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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
PATENT TRIAL AND APPEAL BOARD**

In re:	)	U.S. PATENT NO.
	)	9,311,271
UNITED SERVICES AUTOMOBILE	)	PROCEEDING NO.
ASSOCIATION (USAA),	)	IPR2023-00911
	)	IPR2023-00912
PETITIONER,	)	
	)	U.S. PATENT NO.
V.	)	10,198,879
	)	IPR2023-00858
AUTO TELEMATICS, LTD.,	)	
	)	HON. HOSKINS
Patent Owner.	)	HON. IPPOLITO
	)	HON. O'HANLON

CERTIFIED COPY

**REPORTER'S TRANSCRIPT OF PROCEEDINGS
WEDNESDAY, NOVEMBER 1, 2023**

Reference No: 36137-0024IP2 & 36137-0027IP2
Reported by: Tamara Houston, CA CSR No. 7244, RPR, CCRR

THE SULLIVAN GROUP OF COURT REPORTERS

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THE SULLIVAN GROUP OF COURT REPORTERS

PROCEEDINGS VIA PHONE CONFERENCE
WEDNESDAY, NOVEMBER 1, 2023

--000--

JUDGE HOSKINS: This is Administrative Judge George Hoskins. This is a conference call for IPR 2023-00858 and IPR 2023-00912, related cases between Auto Telematics. I'm joined today by my two colleagues on the panel who are Francis Ippolito and Sean O'Hanlon.

And so with that brief introduction, let me get some introduction from the parties, please, and we'll start with counsel for Petitioner.

MS. HUANG: Good afternoon, Your Honor. This is Jenny Huang on behalf of Petitioner with Fish & Richardson. And also on the call are my colleagues, Andrew Patrick, Karl Renner, and Tom Rozyłowicz of Fish & Richardson.

JUDGE HOSKINS: Thank you, Ms. Huang. Did I pronounce that correctly?

MS. HUANG: Yeah, Huang. That's good. Thanks.

JUDGE HOSKINS: Thank you. And welcome to the board today.

And so counsel for Patent Owner then, please.

MR. TILLER: Good afternoon, Your Honor. Steve Tiller from Whiteford, Taylor, and Preston on

1 behalf of the Patent Owner, Auto Telematics. And it's
2 just me today.

3 JUDGE HOSKINS: Okay. Thank you. And welcome
4 today, Mr. Tiller.

5 MR. TILLER: Thank you.

6 JUDGE HOSKINS: So I think I heard a court
7 reporter waiting in the background.

8 Who arranged for the court reporter today?

9 MS. HUANG: Thank you, Your Honor.
10 Petitioners requested a court reporter, so I believe
11 she's on, and we will file a transcript as an exhibit in
12 each of the proceedings once that's finalized.

13 JUDGE HOSKINS: Okay. That would be great.

14 (Discussion held off of the record.)

15 JUDGE HOSKINS: Well, let's go back on the
16 record.

17 Okay. So we're here today to talk about three
18 proceedings, really. One very briefly and then the
19 other two at somewhat more length.

20 So the one that I'm talking about is IPR
21 2023-00911, and so this is the case where just a few
22 days ago Petitioner sent in an email request seeking to
23 file a new stipulation concerning the interplay between
24 the '911 IPR and co-pending district court litigation.
25 The email says the Patent Owner does not object to the

1 filing of a new stipulation as an exhibit.

2 So let me just ask, Mr. Tiller, since we're
3 all here together today; is that correct? Are you okay
4 with the filing of the new stipulation in the '911 case?

5 MR. TILLER: That is correct, Your Honor.

6 JUDGE HOSKINS: Okay. Well, then, in that
7 event, Ms. Huang, go ahead and please file the new
8 stipulation as an exhibit, and you can also file then a
9 paper with an updated list of exhibits as you have done
10 in other cases for similar filings of stipulations.

11 There is no need for further briefing. My
12 understanding of your request is -- is you don't think
13 further briefing is required, and, you know, we don't
14 need further briefing for that stipulation. So just the
15 filing of the exhibit and then the updated list of
16 exhibits is a paper -- we'll take care of that
17 particular issue unless you have something further on
18 that front that you want to discuss here today.

