

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNITED SERVICES AUTOMOBILE ASSOCIATION,
Petitioner,

v.

AUTO TELEMATICS LTD.,
Patent Owner.

Case IPR2023-00518
Patent No. 9,633,487 B2

PATENT OWNER AUTO TELEMATICS LTD's
PATENT OWNER'S SUR-REPLY

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Patent Owner Auto Telematics Ltd. (“PO”) timely files this Sur-Reply in response to the Reply filed by United Services Automobile Association (“Petitioner”) for *Inter Partes* Review of claims 1-13 (the “Challenged Claims”) of Patent No. 9,633,487 B2 (“the ’487 patent”).

I. INTRODUCTION

Petitioner has failed to demonstrate the unpatentability of the Challenged Claims. PO has demonstrated how Petitioner mischaracterizes the claims in an unsuccessful attempt to cobble Curry’s features to the claim language, at times misconstruing claim terms, while, at other times, improperly using single features in Curry to meet multiple distinct elements of the claims. In doing so, Petitioner improperly broadens Curry’s disclosure to what it is not. Petitioner then ignores PO’s corroborating evidence and walks back its motivation to combine Curry with Rabu.

While PO concedes that Curry uses sensor data to handle phone calls, PO has provided sufficient evidence that this is Curry’s practical limit. Curry discloses a phone call handler, which prevents certain unsafe *human* behavior, “such as talking or texting” at the same time as driving. While possibly being a *cause* of certain *vehicle* behavior, “talking or texting” is not vehicle behavior detected and processed during the claimed “driving period,” as required by the Challenged Claims. “Talking

or texting” regards use of a phone, not use of a vehicle, and is not “how a vehicle is driven.”

While Petitioner misconstrues PO’s position that “talking or texting with mobile phones while driving” does not have a nexus to the claim elements (*see* Pet. Reply, 9), PO makes clear that “talking or texting” on a mobile device does not read on “determin[ing]...a start of a driving period,” or “process[ing] the sensor data...during the driving period to derive driving information associated with how a vehicle is driven,” according to claim 1. While Petitioner’s reasoning that “‘using mobile phones while driving’ causes a driver to be ‘four times as likely to get into crashes’” may be subjectively correct, the claims objectively require actual derivation of driving information related to how a vehicle is driven, which is not satisfied by determining that a phone is being used while a vehicle is being driven. *See* Pet. Reply, 9.

II. DETERMINING, BY THE MOBILE DEVICE, HOW A VEHICLE IS DRIVEN IS EXPLICIT IN THE CLAIMS

Regardless of whether Curry’s objective is “to improve driver safety,” Curry’s phone does not determine *how* a vehicle is driven. *See* Pet. Reply, 1. Indeed, Petitioner does not rebut that Curry does not disclose “how a vehicle is driven.” Instead, Petitioner waves this claim element off as “inconsequential” as compared

to “whether” a vehicle is driven. *Id.*, 9. “How a vehicle is driven” is explicit in the claims and is a key aspect that Petitioner ignores.

While Curry’s disclosure may be “an integrated and economical solution” to “prevent...talking on or texting [with] mobile phones while driving,” this has no bearing on whether Curry discloses “process[ing] the sensor data from the sensor set during the driving period to derive driving information associated with *how* the vehicle is driven.” Pet. Reply, 1; compare Ex. 1001, claim 1. Curry is silent about its phone detecting and preventing unsafe driving behavior related to actual *vehicle* behavior (that is, *how* the vehicle is driven). While Petitioner suggests this is Curry’s intended use, Petitioner fails to demonstrate that Curry actually discloses its *phone* detecting and preventing unsafe *vehicle* behavior. Although a driver’s use of a phone while driving may be a *cause* of certain vehicle behavior, *user* behavior with a phone is not *vehicle* behavior. Petitioner fails to address the distinction.

