

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

SOLOMON TECHNOLOGIES, INC.,)
)
Plaintiff,)
) CASE NO. 8:05-cv-01702-JDW-MAP
v.)
)
TOYOTA MOTOR CORPORATION,)
TOYOTA MOTOR SALES, U.S.A., INC.,)
TOYOTA MOTOR ENGINEERING AND)
MANUFACTURING NORTH AMERICA,)
INC., AND TOYOTA MOTOR)
MANUFACTURING KENTUCKY, INC.,)
)
Defendants.

**DECLARATION OF KENNETH L. STEIN, ESQ. IN OPPOSITION
TO TOYOTA’S MOTION FOR SUMMARY JUDGMENT**

Kenneth L. Stein, Esq., being duly sworn, declares and states:

1. I am a Partner at the law firm of Stroock & Stroock & Lavan, LLP, which is located at 180 Maiden Lane, New York, New York 10038, counsel of record for Plaintiff Solomon Technologies, Inc. (“Solomon”). I have personal knowledge of the matters set forth herein.

2. I submit this declaration pursuant to Fed. R. Civ. P. 56(f) in support of Solomon’s Opposition to Toyota’s Motion for Summary Judgment (“Toyota’s Motion”).

3. To date, there has been no discovery in the present action. There has, however, been discovery in related, prior proceedings before the International Trade Commission (“ITC”), which is relevant to the present action.

4. To adequately address the issues raised in Toyota’s Motion, Solomon requires additional discovery into at least the following subject areas:

- a. Whether Toyota (or its suppliers) considers the “rotor shafts” in Toyota’s accused transaxles to be like the sun gear extension shown in Figure 5 of U.S. Patent 5,067,932 (the “’932 Patent”);
- b. Whether Toyota considers the “rotor assembly” in Toyota’s accused transaxles to be disk-like;
- c. Whether Toyota considers the volume in space created by the rotation of all the motor elements in Toyota’s accused transaxles, including the rotor assembly, to include, to a large extent, a transmission element or vice versa;
- d. Whether Toyota considers the structural elements of the “power conversion means” recited in claim 7 of the ‘932 Patent to be sufficient to perform the recited function of the power conversion means;
- e. How critical and important Solomon’s patented technology is to Toyota’s accused hybrid vehicles; and
- f. Whether Toyota willfully infringed Solomon’s patent by adopting Solomon’s patented technology after Solomon disclosed its technology to Toyota.

5. Items 3(a)-(d) above relate to facts pertaining to infringement under the Federal Circuit’s claim construction in connection with the prior ITC proceedings or new claim construction issues in this action. The discovery in the ITC proceedings did not have the benefit of the Federal Circuit’s claim construction or consideration of the new claim construction issues and, as result, did not focus on or fully explore these items.

6. Items 3(e)-(f) above also relate to infringement by Toyota. Solomon believes that these items were not fully and completely explored during the prior ITC proceedings.

7. All the above discovery relate to facts that are material to Toyota’s pending motion for summary judgment.

8. The discovery identified in this declaration is essential to resisting Toyota’s Motion for at least the following reasons.

9. If discovery establishes that Toyota considers (i) the “rotor shafts” in Toyota's accused vehicles to be like the sun gear extension shown in Figure 5 of the ‘932 patent, (ii) the “rotor assembly” in Toyota’s accused transaxles to be disk-like, or (iii) the volume in space created by the rotation of all the motor elements in Toyota's accused transaxles, including the rotor assembly, to include, to a large extent, a transmission element or vice versa, that would support Solomon’s argument that Toyota’s accused transaxles infringe even under the Federal Circuit’s claim construction, which is one of the reasons that Toyota’s motion for summary judgment should be denied.

10. Likewise, if discovery establishes that Toyota considers the structural elements of the “power conversion means” limitation recited in claim 7 of the ‘932 Patent to be sufficient to perform the recited function of the power conversion means that would support Solomon’s argument that that limitation is not a means-plus-function limitation, which is another basis for denying Toyota’s motion for summary judgment.

11. Also, if discovery establishes that Toyota willfully infringed Solomon’s patent after prior meetings between the companies in which Solomon revealed its patented technology to Toyota and that that technology is critical to Toyota’s accused products, that would effect the credibility and weight of Toyota’s arguments that its accused transaxles do not infringe Solomon’s patent, which is the basis for Toyota’s summary judgment motion.

12. All the discovery that Solomon seeks is within Toyota’s knowledge, custody and control.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: August 17, 2009

By: /s/ Kenneth L. Stein
Kenneth L. Stein