

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TESLA, INC.,
Petitioner,

v.

CHARGE FUSION TECHNOLOGIES, LLC,
Patent Owner.

IPR2022-01217
Patent 10,998,753 B2

Before MEREDITH C. PETRAVICK, JEREMY M. PLENZLER, and
CARL M. DEFRANCO, *Administrative Patent Judges*.

PLENZLER, *Administrative Patent Judge*.

JUDGMENT
Final Written Decision
Determining No Challenged Claims Unpatentable
35 U.S.C. § 318(a)

I. INTRODUCTION

A. Background and Summary

Tesla, Inc. (“Petitioner”) filed a Petition requesting *inter partes* review of claims 1–10 of U.S. Patent No. 10,998,753 B2 (Ex. 1001, “the ’753 patent”). Paper 2 (“Pet.”). Charge Fusion Technologies, LLC (“Patent

Owner”) filed a Preliminary Response. Paper 6 (“Prelim. Resp.”). Pursuant to our request, Petitioner filed a reply to Patent Owner’s Preliminary Response (Paper 8, “Pet. Prelim. Reply”), and Patent Owner filed a response to that reply (Paper 9, “Prelim. Sur-Reply”).

We instituted an *inter partes* review of claims 1–10 of the ’753 patent on all grounds of unpatentability alleged in the Petition. Paper 11 (“Institution Decision” or “Inst. Dec.”).

After institution of trial, Patent Owner filed a Response (Paper 16, “PO Resp.”), Petitioner filed a Reply (Paper 19, “Pet. Reply”), and Patent Owner filed a Sur-Reply (Paper 23, “PO Sur-Reply”).

An oral hearing was held on November 1, 2023, and the record includes a transcript of the hearing. Paper 28 (“Transcript” or “Tr.”).

We have jurisdiction under 35 U.S.C. § 6. This Final Written Decision is issued pursuant to 35 U.S.C. § 318(a). For the reasons that follow, we determine that Petitioner has not shown by a preponderance of the evidence that any claim of the ’753 patent is unpatentable.

B. Related Matters

The parties indicate that the ’753 patent is involved in *Charge Fusion Technologies, LLC v. Tesla, Inc.*, No. 1:22-cv-00488-LY (W.D. Tex. 2021). Pet. 1¹; Paper 4, 1. The ’753 patent is a continuation filing of U.S. Pat. No. 10,819,135 B2 (“the ’135 patent”), which is continuation of U.S. Patent No. 9,853,488 B2 (“the ’488 patent”).

The ’135 and ’488 patents are also involved in the litigation noted above. The ’135 patent is challenged in IPR2023-00063 and the ’488 patent

¹ Petitioner indicates the case number is “6:22-cv-00488-LY,” which appears to be a typographical error.

is challenged in IPR2023-00062. Trial has been instituted for both proceedings, and both proceedings are pending.

C. The '753 Patent

The '753 patent relates to “[s]ystems and methods for charging electric vehicles and for quantitative and qualitative load balancing of electrical demand.” Ex. 1001, Abstract. The '753 patent explains that “the owner of an electrical automobile must often times adhere to a schedule of charging that renders the automobile unusable for protracted stretches of time.” *Id.* at 1:34–37. The schedule may be based on user preferences. *See id.* at 10:31–34.

According to the '753 patent, “the processor 446 may utilize the identification and/or preference data to determine, select, calculate, and/or otherwise derive a charging schedule for the vehicle 460.” Ex. 1001, 10:31–34. The '753 patent explains that “the processor 446 may determine . . . available market rates (e.g., a time-of-day and/or usage-based rate schedule) for purchasing electrical energy from the PSE [(Power Supplying Entity)].” *Id.* at 10:41–45. “The processor 446 may utilize such rate information in combination with the identification and/or preference information, for example, to determine the most cost-effective schedule for charging the vehicle 460.” *Id.* at 10:45–49. The '753 patent explains:

In the case that the preference information includes an indication of how much energy is desired to be stored by the vehicle 460 by a certain time, the processor 446 may calculate an estimated time to achieve the desired charge and may identify when, during the available charging window (e.g., a time window bounded by the current time and the desired total charge end time) would be most cost effective (e.g., cheapest) to acquire the desired estimated charge.

Id. at 10:49–57.

