

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DELTRAN USA LLC,
Petitioner,

v.

THE NOCO COMPANY,
Patent Owner.

IPR2024-01219
Patent 11,667,203 B2

Record of Oral Argument
Held: December 17, 2025

Before JAMESON LEE, AVELYN M. ROSS, and JASON M. REPKO,
Administrative Patent Judges.

APPEARANCES:

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The above-entitled matter came on for hearing on Wednesday,
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P R O C E E D I N G S

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JUDGE ROSS: Good afternoon. We are here for the final hearing in IPR2024-01219 concerning US Patent Number 11,667,203. I am Judge Ross and joining me today are Judge Lee and Judge Repko. I'm sure you all can see that I'm joining remotely, so please be aware that there may be a delay or lag in either the audio or the video feed, and make every effort to speak clearly and avoid speaking over each other to assist the Court Reporter.

During your presentation, please refer to your slide numbers to ensure that the record is clear for us. We do have access to the entire case file, so if you need to refer to papers or exhibits that are not part of your presentation, you may do so. Hearing no objection, we did authorize a public line for today's hearing, so be aware that members of the public may be joining us today. Petitioner, who has a LEAP Practitioner, will have 75 minutes for their argument, and Patent Owner, you will have 60 minutes for your argument. Because the Petitioner bears the burden of persuasion, Petitioner will go first, followed by Patent Owner, and you may each reserve time for rebuttal.

There is a clock in the hearing room, but it's not really within my field of vision, so I encourage you to keep track of your own time. I will try to give each party a warning when you're near the end of your allotted time, but that may not happen in a timely manner, given that I'm focusing on the argument at hand. It looks like Petitioner has raised some objections to Patent Owner's demonstratives. I want to be clear at the outset that demonstratives are not evidence, but a tool to benefit the oral argument. We

1 will only consider and make our final determination based on arguments that
2 are presented in the papers.

3 So, Patent Owner, please be prepared to explain how what appears
4 in the demonstrative slides was fairly presented in the Patent Owner
5 response, because that appears to be Petitioner's concern. And I think
6 specifically it's Slides 42, 43, 44, and 49 that appear a particular concern.
7 Before you begin your argument, please remember to introduce yourself and
8 those in your party, and let us know how much time you'd like to reserve for
9 rebuttal. Counsel for Petitioner, please proceed when you're ready.

10 JUDGE LEE: This is Judge Lee. Before we start, may I ask
11 Counsel for Patent Owner a question. Do you know that arguments not
12 raised in the Patent Owner response, but only in the preliminary response are
13 not appropriate for re-presentation in the trial?

14 MR. CHANDRA: Yes.

15 JUDGE LEE: Are you aware of that?

16 MR. SAUER: Yes, Your Honor. We won't be getting into any of
17 that today, so I think that' s--

18 JUDGE LEE: Is there a microphone in front of you?

19 MR. SAUER: Oh.

20 JUDGE LEE: Not on?

21 MR. SAUER: Sorry. I understand that, Your Honor. We won't be
22 getting into any of that today. I think the objections would be --

23 JUDGE LEE: I ask that because your slides actually cite to the
24 preliminary response, so that gave me the idea that you might not be aware
25 that you can't cite to the preliminary response if that argument is not
26 presented again in your Patent Owner response.

1 MR. SAUER: Well, we try to be inclusive, Your Honor, but we're
2 not letting --

3 JUDGE LEE: I can't hear you.

4 MR. SAUER: Is this microphone not on? I'm sorry. Can you hear
5 me now?

6 JUDGE LEE: Yeah.

7 MR. SAUER: We try to be inclusive in the citations, but we're not
8 going to get into those demonstrative slides. I think it'll be --

9 JUDGE LEE: Have you included in your slides material that is in
10 your preliminary response, but not in the Patent Owner response?

11 MR. SAUER: Well, that's the data, Your Honor. The materials
12 that they pointed to are also --

13 JUDGE LEE: Well, it's a yes or no question.

14 MR. SAUER: That --

15 JUDGE LEE: Because you cited to it, so I assume there's
16 something in the preliminary response that's in your slide, but what they're
17 concerned about is is it presented again in your Patent Owner response and
18 they have a legitimate complaint about it.

19 MR. SAUER: The citations -- the couple slides they're
20 complaining about, Your Honor, address things that -- arguments that we
21 consolidated in the Patent Owner response. They appear in the expert
22 declaration, it supports that. Maybe not verbatim in --

23 JUDGE LEE: So, is the answer no? Everything you cited to the
24 preliminary response is in the Patent Owner response or in your expert
25 declaration?

26 MR. SAUER: Or in the expert declaration.

1 JUDGE LEE: Are you saying that?

2 MR. SAUER: Yes.

3 JUDGE LEE: So, there's nothing inappropriate?

4 MR. SAUER: Nothing inappropriate, Your Honor.

5 JUDGE LEE: Well, okay. Like Judge Ross said --

6 MR. SAUER: But again, I think --

7 JUDGE LEE: -- since we can't decide at the moment, we're going
8 to take it into consideration. If there's anything we see that's in the
9 preliminary response, but not presented again, we're not likely going to
10 consider it.

11 MR. SAUER: That's fair, Your Honor. As I said, I don't think
12 we're going to get into those --

13 JUDGE LEE: Okay.

14 MR. SAUER: -- slides anyway, so I think it will be all right.

15 JUDGE LEE: Is that good enough for the Petitioner's side?

16 MR. CHANDRA: Yes. Thank you, Your Honor. Appreciate it.

17 JUDGE LEE: Okay, thank you.

18 MR. CHANDRA: May it please the Board. My name is Chetan
19 Chandra from Fox Rothschild representing Petitioner, Deltran USA, LLC.
20 With me is my colleague, Ryan Miller, who is lead Counsel, also with Fox
21 Rothschild, representing Petitioner. If I may, I'd like to reserve 15 minutes
22 for rebuttal.

23 JUDGE ROSS: Feel free to proceed when you're ready.

24 MR. CHANDRA: Thank you, Your Honor. This is the fourth IPR
25 on a patent in this family that I'm sure Your Honors are well aware, the
26 specifications are identical to the prior patents, the claims are directed to the

1 same features, the same prior art, and the same issues are before the Board
2 again, and those issues have already been decided in these prior proceedings.
3 The same result should occur here. The challenged claims of the '203 patent
4 should be found unpatentable.

5 My understanding is that Your Honors here today were part of the
6 prior IPR proceedings, whether it was the IPR proceeding as the '051 patent
7 or the more recent ADC IPRs against the '023 and '243 patents. As I'm sure
8 you're aware, in 2020, the '051 patent was -- the challenged claims were
9 found unpatentable, almost all, except for, I believe, Claim 11. The Federal
10 Circuit confirmed or affirmed the Board's findings on appeal. The recent
11 challenges from ADC against the '023 and '243 patents were decided in
12 August. The director denied review of, I believe, at least one of those final
13 written decisions.

14 And the decisions in these prior IPRs, again, and the factual
15 findings are all relevant to the issues here, even putting a side collateral
16 estoppel. These are, again, the same references, the same specifications, the
17 same features being claimed, to the extent that NOCO is arguing that the
18 Board should deviate from its prior factual findings, they needed to explain
19 why such a deviation was warranted and they haven't done so.

20 If we go to Slide 2, briefly I'll cover the patent and make sure Your
21 Honors are familiar with this specification. At a high level, this is a patent
22 directed to a portable vehicle battery, jump starter apparatus with safety
23 features. The specification primarily focuses on safety features that include
24 a reverse polarity sensor, a battery presence detection sensor, and their
25 relationship with the power switch and how the microcontroller uses those
26 sensors to determine when it's safe, to transfer power from the jump starter

1 to a vehicle battery that's being jumpstarted. The Patent also has six
2 sentences total regarding USB charging, generally describing using off the
3 shelf components for a DC-DC converter, and standard USB ports to allow
4 voltage to come into the device and charge the jump starter battery.

5 If we go to Slide 3, I will briefly go over Claim 1. We have -- you
6 can see that the components of the jump starter and the safety features are
7 recited and you've got a jump starter apparatus, the power supply, you have
8 limitation 1[d], a vehicle battery isolation sensor, which detects the presence
9 of the vehicle battery, reverse polarity sensor, the power switch configured
10 to electrically connect the power supply to the vehicle battery, and then
11 limitation 1[g] requires that the switch is controlled based on the signals
12 from the battery isolation sensor and a reverse polarity sensor.

13 On Slide 4, we have Claim 5. This is the only other claim that
14 limitations are in dispute. The NOCO does dispute limitations of Claim 1,
15 but Claim 5 is the only other claim that they're disputing specific limitations.
16 As you can see, Claim 5 depends on Claim 4. Claim 4 defines that a
17 microcontroller exists in the device, and Claim 5 describes the
18 microcontroller as configured to automatically cause the sensors to detect
19 when two conditions are satisfied, and we'll get into those details more when
20 we talk about those fields.

21 On Slide 6, if you could go to the next one -- or apologies -- go
22 back, sorry. On Slide 6, we've got -- there we go, Slide 5. Thank you. An
23 overview of the grounds. Essentially, we have two sets of grounds
24 -- Grounds 1, 2, and 3 -- built from a combination of Richardson and Zhao,
25 and the first set of grounds adding applicant admitted prior art where
26 alternatively, Epower-20 and 21 in Ground 3 includes Krieger. And the

1 second set is similar. It builds from a combination of Yu and Paparrizos,
2 and it includes the same secondary references in Grounds 5 and 6 that were
3 in Grounds 2 and 3. NOCO hasn't raised any disputes to Grounds 3 and 6.
4 They've challenged the reliance on AAPA in Grounds 2 and 5, but all the
5 other -- all the substantive disputes focus on Ground 1.

6 Next slide, please. One more. Okay. So, focusing on Ground 1,
7 this is a quick mapping at a high level, how the references stack up to the
8 limitations of the claim. We can see that Richardson generally teaches all of
9 the components of a jump starter aside from the USB charging limitations,
10 which are in -- you can see the blue label on the left -- in limitations 1[b] and
11 1[c]. Those are taught by the reference Zhao, and the combination we
12 proposed here is a combination of Richardson and Zhao adding USB as a
13 secondary charging mechanism to Richardson's jump starter.

14 Next slide. Again, preview this briefly. These are the prior IPR
15 decisions that relate to the features that were similarly claimed and the same
16 references that are at issue here in Ground 1. We agree the claim language
17 is not identical in the other patents, but we assert that the claims are the same
18 features, and even though different words are used, these are distinctions
19 without a difference.

20 Next slide, please. The high level. Slide 9 goes over the
21 motivations to combine that a petition provides, adding Zhao's USB
22 charging as a second option provides standardized power input, reduced
23 proprietary chargers, ubiquitous availability of USB ports and charging, and
24 as well as a backup charging option, in case you don't have the included or
25 the AC charger that might come with the device.

26 Next slide, please. I'll quickly go over Ground 4, which is very

1 similar to the references and arguments of Ground 1. The mapping is
2 similar. Yu is a portable jump starter that teaches all of the limitations of the
3 jump starters claimed, except for the USB charging features. Paparizzos
4 teaches those features and just like in Ground 1, we propose that it would be
5 obvious to combine the USB charging of Paparrizos with the jump starter of
6 Zhao as a secondary charging mechanism. Next slide. Here, again, is the
7 two prior IPRs that dealt with Yu and Paparrizos. These are the two ADC
8 IPRs that were decided in August of this year, and again, the same or similar
9 safety features and USB charging were found to be obvious over the
10 combination of Yu and Paparrizos. And motivation to combine the high
11 level -- they're similar to what we proposed in Ground 1. I'll note that
12 Paparrizos has some specific disclosure about the popularity about USB that
13 we have, of course, included as part of the grounds in Ground 4.

14 Next slide, please. So, this is an overview of NOCO's arguments
15 with the petition. Ground 1, they dispute three things, essentially. That
16 Richardson teaches the timing of limitation 1[g], they dispute the motivation
17 to combine for adding USB as a secondary charger, and they also dispute
18 that Richardson teaches Claim 5. For Ground 4, they dispute that Yu
19 teaches the control of a relay as required in limitation 1[g]. They dispute the
20 motivation to combine, again. And then Grounds 3 and 6, they allege that
21 AAPA -- applicant admitted prior art -- is an improper basis for these
22 grounds.

23 I would like to talk about motivation to combine last because my
24 understanding is that Your Honors are familiar with the arguments, that the
25 same arguments are represented in the ADC IPRs that the Board recently
26 decided. The issues are the exact same. The combinations of references are

1 the exact same. To the extent there are any references, we've added a few
2 exhibits in response to NOCO's arguments that we believe are icing on the
3 cake. Your Honors believe they support the same decision that you reached
4 before, but all the same rationales and reasonings and factual findings that
5 were relied upon in the final written decisions for the ADC IPRs will hold
6 true here. So, unless Your Honors want to get into motivation to combine, I
7 would actually like to start with an issue not listed on here, which is
8 collateral estoppel.

