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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

KRUSE TECHNOLOGY PARTNERSHIP,

Plaintiff,

v.

ISUZU MOTORS LIMITED, ISUZU NORTH AMERICA CORPORATION, and ISUZU COMMERCIAL TRUCK OF AMERICA, INC.

Defendants.

Case No. CV09-3710 JVS (RNBx)

Assigned to:
Hon. James V. Selna
Hon. Robert N. Block, Mag. Judge

ANSWER AND COUNTERCLAIMS OF ISUZU COMMERCIAL TRUCK OF AMERICA, INC.

DEMAND FOR JURY TRIAL

Defendant Isuzu Commercial Truck of America, Inc. ("ICTA") answers the Complaint for Patent Infringement ("Complaint") of Plaintiff Kruse Technology Partnership, ("KTP"), as follows:

I. THE PARTIES

1. ICTA is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 1 and on that basis denies each and every such allegation.

2. ICTA admits the allegations in Paragraph 2.

3. ICTA admits the allegations in Paragraph 3.

4. ICTA admits the allegations in Paragraph 4.

5. ICTA admits that it does business in this judicial district and otherwise denies the allegations in Paragraph 5.

II. JURISDICTION AND VENUE

6. ICTA incorporates the answers provided to paragraphs 1-5 as though fully stated herein.

7. ICTA admits that the Complaint purports to set forth a cause of action under the patent laws of the United States, 35 U.S.C. § 100, et seq., more particularly 35 U.S.C. § 271 and § 281. However, ICTA denies that KTP has a valid cause of action.

8. ICTA admits that subject matter jurisdiction in this Court is proper under 28 U.S.C. § 1338(a).

9. ICTA admits that venue is proper in this District under 28 U.S.C. §§ 1391 and 1400(b).

III. FIRST CLAIM FOR RELIEF: PATENT INFRINGEMENT (U.S. PATENT NO. 5,265,562)

10. ICTA incorporates the answers provided to paragraphs 1-9 as though fully stated herein.

11. ICTA admits that on its face U.S. Patent No. 5,265,562 ("the '562 patent") attached as Exhibit A to the Complaint is entitled "Internal Combustion Engine With

Limited Temperature Cycle." ICTA further admits that, on its face, the '562 patent bears an issue date of November 30, 1993, and lists Douglas C. Kruse as inventor. Otherwise, ICTA denies the remaining allegations in Paragraph 11.

12. ICTA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12, and on that basis, denies those allegations.

13. ICTA denies the allegations in Paragraph 13.

14. ICTA denies the allegations in Paragraph 14.

15. ICTA denies the allegations in Paragraph 15.

16. ICTA denies the allegations in Paragraph 16.

IV. SECOND CLAIM FOR RELIEF: PATENT INFRINGEMENT (U.S. PATENT NO. 6,058,904)

17. ICTA incorporates the answers provided to paragraphs 1-16 as though fully stated herein.

18. ICTA admits that on its face U.S. Patent No. 6,058,904 ("the '904 Patent") attached as Exhibit B to the Complaint is entitled "Internal Combustion Engine With Limited Temperature Cycle." ICTA further admits that, on its face, the '904 Patent bears an issue date of May 9, 2000, and lists Douglas C. Kruse as inventor. Otherwise, ICTA denies the remaining allegations in Paragraph 18.

19. ICTA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19, and on that basis, denies those allegations.

20. ICTA denies the allegations in Paragraph 20.

21. ICTA denies the allegations in Paragraph 21.

22. ICTA denies the allegations in Paragraph 22.

23. ICTA denies the allegations in Paragraph 23.

V. THIRD CLAIM FOR RELIEF: PATENT INFRINGEMENT (U.S. PATENT NO. 6,405,704)

24. ICTA incorporates the answers provided to paragraphs 1-23 as though fully stated herein.

25. ICTA admits that on its face U.S. Patent No. 6,405,704 ("the '704 Patent") attached as Exhibit C to the Complaint is entitled "Internal Combustion Engine With Limited Temperature Cycle." ICTA further admits that, on its face, the '704 Patent bears an issue date of June 18, 2002, and lists Douglas C. Kruse as inventor. Otherwise, ICTA denies the remaining allegations in Paragraph 25.

