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Attorneys for Defendant/Counterclaimant
TESLA, INC.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

NIKOLA CORPORATION, a Delaware corporation,)	Civil Action No. 3:18-cv-7460-JD
)	
Plaintiff,/Counter Defendant)	Hon. James Donato
)	
v.)	TESLA, INC.'S ANSWER TO THIRD
)	AMENDED COMPLAINT AND
)	COUNTERCLAIMS
TESLA, INC., a Delaware corporation,)	
)	DEMAND FOR JURY TRIAL
Defendant/Counterclaimant.)	

1 Defendant Tesla, Inc. (“Tesla”) hereby answers the Third Amended Complaint of Plaintiff
2 Nikola Corporation (“Nikola”).

3 **I. RESPONSE TO NIKOLA’S INTRODUCTION**¹

4 1. Tesla lacks sufficient knowledge or information to admit or deny the allegations
5 in paragraph 1, and therefore denies those allegations.

6 2. Tesla lacks sufficient knowledge or information to admit or deny the allegations
7 in paragraph 2, and therefore denies those allegations.

8 3. Tesla lacks sufficient knowledge or information to admit or deny the allegations
9 in paragraph 3, and therefore denies those allegations.

10 4. Tesla lacks sufficient knowledge or information to admit or deny the allegations
11 in paragraph 4, and therefore denies those allegations.

12 5. Tesla admits that as of May 9, 2016, Tesla had not publicly announced that it was
13 considering building a class 8 semi-truck. Tesla denies any remaining allegations in paragraph 5.

14 6. Denied.

15 7. Tesla lacks sufficient knowledge or information to admit or deny the allegations
16 in paragraph 7, and therefore denies those allegations.

17 8. Denied.

18 9. Tesla admits that it filed a 10-Q that included reporting for the three-month period
19 ending June 30, 2016. The document speaks for itself. Tesla denies any remaining allegations in
20 paragraph 9.

21 10. Tesla admits that on July 20, 2016, Elon Musk, Tesla’s CEO, posted on Tesla’s
22 blog that “heavy-duty trucks” were “in the early stages of development at Tesla and should be
23 ready for unveiling next year.” Tesla lacks sufficient knowledge or information to admit or deny
24 the remaining allegations in paragraph 10, and therefore denies those allegations.

25
26
27 ¹ For the Court’s convenience, Tesla has incorporated the section titles that appear in the
28 Complaint. Tesla does not necessarily agree with the characterizations of such section titles and
does not waive any right to object to those characterizations.

11. Tesla lacks sufficient knowledge or information to admit or deny the allegations in paragraph 11, and therefore denies those allegations.

12. Tesla lacks sufficient knowledge or information to admit or deny the allegations in paragraph 12, and therefore denies those allegations.

13. Tesla admits that as of April 28, 2017, it did not have any issued design patents based on its Tesla Semi.² Tesla admits that as of April 28, 2017, it had not publicly announced that it was seeking any design patents based on its Tesla Semi. Tesla lacks sufficient knowledge or information to admit or deny the remaining allegations in paragraph 13, and therefore denies those allegations.

14. Tesla admits that on April 28, 2017, during a TED conference in Vancouver, Elon Musk shared an image showing a darkened silhouette of the Tesla Semi from the front with the headlights on. Tesla denies any remaining allegations in paragraph 14.

15. Tesla admits that it received a letter from Nikola dated November 7, 2017 and that paragraph 15 purports to describe certain contents of that letter, which speaks for itself. Tesla admits that it did not respond to Nikola's letter dated November 7, 2017. Tesla denies any remaining allegations in paragraph 15.

16. Tesla admits that on November 16, 2017, Tesla held an event in Hawthorne, California and displayed two prototypes of the Tesla Semi. Tesla admits that the event was attended by journalists, industry leaders, potential customers, and Tesla employees. Tesla admits that the event was streamed online. Tesla admits that Tesla received reservations for its Tesla Semi before November 16, 2017. Tesla admits that on November 17, 2017, Tesla's market capitalization was around \$52.95 billion. Tesla lacks sufficient knowledge or information to admit or deny the remaining allegations in paragraph 16, and therefore denies those allegations.

² In the Third Amended Complaint ("Complaint"), Nikola repeatedly uses the phrase "Tesla Semi." Tesla understands that that the Complaint uses the phrase to refer only to the particular version of a prototype design of Tesla Semi that is specifically identified in the Complaint. Tesla's response to each paragraph that uses this phrase incorporates this understanding of the term.

1 17. Tesla lacks sufficient knowledge or information to admit or deny the allegations
2 in paragraph 17, and therefore denies those allegations.

3 18. Tesla admits that the PTO issued patents to Nikola. Tesla denies the remaining
4 allegations of paragraph 18.

5 19. Denied.

6 20. Tesla admits that it has made statements about the view drivers have from the
7 driver's seat of the Tesla Semi. Tesla denies all remaining allegations in paragraph 20.

8 21. Tesla admits that it has made statements regarding the aerodynamic design of the
9 Tesla Semi and that it has made statements that the Tesla Semi has a drag coefficient of around
10 0.36. Tesla lacks knowledge or information sufficient to form a belief as to the truth of the
11 allegations regarding the drag coefficient of the Nikola One, and therefore denies them. Tesla
12 denies all remaining allegations in paragraph 21.

13 22. Tesla admits that the Tesla Semi has a door and has made statements regarding a
14 user's ability to access the vehicle. Tesla lacks knowledge or information sufficient to form a
15 belief as to the truth of the allegations regarding the drag coefficient of the Nikola One, and
16 therefore denies them. Tesla denies all remaining allegations in paragraph 22.

17 23. Denied.

18 24. Tesla admits that the PTO issued a utility patent to Nikola. Tesla denies the
19 remaining allegations of paragraph 24.

20 25. Denied.

21 26. Denied.

22 27. Tesla lacks knowledge or information sufficient to form a belief as to the truth of
23 the allegations in this paragraph, and therefore denies them.

24 28. Denied.

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26 ///

**II. RESPONSE TO ALLEGATIONS REGARDING
PARTIES, JURISDICTION, AND VENUE**

29. Tesla lacks sufficient knowledge or information to admit or deny the allegations in paragraph 29, and therefore denies those allegations

30. Admitted.

31. Tesla admits that the Third Amended Complaint alleges infringement of United States Patent Nos. D811,944 (the “D944 Patent”), D811,968 (the “D968 Patent”), D816,004 (the “D004 Patent”), and 10,077,084 (the “084 Patent”) arising under 35 U.S.C. § 1 *et seq.* and alleges infringement of Nikola’s Nikola One trade dress arising under 15 U.S.C. § 1051 *et seq.*, but denies that Nikola is entitled to any relief. Tesla denies any remaining allegations in paragraph 31.

32. Admitted.

33. This paragraph contains legal conclusions to which no answer is required. To the extent an answer is required, Tesla does not contest personal jurisdiction in the Northern District of California for the purposes of this action only. Tesla specifically denies that it has offered for sale any allegedly infringing product. Tesla denies the remaining allegations in paragraph 33.

34. This paragraph contains legal conclusions to which no answer is required. To the extent an answer is required, Tesla does not contest venue in the Northern District of California for the purposes of this action only. Tesla specifically denies that it has offered for sale any allegedly infringing product. Tesla denies the remaining allegations in paragraph 34.

III. FACTUAL BACKGROUND

A. Response to Allegations That Trevor Milton and Steve Jennes Designed the Nikola One

35. Tesla lacks sufficient knowledge or information to admit or deny the allegations in paragraph 35, and therefore denies those allegations.

36. Tesla lacks sufficient knowledge or information to admit or deny the allegations in paragraph 36, and therefore denies those allegations.

37. Denied.

1 38. Tesla lacks sufficient knowledge or information to admit or deny the allegations
2 in paragraph 38, and therefore denies those allegations.

3 39. Tesla lacks sufficient knowledge or information to admit or deny the allegations
4 in paragraph 39, and therefore denies those allegations.

