

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNITED SERVICES AUTOMOBILE ASSOCIATION,

Petitioner,

v.

AUTO TELEMATICS LTD.,

Patent Owner.

Case IPR2023-00857

Patent No. 10,198,879 B2

PATENT OWNER AUTO TELEMATICS LTD's

SUR-REPLY

TABLE OF CONTENTS

	Page
I. CLAIM INTERPRETATION	1
A. “Driving Period”	1
a. A driving period must start at the beginning of a period in which the vehicle is being driven and must include the entire period in which the vehicle is driven.	1
b. A driving period is NOT a mere snapshot of time or an arbitrary number of minutes.	3
B. “A Start of a Driving Period”	4
C. “Driving Information”	8
II. CURRY DISCLOSES FAR LESS THAN PETITIONER ASSERTS.....	10
A. Curry’s Phone Does Not <i>Determine How a Vehicle Is Driven</i>	10
B. Curry’s Phone Does Not <i>Determine a Start of a Driving Period</i>	11
C. Curry’s Phone Does Not <i>Process the Driving Information to Generate a Driving Score Associated With a Particular Driver</i>	14
III. PETITIONER WALKS BACK ITS MOTIVATION TO COMBINE CURRY AND RABU	21
IV. PETITIONER’S ARGUMENTS REGARDING KATAYAMA ARE IRRELEVANT AND INACCURATE	27

I. CLAIM INTERPRETATION

A. “Driving Period”

The parties and Board agree that no express constructions are required. POR, 6; Pet. Reply, 2; Inst. Dec., 11-12. Yet, Petitioner inappropriately limits the definition of “driving period” to “a start of a driving period during which the mobile device is removably attached to the vehicle and the vehicle is in use.” Pet. Reply, 3; Ex-1001, 31:56-58. These claim features do not define a “driving period.” Ex-2001, ¶53.

- a. A driving period must start at the beginning of a period in which the vehicle is being driven and must include the entire period in which the vehicle is driven.**

Petitioner fails to read the claims as a whole and in context of the specification. Claim 1 recites:

[A] “determine...a start of a driving period during which the mobile device is removably attached to the vehicle and the vehicle is in use;

[B] process the sensor data...during the driving period to derive driving information associated with how the vehicle is driven....”

Ex-1001, 31:54-61. The claim language of limitation [A] concerns the “*start of a driving period*,” it is not the definition of “driving period.” Ex-2001, ¶53. A “driving period” is defined by a full reading of the claims (including [B]), as supported by the specification.

Consistent with the specification, the driving period is the period during which the vehicle is driven. POR, 38; Ex-2001, ¶54; Ex-1001, Abstract, 1:34—2:26 (describing a mobile device seeking to emulate a vehicle “black box,” which monitors the entire period in which the vehicle is driven), 18:40—20:63, FIGs. 4a, 4b (illustrating continuous processing of sensor data and generating driving information throughout the driving period, which starts when the start of the driving period is registered and ends when the driving period is terminated), 13:36-49 (“[a] main purpose [is]...to monitor and process sensor data captured by the mobile device, to derive driving information associated with a moving vehicle...to determine if a driving incident or event has occurred...”). This driving period must be consistent with the purpose of the invention: “to log driving information associated with the vehicle, when that vehicle is being driven.” Ex-1001, 3:19-21; Ex-2001, ¶54.

While “removably attached to the vehicle and the vehicle is in use” are conditions for the *start of* a driving period, the driving period is the period during which “driving information associated with how the vehicle is driven” is derived. Ex-1001, 31:54-61; Ex-2001, ¶¶53, 61. Petitioner misstates “driving period” as “*corresponding to a period during which the mobile device is removably attached to the vehicle and the vehicle is in use.*” Pet. Reply, 3. First, the claim does not include

the words “corresponding to.” Second, “corresponding to” does not mean “defining.”

Claim 1 requires that the processing be during a time period “associated with how the vehicle is driven.” This can only be met *during the time period, i.e., the duration*, when “the vehicle is driven.” Based on a plain reading of the claims, the specification, and common sense, PO maintains that the claim limitations “during which the mobile device is removably attached to the vehicle” and “the vehicle is in use” do not define the “driving period.” *See* Ex-2001, ¶¶49-55, 61.

b. A driving period is NOT a mere snapshot of time or an arbitrary number of minutes.

Petitioner repeatedly misinterprets “driving period” in terms of “snapshots,” *e.g.*, instances of time at which data is recorded when a phone call is initiated, or in terms of an arbitrary (pre-set) number of minutes of recording data after a phone call is initiated. *See* Pet., 24-26; Pet. Reply, 6-7. These interpretations are *inconsistent with claim 1*. *See* Ex-2001, ¶¶54-55.

If the driving period was a mere snapshot in time when a phone call was initiated and when other conditions were met, the additional requirements of the claim to “process the sensor data...during the driving period to derive driving information associated with how the vehicle is driven” and to subsequently “process the driving information to generate a driving score” could not be met. The processing

must occur “during the driving period to derive driving information associated with how the vehicle is driven,” not just at a snapshot in time or over an arbitrary time period untethered to driving. *See* Ex-1001, 31:59-61, 31:67—32:2; POR, 6-7, 11, 32; Ex-2001, ¶¶54-55, 124-129, 149.

The claims are not about scoring a driver’s random use of a cell phone at arbitrary times, and such interpretation does not properly consider the claim as a whole and would at least miss logging, processing, and scoring driving information during a significant portion of the driving period, which activities over the entirety of an actual driving period are explicitly supported by the ’879 specification. *See* Ex-1001, 19:17—20:51; POR, 6-7, 11-12, 14-15; Ex-2001, ¶¶52, 55. For example, the specification discloses “enforc[ing] the correct and consistent use of the Witness application...to guarantee that the application is enabled whenever a given insured vehicle is being driven” over “the total travelled distance of the vehicle” for “monitoring all vehicle journeys.” Ex-1001, 30:34-57.

