

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TESLA, INC.,
Petitioner,

v.

GRAPHITE CHARGING COMPANY, LLC,
Patent Owner

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

PATENT OWNER'S REQUEST FOR DIRECTOR REVIEW

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I. INTRODUCTION

Pursuant to 37 CFR §§ 42.75 and 42.71(d), Patent Owner Graphite Charging Company, LLC (“PO”) submits this Request for Director Review of the Board’s final written decision (Paper 43; “FWD”) invalidating claims 1-20 of U.S. Patent No. 8,103,391 (“391 patent”). The Board’s unpatentability decision should be reversed in its entirety for the reasons set forth below.

II. LEGAL STANDARD FOR DIRECTOR REVIEW

“Requests for Director Review of a Board’s [FWDs] . . . shall be limited to decisions presenting (a) an abuse of discretion, (b) important issues of law or policy, (c) erroneous findings of material fact, or (d) erroneous conclusions of law.” USPTO, *Director Review Process*, §2.B, available at <https://www.uspto.gov/patents/ptab/decisions/director-review-process> (last updated March 18, 2025). The Board’s FWD is an abuse of discretion if it “(1) is clearly unreasonable, arbitrary, or fanciful; (2) is based on an erroneous conclusion of law; (3) rests on clearly erroneous fact finding; or (4) involves a record that contains no evidence on which the Board could rationally base its decision.” *Intelligent Bio-Sys., Inc. v. Illumina Cambridge, Ltd.*, 821 F.3d 1359, 1367 (Fed. Cir. 2016).

Under the APA, the Board’s decisions should be held unlawful and set aside if they are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” “contrary to constitutional right, power, privilege, or immunity,” “in excess of statutory jurisdiction, authority, or limitations, or short of

statutory right,” “without observance of procedure required by law,” “unsupported by substantial evidence . . .” or “unwarranted by the facts.” 5 U.S.C. § 706(2).

III. ARGUMENT

A. The Board’s Claim Construction Analysis Improperly Shifted the Burden of Proof to PO and is Unsupported by Substantial Evidence

For all claims and Grounds, the Board abused its discretion and violated the APA for at least two reasons. **First**, it improperly shifted the burden of proof to PO by adopting overly broad constructions without evidentiary support because it disagreed that PO’s evidence demonstrated lexicography, disparagement and/or disavowal. Given Petitioner’s failure to provide any constructions in the Petition and its failure to provide any expert testimony or evidence for its broad constructions—other than dictionary definitions only for “request” and “response” that support PO (Paper 27 at 12; Ex-1022 at 3; Ex-1023 at 3, 4)—the Board should have found that Petitioner had not met its burden. *Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378-79 (Fed. Cir. 2015) (“Failure to prove the matter as required . . . means that the party with the burden of persuasion [the petitioner] loses on that point[.]”). Further, Petitioner failed to offer invalidity arguments based on PO’s constructions. (Paper 27 at 1.) The Board also improperly relied on reference numerals in the definitions of the disputed terms and generic boilerplate language in the patent to support its overly broad constructions of the disputed terms. Thus, the entire FWD should be reversed.

The Board erroneously rejected PO’s argument that the patentees acted as their own lexicographers with respect to the disputed terms. (FWD at 15-27, 36-38 & 45-50.) The patentees defined all the disputed terms in the specification (Paper 24 at 19-28), yet the Board declined to adopt or even consider those definitions in determining plain and ordinary meaning because it interpreted those portions of the specification as illustrative embodiments since they contained reference numbers.

Term	The '391 patent specification	Affected claims
“request”	“Request 414 is a message signaling the start of charging process 404.” (Ex-1001 at 12:3-4; Paper 24 at 27-28.) ¹	All independent claims and, therefore, the entire FWD.
“response”	“Response 418 is a message that may instruct energy transaction execution engine 416 to terminate charging process 404.” (Ex-1001 at 12:12-14; Paper 24 at 27-28.)	All claims (same as with “request”).
“data services interruption”	“Data services interruption 506 is a set of one or more interruptions caused by the inability for information to be exchanged with data services sources . Data service sources are sources of data, such as, for example, energy data services 308 in FIG. 3.” (Ex. 1001 at 13:38-46.) “Energy data services 308 are a set of one or more third party data sources providing information relevant to	Claims 6, 13.