While Petitioner notes that the Board initially questioned the scope of Curry, the Board did not fully evaluate the claim element of “how the vehicle is driven” in its Institution Decision. *See* Pet. Reply, 2. The Board did not address specific arguments regarding vehicle behavior, only “possible violations of mobile phone use or unsafe driving behavior” of a user (*see* Inst. Decision, 33-34), which is not “driving information associated with how the vehicle is driven.” Regarding “how the vehicle is driven,” the Board quoted Michalson’s unexplained mapping of

“possible violations of mobile phone use or unsafe driving behavior” to “driving information associated with how the vehicle is driven.” *Id.*, 34 (quoting Ex. 1003, ¶144). Petitioner did not make this mapping clear for the Board, and the Board now has sufficient evidence to reevaluate Curry. In fact, the Board found Petitioner’s similar arguments for the Forstall-Rabu-Langle combination, for which Petitioner used similar insufficient mapping of “safe and unsafe driving behaviors” to “driving information associated with how the vehicle is driven,” to be insufficiently explained. *See* Inst. Decision, 44-45 (citing Ex. 1003, ¶218).¹

III. A DRIVING PERIOD MUST START AT THE BEGINNING OF A PERIOD IN WHICH THE VEHICLE IS BEING DRIVEN AND MUST INCLUDE THE ENTIRE PERIOD IN WHICH THE VEHICLE IS DRIVEN

“Determin[ing] the start of a driving period” is an important aspect of the claims “to detect occurrence of a predetermined event” (such as an accident). *See* Ex 1001, claim 1, 31:52-66; 1:26-27; 19:17—20:4 (describing a process for detecting a driving incident). Yet, to map Curry’s random phone calls at arbitrary times to “the start of a driving period,” Petitioner incorrectly argues that “the claim leaves open the possibility of the driving period corresponding to the beginning, middle or end of, a vehicle’s operation.” Pet. Reply, 3. If the “driving period” for “process[ing] the

¹ Petitioner did not address the Forstall-Rabu-Langle combination in its Reply.

sensor data...to derive driving information associated with how the vehicle is driven,” according to claim 1, began at the middle or end of a period in which the vehicle is driven, the purpose of the invention claimed in the ’487 patent could not be accomplished. For example, if the driving period started at the middle or close to the end of the period in which the vehicle is being driven (as Petitioner alleges can be the case), but an accident occurs at the beginning when Petitioner’s processing has not started, the purpose of determining the cause of the accident would be thwarted. *See* Ex. 2001, ¶¶46-48, 53, 55, 60.

Regardless of the practical purpose of this claim language, Petitioner ignores plain common sense. A driving period is the entire period in which the vehicle is being driven by a driver. POR, 34; Ex. 2001, ¶55. Contrary to Petitioner’s allegation, this is supported by the claim language and the specification. *See, e.g.*, Ex. 1001, Abstract, FIG. 4a, 2:6-8, 2:64—3:1, 3:20-22 (describing a mobile device seeking to emulate a vehicle “black box,” which monitors the entire period in which the vehicle is being driven).

According to the ’487 specification,

[a] main purpose of the [mobile device], when arranged within a vehicle in motion,...is to monitor and process sensor data captured by the mobile device, to derive driving information associated with the moving automobile....[T]his driving information is subsequently used by the mobile device to determine if a driving incident or event has

occurred. The term ‘driving incident’ as used within the present context may relate to an event such as a collision, near miss, dangerous driving, erratic driving or similar. Similarly, the driving information may be used as a means for monitoring a driver’s driving performance, and determining a driving characteristic, or user profile for the subject driver.

Ex. 1001, 13:36-49. It would thus make no sense to process and analyze sensor data only during a portion of the period in which the vehicle is being driven. The primary purpose of the invention would be frustrated. *See* Ex. 2001, ¶¶46-48, 53, 55.

Regardless of Curry’s “multiple embodiments,” Curry does not disclose the claimed “driving period,” so Curry cannot disclose the start of it. Although Petitioner cites to Ex. 1005 at 12:20—13:26 and 15:7-22 for this conjecture, it likely meant to cite to 13:20—14:26 (FIG. 3) and 16:7-22 (FIG. 4). Pet. Reply, 6. While these cited portions of Curry may show the start of a phone call and/or recording period occurring at the time Curry’s phone determines the phone is in a certain activity mode, these cited portions do not determine the start of the claimed driving period. Ex. 2001, ¶¶106-109, 121.

For example, Curry’s phone is limited to motion recording by collecting/caching raw sensor (GPS 314, accelerometer 316) data in the motion data cache 304 at the detection of an outgoing call 301 or receipt of an incoming call 303 by a motion recording activation 302 function. *See* Ex. 1005, FIG. 3, 13:20-31.

