

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNITED SERVICES AUTOMOBILE ASSOCIATION,
Petitioner,

v.

AUTO TELEMATICS LTD.,
Patent Owner.

IPR2023-00857 (Patent 10,198,879 B2)
IPR2023-00911 (Patent 9,311,271 B2)

Record of Oral Hearing
Held: August 29, 2024

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

IPR2023-00857 (Patent 10,198,879 B2)

IPR2023-00911 (Patent 9,311,271 B2)

APPEARANCES:

ON BEHALF OF THE PETITIONER:

Andrew B. Patrick
W. Karl Renner
Jennifer J. Huang
Ryan Chowdhury
Thomas Rozylowicz
FISH & RICHARDSON. P.C.
patrick@fr.com
renner@fr.com
jjh@fr.com
rchowdhury@fr.com
rozylowicz@fr.com

ON BEHALF OF THE PATENT OWNER:

Steven E. Tiller
Gregory Stone
Lisa Schreihart
WHITEFORD, TAYLOR & PRESTON, LLP
stiller@whitefordlaw.com
gstone@whitefordlaw.com
lschreihart@whitefordlaw.com

Lissi Mojica
ANSWERS IP LLC
lissi@answersip.com

The above-entitled matter came on for hearing on Thursday, August 29, 2024, commencing at 12:00 p.m., via video teleconference.

P R O C E E D I N G S

- - - - -

JUDGE O'HANLON: Good afternoon, everyone. This is Judge O'Hanlon. I'm joined by Judges Hoskins and Ippolito. This is a hearing for two proceedings, IPR2023-00857, regarding U.S. Patent Number 10,198,879 and IPR2023-00911, regarding U.S. Patent Number 9,311,271. All proceedings are captioned United Services Automobile Association versus Auto Telematics Limited. I'd like to start by having counsel for the parties introduce yourselves for the record, beginning with counsel for Petitioner, please.

MR. PATRICK: Thank you, Your Honor. My name is Andrew Patrick. I'm joined by my colleagues Tom Rozylowicz, Karl Renner, Jenny Huang, and Ryan Chowdhury on behalf of Petitioner, USAA.

JUDGE O'HANLON: Thank you, Mr. Patrick. And for Patent Owner, please.

MR. TILLER: Good afternoon, Your Honor. My name is Steve Tiller. I'm with Whiteford, Taylor & Preston. With me are my colleagues Greg Stone, Lisa Schreihart, and Lissi Mojica on behalf of Patent Owner.

JUDGE O'HANLON: Thank you, Mr. Tiller.

I have a few housekeeping items to go through before we begin today. First of all, our primary goal is to allow you to make arguments and to be heard. If at any time during the proceeding you encounter technical or other difficulties that undermine your ability to do so, please let us know immediately by contacting the team members who provided you with the connection information for today's hearing.

Recording of any PTAB hearing is prohibited. The court reporter

1 will provide a transcript of the hearing that will become a part of the record
2 in each of these proceedings. To ensure that the transcript of this hearing is
3 clear, we ask you to ensure your microphone is positioned close to you when
4 you're speaking, and when not speaking, please mute your microphone.

5 When referencing your demonstratives, papers, or exhibits, please state the
6 slide or document number so that we can follow along more easily and for
7 clarity of the record. As I mentioned, we'll be addressing two proceedings
8 today. As we set forth in our hearing order, the parties will present
9 arguments for the '857 proceeding first and then with the '911 proceeding.

10 There will be one transcript that will be entered into each of these
11 proceedings. Therefore, when presenting arguments for the '911
12 proceeding, the second proceeding, if appropriate, the parties may simply
13 refer back to the arguments made for the first proceeding, the '857
14 proceeding.

15 Each side will have 60 minutes of total time to argue each
16 proceeding. Petitioner will go first, followed by Patent Owner, and each
17 side may reserve time for rebuttal. We will be keeping time during your
18 presentations, but please also keep track of your time yourselves since we do
19 not have a timer for these online or virtual hearings. If you run over during
20 your time during your argument in chief, we will let you continue using the
21 time you've reserved for rebuttal. We will endeavor to let you know when
22 this happens. But again, please keep track of your time yourselves.

23 Finally, please remember that your arguments should be limited to
24 only those arguments previously presented in your briefs. Please make it
25 clear which challenges and claims you're addressing at all times. We ask
26 that the parties hold any objections regarding the opposing party's

1 arguments until it is your time to argue.

2 Do either of the parties have any questions before we begin?

3 All right. Hearing none, I invite Mr. Patrick to begin. Mr. Patrick,
4 would you like to reserve any time for rebuttal?

5 MR. PATRICK: Thank you, Your Honor. We would like to
6 reserve 15 minutes for rebuttal.

7 JUDGE O'HANLON: Fifteen minutes? Okay. Thank you. You
8 may begin when you're ready.

9 MR. PATRICK: Thank you, Your Honors. And may it please the
10 Board. My -- my name is Andrew Patrick, and I represent Petitioner,
11 USAA. I'm joined by my colleagues, Karl Renner, Tom Rozylowicz, Ryan
12 Chowdhury, and Jenny Huang. We plan to divide today's presentation on
13 the '879 Patent IPR between myself and Ryan.

14 More specifically, and if you'll turn with me to slide 3 of
15 Petitioner's demonstratives, Ryan intends to explore with you the manner in
16 which the proposed combination of Curry and Rabu renders obvious the
17 independent claims, and in doing so will particularly focus on topics
18 identified as 1 and 4 on this slide, determining a start of a driving period and
19 processing driving information to generate a driving score. Before reaching
20 that part of our presentation, however, I'd like to address the disclosures of
21 Curry and Rabu and the combination of those two references that was
22 proposed in the petition and in Dr. Michalson's accompanying testimony.
23 We believe that this would be helpful, both because Patent Owners attempts
24 to pry that combination apart, rely on what we believe to be mis-readings of
25 the references themselves, and of the combination as actually proposed in
26 the petition. As we'll discuss, a person of skill in the art reading Curry and

1 Rabu would have been motivated to combine the teachings of those
2 references to enhance Curry in various ways and would have reasonably
3 expected success in doing so.

4 I'd like to ask Your Honors to turn to slide 10, which depicts at
5 right Curry's Figure 1. As shown in Figure 1, Curry's mobile phone client
6 processes acceleration, location, and speed data provided by embedded
7 sensors including a GPS receiver and an accelerometer to derive information
8 about both whether and how a vehicle is being driven, and then further
9 leverages that derived driving information both for purposes of uploading
10 driving safety performance data to a driving safety data server with which
11 the mobile phone shares wireless communication links and for purposes of
12 real-time dynamic call handling that prevents unsafe driving behaviors.

13 As Dr. Michalson testified in the clip of his declaration shown at
14 left, raw data and derived driving behavior information is stored in mobile
15 phone 106, for example, in a motion data cache 118 and a driving safety
16 performance database 324. And mobile client 110 processes stored
17 information both to determine a mode within which the mobile phone should
18 operate and to generate a driving safety score for the user that can be
19 wirelessly communicated to third parties.

20 Now, in more detail, Curry explains at page 10, lines 27 through
21 30, and specifically of the PDF submitted as Exhibit USAA 1005, that the
22 use of the mobile phone client 110 that includes the motion data cache 118,
23 the activity mode recognition 120, the use permission database 112, and the
24 dynamic call handling module 122 provides a reliable method to detect and
25 prevent talking while driving. Curry adds on the following page 11 at lines
26 6 through 10 that the activity mode recognition module can be used to

1 determine the context of a phone call to a selected user based on previously
2 collected motion data and adjust the related safety score for the user if a
3 violation is identified. Notably, Curry, in at least that instance, discloses that
4 the activity mode recognition module 120 that is depicted as part of the
5 mobile phone client 110 running on Curry's mobile device can be used to
6 adjust a user safety score if a violation is identified based on collected
7 motion data.

8 Slide 11 reproduces related disclosure from Curry explaining that
9 the data in the motion data cache can be compared with the user permission
10 data to enable a driver safety statistic to be calculated based on when and
11 where the wireless computing device was used and the motion of the device
12 and adding that the driver safety statistic may be decreased for certain user
13 behaviors, such as use of the device while driving a vehicle. Notably, Curry
14 goes on to explain in the same paragraph that the driver safety statistic can
15 also be decreased based on driving behavior, such as speeding, abnormal
16 acceleration, abnormal deceleration, and taking sharp turns. And, as we've
17 just seen in Curry's Figure 1, Curry's mobile phone client includes a motion
18 data cache, a use permission database, and an activity mode recognition
19 module that can adjust a user safety score based on violations determined
20 from collected motion data.

21 Now, from this and related description, a person of skill in the art
22 would have understood and found obvious that Curry's comparison of the
23 data in the motion data cache, with the user permission data, for purposes of
24 calculating a driver safety statistic is a process that Curry suggests can be
25 beneficially performed locally by the mobile phone prior to wirelessly
26 communicating the resulting driver safety performance data to the data

1 server. Indeed, Curry concludes this paragraph with the express statement
2 that the safety statistic can be reported to or calculated at the data server.
3 Now Patent Owner contests that this language would have suggested to a
4 person of skill that the mobile phone can locally process sensor data to
5 derive driving information used by the phone to calculate the safety statistic
6 for purposes of reporting that statistic to the data server. But in view of
7 these and other disclosures by Curry, we don't believe that Patent Owner's
8 contrary assertion that Curry would have been understood as limiting
9 derivation of driving information or calculation of a driving score to the
10 server is correct. For instance, skipping ahead to slide 16, we can see
11 reproduced Curry's Figure 5, which is said by Curry to depict a flow chart
12 showing how to combine two sources of data from the embedded GPS
13 receiver and accelerometer and a mobile phone to precisely identify the type
14 of motion in accordance with one embodiment. And more specifically,
15 Curry explains at PDF page 17, lines 2 through 14, that GPS location data
16 are first fetched from different timestamps 502, and a space-mean and speed
17 measure is calculated 504 as travel distance divided by time interval, adding
18 that if the space-mean speed is in a high speed range, then the user is likely
19 to be in driving mode 506. But that if a GPS measurement gives a median
20 range space-mean speed for example, one mile per hour to 15 miles per
21 hour, then accelerometer data needs to be fetched 510, and the magnitude of
22 acceleration deceleration is calculated 512 for the same data collection time
23 interval. Curry goes on to describe in the same paragraph that this further
24 calculation of acceleration or deceleration enables Curry's system to
25 distinguish between activities such as walking, running, and driving at low
26 speed or under traffic congestion conditions. And from this and related

1 description, a person of skill would have understood and found obvious that
2 the activity mode recognition module that Curry describes as being present
3 in Curry's mobile device determines driving activity and derives information
4 on driving speed and acceleration from locally stored GPS and
5 accelerometer sensor data. And as we earlier discussed, that same activity
6 mode recognition module can further adjust the user safety score based on
7 violations also determined from collected motion data, including speeding
8 and abnormal acceleration or deceleration.

9 Notably, however, and again, Curry leaves open the possibility of a
10 driving safety score being either reported to a data server by the mobile
11 device, as just discussed, or additionally, or alternatively, being calculated
12 by the data server itself. In that regard, I'd like to ask Your Honors to turn
13 back with me to slide 12, which reproduces the portion of Curry describing a
14 trade-off between the complexity of the mobile device and the amount of
15 information communicated on the mobile device's network that would have
16 informed the person of skill's decision as to the location of software and
17 firmware used to create the functionality of the system for monitoring and
18 controlling the use of a mobile computing device illustrated in Figure 1. For
19 instance, Curry discloses that the actual location of the modules, caches, and
20 databases can be decided based on engineering and business needs.

21 In recapping what we just discussed, Curry discloses a driving
22 safety statistic that can be either locally or remotely determined based both
23 on comparison of locally stored GPS and accelerometer data to locally
24 stored use permission data, and on driving behavior information, including
25 speeding and abnormal acceleration, that is itself derived from the same
26 locally stored GPS and accelerometer sensor data. Curry then adds that the

1 calculated driving statistic can be reported to the data server and depicts
2 wireless communication between the mobile phone client and the server,
3 including the communication of driving safety performance data from the
4 mobile phone to the server. Now, even if one were to accept for the sake of
5 argument alone, that Curry's express disclosures are insufficient to suggest
6 local processing of raw sensor data to derive driving information and to
7 determine driving safety scores, Curry, at page 12, lines 3 to 18, specifically
8 encourages the person of skill to create Figure 1's monitoring and control
9 functionality by locating the involved modules, caches, and databases,
10 wherever makes sense in view of business and engineering needs, further
11 accounting for a trade-off between the complexity of the mobile device and
12 the amount of information communicated on the mobile device's network.

13 For at least these reasons, Petitioner respectfully submits that Dr.
14 Michalson's testimony accurately indicates that a person of skill would have
15 understood and found obvious that Curry's mobile phone locally processes
16 raw sensor data to derive driving information, and that Curry's driving
17 safety statistic can just as obviously be calculated either locally by the same
18 mobile phone, or remotely at a data server based on data received from the
19 mobile phone.

20 And I'd like to pause for a moment to address any questions Your
21 Honors may have with respect to these aspects of Curry's disclosure before
22 briefly turning to discussion of Rabu and the enhancement of Curry based on
23 Rabu's teachings.

24 JUDGE O'HANLON: I don't think we have any questions at this
25 time. Thank you.

26 MR. PATRICK: Thank you, Your Honor. With that, I'd now like

1 to ask Your Honors to turn with me to slide 21, which reproduces at bottom
2 disclosure from Rabu of use of a generally conventional accelerometer to
3 measure acceleration due to gravity, and based on that measurement,
4 processing an angle of tilt with respect to a reference plane. As Dr.
5 Michalson explains, paragraph 67 of his declaration, reproduced at the top of
6 this slide, Rabu describes using an accelerometer embedded within a
7 portable media device to determine whether the portable media device is in a
8 dock, resting on a surface, or being handled by a person in addition to
9 whether the portable media device is located in a moving vehicle or
10 stationary vehicle. In that regard, Rabu notably describes a first orientation
11 determination that informs whether the mobile device is in a dock, resting on
12 a surface, or being handled. And the second motion determination that
13 informs whether the mobile phone is located in a moving vehicle or
14 stationary vehicle. And as just discussed, for instance, Rabu's orientation
15 determination is based on an angle of tilt that is itself determined based on
16 the generic accelerometer's measure of acceleration due to gravity. And it's
17 further shown on this slide Rabu further contemplates that in some
18 embodiments, accelerometer 409 can sense the amount of dynamic
19 acceleration. That based on this information, processor 404 can determine a
20 frequency spectrum associated with the holder motion and consequently
21 determine the motion status of PMD 400.

22 Now, regarding orientation –

23 JUDGE HOSKINS: Can I stop you for second, please? This is
24 Judge Hoskins.

25 MR. PATRICK: Certainly, Your Honor. Thank you.

26 JUDGE HOSKINS: Well, I kind of – I have two -- I'm wondering

1 what the interface is between Rabu and Claim 1 of this Patent, of the '879
2 Patent. And so, I think you're citing Rabu principally for the limitation that
3 talks about determining the start of a driving period during which the mobile
4 device is removably attached to the vehicle. And so, you're getting the
5 removably attached to the vehicle from Rabu's docking of the mobile
6 device. Do I have that correct?

7 MR. PATRICK: That's correct, Your Honor.

8 JUDGE HOSKINS: Okay. So then, it also, this determination step
9 of Claim 1 also talks about this period being when the vehicle is in use.
10 Walk me through that latter part in terms of what's coming from Curry and
11 what's coming from Rabu in your combination.

12 MR. PATRICK: Certainly, Your Honor. I appreciate the question,
13 and I'd be happy to do that. So, with respect to Curry's Figure 5, for
14 instance, that we were just discussing, and in that regard, we could turn back
15 to slide 16. Curry discloses its own method for determining motion status of
16 the mobile device as it's located within a vehicle. And then based on that
17 activity mode recognition, establishing a start of a period of time during
18 which the vehicle is being driven. And more specifically, in this process that
19 you see in Figure 5, it uses, in some instances, both GPS data and
20 accelerometer data. So, within the flow chart, you can see that there's a
21 determination of a range of speed based on GPS data from two different
22 points in time and at two different locations. And if it's determined that the
23 vehicle is exceeding a certain speed threshold, then great, you're in the
24 driving mode. On the other hand, and as we mentioned, if there's a
25 determination that it's not exceeding that speed, then there can be a further
26 check against accelerometer data of the motion magnitude range that can

1 result if there is a low motion magnitude range based on accelerometer data
2 on the determination that you are driving, but you may be driving at a low
3 speed, for example, instead walking or running. So, from that disclosure, we
4 have in Curry already its methodology for determining motion status, which
5 we in the petition then map to a determination of with respect to the 1.6
6 limitation, for example, that the vehicle is in use. And the Figure 5
7 disclosure that I was just discussing, it doesn't stand alone, it's actually
8 located within Curry on a very next page from an earlier discussion of
9 Figure 4. Figure 4 actually explains the process that can be initiated by an
10 incoming phone call or a text, or even manually by the user through the user
11 interface of the phone for starting a monitoring period. And specifically
12 what Curry is doing there is it's checking to see if the driver is engaged in
13 the unsafe driving behavior, for example, talking while driving. And so, in
14 response to those user inputs, it initiates the activity mode recognition
15 process, an example of which is shown on Figure 5. And then further within
16 a given range of data that it's monitoring, this timestamp sensor data from
17 the GPS and the accelerometer, it will pinpoint a start of the driving period
18 that coincides exactly with, for example, when the vehicle's speed exceeded
19 that high-speed threshold. Curry describes this in one example as being 15
20 miles per hour. So, if we're looking at limitation 1.6 of Independent Claim
21 1, Curry, we believe, renders obvious, even without Rabu, a determination
22 based on at least one of the inputs received by the user interface, for
23 example, in response to an incoming phone call or text or even manually by
24 the user as they're getting into the vehicle and they're selecting that they
25 want to start driving. And sensor data from the device to sensor set and this
26 GPS and/or accelerometer data, a start of a driving period during which the

1 mobile device is in a vehicle that is in use. And what Curry alone doesn't
2 get you is that the mobile device is removably attached to the vehicle. And
3 that's really where Rabu provides that portion of the obviousness analysis.
4 And it's therefore why we've been saying all along and actually going back
5 to the petition itself, that the person of skill would have found obvious
6 actually the integration for good reason of Rabu's orientation data, and then
7 it's associated nuanced operating mode determinations. And so, I know that
8 was a very long answer to your question. I hope I answered the question,
9 and please, if I didn't, let me know if there are any subparts you'd like to
10 discuss. Otherwise, I could get more into the obviousness.

