

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TESLA, INC.,
Petitioner

v.

CHARGE FUSION TECHNOLOGIES, LLC,
Patent Owner

Case IPR2025-00152
Patent 11,990,788

DECLARATION OF DR. STEVEN GOLDBERG IN SUPPORT OF
PATENT OWNER'S RESPONSE

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I, Steven Goldberg, hereby declare the following:

I. INTRODUCTION

1. My name is Dr. Steven Goldberg. I have been retained by counsel for Patent Owner as a technical expert in the above-captioned Inter Partes Review (“IPR”) matter. Specifically, I have been asked to study and provide my opinions on the technology described and claimed by U.S. Patent Nos. 11,631,788 (the “’788 Patent”). I understand that the Challenged Claims are claims 1-30 from the ’788 Patent. My opinions in this Declaration are limited to those Challenged Claims.

2. My compensation in this matter is not based on the substance of my opinions or the outcome of this matter. I have no financial interest in the Patent Owner. I am being compensated at an hourly rate of \$500 for my analysis and testimony in this case.

II. BACKGROUND AND QUALIFICATIONS

3. I am currently a Partner at DYDX Ventures, an early-stage venture capital firm. Additionally, I am the sole proprietor of a consulting business, dba Air Access, where I provide engineering, technical and management services. In that role, I direct and advise a number of high-tech start-up companies and provide litigation technical consulting and support services. My current curriculum vitae

(CV) is attached at Exhibit A and some highlights follow.

4. My forty-year career in the technology industry includes employment as an RF engineer, algorithm engineer, digital design engineer, engineering manager, business general manager, CEO, technology investor, and board member. The vast majority of these positions were at companies involved in wireless communications, telematics, radar technology, communications technology, automotive, and/or embedded systems (those that include hardware, software, and algorithms).

5. I received a B.S.E.E. degree and M.S.E.E. degree from Washington University, St. Louis, Missouri in 1975 and 1980, respectively. I also received a Ph.D. in Electrical Engineering from the University of California, Santa Barbara in 1988.

6. My graduate education focused on digital and analog communications and related algorithms. My Ph.D. doctoral thesis focused on direct sequence spread spectrum communications and wireless technology, which includes technology related to the Global Positioning System (GPS), a technology based on direct sequence spread spectrum technology.

7. I was twice employed at Trimble Navigation, Sunnyvale, CA, a global leader in GPS technology. In my first position at Trimble, from 1991 to 1995, I was an Engineering Manager with the Vehicle Tracking Division of the company and a

Senior Engineer in the Differential Corrections Group in the Survey Division. My group within the Vehicle Tracking Division—which was composed of hardware, software, and algorithm engineers—designed, developed, and manufactured tracking systems for cars, trucks, first responders, and public transportation systems. My second period of employment with Trimble Navigation was from September 2008 to September 2009. During this time, I was the Program Manager for the Trimble Military Division where I led approximately 20 hardware, software, algorithm, mechanical, and RF engineers in the design of the next generation M-Code GPS system for military aircraft.

8. My software and programming experience includes programming activity through undergraduate, graduate, Ph.D. programs in Fortran and Matlab (1971-1988). As a Systems Engineer at Applied Signal Technology (1988-1991), my job was to create algorithms to help the National Security Agency and the CIA to receive and decode wireless messages from entities of interest internationally (known as Signal Intelligence). I designed and tested my algorithms in MATLAB, a programming language used by systems engineers. From 1991-2009, I had hundreds of software engineers reporting to me in my roles as Engineering Manager, VP Engineering, and CEO, including over 250 software engineers as part of my role of VP of Engineering at Nokia. I regularly reviewed product software architectures

and validated, at a system and algorithmic level, the functionality and the potential performance of a wide variety of products, from GPS receivers and wireless/microwave radios to Internet Security products.

9. Additionally, earlier in my career I was an engineer with California Microwave, Inc., Emerson Electric Co., and an engineer at the Hewlett Packard Company where I regularly had responsibility for radar component design and/or radar system measurements.

10. Notably, I was also a founder and engineering leader at DataRunway, a startup company focused on the design, manufacture, and sale of a system that would provide high-speed data to aircraft in flight.

