

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.

IPR2024-00981
Patent 9,365,188 B1

Record of Oral Hearing
Held: September 19, 2025

Before GEORGIANNA W. BRADEN, FRANCES L. IPPOLITO, and
DANIEL J. GALLIGAN, *Administrative Patent Judges*.

APPEARANCES:

ON BEHALF OF THE PETITIONER:

JAMES GLASS, ESQ.
QUINCY LU, ESQ.
Quinn Emanuel Urquhart & Sullivan, LLP
711 Louisiana Street, Suite 500
Houston, Texas 77002
(713) 221-7000
jimglass@quinnemanuel.com
quincylu@quinnemanuel.com

ON BEHALF OF THE PATENT OWNER:

BRENDA ENTZMINGER, ESQ.
Bunsow De Mory LLP
701 El Camino Real
Redwood City, California 94063
(650) 351-7242
Bentzminger@bdiplaw.com

The above-entitled matter came on for hearing on Friday, September 19, 2025, commencing at 11:00 a.m., at the U.S. Patent and Trademark Office, Southwest Regional Office, 207 South Houston Street, Dallas, Texas 75202.

P R O C E E D I N G S

- - - - -

(11:00 a.m.)

JUDGE BRADEN: Good morning everyone. We are convened for oral arguments in IPR2024-00981, which challenges U.S. Patent No. 9,365,188. I'm Judge Braden. Also appearing are my colleagues, Judge Ippolito, who is on the screen, and Judge Galligan, who is here with me.

Before we begin, I want to thank everyone for joining us in person. It's very nice to have everyone in the same room. Despite the fact that all counsel is in the same room, please keep in mind the fact that Judge Ippolito is joining us virtually. Therefore, even when you are at the podium, we ask that you speak clearly, identify yourself, and if you reference any demonstratives, please make sure you identify the specific numbers when you're referring to those demonstratives. That will aid us after the hearing, it will aid our court reporter, and it will aid Judge Ippolito in being part of the hearing.

We have not received a notice from either party that business confidential information will be discussed or disclosed during the course of this hearing. That being said, please be aware that even though we are in the room, third parties may be attending virtually and hearing this; therefore, if you plan to divulge any business confidential information, you need to inform the panel so that we can wall off the third parties for that portion of the hearing.

Petitioner's counsel, do you understand?

MR. GLASS: Yes, your Honor.

JUDGE BRADEN: Very good. Patent Owner's counsel, do you

1 understand?

2 MS. ENTZMINGER: Yes, your Honor.

3 JUDGE BRADEN: Very good. Per the hearing order in this
4 proceeding, each party has 60 minutes total time to argue their case. We
5 don't have -- I don't believe that we have a request for any LEAP counsel
6 today. Is that correct, Petitioner's counsel?

7 MR. GLASS: Correct.

8 MS. ENTZMINGER: Also correct.

9 JUDGE BRADEN: Thank you, Patent Owner's Counsel. So going
10 forward, Petitioner Kia Corp and Toyota has the ultimate burden of
11 establishing unpatentability. Therefore, Petitioner will open the hearing by
12 presenting its case in chief as provided in its petition regarding the alleged
13 un-patentability of the challenged claims. Petitioner may reserve rebuttal
14 time but no more than half of its total time.

15 Thereafter, Patent Owner, Emerging Automotives, LLC, will respond
16 to Petitioner's arguments. Patent Owner may reserve serve rebuttal time of
17 no more than half of its total time to respond to Petitioner's rebuttal.
18 Otherwise, the parties may use its allotted time to discuss the case as they
19 choose. However, we ask that you make it clear which challenges and which
20 claims you're addressing. In order to ensure clarity of the record, following
21 the hearing please ensure that the court reporter has a list of words and
22 spellings unless you've already done so.

23 Lastly, we ask that the parties please hold any objections regarding
24 opposing parties of arguments until it is their time to talk. To be clear, we
25 will not take any objection during a party's arguments. You must wait until
26 it is your time to talk at the podium to note any objections. I will try to

1 maintain a clock and you will see at the front here we've got lights.

2 So when you start to get into your rebuttal or sur-rebuttal time, the
3 lights are supposed to go from green to yellow. My suggestion is that you
4 also maintain a clock just so that we can be clear on how much time each
5 party has. So with that, let's get started with appearances for both parties.
6 We'll start with Petitioner.

7 MR. GLASS: Good morning, Your Honor for Petitioner Kia, James
8 Glass, Lead counsel, with me today is Quincy Liu. We also have counsel
9 for Toyota. They'll make their appearances.

10 MR. SKOYLES: Good morning, your honors. Aidan Skoyles for
11 Petitioner Toyota and with me is my partner, Joshua Goldberg. Also
12 appearing from Toyota is Kazuya -- Toyama Kazuya.

13 JUDGE BRADEN: Very good. Thank you very much. And for
14 Patent Owner?

15 MS. ENTZMINGER: Good morning, Your Honors. Brenda
16 Entzminger for Patent Owner, Emerging Automotive, LLC.

17 JUDGE BRADEN: Excellent. Petitioner, do you wish to reserve
18 any rebuttal time?

19 MR. GLASS: Optimistically, Your honor, I'll reserve 25 minutes. I
20 do expect it's likely I'll lead into that time, however.

21 JUDGE BRADEN: Very good. And Patent Owner?

22 MS. ENTZMINGER: Thank you, Your Honor. I would like to
23 reserve ten minutes for a rebuttal, please.

24 JUDGE BRADEN: Very good. If that changes before your time at
25 the podium, please just let me know.

26 MS. ENTZMINGER: I will. Thank you.

1 JUDGE BRADEN: Are there any questions or issues that the parties
2 would like to raise before we begin starting with Petitioner?

3 MR. GLASS: No, Your Honor.

4 JUDGE BRADEN: Patent Owner?

5 MS. ENTZMINGER: No, Your Honor.

6 JUDGE BRADEN: Very good. Petitioner, you may begin
7 arguments when ready. Are you ready?

8 MR. GLASS: Well, good morning. Again, Your Honors, it is good
9 to be back, live and good to be all in the same room. I know Your Honors
10 are familiar with the case and with the prior the arguments. I'm just going
11 to jump right to the issues. I'll start off on slide 16. Now, I'll start off with
12 the Kleve-based grounds.

13 Now, for Kleve, Patent Owner does not dispute the vast majority of
14 the issues Kleve discloses. The claims are long. They're complicated.
15 Patent Owner does not dispute, for example, and just by way of example,
16 that Kleve discloses the use conditions, that the owner sends those use
17 conditions to the server, that the use conditions are enforced.

18 Patent Owner's only dispute with the Kleve based grounds revolves
19 around how those use conditions are set and when they are set and whether
20 they're included in the, request for the E-key. So I'll jump to that issue
21 specifically. Going to slide, excuse me, 27. I don't have the claims on this
22 slide.

23 Did we lose my video? Oh, I don't have the claims on the slide, but
24 they all require that the server receives a request from the owner to generate
25 an E-key. And then that request includes a condition of use of the vehicle,
26 Patent Owner disputes, that that is disclosed by Kleve. The claims go on to

1 require that the E-key is assigned or associated with the condition of use of
2 the vehicle. That's the other aspect of the claims that Patent Owner
3 disputes.

4 Now, just to set the table for our arguments, we have raised two
5 arguments in response in our petition that POSITA reading Kleve would
6 understand what it's express disclosure discloses to a person of ordinary skill
7 in the art.

8 My mic on?

9 JUDGE BRADEN: Yes, we can hear you.

10 MR. GLASS: Okay. So our -- our arguments basically is -- is
11 twofold. One, that person of ordinary skill in the art reading, Kleve would
12 understand that based on its disclosure, it discloses a condition of a request
13 for an E-key, where that request includes that condition of use, or that it
14 would be obvious that Kleve draws a direct line based on its disclosure to
15 one of ordinary skill in the art understanding that it would -- that it would
16 disclose those conditions.

17 Now, I have on slide 27 -- I just wanna walk through some context. I
18 don't think -- this is inspection. I know it's not in dispute, but just to set the
19 context for Kleve, there is expressly shown in Kleve the request for the
20 E-key and that the owner enters information in. In respect to that request,
21 this is shown in connection with figure five and figure six.

22 I have on slide 27, specifically in connection with 62, and I am
23 annotating as I go along. Just so the record reflects, I will be verbalizing
24 more or less what I'm doing. I'm looking at paragraph 62. I've circled that
25 and in connection with figure five, the vehicle owner, and I'm reading from
26 the last sentence that I've highlighted on slide 27, the vehicle owner may

1 enter in vehicle authorization credentials.

2 And these are credentials that the renter has already entered into. So
3 the server already knows these credentials. The owner is entering those
4 credentials based on the information from the temporary user to set up a
5 virtual key. So this is the request. This is the request made by is one
6 example of the request made by the owner.

7 It's also reflected in figure six that after that E-key is generated, after
8 the use conditions are generated, they are sent to the temporary user. So
9 now where --

10 JUDGE IPPOLITO: Counsel, I just wanted to let you know that I'm
11 not seeing the slides on the video, the shared video, but I can follow along
12 with the PDF of the slides. So if you continue letting me know how you're
13 annotating it, you know, with circling that, that would be helpful. I have a
14 copy of it. I'm -- I'm following your information.

15 MR. GLASS: That is helpful to know, Your Honor. I will -- for the
16 most part I'll be simply drawing attention to portions that we've already
17 highlighted. If I do anything else, I will -- I will make sure the record is
18 clear.

19 So slide 27, again, that's the request. That is an example of the owner
20 making request for the E-key, the critical disclosure, whether that request
21 includes a condition of use, and this, we pointed to this repeatedly in the
22 briefs.

23 Your Honors credited this in your institution decision. This is on
24 slide 28, and specifically, this is paragraph 39. I'm simply -- I'm simply
25 circling paragraph 39, that when the virtual key is generated, it is enabled for
26 a -- is enabled for a given rental period.

1 JUDGE BRADEN: So what is the rental period? Because there
2 seems to be a dispute about the start of the rental period, the end of the rental
3 period, and it seemed like for the vast majority of the Petition that Petitioner
4 referred to the rental period. But is that the restriction, or is the start one
5 restriction and the end is a different restriction?

6 MR. GLASS: They're interrelated. So the rental period is what the
7 parties agreed to in their rental agreement when they agreed, when they first
8 set up their profiles, when they agreed to their rental terms. That is the
9 rental period. And this, that is what the owner enters when, or one of
10 ordinary skill would understand. That is what the owner enters when the
11 owner requests that E-key.

12 JUDGE BRADEN: So if it's associated with the E-key with the
13 virtual key, then as soon as the rental period is over at the -- the end time, the
14 virtual key stops, it's no longer functional. How does that work?

15 MR. GLASS: That's exactly what Kleve discloses. I don't have -- if
16 you can find that paragraph for me, there is an express disclosure in Kleve
17 where it says if the parties have not extended the rental period, and they can
18 just, like if you go to Hertz or Enterprise, if you have a rental agreement and
19 you want you at the end, you need it for a few extra days. This is exactly
20 what Kleve discloses.

21 JUDGE BRADEN: But what happens at -- in figure two when you
22 move past step 224 to 226 and you purchase additional time, the user -- the
23 renter purchases additional time, do they get a new virtual key with a new
24 restriction for an end time? How does that work?

25 MR. GLASS: That is -- that is -- in fact, that's an excellent question.
26 That's one of points that Patent Owner raises, and this is on slide 47,

1 paragraph 43. Paragraph 43 speaks to extending the rental period or
2 terminating the rental period. And it explains at step 224 -- let me bring up
3 my highlighter.

4 "The system may notify the temporary user that the agreed-upon
5 rental period may expire soon."

6 So the rental period is what they agreed to in the rental agreement.
7 Its goes through a few use conditions; if the rental period hasn't expired, the
8 system can continue to monitor. If it has -- if a temporary user -- I'm
9 reading the last line at paragraph 43.

10 "If a temporary user decides that he may need to purchase additional
11 rental time, the system may update the new rental period, end-time
12 restriction, and continue to monitor use of the vehicle."

13 So this gets into what I think is a misunderstanding by Patent Owner
14 of the claims. They argued in their appeal or maybe it's in their sur-reply
15 that there is no re-issuance of the E-Key when that period ends. There
16 doesn't have to be. That E-Key is associated with the rental period. And
17 what Kleve expressly discloses is when the parties agree to extend that rental
18 period, that end time is simply updated, and because E-Key is associated
19 with that rental period, it's now enabled for that additional length of time.

20 JUDGE BRADEN: So you don't have a new E-Key that's issued;
21 you just update the current e-key?

22 MR. GLASS: You update and now enabled for that new period.

23 JUDGE BRADEN: So what's the different associated with the rental
24 period and restrictions that's associated with the E-Key.

25 MR. GLASS: They are the same, I don't know that there is a disk we
26 are saying that the rental period is a restriction.

