

STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

FORD MOTOR COMPANY  
Petitioner,

v.

PAICE LLC & ABELL FOUNDATION, INC.  
Patent Owner.

---

U.S. Patent No. 7,237,634

IPR Case No.: IPR2014-00904

---

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

**Table of Contents**

I. Patent Owner’s motion for observation is improper and should be dismissed..... 1

II. Response To Patent Owner’s Observations .....2

    Observation 1. ....2

    Observation 2. ....2

Certificate of Service .....4

**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 June 10, 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.** Observation 1 improperly raises a new argument related to the "textbook definition of road load" which is not at issue in this case. Observation 1 is also not relevant because it pertains to both experts' testimony regarding the "textbook definition of road load" and not the "instantaneous torque required to propel the vehicle, be it positive or negative" (*i.e.*, The claimed "road load" of the '634 Patent). In contrast, Dr. Davis testified that whether "the 'instantaneous torque required to propel the vehicle' [*i.e.*, claimed "road load"] meets or exceeds those [external] forces depends on the operator command. (Ex. 1005 at ¶¶290-92.) For example, if a driver wants to accelerate the vehicle, the 'instantaneous torque required to propel the vehicle' will exceed the torque required to overcome those forces. And if a driver wants to decelerate the vehicle, the 'instantaneous torque required to propel the vehicle' will be less than the torque required to overcome those forces." (Ex. 1044 at ¶9.)

**Observation 2.** Observation 2 is irrelevant and improperly attempts to raise a new issue never raised, concerning prior art never discussed, in Dr. Davis'

direct testimony in this proceeding. Paice does not compare the observed cross-examination testimony (Ex. 2015, p. 19, lines 16-22) to any testimony from Dr. Davis in this IPR. Rather, Paice asserts the testimony is relevant to Dr. Davis' testimony in a later IPR (2014-01416) concerning a prior art reference (U.S. Patent No. 5,842,534) not at issue in this IPR. Further, Paice's assertions that Dr. Davis "agreed" to certain matters are incorrect and unsupported by the cited testimony. And Paice cites no testimony supporting Paice's suggestion that the unrelated prior art reference from the later proceeding concerns "the same type of disclosure" as the prior art Dr. Davis analyzed in this proceeding.

Dated: June 22, 2015

Respectfully submitted,

/John P. Rondini/  
John P. Rondini (Reg. No. 64,949)  
**BROOKS KUSHMAN P.C.**  
1000 Town Center, 22nd Floor  
Southfield, MI 48075  
(248) 358-4400

Lissi Mojica (Reg. No. 63,421)  
Kevin Greenleaf (Reg. No. 64,062)  
**DENTONS US LLP**  
1530 Page Mill Road, Suite 200  
Palo Alto, CA 94304-1125  
650 798 0300

*Attorneys for Petitioner*

# 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.