11. Throughout my career, I was very close to “product” and “product development.” As an engineer, engineering manager, VP of engineering, General Manager, CEO, and corporate board member, I have been directly involved in product definition, market validation, product development, testing, manufacturing, pricing, sales, and support. My product management experience includes the creation and oversight of Market Requirements Documents (MRD; created by Marketing Dept), Product Requirements Documents (PRD; created by Product Managers), and System Specification Documents (SSD; created by engineering departments). These documents are tied to a detailed process that guides and enables

the creation of a product by assessing and responding to the market and customer needs.

12. Additionally, at Trimble Navigation, Cylink, Applied Signal Technology, Nokia, DataRunway, and Vidient, I was involved with the generation of intellectual property, specifically patents, related to the products planned for current and future development in the fields of GPS, RF and microwave communications, communications signal processing, receiver design, and RF and microwave components.

13. My professional experience also includes the comparative analysis of competing products and features in a given marketplace as a mechanism for product valuation and unit pricing. This analysis typically involves leveraging a multidisciplinary evaluation of the product that requires an understanding of the hardware, software, algorithmic, user interface, and aesthetic design, and a valuation of the intellectual property associated with these aspects of the product.

14. Additionally, I worked for 11 years at Venrock, a Venture Capital firm, as a Partner where I evaluated and provided technical diligence for a wide range of technology companies, including electric vehicle manufacturers, electric utility grid generation and grid storage companies, electric vehicle charging companies and technology, and technology related to electric utility load balancing and supply.

15. My experience of nearly 40 years in academic, financial, and practical situations as well as my hands-on experience, has given me a detailed appreciation of the technology involved with the '788 Patent.

III. MATERIALS USED

16. In writing this Declaration, I have considered the following: my own knowledge and experience, including my work experience in the above fields; my experience in teaching those subjects; and my experience in working with others involved in those fields. I have also reviewed the exhibits filed with the Petition and the Petition itself. Among the references considered are the '788 Patent (EX1001), the '788 Patent File History (EX1002), Sutardja (EX1004), Donnelly (EX1006), Letendre (EX1007), Knockeart (EX1010), and Seelig (EX1078). I have also reviewed the Expert Declaration by Scott Andrews (EX1003).

IV. LEGAL FRAMEWORK

17. I have been informed by counsel for Patent Owner that the following legal principles apply to an analysis of patentability based on 35 U.S.C. § 103 for obviousness. I have also been informed that, in an inter partes review proceeding such as this proceeding, to render a patent claim unpatentable, Petitioner must show by a preponderance of the evidence that the claim would have been rendered obvious

by one or more properly combined prior art patents or publications.

A. Obviousness

18. I understand that to find a patent invalid for obviousness, the Petitioner must prove that the differences between the claimed invention and the prior art taken as a whole would have been obvious to one of ordinary skill in the art at the time the invention was made.

19. I have been informed that to render a claim obvious, a combination of prior art references must disclose each claim element of that claim, and that obviousness is a question of law based on the underlying facts. I understand that the underlying factual inquiries are: (1) the scope and content of the prior art, (2) the differences between the prior art and the claims at issue, (3) the level of ordinary skill in the pertinent art, and (4) secondary considerations of non-obviousness.

20. I am also informed that the fact that all of the elements of a claimed invention can be found separately in more than one prior art reference is not sufficient to warrant a finding that a claimed invention is obvious. There must be a reason why it would have been obvious to modify or combine the prior art to arrive at the claimed invention. I understand that a helpful insight into this determination is whether there is a teaching, suggestion or motivation in the prior art that would lead one of ordinary skill in the art to combine the elements. When there is no

suggestion for the proposed combination, or when the prior art suggests something other than the combination, a finding of obviousness is generally not warranted.

21. I understand that the prior art must be considered in its entirety, including disclosures that teach away from the claimed invention. Furthermore, if a proposed modification to a prior art reference would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification.

22. I understand that the pertinent obviousness inquiry takes place at the time of the invention. Therefore, the use of hindsight in an obviousness analysis is impermissible.

