UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

VELOCITY PATENT LLC, Plaintiff, v. MERCEDES-BENZ USA, LLC; MERDECES-BENZ U.S. INTERNATIONAL, INC., Defendants.	))))))))))	 Case No. 13-cv-8413 Judge John W. Darrah
VELOCITY PATENT LLC, Plaintiff, v. FCA US LLC, Defendant.	)))))))))	 Case No. 13-cv-8419 Judge John W. Darrah
VELOCITY PATENT LLC, Plaintiff, v. AUDI OF AMERICA, INC., Defendant.	)))))))))	 Case No. 13-cv-8418 Judge John W. Darrah

MEMORANDUM OPINION AND ORDER

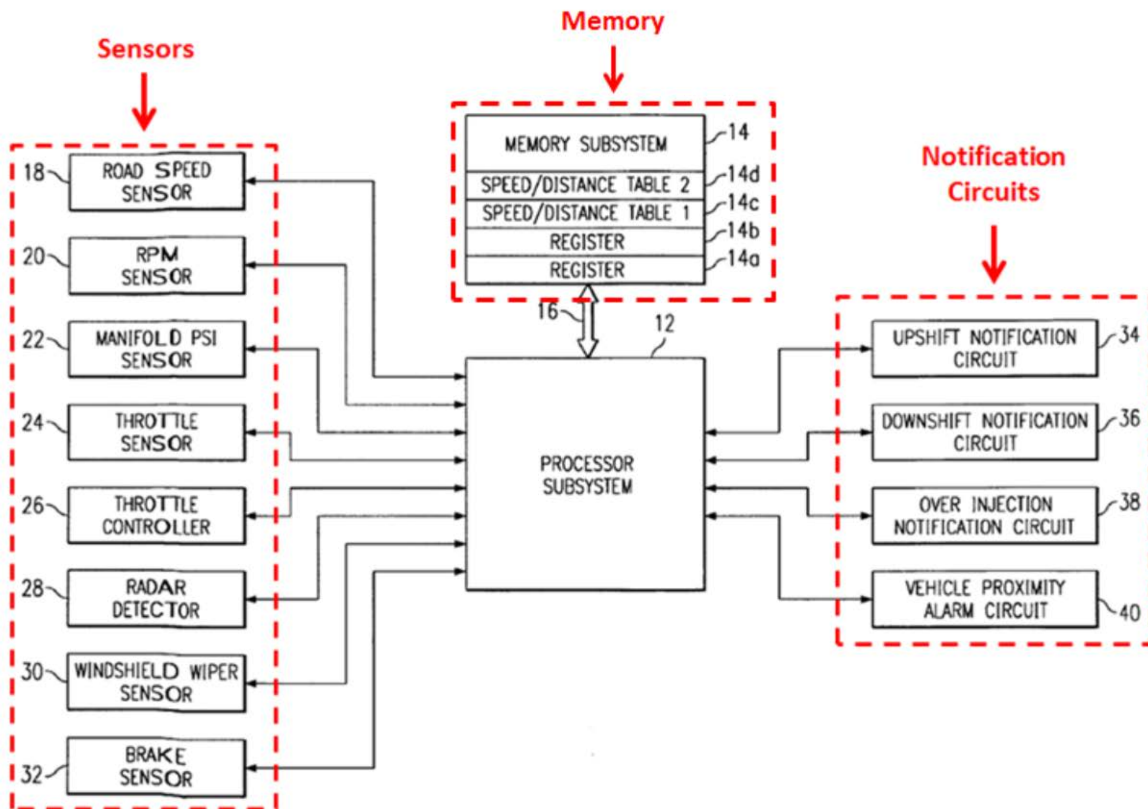
Plaintiff Velocity Patent, LLC ("Velocity") filed a Complaint against Defendants Mercedes-Benz USA, LLC and Mercedes-Benz U.S. International, Inc. and Amended Complaints against FCA US LLC and Audi of America, Inc., each alleging one count of infringement for several claims of U.S. Patent No. 5,954,781 ("the '781 Patent"). On

DOCKET ALARM
Find authenticated court documents without watermarks at docketalarm.com.

April 12, 2016, the Court held a claims-construction hearing, which included the argument of counsel for each party and the submissions of written summations by each party. The Court also considered the PowerPoint presentations presented by the parties at the hearing.

BACKGROUND

The '781 Patent was issued on September 21, 1999. The patent is entitled "METHOD AND APPARATUS FOR OPTIMIZING VEHICLE OPERATION" and describes a system that "notifies the driver of recommended corrections in vehicle operation and, under certain conditions, automatically initiates selected corrective action." ('781 Pat. at 1:7-10.) The patent generally claims several sensors, a memory subsystem, a processor subsystem, and notification circuits.



DOCKET ALARM
Find authenticated court documents without watermarks at docketalarm.com.

