

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. IPR2024-00388
U.S. Patent No. 8,291,243

PATENT OWNER'S MOTION TO EXCLUDE

Mail Stop PATENT BOARD
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
Submitted Electronically via PTAB E2E

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	ARGUMENT.....	1
A.	The Board Should Exclude Ex-1006 (Archived Copies of Published Data from the Alberta Electric Supply Operator (“AESO Report”)) in Its Entirety	1
B.	The Board Should Exclude Ex-1012 (Alberta Electrical Supply System Study) in Its Entirety.....	3
C.	The Board Should Exclude Ex-1013 (Alberta Electric Supply Operator – Help Page) in Its Entirety	3
D.	The Board Should Exclude Ex-1014 (RSS Article) in Its Entirety	5
E.	The Board Should Exclude Ex-1015 (History of Power Article) in Its Entirety.....	6
F.	The Board Should Exclude Ex-1016 (U.S. Patent No. 5,673,497 to St. Louis) in Its Entirety.....	7
G.	The Board Should Exclude Ex-1017 (Alliance Laundry Systems – Home Laundry Dryers Service Manual) in Its Entirety	8
H.	The Board Should Exclude Ex-1018 (Internet Archive Affidavit) in Its Entirety.....	9
I.	The Board Should Exclude Certain Portions of Ex-1025 (Copy of February 11, 2025 Deposition Transcript of Dr. Cameron)	11
J.	The Board Should Exclude Ex-1027 (Inspiron 1210 Quick Reference Guide) in Its Entirety	12
K.	The Board Should Exclude Portions of the Petition (Paper 2)	13
L.	The Board Should Exclude Certain Portions of Ex-1003, Declaration of Dr. C. Arthur MacCarley	14
M.	The Board Should Exclude Certain Portions of Petitioner’s Reply (Paper 28)	14
III.	CONCLUSION.....	15

TABLE OF AUTHORITIES

Statutes

37 C.F.R. § 42.64	1
Fed. R. Evid. 106	11
Fed. R. Evid. 401	passim
Fed. R. Evid. 402	passim
Fed. R. Evid. 403	passim
Fed. R. Evid. 801	4, 7, 9, 13
Fed. R. Evid. 802	passim
Fed. R. Evid. 803	passim
Fed. R. Evid. 804	passim
Fed. R. Evid. 901	passim
Fed. R. Evid. 902	7

I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.64(c), Patent Owner Graphite Charging Company, LLC (“PO” or “Graphite”) requests that the Board exclude from the record—in full or in part—the following inadmissible exhibits and related briefing submitted by Petitioner Tesla, Inc. (“Petitioner”).

It is not enough for the Board to find that this Motion is moot if the Board does not rely on the inadmissible evidence in reaching its Final Written Decision. If this evidence remains in the record, Petitioner may seek to rely on it on appeal to the Federal Circuit, and PO could be unfairly prejudiced.

II. ARGUMENT

A. The Board Should Exclude Ex-1006 (Archived Copies of Published Data from the Alberta Electric Supply Operator (“AESO Report”)) in Its Entirety

Petitioner relied on Ex-1006 in the Petition (Paper 2 at 4, 5-6, 78-79, and 80-82), its Reply (Paper 28 at 30-21), in its expert Dr. MacCarley’s declaration (*e.g.* Ex-1003, ¶¶ 47, 206, 210), and during the deposition of PO’s expert Dr. Cameron (*e.g.*, Ex-1025 at 301:21-315:14). PO timely objected to Ex-1006. (Paper 18 at 3-4.)

Ex-1006 should be excluded in its entirety. *First*, it is inadmissible under Fed. R. Evid. 901(a) as Petitioner has not “produced sufficient evidence to support a finding that the item is what the proponent claims it is.” For example, Petitioner

alleged a publication date but has not provided sufficient evidence pursuant to Fed. R. Evid. 901(b) or otherwise satisfying the requirement of Fed. R. Evid. 901(a) because it failed to show that Ex-1006 was ever **publicly** available or to establish either a publication or creation date.

Additionally, Ex-1006 does not appear to be a copy of an authentic document from Wayback Machine, as Wayback Machine's affiant attached a document (Ex-1018 at 12-13) that on its face differs from Ex-1016 (for example, the header information and timeline are missing).

