

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNITED SERVICES AUTOMOBILE ASSOCIATION
Petitioner,

v.

AUTO TELEMATICS LTD.
Patent Owner.

IPR2023-00518
Patent 9,633,487 B2

Record of Oral Hearing
Held: June 20, 2024

Before GEORGE R. HOSKINS, FRANCES L. IPPOLITO, and
SEAN P. O'HANLON, *Administrative Patent Judges*.

APPEARANCES:

ON BEHALF OF THE PETITIONER:

THOMAS ROZYLOWICZ, ESQUIRE
ANDREW B. PATRICK, ESQUIRE
RYAN CHOWDHURY, ESQUIRE
CHARLENE THROWER, ESQUIRE
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ON BEHALF OF THE PATENT OWNER:

STEVEN E. TILLER, ESQUIRE
GREGORY STONE, ESQUIRE
Whiteford, Taylor & Preston, L.L.P.

The above-entitled matter came on for hearing on Thursday, June 20, 2024, commencing at 1:00 p.m., via video-conference.

P R O C E E D I N G S

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JUDGE IPPOLITO: Would counsel for Petitioner please state their appearance for today.

MR. ROZYLOWICZ: Yes, Your Honor. This is Tom Rozylowicz, representing Petitioner USAA. I'm joined by my colleagues, Andrew Patrick, Ryan Chowdhury, Charlene Thrower, and Karl Runner.

JUDGE IPPOLITO: Thank you and welcome. Counsel for Patent Owner, please state your appearance as well. I believe you're muted.

Still muted.

MR. TILLER: I'll -- I'll --

JUDGE IPPOLITO: There you are.

MR. TILLER: Sorry about that.

JUDGE IPPOLITO: Now there's a feedback echo.

MR. TILLER: Okay.

JUDGE IPPOLITO: I'm going to mute on my end.

MR. TILLER: Are you still getting -- can you hear me? Okay. Sorry about that. We're still having an echo, sorry.

JUDGE IPPOLITO: We can hear you on our end if I mute.

MR. TILLER: You're going to have to turn that off, Greg.

Can you hear me?

JUDGE IPPOLITO: We can.

MR. STONE: Try your speaker.

MR. TILLER: Can you please try your speaker so we can hear you?

JUDGE IPPOLITO: So right now, I don't hear an echo.

MR. TILLER: Just turn off the whole thing.

1 MR. STONE: Is your speaker on?

2 MR. TILLER: Yes, my speaker is on --

3 JUDGE IPPOLITO: And we can -- we can take a couple minutes.

4 MR. TILLER: No, no. I apologize. We -- we worked this all out
5 yesterday, and it was working fine.

6 JUDGE IPPOLITO: It happens with these hearings, but we can take a
7 couple of minutes if you want to.

8 MR. TILLER: No, I think we have it. I think we have it.

9 JUDGE IPPOLITO: All right.

10 MR. TILLER: Anyway, my name is Steven Tiller, Whiteford, Taylor
11 & Preston, on behalf of the Patent Owner. With me are my colleagues Lisa
12 Schreihart, Greg Stone, and Elisa Mojica.

13 JUDGE IPPOLITO: Welcome and thank you. So as we have set forth
14 in our trial hearing order, each side will have up to 60 minutes of argument
15 time. Petitioner bears the burden of showing on patentability and will argue
16 their case first and may reserve rebuttal time. Patent Owner will then argue
17 their opposition to petitioner's case and may reserve surrebuttal time. And for
18 logistics, petitioners will then argue any rebuttal, and then Patent Owner will
19 follow with any surrebuttal.

20 So before we begin, we've talked a little bit about some of the
21 housekeeping items. But if you experience any more technical difficulties
22 that prevent you from presenting your case, let us know, and then we can
23 figure out how to fix those before we move forward. And we do have the
24 entire record before us, including the parties' demonstratives. And we're just
25 going to ask, as we ask in every hearing, that you're referring to a particular
26 slide, to identify what that is for the record. Even if you're sharing your

1 screen, we want to make sure that that information gets into the actual
2 transcript.

3 We'll be keeping a count of the argument time. We're all virtual today.
4 I will have my clock, but that does not mean that my clock necessarily syncs
5 with your clock. So you should also be keeping time on your end. We'll give
6 reminders, but you should have a way of keeping track of your time as well.

7 And as you can see, muting helps with some of the audio issues that
8 can come up. So when you're not speaking, please mute yourself.

9 And with all that said, Petitioner, you may begin when you're ready.

10 MR. ROZYLOWICZ: Thank you, Your Honors. And may it please
11 the Court, if we can reserve 20 minutes for rebuttal, we plan to speak to 40
12 minutes in our case in chief.

13 JUDGE IPPOLITO: Thank you.

14 MR. ROZYLOWICZ: If we now turn to slide 3, please.

15 Now, as a preview today, we plan to tackle three topics. First, I'll
16 tackle Patent Owner's contentions that recurring revenue cannot be combined
17 because they improperly allege that Rabu was somehow limited to
18 frequency-based motion detection. And as we'll discuss in greater detail,
19 Patent Owner's arguments against obviousness are predicated upon an
20 improperly narrow view of Rabu and would require precedent to ignore
21 Rabu's discussion of accelerometers, which, by the way, their own expert
22 concedes are the exact sensors used in Curry's iPhone 3G.

23 Second, my colleague, Mr. Chowdhury, will speak to Elements 1.7 and
24 demonstrating that the Curry Rabu combination describes processing the
25 sensor data to derive driving information. Mr. Chowdhury will then speak to
26 Element 1.6 to demonstrate why the Curry Rabu combination describes

1 determining the start of a driving period. Time permitting, Mr. Chowdhury
2 will also touch upon Element 1.8 and why the combination stores a selection
3 of driving information on the mobile device.

4 Now, in preparing for today's hearing, we note that there are a few
5 portions of the record not appearing demonstratives that we will reference.
6 And in order to facilitate ease of access to those materials, a preview that will
7 be on Curry page 3, Lines 24 through page 4, line 6. Again, that's Curry page
8 3, lines 24 through page 4, lines 6. And this portion is cited in the petition on
9 pages 6, 17, and 33 and again in the reply on pages 4, 8, 9, 12, and 14.

10 We will also reference Curry pages 13, lines 27 through page 14, line
11 16, which addresses related aspects of how recorded sensor data and
12 evaluations of that recorded sensor data are performed in real time on a
13 mobile device. Again, that's Curry pages 13, lines 27 through 14 -- I'm
14 sorry -- through page 14, line 16.

15 Now, we'll now turn to the petition page Roman Numeral 10, which
16 shows a listing of Claim 1. As we see here, my colleague will be addressing
17 limitations 1.6, 1.7, and 1.8.

18 But first, we'll tackle the combination as we turn to slide 9, please.

19 Now, to get into the heart of the matter, I understand just the Patent
20 Owner's argument is about the combinability with Curry and Rabu because
21 Patent Owner incorrectly alleges that Rabu uses some type of frequency
22 spectrum analysis.

23 Now, before we get there, we'll briefly touch upon select aspects of
24 Curry and Rabu to see how they come together in a combination in order to
25 refute Patent Owner's assertion. I respectfully submit that the Patent Owner's
26 arguments looks past Rabu's explicit disclosure of accelerometer to determine

1 phone orientation. And further, Patent Owner looks past petitioner's Reliance
2 on Rabu's accelerometer. But first, let's talk about the select key aspects.

3 Both referenced -- both references contemplate using an iPhone to
4 promote safe driving behavior. As we see from the above box, we see that
5 Curry describes, and I quote, "Using a mobile wireless computing device
6 with embedded accelerometers and/or positioning sensors, e.g., an iPhone 3G
7 smartphone, to detect and prevent unsafe driving behaviors."

8 Now, let's turn to slide 10, please. Now, I'll note that Curry collects
9 raw data, and I quote, "Stored on the phone, e.g., motion data cache 118,
10 driving safety performance database 324," in order to -- and I'll emphasize
11 this part -- and I'll quote, "Determine an operating mode of the phone, e.g., a
12 GPS monitoring/navigation mode or communication mode and generated
13 user driving safety score."

14 Now, why does it do this? I should note that beyond these two
15 mutually exclusive modes that promote safe driving, Curry also suggests a
16 more nuanced approach, which involves correlating different activity levels
17 such as stop or driving with different operating modes, having different levels
18 of phone restrictions and accounting for the phone usage context when
19 generating a driving score.

20 Let's turn to slide 11, please. Here we see that the phone described in
21 Curry

22 is indeed a conventional architecture. Your Honor, this Figure simply
23 identifies some of the well-known components inside of an iPhone and its
24 integration in a larger system.

25 Let's turn to Rabu slide 16, please. Now, Rabu was an Apple patent
26 that describes using an accelerometer embedded in a portable media device

1 such as a smartphone, to determine whether a PMD is coupled to a dock as
2 opposed to resting on a surface or being handled by a person. And the
3 embedded accelerometer determines the motion status of the PMD. That is,
4 whether it is moving or stationary -- whether it is in a moving or stationary
5 vehicle.

6 Rabu leverages those determinations to choose a particular mode of
7 operation for the PMD that can promote driver safety by restricting
8 problematic phone interactions. For example, in Rabu, if the PMD is docked
9 in a moving vehicle, an operating mode with relatively few restrictions can be
10 chosen.

11 Conversely, if the PMD determines that it is being held by the driver,
12 the PMD can disable texting while driving. this is perfectly consistent with
13 Curry and provides nuanced monitoring that Curry, in fact, suggests.

14 Let's turn to slide 17, please. Now, let's focus on Rabu in greater
15 detail. As is shown in the petition, we see figures 1 through 3 of Rabu,
16 showing how the orientation of an iPhone is measured. When the iPhone
17 shown in Figure 1 is placed in the dock 200, shown in Figure 2, the angle 302
18 is measured as is illustrated in Figure 3. This orientation angle is leveraged to
19 confirm whether the PMD is coupled to dock 200 and the switch to an
20 associated mode of operation.

21 Let's turn to slide 18, please. Here, Figure 4 shows PMD 400 with
22 processor 404, which uses accelerometer 409 to determine both the PMDs
23 motion status and orientation angle. Note that these constituent systems in
24 Rabu are those exact systems that are described and contemplated by the
25 iPhone 3G referenced by Curry.

26 Now, if we can jump ahead to Slide 79, please. I'll give everyone a

1 few moments as we get to Slide 79.

2 Now, the Patent Owner alleges that Rabu must somehow use frequency
3 spectrum analysis to determine orientation and based on that
4 misinterpretation, further alleged -- further alleges a lack of -- lack of
5 expected success in the combination. Now, contrary to Patent Owner's
6 position, and as shown in the upper box, Rabu's determination of orientation
7 in no way relies on -- upon frequency spectrum.

