

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

ELECTROLYSIS PREVENTION SOLUTIONS
LLC,

Plaintiff,

v.

DAIMLER TRUCKS NORTH AMERICA LLC,

Defendant.

Civil Action No. 3:21-cv-171

JURY TRIAL DEMANDED

PLAINTIFF’S SECOND AMENDED INFRINGEMENT CONTENTIONS

Pursuant to the parties’ September 23, 2022 Stipulation (ECF 59), Plaintiff Electrolysis Prevention Solutions LLC (“EPS”) hereby serves its Second Amended Infringement Contentions to Defendant Daimler Trucks North America LLC (“DTNA” or “Defendant”).

BACKGROUND

On August 2, 2021, pursuant to P.R. 3.1, EPS served its Initial Infringement Contentions (“Initial Contentions”). In its Initial Contentions, EPS accused of infringement all radiators made, used, offered for sale, sold, and/or imported by DTNA that have the same, or substantially similar, features as those accused of infringement in the representative claim chart served as part of EPS’s Initial Contentions. In its Initial Contentions, EPS identified the accused radiators as specifically as possible, based on the publicly available information available to EPS at the time, by identifying the DTNA vehicle brands that would have included the accused radiators—i.e., Freightliner, Thomas Built, Western Star, and Freightliner Custom Chassis—as well as the radiators sold by DTNA’s aftermarket parts brand Alliance Parts. EPS also appended to its contentions the 2016 Alliance Parts radiator catalog, which was (and remains) the most recent version of the catalog that EPS has been able to locate publicly. In conjunction with EPS’s

Initial Contentions, EPS included a representative claim chart for radiator number A05-34822-000 detailing its theory of infringement for the accused radiators. On February 10, 2022, in response to DTNA's request, EPS provided DTNA with additional evidence related to representativeness that demonstrated that the features EPS was accusing of infringement—i.e., those shown in the representative chart for A05-34822-000 (and the same as those accused of infringement in the additional charts served concurrently herewith)—were present in other accused radiators as well as numerous third-party products. On June 3, 2022, pursuant to P.R. 3.6(a)(2), EPS served an Amended P.R. 3-1(c) chart, which was updated based on the Court's Claim Construction Order (ECF 41) ("First Amended Contentions").

DTNA never moved to strike EPS's Initial Contentions or First Amended Contentions. DTNA has never indicated it does not understand what products are accused in this case or what elements, or features, of those products are accused of infringement. Rather, DTNA simply has refused to-date to provide discovery on any radiator model number other than A05-348225-000, despite acknowledging that EPS's infringement contentions, and the universe of accused products in this case, go well beyond a single radiator. On June 3, 2022, EPS filed a motion to compel discovery from DTNA on the full universe of accused products. ECF 45. EPS's motion to compel included among other things a request to inspect the accused products and access to DTNA's private DTNAConnect website so that EPS could not only get discovery on the accused products, but also so that EPS could provide DTNA with a more specific identification of the products at issue. After awaiting a ruling on that motion for several months, and when it became clear that the parties would need to request that the schedule in this matter be adjusted since there was insufficient time to complete discovery, DTNA entertained resolving DTNA's discovery deficiencies through an extension to the case schedule and a stipulation. In that stipulation,

DTNA agreed to provide a list of “all radiators installed into, or sold for installation into, the lines of vehicles identified in EPS’s infringement contentions that DTNA has sold since on or about July 9, 2019.” ECF 59, ¶ 1. DTNA also represented that the radiators it identified as having installed and/or sold “are available for purchase by members of the general public, such as EPS’s counsel, through DTNA retailers.” *Id.*, ¶ 2. EPS then agreed to provide these Second Amended Infringement Contentions, after which DTNA will provide discovery on the full scope of accused products in this case beginning 30 days after service of these Second Amended Infringement Contentions and “will make its best efforts to substantially complete its supplemental responses within 75 days after EPS’s service of” these Second Amended Infringement Contentions. *Id.*, ¶¶ 3-5.

On September 27, 2022, DTNA served the list of radiators (“DTNA List”), that DTNA represented included, for the time period of July 9, 2019 to the date of service, (1) all radiators installed into, or sold for installation into, vehicles in DTNA’s Freightliner, Thomas Built, Western Star, and Freightliner Custom Chassis brands, and (2) made, used, offered for sale, sold, and/or imported by DTNA’s Alliance Parts brand. In conjunction with the service of the DTNA List, DTNA provided the following qualifying statement:

As previously discussed, there may be a number of different reasons why the list is over-inclusive and/or under-inclusive. For example, it is possible that some of these part numbers may be partial radiator assemblies, as opposed to fully assembled radiators. Further, some of these parts may have been installed into a vehicle manufactured in Mexico and not sold into the United States. Also, some of them may be misclassified in DTNA’s system. We also understand that some of these parts may have been discontinued and may no longer be available for purchase. Please let us know if you encounter these or any other issues for the parts you intend to purchase, and we will update the list as appropriate.

