

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

VISION WORKS IP CORP.,

Plaintiff,

v.

SUBARU OF AMERICA, INC.,

Defendant.

Civil Action No. 1:24-cv-_____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff VISION WORKS IP CORP. (hereinafter, “Plaintiff” or “Vision Works”) files this Complaint for patent infringement against Defendant SUBARU OF AMERICA, INC. (hereinafter, “Subaru” or “Defendant”) alleging, based on its own knowledge as to itself and its own actions, and based on information and belief as to all other matters, as follows:

NATURE OF THE ACTION

1. This is a patent infringement action to stop Defendant’s infringement of the following United States Patents (collectively, the “Patents-in-Suit”) issued by the United States Patent and Trademark Office (“USPTO”):

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	U.S. Patent No.	Reference
1.	8,315,769	https://image-ppubs.uspto.gov/dirsearch-public/print/downloadPdf/8315769 https://patents.google.com/patent/US8315769B2/en?q=8%2c315%2c769
2.	8,437,935	https://image-ppubs.uspto.gov/dirsearch-public/print/downloadPdf/8437935 https://patents.google.com/patent/US8437935B2/en?q=8%2c437%2c935
3.	8,682,558	https://image-ppubs.uspto.gov/dirsearch-public/print/downloadPdf/8682558 https://patents.google.com/patent/US8682558B2/en?q=8%2c682%2c558
4.	8,954,251	https://image-ppubs.uspto.gov/dirsearch-public/print/downloadPdf/8954251 https://patents.google.com/patent/US8954251B2/en?q=8%2c954%2c251
5.	9,830,821	https://image-ppubs.uspto.gov/dirsearch-public/print/downloadPdf/9830821 https://patents.google.com/patent/US9830821B2/en?q=9%2c830%2c821
6.	10,436,125	https://image-ppubs.uspto.gov/dirsearch-public/print/downloadPdf/10436125 https://patents.google.com/patent/US10436125B2/en?q=10%2c436%2c125

2. Plaintiff seeks monetary damages and injunctive relief.

PARTIES

3. Vision Works is a corporation organized and existing under the laws of the State of Washington and maintains its principal place of business at 202 Mineral Road N., Mineral, Washington, 98355 (Lewis County).

4. Based upon public information, Subaru is a corporation organized under the laws of the State of New Jersey since January 19, 1977.

5. Based upon public information, Subaru has its principal place of business at One Subaru Drive, Camden, New Jersey, 08103-3308.

6. Based upon public information, Subaru may be served through its registered agent, C T Corporation System, located at 289 South Culver Street, Lawrenceville, Georgia, 30046-4805.

JURISDICTION AND VENUE

7. Plaintiff repeats and re-alleges the allegations in the Paragraphs above as though fully set forth in their entirety.

8. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. §§ 271, 281, 283, 284, and 285. This Court has subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 1331 and 1338(a).

9. Subaru is subject to this Court's specific and general personal jurisdiction under due process because of its substantial business in this Judicial District, in the State of Georgia, and in the United States, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, or deriving substantial revenue from goods and services provided to individuals in this state, in this District,

and in the United States.

10. Specifically, Subaru intends to do and does business in, has committed acts of infringement in, and continues to commit acts of infringement in this District, in the State of Georgia, and in the United States, directly, through intermediaries, by contributing to and through the inducement of third parties, and offers and sends its products and services, including those accused of infringement here, to customers and potential customers located in this state, including in this District, and in the United States.

11. More specifically, Subaru directly and/or through its intermediaries, ships, distributes, makes, uses, imports, offers for sale, sells, and/or advertises its products and services in the United States, the State of Georgia, and in this District, such as:

- Subaru maintains a regional distribution center in Douglasville, Georgia and a field office in Atlanta, Georgia, and imports vehicles through the port of Savannah, Georgia¹; and
- Subaru offers its vehicles for sale at a network of dealers in New Georgia.²

12. On information and belief, Subaru has significant ties to, and presence in, the State of Georgia and this District, making venue in this Judicial District both proper and convenient for this action.

¹ <https://www.subaru.com/about/our-company.html> (last visited February 29, 2024)

² <https://www.subaru.com/find/a-retailer.html?zipCode=30307> (last visited February 29, 2024)

13. Therefore, venue is proper in this District pursuant to 28 U.S.C. §1400(b).

THE ACCUSED PRODUCTS

14. Based upon public information, Defendant owns, operates, advertises, and/or controls the website www.subaru.com through which it advertises, sells, offers to sell, provides and/or educates customers about its products.³

15. Defendant offers at least the following products (hereinafter, the “Accused Products”) that infringe one or more claims of at least one of the Patents-in-Suit:

- Subaru Vehicle Dynamics Control (VDC) system;
- Subaru Auto Start Stop technology;
- Subaru MySubaru App; and
- Subaru EyeSight Driver Assist Technology.

COUNT I: INFRINGEMENT OF U.S. PATENT NO. 8,315,769

16. Plaintiff re-alleges and incorporates by reference each of paragraphs 1-15 above as though fully set forth in their entirety.

17. U.S. Patent No. 8,315,769 (the “’769 patent”) was issued on November 20, 2012 after full and fair examination by the USPTO of Application No. 13/302,965 which was filed on November 22, 2011. The ’769 patent is entitled

³ See <https://www.subaru.com/index.html> (last visited February 29, 2024).

“Absolute Acceleration Sensor For Use Within Moving Vehicles.” *See* ’769 patent at p. 1.

18. The claims of the ’769 patent are not directed to an abstract idea and are not limited to well-understood, routine, or conventional activity. Rather, the claimed inventions include inventive components that control a vehicle’s performance by continuously updating the suspension of a vehicle for optimum performance based on the lateral acceleration of the vehicle’s body when cornering.