¹ Unless specified otherwise, emphasis is added throughout this brief.

	the energy transaction.” (<i>Id.</i> at 8:38-44; Paper 24 at 20-22.)	
“manual override interruption”	“Manual override interruption 422 is <i>an instruction</i> that causes energy transaction execution engine 416 to terminate charging process 404. User 420 may generate manual override interruption 422 by interacting with a user interface” (Ex-1001 at 12:26-36.)	Claims 2, 9, 16.
“preference interruption”	“Preferences interruption 504 is a set of one or more interruptions that are caused from a violation of a <i>user-specified</i> preference.” (Ex-1001 at 13:22-36; Paper 24 at 25-27.)	Claims 5, 12.

However, the purpose of reference numbers in a specification is to aid the public in locating features of the invention in the figures—not to limit or expand the scope of those features. *See, e.g.*, 37 C.F.R. § 1.83(a) (requiring every feature of the invention specified in the claims to be shown in the drawings) & § 1.84(p) (requiring reference characters appearing in the drawings to also be mentioned in the specification); *Cf.* MPEP 608.01(m) (explaining that, with respect to reference characters in a claim, “generally, the presence or absence of such reference characters does not affect the scope of a claim[.]”). Dr. Cameron testified that a POSITA would understand the disputed portions of the specification to be definitions (Ex-1021 at 48:14-15, 94-10-16), and his testimony remains un rebutted.

The Board also relied on generic boilerplate in the specification as evidence

that PO did not intend the definitions to be limiting. (FWD at 14 (quoting Ex-1001 at 15:29-31 & 15:44-46).) However, the Federal Circuit has instructed that “such boilerplate language, without more, is not sufficient to overcome the explicit description of the present invention[.]” *SandBox Logistics LLC v. Proppant Express Invs.*, 813 F. App’x 548, 553 n.8 (Fed. Cir. 2020) (internal quotation marks omitted); *see also Wireless Agents LLC v. Sony Ericsson Mobile Commc’ns Ab*, 189 F. App’x 965, 967 (Fed. Cir. 2006) (boilerplate language at the end of the specification cannot be used to broaden construction beyond what is disclosed).

The Board also dismissed substantial evidence that the ’391 patent disavowed a broad construction of the terms “request” and “response,” which appear in all the independent claims. As explained by PO, the ’391 patent aimed to provide “a much more complete, flexible, and interoperable system governing all aspects of the charging transaction[.]” than previously known “rudimentary energy transactions,” such as transactions involving only the electric vehicle and the charger, which the patentees disparaged and disavowed. (*E.g.*, Ex-1001 at 6:65-7:2, 7:12-16; Paper 24 at 27-28.) To ensure the requisite interoperability and flexibility, “requests” and “responses” between participants to the transaction must be messages with a header and a body. (Ex-2005, ¶¶ 93-94; Paper 24 at 27-28; Paper 27 at 11.) As PO’s expert Dr. Cameron testified, without headers, requests and responses would not know where to go in a complex system. (Ex-1021 at

166:17–167:1.) The use of messages is therefore important for flexibility and interoperability. (*See generally* Ex-1001.) The Board’s shifting of the burden to PO and its rejection of this substantial un rebutted evidence led to its erroneous holding that the terms “request” and “response” could be signals (FWD at 15-22), which according to Dr. Cameron was characteristic of the simplistic technology disparaged in the ’391 patent as not being flexible (Ex-2005 at ¶ 94). This holding directly contradicts the Federal Circuit’s instruction that “a patent’s express purpose of the invention ‘informs the proper construction of claim terms.’” *Sequoia Tech., LLC v. Dell, Inc.*, 66 F.4th 1317, 1326 (Fed. Cir. 2023). The Board’s holding also effectively broadens the claims to encompass disparaged “rudimentary changing scenarios.” *See On Demand Mach. Corp. v. Ingram Indus.*, 442 F.3d 1331, 1340 (Fed. Cir. 2006) (claims cannot be of broader scope than the invention set forth in the specification).

Further, neither Petitioner nor the Board showed any evidence that PO’s constructions create an inconsistency or exclude an embodiment. On the contrary, it is the Board’s positions that create inconsistencies. For example, as Dr. Cameron testified, the term “data services interruption” in claims 1, 4, 8, 11, 15, 18, and 20 concerns third-party data services and excludes intra-system communications abnormalities (Paper 24 at 21; Ex-2005, ¶¶ 71-72), as intra-system communication abnormalities fall under the separate category of device

capabilities interruptions (*compare* Ex-1001 at 13:10-15 with *id.* 13:38-42; *see also* Paper 24 at 11-12; Paper 27 at 5-7). By refusing to exclude intra-system communications abnormalities from the scope of “data services interruption,” the Board rendered “device capabilities interruption” redundant. (FWD at 24.)