1 JUDGE BRADEN: Thank you, Counsel.

2 MR. GLASS: Let me jump back to slide 27, 29. Just picking up
3 where I left off this paragraph 39 is the critical disclosure and express
4 disclosure of a restriction on use that is associated with the E-Key, it is a
5 rental period and it states that the E-key is enabled for that rental period, and
6 I'll note also that this let me move my pen up. This E-Key is directed at
7 step 210. It's before step 214. It's issued before the -- on optional use
8 conditions Patent Owner -- that this couldn't possibly but a use condition
9 because the only because use conditions are in step 214 that put it has cart
10 before the horse, and it happens outside of step 214.

11 JUDGE BRADEN: So 214 are optional restrictions, whereas
12 according to Petitioner, the rental period is a non-optional restriction that
13 happens at step 210 or 206.

14 MR. GLASS: I would put it slightly differently. Step 214, and I'm
15 going to get into this in more detail in a minute.

16 Step 214 is a step where the owner can enter in optionally terms and
17 conditions that they've agreed to, that he wants to monitor. So if I've agreed
18 to, in the rental agreement, I'm renting your pickup truck, I wanna haul a
19 thousand pounds, but the owner now wants, that's a legally binding
20 document between the parties.

21 But the owner now, because it's his truck, wants to monitor that. He
22 can set that at step 214. That's what that step is for. It's in a monitoring and
23 enforcement step optionally that the owner can enter, and Kleve is clear on
24 that. I can point to that. I can jump ahead if you'd like and go to that
25 disclosure.

26 Kleve doesn't give a, on slide 12, Kleve doesn't give a ton of

1 disclosure on the rationale of step 214, but when it does, it is consistent in
2 every sense that it is always to enforce the restrictions of the rental
3 agreement. I'm reading Your Honor from slide, 12 on paragraph 51. I'm
4 going to highlight the sentence that begins with controlling usage if I can get
5 my highlighter working.

6 Controlling usage to enforce compliance with the rental agreement.
7 Terms may be of more importance to a vehicle rental micro-business owner
8 as this may be the only vehicle the owner possesses. What Kleve is saying
9 is that you are controlling usage. This is in figure three. This is an
10 analogous step to step 214.

11 You're controlling usage to enforce compliance with the rental terms.
12 I'm going to get into it a little bit. Patent Owner has said, no, no, no, step
13 214 is divorced from the rental agreement; you can set whatever conditions
14 you want. That makes no sense. If you think about it, we have a legally
15 binding rental agreement, and according to Patent Owner, you can then, and
16 when they, they agree to the terms, the renter gets to the car, the owner can
17 now reset whatever restrictions they want. Patent Owner says that the use
18 restrictions on 214 are irrespective of what happens in the agreement. But
19 that's not what Kleve says. This is one example. There's another -- I think
20 I have it on the slide, right? I'm on slide 101, and this is just an appendix.

21 I've included various aspects of Kleve, the -- of the record, so I don't
22 have to jockey around between documents, but I'm reading from paragraph
23 44, excuse me, paragraph 40 -- 41, excuse me. The last sentence of
24 paragraph 41. An exemplary example of control usage, and this is, this is in
25 connection with figure two.

26 This is controlling the -- the conditions that the owner has set. An

1 exemplary example of control usage may be limiting the temporary user
2 from, the site driving to restricted areas defined by the owner, based on the
3 terms and conditions, based on the rental terms and conditions.

4 So again, this is another example, and I don't, there's nothing in Kleve
5 that suggests otherwise that step 214 is just a monitoring step that the parties
6 agree to a rental agreement and then the owner can optionally at step 214
7 choose to monitor and enforce those, those conditions that he wants to.

8 Now, in connection with the rental term, I'll jump back to, I forget
9 which slide I was on at this point.

10 JUDGE BRADEN: But counsel, if I look at paragraph 40 and figure
11 two, it doesn't say monitor user restrictions. It specifically says the owner
12 may set user restrictions by use of the website or nomadic device, and then it
13 goes on to talk about which restrictions could be set.

14 MR. GLASS: Right.

15 JUDGE BRADEN: So how does that play into your argument that
16 step 214 is simply we're setting up the things we want to monitor?

17 MR. GLASS: Well, their -- okay. It's beyond monitoring. So if
18 you look at you -- the purpose of setting the restrictions is that you can then
19 monitor and enforce them. And that's what the -- the subsequent paragraphs
20 speak to.

21 So for example, I think -- I think one of the examples is you could set
22 a speed restriction setting the restriction alone doesn't accomplish anything.
23 What Kleve explains is that you then can monitor it and optionally, if the
24 renter exceeds that speed limitation or the hauling amount, the pounds that
25 you've agreed to haul, there are remedial actions you can take.

26 So that's, that's the structure of Kleve. You set it, monitor it, and you

1 can enforce it.

2 JUDGE BRADEN: So are the remedial actions automatic based on
3 the restrictions, or does the owner have to do something additional in order
4 to incur the remedial actions?

5 MR. GLASS: That, that's a good question. I'd have to go back and
6 look at the paragraph. I believe the way Kleve is structured is that the
7 owner has to set up that remedial action. It's not automatic that the owner
8 can monitor it. I believe there's -- there are various options. A warning
9 can be displayed on the screen that you're, hey, you're violating this term,
10 you're going too fast.

11 And I think there's -- it is -- Kleve frames it as an optional aspect that
12 the car can, for example, shut down. But I think that's, I -- I'd have to look
13 at it. I don't remember off the top of my head, but I believe the way it
14 structures is that, is the option, the owner to set what remedial actions he
15 wants to happen, if any.

16 JUDGE BRADEN: All right. Thank you, Counselor.

17 MR. GLASS: Now, I'm going to go back to slide 30 and stress why
18 is now Patent Owner has criticized us because, well, there's no reason to
19 have this E-key enabled before the rental period because the credentials are
20 sent to the rental and that's what starts the rental period. That's not correct.

21 Again, this is on slide 39. Kleve expressly discloses use conditions
22 in which that E-key will give a renter access to the car, and in one case, a
23 drive-away based on the E-key alone. This is in paragraph 48. At step
24 322, the virtual key may allow a temporary user granted access to the
25 owner's vehicle.

26 The granted access allowed by the virtual key may prevent permit

1 entry of the vehicle granted a keyless driveway of the vehicle and or. So
2 that is why when we say there's security issues with enabling that E-key for
3 just the rental period, that's why it is critical. That E-key keep in mind in, in
4 figure two, figure two is distributed before the start of the rental period.

5 So if that E-key is enabled, as Patent Owner argues, it's not associated
6 with any rental period, an unscrupulous renter could just go to the car and at
7 the very least, gain access to that car. That's what our security argument is.
8 That's why we say it's, it's not just a one-off statement that we should ignore.

9 It is critical to the security in Kleve. That's one example. Kleve gives
10 another, this is at paragraph 49. Patent Owner argues, well, the E-key is a
11 credential and sending the credential is what starts the rental term. But even
12 in that scenario, the E-key gives you access to the vehicle. And I'm just
13 looking at -- Your Honor, I'm looking at the second portion that I've
14 highlighted on paragraph 49.

15 The remote credential verification of the vehicle may be done with
16 additional hardware on the exterior of the vehicle or in the vehicle cabin.
17 So what is that saying? Even when credentials are sent, in addition to the
18 V-key, the renter gains access to the car and the credentials are confirmed
19 inside the car.

20 So the E-key, again, if that was not enabled during the rental period, if
21 it was not associated with that rental term, a renter could gain access to the
22 car. He wouldn't be able to drive away in that scenario, but he gained access
23 to the car, and this is the owner's private car. Of course, you don't want a
24 renter doing that.

25 I will walk through all of this on slides 31, 32, and 33. I've just cited
26 to testimony from Dr. Almeroth. I know Your Honors are familiar with it.

1 This is paragraphs 107, 108, 120, from his declaration. Everything I've
2 said -- I know Your Honors are familiar with this -- is consistent with the
3 institution decision.

4 I know it's preliminary, but there has been no new evidence
5 whatsoever to, to require departing from that institution decision. Your
6 Honor, stated, you're persuaded. This is at the top of the quote I have on
7 page 40. Kleve teaches, or at least suggests that the user's request includes
8 a condition of use because the vehicles are because conditions of use of the
9 vehicle as set by the user via the user account.

10 You credited the very same paragraphs that I just walked through, that
11 Kleve, the E-key is enabled during a rental period. Your Honors have also
12 credited, which I'm about -- I'll get into Patent Owner's response to this
13 point. Your Honors likewise credited Dr. Almeroth's testimony. That in
14 the embodiments, he considered paragraphs 39 and 68, which I believe are
15 paragraph, figures three and five, that the E-key is always generated after the
16 rental agreement.

17 Now, that's essentially our affirmative proof. There's the disclosure,
18 and Kleve, I think, is very straightforward. It's very, it's very
19 understandable, and I think our positions hopefully are clear. I'll walk
20 through Patent Owner's response to those positions. I'm going to focus on
21 their sur-reply, and then if I have time, I'll back into their, their POR.

22 Now, first in the sur-reply and mostly in the sur-reply, they made
23 some points on this in the POR. Patent Owner mischaracterizes Dr. Alan
24 Roth's opinion that the E-key is always generated after the rental agreement.
25 They cite his testimony. They're incorrect. He never testified that he was
26 wrong. He never made any admission.

1 And if you look at the embodiments that he cited, the E-key is always
2 generated after the rental agreement. That's always the case. Second, in
3 the server reply, Patent Owner raises a brand new argument. They argue
4 that the server, the -- excuse me -- that Dr. Almeroth admitted that the server
5 quote knows the terms of the agreement and therefore there would be no
6 reason for an owner to reenter that information.

7 That admission comes from, Dr. Almeroth's alleged admission comes
8 from Dr. Almeroth's declaration. That testimony doesn't exist. I'm going to
9 walk through that. And they're also wrong in each and every embodiment
10 that we've considered. And, in fact, each and every embodiment that
11 they've cited, the E-key is always generated, I'm -- excuse me -- in each and
12 every embodiment in Kleve.

13 Let me back up. In Kleve, there is no disclosure of the server
14 understanding the terms of the agreement. The third, the last point I'll raise
15 in connection with the POR, if I have time, step 214. Patent Owners argue
16 that step 214 is the only place that conditions can be set and the owner, and
17 only the owner can set those conditions. That's also incorrect. So also --

18 JUDGE BRADEN: So before you get into that, could we talk a little
19 bit about figure 3B?

20 MR. GLASS: Sure.

21 JUDGE BRADEN: And I would like you to explain it to me. As far
22 as I understand that it's Petitioner's position that the rental period is
23 associated with the E-key and that the owner of the vehicle commenced, set
24 restrictions to monitor and then take remedial action.

25 But as I understand it, showing in 3B if the renter of the vehicle.
26 Does, like they exceed the geographic region or they tow more than, you

1 know, however much there's the restriction allows that this extreme usage
2 could prompt the termination of the virtual key, and that would occur even
3 before the rental period is over.

4 If that's the case, then how does the association with the rental period,
5 with that E-key, how does that work? If you can still terminate the virtual
6 key even before that other restriction that's associated with the E-key is met.

7 MR. GLASS: Kleve doesn't give us a ton of detail on that, but
8 I -- what I think Kleve is getting at -- this is a term that the parties have
9 agreed to. So they've agreed you're only going to haul, let's just say 100
10 pounds. If now the owner can set at step 214 or -- or the analogous step in
11 figure three, a monitoring to make sure that that is not exceeded.

12 And I think the way Kleve -- Kleve doesn't give us particulars on it,
13 but states, again, I believe, I'm going from memory that if the -- the owner
14 can say, well, if you're hauling more than that a hundred pounds, you're
15 going to get a warning first. And then, because that's a, a term that the
16 parties agreed to, that there is assumedly code on the server that then the
17 E-key from the -- or just terminates the E-key.

18 Kleve does speak to terminating the E-key. There is a process in
19 Kleve. Paragraph 49 where there's a graceful termination of the E-key. So
20 Kleve doesn't connect the dots in connection with what happens if you
21 violate the agreement and that, that term gets terminated. But I would
22 assume that that's exactly what happens, whatever the graceful way of
23 terminating the E-key, resetting the terms, that's exactly what happens if
24 the -- if the terms of the agreement are violated.

25 JUDGE BRADEN: And is there testimony from Dr. Almeroth that
26 supports your argument or that supports your position that this is not what

1 has to happen, or this would be obvious to one of skill in the art?

2 MR. GLASS: I'm sorry, if you could repeat your question, Your
3 Honor.

4 JUDGE BRADEN: Is there any testimony from Dr. Almeroth that
5 supports what you just stated as far as what happens with the termination of
6 the virtual key?

7 MR. GLASS: If you could give me to my rebuttal, I'll take a look
8 and see if I can give you a citation.

9 JUDGE BRADEN: Absolutely. Thank you. Okay.

10 MR. GLASS: Did I otherwise answer your questions?

11 JUDGE BRADEN: Yes, Counselor. Thank you.

12 MR. GLASS: So I'm focused back now on this, statement by Patent
13 Owner that Dr. Almeroth admitted that the E-key is -- he admitted that the
14 E-key is not always generated after the agreement. This is on page six
15 through seven of the sur-reply. Excuse me.

16 Patent Owner, Patent Owner included a snip from -- a snippet from
17 Your Honors' decision and argued that Dr. Almeroth admitted his testimony
18 was wrong. I'm going to jump to his testimony. This is on slide 128. This
19 is page 27 of exhibit 2030.

