

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

Auto Telematics Ltd.,

Plaintiff,

v.

United Services Automotive Association,

Defendant.

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Civ. No. 6:22-CV-00474-ADA-DTG

Jury Trial Demanded

PLAINTIFF'S CLAIM CONSTRUCTION RESPONSE BRIEF

TABLE OF CONTENTS

TABLE OF CONTENTS.....	1
TABLE OF AUTHORITIES	2
I. INTRODUCTION	1
II. BACKGROUND AND TECHNOLOGY AT ISSUE	1
III. CLAIM TERMS USAA CONTENTS REQUIRE CONSTRUCTION	4
a. “sensor set”	5
b. “driving period”	12
i. USAA’s construction improperly seeks to limit the claims.....	13
ii. USAA’s construction ignores the difference between “attached” and “affixed”	16
IV. CLAIM TERMS USAA CONTENTS ARE INDEFINITE.....	17
a. “driving information”.....	19
i. “comprising” vs. “derived based on”	19
ii. “process[ed] . . . to generate a driving score”	21
b. “driving score”	22
i. The concept of a driving score was known in the art	22
ii. Claims 6 and 7 of the ’271 Patent.....	24
iii. Other Asserted Claims that recite “driving score”.....	27
V. CONCLUSION.....	28

TABLE OF AUTHORITIES

Cases

<i>Abtox, Inc. v. Exitron Corp.</i> 122 F.3d 1019 (Fed. Cir. 1997).....	6
<i>Bancorp Servs., LLC v. Hartford Life Ins. Co.</i> 359 F.3d 1367 (Fed. Cir. 2004).....	24
<i>C.R. Bard, Inc. v. U.S. Surgical Corp.</i> 388 F.3d 858 (Fed. Cir. 2004).....	18
<i>Comark Commc'ns, Inc. v. Harris Corp.</i> 156 F.3d 1182 (Fed. Cir. 1998).....	15
<i>Constant v. Advanced Micro-Devices, Inc.</i> 848 F.2d 1560 (Fed. Cir. 1988).....	15
<i>Custom Accessories, Inc. v. Jeffrey-Allan Indus.</i> 807 F.2d 955 (Fed. Cir. 1986).....	23
<i>Digital Biometrics, Inc. v. Identix, Inc.</i> 149 F.3d 1335 (Fed. Cir. 1998).....	6
<i>Digital Retail Apps, Inc. v. H-E-B, LP</i> Civ. No. 6:19-CV-00167-ADA, Dkt. No. 68 (W.D. Tex. Jan. 23, 2020).....	26
<i>Energizer Holdings v. ITC</i> 435 F.3d 1366 (Fed. Cir. 2006).....	27
<i>ePlus, Inc. v. Lawson Software, Inc.</i> 700 F.3d 509 (Fed. Cir. 2012).....	18
<i>Halliburton Energy Servs., Inc. v. M-I LLC</i> 514 F.3d 1244 (Fed. Cir. 2008).....	18
<i>IBSA Institut Biochemique, S.A. v. Teva Pharms. USA, Inc.</i> 966 F.3d 1374 (Fed. Cir. 2020).....	9
<i>Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.</i> 381 F.3d 1111 (Fed. Cir. 2004).....	17
<i>Kroy IP Holdings, LLC v. Safeway, Inc.</i> Civ. No. 2:12-CV-00800-WCB, 2014 WL 3735222 (E.D. Tex. July 28, 2014).....	7

<i>Kumar v. Ovonic Battery Co.</i> 351 F.3d 1364 (Fed. Cir. 2003).....	23
<i>Leibel-Flarsheim Co. v. Medrad, Inc.</i> 358 F.3d 898 (Fed. Cir. 2004).....	15
<i>Medrad, Inc. v. MRI Devices Corp.</i> 401 F.3d 1313 (Fed. Cir. 2005).....	5
<i>MV3 Partners LLC v. Roku, Inc.</i> Civ. No. 6:18-CV-00308-ADA, Dkt. No. 90 (W.D. Tex. Oct. 2, 2019)	7
<i>Nautilus, Inc. v. Biosig Instruments, Inc.</i> 572 U.S. 898 (2014).....	18
<i>NeoMagic Corp. v. Trident Microsystems, Inc.</i> 287 F.3d 1062 (Fed. Cir. 2002).....	10
<i>Phillips v. AWH Corp.</i> 415 F.3d 1303 (Fed. Cir. 2005).....	<i>passim</i>
<i>Pisony v. Commando Constr., Inc.</i> Civ. No. 6:17-CV-00055-ADA, Dkt. No. 66 (W.D. Tex. Jan. 23, 2019).....	6
<i>Renishaw PLC v. Marposs Società Per Azioni</i> 158 F.3d 1243 (Fed. Cir. 1998).....	5
<i>Schumer v. Laboratory Computer Sys., Inc.</i> 308 F.3d 1304 (Fed. Cir. 2002).....	9, 10
<i>Seymour v. Osborne</i> 11 Wall. 516 (1871).....	18
<i>SkinMedica, Inc. v. Histogen Inc.</i> 727 F.3d 1187 (Fed. Cir. 2013).....	9
<i>Sonix Tech. Co., Ltd. v. Publ'ns Int'l, Ltd.</i> 844 F.3d 1370 (Fed. Cir. 2017).....	17
<i>Tate Access Floors, Inc. v. Interface Architectural Res., Inc.</i> 279 F.3d 1357 (Fed. Cir. 2002).....	23
<i>Teleflex, Inc. v. Fivosa N. Am. Corp.</i> 299 F.3d 1313 (Fed. Cir. 2002).....	26

<i>Teva Pharm. USA, Inc. v. Sandoz, Inc.</i> 574 U.S. 318 (2015).....	18
<i>Toshiba Corp. v. Imation Corp.</i> 681 F.3d 1358 (Fed. Cir. 2012).....	5
<i>U.S. Surgical Corp. v. Ethicon, Inc.</i> 103 F.3d 1554 (Fed. Cir. 1997).....	6
<i>Vidir Mach. Inc. v. United Fixtures Co.</i> 570 F. Supp. 2d 693 (M.D. Pa. 2008).....	26
<i>Vitronics Corp. v. Conceptronic, Inc.</i> 90 F.3d 1576 (Fed. Cir. 1996).....	23

Statutes & Rules

35 U.S.C. § 112.....	11
35 U.S.C. § 112, ¶ 2.....	18
35 U.S.C. § 282.....	17

I. INTRODUCTION

Pursuant to the Court’s Scheduling Order (Dkt. No. 23), Plaintiff Auto Telematics Ltd. (“Plaintiff” or “Auto Telematics”) files this Responsive Claim Construction Brief. Attached hereto as Exhibits 1–4, respectively, are searchable PDF copies of the four asserted patents in this case: United States Patent Nos. 9,311,271 (“the ’271 Patent”), 9,633,487 (“the ’487 Patent”), 10,191,369 (“the ’369 Patent”), and 10,198,879 (“the ’879 Patent”) (collectively, the “Asserted Patents”), each titled “Method and System for Logging Vehicle Behavior,”¹ and naming Andrew William Wright as the sole inventor.

