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IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

FRANK M. WEYER

Plaintiff,

v.

FORD MOTOR COMPANY, a Delaware Corporation,

Defendant.

Civil Action No. CV 04-08630 CBM(SHx)

PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION; DECLARATION OF FRANK M. WEYER; EXHIBITS 1 – 4

DATE: February 28, 2005
TIME: 10:00 AM
CRTM: 2

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PRE-TRIAL: Not Set
TRIAL: Not Set

JUDGE: Hon. Consuelo B. Marshall
Judge Presiding

Hon. Stephen J. Hillman
Magistrate Judge

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MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff Frank M. Weyer ("Weyer") hereby moves pursuant to FRCP 65 and 35 U.S.C. § 283 for a preliminary injunction against Defendant Ford Motor Company ("Ford") to preclude Ford's continued manufacture, offering for sale, and sale of 2005 model year Mustang automobiles with the "MyColor" instrument panel lighting feature.

I. INTRODUCTION

Weyer is the owner of United States Patent 5,975,728 issued on Nov. 2, 1999 for "Method and Apparatus for Providing User Selectable Multi-Color Automobile Instrument Panel Illumination" ("the '728 patent") (Exhibit 1). The '728 patent discloses and claims a novel automobile instrument panel illumination system that allows a user to adjust the color of an automobile's instrument panel lighting. In the past, each car came with a fixed color for its instrument panel lighting. Common colors of lighting used include white, green, orange and blue. To change the color of an individual's instrument panel lighting, the individual would have to buy a different car.

The invention of the '728 patent allows a car owner to vary the color of the car's instrument panel lighting. In one embodiment of the invention, red, green and blue light emitting diodes ("LED's") are provided to provide instrument panel lighting. A control system allows the user to vary the amount of electricity supplied to the LED's of each color. By doing so, the user can change the color of the instrument panel lighting to various mixtures of the LED's colors.

Shortly after the '728 patent issued in November 1999, Weyer mailed a copy of the '728 patent to Ford. In the letter, Weyer offered to sell rights to the '728 patent to Ford. Ford did not respond. (Weyer Decl., ¶4).

In or about October 2004, Ford began selling its new 2005 model year Ford Mustang. Ford advertised that the new Mustang would be available with an "industry

first" option that allows the user to select the color of the Mustang's instrument panel lighting. Ford calls this option the "MyColor" feature. (Exhibit 2). The MyColor feature uses the invention of the '728 patent.

As shown in the claim chart below, Ford's "MyColor" system clearly infringes claims 10, 12 and 17 of the '728 patent. In addition, Ford's statement that the MyColor "color-configurable instrument panel" is an "industry first" provides strong evidence of that the '728 patent is novel and, therefore, valid. Ford's unlawful use of the invention of the '728 patent is an unlawful appropriation of Weyer's exclusive patent rights, causing Plaintiff irreparable harm. Fords's conduct may not continue. A preliminary injunction is necessary to prevent further harm to Weyer.

II. ANALYSIS

The issuance of a preliminary injunction rests within the sound discretion of the trial court. Oakley, Inc. v. Sunglass Hut International, 316 F.3d 1331, 1338-1339 (Fed. Cir. 2003). The factors to be weighed are: (1) the moving party's likelihood of success on the merits; (2) irreparable harm if the injunction is not granted; (3) the balance of the hardships between the parties; and (4) any adverse impact on the public interest if the injunction were issued. Id. If the moving party proves there is a high likelihood of success, that party is entitled to a presumption of irreparable harm (because failure to do so would undermine the statutory grant of the exclusive right to keep others from making, using, selling, or offering to sell infringing products that accompanies the grant of a patent). See J Jack Guttman, Inc. v. Kopykake Enterprises, Inc., 302 F.3d 1352, 1356 (Fed. Cir. 2002); Bell & Howell Document Management Products Co. v. Altek Systems, 132 F.3d 701, 708 (Fed. Cir. 1998).