26. ICTA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 26, and on that basis, denies those allegations.

27. ICTA denies the allegations in Paragraph 27.

28. ICTA denies the allegations in Paragraph 28.

29. ICTA denies the allegations in Paragraph 29.

30. ICTA denies the allegations in Paragraph 30.

RESPONSE TO PRAYER FOR RELIEF

ICTA denies that KTP is entitled to any to either the requested relief or any other or further relief.

DEFENSES

ICTA hereby asserts the following defenses without undertaking or otherwise shifting any applicable burdens of proof. ICTA reserves the right to assert additional defenses, as warranted by facts revealed through investigation and discovery.

FIRST AFFIRMATIVE DEFENSE

NON-INFRINGEMENT

31. ICTA has not and does not infringe, contribute to the infringement of, or actively induce others to infringe, either directly, indirectly, literally, or by application of the doctrine of equivalents, any valid claim of the '562, '904, or '704 Patents.

SECOND AFFIRMATIVE DEFENSE

INVALIDITY UNDER 35 U.S.C. §§ 101, 102, 103 and 112

32. One or more of the claims of the '562, '904, and '704 Patents are invalid for failure to comply with the conditions for patentability specified in 35 U.S.C. § 101, et seq., including without limitation each of the requirements in 35 U.S.C. §§ 101, 102, 103, and 112.

THIRD AFFIRMATIVE DEFENSE

ESTOPPEL

33. KTP's claims for relief are barred by the defense of estoppel.

FOURTH AFFIRMATIVE DEFENSE

LACHES

34. KTP's claims for patent infringement and/or damages are barred by laches, waiver, equitable estoppel, and/or acquiescence.

FIFTH AFFIRMATIVE DEFENSE

PROSECUTION HISTORY ESTOPPEL

35. KTP is estopped from construing the claims of the '562, '904, and '704 patents in such a way as may cover activities of ICTA by reason of, *inter alia*, amendments and/or statements made in and to the United States Patent and Trademark Office during the prosecution of the applications that issued as the '562, '904, and '704 Patents.

SIXTH AFFIRMATIVE DEFENSE

EQUITABLE ESTOPPEL

36. KTP's claims for infringement of the '562, '904, and '704 Patents and/or damages are barred in whole or part by the doctrine of equitable estoppel.

SEVENTH AFFIRMATIVE DEFENSE

CLAIM SPLITTING

37. KTP is barred from any relief in this action under the doctrine of claim splitting, because, on information and belief, some of KTP's claims in this action may

be identical to the claims KTP makes in the earlier filed litigation, *Kruse Technology Partnership v. General Motors Corporation*, Case No. SACV 08-1452-JVS (RNBx) and in *Kruse Technology Partnership v. General Motors Company*, Case No. CV09-4970-JVS (MLGx).

EIGHTH AFFIRMATIVE DEFENSE

PATENT EXHAUSTION

38. KTP is barred from any relief in this action in whole or in part under the doctrine of patent exhaustion.

NINTH AFFIRMATIVE DEFENSE

LIMITATION ON DAMAGES

39. KTP's claim for relief is statutorily limited by the time limitations on damages specified in 35 U.S.C. § 286.

TENTH AFFIRMATIVE DEFENSE

INEQUITABLE CONDUCT AND UNCLEAN HANDS

40. The '562 Patent, the '904 Patent, and the '704 Patent are unenforceable because of KTP's inequitable conduct and unclean hands in the filing and prosecution of the applications leading to the issuance of these patents. On information and belief, in the filing and prosecution of these applications, Mr. Douglas C. Kruse ("Mr. Kruse") and his patent attorneys, Louis Mok and Michael Elkind, with an intent to deceive the U.S. Patent and Trademark Office ("PTO") and its Patent Examiners, intentionally withheld and misrepresented information material to the patentability of the claims of those patent applications.

41. Application serial no. 07/919,916, the application of the '562 Patent, recited claims that required among other things the use of "substantially constant volume" combustion and "substantially isothermal" or "constant temperature" combustion. Application claim 3, which later issued as claim 5 of the '562 Patent, for example, recited:

"A spark ignition internal combustion engine including a combustion chamber, said engine having an operating cycle including a heat input phase comprising a substantially constant volume combustion process followed by a substantially isothermal combustion process."