23. I also understand that even if one can demonstrate a reason to combine references, a prima facie case of obviousness cannot be shown without a reasonable expectation of success, which is determined at the time the invention was made. I also understand that for a finding of obviousness, at least some degree of predictability is required when considering a combination of references.

B. Level of a Person of Ordinary Skill in the Art

24. I was asked to provide my opinion as to the level of skill of a person of ordinary skill in the art (“POSITA”) of the ’788 Patent at the priority date of the claimed invention, which counsel has told me to assume is July 13, 2009. In

determining the characteristics of a hypothetical POSITA of the '788 Patent, I considered several factors, including the type of problems encountered in the art, the solutions to those problems, the rapidity with which innovations are made in the field, the sophistication of the technology, and the education level of active workers in the field. I also placed myself back in the time frame of the claimed invention and considered the colleagues with whom I had worked at that time.

25. In my opinion and for purposes of this Petition, a POSITA at the time of the claimed invention of the '788 Patent would have had at least a Bachelor's Degree in an Engineering discipline such as Electrical or Mechanical Engineering (or equivalent field), and at least two years of relevant experience in the research, design, development and/or testing of automotive systems and related embedded systems, or the equivalent, with additional education substituting for experience and vice versa. Such a POSITA would have been capable of understanding the '788 Patent and the prior art references discussed herein. I apply this level of ordinary skill throughout this declaration.

26. Based on my education, training, and professional experience in the field of the claimed invention, including teaching the requisite skills necessary for a POSITA during the relevant time period, I am familiar with the level and abilities of a POSITA at the time of the claimed invention. Additionally, I met at least these

minimum qualifications to be a POSITA as of the time of the claimed invention of the '788 Patent. Specifically, by July 13, 2009, I had already obtained a Ph.D. degree in electrical engineering and accumulated at least 20 years of experience in the design and/or testing of automotive technology, embedded systems, vehicle sensors, and related technologies.

C. Claim Construction

27. In my opinion, for purposes of this Petition, none of the terms in the Challenged Claims require additional construction beyond their plain and ordinary meaning as a POSITA would understand them at the time of the invention. I disagree with the claim construction opinions proposed by Dr. Andrews and Petitioner. I have provided my opinions on the claim terms proposed by Dr. Andrews for construction.

28. For the “unitary charge indicator” claim term, I disagree with Petitioner’s construction at least because it incorrectly limits the “unitary vehicle charge indicator” to a “bar graph” based solely on a Figure within the ‘788 Patent that also appears in every other Charge Fusion parent application which I have encountered dating back to the 2009 priority date.

29. I note that neither Mr. Andrews nor Petitioner proposed to limit any charge indicator terms that appeared in the ‘753 or ‘135 Patents to a “bar graph.”

Importantly, the ‘788 Patent itself is not limited to a “bar graph” but also states: “the various systems described herein are depicted for use in explanation, but not limitation, of described embodiments. The Different types, layouts, quantities, and configurations of systems described herein may be utilized without deviating from the scope of some embodiments” and that “other configurations of systems and devices may also or alternatively be utilized to perform the methods described herein without deviating from the scope of some embodiments.” EX1001, 6:24-29, 16:32-35.

30. I disagree with Dr. Andrews’ and Petitioner’s assertion that “the first and second GUI portions merely inform people of the claimed information (i.e., the current battery charge and the uncharged capacity of the battery). Unlike the third GUI portion, which is “a slider by which an amount of charge may be specified[,]” the first and second GUI portions do not interact with any other elements of the claim and guide the user that is implementing the desired amount of charge via the slider. Petition at 7.

31. I note that it appears that even the Petitioner at one point agreed that the first and second portions of a unitary charge indicator provide function. In IPR2023-00063, which was Petitioner’s IPR for the parent ‘135 Patent, Petitioner stated that combining a battery charge indicator with a slider provide the system with

“additional functionality of displaying the charge capacity of the battery alongside the slider for selecting a cutoff voltage.” IPR2023-00063, Petition at 30-31.