Auto Telematics presently accuses USAA of infringing the following claims of the Asserted Patents (the bold-faced, underlined claims are independent claims):

’271 Patent: Claims 1, 3, 4, 5, 6, and 7

’487 Patent: Claims 1, 2, 3, 6, 9, 10, 11, 12, and 13

’369 Patent: Claims 1, 2, 4, 5, 6, 7, 15, 18, 19, 20, 21, and 26

’879 Patent: Claims 1, 2, 3, 4, 5, 6, 9, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 34, 35, 39, 40, 41, 46, 51, and 54

The Asserted Patents share a common specification. Unless otherwise noted, the citations in this brief all refer to the specification of the ’271 Patent.

II. BACKGROUND AND TECHNOLOGY AT ISSUE

Andrew Wright, the inventor of the Asserted Patents, has been developing technology throughout his career. For example, while obtaining his Ph.D., Dr. Wright designed and developed a “choice chamber” to study the ability of female beetles (a deadly pest to black eyed peas) to determine the difference between fresh peas and ones on which eggs had previously been laid as part of the development of a method to control that beetle population.

¹ The ’369 and ’879 Patents use the British spelling, “Bevahiour.”

After receiving his Ph.D., Dr. Wright went into manufacturing management, where he worked with engineering and research teams on many improvement projects. Examples include the use of infra-red cameras to identify contaminants during the production of breakfast cereal as well as the use of air jets to improve the coating quality of cereals.

In 1997, Dr. Wright became general manager of the largest plant bakery in Europe—a site employing 350 staff working around the clock to make approximately four million loaves of bread per week for supermarkets in the United Kingdom. There, Dr. Wright was involved not only in managing multi-million-pound engineering projects but also in developing improvements to these complex manufacturing systems.

In 2001, Dr. Wright and his wife, a corporate lawyer, developed a website known as Legalpulse to provide low-cost legal information to individuals and businesses. This application was very successful in reaching a wide audience, received favorable press coverage, and even gained a “plain English” award. Well-financed competitors entered the market to compete with this business, ultimately leading to the closure of the venture. This experience taught Dr. Wright and his wife the value of protecting their intellectual property as well as the importance of using routine, easy-to-understand terminology when developing and describing technology.

Thereafter, Dr. Wright accompanied his wife to the UK County Court where an argument over the cause of a minor traffic accident led him to conceive of the inventions described and claimed in the Asserted Patents. Initially, Dr. Wright developed an application for mobile phones that simply recorded video of a vehicle’s journey in a rolling loop while also recording other useful information such as time of day, speed, and GPS position. At the time, this application became the best-selling travel application in several countries across Europe.

Dr. Wright spent many hours exploring the capabilities of a mobile phone and the option

of using it as a dash camera for his invention. The iPhone 3 and Android phones that he worked with at the time, however, had a great number of limitations, leading Dr. Wright to experiment with many advancements to improve their data-collection capabilities.

Dr. Wright saw an opportunity to improve upon his earliest developed application and create something more comprehensive than a simple dash camera. He worked to develop an easy-to-use application to log driving data that could be used by organizations with large vehicle fleets to improve driver safety, as well as by automobile insurers to more accurately rate insureds and provide policy discounts to safe drivers. Data logging devices at the time were exclusively integrated with a vehicle's data network—similar to the “black boxes” used to track aircraft flight data and communications. These data logging devices would take inputs from the sensors integrated with a vehicle—such as those used to measure speed—to determine a person's driving habits. These “black box” type devices, however, were difficult and costly to install. Moreover, because they were attached to a vehicle's sensors, updating their hardware and software applications was time consuming and expensive, requiring access to the vehicle itself. Finally, the data provided by these devices was not personal to the driver, but, rather, logged only information regarding a particular vehicle. Thus, data collected from any vehicle driven by multiple operators (*e.g.*, fleet delivery trucks, family vehicles, etc.) could not be used to distinguish between and rate good drivers from bad drivers.

Dr. Wright conceived of and eventually reduced to practice systems and methods of using the sensor set found on a mobile telecommunications device to monitor individual drivers' driving patterns with the goal of improving driver safety. While using a so-called “smart phone” to track data may seem commonplace today, such use was not customary or obvious well over a decade ago, in 2010 and 2011, when Dr. Wright conceived of the inventions claimed in the Asserted

Patents. Dr. Wright’s novel ideas of configuring a mobile device’s sensors (instead of the vehicle’s sensors) to log driving information associated with the operator of a vehicle provided many improvements over then-existing technology.

First, because the inventions use the device’s sensors instead of the vehicle’s sensors, access to difficult-to-reach areas of the vehicle is not necessary. This makes development and installation easier and less expensive. Second, recovering data and updating the application can be accomplished remotely without requiring direct access to the vehicle. This, too, significantly reduces costs. Finally, and perhaps most importantly, because drivers almost always have their mobile phones with them, the data collected by the device’s sensors can be associated with a particular individual, not just a particular vehicle. This allows fleet management companies, insurers, and others to more accurately identify and rate problematic drivers while offering good drivers discounts or other benefits. This technology has revolutionized a number of industries, as evidenced by the number of insurers, delivery companies, ride-share companies, and other managers of large vehicle fleets that rely on the technology to improve driver safety and reduce insurance premiums.

III. CLAIM TERMS USAA CONTENDS REQUIRE CONSTRUCTION

The inventions described and claimed in the Asserted Patents use words and phrases a consumer would readily understand. The claims do not use lofty engineering jargon or technical terms and do not require construction by this Court.

The words used in a patent are presumed to have their plain and ordinary meaning. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005). Importantly, the plain and ordinary meaning of a claim term is not determined in a vacuum; rather, it is the plain and ordinary meaning as understood by a person of ordinary skill in the art (“POSITA”) in the context of the written description and prosecution history. *See Medrad, Inc. v. MRI Devices Corp.*, 401 F.3d 1313, 1319

(Fed. Cir. 2005). There are two exceptions to the rule that the plain and ordinary meaning applies: (1) when the patentee acts as his own lexicographer; and (2) when the patentee has clearly and unmistakably disavowed claim scope during prosecution. *Phillips*, 415 F.3d at 1319. “Absent disclaimer or lexicography, the plain meaning of the claim controls.” *Toshiba Corp. v. Imation Corp.*, 681 F.3d 1358, 1369 (Fed. Cir. 2012).