According to the '753 patent, “[t]he operator of the vehicle 660 may, for example, select a first menu option 668a to define settings regarding desired charge levels, charging times, desired travel distances and/or itineraries, etc.” Ex. 1001, 14:1–4. “The user may also or alternatively view and/or change the desired charge range level 720.” *Id.* at 14:54–55. “An estimate of how far the vehicle can travel on a given charge amount . . . can be determined, for example, and utilized to express the desired charge level in terms of distance capable of being traveled.” *Id.* at 14:55–60. “[A] user may determine a desired distance to travel (e.g., how far it is from home to work or vice versa) and may set the desired charge range level 720 to match the desired distance.” *Id.* at 14:61–64.

The '753 patent provides an example where “a user may have specified that the car is not to be charged if the cost of electricity is over \$0.10/kWh” and “that the automobile needs to be 80% charged at the end of eight hours.” Ex. 1001, 19:32–35. “[T]he user may indicate a desired charging level (and/or a desired charging level may be automatically calculated) based on a desired distance of travel.” *Id.* at 19:35–38. In the example provided, “the vehicle/charging facility is located 20 miles from the driver’s home” and “the driver (and/or the vehicle or charging station) may determine that the vehicle should be charged to have enough power to travel the 20 miles home.” *Id.* at 19:39–43.

“In the above example, the information may be entered into a central server for retrieval by the electrical charging system (ECS),” and “the ECS operates to determine an appropriate charging schedule.” Ex. 1001, 19:45–58. The '753 patent explains:

For example, a driver parks his car in a space having an ECS.
The driver knows that his car will sit in the space all work day,

hence the chosen charging duration of eight hours. The ECS, perhaps relying on other retrieved information specifying the charging characteristics of the automobile, computes that it will take approximately three hours of charging to charge the automobile to a minimum of 80% charged. The ECS, via communication with the power supplier, determines that the present cost of electricity is \$0.12/kWh but will fall to \$0.09/kWh in two hours. The system therefore waits for two hours before charging the automobile for approximately three hours.

Id. at 19:58–20:3.

In the above examples, the charging schedule determines when to start charging during an available time window. Throughout the Specification, the control for initiating vehicle charging is actively controlled by the software. It is not simply the user manually starting and stopping the charging. The Specification explains that “the methods described herein may be performed by hardware, software (including microcode), firmware, or any combination thereof. For example, a storage medium may store thereon instructions that when executed by a machine result in performance according to any of the embodiments described herein.” Ex. 1001, 16:12–17. The Specification explains that the “Electrical Charging System (ECS) 340 . . . may comprise . . . a processor 346” and “may also comprise or be associated with a power management device 348.” *Id.* at 7:61–66. As noted in the example discussed above, “[t]he *system* . . . waits for two hours before charging the automobile.” *Id.* at 20:1–2 (emphasis added).

In each of the examples provided in the Specification, the system controls initiating charging *after* the vehicle is plugged in to an electrical source or in sufficient proximity to allow wireless charging. That is, with this system, the vehicle does not simply charge immediately when the user

plugs in the vehicle. Rather, it is an “intelligent” system. *See, e.g., id.* at 2:5–45.

D. Illustrative Claim

1. An electrical charging system, comprising:
 - one or more processing devices; and
 - a non-transitory memory device in communication with the one or more processing devices, the non-transitory memory storing instructions that when executed by the one or more processing devices, result in:
 - receiving information indicative of a starting location of an electric vehicle;
 - receiving information indicative of a desired destination of the electric vehicle;
 - receiving information indicative of a charging location of each of a plurality of electric charge providers;
 - computing, based at least in part on the starting location, the desired destination, and the charging locations of one or more of the plurality of electric charge providers, a charging schedule for the electric vehicle[,] the charging schedule comprising a scheduled start time and an indication of a scheduled stop time for charging the electric vehicle at each of one or more of the plurality of charging locations and a sequence defining an order in which the electric vehicle is to be charged at each of the one or more of the plurality of charging locations, wherein a first charging location of the sequence is computed based, at least in part, on an ability of the electric vehicle to travel to the first charging location utilizing a charge amount stored in a battery of the electric vehicle;
 - displaying a charging status of the electric vehicle via a graphical user interface forming a part of the electric vehicle; and
 - increasing, in accordance with the charging schedule, a level of charge of the battery of the electric vehicle;

wherein the desired destination information is defined by a user of the electric vehicle via the graphical user interface adapted to display a vehicle charge indicator element comprising a first portion indicative of an amount of charge residing in a battery of the electric vehicle and a second portion indicative of an uncharged capacity of the battery of the electric vehicle and wherein the vehicle charge indicator element further comprises a slider by which an amount of charge may be specified.

