

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

KIA CORP. and TOYOTA MOTOR CORP.,
Petitioner,

v.

EMERGING AUTOMOTIVE LLC,
Patent Owner

IPR2024-00814
Patent 11,396,244 B2

Record of Oral Hearing
Held: August 25, 2025

Before GEORGIANNA W. BRADEN, FRANCES L. IPPOLITO, and
JASON M. REPKO, *Administrative Patent Judges*.

IPR2024-00814
Patent 11,396,244 B2

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P R O C E E D I N G S

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JUDGE IPPOLITO: Welcome. Good afternoon. This is the oral hearing for IPR2024-00814. I'm Judge Ippolito. And with us today are Judges Braden and Repko. You can see from our screens that we're in different locations. To start, I want to make sure that all of the parties are here. Counsel is here. Beginning with Petitioner, are you here with us today?

MR. SKOYLES: Yes, Your Honor. Aidan Skoyles here for Petitioner Toyota Motor Corporation.

JUDGE IPPOLITO: Okay. Thank you. And Patent Owner?

MS. ENTZMINGER: Yes. Good afternoon, Your Honor. Brenda Entzminger for Emerging Automotive LLC. And with me on the line is lead counsel, Jerry Tice.

JUDGE IPPOLITO: Great. Welcome. Our hearing order sets out the procedures we'll follow today. For our order, each side has 60 minutes. And you can reserve some of that time for rebuttal or surrebuttal. We are virtual today, so I have my phone. But that is not necessarily going to be the most useful for you in your different locations, so please keep track of your time. I'll try to give you a reminder, but if I'm asking a question or we're having a conversation, I might not notice the time winding down.

I do like to offer a break before we do the rebuttals, just so that way we can kind of reset and, you know, organize ourselves. We don't have to, but usually, there will be a short five to seven-minute break. As you're presenting, I know that it's very easy to rely on the shared screen feature and

1 know that the demonstratives are up, but that isn't going to be in the
2 transcript unless you actually say which slide number we're on. So that
3 would be the most helpful is to keep that in the record.

4 As a reminder, this hearing is public. We do have an active public
5 line. And I just want to make sure that we all are aware. I don't believe
6 there's anything confidential that I saw would be presented today, but I still
7 like to remind the parties that we do have a public line. And with that, I
8 think we can start.

9 Petitioner, are you ready? Would you like to begin?

10 MR. SKOYLES: Yes, Your Honor, we're ready.

11 JUDGE IPPOLITO: Okay. Let me ask first then if you would like
12 to reserve any time for rebuttal?

13 MR. SKOYLES: Yes. We'd like to reserve 15 minutes, please.

14 JUDGE IPPOLITO: 15 minutes. Okay. And whenever you're
15 ready, you can begin, and I will start the clock here.

16 MR. SKOYLES: Thank you, Your Honors. Petitioners would like
17 to address with a quick summary of the status of the claims at issue in this
18 petition. If I can go to Slide 4, please. The petition was -- they're offered in
19 a way that addressed the claims as issued and also addressed the substance
20 of some modifications to the claims the Patent Owner attempted to add.

21 We can go to Slide 5. On January 17th, 2024, Patent Owner
22 submitted a Certificate of Correction seeking to include some limitations
23 that were omitted from the claims as issued. Now, our petition was filed in
24 April 24 -- April 2024. And so there was some question as to whether those
25 edits were added to the claims.

26 I can go to Slide 6. I just want to point out the subsequent history

1 after the petition was filed. On September 21st, 2024, the examiner denied
2 the request to correct. On October 15th, 2024, Patent Owner filed a request
3 for reconsideration. On December 2nd, 2024, that request was denied. And
4 so at this point, the corrections sought are not part of the claims.

5 I would also point out on Slide 7 that on December 11th, 2024, the
6 Patent Owner filed a request for reissue. That request for reissue is
7 suspended, pending the outcome of this IPR. And so for the purposes of
8 today's discussion, we will address the claims as they stand, which do not
9 include the language that was sought to be included.

10 If I can turn now to the merits of the petition on Slide 9, I want to
11 start with a kind of a high-level summary of the '244 Patent compared to
12 Rector. In general, Rector provides the same solution as the '244 Patent. In
13 the Patent Owner's own words, the '244 Patent relates to the, what they call,
14 automatic and seamless transfer of user profile settings between a vehicle
15 and the cloud, with some kind of mechanism for authenticating devices, and
16 verifying users to ensure that only verified users can access the stored profile
17 and settings.

18 Now, Rector, Exhibit 1006 teaches a smart vehicle with a way of
19 controlling the settings on that vehicle. The driver of the vehicle can be
20 identified using their wireless communication device that has some unique
21 identifier in it. Once the driver is identified, the smart vehicle can look up
22 settings for the user and implement them on the vehicle. It is very similar to
23 what's disclosed in the '244 Patent.

24 We move to Slide 10. Rector discloses that the identity of the user
25 could be determined by the smart car. In paragraph 43, though, Rector
26 discloses an alternative wherein the unique identifier can be compared to a

1 set of identifiers on the network. Now, in our petition, we relied on a
2 combination with Kleve, which is similar but clearly discloses that, in
3 Kleve's words, "Additional security can be added to the system by requiring
4 remote credential verification by a server." That's in the first sentence of
5 paragraph 49.

6 So, I can go to Slide 12 next. This is just a recitation of Claim 1
7 colorized, consistent with how we colorized it in the petition, and the
8 disputed limitations there are identified in the red box. Now, for the purpose
9 of this slide, I've left in underline the language that we talked about earlier
10 that Patent Owner attempted to add to the claims but is not in the claims as
11 they stand today.

12 I'd like to start on Slide 13 and talk through the limitations of
13 Claim 1 overall and then go back and focus on the issues in dispute at this
14 point. Preamble of Claim 1 requires a method executed by a server of a
15 cloud services system that is configured to interface with vehicles. Rector
16 discloses a server of a cloud system and there's no doubt that server
17 interfaces with vehicles.

18 Slide 14, limitation 1[a], we receive by a server, so Rector's server
19 is shown as element 130 in Figure 1. That server receives a request from
20 electronics of the vehicle to access a profile. In the top of Rector's Figure 1,
21 you see a vehicle communicating with a mobile device in the vehicle and a
22 remote server and looking up settings for the driver. Those settings are the
23 profile for a user account. And that request identifies user information
24 because that's how the server knows whose profile or whose settings to
25 identify.

26 We go to Slide 15, limitation 1[b], we are processing by the server

1 user information to verify the user for accessing the profile. Rector discloses
2 looking up the settings for the driver in step S352 of Figure 3, which could
3 include using the settings server 130 described in Rector to process user
4 information to verify. Our petition also relied on Kleve, as we discussed
5 already, for this notion of server-side verification. Now, the profile has to
6 have settings. Part of those settings need to be stored on cloud accessible
7 storage. This aspect is undisputed. Rector discloses a database of settings
8 on a settings server in the cloud.

9 Limitation 16, transferring by the server, upon verifying the user
10 information settings to storage of the vehicle, on Slide 16. And paragraph 9
11 of Rector discloses additional details of the server logic which, as shown in
12 red there, will associate the unique identifier with the user account, then
13 determine their settings and transmit those settings to the client logic. Now,
14 as Rector describes it, the client logic is what is on the vehicle. Now --

15 JUDGE REPKO: This is Judge Repko.

16 MR. SKOYLES: Yes.

17 JUDGE REPKO: I have a question about this. So in your petition,
18 you do note that to the extent that the element is interpreted to require a
19 server, you then turn to Kleve. So for the Rector embodiments where the
20 server -- you're saying the server makes the determination, is that being
21 relied upon in the petition, or are you simply just relying on Kleve for the
22 server's verification?

23 MR. SKOYLES: We are relying on Kleve for the server verifying
24 the identity, that's right. Rector's server stores the settings, but Kleve
25 discloses the notion of using a server to verify the identity of the user.

26 JUDGE REPKO: So in the method embodiment in Rector, this is

1 what you cited, I guess in -- on page 23 of the petition, you cited paragraph
2 43, does the server actually make that verification? Does it do the
3 identification? Or is that another embodiment that does the verification at
4 the server?

5 MR. SKOYLES: We'll talk about that in an additional slide,
6 subsequent slide. But paragraph 43 of Rector certainly discloses -- I'm
7 sorry, certainly discloses that the server could perform that limitation. It
8 says, as an alternative, the -- I don't have the language in front of me, but
9 we'll get to it eventually. As an alternative, the unique identifier can be
10 compared against unique identifiers stored in the server. So, it suggests
11 certainly that the server could be doing that in paragraph 43.

12 JUDGE REPKO: So it suggests. I would like to talk about it now,
13 though, because I think it's important. So the language in paragraph 43, I
14 think it's -- does it suggest that the server storing the identifiers are actually
15 doing the verification? Because you can imagine a scenario where the
16 information is stored on a server, then downloaded to the smart vehicle and
17 compared at the smart vehicle, where the smart vehicle will determine the
18 identity, but the server may have the data. So what's going on in paragraph
19 43? Is it the server is also verifying the identity?

20 MR. SKOYLES: Let's go to Slide 28 if we could. It has the
21 language in paragraph 43. Slide 28 has a clip of paragraph 43. And it shows
22 that alternatively, the unique identifier may be compared with a set of unique
23 identifiers on a server on a network. It is conceivable that the -- that this is
24 intended to mean the entire database of unique identifiers is downloaded to
25 the vehicle, wherein the vehicle makes that comparison.

26 That seems like an unlikely read of what's disclosed in Rector. It

1 would not be sensible to download the entire universe of identifiers to the
2 vehicle when you have the transceiver in Rector's vehicle already. You have
3 a database of unique identifiers on a server and also the settings that go with
4 each of those unique identifiers potentially on the server, again, certainly
5 suggests to have that server doing the comparison of the -- or the verification
6 of the identifiers. Kleve, though, makes it very clear that that verification
7 could be done on the server.