USAA contends that two terms – “sensor set” and “driving period” – require construction. USAA does not contend that either of the two exceptions mentioned above applies to either term. USAA does not argue that the patentee acted as his own lexicographer, and it does not contend that the patentee disavowed claim scope during prosecution. Thus, it is undisputed that the plain and ordinary meaning of these two terms should apply. But USAA seeks a construction anyway. As explained below, for “sensor set,” USAA’s construction does nothing more than restate the words that are already in the Asserted Claims. For “driving period,” USAA again restates language from the claims but also seeks to impose limitations that are neither in the claims nor in the specification.

a. “sensor set”

Auto Telematics’s Construction	USAA’s Construction
No construction necessary. A person of ordinary skill in the art would understand the meaning of the terms and/or phrases in question as used in the context of the claimed inventions.	The “sensor set” comprises any one of the listed items (an image sensor, an audio sensor, an accelerometer, or a positioning module), or a combination thereof.

The term “sensor set” does not need to be construed, as the term is clearly defined in the claim language itself and its limitations are spelled out directly in the claims. *See, e.g., Renishaw PLC v. Marposs Società Per Azioni*, 158 F.3d 1243, 1248 (Fed. Cir. 1998) (“The claims define the scope of the right to exclude; the claim construction inquiry, therefore, begins and ends in all cases

with the actual words of the claim.”); *Digital Biometrics, Inc. v. Identix, Inc.*, 149 F.3d 1335, 1344 (Fed. Cir. 1998) (“The actual words of the claim are the controlling focus.”); *Abtox, Inc. v. Exitron Corp.*, 122 F.3d 1019, 1023 (Fed. Cir. 1997) (“The language of the claim frames and ultimately resolves all issues of claim interpretation.”).

Here, USAA asks the Court to construe “sensor set” by restating the claim language. The chart below compares how the term appears in a sample claim (’271 Patent Claim 1) with how USAA proposes to construe it (colors added):

’271 Patent – Claim 1	USAA’s Construction
“a sensor set comprising an image sensor, an audio sensor, an accelerometer, or a positioning module, or a combination thereof”	The “sensor set” comprises any one of the listed items (an image sensor, an audio sensor, an accelerometer, or a positioning module), or a combination thereof.

USAA provides no explanation as to how its modified version of the claim language clarifies the meaning or scope or how it would be helpful to a jury. This approach to claim construction is contrary to Federal Circuit law and previous decisions from this Court. The Federal Circuit has made clear that “[c]laim construction is a matter of resolution of disputed meanings and technical scope, not an obligatory exercise in redundancy.” *U.S. Surgical Corp. v. Ethicon, Inc.*, 103 F.3d 1554, 1568 (Fed. Cir. 1997). Relying on this principle, this Court has previously rejected invitations to engage in such linguistic redundancy, declining to construe terms where “the words chosen by the scrivener of [the claim] are more than adequate to be understood by one who is skilled in the art.” *Pisomy v. Commando Constr., Inc.*, Civ. No. 6:17-CV-00055-ADA, Dkt. No. 66 (W.D. Tex. Jan. 23, 2019). Similarly, this Court has held that construction is not required when “none of [the terms at issue] are difficult technical terms for which a construction would help the jury understand the meaning of the term.” *MV3 Partners LLC v. Roku, Inc.*, Civ. No. 6:18-

CV-00308-ADA, Dkt. No. 90 at 6 (W.D. Tex. Oct. 2, 2019) (citing *Kroy IP Holdings, LLC v. Safeway, Inc.*, Civ. No. 2:12-CV-00800-WCB, 2014 WL 3735222, at *2 (E.D. Tex. July 28, 2014)).

In seeking a construction that restates the claim language, USAA (1) misrepresents the position Auto Telematics took on the meet and confer and (2) hides its own true intention in seeking a construction of this term.

First, contrary to USAA's allegation, Auto Telematics does not contend that "or" does not mean "or." See USAA Brief at 4. Even if there were a dispute over the meaning of "or," the claim language itself uses the term "or," rendering USAA's proposed construction superfluous. Further, Auto Telematics did not "equivocate[]" during the meet and confer. Rather, as Auto Telematics clearly stated (and states now), the claim language clearly defines a "sensor set." However, that is not the end of the claim analysis. While a "sensor set" alone and out of context may theoretically include an image sensor, an audio sensor, an accelerometer, or a positioning module **alone**, a POSITA would look to the rest of the claim to understand what sensor or combination of sensors is required to meet the rest of the claim language. If a later limitation in the claim required the sensor set to capture an image, for example, a POSITA would understand that **in the context of that claim**, the sensor set would have to include at least an image sensor. This is not equivocation. It is reading the claim term as a POSITA would understand it in light of the claim language **as a whole** as supported by the specification. This is precisely what is required in claim construction. See *Phillips*, 415 F.3d at 1313.

The specification—including the portions USAA relies on—also supports the view that a POSITA would understand which sensors are required based on the context in which the term "sensor set" is used:

For example, if the sensor set comprises an accelerometer, the acceleration of the vehicle can be more accurately measured due to the mobile device being firmly attached to the vehicle. Similarly, if the sensor set comprises an image sensor, for example, for capturing video footage of the road ahead, better footage can be obtained as the mobile device can be held in the correct position and orientation relative to the vehicle.

'271 Patent at 3:1–8 (emphases added). A POSITA would understand, as described in the specification, that for claims requiring detection of acceleration, an accelerometer would be present in the sensor set. For claims requiring the capturing of video footage, an image sensor would be present in the sensor set. Although a POSITA would already understand the functions and capabilities of the individual sensors recited in the claim, these examples illustrate how the specification provides additional guidance to the POSITA as to which sensors carry out which functions.

Second, USAA conceals the true aim of its construction from the Court. This is not a claim construction dispute; it is the central argument of USAA's written description defense. In fact, when the Parties submitted their joint proposed scheduling order in this case, USAA asked the Court to resolve this issue during claim construction:

With one exception, the Parties have reached agreement on the Scheduling order, attached as Exhibit A. The Parties dispute whether the *Markman* proceedings, including briefing, argument, and determination by the Court, should be expanded to address the issue of written description support for the "sensor set" limitations present in the asserted patents. . . .

. . .

USAA respectfully proposes that the Court determine, as part of *Markman*, whether the "sensor set" limitation has written description support. . . .

Dkt. No. 22 at 2 (emphases in original). USAA went on to explain its written description argument:

The claims are directed to using data from the "sensor set" of a mobile device (*i.e.*, a cell phone) to "to [sic] track and determine attributes of individual [automobile] driving sessions." Compl. ¶ 65. All but one of the asserted claims describe the

“sensor set” as a disjunctive list of individual sensors: “an image sensor, an audio sensor, an accelerometer or a positioning module, or a combination thereof.”[] By using “or”, the claims encompass the determination of driving behavior using just one of the listed sensors. But the specification discloses using those sensors only in combination. *Cf. id.* (“The claims of the Patents-In-Suit are directed to the inventive combination of multiple sensors to track and determine attributes of individual driving sessions....”) (emphasis added).

