

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

EMERGING AUTOMOTIVE LLC,

Plaintiff,

v.

TOYOTA MOTOR CORP., *et al*,

Defendants.

CIVIL ACTION NO. 2:23-cv-00434-JRG
(Member Case)

**PLAINTIFF EMERGING AUTOMOTIVE LLC’S DISCLOSURE OF ASSERTED
CLAIMS AND INFRINGEMENT CONTENTIONS AGAINST TOYOTA
DEEFNDANTS**

Pursuant to Patent Rules 3-1 and 3-2 of the Eastern District of Texas, Plaintiff Emerging Automotive LLC (“Plaintiff” or “Emerging Auto”) serves preliminary infringement contentions and identification of priority dates (“Disclosure”) on Toyota Motor North America, Inc., Toyota Motor Sales, U.S.A., Inc., and Toyota Motor Corporation (collectively, “Defendants” or “Toyota”) regarding U.S. Patent Nos. 9,171,268 (the “’268 patent”), 9,365,188 (the “’188 patent”), 10,407,026 (the “’026 patent”), 11,396,244 (the “’244 patent”), and 11,738,659 (the “’659 patent”) (collectively, the “patents-in-suit”).

The following asserted claims and contentions are based upon Emerging Auto’s good faith evaluation of information known to Emerging Auto at this time based on publicly available information and documents. Emerging Auto reserves its right to supplement and/or amend these Asserted Claims and Infringement Contentions in view of information and/or documents that may be obtained during discovery, further investigation, the Court’s claim construction ruling, applicable case law and authorities, and/or any other reasons permitted under the Court’s Order, the Patent Rules, and the Federal Rules of Civil Procedure. *See Eolas Techs. Inc. v. Amazon.com*,

Inc., No. 6:15-CV-01038, 2016 WL 7666160, at *2 (E.D. Tex. Dec. 5, 2016) (“[G]iven Plaintiff’s assertion that Defendants have not produced all documents and code reflecting their server architectures, it is unreasonable to expect Plaintiff to draft ICs in great detail. . . . [C]ontentions should become more detailed with the conclusion of fact discovery and claim construction.”).

This Disclosure is made without prejudice to any position Emerging Auto may take with respect to claim construction. Emerging Auto reserves its right to supplement this Disclosure and attachments based on the Court’s claim construction. Emerging Auto further reserves the right to introduce and use such supplemental materials at trial.

The information in this Disclosure is not an admission regarding the scope of any claims or the proper construction of those claims or any claims contained therein. The production of documents accompanying this Disclosure is not an admission that such documents are admissible, and Emerging Auto does not waive any objections regarding admissibility. Emerging Auto reserves the right to supplement its production of documents accompanying this disclosure upon identification or receipt of additional documents, including documents from third parties.

I. P.R. 3-1 Disclosure of Asserted Claims and Infringement Contentions

(a) Each claim of each patent in suit that is allegedly infringed by each opposing party;

By making, using, testing, offering for sale, selling, and/or importing any of the Accused Instrumentalities identified in paragraph I(b) below, Defendants directly infringe the following claims of the patent listed below (the “patents-in-suit”). Furthermore, Defendants indirectly infringe the asserted claims of the patents-in-suit. As a specific example, Defendants have, and continue to actively induce others to infringe the asserted claims of the patents-in-suit via the Accused Instrumentalities. Defendants further contribute to infringement via the Accused Instrumentalities.

Emerging Auto currently asserts all claims charted in Attachments A-E, including:

- Claims 1, 2, 6, 7, 10, 11, 13-15, and 18-20 of the '026 patent (Attachment A);
 - Claims 1-18, and 20-21 of the '659 patent (Attachment B);
 - Claims 1-3, 5-12, and 16-17 of the '188 patent (Attachment C);
 - Claims 1, 2, 4-11, and 14-22 of the '244 patent (Attachment D); and
 - Claims 10-20 of the '268 patent (Attachment E).
- (b) **Separately for each asserted claim, each accused apparatus, product, device, process, method, act, or other instrumentality (“Accused Instrumentality”) of each opposing party of which the party is aware. This identification shall be as specific as possible. Each product, device, and apparatus must be identified by name or model number, if known. Each method or process must be identified by name, if known, or by any product, device, or apparatus which, when used, allegedly results in the practice of the claimed method or process;**