Contrary to Petitioner's assertion (Paper 2 at 5), Wang does not prove that Ex-1006 was publicly available before the earliest priority date because Wang only provides a link to the AESO website (www.aeso.ca). (Ex-1005 at 36:5-6.) Likewise, contrary to Dr. MacCarley's implication that data in Ex-1006 is similar to or same as the data from the AESO cited in Wang, Ex-1006 and Wang cite, among other things, different values for the electric grid. (Ex-1003, ¶ 32; Ex-1005 at 37, tbl. 1.)

Second, Ex-1006 is hearsay under Fed. R. Evid. 801(c) and thus inadmissible under Fed. R. Evid. 802. For example, Petitioner relies on Ex-1006 for the truth of the matter asserted therein. (See Ex-1003, ¶¶ 206, 210.) Yet Petitioner has not offered sufficient evidence that Ex-1006 falls within any exclusion or exception of the rule against hearsay under Fed. R. Evid. 803 or 804.

Third, Ex-1006 is irrelevant under Fed. R. Evid. 401 and thus inadmissible under Fed. R. Evid. 402, or as being confusing or a waste of time under Fed. R. Evid. 403 because Ex-1006 is inadmissible as explained above.

B. The Board Should Exclude Ex-1012 (Alberta Electrical Supply System Study) in Its Entirety

Petitioner did not cite to Ex-1012 in either its Petition, Reply, or Dr. MacCarley's declaration. (*See generally* Paper 2, Paper 28, Ex-1003.) PO timely objected to Ex-1012. (Paper 18 at 4.)

Ex-1012 should be excluded in its entirety. **First**, Ex-1012 is inadmissible hearsay under Fed. R. Evid. 901(a) as Petitioner has not "produced sufficient evidence to support a finding that the item is what the proponent claims it is." For example, Petitioner alleges a publication date but has not provided sufficient evidence pursuant to Fed. R. Evid. 901(b) or otherwise satisfying the requirement of Fed. R. Evid. 901(a).

Second, Ex-1012 is irrelevant under Fed. R. Evid. 401 because, among other things, it was not cited in the body of the Petition or Dr. MacCarley's declaration, and is thus inadmissible under Fed. R. Evid. 402, or as being confusing or a waste of time under Fed. R. Evid. 403 because Ex-1012 is inadmissible as explained above.

C. The Board Should Exclude Ex-1013 (Alberta Electric Supply Operator – Help Page) in Its Entirety

Petitioner relied on Ex-1013 in Dr. MacCarley's Declaration to argue that AESO updates its report "every 2 minutes[.]" (Ex-1003, ¶ 70.) More importantly, Ex-1013 is not cited in the body of the Petition or Petitioner's Reply. (*See* Paper 2; Paper 28.) PO timely objected to Ex-1013. (Paper 18 at 4-5.)

Ex-1013 should be excluded in its entirety. **First**, Ex-1013 is inadmissible under Fed. R. Evid. 901(a) as Petitioner had not "produced sufficient evidence to support a finding that the item is what the proponent claims it is." For example, Petitioner alleges a publication date but has not provided sufficient evidence pursuant to Fed. R. Evid. 901(b) or otherwise satisfying the requirement of Fed. R. Evid. 901(a). Further, Wayback Machine's affiant (Ex-1018) failed to authenticate Ex-1013 in their declaration/ affidavit.

Second, Ex-1013 is hearsay under Fed. R. Evid. 801(c) and thus inadmissible under Fed. R. Evid. 802. For example, Petitioner relies on Ex-1013 for the truth of the matter asserted therein. (*See* Ex-1003, ¶ 70.) Yet Petitioner has not offered sufficient evidence that Ex-1013 falls within any exclusion or exception of the rule against hearsay under Fed. R. Evid. 803 or 804.

Third, Ex-1013 is irrelevant under Fed. R. Evid. 401 because, among other things, it was not cited in the body of the Petition, and is thus inadmissible under Fed. R. Evid. 402, or as being confusing or a waste of time under Fed. R. Evid. 403 because Ex-1013 is inadmissible as explained above.

