

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

ETHANOL BOOSTING SYSTEMS, LLC,
and MASSACHUSETTS INSTITUTE OF
TECHNOLOGY

Plaintiffs,

v.

FORD MOTOR COMPANY

Defendant.

Civil Action No. 19-cv-196-CFC

JURY TRIAL DEMANDED

ANSWER TO DEFENDANT’S COUNTERCLAIMS

Ethanol Boosting Systems, LLC (“EBS”) and the Massachusetts Institute of Technology (“MIT”) (collectively, “Plaintiffs”) submit the following Answer to the Counterclaims asserted by Ford Motor Company (“Ford” or “Defendant”):

THE PARTIES

1. Plaintiffs admit that Ford is a corporation organized under the laws of the State of Delaware and that Ford has alleged that its principal place of business is at One American Road, Dearborn, Michigan. Plaintiffs deny the remaining allegations in this paragraph.
2. Plaintiffs admit that EBS is a limited liability company organized under the laws of the State of Delaware with its principal place of business in Cambridge, Massachusetts. Plaintiffs deny the remaining allegations in this paragraph.
3. Admitted.

JURISDICTION AND VENUE

4. Plaintiffs admit that the Court has subject matter jurisdiction over Defendant’s Counterclaims to the extent they arise under 28 U.S.C. §§ 1331 and 1338. Plaintiffs deny the remaining allegations in this paragraph.

5. Plaintiffs admit that this Court has personal jurisdiction over them to the extent that the asserted Counterclaims relate to the allegations in Plaintiffs' Complaint. Plaintiffs deny the remaining allegations in this paragraph.

6. Admitted.

BACKGROUND OF THE ASSERTED PATENTS

7. Plaintiffs admit that EBS was incorporated in March 2005 and that it is the exclusive licensee of United States Patent No. 8,069,839; United States Patent No. 9,255,519; United States Patent No. 9,810,166; and United States Patent No. 10,138,826, which, for purposes of responding to Ford's allegations, Plaintiffs understand to be the "Asserted Patents." Plaintiffs deny the remaining allegations in this paragraph.

8. Plaintiffs admit that each of the Asserted Patents claims priority to and is a continuation of at least U.S. Patent Application No. 10/991,774, which was filed on November 18, 2004, and ultimately issued as U.S. Patent No. 7,314,033. Plaintiffs deny the remaining allegations in this paragraph.

9. Plaintiffs admit that Leslie Bromberg, Daniel Cohn, and John Heywood—whom, for the purposes of responding to Ford's allegations, Plaintiffs understand to be the "inventors"—through their patent attorneys, filed U.S. Patent Application No. 11/758,157 on June 5, 2007, and that it was a continuation in part of U.S. Patent Application No. 10/991,774, which ultimately issued as U.S. Patent No. 7,314,033. Plaintiffs deny the remaining allegations in this paragraph.

10. Plaintiffs admit that on May 13, 2010, the Patent Examiner issued a Non-Final Rejection of Claims 31-67 of U.S. Patent Application No. 11/758,157 under 35 U.S.C. § 102(b)

as being anticipated by Gray, Jr. (US 6,651,432 B1). Plaintiffs deny the remaining allegations in this paragraph.

11. Plaintiffs admit that on June 18, 2018, the Applicant filed an Amendment and Remarks, the contents of which speak for themselves, and that U.S. Patent No. 6,651,432—which, for purposes of responding to Ford’s allegations, Plaintiffs understand to be “Gray”—recites the use of direct and port injection. Plaintiffs deny the remaining allegations in this paragraph.

12. Plaintiffs admit that neither the inventors nor their attorneys disclosed U.S. Patent No. 6,651,432 during the prosecution of the applications that ultimately issued as the Asserted Patents. Plaintiffs otherwise lack knowledge or information sufficient to form a belief about the truth of this allegation and therefore deny it.

