UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

AUTOCONNECT HOLDINGS, LLC Plaintiff, **v.** **FORD MOTOR COMPANY,** Defendant.	**Case No.: 24-1327-CFC** **JURY TRIAL DEMANDED**

DEFENDANT FORD MOTOR COMPANY'S MOTION TO DISMISS PURSUANT TO FED. R. CIV. 12 (b)(6)

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I. NATURE OF THE PROCEEDINGS

Plaintiff AutoConnect Holdings LLC ("AutoConnect") filed this lawsuit against Defendant Ford Motor Company ("Ford") alleging infringement of 13 Patents. (D.I.1.) Pursuant to Rule 12(b)(6), Ford moves to dismiss AutoConnect's claims for 7 of the 13 asserted patents.

II. SUMMARY OF THE ARGUMENT

Ford moves to dismiss certain of AutoConnect's claims on two different grounds. First, the asserted claims of the '697, '239, '367, '186, '153, and '100 Patents are invalid as indefinite because they recite numerous "and/or" limitations, as well as the terms "and" and "or," in a manner that renders the scope of those claims insolubly ambiguous. The specifications each define the term "and/or" as "both conjunctive and disjunctive in operation." But the scope of a patent claim listing various features cannot be "***both***" conjunctive (requiring ***all*** features) "***and***" disjunctive (requiring ***any*** feature). Under the Federal Circuit's *en banc* decision in *Phillips*, the inventor's express definition controls. This renders the scope of the asserted "and/or" claims indefinite under 35 U.S.C. §112 because a person of ordinary skill in the art ("POSA") reading these claims in view of the specification cannot decipher the true scope of these claims.

Second, AutoConnect's claim charts for the '100 and '491 Patents, fail to satisfy the pleading requirements of *Iqbal* and *Twombly* because AutoConnect fails to plead facts that make its infringement claims plausible. For the '100 Patent, AutoConnect charts

the asserted claims against third-party "AUTOSAR" "specifications"—not Ford vehicles. AutoConnect's Complaint and claim chart do not (and cannot) allege that Ford vehicles practice the cited specifications, because they do not.

AutoConnect asserts its '491 Patent against two third-party software applications installed on certain Ford vehicles: Apple's "CarPlay" and Google's "Android Auto." The asserted claims require a "signal processor" that is configured to "determine load." AutoConnect's claim chart asserts in a conclusory fashion that the accused CarPlay and Android Auto applications "determine a load," but provide no facts making the allegation plausible. AutoConnect's chart directs Ford to videos posted on Apple and Google's respective websites. But those videos make no reference to "determin[ing] a load" and AutoConnect's claim chart fails to explain how the accused applications satisfy the claim limitation. Ford is not aware of any aspect of CarPlay or Android Auto that "determine[s] a load" and cannot glean from AutoConnect's charts how, factually, AutoConnect contends that claim limitation is satisfied by any Ford vehicle.

Thus, AutoConnect has failed to plausibly state a claim for infringement of the '100 and '491 Patents.

III. STATEMENT OF FACTS

A. Facts Relevant to Indefiniteness Under 35 U.S.C. §112

All asserted claims of the '367, '239, '697, '186, '153, and '100 Patents identified in the Complaint recite at least one "and/or" limitation to connect multiple claim

limitations, together with varying uses of the individual terms "and" and "or." The following table identifies AutoConnect's asserted claims at issue in this motion.

Asserted Patent	Complaint Count	Asserted Claims	Docket Index No.
9,020,697 ("the '697 Patent")	II	1, 8, 15	1-6
9,082,239 ("the '239 Patent")	III	1, 8, 15	1-9
9,098,367 ("the '367 Patent")	IV	1, 10, 17	1-12
9,123,186 ("the '186 Patent")	VI	1, 8, 15	1-18
9,173,100 ("the '100 Patent")	X	1, 9, 17	1-30
9,290,153 ("the '153 Patent")	XI	1, 11, 12	1-33

