

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 AMENDED OBJECTIONS TO EVIDENCE
SUBMITTED BY TOYOTA MOTOR CORPORATION**

Case No. IPR2013-00424

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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 Toyota Motor Corporation’s (“Toyota’s”) Petition for *Inter Partes* Review of U.S. 5,845,000 (“the ‘000 patent”). These amended objections supersede AVS’s prior objections to evidence served and submitted on January 27, 2014. (Paper No. 18.)

1. EXHIBITS 1008 AND 1009 (YANAGAWA)

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

AVS objects to the admissibility of Exhibits 1008 and 1009 relating to Yanagawa and its purported English Translation. Yanagawa purports to be an unexamined Japanese Patent Application that was apparently published in Japanese. (*See* Ex. 1008.) AVS objects to the admission of Exhibit 1008 (a purported copy of the Japanese Yanagawa reference) and Exhibit 1009 (the proffered translation of Yanagawa) because: (1) they have not been sufficiently authenticated under Fed. R. Evid. 901(a); and (2) the proffered translation 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 a piece of evidence must be authenticated through “evidence sufficient to support a finding that the item is what the proponent claims it is.” Fed. R. Evid.

901(a). 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(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 Yanagawa or any other affidavit from a person with personal knowledge of its authenticity. (*See* Exs. 1008 & 1009.) As such, Yanagawa is not admissible.

Second, in order to rely on Yanagawa 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). 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. 1009 at 7.) Further, Toyota’s certification is deficient because it 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 Yanagawa. 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: Japanese patent S62-131837.” (Ex. 1009 at 7.) 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 Yanagawa. (*See* 12/5/13 Order Denying Petitioner’s Request to Submit Supplemental Evidence (Paper No. 15).) The Board indicated that any such a supplement must follow the process for objections under 37 § C.F.R. 42.64. (*See*

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