

IPR2013-00020; Petitioner's Reply to Opposition to Motion to Exclude Evidence

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LKQ CORPORATION
Petitioner

v.

Patent of CLEARLAMP, LLC
Patent Owner

Case No. IPR2013-00020
Patent 7,297,364

**PETITIONER'S REPLY TO PATENT OWNER'S OPPOSITION TO
PETITIONER'S MOTION TO EXCLUDE EVIDENCE**

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I. Introduction

LKQ Corp. ("Petitioner" or "LKQ") submits this Reply to Clearlamp's ("PO" or "Clearlamp") Opposition ("Opp.") to LKQ's Motion to Exclude ("Mot."). PO has not provided a compelling rebuttal to any issues in the Motion.

II. Exh. 2004 - Declaration of A. Harvey Bell, IV

A. "Federal Standards" and "Consumer Retail Market" Testimony

There is no reference in the '364 Patent to any federal safety standards. Mr. Bell's insistence that the FMVSS 108 document is relevant is baseless. PO outlines Mr. Bell's experience as an automotive executive. (Opp., 2-3). Absent is (a) experience refurbishing polycarbonate headlamps or (b) experience with the "consumer retail market."¹ Paragraphs 6, 22, 25 to 29, 41 to 43, 56, 58, 75, 78 and 79 of Exh. 2004 should thus be excluded.

B. PO's Experiments Should be Excluded

PO's testing and Exh. 2004 do not satisfy 37 C.F.R. § 42.65(a) or (b). Paragraphs 54 and 55 of Exh. 2004 are thus improper. Clearlamp argues that Mr. Bell's unfamiliarity with the details of PO's testing is of no moment. (Opp., 7).

¹ PO's suggestion that Mr. Bell has experience with polycarbonate lamps is untrue, and is unsupported by Mr. Bell's CV (Exh. 2005). (Opp., 5). It uses the "directly translates" language to gloss over this lack of experience. (*Id.*)

Yet Mr. Bell did not know if PO's worker was applying "barely any pressure and barely sand[ing] off any of the surfaces." (Exh. 1034, 26:15-22). At least details regarding the pressure applied during sanding greatly impact Mr. Bell's opinion.

PO also chides LKQ for providing "no evidence regarding what the proper conditions should have been." (Opp., 7). LKQ has no idea why PO conducted the experiment it conducted.² The Motion is premised on the fact that Mr. Bell's "opinion" does not even approach the requirements of 37 C.F.R. § 42.65(a) or (b).³

PO also trivializes LKQ's "underlying data" argument (a requirement taken from the text of 37 C.F.R. 42.65(a)), saying "it is unclear what 'underlying data' LKQ believes should be provided." (Opp., 7). While the burden is not on LKQ to cure PO's non-compliance, PO was required to provide an affidavit that explains

² PO failed if it attempted to replicate Kuta. The tests PO performed did not apply the Kuta steps that precede use of 1500 grit sandpaper. (Exh. 1034, 23:14-24:15). Moreover, in PO's timed test, PO sanded the entire lens surface--a much greater area than the limited access corners to be sanded in Kuta. (*Id.* at 26:5-14).

³ PO states that its inclusion of links to videos of the tests "authentica[t] those links and plac[e] them into evidence," and volunteers to provide the videos to the Board. (Opp., 8). The videos are not in evidence and the time for submitting such evidence has passed.

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the five criteria in 37 C.F.R. § 42.65(b). PO did not do this.

The last sentence of paragraph 52 and all of paragraph 53 rely only on the experiments described in paragraph 54 and 55. These portions of paragraphs 52 and 53 of Exh. 2004 should be excluded. LKQ withdraws the Motion as to paragraph 51 and the first two sentences of paragraph 52 of Exh. 2004.

III. Exh. 2009 - Declaration of Irving S. Rappaport

The Opposition does not warrant analysis beyond the analysis in the Motion. In fact, it ignores several types of inadmissible evidence in Mr. Rappaport's declaration. Without relevant technical background or data underlying his analysis, Mr. Rappaport's testimony is inadmissible under 37 C.F.R. § 42.65.⁴

IV. Exhs. 2012 - 2014 - Testing Compilations

PO does not address its failure to introduce email correspondence with third party testing agencies into evidence. (Mot., 8). PO also did not address the argument that Exhs. 2012 - 2014 do not satisfy 37 C.F.R. § 42.65(b). And though PO discusses Mr. Asselta's testimony, it did not provide support for its assertion that the tested lamps were created "using the '364 process." (Opp., 12).

The '364 Patent claims require several steps. Mr. Asselta had no personal

⁴ Paragraphs 1 to 18 of Mr. Rappaport's declaration are background, and serve no purpose if paragraphs 19 to 50 of Exh. 2009 are excluded as LKQ requests.

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