

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNITED SERVICES AUTOMOBILE ASSOCIATION,
Petitioner,

v.

AUTO TELEMATICS LTD.,
Patent Owner.

IPR2023-00912
Patent 9,311,271 B2

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

HOSKINS, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
35 U.S.C. § 314

I. INTRODUCTION

United Services Automobile Association (“Petitioner”) has filed a Petition (Paper 3, “Pet.”) pursuant to 35 U.S.C. §§ 311–319 to institute an *inter partes* review of U.S. Patent No. 9,311,271 B2 (Ex. 1001, “the ’271 patent”), claims 1–7. Petitioner also filed a paper ranking its two petitions¹ challenging the ’271 patent. *See* Paper 2. Auto Telematics Ltd. (“Patent Owner”) has filed a Preliminary Response (Paper 7, “Prelim. Resp.”) opposing institution of review.

The Petition, to justify institution of review, must demonstrate a reasonable likelihood that Petitioner would prevail with respect to at least one challenged claim. *See* 35 U.S.C. § 314(a). Upon consideration of the Petition, the Preliminary Response, and the evidence of record, we determine the information presented does not establish a reasonable likelihood that Petitioner would prevail in showing the unpatentability of at least one of the challenged claims. Accordingly, we *deny* institution of the petitioned *inter partes* review.

II. BACKGROUND

A. *Real Parties-in-Interest and Related Proceedings*

Petitioner identifies itself (i.e., United Services Automobile Association) and Noblr Reciprocal Exchange as real parties-in-interest. *See* Pet. 83; Paper 6 (Petitioner’s Updated Mandatory Notices). Patent Owner identifies itself (i.e., Auto Telematics Ltd.) as a real party-in-interest. *See* Paper 5 (Patent Owner’s Mandatory Notices).

¹ The Petition in this case, and the petition in IPR2023-00911.

The parties identify one district court litigation involving the '271 patent: *Auto Telematics Ltd. v. United Services Automobile Association and Noblr Reciprocal Exchange*, Case No. 6:22-cv-00474 (W.D. Tex.). See Pet. 83; Paper 5; Paper 6.

Petitioner has filed one other IPR petition to challenge the '271 patent (IPR2023-00911). Petitioner has also filed other IPR petitions to challenge other patents related to the '271 patent, including U.S. Patent No. 9,633,487 (IPR2023-00518 and IPR2023-00519), U.S. Patent No. 10,192,369 (IPR2023-00768, IPR2023-00769, and IPR2023-00770), and U.S. Patent No. 10,198,879 (IPR2023-00857, IPR2023-00858, and IPR2023-00859). See Pet. 83–84; Paper 5.

B. The '271 Patent

The '271 patent “relates to methods and systems for logging driving information associated with vehicle behaviour,” and particularly provides “a mobile device adapted for installation to a vehicle and configured to log such driving information, for example, video footage associated with how the vehicle is driven.” Ex. 1001, 1:17–22. This information may be utilized “to determine the cause of an event such as an accident, to modify driver behaviour and/or to determine insurance premiums.” *Id.* at 1:22–25.

The '271 patent describes that prior art “data logging devices exist for road vehicles,” and could be used “to determine the cause of traffic accidents or other vehicle-related events, whether these stem from a vehicle malfunction or driver negligence.” *Id.* at 1:36–43. However, these devices often were “integrated with the car data network,” and were “difficult and costly to install.” *Id.* at 1:44–48.

The '271 patent thus proposes “a mobile telecommunications device adapted for installation to a vehicle and configured to log driving information associated with the vehicle when driven.” *Id.* at 1:57–62. According to the '271 patent, “the use of a mobile telecommunication device enables a data logging device to be conveniently and inexpensively retrofitted to a vehicle.” *Id.* at 2:10–12.

To log the data, the adapted device operates by “registering the start of the driving period during which the mobile device is installed to the vehicle and the vehicle is being driven by the driver.” *Id.* at 3:14–16. This prevents logging information needlessly. *Id.* at 3:16–21. Preferably, the registration is “in response to an initialisation input,” such as user input, or automatic, “in response to the mobile device being installed to the vehicle and/or the vehicle being driven.” *Id.* at 3:25–32. “For example, if the sensor data reflects a detected speed above a predetermined threshold—for example, 20 kilometers per hour—then this can be used to trigger the start of the driving period.” *Id.* at 3:34–38.

