

# CLIENT ALERTS

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## Butzel Long IP Bulletin

5.10.2017

### **BUTZEL LONG IP BULLETIN**

Strong intellectual property (“IP”) rights are the cornerstone of success for many companies looking to keep pace in today’s rapidly developing marketplace for new and advanced automotive technologies. Butzel Long works with automotive suppliers to help them navigate each phase of the IP lifecycle, from procuring rights all the way through enforcement campaigns in federal and state courts, and before the International Trade Commission. To keep our clients informed and up to date on what is happening in the world of IP, the Butzel Long IP Bulletin highlights recent patent, trademark and copyright news, issues and case law with special emphasis on the automotive industry. If you would like to receive more information about a particular case, issue or news item, or have any questions regarding our practice, please feel free to contact your Butzel Long attorney.

Items in this Bulletin:

- **NEW AUTOMOTIVE PATENT INFRINGEMENT COMPLAINTS**
- **MICHIGAN MAY BE SEEING MORE PATENT INFRINGEMENT CASES**
- **U.S. TRADE REP. SHINES SPOTLIGHT ON AUTOMOTIVE IP**

### **NEW PATENT INFRINGEMENT COMPLAINTS**

Patent owners filed infringement complaints in the last thirty days targeting a wide range of automotive products, including after-market wheels, windshield spray nozzles, retractable vehicle steps, power steering units, vehicle leveling assemblies, and heat exchangers in truck engine assemblies. We will monitor these cases for developments and update the list below as automotive-related patent cases arise.

- ***Serenitiva LLC v. Bridgestone Americas, Inc.*, Civ. Action No. 6:17-cv-00291 (E.D. Tex. May 10, 2017).** Serenitiva claims that

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Bridgestone Americas infringes U.S. Patent No. 6,865,268, titled “Dynamic, Real-Time Call Tracking for Web-Based Customer Relationship Management,” through its use of Freshdesk, Inc.’s customer support software (Serenitiva has separately sued Freshdesk for infringement). Serenitiva alleges that the Bridgestone infringes by using Freshdesk software to provide an on-line call ticket request form (e.g., e-mail ticketing) for creating and submitting a call ticket (e.g., ticket) for resolution. Serenitiva seeks reasonable royalty and other unspecified damages. Serenitiva’s complaint against Bridgestone is the twelfth infringement action filed by Serenitiva on this patent since November 2016. Each of Serenitiva’s prior cases were dismissed by agreement of the parties before the defendants’ answer was due.