8 Instead, Rabu explicitly states at Column 4, lines 21 through 29
9 that -- and I'm quoting -- "Accelerometer can measure acceleration due to
10 gravity," end quote. And that, quote, "Based on that measurement, processor
11 404 can determine the angle it is tilted at with respect to a vertical, horizontal
12 or any other reference plane."

13 Now, as is shown in the lower box, Rabu further explains in columns 8,
14 lines 17 through 18 that this orientation angle is used to determine holder
15 status. Notably, and again, Rabu's discussion of orientation angle solely
16 focuses on its conventional accelerometer's determination of the angle of tilt
17 based on the force of gravity and in no way relies upon frequency spectrum.

18 Now, Rabu immediately juxtaposes that technique with a different
19 technique that it describes in the part that just follows this -- this quoted
20 portion shown here on Slide 79. And that is column 4, beginning
21 at -- column 4 or Rabu beginning at lines 29 through 33. In this portion of
22 Rabu, it states that, "In some embodiments, accelerometer 409 can sense the
23 amount of dynamic acceleration and that based on this information, the
24 process of 404 can determine a frequency spectrum associated with the holder
25 motion and consequently determine the motion status of PMD 400."

26 We would like to note two things about this and the related description.

1 First, Rabu's description of the use of frequency spectrum is expressly limited
2 to some embodiments. Second, even within those embodiments, the
3 frequency spectrum is only used for the purposes of determining motion
4 status.

5 And as explained in the petition, Curry already describes its own
6 accelerometer-based techniques for determining motion status and if, as a
7 reader would have readily appreciated, as obvious, the advantages of
8 integration of Rabu's techniques for determining orientation and would have
9 expected success in implementing those techniques in the combined Curry
10 and Rabu system.

11 Again, there's no ambiguity on these points and any suggestion that
12 other frequency spectrum analysis would be relied upon. And the Curry
13 Rabu system requires the board to look past the explicit record relied upon in
14 the petition, including Dr. Michelson's corroborated testimony.

15 Let's turn to Slide 21, please. Now, turning to the upper box, we see
16 how the petition identified the nuanced operating modes as being beneficial.
17 Like Curry, Rabu's system allows for modes -- allows for mode switching
18 based on a mobile device of its user -- usage context. Both greater number of
19 modes for a more nuanced approach to promotion safe driving. And it is
20 Rabu's use of dock status as contemplated in Figure 5 that allows us to make
21 this more detailed determination.

22 And again, why are these modes significant. If the phone is being held
23 by the driver, the processor can disable texting while driving. While if the
24 phone is docked, procedure would have found it obvious to change the
25 phone's operating mode to one that involves fewer restrictions.

26 Now, this is really the last time I plan to speak to -- about the

1 combination, so I'll pause to see if there's any questions.

2 JUDGE IPPOLITO: I don't have a question, but -- well, I guess it is a
3 question. So looking at petition Pages 14 through 15, is that a pretty fair
4 encapsulation, I think, of what you're saying is the argument? And that is
5 primarily the disclosure relied upon in Rabu is with regard to the use of the
6 accelerometer to determine the phone's angle? And then on page 15 of your
7 petition, you go into, which essentially, I think is Figure 5, as you showed on
8 this slide.

9 MR. ROZYLOWICZ: Yes, Your Honor, I believe it is.

10 JUDGE IPPOLITO: Okay. Thank you.

11 MR. ROZYLOWICZ: Okay. Well, Your Honors, if there's no further
12 questions, I'll -- my colleague, Mr. Chowdhury, will speak to Elements 1.6,
13 1.7, and 1.8.

14 MR. CHOWDHURY: Thank you, Tom. And good afternoon, Your
15 Honors. Let's turn to slide 36. This slide overviews key elements of three
16 limitations, 1.6, 1.7, and 1.8. And we'll address each of these three
17 limitations in the next about 20 to 25 minutes. 1.6 recites a determination of
18 a start of a driving period. 1.7 recites processing of sensor data during the
19 driving period to derive driving information. 1.8 finally recites storage of a
20 selection of the driving information derived in 1.7.

21 We'll start with 1.7 first before moving onto 1.6 and 1.8. We start with
22 1.7 as Patent Owner primarily focuses on it within its surreply. So we'd like
23 to use our time today to address those arguments.

24 As to 1.6 and 1.8, our view is that the papers are clear on how the
25 Curry Rabu combination addresses these requirements, so we'll summarize
26 relevant parts of the record in addressing these two limitations.

1 Slide 48, please. On the left, you see that 1.7 recites in part, "Process
2 the sensor data during the driving period to derive driving information." And
3 while we're there let's focus on the last three words, "derive driving
4 information." It's noteworthy here that the parties do not dispute what
5 information qualifies as driving information. Rather, there seems to be some
6 confusion by the Patent Owner as to what was brought in the petition based
7 on Curry's disclosure. So let's go ahead and examine that.

8 Slide 15 --

9 JUDGE HOSKINS: Mr. Chowdhury, this is Judge Hoskins. Just --

10 MR. CHOWDHURY: Yes.

11 JUDGE HOSKINS: -- before you do that, I think a big part of what
12 Patent Owner is arguing is what unit is doing this processing, which is not
13 really reflected on your -- your slide here. So I think Patent Owner's view is
14 that it's got to be the mobile unit that is doing this processing that you're
15 talking about.

16 Do you agree that it has to be the mobile unit that's doing this
17 processing?

18 MR. CHOWDHURY: Your Honor, thank you for the question. And
19 we -- we completely agree. We -- we agree with the Patent Owner that the
20 processing has to be done on the local device. And on that note, we'll note
21 that Curry provides an example of an implementation of its mobile device as
22 an iPhone 3G. And we have testimony from Patent Owner's expert within
23 this record that the iPhone 3G would have been understood to have
24 processing capabilities of the types of sensor data that are collected by
25 Curry's mobile phone 106.

26 Resuming to the talking points, let's -- let's go back to --

1 JUDGE IPPOLITO: I'd like to follow up on that question before we
2 move on to the next thing.

3 MR. CHOWDHURY: Sure.

4 JUDGE IPPOLITO: You said that there is an example in Curry where
5 that information is derived, driving information is derived by the mobile
6 device. Where is that?

7 MR. CHOWDHURY: Your Honors, we'll -- if I could, when we
8 address 1.7, we'll actually get to a point of Curry -- part of Curry that actually
9 addresses that question. So I'll refer back to your question when we get to
10 that part of Curry.

11 But sitting here right now, I'll tell you that that part is described in PDF
12 page 3, line 24, and it continues onto page 4. And we'll -- we'll address that
13 in the later part of this module, addressing 1.7.

14 JUDGE IPPOLITO: Okay. And then -- and then the other question I
15 have, which is separate from -- from what we were just talking about, is I
16 think that there is maybe a disagreement or at least maybe a different view on
17 what driving information is between the parties. At least that's my
18 understanding from the briefs.

19 There may be certain information that is more reflective of driving
20 versus reflective of perhaps a user or someone who could be a driver. I just
21 wanted to understand your response to that. And I believe that that's what has
22 been argued in the brief, so correct me if I'm wrong.

23 MR. CHOWDHURY: No. Yeah, we agree with you, Judge Ippolito.
24 I think there is some disagreement between the parties as to the definition of
25 driving information. Ultimately, we think that difference is irrelevant since
26 the prior art satisfies not only the petitioner's articulation of driving

1 information, but the articulation of driving information in the surreply, which
2 we'll address, as we're going through 1.7. We'll plan to address that and note
3 your specific question as it relates to the -- the difference in the articulations
4 of the driving information.

5 JUDGE IPPOLITO: Okay.

6 MR. CHOWDHURY: If you could turn to slide 50. So on the left
7 here, you see that on page 29, the petition identified, among other types of
8 information, Curry's driving behavior information as satisfying the
9 requirements of the driving information recited in 1.7. And the right shows
10 the relied-upon disclosure from Curry, which includes the example of driver
11 behavior information, including abnormal acceleration, among others.

12 So then let's turn now to slide 49. Here you see that the Patent Owner
13 identified driving information, including various other things, including speed
14 and acceleration. So when we said earlier that there was no disagreement
15 between the parties in terms of what constitutes the driving information, I
16 think what we were referring to here is that Patent Owner's explanation of
17 driving information, at least in this part of the Patent Owner response is
18 congruent with the mapping in the petition to abnormal acceleration as
19 discussed just a few moments ago with respect to slide 50.

20 So apparently aware of the similarity, what Patent Owner did in its
21 surreply was to -- or refined the articulation of driving information as
22 requiring something different and specifically vehicle behavior. And yet, as I
23 mentioned earlier, even this new articulation is met by Curry because, for
24 instance, abnormal acceleration is more than just raw acceleration values.
25 And so it's more than just sensor data.

26 And how so? Well, let's explore the full portion of the paragraph of

1 Curry that I mentioned earlier, which is on PDF page 3, lines 24 through
2 PDF, page 4, line 6.

3 And, Judge Ippolito, recognizing that you asked us -- asked me the
4 question earlier on which part of Curry supports the derivation of driving
5 information to occur locally on the mobile device, I think this portion here is
6 particularly relevant. And so let's -- let's talk about that.

7 You know, when you get to this part of Curry starting at the top, the
8 first sentence tells us the local -- the motion data cache is used to, quote,
9 "Record the location, speed, and acceleration of the mobile wireless
10 computing device."

11 Going a few sentences down, on the third sentence, tells us "Data in the
12 motion data cache, for instance, acceleration values can be compared with
13 user permission data to enable a driver safety statistic to be calculated based
14 on when and where the wireless computing device was used and the motion
15 of the device."

16 Turning now to the bottom portion or of this paragraph, which starts on
17 the earlier part of PDF page 4, we see that the driver safety statistic -- statistic
18 can be decreased based on driving information such as speed, abnormal
19 acceleration, abnormal deceleration, and taking sharp turns.

20 Finally, the safety statistic can be, quote, "Reported to a data server,"
21 suggesting at least calculation by something other than the data server, for
22 instance, the mobile device.

23 So now, I'd just like to return back to the questions Your Honors asked
24 us earlier today about how do we know from Curry that there is a local
25 derivation -- derivation of driving information from sensor data that occurs
26 locally on the mobile device. Well, we submit to you that this portion of

1 Curry tells us a few things.

2 What does it tell us? First, Curry's mobile device not only reports
3 sensor data. It also processes it to assess whether that recorded data is
4 abnormal in order to then reflect that abnormality into the value of the driver
5 safety statistic.

6 And as explained in our papers, an assessment of recorded sensor data,
7 which we can call process sensor data, satisfies the requirements of driving
8 information because they reflect something more than raw measured values.

