

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TESLA, INC.,
Petitioner

v.

GRAPHITE CHARGING COMPANY, LLC,
Patent Owner

U.S. Patent No. 8,103,391
Case No. IPR2024-00387

**Petitioner's Opposition to
Patent Owner's Motion to Exclude**

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1. Introduction

Petitioner hereby opposes Patent Owner's motion to exclude. The motion seeks to exclude Exhibits 1011 and 1020, as well as portions of four other documents pertaining to these two exhibits.

This is a meritless attempt to eliminate relevant, corroborating evidence relied on by Dr. MacCarley pertaining to a well-known industry standard—namely, the Society of Automotive Engineers (SAE) J1772 Standard for electric-vehicle chargers (Ex-1011). The Standard corroborates Dr. MacCarley's opinions concerning the knowledge of a Person of Ordinary Skill in the Art (POSA) with regard to electric-vehicle chargers, and none of Patent Owner's evidentiary challenges has merit.

Accordingly, Ex-1011 should be deemed helpful to the Board in understanding the disputed issues and not excluded from the record. Patent Owner's attack on its own expert's patent in Ex-1020, which reflects a contradiction in his understanding of lexicography, is similarly weak. Patent Owner's remaining challenges rest entirely on its inadmissibility positions against Ex-1011 and Ex-1020 and thus fail because those exhibits are admissible.

For reasons detailed below, the Board should deny the entire motion.

2. Legal Standard

Subject to the Federal Rules of Evidence, all relevant evidence is generally admissible. 37 C.F.R. §§ 42.62 and 351.10(a). When a party believes certain evidence is inadmissible, the party can move to exclude the evidence. *Id.* § 42.64(c). However, the moving party bears the burden of proving the evidence is irrelevant or otherwise inadmissible. *Id.* § 42.20(c).

While evidence must be shown to be authentic, Fed. R. Evid. 901(a), proving a lack of authenticity is a high bar as authenticity requires only “a rational basis that the document is what it is asserted to be.” *Apple Inc. v. MemoryWeb, LLC*, IPR2022-00033, Paper 42 at 5; *see also United States v. Pluta*, 176 F.3d 43, 49 (2d Cir. 1999) (“[T]he standard for authentication ... is one of reasonable likelihood.”).

Hearsay is “a statement ... offer[ed] to prove the truth of the matter asserted in the statement.” Fed. R. Evid. 801(c). While generally inadmissible, hearsay is admissible if it falls within one of numerous exceptions, such as for “compilations that are generally relied on ... by persons in particular occupations.” *Id.* §§ 802 and 803(17).

3. Argument

3.1 The Board Should Not Exclude the SAE J1772 Standard (Ex-1011)

Patent Owner's arguments regarding authenticity, hearsay, and relevance are meritless. Exhibit 1011 is admissible and should not be excluded.

Authenticity. Exhibit 1011 is authentic. It is a publicly disseminated SAE industry standard, widely available and relied upon by skilled artisans. Expert testimony by Dr. MacCarley (Ex-1009 ¶¶ 19, 56, 68, 146, 154, 269, 270) confirms that the document is what it purports to be. Authentication by an expert with familiarity with industry standards is sufficient.

The document itself bears the markings from the well-known standards organization that issued it (Society of Automotive Engineers, SAE) on almost every page. J1772 is not obscure or marginal; it is a widely accepted industry standard used across the electric vehicle ecosystem. As such, it reflects the standard practice and expectations of skilled artisans in the field at the relevant time.

In addition to the authentication from Dr. MacCarley (which itself is sufficient), Ex-1011 has also been authenticated under Rule 901(8) as no suspicion has been cast on its authenticity, it was in a place where it would likely be (available for download from SAE as indicated in the footer of each page of Ex-1011), and being a revision document from 2001 as it was at least 20 years old when offered in

this proceeding in 2024. Fed. R. Evid. 901(8). Indeed, Patent Owner provides no particularized concern about the authenticity of this document.

