

IN THE 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 IPR2023-00328
U.S. Patent No. 10,894,503

**PETITIONER VOLKSWAGEN GROUP OF AMERICA, INC.’S
OBJECTIONS TO EVIDENCE PURSUANT TO 37 C.F.R. § 42.64(B)(1)**

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P.O. Box 1450
Alexandria, VA 22313-1450

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	EXHIBIT 2001 – DECLARATION OF MATTHEW A. TURK, PH.D. AND EXHIBIT 2002 – CURRICULUM VITAE OF MATTHEW A. TURK, PH.D.	2
III.	EXHIBIT 2003 – BEST PRACTICES AND FAQs FOR FILING REQUESTS FOR REEXAMINATION COMPLIANT WITH 37 CFR 1.510 AND 1.915, PTAB, MAY 2010.....	3
IV.	EXHIBIT 2004 – PETITION CHALLENGING U.S. PATENT NO. 10,894,503; VOLKSWAGEN GROUP OF AMERICA, INC. V. YECHEZKAL EVAN SPERO, IPR2023-00197, PAPER 2, NOVEMBER 30, 2022	4
V.	EXHIBIT 2005 – PETITION CHALLENGING U.S. PATENT NO. 10,894,503; VOLKSWAGEN GROUP OF AMERICA, INC. V. YECHEZKAL EVAN SPERO, IPR2023-00335, PAPER 2, DECEMBER 23, 2022	4
VI.	CONCLUSION	5

I. INTRODUCTION

Petitioner Volkswagen Group of America, Inc. (“Petitioner”), 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 2001, the “Declaration of Matthew A. Turk, Ph.D.,”
- Exhibit 2002, the “Curriculum Vitae of Matthew A. Turk, Ph.D.,”
- Exhibit 2003, “Best Practices and FAQs for Filing Requests for Reexamination Compliant with 37 CFR 1.510 and 1.915, PTAB, May 2010;”
- Exhibit 2004, “Petition challenging U.S. Patent No. 10,894,503; Volkswagen Group of America, Inc. v. Yechezkal Evan Spero, IPR2023-00197, Paper 2, November 30, 2022;¹” and
- Exhibit 2005, “Petition challenging U.S. Patent No. 10,894,503, Volkswagen Group of America, Inc. v. Yechezkal Evan Spero, IPR2023-00335, Paper 2, December 23, 2022” (collectively, the “Challenged Evidence”).

¹ The exhibit listing in Patent Owner’s Preliminary Response identified the Petition filed in the IPR2023-003197 proceeding by the wrong paper number. In the -00197 proceeding, the Petition is labeled as “Paper 1.”

This evidence was filed by Patent Owner Yechezkal Evan Spero (“Patent Owner”) on April 19, 2023, with Patent Owner’s Preliminary Response.

Petitioner’s Objections are timely filed under 37 C.F.R. § 42.64(b)(1), within 10 business days of the July 17, 2023 Institution Decision. 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).

II. EXHIBIT 2001 – DECLARATION OF MATTHEW A. TURK, PH.D. AND EXHIBIT 2002 – CURRICULUM VITAE OF MATTHEW A. TURK, PH.D.

Petitioner objects to Exhibit 2001 under F.R.E. 702 and 703, because Exhibit 2001 includes statements and testimony from a witness who is not qualified as an expert. It also includes statements and testimony based on insufficient facts or data, and is not the product of reliable principles and methods. *See, e.g.*, EX2001, ¶¶23-136. Further, the relied-upon facts and data are not those on which experts in this field would reasonably apply.

Petitioner further objects to Exhibit 2001 and Exhibit 2002 as not being relevant under F.R.E. 401-402, at least to the extent each is not relied upon in the Patent Owner Response, and also because any probative value is substantially outweighed by other considerations under F.R.E. 403, including unfair prejudice, confusion of the issues, and waste of time.

III. EXHIBIT 2003 – BEST PRACTICES AND FAQs FOR FILING REQUESTS FOR REEXAMINATION COMPLIANT WITH 37 CFR 1.510 AND 1.915, PTAB, MAY 2010

Petitioner objects to Exhibit 2003 as not being relevant under F.R.E. 401-402, at least to the extent it is not relied upon in the Patent Owner Response, and also because any probative value is substantially outweighed by other considerations under F.R.E. 403, including unfair prejudice, confusion of the issues, and waste of time. Exhibit 2003 discussed procedures and standards for reexamination proceedings that are not applicable to the present *Inter Partes* Review proceeding.

Petitioner further objects to Exhibit 2003 under F.R.E. 901, 1002, 1003, and 37 C.F.R. § 42.61 because Patent Owner fails to provide the authentication required for this document, and the Exhibit is not self-authenticating under F.R.E. 902.

Petitioner objects to Exhibit 2003 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 document would be misleading and unfairly prejudicial to Petitioner (F.R.E. 403).

IV. EXHIBIT 2004 – PETITION CHALLENGING U.S. PATENT NO. 10,894,503; VOLKSWAGEN GROUP OF AMERICA, INC. V. YECHEZKAL EVAN SPERO, IPR2023-00197, PAPER 2, NOVEMBER 30, 2022

Petitioner objects to Exhibit 2004 as inadmissible under F.R.E. 401-403 because it is not relevant to any argument in this proceeding and any probative value Exhibit 2004 may have is substantially outweighed by the potential confusion it injects into the record of this case. Exhibit 2004 purports to be the Petition in IPR2023-00197, which is a different proceeding. Further, Patent Owner's only use of Exhibit 2004 was to support an argument for discretionary denial of institution of this proceeding. The institution of this proceeding has rendered that argument moot, meaning this exhibit is no longer being used for any purpose and is therefore irrelevant.

V. EXHIBIT 2005 – PETITION CHALLENGING U.S. PATENT NO. 10,894,503; VOLKSWAGEN GROUP OF AMERICA, INC. V. YECHEZKAL EVAN SPERO, IPR2023-00335, PAPER 2, DECEMBER 23, 2022

Petitioner objects to Exhibit 2005 as inadmissible under F.R.E. 401-403 because it is not relevant to any argument in this proceeding and any probative value Exhibit 2005 may have is substantially outweighed by the potential confusion it injects into the record of this case. Exhibit 2005 purports to be the Petition in IPR2023-00335, which is a different proceeding. Further, Patent Owner's only use of Exhibit 2005 was to support an argument for discretionary

denial of institution of this proceeding. The institution of this proceeding has rendered that argument moot, meaning this exhibit is no longer being used for any purpose and is therefore irrelevant.

VI. 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 VOLKSWAGEN
GROUP OF AMERICA, INC.'S OBJECTIONS TO EVIDENCE**
PURSUANT TO 37 C.F.R. § 42.64(B)(1) was served in its entirety on July 31,
2023 upon the following parties via electronic mail:

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