

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Mercedes-Benz USA, LLC

Petitioner

v.

AMERICAN VEHICULAR SCIENCES LLC

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 IN
PETITION FOR *INTER PARTES* REVIEW OF
U.S. PATENT NO. 6,772,057**

Case No. IPR2014-00646

Pursuant to 37 C.F.R. § 42.64, Patent Owner American Vehicular Sciences LLC (“AVS”) serves and submits the following objections to evidence served with Mercedes-Benz USA, LLC’s Petition for *Inter Partes* Review of U.S. Pat. No. 6,772,057 (the “057 patent”).

AVS objects to the admissibility of Exhibits 1007, 1008, and 1010 on the basis of lack of authentication, hearsay, and relevance, because Mercedes has not sufficiently established that these documents are prior art “printed publication.” *See* Fed. R. Evid. 402, 403, 802, 901; *see also Nordock Inc. v. Systems Inc.*, No. 11-C-118, 2013 U.S. Dist. LEXIS 34661, at *7 (E.D. Wis. Mar. 13, 2013) (“Because insufficient evidence has been presented regarding the dates of the two publications, they are not admissible as prior art and Nordock’s motion to exclude ‘undated’ and ‘unpublished’ references from evidence as asserted ‘prior art’ references is granted.”); *Amini Innovation Corp. v. Anthony California, Inc.*, No. 03-8749, 2006 U.S. Dist. LEXIS 100800, at *19 (C.D. Cal. Sept. 21, 2006) (“Without knowing the publication dates, the documents are not admissible as prior art.”).

1. Komoda document (Exhibit 1007)

First, AVS objects to the admissibility of Norio Komoda et al., *Automated Vehicle/Highway System*, 13th Int’l Technical Conf. on Experimental Safety Vehicles (Exhibit 1007) because Mercedes has not sufficiently established that the

Komoda document is prior art to the 057 patent. There is nothing on the face of the Komoda document that indicates when it became accessible to the public. Moreover, Mercedes has offered no declaration or other evidence purporting to state when the Komoda document became publicly accessible within the meaning of 35 U.S.C. § 102(b).

The copy of the Komoda document submitted by Mercedes appears to be undated. A cover sheet submitted with the Komoda document bears the name "Univ. of MD Baltimor County," and states, at one point and in separately-typed text "1991." But that cover page also states "13th International Technical Conference on Experimental Safety Vehicles," a reference that is undated.

Mercedes has not established that the Komoda document (Exhibit 1007) is prior art to the 057 patent. *See DH Tech., Inc. v. Synergystex Int'l, Inc.*, No. 92-3307, 1994 U.S. Dist. LEXIS 5301, at *4 (N.D. Cal. Apr. 11, 1994) ("the June 1989 notation on the manual's cover does not identify the date in June 1989 on which the manual was published, or if the manual was actually published in June 1989"); *Mannesmann Demag Corp. v. Engineered Metal Prods. Co.*, 605 F. Supp. 2d 1362, 1366-67 (D. Del. 1985) (Section 102(b) bar critical date was June 26, 1977; as to a printed brochure with a "6.77" date mark, the evidence did not show that it was actually accessible to the public prior to the critical date); *see also Carella v. Starlight Archery & Pro Line Co.*, 804 F.2d 135, 139 (Fed. Cir. 1986)

(as to an advertisement mailed on a certain date, “[n]o evidence was presented as to the date of receipt of the mailer by any of the addressees.”).

2. Kawai document (Exhibit 1008)

AVS objects to the admissibility of Mitsuo Kawai, *Collision Avoidance Technologies*, Leading Change: The Transportation Electronic Revolution, Proceedings of the 1994 Int’l Congress on Transp. Electronics (Exhibit 1008) because Mercedes has not sufficiently established that the Kawai document is prior art to the 057 patent.

The cover page appended to the Kawai document by Mercedes references the Proceedings of the 1994 International Congress on Transportation Electronics. In the lower-right-hand corner, that cover page states “October 1994.” But Mercedes has provided no evidence of when the Kawai document was actually publicly accessible within the meaning of 35 U.S.C. § 102(b). As with Komoda, the Kawai document itself appears to be undated. Above its title, it uses the term “94C038,” with no guide as to what that might mean, and no apparent connection to the cover page appended by Mercedes.

Mercedes has not established that the Kawai document (Exhibit 1008) is prior art to the 057 patent.

3. Suzuki document (Exhibit 1010)

Finally, AVS objects to the admissibility of Toshihiko Suzuki et al., *Driving Environment Recognition for Active Safety*, Toyota Technical Review (Exhibit 1010). As with the Komoda and Kawai documents, Mercedes has not established that the Suzuki document is prior art to the 057 patent. For example, Mercedes has not established any date by which the Suzuki document was purportedly accessible to the public within the meaning of 35 U.S.C. § 102(b).

Respectfully submitted,

/Scott P. McBride/

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DATE: November 6, 2014

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