B. “A Start of a Driving Period”

Petitioner relies on its improper construction for “a driving period” to erroneously limit the “*start of a driving period.*” A “start” is a particular time, while a “driving period” is a duration. Petitioner erroneously asserts that “because the...parameters defining ‘driving period’ are ‘removably attached...and the vehicle is in use,’ the claim leaves open the possibility of the driving period corresponding

to the beginning, middle or end of, a vehicle's operation.” Pet. Reply, 3. However, “removably attached...and the vehicle [being] in use” regard the *start of* a driving period; they do not define the driving period itself. Ex-1001, 31:54-58; POR, 6; Ex-2001, ¶¶50-55.

“Determin[ing] the start of a driving period” is a critical aspect of the claims “to detect occurrence of a predetermined event” (*e.g.*, an accident). POR, 6-7, 11. If the claimed “driving period” began at the middle or end of a period in which the vehicle is driven, the purpose of the claimed invention could not be accomplished. *Id.* For example, if the driving period started at the middle or end of the period in which the vehicle is being driven, but an accident occurs at the beginning when Petitioner's processing has not started, the purpose of determining the cause of the accident would be thwarted. *Id.*; Ex-1001, 13:36-55, 30:34-57. *See also* Ex-2001, ¶¶49-55, 61.

After the start of the driving period is determined, the driving period is not limited to anything other than the duration of time during which the vehicle is being driven. *See* Ex-1001, FIG. 4a, 20:23-51. Contrary to Petitioner's allegation, PO's characterization of the “start of a driving period” is not defeated by the '879 patent disclosing a registration process or other technical mechanism (such as a speed threshold) by which the mobile device determines the start of that driving period. *See* Pet. Reply, 7. *See, also*, POR, 13; Ex-2001, ¶61; Ex-1001, 3:21-48, 18:63—

19:16. The '879 patent discloses a computerized system having a mobile device (*e.g.*, a smartphone) with a programmable processor. Ex-1001, 10:63-67, 13:57-61, 16:62-65, 17:27-52. As such, the mobile device requires a practical way of electronically determining when a driving period starts (such as meeting a speed threshold) to trigger processing of sensor data. Such a trigger does not negate an understanding of a driving period being the period that the vehicle is driven. *See* Pet. Reply, 4; Ex-2001, ¶¶50-52, 54. *See, also*, Ex-1001, 3:21-45, 18:63—19:16. The fact that the start of the driving period is determined by the vehicle reaching a speed threshold does not alter the purpose of the invention to monitor sensor data related to the *entirety* of the driving period and derive driving information related to how the vehicle is being driven during that period. Ex-2001, ¶¶50-52, 54; Ex-1085, 263:15-18, 268:9-22, 269:13-25.

Thus, PO's expert was correct in noting that "the specifics of exactly when the driving period starts and exactly when it ends are not critical to the analysis or the driving period...." Pet. Reply, 4 (quoting Ex-1084, 99:7-10). Mr. Wilson correctly provided his interpretation according to embodiments citing available technology (*e.g.*, measuring a speed threshold), as would have been understood by a POSITA and as is supported in the specification. *See, e.g.*, Ex-1001, 3:32-48; Ex-1085, 263:15-18, 268:9-22, 269:13-25. PO does not "unjustifiably limit[] the start of [1.6] to the start of driving" just because the patent describes reaching a threshold

speed to indicate the start of the driving period. *See* Pet. Reply, 7. Reaching a threshold speed at which a vehicle would be considered by a computer to be driving is a practical approximation of the start of the driving period and, most importantly, has a nexus to driving, whereas a phone call is untethered to the determination of the start of actual driving. Ex-2001, ¶¶54, 68, 126-128. *See, also*, POR, 6-7, 25.

Even Curry generally understood the idea of measuring a speed that would indicate driving. *See, e.g.*, Ex-1005, 16:26-28 (suggesting that “driving mode” can be recognized when speed is “greater than 15 miles/hour”). A key difference is that, in the ’879 patent, once the driving period has been determined to start, processing sensor data commences and continues “during the driving period,” according to claim 1, to derive driving information associated with “how a vehicle is driven,” regardless of any arbitrarily timed phone call occurring sometime during or outside of driving. Phone calls are not going to stop or restart a driving period in the ’879 system, as it would defeat the purposes of the claimed invention to detect occurrence of a predetermined event, modify driver behavior, and determine insurance premiums. POR, 6-7, 15; Ex-1001, 1:27-30; Ex-2001, ¶¶55, 68.

The ’879 patent even acknowledges that phone calls may need to be handled during a driving period and discloses ways to do that without impacting the patent’s primary purposes. *See, e.g.*, Ex-1001, 3:63—4:36 (“voice-call management may comprise temporarily disabling and/or diverting voice-calls...during a driving

period”); Ex-2001, ¶68. Differing from Curry, however, a phone call does not define the start of a driving period.

The claims must be read in light of the specification to include processing for the entire driving period. Ex-1001, 16:48—18:32 (describing that the mobile device continuously samples and records sensor data in continuously generated data files), 20:23-51 (“The [mobile device] continues to sample sensor data, to derive driving information, and [the method steps] are repeated, until the driving period has...terminated.”). In summary, while the start of a driving period is conditioned on the phone being “removably attached” and the vehicle being “in use,” the driving period must be the period during which the vehicle is driven once the start is determined and until the period is terminated.

C. “Driving Information”

Petitioner ignores that while driving information can include speed and acceleration data from the sensor set, claim 1 requires that the mobile device must “process the sensor data from the sensor set during the driving period to *derive driving information associated with how the vehicle is driven.*” Ex-1001, 31:59-61. This “derived driving information” is defined to include more than raw sensor data and, when properly read in the entire claim, includes information regarding “how the vehicle is driven,” including “occurrence of a predetermined event.” *See, e.g.,* Ex-1001, 1:22-30, 3:19-25, 5:12-21 (“detailed driving information in the lead up to,

and immediately following a predetermined event of significance”), 7:1-3 (“driving information representing acceptable or unacceptable driving patterns”), 7:48-49 (selected portions of driving information associated with a detected event), 10:27-30 (processed driving information to generate and comprise a driving score), , 14:20-26 (“speed of impact, the g-forces the vehicle was subjected to during the collision, or any other information wherefrom the severity of the collision may be determined...”), 19:44-64 (automating determination of a driving incident by detecting a threshold or marked variation in acceleration, velocity, g-force, pitch, roll, yaw, or combination of derived driving information). POR, 2-3, 11-12, 14, 30-32; Ex-2001, ¶¶20, 23, 56, 63-65, 108-112.

