

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION

AFFINITY LABS OF TEXAS, LLC,

Plaintiff,

v.

FORD MOTOR COMPANY,

Defendant.

NO. WA:13-CV-363 (LEAD)

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AFFINITY LABS OF TEXAS, LLC,

Plaintiff,

v.

TOYOTA MOTOR NORTH AMERICA  
INC, et al.,

Defendants.

NO: WA:13-CV-365  
(CONSOLIDATED)

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AFFINITY LABS OF TEXAS, LLC,

Plaintiff,

v.

VOLVO CARS OF NORTH AMERICA,  
LLC and AB VOLVO,

Defendants.

NO: WA:13-CV-366  
(CONSOLIDATED)

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AFFINITY LABS OF TEXAS, LLC,

Plaintiff,

v.

HONDA NORTH AMERICA, INC., et al.,

Defendants.

NO: WA:13-CV-367  
(CONSOLIDATED)

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AFFINITY LABS OF TEXAS, LLC,

Plaintiff,

v.

JAGUAR LAND ROVER NORTH  
AMERICA,

Defendant.

NO: WA:13-CV-368  
(CONSOLIDATED)

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AFFINITY LABS OF TEXAS, LLC,

Plaintiff,

v.

NISSAN NORTH AMERICA INC., and  
NISSAN MOTOR CO., LTD.,

Defendants.

NO: WA:13-CV-369  
(CONSOLIDATED)

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AFFINITY LABS OF TEXAS, LLC,

Plaintiff,

v.

GENERAL MOTORS LLC,

Defendant.

NO: WA:13-CV-370  
(CONSOLIDATED)

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**PLAINTIFF’S AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Affinity Labs of Texas, LLC (“Affinity Labs”) for its causes of action against Defendants, Toyota Motor North America, Inc., Toyota Motor Corporation, Toyota Motor Sales USA, Inc., Gulf States Toyota, Inc., and Toyota Motor Manufacturing Texas, Inc. (collectively,

“Toyota” and/or “Defendants”), 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 Toyota Motor North America, Inc. is a California corporation with its principal place of business located at 601 Lexington Ave., 49th Fl., New York, New York 10022. On information and belief, Toyota Motor North America, Inc. is authorized to do business in Texas.

3. On information and belief, Defendant Toyota Motor Sales, U.S.A., Inc. is a California corporation with its principal place of business at 19001 South Western Avenue, Torrance, CA 90501. On information and belief, Toyota Motor Sales, U.S.A., Inc. does business in the state of Texas, and maintains a regular place of business in this state or a designated agent for service of process in this state.

4. On information and belief, Defendant Toyota Motor Corporation is a Japanese corporation with its principal place of business at 1, Toyota-cho, Toyota City, Aichi Prefecture 471-8571, Japan.

5. On information and belief, Defendant Gulf States Toyota, Inc. is a Texas corporation with its principal place of business at 1375 Enclave Parkway, Houston, Texas 77077.

6. On information and belief, Defendant Toyota Motor Manufacturing, Texas Inc. is a Texas corporation with its principal place of business at 1 Lone Star Pass, San Antonio, Texas 78264.

**JURISDICTION**

7. 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.

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

### **VENUE**

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

10. Venue in the Western District of Texas is further proper because Toyota has been authorized to do business in the State of Texas by the Texas Secretary of State. Furthermore, Toyota maintains a registered agent for service of process in Texas. Moreover,

Toyota has a website, [www.toyotainaction.net/us/tx](http://www.toyotainaction.net/us/tx), which highlights Toyota's connections to the state of Texas, which include 96 Toyota dealerships in Texas as well as 17,926 jobs created by Toyota in Texas.

11. Venue in the Western District of Texas is further proper because Toyota sells Toyota-branded automobiles in Texas, including in the Western District of Texas, through authorized dealers. Clicking on "Find a Dealer" from Toyota's <http://www.toyota.com> website directs such inquiries to a list of Toyota-named automobile dealerships, including some in the Western District of Texas, such as AutoNation Toyota South Austin in Austin, Texas and Charles Maund Toyota, in Austin, Texas. Consumers can view listings of Toyota automobiles for sale on the dealerships' respective websites.

12. Venue in the Western District of Texas is further proper because Toyota Motor Manufacturing Texas, Inc. is headquartered in this District in San Antonio, Texas, and employs at least 2,300 people in this District.

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

14. 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.

15. 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.

16. 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**

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

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

19. 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.