11 JUDGE HOSKINS: You answered the question. Thank you.

12 MR. PATRICK: Okay. Thank you, Your Honor. Okay. So, if we
13 were to actually return to slide 21, you know, as I was saying, Rabu
14 describes its first orientation determination, it then describes its second
15 motion determination on slide 22 regarding the orientation. We can see as
16 shown in Rabu's Figures 1 through 3, reproduced at the bottom of slide 22,
17 that Rabu discloses that when the mobile phone detects that it is at a specific
18 angle, it can determine that it's coupled to a specific dock and can therefore
19 switch to an associated mode of operation.

20 At slide 23, we see reproduced at the bottom, Figure 5 of Rabu,
21 which shows operational modes A through G. And as can be seen, those
22 modes take into account both orientation and motion status of the mobile
23 phone. And so, for instance, Rabu describes switching operating modes
24 based on determining that the phone is docked in a moving vehicle, as
25 opposed to being handheld while located in a moving vehicle. And as
26 shown in slide 24, Rabu's processor 404 uses the same generic

1 accelerometer 409 to determine both the phone's motion status and
2 orientation angle.

3 Now, I'd like to ask Your Honors to turn with me to slide 41. At
4 upper left, that shows the petition's contention that a person of ordinary skill
5 in the art would have found obvious the integration of Rabu's dock status
6 sensing and associated mode shifting capabilities into Curry's phone to
7 promote safe driving. Along those lines, the petition at page 13 noted both
8 that Curry suggests correlating different activity modes with different
9 operating modes, and accounting in nuanced ways for phone usage context
10 when determining driving scores and phone usage restrictions, and that Rabu
11 describes discerning phone usage context from accelerometer data indicating
12 phone orientation angle and motion status and changing the phone's
13 operating mode to account for that context. Now, for instance, Rabu's
14 Figure 5 in the related description suggests switching operating modes based
15 on determining that the phone is docked in a moving vehicle. And the
16 petition noted that it would, for example, have been obvious to change the
17 phone's operating mode to one involving relatively fewer restrictions if the
18 phone is docked within a moving vehicle, as opposed, for example, to being
19 handheld within the moving vehicle. The result, as Dr. Michalson explains
20 at paragraph 88 of his declaration and shown at upper right, is a device with
21 added functionality capable of defining and determining different types of
22 driving periods based on user inputs and sensor data, and if appropriate,
23 restricting phone use and/or adjusting user driving scores depending on a
24 type of driving period determined. And Patent Owner has argued that a
25 person of skill would not have enhanced Curry based on Rabu's teachings,
26 based on difficulties that they've alleged with respect to determining motion

1 status using frequency spectrum. That, despite Rabu's expressed
2 recommendation of that approach in connection with some of its
3 embodiments, for example, in the portion of Rabu's column 4 disclosure that
4 we earlier saw together. And Patent Owner's argument fails for at least two
5 reasons. First and foremost, it asks Your Honors to look past Rabu's
6 expressed disclosure recommending its exemplary method of motion status
7 determination, and to instead imagine that a person of skill would have been
8 so persuaded by alleged difficulties with frequency spectra-based
9 determinations as to have disregarded that disclosure. And with it, the
10 combination that Patent Owner alleges we proposed. That simply is
11 incredible in view of Rabu's teachings.

12 The second major problem with this argument from Patent Owner
13 is that it confuses the Curry-Rabu combination, which again, as proposed in
14 the petition, did not specifically rely on the use of frequency spectra to
15 determine motion status. As shown at the upper left is slide 41, the petition
16 instead noted that the person of skill would have found obvious the
17 integration of Rabu's dock status sensing and associated mode shifting
18 capabilities into Curry's phone to promote safe driving.

19 And turning to slide 42, we see at lower left, Dr. Michalson's
20 testimony that a smartphone processor leveraging a generally conventional
21 accelerometer, such as that found in Curry's phone, can be used to determine
22 both an orientation angle and motion status of the smartphone for the
23 purposes of discerning context associated with the phone's usage and
24 changing the phone's operating mode. Now, as we hope is apparent, Patent
25 Owner is simply incorrect in asserting that the combination proposed by the
26 petition specifically relied upon Rabu's teachings with respect to frequency

1 spectrum. And to the contrary, the proposed combination relied on Rabu's
2 teachings with respect to detecting holder status based on orientation angle,
3 which is itself determined based on gravity, and is further taught by Rabu,
4 leverage that orientation data in combination with motion data to provide the
5 benefits of flow from better accounting for phone usage context and
6 multimodal operations. In that regard, Curry already describes using
7 accelerometer data to determine a change in activity from, for example, stop
8 to driving, and further expressly states at column 16, lines 7 through 22, that
9 its system would have been capable of using acceleration data to determine
10 the change and then further estimate the motion type before or after change.
11 In other words, Curry already describes motion status, information derived
12 from accelerometer data, and as noted in the petitioner reply, consistent with
13 Dr. Michalson's earlier testimony reproduced on this slide, a person of skill
14 would have readily appreciated the accelerometer found in Curry's phone
15 could be used to determine both orientation angle as taught by Rabu, and
16 motion status as taught by either of Curry or Rabu to advantageously enable
17 the more nuanced, multimodal operations also suggested by Rabu. For at
18 least this additional reason Patent Owner's arguments against the Curry-
19 Rabu combination fail. Or, and as shown at slide 50, Dr. Michalson has
20 testified that configuring Curry's systems to leverage Rabu's teachings
21 would have required only routine programming knowledge, which was well
22 within the skill of a POSITA, and that the change to Curry would have
23 amounted to nothing more than the use of a known technique to improve
24 similar devices. In each instance, a smartphone equipped with a generic
25 accelerometer in a similar way and combining prior elements according to
26 known methods to yield predictable results.

1 Before turning the podium over to my colleague, Ryan, for a
2 discussion of the application of the Curry-Rabu combination, the '879
3 Patent's independent claims, I'd like to briefly pause to answer any further
4 questions that Your Honors may have at this time with respect to Curry and
5 Rabu. Thank you, Your Honors.

6 MR. CHOWDHURY: Thank you, Andrew, and may it please the
7 Board. In this part of the presentation, we'll plan to focus on 1.10 and 1.6.
8 And before we get into the details, I'd ask for you to have the petition and
9 Curry, which is Exhibit USAA 1005, handy, as we'll reference them during
10 this part of this discussion.

11 Let's start with slide 77, which provides an overview of 1.10. On
12 the bottom left, we see that 1.10 generally recites processing of driving
13 information to generate a driving score. Before we get into Curry, let's
14 focus first on the claim language, which says, process the driving
15 information to generate a driving score associated with a particular driver.

16 Slide 78, please. Testimony from Dr. Michalson relevant to 1.10 is
17 shown on the left here. As noted in the top two highlighted portions, he says
18 that raw data and derived driving behavior information are each stored and
19 processed locally on mobile phone 106. The result of this processing is to
20 generate a driving safety score that Dr. Michalson later explained in the
21 bottom highlight, may be communicated to third parties. Curry's disclosure
22 in slide 79 confirms this testimony.

23 Turning to slide 79, we recognize that you've seen this part of
24 Curry in prior hearings. Today, we'll focus on how this portion further
25 demonstrates satisfaction of 1.10. In the top highlight, we see that Curry
26 tells us that data stored in the motion data cache is compared with user

1 permission data to enable a driver safety statistic to be calculated. This
2 calculation is based on when and where the wireless computing device was
3 used and the motion of the device. Both types of information that are
4 tracked by the mobile phone per Curry's disclosure. The next sentence after
5 the top highlight states that the statistic can be decreased for certain
6 behaviors. From this, we know that the driver safety statistic has a
7 numerical value. And that's because Curry's use of the word decrease
8 suggests an adjustment to some baseline value. A value is, in other words, a
9 score. Turning now to the bottom highlight, as Andrew explained earlier,
10 we then see that the safety statistic, for example, a driving score, can be
11 reported to a data server. Putting it all together, the portion of Curry shown
12 on slide 79 teaches at least three things. First, it teaches local processing of
13 raw sensor data, for instance, to evaluate raw acceleration values for
14 calculation of a driver safety statistic. Second, it teaches local processing of
15 derived driving behavior information, for instance, processing relating to
16 whether a calculated driver safety statistic should be decreased. And finally,
17 it teaches reporting of a driver safety statistic to a data server, confirming
18 embodiments where the driver safety statistic is calculated locally on the
19 mobile phone. Other parts of Curry confirmed these three teachings.

20 JUDGE HOSKINS: Mr. Chowdhury, this is Judge Hoskins.

21 Before you move on, can you go back to your slide 78, please?

22 MR. CHOWDHURY: Yes. Happy to do that. Yep.

23 JUDGE HOSKINS: Thank you. So, the -- your snippet from the
24 Michalson declaration here on the left talks about how, I'm just looking at
25 the first five lines or so.

26 MR. CHOWDHURY: Sure.

1 JUDGE HOSKINS: It says raw data and derived driving behavior
2 information is stored in mobile phone 106. And but then he refers to the
3 driving safety performance database 324. Is that database 324 really on the
4 mobile phone 106?

5 MR. CHOWDHURY: Yes, we believe so. And it's -- you can see
6 that from Figure 3 of Curry, which shows, and I'll just turn to that figure
7 here. So, when we -- let's look at Figure 3 of Curry, and you see that there
8 are elements here that are both locally located on the mobile phone, such as
9 the motion data cache 304. And then there's also parts that are indicated, as
10 you mentioned, the driving safety performance database. The way we know
11 it's located on the mobile phone is because you see that the output from the
12 driving safety performance database that's shown on the left side of motion
13 data cache 304 is to mobile phone communication links 320 and then to the
14 storage server in Curry.

15 JUDGE HOSKINS: I see. Thank you.

16 MR. CHOWDHURY: No problem, Your Honor. Continuing to --
17 continuing with our presentation, let's turn now to slide 80. In the top
18 portion of this slide, Curry tells us that the activity mode recognition module
19 306 estimates the type of driving activity. There's no dispute that module
20 306 resides on Curry's mobile phone, and Your Honors noted the same on
21 page 45 of the institution decision in stating that it is part of client unit 110
22 which resides on the mobile phone. Turning now to the bottom portion of
23 the slide, Curry at PDF page 11, lines 3 through 14, also tells us that
24 activities estimation is used to adjust a safety score based on the
25 identification of a violation. Notice that this disclosure is entirely consistent
26 with what we just discussed in relation to slide 79. And when you look at

1 these parts of Curry together, it's clear that Curry contemplates a safety
2 score to represent an example of a safety statistic. And when Curry
3 references identification of a violation, it's similarly referring to an example
4 of a type of driving behavior information that decreases in numerical value
5 of the driver safety statistic. And as noted in our papers, such information
6 includes speeding, abnormal acceleration, and taking sharp turns which are
7 all listed in the portion of Curry shown on slide 79. Your Honors recognized
8 the same when addressing this part of Curry on page 46 of the institution
9 decision noting that the adjustment of a score is, quote creating that is
10 generating a new driving score. With that, I'll pause to see if there are any
11 questions on 1.10 before moving on to 1.6.

12 Hearing no questions, let's shift our focus to 1.6, and in doing so,
13 please turn to slide 52. While we've already addressed what 1.6 means in
14 prior hearings, let's revisit this topic today to remind ourselves how Curry
15 satisfies it. To summarize, page four of the petition noted that the claim
16 leaves open the possibility of the driving period corresponding to the
17 beginning, middle, or end of a vehicle's operation. And on page 11 of the
18 institution decision, Your Honors noted that the driving period is, "a period
19 during which the mobile phone is removably attached to the vehicle and the
20 vehicle is in use." Now, let's examine how Curry's disclosure satisfies
21 determining a start of the driving period. And to do this, let's look back at
22 the petition. On page 23, the petition noted that 1.6 may be satisfied by
23 Curry in multiple ways. One of those ways is discussed on page 12. Please
24 refer to this page of the petition, and I'll give you a moment to get there.
25 Here, on the third line of the third paragraph, the petition explained that
26 Curry's phone 106 switches between two operating modes, remaining

1 substantially still and driving. On the last line of page 12, near the right and
2 continuing onto page 13, you then see that there is a transition that is
3 activated by the phone's user, for example, through a user input that
4 manually changes the activity mode. Further, as noted on the third line of
5 page 13, the transition is based on the use of acceleration data to determine
6 the change, which is used to further estimate the motion type before or after
7 the change. To summarize, we plainly have within pages 12 and 13 of the
8 petition a discussion of Curry demonstrating a determination of a start of a
9 driving period where the start is based on both user input and sensor data.

10 Let's now explore another way in which the petition addressed 1.6
11 based on Curry. This is discussed on pages 24 through 26 in relation to
12 Curry's Figure 4. Let's turn to slide 58 to examine further. Curry's Figure 4
13 is shown on the left of this slide. To better understand the process shown in
14 this figure, let's turn to the corresponding description in Curry. That
15 description starts on PDF page 16, line 8, which I'll ask you to refer to now.
16 In this paragraph, Curry tells us that the Figure 4 process is started right after
17 a phone caller message. This results in the GPS sensor and accelerometers
18 starting to record a time series. In the same paragraph, on line 13, Curry
19 notes that sensors continue to collect data to determine the type of that
20 current activity in relation to the assessment of risky behaviors, such as
21 talking or texting while driving. Curry also describes using the same sensor
22 data to determine a change in activity mode. So, from the description of
23 Figure 4, we see a process that not only involves identifying a user's phone
24 usage, but also assessing activity mode. This assessment of activity mode is
25 shown in more detail in Figure 5. And to visualize Figure 5, let's now turn
26 to slide 16. As Andrew noted earlier, Figure 5 shows the activity

1 recognition module that may assess speed measurements to identify motion
2 and thereby determine whether a user is driving. One example process flow
3 is shown towards the top left of this figure, starting at element 502, moving
4 down to element 504, and then towards the left towards element 506. We
5 see here that when a measured speed exceeds a high speed or a threshold
6 speed, this results in a change in activity mode to the driving mode 506.
7 With this additional information regarding activity mode detection, let's now
8 turn back to Figure 4 on slide 58. So, where is the start of a driving period
9 in Figure 4? Let's talk about it. And in doing so, I'd like to ask you to refer
10 to page 25 of the petition, where we explained in more detail. There,
11 starting at line 2, the petition made clear that the start of a driving period is
12 something that is determined based on a combination of user inputs, for
13 example, received in relation to a call or a text, and motion data from a
14 phone's sensor set. In fact, the activity mode recognition process by which
15 the start of the driving period is determined takes place when those two
16 things occur. For example, Curry indicates with respect to Figure 5 that a
17 start of a driving period coincides with a point in time at which the vehicle's
18 speed exceeds a threshold, which is determined based on the phone's sensor
19 data. This makes sense because it ultimately supports Curry's overall
20 purpose to identify risky driving behaviors, such as texting while driving.
21 And it's also consistent with the '879 Patent specification, which describes
22 an example of how a driving period has started.

23 Slide 57, please.

24 JUDGE O'HANLON: Mr. Chowdhury, just to let you know, you
25 have about four or five minutes left in your time before rebuttal.

26 MR. CHOWDHURY: Excellent. Thank you so much for letting

1 us know. On slide 57, and I'm close to wrapping up here, on the left, we
2 see a part of the '879 specification that is highlighted -- that was highlighted
3 by Your Honors in the institution decision. There, Your Honors noted that
4 this portion, quote, supports Petitioner's interpretation that the start of a
5 driving period may correspond to the middle of a vehicle's operation, and
6 specifically when the vehicle reaches a predetermined minimum speed. And
7 again, notice that this process is the same as the example of activity mode
8 recognition shown in Curry's Figure 5.

9 To conclude, not only does Curry determine a start of a driving
10 period, it does so in multiple ways as explained in at least pages 12 and 25 of
11 the petition. Curry also provides a specific example of determining a start of
12 a driving period, one that coincides with an example described in the '879
13 Patent and shown on slide 57. Before wrapping up, I ask if Your Honors
14 have any questions regarding 1.6.

