

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. 5,845,000

Issue Date: December 1, 1998

Title: OPTICAL IDENTIFICATION AND MONITORING SYSTEM USING
PATTERN RECOGNITION FOR USE WITH VEHICLES

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

Case No. IPR2013-00424

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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 Toyota Motor Corporation’s (“Toyota’s”) Petition for *Inter Partes* Review of U.S. 5,845,000 (“the ‘000 patent”).¹

1. EXHIBITS RELATING TO PETITION GROUNDS REJECTED BY THE BOARD

On January 14, 2014, the Board granted *inter partes* review on the following grounds raised by Toyota in its Petition:

- Ground 1 (alleged anticipation by Lemelson as to claims 10, 11, 19, and 23),

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 Order (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 (alleged obviousness by Lemelson in view of Asayama as to claims 10, 11, 19, and 23), and
- Ground 8 (alleged obviousness by Lemelson in view of Yanagawa as to claims 16, 17, and 20).

Inter partes review was not instituted on the remaining grounds. (See Paper 16, 1/14/14 Decision to Grant Inter Partes Review (“1/14/14 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, such evidence is 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, Exhibit 1005 relates to an asserted prior art reference, Pomerleau. The rejection ground based on Pomerleau was not granted by the Board. (See Paper 16, 1/14/14 Board Decision at 41-42.) Portions of the Declaration of Dr. Nikolaos Papanikolopoulos similarly relate to the Pomerleau reference. (See Ex. 1013 at ¶¶ 22-23 and 32-36.)

AVS therefore objects to the admissibility of Exhibit 1005, as well as those

portions of the Declaration of Dr. Papanikolopoulos that discuss that exhibit (*see* Ex. 1013 at ¶¶ 22-23 and 32-36), 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.

Exhibits 1006 and 1007 relate to an asserted prior art reference, Mizukoshi, and its alleged English translation. The rejection grounds based, at least in part, on Mizukoshi and its alleged English translation were not granted by the Board. (*See* Paper 16, 1/14/14 Board Decision at 43) Portions of the Declaration of Dr. Papanikolopoulos similarly relate to the Mizukoshi reference and its alleged English translation. (*See* Ex. 1013 at ¶¶ 23, 36-40, 44-47.)

AVS therefore objects to the admissibility of Exhibits 1006 and 1007, as well as those portions of the Declaration of Dr. Papanikolopoulos that discuss those exhibits (*see id.*), 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 1008 AND 1009 (YANAGAWA)

Toyota argues that claims of the '000 patent are anticipated or rendered obvious by Yanagawa.

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