9 So, regarding collateral estoppel, we believe that collateral
10 estoppel should apply, at least supports findings with regards to the '015
11 patent in what Richardson teaches. As noted in the petition on pages 29 and
12 30, we lay out the elements of collateral estoppel and we explain that the
13 claims of the '015 patent, although there are differences in the words, the
14 same features are recited. Specifically, we provide Exhibit 1051, which has
15 a table of comparing the invalidated claims of the '015 patent based on
16 Richardson compared to the claims of the '203 patent. And we believe that
17 comparison speaks for itself. A simple reading of those features reveals that
18 again, although the words are different, they are the same features being
19 claimed.

20 NOCO has disputed that the claims are substantially the same and
21 in their Patent Owner response at page 36, they provide a redline comparison
22 to show, you know, the strikethroughs and underlines of new language
23 comparing the '015 patent to Claim 1 and the '203 patent to Claim 1. Again,
24 we don't dispute that these words are different, but these are different words
25 that do not lead to a substantive difference. At NOCO's Patent Owner
26 response, they point to three differences in the claims that they allege

1 provide a new question of patentability.

2 Two of those are deletions that NOCO notes that '203 patent
3 deletes the microcontroller and does not require that the battery presence
4 detection sensor is connected to the positive and negative outputs. Those
5 deletions just mean the '203 patent claims a broader limitation than what was
6 in the '015 patent, and what the Board has already found is that the species
7 limitation of the '015 patent is taught and anticipated by Richardson.
8 Richardson therefore anticipates and teaches the genus limitation. The third
9 change they note between the '203 patent and the '015 patent Claims 1, is
10 that the '203 patent only indicates that the vehicle battery is connected to the
11 jump starter, as opposed to indicating the presence of a battery.

12 This is a distinction without a difference, in the context of a jump
13 starter -- a battery that is connected to the jump starter -- is a battery that's
14 present. Just because different words are being used, it doesn't mean there's
15 a difference in the feature that's being claimed in the '015 patent Claim 1 and
16 the '023 patent Claim 1. And moreover, NOCO's briefing is constantly
17 referring to detecting the presence of a battery. They cannot fairly claim that
18 the fact that the '015 patent Claim 1 doesn't specifically say detect a presence
19 of a battery, that that is not what is actually being claimed.

20 NOCO also argues that the addition of the USB port and the DC-
21 DC conversion circuit and limitations 1[b] and 1[c] of '203 patent Claim 1
22 means that there's a substantially different invalidity issue here in this case,
23 but that misses the point, right? We're not asking the Board to apply the
24 findings regarding Richardson to those limitations. We are asking the Board
25 to apply the findings that Richardson teaches the safety features of the jump
26 starter to the same safety features that are being claimed in the '203 patent.

1 And more than that, you can see that the addition of USB charging port and
2 a DC-DC conversion circuit doesn't materially alter any of the other claimed
3 features.

4 Now, we know this because the '015 patent Claim 1 is a dependent
5 claim -- sorry -- Claim 11 depends from Claim 1 and recited the USB
6 charging port. That means that '015 patent Claim 1 held within its scope a
7 jump starter with all of the explicitly recited safety features and a jump
8 starter that includes a USB charging port. But the fact that that was within
9 the scope of Claim 1 didn't prevent the Board from finding that Richardson
10 teaches all of the safety features and components to the jump starter and the
11 same should apply here. The fact that the USB -- that Claim 1 of the '203
12 patent adds USB charging doesn't materially alter, in any way, the other
13 features that are being claimed in the '203 patent Claim 1.

14 The Board's findings of fact were also essential. The finding of
15 fact in the '015 IPR were essential to the Board's decision that Richardson
16 anticipates Claim 1. Of course, the Board needed to find that Richardson
17 taught every reference that was claimed in the '015 patent Claim 1 in order
18 to decide that Richardson anticipates that claim. NOCO disputes that the
19 findings of fact were essential for two reasons. The first is a focus on the
20 wrong final judgment. NOCO believes the final judgment at issue here in
21 collateral estoppel was just that Claim 1 is unpatentable and they say that
22 there were two alternative grounds that the Board relied on -- they were
23 separate from each other -- to find that Claim 1 was unpatentable.

24 But this leads to an absurd result. Essentially, NOCO is arguing
25 that even if you have two identical claims, so long as the first decision
26 involved more than one invalidating ground, the collateral estoppel would

1 never apply to even identical claims. That is not how collateral estoppel
2 should apply and how it is intended to work.

3 JUDGE LEE: Counsel, this is Judge Lee. Did you cite any case
4 authority which says that collateral estoppel would apply on a limitation by
5 limitation basis?

6 MR. CHANDRA: Yes, Your Honor. In our petition, we did cite
7 to, I believe, it's *Interconnect* -- I'll get you the citation. On pages 29 and 30
8 of the petition, we do cite to, I believe it's *Interconnect*, that talks about
9 approaching claims on a limitation by limitation basis. In that case, the --

10 JUDGE LEE: In the petition? Because in the Patent Owner
11 Response, they cite a applicable Federal Circuit case law, which seems to
12 say the other way, that the whole claim has to be essentially the same, and
13 there's also a narrative in that case which explains why, that you can't just go
14 and say, oh, this limitation is similar to that limitation in the other claim and
15 therefore, a party is estopped from arguing. You actually have a case in
16 your petition that goes against that?

17 MR. CHANDRA: We believe we do. We believe that the cases
18 NOCO has cited and I believe they also cited *Interconnect Planning*
19 Corporation to raise this argument and they also cited *GE/Raytheon* with a
20 contention that a claim must be treated as a whole. As to the second case,
21 *GE/Raytheon – GE v. Raytheon Tech Corp.* case is about obviousness and
22 whether a motivation to combine was properly raised or whether the
23 Petitioner simply addressed the claims limitation by limitation and didn't
24 consider the device as a whole.

25 It really wasn't a case about collateral estoppel, and with regard to
26 *Interconnect Planning*, the Federal Circuit did take issue with a patent

1 challenger, essentially saying collateral estoppel applies to limitations and
2 we're only going to address the ones that collateral estoppel doesn't apply to.
3 But that's not what we're doing here. We're saying that -- we are addressing
4 the claim as a whole. We want the Board to not just put aside those
5 limitations, but hold to the findings of fact which were Richardson teaches
6 the features that are being claimed. And from that, we are adding the USB
7 charging, which is now claimed in the '203 patent, and we are proposing a
8 combination of the references and the prior teachings of the Board, and we
9 also provide our own citations to Richardson.

10 So, we believe that the case law that NOCO is citing is actually the
11 Federal Circuit saying, hey, you can't just leave prior limitations to collateral
12 estoppel and then only attack the limitations that weren't collaterally
13 estopped because that's not what we're doing. We're not simply relying on
14 collateral estoppel. We just want, you know, the issue of whether
15 Richardson teaches a battery presence detection sensor, for example, that has
16 been decided. That issue is done. Richardson teaches that feature and we
17 want NOCO to be estopped from arguing otherwise.

18 JUDGE LEE: Counsel, this is Judge Lee. In looking at page 29 of
19 the petition, you cite just one case for the proposition that one of the
20 requirements for collateral estoppel is that the issue is identical. Well, how
21 is the issue identical if two claims are substantially dissimilar?

22 MR. CHANDRA: Thank you, Your Honor. We believe the issues
23 are identical because the claims are not substantially different. They are
24 substantially identical here, right? First, I do want to be clear what the issue
25 is because I think the parties dispute. We believe the issue is whether
26 Richardson teaches the limitations claimed, and the issues are the findings of

1 fact that the Board had in the '015 IPR, and as to the claims having words
2 that are different, as we believe are comparison, Exhibit 1051 and as I've
3 talked about briefly here, the difference in wordings do not lead to a
4 difference in the feature being claimed, such that the Board's prior findings
5 no longer apply. These are patents that have the same specifications and it's
6 not like they describe --

7 JUDGE LEE: Can you move the microphone more towards you?
8 Thank you.

9 MR. CHANDRA: Thank you, Your Honor. Sorry. You know,
10 these specifications describe essentially one embodiment on how to perform
11 the function it described. It's not as if the describing five, six, seven
12 different ways to do the same thing, right? So, just because you have a lid
13 with a cup and then you claim a lid with a cover, they're different words, but
14 they're the same feature, right? That's what we believe is happened here.
15 An examination of the differences of the words reveals that the features
16 being claimed are substantively identical.

17 JUDGE LEE: Well, frankly, I'm a little confused because earlier, I
18 asked you does estoppel apply on a limitation by limitation basis and you
19 said yes. So, that would mean it doesn't matter what the other limitations
20 say, as long as there's one similar limitation here and there, then they can't
21 say anything on that limitation, that they didn't argue about that limitation
22 before. That's limitation by limitation. And then I asked you a question.
23 Does the whole claim have to be the -- what if the whole claim is dissimilar,
24 and immediately, you go, oh no, but here, the whole claim is not dissimilar.
25 Well, you can't have it both ways.

26 What if we decide these are not substantially similar claims as a

1 whole? Then where are we? Do you stick by your earlier answer, well it's
2 limitation by limitation, then the claims are different and it wouldn't make
3 any difference to you because if this limitation is exactly the same, then you
4 would say estoppel still applies. But you seemed to have backtracked to say,
5 well, if the claims are, as a whole different, then there wouldn't be estoppel,
6 so that's why I'm confused. Which way is it going to be?

7 MR. CHANDRA: I'm sorry, Your Honor, and I'm sorry if I was
8 unclear. We believe the limitation by limitation analysis is the applicable
9 and appropriate here because the features that were found to be taught by
10 Richardson are the same, and where this claim '203 is, as a whole, different
11 is in regard to the USB charging limitations, but those limitations don't alter
12 the teachings of Richardson as they are applied to the other safety features of
13 the claim. So, we believe that the limitation by limitation analysis allows
14 you to look at the features that are being claimed in the instant claim and you
15 look back to what the findings were as to those features, you do have to, of
16 course, look at the claim overall and consider whether, you know, are there
17 other features that alter the findings of fact and whether those findings of
18 facts apply. In this case and in these claims, we believe the answer is no,
19 that the additional claims and the different words that are being used don't
20 materially alter the -- whether the Board's prior findings of fact as to what
21 Richardson teaches would apply here to this claim. Thank you, Your Honor.

22 JUDGE REPKO: So, I just want to follow-up because you're kind
23 of talking about this at kind of a high level, just being more concrete about
24 the issue with Richardson. They're arguing that they fail to teach the
25 presence of the battery according to the steps, so you're saying that that's
26 where collateral estoppel applies, in that particular teaching?

1 MR. CHANDRA: Yes, Your Honor. I believe it does apply to
2 that particular teaching. We can -- if we take a look at Exhibit 1051 --

3 JUDGE REPKO: And before you answer, I had a follow-up
4 question to that. And that's the same feature in the claim, you're saying?
5 There's been no changes in the claim with respect to that particular feature
6 -- battery presence detection?

7 MR. CHANDRA: Thank you. There are changes to the words
8 being used and the '203 patent doesn't require all of the elements, so if we're
9 talking about the limitation 1[g] of the '203 patent and the last limitation of
10 the '015 patent Claim 1, the '015 patent Claim 1, that limitation requires
11 more than what the '203 patent requires. And so my point here is that just
12 because it requires more, it becomes a species of what the '203 patent is
13 claiming.

14 JUDGE REPKO: So, they are different. So, then you end up
15 going back to the argument about limitation by limitation. We should be
16 looking at this by limitation by limitation other than a claim as a whole to
17 determine whether (INDISCERNIBLE) because those limitations are
18 different. You're just kind of arguing about the substance of that difference.

19 MR. CHANDRA: Yeah, I believe it -- I believe you have to do
20 both. I think you do have to examine the limitations to each other and also
21 look at whether the claim as a whole, you know, materially alters what is
22 being claimed and we believe that if you look at an examination of the
23 words and what's being claimed, it's really -- this is a case where the
24 difference is in wording and the fact that the '203 limitations and the '203
25 patent Claim 1 are broader, we still end up in a place where the findings of
26 fact from the '015 patent apply to these features and --

1 JUDGE REPKO: And I get the gist of your argument and it would
2 be helpful to kind of flush that out in specifics from Richardson and talking
3 about the battery presence detection in particular. That might help, you
4 know, us, as well.

5 MR. CHANDRA: All right. Thank you, Your Honor. Absolutely.
6 And I'm happy to move there.

7 JUDGE ROSS: Could I ask a quick question, please?

8 MR. CHANDRA: Yes.

9 JUDGE ROSS: Do we even need to decide the collateral estoppel
10 issue? I mean, it seems to me that if your petition clearly made out your
11 case for the combination of Richardson and Zhao, then we don't even need
12 to reach that.

13 MR. CHANDRA: That's exactly right, Your Honor. That is our
14 position, as well. We believe collateral estoppel applies, but you don't need
15 to decide that issue in order to find these claims unpatentable. As I
16 mentioned before, these are the same references. We have fairly sought out
17 all of the portions of Richardson, we cited to specific portions. Not just
18 relying on collateral estoppel, but the teachings of the reference itself. So,
19 while this is an issue, we believe that collateral estoppel should apply. It
20 does not have to apply in order to find the challenged claims unpatentable.