15 JUDGE O'HANLON: Yes, Mr. Chowdhury, this is Judge
16 O'Hanlon. Patent Owner argues that the recited driving period is the entire
17 time that the vehicle is driven. I wonder if you had any comments on that
18 proposed interpretation of the claim.

19 MR. CHOWDHURY: Thank you, Your Honor, for the question.
20 And I believe we addressed that in the reply. It's our view that the driving
21 period need not be limited to the entire period of driving. We can see that
22 that's the case because of the description that's shown on slide 57, where in
23 this specific example, you see that the start of a driving period occurs after
24 the vehicle has been driven for a certain time period and then reaches a
25 predetermined threshold. In this example, it's 20 kilometers per hour. So, at
26 least with this example, we know that it's clear that a driving period is not

1 necessarily defined by the time period with which the vehicle is being
2 driven. It can occur at some point in the middle, which is consistent with
3 how that term is described in our petition.

4 JUDGE O'HANLON: Thank you, Mr. Chowdhury. I don't
5 believe we have any more questions. I have you with about 17 minutes left
6 in your time for rebuttal.

7 MR. CHOWDHURY: Thank you, Your honors. With no further
8 questions, will reserve the remainder for rebuttal.

9 JUDGE O'HANLON: Thank you. We'll now hear from Patent
10 Owner. Mr. Tiller, would you like to reserve any time for sur-rebuttal?

11 MR. TILLER: Thank you, Judge. I would like to reserve 15
12 minutes.

13 JUDGE O'HANLON: Fifteen minutes. Thank you. You may
14 begin when you're ready.

15 MR. TILLER: May it please the Board. I think notwithstanding
16 the fact that this is our third time discussing this specification, I think there is
17 some benefit into looking into the specification and to determine what is the
18 purpose of the Wright Patent, of the '879 Patent. So, if you would turn to
19 slide 3 of Patent Owner's demonstratives, you'll see that one of the
20 purposes, as we've talked about before, is that driving information may be
21 utilized to determine the cause of an event such as an accident to modify
22 driver behavior and/or to determine insurance premiums.

23 If you move to slide 4, you see that the driving information is
24 subsequently used by a mobile device to determine if a driving incident or
25 event has occurred. Further, on slide 6, you'll see that the purpose of the
26 invention is to take a generic mobile telecommunications device already

1 owned by a driver of the vehicle and to provide data logging functionality
2 that would otherwise necessitate a dedicated black box. This invention is
3 about determining when bad things happen while people are driving their
4 vehicles, accidents, sharp braking, rolling over, yaw, pitch, all sorts of
5 different things that may happen to a vehicle.

6 If you move to slide 12, you'll see that the '879 Patent includes a
7 rather robust discussion about event modeling to determine vehicle events.
8 This is about taking the driving information, which is determined by the
9 phone, and then modeling it to other events such that the insurance company
10 or the parent or whoever the provider is can determine whether there has
11 been some type of an incident. This too is discussed on slide 15 of the
12 Patent Owner's demonstratives. This is notably different than Curry. If you
13 take a look at Curry, and I need to find the slide 38, Curry is a system and
14 method for preventing cell phone use while driving. If you then move to
15 slide 30 -- or to 40, you'll see that collected driving safety information is
16 sent back to a server through a mobile phone communications link, and it is
17 there that processing is done to determine whatever Curry is going to
18 determine. Now, there was a lot of discussion by Petitioner's counsel about
19 where the processing is done. We can look at many, many citations of the
20 information being sent to a server and a safety statistic, or some other
21 derived driving information may be calculated in Curry. In fact, one of their
22 slides, one of Petitioner's slides, most notably slide 11 of Petitioner's slides,
23 focuses on the motion data cache can be used to record location speed and
24 acceleration of the mobile wireless computing device. That is the raw sensor
25 data coming from the phone sensors. You will see that the next sentence
26 says, this data or the data in the motion data cache can be transmitted to and

1 stored on a data server. This is not the only example of data being
2 transmitted to a data server in Curry. There are multiple other examples that
3 we've talked about in prior arguments and that we've set forth in our Patent
4 Owner response. Essentially, however, Petitioner relies on two primary
5 arguments to make the point that the processing is done on the phone. Let's
6 look at those two points. The first is on page 4 of Curry, line 5. And you
7 heard my colleagues on behalf of Petitioner refer many times to this line that
8 says, the safety statistic can be reported to or calculated at the data server.
9 Obviously, this and all the other references that we cite in our Patent Owner
10 response just supports the idea that the safety statistic is calculated at the
11 data server. But let's look at the rest of the sentence. The safety statistic can
12 be reported to. Obviously, this is passive voice. Obviously, this does not
13 say the phone reports this to the safety -- to the server. Nowhere is there
14 any explicit callout of the phone sending this information to the server.
15 However –

16 JUDGE HOSKINS: Mr. Tiller?

17 MR. TILLER: Yes.

18 JUDGE HOSKINS: This is Judge Hoskins. What about higher up
19 in that paragraph, lines 1 to 3 says, for example the wireless device may
20 collect speed and location information and report that information back to
21 the data server. So, why isn't the sentence that you were talking about
22 which is, you know, two sentences later, why isn't that just kind of carrying
23 on from what the wireless device can do?

24 MR. TILLER: That's raw data, Your Honor, simply put, that's
25 raw data. And you see that in the drawings if I can quickly go to it, Your
26 Honor, in I think it's Figure 1 of Curry. You'll see that, and of course I have

1 a bad copy of it right here, that the acceleration data, the location, and speed
2 data is coming from the sensors of the phone. The sensors of the phone
3 certainly do not collect a driver statistic, and the sensors in the phone
4 certainly do not calculate a safety statistic. So, that's why I would assert,
5 Your Honor, that that does not address, and this is spelled out in a little more
6 detail in slide 43 of Patent Owner's demonstratives. You'll see in red that's
7 the flow of the raw data. The data goes from the sensors to the motion data
8 cache, activity mode recognition is combined with user permission data to
9 determine whether the call should be accepted or not. So, that sentence,
10 Your Honor, specifically and expressly refers to raw data. That's why I
11 would point that that is not the safety statistic, but that sentence, the safety
12 statistic can be reported to, is expressly shown in Figure 1. So, not only is
13 this language passive, not only does it not expressly say it's the phone that
14 does this. And by the way, there's no discussion either of where the phone
15 does this or how the phone does this. But instead, in Figure 1, there is an
16 expressed, explicit disclosure of insurance companies transmitting driver
17 safety scores or, in other words, a driver safety statistic to the server. And,
18 Your Honor, I would go so far as to say it makes sense. If the insurance
19 company is deciding on increasing someone's premiums based on a
20 decreased score, or conversely the opposite, decreasing premiums based on
21 an increased safety score, it is important, it is paramount that the customer,
22 the driver, understand why those decisions were made. Oh, my insurance
23 premium has gone up. Why? Oh, my score went down. So, as opposed to
24 some passive hypothetical that almost by process by elimination, and I know
25 you've heard me say that before, that seems to be the argument that
26 Petitioner is making that somehow, well, because there's nothing else, it has

1 to be the phone. But there is an express disclosure in Figure 1 that it is the
2 insurance companies. And again, that just makes sense. You're sending
3 somebody their new premium, you're sending them their score.

4 There is also some other language the Petitioner seems to be
5 relying on. And that is on of Curry, which is Petitioner's Exhibit 1005. On
6 page 12, there is a discussion about possibly placing more modules, caches,
7 and database -- databases, I should say, on the mobile device. That seems to
8 be a very big point for Petitioner in arguing, well, that tells a person of
9 ordinary skill in the art that now we can have these databases, they can be on
10 the phone, they can be on the server, they could theoretically be somewhere
11 else. But first and foremost, there is no disclosure here of what modules
12 would be on which apparatus, or more importantly, how those modules
13 would be transferred or would be moved from the phone to the server or
14 from the server to the phone. And remember, if you look at Patent Owner's
15 demonstrative slide 44, which discusses Figure 2, you'll see explicitly that
16 the driving safety score evaluation module, which is where the driving safety
17 scores are determined, is expressly and explicitly shown as being on the
18 driver safety user control and monitoring website or, in other words,
19 potentially the server, something other than the phone. And so, there is
20 nothing on page 12 of Curry, again, Exhibit 1005, that talks about which
21 modules can be on the phone versus the server, or more importantly, how
22 those modules can be moved from the phone to the server or vice versa.
23 And more importantly, Your Honors, this disclosure expressly and explicitly
24 said this is going to be complex. Quote, by placing more modules, caches,
25 and databases on the mobile device it can require a more complex device.
26 This is going to take real hardware engineering to come up with this more

1 complex device to handle the processing and the memory that will be
2 involved. It says it right there. A person of ordinary skill in the art looking
3 at that would not believe that there's a reasonable expectation of engaging in
4 some normal or do amount of research or development that they'll be able to
5 come up with this phone that is able to do this processing. Also, Your
6 Honors, I think you have to look at this sentence in the context of the entire
7 paragraph. We can't just read sentences alone. This paragraph talks about
8 while the quote, while the mobile phone client 110 is illustrated in Figure 1
9 as including a variety of modules, caches, and databases, it is also possible
10 that these may be located remotely. What this paragraph is talking about
11 and the sentence on which Petitioner is relying is talking about taking what's
12 already on the phone as shown in Figure 1, which again, is shown clearly on
13 slide 43 of Patent Owner's demonstratives, this paragraph is talking about
14 moving what's on the phone somewhere else. Again, the sentence says,
15 while the mobile phone client 110 is illustrated in -- is illustrated in Figure 1
16 as including a variety of modules, caches, and databases, it is also possible
17 that these may be located remotely. Then when you read the rest of it, it
18 makes sense, two sentences down, where Curry says, by placing more
19 modules, caches, and databases on the mobile device, it can require a more
20 complex device. Those are the -- you're not talking about moving stuff to
21 the phone. You're talking about moving stuff off the phone in this
22 paragraph. But either way, there is no disclosure of how to do it, and there
23 is, in fact, disclosure that it would not be easy and would not be reasonable.
24 And therefore, a POSITA would not expect there to be a very high
25 likelihood of success of doing this without undue experimentation, without
26 undue engineering. And that, obviously, is the standard in order to render

1 this point, this issue, in favor of Patent Owner.

2 There was also discussion during Petitioner's argument about
3 driving period. And I believe, Judge O'Hanlon, you asked the question, you
4 know, why -- you raised our position that driving period has to be the
5 entirety of the period in which the vehicle is being driven. And we've talked
6 about that issue a lot in the prior two times we've had the pleasure of
7 spending time together. But I will concede that I had not focused, and
8 presumably maybe the Board had not focused, on some language that we do
9 cite to in our briefing, that really makes it clear. And again, we talked about
10 a few minutes ago, the purpose of these inventions. The purpose is to
11 modify driving behavior, determine insurance premiums, and determine the
12 cause or at least to collect data regarding accidents and other events. And as
13 we've talked about in the past, if you're not recording information, then if an
14 accident happens, or if speeding happens, or if some other event happens,
15 it's not going to get recorded. There's not going to be any data collected
16 about it. That's the purpose of this invention. If you go to the '879 Patent,
17 which is Petitioner's Exhibit 1001, and if you go to column 30, beginning at
18 line 25, you will see language, as will be appreciated, the interaction of the
19 mobile device and the device monitoring system has the advantage of
20 actively improving user driving behavior. That is, if the user knows that
21 their alleged driving behavior may adversely affect their insurance policy,
22 then it is likely that the user will be dissuaded from driving recklessly. In
23 view of this, an insurance company may be able to incentivize users through
24 lower insurance premiums. However, so that users do not wrongfully
25 benefit from such incentives, it is necessary to enforce the correct and
26 consistent use of the Witness application. It would not be beneficial, and

1 I'm on line 36 now, it would not be beneficial from the perspective of the
2 insurance company if the user could choose when to enable the application.
3 For example, if the user could choose to disable the application when
4 speeding, then the effectiveness of the application would be reduced. This is
5 the idea while it talks here about the user actively turning off the application.
6 The fact of the matter is, under Petitioner's definition of the driving period,
7 there would be likely large periods of time when there is no recording, since
8 recording only starts when any phone call comes in or goes out, or a text
9 comes in or goes out.

10 JUDGE O'HANLON: Mr. Tiller, this is Judge O'Hanlon. I
11 appreciate what you're saying about the disclosure, what the written
12 description of the challenged Patent says. I wonder if you could tie that to
13 Claim 1, any language in Claim 1 that would require the driving period to be
14 the entire time that the vehicle is being driven.

15 MR. TILLER: Your Honor, if you give me half a second. But if I
16 may, Your Honor, can I just finish with column 30 and then get to your issue
17 because --

18 JUDGE O'HANLON: Sure.

19 MR. TILLER: -- column 30 goes on to say at line 41, accordingly
20 the application may include measures to guarantee that the application is
21 enabled whenever a given insured vehicle is being driven.

22 JUDGE O'HANLON: Does it include the word "may" there?

23 MR. TILLER: It does.

24 JUDGE O'HANLON: Doesn't that "may" cut against what you
25 were saying before?

26 MR. TILLER: No, I don't think so, Your Honor, because again, in

1 Claim 1, it talks about determining the start of a driving period. And the
2 definition of driving period has to -- you have to give meaning to the word
3 driving. And you have to read the spec, or I'm sorry, you have to read the
4 claim in the light of the specification. And the specification talks over and
5 over again about continuously monitoring this data. And again, I'll go on to
6 further say again in column 30, Your Honor, Judge O'Hanlon, it goes on to
7 say it will be appreciated that the exercise depends on using the application
8 every single time the particular vehicle is being driven. The specification
9 here is talking about the importance of making sure that the application is
10 recording while there is driving going. Petitioner --

11 JUDGE O'HANLON: Mr. Tiller, let me interrupt you again. But
12 doesn't the specification also discuss allowing the user to initialize the
13 recording period or the monitoring period?

14 MR. TILLER: It does require the start of a driving period.
15 There's no question. The claim says during, and I have to read it again
16 because I don't have it, process the sensor data from this out -- determine a
17 start of a driving period during which the mobile device is remotely attached
18 to the vehicle, and the vehicle is in use.

19 JUDGE O'HANLON: But that's not getting to my question. You
20 talked about how the '879 Patent continuously talks about the importance of
21 always recording driving information, but doesn't the '879 Patent also
22 discuss allowing the user to manually turn on the system?

23 MR. TILLER: I think it talks about determining based on at least
24 one of the inputs received by the user interface and sensor data. It does talk
25 about inputs received by the user interface. I don't think that anywhere is
26 disclosed as the driver having to turn on the application. I think that could

1 very easily be the downloading of the application. Putting the application on
2 your phone is done through the user interface. All that is required by '879 is
3 that there be some type of input received by the user interface.

4 JUDGE O'HANLON: Well, let me direct you to column 3 starting
5 around line 34 of the '879 Patent says, "the initialisation input may comprise
6 a user input—for example, the user manually executing the application on
7 the mobile device."

8 MR. TILLER: Right.

9 JUDGE O'HANLON: And I would say that the user can manually
10 turn the system on and it doesn't necessarily say that has to occur when the
11 person first begins driving a vehicle or refer to any time, right?

12 MR. TILLER: It doesn't. I agree with you, that language does not
13 say that it can't happen at some period of time. But if you read the Patent
14 specification throughout there is multiple disclosures and we've cited to
15 them in our POR, it talks about how there has to be continuous monitoring,
16 continuous application. And again, the user input can be any type of
17 interaction with the user interface. That's all the claim requires based on at
18 least one of the inputs received by the user interface. I would argue that it
19 does not, or I would contend, let me say that better, that it does not require
20 the user turning it on every time. It could be that the user downloads the
21 application. It can be, and again, the Witness app -- the application, we call
22 it the Witness application because that's the marketing term that was used.
23 So, forgive me if I kind of say that every once in a while. But the Witness
24 application is a mobile phone app. In order to make it work, and in order to
25 give meaning to the word driving, if the requirement to drive or the
26 requirement to record during the entirety of the driving period, then you

1 wouldn't need the word driving. It would just be a period in which the
2 mobile phone is removably attached or removably affixed to the vehicle and
3 the vehicle is in use. You wouldn't need the word driving. You have to
4 give meaning to that word, and that word is the time period which the
5 vehicle is being driven. And again, Your Honor, the construction that
6 Petitioner is seeking here was already rejected by the District Court in
7 Texas. I realize that Your Honors are not bound by that, but this argument
8 was made and it wasn't agreed to. And again, if you take that disclosure,
9 Judge O'Hanlon, and then don't read it in the context of everything else,
10 then I think that that is a mistake. And again, when you look at all of these
11 citations whether it's to column 30 that we were just talking about where it
12 talks about the way that this thing works is by making sure that you drive or
13 that make sure you are recording during the entirety of the driving period.
14 That's what column 30 was talking about. The only argument that in
15 response to your question that was made by Petitioner was well there is an
16 express disclosure of reaching a speed threshold in Wright. I think it's 20
17 kilometers an hour. And that because it takes some period of time, whatever
18 that is to reach 20 kilometers per hour. So, I think that's 10.4 miles per
19 hour. Whatever amount of time that is, that since that period is not being
20 recorded, well, that means our definition is incorrect. It can start at the
21 beginning, middle, or end. But importantly, the driving period has to be a
22 reasonable approximation of the entire driving period. That's what Mr.
23 Wilson said, our expert, Patent Owner's expert, talked about that. And we
24 cite to that on slides 28 and slides 29 of our demonstratives as to why it has
25 to be this entire time period, because the purpose of Wright could not, would
26 not be met absent the entirety of the driving period being recorded. And just

1 because there is some small period of time at the beginning of the driving
2 period, in order to affect or initialize the application itself, doesn't change
3 that point. It doesn't change the purpose. And what can happen with a
4 phone call being received or made is obviously, and I understand your points
5 made in the initialization or the institution order, that but if there's no phone
6 call, or if the phone call is five minutes into a trip, the recording stops at 11
7 minutes into the trip, and the accident happens 30 minutes into the trip, the
8 purpose of Wright will not be met. So, it's got to be something other. It
9 cannot be, well, it can be at the beginning, middle, or end. Remember, the
10 recording that is being done by Curry is absolutely untethered to vehicle
11 movement. It is just a random period of time. In Curry, it's disclosed as six
12 minutes. In some cases, I guess it could be four, it could be eight, whatever
13 it may be. But the fact that this recording has nothing to do with driving and
14 just has to do with temporal periods of time, does not make sense and is not
15 consistent with the fact that the claim requires determining the start of a
16 driving period.

