

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

CLEAR WITH COMPUTERS, LLC
F/K/A ORION IP, LLC

v.

MERCEDES BENZ USA, LLC

No. 6:07-cv-451 LED

JURY

JOINT MOTION FOR ENTRY OF STIPULATION OF DISMISSAL AND FINAL JUDGMENT

WHEREAS Plaintiff Clear with Computers IP, LLC f.k.a. Orion IP, LLC (“CWC”); and Defendant Mercedes Benz USA, LLC (“Mercedes”) are the parties in the above-captioned case (“this Action”);

WHEREAS on May 30, 2008, the Court entered a Memorandum Opinion and Order in *Orion IP, LLC v. Mercedes-Benz USA, LLC* (Case No. 6:07-cv-00451) (Docket No. 50) (hereinafter the “May 30 Order”) granting Mercedes’ Motion for Judgment on the Pleadings or in the Alternative Motion for Summary Judgment (Docket No. 21) and denying CWC’s Cross Motion for Judgment on the Pleadings, or in the Alternative, Motion for Summary Judgment Regarding Release and License Affirmative Defenses and Breach of Contract Counterclaims (Docket No. 24);

WHEREAS on June 5, 2008 Defendant replead its Breach of Contract Action against CWC (Docket No. 51) based upon the Court’s May 30 Order;

WHEREAS the parties agree that in light of the May 30 Order Defendant is entitled to judgment in its favor on Count I of Defendant’s Counterclaim for Breach of Contract (Docket

No. 41); (Docket No. 51) and entitled to damages of \$76,500 plus costs and attorneys' fees associated with any appeal of the May 30 Order;

WHEREAS, the parties further agree that a final judgment can and should be entered in favor of Defendant and against CWC pursuant to Fed. R. Civ. P. 54(b) and, by the parties' Stipulation and the Court's acceptance or entering of this Stipulation the Court expressly finds, and the parties agree, that no just reason for delay exists;

WHEREAS, the parties wish to stay the execution of the Judgment pending the resolution of any appeals there from and wish to provide the means for securing payment of the Judgment should Defendant prevail on appeal pursuant to the terms of this Stipulation;

WHEREAS, the parties agree that by entering into this stipulation, they are not waiving any rights or issues for appeal of the May 30 Order or judgment to be entered herein;

WHEREAS, the parties are submitting to the Court herewith a proposed **FINAL JUDGMENT** reflecting their stipulations, and make the stipulations herein subject to entry of such **FINAL JUDGMENT**;

IT IS HEREBY STIPULATED AND AGREED,

1. In light of the Court's Memorandum Opinion and Order in *Orion IP, LLC v. Mercedes-Benz USA, LLC* (Case No. 6:07-cv-00451) (Docket No. 50), the parties agree that Defendant is entitled to judgment in its favor on Defendant's Motion for Judgment on the Pleadings or in the Alternative Motion for Summary Judgment (Docket No. 21), Count I of Defendant's Counterclaim (Docket No. 51) and the claims for relief therein and on CWC's Cross Motion for Judgment on the Pleadings, or in the Alternative, Motion for Summary Judgment Regarding Release and License Affirmative Defenses and Breach of Contract Counterclaims

(Docket No. 24).

2. The parties agree that if the Court's decision granting Defendant's Motion for Judgment on the Pleadings or in the Alternative Motion for Summary Judgment (Docket No. 21) and denying Orion's Cross Motion for Judgment on the Pleadings, or in the Alternative, Motion for Summary Judgment Regarding Release and License Affirmative Defenses and Breach of Contract Counterclaims (Docket No. 24) is reversed and remanded for further proceedings by the U.S Court of Appeals for the Federal Circuit, the United States Court of Appeals for the Fifth Circuit, or United States Supreme Court, then this judgment shall be vacated and remanded for further proceedings in this Court, including proceedings relative to CWC's patent infringement claim which was dismissed by summary judgment by the May 30 Order.

3. That in order to provide the means for Defendant to secure payment of the Judgment should Defendant prevail on appeal CWC shall deposit the sum of \$76,500 which reflects the total recovery that Defendant is entitled to pursuant to this judgment, in an interest-bearing escrow account at Bank of America within 10 days of entry of the Order.

4. Should the Defendant prevail on appeal, Defendant will move this Court for an award of its costs and attorneys' fees associated with any appeal of the May 30 Order; the amount deposited referenced in paragraph 3, however, is not satisfaction of any costs and fees associated with defense of any appeal.

5. That by agreeing to the terms of paragraph 3 above, Defendant agrees that although no money judgment has been entered or awarded, it will not take any action, or make any filing of any kind in any public record, be it a court or otherwise, that would treat this as a final and executable adverse judgment against CWC;

6. That, upon entry of the judgment in the United States Court of Appeals for the Federal Circuit, the United States Court of Appeals for the Fifth Circuit, or United States Supreme Court disposing of (whether by remanding, reversing, upholding, modifying in any way, or otherwise) any appeal or appeals raised by Clear with Computers, LLC relative to the May 30 Order or the Judgment contemplated in this Stipulation, and upon the mutual agreement of the parties, the escrowed sum, including all accrued interest, shall be released to the prevailing party consistent with the judgment or judgments on appeal, and the interest accrued in the escrow account shall be deemed equivalent to the interest otherwise payable as post-judgment interest under applicable law.