Figure 2, reproduced below, illustrates an automobile with a mobile device installed for logging. *Id.* at 12:38–40.

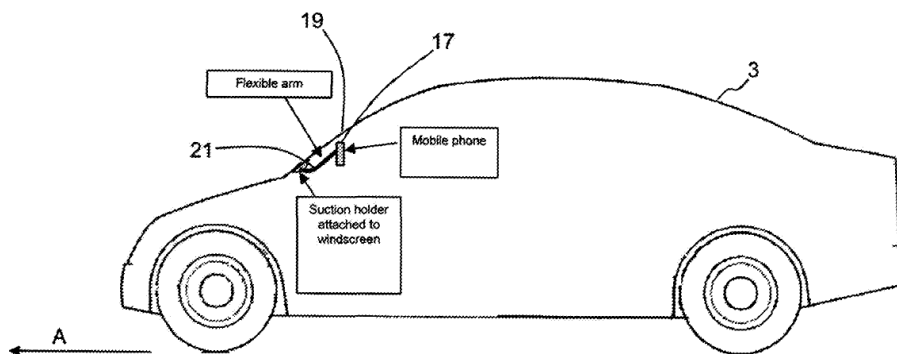


Figure 2 of the '271 Patent.

Figure 2, reproduced above, shows a preferred arrangement of mobile telecommunications device 17 within automobile 3. *Id.* at 14:45–47.

C. The Claims of the '271 Patent

The '271 patent includes seven claims, all of which are challenged here. *See* Ex. 1001, 31:28–34:21; Pet. 1–2.

Claim 1 recites (with our emphases added):

1. A mobile telecommunications device configured to log driving information associated with a vehicle, the mobile device comprising:
 - a sensor set comprising an image sensor, an audio sensor, an accelerometer, or a positioning module, or a combination thereof;
 - a user interface;
 - a processor; and
 - a memory;the mobile device configured to:
 - 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;*
 - process the sensor data from the sensor set during the driving period to derive driving information associated with how the vehicle is driven;
 - store a selection of the driving information to the memory, wherein *the driving information is derived without data from vehicle sensors;* and,
 - 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.

Ex. 1001, 31:29–56. Claims 2 and 3 depend from claim 1. *See id.* at 31:57–67.

Claim 4 is an independent claim, reciting a device similar to the device of claim 1, and includes the limitations emphasized above in claim 1. *See id.* at 32:1–29. Claim 5 depends from claim 4. *See id.* at 32:30–39.

Claim 6 recites (with our emphases added):

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

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

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

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

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

wherein the driving information comprises at least one of *a driving score* and sensor data captured and processed by the remote mobile telecommunications device during a driving period during which the remote mobile telecommunications device is removably attached to the vehicle being driven by the driver, the data logging system being further arranged

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

Id. at 32:40–33:4.

Claim 7 is an independent claim, reciting a system similar to the system of claim 6, and includes the limitations emphasized above in claim 6. *See id.* at 33:5–34:21. Claim 7 further recites: “wherein *the driving score is used to define an insurance premium* associated with the account and the data logging system is further *arranged to communicate to the remote mobile telecommunication device an insurance offer* generated in response to the driving information received from the remote mobile telecommunications device.” *Id.* at 34:15–21 (emphases added).

D. Asserted Prior Art

Petitioner’s challenges rely on the following five references, listed in chronological order by either filing date (Tamir, Chatterjee, Wilkes, and Peng) or publication date (Callopy). *See* Pet. 1–2.

Name	Reference	Date	Exhibit No.
Tamir	US 7,821,421 B2	July 21, 2006 ²	1012
Chatterjee	US 2010/0131691 A1	Nov. 17, 2009	1006
Wilkes	US 2011/0077028 A1	Feb. 11, 2010	1518

² Petitioner asserts Tamir’s filing date is February 1, 2007. *See* Pet. 2. However, Tamir was filed on July 21, 2006, as the national stage entry of a PCT application, and was later published as a U.S. application on February 1, 2007. *See* Ex. 1012, codes (65) and (86).