19 MS. HUANG: No, Your Honor. That sounds
20 great. Thank you for that.

21 JUDGE HOSKINS: Okay. Good. So then we go on
22 to the item that was part of the formal agenda before
23 this phone call, which is two -- two cases, so IPR
24 2023-00858 and IPR 2023-00912. And so here Petitioner
25 has requested authorization to file further preliminary

1 briefing addressing the issue of whether the P3 priority
2 document provides written description support for -- if
3 you'll permit me to thumbnail it -- either generating a
4 driving score or determining a start of a driving
5 period.

6 So what we're going to do today on this front
7 is let Ms. Huang have her say on why the further
8 briefing should be allowed, then Mr. Tiller can respond
9 with whatever he may have to say, then Ms. Huang will
10 have a chance to reply. And at that point we'll figure
11 out -- the panel will confer a little bit and we'll --
12 we'll talk about whether we want to hear more or what
13 the next steps are going to be, but we're going to at
14 least have that kind of back and forth with Petitioner
15 having their say and then Patent Owner having their say
16 and the Petitioner having a reply.

17 So with that I'm gonna -- does anybody have
18 any questions about the overall kind of structure for
19 this part of the telephone conference, or can we go
20 ahead and go forward?

21 So let me ask, Ms. Huang, do you have any
22 questions about that?

23 MS. HUANG: Sure. I guess the only question I
24 have is whether it would be beneficial to Your Honors if
25 we broke this up as you -- you mentioned using that

1 shorthand whether -- I'll just call it the "driving
2 score" and then the "driving period." Would it be
3 beneficial for us to break this up element by element,
4 or should I talk -- speak to all of them first and then
5 give Mr. Tiller a chance to respond to all of those
6 issues collectively?

7 JUDGE HOSKINS: That's up to you. We don't
8 have a preference. If you want to break it up, that's
9 fine, if that makes it easier for you. Sometimes it's
10 easier to kind of take things in bites, and that would
11 be fine with us. But if you would also kind of
12 prefer -- we can do it both at the same time too, if
13 that works.

14 MS. HUANG: Yeah. I'm somewhat inclined to do
15 them together because there's related reasons for
16 foreseeability and the like, but I just wanted to check
17 with you if there would be a different approach that
18 would be beneficial, Your Honor.

19 JUDGE HOSKINS: I appreciate that. I would
20 invite you to just address them both together and then
21 Mr. Tiller can respond.

22 MS. HUANG: Okay. We will do that,
23 Your Honor. I'll be beginning the presentation, but
24 you're likely to hear from my colleague, Carl Renner, as
25 well.

1 So as a brief summary, Your Honor, Petitioner
2 seeks five-page replies in each of these two IPR matters
3 to address related issues of claim construction and
4 priority.

5 The Petitioner is offering to file these
6 replies within one business day of an order granting
7 Petitioner's request. And moreover, Petitioner doesn't
8 oppose a similar sur-reply from Patent Owner to be filed
9 within five business days of Petitioner's reply. And
10 notably this proposed schedule provides Your Honors the
11 briefing more than one month prior to the statutory
12 deadline for rendering an institution decision in the
13 implicated IPRs.

14 So first, with the -- with respect to IPR
15 2023-00912 for the '271 patent, Petitioner seeks to
16 address the POPR contentions in support of the driving
17 score elements. And just for the record, this is
18 element 6.9, 7.9, 6.10, 7.10 and 7.11. And second
19 Petitioner's reply would additionally address the POPR's
20 attempt to demonstrate support in the P3 documents for
21 claim elements relating to a driving period. Those are
22 elements 1.6 and 4.6.

23 And like Your Honors, I will likely similarly
24 use sort of a shorthand referring to either the driving
25 score elements or the driving period elements.

1 The reply would additionally address POPR
2 contentions that improperly apply obviousness standards
3 in place of written descriptions. And we know from
4 Ariad v. Eli Lilly which is 598 f.3d 1352 that a
5 description that merely renders an invention obvious
6 doesn't satisfy written description.

