

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VOLKSWAGEN GROUP OF AMERICA, INC. and
PORSCHE CARS NORTH AMERICA, INC.,
Petitioner

v.

YECHEZKAL EVAN SPERO,
Patent Owner

Case IPR2023-00335¹
U.S. Patent No. 10,894,503

**PETITIONER VOLKSWAGEN GROUP OF AMERICA, INC.’S REPLY TO
PATENT OWNER’S OPPOSITION TO PETITIONER’S MOTION TO
EXCLUDE EVIDENCE UNDER 37 C.F.R. § 42.64(c)**

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Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
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¹ Porsche Cars North America, Inc., which filed a petition in IPR2023-01321, has been joined as a party to this proceeding

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I. INTRODUCTION

Patent Owner alleges that “granting Petitioner’s motion would open the floodgates to expert exclusion gamesmanship at the PTAB.” Opp., 15. But admitting testimony from a declarant unqualified under the law and FRE—as explained in *Kyocera*—is the real risk. This Motion to Exclude is simple. The parties agreed that a POSA required “2 years of *industry experience in the area of automotive lighting and lighting-control systems*.” Pet., 6; Institution Decision (“DI”), 7-8; POR, 20 (emphasis added unless noted); EX1003, ¶¶38, 42 (Dr. Jiao applied his analysis from a perspective of a POSA). Patent Owner did not dispute the definition despite the invitation to do so. Dr. Turk *himself* accepted this level of skill. Yet Dr. Turk falls short of this skill level, so his testimony is not admissible under *Kyocera* and the FRE.

Patent Owner’s disingenuous assertion that the POSA definition was a “new” argument in Petitioner’s Reply is belied by its acknowledgement—*before filing its POR*—that it understood Petitioner’s challenge: “*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.)*” EX2027, 1; Opp., 6 n.1 (“Petitioner first suggested its new narrow interpretation of the POSA level in its objection to

Ex.2001 on July 31, 2023 . . .”). Patent Owner expressly declined the Board’s invitation to explain “[i]f Patent Owner believes that use of . . . Petitioner’s” POSA definition “as modified would affect the analysis” of the proceeding (DI, 8; POR, 20 (citing DI, 8)). Patent Owner cannot now feign that it “understood” its POPR POSA definition was “effectively incorporated” in Petitioner’s definition. Opp., 3.

Patent Owner now veers in a new direction, alleging the “seminal” issue is “whether optics and sensing/imaging experience fall within the ‘area of automotive lighting and lighting controls.’” *Id.*, 1. But this diversion misses the mark entirely. Whether other technologies may also be related to the POSA level does *not* eliminate the agreed-upon requirement here that a POSA have “2 years of industry experience in the area of automotive lighting and lighting-control systems.” DI, 7-8. Of course, in “adaptive motor vehicle headlights with light sources/clusters” (MTE, 4 (cited by Opp., 2)), experience in optics and sensing/imaging—within the context automotive lighting and lighting control—may aid a POSA’s knowledge and understanding. But optics and sensing/imaging from Dr. Turk’s experience with computer vision/facial recognition (EX2001, ¶¶7, 10, 12, 15-16; EX2006, ¶¶9-10, 12, 14, 17-20; EX2002, 4) does *not* satisfy (or replace) the agreed-upon industry experience in “automotive lighting and lighting-control systems.” Pet., 6.

II. ARGUMENT

A. Patent Owner did not dispute the Petition’s POSA definition, the agreed-upon definition has not changed, and there is no credible argument that Dr. Turk’s testimony is admissible.

Patent Owner again acknowledges it did not dispute the POSA definition (Opp., 3-4); and Dr. Turk accepted the skill level (EX1052, 20:5-22:2) he does not meet. So his declarations must be excluded. *Kyocera Senco Indus. v. Int’l Trade Comm’n*, 22 F.4th 1369, 1375-78 (Fed. Cir. 2022). *Kyocera’s* “sliding scale” required experience specific to power nailer design, (*id.* at 1376-78); just as here it requires specific industry experience in automotive lighting and lighting-control systems.

