

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

AUTO TELEMATICS, LTD.,

Plaintiff,

v.

**UNITED SERVICES AUTOMOBILE
ASSOCIATION,**

Defendant.

**Civil Action No. 6:22-CV-00474-ADA
JURY TRIAL DEMANDED**

**UNITED SERVICES AUTOMOBILE ASSOCIATION’S
PRELIMINARY INVALIDITY CONTENTIONS**

Defendant United Services Automobile Association (“USAA”) hereby provides its Preliminary Invalidity Contentions (“Invalidity Contentions”), which includes the accompanying claim charts and production of documents, to Plaintiff Auto Telematics, Ltd. (“Plaintiff”).¹

I. INTRODUCTION

As disclosed in its August 26, 2022 Preliminary Infringement Contentions (“Infringement Contentions”), Plaintiff asserts the following patents and claims in this case:²

- Claims 1 and 3–7 of U.S. Patent No. 9,311,271 (“the ’271 Patent”);

¹ Concurrently with service of its Preliminary Invalidity Contentions, USAA is producing (1) all prior art referenced in these Invalidity Contentions (*see* documents with pre-fix “USAA-AT-PA”), and (2) technical documents (*see* documents with pre-fix “USAA-AT”) and source code (available for inspection in Fish & Richardson’s Dallas office, pursuant to the protocol provided in the Protective Order (Dkt. 24)) sufficient to show the operation of the accused product, to the extent such material is in USAA’s possession, custody, or control.

² Plaintiff’s May 5, 2022 Infringement Contentions also mention the following patents, for which Plaintiff does not identify any Asserted Claims, nor which are the subject of any claim for infringement in the Complaint: U.S. Patent Nos. 6,963,866 (“the ’866 Patent”); 7,552,118 (“the ’118 Patent”); 7,836,067 (“the ’067 Patent”); 9,141,612 (“the ’612 Patent”), and 10,013,435 (“the ’435 Patent”).

- Claims 1-3, 6, and 9-13 of U.S. Patent No. 9,633,487 (“the ’487 Patent”);
- Claims 1-2, 4-7, 15, 18-21, and 26 of U.S. Patent No. 10,192,369 (“the ’369 Patent”); and
- Claims 1-6, 9, 14-16, 19-26, 34, 35, 39-41, 46, 51, and 54 of U.S. Patent No. 10,198,879 (“the ’879 Patent”).

The patents identified in this list are together herein referred to as “the Asserted Patents,” and the claims identified are together herein referred to as “the Asserted Claims,” unless reference is made specifically as to particularly identified one or more of the Asserted Claims.

As further detailed in and supported by these Invalidity Contentions, USAA contends that each of the Asserted Claims is invalid under at least 35 U.S.C. §§ 101, 102, 103, and/or 112.³

II. AMENDMENT / SUPPLEMENTATION

USAA’s Invalidity Contentions pertain to the Asserted Claims as identified in Plaintiff’s Infringement Contentions. To the extent the Plaintiff is permitted to amend its Infringement Contentions and/or assert one or more claims other than the Asserted Claims, USAA reserves the right to modify, amend, or supplement these Invalidity Contentions accordingly to, for example, show the invalidity of any such newly asserted claims.

These Invalidity Contentions are based on USAA’s current understanding of the Asserted Claims and Plaintiff’s apparent view of the scope of those claims as shown, for example, in Plaintiff’s Infringement Contentions.

USAA further reserves the right to revise these Invalidity Contentions in view of *Markman* proceedings, relevant orders of the Court, the additional information obtained during discovery,

³ References to Title 35 of the United States Code are to statutes prior to amendment under the America Invents Act (AIA), as the Asserted Patents have effective filing dates prior to applicable AIA effective dates. Additionally, while USAA currently discloses preliminary prior art invalidity contentions for the Asserted Claims, it provides herein certain other disclosures pertaining to the invalidity of every claim in the Asserted Patents.

additional infringement theories put forth by Plaintiff during fact and/or expert discovery, any findings as to the priority date(s) of the Asserted Claims, and/or positions that Plaintiff, its fact witnesses, or its expert witness(es) may take concerning claim construction, infringement, and/or invalidity issues. USAA specifically challenges the priority dates and expiration dates asserted by Plaintiff in its Infringement Contentions, and expects to uncover through discovery evidence to rebut Plaintiff's assertions.

USAA further reserves the right to supplement its accompanying prior art document production should it later discover additional prior art documents, information, testimony, prior art systems and related documentation, and/or technical information, including information provided by third parties after the date of service of these Invalidity Contentions.

USAA may further rely on inventor admissions concerning the scope or state of the prior art relevant to the Asserted Claims, the patent prosecution histories of the Asserted Patents, related patents and/or patent applications, any deposition or trial testimony of named inventors on the Asserted Patents, and the papers filed and any evidence produced or submitted by Plaintiff in connection with this case or other related litigation. USAA reserves the right to contend that one or more of the Asserted Claims are invalid under 35 U.S.C. § 102(f) in the event USAA obtains evidence that one or more of the named inventors did not invent the subject matter in the Asserted Claims.

Prior art not included in these Invalidity Contentions, whether known or not known to USAA, may become relevant. In particular, USAA is currently unaware of the extent, if any, to which Plaintiff will contend that limitations of the Asserted Claims are not disclosed in the prior art identified in these Invalidity Contentions. Accordingly, USAA reserves the right to identify

other references that would disclose the allegedly missing limitation(s) of the claimed method, device, or system.

The references identified in these Invalidity Contentions, which include the attached claim charts (Exhibits A-D), may disclose the elements of the Asserted Claims explicitly and/or inherently, and/or they may be relied upon to show the state of the art in the relevant time frame. References identified in these Invalidity Contentions, as well as the “References Cited” on the face of the Asserted Patents, and any publications or prior art methods or systems cited or referenced within the body of the Asserted Patents, may be used to illustrate, but not limit the scope of, the state of the art to which the Asserted Patents pertain (*i.e.*, at a time prior to the date of alleged inventions of the Asserted Claims of the Asserted Patents). Moreover, USAA reserves the ability to rely on later identified sources of information, including but not limited to witness testimony and other discovery, to establish the state of the art in the relevant time frame pertaining to the Asserted Patents.

Because discovery has not yet begun, USAA anticipates that additional prior art and invalidity bases may be found. USAA’s investigation and analysis of the prior art is continuing, and thus USAA reserves the right to supplement, amend, and/or revise the information provided herein as USAA conducts further investigation and/or analysis, including identifying, charting, and relying on additional references.

Additionally, in view of likely third-party discovery that will be taken, USAA reserves the right to present additional items of prior art under 35 U.S.C. §§ 102(a), (b), (e), and/or (g), and/or § 103 located during discovery or further investigation, and to assert contentions of invalidity under 35 U.S.C. §§ 102(c), (d), and/or (f). For example, USAA expects to issue subpoenas to third

parties believed to have knowledge, documents, and/or other evidence concerning invalidity of one or more of the Asserted Claims.

While USAA took reasonable efforts to prepare these preliminary contentions, USAA reserves the right to supplement or otherwise amend these Invalidity Contentions in response to any relevant discovery, including that provided by third parties, Plaintiff, expert reports, and depositions. USAA also reserves the right to supplement or otherwise amend these Invalidity Contentions in response to any rebuttal evidence disclosed by Plaintiff or as otherwise may be necessary or appropriate under the circumstances.

In addition to the positions and prior art identified in these Invalidity Contentions (including the accompanying invalidity claim charts), USAA also incorporates by reference all invalidity contentions, prior art, and invalidity claim charts (including, without limitation, all anticipation positions, obviousness positions (including all prior art combinations and motivations to combine), indefiniteness positions, and non-enablement positions) concerning one or more of the Asserted Patents, as disclosed at any time, including in previous or related litigation or United States Patent & Trademark Office (USPTO) proceedings, to the Plaintiff, including to one or more of the named inventors and any individuals associated with the prosecution and/or post-grant review of one or more of the Asserted Patents.

Further, USAA refers to any prior art and invalidity contentions that Plaintiff has in its possession, custody, or control from other litigation or proceedings involving any invalidity allegations as to patents claiming subject matter similar to that claimed in one or more of the Asserted Patents. USAA reserves the right to review any such prior art and invalidity contentions

and rely on and/or incorporate into USAA's Invalidity Contentions one or more such contentions to demonstrate invalidity of one or more claims of the Asserted Patents.

Further, USAA intends to rely on inventor admissions concerning the scope of the prior art relevant to the Asserted Patents found in the patents themselves, the patent prosecution histories of the Asserted Patents and related patents and/or patent applications, any deposition testimony of the named inventors on the Asserted Patents, testimony from third party prior art authors, inventors, and witnesses, and the papers filed and any evidence submitted by Plaintiff in conjunction with this litigation.

III. IDENTIFICATION OF PRIOR ART

A. PRIOR PUBLICATIONS, PATENTS, AND NON-PATENT LITERATURE PRIOR ART

Subject to USAA's reservation of rights, in addition to the references cited on the face of the Asserted Patents and any foreign counterparts, the admitted prior art references in the Asserted Patent specifications, the prosecution histories of the Asserted Patents and their foreign counterparts, and the prior art cited in any invalidity contentions or invalidity expert report in any past or future action or proceeding involving the Asserted Patents, USAA herein identifies prior art that anticipates or renders obvious the Asserted Claims.

No.	Prior Publication / Patent / NPL ⁴	Short Name	Date of Issue/Publication
1.	U.S. Patent Appl. No. 2013/046562	Taylor '562	November 06, 2009
2.	WO 2010/132555	Winston '555	May 12, 2009
3.	U.S. Patent No. 8,248,223	Periwal '223	August 25, 2008
4.	U.S. Patent No. 8,577,703	McClellan '703	July 17, 2007
5.	PriPAYD: Privacy Friendly Pay-As-You-Drive Insurance	Troncoso	October 29, 2007

⁴ For all non-patent documents, the corresponding publication date may not be the earliest publication date. For example, it may be the date that the publication was presented at a particular conference, however that publication may have actually published prior to the conference presentation. USAA's investigation into the publication dates is ongoing.