17 I also want to address if I may, Your Honor, in the few minutes I
18 have left, the issue of Rabu.

19 JUDGE O'HANLON: Can I interrupt you? Just one more
20 question that I guess closes this out. Referring back to the actual language
21 of Claim 1, is your position that the '879 Patent defines driving period to
22 mean the entire time the vehicle is driven? Or is there some other language
23 in Claim 1 that somehow makes driving period mean the entire time?

24 MR. TILLER: No, you have to read you have to read the claim in
25 light of the specification. And again, when you look at the purpose behind
26 Wright when you look at the language, including all the language that's cited

1 in our briefing. And also, the derivation of driving information must also
2 occur during the driving period. So again, there is – so again, you have to
3 determine, a start of a driving period, and process the sensor data from the
4 sensor set during the driving period to derive driving information. But
5 again, that has to occur while driving is going on. That, in addition to the
6 specification, really does get to the idea that it has to be the entirety of the
7 driving period.

8 I'd like to take a second, though, to talk about Rabu. Because this
9 has, as I'm sure you can appreciate from the last two arguments that we had,
10 this has garnered some frustration on our part. There is disclosure after
11 disclosure, citation after citation, to Rabu's frequency spectra analysis to
12 determine holder motion status. As you all know, Rabu discloses two
13 analyses, determining holder status and determining holder motion status.
14 So, one, is the phone being held in a dock? And holder motion status, is it
15 being held, or is it in a moving car? And there is, in the petition, there is
16 citation after citation after citation. And we've identified those citations in
17 our demonstratives. So, for example, on slide 61, Patent Owner discusses
18 the repeated citations to the determination of holder motion status, because
19 Rabu at column 3, lines 1 through 10, discuss selecting a mode of operation
20 based on holder motion status, which as we all know, and as I think is
21 conceded by opposing counsel, is determined by analyzing the phone's
22 frequency spectrum. There is citation after citation of Petitioner relying on
23 that citation of Rabu, or that part of Rabu. Again, if you look at slide 63,
24 there is repeated citation to columns 8, lines 13 through column 10, lines 42,
25 discussing the use of frequency spectrum. There is repeated discussion of
26 Figures 7, 8, 9, and 10, all of which go to the determine a frequency spectra,

1 and then what do you do once you've made that determination of frequency
2 spectra? There's repeated citations to Figure 5 of Rabu. In fact, they
3 showed you Figure 5 today. And Figure 5 requires the analysis of holder
4 status, is it in a dock, and holder motion status, it is in a moving car. You
5 can't talk about changing modes when referring to Rabu without referring to
6 both holder status and holder motion status. And yet, they come in -- or
7 Petitioner comes in and says, well, we're really not relying on holder motion
8 status. We're just relying on holder status. However, again, if you look at,
9 I'd take you to slide 67, and Petitioner says in its petition, Rabu's docking
10 status enabled its termination of when phone 106 is docked within a moving
11 vehicle. Rabu's docking status is also used to estimate context of mobile
12 phone use. That context is whether it's in a moving vehicle or not. And
13 then I do have to, and I don't want to put words in Your Honors' mouths,
14 but I do need to point you once again to your institution order where this
15 Honorable Board said, that Petitioner has sufficiently explained that Rabu
16 teaches the mobile device is removably attached to the vehicle, and the
17 vehicle is in use because the phone can determine if the phone is in a moving
18 vehicle. That's what you all said is taught by Rabu. You go on in the
19 institution order, and again, I'm looking at slide 69 where this Board says in
20 particular, Rabu teaches that a PMD, a phone, may have a holder status
21 which can indicate how the PMD is being held and whether the PMD is in
22 motion. This doesn't talk about Curry at all. This says Rabu teaches
23 determining whether the phone is in a holder and whether it's in a moving
24 vehicle. Whether it's in a moving vehicle is determined in one way in Rabu,
25 analyzing frequency spectrum. The institution goes on to say, based on the
26 determined, and in fact it's highlighted, or italicized, based on the

1 determined frequency spectra, the PMD can determine whether it is in a
2 moving vehicle, in a stationary vehicle being held by a moving person, or
3 being held by a stationary person. This works. Rabu works. To the extent
4 that it works at all, we take the position it doesn't work. But to the extent
5 that it works at all, it works because it is determining whether the phone is in
6 a dock and whether it's in a moving vehicle. Petitioner went to this, went to
7 Rabu, because there's discussion in Curry about how sometimes there's not
8 enough data in Curry to make a final decision. It doesn't know whether the
9 phone is in a moving vehicle or not. So, you need to go to Rabu for the
10 nuanced, I'm using their, again, hating air quotes, but using their term
11 nuanced approach of Rabu. The nuanced approach as determined in, as
12 shown in Figure 5 of Rabu, is you can figure out these different modes based
13 on whether the phone is in a dock and whether it's in a moving vehicle.

14 JUDGE O'HANLON: Mr. Tiller, I just want to let you know
15 there's about three and a half minutes in your time. And I understand you're
16 quoting from our institution decision, but what about Petitioner's arguments
17 in the reply that perhaps, well, highlighting other parts of petition where
18 they, again, where you just talked about the nuanced version, I guess, of
19 Curry's phone that would result in the combination, and looking at page 14
20 of the petition, for example, it says basically, as I understand it, based on the
21 arguments in the reply, the combination allows the user to, I guess, modify
22 Currie's two operation status, basically full-on and full-off, such that when
23 the phone is docked and then according to the petition at page 14, involving
24 relatively fewer restrictions if the phone is docked within a moving vehicle.
25 And then it goes on to say, for example, allowing a docked phone speaker
26 mode while driving -- allowing usage of a docked phone's speaker while

1 driving. So, isn't the nuanced application that the Petitioner is talking about
2 just using the docked status from Rabu to apply that to Curry?

3 MR. TILLER: So, let me answer that in a couple of ways, Judge,
4 and thank you for the question. So, first of all, there is repeated citation on
5 page 14. For example, I think it's the third line, there's citations to Figure 5,
6 Figure 7, Figure 8, where Figures 7 and 8 talk about determining frequency
7 spectra. They can't say, we're only relying on the holder status of Rabu, but
8 we're going to cite to the holder motion status of Rabu. That's not the way
9 it should be done. And they talk about the Curry-Rabu phone. I get that
10 they talk about the Curry-Rabu phone, but they can't say, well, the Curry-
11 Rabu phone, notwithstanding the fact that we cited to frequency spectra over
12 and over and over again, we're really not relying on that. And remember,
13 the frequency spectra analysis that is used to determine whether the vehicle
14 or whether the phone is in a moving vehicle or not was talked about by Mr.
15 Wilson, our expert, he criticized it extensively. There is no rebuttal. His
16 testimony is that a person of only skill in the art would not have gone to look
17 to use this mechanism, this means to determine whether the car is in a
18 moving, or whether the phone is in a moving car or not, because it is just so
19 unreliable. And then, but think about the holder status too, Your Honor. If I
20 met, you know, and I'm holding my phone here, the determination, I realize
21 I'm at just about my time, but I'd like to finish this point up, Judge. You
22 know, the holder status is, if it's at a 15 degree angle, it's in a car. If it's like
23 this, it's on a stationary table or something else that's presumably not in the
24 car. And if it's -- if there's different angles, it means I'm probably holding
25 it in my hand. That's the discussion in Rabu. And, Your Honor, I would go
26 so far as to say it doesn't even it doesn't even make even a bit of common

1 sense. And I just look at myself and I know I'm not trying to put myself as
2 evidence here. But sometimes my phone is in my cup holder. If my kid or
3 my wife is in the seat next to me, other times it's lying flat on the seat next
4 to me. There is no consistency. There is no way to say with absolute
5 certainty that something that is held at a 15 degree angle is in fact means it's
6 docked. So, that and again, we didn't -- we did not criticize. We did not
7 have Mr. Wilson criticize the holder status because we didn't think we
8 needed to. Because we were told in the petition, and I believe Your Honors
9 thought so as well, based on what was cited in the institution order, that
10 plaintiff, the Petitioner was relying on both holder status via determination
11 by orientation angle, and holder motion status determined via an analysis of
12 frequency spectrum. And without both, Rabu doesn't work. And again, we
13 would go so far as to say Rabu doesn't work even with both. But you can't
14 -- Petitioner can't come in and say, holder status, holder motion status,
15 frequency spectra, orientation angle over and over and over again cite to it.
16 They cited to it today in their slides. And then say, but we're really not
17 relying on holder motion status. There is no affirmative assertion when you
18 cite to the holder motion status of Rabu that many times. And again, you
19 can look at them in the citations we have in our demonstratives. When you
20 cite that many times, if you're not relying on frequency spectra, if you're not
21 relying on holder of motion status, you better say we're not relying on this.

22 So, thank you, unless there's any further questions.

23 JUDGE O'HANLON: Thank you, Mr. Tiller. We will now hear
24 from Petitioner on rebuttal, Mr. Patrick, I presume. I have about 17 and a
25 half minutes left, and you may begin when you're ready.

26 MR. PATRICK: Thank you, Your Honor. So, I'd like to briefly

1 address a few points, I suppose, since we just heard from Patent Owner on
2 their opinion as to what the petition set forth about Rabu. Again, and
3 frankly, it is our view that the frustration that they're referring to is born out
4 of the fact that they're attacking a straw man, rather than what was actually
5 established within the petition itself. They refer to a variety of citations to
6 Rabu's disclosures related to frequency spectra. And of course, those are
7 cited because Rabu describes determinations that are based on orientation
8 status and motion status of a mobile device. And I think as we discussed
9 with you earlier in our presentation, the petition relied on the teachings with
10 respect to determination of orientation status of the mobile device based on
11 accelerometer data, and then further Rabu's discussion of being able to make
12 nuanced decisioning about operating modes based on a combination of
13 orientation status and motion status. Again, Curry itself explains at length
14 methodologies for determining motion status based on GPS sensor data,
15 enabling determinations as to whether and when a vehicle is being driven.
16 And in that regard, as we explained in the Petitioner reply, the person of skill
17 would have understood and found obvious that they'd be successfully able to
18 implement what Rabu describes in terms of the nuanced determinations
19 using either Curry's already established methodologies for determining
20 motion status, or the frequency spectra that Rabu describes. Both are
21 options. And, you know, as we're hearing from Patent Owner again today,
22 we understand that they're attempting to attack Rabu, it seems and
23 suggesting that its disclosure is not enabling. It's strange, it's not really
24 getting to the issue as we presented it within the petition. And again, Rabu
25 recommends in some of its embodiments using frequency spectra, we don't
26 believe that this record has established a reasonable basis for doubting that

1 what Rabu recommends is true. But we weren't specifically relying on
2 frequency spectra. Again, we were citing, two portions of Rabu dealing with
3 determinations of motion status, and the petition, I believe if you were to
4 check, doesn't actually use the phrase frequency spectra, and for good
5 reason. So, I wanted to briefly revisit that in case there are questions from
6 Your Honors on that topic.

7 And if not, I'd then turn to a brief discussion again of what Curry
8 discloses. In that regard, I believe we heard from Patent Owner that it's
9 their opinion that when Curry expressly describes that a safety statistic can
10 be either reported to, or calculated by a data server, that it could only be the
11 auto insurance companies that are reporting a safety statistic to the data
12 server. Now, there are a few problems with this. And first and briefly, I'd
13 like to revisit the express disclosures from Curry at page 11 of the PDF lines
14 3 through 10. Therein again, Curry discloses that the activity mode
15 recognition module 120 that is depicted in Curry's Figure 1 as being located
16 within the mobile device as part of the mobile phone client, that that module
17 determines the context of a phone call to a selected user based on the
18 collected motion data. Again, motion data collected by Curry's device and
19 adjust the related safety score for the user if a violation is identified. It's
20 telling you right there that the activity mode recognition module can adjust a
21 related safety score. Now, it's been our position all along that adjusting a
22 score is generating a new score based on a previous score. There is actually
23 further disclosure in Curry along those lines explaining how the various
24 deductions from an initial driving score can be made. And in that regard, if
25 you were to look at page 13 of Curry, the PDF, there's disclosure in that
26 context with respect to Figure 2, but we think it would have been well

1 understood regardless as applying to wherever the safety score is calculated
2 or determined of taking an initial driving score and deducting from it, you
3 know, based on the relationship between the types of driving safety
4 violations and traffic accidents that gives examples. For example, one to 10
5 miles per hour over the speed limit may deduct 20 points, et cetera. So,
6 returning back to the disclosure of the activity mode recognition module
7 itself, expressly being able to adjust a related safety score based on
8 violations, you know, it's our opinion that that's at least one instance in
9 which Curry renders obvious the determination of a driving score at the
10 mobile device based on derived driving information, based on what, the very
11 sensor data provided by the mobile device is embedded, GPS and
12 accelerometer.

13 Now, along those lines, if we could, and again in relation to the
14 contention with respect to the auto insurance companies, it may be helpful to
15 turn to slide 13 of Petitioner's demonstratives. And there and again, we'll
16 see reproduced at right Curry's Figure 1. Notably, Figure 1 depicts driving
17 safety performance data that's being communicated by the mobile phone
18 client to the driving safety data server. And as we discussed, that driving
19 safety performance data can include both sensory data from the mobile
20 phone's accelerometer and GPS and a driving safety score or other driving
21 information derived from the sensor data. And interestingly, Figure 1 also
22 depicts a double-headed arrow between auto insurance companies and the
23 driving safety data server. And in doing that, it indicates a data flow
24 between the companies and the server that includes driving safety scores
25 being provided to the companies by the server and insurance premiums
26 being provided to the server from the companies. Now, Curry describes its

1 driving safety statistic as being either reported to or calculated by the server.
2 And we think that a person of skill would additionally have understood that
3 in this figure the device reporting that statistic to the server would be the
4 device in possession of the sensor data from which the statistic can be
5 calculated, in other words, the mobile device. Interestingly, what you will
6 not see in this figure is data being provided from the mobile device to the
7 auto insurance companies in at least this example. Therefore, we think it
8 reinforces that the statistic could be determined locally if beneficial for the
9 business and engineering reasons that Curry was addressing. And consistent
10 with that, as shown at left, Curry explains that the safety statistic collected
11 by the wireless device can be made available to an insurance company, that
12 the insurance company can provide the user a discounted rate in return. And
13 similarly, Curry at page 10, lines 3 through 5 explains that through a data
14 exchange server or a data exchange interface, a system user can share the
15 safety score of the user of the mobile phone 106 with a third party such as an
16 insurance company 130 to obtain insurance premiums. So, and it lists these
17 and additional ways we think that Curry reinforces that in embodiments in
18 which the driving safety statistic is reported to the data server, it is the
19 mobile phone client that does the reporting after first locally calculating that
20 statistic.

21 I'd like to pause for a moment to ask if Your Honors have
22 questions on that point. And if not, then I'll ask my colleague, Ryan, to
23 come back to the podium, just for a few other issues.

24 MR. CHOWDHURY: Good afternoon, Your Honors. I just
25 wanted to address a few points raised by Patent Owner in relation to Curry
26 and limitation 1.6. And further limitations 1.7 and 1.10. In addressing

1 processing that's recited in 1.7, Patent Owner wants you to believe that the
2 only information available on Curry's mobile phone is raw data. Now,
3 we've already addressed why that can't be the case, and it's because the
4 portion of Curry shown on slide 79 of Petitioner's demonstratives, that's
5 PDF page 3, line 24 to PDF page 4, line 6, clearly suggests at least some
6 embodiments where the safety statistic is calculated by the mobile phone and
7 then reported to the data server. Now, also, a safety statistic is not merely
8 just raw data, and that's because Curry on PDF page 3, lines 27 through 30,
9 describe that the safety statistic is calculated based on a comparison of data
10 in the motion data cache and the use permission data. So, this comparison
11 reflects some type of processing. Patent Owner is also incorrect because
12 Curry at PDF page 4, lines 3 through 5, states that the value of the safety
13 statistic is decreased based on driving behavior information, such as
14 speeding, abnormal acceleration, abnormal deceleration, and taking sharp
15 turns. We've already discussed how abnormal acceleration can't just be raw
16 data. There is some sort of assessment to acceleration values to determine
17 its abnormality. So, beyond the safety statistic itself, we know that
18 information used for its calculation or its adjustment, which are clearly not
19 raw data, is similarly on the mobile phone.

