

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TESLA INC.,
Petitioner

v.

CHARGE FUSION TECHNOLOGIES, LLC,
Patent Owner

Case No. IPR2025-00032
Patent No. 11,563,338

**PETITIONER'S OPPOSITION TO
PATENT OWNER'S REQUEST FOR DIRECTOR REVIEW**

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	THE BOARD CORRECTLY FOUND ALL CHALLENGED CLAIMS UNPATENTABLE OVER THE PRIOR ART.....	2
	A. The Board Correctly Applied the §103 Standard	2
	B. Neither the Board Nor the Petition Rely on Hindsight.....	3
	C. Patent Owner’s Drafting Gamesmanship Should Not Be Rewarded	5
III.	THE BOARD CORRECTLY FOUND THE VEHICLE SENSOR LIMITATION OBVIOUS.....	6
	A. Patent Owner Does Not Compare Oyobe’s Disclosures to the Claim Requirements.....	6
	B. Patent Owner Does Not Rebut the Board’s Motivation to Combine Findings.....	7
IV.	THE BOARD CORRECTLY FOUND THE VEHICLE CHARGE INDICATOR LIMITATION OBVIOUS.....	9
	A. Patent Owner’s Critiques of Ferro Are Untethered to the Claims	9
	B. The Board Properly Relied on Donnelly, and the Patent Owner’s Attacks Are Both Waived and Meritless.....	9
	C. Patent Owner’s New Arguments are Untimely and Misrepresent Letendre’s Teachings	12
V.	THE BOARD CORRECTLY FOUND THE SENDING AN ALERT LIMITATION OBVIOUS.....	13
	A. The Board Correctly Interpreted the Claims.....	13
	B. The Board Properly Found Donnelly Teaches Sending an Alert	14
	C. Patent Owner’s Remaining Arguments Are Waived and Meritless.....	15
VI.	CONCLUSION.....	15

I. INTRODUCTION

Director Review is not an opportunity to relitigate arguments that were fully litigated and properly rejected by the Board. Patent Owner’s Request for Director Review (“Request”) fails because it does not identify any important issue of law or policy, abuse of discretion, or material factual or legal error justifying review. Patent Owner’s principal complaint—that the Board applied a “could have” rather than “would have” obviousness standard—is unsupported by the Final Written Decision (“Decision”). Paper 27. The Board did not rely on the mere possibility of combining references. It found the challenged claims obvious based on specific, objective evidence of why a POSITA would have been motivated to make the proposed combinations and had a reasonable expectation of success.

Patent Owner also cannot identify any erroneous finding of material fact. Instead, Patent Owner repeatedly critiques the references for failing to disclose features that are not in the claims. Patent Owner disparages Ferro for failing to teach “a user choosing any selected amount [of charge] at any given time for any reason” (Request, 12), Oyobe because it does not “teach or suggest ‘indicat[ing] an intention to begin a charging transaction’” (*id.*, at 10) and Donnelly for not including a “user manipulable” or “interactive” bar graph. *Id.*, at 7, 13. Those criticisms do not show Board error; they confirm that Patent Owner’s Request depends on importing unclaimed requirements into the challenged claims.

Finally, Patent Owner improperly raises new arguments not presented below. The Director Review process does not permit new evidence or new arguments outside the official record. *See* <https://www.uspto.gov/patents/ptab/decisions/director-review-process> at 3(e). Patent Owner had a full opportunity to litigate its positions during the IPR and is limited to the arguments it timely preserved. Director Review is not an opportunity for a do-over.

II. THE BOARD CORRECTLY FOUND ALL CHALLENGED CLAIMS UNPATENTABLE OVER THE PRIOR ART

A. The Board Correctly Applied the §103 Standard

The Board correctly applied the §103 standard by evaluating whether a person of skill in the art (“POSITA”) as of the priority date would have been motivated to combine the prior art references and had a reasonable expectation of success in doing so. The Board did not rely on whether the references merely *could have* been combined. Rather, it found a POSITA *would have* made the proposed combinations based on specific, objective evidence presented in the Petition.