Petitioner continues to allege that Curry’s phone determines “‘driving behavior’ information...such as...speeding, abnormal acceleration, abnormal deceleration, and taking sharp turns.” Pet. Reply, 4-5, 8. However, there is no evidence in Curry, let alone in Petitioner’s citations to Curry (Ex-1005, 3:24—4:6), that Curry’s phone determines anything abnormal in its raw sensor data. POR, 18-19, 22-24, 32-34; Ex-2001, ¶¶76, 78-80, 84. While PO agrees that Curry’s phone identifies phone use, there is no evidence in Curry that the claimed driving information concerning the behavior of the vehicle, including any abnormalities, is determined by anything other than Curry’s server, if at all. POR, 20-22, 24, 32-34; Ex-2001, 76-77, 81-82. This distinction is important because the ’879 claims *require*

that the mobile device perform this processing. Ex-1001, 31:52-53, 59-61. But instead of clearly mapping “driving information” as defined in the ’879 specification, Petitioner inaccurately maps “talking...or texting...while driving” to the claims, that is, what a *user* is doing on the phone instead of what a *vehicle* is determined to be doing by processing sensor data to derive driving information, as required by the claims. Pet. Reply, 5; POR, 18, 24, 32-33; Ex-2001, ¶149.

Curry discloses a phone call handler, which prevents certain unsafe *human* behavior, “such as talking or texting” when driving is identified. POR, 18-19; Ex-2001, ¶¶75, 79, 85, 114, 132, 156. While possibly being a *cause* of certain *vehicle* behavior, “talking or texting” is not vehicle behavior detected and processed during the claimed “driving period.” “Talking or texting” regards use of a phone, not use of a vehicle, and is not “how a vehicle is driven.” The claims require actual derivation of driving information related to how a vehicle is driven, which is not satisfied by determining that a phone is being used while a vehicle is being driven. POR, 24; Ex-2001, ¶149.

II. CURRY DISCLOSES FAR LESS THAN PETITIONER ASSERTS

A. Curry’s Phone Does Not *Determine How a Vehicle Is Driven*

Regardless of whether Curry’s objective is “to improve driver safety,” Petitioner fails to rebut that Curry’s phone does not determine *how* a vehicle is

driven. *See* Pet. Reply, 1-2. Instead, Petitioner waves this claim element off as “inconsequential” as compared to “whether” a vehicle is driven. *Id.*, 8. While Curry’s disclosure may seek to prevent talking or texting while driving, this has no bearing on whether Curry discloses “process[ing] the sensor data from the sensor set during the driving period to derive driving information associated with *how* the vehicle is driven.” Pet. Reply, 1; compare Ex-1001, claim 1.

The Board initially questioned the scope of Curry but did not fully evaluate the claim element of “how the vehicle is driven” in its Institution Decision. *See* Pet. Reply, 2 (citing Inst. Dec., 28). The Board did not address specific arguments regarding vehicle behavior, only “possible violations of mobile phone use or unsafe driving behavior,” such as “talking on or texting with mobile phones while driving,” which is not “driving information associated with how the vehicle is driven.” The Board now has sufficient evidence to reevaluate Curry.

B. Curry’s Phone Does Not *Determine a Start of a Driving Period*

Curry’s “multiple embodiments” do not disclose the claimed “driving period,” so Curry cannot disclose the start of it. Petitioner’s citations to Curry may show the start of a phone call and recording period occurring at the time Curry’s phone determines that the phone is in a certain activity mode, but these citations do not disclose the determination of the start of the claimed driving period. Pet. Reply, 5-6

(citing Ex-1005, 13:20—14:26 (FIG. 3), 16:7-22 (FIG. 4)); POR, 22-23, 35-38; Ex-2001, ¶¶83, 85, 123-128.

Curry's phone is limited to motion recording by collecting/caching raw sensor (GPS 314, accelerometer 316) data in the motion data cache 304 at the detection of an outgoing call 301 or receipt of an incoming call 303 by a motion recording activation 302 function. *See* Ex-1005, FIG. 3, 13:20-31. Curry's phone does not determine an activity of driving until activity mode recognition 306, *after* motion recording is started and raw sensor data is cached. *Id.*, FIG. 3, 13:31—14:4. The dynamical call handling module 308 then determines whether to block a call based on the determined activity mode and user permission data sent from outside the phone to a static database on the phone. *Id.*, 14:5-19. Then, “[d]ata from the motion data cache 304 and the activity mode recognition module 306 can be...sent back to the server 322” for further processing. *Id.*, 14:19-23. Curry at 14:23-26 merely discusses what occurs if the activity mode is not determined as driving. Thus, 13:20—14:26 (FIG. 3) of Curry does not disclose determining a start of a driving period or any processing regarding deriving driving information or vehicle behavior during a driving period. At best, this portion of Curry discloses taking a snapshot of activity after a recording period is triggered by a phone call and subsequently handling the call based on the activity and predetermined user permissions. This is

not the claimed “start of a driving period.” *See* Ex-2001, ¶¶149-152, 157-158 (describing FIG. 3 of Curry).

Curry, at 16:7-22 (FIG. 4), discloses Curry’s phone caching raw sensor data over a limited time period (e.g., 6 minutes) and *post-processing* the data merely to determine activity mode, similar to FIG. 3, for a call that was put through. Any “unsafe driving behaviors”...can be penalized after the fact by deducting the driving safety score in the data server” (*not on Curry’s phone*). Ex-1005, 16:7-18. While Curry’s phone can deal with changes in activity mode during the FIG. 4 process, there is no disclosure of Curry’s phone determining the start of the claimed driving period or any processing to derive driving information regarding vehicle behavior. *See id.*, 16:18-22. *See also* Ex-2001, ¶¶82, 124-125, 128, 149, 152 (describing Curry’s FIG. 4).