Dkt. No. 22 at 2 (emphases in original). This explanation is lifted directly from USAA’s invalidity contentions. *See, e.g.*, Exhibit 5, USAA’s Invalidity Contentions at 42–43. In a nutshell, USAA contends that the specification must describe how to practice every claimed embodiment using each sensor individually and using every possible combination of sensors.

The Court declined USAA’s request to seek early resolution of this issue. *See* Dkt. No. 23 at 2 (“Invalidity challenges based on § 112 lack of written description are **not** due until the MSJ deadline.”). Now, despite the Court’s having denied USAA’s request to brief this issue during this phase of the case, USAA seeks to shoehorn its written description arguments into its claim construction brief through its proposed construction of “sensor set.” The impetus behind USAA’s redundant definition of “sensor set” is not that the term needs to be construed—and not because the parties actually dispute the meaning of “or”—but rather so that it can present its erroneous written description argument to the Court, subverting the Court’s express ruling to the contrary.

USAA relies on three cases in support of its contention that this term needs to be construed: *Schumer v. Laboratory Computer Sys., Inc.*, 308 F.3d 1304 (Fed. Cir. 2002), *SkinMedica, Inc. v. Histogen Inc.*, 727 F.3d 1187 (Fed. Cir. 2013), and *IBSA Institut Biochemique, S.A. v. Teva Pharms. USA, Inc.*, 966 F.3d 1374 (Fed. Cir. 2020). *See* USAA Brief at 7. None of these cases addresses the issue USAA seeks to inject into this case—*i.e.*, whether a term that defines a list requires that the full scope of the claim be satisfied by any individual member of the list, regardless of what other elements exist in the claim. Nor do any of these cases override the fundamental rule of claim construction that the scope of the claim is determined according to the

understanding of a POSITA. USAA seeks to construe the term “or” and end the analysis there, without regard to the rest of the claim or what a POSITA would understand. But, as the Court in *Schumer* stated, “[g]iving the term ‘or’ its accepted definition, however, is not the end of the inquiry.” *Schumer*, 308 F.3d at 1312.

USAA contends that Auto Telematics believes that “or” means “and” because its infringement contentions state that “an iPhone includes a camera, microphone, accelerometer, **and** positioning module.” See USAA Brief at 4 (emphasis in original). As an initial matter, Auto Telematics’s infringement contentions are irrelevant. While USAA could potentially infringe with fewer than all sensors, the infringement contentions point out that each type of sensor listed in the claim is present in the Accused Instrumentalities, which is also sufficient to satisfy this claim term. There is no doubt that if Auto Telematics had stated in its infringement contentions that the Accused Instrumentalities included “a camera, microphone, accelerometer, or a positioning module, or a combination thereof,” USAA would have complained that they were too vague, asking “Which is it?!” The fact that USAA infringes using *all* recited sensors is not relevant to the meaning of the term. See *NeoMagic Corp. v. Trident Microsystems, Inc.*, 287 F.3d 1062, 1074 (Fed. Cir. 2002) (“[C]laims may not be construed with reference to the accused device.”).

USAA also contends that “during prosecution of the ’271 Patent, the Examiner identified the use of the ‘or’ language as a reason to reject an independent claim by pointing to prior art having just one of the listed sensors.” USAA Brief at 6. But the portion of the prosecution history USAA cites in passing is not so clear:

13. With respect to independent claim 20, the claim is heavily amended that precipitated new art applied in order to make an appropriate rejection. The discloses the active steps of determining a start period of operation of a vehicle on a trip based upon sensor information as the claim uses the conjunctive or, only one such sensor information is identified. Furthermore, the processing sensor data and storing data are disclosed in the art of record. The respective features of the art of record are identified in the office action.

USAA Brief, Exhibit 2 at 7. In particular, the passage appears to omit words, and it is unclear whether the phrase “only one such sensor information is identified” refers to the prior art, the claims, or the specification. Moreover, the cited passage states that “the claim uses the conjunctive or,” which makes it irrelevant to USAA’s argument that the claim term at issue uses a “disjunctive ‘or.’” *See* USAA Brief at 7.

In any event, as previously discussed, there is no dispute over the meaning of “or.” USAA’s real argument concerns whether 35 U.S.C. § 112 requires that the specification describe how to practice every embodiment of the invention using any single sensor individually **and** every possible combination of sensors. USAA’s premature attempt to litigate its written description defense should be rejected for a second time.² USAA cannot meaningfully dispute that a POSITA (and, in fact, a layperson on the jury) would readily understand the scope of the claims as written without further construction from the Court. Its attempt to construe the claims by rewriting the

² Even if the Court were to adopt USAA’s redundant construction of this term, it would have no bearing on USAA’s written description arguments. Fact issues would remain, including issues regarding a POSITA’s understanding of the Asserted Patents’ teachings and the general knowledge of a POSITA.

words in a judicial order serves no purpose in this case.

b. “driving period”

Auto Telematics’s Construction	USAA’s Construction
No construction necessary. A person of ordinary skill in the art would understand the meaning of the terms and/or phrases in question as used in the context of the claimed inventions.	The “driving period” requires that: 1) the mobile telecommunications device is removably [attached / affixed] to the vehicle; and 2) the vehicle is [in use / being driven by the driver].

This term does not need to be construed, as the claims define what is required to determine a “driving period.” On its face, USAA’s proposed construction appears just to recite language that already appears elsewhere in the claim. A comparative chart illustrates this (colors added):

’271 Patent – Claim 1	USAA’s Construction
“determine, based on inputs received by the user interface and sensor data from the sensor set, a start of a driving period during which the mobile device is removably attached to the vehicle and the vehicle is in use”	The “driving period” requires that: 1) the mobile telecommunications device is removably [attached / affixed] to the vehicle; and 2) the vehicle is [in use / being driven by the driver].

Merely reciting the claim language as the proposed construction alone would make USAA’s construction improper, for the same reasons its proposed construction of “sensor set” is improper. *See, e.g., U.S. Surgical Corp.*, 103 F.3d at 1568 (“Claim construction is a matter of resolution of disputed meanings and technical scope, not an obligatory exercise in redundancy.”). But USAA’s proposed construction suffers additional flaws. In particular, it introduces “requirements” for the driving period that are not present in the claims. Further, USAA’s characterization of its construction introduces an additional “system confirmation step” that does not appear in the claims. Finally, USAA’s proposed construction conflates distinct terms (*i.e.*, “attached” vs. “affixed”).

i. USAA’s construction improperly seeks to limit the claims

First, although it is unclear from the face of USAA’s proposed construction, USAA seeks to incorporate limitations that do not appear in the claims or in the specification. In particular, USAA’s construction would require that the mobile device be “removably attached” or “removably affixed” (1) for the entire duration of the “driving period” and (2) as a precondition to the start of a driving period. USAA Brief at 9–10. Additionally, USAA improperly seeks to incorporate the requirement that the system perform a confirmation step to verify that the mobile device is removably attached or removably affixed before the driving period starts.

