

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

**EMERGING AUTOMOTIVE LLC'S
PATENT OWNER RESPONSE**

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Patent Owner's Updated Exhibit List	
EX2001	Declaration of Professor Sam Malek, Ph.D. under 37 C.F.R. § 1.68 in support of Patent Owner's Preliminary Response
EX2002	<i>Curriculum Vitae</i> of Dr. Malek
EX2003	Declaration of Professor Sam Malek, Ph.D. under 37 C.F.R. § 1.68 in support of Patent Owner's Response
EX2004	Cover pleading to Defendants' Preliminary Invalidity Contentions, <i>Emerging Automotive LLC v. Kia Corporation, et. al., and Toyota Motor Corp. et al.</i> , No. 2:23-cv-0437-JRG (lead case), No. 2:23-cv-0434-JRG (member case), served March 28, 2024
EX2005	Exhibits E-3, E-6 to Defendants' Preliminary Invalidity Contentions, <i>Emerging Automotive LLC v. Kia Corporation, et. al., and Toyota Motor Corp. et al.</i> , No. 2:23-cv-0437-JRG (lead case), No. 2:23-cv-0434-JRG (member case), served March 28, 2024
EX2006	Judicial Caseload Profile (March 31, 2024): Table C-5, <i>U.S. District Courts—Civil Federal Judicial Caseload Statistics</i> ; Table T-3, <i>U.S. District Courts—Median Time from Filings to Trial for Civil Cases in which Trials were Completed</i>
EX2007	Civil Docket Report for <i>Emerging Automotive LLC v. Kia Corporation, et. al., and Toyota Motor Corp. et al.</i> , No. 2:23-cv-0437-JRG (lead case)
EX2008	Civil Docket Report for <i>Emerging Automotive LLC v. Toyota Motor Corp. et al.</i> , No. 2:23-cv-0434-JRG (member case)
EX2009	Google Patents search, U.S. Patent No. 11,396,244, available at https://patents.google.com/patent/US11396244B2/en?q=11396244#citedBy (identifying assignees of patents and patent applications which cited to U.S. Patent No. 11,396,244)
EX2010	Toyota's Appeal Brief, seeking review of Toyota's USPTO-rejected U.S. Patent Application Publication No. 2022/0144292, titled "Systems and Methods for Selecting a User Profile Among Multiple Users Carrying Personal Devices"
EX2011	U.S. Patent No. 10,449,918

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EX2012	Global Dossier for Toyota's family of patents and applications titled, "User Profile Synchronization for a Vehicle"
EX2013	Judge Gilstrap Trial Schedule for July 21, 2025
EX2014	[reserved]
EX2015	[reserved]
EX2016	Docket Navigator Median Time-to-Trial Statistics for Judge Rodney Gilstrap (excluding transfers), August 26, 2019 through August 26, 2024

I. Introduction

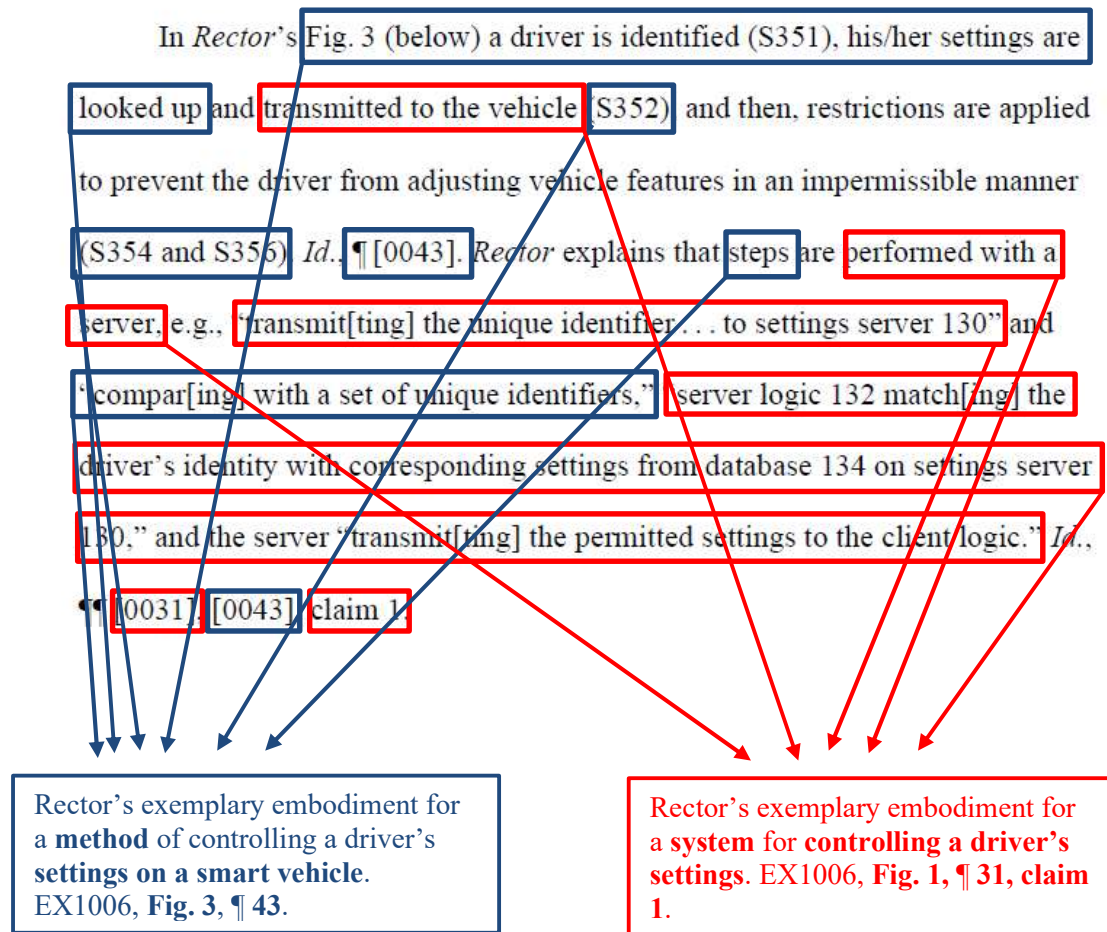
The Petition suffers from a fundamental flaw: a complete failure to explain or support its combination of embodiments from its primary reference, *Rector*. The Petition, improperly guided by the '244 Patent, relies on cherry-picked components from the *Rector* reference, treating the various features of *Rector*'s different embodiments as if they are interchangeable, without any explanation or motivation to do so. The Petition repeatedly mixes and matches components and functions from *Rector*'s distinct embodiments, without ever even addressing that it has done so, or contemplating the consequences of doing so.

Recognizing that *Rector*'s **method**¹ of controlling permitted settings on a smart vehicle (e.g., EX1006, Figure 3, para 43) requires a smart *vehicle*—at every step—to perform the operations, Petitioner attempts to redesign *Rector*'s method for controlling permitted settings instead with a *server* capable of transmitting settings (e.g., *id.*, para 9, claim 1), as required by all challenged claims.² Petitioner's reconstruction of *Rector*'s disclosures is guided only by improper hindsight.

¹ Emphasis herein added unless otherwise noted.

² Patent Owner has submitted a reissue application, proposing additional limitations and claims that are not addressed herein. The Petition fails regardless.

As shown in the annotated image below from the Petition, Petitioner treats two distinct embodiments of *Rector* as one:



See Pet. 14; EX1005, ¶ 100 (same verbatim); *see also* Pet. 23, 27-28, 30-31; EX1005, ¶¶ 113, 118, 119, 127-137; EX1006, Fig. 3, ¶¶ 43, 1, 31, claim 1. As discussed below, *Rector*'s method never contemplates performing the alleged steps of the challenged claim with a server.

Rector describes one embodiment, illustrated in Figure 3, of a method of controlling a driver's settings on a smart vehicle (EX1006, ¶ 43, Fig. 3), and

separately describes a system embodiment—a system for controlling a driver’s settings (*id.*, ¶ 9, claim 1). Missing from both the Petition and Dr. Almeroth’s declaration is any showing that a POSITA would have been motivated to make this combination of disparate features of *Rector*’s embodiments, and in the manner proposed, or that a POSITA would have had a reasonable expectation of success in doing so. At most, Petitioner’s expert, Dr. Almeroth, merely offers testimony on what operations *Rector* is “capable of” performing, without ever explaining *why* a POSITA would have undertaken his proposed redesign of *Rector*’s method to achieve that result. Such testimony cannot sustain Petitioner’s burden, for Dr. Almeroth’s opinion as to what *Rector could* include or *would* be capable of is not the same as what *Rector* teaches. *Abiomed, Inc. v. Maquet Cardiovascular, LLC*, IPR2017-01204, Paper 9 at 11 (P.T.A.B. Oct. 23, 2017) (petition failed to prove features of two embodiments were properly combined, finding “Dr. Collins’s opinion as to what pump 420 *could* include or *would* accommodate, however, is not the same as what [the reference] teaches.”) (emphases in original).

These failures are fatal to the Petition, for Petitioner relies on its combination of *Rector*’s disparate embodiments for all grounds. Any obviousness combination must be supported by explanation and evidence, showing that a POSITA would have had a motivation to make the combination proposed, and would have had a reasonable expectation of success in doing so. *See, e.g., Pers. Web Techs., LLC v.*

Apple, Inc., 848 F.3d 987, 991 (Fed. Cir. 2017); *see also In re Kotzab*, 217 F.3d 1365, 1370 (Fed. Cir. 2000) (even where combination includes features from a single reference, “there must be a showing of a suggestion or motivation to modify the teachings of that reference.”). And apart from the Petition’s lack of explanation or evidence to justify its combination of embodiments, the reference itself shows there would be no reasonable expectation of success and indeed Petitioner’s redesign of *Rector*’s method would render its steps meaningless and nonsensical.

Even if proper, Petitioner’s Dr. Frankenstein approach to *Rector* is of no avail, as *Rector* still fails to teach or suggest at least claim elements 1[c] and 17[c],³ requiring the *server-executed* “transferring” of settings and “the transferring is configured to instruct” vehicle software/hardware on applying settings for customizing the vehicle to use the settings. EX1001, 33:23-29, 34:17-24. *Rector*’s “method of controlling a driver’s settings on a vehicle” does not include any server-

³ The Petition separates claim 1[c] and 17[c] into two separate elements (1[c]-[d] and 17[c]-[d]) (Pet. 27-28, 30-31). The Board’s analysis at pp.33-34 of the Institution Decision treats the “transferring, by the server, ... the transferring is configured to instruct ...” as “claim 1[c].” This Response follows the latter approach utilized by the Board and characterizes the “transferring” step of the independent claims as claim 1[c] and 17[c].

executed step, let alone any *server-transferred* settings. In fact, *Rector*'s method offers no teaching or suggestion of any server operation whatsoever.

Moreover, applying the plain and ordinary meaning of “configured to,” as recited in the claims, Dr. Almeroth’s testimony as to what *Rector*’s components may be “capable of” or whether an operation might “cause” another operation to occur, is insufficient to teach the required “transferring *configured to* instruct.” See, e.g., *Aspex Eyewear, Inc. v. Marchon Eyewear, Inc.*, 672 F.3d 1335, 1349 (Fed. Cir. 2012) (describing “configured to” as narrower than the “broader sense” of “capable of” or “suitable for”); *ParkerVision, Inc. v. Qualcomm Inc.*, 903 F.3d 1354, 1361 (Fed. Cir. 2018) (“our cases distinguish between claims with language that recites capability, and those that recite configuration”); *Acclarent, Inc. v. Albritton*, IPR2017-00498, Paper 40 at 14 (P.T.A.B. July 9, 2018) (the ordinary meaning of “configured to” should not “be construed as requiring a mere capability under this precedent.”).

