

BEUS GILBERT PLLC
ATTORNEYS AT LAW
701 NORTH 44TH STREET
PHOENIX, ARIZONA 85008-6504
TELEPHONE (480) 429-3000

Leo R. Beus / 002687 / lbeus@beusgilbert.com
K. Reed Willis / 028060 / rwillis@beusgilbert.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Nikola Corporation, a Delaware
corporation,

Plaintiff,

vs.

Tesla, Inc., a Delaware corporation,

Defendant,

Case No.: 2:18-cv-01344-PHX-GMS

**THIRD AMENDED COMPLAINT FOR
INFRINGEMENT OF UNITED
STATES PATENT NOS. D811,944;
D811,968; AND D816,004**

Jury Trial Demanded

I. INTRODUCTION

1. On 30 December 2015, Nikola Corporation, a start-up alternative fuel vehicle manufacturer, filed with the United States Patent and Trademark Office a series of design patents for an electric Class 8 heavy-duty truck. On 30 December 2016, Nikola filed several utility patents for an electric Class 8 heavy-duty truck.

2. On 9 May 2016, Nikola posted its design on its website and released a press release with the image of Nikola's semi, the Nikola One.

1 3. By 9 May 2016, Tesla’s chief executive officer, Elon Musk, had seen Nikola’s
2 image of the Nikola One.

3 4. Following the release of the design photo, there was widespread publicity of
4 the photo of Nikola’s unique design. The week following the publication of the photo,
5 Nikola had over 80,000 visitors to its website and over 210,000 page views.
6

7 5. As of 9 May 2016, Tesla had not announced that it was considering building a
8 Class 8 semi-truck.

9 6. By 31 August 2016, Nikola had over 300 orders totaling over 7,000 trucks.
10 The full value of these orders was over \$2.3 billion.

11 7. On 1 December 2016, Nikola unveiled a prototype at its headquarters in Salt
12 Lake City to a live crowd of 600 journalists, industry partners and leaders, and government
13 officials.
14

15 8. After the Nikola One unveiling, Nikola received additional orders, raising the
16 value of the orders to over \$4 billion.

17 9. For the period ending June 30, 2016, Tesla, Inc. reported in its 10-Q that it had
18 a loss of \$272,560,000.
19

20 10. On 20 July 2016, 72-days after Nikola published its design, Elon Musk
21 announced on Tesla’s blog that it was “in the early stages of development at Tesla and
22 should be ready for unveiling next year.”

23 11. On 22 September 2016—four months after Nikola published its design—
24 Aaron Hoyos, a recruiter for Tesla, reached out to Kevin Lynk (Nikola’s Chief Engineer). In
25 that email, Hoyos told Lynk that “Tesla is building a new team to focus on development of
26 heavy trucks.” Hoyos said that “[b]ased on [Lynk’s] background at Nikola, it seems like
27 your background would be a great fit.” Hoyos asked, “[W]ould you be open to a quick call
28 to hear what we’re up to?”

1 12. Nikola did not respond to Tesla’s invitation.

2 13. On 28 April 2017—just shy of one year after Nikola published its design, Tesla
3 did not have any design patents on its semi-truck. And Tesla had not announced that it was
4 seeking this protection.

5 14. On 28 April 2017, Tesla released a teaser image of its semi.

6 15. On 7 November 2017, Nikola sent a letter to Tesla that identified the semi-
7 truck features for which Nikola was obtaining design and utility patent protection, told Tesla
8 that its semi infringed, and demanded that Tesla not unveil its semi until Tesla’s
9 infringement had been resolved. Tesla never responded.
10

11 16. On 16 November 2017, Tesla unveiled its semi design in Hawthorne,
12 California at an event and reception attended by hundreds of journalists, industry leaders,
13 potential customers, and Tesla employees. The event was streamed online and viewed by
14 thousands more individuals. Almost immediately, Tesla received orders for its semi. Upon
15 information and belief, Tesla’s market value jumped by roughly \$2 billion after the semi
16 unveiling.
17

18 17. The week after Tesla unveiled its semi, a former trucking company CEO and
19 owner of trucking dealerships called Nikola and said that the Tesla semi looked like the
20 Nikola design, and asked if Nikola was working with Tesla.
21

22 18. The United States Patent and Trademark Office (the “PTO”) issued six design
23 patents to Nikola between February and April 2018. These patents protect Nikola’s wrap
24 windshield, mid-entry door, fuselage, fender, side cladding, and the overall design of a semi.
25

26 19. The Tesla semi design is substantially similar to Nikola’s unique design, and
27 Tesla copied Nikola’s patented design. Further, the Nikola One design is distinct and
28 constitutes trade dress. The Tesla semi is confusingly similar to the Nikola One and,
therefore, has infringed Nikola’s trade dress.



Nikola One



Tesla Semi

20. Nikola designed the wrap windshield, a unique feature in the trucking industry. The design is identifiable from a distance. The wrap windshield provides drivers an unobstructed view of the road. Tesla copied the wrap windshield, and advertised the driver's view and its peripheral view from inside the truck.

1 21. The fuselage has an aerodynamic look that is a continuous line from the front
2 of the vehicle through the roof. This patented design is unique in the trucking industry. The
3 Nikola One has a drag coefficient of around 0.37. Similarly, the Tesla truck has a drag
4 coefficient of around 0.36. Tesla has advertised the aerodynamic, continuous line design of
5 its vehicle.
6

7 22. Nikola designed a mid-entry door, another first in the trucking industry. The
8 door gives the driver access to the cab without any obstacles in the driver's way. Tesla's
9 truck has a mid-entry door, and Tesla has advertised the ease of access of its vehicle.
10

11 23. In addition to individual components, Tesla's overall semi design copies
12 Nikola's patented designs.

13 24. On 18 September 2018, Nikola was issued a utility patent that taught a system,
14 method and device for a vehicle door or window.

15 25. Tesla's door either meets literally or is equivalent to Nikola's patented door.

16 26. For example, Nikola's utility patent claims a door to a semi where a portion of
17 the door is positioned behind the driver's seat.
18



1 27. As shown in the picture, the Tesla door is also located behind the driver's seat.

2 28. Tesla's infringement has caused Nikola more than \$2 billion in damages.

3 **II. PARTIES, JURISDICTION, AND VENUE**

4 29. Nikola Corporation is a Delaware corporation with its current place of business
5 in Phoenix, Arizona. It moved its headquarters to Phoenix together with its employees and
6 documents. Nikola has registered as a foreign corporation conducting business in Arizona.
7 Nikola has ceased operations in Salt Lake City, Utah. Nikola is spending over seventeen
8 million dollars to buildout its 130,000 plus square foot headquarters and research and
9 development center in Phoenix. Nikola is currently leasing multiple office spaces in
10 Maricopa County. Nikola has announced that it will be building a 1 million square foot
11 manufacturing facility in Coolidge, Arizona. Nikola is receiving an economic development
12 agreement and tax breaks in return for relocating its entire business in Arizona.
13

14 30. Tesla, Inc. is a Delaware corporation with its principal place of business at
15 3500 Deer Creek Road, Palo Alto California.
16

17 31. This Complaint arises under the Patent Act of the United States of America,
18 35 U.S.C. § 1 *et seq.* and under the Lanham Act, 15 U.S.C. § 1051 *et seq.*
19

20 32. This Court has subject matter jurisdiction over the Complaint pursuant to
21 28 U.S.C. §§ 1331 and 1338.

22 33. This Court has personal jurisdiction over Tesla consistent with the principles of
23 due process and the Arizona long-arm statute, because Tesla offers its infringing product for
24 sale in this District, and have committed acts of patent infringement in this District.
25

26 34. Venue is proper under 28 U.S.C. § 1400(b) because Tesla sells or offers to sell
27 infringing products in this District and maintains a regular and established place of business
28 located within the District. Specifically, Tesla maintains two showrooms and two service
centers in the District. Upon information and belief, Tesla has offered to sell the infringing

1 product in this District. Nikola is located in this District, and its employees and documents
2 are located in this District.