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

21. 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”).

22. The ’812 application broadly 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.

23. 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.

24. Mr. White and Mr. Imes made this disclosure in the '812 application over a year before the iPod was released in October 2001, approximately 3 years before the iTunes Store sold its first song, 7 years before the first iPhone was sold, 8 years before the App Store was launched, and 8 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. This same connective functionality did not become available on Android phones until more than 9 years after Mr. White and Mr. Imes filed the '812 application.

25. 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.

26. 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.

27. 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."

28. 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.

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

**COUNT I**

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

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

31. In violation of 35 U.S.C. § 271, Toyota 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, in violation of 35 § 271(a); and/or (2) inducing infringement of one or more claims of the '191 patent, in violation of 35 U.S.C. § 271(b). In particular, Toyota infringes one or more claims of the '191 patent directly and indirectly, literally and under the doctrine of equivalents, and by inducement by (1) manufacture, use, marketing of, sale, offer for sale, and/or importation of Toyota automobiles with sound systems, including at least the Toyota Tundra; and (2) using Toyota automobiles with sound systems, including at least the Toyota Tundra, as part of the audio system and methods claimed in the '191 patent.

32. Toyota directly infringes one or more claims of the '191 patent at least by making, using, selling and offering to sell Toyota automobiles with sound systems, including at least the Toyota Tundra. Toyota markets and sells its Toyota 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.



33. Toyota markets and sells Toyota automobiles containing a Bluetooth compliant communication module supplied by BLU Logic.

34. Toyota has had actual knowledge of the '191 patent since at least the service of the original complaint in this action.

35. Toyota has and continues to indirectly infringe one or more claims of the '191 patent by inducing others (e.g., its customers and end-users) to directly infringe the '191 patent in this District and elsewhere in the United States in violation of 35 U.S.C. § 271(b) since at least the service of the original complaint in this action.

36. Through its website, user manuals, advertising, and sales personnel, Toyota markets and promotes the use of Toyota automobiles with sound systems that are able to pair with a portable electronic device, such as an MP3 player or cell phone, including the Toyota Tundra, which infringe the '191 patent when they are used as Toyota intends by its customers and end-users. Toyota further instructs its customers and end-users how to use such products in a manner that infringes the '191 patent claims. As an example, through its website located at <http://www.toyota.com/connect>, Toyota instructs downstream customers concerning the use of its automobile sound systems that are able to pair with a portable electronic device, such as an MP3 player or cell phone, which infringes claims of the '191 patent. (*See* Exhibits A, C). Toyota also instructs its customers and end-users to infringe the '191 patent claims through the products themselves, for example, through on-screen instructions, intuitive user interfaces, and command prompts. Not by way of limitation, Toyota specifically instructs its customers and end-users regarding use of Bluetooth wireless technology to create a direct connection between their portable electronic device and the automobile sound system, including for the purposes of streaming content and playing music on their automobile sound system. Toyota induces this

direct infringement by advertising and instructing its customers and end-users to use its automobile sound systems, including at least the sound system in the Toyota Tundra, in a manner which infringes claims of the '191 patent, as set forth in the claim chart attached as Exhibit C and incorporated herein. (*See* Exhibits A, C).

37. On information and belief, even though Toyota has been aware of the '191 patent since at least the service of the original complaint in this action, and aware that its customers and end-users infringe the '191 patent, Toyota has not made any changes, to date, to the functionality, operations, marketing, advertising, sales, technical support, etc. of such products to avoid infringing the '191 patent. (*See* Exhibits A, C).

38. As such, Toyota continues to specifically intend for and encourage its customers and end-users to use its products in a manner that directly infringes the claims of the '191 patent.

39. Toyota's actions of, *inter alia*, making, importing, using, offering for sale, and/or selling such products constitutes infringement of the '191 patent, which was duly issued by the United States Patent and Trademark Office and is presumed valid. Toyota has been aware since at least service of the original complaint that its actions constitute infringement of the '191 patent, and that the '191 patent is valid. Despite Toyota's knowledge, on information and belief, Toyota has not made any changes, to date, to the functionality, operations, marketing, advertising, sales, or technical support for the relevant operation of its accused products, and has not provided its users and/or customers with instructions on how to avoid infringement of the '191 patent. Instead, Toyota has continued to, and still is continuing to, make, use, offer for sale, and/or sell accused products that when used as Toyota specifically instructs and intends, practice claims of the '191 patent. (*See* Exhibits A, C).