The Petition also fails to establish that *Rector*, alone or in combination with *Kleve*, teaches claim limitations 1[b] or 17[b]. Petitioner cannot meet its burden to show obviousness, first because the motivation to combine is based on a non-existent problem of *Rector*, and further because it relies on purported teachings of *Kleve* that are not supported by the disclosures themselves.

And, even if the combination were proper, Toyota's addition of *Kleve* does nothing to meet the recited limitation, as it wholly disregards the claims' requirement that a server verifies the user "for accessing the profile." EX1001, claims 1[b], 17[b]. A server must process user information "to verify the user *for accessing the profile* associated with the user account, the profile having a plurality of settings of the user for the vehicle." *Id. Kleve*, by contrast, merely grants access to a vehicle, not a profile.

The secondary references do not remedy these failures, nor are they alleged to do so. The Petition fails.

II. Overview and claim constructions of the '244 Patent.

A. The '244 Patent enables the automatic transfer of user profile settings, wherein the transfer itself is configured to instruct the vehicle to apply the settings for customizing the vehicle to use the settings.

U.S. Patent No. 11,396,244 ("the '244 Patent") is titled "methods for transferring user profiles between vehicles using cloud services." The '244 Patent is part of a family of patents that teach and claim inventions for improving the efficiency, security, consistency and overall user experience of personal, rental and shared-use vehicle systems. The inventions of the '244 Patent were invented by Albert and Angel Penilla (the "Penilla brothers") and issued to their company, Emerging Automotive LLC, a family-owned automotive innovation company.

The '244 Patent discloses the Penilla brothers' inventive systems and methods allowing for, e.g., the automatic and seamless transfer of user profile settings between vehicles and the employment of a cloud processing system to manage, update, learn from, improve upon, and automatically implement a personalized vehicle-user experience in vehicles. EX1001, Abstract, 1:59-6:11. The inventions of the '244 Patent offer a specific, personalized user experience, defined by preferences the user sets in a user profile, while simultaneously achieving the scalability of applying those personalized settings to various shared vehicles and shared vehicle services—leveraging cloud services to store and manage user profile data which allows for secure and efficient synchronization of settings across a wide range of vehicle types by, e.g., server-side verification of the user's access to the user profile and “a server transferring settings” wherein “the transferring is configured to instruct” software/hardware of the vehicle to apply the settings for customizing the vehicle to use the settings. *Id.*; *see also id.*, 33:9-35:30, 36:1-29. As stated in the title, the '244 Patent involves transferring of user profiles between vehicles using cloud services, making secure and efficient synchronization of user profile settings across different vehicles. EX1001, Title. As part of this process, the systems and methods include mechanisms for authenticating devices and verifying users that interact with the user profile data, ensuring that only verified users can access or modify the stored

profiles, and only specified users can access or modify restricted settings. EX1001, 1:59-3:63, 16:13-17:7, 10:15-24; 13:37-14:39.

Additionally, the claimed inventions ensure that the user can set a custom configuration with specific settings, “to provide limited use of certain systems on the vehicle, such as when a guest is driving the vehicle,” and, by the transferring operation of the claims, “the user’s settings are seamlessly transferred to the vehicle the user chooses to drive.” *Id.*, 11:9-28, 22:50-63. Once the driver selects a vehicle on which to apply the user’s custom configuration, for example by pairing a mobile device with the desired vehicle, the vehicle requests access to that user profile, and upon the server verifying the vehicle’s access to that user profile, the server transfers settings to that vehicle. *Id.*; *see also id.*, claims 1, 17.

The claimed inventions allow a “seamless[] transfer” of the user’s custom configuration of settings, regardless of the vehicle type. *Id.*, 19:57-67, 22:50-63. For example, the specification explains that “[t]he transfer of the profile will allow the settings of the user to automatically be set in the vehicle” (*id.*, 19:51-67), allowing the user to access their customized configuration, such as an “access display,” “customized to the user, regardless of the vehicle that the user chooses to drive.” *Id.*, 22:50-23:42. “This is especially useful for cases where a user drives many cars, but wishes to keep his settings constant,” allowing “syncing of a user’s settings” to the

vehicle electronics for “a friend’s vehicle, a rented vehicle or a shared vehicle,” either directly from the cloud or via a user’s mobile device. *Id.*, 22:61-23:42.

However, the inventors acknowledge that “only some settings are directly transferrable” across different vehicle models made by different manufacturers (*id.*, 23:24-34), and therefore the inventions ensure that the server’s transfer of these settings is configured to transfer to instruct the vehicle to apply the settings for customizing the vehicle settings, ensuring that at least some of user profile settings are “directly transferrable” to the desired vehicle (*id.*, 23:34-42). And in this way, the “auto-sync facilitates sharing of data and also allows users to unify their settings across any number of vehicles the user may drive.” *Id.* To accomplish this objective, the ’244 Patent instructs, the server can utilize a “mapping engine 118” “that communicates with the automakers database to identify the settings, applications, APIs, or modules that allow integration of Bob’s user profile from the user profiles database 160 so that Bob’s profile can be sent to car 200.” *Id.*, 17:3-7. In this way, the server transferring operation allows for “the custom configuration [to] be transferred either entirely or partially to the [desired] vehicle” (*id.*, 7:31-50), depending on whether the functions of the particular vehicle allow for the settings to be transferred (*id.*, 23:34-42).

For example, to execute the transferring of settings operation, the server can access “[a]n automaker database 116 [that] can include data regarding a plurality of

vehicles, including standard user interfaces, configuration interfaces, and other information necessary to provide [the user] with a custom interface for [the] vehicle.” *Id.* 18:9-12. In this database, “vehicle makers can upload their translation metric for each model and the mapping tables can be used to provide the sync operation.” *Id.* And using a mapping engine, for example, the server can access the database “to find a translation metric,” where “[t]he translation metric can include mapping tables that allow for settings to be transferred between functions of one vehicle to other vehicles.” *Id.*, 23:34-42. With the server’s transferring operation specifically “configured to” instruct the vehicle electronics software/hardware, therefore, at least some of the user’s profile settings can be seamlessly transferred to any number of vehicle types. *Id.*; *see also id.*, 16:14-24.

Accordingly, the innovations of the ’244 Patent ensure that as many of the settings of the user’s custom configuration as are supported by the vehicle functions will be transferred to any number of vehicle types because the vehicle’s software/hardware will be specifically instructed on applying the settings for customizing the vehicle to use those settings. *Id.* The inventions do so, for example, by requiring that the server’s transferring operation is specifically configured, i.e., “the transferring is configured to instruct software and/or hardware associated with [the] electronics of the vehicle to apply [] settings to the vehicle for customizing

[the] vehicle to use [those] settings associated with the profile[.]” *See, e.g.*, EX1001, 33:25-29 (claim 1[c]).

B. Claim construction: “the transferring is configured to instruct ...”

The Board gives terms their ordinary and customary meaning, as would be understood by a person of ordinary skill in the art at the time of the invention, in light of the language of the claims, the specification, and the prosecution history. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313-14 (Fed. Cir. 2005). For trial in this matter, the Board need only construe claim language as to claims 1 and 17: “the transferring is configured to instruct”

The Board should construe the term “the transferring is configured to instruct,” as recited in claims 1[c] and 17[c], according to its plain and ordinary meaning, the transferring is “configured to” i.e., designed, adapted or programmed to accomplish the specified objective of the limitation: “to instruct software and/or hardware associated with said electronics of said vehicle to apply one or more settings to the vehicle for customizing said vehicle to use said one or more settings associated with the profile” (claim 1[c]) / “to instruct software and hardware associated [with] the vehicle to enable said one or more settings for use on the vehicle to customize said vehicle for the user” (claim 17[c]). EX1001, 33:23-29, 35:17-24.

The plain and ordinary meaning of “configured to,” as used in the claims, as dictated by Federal Circuit precedent, and as described in the specification, must be configured to accomplish the specific purpose recited by the claims, as opposed to transferring that is merely “capable of” such a purpose.

1. The express language of the claim itself requires the plain and ordinary meaning, as opposed to “capable of.”

The claim language itself supports the narrower construction by using the “configured to” language, as opposed to “capable of.” For example, the independent claims themselves recite that the transferring operation is “configured to” instruct to apply settings to the vehicle for customizing said vehicle to use said settings, as opposed to reciting that the transferring operation is merely “capable of” such a result. EX1001, 33:23-29 (claim 1[c]), 35:17-24 (claim 17[c]). Therefore, the claims as a whole expressly ascribe a different meaning to the term “configured to” versus the term “capable of.”

2. Precedent requires the plain and ordinary meaning of “configured to,” which is narrower than “capable of.”

The Federal Circuit has repeatedly construed the phrase “configured to” to have a narrower meaning than merely “capable of” or “suitable for.” *See, e.g., Aspex Eyewear*, 672 F.3d at 1349 (describing “configured to” as narrower than the “broader sense” of “capable of” or “suitable for”); *see Typhoon Touch Techs., Inc. v. Dell, Inc.*, 659 F.3d 1376, 1380 (Fed. Cir. 2011) (construing “memory ... configured to”

as “memory that must perform the recited function”); *see also In re Man Mach. Interface Techs. LLC*, 822 F.3d 1282, 1285 (Fed. Cir. 2016) (interpreting thumb switch as being “configured to,” i.e. “made or designed for activation by a human thumb,” as opposed to merely “capable of” or “suitable for”) (citing *In re Giannelli*, 739 F.3d 1375, 1379 (Fed. Cir. 2014)); *and see ParkerVision, Inc.*, 903 F.3d at 1361 (“our cases distinguish between claims with language that recites capability, and those that recite configuration”).

In *Aspex*, for example, the Federal Circuit held that the phrase “adapted to,” like “configured to,” is most naturally understood to mean designed to or configured to accomplish the specified objective, not merely that the device can be made to serve that purpose. *Aspex*, 672 F.3d at 1349. And the Board has consistently followed this Federal Circuit precedent.

In *Acclarent*, for instance, the Board explained that “the most natural reading of ‘configured to’” is “designed to accomplish the claimed objectives,” and as a corollary, the ordinary meaning of “configured to” should not “be construed as requiring mere capability under this precedent.” *Acclarent*, IPR2017-00498, Paper 40 at 14 (citing, e.g., *Aspex*, 672 F.3d at 1349). The Board in *Acclarent* found that “the claims use ‘configured to’ and ‘adapted to’ in a manner that requires structure that performs specific functions.” IPR2017-00498, Paper 40 at 14-15. There, the Board rejected the Petitioner’s argument that “configured to” merely required that

the recited components were “‘capable of’ performing the claimed functions.” *Id.* at 12. The Board agreed with the Patent Owner that “the narrower construction, rather than the broad ‘capable of’ construction advocated by Petitioner, applies,” and indeed “[c]ontrolling case law strongly supports this result[.]” *Id.* (citing *Giannelli*, 739 at 1379-80 and *Aspex*, 672 F.3d at 1349).

Likewise, the Board in *Wirtgen* construed a claim which recited “an operator input device configured to allow an operator ... to enter a first save command,” to mean that “the input device is specifically structured to allow for entry of a save command.” *Wirtgen Am., Inc. v. Caterpillar Paving Prods. Inc.*, IPR2018-01199, Paper 10 at 14 (P.T.A.B. Nov. 14, 2018). As the Board in *Acclarent* explained, “[t]he precedent makes clear that the ‘configured to’ phrase itself connotes the narrower meaning and simply presumes this is the case[.]” *Acclarent*, IPR2017-00498, Paper 40 at 14.