20 I urge Your Honors to look at this testimony. It's about ten pages. It's
21 roughly page 20 to page 30. I know Your Honors, I've read everything, but if
22 a refresher on this I think is instructive, this is a long line of questioning.
23 Counsel asked various lines of questioning on this.

24 Counsel asked, for example, if by always Dr. Almeroth meant
25 automatically. Dr. Almeroth spoke to his real world view of Kleve. And
26 at the culmination of that line of testimony at the bottom of page 27, Counsel

1 asked -- I'm going to highlight. At line 21 is -- excuse me -- is always
2 generated. This is -- line 21 is always generated after the rental agreement
3 encompass all embodiments of Kleve.

4 So she's asking, Dr. Almeroth, is it your opinion essentially that
5 always generated happens in all of the embodiments? He very
6 correctly -- well, very honestly said, no, not necessarily. That's on page 129
7 in his declaration. Keep in mind, he -- he applied, figures three and figures
8 five to the claims. And when he said, not necessarily, he was thinking there
9 could be maybe one of ordinary skill in the art could review the -- could
10 review Kleve a little broader.

11 But he made it very clear in his testimony when he was asked. This
12 is on slide 127. Give me one moment on 127. He was asked earlier -- and
13 I'm reading from lines eight through 12. I won't read it verbatim, but
14 essentially counsel asked Dr. Al Roth, is it a prerequisite that the V-key is
15 always generated after the rental agreement? And he testified, he -- he
16 stated my declaration was correct.

17 This is online 14. Excuse me. I think what I'm saying is basically
18 what's described in the declaration, which is basically a person of skill in the
19 art reading, Kleve would understand that there is an embodiment where the
20 virtual key is generated after the rental agreement and always generated after
21 the rental agreement and that embodiment.

22 So what is he saying? He's saying in this, in what I've analyzed.
23 Maybe there could, maybe there could be something else. And if you read
24 the -- the context of the questioning, I think it makes it clear. But when
25 asked directly, he was very clear: In those embodiments that I've looked at,
26 it is always generated.

1 So not only is there no admission, Kleve does not support Patent
2 Owner's position. Now I'm on slide 36. Patent Owner. And keep in
3 mind, Dr. Almeroth looked at figures five and figure three in his, in his
4 statement, in his declaration. Patent Owner argues that figure five of Kleve
5 is an example where a E-key is sent before a rental agreement happens.

6 That's not what figure five says. I'm going to walk through that in a
7 moment, but think about that for a second. It makes no sense. The E-key,
8 as I've already walked through, gives a renter access to a car, at least gives
9 the -- gives the user access to the car. This is the owner's private vehicle.
10 Why would an owner send to someone he doesn't know; he has no terms
11 with, there's no price, there's no restrictions, there's no rental agreement.

12 Why would he send that E-key to a potential renter, allow that renter
13 to sit in his car and then they agree to terms. It makes no sense. Now,
14 Patent Owner has criticized us repeatedly for bringing in common sense. I
15 think they cited the in (inaudible) case, of course, we're, we are bound by the
16 disclosure of the prior art, but we're not required to divorce our thinking
17 from reality that is divorced from reality.

18 That doesn't make any sense and Kleve doesn't say that. In fact,
19 Kleve says the exact opposite in figure five. Patent Owner -- give me one
20 second.

21 Patent Owner focuses on paragraph 65 at the tail end of paragraph 65.
22 It states that the owner, the renter would be sitting in the car and working
23 with the VCS, they can agree to rental terms. That's the last portion of that
24 paragraph. Patent Owner says, well, this is an express disclosure of setting
25 the E-key before an agreement is reached. Now, paragraph 65 is referring
26 to an example that I'm reading from the first line, Your Honor, an example

1 for applying a temporary user credential. This refers back to paragraph 64,
2 which is step 516.

3 So we're talking about an example of a step in figure five and figure
4 five is very clear. This is paragraph 62, that the figure five examples
5 illustrates the process after the vehicle owner and temporary user have both
6 agreed to the rental agreement. So figure five is very clear that the entirety
7 of figure five happens after the parties have already agreed to the rental
8 agreement.

9 The E-key in figure five, just like Dr. Almeroth testified, is distributed
10 after that agreement. The far more, I think, rational way to look at this
11 statement is just that those terms, they're not in lieu of the parties getting into
12 an agreement to begin with. They're in addition to, it's simply it. It's simply
13 an additional step.

14 The terms are then repeated and displayed on the screen after the
15 parties have already agreed to the terms and the owner and the renter
16 confirms them. I think that's the far more rational view of figure five.

17 JUDGE GALLIGAN: Counsel, let me, kind of back up and ask kind
18 of the bigger picture. So we've got -- let's talk about figure two and 214.
19 You set restrictions that is clearly after step 210, the virtual key; distributing
20 of the virtual key. So if we were, say, if we decide, you know, we -- we
21 analyze Kleve and we say, yeah, it really does talk about entering a, a
22 contract, distributing a virtual key, and then afterwards the user goes in there
23 and tweaks stuff and adds stuff. You would agree that there's no, that
24 the -- the restrictions, like you're talking about the weight that can be towed,
25 that would be set after the generation of the E-key, right, under that
26 scenario?

1 MR. GLASS: If I understand the scenario correctly, in -- in your
2 scenario, is there a rental agreement that the parties have already agreed to.

3 JUDGE GALLIGAN: There's a rental agreement for a period of
4 time, let's say, that doesn't include those restrictions?

5 MR. GLASS: Yeah, I would say a -- and that's an interesting
6 hypothetical. I would say that if there's a term that is not in the agreement,
7 the only concrete example we have of that in Kleve is extending the term. So
8 that's a term that's not in the agreement, and there the parties agree to it. So
9 I would say, yes, it could happen. There could be terms that are not in the
10 agreement. But they would have to be agreed to. And that's based on the
11 disclosure of Kleve. And it's based on just a rational interpretation of the
12 reference.

13 JUDGE GALLIGAN: Okay. So that, so two steps before 214 was
14 to say user restrictions. That's, how are you reading that, vis-à-vis step 210
15 distributed, the virtual key?

16 MR. GLASS: So the -- again, they -- you -- the virtual key includes,
17 and it's associated with the rental term. That's the use restriction. We are
18 focused on. That restriction is not in any way discussed, discussed
19 anywhere in step 214. That's -- that cannot be set in step 214. Right. It
20 can be extended, it can be terminated, but it cannot be set.

21 JUDGE GALLIGAN: So 214 is describing additional restrictions
22 that may come up later, but the parties agree to, is that what your position is?

23 MR. GLASS: I would -- I would say that they are conditions that the
24 owner can monitor that they've already agreed to. And in one example that
25 Kleve discloses extending the period, that's an example of one commission
26 that they did not agree to, that they can later on agree to.

1 JUDGE GALLIGAN: Okay. Does your -- for you to succeed, do
2 you need the user restrictions of -- for instance, this towing or these
3 examples or, or is rental period -- do you think the rental period alone gets
4 you where you need to be?

5 MR. GLASS: Yes.

6 JUDGE GALLIGAN: Okay. Thank you. Yes.

7 JUDGE BRADEN: So let's bounce back to figure five if we may.
8 Okay. I'd like to ask you about, paragraph 62, 64, 65, and specifically I'd
9 like to ask about steps. Oh, sorry. Oh. 5 -- 516 and 506 in figure five.

10 Explain to me, please, Petitioner's perspective regarding what you
11 have as temporary user credential verification at the vehicle as discussed in
12 paragraph 65 and how that relates to in paragraph 62, where you
13 talk -- where Kleve discloses -- where the vehicle owner enters in vehicle
14 authorization credentials based on the information received from the
15 temporary users to set up a virtual key, the virtual key may be sent to the
16 vehicle, allowing temporary user access to owner's vehicle.

17 How does -- 62, where you've got your, the vehicle authorization
18 credentials that are then used to set up the virtual key, how does that work
19 with paragraph 65 where you're applying those temporary user credentials at
20 the vehicle? Is that before they set up the virtual key? How -- how does
21 that work?

22 MR. GLASS: So the -- okay. If I understand the question, the
23 virtual key is set up by the owner. The owner receives information that the
24 renter has already typed in, the owner enters that information. Could be a
25 barcode. It could be a password. There's a litany of, of things that it could
26 be. That E-key is then generated and then sent to the, sent to the owner,

1 sent to the renter, excuse me -- additional credentials may then be sent to the
2 E-key is disclosed as it may be enhanced. It's not on this slide, but it may
3 be enhanced with additional credentials. So the E-key alone may get you
4 into the car, but there may be also additional credentials. I think facial
5 recognition or a password.

6 There's a camera in one embodiments that can scan the renter outside
7 the car. So the credentials -- Kleve does say, and we don't dispute this,
8 Kleve does say that the credentials could be the E-key, but it also says that it
9 could be in addition to the VE-key as enhanced security. So does that
10 hopefully, does that answer?

11 JUDGE BRADEN: Yes. Thank you. Yes, I -- and I believe that
12 an -- that answers the question I was going to have about step 516. So
13 thank you, Counselor.

14 MR. GLASS: I'm going to work through this a little quicker than I
15 anticipated. So, figure three. Now, keep in mind Dr. Almeroth only focused
16 on figure two and figure five.

17 Patent Owner cites figure three for the same purpose that this is an
18 example where an E-key is sent to a renter before they enter into terms. It's
19 the same issue. They focus on the fact that the terms can be displayed on
20 the screen two sentences prior. Figure three states the agreement between
21 the owner and temporary user can be signed and made to the website at step
22 320.

23 If you read the sentence they referred to, it goes on, says, "Rental
24 conditions may also be displayed."

25 So this is not an embodiment where a VE-key is sent to a unknown
26 user before a rental agreement is in place. It is expressly disclosed as again,

1 a confirmation step. The rental terms are displayed on the screen and
2 they're accepted again at the car.

3 I want to press on -- I -- unless there's any question on that issue, I'm
4 going to press on to the -- what I'm referring to as the KNOWS issue,
5 K-N-O-W-S.

6 Patent Owner has argued, again, the sidestep, this disclosure in Klevé
7 that the rental, that the E-key is enabled for the rental period.

8 JUDGE BRADEN: And Counsel, for benefit of Judge Ippolito,
9 could you please refer to which slide you've moved to?

10 MR. GLASS: Oh, excuse me. I'm -- I'm sorry. I'm on slide 39,
11 Your Honor.

12 JUDGE BRADEN: Thank you.

13 MR. GLASS: In the sur-reply, Patent Owners raised, this is an
14 entirely new argument. This was not raised in the POR. The POR, and
15 Patent Owner ties it not to Dr. Almeroth's testimony -- deposition testimony.
16 They tie it to his declaration testimony. So this is something Patent Owner
17 has known since day one.

18 Now, I may not have time to go through step 2 -- 214. So I'll point
19 out that this is entirely inconsistent with what they've argued in the POR. In
20 the POR, Patent Owners argue that is the owner and only the owner that can
21 set conditions in the surly. They come back and say, well, no, it's the server
22 that sets the conditions and why.

23 They argue that, well, the server, by virtue of storing the agreement,
24 the server knows the terms of the agreement and therefore there's no reason
25 for the owner to retype them in. They tie it very explicitly to an alleged
26 admission from Dr. Almeroth, and they say this three times on page nine.

1 I'm in the sur-reply on page nine.

2 Dr. Almeroth admits the server already knows which rental period to
3 apply. They say that repeatedly on page nine. I have the other -- the other
4 snippets on the slide. They say it again on page three again, on pages ten
5 through 11. The obvious implication of saying that an expert admits
6 something and then putting that word -- that word knows in quotes, is they're
7 attempting to persuade Your Honors that that's what Dr. Almeroth.

8 Actually said, he didn't -- that testimony doesn't exist. In fact, he said
9 the exact opposite. I'll go to slide 113, Patent Owners cited to. I'm on slide
10 113, Your Honor, and paragraphs 108 through 109 of Dr. Almeroth's
11 declaration. I'll urge Your Honors to also focus on this testimony.

12 Again, Patent Owners argue that he admitted the server knows the
13 rental terms. This is in connection with a, a limitation that Dr. Almeroth is
14 mapping that requires the request to come from an owner through the owner
15 profile to identify a vehicle and identify a renter for the E-key. And he
16 testifies. He starts off, I'll just walk briefly through his testimony.

17 He starts off by saying, in my opinion, I'm reading from paragraph
18 108, "A person of ordinary skill in the art would understand the request for a
19 E-key is made through a user account."

20 And he gives some examples. He then proceeds to say exactly the
21 opposite of what Patent Owner claims. He admitted a person of ordinary
22 skill in the art would further understand that the server would need to receive
23 the request from a user profile in order to know which vehicle to generate a
24 E-key and which temporary user to give grant the E-key.

25 Now keep in mind, their brief is saying that he admitted that he, that
26 the server knows this information. Once they received the request from the

1 user profile, would the server then not know which vehicle to generate a
2 E-key for -- once the owner puts the information in, once the owner requests
3 the information, and once the owner types in the information for the E-key,
4 then the server knows.

