

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TESLA, INC.,
Petitioner

v.

GRAPHITE CHARGING COMPANY, LLC,
Patent Owner.

IPR2024-00387
Patent 8,103,391 B2

Record of Oral Hearing
Held: May 6, 2025

Before KEN B. BARRETT, MIRIAM L. QUINN, and MATTHEW S.
MEYERS, *Administrative Patent Judges*.

IPR2024-00387
Patent 8,103,391 B2

APPEARANCES:

ON BEHALF OF THE PETITIONER:

ALEXANDER B. STEIN, ESQUIRE
PETER LODERUP, ESQUIRE
Morgan, Lewis & Bockius LLP
1301 Second Avenue, Suite 300
Seattle, Washington 98101
(206) 274-6437

ON BEHALF OF THE PATENT OWNER:

JASON M. SHAPIRO, ESQUIRE
NADIA LOIZIDES, ESQUIRE
Devlin Law Firm, LLC
1526 Gilpin Avenue
Wilmington, Delaware 19806
(302) 449-9010

The above-entitled matter came on for hearing on Tuesday, May 6, 2025, commencing at 1:00 p.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

P R O C E E D I N G S

- - - - -

JUDGE BARRETT: Welcome, everyone. Good morning or good afternoon, whichever it may be. We are on the record in IPR2024-00387 Tesla Incorporated versus Graphite Charging Co. LLC. This is a hearing being conducted today by video conference. I am Judge Barrett, and with me today are Judges Quinn and Myers. Let's begin with the parties' appearances. Who do we have from Petitioner today?

MR. STEIN: Hello, Your Honors. Today you have Alex Stein, here on behalf of the Petitioner. I'll be doing the primary arguments, and Peter Loderup, also here on behalf of Petitioner. And we're both from the law firm of Morgan, Lewis and Bockius.

JUDGE BARRETT: Welcome, and who do we have for Patent Owner today?

MR. SHAPIRO: Good afternoon, Your Honors. My name is Jason Shapiro. I'm lead counsel for Graphite Charging Company and with me here today is my colleague, Nadia Loizides.

JUDGE BARRETT: Welcome. All right. We set forth the procedure for today's hearing in our oral argument order. I just want to remind everybody how this is going to work. The order set the time for 60 minutes each. However, both parties have a LEAP practitioner, which is an acronym for Legal Experience and Advancement Program. That means each side will have an additional 15 minutes. So, with that, Petitioner will have 75 minutes total to present its case. Patent Owner will also have 75 minutes total. I note that's a very long period of time. I don't think the parties are going to need that much. So, feel free to not use all your time. Petitioner will go first

1 and may reserve time for rebuttal. Then Patent Owner will have the
2 opportunity to present its response and also may reserve some time for a
3 brief sur rebuttal. Petitioner then will present its rebuttal. Patent Owner will
4 close us out with a sur-rebuttal argument. I will be monitoring the clock and
5 give you warnings, but I suggest you have someone on your team that is
6 there watching the clock and giving you whatever timing warnings you're
7 going to need.

8 When one party's up, well, I guess virtually up. The other party
9 should not interrupt or object to anything that's going on. You can address
10 those issues when it's your time up. We do have your demonstrative exhibits
11 pulled up on our computers. Normally I would say feel free to share your
12 screen, but the way we have it set up today, that would be awkward. So, if
13 you would, you can still do that, but I'm not sure that we're going to be able
14 to see them. Please every time you turn to a slide, please read into the
15 record the demonstrative slide number. Or if you're going to pull anything
16 from the record, somehow give us a good identification, exhibit number,
17 page number, things like that. These hearings are open to the public today,
18 and there is an open line. I don't expect any confidential information to be
19 discussed today, but if counsel sees that coming down the pike, just pause,
20 let me know and we will deal with it as appropriate. Any questions or
21 concerns, Petitioner?

22 MR. STEIN: Just one brief question I wanted to ask in terms of the
23 video. You know, which video lines are open? My colleague, Mr. Loderup,
24 is saying that his video doesn't appear to be working. He's the lead
25 practitioner who will be presenting a portion of the argument. I just wanted

1 to check if that's intended. If the LEAP counsel has video on, then we turn
2 on for LEAP practitioners later, or how that works.

3 JUDGE BARRETT: Hold one second. Charle, are you there in the
4 background? Can you help us with this?

5 MR. TOROSSIAN: Yes. If they are able to disconnect and reconnect
6 just to make sure that they refresh their connection. If they're having issues
7 with their audio and video. If you can hear me, please try to disconnect and
8 reconnect.

9 MR. STEIN: Yeah, he's doing that now right now.

10 MR. TOROSSIAN: Thank you.

11 MR. STEIN: Thank you, Charle and thanks Judge Barrett.

12 JUDGE BARRETT: Thank you for bringing that to our attention.

13 MR. STEIN: Yeah, and then, you know, he's very excited to have the
14 opportunity to do the LEAP speaking opportunity. I wouldn't want him to
15 have to do it without you being able to see him as well.

16 JUDGE BARRETT: We appreciate that. While he's coming online,
17 Patent Owner, any questions or concerns?

18 MR. SHAPIRO: No, Your Honor.

19 JUDGE BARRETT: All right. Thank you. Mr. Stein, while we're
20 waiting, how much time would you like to reserve for rebuttal?

21 MR. STEIN: Yeah, I'll be hoping to reserve 20 minutes, but if we
22 leak over a little bit and we're left with 15, that'll be totally fine. So, I'll
23 intend to reserve 15.

24 JUDGE BARRETT: Reserving 15. One five.

25 MR. STEIN: One five.

26 JUDGE BARRETT: Okay.

1 MR. TOROSSIAN: Still waiting for the connection. I just added for
2 the connection that disconnected to audio, they're probably connecting via
3 phone, rather the computer audio.

4 JUDGE BARRETT: Okay, Charle, so you're saying the attorney does
5 not have video?

6 MR. TOROSSIAN: Not yet. He's trying to connect to the audio.
7 Once he's connected to the audio via phone, we can double check and make
8 sure that he's good to go. We'll just stand by for that part.

9 JUDGE BARRETT: Thank you. Thank you.

10 MR. STEIN: Thank you for your patience. Your Honors apologize
11 for the technical difficulties.

12 JUDGE BARRETT: Oh, no, no need for apologies.

13 MR. TOROSSIAN: All right. Can you hear us, Mr. Loderup?

14 MR. LODERUP: Yes, I can hear you. No video access, but that's all.

15 MR. TOROSSIAN: Have you connected via the browser or did you
16 use the plugin just to be on the same?

17 MR. LODERUP: Router.

18 MR. TOROSSIAN: Okay. See if you can use the plugin, if that's
19 possible. That will give you more options and it should work better if you
20 are able to do so.

21 MR. LODERUP: By plugin, you mean the Webex software?

22 MR. TOROSSIAN: That is correct, yes. Once you launch it, it'll give
23 you the option whether to connect either or correct.

24 MR. LODERUP: Okay, I'll be right back.

25 JUDGE BARRETT: Mr. Stein, while they're working that out, are
26 you prepared to go ahead and get started?

1 MR. STEIN: Yeah, I'm ready to go. We can get started.

2 JUDGE BARRETT: Okay, then whenever you are ready.

3 MR. STEIN: Okay. All right. Thank you. Thank you, Judge Barrett,
4 and thank you for your time Judges Quinn and Meyers. It's my pleasure to
5 be here on behalf of the Petitioner today to talk through the unpatentability
6 issues of US patent number 8,103,391 in IPR2024-00387. To keep things
7 simple, I'll use the shorthand '391 Patent as I go through things today. So I'd
8 now like to direct Your Honor's attention to my demonstratives. If you
9 could turn to page two, please. I'll start there. So, this is a roadmap for my
10 presentation today. I'll be starting with a very brief overview and sort of a
11 walkthrough of the '391 Patent. I'll then turn to issues of claim construction,
12 which are very important in this case and largely dispose of most of the
13 issues here. There are a few remaining issues that are not dependent on
14 claim construction, but the heavy majority of the issues are. So, I will spend
15 quite a bit of time on claim construction just because the weight of the issues
16 is shifted towards claim construction in this proceeding. Next I'm going to
17 talk about the prior art. And here we have two very strong alternative base
18 references.

19 So we have the Kimerareference, and that's used in grounds one to
20 three in combination with two secondary references in grounds two and
21 three. And then we have the Keith reference used in grounds four and six.
22 So again, two different groups of combinations with two different base
23 references. After that, our LEAP practitioner, Mr. Loderup, will discuss the
24 two motions that Patent Owner has filed. We'll briefly conclude, and that
25 that will be the scope of our presentation today. Next, I'd like to turn to slide
26 four in our demonstrative. So starting here, you see a figure from the patent.

1 This is Figure 6 on the right-hand side of slide 4, and on the left-hand side
2 you see the field of the invention. So, what are we talking about today?
3 Well, this is chargers for electric vehicles. And what this patent talks about
4 is a broad, well-known concept of monitoring a charging process for
5 interrupt conditions that terminate the charging process. That's what you see
6 highlighted in the field of invention on the left-hand side of slide 4.

7 At this point I'd like to turn and look with Your Honors at the patent
8 itself. So if you're able to. If you have Exhibit 1001 in front of you, I'd like
9 to talk through the patent itself just for a minute. So, you'll see if you bring
10 it up. The title of the patent, as I said earlier, is directed to this broad
11 concept system for detecting interrupt conditions during an electric vehicle
12 charging process. And if you scroll through the patent a little bit and you
13 arrive at Figure 1 on page 3 of the patent, you'll see at the top the basic
14 framework that we're all pretty familiar with. You have an electric vehicle
15 116. You have charge going between a charging station 118. And you have
16 this basic framework for charging a vehicle. And then you have some
17 connected components that assist with this monitoring of interrupt
18 conditions, which we'll talk about as we go through things.

19 Next, if you continue through the figures, there's seven in total, and
20 you just kind of scroll through. What I'd like to turn to next is the section in
21 column two, which is entitled Brief description of the several views of the
22 drawings and what you'll see here. And this will be important when I talk
23 about claim construction. Each of these figures is introduced as being an
24 illustrative embodiment. It's very clear in the patent. So Starting at line 18,
25 you'll see Figure 1 is in an illustrative embodiment. Next, starting at line 22,
26 Figure 2 is introduced as an illustrative embodiment. Figure 3, the same.

1 Figure 4, the same. Figure 5, Figure 6, Figure 7. They are all illustrative,
2 non-limiting embodiments. So, the patent specifically gives us that guidance
3 when it's introducing these figures. And that's going to be important when I
4 turn to claim construction in a minute here.

5 Next, if you could jump back to slide 5 in my demonstratives, I'd like
6 to take a look at Claim 1 for a moment. So Claim 1 has five elements and
7 I'll focus on the ones that we've annotated in various colors here. So first,
8 and these correspond to the Figure 6 example just to give Your Honors a
9 visual for what the claims are covering. So you start with receiving a
10 request signaling the start of the charging process. That's in green. You
11 monitor a set of operational parameters. That's in yellow. You detect the
12 one or more interruptions in orange. And then at the end you send a
13 response to terminate the charging process. So that's the whole claim. It's
14 written in very broad terms and we will talk through those in a moment. I
15 want to focus for a second on what the disputes are because that's where I
16 want to spend –

17 JUDGE BARRETT: Counsel?

18 MR. STEIN: Yes.

19 JUDGE BARRETT: Excuse me. Before you move on the limitation
20 1D, I'm just going to foreshadow some of my questions here. Limitation 1D
21 where it involves the energy transaction execution engine. When you get
22 around to talking about dependent claims, and specifically I think 2 and 5
23 are the biggies for me, I'm going to be wanting to know how those
24 dependent claims fit with limitation 1D and how it's satisfied in your either
25 anticipation or combination.

1 MR. STEIN: Okay, I can talk about that for a moment now and then
2 maybe I can turn to it as I go through the presentation as well. So, if you go
3 back to the patent Exhibit 1001 and you look at column 16, that's where we
4 see at the bottom right corner there we see the listing of the claims. So, as I
5 said, as it pertains to 1D, 1D itself just says sending a response to the energy
6 transaction execution engine to terminate the charging process. What we see
7 in Claim 2 is it talks about which interruption is being exercised. And here
8 it's the manual override interruption. And then it continues. The computer
9 implemented method further comprises responsive to receiving from a user
10 the manual override interruption terminating the charging process. So,
11 there's two things I'd like to focus on here, and I'll turn back to these when I
12 get to the prior art.

13 So, first is what you see in 1D where it says you send this response to
14 the energy transaction execution engine. What you see in Claim 2 is it
15 doesn't specify what component needs to terminate the charging process. It
16 just says that you send this response to the energy transaction execution
17 engine. That's in 1D. And then Claim 2 says you terminate, but doesn't say
18 what is doing the termination. And this is relevant to the Keith reference
19 when we get there, which has this probe and a receptacle and the way that
20 the probe leaves a receptacle and the way that signals are conveyed between
21 the components of Keith is important to this because it actually doesn't
22 matter. When this term, which element does the termination? Because the
23 claims don't require that. They just require a response going to the energy
24 transaction execution engine. And then in Claim 2, termination actually
25 happens, but it does not say which actor, which component must be
26 responsible for the termination. So, I want to just kind of frame that for

1 later. Unless there's any questions on that. I'll take a look at Claim 5 for a
2 minute.

3 JUDGE BARRETT: No questions right now.

4 MR. STEIN: Okay, thank you, Judge Barrett. Claim 5, if you look at
5 column 17 and you turn to line eight or nine in line 17, that's Claim 5. So,
6 Claim 2 was the manual override interruption. Claim 5 is the preference
7 interruption. And this one says the preference interruption is detected from a
8 violation of a preference selected by a participant to the charging process.
9 So this uses that same term of the charging process, which is different from
10 the flow of electricity. The patent defines them differently. The flow of
11 electricity is the exchange of electricity between the charger and the vehicle.
12 The charging process is defined as something broader. And we will talk
13 about that. And that has some relevance to Claim 5 as well. So I hope that
14 helps to frame claim 2 and 5 in the context of 1D. And I'll return to sort of
15 that frame when I get to the prior art, if that's okay, Judge Barrett.

16 JUDGE BARRETT: That's fine. Thank you.

17 MR. STEIN: Okay. And turning back to slide 5 just for a moment, I
18 do want to just reiterate the narrowness of the dispute as it pertains to Claim
19 1. The only dispute is whether request and response must be messages. And
20 Patent Owner doesn't stop there. They say they must have a specific
21 structure. They must have a header and a body. Even though if you look at
22 the patent, it never uses the word header, never uses the word body. And
23 we'll talk about why those constructions are wrong. There's one element.

