

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNITED SERVICES AUTOMOBILE ASSOCIATION,
Petitioner,

v.

AUTO TELEMATICS LTD.,
Patent Owner.

Case IPR2023-00518
Patent 9,633,487

Case IPR2023-00768
Patent 10,192,369

**PATENT OWNER'S RESPONSE TO PETITIONER'S OBJECTIONS TO
EVIDENCE UNDER 37 C.F.R. § 42.64**

In accordance with 37 C.F.R. § 42.64(b)(2), Patent Owner Auto Telematics, Ltd. (“AT” or “Patent Owner”) hereby responds to Petitioner’s Objections to Evidence.

On February 6, 2024, Petitioner United Services Automobile Association (“USAA” or “Petitioner”) served objections to exhibits AT-2001, AT-2002, and AT-2003 filed with Patent Owner’s Responses (Pap. 18 in IPR2023-00518 and Pap. 15 in IPR2023-00768) to USAA’s Petition for *Inter Partes* Reviews of Patent 9,633,487 B2 and 10,192,369, respectively, citing certain Federal Rules of Evidence (“FRE”) and 37 C.F.R. § 42.64(b)(1). Petitioner objects to a portion of Exhibit AT-2001, the Declaration of Christopher K. Wilson (“Wilson Declaration”), as well as the entirety of Exhibit AT-2002 (“Ogawa”) and Exhibit AT-2003 (the “NHTSA EDR Q&As”). Specifically, Petitioner objects to AT-2001 for relying on alleged inadmissible evidence for the portions of AT-2001 discussing AT-2002 and AT-2003, which exhibits Petitioner objects to under FRE 401, 402, 403, and 602 or 901.

Patent Owner serves Petitioner with this response to Petitioner’s objections. Patent Owner’s response to Petitioner’s objections is timely under 37 C.F.R. § 42.64(b)(2).

I. EXHIBIT AT-2001 – DECLARATION OF MR. CHRISTOPHER K. WILSON

Petitioner alleges that the “Wilson Declaration fails to explain where exhibits [AT-2002 and AT-2003]¹ were found, provide evidence that the documents would have been available to one skilled in the art, describe when and where the documents were published, or verify that the exhibits are true and correct copies of the documents.” Pap. 19, 1, note 1 in IPR2023-00518, and Pap. 16, 1, note 1 in IPR2023-00768. To the extent that AT-2002 and AT-2003 require any authentication, Patent Owner provides further response in *infra* sections II and III and submits that AT-2001 does not rely on inadmissible evidence.

Specifically, AT-2001 is not required to explain that Ogawa (AT-2002) was incorporated by reference in Petitioner’s own exhibit USAA-1013 (Patent 8,682,399 B2 to “Rabu”), which lists Ogawa on its face, and for which Information Disclosure Statement (“IDS”), dated December 15, 2009, was filed at the United States Patent and Trademark Office (“USPTO”). These facts alone make clear that Ogawa would have been available to one skilled in the art. *See* AT-2004. However, out of an abundance of caution, Patent Owner submits supplemental evidence AT-2004, AT-2005, and AT-2006. *See infra* sections II and IV.

¹ The subject exhibit numbers were identified as AT-2001 and AT-2002 in footnote 1 of Petitioner’s Objections. Patent Owner believes that Petitioner meant to identify these exhibits as AT-2002 and AT-2003.

Petitioner objects to AT-2001 to the extent that Patent Owner's expert relies on AT-2002 in the Wilson Declaration. Pap. 19, 1-2 in IPR2023-00518, and Pap. 16, 1-2 in IPR2023-00768. Ogawa, however, provides relevant and probative evidence as to the "motion spectra associated with different types of motion" and support as to the reliability of using such motion to identify the human activity modes of the disclosure in USAA-1013, upon which Patent Owner's expert opines. *See* USAA-1013 at 7:54-60; AT-2001, ¶¶92, 129. *See infra* section II. Indeed, Ogawa provides the primary, if not the exclusive, support for the disclosure of USAA-1013.

Further, according to *infra* section III, Patent Owner provides authentication of AT-2003 as required by FRE 901 or FRE 602 and further clarification of its relevance and probative value. Patent Owner provides as supplemental evidence AT-2006 in response to Petitioner's objection to AT-2003. *See infra* sections III and IV.

Therefore, and in consideration of the evidence below, Petitioner's objections to AT-2001 should be rejected.