5 If I, I'm assuming we know what the word "knows" mean, but the
6 server is, is the server has the information, right?

7 I'll get to it in a second. This makes sense because again, as Patent
8 Owner puts, as Patent Owner stresses, this is all about owner control. By
9 making this an owner operation as opposed to an automatic operation, it puts
10 the control of the E-key, the thing that's going to give someone access to that
11 owner's car, puts that in the hands of the owner.

12 So I'll -- I'll walk through the disclosure next, but I just want to point
13 out very clearly, Dr. Almeroth never made that admission. That testimony
14 simply doesn't exist. Paragraph 109, I could -- I'll walk through it if you'd
15 like Your Honors, but it's his analog paragraph to just arguing that if not
16 expressly disclosed. It's obvious. And there's no statement that the rental,
17 that the rental terms are known to the server, certainly not sufficient to put it
18 in quotes.

19 I'll drop back to slide 40. Now. I think this may get back to Your
20 Honor a question you had asked me earlier, but the premise of their
21 argument is also incorrect. That's even if the server knows the information
22 that one of ordinary skill would -- would understand that the owner wouldn't
23 retype it in but in a different context.

24 That's exactly what Kleve discloses in paragraph 37, and I'm just
25 highlighting paragraph 37. This is the setup. This is where the owner and
26 the -- renter set up their profiles. And as part of that, the renter enters

1 various credential information, including photos of credit cards, forms of ID,
2 facial recognition, et cetera.

3 In step 62, now, fast-forwarding to figure five, which again happens
4 after explicitly happens, after all of this is set up. The vehicle owner enters
5 in vehicle authorization credentials based on information, by the temporary
6 user to set up a virtual key.

7 What is that referring to? 63 makes it very clear. Additional
8 temporary user identification, 504 may be sent to the vehicle owner. So
9 that information is sent to the vehicle owner allowing for this information to
10 be entered into the server and used as a E-key.

11 Now, what information specifically that temporary user information
12 includes. I'm just going to highlight the last four lines. It's the exact same
13 information word for word that was entered into in paragraph 37. Why am
14 I going through this? This is an example of the owner requesting a E-key
15 and entering information that the server already knows or is aware of. This
16 is information that the renter entered into through its his phone while setting
17 up his profile.

18 So the premise of this argument, which again is brand new, is entirely
19 faulty. There's no, there's an express disclosure of doing exactly what
20 Patent Owner says Kleve would never do. I will also point out one last
21 point that there is no disclosure. I put on it, on slide 42, I put a few
22 paragraphs of what the servers described as doing the server throughout.

23 Kleve is described as storing information, relaying communication.
24 There is no disclosure of any algorithm, any code, anything, even functional
25 language of the servers scraping these rental agreements for terms or in any,
26 having any awareness, any awareness or knowledge whatsoever of what the

1 terms of the agreement are.

2 In fact, Kleve refers to the agreements in paragraph 38 as forms.
3 They're standard forms, they're custom forms. This is not -- so, I don't have
4 any expert testimony on this, but a form would be, we have experience with
5 that. It's a PDF, we DocuSign PDFs all the time. That doesn't mean that
6 where they're stored has knowledge of them.

7 There is additional code, additional algorithms that have to be
8 implemented to do that. Kleve says nothing on that. Ironically, what it
9 comes down to is Patent Owners arguing that it would've been obvious, but
10 that's the disclosure simply doesn't exist in Kleve.

11 JUDGE BRADEN: And counsel, I want to let you know that you
12 have 15 minutes left of your reserve rebuttal time. I mean, you may
13 continue. I just wanted to --

14 MR. GLASS: I'm going, I'm going to eat into that just a bit.

15 Now, those are, for the most part, Patent Owners, surly arguments on
16 the POR. They argue, essentially two points there. There's a lot of,
17 positions they raise. We've rebutted them, I hope, adequately, in the reply.

18 Patent Owner essentially argues two points that the conditions of use
19 must be set up in step 214, which is at the beginning of the rental period
20 after the E-keys are disclosed. I've already walked through that. At this
21 point I hope it's clear. At paragraph 39, that is an express disclosure of a
22 condition on use that occurs after step 214.

23 So step 214 cannot possibly be the only place where restrictions are
24 set, and Kleve never says that. I've already pointed out Patent
25 Owner -- Patent Owner, concedes in the POR. That step 214 is optional.
26 Now Patent Owner also -- I'll go through this one last point I think in the

1 time that I've left.

2 Patent Owner argues that the owner and only the owner can set use
3 restrictions, and that is to the exclusion of the rental agreement. This is
4 directly contradictory to what they argue in the sur-reply. It's the server and
5 only the server that can set conditions. The POR, it's the owner.

6 I'll point out on slide 44 how far this goes. Patent Owner at POR five
7 and POR eight state that the owner can set restrictions regardless of the
8 terms of the rental agreement. They go on to say that the owner could set
9 additional user restrictions that are not necessarily agreed to or contemplated
10 in the rental agreement.

11 Again, I've also -- I've already walked through this. This doesn't
12 make any sense. I've already walked through the disclosure on slide 12
13 where Kleve states that the point is to enforce and monitor those terms. So
14 step 214 is not to the exclusion of the rental agreement. It is to enforce
15 those terms that the parties have already agreed to.

16 We've already gone through on slide 46. We've already gone through
17 extending the term issue. On slide 47, I'll point out Patent Owner argues
18 repeatedly in the POR that Kleve uses this language initially, and that
19 because Kleve states that certain conditions are initially set that must mean
20 that that is the only place where they can be set.

21 I'll just say, again, I urge Your Honors to look at paragraph 43.
22 Kleve says nothing of the sort. Kleve is -- this is talking about the extending
23 the rental period. And all Kleve says it is in the second portion that I've
24 highlighted there, is that if the term is still in place, the system will continue
25 to monitor the vehicle restrictions initially set by the owner.

26 It's not saying that -- that because the word initially is there does not

1 mean that all terms must be set at step 214. That's not what that paragraph
2 says. Simply saying that the system will continue to monitor those terms.

3 I think Your Honors, I'm -- I'm just going to -- I'll end with -- I'll just
4 touch on obviousness and I'll try and I'll reserve the remainder of my time.
5 Patent Owner in response to our obviousness argument, simply for the most
6 part, repeats the same points. Step 214 is paramount. There's no reason to
7 enforce, security because the credentials do that. I've walked through that.

8 I'll just point out that this, again. I said this in the beginning, that
9 Kleve is a direct line to obviousness. We have a system where the E-key is,
10 it's an express disclosure. Patent Owner cannot get around this, that the
11 E-key is enabled during the rental period. That's the restriction on use, that
12 the owner has to type in information when sending the E-key, when creating
13 the E-key and that information is already known to the server.

14 One of ordinary skill in the art would understand that because that
15 E-key is already enabled for that term and the owner is the one that is
16 requesting it and typing in information, he would naturally also simply type
17 in the rental term. And that's really the crux of our argument.

18 We have a series of motivations to combine. Why would someone do
19 this? I'm not going to repeat them. I'll just point out that again, as Patent
20 Owners pointed out, Kleve is -- is focused on owner control. This gives the
21 owner control as opposed to having the server set it automatically, putting it
22 in the hands of the owner to enter that rental term, gives that owner that
23 control.

24 Unless there are any questions Your Honors, I'll reserve the rest of my
25 time.

26 JUDGE GALLIGAN: I do have a question.

1 Sure, on Zaid grounds. I don't know if that's how it's pronounced.
2 Okay. Can you look at petition page 47, please? Let me know when you
3 are there.

4 At the bottom there is -- page 47 is where the petitioner alleges that
5 the request includes a condition of use, set by the user account. It says that
6 Zaid states that the reservation request includes a reservation for specified
7 time, which is a condition. This condition is set up by the user account
8 when the owner announces when the vehicle is available for sharing.

9 And I'm trying to figure out why is that the request for the E-key
10 rather than just the advertising of the vehicle because I think Zaid talks about
11 advertising a vehicle for a time when someone can then sign up, and, that, I
12 don't see how that's a request.

13 MR. GLASS: Yeah. I think, Your Honor, the point, and I don't -- I
14 don't disagree with your interpretation as I -- the point is that what we're
15 saying is that, yes, that request comes from the user. What we're saying is
16 that --

17 JUDGE GALLIGAN: Sorry, when you say user, you mean renter?

18 MR. GLASS: A renter.

19 JUDGE GALLIGAN: Renter. Okay.

20 MR. GLASS: It would've been obvious for the system to be
21 modified, to, to have that request come from the owner.

22 JUDGE GALLIGAN: Where, where's the allegation and, and
23 testimony support that you would've modified the system to have the owner.

24 MR. GLASS: I'll have to check for you.

25 JUDGE GALLIGAN: You, you can do it in your reply.

26 MR. GLASS: Yeah. But, but that, that is our position. It does. I

1 don't dispute that that request comes from the renter in the reply. I think we
2 also pointed out that Zaid it says that the -- that the reservation may be made
3 by the owner or the renter. Right. And, that the system could -- that that
4 request could come from the owner. But I do agree that the -- that the
5 disclosure states that that comes from the renter.

6 JUDGE GALLIGAN: And you would agree that this is not the
7 request for the E-key. This is the advertisement of the vehicle that you're
8 referring to in, in the bottom page 47, right?

9 MR. GLASS: From the owner. That is the advertisement, Correct.

10 JUDGE GALLIGAN: Okay. Thank you.

11 MR. GLASS: And, Your Honor, how much time do I have left?

12 JUDGE BRADEN: You have eight minutes.

13 MR. GLASS: Thank you, Your Honors.

14 MS. ENTZMINGER: Good afternoon, Your Honors.

15 JUDGE BRADEN: Counselor, can you please confirm the time that
16 you want for rebuttal?

17 MS. ENTZMINGER: Yes, please, ten minutes for surrebuttal,
18 please.

19 JUDGE BRADEN: Very good. Thank you. Please proceed.

20 MS. ENTZMINGER: Thank you. Good afternoon, Your Honors,
21 Brenda Entzminger for Emerging Automotive, LLC, the Patent Owner, Your
22 Honors. I just wanted to start with an overview of the key disputes from the
23 claims referring to independent claims one, 16 and 19.

24 At 1a, 16a and 19a, there is a requirement in each of these
25 independent claims that a request must be issued by a user via user account,
26 and that request is received by a server. And within that request, there must

1 be a condition of use that is set by that user, that same user, and by that same
2 user account referring to Patent Owners.

3 Slide five. This shows Your Honors the key limitations of 1a and
4 16a. And on the next slide, we'll get to 19a, but they are the same. And
5 calling out for Your Honors in underlined red is -- are principally the two
6 issues that apply to all grounds in the petition because neither primary
7 reference Kleve nor Zaid teaches either of these limitations; all grounds fail.

8 And if I refer to Patent Owner slide six, this is the same language
9 referred to. And both of these limitations are lacking. There isn't in either
10 primary reference, both recited limitations. Moreover, referring to Patent
11 Owner slide seven, limitations 1b --16b -- and 19b all require that when the
12 server generates the requested E-key, that E-key must be assigned with the
13 condition of use.

14 Referring back to the condition of use that was set by the owner or
15 user via a user account in 1a, claim 16b is slightly different using associated.
16 So sometimes you'll see us use assigned associated in conjunction, but each
17 of these independent claims is requiring that the generated E-key generated
18 by a server must include or assigned that requested condition of use.

19 Now, we're starting with -- so if I turn to Patent Owner, slide eight,
20 starting with Kleve, Kleve fails because the relied upon request to set up a
21 virtual key does not include a condition of use, nor does the --

22 JUDGE BRADEN: But Counselor, if I look at paragraph 39, it
23 specifically says that the virtual key may be sent to the vehicle configuring
24 the VCS to enable the keyless drive system for the appropriate temporary
25 user given during a given rental period.

26 So why would that rental period not be a restriction of use that is

1 associated with the virtual key that's being sent to the temporary user?

2 MS. ENTZMINGER: Thank you, Your Honor.

3 Number one, there is a distinct and separate mechanism that Kleve
4 teaches for setting use restrictions, and that is what we highlighted and
5 taught in the Patent Owner response at step 214. The most detailed
6 teachings regarding when use restrictions can be set is with respect to figure
7 two and most specifically paragraphs 40 through 43.

8 However, to answer more specifically Your Honor's point, because I
9 do think this is important, this was a sentence relied upon in the institution
10 decision and it was repeated several times by Petitioner's counsel. Clearly,
11 this is a key issue that they're relying on to say, Hey, whatever happens at
12 214, we at least know the rental period must be in the virtual key.

13 Now, I do think it's important, for example, if we look at Petitioner's
14 slide 42. And for Judge Ippolito's benefit, there is also highlighting that I
15 did on paragraph 45 -- on this slide, but I'll get to that in a moment. But
16 Petitioner's slide 42, this is explaining -- these are some excerpts from Kleve
17 and include figure four.

18 And Your Honor, that sentence from Kleve at paragraph 39 is saying
19 that a virtual key may be sent to the vehicle to enable an Achilles drive away
20 for a rental period. But we know that Petitioner's argument that necessarily
21 that virtual key sent to the vehicle must have a rental period is simply
22 incorrect because as a petitioner is saying, well, there are these security
23 concerns.