9 Further, as we'll soon see, this portion of Curry's -- shown in this part
10 of Curry satisfies the new definition of "driving information" that Patent
11 Owner advances in its surreply.

12 But before we get there, we think this is an important point, and given
13 your questions earlier, we wanted to make sure we conveyed our position
14 clearly and addressed any -- any previous questions.

15 So I'll briefly pause here before moving on. With no further questions,
16 let's now turn to Slide 49, which focuses on Patent Owner's original position
17 in the Patent Owner response.

18 As shown here, the Patent Owner characterizes driving information as
19 including location, speed, acceleration, and speed associated with how a
20 vehicle is driven, including driving anomalies. Note here how close this
21 characterization is to the disclosure of Curry we discussed a few moments
22 ago.

23 That part of Curry explained that information used to adjust the value
24 of a driver safety statistic includes driver behavior information such as
25 abnormal acceleration. And, of course, if acceleration is assessed to be
26 abnormal, this would have been involved in some type of evaluation, in other

1 words, processing of raw sensor values represented by raw recorded
2 acceleration data.

3 So in our view, consistent with 1.7, what Curry describes in at least this
4 paragraph portion of Curry, between pages 3 and 4, recorded acceleration
5 values or sensor data being evaluated or processed to determine whether the
6 recorded values are abnormal, such that the abnormal acceleration or driving
7 information is derived from and based on processing of the recorded
8 acceleration values.

9 Now, let's now turn to how Patent Owner addresses this topic in its
10 surreply. On page 3 of its surreply, Patent Owner expresses a distinction
11 between user behavior and vehicle behavior and seemingly takes the position
12 that user behavior information is something different than driving information
13 that's recited in 1.7.

14 Notably, this distinction is expressed for the first time in the surreply
15 and without any supporting expert testimony. Setting aside whether this
16 argument is procedurally proper, the distinction is ultimately one without a
17 difference, because both the '487 patent and Curry focus on aspects of unsafe
18 driving behaviors.

19 Finally, it's our view that the distinction is ultimately inconsequential
20 to the disposition of this proceeding as the articulation from Curry that we
21 discussed and summarized a few moments ago satisfies patent -- Patent
22 Owner's own proposed definition of "driving information," representing
23 vehicle behavior.

24 As noted previously, abnormal acceleration in Curry is indicative of
25 vehicle motion. In other words, it indicates a change in acceleration that is
26 not normal. This is plainly vehicle behavior.

1 Any other questions on 1.7 before we move onto the other two
2 limitations?

3 JUDGE O'HANLON: Yes. This is Judge O'Hanlon. I have a
4 question. You pointed to Pages 3 and 4 of the Curry reference. Were those
5 mentioned in the petition?

6 MR. CHOWDHURY: Yes, they were. And if you give us a moment,
7 we'll look through the record and give you citations to the -- that -- those
8 parts of Curry within the petition. But I know we have it at least on page 27
9 of the petition, which addresses the -- element 1.6 and 1.7. But I'll -- I'll
10 review the petition and confirm that.

11 Now, turning to 1.6 --

12 JUDGE IPPOLITO: I actually still have one -- one quick question --

13 MR. CHOWDHURY: Sure.

14 JUDGE IPPOLITO: Just a clarification on Curry. And I apologize
15 because we have the double sets of page numbers. Sometimes I'm trying to
16 figure out which one we're using, but I believe it's Figure 2. I'll go there. I
17 don't know what page it's on. I'll pull it up real quick.

18 And I just want to make sure that I understand how you are relying on
19 Curry. In this Figure, we see that there's the mobile phone client, a 210, and
20 also, I believe the web server on the other side. And there's a connection
21 between the two. We see that there is a local motion data cache.

22 So I just want to make sure I understand. On the 210 side, what is
23 doing the derivation? For your arguments and your position, what is doing
24 the derivation of the driving information on the 210 side?

25 MR. CHOWDHURY: Yeah. That's a great question. And -- and I
26 think Figure 2 is a good example of the interaction between a mobile phone

1 client 210, which I would say is also reflected in Figure 1 as the mobile
2 phone client 110. I think it's in our view that mobile phone client runs on a
3 mobile -- mobile phone 106, which would have been understood to include
4 processing capabilities as noted in the petition.

5 And so when we think about what -- what component does the
6 processing on mobile phone client 210 or mobile phone client 106, it's our
7 view that the processing capabilities of that -- implementations that are
8 described within Curry would have included a processor that performs the
9 type of processing that's described within Curry.

10 In other words, it's -- we believe it's obvious that the functionality, the
11 processing capabilities that's described within Curry, are -- are done by a
12 processor of the types of mobile phones that are described in Curry as
13 implementing as being implemented on by the mobile phone 106. An
14 example of that is the iPhone 3G.

15 JUDGE IPPOLITO: If we look at Figure 1, are there any of the
16 components that are shown in -- in 106 but mainly 110 that would perform
17 that derivation of driving information? For example, there's a data cache, so
18 that's storage. Is there any module in here that's shown that you're relying
19 upon as doing that processing at 1.7?

20 MR. CHOWDHURY: Yeah. And I think that's a great question. With
21 1.6, you know, I'm looking at the Figure here right now. And the first thing
22 I'd say is I don't think this Figure is intended to show all of the hardware and
23 the componentry that would have been understood by a person of ordinary
24 skill in the art, looking at Figure 1.

25 What I can tell you is that mobile phone 106 is described expressly
26 within Curry as being implemented on smartphones such as the iPhone 3G,

1 which -- which we've provided record evidence through Dr. Michelson's
2 testimony as well as some deposition testimony from Mr. Wilson that these
3 types of phones that Curry describes as implementing the mobile phone 106
4 has the type of processing capabilities.

5 So I think the record evidence -- you know, supporting how you would
6 look -- how a person of ordinary skill in the art would look at Figure 1 would
7 understand that there are processors and other well-known componentry
8 within phone 106 that would have been understood to provide the types of
9 processing functionality. Even the Figure 1 might not necessarily show the
10 entirety of all of that componentry within this Figure.

11 JUDGE IPPOLITO: Thank you. I think I understand your position.
12 And you have about, I would say 11 -- a little bit over 11 minutes left.

13 MR. CHOWDHURY: Sure. Thank you again for the questions. It's
14 been very helpful.

15 Let's now move to Slide 37 to discuss 1.6. There's been discussion on
16 this record on what 1.6 means, and there is a dispute on what's required by
17 claim 1. But as you -- as you'll soon realize, this ultimately ends up being
18 irrelevant just like our discussion -- discussion for 1.7, because the prior art
19 ultimately satisfies either party's articulation.

20 But first, let's return to the roots. And in doing so, I'll turn you to page
21 13 of the petition where we showcased portions of Curry that address not
22 only our interpretation, but also those addressed by the Patent Owner.

23 I'll give you a few moments to get to page 13 of the petition. And here
24 we see that the petition explained on the third line here, that phone 106
25 switches between two operating modes. It's cut off on this -- this portion on
26 this page, but Curry essentially teaches two types of modes, one of them

1 being a GPS monitoring/navigation mode.

2 Two lines later on line 5 near the right, you then see that there is a
3 transition that is, quote, "Activated by the user's phone and, for example,
4 through using" -- through a user input that manually changes the activity
5 mode."

6 Further, that transition is based on use of acceleration data to determine
7 the change, which is then used to estimate the motion type before and after
8 the change.

9 Summarizing these points, what we see is plainly within Curry, the
10 cited portions of Curry on page 13 of the petition, a determination of a start of
11 a driving period where that start is based both -- both on the user inputs on a
12 user interface and sensor data collected by the mobile device. The cited
13 portions of Curry are then relied upon in Pages 26 through 27 of the petition
14 that specifically address 1.6.

15 And we further demonstrated this fact on page 6 of the reply, which
16 similarly cites to Curry's disclosures with respect to figures 3 and Figure 4.
17 But that discussion is well developed, and we'll leave it to the papers.

18 But one note -- note I'd make here is that from the record, we can see
19 that the Patent Owner didn't overlook this portion of Curry. After all, it cited
20 to it in page 6 of its surreply. Patent Owner just didn't acknowledge the
21 relevance of these teachings from Curry, which are directed to functionality
22 referenced in relation to its Figure 3 and Figure 3 embodiments.

23 Instead, what the Patent Owner did was exclusively focused on Figure
24 4, which by the way, is in our view, satisfies either of the party's articulations
25 of 1.6.

26 While you're locked into page 13, let's move on to how the cited

1 portions of Curry satisfy each of the party's articulations of 1.6.

2 Please turn to Slide 39, which summarizes the petitioner's articulation
3 of 1.6. On the right, the second sentence in -- the second sentence from the
4 petition that's shown on the right side of the slide identifies two attributes of
5 driving period. And then it further explains that these attributes may be
6 satisfied by start, whether at the onset of vehicle driving or whether instead
7 before or thereafter.

8 And of note, there's been no argument that we could tell from the
9 Patent Owner disputing that sensor data recording capabilities provided by
10 the Curry Rabu combination do not satisfy the removably attached and the
11 vehicle and use attributes of the driving period.

12 And as we've discussed in relation to Figure 13 of the petition, the
13 transition from -- of the activity mode from substantially still to driving in the
14 cited portions of Curry represent a start of a driving period.

15 Now, notice that a start of the driving period in this example is at the
16 onset of vehicle driving. And it's exactly what Patent Owner argues for 1.6 as
17 being the only appropriate interpretation.

18 So we see here that the analysis of Curry provided in at least page 3 of
19 the petition, further embraced in page 6 of the reply, satisfies not only
20 petitioner's articulation of 1.6, but also Patent Owner's articulation. And by
21 the way, not that it's dispositive for the reasons we just discussed, Patent
22 Owner's articulation of 1.6 is also unjustifiably narrow. Let's explore why.

23 Before turning to Patent Owner's articulation, we'd also note that
24 page -- the page 13 discussion we just referenced is not the only explanation
25 of Curry that demonstrates how each of the competing articulations of 1.6 are
26 met by its disclosure.

1 This is noted, for example, on page 6 of the petitioner's reply, which
2 addresses both the Figure 3 and Figure 4 embodiments. But we'll leave that
3 discussion to the papers.

4 In the meantime, let's turn to slide 41. Here on the left, we see an
5 example from the '487 patent specification itself. In this example, a driving
6 period has a start that is triggered upon, quote, "A detected speed above a
7 predetermined threshold."

8 This confirms that the start is at some point after the start of driving. It
9 also confirms that Patent Owner's articulation of 1.6 is too narrow. If the start
10 of the driving period is required to be the start of driving, as you'll hear Patent
11 Owner argue, then it would exclude this embodiment as Your Honors have
12 previously noted in related IPR proceedings.