19. The written description of the ’769 patent describes in technical detail each limitation of the claims, allowing a skilled artisan to understand the scope of the claims and how the non-conventional and non-generic combination of claim limitations is patently distinct from and improved upon what may have been considered conventional or generic in the art at the time of the invention.

20. Vision Works owns all substantial rights, interest, and title in and to the ’769 patent, including the sole and exclusive right to prosecute this action and enforce it against infringers and to collect damages for all relevant times.

21. Vision Works or its predecessors-in-interest have satisfied all statutory obligations required to collect pre-filing damages for the full period allowed by law for infringement of the ’769 patent.

22. Based upon public information, Plaintiff is informed and believes that Defendant has infringed one or more claims of the ’769 patent, either literally or

under the doctrine of equivalents, because it ships, distributes, makes, uses, imports, offers for sale, sells, and/or advertises the Subaru Vehicle Dynamics Control system (the “VDC system”).

23. Upon information and belief, the VDC system meets each and every step of at least Claim 21 of the ’769 Patent, either literally or equivalently.

24. Based upon public information, Defendant’s provision of the VDC system has infringed, and continues to infringe, one or more claims of the ’769 Patent, including Claim 21 because the VDC system provides a method for controlling the performance characteristics of a vehicle by sensing its lateral acceleration at the vehicle, sending a signal to a plurality of control devices based upon the vehicle’s lateral acceleration, and adjusting a suspension characteristic of the vehicle based upon the lateral acceleration of the vehicle.

25. Based upon public information, Defendant’s customers use the VDC system in such a way that infringes one or more claims of the ’769 patent.

26. To the extent that Defendant is not the only direct infringer of one or more claims of the ’769 patent, it instructs its customers on how to use the VDC system in ways that infringe said claims through its support and sales activities.⁴

27. Based upon public information, Defendant specifically intends its

⁴ See <https://www.subaru.com/about/company-news/subaru-announces-pricing-on-the-all-new-2022-WRX.html> (last visited February 29, 2024); <https://www.subaru.com/vehicle-info/articles/what-is-subaru-x-mode.html> (last visited February 29, 2024)

customers to use its products and services in such a way that infringes one or more claims of the '769 patent by, at a minimum, providing and supporting the VDC system and instructing its customers on how to use them in an infringing manner, at least through information available on Defendant's website including information brochures, promotional material, and contact information.⁵

28. Based upon public information, Defendant has intentionally induced, and continues to induce, infringement of one or more claims of the '769 patent in this District and elsewhere in the United States, by its intentional acts which have successfully, among other things, encouraged, instructed, enabled, and otherwise caused Defendant's customers, employees, partners, or contractors to use the VDC system in an infringing manner. Defendant took active steps, directly or through contractual relationships with others, with the specific intent to cause them to use the VDC system in a manner that infringes one or more claims of the '769 patent, including, for example, claim 21. Such steps by Defendant included, among other things, advising or directing customers, personnel, contractors, or end-users to use the VDC system in an infringing manner; advertising and promoting the use of the VDC system in an infringing manner; or distributing instructions that guide users to use the VDC system in an infringing manner. Defendant is performing these steps, which constitute induced infringement with the knowledge of the '769 patent and

⁵ See Footnote 4.

with the knowledge that the induced acts constitute infringement. Defendant is aware that the normal and customary use of the VDC system by others would infringe the '769 patent. Defendant's inducement is ongoing.

29. Defendant has also indirectly infringed and continues to indirectly infringe by contributing to the infringement of the '769 patent. Defendant has contributed, and continues to contribute, to the direct infringement of the '769 patent by its customers, personnel, and contractors. The VDC system has special features that are specially designed to be used in an infringing way and that have no substantial uses other than ones that infringe one or more claims of the '769 patent, including, for example, claim 21. The special features constitute a material part of the invention of one or more of the claims of the '769 patent and are not staple articles of commerce suitable for substantial non-infringing use. Defendant's contributory infringement is ongoing.

30. Despite knowledge of the '769 patent since as early as the date the original complaint was served, Defendant, based upon public information, continues to encourage, instruct, enable, and otherwise cause its customers to use its products and services, in a manner which infringes one or more claims of the '769 patent. Based upon public information, the provision of and sale of the VDC system is a source of revenue and a business focus for Defendant.

31. Defendant's aforesaid activities have been without authority and/or

license from Plaintiff.

32. Furthermore, on information and belief, Defendant has a policy or practice of not reviewing the patents of others, including instructing its employees to not review the patents of others, and thus have been willfully blind of Vision Works' patent rights.

33. Defendant's actions are at least objectively reckless as to the risk of infringing a valid patent and this objective risk was either known or should have been known by Defendant.

34. Since at least the filing of the original complaint in this matter, Defendant's direct and indirect infringement of the '769 patent has been and continues to be willful, intentional, deliberate, or in conscious disregard of Plaintiff's rights under the patent.

35. Vision Works has been damaged and continues to be damaged as a result of the infringing conduct by Defendant alleged above. Thus, Defendant is liable to Vision Works in an amount that compensates it for such infringement, which by law cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

36. Vision Works has suffered and continues to suffer irreparable harm, through its loss of market share and goodwill, for which there is no adequate remedy at law. Vision Works has and will continue to suffer this harm by virtue of

Defendant's infringement of one or more claims of the '769 patent. Defendant's actions have interfered with and will interfere with Vision Works's ability to license technology. The balance of hardships favors Vision Works's ability to commercialize its own ideas and technology. The public interest in allowing Vision Works to enforce its right to exclude outweighs other public interests, which supports injunctive relief in this case.

COUNT II: INFRINGEMENT OF U.S. PATENT NO. 8,437,935

37. Plaintiff re-alleges and incorporates by reference each of paragraphs 1-15 above as though fully set forth in their entirety.

