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pro hac vice admission applications to be filed

Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

55 BRAKE, L.L.C.,)
)
Plaintiff,)
)
v.)
)
AUDI OF AMERICA, INC.; BMW OF)
NORTH AMERICA, L.L.C.; CHRYSLER,)
L.L.C.; DAIMLER NORTH AMERICA)
CORPORATION; FORD MOTOR)
COMPANY; HYUNDAI MOTOR)
AMERICA; LAND ROVER NORTH)
AMERICA, INC.; MAZDA MOTOR OF)
AMERICA, INC.; MERCEDES-BENZ)
USA, L.L.C.; TOYOTA MOTOR SALES,)
U.S.A., INC.; VOLKSWAGEN OF)
AMERICA, INC.; and VOLVO CARS OF)
NORTH AMERICA, INC.,)
)
Defendants.)
_____)

Case No. CV 08-177-S-____

**COMPLAINT AND DEMAND
FOR JURY TRIAL**

Plaintiff, 55 Brake, L.L.C. (“Plaintiff”), brings this action against Defendants Audi of America, Inc. (“Audi”), BMW of North America, L.L.C. (“BMW”), Chrysler L.L.C. (“Chrysler”), Daimler North America Corporation (“Daimler”), Ford Motor Company (“Ford”),

Hyundai Motor America (“Hyundai”), Land Rover North America, Inc. (“Land Rover”), Mazda Motor of America, Inc. (“Mazda”), Mercedes-Benz USA, LLC (“Mercedes”), Toyota Motor Sales, U.S.A., Inc. (“Toyota”), Volkswagen of America, Inc. (“Volkswagen”), and Volvo Cars of North America, Inc. (“Volvo”) (herein, collectively, “Defendants”) and for its cause of action alleges:

THE PARTIES

1. Plaintiff is a limited liability company organized and existing under the laws of the State of Idaho, with its principal place of business in Cascade, Idaho.

2. Upon information and belief, Audi is a corporation organized and existing under the laws of the State of New Jersey, with its principal place of business at 3800 Hamlin Road, Auburn Hills, Michigan 48326. Audi may be served with process by serving its Executive Vice President, Johan de Nysschen, at 3800 Hamlin Road, Auburn Hills Michigan 48326.

3. Upon information and belief, BMW is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business at 300 Chestnut Ridge Road, Woodcliff Lake, New Jersey 07767. BMW may be served with process by serving its Idaho registered agent, CT Corporation System, at 1111 W. Jefferson Suite 530 Boise, Idaho 83702.

4. Upon information and belief, Chrysler is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business at 1000 Chrysler Drive, Auburn Hills, Michigan 48326-2766. Chrysler may be served with process by serving its Idaho registered agent, CT Corporation System, 1111 W. Jefferson Suite 530, Boise, Idaho 83702.

5. Upon information and belief, Daimler is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 1000 Chrysler Drive, Auburn Hills, Michigan 48326-2766. Daimler may be served with process by serving its Idaho registered agent, CT Corporation System, 1111 W. Jefferson Suite 530, Boise, Idaho 83702.

6. Upon information and belief, Ford is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 1 American Road, Dearborn, Michigan 48126-2798. Ford may be served with process by serving its Idaho registered agent, CT Corporation System, 1111 W. Jefferson Suite 530, Boise, Idaho 83702.

7. Upon information and belief, Hyundai is a corporation organized and existing under the laws of the State of California, with its principal place of business at 10550 Talbert Avenue, Fountain Valley, California 92708-6031. Hyundai may be served with process by serving its Idaho registered agent, National Registered Agents, Inc., 512 W. Bannock Street, Boise, Idaho 83702-5760.

8. Upon information and belief, Land Rover is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at One Premier Place, Irvine, California 92618. Land Rover may be served with process by serving its Chief Executive Officer, Michael O'Driscoll, at One Premier Place, Irvine, California 92618.