Email from P. Lujin (Sept. 27, 2022).

Since receiving the DTNA List on September 27, 2022, EPS has conducted extensive research regarding the part numbers listed on DTNA's list, including multiple conversations with representatives at DTNA dealers, placing multiple orders with DTNA dealers, and extensive research on publicly accessible DTNA and third-party websites regarding the status of part numbers on the DTNA List and cross-reference part numbers for the products on the DTNA List. That extensive research has demonstrated a number of deficiencies in the DTNA List, including the fact that many part numbers on DTNA's list have been discontinued, are on backorder, have been superseded or replaced, or are simply not locatable. This issue applies to over 400 radiator model numbers—*i.e.*, over half of the numbers identified on the DTNA List. EPS has raised this issue with DTNA and because these radiators are not available (despite DTNA's representation that they were sold or otherwise used during the relevant time period), EPS has requested an inspection of these radiators. The parties remain in the process of seeing whether or not they can resolve that issue. Attached hereto as Exhibit 1 is an annotated version of the DTNA List that includes a status column that describes the availability information EPS has been able to determine based on publicly available sources of information.

In addition, many part numbers (including both discontinued and non-discontinued part numbers) cross-reference other part numbers not included in the DTNA List. Further, publicly available information does not identify what radiator part number is installed onto each truck DTNA has sold since July 9, 2019. As discussed below, it is EPS's understanding that DTNA's private DTNACONNECT website has more detailed information about product numbering, availability, etc., but DTNA has refused to provide EPS's counsel with login credentials so it can access this information.

EPS has repeatedly raised these issues with DTNA via email and on telephonic meet and confers, but to date DTNA has not taken any steps to resolve these deficiencies and/or provide additional information, *e.g.*, by providing access to DTNA's private DTNAConnect website (<https://dtnacontent-dtna.prd.freightliner.com/content/public/dtnaconnect---daimler-trucks-north-america.html>), which DTNA's own website indicates "allows you access your vehicle's originally installed parts using an interactive Bill of Materials (BOM)" and provides "access to parts cross-reference, alternates, supersedures, rich part imagery and so much more!" https://dtnacontent-dtna.prd.freightliner.com/content/public/TEM_BB_Registration.html.

DTNA has also refused to allow EPS to inspect products at DTNA's facilities, which was among the issues raised in EPS's motion to compel. *See* ECF 45 at 10-12. EPS has also served third-party subpoenas seeking documents and depositions from several of DTNA's suppliers of accused products but has yet to receive that discovery.

Despite the deficiencies in the DTNA List, DTNA's inability to obtain many of the products on the DTNA List, and DTNA's refusal to provide additional information or assistance (despite agreeing to do so in the parties' stipulation), EPS has undertaken its best efforts to obtain additional representative samples of accused products and to identify with as much specificity as is possible to-date the particular model numbers of radiators that are accused of infringement in this case. Given these continued deficiencies, should DTNA continue to refuse to provide discovery on the full scope of accused products, EPS reserves the right to file a new (or renewed) motion to compel discovery from DTNA, and EPS further reserves the right to amend the specific list of accused products in response to additional discovery from DTNA and/or DTNA's suppliers.

P.R. 3.1(A): Disclosure of Asserted Claims

P.R. 3.1(A): EPS contends that DTNA has, and continues to, infringe the following claims of U.S. Reissue Patent No. RE47,494 (“the ’494 Patent”): 25-27, 29, 31-37, 42, 45-47 (collectively “the Asserted Claims”).¹

P.R. 3.1(B): Disclosure of Accused Products

P.R. 3.1(B): EPS alleges that the radiators listed in Exhibit 1 hereto infringe the Asserted Claims, to the extent they include the features shown in Exhibits 2 through 12 hereto. Exhibit 1 is an annotated version of a subset of the products on the DTNA List. Given DTNA’s representations, EPS understands this list to include (excepting the model numbers removed by EPS): (1) all radiators installed into, or sold for installation into, vehicles in DTNA’s Freightliner, Thomas Built, Western Star, and Freightliner Custom Chassis brands, and (2) made, used, offered for sale, sold, and/or imported by DTNA’s Alliance Parts brand, since July 9, 2019.² The radiator model numbers listed on Exhibit 1 are collectively referred to herein, and in the accompanying claim charts, as the “Accused Products.”