20 Next, I wanted to address some of Patent Owner's points with
21 respect to 1.6. Patent Owner seems to express the view that a determination
22 of a start of a driving period, being at a time point after the stride of driving
23 frustrates the purpose of the invention. We don't think this position is
24 credible, and that's based on the intrinsic record of the '879 Patent itself. If
25 that were the case, it's not apparent to us why the specification expressly
26 teaches specific embodiments where the start of the driving period is

1 manually initiated by a user, or alternatively, automatically initiated. And
2 we see that clear articulation in at least column 18, line 63 to column 19, line
3 6. Patent Owner also makes a big deal about how starting a driving period
4 after the start of driving somehow makes it more challenging to detect an
5 accident. We'll note, we'll refer you back to column 19 of the '879 Patent,
6 which describes the use of this threshold. And the purpose in that portion of
7 the specification is that the threshold is used to automatically determine
8 when to start a driving period. The threshold is used to indicate when a
9 vehicle is in motion. So, any monitoring that would occur before -- below
10 the threshold, such as for example, 20 kilometers per hour, is data that is
11 irrelevant to monitor and that's coming from the '879 specification because
12 of the use of the threshold to predict that the vehicle is in motion.

13 Regardless, if you give any credence to the arguments by the Patent Owner,
14 the Patent, the '879 Patent specification, as it relates to discussing the start of
15 a driving period, is full of permissive language. It uses the terms can and
16 may and further articulates distinct embodiments, such as an embodiment
17 where a user manually starts the driving period, and others where a threshold
18 is used to automatically start the driving period. And some of these driving
19 periods are not limited to the entire period of driving. And for this reason,
20 it's our view that when a person of ordinary skill in the art has looking to the
21 specification to understand the scope of driving period, they would have
22 been informed by these disclosures and would have understood that the
23 driving period that's claimed in 1.6 need not be limited in the way that
24 Patent Owner's counsel has explained today.

25 Any questions on any of the topics we discussed? Hearing none,
26 Petitioner rests its case with respect to IPR2023-00857.

1 JUDGE O'HANLON: I'm sorry, Mr. Chowdhury. This is Judge
2 O'Hanlon. I had one question.

3 MR. CHOWDHURY: Sure.

4 JUDGE O'HANLON: I'm not sure if this is directed towards you
5 or Mr. Patrick, but Mr. Tiller talked about column, I believe it's column 12
6 of Curry, I'm sorry, page 12 of Curry, where the disclosure of why you can
7 move modules between the server and the phone and made a couple of
8 points. First, he said, you know, that would be a pretty complex
9 undertaking. A person of ordinary skill in the art wouldn't necessarily know
10 how to do that. And then he also talked about, well, that's just really talking
11 about moving modules from the phone to the server. I was wondering if
12 either of you, Mr. Chowdhury or Mr. Patrick, had a response to that line of
13 argument by Mr. Tiller?

14 MR. CHOWDHURY: I'll let my colleague Andrew Patrick
15 answer that question for you. Thank you, Your Honor.

16 MR. PATRICK: Thank you, Judge O'Hanlon. We do appreciate
17 the question. And, you know, looking to PDF page 12 of Curry, we can see
18 the material there discussing Figure 1 in which it expressly states that while
19 the mobile phone client 110 is illustrated in Figure 1 is including a variety of
20 modules, caches, and databases, it is also possible that these may be located
21 remotely, such as on the driving safety server or in a mobile phone service
22 provider's network. It goes on and states that the location of software and
23 firmware used to create the functionality of the system for monitoring and
24 controlling the use of a mobile computing device illustrated in Figure 1 can
25 be based on a trade-off between the complexity of the mobile device and the
26 amount of information communicated on the mobile device's network. By

1 this language, we understand Curry to mean, and we believe that the person
2 of skill would have understood and found obvious, that the various
3 illustrated modules would be located on the mobile phone client, as depicted,
4 or on the data server, again, depending on trade-offs. Those trade-offs
5 relating to business and engineering needs, and including, for example, and
6 expressly in Curry a complexity of the mobile device versus the amount of
7 information that needs to be passed over the network connection with the
8 data server. And when we consider, again, the disclosures with respect to
9 the activity mode recognition module, again, one of these modules that's
10 shown in Figure 1 is located within mobile phone client 110, as adjusting
11 safety scores. We think it's clear, and it would have been obvious, that the
12 mobile phone client therefore has the ability, and actually would have been
13 implemented, to calculate or generate driving safety scores, in addition to
14 deriving other driving information. So, in that regard, we think that, you
15 know, Curry, it acknowledges that a POSITA could have otherwise,
16 alternatively or in addition, perhaps, had a calculation of the driving score
17 performed at the data server. It's just indicating that, you know, depending
18 on the trade-offs involved, that's a possibility, and in fact, therefore, both
19 implementations are obvious. I'm not sure if I answered your question. I
20 hope that I did, and if I didn't, please do feel free to ask a follow-up. I'd be
21 happy to answer.

22 JUDGE O'HANLON: No, and I appreciate your response. Thank
23 you.

24 MR. PATRICK: Thank you, Your Honor. All right. So, with that
25 we're happy to yield the remainder of our time. Thank you very much.

26 JUDGE O'HANLON: Thank you. And now we'll turn to Mr.

1 Tiller for your sur-rebuttal. You have just over 12 minutes left in your time.

2 MR. TILLER: Thank you, Your Honor. I will be brief although
3 never believe a lawyer when they say they'll be brief.

4 I want to talk about the reliance on Rabu just a little bit as
5 discussed by Mr. Patrick. I'm just looking at Petitioner's, or Petitioner's
6 petition, and I think Mr. Patrick cited for you pages 16 and 17. If you look
7 at the very bottom of page 15, literally the last line, you'll see, well, let me
8 go up above. A POSITA, if you start that paragraph, a POSITA would have
9 found obvious that enhancing Curry's systems based on Rabu's teaching --
10 teachings, would introduce multiple advantages, including, number three,
11 enhanced reliability of motion detection and related determinations based on
12 data obtained from sensors within a docked phone. And they cite to column
13 2, lines 61 through column 3, line 10. That's the discussion about using
14 frequency spectra to determine holder motion status. That is the enhanced
15 reliability of motion detection being provided by Rabu. Page 16, again,
16 where Mr. Patrick just cited to. These, among other advantages, would have
17 amply motivated a POSITA to integrate Rabu's teachings into Curry in a
18 manner enabling Curry's phone, both to determine the start of a driving
19 period during which a phone is docked within a moving vehicle, and to
20 make corresponding adjustments to the phone's operating modes. The
21 operating modes are shown in Figure 5, and rely on whether the phone is
22 docked, whether the phone is being used in a moving vehicle. That's what is
23 disclosed in their petition. And now, when the accuracy, reliability, veracity
24 of relying on frequency spectrum has been questioned and not rebutted,
25 Petitioner is running away from it. And again, we argue that the holder
26 status of Rabu is just as flawed, but that the motivation to combine, if there

1 was motivation, was by the use of Rabu's holder status and holder motion
2 status.

3 I want to address briefly, I think it was, again, Mr. Patrick, and I
4 apologize if it wasn't, Mr. Patrick essentially said he believes that Patent
5 Owner is making an enablement argument, or I guess a lack of an
6 enablement argument, as to Curry. No, that's not what we're doing. An
7 enablement argument, as we all know, has to do with whether a particular
8 Patent is enabled by the specification. That's not what we're talking about
9 here at all. What we're talking about is whether the teaching of Curry
10 teaches a person of ordinary skill in the art to meet the limitations or to have
11 come up with something such as to render the limitations of the claim at
12 issue or the claims at issue being obvious. Here, the reliance on Curry page
13 12, lines 3 through roughly 12, there is again no teaching of how to deal with
14 this trade-off between the complexity of the mobile device and the amount
15 of information communicated on the mobile device's network. And in fact,
16 it talks about this as being complex such that a person of ordinary skill in the
17 art would not have believed that this could have been done with the
18 reasonable amount of experimentation. This would have been something
19 complex. You know, we were talking in here before this argument, you
20 know, I can -- my car might fly, but it takes some work to get it to fly. If
21 there's no teaching of that, then there's no -- there's nothing to render a
22 flying car obvious. You can't just say, well, a car could fly. Well, these
23 modules could be on one apparatus or one device or the other. I also want to
24 take I think it was Chowdhury who discussed Curry. And I just want to
25 make sure I have it, Curry page 11. If you go to slide 50 of Patent Owner's
26 demonstratives, this is where that that language is discussed. And it talks

1 about the motion data can be recorded, even after a phone call or text
2 message ends. And it talks about what then happens in the post-processing
3 stage. The post- processing stage is what this is talking about. It is what this
4 paragraph is talking about. And if you go to, again, slide 50 in the bottom
5 right box, which quotes Curry at page 16, lines 7 through 18, it talks about
6 what the post-processing stage is. It says there, the risky behaviors of
7 talking while driving or texting while driving may not be identified in real
8 time due to limited data. So, Curry is admitting there, we may not be able to
9 figure it out. Quite frankly, side note, that's why they had to go to Rabu for
10 the holder motion status, because Curry is unreliable in making this
11 determination. But again, the risky behaviors of talking while driving or
12 texting while driving may not be identified in real time due to limited data.
13 But the post-processing technique can deliver high confidence estimation
14 results. In this manner, any unsafe driving behaviors can be penalized after
15 the fact by deducting the driving safety score in the data server. This post-
16 processing done after the driving period is over is done in the server, and it
17 is not done during the driving period. That analysis is being done in the
18 server after the driving period is over.

19 There was also some discussion about Figure 1 and the double
20 lines. And I'll be candid, Mr. Patrick is clearly a smarter person than I am.
21 And I mean that seriously. I'm not trying to be sarcastic at all. The auto
22 insurance company is shown in Figure 1 as sending driving safety scores to
23 the server. It's explicitly shown. There's nothing -- we don't have to do any
24 inference. We don't have to guess. So, when the application says driving
25 safety scores or driving safety statistics can be reported to or calculated by
26 the data server, I think we all agree that it can be calculated by the data

1 server. In fact, we argue that's the only place that can be done. But here
2 there is also an express disclosure of that driving safety score being sent to
3 the server by the insurance company. And we talked about earlier that is
4 because it makes sense that when driving safety scores are deducted as
5 shown -- as discussed at Curry page 16 lines 7 through 18, it is done in the
6 server. So, you have to get these scores from the insurance company to the
7 server. You have to get them ultimately to the customer. And there's one
8 other place where this is discussed that we really haven't talked about, Your
9 Honors, and that's Claim 18 of Curry. Claim 18, which depends from Claim
10 17, which then depends from Claim 14, which then depends from Claim 13,
11 which then depends from Claim 12. So, it's a little bit of a hierarchical
12 analysis here. But if you -- or actually, if you look at Claim 13, it says the
13 system as in Claim 12, wherein data in the motion data cache is transmitted
14 to and stored on the data server and combined with user permission data to
15 enable a driver safety statistic to be calculated based on when the mobile
16 wireless computing device was used. And then Claim 18, which again
17 depends from Claim 13, talks about decreasing the driver safety statistic.
18 Now again, I realize that the claims don't necessarily tell the entire story, but
19 here you're talking about Claim 18, which is expressly discussing decreasing
20 the driver safety statistic being done based on motion data cache information
21 being transmitted to the data server as claimed in Claim 13.

22 Unless Your Honors have any questions, Patent Owner rests.

23 JUDGE O'HANLON: Thank you, Mr. Tiller. And thank you to
24 all the counsel for your presentations today. A final written decision will be
25 issued in due course. And the hearing for the '857 proceeding is now
26 adjourned. Let's go off the record for a moment, please. It is -- I have a

1 2:03.

2 JUDGE HOSKINS: So, this is Judge Hoskins. We are here now
3 to hear a second case following a first case. So, the second case is IPR2023-
4 00911. And the challenged Patent here is U.S. Patent Number 9,311,271.
5 And we have a little bit of a different counsel lineup. So, let me ask for
6 counsel for Petitioner to make their appearance for this case please.

7 MS. HUANG: Hi. Good afternoon, Your Honors. My name is
8 Jenny Huang, and I represent Petitioner USAA.

9 JUDGE HOSKINS: Thank you, Ms. Huang.

10 MS. HUANG: Huang.

11 JUDGE HOSKINS: Huang.

12 MS. HUANG: Yep.

13 JUDGE HOSKINS: Thank you and welcome to the Board today.

14 MS. HUANG: Thank you.

15 JUDGE HOSKINS: And for Patent Owner please. Mr. Tiller I
16 think you might be muted.

17 MR. TILLER: I'm sorry. Good afternoon. Steve Tiller on behalf
18 of Patent Owner.

19 JUDGE HOSKINS: No worries and welcome back today. So,
20 thank you.

21 MR. TILLER: Thank you, Your Honor.

22 JUDGE HOSKINS: So, I'm not going to go through the, you
23 know, the preliminaries that we heard this morning. Ms. Huang, I assume
24 you were here to -- to hear them. Each side does have 60 minutes in this
25 second case. There is a little bit of overlap though, and to the extent you
26 won't want to just refer back to what you said in the first case, it will all be

1 on one transcript and so it will all be kind of in one package and so that's
2 fine from our perspective. Also, if there's something you want to add, you
3 do have your 60 minutes for this case. So, with that, let me just ask if there
4 are any questions about the procedure before I turn things over to Ms.
5 Huang. I see Mr. Tiller shake -- okay, thank you. So, Ms. Huang, of your
6 60 minutes, would you like to make a reservation for rebuttal?

7 MS. HUANG: Yes, Your Honor. I'd like to reserve 15 minutes,
8 please.

9 JUDGE HOSKINS: Fifteen minutes. Okay. Thank you. So
10 noted, and you are free to begin when you are ready, and when you do
11 begin, we'll start your 45 minute clock for your principal argument.

12 MS. HUANG: Thank you. Thank you, Your Honors. May it
13 please the Board. Again, my name is Jenny Huang and I represent Petitioner
14 USAA. I have the immense pleasure today of talking to you about
15 something that isn't just Curry and Rabu, so pretty exciting hopefully for
16 everyone who's here today. So, you've heard my colleagues today discuss
17 the '879 Patent as it relates to IPR2023-00857. Now, as you acknowledge,
18 the '271 Patent has a lot of the same overlapping issues because there's a lot
19 of overlapping claim language. So, to best use the time, best use the time we
20 have today, and in the spirit of promoting efficiency, I'd like to first discuss
21 the similarities and differences as between the independent claims that are at
22 issue in the '879 and '271 IPRs. And that way we can use this time today to
23 focus more on the issues that are unique to the IPR for the '271 Patent.

24 So, Petitioner challenges five claims for the '271 Patent, four of
25 which are Independent Claims, Claims 1, 4, 6, and 7. So, to kind of talk
26 about these claims at a high level, I'd ask Your Honors to please turn to the

1 petition. The petition is a good place to do this because we kind of have
2 reference numbers so you can follow the elements that are unique to this
3 proceeding. So, please turn to the petition at page romanette at xi. So,
4 Claim 1 of the '271 Patent is substantively the same as Claim 1 of the '879
5 Patent, with the exception of element 1.10 of the '271 Patent, which is the
6 final wherein clause of the claim. This is the limitation that Your Honors
7 referred to as the initialization limitation on page 48 of the institutional
8 decision. So, I'll try to do the same here today.

9 With respect to Claim 4 of the '271 Patent, please turn to the next
10 page of the petition at page romanette xii. The language is again
11 substantively identical to Claim 1 of the '879 Patent and Claim 1 of the '271
12 Patent, with the exception of the last wherein clause of Claim 4, which is
13 elements 4.10 and 4.11 of the '271 Patent. However, the only arguments
14 made in Patent Owner's response that are specifically offered with respect to
15 Claim 4 are at pages 57 to 59 of Patent Owner's response. But these
16 arguments are all limited to claim features that are common between Claims
17 1 and 4, and a conclusory allegation that Patent's -- Petitioner's further
18 inclusion of McClellan in Ground 1D for Claim 4 does not address the
19 alleged shortcomings in Ground 1A. Significantly, Patent Owner makes no
20 arguments specific to either elements 4.10 or 4.11 which again are the only
21 unique claim features in Claim 4, and we made this point in Petitioner's
22 reply at page 5.

23 Next, if you'll please look to the petition, it's at the very bottom of
24 page romanette xii to xiii, 6 kind of flows over to 7. We have Claims 6 and
25 7 and they're very similar to one another but they're quite distinct from the
26 '879 Patent claims in that they're directed to a data logging system. The

1 only elements at issue with respect to these two claims are elements 6.9 and
2 7.9 which is the first half of that last wherein clause shown on this claim.
3 These claims are identical in claim -- or these elements, excuse me, are
4 identical in Claims 6 and 7 and I'll go into more detail on Claims 6 and 7 a
5 little later. But I wanted to preview with Your Honors the limited, unique
6 issues in this proceeding.

7 So, where the claims overlap with the earlier '879 proceeding, I'd
8 refer Your Honors to my colleagues' earlier discussion of those claim
9 elements from the '879 proceeding because the arguments are the same. If
10 Your Honors have any additional questions, or you want to hear it again my
11 colleagues are still here and they're happy to address them.