7. That in the absence of mutual agreement under section (6) herein as to the release of the escrowed funds described in section (3) herein, each party shall be entitled to file appropriate pleadings in this Court to obtain such release. The party prevailing in any proceedings under this section (6) shall be entitled to recover its costs and reasonable and necessary attorney's fees incurred in pursuing that action.

8. By entering into this Stipulation, the parties are not waiving any rights or issues for appeal relating to or arising from the May 30 Order or judgment to be entered herein. The parties reserve all rights of appeal regarding all issues and claims relating to or arising from the May 30 Order or any judgment to be entered herein

IT IS SO STIPULATED

Dated: July 21, 2008

Respectfully submitted,

CLEAR WITH COMPUTERS, LLC

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(w/permission by Michael E. Jones)
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**ATTORNEYS FOR DEFENDANT
MERCEDES BENZ USA, LLC**

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who have consented to electronic service are being served with a copy of the foregoing via the Court's CM/ECF system per local rules on this the 21st day of July 2008. Any other counsel of record will be served by First Class U.S. mail on this same date.

/s/ Michael E. Jones

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No. 6:07-cv-451 LED

JURY

FINAL JUDGMENT PURSUANT TO RULE 54(B)

The Court, upon the Stipulation of the parties to this action, and upon finding that there is no just reason for delay in the entry of this judgment, hereby Orders as follows:

(1) On May 30, 2008, this Court granted (Dkt. No. 50) Defendant Mercedes-Benz USA, LLC's Motion for Judgment on the Pleadings or in the Alternative Motion for Summary Judgment (Docket No. 21) and denying Plaintiff Clear with Computers, LLC, f/k/a Orion IP, LLC's Motion for Judgment on the Pleadings, or in the Alternative, Motion for Summary Judgment Regarding Release and License Affirmative Defenses and Breach of Contract Counterclaims (Docket No. 24);

(2) In granting Defendant's Motion for Judgment on the Pleadings or in the Alternative Motion for Summary Judgment (Dkt. No. 21), this Court dismissed Plaintiff's claims for patent infringement (Docket No. 50) and invited Defendant to replead its counterclaim for breach of contract, which Defendants did on June 5, 2008 (Docket No. 51);

(3) By stipulation, Plaintiff and Defendant have agreed that in light of the May 30 Order, Defendant is entitled to judgment in its favor on its Counterclaim for Breach of Contract (Docket No. 51) and entitled to damages of \$76,500 representing attorneys' fees already incurred as well as the fees and costs resulting from any appeal that is taken should Defendant prevail on such appeal, **IT IS THEREFORE ORDERED AND ADJUDGED** that Plaintiff breached the Patent License and Settlement Agreement between the parties by instigating the now dismissed lawsuit for patent infringement and Judgment is therefore entered in favor of the Defendant in the amount of \$76,500.;

(4) To provide the means for Defendant to secure payment of this Judgment, Plaintiff shall, within 10 days of the entry of this Judgment, deposit the sum of \$76,500 in an interest-bearing escrow account at Bank of America, which shall serve as the escrow

agent for such sums, upon which deposit execution on this judgment shall be stayed pending appeal;

(5) In the event Defendant prevails on appeal and wishes to include the fees and expenses incurred in the defense of any appeal in the judgment to which it would be entitled, Defendant shall move this Court for the inclusion of those fees and expenses within 30 days of the remand of the appeal to this Court by the United States Court of Appeals for the Federal Circuit, the United States Court of Appeals for the Fifth Circuit, or the United States Supreme Court finally disposing of any appeal or appeals raised by Plaintiff from the May 30, 2008 Order.

(6) That, with respect to Plaintiff, upon entry of the judgment in the United States Court of Appeals for the Federal Circuit, the United States Court of Appeals for the Fifth Circuit, or United States Supreme Court disposing of (whether by remanding, reversing, upholding or otherwise) any appeal or appeals raised by Plaintiff from the May 30, 2008 Order, the parties shall submit a proposed order to the Court, in the form attached hereto as Exhibit B, to implement the final appellate court order(s) by instructing the escrow agent to pay the sum, including all accrued interest, shall be released to the appropriate party or parties consistent with the judgment or judgments on appeal within five (5) business days of presentment of this Court's order, and the interest accrued in the escrow account shall be deemed equivalent to the interest otherwise payable as post-judgment interest under applicable law;

(7) Clear with Computers, LLC shall be responsible for any expenses associated with maintaining the escrow accounts described in paragraphs (4), (5), and (6) above.

(8) The Court expressly determines that there is no just reason for delay in the entry of this partial final judgment and therefore directs entry pursuant to the provisions of Rule 54(b) of the Federal Rules of Civil Procedure.