Ex. 1001, 29:16–57.

E. Evidence and Asserted Ground

Petitioner asserts that claims 1–10 would have been unpatentable on the following ground:

Claim(s) Challenged	35 U.S.C. §²	Reference(s)/Basis
1–10	103	Kato ³ , Tesla Roadster Manual ⁴ , Eberhard ⁵

Petitioner submits declarations from Christopher Wilson (Ex. 1002, “Wilson I Declaration”; Ex. 1020; “Wilson II Declaration”) and Lis Fraser (Ex. 1010, “Fraser I Declaration”; Ex. 1015, “Fraser II Declaration”). Patent Owner submits two declarations from Steven Goldberg, Ph.D. (Ex. 2001, “Goldberg Declaration I”; Ex. 2009, “Goldberg Declaration II”).

² The Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112-29, 125 Stat. 284 (2011), amended 35 U.S.C. § 103, effective March 16, 2013. Because the application from which the ’753 patent issued was filed before this date, the pre-AIA version of § 103 applies.

³ US Patent Pub. 2008/0243331 A1, Oct. 2, 2008 (Ex. 1008).

⁴ 2008 Tesla Roadster Touch Screen User’s Manual (Ex. 1005).

⁵ US Patent No. 7,671,567 B2, Mar. 2, 2010 (Ex. 1009).

II. ANALYSIS

A. Legal Standards

Petitioner bears the burden of persuasion to prove unpatentability, by a preponderance of the evidence, of the claims challenged in the Petition. 35 U.S.C. § 316(e). This burden never shifts to Patent Owner. *Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015).

Petitioner’s challenge is based on obviousness. A claim is unpatentable under 35 U.S.C. § 103 if the differences between the claimed invention and the prior art are such that the claimed invention as a whole would have been obvious at the time of the claimed invention to a person having ordinary skill in the art to which the claimed invention pertains. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved based on underlying factual determinations including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of ordinary skill in the art; and (4) when in the record, objective evidence of non-obviousness. *Graham v. John Deere Co. of Kan. City*, 383 U.S. 1, 17–18 (1966).

B. Level of Ordinary Skill in the Art

The level of ordinary skill in the art is “a prism or lens” through which we view the prior art and the claimed invention. *Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001). The person of ordinary skill in the art is a hypothetical person presumed to have known the relevant art at the time of the invention. *In re GPAC Inc.*, 57 F.3d 1573, 1579 (Fed. Cir. 1995). In determining the level of ordinary skill in the art, we may consider certain factors, including the “type of problems encountered in the art; prior art

solutions to those problems; rapidity with which innovations are made; sophistication of the technology; and educational level of active workers in the field.” *Id.*

Petitioner’s declarant, Mr. Wilson, testifies that one skilled in the art during the relevant time frame “would have had at least a bachelor’s degree in electrical engineering, mechanical engineering, or physics (or an equivalent field) and at least two years of work experience involving automotive systems, including vehicle information systems, vehicle sensors, and vehicle controllers (ECUs),” but “[m]ore education can supplement practical experience and vice versa.” Pet. 9–10 (citing Ex. 1002 ¶ 27). Patent Owner does not contest Petitioner’s articulation of the level of skill in the art. *See* PO Resp. 16 (“Because the proposed level of ordinary skill does not affect the ultimate analysis, Patent Owner takes no position with respect to Petitioner’s proposed level of ordinary skill in the art.”).

We analyze the asserted prior art with respect to the level of skill set forth by Petitioner because it is consistent with the prior art.

C. Claim Construction

In an *inter partes* review, we construe a patent claim “using the same claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. § 282(b).” 37 C.F.R. § 42.100(b) (2021). Under this standard, the words of a claim generally are given their “ordinary and customary meaning,” which is the meaning the term would have to a person of ordinary skill at the time of the invention, in the context of the entire patent including the specification. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–13 (Fed. Cir. 2005) (en banc).

According to Petitioner, “all claim terms should be given their plain and ordinary meaning.” Pet. 10. Similarly, “for all claim terms, Patent

Owner requests that the Board adopt the ordinary and customary meaning of the claim terms as understood by one of ordinary skill in the art.” PO Resp.