“Starting the recording of sensor data upon receipt of a phone call in Curry is not ‘start of a driving period,’” as required by the claims. Pet. Reply, 6 (citing POPR, 37). Curry’s caching process is untethered to driving, instead relying on a phone call or user input to start recording to “motion data cache,” and only thereafter determining an activity mode from the cached data, which may or may not indicate driving. Ex-1005, 8:29—9:3, 13:25-33 (FIG. 3), 16:7-22 (FIG. 4); 17:20-23 (FIG. 5). Ex-2001, ¶¶80-83, 85, 149, 157.

Thus, at most, Petitioner addresses the start of a recording period, not of the claimed driving period. Curry's phone may activate a call handler *at some time while* driving (*see* Ex-1005, FIG. 1, 122; FIG. 3, 308; 14:5-10), merely evaluating raw data from motion data cache, activity mode, and user permissions (Ex-1005, 14:17-26), but Curry's phone does not determine when driving starts or *how* the vehicle is driven after it determines the activity of driving. *See* Ex-2001, ¶¶76, 77, 79, 82-85, 88, 109, 113-114, 131-133. Curry's phone merely determines that the "user is driving." Ex-1005, FIG. 3, 310, 14:8-10.

C. Curry's Phone Does Not Process the Driving Information to Generate a Driving Score Associated With a Particular Driver

Petitioner erroneously alleges that Curry discloses "[o]ther types of driving information" including "a 'safety statistic' [that] can be 'reported to' a data server." Pet. Reply, 10. Contrary to Petitioner's allegation, this does not "confirm[] local processing of safety statistics." *Id.* This "safety statistic" is determined by Curry's server or is reported to Curry's server by Curry's Auto Insurance Companies 130 as "Driving Safety Scores." *See* Ex-1005, 3:26-30, 4:1-6, 10:3-5; FIG. 1 (104, 130), FIG. 2 (214, 216). Curry's phone reports to Curry's server "driving safety performance data," ***which is defined by Curry as raw sensor data from motion data cache.*** *See id.*, FIG. 1, FIG. 3, 7:5-17, 9:1-3, 9:31-33, 13:1-2, 14:19-21 (disclosing that Curry's server performs statistical analysis on raw sensor data 114, 116 received

as an upload from motion data cache 118 of Curry's mobile phone client 110). *See also* Ex-2001, ¶¶157, 199-201. Indeed, Petitioner appears to agree that "driving safety performance data" includes raw sensor data. *See* Pet. Reply, 9 ("location, speed, and acceleration data' are examples of 'driving safety performance data'"). "Driving safety performance data," "driving safety information," or "driver safety data" are the semantics used in Curry's disclosure to represent raw sensor data, which can be accompanied by an activity mode determination, and which is all sent to Curry's server for processing. Ex-1005, 8:29—9:3, 9:22-28, 11:15-18, 14:19-23, 18:1-3; Ex-2001, ¶¶76-77, 82.

Curry's drawings (FIGs. 1, 2, 3 below) confirm both raw sensor data (FIGs. 1, 2, 3, in red) transmitted to Curry's server (FIGs. 1, 2, 3, in blue) for further processing, and that further processing *by the server* includes statistical analysis and sharing of driving safety scores (FIG. 1, 2, in green) between the server (FIG. 1, 2, in blue) and third parties (FIG. 1, 2, in orange). Ex-1005, 9:30—10:5, 11:15-18, 11:26-30, 13:3-19, 14:17-23. Curry's drawings and accompanying disclosure, however, do not indicate such processing by Curry's *phone*. Curry's phone, at most, sends raw sensor data (FIG. 1, 2, 3, in red) along with an activity mode determination (FIG. 3, in purple) to Curry's server (FIGs. 1, 2, 3, in blue) for processing and statistical analysis. Ex-1005, 9:22-28, 13:1-2, 14:19-23.