38. U.S. Patent No. 8,437,935 (the "'935 patent") was issued on May 7, 2013 after full and fair examination by the USPTO of Application No. 12/464,601 which was filed on May 12, 2009. *See* '935 patent at p. 1. The '935 patent is entitled "Absolute Acceleration Sensor For Use Within Moving Vehicles."

39. The claims of the '935 patent are not directed to an abstract idea and are not limited to well-understood, routine, or conventional activity. Rather, the claimed inventions include inventive components that save fuel and reduce emissions by automatically turning off a vehicle's idling engine if it is stationary for a prescribed amount of time.

40. The written description of the '935 patent describes in technical detail each limitation of the claims, allowing a skilled artisan to understand the scope of

the claims and how the non-conventional and non-generic combination of claim limitations is patently distinct from and improved upon what may have been considered conventional or generic in the art at the time of the invention.

41. Vision Works owns all substantial rights, interest, and title in and to the '935 patent, including the sole and exclusive right to prosecute this action and enforce it against infringers and to collect damages for all relevant times.

42. Vision Works or its predecessors-in-interest have satisfied all statutory obligations required to collect pre-filing damages for the full period allowed by law for infringement of the '935 patent.

43. Based upon public information, Plaintiff is informed and believes that Defendant has infringed one or more claims of the '935 Patent, either literally or under the doctrine of equivalents, because it ships, distributes, makes, uses, imports, offers for sale, sells, and/or advertises the Subaru Auto Start Stop technology (“Auto Start Stop”) and the Subaru MySubaru App (the “MySubaru App”).

44. Upon information and belief, the Auto Start Stop and the MySubaru App meet each and every step of at least Claim 12 of the '935 patent, either literally or equivalently.

45. Based upon public information, Defendant’s provision of the Auto Start Stop and the MySubaru App have infringed, and continue to infringe, one or more claims of the '935 Patent, including Claim 12 because they provide a method for

automatically turning off an idling engine of a vehicle by sensing a stationary status of the vehicle, activating an idling timer, with a deactivation time window, and detecting a transmission park-status of the vehicle where, if the vehicle is stationary, the idling timer is activated and is configured to send a de-activation signal to turn off the engine once the deactivation time window has expired and the transmission park-status of the vehicle is confirmed, and is programmed to expire after a predetermined period of time.

46. Based upon public information, Defendant's customers use Auto Start Stop and the MySubaru App in such a way that infringes one or more claims of the '935 patent.

47. To the extent that Defendant is not the only direct infringer of one or more claims of the '935 patent, it instructs its customers on how to use Auto Start Stop and the MySubaru App in ways that infringe said claims through its support and sales activities.^{6,7}

48. Based upon public information, Defendant specifically intends its customers to use its products and services in such a way that infringes one or more claims of the '935 patent by, at a minimum, providing and supporting Auto Start

⁶ See <https://www.subaru.com/vehicles/outback/features.html> (last visited February 29, 2024); <https://joom.ag/4IRd> (last visited February 29, 2024)

⁷ See <https://www.subaru.com/subaru-starlink/starlink-safety-and-security.html> (last visited February 29, 2024); <https://joom.ag/4IRd> (last visited February 29, 2024)

Stop and the MySubaru App and instructing its customers on how to use them in an infringing manner, at least through information available on Defendant's website including information brochures, promotional material, and contact information.⁸

49. Based upon public information, Defendant has intentionally induced, and continues to induce, infringement of one or more claims of the '935 patent in this District and elsewhere in the United States, by its intentional acts which have successfully, among other things, encouraged, instructed, enabled, and otherwise caused Defendant's customers, employees, partners, or contractors to use Auto Start Stop and the MySubaru App in an infringing manner. Defendant took active steps, directly or through contractual relationships with others, with the specific intent to cause them to use Auto Start Stop and the MySubaru App in a manner that infringes one or more claims of the '935 patent, including, for example, claim 12. Such steps by Defendant included, among other things, advising or directing customers, personnel, contractors, or end-users to use Auto Start Stop and the MySubaru App in an infringing manner; advertising and promoting the use of Auto Start Stop and the MySubaru App in an infringing manner; or distributing instructions that guide users to use Auto Start Stop and the MySubaru App in an infringing manner. Defendant is performing these steps, which constitute induced infringement with the knowledge of the '935 patent and with the knowledge that the induced acts constitute

⁸ See Footnotes 6 and 7.

infringement. Defendant is aware that the normal and customary use of the Auto Start Stop and the MySubaru App by others would infringe the '935 patent. Defendant's inducement is ongoing.

50. Defendant has also indirectly infringed and continues to indirectly infringe by contributing to the infringement of the '935 patent. Defendant has contributed and continues to contribute to the direct infringement of the '935 patent by its customers, personnel, and contractors. Auto Start Stop and the MySubaru App have special features that are specially designed to be used in an infringing way and that have no substantial uses other than ones that infringe one or more claims of the '935 patent, including, for example, claim 12. The special features constitute a material part of the invention of one or more of the claims of the '935 patent and are not staple articles of commerce suitable for substantial non-infringing use. Defendant's contributory infringement is ongoing.

51. Despite knowledge of the '935 patent since as early as the date the original complaint was served, Defendant, based upon public information, continues to encourage, instruct, enable, and otherwise cause its customers to use its products and services, in a manner which infringes one or more claims of the '935 patent. Based upon public information, the provision of and sale of Auto Start Stop and the MySubaru App is a source of revenue and a business focus for Defendant.

52. Defendant's aforesaid activities have been without authority and/or

license from Plaintiff.

53. Furthermore, on information and belief, Defendant has a policy or practice of not reviewing the patents of others, including instructing its employees to not review the patents of others, and thus have been willfully blind of Vision Works' patent rights.

54. Defendant's actions are at least objectively reckless as to the risk of infringing a valid patent and this objective risk was either known or should have been known by Defendant.