13 Patent Owner's articulation also contradicts testimony from its expert.
14 On the right here, you'll see that Mr. Wilson testified that the specifics of
15 exactly when the driving period starts is, quote, "Not critical to the analysis."
16 And in doing so, Mr. Wilson opined on 1.6 from the person -- from the
17 perspective of a person of ordinary skill in the art as noted in his answer.

18 So to conclude, it's our view that both the intrinsic record and the
19 record evidence within this proceeding contradicts Patent Owner's
20 articulation of 1.6. And that articulation would be one that requires the start
21 of a driving period to be the start of driving.

22 With that, I'd ask if you have any questions regarding 1.6 before I
23 quickly turn to 1.8 to address any topics there.

24 JUDGE IPPOLITO: You have about four minutes.

25 MR. CHOWDHURY: With no questions, let's now quickly address
26 1.8. Slide 58, please. You'll see on the bottom left of this slide, 1.8 recites a

1 store -- a selection of driving information. And in discussing 1.7, we
2 previously addressed how Curry satisfies the driving information element.

3 Slide 60, please. Before we get into the contents of this slide, let's just
4 start with a simplified example. Assume you have a package, and you're
5 moving from your house to somewhere else. Prior to the package being sent
6 from your house, where is it located? It may be somewhat trivial to ask, but
7 this relates to how Curry's disclosure of transmission in the top left portion of
8 the slide relates to the requirements of 1.8.

9 So we ask ourselves prior to transmission to a remote server from a
10 mobile device, where is the transmitted data located? And it's our view that a
11 person of ordinary skill in the art would have understood that that
12 data -- transmitted data is located at the mobile device. And the same logic
13 applies for the discussion of Curry and the petition on the top left of this
14 slide. But -- but let's read and confirm.

15 Here we see that Curry teaches processing of a driver safety statistic on
16 a mobile device and then further teaches the transmission of the driver safety
17 statistic to a remote server. So we ask ourselves again, where is the driver
18 safety statistic if its associated data and -- and its associated data prior to
19 transmission. We submit that it's stored on the mobile device.

20 In its response, the Patent Owner argued that Curry only teaches
21 storing raw sensor data. And in the reply, we explained that this could not be
22 true given other disclosures in Curry such as that relating to the calculation of
23 the driver safety statistic.

24 How can we confirm? Well, what I would say is we can turn back to
25 the portion of Curry discussed earlier within this -- earlier during this
26 presentation. And that's PDF page 3 slide -- line number 24.

1 We see there that on the bottom portion of the paragraph, the last five
2 words of the sentence say that the safety statistic may be calculated at the
3 data server.

4 Now, notice the preceding word "or." The use of "or" here necessarily
5 tells you that what we're talking about is an alternative to calculation at the
6 server. And what is that alternative? It's calculation at the device that
7 provides reporting to the server. It's simply the mobile device.

8 In the reply, we argued that the Patent Owner ignores these express
9 disclosures of motion -- of the motion data cache or on the -- on the mobile
10 device for locally storing process data.

11 And in responding to this argument on page 18 of the surreply, the
12 Patent Owner expresses a nonresponsive answer. And I'll quote here from
13 their brief. "Patent Owner does not ignore this cache but
14 discusses" -- "discusses it as merely storage for a raw sensor data."

15 Patent Owner then further notes that a cache by its plain
16 meaning -- plain and ordinary meaning is nothing more than storage. And as
17 Your Honors have pointed out earlier today and what -- and in responding to
18 your questions, it's our view that mobile phone 106 includes a processing
19 processor and has the -- and would have been understood by a person of
20 ordinary skill in the art to have the processing capabilities to perform the
21 types of processing that's described in various parts of Curry, including, for
22 instance, PDF page 3, line 24 to PDF page 4, line 6.

23 With that, Your Honors, I'll ask -- I'll check to see if you have any
24 further questions. And if not, Petitioner remains -- reserves the remainder of
25 its time for rebuttal.

26 JUDGE IPPOLITO: No questions from me, and you didn't have any

1 remaining time to add to your rebuttal time.

2 All right. And with that, Patent Owner, you may begin when you're
3 ready.

4 MR. TILLER: Thank you, Your Honor. If I can just -- it's impossible
5 for me to have an oral argument and be sitting, so I'm going to raise up my --

6 JUDGE IPPOLITO: Take your time. And as you're doing that, just let
7 me know what time you'd like to reserve for sur-rebuttal, if any time.

8 MR. TILLER: I'd like to reserve ten minutes.

9 JUDGE IPPOLITO: Okay.

10 MR. TILLER: Are you ready, Your Honors?

11 JUDGE IPPOLITO: We are.

12 MR. TILLER: Thank you. Good afternoon. As I mentioned earlier,
13 my name is Steve Tiller. I'm with the law firm of Whiteford, Taylor &
14 Preston. May it please the Board.

15 I'd like to address the arguments in order essentially that were just
16 made. In particular I think they started -- USAA started with this discussion
17 about what's going on in Rabu.

18 If you turn to, in our demonstrative slide 31, you'll see an excerpt of
19 Rabu from page 1 of Rabu. And, again, we're using the bottom numbers, I
20 believe. I mean, of Curry. Rabu, there's -- I apologize. This is in Rabu at
21 column 1, lines 42 to 52, where it says, "In some embodiments, the motion
22 status may be a combination of a PMD," which is the personal mobile device
23 "holder status and a PMD holder motion steps."

24 Rabu calculates two -- or determines two different things. One is
25 holder status. That's the orientation angle that counsel talked about. Then
26 there is also holder motion status. What is that holder? Is it moving? Is it in

1 a moving vehicle? Is it potentially with a person who's walking? Those are
2 the two basic principles that are set forth in Rabu, holder status, holder
3 motion status.

4 If you look at slide 32, which is again a quote from Rabu at Column 2,
5 line 61 through Column 3, line 4, you'll see that in some embodiments, the
6 personal mobile device can determine a frequency spectrum associated with a
7 current motion of the PMD.

8 Based on this determined frequency spectrum, the -- the PMD can
9 determine the holder motion status. The only way in Rabu that the PMD is
10 able to determine whether what its motion status is, is by doing this analysis
11 on frequency spectrum.

12 Then, if you move to slide 33, slide 33 highlights Figure 5. Figure 5
13 was relied on repeatedly by the Petitioner in their pleadings. And you will
14 see that what Figure 5 shows are different modes, different modes which
15 Petitioner relies on to suggest that there is a -- Rabu provides a more nuanced
16 approach to determining holder status and holder motion status.

17 And you will see that Figure 5 talks about these nuanced modes where
18 the PMD can be held -- handheld while located in a moving vehicle. It can be
19 resting while in a moving vehicle. It can be handheld while person is in
20 motion, and it can be docked in a moving vehicle.

21 The only disclosure to determine whether that PMD is in a moving
22 vehicle or with -- or in a person who's moving, or handheld by a person who
23 is moving, is by the use of frequency spectra. Figure 5 is repeatedly relied on
24 by USAA -- by Petitioner in its pleadings.

25 If we then go to slide 34, and I'll give Your Honors a second to get
26 there. This is Figure 7. Figure 7 of Rabu talks about this determination of

1 orientation. That was discussed by counsel, that there is an ability to
2 determine orientation angle using the gyroscope of the phone to determine
3 whether the phone is in a holder or being handheld or is resting on some
4 surface. Figure 7 is repeatedly relied on in -- in petitioner's pleadings.

5 However, if you then go to slide 35, in slide 35, there is Figure 8.
6 Figure 8 is a discussion of the use of frequency spectra associated with holder
7 motion. And then there is -- comparing this frequency spectra to one or more
8 frequency spectra to determine whether the PMD is again in a moving
9 vehicle, in the -- in a person's hand who's moving, or resting. Figure 8 is
10 repeatedly relied on in petitioner's pleadings.

11 If you go to Figure 30 or slide 36, I should say -- sorry, Your
12 Honors -- you will see that there is also reference to Column 3, lines 1
13 through 10. Column 3, lines 1 through 10 discuss how the PMD can select a
14 mode of operation based on the holder status and the holder motion status.
15 Every motion has a particular frequency spectrum associated with that
16 motion, and then it gives examples.

17 This section, again, repeatedly relied on in petitioner's pleadings at
18 page 12, at page 14, at page 17, where they're describing this enhanced,
19 reliability of motion detection that Rabu provides.

20 On page 28, describing the determination of whether this Curry Rabu
21 phone is in a vehicle being driven, which again is determined in Rabu solely
22 by the use of frequency spectrum.

23 If you turn to slide 37, you will see reference to Column 8, line 13
24 through Column 10, line 42.

25 And I realize that that is a very large swath of information Your
26 Honors. But this is the section that is, again, repeatedly over and over relied

1 upon by Petitioner to support its arguments of the use of Rabu with Curry.

2 And if you note, in that wide swath of this disclosure are, in particular,
3 columns 9 -- or column 9 -- excuse me -- line 25 through column 9, line 54.

4 That is the written description of Figure 8. And as we saw earlier, Figure 8 is
5 specifically disclosed to discuss the use of frequency spectra to determine
6 holder motion status.

7 And they cite to this repeatedly in their petition at page 11, which
8 discusses this Curry Rabu accelerometer to make this status determination.
9 Page 12, discussing Curry Rabu phone as leveraging orientation and motion
10 data. 23, describing use of motion data. And, again, as I said earlier on page
11 28, describing the determination of whether the Curry Rabu phone is in a
12 vehicle being driven.

13 Petitioner's expert. If you look at slide 41, petitioner's expert relies on
14 the various operating modes. And, again, to determine whether the PMD is
15 in a moving vehicle or not requires, pursuant to Rabu, the analysis of
16 frequency spectrum.

17 Your Honors, in your institution grant decision, even came to what I
18 would say was the same conclusion that we came to, which is that Petitioner
19 was arguing not just that it was relying on the orientation angle analysis of
20 Rabu, but on the holder motion status analysis of Rabu.

21 In fact, Your Honors indicated on pages 24 and 25 of your decision,
22 which is shown here, that "The Board determines that Petitioner has
23 sufficiently explained that Rabu teaches the limitation of the mobile device
24 being removably attached to the vehicle and the vehicle being in use
25 because" -- and I would go down to section -- or point 3, "the PMD can
26 determine if the PMD is in a moving vehicle. The PMD selects a mode of

1 operation based on the holder motion status."

2 And Your Honors also realize that this was determined, as shown in
3 Rabu, by the use and analysis of frequency spectrum. You say, "In some
4 embodiments, the PMD can determine a frequency spectrum associated with
5 its current motion. Based on the determined frequency spectra, the PMD can
6 determine whether it is in a moving vehicle, in a stationary vehicle being held
7 by a moving person, or being held by a stationary person."