Hearsay. Exhibit 1011 is not hearsay. Petitioner does not offer Exhibit 1011 for purposes of proving automotive industry standards (i.e., the matter asserted therein). Rather, the exhibit is used as corroborating evidence of a POSA's knowledge of chargers for electric vehicles. Paper 2 § VI; *see also* Ex-1009 ¶¶ 19, 56, 68, 74, 154, 269, and 270. Indeed, the Petition explicitly states that a POSA would have been familiar with electric vehicle charging standards, including the SAE J1772 Standard of Exhibit 1011. Paper 2 § VI.

Even if Exhibit 1011 were hearsay, it would still be admissible because it is a compilation generally relied on by persons in particular occupations—namely, people associated with the automotive industry. Fed. R. Evid. 803(17); *see Toyota Motor Corp. et al. v. Intell. Ventures II LLC*, IPR2022-01130, Paper 41 at 16 (finding an industry standard satisfies the hearsay exception under Rule 803(17)); Ex-1011 at 2 (“The intent of this document is to define a common electric vehicle charging system architecture [for use in North America].”).

More fundamentally, there is no valid reason to exclude a widely accepted industry standard that provides foundational context for what a POSA would have found familiar, logical, and motivating (as explained by Dr. MacCarley). Attempting

to exclude such a standard is inconsistent with the Board’s mandate to assess the perspective of a POSA accurately.

Relevance. Exhibit 1011 is relevant. As noted above, the exhibit informs the question of a POSA’s knowledge and provides corroborating evidence reflecting that knowledge. *See* Ex-1009 ¶¶ 19, 56, 68, and 74. Patent Owner’s own expert confirmed this in his deposition, suggesting that a POSA would not only be aware of all regulations in their particular industry but would strive to adhere to them, as well. *See* Ex-1021 at 43:18-45:1 and 38:12-39:7.

The intrinsic record of the ’391 Patent further confirms general knowledge of the SAE J1772 Standard and its relevance in determining a POSA’s knowledge. U.S. Patent App. Pub. No. 2009/177580 (“Lowenthal”), which Patent Owner cited in an IDS, repeatedly indicates that its invention is compatible with the SAE J1772 Standard. Ex-1007 at 119 (citing Lowenthal); Ex-1025 ¶¶ [0036] and [0044].

INFORMATION DISCLOSURE STATEMENT BY APPLICANT (Not for submission under 37 CFR 1.99)				Application Number	12194325
				Filing Date	2008-08-19
				First Named Inventor	Ferro et al.
				Art Unit	3661
				Examiner Name	Olsen, Lin B
				Attorney Docket Number	AUS920080188US1
...					
	9	20090177580	A1	2009-07-09	Lowenthal et al.

Exhibit 1007 at 119 (Excerpt)

(19) **United States**

(12) **Patent Application Publication**

Lowenthal et al.

(10) **Pub. No.: US 2009/0177580 A1**

(43) **Pub. Date: Jul. 9, 2009**

[0036] The Smartlet™ 110 comprises an electrical receptacle 112 and indicator lights 114. Alternatively, the indicator lights 114 may be replaced with a display. The electrical receptor 112 and the electrical connector 152 are configured to make an electrical connection allowing safe flow of electrical power between the Smartlet™ 110 and the electrical vehicle 150. Examples of suitable receptacles are those conforming to the NEMA (National Electrical Manufacturers Association) standards 5-15, 5-20, 14-50 and SAE (Society of Automotive Engineers) standard J1772. Although, other receptacles will be used for systems outside the United States which operate at voltages other than 110V (for example 220V) and which are required to meet different standards. In preferred embodiments the electrical receptacle 112 has a cover. The cover is lockable and is released by the Smartlet™ 110 upon receipt of a request for charging of an electrical vehicle 150 by the electric vehicle operator 160. This request may be made by the mobile communication device 162, as described above.