55. Since at least the filing of the original complaint in this matter, Defendant's direct and indirect infringement of the '935 patent has been and continues to be willful, intentional, deliberate, or in conscious disregard of Plaintiff's rights under the patent.

56. Vision Works has been damaged and continues to be damaged as a result of the infringing conduct by Defendant alleged above. Thus, Defendant is liable to Vision Works in an amount that compensates it for such infringement, which by law cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

57. Vision Works has suffered and continues to suffer irreparable harm, through its loss of market share and goodwill, for which there is no adequate remedy at law. Vision Works has and will continue to suffer this harm by virtue of

Defendant's infringement of one or more claims of the '935 patent. Defendant's actions have interfered with and will interfere with Vision Works's ability to license technology. The balance of hardships favors Vision Works's ability to commercialize its own ideas and technology. The public interest in allowing Vision Works to enforce its right to exclude outweighs other public interests, which supports injunctive relief in this case.

COUNT III: INFRINGEMENT OF U.S. PATENT NO. 8,682,558

58. Plaintiff re-alleges and incorporates by reference each of paragraphs 1-15 above as though fully set forth in their entirety.

59. U.S. Patent No. 8,682,558 (the "'558 patent") was issued on March 25, 2014 after full and fair examination by the USPTO of Application No. 13/650,017 which was filed on October 11, 2012. *See* '558 patent at p. 1. The '558 patent is entitled "Absolute Acceleration Sensor For Use Within Moving Vehicles."

60. The claims of the '558 Patent are not directed to an abstract idea and are not limited to well-understood, routine, or conventional activity. Rather, the claimed inventions include inventive components that use measurements of the absolute acceleration of a vehicle to control at least one of its performance systems.

61. The written description of the '558 Patent describes in technical detail each limitation of the claims, allowing a skilled artisan to understand the scope of the claims and how the non-conventional and non-generic combination of claim

limitations is patently distinct from and improved upon what may have been considered conventional or generic in the art at the time of the invention.

62. Vision Works owns all substantial rights, interest, and title in and to the '558 Patent, including the sole and exclusive right to prosecute this action and enforce it against infringers and to collect damages for all relevant times.

63. Vision Works or its predecessors-in-interest have satisfied all statutory obligations required to collect pre-filing damages for the full period allowed by law for infringement of the '558 Patent.

64. Based upon public information, Plaintiff is informed and believes that Defendant has infringed one or more claims of the '558 Patent, either literally or under the doctrine of equivalents, because it ships, distributes, makes, uses, imports, offers for sale, sells, and/or advertises the admin/user roles and permissions and groups for the Subaru Vehicle Dynamics Control system (the "VDC system").

65. Upon information and belief, the VDC system meets each and every step of at least Claim 21 of the '558 patent, either literally or equivalently.

66. Based upon public information, Defendant's provision of the VDC system has infringed, and continues to infringe, one or more claims of the '558 Patent, including Claim 21 because the VDC system provides a system for monitoring and controlling the performance characteristics of a vehicle including an accelerometer-gyroscope for sensing an absolute acceleration of the vehicle, a

vehicle computer unit that receives a signal from the accelerometer-gyroscope based upon the absolute acceleration of the vehicle and operates one or more vehicle performance systems based upon the absolute acceleration of the vehicle.

67. Based upon public information, Defendant's customers use the VDC system in such a way that infringes one or more claims of the '558 patent.

68. To the extent that Defendant is not the only direct infringer of one or more claims of the '558 patent, it instructs its customers on how to use the VDC system in ways that infringe said claims through its support and sales activities.⁹

69. Based upon public information, Defendant specifically intends its customers to use its products and services in such a way that infringes one or more claims of the '558 patent by, at a minimum, providing and supporting the VDC system and instructing its customers on how to use them in an infringing manner, at least through information available on Defendant's website including information brochures, promotional material, and contact information.¹⁰

70. Based upon public information, Defendant has intentionally induced, and continues to induce, infringement of one or more claims of the '558 patent in this District and elsewhere in the United States, by its intentional acts which have

⁹ See <https://www.subaru.com/about/company-news/subaru-announces-pricing-on-the-all-new-2022-WRX.html> (last visited February 29, 2024); <https://www.subaru.com/vehicle-info/articles/what-is-subaru-x-mode.html> (last visited February 29, 2024)

¹⁰ See Footnote 9.

successfully, among other things, encouraged, instructed, enabled, and otherwise caused Defendant's customers, employees, partners, or contractors to use the VDC system in an infringing manner. Defendant took active steps, directly or through contractual relationships with others, with the specific intent to cause them to use the VDC system in a manner that infringes one or more claims of the '558 patent, including, for example, claim 21. Such steps by Defendant included, among other things, advising or directing customers, personnel, contractors, or end-users to use the VDC system in an infringing manner; advertising and promoting the use of the VDC system in an infringing manner; or distributing instructions that guide users to use the VDC system in an infringing manner. Defendant is performing these steps, which constitute induced infringement with the knowledge of the '558 patent and with the knowledge that the induced acts constitute infringement. Defendant is aware that the normal and customary use of the VDC system by others would infringe the '558 patent. Defendant's inducement is ongoing.

71. Defendant has also indirectly infringed and continues to indirectly infringe by contributing to the infringement of the '558 patent. Defendant has contributed and continues to contribute to the direct infringement of the '558 patent by its customers, personnel, and contractors. The VDC system has special features that are specially designed to be used in an infringing way and that have no substantial uses other than ones that infringe one or more claims of the '558 patent,

including, for example, claim 21. The special features constitute a material part of the invention of one or more of the claims of the '558 patent and are not staple articles of commerce suitable for substantial non-infringing use. Defendant's contributory infringement is ongoing.