II. EXHIBIT AT-2002 ("Ogawa")

1. AT-2002 is Authenticated Under FRE 901 or FRE 602

The Ogawa article, AT-2002, which published in November 2001 and was available at the 22nd Asian Conference on Remote Sensing at the Centre for Remote Imaging of the National University of Singapore (November 5-9, 2001), is

Petitioner's own evidence and is self-authenticating as being incorporated by reference in its entirety in Petitioner's exhibit USAA-1013. USAA-1013, 7:56-60. Ogawa is also listed on the face of exhibit USAA-1013 under "OTHER PUBLICATIONS" of "References Cited." USAA-1013, 1, item (56). Patent Owner, in Wilson's Declaration (AT-2001), merely responded to the disclosure of Ogawa that Petitioner filed under USAA-1013 with the Petition. Further, as filed with Patent Owner's Response, Patent Owner merely put Ogawa on the record as labeled exhibit AT-2002 for easier reference by the Board. As such, Ogawa is authenticated given Petitioner's reliance on USAA-1013.

Out of an abundance of caution, however, Patent Owner submits as supplemental evidence AT-2004, the IDS listing the filing of Ogawa in the USPTO file wrapper of Rabu for the USAA-1013 exhibit. Patent Owner also submits as supplemental evidence AT-2005, a declaration by librarian Mary Longchamp of Patent Owner's Counsel, Whiteford, Taylor & Preston LLP, providing an explanation of where exhibit AT-2002 was found, describing when and where the document was published, and verifying that the exhibit is a true and correct copy of the document. Further, Patent Owner also submits as supplemental evidence AT-2006, a declaration by expert witness Christopher K. Wilson, verifying that the

exhibit is a true and correct copy of the document that he reviewed as evidence referenced in his Declaration AT-2001.

2. AT-2002 is Relevant Under FRE 401 and Admissible Under FRE 402

Ogawa (AT-2002) is cited in USAA-1013 generally for “[e]xamples of motion spectra associated with different types of motion including walking, buses, cars, and trains” (USAA-1013, 7:56-60), which is the very topic that Rabu purports to address and is the very topic upon which Petitioner relies for much of its motivation to combine. *See, e.g.*, IPR2023-00518 Pap. 3, at 8, 10-12, 14-15, 23-24, 28; IPR2023-00768 Pap. 2, at 8-9, 12-15, 31-32, 35 (citing, *e.g.*, USAA-1013, 8:13-10:42, FIGs. 5, 7, 8). At least because Ogawa is cited on the face of USAA-1013 and is incorporated by reference in USAA-1013 in its entirety (*see supra* section II.1), the disclosure of Ogawa *is* effectively the disclosure of USAA-1013, Petitioner’s own evidence. As such, Ogawa is relevant given Petitioner’s reliance on USAA-1013.

Given that Petitioner asserts that the disclosure of Ogawa is “irrelevant” (*see* Pap. 19, at 2 in IPR2023-00518; Pap. 15, at 2 in IPR2023-00768), Petitioner thus appears to agree with Patent Owner that such motion spectra are irrelevant with respect to the *Inter Partes* Review of Patents 9,633,487 B2 and 10,192,369 B2, because USAA-1013 discusses and relies upon such motion spectra throughout its

disclosure. *See, generally*, USAA-1013. Thus, Petitioner appears to be stating that USAA-1013 is similarly irrelevant under FRE 401 and therefore inadmissible under FRE 402 to the extent that it relies on Ogawa. Therefore, to the extent that USAA-1013 discusses and relies on the disclosure of Ogawa, USAA-1013 would be equally as objectionable.

3. AT-2002 is Admissible Under FRE 403

For similar reasons as stated in *supra* section II.2, Ogawa is probative given Petitioner's reliance on USAA-1013. To the extent that USAA-1013 relies on Ogawa, if Petitioner maintains that, under FRE 402, Ogawa "is confusing, of minimal probative value, outweighed by prejudice, and/or a waste of time and therefore inadmissible under FRE 403" (Pap. 19, at 2 in IPR2023-00518; Pap. 15, at 2 in IPR2023-00768), Petitioner is alleging the same regarding USAA-1013. Thus, USAA-1013 would be equally as objectionable.

Simply, Petitioner cannot assert that Ogawa is irrelevant and lacks probative value while at the same time arguing that USAA-1013, which primarily relies on Ogawa for support, is nonetheless relevant, probative and can form the basis for Petitioner's invalidity assertions. As such, Petitioner's objections to AT-2002 should be rejected.