24 JUDGE QUINN: If I can interrupt you for a second, I want to ask a
25 question. It seems to me that most of the embodiments, if not all the
26 embodiments that we have in this patent, describe the various computer

1 components connected to a communication fabric or communication
2 network. Any examples provided are sort of packet networks like the
3 Internet or LAN or things that are in the realm of 802.11 communication.
4 As an IEEE standard. Wouldn't that then inform as to what kinds of
5 communications or the types of communications that are occurring between
6 these components?

7 MR. STEIN: I think it does, Judge Quinn. It gives us sort of the
8 ceiling for what is covered, but it's not the floor. So, this is an argument that
9 comes up repeatedly in the briefing and the point is, and I'll talk about this
10 right now, too, I appreciate the setup. So if we turn right to slide 13, I'll get
11 right to the request and response so we can talk about those constructions.
12 But the point is, it's not that the patent excludes messages and excludes more
13 modern forms of communication. The point we're trying to raise is that
14 these claims were written broadly. Patent Owner, absolutely, during
15 prosecution, could have amended these claims to use a different term to
16 focus on other forms of communication that it wanted to claim, but it chose
17 broad terms, and that's the Rambus case. And the Rambus case was a case
18 from the Federal Circuit where a patentee was doing something similar.
19 They were trying to limit their claims to a single chip memory device when
20 they used a broader term. The same is true here. Even after all of the
21 embodiments use a certain term, if there's not a clear and expressed
22 disavowal or lexicography, none of which we have here, then we don't limit
23 the scope. And if I can point to. Yeah.

24 JUDGE QUINN: So let me ask you, though. So I appreciate that. I
25 do understand that the words request and response themselves don't say

1 anything specific about the technology. But when you say there is a range
2 and there's a ceiling and a floor, what is the floor, then?

3 MR. STEIN: I think the floor would be signals as well. So, there's
4 also this, you know, more rudimentary form of communication that's
5 contemplated within the patent. So, if we turn for a minute, you can look at
6 column four, this Exhibit 1001. If you look at column four, line 11, for
7 example, you'll see that this doesn't just cover wireless communications. It
8 also covers wired communications. We have Network 102, may include
9 connections such as wire, wireless communication links, or fiber optic
10 cables. The other thing I would point to is at the end of the patent, again, as
11 I set up at the beginning, it's just written as a very broad claim. So, they
12 covered everything that they were intending to cover. If we turn, for
13 example, to column. See what I wanted to show here, column 16, line 26,
14 you'll see it talks about the coupling of network adapters, but it uses optional
15 language. So, network adapters may also be coupled to the system. So
16 again, these are all options that could be included within the scope of the
17 claim, but it's not limited to any of these.

18 And then one other part of the patent I'd like to point to, just for a
19 minute, is column 7, line lines 1. Or actually, let's start at column 6, line 65.
20 And this is something that Patent Owner does raise repeatedly. So, I think
21 it's worth talking about. Column six, line 65. It says the illustrative
22 embodiments recognize that charging electric vehicles will frequently be
23 conducted under much broader and more complex sets of circumstances than
24 this simple scenario. So again, they're using this to say this is the reason
25 why it has to be this other form of communication. But again, we have to
26 look at the language. And if you look at the language in column six, line 65

1 to 66, it just says will frequently be conducted. So, the point I would make
2 to you, Judge Quinn, is it's not limited to these particular forms of
3 communication. It says it's frequently. Right.

4 So the patent is written such that it can cover other forms of
5 communication as well. And it certainly does. So, if we turn back to slide
6 13 Just for a moment, and we look at the claim language itself, you'll see
7 limitation 1A actually has the word signal in it. And this is the thing they're
8 trying to exclude. They're just trying to exclude this one form of
9 communication, which is within the scope of this disclosure. And I think it's
10 quite telling. If you look at limitation 1A, it actually has the word signal. It
11 says request signaling the start of the charging process. So, the attempt to
12 try to exclude --

13 JUDGE QUINN: So, one thing, if I could play devil's advocate here,
14 because Claim 1 is a computer implemented method and claim 8 is a
15 computer program. So these are instructions that are operating in some
16 microprocessor or controller. So they're processing information coming in
17 and out of the processor. So, I mean, I don't disagree that the word signaling
18 there could mean that there might be something more tangible like a voltage
19 spike or a resistance drop in some line that the processor is monitoring, but
20 then that in turn must be interpreted by the program itself as some kind of
21 request or some kind of instruction. And that's where I think the disconnect
22 might be. If you can expand on that.

23 MR. STEIN: Sure, sure. Thanks, Judge Quinn. I'll try. So if you
24 turn to the petition and you look at page 64 of the petition, I just want to talk
25 about the Keith reference. And Kimura is very similar, but I'll use Keith
26 because it represents the state of the art and the scope of what these broad

1 claims cover. So, if you look at the annotated figure that we have on page
2 64 of the petition, what you'll see is that each. So on the left-hand side,
3 annotated in blue, that's the Charge Station 31, that's also circled with a blue
4 circle. On the right-hand side, you have the vehicle in teal also circled in 30.
5 Within each of those components on the two sides of the system, you have a
6 computer, you have a charge station computer 34 that's annotated in orange,
7 and you have a vehicle charge computer 72 that's annotated in pink. So to
8 your point, Judge Quinn, that's exactly what the prior art does. The prior art
9 receives this information. It has computers on either side of the system that
10 analyze this information and that perform interruption detection. And it's
11 discussed at length in the petition. So yes, the prior art is very similar to
12 what you were outlining there and has the same sort of setup and has
13 computers on each side of the system.

14 JUDGE QUINN: Isn't there an argument, however, that the
15 communication that Keith is utilizing is not the type of communication,
16 excuse me, that aligns with the request or messaging?

17 MR. STEIN: I think that's certainly the point that Patent Owner has
18 made. But again, you, Honor, I don't think it's consistent with the broad
19 scope of the way the disclosure has been written. As we talked about, these
20 are illustrative examples. If I could turn now to my slides just for a minute.
21 If we look at slide 15, these are the portions of the specification that Patent
22 Owner is relying on for their construction. And as I highlighted at the
23 beginning at the top here, they're only relying on Figure 4 for these. This is
24 in their brief. If you look at their brief, paper 24 at page 27, the entirety of
25 their argument is in three bullet points. Those three bullet points in the
26 supporting portions of the specification are reproduced on slide 15 here.

1 And what you'll see is they rely on the patent, exhibit 1001, column 2, lines
2 25 to 27. This is the Figure 4 description. It's an illustrative embodiment.
3 And next, exhibit 1001, column 12, lines 3 to 4.

4 And I think this is quite important, Judge Quinn. It says Request 414
5 is a message. So, I really want to stress that, that this is telling us this
6 example that we see in the figure is a message. But it's not telling us that
7 this is a defined term. It's not telling us that this is something that limits the
8 scope of the disclosure. It's telling us we're telling skilled artisans that, hey,
9 here's an example of how we think we've enabled this disclosure because
10 we've given you example of 414 and 414 is a message. So, to me, Your
11 Honor, the reference numeral is quite important in the context of this debate
12 here because it's really showing us, look at this one figure, look at this
13 illustrative embodiment, and see this example that we're trying to show you
14 helps us reportedly enable our invention. And the same is true for response.
15 If we look at slide 15, we've reproduced there, exhibit 1001, column 12,
16 lines 12 to 14. The same is true for the response example. It's a reference
17 numeral. It's something shown in a figure. It's an illustrative embodiment
18 meant to educate the skilled person. So, it says Response 418 is a message.
19 It doesn't say response is here. And after defined as. It doesn't quote
20 response and say this means a certain thing. This is an example with
21 reference to a figure. It's not something that's designed to limit the scope of
22 the claims.

23 So, if we jump ahead now to look at slide 18, and this goes to your
24 questions as well, Judge Quinn, we have a little bit of a dispute in the
25 briefing over the extrinsic record, and there's more in the intrinsic record.
26 I'll leave that to what we put in our briefing here because I think it's quite

1 compelling, but I'd like to spend some time on the extrinsic evidence. So, if
2 we look at slide 18, there's been an introduction of various technical
3 dictionaries from the time to talk about what was the understanding of what
4 these terms mean. And I think that's also important to your question, Judge
5 Quinn. So, Exhibits 1022 and 1023, they have definitions from the time of
6 response and request, and they include signals. We have two reproduced
7 here on the slide.

8 And there's one point I'd like to make here, and I'd like to refer to
9 Patent Owners demonstrative. It's their demonstrative slide 37. And this is
10 also in their briefing. But what they say is, look at these dictionaries.
11 There's also a definition that says response is a message. And I would
12 submit, Your Honors, that is exactly our point. Our point is that these terms
13 are broad. They cover messages, they cover signals, and they cover other
14 things. They're not limited to any one of them. And that's exactly the point
15 that I'm aiming to make today. They cover various different things. They're
16 broad terms. And all we have in the patent is illustrative examples that don't
17 limit their scope. If we jump ahead now, I'll spend a little bit of time on the
18 lexicography positions related to the interruption terms.

19 JUDGE QUINN: Before you go to lexicography, just one quick
20 question. Are you contending that we do not need to rely on dictionary
21 evidence to understand the words Response and Requests that are claimed?

22 MR. STEIN: No, Your Honor. I mean, extrinsic evidence can be
23 consulted. That wouldn't be my submission. My submission is that once
24 you consult the extrinsic evidence, what you should draw from it is the
25 conclusion that these terms had an understanding in the art that covers
26 signals and covers messages and covers other things. So, when we're

1 looking to understand the scope of these terms, they should be understood to
2 have the breadth that they were understood to have in this art. That's the
3 point that I'm making.

4 JUDGE QUINN: And as a follow up, are you contending that we do
5 not also need to rely on expert testimony under the Teva line of cases to
6 understand the meaning of these words?

7 MR. STEIN: I don't think expert testimony is necessary to understand
8 these terms, but I'm not contending that you shouldn't consult it, but I would
9 ask. So the expert testimony that is in this case is from Patent Owners
10 expert, both a declaration and his deposition testimony. So he would need to
11 consider that in full. I would think it's not very meaningful evidence
12 because I would ask Your Honors to look at his declaration. I discussed
13 with him at length various errors in his declaration that I think are very
14 troubling. For instance, there are references from his declaration to sections
15 that appear only in Patent Owner's brief. I do not think it's a very
16 compelling piece of evidence. It has nothing over the briefing. It appears to
17 just be attorney argument. It should be given the little weight it deserves.

18 With that, I'd like to turn to slide 19 and turn to the lexicography
19 position. So, we sort of have three of them. And this relates to the
20 dependent claims that we have in Claims 2, 5 and 6 that I started to talk
21 about with Judge Barrett just a little bit. What Patent Owner is doing here is
22 similar, is very similar to what it's doing with request and response, where
23 it's taking illustrative, non-limiting examples and try to pull aspects of those
24 into the claims. That is improper. The Federal Circuit has told us repeatedly
25 that we do not do that. So, let's talk through one of them, just as a

1 representative example, because I want to make sure I leave time for our
2 LEAP practitioner.

3 So, if we turn to slide 20, this is again the entirety of what they're
4 relying on for lexicography, and it's not correct. So, on slide 20 at the top,
5 this is similar to request and response. This is exhibit 1001, column 13,
6 lines 38 to 40 for data services interruption. They point to data services
7 interruption 506 and it gives an example of what this is with the context of
8 Figure 5 and an illustrative non-limiting example that is not a definition. We
9 have examples of definitions from the Federal Circuit that give us good
10 guidance. So, what we have is from the what were the two cases, the 3M
11 Innovative Properties case first, which is cited by Patent Owner and does not
12 support its position. So the example there of lexicography was a quoted
13 term, multiple embossed and then meant. That's a classic example of what
14 lexicography might look like. That's 350 F.3d 1365. Similarly, we have the
15 example of the Astrazeneca case, also cited by Patent Owner. It does not
16 support their positions. That's 384 F.3d 1333. This one said the solubilizers
17 suitable according to the invention are defined below.

18 So, if you have a quoted term and you say means, or if you have
19 something that actually says it's defined below, that is relevant to find out if
20 there was lexicography here. As I said a bunch of times now, these are
21 illustrative, non-limiting examples that actually have reference numerals in
22 front of them. They refer to figures, they don't refer to definitions. And one
23 more point on slide 20, actually I did ask Patent Owners expert about this
24 because I was frankly flummoxed by what this position means. And I asked
25 him, are you overlooking the reference numeral 506? It's referring to
26 something specific in the figure. And he said, you read it without the 506.

1 You read it without the 506. In order to find a definition, you have to ignore
2 the reference numeral. That's illogical, that makes no sense, and that
3 underscores that these positions just aren't correct.

4 Let's turn now to slide 21 because I also want to flag one other thing I
5 haven't had a chance to say yet, which is not only are the specific
6 embodiments non limiting, but the specification tells us that its whole
7 document in its entirety is non-limiting. That's one example. That's Exhibit
8 1001 at column 15, lines 29 to 31, where the patent tells us the terminology
9 used herein is for the purpose of describing particular embodiments only is
10 not intended to be limiting the invention. So not only does the case law tell
11 us this, the drafter of the patent document told us the exact same thing.
12 Don't limit my invention to the embodiments that I'm giving here to provide
13 a purportedly enabling disclosure.

14 From here, I'd like to jump ahead to slide 23 in Petitioners
15 demonstratives just to highlight that there are two past PTAB panel
16 decisions that I think are instructive for Your Honors to look at. There's the
17 ResMed case, IPR2022-00994, and then there's the Yida case, IPR2023-
18 00172, where panel members were confronted with similar sets of
19 circumstances and correctly rejected these types of lexicography positions
20 wrapped up only in illustrative examples. So just to summarize on
21 lexicography, there is no lexicography in this patent period. And that's for
22 the reasons that I've discussed and I'd like to, if Your Honors will bear with
23 me, I'll give one specific example and I'll try to do it quickly.

24 So, if we turn to slide 24, this is the data services interruption. This
25 appears in claim 6. And what is Patent Owner trying to do here? Well,
26 they're unhappy with the broad term that they have in Claim 6, so they ask

1 Your Honors to rewrite the claim. They say it's not data services
2 interruption, which is what Claim 6 says. It actually needs this extra term.
3 It's actually third party data sources, and you have to add this term which
4 appears nowhere in the claim. So starting with the claims, we have nothing
5 about the source of the data, nothing about the type of the data. There's
6 nothing constraining what this term means. It was a broad term and they're
7 held to its breadth.