No.	Prior Publication / Patent / NPL ⁴	Short Name	Date of Issue/Publication
6.	U.S. Patent No. 9,688,286	Wilkes, III '286	September 29, 2009
7.	U.S. Patent No. 8,290,480	Abramson '480	September 21, 2010
8.	U.S. Patent Appl. No. 2006/0053038	Warren '038	September 08, 2004
9.	U.S. Patent Appl. No. 2007/0027726	Warren '726	September 08, 2004
10.	U.S. Patent No. 9,315,195	Armitage '195	October 20, 2009
11.	U.S. Patent No. 6,472,982	Eida '982	November 30, 2000
12.	U.S. Patent No. 6,324,450	Iwama '450	October 8, 1999
13.	Are you a Safe Driver	Langle	2009
14.	Comparing Real-World Behaviors of Drivers with High versus Low Rates of Crashes and Near-Crashes	NHTSA	February 2009
15.	U.S. Patent No. 7,423,529	Singer '529	Jan 16, 2003
16.	U.S. Patent No. 8,035,508	Breed '508	June 11, 2002
17.	U.S. Patent No. 7,617,042	Horvitz '042	June 30, 2006
18.	U.S. Patent No. 8,244,309	Marumoto '309	June 19, 2008
19.	U.S. Patent No. 9,489,782	Payne '782	July 28, 2010
20.	U.S. Patent Appl. No. 2010/0106534	Robinson '534	October 24, 2008
21.	U.S. Patent Appl. No. 2012/0052907	Gilbreath '907	August 30, 2010
22.	U.S. Patent No. 9,201,842	Plante '842	March 16, 2006
23.	U.S. Patent No. 8,135,507	Okabe '507	November 15, 2006
24.	U.S. Patent No. 8,532,642	Potkonjak '642	March 31, 2009
25.	U.S. Patent No. 9,079,494	Skelton '494	July 1, 2010
26.	Using Smartphones to Detect Car Accidents and Provide Situational Awareness to Emergency Responders	Thompson	June 2010
27.	Mobile Phone Based Drunk Driving Detection	Dai	June 7, 2010
28.	Daily Roads Voyager	DailyRoads	April 12, 2010
29.	iNav: A Hybrid Approach to WiFi Localization and Tracking of Mobile Devices	Popov	2008
30.	SmartLDWS: A Robust and Scalable Lane Departure Warning System for the Smartphones	Lan	October 7, 2009
31.	Subjective Sensing	Liu	July 25, 2010
32.	Cell link: Real-time Data Tracking of Automobiles via Cell Phones	Cao	February 22, 2010

No.	Prior Publication / Patent / NPL ⁴	Short Name	Date of Issue/Publication
33.	Olympic Foodservice Deploys Cube Route GPS Tracking Service	CubeRoute	October 24, 2005
34.	Keep on Trucking	Sternstein	June 6, 2005
35.	Gizmo May Cut Premiums for Careful Drivers: An Insurer is Trying Out Computerized Car Monitoring to Identify Low-Risk and High-Risk Customers	Kristof	November 13, 2005
36.	Safety in Numbers: Some Smart Fleet Owners are Mining Data on Drivers and Their Operations to Identify Risks and Prevent Accidents	Commercial Carrier Journal	September 2006
37.	Valuation of Electronic Data Recorders for Incident Investigation, Driver Performance, and Vehicle Maintenance	Westbrook	September 2009
38.	Taking the Wheel on Safety: Managing Driver Habits is Becoming a Sophisticated Yet Simple Process	Huff	October 2008
39.	U.S. Patent No. 7,876,205	Catten '205	October 2, 2007
40.	U.S. Patent Appl. No. 2010/0131304	Collopy '304	November 26, 2008
41.	U.S. Patent No. 8,604,920	Armitage '920	October 20, 2009
42.	Telematics Data in Motor Insurance: Creating Value by Understanding the Impact of Accidents on Vehicle Use	Ippisch	October 26, 2010
43.	CompAcc: Using Mobile Phone Compasses and Accelerometers for Localization	Constandache	2010
44.	U.S. Patent Appl. No. 2011/0294520	Zhou	October 9, 2008
45.	Accelerometer based transportation mode recognition on mobile phones	Wang	2010
46.	U.S. Patent No. 9,117,320	Hinkel	June 5, 2009
47.	U.S. Patent Appl. No. 2003/0107648	Stewart '648	December 12, 2001
48.	U.S. Patent Appl. No. 2003/0151663	Lorenzetti '663	January 23, 2002
49.	U.S. Patent Appl. No. 2008/0092177	Swanburg '177	October 11, 2006
50.	U.S. Patent Appl. No. 2003/0080878	Kirmuss '878	October 30, 2001
51.	U.S. Patent Appl. No. 2007/0150138	Plante '138	December 8, 2005
52.	U.S. Patent Appl. No. 2009/0132294	Haines '294	November 15, 2007
53.	U.S. Patent Appl. No. 2010/0030586	Taylor '586	July 31, 2008
54.	U.S. Patent Appl. No. 2012/0283944	Haavasoja '944	December 3, 2009

No.	Prior Publication / Patent / NPL ⁴	Short Name	Date of Issue/Publication
55.	U.S. Patent No. 7,822,513	Wulff '513	July 27, 2005
56.	U.S. Patent Appl. No. 2010/0157061	Katsman '061	December 24, 2008
57.	U.S. Patent No. 8,660,785	Sato '785	March 19, 2009
58.	U.S. Patent No. 2010/0208070	Haynes '070	August 5, 2005
59.	U.S. Patent No. 8,503,943	Spanhake '943	March 11, 2008
60.	U.S. Patent Appl. No. 2010/0318258	Katayama '258	July 1, 2005
61.	U.S. Patent Appl. No. 2010/0103265	Yu '265	October 28, 2008
62.	Nericell: Rich Monitoring of Road and Traffic Conditions using Mobile Smartphones	Mohan	2008
63.	Mobile phones to track carbon footprint	Jha	September 29, 2008
64.	U.S. Patent Appl. No. 2009/0318121	Marumoto '121	June 19, 2008
65.	U.S. Patent Appl. No. 2009/0024419	McClellan '419	July 17, 2007
66.	JP 2008/052330	Ono '330	August 22, 2006
67.	U.S. Patent No. 6,677,854	Dix '854	October 5, 2001
68.	WO 2011/035799	Reilhac '799	September 25, 2009
69.	U.S. Patent Appl. No. 2011/0153189	Chiang '189	December 17, 2009
70.	U.S. Patent Appl. No. 2012/0029764	Payne '764	July 28, 2010
71.	U.S. Patent Appl. No. 2007/0268158	Gunderson '158	May 9, 2006
72.	U.S. Patent No. 8,519,853	Eskandarian '853	November 5, 2008
73.	U.S. Patent Appl. No. 2007/0027585	Wulff '585	July 27, 2005
74.	U.S. Patent Appl. No. 2012/0065874	Sato '874	March 19, 2009
75.	JP 2012/119812	Kawamura '812	November 30, 2010
76.	JP 2004/053541	Kajikawa '541	July 24, 2002
77.	U.S. Patent No. 8,296,013	Kuramori '013	May 14, 2008
78.	A Mobile Knowledge-Based System for On-Board Diagnostics and Car Driving Assistance	Ruta	January 2010
79.	Development and Evaluation of a Cellular Phone Based Teen Driver Support System	Creaser	2009

B. SYSTEM PRIOR ART

USAA further identifies the following prior art systems that were known, used, or sold prior to the priority dates of the Asserted Patents:

- a. iCartel;
- b. DailyRoads Voyager, c. 2010;
- c. iDrive, c. 2009;
- d. IVOX DriverScore, c. October 2008;
- e. MicroStrain Wireless Data Acquisition System, c. 2009;
- f. PEIR, c. 2005; and
- g. Waze (f/k/a FreeMap Israel), c. 2006.

USAA's investigation of such products and systems is ongoing, and USAA reserves the right to seek discovery and supplement its Invalidity Contentions based on information learned about those products and systems. USAA expects to further investigate these systems once discovery opens, including through potential third party subpoenas, and reserves the right to supplement these contentions and accompanying claim charts after further investigation.

USAA further identifies as prior art any and all actual products and systems, as disclosed in identified prior art references, that were known, used, or sold prior to the applicable filing dates of the Asserted Patents. USAA's investigation of such products and systems is ongoing and it reserves the right to seek discovery and supplement its Invalidity Contentions based on information learned about those products and systems. To the extent that such products and systems are as described in corresponding prior art publications, those products and systems are invalidating for the same or similar reasons that the corresponding prior art publication is invalidating. In certain cases, due to the substantial relation between a publication and a corresponding product or system, the combination of such prior art should be treated as a single reference for purposes under 35 U.S.C. § 102.

USAA continues to investigate each of the above identified prior art, including through potential discovery obtained via third party subpoenas, and USAA reserves the right to supplement

these preliminary Invalidity Contentions and accompanying claim charts after further investigation.

IV. IDENTIFICATION OF INVALIDITY DUE TO ANTICIPATION

USAA lists the prior art now known to it and which it contends invalidates, alone or in combination, the Asserted Claims of the Asserted Patents. USAA reserves the right to rely on the earliest publication or priority dates to which each of the prior art references are entitled, including dates on which a claim of priority may be based for patent references that are any of a divisional, continuation, or continuation-in-part of an earlier filed patent application.

The patents, publications, and systems listed in this section each qualify as prior art under Pre-AIA 35 U.S.C. §§ 102(a), 102(b), 102(e), and/or 102(g), and/or AIA 35 U.S.C. § 102(a). The attached Exhibits A01-A16, B01-B16, C01-C16, and D01-D16 each contain a claim chart for one of these prior art references or systems and identify where the relevant claim element is disclosed in and/or rendered obvious by the prior art.

No.	Prior Publication / Patent / NPL ⁵	Short Name
1.	U.S. Patent Appl. No. 2013/046562	Taylor '562
2.	WO 2010/132555	Winston '555
3.	U.S. Patent No. 8,248,223	Periwal '223
4.	U.S. Patent No. 8,577,703	McClellan '703
5.	PriPAYD: Privacy Friendly Pay-As-You-Drive Insurance	Troncoso
6.	U.S. Patent No. 9,688,286	Wilkes, III '286
7.	U.S. Patent No. 8,290,480	Abramson '480
8.	U.S. Patent Appl. No. 2006/0053038	Warren '038
9.	U.S. Patent Appl. No. 2007/0027726	Warren '726
10.	U.S. Patent No. 9,315,195	Armitage '195
11.	U.S. Patent No. 6,472,982	Eida '982

⁵ For all non-patent documents, the corresponding publication date may not be the earliest publication date. For example, it may be the date that the publication was presented at a particular conference, however that publication may have actually published prior to the conference presentation. USAA's investigation into the publication dates is ongoing.