Second, having improperly rejected PO’s constructions, allegedly in favor of plain and ordinary meaning, the Board failed to specify the plain and ordinary meanings. *See O2 Micro Int’l v. Beyond Innovation Tech.*, 521 F.3d 1351, 1361 (Fed. Cir. 2008) (“A determination that a claim term ‘needs no construction’ or has the ‘plain and ordinary meaning’ may be inadequate when a term has more than one ‘ordinary’ meaning or when reliance on a term’s ‘ordinary’ meaning does not resolve the parties’ dispute.”). Here, the parties’ disputes remain unresolved.

For example, the Board held that the terms “request” and “response” should be given their plain and ordinary meaning, but their contours remain amorphous because the Board at best determined that claim 1 would not exclude “the use of a signals [*sic*].” (FWD at 22.) This is insufficient because PO’s unrebutted expert claim construction testimony explained how a POSITA would not understand these terms to cover signals. (Ex-2005, ¶ 93-94; Paper 24 at 27-28; Paper 27 at 11.) The Board also rejected, without an adequate explanation, extrinsic evidence of what a plain and ordinary meaning of these terms would have been. (FWD at 21.)

As explained above, the Board rejected unrebutted testimony of PO’s expert

Dr. Cameron that “a data services interruption” excludes intra-system communications abnormalities (Paper 24 at 21; Ex-2005, ¶¶ 71-72), thereby reading “a device capabilities interruption” out of the claims. (FDW at 24; *supra* Part III.A.) The Board also neither acknowledged nor addressed several inconsistent definitions of “data services interruptions” that Dr. MacCarley gave for the first time during his deposition. (See Paper 24 at 21 (quoting Ex-2007 at 34:21-25, 27:23–28:4 & 70:5-6).) Thus, this dispute remains unresolved.

For the terms “manual override interruption” and “preference interruption,” the Board not only discounted Dr. Cameron’s unrebutted testimony, but also introduced new evidence not relied on by Petitioner. Specifically, for “manual override interruption,” which the Board discussed in connection with claim 2 under Ground 2, the Board *sua sponte* introduced evidence of instructions in Hotta (FWD at 45-50)—when the Petition did not as much as mention the word “instruction” in connection with claim 2 under Ground 2 and relied instead on Hotta’s disclosure of pressing command keys (Pet. at 54-57). For “preference interruption,” which the Board discussed in connection with claim 5 under Ground 1, the Board avoided ruling that Kimura does not teach or suggest user-specified preferences (Paper 24 at 25-27) by creating an entirely new invalidity theory drawing on Petitioner’s evidence from Ground 2, as discussed directly below (FWD at 38; *infra* Part III.B).

B. The Board *Sua Sponte* Created and Decided a New Invalidity Theory to Invalidate Claims 5, 7, 12, 14 and 19 Under Ground 1

The Board is not “free to adopt arguments on behalf of petitioners that could have been, but were not, raised by the petitioner during an IPR.” *In re Magnum Oil Tools Int’l*, 829 F.3d 1364, 1381 (Fed. Cir. 2016). However, this is exactly what the Board did for claims 5, 7, 12, 14, and 19 under Ground 1 by creating a new theory of invalidity based on testimony concerning Ground 2. (FWD at 38.)

Petitioner argued that Kimura renders obvious claim 5 under Ground 1 because it discloses a preference interruption “caused by the terminal voltage of the battery 11 reaching the predefined threshold[,]” and that under claim 5 preferences may be set by “a user, a third party, or by a computer entity.” (Pet. at 39-40.) PO pointed out that Petitioner’s challenge failed at least for two reasons. First, Kimura’s voltage threshold on which Petitioner relied must be preset at the factory because it is saved in EEPROM memory, and Petitioner showed no teaching or suggestion of a user interface that would permit alteration of the preset. (Paper 24 at 29-30; Ex-2005, ¶ 97; Paper 27 at 14.) Second, a factory preset could not be “a participant to the charging process” because the participants/parties to the charging transaction under the ’391 patent include “the owner of the electric vehicle to be charged, the operator of the electric vehicle, the owner of the charging station, and an electric utility company providing electricity to an electric power grid associated with the charging station” who must agree to conditions during the pre-charge stage. (Paper 24 at 29 (quoting Ex-1001 at 7:43-49).)

