

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.

YECHEZKAL EVAN SPERO  
Patent Owner.

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U.S. Patent No. 11,208,029 to Spero

Case No.: IPR2022-01586

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**PATENT OWNER'S OBJECTIONS TO EVIDENCE PURSUANT TO 37  
C.F.R. § 42.64(B)(1)**

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## **I. Introduction**

Patent Owner Yechezkal Evan Spero (“Patent Owner”), 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 1036** – “Declaration of Jianzhong Jiao, Ph.D., in Support of Petitioner’s Reply”
- **Exhibit 1038** – “Leighty, *et al.*, ‘Developing Technologies for Army Autonomous Land Vehicles (U),’ Leighty & Lane”
- **Exhibit 1039** – “Lowrie, *et al.*, ‘The Autonomous Land Vehicle (ALV) Preliminary Road-Following Demonstration,’ Lowrie, James, Thomas, Mark, Gremban, Keith, Turk, Matthew, Proceedings of SPIE, Vol. 579 Intelligent Robot and Computer Vision, (11 December 1985)”
- **Exhibit 1040** – “U.S. Patent. No. 5,426,294, to Kobayashi *et al.*, issued June 20, 1995”
- **Exhibit 1041** – “‘The International System of Units (SI),’ Bureau International des Poids et Mesures, 7<sup>th</sup> Edition (1998) (Excerpt)”
- **Exhibit 1042** – “Surface Vehicle Recommended Practice, Performance Requirement for Motor Vehicle Headlamps, J1383 (May

2018)”

- **Exhibit 1044** – “49 C.F.R. 571.108, Standard No. 108 (Up To date as of Nov. 3, 2023)”
- **Exhibit 1045** – “Terminology – Motor Vehicle Lighting, SAE J387 Nov87, The Engineering Society For Advancing Mobility Land Sea Air and Space (Revised Nov. 1987)”

This evidence was filed by Petitioner, Volkswagen Group of America, Inc. (“Petitioner”) on November 8, with Petitioner’s Reply to Patent Owner’s Response to Petition. Patent Owner’s Objections are timely filed under 37 C.F.R. § 42.64(b)(1), within five business days of the November 8, 2023 Petitioner’s Reply to Patent Owner’s Response to Petition. Patent Owner files these objections to provide notice to Petitioner and as a prelude to a motion to exclude, which the Patent Owner may file pursuant to 37 C.F.R. § 42.64(c).

## **II. Exhibit 1036**

Patent Owner objects to Exhibit 1036 to the extent it seeks to support arguments made in Petitioner’s Reply, which are not responsive to the Patent Owner’s Response. *See* 37 C.F.R. § 42.23(b) (“A reply may only respond to arguments raised in the corresponding opposition, patent owner preliminary response, patent owner response, or decision on institution.”); 37 C.F.R. § 42.104 (b)(5). Indeed, introduction of Exhibit 1036 at this stage of the proceedings

violates FRE 403.

### **III. Exhibits 1038 and 1039**

Patent Owner objects to Exhibits 1038 and 1039 as not relevant under FRE 401–403, at least to the extent they are not relied upon in the Petitioner’s Reply, and because any probative value is substantially outweighed by other considerations under FRE 403, including unfair prejudice, confusion of the issues, and waste of time. Indeed, Exhibits 1038 and 1039 are not even cited in the Petitioner’s Reply.

Patent Owner also objects to Exhibits 1038 and 1039 under FRE 801 and 802 as inadmissible hearsay to the extent that the out of court statements therein are offered to prove the truth of the matter asserted in the statements and such exhibits do not fall within any exception or exclusion to the rules against hearsay.

Patent Owner further objects to Exhibits 1038 and 1039 under FRE 901, 1002, 1003, and 37 C.F.R. § 42.61 as unauthenticated (to the extent that such documents are not self-authenticating) and violate the best evidence rule.

### **IV. Exhibit 1040**

Patent Owner also objects to Exhibit 1040 and the associated portions of Petitioner’s Reply as containing improper new evidence and arguments that should have been provided in the Petition. *See* 37 C.F.R. § 42.23(b) (“A reply may only respond to arguments raised in the corresponding opposition, patent owner

preliminary response, patent owner response, or decision on institution.”); 37 C.F.R. § 42.104 (b)(5). Indeed, introduction of Exhibit 1040 at this stage of the proceedings violates FRE 403.

