

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS**

VELOCITY PATENT LLC,

*Plaintiff,*

v.

MERCEDES-BENZ USA, LLC;  
MERCEDES-BENZ U.S.  
INTERNATIONAL, INC.

*Defendants.*

Civil Action No. 1:13-cv-08413

Hon. Thomas M. Durkin

VELOCITY PATENT LLC,

*Plaintiff,*

v.

FCA US LLC

*Defendants.*

Civil Action No. 1:13-cv-08419

Hon. Thomas M. Durkin

**JOINT STATUS REPORT**

Pursuant to the Court's Order of February 28, 2017, the parties submit the following joint status report in advance of the status hearing set for March 21, 2017.

## **I. Nature of the Case**

Plaintiff Velocity Patent LLC ("Velocity") instituted patent infringement actions asserting U.S. Patent No. 5,954,781 ("the '781 patent") against defendants in five separate cases. Velocity reached settlement agreements in three of the cases. Two cases – against Defendant FCA US LLC ("FCA") and against Defendants Mercedes-Benz USA, LLC and Mercedes-Benz U.S. International Inc. (together "Mercedes") – are still active.

Velocity seeks a finding of infringement of the '781 patent and an award of damages. Mercedes has filed counterclaims seeking a declaratory judgment of non-infringement of the '781 patent. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a). The attorneys-of-record for the remaining parties are the undersigned.

## **II. Proceedings to Date and Discovery**

Discovery commenced in February 2014.<sup>1</sup> The parties exchanged, among other things, initial disclosures and initial Infringement, Invalidity, Non-infringement, and Validity contentions. The cases were stayed by stipulation of the parties on September 16, 2014, pending reexamination proceedings filed by Audi (a defendant in one of the three settled cases) for the '781 patent. The USPTO issued a reexamination certificate on July 7, 2015 confirming validity of the asserted claims and allowing new claims. After the reexamination ended, Velocity submits that it voluntarily served updated LPR 2.2

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<sup>1</sup> Discovery was coordinated among the cases pursuant to Judge Darrah's Memorandum Opinion and Order of April 24, 2014. *E.g.*, Dkt No. 56 (Mercedes).

initial infringement contentions on Mercedes and FCA on October 2, 2015, addressing originally asserted claims and new claims granted during the reexamination.

Defendants then asserted that the patent claims were not infringed or were indefinite at least based on the claim term “a fuel overinjection notification circuit issuing a notification that excessive fuel is being supplied to the engine.” To streamline the case, the parties agreed in 2015 to continue the stay of fact discovery and address claim construction and dispositive motions before proceeding with the remainder of the case. Claim construction briefs were filed, and Defendants filed a dispositive motion urging that the term “a fuel overinjection notification circuit issuing a notification that excessive fuel is being supplied to the engine” was indefinite or not infringed. *E.g.*, Dkt No. 104-105 (Mercedes). Velocity cross-moved, urging that such term was infringed under any party’s construction. Dkt No. 111 (Mercedes); Dkt No. 88 (FCA).

On September 21, 2016, the Court issued a *Markman* order and its rulings on dispositive motions. Dkt Nos. 142-144 (Mercedes); Dkt Nos. 113-116 (FCA). Each Defendant’s motion for summary judgment of non-infringement and indefiniteness was denied on all counts. Dkt Nos. 143-144 (Mercedes); Dkt Nos. 115-116 (FCA). Velocity’s cross-motion for summary judgment of infringement was also denied on all counts. *Id.*

**Schedule:** There is currently no operative schedule for the pending cases. Fact discovery has not resumed since September 16, 2014. Defendants suggest that the Court set fact and expert discovery cut-off dates of August 28, 2017, and November 17, 2017, respectively. Velocity suggests fact and expert discovery cut-off dates of January 17, 2018 and June 20, 2018, respectively.

**Depositions:** Velocity expects it will require: 50 hours of fact deposition testimony of defendants per case; at least 20 hours of expert deposition testimony per case, depending on the number of experts that the defendants use; and 20-30 hours of deposition testimony of third parties identified by the defendants that possess discoverable information. Defendants expect that each party will take a 30(b)(6) deposition of Velocity and any other owners and assignees of the '781 patent (current and former), and also depose the inventor and prosecuting attorney of the '781 patent.

### **III. Pending Motions**

There are no pending motions in the case.

### **IV. Trial**

Velocity demands a jury trial. No trial date or date for a final pretrial order has been set. Defendants propose a trial date as early as February 2018; Velocity proposes October 2018. Velocity anticipates each trial will last between 10 and 14 days. Defendants anticipate each trial will last between 3 and 5 days.

### **V. Referrals and Settlement**

Discovery issues were previously referred to Magistrate Judge Michael T. Mason. The parties have not discussed consenting to having the magistrate judge conduct all further proceedings in the case. Velocity and Mercedes have agreed to mediate. Velocity prefers that Judge Durkin or, alternatively, Magistrate Judge Mason or another Magistrate Judge act as the mediator. Mercedes prefers a private mediator under the circumstances, as Mercedes believes that this would save resources. FCA submits that mediation will not be productive.

Dated: March 15, 2017

Respectfully submitted,

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