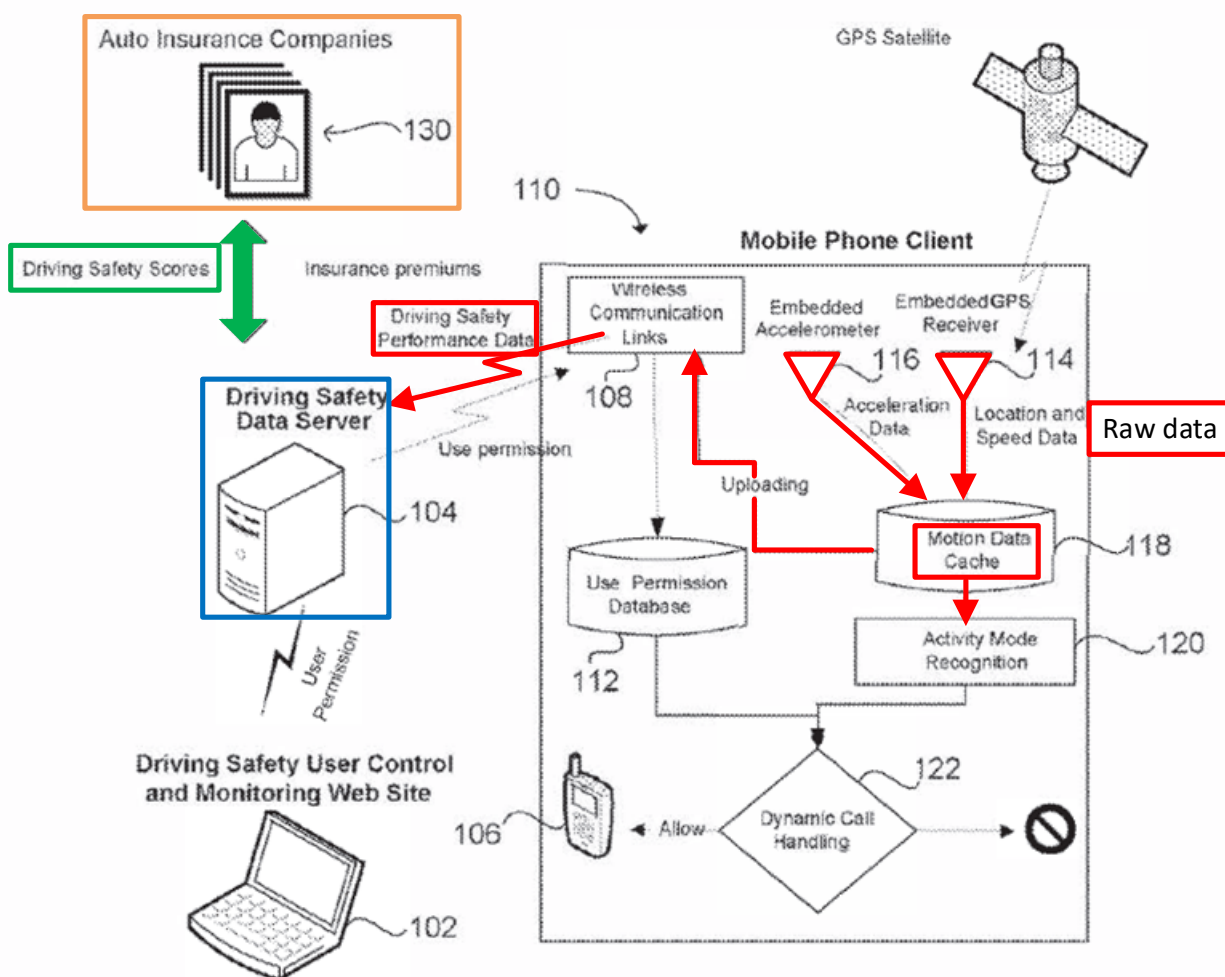


FIG. 1

Ex-1005, FIG. 1 (annotated).

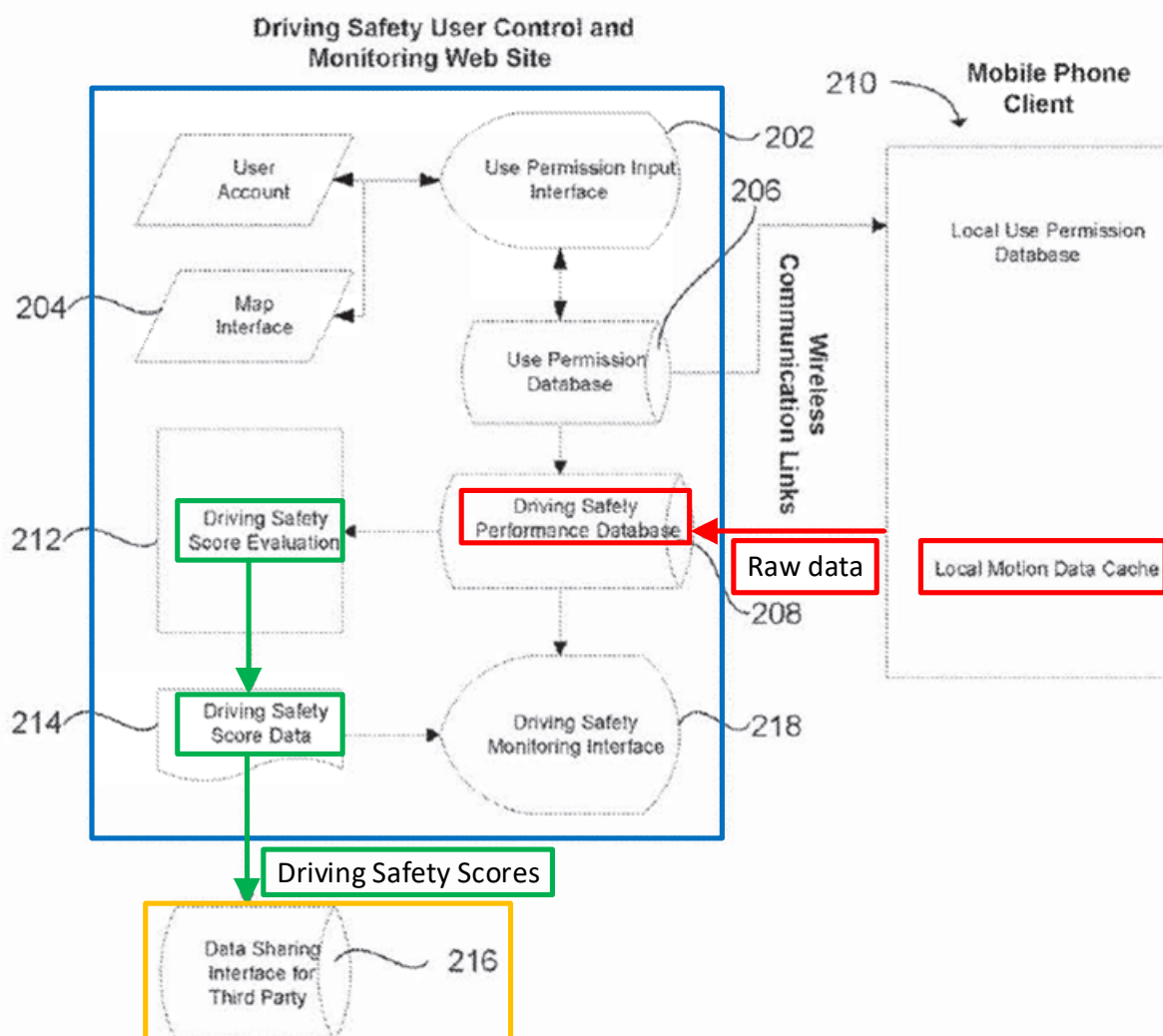


FIG. 2

Id., FIG. 2 (annotated).