3 **III. FACTUAL BACKGROUND**

4 **A. Trevor Milton and Steve Jennes Designed the Nikola One.**

5
6 35. From childhood, Trevor Milton wanted to revolutionize the trucking industry
7 by decreasing the trucking industry's reliance on fossil fuels. As an adult, Milton has started
8 or worked for several companies that designed alternative fuel technology for semi-trucks.

9 36. Reducing the trucking industry's reliance on fossil fuels will have a dramatic
10 impact on the world. Professional truck drivers used almost 55 billion gallons of diesel fuel
11 and gasoline in 2016. Class 8 trucks account for the annual production of 7% of greenhouse
12 gases worldwide.

13
14 37. Milton set out to combine alternative fuel technology with existing Class 8
15 truck designs. He then decided to build a truck from scratch that included a zero-emission
16 fuel system. Milton's goal was to design a truck, whose design stood out as much as its
17 technology.

18 38. Milton began designing the Nikola One in his basement in 2013. But Milton
19 was not satisfied with his designs. He looked for a designer with vehicle design experience.
20 In April 2015, he hired Steve Jennes, a designer with over 25 years of experience.

21
22 39. Jennes and Milton went to work improving the shape and proportions of the
23 truck in order to create a distinctive appearance. Jennes would develop a design; Milton
24 made changes. The back-and-forth continued for months until Nikola finalized an overall
25 truck design.

26
27 40. Nikola's overall design focused on the centerline and silhouette of the truck.
28 The goal was to develop a truck with one line from the bumper to the top of the cab. Nikola
wanted its truck to be recognized from as far as a half-a-mile away.

1 41. Nikola designed a wrap windshield that provided a panoramic view of both the
2 road and the vehicle's surroundings.

3 42. Nikola moved the driver over the front wheels of the truck because there was
4 no engine block. With the driver moved forward in the cab, Nikola relocated the door to the
5 middle of the cab (a mid-entry door). The mid-entry door provided drivers easier and safer
6 access to the vehicle. Specifically, the door is behind the driver's seat, which eliminates
7 obstacles a driver faces as he or she climbs into a semi-truck, such as a driver's wheel or
8 seat.
9

10 43. Nikola's design resulted in surprising outcomes. For example, Nikola
11 increased the volume area of the cab by roughly 30% and decreased the coefficient of drag
12 dramatically.
13

14 44. Nikola's design of the Nikola One is distinct and serves as a source or origin
15 indicator. Therefore, the design of the Nikola One is trade dress.

16 45. On 30 December 2015, Nikola submitted six design patent applications that
17 covered these ornamental features and several pending utility patent applications. And on
18 30 December 2016, Nikola submitted a utility patent application that covered the function
19 and system of the door.
20

21 46. By the time Nikola filed its patent applications, it had spent several million
22 dollars developing the Nikola One.

23 **B. The Nikola One Was Unveiled To Wide Praise And Received Several**
24 **Billions in Orders.**

25 47. On 9 May 2016, Nikola released its first picture of the Nikola One on Nikola's
26 website and a press release touting the Nikola One ([https://dxtn4vayafzin.cloudfront.net/](https://dxtn4vayafzin.cloudfront.net/nikolamotor/uploads/press_release/pdf/5/Press_Release_TRUCK_Final.pdf)
27 [nikolamotor/uploads/press_release/pdf/5/Press_Release_TRUCK_Final.pdf](https://dxtn4vayafzin.cloudfront.net/nikolamotor/uploads/press_release/pdf/5/Press_Release_TRUCK_Final.pdf)). That same
28 day, Nikola tweeted an image of its semi-truck, specifically tagging Tesla.



48. Between May 9 and May 16, Nikola's website had over 200,000 page views.

49. News outlets reported on the Nikola One. For example, Jonathan Ramsey reported on 13 May 2016 for the website Drive that Nikola would lead to a "revolution" in the world of long-haul trucks (available at <http://www.thedrive.com/news/3461/2-000-hp-hybrid-electric-nikola-one-semi-is-a-truckers-dream>). Stephen Edelstein on 17 May 2016 reported on the Nikola One for the Green Car Reports website (available at https://www.greencarreports.com/news/1103987_nikola-one-2000-hp-natural-gas-electric-semi-truck-announced).

50. Nikola began receiving pre-orders for the Nikola One. By 13 June 2016, Nikola reported that it had received over 7,000 reservations for its truck, valued at \$2.3 billion (available at <https://www.prnewswire.com/news-releases/nikola-motor-company-generates-23-billion-in-pre-sales-in-first-month-300283523.html>).

51. At that time, Tesla had not announced that it was going to build a heavy duty truck. Based on information and belief, Tesla had not filed any patent applications for its heavy duty truck.

1 52. On 1 December 2016, Nikola held an unveiling event and reception for the
2 Nikola One. Over 600 members of the media, industry partners, customers and government
3 leaders attended the event (https://nikolamotor.com/pdfs/December_1_Release.pdf). An
4 additional 7,000 watched the event online that same day. To date, the event has been viewed
5 over 1.2 million times on YouTube.
6

7 53. Many websites and news agencies reported on the Nikola One unveiling. For
8 example, in a podcast, Road Show toured the Nikola One, and described it as looking very
9 cool and “Tron-like.” (Available at <https://www.youtube.com/watch?v=B52MpalkZsE>).
10 Business Insider also reported on the Nikola One unveiling
11 (<http://www.businessinsider.com/nikola-one-hydrogen-truck-photos-features-2016-12>).
12

13 54. Subsequent to the unveiling, the value of Nikola’s reservations jumped to over
14 \$4 billion ([https://www.trucks.com/2016/12/01/nikola-one-hydrogen-fuel-cell-electric-semi-](https://www.trucks.com/2016/12/01/nikola-one-hydrogen-fuel-cell-electric-semi-truck-debuts/)
15 [truck-debuts/](https://www.trucks.com/2016/12/01/nikola-one-hydrogen-fuel-cell-electric-semi-truck-debuts/)).
16

17 55. Nikola’s total reservations are currently worth more than \$6.3 billion in
18 revenue.
19

20 56. By the time of the Nikola One unveiling, Nikola spent millions developing its
21 vehicle.
22

23 57. Nikola announced that its semi will enter production in 2020.
24

25 **C. Tesla Announced A Semi-Truck and Offered to Sell the Semi.**
26

27 58. By 9 May and 13 June 2016, Tesla had not announced that it was considering
28 building a heavy duty semi-truck.

 59. In its Form 10-Q for the period ending 30 June 2016, 52 days after Nikola
released its design; Tesla reported a net loss of over \$293 million over three months and over
\$575 million net loss for the six months that ended on June 30.

1 60. On 20 July 2016, only 72 days after Nikola published its design, Tesla
2 announced in its 2016 Master Plan, Part Deux, that heavy-duty trucks were “in the early
3 stages of development at Tesla and should be ready for unveiling next year.”

4 61. On 22 September 2016, Tesla contacted Kevin Lynk, Nikola’s Chief Engineer.
5 Tesla told Lynk that “Tesla is building a new team to focus on development of heavy
6 trucks.” Tesla said that “Based on [Lynk’s] background at Nikola, it seems like your
7 background would be a great fit.” Tesla then asked if Lynk “would be open to a quick call to
8 hear what we’re up to?”

9
10 62. On 13 April 2017, Elon Musk, Tesla’s CEO, tweeted that “Tesla Semi truck
11 unveil set for September. Team has done an amazing job. Seriously next level.”

12
13 63. Elon Musk released a teaser for the Tesla Semi on 28 April 2017 during a
14 public interview. There, he released a picture showing a front silhouette of the semi with its
15 headlights on.

16 64. On 3 May 2017, Elon Musk also said that Tesla would manufacture the Semi
17 by itself, and as a result, the semi was “actually going to have a very good gross margin
18 So effectively that was just a very compelling product that has low unit cost.”

19
20 65. After Tesla teased a picture of the Semi, the public and industry watchers
21 photographed any sighting of the Tesla Semi. On 2 October 2017, a “spy” photo popped up
22 on Reddit of what appeared to be a Tesla Semi.