[0044] The electrical cable 116 and vehicle receptacle 154 are configured to make an electrical connection allowing safe flow of electrical power between the Smartlet™ 110 and the electrical vehicle 150. Examples of suitable receptacles are those conforming to the NEMA (National Electrical Manufacturers Association) standards 5-15, 5-20, 14-50. Furthermore, examples of suitable receptacles and cables are those conforming to SAE (Society of Automotive Engineers) standard J1772. Although, other receptacles will be used for systems outside the United States which operate at voltages other than 110V (for example 220V) and which are required to meet different standards. The electrical cable 116 may be lockable to the Smartlet 110, and is released on instructions from the payment station 135, thus allowing the vehicle operator 160 to connect the electric vehicle 150 to the Smartlet™ 110 with the electrical cable 116.

Exhibit 1025, Title and ¶¶ [0036] and [0044]

In addition to indicating a POSA's knowledge, Exhibit 1011 also provides corroborating support for a POSA's motivation to combine various embodiments present in the prior art. *See id.* ¶¶ 154, 269, and 270. For example, Dr. MacCarley notes in his Declaration that a POSA would have found it obvious to combine U.S. Patent Nos. 5,696,367 ("Keith") and 5,548,200 ("Nor"). *Id.* ¶¶ 263-268. Confirming this, Dr. MacCarley cites to data and communication pathways prescribed by Exhibit 1011 as corroborating evidence that a POSA would have found the combination obvious. *Id.* ¶¶ 269-270; *see also id.* ¶ 154 (confirming motivation to combine two other references in view of Exhibit 1011).

3.2 The Board Should Not Exclude the Cameron Patent (Ex-1020)

Despite bearing the burden on its motion, Patent Owner provides no reasoned explanation for why exclusion of Exhibit 1020 is warranted. *See Veeam Software Corp. v. Symantec Corp.*, IPR2013-00150, Paper 54 at 32-33 (Aug. 7, 2013) (“A motion to exclude must state why the evidence is inadmissible ... and explain the objection.”). Instead, Patent Owner merely repeats general objections from the deposition and provides nothing of substance to meet its burden. Notwithstanding, Exhibit 1020 is admissible and should not be excluded.

Authenticity. Exhibit 1020 (a U.S. Patent document) is authentic. Certain evidence is self-authenticating and does not require extrinsic evidence of authenticity. Fed. R. Evid. § 902(5). The Board’s regulations also provide that “[c]ertification is not necessary as a condition to admissibility when the evidence to be submitted is a record of the Office to which all parties have access.” 37 C.F.R. § 42.61. There is no dispute that all parties have access to this U.S. Patent document. Patent Owner’s own expert confirmed that Ex-1020 “looks like the patent I remember.” Ex-1021 at 129:5-17. There is no authentication issue.

Hearsay. Exhibit 1020 is not hearsay. As noted above, this exhibit demonstrates an inconsistency in Patent Owner’s expert’s understanding of

lexicography in different context and is not relied upon to prove the truth of the matter asserted therein.

Relevance. Exhibit 1020 is relevant to lexicography positions raised in the Patent Owner's Response (Paper 24 § V), which positions are inconsistent with Patent Owner's own expert's understanding of lexicography in his own patent. Petitioner's Reply (Paper 26) at 3 n.2. Submitting this exhibit as reply evidence was Petitioner's only opportunity to address these inconsistent positions, implicated for the first time based on the lexicography positions in Patent Owner's Response. In addition to being relevant, submission of Exhibit 1020 was therefore timely.

3.3 The Board Should Not Exclude Portions of the Declaration (Ex-1009)

Patent Owner seeks to exclude certain portions of the Declaration, taking issue with references to Exhibit 1011 and allegedly improper incorporation by reference. These arguments should be rejected and the Declaration found admissible in its entirety.¹

¹ Patent Owner's objection to the Declaration said nothing regarding citations to Ex-1011. Paper 17 at 2. Accordingly, Patent Owner's motion to exclude such citations from the Declaration is improper.