Accordingly, precedent requires that “the transferring is configured to instruct” is to be given its plain and ordinary meaning, which is distinct from mere capability.

3. The specification supports the plain and ordinary meaning of “the transferring is configured to instruct.”

There is good reason Patent Owner included the “configured to” language in the “transferring” limitation of each of the independent claims. As described in

Section II.A. above, the claimed inventions ensure that the user can set a custom configuration with specific settings, “to provide limited use of certain systems on the vehicle, such as when a guest is driving the vehicle,” and, by the transferring operation of the claims, “the user’s settings are seamlessly transferred to the vehicle the user chooses to drive.” EX1001, 11:9-28, 22:50-63. As the specification explains, however, “only some settings are directly transferrable” across different vehicle models made by different manufacturers. *Id.*, 23:24-34.

By the “transferring is configured to instruct,” therefore, the claimed inventions enable the “seamless[] transfer” of the user’s custom configuration of settings, regardless of the vehicle type. *Id.*, 19:57-67, 22:50-63; *see, e.g., id.*, claims 1, 2, 17. For example, the specification explains that “[t]he transfer of the profile will allow the settings of the user to automatically be set in the vehicle” (*id.*, 19:51-67), allowing the user to access their customized configuration, such as an “access display,” “customized to the user, regardless of the vehicle that the user chooses to drive.” *Id.*, 22:50-23:42.

To accomplish these objectives, the server’s transferring operation can be specifically configured to instruct software and/or hardware associated with the electronics of the vehicle to apply settings to the vehicle for customizing the vehicle to use those settings associated with the profile. *See* EX1001, 33:25-29 (claim 1[c]). For example, the specification instructs that the server can utilize a “mapping engine

118” “that communicates with the automakers database to identify the settings, applications, APIs, or modules that allow integration of Bob’s user profile from the user profiles database 160 so that Bob’s profile can be sent to car 200.” *Id.*, 17:3-7. In this way, the server transferring operation allows for “the custom configuration [to] be transferred either entirely or partially to the [desired] vehicle” (*id.*, 7:31-50), depending on whether the functions of the particular vehicle allow for the settings to be transferred (*id.*, 23:34-42).

The specification teaches that the server can execute the transferring of settings operation, whereby the server can access “[a]n automaker database 116 [that] can include data regarding a plurality of vehicles, including standard user interfaces, configuration interfaces, and other information necessary to provide [the user] with a custom interface for [the] vehicle.” *Id.* 18:9-12. In this database, “vehicle makers can upload their translation metric for each model and the mapping tables can be used to provide the sync operation.” *Id.* And, within this database, the server can use a mapping engine “to find a translation metric,” where “[t]he translation metric can include mapping tables that allow for settings to be transferred between functions of one vehicle to other vehicles.” *Id.*, 23:34-42. In this way, various vehicle makes and models can be instructed to apply settings for customizing those specific vehicles to use those settings. *Id.*; *see id.*, 33:25-29 (claim 1[c]).

Accordingly, with the server’s transferring operation specifically “configured to instruct” the vehicle electronics software/hardware of the vehicle, any number of vehicle types can be instructed to apply settings for customizing the vehicle to use those settings. *Id.*, 23:34-42; *see also id.*, 16:14-24, 33:25-29 (claim 1[c]).

III. All Grounds fail because the Petition fails to explain or support its combination of *Rector*’s embodiments, relied upon for all Grounds.

Petitioner must rewrite its primary reference, *Rector*, because the reference neither teaches nor suggests the server-executed steps of “processing ... to verify the user for accessing the profile” (claims 1[b] / 17[b]) or “the transferring is configured to instruct” (claims 1[c] / 17[c]), as recited by the independent claims.

Petitioner’s failure to provide sufficient rationale to combine the teachings of *Rector*’s different embodiments is fatal to the Petition. Unlike the server-verification step recited by claims 1[b] (and claim 1[c] – “the server, upon verifying...”) and 17[b] (same), the Petition relies on *Rector* alone for alleged teaching of the “transferring” / “the transferring is configured to instruct” step required of the independent claims 1[c] and 17[c]. Pet. 27-28, 30-31.

In a strained effort to reach the limitations of the claimed methods, the Petition cobbles together disparate teachings from *Rector*’s distinct embodiments. *Id.* But Petitioner’s redesign of *Rector* cannot sustain an obviousness challenge where “Petitioner simply fails to explain sufficiently why one skilled in the art would have

found it obvious to combine those teachings.” *Abiomed, Inc.*, IPR2017-01204, IPR2017-01205, Paper 9 at 11.

As demonstrated below, *Rector*’s method of controlling a driver’s settings on a vehicle” requires every step to be executed by the “smart vehicle,” not a server. *See* EX1006, 43, Fig. 3; Section III.A. *infra*. In an effort to remedy the omissions of *Rector*’s smart-vehicle-executed method, the Petition cherry-picks features from *Rector*’s *other* embodiments, without any explanation or evidence of motivation, and instead uses the ’244 Patent’s claimed methods as its roadmap. Improper hindsight notwithstanding, Petitioner does not and cannot justify its wholesale rewriting of *Rector*’s “method of controlling permitted settings on a vehicle.” EX1006, Fig. 3, ¶ 43; Pet. 27-28, 30-31; EX1005, ¶¶ 127-137.

Even if, by Petitioner’s redesign of *Rector*’s method, each limitation of the claimed methods could be identified (they are not, e.g., see Sections IV., V. *infra*), Federal Circuit precedent remains clear that “identification in the prior art of each individual part claimed is insufficient to defeat patentability of the whole claimed invention.” *In re Kotzab*, 217 F.3d at 1370. That is, even where the combined features come from a single prior art reference, “there must be a showing of a suggestion or motivation to modify the teachings of that reference.” *Id.* For example in *Cisco Systems, Inc. v. Bockstar Technologies LLC*, the Board rejected an obviousness challenge which relied on a combination of features of two devices

disclosed in the same reference, because the “Petition ha[d] not explained how or why a person having ordinary skill in the art would modify the Multigigabit Router to use the [features] of the Netstar GigaRouter.” IPR2014-01192, Paper 10 at 13 (P.T.A.B. Feb. 2, 2015) (citing *In re Kotzab*, 217 F.3d at 1370). The Board reasoned that “[a]lthough both routers are described in a single reference, Petitioner must still articulate a rationale for combining the features of the two devices.” *Id.*

Dr. Almeroth’s testimony cannot sustain Petitioner’s burden, for his opinion as to what *Rector* could include or would be capable of is not the same as what *Rector* teaches. *Abiomed*, IPR2017-01204, Paper 9 at 11 (petition failed to prove features of two embodiments were properly combined, finding “Dr. Collins’s opinion as to what pump 420 could include or would accommodate, however, is not the same as what [the reference] teaches.”) (emphases in original).

At most, Petitioner contends that the disclosures of *Rector*’s various embodiments could be combined (Pet. 14, 23, 27-28, 30-31; EX1005, 100, 127-137) (verbatim parroted by Dr. Almeroth)), but what *Rector* could include or would be capable of is not the same as showing, by an evidence-supported motivation to combine, what *Rector* teaches a POSITA. *Abiomed*, IPR2017-01204, Paper 9 at 11 (evidence offered as to what reference could include or would accommodate is insufficient to show what the reference teaches). And, like the deficiencies recited by the Board in *Abiomed*, the Petition here, too, fails to show that “the features of

[*Rector*'s] various embodiments are interchangeable or that one skilled in the art would have combined those features in the manner proposed by Petitioner.” *Id.* at

11. For this reason alone, all grounds fail.

A. Petitioner relies on distinct and incompatible embodiments within *Rector* because *Rector*'s method never teaches any server-executed transmission or transfer of settings.

Unlike each of the server-executed steps of the independent claims of the '244 Patent (EX1001, claims 1, 17), *Rector*'s “method of controlling a driver's settings on a smart vehicle” does not contemplate a server at *any* step (EX1006, Figure 3, ¶ 43). This is unsurprising, since the import of *Rector* as a whole is centered around the operations of a “smart vehicle.” EX1006; EX2003, ¶¶ 56-60. Indeed, *Rector* actually ***requires*** the “smart vehicle,” as the lone operator, to execute each of the steps depicted in Figure 3—illustrating an embodiment of “a method of controlling a driver's settings ***on a smart vehicle***.” EX1006, ¶ 43, Fig. 3; EX2003, ¶¶ 56-60, 66. In contrast to this “method of controlling a driver's settings ***on a smart vehicle***,” *Rector* teaches that a separate embodiment, its “system for ***controlling a driver's settings***,” does include a server and that server can “associate the unique identifier with the user account, determine the permitted settings for the user, and transmit the permitted settings to the client logic” of a smart vehicle. *See, e.g., id.*, ¶ 9, claim 1.

Petitioner's arguments rely on the premise that *Rector*'s method of controlling a driver's settings ***on a smart vehicle*** renders the claimed methods for transferring

user profile settings to a vehicle obvious. *E.g.*, Pet. 27-28, 30-32 (relying solely on *Rector* for alleged disclosure of “claim 1[c]-[d],” “transferring, by the server ... the transferring is configured to instruct ...”), 45-46 (same as to claim 17[c]-[d]). However, the Petitioner failed to consider or address the fundamental differences between the *Rector*’s method—reliant on ***a smart vehicle*** to perform every step—and the claimed methods of the ’244 Patent, which require ***a server*** to execute each of the recited steps.

Instead, the Petition conceals the many substantial and core differences between the relied-upon prior art and the claimed methods by patching together disparate and fundamentally incompatible features of: (1) *Rector*’s embodiment of ***a method*** of controlling a driver’s settings ***on a vehicle***—which requires no server at all, and (2) *Rector*’s embodiment of ***a system*** for controlling ***a driver’s settings***, which instead uses a server capable of various setting-control functions. *Compare generally*, EX1006, ¶ 9, claim 1 *with id.*, ¶ 43, Fig. 3. Petitioner treats the features of these two distinct embodiments as interchangeable with no explanation for having done so, nor any explanation as to how the resultant modification would be achieved (e.g., at what step(s) of the paragraph 43 method are the paragraph 9/claim 1 system’s server functions supposed to be substituted or supplemented?). *E.g.*, Pet. 14, 27-28, 30-32; *see also* Section III.B. *infra*. And despite Petitioner’s burden of proof, neither the Petition nor its expert ever addresses the consequences of the

Petition's modifications of *Rector's* method, let alone offers any teaching or motivation that could possibly justify its wholesale transformation of *Rector's smart-vehicle-operated method*.

1. ***Rector's "method of controlling a driver's settings on a vehicle," illustrated in Figure 3, requires the "smart vehicle" to execute each step of the method.***

Petitioner relies upon the embodiment of *Rector* described in Figure 3. However, Figure 3 (and paragraph 43, describing Figure 3) fails to disclose or suggest "transferring, by the server ... the plurality of settings to the vehicle ... the transferring is configured to instruct ..." as required by all challenged claims. EX1001, claims 1[c], 17[c]; EX2003, ¶¶ 55, 65-67.