12 Otherwise, I plan to focus on issues unique to the '271 Patent
13 which relate to just two claim features. One, the initialization limitation of
14 element 1.10, and two, elements 6.9 and 7.9 in the Callopy-Curry
15 combination in Ground 2. And at a high level, as Patent Owner frequently
16 does throughout the '879 IPR proceeding, here, with respect to the '271
17 Patent, Patent Owner again mischaracterizes the petition and the
18 combinations offered, and then spends most of its time attacking its own
19 mischaracterization of the combination as being flawed. Behind these
20 smoke and mirror attacks based on misrepresentations of the combinations,
21 however, Petitioner's arguments, and the basis for those combinations
22 remain untouched and intact. So, since Your Honors likely have the
23 substance of Claim 1 on your mind from the earlier '879 IPR, let's start
24 there, and we'll focus on the non-overlapping subject matter with respect to
25 the '271 Patent.

26 So, if Your Honors could please turn to slide 88 of Petitioner's

1 demonstratives, we see the initialization limitation, which again is element
2 1.10. And as you'll recall, Petitioner presented two theories of invalidity for
3 Claim 1, one based on Curry-Rabu, which is Ground 1A, and one based on
4 Curry-Rabu-Katayama, which is Ground 1B. The language highlighted or
5 not grayed out on the right on the above, on the slide, is an excerpt from the
6 petition as it relates to the mapping of Curry-Rabu, Ground 1A, to the
7 initialization limitation. And on a high level, the petition argues at pages 40
8 to 41 in the Curry-Rabu ground that a POSITA would have found obvious
9 the automatic generation by the Curry-Rabu phone's fine application 1.10 of
10 an initialization input for registering the start of the already determined
11 driving period in response to GPS sensor data having predetermined values
12 reflecting a detected speed above a predetermined threshold. Now if we turn
13 to slide 89, we see that Your Honors understood both the petition's mapping
14 of Curry-Rabu to the initialization limitation and what the initialization
15 limitation itself requires without overcomplicating or confusing the issue.
16 And in particular, the Board recognizes that Curry's mobile phone 106
17 performs the initialization limitation. Specifically, Curry's client unit 110
18 registers the start of the driving period in response to an initialization input
19 generated automatically in response to the sensor data reflecting a detected
20 speed above a predetermined threshold, and records the location, speed, and
21 acceleration of mobile phone 106 each time a phone call is transmitted from
22 or received by the phone. The Board further recognizes that client unit 110
23 uses this recorded speed information to determine whether the user is driving
24 a vehicle and also to apply preset permission policies to phone operations.
25 That is, this speed data is part of what automatically determines and registers
26 the start of the driving period, as the Board noted in the institution decision

1 at page 51. Notably, after characterizing Curry in this manner, the Board
2 concluded, this appears to be all the initialization limitation requires the
3 mobile device to perform. Petitioner agrees, and Patent Owner has failed to
4 show otherwise.

5 Now, if you'll turn to slide 90, consistent with Your Honors'
6 interpretation of Curry, we have Dr. Michalson here referring to Figure 5 of
7 Curry in paragraph 167 of his declaration, Exhibit 1003. And he states that
8 Curry's phone determines a space mean speed measure that is used to
9 determine whether a vehicle within the phone is locating, excuse me,
10 whether a vehicle within which the phone is located is traveling within, for
11 example, a high speed range. Thus, as Dr. Michalson states, a POSITA
12 would have found obvious the automatic generation by the Curry-Rabu
13 phone's client application 110 of an initialization input for registering the
14 start of the already determined driving period in response to GPS sensor data
15 having predetermined values reflecting a detected speed above a
16 predetermined threshold.

17 Slide 91 shows what Curry states with respect to this element. In
18 particular, that it is easy to identify driving mode when the speed is high, for
19 example, greater than 15 miles per hour. And that Figure 5 illustrates how
20 to combine information from GPS and accelerometer sensors to precisely
21 identify the type of activity.

22 Finally, on slide 92, we see that Dr. Michalson argues at paragraph
23 166 of his declaration, additionally that in the Curry-Rabu combination to
24 avoid erasing driving behavior information indicating unsafe behaviors such
25 as speeding, a POSITA would have found obvious the configuration of
26 client application 110 to in response to an initialization input generated

1 automatically in response to the Curry-Rabu phone's sensor data having
2 predetermined values indicating that such behaviors had occurred during a
3 given driving period, register the already determined start of that driving
4 period for purposes of reporting related driving information and sensor data
5 within the Curry-Rabu phone's long-term memory module.

6 Now, as additional support for this proposition, if we turn to slide
7 93, the petition offers Curry-Rabu-Katayama as a separate ground, Ground
8 1B, which is similar to the Curry-Rabu ground but adds Katayama as it
9 provides explicit teachings about the use of memory and explicit teachings
10 relating to why data is moved between short and long-term memory in
11 devices. Slide 93 shows the petition at page 50, which states that a POSITA
12 would have found obvious the automatic generation of the initialization
13 input for registration of the start of the driving period and transfer of related
14 data in response to the speed of the vehicle exceeding the predetermined
15 speed threshold.

16 Turning to slide 94 we see again the Board endorsed this mapping
17 at page 56 of the institution decision finding that Petitioner's mapping with
18 supporting evidence of the initialization limitation justifies the IPR and that
19 quote, the detailed discussion of how the disclosures of Curry and Katayama
20 support the contention without the taint of hindsight.

21 Turning to slide 95, significantly Patent Owner did not effectively
22 counter the petition or the Board's institution decision as it relates to the
23 additional combination of Curry-Rabu with Katayama. In Patent Owner's
24 response at 54 to 55, Patent Owner attempts to undermine Petitioner's
25 argument concerning the motivation to combine by saying that Katayama is
26 prohibitively different from the '271 Patent. But these arguments are flawed

1 for multiple reasons. As argued in Petitioner's reply at pages 27 to 28,
2 Patent Owner is confusing inoperability and incompatibility with respect to
3 arguing that Katayama does not disclose a mobile phone, and that Katayama
4 requires connection with and data from vehicle sensors. But these
5 characterizations of Katayama are irrelevant because the combination put
6 forth in the petition does not rely on Katayama's teachings relating to those
7 elements. As to a mobile phone, the combination does not rely on Katayama
8 as teaching a mobile phone, but rather it's teaching relating to partitioning
9 memory. The combination uses Curry's teaching of a mobile device for
10 reporting sensor data as my colleagues previously discussed at length.

11 Patent Owner further --

12 JUDGE HOSKINS: (INDISCERNIBLE) this is Judge Hoskins,
13 Ms. Huang.

14 MS. HUANG: Sure.

15 JUDGE HOSKINS: Since you're going there, what is Katayama's
16 use of short-term and long-term memory? How is that pertinent to what's
17 recited in Claim 1?

18 MS. HUANG: Sure. So, this is something that I'm happy to
19 address. It really relates to, well, let's put it this way. The ultimate
20 combination covers the claim and the analysis that a POSITA should
21 perform when determining whether something is not whether Katayama
22 necessarily relates to the claim or whether Katayama is directed or
23 prohibitively different than the Patent itself, but rather whether a POSITA
24 considering the prior art would have found obvious a combination. So,
25 Katayama's brought in --

26 JUDGE HOSKINS: I appreciate that, but you're going, you've got

1 Ground A, which is Curry and Rabu, and you've got ground B, Ground 1B,
2 which is Curry, Rabu, and Katayama. So, presumably you offered Ground
3 1B for some reason where Ground 1A might not do the trick for you with
4 respect to Claim 1. And so, I'm wondering, what is it about the claim that
5 Katayama helps with, even if you're not relying -- even if it doesn't say
6 long-term, short-term memory, how does the use of Katayama's short-term
7 and long-term memory help you with some sort of what might be a
8 deficiency in Ground 1A when moving to Ground 1B?

9 MS. HUANG: Sure. Thank you for that. Happy to clarify that.
10 So, as in Ground 1A, the argument is that it would have been obvious to a
11 POSITA to partition or to move important driving information from short to
12 long-term memory so that that important information is not saved. Now,
13 where Curry or Rabu was not explicit as to that teaching --

14 JUDGE HOSKINS: So, but doing that, let me just back up a
15 second. Doing that, what limitation in Claim 1 is that addressing?

16 MS. HUANG: That addresses registering the start of the driving
17 period. That's the action that when the vehicle in which the mobile device is
18 located is moving at faster than a predetermined speed, the combination's
19 device determines that that is important information that needs to be saved.
20 And so, you want to register the start of the driving period, including the
21 information that's being reported, because the device has recognized that
22 this is something important. This is something we don't want to lose if it's
23 sitting in a short-term memory buffer. So, we register the start of that
24 driving period by taking that important driving information that's being
25 collected by the vehicle sensors and transfer that to a long-term memory to
26 ensure that that information is not lost or inadvertently written over. Hope

1 that that --

2 JUDGE HOSKINS: Thank you for that.

3 MS. HUANG: Yes, of course. So, Patent Owner instead is
4 mischaracterizing, however, how we're using Katayama. You know,
5 additionally, Patent Owner's arguments at pages 54 to 55 in Patent Owner's
6 response relating to the differences between Katayama and the '271 Patent,
7 rather than the differences between Katayama and Currie and Rabu, that
8 Katayama is prohibitively different from the '271 Patent. They seem to be
9 requiring that Petitioner is using the '271 Patent or its claims as a roadmap,
10 but we know that's improper. And in fact, Patent Owner accuses Petitioner
11 at pages 56 to 57 of Patent Owner's response of using hindsight in applying
12 Katayama, while at the same time arguing that Katayama is too different
13 from the '271 Patent to be applied as prior art at pages 54 to 55. It can't be
14 both. And in reality, it's neither. Ultimately, it seems like Patent Owner's
15 arguments regarding the combination and obviousness are actually rooted in
16 misunderstandings or mischaracterizations. As explained with reference to
17 slide 95, Patent Owner mischaracterizes the combination of Curry, Rabu,
18 Katayama, and that's not where it stops.

19 The other problem with Patent Owner's argument is that they
20 confuse what obviousness is. We can see that in their writing when we look
21 at the Patent Owner's response, because in the Patent Owner's response,
22 Patent Owner takes a swipe at hindsight where they criticize the proper
23 analysis, which of course is to look at (INDISCERNIBLE) references for the
24 analysis, not the claims. So, let's take a look at their writing. If you will,
25 please turn to slide 96. In addressing the manner in which obviousness was
26 presented and endorsed, you can see Patent Owner's response. Patent

1 Owner goes on to explain how obviousness should be addressed. I
2 apologize, I know there's a lot of text on this slide, but if we'll read it
3 together, Patent Owner states, this is incorrect under § 103. In an
4 obviousness analysis to combine tertiary reference C, in this case, Katayama,
5 with primary and secondary references A and B, in this case, Curry and
6 Rabu, respectively, one cannot look to reference C, the tertiary reference, for
7 motivation to combine. That is simply contradictory to § 103 and the
8 requirements of an obviousness analysis, is what Patent Owner said.
9 Notably, Patent Owner does not cite any law, any cases in support of this
10 position. And Your Honors, I think we know why. Now, Patent Owner
11 goes on to say that when looking at Curry and Rabu, a Petitioner only knew
12 of the beneficial results described in Katayama, unless it knew of Katayama
13 in hindsight. But this is not the correct inquiry with respect to hindsight.
14 Hindsight asks whether a combination uses the invention itself to find a
15 claim obvious, yet Patent Owner suggests the opposite. Petitioner isn't
16 reading into the prior art the teachings of the invention at issue. In fact,
17 Patent Owner admits as much when it says that Katayama is prohibitively
18 different from the '271 Patent at pages 25 and 54 of its Patent Owner's
19 response. Petitioner is merely using Katayama's teachings and the benefit it
20 affords to describe motivations to combine just as Your Honors recognized
21 in the institution decision and as Your Honors understand is proper
22 obviousness analysis under § 103.

23 Now, moreover, even if Patent Owners' misstatements of the law
24 were correct, which we know they're not, Patent Owner further ignores
25 Petitioner's reliance on Curry as motivation to combine Katayama with
26 Curry-Rabu. As shown on slide 96 on the bottom, Petitioner's reply at page

26 stated that both Curry and Katayama each contemplate scenarios that benefit persistent and temporary storage of recorded data, and it cites to the petition at pages 44 to 51. The panel stated that Petitioner explains with a detailed discussion of how the disclosures of Curry and Katayama support this contention without the taint of hindsight, according to the institution decision at page 56. So, Patent Owner's (INDISCERNIBLE) and Katayama about how it can't be used for a motivation to combine are further problematic because they ignore the teachings of Curry, which independently provides a motivation to combine. You can look at the petition at pages 44 to 51 for a full discussion of the combination, and that includes multiple sites to Curry in support of the combination, for example, on the middle of page 45, second paragraph.

If we turn to slide 96, excuse me, 97, Patent Owner's additional attacks on Katayama's teachings of long-term memory further mischaracterizes the arguments made in the petition. Patent Owner's arguments are more of a distraction than a substantive attack on whether Petitioner's mappings of the Curry-Rabu-Katayama combination meets the requirements of the claims. For instance, Patent Owner argues on page 55 of Patent Owner's response that a POSITA would not have been motivated to look to Katayama for additional storage details for Curry and Rabu because, as Patent Owner argues, a POSITA considering Claim 1 of the '271 Patent wouldn't look to Katayama because the claim doesn't require utilization of long-term memory. And this is sort of getting at, I think, what Judge Hoskins was asking because here Patent Owner's argument is flawed because it mischaracterizes obviousness analysis. It neutralizes its other argument, actually, that Petitioner's combination relies on hindsight at the

1 same time. First, as we addressed with the discussion of the last slide, it is
2 completely proper obviousness analysis to look to any of the prior art
3 references for motivation to combine. Second, in the petition, a POSITA
4 does not look to the claims of the '271 Patent to inquire as to whether a
5 combination is obvious. That we know is improper, and that leads to
6 impermissible hindsight. Rather, we consider the prior art references that
7 make up the combination. So, it follows whether the claims require long-
8 term memory is irrelevant to whether a POSITA would have looked to
9 Katayama. Instead, a POSITA here is simply considering in this scenario,
10 Curry-Rabu, and contemplating what would have been obvious in view of
11 the combination of those references. And for the reasons Petitioner argued
12 in its petition, a POSITA would have been motivated to look to references
13 such as Katayama to avoid an erasure of important situation data, such as
14 data values indicating unsafe speed, which is gathered by the Curry-Rabu
15 combination. Katayama provides teachings of using long-term memory to
16 avoid such erasure of important situation data. So, it provides sufficient
17 teaching and motivation to the combination. It just so happens that also
18 teaches registering the start of a driving period. So, as Your Honors
19 correctly observed in the institution decision, Petitioner's case for
20 obviousness posits that configuring Curry's mobile phone 106 to employ
21 temporary and long-term memories to achieve the beneficial results
22 described in Katayama would lead to the phone satisfying the initialization
23 limitations requirement of registering the start of a driving period. That is,
24 Petitioner offers a combination that Dr. Michalson supported that a POSITA
25 would have found obvious. That the resulting combination offers details or
26 features that the claims do not explicitly recite or require is of no

1 consequence. The only question is whether that combination actually meets
2 the requirements of the claims of the '271 Patent, and Petitioner has shown
3 that it does.

4 Now, if we turn to slide 98, I want to address an argument that
5 Patent Owner presents in its sur-reply at page 28. Specifically, where it
6 alleges that the initialization limitation element 1.10 refers to block 42 of
7 Figure 4A of the '271 Patent while further alleging that Petitioner refers to
8 block 50 of the '271 Patent. There are a couple of problems with this that I
9 want to address here. First, Petitioner never refers to block 50 anywhere in
10 its petition. You can do a search for 50 in the petition. There's no reference
11 to block 50 or column 18, lines 55 to 60 of the '271 Patent anywhere. The
12 same holds true for Petitioner's reply at page 25, which Patent Owner cites
13 as allegedly making the statement. The entirety of page 25 of Petitioner's
14 reply is shown on slide 98. I invite you to look at it. It simply isn't there.
15 Nothing about block 50, nothing about column 18 lines 55 to 60 of the '271
16 Patent. In fact, nothing about the '271 Patent or Exhibit 1001 at all. That's
17 not what we did. If you look at the petition, we just tried to understand the
18 claims and we mapped them to the art. Take a look at the petition at pages
19 34 to 41 and pages 48 to 51. There is no reference to the '271 Patent at all
20 on these pages.

21 Second, Patent Owner's argument, seemingly responsive to
22 Petitioner's reference to block 50, which we know doesn't exist, is actually
23 improper because the sur-reply, excuse me, it's actually improper in the sur-
24 reply because it's new. It's not responsive to anything Petitioner said in the
25 reply or even in the petition. Patent Owner never argued in its Patent
26 Owner's response that element 1.10 refers to block 42 or to column 18, lines

1 30 to 39. These arguments are new and they should be disregarded as
2 impermissible new argument. Now, certainly there's a suggestion that it's
3 responsive to Petitioner's characterization of the initialization limitation at
4 page 25. But as you can see on the slide, that simply doesn't exist. This
5 argument is new. It's based on something Petitioner never argued, and it's
6 improper.

