

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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BMW OF NORTH AMERICA, LLC  
BAYERISCHE MOTOREN WERKE AKTIENGESELLSCHAFT  
Petitioner

v.

THEODORE & ASSOCIATES, LLC  
Patent Owner

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Case IPR2017-01379  
Patent 9,045,163 B2

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**PATENT OWNER THEODORE & ASSOCIATES, LLC'S  
OBJECTIONS TO EVIDENCE UNDER 37 C.F.R. § 42.64(b)(1)**

Pursuant to 37 CFR C.F.R. § 42.64(b)(1), Patent Owner Theodore & Associates, LLC makes the following objections to documents and testimony submitted with Petitioners' May 16, 2018 Reply to Patent Owner Response:

<b>Evidence</b>	<b>Objections</b>
Petitioners' Reply to Patent Owner Response	Patent Owner objects under FRE 401–03 to the incorporation and restatement in the Petitioners' Reply of cross-examination testimony offered by Mr. Kunselman during the deposition conducted on April 16, 2018, to the extent that such testimony was objected to on the record for the reasons originally offered, including but not limited to the incorporation of the testimonial evidence on pages 1, 4, 5, 7–9, 13–15, 20–22, and 26 of the Petitioners' Reply, as well as any other characterizations of objected-to testimony.

<b>Evidence</b>	<b>Objections</b>
BMW-1050	<p>Patent Owner objects to the admission of this Exhibit under FRE 901(a). Petitioners have not submitted evidence sufficient to support a finding that the item/information is what Petitioners purport it to be.</p> <p>Patent Owner objects to the admission of this Exhibit under 37 CFR 42.123. This Exhibit is supplemental evidence submitted without the entry of a motion for permission to do so. Furthermore, this Exhibit is submitted more than one month after the date the trial is instituted. The Exhibit could have been obtained earlier, and consideration of the Exhibit would not be in the interests of justice.</p> <p>Patent Owner objects to the admission of this Exhibit under 37 CFR 42.23(b). This Exhibit supports an argument in the Petitioners' Reply (or the Supplemental Declaration of Donald D. Parker, which is an exhibit to the Petitioners' Reply) that is not responsive to an argument by the Patent Owner, and/or this Exhibit is belated evidence that could have been presented in a prior filing. (<i>See Office Patent Trial Practice Guide</i>, 77 Fed. Reg. 48756, 48767 (Aug. 14, 2012).)</p>
BMW-1051	<p>Patent Owner objects to the admission of this Exhibit under FRE 901(a). Petitioners have not submitted evidence sufficient to support a finding that the item/information is what Petitioners purport it to be.</p> <p>Patent Owner objects to the admission of this Exhibit under FRE 802 as inadmissible hearsay. Petitioners are offering the Exhibit for its truth, and the Exhibit does not fall within any exception to the hearsay rule.</p> <p>Patent Owner objects to the admission of this Exhibit under 37 CFR 42.123. This Exhibit is supplemental evidence submitted without the entry of a motion for permission to do so. Furthermore, this Exhibit is submitted more than one month after the date the trial is instituted. The Exhibit could have been obtained earlier, and consideration of the Exhibit would not be in the interests of justice.</p>

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	<p>Patent Owner objects to the admission of this Exhibit under 37 CFR 42.23(b). This Exhibit supports an argument in the Petitioners' Reply (or the Supplemental Declaration of Donald D. Parker, which is an exhibit to the Petitioners' Reply) that is not responsive to an argument by the Patent Owner, and/or this Exhibit is belated evidence that could have been presented in a prior filing. (<i>See Office Patent Trial Practice Guide</i>, 77 Fed. Reg. 48756, 48767 (Aug. 14, 2012).)</p>
BMW-1052	<p>Patent Owner objects to the admission of this Exhibit under FRE 901(a). Petitioners have not submitted evidence sufficient to support a finding that the item/information is what Petitioners purport it to be.</p> <p>Patent Owner objects to the admission of this Exhibit under FRE 106. This Exhibit purports to be excerpts from the <i>Dictionary of Automotive Engineering</i> (2d ed. 1998). Per FRE 106, Patent Owner requires the introduction of the remainder of the writing in view of the misleading impression Petitioners have created by taking matters out of context.</p> <p>Patent Owner objects to the admission of this Exhibit under 37 CFR 42.123. This Exhibit is supplemental evidence submitted without the entry of a motion for permission to do so. Furthermore, this Exhibit is submitted more than one month after the date the trial is instituted. The Exhibit could have been obtained earlier, and consideration of the Exhibit would not be in the interests of justice.</p> <p>Patent Owner objects to the admission of this Exhibit under 37 CFR 42.23(b). This Exhibit supports an argument in the Petitioners' Reply (or the Supplemental Declaration of Donald D. Parker, which is an exhibit to the Petitioners' Reply) that is not responsive to an argument by the Patent Owner, and/or this Exhibit is belated evidence that could have been presented in a prior filing. (<i>See Office Patent Trial Practice Guide</i>, 77 Fed. Reg. 48756, 48767 (Aug. 14, 2012).)</p>