8 It is unquestioned that Petitioner relies on the frequency spectra
9 analogy basis of Rabu. Then only after Patent Owner submits its POR,
10 submits its expert disclosure, Mr. Wilson, and if -- it is only after that that
11 now, apparently, Petitioner seems to be walking back its reliance on this
12 aspect of Rabu. And presumably, that is done because Mr. Wilson pointed
13 out -- and it's now unrebutted -- pointed out the problem with relying on
14 frequency spectra. It is unreliable.

15 Frequency spectra has many -- must rely on many, many, many
16 variables such as where is the phone? Is it in somebody's pocket? Is it
17 on -- where I often put my phone -- on the seat next to me? Is it on the
18 dashboard? Because the --

19 JUDGE IPPOLITO: Counsel, may I stop you there for some
20 questions?

21 MR. TILLER: Please.

22 JUDGE IPPOLITO: Okay. So the first question I have, and this is
23 more of a confirmation question, is that it's Patent Owner's position that
24 Petitioner has made arguments that rely on Rabu's frequency spectrum
25 disclosure, as well as the other disclosure that was discussed today about the
26 accelerometers. Is that correct?

1 MR. TILLER: Yes. Petitioner made arguments with regards to
2 orientation angle and movement.

3 JUDGE IPPOLITO: And so, Patent Owner, you've had an opportunity
4 to respond to those in the Patent Owner response. Is that fair?

5 MR. TILLER: We had an opportunity to respond to the combination
6 of orientation angle and holder -- of holder status, I should say, and holder
7 motion status. That is what we responded to was the motivation to combine
8 that. It appears now -- and I don't know if you were done, Your Honor. I
9 apologize.

10 JUDGE IPPOLITO: Well, let me -- let me stop you right there. And
11 let's look at petition page 14 and 15, which is what I brought up earlier during
12 petitioner's counsel's presentation.

13 MR. TILLER: If you can give me half a second.

14 JUDGE IPPOLITO: Absolutely.

15 MR. TILLER: I need to get my copy -- copy of the petition. You said
16 14 and 15?

17 JUDGE IPPOLITO: Yes.

18 MR. TILLER: Yes.

19 JUDGE IPPOLITO: You can take a look at that.

20 MR. TILLER: Yes, Your Honor.

21 JUDGE IPPOLITO: Okay. So on page 14, there's discussion here
22 about the accelerometer in Rabu and Curry. And I believe this is a fair
23 characterization that petitioner's position is because there is an accelerometer
24 in both, you can look at the teaching in Rabu regarding the accelerometer
25 for -- I think its limitation is at 1 point -- I don't know which -- we numbered
26 it, but for the removable attaching of that device.

1 So I'm trying to understand, looking at -- let's see some of these
2 citations -- Column 4. Let's go to Column 4 in Rabu. We talked about a little
3 bit line 21 based on what petitioner's argued in the petition on page 14.

4 MR. TILLER: Yes, Your Honor.

5 JUDGE IPPOLITO: Why would it be unreasonable expectation of
6 success if Rabu is also teaching that if you have accelerometer data, the
7 processor can determine a frequency spectrum associated with the holder
8 motion?

9 Because I think what I understand the argument to be in the petition on
10 page 14 and 15 is that there is this accelerometer data. And even if we look
11 at the frequency spectrum analysis that might have to take place, that is also
12 based on the accelerometer data that is present in both Curry and Rabu.

13 So help me understand why there is this discrepancy between the
14 disclosures of these reference and why they don't work together.

15 MR. TILLER: Well, Your Honor, you have to remember what -- the
16 whole purpose of this was, according to their argument, was that the
17 combination of Curry and Rabu provides for more nuanced determination of
18 whether the phone is, in fact, in a moving vehicle or not.

19 And so in their petition, they seem to argue, you use the accelerometer
20 in Rabu, you do this analysis of frequency spectra, and that helps you identify
21 these more nuanced categories, which are identified in Figure 5. Now they
22 seem to be saying, well, no, we're actually using the accelerometer of Curry
23 because Curry can also provide us this data.

24 But ultimately, they are still arguing that the accelerometer of Curry.
25 They're applying the disclosure. They're applying the teachings of Rabu.
26 And they do it over and over and over again by citing to Figure 5, Figure 8,

1 column 3, lines 1 through 10, columns 9 through approximately 20 to 40.

2 I've now forgotten the exact cite, but the one I mentioned earlier.

3 So what they're saying is, well, we're really not relying on Rabu. We're
4 relying on the accelerometer of Curry, but we recognize that Curry doesn't
5 have these nuanced categories. So we have to take that accelerometer, but
6 then we have to use it or apply it consistent with the teachings of Rabu.

7 And again, we argue, and there's no evidence to rebut this, that Rabu's
8 frequency spectra analysis, which is what, again, they're relying on, is
9 unreliable because of all of these problems that Mr. Wilson has identified,
10 which there is no testimony, expert or otherwise, to rebut.

11 So it's really, Your Honor -- I hope I've made myself clear and maybe I
12 haven't. But is that they went from Curry -- they went from Curry, and then
13 the accelerometer of Rabu, using Rabu in such a way to no, no, no, no, no,
14 no. The Rabu accelerometer and the Curry accelerometer are the same thing.
15 So we're going to use the Curry accelerometer, but we're still going to do it
16 consistent with the teachings of Rabu.

17 And now they're telling you, oh, no, no, no, no. That's not what we
18 want. We are simply relying on this for orientation angle. But yet, Your
19 Honors indicated it was -- Your Honors agreed that you understood, at least
20 that's how I read your decision -- obviously, you have to decide that point.
21 But how I read your decision is that you understood that they were relying on
22 the teachings of Rabu and, in particular, the teachings of the use of frequency
23 spectra to determine holder motion status. And without holder motion status,
24 they don't get into this nuanced approach that they are so heavily relying on.

25 JUDGE IPPOLITO: And, Counsel, let me just ask you -- pause and
26 ask you there -- and I say this because there's usually a lag. So I prefaced it

1 with I'm asking you a question.

2 We have talked a little bit about whether or not petitioners made those
3 arguments or have not made those arguments. We can that set that aside for a
4 second.

5 I want to just make sure I understand from your point of view from that
6 disclosure in column 4 of Rabu, I think it's line 21 starting there. Would you
7 agree that there is disclosure in there about how to use the accelerometer
8 information to do the frequency spectrum analysis?

9 MR. TILLER: Disclosure in Rabu?

10 JUDGE IPPOLITO: Yes.

11 MR. TILLER: Yes. I think there is disclosure in Rabu as to how to do
12 the frequency analysis. We assert that that use of frequency spectra is
13 unreliable for all the reasons that Mr. Wilson testified to and which, at least in
14 my opinion, has gone unrebutted.

15 JUDGE IPPOLITO: Understood. Thank you.

16 MR. TILLER: Any other questions with regards to this Rabu issue?

17 I'd like to address now the driving period. And if we -- if we look
18 at -- I'd like to go through just a very quick sort of overview of the '487
19 patent. And forgive me if I sometimes refer to it as the "Wright patent." I
20 don't mean it as r-i-g-h-t. I do mean it as W-r-i-g-h-t, our inventor.

21 So if we look at -- if you please look at slide 2, the purpose of this
22 invention is to determine the -- is to provide driving information, which may
23 ultimately be utilized to determine the cause of an event, such as an accident,
24 to modify driver behavior. Hey, somebody's watching me. Somebody is
25 watching what I'm doing; I need to drive better and/or to determine insurance
26 premiums. And in fact, that's exactly why we believe USAA is using this

1 invention, because, as Your Honors know, there is also a corresponding
2 infringement action going on in the Western District of Texas.

3 And if we look at slide 3, which is a quote from Column 13, lines 36
4 through 56 of the Wright patent, this purpose is again set forth, in particular, a
5 main purpose of the mobile telecommunications device "when arranged
6 within a vehicle in motion."

7 It obviously doesn't say there "when arranged during some subset of
8 the time period when the vehicle is in motion." And if you think about the
9 purpose, the purpose to identify driving information regarding an accident.
10 Did somebody make a hard stop? Did -- somebody speeding? Did
11 somebody -- you know, what were the G-forces on the vehicle at the time of a
12 particular incident?

13 It would obviously make no sense to only record some -- some portion
14 of the raw sensor data because what happens if the driving -- if the accident
15 happens when there's no recording going on? What happens if the person
16 drives great when the recording is going on and then not -- and then not well?

17 JUDGE HOSKINS: Mr. Tiller, this is Judge Hoskins. Let me push
18 back a little bit on that. Let's suppose that there's an hourlong trip. We're
19 driving from city A to city B, and it takes an hour to get there. And we do
20 this monitoring only during, you know, 15 minutes of that trip. We're still
21 getting the benefits of the monitoring during those 15 minutes. I mean,
22 maybe it would be better if we did it the entire hour, but we're still getting the
23 benefit during the 15 minutes, aren't we?

24 MR. TILLER: Maybe, but not necessarily, Your Honor, because,
25 again, if the accident -- you know, if the purpose is to determine how an
26 accident happened, or at least to provide information about how an accident

1 may have happened, and the accident happens during the 45 minutes, given
2 your example, where monitoring is not going on, then, obviously, you're not
3 getting any benefit.

4 If the 15 minutes of this trip, this hypothetical trip that you have set
5 forth, Your Honor, if you're in, you know, traffic and you're going very slow,
6 bumper-to-bumper traffic. And then after 15 minutes, you get on the
7 highway. And you start driving at 100 miles an hour, and you start swerving,
8 again, you're not getting the benefit.

9 That's not what the insurance company wants to know. They want to
10 know that how you drive overall, if it is to modify driving behavior. If it is so
11 that the person, the driver, knows, hey, somebody is watching. And I put that
12 in quotes. And I hate using air quotes like that. But somebody's watching
13 me. But, hey, they're only going to be watching me -- and I'm not saying that
14 the driver would necessarily know this, but if I drive poorly for that 45
15 minutes when there's no monitoring going on but very well for the 15
16 minutes, that could be coincidental.

17 Again, you're not getting the benefit. Are you getting some
18 information? I can't deny that. But you're not getting the -- the benefit of that
19 information.

20 And, again, skipping ahead, because I'm already seeing that you are all
21 sort of on top of this issue. Skipping ahead to what triggers this period, this
22 recording period, this monitoring period -- and I appreciate Your Honor sort
23 of referring to this as a monitoring period, because this monitoring period that
24 is initialized by -- in Curry, there's only one thing that discloses that
25 monitoring period being initialized. And that is the -- a phone call.

