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Via E-Mail:jfitzsimmons-PTAB@sternekessler.com

Jason A. Fitzsimmons
Sterne, Kessler, Goldstein & Fox P.L.L.C.
1101 K Street, N.W.
Washington, D.C. 20005-3934

Re: Volkswagen Group of America, Inc., v. Yechezkal Evan Spero
Case IPR2022-01586
Our File No. TRCH0110IPR

Dear Mr. Fitzsimmons:

This letter is in response to the notice we received on August 23, 2023 in which you objected to certain evidence submitted in support of the Patent Owner's Response. As outlined below, we disagree with your arguments concerning the deficiency of the evidence.

As a preliminary matter, we note that as the objecting party, Petitioner bears the burden of establishing its entitlement to the relief it requests. Yet, Petitioner's notice, apart from parroting certain asserted Rules, sets forth no basis in support of the asserted objections. This is improper. See 37 C.F.R. § 42.64 ("The objection must identify the grounds for the objection with sufficient particularity to allow correction in the form of supplemental evidence.").

With regard to Exhibit 2006, the opinions provided in Dr. Turk's Supplemental Declaration were based upon: (1) his qualifications and professional experience and (2) the documents Dr. Turk cited and considered. (Ex. 2006 at ¶¶16-21; see *also* Ex. 2002.) Dr. Turk is a testifying expert pursuant to Federal Rules of Evidence ("FRE") 703 and he may therefore express opinions based on facts or data he has been made aware of or personally observed. To the extent you are implying that Dr. Turk's education or experience does not satisfy Petitioner's proposed level of skill in the art, then please review Petitioner's Expert's qualifying statement: "a higher level of education or skill might make up for less experience and vice versa." (Ex.

1003 at ¶42.) Your objections under FRE 702 and 703 are therefore inapplicable to Dr. Turk's Supplemental Declaration. See FRE 702 and 703.

Dr. Turk's Supplemental Declaration is relevant under FRE 401 and 402 because it identifies and explains technical issues that Petitioner's Expert failed to explain and therefore it has a tendency to make a fact more or less probable than it would be without the evidence; and the fact is of consequence in determining the action, and its admission is not otherwise prohibited. Nor does Dr. Turk's Declaration violate FRE 403. Accordingly, your objections under FRE 401, 402, and 403 are also inapplicable to Dr. Turk's Supplemental Declaration.

Regarding Exhibits 2008 and 2009, these Exhibits are relevant under FRE 401–403 because they demonstrate (and are evidence of) Petitioner's own admissions and contradictory statements and therefore have a tendency to make a fact more or less probable than it would be without the evidence. Indeed, the probative value of such evidence substantially outweighs any potential prejudice—to the extent there exists any. Accordingly, your objections under FRE 401–403 are inapplicable to Exhibits 2008 and 2009.

As to Exhibits 2010–2017, the Patent Owner responds to each of Petitioner's objections in turn. First, Patent Owner disagrees with the Petitioner's objection that Exhibits 2010–2016 are not relevant. Each of the cited exhibits contain information that are relevant to the instant case as they demonstrate the "State of the Art as of 2002," including "Regulations and Standards," "Design Tradeoffs," "Hardware," "Optical System," "Heat Management," "Packaging," and "Cost." (See Ex. 2006 at ¶¶25–38.) Nor do Exhibits 2010–2016 violate Rule 403. Accordingly, your objections under FRE 401–403 are inapplicable to Exhibits 2010 and 2016.

We also disagree with your objection to Exhibits 2010–2016 under FRE 901, 1002, 1003, and 37 C.F.R. § 42.61 as allegedly lacking authenticity. First, Dr. Turk provides testimony that exhibits are what they claim to be; and the list of exhibits (Ex. 2006 at 5) includes websites identifying where one may locate the exhibits. Further, each of the aforementioned exhibits is authentic under Rule 901(b) because their "appearance, contents, substance, internal patterns, [and/or] other distinctive characteristics" demonstrate that they bear all the earmarks of an authentic document. See FRE 901. Second, at least some—if not all—of these Exhibits are self-authenticating under Rule 902. See *e.g.*, FRE 902(5) and (6) (identifying "book[s], pamphlet[s], or other publication[s] purporting to be issued by a public authority," as well as "[p]rinted material purporting to be a newspaper or periodical" as self-authenticating); see also *Weingartner Lumber & Supply Co. v. Kadant Composites, LLC*, No. 08-181-DLB, 2010 WL 996473, at *7 n.12 (E.D. Ky.

Mar. 16, 2010) ("Publicly maintained records downloaded from a government website would likely be self-authenticating under Fed. R. Evid. 902(5)."). Not to mention that Exhibits 2010, 2012, 2013, 2014, and 2015 are authored by Petitioner's own expert, Mr. Jianzhong Jiao, and listed in his curriculum vitae Ex. 1004.

Relatedly, we further disagree with your objection to Exhibits 2010–2017 as impermissible hearsay under FRE 801 and 802 for several reasons. Under Rule 803 "[a] statement contained in a treatise, periodical, or pamphlet" "are not excluded by the rule against hearsay" "if: **(A)** the statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and **(B)** the publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice." See FRE 803. The above-mentioned exhibits are relied upon by Dr. Turk, Patent Owner's testifying expert, who, under Rule 703, may express opinions based on facts or data he has been made aware of or personally observed. (See Ex. 2001, Ex. 2002, and Ex. 2006.) Additionally, as mentioned above, at least some of these exhibits are authored by Petitioner's own expert, Mr. Jianzhong Jiao. (See Exs. 1004, 2010, 2012, 2013, 2014, and 2015.)

Finally, your objection to Exhibit 2011 under Rule 106 is without merit. Rule 106 provides that "[i]f a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at the time, of any other part—or any other writing or recorded statement—that in fairness ought to be considered at the same time." See FRE 106. Yet, Petitioner's objection does not identify "any other part – or any other writing or recorded statement – that in fairness ought to be considered at the same time." *Id.* Accordingly, Petitioner's objection based on Rule 106 is also without merit.

Very truly yours,

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/Andrew B. Turner/

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ABT/fea