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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 IPR2023-00335
Our File No. TRCH0117IPR

Dear Mr. Fitzsimmons:

This letter is in response to the notice we received on July 31, 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.

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 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 at ¶¶4-19; 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 ¶43.) 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, and its admission is not otherwise prohibited. 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 401-402 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*, 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)."). Your statement that Ex. 2003 is not applicable to an IPR proceeding is misplaced. The PTAB has previously cited the same document to support its denial of institution for lacking particularity. *See e.g., Adaptics LTD. v. Perfect Co*., IPR2018-01596, Paper 20 at 18 (PTAB Mar. 6, 2019) (Informative). Ex. 2003 is admissible and relevant evidence under FRE 402, as it does not contradict the Constitution, statutes, or rules. Nor does Ex. 2003 violate Rule 403. Accordingly, your objections under FRE 401, 402, 403, 801, 802, 901, 1002, 1003, and 37 C.F.R. § 42.61 are also inapplicable to Ex. 2003.

As to Exhibits 2004 and 2005, these Exhibits are relevant under FRE 401-402 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 also admissible and relevant evidence under FRE 401-403 as their admission is not otherwise prohibited. Accordingly, your objections under FRE 401-403 are inapplicable to Exhibits 2004 and 2005.

Very truly yours,

/Andrew B. Turner/

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