Independent claim 1 similarly recited a method and also required, among other things, "wherein the combustion of the fuel/air mixture resulting from the fuel first introduced is a substantially constant volume process; and wherein the combustion as a result of the introduction of the second fraction is a substantially isothermal process." Dependent claim 2 recited the method of claim 1, adding that "the fuel is introduced by direct injection."

42. On December 17, 1992, during the prosecution of the application for the '562 Patent, Patent Examiner Willis Wolfe rejected the application claims based on a prior art patent, U.S. Patent 2,917,031 to Nestorovic ("Nestorovic Patent"). On March 12, 1993, Mr. Kruse's patent attorney, Louis Mok, argued against the examiner's rejection by representing that the Nestorovic Patent did not disclose the required "isothermal" or constant temperature combustion of the claims. Mr. Mok represented that because the Nestorovic Patent disclosed a constant pressure process, it could not have also disclosed a constant temperature process: "It is, of course, thermodynamically impossible to provide a process that is simultaneously constant pressure and isothermal [constant temperature]." The Examiner accepted this representation, concluding that the prior art disclosed to him did not teach constant temperature combustion. He subsequently allowed the claims that issued in the '562 Patent.

43. While the application for the '562 Patent was still pending, Mr. Kruse and his attorney Mr. Mok also filed a substantially-identical application for patent in other countries, including European countries (the "European application"). Claims 1-11 in Mr. Kruse's European application were, at the time, substantially identical to claims pending in the U.S. application for, and

later issued in, the '562 Patent, reciting among other things, a combination of "substantially constant volume combustion" and "substantially isothermal combustion."

44. During the prosecution of the European application, the European Patent Office conducted a search of applicable prior art with respect to the substantially identical claims in the European application and issued Mr. Kruse and his attorney Mr. Mok an "International Search Report" on October 15, 1993, before issuance of the '562 Patent. That "Search Report" highlighted, as a "document of particular relevance" to the substantially-identical claims, German prior patent DT 2507142 Al to Porsche ("the Porsche Application"). The Porsche Application was published September 2, 1976, and, therefore, was prior art under 35 U.S.C. § 102(b) to all of Mr. Kruse's U.S. applications, as well as to his European application. The Porsche Application, in fact, disclosed the use of "constant volume" and "constant temperature" combustions required by the application claims, including claims 1 and 3, which issued as claims 1 and 5 of the '562 Patent. The Porsche Application additionally disclosed the use of direct injection specifically recited by claim 2. The Porsche Application was therefore material and not cumulative of any other prior art before the examiner, and would have resulted in a rejection of at least application claims 1, 2, and 3 for anticipation.

45. Mr. Kruse and Mr. Mok knew about the Porsche Application and received a copy of the European Patent Office's determination that it was of "particular relevance" to claims that they had filed in the European application that were substantially identical to the claims of Mr. Kruse's application for the '562 Patent. Despite this knowledge, and in violation of their duty of disclosure to the PTO (35 U.S.C. § 56; 37 C.F.R. § 1.56), Mr. Kruse and Mr. Mok failed to disclose the Porsche Application to the PTO during the pendency of the '562 Patent and the U.S. patent issued without consideration by the PTO of the relevant disclosures of the prior art Porsche Application.