8 JUDGE REPKO: So turning back to your petition, which
9 embodiment are you relying upon on 23 and 24, the petition? I mean, are
10 you -- is it your position that paragraph 43 teaches a server that performs the
11 verification at the server on page 23? And if so, how does that -- how can I
12 reconcile that with the statement on page 24 of the petition that says to the
13 extent element 1[b] is interpreted to require the server, you then turn to
14 Kleve. It seems to suggest, like reading that together, that you don't
15 necessarily believe that the server is doing that verification.

16 MR. SKOYLES: I believe a reasonable way of reading Kleve's
17 disclosure is that the server does the verification. But I would grant you
18 there is a modicum of ambiguity, and that's why we turn to Kleve. The
19 sentence there on paragraph 43 in Slide 28 is sort of written in the passive
20 voice, right? It says the unique identifier may be compared. So, it isn't
21 explicit as to exactly what's doing the comparison. I would posit that it's
22 certainly reasonable to have the server do it. And Kleve shows an
23 obviousness combination where the server is doing remote credential
24 authentication. That's --

25 JUDGE REPKO: And so your position, though, in the petition on
26 page 23, is that the server is doing it; is that correct? I mean, for example,

1 like, you have italicized server on page 23, and you've pointed to paragraph
2 9, is that the same embodiment that's in paragraph 43?

3 MR. SKOYLES: Well, I'm going to talk about the issue of
4 separate embodiments later. But I believe the settings server in Rector is the
5 server that's being referred to here. So the server that stores the settings also
6 stores the identifiers. That server is what would do the comparison of the ID
7 to the known database of IDs. That's why we italicized server. Rector's
8 server is what's doing the associating of the account with the known IDs and
9 the permitted settings for each of those known IDs.

10 JUDGE REPKO: And so why even say that on page 24 of your
11 petition, to the extent it is interpreted to require? How can I reconcile that
12 with your statement on the previous page? I mean, is it -- are you suggesting
13 that, you know, there's an interpretation that doesn't require the server to do
14 the verification and that you've addressed that interpretation on the previous
15 page?

16 MR. SKOYLES: You could certainly do it like that. I mean, I
17 think Rector is relatively clear in its disclosure that the server does these
18 -- performs these functionalities. But Rector -- sorry, Kleve is, you know, an
19 alternative. It's an embodiment. It's an obviousness combination that shows
20 a clear disclosure of server-based user authentication that you could combine
21 with Rector to get to that notion of a server verifying the users.

22 JUDGE REPKO: Right. And I realize that's your position now,
23 but I'm just -- and just going back to what you've presented to us in the
24 petition, on page 23, just -- you know, is it clear that the server -- you're
25 relying upon the servers on page 23. On page 24, you're pivoting here to the
26 Kleve and making this alternative argument. Is there anything else in the

1 petition you could point me to that kind of clarifies this? Do you see why
2 I'm having a little bit of trouble here?

3 MR. SKOYLES: Well, if I may, let me talk to some of the other
4 disclosures in Rector. And I think when you see the different disclosures in
5 Rector and how they can be read together, in contrast to what Patent Owner
6 argues, you can see how -- what Rector is really talking about is making a
7 vehicle, a smart vehicle, through the use of a server. And it's clear
8 throughout the disclosures in Rector that that server would be used to do
9 things, like compare and verify the user ID and also get those users settings.

10 JUDGE REPKO: Okay. So I guess in terms of page 24 here,
11 you're not proposing -- I mean, it says proposing to modify Rector. Is
12 Rector lacking that feature? Is that what your position is here? Is it
13 someplace where you say what Rector is lacking, or is this an alternative?

14 MR. SKOYLES: I think it's an alternative. I wouldn't say Rector
15 is lacking in the disclosure of a server verifying the users. However, to the
16 extent a server is explicitly required to verify the user, Kleve discloses that.

17 JUDGE REPKO: Yeah. That sounds like that could be a way to
18 think about this, it's to say to the extent that you disagree that Rector
19 discloses a server to verify. That's not what you said here. You actually
20 said that that is -- you based it on some sort of alternative interpretation. So
21 it's a slightly different position here.

22 MR. SKOYLES: That was not my intent in putting this together. I
23 think the disclosure of Rector in the various system and method descriptions
24 shows the server is really fundamental to how it operates. And so we do
25 think Rector is complete. But if the disclosure of Rector is found to not be
26 sufficient, to not explicitly disclose a server doing that verification, you

1 could turn to Kleve.

2 JUDGE REPKO: Did you state that someplace in the petition?
3 Can you point me to a part where you articulated what you just stated right
4 there? I'm looking, for example, on page 25 of the petition. I mean, there
5 you say, it would have been obvious to modify Rector's method of
6 controlling driver settings to include server-side verification. That almost
7 sounds like there's, like, a method embodiment that doesn't have server-side.
8 And then you want to modify that method to include server-side verification,
9 like on page -- like in paragraph 43.

10 MR. SKOYLES: That's true. So there's no doubt Rector discloses
11 an embodiment where server-side verification is not used. It talks about
12 potentially doing the verification of the user on the vehicle, only on the
13 vehicle. Now, it says you could do it as an alternative by comparing the user
14 ID with ID's unique identifier stored on the server and Kleve provides that
15 notion of additional security. It's the belt and suspenders. It's the second
16 way of modifying or verifying the user ID. That's consistent with what our
17 expert said as well. The idea of adding server-side verification to Rector
18 would make it -- you know, like adding two locks on your door, it makes it
19 more secure.

20 JUDGE REPKO: Okay. Thank you. I have no further questions
21 on that.

22 MR. SKOYLES: Okay. Let me go back to -- I think we were on
23 limitation 1[c], Slide 16. Or perhaps, we were on 1[d], Slide 17. So,
24 limitation 1[d] requires the transferring configured to instruct the software
25 and/or hardware to apply certain settings to the vehicle. And we'll talk about
26 this in more detail. But we'll point out paragraph 9 of Rector discloses how

1 the settings server will transmit permitted settings to the client logic,
2 wherein the client logic transmits functions of the smart vehicle based on the
3 permitted settings. Limitation 1[e] simply requires wireless communication
4 for exchanging data, and this is disclosed by Rector's transceiver 206.

5 So, I want to go next to Slide 24. This is something we were
6 talking about just a moment ago. But if we just read through Rector again,
7 and I invite the Board to do this, Rector is essentially disclosing a single
8 system. It is described as a different embodiment, but it is really two
9 different ways of approaching the exact same thing. Rector includes some
10 definitions for different components. Then in paragraph 30, it discloses a
11 system for controlling driver settings on a smart vehicle. Figure 2 shows a
12 smart vehicle 200 according to an exemplary embodiment of the present
13 invention.

14 And then Figure 3 shows a method of controlling a smart -- sorry,
15 controlling a driver's settings on a smart vehicle. Figure 4 goes on to show
16 that smart vehicle with multiple occupants. And Figure 5 shows secondary
17 means for verifying the identity. Really, though, these are not two distinct
18 embodiments. One is a smart vehicle with some physical components, and
19 one is a method of controlling the smart settings on a smart vehicle.

20 If we go to Slide 25, Figure 2 discloses the smart vehicle 200 as
21 having particular physical components, CPU, memory, and antenna, seats,
22 typical things in a vehicle, and a transceiver 206 used to communicate with
23 other devices such as a server on a network.

24 Then Figure 3 is a flowchart. We relied on this in page 23 of our
25 petition. This shows a method of controlling a driver's settings on a smart
26 vehicle. And the discussion of Figure 3 talks about using their identifier to

1 identify the user in step S351 and notes, as we've already seen, that
2 alternatively, the unique identifier may be compared with a set of unique
3 identifiers on a server on a network.

4 So, the idea of Figure 2 and Figure 3, the so-called system
5 embodiment and the so-called method embodiment being distinct and
6 separable and sort of never the two shall meet is belied by how they are
7 described. Both of them talk about using this server on a network to provide
8 the smart functionality that is the central thrust of what Rector is all about.

9 The third line from the bottom on Figure 3, I'd point out, talks
10 about how the database of settings may be on the network. So although it is
11 possible that the settings are stored locally, the idea of the server including
12 the settings is worked into that method embodiment. The description of
13 Figure 3, the method embodiment, shows that Rector doesn't really care
14 where the settings are stored, but they could be stored on a server.

15 Let's go to Slide 27. Patent Owner relies heavily on the *Abiomed*
16 case. *Abiomed* is really a distinguishable situation from what we have here.
17 In *Abiomed*, you have one embodiment which is a heart -- a blood pump
18 located outside a blood vessel. And in another embodiment, you have a
19 blood pump located inside a heart. Now, I am no blood pump expert, but it
20 seems like these are very different things that could not be considered to be
21 interchangeable. And that's exactly what the Board held. Distinct
22 embodiments may be -- cannot be combined. But that's very different than
23 the circumstance we have in Rector. In Rector, we have a vehicle and a
24 method of controlling that vehicle. They are intended to be read together,
25 and they certainly can be read together.

26 Let's go to Slide 32 next. Rector discloses a settings server 130.

1 This settings server 130, in addition to being the server that could match the
2 driver's identity, also can be the server that stores the settings. Rector
3 discloses two different kinds of settings. The driver created settings, which
4 are things like seat position, mirror position, radio, temperature controls, and
5 then controlling authority settings. I think of these as dad mode settings.
6 These are the kinds of things that an authority sets when the user cannot set
7 them, things like maximum speed, radio controls, maybe you can't use the
8 radio when the vehicle is in motion, or you can't set the volume at a certain
9 level. These are things that the driver cannot change. And these are the
10 kinds of settings that could be stored in the Rector settings server 130.

11 And this is a server that -- in Slide 33 -- is described in both Figure
12 2 and Figure 3, the so-called system and method embodiments. In both
13 cases, that setting server is described as potentially being on the network.
14 Claim 1 of Rector requires that settings server to transmit permitted settings
15 to the client logic.