72. Despite knowledge of the '558 patent since as early as the date the original complaint was served, Defendant, based upon public information, continues to encourage, instruct, enable, and otherwise cause its customers to use its products and services, in a manner which infringes one or more claims of the '558 patent. Based upon public information, the provision of and sale of the VDC system is a source of revenue and a business focus for Defendant.

73. Defendant's aforesaid activities have been without authority and/or license from Plaintiff.

74. Furthermore, on information and belief, Defendant has a policy or practice of not reviewing the patents of others, including instructing its employees to not review the patents of others, and thus have been willfully blind of Vision Works' patent rights.

75. Defendant's actions are at least objectively reckless as to the risk of infringing a valid patent and this objective risk was either known or should have been known by Defendant.

76. Since at least the filing of the original complaint in this matter,

Defendant's direct and indirect infringement of the '558 patent has been and continues to be willful, intentional, deliberate, or in conscious disregard of Plaintiff's rights under the patent.

77. Vision Works has been damaged and continues to be damaged as a result of the infringing conduct by Defendant alleged above. Thus, Defendant is liable to Vision Works in an amount that compensates it for such infringement, which by law cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

78. Vision Works has suffered and continues to suffer irreparable harm, through its loss of market share and goodwill, for which there is no adequate remedy at law. Vision Works has and will continue to suffer this harm by virtue of Defendant's infringement of one or more claims of the '558 patent. Defendant's actions have interfered with and will interfere with Vision Works's ability to license technology. The balance of hardships favors Vision Works's ability to commercialize its own ideas and technology. The public interest in allowing Vision Works to enforce its right to exclude outweighs other public interests, which supports injunctive relief in this case.

COUNT IV: INFRINGEMENT OF U.S. PATENT NO. 8,954,251

79. Plaintiff re-alleges and incorporates by reference each of paragraphs 1-15 above as though fully set forth in their entirety.

80. U.S. Patent No. 8,954,251 (the “’251 patent”) was issued on February 10, 2015 after full and fair examination by the USPTO of Application No. 14/011,527 which was filed on August 27, 2013. *See* ’251 patent at p.1. The ’251 patent is entitled “Absolute Acceleration Sensor For Use Within Moving Vehicles.”

81. The claims of the ’251 patent are not directed to an abstract idea and are not limited to well-understood, routine, or conventional activity. Rather, the claimed inventions include inventive components that improve vehicle safety by providing a system for communicating information about the speed of a vehicle and about its distance to a nearby vehicle.

82. The written description of the ’251 patent describes in technical detail each limitation of the claims, allowing a skilled artisan to understand the scope of the claims and how the non-conventional and non-generic combination of claim limitations is patently distinct from and improved upon what may have been considered conventional or generic in the art at the time of the invention.

83. Vision Works owns all substantial rights, interest, and title in and to the ’251 patent, including the sole and exclusive right to prosecute this action and enforce it against infringers and to collect damages for all relevant times.

84. Vision Works or its predecessors-in-interest have satisfied all statutory obligations required to collect pre-filing damages for the full period allowed by law for infringement of the ’251 patent.

85. Based upon public information, Plaintiff is informed and believes that Defendant has infringed one or more claims of the '251 patent, either literally or under the doctrine of equivalents, because it ships, distributes, makes, uses, imports, offers for sale, sells, and/or advertises scheduling and executing remote backups using the Subaru EyeSight Driver Assist Technology ("Subaru EyeSight").

86. Upon information and belief, Subaru EyeSight meets each and every step of at least Claim 12 of the '251 patent, either literally or equivalently.

87. Based upon public information, Defendant's provision of Subaru EyeSight has infringed, and continues to infringe, one or more claims of the '251 Patent, including Claim 12 because Subaru EyeSight provides a communication system for a vehicle that includes a laser range finder to calculate a distance between the vehicle and an object, a vehicle speed sensor that calculates a speed of the vehicle, a warning device that generates an internal alert to a driver of the vehicle, and a control device coupled to 1) the rangefinder that sends a signal to the control device corresponding to the vehicles distance from the object, 2) the vehicle speed sensor that sends a signal to the control device corresponding to a speed of the vehicle, and 3) a warning device that operates according to the signal from the range finder and the speed of the vehicle.

88. Based upon public information, Defendant's customers use Subaru EyeSight in such a way that infringes one or more claims of the '251 patent.

89. To the extent that Defendant is not the only direct infringer of one or more claims of the '251 patent, it instructs its customers on how to use Subaru EyeSight in ways that infringe said claims through its support and sales activities.¹¹

90. Based upon public information, Defendant specifically intends its customers to use its products and services in such a way that infringes one or more claims of the '251 patent by, at a minimum, providing and supporting Subaru EyeSight and instructing its customers on how to use them in an infringing manner, at least through information available on Defendant's website including information brochures, promotional material, and contact information.¹²

91. Based upon public information, Defendant has intentionally induced, and continues to induce, infringement of one or more claims of the '251 patent in this District and elsewhere in the United States, by its intentional acts which have successfully, among other things, encouraged, instructed, enabled, and otherwise caused Defendant's customers, employees, partners, or contractors to use Subaru EyeSight in an infringing manner. Defendant took active steps, directly or through contractual relationships with others, with the specific intent to cause them to use the Subaru EyeSight in a manner that infringes one or more claims of the '251 patent,

¹¹ See <https://www.subaru.com/vehicle-info/eyesight.html> (last visited February 29, 2024); <https://www.subaru.com/vehicles/outback/features.html/state-of-the-art-safety> (last visited February 29, 2024)

¹² See Footnote 11.

including, for example, claim 12. Such steps by Defendant included, among other things, advising or directing customers, personnel, contractors, or end-users to use Subaru EyeSight in an infringing manner; advertising and promoting the use of t Subaru EyeSight in an infringing manner; or distributing instructions that guide users to use Subaru EyeSight in an infringing manner. Defendant is performing these steps, which constitute induced infringement with the knowledge of the '251 patent and with the knowledge that the induced acts constitute infringement. Defendant is aware that the normal and customary use of Subaru EyeSight by others would infringe the '251 patent. Defendant's inducement is ongoing.