8 We turn to slide 25, and this is really revealing as well. If you look at
9 the way that this argument has been constructed, it's an example on top of an
10 example. So, you can see highlighted in yellow is another one of these
11 references to a figure with a reference numeral, Data Services Interruption.
12 It then refers to what we've highlighted in green on slide 25, data services
13 sources, which then refers to what we've highlighted in blue on this slide.
14 Energy Data Services 308. At that point, we still haven't seen third party.
15 So, this is column 13, lines 38 to 42. It's not there. Patent Owner has to
16 jump to another example, another representative, non-limiting, illustrative
17 embodiment of column 8, lines 38 to 40 to finally find the word third party.
18 So again, this is an example on top of an example. It does not limit the
19 scope.

20 JUDGE QUINN: So, here's a question for you. Let's say we look at
21 the arguments Patent Owner has made and we don't agree that there's
22 lexicography. Do we need to then construe the terms based on the plain and
23 ordinary meaning or any other rubric of claim construction? I'm asking
24 because I don't see you having proposed a claim construction for these
25 terms. So what happens next if we reject Patent Owners construction?

1 MR. STEIN: Yeah, thank you, Judge Quinn. It's a good question. So
2 I think if you look at the Yita case, you look at the ResMed case, or you look
3 at the Federal Circuit's case in Real Time Data versus Iancu. Your Honors
4 need to proceed no further than to resolve the dispute in front of you, which
5 is simply to reject the lexicography positions. Once you do that, the breadth
6 of the claim exists as it states in the claim language, and the prior art is on
7 point, so there's no need to proceed further. However, if you did need to, as
8 Patent Owner has pointed out at our expert's deposition, he did provide some
9 identifications of what plain and ordinary meanings could look like that
10 we've not offered as part of our positions because we don't think it's
11 necessary to resolve the disputes in front of you. But those are in the record
12 in his deposition transcript, and they're consistent with what the prior art
13 teaches.

14 JUDGE QUINN: Are you saying that you are not disputing some
15 claim construction provided by Patent Owner that are in the record?

16 MR. STEIN: So, at the deposition of Petitioner's expert, Patent
17 Owner's counsel asked him for plain and ordinary meanings of each of these
18 interruption terms. I'm merely suggesting that the record does reflect some
19 expert testimony on if the lexicography is rejected, what our expert had said
20 these plain meanings could look like, and they're consistent with what is in
21 the prior art. But again, I don't think Your Honors need to proceed any
22 further than to reject the lexicography positions.

23 JUDGE QUINN: Well, if we wanted to consider those portions of the
24 record. What are those portions of the record? Can you be more specific on
25 where they are located? I don't see them in your --

1 MR. STEIN: Correct, Judge Quinn. We didn't offer them on our
2 briefs because we didn't think it was necessary to resolve the disputes, like I
3 said. But if you needed to consult them they are Exhibit 2007, I believe one
4 of them is on. So for Manual Override Interruption Page 43, line 2 to line
5 16. And they continue from there. So, you'll find them after that. I cited
6 one for you. And if you don't mind, I'll try to come back on rebuttal and
7 give you the other citations just to make sure I make good use of my time. If
8 that's okay, Judge Quinn.

9 JUDGE QUINN: That will work. Thank you.

10 MR. STEIN: Thank you. From here, Your Honor, I'd like to jump to
11 slide 30 just for a minute. And I'm skipping ahead for the sake of time, but
12 there's a number of other examples from the intrinsic record as to why the
13 interruption constructions are not correct. One other point I'd like to make
14 very briefly on slide 30 is the prosecution history as well. The prosecution
15 history and the examiner's understanding is something that reflects the
16 public notice function of these patents. And what you'll see when you look
17 at the prosecution history and the sections that we pointed to in our briefing
18 is the examiner also took a broad view of what these claims mean, and that
19 is relevant to figuring out what the breadth of these claims should be.
20 Finally, as to these interruption constructions, I'd like to make one additional
21 point, which is that in limitation 1C, there's an additional interruption term.

22 There's a device capabilities interruption. That term has the same sort
23 of recipe that Patent Owners says is lexicography. It's Exhibit 1001, column
24 13, lines 11 to 15. That's the same example, device capabilities interruption
25 and then a reference numeral and is. And then something. But they're
26 cherry picking which ones they wanted to use and trying to say that they're

1 lexicographers. What that reveals is that these are not attempts to
2 understand what the terms mean, which is the purpose of claim construction.
3 They're simply an attempt to try to find something in the specification that
4 they can import into the claims to try to differentiate the prior art, which is
5 contrary to Federal Circuit precedent. And Your Honors should see that.
6 And I think it's revealing when you look at this other term as well.

7 With that, I would like to jump ahead to slide 41, actually. Yeah,
8 slide 41, please. Your Honor. So, there's an additional argument of claim
9 construction that has to do with claim seven. And claim seven tells us that
10 you identify an operational parameter from the set of operational parameters.
11 Patent Owner once again looks to the specification and tries to pull things in.
12 They say that this imposes a temporal requirement that even though the
13 claim says nothing about when you identify the operational parameter, they
14 say it has to have a temporal dimension. It has to occur before each
15 charging transaction they also say these parameters have to be changeable.
16 I'd like to talk about that just for a moment.

17 So turning to slide 44, what you'll see here is an example of these
18 operational parameters from the specification. This is from column 7, lines
19 12 to 25 and the patent tells us that these operational parameters 408 again
20 one of these non-limiting representative examples with a reference and may
21 include for example prices of electricity available incentives, data
22 transmission fees, connectivity of components to the electric vehicle
23 transaction infrastructure, or deviations from an energy plan. So, there's
24 nothing in here that tells us these have to be changeable or they have to have
25 some temporal dimension. So that's just not only are they trying to read

1 something in, they're also trying to read something out. So that juxtaposition
2 shows that these, this claim construction in particular is not correct.

3 Now just to conclude on claim construction, before I turn to the prior
4 art, there really is a common theme that I hope has revealed itself here.
5 What we're seeing is Patent Owner is cherry picking examples from the
6 specification to pull in words for the claims that don't exist. These are broad
7 broadly written claims and Patent Owner chose the breadth that they chose,
8 and they're stuck with it. And they can't violate canons of claim construction
9 to try to change the scope. That's simply incorrect. It is inconsistent for all
10 the reasons that I've said. With these constructions set aside, that is most of
11 the arguments at issue here. The remaining claims that I'd like to spend
12 some time talking about, hopefully to return to Judge Barrett's question as
13 well, are Claims 2 and 3 and possibly also Claim 5. So, with that, if you
14 could jump ahead with me to slide 52, please.

15 So Hotta is a secondary reference. What you see on slide 52 on the
16 left in the blue box is a portion of our reply rating. What you see on the
17 right hand side is a figure from the Hotta reference. So what did we use
18 Hotta for? Because it's important to understanding the arguments that Your
19 Honors are presented with. So what we used Hotta for was both the manual
20 override claims, that's Claim 2 and its parallel dependent claims, and also the
21 preference interruption claim, that's Claim 5 and it's parallel Claim 12. What
22 you see in that figure we've reproduced from the Hotta reference on slide 52.
23 Hotta has a scheduled boarding time setting key, that's 53, it's annotated and
24 right above that we have a charging stop command key switch so you
25 actually have two different switches here in the Hotta reference. And the
26 proposed combination is just. It was known in the art that you could use

1 these switches to either turn off charging or to set preferences. That's what
2 the scheduled boarding time is used for, and that's what 52, the stop
3 command key switch is used for. You'll see that in the petition.

4 Patent Owner's response simply misses the mark. What they say is
5 Hotta has this different charging subroutine, this two-stage charging
6 subroutine, but that's immaterial. It's not relied on for the combination.
7 We've simply relied on the art recognized knowledge of the use of a switch
8 to set a preference or the use of a switch to manually override the charging
9 process. So once that disconnect is dispelled, the combination of Kimura
10 and Hotta stands strong. If we turn next --

11 JUDGE BARRETT: Before you turn away, I want to get into the
12 weeds a little bit on that Kimura-Hotta ground two, dependent Claim 5. So,
13 you mentioned, I believe you mentioned the boarding time setting in Hotta.
14 Help me understand your combination. Because what I understand is going
15 on in Hotta is there's a selection of a boarding time that just tells the
16 computer or whatever what time to start charging. And then I don't believe
17 it's ever used again. But we're talking about stopping the charging,
18 terminating the charging. How does that teaching fit into your combination?

19 MR. STEIN: Yeah. Yeah. Thank you, Judge Barrett. So, two
20 different things I'd like to start with. So first, we relied on Hotta for two
21 different claims. So one is for Claim 2, which is the manual override
22 interruption, and that's where we're using that stop key from Hotta. We've
23 separately relied on Hotta for the preference interruption, and that's where
24 the boarding key comes in. So, it's used in two different places. I think the
25 Claim 2 one, the manual override. I'll direct Your Honors to our petition at
26 pages 55 to 57. And you'll see that the teaching that we're using is, like I

1 said, this art recognized knowledge that you could have a stop key and it
2 would have been obvious to pull that over into Kimura. I think that's more
3 straightforward.

4 I think if it's okay, I'd like to talk about Claim 5. I think that's where
5 you were pointing me, Judge Barrett. So, if we turn to Claim 5, this is the
6 preference interruption. And what we're talking about in terms of the use of
7 Hotta's boarding time key is not necessarily that you have to use it for a
8 teaching of the boarding time, but that you take it for the principle of the
9 user can set these preferences. There can be some switch that allows them to
10 set the preferences. So, we're not necessarily only pulling in the use of a
11 boarding time. We're pulling in the general principle that it was known in
12 the art that you could set preferences using these switches and Hotta teaches
13 them. So, taking that through to the Kimura reference, you can use some of
14 the preferences from Kimura and the teaching of Hotta to make these
15 preferences be user configurable. So, it's not limited to the boarding time
16 example. It's a general teaching of the use of preferences using switches.

17 JUDGE BARRETT: So, you talked about. I thought I heard you say
18 something about pulling in boarding time into the combination. When I read
19 the petition and maybe it was the reply, it felt like the Petitioner was saying,
20 no, we're not really doing that. We're just using Hotta for this claim, just for
21 the general teaching that users can have preferences. And it sounds, I don't
22 know if -- it almost felt like you were walking away from Hotta for that
23 claim in the reply, but it feels like it's almost a single reference 103, that
24 preferences would have just been obvious. So, one of the interruptions
25 could have been a preference.

1 MR. STEIN: Well, that's correct. I mean, we relied on it for both.
2 Judge Barrett, I think the easiest thing would be to look at the petition. If we
3 look at pages and we didn't walk away from the boarding time, I still think
4 it's appropriate, but I wanted to make clear that we were using a more
5 general proposition. We weren't focused only on the boarding time. That
6 was the point in the reply brief. If you look at pages 58 to 59 in the petition,
7 you'll see that one of the examples on page 58 is it also would have been
8 obvious to combine Kimura with the boarding time selection functionality of
9 Hotta, thereby providing this additional way to indicate preferences. And
10 then it continues.

11 And if you look at the concluding sentence on page 59, we're not
12 limited only to the boarding time we're talking about. We have these
13 preferences that came from Kimura. So you see in the concluding sentence
14 there in the first full paragraph on page 59, wherein the one or more
15 interruptions is the preference interruption and the preferences we identify
16 are voltage or current reaching a corresponding threshold and the preference
17 interruption is detected from violation of a preference the corresponding
18 threshold either for voltage or current selected by a participant user selected
19 per Hotta. So the point was you can pull in the boarding time selection
20 functionality, but it's also a general teaching that the user can set the voltage
21 and they can set the current. So, it's not a single reference 103, because we
22 needed the teaching that that current or voltage could be user selected
23 preferences. And that's what we were using for the modification to Kimura,
24 that you could then take that teaching and use it to allow the user to set
25 voltage or current thresholds.

26 JUDGE BARRETT: Okay, I think that's. Go ahead, Judge Quinn.

1 JUDGE QUINN: So, my question is, following that up, on Claim 1,
2 you rely on Kimura's terminal voltage, which is set, is a preset. It's a preset
3 voltage set by the factory, is that right? So, for the independent claims, then
4 you don't need the participant to the charging process. Therefore, the preset
5 would be okay before Claim 5 to show the preset. You have relied on Hotta
6 for that? Is that a way to summarize the differences between the two
7 claims?

8 MR. STEIN: I think that's generally fair, Judge Quinn. I do think if
9 you look at the difference in language between the claims, I think that's what
10 you're pointing to as well. As far as Claim 1, and remember, as far as Claim
11 1 is concerned, you actually only need one of the interruptions to satisfy. It
12 just says at least one of and then you list three. So, you only need one of
13 them to satisfy Claim 1. It also doesn't say who sets the preference
14 interruption, it just says a preference interruption. In Claim 5, it has a little
15 more specificity, and it says by a participant to the charging process. So
16 you're correct, Judge Quinn, that when we get to Claim 5, that's what we
17 were looking to do was to be more careful with the language recited in
18 Claim 5 and make sure we addressed it properly.

19 Okay, now I'd like to jump just for a moment to slide 59. And on
20 slide 59, I'd like to talk about the King reference because the disputes here
21 are very similar to what we were talking about with Hotta. There's a
22 misunderstanding here where Patent Owner is. So King is used. Let me
23 frame this just for a minute. So Claims 3, 10, and 17, recite the very
24 conventional feature of storing the set of operational parameters in a storage
25 device. That's all it says. What we're using King for is the fact that there
26 was art recognized knowledge that you could store parameters in a memory.

1 We're taking that through back to Kimura to say, well, then you could have
2 taken that knowledge, and you could have stored Kimura's parameters in a
3 storage device.

4 So what you'll see in the briefing is that Patent Owners arguing that
5 King's parameters don't meet the claim elements. But again, that's not
6 material to the combination because the combination we argued was we're
7 taking King's teaching about storage, we're using that to store Kimura's
8 parameters. So again, I just wanted to make sure to spend a second on that
9 to correct that sort of disconnect in the briefing. And you can see that in
10 slide 60 as well. King is only relied on for this storage. You'll see the figure
11 on slide 60. This is from King. This is its Figure 1. There's a nonvolatile
12 memory, it's connected to a battery charger controller and King talks about
13 storing parameters in the memory. And again our combination is storing
14 Kimura's parameters in a memory using the teaching from King.