5 40. Tesla lacks sufficient knowledge or information to admit or deny the allegations
6 in paragraph 40, and therefore denies those allegations.

7 41. Tesla lacks sufficient knowledge or information to admit or deny the allegations
8 in paragraph 41, and therefore denies those allegations.

9 42. Tesla lacks sufficient knowledge or information to admit or deny the allegations
10 in paragraph 42, and therefore denies those allegations.

11 43. Tesla lacks sufficient knowledge or information to admit or deny the allegations
12 in paragraph 43, and therefore denies those allegations.

13 44. Denied.

14 45. Tesla lacks sufficient knowledge or information to admit or deny the allegations
15 in paragraph 45, and therefore denies those allegations.

16 46. Tesla lacks sufficient knowledge or information to admit or deny the allegations
17 in paragraph 46, and therefore denies those allegations.

18 **B. Response to Allegations that the Nikola One Was Unveiled To Wide Praise And**
19 **Received Several Billions in Orders**

20 47. Tesla admits that by May 10, 2016 articles were publicly available discussing
21 Nikola's semi-truck announcement. Tesla lacks sufficient knowledge or information to admit or
22 deny the remaining allegations in paragraph 47 and therefore denies those allegations. To the
23 extent the picture included in the Third Amended Complaint after paragraph 47 constitutes
24 allegations of fact, Tesla cannot verify the origin or veracity of that picture and therefore denies
25 that that picture supports any allegations in the Third Amended Complaint.

26 48. Tesla lacks sufficient knowledge or information to admit or deny the allegations
27 in paragraph 48, and therefore denies those allegations.

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1 49. Tesla admits that various websites reported on Nikola's semi-truck announcement
2 and that paragraph 45 purports to describe certain reports. Tesla lacks sufficient knowledge or
3 information to admit or deny the remaining allegations in paragraph 45 and therefore denies
4 those allegations.

5 50. Tesla lacks sufficient knowledge or information to admit or deny the allegations
6 in paragraph 50, and therefore denies those allegations.

7 51. Tesla admits that as of June 13, 2016, it had not publicly announced that it was
8 going to build the Tesla Semi. Tesla admits that as of June 13, 2016, it had not filed any design
9 patent applications based on the Tesla Semi. Tesla denies any remaining allegations in paragraph
10 47.

11 52. Tesla admits that Nikola held an event on December 1, 2016. Tesla lacks
12 sufficient knowledge or information to admit or deny the remaining allegations in paragraph 52
13 and therefore denies those allegations.

14 53. Tesla lacks sufficient knowledge or information to admit or deny the allegations
15 in paragraph 53, and therefore denies those allegations.

16 54. Denied.

17 55. Denied.

18 56. Tesla lacks sufficient knowledge or information to admit or deny the allegations
19 in paragraph 56, and therefore denies those allegations.

20 57. Tesla lacks sufficient knowledge or information to admit or deny the allegations
21 in paragraph 57, and therefore denies those allegations.

22 **C. Response to Allegations that Tesla Announced A Semi-Truck and Offered to Sell It**

23 58. Tesla admits that as of June 13, 2016, it had not publicly announced that it was
24 considering building the Tesla Semi. Tesla denies any remaining allegations in paragraph 58.

25 59. Tesla admits that it filed Form 10-Q that including reporting for periods ending
26 June 30, 2016. Tesla lacks sufficient knowledge or information to admit or deny any remaining
27 allegations in paragraph 59, and therefore denies those allegations.

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1 60. Tesla admits that it released its 2016 Master Plan, Part Deux on July 20, 2016 and
2 stated therein that “heavy-duty trucks” “are in the early stages of development at Tesla and
3 should be ready for unveiling next year.” Tesla lacks sufficient knowledge or information to
4 admit or deny any remaining allegations in paragraph 60, and therefore denies those allegations.

5 61. Tesla lacks sufficient knowledge or information to admit or deny the allegations
6 of paragraph 61, and therefore denies those allegations.

7 62. Tesla admits that on April 13, 2017, Elon Musk, Tesla’s CEO, tweeted, “Tesla
8 Semi truck unveil set for September. Team has done an amazing job. Seriously next level.”

9 63. Tesla admits that Elon Musk was interviewed on April 28, 2017 and during that
10 interview he shared an image showing a darkened silhouette of the Tesla Semi from the front
11 with the headlights on. Tesla denies any remaining allegations in paragraph 63.

12 64. Tesla admits that on May 3, 2017, Elon Musk said the following, when
13 asked about the Tesla Semi: “We’ll manufacture that ourselves. And most of that semi is
14 actually made out of Model 3 parts, by the way. It’s Model 3 – it’s actually using a bunch
15 of Model 3 motors. Probably revealing too much about the future of it. But so we’re able to
16 use a very high volume vehicle and then combine several motors to have something that I think
17 is actually going to have a very good gross margin, like it’s -- that’s just not something that
18 any other -- it’s like you can’t do that with a traditional truck. So effectively it allows us to
19 have a very compelling product that has a low unit cost.” Tesla denies any remaining allegations
20 in paragraph 64.

21 65. Tesla lacks sufficient knowledge or information to admit or deny the allegations
22 in paragraph 65, and therefore denies those allegations. To the extent the picture included in the
23 Third Amended Complaint after paragraph 65 constitutes allegations of fact, Tesla cannot
24 verify the origin or veracity of that picture and therefore denies that that picture supports any
25 allegations in the Third Amended Complaint.

26 66. Tesla admits that it received a letter from Nikola dated November 7, 2017 and
27 that paragraph 66 purports to describe certain contents of that letter. Tesla admits that Nikola
28 purports to attach a copy of that letter to the Third Amended Complaint as Exhibit 1. Tesla

1 lacks sufficient knowledge or information to admit or deny any remaining allegations in
2 paragraph 66, and therefore denies those allegations.

3 67. Tesla admits that it held an event on November 16, 2017 at which Tesla
4 unveiled its Tesla Semi. Tesla admits that journalists, industry partners, customers, employees,
5 and government leaders attended this event. Tesla lacks sufficient knowledge or information to
6 admit or deny any remaining allegations in paragraph 67, and therefore denies those allegations.

7 68. Tesla admits that it had announced that it expected to release the Tesla Semi in
8 2019.

9 69. Tesla admits that it began accepting reservations for the Tesla Semi prior to
10 November 16, 2017. Tesla admits that various companies in different industries have made
11 reservations for the Tesla Semi. Tesla denies any remaining allegations in paragraph 69.

12 70. Tesla admits that on March 7, 2018, Elon Musk posted on Instagram that Tesla
13 was using its Tesla Semis to carry battery packs from Tesla's Gigafactory in Nevada to Tesla's
14 car factory in California. Tesla denies any remaining allegations in paragraph 70.

15 71. Tesla admits that on November 1, 2017, it announced that it would report a loss
16 for the quarter. Tesla admits that its stock price dropped from November 1, 2017 to November 2,
17 2017. Tesla denies any remaining allegations in paragraph 71.

18 72. Tesla admits that the week before November 16, 2017, its stock price was \$302.99
19 and that on November 17, 2017, its stock price was \$315.05. Tesla admits that this change in
20 stock price represents around a \$2 billion increase in Tesla's market capitalization at that time.
21 Tesla denies the remaining allegations in paragraph 72.

22 73. Denied.

23 74. Tesla lacks sufficient knowledge or information to admit or deny the allegations
24 in paragraph 74, and therefore denies those allegations.

25 **D. Response to Allegations that Nikola was Issued Six Design Patents**

26 75. Tesla admits that Nikola applied for design patents, three of which Nikola has
27 asserted in this action. Tesla denies the remaining allegations of paragraph 75.

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1 76. Tesla admits that the Third Amended Complaint purports to assert infringement of
2 one utility patent. Tesla lacks sufficient knowledge or information to admit or deny the
3 allegations in paragraph 76, and therefore denies those allegations.