Patent Owner’s contrary argument rests on a mischaracterization of the Final Written Decision. The words “could have” appear only once, and there in the context of asking whether a POSITA would have been capable of the math required to implement one of the combinations—an implementation detail ancillary to the proposed modification. Decision, 30. That passing observation does not undermine the Board’s repeated and explicit findings that the combinations were supported by

articulated reasons and grounded in objective evidence.

This case bears no resemblance to the circumstances in *Virtek Vision Int'l ULC v. Assembly Guidance Sys., Inc.*, 97 F.4th 882, 887 (Fed. Cir. 2024). There, neither the Petition nor the expert “articulate[d] any reason why a skilled artisan would combine [the] references.” *Id.* At best, they argued that “it would have been obvious” because both “systems were known.” *Id.* The expert “stated eleven times that he did not provide any reason to combine the references in his expert declaration.” *Id.*

Here, by contrast, the Petition provided detailed explanations for each proposed combination, supported by expert testimony and extensive objective evidence. The Board expressly credited that evidence, finding Petitioner’s expert supported his opinions with substantial corroborating references:

“Mr. Andrews[] supports his extensive explanations of his opinions with citation to dozens of pieces of objective evidence....Mr. Andrews, and Petitioner by extension, leave virtually none of the substance of his testimony unsupported by objective evidence, a practice we applaud.” Paper 11, 39.

Such evidence-driven analysis is the opposite of hindsight reasoning and fully satisfies §103. Because the Board applied the correct legal framework, Patent Owner identifies no error—let alone an error warranting Director Review.

B. Neither the Board Nor the Petition Rely on Hindsight

Patent Owner’s hindsight argument fails for the same reason its §103

argument fails: it is unsupported by the record. The Petition provided detailed, contemporaneous reasons why a POSITA would have combined the prior art references, and the Board expressly relied on that evidence in reaching its conclusions.¹ That evidence-driven analysis is the opposite of hindsight.

Patent Owner does not identify any knowledge *gleaned only from application's disclosure* that Petitioner allegedly relies upon.” *Uber Tech, Inc. v. LBT IP II LLC*, IPR2022-00880, Paper 29, 54-55 (PTAB Dec. 6, 2023) (emphasis original). Instead, it offers conclusory assertions that hindsight “must” have been involved. Speculation is not a substitute for evidence. As the Board found, Patent Owner failed to point to any objective support for its hindsight theory:

[Patent Owner’s expert] Dr. Goldberg cites no objective evidence supporting his opinion that Petitioner’s proffered motivation to combine teachings from Sutardja with Ferro, Donnelly, and Letendre is “hindsight.” For this reason alone, we consider Dr. Goldberg’s testimony to be of little probative value. We also find that his testimony

¹ The motivations relating to Oyobe’s vehicle sensor (Pet., 11-12; EX1003, ¶¶150-152); Donnelly’s battery charge bar graphic, with Letendre’s slider (Pet., 31-41; EX1003, ¶¶215-250); Zeigler’s HVAC mode (Pet., 46-50; EX1003, ¶¶263-281); Galvez-Ramos pet-suitable HVAC system (Pet., 53; EX1003, ¶289); and Donnelly’s alerts (Pet., 58; EX1003, ¶¶301-302) are set out in full in the Petition.

is of little probative value for the reasons identified by Petitioner in its Reply. More specifically, Dr. Goldberg:

has never worked on the design of an electric vehicle charging system, never designed a GUI for an electric vehicle, and never designed an HVAC system for an electric vehicle. EX1093, 12:11–14:1. He has never owned an electric vehicle, never rented an electric vehicle, and never even personally plugged in an electric vehicle to charge. EX1093, 22:19–23:5. His closest experience comes from being on the Board of an electric vehicle company where, admittedly, he “wasn’t involved with engineering.[’]” EX1093, 12:17–18.

Decision, 41-42 (citing Reply 12). The Board did not rely on hindsight. It relied on the detailed record before it. Patent Owner’s disagreement with that record does not establish error, much less an issue warranting Director Review.