Each of the asserted patents reciting an "and/or" claim limitation provides an express definition for "and/or" as an "open ended expression" that is "***both*** ***conjunctive and disjunctive in operation***."[1] (D.I.1-4, 15:58–65; D.I.1-7, 15:63–16:3; D.I.1-10, 4:60–67; D.I.1-16, 15:63–16:3; D.I.1-28, 6:37–44; D.I.1-31, 15:63–16:3.) The definition is followed by an "example," where three claimed features yield seven possible claim scopes: "'A, B, and/or C' means [1] A alone, [2] B alone, [3] C alone, [4] A and B together, [5] A and C together, [6] B and C together, or [7] A, B and C together." (*e.g.,* D.I.1-4, 15:60–65.)

The varying usages of "and/or," "and," and "or" in the asserted claims at issue in this motion are addressed in the Argument section below.

[1] Unless otherwise indicated, all emphasis has been added.

B. Facts Relevant to Failure to State a Claim Under *Iqbal* and *Twombly*

1. Count X: The ’100 Patent

In Count X of the Complaint, AutoConnect asserts that Ford vehicles infringe the ’100 Patent. (D.I.1, ¶¶239–260.) This patent is titled “On board Vehicle Network Security” and is directed to detecting and responding to security breaches on a vehicle network. (D.I.1-28, Abstract, 4:1–13.)

In Exhibit “J2,” AutoConnect identifies Ford vehicles from model year 2017 to 2025 that AutoConnect contends infringe the ’100 Patent. (D.I.1-29.) In its claim chart for the ’100 Patent (Exhibit “J3”), AutoConnect purports to explain ***how*** those Ford vehicles infringe the asserted claims. (D.I.1-30.) AutoConnect does ***not*** chart the asserted claims against the accused Ford vehicles. Instead, AutoConnect charts those claims against certain “AUTOSAR” “specifications” hosted on the AUTOSAR website. (*Id.* at PageID.1047–1053.)

AutoConnect’s claim chart for the ’100 Patent does not and cannot present facts to support the allegation that the accused Ford vehicles practice the AUTOSAR specifications identified in the claim chart because Ford vehicles are not compliant with AUTOSAR. The claim chart states “[u]pon information and belief, the ’100 Accused Instrumentalities [Ford vehicles] implement security mechanisms described in the specifications of AUTOSAR [] to enhance the safety and reliability of vehicles.” (*Id.* at PageID.1045) As support for that allegation, AutoConnect states,

by footnote, "Ford joined AUTOSAR in 2003" and "Ford continues to be a core partner of the AUTOSAR partnership." (*Id.*) In the Complaint, AutoConnect identifies, by footnote, AUTOSAR webpages. (D.I.1, ¶244.) One of those webpages states that Ford is a "Core Partner" of AUTOSAR.

Despite being a member of the AUTOSAR organization, no Ford vehicles made or sold in the U.S. implement AUTOSAR, and AutoConnect pleads no ***facts*** to the contrary.

2. Count I: The '491 Patent

In Count I of the Complaint, AutoConnect asserts that Ford vehicles infringe the '491 Patent. (D.I.1, ¶¶42–63.) This patent is titled "Sharing applications/media between car and phone (hydroid)" and asserted claims 11 and 16 are directed to a vehicle communication system for interacting with applications on a connected device, such as a smartphone. (D.I.1-1, Abstract; 39:52–40:4; 40:26–40.)

Asserted claim 11 of the '491 Patent recites a "signal processor" that is "operable to" "determine load." (*Id.*, 39:61.) Asserted claim 16 similarly recites "instructions to determine load." (*Id.*, 40:34.)

The '491 Patent claim chart states that the Apple CarPlay and Android Auto software installed in certain Ford vehicles satisfies the "determine load" limitation of the asserted claims:

The '491 Accused Instrumentalities include a signal processor that determines load. The signal processor determines load by, for example, analyzing information sent between the '491 Accused Instrumentalities and the mobile device while an Apple CarPlay and/or Android Auto session is established. Additionally, load can be determined by monitoring the volume of data transferred with the mobile device and the types of tasks being handled by the '491 Accused Instrumentalities, including the capabilities required for such tasks.

