

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

PAICE LLC,

Plaintiff,

v.

TOYOTA MOTOR CORPORATION, a
Japanese Corporation, TOYOTA MOTOR
NORTH AMERICA, INC., and TOYOTA
MOTOR SALES, U.S.A., INC.,

Defendants.

Case No.: 07-cv-180-DF

JURY TRIAL DEMANDED

SECOND AMENDED COMPLAINT

Plaintiff Paice LLC, by and through the undersigned attorneys, hereby files this Second Amended Complaint against Toyota Motor Corporation, Toyota Motor North America, Inc., and Toyota Motor Sales, U.S.A., Inc., requesting damages and other relief based upon its personal knowledge as to its own facts and circumstances, and based upon information and belief as to the acts and circumstances of others.

PARTIES

1. Plaintiff LLC (“Paice”) is a Delaware limited liability company having its principal place of business at 22957 Shady Knoll Drive, Bonita Springs, FL 34135.
2. Upon information and belief, Defendant Toyota Motor Corporation (“TMC”) is a Japanese Corporation having its principal place of business at 1 Toyota-Cho, Toyota City, Aichi Prefecture 471-8571, Japan.

3. Upon information and belief, Defendant Toyota Motor North America, Inc. (“Toyota NA”) is a Delaware corporation having its principal place of business at 9 West 57th Street, Suite 4900, New York, NY 10019. Upon further information and belief, Toyota NA is a wholly-owned subsidiary of TMC and is the holding company for TMC’s United States sales and manufacturing companies.

4. Upon information and belief, Defendant Toyota Motor Sales, U.S.A., Inc. (“Toyota USA”) is a Delaware corporation having its principal place of business at 19001 S. Western Avenue, Torrance, CA 90509. Upon further information and belief, Toyota USA is TMC’s sales and marketing arm, overseeing TMC vehicle sales, service, and parts for the over 1,200 Toyota dealerships located within the United States.

JURISDICTION AND VENUE

5. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction over this action under 28 U. S. C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over TMC, Toyota NA, and Toyota USA (collectively, “Toyota Defendants”) because, among other things, the Toyota Defendants have directly infringed, contributed to the infringement of, and actively induced infringement of Paice’s patents within this judicial district.

7. Venue is proper in this Court under 28 U.S.C. §§ 1391 and 1400(b) because the Toyota Defendants have committed acts of infringement in and are subject to personal jurisdiction in this judicial district.

FACTS

8. Paice is the owner by assignment of all right, title, and interest in and to United States Letters Patent No. 5,343,970 (“the ’970 patent”), entitled “HYBRID ELECTRIC VEHICLE.” The ’970 patent was duly and legally issued by the United States Patent and Trademark Office on September 6, 1994.

9. Paice is the owner by assignment of all right, title, and interest in and to United States Letters Patent No. 7,104,347 (“the ’347 patent”), entitled “HYBRID VEHICLES.” The ’347 patent was duly and legally issued by the United States Patent and Trademark Office on September 12, 2006.

10. Paice is the owner by assignment of all right, title, and interest in and to United States Letters Patent No. 7,237,634 (“the ’634 patent”), entitled “HYBRID VEHICLES.” The ’634 patent was duly and legally issued by the United States Patent and Trademark Office on July 3, 2007.

11. In December 2005, a jury in the jurisdiction found that the Toyota Defendants have been making, using, selling, offering for sale within the United States, or importing into the United States, hybrid vehicles that infringe the ’970 patent, including the Toyota Prius II, Toyota Highlander hybrid SUV and Lexus RX400h hybrid SUV.

12. In August 2006, this Court entered final judgment that the Toyota Prius II, Toyota Highlander hybrid SUV and Lexus RX400h hybrid SUV infringe the ’970 patent.

COUNT I: INFRINGEMENT OF UNITED STATES PATENT NO. 5,343,970

13. Paice incorporates paragraphs 1-12 as if fully set forth herein.

14. On information and belief, after the jury rendered its verdict in December 2005, Toyota began making, using, selling, offering for sale within the United States, or importing into

the United States, a hybrid version of its Toyota Camry (“Toyota Camry hybrid”), the hybrid Lexus GS450h and the hybrid Lexus LS600h.

15. The August 2006 Final Judgment was limited to each “infringing Prius II, Toyota Highlander, or Lexus RX400h.”

16. On information and belief, the Toyota Camry hybrid, Lexus GS450h and Lexus LS600h are identical, in all respects relevant and material to the infringement of the ’970 patent, to at least one of the Toyota Prius II, Toyota Highlander hybrid SUV or Lexus RX400h hybrid SUV.