C. Patent Owner’s Drafting Gamesmanship Should Not Be Rewarded

Patent Owner’s remaining argument—that the number of references cited in the Petition weighs against obviousness—fails as a matter of law. The Federal Circuit has repeatedly held that “[a] large number of references in a rejection does not, without more, weigh against the obviousness of the claimed invention.” *In re Gatabi*, No. 2022-1580, 2023 WL 3477285, at *3 (Fed. Cir. May 16, 2023). The relevant inquiry is not how many references are cited, but whether the combination is supported by articulated reasoning and objective evidence, as the Board found.

Nor is it surprising that multiple references are used. Claim 1 of the '338 Patent recites a series of disparate features **with no claimed relationship to one another**, including: (1) a vehicle sensor for detecting a parked vehicle; (2) a graphical user interface with a slider for specifying an amount of charge; (3) an HVAC operating mode suitable for a pet; and (4) determining when a charge threshold is reached and sending an alert.

Patent Owner's argument thus reflects not a flaw in the Board's analysis, but the breadth and disjointed nature of the claims themselves. The Board correctly evaluated each proposed combination on its merits and found that each was supported by articulated motivations and grounded in objective evidence. Patent Owner identifies no error in that analysis. Its argument instead seeks to elevate form over substance and reward claim drafting gamesmanship rather than innovation. That provides no basis for Director Review.

III. THE BOARD CORRECTLY FOUND THE VEHICLE SENSOR LIMITATION OBVIOUS

Patent Owner identifies no error in the Board's determination that limitation 1[e] is obvious. Instead, it advances arguments that either rely on requirements absent from the claims or ignore the Board's findings regarding motivation to combine. Neither approach provides a basis for Director Review.

A. Patent Owner Does Not Compare Oyobe's Disclosures to the Claim Requirements

Patent Owner argues that Oyobe does not “teach or suggest ‘indicat[ing] an intention to begin a charging transaction.’” Request, 10. That language does not appear in any challenged claim. Limitation 1[e] recites requires only that the system “receive, from the vehicle sensor, information indicative of a presence of an electric vehicle in a parking space.” EX1001, 1[e]. It does not require any explicit indication of an intent to begin charging. Therefore, the Board correctly found that Oyobe’s express teaching that “[c]ontrol apparatus 60B...receives a detection signal from vehicle position detecting apparatus 108” when vehicle sensor 108 “detects that the vehicle is parked at the location where charging equipment is installed” teaches limitation 1[e]. EX1005, [0143]-[0144], Pet., 19.

B. Patent Owner Does Not Rebut the Board’s Motivation to Combine Findings

Patent Owner also fails to rebut the Board’s finding that it would have been obvious to incorporate Oyobe’s detection signal into Ferro’s electric vehicle charging system. The Board explained that Ferro “describes manual options for initiating charging” and “although Ferro refers to wireless charging, it provides no implementation details.” Decision, 21 (citing EX1004, ¶36, EX2003, 54:8-55:9). Therefore, a POSITA “would have been motivated to incorporate Oyobe’s wireless

vehicle detecting apparatus into Ferro² because doing so ‘advantageously allows a user to instruct charging without exiting the vehicle and physically interacting with a charging station.’” Decision, 19 (citing Pet. 11–12 and Ex. 1003 ¶¶ 150–152).

Patent Owner does not dispute these findings. It does not challenge the Board’s determination that Ferro lacks implementation details for wireless charging, nor does it address the advantages of incorporating Oyobe’s vehicle sensor in allowing the user to avoid physically interacting with a charging station. Instead, Patent Owner offers only a conclusory assertion that parking near a charger does not demonstrate an “intention to begin charging.”³ Request, 10. But that assertion again relies on a requirement not found in the claim and does nothing to undermine the Board’s motivation-to-combine analysis. Patent Owner offers no basis to disturb the

² Notably, this is the *second* IPR panel to decide that it is obvious to modify Ferro in this way. *See* Reply, 16 (citing IPR2023-00062, Paper 35 at 28-29).

³ Patent Owner also presents new arguments not raised below, including a new claim that, in Ferro “the EV user already has the option to not exit the vehicle.” Request, 9. Patent Owner’s citations describe manual options for charge initiation located outside the vehicle. The Board correctly determined that Ferro teaches *manual* options and the combination “allow[s] a user to initiate Ferro’s charging methods more easily without the user having to leave the vehicle.” Decision, 21.