24 What if we have an unscrupulous temporary user trying to get access
25 to the vehicle before the rental period starts? They have a virtual PEG that,
26 that apparently doesn't have a rental period in it. And that's right, but that

1 certainly doesn't mean that this disclosure at paragraph 39 is the only
2 disclosure regarding how that keyless drive away is enabled.

3 We know that more has to happen than just the virtual key being sent
4 to the vehicle. Number one, the temporary user needs to use their virtual
5 key. They need to get the virtual key, and they need to use the virtual key
6 at the vehicle. And paragraph 57, that is excerpted by petitioners, speaks to
7 how the server and its processing capabilities enables a temporary user
8 keyless access and driveway capabilities of the owner's vehicle.

9 The disclosure of paragraph 39 regarding enabling a vehicle to allow
10 temporary user access for a particular rental period is necessary but not
11 sufficient. And it's simply not accurate to say that without including the
12 rental period in the virtual key, there are all these security concerns that
13 somehow the rental period cannot be obtained or known by the vehicle to
14 check when a temporary user gets their or tries to use their particular virtual
15 key.

16 JUDGE GALLIGAN: Counsel, can I just ask you a question? So
17 you said that it is -- it -- it sounded like you said that there is some -- some
18 association of a condition with a key, but it's a necessary but insufficient
19 condition because there may be other conditions. But why wouldn't that
20 meet the claim then, if there, for instance, a rental period is assigned to the
21 key, even if you have to satisfy facial recognition scan to gain access?

22 MS. ENTZMINGER: Well, sorry if I misspoke, Your Honor, but I
23 wasn't saying that it was associated with the rental key. I was saying
24 that -- I'm sorry -- with the virtual key. The virtual key can enable access to
25 the temporary user for a given rental period without that rental period being
26 included in or associated with or assigned with the virtual key.

1 And if I may, I'll explain using Petitioner's slide 42. Okay. Figure
2 four, which petitioners highlighted is describing communications and -- how
3 the communications occur among various components, including the server,
4 the vehicle, and the temporary user's phone. And 57 in particular, paragraph
5 57 and 58 is speaking to what the server is doing when it receives signals
6 and messages from these smartphones, effectively calling them pneumatic
7 devices, but effectively smartphones.

8 And if we turn, for example, to Petitioner's slide 103 and for Judge
9 Ippolito's benefit, I'm -- I have highlighted some section of -- some
10 components of paragraph 57. It's at the bottom right corner of Petitioner's
11 slide 103. And what was cut off from petitioner slide 42 in the top of
12 paragraph 57 is that the server system includes processing capability for
13 these incoming signals from the nomadic devices.

14 And then it goes on to say part of what we already saw at the bottom
15 of paragraph 57 on this page that -- that the server is enabling or enable is
16 the verb, and I'll go on to slide. Petitioner slide 104, enable a temporary
17 user keyless access and driveway capabilities of the owner's vehicle. And
18 in addition to discussing the processing capability of the server in paragraph
19 47, paragraph -- sorry, 57 -- paragraph 58 is further discussing. And I will
20 discuss what I've highlighted here for Judge Ippolito's benefit.

21 In the middle of paragraph 58, there is disclosure regarding once the
22 server receives the incoming deed request from the remote source, the
23 message is processed and or relayed to a vehicle and the temporary user's
24 nomadic device. And skipping ahead to the last sentence, the last phrase of
25 paragraph 58, it's specifically referencing the server performing a database
26 lookup.

1 And in that server's database is the rental agreement. And this is
2 important because it is not as petitioners suggest some novel argument, but
3 rather Petitioner's reply is, is a series of common sense type arguments that
4 the rental period must, for security purposes, for common sense purposes
5 must be included in the virtual key when it is sent to the vehicle because
6 otherwise, how would the vehicle possibly know the rental period? But we
7 know that the server's database is, includes the rental period and the server
8 can perform a database lookup for that information to enable a temporary
9 user keyless access and drive away capabilities of the owner's vehicle.

10 JUDGE GALLIGAN: Counsel, let me just ask you this then. I
11 mean, I think there's the key -- is this the key credential distinction that
12 you're making sort of -- I was trying to figure out, because if the virtual key,
13 you know, let's just say, I think what I'm hearing you say is the virtual key
14 sent to the car and the vehicle control system, VCS, or whatever it's called,
15 is able by virtue of the virtual key is enabled to operate at a certain time.
16 But you're saying, well, there's actually a check. There's you, you
17 cross -- you cross check with the server, the key, and then that's what
18 enables it. Is that what you're saying?

19 MS. ENTZMINGER: What I'm saying is, in addition to sending the
20 virtual key to the vehicle, the disclosure from Kleve at paragraphs 57, for
21 example are making clear that also the temporary user must get a virtual key
22 beforehand, right. And the temporary user, their use of the key that is
23 enabled by the server enabling a temporary user keyless access and driveway
24 capabilities of the owner's vehicle. It may not be the only way, but the
25 capability of the server is the point that rebuts Petitioner's argument that the
26 rental period must be in the virtual key to enable a rental period to enable a

1 driver list -- sorry, key list drive away capabilities during a given rental
2 period.

3 JUDGE BRADEN: But Counselor, isn't paragraph 57 and 58 in
4 discussing figure four really talking about the fact that you have these
5 communication routes and you and the server facilitates that communication.
6 But when I look at paragraph 39, it talks about the fact that you've got this
7 virtual key.

8 Yes, it enables the VCS, which has to communicate, you know,
9 through the, you know, through antennas and stuff like that to the server, get
10 information, but it says during a given rental period, how do I get away from
11 that? How does paragraph 39 not tell me that there is some sort of
12 association between this keyless entry, this virtual key, and the rental period.

13 MS. ENTZMINGER: Well, I would say number one, Your Honor,
14 that it can enable this for a given rental period without having the rental
15 period in the virtual key. Because the virtual -- because the vehicle is able
16 to communicate with the server, and the server can perform a database
17 lookup of the rental agreement and rental terms that are stored on the server.

18 JUDGE GALLIGAN: That's what I think that's getting to my, I was
19 trying to get to that point. Does the claim require a, I mean, this is E-key,
20 right?

21 It's a, you know, somewhat of a nebulous. It's a -- it's data
22 somewhere, you know, so why isn't that enough? Where if I say this is
23 E-key 5150, and that the card then pings the server and says, what are the
24 restrictions on E-key 5150? They say, well, the rental period starts in one
25 hour. That, to me, that seems like you're assigned that E-key with a
26 condition of use, but you seem to be saying that it somehow has to be in, in

1 the E-key. And I, and I don't know if I see that in the claim, but can you
2 clarify?

3 MS. ENTZMINGER: Yeah. The opposite, in fact. I'm saying it
4 does not have to be in the E-key, and perhaps it is a little easier for Your
5 Honors if I first turn then to -- we come back to this issue and I can turn to
6 Patent Owners demonstratives at slide 26. Kleve is teaching a distinct
7 mechanism for controlling use of the vehicle and what the claims require,
8 Your Honor, is that not only must the virtual key have an assigned condition
9 of use, but before that generated, E-key has that assigned condition of use.
10 There must be a request from the user via user account to generate an E-key.

11 And that request must include a condition of use. And the principle
12 point, not the only point, but the principle point we made in sur reply is that
13 if, as petitioners say, oh my gosh, the rental period must be in the E-key
14 either because paragraph 309's last sentence about enabling keyless access
15 for a rental period or -- because they think security mechanisms and
16 unscrupulous temporary users require such a result, it still -- it still wouldn't
17 get you to the request, including the condition of use. And why would it?
18 Because the server already has the rental agreement. The server already
19 knows the rental period. There is absolutely no reason for the use the
20 vehicle owner in Kleve's words to send to the server in the request to
21 generate, or in the request to set up a virtual key to actually include the very
22 information that the server already has.

23 And this is perhaps this -- Judge Braden, you have a furrowed brow
24 and perhaps there -- there is a question, on the horizon?

25 JUDGE BRADEN: I am -- I'm not sure I'm following because if the
26 request includes the condition for the use of the vehicle as set by the user via

1 the user account, that is that request, not the rental consent and agreement
2 that includes the rental period, including the start and the end restriction.

3 How is the request from the user not what's going into the server?

4 MS. ENTZMINGER: Okay.

5 JUDGE BRADEN: Because it seems to me like you're, you're
6 parsing out -- it's like the server already has it, well, the server has it because
7 it was submitted as a request by the vehicle owner. The user, correct?

8 MS. ENTZMINGER: No, these are two different operations that
9 petitioners rely upon.

10 Number one, a rental agreement. They're relying upon the rental
11 period within the rental agreement as a condition of use. That's the -- that's
12 the only event in Kleve that is happening before the distribution of the
13 E-key, the generation of the E-key. And so that's what they're pointing to
14 because all the use restrictions in Kleve are taught to be input at step 214.

15 And in other disclosures of Kleve, they're very clear that those use
16 restrictions are set initially by the owner at the beginning of the rental period
17 that is after the key's been generated. And so none of those use restrictions
18 can possibly be in the E-key, let alone in the request to set up an E-key.

19 Second, petitioners are relying on a disclosure at paragraph 62, which
20 is an A vehicle owner requesting to a server to set up a virtual key. And if I
21 may, the slide -- Patent Owner's slide 13 -- 13 and perhaps also 14. I'll turn
22 to them. But the relied upon disclosures in the petition are at 62 and 63 for
23 the alleged request. And while at 62, paragraph 62, Kleve is describing, the
24 owner may set up a -- may request to set up a virtual key. The actual
25 information that is to be entered into the server and used as a virtual key is
26 just described as the credential information that is in box 516.

1 And at paragraph 63, this is the quote, this information that Kleve is
2 referring to. Nowhere here is Kleve saying this information somehow
3 includes any condition abuse, not a rental period, not any rental term,
4 nothing at all. There is no express disclosure. There is no suggested
5 disclosure of anything being in this information.

6 JUDGE BRADEN: So it's really the request that you're focusing on,
7 as in the request doesn't include the restriction?

8 MS. ENTZMINGER: Your Honor, our position is that neither does
9 but --

10 Judge Braden: Understood.

11 MS. ENTZMINGER: But for clarification, even if paragraph 39 was
12 interpreted to assume that a rental period is somehow included in the virtual
13 key sent to the vehicle, there is still no, no disclosure from Kleve, no
14 teaching from Kleve, and absolutely no evidence or rationale even to explain
15 why the request to the server; please set up a virtual key with, quote, this
16 information. Why would that request suddenly include information that the
17 server already has in the user profile, stored on the server's database.

18 JUDGE BRADEN: Well, I believe that Counsel for Petitioner -- and
19 I don't want to put words in their mouth, but I believe that they said that
20 there's nothing in Kleve that says that you would scrape that user account
21 information and they would, and they, they then pointed to specific
22 disclosures where the owner was having to enter that. And is that incorrect?

23 MS. ENTZMINGER: Well, there is no requirement of scraping.
24 That is true. The point made by the server having this information is to
25 rebut the suggestion by petitioners, there is no express disclosure that the
26 request. Should include all the information that the server already has.

1 At most what might be needed is something to identify who's this
2 coming from, which user they have an account. Okay? Find the account.
3 It's a user profile that's saved on the database, on the server, and that is what
4 was pointed to and repeated in sur-reply. That is Dr. Almeroth saying this
5 is what the server already knows.

6 It's in the user profile, it's already in the database. There's absolutely
7 no suggestion that the, when, when they say this information sent is entered
8 into the server, it's pointing to this unique credential information. It's
9 pointing to information they got from the renter, but nowhere is it saying
10 somehow that that should include a rental period.

11 The absence of that is telling, but two, also rebut. So not just the
12 absence of an express disclosure, but to also rebut the suggestion. Well, for
13 security purposes, it must include the rental period. That too isn't accurate
14 even for the E-key itself, because for the E-key, for the virtual key, rather,
15 the server has clevis teaching.

16 The server has the ability to give the vehicle information when it
17 receives incoming information from the temporary user. As to whether or
18 not they're even allowed to have access to that key for a given period. They
19 have -- the server has the functionality expressly disclosed by Kleve to do a
20 database lookup.

21 JUDGE BRADEN: Well, what to Judge Galligan's point then why is
22 that not a restriction that specifically that time period where the renter is
23 allowed, why is that not a restriction that's then associated with that E-key?

24 MS. ENTZMINGER: Well, I think, Your Honor, I should have been
25 clearer at the outset that, returning to Patent Owner's slide five, the claim
26 language requires. So if we actually look at the bottom of the highlighted

1 portion, so the underlined portion of the independent claims 1a, 16a on -- on
2 this particular slide, but it also applies to 19a. The request that is sent by the
3 user has to include a condition of use of the vehicle as set by the user via the
4 user account.

5 There is absolutely no disclosure in Kleve that the request to set up a
6 virtual key includes any condition of use, not a rental period, not a rental
7 agreement, not a rental start time. There is no disclosure. And what
8 petitioners are arguing is, is merely that because it is a necessary act that the
9 virtual key must be sent to the vehicle to enable access and driveway
10 capabilities. That's necessary, but not sufficient. That's not enough.