4 77. Tesla admits that the 'D944 Patent is entitled "Fuselage," and issued on March 6,
5 2018. Tesla admits that what purports to be a copy of the 'D944 Patent is attached to the Third
6 Amended Complaint as Exhibit 2. Tesla admits that what purports to be an excerpt from the
7 'D944 Patent is reproduced below paragraph 77. Tesla denies any remaining allegations in
8 paragraph 77.

9 78. Tesla admits that the 'D968 Patent is entitled "Wrap Windshield," and issued on
10 March 6, 2018. Tesla admits that what purports to be a copy of the 'D968 Patent is attached to
11 the Third Amended Complaint as Exhibit 3. Tesla admits that what purports to be an excerpt
12 from the 'D968 Patent is reproduced below paragraph 78. Tesla denies any remaining allegations
13 in paragraph 78.

14 79. Tesla admits that the 'D004 Patent is entitled "Side Door," and issued on April 14,
15 2018. Tesla admits that what purports to be a copy of the 'D004 Patent is attached to the Third
16 Amended Complaint as Exhibit 4. Tesla admits that what purports to be an excerpt from the
17 'D004 Patent is reproduced below paragraph 79. Tesla denies any remaining allegations in
18 paragraph 79.

19 80. Tesla admits that the '084 Patent is entitled "Systems, Methods, and Devices for
20 an Automobile Door or Window," and issued on September 18, 2018. Tesla admits that what
21 purports to be a copy of the '084 Patent is attached to the Third Amended Complaint as
22 Exhibit 5. Tesla denies any remaining allegations in paragraph 80.

23 81. Tesla lacks sufficient knowledge or information to admit or deny the allegations
24 in paragraph 81, and therefore denies those allegations.

25 82. Tesla lacks sufficient knowledge or information to admit or deny the allegations
26 in paragraph 82, and therefore denies those allegations.

27 83. Tesla admits that it received a letter from Nikola dated November 7, 2017 and
28 that paragraph 83 purports to describe certain contents of that letter. Tesla admits that it did not

1 respond to Nikola's letter dated November 7, 2017. Tesla denies any remaining allegations in
2 paragraph 83.

3 **E. Response to Allegations that the Design of the Tesla Semi is Substantially Similar to**
4 **Nikola's Patented Design and Is Confusingly Similar to Nikola's Trade Dress**

5 84. Denied.

6 85. Denied.

7 86. Denied.

8 **1. Response to Allegations Regarding The Fuselage Patent**

9 87. Tesla admits that what purports to be an excerpt from the 'D944 Patent is
10 reproduced below paragraph 87. Tesla denies any remaining allegations in paragraph 87.

11 88. Tesla lacks sufficient knowledge or information to admit or deny the allegations
12 in paragraph 88, and therefore denies those allegations. To the extent the picture included in the
13 Third Amended Complaint after paragraph 88 constitutes allegations of fact, Tesla cannot
14 verify the origin or veracity of this picture and therefore denies that the picture supports any
15 allegations in the Third Amended Complaint.

16 89. Tesla denies each and every allegation of paragraph 89. To the extent the pictures
17 included in the Third Amended Complaint after paragraph 89 constitute allegations of fact,
18 Tesla cannot verify the origin or veracity of these pictures and therefore denies that the pictures
19 support any allegations in the Third Amended Complaint.

20 90. Tesla denies that the overall design of the Nikola One is an ornamental design.
21 Tesla lacks sufficient knowledge or information to admit or deny the remaining allegations in
22 paragraph 90, and therefore denies those allegations.

23 91. Tesla admits that Nikola has described its semi-truck as aerodynamic. Tesla lacks
24 sufficient knowledge or information to admit or deny the remaining allegations in paragraph 91,
25 and therefore denies those allegations.

26 92. Tesla lacks sufficient knowledge or information to admit or deny the allegations
27 in paragraph 92, and therefore denies those allegations.

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1 93. Tesla admits that on November 16, 2017, Elon Musk said that Tesla “designed the
2 Tesla truck to be like a bullet” and mentioned the “bullet-shaped nose.” Tesla denies any
3 remaining allegations in paragraph 93.

4 94. Tesla admits that on November 16, 2017, Elon Musk noted that the Tesla Semi
5 has a drag coefficient of 0.36 and that this was better than the 0.38 drag coefficient attributed to a
6 Bugatti Chiron. Tesla denies any remaining allegations in paragraph 94.

7 95. Tesla admits that Jerome Guillen said at an event on November 25, 2017 in the
8 Netherlands that the Tesla Semi looks like the TGV, the Eurostar, or a bullet train. Tesla denies
9 any remaining allegations in paragraph 95.

10 96. Tesla admits that on November 16, 2017, Elon Musk noted the “spacious interior”
11 of the Tesla Semi design and the screen included the words “expansive cockpit interior.” To the
12 extent Nikola alleges that the quoted language was stated during the November 25, 2017 event in
13 the Netherlands, Tesla denies those allegations. Tesla denies any remaining allegations in
14 paragraph 96.

15 97. Denied.

16 98. Denied.

17 **2. Response to Allegations Regarding the Wrap Windshield Patent**

18 99. Tesla admits that what purports to be an excerpt from the 'D968 Patent is
19 reproduced below paragraph 99. Tesla denies any remaining allegations in paragraph 99.

20 100. Tesla lacks sufficient knowledge or information to admit or deny the allegations
21 in paragraph 100, and therefore denies those allegations. To the extent the picture included in
22 the Third Amended Complaint after paragraph 100 constitutes allegations of fact, Tesla cannot
23 verify the origin or veracity of this picture and therefore denies that the picture supports any
24 allegations in the Third Amended Complaint.

25 101. Tesla admits that the Tesla Semi has a windshield. Tesla denies any remaining
26 allegations in paragraph 101. To the extent the pictures included in the Third Amended
27 Complaint after paragraph 101 constitute allegations of fact, Tesla cannot verify the origin or
28

1 veracity of these pictures and therefore denies that the pictures support any allegations in the
2 Third Amended Complaint.

3 102. This paragraph is ambiguous and cannot be admitted or denied, and, on that basis
4 Tesla denies the allegations in this paragraph.

5 103. Tesla lacks sufficient knowledge or information to admit or deny the allegations
6 in paragraph 103, and therefore denies those allegations.

7 104. Tesla admits that on November 16, 2017, Elon Musk said the driver had
8 “complete visibility of the road and all the surroundings.” Tesla denies that Elon Musk
9 specifically referenced a “wrap windshield” or that Elon Musk stated that the driver has complete
10 visibility “in part, because of the wrap windshield.” Tesla denies any remaining allegations in
11 paragraph 104.

12 105. Denied.

13 106. Denied.

14 **3. Response to Allegations Regarding the Mid-Entry Door Patent**

15 107. Tesla admits that what purports to be an excerpt from the 'D004 Patent is
16 reproduced below paragraph 107. Tesla denies any remaining allegations in paragraph 107.

17 108. Tesla lacks sufficient knowledge or information to admit or deny the allegations
18 in paragraph 108, and therefore denies those allegations. To the extent the picture included in
19 the Third Amended Complaint after paragraph 108 constitutes allegations of fact, Tesla cannot
20 verify the origin or veracity of this picture and therefore denies that the picture supports any
21 allegations in the Third Amended Complaint.

22 109. Tesla admits that the Tesla Semi has a door. Tesla denies any remaining
23 allegations in paragraph 109. To the extent the pictures included in the Third Amended
24 Complaint after paragraph 109 constitute allegations of fact, Tesla cannot verify the origin or
25 veracity of these pictures and therefore denies that the pictures support any allegations in the
26 Third Amended Complaint.

27 110. This paragraph is ambiguous and cannot be admitted or denied, and, on that basis
28 Tesla denies the allegations in this paragraph.

111. Tesla lacks sufficient knowledge or information to admit or deny the allegations in paragraph 111, and therefore denies those allegations.

112. Tesla admits that on November 16, 2017 at the Tesla event, the text shown on a screen included the words “easy entry and exit.” Tesla denies all remaining allegations in paragraph 112.