14. And after institution, Petition made clear that “[t]he Parties agree the Challenged Claims should be given their ordinary and customary meaning for purposes of this IPR.” Pet. Reply 1.

We do not need to construe any terms expressly to reach our decision. *See Realtime Data, LLC v. Iancu*, 912 F.3d 1368, 1375 (Fed. Cir. 2019) (“The Board is required to construe ‘only those terms . . . that are in controversy, and only to the extent necessary to resolve the controversy.’” (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999))).

D. Petitioner’s Challenge

Petitioner asserts that claims 1–10 are unpatentable under 35 U.S.C. § 103 as obvious over Kato, the Tesla Manual, and Eberhard. Pet. 19–57. Based on the evidence of record, we conclude Petitioner has failed to establish that claims 1–10 are unpatentable.

The dispositive issue in this case is whether Kato teaches claim 1’s recitation of

instructions that when executed by the one or more processing devices, result in . . . *computing*, based at least in part on the starting location, the desired destination, and the charging locations of one or more of the plurality of electric charge providers, *a charging schedule* for the electric vehicle . . . comprising *a scheduled start time* and an indication of *a scheduled stop time* for charging the electric vehicle at each of one or more of the plurality of charging locations and a sequence defining an order in which the electric vehicle is to be charged at each of the one or more of the plurality of charging locations.

Ex. 1001, 29:20–38 (emphasis added) (“the charging schedule limitation”).⁶ As seen in the claim language reproduced above, the plain language of the claim requires that the processor executes instructions that compute the charging schedule and, as discussed further below, the processor also executes instructions that control vehicle charging in accordance with that schedule. Both Petitioner and Patent Owner agree that the charging schedule limitation does not invoke 35 U.S.C. § 112 ¶ 6. Pet. Reply 1; PO Resp. 14.

I. Kato

Kato is a U.S. patent application titled “Stop-Off Facility Guidance Systems, Methods, and Programs.” Ex. 1008, code (54). It describes a navigation system that determines charging points for a vehicle along a planned route. *Id.* ¶¶ 49–60. Kato explains, for example, that “target battery remaining amounts SOC* at each of [the] points are calculated in such a way that the battery remaining amount SOC becomes 0% at the arrival to the next planned charging point.” *Id.* ¶ 55. Kato provides an example where “the first starting point and the last destination are both the home” and “[t]he battery 18 is full-charged at the departure at the home, so that the battery remaining amount SOC at that time is 100%, and the battery remaining amount SOC becomes 0% at the arrival at the home.” *Id.* ¶ 59. “Each of the battery remaining amounts SOC at each of the planned charging points is nearly 0% so as to charge the battery of the vehicle at the planned charging points.” *Id.* Kato further explains “when the time which can be spent at the

⁶ A similar recitation is found in independent claim 6. *See* Ex. 1001, 30:33–48. Our discussion of claim 1 below applies equally to claim 6. This limitation corresponds to what Petitioner refers to as limitations 1(g) and 1(h), as well as 6(g) and 6(h) in the Petition. *See* Pet. iv., vi.

planned charging point is shorter than the time required for charging, . . . although the battery remaining amount SOC does not reach 100%, the vehicle goes to the next destination.” *Id.*

Kato explains that its “battery remaining amount SOC . . . 100% and 0% do not indicate the physical remaining amount,” but, rather, “100% and 0% of SOC indicate the highest remaining amount and the lowest remaining amount based on the economical repeated use of the battery 18.” Ex. 1008 ¶ 60. For example, “when the battery 18 is an alkaline battery, the battery may be used until the SOC becomes very low,” but “when the battery 18 is a zinc battery, using the zinc battery until the SOC becomes excessively low causes the battery life to be shortened.” *Id.* Accordingly, “a state which a predetermined amount of charge is still remaining in the zinc battery is set as 0% of the battery remaining amount SOC for the zinc battery.” *Id.*

2. Claim 1

Petitioner cites Kato as teaching the charging schedule limitation. *See* Pet. 24–29. And with respect to “computing . . . a scheduled start time and an indication of a scheduled stop time for charging the electric vehicle,” Petitioner relies solely on paragraphs 53–55 of Kato teaching this feature. *See* 24–26 (citing Ex. 1008; Ex. 1002 ¶¶ 75–82⁷); *see also* PO Resp. 17 (noting the same); Tr. 5:9–15, 6:20–7:4 (Petitioner confirming the same at oral hearing).