Rector makes clear that Figure 3 "shows a method of controlling a driver's settings on a smart vehicle, according to an exemplary embodiment[.]" EX1006, ¶ 43; *see also id.*, Fig. 3:

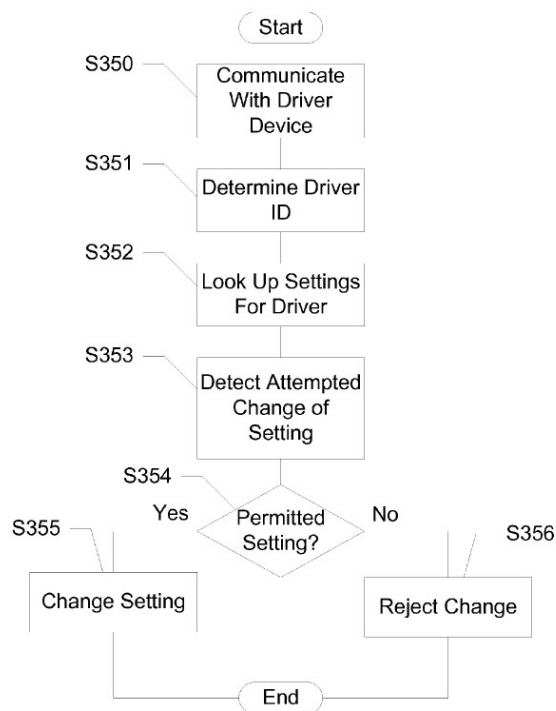


Figure 3

“In this embodiment, the method begins with the smart vehicle communicating with a driver’s device S350,” which “may be a cellular telephone.” *Id.*, ¶ 43. The smart vehicle communicates with the device “to request a unique identifier for the driver’s wireless communication device.” *Id.* “With the unique identifier, the smart vehicle determines the identity of the driver S351.” *Id.*

Rector explains that the smart vehicle determines the driver’s identity in one of two ways: (1) “the client logic and processor on *the smart vehicle* compares the unique identifier with a set of unique identifiers stored on a memory of the smart vehicle” or (2) “[a]lternatively,” *the smart vehicle* compares the unique identifier “with a set of unique identifiers on a server on a network.” *Id.* Either way, *Rector*

teaches that it is the smart vehicle that performs the comparison operation to “determine the identity of the driver S351.” *Id.*; EX2003, ¶ 56.

Indeed, *Rector* mandates that for both of these initial steps, “S350 - communicate with driver device” and “S351 - determine driver ID,” it is the smart vehicle which executes each operation. EX1006, ¶ 43; EX2003, ¶ 56. And while the smart vehicle may determine driver ID by comparing the unique identifier from S350 with “a set of unique identifiers *on a server on a network*,” *Rector* teaches that this is an “alternative” option—that is, this step can be accomplished without the server at all, confirming that it is the vehicle, and not any server, that does the comparing. EX1006, ¶ 43; EX2003, ¶ 56.

The subsequent step of *Rector*’s method of controlling a driver’s settings on a smart vehicle, S352, is also performed by the smart vehicle. *Id.*, ¶ 43. *Rector* explains that “[w]ith the identity of the driver determined, the smart vehicle ***looks up settings*** for the driver S352.” *Id.*; *see also id.*, Fig. 3 (annot.):

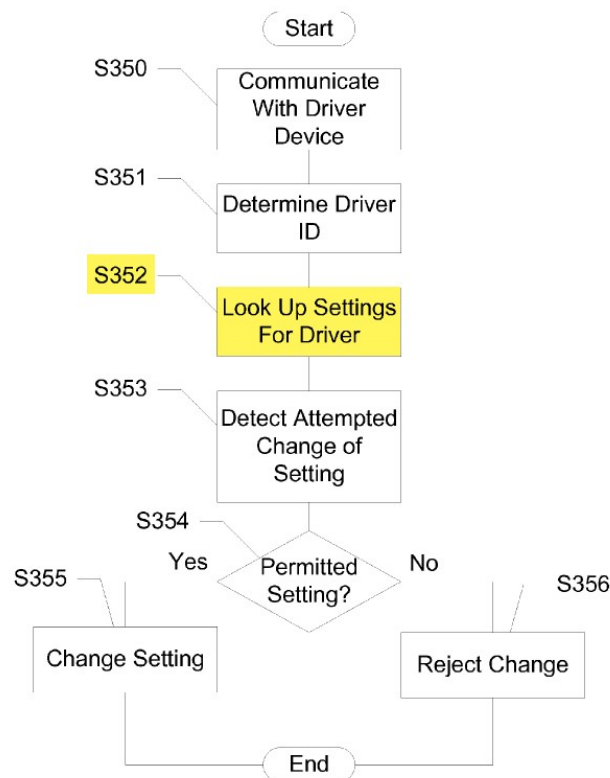


Figure 3

Importantly, the method provides no mention of any server transmission of settings to the vehicle whatsoever; rather, it is “*the smart vehicle* [that] looks up settings for the driver S352.” *Id.*, ¶ 43; EX2003, ¶¶ 57-58. This smart vehicle goes on to “determine” settings “by comparing the driver’s identity with *a database* of identities with corresponding settings.” *Id.* “This database may be on the network, on the driver’s device, on the smart vehicle’s memory, etc.,” but regardless of where the database is located, *Rector*’s method requires that the smart vehicle look up the settings in the database, and the method will later require that the smart vehicle reconsult this database of settings in order for the smart vehicle to execute a subsequent

step, S354 (determining whether a detected attempted change of setting is permitted or prohibited). *Id.*, ¶ 43.

After the smart vehicle determines the driver's permitted settings, *Rector* explains that the smart vehicle will detect an attempted change of a setting, at step S353, such as detecting "the driver speeding up," or "the radio volume changing." *Id.* And then, at the next step of the method, the smart vehicle determines "whether the attempted change of the setting is permitted S354." *Id.* "This is accomplished by the client logic of the smart vehicle comparing the detected change with *the database* of permitted or prohibited settings for the driver." *Id.*

Accordingly, for step S352, *Rector*'s method requires that the smart vehicle look up settings for the driver and determine the settings for the driver by comparing the driver's identity with "*a database*" of settings corresponding to the driver's identity. *Id.* And two steps thereafter, *Rector* requires that the smart vehicle re-consult "*the database*" to perform step S354. *Id.* That is, *after* the look up and determining settings for the driver, and *after* detecting an attempted change of a setting, the smart vehicle will determine whether this change of setting is permitted or not, at step S354, by comparing the detected attempted change "with *the database* of permitted or prohibited settings for the driver." *Id.* The smart vehicle must consult the same *database* storing the driver's permitted settings for at least these two steps. *Id.*; EX2003, ¶ 59.

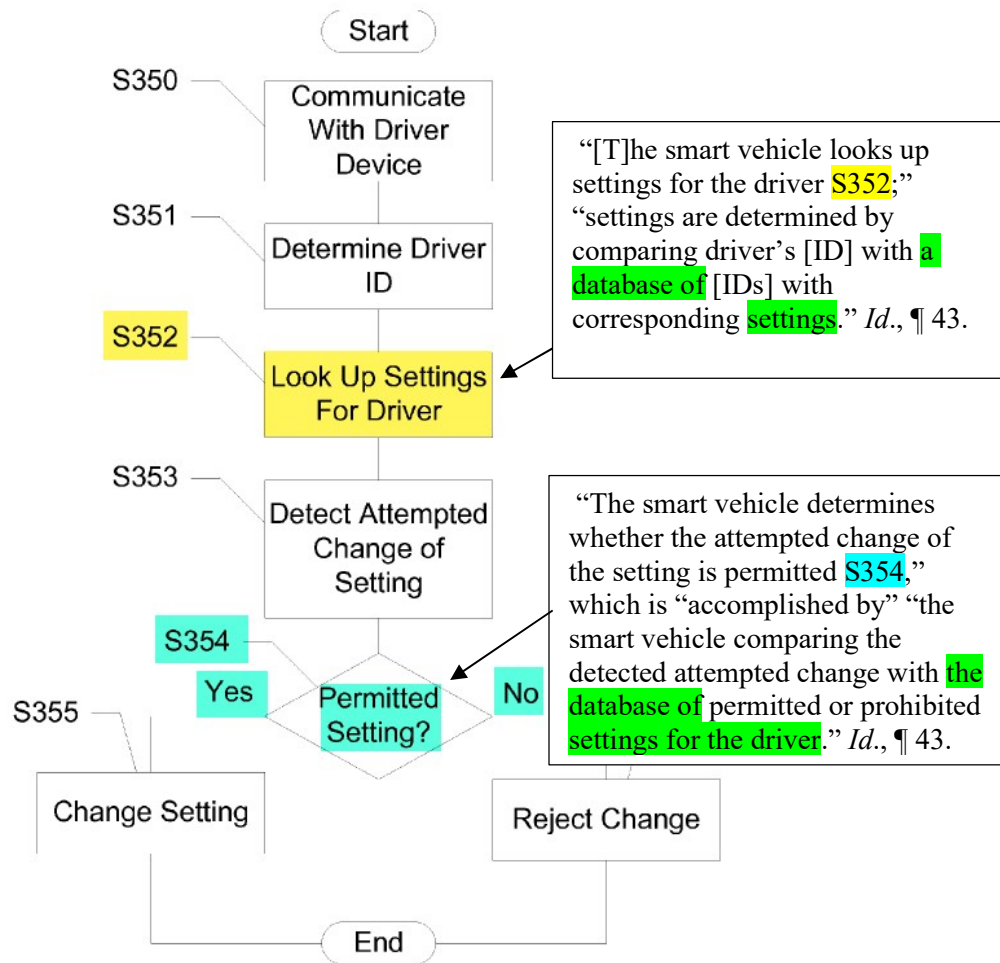


Figure 3

EX1006, Fig. 3 (annot.), ¶ 43. If, after consulting the database, the smart vehicle determines that the “change of setting is permitted, the change is allowed S355”, but “[i]f the attempted setting is not permitted, the setting is rejected S356.” *Id.*, ¶ 43.

In sum, *Rector* teaches that none of the steps of the “method of controlling a driver’s settings on a vehicle” is performed by a server, but instead the smart vehicle must look up settings in a database and re-consult that database for the later step of determining whether an attempted change of setting is permitted or prohibited. *Id.*,

¶ 43; EX2003, ¶ 57-60. Missing from this embodiment is any teaching of any server transmission or server transfer of settings from the database. *Id.*

2. *Rector's* method fails to teach or suggest any server “transmitted” settings or any server “transmission of settings,” and in fact teaches away from such transmission.

As detailed above, *Rector's* method recites steps in which the smart vehicle is to perform operations involving permitted/prohibited settings, but the method does not disclose or suggest that any server transmits or transfers any settings to the vehicle. *Id.*, ¶ 43; EX2003, ¶¶ 57-60, 65. Contrary to Petitioner's argument that the method “steps are performed with a server” (e.g., Pet. 14), there is simply no such server-transmission or transfer of settings in *Rector's* method of controlling a driver's settings on a smart vehicle—not in step S352 or elsewhere. *Id.* And indeed, *Rector's* method actually teaches away from any server transferring settings. *Id.*

For example, if the settings were somehow (but inexplicably) “transmitted” to the vehicle by a server *after* or when the smart vehicle uses a database of settings, at step S352, to look up and determine settings for the driver (e.g., Pet. 14), such a proposition begs the question of why *Rector's* method would require that the smart vehicle re-consult the database of settings at step S354. *Id.* That is, if the server had “transmitted” the settings to the vehicle *from* the recited database of settings at or after step S352, how could this proposition be reconciled with *Rector* requiring that the smart vehicle re-consult the database of settings at step S354? Ultimately, the

Petition leaves these questions unanswered, but in any event, *Rector*'s method does not teach or suggest that a server ever transmits or transfers any settings, as Petitioner and its expert wrongly assert. Pet. 14; EX1005, ¶ 100 (same, verbatim).

