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.: _____ **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.

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.

3. By 9 May 2016, Elon Musk had seen the Nikola's image of the Nikola One.

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

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

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

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

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

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

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

11. On 22 September 2016 –four months after Nikola published its design, Aaron Hoyos, a recruiter for Tesla, reached out to Kevin Lynk (Nikola's Chief Engineer). In that email, Hoyos told Lynk that "Tesla is building a new team to focus on development heavy trucks." Hoyos said that "[b]ased on [Lynk's] background at Nikola, it seems like your

background would be a great fit." Hoyos asked, "[W]ould you be open to a quick call to hear what we're up to?"

12. Nikola did not respond to Tesla's invitation.

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

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

15. On November 7, 2017, Nikola sent a letter to Tesla that identified the semi-truck design features Nikola was patenting and demanded that Tesla not unveil its semi until Tesla's infringement had been resolved. Tesla never responded.

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

17. Tesla has never claimed that its design was unique. Upon information and belief, Tesla does not have any patents protecting the design of its semi-truck and has not filed any applications for design patent protection.

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

19. The Tesla Semi design is substantially similar to Nikola's unique design, and Tesla copied Nikola's patents.

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 view drivers had in its vehicle.

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

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

23. Nikola's front fender is distinct. Tesla's front fender copies the fender design.

24. Tesla's overall semi design copies Nikola's patented design.

25. Nikola has been harmed by Tesla's infringement in excess of $2 billion.

II. PARTIES, JURISDICTION, AND VENUE

26. Nikola Corporation is a Delaware corporation with its current place of business in Salt Lake City, Utah. Nikola has filed to do business in Arizona. It has announced that it is moving its headquarters to Arizona in July and is spending over fifteen million dollars to build its 130,000 plus square foot headquarters in Phoenix. Nikola has announced that it is building a 1 million square foot manufacturing facility in Buckeye, Arizona.

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

28. This Complaint arises under the Patent Act of the United States of America, 35 U.S.C. § 1 *et seq*.

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

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

31. Venue is proper under 28 U.S.C. § 1400(b) because Tesla sells or offers to sell infringing products in this District and maintains a regular and established place of business 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 product in this District.

III. FACTUAL BACKGROUND

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

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

33. Reducing the trucking industry's reliance on fossil fuels will have a dramatic impact on the world. Professional truck drivers used almost 55 billion gallons of diesel and gasoline in 2016. Class 8 trucks account for seven percent of greenhouse gases worldwide.

34. Milton tried to combine alternative fuel technology with existing Class 8 truck design. He then decided to build a truck from scratch that included a zero-emission fuel system.

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

36. Jennes and Milton went to work improving the shape and proportions of the truck. Jennes would develop a design; Milton made changes. The back-and-forth continued for months until Nikola finalized an overall truck design.

37. Nikola focused on the centerline and silhouette of the truck. 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 half-a-mile away.

38. Nikola developed a wrap windshield. The windshield provided a panoramic view of the road and the vehicle's surroundings.

39. Nikola moved the driver over the front wheels of the truck because there was no engine block. With the driver moving forward in the cab, Nikola relocated the door to the middle of the cab (a mid-entry door). The mid-entry door provided drivers easier and safer access to the vehicle.

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

41. On December 30, 2015, Nikola submitted six design patent applications that covered these ornamental features and several pending utility patent applications.

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

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

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

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

45. News outlets reported on the Nikola One. For example, Jonathan Ramsey reported on May 13, 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 May 17, 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).

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

47. 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.

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

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

50. Subsequent to the unveiling, the value of Nikola's reservations jumped to over $4 billion (https://www.trucks.com/2016/12/01/nikola-one-hydrogen-fuel-cell-electric-semi-truck-debuts/).

51. Nikola's total reservations are currently worth more than $6.3 billion in revenue.

52. By the time of the Nikola One unveiling, Nikola spent millions developing its vehicle.

53. Nikola announced that its semi will enter production in 2020.

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

54. By May 9 or June 13, 2016, Tesla had not announced that it was considering building a heavy duty semi-truck.

55. In its Form 10-Q for the period ending June 30, 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.

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

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

58. On April 13, 2017, Elon Musk, Tesla's CEO, tweeted that "Tesla Semi truck unveil set for September. Team has done an amazing job. Seriously next level."

