

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VOLKSWAGEN GROUP OF AMERICA, INC.,
Petitioner

v.

YECHEZKAL EVAN SPERO,
Patent Owner

Case IPR2022-01586
U.S. Patent No. 11,208,029

**PETITIONER VOLKSWAGEN GROUP OF AMERICA, INC.’S
OBJECTIONS TO EVIDENCE PURSUANT TO 37 C.F.R. § 42.64(B)(1)**

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I. INTRODUCTION

Petitioner Volkswagen Group of America, Inc. (“Petitioner”), objects under the Federal Rules of Evidence (FRE) and 37 C.F.R. § 42.64(b)(1) to the admissibility of Exhibit 2001, the Declaration of Matthew A. Turk, Ph.D.; Exhibit 2002, the Curriculum Vitae of Matthew A. Turk, Ph.D.; Exhibit 2003, “Petition challenging U.S. Patent No. 11,208,029, Unified Patents, LLC v. Torchlight Technologies LLC IPR2022-01500, Paper 1, September 22, 2022”; and Exhibit 2005, “Comparison of Harbers (Ex. 1011) to Harbers ’172 (Ex. 2004)” (the “Challenged Evidence”), filed by Patent Owner Yechezkal Evan Spero (“Patent Owner”) on February 28, 2023, with Patent Owner’s Preliminary Response. Petitioner’s Objections are timely filed under 37 C.F.R. § 42.64(b)(1), within 10 business days of the May 24, 2023 Institution Decision. Petitioner files these Objections to provide notice to Patent Owner that Petitioner may move to exclude the Challenged Evidence under 37 C.F.R. § 42.64(c).

II. EXHIBIT 2001 – DECLARATION OF MATTHEW A. TURK, PHD AND EXHIBIT 2002 – CURRICULUM VITAE OF MATTHEW A. TURK, PHD

Petitioner objects to Exhibit 2001 under F.R.E. 702 and 703, because Exhibit 2001 includes statements and testimony from a witness who is not qualified as an expert. It also includes statements and testimony based on insufficient facts or data, and is not the product of reliable principles and methods. *See, e.g.*, EX2001, ¶¶6-

18, 21–25, 27–95, and 97–109. Further, the relied-upon facts and data are not those on which experts in this field would reasonably apply.

Petitioner further objects to Exhibit 2001 and Exhibit 2002 as not being relevant under F.R.E. 401-402, at least to the extent each is not relied upon in the Patent Owner Response, and also because any probative value is substantially outweighed by other considerations under F.R.E. 403, including unfair prejudice, confusion of the issues, and waste of time.

III. EXHIBIT 2003 – “PETITION CHALLENGING U.S. PATENT NO. 11,208,029, UNIFIED PATENTS, LLC V. TORCHLIGHT TECHNOLOGIES LLC IPR2022-01500, PAPER 1, SEPTEMBER 22, 2022”

Petitioner objects to Exhibit 2003 as inadmissible under F.R.E. 401-402 because any probative value is substantially outweighed by the potential confusion it injects into the record of this case. Exhibit 2002 purports to be a Petition in IPR2022-01500, which is a different proceeding.

Petitioner further objects to Exhibit 2003 under F.R.E. 901, 1002, 1003, and 37 C.F.R. § 42.61 because Patent Owner fails to provide the authentication required for this document, and the Exhibit is not self-authenticating under F.R.E. 902.

Petitioner objects to Exhibit 2003 as impermissible hearsay under F.R.E. 801 and 802 to the extent to which the out of court statements therein are offered for the truth of the matters asserted and constitute impermissible hearsay for which

Patent Owner has not demonstrated any exception or exclusion to the rule against hearsay. Accordingly, permitting Patent Owner to rely on this document would be misleading and unfairly prejudicial to Petitioner (F.R.E. 403).

IV. EXHIBIT 2005 – “COMPARISON OF HARBERS (EX. 1011) TO HARBERS ’172 (EX. 2004)”

Petitioner further objects to Exhibit 2005 under F.R.E. 901, 1002, 1003, and 37 C.F.R. § 42.61 because Patent Owner fails to provide the authentication required for this document, and the Exhibit is not self-authenticating under F.R.E. 902.

Petitioner objects to Exhibit 2005 as impermissible hearsay under F.R.E. 801 and 802 to the extent to which the out of court statements therein are offered for the truth of the matters asserted and constitute impermissible hearsay for which Patent Owner has not demonstrated any exception or exclusion to the rule against hearsay. Accordingly, permitting Patent Owner to rely on this document would be misleading and unfairly prejudicial to Petitioner (F.R.E. 403).

V. CONCLUSION

To the extent Patent Owner fails to correct the defects associated with the Challenged Evidence in view of Petitioner’s objections herein, Petitioner may file a motion to exclude the Challenged Evidence under 37 C.F.R. § 42.64(c).

Respectfully submitted,

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CERTIFICATE OF SERVICE (37 C.F.R. § 42.6(e))

I certify that the above-captioned **PETITIONER VOLKSWAGEN
GROUP OF AMERICA, INC.'S OBJECTIONS TO EVIDENCE** was served
in its entirety on June 8, 2023 upon the following parties via electronic mail:

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