UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Mercedes-Benz USA, LLC,
Petitioner,

v.

Yechezkal Evan Spero,
Patent Owner.

Case No. IPR2023-01026
Patent 10,894,503

PETITIONER'S OBJECTIONS TO EVIDENCE PURSUANT TO 37 C.F.R. § 42.64(B)(1)

Filed on behalf of Petitioner:
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I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner Mercedes-Benz USA, LLC ("Petitioner") asserts the following objections to the below exhibits submitted by Patent Owner Yechezkal Evan Spero ("Patent Owner") with its Patent Owner's Preliminary Response ("Preliminary Response") in this *inter partes* review. As required by 37 C.F.R. § 42.62, Petitioner's objections apply the Federal Rules of Evidence ("F.R.E."). These objections apply equally to Patent Owner's reliance on these exhibits in any subsequently filed documents.

- EX2001, the "Declaration of Mathew A. Turk, PhD";
- EX2002, the "Curriculum Vitae of Mathew A. Turk, PhD";
- EX2003, "Best Practices and FAQs for Filing Requests for Reexamination Compliant with 37 CFR 1.510 and 1.915, PTAB, May 2010";
- EX2006, "U.S. Published Patent Application US2003/0137849A1 to Alden, Prosecution History in the U.S. Patent and Trademark Office";

II. OBJECTIONS

A. Exhibits 2001-2002

Petitioner objects to Exhibit 2001 under F.R.E. 702 and 703, because the testimony is not based on sufficient facts or data, is not the product of reliable principles and methods, and does not reflect a reliable application of the principles and methods to the facts of the case. *See e.g.*, EX2001, ¶¶23-70. Further, the facts

and data that the declarant relied upon are not those on which experts in this field would reasonably rely. Petitioner also objects to Exhibit 2001 under F.R.E. 602 to the extent that the declarant's testimony is not based on his own personal knowledge. *See e.g.*, EX2001, ¶40.

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

B. Exhibit 2003

Petitioner objects to Exhibit 2003 because it is not relevant under F.R.E. 401-402, at least to the extent it is not relied upon in the Patent Owner Response. Petitioner also objects to Exhibit 2003 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. Petitioner further objects to Exhibit 2003 under F.R.E. 901 because the Exhibit is not self-authenticating under F.R.E. 902 and Patent Owner fails to provide the authentication required for this document.

Petitioner also objects to Exhibit 2003 under F.R.E. 801 and 802 because the out of court statements contained in Exhibit 2003 are inadmissible hearsay to the extent they are offered for the truth of the matters asserted and Patent Owner has not demonstrated any exception or exclusion to the rule against hearsay applies here. Permitting Patent Owner to rely on this document would be misleading and unfairly prejudicial to Petitioner under F.R.E. 403.

C. Exhibit 2006

Petitioner objects to Exhibit 2006 because it is not relevant under F.R.E. 401-402, at least to the extent that it is not relied upon in the Patent Owner Response. Petitioner also objects to Exhibit 2006 because any probative value of this exhibit is substantially outweighed by other considerations under F.R.E. 403, including unfair prejudice, confusion of the issues, and waste of time.

Petitioner further objects to Exhibit 2006 because the out of court statements cited by Patent Owner from Exhibit 2006 are inadmissible hearsay under F.R.E. 801 and 802 and hearsay within hearsay under F.R.E. 805 to the extent they are offered for the truth of the matters asserted and Patent Owner has not demonstrated any exception or exclusion to the rule against hearsay applies here. *See, e.g.*, EX2006, 39. Permitting Patent Owner to rely on this document would be misleading and unfairly prejudicial to Petitioner under F.R.E. 403. Petitioner also objects to this exhibit under F.R.E. 901 as Patent Owner has failed to show that the

documents included in this exhibit, such as the document cited by Patent Owner, are authentic or self-authenticated under F.R.E. 902. *See e.g.*, EX2006, 39.

III. CONCLUSION

These objections are timely filed under 37 C.F.R. § 42.64(b)(1), within 10 business days of the Institution Decision, which was issued on January 17, 2024. To the extent Patent Owner fails to correct the defects associated with the challenged exhibits 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).

Dated: January 31, 2024

Respectfully submitted,

/s/ Celine J. Crowson

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Counsel for Petitioner Mercedes-Benz USA, LLC

Certificate of Service

The undersigned certifies that, in accordance with 37 C.F.R. § 42.6(e) and 37 C.F.R. § 42.105, the foregoing Petitioner's Objections to Evidence Pursuant to 37 C.F.R. § 42.64(b)(1) were served on January 31, 2024, by email at the following email address:

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/s/ *Stephanie McDonough*

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