Name	Reference	Date	Exhibit No.
Callopy	WO 2010/062899 A1	June 3, 2010 ³	1045
Peng	US 2011/0307188 A1	June 29, 2011	1005

See Ex. 1005, code (22); Ex. 1006, code (22); Ex. 1012, code (86); Ex. 1045, code (43); Ex. 1518, code (22). As discussed below, Patent Owner argues the Petition fails to establish Peng is prior art to the '271 patent.

E. Asserted Grounds

Petitioner asserts the following four grounds of unpatentability. *See* Pet. 1–2.

Ground	Claim(s) Challenged	35 U.S.C. § ⁴	References
1A	1, 2, 4	103(a)	Peng, Chatterjee
1B	3	103(a)	Peng, Chatterjee, Tamir
1C	5	103(a)	Peng, Chatterjee, Wilkes
1D	6, 7	103(a)	Peng, Callopy

³ Petitioner asserts Callopy's publication date is March 6, 2010. *See* Pet. 2. However, Callopy was published on June 3, 2010. *See* Ex. 1045, code (43).

⁴ The Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011) ("AIA"), amended § 103. These amendments do not affect the outcome of the present Decision. Therefore, we cite to the pre-AIA version. We would reach the same result even if the post-AIA version applies.

F. Testimonial Evidence

Petitioner relies on the proffered expert witness testimony of William R. Michalson, Ph.D. (Exhibit 1003). Patent Owner relies on the proffered expert witness testimony of Mr. Christopher K. Wilson (Exhibit 2001).

III. ANALYSIS AND CONCLUSION

A. Legal Standards—Petitioner’s Burden

“In an [*inter partes* review], the petitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable.” *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016) (citing 35 U.S.C. § 312(a)(3) (requiring *inter partes* review petitions to identify “with particularity . . . the evidence that supports the grounds for the challenge to each claim”)). This burden of persuasion never shifts to the patent owner. *See Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015).

B. Legal Standards—Priority of Filing Date

A U.S. patent application is entitled to assert priority to the filing date of an earlier-filed foreign application “for the same invention.” 35 U.S.C. § 119(a). This requires that the earlier-filed foreign application must, among other requirements, provide written description support under 35 U.S.C. § 112 for the claimed subject matter in the later-filed U.S. application. *See In re Ziegler*, 992 F.2d 1197, 1200 (Fed. Cir. 1993) (“A foreign patent application must meet the requirements of 35 U.S.C. § 112, first paragraph, in order for a later filed United States application to be entitled to the benefit of the foreign filing date under 35 U.S.C. § 119.”).

“To satisfy the written description requirement, a patent’s specification must ‘reasonably convey[] to those skilled in the art that the inventor had possession of the claimed subject matter as of the filing date.’” *Novartis Pharms. Corp. v. Accord Healthcare, Inc.*, 38 F.4th 1013, 1016 (Fed. Cir. 2022) (alteration in original) (quoting *Ariad Pharms., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010) (en banc)). The written description “test requires an objective inquiry into the four corners of the specification from the perspective of a person of ordinary skill in the art.” *Ariad*, 598 F.3d at 1351. “For negative claim limitations, . . . there is adequate written description when, for example, ‘the specification describes a reason to exclude the relevant [element].’” *Novartis*, 38 F.4th at 1016 (second alteration in original) (quoting *Santarus, Inc. v. Par Pharm., Inc.*, 694 F.3d 1344, 1351 (Fed. Cir. 2012)).

C. *Level of Ordinary Skill in the Art*

In determining the level of ordinary skill in the art, we consider the type of problems encountered in the art, the prior art solutions to those problems, the rapidity with which innovations are made, the sophistication of the technology, and the educational level of active workers in the field. *See Custom Accessories, Inc. v. Jeffrey-Allan Indus. Inc.*, 807 F.2d 955, 962 (Fed. Cir. 1986); *Orthopedic Equip. Co. v. U.S.*, 702 F.2d 1005, 1011 (Fed. Cir. 1983).