A. LIKELIHOOD OF SUCCESS ON THE MERITS

As demonstrated below, infringement is clear. Further, Ford itself admits that the patented invention invention is novel, an "industry first." Accordingly, Weyer has a very high likelihood of success on the merits.

1. Infringement Analysis

The first step in the infringement analysis is for the Court to construe the claims of the patent. Oakley, Inc., 316 F.3d at 1339. Once that is completed, the Court compares the construed claims to the accused infringing devices to determine the likelihood of infringement. Id. Infringement will be found where the claim elements, or their equivalent, are found in the accused devices. Id.

(a) Claim interpretation

The claims at issue in this preliminary injunction motion are claims 10, 12 and 17. Claims 10 and 12 are dependant claims that are dependant on claim 3. Claim 3, in turn, is dependent on claim 1. Accordingly, claims 10 and 12 contain all of the limitations of claims 1 and 3 as well as their own limitations. Claim 17 is dependant on claim 1, and contains all of the limitations of claim 1 as well as its own limitations. The claim chart below sets forth claims 1, 3, 10, 12 and 17. The references to column and line numbers identify portions of the '728 patent specification that provide support for the listed interpretations.

Claim 1	**Interpretation**
1. An automobile instrument panel illumination system comprising:	*A system for providing instrument panel illumination. (Col. 2, lines 55-57)*
a plurality of differently colored, electrically powered illumination sources	*A plurality of differently colored electrical light sources such as light bulbs and light emitting diodes ("LED's"). (Col. 3, lines 21-23; Col. 3, line 65 to Col. 4, line 4)*

disposed so as to provide illumination to a face of at least one instrument of an instrument panel,	*The light sources are mounted in any desired manner that allows light generated by the light sources to reach and provide illumination to the face of at least one of the instruments on the instrument panel. (Col. 3, lines 9-10; Col. 5, lines 11-12).*
each of said illumination sources providing a specific color of illumination to said face of said at least one instrument;	*Each of the light sources provides a specific color of illumination to an instrument face, such as, for example, red, green and blue. (Col. 3, line 64 - Col. 4, line 3)*
a color selection control system comprising electrical switches controlling an amount of electrical power delivered to said plurality of differently colored illumination sources allowing a user to select a desired color of illumination for said face of said at least one instrument by controlling said amount of electrical power delivered to said differently colored illumination sources.	*A control system including analog or digital electrical switches that allows a user to control the color of the illumination provided to the instrument's face by controlling the amount of electricity supplied to the respective differently colored light sources. (Col. 3, lines 39-55)*

Claim 3	Interpretation
3. The instrument panel illumination system of claim 1 wherein said illumination sources comprise a plurality of differently colored light sources disposed so as to provide illumination to said face of at least one instrument of said instrument panel.	*The light sources have a plurality of different colors, such as, for example, red, green and blue. (Col. 3, lines 64-67)*
Claim 10	**Interpretation**
10. The instrument panel illumination system of claim 3 wherein said light sources comprise red, green, and blue light sources.	*The light sources (light bulbs or LED's) include specifically red, green and blue light sources. (Col. 3, line 64 - Col 4, line 4)*
Claim 12	**Interpretation**
12. The instrument panel illumination system of claim 3 wherein said light sources comprise light emitting diodes.	*The red, green and blue light sources comprise LED's. (Col. 3, line 64 - Col 4, line 3)*
Claim 17	**Interpretation**
17. The instrument panel illumination system of claim 1 wherein said electrical switches of said color selection control system comprise digital circuit elements.	*The color selection control system uses digital circuits. (Col. 3, lines 51-55).*

(b) Element by element comparison

The following chart and analysis demonstrate that Ford's "MyColor" feature contains each and every element of claims 1, 3, 10, 12 and 17:

