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.

_____

U.S. Patent No. 10,894,503 to Spero

Case No.: IPR2023-00197

_____

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 1051** – "Supplemental Declaration of Dr. Jianzhong Jiao"
- **Exhibit 1053** – "Transcript of the Deposition of Matthew A. Turk, Ph.D., in IPR2023-00315 regarding U.S. Patent No. 9,955,551"
- **Exhibit 1054** – "Transcript of the Deposition of Matthew A. Turk, Ph.D., in IPR2022-01586 regarding U.S. Patent No. 11,208,029"
- **Exhibit 1056** – "Model, G., 'Spatial Light Modulators: Processing Light in Real Time, *Optics and Photonics News*, pp. 17-21 (March 1997)"
- **Exhibit 1057 –** "U.S. Patent No. 6,132,072 to Turnbull *et al*."
- **Exhibit 1058 –** "U.S. Patent No. 5,754,217 to Allen"
- **Exhibit 1059 –** "U.S. Patent No. 6,195,136 to Handschy *et al*."
- **Exhibit 1062** – "U.S. Patent No. 4,907,044 to Schellhorn *et al*."
- **Exhibit 1063 – "**Leighty, *et al.*, "Developing Technologies for Army Autonomous Land Vehicles (U)," Army Engineer Topographic Labs, Fort Belvoir, October 1985 (accessible online at

https://apps.dtic.mil/sti/tr/pdf/ADA187972.pdf, last accessed October 30, 2023)"

- **Exhibit 1064** – "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 1065** – "Surface Vehicle Recommended Practice, Performance Requirement for Motor Vehicle Headlamps, J1383 (May 2018)"
- **Exhibit 1066** – "Standard No. 108; Lamps; reflective devices and associated equipment, 49 C.F.R. § 571.108 (November 3, 2023)"
- **Exhibit 1067** – "Terminology – Motor Vehicle Lighting, SAE J387 Nov. 87, The Engineering Society For Advancing Mobility Land Sea Air and Space (Revised Nov. 1987)"
- **Exhibit 1068 –** "The International System of Units (SI)," Bureau International des Poids et Mesures, 7th Edition (1998) (Excerpt)
- **Exhibit 1069 –** "Surface Vehicle Standard: Color Specification, SAE International, J578, February 2019"

- **Exhibit 1070 –** "Second Declaration of Matthew A. Turk, Ph.D. in IPR2023-00315 regarding U.S. Patent No. 9,955,551"

This evidence was filed by Petitioner, Volkswagen Group of America, Inc. ("Petitioner") on January 5, 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 January 5, 2024 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 1051

Patent Owner objects to Exhibit 1051, the associated portions of Petitioner's Reply, and the newly cited exhibits therein to the extent they seek to support arguments made in Petitioner's Reply, which are not responsive to the Patent Owner's Responses. *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). For example, Patent Owner objects to Exhibits 1056–1059 and 1062–1069, and the associated portions of Dr. Jiao's Supplemental Declaration (Exhibit 1051 at ¶¶15, 21, 23, 24, 42, 43, 51, 53, 55, 106, and 164) as containing improper new evidence and arguments that should have been provided in the Petition or its

supporting exhibits. *Id.* Indeed, introduction of Exhibit 1051, the associated portions of Petitioner's Reply, and the newly cited exhibits therein at this stage of the proceedings violates FRE 403.

III. Exhibits 1053 and 1054

Patent Owner objects to Exhibits 1053 and 1054 as inadmissible under FRE 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 1053 purports to be the transcript of the deposition of Dr. Turk in IPR2023-00315 regarding U.S. Pat. No. 9,955,551, and Exhibit 1054 purports to be the transcript of the deposition of Dr. Turk in IPR2022-01586 regarding U.S. Pat. No. 11,208,029, which are different proceedings involving different patents.

IV. Exhibit 1056

Patent Owner objects to Exhibits 1056 as not relevant and prejudicial under FRE 401–403, at least to the extent that 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 1056 is not even cited in the Petitioner's Reply.

Patent Owner also objects to Exhibit 1056 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.

Patent Owner further objects to Exhibit 1056 under FRE 901, 902, and 37 C.F.R. § 42.61 as unauthenticated (to the extent that such documents are not self-authenticating).

V. Exhibits 1057–1059 and 1062

Patent Owner objects to Exhibits 1057–1059 and 1062 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 1057–1059 and 1062 are not even cited in the Petitioner's Reply.

Patent Owner also objects to Exhibit 1057–1059 and 1062 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.

VI. Exhibits 1063 and 1064

Patent Owner objects to Exhibits 1063 and 1064 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 1063 and 1064 are not even cited in the Petitioner's Reply.

Patent Owner also objects to Exhibits 1063 and 1064 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 1063 and 1064 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.

VII. Exhibit 1065

Patent Owner objects to Exhibit 1065 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 1065 is not even cited in the Petitioner's Reply.

Patent Owner further objects to Exhibit 1065 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 Exhibit 1054 under FRE 901 and 37 C.F.R. § 42.61 as unauthenticated to the extent that it is not self-authenticating.

VIII. Exhibits 1066 and 1067

Patent Owner objects to Exhibits 1066 and 1067 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 1066 and 1067 are not even cited in the Petitioner's Reply.

IX. Exhibit 1068

Patent Owner objects to Exhibit 1068 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 further objects to Exhibit 1068 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 1068 under FRE 901 as unauthenticated to the extent that it is not self-authenticating.

Moreover, Patent Owner objects to Exhibit 1068 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.

X. Exhibit 1069

Patent Owner objects to Exhibit 1069 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 further objects to Exhibit 1069 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 Exhibit 1069 under FRE 901 and 37 C.F.R. § 42.61 as unauthenticated to the extent that it is not self-authenticating.

XI. Exhibit 1070

Patent Owner objects to Exhibit 1070 as inadmissible under FRE 401–403 because it 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 1070 purports to be the Second Declaration of Dr. Turk in IPR2023-00315 regarding U.S. Pat. No. 9,955,551, which is a different proceeding involving a different patent. Indeed, Exhibit 1070 is not even cited in either the Petitioner's Reply, or the supporting Declaration of Dr. Jiao.

XII. 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: January 12, 2024

/ 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 serving the following correspondence email addresses:

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