Petitioner refers to Dr. Michalson’s testimony, by footnote, to propose a level of ordinary skill in the art. *See* Pet. 11 n.7 (noting “USAA-1003, ¶¶ 14–15 (defining a POSITA)”). In the cited testimony, Dr. Michalson states a person of ordinary skill

would have had at least a Bachelor of Science Degree (or equivalent) in an academic area emphasizing electrical engineering, computer engineering, computer science, or a related technical field, and about 2–3 years of experience in the field of telematics systems (e.g., familiarity with control and diagnostic systems, navigation systems and wireless communication technology).

Ex. 1003 ¶¶ 14–15. Further: “More education, e.g., a doctorate in an academic area emphasizing electrical engineering, computer engineering, computer science, or a related technical field, would compensate for fewer years of work experience.” *Id.*

Patent Owner “does not challenge” Dr. Michalson’s formulation of ordinary skill. Prelim. Resp. 13. Nonetheless, Patent Owner’s witness Mr. Wilson “add[s] that a [person of ordinary skill in the art] may also include individuals with a Bachelor of Science degree (or equivalent) in other fields, including physics, and that the particular educational experience becomes less relevant as the individual’s experience in the telematics field increases.” Ex. 2001 ¶ 11; *see* Prelim. Resp. 13 n.6. In Mr. Wilson’s view, a person of ordinary skill “would include individuals with a Bachelor’s of Science Degree in any discipline and 3–5 years of experience in the field of telematics systems.” Ex. 2001 ¶ 11; *see* Prelim. Resp. 13 n.6.

We conclude the differences in the level of ordinary skill in the art as proposed by Dr. Michalson and Mr. Wilson are insubstantial and do not impact the analysis of the issues presented here. We find that both proposals are consistent with the level of ordinary skill in the art reflected by the ’271 patent and the prior art of record. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001); *In re GPAC Inc.*, 57 F.3d 1573, 1579 (Fed. Cir.

1995); *In re Oelrich*, 579 F.2d 86, 91 (CCPA 1978). Therefore, we adopt and apply both, collectively, in this Decision.

D. Claim Construction

We interpret the '271 patent claims “using the same claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. 282(b).” 37 C.F.R. § 42.100(b). This “includ[es] construing the claim in accordance with the ordinary and customary meaning of such claim as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent.” *Id.*

We address claim construction of some claim terms below. *See infra* Section III.E.3(i)(a) (claim 1, “driving period”), Section III.E.3(ii) (claim 1, derive driving information “without data from vehicle sensors”), Section III.E.5(ii) (claim 6, “driving score”). Otherwise, based on the arguments and evidence presented, we determine no explicit construction of any claim term is needed for purposes of this Decision. *See Realtime Data, LLC v. Iancu*, 912 F.3d 1368, 1375 (Fed. Cir. 2019) (“The Board is required to construe ‘only those terms . . . that are in controversy, and only to the extent necessary to resolve the controversy.’”) (alteration in original) (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999)).

E. Priority Filing Date of the '271 Patent Claims

1. Introduction

The parties dispute the priority date of the '271 patent claims. Petitioner argues the '271 patent is entitled only to its actual filing date of July 24, 2013, so Peng is prior art to the '271 patent by virtue of its earlier

filing date of June 29, 2011. *See* Pet. 2, 6–7 (citing Ex. 1003 ¶¶ 68–107). Patent Owner argues Petitioner has failed to show the '271 patent claims are not entitled to priority to one parent application's filing date of June 10, 2011, and so has failed to establish Peng is prior art. *See* Prelim. Resp. 2–3, 14–31 (citing Ex. 2001 ¶¶ 17–41). We agree with Patent Owner, for the following reasons.

2. *Background Facts*

The application that issued as the '271 patent was filed in the United States on July 24, 2013, as a national stage entry of Patent Cooperation Treaty Application No. PCT/GB 2011/052491 that was filed on December 15, 2011. *See* Ex. 1001, codes (22) and (86). The '271 patent claims priority to Great Britain Patent Application No. 1109759.9 filed on June 10, 2011 (Ex. 1505, “P3”)⁵ and three other Great Britain patent applications.⁶ *See* Ex. 1001, code (30).

All of the unpatentability challenges asserted in the Petition rely on Peng. *See* Pet. 1–2. Peng is a U.S. patent application filed on June 29, 2011, and published on December 15, 2011. *See* Ex. 1005, codes (22) and (43). In an effort to establish Peng is prior art to the '271 patent, Petitioner argues P3 fails to provide written description support for the independent claims of the '271 patent. *See* Pet. 6–7.