7 Now, with respect to the other IPR, IPR
8 2023-00858, the anticipated reply would address the
9 arguments offered to establish that supported this for
10 claim elements relating to a driving score. And that is
11 elements 1.10, 21.9, 46.12, 51.9, 54.10, and 55.11. And
12 we would do so in a similar manner as discussed above
13 with respect to the '912 IPR.

14 So turning now to the driving score issue, so
15 this first issue, which is priority in claim
16 construction as it relates to a driving score,
17 Petitioner has good cause to request such additional
18 briefing. Now, to talk about good cause and with that
19 foreseeability, we have to consider the exceptional
20 nature of patent owner's claim construction. So please
21 just bear with us as we'll do what we can to avoid
22 touching on the merits despite the need to offer some
23 detail regarding the specific constructions the Patent
24 Owner offers in its POPRs. It's significant, so that
25 bears on considerations of foreseeability.

1 Patent owner's preliminary response presents,
2 for the first time, claim constructions relating to a
3 driving score. It offers a first construction for a
4 driving score as, quote, a number associated with the
5 risk profile of the driver. In other words, it's an
6 assessment of what type of driver the individual is, end
7 quote. That's in the '271 POPR at page 28 and the '879
8 POPR at page 20. And Patent Owner additionally, for the
9 first time, seemingly provides a second construction for
10 a driving score equating a driving score with a risk
11 profile and arguing that, quote, a POSITA would
12 understand the generation of a risk profile is
13 generation of a type of driving score. That's in the
14 '271 POPR at page 30 and the '879 POPR at page 23.

15 Now, at a high level, these constructions were
16 not foreseeable for two reasons. One, the divergence by
17 Patent Owner from its contrary claim construction
18 position in the district court where Patent Owner claims
19 that no construction is necessary; and two, the
20 constructions themselves are inconsistent with the '271
21 and '879 patents and the priority documents and any
22 plain and ordinary meaning of the term.

23 We'll turn first to the first reason with
24 respect to patent owners divergence from the claim
25 construction in the district court.

1 So at the district court, Patent Owner simply
2 alleged that, quote, no construction is necessary, end
3 quote, for a driving score. That's in Exhibit USAA 1069
4 at page 27. Plaintiffs or Patent Owner's briefing in
5 that district court case does not allege that a driving
6 score is any kind of a number or that it's a type of
7 risk profile. It alleged that the term should be
8 afforded it's plain and ordinary meaning, but it didn't
9 argue that the plain and ordinary meaning is a number or
10 a risk profile as a type of driving score. For example,
11 it argues with respect to another reference. In trying
12 to explain what a driving score is, it says, "It
13 reflects the quality of the driving behavior of the
14 driver and that the point of a driving score is to
15 provide some assessment of driving behavior." This can
16 be found in Exhibit 1071 at pages 13 and 14.

17 And moreover, in the district court, the court
18 had actually determined that in an order that the term
19 should be given it's plain and ordinary meaning. And
20 that's in Exhibit USAA 1073 at page 2.

21 So in light of all of this, Petitioner had no
22 reason to foresee that Patent Owner would offer such a
23 construction now in its POPR, which is an entirely new
24 theory, one that's contrary to the district court
25 positions and contrary to the plain and ordinary

1 meaning.

2 Now, the second reason why this wasn't
3 foreseeable is with respect to the patents themselves
4 and the priority documents. The '271 and '879 patents
5 do not provide any teachings that a driving score is any
6 kind of a number as Patent Owner now alleges in its
7 first construction. In fact, if you look at those
8 patents, the word "number" appears 14 times in the
9 specifications, but none of these times have anything to
10 do with the driving score. It talks about the number of
11 plates, the vehicles, or the number of different
12 orientations or number of data files. Nothing having to
13 do with a driving score.

14 Now as to Patent Owner's second construction
15 where it essentially equates a driving score with a risk
16 profile, the '271 and '879 patents similarly just don't
17 support this construction, and so it was additionally
18 not foreseeable. For example, for the '271 patent,
19 claim 6 and 7, which recite a driving score, really
20 treat these two concepts -- the concepts of a driving
21 score and a risk profile -- as being distinct from one
22 another, not the same. In fact, they have a cobbled
23 relationship where one is actually used to determine the
24 other. So it wouldn't have been foreseeable for
25 Petitioner to think that Patent Owner would take the

1 position that they were essentially the same.