1 66. Nikola learned of the photograph. On 7 November 2017, Nikola sent a letter to
2 Tesla that notified Tesla of Nikola's pending patent applications, Nikola's belief that Tesla's
3 Semi will infringe on the patents, and demanded that Tesla refrain from unveiling its Semi.
4 A true and correct copy of the letter is attached as **Exhibit 1**.
5

6 67. On November 16, 2017, Tesla held an unveiling party and a reception for the
7 Semi attended by hundreds of journalists, industry partners, customers, employees and
8 government leaders.

9 68. Tesla has announced that it expects to release the Semi in 2019.

10 69. The same day as the unveiling, Tesla began accepting reservations for the
11 Semi. Tesla has reservations from major companies with retail, shipping, or logistic needs.
12 One analyst estimated on 18 December 2017 that Tesla has accepted reservations for over
13 1,200 Semis ([http://www.businessinsider.com/tesla-over-1200-pre-orders-for-new-semi-](http://www.businessinsider.com/tesla-over-1200-pre-orders-for-new-semi-2017-12/)
14 [2017-12/](http://www.businessinsider.com/tesla-over-1200-pre-orders-for-new-semi-2017-12/)). Upon information and belief, at full value, Tesla's orders are worth over \$215
15 million.
16

17 70. On 7 March 2018, Musk announced via Instagram that Tesla was using its
18 Semis to haul battery packs from Tesla's Gigafactory in Nevada to Tesla's car factory in
19 California.
20

21 71. On 1 November 2017, Tesla announced that it would miss its goal of
22 producing 5,000 Model 3 cars per week in 2017 and took a massive \$619 million quarterly
23 loss. Tesla's stock price dropped from just over \$321 (November 1) to less than \$300
24 (November 2).
25

26 72. A week before the unveiling, Tesla's stock price was \$302.99 and the day after
27 the unveiling, the price was \$315.05. This corresponded to a jump of roughly \$2 billion in
28 Tesla's market value. In other words, the market believed the Tesla Semi was worth roughly
\$2 billion in discounted future profits to Tesla.

1 73. Tesla uses reservation deposits to fund its operations.

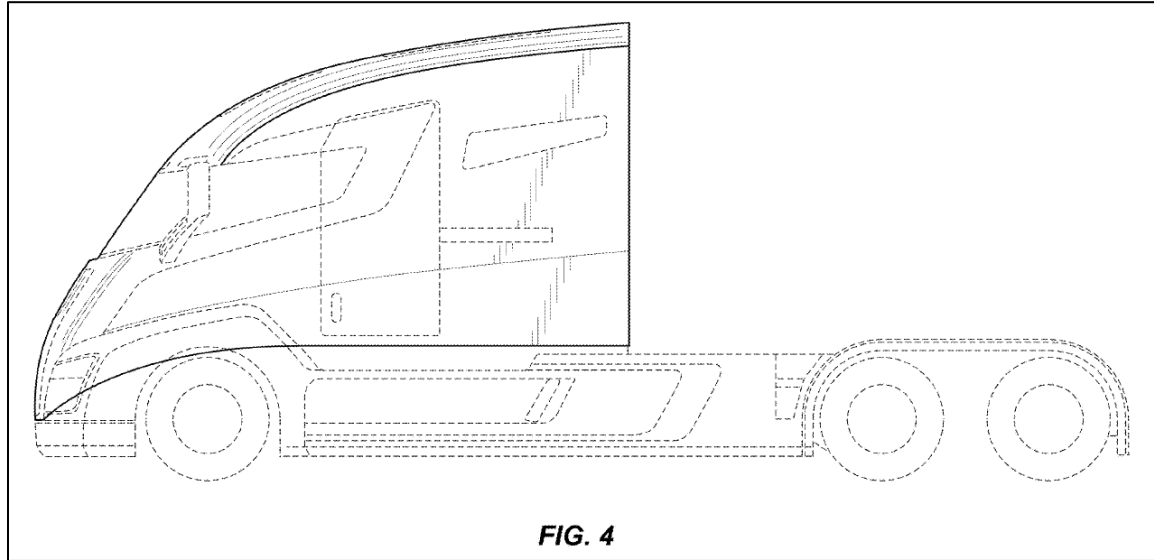
2 74. The week of 20 November 2017, following Tesla's unveiling of its semi-truck,
3 Nikola received a call from the former chief executive officer of a large trucking company
4 and current owner of trucking dealerships in California, Arizona, Washington and Alaska.
5 This individual told Nikola that he thought the Tesla Semi looked like Nikola's design, and
6 asked if Nikola had partnered with Tesla to build semi trucks.
7

8 **D. Nikola Was Issued Six Design Patents.**

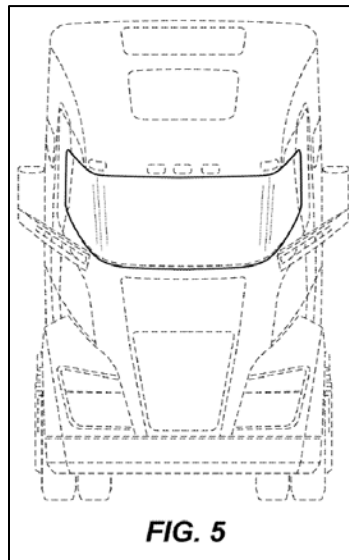
9 75. On 30 December 2015, Nikola applied for design patents to protect the
10 ornamental design of the Nikola One (a peculiar or distinctive appearance, the shape of the
11 design, or the surface decoration of the design). The issued patents covered the fuselage, the
12 windshield, the mid-entry door, the front fender, the side cladding, and the overall semi
13 design. Three of the patents (the "Asserted Design Patents") are at issue in this case.
14

15 76. Between September 2016 and May 2017, Nikola applied for four utility patents
16 related to the function, system, device and methods for the windshield, door, and battery for
17 the Nikola One. To date, Nikola has been issued one utility patent that is at issue in this case
18 (the "Asserted Utility Patent" and collectively "Asserted Patents"), which is directed toward
19 the Nikola One's door.
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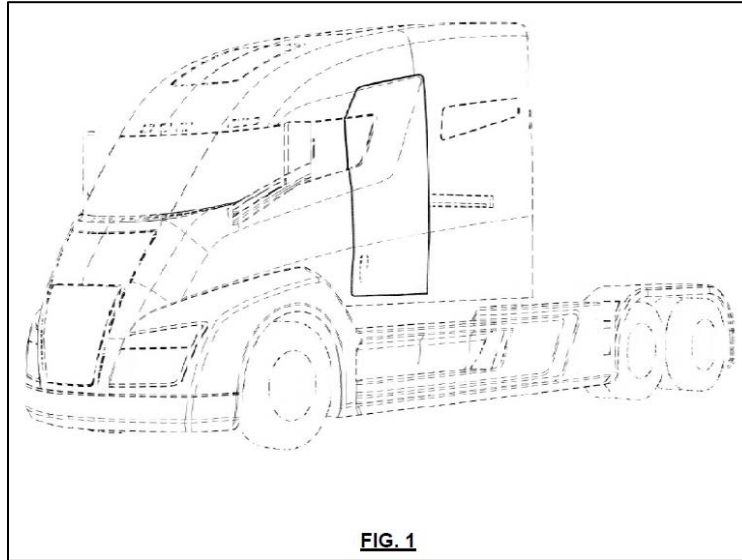
21 77. On 6 March 2018, Nikola was issued U.S. Pat. D811,944 (the "D944 patent"
22 or the "Fuselage Patent") entitled Fuselage. Attached as **Exhibit 2** is a true and correct copy
23 of the 'D944 patent. The patent claims the ornamental design of the fuselage of a semi-
24 truck. One depiction of the claim is shown below.
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78. On 6 March 2018, Nikola was issued U.S. Pat. D811,968 (the “D968 patent” or the “Wrap Windshield Patent”) entitled Wrap Windshield. Attached as **Exhibit 3** is a true and correct copy of the ‘D968 patent. The patent claims the ornamental design for a wrap windshield. A representative drawing of the claim is show below.