For example, the '491 Accused Instrumentalities establish a CarPlay session by transmitting information to a mobile device and receiving information from the mobile device through communication protocols. The signal processor analyzes this information to determine load.

When a CarPlay Home screen is first shown, and no audio is playing, the communication protocols are used for setup and location information. An H264 video stream showing the Home screen is sent from the iPhone to the car.

The '491 Accused Instrumentalities running Android Auto determine load in a manner materially similar to Apple CarPlay.

See also Rows 11C and 11E.

Exemplary Sources
https://developer.apple.com/videos/play/wwdc2016/722/
https://developer.android.com/training/cars/apps#carsensors

(D.I.1-3, PageID.155–156.)

But the hyperlinks provided in the claim chart make no reference to "determin[ing] load."

IV. LEGAL STANDARD

A. Patent Claim Indefiniteness

A patent claim is indefinite under 35 U.S.C. §112(b) if it "fail[s] to inform, with reasonable certainty, those skilled in the art about the scope of the invention." *Nautilus, Inc. v. Biosig Instruments, Inc.*, 572 U.S. 898, 901 (2014). A patent must apprise the public of what subject matter is "still open to them." *Id.* at 909–910 (citations omitted). "Otherwise there would be '[a] zone of uncertainty which enterprise and experimentation may enter only at the risk of infringement claims.'" *Id*. (citation omitted).

As a question of law, indefiniteness is ripe for resolution at the motion to dismiss stage. *In re TLI Commc'ns LLC Pat. Litig.*, 87 F. Supp. 3d 773, 805 (E.D. Va. 2015) (granting Rule 12(b)(6) motion to dismiss based on indefiniteness), *aff'd*, 823 F.3d 607 (Fed. Cir. 2016); *DSS, Inc. v. Nichia Corp.*, No. LA CV 19-08172, 2024 WL 3515886, at *4 (C.D. Cal. July 12, 2024) (same).[2]

In conducting an indefiniteness inquiry, a court is not to "rewrite claims to preserve their validity." *Allen Eng'g Corp. v. Bartell Indus., Inc.*, 299 F.3d 1336, 1349 (Fed. Cir. 2002). The Federal Circuit has affirmed findings of indefiniteness where the claims recite nonsensical or impossible claim scope. *See e.g., Horizon Pharma, Inc. v. Dr. Reddy's Lab'ys Inc.*, 839 F. App'x 500, 505 (Fed. Cir. 2021) (affirming the district court's finding of indefiniteness because "[o]ne circumstance in which claims are indefinite is where the claims, as properly construed, are nonsensical").

For example, where the patent's specification provides an express definition of a claim term that "clouds" the scope of the term, requiring a POSA to "wade through a morass of uncertainty and contradiction," the claim term is invalid as indefinite. *IQASR LLC v. Wendt Corp.*, 825 F. App'x. 900 (Fed. Cir. 2020). And a Court cannot rewrite a

[2] In some instances, courts have declined to rule on indefiniteness at the motion to dismiss stage because "indefinites arguments [may] require claim construction." *See e.g., Blackbird Tech v. Uber Techs., Inc.*, No. CV 19-561 (MN), 2020 WL 58535, at *8 (D. Del. Jan. 6, 2020). This is ***not*** one of those instances because as explained below the patent specifications expressly define the disputed term in a manner that renders the claims indefinite. For this motion, claim construction is not required.

patent specification to add clarity where the specification, as originally written, is contradictory and nonsensical. *Cf. Default Proof Credit Card Sys. v. Home Depot U.S.A., Inc.*, 412 F. 3d 1291, 1302–03 (Fed. Cir. 2005) (declining "to rewrite the patent's specification . . . [because] [t]he primary purpose of the definiteness requirement is to ensure that the claims are written in such a way that they give notice to the public of the extent … protection afforded by the patent"); *Omega Eng'g, Inc v. Raytek Corp.*, 334 F. 3d 1314, 1332 (Fed. Cir. 2003) (declining plaintiff's expert declaration because it sought "to rewrite the patent's specification" stating "[t]hat we cannot accept").