92. Defendant has also indirectly infringed and continues to indirectly infringe by contributing to the infringement of the '251 patent. Defendant has contributed and continues to contribute to the direct infringement of the '251 patent by its customers, personnel, and contractors. Subaru EyeSight has special features that are specially designed to be used in an infringing way and that have no substantial uses other than ones that infringe one or more claims of the '251 patent, including, for example, claim 12. The special features constitute a material part of the invention of one or more of the claims of the '251 patent and are not staple articles of commerce suitable for substantial non-infringing use. Defendant's contributory infringement is ongoing.

93. Despite knowledge of the '251 patent since as early as the date the

original complaint was served, Defendant, based upon public information, continues to encourage, instruct, enable, and otherwise cause its customers to use its products and services, in a manner which infringes one or more claims of the '251 patent. Based upon public information, the provision of and sale of Subaru EyeSight is a source of revenue and a business focus for Defendant.

94. Defendant's aforesaid activities have been without authority and/or license from Plaintiff.

95. Furthermore, on information and belief, Defendant has a policy or practice of not reviewing the patents of others, including instructing its employees to not review the patents of others, and thus have been willfully blind of Vision Works' patent rights.

96. Defendant's actions are at least objectively reckless as to the risk of infringing a valid patent and this objective risk was either known or should have been known by Defendant.

97. Since at least the filing of the original complaint in this matter, Defendant's direct and indirect infringement of the '251 patent has been and continues to be willful, intentional, deliberate, or in conscious disregard of Plaintiff's rights under the patent.

98. Vision Works has been damaged and continues to be damaged as a result of the infringing conduct by Defendant alleged above. Thus, Defendant is liable to

Vision Works in an amount that compensates it for such infringement, which by law cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

99. Vision Works has suffered and continues to suffer irreparable harm, through its loss of market share and goodwill, for which there is no adequate remedy at law. Vision Works has and will continue to suffer this harm by virtue of Defendant's infringement of one or more claims of the '251 patent. Defendant's actions have interfered with and will interfere with Vision Works's ability to license technology. The balance of hardships favors Vision Works's ability to commercialize its own ideas and technology. The public interest in allowing Vision Works to enforce its right to exclude outweighs other public interests, which supports injunctive relief in this case.

COUNT V: INFRINGEMENT OF U.S. PATENT NO. 9,830,821

100. Plaintiff re-alleges and incorporates by reference each of paragraphs 1-15 above as though fully set forth in their entirety.

101. U.S. Patent No. 9,830,821 (The "'821 patent") was issued on November 28, 2017 after full and fair examination by the USPTO of Application No. 14/584,946 which was filed on December 29, 2014. *See* '821 patent at p. 1. The '821 patent is entitled "Absolute Acceleration Sensor For Use Within Moving Vehicles."

102. The claims of the '821 patent are not directed to an abstract idea and are not limited to well-understood, routine, or conventional activity. Rather, the claimed inventions include inventive components that improve vehicle safety by providing a system for communicating information about the speed of a vehicle and about its distance to a nearby vehicle.

103. The written description of the '821 patent describes in technical detail each limitation of the claims, allowing a skilled artisan to understand the scope of the claims and how the non-conventional and non-generic combination of claim limitations is patently distinct from and improved upon what may have been considered conventional or generic in the art at the time of the invention.

104. Vision Works owns all substantial rights, interest, and title in and to the '821 patent, including the sole and exclusive right to prosecute this action and enforce it against infringers and to collect damages for all relevant times.

105. Vision Works or its predecessors-in-interest have satisfied all statutory obligations required to collect pre-filing damages for the full period allowed by law for infringement of the '821 patent.

106. Based upon public information, Plaintiff is informed and believes that Defendant has infringed one or more claims of the '821 patent, either literally or under the doctrine of equivalents, because it ships, distributes, makes, uses, imports, offers for sale, sells, and/or advertises remote access for multiple users using Subaru

EyeSight Driver Assist Technology (“Subaru EyeSight”).

107. Upon information and belief, Subaru EyeSight meets each and every step of at least Claim 12 of the ’821 patent, either literally or equivalently.

108. Based upon public information, Defendant’s provision of Subaru EyeSight has infringed, and continues to infringe, one or more claims of the ’821 Patent, including Claim 12 because Subaru EyeSight provides a method for communication for a vehicle to calculate a distance between the vehicle and an object and for recording the event if the vehicle enters a safe-zone threshold with respect to distance between the vehicle and the object, wherein the safe-zone threshold is set based upon the speed of the vehicle, and which increases as the speed of the vehicle increases once the vehicle reaches a specified speed.

109. Based upon public information, Defendant’s customers use Subaru EyeSight in such a way that infringes one or more claims of the ’821 patent.