The Board, however, acknowledged that in invalidating claim 5 under Ground 1 it relied not on evidence Petitioner submitted for Ground 1 but on testimony of Dr. MacCarley relating to claim 5 under Ground 2. (FWD at 38 (quoting Ex-1009, ¶¶ 157-158).) Similarly, for claims 7, 14, and 19, the Board relied on Kimura’s purported disclosure of DIP switches under Ground 1 (FWD at 43-44), despite Petitioner never advancing an invalidity theory based on Kimura’s DIP switches for these claims under that Ground (see Pet. at 42-43, 46 & 49; Paper 26 at 15-16). PO was not on notice that the Board would consider this theory under Ground 1, nor was it given an opportunity to respond to it. This constitutes an abuse of discretion, and violations of the APA and due process. *In re NuVasive, Inc.*, 841 F.3d 966, 971 (Fed. Cir. 2016); 5 U.S.C. §§ 554(b)(3), 554(c), 556(d).

C. The Board Erroneously Read out Claim Language and Ignored Relevant Evidence for Claims 7, 14, and 19 Under Ground 1

For claims 7, 14, and 19 under Ground 1, the Board abused its discretion and violated the APA by making three errors. **First**, the Board completely ignored (FWD at 40-44) that these claims recite that “an operational parameter” must be identified “*from the set of operational parameters* that conform to the set of predefined interrupt conditions[.]” (Ex-1001 at 17:18-20, 18:6-8, 18:41-43). The Board was aware that Petitioner had failed to meet its burden as to this limitation because PO highlighted it in its POR and Sur-Reply. (Paper 24 at 33-35 & 37; Paper 27 at 14.) Yet, the Board did not even acknowledge this shortcoming.

Secondly, the Board dismissed PO’s argument that an operational parameter must be identified during a pre-charge stage because all the parties to the transaction must agree to the conditions governing the transaction. (FWD at 40-43.) Instead, the Board erroneously concluded that PO “does not explain adequately, . . . how a disclosure of *presenting* conditions to parties during a pre-charge phase precludes *identifying* operational parameters at another time.” (FWD at 42 (emphasis original).) The Board’s conclusion is not supported either by express claim language, specification, or expert testimony from either side.

Specifically, the ’391 patent discloses only three stages of a charging transaction—pre-charge, charge (during the flow of electricity), and post-charge. (Ex-1001 at 7:17-19; Paper 24 at 33; Ex-2005, ¶ 85.) Claim 1, from which claim 7 depends, recites that monitoring a set of operational parameters for interruptions occurs ***during the flow of electricity***. (Ex-1001 at 16:48-50). All parties must ***agree*** to conditions governing the charging transaction during the pre-charge phase. (Paper 24 at 35 (quoting Ex-1001 at 7:41-49).) The conditions governing the charging transaction include predefined interrupt conditions, which include rules involving operational parameters. (Paper 24 at 35; Ex-2005, ¶ 103.) The operational parameters in the predefined interrupt conditions are the set of operational parameters from which the method identifies operational parameters to monitor. (Paper 24 at 35; Ex-2005, ¶ 103.) Contrary to the Board’s theory, the

requisite identification simply cannot occur “at another time” (*e.g.*, in the middle of the charge stage or after the flow of electricity stopped) because monitoring for interruptions occurs “responsive to receiving, from an energy transaction execution engine, a request signaling a **start** of the charging process[.]” (Ex-1001, 16:46-52.)

Third, the Board faulted PO’s focusing on Kimura’s factory presets and purportedly ignoring its disclosure of DIP switches (FWD at 43.) However, Petitioner never relied on that disclosure in connection with these claims in Ground 1. (See Pet. at 42-43, 46 & 49; *supra* Part III.B.)

D. The Board Misapplied Its Own POSITA Definition

The Board abused its discretion and violated the APA when it misapplied its own POSITA definition. **First**, the Board penalized PO’s expert Dr. Cameron for lack of experience with electric vehicle charging that the Board expressly ruled was not required of a POSITA. The parties disagreed on whether a POSITA would have had experience with electric vehicle charging. Petitioner submitted that a POSITA “would have had . . . at least two to three years of ***experience working on software and/or hardware used to manage charging processes for electric vehicles.***” (Pet. at 6 (citing Ex-1009, ¶¶ 16-20).) PO argued that Petitioner’s definition was too narrow and that because the ’391 patent “is focused on data processing concepts such as execution engines, interrupt monitors, and data services for managing an energy transaction, at least two to three years of

experience working on data processing systems in the field of energy

management would have been sufficient.” (Paper 24 at 17-18.)

