

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TESLA, INC.,
Petitioner,

v.

CHARGE FUSION TECHNOLOGIES, LLC,
Patent Owner.

Case IPR2025-00032
Patent 11,563,338

**PATENT OWNER'S PRELIMINARY SUR-REPLY TO PETITIONER'S
PRELIMINARY REPLY TO PATENT OWNER'S PRELIMINARY
RESPONSE**

Pursuant to the Board’s March 6, 2025, authorization, Patent Owner submits this Preliminary Sur-Reply to Petitioner’s Preliminary Reply (Paper 9) (“Reply”).

I. DISCRETIONARY DENIAL IS WARRANTED UNDER §325

In its Reply, Petitioner fails to respond to the fact that its main reference applied in every ground, Ferro, is on the face of the ‘338 Patent and that Ferro’s parent application, *Hafner*, was considered by the examiner in many related applications of the ‘338 Patent. EX1001, 2. Simply because Ferro was not included in an Office Action does not nullify or contradict the Board’s previous guidance that references do not need to be in an Office Action to satisfy the first prong of *Advanced Bionics. See Palo Alto Networks, Inc. v. Centripetal Networks, Inc.*, IPR2021- 01155, Paper 12 at 14 (PTAB Jan. 20, 2022). Further, contrary to the Petitioner’s unsupported allegation (Reply, pg. 1, lines 14-15), the additional references are clearly cumulative to references considered by the Examiner. The battery picture from Donnelly is substantively identical to the one from the Tesla Manual, Oyobe actually provides less “vehicle sensor” description than Hafner, Letendre shows a physical slider similar to the one from Eberhard, and Ziegler’s HVAC controls are substantially the same as in Hibi.

II. LETENDRE FAILS TO TEACH AN AMOUNT OF CHARGE

In its Reply, Petitioner provides a claim construction analysis of the term “amount of charge” yet failed to include a construction in the Petition. Reply at 2.

The ‘338 Patent describes many different embodiments, including embodiments where a user can “increase or decrease the desired charge percent level” (EX1001, 14:63-67) to define an “amount of charge” as well as those where the user can enter a number of miles and have the system “automatically” compute the “amount of charge”. The claims at issue here require that the slider specifies “an *amount of charge*” – not a number of miles. There is indeed a relationship between miles and amount of charge, but Petitioners’ misinterpretation of the language quoted from the ‘338 Patent description would convert the mere relationship to an equivalency, which clearly violates the ordinary meaning of the claimed term. Nowhere does Letendre provide description of a user being able to specify an amount of charge (e.g., via a slider mechanism), and Petitioner’s inappropriate conflation of the two related but distinct variables confounds the attempt to combine Ferro’s amount of charge with Letendre’s mileage selection, and accordingly does not cure this deficiency.

III. PATENT OWNER DID NOT MISREPRESENT THE PETITION

Patent Owner’s clerical error regarding limitations 10[h] and 10[i] does not nullify PO’s position that Petitioner does not identify “*with particularity*” the grounds challenged. *POPR*, 33-34. For *numerous* limitations, the Petition uses a format similar to ““I. Claim 11” followed only by “Claim 2”; *Pet.*, 65”. *see POPR* 34. The Board and Patent Owner are not required to sift through the record to

establish the Petitioner's argument and satisfy Petitioner's burden for them. Further, footnote 4 does not save the Petition. *Reply*, at 3; *citing Pet.*, 16, FN 4. It is not clear when reference to a claim is a citation, or a general indication of a claim – compare the words “I. Claim 11” to “Claim 2” and identify which is a citation. *See Pet.* at 66. Regarding claim 19[h], the analysis in the Petition requires the Board and PO to follow unstated logic to identify the Petitioner's argument alleging where antecedent basis in the claim is located. This is exacerbated by unclear “citation” format. The Petition does not identify the grounds of rejection *with particularity*. And the Petition's confusing cross-referencing scheme is simply a ploy to circumvent the word count. *See POPR*, 35.

Patent owner did not misrepresent Petitioner's mappings regarding motivation to combine but instead asserts that Petitioner fails to properly present any motivation for combining the entirety of the secondary references with a modified version of Ferro to disclose the entire invention. Instead, Petitioner asserts a separate motivation to combine each of the six references with Ferro. *See POPR* 64. Petitioner cannot combine references “like separate pieces of a simple jigsaw puzzle” without “explain[ing] what reason or motivation one of ordinary skill in the art at the time of the invention would have had to place these pieces together.” *InTouch Techs., Inc. v. VGO Comm'cns, Inc.*, 751 F.3d 1327, 1349 (Fed. Cir. 2014).

Dated: March 18, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 18, 2025, a true and correct copy of the foregoing PATENT OWNER'S PRELIMINARY SUR-REPLY was served by electronic mail upon the following counsel of record for Petitioners:

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