UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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VOLKSWAGEN GROUP OF AMERICA, INC.,
Petitioner,

v.

JOAO CONTROL & MONITORING SYSTEMS, LLC,
Patent Owner.
_____

Case IPR2015-01611
Patent No. 6,549,130 B1

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PETITIONER'S REQUEST FOR REHEARING
UNDER 37 C.F.R. § 42.71(d)

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Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
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I.   INTRODUCTION

Petitioner Volkswagen Group of America, Inc. ("VWGoA") requests rehearing under 37 C.F.R. § 42.71(d) of the Board's Final Written Decision ("Decision," Paper 21) finding, *inter alia*, that VWGoA's did not carry its burden to establish that U.S. Patent No. 6,072,402 ("Kniffin") anticipates independent claims 26, 42, 48, 91, and 138 of U.S. Patent No. 6,549,130 ("the '130 Patent"), and therefore did not establish that claims 26, 31, 38, 42, 48, 60, 63, 64, 73, 74, 85, 138, 139, and 143 are unpatentable.

In its decision, the Board misapprehended VWGoA's showing that Kniffin's storing of data in memory in the truck access control device (and the reprogramming of the truck access control device) is *responsive* to the clearinghouse.   As a consequence, the Board found that VWGoA did not adequately explain how Kniffin anticipates independent claims 26, 42, 48, and 138. For the same reason, the Board also found that VWGoA did not establish the unpatentability of dependent claims 31, 38, 43, 60, 63, 64, 73, 74, 85, 139, and 143. VWGoA requests a rehearing seeking reconsideration on this point.

The challenged independent claims all merely require a conventional chain of three control devices: an originating, intermediate, and in-vehicle control device, passing along signals to allow for remote operation of vehicle systems. In particular, claims 26, 31, 38, 42, 43, 48, 60, 63, 64, 73, 74, 85, 138, 139, and 143

all require that the in-vehicle control device is responsive to a signal from the intermediary control device, to activate a vehicle component. Decision, p. 13. In its petition, VWGoA showed that Kniffin describes an in-vehicle device (access control device 64) that is responsive to the signal from an intermediate device (clearinghouse 66), to activate a vehicle component. *See e.g.* Petition, pp. 14-17. The Petition described that the claimed vehicle component is described by each of (i) the access lock 12 and (ii) the memory 68. In the case of the memory 64, the Petition explained that Kniffin's memory 68 is coded or reprogrammed in response to the transmission from the clearinghouse to the access control device. *Id.* It is this showing, regarding the memory 68 and the related discussion of programming that memory, that is the subject of this request for rehearing.

II.   LEGAL STANDARD

Under 37 C.F.R. § 42.71(d), a petitioner may request rehearing on a Final Written Decision. A request for rehearing "must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, or a reply." 37 C.F.R. § 42.71(d). When evaluating a request for rehearing on a decision, the Board will review the decision for an abuse of discretion. 37 C.F.R. § 42.71(c). An abuse of discretion occurs when a decision is based on an "erroneous

conclusion of law or clearly erroneous factual findings, or . . . a clear error of judgment." *PPG Indus. Inc. v. Celanese Polymer Specialties Co.*, 840 F.2d 1565, 1567 (Fed. Cir. 1988); *see, e.g., Facebook, Inc. v. Software Rights Archive, LLC*, IPR2013-00478, Paper No. 31 (Apr. 14, 2014).

III.   ARGUMENT

A. The Board overlooked the evidence expressly relied upon in the Petition

Although the Board cited to portions of VWGoA's Petition discussing Kniffin's storing of data in memory in the truck access control device, responsive to the clearinghouse (*i.e.*, Decision, pp. 13-14) the Board's Decision demonstrates that it overlooked the evidence expressly relied upon in the Petition, and therefore misapprehended and failed to appreciate VWGoA's showing in this regard.

First, the Board remarked that "Petitioner . . . makes the bare assertion that 'Kniffin's truck access control device 64 (the in-vehicle control device), located in the vehicle, is responsive to signals from clearinghouse 18 or 66 (the middle device), located remote from the vehicle 62.'" Decision, p. 13. However, this was not a bare assertion: The Petition, for example, pointed to relevant portions of Kniffin showing a causal link between the clearinghouse and the storing of data in the in-vehicle memory, which the Board did not address. For example, the Petition stated:

Once clearinghouse 66 has verified the schedule of deliveries, clearinghouse 66 transmits the schedule to the truck access control device 64 (the in-vehicle control device located at truck 62), where the schedule is stored in memory 68. **Col. 8, 11. 15-24**.

(Petition, p. 15 (emphasis to the citation added)).

Kniffin's truck access control device 64 (the in-vehicle control device), located in the vehicle, is responsive to signals from clearinghouse 18 or 66 (the middle device) located remote from the vehicle 62. Clearinghouse 18 (the middle device) of Figure 1 includes computer 20 and database 24 that communicates with the access control device 12 via a radio transmission, *e.g.*, by a paging or cellular telephone system, or other RF carrier. Col. 2, ll. 44-49. Similarly, in the vehicle embodiment, clearinghouse 66 (the middle device) transmits a signal to truck access control device 64 (the in-vehicle control device). **Col. 8, ll. 21-24**. Clearinghouse 66 receives signals from the telephone 22 and communications link 16, and includes an RF transmission system for transmitting the verified schedule of stops. Moreover, truck access control device 64 (the in-vehicle control device) is responsive to signals from clearinghouse 66 (the middle device), as Kniffin discloses that truck access control device 64 may be reprogrammed by clearinghouse 66. **Col. 8, ll. 61-67; Ex. 1002, ¶¶ 11-13**.

(Petition, p. 16-17 (emphasis to the citation added)).

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