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BMW-1053	<p>Patent Owner objects to the admission of this Exhibit under FRE 901(a). Petitioners have not submitted evidence sufficient to support a finding that the item/information is what Petitioners purport it to be.</p> <p>Patent Owner objects to the admission of this Exhibit under FRE 802 as inadmissible hearsay. Petitioners are offering the Exhibit for its truth, and the Exhibit does not fall within any exception to the hearsay rule.</p> <p>Patent Owner objects to the admission of this Exhibit under 37 CFR 42.123. This Exhibit is supplemental evidence submitted without the entry of a motion for permission to do so. Furthermore, this Exhibit is submitted more than one month after the date the trial is instituted. The Exhibit could have been obtained earlier, and consideration of the Exhibit would not be in the interests of justice.</p> <p>Patent Owner objects to the admission of this Exhibit under 37 CFR 42.23(b). This Exhibit supports an argument in the Petitioners' Reply (or the Supplemental Declaration of Donald D. Parker, which is an exhibit to the Petitioners' Reply) that is not responsive to an argument by the Patent Owner, and/or this Exhibit is belated evidence that could have been presented in a prior filing. (<i>See Office Patent Trial Practice Guide</i>, 77 Fed. Reg. 48756, 48767 (Aug. 14, 2012).)</p>
BMW-1054	<p>Patent Owner objects to the admission of this Exhibit under FRE 901(a). Petitioners have not submitted evidence sufficient to support a finding that the item/information is what Petitioners purport it to be.</p> <p>Patent Owner objects to the admission of this Exhibit under FRE 802 as inadmissible hearsay. Petitioners are offering the Exhibit for its truth, and the Exhibit does not fall within any exception to the hearsay rule.</p> <p>Patent Owner objects to the admission of this Exhibit under 37 CFR 42.123. This Exhibit is supplemental evidence</p>

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	<p>submitted without the entry of a motion for permission to do so. Furthermore, this Exhibit is submitted more than one month after the date the trial is instituted. The Exhibit could have been obtained earlier, and consideration of the Exhibit would not be in the interests of justice.</p> <p>Patent Owner objects to the admission of this Exhibit under 37 CFR 42.23(b). This Exhibit supports an argument in the Petitioners' Reply (or the Supplemental Declaration of Donald D. Parker, which is an exhibit to the Petitioners' Reply) that is not responsive to an argument by the Patent Owner, and/or this Exhibit is belated evidence that could have been presented in a prior filing. (<i>See</i> Office Patent Trial Practice Guide, 77 Fed. Reg. 48756, 48767 (Aug. 14, 2012).)</p>
BMW-1055	<p>Patent Owner objects to the admission of this Exhibit under FRE 106. This Exhibit purports to be an excerpt from an article entitled "Best Inventions of 2006" from <i>Time</i>. Per FRE 106, Patent Owner requires the introduction of the remainder of the writing in view of the misleading impression Petitioners have created by taking matters out of context.</p> <p>Patent Owner objects to the admission of this Exhibit under FRE 901(a). Petitioners have not submitted evidence sufficient to support a finding that the item/information is what Petitioners purport it to be.</p> <p>Patent Owner objects to the admission of this Exhibit under FRE 802 as inadmissible hearsay. Petitioners are offering the Exhibit for its truth, and the Exhibit does not fall within any exception to the hearsay rule.</p> <p>Patent Owner objects to the admission of this Exhibit under 37 CFR 42.123. This Exhibit is supplemental evidence submitted without the entry of a motion for permission to do so. Furthermore, this Exhibit is submitted more than one month after the date the trial is instituted. The Exhibit could have been obtained earlier, and consideration of the Exhibit would not be in the interests of justice.</p>

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BMW-1056	<p>Patent Owner objects to the admission of this Exhibit under FRE 901(a). Petitioners have not submitted evidence sufficient to support a finding that the item/information is what Petitioners purport it to be.</p> <p>Patent Owner objects to the admission of this Exhibit under FRE 802 as inadmissible hearsay. Petitioners are offering the Exhibit for its truth, and the Exhibit does not fall within any exception to the hearsay rule.</p> <p>Patent Owner objects to the admission of this Exhibit under 37 CFR 42.123. This Exhibit is supplemental evidence submitted without the entry of a motion for permission to do so. Furthermore, this Exhibit is submitted more than one month after the date the trial is instituted. The Exhibit could have been obtained earlier, and consideration of the Exhibit would not be in the interests of justice.</p> <p>Patent Owner objects to the admission of this Exhibit under 37 CFR 42.23(b). This Exhibit supports an argument in the Petitioners' Reply (or the Supplemental Declaration of Donald D. Parker, which is an exhibit to the Petitioners' Reply) that is not responsive to an argument by the Patent Owner, and/or this Exhibit is belated evidence that could have been presented in a prior filing. (<i>See Office Patent Trial Practice Guide</i>, 77 Fed. Reg. 48756, 48767 (Aug. 14, 2012).)</p>
BMW-1057	<p>Patent Owner objects to the admission of this Exhibit under FRE 901(a). Petitioners have not submitted evidence sufficient to support a finding that the item/information is</p>

