judicial district and Volvo has established minimum contacts within the forum such that the exercise of jurisdiction over Volvo would not offend traditional notions of fair play and substantial justice. For example, Volvo 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 at least, for example, the Volvo SC60 with Volvo Sensus automobile entertainment system. In conducting its business in Texas and this judicial district, Volvo derives substantial revenue from infringing products being sold, used, imported, and/or offered for sale or providing service and support to Volvo's customers in Texas and this District, and will continue to do so unless enjoined by this Court.

VENUE

6. Venue in the Western District of Texas is proper pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b) because Defendants have committed acts within this judicial district giving rise to this action, and Defendants have and continue 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 Defendants' customers in this District.

7. Venue in the Western District of Texas is further proper because Volvo sells Volvo-branded automobiles in Texas, including in the Western District of Texas, through authorized

dealers. Clicking on “Find a Dealer” from Volvo’s www.volvocars.com/us website directs such inquiries to a list of Volvo-named automobile dealerships, including some in the Western District of Texas, such as Roger Beasley Volvo in Austin, Texas, Garlyn Shelton Imports in Temple, Texas, and Volvo Center in San Antonio, Texas. Consumers can view listings of Volvo automobiles for sale on the dealerships’ respective websites.

8. Venue in the Western District of Texas is further proper because, on information and belief, Volvo Cars of North America, LLC is authorized to do business in Texas and has appointed CT Corporation System, 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201 as its agent for service of process.

9. Venue in the Western District of Texas is further proper because Affinity Labs is headquartered in this District in Dripping Springs, Texas.

10. Venue in the Western District of Texas is further proper because the majority of Affinity Labs’ documents and relevant evidence is located at Affinity Labs’ headquarters within this District and numerous witnesses are also located within this District.

11. Venue in the Western District of Texas is also proper because Affinity Labs is organized and governed by the limited liability company laws of Texas and is subject to taxes in Texas. Affinity Labs maintains a registered agent for service of process in Texas.

12. Venue in the Western District of Texas is also proper because this District is centrally located to resolve common issues of fact among Affinity Labs and the Defendants.

BACKGROUND

Affinity Labs

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

14. Affinity Labs was founded in 2008 by Russell White and Harlie Frost.
15. 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.
16. Mr. White is also a prolific inventor. Mr. White is listed as an inventor on at least twenty-five separate United States patents.
17. 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”).
18. 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.
19. 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.
20. 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.

21. On October 8, 2013, the PTO issued United States Patent No. 8,554,191, entitled “System and Method for Managing Media” (“the ’191 patent”), a copy of which is attached as Exhibit A. The ’191 patent was issued from a continuation application claiming priority to the ’812 application.

22. On November 19, 2013, the PTO issued United States Patent No. 8,588,680, entitled “System and Method to Communicate Targeted Information” (“the ’680 patent”), a copy of which is attached as Exhibit B. The ’680 patent was issued from a continuation application claiming priority to the ’812 application.

23. The ’191 and ’680 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.”

24. Other patents in the ’191 and ’680 patent family have been cited by major businesses in the computer, software, communications, automotive, and mobile industries. For example, U.S. Patent No. 7,324,833 and U.S. Patent No. 7,634,228 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.

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

COUNT I

Infringement of U.S. Patent No. 8,554,191 by Volvo

26. On information and belief, Defendants manufacture, use, sell, offer to sell, market, import, have manufactured, used, sold, offered to sell, marketed, and/or imported products that infringe or have infringed the ’191 patent.

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

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

29. Upon information and belief, in violation of 35 U.S.C. § 271(a), Volvo has infringed, and if not enjoined, will continue to infringe the '191 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 '191 patent, literally and/or under the doctrine of equivalents; (2) inducing infringement of one or more claims of the '191 patent, in violation of 35 U.S.C. § 271(b); and/or (3) contributing to the infringement of one or more claims of the '191 patent, in violation of 35 U.S.C. § 271(c). In particular, Volvo infringes one or more claims of the '191 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 Volvo automobiles with sound systems, including at least, for example, the Volvo SC60; and (2) using Volvo automobiles with sound systems, including at least, for example, the Volvo SC60, as part of the audio system and methods claimed in the '191 patent.

30. Also on information and belief, Volvo markets and sells Volvo automobiles with sound systems, including at least, for example, the Volvo SC60. Volvo markets and sells its Volvo 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.

31. Also on information and belief, Volvo markets and sells Volvo automobiles containing a Bluetooth compliant communication module supplied by Motorola.