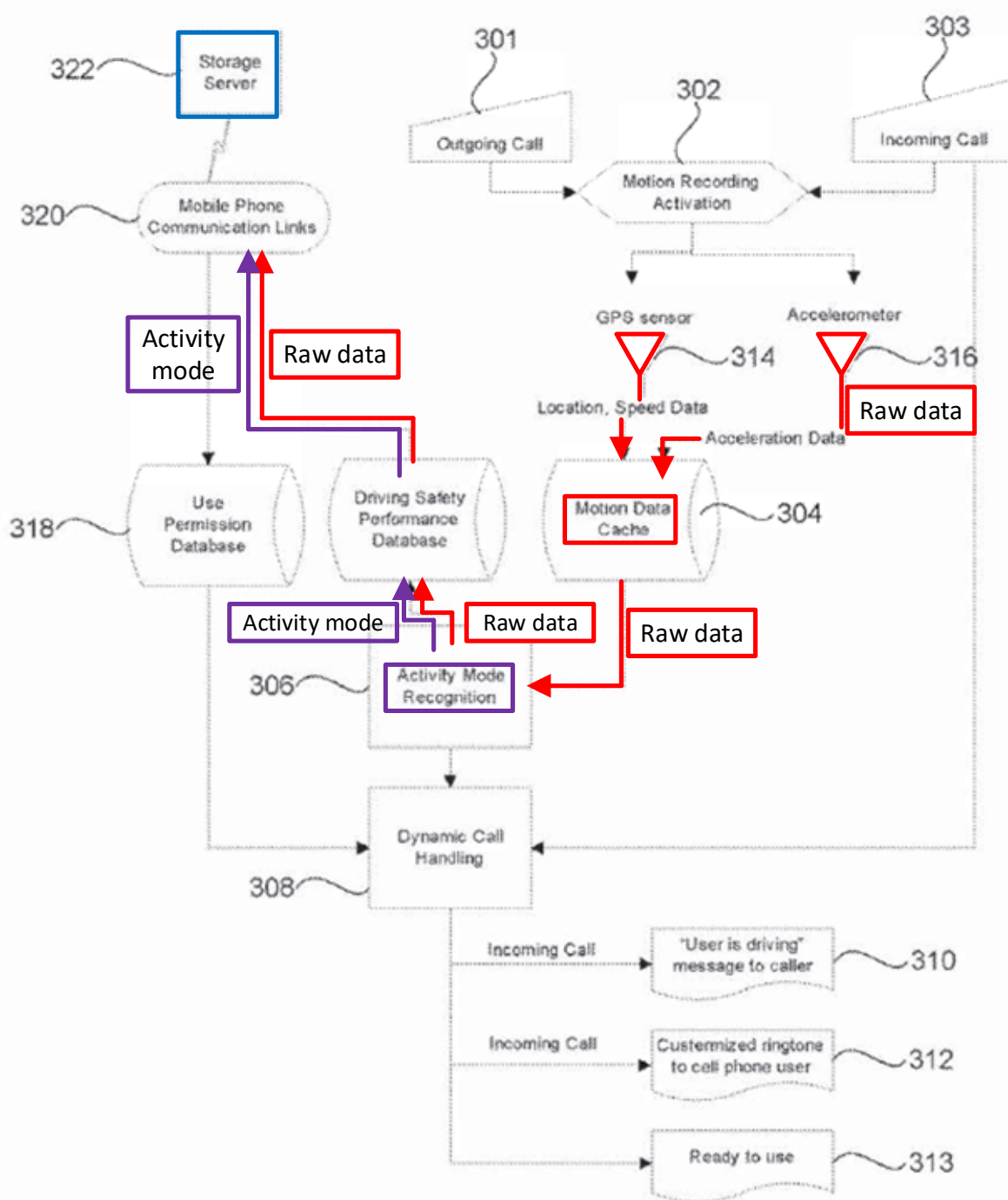


FIG. 3

Id., FIG. 3 (annotated).

Petitioner's assertion that Curry's phone processes a safety statistic and reports it to Curry's server is unsupported. Rather, Petitioner attempts to skew Curry into something that it is not. *See* Pet. Reply, 10, 13-14. First, Curry use of passive voice (*see, e.g.*, Pet. Reply, 10, citing Ex-1005, 3:24—4:6, 21:4-6) makes it wholly unclear what entity performs that function. Even so, referring to “adjust[ing] the related safety score” (Pet. Reply, 14, citing Ex-1005, 11:7-10), Curry makes clear that its statistical analysis and scoring is performed *at the server or by a third party*. *See, e.g.*, Ex-1005, 3:24-32, 4:1-6, 7:13-17, 9:22—10:12, 13:1-19, 16:16-18. Curry does not disclose that its mobile device calculates, reports, or shares safety statistics or scores.

A close reading of Curry's specification regarding FIG. 4 reveals that when Curry says “[i]n the post-processing stage, the activity mode recognition module can be used to...*adjust* the related safety score...” (*id.*, 11:7-10), it means that in “[t]he post-processing technique...any unsafe driving behaviors can be penalized after the fact *by deducting the driving safety score in the data server.*” *Id.*, 16:13-18 (discussing FIG. 4). While 11:7-10 does not say what adjusts the score (“used...to adjust” is passive voice and does not mean “adjust”), 16:13-18, in reference to 11:7-10, identifies the server as doing so. Further, Curry discloses this as *post-processing*, unlike the processing of the '879 claims. *Id.*, 16:13-16.

Reading Curry *as a whole* provides clarity that its server, or some third party, performs all statistical analysis related to driver scoring. *See, e.g.*, Ex-1005, FIG. 2, where the same functions (*e.g.*, driving safety score evaluation 212) are never shown by Curry as residing on its phone. Specifically, Curry sends raw sensor data from its phone client 110, 210 to server 104/driver safety user control and monitoring website 102, which compares the raw sensor data with the user permission data from 102 to calculate the safety statistic by Driving Safety Score Evaluation 212. Ex-1005, 3:24-32, 13:3-19, FIG. 1, FIG. 2; Ex-2001, ¶¶116, 154, 157, 192, 199. Further, Curry discloses, in FIG. 1, sharing driving safety scores between server 104 and auto insurance companies 130, and, in FIG. 2, sharing driving safety score data 214 with third parties 216.