USAA complains that Auto Telematics’s infringement contentions provide multiple “possibilities” of how a device may be removably attached or removably affixed to a vehicle, and that this somehow means Auto Telematics contents that “mere capability” of attachment meets the claim language. *See* USAA Brief at 10–11. USAA is tilting at windmills here. Auto Telematics’s claim charts identify alternative ways in which a device may be “removably attached” or “removably affixed” to a vehicle, as is permitted. Auto Telematics has never taken the position that “mere capability” of attachment or affixation meets the claim language. Auto Telematics’s infringement contentions do not even use the word “capability” with respect to these claim elements. Simply put, there is no dispute about what the claim language requires, *e.g.*, “a driving period during which the mobile telecommunications device is removably attached to the vehicle.” *See* ’271 Patent at Claims 1, 4. Rather, the dispute between the Parties lies with USAA’s attempt to insert unsupported “requirements” into the claimed “driving period” claim term.

First, USAA contends that the mobile device must be removably attached or removably affixed **at the start** of the driving period and, apparently, for the entire driving period. *See, e.g.*, USAA Brief at 11 (“But Auto Telematics neither identifies any one of the possibilities as *necessarily* performed, nor identifies any one of the possibilities as *necessary* in order for the

driving period to start.”) (emphases in original). This requirement is completely divorced from the claim language. The claims do not state that the mobile device must be removably attached or removably affixed “for the driving period to start.” Instead, they require that the mobile device be removably attached or removably affixed **during** the driving period:

determine, based on inputs received by the user interface and sensor data from the sensor set, a start of a driving period **during which** the mobile device is removably attached to the vehicle and the vehicle is in use

’271 Patent at Claim 1 (emphasis added). The claim language itself accurately captures the scope of the invention, and there is no need for a different construction incorporating USAA’s manufactured “requirements” for the driving period.

Next, USAA contends that the “system” is required to “confirm” whether the mobile device is attached or affixed to the vehicle as a precondition to the start of the driving period, stating “[i]f the system is not required to confirm that the mobile device has been ‘removably attached’ for there to be a ‘driving period,’ the claim cannot be infringed.” USAA Brief at 10. USAA appears to be arguing that for the claim to be infringed, not only must all the limitations be met, but “the system” itself must also “confirm” that the mobile device is attached or affixed **and** that it do so **before** a driving period can commence. It is unclear from where USAA draws this conclusion, as the claim says nothing about an active “confirm” step that is performed by “the system.” On the contrary, the specification refers to this embodiment in the alternative:

Alternatively, the start of the driving period may be initiated once the application determines that the mobile telecommunications device 17 has been affixed to the vehicle. For example, the adapter 21 may comprise a registration module (not shown) arranged to **register the installation and fixation of the mobile device to the vehicle and/or adapter**. The registration module may comprise an NFC device. When the mobile device is brought into close proximity with the registration module, a driving period is initiated.

’271 Patent at 18:40–48 (underlined emphases added). USAA’s attempt to incorporate this unclaimed feature into the Asserted Claims is improper and should be rejected. *See, e.g., Comark*

Commc'ns, Inc. v. Harris Corp., 156 F.3d 1182, 1187 (Fed. Cir. 1998) (“Although the specification may aid the court in interpreting the meaning of disputed claim language, particular embodiments and examples appearing in the specification will not generally be read into the claims.”) (quoting *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 1571 (Fed. Cir. 1988)).

Additionally, there are other (unasserted) claims that explicitly discuss an embodiment of “register[ing] the attachment of the mobile device to the vehicle.” *See, e.g.*, ’271 Patent at Claim 2. This recitation of a registration step in the unasserted claim is further evidence that the independent claims that do not feature such language do not require a “confirmation step,” as USAA contends. *See, e.g., Phillips*, 415 F.3d at 1315 (“[T]he presence of a dependent claim that adds a particular limitation gives rise to a presumption that the limitation in question is not present in the independent claim.”) (citing *Leibel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 910 (Fed. Cir. 2004)). Indeed, “where the limitation that is sought to be ‘read into’ an independent claim already appears in a dependent claim, the doctrine of claim differentiation is at its strongest.” *Leibel-Flarsheim*, 358 F.3d at 910.

To accept USAA’s argument, one would have to conclude that a mobile device that meets every limitation of the claims—and that is physically connected to a mounting device, as in the narrower preferred embodiment—would not infringe unless the system performed some unclaimed verification that the device was so connected. This requirement, too, is far removed from the claim language.

The Asserted Claims recite what is required to determine the start of a driving period, and none of them require the “system” to “confirm that the mobile device has been ‘removably attached.’” For example, Claim 1 of the ’271 Patent describes determining the start of a driving

period based on the detection of a speed above a predetermined threshold:

wherein the mobile communications device is controlled by a downloaded application to control the mobile device to register the start of the driving period in response to an initialization input generated automatically in response to the sensor data having predetermined values, wherein the initialization input is generated in response to sensor data reflecting a detected speed above a predetermined threshold.

'271 Patent at Claim 1. Additionally, the requirement in Claim 1 that the start of the driving period be registered “in response to an initialization input **generated automatically** in response to the sensor data having predetermined values” is further evidence that there is no requirement for some unclaimed verification step to determine that the device is connected before the driving period begins. After all, the initialization to start the driving period could not occur “automatically” if the system had to wait for a “confirmation step” to be completed. Unsurprisingly, USAA provides no citation to the specification to support its arguments that the Asserted Claims require “the system” to “confirm” that attachment/affixation has occurred before a driving period begins.

In fact, USAA’s improper limitations—*e.g.*, the requirements that (1) the mobile device be removably attached or removably affixed for the entire duration of the driving period and (2) the system confirm that the mobile device is removably attached or removably affixed before the driving period begins—are not clearly reflected in its proposed construction. Thus, it appears that USAA seeks to rewrite the claim language and then later argue that its rewritten claims require the Court to agree to each additional limitation USAA argues for in its Brief. The Court should decline to construe this term and instead agree with Auto Telematics that it has its plain and ordinary meaning.

ii. USAA’s construction ignores the difference between “attached” and “affixed”

Second, USAA’s construction combines two terms—“attached” and “affixed”—and treats them as though they have a single meaning. This, too, is improper. *See, e.g., Innova/Pure Water,*

Inc. v. Safari Water Filtration Sys., Inc., 381 F.3d 1111, 1119 (Fed. Cir. 2004) (“[W]hen an applicant uses different terms in a claim it is permissible to infer that he intended his choice of different terms to reflect a differentiation in the meaning of those terms.”).

Here, “attached” and “affixed” are both used in the patent according to their plain and ordinary meaning. Auto Telematics has applied these terms broadly, as supported by the specification. *See, e.g.*, ’271 Patent at 18:45–48 (referring to a wireless connection).

