

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

FACET TECHNOLOGY CORP.,

Plaintiff,

v.

GENERAL MOTORS LLC

Defendant.

GENERAL MOTORS LLC

Third-Party Plaintiff,

v.

MAGNA ELECTRONICS INC., and ZF
ACTIVE SAFETY AND ELECTRONICS US
LLC.

Third-Party Defendants.

Civil Action No. 2:24-cv-00035

JURY TRIAL DEMANDED

**THIRD-PARTY COMPLAINT OF GENERAL MOTORS LLC FOR
BREACH OF CONTRACT, INDEMNIFICATION, BREACH OF WARRANTY,
CONTRIBUTION, AND DECLARATORY JUDGMENT**

General Motors LLC (“GM” or “Third-Party Plaintiff”), by and through its undersigned counsel, hereby brings this Third-Party Complaint against Magna Electronics Inc. (“Magna”) and ZF Active Safety and Electronics US LLC (“ZF”) (each a “Third-Party Defendant” and, collectively, “Third-Party Defendants”) pursuant to Rule 14(a) of the Federal Rules of Civil Procedure and allege as follows:

THE PARTIES

1. Facet Technology Corp. (“Facet” or “Plaintiff”) purports to be a corporation organized and existing under the laws of Minnesota and located at 1044 Rosemary Circle, Chaska, MN 55318.

2. General Motors LLC is a limited liability company existing under the laws of Delaware with a place of business located at 300 Renaissance Center, Detroit, MI 48265.

3. Upon information and belief, Third-Party Defendant Magna Electronics, Inc. is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 2050 Auburn Hills, Michigan 48326, and with a registered office of 601 Abbott Road, East Lansing, Michigan 48823.

4. Upon information and belief, Third-Party ZF Active Safety and Electronics US LLC is a Delaware limited liability company with a regular and established place of business at 12001 Tech Center Drive, Livonia, MI 48150.

JURISDICTION AND VENUE

5. This action was brought by Facet for infringement of United States patents arising under the patent laws of the United States, Title 35 of the United States Code.

6. Facet’s Complaint for Patent Infringement filed January 22, 2024 (“Facet’s Complaint”) alleges that this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a). A copy of Facet’s Complaint is attached hereto as Exhibit A.

7. Facet’s Complaint alleges that personal jurisdiction over GM is proper in this Court.

8. Facet’s Complaint alleges that this judicial district is a proper venue under 28 U.S.C. § 1400(b). For purpose of this action only, GM has not disputed that venue is proper

under 28 U.S.C. § 1400(b), provided that GM reserves the right to challenge venue under the principle of forum *non conveniens* following clarification of Plaintiff's allegations and following an appropriate time thereafter for investigation into the relevant public and private factors relating thereto.

9. This Court has supplemental jurisdiction over the claims in this Third-Party Complaint pursuant to 28 U.S.C. § 1367 because the claims are so related to the principal claims in Facet's Complaint and in the above-captioned action that they form part of the same case or controversy.

10. This Court has personal jurisdiction over each of the Third-Party Defendants pursuant to the Texas long-arm statute, Tex. Civ. Prac. & Rem. Code § 17.042.

11. On information and belief, each of the Third-Party Defendants does business in the State of Texas, and each of the Third-Party Defendants purposefully avails itself of the privilege of conducting activities in the State of Texas and has established minimum contacts with the State of Texas such that the exercise of jurisdiction is and would be consistent with federal due-process guarantees.

12. On information and belief, Magna's products are included in vehicles that are being sold and used in the state of Texas and this district, and Magna has operated, conducted, engaged in, transacted, and/or carried on substantial business in the state of Texas and this district. On information and belief, front camera modules supplied by Magana and accused of infringement in Facet's Complaint are being sold and used in the state of Texas and this district.

13. On information and belief, Magna has sufficient minimum contacts with the State of Texas to satisfy the requirements of due process.

14. On information and belief, ZF's products are included in vehicles that are being sold and used in the state of Texas and this district, and ZF has operated, conducted, engaged in, transacted, and/or carried on substantial business in the state of Texas and this district. On information and belief, front camera modules supplied by ZF and accused of infringement in Facet's Complaint are being sold and used in the state of Texas and this district.

15. On information and belief, ZF has sufficient minimum contacts with the State of Texas to satisfy the requirements of due process.

FACTUAL BACKGROUND

16. Facet's Complaint asserts claims of infringement of United States Patent Nos. 9,335,255 and 9,671,328 (collectively, the "Patents-in-Suit").

17. In support of Facet's claims of infringement, Facet's Complaint alleges that "GM incorporates processing platforms that include Mobileye EyeQ3 and EyeQ4 Systems-on-Chip (SOCs)," and that "GM uses Mobileye software on cameras that support safety technologies such as forward collision alert and lane departure warning systems." (Ex. A., ¶ 37.) Facet's Complaint further alleges that "The Mobileye SOC's used in GM vehicles for LKA and LDW rely on a forward looking camera module that acts as the intensity sensor." (*Id.* at ¶ 54.)

18. Facet's claims of infringement are based on Mobileye EyeQ3 and EyeQ4 SOC's found in forward looking camera modules. (*Id.* at ¶¶ 37, 40, 54, 77.)