Plaintiff accuses Defendants of infringing each asserted claim of the '026 and '659 patents and claim 20 of the '268 patent by making, using, selling, offering for sale, and/or importing into the United States (on or after September 20, 2017) vehicles that are configured to be locked, unlocked, and/or started using a digital device (the “Accused Toyota Vehicle Instrumentalities”). The Accused Toyota Vehicle Instrumentalities include, but are not limited to, Toyota’s vehicles (including Toyota-branded and Lexus-branded vehicles) that are compatible with Remote Connect functionality and/or Digital Key functionality. Reference to these services/features by their marketing name is non-exhaustive, and includes ancillary and/or related products and services, as well as other implementations (e.g., custom, proprietary, or alternative branding). For example, reference to these consumer implementations includes the same or similar implementations for fleet management, hospitality, vehicle rental, and vehicle sharing implementations, even if offered under different program, project, or marketing names. By way of further example, additional features and/or services may be implicated or identified by functionality in the illustrative charts

attached hereto, such as the Drive Connect (for Intelligent Assistant), Safety Connect, and/or Service Connect connected services (to the extent that data regarding use or operation of the vehicle is transmitted or received by virtue of such services, instead of or in addition to the Remote Connect or Digital Key services referenced in Plaintiff's contentions).

The identification of vehicle models below is based on a review of publicly available information; this list is non-limiting, and includes additional vehicles, trim levels, etc., which were offered or sold with such functionality (for example, in a custom build or feature package or similar "upgrade"), including newly released vehicles with the same or similar functionality, and vehicles to which the identified functionality may have been added after initial sale or publication of vehicle specifications (e.g., via updates to the vehicle software, firmware, head unit, etc.).

The Accused Toyota Vehicle Instrumentalities configured with the identified Remote Connect functionality include, but are not limited to, the currently known vehicles below:

Toyota Model Year 2024: 4Runner, bZ4X, Camry, Corolla, Corolla Cross, Corolla Hatchback, Crown, GR Corolla, Grand Highlander, Highlander, Prius, Prius Prime, Rav4, Rav4 Prime, Sequoia, Sienna, Tacoma, Tundra, and Venza.

Lexus Model Year 2024: ES350, IS300, IS350, IS500, LC500C, LC500H, LS500, LS500H, LX600, NX250, RCF, UX, RX350, RX350H, RX350L, RX450H, RX450H+, RX450HL, RX500H, RZ450e, RC300, TX350, TX500H, UX250H, NX350, NX450+, NX350H, and GX550.

Toyota Model Year 2023: 4Runner, bZ4X, Camry, Corolla, Corolla Cross, Corolla Hatchback, Crown, GR Corolla, GR86, Highlander, Mirai, Prius, Prius Prime, Rav4, Rav4 Prime, Sequoia, Sienna, Tacoma, Tundra, and Venza.

Lexus Model Year 2023: ES, ES250, ES300H, ES350, GX, GX460, IS, IS300, IS350, IS500, LC, LC500, LC500C, LC500H, LS, LS500, LS500H, LX600, NX, NX250, NX350, NX350H, NX450H+, RC300, RCF, RX, RX350, RX350H, RX350L, RX450e, RX450H, RX450HL, RX500H, RZ450e, UX, UX250, and UX250H.

Toyota Model Year 2022: 4Runner, Avalon, Camry, Corolla Cross, Corolla Hatchback, Corolla Sedan, GR86, Highlander, Mirai, Prius Prime, Rav4, Rav4 Prime, Sequoia, Sienna, Tacoma, Tundra, and Venza.

Lexus Model Year 2022: ES250, ES300H, ES350, GX460, IS300, IS350, IS500, LC500, LC500C, LC500H, LS500, LS500H, LX600, NX250, RCF, RX350, RX350L, RX450H, RX450HL, RC300, UX200, UX250H, NX350, NX350H, and NX450H+.

Toyota Model Year 2021: 4Runner, Avalon, Camry, Corolla Hatchback, Corolla Sedan, Highlander, Mirai, Prius Prime, Rav4, Rav4 Prime, Sequoia, Sienna, Tacoma, Tundra, and Venza.