B. Pleading Standard for Claims of Patent Infringement

Under Rule 12(b)(6), a district court may dismiss a cause of action for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). A complaint "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Allegations must include "enough facts" that, when taken as true, "state a claim to relief that is plausible on its face." *Id.* at 570. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009).

When analyzing a motion to dismiss for failure to state a claim, the court accepts as true all well-pleaded factual allegations and draws reasonable inferences in favor of the nonmoving party, but the court need not "accept as true allegations that are merely

conclusory, unwarranted deductions of fact, or unreasonable inferences." *Anderson v. Kimberly-Clark Corp.*, 570 F. App'x 927, 931 (Fed. Cir. 2014).

In patent cases, "a plaintiff cannot assert a plausible claim for infringement under the *Iqbal*/*Twombly* standard by reciting the [patent] claim elements and merely concluding that the accused product has those elements. There must be some factual allegations that, when taken as true, articulate why it is plausible that the accused product infringes the patent claim." *Bot M8 LLC v. Sony Corp. of Am.*, 4 F.4th 1342, 1353 (Fed. Cir. 2021).

V. ARGUMENT

A. The Asserted Patent Claims Reciting "and/or" are Indefinite as a Matter of Law.

In patent law, a "patentee's use of 'and/or'" has been criticized as "sloppy draftsmanship or a sign of intellectual laziness." *Pavilion Techs., Inc. v. Emerson Elec. Co.*, No. A-05-CA-898-SS, 2006 WL 6210180, at *12 (W.D. Tex. Sept. 5, 2006). "Indeed, as a number of commentators have pointed out, the term 'and/or' has no place in strong, effective writing." *Id.*; *United States v. Taylor,* 258 F.3d 815, 819 (8th Cir. 2001) ("Strunk and White describe 'and/or' as a 'device, or shortcut, that damages a sentence and often leads to confusion or ambiguity.'") (citation omitted). Nevertheless, in some cases, courts have found a patentee's recitation of "and/or" in the claims "sufficiently meaningful that it may be readily understood." *See e.g., Pavilion Techs.*,

2006 WL 6210180, at *12 ("'*And/or*, though undeniably clumsy, does have a specific meaning (*x* and/or *y* = *xoryor both*'") (citation omitted). This is ***not*** one of those cases.

In this case, the patent specifications expressly define the term "and/or" as "***both conjunctive and disjunctive in operation***." (D.I.1-4, 15:58–65; D.I.1-7, 15:63–16:3; D.I.1-10, 4:60–67; D.I.1-16, 15:63–16:3; D.I.1-28, 6:37–44; D.I.1-31, 15:63–16:3.) The specifications provide "example" of an "and/or" limitation comprising three elements, stating "'A, B, and/or C' means [1] A alone, [2] B alone, [3] C alone, [4] A and B together, [5] A and C together, [6] B and C together, or [7] A, B and C together." (*e.g.,* D.I.1-4, 15:58–65.)

In *Phillips*, the Federal Circuit recognized "the specification may reveal a special definition given to a claim term by the patentee that differs from the meaning it would otherwise possess" and "***[i]n such cases, the inventor's lexicography governs.***" *Phillips v. AWH Corp.*, 415 F.3d 1303,1316 (Fed. Cir. 2005) (en banc). Thus, the definition in the asserted patents "govern" the meaning of "and/or."

The definition of "and/or" provided in the specifications renders the claims insolubly ambiguous because the scope of a claim reciting multiple elements cannot be "***both***" conjunctive (requiring ***all*** of the recited elements) "***and***" disjunctive (requiring ***any*** of the recited elements). Depending on whether the conjunctive or the disjunctive definition is applied, the claim has two very different scopes. The varying scope is confirmed by the example provided in the specification explaining that "A, B, and/or C"

is intended "in operation" to cover ***seven different claim scopes***. The definition provided in the specifications makes it impossible for POSA to understand the scope of the claims. And, selecting just ***one*** claim scope among the several identified in the specification would be contrary to the specification, leaving a POSA in a quandary on the true scope of the claim.