21 If we can go to Slide 15. I'll move exactly into the disputes about
22 Richardson. So, as we were just discussing a little bit, limitation 1[g] is at
23 issue. NOCO is challenging that Richardson teaches the controlling the
24 power switch, such that the power supply is connected, based on the vehicle
25 battery sensor detecting the presence of the vehicle battery, and this is prior
26 to closing the switch.

1 So, Richardson expressly teaches this limitation. Limitation -- if
2 you look at the second bolded part after the little letter I, is the vehicle
3 battery isolation sensor currently indicates that the vehicle battery is
4 connected to the jump starter apparatus. Paragraph 34 of Richardson
5 expressly describes that this occurs. The very first sentence of that
6 paragraph states that if one of the push buttons, which is auto or manual
7 buttons has been selected, the system will compare the operator configured
8 starter voltage against the voltage of the vehicle to be started. Richardson is
9 getting a voltage from a connected vehicle battery and comparing it to what
10 the user has selected and deciding if that comparison is within a pre-
11 determined range.

12 The same paragraph says that if that comparison is in the pre-
13 determined range, to step 252 will return a yes. That means that the system
14 just detected a voltage from a battery that was present, compared it to a user
15 selected voltage, and confirmed yes, the comparison is in the pre-determined
16 range. That's what the claim requires. We just confirmed that a battery is
17 present, it has the voltage we want, let's move on. Full stop. That's what the
18 claim requires and that's all that -- we have other parts that Richardson said,
19 as well, but that expressed disclosure alone teaches what is claimed. NOCO
20 doesn't really actually dispute that paragraph. Instead, they assert that
21 Richardson, you know, can't do some other function and because it can't do
22 this other function, it's inoperable and not enabled.

23 Go to Slide 18. So, this is a red herring argument in its truest form
24 from NOCO. Again, what I just described and what we just went over is
25 how Richardson's device operates in auto mode and that, by itself, teaches
26 what is claimed, and the case law is clear that the relevant inquiry as to prior

1 art enablement is whether a person of skill at the time, the patent would have
2 been able to combine the relied upon elements of the prior art. Again, we
3 are relying on that expressed disclosure about how auto mode works.
4 Whether manual mode works or how it comes into play is not relevant even
5 to the enablement question.

6 You can leave the Slide 18 up. Thank you. So, turning to the
7 enablement argument that NOCO has raised, I want to be very clear that this
8 is their burden. We cited the *Apple v. Corephotonics* case in our reply at
9 page 6, and that case is very clear. The Federal Circuit directly dealt with
10 the issue of who has the burden to prove that prior art is not enabled. That
11 case held that printed publications and printed patent publications have a
12 presumption of enablement and it is always the burden of the Patent Owner
13 to show that the prior art is not enabled.

14 NOCO has fallen well short of that burden. They haven't offered
15 any discussion of law in its factor, they haven't discussed undo
16 experimentation at all. They do cite a case law that mentions
17 experimentation, but they have no actual discussion of why undo
18 experimentation is occurring here. So, they can't fairly claim that they've
19 properly addressed the standards for prior art enablement that are required.

20 JUDGE REPKO: Which of these issues were present in the
21 previous, in terms of the being a necessary part of making this decision?

22 MR. CHANDRA: Yeah. The question of enablement was not
23 raised in the prior IPR, so the question of whether Richardson is enabled, it
24 is fairly new, but you know, the reasons -- I can go into it -- it still falls on its
25 face. It's unsupported argument. Go to Slide 18.

26 JUDGE LEE: Counsel, this is Judge Lee. What's the answer to

1 Patent Owner arguing that the earlier patent -- the '015 patent -- was -- some
2 of the claims were found unpatentable on multiple grounds, so -- which
3 makes it -- makes estoppel not apply, if it wasn't necessary?

4 MR. CHANDRA: Yeah. I believe that's a bit of an absurd
5 argument. I tried to allude to it before that I believe that argument would
6 lead to even identical claims not being estopped if the first patent -- the first
7 claim was, you know, anticipated by more than one reference. I don't
8 believe, at a basic level, the collateral estoppel is meant to allow a Patent
9 Owner or a litigant to keep bringing the same claims on the same identical
10 recited claim, just because it was multiply or triply invalid over references,
11 but there also is case law.

12 One of the cases that NOCO cited is a *John Alexander* case from
13 the 3rd Circuit at their Patent Owner response, page 40. That case
14 specifically held that in the 3rd Circuit -- I'm quoting from page 253
15 -- denying preclusive effect to a finding that would support a Court's
16 judgment really because the case was disposed of on other grounds, as well,
17 would result is an inefficient use of private and public litigation resources.
18 So, we have appeals courts looking at this issue and deciding that, you
19 know, just because there were multiple separate grounds that were sufficient
20 to dispose of a claim, that doesn't somehow preclude the application of
21 collateral estoppel.

22 Turning to the facts of what NOCO has alleged, even if they're
23 right about this being an issue that needs to be decided and that's right for a
24 decision, again, you know, we assert that this is all a red herring here.
25 Richardson's auto mode teaches what is claimed, but even if we get into the
26 issues, NOCO is wrong that Richardson is not enabled. Again, this is their

1 burden and they assert essentially that Richardson would never work if it
2 could -- if that 252 could detect a dead or not connected battery and return a
3 no. So, it could never work. We have shown in our reply, responding to
4 that argument, that a POSITA would understand readily based on a
5 disclosure of Richardson, based on reading the entire text of Richardson and
6 armed with the knowledge of a POSITA that one way Richardson could
7 work is to simply have two separate tests at step 252.

8 JUDGE REPKO: That's not in the figure or in any explicit
9 teaching in Richardson.

10 MR. CHANDRA: Yes, that's correct. The table here is shown on
11 the bottom left of Slide 19 is not in Richardson explicitly and he doesn't
12 explicitly describe this, but our contention, and supported by Dr.
13 MacCarley's analysis and opinions, is that if you look at the way Richardson
14 is designed, he describes that auto mode would work when there is an
15 appropriate battery for the selected voltage, and I believe 15 paragraphs later
16 says manual mode will work if there's a dead battery or no battery connected
17 at all, and a POSITA would understand that you're describing two modes
18 that are meant to work for different conditions.

19 Then if you look at step 248, which occurs right before step 252,
20 Richardson's system requires that the system be in manual or auto mode
21 before you can go to step 252. So, this is information -- what mode are we
22 in -- that the system has to have before you get to step 252. So, a POSITA
23 looking at this and understanding that the modes are intended -- the manual
24 mode is intended for dead or not connected battery and that Richardson's
25 disclosure about auto mode is talking about, you know, one use of the case
26 where the voltage of the vehicle battery is appropriate for the user's selected

1 voltage, one very easy way to implement this, based on a POSITA's
2 understanding of a system and their own basic logical engineering is to just
3 have two separate tests.

4 Use the information that you gained in step 248 and have two
5 different tests. If you're in manual mode, test it one way. If you're in auto
6 mode, test it a different way. And again, this is our response to their burden.
7 They say it would never work and we're saying a POSITA would readily
8 understand that this is one way it could work, and where a party says, hey,
9 it's not enabled, it never works, even a single example of how it likely and
10 plausibly could work defeats that argument.

11 JUDGE REPKO: I understand it's not reflected in Figure 5, as
12 well, right? When you start looking at Figure 5, that's not -- the table is not
13 reflected in that figure, correct?

14 MR. CHANDRA: Yes, that's correct, and that is what NOCO is
15 arguing, but I believe they're essentially ignoring a POSITA's knowledge. A
16 patent document doesn't have to describe every single aspect of every single
17 part of every single, you know, little detail of how it works. Patents often do
18 leave open to a POSITA the parts that the drafter will know a POSITA will
19 understand, and our position that this is one of those parts, you know -- that
20 table is an example of how it could work, we're not saying that is exactly
21 how it must work, but we're saying that a POSITA would understand that's
22 one way it could work.

23 JUDGE REPKO: And so your expert has created a table,
24 essentially, and does he base on that table on any other evidence in the
25 record? Is there any other patents or anything else that would kind of
26 describe that or products that describe that table?

1 MR. CHANDRA: That table is based on the disclosure of
2 Richardson. The vehicle batteries seen on the left are parts of Richardson
3 that vehicle battery -- or that the jump starter voltage, that that vehicle
4 battery overview, those are all parts -- those are disclosures from Richardson
5 and it goes into quite a bit of detail on creating this table. And even the
6 results are part of disclosures, so his opinion is that this table is
7 (INDISCERNIBLE), but he understands the written Richardson standard
8 that a POSITA would know at the time.

9 JUDGE REPKO: Do you have any further evidence on what a
10 POSITA would know? Is your expert testimony -- is there anything other
11 than that?

12 MR. CHANDRA: On this issue, of course a POSITA would -- we
13 do cite our preferences in our backup section.

14 JUDGE REPKO: Right.

15 MR. CHANDRA: I'm sure if he specifically cited those
16 preferences from this issue --

17 JUDGE REPKO: Um-hum.

18 MR. CHANDRA: -- that would inform the general knowledge of
19 the POSITA, so I think what they are asking -- they're essentially talking
20 about this table and then others in certain references, I believe the answer is
21 no, but the general knowledge of a POSITA is described in our petition and
22 there are other references to support this.

23 JUDGE REPKO: Okay, thank you.

24 JUDGE LEE: Counsel, it's Judge Lee. Is that a complete answer
25 to Patent Owner's argument that Richardson is sufficient, for you to just say,
26 well we're not relying on the manual mode, we're relying on the auto mode.

1 Does that completely rebuff Patent Owner's argument?

2 MR. CHANDRA: We think it does. We think, I believe, on two
3 slides back, the case law is quite clear about what we are talking about at
4 challenge with the patent and relied upon elements. The question is whether
5 those elements relied upon are enabled. I think it's on Slide 18. So, we
6 reassert that it's only, you know -- if you use Richardson's device in auto
7 mode, you will -- the device will detect the presence of a battery before it
8 allows the switch to close and that's it. You just have to use it in one way to
9 have what the claim requires. So, that's all that is required to show that these
10 claims are taught by Richardson. Those are the required elements. So, we
11 believe that is sufficient.

12 JUDGE LEE: So, if you do rely on the manual mode, then they
13 would have a point, but you did not. That's --

14 MR. CHANDRA: I think that's fair to say, yes. If we relied on
15 manual mode, then they have a point, but these claims don't recite manual
16 mode. I think you would -- I think the patent describes it with the claims
17 simply not saying it, so we do not rely on that because we didn't have to.

18 JUDGE LEE: Thank you.

19 MR. CHANDRA: And I think, just to tie the bow on that, one of
20 those arguments is that in their surreply, they assert all this argument about
21 the table and how Richardson might work needed to be in the petition, but
22 again, I'll direct Your Honors to the *Apple v. Corephotonics* case, that was
23 the issue that was directly cited by the Federal Circuit, that Petitioner, Apple,
24 had -- or the Board had held that Apple -- the Petitioner had to show in the
25 petition that a prior art was enabled and the Federal Circuit answered the
26 question, is that the appropriate distribution burden, and the answer was no,

1 that the Petitioner is not required to show enablement. Prior art is presumed
2 to be enabling and the burden is on the Patent Owner. You know, once the
3 Patent Owner raises the issue, of course the Petitioner needs to respond and
4 we've done so here.

5 So, I'd like to turn to the discussion about the teachings of Yu in
6 respect to limitation 1[g]. So, we'll first take a look at Slide 15 and then the
7 issue with Yu here is focusing on whether the power switch is controlled
8 based on signals from the vehicle isolation sensor. If you go to Slide 20,
9 what NOCO is arguing is that the user is performing an evaluation of a
10 detected voltage and then deciding whether the switch should be closed.
11 That is simply a tortured and incorrect reading of the evidence.

12 The next slide, Slide 21, we know that Yu explicitly teaches the
13 microprocessor controls the opening and closing of the relay. This isn't in
14 dispute. It's the microprocessor. It's the only thing that can control the
15 opening and closing of the relay. We discussed this in our reply and
16 NOCO's expert confirmed as much in the petition and those citations are in
17 our reply on pages 8 and 9. On the next slide, we can look at paragraph 26.
18 This is a portion of paragraph 26 in Yu, and the text in red, first sentence
19 says, the microprocessor 42 will detect external battery voltage. The very
20 next sentence tells you what it's doing with that detected voltage. It's an "if
21 then" statement. If the external battery voltage is within the normal range,
22 then the JUMP of the input buttons can be pressed to close the relay.

23 A POSITA would understand and Dr. MacCarley has testified that
24 this is a basic if then statement and the converse helps show how you
25 operate. If the external battery voltage is outside the normal range, then
26 pressing the JUMP button will do nothing. The microprocessor will not

1 close the relay. That tells you that the device that's doing the evaluation of a
2 normal range, is the microprocessor. It's not the user and it's not just this
3 paragraph.

4 So, this paragraph, if you read it in its entirety, is almost
5 exclusively directed to describing what the microprocessor does. NOCO has
6 picked up on, you know, perhaps an unstated portion of the if the external
7 battery falls into -- is within the normal range, and they're trying to exploit
8 that they believe is an ambiguity here, but if you read the entire paragraph of
9 Yu and as we explained in the petition and Dr. MacCarley opines, also
10 understand the goal of Yu is to prevent sparks when transferring power from
11 the transformer to the battery.

