

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 the following evidence:

- Exhibit 2006, “Supplemental Declaration of Matthew A. Turk, PhD”;
- Exhibit 2008, “Petition challenging U.S. Patent No. 9,995,551, Volkswagen Group of America, Inc. v. Torchlight Technologies LLC IPR2023-00318, Paper 2, December 22, 2022”;
- Exhibit 2009, “Declaration of Dr. Jiao, Volkswagen Group of America, Inc. v. Torchlight Technologies LLC IPR2023-00318, Exhibit 1003”;
- Exhibit 2010, “Jianzhong Jiao and Ben Wang, “Etendue Concern for Automotive Headlamp Using LEDs,” SPIE Proceedings Vol. 5187, (January 2004)”;
- Exhibit 2011, “Michael Bass, Handbook of Optics 3 RD Edition Volume II, (McGraw-Hill, 2010)”;
- Exhibit 2012, “Ben Wang and Jianzhong Jiao “Studies for Headlamp Optical Design Using LEDs,” SAE Technical Paper Series 2004-01-0434, (March 2004)”;
- Exhibit 2013, “Ben Wang and Jianzhong Jiao “Optical Transform

Limitations in Headlamp Photometric Performance,” SAE Technical Paper Series 2005-01-0861, (April 2005)”;

- Exhibit 2014, “LEDs Magazine “Major contributors in LED and lighting standards have led the SSL revolution,” Jianzhong Jiao February 2018”;
- Exhibit 2015, “Jianzhong Jiao and Ben Wang “High-Efficiency Reflector Optics for LED Forward Lighting,” SPIE Proceedings Vol. 6670, (September 2007)”;
- Exhibit 2016, “Navigant Consulting “Energy Saving Estimates of Light Emitting Diodes in Niche Lighting Applications” Building Technologies Program Office of Energy Efficiency and Renewable Energy U.S. Department of Energy (September 2008)”;
- Exhibit 2017, “PCT Publication No. WO 86/05147 to Flaaten”.

This evidence was filed by Patent Owner Yechezkal Evan Spero (“Patent Owner”) on August 16, 2023, with Patent Owner’s Response to Petition.

Petitioner’s Objections are timely filed under 37 C.F.R. § 42.64(b)(1), within five business days of the August 16, 2023, Patent Owner’s Response to Petition.

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 2006

Petitioner objects to Exhibit 2006 under F.R.E. 702 and 703, because Exhibit 2006 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.*, EX2006, ¶¶22–180, for example ¶¶22–24, 25, 26–38, 47–49, 50, 51–61, 62–68, 69–74, 74–90, 91–92, 93–126, 127–177, 178–180. Further, the relied-upon facts and data are not those on which experts in this field would reasonably apply.

Petitioner further objects to Exhibit 2006 as not being relevant under F.R.E. 401-402, at least to the extent it is not relied upon in the Patent Owner Response, *see, e.g.*, EX2006, ¶¶1–24, 45, 47–50, 91–93, 108, 122, 124–125, 154, 157, 159, 166, 176, 178–181, 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 2008 AND EXHIBIT 2009

Petitioner objects to Exhibit 2008 and Exhibit 2009 as inadmissible under F.R.E. 401-403 because each is not relevant to any argument in this proceeding and any probative value each may have is substantially outweighed by the potential confusion it injects into the record of this case. Exhibit 2008 purports to be the Petition in IPR2023-00318, and Exhibit 2009 purports to be Petitioner's Expert's

Declaration in IPR2023-00318. IPR2023-00318 is a different proceeding involving a different patent.

IV. EXHIBITS 2010-2017

Petitioner objects to Exhibits 2010-2016 as not being relevant under F.R.E. 401-402, at least to the extent they are 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. Indeed, Exhibit 2014 is not cited at all in the Patent Owner Response or Supplemental Turk Declaration, for example. And Exhibits 2010, 2011, 2013, 2015, and 2016 are not cited at all in the Patent Owner Response.

Petitioner further objects to Exhibits 2010-2016 under F.R.E. 901, 1002, 1003, and 37 C.F.R. § 42.61 because Patent Owner fails to provide the authentication required for these documents, and the Exhibits are not self-authenticating under F.R.E. 902.

Petitioner further objects to Exhibits 2010-2017 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 these documents would be misleading and unfairly prejudicial to Petitioner (F.R.E. 403).

Petitioner further objects to Exhibit 2011 under F.R.E. 106. This Exhibit appears to be an excerpt of a document and, therefore, is incomplete. Accordingly, Patent Owner objects to the use of Exhibit 2011 to the extent it does not include all statements or recorded parts that in fairness ought to be considered at the same time. F.R.E. 106.

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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Date: August 23, 2023

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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 August 23, 2023 upon the following parties via electronic mail:

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