16 So we go to Slide 35 now, an overview of how Claim 1 maps to
17 rector. In limitation 1[a], we have receiving a request from electronics of the
18 vehicle to access a profile. Step 350 of Rector discloses the system
19 accessing a stored user profile. In limitation 1[b], the first part, we have
20 processing the user information to verify the user. This can be done in
21 Rector's server, although we also point out that it could be done in Kleve.
22 Limitation 1[b], the second part, the green part, the profile has to have
23 settings. This could be the database on the network referring to where the
24 settings could be stored.

25 Limitation 1[c] requires transferring those settings to the vehicle.
26 Rector talks about transferring the driver created settings or the controlling

1 authority settings to the vehicle. Limitation 1[d], we'll talk about in a
2 minute, this is the transferring being configured to instruct. And limitation
3 1[e] using wireless communication, which is disclosed by Rector's
4 transceiver 206.

5 Okay. So let's go to Slide 36. The next aspect I wanted to focus
6 on is the transferring being configured to instruct. The next argument Patent
7 Owner makes, the next primary argument, is the notion that limitation 1[d]
8 requires some kind of actual instruction.

9 Let's turn back to Rector to remind ourselves what it discloses.
10 These dad mode settings, controlling authority settings, things like speed
11 restrictions are naturally going to be the kinds of things that have to be
12 implemented on the vehicle when they are transferred. Slide 37 shows the
13 settings, including the maximum speed of the smart vehicle, as being a
14 setting that could be associated with the user. If that setting was not a
15 setting that was implemented or that the transferring was not configured to
16 instruct the vehicle to implement, then it wouldn't be a limitation at all. The
17 driver could just choose not to implement the speed setting. It would not be
18 a controlling authority setting.

19 The whole thrust of Rector is that certain settings are not optional.
20 And once User A gets in, the vehicle and the server recognizes that user A is
21 in the vehicle, if they have some speed restrictions, they're transferred to the
22 vehicle and implemented right then with nothing else. And that is
23 transferring configured to instruct.

24 This is described specifically, if you go to Slide 38, at the
25 conclusion of paragraph 9. Paragraph 9 says the server logic on the settings
26 server -- I'm reading just a couple of lines above the red box there

1 -- associates the ID with the user account, then determines their permitted
2 settings, and transmits the permitted settings to the client logic, wherein the
3 client logic limits functions of the smart vehicle based upon the permitted
4 settings.

5 So once the transferring of the settings takes place, the client logic
6 limits the vehicle based on those settings. There is no other step. There is
7 nothing other than the transmitting of those settings that causes them to be
8 implemented, or the language of the claim, instructs the vehicle electronics
9 to apply the settings.

10 JUDGE IPPOLITO: Counsel, can I stop you there and ask a
11 question?

12 MR. SKOYLES: Yes.

13 JUDGE IPPOLITO: One of the questions I have is about how you
14 structured the arguments in your petition, but a slightly different question
15 than what we've been discussing today, although it's related. So this
16 limitation has been separated for discussion purposes. I think your
17 annotation is 1[c], 1[d]. That's how you've organized it.

18 MR. SKOYLES: Yes. There's a little bit of confusion as to how
19 the --

20 JUDGE IPPOLITO: Yes.

21 MR. SKOYLES: I'm sorry.

22 JUDGE IPPOLITO: So the question I have is because the claim
23 limitations have been discussed in this way separately, I was trying to figure
24 out what aspect of Kleve's server is relied upon for this transferring
25 limitation. Because the transferring is happening via -- by the server in 1[c],
26 as you've separated it out. And so there's other things that are going on upon

1 verifying. But it's still this transferring step that is continuing -- or the
2 transferring is continuing in 1[d], and it's doing additional -- there's
3 additional limitations. But then the discussion of the petition is mainly
4 about Rector.

5 And so what I'm trying to understand today as a question I had as I
6 was reading the petition is, how does Kleve fit in with your arguments here?
7 If we were to look at the claim limitation not separated, together, I'm trying
8 to understand how I'm supposed to read this combination. And that's what
9 I'm struggling a little bit because of how it was discussed in the petition is
10 what is Kleve -- what are you relying on Kleve for? And once that is relied
11 upon in 1[c], how does that affect your discussion on 1[d]?

12 MR. SKOYLES: I understand your question, and I apologize for
13 any confusion in the way we set it up. Our intention is that Kleve is relied
14 on solely for the purpose of verifying the user information by the server.
15 That is the limitation from 1[c], referenced starting on line -- on page 27 of
16 our petition.

17 Once you get to 1[d], starting on page 30, we're now past the point
18 where the user is verified. At this point, we're talking about getting the
19 settings out of the server and onto the vehicle. All of that is disclosed by
20 Rector. Rector is the one that discloses server logic, transmitting settings to
21 client logic that's in Rector's vehicle. And that client logic says, okay, I have
22 a speed setting, I have to implement that. There's no other step. And the
23 bottom of Slide 38, it says, wherein client logic, Rector's client logic, limits
24 functions of the smart vehicle based on the settings that it receives.

25 JUDGE IPPOLITO: Okay. Well, thank you for that clarification.
26 And part of the reason I did need clarification, because Kleve also talks

1 about vehicle preset settings being applied when renting a vehicle. So
2 there's additional things that are happening in Kleve with the server.
3 Different, but still, there's additional disclosure. And I didn't know how
4 much of that you were relying upon in this combination for the limitation as
5 a whole. But my understanding today is that that's not something you're
6 relying upon at all, it's just the verifying from Kleve.

7 MR. SKOYLES: Yes, Your Honor, that's correct. I agree. Kleve
8 is very similar to Rector in the way these systems are kind of fundamentally
9 set up. Both of them are talking about smart vehicles connected to servers,
10 where different users have different rights and privileges. So both
11 references are very close. But I don't believe we need anything other than
12 the notion of server-side verification from Kleve to get through 1[c] or 1[d].

13 So if I can go to Slide 41 now, just to wrap up the discussion of the
14 transferring being configured to instruct, that limitation 1[d] is satisfied by
15 what we just looked at from paragraph 9, showing how the client logic limits
16 functions of the smart vehicle when those settings have been transmitted to
17 it.

18 The last issue I'd like to talk about is the combination of Kleve and
19 Rector. If we can go to Slide 43. We can go to Slide 44. This is in regards
20 to limitation 1[b]. So just to remind ourselves of this limitation, 1[b]
21 requires processing by the server, at least part of the user information, to
22 verify the user for accessing a profile associated with the user account.

23 Patent Owner argues that the smart vehicle in Rector does all of the
24 verification, and the server does nothing. As we've looked at a few times
25 already, Rector's disclosure does indicate the -- or at least contemplate use of
26 a server used as an alternative for comparing identifiers. We relied on

1 Kleve, which we think has a very clear description.

2 In Slide 45, you can see paragraph 49 of Kleve, which talks about
3 providing additional security. Adding security by requiring remote
4 credential verification at the vehicle. And how could that remote credential
5 verification be done? It could be done using a server. So again, to answer
6 the question, we are not relying on the storage of user profiles in Kleve,
7 although it arguably does provide some of that, we are relying on Kleve for
8 the notion of remote credential verification done on a server.

9 Let's go to Slide 47, which addresses exactly some of the other
10 functionality provided in Kleve. Kleve does disclose these personal settings
11 that could be applied after ID verification. It talks about things like radio
12 presets. Well, your radio presets could be a profile. Your radio presets are
13 different from mine. Those could be stored on a server and conveyed to a
14 vehicle. So one of the arguments Patent Owner makes is that Kleve's user
15 authentication is only for the purpose of accessing the vehicle. And you can
16 see from the disclosure in Kleve, it does use that verification for things other
17 than just providing you something to unlock the door. It also provides a way
18 of transmitting settings for a particular profile to the vehicle.

19 As to the specific combination, if you go to Slide 48, Patent Owner
20 argues that the combination of Rector and Kleve would be less secure. That
21 doesn't make a lot of sense. As the institution decision noted -- sorry, Kleve
22 itself proposes that you would add security by requiring remote credential
23 verification. And Rector proposes at least using server lookups for unique
24 identifiers as an alternative.

25 So the idea of using a separate server to do this verification is
26 certainly something that's contemplated by both references. And it also

1 makes common sense, server verification confirms that someone didn't just
2 steal your key or steal your phone. By having a server, some kind of a third
3 party do the verification, or some kind of a separate entity, you make the
4 system more secure.

5 In Slide 49, that is what our experts opined on, among other things.
6 He pointed out that at least adding server-side verification is a little bit like
7 having two locks on your door. That's going to be a system that's more
8 secure, not less secure, than a vehicle-based -- solely vehicle-based
9 verification system. Patent Owners really offer nothing in support of their
10 position. They have no extrinsic evidence suggesting or showing that would
11 be less secure. The only support they have is the say-so of their expert.

12 In their sur-reply, they cite nothing other than Exhibit 2003 at
13 paragraph 78, 79, that is the opening expert report that Dr. Malek submitted.
14 There's nothing else that they were able to provide to support their argument
15 that adding server-side verification would be less secure. We believe it
16 would be secure. That's one of the reasons you would look to the
17 combination with Kleve.

18 I'm a little early, but unless there's any questions, I think I'll reserve
19 the remainder of my time.

20 JUDGE IPPOLITO: Sorry, I was double-muted, and I was also
21 trying to check the clock. So, I have -- let's say it's 10 minutes because it
22 was, like, 9:47. And I was fiddling with the unmute button. So that will be
23 added to your 15 minutes. So 25, does that match what you have there,
24 Petitioner?

25 MR. SKOYLES: Yes.

26 JUDGE IPPOLITO: Okay. That is good. Usually, we don't like

1 to have rebuttals be half the time, but that's 25 minutes. And I suspect we'll
2 have a quick discussion anyway. But thank you.

3 And with that, I'm going to let Patent Owner take over. If you're
4 ready, we can start. I'm going to set the timer for whatever time you'd like,
5 minus the surrebuttal time, if you'd like to take any surrebuttal time.