Claim 1	**Ford's "MyColor" Instrument Panel Lighting System**
1. An automobile instrument panel illumination system comprising:	*05 Mustang Sales Brochure, p. 16 (Exh.2): "And make sure you establish the proper mood with the industry's first available driver-configurable MyColor(tm) instrument-panel lighting that lets you choose from 125 colors."*
a plurality of differently colored, electrically powered illumination sources	*05 Mustang Owner's Manual, p.55 (Exh.3): "MyColor is user defined backlighting color. The backlighting colors are achieved through the blending of light from Red, Green and Blue LEDs."*
disposed so as to provide illumination to a face of at least one instrument of an instrument panel,	*05 Mustang Sales Brochure, p. 16 (Exh.2) (Showing instument panel faces illuminated with 10 different colors of lighting).*
each of said illumination sources providing a specific color of illumination to said face of said at least one instrument;	*05 Mustang Owner's Manual, p.55 (Exh.3): "MyColor is user defined backlighting color. The backlighting colors are achieved through the blending of light from Red, Green and Blue LEDs."*

a color selection control system comprising electrical switches controlling an amount of electrical power delivered to said plurality of differently colored illumination sources allowing a user to select a desired color of illumination for said face of said at least one instrument by controlling said amount of electrical power delivered to said differently colored illumination sources.	*05 Mustang Owner's Manual, p.55 (Exh.3): "To enter the MyColor adjust mode, hold RESET for 3 seconds at the Adjust menu, or press setup to scroll through the display colors again. When in the MyColor adjust mode, pressing RESET will step through the Red, Green, Blue and Exit options. Pressing SETUP will increment the proportion of the color being adjusted. Try many combinations and record your favorites. To Exit MyColor adjust hold RESET for 3 seconds when prompted. Pressing RESET for less than 3 seconds will cycle back through the color components."*
Claim 3	**Ford's "MyColor" Instrument Panel Lighting System**
3. The instrument panel illumination system of claim 1 wherein said illumination sources comprise a plurality of differently colored light sources disposed so as to provide illumination to said face of at least one instrument of said instrument panel.	*05 Mustang Owner's Manual, p.55 (Exh.3): "MyColor is user defined backlighting color. The backlighting colors are achieved through the blending of light from Red, Green and Blue LEDs."*

Claim 10	Ford's "MyColor" Instrument Panel Lighting System
10. The instrument panel illumination system of claim 3 wherein said light sources comprise red, green, and blue light sources.	*05 Mustang Owner's Manual, p.55 (Exh.3): "MyColor is user defined backlighting color. The backlighting colors are achieved through the blending of light from Red, Green and Blue LEDs."*
Claim 12	**Ford's "MyColor" Instrument Panel Lighting System**
12. The instrument panel illumination system of claim 3 wherein said light sources comprise light emitting diodes.	*05 Mustang Owner's Manual, p.55 (Exh.3): "MyColor is user defined backlighting color. The backlighting colors are achieved through the blending of light from Red, Green and Blue LEDs."*
Claim 17	**Ford's "MyColor" Instrument Panel Lighting System**
17. The instrument panel illumination system of claim 1 wherein said electrical switches of said color selection control system comprise digital circuit elements.	*05 Mustang Owner's Manual, p.55 (Exh.3): "To enter the MyColor adjust mode, hold RESET for 3 seconds at the Adjust menu, or press setup to scroll through the display colors again. When in the MyColor adjust mode, pressing RESET will step through the Red, Green, Blue and Exit options. Pressing SETUP will increment the proportion of the color being adjusted. Try many combinations and record your favorites.*

	To Exit MyColor adjust hold RESET for 3 seconds when prompted. Pressing RESET for less than 3 seconds will cycle back through the color components."

2. Validity Analysis

Having shown that infringement is clear, the burden shifts to Defendant to show "a substantial question concerning ... validity ... that [the party seeking the injunction] cannot prove lacks substantial merit". Oakley, Inc., 316 F.3d at 1339 – 1340. In attempting to meet that burden with respect to invalidity, the Defendant must show facts supporting invalidity by clear and convincing evidence. Id. ("[B]ecause an issued patent is presumed valid under 35 U.S.C. § 282, the evidentiary burden to show facts supporting a conclusion of invalidity is clear and convincing evidence"). The moving party, however, "retain[s] the burden of showing a reasonable likelihood that the attack on its patent's validity would fail". Id.