D. The Board Should Exclude Ex-1014 (RSS Article) in Its Entirety

Petitioner did not rely on Ex-1014 in the Petition, and it is only once mentioned in Dr. MacCarley's Declaration (Ex-1003, ¶ 116.) However, Petitioner relied on Ex-1014 during the deposition of PO's expert Dr. Cameron (Ex-1025 at 413:25-414:22), and in its Reply in support of a new argument regarding the purported notoriety of RSS. (Paper 28 at 22-23.)¹ PO timely objected to Ex-1014. (Paper 18 at 5-6.)

Ex-1014 should be excluded in its entirety. *First*, Ex-1014 is inadmissible under Fed. R. Evid. 901(a), and to date Petitioner has not "produced sufficient evidence to support a finding that the item is what the proponent claims it is." For example, Petitioner alleges a publication date but has not provided sufficient evidence pursuant to Fed. R. Evid. 901(b) or otherwise satisfying the requirement of Fed. R. Evid. 901(a).

Further, even if there was evidence of publication, Petitioner has failed to prove that the portions of Ex-1014 on which it relied were made public before the earliest priority date of the '243 patent. On the contrary, the document indicates that some portions of the document were created as late as 2008 because it states

¹ Petitioner's belated new argument regarding RSS's purported notoriety, first raised in its Reply and relying on Ex-104, will be addressed in PO's motion to strike.

“Content licensed from and © 1998 - 2008 O’Reilly Media, Inc.” (Ex-1014 at 17.)

Second, Ex-1014 is hearsay under Fed. R. Evid. 801(c) and thus inadmissible under Fed. R. Evid. 802. For example, Petitioner relies on Ex-1014 for the truth of the matter asserted therein. (See Ex-1003, ¶ 116.) Yet Petitioner has not offered sufficient evidence that Ex-1014 falls within any exclusion or exception of the rule against hearsay under Fed. R. Evid. 803 or 804.

Third, Ex-1014 irrelevant under Fed. R. Evid. 401 because, among other things, it was not cited in the body of the Petition, and is thus inadmissible under Fed. R. Evid. 402, or as being confusing or a waste of time under Fed. R. Evid. 403 because Ex-1014 is inadmissible as explained above.

E. The Board Should Exclude Ex-1015 (History of Power Article) in Its Entirety

Petitioner did not rely on Ex-1015 in the Petition but cited it once in its Reply. (Paper 28 at 20.) Dr. MacCarley cited (and mischaracterized) Ex-1015 once in his declaration, when he asserted that “an article published by Power Magazine describes use of peaking units in the early 1900s.” (Ex-1003, ¶ 98.) PO timely objected to Ex-1015. (Paper 18 at 6-7.)

Ex-1015 should be excluded in its entirety. **First**, it is inadmissible under Fed. R. Evid. 901(a) as Petitioner has not “produced sufficient evidence to support a finding that the item is what the proponent claims it is.” For example, Petitioner alleges a publication date but has not provided sufficient evidence pursuant to Fed.

R. Evid. 901(b) or otherwise satisfying the requirement of Fed. R. Evid. 901(a).

Further, this is not a self-authenticating document under Fed. R. Evid. 902.

Second, Ex-1015 is hearsay under Fed. R. Evid. 801(c) and thus inadmissible under Fed. R. Evid. 802. For example, Petitioner relies on Ex-1015 for the truth of the matter asserted therein. (*See* Ex-1003, ¶ 98.) Yet Petitioner has not offered sufficient evidence that Ex-1015 falls within any exclusion or exception of the rule against hearsay under Fed. R. Evid. 803 or 804.

Third, Ex-1015 is irrelevant under Fed. R. Evid. 401 because, among other things, it was not cited in the body of the Petition and because it was *purportedly* published on October 1, 2022—over a decade after the earliest priority date of the ’243 patent—and is thus inadmissible under Fed. R. Evid. 402, or as being confusing or a waste of time under Fed. R. Evid. 403 because Ex-1015 is inadmissible as explained above.

Ex-1015 is also confusing and a waste of time because of Dr. MacCarley’s mischaracterization of its contents repeated in Petitioner’s Reply. As PO explained in its Sur-Reply, the only “peaking units” Ex-1015 discusses are the models that improved on the world’s first 5-MW steam turbine delivered in 1903. (Paper 30 at 15 (citing Ex-1015 at 2).)