9. Upon information and belief, Mazda is a corporation organized and existing under the laws of the State of California, with its principal place of business at 7755 Irvine Center Drive, Irvine, California 92623. Mazda may be served with process by serving its President, James J. O'Sullivan, at 7755 Irvine Center Drive, Irvine, California 92623.

10. Upon information and belief, Mercedes is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business at One Mercedes Drive, Montvale, New Jersey, 07645. Mercedes may be served with process by serving its Idaho registered agent, CT Corporation System, at 1111 W. Jefferson Suite 530, Boise, Idaho 83702.

11. Upon information and belief, Toyota is a corporation organized and existing under the laws of the State of California, with its principal place of business at 19001 S. Western Avenue, Torrance, California 90501. Toyota may be served with process by serving its Idaho registered agent, Prentice-Hall Corp System, at 1404 Shoreline Drive, Suite 2, Boise, Idaho 83702.

12. Upon information and belief, Volkswagen is a corporation organized and existing under the laws of the State of New Jersey, with its principal place of business at 3800 Hamlin Road, Auburn Hills, Michigan 48326. Volkswagen may be served with process by serving its Idaho registered agent, CT Corporation System, at 1111 E. Jefferson, Suite 530, Boise, Idaho 83702.

13. Upon information and belief, Volvo is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 7 Volvo Drive, Rockleigh, New Jersey 07647. Volvo may be served with process by serving its President, Mark Le Neve at 20 Denise Drive, Kinnelon, New Jersey 07405.

THE PATENT

14. On September 17, 2002, United States Patent No. 6,450,587, entitled “Vehicle Brake Safety System Apparatus and Methods” was duly and legally issued (the “‘587 patent”). A true and correct copy of the ‘587 patent is attached as Exhibit A.

15. Pursuant to 35 U.S.C. § 282, the '587 patent is presumed valid.
16. Plaintiff is the owner of the entire right, title, and interest in the '587 Patent.

JURISDICTION AND VENUE

17. This action arises under the patent laws of the United States, Title 35 United States Code, particularly §§ 271 and 281. This Court has jurisdiction over the claim for patent infringement under 28 U.S.C. § 1338(a). Venue is proper in this Court under Title 28 United States Code §§ 1391(b) and (c) and 1400(b).

18. Audi, upon information and belief, transacts business in this district by using, selling or offering to sell products as described and claimed in the '587 patent and/or by conducting other business in this judicial district sufficient to render it subject to jurisdiction in this district.

19. BMW, upon information and belief, transacts business in this district by using, selling or offering to sell products as described and claimed in the '587 patent and/or by conducting other business in this judicial district sufficient to render it subject to jurisdiction in this district.

20. Chrysler, upon information and belief, transacts business in this district by using, selling or offering to sell products as described and claimed in the '587 patent and/or by conducting other business in this judicial district sufficient to render it subject to jurisdiction in this district.

21. Daimler, upon information and belief, transacts business in this district by using, selling or offering to sell products as described and claimed in the '587 patent and/or by conducting other business in this judicial district sufficient to render it subject to jurisdiction in this district.

22. Ford, upon information and belief, transacts business in this district by using, selling or offering to sell products as described and claimed in the '587 patent and/or by conducting other business in this judicial district sufficient to render it subject to jurisdiction in this district.

23. Hyundai, upon information and belief, transacts business in this district by using, selling or offering to sell products as described and claimed in the '587 patent and/or by conducting other business in this judicial district sufficient to render it subject to jurisdiction in this district.

24. Land Rover, upon information and belief, transacts business in this district by using, selling or offering to sell products as described and claimed in the '587 patent and/or by conducting other business in this judicial district sufficient to render it subject to jurisdiction in this district.

25. Mazda, upon information and belief, transacts business in this district by using, selling or offering to sell products as described and claimed in the '587 patent and/or by conducting other business in this judicial district sufficient to render it subject to jurisdiction in this district.