I. TECHNOLOGY BACKGROUND

A. Battery Charging Technology

32. The ‘788 Patent generally teaches techniques regarding the charge and use of energy storage devices for electric-powered vehicles (EV’s), specifically batteries. The vast majority of today’s commercial and consumer EV’s use variations of lithium-ion batteries.¹ They have a high power-to-weight ratio, high energy efficiency, good high temperature performance, and low self-discharge.² EV batteries undergo cycles of “discharge” that occur when driving and “charge” when the vehicle is plugged-in at a charging station.

33. Battery energy storage capacity is one of key determinants of the driving range of a vehicle between charges. There are a number of factors that impact the life of an EV lithium-ion battery including chronological age, number of accumulated charging cycles, the depth of charge, amount of recharging, the rate of charging and recharging, and ambient operating temperature.

34. For most commercial and consumer vehicles, the main operational

¹ Although hydrogen-powered Fuel Cell Electric Vehicles (FCEV) are technically EV’s, they do not need to be electrically recharged and, therefore, are not the focus of the ‘788 Patent.

² See https://afdc.energy.gov/vehicles/electric_batteries.html

goals include maintaining the specified performance of the vehicle and minimizing the cost and inconvenience of (re)charging, while extending the life of the battery as long as possible.

B. EV Battery Charging

35. One significant challenge for both commercial and consumer EV owners, is managing the EV battery charging. Factors such as driving style, vehicle weight, vehicle aerodynamics, and miles driven will impact timing as to when a recharge is necessary. Other factors including ambient and operating temperature, future travel plans, availability and access to electric charging facilities, and battery energy capacity will impact how long and far an EV can be driven before recharging.

36. At the priority date of the '788 Patent, EV charging infrastructure was (and still is) quite immature. There are a range of standards for the charging infrastructure that can impact the need for charging and setting a schedule for charging. Higher battery charging voltage can decrease the required charging time. Typical 110 VAC, 15 ampere, residential service, may only charge an EV at a few miles per hour. 220 VAC, 30-40 ampere service, may increase charging efficiency to tens of miles per hour. However, commercially available charging networks, before the priority date of the '788 Patent, were contemplated to operate at, at least 480 VAC, at 100+ amperes, and have the ability to fully charge a typical consumer

vehicle, providing hundreds of miles of driving range, in minutes rather than hours.³

37. Given that many consumer and commercial electric vehicles are not always near their “home” location, during a typical 24-hour period when charging is needed, it may be necessary to charge the vehicle at a “different” charging station (than is used at a home location). Given that the industry has not yet standardized on a number of factors, including voltage and connector type, the compatibility of the closest “charging station” is not a foregone conclusion. This complicates the process of knowing how, when, where, and for how long to recharge.^{4 5 6}

V. OVERVIEW OF CITED REFERENCES

A. Donnelly (Ex. 1006)

38. Donnelly is directed to railroad, or train locomotives and the use of energy storage batteries and a method for monitoring, controlling and optimizing electrically powered locomotives. EX1006, 1:24-35; 2:1-6. Specifically, Donnelly teaches a controller unit and system of sensors to monitor, synchronize and optimize

³ Dhameja, Sandeep. *Electric Vehicle Battery Charging*, Woburn, MA. Butterworth -Heinemann, 2002; Page 88.

⁴ *Id.*, Page 90.

⁵ As recently as 2021, the global automotive industry had not yet 100% standardized on charging standards.

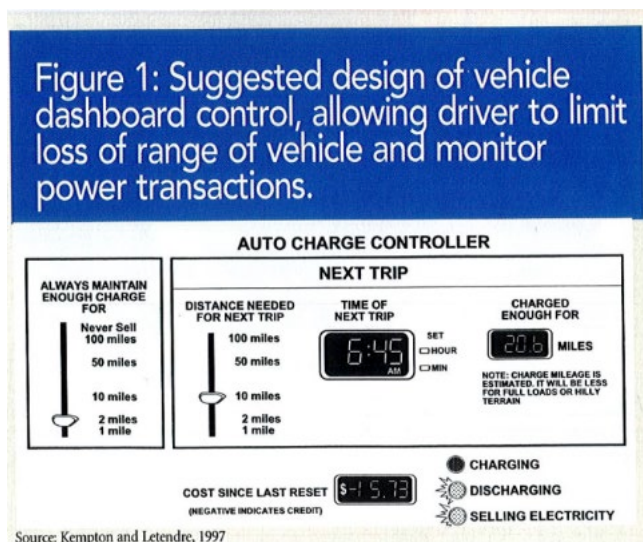
⁶ Arcos-Vargas, Angel. *The Role of the Electric Vehicle in the Energy Transition*, Cham, Switzerland, 2021. Pages 48-49.