Curry's phone does not determine an activity of driving until activity mode recognition 306, *after* motion recording is started and raw sensor data is cached. *Id.*, FIG. 3, 13:31—14:4. The dynamical call handling module 308 then determines whether to block a call based on the determined activity mode and user permission data sent from outside the phone to a static database on the phone. *Id.*, 14:5-19. Then, “[d]ata from the motion data cache 304 and the activity mode recognition module 306 can be...sent back to the server 322” for further processing. *Id.*, 14:19-23. Curry at 14:23-26 merely discusses what occurs if the activity mode is not determined as driving. Thus, 13:20—14:26 of Curry does not disclose determining a start of a driving period or any processing regarding deriving driving information or vehicle behavior during a driving period. At best, Curry at 13:20—14:26 (FIG. 3) discloses taking a snapshot of activity mode after a recording period is triggered by a phone call and subsequently handling the call based on the activity mode and a predetermined user permission. This is not the claimed driving period. Ex. 2001, ¶¶106-109.

Curry's disclosure at 16:7-22 (FIG. 4) fares no better. This section and figure disclose Curry's phone collecting/caching raw sensor data over a limited time period (e.g., 6 minutes) and *post-processing* the data merely to determine activity mode, similar to FIG. 3, for a call that was put through. Any “unsafe driving behaviors” (which are not specifically defined in this section of Curry) “can be penalized after

the fact by deducting the driving safety score in the data server” (*not on Curry’s phone*). Ex. 1005, 16:7-18. Apparently, Curry’s phone can deal with changes in activity mode during the FIG. 4 process, but there is no disclosure of Curry’s phone determining the start of the claimed driving period or any processing to derive driving information (as defined by the ’487 claims), such as vehicle behavior. *See id.*, 16:18-22. Ex. 2001, ¶¶105-109.

PO maintains that “starting the recording of sensor data upon receipt of a phone call in Curry is not ‘start of a driving period.’” Pet. Reply, 6 (citing POPR, 20). Curry does not start its caching process with respect to actual driving, as required by the claims. Curry’s caching process instead relies on either a phone call or user input (Ex. 1005, 8:29—9:3, 13:22-26), but is untethered to driving. However, in the claims, determining the start of a driving period is required for processing of sensor data to derive driving information. Ex. 1001, 31:52-59. Ex. 2001, ¶¶105-109. That Curry’s “motion recording process can be activated 302 on the phone...by the user of the phone” does not start a driving period according to claim 1, which requires both “inputs received by the user interface and sensor data from the device’s sensor set” indicating driving, whereas Curry does not determine activity mode until after it starts recording, regardless of driving status. *See* Ex. 1005, FIG. 3.

The real issue for Petitioner is not whether PO’s “characterization of Curry’s recording process is unduly narrow” (it is not), but that Petitioner’s mapping of

Curry's features does not meet the claim elements. *See* Pet. Reply, 6. Petitioner addresses the start of a recording period, not the start of the claimed driving period. Further, while motion recording in relation to phone calls may advance Curry's overall objective to improve driver safety, it says nothing about meeting the limitations of the '487 claims. *See id.*, 7. Curry's phone may activate a call handler *at some time while* driving, but Curry's phone does not have the ability to determine when driving starts or *how* the vehicle is being driven. *See* Ex. 2001, ¶¶73-75, 79, 107-109, 113.

Contrary to Petitioner's allegation, PO's characterization of the "start of a driving period" is not defeated by the '487 patent disclosing a registration period or other technical mechanism (such as a speed threshold) by which the mobile device determines the start of that driving period. *See* Pet. Reply, 7. *See, also, e.g.*, Ex. 1001, 3:23-47, 18:63—19:16. The '487 patent discloses a computerized system with a processor (e.g., a smartphone) that needs a mechanism to know to start processing when the vehicle is moving. Petitioner ignores basic technology when alleging that, "[b]ecause the '487 patent contemplates embodiments in which a start of driving period occurs at a point in time after a user has already started to drive, the driving period is not limited to the entire time period of a vehicle being driven." Pet. Reply, 4. The fact that the start of the driving period is determined by the vehicle reaching a speed threshold does not alter the purpose of the invention to monitor sensor data

related to the entirety of the driving period and derive driving information related to how the vehicle is being driven. Ex. 2001, ¶¶105-109.