19. GM answered Facet's Complaint on March 29, 2024, denying Facet's allegations of patent infringement.

20. On information and belief, Third-Party Defendants Magna and ZF each incorporate or have incorporated the accused Mobileye EyeQ3 and EyeQ4 SOC's into forward looking camera modules supplied to GM. On information and belief, these forward looking

camera modules are incorporated into all of the accused products for which Facet alleges that GM is liable for infringement of the Patents-in-Suit.

21. Magna's and ZF's forward looking camera modules that incorporate the accused Mobileye EyeQ3 and EyeQ4 SOCs are supplied to GM under purchase orders and sales order acknowledgements that incorporate terms and conditions which separately require Magna and ZF to investigate, defend, hold harmless, and indemnify GM against any actual or alleged claims of infringement relating to such modules.

22. In particular, the terms and conditions of the contracts under which GM purchased the forward camera modules that incorporate the accused Mobileye EyeQ3 and EyeQ4 SOCs from Magna and ZF include the following indemnification provision, in which Magna and ZF are each a "Seller":

Seller will investigate, defend, hold harmless and indemnify Buyer, its successors, its affiliates (collectively "Buyer Group") and its dealers and customers against any actual or alleged claims of infringement or other assertions of proprietary rights violations (including patent, trademark, copyright, industrial design right, or other proprietary right, misuse, or misappropriation of trade secret) and resulting damages and expenses (including attorney's and other professional fees) arising in any way in relation to the goods or services contracted, including such claims where Seller has provided only part of the goods or services (collectively "IP claims"). Seller expressly waives any claim against Buyer Group that any such IP Claims arose out of compliance with Buyer Group's or its dealers' or customers' specification or direction.

23. There exists a real and actual controversy between GM and each of Magna and ZF concerning the issues of liability and indemnity for any damages resulting from Facet's Complaint filed against GM and the allegations and claims set forth therein, as well as from any finding of infringement of the Patents-in-Suit.

24. Each of Magna and ZF is obligated to defend, hold harmless, and indemnify GM for any liability in connection with any claim that their forward looking camera modules that incorporate the accused Mobileye EyeQ3 and EyeQ4 SOCs infringes a U.S. patent.

25. GM has repeatedly requested that Magna defend it and indemnify it against Facet's infringement claims. Magna has repeatedly ignored GM's demand for indemnification and, to date, has not agreed to indemnify GM. On information and belief, including based on Magna's conduct to date, Magna refuses to defend, hold harmless, and indemnify GM against the claims of Facet.

26. GM has repeatedly requested that ZF defend it and indemnify it against Facet's infringement claims. ZF has refused GM's demand for indemnification and, to date, has not agreed to indemnify GM. On information and belief, including based on ZF's conduct to date, ZF refuses to defend, hold harmless, and indemnify GM against the claims of Facet.

27. This Third-Party Complaint arises out of the same transactions and occurrences that are the subject of the claims asserted against GM in the principal cause of action filed by Facet.

**FIRST CAUSE OF ACTION
(BREACH OF CONTRACT)**

28. GM repeats and realleges the allegations contained in the preceding paragraphs as if fully set forth herein.

29. The respective purchase orders and sales order acknowledgements covering the supply of forward camera modules from each of Magna and ZF to GM, including the terms and conditions incorporated therein, form valid and enforceable contracts between GM and Magna and between GM and ZF.

30. Pursuant to those terms and conditions of those valid and enforceable contracts, each of Magna and ZF had and has a contractual duty to defend, hold harmless, and indemnify GM from the claims in Facet's Complaint.

31. GM duly notified each of Magna and ZF of the claims in Facet's Complaint arising out of their respective forward camera modules that incorporate the accused Mobileye EyeQ3 and EyeQ4 SOC's.

32. Despite GM's full performance of its contractual obligations, each of Magna and ZF has failed to defend, hold harmless, and indemnify GM.

33. As a result, each of Magna and ZF has breached its contractual obligations to GM.

34. GM has suffered damage as a result of each of Magna and ZF's breach of their respective contractual obligations, including, without limitation, incurring costs and attorneys' fees in connection with the investigation and defense of the claims asserted in Facet's Complaint.

35. GM will suffer further damage as a result of Magna and ZF's breach, including without limitation incurring future costs of litigation and attorneys' fees and, if GM is found to infringe, incurring the costs of any judgment that may be entered against GM.

SECOND CAUSE OF ACTION (INDEMNIFICATION)

36. GM repeats and realleges the allegations contained in the preceding paragraphs as if fully set forth herein.

37. Each of ZF and Magna has a duty to indemnify GM with respect to the claims in Facet's Complaint under principles of both common-law indemnity and/or implied contractual indemnity.

38. Without admitting the allegations of infringement of by Facet, to the extent infringement of the Patents-in-Suit is found based on the front camera modules supplied by Magna and ZF such that GM is held liable for the products supplied by Magna and ZF, GM is entitled to full restitution from Magna and ZF.

