

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. 6,772,057

Issue Date: August 3, 2004

Title: VEHICLE MONITORING SYSTEMS USING IMAGE PROCESSING

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

Case No. IPR2013-00419

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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”) for *inter partes* review of U.S. Pat. No. 6,772,057 (“the ‘057 patent”).¹

1. EXHIBITS 1006-1011 (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 (claims 1-4, 7-10, 40, 41, 43, 46, 48, 49, 56, 59-61, and 64 for alleged anticipation by Lemelson);

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 2 (claims 30-34, 37-39, and 62 for alleged obviousness by Lemelson in view of Borcherts);
- Ground 3 (claims 4, 43, and 59 for alleged obviousness by Lemelson in view of Asayama);
- Ground 4 (claim 34 for alleged obviousness by Lemelson in view of Borcherts and Asayama); and
- Ground 16 (claims 30, 32, and 37-39 for alleged obviousness by Yamamura in view of Borcherts).

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, they are 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, Exhibits 1006-1011 to Toyota’s Petition relate solely to grounds rejected by the Board. Similarly, the majority of the Declaration of

Nikolaos Papanikolopoulos relates to rejected grounds 5-15. (*See* Ex. 1016, Papanikolopoulos Decl. at ¶¶ 65-174.)

AVS therefore objects to the admissibility of Exhibits 1006-1011 and those portions of the Declaration of Dr. Papanikolopoulos that discuss those rejected grounds, 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. EXHIBITS 1012-1013 (YAMAMURA TRANSLATION AND TRANSLATION AFFIDAVIT)

Toyota argues that claims of the '057 patent are obvious over Japanese Unpublished Patent Application H06-124340 to Yamamura (“Yamamura”). The Board instituted *inter partes* review on this ground with respect to claims 30, 32, and 37-39. (*See* Paper 19, 1/13/14 Board Decision.) Yamamura, however, is an unexamined patent application that was published in Japanese. (*See* Ex. 1012.) AVS objects to the admission of Exhibits 1012-1013 because (1) they have not been sufficiently authenticated under Fed. R. Evid. 901(a) and (2) the translation certification 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, that a piece of evidence be authenticated through “evidence sufficient to support a finding that the matter in question is what its proponent claims.”

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