

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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TOYOTA MOTOR CORPORATION  
Petitioner

v.

AMERICAN VEHICULAR SCIENCES LLC  
Patent Owner

Patent Number: 8,036,788  
Title: VEHICLE DIAGNOSTIC OR PROGNOSTIC MESSAGE  
TRANSMISSION SYSTEMS AND METHODS

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Case IPR2013-00417

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**PATENT OWNER'S RESPONSE PURSUANT TO 37 C.F.R. § 42.120**

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*IPR2013-00417*

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## **I. INTRODUCTION**

Patent Owner American Vehicular Sciences LLC (“AVS”) submits the following response under 37 C.F.R. § 42.120 to the Petition filed by Toyota Motor Corporation (“Toyota”) requesting *inter partes* review of certain claims of U.S. Patent No. 8,036,788 (“the 788 patent”). This filing is timely pursuant to the Board’s Scheduling Order and the parties’ stipulation to extend the deadline for AVS to file its response to March 24, 2104. (See Paper 15, Scheduling Order; Paper 26, Joint Notice of Stipulation to Adjust Schedule.)

In this *inter partes* review, the Board instituted review of claims 1, 3, 4, 6, 7, 8, 9, 11, 15, 16, and 18 of the 788 patent. (Paper 14, Board Decision at 34.) Review of claim 9 was instituted on only one ground—anticipation based on an article entitled “Diesel Locomotive Reliability Improvement By System Monitoring,” by Fry (“Fry”). (*Id.*) Despite multiple opportunities to prove that Fry is prior art to the claims of the 788 patent, namely, it was publicly accessible prior to the June 7, 1995 priority date, Toyota failed to do so.

Because Toyota has failed to show that Fry is prior art to the claims of the 788 patent, AVS respectfully submits that the Board should confirm the patentability of claim 9.<sup>1</sup>

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<sup>1</sup> Concurrently with its Patent Owner’s Response, AVS is filing a Motion to Amend. In its Motion to Amend, AVS is requesting cancellation of claims 1, 3, 4,

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