6 MS. ENTZMINGER: Yes, Your Honor. Thank you. I'd like to
7 take 15 minutes, please, for surrebuttal.

8 JUDGE IPPOLITO: All right. I have that down and you can start
9 when you're ready.

10 MS. ENTZMINGER: So Your Honor -- Your Honors, I would
11 actually like to start the discussion with Petitioner's Slide 35, which is shared
12 on the screen now. And I think this demonstrates, it illustrates well, why
13 this Board was owed an explanation as to why a POSITA would have been
14 motivated to combine Rector's distinct embodiments. While this mapping
15 isn't in the petition or the reply brief, nor is it citing -- nor is this slide citing
16 to exactly which embodiments from Rector on the right side Petitioner has
17 included, the top portion is from Rector's locally controlled method on a
18 smart vehicle, those steps 350 to 352 shown at the top right of the slide.

19 In the purple box, which I've highlighted here, this purple box is
20 taken from Rector Claim 1, which is a network-based system claim that
21 mirrors the network-based system embodiments of paragraph 9 of Rector.
22 And it has the precise same language here relied upon by Petitioner. And
23 this particular disclosure from the network-based system embodiment shows
24 a server logic on the settings server that determines the permitted settings for
25 the user. I've highlighted that language specifically to make a critical point
26 here.

1 If you look, well -- and then just -- finally just to provide the
2 overview for Your Honors, what we see at the bottom on the right is from
3 Rector Figure 2. So just in this one slide, we have three different
4 embodiments. The smart vehicle embodiment of Figure 2, which detects the
5 identities of passengers in the vehicle. You have at the top, the method
6 embodiment of controlling settings on a smart vehicle that's locally executed
7 by the smart vehicle. And in the middle, you have the disclosure from the
8 network-based system embodiment of Claim 1 in paragraph 9.

9 So if you turn to Petitioner's Slide 17, this is the language mirrored
10 in paragraph 9 of Rector. This is Rector's system embodiment for
11 controlling a driver's settings. Note, one, that this embodiment does not
12 suggest or otherwise indicate that these settings are controlled on a smart
13 vehicle. Whereas, as we'll see when we look at the method embodiment for
14 controlling settings on a smart vehicle, it specifically requires that. Second,
15 the same -- I've highlighted the same language as I did in Petitioner's Slide
16 35, showing that the server logic on the settings server determines the
17 permitted settings for the user.

18 And this is key because if we go back to -- let me jump a bit. If we
19 go back to Petitioner's Slide 35, you'll note that they've inserted the Rector
20 system embodiment disclosure under step 352 of the method embodiment,
21 where it says look up settings for driver.

22 And the reason why this is important to today's discussion to the
23 failure of the petition, is because if we go to Patent Owner's slides, and
24 specifically Slide 17, step 352 of the method of locally controlling a driver
25 settings, it specifically says that it is the smart vehicle that looks up the
26 settings for the driver. And when Rector explains what that operation

1 entails, it makes clear that the smart vehicle performs a comparing function
2 in which the settings are determined.

3 And here's why that is critical, going back one more time. So we
4 have at step 352 of the method embodiment, Rector is requiring the smart
5 vehicle to determine settings. But if you go back to what Petitioner, at Slide
6 35, has pointed to, the smart vehicle at 352 has already looked up settings
7 and determined settings. But now, Petitioner has inserted a disclosure from
8 a system embodiment in which now the server duplicates that very operation
9 of determining the settings for the user.

10 And we had highlighted this in the briefs, Your Honors, because
11 this is exactly illustrating why the legal requirements are missing. The basic
12 prima facie showing of obviousness is missing from the petition. There is
13 no showing as to why a POSITA would have even looked to the system
14 embodiment -- the network-based system embodiment of Rector to modify
15 Rector's method of controlling settings on a smart vehicle. Why would they
16 have done so, i.e., what is the motivation or suggestion for having made the
17 modification?

18 Number two, they never once --

19 JUDGE IPPOLITO: So Counsel, let me just stop you there for a
20 second and sort of ask a similar question I asked about the way that this
21 limitation has been discussed by separating out the limitation into different
22 parts. So what is your understanding of how Kleve fits into this? Kleve
23 does teach that there is a server doing certain things for the verifying. Kleve
24 also teaches that the server does other things.

25 So if we're having that teaching taken into consideration, that there
26 is a server in Kleve that is doing a part of what's recited in this limitation,

1 how do we view that with the rest of the arguments about -- the rest of the
2 limitations? And I want to understand you. We heard from the Petitioner,
3 but I want to understand, how do you think that Kleve server fits into these
4 arguments? Because right now, I think we've been discussing a lot about
5 Rector, but I also want to see what you think about the reliance on Kleve.

6 MS. ENTZMINGER: Thank you, Your Honor. I think, first of all,
7 I take Counsel at his word in response to your question. And this is
8 precisely the way we read the petition, that the Petitioner relies solely on
9 Kleve for the verifying aspect of Claim 1, Claim 17. So the server -- the
10 alleged server-side verification of Kleve, is solely what is relied upon from
11 Kleve for the obviousness combination, not for the actual transferring
12 operation required of 1[c], nor of 1[d]. They've split it up into 1[c] and 1[d].
13 But our configuration mirrored that of the institution decision, which is just
14 to combine it as one key, it's one transferring operation. So regardless, it's
15 basically 1[b], the verifying -- the server verifying operation, that the
16 Petitioner relies on Kleve for, specifically the server-side verification.

17 JUDGE IPPOLITO: So the reason I ask is also because, you
18 know, is there an argument here that one of ordinary skill in the art would
19 understand the combination of reference to be consistent with the notion that
20 the server can do other things that's consistent with what's taught in Rector,
21 what we just discussed, that's consistent with what we've discussed is in
22 Kleve. I don't think that there's a dispute that the server can do things and
23 the smart vehicle can do things. So is that not enough to say that there are
24 alternatives here that could support what Petitioner's expert is saying, is that,
25 yeah, there are alternatives and one of them is the server logic in Rector.

26 MS. ENTZMINGER: I appreciate your question, Your Honor,

1 because that's precisely what the Federal Circuit precedent we cited to, and
2 the Board decisions we cited to, said is not enough. What it could do -- what
3 the disclosure indicates a feature could do is simply not enough. Pointing to
4 two features of even a single reference and that they could be combined to
5 perform specific operations or satisfy claim limitations is simply insufficient
6 under the law of obviousness. Because what is lacking here is that a
7 POSITA would have made the combination. There was necessarily a
8 motivation to have combined the two. And this is precisely the hindsight
9 bias that the Federal Circuit in PTAB that the Board in *Dril-Quip, Dril-Quip*
10 decision we cited to, had warned against because -- simply because there
11 may be two features pointed to in the same reference, that combining may
12 not be technologically complex.

13 I mean this is why the Petitioner brought up the *Abiomed* heart
14 pump. I mean that looks complicated, sure. But here, this hindsight bias is
15 particularly harmful where it may seem simplistic to combine the two
16 features. But it doesn't change the fact that legally, Petitioner was required
17 to show why a POSITA would have been motivated to change the method of
18 controlling settings on a smart vehicle of Rector with the server operations
19 of the network-based system embodiment of Rector. That's prima facie
20 legally required.

21 But more so, they were required to show that a POSITA would
22 have had a reasonable expectation of success. We don't have anything in the
23 petition showing how this combination was even supposed to have worked.
24 You wouldn't know from the petition itself that they'd even combined two
25 distinct embodiments.

26 But actually, by pointing to Slide 35 in front of us, Petitioner's

1 Slide 35, this is the first time we see some kind of a combination showing
2 exactly at what step the server logic determining permitted settings and
3 transmitting the permitted settings, is supposed to happen. Apparently,
4 according to Petitioner, it's supposed to happen after step 352 of the method
5 embodiment.

6 But this highlights the problem. This would unnecessarily
7 duplicate the very operation Rector had had the smart vehicle perform in the
8 method embodiment, which is having the smart vehicle determine the
9 permitted settings. And this is left completely unexplained by Petitioner for
10 the Board. And it is not for the Board to fill in the gaps, the legal gaps of the
11 petition, where they were required to provide more than what Dr. Almeroth
12 showed, which was at best, these could be combined. Sure, a server capable
13 of these functions is disclosed. That's not in dispute.

14 JUDGE IPPOLITO: Counsel, let me just kind of maybe rephrase
15 my question or repeat it. Because I think what I would really like to get a
16 sense of is this, Kleve is part of this picture. And I understand that there is
17 no dispute, that there's a little bit of a carve-out as to what aspect of Kleve is
18 relied upon. But it's still in our record, in this combination, with a disclosure
19 about the server providing an alternative way of doing certain things,
20 verifying.

21 And in the context of this limitation as a whole, I am considering,
22 in my view, what Kleve does teach. There's an alternative that a server can
23 -- the server does it. It's not even that it's capable, it does what is in, we'll
24 say, 1[c]. And the server is an alternative to doing a step that in Rector is
25 done by the smart vehicle.

26 So, with that context, I'm looking at these arguments in the

1 petition. And I'm trying to figure out, does Kleve factor into the rest of the
2 arguments as what is known -- as what the expert understood? And that's
3 what I'm asking. And you don't have to agree with Petitioner, I just want to
4 understand how Kleve fits in with these two embodiments -- or three
5 embodiments we're talking about in Rector.

6 MS. ENTZMINGER: So, Your Honor, my understanding and
7 from what I heard Petitioners refer to -- affirm in argument was that they're
8 relying on Kleve solely for the aspect of 1[b], limitation 1[b], and that is the
9 function of the server verifying part of the user information -- or sorry,
10 processing at least part of the user information to verify the user for
11 accessing the profile associated with the user account, that there is no
12 reliance in the petition on Kleve, or on a combination of Kleve and rector as
13 to 1[c] or 1[d].

14 JUDGE IPPOLITO: I would say that on page 30 -- or maybe it's
15 -- you know, starts at 27 of the petition, we do have -- 28, I'm sorry
16 -- discussion about Kleve. And it goes on for a while and it's -- it does talk
17 about the controlling the settings, the transmit settings, upon verifying user
18 information by the server, as in Kleve. So I'm trying to understand how it
19 fits in for your discussion because I do see it in the petition. We did hear
20 from the Petitioner about what their understanding and what their position is.
21 I'm going back to the petition and I'm trying to understand what your
22 position is for this limitation that's been kind of broken apart.