113. Denied.

114. Denied.

115. Tesla lacks sufficient knowledge or information to admit or deny the allegations in paragraph 115, and therefore denies those allegations.

4. **Response to Allegations Regarding the '084 Patent**

116. Tesla admits that the “Detailed Description” section of the '084 Patent states that the disclosure of the '084 Patent “relates generally to systems, methods, and devices for an automobile door or window.” Tesla denies any remaining allegations in paragraph 116.

117. Tesla admits that Example 1 of the '084 Patent recites, “at least one door” that is “located with respect to the body of the vehicle, such that it provides ingress and egress into the cabin from a backside of a seat.” Tesla admits that Example 17 of the '084 Patent recites, “a vehicle as in any of Examples 1-16, wherein the vehicle is a semi-truck.” Tesla denies any remaining allegations in paragraph 117.

118. Tesla admits that what purports to be an excerpt from the '084 Patent is reproduced below paragraph 118. Tesla denies any remaining allegations in paragraph 118.

119. Tesla lacks sufficient knowledge or information to admit or deny the allegations in paragraph 119, and therefore denies those allegations.

120. Tesla admits that Claim 1 of the '084 Patent recites:

1. A semi-truck vehicle comprising:

an electric drive train;

a body;

a cabin located within the body of the semi-truck vehicle, wherein the cabin comprises an interior that is configured to accommodate at least one person;

1 a seat located in the interior of the cabin that is configured for seating
2 a user; and

3 a door comprising a width extending a horizontal length of the door,
4 wherein the door provides ingress and egress to the interior of the
5 cabin of the semi-truck vehicle;

6 wherein the door is located on the body such that a frontmost side
7 of the door is adjacent to a rearmost portion of a front wheel well
8 and the width of the door is disposed between the frontmost side of
9 the door and a rearmost side of the door, at least a portion of the door
10 being positioned behind the seat and at least a portion of the seat is
11 disposed to be forward of a line defining the rearmost portion of the
12 front wheel well such that the door opens to provide ingress and
13 egress into the cabin from a backside of the seat; and

14 wherein the door is the foremost door providing ingress or egress
15 into the interior of the cabin.

16 Tesla denies the remaining allegations of this paragraph.

17 121. Tesla lacks sufficient knowledge or information to admit or deny the allegations
18 in paragraph 121, and therefore denies those allegations. To the extent the picture included in
19 the Third Amended Complaint after paragraph 121 constitutes allegations of fact, Tesla cannot
20 verify the origin or veracity of this picture and therefore denies that the picture supports any
21 allegations in the Third Amended Complaint.

22 122. Tesla lacks sufficient knowledge or information to admit or deny the allegations
23 in paragraph 122, and therefore denies those allegations.

24 123. Denied.

25 124. Denied.

26 **5. Response to Allegations Regarding Nikola's Trade Dress**

27 125. Denied.

28 126. Denied.

127. Denied.

128. Tesla admits that Nikola's semi-truck is not publicly available for purchase as of
the filing date of this Answer. Tesla admits that it has not released the Tesla Semi as of the date
of this Answer. Tesla is informed and believes that Nikola ceased development of the Nikola

1 One. Tesla lacks sufficient knowledge or information to admit or deny the remaining allegations
2 in paragraph 128 and therefore denies those allegations.

3 129. Denied.

4 130. Tesla lacks sufficient knowledge or information to admit or deny the allegations
5 in paragraph 130 and therefore denies those allegations.

6 131. Tesla lacks sufficient knowledge or information to admit or deny the allegations
7 in paragraph 131 and therefore denies those allegations.

8 132. Denied.

9 133. Denied.

10 134. Tesla lacks sufficient knowledge or information to admit or deny the remaining
11 allegations in paragraph 134 and therefore denies those allegations.

12 135. Tesla admits that on June 12, 2014, Elon Musk announced that “Tesla will not
13 initiate patent lawsuits against anyone who, in good faith, wants to use our technology.” Tesla
14 admits that Tesla’s Patent Pledge contains a definition of “acting in good faith” which excludes
15 marketing or selling any “knock-off product (e.g., a product created by imitating or copying the
16 design or appearance of a Tesla product or which suggests an association with or endorsement by
17 Tesla).” Tesla denies any remaining allegations in paragraph 135.

18 136. Denied.

19 137. Denied.

20 138. Denied.

21 139. Tesla lacks sufficient knowledge or information to admit or deny the remaining
22 allegations in paragraph 139 and therefore denies those allegations.

23 **F. Response to Allegations that Nikola Has Been and Will Continue to be Harmed by**
24 **Tesla’s Infringement**

25 140. Denied.

26 141. Denied.

27 142. Tesla lacks sufficient knowledge or information to admit or deny the allegations
28 in paragraph 142 and therefore denies those allegations.

1 143. Tesla admits that Nikola announced it was going to build hydrogen-fueling
2 stations. Tesla lacks sufficient knowledge or information to admit or deny the remaining
3 allegations in paragraph 143 and therefore denies those allegations.

4 144. Tesla admits that Nikola advertised its semi-truck to have a 700-1,000 mile range.
5 Tesla lacks sufficient knowledge or information to admit or deny any remaining allegations in
6 paragraph 144 and therefore denies those allegations.

7 145. Tesla admits that some diesel semi-trucks take roughly 15-20 minutes to refuel
8 and that Nikola advertised its semi-truck as having fast refueling. Tesla lacks sufficient
9 knowledge or information to admit or deny any remaining allegations in paragraph 145 and
10 therefore denies those allegations.

11 146. Denied.

12 147. Tesla lacks sufficient knowledge or information to admit or deny the allegations
13 in paragraph 147 and therefore denies those allegations.

14 148. Denied.

15 149. Tesla admits that its website states that the mile range for the Tesla Semi will be
16 300 or 500 miles. Tesla denies any remaining allegations in paragraph 149.

17 150. Tesla admits that the aerodynamics of the Tesla Semi are factors in achieving the
18 500-mile range estimate. Tesla admits that the aerodynamics of its other vehicles are factors in
19 achieving their maximum range estimates. Tesla denies any remaining allegations in paragraph
20 150.

21 151. Tesla admits that the Tesla Semi uses battery packs to achieve the 500-mile range
22 estimate. Tesla denies any remaining allegations in paragraph 151.

23 152. Tesla admits that it has advertised that the Tesla Semi will take 30 minutes to
24 charge for a 400 mile range. Tesla denies any remaining allegations in paragraph 152.

25 153. Denied.

26 154. Tesla admits that it began accepting reservations for the Tesla Semi prior to
27 November 16, 2017. Tesla admits that it has received reservations for Tesla Semis that total more
28 than \$200 million in value. Tesla denies any remaining allegations in paragraph 154.

1 155. Tesla admits that the week before November 16, 2017, its stock price was \$302.99
2 and that on November 17, 2017, its stock price was \$315.05. Tesla admits that this change in
3 stock price represents around a \$2 billion increase in Tesla's market capitalization at that time.
4 Tesla denies the remaining allegations of paragraph 155.

5 156. Denied.

6 157. Tesla lacks sufficient knowledge or information to admit or deny the allegations
7 in paragraph 157 and therefore denies those allegations.

8 158. Tesla lacks sufficient knowledge or information to admit or deny the allegations
9 in paragraph 158 and therefore denies those allegations. To the extent the picture included in
10 the Third Amended Complaint after paragraph 158 constitutes allegations of fact, Tesla cannot
11 verify the origin or veracity of this picture and therefore denies that the picture supports any
12 allegations in the Third Amended Complaint.

13 159. Tesla lacks sufficient knowledge or information to admit or deny the allegations
14 in paragraph 159 and therefore denies those allegations.

15 160. Tesla lacks sufficient knowledge or information to admit or deny the allegations
16 in paragraph 160 and therefore denies those allegations.

17 161. Tesla lacks sufficient knowledge or information to admit or deny the allegations
18 in paragraph 161 and therefore denies those allegations.

19 162. Tesla admits that on May 1, 2018, Nikola sued Tesla in the District of Arizona for
20 alleged infringement of the 'D944 Patent, the 'D968 Patent, and the 'D004 Patent.