15 Next, if we jump to slide 61 for a minute. Well, actually, just to make
16 good use of time here, I want Mr. Loderup to have his time. So slide 63,
17 please. So, this is the Keith reference. This is sort of the high-level
18 illustration of Keith. You'll see there's a vehicle in teal, you have a probe on
19 the back of a vehicle in red, and on the right-hand side there you have a
20 charger with a receptacle that receives the probe. And this is where. This is
21 how charging occurs in this system of Keith. The part I want to highlight
22 here has to do with this was Judge Barrett's question earlier. But it's the
23 difference between terminating the charging process in Claim 2, which is the
24 overall process, and when the flow of electricity stops. And those are two
25 different things.

1 If we turn to slide 64. How do we know that? Well, we know that
2 because the patent tells us so. If we look at slide 64, you'll see that what
3 we've reproduced here, the patent gives us this example of what the charging
4 process is and it says the activities of Charging Process 318 may include, for
5 example, and then it gives some examples and at the end it has a very broad
6 statement. Any other event or condition that is directly related to or
7 incidental to the exchange of electricity. So it's not limited to the flow of
8 electricity. It's any event related to or incidental to the exchange of
9 electricity. So, when you look at the briefing and you look at the Keith
10 reference, there's a little bit of a disconnect in understanding the difference
11 between those two terms. But once it's understood that those are two
12 different terms. It's clear that Keith is indeed anticipatory for the reasons we
13 explained in our petition. And then I asked you about that --

14 JUDGE QUINN: The claim says that the receiving of the request
15 signals as start of the charging process. So, if the charging process is
16 starting when that request is received, or at least at some point when the
17 request was delivered by the energy transaction execution engine, then there
18 is a definite start to the charging process according to the claim. So, it has to
19 be some function of when the energy transaction execution engine begins.

20 MR. STEIN: I think that's fair, Judge Quinn. I think there could be
21 some co-extensiveness between when the flow of electricity begins and
22 when the charging process begins. What's disputed in the brief is the
23 termination event and what the termination event means for Keith. So that's
24 the issue I wanted to be careful about. And again, there's two different
25 terms. If you look at Claim 1 again, you'll see that the interruptions. It says
26 detecting the one or more interruptions during the flow of electricity. So,

1 there's this different term. So we have this term charging process. It's in the
2 preamble, it's in element 1A, as you correctly pointed out. But then when
3 we get to the next element, we see this different term that interruptions are
4 detected during the flow of electricity. And then later on you have a
5 response to terminate the charging process. So again, these terms are used
6 differently even within Claim 1 itself. And that has meaning.

7 JUDGE BARRETT: Counsel?

8 MR. STEIN: Yeah.

9 JUDGE BARRETT: At least I understand your distinction on those
10 words. My issue was a little different. So I understand for ground four, the
11 Keith 102 and we're talking about dependent Claim 2, the manual override
12 that you're mapping that to Keith's charge run switch, which I understand,
13 then would. Operation of that would then terminate, I guess, in your view,
14 the process. But then how is limitation 1D satisfied? Because we still need,
15 in response to detecting an interruption, which I assume you're saying is the
16 hitting the stop switch, we have to send a response to the energy transaction
17 execution engine. So help me out, because it feels like that execution engine
18 just kind of fell out. We forgot about it when we got to dependent Claim 5.
19 I'm sorry.

20 MR. STEIN: Okay. Yeah. Thanks, Judge Barrett. No, no, I don't. I
21 don't think so. If we go back to the petition and we again go to the
22 concluding, you know, section, it's on page 36 of the petition. Oh, I may
23 have pointed to -- my apologies. Let me find the right section.

24 JUDGE BARRETT: About page 32.

25 MR. STEIN: I think that's Kimura, though. I meant to point you to --

26 JUDGE BARRETT: Oh, I'm sorry, I'm sorry.

1 MR. STEIN: Yeah. So, this is on page 79 of the petition, and this is
2 where we conclude about element 1D. And you'll see both a reproduction of
3 the figure from Keith, and you'll see how we mapped it to the elements of
4 Keith using the energy transaction execution engine. Again, which I want to
5 pause and say, if you look at the patent, this is two black boxes in the patent.
6 There's no meaning to what this energy transaction execution engine is. And
7 there's boilerplate in the document that says it could be hardware, it could be
8 software, could really be anything. So we've taken that broad view as well
9 to the prior art.

10 So if you look at page 79, what we've mapped through the energy
11 transaction execution engine is what we have in the parenthetical after that
12 claim language on page 79. It's portions of the charge station controller,
13 including those implementing 387 and 400. And if you look up to the figure
14 that we have in Figure 15, you'll see 400. You have to go a little bit up to
15 see 387, but that's what sends the signaling to terminate the charging
16 process, and then the probe retracts and then the overall charging process is
17 terminated. First the flow of electricity stops and then the overall charging
18 process stops once the charger knows that the probe has been released.

19 So we did. We were careful to retain that mapping. And I don't think
20 it's undermined by the way that we analyze Claim 2 or the way we analyzed
21 element 1D. I think it's clear in the petition. And 387. 387, just for your
22 reference, Your Honor is on page 71 of the petition as well, which also has a
23 larger view of a figure 15 of Keith and also has 387 on the left-hand side as
24 well, which is from Figure 13. Yeah, Keith is a very pretty sophisticated
25 reference for his time as well with those computers and all the algorithms.

1 With that, I would. If there's no further questions, I'd like to make
2 sure to conclude and leave time for our LEAP practitioner. So, just for a
3 brief conclusion here, most of these claims can and should be found
4 unpatentable because Patent Owner's claim constructions are simply
5 incorrect for all the reasons I've provided. As to the additional arguments
6 we've discussed for Claim 2, Claim 3, and Claim 5, the arguments that
7 Patent Owner has presented simply don't have merit. And Your Honor
8 should find in our favor these references. Kimura and Keith, were really
9 very strong references with. Like I was telling Judge Quinn, these are
10 vehicle and charger side components that had computers that had
11 sophisticated algorithms. They were doing everything that Patent Owner has
12 claimed well before Patent Owner was issued this patent. So the patent is
13 simply invalid at this point. So with that, I'd like Mr. Loderup to have time
14 to discuss the two motions that Patent Owner has submitted.

15 JUDGE BARRETT: Thank you.

16 MR. LODERUP: Thank you.

17 JUDGE BARRETT: Yeah, it's a little low, but we can hear you.

18 MR. LODERUP: All right. I'll try to speak loud. Good afternoon,
19 Your Honors. As Mr. Stein mentioned, my name is Peter Loderup, and I'll
20 be addressing Patent Owner's motion to exclude, its motion to strike, and
21 why the Board should deny both of these motions in full. Before I do so, I'd
22 just like to pause and thank the Board for this opportunity. It's an honor to
23 be here, and I'm grateful for the LEAP Practitioner Program. So let's get
24 into it. First, the motion to exclude. Please turn with me to slide 76 of
25 Petitioners demonstratives. On this slide, you'll see the federal regulations at
26 play when it comes to exclusion of evidence. As the Board is well aware, all

1 relevant evidence typically is admissible. Of course, parties can move to
2 exclude evidence. However, the moving party bears a burden of proving the
3 evidence is inadmissible. Patent Owner has failed to meet this bar for this
4 particular motion.

5 Now, let's talk about the evidence at issue for this motion to exclude.
6 Turn with me now to slide 77. As you'll see outlined on this slide, Patent
7 Owner is arguing that the Board should exclude Society of Automotive
8 Engineers, SAE standard J1772. That's Exhibit 1011. And US patent
9 number 8,918,657, that's Exhibit 1020, which I'll refer to as the Cameron
10 Patent. It's worth noting that the Cameron patent names Petitioners. Sorry,
11 Patent Owner's expert, Dr. Cameron, as its first inventor. The Patent
12 Owners arguing for exclusion of these two exhibits, as well as portions of
13 other documents that discuss or otherwise pertain to Exhibits 1011 and 1020.

14 First, let's talk about the standard. I'm now on, slide 78. The SAE
15 J1772 standard is authentic for two reasons. First, Dr. MacCarley, an expert
16 in his field and a member of the Society of Automotive Engineers, is
17 intimately familiar with Exhibit 1011. His repeated reliance on this exhibit
18 is evidence for its authenticity. Second, the federal rules indicate that
19 various types of documents are authentic. They meet the low bar for
20 authenticity. One set of requirements that it spells out is in Federal Rules of
21 Evidence 901 regards ancient documents. There are three requirements here
22 which you'll see in the green box on 78, slide 78, including requiring that the
23 document itself is at least 20 years old.

24 Now, just quickly, I'd like to turn the Board's attention to Exhibit
25 1011. You'll see at the top right of the first page, that this is the November
26 2001 revision of the J1772 standard. And you see this November 2001

1 revision repeated at the top of each page thereafter. So again, the SAE
2 standard is authentic. It qualifies as authentic under the ancient document
3 standard. And Dr. MacCarley's repeated reliance on the standard is further
4 evidence of its authenticity. And now I'd like to jump forward to slide 80 of
5 Petitioner's demonstratives. The SAE standard is relevant. Dr. MacCarley
6 in his declaration repeatedly relies on the standard as corroborative evidence
7 of a POSA's knowledge and a POSA's motivations. A good example of this
8 comes from Exhibit 1009. That's Dr. MacCarley's declaration at paragraph
9 270. A quote from this paragraph is reproduced at the bottom of slide 80
10 where you'll see that Dr. Carley states that the J1772 standard confirms the
11 existence of motivations discussed for combining Keith and Nor.

12 Now, Patent Owner's position is that a person of skill in the art would
13 not necessarily be aware of this standard and yet their expert's testimony is
14 in direct conflict with this position. Dr. Cameron, his deposition at pages 44,
15 lines 24 to 45. Sorry, page 44, line 24 through page 45, line 1, and then page
16 39, lines 4 through 7 indicated that as a person of skill in the art, he tried to
17 be aware of all regulations at play and follow those regulations. So not only
18 was he aware of regulations but also by necessity would have been aware of
19 the content of those regulations as well as that would be required in his
20 following such regulations.

21 Now, I have another slide, slide 81 that discusses the further relevance
22 of the standard. I want to put a pin in this. It discusses a Lowenthal
23 publication. I'll come back to this when I discuss the motion to strike
24 because it is relevant there as well.

1 JUDGE QUINN: So, Counsel, if I can ask you so, the J1772
2 standard, the only reason you're using it is for knowledge of a person of skill
3 in the art, is that correct?

4 MR. LODERUP: That's right, Your Honor. The Kimura and Keith
5 references can stand on their own two feet. They are sufficient to show that
6 the claims are anticipated and obvious. Dr. MacCarley and the petition
7 present the J1772 standard only as further corroborative evidence of
8 POSITA knowledge and motivation to combine.

9 JUDGE QUINN: So, and what I'm trying to get at is an expert can
10 rely on information that is available to him but may not necessarily be
11 admissible. So, what's the prejudice here?

12 MR. LODERUP: Our position is that there is no prejudice here, Your
13 Honor. Again, we believe that J1772 is admissible. It's authentic, it's
14 relevant, it's not hearsay, and there is no issue with Dr. MacCarley
15 discussing it at length in his declaration. However, if the Board determines
16 for one reason or another that the standard is inadmissible and decides to
17 exclude it, Petitioner would argue that there is still no reason to exclude
18 discussions of the reference from Dr. MacCarley's declaration or other
19 portions of the record. And I believe we get into this on slide. Let's see.

20 JUDGE BARRETT: Counsel, you're coming up on the end of your
21 originally allotted time. You can continue going, but you'll be cutting into
22 your rebuttal time a little bit.

23 MR. LODERUP: Okay, that's fine. I'll cut in just five minutes.
24 Thank you, Your Honor. Let me move on now to discuss the Cameron
25 patent. I'll talk about that briefly, and then finally I'll wrap up with a motion
26 to strike. Let's see. So I'm on slide 83 now of Petitioners demonstratives. I

1 think the only point that needs to be made here for the Cameron patent is
2 that Patent Owner's argument regarding exclusion of the Cameron patent is
3 extremely threadbare. Patent Owner did nothing more than repeat its
4 objections from the deposition of Dr. Cameron, and it did little, if anything,
5 to explain why the objection should be upheld and this evidence should be
6 excluded. The Board and Veeam Software Corp. That's IPR 2013-00150,
7 indicated that a motion to exclude must not only state why the evidence is
8 invisible, but it must explain the objection. The Patent Owner has failed to
9 do that. With respect to the Cameron patent, we also discussed authenticity
10 here, saying relevance in our opposition to the motion to exclude. But I will
11 not discuss those now for the sake of time.

12 Lastly, please move with me to slide 88 of the demonstratives. Here's
13 a quick overview of the motion to strike as detailed here. Patent Owner is
14 moving to exclude exhibits 1020-1022-1023-1024, 1025, and then portions
15 of the reply that relate to these exhibits. Your Honors, the legal standard
16 with regard to this motion strike is clear. Looking at slide 89 now, the
17 Federal Circuit has established that when a Patent Owner introduces new
18 claim construction arguments, Petitioner is well within its rights to present
19 new arguments and new evidence to respond to those new claim
20 constructions. And this is coming from *Axonics v. Medtronic* 75 F.4th 1374
21 at page 1381. This is also consistent with the Code of Federal Regulations
22 37 CFR 42.23 A states a reply may respond to arguments raised in the
23 corresponding patent owner response. That is all that we've done here, Your
24 Honors. We have presented new evidence that responds to the new claim
25 construction that Mr. Stein has discussed at length.

1 MR. STEIN: Peter, let's conclude there to reserve the rest for rebuttal,
2 Your Honors.

3 MR. LODERUP: Sure. Thank you, Your Honors, for your time. As
4 I discussed, the Patent Owner's motions should be denied. And thank you
5 again for your time and consideration.

6 JUDGE BARRETT: Thank you. You only got in about a minute.
7 So. You only cut into your time about a minute, so you have 14 minutes left
8 for rebuttal.

9 MR. LODERUP: Thank you.

10 JUDGE BARRETT: Whenever you are ready and if you could tell
11 me how much time you'd like to reserve for rebuttal.

12 MR. SHAPIRO: Thank you, Your Honor. Patent Owner is ready and
13 we'd like to reserve 15 minutes of our time for sur rebuttal.

