

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’S OBJECTIONS TO EVIDENCE

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Patent Trial and Appeal Board
U.S. Patent and Trademark Office
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Petitioner, Volkswagen Group of America, Inc. (“Petitioner”), objects under the Federal Rules of Evidence (F.R.E.), 37 C.F.R. § 42.64(b)(1), and 37 C.F.R. § 42.23 to the admissibility of the reference to—and underlying content of—“(https://www.linkedin.com/in/evanspero/),” cited by Patent Owner, Yechezkal Evan Spero (“Patent Owner”), on December 20, 2023, on page 2 of Patent Owner’s Sur-Reply (Paper 20).

Petitioner’s Objections are timely filed under 37 C.F.R. § 42.64(b)(1), within five business days of the December 20, 2023 Patent Owner’s Sur-Reply. 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).

I. IDENTIFICATION OF GROUNDS FOR OBJECTIONS

Petitioner objects to the new evidence and new arguments related to Patent Owner’s attempt to re-define the parties agreed-upon POSA definition, including the reference to and citation of “https://www.linkedin.com/in/evanspero/”, which Patent Owner purports to be the ’029 patent’s inventor’s LinkedIn page. *See* Patent Owner’s Sur-Reply, 2; *see also id.*, 1–9. Such evidence and its underlying content is improper under 37 C.F.R. § 42.23(b), which states that “[a] sur-reply may only respond to arguments raised in the corresponding reply and may not be accompanied by new evidence other than deposition transcripts of the cross-examination of any reply witness.”

Furthermore, Patent Owner's attempt to introduce materially different theories not present in its Patent Owner Response—e.g., (1) that the agreed-upon POSA definition should be re-negotiated based on a purported level of skill of the '029 patent's inventor, or (2) that Dr. Jiao's testimony should be given little weight (*see generally* Patent Owner's Sur-Reply, 1–9)—is improper under § 42.23(b). To the extent Patent Owner's Sur-Reply itself is relied upon as evidence for these new arguments, Petitioner objects to it for the same reasons discussed below in view of the new evidence and argument related to the LinkedIn page.

Petitioner further objects to this new evidence as inadmissible under F.R.E. 401-403 because it is not relevant to any argument in this proceeding at least because the parties agree on the POSA definition in this case and this evidence is used by Patent Owner to advance a materially different theory. Further, any probative value each may have is substantially outweighed by the potential confusion it injects into the record of this case.

Petitioner further objects to this evidence under F.R.E. 901, 1002, 1003, and 37 C.F.R. § 42.61, because Patent Owner fails to provide the authentication required for the LinkedIn hyperlink and its underlying content, and the evidence is not self-authenticating under F.R.E. 902.

Petitioner further objects to this evidence 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 evidence would be misleading and unfairly prejudicial to Petitioner (F.R.E. 403).

Petitioner further objects to this evidence under F.R.E. 106. This evidence may include excerpts or modifications, and, therefore, is incomplete. Accordingly, Petitioner objects to the use of this evidence 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.

Should Patent Owner offer Mr. Spero's availability for deposition, Petitioner may reconsider its objections to the proffered evidence.

II. 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'S OBJECTIONS TO EVIDENCE** was served in its entirety on December 28, 2023, upon the following parties via electronic mail:

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