While Curry's phone can have certain processing capabilities, the specific processing alleged is not inherent in the phone nor disclosed in Curry, and *it is Petitioner's burden, not PO's*, to prove otherwise. Petitioner has not done so. The capabilities of Curry's phone regarding what processing it "would have been capable of" is not sufficient for proving that Curry reads on the claim elements. *See* Pet. Reply, 11.

Curry's disclosure is limited to its phone determining activity mode (walking, driving, standing still, *etc.*) based on raw sensor data, and handling phone calls by comparing static user permission data to the determined activity mode. POR, 18-24,

33-34, 37, 45-46; Ex-1005, FIGs. 1-6; Ex-2001, ¶¶123-127. Determining activity mode and handling phone calls is not the “processing” required by the claims to “derive driving information associated with how the vehicle is driven” and to “generate a driving score associated with a particular driver.” POR, 39-40, 44-47; Ex-1001, 31:60-61, 31:67—32:2; Ex-2001, ¶¶131-133, 154-159.

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

Petitioner walks back its original obviousness position, which relied on Rabu’s frequency analysis, to rebut PO’s assertion that a POSITA would have considered a Curry-Rabu combination to be too unreliable for practical use. Since its Petition, Petitioner has relied on Rabu’s frequency analysis of “motion data from its accelerometer” to combine Rabu’s “mode shifting capabilities” with Curry to “restrict phone interactions” and “promote safe driving.” *See* Pet., 11-12. For example, Petitioner repeatedly cites to Rabu’s FIGs. 7 and 8, key parts of Rabu’s “detecting docking status of a portable device using motion sensor data.” *See id.*, 12 (citing Ex-1013, 8:13—10:42, describing Rabu’s “methods for operating a portable media device [PMD]...includ[ing] determining...a frequency spectrum associated with a motion of the [PMD]. Based on the orientation angle and the frequency spectrum, the [PMD] can determine a motion status and select a mode of operation...”).

Petitioner also repeatedly cites to Rabu at 3:1-10, disclosing that the “PMD can determine the holder motion status” and “can select a mode of operation based on...the holder motion status....By examining the frequency spectrum for a motion of an object, it can be possible to determine the type of motion....” *See* Pet., 12-14, 16, 23-24, 27 (citing Ex-1013, 3:1-10).¹

While Petitioner attempts to walk back its dependence on Rabu for this key aspect to focus only on Rabu’s holder status, Petitioner contradicts its Petition, which asserts that the combination provides “associated mode-shifting capabilities into Curry’s phone, thereby enhancing the Curry phone’s ability to promote safe driving...[to] define and determine different types of driving periods...and restrict phone use and/or adjust driving scores depending on a type of driving period

¹ In instituting this IPR, the Board appeared to understand Petitioner to rely on Rabu’s motion status being based on a frequency spectra analysis. *See, e.g.*, Inst. Dec., 29-30 (“...Petitioner has sufficiently explained that Rabu teaches the limitation “the mobile device is removably attached to the vehicle and vehicle is in use” because...(3) the PMD can determine if the PMD is in a moving vehicle; and (4) the PMD selects a mode of operation based on the holder motion status.”). *See also id.*, 30, quoting Ex-1013, 1:66—2:8 (“*Based on the determined frequency spectrum, the PMD can determine whether it is in a moving vehicle...*”) (emphasis in original).

determined.” Pet., 11. Petitioner *explicitly* relies on “relevant solutions and further motivations within Rabu,” which “describes discerning phone usage context from accelerometer data indicating...*motion status*, and changing the phone’s operating mode to account for that context,” for example, “switching operating modes based on determining that the phone is ‘docked in a *moving* vehicle.’” *Id.*, 13-14 (citing Ex-1013, 3:1-10, 8:13—10:42, FIGs. 5, 7, 8). Petitioner also *explicitly* depends on these frequency-based mode-shifting capabilities to generate or adjust “driving scores.” *See* Pet., 11, 16.

Petitioner’s Reply continues to rely on Rabu’s frequency analysis by touting Curry-Rabu’s “multiple additional advantages” including “‘adjustments to phone 106’s operating modes...and generation of user driving scores’...based on capabilities incorporated from Rabu.” *See* Pet. Reply, 14-15. While Petitioner certainly could have relied only on Rabu’s holder status determination in its Petition and Reply, it cannot now throw out the basis for its motivation to combine — Rabu’s holder motion status determination.

If Petitioner is permitted to walk back from its original position, its arguments to combine become even weaker. If Petitioner needed a reference providing holder status based on orientation angle, a POSITA would have found that Curry discloses at least an iPhone 3G smartphone capable of being held and knowing its orientation in different axes. Ex-1005, 2:22-27, 3:6-7, 8:30-33, 13:28-29. Petitioner itself

noticed that the same accelerometer is used in both Curry and Rabu, and that orientation and motion data can be used from the accelerometer to “determine both vehicle motion and docking status.” Pet. Reply, 15. Petitioner does not cite to Rabu to cure any other shortcomings of Curry, so it makes no sense for a POSITA to have looked to Rabu merely for an accelerometer’s orientation data, given Curry’s similar accelerometer and Rabu’s reliability issues. *See id.*, 16 (citing Ex-1085, 57:20—58:20). Further, Curry already discloses being able to “precisely identify the type of activity” to address its own stated challenge “to distinguish walking versus running.” Ex-1005, 16:23—17:2.

The fact remains that Rabu is unreliable and provides its own evidence to substantiate this unreliability by incorporating the “Ogawa” reference. Ex-1013, 7:31-59 (citing Ex-2002). Mr. Wilson’s assertion that Rabu, with Ogawa’s technology as its base, presents reliability issues that would have deterred a POSITA from looking to Rabu is un rebutted. POR, 27-29, 38, 49; Ex-2001, ¶¶100-101, 130, 170.