No.	Prior Publication / Patent / NPL ⁵	Short Name
12.	U.S. Patent No. 6,324,450	Iwama '450
13.	Are you a Safe Driver	Langle
14.	Comparing Real-World Behaviors of Drivers with High versus Low Rates of Crashes and Near-Crashes	NHTSA
15.	U.S. Patent No. 7,423,529	Singer '529
16.	Rich Monitoring of Road and Traffic Conditions using Mobile Smartphones	Nericell

V. IDENTIFICATION OF INVALIDITY DUE TO OBVIOUSNESS

Subject to the reservation of rights above and based upon Plaintiff's Complaint, Infringement Contentions, purported claim constructions, and its application of the claims to the accused products, the references charted and/or identified in these Invalidity Contentions, including the prior art identified in Section IV, *supra*, at least render obvious all of the Asserted Claims of the Asserted Patents in view of the teachings of these references and/or the knowledge of a person of ordinary skill in the art, as disclosed in the prior art charted in Exhibits A01-A16, B01-B16, C01-C16, and D01-D16.

To the extent a finder of fact finds that a limitation of a given claim was not disclosed by one of the references charted in these Invalidity Contentions, such claim(s) are nevertheless unpatentable as obvious because the Asserted Claims contain nothing more than simple and obvious substitution of one known element for another or the mere obvious application of a known technique to a piece of prior art ready for the improvement. To the extent not anticipated, no Asserted Claim goes beyond combining known elements to achieve predictable results or does more than choose between clear alternatives known to those of skill in the art.

In *KSR International Co. v. Teleflex, Inc.*, the United States Supreme Court held that, among other things, "[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." 127 S. Ct. 1727, 1739 (2007);

see also id. at 1731 (“[A] court must ask whether the improvement is more than the predictable use of prior art elements according to their established functions.”). In particular, a patent is obvious where “the content of the prior art, the scope of the patent claim, and the level of ordinary skill are not in material dispute, and the obviousness of the claim is apparent in light of these factors.” *Id.* at 1745–46. The Supreme Court found that “if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.” *Id.* at 1731.

Moreover, the Court recognizes that market pressures will motivate a person of ordinary skill to survey known art for solutions to problems. *KSR*, 127 S. Ct. at 1732 (“When there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill in the art has good reason to pursue the known options within his or her technical grasp.”). When a person of ordinary skill uses an identified, predictable solution to solve a problem, “it is likely the product not of innovation but of ordinary skill and common sense.” *Id.*

In addition, when a work is available in one field of endeavor, design incentives, and other market forces can prompt variations of it, either in the same field or a different one. *KSR*, 127 S. Ct. at 1740. If a person of ordinary skill can implement a predictable variation, § 103 bars its patentability. *Id.* The rationale to combine or modify prior art references is significantly stronger when references seek to solve similar problems, come from the same field, and correspond well. *In re Inland Steel Co.*, 265 F.3d 1354, 1362 (Fed. Cir. 2001).

Motivations to combine, as well as the general state of the art, may be found in a variety of places including the prior art defined or described above and/or in the accompanying charts,

and the specifications of the Asserted Patents. For example, each item, knowledge, prior invention, or action of prior art generally relates to methods and/or systems for logging driving information of a vehicle as it is driven. Some of the prior art references likewise have overlapping prior art authors, contributors, or prior inventors. A Person of Ordinary Skill in the Art (“POSITA”) at the time of the alleged inventions would have been motivated to combine any one item, knowledge, prior invention, or action of identified prior art with any other identified item, knowledge, prior invention, or action of prior art. For at least this reason, it would have been obvious to a person of skill in the art at the time of the alleged inventions of the Asserted Claims to combine the various prior art cited herein so as to practice or include every element of the Asserted Claims, and there is a motivation in the art to make such a combination.

Motivations to combine various prior art are present in the items, knowledge, prior inventions, actions, and references themselves, the common knowledge of one of ordinary skill in the art, the prior art as a whole, or the nature of the problems allegedly addressed by the Asserted Patents. Further reasons to combine the prior art identified in these charts include the nature of the problem being solved, the express, implied and inherent teachings of the prior art, the knowledge of persons of ordinary skill in the art, the fact that the prior art is generally directed towards methods and/or systems for logging driving information of a vehicle as it is driven, that such combinations would have yielded predictable results, and that such combinations would have represented known alternatives to a POSITA.

To the extent not anticipated, the Asserted Claims represent no more than the result of ordinary innovation over the prior art. Moreover, no showing of a specific motivation to combine prior art is required to combine the prior art disclosed above and in the attached charts, as each combination of art would have no unexpected results, and at most would simply represent a known

alternative to one of skill in the art. *See KSR*, 127 S. Ct. at 1739-40 (rejecting the Federal Circuit’s “rigid” application of the teaching, suggestion, or motivation to combine test, instead espousing an “expansive and flexible” approach). Indeed, the Supreme Court held that a POSITA is “a person of ordinary creativity, not an automaton” and “in many cases a person of ordinary skill will be able to fit the teachings of multiple patents together like pieces of a puzzle.” *Id.* at 1742. Nevertheless, in addition to the information contained in the section immediately above and elsewhere in these contentions, additional motivations and reasons to combine the cited art are identified. A person having ordinary skill in any or all of these fields would be aware of all prior art in those fields, including but not limited to the identified prior art, and would have been motivated to combine the teachings and knowledge of prior art with the field.

Although the law does not require evidence of motivation to combine, motivation exists to combine one or more of the references disclosed herein with each other. Beyond specific motivations identified herein, motivation to modify a particular reference or to combine any two or more of the identified references comes from (a) the nature of the problem being solved; (b) the teachings of the prior art; (c) the knowledge of persons of ordinary skill in the art; (d) the fact that all of the references teach systems, apparatuses, and methods related to the subject matter and address the same technical issues described in the Asserted Patents; and (e) one would be motivated by considerations of efficiency, effectiveness, convenience, cost-savings, and accessibility, to combine the various teachings. Additionally, one would be motivated to address the alleged problems or achieve the purported objectives identified in the Background sections of the Asserted Patents.

In view of the foregoing, the following general exemplary obviousness combinations for the Asserted Patents are identified below.

- Taylor '562 in combination with one or more of the exemplary Transmitting Driving Information Wirelessly References, Processing Sensor Data to Determine How a Vehicle Is Driven References, Controlling a Device with Downloadable Application References, Event Detection References, Database References, Driving Score References, Short Term and Long Term Memories References, and Removable Attachment References.
- Winston '555 in combination with one or more of the exemplary Transmitting Driving Information Wirelessly References, Processing Sensor Data to Determine How a Vehicle Is Driven References, Controlling a Device with Downloadable Application References, Event Detection References, Database References, Driving Score References, Short Term and Long Term Memories References, and Removable Attachment References.
- Periwai '223 in combination with one or more of the exemplary Transmitting Driving Information Wirelessly References, Processing Sensor Data to Determine How a Vehicle Is Driven References, Controlling a Device with Downloadable Application References, Event Detection References, Database References, Driving Score References, Short Term and Long Term Memories References, and Removable Attachment References.
- McClellan '703 in combination with one or more of the exemplary Transmitting Driving Information Wirelessly References, Processing Sensor Data to Determine How a Vehicle Is Driven References, Controlling a Device with Downloadable Application References, Event Detection References, Database References, Driving Score References, Short Term and Long Term Memories References, and Removable Attachment References.
- Troncoso in combination with one or more of the exemplary Transmitting Driving Information Wirelessly References, Processing Sensor Data to Determine How a Vehicle Is Driven References, Controlling a Device with Downloadable Application References, Event Detection References, Database References, Driving Score References, Short Term and Long Term Memories References, and Removable Attachment References.
- Wilkes, III '286 in combination with one or more of the exemplary Transmitting Driving Information Wirelessly References, Processing Sensor Data to Determine How a Vehicle Is Driven References, Controlling a Device with Downloadable Application References, Event Detection References, Database References, Driving Score References, Short Term and Long Term Memories References, and Removable Attachment References.
- Abramson '480 in combination with one or more of the exemplary Transmitting Driving Information Wirelessly References, Processing Sensor Data to Determine How a Vehicle Is Driven References, Controlling a Device with Downloadable Application References, Event Detection References, Database References, Driving Score

References, Short Term and Long Term Memories References, and Removable Attachment References.

- Warren '038 in combination with one or more of the exemplary Transmitting Driving Information Wirelessly References, Processing Sensor Data to Determine How a Vehicle Is Driven References, Controlling a Device with Downloadable Application References, Event Detection References, Database References, Driving Score References, Short Term and Long Term Memories References, and Removable Attachment References.
- Warren '726 in combination with one or more of the exemplary Transmitting Driving Information Wirelessly References, Processing Sensor Data to Determine How a Vehicle Is Driven References, Controlling a Device with Downloadable Application References, Event Detection References, Database References, Driving Score References, Short Term and Long Term Memories References, and Removable Attachment References.
- Armitage '195 in combination with one or more of the exemplary Transmitting Driving Information Wirelessly References, Processing Sensor Data to Determine How a Vehicle Is Driven References, Controlling a Device with Downloadable Application References, Event Detection References, Database References, Driving Score References, Short Term and Long Term Memories References, and Removable Attachment References.
- Eida '982 in combination with one or more of the exemplary Transmitting Driving Information Wirelessly References, Processing Sensor Data to Determine How a Vehicle Is Driven References, Controlling a Device with Downloadable Application References, Event Detection References, Database References, Driving Score References, Short Term and Long Term Memories References, and Removable Attachment References.
- Iwama '450 in combination with one or more of the exemplary Transmitting Driving Information Wirelessly References, Processing Sensor Data to Determine How a Vehicle Is Driven References, Controlling a Device with Downloadable Application References, Event Detection References, Database References, Driving Score References, Short Term and Long Term Memories References, and Removable Attachment References.
- NHTSA in combination with one or more of the exemplary Transmitting Driving Information Wirelessly References, Processing Sensor Data to Determine How a Vehicle Is Driven References, Controlling a Device with Downloadable Application References, Event Detection References, Database References, Driving Score References, Short Term and Long Term Memories References, and Removable Attachment References.
- Singer '529 in combination with one or more of the exemplary Transmitting Driving Information Wirelessly References, Processing Sensor Data to Determine How a

Vehicle Is Driven References, Controlling a Device with Downloadable Application References, Event Detection References, Database References, Driving Score References, Short Term and Long Term Memories References, and Removable Attachment References.