110. To the extent that Defendant is not the only direct infringer of one or more claims of the ’821 patent, it instructs its customers on how to use Subaru EyeSight in ways that infringe said claims through its support and sales activities.¹³

111. Based upon public information, Defendant specifically intends its customers to use its products and services in such a way that infringes one or more

¹³ See <https://www.subaru.com/vehicle-info/eyesight.html> (last visited February 29, 2024); <https://www.subaru.com/vehicles/outback/features.html/state-of-the-art-safety> (last visited February 29, 2024)

claims of the '821 patent by, at a minimum, providing and supporting Subaru EyeSight and instructing its customers on how to use them in an infringing manner, at least through information available on Defendant's website including information brochures, promotional material, and contact information.¹⁴

112. Based upon public information, Defendant has intentionally induced, and continues to induce, infringement of one or more claims of the '821 patent in this District and elsewhere in the United States, by its intentional acts which have successfully, among other things, encouraged, instructed, enabled, and otherwise caused Defendant's customers, employees, partners, or contractors to use Subaru EyeSight in an infringing manner. Defendant took active steps, directly or through contractual relationships with others, with the specific intent to cause them to use Subaru EyeSight in a manner that infringes one or more claims of the '821 patent, including, for example, claim 12. Such steps by Defendant included, among other things, advising or directing customers, personnel, contractors, or end-users to use Subaru EyeSight in an infringing manner; advertising and promoting the use of Subaru EyeSight in an infringing manner; or distributing instructions that guide users to use Subaru EyeSight in an infringing manner. Defendant is performing these steps, which constitute induced infringement with the knowledge of the '821 patent and with the knowledge that the induced acts constitute infringement.

¹⁴ See Footnote 13.

Defendant is aware that the normal and customary use of Subaru EyeSight by others would infringe the '821 patent. Defendant's inducement is ongoing.

113. Defendant has also indirectly infringed and continues to indirectly infringe by contributing to the infringement of the '821 patent. Defendant has contributed and continues to contribute to the direct infringement of the '821 patent by its customers, personnel, and contractors. Subaru EyeSight has special features that are specially designed to be used in an infringing way and that have no substantial uses other than ones that infringe one or more claims of the '821 patent, including, for example, claim 12. The special features constitute a material part of the invention of one or more of the claims of the '821 patent and are not staple articles of commerce suitable for substantial non-infringing use. Defendant's contributory infringement is ongoing.

114. Despite knowledge of the '821 patent since as early as the date the original complaint was served, Defendant, based upon public information, continues to encourage, instruct, enable, and otherwise cause its customers to use its products and services, in a manner which infringes one or more claims of the '821 patent. Based upon public information, the provision of and sale of Subaru EyeSight is a source of revenue and a business focus for Defendant.

115. Defendant's aforesaid activities have been without authority and/or license from Plaintiff.

116. Furthermore, on information and belief, Defendant has a policy or practice of not reviewing the patents of others, including instructing its employees to not review the patents of others, and thus have been willfully blind of Vision Works' patent rights.

117. Defendant's actions are at least objectively reckless as to the risk of infringing a valid patent and this objective risk was either known or should have been known by Defendant.

118. Since at least the filing of the original complaint in this matter, Defendant's direct and indirect infringement of the '821 patent has been and continues to be willful, intentional, deliberate, or in conscious disregard of Plaintiff's rights under the patent.

119. Vision Works has been damaged and continues to be damaged as a result of the infringing conduct by Defendant alleged above. Thus, Defendant is liable to Vision Works in an amount that compensates it for such infringement, which by law cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

120. Vision Works has suffered and continues to suffer irreparable harm, through its loss of market share and goodwill, for which there is no adequate remedy at law. Vision Works has and will continue to suffer this harm by virtue of Defendant's infringement of one or more claims of the '821 patent. Defendant's

actions have interfered with and will interfere with Vision Works's ability to license technology. The balance of hardships favors Vision Works's ability to commercialize its own ideas and technology. The public interest in allowing Vision Works to enforce its right to exclude outweighs other public interests, which supports injunctive relief in this case.

COUNT VI: INFRINGEMENT OF U.S. PATENT NO. 10,436,125

121. Plaintiff re-alleges and incorporates by reference each of paragraphs 1--15 above as though fully set forth in their entirety.

122. U.S. Patent No. 10,436,125 (The "'125 patent") was issued on October 8, 2019 after full and fair examination by the USPTO of Application No. 15/918,835 which was filed on March 12, 2018. *See* '125 patent at p. 1. The '125 patent is entitled "Absolute Acceleration Sensor For Use Within Moving Vehicles."

123. The claims of the '125 patent are not directed to an abstract idea and are not limited to well-understood, routine, or conventional activity. Rather, the claimed inventions include inventive components that improve that save fuel and reduce emissions by automatically turning off a vehicle's idling engine if it is stationary for a prescribed amount of time.

124. The written description of the '125 patent describes in technical detail each limitation of the claims, allowing a skilled artisan to understand the scope of the claims and how the non-conventional and non-generic combination of claim

limitations is patently distinct from and improved upon what may have been considered conventional or generic in the art at the time of the invention.

125. Vision Works owns all substantial rights, interest, and title in and to the '125 patent, including the sole and exclusive right to prosecute this action and enforce it against infringers and to collect damages for all relevant times.

126. Vision Works or its predecessors-in-interest have satisfied all statutory obligations required to collect pre-filing damages for the full period allowed by law for infringement of the '125 patent.

127. Based upon public information, Plaintiff is informed and believes that Defendant has infringed one or more claims of the '125 patent, either literally or under the doctrine of equivalents, because it ships, distributes, makes, uses, imports, offers for sale, sells, and/or advertises remote access for multiple users using the Subaru MySubaru App (the "MySubaru App").

128. Upon information and belief, the MySubaru App feature meets each and every step of at least Claim 1 of the '125 patent, either literally or equivalently.

129. Based upon public information, Defendant's provision of the MySubaru App has infringed, and continues to infringe, one or more claims of the '125 Patent, including Claim 1 because the MySubaru App provides a method of shutting down an idling engine that includes detecting that a vehicle has stopped and detecting a non-drive transmission status of the vehicle, and, based on the stopping of the

vehicle and the non-drive transmission status of the vehicle, activating a shutdown timer configured to shutdown the vehicle after a predetermined period of time, and, upon expiration of the shutdown timer and confirming that the vehicle is stopped and the vehicle's non-drive status; shutting down the engine.

130. Based upon public information, Defendant's customers use the MySubaru App in such a way that infringes one or more claims of the '125 patent.