23 MS. ENTZMINGER: Your Honor, I could only just reiterate,
24 even looking at the petition at page 28 and 29 that Your Honor is pointing
25 to, that the Petitioner had relied solely on Kleve for the verifying aspects. I
26 can certainly offer reasons why I would surmise they did not rely on Kleve

1 for the transferring step, one reason being this transfer of settings is done
2 through the phone in Kleve. And we pointed to that as one of the reasons
3 why the Kleve-Rector combination fails to satisfy the operation of 1[b].

4 But as to 1[c], I thought the petition was unequivocal, and
5 Petitioner affirmed an argument that Kleve was being relied upon solely for
6 that aspect of claim limitation 1[b], the server-side verification.

7 JUDGE IPPOLITO: So one thing I just wanted to make sure I
8 understood then, does your Patent Owner response in sur-reply respond to
9 the arguments about this combination in 1[c] that's in the petition where
10 Kleve is part of the analysis? What I heard earlier is that it was something
11 that was considered to be part of 1[b] but not 1[c]. We see from the petition
12 that it is in 1[c]. And I'm not trying to say one way or the other, I just want
13 to make sure I understand how this was dealt with in the record.

14 MS. ENTZMINGER: I think I understand. So because -- let's see
15 if I can pull up, this might help, to pull up Petitioner Slide 35, that -- which
16 breaks down the limitations of the claim. So because c -- 1[c] is saying upon
17 verifying the user information, there is reference back to Kleve that that was
18 allegedly performed by Kleve, by the server of Kleve. And the actual
19 operation is in 1[b]. But of course, the limitation language of 1[c] is saying
20 that the server transfers upon verifying the user information. So we'd
21 address Kleve -- the Kleve-Rector combination failing to disclose the
22 verification aspect of 1[b] and necessarily failing as to that upon verifying
23 the user information aspect of 1[c].

24 JUDGE IPPOLITO: Yeah. So the server is doing, in the Claim 1
25 -- claim limitation -- or sorry, I know it's 1[c] and 1[d]. And I struggle a
26 little bit kind of splitting it apart because it's all together in my mind. But

1 let's say the server is doing all these things, one of which is verifying and
2 one of which is continuing to transfer these instructions out and also the
3 settings. It's the same server, from my understanding of this limitation. And
4 because it's the same server, the argument, as I understand it, is that the
5 server -- the same server is doing these different aspects.

6 So one way that the server is going to verify is to look at Kleve and
7 say, okay, well, Kleve teaches that alternatively, the server can do this
8 aspect. And, you know, that is not necessarily articulated very expressly in
9 Rector, but we see it in Kleve. And then in Rector itself, it has alternatives
10 for what the server can do. And I understood the argument to be that, well,
11 the server, as understood by a person of ordinary skill in the art, that there
12 are alternatives for doing this step where the server can perform everything.
13 So help me understand why that's wrong, or why the petition failed to
14 actually argue that sufficiently.

15 MS. ENTZMINGER: Well, I do think -- unfortunately, Your
16 Honor, one of the reasons why there are these questions is because the
17 petition left unexplained what the motivation for the combination was at
18 1[c], 1[d], what they're referring to as separate limitations. But I agree, it's
19 all one operation of the transferring by the server.

20 And effectively, you could see in Slide 35, what Petitioners have
21 done is look to the server of Kleve for 1[b], but for 1[c], okay, the server of
22 Kleve has done the verifying that needs to be verified. But as for the
23 transferring, we're going to go back to Rector and Rector's system
24 embodiment, specifically, at paragraph 9 in Claim 1.

25 And that's what is confusing because unfortunately, the petition
26 left unexplained what was happening that suddenly, you know, why we

1 would go back to the server of Rector as opposed to continuing with the
2 server of Kleve for the continuation of the method steps required of Claim 1
3 and 17. That was not explained.

4 Number two, it was never explained that they were going -- that
5 the petition was going to a completely different embodiment for the server
6 operation of element 1[c], 17[c]. And this is precisely why there is
7 confusion. We absolutely don't know. This is why there is a failure of a
8 prima facie case for obviousness.

9 We don't know why a POSITA would have been motivated to
10 make the combination in the manner that is being proposed by Petitioner.
11 We have no idea -- looking at Slide 35, we have no idea why a POSITA
12 would seek to duplicate the very determination of settings performed by the
13 smart vehicle at 352 and have it duplicated by the server that is disclosed in
14 the system embodiment of Rector.

15 But also, there's no discussion of why one would go back and forth
16 between, as Your Honor says, hey, there's a server in Kleve too, why is the
17 POSITA going back and forth for -- between Rector and Kleve? All we
18 know is what Dr. Almeroth is saying as to server-side verification, that there
19 is a reason to provide -- to look to Kleve -- an alleged reason to look to
20 Kleve for additional security to provide server-side verification. That's all
21 we have.

22 And we don't have an explanation as to why we're jumping around
23 among embodiments within Rector, nor why we're jumping around from one
24 server to the next in -- from Kleve's operation of 1[b], allegedly satisfying
25 1[b] to Rector's in 1[c]. But the obvious answer is that it's hindsight bias,
26 that it is because the claims method requires these specific limitations that

1 the Petitioner has plucked certain features from Rector itself without any
2 explanation and without any explanation to - as to why there would be this
3 duplication of an operation already performed by the smart vehicle.

4 But also, I think it's important to point out -- turning back to Patent
5 Owner's -- sorry, so this is Patent Owner's Slide 21. And this -- in addition
6 to the duplicativeness that I noted regarding step 352 of the method of
7 Rector having the smart vehicle determine settings, but then Petitioner wants
8 to rely on the system embodiment server, also determining settings. Apart
9 from that duplicativeness, the method itself actually discourages any transfer
10 whatsoever. Because the method itself is requiring that the smart vehicle
11 consult a database at step 352 to determine settings.

12 Now, that database can be stored at different locations, but
13 regardless, we know that the smart vehicle consults that database at step 352.
14 But then at step 354, the method embodiment of Rector demands that the
15 smart vehicle reconsult the same database. Rector uses the term "the
16 database," referring back to the database spoken of with respect to S352.
17 What this means is that regardless of where the settings are stored -- so
18 they're stored on the database.

19 But wherever the database may be, whether it may be in the
20 memory on the smart vehicle, whether it may be on a network, on a server,
21 either way, the same database is being consulted both for determining
22 settings and later, for determining whether a detected attempted change in
23 setting is either permitted or rejected, it's going to be either permitted or
24 rejected.

25 And because it is reconsulting that same database, we know that
26 there was no transfer of settings. Whereas, by contrast, the system

1 embodiment of -- so going back, for example, the system embodiment of
2 Rector looking at Petitioner's Slide 17, here, the server does transmit settings
3 to the client logic of the smart vehicle. This is different in kind than what
4 Rector is teaching with respect to the method embodiment.

5 And while it is not incumbent upon or legally required of Patent
6 Owner to show that the two embodiments are incompatible or are mutually
7 exclusive, they are. There is no reason suggested by Petitioner, or in Rector
8 itself, for there to be a duplication of the determining of settings, nor is there
9 any explanation provided by Petitioner, nor in Rector itself, why, in
10 combining these two embodiments, you would have the server transmit
11 settings to the vehicle only to have the vehicle consult the database not once,
12 but twice, regarding permitted settings. We're left with multiple questions
13 because the basic prima facie elements that Petitioner was required to show
14 for obviousness just aren't there.

15 And moreover, we just don't have any indication from Dr.
16 Almeroth or otherwise -- evidentiary-wise from Petitioner why the two are
17 not incompatible. When Petitioner points to the *Abiomed* blood pump, for
18 example, that I had alluded to earlier, this is an attempt to distinguish
19 *Abiomed*, but it actually highlights the point, the point that we're making
20 with respect to the legal failures of the petition.

21 In *Abiomed*, the Petitioner had actually proffered an explanation as
22 to why the relied upon distinct embodiments were interchangeable. But
23 based on the figures themselves, the Board disagreed. The Board found that
24 not persuasive. And you can look at the two figures and agree, they don't
25 look the same. But the distinguishing characteristic is actually that in
26 *Abiomed*, there was a proffer of evidence. There was a proffer of evidence

1 by the expert, Dr. Collins that the two were interchangeable. And here, there
2 is no such evidence. We don't even have the luxury of trying to weigh the
3 sufficiency of Petitioner's evidence because there is none. There is none
4 trying to show either the why of the combination, how it was supposed to be
5 combined, and why a POSITA would have had a reasonable expectation of
6 success in doing so.

7 And turning to -- turning back to, sorry, Patent Owner's Slide 22.
8 So two separate reasons why they would be incompatible, being that there is
9 this redundancy of determining settings by the smart vehicle in the method
10 embodiment, which is locally controlling settings on a smart vehicle, but
11 also, that there is no suggestion. And in fact, the -- Rector's method
12 discourages any transmission of settings, instead, requiring that the smart
13 vehicle consult and reconsult the very same database of settings for two
14 different steps.

15 So in fact, if you were to look at Petitioner's Slide 35 one more
16 time, the -- what is left unexplained after the server logic determining the
17 permitted settings after step 352 is that at step 354, the method embodiment
18 of Rector is going to require that the smart vehicle reconsult the database.
19 So this combination facilely doesn't make any sense. But again, this is
20 -- this was Petitioner's burden to show not only why it would have made
21 sense, but that there would have been a reason one skilled in the art would
22 have been motivated to make this particularly -- this particular combination
23 as proposed.

24 And I'd like to also address with respect to Petitioner's Slides 25
25 and 26, Petitioner's Counsel today spent a good amount of time talking about
26 why Figures 2 and 3 are allegedly compatible. Well number one,

1 compatibility is not the legal standard. But number two, Figure 2, is not
2 relied upon by Petitioner for the alleged operation of transferring settings by
3 a server.