12 So, with all the context of Yu in mind, a POSITA would
13 reasonably and readily understand that this paragraph is described and that
14 the microprocessor is detecting the voltage, determining if it's in the normal
15 range, and then it allows the JUMP button to be pressed by the user.
16 Essentially, that's, you know, a final check to the user -- hey, do you want to
17 proceed, we're ready to go, hit the JUMP button if you want to go. But that
18 doesn't mean that the user is doing the evaluation. It's quite clear and
19 opposition is that NOCO is torturing this paragraph to insert the user where
20 you never talked about a user and never assessed. The user either knows a
21 normal range or is doing any evaluation there, just concerning unreasonable
22 readings of this paragraph because they just found that sentence that perhaps
23 wasn't written perfectly.

24 JUDGE LEE: Counsel, this is Judge Lee, again. I want to go back
25 to Richardson because in the surreply, Patent Owner says at step 252,
26 actually, the system doesn't care whether you're in auto mode or manual

1 mode because the diversion happens at step 258. So, based on that, the
2 operation would be the same at step 252 for manual and for auto mode.

3 MR. CHANDRA: I hear that argument, Your Honor. That is not
4 how Dr. MacCarley reads this and it's not how we read Richardson as
5 operating. Potentially, step 258 is a state check in order to bifurcate the flow
6 chart, right? The next step has to be auto or manual mode, depending on
7 what situation, what kind of battery you have, whether it's a dead one or a
8 not present battery. Those two scenarios, the system will send you over to
9 the manual mode steps, which in Figure 6, are on the right-hand side, and the
10 auto mode steps are on the left-hand side of that. So, what Richardson is
11 doing is just directing the system to the next appropriate step, and the other
12 part here is that Richardson doesn't say that it's using voltage detection as
13 258. It's just looking at whether, you know, there is -- the system is being
14 manually -- has already been put in manual or auto mode. At least at step
15 248. Could've been earlier, as well.

16 So, the other part of, you know -- the other response to this is that
17 if what NOCO is saying is true and the system is not using the information
18 in step 248 and in step 252, why do you even have step 248? Why even
19 require the system to be in auto or manual mode if at step 252, you're not
20 using that information? It's only one test. You don't need to know. It could
21 wait until step 258 and then require the user to press those buttons.

22 JUDGE REPKO: So, yeah. Well, 248 is saying yes or no is
23 manual or auto pushed, but you could've drawn that differently. You
24 could've said, you know, which button was pushed and then have a flow
25 chart going down, one from manual, one from auto and wouldn't that be the
26 more natural way to depict that particular interaction?

1 MR. CHANDRA: I agree that it could've been drawn differently.
2 I don't know whether it's the more natural way. I think that Richardson
3 offers one way to depict -- I think, many ways to depict the same system.
4 The system that uses auto mode or manual mode. One is checking voltage
5 and then the system says, go to the next step, it is either manual mode or
6 auto mode. Well, how do we direct the flow chart, how do we describe this.
7 One way to describe in the Figure 6 is to have the step that just essentially
8 directs the flow chart, the state check. I agree that it could be different and
9 this is kind of our point that a POSITA would understand that these are
10 exemplary. These are examples of one way the system could work, but
11 understanding the goals of what Richardson is trying to do and how these
12 modes operate, our point is that a POSITA would understand that there are
13 likely two different tests to step 252.

14 JUDGE REPKO: Yeah, because I mean, if you look at 258, they
15 did draw it that way. They have auto/manual, but in 248, they just said, yes
16 or no, so I mean, it's kind of odd, don't you think, that they would depict it
17 one way in one step and another way in another step, if they were actually
18 checking for auto or manual at 248.

19 MR. CHANDRA: I believe I agree with you. I just want to be
20 clear and make sure I fully address what you're saying. I agree that
21 Richardson purposely showed and described 248 as requiring one of the auto
22 or manual buttons to be pressed by the time you get to that step. Then when
23 it describes 258, it's not requiring, it's not even asking, you know, did the
24 user press a button. It's just saying, which button was pressed.

25 JUDGE REPKO: Yeah, it says which button was pressed, so if
26 you were thinking of -- the 252 would behave differently. Depending on

1 which button was pressed, 248 would look like 258. So, 258, it says manual
2 or automatic and that is to pass -- one going auto, one going manual; 248
3 doesn't care. It looks like it just -- it's looking for whether auto or manual
4 and then it goes down to 252. So, I mean, if it were actually -- if 252
5 depended on auto or manual, you would think that it would also have that
6 same depiction as you had in 258 with auto going one path, manual going
7 the other path, and then have maybe two versions of 252.

8 MR. CHANDRA: I see what you're saying and I think that it
9 could've been depicted that way, but the fact that there is no bifurcation, I
10 think, in 258, doesn't mean based on, you know, the reading of Richardson
11 in its entirety of how auto modes are described and how manual modes are
12 described, that just because Figure 5, you know, they showed to step 252 as
13 one level instead of being split out, then it doesn't defeat Dr. MacCarley
14 understanding that there could be two separate tests, and the tests would be
15 the same, that what voltage are you detecting versus what, you know -- so
16 action is made and is it in a right range, but a pre-determined range, it
17 doesn't have to be one. It can be the pre-determined range for auto mode. It
18 can be three pre-determined ranges for manual mode.

19 If any of them are satisfied, then we will proceed, but the system
20 has that information and it requires it. I think that's the key, right. Before
21 you get to step 252, I mean, the only step between 252 -- sorry, 248 to 258 is
22 step 252. There's one step essentially uses the information that you gave in
23 258. And Dr. MacCarley has opined that -- because Yu would understand
24 that we would use that information to answer similar tests so then you could
25 then operate a dead or a non-existent battery in manual mode, and for auto
26 mode, you wouldn't allow those batteries to proceed.

1 JUDGE REPKO: Thank you. No further questions on that.

2 MR. CHANDRA: Thank you, Your Honor. I'd like to talk about
3 the disputes to Claim 5. This is Slide 33. NOCO disputes that Richardson
4 teaches what is claimed as being taught. Just as the claim -- as it appears in
5 the patent -- the next slide is the same language, but broken up a little,
6 basically. You can see that there is a controller configured to perform an
7 action, automatically cause the sensors to detect when two conditions are
8 satisfied. To be clear, NOCO is asking for this claim to be construed.

9 They haven't identified it as a claim construction issue, but they are
10 asking the Board to insert additional time constraints to define what the
11 words "become operational" to mean, and their assertions here are simply
12 not supported by claim language or the patent. And it's -- Patent Owner
13 responds, NOCO essentially ignored the first stated condition that the
14 vehicle battery must be electrically connected to the jump starter. Again,
15 that's connecting the claims, essentially. NOCO ignored that. We pointed
16 out, hey, you've ignored this part of the claim and then in the surreply, they
17 said, no, we didn't ignore it, this is what the claim means, and you can see
18 what they wrote is that Claim 5 requires specific action at the time when the
19 user has hooked up the power cables to the battery and has pressed a button
20 to power on the jump starter.

21 So, NOCO was finally forced to acknowledge the first stated
22 condition. Their statement of what the claim requires actually shows
23 -- confirms that Richardson does exactly what's claimed. This is the same
24 language as (INDISCERNIBLE), for demonstrative purposes. In the next
25 slide, we'll see that Richardson does what they say the claim requires. At
26 Figure 3, the devices power on in 200. At 210, after Richardson has

1 performed various self-tests and bootup sequences to make sure it's all
2 functioning correctly, in 210 the device is operational. Then in step 214, the
3 paragraph 27 of Richardson describes that once the jumper cable 60 has
4 been manually connected to the vehicle to be started, the voltage is measured
5 by the reverse voltage sensor from before, determines that the cables have
6 been properly connected to the vehicle.

7 So, here we are. We have a device that's operational, the user has
8 pressed the power button, and once the cables are connected, the first stated
9 condition in the claim, reverse polarity detection occurs. You'll see on the
10 next slide, after that step occurs, all the next steps, all the way through to
11 step 252, are automatic. So, this is what -- this is the action that the claim
12 requires. Automatically cause the sensors to detect after you've connected
13 the clamps or when you've connected the clamps and the device is
14 operational. All these steps are automatic.

15 The fact that step 252 is, I think, approximately six steps after 214
16 doesn't defeat that these are automatic steps. Even step 248 is automatic. To
17 be clear, Dr. MacCarley testified in his deposition to this. Step 248, again,
18 doesn't require at that moment the button has been pressed or is being
19 pressed. It just requires that it was pressed prior to. So, the user turns on
20 Richardson's device, it's ready, it's operational, they press auto, and then they
21 connect the clamps. Well, at that moment, Richardson's device would
22 proceed all the way to jump starting the vehicle, assuming, you know, the
23 other safety checks that Richardson has are satisfied. Go to the next slide.
24 All right. So, NOCO does argue that they --

25 JUDGE ROSS: And Mr. Chandra, you have about five minutes
26 left in your opening.

1 MR. CHANDRA: Thank you, Your Honor. So, I'll just briefly
2 touch on this. You know, NOCO consistently confuses what action the
3 claim requires. In the briefing, they say claim requires presence detection
4 when the jump starter becomes operational. That's not true because we
5 showed earlier, the claim language says, automatically cause the sensors to
6 do their detection. The action is automatically caused.

7 The other issue here is that NOCO disputes that the claim cites
8 becomes operational, but not when it is operational, so they're drawing a
9 distinction here. That distinction is not supported by the patent at all. They
10 cite to one sentence in their Patent Owner response that says there is a light,
11 309, LED, that turns on when the device is powered up for operation. It is
12 powered up for operation. It doesn't say anything about becoming
13 operational at all. So, this distinction they created is not supported for a
14 construction for proposing that. And NOCO cites Dr. MacCarley for their
15 proposition, so in -- I believe it's the Patent Owner's response in 44, they cite
16 to Dr. MacCarley's deposition at page 13 and they cite only a portion of his
17 testimony. They cite lines 3 to 11.

18 If you read a few lines before that to page 12 through to lines 22,
19 Dr. MacCarley essentially describes that a POSITA would understand that
20 there is a time delay between pressing a power button and a jump starter
21 becoming operational. There are self-checks. There are things that happen.
22 The device is not operational simply when you press the power button, just
23 like a computer. It takes time. There are boot up sequences, but NOCO
24 ignores Dr. MacCarley's testimony with this. His testimony acknowledges
25 that the claim should be read by a POSITA and would be read by a POSITA
26 that becomes operational is simply an acknowledgement that we're not -- the

1 claim isn't talking about just pushing a power button. It's talking about the
2 device being ready to perform the operation that it was assigned to. In this
3 case, ready to jump start a car.

4 I'd like to briefly go to Slide 41. NOCO has argued that Claims 2
5 and 5 are not -- are improperly based on AAPA. On the next slide, it's quite
6 simple here. It's simply not the case. Although the headings -- and they do
7 include citations AAPA -- we also include, for every single limitation in
8 these grounds, citations to Epower 28 and Epower 21, which are printed
9 publications. NOCO's analysis essentially stops at the heading and asserts
10 that the grounds rely only on AAPA, and therefore, they're disqualified.
11 That's simply not the case.

12 We explained where in printed publications all the elements of the
13 claim can be found and we describe why it would be obvious to combine the
14 references to Richardson. I believe NOCO raises the July 2025 memo in
15 regard to this where the director (PHONETIC) requires specific citations to
16 printed publications and it comes out strong, generally against the use of
17 AAPA and the petitions, for two things we believe we have satisfied those
18 requirements, but we also understand that that July memo was prospective
19 and that it didn't apply to Petitioner's (INDISCERNIBLE). So, in a nutshell,
20 regardless of citations to AAPA and our inclusion, we specifically included
21 alternative grounds that do not rely on AAPA at all and citations to printed
22 publications, so this argument is something we found invalid.

23 Just briefly, in my last few seconds here, you know, the last issue
24 that we haven't talked about yet is motivation to combine. As I mentioned at
25 the beginning of my time, these are the same issues the Board has seen in
26 ADC IPRs, the exact same arguments, the same references. You know,

1 we've provided additional exhibits to show why NOCO's blanket statements,
2 that Yu is non-viable or that a jump starter never had USB charging. You
3 know, those are false statements, so those are rebuttals to NOCO's
4 assertions, but they weren't -- they're not necessary. The Board can reach
5 the conclusion, as they did in the ADC IPRs. It would be obvious to
6 combine Richardson and Zhou and (INDISCERNIBLE). Thank you.

7 JUDGE ROSS: Thank you. Patent Owner, you can proceed when
8 you're ready.

9 MR. SAUER: Thank you, Your Honors. Joe Sauer for The
10 NOCO Company. I'm going to reserve 10 minutes for rebuttal, if that's
11 okay.

12 JUDGE LEE: Five minutes? So 15?

13 MR. SAUER: No, no, I said 10.

14 JUDGE LEE: Ten, okay.

15 MR. SAUER: But probably more like five. Can you turn to Slide
16 2, please? As my friend, Mr. Chandra, just went through, this is about the
17 '203 patent and he's reminded us all what that patent is about, so I don't want
18 to get into that unless there are any questions. I'll jump right into it. Slide 3,
19 please. There are six grounds at issue here today, but I'm only going to
20 primarily focus on, as Mr. Chandra did, on Grounds 1 and 4. Ground 1
21 involves a combination of Richardson and Zhao, and Ground 4 involves the
22 combination of Yu and Paparrizos.