⁵ For convenience, we refer to this parent application as P3, the notation adopted by the parties.

⁶ Petitioner asserts P3 and two of the other three Great Britain applications all fail to provide written description support for the '271 patent claims. *See* Pet. 6–7 & n.5. Our present Decision is limited to considering P3. We need not and therefore we do not address any of the other parent Great Britain applications.

We discuss each independent claim separately, then we address the dependent claims as a group.

3. *Independent Claim 1*

Petitioner argues P3 does not provide written description support for two limitations recited in claim 1. *See* Pet. 6–7 (“**Second**” argument relating to claim element [1.6], and “**Third**” argument relating to claim element [1.9]). We discuss each in turn.

(i) *Determining a Start of a Driving Period*

Claim 1 recites a mobile telecommunications device “configured to: 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.” Ex. 1001, 31:29, 31:38–42.

(a) *Claim Construction—“a start of a driving period”*

Petitioner argues: “Based on plain meaning, the recited ‘driving period’ references a time period ‘during which [a] mobile device is removably attached to the vehicle and the vehicle is in use.’” Pet. 3 (alteration in original). In support, Petitioner asserts claim 1 “establishes just two ‘driving period’ attributes: (1) ‘the mobile device is removably attached to the vehicle’ and (2) ‘the vehicle is in use.’” *Id.* at 4 (citing Ex. 1003 ¶ 110). Petitioner asserts those two “attributes may be satisfied by a start of a data collection period, whether at the onset of vehicle driving or whether instead before or thereafter” (*id.*), so claim 1 “leaves open the possibility of the driving period corresponding to the beginning, middle, or

end of a vehicle’s operation.” *Id.* at 3 (citing Ex. 1003 ¶¶ 109–110).

Petitioner contends the ’271 patent “specification is similarly unbounded, as it expressly recognizes several driving period options that are untethered from, e.g., the beginning of the user driving the vehicle.” *Id.* at 3–4 (citing Ex. 1001, 3:25–54; Ex. 1003 ¶¶ 108–110).

Patent Owner responds that “[i]t is critical to [claim 1] that the start of a driving period is determined,” and that the ’271 patent specification “describe[s] how the mobile device is to be configured to determine the start of a driving period.” Prelim. Resp. 6–8 & n.4 (citing Ex. 1001, 1:59–2:9, 3:27–54, 19:60–66, and adding emphasis to particular disclosures found therein). However, Patent Owner does not directly address Petitioner’s construction of claim 1, whereby the recited “start of a driving period” may correspond to the beginning, the middle, or the end of a vehicle’s operation. *See id.*; *see also id.* at 13–14 (addressing claim construction, and arguing “no constructions are required here”).

We agree with Petitioner’s construction, to the extent that claim 1 expressly defines the “driving period” as corresponding to a period “during which the mobile device is removably attached to the vehicle and the vehicle is in use.” Ex. 1001, 31:39–42. We also apply, without affirmatively deciding its propriety, Petitioner’s additional construction that the start of the driving period may correspond to the beginning, the middle, or the end of a vehicle’s operation.

For the reasons that follow, we determine P3 provides written description support for claim 1, even applying Petitioner’s foregoing claim construction.

(b) *P3 Disclosure*

Petitioner argues P3 “fail[s] to provide support for a mobile telecommunications device that ‘determine[s], based on inputs received by the user interface *and* sensor data from the sensor set, a start of a driving period’” Pet. 6 (second and third alterations in original) (citing Ex. 1003 ¶¶ 68–105). According to Petitioner, P3 instead “teach[es], or at least suggests, the start of the driving period does not involve user inputs or sensor inputs.” *Id.*

Patent Owner argues P3 demonstrates possession of determining the start of a driving period based on *both* “inputs received by the user interface” *and* “sensor data,” as recited in claim 1. *See* Prelim. Resp. 15–16. To start, Patent Owner asserts P3 describes a mobile device that receives user input via a touch screen to start and stop “the recording of driving data” on a “Recording Screen.” *Id.* at 16–17 (citing Ex. 1505, Fig. 1, 5:35, 10:27, 10:33; Ex. 2001 ¶¶ 22–23). Patent Owner explains that a person of ordinary skill in the art would understand the device receives user input to start a recording by pressing the appropriate button on the screen. *Id.* at 17 (citing Ex. 2001 ¶ 23). Thus, Patent Owner concludes “P3 explicitly discloses that one of the inputs to determine the start of a driving period may comprise a user pressing the ‘Start/Stop’ button on the touch screen.” *Id.*