21 163. Tesla lacks sufficient knowledge or information to admit or deny the allegations
22 in paragraph 163 and therefore denies those allegations.

23 164. Tesla admits that on September 6, 2018, Nikola provided Tesla with a copy of the
24 Issue Notification for the '084 Patent. Tesla denies any remaining allegations in paragraph 164.

25 165. Denied.

26 166. Denied.

27 167. Denied.

28 168. Denied.

169. Denied.

170. Denied.

171. Denied.

RESPONSE TO ALLEGATIONS REGARDING COUNT I

Infringement of the 'D944 Patent (Fuselage Patent) (35 U.S.C. § 271)

172. Tesla incorporates and realleges paragraphs 1 through 161 of this Complaint.

173. Denied.

174. Denied.

RESPONSE TO ALLEGATIONS REGARDING COUNT II

Infringement of the 'D968 Patent (Wrap Windshield Patent) (35 U.S.C. § 271)

175. Tesla incorporates and realleges paragraphs 1 through 164 of this Complaint.

176. Denied.

177. Denied.

RESPONSE TO ALLEGATIONS REGARDING COUNT III

Infringement of the 'D004 Patent (Side Door Patent) (35 U.S.C. § 271)

178. Tesla incorporates and realleges paragraphs 1 through 167 of this Complaint.

179. Denied.

180. Denied.

RESPONSE TO ALLEGATIONS REGARDING COUNT IV

Infringement of the '084 Patent (35 U.S.C. § 271)

181. Tesla incorporates and realleges paragraphs 1 through 170 of this Complaint

182. Denied.

183. Denied.

RESPONSE TO ALLEGATIONS REGARDING COUNT V

Infringement of Nikola's Trade Dress (35 U.S.C. § 1125)

184. Tesla incorporates and realleges paragraphs 1 through 173 of this Complaint

185. Denied.

186. Denied.

187. Denied.

IV. RESPONSE TO DEMAND FOR JURY TRIAL

188. This paragraph sets forth Plaintiff's request for a jury trial to which no response is required.

V. RESPONSE TO PRAYER FOR RELIEF

189. These paragraphs set forth the statement of relief requested by Plaintiff, to which no response is required. To the extent any response is required, Tesla denies that Nikola is entitled to any relief, including the judgment and relief requested in its Prayer for Relief

AFFIRMATIVE DEFENSES

Without prejudice to the denials set forth in its responses to Paragraphs 1 through 189 of the Third Amended Complaint, and without undertaking any of the burdens imposed by law on the Plaintiff, Tesla avers and asserts the following separate defenses to the Third Amended Complaint. Tesla expressly reserves the right to allege additional defenses as they become known through the course of discovery.

First Affirmative Defense

(Non-Infringement)

Nikola's claims are barred because Tesla has not infringed any valid and enforceable claim of the 'D944 Patent, the 'D968 Patent, the 'D004 Patent, or the '084 Patent. Tesla is not liable for infringement of the 'D944 Patent, the 'D968 Patent, the 'D004 Patent, or the '084 Patent, and Nikola's allegations to the contrary are without foundation and have been made without any good-faith basis.

Second Affirmative Defense

(Invalidity)

One or more claims of the 'D944 Patent, the 'D968 Patent, the 'D004 Patent, or the '084 Patent are invalid for failure to comply with one or more of the conditions set forth in Title 35 of the United States Code, including, without limitation, the requirements of 35 U.S.C. §§ 101, 102, 103, 112 and any other judicially created requirements for patentability and enforceability of

1 patents and the defenses recognized in 35 U.S.C. § 282. The design patents are also invalid because
2 they purport to encompass functional features.

3 **Third Affirmative Defense**

4 (Failure to State a Claim)

5 Nikola's Third Amended Complaint fails to state a claim upon which relief may be granted.

6 **Fourth Affirmative Defense**

7 (Failure to State an Exceptional Case)

8 Nikola's Third Amended Complaint fails to state a claim for an exceptional case under 35
9 U.S.C. § 285.

10 **Fifth Affirmative Defense**

11 (Unclean Hands)

12 Nikola's Third Amended Complaint is barred in whole or in part by the doctrine of unclean
13 hands.

14 **Sixth Affirmative Defense**

15 (Inequitable Conduct)

16 One or more of the Patents-in-Suit are unenforceable for inequitable conduct as a result of
17 the conduct of one or more of the named inventors of the Patents-in-Suit. The factual basis for the
18 allegations in this paragraph is described below in Tesla's counterclaims, which are incorporated
19 herein by reference.

20 **Seventh Affirmative Defense**

21 (Invalidity of Trade Dress)

22 Nikola's claimed trade dress is invalid because there has been no use in commerce, and it
23 lacks inherent distinctiveness, lacks secondary meaning, and is functional.

24 **Eighth Affirmative Defense**

25 (Additional Defenses)

26 Tesla reserves the right to present any additional defenses or counterclaims that discovery
27 may reveal.

28 ///

COUNTERCLAIMS

Defendant/Counterclaimant Tesla, Inc. (“Tesla”) hereby alleges the following counterclaims against Plaintiff/Counterdefendant Nikola Corporation (“Nikola” or “Counterdefendant”).

PARTIES

1. Defendant/Counterclaimant Tesla, Inc. is a corporation organized under the laws of the State of Delaware with a principal place of business at 3500 Deer Creek Road, Palo Alto California.

2. On information and belief, and based on Counterdefendant’s allegations, Plaintiff/Counterdefendant Nikola Corporation is a corporation organized under the laws of the State of Delaware with a principal place of business at 4141 E Broadway Road, Phoenix Arizona.

JURISDICTION AND VENUE

3. Tesla seeks a declaratory judgment pursuant to 28 U.S.C. §§ 2201 2202.

4. The Court has jurisdiction over these counterclaims pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201, 2202, and 35 U.S.C. § 100, *et seq.*

5. Venue is proper under 28 U.S.C. § 1391, and by Counterdefendant’s choice of forum.

6. Counterdefendant has filed in this Court an action to enforce United States Patent Nos. D811,944 (the “D944 Patent”), D811,968 (the “D968 Patent”), D816,004 (the “D004 Patent”), and 10,077,084 (the “’084 Patent”) (collectively, the “Patents-in-Suit”), and Nikola’s Nikola One trade dress (the “Nikola trade dress”) against Tesla.

7. Nikola alleges that it owns the ’D944 Patent, the ’D968 Patent, the ’D004 Patent, and the ’084 Patent

8. Tesla has denied that it has infringed, or continues to infringe, any valid and enforceable claim of the Patents-in-Suit.

9. Tesla has further asserted that the Patents-in-Suit are invalid for failure to satisfy one or more of the provisions of Title 35 of the United States Code, including 35 U.S.C. §§ 101,

102, 103, 112, and the defenses recognized in 35 U.S.C. § 282(b), and because the design patents encompass functional features.

10. Nikola alleges that it owns the purported Nikola trade dress.

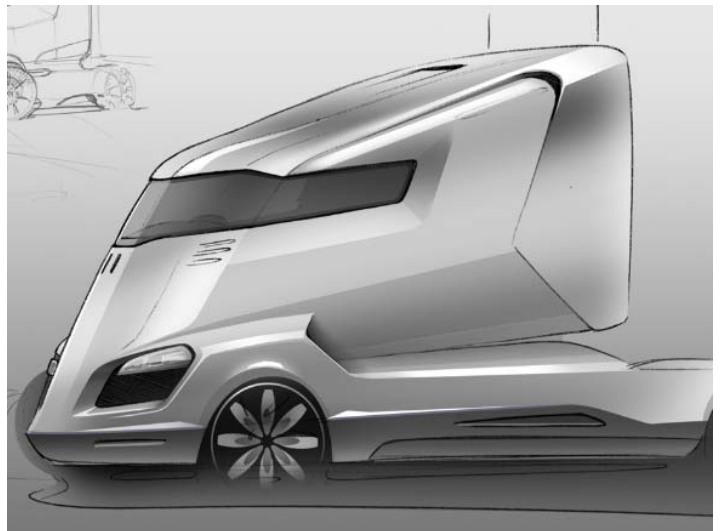
11. Tesla has denied that it infringes or has infringed, any protectable Nikola trade dress.