23 Slide 4, please. Looking at Claim 1 on the slide in the '203 patent,
24 it disputes to Grounds 1 and 4, centered around two sets of claim elements.
25 The first is highlighted on Slide 4 and I like to refer to these as the battery
26 isolation sensor limitations. I'm not going to read them. Mr. Chandra has

1 gone through them, but I highlighted them here.

2 On Slide 5, you can see the other set of claim limitations that are in
3 dispute are the ones highlighted here that relate to USB port and a DC-DC
4 converter. They're able to jump start the charge from an external USB
5 power source. Now, the dispute over this claim language here centers
6 entirely around motivation to combine issues that this Board has already
7 decided. Recently in the decisions in IPR2024-00577 and IPR2024-00671
8 on the related '023 and '243 patents. So, I'm not going to address this claim
9 language today and we'll rest on our briefs on these motivation to combine
10 issues, unless there are any questions to be recognized, the Board has
11 already addressed them.

12 Slide 6 lists the issues discussed in our briefing, but again, the last
13 several of these relate to motivation to combine issue that the Board has
14 already heard briefing on, so we're going to stand on our briefing on those,
15 unless there are questions. So, with that, Slide 7. I'd like to spend a little
16 time talking about collateral estoppel because I think it's a threshold issue for
17 some of the claims and much of what I want to discuss. I'll note that, you
18 know, today is the first time we've heard Petitioner on the issue of whether
19 collateral estoppel can apply on a claim by claim -- claim element by claim
20 element basis. They chose not to brief that. So, hearing from them for the
21 first time today, I want to address those issues briefly without going down a
22 rabbit hole. It's an interesting issue that we could probably talk about all
23 day, and I'll try not to -- I'll try to hit the highlights and rest my briefs on the
24 others.

25 So, Slide 8, please. Here, I've highlighted on Slide 8 all of the
26 claim elements that the petition alleges that collateral estoppel applies from

1 the Board's decision on IPR2020-00944, involving related '015 patent that
2 -- I'm going to refer to this as '015 patent IPR, if that works. And it's
3 detailed in my briefing, the Petitioner's statement about this for a number of
4 reasons. Go to Slide 9. There are four requirements for collateral estoppel
5 that apply. At least three of these requirements are at issue and we've
6 briefed them, but today, I really want to focus on the first two -- mostly, the
7 first one. The first issue -- or the first element -- whether the identical issue
8 that was previously adjudicated is relevant here, as it's relevant to the issue
9 of whether collateral estoppel can be applied on an element by element
10 basis, which I'll get to in a moment. The second issue, or the second
11 element, whether the issue is actually litigated is relevant to the issue of
12 whether the Richardson reference lacks enablement and is therefore
13 disqualified as prior art because this issue has never been adjudicated. It's
14 never been before this Board. It's new.

15 And skip to Slide 11, please. So, because collateral estoppel
16 requires that the identical issue has been adjudicated, it's improper to apply
17 collateral estoppel on an element by element basis. The Federal Circuit case
18 law on this is consistent that the relevant inquiry here is whether there are
19 any differences between the claims as a whole that would materially alter the
20 question of validity, and if there's not, there's no collateral estoppel, and if
21 there's no collateral estoppel, you relook -- you can take a look at
22 Richardson, which I urge you to do. And I want to talk about -- sorry, did
23 you have a question, Judge Lee?

24 JUDGE LEE: Yeah. It's Judge Lee. I hear you, but I think I was
25 on the previous IPR.

26 MR. SAUER: Yes, sir.

1 JUDGE LEE: It just doesn't seem right that -- it seems to me like
2 you've had a full and fair opportunity to argue the very same issue that
3 you're arguing here, but you lost in the last case. So, can you just explain
4 why that is permitted?

5 MR. SAUER: Well, it's permitted, I think, Your Honor -- and this
6 is what the case law tells us, that you get to take a fresh look at it and if
7 there's no collateral estoppel. And I think the reasoning behind that is
8 because with different claims, different limitations, there are different issues,
9 there are different focuses as to what arguments to proceed on. Now, I
10 wasn't involved in that case until after you had issued your decision, Judge
11 Lee, so I can't tell you why or why not, you know -- why previous counsel
12 might've focused on one issue or another or whether they even recognize the
13 issue. I don't know. I can't say, but --

14 JUDGE LEE: But isn't it the same issue? We're talking about --

15 MR. SAUER: It's not the same issue.

16 JUDGE LEE: -- two conditions have to be met before the car
17 battery is connected to the charger. Isn't that issue exactly the same for this
18 reference?

19 MR. SAUER: That issue is the same, but the fact of the matter is
20 Richardson has brought a series of problems with Richardson that I'll
21 explain to you, and those problems weren't addressed by this Board, so that
22 issue is an issue of whether this enablement of Richardson is a new issue
23 that hasn't been adjudicated.

24 JUDGE LEE: So, that issue is the same, but you're saying because
25 of other differences in the claim, the issues claim-wise are not the same?

26 MR. SAUER: Well, the issues claim-wise are not the same

1 because the claims are different. They're limitations. They're clearly -- and
2 if you want to turn to -- I was going to get into the case law, but let's turn
3 first to Slide 12. As you can see, there are questionable substantial
4 differences between the claim. There are limitations that weren't in the
5 previous claims, such as DC-DC converter limitation, the USB limitations,
6 because we have to look at the differences between the claims as a whole
7 and these limitations were not in the claims at issue in the '015 and you get
8 -- and there's no collateral estoppel. With no collateral estoppel, we can take
9 a fresh look at Richardson and the problems with that.

10 JUDGE LEE: The case Petitioner cites in their petition seems to
11 say, no, we're not talking about the having same identical claims. We're
12 talking about same issues.

13 MR. SAUER: I don't think it does, Your Honor. If you want to go
14 back to Slide -- sorry, it's Slide 11, please. I'm not aware of any Federal
15 Circuit case that stands for that proposition. There is the -- I believe they
16 pointed to this case, so let's talk about it. There's the *Interconnect Planning*
17 *Corporation* case that I put on the slide about, and this case is actually
18 squarely on point, albeit a little bit old.

19 What happened in that case is the lower court was looking at
20 reissue claims, and it was comparing the differences between the claims of
21 the parent and the claims of the reissue of that, and only applying the prior
22 art against those differences and finding collateral estoppel on the limitations
23 that were the same. And the Federal Circuit in this case tells us that that's
24 improper, that if there's a substantial difference between the claim as a
25 whole, that ends the collateral estoppel inquiry. You can't then go and
26 compare the differences and only address those differences against the prior

1 art. And it warns us that the reason for this, based on its previous precedent
2 is because to do so would be effectively applying the previous claim as prior
3 art against the later claim and that's a problem. So, that's what that case
4 stands for because it's --

5 JUDGE LEE: Yeah, I see that. So, there's like a dichotomy
6 between the cases that the parties cite. This case is in your favor, but the
7 case Petitioner cites says we're not talking about identical claims, we're
8 talked about same issues. So, if you follow their logic, if the same issue is
9 litigated, it doesn't matter. There are other issues in the claim.

10 MR. SAUER: You might be referring to the Dougal (PHONETIC)
11 case and I was going to get to that, and I think (INDISCERNIBLE)
12 proposition either. The case of -- and I can't remember quite honestly what
13 the case --

14 JUDGE LEE: I think *Steuben Foods*, where they're talking about a
15 claim construction about one term, and the Court disagreed with the Board's
16 construction and vacated the Board's decision, but there may be other issues
17 in the claim.

18 MR. SAUER: I don't have the case in front of me, Your Honor. I
19 can tell you that they're -- I'd have to assume they were looking at it on a
20 claim by claim basis on limitation by limitation.

21 JUDGE LEE: Right. So, it's just on one word, the Court disagreed
22 with the Board and vacated the Board and said, that was previously
23 determined. It was just one claim term.

24 MR. SAUER: Oh, they were talking about construction. That's
25 what they cited to. Now I'm remembering the case. Yeah, so that case dealt
26 with a claim construction issue. It was a totally different issue than

1 comparing a claim to the prior art, and that's because in the issue of claim
2 construction -- and you're right -- that in the issues of claim construction, the
3 Federal Circuit does find estoppel regularly based on prior cases, because
4 you look at that claim term and Yu wrote the specification with the
5 knowledge of a person of skill in the art, and unless that's changed, which it
6 shouldn't have, from one related case to the other, that issue is going to be
7 the same. But that doesn't apply when you're applying a claim against the
8 prior art. Here, you know, different claims have different issues and so, the
9 cases that I would have you focus on, Judge Lee, would have to relate to
10 applying claims to prior art. Not claim construction. That's a different
11 question there.

12 JUDGE LEE: Okay, thank you.

13 MR. SAUER: The other case I wanted to just briefly touch on,
14 because I have seen several PTAB cases that cite to this, including one of the
15 ones that they relied on, and I think one of the ones that you've authored in
16 the past, Judge Lee, is *Google v. Hammond Development International*, and
17 this doesn't stand for the proposition that you can apply collateral estoppel
18 on element bound basis either. The quote that you see from this case, and I
19 think it might be in the petition or at least in the case cited by the petition,
20 *Google* is -- where they say it's well-established, that patent claims may not
21 be identical for collateral estoppel apply. Rather, collateral estoppel requires
22 the issues of patentability to be identical. That's true and that's what the case
23 says, but that doesn't mean that you can go on a claim element -- that claim
24 element collateral estoppel basis because if you look then at the next couple
25 sentences in this case, you can see that they're applying that logic on an
26 analysis of the claims as a whole to one another.

1 And they say, this collateral estoppel may apply even -- sorry,
2 glasses issue -- even if the patent claims use slightly different language to
3 describe substantially the same invention, so long as the differences between
4 the adjudicated patent claims and the unadjudicated patent claims do not
5 materially alter the question of invalidity. So, they're applying -- they're
6 looking at the claims as a whole when, in fact, the case goes on to determine
7 if there was only a couple words different between the claims and the
8 collateral estoppel, but they weren't looking at this as an element to element
9 basis.

10 JUDGE REPKO: Maybe that's what their argument is, too, that
11 perhaps if you look at the claim as a whole, it's not substantially different. If
12 you look at the --

13 MR. SAUER: I'm sorry. Can you repeat that?

14 JUDGE REPKO: I think what they're saying is if you look at the
15 claim as a whole, it's not substantially different.

16 MR. SAUER: Yes.

17 JUDGE REPKO: The features that you removed are, you know,
18 they're kind of trivial, right?

19 MR. SAUER: Precisely. That's what they found, yeah.

20 JUDGE REPKO: Okay.

21 MR. SAUER: So, since collateral estoppel doesn't apply to the
22 claim as a whole or if collateral estoppel doesn't apply to the claim as a
23 whole, it doesn't apply to the individual claim elements and we can take
24 another look at that.

25 JUDGE REPKO: So, in this case, we think that the claim is not
26 substantially identical, right? The --

1 MR. SAUER: I don't think there's any question that the claim as a
2 whole -- there's no dispute that the claim as a whole isn't substantially
3 identical. If you turn, again, to Slide 12, the are entire limitations are
4 missing from the claims that were addressed in the '015 IPR, such as the
5 DC-DC converter USB limitations. Arguably the USB limitations in the
6 dependent claim, but certainly the DC-DC converter limitation was in the
7 presence of their substantial differences between these claims. What
8 Petitioner is looking at is whether there are substantial differences between
9 particular elements of the claim. I would argue that maybe there are, but the
10 fact is, there's no dispute that there's substantial differences between claims,
11 as well.

12 JUDGE REPKO: So this DC-DC converter is what makes it
13 substantially different?

14 MR. SAUER: That's -- I mean, there are lots of differences, as are
15 highlighted here, but that's an element that's just completely missing, so
16 that's an easy one to point to, sure.

17 JUDGE REPKO: So the element is -- you're saying because it's
18 missing from the earlier one and it's in here, it is substantially -- that's kind
19 of one of the reasons alone --

20 MR. SAUER: Yeah.

21 JUDGE REPKO: -- just the DC-DC? Can you explain that a little
22 bit more?

23 MR. SAUER: I think we could stand on that reason alone. There
24 are others, but certainly --

25 JUDGE REPKO: Right. Can you explain that a little bit more
26 why that particular feature makes it substantially different?

1 MR. SAUER: Because it's not in the other claim at all. So --

2 JUDGE REPKO: Just by virtue of the -- why is this so important
3 to this claim?

4 MR. SAUER: I'm sorry?

5 JUDGE REPKO: Why would that not necessarily be present in the
6 previous apparatus? Why would it not rely on that in some way?

7 MR. SAUER: Well, I don't think the question is whether it's in the
8 previous apparatus. I mean, it's certainly in the specifications -- the same
9 specification. It was just absent from the claims. It wasn't claimed in the
10 '015.

11 JUDGE REPKO: What role does it play here in this jump starter
12 in terms of like making it substantially different from the previous
13 apparatus?