As discussed above, there are a number of deficiencies in DTNA’s list of products. To the extent DTNA and/or its suppliers later provide additional discovery or other information that reveals additional products, EPS reserves the right to amend or supplement Exhibit 1 to identify additional accused products. Further, to-date EPS has proposed a number of ways in which the

¹ Independent claims are set forth in bold typeface.

² To the extent the DTNA List did not include all radiators made, used, offered for sale, sold, and/or imported by Alliance Parts since July 9, 2019, all such radiators are accused in this case to the extent they have the same or substantially similar features as those shown in Exhibits 2 through 12. EPS incorporates by reference the 2016 Alliance Parts Radiator Catalog herein, which DTNA has indicated is the most recent publicly available version of the Alliance Parts Radiator Catalog. EPS does not otherwise have access to what model number radiators Alliance Parts has made, used, offered for sale, sold and/or imported since July 9, 2019.

parties may further reduce or narrow the scope of Accused Products. For example, EPS has requested unit and revenue information for the Accused Products so the parties can focus on the top selling items. As another example, EPS has requested schematics, technical information, or an inspection of the Accused Products so the parties can identify those products with the same, or substantially similar, features as those accused of infringement (*see* Exhibits 2 through 12). *See also* EPS's Motion to Compel (ECF 45). To date, DTNA has refused to provide any of this information that would allow the parties to further narrow the scope of this matter.

P.R. 3.1(C): Disclosure of Claim Chart(s)

P.R. 3.1(C): Attached hereto as Exhibits 2 through 12, are claim charts for representative radiators made, used, offered for sale, sold, and/or imported by DTNA since July 9, 2019 detailing where each element of each asserted claim is found in the Accused Products.

All of the information available to EPS to-date demonstrates the representative nature of the accused products in the charts attached hereto as Exhibits 2 through 12. EPS's investigation to-date has revealed the highly prevalent nature of the features shown in Exhibits 2 through 12, including through evidence EPS has provided to DTNA that many DTNA and non-DTNA products contain the features shown in Exhibits 2 through 12. Exhibits 2 through 12 themselves show the representative nature of the accused products, as the products described therein contain substantially the same features. Also, attached hereto as Exhibit 13 is additional evidence of representativeness, demonstrating that the features EPS accused of infringement are not just part of radiators made, used, offered for sale, sold and/or imported by DTNA or its brands, but also are part of other third-party radiators not at issue in this case. Exhibit 13 was previously provided to DTNA's counsel on February 10, 2022.

Also, the fact that certain of the charted products (*i.e.*, the Spectra Premium and Alliance Parts products) have nearly identical model numbers in addition to substantially the same features indicates that parts from those suppliers are representative of each other. Additionally, EPS only accuses the products listed in Exhibit 1 to the extent they contain the same or substantially similar features as those shown in Exhibits 2 through 12 hereto. Finally, DTNA has never disputed the representative nature of the products identified in EPS’s original or amended Infringement Contentions, despite having been on notice of EPS’s contentions and representativeness assertions for over a year. Instead, to-date, DTNA has merely alleged (without reliable support) in meet and confer correspondence and telephonic meet and confers that EPS has not sufficiently demonstrated that the product charted in its Initial Contentions and First Amended Contentions is representative of other accused products. Despite disagreeing the DTNA’s positions, EPS stipulated to provide these Second Amended Infringement Contentions to provide the charts included herewith as Exhibits 2 through 12 to provide additional evidence of infringement and representativeness.

Below is a table summarizing these claim charts.

Ex.	VMRS Code³	Model No.	Manufacturer / Retailer	Alternative Model Nos.⁴
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³ VMRS stands for Vehicle Maintenance Reporting Standards. VMRS codes are a set of industry standard numeric codes that are used to identify, among other things, individual parts. The VMRS code for radiators generally is 042-002, and the VMRS code for the Core and Tank Assembly of a radiator is 042-002-001. *See, e.g.*, <https://tmc.trucking.org/VMRS-Overview>; <https://allianceparts.com/part/abp-n20-2001-1711>.

⁴ These alternative model numbers were determined using the “Cross-Reference” feature on DTNA’s Excelsior Parts website (www.excelsiorparts.com), DTNA’s Alliance Parts website and 2016 Radiator Catalog (*available at* <https://allianceparts.com/parts/cooling-and-air/radiators>), and the DTNA List (see Exhibit 1). This list of alternative model numbers is limited only to those numbers that appear on DTNA’s List. DTNA has indicated that the list may not be complete and, as such, EPS reserves the right to identify additional alternative model numbers to the extent EPS learns that DTNA’s List is not complete.