- Nericell in combination with one or more of the exemplary Transmitting Driving Information Wirelessly References, Processing Sensor Data to Determine How a Vehicle Is Driven References, Controlling a Device with Downloadable Application References, Event Detection References, Database References, Driving Score References, Short Term and Long Term Memories References, and Removable Attachment References.

In addition, USAA provides below a discussion of specific exemplary obviousness combinations for the Asserted Patents, categorized by each claim element that Plaintiff may contend is not disclosed in any individual reference.

A. EXEMPLARY TRANSMITTING DRIVING INFORMATION WIRELESSLY REFERENCES

Claims 1, 4, and 7 of the '271 Patent, Claim 1 of the '487 Patent, Claims 1, 26 of the '369 Patent, and Claims 1, 21, 46, 51, and 54 of the '879 Patent recite methods and systems for using a sensor set to gather data. The relevant claims are identified below.

Patent	Claim(s)	Claim Language
'271	1[a]; 4[a]	"a sensor set comprising an image sensor, an audio sensor, an accelerometer, or a positioning module, or a combination thereof"
'271	1[c], [d]; 4[c], [d], [g]	"sensor data from the device's sensor set," or "data from the device's sensor set," or "sensor data from the sensor set"
'487	1[a]	"a sensor set comprising an image sensor, an audio sensor, an accelerometer or a positioning module, or a combination thereof"
'487	1[d], 1[e]	"sensor data from the device's sensor set," or "data from the device's sensor set," or "sensor data from the sensor set"
'369	1[a]; 26[a]	"a sensor set comprising an image sensor, an audio sensor, an accelerometer or a positioning module, or a combination thereof"

Patent	Claim(s)	Claim Language
'369	1[d], [e]; 26[d], [e]	“sensor data from the device’s sensor set,” or “data from the device’s sensor set,” or “sensor data from the sensor set”
'879	1[a]; 21[pre]; 51[pre]; 54[a]	“a sensor set comprising an image sensor, an audio sensor, an accelerometer or a positioning module, or a combination thereof”
'879	1[d], [e]; 21[b], [c]; 46[a], [d], [e], [j]; 51[b], [c]; 54[d], [e]	“sensor data from the device’s sensor set,” or “data from the device’s sensor set,” or “sensor data from the sensor set”

To the extent Plaintiff contends that an anticipatory reference fails to disclose these elements, such reference(s) can be combined with the corresponding disclosures from any one or more of the following prior art references to render obvious this claim limitation (and/or the preamble to the extent limiting) under 35 U.S.C. § 103(a), at least based on Plaintiff’s Infringement Contentions, purported claim constructions, and its application of the claims to the accused technology, as best as they can be deciphered:

- Wilkes, III ’286;
- Taylor ’562;
- Winston ’555;
- Abramson ’480; and
- Nericell

(collectively, “exemplary Transmitting Driving Information Wirelessly References”). In addition, to the extent Plaintiff contends that any of the prior art invalidity charts provided in Exhibits A01-A16, B01-B16, C01-C16, and D01-D16 fail to disclose these elements, such reference(s) can be combined with the corresponding disclosures from any one or more of the above-described exemplary Transmitting Driving Information Wirelessly References to render obvious this claim limitation under 35 U.S.C. § 103(a), at least based on Plaintiff’s Infringement Contentions,

purported claim constructions, and its application of the claims to the accused technology, as best as they can be deciphered.

One of ordinary skill in the art would have been motivated to combine any one or more of the references provided in Exhibits A01-A16, B01-B16, C01-C16, and D01-D16 with any one or more of the exemplary Transmitting Driving Information Wirelessly References to improve the function and utility of the same, and such a combination would have been within that person's skill.

Combining the prior art identified in Exhibits A01-A16, B01-B16, C01-C16, and D01-D16 with any one of the exemplary Transmitting Driving Information Wirelessly References would have amounted to applying a known technique to a known device ready for improvement to yield predictable results. That is, it would have been obvious in the view of one of ordinary skill in the art to add "sensor set" or "sensor data from sensor set" to any one or more of the references provided in Exhibits A01-A16, B01-B16, C01-C16, and D01-D16. A POSITA would have been motivated to incorporate sensor sets and sensor data into existing telematics and driving monitoring methods, systems, and devices, and such a combination would have been within that person's skill. As demonstrated in the exemplary Transmitting Driving Information Wirelessly References listed above, data collection methods involving "sensor sets" and "sensor data from sensor sets" were well-known in the art by the time of the Asserted Patents' claimed invention and thus, adding it to any one or more of the references provided in Exhibits A01-A16, B01-B16, C01-C16, and D01-D16 would have amounted to applying a known technique to a known device ready for improvement to yield predictable results.

B. EXEMPLARY PROCESSING SENSOR DATA TO DETERMINE HOW A VEHICLE IS DRIVEN REFERENCES

Claim 1, 4 of the '271 Patent, Claim 1 of the '487 Patent, Claims 1 and 26 of the '369 Patent, and Claims 1, 21, 46, and 54 of the '879 Patent recite methods and systems for processing sensor data to determine how a vehicle is driven. The relevant claims are identified below.

Patent	Claim(s)	Claim Language
'271	1[d]; 4[d]	“process the sensor data from the sensor set during the driving period to derive driving information associated with how the vehicle is driven”
'487	1[e]	“process the sensor data from the sensor set during the driving period to derive driving information associated with how the vehicle is driven”
'369	1[e]; 26[e]	“process the sensor data from the sensor set during the driving period to derive driving information associated with how the vehicle is driven”
'879	1[e]; 21[c]; 46[e]; 54[e]	“process the sensor data from the sensor set during the driving period to derive driving information associated with how the vehicle is driven”

To the extent Plaintiff contends that an anticipatory reference fails to disclose these elements, such reference(s) can be combined with the corresponding disclosures from any one or more of the following prior art references to render obvious this claim limitation (and/or the preamble to the extent limiting) under 35 U.S.C. § 103(a), at least based on Plaintiff's Infringement Contentions, purported claim constructions, and its application of the claims to the accused technology, as best as they can be deciphered:

- Wilkes, III '286;
- Taylor '562;
- Winston '555;
- Nericell; and
- Langle

(collectively, “exemplary Processing Sensor Data to Determine How a Vehicle Is Driven References”). In addition, to the extent Plaintiff contends that any of the prior art invalidity charts provided in Exhibits A01-A16, B01-B16, C01-C16, and D01-D16 fail to disclose these elements, such reference(s) can be combined with the corresponding disclosures from any one or more of the above-described exemplary Processing Sensor Data to Determine How a Vehicle Is Driven References to render obvious this claim limitation under 35 U.S.C. § 103(a), at least based on Plaintiff’s Infringement Contentions, purported claim constructions, and its application of the claims to the accused technology, as best as they can be deciphered.

One of ordinary skill in the art would have been motivated to combine any one or more of the references provided in Exhibits A01-A16, B01-B16, C01-C16, and D01-D16 with any one or more of the exemplary Processing Sensor Data to Determine How a Vehicle Is Driven References to improve the function and utility of the same, and such a combination would have been within that person’s skill.

Combining the prior art identified in Exhibits A01-A16, B01-B16, C01-C16, and D01-D16 with any one of the exemplary Processing Sensor Data to Determine How a Vehicle Is Driven References would have amounted to applying a known technique to a known device ready for improvement to yield predictable results. That is, it would have been obvious in the view of one of ordinary skill in the art to add “processing sensor data to determine how a vehicle is driven” to any one or more of the references provided in Exhibits A01-A16, B01-B16, C01-C16, and D01-D16. A POSITA would have been motivated to incorporate a plurality of documents each with a Processing Sensor Data to Determine How a Vehicle Is Driven Reference into existing telematics and driving monitoring methods, systems, and devices, and such a combination would have been within that person’s skill. As demonstrated in the exemplary Processing Sensor Data to Determine

How a Vehicle Is Driven References, telematics and driving monitoring methods involving “processing sensor data to determine how a vehicle is driven” were well-known in the art by the time of the Asserted Patents’ claimed invention and thus, adding it to any one or more of the references provided in Exhibits A01-A16, B01-B16, C01-C16, and D01-D16 would have amounted to applying a known technique to a known device ready for improvement to yield predictable results.

C. EXEMPLARY CONTROLLING A DEVICE WITH DOWNLOADABLE APPLICATION REFERENCES

Claims 1, 3, and 4 of the ’271 Patent, Claims 1 and 9 of the ’487 Patent, Claims 2 and 18 of the ’369 Patent, and Claims 1, 2, 14, 15, 21, 46, 51, 54 of the ’879 Patent recite methods and systems for controlling a device with downloadable application. The relevant claims are identified below.

Patent	Claim(s)	Claim Language
’271	1[f]; 3; 4[f]	“the mobile communications device is controlled by a downloaded application”
’487	1[h]; 9	“the mobile communications device is controlled by a downloaded application”
’369	2; 18	“the mobile communications device is controlled by a downloaded application”
’879	1[g]; 2; 14; 15; 46[k]; 54[g]	“the mobile communications device is controlled by a downloaded application”
’879	21[pre]; 51[pre]	“A non-transitory computer readable medium having instructions comprising a software application stored thereon, wherein the instructions are configured to be executed on a processor of a mobile telecommunications device”

To the extent Plaintiff contends that an anticipatory reference fails to disclose these elements, such reference(s) can be combined with the corresponding disclosures from any one or

more of the following prior art references to render obvious this claim limitation (and/or the preamble to the extent limiting) under 35 U.S.C. § 103(a), at least based on Plaintiff's Infringement Contentions, purported claim constructions, and its application of the claims to the accused technology, as best as they can be deciphered:

- Wilkes, III '286;
- Taylro '562;
- Dai;
- Abramson '480; and
- Nericell

(collectively, the "exemplary Controlling A Device With Downloadable Application References"). In addition, to the extent Plaintiff contends that any of the prior art invalidity charts provided in Exhibits A01-A16, B01-B16, C01-C16, and D01-D16 fail to disclose these elements, such reference(s) can be combined with the corresponding disclosures from any one or more of the above-described exemplary Controlling a Device with Downloadable Application References to render obvious this claim limitation under 35 U.S.C. § 103(a), at least based on Plaintiff's Infringement Contentions, purported claim constructions, and its application of the claims to the accused technology, as best as they can be deciphered.