26 And when I use the term "phone call," I'm meaning, you know, either

1 coming-in phone call, going-out phone call, text message, but some type of
2 use of the phone. So that use of the phone is completely untethered to
3 driving. The vehicle -- the phone may not be in a moving vehicle when that
4 phone call comes in, and then the phone is allowed to accept the phone call.

5 Remember, Curry -- the whole purpose of Curry is a system and
6 method for preventing cell phone use while handling. It's a dynamic phone
7 call handler. That's why -- that's the purpose of it. And so all that's
8 happening here is that a phone call comes in, or a phone call is made. And
9 the activity module, the activity recognition module, is triggered to determine
10 one thing and one thing only, whether the vehicle is being driven or not.

11 And, in fact, that's the term that the petition -- or the Petitioner uses in
12 the petition. They concede that the activity recognition module determines
13 whether the vehicle is being driven or not.

14 So let's go back to driving period and then to what's being determined.
15 Driving period, this period of which there is driving going on has to have
16 meaning. There was talk by counsel that the driving period has two
17 attributes. That's -- the claim talks about the driving period occurs when the
18 phone is removably attached to the vehicle and the vehicle is in use. But the
19 word "driving" has to have some meaning. And "driving," according to our
20 expert, is the period in which the vehicle is being driven.

21 And again, that goes back to the purpose, Your Honor, that you pointed
22 out, which is the whole purpose of this is to collect information about how
23 the person drives, not how a person drives during some subset of the time that
24 they are driving. Driving has to have meaning. Otherwise, it would just be a
25 period where the -- where the phone is removably attached to the vehicle and
26 the -- and the vehicle is in use. But their interpretation of this term, "driving

1 period," essentially just skips over the term "driving."

2 And remember -- and while I know that Your Honors are not bound to
3 what Judge Albright did in the Western District of Texas, this was the exact
4 argument that was brought before Judge Albright in the Western District of
5 Texas. And he said, No. "Driving period" must be interpreted. It must be
6 construed consistent with its plain and ordinary meaning. And that was when
7 the exact argument that they are making before Your Honors was being made
8 to Judge Albright.

9 He said, no, I don't agree with that. It's plain and ordinary meaning.
10 Plain and ordinary meaning, according to our expert of "driving period" must
11 mean the period in which the vehicle is being driven.

12 JUDGE HOSKINS: Mr. Tiller?

13 MR. TILLER: Yes.

14 JUDGE HOSKINS: This is Judge Hoskins again. I apologize for
15 interrupting.

16 MR. TILLER: Please.

17 JUDGE HOSKINS: Can you help me understand, then -- so I'm
18 thinking about claim construction now. So put aside Curry for a moment.
19 I'm talking claim construction and the specification of the '487 patent.

20 So the claim says that we determine a start of a driving period based on
21 the inputs received by the user. So help me understand how -- how your
22 understanding of "driving period," which must mean -- the start of a driving
23 period must mean the time at which driving starts.

24 What are the specification disclosures with respect to the inputs from
25 the user that helps you to say that the start of the driving period must be the
26 time at which the driving starts?

1 MR. TILLER: Well, I -- first of all, I think that's a different claim
2 element, Your Honor, whether it's basic --

3 JUDGE HOSKINS: Can we -- can we look at claim 1 point -- we're
4 talking about 1.6, right?

5 MR. TILLER: Yeah. Yeah. Yeah. No, I understand that point. And
6 my point is I'm focusing on determining a start of a driving period. You're
7 focusing on determining based on the inputs received by the user interface
8 and sensor data. How is that initiated? I understand. I understand your
9 question, but they are somewhat separate, Your Honor. That's my only point
10 that I wanted to -- to make.

11 But I think it can be started with the person engaging the application.
12 It can be the input of the person setting up the thresholds to -- to start the
13 recording, you know, this needs to be started at two mile -- and when the
14 vehicle gets two miles an hour. This needs to be -- this needs to start
15 recording when --

16 JUDGE HOSKINS: If there's a minimum speed, doesn't that cut
17 against, then, your position that the start of the driving period must be the
18 start of driving? Because if -- if there's a minimum speed that's required,
19 there's a portion of driving that you do before you get to that minimum speed.

20 MR. TILLER: Your Honor, and -- yes, I understand that point. And,
21 yes, I understand Petitioner has made that argument. As our -- I would note a
22 couple of things. First of all, there are disclosures in the spec where you don't
23 have that issue. For example, the patent talks about use of an NFC and
24 near -- I think it's a near field communication such that the phone knows that
25 it's basically next to or in the vehicle by use of this NFC. So there are aspects
26 of the disclosure -- of the specification that -- where that issue does not come

1 in.

2 But, yes, I acknowledge there is that disclosure of I think it's 20
3 kilometers per hour. You know, that's -- that's the speed threshold. And,
4 again, our expert testified -- Mr. Wilson testified to the fact that a person of
5 ordinary skill in the art would understand that there has to be some practical
6 mechanism of -- you know, this is -- for all intents and purposes, this is a
7 computer. And it has to have some trigger to start. And so it could be the
8 NFC, but it could also be reaching a speed threshold.

9 And that that is an -- a near approximation of the entire driving period,
10 which, by the way, still has -- is still tethered to the concept of driving. In
11 order to go 2 miles an hour, or 6 miles per hour, or 10 miles an hour, and 20
12 kilometers, based on my bad math, might be 12 miles an hour. But that is
13 still tethered to driving. There's still a relationship back to driving.

14 If we look at what Curry is talking about and this monitoring period
15 that is being discussed, Curry, the -- the initialization of the driving period
16 has nothing to do. It -- completely untethered, has nothing to do with driving.
17 And the time period which this recording is going on has nothing to do with
18 driving. It is completely untethered from the concept of driving.

19 And so, you know, the driving period has to have something to do with
20 driving. And yet, Curry even talks about during these -- these I think they
21 used four minutes or six -- six minutes it may have been.

22 In Curry, for this recording period, it is a finite number. It is random,
23 for lack of a better term. And Curry even talks about how the -- the phone or
24 the vehicle can continue driving well beyond the six minutes. It can also stop
25 within the six minutes. It could stop and start again within this six minutes.
26 Again, there's got to be something tying this to driving.

1 I'd like -- Your Honor, unless you have any other questions on this
2 issue, I'd like to get to the -- the processing. And I found it very interesting
3 that it appears that Petitioner -- Petitioner relied pretty significantly -- I heard
4 multiple references to it -- to the lines from page 3 -- and I'm now on
5 Curry -- I apologize -- Curry page 3, line 24 through Curry, page 4, line 6.
6 And in particular, counsel talked extensively about the last line of that
7 citation, which says, and I quote, "The safety statistic can be reported to or
8 calculated at the data server."

9 Now, we all agree, if it's calculated at the data server, that means it's
10 not being calculated or processed for purposes of terms of the -- of the claim.
11 It's not being processed by the phone, and counsel even acknowledged that
12 the claim requires this processing to be done on the phone. So if it's being
13 calculated, this safety statistic -- and I have a hard time saying that without
14 stumbling over the words. If it's calculated at the data server, obviously, it's
15 not being done at the phone.

16 But then through some -- I would almost say some type of process of
17 elimination, counsel argued that where it says the safety statistic can be
18 reported to the data server, well, that that must mean it's the phone. And I -- I
19 cannot disagree with that anymore.

20 And, Judge Ippolito, I think you asked a very pertinent question when
21 you said, well, where is it shown that this is done on the phone. And you
22 took counsel to Figure 2, and there is nothing there about calculating the
23 safety statistic on the phone.

24 And even if we look at Figure 1, there's nothing in Figure 1 that talks
25 about calculating a safety statistic.

26 However, in Figure 1 and in Figure 2, there is a discussion about

1 something else, some other thing, some other piece of equipment, calculating
2 the safety statistic. And remember, the sentence that they want you to focus
3 on is, "The safety statistic can be reported to the data server." And counsel
4 argued that must mean it's the phone. There's nothing else that is doing this.

5 I sharply disagree with that point. So if we look at Figure 1, and if we
6 look up at element 130, which is kind of in the upper left-hand corner, you'll
7 see that there's the auto insurance company. And what is the auto insurance
8 company sending to the server? Driver safety scores. Curry itself says the
9 auto insurance company can send driver safety scores. I would -- I would
10 argue that that is a driver -- or that that is a safety statistic. It's sending it to
11 the server.

12 There's something else that could very well be sending data or sending
13 the safety statistic to the server, and that's shown in Figure 2 and. That's the
14 driving safety user control and monitoring website.

15 If you look at element 208, element 208, the driving safety
16 performance database, is receiving information from the phone. No
17 discussion about the phone calculating anything. But then driving safety
18 performance database sends information to 212, driving safety score
19 evaluation. And then driving safety score evaluation module sends it to 214,
20 driving safety score data, which can then send it to 216, data sharing interface
21 for a third party.

22 So it is 212 relying on the data from 208, which is determining a safety
23 score, which I would argue, again, is the same as a safety statistic, and
24 sending it to third parties. That third party can and very well is the data
25 server. It may also be the insurance company.

26 But to rely so heavily on that one sentence on page 4, where it says,

1 "The safety statistic can be reported to the data server." And say essentially,
2 by process of elimination, that that must mean it's the phone that is doing this,
3 I think is just not reading or not recognizing all the disclosures.

4 And then you have to combine this, Your Honors, with all of the
5 disclosures in Curry where there is explicit and express data transfer of raw
6 sensor data to the server. And just highlighting a few of them, page 4, lines 1
7 through 6, where the server uses the model to determine speeding, abnormal
8 acceleration and deceleration.

9 Line 7 -- or I'm sorry, page 7, lines 8 through 17, where a driving
10 safety evaluation module on the server performs a statistical analysis.

11 Line -- or page 9, line 23 through 10 -- page 10, line 5, where raw
12 motion and activity mode estimation is sent from the mobile phone to the
13 server for further processing.

14 And there is repeated -- and I will say Mr. Wilson even talks to this
15 point at Paragraph 69 of his declaration wherein he talks about the idea that
16 all of the processing is being done at the server.

17 And I believe -- and maybe I misunderstood Your Honors -- but I
18 believe that counsel essentially said, well, it may be kind of a distinction
19 without a difference, and that is simply not true.

20 The inventor of the Wright patent, Mr. Wright -- remember, this is
21 2010. And people still thought that phones were supposed to be used to place
22 phone calls. I know we don't use our phones to place phone calls nearly as
23 much as we used to. We use it for all sorts of other things. But he was ahead
24 of his time in his thinking that a phone could process this information.

25 And to say that, well, it's really not that big of a deal and to -- for the
26 phone to make this determination as opposed to the server, which is disclosed

1 in Curry, I think is just objectively wrong.