46. Moreover, although the Porsche Application itself was later cited to the PTO in connection with Mr. Kruse's subsequent U.S. applications by Mr. Kruse and the attorney who replaced Mr. Mok, Mr. Elkind, Mr. Kruse and Michael Elkind withheld information relevant to the Porsche Application that would have explained the Porsche Application's disclosure. On information and belief, Mr. Elkind coordinated the prosecution of Mr. Kruse's European application through Mr. Kruse's European attorneys, including Mr. Roger Prutton. Mr. Kruse and Mr. Elkind failed to inform the U.S. examiners in charge of Mr. Kruse's continuing patent applications that Examiners in the European Patent Office ("EPO") had reviewed the European application and rejected claims substantially identical to those in the '562 Patent based on the Porsche Application. Moreover, they did not disclose to the U.S. examiners that the European examiners gave detailed technical explanations showing why the Porsche Application disclosed features that were the subject, not only of claims substantially identical to those in the '562 Patent, but also of claims pending in Mr. Kruse's applications for other U.S. patents that Mr. Elkind was prosecuting. Claim 9 of the '904 Patent, which issued on May 9, 2000, is identical to claim 1 of the '562 Patent except for the additional use of "compressed air." The claims of the '704 Patent also were sufficiently similar to the claims of the earlier-issued '562 and '904 Patents that Mr. Kruse, through Mr. Elkind, filed a terminal disclaimer to prevent their being rejected for double-patenting in light of the similarity in the claims with the earlier-issued '562 and '904 Patents.

47. On information and belief, Mr. Kruse and his attorney Mr. Elkind knew of the European Examiners' rejection of the substantially-identical claims in the European application, were aware of the European Examiners' explanation of the subject matter disclosed by the Porsche Application, including the steps of providing (in spark-ignited directly-injected engines) a substantially constant volume combustion process followed by a substantially isothermal (*i.e.*, constant temperature) combustion process, and were aware that such features were common to claims in Mr. Kruse's then-pending U.S. applications. On information and belief, Mr. Kruse and Mr. Elkind also knew that the

European Examiners had provided additional explanations that were material to the claims of the then-pending Kruse applications and to the U.S. patent examiners' understanding of those claims. For example, Examiner Willis Wolfe, who examined and issued the application for the '562 Patent, explained on October 21, 1994 in a co-pending Patent Cooperation Treaty ("PCT") application with substantially identical claims that he had allowed in the '562 Patent, and that were subsequently allowed in the '904 Patent, that the claims were patentable because the prior art that he had reviewed "does not teach or fairly suggest the utilization of a constant volume combustion process followed by a substantially isothermal combustion process in a spark ignited, directly injected internal combustion engine." On December 18, 1996, a European Examiner explained in detail why the Porsche Application disclosed these features: "Accordingly, DE-A-2 507 142 [the Porsche Application] shows a method of operating a spark ignition internal combustion [engine] in which a substantially constant volume combustion process is followed by a substantially isothermal combustion process . . . ." Additionally, on December 9, 1997, three European Examiners explained in a communication to Mr. Kruse and his European attorney that the Porsche Application also disclosed direct injection.

48. On information and belief, Mr. Kruse and his patent attorney Mr. Elkind were also both also aware of Mr. Kruse's admissions to the European Examiners after receiving their technical explanations regarding the disclosure of the Porsche Application. For example, on February 3, 1998, Mr. Kruse compared the disclosure in his application to that of the Porsche Application and ultimately admitted that the Porsche Application disclosed both a constant volume combustion and isothermal combustion. Mr. Kruse, who had earlier stated through his European attorney on August 28, 1995 that "the description of the process in [the Porsche Application] is extremely sketchy and it is extremely difficult to derive any clear teaching from it," ultimately conceded the correctness of the European Examiners' technical explanations of the Porsche Application, including the use of constant volume combustion, constant

temperature combustion, direct injection, and spark ignition, by amending his claims and adding other requirements not required by the claims of his original European application or by the claims of the Kruse '562, '904, or '704 Patents.

49. The European Examiners' decisions on patentability, technical explanations of the Porsche Application, and Mr. Kruse's admissions regarding the disclosure of the Porsche Application, were material to the patentability of the claims in Mr. Kruse's U.S. patent applications. Mr. Kruse and his attorney Mr. Elkind withheld from the U.S. Examiners knowledge of the European Examiners' decisions and technical explanations of the Porsche Application, thereby preventing the U.S. Examiners from evaluating and agreeing with the European Examiners' assessment of the Porsche Application. On information and belief, Mr. Kruse and Mr. Elkind withheld this material information, which was not otherwise available to the U.S. examiners from any other source, in order to avoid their use in a rejection of their claims in the U.S. Patent applications leading to, *inter alia*, the '904 and '704 Patents.

