UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLIED CONCEPTS INC.,

Petitioner

v.

KUSTOM SIGNALS INC.,

Patent Owner

Case: IPR2024-00884

U.S. Patent No. 11,703,602

PETITIONER'S OBJECTIONS TO PATENT OWNER'S EVIDENCE SERVED ON FEBRUARY 14, 2025

Petitioner Applied Concepts Inc. objects to the admissibility of the following evidence filed by Patent Owner Kustom Signals Inc. with its Patent Owner's Response (Paper No. 16) on the following grounds:

Declaration of Dr. Chris Bartone, including in view of Dr. Bartone CV where applicable **(Exhibits 2003, 2004)**	**FRE 402 (Relevance), FRE 403 (Prejudice), FRE 701 (Lay Witness Opinion), FRE 702 (Improper Testimony), FRE 602 (Personal Knowledge):** At least ¶¶ 39-41, 74, 83, 84, and 175 are inadmissible because Dr. Bartone fails to identify any basis to opine that the USPTO Examiner reviewed the '039 or '602 Patent claims "closely" or "very closely" or that the USPTO Examiner recognized "a very unique and innovative aspect of claim 1," nor has Dr. Bartone been presented as having, let alone shown to have, USPTO prosecution procedure expertise. Nor does Dr. Bartone have any way to know what the USPTO or the USPTO Examiner believed or was thinking during prosecution. In addition, Dr. Barton's discussion of the prosecution history is incomplete and/or prejudicial for failing to include one or more meaningful events during prosecution such as amendments to the claims to overcome USPTO Examiner rejections. Further, at least ¶¶ 60-84 and 123-147 are inadmissible to the extent Dr. Bartone seeks to provide legal opinions or other opinions based on an incorrect application of the law.

	FRE 402 (Relevance), FRE 403 (Prejudice): At least ¶¶ 19-20, 26-27, 38, 43, 46, 52, 57, 70, 78, 86, 91, 101, 114, 116-117, 121-123, 126-147, 202, and 228 are inadmissible due to Dr. Bartone's attempts to incorporate an "accuracy" limitation into the claims of the '039 Patent when no such accuracy limitation is recited in the claims. By attempting to inject an otherwise non-existent limitation into the claims, Dr. Bartone's opinions that rely on accuracy in attempt to overcome Petitioner's invalidity grounds are irrelevant and their probative value is outweighed by the prejudicial value and likelihood to cause unnecessary confusion. **FRE 402 (Relevance), FRE 403 (Prejudice), FRE 701 (Lay Witness Opinion), FRE 702 (Improper Testimony):** At least ¶¶ 95-96, 105-106, 123-124, 136, 153, 155-156, 161, 164, 168, 178, 194, 202, 206-207, 218, 228, and 239 are inadmissible because Dr. Bartone is not qualified, nor has he been shown to be have expertise, to provide expert testimony on vehicle fuel injectors and the simplicity or complexity of how vehicle fuel injectors may be used.
Excerpts of Grewal, Andrews, Bartone, Global Navigation Satellite Systems, Inertial Navigation, and Integration, Third Edition, Chapter 7 GNSS Data Errors, John Wiley, ISBN: 9 **(Exhibit 2007)**	**FRE 401, 402, and 403; 37 C.F.R. §§ 42.22(a)(2) and 42.104(b)(5):** This exhibit is cited to in ¶ 22 of Dr. Barton's Declaration (Exhibit 2003), but neither that paragraph nor this exhibit appears to have been cited in the Patent Owner Response, and thus

	this exhibit is irrelevant in support of the Patent Owner Response. **FRE 802 (Hearsay):** This exhibit cited in Dr. Bartone's Declaration (Exhibit 2003), including the publication date stated in the exhibit, are inadmissible hearsay. Each cite is offered "for its truth" because it is cited in support of the characterization of the purported state of the art at the time of the '602 Patent. Because Patent Owner has not identified any applicable hearsay exception for the cited basis in the exhibit, the exhibit constitutes inadmissible hearsay. To the extent the exhibit cites other references, such statements, if cited, constitute hearsay within hearsay. **FRE 901 (Authentication):** This exhibit is inadmissible for lack of proper authentication, because the Patent Owner has failed to produce any evidence to support a finding that the exhibit is what the Patent Owner claims it is.
Declaration of Kent Hayes **(Exhibit 2008)**	**FRE 402 (Relevance), FRE 403 (Prejudice), FRE 701 (Lay Witness Opinion), FRE 702 (Improper Testimony), FRE 602 (Personal Knowledge):** This exhibit is inadmissible because Mr. Hayes fails to identify any basis to opine that Exhibits A and B to his declaration are true and accurate copies, such as how they were obtained, where they were obtained from, when they were obtained, who obtained them or why