14 JUDGE BARRETT: Okay, 15. Thank you.

15 MR. SHAPIRO: Thank you. Okay, let me do my slides. Let's go to
16 slide 2. And these are the topics that we're going to discuss today. I'm going
17 to provide a quick overview of the '391 Patent, then address claim
18 construction and grounds one through three. And then my colleague Ms.
19 Loizides will address grounds three through six. Dr. MacCarley's
20 undisclosed connections to Tesla, and Patent Owner's motions to exclude
21 and strike. Moving to slide 5. I'd like to provide a little context surrounding
22 the '391 Patent that Petitioner left out of its presentation. As everyone
23 knows by now, the '391 Patent was filed by IBM about 17 years ago. And
24 according to the IBM inventors at that time, the existing infrastructure for
25 charging electrical vehicles only accommodate the most rudimentary
26 charging scenarios, such as owners plugging their electric vehicle into a

1 common electrical outlet. But to enable a more complete, flexible and
2 interoperable system governing all aspects of the charging transaction, the
3 inventors came up with a solution that uses requests and responses that, as
4 we explain, are messages that are exchanged between components of the
5 charging infrastructure.

6 Patent Owner's expert, Dr. Cameron testified that in a data processing
7 system, a message is a unit of data or information sent from one device to
8 another that includes a header and a body. And as I'll explain later, Dr.
9 Cameron's construction is supported by intrinsic and extrinsic evidence.
10 Moving now to slide six. Dr. Cameron testified in his deposition that the
11 purpose of the header in a message is to contain meta information, and the
12 meta information is about transmission, including information about the
13 source location and the target location, which allows messages to be
14 exchanged between multiple participants to the charging transaction, such as
15 the owner of the electric vehicle, the operator of the electric vehicle, and
16 even the utility company that powers the charging station. Dr. Cameron
17 distinguished messages from signals used in the prior art charging systems,
18 such as those described in Petitioner's prior art, noting that signals are not
19 suitable for more complex, flexible and interoperable systems and methods
20 such as those involving multiple participants at different locations, because
21 signals do not include a header specifying a source and a target. And I think,
22 as we've now recognized, all of the '391 Patent claims require requests and
23 responses, and the patent defines requests and responses as messages.

24 JUDGE BARRETT: And notably, Counselor, before we move on, I
25 want to go back to something you said earlier, I believe you, or you were
26 attributing it to your witness about this being a data processing patent or

1 something along those lines. I think Petitioner would say and have said this
2 is an electric vehicle charging patent. And it seems important for these
3 claim construction issues that we're going to be discussing. Is it more about
4 chargers where maybe the persons of ordinary skill in the art use terms a
5 little more colloquially, or is it a data processing patent where people are
6 going to be using these computer science kind of terms of art?

7 MR. SHAPIRO: That's a good question, Your Honor. Patent Owner
8 would take the position that this is a data processing system first and
9 foremost. And one of the most significant pieces of evidence in the intrinsic
10 record that supports Patent Owner's position is the field of the invention
11 which Petitioner mentioned in its presentation, but selectively neglected the
12 first sentence of the field of the invention, which states the present invention
13 is related generally to an improved data processing system. So, the
14 inventors considered the invention a data processing system that they are
15 applying to electric vehicle charging. So, I would agree with Your Honor's
16 statement that this is more in the realm of computer science and data
17 processing than it is in the realm of electric vehicles or chargers.

18 And I think, and that's why I wanted to go through and talk about the
19 context of the '391 Patent, because what the inventors were trying to do was
20 to take it was to go beyond the rudimentary charging systems where you
21 plug an electric vehicle into a charger and there's signals that go back and
22 forth that help you control the charging process to something much more
23 broad. And where you're looking at, number one, all aspects of the charging
24 transaction, you have a pre-charge phase, you have a charging phase, you
25 have a post-charge phase in the charging phase, you can use information
26 from the electric vehicle, you can use information from the charger, you can

1 use information from data services, from suppliers of incentives. These are
2 multiple participants that are not necessarily right at the point of charging.
3 And so how do you do that? You can't.

4 JUDGE QUINN: Counsel. Sorry, I'm appreciating the background
5 and the discussion, but I think the exercise here is to look at the claim
6 specifically and I'm having trouble reconciling the broad idea or concept that
7 you're referring to about the multi-participants in a data processing system
8 with the simplicity of the wording of the claim, which also has very broad
9 terms and I don't know how to read the claim and import into that claim
10 these aspects you're referring to about the complexity of various systems and
11 exchanging data beyond that, which what we're seeing in the art with Keith
12 and Kimura, which go beyond just sending data back and forth about
13 charging parameters.

14 So how do you read the claims to bring in all those things? And if it's
15 just the words request and response, I guess that's what we need to focus on.
16 If there are other terms that help bring that story together, I urge you focus
17 on that because right now the claims don't really read to us that way.

18 MR. SHAPIRO: Right. Thank you, Your Honor. And so I know, I
19 would agree that obviously the terms request and response are a very
20 important aspect of the claims that help tie the claims to the goals that the
21 inventors were seeking to achieve. But also it's these interrupt conditions
22 and you know, one in particular, the data services interruption, which is
23 discussed in the patent and related to, you know, sources that are, you know,
24 other than the electric vehicle and the charger and what I was getting to, and
25 I won't, I won't belabor the discussion of the patent is that the response, the
26 request and responses being messages with a header and a body is important

1 because in the patent, in order to know where you know, who a message is
2 being sent to, where it comes from it's necessary to have a header, the
3 metadata, the header that provides you that information. And the prior art
4 didn't have that with. And if we're going to talk about requests and
5 responses, let me just kind of skip ahead. Let me go to. Hold on a second.
6 34. Okay, turning to slide 34.

7 So according to Dr. Cameron, the person of ordinary skill in the art
8 would understand the terms request and response to the messages with a
9 header and a body. As I just mentioned, the patent supports Dr. Cameron's
10 testimony by explicitly stating that requests and responses are messages.
11 And for example, columns 12, lines 3 and 4, columns 12, 12 to 14. But Dr.
12 Cameron also explained that in data processing, the message is the unit of
13 data information sent from one device to another that includes a header and a
14 body.

15 And if you look at the '391 Patent, you'll see that it teaches, and this
16 was, I think that you were alluding to this earlier during Petitioner's
17 presentation. But the '391 Patent teaches the use of data buses and networks
18 to route messages between the various components of the charging system.
19 And so, as Dr. Cameron testified, without headers, the system wouldn't be
20 able to route the messages to, you know, without knowing the source and the
21 destination of the messages. So, Dr. Cameron's testimony on the meaning of
22 the term message in the context of the '391 Patent is important. And, you
23 know, and I want to emphasize that it's the patent that defined request and
24 response as a message.

25 JUDGE BARRETT: Counsel, on that point, you read, I'm looking at
26 your slide 34. It actually says request 414 is a message. And I believe this

1 was Petitioner's point. Isn't that just merely an example in one illustrative
2 embodiment, as opposed to lexicography, redefining and narrowing the
3 claimed invention?

4 MR. SHAPIRO: Patent Owner disagrees with Petitioner's argument
5 that the presence of a reference number and a definition somehow converts
6 the definition to an illustration. Reference numbers, they merely direct the
7 reader to where the feature could be found in the drawings. And Dr.
8 Cameron's unrebutted testimony indicated that a person of ordinary skill in
9 the art would read the definition without the reference numbers. And so,
10 you know, a good example of this is when, you know, in the, when the '391
11 Patent is defining the data services interruption and the preferences
12 interruption. And when it does so, it says, you know, a data services
13 interruption is a reference number, you know, is, and goes on to explain
14 what it is. And then it gives examples of things that could be a data services
15 interruption.

16 So, on the one hand, it's saying data or request. You know, request
17 quote,unquote is a message signaling the start of the charging process, right?
18 And then it might go on and say, you know, examples of such a request
19 include, you know, may include X, Y and Z. When it's doing this, what it's
20 saying is, well, okay, in this embodiment I have a request, for example. And
21 then, you know, examples of requests may be blah, blah, blah, blah, blah. It
22 also provides a definition of what a request is. That doesn't mean that the
23 request, that the definition is somehow illustrative. If it was illustrative, it
24 would say a request may be a message signaling the start of a charging
25 process. Instead, it says request, quote,unquote, is a message signaling the
26 start of a charging process. So really, what the '391 Patent is doing when it's

1 providing all these definitions is it's defining features that are in various
2 embodiments.

3 So, yes, it's true, the embodiments are illustrative because they may
4 include a certain feature. But the definition of the feature is not illustrative.
5 It is the definition. If they wanted it to be illustrative, they would have said,
6 maybe not. Quote, unquote is. And so --

7 JUDGE QUINN: Counsel, can I ask something? When we're used to
8 seeing lexicography, we tend to see a lot more of an express intention to
9 define terms. And we have here something a little bit more vague than that.
10 And when I read things like the explanation of your communications unit
11 may include a modem, then I'm kind of questioning whether what Petitioner
12 said, there's a ceiling and a floor, whether that is correct, that by disclosing
13 the communications units and the ability to communicate using a modem,
14 which is a serial communication, that's a more basic form of communication,
15 goes back to the 80s, where serial communication doesn't use a message
16 type of, like a packet would, like a header with a body. So, don't you think
17 that there are aspects of the specification that lead us to read those
18 statements that you intend are definitional, a little broader, and if not, then
19 what do we do with these other embodiments that don't really align with
20 what you are proposing?

21 MR. SHAPIRO: Okay, thank you, Your Honor. I have two responses
22 to that. First, as Petitioner mentioned, there's several cases that have been
23 cited on the issue of claim construction. One of them is the Astrazeneca
24 versus Mutual Pharmaceutical Company. And in that case, the Federal
25 Circuit stated that lexicography does not require a statement in the form of I
26 define such and such to mean that such a rigid formalism is not required.

1 And they cited to Bell Atlantic Network Services, another Federal Circuit
2 case which held that a claim term may be clearly redefined without an
3 explicit statement of redefinition. The specification may define claim terms
4 by implication such that the meaning may be found in or ascertained by our
5 reading of the patent documents.

6 So, and here we have more than implication. We have statements that
7 terms like request, response and data services interruption and preferences
8 interruption. We have explicit definitions where they say these terms. Each
9 of these terms is. And then explains what it is. So that would be my first.
10 That would be my first response. But you also asked about, you also asked
11 about what we do with all the different examples and when. So, the other
12 thing that I would raise is that claims are supposed to be read in light of the
13 specification and also in light of the problems that the inventors are trying to
14 solve. And that's why I wanted to talk about the context of the '391 Patent
15 and how the inventors were trying to solve the problem of lack of flexibility
16 in the prior art. You know, like Kimura and Keith, for example, where you
17 have signals that are conveyed over dedicated lines, that's not flexible. And
18 it doesn't solve the problem that the inventors were seeking to solve.

19 And so, we have to read the claims in the context of the patent
20 specification, which is trying to achieve certain goals. That is a canon of
21 claim construction. And that's why I thought it's important and sometimes it
22 gets lost because there are so many terms here and so many issues that we're
23 going over. But I didn't want it to get lost that the problem that the inventors
24 are trying to solve is important when you're trying to construe what claim
25 terms mean. So, I would say here that even though the inventors did not
26 state that the definition of request is a message, the way that they wrote it,

1 and in the context of what they were trying to accomplish, I think that there
2 can be only conclusion you can reach is that they were attempting to define
3 these terms so that the reader would understand the embodiments that they're
4 describing.

5 Okay, so the only other thing I'll say about the '391 Patent, I think it
6 was mentioned earlier, is that I think we mentioned that the '391 Patent does
7 talk about the use of a data bus and the networks. And I think it also should
8 be noted that in a data bus, messages can't be routed unless they have a
9 header. So, and I think that's shown in Figure 3 of the '391 Patent, where
10 we have Integration Service Bus 324. So again, the intrinsic evidence,
11 including, you know what, the problem the inventors are trying to solve,
12 how they solve it, the embodiment showing there's a service bus and then all
13 these different components that are communicating with each other, I think
14 shows what they were trying to achieve. So, with that, let's go back to slide
15 9.

16 Okay, now let's talk about interruptions. So, the '391 Patent describes
17 how during the charging phase, the system and method monitors data
18 transmissions and conditions to detect interrupt conditions and interruptions.
19 During the charge phase include. This is what we've all been talking about.
20 Device capability interruption preference interruption and data services
21 interruption. And a user may also terminate the charging process by
22 generating a manual override interruption. Turning now to slide 18. As one
23 of Your Honors noticed, the Petitioner didn't provide, didn't construe any
24 claims in the petition and didn't address any of these statements in the patent
25 that Patent Owner believes are definite definitions. And certainly, if the
26 Board agrees with Patent Owner that they are definitions. Those definitions

1 would undermine Petitioners invalidity arguments. So it's understandable
2 why they're seeking to distance themselves from those definitions. In its
3 response, Patent Owner provided evidence showing that the Patent Owners
4 acted as their own lexicographers with respect to the terms that been
5 discussing and with respect to interruptions --

6 JUDGE BARRETT: Counsel, let me stop you a second. You just
7 mentioned own lexicography, and if I understand your position on request
8 and response, I thought you were saying those already had ordinary
9 meanings in the art that were messages, so why would we need to resort to
10 lexicography? I hope that question made sense.

11 MR. SHAPIRO: No, that does make sense, Your Honor. So, I think
12 that the construction of a question and response is a bit hybrid in nature.
13 The patent is very clear that request and response are messages. And so, in
14 that sense, the patentees were being their own lexicographers. Dr. Cameron
15 also testified that a person of ordinary skill in the art would consider a
16 request in a response to message. And then the parties got into citing
17 extrinsic evidence in the form of dictionary definitions that support the
18 notion that requests and responses are messages. But we really didn't have
19 to go there because the patent says that they're messages. And I don't think
20 we should lose sight of the fact. And that's the intrinsic record is, you know,
21 more important.

22 But then the question comes up, well, what is the message? Well, the
23 '391 Patent doesn't explicitly state what a message is, and that's where the
24 plain and ordinary meaning comes into effect. And Dr. Cameron provided a
25 construction of what the plain and ordinary meaning of a message would be
26 to a person of ordinary skill in the art. And so I do think the answer to your

1 question is that, you know, the claim the construction of requests and
2 responses is hybrid in nature in that there's a portion of it is lexicography but
3 then in order to understand the definition that was provided by the inventors,
4 we have to consider the plain and ordinary meaning of a term that appears in
5 that definition.