131. To the extent that Defendant is not the only direct infringer of one or more claims of the '125 patent, it instructs its customers on how to use the MySubaru App feature in ways that infringe said claims through its support and sales activities.¹⁵

132. Based upon public information, Defendant specifically intends its customers to use its products and services in such a way that infringes one or more claims of the '125 patent by, at a minimum, providing and supporting the MySubaru App and instructing its customers on how to use them in an infringing manner, at least through information available on Defendant's website including information brochures, promotional material, and contact information.¹⁶

133. Based upon public information, Defendant has intentionally induced, and continues to induce, infringement of one or more claims of the '125 patent in

¹⁵ See <https://www.subaru.com/subaru-starlink/starlink-safety-and-security.html> (last visited February 29, 2024); <https://joom.ag/4IRd> (last visited February 29, 2024)

¹⁶ See Footnote 15.

this District and elsewhere in the United States, by its intentional acts which have successfully, among other things, encouraged, instructed, enabled, and otherwise caused Defendant's customers, employees, partners, or contractors to use the MySubaru App in an infringing manner. Defendant took active steps, directly or through contractual relationships with others, with the specific intent to cause them to use the MySubaru App in a manner that infringes one or more claims of the '125 patent, including, for example, claim 1. Such steps by Defendant included, among other things, advising or directing customers, personnel, contractors, or end-users to use the MySubaru App in an infringing manner; advertising and promoting the use of the MySubaru App in an infringing manner; or distributing instructions that guide users to use the MySubaru App in an infringing manner. Defendant is performing these steps, which constitute induced infringement with the knowledge of the '125 patent and with the knowledge that the induced acts constitute infringement. Defendant is aware that the normal and customary use of the MySubaru App by others would infringe the '125 patent. Defendant's inducement is ongoing.

134. Defendant has also indirectly infringed and continues to indirectly infringe by contributing to the infringement of the '125 patent. Defendant has contributed and continues to contribute to the direct infringement of the '125 patent by its customers, personnel, and contractors. The MySubaru App has special features that are specially designed to be used in an infringing way and that have no

substantial uses other than ones that infringe one or more claims of the '125 patent, including, for example, claim 1. The special features constitute a material part of the invention of one or more of the claims of the '125 patent and are not staple articles of commerce suitable for substantial non-infringing use. Defendant's contributory infringement is ongoing.

135. Despite knowledge of the '125 patent since as early as the date the original complaint was served, Defendant, based upon public information, continues to encourage, instruct, enable, and otherwise cause its customers to use its products and services, in a manner which infringes one or more claims of the '125 patent. Based upon public information, the provision of and sale of the MySubaru App is a source of revenue and a business focus for Defendant.

136. Defendant's aforesaid activities have been without authority and/or license from Plaintiff.

137. Furthermore, on information and belief, Defendant has a policy or practice of not reviewing the patents of others, including instructing its employees to not review the patents of others, and thus have been willfully blind of Vision Works' patent rights.

138. Defendant's actions are at least objectively reckless as to the risk of infringing a valid patent and this objective risk was either known or should have been known by Defendant.

139. Since at least the filing of the original complaint in this matter, Defendant's direct and indirect infringement of the '125 patent has been and continues to be willful, intentional, deliberate, or in conscious disregard of Plaintiff's rights under the patent.

140. Vision Works has been damaged and continues to be damaged as a result of the infringing conduct by Defendant alleged above. Thus, Defendant is liable to Vision Works in an amount that compensates it for such infringement, which by law cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

141. Vision Works has suffered and continues to suffer irreparable harm, through its loss of market share and goodwill, for which there is no adequate remedy at law. Vision Works has and will continue to suffer this harm by virtue of Defendant's infringement of one or more claims of the '125 patent. Defendant's actions have interfered with and will interfere with Vision Works's ability to license technology. The balance of hardships favors Vision Works's ability to commercialize its own ideas and technology. The public interest in allowing Vision Works to enforce its right to exclude outweighs other public interests, which supports injunctive relief in this case.

JURY DEMAND

142. Plaintiff demands a trial by jury on all issues so triable by right.

PRAYER FOR RELIEF

143. Plaintiff respectfully requests the following relief:

- A. An adjudication that one or more claims of the Patents-in-Suit has been infringed, either literally and/or under the doctrine of equivalents, by Defendant;
- B. An award of damages to be paid by Defendant adequate to compensate Plaintiff Defendant's past infringement, including interest, costs, and disbursements as justified under 35 U.S.C. § 284 and, if necessary to adequately compensate Plaintiff for Defendant's infringement, an accounting of all infringing sales including, but not limited to, those sales not presented at trial;
- C. A permanent injunction enjoining Defendant and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in concert therewith from infringement of the Patents-in-Suit; or, in the alternative, an award of a reasonable ongoing royalty for future infringement of said patent by such entities;
- D. Judgment that Defendant's infringements be found willful as to the Patents-in-Suit; and that the Court award treble damages for the period of such willful infringement pursuant to 35 U.S.C. § 284;

- E. Pre-judgment and post-judgment interest on the damages caused by Defendant's infringing activities and other conduct complained of herein;
- F. That this Court declare this to be an exceptional case and award Plaintiff its reasonable attorneys' fees and costs in accordance with 35 U.S.C. § 285; and,
- G. Any further relief that this Court deems just and proper.

Dated: March 4, 2024

Respectfully submitted,

/s/ James F. McDonough, III

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LOCAL RULE 7.1(D) CERTIFICATION

I hereby certify, pursuant to L.R. 7.1(D), NDGa., that the foregoing complies with the font and point selections approved by the Court in L.R. 5.1(C), NDGa.. The foregoing pleading was prepared on a computer using 14-point Times New Roman font.

/s/ James F. McDonough, III

James F. McDonough, III