The notification circuits provide warnings to the driver that certain conditions are present. Velocity asserts Claims 1, 7, 13, 17-20, 28, 3-34, 40-42, 46, 53, 56, 58, 60, 64, 66, 69, 75-76, and 88 of the '781 Patent against Defendants.[1]

LEGAL STANDARD

Claim construction is a question of law. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 970 (Fed. Cir. 1995). Claim construction involves "determining the meaning and scope of the patent claims asserted to be infringed." *Id.* at 976. In construing the claim, the court does not "rewrite claims" but, rather, "give[s] effect to the terms chosen by the patentee." *K-2 Corp. v. Salomon S.A.*, 191 F.3d 1356, 1364 (Fed. Cir. 1999). The words of a claim are "generally given their ordinary and customary meaning," that is, "the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-13 (Fed. Cir. 2005) (citations omitted.)

In interpreting claims, "the court should look first to the intrinsic evidence of record, *i.e.*, the patent itself, including the claims, the specification and, if in evidence, the prosecution history." *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). The specification is "highly relevant to the claim construction analysis," is "usually . . . dispositive" and is "the single best guide to the meaning of a disputed term." *Id.* However, limitations from the specification describing embodiments must not be imported into a claim that does not recite those limitations. *Phillips*, 415 F.3d at 1323.

The court may also consider extrinsic evidence, such as expert testimony, dictionaries and learned treatises. *Markman*, 52 F.3d at 980. However, "[e]xtrinsic evidence is to be used for

[1] Claims 28, 41, and 88 are not asserted against Mercedes.

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

the court's understanding of the patent, not for the purpose of varying or contradicting the terms of the claims." *Id.* at 981.

ANALYSIS

"Fuel Overinjection Notification Circuit"

The parties dispute the proper construction of the term "fuel overinjection notification circuit . . . , said fuel overinjection notification circuit issuing a notification that excessive fuel is being supplied to said engine of said vehicle." This term is located in Claims 1, 7, 13, 17, 28, 60, 69, and 76. The following are the parties' proposed constructions:

Velocity's Proposed Construction	Defendants' Proposed Construction
A circuit that notifies a driver of a reduced fuel economy condition at the time of the condition.	**Mercedes/FCA**: The term "excessive fuel is being supplied to said engine" is indefinite. In the alternative, that term means "more fuel than is proper is being supplied to the engine." **Audi**: Indefinite

Indefiniteness

Defendants argue that this term is indefinite. A patent must "conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as [the] invention." 35 U.S.C. § 112, ¶ 2. A lack of definiteness renders the patent or any claim in suit invalid. 35 U.S.C. § 282, ¶ 2(3).1. "[A] patent is invalid for indefiniteness if its claims, read in light of the specification delineating the patent, and the prosecution history, fail to inform, with reasonable certainty, those skilled in the art about the scope of the invention." *Nautilus, Inc. v. Biosig Instruments, Inc.*, 134 S. Ct. 2120, 2124 (2014).

"Some modicum of uncertainty . . . is the 'price of ensuring the appropriate incentives for innovation.'" *Id.* at 2128 (quoting *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 535

DOCKET ALARM
Find authenticated court documents without watermarks at docketalarm.com.

U.S. 722, 732 (2002)). However, "a patent must be precise enough to afford clear notice of what is claimed, thereby appris[ing] the public of what is still open to them." *Id.* at 2129. "The properties and purpose of the invention, together with the examples provided by the specification, [must] apprise an ordinary-skilled artisan of the scope of the invention." *Delaware Display Grp. LLC v. Lenovo Grp. Ltd*, No. CA 13-2108-RGA, 2015 WL 6870031, at *6 (D. Del. Nov. 6, 2015). "[T]he burden of proving indefiniteness remains on the party challenging [the patent's] validity and that they must establish it by clear and convincing evidence." *Dow Chem. Co. v. Nova Chemicals Corp. (Canada)*, 809 F.3d 1223, 1227 (Fed. Cir. 2015).

Plaintiff argues that the "fuel overinjection notification circuit" does not contain a term of degree and is not indefinite because the claim provides for a notification. However, the notification is activated when "excessive fuel" is being supplied to the engine and "excessive fuel" is a term of degree. However, terms of degree are not "inherently indefinite." *Interval Licensing LLC v. AOL, Inc.*, 766 F.3d 1364, 1370 (Fed. Cir. 2014), *cert. denied*, 136 S. Ct. 59, 193 L. Ed. 2d 207 (2015). A term of degree provides insufficient notice of its scope if it depends "on the unpredictable vagaries of any one person's opinion." *Id.* at 1371 (citing *Datamize, LLC v. Plumtree Software, Inc.*, 417 F.3d 1342, 1350 (Fed. Cir. 2005)). In *Interval Licensing*, the patents described a system that selectively displayed generated images "in an unobtrusive manner that does not distract a user of the display device . . . ." *Interval Licensing LLC*, 766 F.3d 1364, 1368. The Federal Circuit found the claim term "unobtrusive manner" indefinite, referencing the term's highly subjective nature and its failure to provide guidance to one of skill in the art. *Id.* at 1371. Whether an image was obtrusive depended on the preferences of any particular viewer and the circumstances under which the

DOCKET ALARM
Find authenticated court documents without watermarks at docketalarm.com.

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.

WHAT WILL YOU BUILD? | **sales@docketalarm.com** | **1-866-77-FASTCASE**

fastcase®
Smarter legal research.