

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TOYOTA MOTOR CORP. and KIA CORP.,
Petitioners,

v.

EMERGING AUTOMOTIVE LLC,
Patent Owner.

Case No. IPR2024-00785
U.S. Patent No. 10,407,026

PETITIONERS' REQUEST FOR REHEARING

Table of Contents

I. INTRODUCTION 1

II. LEGAL STANDARD 2

III. ARGUMENT.....2

 A. The Board Misapprehended or Overlooked Zaid’s Express
Teaching that the Vehicle Unlocks Doors on Receipt of the
Vehicle Reservation 2

 1. Zaid Discloses that the Vehicle’s Doors are Unlocked
When the Vehicle Reservation Is Received from the
Wireless Communication Device 4

 2. Dr. Malek Cannot Re-Write the Plain Language of Zaid.....7

IV. RELIEF REQUESTED 10

I. INTRODUCTION

Petitioners respectfully request rehearing of the Board’s Decision (Paper No. 13; “Decision”) denying institution of review of the ’026 patent in accordance with 37 C.F.R. § 42.71(d).

The Decision overlooked and diverged from Zaid’s express teachings that a reservation received by the vehicle *directly* unlocks the vehicles doors. The Board instead interpreted Zaid’s system as “provid[ing] a *separate* command for unlocking the doors, which occurs after the vehicle is reserved.” Decision, 25.¹ But, this statement, at best, only applies to one part of Zaid’s disclosure. The Board overlooked the Petition’s reliance on Zaid’s Figure 6, which expressly discloses that “*when* a vehicle reservation is received,” “vehicle access is granted ... includ[ing] *opening the vehicle door*.” Petition, 27-28 (quoting Zaid, ¶ [0129]). The Board also overlooked portions of Zaid that the Petition quoted, which similarly explain that “access to the vehicle” means “*unlocking the vehicle door*.” Petition, 28 (quoting Zaid, ¶ [0090]); *see also* Petition 27, (citing Zaid, ¶ [0067]) (“[a]ccess to the vehicle is provided *when a vehicle reservation is received* from the wireless communication device.”); Zaid, ¶ [0068]. As the Petition explained, because the vehicle reservation directly results in unlocking of the vehicle, it is a request for unlocking. Petition, 27-28. While Zaid’s Figure 4, in isolation, suggests

¹ All emphases added unless specified otherwise.

the possibility that a separate command may also provide unlocking after the reservation, the Board’s exclusive reliance on that disclosure overlooked the Petition’s reliance on other disclosures that are contrary to the Board’s conclusion. Reconsideration of the Board’s decision is warranted on this point.

II. LEGAL STANDARD

“A party dissatisfied with a decision may file a single request for rehearing without prior authorization from the Board” and “must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, or a reply.” 37 C.F.R. § 42.71(d).

III. ARGUMENT

A. The Board Misapprehended or Overlooked Zaid’s Express Teaching that the Vehicle Unlocks Doors on Receipt of the Vehicle Reservation

In its Decision, the Board rejected Petitioners’ argument that Zaid disclosed limitation 1[e], which states:

wherein the communications circuitry of the vehicle is configured to receive a request from the mobile device for unlocking of the vehicle;

Decision, 22–26. The Board recognized that Zaid discloses that a user’s “wireless communication device” sends a “vehicle reservation” to a vehicle but overlooked Zaid’s disclosures that the vehicle reservation provides vehicle access “when” it is

received, which includes unlocking the doors. Decision, 22. Instead, based solely on Zaid’s description of its Figure 4, the Board adopted Patent Owner’s interpretation of the Zaid reference that the unlocking does not occur until after a separate command is sent to the vehicle. Decision, 24-25. The Board concluded that “Petitioner has not provided sufficient explanation and supporting evidence that Zaid discloses or teaches ‘a request from the mobile device for unlocking of the vehicle’” because “Zaid identifies these as two different steps in its process.” Decision, 25–26.

The Board’s interpretation of Zaid improperly focuses on one part of Zaid in isolation and overlooks Zaid’s plain description of the vehicle being unlocked directly by receipt of the vehicle reservation, and not by a separate later request. As described in the Petition, Zaid explicitly states in its description of Figure 6 that vehicle access is provided “*when* a vehicle reservation is received,” and that “granting access *includes opening the vehicle door.*” Zaid, ¶ [0129] and Fig. 6 (element 604) (cited and quoted by Petition 27-28). The Board’s conclusion that Zaid requires a separate unlock request relies on language describing Zaid’s Figure 4 and ignores Zaid’s description of Figure 6. Considering Figure 6, Zaid’s vehicle reservation is a request from a mobile device for unlocking of the vehicle, consistent with limitation 1[e].