USAA’s only acknowledgement of the different claim language is in footnote 5 to its brief, where it states, “Neither party asserts that these differences impact the parties’ dispute.” Contrary to USAA’s statement, Auto Telematics does contend that “attached” and “affixed” have different meanings, as a POSITA would understand. *See, e.g.*, Exhibit 6, Merriam-Webster definition for “attached”; Exhibit 7, Merriam-Webster definition for “affixed.” It is unclear what USAA means by “the parties’ dispute,” as Auto Telematics’s position is simply that “driving period” does not need to be construed. USAA has not asked the Court to construe “attached” or “affixed,” apparently agreeing with Auto Telematics that both terms have their plain and ordinary meaning.

IV. CLAIM TERMS USAA CONTENDS ARE INDEFINITE

During the disclosure phase of the claim-construction process—and through the Parties’ meet and confer—USAA contended that four separate terms were indefinite (“sensor data,” “without data from vehicle sensors,” “driving score,” and “a driving period”). Before filing its opening Brief, USAA added a new term (“driving information”), and dropped three of the terms (“sensor data,” “without data from vehicle sensors,” and “a driving period”). Auto Telematics will only address the terms that USAA discusses in its brief, as the claims are presumed valid and it is USAA’s burden to prove otherwise by clear and convincing evidence. *See* 35 U.S.C. § 282; *Sonix Tech. Co., Ltd. v. Publ’ns Int’l, Ltd.*, 844 F.3d 1370, 1377 (Fed. Cir. 2017) (“Indefiniteness must be proven by clear and convincing evidence.”).

“[I]ndefiniteness is a question of law and in effect part of claim construction.” *ePlus, Inc. v. Lawson Software, Inc.*, 700 F.3d 509, 517 (Fed. Cir. 2012). Patent claims must particularly point out and distinctly claim the subject matter regarded as the invention. 35 U.S.C. § 112, ¶ 2. A claim, when viewed in light of the intrinsic evidence, must “inform those skilled in the art about the scope of the invention with reasonable certainty.” *Nautilus, Inc. v. Biosig Instruments, Inc.*, 572 U.S. 898, 910 (2014). To find a term indefinite, the Court must find “by clear and convincing evidence that a skilled artisan could not discern the boundaries of the claim based on the claim language, the specification, and the prosecution history, as well as her knowledge of the relevant art area.” *Halliburton Energy Servs., Inc. v. M-I LLC*, 514 F.3d 1244, 1249–509 (Fed. Cir. 2008).

USAA relies on the declaration of its expert, Scott Andrews, to support its contention that the below terms are indefinite. Although extrinsic evidence can be useful to a Court, it is “less significant than the intrinsic record in determining the legally operative meaning of claim language.” *Phillips*, 415 F.3d at 1317 (quoting *C.R. Bard, Inc. v. U.S. Surgical Corp.*, 388 F.3d 858, 862 (Fed. Cir. 2004)). The Supreme Court has explained the role of extrinsic evidence in claim construction:

In some cases, however, the district court will need to look beyond the patent’s intrinsic evidence and to consult extrinsic evidence in order to understand, for example, the background science or the meaning of a term in the relevant art during the relevant time period. *See, e.g., Seymour v. Osborne*, 11 Wall. 516, 546 (1871) (a patent may be “so interspersed with technical terms and terms of art that the testimony of scientific witnesses is indispensable to a correct understanding of its meaning”). In cases where those subsidiary facts are in dispute, courts will need to make subsidiary factual findings about that extrinsic evidence. These are the “evidentiary underpinnings” of claim construction that we discussed in *Markman*, and this subsidiary factfinding must be reviewed for clear error on appeal.

Teva Pharm. USA, Inc. v. Sandoz, Inc., 574 U.S. 318, 331–32 (2015). Here, USAA does not rely on expert testimony to shed light on background science or the meaning of technical terms in the art. As noted above, the language of the Asserted Patents is clear. Instead, USAA relies on expert

testimony to do precisely that which the Court is already well-equipped to do: read the claim language in light of the specification and file history. This use of expert testimony as a stand-in for attorney argument brings little to the claim construction process and should be given no weight in the Court’s analysis.

a. “driving information”

Auto Telematics’s Construction	USAA’s Construction
Not indefinite. No construction necessary. A person of ordinary skill in the art would understand the meaning of the terms and/or phrases in question as used in the context of the claimed inventions.	Indefinite.

The term “driving information” appears in every independent claim of every patent (asserted and unasserted) in the Auto Telematics portfolio. USAA does not contend that the term “driving information” is itself indefinite; rather, it contends that a POSITA would be confused only about the use of “driving information” in Claims 6 and 7 of the ’271 Patent. *See* USAA Brief at 12. Thus, it is undisputed that the specification describes driving information in a way that would be readily understandable to a POSITA.

USAA claims that a POSITA would not understand “driving information” in the context of Claims 6 and 7 of the ’271 Patent because (1) the claims say that the driving information “comprises” sensor data and that it is “derived based on” sensor data, and (2) the claims also say that driving information is processed to generate a driving score. *See* USAA Brief at 12–18. USAA cannot demonstrate by clear and convincing evidence that these claims are indefinite.

i. “comprising” vs. “derived based on”

First USAA contends that driving information may not comprise sensor data because the specification states that it is “derived or processed from sensor data.” USAA Brief at 14. But why

can it not be both? USAA makes the conclusory allegation that sensor data must be sampled and processed to derive driving information but that sensor data cannot then be part of the driving information. USAA does not provide any reason why driving information cannot be derived from and also comprise “sensor data.” USAA’s argument makes no sense, is inconsistent with the claim language, and is based on an overly narrow view of what it means to “be derived from”—a phrase that USAA has not asked the Court to construe.

The claim language in question reads as follows:

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

’271 Patent at Claim 1. Thus, the driving information is “derived based on” two things: (1) inputs received by a user interface of the remove mobile telecommunications device, and (2) sensor data from a sensor set of the remote mobile telecommunications device. USAA contends that “derived based on” means that the sensor data must be processed into something new that is no longer sensor data. But that is not what the claim says. The claim says that the driving information is derived based on the two elements listed above. Nothing in the claims specifies that “derive” means that the sensor data must be transformed into something that is no longer sensor data. Why can “derived based on” not mean that the inputs received by the user interface are merely packaged together with sensor data? Would that not be driving information “derived based on” the two required elements? And would the driving information not then “comprise” sensor data? Would the sensor data not then be a “subset” of the driving information?³

³ USAA’s expert argues that “for a first thing to ‘comprise’ a second thing, the second thing must be a subset of the first thing.” Andrews Decl. at ¶ 45. That is not true. The term “comprises” is a

Even if sensor data **does** have to be transformed, nothing in the claims or the specification mandates that (1) **all** sensor data must be so transformed, (2) transformed sensor data is not still “sensor data,” or (3) the system cannot also maintain some sensor data to store as part of the driving information. In fact, the specification discusses this exact thing, describing sensor data being down-sampled before being stored as driving information:

In particular, the executed application may control the mobile device to store a summary of the driving period. The summary may comprise compressed and/or summarized driving information. For example, the sensor data can be processed at a first sampling rate and then down-sampled to a fraction of the first sampling rate for storage as driving information. Put another way, the mobile device can be controlled by the executed application to down-sample sensor data from a first sampling rate to a second sampling and store the sensor data as driving information at said second sampling rate. Advantageously, this retains a snapshot of when and /or how the vehicle is being driven, but with fewer data points, and so requiring less storage.