4 And in fact, Rector's Figure 2 discussion, the paragraphs of Rector
5 is not offering any disclosure of a server operation transmitting settings.
6 Instead, Rector's Figure 2 is an embodiment in which a smart vehicle uses
7 antenna technology in communication with a user's smart -- a user's mobile
8 device or smartphone to detect things like number of passengers in the
9 vehicle, which passenger is the driver, and determine applicable setting
10 based on number of passengers.

11 So Figure 2 isn't relied upon, nor are the particular disclosures of
12 Figure 2 -- you know, illustrating what Figure 2 is in Rector relied upon by
13 the Petitioner for any alleged showing -- any alleged satisfaction of Claim
14 1[c] or 17[c], the operation requiring a server to transfer settings. So this
15 alleged compatibility is irrelevant.

16 But what is -- and also, referring to Petitioner's Slide 24, Petitioner
17 is trying to make the point that somehow all of the systems and methods of
18 Rector are all one and the same. Number one, if this was a -- if this was to
19 be relied upon for the combination of embodiments for Claim 1[c], then the
20 petition should have said so, number one. And the POSITA testimony relied
21 upon or allegedly should have said so.

22 But number two, the disclosures of Rector make this -- make clear
23 this is just not the case. And again, Petitioner's Slide 35 shows this to be
24 true, that the method embodiment of Rector is distinct in kind from the
25 network-based system embodiment, which actually has the server
26 determining settings and transferring those settings.

1 Turning to Patent Owner's Slide 15. This is the first portion of
2 paragraph 43 of Rector, which for the entirety of paragraph 43, which it goes
3 on for a while, but it describes each of the steps of the method of controlling
4 a driver's settings. But what I've underlined here on Patent Owner's Slide 15
5 is that unlike the network-based system embodiment of paragraph 9 in Claim
6 1 that Petitioner relies on for the server operation of 1[c], the method
7 embodiment of controlling a driver setting is on a smart vehicle. And
8 critically, Rector is teaching that the smart vehicle executes each step of the
9 method that Petitioner has relied upon. And the Figure 3, shown to the right
10 on Patent Owner's Slide 15, shows that starting with the first step, step 350,
11 it is the smart vehicle that is communicating with the driver's device.

12 Turning to Slide 16. In this method of controlling a driver's
13 settings, step 351 also has the smart vehicle determining the identity of the
14 driver. Now, I heard Petitioner's Counsel say that the server is the one doing
15 the identifying, in response to Judge Repko's question regarding the
16 identification.

17 However, Rector's method makes clear, at paragraph 43, so this
18 can be seen a little more these at Patent Owner's Slide 44. So regardless of
19 the two alternative ways of performing the comparison operation to perform
20 step 351, it is still the smart vehicle that is performing that comparison
21 operation, either by, one, comparing identifiers stored on a memory of the
22 smart vehicle, or alternatively, the smart vehicle is comparing the identifiers
23 stored on a server. But either way, this is being executed by the smart
24 vehicle. There isn't any disclosure in Rector that it is the server that is
25 determining the identity of the of the driver.

26 But even to be clearer, we could look to Slide 45 of Patent Owner's

1 demonstratives. Paragraph 40 of Rector is making clear that it is the smart
2 vehicle that performs the operation of determining a driver's identification.
3 I'll quote from paragraph 40, "The determination of a driver's identification
4 and subsequent initiation of the corresponding settings for the driver are
5 performed by the smart vehicle 200, in this exemplary embodiment, as
6 follows."

7 Looking at paragraph 43 to the right, this is consistent with the
8 method embodiment of paragraph 43, the method embodiment that is
9 describing step 351 in which the smart vehicle is determining the identity of
10 the driver.

11 Referring to Patent Owner's Slide 18 --

12 JUDGE REPKO: This is Judge Repko. I guess what they were
13 saying is that alternatively, it -- you have to do it on the server because the
14 set of unique identifiers is -- cannot be downloaded to the vehicle or
15 something like that. It's like the database maybe is too large or something to
16 make that comparison. Is there any -- how do you respond to that?

17 MS. ENTZMINGER: Well, actually, that's a great question, Your
18 Honor. Because what we have for, let's see -- which -- 17 -- okay. So --

19 JUDGE REPKO: I think one of the things we looked at too is later
20 in that paragraph that you talked about, you know, where the database may
21 be. But is -- I mean, is -- does that have any weight with that argument, I
22 guess?

23 MS. ENTZMINGER: Well, thank you, Your Honor. I think,
24 looking at Patent Owner's Slide 21 and 22, what we had -- so I'm on Slide 22
25 specifically now. But there isn't a download that is contemplated in the
26 method. Because the method is saying that at step 352, the smart vehicle is

1 looking up the settings, and the settings are determined for the driver. But
2 then at step 354, the smart vehicle reconsults that same database to perform
3 the operation of determining whether the attempted change of setting is
4 permitted. So --

5 JUDGE REPKO: Then the data -- I guess, later on, it does say the
6 database may be on the network or on the driver's device. So under that
7 view, it's multiple consultation of the database. And how do you reconcile
8 that with that last sentence in 43 that you have on page 45, I guess, the -- this
9 database, meaning the database of identity, may be on the network, on the
10 driver's device, or smart vehicle's memory?

11 MS. ENTZMINGER: Absolutely. And I should have made this
12 point clearer that whether or not the database is on the network, on the
13 device, or on the smart vehicle's memory, the method described in paragraph
14 43 of Rector is requiring that the smart vehicle reconsult the database, that
15 there isn't a server operation disclosed merely because the database might be
16 on the network, might be on a network stored by a server and -- nor is there
17 any -- let's see if it's clear from -- yes.

18 So looking at Slide 16. So the unique identifier may be compared
19 with a set of identifiers on a server on a network, but whether or not the
20 server is consulted, that operation is still performed by the smart vehicle.
21 And that's what I was alluding to a few moments ago, that the smart vehicle
22 Rector teaches is the one determining the identity of the driver, whether or
23 not the smart vehicle is in communication with a server to determine that
24 driver identity.

25 JUDGE REPKO: But if the database is on the server, then you
26 can't make that comparison.

1 MS. ENTZMINGER: So this -- the database on the server, that is
2 with respect to step 352, so turning to Slide 17, this database is the database
3 of settings.

4 JUDGE REPKO: The database of identity still is going to be on
5 the server.

6 MS. ENTZMINGER: Oh, yes, sorry. This is with respect to
7 -- yeah, I apologize. My point was with respect to the database settings that
8 is reconsulted. But the database of identities, this is still the smart vehicle
9 performing that operation. Rector isn't saying that the server itself is
10 performing that particular operation.

11 JUDGE REPKO: But I mean, I guess the database of identities has
12 corresponding settings. The alternatively -- the statement that begins with
13 alternatively says the unique identifier may be compared with the unique
14 identifiers on the server. So the unique identifiers on the server presumably
15 is in that database, right, how you read that paragraph?

16 MS. ENTZMINGER: Yeah. Yes. Yeah.

17 JUDGE REPKO: That database could be on the server.

18 MS. ENTZMINGER: That's correct.

19 JUDGE REPKO: So is this an alternative -- I guess, thinking
20 -- not thinking about Figure 3, how does that fit in the Figure 3? So if we
21 have the database with the identities with the corresponding settings, and all
22 of this ends up under that alternative would be -- would have to be on the
23 server. The data is on the server, and the comparison must be also on the
24 server, right, and that never leaves the server?

25 MS. ENTZMINGER: The unique identifier -- well, so in these
26 two alternative operations -- and maybe Slide 44 is a little clearer on this.

1 But yes, the unique identifiers can be stored on a server. And even in that
2 scenario, the -- it is still the smart vehicle performing the operation of
3 determining the identity of the driver.

4 JUDGE REPKO: Okay.

5 MS. ENTZMINGER: These are the two possible ways that the
6 smart vehicle is comparing the unique identifier retrieved from the phone of
7 the driver with a set of unique identifiers. Those unique identifiers can
8 either be stored on the memory of the vehicle or stored on a server on a
9 network. But either way, the comparison operation is performed by the
10 smart vehicle per Rector's method.

11 JUDGE REPKO: But if they're on the server, how is that doing
12 the comparison? The data that needs to compare to is only on the server.

13 MS. ENTZMINGER: In the second alternative?

14 JUDGE REPKO: Right.

15 MS. ENTZMINGER: How it's doing the comparison, these are the
16 disclosures of how the comparison is performed by the smart vehicle by
17 associating a unique -- I believe it uses the language associating a unique
18 identifier with identifiers on -- stored either on the memory or on the server.
19 But other than that comparison function, Rector isn't giving the complete
20 disclosure of how.

21 JUDGE REPKO: I mean, it doesn't describe -- but just thinking
22 this through, so you have what are the possibilities? It doesn't say exactly
23 how, but you have a smart vehicle or some comparison, the comparison
24 between identities -- identifiers, rather, and the identifiers are on the server.
25 How could it compare identifiers on the server without downloading them or
26 somehow transferring them to the vehicle's memory, which would be that

1 other embodiment, right? So why would you even bother having them on
2 the server if you're going to download them all anyway?

3 MS. ENTZMINGER: Well, the petition didn't address that
4 specific question. But the -- there's no reason to believe it wouldn't be, you
5 know, similar to the next step, step 352, what we were discussing earlier,
6 which is that method has the smart vehicle actually consulting a database for
7 the determination of settings, and then again later, for determining whether
8 an attempted change of setting is allowed or not. So it need not have any
9 transfer. So similarly to step 351, there need not be a transfer of the
10 identifier, like 352, the method can be requiring that the smart vehicle look it
11 up without having to download it. And it just doesn't say that they are
12 downloaded.

13 JUDGE REPKO: So how is that possible to look it up without
14 them downloading it? Because the database has identities with
15 corresponding settings. So if the -- for example, in that alternative, if the
16 server looks it up, the -- and the identifier finds the settings, and then sends
17 the settings at some point to the smart vehicle, then the smart vehicle can
18 have the -- would have the settings. But if the smart vehicle is doing that
19 comparison, I mean, how is it doing that exactly in conjunction with the
20 server? I mean, what are the possibilities there, you know?