Claim 17 of the '367 Patent recites, in relevant part:

> the plurality of applications comprising a plurality of an application related to ***at least one of*** a handicap ***and*** accessibility graphical user interfaces, an email client, a web browser, a communications application, a game, an entertainment application, a satellite positioning system receiver application, an automotive navigation application ***or*** a device, a map application, a medical information application, an emergency service application, a noise suppression application, a news-related application, a vehicle manual related application, a weather information-related application, a biometric application, a travel application, a speech recognition application, an application to read to an operator of the vehicle Really Simple Syndication ("RSS") feeds, Twitter messages, email messages, ***and/or*** instant messages, a social networking application, a streaming media application, ***and*** a utility application.

(D.I.1-10, 37:27–45.)

The usage of "and," "or," and "and/or" in claim 17 leaves a POSA hopeless to determine the scope of this claim. Applying the patent's definition of "and/or" creates dozens of possible combinations, each yielding a different claim scope. And the sporadic use of "and" and "or" by themselves among the listing prevents a POSA from knowing which feature options, of the many provided, are subject to the "at least one of" limitation. Finally, the recitation of "and" *after* the "and/or" creates confusion as to whether the

"utility application" is subject to the "and/or" limitation or not, which also impacts the claim scope.

Asserted claims 1, 8, and 15 of the '239 Patent recite, in relevant part:

> wherein the persona comprises ***one or more of*** bioinformatics, medical information, driving history, personal information, private information, travel information, ***and*** Internet browsing history ***and/or*** browsed content;
>
> * * *
>
> wherein vehicle related information comprises ***one or more of*** vehicle context, state, external surroundings, location, past, current, ***and/or*** intended path of travel, waypoint, ***and*** destination.

(D.I.1-7, 125:5–15; 126:21–32; 127:36–45.) A POSA reading the asserted '239 Patent claims cannot decipher which of the recited claim features is subject to the "one or more" limitation, and whether the limitations connected by "and" are subject to the "and/or" limitation or not.

Claims 1, 10, and 17 of the '367 Patent, recite "***one or more*** of an on board hardware ***and/or*** software resource, module, algorithm, ***and/or*** component ***and/or*** a setting ***and/or*** property thereof." (D.I.1-10, 34:12–15; 35:56–59; 37:56–59.) In addition to the compounded ambiguity arising from the use of four "and/or" limitations, some limitations following the "one or more" are separated by "and/or," and others are not. This creates the unresolvable ambiguity over whether the "one or more" applies to the "software resource, module, algorithm" (*i.e.*, the claim is limited to ***any one*** of them), or

if the "one or more" applies only to the terms separated by "and/or" (*i.e.*, the claim requires ***each of*** "software resource, module, algorithm").

Asserted claims 1, 8, and 15 of the '186 Patent recite: "***at least one*** of an area ***and/or*** zone occupied by the vehicle occupant ***and*** an operating state of the vehicle." (D.I.1-16, 125:25–27; 126:53–55; 128:13–15.) It is impossible to determine if the claim scope requires "at least one of" (i) the "area" and "zone" limitations, (ii) the "area and/or zone" limitation and the "operating state" limitation, (iii) any one of the "area," "zone," and "operating state" limitations, or some other combination of features.

Claims 1, 8, and 15 of the '697 Patent recite an "attempt to access the vehicle network ***and/or*** communication subsystem." (D.I.1-4, 124:66–67; 126:27–28; 127:56–57.) Claims 1 and 12 of the '153 Patent similarly recite "devices connected wirelessly to the network ***and/or*** communication subsystem." (D.I.1-31, 124:48–49; 126:37–38.) The '697 and '153 Patents make clear the claimed "network" and "communication subsystem" are different components, as they are given different reference numerals and are shown differently in the figures. (D.I.1-4, 92:37–38; D.I.1-31, 91:57–58.) Applying the definition of "and/or" to the asserted claims of the '697 and '153 Patents means those claims cover "both" the conjunctive (the vehicle network "and" the communication subsystem) "and" the disjunctive (the vehicle network "or" the communication subsystem). (D.I.1-4, 124:66–67; 126:27–28; 127:56–57; D.I.1-31, 124:48–49; 126:37–38.)

