UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CONRAD O. GARDNER, Individually, Plaintiff, v. **TOYOTA MOTOR CORPORATION,** a Japanese Corporation, and **TOYOTA MOTOR SALES, U.S.A, INC.,** a California Corporation, Defendants.	**NO. C 08-0632 RAJ** **SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT** **JURY DEMAND**

1. IDENTITY OF PARTIES

1.1 Plaintiff. Plaintiff Conrad O. Gardner ("Gardner") is a United States citizen residing at 654 5th Avenue S., Suite 201, Edmonds, Washington, 98020. At all times relevant to this action, Conrad O. Gardner has been the inventor and owner of the United States Letters Patent No. 7,290,627 (the "627 Patent") titled "Extended range motor vehicle having ambient pollutant processing."

1.2 Defendant Toyota Motor Corporation. Defendant Toyota Motor Corporation ("TMC") is, upon information and belief, a Japanese corporation having a principal place of business at 1 Toyota-Cho, Toyota City, Aichi Prefecture 471-8571, Japan.

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1.3 Defendant Toyota Motor Sales, U.S.A., Inc. Defendant Toyota Motor Sales, U.S.A., Inc. ("Toyota USA") is, upon information and belief, a California corporation having its principal place of business at 19001 S. Western Avenue, Torrance, CA 90501. 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 throughout the United States, including in the Western District of Washington.

1.4 Collectively, the Toyota defendants manufacture automobiles in Japan and the United States, and import, use, offer for sale, and/or sell infringing automobiles in this judicial district and elsewhere.

2. JURISDICTION AND VENUE

2.1 This court has jurisdiction over the parties and over the subject matter of this dispute pursuant to 28 U.S.C. § § 1331 and 1338 and 35 U.S.C. § 271. Venue is proper in the District Court for the Western District of Washington, pursuant to 28 U.S.C. §1391(c) and 28 U.S.C. §1400(b).

2.2 This Court has personal jurisdiction over TMC and Toyota USA (collectively "Defendants") because in addition to their systematic, continuous and routine contact with Washington, they have directly infringed, contributed to the infringement of, and/or actively induced infringement of Gardner's patent within this judicial district as stated below.

3. FACTUAL ALLEGATIONS

Background Concerning Hybrid Technology

3.1 Traditionally automobiles have had only one source of power: an internal combustion engine ("I.C."). In order to power the vehicle, the I.C. must always operate, even when it is less efficient to do so, such as idling in traffic. Battery powered electric vehicles avoid these problems because they use energy only when moving. However, these vehicles have been impractical as a means of transportation because of their limited range before the battery

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requires a recharge. By contrast, a vehicle powered by both an I.C. and an electric motor ("hybrid") can combine the advantages of both. The hybrid can increase gas mileage and reduce pollution, as electric vehicles do, yet provide the range and performance of a traditionally powered car when needed. Efficiencies and energy savings are accomplished by using the I.C. only when it is most efficient to do so.

3.2 The hybrid may use the electric motor when the car is moving slowly, and the I.C. to power the vehicle during cruise or highway speeds. The hybrid may also use the motor and the I.C. together for rapid acceleration. The hybrid may also use the I.C. to recharge the vehicle's battery, extending electric motor mode's useful range. The hybrid's control computer commander these representative combinations of power sources as "operating modes."

Plaintiff Gardner's Development of Patented Pioneering Hybrid Technology.

3.3 Plaintiff Conrad Gardner is an engineer, patent attorney, and inventor of environmentally friendly technologies for the automobile. Gardner's engineering innovations have spanned several decades and are marked by such pioneering milestones as the Electronically Controlled Exhaust Gas Recirculation Valve, U. S. Patent No. 3,788,284; the Feedback Modulation of Exhaust Gases in Internal Combustion Engines (a key component of the first automobile emission reduction systems and licensed to major automobile manufacturers). A copy U. S. Patent No. 3,788,284 is attached as Exhibit A.

The Technology Protected by Plaintiff Gardner's Pioneering '627 Patent.

3.4 Gardner's most recent environmentally friendly and innovative invention is certain pioneering hybrid automobile technology embodied in United States Letters Patent No. 7,290,627 ("the 627 patent"), titled "Extended Range Motor Vehicle Having Ambient Pollutant Processing,"and attached as Exhibit B to this Complaint and by this reference incorporated into this paragraph as though set forth.

3.5 Gardner's '627 patent teaches a hybrid vehicle control system comprised of: a computer; at least one sensor to sense the vehicles running state; a battery; an I.C.; two

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electric motors for generating power and driving forces; and a device for transferring the driving forces produced by the I.C. and electric motor to the wheels in response to the computer commands based on the vehicles running state. In '627, the computer controls the mixing or contribution of the driving force from an I.C. with that from two electric motors. Because '627 is equipped with more than one source of power, '627 requires a device to transfer the driving forces of the respective power sources to the wheels.