One of ordinary skill in the art would have been motivated to combine any one or more of the references provided in Exhibits A01-A16, B01-B16, C01-C16, and D01-D16 with any one or more of the exemplary Controlling a Device with Downloadable Application References to improve the function and utility of the same, and such a combination would have been within that person's skill. As shown in the teachings of the foregoing exemplary Controlling a Device with Downloadable Application References, techniques for transmitting data wirelessly were well-known in the art by the time of the Asserted Patents' claimed invention.

Combining the prior art identified in Exhibits A01-A16, B01-B16, C01-C16, and D01-D16 with any one of the exemplary Controlling a Device with Downloadable Application References would have amounted to applying a known technique to a known device ready for improvement to yield predictable results. That is, it would have been obvious in the view of one of ordinary skill in the art to add “controlling a device with downloadable application” to any one or more of the references provided in Exhibits A01-A16, B01-B16, C01-C16, and D01-D16. A POSITA would have been motivated to incorporate controlling a device with downloadable application into existing telematics and driving monitoring methods, systems, and devices, and such a combination would have been within that person’s skill. As demonstrated in the exemplary Controlling a Device with Downloadable Application References, telematics and driving monitoring methods involving “controlling a device with downloadable application” were well-known in the art by the time of the Asserted Patents’ claimed invention and thus, adding it to any one or more of the references provided in Exhibits A01-A16, B01-B16, C01-C16, and D01-D16 would have amounted to applying a known technique to a known device ready for improvement to yield predictable results.

D. EXEMPLARY EVENT DETECTION REFERENCES

Claim 5 of the ’271 Patent, Claim 1 of the ’487 Patent, Claims 2 and 21 of the ’369 Patent, and Claims 2, 14, 15 of the ’879 Patent recite methods and systems for detecting events. The relevant claims are identified below.

Patent	Claim(s)	Claim Language
’271	5	“detect occurrence of a predetermined event by correlating the sensor data against at least one event indication model”
’487	1[h]	“detect occurrence of a predetermined event and in response take at least one predetermined action”

Patent	Claim(s)	Claim Language
'369	2	“detect occurrence of a predetermined event and in response take at least one predetermined action”
'369	21	“the process step comprises determination of at least one of: vehicle acceleration events and vehicle braking events”
'879	2	“detect occurrence of a predetermined event and in response take at least one predetermined action”
'879	14; 15	“detect the occurrence of a predetermined event of significance”

To the extent Plaintiff contends that an anticipatory reference fails to disclose these elements, such reference(s) can be combined with the corresponding disclosures from any one or more of the following prior art references to render obvious this claim limitation (and/or the preamble to the extent limiting) under 35 U.S.C. § 103(a), at least based on Plaintiff's Infringement Contentions, purported claim constructions, and its application of the claims to the accused technology, as best as they can be deciphered:

- Langle;
- Wilkes, III '286;
- Singer '529; and
- NHTSA

(collectively, the “exemplary Event Detection References”). In addition, to the extent Plaintiff contends that any of the prior art invalidity charts provided in Exhibits A01-A16, B01-B16, C01-C16, and D01-D16 fail to disclose these elements, such reference(s) can be combined with the corresponding disclosures from any one or more of the above-described exemplary Event Detection References to render obvious this claim limitation under 35 U.S.C. § 103(a), at least based on Plaintiff's Infringement Contentions, purported claim constructions, and its application of the claims to the accused technology, as best as they can be deciphered.

One of ordinary skill in the art would have been motivated to combine any one or more of the references provided in Exhibits A01-A16, B01-B16, C01-C16, and D01-D16 with any one or more of the exemplary Event Detection References to improve the function and utility of the same, and such a combination would have been within that person's skill. As shown in the teachings of the exemplary Event Detection References, techniques for event detection were well-known in the art by the time of the Asserted Patents' claimed invention.

Combining the prior art identified in Exhibits A01-A16, B01-B16, C01-C16, and D01-D16 with any one of the exemplary Event Detection References would have amounted to applying a known technique to a known device ready for improvement to yield predictable results. That is, it would have been obvious in the view of one of ordinary skill in the art to add "detecting events" to any one or more of the references provided in Exhibits A01-A16, B01-B16, C01-C16, and D01-D16. A POSITA would have been motivated to incorporate detecting events into existing telematics and driving monitoring methods, systems, and devices, and such a combination would have been within that person's skill. As demonstrated in the exemplary Event Detection References, telematics and driving monitoring methods involving "event detection" were well-known in the art by the time of the Asserted Patents' claimed invention and thus, adding it to any one or more of the references provided in Exhibits A01-A16, B01-B16, C01-C16, and D01-D16 would have amounted to applying a known technique to a known device ready for improvement to yield predictable results.

E. EXEMPLARY DATABASE REFERENCES

Claims 6 and 7 of the '271 Patent recite methods and systems for using a database to store driving information. The relevant claims are identified below.

Patent	Claim(s)	Claim Language
'271	6[a]; 7[a]	“a database for storing a plurality of accounts, each account having a unique identifier and the database being arranged to store driving information associated with at least one of a vehicle and a driver;”

To the extent Plaintiff contends that an anticipatory reference fails to disclose these elements, such reference(s) can be combined with the corresponding disclosures from any one or more of the following prior art references to render obvious this claim limitation (and/or the preamble to the extent limiting) under 35 U.S.C. § 103(a), at least based on Plaintiff's Infringement Contentions, purported claim constructions, and its application of the claims to the accused technology, as best as they can be deciphered:

- Taylor '562;
- Winston '555; and
- McClellan '703

(collectively, the “exemplary Database References”). In addition, to the extent Plaintiff contends that any of the prior art invalidity charts provided in Exhibits A01-A16, B01-B16, C01-C16, and D01-D16 fail to disclose these elements, such reference(s) can be combined with the corresponding disclosures from any one or more of the above-described exemplary Database References to render obvious this claim limitation under 35 U.S.C. § 103(a), at least based on Plaintiff's Infringement Contentions, purported claim constructions, and its application of the claims to the accused technology, as best as they can be deciphered.

One of ordinary skill in the art would have been motivated to combine any one or more of the references provided in Exhibits A01-A16, B01-B16, C01-C16, and D01-D16 with any one or more of the exemplary Database References to improve the function and utility of the same, and such a combination would have been within that person's skill. As shown in the teachings of the

exemplary Database References, techniques for using a database to store driving information were well-known in the art by the time of the Asserted Patents' claimed invention.

Combining the prior art identified in Exhibits A01-A16, B01-B16, C01-C16, and D01-D16 with any one of the exemplary Database References would have amounted to applying a known technique to a known device ready for improvement to yield predictable results. That is, it would have been obvious in the view of one of ordinary skill in the art to add “using a database to store driving information” to any one or more of the references provided in Exhibits A01-A16, B01-B16, C01-C16, and D01-D16. A POSITA would have been motivated to incorporate using a database to store driving information into existing telematics and driving monitoring methods, systems, and devices, and such a combination would have been within that person's skill. As demonstrated in the exemplary Database References, telematics and driving monitoring methods involving “using a database to store driving information” were well-known in the art by the time of the Asserted Patents' claimed invention and thus, adding it to any one or more of the references provided in Exhibits A01-A16, B01-B16, C01-C16, and D01-D16 would have amounted to applying a known technique to a known device ready for improvement to yield predictable results.

F. EXEMPLARY DRIVING SCORE REFERENCES

Claims 6 and 7 of the '271 Patent, Claim 9 of the '487 Patent, Claim 18 of the '369 Patent, and Claims 1, 21, 51, 46, and 54 of the '879 Patent recite methods and systems for determining a driving score based on a driver's driving information and determining insurance premium. The relevant claims are identified below.

Patent	Claim(s)	Claim Language
'271	6[f]; 7[f]	“the driving information comprises at least one of a driving score and sensor data captured and processed by the remote mobile telecommunications device during a driving period during which the remote mobile telecommunications device is removably attached to the vehicle being driven by the driver;”
'271	6[g]	“the data logging system being further arranged to process the driving information logged to a corresponding account to generate a driving score used to determine a risk profile for at least one of the vehicle and driver”
'271	7[h]	“the driving score is used to define an insurance premium associated with the account and the data logging system is further arranged to communicate to the remote mobile telecommunication device an insurance offer generated in response to the driving information received from the remote mobile telecommunications device;”
'487	9	“he mobile communications device is controlled by the downloaded application to control the mobile device to process the driving information to generate a driving score associated with a particular driver”
'369	18	“the mobile telecommunications device is controlled by the downloaded application to control the mobile device to process the driving information to generate a driving score associated with a particular driver”
'879	1[g]	“the mobile telecommunications device is controlled by a downloaded application to control the mobile device to process the driving information to generate a driving score associated with a particular driver”
'879	21[e]; 51[e]	“generate a driving score associated with the driver”
'879	46[k]	“generate a driving score associated with a particular driver”
'879	54[g]	“the driving information is derived without data from the vehicle sensors, and the mobile telecommunications device is controlled by a downloaded application to control the mobile device to process the driving information to generate a driving score associated with a particular driver”

To the extent Plaintiff contends that an anticipatory reference fails to disclose these elements, such reference(s) can be combined with the corresponding disclosures from any one or more of the following prior art references to render obvious this claim limitation (and/or the preamble to the extent limiting) under 35 U.S.C. § 103(a), at least based on Plaintiff's Infringement

Contentions, purported claim constructions, and its application of the claims to the accused technology, as best as they can be deciphered:

- Willkes, III '286;
- Taylor '562;
- Winiston '555;
- McClellan '703;
- Warren '038; and
- Warren '726

(collectively, the “exemplary Driving Score References”). In addition, to the extent Plaintiff contends that any of the prior art invalidity charts provided in Exhibits A01-A16, B01-B16, C01-C16, and D01-D16 fail to disclose these elements, such reference(s) can be combined with the corresponding disclosures from any one or more of the above-described exemplary Driving Score References to render obvious this claim limitation under 35 U.S.C. § 103(a), at least based on Plaintiff’s Infringement Contentions, purported claim constructions, and its application of the claims to the accused technology, as best as they can be deciphered.

