

**ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In re:)	
)	
Taotao USA, Inc.,)	CAA Appeal No. 18-01 & 18-02
Taotao Group Co., Ltd., and)	
Jinyun County Xiangyuan Industry Co., Ltd.)	
)	
Docket No. CAA-HQ-2015-8065)	
)	

**COMPLAINANT’S SUR-REPLY
IN OPPOSITION TO APPELLANTS’ REPLY BRIEF**

The Director of the U.S Environmental Protection Agency’s Air Enforcement Division (“Complainant”) files this sur-reply with the Environmental Appeals Board (“Board”) pursuant to the Board’s Order Granting Appellants Leave to File Consolidated Reply Brief and Setting Deadline for Filing a Sur-reply, dated November 6, 2018 (“Consolidated Reply Order”). Appellants’ Reply Brief, filed November 19, 2018¹, primarily restates arguments from their Appeal Briefs that are fully addressed in Complainant’s Response Brief filed October 24, 2018. Complainant writes now for the limited purpose of addressing Appellants’ allegation that the testimony of Agency witness Cleophas Cawthorn Jackson² was inconsistent with the declaration

¹ Appellants also moved for leave to file the Reply Brief at the same time as the Reply Brief was filed. Motion for Leave to File Reply Brief, filed November 19, 2018. The Motion for Leave is improperly before the Board because the leave it is seeking, i.e., to file the Reply Brief, had previously been provided by the Board in the Consolidated Reply Order. Therefore, Complainant is not addressing the issues raised therein.

² Mr. Cleophas Jackson holds a Master’s Degree in Mechanical Engineering and is the Director of the Agency’s Gasoline Engine Compliance Center (“GECC”). CX156A; Tr. 11. His duties include overseeing certification and compliance related activities under the Clean Air Act for about 2800 engine families annually. Tr. 12, 21–24. The ALJ qualified Mr. Jackson as an expert witness in the Agency’s vehicle and engine certification program. Tr. 43.

of Agency witness Dr. Ronald M. Heck.³ See Reply Br. at 6–7, 15–16. As described below, Dr. Heck’s declaration and Mr. Jackson’s testimony are squarely consistent.

Complainant placed declarations from Dr. Ronald M. Heck into the record in support of Complainant’s Motion for Partial Accelerated Decision. See CX176 (Declaration of Ronald M. Heck); Complainant’s Motion for Partial Accelerated Decision, *passim* (citing CX176); Complainant’s Reply in Support of Complainant’s Motion for Partial Accel. Dec., Attach. A (Second Declaration of Ronald M. Heck). In relevant part, Dr. Heck’s First Declaration states that catalytic air pollution control technology is a highly specialized science and a very important area of pollution control technology. CX176 at EPA-002408. Platinum, (“Pt”), Palladium (“Pd”), and Rhodium (“Rh”) are three precious metals that have historically been the key active components used in catalytic converters. *Id.* Studies to date have not provided a reliable method or model for determining what emission rate a given catalytic converter with a specified precious metals ratio will achieve in a given application. *Id.* Reliable emission results can only be obtained by testing a catalytic converter’s performance in a particular application. *Id.*

At hearing, Mr. Jackson described the Agency’s process for determining whether to issue a certificate of conformity based on the certification application provided by the manufacturer. Tr. at 74–76; 114–17. Mr. Jackson described how the Agency reviews engine design and emission control information in the application for anomalies to determine whether to require additional emissions testing for the product. Tr. at 115; see Tr. at 45–46, 76–77 (describing authority to order testing). As an example, Mr. Jackson testified that an application describing a

³ Dr. Ronald M. Heck, holds a Ph.D. in Chemical Engineering, and provided two declarations in support of Complainant’s Motion for Partial Accelerated Decision, filed November 28, 2016. CX158; CX 176; Complainant’s Reply in Support of Complainant’s Motion for Partial Accel. Dec., Attach. A. Dr. Heck’s first declaration provides his educational and professional experience, including his co-authorship of the book entitled, *Catalytic Air Pollution Control: Commercial Technology*. CX176.

Pd-only catalytic converter might prompt concern about the product's performance over its full useful life due to the risk of Pd-poisoning. Tr. at 115, 135–36. In this situation the Agency could order further testing. Tr. at 115.

Appellants selectively quote Mr. Jackson to claim he testified “that the design specifications in the application [are] used to ‘assess whether or not . . . a catalyst as described would be compliant,’” (Reply Br. at 16 (quoting Tr. at 114–15)), and argue that this is inconsistent with Dr. Heck's declaration that the only reliable way to determine a catalytic converter's performance in a given application is through full-useful life testing. Reply Br. at 15–16 (citing CX176 ¶¶19–20).

Appellants' attempt to undermine Mr. Jackson's testimony is without merit because his testimony is squarely consistent with Dr. Heck's declaration. Dr. Heck declared that catalytic converter performance can only reliably be determined through full useful-life testing. Mr. Jackson testified that the Agency reviews information about a catalytic converter's composition to determine whether additional testing is required before the Agency grants an application for a certificate of conformity.⁴ Nothing in Mr. Jackson's testimony contradicts Dr. Heck, and Appellants' argument that Mr. Jackson should be discredited is without merit.

Respectfully Submitted,

Date

11/29/18

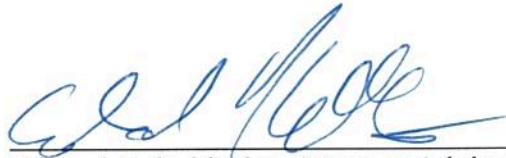


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⁴ As Complainant has previously argued, the provision of inaccurate information in Appellants' applications harmed the regulatory scheme by depriving the Agency of the opportunity to conduct this review.

11/29/2018

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CERTIFICATE OF SERVICE

I certify that the foregoing Sur-Reply In Opposition to Appellants' Reply Brief in *In re Taotao USA, Inc.*, et al., Docket No. CAA-HQ-2015-8065, CAA Appeal Nos. 18-01 & 18-02, was filed and served on the Environmental Appeals Board this day through the Environmental Appeals Board E-Filing System.

I certify that the foregoing was sent this day by email for service on Appellants' counsel identified below at the email addresses listed below:

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