**V. Exhibit 1041**

Patent Owner objects to Exhibit 1041 as not relevant under FRE 401–403, at least to the extent it is not relied upon in the Petitioner’s Reply, and because any probative value is substantially outweighed by other considerations under FRE 403, including unfair prejudice, confusion of the issues, and waste of time.

Patent Owner also objects to Exhibit 1041 and the associated portions of Petitioner’s Reply as containing improper new evidence and arguments that should have been provided in the Petition. *See* 37 C.F.R. § 42.23(b) (“A reply may only respond to arguments raised in the corresponding opposition, patent owner preliminary response, patent owner response, or decision on institution.”); 37 C.F.R. § 42.104 (b)(5). Indeed, introduction of Exhibit 1041 at this stage of the proceedings violates FRE 403.

Patent Owner further objects to Exhibit 1041 under FRE 801 and 802 as inadmissible hearsay to the extent that the out of court statements therein are offered to prove the truth of the matter asserted in the statements and it does not fall within any exception or exclusion to the rules against hearsay. Still further, Patent Owner objects to Exhibits 1041 under FRE 901 as unauthenticated to the

extent that it is not self-authenticating.

Moreover, Patent Owner objects to Exhibit 1041 under FRE 106 as incomplete to the extent that it does not include all statements that in fairness ought to be considered at the same time.

## **VI. Exhibit 1042**

Patent Owner objects to Exhibit 1042 as not relevant under FRE 401–403, at least to the extent it is not relied upon in the Petitioner’s Reply, and because any probative value is substantially outweighed by other considerations under FRE 403, including unfair prejudice, confusion of the issues, and waste of time. Indeed, Exhibit 1042 is not even cited in the Petitioner’s Reply.

Patent Owner also objects to Exhibit 1042 and the associated portions of Dr. Jiao’s Declaration as containing improper new evidence and arguments that should have been provided in the Petition or its supporting exhibits. *See* 37 C.F.R. § 42.23(b) (“A reply may only respond to arguments raised in the corresponding opposition, patent owner preliminary response, patent owner response, or decision on institution.”); 37 C.F.R. § 42.104 (b)(5). Indeed, introduction of Exhibit 1042 at this stage of the proceedings violates FRE 403.

Patent Owner further objects to Exhibit 1042 under FRE 801 and 802 as inadmissible hearsay to the extent that the out of court statements therein are offered to prove the truth of the matter asserted in the statements and it does not

fall within any exception or exclusion to the rules against hearsay. Still further, Patent Owner objects to Exhibits 1042 under FRE 901 and 37 C.F.R. § 42.61 as unauthenticated to the extent that it is not self-authenticating.

## **VII. Exhibits 1044 and 1045**

Patent Owner objects to Exhibits 1044 and 1045 as not relevant under FRE 401–403, at least to the extent they are not relied upon in the Petitioner’s Reply, and because any probative value is substantially outweighed by other considerations under FRE 403, including unfair prejudice, confusion of the issues, and waste of time. Indeed, Exhibits 1044 and 1045 are not even cited in the Petitioner’s Reply.

Patent Owner also objects to Exhibits 1044 and 1045 and the associated portions of Dr. Jiao’s Declaration as containing improper new evidence and arguments that should have been provided in the Petition or its supporting exhibits. *See* 37 C.F.R. § 42.23(b) (“A reply may only respond to arguments raised in the corresponding opposition, patent owner preliminary response, patent owner response, or decision on institution.”); 37 C.F.R. § 42.104 (b)(5). Indeed, introduction of Exhibits 1044 and 1045 at this stage of the proceedings violates FRE 403.

## **VIII. Conclusion**

Pursuant to 37 C.F.R. § 42.64(c), Patent Owner may seek to exclude the



Challenged Evidence unless Petitioner remedy the above-identified defects.

Respectfully submitted,

Dated: November 16, 2023

/ Andrew B. Turner /  
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**Certificate of Service Pursuant to 37 C.F.R. § 42.6(e)**

The foregoing **Patent Owner's Objections to Evidence** was served via electronic mail by the serving the following correspondence email addresses:

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