Next, Patent Owner contends P3’s mobile device receives input from sensor data from the device’s sensor set. *See id.* at 18. Patent Owner asserts P3 “makes clear that the [mobile device] can detect the speed at which a vehicle is being driven using GPS.” *Id.* (citing Ex. 1505, 8:35). Patent Owner asserts P3 describes that the mobile device obtains the “date, time, speed, forward/backward G-forces, latitude, longitude and heading

information,” which “will typically change depending on the behavior of the vehicle, as recorded by the mobile device.” *Id.* (citing Ex. 1505, Fig. 1, 10:16, 12:18–21). Patent Owner argues that, therefore, “P3 discloses an application collecting inputs from . . . sensors on the mobile device.” *Id.* (citing Ex. 2001 ¶ 24).

Patent Owner further argues P3’s mobile device uses the above inputs “to determine the start of a driving period.” *Id.* at 18–20. Patent Owner asserts P3 illustrates this through a safety feature that allows “the application to switch from displaying a video feed on the mobile device’s screen to a map once the vehicle has reached a predesignated speed.” *Id.* at 18–19 (citing Ex. 1505, Fig. 8, 14:34–15:9). Patent Owner notes “[t]he user can set this predetermined speed” and “a person of ordinary skill in the art would have known that the application could” determine when “to switch from a live video feed to a map view.” *Id.* at 19 (citing Ex. 1505, Fig. 8). Patent Owner contends “[i]t is at the ‘start of a driving period’ (as determined by the vehicle’s speed crossing a pre-determined threshold) wherein this safety feature could be activated.” *Id.* at 19–20 (citing Ex. 2001 ¶ 26).

Based on our review of the record, we determine Patent Owner has the better-supported position.

As Patent Owner observes, P3 discloses “a mobile device loaded with an application—a ‘mobile app’—which is arranged to record and document the events surrounding an incident involving the vehicle such as a vehicle crash.” Ex. 1505, 5:5–8. P3 further teaches that the mobile app, referred to as “Witness,” is arranged to record a number of inputs from sensors such as accelerometers and GPS modules. *Id.* at 5:25–6:3.

As an example of operation, P3 discloses that the mobile device is mounted adjacent the vehicle windscreen so that a camera on the phone can see the road ahead. *Id.* at 5:14–18. The result of this mounting is shown in the bottom half of Figure 1 in P3, reproduced below:

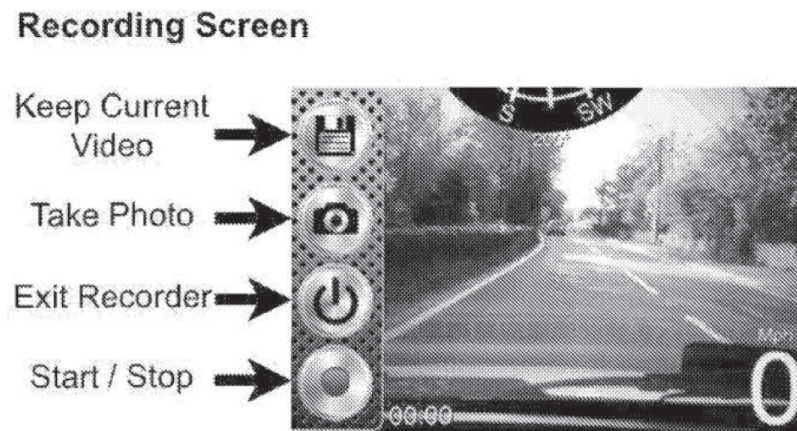


Figure 1 of P3 (Excerpt).

