Toyota: Our 'Crown Jewel' Is Source Code, Not Cars

Gillian Flaccus, Associated Press

SANTA ANA, California (AP) — A federal judge overseeing lawsuits against Toyota Motor Corp. for sudden acceleration problems indicated Friday that he will allow the automaker to monitor plaintiffs' access to its proprietary source code.

And he proposed a number of other ways to prevent leaks of what Toyota says is the "crown jewel" of its intellectual property.

U.S. District Judge James B. Selna also urged attorneys from both sides to resolve the dispute over plaintiffs' access to the source code so that the first trials can begin in 2013. He ordered attorneys to submit a proposed order to the court by March 7 outlining a final plan but shared his thoughts on a number of points Friday during a lengthy hearing.

The ultra-secret source code is the programming at the heart of Toyota's electronic throttle control system, which is the target of some of the lawsuits alleging injuries and deaths caused by out-of-control vehicles. The lawsuits have been consolidated in U.S. District Court in Santa Ana.

The question of how much access plaintiffs will have to that code has been a key sticking point that has prevented the cases from moving forward. Toyota wants to put strict limitations on how plaintiffs can access and study the programming, but plaintiffs' attorneys say examining the source code for flaws is critical to their case.

"I think that some accommodations have to be made," Selna told attorneys as the hearing got under way. "I think what we need today is answers and I'm prepared to give answers."

Toyota has recalled more than 14 million vehicles globally to fix gas pedals and other safety problems since 2009, including more than 2 million that were recalled Thursday to address accelerator pedals that could become entrapped in floor mats or jammed in driver's side carpeting. The company paid the U.S. government a record $48.8 million in fines for its handling of three recalls.

U.S. regulators said earlier this month that electronic flaws were not to blame for reports of sudden, unintended acceleration — a finding that Toyota attorneys pointed out Friday.

Still, plaintiffs want to study the computer code and want more access than was given to federal investigators. Attorneys for the plaintiffs said in court papers filed Tuesday that the federal probe only had access to 280,000 lines of code related to the Toyota Camry.

Selna indicated that he favored allowing the plaintiffs to access the source code through Toyota's server and not allowing the plaintiffs' analysts to have a copy on their own servers.

The judge also proposed allowing Toyota to alert the court and request an emergency hearing if it believed plaintiffs were accessing the code in an improper way.

Plaintiff attorneys hope to begin analyzing the source code for Toyota's electronic throttle control system in April and expect the process could take up to 10 months, plaintiffs' attorney Mark Robinson told the court. The plaintiffs will hire 10 engineers who will examine the source code in two shifts in a specially designated and secure room in Maryland, he said.

The room will be guarded and will have a surveillance camera and a screener at the door to monitor who comes and goes, and any material that is not shredded at the end of each day will be placed in a safe. Those wishing to enter the room will submit to scans of their irises and hands.

Toyota attorney Joel Smith proposed Friday that each page printed by the plaintiffs be marked with a radio frequency identification tag that can be detected by a scanner at the door to the study room. The judge suggested the two sides split the cost of the tagging, which could cost up to $1 per page.

"We'll know who walked out with a page of our paper," Smith said. "If somebody tore a piece of paper off and tried to take the untagged portion, the guard's going to have a page that's missing its tag. I think it's a very ingenious system that will add significantly to the security."

Hundreds of lawsuits have been filed since the Japanese automaker starting recalling millions of vehicles because of sudden-acceleration problems in several models and brake defects with the Prius hybrid.

Toyota maintains the plaintiffs have been unable to prove that a design defect — namely its electronic throttle control system — is responsible for vehicles surging unexpectedly. It has blamed driver error, faulty floor mats and sticky accelerator pedals.

On Friday, the automaker said it would give plaintiffs' attorneys the same level of access to the source code that was given to investigators with NASA and the National Highway Traffic Safety Administration for their probe into sudden acceleration.

"Toyota's source code is the crown jewel of the company's intellectual property and deserves the highest levels of protection and oversight during discovery. We are pleased that the court will establish procedures to protect Toyota's ability to rigorously guard the confidentiality of this code," the company said in a statement.

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