Indeed, *Rector*'s method steps are fundamentally *incompatible* with Petitioner's imagined server "transmission of settings" from the database. *Id.*; Pet. 14, 28. As demonstrated above, *Rector*'s method requires that the database is where the driver's settings are stored, and *Rector* further requires that the smart vehicle must repeatedly consult this database of settings (e.g., steps S352 and S354) to execute its operations. EX1006, ¶ 43. Therefore, whether the smart vehicle looks up the driver's settings in a database "on the network, on the driver's device, on the smart vehicle's memory, etc.," *Rector*'s method requires that the smart vehicle must re-consult "the database of permitted or prohibited settings for the driver"—for both its recited smart vehicle operation at step S352 and the subsequent operation required at step S354. *Id.*, ¶ 43, Fig. 3; EX2003, ¶ 66.

Accordingly, there is no teaching or suggestion that *Rector*'s "method of controlling a driver's settings on a smart vehicle" includes any server transfer or transmission of settings. EX2003, ¶¶ 65-67. And in fact, *Rector*'s method offers no teaching or suggestion of any server operation whatsoever. *Id.* More problematic for the Petition, however, is that any purported server transmission of settings would be incompatible with the method recited by *Rector*. The Petition leaves unexplained

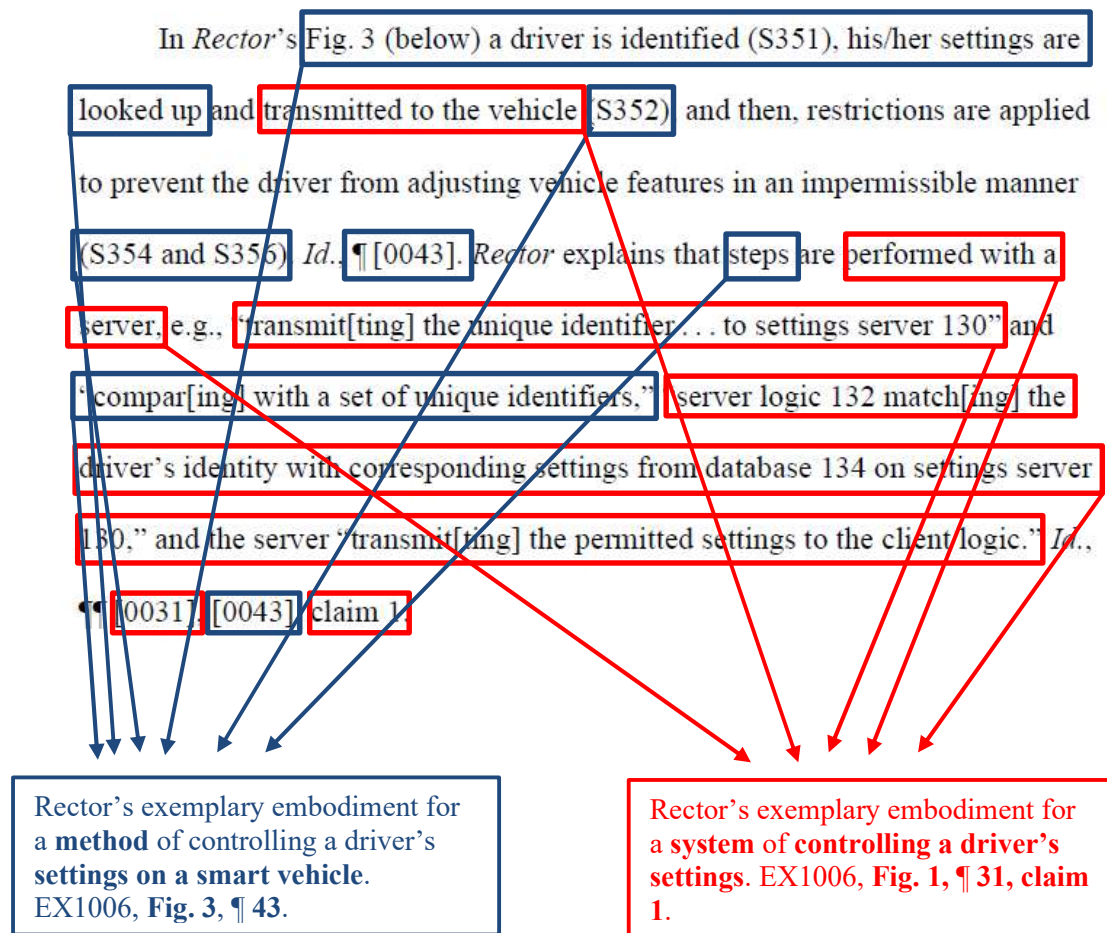
why and how a POSITA would nonetheless be motivated to modify *Rector*'s method to add such a server-executed "transmission of settings." Pet. 14, 23, 27-28, 30-31.

B. The Petition fails to explain or support its ground-up redesign of *Rector*'s method of a driver's settings on a vehicle.

Petitioner proffers an unsupported, incompatible combination of *Rector*'s embodiments, and relies on that combination for its obviousness challenges of each independent claim. *E.g.*, Pet. 27-28 (claim 1[c]: "transferring" operation), 30-31 (claim 1[c]: "transferring is configured to instruct" limitation), 45-46 (claim 17[c]'s "transferring" operations). But the Petition fails to show that "the features of [*Rector*'s] various embodiments are interchangeable or that one skilled in the art would have combined those features in the manner proposed by Petitioner." *Abiomed*, IPR2017-01204, Paper 9 at 11. As the Petition relies on this unjustified combination of *Rector* for its challenge to each independent claim, all grounds of the Petition fail.

Without acknowledging that it has rewritten *Rector*'s method, the Petition forms a misleading patchwork of various features from *Rector*'s distinct embodiments and repeatedly mischaracterizes what *Rector* teaches. For example, the Petition erroneously states that *Rector*'s method "steps are performed with a server" (Pet. 14)—when, in fact, no steps are performed with a server. EX1006, ¶ 43; *see* Section III.A.1.-2., *supra*. Ultimately, Petitioner and Dr. Almeroth transform

Rector's method into an unrecognizable mischaracterization of assembled pieces that were never taught to be, nor are, interchangeable with one another. *See, e.g.*, Pet. 14 (annot.):



See also Pet. 23, 27-28, 30-31.

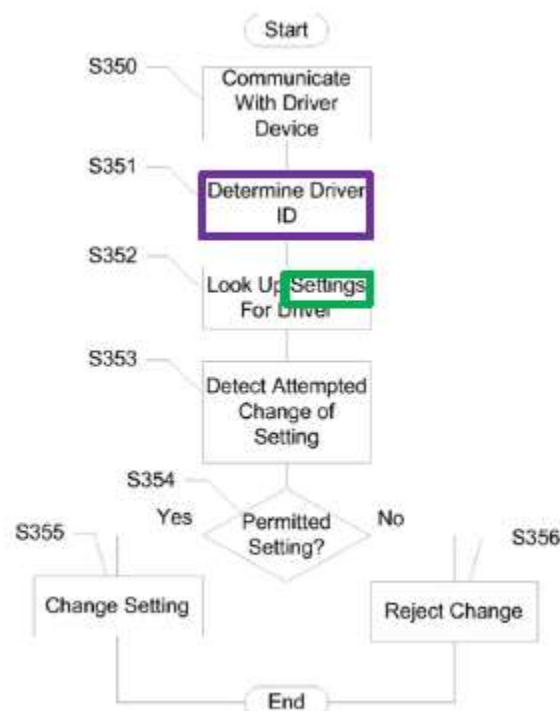


Figure 3

Pet. 23; *see also id.*, 27-28:

Rector discloses its server “transmit[s] the permitted settings to the client

logic [on the smart vehicle], wherein the client logic limits functions of the smart

vehicle based upon the permitted settings.” *Id.*, ¶ [0009] Ex. 1005, ¶¶ 127-128.

Rector’s “permitted settings” can include “prohibition[s],” such as “a prohibition of the use of a function of the wireless communication device.” Ex. 1006, claim 7.

Also, as in Fig. 3 (above), transmission of settings occurs after step S351 of

determining the driver ID Rector discloses implementing the settings only upon

determining driver identity. *Id.*, ¶¶ [0010], [0043], [0057]

Rector’s exemplary embodiment for a **method** of controlling a driver’s **settings on a smart vehicle**. EX1006, Fig. 3, ¶¶ 10, 43.

Rector’s exemplary embodiment of “smart vehicle 900 detecting a driver’s license 960[.]” EX1006, ¶ 57, Fig. 9.

Rector’s embodiments of a “**system** for controlling a **driver’s settings**.” EX1006, **claims 1, 7, ¶ 9.**

Pet. 27-28 (annot.).

However, Petitioner, like Dr. Almeroth, provides no reason why one of skill in the art would have modified the specific configuration of *Rector*'s method embodiment to achieve the redesign Petitioner proposes in its obviousness arguments. Pet. 23, 27-28, 30-31; EX1005, ¶¶ 100, 127-128, 134-136. This approach defies the fundamental law of obviousness. For example, in *Aptiv*, the Board found the Petition failed to show obviousness because the expert relied on a reference's embodiments' components as "interchangeable," though "neither Petitioner nor [its expert] explain[ed] what reason or motivation one of ordinary skill in the art would have had to combine those embodiments." *Aptiv Servs. US, LLC v. Microchip Tech. Inc.*, IPR2024-00803, Paper 10 at 26-27 (P.T.A.B. Nov. 7, 2024).

By having Dr. Almeroth repeat verbatim the combination of features from the Petition, the most that the Board can surmise from this unexplained patchwork of embodiments is that a POSITA *could have made* the proposed modifications to *Rector*'s method. Pet. 27-28, 30-21; EX1005, ¶¶ 127-128, 134-136 (same). "However, 'obviousness concerns whether a skilled artisan not only *could have made* but *would have been motivated to make* the combinations or modifications of prior art to arrive at the claimed invention.'" *Axon Enter., Inc. v. Dig. Ally, Inc.*, IPR2017-00515, Paper 10 at 20 (P.T.A.B. July 6, 2017) (quoting *Belden Inc. v. Berk-*

Tec LLC, 805 F.3d 1064, 1073 (Fed. Cir. 2015) (emphases in original); *see also InTouch Techs., Inc. v. VGO Commc'ns, Inc.*, 751 F.3d 1327, 1352 (Fed. Cir. 2014) (characterizing as indicative of a hindsight analysis an expert's "testimony [that] primarily consisted of conclusory references to her belief that one of ordinary skill could combine the references, not that they would have been motivated to do so.")).

Neither Petitioner nor Dr. Almeroth pointed to any suggestion in *Rector* that its method remains operable if its steps are swapped or supplemented with the system embodiment components selectively plucked by the Petition. Pet. 14, 23, 27-28, 30-31; EX1005, ¶¶ 100, 113, 127-128, 134-136 (same). But even if *Rector*'s method could still be operable with the Petition's redesign, neither Petitioner nor its expert "explains adequately why a skilled artisan would have had reason to redesign" *Rector*'s method, and "[t]he mere possibility of such substitution does not provide a reason by a person of ordinary skill in the art would have done so." *See Olympia Tools Int'l, Inc. v. JPW Indus., Inc.*, IPR2018-00388, Paper 8 at 22 (P.T.A.B. June 20, 2018) (finding petition failed to meet obviousness burden where rationale lacking as to motivation to modify particular configuration of prior art reference).