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

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

61. After Tesla teased a picture of the Semi, the public and industry watchers photographed any sighting of the Tesla Semi. On October 2, 2017, a "spy" photo popped up on reddit of what appeared to be a Tesla Semi.

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

63. On November 16, 2017, Tesla held an unveiling party and a reception for the Semi attend by hundreds of journalist, industry partners, customers, employees and government leaders.

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

65. The same day as the unveiling, Tesla began accepting reservations for the Semi. Tesla has reservations from major companies with retail, shipping, or logistic needs. One analyst estimated on December 18, 2017 that Tesla has accepted reservations for over

1,200 Semis (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 million.

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

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

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

69. Upon information and belief, Tesla uses reservation deposits to fund its operations.

D. Nikola Was Issued Six Design Patents.

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

71. On March 6, 2018, Nikola was issued U.S. Pat. D811,944 (the "'D944 patent" or the "Fuselage Patent") entitled Fuselage. Attached as **Exhibit 2** is a true and correct copy of the 'D944 patent. The patent claims the ornamental design of the fuselage of a semi-truck. One depiction of the claim is shown below.

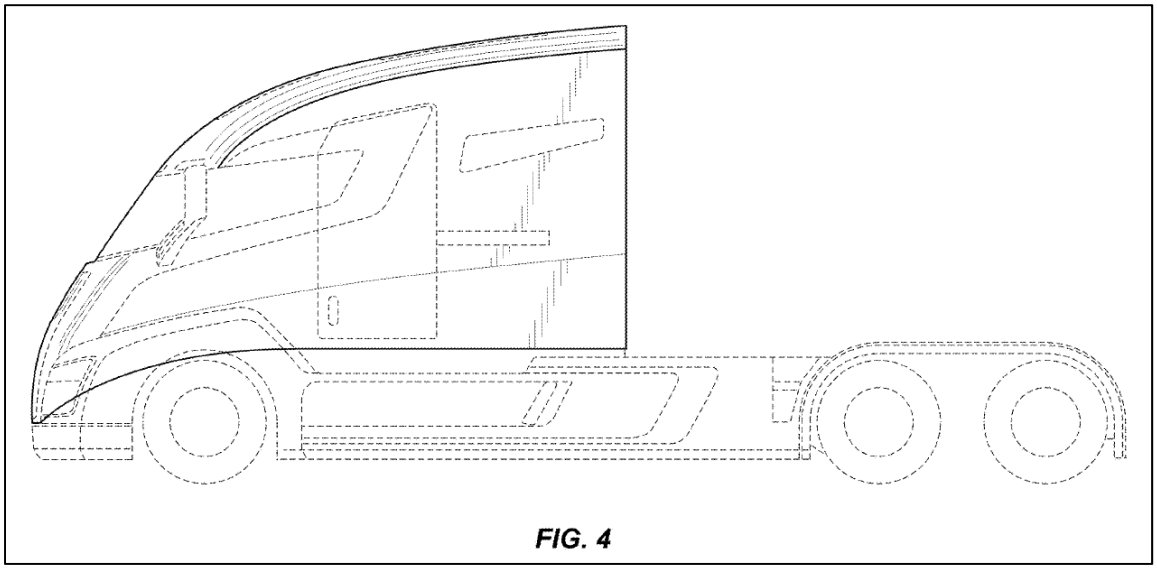


FIG. 4

72. On March 6, 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.

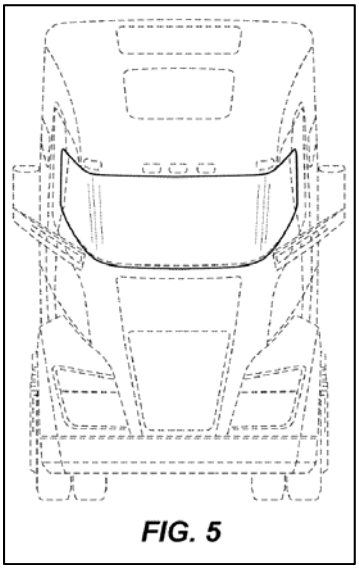


FIG. 5

73. On April 24, 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.

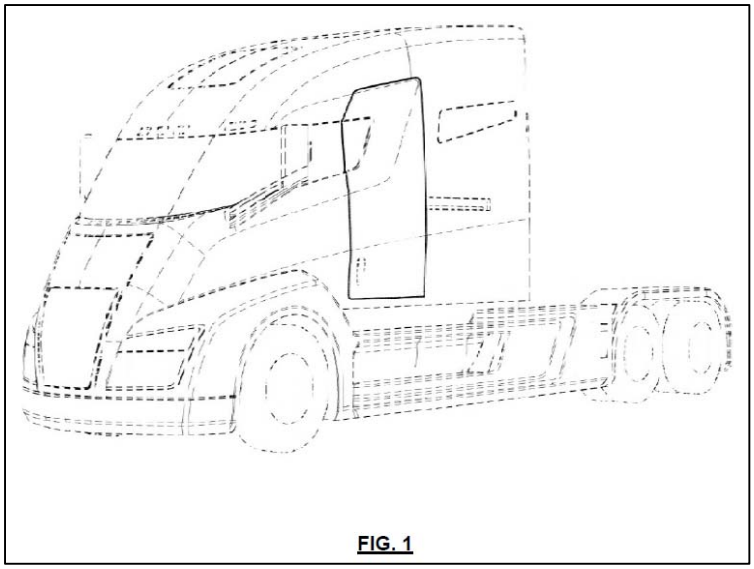


FIG. 1

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

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

76. Nikola sent a letter to Tesla on November 7, 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 Tesla Semi Is Substantially Similar to Nikola's Patented Design.

77. The Nikola One embodies the Asserted Patents, which include the fuselage, a wrap windshield, and a mid-entry door.

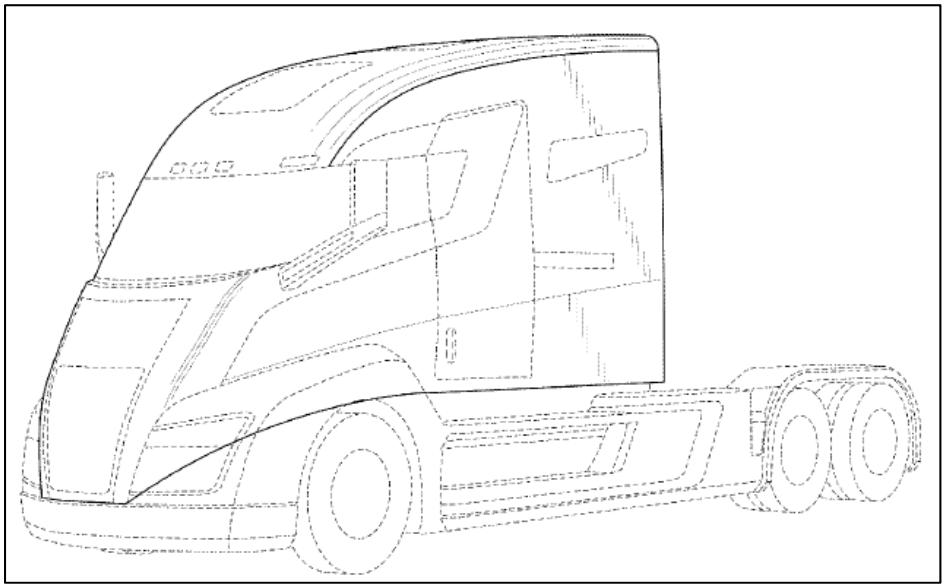
78. The Tesla Semi is substantially similar to Nikola's unique designs.