79. On 24 April 2018, Nikola was issued U.S. Pat. D816,004 S entitled Side Door(s) (the “D004 patent” or the “Side Door Patent”). Attached as **Exhibit 4** is a true and correct copy of the ‘D004 patent. The patent claims the ornamental design of a side door on a semi-truck. A representative drawing of the claim is shown below.



80. On 18 September 2018, Nikola was issued U.S. Pat. 10,077,084 (the '084 Patent) entitled Systems, Methods, and Devices for an Automobile Door or Window. Attached as **Exhibit 5** is a true and correct copy of the '084 Patent. The patent teaches a semi-truck door that is behind the driver's seat.

81. Nikola owns all right, title, and interest in and to each of the Asserted Patents.

82. At Nikola's unveiling event on 1 December 2016, Nikola showcased the fuselage, the windshield, the door, and overall design features of the Nikola One. Nikola emphasized that it was obtaining patents on these features.

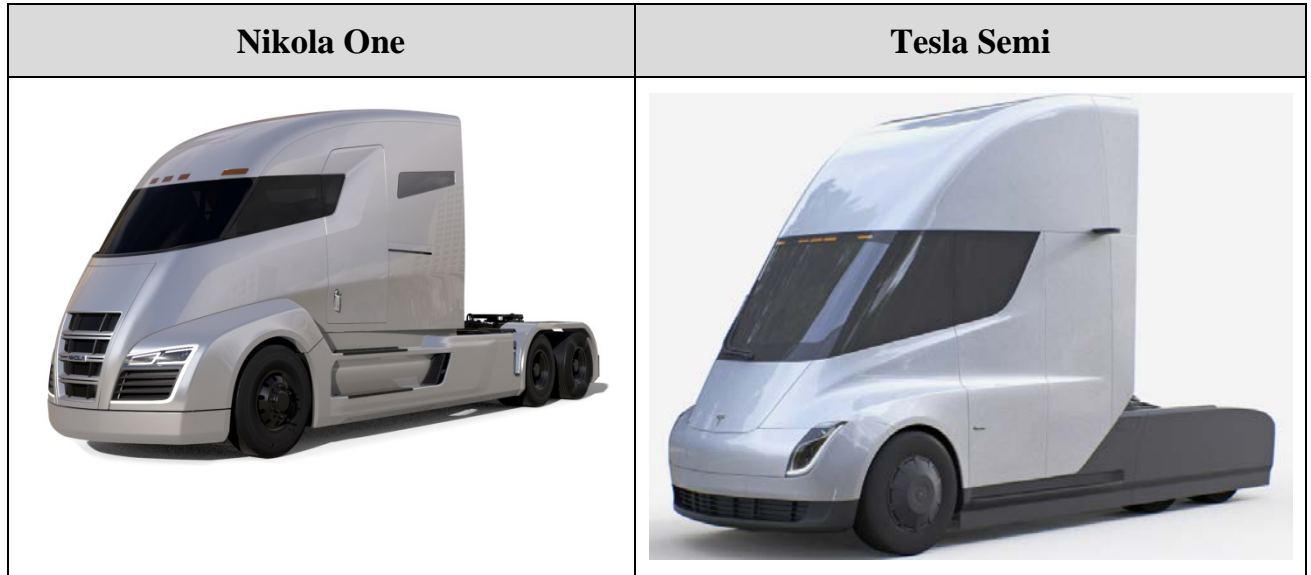
83. Nikola sent a letter to Tesla on 7 November 2017 alerting Tesla to Nikola's pending patent applications and demanding that Tesla not infringe Nikola's patents. Tesla ignored Nikola's letter.

E. The Design of the Tesla Semi Is Substantially Similar to Nikola's Patented Design and Is Confusingly Similar to Nikola's Trade Dress.

84. The Nikola One embodies the Asserted Patents, which include the fuselage, a wrap windshield, and a mid-entry door. The design of the Nikola One constitutes Nikola's trade dress.

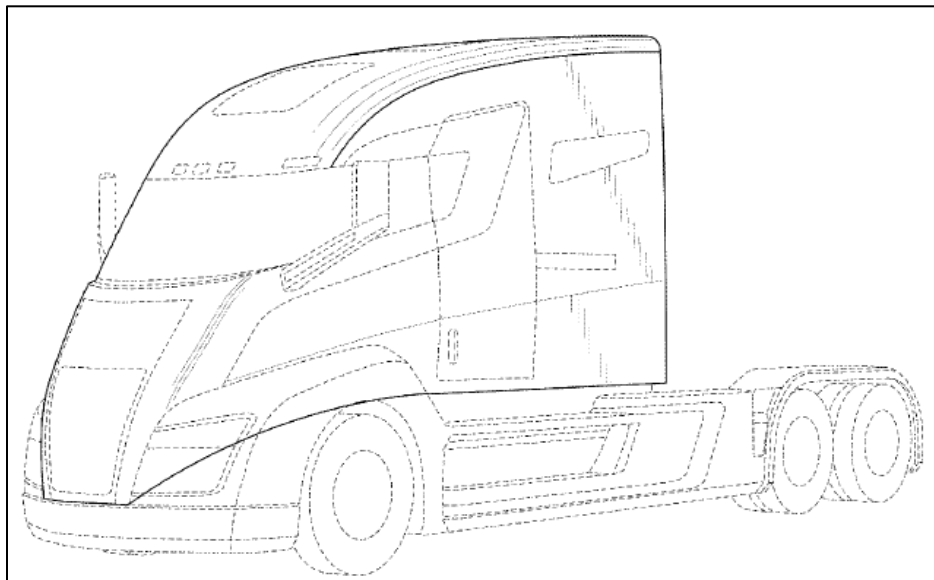
85. The Tesla Semi is substantially similar to Nikola's unique designs.

86. A side-by-side comparison between the two reveals that Tesla has infringed Nikola's patented truck designs, including the Fuselage, the Wrap Windshield and Mid-Entry Door.

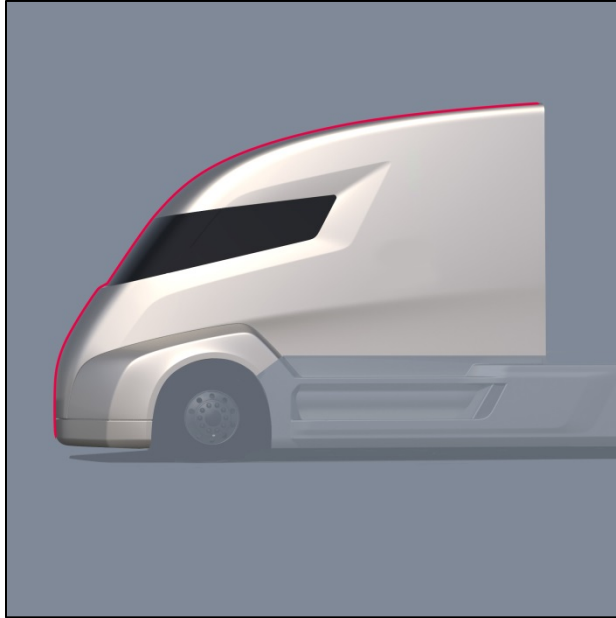


1. The Fuselage Patent.

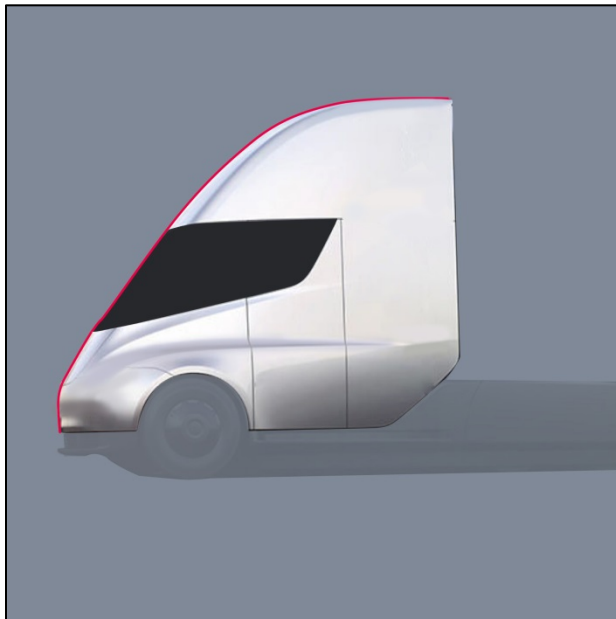
87. The 'D944 Patent claims a fuselage as depicted in the following drawing, (Fig. 1).