One of ordinary skill in the art would have been motivated to combine any one or more of the references provided in Exhibits A01-A16, B01-B16, C01-C16, and D01-D16 with any one or more of the exemplary Driving Score References to improve the function and utility of the same, and such a combination would have been within that person’s skill. As shown in the teachings of the exemplary Driving Score References, techniques for generating a driving score based on a driver’s driving information and using the driving score to determine a risk profile and insurance premium were well-known in the art by the time of the Asserted Patents’ claimed invention.

Combining the prior art identified in Exhibits A01-A16, B01-B16, C01-C16, and D01-D16 with any one of the exemplary Driving Score References would have amounted to applying a

known technique to a known device ready for improvement to yield predictable results. That is, it would have been obvious in the view of one of ordinary skill in the art to add “generating a Driving Score based on a driver’s driving information and using the driving score to determine a risk profile and insurance premium” to any one or more of the references provided in Exhibits A01-A16, B01-B16, C01-C16, and D01-D16. A POSITA would have been motivated to incorporate generating a driving score based on a driver’s driving information and using the driving score to determine a risk profile and insurance premium into existing telematics and driving monitoring methods, systems, and devices, and such a combination would have been within that person’s skill. As demonstrated in the exemplary Driving Score References, telematics and driving monitoring methods involving “generating a Driving Score based on a driver’s driving information and using the driving score to determine a risk profile and insurance premium” were well-known in the art by the time of the Asserted Patents’ claimed invention and thus, adding it to any one or more of the references provided in Exhibits A01-A16, B01-B16, C01-C16, and D01-D16 would have amounted to applying a known technique to a known device ready for improvement to yield predictable results.

G. EXEMPLARY SHORT TERM AND LONG TERM MEMORIES REFERENCES

Claim 6 of the ’487 Patent, Claims 1 and 26 of the ’369 Patent, and Claim 9 of the ’879 Patent recite methods and systems for using short term memory for transient storage and long term memory for persistent storage. The relevant claims are identified below.

Patent	Claim(s)	Claim Language
’487	6[a]	“a long term memory for persistently storing driving information and a short term memory for transiently storing driving information, wherein the short term memory receives driving information at a higher update rate than the long term memory”
’487	6[b]	“write driving information to the short term memory at a predetermined update rate during the driving period in a predetermined sequence”

Patent	Claim(s)	Claim Language
'487	6[c]	“overwrite the driving information previously written to the short term memory in accordance with the predetermined sequence”
'369	1[h]; 26[h]	“a long term memory for persistently storing driving information and a short term memory for transiently storing driving information, wherein the short term memory receives driving information at a higher update rate than the long term memory”
'369	1[i]; 26[i]	“write driving information to the short term memory at a predetermined update rate during the driving period in a predetermined sequence”
'369	1[j]; 26[i]	“overwrite the driving information previously written to the short term memory in accordance with the predetermined sequence”
'879	9[a]	“a long term memory for persistently storing driving information and a short term memory for transiently storing driving information, wherein the short term memory receives driving information at a higher update rate than the long term memory”
'879	9[b]	“write driving information to the short term memory at a predetermined update rate during the driving period in a predetermined sequence”
'879	9[c]	“overwrite the driving information previously written to the short term memory in accordance with the predetermined sequence.”

To the extent Plaintiff contends that an anticipatory reference fails to disclose these elements, such reference(s) can be combined with the corresponding disclosures from any one or more of the following prior art references to render obvious this claim limitation (and/or the preamble to the extent limiting) under 35 U.S.C. § 103(a), at least based on Plaintiff's Infringement Contentions, purported claim constructions, and its application of the claims to the accused technology, as best as they can be deciphered:

- Singer '529;
- Abramson '480;
- Eida '985; and
- Iwama '450

(collectively, the “exemplary Short Term and Long Term Memories References”). In addition, to the extent Plaintiff contends that any of the prior art invalidity charts provided in Exhibits A01-

A16, B01-B16, C01-C16, and D01-D16 fail to disclose these elements, such reference(s) can be combined with the corresponding disclosures from any one or more of the above-described exemplary Short Term and Long Term Memories References to render obvious this claim limitation under 35 U.S.C. § 103(a), at least based on Plaintiff's Infringement Contentions, purported claim constructions, and its application of the claims to the accused technology, as best as they can be deciphered.

One of ordinary skill in the art would have been motivated to combine any one or more of the references provided in Exhibits A01-A16, B01-B16, C01-C16, and D01-D16 with any one or more of the exemplary Short Term and Long Term Memories References to improve the function and utility of the same, and such a combination would have been within that person's skill. As shown in the teachings of the foregoing exemplary Short Term and Long Term Memories References, techniques for using short term memory for transient storage and long term memory for persistent storage were well-known in the art by the time of the Asserted Patents' claimed invention.

Combining the prior art identified in Exhibits A01-A16, B01-B16, C01-C16, and D01-D16 with any one of the exemplary Short Term and Long Term Memories References would have amounted to applying a known technique to a known device ready for improvement to yield predictable results. That is, it would have been obvious in the view of one of ordinary skill in the art to add "using short term memory for transient storage and long term memory for persistent storage" to any one or more of the references provided in Exhibits A01-A16, B01-B16, C01-C16, and D01-D16. A POSITA would have been motivated to incorporate generating a short term and long term memories based on a driver's driving information and using the short term and long term memories to use both types of memories into existing telematics and driving monitoring methods,

systems, and devices, and such a combination would have been within that person's skill. As demonstrated in the exemplary Short Term and Long Term Memories References, telematics and driving monitoring methods involving "using short term memory for transient storage and long term memory for persistent storage" were well-known in the art by the time of the Asserted Patents' claimed invention and thus, adding it to any one or more of the references provided in Exhibits A01-A16, B01-B16, C01-C16, and D01-D16 would have amounted to applying a known technique to a known device ready for improvement to yield predictable results.

H. EXEMPLARY REMOVABLE ATTACHMENT REFERENCES

Claims 1, 4, 6, and 7 of the '271 Patent, Claim 1 of the '487 Patent, Claims 1 and 26 of the '369 Patent, and Claims 1, 9, 21, 46, and 51 of the '879 Patent recite methods and systems for removably attaching a device to a vehicle. The relevant claims are identified below.

Patent	Claim(s)	Claim Language
'271	1[c]; 4[c]	"the mobile device is removably attached to the vehicle"
'271	6[f]; 7[f]	" the remote mobile telecommunications device is removably attached to the vehicle "
'487	1[d]	"the mobile device is removably attached to the vehicle"
'369	1[d]	"the mobile device is removably attached to the vehicle"
'369	26[d]	"the mobile device is removably affixed to the vehicle"
'879	1[d]; 46[d]	"the mobile device is removably attached to the vehicle"
'879	9[b]; 21[b]; 51[b]	"the mobile telecommunications device is removably attached to a vehicle"

To the extent Plaintiff contends that an anticipatory reference fails to disclose these elements, such reference(s) can be combined with the corresponding disclosures from any one or more of the following prior art references to render obvious this claim limitation (and/or the preamble to the extent limiting) under 35 U.S.C. § 103(a), at least based on Plaintiff's Infringement

Contentions, purported claim constructions, and its application of the claims to the accused technology, as best as they can be deciphered:

- Singer '529;
- Abramson '480;
- Eida '985; and
- Iwama '450

(collectively, the “exemplary Removable Attachment References”). In addition, to the extent Plaintiff contends that any of the prior art invalidity charts provided in Exhibits A01-A16, B01-B16, C01-C16, and D01-D16 fail to disclose these elements, such reference(s) can be combined with the corresponding disclosures from any one or more of the above-described exemplary Removable Attachment References to render obvious this claim limitation under 35 U.S.C. § 103(a), at least based on Plaintiff’s Infringement Contentions, purported claim constructions, and its application of the claims to the accused technology, as best as they can be deciphered.

One of ordinary skill in the art would have been motivated to combine any one or more of the references provided in Exhibits A01-A16, B01-B16, C01-C16, and D01-D16 with any one or more of the exemplary Removable Attachment References to improve the function and utility of the same, and such a combination would have been within that person’s skill. As shown in the teachings of the foregoing exemplary Removable Attachment References, techniques for removably attaching a device to a vehicle were well-known in the art by the time of the Asserted Patents’ claimed invention.

Combining the prior art identified in Exhibits A01-A16, B01-B16, C01-C16, and D01-D16 with any one of the exemplary Removable Attachment References would have amounted to applying a known technique to a known device ready for improvement to yield predictable results. That is, it would have been obvious in the view of one of ordinary skill in the art to add “removably

attaching a device to a vehicle” to any one or more of the references provided in Exhibits A01-A16, B01-B16, C01-C16, and D01-D16. A POSITA would have been motivated to incorporate attaching a device to a vehicle removably into existing telematics and driving monitoring methods, systems, and devices, and such a combination would have been within that person’s skill. As demonstrated in the exemplary Removable Attachment References, telematics and driving monitoring methods involving “removably attaching a device to a vehicle” were well-known in the art by the time of the Asserted Patents’ claimed invention and thus, adding it to any one or more of the references provided in Exhibits A01-A16, B01-B16, C01-C16, and D01-D16 would have amounted to applying a known technique to a known device ready for improvement to yield predictable results.

VI. CLAIM CHARTS

Invalidity claim charts identifying exemplary citations to and disclosures in the references identified in Section II, *supra*, as to the Asserted Claims of the Asserted Patents are provided in attached Exhibits A (the ’271 Patent), B (the ’487 Patent), C (the ’369 Patent), and D (the ’879 Patent).

Where a reference discloses, either expressly or inherently, each of the limitations of a particular claim, that reference anticipates that claim. To the extent that a reference is deemed not to have disclosure for a particular claim limitation, USAA contends that that reference can be combined with a POSITA’s knowledge and/or one or more other references to disclose that claim limitation, based on what would be obvious to one of ordinary skill in that art and/or for at least the reasons provided in USAA’s Invalidity Contentions.

USAA has identified relevant portions and/or features of the prior art. However, the identified prior art may contain additional disclosures of the claim limitations, regardless of whether cumulative with identified portions. USAA may rely on uncited portions or features of

the identified prior art, other documents, and expert testimony, to provide context or to aid in understanding the identified prior art and the state of the art. Citations to a particular figure in a reference include the caption and description of the figure and any text relating to the figure. Similarly, citations to particular text referring or relating to a figure include the figure and caption as well.