’271 Patent at 4:52–64. USAA even acknowledges this passage, admitting that it “might” disclose driving information that comprises sensor data. *See* USAA Brief at 17–18. But then USAA discounts this clear disclosure by complaining that the claims do not recite a first or higher sampling rate or a second or lower sampling rate. *See id.* The claim does not have to do that. A POSITA would understand from the claim language in view of the specification that the sensor data may be down-sampled or otherwise processed (along with the inputs received from the remote telecommunications device) to derive driving information **and** that the driving information may also include sensor data.

ii. “process[ed] . . . to generate a driving score”

USAA’s other complaint about “driving information” in Claims 6 and 7 of the ’271 Patent is that the claims say that driving information is processed to generate a driving score, where the

well-understood concept in patent law, and nothing in that legal concept prevents embodiments where a first thing “comprises” a second thing that makes up 100% of the first thing.

sensor data may also comprise a driving score. *See* USAA Brief at 13. USAA does not actually discuss this argument in this section of its brief. Instead, it refers the reader to the argument about “driving score,” which is addressed below.

b. “driving score”

Auto Telematics’s Construction	USAA’s Construction
Not indefinite. No construction necessary. A person of ordinary skill in the art would understand the meaning of the terms and/or phrases in question as used in the context of the claimed inventions.	Indefinite.

USAA lodges several complaints about the use of “driving score” in the Asserted Claims and in the specification. In doing so, it makes inconsistent arguments that actually prove that a POSITA would understand how the terms are used in the Asserted Patents. To illustrate the differences in USAA’s arguments, Auto Telematics will address them separately.

i. The concept of a driving score was known in the art

USAA begins its argument about “driving score” by stating, “[d]riving score’ was not an established term of art with an established definition at the time of the alleged invention” USAA Brief at 19. This is the foundation upon which USAA’s entire argument is based. USAA is incorrect. The concept of a driving score was known in the art at the time of the invention, as evidenced by the intrinsic record.

In the very first office action that issued in connection with the ’271 Patent (the first patent in the family), the examiner cited U.S. Patent Application Publication No. 2010/0157061 (“*Katsman*”) as prior art to the pending application. *See* Exhibit 8, Notice of References Cited, attached to Office Action dated March 27, 2015. The specification of *Katsman* states, in relevant part:

In accordance with embodiments of the present invention, a database manager system associated with the vehicle monitoring system server may manage a database of recorded traffic events and driving behavior. The database manager system may rate member drivers by assigning **scores or points**. The assigned scores are assigned such as to **reflect the quality of the driving behavior or the driver**. The assigned scores may be affected by the number and the nature of recorded traffic events in which the member driver was involved. For example, **the score may be assigned in such a manner that when a member driver drives carelessly or causes an accident**, the member driver's score may be lowered. When a member driver contributes to road safety by the reporting unsafe driving by another driver or unsafe road conditions, the member driver's score may be raised. **The score may affect the premium that a member driver pays to an insurance company** who is, or cooperates with, the system administrator of the vehicle monitoring system. The score may also affect the eligibility for renewal of the member driver's driving license by a licensing authority that either is, or cooperates with, the system administrator of the vehicle monitoring system. Alternatively, on the basis of the member driver's score, an authority may decide whether the member driver is required to take, or is exempt from, a driver safety course.

Exhibit 9, *Katsman* at ¶ 0065 (emphases added). As art cited during prosecution, *Katsman* is part of the intrinsic record of the Asserted Patents. See *Kumar v. Ovonic Battery Co.*, 351 F.3d 1364, 1368 (Fed. Cir. 2003) (“prior art cited in a patent or cited in the prosecution history of the patent constitutes intrinsic evidence”) (citing *Tate Access Floors, Inc. v. Interface Architectural Res., Inc.*, 279 F.3d 1357, 1371–72 n.4 (Fed. Cir. 2002); *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)). The use of “driving score” in the Asserted Claims is consistent with the disclosure of “driver's score” in *Katsman*.

Katsman has been cited on the face of every patent in the Auto Telematics portfolio, including each of the Asserted Patents. A POSITA would be aware of *Katsman* and its teachings, as the POSITA is presumed to be aware of the prior art. See *Custom Accessories, Inc. v. Jeffrey-Allan Indus.*, 807 F.2d 955, 962 (Fed. Cir. 1986). In fact, USAA itself devotes several pages of its invalidity contentions to identify alleged disclosure of “driving score” in the prior art. See Exhibit 5, USAA's Invalidity Contentions at 29–32. Thus, USAA's foundational position—*i.e.*, that a POSITA would be confused about the concept of a driving score—is fundamentally flawed.

Nevertheless, and contrary to USAA’s position, the terms used in a patent do not have to be well-recognized terms of art to avoid a finding of indefiniteness or to avoid construction by a Court. Rather, when “the components of a term have well-recognized meanings,” a POSITA could “infer the meaning of the entire phrase.” *Bancorp Servs., LLC v. Hartford Life Ins. Co.*, 359 F.3d 1367, 1372 (Fed. Cir. 2004). For at least these reasons, a POSITA reading the Asserted Patents would be aware of the concept of a driving score and would understand its meaning as used in the Asserted Claims.

ii. Claims 6 and 7 of the ’271 Patent

USAA complains that these claims mention two different instances of “driving score”: one that is part of the driving information and a second that is generated by the data logging system. *See* USAA Brief at 20–21. USAA contends that “there is no support in the specification for” a driving score that is part of the driving information and a separate driving score that is generated by the data logging system. *See id.* This is a curious argument, as it appears immediately after USAA cites support in the specification for precisely these two embodiments of driving score:

Driving score as part of driving information:

Preferably, the mobile device is controlled by the executed application to process the driving information to generate a driving score. The driving information may comprise the driving score.

’271 Patent at 10:14–17.

Driving score generated by data logging system:

Preferably, the system is arranged to process the driving information logged to the corresponding account to generate a driving score.

’271 Patent at 12:4–6.