2 And for the '879 patent, even those claims
3 don't recite a risk profile in relation to a driving
4 score, the patent itself includes similar recitations at
5 column 12, lines 23 to 24.

6 This construction also wasn't foreseeable in
7 view of the P3 reference which is USAA 1505, that's the
8 priority document, or any of the other priority
9 documents. P3 never mentions any driving score or any
10 number associated with the risk profile, and the POPR
11 does not allege any support from any of the other
12 priority documents. And since P3 never mentions a
13 driving score, it further cannot equate it with a risk
14 profile as Patent Owner now does so in its second
15 construction.

16 Finally, fairness dictates that Petitioner
17 should be afforded an opportunity to respond to this new
18 construction as it relates to priority. Patent Owner
19 has never offered these constructions before. While
20 Petitioner was drafting the petition, it had the
21 position that Patent Owner previously took in the
22 district court. So that's what we kept in mind and
23 could -- that's what we could foresee when we were
24 drafting. And now for the first time in claiming
25 written description support for the term, Patent Owner

1 offers these two new constructions that are divergent
2 from the district. And they diverge in the way that
3 they did. And it gave the unforeseeability. It actually
4 enhanced when you see the presented positions that are
5 inconsistent with the patent and the claims themselves.

6 So the question for Your Honors to consider is
7 were Patent Owner's arguments in its new claim
8 construction position, were they within a reasonable
9 range of arguments to come from the POPR? And, no, they
10 are not. They are not arguments that could have been
11 foreseen. And that's the reason why these kinds of
12 briefs that we're asking for today are granted or
13 denied. Should we have been able to see this coming?
14 And if not, Petitioner should be granted additional
15 briefing. In the interest of fairness, Petitioner
16 should have an opportunity to be heard.

17 Now, we have no issue, you know, with
18 Petitioner's having to deal with issues before them, but
19 if something comes up that was never before them, that's
20 where additional briefing makes sense to make sure, Your
21 Honors, that both sides's views can be heard but only
22 where it's reasonable to be heard. And where something
23 comes up that truly wasn't foreseeable, it's actually
24 important to have that briefing. And actually, many
25 panels have granted additional briefing on these types

1 of issues of priority and claim construction in the
2 past. And one case that's particularly on point is Yita
3 v Macneil. That's IPR 2020-01138 and -01140, related
4 cases. And Paper 13 is an order where the panel granted
5 Petitioner's request for additional briefing to address
6 Patent Owner's, quote, priority and claim construction
7 arguments.

8 Now in that case Petitioner pointed out that
9 good cause existed because whether or not the patents
10 are entitled to what's priority is a threshold issue,
11 end quote. And patent owner's assertions weren't --
12 were unforeseeable. Excuse me. There is good cause
13 actually listed because Petitioner couldn't have
14 anticipated patent owner's proposed construction because
15 claim construction hadn't been addressed yet in the
16 co-pending district court case. So the specific
17 construction patent owner advanced and the POPR wasn't
18 foreseeable.

19 Now, obviously our posture here is a little
20 bit different. But, arguably, we're even more
21 sympathetic because of that different posture. In Yita
22 petitioner didn't know what was to come from the patent
23 owner, but they knew something was going to come, right?
24 They were going to talk about claim construction next in
25 the district court.

1 And here we had no idea that Patent Owner
2 would present anything else or anything different
3 because Patent Owner already had a chance to argue its
4 claim construction case in that district court. And it
5 did. Petitioner could not have reasonably foreseen that
6 Patent Owner would throw out a new claim construction
7 here in the POPR.

8 Now, turning now to the driving period claim
9 elements, and this is for IPR 2023-00912, Petitioner
10 seeks to --

11 JUDGE HOSKINS: Ms. Huang, hold on one second,
12 please.

13 MS. HUANG: Sure.

14 JUDGE HOSKINS: Can you -- the citation you
15 gave us to the other board decision went by quickly.
16 What I wrote down was IPR 2020-01138? Do I have that
17 correctly?