2	042-002-001	A05-34822-000	Unknown ⁵	05-36463-202, BHT A9986, BHT U3692002, BHT U3698001, BHT U3692001, A05-30693-003, ABP N20 2001 1721, ABP N20 2001 1711, A05-19870-023, BHT A9986, BHT D0530, BHT E3831, BHT E7236, BHT U3692001, BHT U3698001, A05-19870-023.
3	042-002-001	BHT B4763002 / B4763003	Mahle Behr ⁶	ABP N20 2001 1707, BHT B4761, BHT C2307, BHT C7609, BHT H9350, BHT H9353, 05-36467-002, ABP N20 2001 1714C, BHT 68925, BHT 70012, A05-34821-000, BHT A6724, BHT A6727, BHT A6725002, BHT B4761, BHT B4763002, BHT C2307, BHT C7609, BHT E0805, BHT H9350, BHT H9353, EXO 3AH00200SP.
4	042-002-001	BHT U3933002	Mahle Behr ⁷	BHT D0530, BHT D0635, BHT E7244, BHT U3700001, BHT U3701001, BHT U3933001.

⁵ The product packaging indicates that the radiator came from DTNA's facility located at 2510 Mill Center Parkway, Buford, Georgia 30518.

⁶ The product packaging indicates that the radiator was manufactured in the United States and came from DTNA's facility located at 2510 Mill Center Parkway, Buford, Georgia 30518.

⁷ The product packaging indicates that the radiator was manufactured in the United States and came from DTNA's facility located at 2510 Mill Center Parkway, Buford, Georgia 30518.

5	042-002-001	SPB / ABP N20 2001 1519	Spectra Premium / Alliance Parts	F4HZ 8005 F, F4HZ 8005 G, VAB 1003485, VAB 1101862, VAB 1102177, E8HZ 8005 T, EXO 3AH00243SP, E8HZ 8005 N.
6	042-002-001	SPB / ABP N20 2001 1704	Spectra Premium / Alliance Parts ⁸	1003435, 1003439, 1102038, 3698001, BHT C1680, BHT H0134.
7		SPB / ABP N20 2001 1707	Spectra Premium / Alliance Parts ⁹	BHT 68925, BHT 70012, BHT A6724, BHT A6727, BHT A6725002, BHT B4761, BHT C2307, BHT C7609, BHT D9460, BHT E0805, BHT H9350, BHT H9353, EXO 3AH00200SP, A05- 34821-000.
8		SPB / ABP N20 2001 1711	Spectra Premium / Alliance Parts ¹⁰	3AH00243SP, 3AH00321SP, 3S49914 A05-12800-002, A05-12800-004, A05-16009-000, A05-16058-003, A05-16060-003, A05-16225-001, BHT A9986, BHT D0530, BHT E3831,

⁸ The product packaging indicates that the radiator came from DTNA's facility located at 515 11 Street SE, Canton, Ohio 44707.

⁹ The product packaging indicates that the radiator came from DTNA's facility located at 4140 Anson Blvd., Whitestown, IN 46075.

¹⁰ The product packaging indicates that the radiator came from DTNA's facility located at 5745 Challenge Drive, Memphis, TN 38115.

				BHT E7236, BHT U3692001, BHT U3698001.
9		SPB / ABP N20 2001 1725	Spectra Premium / Alliance Parts ¹¹	BHT B7596, BHT B9384, MOD 3S0581790002, BHT B9384, BHT 91661, 05-34048-000, A05-34049-001, A05-26615-020, EXO 3AH00221SP, ABP N09 4401 1719, BHT B7596, 05-26620-004, 05-27749-002, A05-26615-010, A05-26615-022, A05-30696-000, A05-30696-003.
10		SPB / ABP N20 2001 1738	Spectra Premium / Alliance Parts ¹²	A05-30676-001, A05-30676-003.
11		SPB / APB N20 2001 1742	Spectra Premium / Alliance Parts	BHT EA753001
12		SPB / ABP N20 2001 3535	Spectra Premium / Alliance Parts	

EPS may rely on additional evidence to show infringement at trial. However, DTNA has not yet provided relevant discovery that may be used to further illuminate EPS's infringement theories.

¹¹ The product packaging indicates that the radiator came from DTNA's facility located at 2510 Mill Center Parkway, Buford, Georgia 30518.

¹² The product packaging indicates that the radiator came from DTNA's facility located at 4140 Anson Blvd., Whitestown, IN 46075.

Dated: November 22, 2022

Respectfully submitted,

/s/ Timothy E. Grochocinski

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CERTIFICATE OF SERVICE

Pursuant to Local Rule 5(b)(1), I hereby certify that on November 22, 2022, the foregoing document was served on counsel for Defendant via electronic mail.

/s/ Timothy E. Grochocinski