the operation of the locomotive drive train as well as the individual axles during acceleration and braking. Id. at 3:42-50.

39. In my opinion, Donnelly is not directed at electric cars. Although it does appear to disclose a touch screen (Id. at 21:47-58), the screen is not directed at a GUI slider mechanism as presented in the challenged claims, nor relates to any ability for a user to select an amount of charge for the railroad locomotive disclosed.

B. Letendre (Ex. 1007)

40. Letendre is directed towards electric vehicles and the concept of vehicle to grid power or “V2G.” EX1007 at 7. Petitioner cites Letender for its GUI element, reproduced below:



41. EX1007 at 8. However, nothing within Letendre discloses a GUI slider

that allows a user to select an amount of charge related to the total amount of battery capacity. Further, Letendre's Figure 7, cited by the Petitioner, does not disclose a GUI slider, but instead appears to disclose a physical slider. Nothing within Letendre teaches, suggests or discloses a triparte (i.e. "three-element") GUI slider (e.g., the claimed "first portion", "second portion", and "third portion") directed to selecting the amount of charge related to the capacity of the battery within the electric vehicle.

C. Seelig (Ex. 1078)

42. Seelig is directed to "a process for contactless energy transmission in charging the battery of a vehicle." EX1078, Abstract. Seelig teaches a "primary element 1 of an inductive transmitter is brought into an approach position with respect to the secondary element 2 of the transmitter, which is located on the underside of an electric car 3". EX1078, 2:20-23. In response to primary element and secondary element coupling, a "signal 'coupling achieved' KER received on the vehicle ... switches on the charging initiation signal generator LAG via the setting input S. ... The charging initiation signal LA transmitted to the charging apparatus on the same path as the orientation signal OS now switches on the charging operation memory LBS and thus switches on the inverter." EX1078, Fig. 6, 6:21-32.

D. Sutardja (EX1011)

43. Sutardja is directed to “systems and methods for charging batteries in vehicles.” EX1011, [0002]. Sutardja charges based on “charging parameters”. *Id.* [0235]. Sutardja utilized a charge management system, or CMS, having a vehicle that is charged at a location such as home or work. *Id.* [0239], Figure 3A.

VI. OPINIONS

A. Petitioner’s “modified” Sutardja in combination with Donnelly and Letendre failed to teach or disclose the “unitary vehicle charge indicator element” present in all Challenged Claims.

44. Claims 1, 6 and 11 and respective dependent claims require a user interface that contains a unitary vehicle charge indicator element comprising: (1) a first portion indicating the amount of charge left in the battery of an electric vehicle, (2) a second portion indicating the uncharged capacity of the battery of the electric vehicle, and (3) a slider element which allows a user to select, via the graphical user interface, the amount of charge for a particular single charge amount for the electric vehicle. As shown in Figure 7 of the ‘788 Patent below, the Vehicle Charging Dashboard discloses where a user can select the desired amount of charge using a unitary vehicle charge indicator element:

