

**UNITED STATES INTERNATIONAL TRADE COMMISSION**  
**Washington D.C. 20436**

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<b>In the Matter of</b>	)	
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<b>CERTAIN HYBRID ELECTRIC VEHICLES</b>	)	<b>Inv. No. 337-TA-688</b>
<b>AND COMPONENTS THEREOF</b>	)	
	)	

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**NOTICE OF COMMISSION DETERMINATION  
TO REVIEW AN INITIAL DETERMINATION  
AND ON REVIEW TO REVERSE AND REMAND**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to review the final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) on March 3, 2010, granting, on the basis of claim preclusion, complainant’s motion for summary determination regarding infringement, validity and enforceability of the patent in suit. On review, the Commission has determined to reverse the ID and remand for further proceedings.

**FOR FURTHER INFORMATION CONTACT:** Sidney A. Rosenzweig, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2532. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on October 5, 2009, based on a complaint filed by Paice LLC (“Paice”) of Bonita Springs, Florida. 74 *Fed. Reg.* 52258-59 (Oct. 9, 2009). The complaint named as respondents Toyota Motor Corporation of Japan and two U.S. subsidiaries (collectively “Toyota”). The complaint alleges infringement by certain Toyota hybrid vehicles of claims of U.S. Patent No. 5,343,970 (“the ’970 patent”).

This investigation follows years of lawsuits between Paice and Toyota. In late 2005, a federal jury in the Eastern District of Texas found that certain Toyota hybrid vehicles infringed claims of the '970 patent, and judgment was entered.


Paice and Toyota contend that the Texas action must be afforded preclusive effect in this investigation, though they disagree as to the operation and effect of the preclusion. On November 25, 2009, Paice moved – on the basis of claim preclusion and/or issue preclusion – for summary determination that the accused products infringe the '970 patent and that the '970 patent is valid and enforceable. On December 21, 2009, the Commission's Investigative Attorney ("IA") filed a response in support of Paice's motion. On December 22, 2009, Toyota opposed Paice's motion and cross-moved for summary determination terminating the entirety of the investigation on the basis of claim preclusion. Paice and the IA opposed Toyota's cross-motion.

On March 3, 2010, the ALJ issued Order No. 6, which granted Paice's motion (as an ID) and denied Toyota's cross-motion (as a non-ID order). With regard to the ID portion of Order No. 6, the ALJ concluded that all of the factors necessary for claim preclusion had been met with regard to validity, enforceability and infringement. With regard to the non-ID portion of the order – Toyota's cross-motion – the ALJ held that Toyota failed to present sufficient evidence for summary determination that claim preclusion bars Paice's complaint. Toyota petitioned for review of the ID, which Paice and the IA oppose.

Having examined the record of this investigation, including the ALJ's ID and the remainder of Order No. 6, the petition for review and the responses thereto, the Commission has determined to review and reverse the ID. The ID is remanded to the ALJ to determine whether and to what extent arguments regarding infringement and validity are barred by the doctrine of issue preclusion, *see* Restatement (Second) of Judgments §§ 17(3), 27, 28 (1982), as raised in Paice's November 25, 2009 motion and the responses thereto.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.42).

By order of the Commission.

  
William R. Bishop  
Acting Secretary to the Commission

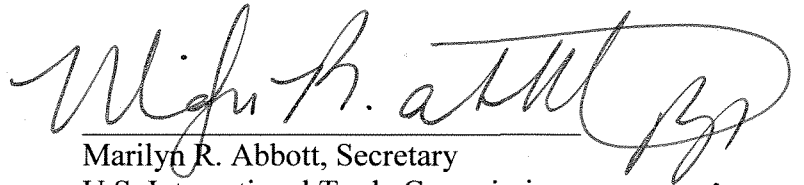
Issued: April 2, 2010

**CERTAIN HYBRID ELECTRIC VEHICLES AND  
COMPONENTS THEREOF**

**337-TA-688**

**CERTIFICATE OF SERVICE**

I, Marilyn R. Abbott, hereby certify that the attached **NOTICE OF COMMISSION DETERMINATION TO REVIEW AN INITIAL DETERMINATION AND ON REVIEW TO REVERSE AND REMAND** has been served by hand upon the Commission Investigative Attorney, Erin D. E. Joffre, Esq., and the following parties as indicated, on April 2, 2010.



Marilyn R. Abbott, Secretary  
U.S. International Trade Commission  
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**On behalf of Complainant Paice LLC:**

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**On behalf of Respondents Toyota Motor Corporation;  
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