PO's expert properly rebuts Petitioner's interpretation and was correct in noting that "the specifics of exactly when the driving period starts and exactly when it ends are not critical to the analysis or the driving period as perceived by a person of skill in the art." Pet. Reply, 4 (quoting Ex. 1084, 99:7-10). Mr. Wilson correctly provided his interpretation according to embodiments citing available technology (e.g., measuring a speed threshold), as would have been understood by a POSITA and as is supported in the '487 specification at least at 3:31-47. PO does not "unjustifiably limit[] the start of [1.6] to the start of driving" just because the patent describes reaching a threshold speed to indicate the start of the driving period. *See* Pet. Reply, 7. Reaching a threshold speed at which a vehicle would be considered by a computer to be driving would have been within the understanding of a POSITA for a practical approximation of the start of the driving period, because that determination actually has a nexus to driving, whereas a phone call is untethered to the determination of an actual start of actual driving in every practical way. Ex. 2001, ¶¶71, 79.

Even Curry generally understood the idea of measuring a speed that would indicate driving. *See, e.g.*, Ex. 1005, 16:26-28 (suggesting that "driving mode" can be recognized when speed is "greater than 15 miles/hour"). A key difference is that,

in the '487 patent, once the driving period has been determined to start, processing sensor data commences and continues “during the driving period,” according to claim 1, to derive driving information associated with “how a vehicle is driven,” regardless of any arbitrarily timed phone call occurring sometime during or outside of driving. Incoming or outgoing calls are not going to stop or restart a driving period in the '487 system, because it would defeat the purposes of the '487 patent to detect occurrence of a predetermined event, modify driver behavior, and determine insurance premiums. Ex. 1001, 1:19-25.

The '487 patent even acknowledges that phone calls may need to be handled during a driving period and discloses ways to do that without affecting the driving period or collection of data during the driving period. *See, e.g.*, Ex. 1001, 3:62—4:35 (“voice-call management may comprise temporarily disabling and/or diverting voice-calls incoming to the mobile device during a driving period”). Differing from Curry, a phone call does not and should not define the start of a driving period.

The claims of the '487 patent go well beyond Curry’s purpose and technology. For example, while Curry discloses collecting raw sensor data triggered by receipt or placement of a phone call, and continuing to collect the raw sensor data for some time thereafter unrelated to actual driving (e.g., for 6 minutes) (*see* Ex. 1005, FIG. 4), the claims of the '487 patent require “process[ing] the sensor data from the sensor set during the driving period to derive driving information associated with how the

vehicle is being driven.” Ex. 1001, 31:57-59. Logically, this includes the entire period in which the vehicle is driven. Ex. 2001, ¶¶73, 75, 111.

The claims must be read in light of the specification to include processing for the entire driving period. Ex. 1001, 16:48—18:32 (describing the continuous sampling of sensor data, continuous capture of sensor data in FIFO storage buffers in continuously generated data files, and overwriting of older sampled data with newly sampled data, “unless a driving incident has been detected, in which case...all data related to the driving incident is stored in a long term protected storage 34b to safeguard it from being overwritten by newer data....[T]he sensors of the [mobile device] 17 are continuously recording sensor data...”). The mobile device can detect when a driving period has terminated. *Id.*, 20:23-51 (“[T]he [mobile device] will continue to sample and record sensor data even once a driving incident has been detected, unless the [mobile device] detects that the driving period has terminated....If the driving period has terminated, the present method is terminated and the device stops recording sensor data. The end of a driving period may be automatically detected by the processor module 33, if certain conditions are met. For example, if the measured velocity of the vehicle remains zero for a predetermined period of time, the processor module 33 may infer that the vehicle is stationary and no longer being driven, and accordingly ceases recording sensor data, and the method is terminated. If instead the processor determines that the driving period has

not yet terminated, a new data file period is initiated, and [the method steps] are repeated....The [mobile device] continues to sample sensor data, to derive driving information, and [the method steps] are repeated, until the driving period has determined to have terminated.”).

The driving period of the ’487 claims is markedly different than Curry’s time period for recording data once a phone call is received, whether or not the vehicle is driving. Curry’s monitoring period is not tethered to actual driving, nor does it disclose the claimed driving period. Rather, it is initiated at some arbitrary time based on the receipt or placement of a phone call or text message and ends not when driving has ceased, but rather at some arbitrary, predetermined time regardless of activity mode (e.g., when the vehicle may still be driving or after driving has terminated). This is not the driving period claimed by the ’487 patent. Ex. 2001, ¶¶74, 105-109.