6 Okay, let me see where I was 18, actually, and talk, you know, Your
7 Honors asked, you know, well, isn't it normal when you have lexicography
8 to have to, you know, say that it's a definition or have some more sort of,
9 you know, formal structure that would indicate that? And, you know, and I
10 think some of, you know, Petitioner made this argument, too, and they said,
11 hey, you know, the definitions don't appear in a separate definition section.
12 But, you know, all patent practitioners are aware that there's no requirement
13 for a separate definition section. And as noted in the Astrazeneca case that I
14 mentioned before, a patent, it could be deemed a lexicographer for just for
15 using a term throughout a specification consistent with, you know, a
16 definition. And.

17 JUDGE QUINN: I'm sorry, are you referring to the Astrazeneca case
18 again and saying that a consistent use of a word means lexicography?

19 MR. SHAPIRO: I think what it means, it could imply a definition.
20 That's how I would characterize the Astrazeneca case.

21 JUDGE QUINN: Or an implied definition is not lexicography. Right.
22 I mean, there are opposites. Lexicography is expressly stating a definition,
23 whereas implied is something you look into the disclosure in order to
24 ascertain a meaning.

25 MR. SHAPIRO: Yes, Your Honor, I understand that. And so, my,
26 you know, our position would be that the patentees were being

1 lexicographers. But at worst, you know, to the extent that the Board doesn't
2 agree with their lexicographers, then we believe that there's ample evidence
3 that the definitions should be implied in the context of the '391 Patent. Does
4 that make sense?

5 JUDGE QUINN: Yes. But I still question where the role of the
6 expert is, since I asked your opposing counsel during his presentation,
7 should we rely on an expert or else if the claim term is an ordinary term, not
8 a term of art, and its meaning can be ascertained from the disclosure by itself
9 without resorting to extrinsic evidence.

10 MR. SHAPIRO: Right. So, yeah, the intrinsic evidence is always the
11 most important. But where a term has a special meaning in the art, then
12 extrinsic evidence can be helpful in understanding the term. And here, for
13 example, message having a header and a body, I think that it's useful to
14 consult expert testimony on this issue. And Patent Owner did consult with
15 its expert and provided expert testimony on the claim construction issues
16 where appropriate. And that expert Patent Owner's expert testimony
17 remains unrebutted by expert testimony because Petitioner chose not to
18 submit rebuttal a rebuttal expert declaration.

19 Okay, let's let me go to data services interruption. So, and let me. I
20 guess what I'll do is let's go to slide 21 just to save some time. So, I'd like to
21 address some of Petitioner's arguments specific to the term data services
22 interruption. First, Petitioner challenged Patent Owner's construction
23 because the claims do not mention third party data sources. However, it's
24 clear that the specification does mention third party data sources. And
25 according to the Federal Circuit in the Thorner decision, which is cited in
26 our sur reply, disavowal occurs quote even though the language of the

1 claims read without reference to the specification might be considered
2 broader.

3 Second, Petitioner argued that the data service sources are not limited
4 to third parties such as energy data services and could be any of the other
5 components in Figure 3. But there's no support in the '391 Patent and
6 Petitioner hasn't pointed to any support in the '391 Patent to consider local
7 intersystem components as data service sources. And indeed none of the
8 intersystem components in Figure 3 even have the word data in their names.
9 Only The Energy Data Services 308 in Figure 3 refers to data services. And
10 the '391 Patent is explicit that energy data services are from third party data
11 service sources.

12 JUDGE BARRETT: The claim language doesn't use the word energy,
13 does it? Isn't energy data services a subset of data services? Are you saying
14 we need to narrow the claim to just energy data services?

15 MR. SHAPIRO: It is correct that the claim does not recite energy
16 data services. It recites data services. Let me just orient myself here for a
17 second. So we have. So if we look at the definition of energy data services
18 and let me give you cite to the '391 Patents so that we're all looking at the
19 same thing.

20 JUDGE BARRETT: Counselor, I think it would help me if you
21 started with Data Services Interruption 506 in column 13.

22 MR. SHAPIRO: Right.

23 JUDGE BARRETT: That does seem to track with the claim
24 language.

25 MR. SHAPIRO: Right. So that's where I was going. So in column
26 13 of the 391 patent, Interruption 500 is set to include also data services

1 interruptions 506 which is quote, a set of one or more interruptions caused
2 by the inability for information to be exchanged with data services sources,
3 unquote. Then the '391 Patent goes on to state that data service sources are
4 sources of data such as, for example Energy Data Services 308 in Figure 3.

5 JUDGE BARRETT: And then doesn't that phrase, "for example," end
6 the inquiry though, that energy data services are merely one example of a
7 type of data services interruption?

8 MR. SHAPIRO: Well, that's Petitioner argument. But what I'd like to
9 point out, if I can find the language in here, so in column 8, where the '391
10 Patent talks about energy data services, it says that it's a set of one or more
11 third party data sources providing information relevant to the energy
12 transaction. And so, and by the way, energy data services are the only data
13 services that are described in the '391 Patent. And since they are
14 information relevant to the energy transaction, it's difficult to conceive of
15 any other data services other than energy data services. And then if you then
16 ask, well, maybe energy data services are third party data sources, but there's
17 other data services that are not third party. But that also doesn't make sense
18 in the context of the '391 Patent, because if you look at the definition of
19 device capabilities interruption, that would cover communication or
20 connectivity problems between intra-system components.

21 So therefore, in the context of the '391 Patent, the fact that these
22 energy data services are the only data services described and any
23 communication problems between intra-system components would be
24 covered by a device capabilities interruption, the implication is that the data
25 services interruption 506 really can only be in energy data services based on
26 lack of communication with energy data services.

1 JUDGE BARRETT: So are you saying the patent drafter made a
2 mistake when they said, “for example.”

3 MR. SHAPIRO: I don't know why it's written that way, but based on
4 the analysis that I just provided, that is, I think, the necessary conclusion.
5 Okay, staying on claim on slide 22, Petitioner argued that the prosecution
6 history supports a broad reading of data services interruption. And because
7 the examiner read it as not requiring a third party. And what I'd like to
8 mention is that as we discussed in our sur reply, the Federal Circuit held in
9 3M Innovative Properties versus Avery Denison that Patent Owner's
10 decision to argue a different aspect of the invention during prosecution does
11 not stop it from advancing new arguments before the Board. So, in other
12 words, Patent Owner silence in response to the examiner's characterization is
13 not acquiescence because the claim was eventually allowed on grounds
14 unrelated to the un rebutted characterization, which was the lack of quote,
15 flow of electricity, unquote in the prior art. An issue there.

16 So, like the claims in the 3M case, the claims here were eventually
17 allowed based on Patent Owner's argument that the prior teachings did not
18 occur quote, during the flow of electricity, unquote. And that was unrelated
19 to the un rebutted characterization. Therefore, under Federal Circuit
20 precedent, Patent Owner silence was not acquiescence. Turning to slide 23,
21 we have manual override interruption. And again, you know, we've been
22 through this. I think that a lot of the same considerations that we spoke
23 about with reference to the data services interruption apply equally with
24 respect to the manual override interruption, except for the fact that the '391
25 Patent defined the manual overhead interruption as an instruction. And there
26 once again we solicited opinion from our expert Dr. Cameron about the plain

1 and ordinary meaning of the term instruction. And he opined that it was an
2 encoding of a series of operational steps specifying the details to be executed
3 according to those operational steps.

4 And you know, and again, Patent Owner believes that there's support
5 for Dr. Cameron's opinion in the intrinsic record as well. For example, the
6 '391 Patent at column 1513 through 16 talks about that the blocks in the
7 flowcharts, including you know, flowchart that has manual override
8 interruption blocks represent module segments or code which comprise one
9 or more executable instructions. Again, that's consistent with Dr. Cameron's
10 opinion that the term construction is an encoding of a series of operational
11 steps specifying details to be executed according to those operational steps.
12 And the other thing I would mention is that by defining the term manual
13 override interruption this way, patentees were disavowing claims that
14 covered the mere opening and closing of a switch, which is a very
15 rudimentary operation.

16 Skipping to slide 26, I'm going to address some of Petitioners
17 arguments regarding manual override interruption and try to move a little
18 quicker so that my colleague has time to finish up as well. So again, the
19 petition argued that the claims don't say anything about the manual override
20 interruptions being instructions, but this is a red herring because the
21 specification defines it as an instruction. And as I mentioned that the
22 Federal Circuit in the Thorner decision said that you can have disavowal
23 even though the language of the claims read without reference to the
24 specification might be considered broader. The Petitioner also made the
25 same argument about prosecution history supporting a broad reading. But
26 again, the claims were the Patent Owner argued a different aspect of the

1 claims. Claims were eventually allowed based on that and Patent Owner,
2 you know, should not be held to have acquiesced in the examiner's broad
3 instruction. And then I'm going to move to slide 30 and address Petitioners
4 arguments regarding Patent Owners construction and preference
5 interruption.

6 JUDGE BARRETT: Counsel, before you move on. You've used the
7 word disavowed a few times. I just want to make sure I understand your
8 position. When I think disavowal, I think I'm looking for some negative
9 comment about the thing that you're saying is disavowed. But it seems like
10 you're arguing that using own lexicography, the applicants claim this very
11 narrowly, and that is by extension a disavowal of anything broader.

12 MR. SHAPIRO: I apologize for interrupting before, Your Honor. So,
13 lexicography is in fact a disavowal. I think that there is also disparagement,
14 which is criticism of the prior art, and we have some of that here, where the
15 inventors were criticizing the rudimentary scenarios that were
16 accommodated by the prior art and how they weren't flexible. For example,
17 prior art in which signals are sent over dedicated lines are certainly not
18 flexible because you can't change things, right? So you know. So, the
19 disparagement, for example, column six beginning at line 60, also supports
20 Patent Owners claim constructions. But when I was saying disavowal, I was
21 referring to lexicography because if I define a term a certain way, then I am
22 disavowing other definitions of that term.

23 Okay, slide 30. Again, the Petitioner argued that there's nothing in the
24 claims regarding preference interruptions being selected by a user, but it's
25 clear from the specification that a preference interruption is caused by a
26 violation of a quote user specified preference. So under the Thorner

1 decision, disavowal occurred, and a Petitioner also criticized the Patent
2 Owner for its distinction between users and participants for not recognizing
3 a distinction between users and participants. But the '391 Patent uses the
4 terms users, parties and participants interchangeably, as Patent Owner
5 pointed out in the sur-reply at pages 9 through 10.

6 And the second argument the Petitioner raised is that Patent Owner's
7 reading excludes preferences specified by quote other parties, unquote. And
8 this is untrue. As I just noted, the '391 Patent uses the terms users and
9 parties participants interchangeably. Thus, Patent Owner's construction is
10 consistent with the use of the term in the specification. And in any event,
11 the Petitioner conceded that a user is not a third party, as Patent Owner's
12 expert explained. See that at the reply at 7 and our sur-reply at 10. Finally,
13 Petitioner argued that Patent Owner's construction of preference interruption
14 was inconsistent with its litigation position. But other than a conclusory
15 statement, there's no explanation from the Petitioner why the dynamic load
16 management configurations and Patent Owners preliminary infringement
17 contentions are not user preferences. Petitioner citation to Exhibit 1024,
18 which it belatedly produced, is irrelevant because the alleged quote in its
19 reply regarding dynamic load management configuration doesn't even
20 appear in that exhibit.

21 Okay, slide 33. How are we doing on time? Okay, so let me just.
22 Let's go to slide 35. I'd like to provide a brief overview of Kimura, which is
23 the primary reference in grounds 1 through 3. In Figure 1 of Kimura, which
24 is shown on the left of slide 35, the electric vehicle is shown on the right at
25 10 and the charger is shown on the left at 20. A cable 25 connects the
26 charger to the electric vehicle and includes six separate control lines 32

1 through 36, which are shown in the blue box and as admitted by Petitioner
2 and shown on the right in slide 35, Control Line 33 is dedicated to
3 transmission of charge start and stop signals between the vehicle and the
4 charger, and Control Line 34 is dedicated to transmission charge, enable and
5 inhibit signals between the vehicle and the charger. So, since Control Lines
6 33 and 34 are dedicated, or in other words, hardwired to only communicate
7 start, stop signals on line 33 and only communicate enable inhibit signals on
8 line 34, the source and destination of every signal is known aa prior art.

9 Therefore, this system is adequate only for rudimentary charging
10 scenarios and it obviously offers no flexibility, which, again, going back to
11 one of the goals of the inventors, explains why this is the type of art that they
12 were disparaging, as we discussed a few minutes ago. So, Petitioner doesn't
13 dispute that Kimura teaches signals instead of messages and doesn't argue
14 that it would have been obvious to modify Kimura to utilize messages. So
15 therefore, if the Board agrees with patent construction of requests and
16 responses as messages that contain a header and a body, it should find the
17 Petitioner failed to show by a preponderance of evidence that dependent
18 claims the Claim 1 and the Claim 1. And here it is, 1, 4 through 8, 11
19 through 15, and 18 through 20 are not obvious over Kimura.

20 So then, turning to slide 40, I'd like to discuss additional reasons why
21 dependent Claims 7, 14 and 19 are not obvious over Kimura. So, these
22 claims recite wherein one or more of the interruptions are detected by
23 identifying an operational parameter from the set of operational parameters
24 that conform to the set of predefined interrupt conditions. And Dr. Cameron
25 explained that a POSITA reading the '391 Patent would understand Claim 7
26 to mean that an operational parameter from the set of operational parameters

1 that conform to the set of predefined interrupt conditions is identified before
2 each new charging transaction. Dr. Cameron's testimony at this point also
3 remains unrebutted. And turning to slide 41, addressing Petitioner's
4 arguments regarding the operation identifying an operational parameter, the
5 Petitioner argued that the portion of the specification relied on by Patent
6 Owner in support of its construction is non-limiting. But the specification
7 states without reference to any particular embodiment that the electrical
8 vehicle transactions are divided into pre-charge and post-charge phases and
9 that in the pre-charge phase all parties are presented with conditions
10 governing a charging transaction that's not limited to any particular
11 embodiment.

12 And Petitioner argues that operational parameters need not be
13 changeable in its reply. But it couldn't identify any operational parameters
14 in the '391 Patent that are not changeable. And that makes sense because if
15 operational parameters are not changeable or if operational parameters need
16 not be changeable as proposed by Petitioner, then why would you monitor
17 and store them as described in the '391 Patent? If they don't change, there'd
18 be no reason to monitor them and store them for auditing for, you know,
19 post-charge auditing as described in the '391 Patent. So Petitioner's position
20 that operational parameters need not be changeable. It just doesn't matter.