F. The Board Should Exclude Ex-1016 (U.S. Patent No. 5,673,497 to St. Louis) in Its Entirety

Petitioner did not rely on Ex-1016 in the Petition or its Reply. Dr.

MacCarley discusses it in his declaration as evidence that “a dryer operating in a fluff temperature mode does not use the heater.” (Ex-1003, ¶ 163.) PO timely objected to Ex-1016. (Paper 18 at 7.)

Ex-1016 should be excluded in its entirety as irrelevant under Fed. R. Evid. 401 because, among other things, it is not cited in the body of the Petition or the Reply, and thus inadmissible under Fed. R. Evid. 402. Additionally, neither Petitioner, nor Dr. MacCarley explain why it is relevant whether a dryer operating in a fluff temperature uses the heater.

Ex-1016 is also confusing or a waste of time under Fed. R. Evid. 403 for the same reasons.

G. The Board Should Exclude Ex-1017 (Alliance Laundry Systems – Home Laundry Dryers Service Manual) in Its Entirety

Petitioner did not rely on Ex-1017 in the Petition or its Reply. Dr. MacCarley cited Ex-1017 once in his declaration as evidence that “the Dryer Service Manual (dated 2002) indicates that the ‘heater assembly does not heat’ when the ‘temperature selector switch [is] set [to] FLUFF.’” (Ex-1003, ¶ 163.) PO timely objected to Ex-1017. (Paper 18 at 7-8.)

Ex-1017 should be excluded in its entirety. *First*, Ex-1017 is inadmissible under Fed. R. Evid. 901(a) as Petitioner has not “produced sufficient evidence to support a finding that the item is what the proponent claims it is.” For example, Petitioner alleges a publication date but has not provided sufficient evidence

pursuant to Fed. R. Evid. 901(b) or otherwise satisfying the requirement of Fed. R. Evid. 901(a) because, among other things, Petitioner failed to show that Ex-1017 was ever publicly available, let alone before the earliest priority date of the '243 patent. On the contrary, Ex-1017 throughout contains a footer reading “DO NOT COPY OR TRANSMIT,” indicating that it is not a publicly available document. (*See generally* Ex-1017.)

Second, Ex-1017 is hearsay under Fed. R. Evid. 801(c) and thus inadmissible under Fed. R. Evid. 802. For example, Petitioner relies on Ex-1017 for the truth of the matter asserted therein. (*See* Ex-1003, ¶ 163.) Yet Petitioner has not offered sufficient evidence that Ex-1017 falls within any exclusion or exception of the rule against hearsay under Fed. R. Evid. 803 or 804.

Third, Ex-1017 is irrelevant under Fed. R. Evid. 401 because, among other things, it is not cited in the body of the Petition or the Reply, and is thus inadmissible under Fed. R. Evid. 402. Neither Petitioner, nor Dr. MacCarley explain why this information about “FLUFF” setting is relevant.

Ex-1017 is also confusing or a waste of time under Fed. R. Evid. 403 because Ex-1017 for the same reasons.

H. The Board Should Exclude Ex-1018 (Internet Archive Affidavit) in Its Entirety

Petitioner did not rely on Ex-1018 in the Petition but belatedly advanced a

new argument that Ex-1018 shows changes in TNG values in its Reply.² (Paper 28 at 31.) Dr. MacCarley commented in his declaration that “[he] understand[s] that each of the archived versions of AESO’s supply and demand report that I looked at has been submitted in Ex-1018[.]” (Ex-1003, ¶ 33.) PO timely objected to Ex-1018. (Paper 18 at 8-9.)

Ex-1018 should be excluded in its entirety. **First**, Ex-1018 is hearsay under Fed. R. Evid. 801(c) and thus inadmissible under Fed. R. Evid. 802. For example, Petitioner relies on Ex-1018 for the truth of the matter asserted therein, including the publication dates of the documents attached to Ex-1018. (*See* Ex-1003, ¶ 33.) Yet Petitioner has not offered sufficient evidence that Ex-1018 falls within any exclusion or exception of the rule against hearsay under Fed. R. Evid. 803 or 804. Further, Dr. MacCarley cannot certify or authenticate this affidavit through his declaration.