17. By making, using, selling, offering for sale within the United States, and/or importing into the United States their hybrid vehicles, including but not limited to the Toyota Camry hybrid, Lexus GS450h, and Lexus LS600h, the Toyota Defendants are directly infringing the ’970 patent. Notwithstanding the allegations in this paragraph, Paice has given Toyota a covenant not to assert the ’970 patent against the Lexus GS450h and the Lexus LS600h.

18. By, among other things, distributing or offering for sale the Toyota Camry hybrid, Lexus GS450h and Lexus LS600h and manuals that teach third parties to operate the Toyota Camry hybrid, Lexus GS450h and Lexus LS600h in a manner that directly infringes the ’970 patent, the Toyota Defendants have been and now are contributing to and actively inducing the infringement of the ’970 patent by others. Notwithstanding the allegations in this paragraph, Paice has given Toyota a covenant not to assert the ’970 patent against the Lexus GS450h and the Lexus LS600h.

19. The Toyota Defendants have actual knowledge of the ’970 patent and their infringement is willful.

20. The Toyota Defendants' past and continued acts of infringement have injured Paice, and thus Paice is entitled to recover damages adequate to compensate for that infringement.

COUNT II: INFRINGEMENT OF UNITED STATES PATENT NO. 7,104,347

21. Paice incorporates paragraphs 1-20 as if fully set forth herein.

22. By making, using, selling, offering for sale within the United States, and/or importing into the United States their hybrid vehicles, including but not limited to the Toyota Prius II, Highlander SUV, Lexus RX400h SUV, Toyota Camry hybrid, Lexus GS450h and Lexus LS600h, the Toyota Defendants are directly infringing the '347 patent.

23. By, among other things, distributing or offering for sale their hybrid vehicles and manuals that teach third parties to operate the hybrid vehicles in a manner that directly infringes the '347 patent, the Toyota Defendants have been and now are contributing to and actively inducing the infringement of the '347 patent by others.

24. The Toyota Defendants have actual knowledge of the '347 patent and their infringement is willful.

25. The Toyota Defendants' past and continued acts of infringement have injured Paice, and thus Paice is entitled to recover damages adequate to compensate for that infringement.

COUNT III: INFRINGEMENT OF UNITED STATES PATENT NO. 7,237,634

26. Paice incorporates paragraphs 1-25 as if fully set forth herein.

27. By making, using, selling, offering for sale within the United States, and/or importing into the United States their hybrid vehicles, including but not limited to the Toyota

Prius II, Highlander SUV, Lexus RX400h SUV, Toyota Camry hybrid, Lexus GS450h, and Lexus LS600h, the Toyota Defendants are directly infringing the '634 patent.

28. By, among other things, distributing or offering for sale their hybrid vehicles and manuals that teach third parties to operate the hybrid vehicles in a manner that directly infringes the '634 patent, the Toyota Defendants have been and now are contributing to and actively inducing the infringement of the '634 patent by others.

29. The Toyota Defendants have actual knowledge of the '634 patent and their infringement is willful.

30. The Toyota Defendants' past and continued acts of infringement have injured Paice, and thus Paice is entitled to recover damages adequate to compensate for that infringement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Paice LLC prays that this Court enter judgment:

- a) declaring that the Toyota Defendants' hybrid vehicles, including but not limited to the Toyota Camry hybrid, infringe United States Patent No. 5,343,970;
- b) declaring that the Toyota Defendants' hybrid vehicles, including but not limited to the Toyota Prius II, Highlander SUV, Lexus RX400h SUV, Toyota Camry hybrid, GS450h and LS600h, infringe United States Patent Nos. 7,104,347 and 7,237,634;
- c) permanently enjoining the Toyota Defendants from infringing the '970, '347, and '634 patents;
- d) awarding plaintiff damages resulting from the Toyota Defendants' infringement adequate to compensate for that infringement;
- e) awarding plaintiff treble damages from the Toyota Defendants' willful infringement;
- f) declaring this to be an exceptional case under 35 U.S.C. § 285;

- g) awarding plaintiff's costs in this action, together with reasonable attorneys' fees and pre-judgment and post-judgment interest; and
- h) granting plaintiff such other relief as this Court deems just and proper.

Paice respectfully demands trial by jury.

Respectfully submitted,

Dated: July 22, 2009

By: /s/ Ahmed Davis (w/ permission SFB)
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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on this 15th day of May, 2009.

/s/ Ahmed J. Davis _____

Ahmed J. Davis