

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

Case IPR2013-00417

**PATENT OWNER'S MOTION TO EXCLUDE PURSUANT TO 37 C.F.R. §
42.64(c)**

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Rules

37 C.F.R. § 42.641
Fed. R. Evid. 100215
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I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.64 and the Scheduling Order in this IPR, Patent Owner American Vehicular Sciences LLC (“AVS”) submits the following motion to exclude Exs. 1005 and 1011 through 1014. This filing is timely under the Board’s Scheduling Order (Paper 15).

The Board instituted a trial with respect to claim 9 of U.S. Patent 8,036,788 (“788 patent”) based on an article (“Fry”) by Kevin Fry, that purportedly appeared in the Proceedings for the Institution of Mechanical Engineers (“IME”) sometime in 1995. The only issue remaining with respect to Toyota’s Petition is whether Fry is prior art, i.e., was Fry publicly accessible prior to the June 7, 1995 priority date.

Toyota has failed to present admissible evidence showing that Fry is prior art—and wrongfully withheld evidence to the contrary. As discussed below, Toyota’s asserted evidence is inadmissible under Fed. R. Evid. 402, 403, 602, 802 and 1003. Further, the only admissible evidence shows that Fry was not publicly accessible as of June 7, 1995. Toyota located but withheld twelve recipient date-stamped copies of Fry (or cover pages thereof). All of these copies of Fry were stamped with dates of receipt in September and October 1995. (*See* Exs. 2014-2023, 2025-26.) This includes the copy kept by the IME, the organization responsible for having Fry published. (*See* Ex. 2025; Ex. 1014 ¶ 3.) No date-stamped copies prior to June 7, 1995 have been shown to exist. While Toyota

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