2 And then counsel then goes so far as to argue, well, the iPhone 3 has
3 this capability, and it would have been obvious to a person of ordinary skill in
4 the art that, well, given this capability of the iPhone 3, of course a person of
5 ordinary skill in the art would have figured out that the phone can -- can do
6 this determination as well. That is inconsistent with principles of
7 obviousness.

8 There is no disclosure in Curry talking about the phone processing this
9 safety statistic or this score. Nor is there even any teaching or suggestion in
10 Curry that the phone can do this. The only suggestion that is out there that
11 the phone can do this is the Wright patent itself.

12 And obviously, we all -- I think we can all agree that --

13 JUDGE IPPOLITO: Counsel, you have about five minutes left.

14 MR. TILLER: Thank you, Your Honor. I'm virtually done.

15 That we can all agree that the person of ordinary skill in the art must
16 have some type of teaching or suggestion and cannot simply rely on the
17 disclosure of the patent that is being discussed.

18 So with that, I would ask the Board if there are any other questions on
19 this, and I would reserve the rest of my time. Thank you.

20 JUDGE IPPOLITO: You have about four minutes. I'll add that to
21 your 10.

22 Petitioner, you have 20 minutes for your rebuttal, and you may begin
23 whenever you're ready.

24 MR. ROZYLOWICZ: Thank you, Your Honor. To briefly touch upon
25 a few points raised by the Patent Owner and their remarks, first point, Your
26 Honor, I believe that the Patent Owner alleged that we had changed our

1 position from our petition.

2 I respectfully call your attention to page 14 of the petition. And there,
3 the last three sentences or the last three lines, I should say, which says, and I
4 quote, that, "For instance, as shown in Rabu's Figure 5 below, Rabu describes
5 switching operating modes based on determining that the phone is docked as
6 opposed to being handheld." Again, Your Honor, we're saying -- we're only
7 using a holder status based on the orientation there. And the allegations that
8 we've changed our time just don't believe pass muster when considering
9 language we relied upon in page 14 of our petition.

10 Second point, Your Honor, no, we don't agree that the frequency
11 spectrum is used. But even if somehow frequency spectra were used, I
12 believe there's a number of flaws with their argument.

13 First, the Ogawa article that the Patent Owner is relying upon is from
14 2000, and I think we -- it doesn't really -- or their expert testimony doesn't
15 account for advances that have taken place since Rabu's filing in 2009. And
16 notably, this is after the introduction of the iPhone in 2008.

17 Now, Your Honor, I'll also call your attention to their exhibits on Slide
18 48, which discusses one of the corroborating references, Lengel and I'll read
19 from their slide, page 48, which says that "Mobile phones, which have
20 accelerometers, may be used for risk level detection while riding in a vehicle.
21 Accelerometers have been gaining popularity lately, mostly because of
22 advances in gaming technology."

23 And here's the key part that I'll -- I'll emphasize, "They're typically
24 used as two-dimensional sensors for consumer electronics, such as cameras to
25 determine orientation, but may be used to enhance safety. Programming with
26 accelerometers on the Android platform is straightforward and supports three

1 axes."

2 Again, Your Honor, just, we believe it's further evidence in the record
3 to suggest that, in fact, these technologies were -- were not unreliable. In
4 fact, they were stable, consistent, and, in fact, would be relied upon as
5 evidenced by the fact that, you know, they're certainly seen as commoditized
6 in the context of an Android platform, as well as the fact that these were used
7 in the wildly successful iPhone products.

8 And, in fact, we're on our -- I believe we're on the iPhone 3G, as
9 referenced by the Curry article and considered here. but don't just take our
10 word for it, Your Honor, or their demonstrative's word for it. Let's take a
11 look at what their experts said.

12 In particular, I'd call the attention to the testimony of their own expert,
13 Mr. Wilson, which appears on page 29 of our demonstratives. Now, when
14 deposed, Mr. Wilson said in the lower left-hand box shown below -- and I'll
15 read from it -- that when asked the question, "The same hardware that's
16 disclosed in Curry to determine motion is also disclosed in Rabu, correct?"

17 His answer, "The same generic hardware is disclosed. The
18 requirements on the Curry hardware, the technical specifications, are
19 reasonably well predictable."

20 Again, Your Honor, their expert's choice of words, "reasonably well
21 predictable," nothing that suggests there's any concern or reason why there
22 wouldn't be a reasonable expectation of success in using the Curry sensor
23 here.

24 Now, and my third point, Your Honor, now that we're in a -- Your
25 Honor, the Patent Owner's position is that a POSITA would actually have
26 understood Rabu's techniques to be -- I'm sorry. The Patent Owner's position

1 is that a POSITA would have understood Rabu's techniques to be unreliable
2 for integration into Curry because Curry requires frequency spectrum to
3 determine motion status. And a POSITA would have looked to Rabu's
4 teachings as a whole rather than only in a limited part upon which we've
5 relied.

6 Now, Curry already discloses its own techniques for determining
7 motion status based on its embedded accelerometer and that a POSITA would
8 have recognized Rabu's techniques regarding orientation, which in no way
9 rely on frequency spectrum as complementary. Now, Patent Owner now
10 contends that the POSITA would read Rabu as generally requiring frequency
11 spectra and that this would make a POSITA disfavor integrating Rabu.

12 This assertion, I believe, doesn't stand as made without regard to the
13 fact that Rabu leverages frequency spectra and that they would not displace
14 Curry's teachings with Rabu's frequency teachings, but they would instead
15 turn to Rabu for what it offers and only what it offers anew, that is not being
16 a skill of a POSITA, which has a -- in a -- in the record, we argued, has a
17 bachelor's degree and two-to-three years of experience, as demonstrated by
18 Michelson's testimony on page 15 of his affidavit.

19 In Paragraph 15 of his affidavit, he said that, "I believe a person of
20 ordinary skill in the art in this matter would have had at least a bachelor's of
21 science degree or equivalent in an academic area, emphasizing electrical
22 engineering, computer engineering, computer science, or relevant technical
23 field, and about 2 to 3 years of experience. More education, that is a
24 doctorate, in an academic area, emphasizing electrical engineering or these
25 other disciplines would compensate for fewer years of work experience."

26 Further, Your Honor, I'll call your attention to Slide 32. And, again,

1 we believe that Slide 32 of Patent Owner's demonstratives even recognize the
2 distinction between using -- between holder status and motion status. Now
3 I'll read from their Slide 32.

4 Now, in some embodiments, it says, "The PMD can use inputs from
5 internal motion sensors, such as an accelerometer or gyroscope, to determine
6 orientation angle of the PMD. The orientation angle can be used to determine
7 holder status."

8 Again, that's how it describes what is used to determine holder status,
9 which is only -- what's the only thing we rely upon in terms of the sensors
10 from -- from -- from Rabu.

11 It then says, "In some embodiments, the PMD can determine frequency
12 spectrum associated with the current motion of the PMD."

13 Again, frequency spectra is only associated with motion status.

14 And then it says, "Based on determined frequency spectrum, the PMD
15 can determine the holder motion status."

16 In addition, it says, "The PMD can select a mode of operation based on
17 the holder status and the holder motion status."

18 These are not the same thing as -- Your Honor, these are two different
19 things, each relying on different inputs as set forth in their own slide.

20 Finally, Your Honor, I believe that Patent Owner took issues with our
21 use of Figure 8. I would call your attention to column 10, lines 35 through 36
22 of Rabu. Again, that's column 10, lines 35 through 36 of Rabu.

23 Again, it says, "In some embodiments, the information from the GPS
24 device can be used to determine holder motion status. For example, the GPS
25 coordinates of the holder can change over" -- "holder change over time. It
26 conclude" -- "it can conclude that the holder is moving. Based on the

1 differences in the GPS coordinates and elapsed time, it may be possible to
2 determine how fast the holder is moving, e.g., whether it is more likely in a
3 moving car or being carried away with -- by a walking person."

4 Again, Your Honor, no discussion in that particular embodiment of
5 using frequency spectrum.

6 I'll pause to see if there's any questions before I allow my colleague,
7 Mr. Chowdhury, to use the balance of the time to speak to elements 1.6
8 through 1.8.

9 Thank you, Your Honor. So, Mr. Chowdhury.

10 MR. CHOWDHURY: Thank you. Your Honors, I'll start with some
11 questions

12 that you'd asked me during our direct argument, and then I'll address
13 some points raised by counsel for Patent Owner.

14 First question you asked was the page that we reviewed during our
15 direct argument, page 3, line 24 through PDF page 4, line 6 in Curry where
16 that portion is cited in the petition. I'd note that we've cited it in various parts
17 of the petition including Pages 6, 22, 32, and 33 and including other parts of
18 the petition with citations to parts that include that portion as well as other
19 portions.

20 The second question relates to how do we know that driving
21 information is processed on the mobile device. I'd say that we know from
22 various teachings and disclosures from Curry.

23 First, I draw your attention to Figure 1 of Curry. In Figure 1, while we
24 don't necessarily see all of the hardware elements of phone 106, we see from
25 how the box is drawn around mobile client 110, that certain aspects of how
26 sensor data is processed occur in relation to functionality of the mobile phone

1 client 110.

2 For example, you see that acceleration data from embedded
3 accelerometer 116, and location and speed data each obtained -- are each
4 obtained by mobile data cache 118. This data is then processed by the
5 activity recognition module 120 to identify an activity mode of the mobile
6 telephone. There's no dispute between the parties that activity mode
7 recognition module 120 resides on the mobile phone 106.

8 In fact, Curry's Figure 3 disclosure further supports this. And
9 disclosure of Figure 3 -- Figure 3 at the bottom of PDF page 13 confirms this
10 since it states, quote, "The activity recognition module 306 can use recorded
11 timestamped data to estimate the type of activity, driving, walking, running,
12 or remaining substantially still."

13 Consistent with Figure 1, Curry's Figure 3 shows -- tells you that the
14 determination of an activity mode, which involves receipt of sensor data that's
15 collected by the mobile phone and is done by the activity recognition module
16 tells you that the processing of recording timestamp data would occur on the
17 mobile phone.

18 And we see the same in the Figure -- of Figure 3. Sensor data from
19 GPS sensor 314 and accelerometer 316 are obtained in a motion data cache
20 304, which is then provided to activity mode recognition module 306 for
21 processing to identify an activity mode of the mobile phone 106.

22 We'll also refer --

23 JUDGE HOSKINS: Mr. Chowdhury, this is Judge Hoskins. So -- so
24 following that line of reasoning, what is the output of the activity mode
25 recognition module that corresponds to driving information associated with
26 how the vehicle is driven, which is the -- the claim term?

1 MR. CHOWDHURY: Sure. And thank you for the question.

2 What we noted in our papers is that the activity mode can be used for a
3 variety of different things. When you look at Figure 3, you can see that it can
4 be used for dynamic call handling. You can also see that there's an arrow
5 pointing from activity mode recognition 304 to the driving safety
6 performance database, and then ultimately out to the storage server 322.

