

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TOYOTA MOTOR CORP.,
Petitioner,

v.

EMERGING AUTOMOTIVE LLC,
Patent Owner

Case IPR2024-00814
U.S. Patent No. 11,396,244

PATENT OWNER'S SUR-REPLY

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I. PETITIONER’S REPLY HIGHLIGHTS THE DEFICIENCIES OF THE PETITION AND CONFIRMS ITS LACK OF MERIT

Toyota’s attempt to cure the Petition’s substantive defects, offering new theories based solely on attorney argument, only highlights the Petition’s failures.

Rector’s smart vehicle, not any server, performs the relied-upon operations: Toyota’s reply attempts to sow confusion around *Rector*’s alleged disclosures. The POPR exposed the Petition’s misleading, partial quotes, showing—by *Rector*’s exact words—that each of the Petition’s relied-upon operations was performed by *Rector*’s “*smart vehicle*,” not any alleged server. POPR, 39-41. While the Petition pointed to *Rector*’s step “S351,” “determine driver ID,” as the independent claims’ “processing, by the server” function, and *Rector*’s “comparing” operation as a purported server performing the recited verification (Pet. 23), the POPR used accurate quotes to show that neither operation of *Rector* is performed by any server. POPR, 39-41 (e.g., *Rector*’s “*smart vehicle determines the identity of the driver*” and “a client logic and processor *on the smart vehicle compares* the unique identifier with a set of unique identifiers on a server on a network.”) (citing EX1006, ¶¶ [0040], [0043], Figure 3; EX2001, ¶¶ 61-62). With its artifice laid bare by *Rector*’s actual teachings, Toyota makes the brand-new, unsupported assertion in reply that *Rector*’s alleged “match” function teaches the required “processing, by a server, . . . user information to verify the user for

accessing the profile[.]” Reply, 4. The Petition never mentions any “match” function of *Rector*, let alone explains how this operation could perform the “determine[] the driver identity” function that Toyota and its expert identified as teaching the server operations required by claims 1[b] / 17[b] / 21[b]. Pet. 23 (identifying “determines the driver identity”); EX1005, ¶ 118 (same). This belated attempt to change theories fails, as it presents yet another problem for Petitioner: the reference confirms that *Rector*’s “[client] logic 105 on smart vehicle 100 ... determines the identity of the driver” (EX1006, ¶ [0030]) *before* its “[s]erver logic 132 matches *the* driver’s identity with corresponding settings” (*id.*, ¶ [0031], Fig. 3 (*compare* S351 with S352)). Toyota’s expert never opined on this new theory, but he contradicted it by admitting that *Rector*’s “match” function occurs “*after* identifying the driver” (EX1005, ¶ 150) and therefore cannot be the *preceding* step S351 that he and Toyota pointed to as the server processing information to verify the user. Pet. 23; EX1005, ¶ 118.

Kleve’s server operations, at most, grant vehicle access; not access to any profile: here again, the reply’s efforts to rehabilitate *Kleve* fail. Toyota claims that “Kleve’s disclosures of server-side verification are not limited to ‘verification for access to a vehicle,’” implying it could include access to a profile. However, Toyota merely recites *Kleve* paragraphs verifying only *access to a vehicle*, and *not any*

access to Kleve's "user profile," let alone any access to the "profile associated with the user account, the profile having ... settings for the user for the vehicle," as claimed. Reply, 4; POPR 46-49. Indeed, the POPR demonstrated that the Petition's reliance on *Kleve* is misplaced as each of the Petition's identified disclosures specifically references how a temporary user may be "granted *access to the owner's vehicle*"—via virtual key, remote credential verification, or both. "The granted access allowed by the virtual key may permit *entry of the vehicle*." POPR 46-47 (citing, e.g., EX1007, ¶¶ [0048-0049]).

The Petition only relied on *Kleve's* paragraphs 49, 69, 72, and Figure 6 for limitations 1[b] / 17[b] / 21[b] (Pet. 24-25). The POPR refuted each. After recognizing its failure, Toyota now ignores that it identified *Kleve's* "user profile" as the alleged "user account / user profile" (Pet. 25), and changes tack, citing new wholesale columns of *Kleve*. Reply, 4-5. But again, Toyota's untimely reliance on these additional disclosures only solidifies *Kleve's* failure: *Kleve's* verification is for *accessing a vehicle*, i.e. via a virtual key. It is not *verifying the user for "accessing the **profile**,"* as required by the claims. POPR, 46-48. Instead, *Kleve's* "user profile" is simply a site where the owner lists details of the vehicle, the temporary user submits photographs, and the two individuals exchange payment details. *Id.* Not one of the identified verification operations of *Kleve* even remotely

suggests a server verifying access to this identified “profile,” let alone any server-performed verification of the user to access the profile with vehicle settings—*Kleve*’s profile has no such settings. *Id.*; EX1007, ¶ [0037]; EX2001, ¶¶ 67-71, 55-56. In reply, Toyota attempts to change horses and rely now on *Kleve*’s application of “enhancements” and “preset settings,” hoping the Board will disregard its irreconcilable reliance on *Kleve*’s “user profile.” Reply, 4-5. This new theory, even if considered, only presents additional problems for the Petition: these settings of *Kleve*, applied *after* granting vehicle access via a virtual key (EX1007, Fig. 6), are of no aid to the Petition, as *Kleve* still lacks any suggestion or teaching of server-verified access to any user profile, let alone to the recited profile having a plurality of settings for use on the vehicle. POPR, 46-49. And, in any event, *Kleve*’s user profile has no such “preset settings,” “enhancements” or any settings. *Id.*, 47-49.

Toyota does nothing to rebut its lack of motivation to combine, citing instead to an article that merely bolsters Dr. Malek’s opinion: The reply fails to address the lack of motivation to modify *Rector* with *Kleve*—based on alleged “additional security”—since *Rector* already uses the *more secure* client-side verification. EX2001, ¶¶ 65-66. Instead, attempting to make some sense out of its nonsensical motivation to combine, Toyota presents new evidence, an article by Dr. Malek, misrepresenting his work. Reply, 5. Dr. Malek’s article describes “self-

protecting software systems,” which can monitor themselves and dynamically change their security posture during execution (EX1026), a topic unrelated to whether client-side verification or client-side verification *including* server-side verification—as the Petition posits—provides “additional security.” Pet. 22. Petitioner’s cited statement about “static point security solutions,” i.e., solutions not adaptable at runtime, such as one-time password authentication, does not speak to *where* that security assessment is performed, i.e. whether on the server-side or client-side, and is therefore irrelevant to their comparative security. EX1026, at 3. The article is in fact entirely consistent with, and supportive of, Dr. Malek’s declaration, as it states, for example, “[a]s software systems become more distributed ..., networking services become an integral part of the system architecture, making these systems more prone to malicious attacks.” *Id.* at 2; EX2001, ¶¶ 65-66 (describing server-side authentication, because it involves network communication, is generally considered to be less secure than client-side authentication). Dr. Malek’s opinions remain unrefuted and are bolstered by the reply’s cited article.

II. THE SECTION 311(B) ISSUE IS BEFORE THE FEDERAL CIRCUIT

The Federal Circuit’s forthcoming decision in the *Lynx Labs* case will confirm whether Section 311(b) permits institution here. *See* POPR, 51 n.4.

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CERTIFICATE OF SERVICE

Petitioner has consented to e-mail service in this proceeding. Pursuant to 37 C.F.R. §42.6, the undersigned certifies that on October 16, 2024, a copy of the foregoing document was served by email upon the following counsel at the below email addresses:

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