3.6 The '627 patent further teaches the use of a computerized control system to optimize this mix and transfer of driving forces to the wheels in response to sensed system and environmental parameters, indicative of the vehicles running state, such as cruise, idle, acceleration or battery charge. Depending on the running state, the control system may command either the I.C., electric motor or both to drive the vehicle. Further, it may also command the transfer of the I.C.'s driving force to an electric motor to recharge of the battery.

3.7 Mr. Gardner's '627 patent's advances and validity were underscored by the examination and approval of its claims by a three judge panel during prosecution of the patent application, prior to the United States Patent and Trademark Office's ("USPTO") issuance of the '627 patent on November 6, 2007.

3.8 Gardner's invention is pioneering because the application for the patent-in-suit claims the benefit of the domestic priority of its parent patent application that was filed in 1992. Toyota and the automobile industry's interest in hybrid automotive technology commenced years after Gardner applied for and obtained his first patent in this nascent field of technology. For example, in a 1994 letter to Mr. Gardner, an officer of Honda Corporation advised Mr. Gardner that Honda had no interest in hybrid vehicle technology and no plans to develop a hybrid vehicle in the foreseeable future.

Toyota's Early Knowledge of Gardner's Patented Hybrid Technology.

3.9 The Toyota Defendants first began investigating the development of a commercial hybrid automobile in November, 1994, two years after Gardner had applied for

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his first hybrid technology patent. In fact, the USPTO rejected Toyota's January 24, 1994 patent application for hybrid automobile technology, described in patent application ser. no. 08/185,407 on the ground that the claim was anticipated by Gardner. Copies of USPTO documents stating this decision are attached as Exhibit C and incorporated into this Complaint by this reference as though fully set forth in this paragraph.

Toyota's Development of Infringing Hybrid Technology

3.10 Toyota initiated its first project for a mass produced hybrid vehicle in late 1995, that resulted in the introduction into the United States market of the "Japanese Prius" in 1997, and the "Prius I" in 2000. Toyota later introduced the second generation "Prius II," which gained certain efficiencies by the use of high voltage and low current. The Prius II hybrid control system is also present in the Toyota Camry and Highlander.

3.11 The Prius II hybrid control system is comprised of all the corresponding structural or functional elements that are taught by the claims in the '627 patent, including: a computer; at least one sensor to sense the vehicles running state; a battery; an I.C.; two electric motors for generating power and driving forces; a device called for transferring the driving forces produced by the I.C. and electric motors in response to the computer commands and sensed operating state of the vehicle. Descriptions and schematics of Toyota's hybrid technology system are contained in Exhibits D, E & E1 to this Complaint, which descriptions and schematics are hereby incorporated into this paragraph by this reference.

3.12 The drive train of the Prius II, uses a "planetary gear unit" ("PGU") as a device that combines an I.C. generated driving force with an electric motor driving force that can transfer the sum of this driving force to the wheels. See Exhibit E & E1

3.13 The "planetary gear unit," has a "sun" gear that meshes with several "planetary" gears which are supported in their relative orbits about the "sun" gear by a "planetary carrier," which in turn mesh with a peripheral ring gear. In operation, a first electric motor's ("MG2") driving force is fed directly into the ring gear. The I.C.'s driving force

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is fed to the planetary carrier. This arrangement can add the I.C.'s driving force to MG2's driving force on the ring gear of the planetary gear unit, the sum of which can be transferred to the wheels of the car.

3.14 The PGU is a device that can transfer variable amounts of driving force to the wheels as driving conditions, and the corresponding combinations of I.C. and electric motor driving forces, in the various driving modes change.

3.15 A second electric motor, ("MG1") is connected to the "sun" gear and is commanded by the Prius hybrid control system to control the relative mix and transfer of the I.C. driving force and the electric motor driving force that is transferred through the PGU to the wheels, by acting as an electronic variable friction clutch. The variable electronic "friction" produced by MG1 can control the speed of its sun gear in response to commands by the Prius hybrid control computer.

3.16 The gear ratio between the planetary gears (connected to the I.C.) and the ring gear (connected to the wheels) can be continuously adjusted through the by electrically controlling the speed of the sun gear.

3.17 MG1 can be used as a starter motor for the I.C.

3.18 The Prius hybrid computer control system can command an operational mode that charges the battery when the vehicle is at idle.

3.19 The Prius hybrid computer control system can command the start of the I.C. at idle by commanding MG2 to hold the PGU to selectively prevent the I.C.'s driving force from being transferred to the wheels so that MG1 can start the I.C.

3.20 During I.C. start mode at idle, the MG2 acts as an electronic clutch while MG1 acts as a starter.

3.21 During the I.C. start mode at idle, the vehicle can remain stationary because MG2 acts as an electronic clutch.

3.22 During battery charge mode at idle, the Prius hybrid control system commands

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MG2 to act as an electronic clutch while it commands the I.C. driving force to be transferred to MG1 which in turn is commanded to act as a generator to charge the battery.

Toyota's Knowledge of its Infringing Conduct and Refusal to Buy a License to Use Mr. Gardner's Patented Technology or Cease Infringing Upon It.

