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July 20, 2023

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

Jason A. Fitzsimmons
Sterne, Kessler, Goldstein & Fox P.L.L.C.
1100 New York Avenue, N.W.
Washington, D.C. 20005-3934

Re: ***Volkswagen Group of America, Inc., v. Yechezkal Evan Spero***
Case IPR2023-00315
Our File No. TRCH0112IPR

Dear Mr. Fitzsimmons:

This letter is in response to the notice we received on July 6, 2023 in which you objected to certain evidence submitted in support of the Patent Owner's Preliminary Response. As outlined below, we disagree with your arguments concerning the deficiency of the evidence.

With regard to Exhibits 2001 and 2002, and as set forth in these Exhibits, the opinions provided in Dr. Turk's Declaration were based upon: (1) his qualifications and professional experience and (2) the documents Dr. Turk cited and considered. (Ex. 2001, ¶¶4-19, Ex. 2002.) Dr. Turk is a testifying expert pursuant to 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, ¶45.) Your objections under FRE 702 and 703 are therefore inapplicable to Dr. Turk's expert testimony. *See* FRE 702 and 703.

Dr. Turk's 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. Dr. Turk's Declaration is admissible relevant evidence under FRE 402, as it does not contradict the Constitution, statutes, or rules. Accordingly,

your objections under FRE 401, 402, and 403 are also inapplicable to Dr. Turk's expert testimony.

Regarding Ex. 2003, the Best Practices and FAQs for Filing Requests for Reexamination Compliant with 37 C.F.R. § 1.1510 and 1.915, PTAB, May 2010 is relevant under FRE 401 with respect to Patent Owner's particularity argument because it shows the USPTO's longstanding guidance regarding the requisite clarity and particularity of a patent challenge. Ex. 2003 is available at (https://www.uspto.gov/sites/default/files/patents/Best_Practices_and_FAQs_for_filing_reexaminations_5_10_10.pdf), which is a government website. *See Weingartner Lumber & Supply Co. v. Kadant Composites, LLC*, 2010 WL 996473 (E.D. Ky. 2010) ("Publicly maintained records downloaded from a government website would likely be self-authenticating under Fed.R.Evid. 902(5)."). Your statement that Ex. 2003 is not applicable to an IPR proceeding is misplaced. For example, the PTAB cites the same document to support its denial of institution in *Adaptics LTD* for lacking particularity. *See Adaptics LTD. v. Perfect Co*., IPR2018-01596, Paper 20 at 18 (PTAB March 6, 2019) (Informative). Ex. 2003 is admissible and relevant evidence under FRE 402, as it does not contradict the Constitution, statutes, or rules. Accordingly, your objections under FRE 401, 402, 403, 801, 802, 901, 1002, and 1003 are also inapplicable to Ex. 2003.

Exhibits 2004 and 2005 include markings, i.e., "IPR2023-00328" or "IPR2023-00335" establishing that these documents are available from governmental agencies such as the PTAB P-TACTs website. *See Weingartner Lumber & Supply Co. v. Kadant Composites, LLC*, 2010 WL 996473 (E.D. Ky. 2010) ("Publicly maintained records downloaded from a government website would likely be self-authenticating under Fed.R.Evid. 902(5)."). Exhibits 2004 and 2005 are relevant under FRE 401 with respect to Patent Owner's parallel petition argument because they illustrate the substantial overlap between Petitioner's redundant grounds, the substantial and unnecessary burden on the Board and the patent owner, and the resultant fairness, timing, and efficiency concerns, regardless of the stage of the proceeding. Exhibits. 2004 and 2005 are admissible and relevant evidence under FRE 402, as they do not contradict the Constitution, statutes, or rules. Accordingly, your objections under FRE 403 are also inapplicable to Exhibits 2004 and 2005.

Very truly yours,

/Andrew B. Turner/

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