1 88. The Nikola One's fuselage embodies the Fuselage Patent.
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13 89. The Tesla Semi has a similar fuselage to the patented design, and has infringed
14 Nikola's patent.
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90. The overall design of the Nikola One and Tesla Semi are ornamental designs.

91. Nikola explained at its unveiling event that it was designing an aerodynamic truck. The Nikola One has a drag coefficient of 0.37

92. Nikola has showcased that the cabin is approximately 30% larger than a traditional semi-truck.

93. Tesla said at the Semi unveiling event that the Semi it was “designed to be a bullet” and pointed out the “bullet shaped nose.”

94. Tesla also highlighted that the Tesla Semi has a drag coefficient of 0.36, which is better than a Bugatti Chiron (0.38).

95. Tesla’s Chief Designer, Jerome Guillen, said at an event on 25 November 2017 in the Netherlands that the Semi looks like the TGV, the Eurostar or a bullet train.

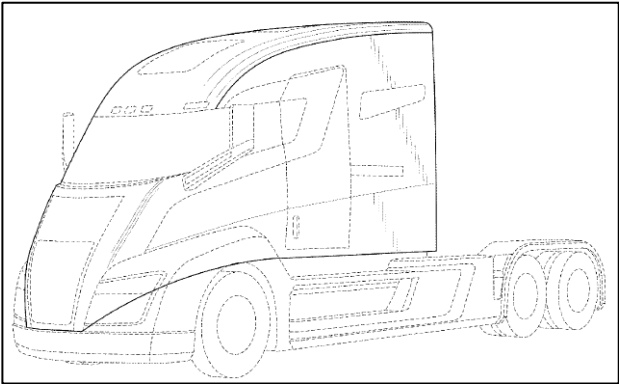

96. Tesla further showcased the “spacious interior” and the “expansive cockpit interior” based on the fuselage design.

97. Nikola’s overall design departed conspicuously from the prior art.

Other Semi Trucks

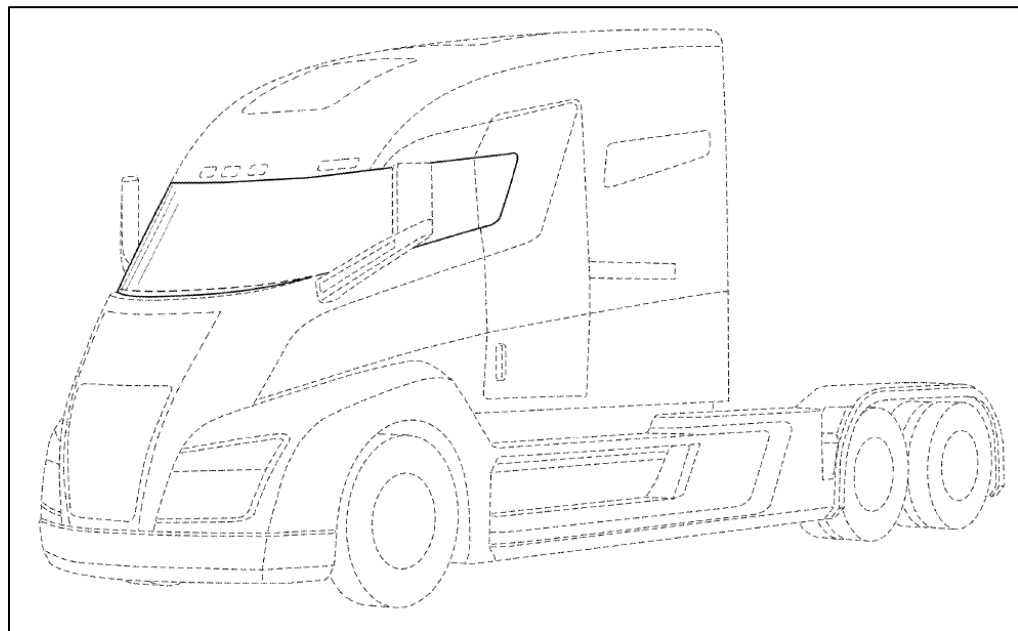


98. An ordinary observer would find that the Tesla Semi fuselage is substantially similar to the Fuselage Patent, and that Tesla infringes Nikola's patent.

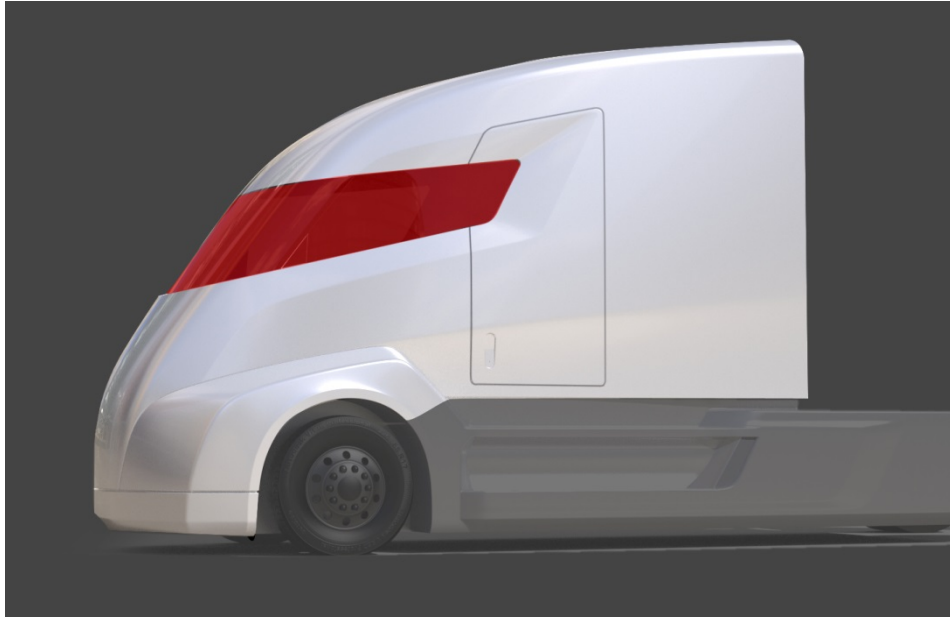
Nikola Fuselage Patent, Fig. 1	Tesla Semi
	

2. The Wrap Windshield Patent.

99. The 'D968 patent claims a wrap windshield as depicted in the following drawing (Fig. 1).



1 100. The Nikola One's windshield embodies the protected design.
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13 101. The Tesla Semi also has a wrap windshield.
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102. The wrap windshield is an ornamental design.

103. During the Nikola One unveiling event on 1 December 2016, Nikola highlighted the wrap windshield as a unique design. Nikola explained that the windshield gave the driver panoramic views of his surroundings and the road.

104. During the Tesla Semi unveiling event on 16 November 2017, Tesla drew attention to its wrap windshield. Tesla said that the driver has complete visibility of the road and the surroundings, in part, because of the wrap windshield.

105. Upon information and belief, no other Class 8 semi-truck had a wrap windshield when Nikola filed its patent applications.

Other Semi Trucks

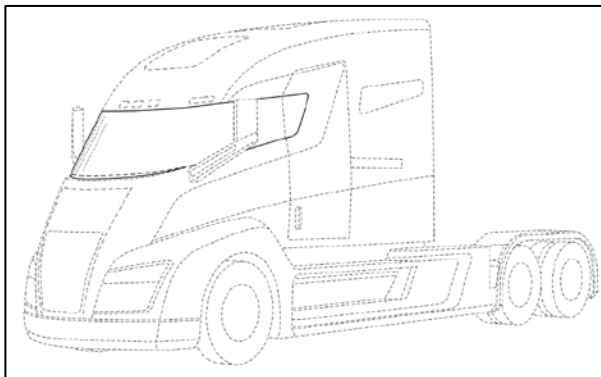


Other Semi Trucks



106. As such, an ordinary observer would find that the windshields between the Tesla Semi and the Wrap Windshield Patent are substantially similar, and therefore Tesla infringes Nikola's patent.

