

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TOYOTA MOTOR CORPORATION

Petitioner

v.

Patent of AMERICAN VEHICULAR SCIENCES LLC

Patent Owner

Patent No. 8,036,788

Issue Date: October 11, 2011

Title: VEHICLE DIAGNOSTIC OR PROGNOSTIC MESSAGE
TRANSMISSION SYSTEMS AND METHODS

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

Case No. IPR2013-00417

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Pursuant to 37 C.F.R. § 42.64, Patent Owner American Vehicular Sciences LLC (“AVS”) serves and submits the following objections to evidence served with Toyota Motor Corporation’s Petition for *Inter Partes* Review of U.S. Pat. No. 8,036,788 (the “788 patent”).¹

1. EXHIBIT RELATING TO PETITION GROUND REJECTED BY THE BOARD

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

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 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 1 (as to claims 1, 3, 4, 6, 7, 8, 11, 15, 16 and 18);
- Ground 2 (as to claims 1, 3, 4, 6, 7, 8, 11, 16 and 18); and
- Ground 3 (as to claims 9 and 15).

A trial was not instituted based on Ground 4. (*See* 1/13/14 Board Decision (Paper No. 14) at 34 (“Board Decision”).)

Exhibit 1006 relates to a ground as to which no trial was instituted. AVS therefore objects to this exhibit as irrelevant under Fed. R. Evid. 402; *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). AVS further objects to this exhibit under Fed. R. Evid. 403 because its probative value is substantially outweighed by the risk that introduction of this evidence will confuse the issues, lead to undue delay, waste time, and/or result in needlessly presenting cumulative evidence. AVS reserves its right to supplement its objections should Toyota later attempt to rely on this or other evidence during the course of this trial. AVS additionally reserves its right to supplement its objections should Toyota seek reconsideration of the Board’s Decision.

2. EXHIBITS 1003 AND 1004 (ISHIHARA)

In Ground 2 of its Petition, Toyota argues that certain claims of the ‘788 patent are anticipated by Japanese Unexamined Patent Application Publication H01-197145 to Ishihara (“Ishihara”). Ishihara, however, purports to be an

unexamined patent application that was published in Japanese. (*See* Ex. 1003.) AVS objects to the admission of Exhibit 1003 (a purported copy of the Japanese Ishihara reference) and Exhibit 1004 (the proffered translation of Ishihara) because: (1) they have not been sufficiently authenticated under Fed. R. Evid. 901(a); and (2) the proffered translation does not conform to the requirements of a proper affidavit under 37 C.F.R. § 42.63(b).

Federal Rule of Evidence 901(a) requires that as a condition precedent to admission a piece of evidence must be authenticated through “evidence sufficient to support a finding that the item is what the proponent claims it is.” Fed. R. Evid. 901(a). Ordinarily, documents are authenticated by attaching them to an affidavit of an individual with personal knowledge of their authenticity who swears that the documents are true and correct copies of the originals. *See* Fed. R. Evid. 901(b)(1). Documents from a foreign office are typically authenticated by providing a certified copy. *See* Fed. R. Evid. 902(3). The Rules governing inter partes review provide that only United States Patent Office documents are self-authenticating without requiring a certified copy. *See* 37 C.F.R. § 42.61. Toyota has not provided a certified copy of Ishihara or any other affidavit from a person with personal knowledge of its authenticity. (*See* Exs. 1003 & 1004.) As such, Ishihara is not admissible.

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