

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

AUTOMOTIVE BODY PARTS ASSOCIATION,	§	
	§	CIVIL ACTION NO.
Plaintiff,	§	
v.	§	
	§	
FORD GLOBAL TECHNOLOGIES, LLC,	§	
	§	A JURY IS DEMANDED
Defendant.	§	

COMPLAINT FOR DECLARATORY JUDGMENT

Automotive Body Parts Association for its Complaint for Declaratory Judgment against Ford Global Technologies, LLC, states and alleges as follows:

I. PARTIES

1. Plaintiff Automotive Body Parts Association (hereinafter "ABPA") is a non-profit corporation organized and existing under the laws of the State of Texas with a principal office in Houston, Texas. Members of the ABPA are doing business in this judicial district.

2. On information and belief, Ford Global Technologies, LLC (hereinafter Ford Global Technologies), is a corporation organized and existing under the laws of the State of Delaware with a principal office and principal place of business at 30600 Telegraph Road, Suite 2345, Bingham Farms, Michigan 48025. On information and belief, Ford Global Technologies is a wholly owned subsidiary of Ford Motor Company and manages intellectual property and technology commercialization matters for Ford Motor Company. On information and belief, Ford Global Technologies has not designated an agent for service of process in Texas and therefore may be served with process by serving the Texas Secretary of State via certified mail, return receipt requested, at the following address: Service of Process, Secretary of State, P.O. Box 12079, Austin, Texas 78711-2079.

II. JURISDICTION AND VENUE

3. This Complaint arises under the Patent Laws of the United States, 35 U.S.C. § 100 et seq. and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, based upon an actual controversy between the parties to declare that certain design patents owned by Ford Global Technologies are invalid and unenforceable under the doctrines of patent exhaustion and functionality and are not infringed by members of the ABPA.

4. This Court has original jurisdiction over the subject matter of these claims pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over Ford Global Technologies due to Ford Global Technologies' continuous and systematic business contacts with the state of Texas, including conducting of substantial and regular business in Texas through marketing and sales of automobiles and automotive body repair parts in Texas including but not limited to automotive body repair parts that are the subject of Ford Global Technologies' asserted design patents. Further, Ford Global Technologies has threatened to sue one or more members of the ABPA for alleged design patent infringement for selling in this judicial district automotive body repair parts allegedly covered by design patents owned by Ford Global Technologies.

6. Venue is proper in this District under 28 U.S.C. §§ 1391 (b), (c), (d) and 1400 (b).

III. ASSOCIATIONAL STANDING

7. ABPA members distribute aftermarket repair parts in the automotive collision repair trade. The ABPA has associational standing to bring this action because (a) its members otherwise would have standing to sue in their own right, (b) the interests this action seeks to protect are germane to the ABPA's purpose, and (c) neither the claim asserted nor the relief requested requires the participation of individual ABPA members in the lawsuit.

8. Ford Global Technologies has threatened to sue one or more ABPA members for alleged design patent infringement for selling automotive body repair parts allegedly covered by design patents owned by Ford Global Technologies. Therefore, ABPA members otherwise would have standing to sue Ford Global Technologies for a declaratory judgment of patent invalidity, patent unenforceability, and patent non-infringement in their own right.

9. The ABPA bylaws provide in relevant part that objectives of the ABPA are "[t]o promote fair and honorable trade practices between the membership and the customers of the membership of the Association," "[t]o discourage unfair competition and violation of business customs and usages of the trade," "[t]o creatively expand the role to the Distributor and to open up new business opportunities and services to the independent autobody shops and dealers," and "[t]o foster good will between the industry, its factory suppliers, customers, and other industries influencing industry growth (i.e., the insurance industry)."

10. The ABPA website provides in relevant part that "members of ABPA are dedicated to serving the collision repair industry with Quality Replacement Parts, backed by Dependable Service and Fair Prices" and "ABPA members are pledged to supporting the multifaceted collision repair industry by not only delivering quality products where and when needed, but also by making the entire parts delivery system more expedient and economically viable."

11. Ford Global Technologies uses design patents on automotive body repair parts to limit distribution and increase cost of the repair parts. This action seeks a declaration that such automotive body repair part design patents are invalid and/or unenforceable under the doctrines of patent exhaustion and/or functionality and are not infringed by ABPA members. Therefore, the interests this action seeks to protect are germane to the ABPA's purpose.

12. This declaratory judgment action seeks declarative and injunctive relief concerning the validity, enforceability, and non-infringement of Ford Global Technologies' design patents directed toward automotive body repair parts. Therefore, neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

IV. BACKGROUND

13. Ford Global Technologies is the assignee of certain U.S. design patents directed toward automotive body repair parts. Ford Global Technologies has asserted in writing that one or more ABPA Members have and are infringing the following Ford Global Technologies design patents covering automotive body repair parts, one or more of which automotive body repair parts were sold by members of the ABPA in this judicial district: D489299 (Exterior of Vehicle Hood); D489657 (Vehicle Side View Mirror); D494517 (Vehicle Side View Mirror); D496890 (Vehicle Grill); D501685 (Vehicle Head Lamp); and D508223 (Fender).