18 MS. HUANG: Yep. Yep, that's right. There's
19 another related matter, but that will get you where you
20 need to be.

21 JUDGE HOSKINS: And that was Paper 30?

22 MS. HUANG: Paper 13. 1-3, Your Honor.

23 JUDGE HOSKINS: 13. Thank you.

24 MS. HUANG: Yep. You're welcome. Sorry if I
25 was unclear.

1 All right. Moving on now to the driving
2 period element. So for IPR 2023 and 00912, This is
3 where this element comes into play. So Petitioner seeks
4 a reply to address the POPR's attempt to demonstrate
5 support in the P3 document for the claim elements that
6 relate to a driving period.

7 Now, Your Honors, again, if you would just
8 bear with me for a minute --

9 JUDGE HOSKINS: Let -- let me cut you short a
10 little bit on this. Are you just -- on this point, are
11 you basically wanting to repeat what you did in the
12 request for rehearing of the earlier case where we've
13 already denied institution?

14 MS. HUANG: I think -- I would say that we're
15 saying the exact same things but the posture is
16 different, but I think a lot of the points that we'd
17 want to highlight are the same as has been presented in
18 that request, Your Honor.

19 JUDGE HOSKINS: Okay. Okay. Well, go ahead
20 and say what you were going to say. Thank you.

21 MS. HUANG: Sure. And so, you know, we want
22 to talk about this element. I don't want to -- I don't
23 mean to argue the merits, though the merits are relevant
24 to why Patent Owner's arguments weren't foreseeable, so
25 I promise not to get into the weeds, and if you've

1 picked up the request for hearing in the related case,
2 you have been in the weeds, but I just need to briefly
3 present a high-level summary of the claim element in
4 question.

5 So specifically these are elements 1.6 and
6 4.6. And that element recites, "Determined based on
7 inputs received by the user interface and sensor data
8 from the sensor specs, a start of a driving period
9 during which the mobile device is removably attached to
10 the vehicle and the vehicle is in use." And with
11 respect to which we offered affirmatively a construction
12 in the petition at pages 3 and 4.

13 Specifically, we indicated the plain and
14 ordinary meaning of the term "driving period," as
15 recited in those elements, is one having two attributes:
16 That the mobile device is removably attached to the
17 vehicle, and that the vehicle is in use. And here
18 again, Petitioner has good cause to seek additional
19 briefing, although it's slightly different than the
20 driving score elements.

21 Instead of Patent Owner offering a brand new
22 construction that we couldn't have foreseen, here
23 Petitioner affirmatively presented its claim
24 construction concerning those elements briefed in the
25 petition at pages 3 to 4 --

1 JUDGE HOSKINS: Well, if it's already in the
2 petition -- why -- if it's already in the petition, why
3 do we need more briefing?

4 MS. HUANG: Thank you, Your Honor. That's a
5 great question.

6 I would say it's because in -- Patent Owner
7 disregarded Petitioner's construction, which by itself
8 is problematic, but arguably in ignoring Petitioner's
9 claim construction through its own analysis, Patent
10 Owner actually presented sort of an implicit
11 construction. So then the problem becomes the same as
12 the driving score elements where through its implicit
13 construction, it provided a new construction, one that
14 disregards the literal language of the claims, and by
15 doing so unjustifiably broadens the claim by weeding
16 elements out.

17 JUDGE HOSKINS: Isn't this the kind of thing
18 we deal with every day on decisions on institution when
19 we're looking at a petition in a preliminary response
20 without the need for further briefing?

21 MS. HUANG: Well, I think in this case, you
22 know, we presented a construction and they chose to
23 ignore it, but in doing so they presented a new
24 construction which Petitioner has never had an
25 opportunity to address. So it's a little bit different

1 here. You know, I think -- essentially this issue that
2 we have before us is one in the papers where we have
3 kind of two ships passing in the night. Like we've set
4 forth our position as it relates to priority. They set
5 forth sort of an orthogonal position, but they never
6 addressed what we said. And by ignoring our claim
7 construction, that's what we have here. So instead,
8 Patent Owner applied its own construction, and this is
9 true for the driving score elements as well, and
10 Petitioner would just ask for discourse where both
11 parties have an opportunity to be heard and present
12 their positions relative to the other party's
13 interpretation.