21 JUDGE QUINN: Can I ask you a question about that, Counsel?
22 Because if an operational parameter, for example the voltage level of the
23 battery that you're looking at, that may be a parameter that you will forever
24 be monitoring because it is an important parameter for the charging process
25 and the value may change depending on which battery you have installed in
26 your vehicle. But once you set that parameter for your vehicle, that doesn't

1 necessarily need to change from charge to charge because the battery is what
2 it is unless you change the battery. So I'm not sure that changeable is a
3 particular minimum that we need to see in these parameters. And I'm
4 thinking once we start saying that something has an ability to be changed,
5 then the question is how often does it need to be changed for it to be a
6 changeable parameter. So, aren't we inviting more questions by importing
7 into a term like operational parameters something that's neither needed nor
8 implied by the operation of the claim?

9 MR. SHAPIRO: Well, I think it's important to distinguish between
10 changeable and non-changeable operational parameters or parameters. I
11 would say that parameters that change are operational parameters. You
12 know, parameters that don't change, don't change during the operation of the
13 for example, the charging process.

14 JUDGE QUINN: Right. So now you're opening a window. So that's
15 what I'm saying. Like you're not "changeable" during what window of
16 time? During the charging process, during the lifetime of the vehicle? At
17 what point is something "changeable" or not "changeable"? Right.

18 MR. SHAPIRO: Right. But again, all of the examples of operational
19 parameters in the patent, such as the price of electricity, available incentives,
20 data transmission speeds, connection components, you know, deviating from
21 an energy plan, these are all things that are part of the operational plan. And
22 so. And they may not change. That's why you monitor them. But if they do
23 change, you want to be able to react to them. So, there are things that can
24 change during the, during the operation.

25 Okay, I am running out of time, so let me just hit. Let me see if
26 there's anything else I did, you know, the other thing I did want to mention

1 about the Petitioner's argument that the Petitioners is that the patent
2 examiner's understanding of a claim during prosecution history is somehow
3 determinative. Is, we need to point out, too, that during prosecution we
4 talked about the case and why that says it's not true. But also, we should
5 recognize that during prosecution, the broadest reasonable interpretation is
6 applied to the claims. Whereas, you know, before the Board, we, you know,
7 we used the Phillips standard. And so, we have to be cautious about putting
8 too much or placing too much weight on how an examiner might have
9 construed claim terms.

10 Also, with respect to the -- with Hotta and the preference interruption,
11 Petitioner seems to be arguing that. Well, it's not that we're saying that, you
12 know, the boarding time is, you know, should be imported into Kimura.
13 What we're really saying is that we're just trying to show that a user can set
14 preferences, but neither Kimura nor Hotta teaches setting preferences related
15 to an interrupt condition. And that's really what's important. And the
16 boarding, as one of Your Honors pointed out, it's kind of hard to somehow
17 fit the boarding preference into an interrupt condition shape. Right. And
18 neither Kimura nor Hotta teaches violation of a unit of a user specified
19 preference. So I think that's another important thing.

20
21 And I think with that I'm going to turn, I'm going to turn it over to my
22 colleague, Ms. Loizides, so that she can discuss grounds three through six
23 and the motions to exclude and strike. Thank you, Your Honors.

24 JUDGE BARRETT: You have about five minutes remaining of your
25 original time.

26 MS. LOIZIDES: Could you repeat please for many minutes?

1 JUDGE BARRETT: You have about five minutes remaining of your
2 original time and then you can keep going, but you'll be cutting into your
3 rebuttal time.

4 MS. LOIZIDES: Okay, thanks so much. So this is Nadiaa Loizides.
5 On behalf of Patent Owner, I will be covering grounds four through six, Dr.
6 MacCarley's bias and Patent Owner's motions to exclude and strike. So
7 since we are hard pressed for time, I will just make a few major points about
8 ground four, and that is that Keith does not anticipate Claim 1, and by virtue
9 of not anticipating Claim 1, it does not anticipate any of the other challenge
10 claims and it does not anticipate Claim 1 because as the Petitioner admits,
11 Keith does not teach request and response. Petitioner admits that Keith
12 discloses the use of signal or key instead of a request. That is a message
13 that's in petition 65, 66. And Keith also does not teach a response which
14 also needs to be a message because Petitioner relies on Keith disclosure of
15 mechanics, mechanical de-energizing the vehicle contact relay. And that's in
16 Petition 78. And that is again not a response that needs to be a message.

17 I would also like to point Your Honors to Petitioner to the petition at
18 page 78 because counsel for Petitioner said that tried to make a point that
19 under the '391 Patent, the charging process does not stop at the charge that
20 there is a post-charge phase. But if you look at page 78 of the petition with
21 the first paragraph, it's very clear that they are talking about these de-
22 energizing of the vehicle contact relay provides a response that causes the
23 charging station computer 34 to terminate the charging process. At the very
24 top of that same paragraph, Petitioner also says for controller 72, the
25 response to terminate the charging process is signaled by de-energizing the
26 vehicle contact relay.

1 Now, Keith does not anticipate dependent Claims 2, 9 and 16 for
2 several additional reasons. Again, moving Keith's discrete on/off charge
3 into an open position is different from generating instructions. And we
4 know that instructions are required because we have the patent language that
5 supports that, and we also have Dr. Cameron's un rebutted testimony. So, I
6 would like to refer Your Honors to the Patent '391 Patent Column 15 lines, I
7 would say 12, which says each block on the flowchart or block diagram may
8 represent a module segment or portion of the code which comprises one or
9 more executable instructions for implementing the specified logical
10 functions. Also –

11 JUDGE QUINN: So counselor, I'd ask you something if you can
12 back up for a minute.

13 MS. LOIZIDES: Yes.

14 JUDGE QUINN: I'm sorry, you were going really fast and I was
15 trying to catch up to you. You were saying about Keith, talking about the
16 manual override position of Petitioner that you contended on that Keith does
17 not anticipate because there is a charge stop process that somehow doesn't
18 invoke the other controlling processes of Keith. But I want to ask you if you
19 have any interpretation of Figure 1 of Keith where the charge run key or
20 switch or interface is input directly into the charge computer. So, I wonder
21 then what is the role of the computer then under your interpretation of how
22 Keith operates?

23 MS. LOIZIDES: Okay, so Your Honor, if you're asking about manual
24 override. So it's. That's exactly where I was going. This is independent
25 Claim 2, which besides in relevant part, responsive to receiving from a user
26 the manual override interruption terminating the charging process. So, the

1 Petitioner argued here today that the patent does not say which element tells
2 us what element terminates. And we have unrebutted testimony from Dr.
3 Cameron that it is the ETEE, Energy Transaction Execution Engine that
4 terminates the charging process. That's Exhibit 2005, paragraphs 132, 138
5 and also paragraphs 76, also in Exhibit 1001, which is the patent at column
6 12 lines 26, 23. It also says that manual override interruption is an
7 instruction that causes Energy Transaction Execution Engine 416 to
8 terminate the charging process for all fours. We address this issue in our
9 response at pages 22 to 25 and so apply at page seven.

10 So going back to the other half of your question about Keith, Figure 1,
11 if you look in the middle of that figure, right in the center, there's this switch
12 77. That switch is coupled with the vehicle control or vehicle charge
13 computer 72. That's if you look sort of flex the picture into half
14 horizontally, you will see the vehicle charge computer 72 sort of three
15 quarters in. If you go from the left to the right. Now the station charge
16 computer 34 is in the opposite direction and the charge 77 is not attached to
17 it at all. So, the first of all on the case, it is the operator who turns the
18 charge. So, it is not an instruction. And if the Petitioner's position is that the
19 operator turning an instruction somehow makes the computer do something
20 that that computer cannot be the ETEE because the charge switch 77 is
21 coupled to the vehicle charge computer 72 which serves as the ETIM energy
22 transaction interruption mod. And not only this, but actually all the follow
23 up actions that the Petitioner relies on, they occur on the vehicle side. So for
24 example, displays and reenabling the vehicle that Petitioner cited in reply at
25 page 22 they take place vehicle side and the support for that is in Keith

1 Exhibit 1005, column A32 and we address this issue in the sur-reply at
2 pages 20 to 21.

3 Also, I would like to point out that Figure 16 on which the Petitioner
4 relies that also talks about the vehicle. At the very top of that figure you will
5 see the big frame that says vehicle. So, if we are looking at that figure, the
6 Petitioner told us in reply 22, 23 that for example, step 449 would show us
7 would give support to their position. But that step includes a vehicle
8 retracting the charging probe and unlocking the brake. So that actually
9 undermines the Petitioner's position. And also Figure 19 undermines
10 Petitioner's position as well because it shows that the charging process
11 cannot continue and therefore cannot terminate after the vehicle physically
12 detached from the station. I will also as to --

13 JUDGE BARRETT: Counsel, you're eating into your time now.
14 You're about four minutes into your rebuttal time. That's fine, you may
15 continue going. But I just wanted to make sure you understood.

16 MS. LOIZIDES: Okay, thanks so much, Your Honor. So for ground
17 five, I will only make one point and that is about motivation to combine.
18 Counsel for Petitioner today stressed that every figure in '391 Patent is a
19 separate embodiment. But Keith actually characterizes its pictures the same
20 way. So, if you look at Keith at column three, lines 56 to 57, each of the
21 figures it characterizes as embodiments. Therefore, counsel for Petitioner
22 undermines its own point. And then for I would also like to quickly touch
23 on Dr. MacCarley's bias. So Dr. MacCarley's testimony should be given
24 little to no weight. Because of his longstanding connections to Tesla that the
25 Petitioner and Dr. MacCarthy disclose until counsel for Patent Owner
26 actually probed him about it during his deposition.

1 Just to give you a few examples, this connection lasted over a decade.
2 Dr. MacCarley received multiple chargers and charge ports. Dr. McCarthy
3 toured Tesla's facility and took his students to tour Tesla's facilities. From
4 the early days of Tesla, when they were operated in Dr. MacCarley's woods
5 from nothing more than a garage. They are also touring Tesla's facilities
6 near the university in Palo Alto. Tesla shared some of their know how,
7 including how to build their vehicles and charges. Tesla's recruiter is one of
8 Dr. MacCarley's former students. Dr. MacCarley boasted that he was
9 instrumental, and that is quote, unquote, instrumental in forwarding his best
10 students to Tesla's recruiters. And also Dr. MacCarley, during his
11 deposition, admitted that Tesla's jobs are one of the most prestigious
12 opportunities for his students.

13 So, Petitioner said in their briefing that Dr. MacCarley is not biased
14 because he did not receive money, but Dr. MacCarley received a lot of gifts
15 in kind. And under Dr. MacCarley's own university policy, those are
16 considered personal gifts and need to be reported. Now, regarding our
17 motions. So, I will only talk about -- regarding our motion to exclude, I will
18 only talk about Exhibit 1011 and Exhibit 1020 because the rest of them, they
19 basically change on those 1011. Did they say 2011? I'm sorry, I apologize.
20 So Exhibit 1011. Right. That is the purported copy of J1772. I wanted to
21 point out that there is actually a huge question about, not only about the
22 authenticity of this document, but also about Dr. MacCarley's credibility,
23 because Dr. MacCarley, in response to our evidentiary objections, submitted
24 a supplemental declaration, Exhibit 1015, of which the Petitioner, I think,
25 did not even file with the Board. And there the Petitioner. I'm sorry, Dr.
26 MacCarley said that he obtained a copy of that. Yes.

1 JUDGE BARRETT: Did I understand you say you're now reading
2 into the record things that are not in the record? This is some kind of
3 declaration that was not filed with the Board or was it?

4 MS. LOIZIDES: Yes, it's the declaration of Dr. MacCarley that the
5 supplemental declaration of Dr. MacCarley, which was served on us, and the
6 Petitioner could have filed it in support of their response to the motion to
7 exclude. But since I assume I can only extrapolate because of the
8 inconsistencies in that declaration, they chose not to file it.

9 JUDGE BARRETT: Well, my point is we only want to hear about
10 evidence that's in the record. So, I really don't want to be introducing things
11 that are not into the record at this point.

12 MS. LOIZIDES: So, Your Honor, we mentioned that in our motion
13 to, in our reply to, in support of the motion to exclude because the Petitioner
14 raised the question about the footers in J1772, saying that those footers say
15 you can download it at such and such website. But in fact, those footers say
16 that this document is licensed to Morgan Lewis and Bockius LLP and also
17 has a prohibition on copying and networking of that document. So that does
18 not. You cannot reconcile that with Dr. MacCarley's statement in his
19 supplemental declaration that was served on us that he obtained a copy of
20 J1772 and that he gave it to the Petitioner's counsel and that that's the copy
21 that was submitted in this proceeding.

22 JUDGE BARRETT: You have about five minutes remaining of your
23 total time.

24 MS. LOIZIDES: All right. I would also say that J1772 is really
25 irrelevant because it was only mentioned in Lowenthal, which is part of the
26 intrinsic record. But at best it's relevant to the examples of suitable

1 receptacles and cables. And as to the Petitioner's point that we are re-
2 arguing that we're including the same arguments both in our motion to
3 exclude and motion to strike, that's not true. We are repeating where the
4 Petitioner relied on certain exhibits. So that would be probably somewhat
5 repetitive. But as to Exhibit 1020, which is a patent issued to Dr. Cameron,
6 that Exhibit is mentioned both in our motion to exclude, a motion to strike,
7 but for different reasons. So to give you an analogy, something can be both
8 over sold and burned. So we are raising objections to it on different
9 grounds. One is appropriate for motion to strike, the other for motion to
10 exclude. And therefore with this I conclude and I ask you that you find all
11 these claims valid and grant all of our motions. Thank you, Your Honors.

12 JUDGE BARRETT: Thank you. You have about four minutes
13 remaining for rebuttal.

14 MS. LOIZIDES: Thank you.

15 MR. STEIN: Okay, thank you, Your Honor. So for rebuttal here I
16 have six topics I'd like to hit on and I'll take them each in turn. I'm going to
17 start with the data processing system that was discussed. I'll talk about claim
18 construction. I want to talk about the data services interruption. I'll talk
19 about claim 5 and then I'll make one final point regarding this extra record
20 evidence that was just discussed, which we of course object to. So first, as
21 to the first topic I'd like to talk about, it's Dr. MacCarley and if you could
22 turn with me to Petitioner's demonstrators at slide 72.