Presumably recognizing the propriety of PO’s expert’s opinions, Petitioner now asserts that Rabu is only needed for its holder status (Rabu’s FIGs. 6 (602), 7), not holder motion status (Rabu’s FIGs. 6 (603), 8, 9, 10), and mischaracterizes Rabu to conflate holder status with holder motion status. *See* Pet. Reply, 17-18. Yet, if only Rabu’s holder status was combined with Curry, a POSITA could not have

achieved Petitioner’s purported benefits by leveraging Rabu’s “associated mode-shifting capabilities into Curry’s phone, thereby enhancing the Curry phone’s ability to promote safe driving,” because Rabu’s mode-shifting capabilities are based on Rabu’s holder motion status. *See* Pet., 11-12 (citing Ex-1013, 8:13—10:42). Rabu’s holder alone would not have achieved Petitioner’s suggested benefits, as Petitioner recognizes, without adding holder motion status.

Petitioner baselessly accuses PO of alleging that Curry and Rabu are incompatible and inoperable. Pet. Reply, 14-18. PO, however, never raised those arguments. Rather, PO argued that Curry-Rabu would have been unreliable and ineffective at curing Curry’s shortcomings, and thus a POSITA would not have made the combination. Even if the combination were made, it simply would not have achieved the “nuances” of Rabu’s FIG. 5, which Petitioner touted as a motivation to combine throughout these proceedings. *See* Pet., 11-14 (citing Ex-1013, 3:1-10, 8:13—10:42, FIGs. 5, 7, 8), 16 (points 4, 5, citing Ex-1013, 3:1-10).

Regarding Petitioner’s misplaced “bodily incorporation” argument (Pet. Reply, 16-18), *In re Keller*, upon which Petitioner relies, stands for the proposition that:

To justify combining reference teachings in support of a rejection it is not necessary that a device shown in one reference can be physically inserted into the device shown in the other....The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that

the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art.

In re Keller, 642 F.3d 413, 425 (CCPA 1981). PO does not disagree with this proposition nor argue that frequency spectra must be physically inserted or incorporated into the Curry-Rabu phone as argued by Petitioner. Pet. Reply, 17. PO's arguments address "what the combined teachings...would have suggested to [a POSITA]," as required by the *Keller* court. *Keller*, 642 F.3d at 425. PO rightly identifies a lack of motivation to combine Rabu with Curry based on the unreliability of frequency spectra to determine holder motion status. The Curry-Rabu phone would not have provided the nuanced determination of activity mode sought by the combination, and therefore, a POSITA would not have made the combination. This unreliability, to which Mr. Wilson attested (*see* Ex-2001, 100-103, 160-167, 170), is unchallenged by Petitioner. Therefore, Petitioner's bodily incorporation argument is simply unfounded.

Petitioner originally asserted the full combination of Curry and Rabu, but when faced with substantial concerns about Curry-Rabu's feasibility, now promotes only a portion of the combination (the holder) as being relevant.² By walking back,

² In attempting to "undo" its Petition, Petitioner attempts to ignore or hide its previous references to frequency spectra, unsuccessfully cherry-picking its past

Petitioner now seems to agree that a POSITA would not have combined Rabu with Curry, as PO has asserted all along.

IV. PETITIONER’S ARGUMENTS REGARDING KATAYAMA ARE IRRELEVANT AND INACCURATE

PO never argued concepts of non-analogous art or inoperability regarding Katayama, so Petitioner’s arguments as such are irrelevant. *See* Pet. Reply, 23-25. PO’s arguments address the differences between the claimed storage and Katayama’s storage configuration for its custom vehicle-sensor-integrated device and the lack of motivation to combine Katayama’s storage with Curry-Rabu. *See* POR, 56-58; Ex-2001, ¶¶177-179.

Further, Petitioner fails to explain how or why a POSITA would have implemented such configuration on a conventional smartphone, or why Curry would have needed “enhancements” for caching limited data associated with Curry’s phone call handling, especially when processing on the Curry-Rabu phone discloses no way of distinguishing “important situation data” or detecting accidents. Curry discloses evaluating all raw data at the time of a phone call for activity mode and sending all

citations having “no reference to frequency spectra.” Pet. Reply, 19. However, Petitioner’s references at Ex-1003, ¶¶89, 93-96, 98-99, 101-102, 104; Ex-1013, 2:2-11, 5:53—6:17, 8:1-4 (FIG. 5) all rely on frequency spectra.

cached raw data to Curry's server for statistical analysis. POR, 40-43 (citing Ex-1005, FIGs. 1, 2, 3, 5; 7:8-10, 8:30—9:33, 11:15-18, 13:1-5, 13:27—14:26, 16:7-22, 17:1-14, 17:32—18:3); Ex-2001, ¶¶140, 142-145.

For the reasons set forth herein, PO respectfully requests that the Board find all challenged claims patentable.

July 15, 2024

Respectfully submitted,

/Steven E. Tiller/

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

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

*Counsel for Patent Owner,
Auto Telematics Ltd.*

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

Pursuant to 37 C.F.R. § 42.24, Patent Owner Auto Telematics Ltd., certifies that, based on the word count of the word processing application used to prepare this paper, the number of words in this Patent Owner Sur-Reply is 5,597. This word count does not include the items that may be excluded from the count under 37 C.F.R. § 42.24(a) including the table of contents, table of authorities, list of exhibits and this certificate.

July 15, 2024

Respectfully submitted,

/Steven E. Tiller/

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

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

*Counsel for Patent Owner,
Auto Telematics Ltd.*

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), undersigned counsel certifies that on July 15, 2024, this paper – Patent Owner Auto Telematics Ltd.’s Response Pursuant to 37 C.F.R. §42.107 – was served via electronic mail upon the following counsel of record for Petitioner:

Via Email Only (by consent):

W. Karl Renner
IPR36137-0025IP1@fr.com

Thomas Rozylowicz
tar@fr.com

Andrew B. Patrick
patrick@fr.com

Michael T. Zoppo
zoppo@fr.com

Ryan Chowdhury
rchowdhury@fr.com

PTABInbound@fr.com

axf-ptab@fr.com

July 15, 2024

Respectfully submitted,

/Steven E. Tiller/

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

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

*Counsel for Patent Owner,
Auto Telematics Ltd.*

Email:

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