

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. IPR2013-00413

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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 of Toyota Motor Corporation (“Toyota”) Petition 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 2 (claims 1, 2, 5, 10, 17-19, 21, 26, 27, 32, 40, 61), and
- Ground 4 (as to claim 20).

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)”).)

Inter partes review was not instituted on the remaining grounds. (See 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. Fed. R. Evid. 403.

For example, portions of the Declaration of Scott Andrews relate to rejected grounds 1 and 3. (See Ex. 1106, Andrews Decl. at ¶¶ 40-65, 90-105)

AVS therefore objects to the admissibility of those portions of the Declaration of Mr. Andrews that discuss those rejected grounds under Fed. Evid. 402 and 403. 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 1105 (AVS’S LITIGATION INFRINGEMENT CONTENTIONS)

AVS objects to the admissibility of Exhibit 1105, AVS’s infringement contentions in the district court litigation between AVS and Toyota in the Eastern

District of Texas pursuant to Fed. R. Evid. 402 and 403. These infringement contentions have no bearing on the present *inter partes* review proceedings. Toyota only attempted to rely on AVS's non-final, pre-discovery litigation positions as alleged admissions dispositive of the priority dates of the '697 patent claims. (*See, e.g.*, Petition at p. 5.) The Board, however, did not cite to or rely on Exhibit 1105 in its Decision Instituting Inter Partes Review. (*See* Paper 16, 1/13/14 Board Decision.) And for purposes of these proceedings, AVS does not dispute the priority dates asserted in Toyota's Petition.

Further, Exhibit 1105 is not arguably relevant to prove any other issues in the proceeding. Toyota has not pointed to Exhibit 1105 for any other purpose. It is well established that litigation positions and even district court rulings are not binding before the USPTO because of the different standards for invalidity and claim construction. *See, e.g., Infinera Corp. v. Cheetah Omni, LLC*, Appeal 2011-007232 (BPAI March 30, 2012) ("In addition, we are not bound by positions taken by Respondent in infringement litigation, as our standard for claim interpretation is broadest reasonable interpretation commensurate with the Specification . . ."). *See also, e.g., Garmin Intern., Inc. v. Patent of Cuozzo Speed Tech., LLC*, Case IPR2012-00001 (PTAB Jan. 9, 2013) ("Petitioner states that the term has to mean, in this proceeding, what the Patent Owner asserts it means in the infringement suits the Patent owner has filed against various parties including Petitioner. That

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