

STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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FORD MOTOR COMPANY  
Petitioner,

v.

PAICE LLC & ABELL FOUNDATION, INC.  
Patent Owner.

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U.S. Patent No. 7,104,347 to Severinsky et al.

IPR Case No.: IPR2014-00571

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**PETITIONERS' RESPONSE TO PATENT OWNER'S  
MOTION FOR OBSERVATIONS ON CROSS EXAMINATION**

**I. Patent Owner's motion for observation is improper and should be dismissed**

A “motion for observation on cross-examination is a mechanism to draw the Board’s attention to relevant cross-examination testimony of a reply witness.” *Medtronic Inc. v. Nuvasive, Inc.*, IPR2013-00506, Paper 31 at 3. The Board has been clear that the observations must be nothing more than a “concise statement of the relevance of precisely identified testimony to a precisely identified argument or portion of an exhibit.” *Medtronic, Inc. v. Nuvasive, Inc.*, IPR2013-00506, Paper 37 at 2. Observations are not allowed to include arguments, and are not “an opportunity to raise new issues, to re-argue issues, or to pursue objections.” PTAB Trial Practice Guide, 77 F.R. 157, 48768 §L; IPR2013-00506, Paper 37 at 2. If even one observation is found to have violated these rules, the Board may dismiss and not consider the Patent Owner’s entire motion for observation. *See* IPR2013-00506, Paper 37 at 2-4 (“the entire motion... may be dismissed and not considered if there is even one excessively long or argumentative observation”); *see also* CBM2013-00017, Paper 36 at 4.

On May 15, 2015, Patent Owner filed its Motion for Observations on Cross Examination of Dr. Gregory Davis. (Paper No. 33.) Petitioner believes that one or more of the Patent Owner’s observations are improper as they are argumentative, include new issues not previously raised, and/or re-argue prior issues and pursue

objections. Accordingly, Petitioner requests that the Board deny Patent Owner's motion.

## II. Response To Patent Owner's Observations

Notwithstanding the above general objections, Petitioner respectfully submits the following responses.

**Observation 1.** The cited testimony and paragraph from Dr. Davis' Reply Declaration do not demonstrate "that accelerator pedal position alone is not sufficient to determine the instantaneous torque required to propel the vehicle." Dr. Davis never testified that pedal position alone could not be used to "determine the instantaneous torque required to propel the vehicle" (Ex. 2012 at 38:4-23). And Dr. Davis' testimony simply confirms that the torque required to propel the vehicle is influenced by the driver "through the use of the pedals." (Ex. 1038 at ¶8; Ex. 2012 at 37:8-24; 39:2-13.)

**Observation 2.** This observation is improper because it raises a new issue, namely whether the "acceleration and/or hill climbing mode" is "related to when to turn on the motor." Notwithstanding, the cited testimony is not relevant because it does not "reinforce Dr. Davis' previous assertion that Severinsky's high-speed acceleration and/or hill climbing mode is related to when to turn on the motor." Instead, Dr. Davis testified that during "high-speed acceleration and/or hill climbing mode" the "vehicle would launch. . . on the electric motor. . . **and then** it

would add the engine into the drivetrain as soon as the engine can actually provide meaningful torque...” (Ex. 2012 at 68:11-22.) And Dr. Davis also testified that “at the very beginning” of this mode the “engine would have zero torque because it wasn’t running.” (Ex. 2012 at 68:23-69:1.)

**Observation 3.** This observation is improper because it raises a new issue, namely whether the “acceleration and/or hill climbing mode” is “entered when the alleged torque required to propel the vehicle is above 100% of the maximum torque output of the engine.” Notwithstanding, the cited testimony is not relevant because Dr. Davis Original Declaration never stated that “high-speed acceleration and/or hill climbing mode is entered when the alleged torque required to propel the vehicle is above 100% of the maximum torque output of the engine.” Instead, Dr. Davis testified: “Severinsky discloses that the vehicle could transition from operation by the motor only when the engines off, to operating the engine and motor combined in the acceleration/hill climbing mode, which was in response to the operator's command. . .” (Ex. 44:7-46:17; Ex. 1038 at ¶¶8-9.)

Dated: May 22, 2015

Respectfully submitted,

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