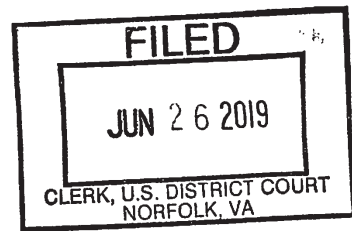


UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Norfolk Division



JAGUAR LAND ROVER LIMITED,

Plaintiff,

v.

Civil No. 2:18cv320

BENTLEY MOTORS LIMITED, and  
BENTLEY MOTORS, INC.,

Defendants.

OPINION AND ORDER

This matter is before the Court on a Motion to Dismiss filed by Defendants Bentley Motors Limited and Bentley Motors, Inc. (collectively "Defendants" or "Bentley"), pursuant to Federal Rule of Civil Procedure 12(b)(6). ECF No. 33. For the reasons stated below, Defendants' Motion to Dismiss is DENIED.

I. FACTUAL and PROCEDURAL HISTORY<sup>1</sup>

A. The Parties

Jaguar Land Rover Limited ("Plaintiff" or "Jaguar Land Rover" or "JLR") is a British corporation. Am. Compl., ECF No. 31 ¶ 1. Jaguar Land Rover manufactures four-wheel drive Sports Utility

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<sup>1</sup> A motion to dismiss under Rule 12(b)(6) is generally limited to a review of the allegations in the complaint itself. Goines v. Valley Cmty. Servs. Bd., 822 F.3d 159, 165-66 (4th Cir. 2016). However, courts may consider documents that are attached to the complaint as exhibits. Fed. R. Civ. P. 10(c). Thus, the facts recited here are drawn from the Complaint and attached exhibits. They are assumed true only to decide the motion to dismiss. The facts stated here are not factual findings for any purpose other than consideration of the pending motion. See Erickson v. Pardus, 551 U.S. 89, 94 (2007) ("[W]hen ruling on a defendant's motion to dismiss, a judge must accept as true all of the factual allegations contained in the complaint.").

Vehicles ("SUVs") including the Jaguar F-Pace, Land Rover Discovery Sport, Land Rover Discovery, Range Rover Evoque, Range Rover Velar, Range Rover Sport, and The Range Rover. Id. ¶ 14. JLR's patented Terrain Response technology is included on these vehicles. Id. ¶ 15.

Defendant Bentley Motors Limited is a British corporation, id. ¶ 3, and Defendant Bentley Motors, Inc. is the U.S.-based sales company for and wholly-owned subsidiary of Bentley Motors Limited, id. ¶ 6. Defendant Bentley Motors, Inc. is incorporated in Delaware with its principal place of business in Virginia. Id. ¶ 4. Bentley designs, develops, manufactures and sells luxury motor vehicles. Id. ¶ 40.

#### B. The Patent

On May 8, 2018, the United States Patent and Trademark Office issued U.S. Patent No. RE46,828, titled "Vehicle Control." Id. ¶ 8; see also id., Ex. A ("the '828 patent"). Jaguar Land Rover's Terrain Response technology is embodied in the '828 patent. Id. ¶ 21. The '828 patent is a reissue of U.S. Patent No. 7,349,776. Id. ¶ 10; see also id., Ex. B ("the '776 patent"). JLR held all right, title, and interest in the '828 and '776 patents. Id. ¶¶ 9-10.

The '828 patent generally "relates to the control of vehicles, in particular to the coordinated control of a number of subsystems of a vehicle. . . . Various systems are known in which operation

of various subsystems of a vehicle can operate in different configuration modes so as to suit different conditions." '828 patent, col 1:14-20. Like other vehicle control systems, the '828 patent operates as follows: "the control of a number of the vehicle subsystems is coordinated by a central vehicle controller, which can be switched between a number of modes thereby controlling all of the subsystems in a coordinated way which is simple for the driver to control." Id., col 1:41-46. Other systems, however, "do[ ] not provide the driver with the ability to provide direct input regarding the surface terrain in an attempt to better select the appropriate subsystem configuration modes. This deficiency results in the less than optimal stability, handling, and safety performance of the vehicle." Id., col 1:52-57.

Specifically, the Terrain Response technology electronically controls various vehicle subsystems, including the engine, the transmission, the brakes, the traction control, the suspension and the steering, to operate in a manner that is suitable for driving on a particular off-road surface. Id. ¶ 16. The driver of the vehicle uses an input panel to select from several off-road driving surfaces including Grass/Gravel/Snow, Mud and Ruts, Sand, and Rocks. Id. Claim 18 recites:

A vehicle control system having a driver input for selecting a surface terrain, the vehicle control system arranged to control a plurality of vehicle subsystems each of which is operable in a plurality of subsystem configuration modes, wherein the vehicle control system

is operable in a plurality of driving modes in each of which it is arranged to select the subsystem configuration modes in a manner suitable for a respective surface terrain.

'828 patent, col 19:65-20:5.

The Terrain Response controller then instructs each of the subsystems to operate in a manner or mode that is suitable for driving on the selected surface. Am. Compl. ¶ 16.

Claims 19 and 20 recite:

A vehicle control system according to claim 18, wherein one of the plurality of vehicle subsystems is a suspension subsystem.

A vehicle control system according to claim 19, wherein the plurality of vehicle subsystems further comprise a steering subsystem, a brake subsystem, an engine management subsystem, and a transmission subsystem.

'828 patent, col 20:6-12. The technology also allows the driver to further adjust the operation of the subsystems. Am. Compl. ¶ 17. The claimed elements in combination is alleged to be implemented in an unconventional and non-trivial manner, and are not generic vehicle components, but a control system that is not standard and cannot be purchased off-the-shelf. Id. ¶ 32.

### C. Infringement

In 2016, Bentley launched its first SUV, the Bentayga, which is a direct competitor to JLR's Range Rover model. Id. The Bentayga has a Drive Dynamics system, which can be equipped with an "All Terrain Specification" that provides four off-road settings: "Snow, Ice & Wet Grass," "Dirt & Gravel," "Mud & Trail,"

and "Sand." Id. On information and belief, the off-road settings in the All Terrain Specification adjust various vehicle subsystems including the electronic stability-control system, traction-control system, engine, gearbox, and suspension settings to improve performance on different off-road driving surfaces. Id. ¶ 41.

The Amended Complaint alleges on information and belief, that Bentley knowingly copied the Terrain Response system installed on JLR's Range Rover. Id. ¶ 41. Bentley became aware of the '776 patent by at least February 5, 2016. Id. ¶ 11. On February 5, 2016, JLR sent a letter to Bentley stating that the Bentley Bentayga has a "Driver Assistance" system that infringed upon the '776 patent. Id. On or about February 5, 2018, representatives from JLR met with representatives from Bentley, and informed Bentley that JLR had received a Notice of Allowance for the '828 patent and expected it to be granted shortly. Id. ¶ 12. On May 24, 2018, JLR sent a letter to Bentley indicating that the '828 patent had issued on May 8, 2018, and reiterating that the Bentley Bentayga infringes upon JLR's patents. Id. ¶ 13.

Specifically, JLR asserts that Bentley has infringed upon at least claims 21, 41, and 46 of the '828 patent. Id. ¶ 50. Claim 21 recites:

A vehicle control system having a driver input device for selecting a driving surface, the vehicle control system arranged to control a plurality of vehicle

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