Nikola Wrap Windshield Patent, Fig. 1

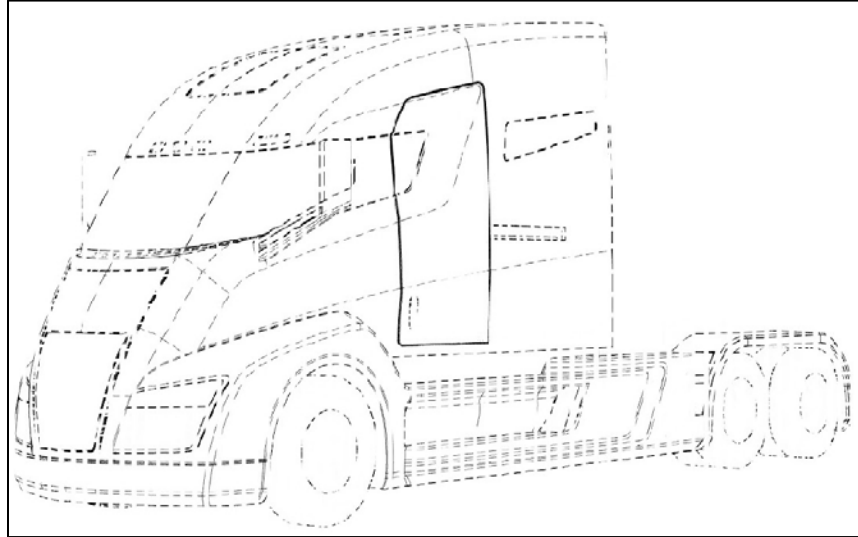


Tesla Semi



3. **The Mid-Entry Door Patent.**

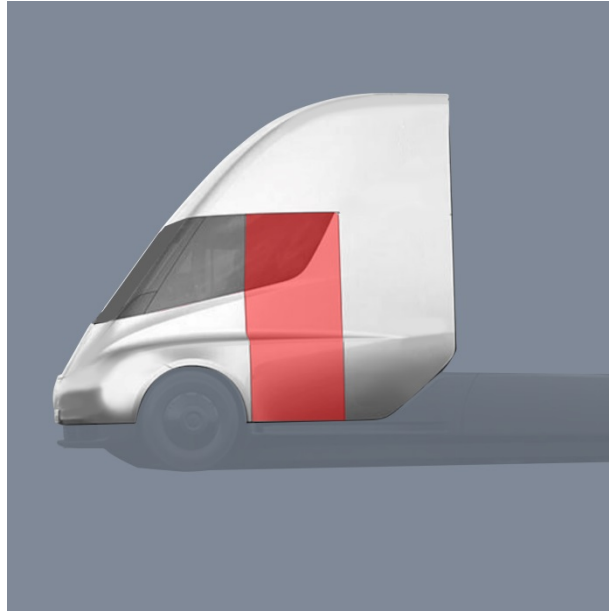
107. The 'D004 Patent claims a mid-entry door as depicted in the following picture (Fig. 1).



108. The Nikola One embodies the mid-entry design.



109. The Tesla Semi also has a mid-entry door.



110. The mid-entry door is an ornamental design.

111. At the Nikola One unveiling event, Nikola discussed the ease of entering the vehicle through the mid-entry door and highlighted the increased safety of the door.

112. Similarly, at the Tesla Semi unveiling, Tesla noted the “easy entry and exit” of the vehicle.

113. Upon information and belief, no other semi-truck has a mid-entry door.

114. As such, an ordinary observer would find that Tesla's door is substantially similar to Nikola's design, and that Tesla infringes Nikola's patents.



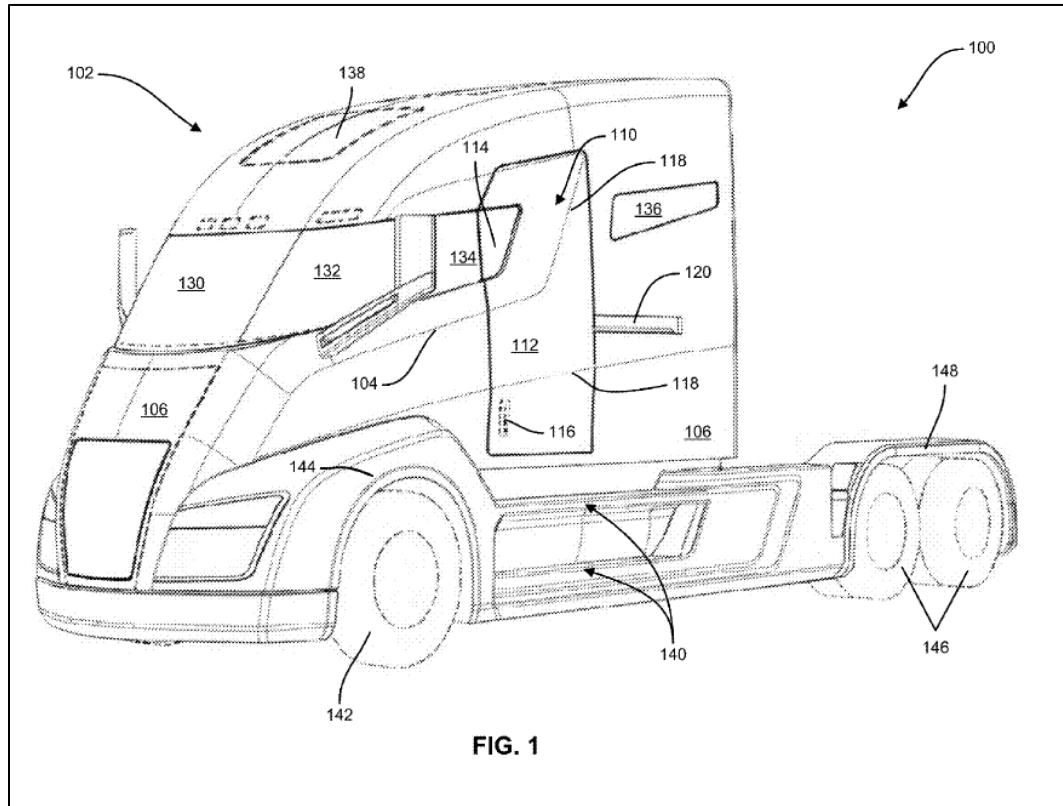
115. Nikola has retained a world-class automotive design expert that has reviewed and compared Nikola's patents and pictures of the Tesla Semi. This design expert has opined that Tesla Semi overall design, wrap windshield, and mid-entry door are substantially similar to Nikola's patented design.

4. The Door Utility Patent (the '084 Patent).

116. The '084 Patent describes a system, method and device for an automobile door or window.

117. For example, in one embodiment, the patent teaches a door that permits ingress and egress into the semi-truck and the door opens to a backside of at least one seat.

118. A representative figure is below:



119. The semi has a door (110) and steps (140). The foremost part of the door is behind the driver's seat.

120. A representative claim reads:

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;

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

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

wherein the door is located on the body such that a frontmost side of the door is adjacent to a rearmost portion of a front wheel

1 well and the width of the door is disposed between the frontmost
2 side of the door and a rearmost side of the door, at least a portion
3 of the door being positioned behind the seat and at least a portion
4 of the seat is disposed to be forward of a line defining the
5 rearmost portion of the front wheel well such that the door opens
6 to provide ingress and egress into the cabin from the backside of
7 the seat; and

8 wherein the door is the foremost door providing ingress or egress
9 into the interior of the cabin.

10 121. The Nikola One embodies the '084 patent. As shown in the following picture.



18 122. The door opens to reveal a seat at the foremost part of the door.