14. The automotive body repair parts covered by the design patents listed above are duplicates of the automotive body parts originally sold with the first sale of the automobile of which they are or were a part. The designs of the automotive body repair parts covered by the design patents listed above are dictated by the function they perform in that, *inter alia*, they must be identical in appearance to the original automotive body parts to duplicate original automobile appearance following repair and/or must mate in a certain way with the surrounding portion of the automobile.

V. COUNT I. REQUEST FOR DECLARATORY JUDGMENT

15. ABPA repeats and realleges each of the allegations in paragraphs 1-14 as if fully set forth herein.

16. Ford Global Technologies has accused one or more ABPA members of infringing one or more of the above listed Ford Global Technologies' design patents covering automotive body repair parts. ABPA asserts that its members are not infringing Ford Global Technologies' design patents because, *inter alia*, the design patents are invalid and/or unenforceable under the doctrines of patent exhaustion and/or functionality.

17. There is an actual, substantial, immediate, and continuing controversy between members of the ABPA and Ford Global Technologies regarding Ford Global Technologies' assertion of their design patents covering automotive body repair parts and Ford Global Technologies' threats of design patent litigation against ABPA members. A declaration of rights is both necessary and appropriate to establish that ABPA members are not committing patent infringement by offering for sale and selling automotive body repair parts allegedly covered by Ford Global Technologies' design patents. This action seeks a declaration that such automotive repair part design patents are invalid and/or unenforceable under the doctrines of patent exhaustion and/or functionality and are not infringed by members of the ABPA.

18. ABPA Members are being injured by Ford Global Technologies' assertion of its design patents covering automotive body repair parts and Ford Global Technologies' threats of litigation against ABPA Members. Ford Global Technologies' assertions and threats have prevented one or more ABPA Members from purchasing and selling automotive repair parts for Ford Motor Company automobiles without threat of litigation from Ford Global Technologies. Ford Global Technologies' actions have deprived ABPA Members of the economic opportunity to compete in the marketplace for automotive body repair parts for Ford Motor Company automobiles and have improperly distorted the marketplace by decreasing the supply and increasing the cost of automotive body repair parts for Ford Motor Company automobiles.

19. The requested relief can redress the injury being suffered by ABPA members. A declaratory judgment of patent invalidity, patent unenforceability, and patent non-infringement regarding Ford Global Technologies' subject design patents and an injunction preventing Ford Global Technologies from enforcing such design patents will permit ABPA members to purchase, offer for sale, and sell automotive body repair parts for Ford Motor Company automobiles without the threat or potential consequences of design patent infringement litigation.

VI. PRAYER FOR JUDGMENT AND RELIEF

WHEREFORE, ABPA respectfully requests the Court enter judgment as follows:

- A. Declaring that the subject Ford Global Technologies' design patents directed toward automotive body repair parts are invalid, unenforceable, and not infringed by ABPA Members;
- B. Permanently enjoining Ford Global Technologies from enforcing or attempting to enforce the subject design patents directed toward automotive body repair parts against ABPA Members;
- C. An award of costs of suit to Plaintiff ABPA; and
- D. Such other and further relief as the Court deems proper and just.

VII. DEMAND FOR JURY TRIAL

Plaintiff ABPA, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, demands a trial by jury on all issues triable by right by a jury.

Respectfully submitted,

/s/ Robert G. Oake, Jr.
Robert G. Oake, Jr.
Texas State Bar No. 15154300
Oake Law Office
825 Market Street, Suite 250
Allen, Texas 75013
(214) 207-9066
rgo@oake.com

Attorney for Plaintiff ABPA

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

AUTOMOTIVE BODY PARTS ASSOCIATION

(b) County of Residence of First Listed Plaintiff HARRIS (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Robert G. Oake, Jr., Oake Law Office, 825 Market Street, Suite 250, Allen, Texas, 75013, (214) 207-9066.

DEFENDANTS

FORD GLOBAL TECHNOLOGIES, LLC

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 35 USC Sec. 100 et seq. and 28 USC Secs. 2201 and 2202. Brief description of cause: Request for Declaratory Judgment of patent invalidity, unenforceability, noninfringement and injunction

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ N/A CHECK YES only if demanded in complaint: JURY DEMAND: X Yes O No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

November 25, 2013 s/Robert G. Oake, Jr./

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

2:15-cv-10137-LJM-MJH Doc # 1-1 Filed 01/14/15 Pg 2 of 2 Pg ID 8
INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.