Claims 1, 8, and 15 of the ’697 Patent separately recite “within a predetermined area ***and/or*** zone of the vehicle.” (D.I.1-4, 124:59–60; 126:21–22; 127:53–54.) The specification and figures of the ’697 Patent teach that an “area” can include one or more “zones,” thus the claim terms have different scope. (D.I.1-4, 33:29–51, Figs. 5A and 5B.) Applying the patent definition means these claims cover “both” the conjunctive (an area “and” a zone) “and” the “disjunctive” (an area “or” a zone).

Finally, claims 1, 9, and 17 of the ’100 Patent each recite “breach of a security measure to a firewall ***and/or*** gateway.” (D.I.1-28, 59:33–34; 61:34–35; 63:34–35.) The ’100 Patent describes a “firewall” and a “gateway” as distinct devices, explaining “[t]he gateway can be any module equipped for interfacing with another network that uses one or more different communication protocols” and “[t]he firewall can use any technique to maintain security, including network address translation, network layer or packet filtration, application-layer firewall, and the like.” (*Id.*, 23:17–22.) Under the patent definition, these claims cover both “a firewall [and] gateway” and “a firewall [or] gateway.”

Because the asserted “and/or” claims are of different and uncertain scope, the claims are invalid as indefinite. *Trustees of Columbia Univ. v. Symantec Corp.*, 811 F.3d 1359, 1367 (Fed. Cir. 2016) (“The claims are nonsensical in the way a claim to extracting orange juice from apples would be, and are thus indefinite”); *Koki Holdings Co. v. Kyocera Senco Indus. Tools, Inc.*, No. CV 18-313-CFC, 2021 WL 1092579, at *1 (D.

Del. Mar. 22, 2021) ("A claim that is nonsensical or requires an impossibility is indefinite as a matter of law under § 112(b).").

Some courts have found the use of "and/or," "one or more," and "at least one of" sufficiently clear to avoid a finding of indefiniteness. In *Pavilion Techs.*, for example, the court construed the term "and/or" to mean "any combination of one or more of the items"—*i.e.*, a disjunctive "or." 2006 WL 6210180, at *12. Here, however, the Court does not have the discretion to adopt the disjunctive interpretation over the conjunctive interpretation because the patents' express definition requires "both." *Phillips*, 415 F.3d at 1316.

The Federal Circuit's decision in *IQASR* is instructive. 825 Fed. Appx. 900. There, plaintiff argued that the at-issue patent defined claimed term "'magnetic fuzz' . . . [as] a type of magnetic 'low susceptance microparticle' and also 'magnetically active disassociated microparticles' . . .." *Id.* at 905. The Court agreed that the specification supported these definitions, but also found that it "clouds them." *Id.* The Court found that because "the multiple layers of definitions are all open-ended and non-limiting, a skilled artisan must wade through a morass of uncertainty and contradiction" to determine the true scope of the claim. *Id.* Like in *IQASR*, the claims reciting the "and/or" limitations are indefinite because they recite "***open-ended expressions that are both conjunctive and disjunctive in operation***." (D.I.1-10, 4:60–67.) Like in that case, the claims require "a

skilled artisan [to] wade through a morass of uncertainty and contradiction," preventing him or her from discerning the bounds of the claims.

While other courts have construed "and/or" ***in the claims*** to interpret the term as "or" or "one or more," the Court here cannot rewrite the express definition ***in the specification*** to change "***both*** conjunctive ***and*** disjunctive in operation" to one or the other. *Default Proof*, 412 F. 3d at 1302–03; *Omega Eng'g*, 334 F. 3d at 1332. The Court cannot retroactively rewrite the patents to choose one over the other. As in *IQASR,* the definition in the patent specifications "clouds" rather than clarifies the scope of the claim, requiring a POSA to "wade through a morass of uncertainty and contradiction" thereby rendering the claims invalid as indefinite. 825 Fed. Appx. 900.