19 123. The Tesla Semi's door meets the limitation, either literally or under the
20 doctrine of equivalence, of claim 1 of the '084 Patent.
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124. The Tesla Semi is a semi-truck vehicle comprising an electric drive train. Tesla advertises during the Semi unveiling that it had developed a semi-truck with an electric drive train. The Semi has a body and a cabin located within the body. The cabin can accommodate at least one person as shown in the picture above. The cabin has a seat, here in the middle of the cabin, that is configured to seat a user. The Semi has a door with a width extending a horizontal length and that allows ingress and egress into the cabin. The door is located so that the frontmost side of the door is adjacent to the front wheel well. Further, the width of the door is between the front side and rear side of the door and a portion of the door is positioned behind the seat. A portion of the seat is forward of the rearmost portion of the front wheel well. The door provides ingress and egress into the cabin from the backside of the seat. The Semi's door is the foremost door providing ingress or egress into the cabin. As such, Tesla infringes the '084 patent.

5. Nikola's Trade Dress

125. The Nikola One and its features have a unique design that is used to identify the source or origin of the Nikola One (Plaintiff Nikola).



126. The Nikola One's trade dress includes: the overall look, design, and appearance of the Nikola One, which includes a wraparound windshield with a taper from the front of the windshield to either side of the truck, the rearmost part of the windshield has a sloping angle from an obtuse angle at the bottom corner to an acute angle at the top corner, the bottom edge of the windshield slopes down from the obtuse corner angle toward the front of the windshield; a body that tapers from the back towards the nose, a small nose beyond the frontmost part of the front wheels, a long continuous line from the front of bumper through the roof, the line sloping at an angle and then rounding to form the room; and the cabin is supported by two protruding shapes of the front wheel arches.

127. The Nikola One's trade dress has acquired secondary meaning.

128. The alternative fuel semi-truck market is an emerging market. Each company, Nikola, Tesla, Mercedes-Benz, and Thor, are offering different technology platforms. For example, Nikola uses a hydrogen fuel cell while the Tesla uses an electric battery. Nikola's technology provides a better range than the Tesla Semi or any other electric semi-truck. Nikola's truck has received industry praise. For example, Chad Prevost of Freight Waves

1 said on January 30, 2018 that the “winner” between battery electric vehicles and hydrogen-
2 fuel cell vehicles is Nikola (available at
3 [https://www.freightwaves.com/news/2018/1/30/look-no-further-than-the-nikola-one-for-](https://www.freightwaves.com/news/2018/1/30/look-no-further-than-the-nikola-one-for-immediate-disruption)
4 [immediate-disruption](https://www.freightwaves.com/news/2018/1/30/look-no-further-than-the-nikola-one-for-immediate-disruption)).
5

6 129. Nikola designed the Nikola One to be as a unique and distinct as its technology
7 platform. As such, the Nikola One trade dress identifies the source and origin of the semi-
8 truck as Nikola.

9 130. When Nikola revealed the Nikola One, industry insiders praised the design as
10 being “unlike anything currently on the road.” (available at
11 <https://www.topspeed.com/cars/others/2020-nikola-one-ar175333.html>). Industry observers
12 praised the aesthetical look as a design “that’s never been seen before on big rigs.” One
13 purchaser in the industry called Nikola after the Tesla Semi unveiling and commented that
14 the two vehicles
15

16 131. Nikola has spent \$1.4 million in marketing the Nikola One. Each
17 advertisement of the Nikola One features the overall look and appearance of the vehicle.
18 Nikola has over \$7 billion in orders.

19 132. Nikola has exclusively used its trade dress since at least December 30, 2015
20 when Nikola submitted its design patent applications.
21

22 133. The Nikola One trade dress is non-functional. The trade dress does not yield a
23 utilitarian advantage. There are other alternative designs available for alternative fuel semi-
24 trucks. For example, Mercedes-Benz designed its own unique alternative fuel semi-truck.
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134. The Nikole One design does not achieve economies in manufacturing or use , and the design was not relatively simple or inexpensive to manufacture.

135. Tesla itself recognizes that its vehicle designs are important. On 12 June 2014, Elon Musk announced that it “will not initiate patent lawsuits against anyone who, in good faith, wants to use [Tesla’s] technology.” (available at <https://www.tesla.com/BLOG/ALL-OUR-PATENT-ARE-BELONG-YOU>). Tesla defines “acting in good faith” to exclude marketing or selling “any knock-off product (e.g., a product created by imitating or copying the design or appearance of a Tesla product or which suggests an association or endorsement by Tesla).”

1 136. The Tesla Semi's design is similar to the Nikola One's.



11 137. The Tesla Semi has a wraparound windshield that tapers from the front of the
12 vehicle to the side. The end of the windshield slopes up from an obtuse angle to an acute
13 angle at the upper corner. The bottom edge of the windshield slopes down. The cabin is
14 supported by two protruding front wheel arches. The cabin of the Tesla Semi is wider and
15 narrows to the front, which creates a small nose. The Tesla Semi has a long, continuous line
16 from the front of the bumper through the roof. The shape of the front of fuselage is upward
17 sloping and then rounds to form the roof.
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20 138. Tesla's Semi has caused or is likely to cause confusion among ordinary
21 consumers as to the source, sponsorship, affiliation or Nikola's approval of the design of
22 Tesla's Semi.

23 139. The week after the Tesla Semi unveiling, an owner of semi-truck dealerships
24 and former executive of a major trucking company asked Nikola if it had done a deal with
25 Tesla and that the two vehicles looked similar.
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1 **F. Nikola Has Been And Will Continue To Be Harmed By Tesla's**
2 **Infringement.**

3 140. With the Nikola One, Nikola was introducing a new semi-truck and a new
4 drivetrain and fueling technology.

5 141. The Nikola One is an electric-hydrogen hybrid.

6 142. Nikola's research and development resulted in a semi-truck with a drag
7 coefficient of 0.37, almost half of a standard diesel truck of 0.65-0.70.

8 143. At the unveiling for the Nikola One on 1 December 2016, Nikola announced
9 that it was going to build over 360 hydrogen-fueling stations across the United States.

10 144. The Nikola One is advertised to have a 700-1,000 mile range.

11 145. Nikola estimates that it will take 15-20 minutes to fill its hydrogen fuel tank. A
12 diesel semi-truck takes roughly 15-20 minutes to fill.

13 146. Nikola is offering its Nikola One with fuel, service and warranty for \$900,000
14 for the first million miles.

15 147. Nikola has established its brand as a start-up, alternative fuel semi-truck
16 company.

17 148. Nikola's success is evident in receiving tens of millions in investments from
18 dozens of investors, partnering with large trucking companies like U.S. Xpress and Ryder,
19 and receiving orders for over 7,000 trucks.

20 149. Tesla is offering an electric semi-truck. The Tesla Semi is advertised to have a
21 maximum range of 500 miles.

22 150. Upon information and belief, the Tesla Semi, like all Tesla vehicles, needs an
23 aerodynamic design for its vehicle to achieve the 500 mile range estimate.
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1 151. The Tesla Semi will need large battery packs for an 80,000 pound truck and
2 trailer to go, at most, 500 miles. Upon information and belief, these large battery packs will
3 reduce the amount of cargo that a Tesla Semi can haul.

4 152. Tesla advertises that its Semi will take 30 minutes to charge.

5 153. Tesla offers its Semi for between \$150,000 to \$200,000.

6 154. On 16 November 2017, Tesla began receiving orders from companies that
7 wanted to test the Tesla Semi. Analysts estimated that Tesla has received over 1,200
8 reservations. At full value, the orders are worth over \$200 million.

9 155. Tesla has also attracted additional investors as a result of the Tesla Semi. A
10 week before the unveiling, Tesla's stock price was \$302.99 and the day after the unveiling,
11 the price was \$315.05. This corresponded to a jump of roughly \$2 billion in Tesla's market
12 value.

13 156. Tesla's infringement has harmed Nikola's plans by causing confusion in the
14 market because of the substantially similarities between the Tesla Semi and Nikola's
15 patented design.

16 157. Industry insiders have noted the similarities between the Nikola One and the
17 Tesla Semi. On 21 July 2016, Steve Hanley for the blog Teslarati discusses Tesla's
18 announcement to build a heavy duty truck and includes a picture of the Nikola one (available
19 at <https://www.teslarati.com/tesla-semi-will-shake-trucking-industry-roots/>).