Throughout the invalidity claim charts, USAA provides examples of where references disclose subject matter recited in preambles of the Asserted Claims, regardless of whether the preambles limit the claims. USAA reserves the right to argue that the preambles are or are not limitations. Further, where an entry in a claim chart corresponding to a given limitation refers back to the discussion of another claim, the entry incorporates all evidence cited for the other claim.

Correspondence between claim language of the Asserted patents and disclosures in prior art references shall not imply or be taken as any admission regarding whether the claim language has patentable weight or meets the requirements of 35 U.S.C. § 112.

VII. ALLEGED PRIORITY DATE AND RELATED INVALIDITY ISSUE

Plaintiff alleges in its infringement contentions the following priority dates (Pl.’s Prelim. Infring. Contentions at 8):

Priority Date	Asserted Claims
As early as January 25, 2011	’271 Patent – Claims 4, 5 ’487 Patent – Claims 1–3, 6, 9, 11–13 ’369 Patent – Claims 1, 2, 4, 6, 7, 15, 18–21, 26 ’879 Patent – Claims 1–3, 5, 6, 9, 14–16, 19–23, 25, 26, 34, 35, 39–41, 46, 51, 54
As early as December 15, 2011	’271 Patent – Claims 1, 3, 6, 7 ’487 Patent – Claim 10 ’369 Patent – Claim 5 ’879 Patent – Claims 4, 24

USAA disputes this priority claim and expects to take discovery into the priority date of the Asserted Claims once discovery opens.

VIII. OTHER GROUNDS FOR INVALIDITY

A. ABSTRACT IDEA UNDER 35 U.S.C. § 101

USAA asserts that the Asserted Claims are invalid under 35 U.S.C. § 101 as lacking patent-eligible subject matter.

“Collecting information, analyzing it, and displaying certain results of the collection and analysis” is an abstract concept ineligible for patent protection. *Elec. Power Grp. LLC v. Alstrom S.A.*, 830 F.3d 1350, 1353-54 (Fed. Cir. 2016). The claims of the Asserted Patents attempt to limit this abstract idea by restricting the collection of information to data collected by “sensor sets” found on a mobile device and data collecting “during the driving period,” but just like the patents found ineligible in *Electric Power Group*, the Asserted Claims’ purported advantage is still “a process of gathering and analyzing information of a specified content, then displaying the results, and not any particular assertedly inventive technology for performing those functions.” *Id.* Similarly, the Federal Circuit held that “limiting the claims to the particular technological environment of power-grid monitoring is, without more, insufficient to transform them into patent-eligible applications of the **abstract idea** at their core.” *Id.* (emphasis in original). That is exactly the case here; the Asserted Patents’ attempt to limit the claims to the technological environment of using mobile phone’s sensors to evaluate a user’s driving is insufficient to transform the abstract concept of collecting, analyzing, and presenting information into a patent-eligible application of such a concept.

Further, abstract ideas like this, when implemented using conventional computer components, are not eligible for patent protection under 35 U.S.C. § 101. *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2357 (2014). This is especially true when, as is the case here, the

abstract idea is not directed to any improvement in technology and any purported “inventive concept” is limited to improving the abstract idea itself. *See BSG Tech LLC v. Buyseasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018).

The applicants did not claim an unconventional system, nor did they claim a particular mechanism for improving computing systems.⁶ Claims that “recite the concept, but not the way to implement it,” are ineligible for patenting. *Epic IP LLC v. Backblaze, Inc.*, 351 F. Supp. 3d 733, 740 (D. Del. 2018). The Asserted Patents simply claim the abstract concept of a system that collects, analyzes, and presents information, not a specific implementation of that concept. The Asserted Patents’ claims are therefore invalid for failure to claim patent eligible subject matter.

As an example, the Asserted Patents do not claim to have made any improvements to the computer-functionality or underlying technology itself. First, all elements of the Asserted Claims of the Asserted Patents were commonplace before the alleged priority date or priority dates.⁷ The embodiments disclosed by the Asserted Patents generally describe methods and systems “for logging driving information associated with vehicle behaviour.” ’271 Patent at 1:18–19.⁸ More specifically, they “relate[] to a mobile device adapted for installation to a vehicle and configured to log such driving information, for example, video footage associated with how the vehicle is driven.” *Id.* at 1:19–22. Such driving information may “subsequently be utilised to determine the cause of an event such as an accident, to modify driver behaviour and/or to determine insurance

⁶ To the contrary, the Asserted Patents actually tout that their purported advancement over the prior art is the use of conventional technology available in mobile phones. *E.g.*, ’271 Patent at col. 2:10-21. The purported invention of the Asserted Patents is the use of conventional technology to perform the well-known function of driver monitoring.

⁷ *See* Pl.’s Prelim. Infringement Contentions at 8; *see also* § VII, *supra*.

⁸ The Asserted Patents share a common specification. All citations in this section are made with reference to the ’271 Patent specification, but apply equally to the other Asserted Patents.

premiums.” *Id.* at 1:23–24. The Asserted Patents claimed that these systems and methods are disclosed to alleviate problems that data logging devices integrated with the car data network being difficult and costly to install. *Id.* at 1:47–48. The applicant also asserts that “the uptake of data logging devices that can be retrofitted to road vehicles, as are known in the art, has been minimal.” *Id.* at 1:49–51. The applicant thus describes that some embodiments “provides[sic] a mobile telecommunications device adapted for installation to a vehicle and configured to log driving information associated with the vehicle when driven.” *Id.* at 1:61–62.

The Asserted Patents do not purport to have invented any particular aspect of the claimed mobile telecommunications devices, either. For example, while the claimed method and system uses “a mobile telecommunication device,” which “enables a data logging device to be conveniently and inexpensively retrofitted to a vehicle” (*see* ’271 Patent at 2:11–12), the Asserted Patents do not claim to have invented such devices. On the contrary, the Asserted Patents describe that “Mobile telecommunication devices such as ‘smart-phones’ are becoming increasingly widespread, and these devices tend to have the requisite sensor sets to capture data concerning vehicle behaviour.” *Id.* at 2:12–15. Indeed, the Asserted Patents continue to describe that the claimed system and method use a “generic mobile telecommunications device.” *Id.* at 2:15. Similarly, the application that supports and/or directs the mobile device “may be sourced from an application store and/or content provider.” *Id.* at 2:47–48.

Therefore, the Asserted Claims fail to meet the standard for patent eligibility under § 101.

IX. INDEFINITENESS, ENABLEMENT, AND WRITTEN DESCRIPTION UNDER 35 U.S.C. § 112

In addition, USAA identifies grounds of invalidity based on (i) lack of enablement and/or written description under 35 U.S.C. § 112, ¶ 1; and (ii) indefiniteness under 35 U.S.C. § 112, ¶ 2.

USAA reserves the right to supplement the grounds under 35 U.S.C. § 112 rendering one or more claim invalid.

A. LACK OF ENABLEMENT / WRITTEN DESCRIPTION

USAA incorporates its Answer and Counterclaims (Dkt. 19) by reference.

1. “Sensor Set”

Every claim in the Asserted Patents is directed to using data from the “sensor set” of a mobile device (*i.e.*, a cell phone) to “to track and determine attributes of individual [automobile] driving sessions.” Compl. (Dkt. 1) ¶ 65. The claims describe the “sensor set” as a disjunctive list of individual sensors: “an image sensor, an audio sensor, an accelerometer or a positioning module, or a combination thereof.”⁹ By using “or,” the claims encompass the determination of driving behavior using just one of the listed sensors. But the specification discloses using those sensors only in combination. *Cf.* Compl. ¶ 65 (“The claims of the Patents-In-Suit are directed to the inventive combination of multiple sensors to track and determine attributes of individual driving sessions....”) (emphasis added); ’487 Patent at FIG. 4b and related description.

Based on Plaintiff’s Complaint (¶ 65) and Infringement Contentions, the parties seem to disagree whether the “sensor set” list is disjunctive or conjunctive. However, the plain and ordinary meaning of “or” is “or”—not “and.” Under an appropriate claim construction, the claims cover subject matter that is not disclosed in the specification, and those claims are invalid for failing to satisfy the written description requirement of § 112. *Atlantic Research Mktg. Sys., Inc. v. Troy*, 659 F.3d 1345, 1355 (Fed. Cir. 2011) (affirming summary judgment of invalidity

⁹ See, e.g., ’487 Patent at Cl. 1; ’369 Patent at Cls. 1, 26; ’879 Patent at Cls. 1, 21, 46, 51, 54 (emphasis added); see also ’271 Patent at Cl. 1.

because the claims “exceed in scope the subject matter that [the inventor] chose to disclose to the public in the written description”).

For similar reasons, every claim in the Asserted Patents fails the enablement requirement and is thus invalid. The **full scope** of the claims must be enabled. *E.g., LizardTech, Inc. v. Earth Resource Mapping, Inc.*, 424 F.3d 1336, 1346 (Fed. Cir. 2005). The claims encompass the determination of driving behavior using just **one** of the listed sensors, *i.e.*, just an image sensor, just an audio sensor, just an accelerometer, or just a positioning module. But the specification discloses using those sensors only in combination to determine driving information, and a person of ordinary skill in the art at the time of alleged invention (POSITA) would not be able to practice the full scope of the invention as claimed. For example, a POSITA would not have been able to practice any claim of the Asserted Patents using just an audio sensor. And the specification provides absolutely no guidance on such an endeavor.

As noted, the foregoing issues invalidate every claim in the Asserted Patents. However, USAA notes that these issues are especially acute in the following claims (and, therefore, the claims that depend therefrom):

‘369 Patent – Claim 21	Explicitly requires determination of acceleration and braking, but requires the ability to do so with, <i>e.g.</i> , just an audio sensor or just an image sensor.
‘271 Patent – Claim 1	Explicitly requires determination of speed, but requires the ability to do so with, <i>e.g.</i> , just an audio sensor or just an image sensor.
‘879 Patent – Claim 46	Explicitly requires determination of acceleration and braking, but requires the ability to do so with, <i>e.g.</i> , just an audio sensor or just an image sensor.
‘879 Patent – Claim 51	Explicitly requires determination of acceleration and braking, but requires the ability to do so with, <i>e.g.</i> , just an audio sensor or just an image sensor.

