

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TOYOTA MOTOR CORPORATION

Petitioner

v.

Patent of AMERICAN VEHICULAR SCIENCES

Patent Owner

Patent No. 6,738,697

Issue Date: May 18, 2004

Title: TELEMATICS SYSTEM FOR VEHICLE DIAGNOSTICS

**PATENT OWNER'S OBJECTIONS TO EVIDENCE SUBMITTED BY
TOYOTA MOTOR CORPORATION**

Case No. IPR2013-00412

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Pursuant to 37 C.F.R. § 42.64, Patent Owner American Vehicular Sciences (“AVS”) serves and submits the following objections to evidence served with the Petition by Toyota Motor Corporation (“Toyota”) for *Inter Partes* Review of U.S. Pat. No. 6,738,697 (“the ‘697 patent”).¹

1. EXHIBITS RELATING TO PETITION GROUNDS REJECTED BY THE BOARD

On January 13, 2014, the Board granted *inter partes* review on the following grounds raised by Toyota in its Petition:

- Ground 1 (as to claims 1, 2, 10, 17, 19-21, 32, 40, 61),

¹ Due to uncertainty in the rules, in addition to serving its objections to Toyota’s evidence, AVS is also filing its objections to evidence with the Board to make ensure that they are a part of the record for this trial. *See, e.g.*, 37 C.F.R. § 42.64(c) (providing that a motion to exclude “must identify the objections in the record”). Additionally, Toyota filed a number of petitions for inter partes review against AVS. In some of those inter partes review proceedings, the Board indicated that AVS was to file its objections to evidence. (See, e.g., IPR 2013-00422, 1/13/14 Board Decision (Paper No. 14) at 31 (“Within ten business days of institution of trial, Patent Owner must file an objection to evidence under 37 C.F.R. § 42.64(b)(1)”).)

- Ground 3 (as to claims 1, 2, 10, 17, 18, 21, 26, 27, 32, 61),
- Ground 5 (as to claims 18, 19, 20, 26, 27, 40), and
- Ground 7 (as to claims 18, 19, 20, 26, 27, 40).

Inter partes review was not instituted on the remaining grounds. (See Paper 18, 1/13/14 Decision to Grant Inter Partes Review (“1/13/14 Board Decision”).)

Exhibits, expert testimony, and arguments relating to rejected grounds are therefore no longer relevant. See Fed. Evid. 402 (“[i]rrelevant evidence is not admissible”); Fed. R. Evid. 401. See also 37 C.F.R. §42.120 (“A patent owner may file a response to the petition addressing any ground for unpatentability not already denied.”) (emphasis added). Further, such evidence is inadmissible under Fed. R. Evid. 403, as any remaining probative value is substantially outweighed by a danger of unfair prejudice, confusing the issues, waste, or needless presentation of cumulative evidence. See Fed. R. Evid. 403.

For example, Exhibits 1003 and 1004 relate to an asserted prior art reference (Ishihara) and rejection ground that were not granted by the Board. (See 1/13/14 Board Decision at pp. 27-28, 39-40.) Portions of the Declaration of Scott Andrews similarly relate to the Ishihara reference. (See Ex. 1008, Andrews Decl. at ¶¶ 15, 39, 61-82, 113, 115-117, 125-126, and 131-147.)

AVS therefore objects to the admissibility of Exhibits 1003 and 1004, as well as those portions of the Declaration of Mr. Andrews that discuss those

exhibits, on the basis of relevance. AVS reserves its right to move to supplement its objections should Toyota later attempt to rely on rejected grounds or references, or should it move for reconsideration of any rejected grounds.

2. EXHIBIT 1002 (FRY REFERENCE)

AVS objects to the admissibility of K.N. Fry, “Diesel Locomotive Reliability Improvement by System Monitoring,” Proc. Instn. Mech. Engrs. Vol. 209, 3-12 (1995) (“Fry”) because Toyota has not sufficiently established that Fry is prior art to the ‘697 patent. For that reason, Fry is irrelevant pursuant to Fed. R. Evid. 402 and/or inadmissible pursuant to Fed. R. Evid. 403. *See, e.g., Nordock Inc. v. Systems Inc.*, 2013 U.S. Dist. LEXIS 34661 (E.D. Wis. Mar. 13, 2013) (“Because insufficient evidence has been presented regarding the dates of the two publications, they are not admissible as prior art and Nordock's motion to exclude ‘undated’ and ‘unpublished’ references from evidence as asserted ‘prior art’ references is granted.”); *Amini Innovation Corp. v. Anthony California, Inc.*, 2006 U.S. Dist. LEXIS 100800 (C.D. Cal. Sept. 21, 2006) (“Without knowing the publication dates, the documents are not admissible as prior art.”). In addition, AVS objects to a 2013-dated Internet cover page and abstract of Fry that Toyota submitted as part of Exhibit 1002. Those documents are inadmissible hearsay under Fed. R. Evid. 801 and 802 as to the alleged publication date of Fry, and lack authenticity or reliability under Fed. R. Evid. 901.

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