

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

PAICE LLC and THE ABELL FOUNDATION,
INC.,

Plaintiffs,

v.

BAYERISCHE MOTOREN WERKE A.G., and
BMW OF NORTH AMERICA, LLC,

Defendants.

C.A. No. 19-CV-3348-SAG

JURY TRIAL DEMANDED

**DEFENDANTS BAYERISCHE MOTOREN WERKE, AG AND BMW OF NORTH
AMERICA, LLC'S RESPONSIVE CLAIM CONSTRUCTION STATEMENT**

I. INTRODUCTION

Pursuant to the Court's Scheduling Order (ECF No. 51) and Local Rule 805.1(d), Defendants Bayerische Motoren Werke, AG ("BMWAG") and BMW of North America, LLC ("BMWNA") (collectively, "BMW" or "Defendants") hereby provide the following Responsive Claim Construction Statement. BMW's proposed constructions reflect its current knowledge and understanding as of this date in this Action. BMW's proposed constructions are based in whole or in part on its present understanding of Paice's apparent positions as to the construction of certain terms of the Asserted Claims of U.S. Patent Nos. 7,104,347 ("the '347 patent"); 7,237,634 ("the '634 patent"); and 8,630,761 ("the '761 patent") (collectively, the "Asserted Patents"). BMW reserves the right to seek leave to revise, amend, modify and/or supplement its proposed constructions based on additional discovery or other positions raised by Paice in this Action or any related action.

II. IDENTIFICATION OF CLAIM TERMS, PROPOSED CONSTRUCTIONS, AND SUPPORTING EVIDENCE

BMW identifies the following claim terms, proposed constructions, and supporting exemplary intrinsic and extrinsic evidence in the charts below. The charts include the claim terms being construed, the Asserted Claims in which the terms appear, BMW's proposed construction for each of the term, and both intrinsic and extrinsic evidence in support of the proposed constructions.

For all other claim terms not included herein, BMW submits that no construction is required and/or that the term should be given its plain and ordinary meaning. In its Proposed Claim Construction Statement, Paice has provided two terms that require construction. BMW agrees with the following constructions proposed by Paice:

Claim Term	Asserted Claim(s)	Proposed Construction
“road load” or “RL”	’347 patent, claims 11 and 33; ’634 patent, claims 33, 37, 39, 40, 41, 43, 50, 188, 202, 204, 206, and 208; ’761 patent, claims 4, 5, 6, 10, 11, and 12	“the amount of instantaneous torque required to propel the vehicle, be it positive or negative”
“setpoint” or “SP”	’347 patent, claims 2 and 24; ’634 patent, claims 33, 34, 35, 37, 39, 40, 43, 55, 188, 202, 205, 206, and 213	“a predetermined torque value that may or may not be reset”

In addition to these agreed-upon terms and constructions, BMW hereby identifies the following terms, constructions, and evidence in support of its constructions:

A. The ’347 Patent

Claim Term	Proposed Construction	Intrinsic and Extrinsic Evidence
“monitor[] patterns of vehicle operation over time” (claims 2 and 24)	“monitor[] a driver’s repeated driving operations over time”	’347 patent at 40:56-41:9; 44:23-39. Final Written Decision in IPR2014-00884. Claim Construction Order (No. 21) in ITC Inv. No. 337-TA-1042. BMW may offer expert testimony regarding the proposed construction of “monitor[] patterns of vehicle operation over time” as would be understood by a POSA, including in view of the well-understood meaning in the relevant fields of art, as well as in view of the claims, specification, prosecution histories, and cited references.
“shafts may be connected by a non-slipping clutch” (claim 38)	“shafts are connected by a non-slipping clutch, a non-conventional automotive friction clutch that does not allow for extensive relative slipping before the shafts are fully engaged”	’347 patent at 26:25-50; Fig. 4, clutch 51 BMW may offer expert testimony regarding the proposed construction of “shafts may be connected by a non-slipping clutch” as would be understood by a POSA, including in view of the well-understood meaning in the relevant fields of art, as well as in view of the claims, specification, prosecution histories, and cited references.