14 MR. SAUER: It's part of the USB, part of the limitations and it
15 enables it to be charged from the USB charger.

16 JUDGE REPKO: And so the previous claims, they didn't have
17 either the USB or the DC-DC converter. You're focused on that DC-DC
18 converter here.

19 MR. SAUER: Well, I'm focusing on it now because there was a
20 dependent claim in the '015 patent, as Judge would remember. Claim 11, it
21 related to the USB port. There were no claims dependent or independent
22 that had a DC-DC converter. Now, there are other, as you can see on the
23 slide, differences between claims. I'm focusing on that one because it's easy.
24 It's completely missing from the '015 patent limitations.

25 JUDGE REPKO: So, what role does it play here with respect to
26 USB converter and, you know, what does it couple? How does it actually

1 make it different than what was going on before with the USB converter that
2 you're saying?

3 MR. SAUER: Just the scenario or limitation as to how the USB
4 charging is done.

5 JUDGE REPKO: Is it not typically done with a DC-DC
6 converter?

7 MR. SAUER: Give me a second, I'm sorry.

8 JUDGE REPKO: I'll give you a minute. Do you need to take a
9 glass of water or something?

10 MR. SAUER: Could Your Honor -- can we take a quick break?

11 JUDGE REPKO: Yeah. Judge Lee, can we pause the time? He's
12 having some trouble.

13 MR. SAUER: Sorry.

14 JUDGE REPKO: Can you pause his time?

15 JUDGE LEE: Pause it? Sure.

16 MR. SAUER: It's okay. You can let run. I'll be fast.

17 JUDGE REPKO: Just let us know when you're ready.

18 MR. SAUER: Thanks. Thanks so much. I'm sorry.

19 JUDGE REPKO: All right.

20 MR. SAUER: It's hard to think when you can't breathe.

21 JUDGE REPKO: All set?

22 MR. SAUER: What was the question?

23 JUDGE REPKO: Can you explain a little bit more about the role
24 of the DC-DC converter here and why it makes it substantially different? If
25 you could --

26 MR. SAUER: Than a claim that doesn't have it?

1 JUDGE REPKO: Yes, because we have the USB port and the DC-
2 DC converter is coupled between the port and the rechargeable battery, so
3 this is substantially different because why?

4 MR. SAUER: I'm not sure I really understand the question. It's
5 substantially different because it's a limitation that wasn't addressed in the
6 previous claims and it's at issue -- it was at issue at least in the, you know
7 -- the motivation to combine elements of this claim, but we addressed this in
8 the previous IPRs. These two limitations are similar limitations as to
9 whether these were found in the secondary reference. Richardson doesn't
10 have this. You have to go to another reference to find these two limitations,
11 so certainly, material patentability over Richardson.

12 JUDGE ROSS: But Mr. Sauer, we're not relying on Richardson
13 for that piece, right? And so I think the question that we all have is how
14 does this change our Richardson analysis of the claim that exists now?

15 MR. SAUER: Well --

16 JUDGE ROSS: It doesn't really, does it? Especially when, I
17 guess, what the parties are focused on here is limitation 1[g].

18 MR. SAUER: Well, that's right. This is what the Federal Circuit
19 law tells us. You can't just focus on 1[g]. You have to focus on the claim as
20 a whole, and if there are material differences there, there's no collateral
21 estoppel. Now, this isn't saying that you can't, you know, look at the facts
22 that you considered in the '015 case, that you have to do this with blinders
23 on. What it's saying is there's no collateral estoppel and that means we get to
24 take another look. You're not barred by law from finding something
25 different. Maybe we can take another look at Richardson and see why it
26 really doesn't read on this limitation.

1 JUDGE REPKO: So, what I'm hearing is -- you just focused on
2 whether the words are there or not, but I don't really hear a whole lot about
3 why it's substantively different.

4 MR. SAUER: No.

5 JUDGE REPKO: I'm a little skeptical about that aspect of it.

6 MR. SAUER: Well, it gets me -- Richardson, if you look back at
7 the '015 case, it was a 102 case. It was whether or not the claims were
8 anticipated by Richardson. This element is clearly not anticipated by
9 Richardson or the USB port, which is why it's a 103 argument now. So, it
10 makes these claims patentably different than the claims that were at issue in
11 Richardson and -- excuse me -- in the '015 IPR.

12 JUDGE REPKO: I don't have any further questions on that.
13 Thank you.

14 MR. SAUER: See, I told you it's an interesting issue. We can talk
15 about it all day, but I'm going to move on, in the interest of time here.
16 There's some other issues as to collateral estoppel we've briefed, and I'll
17 leave it at that, unless there are questions. We can move to Slide 16, please.
18 Now, turning to Ground 1 and particularly, the petition's reliance on
19 Richardson, as we detailed in the briefings, Petitioner is asking the Board to
20 read things into Richardson that just aren't there, and worse, something
21 about Richardson appears to be broken. Either it's missing some necessary
22 disclosures that it needs or there's serious drafting errors, but either way, it
23 just can't operate the way the Petitioner suggests it does.

24 Slide 17, please. This here, again, is a reminder as to the
25 limitations on the battery isolation sensor limitations that are at issue here.
26 Claim 18 -- or Slide 18, sorry. The dispute here revolves around what

1 happens in step 252 of Richardson, which is described in paragraph 34 and
2 produced on the slide. And as you can see, as I've highlighted on the slide, it
3 tells us first in this paragraph that one of the manual or auto buttons is
4 pushed, then what happens in step 248, as shown in the slide, then the
5 system will compare the operator configured starter voltage against the
6 voltage in the vehicle when you start it.

7 And then it goes on to explain that you can configure Richardson's
8 jump starter for different voltage outputs, and that this is the configured
9 voltage that's compared against the voltage of the vehicle restarted. And
10 then at the bottom of this paragraph -- this is the language that's really
11 causing the dispute -- it says that if the difference between the voltage
12 selected and the voltage measured is not within a pre-determined range and
13 tolerance -- it's that 252, then a wrong selector voltage -- "wrong selector
14 volts" message is displayed at step 254 on the LCD and further operation is
15 prohibited. That's what's causing the dispute. Going to Slide 19, it shows on
16 this slide, the petition argues the Richardson device makes this
17 determination of the battery presence in step 252 on Figure 5, which we just
18 talked about.

19 Now, the petition provides very little explanation as to how that
20 happened. We know from hearing from them today in later briefings that
21 their interpretation of step 252 is that Richardson will only return to yes at
22 this step and move on with the chart to jump start the vehicle if the battery
23 -- vehicle battery is connected because they say if no vehicle battery is
24 connected, step 252 will be interpreted as the wrong battery type, and then
25 it'll display a warning and essentially goes into a loop and can't go any
26 further. So, that sounds reasonable first, but then when you look into

1 Richardson further, you see that it can't work that way.

2 Slide 20, please. So, Slide 20 includes the portions of Figure 5 and
3 Figure 6 to show what happens right after step 252. So, as you can see, if a
4 yes is generated at step 252, the process proceeds to this connector block E,
5 and remember, under Petitioner's interpretation, step 252, you can only
6 return yes if the vehicle battery is connected. So, you can see that block E in
7 Figure 5 is block E in Figure 6 and goes to step 258 where the process
8 determines whether this is manual or auto mode. This determination isn't
9 made until after step 252.

10 There's no dispute about that. And then in connection with manual
11 mode, as I put on the slide that tells us in paragraph 49, that if in manual
12 mode, the jump starter may be used when the battery voltage is about 10
13 volts or if the vehicle's battery not connected. So, Richardson tells us that
14 you have to be able to use manual mode, which starts after step 258, even
15 when there's no vehicle battery connected. According to Petitioner's
16 interpretation, if you want to know if the battery is connected, you can't go
17 past step 252, as something is wrong here. It just can't work this way.

18 Slide 21. So, in attempt to patch up these problems with
19 Richardson, as we raised in our Patent Owner response, the Petitioner argued
20 for the first time in their reply brief that step 252 of Richardson somehow
21 works differently in manual mode than auto mode. Now, first of all,
22 argument is completely untimely. It shouldn't be considered. It made no
23 mention of auto mode or manual mode, anything of the sort in the petition.
24 They suggested that that was our burden, maybe as to the issue of
25 operability, but not to the issue of making out their reason in Richardson,
26 which they didn't do. In any case --

1 JUDGE REPKO: I think they were arguing that really, a person of
2 ordinary skill in the art would look at Figure 5 and understand that to be the
3 case. So, is that not a proper rebuttal to your argument that that step is
4 present?

5 MR. SAUER: Well, maybe, but a person of skill in the art
6 wouldn't look at it that way, which is what I'll get into right now. So, even if
7 it isn't untimely, which I'd say it is, it's wrong. So, they've -- the argument
8 they're making is completely unsupported by Richardson. It made
9 (INDISCERNIBLE). But if you want to turn to Slide 22, I'll explain more.

10 So, again, Petitioner argues that in step 252, it somehow operates
11 differently in manual mode or auto mode, and their interpretation only
12 applies to auto mode. It doesn't apply to the manual mode version. First, the
13 description of 252 or step 252 doesn't say anything of the sort. The
14 description of 252 doesn't mention some different operation in manual mode
15 or auto mode or wouldn't apply in any different operation. It doesn't care
16 whether it's manual mode or auto mode. It only provides one description for
17 what happens in 252 here, regardless of mode.

18 But beyond that, step 252 -- and I believe Your Honor alluded to
19 this in one of your questions -- it doesn't even know which mode it's in or
20 doesn't even care which mode it's in until it gets to step 258, where for the
21 first time, it makes a determination whether it's in auto mode or manual
22 mode. At step 250 -- 248, it's only asking whether a button has been
23 pressed, manual or auto. It's not operating any differently in 252 based on
24 that press. It doesn't care. And you're asking, well why have that step there.

25 Well, the reason they have that step there is it's operating like -- the
26 best I can understand it -- it seems that it's operating like a start button

1 because what happens is it goes through all of its initial configurations until
2 it gets to step 248 and then waits and if nobody has pushed a button, then it
3 displays a ready signal and says, all right, we're ready, push a button. And
4 once you've pushed either the auto mode or manual mode, it doesn't care at
5 that point and now it goes on to step 252 to do what is there, but not until
6 step 258 does it make a determination as to which mode it's in, and it tells us
7 that. It tells us in paragraph 32 that with respect to step 258, its selected is in
8 the correct range then. Now, for the first time, the system determines which
9 button was selected. It doesn't say anything about that determination until
10 we get to step 252. It doesn't know or care what mode it's in until that split
11 at that point.

12 JUDGE REPKO: Yeah, that's one of the things I was thinking,
13 too, is if you look at 248, then why even have a button that says auto or
14 manual at that point. It seems like you would have something else, but it
15 seems like that same information has to get down to 258 at some point.

16 MR. SAUER: You can have --

17 JUDGE REPKO: I think that's the thing.

18 MR. SAUER: You can have --

19 JUDGE REPKO: Like there's only one --

20 MR. SAUER: You can have a start button instead, but --

21 JUDGE REPKO: Yeah.

22 MR. SAUER: -- the way Richardson does it is he's using those
23 buttons for the same purpose, okay, go. Because remember, it gets up to that
24 point and then it waits so the user is ready to proceed to jump start, and then
25 it's looking for him to press one of those two buttons to move the process
26 forward. It doesn't care at that point which button is pressed until it has a

1 split, but it's using that start button, because you can see if it's a no, it goes to
2 step 250 where it displays a ready message and it loops and sits there and
3 waits.

4 JUDGE REPKO: Thank you.

5 MR. SAUER: So, moving on then to Slide 23, inoperability. So,
6 whatever Richardson does in step 252, it can't be determining the presence
7 of a vehicle battery as Petitioner suggests, otherwise its disclosure is
8 inoperable and it's disqualified as prior art. I should note that -- I think I did
9 mention briefly the issue of inoperability in Richardson is an issue that's
10 never been adjudicated, so the second prong of the collateral estoppel the
11 last year, they've never been actually litigated. So, whether you find
12 collateral estoppel for the other issues or not it shouldn't apply here.

13 Moving on to Slide 24. As I already mentioned, and I don't want
14 to go through it completely again, but Richardson tell us that in manual
15 mode, you have to be able to operate when there's no vehicle battery
16 connected, but in step 242, which becomes -- before that, it tells us that if the
17 difference between the voltage selected and the voltage measured is not
18 within a pre-determined range, the tolerance of further operation is
19 prohibited. So, if that means that you can't proceed further with no battery
20 connected, you can't get past step 252. If you can't get past step 252, you
21 can't operate in manual mode the way -- in the way patent tells us you have
22 to. Something is wrong, whether it's insufficient disclosure as to what's
23 happening in step 252 or if the drafters made a mistake, I don't know, but it's
24 broken.

25 And you know, the issue is to whether or not this only applies to
26 manual mode or auto mode and is a red herring to use Petitioner's terms

1 because as we talked about at step 252, it doesn't know or care whether it's in
2 auto mode or manual mode. It doesn't look to that until it gets to step 258.
3 So, in step 252, a yes if, you know -- if it's correct and it can operate in
4 manual mode with no battery connected, but yes, it would have to mean -- I
5 don't know. I don't know what the proper -- if it's the correct battery or no
6 battery is connected. I'm just not clear how that could work.