As described *supra*, *Rector*'s method never teaches or suggests any server "transmission of settings," let alone that any "transmission of settings occurs after step S351 of determining the driver ID," as Petitioner wrongly contends. Pet. 28; *but see* EX1006, ¶ 43; EX2003, ¶¶ 55-60, 65-67. Rather, it is *Rector*'s "system for

controlling a driver's settings," described at paragraph 9 and claim 1, that includes a server to "determine the permitted settings for the user, and transmit the permitted settings to the client logic[.]" EX1006, ¶ 9, claim 1. Compounding Petitioner's unexplained mischaracterizations of *Rector*'s method, however, are the unaddressed, incompatible consequences of interchanging these distinct embodiments from *Rector*.

- 1. Petitioner offers no reason to add *Rector*'s system embodiment, wherein a server determines permitted settings, to the separate embodiment requiring that a smart vehicle determine the settings.**

Rector's method embodiment already achieves the very same determining of settings that the system embodiment achieves, but the Petition never justifies nor explains the nonsensical redundancies of combining the two embodiments. Pet. 14, 23, 27-28, 30-31; EX1006, ¶¶ 9 ("server to associate the unique identifier ..., determine the permitted settings for the user, and transmit the permitted settings"), 43 ("smart vehicle looks up settings for the driver ... the settings are determined by comparing the driver's identity with a database of identity with corresponding settings"). Indeed, adding *Rector*'s system embodiment for controlling a driver's settings (e.g. paragraph 9, claim 1) to the method embodiment described in paragraph 43 (controlling settings *on a smart vehicle*), would render *Rector*'s method step S352 completely meaningless.

In other words, the Petition fails to offer any rationale for a POSITA to combine *Rector*'s disclosed system embodiment at paragraph 9—wherein a server **determines** and then **transmits** permitted settings (*id.*, ¶ 9)—to *Rector*'s method of controlling settings on a vehicle (*id.*, ¶ 43), which independently requires that **the smart vehicle** look up and determine permitted settings (*id.*, ¶ 43). *See also* EX2003, ¶ 67. Such a combination begs the question of why *Rector*'s method would even require that the smart vehicle look up and determine permitted settings *at all* (step S352), if by Petitioner's redesign, *Rector*'s **system** embodiment were also determining permitted settings and transmitting them onto the vehicle (*id.*, ¶ 9) (system including a server “to determine the permitted settings for the user, and transmit the permitted settings to the client logic”).

Because the method embodiment already achieves the very same determining of settings that the system embodiment achieves, the Petition necessarily “falls short of the requisite motivation to establish obviousness.” *See, e.g., Dril-Quip, Inc. v. FMC Techs., Inc.*, PGR2021-00049, Paper 32 at 37 (P.T.A.B. Aug. 1, 2022). In *Dril-Quip*, the Petition argued that the prior art reference, Maersk, had disclosed the very routing options it combined with Maersk's wellhead system, but the Board found that the petition lacked a “persuasive motivation” to make that combination, since the reference's wellhead system embodiment already achieved the same end of the *additional* disclosed routing options. *Id.* The Board reasoned: “Maersk's existing

structures *already* isolate hydraulic fluids and annular fluids from each other and from the environment, so achieving such isolation cannot provide the requisite motivation for modifying Maersk to re-route the annular fluid flow.” *Id.* at 36 (emphasis in original).

While the Petitioner in *Dril-Quip* had at least proffered *some* motivation (even if not persuasive) for making that modification, the Board nonetheless found that although the petition “establishes that Maersk could have been modified predictably to reach the claimed invention,” “this alone is not a sufficient reasoning to support obviousness.” *Id.* Here, by contrast, Petitioner offers no motivation to combine *Rector*’s embodiments.

As noted above, at best, Petitioner and Dr. Almeroth have patched together distinct features of *Rector*’s embodiments that *could have* been combined (Pet. 27-28, 30-21; EX1005, ¶¶ 127-128, 134-136 (same)), but this is insufficient to sustain Petitioner’s burden of proving obviousness. *See id.*; *see also Axon*, IPR2017-00515, Paper 10 at 20 (finding rationale “for modifying Pierce in the manner asserted by Petitioner to be insufficient” where “Petitioner’s contentions and Dr. Houh’s opinions say no more than that a person of ordinary skill in the art could have made the proposed modification”).

2. The Petition lacks any showing that a POSITA would have had a reasonable expectation of success in combining the relied-upon embodiments.

Despite Petitioner’s extensive manipulation of *Rector*’s “smart vehicle” embodiment of controlling a driver’s settings on a smart vehicle, Petitioner fails to provide any explanation, let alone evidence, that a POSITA would have had a reasonable expectation of success in combining the embodiments of *Rector* in the manner proposed. *Pers. Web Techs.*, 848 F.3d at 991 (vacating in part and remanding because Board did not make finding, “supported by evidence and explanation,” “that a person of ordinary skill in the art would have been motivated to combine the prior art in the way claimed [] and had a reasonable expectation of success in doing so”) (citing *In re NuVasive, Inc.*, 842 F.3d 1376, 1381–82 (Fed. Cir. 2016), *In re Warsaw Orthopedic, Inc.*, 832 F.3d 1327, 1333–34 (Fed. Cir. 2016), and *Ariosa Diagnostics v. Verinata Health, Inc.*, 805 F.3d 1359, 1364–67 (Fed. Cir. 2015)). The Petition here cannot sustain an obviousness determination, for it not only fails to show a reasonable expectation of success in combining the embodiments of *Rector*, but the Petition also lacks any explanation as to *how* the features of the combined embodiments could be compatible. Pet. 27-28, 30-21; EX1005, ¶¶ 127-128, 134-136

First, the Petition leaves unanswered questions as to *when*, i.e., at what steps of *Rector*’s method (EX1006, ¶ 43), a POSITA would be motivated to add *Rector*’s

system embodiment (e.g., *id.*, ¶ 9), and why. The Petition offers no clue on this point, stating only that “transmission of settings occurs after step S351 of determining the driver ID.” Pet. 28. But Petitioner never provides any detail as to when, after S351, a POSITA would allegedly add a server-transmission of settings to *Rector*’s method. *Id.* Indeed, the Board is left with no explanation as to whether Petitioner and Dr. Almeroth propose to add *Rector* system’s server-transmission of settings, for example: (1) before, after or during the smart vehicle’s look up of settings for the driver at *Rector*’s **method** step S352 (EX1006, ¶ 43), or (2) before, after or during the **method**’s subsequent requirement that **the smart vehicle** determine permitted settings for the driver (*id.*).

Moreover, even assuming the purported server-transmission of settings (Pet. 28) were added to occur sometime after **method** step S351 and before **method** step S354 (EX1006, ¶ 43), the Petition’s proposed combination of embodiments would render yet another step of *Rector*’s method nonsensical. Pet. 14, 27-28, 30-31. As detailed above, at step S354, *Rector* teaches that the smart vehicle determines whether the change in setting is permitted, and that operation “is accomplished by the client logic of the smart vehicle comparing the detected attempted change with the database of permitted or prohibited settings for the driver.” *Id.*, ¶ 43. *Rector*’s teaching here is not permissive (i.e., no use of words such as “may” or “optionally”),

but instead ***requires*** that the S354 operation “is accomplished” by the smart vehicle checking “the database” of settings it had also consulted for step S352. *Id.*

Therefore, if the Petition’s system embodiment were added before step S354, such that *Rector*’s system server determines and transmits settings before *Rector*’s method step S354, *Rector*’s method is still going to require (at S354) that the smart vehicle check the database of permitted settings each time it detects an attempted change of setting. *Id.*, ¶ 43. This confounding result is left completely unaddressed by the Petition. Pet. 27-28, 30-31.

Although the Petition’s relied-upon method and system embodiments are both described in *Rector*, the “Petitioner must still articulate a rationale for combining the features of the two[.]” *See, e.g., Cisco*, IPR2014001192, Paper 10 at 13 (“Although both routers are described in a single reference, Petitioner must still articulate a rationale for combining the features of the two devices.”). The Petition fails to provide either explanation or evidence to show that a POSITA would have been motivated to combine *Rector*’s embodiments, let alone that a POSITA would have had a reasonable expectation of success in doing so.

Because Petitioner relies upon these unjustified combinations from *Rector* for at least independent claim elements 1[c] and 17[c], the Petition fails to show obviousness. *Pers. Web Techs.*, 848 F.3d at 991.

IV. All Grounds fail because even if Petitioner’s unjustified combination of *Rector*’s embodiments were somehow proper, *Rector* still fails to disclose the recited “transferring is configured to instruct” step of the independent claims.

As detailed in Section II.B. above, the plain and ordinary meaning of the term, “the transferring is configured to,” as used in the claims, as dictated by Federal Circuit precedent, and as supported by the specification, must be configured to accomplish the specific purpose recited by the claims, as opposed to transferring that is merely “capable of” such a purpose.

Independent claim elements 1[c] and 17[c] recite operations in which the server transfers settings, and the claims further require “the transferring is *configured to* instruct” software and/or hardware of the vehicle to accomplish specific actions, i.e. to apply the settings for customizing the vehicle to use the settings. EX1001, claims 1, 17. Missing from the Petition and *Rector* is any suggestion of the server’s transferring of settings to the vehicle that “is configured to instruct” the vehicle according to the limitations of claim 1[c] and 17[c]. EX2003, ¶¶ 65-71.

That is, the Petition fails to show “the transferring is configured to instruct” as recited in claims 1[c] and 17[c] according to its plain and ordinary meaning, i.e., “the transferring” is designed, adapted or programmed to accomplish the specified objective of the limitation: “to instruct software and/or hardware associated with

said electronics of said vehicle to apply one or more settings to the vehicle for customizing said vehicle to use said one or more settings associated with the profile” (claim 1[c]) / “to instruct software and hardware associated [with] the vehicle to enable said one or more settings for use on the vehicle to customize said vehicle for the user” (claim 17[c]). EX1001, 33:23-29, 35:17-24.

Thus, *Rector* fails to teach that the identified “transmitting” is the “transferring is configured to instruct” the software/hardware of the vehicle to apply the settings for customizing the vehicle to use the settings. *See* EX1001, 33:23-29 (claim 1[c]), 35:17-24 (claim 17[c]). Dr. Almeroth’s testimony as to what *Rector*’s transmitted settings “cause,” or what *Rector*’s system may be “capable of” are facially deficient. *See* EX1005, ¶¶ 127-137 (relying on *Rector* alone for transferring ... the transferring is configured to instruct ...” limitation of claim 1[c]). Neither capability nor causation teaches the required “transferring is configured to instruct ...,” as recited by the independent claims. EX2003, ¶¶ 65-71.

A. *Rector* fails to teach that transmitted settings allegedly “cause” the smart vehicle to implement settings, let alone teach the recited “configured to instruct” limitations.

Dr. Almeroth states that “Rector discloses its server ‘transmit[s] the permitted settings to the client logic [of the smart vehicle]’” and “[t]hese transmitted settings *cause* the client logic to implement them.” EX1005, ¶ 134 (emphasis added) (citing EX1006, claim 1, ¶ 9). In point of fact, *Rector* does not

use the word “cause” in paragraph 9 or claim 1, nor any equivalent, and in any event, these cited disclosures of *Rector* do not support Dr. Almeroth’s conclusion that “these transmitted settings **cause** the client logic to implement them.” *Id.*; *but see* EX1006, claim 1, ¶ 9; EX2003, ¶ 69. If anything, *Rector* repeatedly emphasizes that it is ***the smart vehicle itself***, using its client logic, that determines what functions to limit on the vehicle according to the permitted settings. *See, e.g.*, EX1006, ¶ 9; EX2003, ¶ 69.

