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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LKQ CORPORATION
Petitioner

v.

CLEARLAMP, LLC
Patent Owner

Case IPR2013-00020
Patent 7,297,364

PATENT OWNER'S OPPOSITION TO PETITIONER'S MOTION TO EXCLUDE

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I. INTRODUCTION

Clearlamp, LLC opposes LKQ Corp.'s Motion to Exclude various portions of Clearlamp's evidence in this proceeding, and requests that the Board deny the motion in its entirety. As shown below, and contrary to LKQ's representations, the testimonial and documentary evidence subject to LKQ's motion is admissible under the Federal Rules of Evidence and the Code of Federal Regulations.

Clearlamp's Response to LKQ's Petition detailed LKQ's failure to put forth a *prima facie* case of obviousness with regard to the challenged claims. In support of its Response, Clearlamp submitted extensive evidence that detailed this failure by LKQ, including the expert declaration of Professor A. Harvey Bell, which fully addressed the prior art, including through certain testing of the prior art method and testing by third parties of the patented method. Clearlamp's opposition also addressed secondary considerations of non-obviousness, again through both expert testimony (from Mr. Rappaport) and deposition testimony from a former LKQ employee (Mr. Sandau) illustrating LKQ's efforts to copy the patented process.

As a means to fix—post-Petition—its failure to establish a *prima facie* case of obviousness, LKQ tries several tactics, including improperly attempting to fill its evidentiary holes with deposition testimony from Clearlamp's experts, while at the same time trying to exclude other expert testimony and supporting evidence of Clearlamp's. Although LKQ does not move to exclude all of Clearlamp's

evidence (including, notably, the declaration testimony of Mr. Dimitris Katsamberis, a clear coat expert), LKQ is still forced to overreach in its efforts to exclude the evidence that is subject to its motion. For example, LKQ argues that Mr. Bell's description of testing conducted at Clearlamp is inadmissible (Ex. 2004, ¶¶54, 55), but then bootstraps that into an argument that ¶¶51–53 of Mr. Bell's declaration—which are based on the Kuta reference alone—are also somehow inadmissible. LKQ's overreaching illustrates the desperation embodied in its Motion to Exclude—an attempt to avoid an adverse judgment in this proceeding in view of the holes in its own evidence. In the end, LKQ's Motion to Exclude must fail, though, because all the evidence it complains of is properly admissible.

II. Ex. 2004-Declaration of A. Harvey Bell

Mr. Bell is a Professor of Engineering Practice and Co-Director of Multidisciplinary Design Program at the University of Michigan. Ex. 2005. He holds a Bachelor of Science degree in Mechanical Engineering from the University of Michigan. Prior to his current position, Professor Bell worked for General Motors for 39 years in a variety of capacities, including Executive Director of Advanced Vehicle Development (North America). There, Mr. Bell was responsible for ensuring that all designs met GM and government safety requirements.

Throughout his extensive career at GM, Professor Bell was focused on vehicle safety including headlamps and tail lamps. As a result of his more than 40

years' of experience in the car industry, Professor Bell is familiar with all aspects of all vehicle safety systems, including vehicle lamps, and understands the performance requirements of original equipment vehicle lamps (headlamps and tail lamps), as well as federal vehicle safety requirements. Mr. Bell's qualifications are further summarized in his curriculum vitae. Ex. 2005. Mr. Bell is experienced and skilled in the relevant field – automotive, field and vehicle safety, including vehicle lamps, and offered cogent, reliable, and relevant testimony comparing the patent-in-suit to the prior art at issue in this proceeding.

LKQ seeks to exclude two portions of Mr. Bell's declaration. First, LKQ argues that ¶¶6, 17, 22, 25–30, 41–43, 56, 58, 75, 77–79, and 87, addressing federal motor vehicle safety standards and the market for refurbished car parts, should be excluded as irrelevant or lacking foundation. Separately, LKQ argues that ¶¶51–55 of Mr. Bell's declaration, addressing the issue of whether the prior art teaches the claims' step of removing the old clear coating, should be excluded under 37 C.F.R. 42.65. Both aspects of LKQ's motion should be denied.

A. Federal Safety Standards and the Relevant Market

LKQ first argues that ¶¶17, 25, 30, 77, and 87[1] of Mr. Bell's declaration, which address federal vehicle safety standards, should be excluded as irrelevant,

[1] Notably, Paragraph 87 of Mr. Bell's declaration is a discussion of his review of the infringing LKQ process. Because it infringes the method of the '364 patent

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