Lexus Model Year 2021: ES250, ES300H, ES350, GX460, IS300, IS350, LC500, LC500C, LC500H, LS500, LS500H, NX300, NX300H, RCF, RX350, RX350L, RX450H, RX450HL, RC300, UX200, and UX250H.

Toyota Model Year 2020: 4Runner, Avalon, Camry, Corolla, Corolla Hatchback, Highlander, Rav4, Sequoia, Tacoma, and Tundra.

Lexus Model Year 2020: LC500, LC500H, LS500, NX300, NX300H, RCF, RX350, RX350L, RX450H, RX450HL, RC300, UX200, and UX250H.

Toyota Model Year 2019: Avalon, Camry, Corolla Hatchback, and Rav4.

Lexus Model Year 2019: LC500, LS500, LS500H, NX300, NX300H, RCF, RX350, RX350L, RX450H, RX450HL, RC300, UX200, and UX250H.

Toyota Model Year 2018: Camry

Lexus Model Year 2018: LC500, LC500H, LS500, LS500H, NX300, NX300H, RCF, RX350, RX350L, RX450H, RX450HL, and RC300.

Lexus Model Year 2017: CT200H, ES300H, and ES350.

Lexus Model Year 2016: CT200H, ES300H, and ES350.

The Accused Toyota Vehicle Instrumentalities with Digital Key functionality include, but are not limited to, the currently known vehicles below:

Toyota Model Year 2024: bZ4X, Crown, Grand Highlander, Prius, and Prius Prime.

Lexus Model Year 2024: ES350, GX550, LS500, LC500C, LC500H, LS500, LS500H, NX250, NX350, NX350H, NX450H+, RC300, RX350, RX350H, RX350L, RX450H, RX450HL, RX450H+, RX500H, RZ450e, TX350, and TX500H.

Toyota Model Year 2023: bZ4X, Crown, Prius, and Prius Prime.

Lexus Model Year 2023: ES250, ES300H, ES350, LS500, LS500H, NX, NX250, NX350, NX350H, NX450H+, RX350, RX350H, RX350L, RX450H, RX450HL, RX500H, RZ450e, and UX250.

Lexus Model Year 2022: NX250, NX350, NX350H, and NX450H+.

Other accused vehicle models as may be implemented, supported, or enabled by Toyota, including through its “dealers and partners” as described in the Toyota Case study published at <https://www.toyotaconnected.com/insights/digital-key>, including by not limited to the Hui-enabled vehicle models.

Plaintiff further accuses Defendants of infringing each asserted claim of the '188 and '244 patents and each asserted claim other than claim 20 of the '268 patent by making and using servers configured to communicate with Toyota's vehicles (e.g., Toyota and/or Lexus-branded vehicles)

and/or Toyota's applications, including, but not limited to, Toyota and Lexus mobile applications, as well as selling or offering for sale services that make use of said servers, and/or vehicles configured to utilize such services (the "Accused Server Instrumentalities"). The Accused Server Instrumentalities include, but are not limited to, servers associated with Toyota's Remote Connect functionality, Toyota's Digital Key functionality, and/or Toyota's user profile functionality (and their Lexus-branded equivalents and/or counterparts, e.g., Enform Remote, etc.). For the avoidance of doubt, the "Accused Server Instrumentalities" include a single server used to implement the foregoing functionality, as well as any group of servers used to implement the foregoing functionality. References to a "server" or to "servers" are not limiting, and include single server, multiple server, and distributed / "cloud" based implementations (including so-called "serverless" cloud architectures) operated by, on behalf of, or at the direction of Toyota, including via implementations in private or public cloud infrastructure.

- (c) **A chart identifying specifically where each element of each asserted claim is found within each Accused Instrumentality, including for each element that such party contends is governed by 35 U.S.C. § 112(6), the identity of the structure(s), act(s), or materials(s) in the Accused Instrumentality that performs the claimed functions;**

Charts identifying where each element or step of the asserted claims are found within, or performed by, each Accused Instrumentality are included as Attachments A-E accompanying this document. Plaintiff reserves the right to seek leave of Court to augment and supplement this disclosure after discovery from Defendants, or as permitted under the Patent Rules.