- ***Lund Motion Products, Inc. v. Rev Wheel, LLC d/b/a/ DV8 Off-Road, Civ. Action No. 5:17-cv-00883 (C. D. Cal. May 8, 2017)***. Lund claims that Rev Wheel infringes three patents covering various aspects of a “Retractable Vehicle Step” (U.S. Patent Nos. 9,302,626; 9,561,751; and 8,157,277) by making, using, offering to sell, selling, and/or importing retractable vehicle steps such as the 2-door DV8 Electric Step and the 4-door DV8 Electric Step, including at the 2015 and 2016 Specialty Equipment Market Association (SEMA) trade show in Las Vegas, Nevada. Lund seeks a determination of infringement, a preliminary and permanent injunction against Rev Wheel, treble damages, and attorney’s fees.
- ***In re Certain Thermoplastic-Encapsulated Electric Motors, Components Thereof, and Products and Vehicles Containing Same, ITC Inv. No. 337-TA-1052 (U.S. Int’l Trade Comm. April 28, 2017)***. The U.S. International Trade Commission (“ITC”) instituted an investigation into the importation of certain electric motors or parts of electric motors encapsulated in a heat-resistant plastic body or a body with heat-resistant characteristics, which include motors used in various parts of automobiles (e.g., pumps in power steering units). The ITC initiated the investigation based on a March 21, 2017 complaint filed by Intellectual Ventures II LLC of Bellevue, WA, a non-practicing patent assertion entity. The complaint alleges violations of section 337 of the Tariff Act of 1930 in the importation into the United States and sale of vehicles and vehicle parts that infringe U.S. Patent Nos. 7,154,200; 7,067,944; 7,067,952; 7,683,509; and 7,928,348, and requests the USITC to issue a limited exclusion order and cease and desist orders. The respondents are: Aisin Seiki Co., Ltd., of Aichi, Japan; Aisin Holdings of America, Inc., of Seymour, IN; Aisin Technical Center of America, Inc., of Northville, MI; Aisin World Corporation of America, of Northville, MI; BMW, Denso, Honda, Mitsuba, Nidec Corp. of Japan and various Toyota Motors entities.
- ***Innovative Design Solutions, Inc. v. Days Corp. d/b/a/ Equalizer Systems, Civ. Action No. 3:17-cv-00327 (N.D. Ind. May 1, 2017)***. Michigan-based Innovative Design Solutions, Inc. (“IDS”) alleges ownership of United States Patent No. 6,584,385 B1 (“the ‘385 patent”) relating to a Vehicle Leveling Assembly. IDS accuses Days of infringing the ‘385 patent by making, using, offering to sell, and selling, or importing into the United States vehicle leveling assemblies embodying the patented device and/or practicing the patented method, including Defendant’s Auto-Level line of products as shown in Defendant’s internet advertising. IDS also claims that Days infringes by instructing others to calibrate their Auto-Level products according to the patented method, as shown in Days’ Auto-Level Operations Guide available for download on Defendant’s website. IDS seeks a preliminary and permanent injunction, treble damages for willful infringement, and attorney fees

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and costs.

- ***dlh Bowles, Inc. v. Dorman Products, Inc., Civ. Action No. 5:17-cv-00905-SL (N.D. Ohio April 28, 2017).***  
dlh Bowles accuses Dorman Products of selling an assortment of windshield nozzle products, including knock-off copies of dlh Bowles' products that infringe one or more claims of five U.S. patents relating to liquid spray nozzles used to apply wash liquid on windshields. dlh Bowles alleges that Dorman has been selling the accused products through various marketing and retail channels, including online stores, such as amazon.com, advanceautoparts.com, autoplicity.com, summitracing.com, partsgeek.com, walmart.com, and carid.com. dlh Bowles' complaint requests an award of damages, including lost profits, and attorney's fees.
- ***Bridgestone Brands, LLC, et al. v. Balkrishna Indus., Ltd. et al., Civ. Action No. 17-cv-00771 (M.D. Tenn. April 28, 2017).*** Bridgestone accuses defendants Balkrishna and BKT of making, selling and advertising a tire that copies and infringes Bridgestone's patented sidewall protector technology and patented tire tread design. Bridgestone claims that Balkrishna and related entities have offered for sale and sold the "LiftStar," "Farm Highway Special," and "Forestry Special" brand tires that infringe U.S. Patent No. 8,156,980, titled "Sidewall Protector Ribs," and U.S. Design Patent No. D612,800 for a "Tire Tread," as shown below. Bridgestone also accuses Balkrishna and BKT of trademark infringement, trademark counterfeiting and unfair competition based on Balkrishna's and BKT's use of Bridgestone's federally registered HIGHWAY SPECIAL and FORESTRY SPECIAL trademarks. Bridgestone seeks disgorgement of Balkrishna's profits and other damages for patent infringement, up to \$2M in additional damages for trademark counterfeiting, an injunction, and attorney's fees and costs.
- ***Modine Mfg., Co. v. Borg Warner, Inc., Civ. Action No. 17-cv-00467-UNA (D. Del. April 25, 2017).***  
Modine Manufacturing accuses Borg Warner of making, using, selling, offering for sale, and/or importing into the United States a heat exchanger that infringes United States Patent No. 8,794,299, titled "2-Pass heat exchanger including thermal expansion joints." Modine claims that the infringing heat exchangers are sold to Ford Motor Company ("Ford"), and are used as exhaust gas recirculation coolers in at least some of the engine assemblies of Ford's F-series pickup trucks. Modine alleges that BorgWarner is responsible for the manufacture, use, sale, offer for sale, or importation of at least the coolant housing and exhaust gas cores of the accused heat exchanger, as indicated by BorgWarner's U.S. Patent Application No. 2015/0260465, which depicts the coolant housing and exhaust gas cores of the exhaust gas recirculation cooler sold in Ford's F-series pickup trucks. Modine requests an award of damages, including lost profits.
- ***Chu v. Suzhou ZhongCheng New Energy Technology Co., Ltd., Civ. Action No. 17-cv-00206-RAJ-LRL (E.D. Va. April 12, 2017).*** Plaintiff Henry Chu designs stylish aftermarket automotive air compressor products and claims to own over fifty U.S. design patents. Chu accuses the Defendant of selling and offering to sell infringing products to third-party retailers and wholesalers in the United States, including retailers and wholesalers operating in the Commonwealth of Virginia. Chu claims that he and his patented designs are well-known throughout the aftermarket automotive air conditioning parts industry and that Defendant's accused products are identical or virtually identical copies of

