

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

DELAWARE RADIO TECHNOLOGIES,
LLC and WYNCOMM, LLC,

Plaintiffs,

v.

TESLA MOTORS, INC.,

Defendant.

Civil Action No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Delaware Radio Technologies, LLC and Wyncomm, LLC (“Plaintiffs”), by way of this Complaint for Patent Infringement (“Complaint”) against Tesla Motors, Inc. (“Defendant” or “Tesla”), allege as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*

THE PARTIES

2. Plaintiff Delaware Radio Technologies, LLC (“Delaware Radio”) is a limited liability company organized under the laws of the State of Delaware with a place of business at 1209 Orange Street, Wilmington, Delaware 19801.

3. Plaintiff Wyncomm, LLC (“Wyncomm”) is a limited liability company organized under the laws of the State of Delaware with a place of business at 113 Barksdale Professional Center, Newark, Delaware 19711.

4. Upon information and belief, Defendant, is a corporation organized under the laws of Delaware, with its principal place of business at 3500 Deer Creek Road, Palo Alto, California, 94304, and a registered agent at The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware, 19801.

JURISDICTION AND VENUE

5. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 271, *et seq.*

6. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a).

7. This Court has personal jurisdiction over Defendant at least because Defendant has ongoing and systematic contacts with this District and the United States. Specifically, Defendant is a corporation organized under the laws of Delaware, has a registered agent for service of process in Delaware, and has thereby availed itself of the privileges and the protections of the laws of the State of Delaware. Defendant sells and/or offers to sell products and/or services throughout the United States, including in this Judicial District. Further, Defendant introduces infringing products and/or services into the stream of commerce knowing that they would be sold in this Judicial District and elsewhere in the United States.

8. Venue is proper in this District under 28 U.S.C. §§ 1400 (b) and 1391.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 5,506,866

9. The allegations set forth in the foregoing paragraphs 1 through 8 are hereby realleged and incorporated herein by reference.

10. On April 9, 1996, U.S. Patent No. 5,506,866 (the “866 Patent”), entitled “Side-Channel Communications in Simultaneous Voice and Data Transmission,” was duly and legally

issued by the United States Patent and Trademark Office. A true and correct copy of the '866 Patent is attached as Exhibit A to this Complaint.

11. Wyncomm is the owner of any and all right, title, and interest in and to the patent excluding the field of HD Radio and any related technology.

12. Delaware Radio is the exclusive licensee of the '866 Patent in the field of HD Radio, including the exclusive right to assert all causes of action arising under said patent in the field of HD Radio and any related technology and the right to any remedies for infringement of it.

13. In violation of 35 U.S.C. § 271, Defendant, including its affiliates, has directly infringed and continues to directly infringe, both literally and under the doctrine of equivalents, one or more claims of the '866 Patent by, without limitation, making, using, importing, selling and/or offering for sale automobiles, including but not limited to the Tesla Model S, equipped to receive HD Radio broadcasts further described in the IBOC Digital Radio Broadcasting Standard (the "Accused Instrumentalities").

14. Because of Defendant's infringement of the '866 Patent, Plaintiffs have suffered damages and will continue to suffer damages in the future.

15. Defendant will be deemed to have knowledge of the '866 Patent and its infringement thereof at least as of the filing date of this Complaint.

COUNT II – INFRINGEMENT OF U.S. PATENT NO. 5,642,379

16. The allegations set forth in the foregoing paragraphs 1 through 15 are hereby realleged and incorporated herein by reference.

17. On June 24, 1997, U.S. Patent No. 5,642,379 (the "'379 Patent"), entitled "Technique for Modulating Orthogonal Signals with One or More Analog or Digital Signals,"

was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the '379 Patent is attached as Exhibit B to this Complaint.

18. Delaware Radio is the assignee and owner of the right, title and interest in and to the '379 Patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

19. In violation of 35 U.S.C. § 271(a), Defendant, including its affiliates, has directly infringed and continues to directly infringe, both literally and under the doctrine of equivalents, one or more claims of the '379 Patent by, without limitation, making, using, importing, selling and/or offering for sale automobiles, including but not limited to the Accused Instrumentalities, equipped to receive HD Radio broadcasts further described in the IBOC Digital Radio Broadcasting Standard.

20. Because of Defendant's infringement of the '379 Patent, Plaintiff Delaware Radio Technologies, LLC have suffered damages and will continue to suffer damages in the future.

21. Defendant will be deemed to have knowledge of the '379 Patent and its infringement thereof at least as of the filing date of this Complaint.

22. At least as of the filing of this Complaint, in violation of 35 U.S.C. § 271(b), Defendant, including its affiliates and dealerships, is, on information and belief, inducing infringement, both literally and under the doctrine of equivalents, of one or more claims of the '379 Patent by, without limitation, making, using, importing, selling and/or offering for sale automobiles, including but not limited to the Accused Instrumentalities, equipped to receive HD Radio broadcasts further described in the IBOC Digital Radio Broadcasting Standard for use by its customers and others. Upon information and belief, Defendant's customers and others have infringed and are continuing to infringe the '379 Patent.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment for themselves and against Defendant as follows:

- A. An adjudication that Defendant has infringed the '866 and '379 Patents;
- B. An award of damages to be paid by Defendant adequate to compensate Plaintiffs for its past infringement of the '866 and '379 Patents, and any continuing or future infringement through the date such judgment is entered, including interest, costs, and expenses;
- C. An accounting of all infringing acts including, but not limited to, those acts not presented at trial and an award for Plaintiffs' damages for any such acts;
- D. A declaration that this case is exceptional under 35 U.S.C. § 285, and an award of Plaintiffs' reasonable attorneys' fees; and
- E. An award to Plaintiffs of such further relief at law or in equity as the Court deems just and proper.

Dated: November 20, 2013

Respectfully submitted,

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