IV. PETITIONER IGNORES OR MISCHARACTERIZES DERIVED DRIVING INFORMATION OF THE CLAIMS

Petitioner ignores that while driving information can include speed and acceleration data from the sensor set, claim 1 of the ’487 patent recites that the mobile device must “process the sensor data from the sensor set during the driving period to derive driving information associated with how the vehicle is driven.” Ex. 1001, 31:57-59. This “derived driving information” is a specific term defined in the

specification to include more than raw sensor data (e.g., more than raw speed and acceleration from phone sensors) and, when properly read in the claim as whole, includes information regarding “how the vehicle is driven,” including “occurrence of a predetermined event.” *See, e.g.*, Ex. 1001, 1:19-26, 3:23-30, 14:5-8 (image data or video footage for determining the cause of an event such as an accident); 5:12-21 (“detailed driving information in the lead up to, and immediately following a predetermined event of significance”); 7:1-3 (“driving information representing acceptable or unacceptable driving patterns”); 7:48-49 (selected portions of driving information associated with a detected event); 10:27-30 (processed driving information to generate and comprise a driving score); 13:39-42 (derived driving information to determine if a driving incident or event has occurred); 14:20-26, 14:48-61 (“speed of impact, the g-forces the vehicle was subjected to during the collision, or any other information wherefrom the severity of the collision may be determined...”).

Petitioner continues to allege that Curry’s phone determines “‘driving behavior’ information...such as...speeding, abnormal acceleration, abnormal deceleration, and taking sharp turns.” Pet. Reply, 4, 8. However, there is no evidence in Curry, let alone in Petitioner’s citations to Curry (Ex. 1005, 3:24—4:6), that Curry’s *phone* determines that information. While PO agrees that Curry’s phone identifies phone use, there is no evidence in Petitioner’s citations to Curry that the

claimed driving information concerning the behavior of the vehicle is determined by anything other than Curry's server, if at all. This distinction is important because the '487 claims require that the mobile device perform this processing. But instead of clearly mapping "driving information" as defined in the '487 specification, Petitioner mischaracterizes "driving information" as "driving behavior information" to inaccurately map "talking...or texting...while driving" to the claims, that is, what a user is doing on the phone instead of what a vehicle is determined to be doing by processing sensor data to derive driving information, as required by the claims. *See* Pet. Reply, 8.

While Petitioner then alleges that Curry discloses "[o]ther types of driving information" including "a 'driver safety statistic,' which may be 'reported to' a data server," this "driver safety statistic" is determined outside of Curry's phone, by Curry's server, or is reported to Curry's server by Curry's Auto Insurance Companies 130 as "Driving Safety Scores." *See* Ex. 1005, FIG. 1, 3:26-30, 4:1-6, 10:3-5. Curry's phone only reports to Curry's server "driving safety performance data," **which is defined by Curry as raw sensor data from motion data cache.** *See id.*, FIG. 1, FIG. 3, 7:5-17, 9:1-3, 9:31-33, 13:1-2, 14:19-21 (disclosing that Curry's server performs statistical analysis on the raw sensor data 114, 116 it receives as an upload from the motion data cache 118 of Curry's mobile phone client 110). *See*

also Ex. 2001, ¶99. Indeed, Petitioner appears to agree that “driving safety performance data” is merely raw sensor data. *See* Pet. Reply, 10-11.

Petitioner’s assertion that Curry’s phone processes a safety statistic and reports it to Curry’s server is unsupported. Petitioner’s citations to Curry use passive voice (*see, e.g.,* Pet. Reply, 12), making it wholly unclear what entity, let alone the phone, performs that function. Reading Curry as a whole, however, provides clarity that its server performs all statistical analysis/processing. *See, e.g.,* Ex. 1005, FIG. 2, where the same functions (e.g., driving safety score evaluation 212) are never shown by Curry as residing on the phone.

That “[t]he safety statistic can be ‘reported to’ a data server” does not “confirm[] location processing of the safety statistic on the mobile phone,” as Petitioner alleges. *See* Pet. Reply, 11-12. An administrator at Driving Safety User Control and Monitoring Web Site 102 sets where Curry’s phone can be used based on user permission data. When location is determined by the raw sensor data of the phone, it is sent to the server 104 and then compared with the user permission data from 102 to calculate the safety statistic by Driving Safety Score Evaluation 212. Ex. 1005, 3:24-32, 13:3-19, FIG. 1, FIG. 2. *See also* Ex. 2001, ¶¶68-69, 79, 113, 120. Additionally, it is irrelevant to Petitioner’s argument that “Mr. Wilson admitted in deposition that the calculation and adjustment of [the driver safety statistic] is based on unsafe driving” because Mr. Wilson never admitted to where the

calculation and adjustment are made. *See* Pet. Reply, 12. Further, whether Mr. Wilson admitted that “the value is an example of driving information” is also irrelevant, because Petitioner has not provided sufficient proof that this value is determined by *Curry’s phone*. *See id.*