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his patented designs. Chu seeks treble damages for willful infringement.

### MICHIGAN MAY BE SEEING MORE PATENT INFRINGEMENT CASES

In ***TC Heartland LLC v. Kraft Foods Group Brands LLC*, No. 16-341**, the U.S. Supreme Court is being asked to narrowly construe the broad patent venue statute that allows a patentee to bring suit in any state that has personal jurisdiction over the accused infringer. As currently interpreted by courts, this often means any state in which an accused infringer has sold a product or service, including forums such as the Eastern District of Texas, in which a disproportionate number of patent suits are filed daily.

According to a recent Lex Machina report, for the first quarter of 2017, the Eastern District of Texas was the top forum in the United States for numbers of patent cases filed, with 311 cases, followed by the District of Delaware (129 cases), the Central District of California (48 cases), the District of New Jersey (41 cases), and the Northern District of Illinois (35 cases). In all, these five jurisdictions accounted for approximately 60 percent of the patent infringement cases filed in the United States since the first quarter of 2017. In the Eastern District of Michigan, by contrast, nine such cases were filed during that time period. These numbers could drastically change, however, depending on the Court's *TC Heartland* decision.

If adopted, Petitioner's argument for restricting venue in patent infringement cases to a corporate defendant's place of incorporation could result in fewer overall filings by non-practicing entities ("NPEs"). NPEs account for the vast majority of all patent litigation filed in the United States and often file in jurisdictions where defendants have a very weak connection to the forum, thus making it harder and more expensive for defendants to challenge infringement.

As demand increases for advanced technologies in areas such as vehicle safety and autonomous control, we anticipate a corresponding increase in automotive industry patent litigation across the board, not just in Delaware and the Eastern District of Texas. While restricting venue to a defendant's state of incorporation could cut down on the overall number of NPE suits, it may increase the number of patent infringement suits filed in jurisdictions in which more companies are headquartered or incorporated, such as California, Delaware, and New York. We anticipate the Court's decision in mid-Summer and will provide a full update at that time.

### U.S. TRADE REP. SHINES SPOTLIGHT ON AUTOMOTIVE IP

**April 28, 2017**, Washington, D.C. – The Office of the United States Trade Representative (USTR) issued the 2017 Special 301 Report, reviewing global developments on trade and IP and identifying trading partners with harmful records on protection, enforcement, or market access for U.S. innovators and creators. The Report calls on U.S. trading partners to address IP-related trade barriers, with a special focus on the countries identified on the Watch List and Priority Watch List. According to the USTR, the Report "underscores the Administration's key trade priority of ensuring that U.S. owners of IP have full and fair opportunity to use and profit from their IP around the globe." The Special Report specifically references counterfeit automotive parts as a key area of concern. Click here to read the full report: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2017/april/ustr-releases-2017->

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If you would like more information about a particular case, issue or news item, or have any questions, please feel free to contact our team.

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