7 JUDGE LEE: This is Judge Lee. Let me ask you a question. I
8 understand that -- what you just said. It doesn't care what mode you're in
9 until step 258. That's when it makes a recognition, right? But not caring
10 about which mode you're in does not mean at step 252 the system is in either
11 mode. It may well be in manual mode already at step 252.

12 MR. SAUER: Sure.

13 JUDGE LEE: It's just that it's not checked until 258.

14 MR. SAUER: Yes.

15 JUDGE LEE: Right? Is that right?

16 MR. SAUER: I think that's right, but in step 252, it doesn't tell us
17 any different operation in one or the other because it doesn't care.

18 JUDGE LEE: Okay.

19 MR. SAUER: So, you know, since it doesn't care, it has to be able
20 to get past that, whether in auto mode and manual mode, and it seems like it
21 can't get past that. It seems like something is wrong because what it's saying
22 about 252, what it's saying about manual mode, doesn't seem to jive. And if
23 you want to look at Petitioner's Slide 19, they've concocted this chart that
24 has an explanation of well, how might this work, and I think that's why they
25 had this slide is to say, well it's not inoperable because the person skilled in
26 the art could figure out a way to make this work and saying that it could

1 have different -- it could operate differently, maybe not in auto mode, we're
2 saying, well, in manual mode, you pass 252 with a yes when the vehicle
3 battery -- the appropriate vehicle battery is selected or when there's a dead
4 battery or no dead battery, non-self-enabled (PHONETIC) That just
5 connected -- it's not supported by anything. It doesn't make sense.

6 How could you -- how would you do that? You have no
7 explanation of how that's possible. How could Richardson be determining if
8 the appropriate battery type, 12 volts, 16 volts, 24 volts, is selected if it also
9 passes a yes when there's no battery connected or when there's a battery
10 connected that's potentially low voltage. So, how can it tell that a battery,
11 for example, with 10 volts -- below 10 volts, let's say -- you know, is a
12 substantial depleted 24 volt battery or 48 volt battery or 12 volt battery.
13 They don't explain that. It doesn't make sense. So, they've provided a
14 theoretical explanation on how this might work to try to get past the
15 operability, but even their explanation doesn't really make sense. Something
16 is missing here. Something is either happening in step 252 that the patent
17 doesn't tell us, or there's just a mistake. So, unless there are any questions on
18 that, I'd like to move on with my remaining time to address Claim 5 and then
19 quickly the --

20 JUDGE LEE: So, this issue was not brought up in the earlier case?

21 MR. SAUER: No, Your Honor. I don't know why it wasn't
22 involved until later.

23 JUDGE LEE: Thank you.

24 MR. SAUER: Slide 26, we just talked a little bit about dependent
25 Claim 5 and the reason is because this is potentially significant because
26 there's no similar -- there's nothing similar to Claim 5 in the '015 patent. So,

1 again, if you were to find collateral estoppel in Claim 1, which I don't think
2 you should, I don't think there's any dispute that collateral estoppel doesn't
3 apply to Claim 5. So, turning to Slide 27, I put the language of Claim 5 here
4 and it depends from Claim 4 which depends from Claim 1, and what Claim 5
5 is doing is it's further limiting the battery isolation sensor limitations to
6 Claim 1 to require presence detection happens, you know, is giving a
7 temporal limitation to it. It happens when the jump starter becomes
8 operational.

9 So, what's that mean? It means that there's a further safety
10 limitation. Claim 1 only requires that this be performed at some point before
11 the power switch is closed and jump starting operation begins. Claim 5 is
12 making a further limitation saying no, this check should happen as soon as
13 the device is operational and clamps are connected. And if you look at
14 Figures 3 and 5 on here, Richardson becomes operational, I would argue,
15 when it's powered on. But we just heard from my friend Mr. Chandra a
16 moment ago where they just -- and I don't know if this is in the briefing, but
17 they just admitted that Richardson becomes operational under their
18 interpretation at step 210. So, let's go with that for the moment. So, let's say
19 Richardson becomes operational at 210. Well, Figure 5 requires that jump
20 starting instead of happening before that, the switch close happens when it
21 becomes operational. So, it requires it here, so what do they say about that?

22 If you look at their Slide 39, they have this red line and they're
23 saying, well everything between step 210 and 252 where they say, at which
24 course, they're pointed the same -- 252 is covering this limitation as the
25 Claim 1 limitation, which reads any difference on the claim entirely, but
26 setting that aside, they say that all this happens automatically. So, as soon as

1 it becomes operational, zing, bang, you're at step 252 and that satisfies the
2 claim limitation, but as we just talked about, that's not true. Because we
3 know at step 248, it sits there. So, it goes to step 248 and puts the ready
4 light up and it waits for someone to push the button. It can sit there all day,
5 it can sit there indefinitely, so this doesn't meet the temporal limitation of
6 Claim 5. Having just a few moments left here, I want to go to Ground 4 on
7 Slide 28 and this is in regards to the combination of Yu and Paparrizos.

8 In Slide 29, like Ground 1, this also involves the dispute here of
9 the battery vehicle -- the vehicle battery -- vehicle battery isolation sensor
10 limitations. Now, turning to Slide 30. So, Yu's system shown here on Slide
11 30, you can see as an external battery voltage detection circuit 45 -- I
12 highlighted that in yellow -- that it's connected to a microprocessor 42 and
13 highlight that that controls the relay switch.

14 There's no dispute that the microprocessor controls the relay
15 switch. That's a made-up dispute, but it doesn't exclusively control it. It
16 also receives, as you can see, an input from buttons -- an input button, a start
17 button, and you know, based on that start button, when you close the relay
18 switch or based on, you know -- it's not exclusively controlled by the
19 microprocessor. So, that's a non-issue. So, the Petitioner argues that
20 because the microprocessor receives a signal from the external battery
21 voltage detection circuit here, 45, that it must use that signal to control and
22 when the relay switch is closed, jump start the vehicle, but Yu just -- it just
23 doesn't say that. It doesn't operate that way. They're reading things into Yu
24 that just aren't there.

25 What Yu tells us in relation to the external battery voltage
26 detection circuit -- and I put some quotes -- I put two quotes here, but it says

1 this over and over. At least three places, essentially the same thing. It tells
2 us that the microprocessor will display the detected battery voltage on an
3 LCD screen, so what happens is the external battery voltage detection circuit
4 output goes to the microprocessor, it displays that on the LED-7
5 (PHONETIC). And then it says that if it's within the normal range, the jump
6 button can be pressed to close the relay. That jump -- pushing a jump button
7 is a user step. It's not controlled -- it's not being found automatically by the
8 microprocessor.

9 So, what it's saying is it displays the voltage up there on the screen,
10 a user can look at that, make a determination if it's in the correct range, and
11 then go ahead and push the jump button. Now, contrast this to what happens
12 and what Yu describes. This isn't sloppy language, like they suggest. Yu
13 says this specifically, and it says it because contrast it to what it tells you
14 about the external battery reverse connection detection circuit 44. There
15 -- and I don't have the quote up here -- but when it's talking about that, that
16 circuit, Yu very specifically tells us that if this circuit indicates that there's a
17 reverse polarity, the power supply will not be allowed to turn on. The
18 microprocessor prevents it.

19 So, this isn't a language issue or a clarity issue. It specifically tells
20 us with respect to reverse a polarity detection, microprocessor would prevent
21 the relay switch from closing. That's dangerous. That can blow up the
22 battery. But with respect to vehicle voltage, it only displays the voltage
23 unless the user makes the choice, and there's a good reason for this. The
24 reason is because, as we were just talking about in Richardson, if the battery
25 is severely depleted, you know, Yu doesn't have a bypass. It doesn't have a
26 manual mode.

1 So, if the battery is severely depleted, let's say it's a couple volts or
2 below 10 volts or whatever, the microprocessor knew if it were based on
3 some threshold and if it wasn't for user step, it wouldn't allow a jump start
4 and you couldn't use it. So, and this isn't an uncommon thing, particularly in
5 some older jump starters. So, what Yu does is he lets this be up to the user
6 and let's them use the voltage, do you have eyes, you can go and make sure
7 the clamps are on the battery, and if it's a really low voltage because the
8 battery is depleted, you can hit start and you can proceed anyway and that's
9 what Yu tells us.

10 JUDGE REPKO: Then why have the condition at all then? Why
11 have the if statement --

12 MR. SAUER: It isn't a condition. It's saying that if -- let's look at
13 what it says. It says the microprocessor detects the external battery voltage
14 and simultaneously displays this voltage on the LCD, so there you go. We
15 have a display and it tells you what voltage it is. If the external battery
16 voltage is within the normal range, me, the user, looking at it, says ah ha,
17 this is okay.

18 JUDGE REPKO: If the user determines that that --

19 MR. SAUER: If a user determines that --

20 JUDGE REPKO: That's the way you read that?

21 MR. SAUER: That's the way I read it. Then the jump button or
22 the input, you press, because that's the user step. The microprocessor is not
23 pressing the jump button, the user is. It's still in the same sentence, so it's
24 the user that is determining from the display whether it's appropriate to press
25 the jump button. And if you can't get this just from the sentence, you know,
26 again, contrast it with what it says about the external battery or reverse

1 connection detection server. It's a mouthful. Where it says that if that's
2 wrong, if that tells us that we have a reverse connection, a microprocessor
3 won't allow it to close. The microprocessor prevents it. That's not what it's
4 saying here and he knows how to say it. Yu knows how to say it. This isn't
5 an issue of unclarity or language.

6 JUDGE REPKO: Yeah. And then if you look at the if statement,
7 really under any condition, you're saying that the jump button can be pressed
8 to close the relay.

9 MR. SAUER: Um-hum.

10 JUDGE REPKO: Why say if?

11 MR. SAUER: Well --

12 JUDGE REPKO: Just like -- just to say, you know --

13 MR. SAUER: Well, it's considered within a normal range. Well,
14 what's a normal range of a battery? The normal range of a battery
15 (INDISCERNIBLE). You know, a very, very, very depleted battery might
16 get down to let's say four volts. So, if a user looks at this and says, it has
17 four volts, well, all I know is there's a battery there and my eyes are telling
18 me there's a battery there. I can go ahead and press, but it doesn't -- but it's
19 leading up -- but it's leading what that normal range is up to -- it usually
20 doesn't tell you what the normal range is in here or whether the
21 microprocessor has some threshold cut off where it prevents it. It's leaving
22 that up to the user.

23 JUDGE REPKO: Well, the previous sentence says it's going to
24 detect its general battery voltage.

25 MR. SAUER: Yeah.

26 JUDGE REPKO: So, it says processor will detect the voltage and

1 then if -- don't you think that relates back to that --

2 MR. SAUER: It detects the -- so you get signal from the external
3 vehicle -- external battery voltage detection circuit 45 to a microprocessor.
4 The microprocessor detects that. It detects that voltage signal from that
5 sensor --

6 JUDGE REPKO: Yeah.

7 MR. SAUER: -- and it displays it. The question is what it uses it
8 for. Yes, the microprocessor is detecting that voltage, but what's it using it
9 for? It's not using it to control the relay. It's using it to provide a display to
10 the user.

11 JUDGE REPKO: It didn't say anything about the display. It says
12 simultaneously will display voltage on the LCD, and so you're saying that
13 the display -- if the user looks at that display, appreciates it's within the
14 normal range, that's what the if statement means, is like --

15 MR. SAUER: Yes.

16 JUDGE REPKO: -- the user is referring to that display --

17 MR. SAUER: Yeah. It simultaneously means --

18 JUDGE REPKO: -- and making that judgment based on what's on
19 the display.

20 MR. SAUER: Yes, correct. And it simultaneously means it's
21 simultaneously detecting it and displaying it once it gets that signal from the
22 sensor, it puts the voltage up on display, and let's me, the user, make a
23 determination what to do.

24 JUDGE REPKO: Thank you. No further questions.

25 JUDGE ROSS: Mr. Sauer, I have a follow-up question and it
26 looks like you have about five minutes left. So, how do we reconcile that

1 with what appears to be broader teachings in Yu? And specifically, I'm
2 pointing to paragraph four of Yu that says the microprocessor controls the
3 opening and closing of the relay.

4 MR. SAUER: Well, it does. I --

5 JUDGE ROSS: Can you talk about that a little bit for me, please?

6 MR. SAUER: I don't think it's -- I think that's right. It's not a
7 broader teaching. If you see the input button six, this is the jump button that
8 the user's pressing. That goes to the microprocessor, which the button
9 doesn't directly close the relay. The microprocessor, when the user sees that
10 voltage and says, all right, this is fine, and pushes that jump button and the
11 microprocessor receives that signal -- the microprocessor from that signal
12 -- the enclosed relay says -- the microprocessor that controls the relay, we
13 don't have a dispute there. It's just what it's based on -- basing that on,
14 whether it's basing that -- whether it's doing that automatically, and I could
15 say, no it's not, it's doing that based on that input from the jump button six.
16 Does that answer the question, Your Honor?