50. During the prosecution of the '562 Patent, the '904 Patent, and the '704 Patent, Mr. Kruse failed to disclose other prior art known to him, including U.S. Patent No. 4,050,420 issued to Cataldo ("Cataldo Patent"), which was assigned to General Motors and was material to the patentability of the claims submitted for examination. Mr. Kruse did not act in accordance with the duty of good faith and candor imposed on him by the PTO's Patent Rules and did not disclose this prior art in any of his communications with PTO Examiners. Instead, on information and belief, Mr. Kruse withheld this prior art in order to mislead the Examiners regarding the patentability of the subject matter claimed in Mr. Kruse's applications. As explained above, during the prosecution of the '562 Patent, Mr. Kruse convinced Examiner Wolfe that the prior art Nestorovic Patent did not disclose constant temperature combustion. Throughout the prosecution of his patents, however, Mr. Kruse was aware that the Cataldo Patent did disclose the concept of using constant temperature combustion, as well as the use of limiting maximum temperature to reduce NOx, a limitation that Mr. Kruse included in

application claim 1 of the application that issued as the '704 Patent. Mr. Kruse was aware of the Cataldo Patent's teaching of these features and of their significance because he found the reference in a text search of a library database regarding the use of constant temperature combustion. Mr. Kruse also acknowledged in a draft patent application regarding his use of constant volume and constant temperature combustions that the Cataldo Patent should be a cited reference. The Cataldo Patent's clear and explicit disclosure of a spark-ignited engine using two-phase combustion in which the second combustion phase was a constant temperature combustion, and in which a limited maximum combustion temperature was used to control NOx, was not cumulative of any other information considered by the U.S. examiners during the pendency of the applications for the '562, '904, and '704 Patents. If the Cataldo Patent had been cited during the prosecution of the '562 and '904 Patents, the examiners in charge of these applications would have used Cataldo's teaching of constant temperature combustion to at least reject claim 1 of the '562 Patent and claim 9 of the '904 Patent as obvious in light of the Cataldo Patent. If the Cataldo Patent had been cited during the prosecution of the '704 Patent, the examiner in charge of the application for this patent would have used it to reject at least claim 1 of this patent as unpatentable for failing to disclose any new or non-obvious distinction as compared to Cataldo's teaching of operating an internal combustion engine by injecting fuel so as to limit temperature to reduce NOx.

51. In addition, before applying for the '904 and '704 Patents, Mr. Kruse submitted a technical paper for publication to the Society of Automotive Engineering ("SAE") entitled "Combustion Model for Limited-Temperature Cycle" ("Article"). The Article disclosed technology relating to the subject matter of the '904 and '704 patent applications. The SAE, after a peer group review, rejected the paper in or about January 1996 on a number of grounds and found that it should "not be published for several reasons." Among other things, the SAE review highlighted a failure of Mr. Kruse to enable his claimed technology. An SAE reviewer found that "[t]he authors have a

simplistic engine cycle simulation program and they have continued to exercise it." The reviewer also stated that it was "basically false advertising" to suggest that the Carnot cycle supported the authors' theory, and that "there is no particular advantage to the constant temperature phase" of the authors' proposed theory. This statement was inconsistent with assertions of Mr. Kruse to the Patent Office that the Carnot cycle provided increased efficiencies. The SAE reviewer also noted that the authors did not teach how their theoretical fuel-delivery method would achieve a desired heat release rate:

> The second flaw in the papers is the tacit assumption that by controlling the fuel injection profile one can get any desired burning profile. All of the mechanisms that promote or inhibit combustion in current engines are still active in their LTC cycle. You can not control only fuel delivery and get what you want for heat release rate. The fuel delivery schedule is only one of several important parameters.

