

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.

Patent of AMERICAN VEHICULAR SCIENCES

Patent Owner

Patent No. 6,772,057

Issue Date: August 3, 2004

Title: VEHICLE MONITORING SYSTEMS USING IMAGE PROCESSING

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

Case No. IPR2013-00419

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Pursuant to 37 C.F.R. § 42.64 and the Board’s comments at the February 3, 2014 Initial Conference Call, 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”). These amended objections supersede AVS’s prior objections to evidence served and submitted on January 27, 2014. (Paper No. 22.)

**1. 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Toyota argues that claims of the ‘057 patent are obvious over Japanese Unpublished Patent Application H06-124340 to Yamamura (“Yamamura”).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.” 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(b)(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 Yamamura or any affidavit from someone with personal knowledge. As such, Yamamura is not admissible. *See, e.g., Frazier v. Layne Christensen Co.*, 2006 WL 6041120 at \*3 (W.D. Wis. Feb. 21, 2006).

Second, in order to rely on Yamamura as prior art, Toyota was required to provide a translation and “an affidavit attesting to the accuracy of the translation.” 37 C.F.R. §42.63(b). A translation of a foreign language document into English, however, must be accompanied by “an affidavit attesting to the accuracy of the translation.” *Id.* In lieu of an affidavit, a party may submit a declaration “only if, the declarant is, on the same document, warned that willful false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C. 1001) . . . .” 37 C.F.R. § 1.68 (emphasis added); *see also* 37 C.F.R. § 42.2. The certification provided by Toyota with its Petition is not an affidavit or compliant declaration. (*See* Ex. 1013.)

Further, Toyota’s translation certification is deficient because it also lacks

authentication. Under the Federal Rules of Evidence (which apply to *inter partes* review) “[w]itness testimony translated from a foreign language must be properly authenticated and any interpretation must be shown to be an accurate translation done by a competent translator.” *Jack v. Trans World Airlines, Inc.*, 854 F. Supp. 654, 659 (N.D. Cal. 1994); *see also Townsend Eng’g Co. v. HiTec Co.*, 1 U.S.P.Q.2d 1987, 1988 (N.D. Ill. 1986); 37 C.F.R. § 42.62. The certification offered by Toyota does not properly authenticate the translation of Yamamura. The certification merely states: “This is to certify that the attached translation is, to the best of my knowledge and belief, a true and accurate translation from Japanese into English of the patent that is entitled: Unexamined Patent Application Publication H01-124340.” (Ex. 1013.) The certification, signed by a “Project Manager,” does not describe this individual’s qualifications to make the translation. (*Id.*) In fact, the certification does not even state that this individual is fluent in Japanese or that this individual actually translated the document in question. (*Id.*) The certification therefore fails to properly authenticate the translation. *See Jack*, 854 F. Supp. at 659 (striking translations from the record where the party only provided “a statement by an individual at a local translation center stating that the translations were true and correct”); *Townsend*, 1 U.S.P.Q.2d at 1988.

Toyota has since attempted to submit a supplemental translation affidavit for

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