12. Tesla has further asserted that the Nikola trade dress is invalid because it lacks inherent distinctiveness, lacks secondary meaning, and is functional.

13. In view of the foregoing, a conflict of asserted rights has arisen between the parties with respect to the noninfringement and invalidity of the relevant claims of the Patents-in- Suit, and the noninfringement and invalidity of the Nikola trade dress. An actual controversy therefore exists between Counterdefendant and Tesla.

INEQUITABLE CONDUCT DURING PROSECUTION OF THE 'D944 PATENT, THE 'D968 PATENT, AND THE 'D004 PATENT

14. Adriano Mudri is the designer of the Road Runner concept truck. The Road Runner truck is a hydrogen-powered concept truck. The Road Runner concept truck was entered into the 2010 Michelin Design Challenge, and was selected for display at the 2010 North American International Auto Show. Several images of the Road Runner concept truck are reproduced below:





15. On information and belief, Trevor Milton, the founder of Nikola and an inventor on the 'D944 Patent, the 'D968 Patent, and the 'D004 Patent (the "Design Patents"), met with Adriano Mudri during 2014 and/or 2015.

16. The 'D944 Patent issued on March 6, 2018 from U.S. Application Serial No. 29/550,177 (the "'177 Application"), which was filed on December 30, 2015. The named inventors on the face of the 'D944 Patent are Trevor R. Milton and Steve Jennes.

17. The 'D968 Patent issued on March 6, 2018 from U.S. Application Serial No. 29/550,181 (the "'181 Application"), which was filed on December 30, 2015. The named inventors on the face of the 'D968 Patent are Trevor R. Milton and Steve Jennes.

18. The 'D004 Patent issued on April 24, 2018 from U.S. Application Serial No. 29/550,180 (the "'180 Application"), which was filed on December 30, 2015. The named inventors on the face of the 'D004 Patent are Trevor R. Milton and Steve Jennes.

19. The named inventors of the Design Patents and their attorneys had a duty of candor to the United States Patent and Trademark Office ("USPTO").

20. Each of the named inventors of the Design Patents signed a declaration indicating that he reviewed and understood the contents of the specification and claims, and was a joint inventor of the subject matter claimed.

21. On information and belief, Trevor Milton was aware of the Road Runner concept truck before the Design Patent Applications were filed.

1 22. On information and belief, Trevor Milton failed to provide material information to
2 the USPTO relating to the inventiveness and inventorship of the claimed inventions.

3 23. The designs claimed in the Design Patents are similar to the Road Runner concept
4 truck design.

5 24. The Road Runner concept truck that Trevor Milton intentionally concealed from
6 and did not identify to the USPTO was material to the issuance of the Design Patents.

7 25. But for the failure of Trevor Milton to identify the Road Runner concept truck to
8 the USPTO, the Design Patents would not have issued.

9 26. Adriano Mudri's Road Runner concept truck design constituted a significant
10 inventive contribution to the inventions claimed in the Design Patents. Adriano Mudri was not
11 identified as an inventor during prosecution of the applications that led to the Design Patents.

12 27. On information and belief, Trevor Milton failed to identify Adriano Mudri as a co-
13 inventor of the Patents-in-Suit with deceptive intent.

14 28. But for the failure of Trevor Milton to identify Adriano Mudri as a co-inventor of
15 the Design Patents, the Design Patents would not have issued.

16 29. On information and belief, Trevor Milton chose not to disclose the Road Runner
17 concept truck to the USPTO with deceptive intent.

18 30. The Design Patents were procured through inequitable conduct before the USPTO
19 and are therefore unenforceable.

20 **FIRST COUNTERCLAIM – DECLARATION OF NONINFRINGEMENT**
21 **OF THE 'D944 PATENT**

22 31. Tesla realleges Paragraphs 1-13 as if set forth fully herein.

23 32. Tesla does not infringe and has not infringed, any valid and enforceable claim of
24 the 'D944 Patent.

25 33. Tesla is entitled to a declaratory judgment that the Tesla does not infringe, and has
26 not infringed, any valid and enforceable claim of the 'D944 Patent.

27 ///

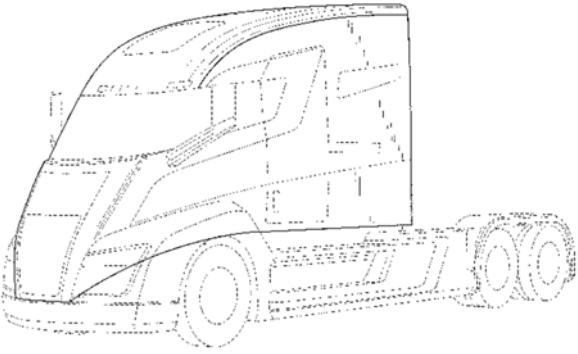
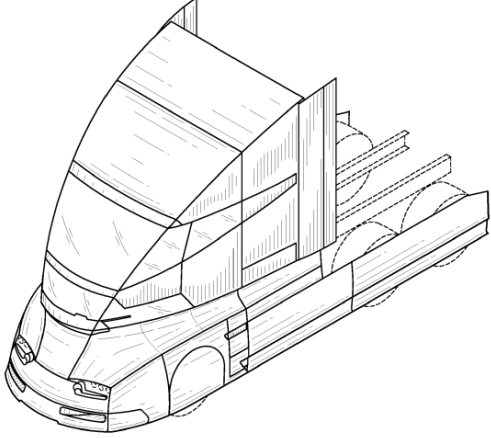
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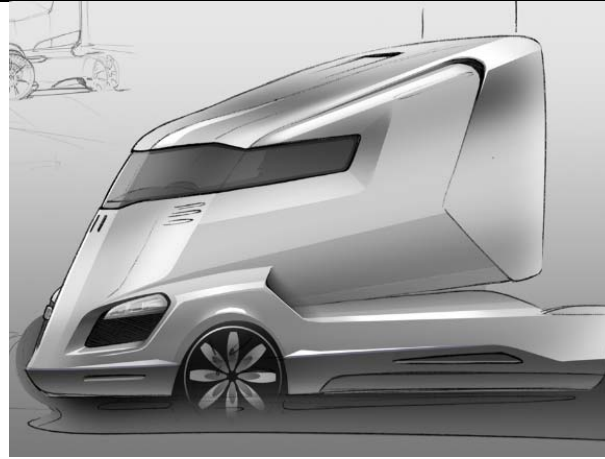
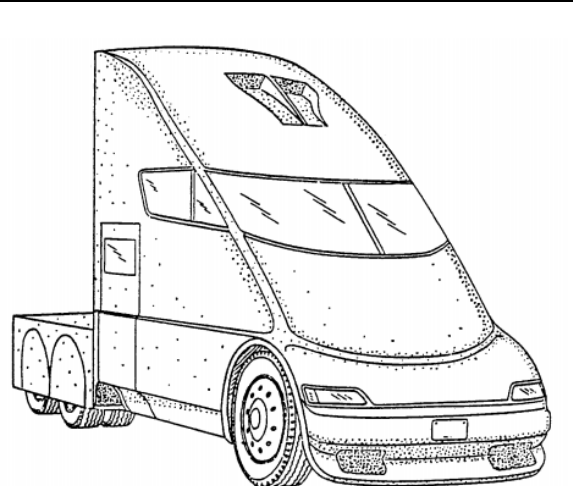


**SECOND COUNTERCLAIM – DECLARATION OF PATENT INVALIDITY
OF THE 'D944 PATENT**

34. Tesla realleges Paragraphs 1-13 as if set forth fully herein.

35. The 'D944 Patent is invalid for failure to satisfy one or more of the provisions set forth in 35 U.S.C. §§ 101 et seq., including, without limitation, the requirements of 35 U.S.C. §§ 101, 102, 103, 112 and/or in view of the defenses recognized in 35 U.S.C. § 282(b), and/or one or more of the judicially created requirements for patentability.