Second, Ex-1018 is irrelevant under Fed. R. Evid. 401 and thus inadmissible under Fed. R. Evid. 402, among other things, because Ex-1018 attaches documents purportedly archived on March 3, 2007, April 12, 2006, December 23, 2005, and October 1, 2005, none of which were cited or relied upon by Petitioner either in the Petition or its expert declaration.

Third, Ex-1018 is also confusing and a waste of time under Fed. R. Evid.

² This issue will be addressed in PO’s motion to strike.

403 because the purported Alberta Supply and Demand data from 2005-2007 that is attached to Ex-1008 is different from the AESO Report (Ex-1006). Dr. MacCarley's statement that "each of the archived versions of AESO's supply and demand report that I looked at has been submitted in Ex-1018 . . ." compounds that confusion. (Ex-1003, ¶33.)

I. The Board Should Exclude Certain Portions of Ex-1025 (Copy of February 11, 2025 Deposition Transcript of Dr. Cameron)

Petitioner relied on Ex-1025 in throughout its Reply. PO timely objected to Ex-1025. (Paper 29 at 2.)

First, those portions of Ex-1025 that were later corrected in the Errata Sheet (submitted concurrently as Ex-2016) should be excluded. Standing as is, Ex-1025 is inadmissible as incomplete and unfair under Fed. R. Evid. 106, and confusing and misleading under Fed. R. Evid. 403 because it does not contain Dr. Cameron's Errata Sheet and Acknowledgement. PO served a copy of Dr. Cameron's Errata Sheet and Acknowledgement on February 25, 2025 at or around 5:20 pm Eastern. Planet Depos, the court-reporter service that transcribed the deposition, served the same on February 26, 2025 at 11:55 am Eastern. Thus, Petitioner had both documents for more than a full day before its filing of Ex-1025 on February 26, 2025 at 11:20 pm Eastern. Despite the fact that PO raised this issue in PO's evidentiary objections (Paper 29 at 2), Petitioner has failed to correct the record. PO is therefore compelled to submit the Errata Sheet with this motion.

Second, for the reasons discussed *supra* Part II.A, the Board should exclude the following references to AESO from the transcript of Dr. Cameron’s deposition: Ex-1025 at 301:21-315:14; *id.* at 432:10-433:9.

Third, for the reasons discussed *supra* Part II.D, the Board should exclude the line of questioning regarding Ex-1014. (Ex-1025 at 413:25-414:22.)

J. The Board Should Exclude Ex-1027 (Inspiron 1210 Quick Reference Guide) in Its Entirety

Petitioner belatedly introduced Ex-1027 as an exhibit to its Reply in support of a new theory regarding user adjustments of delay times.³ (Paper 28 at 7.) PO timely objected to Ex-1027. (Paper 29 at 3-4.)

Ex-1027 should be excluded in its entirety. **First**, Ex-1027 should be excluded for lack of foundation, including authentication under Fed. R. Evid. 901(a) because Petitioner has not “produced sufficient evidence to support a finding that the item is what the proponent claims it is[]” and because this is not a self-authenticating document. For example, Petitioner has failed to show that Ex-1027 was ever publicized or that it was publicly available before the ’243 patent’s earliest priority date. The copyright notice ©2008 is not sufficient to establish a publication date.

³ PO will address these issues in its motion to strike.

Second, Ex-1027 is hearsay under Fed. R. Evid. 801(c) and thus inadmissible under Fed. R. Evid. 802. For example, Petitioner relies on Ex-1027 for the truth of the matter asserted therein in its Reply. (Paper 28 at 7.) Yet Petitioner has not offered sufficient evidence that Ex-1027 falls within any exclusion or exception of the rule against hearsay under F.R.E. 803 or 804.

Third, Ex-1027 is irrelevant under Fed. R. Evid. 401 and thus inadmissible under Fed. R. Evid. 402, and confusing or a waste of time under Fed. R. Evid. 403 for the same reasons as above.

Further, Ex-1027 is irrelevant, confusing, and a waste of time because Petitioner failed to establish that it may be considered prior art published before the earliest priority date of the '243 patent, let alone relevant prior art.