Petitioner appears to believe, if it maps the “same types of information in Curry to the driving information as those identified by [PO],” that Petitioner has met its burden to provide evidence of disclosure of the claim elements in Curry. *Id.*, 9. However, mapping only “the same types of information,” even if true, does not meet Petitioner’s burden when some of the types of information are processed by or sourced from Curry’s server or another entity external to Curry’s phone. **The claims require that the mobile device, not an external source, derive the driving information.** Petitioner, however, provides insufficient or non-existent proof that Curry’s phone performs the claimed functions. While Curry’s phone is a smartphone and, as such, can have certain processing capabilities, the specific processing alleged is not inherent in the phone nor disclosed in Curry, and it is Petitioner’s burden, *not* PO’s, to prove otherwise. Petitioner has not done so. The capabilities of Curry’s phone regarding what processing it “would have been capable of” is not sufficient for proving that Curry reads on the claim elements. *See id.*, 12.

Specifically, Petitioner suggests that PO “ignores Curry’s express disclosure of a motion data cache (on a mobile device) for locally storing processed data.” Pet.

Reply, 5. PO does not ignore this cache, but discusses it as merely storage for raw sensor data, not something that performs processing. *See* POR, 37-38; Ex. 2001, ¶¶113, 116-118, 121, 123, 155. A cache by its plain and ordinary meaning is nothing more than storage, a fact that Curry’s disclosure supports. Ex. 1005, 3:7-12, 3:24-30, 8:33—9:3, 13:29-31.

While Curry’s phone performs certain processing, it is not the claimed processing. Rather, Curry’s processing is limited to determining activity mode (walking, driving, standing still, etc.) based on raw sensor data, and handling phone calls by comparing static user permission data to the determined activity mode. Ex. 1005, FIGs. 1, 3; Ex. 2001, ¶¶67, 69, 72-73, 76, 117, 121, 127. Determining activity mode and handling phone calls is not the “processing” required by the claims to “derive driving information associated with how the vehicle is driven.” Ex. 1001, 31:57-59; Ex. 2001, ¶¶73, 75, 111.

V. PETITIONER IMPROPERLY MAPS A SINGLE FEATURE OF CURRY TO MULTIPLE DISTINCT CLAIM ELEMENTS

PO maintains that Petitioner improperly “maps the ‘incoming phone call of Curry’ to each of the ‘input received by the user interface’ of [1.6] and the ‘predetermined event’ of [1.10].” Pet. Reply, 7-8 (citing POR, 40-41). Petitioner responds by asserting that it relied on Curry’s multiple embodiments to map to [1.6] and [1.10]. *Id.*, 8. This, however, is not a case of combining different elements from

different embodiments under § 103, as Petitioner suggests; instead, both “embodiments” refer to the same element (a phone call), and both “embodiments” are actually one implementation used in different scenarios. The same phone call cannot at once be “an input received by the user interface” required to start the claimed driving period and the “predetermined event” detected during processing during the driving period. Petitioner implies that “an input received by the user interface” is not different than a “predetermined event” in the claims, yet if they were the same, the invention would not work. Both terms are distinct and hold specific purpose and weight.

VI. PETITIONER WALKS BACK ITS MOTIVATION TO COMBINE CURRY AND RABU

Petitioner walks back its original obviousness position, which relied on Rabu’s frequency analysis, to rebut PO’s assertion that a POSITA would have considered a Curry-Rabu combination to be too unreliable for practical use. Since filing its Petition, Petitioner has relied on Rabu’s frequency analysis of “motion data from its accelerometer” to combine Rabu’s “mode shifting capabilities” with Curry to “restrict phone interactions” and “promote safe driving.” *See* Pet., 11-12. For example, Petitioner repeatedly cites to Rabu’s FIG. 8, a key part of Rabu’s “detecting docking status of a portable device using motion sensor data.” *See id.*, 12 (citing Ex. 1013, 8:13—10:42 multiple times, describing Rabu’s “methods for operating a

portable media device...includ[ing] determining an orientation angle of the portable media device and a frequency spectrum associated with a motion of the portable media player. Based on the orientation angle and the frequency spectrum, the [PMD] can determine a motion status and select a mode of operation based on the motion status.”).