The cited paragraphs of the Declaration rely on Exhibit 1011 and general knowledge of a POSA. As explained, Exhibit 1011 is admissible and at least for those reasons the Declaration should not be excluded. Moreover, even if Exhibit 1011 is excluded, the Board should not exclude portions of the Declaration citing to it. Evidence on which an expert relies, even if otherwise inadmissible, still can be disclosed to the factfinder provided that the probative value of the evidence substantially outweighs its prejudicial effect. *RTI Surgical, Inc. v. LifeNet Health*, IPR2019-00571, Paper 75 at 7-9 (PTAB Aug. 14, 2020) (denying motion to exclude as hearsay documents relied upon by an expert because the probative value outweighed any prejudicial effect); *see also* Fed. R. Evid. 703 (“An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted.”).

The Board—a non-jury tribunal with administrative expertise—is well-positioned to determine and assign the appropriate weight to contested portions of the Declaration without any danger of being unfairly prejudiced, confused, or misled. *See, e.g., Google LLC v. IPA Techs. Inc.*, IPR2019-00730, Paper 72 at 30 (PTAB Sept. 16, 2020).

Patent Owner’s claim that paragraphs 44-95 were improperly incorporated into the Petition (Mot., 4-5) is mistaken. These paragraphs were cited by—not incorporated into—the Petition, consistent with common Board practice. That Dr. MacCarley provided further factual support for arguments in the Petition supports the helpful nature of his well-reasoned and support testimony and is no basis for exclusion. *See* 37 CFR § 42.65(a) (encouraging expert testimony that “discloses the underlying facts or data on which the opinion is based”); *Xerox Corp. v. Bytemark, Inc.*, IPR2022-00624, Paper 12 at 5 (PTAB Aug. 24, 2022) (giving little weight to expert testimony that “merely offered conclusory assertions without underlying factual support”).

3.4 The Board Should Not Exclude Portions of the Deposition of Dr. Cameron (Ex-1021)

Patent Owner’s arguments for excluding portions of its own expert’s cross-examination testimony in Ex-1021 rest entirely on its inadmissibility positions for Exhibits 1011 and 1020. Because those positions are wrong, Patent Owner’s challenge to Ex-1021 is wrong too.²

² Patent Owner conducted redirect examination after cross examination of its expert was complete. Therefore, it already had—and exercised—the opportunity to clarify the record.

**3.5 The Board Should Not Exclude Portions of the Errata Sheet
(Ex-1026)**

Patent Owner's request to exclude its own errata sheet is strange and contradictory. Patent Owner itself felt it necessary "to preserve the integrity of the record" (Mot., 6) by preparing the errata. There is no credible basis to exclude Patent Owner's own corrections reflected in Ex-1026.

**3.6 The Board Should Not Exclude Portions of the Petition or
Petitioner's Reply Brief**

There is no basis to exclude any portion of Petitioner's briefs. As explained above, each of the underlying exhibits is admissible and, because Patent Owner's motion to exclude portions of Petitioner's briefs entirely depend on inadmissibility of the underlying exhibits, these arguments fail.

4. Conclusion

The Motion to Exclude seeks to suppress real-world context reflected in a well-known electric-vehicle charging standard (J1772) that Patent Owner itself made part of the intrinsic record during prosecution. The evidence is relevant, admissible, and the Board should consider it and deny the motion in full.

Dated: April 23, 2025

Respectfully Submitted,

/ Alexander B. Stein /
Alexander B. Stein, Reg. No. 71,397

Certification of Compliance with Type-Volume Limits

This Opposition complies with the fifteen-page limit. 37 C.F.R. § 42.24(b)(3). Accordingly, pursuant to 37 C.F.R. § 42.24(d), the undersigned hereby certifies that this paper complies with the applicable type-volume limits.

Dated: April 23, 2025

Respectfully Submitted,

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Certificate of Service

Pursuant to 37 C.F.R. §42.6(e), the undersigned hereby certifies that on April 23, 2025, copies of this Opposition was provided via email to Patent Owner at the following addresses:

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