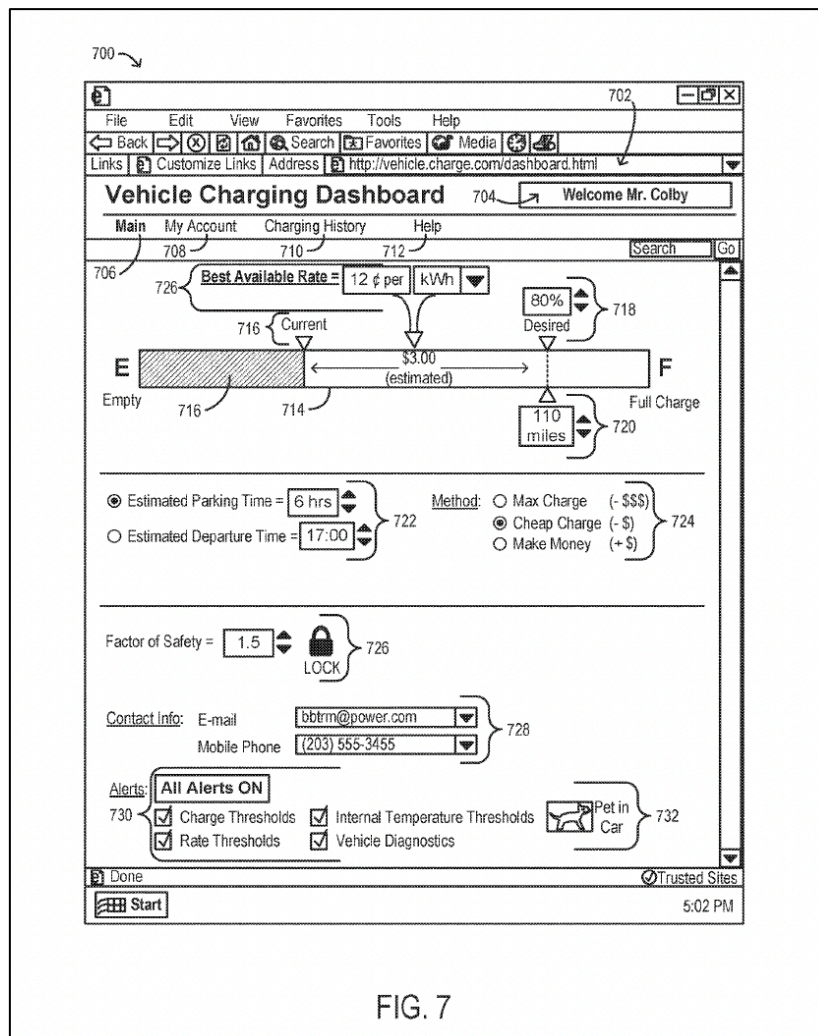


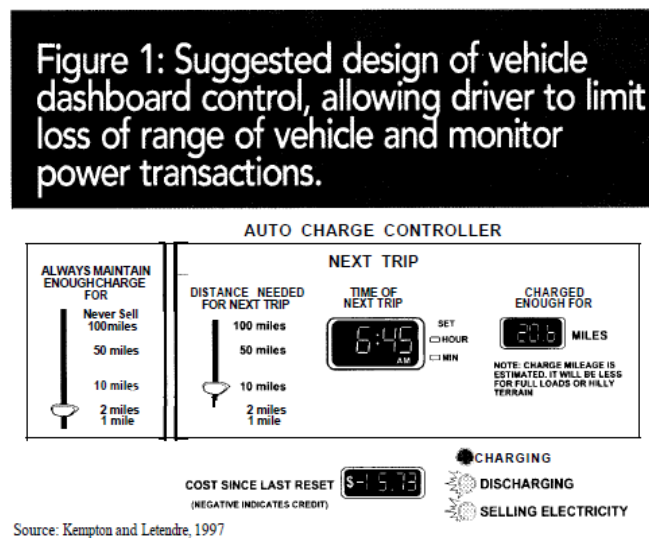
FIG. 7

EX1001, Figure 7.

45. The patent discloses, a user may select a “desired charge percent level.” via sliding the marker (e.g., slider) shown on a unitary vehicle charge indicator element having the marker, shaded portion that shows current charge level, and the unshaded portion that shows uncharged capacity EX1001, 14:40-51. The patent further teaches that the user interface displays a “current charge level.” As shown in

Figure 7, above, the “desired” dashed line (at, e.g., 80%) is selected via the touch screen slider to select an amount of charge to change the current charge level of approximately 35%.