3.23 Conrad O. Gardner is the inventor and owner of all right, title and interest in the technology protected by the '627 patent.

3.24 Defendants were indirectly made aware of the '627 patent prior to its issuance, when the '627 patent's parent patent, United States Letters Patent No. 5,301,764, was cited as prior art against the Defendants United States Letters Patent No. 5,495,906, during its prosecution in 1995. See Exhibit C.

3.25 Defendants were made directly aware of Toyota's infringement of the '627 patent when Gardner offered Defendants an opportunity to license use of the technology protected by the '627 patent. Gardner has given Toyota notice of its infringing conduct and has afforded Toyota an opportunity to examine the technology covered by the '627 patent and to accept Gardner's offer to grant Toyota a license to use the technology rather than continuing to infringe the '627 patent.

3.26 After examining Gardner's '627 patent, and the history of its prosecution and issuance, Toyota was fully aware of Toyota's ongoing infringement of Gardner's patented technology and fully aware of the revenues and profits that Toyota has generated through the manufacture, marketing and sale of infringing products. Defendants nonetheless continued infringing on the technology covered by the '627 patent and continued refusing to negotiate in good faith to acquire a license to use the technology covered by Gardner's '627 patent. Gardner finally had no choice but to initiate this lawsuit to enjoin Toyota from further conduct that infringes on the '627 patent and to obtain damages for Toyota's past and present infringing conduct.

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4. CAUSES OF ACTION

4.1 Violation of 35 U. S. C. § 271

4.1.1 Plaintiff Conrad Gardner realleges the factual allegations stated in paragraphs 3.1 through 3.26 of this Complaint as though fully set forth in this paragraph.

4.1.2 Defendants' actions constitute the manufacturing, importing, using, offering to sell and selling of vehicles employing hybrid technology that infringes upon the '627 patent owned by plaintiff Conrad Gardner. Toyota's infringing hybrid vehicles are manufactured under the names of "Prius," "Camry," and "Highlander."

4.1.2 Defendants have been, and are now, contributing to the infringement of and/or actively inducing the infringement of the '627 patent by others by, among other things, distributing or offering for sale hybrid vehicles and literature that teaches third parties to operate hybrid vehicles in a manner that directly infringes the '627 patent.

4.1.2 Defendants have had actual knowledge of the '627 patent and their infringement is willful.

4.1.2 Defendants' past and continuing acts of infringement have injured and continue to injure Plaintiff Gardner by depriving Gardner of royalties to which he is entitled as owner of the technology exploited by the '627 patent , by invading Gardner's exclusive right as patent owner to control the exploitation of the patented technology, and by propagating and encouraging widespread acts of infringement that cause devaluation of the value of the Gardner patent. The full amount of Plaintiff's damaged from Defendant Toyotas acts of infringement are not yet known, but will be established at trial.

4.1.2 Defendants' acts of infringement of the '627 patent have caused and continue to cause Plaintiff Gardner irreparable harm and to divest Plaintiff of the exclusive rights in the technology afforded by its U. S. Patent. Defendants will continue engaging in infringing conduct causing Gardner irreparable harm unless this Court enjoins them from doing so.

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4.1.2 Defendants' acts of infringement have been and continue to be willful, rendering this an exceptional case, warranting an award of treble damages to Gardner under 35 U.S.C. § 284 and an award of Gardner's attorney fees under 35 U.S.C. § 285.

5. Prayer for Relief

Having made his factual allegations and having asserted his legal claims, Plaintiff Conrad O. Gardner asks that this Court grant him the following relief:

5.1 Entry of a temporary restraining order prohibiting defendants from taking any action to manufacture, import, market, offer for sale or sell products that infringe the technology and methods covered and protected by the '627 patent; and

5.2 Entry of a preliminary injunction extending the temporary restraining order until this Court makes a final decision on plaintiff's infringement claims; and

5.4 Entry of judgment against the Toyota Defendants permanently enjoining them from engaging in activities that infringe on the technology covered by the '627 patent until and unless Defendants purchase a license from Plaintiff granting them the right to use such patented technology; and

5.5 Entry of an order requiring that defendants account to plaintiff for the manufacture, importation and sale of all infringing vehicles, and the revenues derived from such activities; and

5.6 Entry of judgment against defendants, jointly and severally, for:

A. Plaintiff's damages from defendants' acts of infringement, in an amount to be proven at trial; and

B. Trebling the amount of plaintiff s damages, pursuant to 35 U.S.C. § 284; and

D. For plaintiff's reasonable attorneys fees and costs of suit; and

5.7 Entry of orders for such further relief as the court deems just and equitable.

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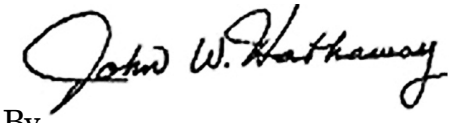
DATED this 13th Day of August, 2008.

JOHN W. HATHAWAY, PLLC



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