26. Mercedes, upon information and belief, transacts business in this district by using, selling or offering to sell products as described and claimed in the '587 patent and/or by conducting other business in this judicial district sufficient to render it subject to jurisdiction in this district.

27. Toyota, upon information and belief, transacts business in this district by using, selling or offering to sell products as described and claimed in the '587 patent and/or by

conducting other business in this judicial district sufficient to render it subject to jurisdiction in this district.

28. Volkswagen, upon information and belief, transacts business in this district by using, selling or offering to sell products as described and claimed in the '587 patent and/or by conducting other business in this judicial district sufficient to render it subject to jurisdiction in this district.

29. Volvo, upon information and belief, transacts business in this district by using, selling or offering to sell products as described and claimed in the '587 patent and/or by conducting other business in this judicial district sufficient to render it subject to jurisdiction in this district.

PATENT INFRINGEMENT COUNT

30. Plaintiff realleges and incorporates by reference paragraphs 1 through 29.

31. Audi, on information and belief, makes, uses, sells, or offers to sell products that infringe claims of the '587 patent, including at least claim 7, and/or also claim 8, 9, 13, 20, 21, 26, 27, 33, or 40, including for example and without limitation the electronic parking brake system on the 2006 Audi A6 and 2005 Audi A8 models, as well as any other electric parking brake system used in additional Audi vehicles as described and claimed in the '587 patent.

32. BMW, on information and belief, makes, uses, sells, or offers to sell products that infringe at least claim 7, and/or also claim 8, 9, 13, 20, 21, 26, 27, 33, or 40 of the '587 patent, including for example and without limitation the electronic parking brake system on the 2004 BMW 745Li model, 2007 BMW 750 Li, 2007 750i 4 and the 2007 760 Li-4 models, as well as any other electric parking brake system used in additional BMW vehicles as described and claimed in the '587 patent.

33. Chrysler, on information and belief, makes, uses, sells, or offers to sell products that infringe at least claim 7, and/or claim 8, 9, 13, 20, 21, 26, 27, 33, or 40 of the '587 patent, including for example and without limitation the electronic parking brake system on the 2002 Dodge Grand Caravan EX model, as well as any other electric parking brake system used in additional Chrysler vehicles as described and claimed in the '587 patent.

34. Daimler, on information and belief, makes, uses, sells or offers to sell products that infringe at least claim 7, and/or claim 8, 9, 13, 20, 21, 26, 27, 33, or 40 of the '587 patent, including for example and without limitation the electronic parking brake system on the 2006 and 2007 S Class Mercedes models, as well as any other electric parking brake system used in additional Daimler vehicles as described and claimed in the '587 patent.

35. Ford, on information and belief, makes, uses, sells, or offers to sells products that infringe at least claim 7, and/or claim 8, 9, 13, 20, 21, 26, 27, 33, or 40 of the '587 patent, including for example and without limitation the electronic parking brake system on the 2004 Lincoln LS series, 2007 Lexus LS 460 series, 2007 Ford Focus C-MAX , 2008 Jaguar XK Coupe, 2008 XK Convertible, 2008 XKR Coupe, 2008 XKR Convertible, 2008 Jaguar S-Type, 2008 Jaguar Super V8, 2008 Jaguar XJ, 2008 Jaguar XF, 2008 Range Rover, and the 2006 Volvo S80 series models, as well as any other electric parking brake system used in additional Ford vehicles as described and claimed in the '587 patent.

36. Hyundai, on information and belief, makes, uses, sells, or offers to sell products that infringe at least claim 7, and/or claim 8, 9, 13, 20, 21, 26, 27, 33, or 40 of the '587 patent, including for example and without limitation the electronic parking brake system on the 2008 Genesis Sports Sedan, as well as any other electric parking brake system used in additional Hyundai vehicles as described and claimed in the '587 patent.

