

RECEIPT NUMBER

536110

12

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FORD MOTOR COMPANY,

a Delaware corporation,

Plaintiff,

JUDGE : Battani, Marianne O.
DECK : S. Division Civil Deck
DATE : 12/28/2005 @ 15:12:07
CASE NUMBER : 2:05CV74904
CMP FORD MOTOR CO V. PAICE, LLC,
TAM

vs.

PAICE LLC,

a Delaware limited liability company,

Defendant.

MAGISTRATE JUDGE VIRGINIA M. MORGAN

ERNIE L. BROOKS (P22875)
FRANK A. ANGILERI (P45611)
BRIAN S. TOBIN (P67621)

BROOKS KUSHMAN P.C.

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Attorneys for Plaintiff

**FORD MOTOR COMPANY'S
COMPLAINT FOR DECLARATORY JUDGMENT
AND DEMAND FOR JURY TRIAL**

Plaintiff Ford Motor Company ("Ford") alleges as follows for its

Complaint for Declaratory Judgment against Defendant Paice, LLC ("Paice"):



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PARTIES

1. Plaintiff Ford is a Delaware corporation having its principal place of business in Dearborn, Michigan.

2. On information and belief, Defendant Paice is a Delaware limited liability company having its principal place of business at 6830 Elm Street, McLean, Virginia 22101. At least as recently as 2003, Paice maintained an engineering center in Livonia, Michigan, and for several years Paice has had other contacts with the State of Michigan.

JURISDICTION AND VENUE

3. Ford brings this action under Title 35 of the United States Code, and under 28 U.S.C. § 2201, to obtain a declaration of non-infringement and/or invalidity with respect to Paice's U.S. Patent No. 5,343,970 ("the '970 patent") entitled "HYBRID ELECTRIC VEHICLE," U.S. Patent No. 6,209,672 ("the '672 patent") entitled "HYBRID VEHICLE," and U.S. Patent No. 6,554,088 ("the '088 patent") entitled "HYBRID VEHICLES" (collectively the "Paice patents"). Because this action arises under the Patent Laws of the United States, this Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

4. Venue in this judicial district is proper under 28 U.S.C. §§ 1391 and 1400(b).



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BACKGROUND

5. On information and belief, Paice is the current assignee of the '970, '672, and '088 patents.

6. In 2001, Paice and Ford met to discuss hybrid electric vehicle technology. During this meeting, Paice communicated its desire to commercialize technology, which Paice calls Hyperdrive technology, through Ford products. At the conclusion of this meeting, both the Paice and Ford representatives agreed that Paice needed to develop further its technology before the technology could be implemented on a Ford vehicle.

7. At the time of their meeting, Ford was developing its own hybrid electric vehicle product that utilized a powersplit transaxle based on a planetary gear system.

8. Over the next several years, Paice and Ford representatives met several times to discuss the status of Paice's progress. During this time, Ford continued to develop its powersplit transaxle.

9. In 2004, Ford met again with Paice to discuss further the possibility of utilizing Paice's Hyperdrive system in Ford's hybrid vehicles.

10. During this 2004 meeting, a Paice representative tried to strong-arm Ford representatives into using Paice's Hyperdrive system by informing them that in 2001 Paice successfully sued Toyota in Europe for patent infringement based on a Toyota system similar to Ford's powersplit transaxle system.



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11. A representative of Paice further informed the Ford representatives that Paice owned several U.S. patents covering hybrid technology and that Paice could obtain patent coverage for anything that Ford developed.

12. In April, 2004, Ford sent a letter to Paice indicating that Ford had decided not to pursue the Paice Hyperdrive system.

13. On June 8, 2004, Paice sued Toyota in the United States District Court for the Eastern District of Texas alleging that Toyota's hybrid electric vehicles infringe the Paice patents. The accused Toyota vehicles include a powersplit transaxle based on a planetary gear system that, on information and belief, was at least in part designed by Aisin AW.

14. In the Paice patents, Paice distinguishes the Paice system from the system disclosed in United States Patent Nos. 3,566,717 and 3,732,751 ("the Berman patents") on the ground that the Berman transaxle is based on a planetary gear system. Despite the fact that Toyota also uses a powersplit transaxle based on a planetary gear system, Paice nonetheless asserted the Paice patents against Toyota.

15. On December 21, 2005, a jury in the Texas case reached a verdict finding, *inter alia*, infringement of claims 11 and 39 of the '970 patent under the doctrine of equivalents, and no infringement of the '672 and '088 patents.

16. Ford currently sells a hybrid version of its popular Escape® vehicle. Like the Berman and Toyota transaxles, the powersplit transaxle used by Ford in its hybrid Escape vehicle is also based on a planetary gear system. The Ford powersplit



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transaxle is purchased from Aisin. Also, although there are differences between the Ford and Toyota systems, Ford is licensed under Toyota patents relating to Toyota's system.