7 Unless Your Honors have any further questions, I'd like to turn to
8 Claims 6 and 7. So, for Claims 6 and 7, Petitioner relies on a different
9 combination, Callopy-Curry, that's Ground 2. I know a lot of times Ground
10 2 is an afterthought and that really isn't the case here. Claims 6 and 7 are
11 both independent claims and the strength of this ground is truly reflected in
12 the weakness and the brevity of Patent Owner's arguments against it in its
13 response and in its sur-reply. Patent Owner may have treated it like an
14 afterthought, but it's anything but that. So, if you'll take a look at the
15 petition, again, we'll look at the claim language again. If you take a look at
16 the petition at page romanette xii and xiii, we see here that unlike Claim 1,
17 which is directed to a data -- we see that Claim 6, unlike Claim 1, is directed
18 to a data logging system rather than a mobile telecommunications device.
19 This system includes a database and a communications interface and the
20 communications interface is used to communicate with and receive data
21 from a remote mobile telecommunications device. That's a lot of text.
22 Ultimately, the one element at issue with respect to Claims 6 and to 7 is
23 what Petitioner calls element 6.9 and 7.9. That's the last element shown for
24 each of those claims. Oh, excuse me. It's the last element of Claim 6, and
25 the second to last of 7. But really it's just portions of these elements that are
26 at issue. And they're identical as between those two claims.

1 So, let's set the stage a little bit. We've spent a lot of time on
2 Curry, as we all know. So, if you could please turn to slide 34 of
3 Petitioner's demonstratives. Let's talk about Curry, or let's talk about
4 Callopy, sorry. Spend some time with Callopy and get to know that a little
5 better. So, Callopy teaches a system, 4000, shown in Figure 40 at right, for
6 real-time monitoring of a driver to facilitate termination of insurance rates.
7 The system, as you can see, has a lot of components, among them a mobile
8 device, 4005, a vehicle, 4030, an insurance provider system, 4035, and a
9 driving history database, 4060. The insurance provider system, 4035,
10 communicates with the mobile device, 4005 via a transceiver 4040, and a
11 communication component 4045 in the insurance provider system 4035. So,
12 referring back to the requirements of Claim 6, or Claim 6 as a whole, we
13 have a data logging system, we have a database, and we have a
14 communications interface used to communicate with and receive data from a
15 mobile device that's remote from the insurance provider or data logging
16 system.

17 If Your Honors could please turn to slide 57, we get to the
18 Callopy-Curry combination. Here, Dr. Michalson explains that the
19 insurance provider system 4035 gathers information from as many sources
20 as are required to facilitate generation and presentation of insurance rates
21 and determine an insurance rate based upon the gathered data and data
22 analysis. And this is at paragraph 211 of Dr. Michalson's declaration. Then
23 he says, to the extent that Callopy does not explicitly teach that its mobile
24 device calculates scores for the insurance provider system to use for
25 determining insurance premiums, doing so would have been obvious to a
26 POSITA. Then Dr. Michalson points to Curry as further evidence that use

1 of a score was well known by the critical date and states that a POSITA
2 would have been motivated to look to Curry to improve Callopy. And my
3 colleagues have gone into quite a bit of detail with respect to the '879 Patent
4 and its IPR on how Curry teaches the use of a driving score and how its
5 mobile device can generate such a driving score. And I'll go into a bit of
6 that myself in addressing Patent Owner's arguments. But turning to slide
7 58, at a high level, we see Dr. Michalson explain at paragraph 215 of his
8 declaration that a POSITA would have been motivated to modify Callopy's
9 system to include a safety score, either determined by the mobile device and
10 provided to the insurance system or determined by the insurance provider
11 system to determine insurance premiums. If we look to slide 58 on the right,
12 we see Curry explained that the location of various software firmware in its
13 system is based on a trade-off between the complexity of the mobile device
14 and the amount of information communicated on the network. And this can
15 be determined based on engineering and business needs, something well
16 within the knowledge of a POSITA.

17 So, with that background, sort of get acclimated with the mapping,
18 let's turn to elements 6.9 and 7.9 and the specifics of those elements that are
19 at issue. So, if Your Honors could please turn to slide 103. You can see on
20 the left an excerpt from elements 6.9 and 7.9, which is really the only
21 portion of these claims that Patent Owner substantively contests. Patent
22 Owner alleges that this language necessitates that driving information
23 includes both a driving score and sensor data captured and processed by the
24 remote mobile telecommunications device rather than, as the claim states, at
25 least one of a driving score and sensor data. As I will explain further,
26 Petitioner explained in the petition how the Callopy-Curry combination

1 renders either of these options obvious.

2 Turning to slide 104, we see at left the relevant language of Claim
3 6 and your Honors' commentary on the claim language in the institution
4 decision at pages 58 and 59. In particular, in response to Patent Owner's
5 argument that Claim 6 requires that the mobile device itself, not a separate
6 server, generates the driving score, Your Honors wrote, we disagree. Claim
7 6 pertinently specifies only that the data logging system receives at least one
8 of a driving score and sensor data captured and processed by the remote
9 mobile telecommunications device. That limitation is satisfied if the system
10 received sensor data but not a driving score from the mobile device. Indeed,
11 a later limitation in Claim 6 expressly requires that the data logging system
12 is arranged to generate a driving score. That is, the Board read the at least
13 one of language to require only one. So, if we have art that teaches driving
14 information that comprises sensor data alone, that will suffice. And Patent
15 Owner didn't refute this. First, Patent Owner --

16 JUDGE HOSKINS: Did the Petitioner agree with that in the
17 reply? The way I read the reply was, Petitioner said it really doesn't matter
18 because Curry's mobile phone does generate a driving score. I don't think
19 Petitioner kind of discussed this issue in the reply. Am I right on that?

20 MS. HUANG: Yeah, Petitioner didn't mention it in the reply, but
21 it's clear in the petition that either option is covered by the combination. I
22 think that's correct.

23 JUDGE HOSKINS: Thank you.

24 MS. HUANG: Of course. So, but Patent Owner, again, didn't
25 refute this. Patent Owner did nothing in its response or sur-reply to show
26 that Claim 6 requires that the mobile device generates a driving score that is

1 part of the driving information received by the data logging system. Instead,
2 it merely points to portions of the '271 Patent that say that the driving
3 information can include a driving score and that the mobile device can
4 generate a driving score. But there's nothing about how it is a requirement
5 that it must be part of the claim. Second, Patent Owner does not address
6 Petitioner's mappings of the prior art to driving information that comprises
7 sensor data, which is all that the claim requires. As such, if the Board
8 maintains its position concerning the interpretation of 6.9 and 7.9, and Patent
9 Owner has cited no case law to the contrary, so, if the Board maintains its
10 interpretation from the institution decision, then Patent Owner should prevail
11 on Ground 2. And more, as we pointed out in Petitioner's reply, even if the
12 Board changed its interpretation, such that Claim 6 is found to require both
13 the driving score and sensor data, the petition showed how the combination
14 teaches both as well.

15 So, let's turn to slide 105, where we first address the driving
16 information comprising sensor data. The petition shows at the top of slide
17 105 on the right at page 77 of the petition that the prior art combination
18 includes the necessary sensor data as recited by elements 6.9 and 7.9. On
19 slide 106, we see where Dr. Michalson explains that information from
20 Callopy's mobile device, 4005, comprises sensor data from the GPS and
21 accelerometer that is processed by the mobile device, which is driving
22 information comprises sensor data captured and processed by the remote
23 mobile telecommunications device, including cites to Callopy. And
24 significantly, Patent Owner does not dispute that the combination's
25 teachings of driving information comprising sensor data. Rather, Patent
26 Owner's arguments are focused on whether the combination, and really

1 specifically Curry's mobile device, derives a driving score. And on that
2 subject, let's turn to slide 107, where we have an excerpt from the petition at
3 page 63 on the bottom on the right, where Petitioner argues that a POSITA
4 would have been motivated to modify Callopy's system to include the use of
5 the safety score, either determined by the mobile device and provided to the
6 insurance provider system, or determined by the insurance provider system
7 to determine insurance premiums. On slide 108, we see Dr. Michalson
8 opined in paragraph 241 of his declaration that, if driving information in
9 Claim 6 is interpreted to require both a driving score and sensor data, the
10 Callopy-Curry combination renders it obvious.

11 So, let's first turn to slide 109 and discuss what Curry teaches on
12 the subject. First, Curry explains that a driving safety evaluation module can
13 calculate safety scores, and the petition argues at page 62 that Curry
14 describes setting an initial driving score and adjusting that driving score in
15 subsequent driving periods. You also heard my colleagues talk about that
16 earlier in the '879 proceeding. Next, Curry explains that the location of
17 software and firmware that create the functionality for the system can be
18 based on a trade-off between the complexity of the mobile device and the
19 amount of information communicated by the mobile devices network, and
20 that the actual locations of those modules, caches, and databases can be
21 decided based on engineering and business needs. Again, you heard that
22 discussed as well by Mr. Patrick and Mr. Chowdhury.

23 And finally, Curry describes calculating a driver safety statistic,
24 which can be reported to the data server, something else that my colleagues
25 discussed earlier. On slide 110, we see Dr. Michalson's commentary on
26 Curry's teachings. He explains what Callopy's insurance provider system,

1 4035, does. It gathers information from as many sources as required to
2 facilitate generation and presentation of insurance rates and determines an
3 insurance rate based upon the gathered data and data analysis. And to the
4 extent that Callopy doesn't explicitly teach that its mobile device calculates
5 scores for the insurance provider system to use for determining insurance
6 premiums, doing so would have been obvious to a POSITA. And indeed,
7 the use of a score was well known by the critical date as evidenced by Curry,
8 and a POSITA would have been motivated to look to Curry to improve
9 Callopy's system. Regarding this combination, Dr. Michalson says, a
10 POSITA would have found obvious implementing Callopy's vehicle
11 monitoring system for determining insurance premiums with Curry's driving
12 score based on its collected driving data for determining insurance
13 premiums. Additionally, a POSITA would have found obvious either
14 determining that score at the mobile device or at the insurance provider
15 system, depending on a trade-off between the complexity of the mobile
16 device and the amount of information communicated on the mobile device's
17 network. Ultimately, as explained, the score could be determined at either
18 location in Callopy, depending on the particular needs of the system.

19 JUDGE HOSKINS: Ms. Huang, you have about five minutes left
20 to go, just so you know.

21 MS. HUANG: Perfect. Thank you. Thus, the petitions and Dr.
22 Michalson's opinions are based on an obviousness combination of Callopy
23 and Curry that a POSITA would have modified Callopy with Curry to use
24 Curry's driving score. And in view of Curry, it would have been obvious to
25 generate that driving score either at the mobile device or server. Both are
26 acceptable and just based on a trade-off of the complexity of Callopy's

1 mobile device, which is complex enough to be able to handle that
2 calculation, and it's also based on the how much information is transmitted
3 over the network.

4 If Your Honors have no further questions, I will reserve the
5 remainder of my time for redirect.

6 JUDGE HOSKINS: I do not, thank you for that. And so, I have --
7 you have 18 minutes left for your rebuttal when we come back to you Ms.
8 Huang. So, Mr. Tiller it looks like you're ready to go. Do you have any
9 time that you would like to reserve for your rebuttal?

10 MR. TILLER: I'm not going to need much time, Your Honor, but
11 I'll reserve 15 minutes just in case.

12 JUDGE HOSKINS: Okay. Thank you.

13 MR. TILLER: But I don't think I'm going to get anywhere near
14 that, quite frankly.

15 JUDGE HOSKINS: Understood. So, you may begin when you
16 are ready. Thank you.

17 MR. TILLER: Thank you very much. And I apologize if I'm
18 going to refer back to some arguments that were made earlier with regards to
19 the '879. But I just want to clarify some points. There was discussion about
20 Figure 3 earlier today. And if we look at Figure 3 of Curry, I'm sorry, of
21 Curry, Exhibit 1005, I apologize for that. I figure you just all know that
22 we're talking about Curry, since we talked about it so much. There was
23 discussion of how do you know that this driving safety performance
24 database is in the phone. But remember, that is just a database. There's no
25 calculation going on there. And we know that because when we look at
26 Curry, page 14, again Exhibit 1005, page 14, line -- starting with line 19.

1 Well, let's start with line 17. The use permission data 318 can be
2 communicated to the mobile computing device through the mobile phone
3 communication link from a computer or server as previously discussed. And
4 here's the important part. Data from the motion data cache and the activity
5 mode recognition module can be transmitted to a local driving safety
6 performance database, 324. That is what is shown in Figure 3. Yes, that is a
7 local driving safety performance database. Whatever raw data, and as we
8 explicitly show in slides, let me get to it, and I apologize. Slides 43 and 44,
9 we show in red the raw sensor data, how that tracks through Figure 1 to the
10 server. This is just another example of that. Here you see data from the
11 motion data cache 304 and the activity mode recognition module 306 can be
12 transmitted to a local driving safety performance database, 324. That's what
13 was highlighted in Figure 3 as well. But then the collected driving safety
14 information can be sent back to the server. So, what happens is this raw data
15 is collected in this driving safety performance database that is local, nothing
16 is done on it, and then it is sent to the server for something to be done to it.
17 That's the discussion that we had for three Patents now. And I won't bore
18 Your Honors with that discussion yet again. But again, what we know is
19 happening is that no processing of driving information is occurring on the
20 Curry phone. Nothing about Callopy, nothing about Katayama changes that
21 point, plain and simple, for all the reasons that we've talked about.

22 JUDGE HOSKINS: Mr. Tiller, this is Judge Hoskins.

23 MR. TILLER: Yes.

24 JUDGE HOSKINS: I have a specific question for you on that with
25 respect to your Patent Owner response. So, I'm looking at page 28. So, I'm
26 hoping you can pull that up.

1 MR. TILLER: In which -- in our 91 --

2 JUDGE HOSKINS: This case.

3 MR. TILLER: In this case?

4 JUDGE HOSKINS: In the IPR2023-00911.

5 MR. TILLER: Hang on. Let me find that if I may. I have like

6 1,000 pieces of paper here. What's the page number?

7 JUDGE HOSKINS: Twenty-eight.

8 MR. TILLER: Twenty-eight. Thank you.

9 JUDGE HOSKINS: Thank you.

10 MR. TILLER: I apologize for the delay.

11 JUDGE HOSKINS: No, it's no worries. No.

12 MR. TILLER: It's chaos. Yes. Okay.

13 JUDGE HOSKINS: So, you were kind of dancing around the

14 issue of, I think the claim limitation, it's one of the claim limitations

15 anyway, that's at issue with what you were just talking about is what's

16 driving information. And the claims say that driving information is derived

17 from sensor data, which is the basis for your distinction between the two, as

18 I understand it.

19 MR. TILLER: Correct.

20 JUDGE HOSKINS: Okay. So, here at page 28, you're saying

21 that -- I'm looking at about four lines up from the bottom. And so, there's a

22 sentence that begins on the left margin. It begins with, quote, driving

23 information, end quote, as required by the claims and as discussed above

24 includes derived information associated with how the vehicle is driven,

25 which is another of the phrases that's in the claims. But then you say, this is

26 my question, including information derived from sensor data. And then you

1 have a list of examples. So, is it your view that your list of examples here
2 are examples of driving information that's derived from sensor data, or is
3 your list of examples there sensor data?

4 MR. TILLER: Yeah. Our -- the parenthetical is driving
5 information then it is derived. So, you have this raw sensor data that is
6 coming out of the sensors. You're going this fast. You're located here.
7 That is what I think everybody has been referring to as raw sensor data.
8 Then something needs to be done to that. There must be derivation of
9 driving information, and we know that is different from sensor data because
10 it is the derived driving information that is derived from sensor data. So,
11 here are examples of driving information that may be derived from sensor
12 data, and that is --

13 JUDGE HOSKINS: So, particularly is speed an example of
14 driving information that's derived from sensor data?

15 MR. TILLER: I'm sorry, Judge Hoskins, we -- we lost you for
16 half a second there. I apologize.

17 JUDGE HOSKINS: No worries, I will try again. So, is speed,
18 which is one of the parenthetical examples, is speed driving information
19 that's derived from sensor data?

