

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

PAICE LLC,

Plaintiff,

v.

TOYOTA MOTOR CORPORATION, a
Japanese Corporation, TOYOTA MOTOR
NORTH AMERICA, INC., and TOYOTA
MOTOR SALES, U.S.A., INC.,

Defendants.

Case No.: 2-07-cv-180-DF

PLAINTIFF PAICE LLC'S REPLY BRIEF ON CLAIM CONSTRUCTION

Dated: August 1, 2008

Samuel F. Baxter (Bar No. 01938000)
McKOOL SMITH P.C.
P.O. Box O
104 E. Houston St., Suite 300
Marshall, Texas 75670
(903) 923-9000

Of Counsel:

Ruffin B. Cordell (Bar No. 04820550)
Ahmed J. Davis
Scott A. Elengold
FISH & RICHARDSON P.C.
1425 K Street, N.W., 11th Floor
Washington, DC 20005
(202) 783-5070

Robert E. Hillman
FISH & RICHARDSON P.C.
225 Franklin Street
Boston, MA 02110
(617) 542-5070

TABLE OF CONTENTS

	<u>Page</u>
I. LEGAL STANDARDS OF CLAIM INTERPRETATION	1
A. Collateral Estoppel Applies To The Claim Construction In This Case	1
B. Application of Means-Plus-Function is Improper	2
C. Ordinary Meaning Applies and Written Description Cannot Limit Claims	3
II. RESPONSE TO TOYOTA’S PROPOSED INTERPRETATION OF DISPUTED CLAIM TERMS	4
A. ’970 Patent	4
1. “Controllable torque transfer unit”	4
2. “Means for performing the following functions responsive to input commands and monitored operation of said vehicle: selecting an appropriate mode of operation...”	6
B. ’347 Patent	7
1. “Controllably coupled”	7
2. “Setpoint” and/or “SP”	9
3. “Road load” and/or “RL”	11
4. “Normally aspirated”	13
5. “Low-load mode I,” “Highway cruising mode IV,” and “Acceleration mode V”	13
C. ’634 Patent	15
1. “Road load”/“RL” and “Setpoint”/“SP”	15
2. “Operating at least one electric motor to propel the hybrid vehicle when the RL required to do so is less than a setpoint (SP)”	15

TABLE OF CONTENTS (cont'd)

	<u>Page</u>
3. “Operating an internal combustion engine of the hybrid vehicle to propel the hybrid vehicle when the RL required to do so is between the SP and a maximum torque output (MTO) of the engine, wherein the engine is operable to efficiently produce torque above the SP, and wherein the SP is substantially less than the MTO”	16
4. “Operating both the at least one electric motor and the engine to propel the hybrid vehicle when the torque RL required to do so is more than the MTO”	16
5. “Energy originating at the battery is supplied to the solid state inverter at a voltage and current such that the ratio of voltage to current is at least about 2.5 to 1”	17
6. “Wherein energy originating at the battery is supplied to the solid state inverter at a maximum current of no more than 150 amps”	18
7. “Energy originating at the battery is supplied to the second motor at a peak voltage of at least about 500 volts.....	18
8. “Power originating at the battery is supplied to the second motor at a peak current no greater than about 150 amps”	19
III. CONCLUSION.....	20

TABLE OF AUTHORITIES

	<u>Page(s)</u>
CASES	
<i>Amgen v. Hoffman-LaRoche Ltd.</i> , 494 F. Supp. 2d 54, 58-61 (D. Mass. 2007).....	5, 12, 14
<i>Arthrex, Inc. v. Depuy Mitek, Inc.</i> , 2006 U.S. Dist. LEXIS 95465 (M.D. Fla. Oct. 16, 2006)	4, 17
<i>CCS Fitness, Inc. v. Brunswick Corp.</i> , 288 F.3d 1359 (Fed. Cir. 2002).....	2
<i>First Years, Inc. v. Munchkin, Inc.</i> , 2008 U.S. Dist. LEXIS 31826 (W.D. Wis. Apr. 15, 2008)	4, 18
<i>In re Wright</i> , 866 F.2d 422 (Fed. Cir. 1989).....	9
<i>Innova/Pure Water, Inc. v. Safari Water Filtration Sys.</i> , 381 F.3d 1111 (Fed. Cir. 2004).....	3
<i>JVW Enterprises, Inc. v. Interact Accessories, Inc.</i> , 424 F.3d 1324 (Fed. Cir. 2005).....	4
<i>Lighting World, Inc. v. Birchwood Lighting, Inc.</i> , 382 F.3d 1354 (Fed. Cir. 2004).....	2
<i>LizardTech, Inc. v. Earth Resource Mapping, Inc.</i> , 433 F.3d 1373 (Fed.Cir. 2006).....	4, 18
<i>Markman v. Westview Instruments, Inc.</i> , 52 F.3d 967 (Fed. Cir. 1995).....	3
<i>Novartis Pharms. Corp. v. Abbott Labs.</i> , 375 F.3d 1328 (Fed. Cir. 2004).....	2
<i>Phillips v. AWH Corp.</i> , 415 F.3d 1303 (Fed. Cir. 2005).....	3, 4
<i>Rambus Inc. v. Hynix Semiconductor Inc.</i> , 2008 WL 2754805 (N.D. Cal. July 10, 2008).....	2
<i>RecoverEdge L.P. v. Pentecost</i> , 44 F.3d 1284 (5th Cir. 1995)	1

TABLE OF AUTHORITIES (cont'd)

	<u>Page(s)</u>
<i>RF Delaware, Inc. v. Pacific Keystone Techs., Inc.</i> , 326 F.3d 1255 (Fed. Cir. 2003).....	1
<i>Schering Corp. v. Amgen Inc.</i> , 222 F.3d 1347 (Fed. Cir. 2002).....	8, 9
<i>Standard Oil Co. v. American Cyanamid Co.</i> , 774 F.2d 448, 452 (Fed.Cir.1985).....	3
<i>Texas Instruments, Inc. v. Linear Technologies Corp.</i> , 182 F. Supp. 2d 580 (5th Cir. 2002)	2
<i>Varco, L.P. v. Panson Sys. USA Corp.</i> , 436 F.3d 1368 (Fed. Cir. 2002).....	4
<i>York Prod., Inc. v. Central Tractor Farm & Family Ctr.</i> , 99 F.3d 1568 (Fed.Cir.1996).....	3
STATUTES	
35 U.S.C. § 112 ¶ 6.....	2, 5, 6
35 U.S.C. § 132.....	9

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.