2. “Without Data from Vehicle Sensors”

Every claim of the Asserted Patents requires that the collected “driving information” is “derived **without** data from vehicle sensors.” This limitation was added early in prosecution to distinguish over the prior art. But there is no written description support for this negative limitation, and every claim in the Asserted Patents is invalid as a result.

In *Novartis Pharms. Corp. v. HEC Pharm Co., LTD.*, No. 2021-1070, 2022 WL 2204163 (Fed. Cir. June 21, 2022), the Federal Circuit took a close look at the nature of disclosure needed to support a negative claim limitation. The Court explained that the question is whether “the specification describes a reason to exclude the relevant [element]”—silence is generally not sufficient to support a claim in which the element is expressly excluded. *Id.*

Here, not only is there **no** disclosure of excluding data from vehicle sensors, there is ample disclosure to the contrary. The specification describes how the “sensor set on board the mobile device may be supplemented by a sensor set external to the mobile device. For example, the external device may be an engine management system of the vehicle and/or the external device may be arranged to connect to the on-car data network of the vehicle. Thus, the external device may have access to information associated with the behavior of the vehicle . . . Such driving information can be processed and/or store by the mobile device under control of the executed application in a manner similar to driving information derived from sensor data internal to the mobile device.” *E.g.*, ‘487 Patent at 9:57–10:14; *see also id.* at 22:62–23:15.

The specification of the Asserted Patents, if anything, distinguishes from prior art “special purpose” or “black box” monitoring systems that perform no function other than driver monitoring, thus requiring an unjustifiable extra expense. Some such devices also require special installation and rely on vehicle power, additional purported downsides identified by the Asserted Patents. But the Asserted Patents never distinguish or disparage the use of data from

vehicle sensors—just the use of a “special purpose” or “black box” monitoring system to get it. Quite to the contrary, the Asserted Patents embrace and describe the use of data from vehicle sensors. The specification establishes that using data from vehicle sensors is part of the alleged “invention.”

For these reasons, every claim in the Asserted Patent is invalid for failing to meet the written description requirement.

B. INDEFINITENESS

USAA incorporates its Answer and Counterclaims by reference.

1. “Without Data from Vehicle Sensors”

“Where it would be apparent to one of skill in the art, based on the specification, that the invention set forth in a claim is not what the patentee regarded as his invention, [the Court] must hold that claim invalid under § 112, paragraph 2.” *Allen Eng’g Corp. v. Bartell Inds., Inc.*, 299 F.3d 1336, 1349 (Fed. Cir. 2002) (reversing judgment that claims were not invalid).

Every independent claim in the Asserted Patents requires that the collected “driving information” is “derived without data from vehicle sensors.”¹⁰ To a POSITA, it would be apparent, based on the specification, that the “invention” set forth in the claims is not what the patentee regarded as their invention. Here, the specification of the Asserted Patents never mention excluding data from vehicle sensors, but instead embrace vehicle sensor data as a basis for creating the claimed “driving information.” The specification describes how

[the] sensor set on board the mobile device may be supplemented by a sensor set external to the mobile device. For example, the external device may be an engine management system of the vehicle and/or the external device may be arranged to connect to the on-car data

¹⁰ See ’271 Patent at Cls. 1, 4, 6, 7, ’487 Patent at Cl. 1, and ’879 Patent at Cls. 1, 21, 46, 51 (emphasis added); see also ’369 Patent at Cls. 1, 26, 27 and ’879 Patent at Cls. 54, 55 (requiring “derived without data from the vehicle sensors”).

network of the vehicle. Thus, the external device may have access to information associated with the behavior of the vehicle Such driving information can be processed and/or store by the mobile device under control of the executed application in a manner similar to driving information derived from sensor data internal to the mobile device.

E.g., ‘487 Patent at 9:57-10:14; *see also id.* at 22:62–23:15.

For at least these reasons, every claim of the Asserted Patents is invalid.

2. “Driving Scores”

Claim 7 of the ‘271 Patent is further invalid for being indefinite. This claim recites:

7. A data-logging system for logging driving information received from a remote mobile telecommunications device, the data-logging system comprising a processor and memory, the data logging system comprising:

- a database for storing a plurality of accounts, each account having a unique identifier and the database being arranged to store driving information associated with at least one of a vehicle and a driver;

- a communications interface arranged to communicate with the remote mobile telecommunications device, and receive therefrom:

- a unique identifier for association of the remote mobile telecommunications device with a corresponding one of the plurality of accounts;

- driving information to be logged to that corresponding account, the driving information derived based on inputs received by a user interface of the remote mobile telecommunications device and sensor data from a sensor set of the remote mobile telecommunications device, the driving information derived without data from vehicle sensors; and,

- wherein the driving information comprises at least one of a driving score and sensor data captured and processed by the remote mobile telecommunications device during a driving period during which the remote mobile telecommunications device is removably attached to the vehicle being driven by the driver, the data logging system being further arranged to process the driving information logged to a corresponding account to generate a driving score used to determine a risk profile for at least one of the vehicle and driver; and,

- wherein the driving score is used to define an insurance premium associated with the account and the data logging system is further arranged to communicate to the remote mobile

telecommunication device an insurance offer generated in response to the driving information received from the remote mobile telecommunications device.

'271 Patent at Cl. 7. This claim recites two instances of “driving scores”: one highlighted in yellow created on the mobile device, and a second “driving score” highlighted in green created on the data logging system. The claim then refers to “the driving score” (highlighted in blue), but there is no reasonable certainty to a POSITA to which “driving score” that “the driving score” refers. The claim is insolubly ambiguous. As such, this claim is invalid for being indefinite.

Furthermore, while the claims of the Asserted Patents recite a “driving score,” which might be generated by the mobile device or the data logging system (and sometimes it is impossible to tell which one), it does not disclose in specificity how this “driving score” is calculated or determined. '271 Patent at 10:13–17, 11:66–12:3, 12:4–6. For example, the Asserted Patents recite that “the mobile device is controlled by the executed application to process the driving information to generate a driving score,” then go on to describe that “[t]he driving information may comprise the driving score.” *Id.* at 10:13–17. As another example, the Asserted Patents describe that “the [data-logging] system is arranged to process the driving information logged to the corresponding account to generate a driving score.” *Id.* at 12:4–6. It is thus unclear to a POSITA whether there are multiple driving scores generated by the mobile device and/or the data-logging systems separately, or that if these are all the same driving score processed by different components of the system.

3. “Sensor Data”

Claim 6 of the '271 Patent is further invalid for being indefinite. The claim recites:

6. A data-logging system for logging driving information received from a remote mobile telecommunications device, the data-logging system comprising a processor and memory, the data logging system comprising:

a database for storing a plurality of accounts, each account having a unique identifier and the database being arranged to store driving information associated with at least one of a vehicle and a driver;

a communications interface arranged to communicate with the remote mobile telecommunications device, and receive therefrom:

a unique identifier for association of the remote mobile telecommunications device with a corresponding one of the plurality of accounts;

driving information to be logged to that corresponding account, the driving information derived based on inputs received by a user interface of the remote mobile telecommunications device and **sensor data** from a sensor set of the remote mobile telecommunications device, the driving information derived without data from vehicle sensors; and,

wherein the driving information comprises at least one of a driving score and **sensor data** captured and processed by the remote mobile telecommunications device during a driving period during which the remote mobile telecommunications device is removably attached to the vehicle being driven by the driver, the data logging system being further arranged to process the driving information logged to a corresponding account to generate a driving score used to determine a risk profile for at least one of the vehicle and driver.

'271 Patent at Cl. 7. This claim recites two instances of “sensor data”: one highlighted in yellow from which “driving information” is *derived*, and a second one highlighted in green that is itself *part of* “driving information.” The claim uses the same term “sensor data” twice, but there is no reasonable certainty to a POSITA whether those are the same or different “sensor data.” The claim is insolubly ambiguous. As such, this claim is invalid for being indefinite.

Subject to the reservation of rights above, USAA further provides below an identification of Asserted Claims along with an identification of the specific limitations that are invalid as indefinite, pursuant to 35 U.S.C. § 112(b). Specifically, at least the following terms are not explained in the specifications of the Asserted Patents such that a POSITA would be able to determine their meaning and scope with reasonable certainty:

Patent(s)/Claim(s) ¹¹	Claim Language
'271 Patent – Claims 6, 7 '487 Patent – Claim 9 '369 Patent – Claim 18 '879 Patent – Claims 1, 21, 46, 51, 54, 55	“driving score” or “driving scores”
'271 Patent – Claims 1, 4	“a sensor set comprising an image sensor, an audio sensor, an accelerometer, or a positioning module, or a combination thereof”
'487 Patent – Claim 1 '369 Patent – Claims 1, 26, 27 '879 Patent – Claims 1, 21, 46, 51, 54, 55	“a sensor set comprising an image sensor, an audio sensor, an accelerometer or a positioning module, or a combination thereof”
'271 Patent – Claims 1, 4, 6, 7 '487 Patent – Claim 1 '879 Patent – Claims 1, 21, 46, 51	“without data from vehicle sensors”
'369 Patent – Claims 1, 26, 27 '879 Patent – Claims 54, 55	“without data from the vehicle sensors”
'271 Patent – Claims 1, 3, 4, 5, 6, 7 '487 Patent – Claim 1 '369 Patent – Claims 1, 26, 27 '879 Patent – Claims 1, 21, 46, 47, 48, 49, 51, 54, 55	“sensor data”
'271 Patent – Claims 1, 4, 6, 7 '487 Patent – Claim 1 '369 Patent – Claims 1, 22, 24, 26, 27 '879 Patent – Claims 1, 21, 42, 44, 46, 47, 49, 51, 52, 54, 55	“sensor set”

X. PRIOR ART PRODUCTION

In connection with these Invalidity Contentions, USAA is also producing the prior art referenced in the Invalidity Contentions. *See* footnote 1, *supra*. USAA’s search for prior art references, additional documentation, and/or corroborating evidence concerning prior art systems and devices is ongoing. Accordingly, USAA reserves the right to supplement its production as it

¹¹ When a claim is invalid for indefiniteness, so is every claim that depends from it. This list should be taken to include all dependencies.

during the course of discovery obtains additional prior art references, documentation, and/or corroborating evidence concerning invalidity.

Dated: October 21, 2022

Respectfully Submitted,

FISH & RICHARDSON P.C.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on October 21, 2022, to all counsel of record.

/s/ Michael T. Zoppo
Michael T. Zoppo