The Board found that the parties’ definitions were similar and that the outcome would not change under either definition. (FWD at 9.) However, the Board went on to improperly credit Dr. MacCarley’s testimony on a motivation to combine because he has experience with electric vehicle charging while dismissing Dr. Cameron’s testimony for lack of such experience. (FWD at 49 (summarizing a portion of Dr. MacCarley’s report (Ex-1009, ¶¶ 6–13) as “detailing his qualifications regarding electric vehicles, including charging” and highlighting “Dr. Cameron admitting that he lacks experience with electric vehicle charging”).)

Second, the Board took an inconsistent position on J1772. Petitioner argued that a POSITA would have been “familiar with standards and regulations relevant to charging of electric vehicles (including J1772, Ex-1011)[.]” (Pet. at 6.) PO argued that no such knowledge was required, noting that neither J1772 nor other standards are mentioned in the ’391 patent. (Paper 24 at 18.)

The Board refused to decide whether knowledge of J1772 was required but then credited Dr. MacCarley’s testimony based on that standard (including for claim 1 under Ground 1 and a motivation to combine under Ground 2). (*Compare* FWD at 10 *with id.* at 49.) Similarly, the Board sided with Petitioner where Petitioner relied on Dr. MacCarley’s testimony based on J1772, including

regarding whether signals meet the “request” and “response” limitations in claim 1 (see Pet. at 11-12 (citing Ex-1009, ¶ 56)), monitoring for conditions during the flow of electricity in claim 1 under Ground 1 (see Pet. at 18 (citing Ex-1009, ¶ 68)), and a motivation to combine Kimura and Hotta under Ground 2 (see Pet. at 52-54 (citing Ex-1009, ¶ 146)).

Relatedly, the Board credited Dr. MacCarley’s testimony based on J1772—recasting it as “common knowledge” (FWD at 49), even though Petitioner never advanced a common knowledge argument in connection with claim 2 under Ground 2 and instead argued that Hotta discloses manually pressing a command key (Pet. at 56-57). Paragraph 154 of Dr. MacCarley’s report (on which the Board relied) was only mentioned as part of a range cite in the Petition. (See Pet. at 57 (citing Ex-1009, ¶¶ 149-54).) Thus, PO was correct that J1772 arguments should be disregarded as impermissibly incorporated by reference. (See FWD at 49.)

In addition, even if the Board was allowed to entertain a common knowledge theory absent from the Petition, Dr. MacCarley provided no evidence that manual override was part of common knowledge other than a cite to J1772. (See Ex-1009, ¶ 154.) See *In re Beasley*, 117 F. App’x 739, 744 (Fed. Cir. 2004); *In re Ahlert*, 424 F.2d 1088, 1091 (C.C.P.A. 1970).

E. The Board Failed to Properly Address Evidence of Dr. MacCarley’s Bias

PO provided substantial evidence that Petitioner’s expert Dr. MacCarley is

biased in favor of Petitioner Tesla because of their decades-long mutually-beneficial relationship that saw Dr. MacCarley improve his academic standing, place his best students with Petitioner, obtain numerous pieces of expensive equipment from Petitioner, tour Petitioner's facilities and have access to its know-how. (Paper 24 at 70-71; Ex-2007 at 78:21–79:1, 79:14–80:1, 80:13-20, 81:2-18.) As Dr. Cameron put it, Tesla was part of Dr. MacCarley's "critical path." (Ex-1021, 138:17-24; Paper 27 at 27.) Neither Petitioner nor Dr. MacCarley disclosed this relationship until probed by PO's counsel during Dr. MacCarley's deposition. (Ex-2007 at 78:13–81:23.) While Petitioner tried to downplay this issue by attorney argument, PO's evidence of bias remains unrebutted. (Paper 27 at 26-28.)

Despite a plethora of unrebutted substantial evidence derived from Dr. MacCarley's own admissions, the FWD never went beyond merely acknowledging that PO made a bias argument and then summarily dismissing it. (FWD at 6 n.3.) The Board never analyzed Dr. MacCarley's bias or how it affected the weight given to his testimony when evaluating his individual assertions later in the FWD, either. (*E.g., id.* at 29.) Because the Board credited Dr. MacCarley's opinions and directly or indirectly relied on them throughout (FWD at 29, 31, 32, 35, 36, 38-40, 43-44, 47-49, 53-55), it affected its entire invalidity analysis.

IV. CONCLUSION

For these reasons, the FWD should be reversed as to all claims.

Respectfully submitted,

Dated: August 29, 2025

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CERTIFICATE OF SERVICE

The undersigned certifies that on August 29, 2025, pursuant to 37 C.F.R. § 42.6(e), a copy of **PATENT OWNER'S REQUEST FOR DIRECTOR'S REVIEW** was served via email (as consented to by counsel) to counsel of record for Petitioner as follows:

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