37. Land Rover, on information and belief, makes, uses, sells, or offers to sell products that infringe at least claim 7, and/or claim 8, 9, 13, 20, 21, 26, 27, 33, or 40 of the '587 patent, including for example and without limitation the electronic parking brake system on the 2008 Range Rover, as well as any other electric parking brake system used in additional Land Rover vehicles as described and claimed in the '587 patent.

38. Mazda, on information and belief, makes, uses, sells, or offers to sell products that infringe at least claim 7, and/or claim 8, 9, 13, 20, 21, 26, 27, 33, or 40 of the '587 patent, including for example and without limitation the electronic parking brake system on the 2003 Mazda Washu, as well as any other electric parking brake system used in additional Mazda vehicles as described and claimed in the '587 patent.

39. Mercedes, on information and belief, makes, uses, sells, or offers to sell products that infringe at least claim 7, and/or claim 8, 9, 13, 20, 21, 26, 27, 33, or 40 of the '587 patent, including for example and without limitation the electronic parking brake system on the 2006 and 2007 S Class Mercedes and the 2007 Mercedes-Benz CL600 Base, as well as any other electric parking brake system used in additional Mercedes vehicles as described and claimed in the '587 patent.

40. Toyota, on information and belief, makes, uses, sells, or offers to sell products that infringe at least claim 7, and/or claim 8, 9, 13, 20, 21, 26, 27, 33, or 40 of the '587 patent, including for example and without limitation the 2006 Toyota Prius and 2007 Lexus LS 460 models, as well as any other electric parking brake system used in additional Toyota vehicles as described and claimed in the '587 patent.

41. Volkswagen, on information and belief, makes, uses, sells, or offers to sell products that infringe at least claim 7, and/or claim 8, 9, 13, 20, 21, 26, 27, 33, or 40 of the '587

patent, including for example and without limitation the 2006 Jetta, VW Passat, 2006 Audi A6, and 2005 Audi A8 models, as well as any other electric parking brake system used in additional Volkswagen vehicles as described and claimed in the '587 patent.

42. Volvo, on information and belief, makes, uses, sells, or offers to sell products that infringe at least claim 7, and/or claim 8, 9, 13, 20, 21, 26, 27, 33, or 40 of the '587 patent, including for example and without limitation the 2006 Volvo S80 Series, as well as any other electric parking brake system used in additional Volvo vehicles as described and claimed in the '587 patent.

43. By so making, using, selling, and offering to sell the aforementioned products, Defendants have been and continue to infringe Plaintiff's rights in the '587 patent.

44. The infringement of the '587 patent alleged above has injured Plaintiff and thus, it is entitled to recover damages adequate to compensate for Defendants' infringement, which in no event can be less than a reasonable royalty.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for entry of judgment:

A. That Defendants, Audi, BMW, Chrysler, Daimler, Ford, Hyundai, Land Rover, Mazda, Mercedes, Toyota, Volkswagen, and Volvo, have infringed one or more claims of the '587 patent.

B. That Defendants, Audi, BMW, Chrysler, Daimler, Ford, Hyundai, Land Rover, Mazda, Mercedes, Toyota, Volkswagen, and Volvo, account for and pay to Plaintiff all damages caused by the infringement of the '587 patent, which by statute can be no less than a reasonable royalty;

- C. That Plaintiff be granted pre-judgment and post-judgment interest on the damages caused to it by reason of Defendants, Audi, BMW, Chrysler, Daimler, Ford, Hyundai, Land Rover, Mazda, Mercedes, Toyota, Volkswagen, and Volvo's infringement of the '587 patent;
- D. That Plaintiff be granted its attorneys' fees in this action;
- E. That costs be awarded to Plaintiff;
- F. That Plaintiff be granted such other and further relief that is just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on all claims and issues so triable.

DATED this 21st th day of April, 2008.

Respectfully submitted,

/Frank J. Dykas/

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