- (d) **Whether each element of each asserted claim is claimed to be literally present or present under the doctrine of equivalents in the Accused Instrumentality;**

Based on its current understanding of the claim language and publicly available information pertaining to the Accused Instrumentalities, and without notice of any claim construction or non-infringement position from Defendants, Plaintiff asserts that Defendants

literally infringe each element or step of the asserted claims. However, any claim element or step not literally present in or performed by the Accused Instrumentalities is satisfied under the doctrine of equivalents because any difference between such claim element or step and the accused element or step is insubstantial. In other words, the accused element or step performs substantially the same function, in substantially the same way, to achieve substantially the same result.

As the parties have not identified disputed claim elements, Defendants have not made their P.R. 3-4 production, and the Court has not construed any claim term, it is not yet clear whether Plaintiff will rely on the doctrine of equivalents. As one example, to the extent Defendants argue that claim elements for “a server” are limited to one physically discrete server and discovery reveals that Defendants operate a plurality of servers for implementing the accused functionality, such limitation would nevertheless be satisfied by the doctrine of equivalents. Accordingly, Plaintiff reserves the right, in response to discovery, Defendants’ P.R. 3-4 production, or as permitted under the Patent Rules, to amend its infringement contentions as necessary.

(e) For any patent that claims priority to an earlier application, the priority date to which each asserted claim allegedly is entitled;

The patents-in-suit are entitled to a priority date no later than the filing date of the earliest application to which they claim priority. As such, the asserted claims of the patents-in-suit are entitled to a priority date at least as early as April 22, 2011.

Plaintiff’s investigation relating to the conception and reduction to practice of the patented inventions is ongoing and it therefore reserves the right to supplement and/or modify this date as discovery in this case continues.

(f) If a party claiming patent infringement wishes to preserve the right to rely, for any purpose, on the assertion that its own apparatus, product, device, process, method, act, or other instrumentality practices the claimed invention, the party must identify, separately for each asserted claim, each such apparatus,

product, device, process, method, act, or other instrumentality that incorporates or reflects that particular claim.

Emerging Auto is not aware of any apparatus, product, device, process, method, act, or other instrumentality of its own that practices the claimed inventions of the patents-in-suit.

II. P.R. 3-2. Document Production Accompanying Disclosure:

(a) Emerging Auto is not aware at this time of any non-privileged documents sufficient to evidence discussion with, disclosure to, or other manner of providing to a third party, or sale of or offer to sell, the claimed inventions prior to the date of application for any of the patents-in-suit, as called for by P.R. 3-2(a);

(b) Emerging Auto is not presently aware of any non-privileged documents that evidence conception, reduction to practice, design, and development of each claimed invention that were created on or before the above referenced date for the patents-in-suit. In the event that further investigation, including discovery, leads to documents that evidence conception, reduction to practice, design, and development of any claimed invention that was created on or before the date of application for the patents-in-suit, Plaintiff reserves the right to claim such date.

(c) Emerging Auto has produced, or will concurrently produce, the patents-in-suit and a copy of the file history for the patents-in-suit bearing production numbers EA_TOY-000001-EA_TOY-2317.

Dated: January 18, 2024

/s/ Marc Belloli

Marc Belloli (*pro hac vice*)

California Bar No. 244290

mbelloli@bdiplaw.com

M. Elizabeth Day (*admitted in Texas*)

California Bar No. 177125

eday@bdiplaw.com

Jerry D. Tice II

Texas State Bar No. 24093263

jtice@bdiplaw.com

Aaron R. Hand (*admitted in Texas*)

California Bar No. 245755

ahand@bdiplaw.com

Brenda Entzminger (*pro hac vice*)

California Bar No. 226760

bentzminger@bdiplaw.com

BUNSOW DE MORY LLP

701 El Camino Real,

Redwood City, CA 94063

Tel: (650) 351-7248

Fax: (415) 426-4744

Andrea L. Fair

Texas Bar No. 24078488

andrea@wsfirm.com

Wesley Hill

Texas Bar No. 24032294

wh@wsfirm.com

WARD, SMITH & HILL, PLLC

1507 Bill Owens Parkway

Longview, Texas 75604

Tel: 903-757-6400

Fax: 903-757-2323

Attorneys for Plaintiff

Emerging Automotive LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 18, 2024, a copy of the foregoing was served on counsel for Defendants via email.

By: /s/ Marc Belloli
Marc Belloli