Claims 6 and 7 of the ’271 Patent are drafted to include both embodiments. Thus, contrary to USAA’s argument, there are at least two examples of driving score disclosed in the Asserted

Patents. There is a (first) driving score, which may be included in the driving information, and a (second) driving score generated based on driving information. First, sensor data is captured and processed to derive driving information. That driving information may comprise this sensor data, and it may comprise a driving score. Later, the driving information (*i.e.*, sensor data or the first driving score) may be processed to generate a (second) driving score, which may be used to determine a risk profile for at least one of the vehicle and driver. In the embodiment where the driving information already comprises a driving score, the processing to generate “a driving score . . . to determine a risk profile” may be—for example, linking the driving score to a specific vehicle and/or driver. In the embodiment where the driving information does not comprise a driving score (or does not expressly have to comprise a driving score), the processing to generate “a driving score . . . to determine a risk profile” may be different—for example, transforming sensor data into a driving score that is then linked to a vehicle and/or driver. There is nothing ambiguous or confusing about this disclosure, which is consistent with the embodiments disclosed in the specification. In fact, Claims 6 and 7 of the ’271 Patent explicitly distinguish between the two embodiments of driving score appearing in those claims. In the first instance, the term is simply referred to as a “driving score”:

wherein the driving information comprises at least one of a driving score and sensor data captured and processed by the remote mobile telecommunications device

’271 Patent at Claim 6, Claim 7.

In the second instance, the term “driving score” is modified by a phrase describing its purpose in the system described in those claims:

the data logging system being further arranged to process the driving information logged to a corresponding account to generate a **driving score used to determine a risk profile for at least one of the vehicle and driver.**

’271 Patent at Claim 6, Claim 7 (emphasis added).

Claim 7 further clarifies the use of the second driving score in that claim as being “used to define an insurance premium associated with the account,” as described in the specification. *See* ’271 Patent at Claim 7; 12:4–9.

A POSITA would understand that these recitations of “driving score” refer to two different things in these particular claims—regardless of the fact that they use the same root term. That Claims 6 and 7 of the ’271 Patent recite “driving score” twice—rather than reciting a “first driving score” and a “second driving score”—may not be common draftsmanship, but it does not render the claims indefinite. As district courts including this Court have previously noted, “careless drafting in the prosecution of the patent . . . does not create ambiguity in the meaning of the patent’s claims nor demonstrate that a person skilled in the art would be unable to discern its readily understood meaning within the context of the patent.” *Vidir Mach. Inc. v. United Fixtures Co.*, 570 F. Supp. 2d 693, 707 n.10 (M.D. Pa. 2008), *cited in Digital Retail Apps, Inc. v. H-E-B, LP*, Civ. No. 6:19-CV-00167-ADA, Dkt. No. 68 at 7 n.1 (W.D. Tex. Jan. 23, 2020). Instead, the question is what a POSITA would understand from reading the claims in light of the specification. The specification may resolve potentially ambiguous claim terms “where the ordinary and accustomed meaning of the words used in the claim lack sufficient clarity to permit the scope of the claim to be ascertained from the words alone.” *Teleflex, Inc. v. Fivosa N. Am. Corp.*, 299 F.3d 1313, 1325 (Fed. Cir. 2002). Here, a POSITA would understand the different uses of “driving score” in Claims 6 and 7 in light of the specification.

USAA also argues that Claim 7 of the ’271 Patent (where “driving score” appears three times) is insolubly ambiguous because “the driving score” allegedly lacks antecedent basis. *See* USAA Brief at 19, 22–24; *see also* ’271 Patent at Claim 7 (“wherein **the driving score** is used to define an insurance premium”) (emphasis added). USAA is incorrect. An express antecedent basis

is not required in all circumstances, and the absence of one does not necessarily render a claim term indefinite. *See, e.g., Energizer Holdings v. ITC*, 435 F.3d 1366, 1371 (Fed. Cir. 2006) (“[w]hen the meaning of the claim would reasonably be understood by persons of ordinary skill when read in light of the specification, the claim is not subject to invalidity based upon departure from the protocol of ‘antecedent basis.’”). The question, again, is what a POSITA would understand the claims to mean in light of the specification as a whole. Here, a POSITA would understand the differing uses of “driving score” in Claim 7: one that may be a part of “driving information” and another that is generated to determine a risk profile. A POSITA would understand that the driving score used to determine the risk profile in Claim 7 would be the score used to define an insurance premium—both because a POSITA would understand the risk profile would be required to define the insurance premium and also because the defined insurance premium is communicated by the data-logging system in this claim (*i.e.*, the same place where the driving score is generated to determine the risk profile).

iii. Other Asserted Claims that recite “driving score”

Having established that the specification discloses multiple embodiments of “driving score,” USAA’s arguments about the remaining claims fall apart. USAA complains that because the specification describes different examples of driving score, the claims that only recite one embodiment are indefinite. *See* USAA Brief at 19. That cannot be the case.

Every other Asserted Claim that recites a “driving score” states that it (a) is generated by or on the mobile device and/or (b) is based on processing the driving information:

wherein the mobile communications device is controlled by [a/the] downloaded application to control the mobile device to **process the driving information to generate a driving score** associated with a particular driver.

’487 Patent at Claim 9; ’369 Patent at Claim 18; ’879 Patent at Claim 46 (emphasis added).

wherein the driving information is derived without data from the vehicle sensors,

and the mobile telecommunications device is controlled by a downloaded application to control the mobile device to **process the driving information to generate a driving score** associated with a particular driver.

'879 Patent at Claims 1, 54 (emphasis added).

wherein the instructions, upon execution by the processor, enable the mobile telecommunications device to . . . **generate a driving score** associated with the driver,

'879 Patent at Claims 21, 51 (emphasis added).

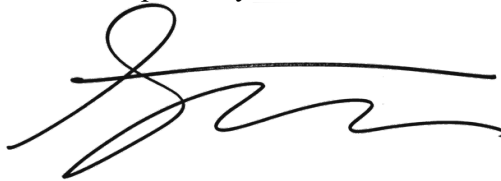
It is undisputed that this embodiment is clearly disclosed in the specification. *See, e.g.*, '271 Patent at 10:14–16 (“Preferably, the mobile device is controlled by the executed application to process the driving information to generate a driving score.”). USAA does not explain what in any of these claims would be confusing to a POSITA, much less provide clear and convincing proof that their scope is indefinite. Instead, USAA relies on alleged “circular definitions” in *other claims* and descriptions of different embodiments of driving scores *in the specification* to suggest that a POSITA could not ascertain the meaning of “driving score” in the context of these claims. USAA cannot prove by clear and convincing evidence that any claim that recites a single embodiment of driving score is indefinite.

V. CONCLUSION

For the foregoing reasons, Auto Telematics respectfully requests that this Court enter a Claim Construction Order adopting Plaintiff’s constructions as proposed herein.

Dated: January 12, 2023

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Andrew J. Wright', with a horizontal line drawn underneath it.

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