Petitioner also repeatedly cites to Rabu at 3:1-10, disclosing that the “PMD can determine the holder motion status” and “can select a mode of operation based on...the holder motion status....By examining the frequency spectrum for a motion of an object, it can be possible to determine the type of motion being experienced by that object.” *See* Pet., 12, 14-15, 17-18, 23-24, 28 (citing Ex. 1013, 3:1:10).²

² In instituting this IPR, the Board appeared to understand Petitioner to rely on Rabu’s motion status being based on a frequency spectra analysis. *See, e.g.,* Inst. Decision, 24 (“...Petitioner has sufficiently explained that Rabu teaches the limitation “the mobile device is removably attached to the vehicle and vehicle is in use” because...(3) the PMD can determine if the PMD is in a moving vehicle; and (4) the PMD selects a mode of operation based on the holder motion status.”). *See also id.*, 24-25, quoting Ex. 1013, 1:66—2:8 (“*Based on the determined frequency spectrum, the PMD can determine whether it is in a moving vehicle...*”) (emphasis in original).

While Petitioner attempts to walk back its dependence on Rabu for this key aspect to focus only on Rabu's holder status, Petitioner contradicts its Petition, which asserts that the combination provides "associated mode-shifting capabilities into Curry's phone, thereby enhancing the Curry phone's ability to promote safe driving...with added functionality ("Curry-Rabu phone"), capable of defining and determining different types of driving periods." Pet., 11. Petitioner *explicitly* relies on "relevant solutions within Rabu," which "describes switching operating modes based on determining that the phone is 'docked in a moving vehicle (versus being 'handheld while located in a moving vehicle')." *Id.*, 14 (citing Ex. 1013, 8:13—10:42, FIGs. 5, 7, 8).

Petitioner's Reply continues to rely on Rabu's frequency analysis by touting Curry-Rabu's "multiple additional advantages" including "adjustments to phone 106's operating modes'...based on capabilities incorporated from Rabu." *See* Pet. Reply, 15-16. While Petitioner certainly could have relied only on Rabu's holder status determination in its Petition and Reply, it cannot now ignore the basis for its motivation to combine: Rabu's holder motion status determination.

If Petitioner is permitted to walk back from its original position, its arguments to combine become even weaker. If all Petitioner needed was a reference providing holder status based on orientation angle, a POSITA would have found that Curry discloses at least an iPhone 3G smartphone capable of being held and knowing its

orientation in different axes. Ex. 1005, 2:22-27, 3:6-7, 8:30-33; 13:28-29. Petitioner itself noticed that the same accelerometer is used in both Curry and Rabu, and that orientation and motion data can be used from the accelerometer to “determine both vehicle motion and docking status.” Pet. Reply, 17. Thus, it makes no sense for a POSITA to have looked to Rabu merely for an accelerometer’s orientation data, given Rabu’s reliability issues. *See id.*, 17 (citing Ex. 1085, 57:20—58:20). Further, Petitioner does not cite Rabu to cure any of Curry’s other shortcomings.

The fact remains that Rabu is unreliable and provides its own evidence to substantiate such by incorporating the “Ogawa” reference. Ex. 1013, 7:31-59. PO’s expert clearly asserts that Rabu, with Ogawa’s technology as its base, presents reliability issues that would have deterred a POSITA from looking to Rabu. POR, 23-25, 35-37; Ex. 2001, ¶¶89-92, 110, 114-115.

Presumably recognizing the propriety of PO’s expert’s opinions, Petitioner now asserts that Rabu is only needed for its holder status (Rabu’s FIG. 7), not holder motion status (Rabu’s FIG. 8), and mischaracterizes Rabu to conflate holder status with holder motion status. *See* Pet. Reply, 18. Yet, if only Rabu’s holder status was combined with Curry, a POSITA could not have achieved the benefits that Petitioner suggests by leveraging Rabu’s “associated mode-shifting capabilities into Curry’s phone, thereby enhancing the Curry phone’s ability to promote safe driving,” because Rabu’s mode-shifting capabilities are based on Rabu’s holder motion status.

See Pet., 11 (citing Ex. 1013, 8:13—10:42). Rabu’s holder alone would not have achieved Petitioner’s suggested benefits, as Rabu discloses and Petitioner recognizes, without adding holder motion status.

Petitioner makes several baseless accusations, wrongfully accusing PO of alleging that Curry and Rabu are incompatible and inoperable, and that Curry is non-enabling. Pet. Reply, 17-19. PO, however, never raised those arguments. Rather, PO’s argument boils down to one simple point: Curry-Rabu would have been unreliable and ineffective at curing Curry’s shortcomings, and thus a POSITA would not have made the combination.