14 Here we have ships passing in the night. It
15 doesn't feel good. It isn't productive. We'd like to
16 hear what they have to say about our construction, quite
17 frankly, on priority, and we'd like to be able to
18 address theirs. I know I talked about fairness earlier,
19 and I'd like to read that again. The truth is Patent
20 Owner had a chance to address Petitioner's position. It
21 had the benefit of our petition where we indicated what
22 our claim construction and priority positions are. And
23 Patent Owner has chosen to ignore those constructions in
24 its preliminary response. So Petition, you know, never
25 had a chance to address Patent Owner's arguments that

1 apply to Patent Owner's claim construction concerning
2 both the driving period and the driving score terms
3 because Patent Owner's arguments weren't foreseeable for
4 all of the reasons that I've already mentioned.

5 So -- I don't know. Let's call it a mulligan
6 and give Patent Owner a sur-reply in addition to an
7 additional -- for Petitioner to even have a first chance
8 to be heard where Patent Owner's, you know, claim
9 constructions were unforeseeable, but it even passed on
10 its own chance to address our claim construction.

11 So even, you know, beyond unfor- -- beyond the
12 unforeseeability of the arguments, given that Patent
13 Owner failed to address our construction and presented
14 its own implicit construction, and given the complexity
15 of these issues, I respectfully submit Your Honors would
16 likely find helpful this briefing on these issues as
17 you're considering issues that are dispositive to
18 institution.

19 And so for that additional reason, good cause
20 exists for granting this briefing.

21 MR. RENNER: If I may, I'd like to just offer
22 a word or two. This is -- this is Karl Renner. And
23 thank you, Your Honors, for entertaining today's call.

24 Just to reinforce, I think you're not wrong in
25 asking the question. We hear it. It is the case that

1 sometimes panels find themselves having to deal with
2 exactly this situation. I think it's a nonoptimal
3 situation, however, and it's one that I expect it isn't
4 really welcomed by Your Honors that you have two
5 different parties expressing two different views,
6 neither one of which engaging with the other's view.
7 And that leaves the record without any information as to
8 how the parties do feel about each other's position or
9 what logic gaps may or may not exist.

10 And I think our request here is as a party
11 that didn't have the opportunity to see the Patent
12 Owner's position here and one that we believe is
13 Ms. Huang is telling you is unforeseeable for the
14 reasons she is indicating, we just want to have an
15 opportunity to actually comment on that position before
16 a decision is rendered. And frankly, as she mentioned,
17 we're happy to receive their comments and feedback and
18 logical response to the construction that we offered at
19 the outset, which they did not provide. And that's
20 where we think the record would be more complete. But
21 you're not wrong. It's a situation that I'm sure Your
22 Honors do face regularly. It's just one that we try --
23 we try -- we strive to actually not leave you with that.
24 And the briefing that is proposed here would hopefully
25 endeavor to do just that and do it in a timely way which

1 doesn't burden the Patent Owner nor Your Honors, gives
2 you that briefing within the month of when the decision
3 is -- is to be rendered. So that's really the nature of
4 it. But I appreciate the questions you asked because
5 it -- to us, actually calls into focus the reason for
6 the briefing.

7 JUDGE HOSKINS: Okay. Thank you for that.
8 Give me a moment here and let me confer with my
9 colleagues, make sure we don't have any further
10 questions for Petitioner's counsel before we turn to
11 Patent Owner's counsel.

12 Okay. We do not. So with that, Mr. Tiller,
13 you are free to kind of have your say when you are
14 ready. Thank you.

15 MR. TILLER: Thank you, Your Honor. I think
16 Ms. Huang said it best, Petitioner is looking for a
17 mulligan. That's not the standard. It's -- it's not
18 because, hey, we did not think of what patent owner may
19 say that's preliminary response, so we'd like to
20 respond. It is clear that a petitioner has the burden
21 to establish in its petition a reasonable likelihood of
22 success. That comes -- the board had said that many
23 times. I'm looking at a case, IPR 2015-01505, Paper T
24 where the board said exactly that. It is not -- the
25 mulligan is not the standard. It is whether special