As detailed above, the inventions of the ’244 Patent allow for the automatic transfer of a user profile to all manner of vehicles, allowing settings to be transferred to any of these vehicle types, by, for example, enabling the server to access a database wherein a translation metric may be uploaded by the automaker and “find a translation metric [that] include[s] mapping tables that allow for settings to be transferred between functions of one vehicle to other vehicles.” EX1001, 23:34-42. *Rector*, by contrast, relies on its “smart vehicle” to do the work, e.g., detect an attempted change of setting, and check the driver’s permitted settings to determine whether the detected attempted change of setting is prohibited or permitted. EX1006, ¶ 43, Fig. 3; EX2003, ¶¶ 55-60, 69. But again, even this “implementing” of settings fails to teach the required “transferring is configured to instruct ... software and/or hardware [of the] vehicle to apply [the] settings for customizing [the] vehicle to use [the] settings.” EX1001, 33:23-29, 35:17-24.

B. Even if *Rector*'s system were “capable of” instructing the smart vehicle, mere capability does not teach the recited “configured to” limitations.

Similarly, Dr. Almeroth asserts that the system of *Rector* is “capable of” following instructions to implement settings, but this too fails to teach the recited limitations of claims 1[c] and 17[c]. EX1005, ¶ 136. However, as detailed in Section II.B. above, the “configured to” term used in the limitations reciting “the transferring is configured to instruct,” cannot be disclosed by mere capability. *See, e.g., Aspex*, 672 F.3d at 1349 (describing “configured to” as narrower than the “broader sense” of “capable of” or “suitable for”); *see Typhoon Touch Techs.*, 659 F.3d at 1380 (concluding “memory ... configured to” is “memory that must perform the recited function”); *see also In re Man Machine*, 822 F.3d at 1286 (device “configured to” was “made or designed for” a specific purpose, as opposed to merely “capable of” or “suitable for”).

As in *Acclarent*, where the Board rejected the Petitioner’s argument that “configured to” merely required that the recited components were ““capable of” performing the claimed functions,” the Petition here likewise fails to show any transferring operation that is specifically “designed to accomplish the claimed objectives.” IPR2017-00498, Paper 40 at 11, 14; *see also Wirtgen*, IPR2018-01199, Paper 10 at 14-15 (“an operator input device configured to allow an operator ... to

enter a first save command,” requires that “the input device is specifically structured to allow for entry of a save command.”).

At bottom, Dr. Almeroth fails to offer any disclosure from *Rector* that teaches or suggests any operation beyond a mere “capability” of a smart vehicle to implement settings. EX1005, ¶¶ 127-137; *id.*, ¶ 136 (“*Rector* is **capable of** satisfying, and does satisfy, this element of claim 1”); EX2003, ¶ 71. For example, while Dr. Almeroth makes the conclusory assertion that “*Rector* discloses numerous examples of the ways that software or hardware of the smart vehicle is instructed to apply the settings for customizing the vehicle,” Dr. Almeroth’s restatement of the recited claim language is not at all supported by *Rector*. EX1005, 136 (citing EX1006, ¶¶ 31-34, 38, 43, 57, 59); EX2003, ¶ 71.

None of Dr. Almeroth’s identified disclosures of *Rector* describes any ***instruction to apply settings for customizing the vehicle***. See *id.*; EX1006, ¶¶ 31 (as part of system for controlling driver’s settings, the system server determines settings associated with a driver’s unique identifier), 32 (describing how, in the same system embodiment, after a parent sets a maximum speed for a child, the smart vehicle can limit the maximum speed of the vehicle using a speed governor), 33 (as part of the system embodiment, a parent or employer can set prohibitions or maximum volume for radio settings), 34 (restrictions on a child’s phone can be enforced using “crippling applications” on the phone), 38 (settings can be stored on

wireless device and communicate directly with the smart vehicle, such that no server is needed in the system embodiment), 43 (describing method of controlling a driver's settings on a smart vehicle, as illustrated in Figure 3), 57 (describing an embodiment shown in Figure 9, wherein a smart vehicle detects a driver's license to determine the driver's identity, and, after the smart vehicle transmits the identifying data to the server, the smart vehicle implements settings for the driver), 59 (describing Figure 11, which shows a screenshot of the creation of settings for a driver); EX2003, ¶ 71.

It is in this context that Dr. Almeroth concludes "Rector is thus capable of satisfying, and does satisfy, this element of claim 1." EX1005, ¶ 136. As shown above, the identified disclosures fail to teach any instruction to apply settings for customizing the vehicle, let alone teach or render obvious any server "transferring ... the transferring is configured to instruct software and/or hardware ... of the vehicle to apply settings for customizing [the] vehicle to use [the] settings." EX1001, 33:23-29, 35:17-23; EX1006; EX2003, ¶ 71. And in any event, a mere *capability* of satisfying the claim limitation fails to demonstrate the recited "configured to" limitation. *See* Section II.B. *supra*; and *see Acclarent*, IPR2017-00498, Paper 40 at 14 ("the most natural reading of 'configured to'" is "designed to accomplish the claimed objectives," and the ordinary meaning of "configured to" should not "be construed as requiring mere capability under this precedent");

and see *O'Reilly Winship, LLC v. Snaprays, LLC*, No. 3:21-cv-02719, 2024 WL 4847377, *5-6 (N.D. Tex. Nov. 19, 2024) (applying ordinary meaning of “configured to” as consistent with “to set up for operation especially in a particular way,” to conclude as a matter of law that “a product having the mere capability of contacting the wall is not ‘configured to’ do so under the ordinary meaning of ‘configured’”).

Because Petitioner relies only on *Rector* for the “transferring ... the transferring is configured to instruct ...” limitation recited in claims 1[c] and 17[c], the addition of *Kleve* to Ground 1 does not cure the deficiencies in Petitioner’s obviousness analysis with respect to these independent claim limitations. Pet. 27-31, 45-46.

V. All Grounds fail because neither *Rector*, nor *Rector* in combination with *Kleve*, teaches or suggests the server processing user information to verify the user for accessing the profile, as recited in independent claims 1[b] and 17[b].

A. *Rector* fails to teach or suggest any server processing user information to verify the user for accessing the profile, as claimed.

The Petition identifies *Rector*’s “comparing the unique identifier with a set of unique identifiers on a server on a network” (Pet. 23), but no alleged server in *Rector* performs this “comparing,” ***verifies a user, or otherwise processes user information to verify a user.*** EX2003, ¶¶ 61-62, 72-77. Instead, *Rector* discloses

that a “smart vehicle,” not any alleged server, performs this “comparing” function. *Id.*; EX1006, ¶ 43.

As detailed in Section III.A. above, *Rector* explains that its “smart vehicle determines the identity of the driver” wherein “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.” EX1006, ¶ 43. And then, “[w]ith the identity of the driver determined,” *Rector* instructs, “the smart vehicle looks up settings for the driver.” *Id.* *Rector* teaches that the “comparing” operation to determine the identity of the driver can be performed in one of two ways: either by comparing information from the wireless communication device of the user to the information stored on the vehicle, or by taking a unique identifier from the wireless communication device and comparing it to the unique identifier from the settings server. *Id.* ¶ 43; *see also id.*, ¶ [0030] (“[c]lient logic 105 on smart vehicle 100, via an antenna and transceiver, receives the unique identifier ... and determines the identity of the driver.”). Neither of *Rector*’s described “comparing” operations discloses or suggests any server processing user information to verify a user for accessing a profile. EX2003, ¶¶ 72-77.

Indeed, in *Rector*, the relied-upon “comparing” function cannot be the alleged server verifying a user for accessing a profile having settings, as the Petition incorrectly states. *Rector* is explicit that “*the determination of a driver’s*

identification and the subsequent initiation of the corresponding settings for the driver *are performed by smart vehicle 200.*” EX1006, ¶ 40; EX2003, ¶¶ 72-75. It is “with the unique identifier” that “*the smart vehicle determines the identity of the driver S351*”:

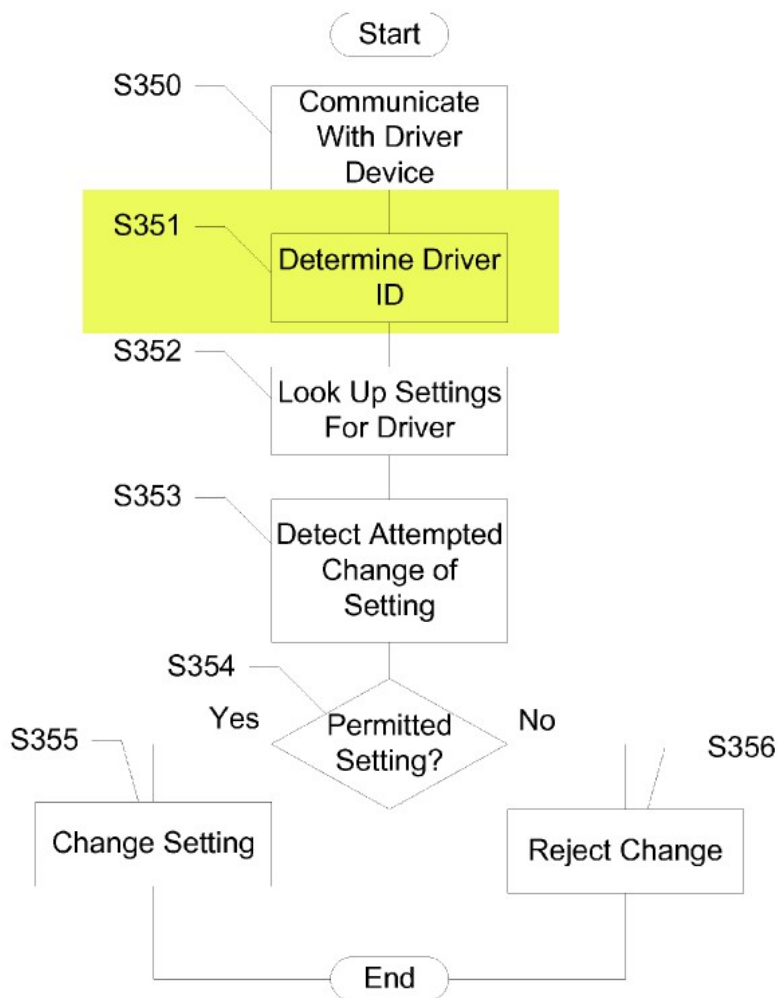


Figure 3

EX1006, Fig. 3 (highlighted); EX2003, ¶¶ 72-77.

The Petition also identifies *Rector*'s "associat[ing] the unique identifier with the user account," but this "association" operation does nothing to fill the Petition's disclosure gap for claim 1[b] or claim 17[b]. Pet. 23; EX1006, ¶ 9; EX2003, ¶¶ 76-77. The Petition never offers any explanation how this "associating" function allegedly discloses the server performing verification of user information for accessing the user profile. Pet. 21-24, 44-45 ("see supra, IV.A.3."), 76 ("see supra, VI.A.10 (discussing nearly identical element 17[b])"); see *id.*, 23 (citing EX1006, ¶¶ 9, 43, 31, Figure 3); EX2003, ¶¶ 76-77. In fact, because *Rector* utilizes the term "verifying a driver's identity" to describe the various means by which *the smart vehicle* of the settings control system can "verify that the correct party is determined to be the driver," *Rector* itself belies the Petition's argument that *Rector*'s use of the term "associate" somehow suggests the required verification function. EX1006, ¶¶ 47-48; EX2003, ¶¶ 76-77.