20 MR. TILLER: Well, speed can be raw data. Speed -- I'm getting
21 an echo now. I apologize. Speed can be raw data. Speed can be if it is
22 derived if something is done to it. So, for example, we have determined that
23 you are speeding because we -- we look at the speed you're going 75 in a 55,
24 so that is that's an identification of speed but it's an identification of speed.
25 So, but driving information must be derived from sensor data. It can be a
26 combination of driving and other driving information and sensor data, but

1 when you talk about velocity, speed of impact, pitch, yaw, roll, g-force,
2 bearing, that is all information that is processed or derived in some way.
3 And that driving information must be essentially about driving. Not about is
4 the driver on a phone call. Because that's what Curry calculates. Curry -- or
5 Curry determines. We talked about that again in the earlier discussion.
6 Curry is a call handler. It has this very simplistic, are you on a call, we have
7 to block it. It is not, as we talked about earlier today, determining event
8 modeling and doing all sorts of detailed analysis on information to help
9 modify driver behavior, to help increase or decrease insurance premiums, or
10 how to collect data related to an event, for example, a crash. Does that
11 answer your --

12 JUDGE HOSKINS: Yes, it does. Thank you.

13 MR. TILLER: Okay. Thank you. So again, and I know we sort of
14 dealt with it very briefly in our ser-reply, but the fact of the matter is nothing
15 about Katayama, and I think you asked a good question when you said, what
16 does Katayama really have to do with Claim 1? Because we don't see what
17 it really does have to do for Claim 1. And it certainly does not cure any of
18 the problems in the Curry-Rabu combination that we have talked about
19 extensively over the last month and a half. And as to Callopy, Callopy still
20 suffers from many of these same problems. And first of all, you have to
21 remember that Callopy relies on not sensor data. Callopy relies on onboard
22 sensors. It's really a fundamental difference. And particularly as it is being
23 relied on as sort of the lead prior art, it is fundamentally different in that it
24 relies on on-board sensors, and it doesn't have its phone, as I think was
25 conceded by counsel. It doesn't calculate driving scores or, quite frankly,
26 any driving information in it. That's why they have to go to Curry. They

1 have to go to Curry to determine driving information. And again, there's no
2 driving information calculated on the phone or generated on the phone, or
3 more importantly, let me use the claim term, derived on the phone. So,
4 starting with Callopy, which does have, you know, discuss dynamic
5 insurance customization and adoption. And you have this, what I would find
6 to be an incredible invention of getting binged with insurance premiums
7 constantly as you're driving. But nonetheless, it uses its phone as a conduit
8 to get that information to something that's in your car. And that's something
9 in your car is using onboard sensors to collect information and send it to the
10 insurance premium. They concede that Curry must be used in combination
11 or relied on in combination to teach about phone calculating. Whether it's a
12 driving score or driving information generally, and I concede it has to be
13 driving information generally, Curry doesn't do that. And we've talked
14 about that ad nauseam, unless you want to -- unless any of Your Honors
15 want to raise that issue again. Quite frankly, we'll rest.

16 JUDGE HOSKINS: Well, I have a couple of other questions for
17 you, please.

18 MR. TILLER: Yes, sir.

19 JUDGE HOSKINS: So, hopefully you still have the Patent Owner
20 response kind of sitting there for you.

21 MR. TILLER: I do. Thank you.

22 JUDGE HOSKINS: I'm now looking at page 54.

23 MR. TILLER: Yes, sir.

24 JUDGE HOSKINS: So, you've got a section B here that's entitled
25 Petitioner lacks sufficient motivation to combine Katayama with Curry and
26 Rabu. So, we're talking about Ground 1B, and you have a statement about

1 you'd be talking about what Katayama is directed to, and then about the
2 third line down from the section title, you say Katayama is prohibitively
3 different from the '271 Patent. And Ms. Huang, I think talked a lot about
4 this statement during her argument. And so, it looks like that might be an
5 analogous art statement because when you start talking about comparing the
6 prior art to the challenged Patent, it starts to sound like analogous art, but
7 you don't go through the two part *Bigio* test. So, I'm wondering, you know,
8 is this, you know, a stab at a non-analogous art argument, or -- or what is
9 this?

10 MR. TILLER: Look, this is this is to point out what Katayama
11 isn't. And if you want to call it a stab at a non-analogous art, it is just
12 highlighting the differences and the fact that it doesn't solve or doesn't, you
13 know, fill the gaps of the Curry-Rabu combination. It relies again on vehicle
14 sensors. And it requires, and you know, and again, it requires this data from
15 vehicle sensors, which we say, you know, one of the fundamental things,
16 and maybe the most fundamental, I apologize, our phone calls come from
17 through our computers. So, when a phone call comes in, I can't say
18 anything or hear anything. So, I apologize for that. I'm sure there's a way
19 to block it. One of the fundamental inventive points of the Wright Patent is
20 the fact that you don't have to retrofit something to this vehicle. You don't
21 have to pull from vehicle sensors, which are not customized to the
22 individual. The phone, you know you've got the individual, particularly we
23 all know now because we're all glued to our phones. But we're just trying
24 to make the point that Katayama is fundamentally different. And in this
25 particular case, in the '271 Patent, Katayama doesn't really address any of
26 the gaps or the problems with the Curry-Rabu combination that we discussed

1 earlier today.

2 JUDGE HOSKINS: Okay. Thank you. So, then with that, I have
3 one more question for you. And again, we're going to the Patent Owner
4 response. So, I'm looking at page 56, two pages later. And this is where
5 you're saying that we misapplied the law of obviousness in our DI because
6 we were finding a motivation to combine in the tertiary reference. And I
7 was surprised by that. And so, I guess my only question is, do you have any
8 legal support for that?

9 MR. TILLER: I mean, listen, I will concede, Your Honor, that I
10 don't see it here. So, you know, other than, you know, citing to *KSR*,
11 obviously.

12 JUDGE HOSKINS: Well, so *KSR* says teaching, suggest, and
13 motivation is still a permissible way to get to an obviousness rationale. It's
14 just not required. Isn't that the basic holding of that case?

15 MR. TILLER: Well, I think that is the basic motivation of that
16 case. But I think what we're saying is here, how would you have ever found
17 Katayama? You're here talking about an invention that expressly and
18 specifically and importantly is not reliant on vehicle sensors. And this is
19 very much so reliant on vehicle sensors. And again, doesn't solve any of the
20 problems with the initial Curry-Rabu discussion, and as I think you pointed
21 out during Ms. Huang's discussion, that it really doesn't apply to any
22 particular claim element. So, you know, that's what we were focusing on
23 here, that there's got to be a reason to even go looking for it, and it just isn't
24 there.

25 JUDGE HOSKINS: Okay. Okay. Thank you.

26 MR. TILLER: Thank you.

1 JUDGE HOSKINS: Those were all my questions. Let me just
2 pause to make sure my colleagues do not have any questions. Sounds like
3 they don't. Okay. So, thank you, Mr. Tiller. We do not allow you to
4 reserve more than half of your time for rebuttal, and so you didn't use up,
5 you know, more than 30 minutes in your initial presentation. So, you have
6 30 minutes when we come back around to you.

7 MR. TILLER: No problem. Thank you, Your Honor.

8 JUDGE HOSKINS: Okay. So, Ms. Huang, as a reminder, you
9 have 18 minutes left for your rebuttal, and you may begin when you are
10 ready.

11 MS. HUANG: Thank you, Your Honors. If you could please turn
12 to slide 75 in Patent Owner's demonstratives. I'm not sure if Mr. Tiller
13 raised it, but he discussed the subject matter, so I just wanted to use it as sort
14 of a talking point demonstrative. So, I wanted to take a moment to address
15 the language presented here and clarify the record for Your Honors. So
16 here, Patent Owner alleges that Petitioner admits that Callopy does not teach
17 calculating scores. Patent Owner said in its presentation, actually, I think
18 that Petitioner conceded it. The Petitioner didn't say that or concede that or
19 admit that. If Your Honors could turn to page 61 of the petition, about six
20 lines from the bottom, the petition actually states to the extent that Callopy
21 does not explicitly teach calculating scores for use for determining insurance
22 premiums, doing so would have been obvious. What we said was it would
23 have been obvious in view of Callopy and Curry. Our point is it was
24 obviousness. It was well-known to do it in view of Curry. And Callopy is
25 not an anticipatory reference. It's offered as part of an obviousness
26 combination. Patent Owner's slide 75 is a misinterpretation of the petition.

1 They cut out words, they added ellipses, and they quoted it as such. And
2 this appeared again in Patent Owner's response at page 61 as well in the first
3 sentence of section 1X, or sorry IXB.

4 Next, I want to turn to Your Honors earlier asked about it, and
5 Patent Owner's counsel then discussed on their direct our further integration
6 in Ground 1B of Katayama into the Ground 1A Curry-Rabu combination,
7 and the relation of Katayama to claim elements. I want to follow my earlier
8 comments with just a little bit more detail. So, at the outset, I'll offer that
9 Katayama's integration speaks to the claimed initialization limitation,
10 including registering the start of the driving period in response to an
11 initialization input generated automatically in response to the sensor data
12 having predetermined values. This is likely apparent at this point, but I'll
13 address further now. First, regarding the registration limitation, Katayama
14 addresses features otherwise obvious over Curry and Rabu. The registration
15 of a start of a driving period based on an initialization input that is itself
16 provided responsive to a vehicle exceeding a speed threshold. Now, recall
17 that Curry expressly describes in connection with Figure 5, a determination
18 of driving activity made based on sensor data indicating that the vehicle
19 speed exceeds a high speed threshold. And as we've discussed, a POSITA
20 would have understood and found obvious that if Curry's activity mode
21 recognition module were to identify a violation during the related driving
22 period, then the related sensor data and the derived driving information
23 should be registered for storage and long-term memory to avoid inadvertent
24 erasure of that data. That process of registration would have been obviously,
25 would have obviously been performed in response to an initialization input
26 related to the determination of speed exceeding a threshold. Katayama

1 provides additional and express disclosure of bifurcating of a local memory
2 into short and long-term memory, which related data handling -- with related
3 data handling techniques aimed at retaining important driving information
4 indicating risky behaviors, such as speeding. So, in that regard, Katayama
5 offers an express indication that sensor data, indicating speeds that are above
6 a threshold and the related data and driving information should be marked as
7 important and stored in long-term memory to avoid erasure. And in that
8 way, Katayama further renders obvious registration responsive to an
9 initialization input that is generated responsive to speed exceeding a
10 threshold. So, in more detail, and as shown at the bottom of slide 6, the
11 '271 Patent's Independent Claim 1 recites, wherein the mobile
12 communications device is controlled by a downloaded application to control
13 the mobile device to register the start of the driving period in response to an
14 initialization input generated automatically in response to the sensor data
15 having predetermined values, wherein the initialization input is generated in
16 response to sensor data reflecting a detected speed above a predetermined
17 threshold. Relatedly, and as explained in the petition at page 49, Katayama
18 describes -- describes digitalization of temporarily stored situation data for
19 purposes of determining at the time of reporting whether the digitalized
20 situation data meets the predetermined criteria for long-term storage. For
21 instance, whether one or more values of temporarily stored digitalized data,
22 sensor data, indicate that the speed of the vehicle exceeds the predetermined
23 upper limit speed. The petition notes that, in one Katayama embodiment,
24 satisfaction of a predetermined speed threshold results in Katayama's system
25 first reporting a risk incident to the driver and then transferring the related
26 situation data in response to the driver pushing a button. However,

1 consistent with Curry's goals of detecting and preventing unsafe driving
2 behaviors, Dr. Michalson testified that a POSITA would have found obvious
3 the automatic generation of the initialization input for registration of the start
4 of the driving period, and transfer of that related data in response to the
5 speed of the vehicle exceeding the predetermined speed threshold. And that
6 is found in paragraph 185 of Dr. Michalson's declaration. So, this approach
7 would advantageously enable the Curry-Rabu-Katayama phone to retain for
8 later transmission to the driving safety data server, both the sensor data and
9 related derived driving information pertaining to speeding without reliance
10 on the unsafe driver themselves acquiescing to that data and information
11 being automatically reported to the server for purposes of, for example,
12 determining insurance premiums. And in at least this way, the Curry-Rabu-
13 Katayama combination further demonstrates obviousness of the Independent
14 Claim 1's initialization limitation if only with provision of details that are
15 indeed unclaimed.

16 And unless Your Honors have additional questions, I'd like to
17 invite my colleague, Mr. Patrick, back up to address a couple of issues.

18 JUDGE HOSKINS: I understand why you want to get Mr. Patrick
19 back up here, but I do have one question for you before we're able to do
20 that.

21 MS. HUANG: Sure.

22 JUDGE HOSKINS: So, if you could turn to, in your Petitioner
23 reply for this case to page two, please.

24 MS. HUANG: All right. I'm there.

25 JUDGE HOSKINS: Thank you. So, the second full paragraph
26 right above the section number two, so the last paragraph right above that,

1 you're referring to the --

2 MR. TILLER: Your Honor, can I just ask two seconds to pull that
3 up?

4 JUDGE HOSKINS: Oh yeah, sure, sorry. Sorry, Mr. Tiller, yes.

5 MR. TILLER: I'm sorry.

6 JUDGE HOSKINS: Let me know when you're there, no worries.

7 MR. TILLER: I got it. Thank you. Sorry about that.

8 JUDGE HOSKINS: No problem, thank you for stopping me, I
9 appreciate that. So, here in page two of the Petitioner reply it states in
10 earlier proceedings for these other Patents. We've talked about similar
11 arguments and so clearly there have been similar arguments. But then the
12 Petitioner reply says, in the interest of brevity and to focus on distinct issues,
13 this reply abbreviates arguments already presented. And so, what I'm asking
14 you is, are you expecting us to go look at the record of all those other cases
15 for arguments that apply to this case? Or can we just look at this particular
16 Petitioner reply for the arguments that are raised in this case?

17 MS. HUANG: Well, Petitioner's reply (INDISCERNIBLE) I
18 think sufficient support for the arguments that it made. And certainly, the
19 petition itself includes sufficient support for the grounds presented. But to
20 the extent that Your Honors are left wondering where additional details may
21 be found, of course the record in the related matters also provide additional
22 information that are hopefully helpful to Your Honors.

23 JUDGE HOSKINS: Well, if that's what we're supposed to do,
24 isn't that an incorporation by reference that our rules say you cannot do?

25 MS. HUANG: Yeah, I -- if I misspoke, I apologize. I certainly
26 would not suggest that it's something that Your Honors are supposed to do.

1 But, you know, as I said earlier, the petition itself and Petitioner's replies --
2 discussion of these elements provides those two documents alone. In
3 addition to the other evidence put forth during this case, provide sufficient
4 information. It's part of its case.

5 JUDGE HOSKINS: Okay. Thank you for that.

6 MS. HUANG: You're welcome.

7 JUDGE HOSKINS: So, that was my only question. So, you can
8 turn it over to Mr. Patrick.

9 MS. HUANG: All right. Thank you.

10 MR. PATRICK: Thank you, Your Honors. Recognizing that our
11 time remaining on rebuttal is limited, I simply wanted to offer myself as
12 available to answer questions that you may have with respect to overlapping
13 claim elements and overlapping issues that came up during Patent Owner's
14 direct. And in that regard, I'm not specifically planning to address any
15 additional topics, but instead just to ask whether Your Honors have
16 questions of me, which I would of course be happy to answer.

17 JUDGE HOSKINS: Understood. Thank you for that. My
18 colleagues -- we do not have any further questions. I understand why you
19 came back up, because I think Mr. Tiller kind of delved into some of the
20 stuff from the earlier case. And so, that's fine. And it's fine that Mr. Tiller
21 did that. But we do not have any further questions for you. Thank you for
22 that.

23 MR. PATRICK: Thanks, Your Honor, we appreciate that. So,
24 with that, we'll yield the remainder of our time.

25 JUDGE HOSKINS: Thank you. So, Mr. Tiller, you are now up
26 for your final rebuttal period, and you can begin when you are ready. Thank

1 you.

2 MR. TILLER: Your Honor, I just have kind of one question and
3 it's probably actually a question for opposing counsel more than you. Ms.
4 Huang spent considerable time talking about the initialization input being --
5 reaching some potential speed relying on Katayama, and honestly, we don't
6 see that as you probably saw in our papers. We saw them relying on the
7 phone call for the initialization input, which would be improper. So, we
8 don't see that in the original petition, just something we wanted to note for
9 the record, that it does not appear that that is, that the reaching speed
10 threshold was relied upon in the petition. But otherwise, we have nothing
11 further absent questions.

12 JUDGE HOSKINS: Okay. Thank you. I have no further
13 questions and hearing none from my colleagues, we're going to adjourn.
14 Now, thank you for the time. Please hold the phone though for a moment.
15 Don't go away quite yet. Thank you, counsel, for your time arguing these
16 two cases today and then the previous two cases in, you know, in the
17 previous sessions. All the related cases are now submitted and you can, of
18 course, expect to get your decisions in due course.

19 So, with that, let me just ask our court reporter, Ms. Perez, whether
20 she has anything she needs from counsel before we all say goodbye.

21 COURT REPORTER: I actually have no clarifying questions
22 today. Thank you very much.

23 JUDGE HOSKINS: Okay. Well, then thank you and thank you
24 everyone again and have a good day.

25 MR. PATRICK: Thank you to the Board. Thank you to the court
26 reporter.

IPR2023-00857 (Patent 10,198,879 B2)

IPR2023-00911 (Patent 9,311,271 B2)

- 1 MS. HUANG: Thank you, Your Honors. Thank you.
- 2 (Whereupon the above-entitled matter went off the record at 3:29
- 3 p.m.)

IPR2023-00857 (Patent 10,198,879 B2)

IPR2023-00911 (Patent 9,311,271 B2)

PETITIONER:

W. Karl Renner

Thomas Rozylowicz

Andrew Patrick

Michael Zoppo

Ryan Chowdhury

Jennifer Huang

Noel Chakkalakal

FISH & RICHARDSON P.C.

axf-ptab@fr.com

tar@fr.com

patrick@fr.com

zoppo@fr.com

rchowdhury@fr.com

jhuang@fr.com

chakkalakal@fr.com

PATENT OWNER:

Steve Tiller

Greg Stone

Lisa Schreihart

WHITEFORD, TAYLOR & PRESTON, L.L.P.

stiller@wtplaw.com

gstone@wtplaw.com

lschreihart@whitefordlaw.com

Lissi Mojica

ANSWERS IP LLC

lissi@answersip.com