1. Zaid Discloses that the Vehicle's Doors are Unlocked When the Vehicle Reservation Is Received from the Wireless Communication Device

Relying on Zaid's Figure 6 and associated disclosure, the petition explained that Zaid's vehicle access kit receives "vehicle reservations" from the user's "wireless communication device." Petition, 27, 28 (citing Zaid, ¶¶ [0067], [0129], Fig. 6). The petition further included excerpts from Zaid showing that "access to the vehicle is provided *when* a vehicle reservation is received from the wireless communication device." *Id.* (quoting Zaid, ¶ [0067]); *see also* ¶ [0129] ("FIG. 6 is a flowchart illustrating an example process 600 for providing vehicle access when a vehicle reservation is received at a vehicle access control system in accordance with some embodiments. At 602, vehicle reservation is received from a wireless communication device.")). The Board acknowledged that Zaid discloses granting vehicle access in response to receiving a vehicle reservation. Decision, 13-14.

The Board overlooked the Petition's citations and quotations of Zaid's description of Figure 6, which expressly disclose that "providing vehicle access ... *includes opening the vehicle door*, and/or allowing engine to be turned on by user." Petition, 28 (quoting Zaid, ¶ [0129]). Notably, Zaid uses the present participle of the verb "open," indicating that the vehicle "open[s] the vehicle door" in response to receiving the vehicle reservation, rather than in the future in response to a separate request. By contrast, Zaid discloses only "*allowing* [the]

engine to be turned on,” thereby indicating Zaid knew how to disclose when a separate action by the user is needed to actuate vehicle functionality.

Indeed, Paragraph 129 does proceed to explain that, with respect to Figure 6, “the vehicle access control system begins to accept commands from the wireless communication device such as commands to open the door.” Zaid, ¶ [0129].

However, Zaid clearly discloses this teaching as separate functionality from the immediate action of “opening the door” described in the previous sentence. Indeed, it would be desirable for the vehicle to allow subsequent commands from the user to open the door, such as when the user leaves and returns to the vehicle. But, this disclosure of subsequent unlocking commands cannot undo the clear language from the previous sentence that the reservation results in the vehicle “opening the vehicle door.” *See Upsher-Smith Labs. v. Pamlab, LLC*, 412 F.3d 1319, 1323 (Fed. Cir. 2005) (reference disclosing optional inclusion of a particular component teaches compositions that both do and do not contain that component).

The Board’s conclusion to the contrary instead relied solely on Zaid’s Figure 4 in isolation. *See* Decision, 25 (citing Zaid, ¶ [0124]). Figure 6’s description, however, expressly states that vehicle access “includes **opening** the vehicle door.” Zaid, ¶ [0129]. Figure 4’s description does not, and instead states that “**once** vehicle access is provided, the user **can** send commands from the wireless communication device ... such as open the vehicle door.” Zaid, ¶ [0124]. Whereas

Figure 6's door opening is described in the present as part of granting vehicle access in response to a vehicle reservation, Figure 4's door opening is described in the future in response to an optional and subsequent request from the user. The Board overlooked these important differences and failed to consider all features disclosed by Zaid.

Zaid's disclosure of a request for unlocking is also evident from the '659 patent prosecution history, where the Office determined that Zaid discloses essentially the same limitation. Petitioners noted that, from the prosecution of the '659 patent, "Zaid discloses wireless transfer of a unique, encrypted reservation from a mobile device to a vehicle where the reservation is decrypted to unlock and enable starting the vehicle for a specified period of time." Petition, 14. Despite Petitioner's discussion of and citations to the prosecution history of the '659 patent in the petition, the Decision offers no recognition or discussion of these facts.

By relying on a single disclosure to limit all other disclosures in Zaid, the Board erred. That Zaid's Figure 4 discloses the potential for separate commands does not erase Zaid's Figure 6 disclosure of opening vehicle doors *when* the vehicle reservation is received from the mobile device, which was detailed in the petition. *See, e.g., Upsher-Smith Labs.*, 412 F.3d at 1323 (Fed. Cir. 2005); *In re Fulton*, 391 F.3d 1195, 1201, 73 USPQ2d 1141, 1146 (Fed. Cir. 2004) ("The prior art's mere disclosure of more than one alternative does not constitute a teaching

away from any of these alternatives because such disclosure does not criticize, discredit, or otherwise discourage the solution claimed....”); *Celeritas Technologies Ltd. v. Rockwell International Corp.*, 150 F.3d 1354, 1361 (Fed. Cir. 1998) (“The fact that a modem with a single carrier data signal is shown to be less than optimal does not vitiate the fact that it is disclosed.”); *see also* M.P.E.P. § 2123(I) (citing *Merck & Co. v. Biocraft Labs., Inc.*, 874 F.2d 804 (Fed. Cir. 1989) (“a reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art.”)).