This portion of Figure 1 shows a “Recording Screen” presented on a smart phone (i.e., the mobile device of claim 1), which “contains a video feed from the camera of the smart-phone” with an overlay of “the detected speed of the vehicle (e.g. 0 mph), heading (e.g. south by south-west) and the elapsed recorded time (e.g. 00:00).” *Id.* at 10:13–19. This allows the user to select the record button that starts a video feed from the mobile device camera, while the camera can see the road. *Id.* (describing Fig. 1). These disclosures of P3 (*id.* at 5:16–18, 10:13–19 (Fig. 1)) demonstrate possession of a mobile device being removably attached to the vehicle while the vehicle is in use, as recited in claim 1.

P3 also demonstrates possession of the mobile device determining, based on inputs received by the user interface and sensor data from the device’s sensor set, a start of that driving period. In particular, P3 discloses

that the user may “define more settings via a More Settings Screen.” *Id.* at 14:29–30. P3 explains that

it is possible for the user to select speed units and also select whether the map should be displayed during recording, and at which speed it should be displayed in favour of the video feed. *This is a safety feature of the Witness application that hides the video feed during recording when the vehicle is detected as travelling above a predetermined speed.* The video feed is replaced by a map of the location of the vehicle—as is typical with in-vehicle GPS devices. *Note that although the on-screen video feed is replaced with a map, video recording continues in the background.*

Id. at 14:34–15:3 (emphases added).

Based on this disclosure, we agree with Patent Owner that selecting “record” by the user on the touch screen provides written description support for the limitation that an input received by the user interface determines the start of a driving period. Moreover, at that stage, the user may also define various settings that may impact the driving period determination. *See id.* at 14:29–30, Fig. 8. For example, the user may use GPS to determine when to toggle from the video feed to a map, based on defined parameters such as a predetermined speed. *See id.* at 14:34–15:3. In this way, P3 also describes that the start of the driving period is further determined by sensor data (e.g., speed) from the mobile device’s sensor set (e.g., GPS, accelerometers).

In attempting to establish a lack of disclosure in P3 to support claim 1, the Petition improperly incorporates Dr. Michalson’s testimony by reference. *See* 37 C.F.R. § 42.6(a)(3) (“Arguments must not be incorporated by reference from one document into another document.”). In particular, the Petition’s analysis is limited to *one sentence* with a supporting *parenthetical description* of Dr. Michalson’s testimony, wherein the cited testimony spans

more than 20 pages of the declaration. *See* Pet. 6 (“**Second**” argument) (citing Ex. 1003 ¶¶ 68–105); Ex. 1003 ¶¶ 68–105 (starting on page 42, and ending on page 63). With the improper incorporation, the Petition contains 13,897 words, complying with the Board’s 14,000 word count limitation by 103 words. *See* Pet. 86 (Certification of Word Count); 37 C.F.R. § 42.24(a)(1)(i) (imposing a word count limitation on IPR petitions). There is no doubt that adding the incorporated twenty pages of witness testimony into the Petition would violate the Board’s word count limitation. Nonetheless, we provide the following comments concerning aspects of Dr. Michalson’s improperly incorporated testimony here.

Dr. Michalson directs us to alternative embodiments described in P3 where the user may not choose to enable or disable the application. *See* Ex. 1003 ¶ 88 (citing Ex. 1505, 19:30–37). Dr. Michalson testifies that P3 discloses the mobile device determines the start of a driving period without inputs from the user interface because “**the application may include measures to guarantee that the application is enabled whenever a given insured vehicle is being driven.**” *Id.* (quoting Ex. 1505, 19:36–37).

Dr. Michalson testifies that:

P3 provides disclosure that contradicts the claimed limitation[] of [claim 1]. For example, P3 describes that the user should not be allowed to selectively activate the application in noting, “[I]t would not be beneficial from the perspective of the insurance company if the user could choose when to enable the application. For example, if a user could choose to disable the application when speeding then the effectiveness of the application would be reduced.”

Id. (third alteration in original) (citing Ex. 1505, 19:31–34).

First, we note that this cited disclosure is from a section titled, “Embodiment alternatives and extensions,” in P3. Ex. 1505, 17:14. That

being so, we do not agree with Dr. Michalson that the disclosure in this section contradicts P3's disclosure of other embodiments where the user selects the video recording option and sets up predefined parameters (e.g., speed) as discussed above. Rather, the embodiments described on page 19 of P3 are "alternatives and extensions" that supplement the disclosure provided elsewhere in P3.