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	<p>what Petitioners purport it to be.</p> <p>Patent Owner objects to the admission of this Exhibit under FRE 802 as inadmissible hearsay. Petitioners are offering the Exhibit for its truth, and the Exhibit does not fall within any exception to the hearsay rule.</p> <p>Patent Owner objects to the admission of this Exhibit under 37 CFR 42.123. This Exhibit is supplemental evidence submitted without the entry of a motion for permission to do so. Furthermore, this Exhibit is submitted more than one month after the date the trial is instituted. The Exhibit could have been obtained earlier, and consideration of the Exhibit would not be in the interests of justice.</p> <p>Patent Owner objects to the admission of this Exhibit under 37 CFR 42.23(b). This Exhibit supports an argument in the Petitioners' Reply (or the Supplemental Declaration of Donald D. Parker, which is an exhibit to the Petitioners' Reply) that is not responsive to an argument by the Patent Owner, and/or this Exhibit is belated evidence that could have been presented in a prior filing. (<i>See</i> Office Patent Trial Practice Guide, 77 Fed. Reg. 48756, 48767 (Aug. 14, 2012).)</p>
BMW-1058	<p>Patent Owner objects to the admission of this Exhibit under FRE 901(a). Petitioners have not submitted evidence sufficient to support a finding that the item/information is what Petitioners purport it to be.</p> <p>Patent Owner objects to the admission of this Exhibit under FRE 802 as inadmissible hearsay. Petitioners are offering the Exhibit for its truth, and the Exhibit does not fall within any exception to the hearsay rule.</p> <p>Patent Owner objects to the admission of this Exhibit under 37 CFR 42.123. This Exhibit is supplemental evidence submitted without the entry of a motion for permission to do so. Furthermore, this Exhibit is submitted more than one month after the date the trial is instituted. The Exhibit could</p>

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BMW-1059	<p>Patent Owner objects to the admission of this Exhibit under FRE 901(a). Petitioners have not submitted evidence sufficient to support a finding that the item/information is what Petitioners purport it to be.</p> <p>Patent Owner objects to the admission of this Exhibit under FRE 802 as inadmissible hearsay. Petitioners are offering the Exhibit for its truth, and the Exhibit does not fall within any exception to the hearsay rule.</p> <p>Patent Owner objects to the admission of this Exhibit under 37 CFR 42.123. This Exhibit is supplemental evidence submitted without the entry of a motion for permission to do so. Furthermore, this Exhibit is submitted more than one month after the date the trial is instituted. The Exhibit could have been obtained earlier, and consideration of the Exhibit would not be in the interests of justice.</p> <p>Patent Owner objects to the admission of this Exhibit under 37 CFR 42.23(b). This Exhibit supports an argument in the Petitioners' Reply (or the Supplemental Declaration of Donald D. Parker, which is an exhibit to the Petitioners' Reply) that is not responsive to an argument by the Patent Owner, and/or this Exhibit is belated evidence that could have been presented in a prior filing. (<i>See</i> Office Patent Trial Practice Guide, 77 Fed. Reg. 48756, 48767 (Aug. 14, 2012).)</p>



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BMW-1060	<p>Patent Owner objects to the admission of this Exhibit under FRE 901(a). Petitioners have not submitted evidence sufficient to support a finding that the item/information is what Petitioners purport it to be.</p> <p>Patent Owner objects to the admission of this Exhibit under FRE 802 as inadmissible hearsay. Petitioners are offering the Exhibit for its truth, and the Exhibit does not fall within any exception to the hearsay rule.</p> <p>Patent Owner objects to the admission of this Exhibit under 37 CFR 42.123. This Exhibit is supplemental evidence submitted without the entry of a motion for permission to do so. Furthermore, this Exhibit is submitted more than one month after the date the trial is instituted. The Exhibit could have been obtained earlier, and consideration of the Exhibit would not be in the interests of justice.</p> <p>Patent Owner objects to the admission of this Exhibit under 37 CFR 42.23(b). This Exhibit supports an argument in the Petitioners' Reply (or the Supplemental Declaration of Donald D. Parker, which is an exhibit to the Petitioners' Reply) that is not responsive to an argument by the Patent Owner, and/or this Exhibit is belated evidence that could have been presented in a prior filing. (<i>See</i> Office Patent Trial Practice Guide, 77 Fed. Reg. 48756, 48767 (Aug. 14, 2012).)</p>
BMW-1061	<p>Patent Owner objects under FRE 401–03 to the incorporation and restatement in the Petitioners' Reply of cross-examination testimony offered by Mr. Kunselman during the deposition conducted on April 16, 2018, to the extent that such testimony was objected to on the record for the reasons originally offered, including but not limited to the incorporation of the testimonial evidence on ¶¶ 24, 25, 29, 30, 32, 38, 40, 52, 62, 67, 74, and 78 of the Supplemental Declaration of Donald D. Parker, as well as any other characterizations of objected-to testimony.</p> <p>Patent Owner objects under FRE 402 and 702 because Mr.</p>