Indeed, the disclosures of *Rector* only identify one component of the "settings control system"—the "smart vehicle"—"to verify that the correct party is determined to be the driver." See, e.g., EX1006, ¶¶ 9, 30, 40, 43, 47-48; EX2003, ¶¶ 72-77. Accordingly, the Petition fails to show that *Rector* teaches or suggests, "processing, by the server, at least part of the user information to verify the user for accessing the profile associated with the user account, the profile having a plurality of settings of the user for the vehicle" / "processing, by one of the servers, at least

part of the user information to verify the access for the user, the profile having a plurality of settings of the user for the vehicle.” EX2003, ¶¶ 72-77.

B. All Grounds fail because the Petition has not shown that a POSITA would have been motivated to modify *Rector*’s *more secure* client-side verification with a *less secure* server-side verification.

The premise of Petitioner’s motivation to combine—that “it would have been obvious to modify *Rector*’s method of controlling driver setting to include server-side verification, as in *Kleve*, *for additional security*”—is incorrect. Pet. 24-25; EX1005, ¶ 122. First, a POSITA would have understood that the client-side verification of *Rector*, a *local* software system, is *more secure* than a system in which authentication is performed *remotely by a server*. EX2003, ¶¶ 78-79. Unlike authentication performed by local systems (i.e., client-side authentication), server-side authentication requires computer networks to transmit messages for verifying credentials, and those distributed systems’ reliance on computer networks means that they are vulnerable to a variety of security attacks. *Id.* Accordingly, modifying a local, client-side verification system with a less-secure server-side system does not provide the “additional security” that the Petition claims. *Id.*; Pet. 24-25; EX1005, ¶ 122. A POSITA motivated to provide “additional security” to the client-side authentication of *Rector* would not have sought to modify *Rector*’s *more*

secure system to render it *less secure* with “server-side authentication, as in *Kleve*.” Pet. 25; EX2003, ¶¶ 78-79.

Therefore, the proposed motivation to combine fails because Toyota’s relied-upon problem—providing “additional security” to the *more secure Rector*, allegedly solved by including a *less secure* “server-side verification”—is simply nonexistent. “A motivation to combine the teachings of references cannot be based on the alleged existence of a problem that does not exist in the specific asserted combination.” *Aruba Networks, Inc., XR Commc’ns LLC*, IPR2018-00701, Paper 10 at 10 (P.T.A.B. Aug. 27, 2018) (denying institution, finding “the purported gap in the teachings of [the reference] that Petitioner relies on as the basis for providing the motivation to combine [the two references] does not exist”) (citing *In re Schweickert*, 676 F.App’x 988, 995-96 (Fed. Cir. 2017)).

The Petition’s alleged motivation to combine is further flawed because *Kleve* does not even stand for the proposition claimed by Toyota and its expert. Pet. 24-25; EX1005, ¶ 122; EX2003, ¶¶ 80-82. Rather, *Kleve* teaches that “additional security” to the virtual key can be achieved “by requiring **remote credential verification at the vehicle**.” EX1007, ¶ 49. Toyota and its expert rely on *Kleve*’s teachings about “additional security” via remote credential verification as *limited to* server-side verification. Pet. 24-25; EX1005, ¶ 122; EX2003, ¶ 78. *Kleve*, however, explains that “the remote credential verification **at the vehicle** may be

done with additional hardware assembled on the exterior of the vehicle or in the vehicle cabin.” EX1007, ¶ 49. *Kleve* goes on to instruct that this remote verification **at the vehicle** can be performed by any of three entities: “the remote credential verification may be done by [1] the VCS, [2] using a server, or [3] allowing the Owner to verify the Temporary User’s request.” *Id.* Here, among *Kleve*’s three options to provide “additional security” to the virtual key is the *most secure*, local option: client-side verification at the vehicle, using the VCS. *Id.*; EX2003, ¶ 78. Therefore, a POSITA seeking to provide “additional security” would not have modified *Rector*’s *more secure* method of controlling driver settings to include the *less-secure* server-side option of *Kleve*. EX2003, ¶¶ 78-79. Failure to acknowledge these teaching of *Kleve* provides yet another reason Toyota and its expert fail to establish a motivation to modify *Rector* with *Kleve*, as proposed. *See, e.g., Aruba Networks*, IPR2018-00701, Paper 10, at 11-14 (denying institution, finding “reasons given for combining the relevant teachings ... to teach or suggest all the elements of this limitation are not supported by the relied upon passages”).

These deficiencies infect each of Grounds 1-5 because the Petition relies on the proposed *Rector-Kleve* combination to challenge independent claims 1 and 17.

C. All Grounds fail because Petitioner has not shown that *Rector* in combination with *Kleve* renders obvious “processing, by the server, ... user information to verify the user for accessing the profile associated with the user account ...” as recited in independent claims 1 and 17.

Acknowledging that the relied-upon disclosures of *Rector* never teach or suggest a *server* performing any verification function (Pet. 23 (“to the extent element 1[b] is interpreted to require the *server* to ‘verify the user for accessing the profile associated with the user account’...”)), Toyota argues that “it would have been obvious to modify *Rector* such that verification is performed by the server, as in *Kleve*.” Pet. 24 (citing EX1007, ¶ 49). But the Petition’s reliance on *Kleve* is misplaced, for its alleged server only verifies credentials ***for accessing a vehicle***, not verifying the user for accessing a user profile having settings, as required by all challenged claims. EX1007, ¶¶ 48-49; EX2003, ¶¶ 80-82. The Petition identifies disclosures of *Kleve* which describe a security feature available to a vehicle owner before a user is granted access to enter and/or drive away a vehicle. EX1007, ¶¶ 48-49; EX2003, ¶¶ 80-82. That is, even after a “virtual key” is issued to a user to “unlock” and drive a vehicle, the user also undergoes remote credential verification **at the vehicle** itself, before the user is allowed to enter and/or drive the vehicle. *Id.* *Kleve* makes clear that it verifies only this vehicle access:

[t]he virtual key may allow a Temporary User temporary granted access to the Owner’s vehicle. ***The granted access allowed by the***

virtual key may permit entry of the vehicle; grant a keyless drive-away of a vehicle, and/or both. The Temporary User may enter a virtual key outside or inside the vehicle, while credential authorization may be processed by the VCS, a server and/or by the vehicle Owner. The system may be further extended to facilitate the virtual key with additional security by requiring remote credential verification at the vehicle. ... For example, but not limited to, the Temporary User entering a credential verification password at the vehicle's touchscreen visual display while having the VCS, server, or owner compare and verify authorization.

Id. The Petition-identified disclosures of *Kleve* never mention or suggest verification by any server for accessing a user profile, let alone accessing a user profile having settings of a user for a vehicle. *Id.*; EX2003, ¶¶ 80-82. Therefore, *Kleve*'s teaching about verifying to ***grant access to a vehicle*** cannot be the required server verification for accessing a profile with a plurality of settings.

And while Toyota attempts to conflate *Kleve*'s "user profile" with the claims' recited "profile having a plurality of settings of the user for the vehicle," *Kleve*'s "user profile" has no such settings. Pet. 25 (citing EX1007, ¶ 37); EX2003, ¶¶ 83-84. Rather, the "user profile" described in *Kleve* is merely a feature on a website which allows the owner to approve of, and receive payment for, a vehicle rental transaction. EX1007, ¶ 37); EX2003, ¶¶ 83-84. For example, *Kleve* teaches that a "user profile" is where the owner lists the make, model and year of the vehicle, the

temporary user submits photographs of their credit cards and photographs of their IDs, and ultimately, it is the “user profile” that serves as a means for the owner to obtain payment from and validate a user to rent the vehicle. *Id.*

More fundamentally, because *Kleve*’s “user profile” has no disclosure or suggestion of any settings of the user for the vehicle (*id.*), let alone any disclosure of transferring settings from a profile to a vehicle (*id.*), the disclosures of *Kleve* cannot achieve the vehicle customization enabled by the user profile transfer solutions of the ’244 Patent. EX1001, 11:30-46, 13:50-14:41, 15:25-17:7, Fig. 4, Fig. 5; EX2003, ¶¶ 84, 61-62. Regardless, and in any event, *Kleve*’s server verification is limited to *the vehicle access*, and has nothing to do with what *Kleve* refers to as a “user profile.” EX1007, ¶¶ 48-49; EX2003, ¶¶ 61-62, 83-84.

Toyota’s reliance on *Kleve*’s disclosure of “step 624” fares no better. Pet. 25 (citing EX1007, Fig. 6). Indeed, *Kleve* never mentions or suggests any server involved at all in “step 624.” EX1007, ¶ 72, Fig. 6; EX2003, ¶ 85. On the contrary, *Kleve* instructs that once a user uses a virtual key to enter/start a vehicle, the user may *use a phone* (or a “nomadic device”)—and not any alleged server—to pair with the vehicle computer system and, according to *Kleve*’s system, it is the phone that “may send personal settings to the vehicle.” EX1007, Fig. 6, ¶ 72; EX2003, ¶¶ 61-62, 85-86.

Accordingly, Petitioner’s *Kleve* arguments are facially deficient, and do not show a reasonable likelihood that *Kleve*’s server verification, even in combination with *Rector*, could suggest or render obvious a server performing a verification of a user for accessing the profile having settings of the user for the vehicle. There is simply no teaching or suggestion in *Kleve* of the claimed “processing, by the server, ... user information to verify the user for accessing the profile associated with the user account the profile having a plurality of settings of the user for the vehicle.” Indeed, *Kleve*’s alleged server verification, at best, grants access to a vehicle only. EX1007, ¶¶ 48-49; EX2003, ¶¶ 61-62, 80-81. And *Kleve*’s disclosure of a “user profile” is of no consequence since there is no server verifying user access to this “user profile” and regardless, *Kleve*’s “user profile” has no settings. EX1007, ¶ 37; EX2003, ¶¶ 83-84. Likewise irrelevant are the “personal settings” identified by Toyota’s Petition, which are sent solely from a nomadic device to a vehicle. EX1007, ¶ 72; EX2003, ¶¶ 83-84. Therefore, *Kleve* fails to cure the deficiencies of *Rector* discussed above.

While Petitioner adds *Yassin* (Grounds 2, 3, and 5), *Patenaude* (Ground 3) and *Faenger* (Grounds 4 and 5), they do not cure deficiencies of *Rector*, or *Rector* in combination with *Kleve*, for independent claim elements 1[b] and 17[b], and Petitioner makes no argument to the contrary. Pet. 47-58 (Ground 2), 58-68 (Ground 3), 68-78 (Ground 4), 78-79 (Ground 5); EX2003, ¶¶ 87-88.

VI. Conclusion

For all of the reasons given above, including because Toyota has failed to meet its burden of proof or even present credible evidence in support of its Petition, the Board should uphold each of the challenged claims.

Dated: February 14, 2025

Respectfully submitted,

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37 C.F.R. §42.24(d) CERTIFICATION

The undersigned hereby certifies that this submission, excluding the tables of contents, certificate of word count, exhibit list, and certificate of service, contains 12,213 words, as determined using the standard word counting feature of the Microsoft Word program.

Dated: February 14, 2025

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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 February 14, 2025, a copy of the foregoing document was served by email upon the following counsel at the below email addresses:

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