46. In my opinion, Mr. Andrews and Petitioner ignore the specifics of the vehicle charge indicator element and instead rely upon a combination of Sutardja, Donnelly, and Letendre for allegedly teaching only the individual portions of this limitation. With respect to the “third portion comprising a slider by which an amount of charge may be specified”, Petitioner and Mr. Andrews solely relies upon Letendre. Letendre’s disclosure is insufficient.



47. When first describing the teachings of Letendre (page 11-14 of IPR), Petitioner accurately describes the teachings of Letendre stating “Letendre teaches a

user interface comprising a slider by which a user specifies parameters managing the charge of an electric vehicle's battery.” However, it is my opinion that Letendre teaches away from a user specifying an amount of charge. Any specified amount of charge is specified by the system in the background in response to a desired driving condition specified by the user. As shown in Letendre's dashboard control, Letendre wants to provide the user a slider to indicate only “two parameters to set”. EX1007, 11. These two parameters are described in the text of Letendre as including only “the length of the expected next trip,” and “the minimum range that must always be maintained.” *Id.* The user does not know a desired amount of charge needed to travel “the length of the expected next trip” and thus is unable to specify it. Letendre operates to take a user specified mileage condition and then estimate a corresponding charge amount that will likely meet the condition. Were the user to actually wish to specify a charge amount, the GUI interface of Letendre would actually prevent the user from doing so because the Letendre dashboard only gives two parameters to set. For example, a user of Letendre would be unable to specify a 70% charge amount. As such, Letendre does not teach specifying an amount of charge, but, rather, explicitly teaches parameters measured in units of distance travelled not related to an amount of charge.

48. Describing the above figure, Letendre clearly states:

An example control panel is shown in Figure 1. Whether the control is physical, on the dash, or on a Web page, the idea is basically the same. The driver has two parameters to set—the length of the expected next trip (in the case shown in Figure 1, 10 miles at 6:45 the next morning), and the minimum range that must always be maintained, e.g. for an emergency room trip, two miles. (Letendre, pages 19-20).

49. Letendre is specific and limiting - the two parameters to be set. i.e., “specified,” are length (measured in miles) and minimum range (again, measured in miles). *Id.* Mr. Andrews and the Petition mischaracterize Letendre by stating “Letendre teaches a slider by which an amount of charge may be specified. Namely Letendre discloses ... a slider the driver selects to ‘set[] the length of the expected next trip’ (here, 10 miles)”. Pet at 38. A distance to travel is not an amount of charge. Distance travelled on a given charge is highly variable based on for example, on loads, terrain characteristics, age of battery, battery cycles, temperature. Indeed, the image in Letendre expressly states “CHARGE MILEAGE IS ESTIMATED. IT WILL BE LESS FOR FULL LOADS OR HILLY TERRAIN”. EX1007, 9, Figure 1. Simply stating distance travelled in length (e.g., 10 miles) does not specifically equate to an amount of charge. Therefore, Letendre’s dashboard is only specifying one of the two specific parameters – miles to travel – and not specifying an amount of charge as required by the claims (which is calculated in the back system).

50. As a result, the user can specify a parameter/condition to be met, such

as miles to travel, and let the system try to approximate a charge amount that will meet the condition. This is inconsistent with specifying an amount of charge. The system may be accurate or not in attempting to charge to a level meeting the user conditions, hence, “Charge mileage is estimated.”

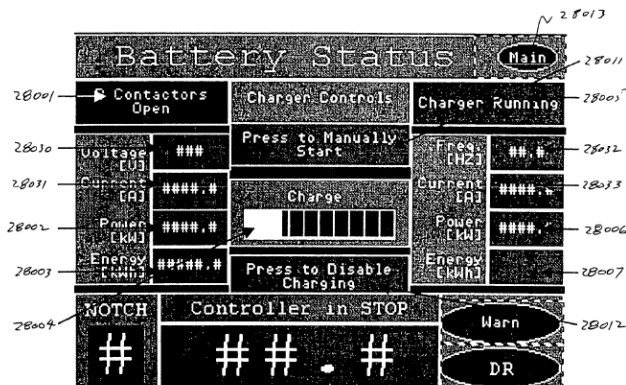
B. There is no Motivation to Combine Sutardja with Donnelly, and Letendre