1 circumstances exist. It is whether good cause exists.
2 This is a situation as -- Judge Hopkins, you've already
3 sort of indicated happens all of the time. The party in
4 most, if not all, petitions and preliminary responses
5 disagreed with each other. That happens all of the
6 time. That doesn't mean that there should be an
7 opportunity for a reply. The fact that a petitioner,
8 when filing a petition, did not know about positions to
9 be taken by the Patent Owner in its response is nothing
10 unexpected. But to present it special circumstance that
11 permits something -- permits a reply, there really has
12 to be something new. There has to be, for example, new
13 evidence that the parties simply didn't know about, or
14 at least the patent owner or the petitioner didn't know
15 about at the time of filing its position. But boards
16 over and over and over have said simply because the
17 patent owner disagrees with the petitioner doesn't mean
18 that the petitioner has the right to file a reply. That
19 would just keep every petition going on over and over
20 and over again. You know, here's a reply, here's a
21 sur-reply. Gosh, board, we'd like -- we'd like the
22 opportunity to reply to their sur-reply because we
23 didn't know that something was going to happen.
24 Mulligans are not the standard. The simple fact is they
25 don't like -- Petitioner doesn't like the arguments that

1 Patent Owner made. I think the board is more than
2 capable of understanding those arguments, interpreting
3 those arguments, deciphering those arguments, and ruling
4 on the papers.

5 There is no more briefing that needs to be
6 made. They argue -- Ms. Huang argued that we gave --
7 the Patent Owner gave a particular construction that
8 they couldn't have expected. That's not really
9 accurate. What we did is said that something in P3 fell
10 within the ordinary meaning of certain terms. That's
11 not a new construction. That's not a construction that
12 is the antithesis of what was said in the district court
13 litigation. In the district court litigation patent
14 owner said we don't need a construction plain and
15 ordinary meaning applied. We're still essentially
16 saying that. We're just saying what falls within the
17 scope of plain and ordinary meaning. They have a
18 different position. The board can read all of the
19 papers and decipher that.

20 So for those reasons, we do not believe that
21 it is appropriate that any good cause has been shown.

22 And just very quickly, Your Honors, in the
23 event that you are inclined to grant this request to
24 file a reply, I don't think it's fair that we would only
25 get five days to respond. They've had two months to

1 look at our arguments. They've been presumably
2 preparing this reply to our arguments for those two
3 months to turn around and say, oh, we're going to be
4 magnanimous and give you five days to respond would
5 certainly not be appropriate. We would need at least a
6 couple weeks, quite frankly, in my mind.

7 But with that said, I don't think that Your
8 Honors need more understanding. Boards all of the
9 time -- and I'm sure Your Honors can read these
10 papers -- interpret these papers and determine whether
11 there's a reasonable likelihood of success such that
12 institution should be granted.

13 Thank you very much.

14 JUDGE HOSKINS: Thank you, Mr. Tiller.

15 I do not have any follow up to that, but give
16 me a moment here and make sure that my colleagues also
17 do not.

18 (Pause on the record.)

19 MS. HUANG: Your Honors, I just wanted to
20 confirm that Petitioner would have an opportunity to
21 respond.

22 JUDGE HOSKINS: Yes. Yes. You are talking
23 about today?

24 MS. HUANG: Yes.

25 JUDGE HOSKINS: Yes. Yes, I said that at the

1 beginning and I meant it. I just, before I --

2 MS. HUANG: Okay.

3 JUDGE HOSKINS: -- before I came back to
4 you --

5 MS. HUANG: No worries. Just wanted to
6 confirm.

7 JUDGE HOSKINS: That's fine. Okay. So I've
8 now -- we do not have any further follow up for
9 Mr. Tiller.

10 So Ms. Huang, if you would like to, you may
11 reply. Thank you.

12 MS. HUANG: Thank you, Your Honor.

13 I just wanted to comment and clarify,
14 Petitioner is not asking for a mulligan. I mentioned a
15 mulligan earlier. We're actually willing to give Patent
16 Owner a mulligan here. Patent Owner had a chance to
17 address Petitioner's claim construction in its POPR, and
18 they didn't do so. So, arguably, it shouldn't get
19 another chance to do so. Patent Owner is saying that
20 we're asking for a mulligan too. Unlike Patent Owner,
21 we haven't had a chance to respond to their
22 unforeseeable claim construction, so we don't need a
23 mulligan. Patent Owner is being offered a mulligan
24 potentially in this case. So just wanting to clarify
25 the mischaracterization by Mr. Tiller on that front.