After Weyer informed Ford of this lawsuit, Ford's attorneys sent Weyer the most relevant prior art that Ford knew of, consisting of a number of U.S. and foreign patent publications. Several of these publications do not qualify as prior art, because they were published within a year of the filing date of the '728 patent and after the invention by Weyer of the invention of the '728 patent. 35 U.S.C. §102(a). (Weyer Decl., ¶3). Accordingly, they do not constitute prior art and cannot render the '728 patent invalid.

Of the remaining patent publications provided by Ford, only one is even marginally relevant, namely an European Patent Application owned by Fiat for a instrument panel lighting system in which a potentiometer is used to distribute electrical power between green and red lamps. (Exh. 4). Unlike the '728 patent, the Fiat patent application does not teach selectively adjusting the level of red, green and

blue LED's to achieve the user's desired illumination color. Nor does the Fiat patent application teach using digital control circuitry. Accordingly, the Fiat patent application does not teach the invention of the '728 patent and does not render the '728 patent invalid.

The invention of the '728 patent is novel and unobvious. Ford itself admits that the claimed invention is "the industry's first available driver configurable . . . instrument panel lighting". It is highly unlikely that Ford will be able to prove that prior art exists that renders the '728 patent invalid by "clear and convincing" evidence. Accordingly, Weyer is likely to succeed on the merits of his claim of patent infringement against Ford.

B. IRREPARABLE HARM

Having made a strong showing of infringement, Weyer is entitled to a presumption of irreparable harm. Jack Guttman, Inc., 302 F.3d at 1356. That presumption results from the fact that the grant of a patent gives the owner the exclusive right to preclude all others from making, using, selling, or offering for sale any infringing device. Bell & Howell, 132 F.3d at 708. Failure to acknowledge the irreparable harm that arises from a violation of that exclusive right would, therefore, undermine the statutory grant. See Id.

C. PUBLIC INTEREST

In balancing the above factors, the Court also considers if there is a critical public interest that would be adversely impacted if an injunction were to issue. Datascope Corp. v. Kontron Inc., 786 F.2d 398, 401 (Fed. Cir. 1986). Here, Weyer is unaware of any adverse impact on the public interest through the issuance of the injunction. Although the Ford "MyColor" option is apparently a popular option for 05 Mustang buyers, there will be no harm to customers if they cannot order the "MyColor" option – they will simply receive a car that, like all other cars in the world, has single color instrument panel illumination. To the contrary, the issuance of the

injunction would further the public interest in protecting the exclusive rights granted by the patent system, thereby fostering invention and innovation.

D. BALANCE OF HARDSHIPS

Ford is a very large corporation. It sells many products. The "MyColor" feature that is the subject of the requested injunction is only an option on one of Ford's vehicles. It is not required for the vehicle's operation, and the non-availability of the "MyColor" option should not significantly affect sales of Ford's vehicles as a whole. Therefore, an injunction against an optional feature that was introduced by Ford in late 2004 is not likely to cause any undue hardship. On the other hand, if Ford is allowed to continue to proceed in violation of Weyer's exclusive patent rights, Ford will detrimentally undermine Weyer's investment in time and effort in developing and protecting the patented technology. Thus, the balance of hardships factor weighs heavily in favor of Weyer.

III. CONCLUSION

Infringement by Ford's "MyColor" option of the '728 patent is clear. Ford has no reasonable validity defense. And, Ford's own sales documents confirm that Weyer's invention is revolutionary and novel, even today. There is no undue harm to to the public, and the balance of hardships weighs in Weyer's favor. A preliminary injunction must issue in this case.

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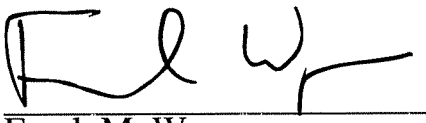
Dated: January 18, 2005 By: 

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