36. For example, the 'D944 Patent is invalid under 35 U.S.C. § 102 and/or § 103 in view of, at least, one or more of: U.S. Patent No. D626,890; the MAN Concept S Truck; the Shell-AirFlow StarShip Truck; the Road Runner Concept Truck; U.S. Patent No. D339,314; the DOE Volvo SuperTruck; and the DOE Navistar SuperTruck. The 'D944 Patent is also invalid because it encompasses functional features.

Nikola 'D944 Patent	U.S. Patent No. D626,890
 <p style="text-align: center;">FIG. 1</p>	

<p>MAN Concept S Truck</p> 	<p>Shell-AirFlow StarShip Truck</p> 
<p>Road Runner Concept Truck</p> 	<p>U.S. Patent No. D339,314</p> 
<p>DOE Volvo SuperTruck</p> 	<p>DOE Navistar SuperTruck</p> 

37. Tesla is entitled to a judicial declaration that the 'D944 Patent is invalid.

**THIRD COUNTERCLAIM – DECLARATION OF NONINFRINGEMENT
OF THE 'D968 PATENT**

38. Tesla realleges Paragraphs 1-13 as if set forth fully herein.

39. Tesla does not infringe and has not infringed any valid and enforceable claim of the 'D968 Patent.

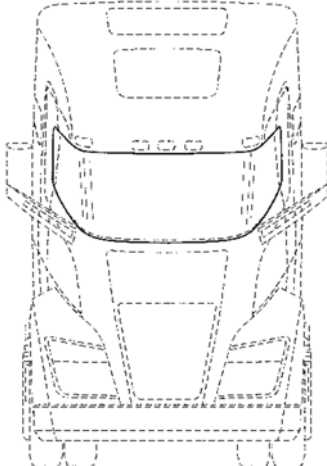
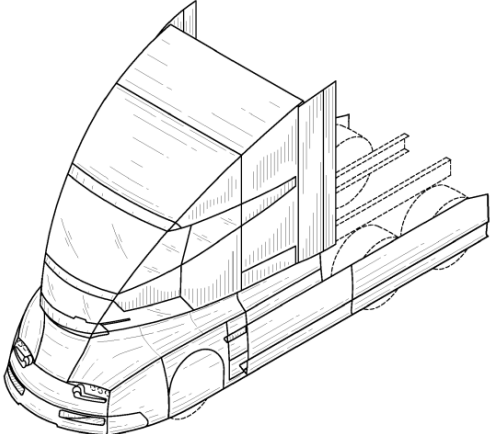
40. Tesla is entitled to a declaratory judgment that the Tesla does not infringe, and has not infringed, any valid and enforceable claim of the 'D968 Patent.



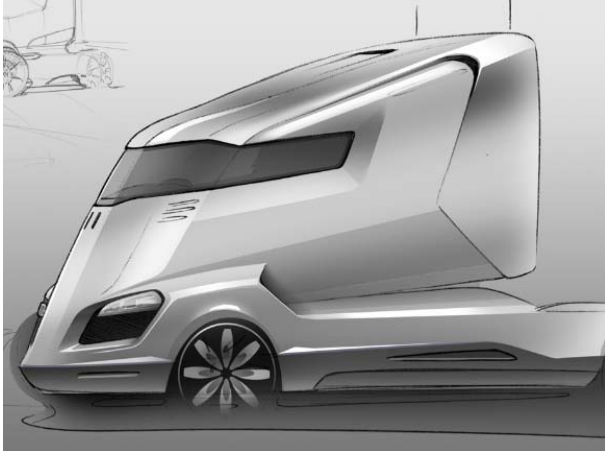
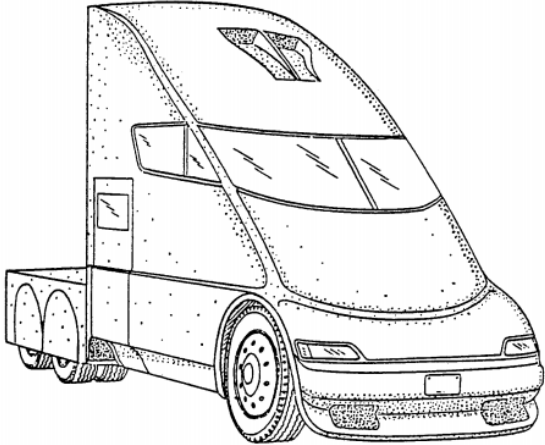


**FOURTH COUNTERCLAIM – DECLARATION OF PATENT INVALIDITY
OF THE 'D968 PATENT**

41. Tesla realleges Paragraphs 1-13 as if set forth fully herein.

42. The 'D968 Patent is invalid for failure to satisfy one or more of the provisions set forth in 35 U.S.C. §§ 101 et seq., including, without limitation, the requirements of 35 U.S.C. §§ 101, 102, 103, 112 and/or in view of the defenses recognized in 35 U.S.C. § 282(b), and/or one or more of the judicially created requirements for patentability.

43. For example, the 'D968 Patent is invalid under 35 U.S.C. § 102 and/or § 103 in view of, at least, one or more of: U.S. Patent No. D626,890; the MAN Concept S Truck; the Shell-AirFlow StarShip Truck; the Road Runner Concept Truck; U.S. Patent No. D339,314; the DOE Volvo SuperTruck; and the DOE Navistar SuperTruck. The 'D968 Patent is also invalid because it encompasses functional features.

Nikola 'D968 Patent	U.S. Patent No. D626,890
	

<p>MAN Concept S Truck</p> 	<p>Shell-AirFlow StarShip Truck</p> 
<p>Road Runner Concept Truck</p> 	<p>U.S. Patent No. D339,314</p> 
<p>DOE Volvo SuperTruck</p> 	<p>DOE Navistar SuperTruck</p> 

1 44. Tesla is entitled to a judicial declaration that the 'D968 Patent is invalid.

2 **FIFTH COUNTERCLAIM – DECLARATION OF NONINFRINGEMENT**
3 **OF THE 'D004 PATENT**

4 45. Tesla realleges Paragraphs 1-13 as if set forth fully herein.

5 46. Tesla does not infringe and has not infringed, any valid and enforceable claim of
6 the 'D004 Patent.

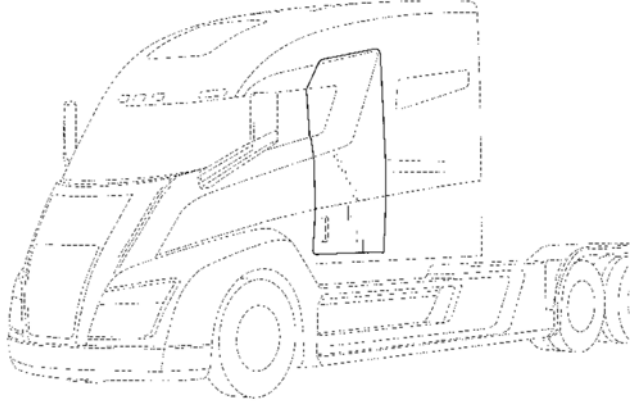
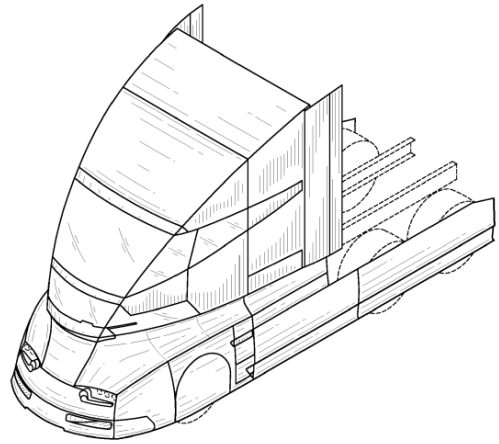
7 47. Tesla is entitled to a declaratory judgment that the Tesla does not infringe, and has
8 not infringed, any valid and enforceable claim of the 'D004 Patent.