The SAE reviewer's criticism of Mr. Kruse's assumption that he could achieve desired burning or heat release profiles by controlling fuel injection profiles was highly relevant to the patentability of each of the claims of the Kruse patents, which rely throughout their disclosures on the same assumption regarding how heat release profiles would be achieved to enable the claimed methods of operating internal combustion engines. The information also was not cumulative because the type of scientific evaluations provided by the SAE peer reviews regarding Mr. Kruse's theoretical methods for controlling heat release and temperature were not available to the examiners through any other source. Mr. Kruse, moreover, was aware of the importance of a peer review of the claimed methods in his patents, not only because his SAE paper referred to the '562 Patent, but because he knew that his methods were theoretical and had not been tested in an actual prototype to determine whether his proposal for achieving heat release and temperature characteristics were an enabling technology. Mr. Kruse withheld the results of the peer review from investors and potential investors in his proposed technology as well as from

the examiners at the PTO. Had Mr. Kruse disclosed the SAE peer review results to the examiners in charge of Mr. Kruse's applications for the '904 and '704 Patents, the information would have been used to reject the claims as unpatentable for lacking an enabling disclosure under 35 U.S.C. § 112.

52. On information and belief, Mr. Kruse did not act in accordance with the duty of good faith and candor imposed on him by 37 C.F.R. § 1.56, but instead withheld this material information from the PTO in order to mislead the Examiners regarding the patentability of the subject matter claimed in his applications.

53. The '562 Patent, the '904 Patent and the '704 Patent are also unenforceable because of other inequitable conduct in the filing and prosecution of the applications leading to the issuance of these patents. On information and belief, in the filing and prosecution of these applications, Mr. Kruse, with an intent to deceive the PTO and its Patent Examiners, intentionally misrepresented information material to the patentability of the claims of those patent applications.

54. Mr. Kruse made representations through his patent attorney to Patent Examiner Willis Wolfe regarding the Nestorovic Patent. On March 12, 1993, Mr. Kruse's patent attorney, Louis Mok, argued against the Patent Examiner's December 17, 1992 rejection of the claims of application serial no. 07/919,916 based on the Nestorovic Patent. Mr. Mok represented that the Nestorovic Patent did not disclose "isothermal" or constant temperature combustion by stating: "It is, of course, thermodynamically impossible to provide a process that is simultaneously constant pressure and isothermal [constant temperature]. What Nestorovic appears to mean is that his constant pressure process is accompanied by a constant flame temperature rather than isothermal heat addition." Mr. Kruse repeated this representation in subsequent communications to PTO Examiners reviewing his related applications.

55. Mr. Kruse, however, knew at all times during the prosecution of his applications that "[i]t is possible thermodynamically for temperature and pressure to remain constant." His knowledge was material information because it refuted and was

directly inconsistent with the position he took in opposing the argument of unpatentability relied on by the Patent Examiner. On information and belief, Mr. Kruse violated his duty of disclosure by misrepresenting to the Examiner, through his patent attorney, that it is "thermodynamically impossible to provide a process that is simultaneously constant pressure and isothermal." In his December 7, 2005 deposition in the Caterpillar case, Mr. Kruse's patent attorney, Mr. Mok, testified that the information he provided to the Examiner was important and that if he had been informed by Mr. Kruse that the information was inaccurate, he would have filed a supplemental paper to correct the representation. Had Mr. Kruse not misrepresented to the Examiner that it was "thermodynamically impossible" for Nestorovic to disclose constant temperature combustion, Examiner Wolfe would have maintained his rejection of the claims of the '562 Patent. Neither that patent nor the '904 and '704 Patents, which were allowed subsequently after the filing of terminal disclaimers, would have issued.

56. On information and belief, Mr. Kruse did not act in accordance with the duty of good faith and candor imposed on him by 37 C.F.R. § 1.56, but instead misrepresented this material information in order to mislead the Examiners regarding the patentability of the subject matter claimed in his applications.

COUNTERCLAIMS

Isuzu Commercial Truck of America, Inc. ("ICTA") brings these counterclaims to obtain a declaratory judgment that: (i) it has not and does not infringe any valid claim of the '562 Patent, the '904 Patent, or the '704 Patent (collectively "the patents-in-suit"); (ii) the patents-in-suit are invalid; and (iii) the patents-in-suit are unenforceable.

I. THE PARTIES

1. Defendant/Counter-Plaintiff ICTA is a California Corporation with its principal place of business at 13340 183rd Street, Cerritos, California 90703-8748.

2. Upon information and belief, Plaintiff/Counter-Defendant Kruse Technology Partnership ("KTP") is a California Limited Partnership located at 1121 N.

Cosby Way, Suite G, Anaheim, California 92806.