20 158. On 17 April 2017, Douglas Stansfield for Torque News published a piece
21 about the Elon Musk's tweet about the Tesla Semi and included a picture of the Nikola One
22 with Tesla logo next to it (available at <https://www.torquenews.com/3618/question-about-specs-tesla-semi-tesla-pickup-truck-know>).



159. On 1 May 2017, Brett Evans for Truck Trend observed that “the [Tesla Semi] looks very similar to another futuristic-propulsion semi concept, the Nikola One.” Mr. Evans also reported that Tesla would likely have “torque-vectoring electric motors,” a feature first announced by Nikola. (Available at <http://www.trucktrend.com/news/1705-elon-musk-teases-upcoming-tesla-semi-in-ted-talk/>)

160. On 20 November 2017—days after Tesla held its public unveiling, Quality, a company focused on lease purchases of semi-trucks and equipment, published an article comparing the Nikola One and the Tesla Semi. The article reported that Nikola and Tesla “have both revealed their perceived future for trucking” that “ambitiously aim to replace diesel powered trucks.” Quality further reported that the Nikola was “designed with driver’s lifestyles in mind. The Nikola is built with [a] mid-cab entry, meaning that drivers will no longer enter the cab via the driver’s seat.” Quality further described the Nikola One as “a very modern looking truck; surrounded by panoramic windows on all sides with an aerodynamic design. Drivers can tell instantaneously that this truck is not like ones they’ve seen before.” The article noted, “Like the Nikola [the Tesla Semi] has a space-age look and feel to it.” Quality also said, “Both the Nikola and Tesla are designed to change the industry for the better by lowering emissions, operating cost per mile, and increasing driver safety over the

1 road.” Quality further noted that “both trucks accomplish this task and do so with style.”
2 (Available at <https://qualityco.com/future-wars-hydrogen-vs-electric-semi-trucks/>)

3 161. The week of 20 November 2018, after Tesla’s public announcement of its
4 semi-truck, the former chief executive officer of a major trucking company and owner of
5 trucking dealerships in Arizona, California, Washington and Alaska, in other words, an
6 ordinary observer or purchaser, called Nikola and said that the Tesla Semi looked similar to
7 Nikola’s design and asked if Nikola had done a deal with Tesla. That is, an ordinary
8 observer thought that the Tesla Semi was confusingly similar to a Nikola.
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10 162. On 1 May 2018, Nikola sued Tesla for infringing the Fuselage Patent, the
11 Wrap Windshield Patent and the Mid-Entry Door Patent. [Doc. 1]
12

13 163. On 2 May 2018, Timothy J. Seppala of Engadget reported on the suit, and
14 noted there are “similarities” between Nikola’s patented design and Tesla’s infringing semi
15 design (available at <https://www.engadget.com/2018/05/02/nikola-motors-is-suing-tesla/>).

16 164. On 6 September 2018, Nikola provided Tesla with a copy of the Issue
17 Notification for the ‘084 Patent. Upon information and belief, Tesla had knowledge of the
18 ‘084 Patent and its published application.
19

20 165. Despite the knowledge of the Asserted Patents, Tesla has continued to infringe
21 Nikola’s patents.

22 166. Tesla’s design has caused confusion among customers because of the
23 substantial similarities. The confusion has diverted sales from Nikola to Tesla. Further, any
24 problems with the Tesla Semi will be attributed to the Nikola One, causing harm to the
25 Nikola brand. For example, Tesla has had problems with its batteries starting fires and its
26 autonomous features causing fatal accidents. Should these problems arise with the Tesla
27 Semi, the market will attribute these problems to Nikola because of the similarities between
28 the two vehicles.

COUNT III

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

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

179. Tesla has infringed and continues to infringe the ‘D004 Patent by making, using, selling, and/or offering to sell in the United States its semi, which is substantially similar to the ornamental design covered by the ‘D004 Patent.

180. Tesla’s infringement has been and continues to be willful.

COUNT IV

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

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

182. Tesla has infringed and continues to infringe the ‘084 Patent by making, using, selling, and/or offering to sell in the United States its Semi.

183. Tesla’s infringement has been and continues to be willful.

COUNT V

Infringement of Nikola’s Trade Dress (15 U.S.C. § 1125)

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

185. The design of the Nikola One is distinctive. Nikola owns the Nikola One trade dress.

186. The design of the Tesla Semi is confusingly similar to Nikola’s trade dress and has caused or will cause confusion among ordinary consumers as to the source, sponsorship, affiliation, or Nikola’s approval of the Tesla Semi.

187. Tesla’s infringement of Nikola’s trade dress has been and continues to be willful.

IV. DEMAND FOR JURY TRIAL

188. Pursuant to Federal Rule of Civil Procedure 38(b), Nikola requests a trial by jury of all aspects properly triable by jury.

1 **V. PRAYER FOR RELIEF**

2 WHEREFORE, Nikola prays for relief as follows:

3 A. A judgment that Tesla has infringed one or more claims of each of Nikola's
4 asserted patents;

5
6 B. An order and judgment permanently enjoining Tesla and its officers, directors,
7 agents, servants, employees, affiliates, attorneys, and all others acting in privity or in concert
8 with them, and their parents, subsidiaries, divisions, successors and assigns, from further acts
9 of infringement of Nikola's asserted patents;

10 C. A judgment awarding Nikola all damages adequate to compensate for Tesla's
11 infringement of Nikola's asserted patents, and in no event less than a reasonable royalty for
12 Tesla's acts of infringement, including all pre-judgment and post-judgment interest at the
13 maximum rate permitted by law, estimated to be in excess of \$2 billion;

14
15 D. A judgment awarding Nikola all damages based on 35 U.S.C. § 154(d);

16 E. A judgment awarding Nikola all damages including treble damages, based on
17 any infringement found to be willful, pursuant to 35 U.S.C. § 284, together with prejudgment
18 interest;

19
20 F. A judgment awarding Nikola its costs pursuant to 35 U.S.C. § 284;

21 G. A judgment finding that this case is exceptional and awarding Nikola its
22 attorney fees in accordance with 35 U.S.C. § 285;

23 H. A judgment awarding Nikola Tesla's total profits pursuant to 35 U.S.C. § 289;

24 I. A judgement awarding Nikola Tesla's profits under 15 U.S.C. § 1117;

25 J. A judgment awarding Nikola its costs pursuant to 15 U.S.C. § 1117;

26 K. A judgment awarding Nikola treble damages pursuant to 15 U.S.C. § 1117;

1 L. A judgment finding that this case is exceptional and awarding Nikola its
2 attorney's fees in accordance with 15 U.S.C. § 1117; and

3 M. Any other remedy to which Nikola may be entitled to or the Court deems just
4 and proper.
5

6 DATED this 18 day of October 2018

7 **BEUS GILBERT PLLC**

8 By /s/ K. Reed Willis

9 Leo R. Beus
10 K. Reed Willis
11 701 North 44th Street
12 Phoenix, AZ 85008-6504
13 Attorneys for Plaintiff
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CERTIFICATE OF SERVICE

I hereby certify that on October 18, 2018, I electronically transmitted the foregoing document to the Clerk's Office using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Eric M. Fraser | efraser@omlaw.com
Colin Proksel | cproksel@omlaw.com
OSBORN MALEDON, P.A.
2929 North Central Avenue, Suite 2100
Phoenix, AZ 85012

Perry J. Vicounty | perry.vicounty@lw.com (admitted *pro hac vice*)
Latham & Watkins LLP
650 Town Center Drive, 20th Floor
Costa Mesa, CA 92626-1925

Clement J. Naples | clement.naples@lw.com (*pro hac vice* pending)
Latham & Watkins LLP
855 Third Avenue
New York, NY 10022-4834

Matthew J. Moore | matthew.moore@lw.com (admitted *pro hac vice*)
Latham & Watkins LLP
555 Eleventh Street, NW, Suite 1000
Washington, DC 20004-1304

Amit Makker | amit.makker@lw.com (admitted *pro hac vice*)
Latham & Watkins LLP
505 Montgomery Street, Suite 2000
San Francisco, CA 94111-6538

Attorneys for Defendant

/s/ K. Reed Willis