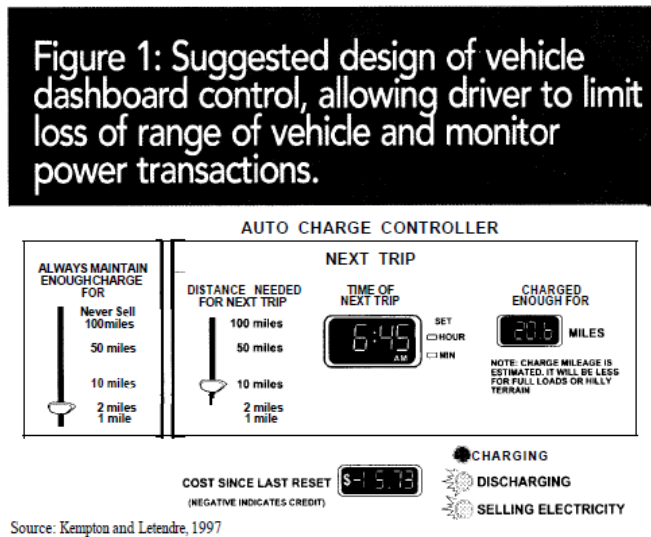
51. A POSITA would not have been motivated to combine Sutardja with Donnelly and Letendre. As explained above and described in the text of Letendre, this reference teaches a specific selectable parameter – the length of the expected next trip. EX1007, 9. Letendre teaches allowing the user to specify the length of the expected next trip because the user does not know the relationship between battery charge and desired distance to be able to drive. If the user knew the desired charge, a slider would be provided to specify such a charge but even Letendre doesn’t want that parameter to be set because charge mileage “WILL BE LESS FOR FULL LOADS OR HILLY TERRAIN”. EX1007, 9, Figure 1. As a result, in the disclosure of Letendre knowing the present battery charge status is of no use to a user when selecting an amount of miles desired to travel. As a result, combining Letendre’s slider for specifying a desired distance to travel with any art, such as Donnelly’s picture of a battery, that is measured in units of charge is an unusable modification.

52. Donnelly, on the other hand, shows a picture of a battery that is

measured in units of charge. EX1006, FIG. 28. Units of charge cannot equate to length of trip because, as discussed above and specifically indicated in Letendre's Figure 1, charge mileage is only estimated not exactly specifiable because it "will be less for full loads or hilly terrain". Therefore, Donnelly and Letendre's two different parameters are incompatible.

53. This incompatibility is further established when looking at the scale of the Letendre slider as compared to the scale of the Donnelly battery "state of charge" bar graph. Letendre's dashboard and Donnelly's battery "state of charge" bar graph are reproduced below.





EX1007, Figure 1.

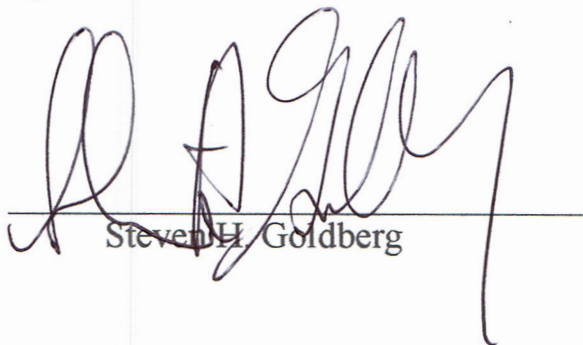
54. It is clear that Letendre is a logarithmic scale, or at the very least non-linear where 50 miles is not halfway between 0 miles and 100 miles. Donnelly, on the other hand, is linear. There is no discussion in either the Petition or the Andrews Declaration that identifies how a logarithmic, or non-linear, slider such as Letendre's is useable in a linear graph such as Donnelly's "Battery State of Charge 28004". Accordingly, there is no motivation to combine Sutardja, Donnelly, and Letendre without hindsight gleaned from the patent and using the claims as a roadmap.

CONCLUSION

I declare that all statements made herein of my knowledge are true, and that all statements made on information and belief are believed to be true, and that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Date: April 15, 2025

By:



Steven H. Goldberg