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	<p>Parker, the witness offering declaration testimony, (a) lacks the knowledge, skill, experience, training, or education to testify as an expert in a manner that is helpful to the Board; (b) provides opinions that are not based on sufficient facts or data; (c) has not applied reliable principles and methods; and/or (d) has not reliably applied such principles and methods to the facts of the case.</p> <p>Patent Owner objects under FRE 703 because Mr. Parker does not base his opinion on facts or data that he has been made aware of or personally observed, and he fails to demonstrate that such facts or data would be reasonably relied upon by experts in the particular field.</p> <p>Patent Owner objects under 37 CFR 42.65(a) because Mr. Parker fails to identify with particularity the underlying facts or data on which his opinions are based.</p> <p>Patent Owner objects to the admission of this Exhibit under 37 CFR 42.123. This Exhibit is supplemental evidence submitted without the entry of a motion for permission to do so. Furthermore, this Exhibit is submitted more than one month after the date the trial is instituted. The Exhibit could have been obtained earlier, and consideration of the Exhibit would not be in the interests of justice.</p> <p>Patent Owner objects to the admission of this Exhibit under 37 CFR 42.23(b). This Exhibit supports an argument in the Petitioners' Reply that is not responsive to an argument by the Patent Owner, and/or this Exhibit is belated evidence that could have been presented in a prior filing. (<i>See</i> Office Patent Trial Practice Guide, 77 Fed. Reg. 48756, 48767 (Aug. 14, 2012).)</p>
BMW-1062	<p>Patent Owner objects to the admission of this Exhibit under FRE 106. This Exhibit purports to be excerpts from the <i>American Heritage College Dictionary</i> (4th ed. 2007). Per FRE 106, Patent Owner requires the introduction of the remainder of the writing in view of the misleading impression</p>

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	<p>Petitioners have created by taking matters out of context.</p> <p>Patent Owner objects to the admission of this Exhibit under FRE 901(a). Petitioners have not submitted evidence sufficient to support a finding that the item/information is what Petitioners purport it to be.</p> <p>Patent Owner objects to the admission of this Exhibit under FRE 802 as inadmissible hearsay. Petitioners are offering the Exhibit for its truth, and the Exhibit does not fall within any exception to the hearsay rule.</p> <p>Patent Owner objects to the admission of this Exhibit under 37 CFR 42.123. This Exhibit is supplemental evidence submitted without the entry of a motion for permission to do so. Furthermore, this Exhibit is submitted more than one month after the date the trial is instituted. The Exhibit could have been obtained earlier, and consideration of the Exhibit would not be in the interests of justice.</p> <p>Patent Owner objects to the admission of this Exhibit under 37 CFR 42.23(b). This Exhibit supports an argument in the Petitioners' Reply (or the Supplemental Declaration of Donald D. Parker, which is an exhibit to the Petitioners' Reply) that is not responsive to an argument by the Patent Owner, and/or this Exhibit is belated evidence that could have been presented in a prior filing. (<i>See</i> Office Patent Trial Practice Guide, 77 Fed. Reg. 48756, 48767 (Aug. 14, 2012).)</p>
BMW-1063	Patent Owner incorporates all objections made during the deposition of Mr. Parker conducted on April 16, 2018.

Dated: May 21, 2018

Respectfully submitted,

/Thomas E. Bejin/

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Case IPR2017-01379  
Patent No. 9,045,163 B2

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*Attorneys for Patent Owner*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 21<sup>st</sup> day of May, 2018, a true and correct copy of the foregoing Patent Owner Theodore & Associates, LLC's Objections to Evidence Under 37 CFR C.F.R. § 42.64(b)(1) has been sent via e-mail to counsel of record as follows:

Jeffrey D. Sanok ([jsanok@crowell.com](mailto:jsanok@crowell.com))  
Jonathan Lindsay ([jlindsay@crowell.com](mailto:jlindsay@crowell.com))  
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