13. Plaintiffs admit that U.S. Patent Application No. 11/546,220 was filed on July 11, 2012 and was a continuation in part of U.S. Patent Application No. 10/991,774, which ultimately issued as U.S. Patent No. 7,314,033. Plaintiffs deny the remaining allegations in this paragraph.

14. Plaintiffs admit that on October 9, 2013, the Patent Examiner issued a Final Rejection of Claims 6, 8-30 of U.S. Patent Application No. 11/546,220 under 35 U.S.C. § 112(b) or 35 U.S.C. § 112 (Pre-AIA), ¶ 2, which speaks for itself. Plaintiffs deny the remaining allegations in this paragraph.

15. Denied.

16. Plaintiffs admit that on May 20, 2014, the United States Patent and Trademark Office issued a notice of abandonment for U.S. Patent Application No. 11/546,220. Plaintiffs deny the remaining allegations in this paragraph.

17. Admitted.

18. Plaintiffs admit that U.S. Patent Application No. 15/463,100 was a continuation of U.S. Patent Application No. 10/991,774, which ultimately issued as U.S. Patent No. 7,314,033, and other applications. Plaintiffs deny the remaining allegations in this paragraph.

19. Plaintiffs admit that on November 13, 2017, the Patent Examiner issued a Non-Final Rejection of Claims 32-67 of U.S. Patent Application 15/463,100 under 35 U.S.C. § 112(b) or 35 U.S.C. § 112 (Pre-AIA), ¶ 1, which speaks for itself. Plaintiffs deny the remaining allegations in this paragraph.

20. Plaintiffs admit that on May 18, 2018, the United States Patent and Trademark Office issued a notice of abandonment for U.S. Patent Application No. 15/463,100. Plaintiffs deny the remaining allegations in this paragraph.

21. Plaintiffs admit that during prosecution of the Asserted Patents the inventors and their patent attorneys—whom, for purposes of responding to Ford’s allegations, Plaintiffs understand to be “the Applicant”—disclosed Office Actions to the United States Patent and Trademark Office. Plaintiffs deny the remaining allegations in this paragraph.

22. Denied.

23. Denied.

RELATIONSHIP BETWEEN FORD AND MIT AND EBS

24. Plaintiffs admit that the statement “Ford Motor Company has been an innovator since it introduced the Model A in 1903” appears on the website for the Ford-MIT Alliance.

25. Plaintiffs admit that MIT and Ford established a Ford-MIT Alliance and that Ford has sponsored research conducted at MIT. Plaintiffs lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in this paragraph, and therefore deny them.

26. Plaintiffs admit that the Ford-MIT Alliance began in 1998, that MIT has stated that it is MIT's longest running industry alliance, and that Ford has contributed funds for research purposes. Plaintiffs deny the remaining allegations in this paragraph.

27. Plaintiffs admit that MIT has stated that the Ford-MIT Alliance has funded more than 150 projects. Plaintiffs deny the remaining allegations in this paragraph.

28. Plaintiffs admit that EBS was incorporated in March 2005 and that it is the exclusive licensee of the Asserted Patents. Plaintiffs deny the remaining allegations in this paragraph.

29. Admitted.

30. Plaintiffs admit that MIT owns each of the Asserted Patents, that members of Ford and MIT occasionally met to discuss issues related to the Ford-MIT Alliance, that a meeting among representatives from Ford and MIT occurred on March 30, 2015, and that this meeting occurred after Professor John Heywood's October 30, 2014 email to Ford. Plaintiffs deny the remaining allegations in this paragraph.

31. Plaintiffs admit that on March 30, 2015, a meeting occurred that included Maria Zuber, then and now the Vice President of Research at MIT, Ken Washington, and Ed Krause. Plaintiffs deny the remaining allegations in this paragraph.

32. Denied.

33. Plaintiffs admit that Professor Heywood corresponded with Ford after March 30, 2015. Plaintiffs deny the remaining allegations in this paragraph.

34. Admitted.

35. Admitted.

36. Denied.

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