The fact that the claim term "and/or" has a meaning *other than* simply "and" or "or" is further confirmed by the fact that the claims separately recite "and" and "or" *by themselves* to join other claim limitations. (*See e.g.,* D.I.1-4, 124:56, 65–66, 125:4; D.I.1-7, 125:8, 16, 26; D.I.1-31, 125:41, etc.).) In *Phillips*, 415 F. 3d at 131, the Federal Circuit instructed "the context in which a term is used in the asserted claim can be highly instructive." Here, the use of the term "and" in the claims plainly means the conjunctive, the use of the term "or" plainly means the disjunctive, and the term "and/or," as expressly defined in the patent, means "both conjunctive and disjunctive"—an impossibility.

For these reasons, all asserted claims reciting "and/or" are invalid as indefinite.

B. AutoConnect Fails to Plausibly Plead Infringement of the ’100 Patent

In its claim chart for the ’100 Patent, AutoConnect does not compare the asserted claims to Ford vehicles. Instead, AutoConnect compares the claims to certain specifications published by a third-party, the AUTOSAR organization. (D.I.1-30, at PageID.1046–1053.) But to establish direct infringement, a complaint must show that all elements of a patent claim are present in the accused products. *Netword, LLC v. Centraal Corp.*, 242 F.3d 1347, 1353 (Fed. Cir. 2001). The third-party AUTOSAR specifications identified in AutoConnect’s claim chart are ***not*** the Ford vehicles identified as the accused products in this case. (*See* D.I.1-29 (identifying accused Ford vehicles).)

To establish direct infringement, a complaint must show that all elements of a patent claim are present in the accused products. *Netword*, 242 F.3d at 1353. A narrow exception to this requirement allows establishing infringement using “an industry standard . . . [i]f a district court construes the claims and finds that the reach of the claims includes any device that practices [that] standard, then this can be sufficient for a finding of infringement.” *Fujitsu Ltd. v. Netgear Inc.*, 620 F.3d 1321, 1327 (Fed. Cir. 2010).

To allege infringement based on an industry standard, however, a patentee must “adduce[] facts suggesting that the asserted claims ‘cover every possible implementation’” of a standard, or “connect either the accused products to the asserted claims, or the [] Standard to the asserted claims.” *Stragent, LLC v. BMW of N. Am., LLC*, No. 6:16-CV-446-RWS-KNM, 2017 WL 2821697, at *5 (E.D. Tex. Mar. 3, 2017), *report*

and recommendation adopted, 2017 WL 2832613 (E.D. Tex. Mar. 27, 2017) (citing *Fujitsu*, 620 F.3d at 1327). This is because "in many instances, an industry standard does not provide the [] specificity required to establish that practicing that standard would always result in infringement. Or, . . . the relevant section of the standard is optional, and standards compliance alone would not establish that the accused infringer chooses to implement the optional section." *Fujitsu*, 620 F.3d at 1327–28.

AutoConnect's allegations (D.I.1, at ¶¶239–260) and claim chart (D.I.1-30) does not plead plausible facts suggesting that the accused Ford vehicles practice ***any*** aspect of AUTOSAR, let alone the particular aspects of the particular specifications cited in AutoConnect's claim chart. AutoConnect has not done so, and cannot do so, because Ford vehicles are not AUTOSAR compliant.

The Complaint attaches as Exhibit J3 "a representative chart that, on information and belief, describes how, as a non-limiting example, the elements of exemplary claims 1, 9, and 17 of the '100 patent are met by the '100 Accused Instrumentalities." (*Id.*, at ¶241.) But, this chart does nothing to "describe[] how" the accused products infringe the '100 Patent. Instead, it states that "[u]pon information and belief, the '100 Accused Instrumentalities implement security mechanisms described in the specifications of AUTOSAR AP" and that "AUTOSAR defines [a] ... standard to support the needs of automotive applications." (D.I.1-30, at PageID.1045.) The chart proceeds to correlate parts of the AUTOSAR specification to the '100 Patent claims. But there is nothing in

the chart plausibly demonstrating that the accused Ford *vehicles* implement the cited portions of the AUTOSAR standard (or any aspect of AUTOSAR).