II. JURISDICTION AND VENUE

3. This action arises under the patent laws of the United States, Title 35, United States Code. This Court has jurisdiction over the subject matter of this counterclaim under 28 U.S.C. §§ 2201, 2202, 1331, 1338(a) and 1367(a).

4. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400.

III. FIRST COUNTERCLAIM

Declaratory Judgment of Non-Infringement of U.S. Patent No. 5,265,562

5. ICTA realleges and incorporates the allegations contained in paragraphs 1 through 4.

6. KTP alleges in its Complaint that it is the owner of the '562 Patent, entitled "Internal Combustion Engine With Limited Temperature Cycle," which bears an issue date of November 30, 1993.

7. KTP has sued ICTA in the present action, alleging infringement of the '562 Patent. Thus, an immediate, real, and justiciable controversy exists between ICTA, on the one hand, and KTP, on the other hand, with respect to the alleged infringement of the '562 Patent.

8. ICTA does not infringe, has not infringed, and does not and has not induced infringement or contributed to infringement of any claim of the '562 Patent under any theory, including literal infringement and infringement under the doctrine of equivalents.

9. ICTA requests declaratory judgment that it does not infringe, directly or indirectly, any claim of the '562 Patent.

IV. SECOND COUNTERCLAIM

Declaratory Judgment of Invalidity of U.S. Patent No. 5,265,562

10. ICTA realleges and incorporate the allegations contained in paragraphs 1 through 9.

11. An immediate, real, and justiciable controversy exists between ICTA, on

the one hand, and KTP, on the other hand, with respect to the invalidity of the '562 Patent.

12. Each asserted claim of the '562 Patent is invalid and/or unenforceable for failure to comply with one or more provisions of Title 35, United States Code, including but not limited to 35 U.S.C. §§ 101, 102, 103, and 112.

13. ICTA requests declaratory judgment that each asserted claim of the '562 Patent is invalid and unenforceable.

V. THIRD COUNTERCLAIM

Declaratory Judgment of Non-Infringement of U.S. Patent No. 6,058,904

14. ICTA realleges and incorporate the allegations contained in paragraphs 1 through 13.

15. KTP alleges in its Complaint that it is the owner of the '904 Patent, entitled "Internal Combustion Engine With Limited Temperature Cycle," which bears an issue date of May 9, 2000.

16. KTP has sued ICTA in the present action, alleging infringement of the '904 Patent. Thus, an immediate, real, and justiciable controversy exists between ICTA, on the one hand, and KTP, on the other hand, with respect to the alleged infringement of the '904 Patent.

17. ICTA does not infringe, have not infringed, and do not and have not induced infringement or contributed to infringement of any claim of the '904 Patent under any theory, including literal infringement and infringement under the doctrine of equivalents.

18. ICTA requests declaratory judgment that it does not infringe, directly or indirectly, any claim of the '904 Patent.

VI. FOURTH COUNTERCLAIM

Declaratory Judgment of Invalidity of U.S. Patent No. 6,058,904

19. ICTA realleges and incorporate the allegations contained in paragraphs 1 through 18.

20. An immediate, real, and justiciable controversy exists between ICTA, on the one hand, and KTP, on the other hand, with respect to the invalidity of the '904 Patent.

21. Each asserted claim of the '904 Patent is invalid and/or unenforceable for failure to comply with one or more provisions of Title 35, United States Code, including but not limited to 35 U.S.C. §§ 101, 102, 103, and 112.

22. ICTA requests declaratory judgment that each asserted claim of the '904 Patent is invalid and unenforceable.

VII. FIFTH COUNTERCLAIM

Declaratory Judgment of Non-Infringement of U.S. Patent No. 6,405,704

23. ICTA realleges and incorporates the allegations contained in paragraphs 1 through 22.

24. KTP alleges in its Complaint that it is the owner of the '704 Patent, entitled "Internal Combustion Engine With Limited Temperature Cycle," which bears an issue date of June 18, 2002.

25. KTP has sued ICTA in the present action, alleging infringement of the '704 Patent. Thus, an immediate, real, and justiciable controversy exists between ICTA and KTP with respect to the alleged infringement of the '704 Patent.