17. Paice has pending in the U.S. Patent and Trademark Office at least two additional patent applications related to the applications that led to the '672 and '088 patents. Specifically, on March 7, 2003, Paice filed a divisional application (S.N. 10/382,577 ("the '577 application")) from the application that eventually issued as the '088 patent. Claims in the '577 application were allowed on October 26, 2005. Moreover, on September 20, 2005 Paice filed a continuation (S.N. 11/229,762) of the '577 application.

18. In view of the above facts, including Paice's assertion to Ford employees that it can patent anything Ford develops, Paice's claim that it successfully enforced patents against a similar Toyota system in Europe, and Paice's suit against Toyota in Texas, Ford has a reasonable apprehension of imminent suit alleging infringement of Paice's '970, '672, and '088 patents.



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**FIRST COUNT: Declaratory Judgment of
Noninfringement and Invalidity of U.S. Pat. No. 5,343,970**

19. Ford restates and realleges the allegations set forth in paragraphs 1-18 and incorporates them by reference.

20. On information and belief, Paice is the owner by assignment of the '970 patent entitled "HYBRID ELECTRIC VEHICLE."

21. Ford has not infringed and is not infringing, either directly by inducement or contributorily, any claim of the '970 patent, either literally or under the doctrine of equivalents.

22. After a reasonable opportunity for further investigation or discovery, Ford is likely to have evidentiary support that the '970 patent is invalid under one or more of 35 U.S.C. §§ 102, 103, and/or 112.



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**SECOND COUNT: Declaratory Judgment of
Noninfringement and Invalidity of U.S. Pat. No. 6,209,672**

23. Ford restates and realleges the allegations set forth in paragraphs 1-22 and incorporates them by reference.

24. On information and belief, Paice is the owner by assignment of the '672 patent entitled "HYBRID VEHICLE."

25. Ford has not infringed and is not infringing, either directly, by inducement or contributorily, any claim of the '672 patent, either literally or under the doctrine of equivalents.

26. After a reasonable opportunity for further investigation or discovery, Ford is likely to have evidentiary support that the '672 patent is invalid under one or more of 35 U.S.C. §§ 102, 103, and/or 112.



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**THIRD COUNT: Declaratory Judgment of
Noninfringement and Invalidity of U.S. Pat. No. 6,554,088**

27. Ford restates and realleges the allegations set forth in paragraphs 1-26 and incorporates them by reference.

28. On information and belief, Paice is the owner by assignment of the '088 patent entitled "HYBRID VEHICLES."

29. Ford has not infringed and is not infringing, either directly, by inducement or contributorily, any claim of the '088 patent, either literally or under the doctrine of equivalents.

30. After a reasonable opportunity for further investigation or discovery, Ford is likely to have evidentiary support that the '088 patent is invalid under one or more of 35 U.S.C. §§ 102, 103, and/or 112.



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PRAYER FOR RELIEF

WHEREFORE, Ford respectfully requests that this Court:

A. declare that Ford has not infringed and is not infringing, directly, by inducement or contributorily, any claim of the U.S. Pat. Nos. 5,343,970, 6,209,672, or 6,554,088;

B. declare that the claims of U.S. Patent Nos. 5,343,970, 6,209,672, and 6,554,088 are invalid;

C. declare this case exceptional under 35 U.S.C. § 285 and award Ford its costs, disbursements, and attorney fees in connection with this action; and

D. award Ford such other and further relief as this Court may deem just and proper.



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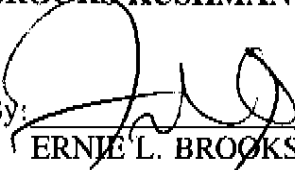
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DEMAND FOR JURY TRIAL

Plaintiff, Ford Motor Company, demands a trial by jury for all issues so triable.

Respectfully submitted,

BROOKS KUSHMAN P.C.

By: 

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Dated: December 28, 2005



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JS 44 11/99

CIVIL COVER SHEET COUNTY IN WHICH THIS ACTION AROSE: Wayne

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

I. (a) PLAINTIFFS

FORD MOTOR COMPANY

(b) County of Residence of First Listed Wayne

26163

(c) Attorney's (Firm Name, Address, and Telephone Number)

BROOKS & KUSHMAN P.C.
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DEFENDANTS

PAICE L.L.C.

County of Residence of First Listed Fairfax

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

11. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item 11)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PLA | DEF | | PLA | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Millar Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment and Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans' Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel And Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury-Med. Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21-881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/CC <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 881 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	FEDERAL TAX SUITS
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 (specify) Transferred from another district
- 6 Multi district Litigation
- 7 Judge from Appeal to District Magistrate

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Title 35 of the United States Code and the Declaratory Judgment Act, 28 U.S.C. § 2201, et seq.

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND CHECK YES only if demanded in complaint. JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: December 28, 2005
SIGNATURE OF ATTORNEY OF RECORD: [Signature]

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

Yes
 No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

Yes
 No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

Notes :