AutoConnect's allegations are insufficient to plausibly plead infringement. *Bot M8 LLC*, 4 F.4th at 1353.

In addition to the absence of plausible facts demonstrating that Ford vehicles practice the identified AUTOSAR specifications (they do not), AutoConnect's claim chart also fails to demonstrate, as required in *Fujitsu* and *Stragent*, that the '100 Patent claims necessarily cover every possible implementation of the AUTOSAR specifications, or that the cited portions of the AUTOSAR specification are mandatory as opposed to optional. In *Stragent*, the plaintiff "allege[d] that the accused products infringe the asserted claims because they comply with the AUTOSAR Standard." 2017 WL 2821697, at *5. Defendants moved to dismiss arguing that "Stragent's direct infringement allegations are deficient under Rule 12(b)(6) because they simply identify a technical standard without further explanation." *Id.* at *3. The court agreed, finding that because "Stragent has adduced no facts suggesting that the asserted claims 'cover every possible implementation of [the AUTOSAR Standard],' Stragent must connect either the accused products to the asserted claims, or the AUTOSAR Standard to the asserted claims." *Id.* at *5 (modification in original). The court found Stragent's conclusory allegation that the patents-in-suit address AUTOSAR compliant systems insufficient especially because, "[t]here have been several releases [or versions] of AUTOSAR, ..." *Id.* Indeed, the court

warned that "[t]his is exactly the type of situation in which *Fujitsu* cautioned against "establish[ing] infringement by arguing that the product admittedly practices the standard." *Id.* (citing *Fujitsu*, 620 F. 3d at 1327). Yet, that is exactly what AutoConnect has done here.

The Court should dismiss AutoConnect's claim for infringement of the '100 Patent.

C. AutoConnect Fails to Plausibly Plead Infringement of the '491 Patent

Asserted claim 11 of the '491 Patent requires a "signal processor" that is "operable to" "determine load." (D.I.1-1, 39:61.) Asserted claim 16 similarly requires "instructions to determine load." (*Id.*, 40:34.)

Yet, AutoConnect's Complaint and the accompanying chart provide no factual support that Ford's accused products allegedly meet this required limitation. (D.I.1, at ¶¶42–63; D.I.1-3, PageID.155–156.) Instead, AutoConnect's chart conclusory states that "[t]he '491 Accused Instrumentalities include a signal processor that determines load," and proceeds to provide an unsubstantiated example. (*Id.*) To meet the pleadings standards of *Iqbal/Twombly*, however, AutoConnect must "do more than assert that the accused product meets the claim elements; it must show *how* the defendant plausibly infringes by alleging some facts connecting the accused product to the claim elements." *Bos. Sci. Corp. v. Nevro*

Corp., 415 F. Supp. 3d 482, 489 (D. Del. 2019) (citing *SIPCO, LLC v. Streetline, Inc.*, 230 F. Supp. 3d 351, 353 (D. Del. 2017)) (emphasis in original).

The only factual evidence identified in AutoConnect's chart for this claim limitation are two videos hosted on Apple and Google websites. (D.I.1-3, PageID.156.) But neither video states that a signal processor in the vehicle communication system is operable to "determine load" as claimed.

AutoConnect's pleadings for this limitation do not pass muster under the *Iqbal/Twombly* standards because they leave Ford guessing as to how the accused products allegedly meet the "determin[ing] load" limitation. *Bos. Sci.*, 415 F. Supp. 3d at 489; *SIPCO*, 230 F. Supp. 3d at 353.

The Court should dismiss AutoConnect's claim for infringement of the '491 Patent.

VI. CONCLUSION

For the foregoing reasons, Ford respectfully requests the Court dismiss Counts I, II, III, IV, VI, X, and XI of the Complaint.

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Date: February 14, 2025 /s/ *Helena C. Rychlicki*