79. A side-by-side comparison between the two reveals that Tesla has infringed Nikola's patented truck designs.

Nikola One	Tesla Semi

1. The Fuselage Patent.

80. The 'D944 Patent claims a fuselage as depicted in the following drawing.



81. The Nikola One's fuselage embodies the Fuselage Patent.

82. The Tesla Semi has a similar fuselage to the patented design, and has infringed Nikola's patent.

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

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

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

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

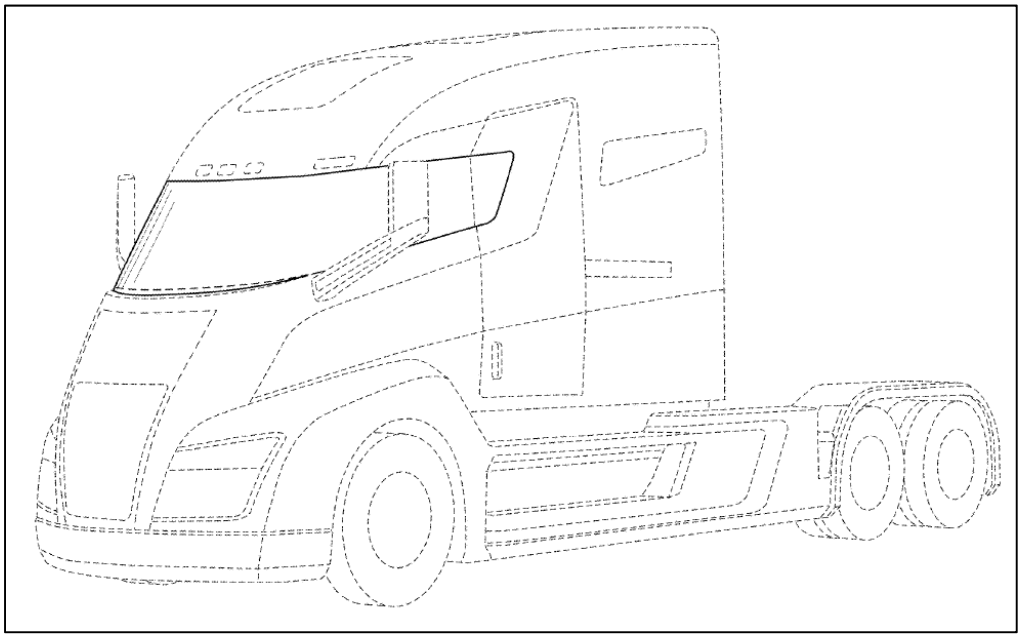
87. Tesla's Chief Designer, Jerome Guillen, said at an event on November 25, 2017 in the Netherlands that the Semi looks like the TGV, the Eurostar or a bullet train.

88. Tesla further showcased the "spacious interior" and the "expansive cockpit interior" based on the fuselage design.

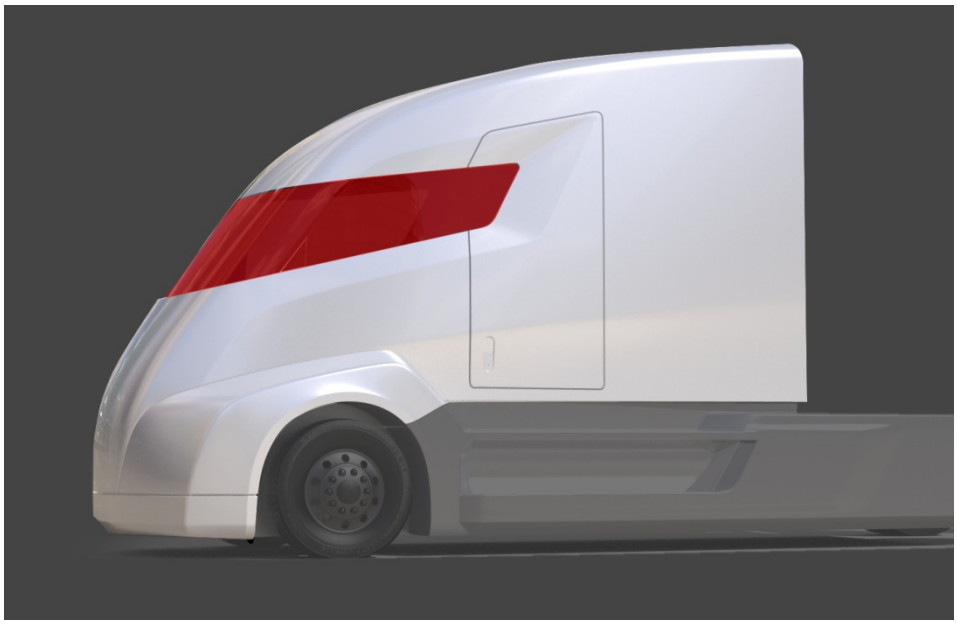
89. An ordinary observer would find that the Tesla Semi fuselage is substantially similar to the Fuselage Patent, and that Tesla infringes Nikola's patent.

2. The Wrap Windshield Patent.

90. The 'D968 patent claims a wrap windshield as depicted in the following drawing.



91. The Nikola One's windshield embodies the protected design.



92. The Tesla Semi also has a wrap windshield.

93. During the Nikola One unveiling event on December 1, 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.

94. During the Tesla Semi unveiling event on November 16, 2017, Tesla pointed out the wrap windshield as a feature. Tesla said that the driver has complete visibility of the road the surroundings, in part, because of the wrap windshield.