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

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

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

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

## **COUNT II**

### **Infringement of U.S. Patent No. 8,588,680 by Toyota**

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

45. In violation of 35 U.S.C. § 271, Toyota 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, in violation of 35 § 271(a); and/or (2) inducing infringement of one or more claims of the '680 patent, in violation of 35 U.S.C. § 271(b). In particular, Toyota infringes one or more claims of the '680 patent directly and indirectly, literally and under the doctrine of equivalents, and by inducement by (1) manufacture, use, marketing of, sale, offer for sale, and/or importation of Toyota automobiles with sound systems, including at least the Toyota Tundra; and (2) using Toyota automobiles with sound systems, including at least the Toyota Tundra, as part of the audio system and methods claimed in the '680 patent.

46. Toyota directly infringes one or more claims of the '680 patent at least by making, using, selling and offering to sell Toyota automobiles with sound systems, including at least the Toyota Tundra. Toyota markets and sells its Toyota 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.

47. Toyota markets and sells Toyota automobiles containing a Bluetooth compliant communication module supplied by BLU Logic.

48. Toyota has had actual knowledge of the '680 patent since at least the service of the original complaint in this action.

49. Toyota has and continues to indirectly infringe one or more claims of the '680 patent by inducing others (e.g., its customers and end-users) to directly infringe the '680 patent in this District and elsewhere in the United States in violation of 35 U.S.C. § 271(b) since at least the service of the original complaint in this action.

50. Through its website, user manuals, advertising, and sales personnel, Toyota markets and promotes the use of Toyota automobiles with sound systems that are able to pair with a portable electronic device, such as an MP3 player or cell phone, including the Toyota Tundra, which infringe the '680 patent when they are used as Toyota intends by its customers and end-users. Toyota further instructs its customers and end-users how to use such products in a manner that infringes the '680 patent claims. As an example, through its website <http://www.toyota.com/connect>, Toyota instructs downstream customers concerning the use of its automobile sound systems that are able to pair with a portable electronic device, such as an MP3 player or cell phone, which infringes claims of the '680 patent. (*See* Exhibits B, D).

51. Toyota also instructs its customers and end-users to infringe the '680 patent claims through the products themselves, for example, through on-screen instructions, intuitive user interfaces, and command prompts. Not by way of limitation, Toyota specifically instructs its customers and end-users regarding use of Bluetooth wireless technology to create a direct connection between their portable electronic device and the automobile sound system, including for the purposes of streaming content, and playing music on their automobile sound system. Toyota induces this direct infringement by advertising and instructing its customers and end-users to use its automobile sound systems, including at least the sound system in the Toyota Tundra, in a manner which infringes claims of the '680 patent, as set forth in the claim chart attached as Exhibit D and incorporated herein. (*See* Exhibits B, D).

52. On information and belief, even though Toyota has been aware of the '680 patent since at least the service of the original complaint in this action, and aware that its customers and end-users infringe the '680 patent, Toyota has not made any changes, to date, to the functionality, operations, marketing, advertising, sales, technical support, etc. of its products to avoid infringing the '680 patent. (*See* Exhibits B, D).

53. As such, Toyota continues to specifically intend for and encourage its customers and end-users to use its products in a manner that directly infringes the claims of the '680 patent.

54. Toyota's actions of, *inter alia*, making, importing, using, offering for sale, and/or selling such products constitutes infringement of the '680 patent, which was duly issued by the United States Patent and Trademark Office and is presumed valid. Toyota has been aware since at least the service of the original complaint that its actions constitute infringement of the '680 patent, and that the '680 patent is valid. Despite Toyota's knowledge, on information and belief, Toyota has not made any changes, to date, to the functionality, operations, marketing,

advertising, sales, or technical support for the relevant operation of its accused products, and has not provided its users and/or customers with instructions on how to avoid infringement of the '680 patent. Instead, Toyota has continued to, and still is continuing to, make, use, offer for sale, and/or sell accused products that when used as Toyota specifically instructs or intends, practice claims of the '680 patent

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

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

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

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

#### **DEMAND FOR TRIAL BY JURY**

59. 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 Toyota has infringed and is infringing the '191 and '680 patents and is liable to Affinity Labs for infringement;
2. An order enjoining Toyota from infringing the '191 patent 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 Toyota'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 Toyota 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.

Dated: May 23, 2014

Respectfully submitted,

By: /s/ David Henry

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