7 But as noted in our papers, in at least one example, the activity mode is
8 used to determine motion of the mobile device and also used to start a driving
9 period.

10 So I would refer you to Slide 55 of petitioner's demonstratives where in
11 the top box shown, you see that Patent Owner's expert admitted that the
12 phone disclosed in Curry, quote, "Had the capability to do some processing
13 on sensor data."

14 As for which hardware components on Curry's mobile telephone would
15 have performed the types of processing we've just discussed, I'd refer you to
16 page 22 of the petition where we cite to Curry's disclosure that processes
17 described within its processors -- processes described within its disclosure
18 may be, quote, "Implemented in software for execution by various types of
19 processors."

20 Now, I'll address -- any further questions on these two points before I
21 address some points raised by opposing counsel?

22 Hearing none, the first point I'll -- I'll address is counsel first argues
23 that the -- the purpose of the invention is focused on accident detection. On
24 this point, I'd refer you to Slide 47 of petitioner's demonstrative. And here we
25 see on the left, you see disclosure from the '487 patent specification that was
26 cited in Pages 5 to 6 of the surreply.

1 And on the right, you see the claim language. And one thing we'd note
2 here is that the term "accident" does not appear in Claim 1, nor does claim 1
3 recite the term "driving incident." Instead, what it recites is a generic
4 recitation of a detection of an occurrence of a predetermined event.

5 You also see that there's -- there's no language in the claims to narrow
6 its scope to accident detection as Patent Owner's counsel would
7 have -- suggests in its surreply and within this hearing.

8 Second, like the briefing submitted by the Patent Owner, counsel
9 reiterates that the monitoring in Curry is separate from driving. This is just
10 plainly incorrect. We can imagine a hypothetical where a phone call is
11 received while a vehicle is being driven. And, in fact, Curry expressly
12 identifies this type of behavior as an unsafe driving behavior. So in our view,
13 it's plainly inaccurate to characterize Curry as being separate from driving
14 altogether.

15 This characterization by the Patent Owner's -- Patent Owner counsel
16 during this hearing also frustrates Curry's overall objective to, quote, "Reduce
17 traffic-related fatalities and injuries."

18 If the disclosure were merely focused on handling phone calls, it makes
19 no sense why the entire background section of its disclosure, which provides
20 context relating to its disclosed invention, is focused on driving.

21 And regarding the portion of Curry that was cited earlier in this -- in
22 this hearing page 3, lines 24 to page 4, line 6, let's be clear the petition
23 contended obviousness over Curry in view of Rabu. And so from that lens,
24 the sentence at least renders obvious in light of other disclosures of Curry that
25 we've discussed that the safety statistic is determined on a device that is not
26 the data server, such as the mobile telephone.

1 Without any further questions on any of these topics or topics related to
2 1.6, 1.7 or 1.8?

3 JUDGE IPPOLITO: None for me.

4 MR. CHOWDHURY: Thank you, Your Honors. With that, Petitioner
5 rests its case.

6 JUDGE IPPOLITO: Thank you. The Patent Owners, you have, let's
7 see, I

8 believe it was 14 minutes.

9 MR. TILLER: Can I have just one minute, Your Honor?

10 JUDGE IPPOLITO: Well, you can have 14, but if you only want to
11 take 1, that's --

12 MR. TILLER: No, no, no, no. I'm sorry. I need one minute before I
13 start.

14 JUDGE IPPOLITO: Oh, okay.

15 MR. TILLER: I just need to get my thoughts together for half a
16 second.

17 JUDGE IPPOLITO: No, absolutely.

18 MR. TILLER: Thank you very much.

19 JUDGE IPPOLITO: I think you might be off video, so I'm -- there you
20 are.

21 MR. TILLER: Okay. Yeah, I was. I'm sorry. If you could just give
22 me half a second there.

23 JUDGE IPPOLITO: Sure.

24 MR. TILLER: Okay. Back, Your Honor. So I apologize.

25 JUDGE IPPOLITO: All right. You have 14 minutes, and you can start
26 when you're ready.

1 MR. TILLER: Thank you very much, Judge. So I want to first go
2 back to this Rabu issue that we were talking about. And counsel spent a
3 significant amount of time of the rebuttal talking about that the iPhone could
4 be programmed and that Mr. Wilson conceded that there can be processing on
5 the phone.

6 The mere fact that something potentially could be done doesn't mean
7 that there is a teaching or a suggestion to do it in the first place. The only
8 teaching or suggestion that we're talking about here is the Wright patent
9 itself, which is obviously based on. That would be using impermissible
10 hindsight.

11 It was Petitioner who argued that the motivation to combine Curry and
12 Rabu was to have this more nuanced approach to the determination of motion
13 of holder status and motion holder status. If they wanted to just talk about it,
14 if they wanted to just send the signal to the Board or to describe to the Board
15 that you use the known accelerometer of Curry consistent with Curry's
16 teachings, then they could have said that.

17 There's -- but yet, they rely heavily on Figure 5, Figure 8, page 3, lines
18 1 through 10, page 9, lines, roughly 20 to 40. They were the ones who
19 repeatedly, over and over and over, cite that. so they are -- they want -- they
20 now want to say, no, we're just using the Curry accelerometer, but we're only
21 using the orientation angle analysis of Rabu.

22 But that's not what they repeatedly said over and over and over again.
23 They cite to it. And that was one of the primary motivations to combine the
24 references. And, in fact, in your institution decision, you noted that yourself.

25 There's still no explanation from counsel as to why the frequency
26 spectra aspects of Rabu were so heavily cited if they weren't relying on it.

1 There's still no explanation of how the -- strike that. Let me kind of go
2 backwards here, Your Honors.

3 There was a mentioning by counsel that, well, Ogawa was written in
4 2000, and accelerometers got better by the 2010 -- by the priority date here.

5 Okay. That may or may not be true, but the simple fact of the matter is
6 the way Rabu determines holder motion status is by very, very subtle
7 differences in frequency based on what's the -- what's the frequency of the
8 phone when it's sitting in the seat next to me. What's the frequency of the
9 phone when it's being held by somebody? When they're walking? When
10 they're running? What's the frequency when you're going 60 miles an hour
11 versus 20 miles an hour?

12 And what Mr. Wilson criticized was, you can't rely on those very
13 subtle differences in frequency spectra because of all of these variables.
14 Where is the phone being held? What -- how well has the car been
15 maintained? Do it -- does its shock absorbers bounce all over the place? Is it
16 going 60 miles an hour? is it going 20 miles an hour? Is it -- is it on a rough
17 country road? Is it on a highway? There's all these variables that are not
18 related to how sophisticated the accelerometer is. It's related to determining
19 very subtle differences and whether you can even rely on those subtle
20 differences.

21 And, again, ultimately, I heard nothing from counsel justifying or
22 explaining why the Board believed that this was a reliance on frequency
23 spectra. And quite frankly, without the frequency, without the analysis of the
24 holder motion status, there was just no reason to combine Curry with Rabu.

25 Curry already had an accelerometer in it. Orientation angle concepts
26 were known already. So there would be no emphasis, no reason to combine

1 Curry and Rabu except in an attempt to invalidate the Wright patent. That's
2 the only thing. And, obviously, that's impermissible. Hindsight.

3 I also want to address something counsel said with regards to the
4 activity mode recognition module determines an activity. We don't dispute
5 that, that the activity mode recognition module in Curry determines activity
6 most of the time. Sometimes, in fact, Curry talks about if there's not enough
7 data, you record the data for a little while, and then you can do a
8 post-processing analysis.

9 And that post-processing analysis is done on the server. But when
10 it -- when it is done in real time, it is done on the phone. But that is user
11 activity, and counsel talked about, well, the purpose of the Wright patent is to
12 improve driver safety.

13 And, of course, there is discussion of the fact -- and they cited to it -- of
14 the fact that using a phone while you're driving may create a distracted driver.
15 But that's not -- that's not information associated with how well the vehicle is
16 being driven. That is information about what the user is doing. That is not
17 information regarding what's happening to the vehicle.

18 And there is citation after citation in Wright about examples of vehicle
19 activity such as in lines -- or column 1, lines 19 through 26, line -- or column
20 3, lines 23 through 30, where you're talking about images, images being
21 processed of what's happening to the vehicle.

22 In column 7, lines 1 through 3, there's discussion of driving
23 information representing acceptable or unacceptable driving patterns.

24 In Column 14, lines 20 through 26 and 48 through 61, there's talk about
25 the speed of an impact, and that's the predetermined event of significance.
26 There's discussion of, you know, what was the speed of impact. What were

1 the G-forces being exerted -- exerted on the car? What other types of
2 information?

3 This is all vehicle information, not what is the driver doing inside. The
4 only thing the activity mode recognition module determines is what is the
5 user -- there's one aspect of what is the user doing. That is not driving
6 information associated with how a vehicle is driven.

7 And the mere fact that the iPhone has the capability to potentially to
8 process information, it was Mr. Wright who figured that out. That's the
9 novelty that is among the reasons for the novelty of this invention. And the
10 mere fact that Mr. Wilson, our expert, agreed that, well, the iPhone can
11 process, to then turn that into the basis for an obviousness rejection to me just
12 completely flaunts the whole idea of the law with regards to section 103.

13 The mere fact that something could happen is not a teaching or
14 suggestion to a person of ordinary skill in the art that they should do it.

15 And if Your Honor will give me -- if Your Honors will give me half a
16 second, I wanted to make one more point because there was a discussion
17 about what is the predetermined event of significance.

18 There is disclosure in the -- in the patent, in the Wright patent, that the
19 predetermined event of significance is a crash. Now, it's not limited. It's not
20 necessarily limited to a crash, but it is a crash. And I think there was some
21 discussion by counsel where he said they don't use the term "crash" in the
22 patent or in the claim. They use the term "predetermined event of
23 significance." But a predetermined event of significance as set forth in the
24 specification itself at, for example, column 1, lines 35 through 7, columns, 5,
25 lines 12 through 14 teaches that a predetermined event of significance is
26 indeed a crash.

1 So unless Your Honors have any other questions, Patent Owner rests.

2 JUDGE IPPOLITO: No questions for me, and I do not see any from
3 my panel members.

4 With that, thank you all for your helpful presentations today. This case
5 is considered submitted, and we are adjourned for the day. But because we
6 do have our court reporter here, I would like for the parties to stay afterwards
7 to answer any questions that the court reporter may have regarding the
8 transcript.

9 MR. ROZYLOWICZ: Certainly, Your Honor.

10 MR. TILLER: Thank you, Your Honor.

11 (Whereupon, at 2:58 p.m. p.m., the proceedings were concluded.)

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