11 And the fact that Kleve specifically says that at paragraph 39 where it
12 says during a given rental period, that's insufficient to say that that's
13 associated with that virtual key that's being sent. Well, it's insufficient
14 because we also know the temporary user is getting a virtual key.

15 They are also saying that, and the temporary user has to use the virtual
16 key. I mean, it -- it's not an isolated event that just by sending the virtual
17 key to the vehicle that alone is going to allow the driveway capability.

18 JUDGE BRADEN: Please. I apologize. Help me to understand
19 that when this specifically says that you've got a virtual key that allows for
20 this keyless system during a given rental period, how that given rental
21 period's not a restriction and not one that's associated with the virtual key
22 that specifically discussed in this statement of paragraph 39. I think maybe
23 I'm not quite following.

24 MS. ENTZMINGER: Well, so because this act needs to happen to
25 enable a keyless driveway, it is not sufficient to enable a keyless driveway.
26 What also needs to happen is that the temporary user needs to get a key and

1 they need to use the key. And what we are saying with respect to why
2 a -- the virtual key itself need not include the rental period to enable that. It
3 can enable that without including the rental period.

4 JUDGE BRADEN: But paragraph specific -- paragraph 39
5 specifically says that this only happens during a given rental period.

6 MS. ENTZMINGER: That's right. And it can enable it for a vehicle
7 in the same way that referring back to paragraph 58. So Petitioner's
8 slide -- Petitioner slide 104 in paragraph 58, this is describing the server
9 receiving an incoming data request from a remote source and the message is
10 processed and or relayed to a vehicle and the temporary user's nomadic
11 device. The next sentence is the vehicle may be identified by a header
12 associated with one or more incoming data packets, or may be identifiable
13 based on a database lookup, for example.

14 And -- and what we're getting at, Your Honor, is that Kleve is
15 expressly disclosing that when the server is receiving messages, for
16 example, from the temporary user to enable a keyless access and drive away
17 capabilities of the owner's vehicle, that receiving those incoming messages
18 or data packets from the vehicle, from the nomadic device, the smartphone,
19 the server is able to look up things like the vehicle identification information
20 and that would be necessary to, in fact, enable a keyless driveway.

21 So there are other things Kleve is teaching that are required to make
22 this happen. The meeting of what the vehicle knows and what the
23 temporary user has and can use and can be authorized or verified for, but
24 merely sending the virtual key to the vehicle itself isn't sufficient. The
25 whole point is that it's, you're also sending something to the temporary user.

26 It's keyless. They don't need a, a quote real key. They're getting a

1 virtual key and they'll use that key to allow their, their access to the vehicle.

2 JUDGE GALLIGAN: Counsel, let me ask you about that. So you,
3 you keep mentioning necessary but insufficient. So the virtual key is
4 necessary for the operation of the car, of the vehicle, right, you agree with
5 that?

6 MS. ENTZMINGER: Right.

7 JUDGE GALLIGAN: In Kleve, you would have to have a virtual
8 key to operate this thing?

9 MS. ENTZMINGER: Yeah. Sometimes Kleve is calling it a
10 credential.

11 JUDGE GALLIGAN: Virtual key credential?

12 MS. ENTZMINGER: Yes. Something, yeah.

13 JUDGE GALLIGAN: So then, the virtual key, my understanding
14 from Kleve is that it might say it's, it's operable from noon on Tuesday until
15 noon on Wednesday.

16 Is that your -- is that correct? I mean, is that right? It might, it
17 might have something like that.

18 MS. ENTZMINGER: Well, there is no disclosure in Kleve that it
19 says that. No, but it is --

20 JUDGE GALLIGAN: Okay. So it's enabled for a given period, I
21 think is what it says in paragraph 39. Right. So could you, are you saying
22 you, it could actually be operated before the given period, the key code,
23 because that seems to contradict Kleve.

24 MS. ENTZMINGER: So, I think what is important is that in this
25 sentence, A, this is not discussing the request. This is whether or not an
26 alleged E-key that is generated by a server includes a condition of use.

1 Apart from that, there is no teaching, there is no disclosure, and there
2 is no reason for the request to include any information that the server already
3 has stored in its database. The user profile is stored to the database and the
4 server can perform a database lookup to match any saved information to
5 authenticate the vehicle.

6 JUDGE GALLIGAN: So, so in that sense, and I'll ask Petitioner's
7 counsel if he, if he wants to, we can address this, but if, I guess according to,
8 to your reading, is that the parties agree, the renter and the owner agree, have
9 some agreement, right? I mean, before, obviously before the person steps
10 in the car, the renter, there's some agreement, correct?

11 MS. ENTZMINGER: Not necessarily.

12 JUDGE GALLIGAN: Okay. Alright. Oh, I didn't, okay, I didn't
13 know that.

14 MS. ENTZMINGER: So this was -- sorry to, just to correct that
15 point, Your Honor, although that's what petitioner states, you'll note that
16 there's now some kind of equivocation on which embodiments were -- were
17 applying this to, there was a statement made by Dr. Almeroth that the key is
18 always generated after the rental agreement.

19 That's not -- so we provided several examples to prove the opposite
20 point he admitted under cross-examination. Oh, no, not all embodiments
21 apparently now they're only relying on the embodiment and figure five and
22 figure two. But the problem with that is it's in figure five's description, that
23 one option for agreeing to rental terms is after the temporary user has
24 already gotten into the vehicle and one of the points Patent Owner was
25 making with this is a -- well, that disproves the point of course that it's
26 always generated after the rental agreement. But more to the point, how is

1 Kleve necessarily requiring a rental period from the rental agreement in a
2 virtual key?

3 If Kleve is also teaching that a temporary user with their virtual key
4 can already get into the vehicle, and at that point agree to rental terms, those
5 two are wholly contradictory and incompatible. And it's also not true what
6 Petitioner's counsel stated that it is only in that one little section that that is
7 stated.

8 A, that is the relied upon figure five description that Dr. Almeroth
9 apparently relied upon and what the petition relies upon. But B, it's also
10 discussed with respect to figure three, where at paragraph 47, and we
11 pointed this out in the Patent Owner's response, that all and the sur-reply, in
12 fact, that when the temporary user is already in the vehicle, so they've
13 already gotten the key and they've already accessed the vehicle, we know
14 that much they can use the touch screen within the vehicle to agree to accept
15 or reject rental terms.

16 When Petitioner's counsel had this slide up, he specifically said, oh,
17 there's already a rental agreement. Well, that's one example, but Kleve also
18 says, here's another way that the terms can be agreed to.

19 JUDGE GALLIGAN: Let's assume -- I'm -- I think that's fine for
20 references to have all kinds of disclosures, but if we're relying on the
21 disclosure where there in figures two and three, for instance, where there
22 seems to be some meeting of the minds agree to terms, and then there's a -- a
23 provision of a -- of an E-key, right?

24 Your focus is on -- and what we -- for now, let's put aside whether the
25 rental period is a, is a condition, and I think you, you might have some
26 dispute with that, but your focus is on the request, right? So whether the

1 request would somehow have, let's assume for purposes of this, that the
2 rental period is a condition.

3 I'm -- I don't need you to agree, just assume for the purpose of this.
4 So how would the request is to generate an E-key for, let's say this contract.
5 I mean, isn't that, isn't that teaching the condition? Because whether or not
6 it says for this contract, for this period, if it references a contract that has
7 conditions, seems like that's a request that that has conditions.

8 I mean, it is incorporating them somehow, or am I not -- sorry. Or is
9 it some other mechanism you're envisioning? Because I still think there has
10 to be some condition. The key has a condition of enablement during a
11 certain rental term, potentially. I mean, I know that's a somewhat disputed
12 issue, but according to paragraph 39, how would the, how would an owner
13 tell the system to generate such a key without some inclination as to such
14 restriction?

15 MS. ENTZMINGER: Well, I'll answer your question, but if I may
16 correct one issue, there is no request regarding a contract. The request is
17 solely, the credential information is inputted into the server to quote, set up a
18 virtual key.

19 JUDGE GALLIGAN: Right. So if there's a contract -- I mean, let's
20 just -- I was just going to assume there was a contract in Kleve, figures two
21 and three before the request to provide -- I'm sorry, for the request to provide
22 the E-key?

23 MS. ENTZMINGER: Correct.

24 JUDGE GALLIGAN: And so that's where I was -- I think
25 petition -- my understanding of Petitioner's point is putting aside the post
26 agreement provisions and restrictions that may be, so for instance in step

1 214, that at least there's a rental period agreed to, and then there's a provision
2 of an E-key.

3 And that's where I'm wondering, and if -- if we credit the statement in
4 paragraph 39 that it's all actually only enabled for this certain period that
5 was agreed to, I mean, how, how else are we to read that then to say there's
6 the provision of the E-key was, was requested with some, with some
7 restriction, which would be the time period.

8 MS. ENTZMINGER: Well, we know that to, to answer assuming, I
9 understand assuming paragraph 39. That includes some rental period in the
10 virtual key sent to the, to the car. There's still absolutely no evidence,
11 rationale or other basis, certainly no disclosure from Kleve for concluding
12 that the request to set up a virtual key would include any condition of use,
13 not the rental period or anything else.

14 Because if we look at Patent Owner slide 26, we know, and this
15 is -- this is detailed throughout the Patent Owner response that Kleve is
16 separating out these things. There is, yes, in this example, there is a rental
17 agreement already agreed to, and those steps are highlighted in yellow.
18 There is a, a distribution of the virtual key that is highlighted in, in purple at
19 step 210, but it is not until step 214 that Kleve teaches that the owner may
20 input, use restrictions and it's paragraphs 40, 41, 42 and 43 that are
21 describing the steps from 214 all the way through to 222 26 of figure two.

22 And what is important here is that what I've circled in black in
23 paragraph 43. This is one particular restriction and it is the rental period
24 end time restriction. And what, we went over the specific teachings of how
25 this is carried out throughout the Patent Owner response. But if at step 226,
26 the temporary user decides that he wants to purchase more time, that he

1 wants to extend the period, he can pay for it and the owner can approve it.

2 And figure two goes back to we've highlighted. And, yes, if that he
3 wants to purchase additional time, it goes back to 214. And this is critical
4 because Kleve is tying the rental period to the use restrictions that are set at
5 214, not to the virtual key. There is no corresponding arrow to the rental
6 agreement.

7 There's no corresponding arrow to the virtual key. And Your Honor,
8 Judge Braden, you brought up a -- the question. What would happen then
9 in Kleve if the renter wants to extend time and does seek to extend time?
10 What happens? Do -- do we -- does everybody get a new virtual key?

11 MS. ENTZMINGER: No, that that is the inefficiency that makes this
12 system more reliable, more efficient, and more secure. It is only the owner
13 not agreed to terms from a rental agreement by an owner and a temporary
14 user, but only the owner. Kleve is very clear that may set use restrictions
15 and those restrictions are flexible to the extent that in this teaching, the rental
16 period can be updated. And by updating this restriction going back to with
17 the arrow, back to the first step, when it can be set at 214, Kleve need not
18 execute another virtual key need not send out another virtual key to the
19 temporary user.

20 Petitioner's counsel said something about updating an E-key, but
21 there's no such disclosure. There's absolutely no such disclosure in Kleve.
22 There is no connection between how a rental period can be extended and the
23 virtual key instead its system is distinct. It may seem commonsensical now.
24 Oh, well just include in the -- in the E-key, just included in the rental.

25 The rental period in the virtual key. But that is not the flexibility that
26 Kleve teaches. Kleve is teaching that the owner has the ability. To enforce

1 any of the rental agreement restrictions that were already agreed to but also
2 any other parameters. And those parameters are things like geofences, it
3 can set geographical limits with geofences and other restrictions that are not
4 described with respect to the teachings for the rental agreement.

5 JUDGE GALLIGAN: When you say that there's the -- Kleve can
6 enforce restrictions that were already agreed to, do you mean before the E-
7 key was generated?

8 MS. ENTZMINGER: No.

9 JUDGE GALLIGAN: Okay. If I may -- but Counsel, if I point you
10 to paragraph 38, it talks about the fact that the owner and temporary user can
11 agree to these terms and conditions for the rental period. And it talks about
12 the fact that you can have a standard rental agreement or develop custom,
13 form based on the type of use that the temporary user is requesting and
14 specifically talks about. The owner can tailor your rental agreement to
15 include what can and cannot be transported, and that at that point, the
16 temporary user and owner can sign the consent and agreement.

17 How is that not setting your terms and your restrictions before the
18 E-key is generated?

19 MS. ENTZMINGER: That's a rental agreement. That's a rental
20 contract. And to use Petitioner's Counsel's analogy, I enter into a rental
21 agreement with Hertz. It's not included in my key. I sign a legally binding
22 agreement, and that is not at all included somehow in magically in a key that
23 I must use to start the ignition of the vehicle. There's no teaching of that in
24 Kleve, but in, in Hertz it's a little different.

