

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BAYERISCHE MOTOREN WERKE
AKTIENGESELLSCHAFT & BMW OF NORTH AMERICA, LLC,
Petitioner,

v.

PAICE LLC & THE ABELL FOUNDATION, INC.,
Patent Owner.

IPR2020-01299
Patent 8,630,761 B2

Record of Oral Hearing
Held: October 19, 2021

Before KALYAN K. DESHPANDE, SALLY C. MEDLEY, and
ARTHUR M. PESLAK, *Administrative Patent Judges*.

IPR2020-01299
Patent 8,630,761 B2

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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ON BEHALF OF PATENT OWNER:

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The above-entitled matter came on for hearing on Tuesday, October 19, 2021, commencing at 9:13 a.m., EDT, by video/by telephone, before Julie Souza, Notary Public.

P R O C E E D I N G S

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JUDGE PESLAK: This is the oral hearing for IPR 2020-01299. We're conducting this all video hearing as a result of the shutdown of the Patent Office facilities due to Covid 19. I'm Judge Peslak. With me are Judges Medley and Deshpande. Will counsel for Petitioner please state your name and firm affiliation for the record and also introduce anyone else who's on the line with you.

MR. GALLUZZO: Good morning, Your Honor. This is Vince Galluzzo from Crowell & Moring on behalf of Petitioners. Also in the room with me are lead counsel Jeffrey Sanok and also back-up counsel Scott Bittman and Jacob Zambrzycki.

JUDGE PESLAK: Thank you. Good morning, Mr. Galluzzo. Counsel for Patent Owner, please state your name and firm affiliation for the record and identify anyone else who's there with you.

MR. LIVEDALEN: Good morning, Your Honor. Brian Livedalen from the law firm of Fish & Richardson representing Patent Owners Paice and Abell and with me here today is my colleague, Mr. Tim Riffe.

JUDGE PESLAK: Good morning. Counsel, for Petitioner you have 60 minutes in accordance with the Hearing Order. Do you wish to reserve any time for rebuttal?

MR. GALLUZZO: Yes, Your Honor. We'd like to reserve

1 ten minutes for rebuttal, please.

2 JUDGE PESLAK: Ten minutes. So you have 50 minutes.
3 You can begin when ready.

4 MR. GALLUZZO: Thank you, Your Honors, and good
5 morning. Again, my name is Vince Galluzzo from Crowel &
6 Moring. I'll be starting us off here today but then I'll be passing
7 it over to my colleague, Mr. Scott Bittman, for the majority of
8 today's presentation. I'd like to begin with Petitioner's
9 demonstrative slide No. 2. On this slide we see independent
10 claim 1 which is of course one of the independent claims that are
11 challenged in this proceeding and we've separated out in green
12 and red coloring to show what's in dispute and what's not.

13 As shown in green, this is the undisputed portion. This is
14 what broadly claims a hybrid vehicle and as a point of reference,
15 what's claimed in green here is much broader than the step point
16 based control strategy of the '347 patent with its various modes
17 of operation that I've presented on to Your Honors recently. All
18 this requires is that there is a control of a flow of torque between
19 components.

20 In the red portion below limitations [e] and [f] I believe is
21 how we note them in briefing. This is the disputed portion. This
22 requires that the hybrid vehicle derive a predicted near-term
23 pattern of operation and it requires that it does so by monitoring
24 operation of the vehicle and this requires controlling operation
25 responsive to that pattern. Now, again, this is very broadly

1 stated and claimed. It doesn't require any specifics about the
2 monitoring. It doesn't say what to monitor, how to monitor it,
3 when to monitor it, and what we're going to hear today because
4 the claims are so broadly stated is what I like to call double
5 speak from Patent Owners related to these pattern limitations.
6 Patent Owners, rather than embracing the broad language of the
7 claims that they negotiated with the Patent Office, will instead
8 propose constructions of constructions in a way that twists the
9 claim language from what the Patent Office granted. Because
10 Patent Owners chose to claim their invention broadly, they must
11 live with that decision now even in the face of invalidating prior
12 art.

13 Next to slide 3, we see a depiction of figure 3 of
14 Severinsky against the undisputed portion. Now Severinsky is
15 the base reference for all of the grounds here. It has all of the
16 components of that broadly stated hybrid control strategy
17 including the controller which we show here in purple which is
18 critical for Petitioner's proposed combinations and Mr. Bittman
19 will provide more detail about that in his presentation.

20 Next to slide 4. We look at those disputed limitations
21 again [e] and [f] and the Board's construction of predicted near-
22 term pattern of operation has an expected pattern of operation.
23 This is a broad claim construction and it is the claim
24 construction that Patent Owner requested and the Board adopted.
25 Patent Owner will argue today and has, if I counted right, half a

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