17 JUDGE ROSS: Yes.

18 JUDGE REPKO: So, a user presses the button, that goes to the
19 microcontroller, then that's going to --

20 MR. SAUER: Yeah.

21 JUDGE REPKO: -- close the relay. It does close the relay, but it's
22 triggered by the --

23 MR. SAUER: The --

24 JUDGE REPKO: -- the user.

25 MR. SAUER: Yes, sir.

26 JUDGE REPKO: Thank you.

1 MR. SAUER: If there's nothing further, I'll save my remaining
2 time for rebuttal.

3 JUDGE ROSS: Thank you. Mr. Chandra, we'll hear from you
4 when you're ready.

5 MR. CHANDRA: Thank you, Your Honors. So, I want to talk
6 about Richardson. My -- opposing Counsel here talked about Richardson in
7 great lengths. Paragraph 34 of Richardson says what it says. It tells you that
8 it is detecting a voltage from vehicle battery and comparing that voltage
9 against the user selected voltage and step 252 will return to yes if that
10 comparison is in the appropriate pre-determined range. And again, that is all
11 the claim requires. That step. What Richardson expressly describes meets
12 what the claim is asking for -- detecting the presence of the vehicle battery.
13 But again, the claim does not say detecting if the battery isn't present,
14 detecting that the battery is dead.

15 The way NOCO wanted to claim those elements, they did, so '015
16 has those limitations. They didn't do that here. The claim just requires
17 detecting the present battery and Richardson tells you that. I don't think
18 there's a real dispute that is telling you that expressly that if step 252 returns
19 a yes, that means a battery with a voltage is -- that is appropriate for the user
20 selected voltage is present.

21 On enablement and the arguments, again, I do want to remind the
22 Board that the standard is whether a POSITA would have to perform undo
23 experimentation to understand, you know, how the device -- to make or use
24 a device. It's clear. Dr. MacCarley opined that the POSITA can read
25 Richardson, it's four corners, and armed with the knowledge of a POSITA at
26 the time of the '203 patent, would understand how to make and use this

1 device. The simple way would be to use the information gained at step 248
2 that the Richardson system requires, know which mode you're in, and
3 perform different tests depending on which mode you're in. That's not a new
4 experimentation. There's a very simple conclusion and there -- I haven't
5 heard any arguments at all from NOCO why that is a new experimentation
6 and it's certainly not in briefing. Sorry, one second, Your Honors. Already
7 had it.

8 Turning to step 248 of Richardson and in regard to Claim 5, Mr.
9 Sauer just said that there is not an automatic process from step 214, through
10 to step 252 because I think he said the system waits at step 248. That's
11 simply not correct. Paragraph 34 of Richardson states if one of the push
12 buttons 42 or 44 has been selected, the system would prepare the operator
13 with the starter voltage of I guess the vehicle battery (PHONETIC).

14 The previous paragraph, paragraph 33, also says the system checks
15 the status of the automatic and manual push buttons if neither button has
16 been pushed -- in the past tense. This isn't the situation where Richardson is
17 requiring the user to press -- at that moment -- when it's evaluation of 248.
18 The user could've pressed it much easier and as I described earlier, a similar
19 scenario is that the user powers on the device, it becomes operational, they
20 select manual or auto mode, they select auto mode and attach the clamps in
21 step 214 and perform, the system automatically proceeds to step 248 and it'll
22 say, has a button been pressed and yes, it has been pressed. Before the user
23 even connected the clamps, they pressed the button. In that case, it will
24 proceed automatically to step 252 to detect the presence of the vehicle
25 battery.

26 JUDGE REPKO: So, prior to step 210, you're saying the user can

1 press any button?

2 MR. CHANDRA: No. I'm not sure that -- because prior to step
3 210, Richardson has to perform the bootup sequence. I'm not sure that it
4 could receive the input, but between step 210 and step 214. So, I would
5 guess that step 210 is in the main process of the loop, right, and it won't
6 perform step 214 until the clamps are connected. So, that is an action the
7 user has to perform. Before they connect the clamps, they can press auto or
8 manual. And if the device is operational at that point, it can receive inputs,
9 they press auto and then they can connect the clamps.

10 JUDGE REPKO: Thank you.

11 MR. CHANDRA: Turning to Yu -- the arguments in Yu -- I think
12 Your Honors asked the question about Yu's paragraph 26. It just simply
13 does not say that the user is evaluating a voltage displayed by an LCD and I
14 think that NOCO's entire argument depends on the unstated premise that the
15 evaluation and displaying voltage are mutually exclusive. There is no
16 reason that a POSITA would believe that. And Yu expressly acknowledges
17 that detecting, at least, is different from displaying, and he says that the
18 microprocessor detects and simultaneously displays. It doesn't say detect
19 and then display. It does both at the same time, so clearly, those steps aren't
20 excluded from each other because the microprocessor can do both.

21 NOCO's whole premise requires you to read Yu's disclosure that if
22 the voltage is appearing on the screen, it means that it's not doing anything
23 else with the voltage. Again, displaying the voltage and evaluating it are not
24 mutually exclusive and I think it's a question of, you know, why would you
25 have the if then statement if the user was making their own determination is
26 the correct -- it has the if then statement, because it's a safety check that the

1 microprocessor has performed.

2 As to the argument that this would mean that if the battery was
3 outside the normal range, Yu's system couldn't jump start that kind of battery
4 and NOCO argues that that means there would be no manual mode and it
5 would make Yu's system inoperable. That argument is nowhere to be found
6 in Yu. No real cites, no disclosure in the Yu reference that discusses manual
7 mode or even mentions that manual mode is necessary. Their citations and
8 their argument are actually built on citations to the '203 patent. They say
9 that manual mode is important because of what the patent says. I'm sure
10 they're not arguing what their patent is in the prior art and that a POSITA
11 would have an understanding based on what the patent says. It's not this
12 works. So, the argument that Yu doesn't have a manual mode and that it
13 makes it inoperable is directly just un-supporting that of the record. It also
14 doesn't even make any sense to me. Yu says -- he describes a way that he
15 wants his device to work. It works in that way. When the vehicle battery
16 voltage is within the normal range, the user can press the jump button and a
17 microprocessor will go through that. It operates exactly the way it detects.
18 Whether it can do things that are unstated to do is (INDISCERNIBLE).

19 Another point about Yu is that, you know, the fact that Yu requires
20 a user to press the jump button before the relay will close is just another
21 condition that Yu has. With that condition, it doesn't take it outside of the
22 scope of the patent. The patent requires two conditions -- the battery being
23 present and the polarity being correct. The fact that Yu also requires the
24 user to press a jump button doesn't mean that it doesn't do the first two
25 things. Unless Your Honors have any questions, that's all I want to say on
26 rebuttal.

1 JUDGE ROSS: Thank you. Mr. Sauer, you can go ahead when
2 you're ready. I think we have you at 13 minutes.

3 MR. SAUER: Thank you, but I won't take 13 minutes unless
4 there's a lot of questions. Just want to touch on a couple points. First of all,
5 on what my friend just said about step 258.

6 JUDGE REPKO: I just didn't want to -- we're going to set the
7 clock.

8 MR. SAUER: Okay.

9 JUDGE REPKO: You have 13 minutes.

10 MR. SAUER: Fifteen?

11 JUDGE REPKO: Thirteen.

12 MR. SAUER: Whenever you're ready.

13 JUDGE REPKO: Yeah, go ahead.

14 MR. SAUER: What I was saying, Your Honors, is -- what my
15 friend was just saying about step 248 of Richardson is just simply not true.
16 I'm going to pull up the slides again and look at their Slide 20, or 39, that
17 shows Figures 3 and 5 of Richardson. And let me take out my glasses for
18 this, but you can see clearly, when it gets to step 248, and this is where it
19 determines if there has been a manual or auto button pressed, if the answer is
20 no, which means you don't have to press it in on its own time sooner, if the
21 answer is no, it goes to step 250 where it displays a ready message and it
22 loops back around. So, the reason for that is because -- I guess you could
23 push it sooner, but Yu has clearly shown or Richardson is clearly showing
24 that it goes into a loop until you do, so you know, 248 waits there until it
25 happens.

26 JUDGE REPKO: I don't really understand that. What do you

1 mean it goes into a loop?

2 MR. SAUER: Well, so it goes -- you've got to follow a few things,
3 right? So, if the answer is no on 248, it goes to 250 where it displays a ready
4 message, then you see it goes back to D and D takes it back to 3 -- Figure 3
5 -- and you can't see a line here very well. That takes you back to the main
6 processor and it goes back looping around, looping around, from 210 to 248
7 until somebody pushes that button -- one of the two buttons.

8 JUDGE REPKO: Well, I mean, you could press it at 210 -- like
9 between 210 and 214. You're saying any time during then.

10 MR. SAUER: Push it any time.

11 JUDGE REPKO: And I think just even under the logic of these
12 flow charts where information doesn't necessarily need to be input at a given
13 step -- that's kind of your argument with respect to 248 and 258, like there's
14 some manual or auto data in the system and it's using that in two places,
15 using that at 248, the button was push it all, and then 258, the type of press
16 -- the manual or automatic. So, it's not necessarily these steps don't -- aren't
17 separate in time. It's just showing the overall flow based on state.

18 MR. SAUER: That's right. And before we got on a tangent, too,
19 don't forget that the limitation at issue here is temporal in saying that further
20 limiting Claim 1 saying this operation has to happen as soon as it becomes
21 operational. So, I would argue it's all the way up at -- it's turned at 200, but
22 even arguing -- even accepting the limitation during that step 210 is not
23 what's happening either.

24 JUDGE REPKO: And this isn't necessarily time. It's just how it
25 proceeds through the system based on state.

26 MR. SAUER: Yeah.

1 JUDGE REPKO: So, if we think of this flow chart, for example, at
2 210 as having all of the information that you need to proceed throughout the
3 rest of the chart, then at that point, isn't that less operational when it's
4 accepting input essentially -- 210 --

5 MR. SAUER: Well, I would say its operational when it was turned
6 on. They would say it's operational at 210, but the limitation requires that
7 the detection happens when it becomes operational and they're saying the
8 detection happens not until step 252, which just, you know, clearly is not
9 what happens. It's clearly after 210 and after 200. I'm saying it's even worse
10 than that, that it was just break there (PHONETIC) there, just like automatic,
11 you know, so --

12 JUDGE REPKO: There's no timing. It seems like the way they're
13 arguing it is these decision points all kind of happen, you know,
14 simultaneously based on the state, essentially. It's going to proceed through
15 this decision based on the state that it received in 210. That's the main
16 processor where it's accepting the input and then based on that input, it's
17 going to proceed through this flow chart.

18 MR. SAUER: Well, at the very least, it's going to proceed through
19 all of these steps that they have along the red line from 210 to 252, and the
20 claim is telling us, well, it has to happen when it becomes operational, which
21 is -- they're saying at 210, so it's not happening when it becomes operational.
22 Even under their interpretation, it's happening along their red line later.

23 JUDGE REPKO: Let's think of it this way, though. Let's say in
24 210, the whole state is of all the button presses, all the jumper cables,
25 voltages --

26 MR. SAUER: Mm-hm.

1 JUDGE REPKO: -- are set at 210.

2 MR. SAUER: Okay.

3 JUDGE REPKO: Let's just assume that for a moment.

4 MR. SAUER: Sure.

5 JUDGE REPKO: And then everything else in that flow chart is
6 going to, you know, flow based on that state.

7 MR. SAUER: It might happen very quickly after step 210. That's
8 happening after. So, you're saying -- let's say that the buttons are already
9 pressed, flies through step --

10 JUDGE REPKO: Because it's going to proceed through the flow
11 chart at that point, right?

12 MR. SAUER: Yeah. It --

13 JUDGE REPKO: Then you have all that state you need, right?

14 MR. SAUER: It might do it quickly, but the claim requires more
15 data. It requires it happens when it becomes operational, so quickly or not,
16 it's not when --

17 JUDGE REPKO: Okay.

18 MR. SAUER: -- becomes operational.

19 JUDGE REPKO: Thank you.

20 MR. SAUER: I also want to briefly address what my friend just
21 said about step 252, that regardless of everything we discussed, that it's clear
22 that step 252 turns to yes when there's a battery present. That's not true,
23 remember, because the yes out of step 252 in their interpretation doesn't
24 necessarily mean that it's detected the right battery type. It also would have
25 to mean that -- their interpretation -- that it would have to also return yes
26 when there's no battery present or when there's a battery below 10 volts. If

1 you get a yes out of 252, it can be any of those things in order -- under their
2 interpretation 1 or 4 in manual mode to be operable. So, that's just not true.

3 Just lastly, I want to reiterate that merely every argument, as you
4 heard from Petitioner today, doesn't present a new petition and isn't
5 supported by the prior art. And Petitioner really tried to shortcut the process
6 with only a cursory analysis of the prior art and missed the mark, and since
7 then, Petitioner has been trying to make up for this with totally new
8 arguments and read things into the record that just aren't there. So, I'll end
9 on saying the Petitioner hasn't met its burden and patentability should be
10 maintained here. Unless there are any further questions, we'll rest.

11 JUDGE ROSS: Well, thank you both very much. Before we
12 adjourn, I'd like to say that you all did a very nice job presenting your issues
13 clearly to us today and fielding our questions. We sincerely appreciate your
14 preparedness with that, the case is under submission and we're adjourned.

15 (Whereupon, the above-entitled matter went off the record at 3:13
16 p.m.)

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Patent 11,667,203 B2

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