**THIRD CAUSE OF ACTION
(CONTRIBUTION)**

39. GM repeats and realleges the allegations contained in the preceding paragraphs as if fully set forth herein.

40. GM duly notified each of Magna and ZF of the claims in Facet's Complaint arising out of the respective forward camera modules provided by Magna and ZF, respectively.

41. Without admitting the allegations of infringement of by Facet, to the extent GM is held liable for any damages to Facet, GM is entitled to contribution from Magna and ZF and Magna and ZF are obligated to satisfy such damages in total as between them in shares consistent with their respective liability.

42. GM is further entitled to contribution from Magna and ZF, jointly and severally, for any other damages arising out of the claims in the Facet Complaint, including any costs, interest, and attorneys' fees.

**FOURTH CAUSE OF ACTION
(BREACH OF MICHIGAN UNIFORM COMMERCIAL CODE-SALES § 440.2312)**

43. GM repeats and realleges the allegations contained in the preceding paragraphs as if fully set forth herein.

44. GM purchased from Magna and ZF the forward camera modules that incorporate the accused Mobileye EyeQ3 and EyeQ4 SOCs and for which Facet alleges that GM is liable for infringement of the Patents-in-Suit

45. Michigan Uniform Commercial Code-Sales § 440.2312 provides in part: "Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like"

46. Magna and ZF are each a merchant that regularly deals in goods of the kind at issue in Facet's Complaint, namely forward camera modules.

47. Without admitting the allegations of infringement of by Facet, to the extent infringement of the Patents-in-Suit is found based on the front camera modules supplied by Magna and ZF, then Magna and ZF have breached their warranty and GM is entitled to damages for such breach.

48. GM has suffered damage as a result of such breach by Magna and ZF of their warranty pursuant to the Michigan Uniform Commercial Code-Sales, including without limitation incurring costs and attorneys' fees in connection with this litigation.

49. GM will suffer further damage as a result of such breach by Magna and ZF of their warranty pursuant to the Michigan Uniform Commercial Code-Sales, including without limitation incurring future costs of litigation and attorneys' fees and, if GM is found to infringe, incurring the cost of any judgment that may be entered against GM.

**FIFTH CAUSE OF ACTION
(DECLARATORY JUDGMENT)**

50. GM repeats and realleges the allegations contained in the preceding paragraphs as if fully set forth herein.

51. As set forth above, the respective purchase orders and sales order acknowledgements covering the supply of forward camera modules by Magna and ZF to GM, including the terms and conditions, include an express obligation of Magna and ZF to investigate, defend, hold harmless, and indemnify GM against any actual or alleged claims of infringement relating to such modules.

52. To date, Magna and ZF have not agreed to investigate, defend, hold harmless, and indemnify GM with respect to the claims asserted in Facet's Complaint. As a result, GM has

incurred and is continuing to incur legal defense costs and other expenses in defending against the claims asserted in Facet's Complaint, as well as in connection with attempting to enforce the obligations owed by Magna and ZF to investigate, defend, hold harmless, and indemnify GM with respect to the claims asserted in Facet's Complaint.

53. On information and belief, each of Magna and ZF disputes that it is obligated, contractually or otherwise, to defend, hold harmless, and indemnify GM with respect to the claims asserted in Facet's Complaint, and as a result there is a an actual, justiciable controversy between GM on the one hand, and each of Magna and ZF on the other.

54. Pursuant to 28 U.S.C. § 2201 *et seq.*, GM is entitled to a declaratory judgment that Magna and ZF are obligated to investigate, defend, hold harmless, and indemnify GM with respect to the claims asserted in Facet's Complaint, and to otherwise set forth the respective duties and obligations of Magna and ZF in furtherance of their respective obligations to GM.

JURY DEMAND

55. The Complaint contains a jury demand, for which no response is required.

PRAYER FOR RELIEF

WHEREFORE, GM respectfully prays for judgment against Third-Party Defendants Magna and ZF and respectfully requests the following relief:

A. A declaratory judgment that each of Magna and ZF must indemnify, hold harmless, and defend GM from any claims arising from the purchase, sale, or use of forward camera modules supplied by Magna and ZF, or vehicles containing such modules;

B. Awarding in favor of GM and against Magna and ZF any amount awarded in judgment in the principal action in favor of Facet and against GM, plus attorneys' fees and costs incurred in defending the principal action and any other losses sustained as a result of Facet's claims;

- C. Awarding GM its attorneys' fees, costs, and other expenses incurred in investigating and defending against the claims in the Facet Complaint;
- D. Awarding GM its attorneys' fees, costs, and other expenses incurred in prosecuting this third-party action, and in attempting to enforce Magna and ZF's obligations to defend, hold harmless, and indemnify GM;
- E. Damages in an amount to be determined at trial, including compensatory damages, pre-judgment interest, and post-judgment interest; and
- F. Awarding GM any such other further legal and equitable relief to which it may be entitled, or to which the Court deems just and proper.

Dated: October 11, 2024

By: /s/ Melissa R. Smith

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this notice was served on all counsel who have consented to electronic service, Local Rule CV-5(a)(3)(A), on October 11, 2024.

Dated: October 11, 2024

/s/ *Melissa R. Smith*

Melissa R. Smith