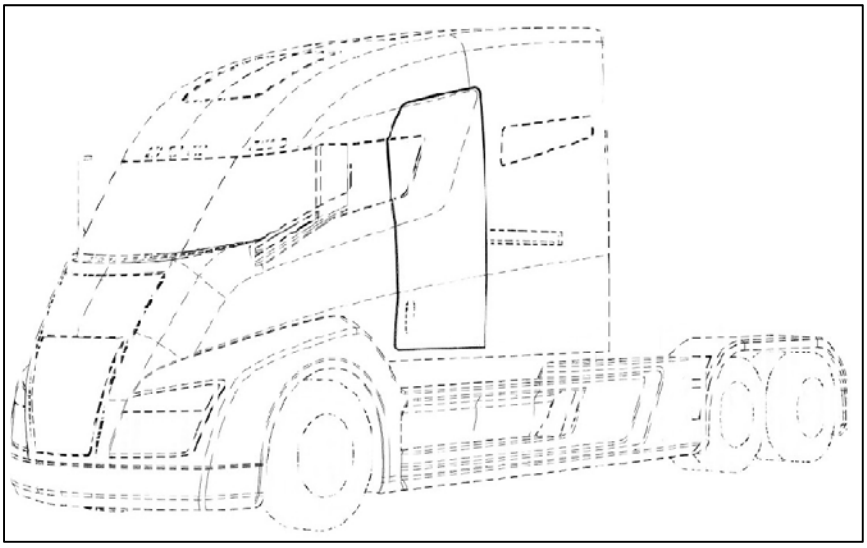
95. Upon information and belief, no other Class 8 semi-truck had a wrap windshield when Nikola filed its patent applications.

Other Semi Trucks	

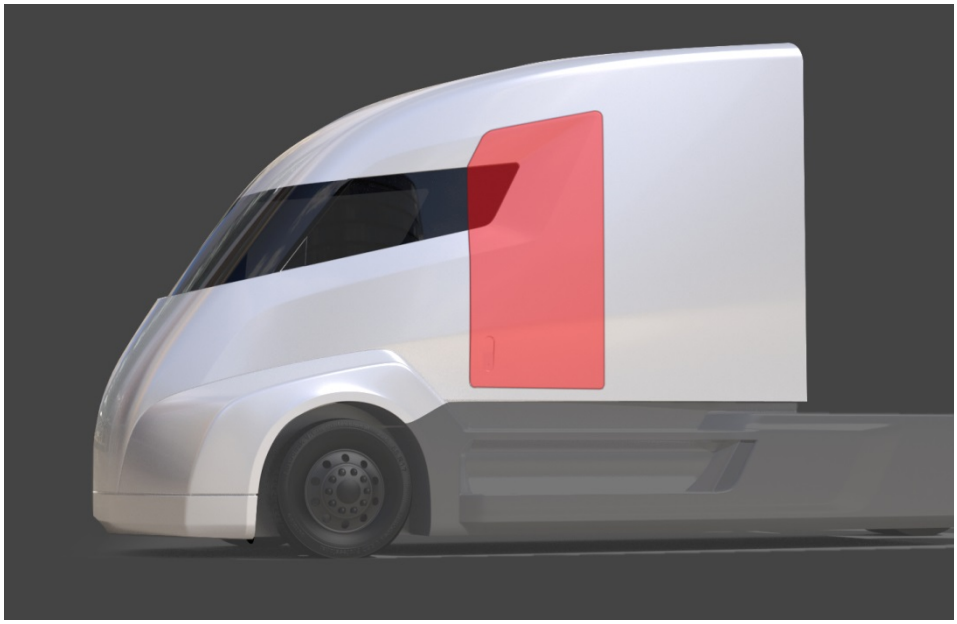
96. As such, an ordinary observer would find that the windshields between the Tesla Semi and the Wrap Windshield Patent are substantially similar, and therefore Tesla infringes Nikola's patent.

3. <u>The Mid-Entry Door Patent.</u>

97. The 'D004 Patent claims a mid-entry door as depicted in the following picture.



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



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

100. 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.