B. The '634 Patent

Claim Term	Proposed Construction	Intrinsic and Extrinsic Evidence
<p>“monitor[] patterns of vehicle operation over time” (claim 33)</p>	<p>“monitor[] a driver’s repeated driving operations over time”</p>	<p>’634 patent at 40:50-41:3; 44:15-31.</p> <p><i>See also</i> Section A.</p> <p>BMW may offer expert testimony regarding the proposed construction of “monitor[] patterns of vehicle operation over time” as would be understood by a POSA, including in view of the well-understood meaning in the relevant fields of art, as well as in view of the claims, specification, prosecution histories, and cited references.</p>
<p>“monitor[] the RL over time” (claims 39, 40, and 80)</p>	<p>Plain meaning or no construction necessary</p>	<p>BMW may offer expert testimony regarding the proposed construction of “monitor[] the RL over time” as would be understood by a POSA, including in view of the well-understood meaning in the relevant fields of art, as well as in view of the claims, specification, prosecution histories, and cited references.</p>
<p>“abnormal and transient conditions” (claim 55)</p>	<p>abnormal and transient conditions “include starting and stopping the engine”</p>	<p>U.S. Patent Application 10/382,577.</p> <p>’347 patent at 60:17-21.</p> <p>Final Written Decisions in IPR2015-00722; IPR2015-00785; IPR2015-00787; IPR2015-00790; IPR2015-00801.</p> <p>BMW may offer expert testimony regarding the proposed construction of “abnormal and transient conditions” as would be understood by a POSA, including in view of the well-understood meaning in the relevant fields of art, as well as in view of the claims, specification, prosecution histories, and cited references.</p>
<p>“turbocharger operated . . . when desired” (claims 49)</p>	<p>“operating the turbocharger when the road load has exceeded the engine’s maximum torque output for a specified period of time”</p>	<p>’634 patent at 21:12-17; 44:52-50:11.</p> <p>BMW may offer expert testimony regarding the proposed construction of “turbocharger operated . . . when desired” as would be understood by a POSA,</p>

		including in view of the well-understood meaning in the relevant fields of art, as well as in view of the claims, specification, prosecution histories, and cited references.
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C. The '761 Patent

Claim Term	Proposed Construction	Intrinsic and Extrinsic Evidence
“a predicted near-term pattern of operation” (claims 1 and 7) and “anticipated patterns of vehicle operation” (claims 6 and 12)	“a pattern of operation of the vehicle expected based on monitoring the driver’s repeated driving operations over time”	’761 patent at 39:47-40:43. BMW may offer expert testimony regarding the proposed construction of “a predicted near-term pattern of operation” and “anticipated patterns of vehicle operation” as would be understood by a POSA, including in view of the well-understood meaning in the relevant fields of art, as well as in view of the claims, specification, prosecution histories, and cited references.
“monitoring operation of said hybrid vehicle” (claims 1 and 7)	“monitoring a driver’s repeated driving operations over time”	’761 patent at 39:47-40:46. <i>See also</i> Section A. BMW may offer expert testimony regarding the proposed construction of “monitoring operation of said hybrid vehicle” as would be understood by a POSA, including in view of the well-understood meaning in the relevant fields of art, as well as in view of the claims, specification, prosecution histories, and cited references.
“repetitive pattern of operation of said hybrid vehicle” (claims 2, 3, 4, 8, 9, and 10)	“a pattern of operation of the hybrid vehicle derived from monitoring the vehicle’s operation over a period of days or weeks”	’761 patent at 39:48-51; 43:15-22. BMW may offer expert testimony regarding the proposed construction of “repetitive pattern of operation of said hybrid vehicle” as would be understood by a POSA, including in view of the well-understood meaning in the relevant fields of art, as well as in view of the claims, specification, prosecution histories, and cited references.

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