Board's findings.

IV. THE BOARD CORRECTLY FOUND THE VEHICLE CHARGE INDICATOR LIMITATION OBVIOUS

Patent Owner likewise identifies no error in the Board's determination that the vehicle charge indicator limitation (1h) is obvious. Instead, Patent Owner relies on arguments that import limitations not found in the claims, mischaracterizes the prior art, and presents new theories. None provide a basis for Director Review.

A. Patent Owner's Critiques of Ferro Are Untethered to the Claims

Patent Owner first contends that Ferro's disclosures should be disregarded because Ferro "does not contemplate a user choosing any selected amount [of charge] at any given time for any reason[.]" Request, 12. This language does not appear in the challenged claims. The claims require a "graphical user interface...adapted to display a vehicle charge indicator element" that includes "a slider by which **an amount of charge may be specified.**" EX1001, claim 1[h]. They do not require unrestricted user selection or any particular degree of flexibility. In any event, Ferro teaches that a user is able to select (and change) the required minimum and maximum level of charge. EX1004, [0123]; EX1003, ¶241. Patent Owner has identified no error in the Board's analysis.

B. The Board Properly Relied on Donnelly, and the Patent Owner's Attacks Are Both Waived and Meritless

The Board correctly found that a POSITA would have been motivated to

modify Ferro's interface in view of Donnelly.

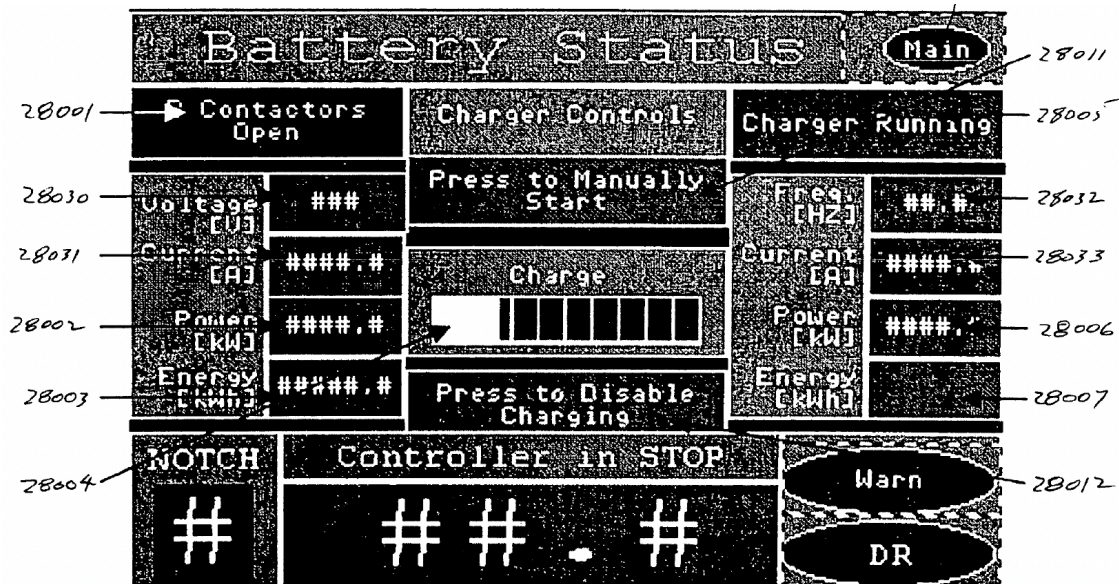
First, Patent Owner suggests that Donnelly is not analogous art. That argument is waived. Patent Owner did not challenge Donnelly's status as analogous art during the IPR.⁴ It cannot raise that issue for the first time in a Request for Director Review. In any event, the argument lacks merit. Patent Owner likes to call Donnelly a "locomotive train" reference (Request, 6, 12), but Donnelly describes a "hybrid vehicle" and explains that "inventive features are applied to vehicles other than locomotives, such as **cars**, railroad cars, and trucks." EX1006, 26:6-8, 1:36-38; Pet., 31 (citing same). Likewise, the challenged '338 Patent defines "electric car" broadly to include trains, cars, and more. EX1001, 3:30-36. The Board therefore correctly treated Donnelly as analogous art.