Petitioner contends that “the route reflected in Kato’s ‘charging schedule setting processing’ includes ‘a scheduled start time and an indication of a scheduled stop time for charging the electric vehicle at each

⁷ The testimony from Dr. Wilson is identical to the statements in the Petition. *Compare* Pet. 24–26 *with* Ex. 1002 ¶¶ 75–82.

of one or more of the plurality of charging locations.” Pet. 25. Petitioner cites Kato’s paragraph 55 for the disclosure related to “charging schedule setting processing.” *Id.* at 24–25. We reproduce paragraph 55 from Kato in its entirety below.

The CPU 31 executes an energy control determination processing as a charging schedule setting processing. As charging conditions, the battery remaining amount SOC as the charging capacity at the first starting point, the distance from the starting point at which the hybrid vehicle can be charged to the planned charging point, a time spent on charging at each planned charging point between the arrival at the point and the departure from the point (that is, a time period which can be spent at the charging point), a time necessary for full-charging the battery 18 (that is, a time required for charging), and the like are read in and the travel distance from the starting point at which the vehicle can be charged is calculated based on the charging conditions. Next, the target battery remaining amounts SOC* at each of points are calculated in such a way that the battery remaining amount SOC becomes 0% at the arrival to the next planned charging point. In this way, the charging schedule including the target battery remaining amounts SOC* at each of points is set.

Ex. 1008 ¶ 55. According to Petitioner, the “scheduled start time” is simply the minute the vehicle arrives at the planned destination in Kato. *See* Pet. 24–26; *see also* Tr. 7:15–8:7, 8:22–9:6, 13:20–14:17, 15:25–16:10, 59:3.

Patent Owner responds that “Claim [1] specifically require[s] the charge schedule to comprise both a *scheduled start time* and an *estimated stop time* as a result of the charging schedule which is computed.” PO Resp. 17. Patent Owner contends that “Petitioner all but glosses over the requisite limitations of a scheduled start time and indication of a scheduled stop time based upon a computation conducted by an aspect of the electric charging system,” and “appears [to] rel[y] on Kato’s disclosure of the ‘time period

which *can* be spent at the charging point.” *Id.* Patent Owner further notes that “Petitioner . . . relies on Kato’s disclosure of ‘target battery remaining amount SOC*’ and equates this as a calculation of time to spend charging which Petitioner states is a start time and stop time.” *Id.* at 17–18.

According to Patent Owner, “[a]t best, Kato only shows the time required to charge, but does not *compute* a charging schedule with a *scheduled start time*.” *Id.* at 19 (citing Ex. 2009 ¶¶ 90–97).

Petitioner responds that “PO’s arguments do not engage with key disclosures in Kato on which Petitioner relies.” Pet. Reply 5. But this is not a fair characterization of the Patent Owner Response. As Petitioner makes clear in its Reply, “[a]s explained in the Petition, Kato’s charging conditions include a time spent on charging at each planned charging point between the arrival at the point (start time) and the departure from the point (stop time).” *Id.* at 6. Petitioner concludes: “Thus, Kato’s charge schedule includes a calculation of the time to spend charging (start time and stop time) at the charging point that is needed to recharge the vehicle battery to the target level (SOC*) so the vehicle can get to the next charging point with 0% battery remaining (SOC).” *Id.* at 7. Petitioner does not rely on the Wilson II Declaration in support of its response to Patent Owner’s contentions noted above. *See id.* at 5–8 (citing the same portions of the Wilson I Declaration (Ex. 1002) cited in the Petition).

As explained above, Patent Owner’s Response disputes Petitioner’s reliance on the time period that can be spent at a charging location corresponding to the recited calculated scheduled start time. Petitioner’s testimony from Dr. Wilson does little to help, as it simply parrots the contentions laid out in the Petition. And, like the contentions in the Petition, that testimony does not offer persuasive explanation as to why one skilled in

the art would understand the disclosure in Kato's paragraphs 53–55 as teaching “computing . . . a charging schedule . . . comprising a scheduled start time and an indication of a scheduled stop time” as required by the claims. Contrary to Petitioner's representations, we see nothing in paragraphs 53–55 of Kato teaching a specific time that is computed as a scheduled start time.