K. The Board Should Exclude Portions of the Petition (Paper 2)

Petitioner submitted inadmissible evidence as discussed *supra* Parts II.A-J. For the same reasons, the Board should exclude the following related portions of the Petition:

- Paper 2 at 4, 5-6, 78-79, and 80-82 (related to Ex-1006);
- Paper 2 at 5 (citing Ex-1003, ¶ 33); *id.* at 12, 19, 23 (citing Ex-1003, ¶ 70); *id.* at 34, 36 (citing Ex-1003, ¶ 98); *id.* at 40, 41 (citing Ex-1003, ¶ 116); *id.* at 63 (citing Ex-1003, ¶ 163); *id.* at 79 (citing Ex-1003, ¶ 206); *id.* at 82 (citing Ex-1003, ¶ 210).

L. The Board Should Exclude Certain Portions of Ex-1003, Declaration of Dr. C. Arthur MacCarley

Petitioner submitted inadmissible evidence as discussed *supra* Parts II.A-J.

For the same reasons, the Board should exclude related portions of Dr.

MacCarley's declaration:

- Ex-1003, ¶¶ 47, 206, 210 (related to Ex-1006);
- Ex-1003, ¶ 70 (arguing, relying on Ex-1013 that AESO updates its report “every 2 minutes[.]”);
- Ex-1003, ¶ 116 (related to Ex-1014);
- Ex-1003, ¶ 98 (asserting that “an article published by Power Magazine [Ex-1015] describes use of peaking units in the early 1900s.”);
- Ex-1003, ¶ 163 (discussing that “a dryer operating in a fluff temperature mode does not use the heater[]” in Ex-1016);
- Ex-1003, ¶ 163 (stating that “the Dryer Service Manual (dated 2002) indicates that the ‘heater assembly does not heat’ when the ‘temperature selector switch [is] set [to] FLUFF[]’” in Ex-1017);
- Ex-1003, ¶ 33 (related to Ex-1018).

M. The Board Should Exclude Certain Portions of Petitioner's Reply (Paper 28)

Petitioner submitted inadmissible evidence as discussed *supra* Parts II.A-J & II.L. For the same reasons, the Board exclude related portions of Petitioner's Reply:

- Paper 28 at 30-21 (related to Ex-1006);
- Paper 28 at 22-23 (related to Ex-1014);
- Paper 28 at 20 (related to Ex-1015 and citing Ex-1003, ¶ 98);
- Paper 28 at 31 (related to Ex-1018);
- Paper 28 at 7 (entire page related to Ex-1027).

III. CONCLUSION

For the foregoing reasons, PO requests that this Motion be granted.

Dated: May 6, 2025

/Jason M. Shapiro/
Jason M. Shapiro
Nadiia Loizides (*pro hac vice*)
Reg. No. 35,354
DEVLIN LAW FIRM LLC
1526 Gilpin Ave.
Wilmington, DE 19806
Tel: (302) 449-9010
jshapiro@devlinlawfirm.com
nloizides@devlinlawfirm.com

Counsel for Patent Owner

CERTIFICATE OF SERVICE

The undersigned certifies that on May 6, 2025, pursuant to 37 C.F.R. § 42.6(e), a copy of **PATENT OWNER'S MOTION TO EXCLUDE** was served via email (as consented to by counsel) to counsel of record for Petitioner as follows:

LEAD COUNSEL	BACKUP COUNSEL
Alexander B. Stein (Reg. No. 71,397) Alexander.stein@morganlewis.com MORGAN, LEWIS & BOCKIUS LLP 1400 Page Mill Road Palo Alto, CA 94304 Tel: (650) 843-4000	Brent A. Hawkins (Reg. No. 44,146) brent.hawkins@morganlewis.com Peter M. Loderup (Reg. No. 79,839) peter.loderup@morganlewis.com Nicholas A. Restauri (Reg. No. 71,783) Nicholas.restauri@morganlewis.com MORGAN, LEWIS & BOCKIUS LLP
Additional email for service: Tesla-Graphite243-IPR@morganlewis.com; pmargulies@tesla.com	

/Jason M. Shapiro/
Jason M. Shapiro
Reg. No. 35,354