21 MS. ENTZMINGER: Well, again, as with -- I think that's a fair
22 question. Rector isn't being explicit into the how. But similar to -- you
23 know, in step 352 and 354, where Rector is specifically having the smart
24 vehicle go to the database, both to determine settings to look them up and
25 determine them, and then reconsult that same database for determining
26 whether or not an attempted change is allowed. This indicates that there was

1 no transfer. So whether the smart vehicle picked up some corresponding
2 code, whether there was a lookup that it retrieved information but didn't get
3 the actual settings themselves. If it had gotten the settings themselves, it
4 would not need to reconsult that database of settings for step 354.

5 Applying that same logic to step 351, here, it's a little different
6 because it's providing two alternative examples. You can either look up the
7 unique identifier that's on the memory of the vehicle, or you can look it up
8 on the server. But it's not saying that it needs to be transferred, it has -- that
9 it's just doing a lookup comparison between the one the smart vehicle did
10 get. It did get -- it does say there is a transmission of that unique identifier
11 from the smartphone of the driver in the vehicle, but it doesn't say that it's
12 transferring unique identifiers from a server nor from the memory of the
13 vehicle to do that comparison determination or function.

14 JUDGE REPKO: Okay. Thank you. I have no further questions
15 on that.

16 JUDGE IPPOLITO: And Counsel, I just want to let you know
17 -- and you probably know from your own timekeeping, you're about -- I
18 think it was about five and a half minutes into your surrebuttal time. So
19 you've got about -- I'll say that you have about 10 minutes of surrebuttal time
20 left. If you would like to continue using your time, you can. But I think we,
21 you know, had a very helpful discussion. But I did want to let you know
22 that you have about 10 minutes left to surrebuttal.

23 MS. ENTZMINGER: I appreciate that, Your Honor. I think I will
24 continue with a few more minutes into my surrebuttal time, if I may, just to
25 get to a few points that I'd like to address from the Petitioner's argument.

26 With respect to the configuration aspects, the configured to

1 instruct, I think - let's see, turning to Patent Owner's Slide 41 would be
2 helpful. Petitioner seems to be arguing that, hey, the smart vehicle of Rector
3 basically does all the things that, you know, Claim [c] wants to accomplish,
4 which is implementing settings, and that's good enough. But actually, the
5 precedents that we cited to, the Federal Circuit precedents and then the
6 Board decisions applying that precedents we cited to make clear that the
7 "configured to" language is very specific and presumes a construction
8 wherein the operation here, the transferring operation is specifically
9 designed to accomplish the claimed objectives.

10 And the claimed objectives here of Claims 1[c] and 17[c] are to
11 instruct software and hardware associated with the vehicle to enable said one
12 or more settings for use on the vehicle to customize said vehicle for the user,
13 as reading from 17[c]'s language. And while 1[c] has hardware and/or
14 software, as opposed to software and hardware at 17[c], the instruction is
15 specific that the vehicle's hardware and/or software must be enabled to use
16 these settings on the vehicle to customize the vehicle for the user.

17 This instruction in the transferring operation is wholly missing
18 from Rector and isn't even alluded to by Petitioner's expert, Dr. Almeroth.
19 At best, Petitioner is pointing to the system embodiment of paragraph 9 and
20 in Claim 1 in which this -- the client logic of the smart vehicle actually limits
21 the functions of the vehicle based on the settings that were transmitted by the
22 server.

23 But that isn't at all compliant, suggesting, teaching, disclosing that
24 the transmission operation disclosed and relied upon in Rector is configured
25 to instruct the software/hardware of the vehicle to enable settings for use on
26 the vehicle. And this is a critical point because this is what distinguishes the

1 claims of the '244 Patent from prior art like Rector. Rector is relying on a
2 "smart vehicle."

3 The smart vehicle is able to do all of these things. It's able to
4 determine settings, it's able to determine whether an attempted change of
5 setting is allowed or not allowed. And if allowed, it can allow it. And if it's
6 not allowed, it can reject it. And that's anything from speed, to radio
7 settings, even how the driver uses their phone. That is a smart vehicle, no
8 doubt about it.

9 And the smart vehicle of Rector limit settings, apply settings,
10 apply, as Petitioner's Counsel calls them dad settings. Sure, absolutely. But
11 it doesn't change the fact that there is no transferring operation that is
12 configured to instruct the vehicle's hardware/software in this specific manner
13 to enable these things to happen. Because the '244 Patent claims have this
14 particular limitation, that means that the transferring of the settings will
15 enable the use of those settings on the vehicle, will enable the vehicle to
16 customize the vehicle for the user.

17 Whereas I saw from Petitioner's Slide -- turning to Petitioner's
18 Slide 17 -- sorry, Slide 37, I highlighted here, this is what Petitioner is -- are
19 arguing. Naturally, these settings would be implemented on transfer. But
20 that is not the invention. It is not that naturally these things happen. It is
21 that the operation is specifically configured to instruct the vehicle
22 software/hardware to enable these things to happen. And that is how a
23 -- these inventions can allow the transfer of user settings to any vehicle, not
24 just a smart vehicle as in Rector. I think Patent Owner's Slide --

25 JUDGE IPPOLITO: Counsel, you have about twelve minutes left
26 of your rebuttal time, just letting you know.

1 MS. ENTZMINGER: Okay. Thank you. Then I'll move on just
2 to the issue of Kleve very quickly. The combination of Kleve and Rector is
3 flawed from the get-go. Because yes, while Kleve is saying for additional
4 security, you can do this. But that is additional security to a virtual key. It is
5 not additional security of, hey, let's add to the security of a client-side
6 verification with a server-side verification. Well, Petitioner's Counsel had
7 referred to this scenario of two locks on the door.

8 The two locks on the door, Kleve says -- referring to Slide -- Patent
9 Owner's Slide 48, Kleve makes clear for additional security. There are three
10 different things that can be done for remote credential verification. You can
11 use the VCS -- which is the Vehicle Control System, that's the vehicle -- you
12 can use a server, or you can have the owner verify the temporary user's
13 request.

14 So if a POSITA looking to make the verification -- any verification
15 of Rector more secure, of these three options, the server is the least secure.
16 The server is the least secure double lock. Because as Dr. Malek stated, and
17 that is sufficient evidence, that the server distributed system is more
18 vulnerable to security attacks. So the posited reason for combining was
19 additional security. But the choice offered by Kleve -- the choices offered
20 by Kleve, Petitioner cherry-picked the least secure option of what Kleve had
21 offered as additional security, not of transferring settings as in -- not for
22 identifying a driver as in Rector but for a virtual key. And with that, I'll --

23 JUDGE REPKO: This is Judge Repko. I have a question on that.
24 I mean, you're essentially with the client -- if you're having everything on the
25 client, you're still going to have to pass around these databases and these
26 settings to all these different clients. And so that transfer, doesn't that

1 introduce additional insecurity in the process rather than having the server
2 pretty much do everything? It never leaves the cloud, for example. You
3 don't have to pass around these databases which could then be intercepted by
4 an attacker and so on.

5 MS. ENTZMINGER: Well, Your Honor, I think this highlights a
6 couple of points from the -- from Patent Owner's argument, that everything
7 on the method of Rector is executed by the smart vehicle. There is no
8 transfer of settings. And as -- from our prior discussion regarding Your
9 Honor's question, Rector isn't teaching a transfer of identities, the identifiers
10 either, from the server. And so it is the smart vehicle executed method of
11 Rector that Petitioner is seeking to modify. That smart vehicle executed
12 method is client-side based. It is more secure than having some transfer
13 from the server -- having a transfer of identity from the server.

14 That actually highlights the points that we are trying to make that
15 there is no transfer in either step 351 or 352 of Rector's method regarding
16 transferred settings or the identities. Rather, the smart vehicle is consulting
17 the database to look that up and has to again, but there isn't a transmission of
18 those -- of that data to the smart vehicle.

19 JUDGE REPKO: So this argument kind of depends on us agreeing
20 with your view that there's no transmission. Is that what you're saying here?

21 MS. ENTZMINGER: Well, it need not --

22 JUDGE REPKO: If we disagree with you on that, then this is
23 moot.

24 MS. ENTZMINGER: Well, respectfully, no, Your Honor.
25 Because whether or not that is accepted, that Rector isn't teaching a
26 transmission of settings in its method embodiment, the method embodiment

1 is having every single step performed by the smart vehicle, locally. I mean,
2 it's literally called a method for controlling settings on a smart vehicle.

3 All of the disclosures of 43 are consistent with this local client-side
4 system. And actually, Dr. Almeroth's declaration and reply agrees with this.
5 So I would say no, for both of those reasons, the combination is still
6 improper. It doesn't comport with the alleged reason, the alleged motivation
7 to provide additional security.

8 JUDGE REPKO: Thank you. I have no further questions.

9 MS. ENTZMINGER: Thank you. And with that, if I had any time
10 left in sur-rebuttal, I'll reserve my time for that.

11 JUDGE IPPOLITO: Well, you have about a minute and a half
12 before the question. So I would say that you can have two minutes, and I'll
13 give Petitioner another minute. I think Petitioner has quite a bit of time.
14 But, you know, given that we've gone back and forth with the questions, you
15 have about a minute and a half left.

16 MS. ENTZMINGER: Okay. Thank you, Your Honor.

17 JUDGE IPPOLITO: That's kind of where we are. I am going to
18 have a -- let's say, like, a seven-minute break. Let's start at the 50 mark.
19 And then we can continue, just, you know, the transition. We've been going
20 for a little bit over, even the time. We'll be back at, let's see --

21 (Whereupon, the above-entitled matter went off the record at 2:42
22 p.m.)

23 JUDGE IPPOLITO: All right. It's 2:50 p.m. Eastern. I see
24 Petitioner has joined us. I have my panel members, Patent Owner here as
25 well. All right. I think we can get started. I have 26 minutes on the clock
26 for Petitioner. And you can begin when you're ready.