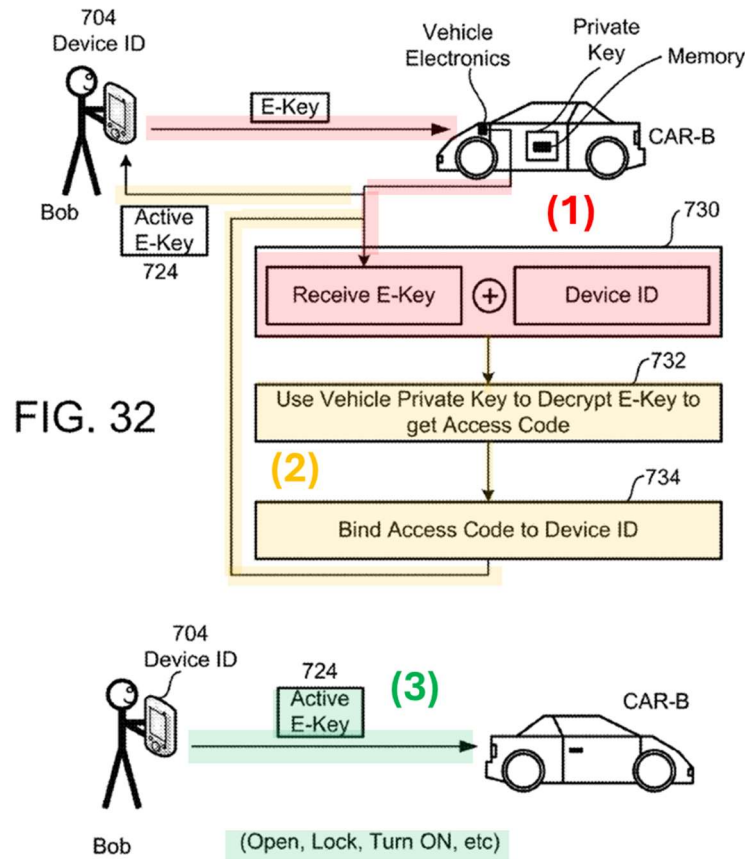
2. Dr. Malek Cannot Re-Write the Plain Language of Zaid

To the extent the Board credited Dr. Malek’s argument that “a reservation could be in the future and immediate unlocking would allow the holder of the reservation unauthorized (early) access,” (Decision at 24), such hypotheticals cannot overcome the plain language of Zaid’s Paragraph 129.

Dr. Malek, a software expert with no apparent experience in the automotive sector, cannot rewrite the plain language of the reference or overlook its inconvenient disclosures. Dr. Malek stresses that Zaid does not disclose a request from the mobile device for unlocking of the vehicle because, “Zaid identifies these as two different steps in its process,” namely a vehicle reservation that permits a later request to unlock in a separate command. Ex. 1005 ¶ 124. As explained above, that Zaid’s Figure 4 discloses potentially separate commands does not erase

Zaid's Figure 6 disclosure of opening vehicle doors *when* the vehicle reservation is received from the mobile device, which was detailed in the petition.

Moreover, Dr. Malek's characterization of Zaid is precisely how *the '026 patent* discloses the operation of the e-Key. As the Petition explained, Zaid's process of a vehicle "receiv[ing] a request from the mobile device for unlocking of the vehicle" is identical to that disclosed in the '026 patent. For example, Fig. 32 of the '026 patent (reproduced in the Petition and below) illustrates (1) "Bob" sending an E-key (analogous to Zaid's reservation) to the vehicle, where (2) the E-key is decrypted to enable the unlocking, and then the vehicle returns an "active E-Key", which (3) *thereafter* can be used to unlock the vehicle, to "Bob". *See* Petition, 6 (citing '026 patent, Fig. 32, 44:63-65, 45:7-8, 45:11-15, 45:52-55). In fact, this process closely mirrors the limitations recited in claim 1.



Accordingly, the '026 patent teaches the very three-step process that Dr. Malek and the Decision distinguished from the '026 claim language. Specifically Dr. Malek's description of Zaid and the '026 patent both describe: “**(1)** when a reservation is received [akin to the E-Key in Fig. 32 being sent to the vehicle initially], **(2)** vehicle access is provided [akin to the E-key being decrypted in 732 and bound to the Device ID of the sender in 734 of Fig. 32], and **(3)** then ‘once vehicle access is provided, the user can send commands from the wireless communication device to a vehicle access control component coupled to the

vehicle to . . . open the vehicle door [akin to “Bob” using his Active E-key to unlock the vehicle as in Fig. 33].” Decision, 24–25.

Despite Petitioners’ discussion and citations to Fig. 32 and the ’026 patent’s associated description in col. 45, the Decision includes no analysis of this disclosure. Petitioner properly illustrated how Zaid’s “vehicle reservation” meets the claim limitation under any construction consistent with the ’026 patent’s disclosures, and Reconsideration is warranted.

IV. RELIEF REQUESTED

For the above reasons, Petitioners respectfully request that the Board reconsider and institute *inter partes* review of the ’026 Patent.

Respectfully submitted,

Dated: December 23, 2024

By: /Joshua L. Goldberg/
Joshua L. Goldberg, Reg. No. 59,369
Counsel for Petitioner

CERTIFICATE OF SERVICE

Pursuant to 37 CFR §§ 42.6(e)(4), the undersigned certifies that the foregoing **Petitioners' Request for Rehearing** was provided via email on December 23, 2024, to the Patent Owner by serving the correspondence address of record as follows:

Jerry D. Tice
jtice@bdiplaw.com

Aaron R. Hand
ahand@bdiplaw.com

Brenda Entzminger
bentzminger@bdiplaw.com

BDIP_EmergingAuto@bdiplaw.com

Dated: December 23, 2024

/Daniel E. Doku/
Daniel E. Doku
Litigation Legal Assistant
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.