Patent Owner's next argument—that Donnelly teaches charging only by "diesel generator (diesel locomotive) or by a third-rail/overhead wire system" was again not raised below and again is unsupported. Request, 12. The very disclosure that Patent Owner cites—7:11-16—states "Alternately, prime energy can be provided by an external source such as overhead electrical trolley wires **or directly**

⁴ See e.g., Reply, 24 ("PO does not rebut the Petition's showing that the applied prior art is analogous and reasonably pertinent....Indeed, the phrases 'analogous' and 'reasonably pertinent' do not appear in the POR.").

plugging into a utility grid.” EX1006, 7:14-15. *See also*, 8:22-24 (“plugging into a utility grid”). Therefore, Patent Owner’s claim that Donnelly never involves battery charging at a charging station is inconsistent with Donnelly’s teachings. Request, 6.

Third, Patent Owner inconsistently describes Donnelly’s interface—at times asserting it is not a GUI, while elsewhere acknowledging that it is. Request, 7, 13. The record reflects that Donnelly teaches a touchscreen-based graphical user interface with selectable options, as shown below:



EX1006, Fig. 28.

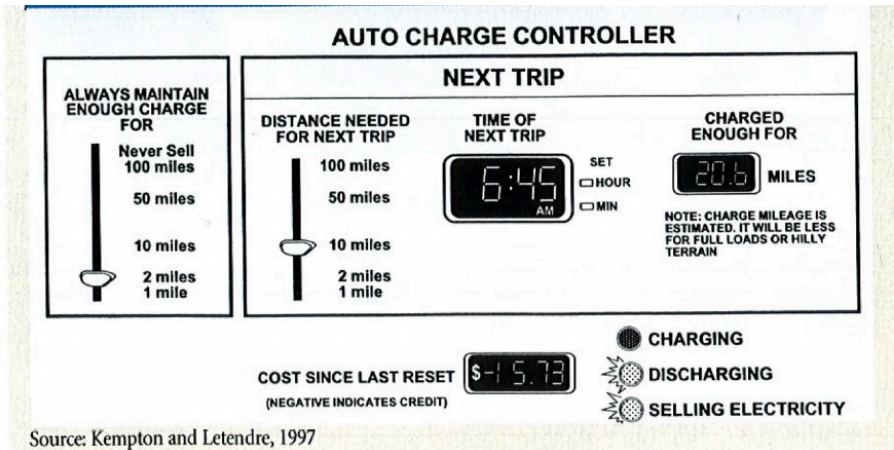
Patent Owner then argues that Donnelly’s bar graph “is not user manipulable” and “is not interactive[.]” Request, 7, 12, 13. Nothing in the claims requires a “user manipulable” or “interactive” bar graph. Further, Figure 7 of the ’338 Patent depicts a bar graph not depicted or described as user manipulable. EX1001, 14:59-63. Patent Owner identifies no error in the Board’s analysis of Donnelly’s teachings.

C. Patent Owner's New Arguments are Untimely and Misrepresent Letendre's Teachings

Patent Owner then argues that using a slider to set an amount of charge—as expressly taught by Letendre—would not have been obvious. But once again, Patent Owner raises new arguments. Below, Patent Owner argued (1) as a matter of claim construction, that Letendre does not teach setting an amount of charge because a distance is not an amount of charge and (2) that it would not have been obvious to incorporate Letendre's teachings into Donelly because one uses a logarithmic scale. PO Resp. 43-46; Sureply 14-15. Patent Owner raises no error in the Board's rejection of either of these arguments. *See* Decision, 30-31.

Instead, Patent Owner presents a new argument: that Letendre teaches only a “certain minimum retention amount...to be kept upon drawn down from the EV battery by the grid operator” during energy sell-back. Request, 13. Patent Owner's argument is untimely and it inaccurately describes Letendre. Letendre teaches two slider controls as shown below. EX1007, at 9. The first sets the minimum amount that the vehicle cannot go below. *Id.* The other sets the distance needed for the next trip. *Id.* The user also inputs the time of the next trip. *Id.* While the charge should never go below the first number (below, set at 2 miles), the vehicle can go below the second number (distance needed for next trip) so long as it has enough charge for the trip by the set time of the next trip. Therefore, Patent Owner's novel claim that

Letendre does not teach “specifying an amount of charge to add to a battery during a charging operation” (Request, 7) is untimely and inaccurate.