1 MR. SKOYLES: Thank you, Your Honor. I'm hopeful I won't use
2 that long. I'll try and be brief and address just a couple of points. I wanted
3 to start off and hit this issue of whether there are separate embodiments in
4 Rector. Rector discloses a smart vehicle and a method of controlling that
5 smart vehicle. This notion, Patent Owners reiterate the notion that they are
6 separate entities, you, know, never the two shall meet is just belied by the
7 general discussion in Rector. The idea of Rector's system is that it includes
8 a transceiver that can be used to communicate with a server. The idea of the
9 method is that you can control the settings on that vehicle by consulting the
10 server potentially to verify the ID of a user and then to figure out whether
11 that user has particular settings that could be applied to the user.

12 It's just an improper reading of Rector to suggest that those are two
13 distinct separate embodiments. We believe it's read as one disclosure, and
14 that's how we argued it in the petition. We think that's the only appropriate
15 reading of Rector.

16 We can go to paragraph 43 of Exhibit 1006. I can just put the
17 patent directly on the screen. I want to talk through a little more detail on
18 what's shown. We can go to the top of paragraph 43. Paragraph 43 says
19 Figure 3 shows a method of controlling a driver's settings on a smart vehicle
20 according to an exemplary embodiment of the present invention.

21 So how does it happen? Well, in step S350, the smart vehicle
22 communicates with a driver's device. There's a long discussion as to how
23 that short range communication might take place, but the result of it is that
24 this unique identifier is associated with the user of a smart vehicle. That
25 identifier identifies the driver.

26 Now, how does that identification take place? In Figure 3, in

1 paragraph 43, the client logic compares the unique ID to the set of unique
2 identifiers stored locally on the smart vehicle. Alternatively, the unique
3 identifier may be compared with a set of unique identifiers on a server on the
4 network.

5 Now, Patent Owner proposes that what that means is that the entire
6 set of identifiers be transferred from the server to the vehicle. And then the
7 vehicle locally makes a comparison of the observed ID to the set of known
8 IDs. Patent Owner ignores, I think it's the very reasonable suggestion that
9 the vehicle actually says, dear server, I have observed here device number
10 123, is that a known identity? The server says yes or no. And then
11 paragraph 43 goes on with the identity of the driver determined sort of as a
12 next step. The smart vehicle looks up settings for the driver 352, in step
13 S352.

14 Paragraph 43 talks about the kinds of settings that could be
15 included, such as what I call dad mode, the controlling authority settings.
16 And paragraph 43 describes how they are done, how they are determined.
17 They are determined by comparing that ID with the database of identities
18 that may be on the network.

19 And again, Patent Owner's interpretation of this is that the entire
20 database of identities is transferred to the vehicle and then some local
21 determination is made. It ignores the, again, very reasonable possibility that
22 in fact the vehicle simply says, dear vehicle -- or dear server, you know,
23 what are the settings for user 123? And then the server provides them from
24 that database back down to the vehicle. That's a natural reading of the
25 disclosure in Rector. It's sensible, it's normal, it's also secure.

26 The suggestion that the Patent Owner has brought up that the entire

1 database might be conveyed locally down to the vehicle is an incredibly
2 unsafe system. Keeping the database, keeping all the identities on the
3 server, and the settings that go with those identities on the server is a
4 dramatically safer, more secure way of building a system. That's what
5 Rector discloses, and that's how we match it in our petition.

6 JUDGE REPKO: With that last sentence there, the database may
7 be in the memory of the vehicle. I mean, isn't that -- how does it -- at least
8 in that embodiment, the database is on the vehicle, in the smart vehicle,
9 right?

10 MR. SKOYLES: It does suggest it could be. And maybe if you
11 had a trivially small database, you could keep it locally on the vehicle's
12 memory. But it sort of discloses a version where the database is on the
13 network. That's the more secure way of doing it. That's what you would do
14 if you had a very large database. You wouldn't have -- it wouldn't be
15 feasible to keep it local on the network. It provide you all kinds of added
16 functionality.

17 It really makes sense to keep that database on the network and
18 have it include identities, both the unique IDs and the settings that are
19 associated with other each user so that the controlling authority, dad mode,
20 can say user 123, yup, they can only go 55 miles an hour. User 123 gets in
21 the vehicle, the vehicle asks the server, is user 123 known? Server says yes.
22 Vehicle then says, well, give me the settings for user 123. Server says, all
23 right, user 123 can only go 55 miles an hour.

24 And then instantly, the vehicle says okay, user 123, like, you
25 know, you instruct whatever the appropriate entities, whatever the
26 appropriate ECUs or components on the vehicle are going to prevent the

1 vehicle from going over 55 miles an hour. That transferring was configured
2 to apply the various settings into the vehicle.

3 JUDGE REPKO: Right. I understand that. But the act of
4 comparing, that's the question. And where is that done? And we have the
5 green -- I guess on their Slide 44, they have the green and the blue. But the
6 idea is that they're saying the smart vehicle must do that comparison. The
7 comparison is either with the database in the memory or the database that
8 was stored at some point on the server.

9 It seems like in an embodiment where they -- Rector explicitly
10 states that the vehicle compares it in one sentence. And then in the next
11 sentence, sort of passively, in a passive voice, they say, there's another
12 comparison and -- another type of comparison, and that's where we have the
13 identifiers on the server. It seems like the comparison would still be at the
14 vehicle, right?

15 MR. SKOYLES: No, not necessarily. I think once you've jumped
16 to having the database on the network, it makes sense sort of using Kleve as
17 a jumping off point to do everything on the server. Once you're using the
18 server's database to verify the ID, it doesn't make sense to put the settings
19 somehow locally on the vehicle. Once you're in a universe where you --

20 JUDGE REPKO: And --

21 MR. SKOYLES: Go ahead.

22 JUDGE REPKO: You still need Kleve as a jumping off point
23 though, right? I mean, Rector doesn't necessarily say that. I think that was
24 -- her point was that Patent Owner said, well, Rector is silent on that point.
25 What actually does the comparison and where that database, how that's
26 transferred, is there a transfer going on? We don't know.

1 MR. SKOYLES: Well, Kleve certainly provides that, you know,
2 and provides as a reason to do it, the addition of security. Once you have a
3 system that uses a server, you're going to need to do some verification. And
4 it makes sense to do that verification on the server. On the transferring as
5 configured to instruct points, Patent Owner commented how -- they were
6 looking for the hardware and software to be enabled to implement the
7 setting.

8 And I would argue that's exactly what Rector discloses. They have
9 no answer as to how those controlling authority settings are implemented in
10 Rector if the transferring isn't the thing that's configured to make the
11 controlling authority setting -- I don't know how else to say it, other than
12 implemented in the vehicle. Rector's entire function -- entire functionality
13 requires the transferring of controlling authority settings to be configured to
14 cause the hardware and software on the vehicle to be limited according to
15 those controlling authority settings.

16 Otherwise, they are not controlling authority settings. They are
17 controlling authority suggestions to the user that, you know, maybe the
18 teenager chooses not to implement. That's not what Rector discloses at all.

19 Specifically on the combination of Rector and Kleve, at the end,
20 Patent Owner criticized our combination, arguing that Kleve discloses
21 different kinds of verification, discloses potential verification by the VCS or
22 on the mobile device or on the server, you know. They criticized our
23 suggestion for using Kleve, suggesting it may be the least secure. I would
24 argue it's the most secure. But whether it's the least or the most, it's
25 undeniably an option that Kleve discloses.

26 And one of the skill in the art will be motivated to consider it, I

1 think, because it furthers the goals of both Rector and Kleve, which is to
2 provide a secure system for settings in a server that can modify a vehicle
3 according to a user profile. That's what the '244 Patent attempts to claim.
4 That's what Rector discloses. And really, that's what Kleve discloses very
5 closely as well.

6 I'm happy to answer any further questions.

7 JUDGE IPPOLITO: I do not have any questions, and I do not see
8 any from my panel member at this point. All right. I don't think we have
9 any more additional questions from the panel.

10 MR. SKOYLES: Okay. Thank you, Your Honor.

11 JUDGE IPPOLITO: Thank you. All right. Let's see, Patent
12 Owner, you have two minutes. You may begin when you're ready.

13 MS. ENTZMINGER: Thank you, Your Honor. Referring to the
14 Rector method embodiment at paragraph 43, with respect to Judge Repko's
15 question regarding step 351, I would just like to clarify because it seems
16 Petitioner's Counsel misheard or misstated what I had represented in oral
17 argument. And I was not stating that there was any downloading onto the
18 vehicle of identifiers. But rather, I was actually stating that as with the step
19 352 of the method embodiment, there is no such transfer of settings.

20 And similarly, with respect to step 351, the method embodiment
21 similarly is having the smart vehicle itself perform the function of
22 determining the identity of the driver in two different ways. And whether
23 the comparison is performed with identifiers stored on a memory local to the
24 vehicle, or the set of unique identifiers is stored on a server on a network, the
25 comparison function is performed by the smart vehicle A. And B, exactly as
26 Judge Repko said, Rector is silent as the exact methodology by which the

1 smart vehicle is performing the comparison operation. But it isn't saying
2 that the whole set of unique identifiers stored, wherever they may be stored,
3 is somehow transferred to the vehicle itself.

4 Well, also, as to the disclosures of Rector in paragraphs 30 and 31
5 of Rector, it's specifically stating that it is the -- so referring to 31 of Rector,
6 it is the --

7 JUDGE IPPOLITO: Counsel, two minutes is fast, so you are out
8 of time. If you want to take 10 seconds and just wrap it up, I'll let you
9 because I cut you off. But you are done with your sur-rebuttal time.

10 MS. ENTZMINGER: Thank you, Your Honor. I just wanted to
11 say that paragraphs 30 and 31 are clear that it is the smart vehicle
12 performing the determining of identification operation. Thank you.

13 JUDGE IPPOLITO: Thank you. Thank you both for your
14 presentations today. It was very helpful. We had a lively discussion about
15 many issues. As we complete the hearing, I would like to ask you to stay
16 afterwards just to make sure that if there are questions from our court
17 reporter, those can be addressed. And with that, the case is considered
18 submitted. And we are adjourned.

19 (Whereupon, the above-entitled matter went off the record at 3:04
20 p.m.)

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Patent 11,396,244 B2

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