23 And I'll be very brief here, but it's unfortunate, to be honest, that this
24 has become an issue in the case because Dr. MacCarley is a career, well-
25 regarded academic. He has tremendous experience in this field. That's laid
26 out in his declaration. He feels very strongly about supporting his students,

1 and that's all he's ever done, is support their clubs and helps them, you know,
2 find good success in industry. And that's, that's all he's ever done. There's
3 no bias whatsoever. If you turn to slide 74, he was clear in his declaration,
4 he was clear at his deposition. He said nothing that would bias his opinions
5 here. Like I said, this is a career academic, a very trustworthy individual
6 that's dedicated his whole career to the academic success. And then helping
7 his students move into industry is just part of that. And this, this lines up
8 pretty closely with the Board's XY case IPR2018-00250, where this was
9 much worse factual circumstances where a board member of one of the
10 parties was offering testimony and even that wasn't found to be sufficient for
11 exclusion. So, Dr. MacCarley, like I said, well regarded. His testimony is
12 helpful and Your Honor should give it due consideration.

13 Topic two, I'd like to talk about this data processing system that was
14 discussed. So if Your Honors could turn and look at the patent exhibit 1001.
15 I don't think we need to look much further than the title, Your Honors. It
16 says system for detecting interrupt conditions during an electric vehicle
17 charging process. That is what this is. This is not just a data processing
18 system. Again, we're talking about does it cover these things or is it limited
19 to these things? It covers a number of different things, but it's not limited to
20 them. And that's really a common theme in our discussions today. And I'd
21 also look at the patent column 1 at lines 8 to 11. Your Honors were
22 discussing with Patent Owners counsel, this reference in the field of
23 invention, where it does say the present invention is related generally to an
24 improved data processing system. And again, it continues though, and in
25 particular to a method and apparatus for managing electric vehicle charging
26 transactions. That's what this is. This is electric vehicle charging. Whether

1 it covers data processing systems is something we've been discussing, but
2 again, it doesn't limit the scope of these claims.

3 So again, it's mentioned here, it's within the scope of these claims.
4 The claims aren't limited to that. And that's really been a very common
5 theme in our discussion here. And as Judge Quinn, you highlighted quite
6 nicely in your questioning that like I said, this simply is not in the claim.
7 These are broad claims. It covers the specifications, various embodiments,
8 and that's what Patent Owner has. And I think you used the word import in,
9 and that is quite compelling because that's what's happening here. And if we
10 look at even the examples that Judge Quinn identified with the modem at
11 column six, lines 55 to 59, and there are other more simpler communication
12 paradigms identified in the patent. So just to kind of summarize, these are
13 broad claims that cover a variety of different embodiments that are described
14 in the specification.

15 Turning next to claim construction, which dovetails with what I was
16 just talking about, but it was really Judge Barrett that hit the nail on the head
17 during the conversations with Patent Owners counsel. These all of these
18 definitions that you're being asked to accept, these all have reference
19 numerals. These are referring to specific examples and figures. These are
20 not definitional. This is not like the Astrazeneca case. This is not like the
21 3M case where I told Your Honors in my opening what those examples
22 looked like. And this is nothing like them. These are clear illustrative
23 examples. They use reference numerals, and they're not designed as
24 definitional statements.

25 One other thing I'd like to point to column 6 of the patent, line 65 to
26 67. And I did mention this in my opening. But even when we're looking at

1 these examples that the patent says of more broad and complex sets of
2 circumstances, Your Honors will notice, in that same phrase it says will
3 frequently be conducted, doesn't say this is the only place where this will be
4 conducted. It does not disparage more simpler systems. It simply says this
5 will have the capability to frequently be used in these more complex
6 scenarios. And that's quite convincing and really undermines Patent
7 Owner's position and underscores the one I've been presenting to Your
8 Honors today.

9 Next, there was this position offered by Patent Owner's counsel about
10 an implied definition and about disavowal. In addition to those simply being
11 incorrect, as I've already discussed, those are actually new arguments, which
12 is frankly a little bit frustrating because we've had to deal with these extra
13 motions. We've opposed them, of course. But if any party has introduced
14 new arguments here, it's actually Patent Owner. And if you look at their
15 Patent Owner's response brief, you'll see that this implied argument and this
16 argument about disavowal. Disavowal was mentioned, never elaborated,
17 never actually argued. It was just a word in the brief that was never, never
18 became a consequential argument because it wasn't developed. So, I would
19 submit that's a new position here today on the implied definition. If you
20 look at that brief, you will not find implied anywhere. You will not find
21 implication. They only argued that those statements that have a word and
22 then a number and then is that that was an express definition. They didn't
23 argue for an implied definition. That is a new argument.

24 So just to summarize on those two points, there just is not clear and
25 unmistakable redefinition of any terms. What we have here is a Patent
26 Owner unhappy with its broad claims and asking Your Honors to rewrite

1 them. And you need to reject that impermissible invitation. If we look at for
2 just for a moment, I want to talk about the data services interruption as well,
3 which was discussed with Patent Owners counsel. Again as I said in my
4 opening, this particular construction is built on an example of an example
5 and is an incorrect argument. If you look at the spec and I believe Judge
6 Barrett, you really again hit the nail on the head with this one. But the spec
7 says column 13 by 40 to 42, such as for example and then we're given this
8 example of an energy data services energy data sources that comes later. So
9 it's not limiting the scope of these claims and it's just a common theme that
10 we've seen with these arguments here today.

11 Finally, on the Hotta reference, I'd like to look just for a minute with
12 Your Honors, if you could go to page 58 in our petition. You'll see in the
13 middle there the first full paragraph under the figure. This is what I was
14 talking about earlier. This is the general principle we were using Hotta for.
15 And I'll read it just for a second. So it says Hotta therefore teaches user
16 selection of a preference for a charging process. Applying this to Kimura, it
17 would have been obvious for a POSA to allow user selection of preferences
18 including the voltage, current and other battery specific preferences that
19 could be read from Kimura's DIP switch or just as easily indicated from
20 user's input. That was the point I was making to Judge Barrett earlier.
21 We're using this general principle from Hotta and applying it to Kimura. So
22 I wanted to make that point as well.

23 Finally, if you could turn with me for a moment to the Keith
24 reference. I think I heard an argument that this is different embodiments and
25 I found that to be a little confusing. If Your Honors could look at this
26 exhibit 1005, the Keith reference at column three at line 60, you'll see where

1 it introduces the drawings. It starts with Figure 1 and then it says
2 incorporating the present invention. And then next it introduces the other
3 figures. Figures 2 to 17 are logic flow diagrams of subroutines involved in
4 the present invention. This is all a single embodiment. That's what Keith
5 talks about. And I'm not sure what the counter-argument was. I didn't.
6 Don't believe I saw it in the briefing. But I just wanted to bring that to Your
7 Honor's attention.

8 Finally, if you could turn with me to Petitioner's demonstratives and
9 look at slide 67, please. So I wanted to make one point about Claim 5, just
10 for a minute, because Patent Owner raised this. So looking at the Keith
11 reference, the argument that we made had to do with the user's expectation
12 that they're not going to spend more than they wanted to spend on the
13 charging process. And if that's violated, the process gets terminated. The
14 point I wanted to submit for Your Honors is that this lines up exactly like the
15 patent. If you look at the '391 Patent at column 13, lines 26 to 28, this is a
16 quote. It says a user may specify a preference, same as claim five, for a
17 threshold cost for charging an electric vehicle. That is the same thing that
18 we see in Keith.

19 So finally, I wanted to make one final point on the motions. If you
20 look at our slide 81, we didn't have a chance to offer this yet, but this is, I
21 think, really revealing. So one of the documents that's at issue with the
22 motions is this Lowenthal reference, which is exhibit 1025. This is on the
23 face of the patent. This was cited during prosecution. This document talks
24 about the J1772 standard. So, this attempt to use extra resources on this
25 exclusion and the striking is really contrary to the prosecution history in the
26 intrinsic record itself. So, I wanted to highlight that for Your Honors. And

1 with that, I'd like to conclude and just thank Your Honors for your time and
2 submit my case and see the rest of my time. Thank you.

3 JUDGE BARRETT: Well, not so quick. On the slide you were just
4 pointing out. I want to make sure I understand your position. You're saying
5 the Lowenthal reference is intrinsic because its title was listed on an IDS. Is
6 that correct?

7 MR. STEIN: Well, Your Honor, Patent Owner or their predecessor in
8 interest, they cited this document to the examiner during prosecution. It now
9 appears on the face of the patent. If you go to page two of Exhibit 1001, the
10 document is on the face of the patent, so it forms part of the intrinsic record
11 because it was cited during prosecution. That's the point.

12 JUDGE BARRETT: Okay, I understand your point. And I do have
13 one more question, and then I'll let you go. On ground one, Kimura,
14 dependant Claim 5, which was the preference selected by a participant to the
15 charging process. And I think, in response to one of Judge Quinn's
16 questions, we were talking about that being a factory preset. At least Patent
17 Owner characterized it that way. And I don't think I've seen Petitioners say
18 otherwise. But, tell me, how does the factory preset, if it is that, how is that
19 a participant to the charging process?

20 MR. STEIN: So if you go to, I think this is page 27 of our brief, but
21 the way we looked at that, and you can look at the patent. So, let's start with
22 the patent just for a minute. So one of the examples that the patent gives of
23 a participant, and I'd like to find the right site for Your Honor, so just bear
24 with me.

25 JUDGE BARRETT: I think I know where you're going, and it does
26 say participants can be beyond the user themselves.

1 MR. STEIN: Exactly.

2 JUDGE BARRETT: The claim language itself, though, is a
3 participant to the charging process. So, the factory preset. How is the
4 factory part of this charging process?

5 MR. STEIN: Correct. Well, let's look at column 13, line 24. So it
6 says the user specified preference. It's giving us an example, maybe, for
7 example, a preference specified by an owner. That's kind of what we're
8 talking about. Or operator still within the realm. Now we get broad. It
9 says, or a utility provider. So utility provider is considered to be a
10 participant that can set this preference. If that's the scope that the
11 specification contemplates, then it's within the realm that a setting on a dip
12 switch, which is what Kimura has, so it actually is something that would be
13 configurable. And this is discussed on page 27 of our petition. That's within
14 the realm of a participant to the charging process because they're the
15 manufacturer of the vehicle. They put certain settings in the dip switch and
16 those drive the charging process that occurs later. So that's because of the
17 broad scope that's offered by the specification when it says a utility company
18 can be the participant that sets a preference.

19 JUDGE BARRETT: Okay, I understand your position.

20 MR. STEIN: Thank you. Okay, with that, Your Honors, I'll cede,
21 you know, the couple minutes I have left. And thank you very much for
22 your time today.

23 JUDGE BARRETT: All right, thank you. And Patent Owner, I
24 believe you have four minutes left.

25 MR. SHAPIRO: Okay. All right. So, Petitioner argued that the '391
26 Patent in column 6 states that the illustrative embodiments will frequently be

1 conducted under much broader, more complex sets of circumstances, and
2 that that language at the bottom of column six means that the embodiments
3 could be simpler. But what it's basically saying is that the embodiments
4 have to be capable of being conducted under those more complex sets of
5 circumstances. So it's clear the Petitioner is misreading the language at the
6 bottom of column 6 of '391 Patent. Also, Petitioner argued that the. Oh,
7 you're going to do that one, right? The disavow. The Kimura teaches
8 meeting users' preferences. But that's not true. I'm sorry, teaches that
9 Kimura teaches detecting interruptions from a violation of a preference. But
10 that's not true because as we've stated in our in our papers, Kimura teaches
11 meeting a user's preference. There's no disclosure of detecting an
12 interruption from a violation of a preference. And I'm going to allow Ms.
13 Loizides to respond to Petitioner's other rebuttals.

14 MS. LOIZIDES: All right, I have three points. First of all, we did
15 develop our disavowal document that in our pages 3 to 4 and under point 3,
16 including distinguishing Petitioner's cases. Secondly, regarding motivation
17 to combine under ground 5 and Keith. Keith explains before the brief
18 descriptions of drawings that these figures are exemplary embodiments as
19 demonstrated in the accompanying drawings. And the third point is that.
20 And actually, on that point, Petitioner said it's a single embodiment and cites
21 to column nine to portions discussed in figure two and Figure 3. But
22 actually voltage is discussed in figure five, figure 15 and figure 16. And if
23 you look at that, since we're on that figure, Figure 16 at block 452 shows
24 that you measure amps, you measure volts, and you calculate and store
25 kilowatt hours and cost. So voltage, contrary to Petitioner's argument, is not
26 stored.

1 And one point that I will make is that Keith teaches preventing
2 overpayment. Keith cannot really prevent overpayment because under Keith
3 overpayment, the overpayment is calculated before the battery charge
4 begins. So what happens is that the computer calculates the amount of
5 money that needs to be deposited, that money is deposited and then the
6 battery charging. And under Keith that is very important because the station
7 will not give refunds. So, this has nothing to do with monitoring
8 interruptions. And that's all I have to say. Thank you, Your Honors.

9 JUDGE BARRETT: Thank you. Okay, the case is submitted but
10 before you log off, I will ask the court reporter if you have any questions,
11 questions about spelling or anything like that.

12 MR. STEIN: Thank you, Your Honors.

13 MS. LOIZIDES: Thank you.

14 REPORTER: If you could just stay on the line for a minute so we can
15 do that after the judges leave.

16 JUDGE BARRETT: That sounds like a good plan. Thank you
17 everyone and have a wonderful rest of your day.

18 MR. SHAPIRO: You too.

19 MR. STEIN: Thank you.

20 (Whereupon, the proceedings at 3:42 p.m. were concluded.)

IPR2024-00387
Patent 8,103,391 B2

PETITIONER:

Alexander B. Stein
Brent A. Hawkins
Peter M. Loderup
Nicholas A. Restauri
MORGAN, LEWIS & BOCKIUS LLP
alexander.stein@morganlewis.com
brent.hawkins@morganlewis.com
peter.loderup@morganlewis.com
nicholas.restauri@morganlewis.com

Paul Margulies
TESLA, INC.
pmargulies@tesla.com

PATENT OWNER:

Jason M. Shapiro
Michael A. Siem
Cedric C.Y. Tan
Lynn A. Lehnert
Nadiia Loizides
DEVLIN LAW FIRM, LLC
jshapiro@devlinlawfirm.com
msiem@devlinlawfirm.com
cedric.tan@gmail.com
llehnert@goldbergsegalla.com
nloizides@devlinlawfirm.com