101. Similarly, at the Tesla Semi unveiling, Tesla noted the "easy entry and exit" of the vehicle.

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

103. As such, Tesla's door is substantially similar to Nikola's patented design.

F. <u>Nikola Has Been And Will Continue To Be Harmed By Tesla's Infringement.</u>

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

105. The Nikola One is an electric-hydrogen hybrid.

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

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

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

109. Nikola estimate that it will take 15-20 minutes to fill its hydrogen fuel tank. A diesel semi-truck takes roughly 15-20 minutes to fill.

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

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

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

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

114. Upon information and belief, the Tesla Semi, like all Tesla vehicles, needs an aerodynamic design for its vehicle to achieve the 500 mile range estimate.

115. The Tesla Semi will need large battery packs for an 80,000 pound truck and trailer to go, at most, 500 miles. Upon information and belief, these large battery packs will reduce the amount of cargo that a Tesla Semi can haul.

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

117. Tesla offers its Semi for between $150,000 to $200,000.

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

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

120. Tesla's infringement has harmed Nikola's plans by causing confusion in the market.

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

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

123. On May 1, 2017, Brett Evans for Truck Trend observed that "the truck 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/)

124. On November 20, 2017, 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 aero-dynamic 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 road." Quality further noted that "both trucks accomplish this task and do so with style." (Available at https://qualityco.com/future-wars-hydrogen-vs-electric-semi-trucks/)

125. Tesla's design has caused confusion among customers. The confusion has diverted sales from Nikola to Tesla. Further, any problems with the Tesla Semi will be attributed to the Nikola One, causing harm to the Nikola brand. For example, Tesla has had

problems with its batteries starting fires and its autonomous features causing fatal accidents. Should these problems arise with the Tesla Semi, the market will attribute these problems to Nikola because of the similarities between the two vehicles.

126. Diverted sales from Nikola to Tesla will increase the cost of building the hydrogen fueling stations throughout the United States.

127. Customers will also impute the Tesla Semi's limitations (distance and charging time) to Nikola, which will make Nikola's product less appealing to customers.

128. Nikola and Tesla are offering competing technology solutions (hybrid versus pure electric). Diverting sales from Nikola to Tesla decreases the chance that Nikola's technology will be adopted as the standard for alternative fuel semi-trucks.

129. Tesla's infringement has harmed Nikola's ability to attract investors and partners because investors can now partner with Tesla to have an alternative fuel semi-truck.

130. Nikola estimates its harm from Tesla's infringement to be in excess of $2 billion.

COUNT I
Infringement of the 'D944 Patent (Fuselage Patent)

131. Nikola incorporates and realleges paragraphs 1 through 130 of this Complaint.

132. Tesla has infringed and continues to infringe the 'D944 Patent by making, using, selling, and/or offering to sell in the United States its Semi, which embodies the design covered by the 'D944 Patent.

133. Tesla's infringement has been and continues to be willful.

COUNT II
Infringement of the 'D968 Patent (Wrap Windshield Patent)

134. Nikola incorporates and realleges paragraphs 1 through 133 of this Complaint.

135. Tesla has infringed and continues to infringe the 'D968 Patent by making, using, selling, and/or offering to sell in the United States its Semi, which embodies the design covered by the 'D968 Patent.

136. Tesla's infringement has been and continues to be willful.

COUNT III
Infringement of the 'D004 Patent (Side Door Patent)

137. Nikola incorporates and realleges paragraphs 1 through 136 of this Complaint.

138. 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 embodies the design covered by the 'D004 Patent.

139. Tesla's infringement has been and continues to be willful.

IV. DEMAND FOR JURY TRIAL

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

V. PRAYER FOR RELIEF

WHEREFORE, Nikola prays for relief as follows:

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

B. An order and judgment permanently enjoining Tesla and its officers, directors, agents, servants, employees, affiliates, attorneys, and all others acting in privity or in concert

with them, and their parents, subsidiaries, divisions, successors and assigns, from further acts of infringement of Nikola's asserted patents;

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

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

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

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

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

H. Any other remedy to which Nikola may be entitled to or the Court deems just and proper.

DATED this 30th day of April 2018

BEUS GILBERT PLLC

By /s/ Leo R. Beus

Leo R. Beus
K. Reed Willis
701 North 44th Street
Phoenix, AZ 85008-6504
Attorneys for Plaintiff