Absent persuasive explanation and evidence from Petitioner, the preponderance of the evidence before us does not support Petitioner's assertion that the beginning of an available time window for charging is a scheduled start time or that the end of that window is a scheduled stop time for charging. We note, again, that Petitioner relies on the express teachings of Kato. The Petition does not assert that it would have been obvious to employ a scheduled start time based on any modification to Kato's teachings. Our decision is limited to the particular basis for the challenge advanced by Petitioner.

Although this, alone, is sufficient basis to find in favor of Patent Owner, our decision that Petitioner has failed to establish unpatentability of any claim in the '753 patent is additionally supported by Petitioner's failure related to the claim recitation of “instructions that when executed by the one or more processing devices, result in . . . increasing, in accordance with the charging schedule, a level of charge of the battery of the electric vehicle.” Ex. 1001, 29:46–47 (“the charging control limitation”)⁸.

⁸ A similar recitation is found in independent claim 6. *See* Ex. 1001, 30:33–48. Our discussion of claim 1 below applies equally to claim 6. This limitation corresponds to what Petitioner refers to as limitations 1(l) and 6(l) in the Petition. *See* Pet. iv., vi.

Like the charging schedule limitation, Petitioner relies on Kato teaching this limitation. *See* Pet. 31–32. Petitioner treats this limitation in a cursory manner and does nothing to address the requirement that it is the instructions executed by the processor that control charging, not simply the user manually initiating the charging. The portions of the Petition reproduced below are the entirety of Petitioner’s contentions related to the charging control limitation.

Petitioner contends that Kato teaches this limitation because

Kato’s “charging schedule setting processing” calculates a level of charge such that “the target battery remaining amounts SOC* at each of [the charging] points are calculated in such a way that the battery remaining amount SOC becomes 0% at the arrival to the next planned charging point. In this way, the charging schedule including the target battery remaining amounts SOC* at each of [the charging] points is set.” EX1008 at [0055].

Pet. 31. Petitioner additionally explains:

Stated differently, the charge level upon leaving one charging location (SOC*) is set and will be increased to that level at the charging location so that the vehicle arrives at the subsequent charging station with 0% charge (SOC=0). EX1002, ¶99.

Kato’s charging schedule setting process is thus predicated on *increasing, in accordance with the charging schedule, a level of charge of the battery of the electric vehicle* in order to charge the battery sufficiently at each charging location to get to the subsequent location via a route using the minimum total link cost. EX1008, [0050].

Id. And, finally, Petitioner explains:

In addition, a POSITA would understand that accurately calculating the “TIME OF END OF CHARGING” or the “time required for vehicle maintenance” (that is, to finish the charge according to the planned schedule) so that appropriate “stop-off facilities” can be recommended to the user is an important element to Kato’s system. EX1008, Abstract, FIG. 6, [0010], EX1002, ¶¶ 98-101.

Id. at 31–32. We see no explanation, or even allegation, that Kato teaches “instructions that when executed by the one or more processing devices, result in . . . increasing, in accordance with the charging schedule, a level of charge of the battery of the electric vehicle.”

Rather, as noted above, Petitioner relies on a user simply plugging a vehicle in (or otherwise manually initiating charging) to meet the charging control limitation. *See* Pet. 31–32; Tr. 61:3–63:18. Indeed, at oral hearing, Petitioner clearly stated: “I think the assumption of Kato is that you are going to start charging when you arrive and plug in.” Tr. 63:16–18. Petitioner provides no reason for us to believe that Kato includes the instructions executed by the processor in the charging control limitation.

For at least the reasons set forth above, Petitioner fails to establish by the preponderance of the evidence that claims 1–10 of the ’753 patent are unpatentable over the combined teachings of Kato, Tesla Roadster Manual, and Eberhard.

III. CONCLUSION

Claims	35 U.S.C. §	Reference(s)/Basis	Claims Shown Unpatentable	Claims Not Shown Unpatentable
1–10	103	Kato, Tesla Roadster Manual, Eberhard		1–10

IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that claims 1–10 of the ’753 patent are not proven unpatentable; and

FURTHER ORDERED that, because this is a Final Written Decision, parties to this proceeding seeking judicial review of the Decision must comply with the notice and service requirements of 37 C.F.R. § 90.2.

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