EX1007 at 9. Patent Owner does not address any of the Board’s analysis of why a slider would have been obvious to use, nor identify any error in that analysis. *Compare*, Request, 13-14 with Decision, 29-31. The Board correctly found the prior art teaches or renders obvious each aspect of the vehicle charge indicator limitation, including the user of a slider to specify charge.

V. THE BOARD CORRECTLY FOUND THE SENDING AN ALERT LIMITATION OBVIOUS

Finally, the Patent Owner identifies no error in the Board’s determination that the “send an alert” limitation 1[n] is obvious.

A. The Board Correctly Interpreted the Claims

The Board did not “commit legal error” in its interpretation of limitation 1[n]. *Contra*, Request, 14. Claim 1 requires an instruction stored in memory that, when executed, will cause a processor to “determine that an amount of charge residing in

a battery of the electric vehicle has reached a predefined threshold; and send an alert to an operator of the electric vehicle indicative of the charge residing in the battery having reached the predefined threshold.” EX1001, Claim 1[n]. It does not impose any additional requirements regarding operator location, whether the vehicle is parked, or what systems are operating at the time the alert is sent. Decision, 33.

Patent Owner does not identify any claim language that supports those additional limitations. Its reliance on “the remainder of the claim” is insufficient to rewrite the plain language of the limitation. Request, 15. The Board correctly refused to import restrictions that do not appear in the claims.

B. The Board Properly Found Donnelly Teaches Sending an Alert

The Petition maps the “send an alert” requirement of Claim 1[n] to displaying an alert on a touchscreen, consistent with the ’338 Patent’s teaching that displaying a message on a dashboard display device is one way of sending a message to the user. EX1001, 20:18-26 (the electrical charging system may “alert the driver to potential problems” by “send[ing] a message...to the user via a user specified node, such as a message on a dashboard display device, a message sent to a cell phone, an email account or the like.”) (emphasis added).

The Board therefore correctly found that the ’338 Patent “refers to displaying a message on a dashboard display as a way to ‘alert the driver to potential problems’” Decision, 33 (citing EX1001, 20:18-26). To the extent Patent Owner is still arguing

that displaying an alert is insufficient to satisfy Claim 1[n], its argument cannot be reconciled with the '338 Patent's own description of an alert. The Board did not err in finding that Donnelly teaches "sending an alert." Decision, 31-34.

C. Patent Owner's Remaining Arguments Are Waived and Meritless

Finally, Patent Owner advances new arguments regarding how Donnelly operates, including citations it did not rely on during the IPR.⁵ Those arguments are improper. Patent Owner challenged Donnelly below only on the ground that displaying a warning within a vehicle is not "sending an alert," a position the Board properly rejected. *See* POR, 47-53; Decision, 31-34.

In any event, Patent Owner's new arguments lack merit. Donnelly expressly teaches providing a warning via a user interface based on the state of charge of the battery. Pet., 56 (citing Donnelly (EX1006), 15:50-67). Donnelly therefore teaches sending an alert. *See* Patent 1, 58-59; EX1003, ¶¶297-304. Patent Owner's novel, selective characterization of Donnelly does not undermine the Board's findings.

VI. CONCLUSION

For these reasons, Patent Owner's Request for Director Review is baseless and should be denied.

⁵ Patent Owner's submissions did not cite Donnelly, 25:4-25, nor reference a diesel generator, third-rail/overhead wire, minor alarms, or Warnings Screen.

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Respectfully submitted,
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CERTIFICATE OF SERVICE ON PATENT OWNER
UNDER 37 C.F.R. § 42.6

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that on June 22, 2026, the foregoing *Opposition to Patent Owner's Request for Director Review* was served via electronic filing with the Board and via Electronic Mail on the following practitioners of record for Patent Owner:

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