1 Further, Petitioner did not disagree that mere
2 disagreement between the parties doesn't justify further
3 briefing, but instead its unforeseeability. And
4 Mr. Tiller references disagreement between the parties,
5 but we've not suggested that it's disagreement here that
6 justifies -- sufficient to justify additional briefing.
7 We're arguing that it's the unforeseeability of Patent
8 Owner's arguments that are sufficient to justify in a
9 briefing.

10 That's all I have, Your Honor.

11 JUDGE HOSKINS: Okay. Well, thank you very
12 much. Give me -- and let me thank both counsel for
13 presenting their discussions today. So just --
14 everybody hold the line, please, for a few moments. I'm
15 going to confer with my colleagues, and we'll come back
16 on the phone -- on this phone. So just give us a few
17 moments here and we'll come back to you. So thank you
18 very much.

19 MR. TILLER: Thank you.

20 (Recess: 12:05 p.m. to 12:06 p.m.)

21 JUDGE HOSKINS: Okay. So I'm back now. And
22 so let me just make sure -- this is Judge Hopkins. Let
23 me make sure that everybody else is still on the line.

24 So Ms. Huang, are you with us still?

25 MS. HUANG: I am. I am, Your Honor. Thank

1 you.

2 JUDGE HOSKINS: Thank you. And Mr. Tiller?

3 MR. TILLER: Yes, Your Honor. Thank you.

4 JUDGE HOSKINS: Okay. Thank you. And court
5 reporter whose name I did not write down.

6 COURT REPORTER: No problem, Your Honor.
7 Tamara Houston, and I am here.

8 JUDGE HOSKINS: Thank you, Ms. Houston. I
9 apologize.

10 We're going to take this under advisement.
11 We're not going to authorize any additional briefing at
12 this time. We will, regardless of what we end up doing,
13 that is either authorizing the additional briefing or
14 not, we'll -- we'll give you, you know, reasons for the
15 decision one way or the other.

16 And so just as a reminder, Ms. Huang, when
17 you -- when we're done here today please do not forget
18 to file the court reporter's transcript as an exhibit
19 because that will become the official record of the
20 phone call today.

21 MS. HUANG: Yes. I promise to do so,
22 Your Honor.

23 JUDGE HOSKINS: Okay. Good. Thank you. So
24 with that, we do not have anything else from our end.
25 So let me just make sure that nobody else has anything

1 else to say.

2 So Ms. Huang, do you have anything to add?

3 MS. HUANG: I do not. Thank you for your
4 time, Your Honor.

5 JUDGE HOSKINS: Thank you.

6 And Mr. Tiller, anything else?

7 MR. TILLER: Nothing further, Your Honor.
8 Thank you.

9 JUDGE HOSKINS: Okay. Well then, thank you
10 very much, again, for your time today. We appreciate
11 the efforts in presenting this issue. And with that, we
12 are adjourned.

13 Goodbye.

14 (Whereupon the proceedings concluded at
15 12:08 p.m.)

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
PATENT TRIAL AND APPEAL BOARD

In re:	)	U.S. PATENT NO.
	)	9,311,271
UNITED SERVICES AUTOMOBILE	)	PROCEEDING NO.
ASSOCIATION (USAA),	)	IPR2023-00911
	)	IPR2023-00912
PETITIONER,	)	
	)	U.S. PATENT NO.
V.	)	10,198,879
	)	IPR2023-00858
AUTO TELEMATICS, LTD.,	)	
	)	HON. HOSKINS
PATENT OWNER.	)	HON. IPPOLITO
	)	HON. O'HANLON

I, Tamara Houston, CSR No. 7244, RPR, CCRR 140, do hereby certify that I did correctly report the proceedings contained herein and that the foregoing pages 1 through 31 inclusive, comprise a full, true, and correct transcript of the proceedings and testimony taken in the matter of the above -- entitled cause on Wednesday, November 1, 2023.

Tamara L. Houston

TAMARA HOUSTON, CSR NO. 7244
CCRR, RPR

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