III. EXHIBIT AT-2003

1. AT-2003 is Authenticated Under FRE 901 or FRE 602

Patent Owner serves Exhibit AT-2006 as supplemental evidence in response to Petitioner's objection to Exhibit AT-2003. AT-2006 is a Declaration by Christopher K. Wilson, dated February 19, 2024, attesting to the authenticity of a publicly available webpage providing a National Highway Traffic Safety Administration (NHTSA) document titled "EDR Q&As," which is available as a PDF document on a United States Government website for the NHTSA. AT-2006 explains where Mr. Wilson found exhibit AT-2003, when and where the document was published, and that the document is a true and correct copy of the document as inspected by Mr. Wilson. AT-2006 further provides evidence of an authenticated webpage from the Internet Archive that establishes that AT-2003 was publicly accessible and available for public download. The authenticated document is dated on the face of the document on page 11, stating "Last Updated: August 11, 2006."

2. AT-2003 is Relevant, Probative, and Admissible Under FRE 402 and 403

AT-2003, providing automotive "black box" (or "Event Data Recorder") U.S. Government regulations at the time of the inventions of the '487 and '369 patents, provides relevant background for the invention demonstrating the importance of automotive black box functionality, including mandates for collecting certain types

of data from a vehicle for transportation safety purposes. *See* AT-2006. AT-2003 provides background for responding in part to Petitioner's allegation of obviousness over Petitioner's exhibits USAA-1005 (WO 2010/042545 A2 to "Curry," disclosing phone call handling) and USAA-1013 (disclosing phone holder and holder motion status) and is thus relevant and admissible under FRE 402. Such automotive black box functionality was introduced in the background section of the '487 and '369 patents as an impetus for the inventions. *See* USAA-1001 at col. 1-2 (in both IPR2023-00518 and IPR2023-00768). Even Petitioner's own evidence in exhibit USAA-1005 discusses the relevance of, and implies the probative value of, Government regulations. *See* USAA-1005, 2:9-21.

Therefore, Petitioner's objections to AT-2003 should be rejected.

IV. UPDATED EXHIBIT LIST

Patent Owner's Exhibit List is updated as follows, adding AT-2004, AT-2005, and AT-2006 with this Response to Petitioner's Objections.

EXHIBIT LIST	
AT-2001	Declaration of Christopher K. Wilson
AT-2002	Ogawa, A. et al., <i>Identification of Human Activity Modes with Wearable Sensors for Autonomous Human Positioning System</i> , 22 nd Asian Conference on Remote Sensing, Centre for Remote Imaging, Sensing and Processing (CRISP), National University of Singapore, Singapore Institute of Surveyors and Valuers (SISV), Nov. 5-9, 2001, Singapore, 4 pages.
AT-2003	National Highway Traffic Safety Administration, EDR Q&As, NHTSA.GOV, August 11, 2006, https://www.nhtsa.gov/sites/nhtsa.gov/files/edr_qas_11aug2006.pdf (last visited January 29, 2024), archived at https://web.archive.org/web/20211125084042/https://www.nhtsa.gov/sites/nhtsa.gov/files/edr_qas_11aug2006.pdf (first archived November 25, 2021), 11 pages.
AT-2004	List of References Cited by Applicant and Considered by Examiner, considered July 17, 2013 and posted July 23, 2013, from Information Disclosure Statement (IDS), filed December 15, 2009, in USPTO file wrapper of Patent Application 12/638,454.
AT-2005	Authentication Declaration of Mary Longchamp for AT-2002
AT-2006	Authentication Declaration of Christopher K. Wilson for AT-2002 and AT-2003

V. CONCLUSION

All alleged shortcomings of the evidence raised by Petitioner in its objections have been fully addressed by the above-described supplemental evidence. This supplemental evidence is being served within ten business days of the Service of Petitioner's objections and, therefore, is timely under 37 C.F.R. § 42.64(b)(2).

Further, Patent Owner reserves its rights to file a motion to exclude USAA-1013, to which Patent Owner objects, under 37 C.F.R. § 42.64(c).

Respectfully submitted,

Dated February 20, 2024

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CERTIFICATE OF SERVICE

Pursuant to 37 CFR § 42.6(e), the undersigned certifies that on February 20, 2024, a complete and entire copy of this Response to Petitioner's Objections to Evidence was provided by email, to the Petitioner, by serving the correspondence addresses of record as follows:

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