Arguing merits, not admissibility, Patent Owner claims that Petitioner’s Reply provides a “new interpretation of its proposed POSA skill level, one that requires specific industry experience.” Opp., 4 (emphasis in Opp.). The Board need look no further than the Petition itself, which plainly required “2 years of industry experience in the area of automotive lighting and lighting-control systems,” Pet., 6, to find that Patent Owner’s argument is demonstrably false.

Of course there is no requirement that Dr. Turk have the “same exact CV as Dr. Jiao.” Opp., 4; *cf. Tecossl, Inc. v. Avid Labs, LLC*, 5:19-cv-00043, Dkt. No. 183 (E.D. Ky. Feb. 9, 2024) (granting motion to exclude proffered expert because his “substantially impressive resume” could not overcome that he lacked the

technical experience required of a POSA). But as Patent Owner again acknowledges, Dr. Turk has no experience with a vehicle headlamp company, an LED (or any other light source) company, or lighting design, or awards/patents for a vehicle forward lighting system. Opp., 4-5. These are *not pre-requisites* of a POSA here, despite Patent Owner's attempt to paint them as "new" additions to the POSA definition. *See id.* But their absence, along with Dr. Turk's unfamiliarity with key terms and authorities, revealed in his direct and cross-examination testimony, is *further evidence* he is not a POSA. Tellingly, Patent Owner did not even attempt to rebut Petitioner's discussion of Dr. Turk's inability to answer basic questions about adjusting headlight beam patterns according to different driving conditions during his deposition. MTE, 8-9. And while Dr. Jiao of course acknowledged that optics and imaging/sensing may be part of adaptive automotive lighting, it does not follow that any person with generic experience in optics and imaging/sensing is qualified to opine on a POSA's understanding of "automotive lighting and lighting-control systems." *See id.*, 3-4. Patent Owner fails *its burden* of establishing Dr. Turk's testimony as admissible; so it must be excluded.

Finally, Dr. Turk's alleged experience on an "illumination portion" of a Martin Marietta project (MTE, 6-7) still falls short—Patent Owner even *admits* that "adaptive automotive lighting, such as that claimed in the '503 Patent is more sophisticated than just illumination," Opp., 13, as in Dr. Turk's project.

B. Patent Owner waived its right to dispute the POSA definition.

Contrary to Patent Owner's position, Opp., 5-6, it did waive its right to contest the POSA definition by not doing so in its POR. Patent Owner made *no attempt* to distinguish Petitioner's controlling authorities. MTE, 14-15 (citing *Intuitive Surgical, Finjan, In re Nuvasive*, CTPG, p. 52). Patent Owner argues the Reply provided a "new" POSA interpretation in order to make its *own* new POSA arguments. Opp., 4-5. Petitioner's position has never changed. So Patent Owner's new arguments were waived. "Patent Owner could have, and should have, raised this [POSA-definition] argument in its Patent Owner Response," if it was disputed. *Intuitive*, IPR2020-00650, Paper 33, at 33 n.4 (citing 37 C.F.R. § 42.23(b)). But Patent Owner agreed with Petitioner and the Board. POR, 20; EX1052, 20:5-22:2.

C. Patent Owner misrepresents Petitioner's POSA considerations.

Again arguing merits and not admissibility, Patent Owner makes numerous unsupported assertions about what Petitioner allegedly "did not consider" for the POSA definition. Opp., 8-10. But Petitioner/Dr. Jiao, listed myriad considerations for the POSA skill level. EX1003, ¶¶27-30. And Dr. Jiao provided plenty of context on the patent's purpose, education of those in the field, and types of technological problems and solutions faced by those in the art. *Id.*, ¶¶42-59. Dr. Jiao also confirmed that the relevant "experience" is industry experience in the area of "automotive lighting and lighting control." EX2026, 50:22-52:19.

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 REPLY TO PATENT OWNER'S OPPOSITION TO PETITIONER'S MOTION TO EXCLUDE EVIDENCE UNDER 37 C.F.R. § 42.64(c)** was served in its entirety on April 9, 2024, upon the following parties via electronic mail:

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