Petitioner alleges that PO has “altered Rabu’s express disclosure to support [PO’s] narrative.” Pet. Reply, 19-20. Yet, it is the other way around. While PO has remained steadfast, Petitioner has walked back its position regarding Rabu. While Petitioner has the burden to show how the references should fit together, PO is merely calling out Petitioner’s ongoing contradiction in its obviousness analysis. If Petitioner does away with Rabu’s frequency spectrum (*see id.*, 20-22), Petitioner could not achieve the “nuances” of Rabu’s FIG. 5, which it strongly touted as a motivation to combine throughout these proceedings. *See* Pet., 14-15 (citing Ex. 1013, 3:1-10, 8:13—10:42, FIGs. 5, 7, 8), 17 (points 4, 5, citing Ex. 1013, 3:1-10).

Petitioner originally promoted the full combination of Curry and Rabu, but when faced with substantial concerns about that combination’s feasibility, is now

promoting only a portion of the combination (i.e., just the holder) as being relevant. Petitioner now seems to agree that a POSITA would not have combined Rabu with Curry, as PO has asserted all along.

VII. CONCLUSION

USAA's Petition fails as Petitioner has not shown that the claims of the '487 patent are obvious in light of the cited references. Accordingly, PO respectfully requests that the Board find all challenged claims patentable.

June 11, 2024

Respectfully submitted,

/Steven E. Tiller/

Steven E. Tiller, Reg. No. 39,859
Gregory Stone, Reg. No. 43,165
Lisa M. Schreihart, Reg. No. 80,016
Whiteford, Taylor & Preston L.L.P.
Seven Saint Paul Street – Suite 1500
Baltimore, Maryland 21202-1636
(410) 347-9425

Lissi Mojica, Reg. No. 63,421
Answers IP LLC
700 Shi Lane
Stevensville, MD 21666

*Counsel for Patent Owner,
Auto Telematics Ltd.*

CERTIFICATE OF COMPLIANCE WITH 37 C.F.R. § 42.24

Pursuant to 37 C.F.R. § 42.24, Patent Owner Auto Telematics Ltd., certifies that, based on the word count of the word processing application used to prepare this paper, the number of words in this Patent Owner Sur-Reply is 5,600. This word count does not include the items that may be excluded from the count under 37 C.F.R. § 42.24(a) including the table of contents, table of authorities, list of exhibits and this certificate.

June 11, 2024

Respectfully submitted,

/Steven E. Tiller/

Steven E. Tiller, Reg. No. 39,859
Gregory Stone, Reg. No. 43,165
Lisa M. Schreihart, Reg. No. 80,016
Whiteford, Taylor & Preston L.L.P.
Seven Saint Paul Street – Suite 1500
Baltimore, Maryland 21202-1636
(410) 347-9425

Lissi Mojica, Reg. No. 63,421
Answers IP LLC
700 Shi Lane
Stevensville, MD 21666

*Counsel for Patent Owner,
Auto Telematics Ltd.*

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), undersigned counsel certifies that on June 11, 2024, this paper – Patent Owner Auto Telematics Ltd.’s Response Pursuant to 37 C.F.R. §42.107 – was served via electronic mail upon the following counsel of record for Petitioner:

Via Email Only (by consent):

W. Karl Renner

IPR36137-0025IP1@fr.com

Thomas Rozylowicz

tar@fr.com

Andrew B. Patrick

patrick@fr.com

Michael T. Zoppo

zoppo@fr.com

Ryan Chowdhury

rchowdhury@fr.com

PTABInbound@fr.com

axf-ptab@fr.com

June 11, 2024

Respectfully submitted,

/Steven E. Tiller/

Steven E. Tiller, Reg. No. 39,859
Gregory Stone, Reg. No. 43,165
Lisa M. Schreihart, No. 80,016
Whiteford, Taylor & Preston L.L.P.
Seven Saint Paul Street – Suite 1500
Baltimore, Maryland 21202-1636
(410) 347-9425

Lissi Mojica, Reg. No. 63,421
Answers IP LLC
700 Shi Lane
Stevensville, MD 21666

*Counsel for Patent Owner,
Auto Telematics Ltd.*

Email:

stiller@whitefordlaw.com
gstone@whitefordlaw.com
lschreihart@whitefordlaw.com
patents@whitefordlaw.com
lissi@answersip.com