25 JUDGE GALLIGAN: Because of the key here, it's saying that the
26 key is enabled for a particular time. And that's where I'm -- and maybe

1 you're disputing the enablement part. I know you're disputing the request,
2 but it, I think that's, that's at least my concern is it says, it says that it's
3 enabled for a particular time, whether that's sufficient or not is, I don't know
4 if that's required for the claim, but it's necessary, right?

5 MS. ENTZMINGER: Well, that would only be as to 1b as to 1a.
6 There's still no teaching that the request includes the request to generate a
7 virtual key, a request to generate an E-key includes any condition of use.

8 JUDGE GALLIGAN: And I in your -- in your -- in the Patent
9 Owner's understanding of the -- of Kleve, would it be that -- I guess, how is
10 when a request by the owner says, We're, we're good to go, we agreed
11 generate the key, how is, how is the -- paragraph 39 is what I'm trying to get
12 to. How is there -- how is the key only enabled for a certain time? Is
13 there -- are you saying that Kleve would then ping a database for conditions
14 that were agreed to in the rental agreement, but they're not in the request?

15 MS. ENTZMINGER: Kleve teaches multiple ways by which this can
16 occur. So one would be, let's see, Patent Owners slide 16, that at rental time
17 the vehicle owner extends a credential to the vehicle and it is this credential
18 that in the other highlighted box of 510.

19 In this slide, slide 16, the vehicle compares the credential to the
20 compares, sorry, the credential received from the server via the vehicle
21 owner and the credential input by the temporary user. This is one way that
22 Kleve teaches that the rental time is enforced.

23 Another way that Kleve teaches that the rental time is enforced is
24 what I just went over, referring to slide 26, and it specifically teaches that a
25 rent a, a rental period end time restriction is one that is input at 214.

26 But additionally, the specific teachings of paragraphs 57 and 58 are

1 making clear that more needs to happen, and in fact, the temporary users
2 access for drive away capabilities needs to happen. It's not just sending it to
3 the virtual key. And when that incoming data request from the vehicle,
4 from the temporary user's, nomadic device, Kleve is teaching capability
5 from the server to process those incoming data packets or signals as it, as it
6 calls them, processing those and performing a database lookup for any
7 necessary information.

8 And in fact, turning back to Petitioner's slides for a moment,
9 Petitioner's expert, so this is slide -- petitioner slide 110, and I've highlighted
10 here some sections, but for Judge Ippolito's benefit: I've highlighted midway
11 through paragraph 103 and -- but actually, I'll start with 104. That it's their
12 expert who's saying that the website and the database are part of a server
13 system.

14 And in paragraph 103 that the user profile is stored in a database.
15 And if we turn to slide 113, it is their expert that is saying -- this is at the
16 bottom of paragraph 108. It is the vehicle owner's user profile, which has
17 information about the vehicle as well as the rental agreement between the
18 vehicle owner and the temporary user. And if we go to, this is Petitioner's
19 slide 116. And I've highlighted some content, but I'll read it out for -- for
20 Judge Ippolito's benefit. This is Dr. Almeroth actually saying in his -- this
21 is Petitioner's expert, the server can confirm all of the necessary information
22 needed before providing the virtual key. It can then match with the saved
23 identification information stored to the in the server's database.

24 Later in the paragraph, their expert is saying, the server is the only one
25 disclosed by Kleve as having all the necessary information to authenticate all
26 necessary information. So this answers Your Honors question. How can

1 this be enabled for the rental period? If it's not in the virtual key, their
2 expert is -- is saying the server is the one that has all the necessary
3 information to authenticate anything you want. Because the user profile has
4 all the necessary information, including the rental agreement and it's stored
5 on the server's database and to use. Okay. Their expert's words, the server
6 can match the saved information stored in the server's database. That's how
7 it can be enabled.

8 JUDGE BRADEN: Counselor, so my understanding is, and I'm
9 looking at paragraph 62, it talks about at step 52, you have -- this is a
10 situation when both the vehicle owner and the temporary user both already
11 have user profiles set up in the database. They've already agreed to the
12 rental agreement. At step 52, that's when you have -- the vehicle owner
13 enters in vehicle authorization credentials to set up the virtual key.

14 It is then -- so at 52 you have the virtual key being made based on that
15 rental agreement. And then later on those -- that's when you have -- at the
16 rental time, at step -- at 506, you've got the vehicle owner sending the
17 credentials to the vehicle so that you can then match up for extra security,
18 but the EQ is already made at 502.

19 So that's -- I'm not sure that that supports Patent Owner's arguments
20 here. What am I missing?

21 MS. ENTZMINGER: Well, there are three different methods by
22 which Kleve is teaching that the rental period can be known to the vehicle to
23 enable the keyless driveway. Step 214, and it's expressly disclosed in
24 paragraph 43 that the rental time restriction is something that can be input by
25 the user, and those restrictions are not set until initially uses the word
26 initially.

1 So not before, but initially at the beginning of the rental period. And
2 this is -- this is the method that Kleve is teaching as to how an owner can
3 input a restriction to have that rental period enforced. Another way is via
4 figure five and the teachings in the accompanying paragraphs of figure five
5 is that the owner can elect to use this credential method of sending a
6 credential to the vehicle at rental time. And the vehicle in turn will
7 compare that credential. So this is at the rental time, the start time. It will
8 compare that credential and compare what the temporary user put in and if
9 matched, authorize the drive.

10 And in addition, so third method is what their expert even agrees to
11 that the vehicle in communication with the server or the temporary user's
12 nomadic device in communication with the server can ensure that the server
13 is communicating back to the vehicle.

14 What is the rental period? Is there a rental period. What is the rental
15 period? So there is at least three mechanisms by which the rental period
16 can be enforced as taught by Kleve that do not at all require that being
17 included in the virtual key, much less in the request to set up a virtual key.
18 The request is made by, in Kleve, is made by the vehicle owner to the server
19 and that request, if you look at Patent Owners slide 14, that request is
20 nothing more than entering in this credential information into the server.

21 And, and this is not me selecting something that, that I learn from
22 Kleve. This is what the petition relies on. This is what the petition relies
23 on as the alleged request. These two portions of paragraph 62 and 63, that
24 is what the petition is relying upon. And nothing here is stating that the
25 rental period is magically included in this request.

26 In this quote, information, nothing here is stating that the rental

1 agreement is somehow included in, in this request. And, and one of the
2 points, again, of the server reply was that there would be no need to, there's
3 absolutely no need to because the server is what has that information instead
4 of having the vehicle owner buy their smartphone.

5 I have to include all this information sent to the server, though the
6 server already has it. There's never been an explanation as to why that
7 would be the case. Nothing but hindsight analysis.

8 JUDGE BRADEN: I'm sorry, Counselor. I'm looking at the Petition
9 and looking at what Petitioner has put for the limitation. The request
10 includes a condition of use of the vehicle as set by the user via the user
11 account. This is on page 15 of the petition. I see no citations to paragraph
12 62 or 63.

13 MS. ENTZMINGER: Well, they've separated it out into request and
14 then what is the condition of use, and so they point to two different things.
15 Exactly. The request that is being pointed to refers to paragraph 62 and 63,
16 so --

17 JUDGE BRADEN: Okay. I do see that on page 14 for 62, 63.

18 MS. ENTZMINGER: And -- and it's quoting that information as
19 well.

20 JUDGE BRADEN: All right. Thank you, Counselor.

21 MS. ENTZMINGER: And this is an important distinction you bring
22 up because, yes, what the data or the disclosures of Kleve relied upon for the
23 alleged request are different and the disclosures relied upon for an. Some
24 condition of use. Kleve isn't teaching that when you set up the virtual key,
25 that somehow the rental period is in there, that somehow the owner has the
26 ability to put the rental period in there.

1 That's not even an ability taught by Kleve, a functionality, a
2 capability. And if it were, Kleve wouldn't be saying initially -- it's saying
3 the owner has the ability to set rental restriction limits initially at the
4 beginning of the rental period.

5 And it's not an isolated teaching. It's an unequivocal teaching that is
6 repeated in paragraph 675 when Kleve is saying that the performance
7 limitations and restriction limits assigned by the vehicle owner at the start of
8 the rental period. Those aren't even downloaded un to the vehicle until after
9 the temporary user has initiated the rental event has started the vehicle.

10 JUDGE GALLIGAN: Counsel, I am a little concerned that under
11 your reading of Kleve, the virtual key is essentially functionless and it has to
12 have something. I mean, at least giving someone access to a car, right?
13 Because then you would use the touch screen to agree to terms. So
14 under -- correct me if I'm wrong, but what functionality does the -- does the
15 virtual key have in your reading of Kleve?

16 MS. ENTZMINGER: What Kleve says, which is just that it's
17 keyless. This is a keyless way so that they never have to meet the owner
18 never has to meet.

19 This is exactly what Kleve says. The owner never has to meet the
20 temporary user, never has to deliver keys. That's all gone. This can be a
21 message relayed among the server and the vehicle and the temporary user's
22 nomadic device. You need not use a key, it, it literally causes keyless
23 access, keyless drive away capabilities, but that is distinct from the express
24 mechanism taught by Kleve to control use and to monitor the vehicle.

25 JUDGE BRADEN: And with that I'm going to let you know that
26 you, have five minutes left of your surrebuttal time.

1 MS. ENTZMINGER: Well, then I will just jump to -- thank you,
2 Your Honor. I appreciate that. I should have been looking at the clock
3 here. I would like to touch upon a couple of other points, even if it eats into
4 additional time.

5 Referring to Petitioner's slide 94, this is Kleve's figure six and
6 apparently now, although you won't find step 604 in the petition, Your
7 Honors, Petitioners are relying on step 604 as an alleged request with some
8 alleged condition of use. But what is important to note first from figure six
9 is one, this step 604, which I've highlighted Judge Ippolito's benefit, this is
10 the one. The second step listed in the vehicle owner nomadic device box on
11 the left of the figure, that specific step 604 says, quote, generate virtual key
12 and vehicle restrictions.

13 That is what it says that the vehicle owner is generating the virtual key
14 and, and vehicle restrictions on the first clause. That's not a request. That's
15 the vehicle owner generating a virtual key, moreover, and so it cannot be the
16 required request. Moreover, it can't on, can't even be, one, quote, received
17 by the server because this is actually performed on the vehicle owner
18 nomadic device.

19 It's within the box 601 that -- and it is from the vehicle owner and
20 their nomadic device that they are generating the virtual key. So it's not a
21 request. It is generating the virtual key. But regardless, the disclosure
22 affirms that the two actions are separate. It doesn't say generate virtual key
23 with vehicle restrictions, for example.

24 It's affirming. These are two distinct actions, and in fact, at step 606,
25 which I've also highlighted, which is directly beneath that step 606, that is
26 the vehicle owner sending the virtual key it that was generated by their

1 nomadic device and sending that to the vehicle. And why would they need
2 to do that along with the vehicle restrictions if the virtual key already had the
3 restrictions.

4 Moreover, of course, it wouldn't meet the claims because the claims
5 require this server to be sending the virtual key to the vehicle. But
6 ultimately, the figure itself refutes each of petitioners relied upon points.
7 Step 604 is not saying request, it's saying to generate. And it's not saying
8 that it's with vehicle restrictions, but that they're two separate actions, and in
9 fact, it's being generated on the nomadic device and delivered from the
10 nomadic device.

11 But if we were to go to slide 105, Petitioner's slide 105, I've
12 highlighted some sections of paragraph 69, but I'll -- I'll read out for Judge
13 Ippolito's benefit, what we're trying to highlight here, and that is even if the
14 figure were somehow not clear enough at 604 -- what, so this is at the top of
15 the second column at 604 -- this is the vehicle owner may then generate a
16 virtual key. That's not a request. That's the owner generating the virtual
17 key. And nor are these steps altogether of figure six sequential because in
18 fact, there's another embodiment described in paragraph 69, another way of
19 generating a virtual key.

20 And in fact, I encourage Your Honors to look at paragraph 69 to the
21 extent that that figure six at all, it is alleged to be a request. And, moreover,
22 a request including a condition of use, paragraph 69, does not ever mention
23 request ever. Paragraph 69 does not ever mention any input of restrictions.

24 That's not the focus of figure six apparently, and certainly in
25 paragraph 69, there's no disclosure of, there's no disclosure that is
26 contradicting in any way. The timing of initially inputting restrictions at step

1 214 at the beginning of the rental period. And with respect to claim 17, I'd
2 just like to state that Patent Owners haven't -- Petitioners haven't shown any
3 suggestion that claim seventeen's challenge, is merited both as to ground
4 seven and ground six. Ground seven merely says, see disclosure above for
5 Patenaude, but for ground six, that is a combination ground of Patenaude
6 and Harris and Zaid, where there is no quote disclosure of the required
7 learning functionality.

8 Thank you, Your Honors.

9 JUDGE BRADEN: Thank you. And Mr. Glass, will you be able to
10 answer my questions about the Zaid reference?

11 MR. GLASS: Yes.

12 JUDGE BRADEN: Okay, great. Thanks.

13 MR. GLASS: So I'll start with that. I do wanna spend most, as
14 much as I can on my rebuttal on points from Counsel, but the two questions
15 were asked, the Zaid question, petition at 44 through 45, Exhibit 1003 to 11
16 through 212, reply 19 through 21.