	they were obtained. Mr. Hayes also fails to identify any basis for opining that the standards "ensure that if a citation is issued by law enforcement, it is legally and technically defensible in court proceedings," or that the standards "are generally accepted in the United States as the standards that must be met to have a properly functioning, and therefore, saleable, radar-based speed system." Further, this exhibit is inadmissible to the extent Mr. Hayes seeks to provide expert opinions, legal opinions, or other opinions based on an incorrect application of the law. **FRE 402 (Relevance), FRE 403 (Prejudice):** This exhibit is inadmissible due to Mr. Hayes's attempts to incorporate limitations into the claims of the '602 Patent of a need to comply with standards when no such limitations are recited in the claims. By attempting to inject an otherwise non-existent limitation into the claims, Mr. Haye's opinions that rely on standards compliance in attempt to overcome Petitioner's invalidity grounds are irrelevant and their probative value is outweighed by the prejudicial value and likelihood to cause unnecessary confusion. **FRE 402 (Relevance), FRE 403 (Prejudice), FRE 701 (Lay Witness Opinion), FRE 702 (Improper Testimony):** This exhibit is inadmissible because Mr. Hayes is not qualified, nor has he been shown to be

	have expertise, to provide expert testimony on standards creation, interpretation, scope, or compliance.
U.S. Department of Transportation, National Highway Traffic Safety Administration, Technical Manual, Speed-Measuring Device Performance Specifications: Down-The-Road Radar Module, DOT HS 812 266, April 2016 **(Exhibit 2009)**	**FRE 802 (Hearsay):** This exhibit, including the publication date stated in the exhibit, are inadmissible hearsay. Each cite is offered "for its truth" because it is cited in support of the characterization of the purported state of the art at the time of the '602 Patent. Because Patent Owner has not identified any applicable hearsay exception for the cited basis in the exhibit, the exhibit constitutes inadmissible hearsay. To the extent the exhibit cites other references, such statements, if cited, constitute hearsay within hearsay. **FRE 901 (Authentication):** This exhibit is inadmissible for lack of proper authentication, because the Patent Owner has failed to produce any evidence to support a finding that the exhibit is what the Patent Owner claims it is.
U.S. Department of Transportation, National Highway Traffic Safety Administration, Technical Manual, Speed-Measuring Device Performance Specifications: Down-The-Road Radar Module, DOT HS 809 812, June 2004 **(Exhibit 2010)**	**FRE 802 (Hearsay):** This exhibit, including the publication date stated in the exhibit, are inadmissible hearsay. Each cite is offered "for its truth" because it is cited in support of the characterization of the purported state of the art at the time of the '602 Patent. Because Patent Owner has not identified any applicable hearsay exception for the cited basis in the exhibit, the exhibit constitutes inadmissible hearsay. To the extent the

	exhibit cites other references, such statements, if cited, constitute hearsay within hearsay. **FRE 901 (Authentication):** This exhibit is inadmissible for lack of proper authentication, because the Patent Owner has failed to produce any evidence to support a finding that the exhibit is what the Patent Owner claims it is.
Transcript of Deposition of Dr. Brian Anthony **(Exhibit 2013)**	Petitioner objects at least to the extent as objected to during the deposition.

Date: February 21, 2025

Respectfully submitted,

By: */Christopher J. Rourk/*
Christopher J. Rourk
USPTO Reg. No. 39,348
Counsel for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing PETITIONER'S OBJECTIONS TO PATENT OWNER'S EVIDENCE SERVED ON FEBRUARY 14, 2025 was served by filing the documents through the Patent Trial and Appeal Case Tracking System (P-TACTS) on February 21, 2025, and a courtesy copy was also served via electronic mail on the following:

sbrown@hoveywilliams.com
mwalters@hoveywilliams.com
litigation@hoveywilliams.com

Date: February 21, 2025

By: */Christopher J. Rourk/*
Christopher J. Rourk, Reg. No. 39,348