9 **SIXTH COUNTERCLAIM – DECLARATION OF PATENT INVALIDITY**
10 **OF THE 'D004 PATENT**

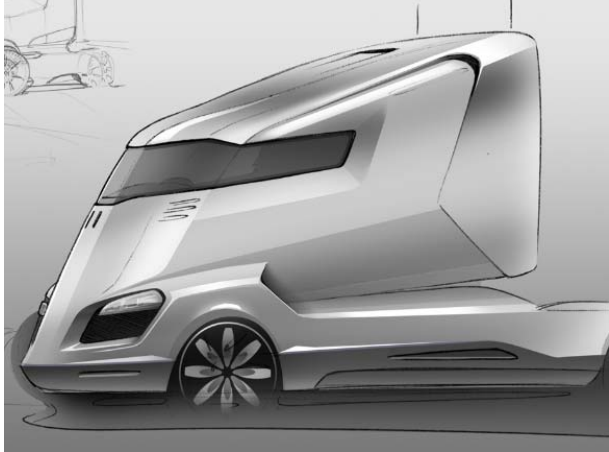
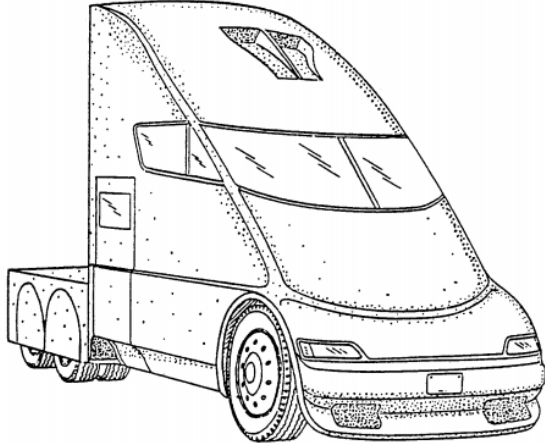


11 48. Tesla realleges Paragraphs 1-13 as if set forth fully herein.

12 49. The 'D004 Patent is invalid for failure to satisfy one or more of the provisions set
13 forth in 35 U.S.C. §§ 101 et seq., including, without limitation, the requirements of 35 U.S.C. §§
14 101, 102, 103, 112 and/or in view of the defenses recognized in 35 U.S.C. § 282(b), and/or one
15 or more of the judicially created requirements for patentability.

16 50. For example, the 'D004 Patent is invalid under 35 U.S.C. § 102 and/or § 103 in
17 view of, at least, one or more of: U.S. Patent No. D626,890; the MAN Concept S Truck; the
18 Shell-AirFlow StarShip Truck; the Road Runner Concept Truck; U.S. Patent No. D339,314; the
19 DOE Volvo SuperTruck; and the DOE Navistar SuperTruck. The 'D004 Patent is also invalid
20 because it encompasses functional features.

Nikola 'D004 Patent	U.S. Patent No. D626,890
	

MAN Concept S Truck	Shell-AirFlow StarShip Truck
	

<p>Road Runner Concept Truck</p> 	<p>U.S. Patent No. D339,314</p> 
<p>DOE Volvo SuperTruck</p> 	<p>DOE Navistar SuperTruck</p> 

51. Tesla is entitled to a judicial declaration that the 'D004 Patent is invalid.

**SEVENTH COUNTERCLAIM – DECLARATION OF NONINFRINGEMENT
OF THE '084 PATENT**

52. Tesla realleges Paragraphs 1-13 as if set forth fully herein.

53. Tesla does not infringe and has not infringed, either directly or indirectly, any valid and enforceable claim of the '084 Patent, either literally or under the doctrine of equivalents.

54. Tesla is entitled to a declaratory judgment that the Tesla does not infringe, and has not infringed, any valid and enforceable claim of the '084 Patent.

///

**EIGHTH COUNTERCLAIM – DECLARATION OF PATENT INVALIDITY
OF THE '084 PATENT**

55. Tesla realleges Paragraphs 1-13 as if set forth fully herein.

56. One or more claims of the '084 Patent are invalid for failure to satisfy one or more of the provisions set forth in 35 U.S.C. §§ 101 et seq., including, without limitation, the requirements of 35 U.S.C. §§ 101, 102, 103, 112 and/or in view of the defenses recognized in 35 U.S.C. § 282(b), and/or one or more of the judicially created requirements for patentability.

57. For example, the claims of the '084 patent are invalid under 35 U.S.C. § 102 and/or § 103 in view of, at least, the Navistar eStar truck; PCT Application Publication No. WO 2009/001086; U.S. Patent No. 7,338,335; U.S. Patent No. 4,932,716; PCT Application Publication No. WO 81/01587; U.S. Patent Application Publication No. 2003/0006628; U.S. Patent No. 7,145,788 to Plummer; the 2013 Kia Sedona User Manual; and "Ergonomics Program at Freightliner." SAE Transactions, vol. 109, 2000, pp. 462–469.

58. Tesla is entitled to a judicial declaration that one or more claims of the 'D004 Patent are invalid.

**NINTH COUNTERCLAIM – DECLARATORY JUDGMENT OF
NO TRADE DRESS INFRINGEMENT**

59. Tesla realleges Paragraphs 1-13 as if set forth fully herein.

60. Tesla does not infringe any protectable trade dress of the Nikola One.

61. Tesla is entitled to a judicial determination that Tesla has not infringed Nikola's trade dress rights in the Nikola One design.

**TENTH COUNTERCLAIM – DECLARATORY JUDGMENT OF
NO TRADE DRESS RIGHTS**

62. Tesla realleges Paragraphs 1-13 as if set forth fully herein.

63. Nikola's purported Nikola One trade dress is not inherently distinctive, has acquired no secondary meaning, and is functional.

64. Tesla is entitled to a judicial determination that Nikola has no rights in its asserted Nikola One trade dress.

THIRD COUNTERCLAIM – DECLARATION OF PATENT UNENFORCEABILITY

65. Tesla realleges Paragraphs 1-30 as if set forth fully herein.

66. Trevor Milton failed to disclose to the Patent and Trademark Office (PTO) material information regarding the Design Patents and did so with an intent to deceive as discussed above.

67. As a result of the actions of Trevor Milton, each of the Design Patents is unenforceable for inequitable conduct and/or unclean hands.

68. Tesla is entitled to a judicial declaration that the Design Patents are unenforceable.

PRAYER FOR RELIEF

WHEREFORE, Tesla requests the following relief:

A. That the Court order the Third Amended Complaint dismissed with prejudice and judgment be entered in favor of Tesla;

B. That a judgment be entered declaring that Tesla has not infringed and does not infringe either directly or indirectly, any valid and enforceable claim of U.S. Patent Nos. D811,944, D811,968, D816,004, and 10,077,084, either literally or under the doctrine of equivalents;

C. That judgment be entered declaring the claims of U.S. Patent Nos. D811,944, D811,968, D816,004, and 10,077,084 invalid;

D. That judgment be entered declaring U.S. Patent Nos. D811,944, D811,968, D816,004, and 10,077,084 unenforceable;

E. That a judgment be entered declaring that Nikola's alleged trade dress has not been infringed and is not infringed by Tesla;

F. That a judgment be entered declaring that Nikola's alleged trade dress is invalid;

G. That a judgment be entered declaring that this action is an exceptional case within the meaning of 35 U.S.C. § 285, and that Tesla is therefore entitled to recover its reasonable attorneys' fees;

H. That Tesla be awarded costs, attorneys' fees, and other relief, both legal and equitable, to which it may be justly entitled; and

I. That Tesla be awarded such other and further relief as is just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Defendant Tesla, Inc. hereby demands trial by jury of all issues that are triable by jury.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Date: September 23, 2020

By: /s/ Michael K. Friedland

Michael K. Friedland
Lauren Keller Katzenellenbogen
Adam B. Powell
Kimberly A. Kennedy

Attorneys for Defendant
TESLA, INC.

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