17 Those -- that's our best support for that proposition. Your Honors,
18 testimony that supports what happens after the key termination. That's in
19 connection with claim four. Exhibit 1003, paragraph 141 through 143.
20 Thank you. I'll start off on slides on slide 28, 29. There. And I think
21 Your Honors hit the issue on the head.

22 This is paragraph 39. We've gone through this extensively. There is
23 no dispute that Kleve's E-key is enabled for a rental period. Patent Owner's
24 arguments amount more or less to -- let's ignore this paragraph. This
25 paragraph can't possibly mean what it says when this paragraph says it's
26 enabled during a given rental period. That must mean something

1 completely different because we set conditions at step 214, but we disagree
2 with them that there are embodiments where the E-keys are generated before
3 the rental agreement. It makes no sense. I walk through that disclosure.

4 We disagree with counsel that. Our expert had made an admission.

5 I walked through that. I may walk through that one more time. But
6 setting that aside, this is express disclosure of the E-key being enabled
7 during the rental period. No one disputes that that rental period is a
8 condition on use. This is, I didn't go through this in the, in the opening, but
9 this is also shown paragraph 71 where the user goes up to the car, he sends a
10 request to the server requesting access. If it is in the scheduled time for
11 rental, he's given access. This is in connection. I think this, this is in
12 connection with figure six.

13 This goes to your point, Judge Galligan, that there is a server lookup
14 that it, Patent Owner's counselor kept saying repeatedly that it's the
15 condition is not included in the E-key. That's not our position. Kleve is
16 not -- it's not a model of clarity on this point, but it very -- it does very
17 clearly state that there is a server check to see if that rental period, if that key
18 is within that rental period, this is in connection with figure six.

19 So again, the point that counts that Patent Owner's Counsel is making
20 is that we should just simply ignore that disclosure and the reference is good
21 for all that it teaches.

22 With respect to -- on the KNOWS argument. The K-N-O-W-S, not
23 N-O-S-E -- on the KNOWS argument. Again, I'll stress that that is a brand
24 new argument. It's unsupported by expert testimony. They have no
25 testimony from their expert counselor, walked you through our expert's
26 testimony. If you look at that testimony carefully, I don't have the time to

1 walk through it all.

2 He said was that -- the profile information that the parties enter into in
3 paragraph 37 that is associated with the profile. Of course, it is because it
4 says it expressly that that information is associated with the profile. He
5 never testified -- he never admitted that the terms of the agreement. There
6 is a chasm of difference between saying that information parties enter into a
7 website as part of their profiles is known to the server, to the terms of the
8 agreement that is disclosed as simply a form is somehow known to the
9 server. He never said that. Counselor did not even attempt to explain their
10 mis-quotation of Dr. Almeroth in their brief.

11 JUDGE GALLIGAN: And Counsel, would it be sufficient in your
12 view if, for instance, the owner says, alright -- we agree I'm using, you
13 know, common parlance. We agree, telling the server, we agreed. Now,
14 generating the E-key per the terms of contract 2,500, do you think that
15 would be sufficient to satisfy the request?

16 MR. GLASS: Of course. I mean, absolutely. So even that -- that
17 was -- you anticipated my next point. Even if that was the case -- even if
18 the server had knowledge or awareness of the terms, that would -- there's no
19 allegation that it would somehow automatically generate that when the
20 E-key is generated, the owner would say, look at contract, whatever, I'm
21 building in massive amounts of disclosure into -- but look at "rental
22 agreement X," pull the rental term and include that in the rental agreement in
23 the -- in the V-key.

24 So short answer, I agree with you, Your Honor. Yes, on slide, I'm
25 going to just go to slide 43.

26 JUDGE GALLIGAN: Following up on that is -- is that a particular

1 allegation you made? Is it -- is the -- because a lot of these are -- let's
2 say -- let's say the step 214 is after the equal. It's clearly after the E-key's
3 generated, you're relying on the rental period, correct?

4 MR. GLASS: I mean, correct.

5 JUDGE GALLIGAN: In that -- in that scenario, is it your contention
6 that the request would specify at least the rental period?

7 MR. GLASS: Correct.

8 JUDGE GALLIGAN: Okay. In the request or in a reference to
9 something else, or does it matter?

10 MR. GLASS: Well, it -- it doesn't matter, and again, I'm -- I'm -- I'll
11 be upfront. The notion of referencing a rental agreement was not in our
12 petition because this came up for the first time on surreply.

13 And it was not an admission or, or testimony from our expert, but
14 sitting here today, if -- if that had been raised earlier, our response would've
15 been, so what? Because the request would have referenced that rental
16 agreement and that's sufficient.

17 Does that make, does that answer your question?

18 JUDGE GALLIGAN: Yes. Thank you.

19 MR. GLASS: I'll also point out, Patent Owner has repeatedly
20 said -- again, I'm just -- I'm going to repeat something I said earlier that the
21 V-key doesn't make sense when you extend the term because the V-key is
22 never updated. The V-key is never reissued. It's an inefficiency to have to
23 reissue the V-key. I never said that.

24 I actually walked through on slide 47, paragraph 43. Paragraph 43,
25 explicitly ties the end time restriction on the database to the agreed to rental
26 term. At the very first sentence, that step 224, the system may notify the

1 temporary user that the agreed upon rental period may expire soon. If they
2 agree, if you drop down to the back end of that paragraph, if they agree to
3 extend the terms, if the user decides that he may need to purchase additional
4 rental time, the system may update the new rental period, end time
5 restriction and continuing monitoring.

6 That goes to your point, Your Honor. That is -- is it -- is this
7 included in the V-key or is it just sufficient to check the database? That's an
8 express disclosure that the -- that the end time restriction is updated. To
9 reflect the fact that the agreed to rental period is about to expire.

10 JUDGE BRADEN: So Counsel, I need you to be very specific
11 about -- let's talk about the request because Patent Owner's Counsel, this was
12 a main argument of that.

13 MR. GLASS: It was. The request does not include the condition of
14 the restriction.

15 JUDGE BRADEN: So point to me where, and tie this together in the
16 petition, you have the request.

17 MR. GLASS: It -- so -- I don't. The page numbers. I'll pull them,
18 but I don't think there's any dispute. We have -- we have discussed
19 paragraph 39, and when we discuss paragraph 39, we say, and we cite to Dr.
20 Almeroth's testimony.

21 I think it's page 15. I'll lay out a position very clearly. Our position
22 is that reading that disclosure in paragraph 39, one of ordinary skill in the art
23 would understand that there is a request. There is absolutely request.
24 There's no dispute on that point, but that there is a request for a V-key.

25 JUDGE BRADEN: But who is making the request?

26 MR. GLASS: The owner.

1 JUDGE BRADEN: Is it a temporary unit or it's the owner?

2 MR. GLASS: It is undisputed in this case that the owner makes the
3 request for the V-key. The only dispute is whether it includes that condition
4 of use. Our position is that reading paragraph 39, also that paragraph that I
5 just walked through on paragraph 71, that a person ordinary skill narrow
6 would understand that that request would have included the condition of use.

7 JUDGE BRADEN: Okay.

8 MR. GLASS: Also, as I -- I concluded with this in my opening
9 responses, the opening presentation, that it is the epitome of obviousness.
10 We have a key that is undoubtedly enabled for the rental period. The owner
11 is entering information, the owner is requesting the V-key. It has to be
12 enabled for a rental period.

13 It is the epitome of obvious to look at that disclosure and say one of
14 ordinary skill in the art would understand that that request would also
15 include the rental period. I hope that -- I hope I didn't make our, our
16 position muddier. I hope I clarified it.

17 JUDGE BRADEN: Thank you, Counselor.

18 MR. GLASS: I had a few other points, but unless there are any -- I
19 see I'm out of time.

20 JUDGE BRADEN: We'll give you an additional two minutes to
21 wrap up and we will also give Patent Owners counsel two minutes to wrap
22 up.

23 MR. GLASS: I'll -- okay. Just the one quick point, I'll just point
24 out. Claim 17, everything Counselor said on claim 17 is a brand new
25 argument that was never -- there was zero allegations in the -- in the -- in the
26 POR or the sur-reply as to grounds six or seven.

1 Their positions on claim 17 focused solely on the Kleve alone
2 arguments. I'll also point out one more, one more issue on this nose
3 argument. Patent Owner glossed over disclosures and again supplemented
4 what they argued for the first time on sur-reply and said, well, look in
5 paragraph 58. There is a database lookup, but again, if you look at
6 paragraph 58, it simply says the vehicle may be identified by header
7 associated with one or more incoming data packets or identifiable based on a
8 database lookup.

9 It doesn't say anything about the rental terms. So this goes again to
10 the position that there is no disclosure in Kleve of the server being aware of
11 the rental terms. Sure. The information that the owner and the renter
12 entered. Yes, that's, that is no, because that is actually entered. I think
13 Kleve discloses it as being entered into a website, but that does not speak to
14 the rental terms.

15 With that, unless there's any questions, I'll rest.

16 JUDGE BRADEN: Seeing no questions from my colleagues.
17 Thank you very much, Counselor.

18 MR. GLASS: Thank you, Your Honors.

19 JUDGE BRADEN: And we will provide Patent Owner's Counsel
20 two minutes.

21 MS. ENTZMINGER: Thank you, Your Honors. Hopefully I can be
22 brief. I do think that to a large extent, and of course the questions,
23 responding to paragraph 39 merit, discussion regarding whether or not the
24 virtual key itself includes some kind of restriction, like a rental period, but
25 there's been absolutely no evidence that the request to set up a virtual key
26 includes a condition of use.

1 What I just heard Petitioner's Counsel say in response to Judge
2 Gallagher's question is, oh, well, the owner would've pointed to a rental
3 agreement would've pointed to a rental term. This isn't in Kleve. It's not in
4 Kleve. It was not testified to by your expert.

5 If Your Honors look at the relied-upon conditions of use, which are
6 different disclosures than the relied upon disclosures for the request, there is
7 no connection, and we went through this clearly in the Patent Owner
8 response. For each and every relied upon alleged condition of use is the
9 rental agreement when a virtual key is issued or generated after a rental
10 agreement has already occurred.

11 In that example, there's absolutely no teaching that the request
12 somehow includes the rental agreement. Number one, as it went through.
13 Kleve is teaching a separate mechanism by which the owner inputs
14 restrictions, and Kleve is not equivocal in saying that that happens initially at
15 the beginning of the rental period, not just with respect to figure two and the
16 accompanying disclosures, but also with respect to figure seven and the
17 accompanying disclosures.

18 There's nothing from Petitioner's Counsel or the petition, any of the
19 briefing has disputed those two unequivocal teachings of Kleve as to when
20 the user that being the owner can first set use restrictions in Kleve. They are
21 distinct. The virtual key is generated and distributed, and the use
22 restrictions are associated with step 214 and the steps that follow in which
23 the VCS after it downloads those restrictions and parameters.

24 Performance limitations is going to control the vehicle according to
25 those use restrictions. But there's a reason why Kleve is teaching that you
26 must, as the owner input rental agreement restrictions at step 214 if you want

1 them enforced because they're not assigned with the virtual key. They're
2 not part of the virtual key, much less included in the request.

3 And we went through in the Patent Owner response each and every
4 alleged condition of use, and none of them is associated with, or included in
5 as is required by the claims. The request to set up a virtual key, each of
6 what was pointed to is occurring after the virtual key has already been
7 generated. And as to the claim 17 issue -- this is a -- a straight rule
8 104b -- four issue. The Petition relied upon patent out and Kleve for
9 alleged disclosure of claim 17. And -- and merely said that now discloses it.
10 See above you go to above --

11 JUDGE BRADEN: Counsel, I'm going to ask that you go ahead and
12 wrap up, please.

13 MS. ENTZMINGER: Yes. Thank you, Your Honor. And that
14 ground six above is a combination. Ground six is a combination that also
15 relies upon Zaid.

16 Thank you.

17 Judge Braden: Thank you very much, Counselor. Thank you all for
18 your time here today. We appreciate you being here with us personally in
19 the Dallas office. Your answers have helped the panel. As a reminder, we
20 ask that you stay and answer any questions that the court reporter may have
21 regarding the spelling.

22 We wish you all a very good day. Thank you very much for your
23 time, and the hearing is now adjourned.

24 MR. GLASS: Thank you, Your Honors.

25 MS. ENTZMINGER: Thank you, Your Honors.

26 (Hearing concluded at 1:22 p.m.)

PETITIONER:

James Glass
Quincy Lu
Brett Watkins
QUINN EMANUEL URQUHART & SULLIVAN, LLP
jimglass@quinnemanuel.com
quincylu@quinnemanuel.com
brettwatkins@quinnemanuel.com

Joshua Goldberg
James Barney
Aidan Skoyles
Nicholas Eitsert
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER, LLP
joshua.goldberg@finnegan.com
james.barney@finnegan.com
aidan.skoyles@finnegan.com
nicholas.eitsert@finnegan.com

PATENT OWNER:

Jerry Tice
Aaron Hand
Brenda Entzminger
BUNSOW DE MORY LLP
jtice@bdiplaw.com
ahand@bdiplaw.com
bentzminger@bdiplaw.com