26. ICTA does not infringe, has not infringed, and does not and has not induced infringement or contributed to infringement of any claim of the '704 Patent under any theory, including literal infringement and infringement under the doctrine of equivalents.

27. ICTA requests declaratory judgment that it does not infringe, directly or indirectly, any claim of the '704 Patent.

VIII. SIXTH COUNTERCLAIM

Declaratory Judgment of Invalidity of U.S. Patent No. 6,405,704

28. ICTA realleges and incorporate the allegations contained in paragraphs 1 through 27.

29. An immediate, real, and justiciable controversy exists between ICTA, on the one hand, and KTP, on the other, with respect to the invalidity of the '704 Patent.

30. Each asserted claim of the '704 Patent is invalid and/or unenforceable for failure to comply with one or more provisions of Title 35, United States Code, including but not limited to 35 U.S.C. §§ 101, 102, 103, and 112.

31. ICTA requests declaratory judgment that each asserted claim of the '704 Patent is invalid and unenforceable.

IX. SEVENTH COUNTERCLAIM

Declaratory Judgment of Unenforceability of The '562, '904, and '704 Patents

32. ICTA realleges and incorporate the allegations contained in paragraphs 1 through 31 and each of the allegations in the Tenth Affirmative Defense (Inequitable Conduct and Unclean Hands).

33. On information and belief, Mr. Kruse and his representatives did not act in accordance with the duty of good faith and candor imposed on them by 37 C.F.R. § 1.56, but instead withheld and misrepresented material information in order to mislead the Examiners regarding the patentability of the subject matter claimed in Mr. Kruse's applications.

34. ICTA requests declaratory judgment that the '562, '904, and '704 Patents are unenforceable.

PRAYER FOR RELIEF

WHEREFORE, ICTA respectfully requests that this Court:

A. dismiss with prejudice the Complaint and each and every count and claim for relief contained therein;

B. determine and declare that the claims of the '562, '904, and '704 Patents are not infringed by ICTA;

C. determine and declare that one or more claims of the '562, '904, and '704 Patents are invalid;

D. determine and declare that the '562, '904, and '704 Patents are unenforceable;

E. order that this case is exceptional pursuant to 35 U.S.C. § 285, and award ICTA reasonable attorneys' fees incurred in this action;

F. award ICTA costs incurred in this action; and,

G. grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

DATED:

HOWREY LLP

By _____
Matthew J. Moore
Ben M. Davidson
Gregory S. Cordrey
Mark L. Blake

Attorneys for Defendant
ISUZU COMMERCIAL TRUCK OF AMERICA, INC.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b) and L.R. 38-1, Defendant/ Counter-Plaintiff Isuzu Commercial Truck of America, Inc. demands a trial by jury of all issues that are triable by right to a jury.

Respectfully submitted,

DATED:

HOWREY LLP

By _____
Matthew Moore
Ben M. Davidson
Gregory S. Cordrey
Mark L. Blake

Attorneys for Defendant
ISUZU COMMERCIAL TRUCK OF AMERICA, INC.

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 550 South Hope Street, 11th Floor, Los Angeles, California 90071.

I am readily familiar with the firm's business practice of collection and processing correspondence for mailing with the U.S. Postal Service. Under said practice, correspondence is deposited with the U.S. Postal Service in the ordinary course of business on that same day with postage thereon fully prepaid. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in this declaration.

On September 30, 2009, I served the foregoing document described as: **ANSWER AND COUNTERCLAIMS OF ISUZU COMMERCIAL TRUCK OF AMERICA, INC.** by having placed a true copy thereof in a sealed envelope addressed as follows:

Jon W. Gurka, Esq.
John B. Sganga, Jr., Esq.
David G Jankowski, Esq.
Karen V Weil, Esq.
Knobbe Martens Olson and Bear LLP
2040 Main Street 14th Floor
Irvine , CA 92614

I deposited such envelope with postage thereon prepaid with the United States Postal Service at 550 South Hope Street, 11th Floor, Los Angeles, California.

I am employed in the office of a member of the bar at whose direction service was effected.

Executed on September 30, 2009, at Los Angeles, California.

Charles Koster
Type or Print Name

Charles Koster