32. In addition, on information and belief, Volvo has actively induced and is actively inducing others, such as Volvo's customers, to directly infringe the '191 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, Volvo and/or its distributors or representatives have sold or otherwise provided Volvo automobiles with sound systems—including at least, for example, the Volvo SC60—to third parties, such as Volvo's customers. Volvo's customers, on information and belief, have directly infringed and are directly infringing the '191 patent. Moreover, Volvo specifically intends for and encourages its customers to use technology in violation of the '191 patent. For example, by marketing and selling its automobiles with sound systems that are able to pair with a portable electronic device, such as an MP3 player or cell phone, Volvo has encouraged and is encouraging its customers to use its automobiles with sound systems and, thus, to directly infringe the '191 patent.

33. Furthermore, on information and belief, Volvo has also contributed to and is contributing to direct infringement of the '191 patent by third parties, such as Volvo'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, Volvo has contributed to and is contributing to infringement of the '191 patent by selling its customers Volvo automobiles with sound systems that are able to pair with a portable electronic device, such as an MP3 player or cell phone, including at least, for example, the Volvo SC60—the use of which by Volvo's customers has directly infringed and is directly infringing the '191 patent.

34. Volvo does not have a license or permission to use the claimed subject matter in the '191 patent.

35. Affinity Labs has been injured and has been caused significant financial damage as a direct and proximate result of Volvo's infringement of the '191 patent.

36. Volvo will continue to infringe the '191 patent, and thus cause irreparable injury and damage to Affinity Labs unless enjoined by this Court.

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

COUNT II

Infringement of U.S. Patent No. 8,588,680 by Volvo

38. On information and belief, Defendants manufacture, use, sell, offer to sell, market, import, have manufactured, used, sold, offered to sell, marketed, and/or imported products that infringe or have infringed the '680 patent.

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

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

41. Upon information and belief, in violation of 35 U.S.C. § 271(a), Volvo has infringed, and if not enjoined, will continue to infringe the '680 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 '680 patent, literally and/or under the doctrine of equivalents; (2) inducing infringement of one or more claims of the '680 patent, in violation of 35 U.S.C. § 271(b); and/or (3) contributing to the infringement of one or more claims of the '680

patent, in violation of 35 U.S.C. § 271(c). In particular, Volvo infringes one or more claims of the '680 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 Volvo automobiles with sound systems, including at least, for example, the Volvo SC60; and (2) using Volvo automobiles with sound systems, including at least, for example, the Volvo SC60, as part of the audio system and methods claimed in the '680 patent.

42. Also on information and belief, Volvo markets and sells Volvo automobiles with sound systems, including at least, for example, the Volvo SC60. Volvo markets and sells its Volvo 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.

43. In addition, on information and belief, Volvo has actively induced and is actively inducing others, such as Volvo's customers, to directly infringe the '680 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, Volvo and/or its distributors or representatives have sold or otherwise provided Volvo automobiles with sound systems—including at least, for example, the Volvo SC60—to third parties, such as Volvo's customers. Volvo's customers, on information and belief, have directly infringed and are directly infringing the '680 patent. Moreover, Volvo specifically intends for and encourages its customers to use technology in violation of the '680 patent. For example, by marketing and selling its automobiles with sound systems that are able to pair with a portable electronic device, such as an MP3 player or cell phone, Volvo has

encouraged and is encouraging its customers to use its automobiles with sound systems and, thus, to directly infringe the '680 patent.

44. Furthermore, on information and belief, Volvo has also contributed to and is contributing to direct infringement of the '680 patent by third parties, such as Volvo'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, Volvo has contributed to and is contributing to infringement of the '680 patent by selling its customers Volvo automobiles with sound systems that are able to pair with a portable electronic device, such as an MP3 player or cell phone, including at least, for example, the Volvo SC60—the use of which by Volvo's customers has directly infringed and is directly infringing the '680 patent.

45. Volvo does not have a license or permission to use the claimed subject matter in the '680 patent.

46. Affinity Labs has been injured and has been caused significant financial damage as a direct and proximate result of Volvo's infringement of the '680 patent.

47. Volvo will continue to infringe the '680 patent, and thus cause irreparable injury and damage to Affinity Labs unless enjoined by this Court.

48. Affinity Labs is entitled to recover from Volvo the damages sustained by Affinity Labs as a result of Volvo'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 Volvo has infringed and is infringing the '191 and '680 patents and is liable to Affinity Labs for infringement;
2. An order enjoining Volvo from infringing the '191 and '680 patents;
3. 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;
4. An award of damages, including pre-judgment and post-judgment interest, in an amount adequate to compensate Affinity Labs for Volvo's infringement of the '191 and '680 patents, and that the damages be trebled pursuant to 35 U.S.C. § 284;
5. An equitable accounting of damages owed by Volvo for the period of infringement of the '191 and '680 patents, following the period of damages established by Affinity Labs at trial;
6. A finding that this case is exceptional and an award of attorneys' fees pursuant to 35 U.S.C. § 285;
7. An award of costs, expenses, and disbursements; and
8. Such other and further relief as the Court deems Affinity Labs may be entitled to in law and equity.

Respectfully submitted,

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