Second, read in its entirety, we understand P3 to disclose that in some embodiments the Witness app may include measures to guarantee that the application is enabled whenever a given insured vehicle is being driven. Be that as it may, Dr. Michaelson has not explained why this disclosure detracts from P3's other explicit disclosure that the user may also activate the video recording features while the application is enabled. Patent Owner's expert, Mr. Wilson, explains this with a "real-world example" where a user enters her vehicle, removably attaches her smart phone to the car, and presses the user interface button to begin recording. Ex. 2001 ¶ 27; Prelim. Resp. 20. Mr. Wilson explains that

[t]he recording starts once the user presses the start button, however, there is little concern for distraction of the driver being caused by the video display during the period of time where the user is reversing out of her garage and getting up to driving speed. *However, once the vehicle reaches a predetermined speed (e.g., 10 mph) as determined by the sensor set, then the driving period during which a distracted driver may be a real safety concern is initiated.* Accordingly, both the user interface input and sensor data are used together to determine the "start of a driving period."

Ex. 2001 ¶ 27 (emphasis added). In this scenario, the application is already enabled, but the driving period does not start until the user begins recording and a predetermined parameter is met. *See* Ex. 1505, 14:29–30, Fig. 8.

We find P3’s disclosure reasonably conveys to a person of ordinary skill in the art that the inventor had possession of the limitation in claim 1 that requires determining a start of a driving period during which a mobile device is removably attached to a vehicle and the vehicle is in use, based on inputs received by a user interface and sensor data from the mobile device’s sensor set.

(ii) *Deriving Driving Information Without Data from Vehicle Sensors*

Claim 1 recites a mobile telecommunications device configured “to derive driving information associated with how the vehicle is driven” from sensor data, and “store a selection of the driving information to the memory, wherein *the driving information is derived without data from vehicle sensors.*” Ex. 1001, 31:29, 31:38, 31:43–48 (emphasis added).

Petitioner argues claim 1 thereby includes “a negative limitation (‘without data from vehicle sensors[’])” that is not supported by P3. Pet. 7 (citing Ex. 1003 ¶¶ 68–105). Petitioner asserts: “The written description requirement is heightened for negatively-articulated limitations, requiring explicit support—mere silence is insufficient under 35 U.S.C. § 112.” *Id.* (citing *Novartis, supra*). Petitioner further contends that “[t]he failure or omission of reference to a claimed object does not constitute disclosure of the negative limitation.” *Id.* (citing *Seabed Geosolutions (US) Inc. v. Magseis FF LLC*, 8 F.4th 1285, 1288 (Fed. Cir. 2021); MPEP § 2173.05(i) (9th ed. Rev. 10.2019, June 2020)). According to Petitioner, despite these “heightened” requirements for written description of a negative limitation,

P3 “provide[s] no explicit support for” the negative limitation of claim 1 at issue here. *Id.* (citing Ex. 1003 ¶¶ 68–105).⁷

In response, Patent Owner firstly agrees with Petitioner that the subject limitation in claim 1 should be treated as a negative limitation. *See* Prelim. Resp. 9–10 & n.5 (citing Ex. 1001, 2:13–24, 2:31–43, 9:45–57); *id.* at 21 n.11. For written description support, Patent Owner argues P3 describes the advantages of using mobile device data because “it will be appreciated that a more sophisticated telephone (*e.g.*, a smart phone) has a **richer** sensor set with which to record and determine the occurrence of an incident.” *Id.* at 21–22 (quoting Ex. 1505, 5:20–21 (emphasis by Patent Owner)) (citing Ex. 1505, 5:14). Patent Owner argues that because “richer sensor set” “is a comparative term” and P3 “does not expressly identify the sensor set which is less rich than the mobile device’s sensor set,” a person of ordinary skill in the art would have recognized “the less rich sensor set would be that of the vehicle as the vehicle’s sensor set is the only other sensor set that reasonably could have been used as part of the disclosed invention.” *Id.* at 22 n.12 (citing Ex. 2001 ¶ 30). Patent Owner asserts P3 “makes clear that the sensor set on which the invention is relying to gather driving data is that of the smart-phone, and not sensors that are included in some other component with a ‘less rich’ sensor set (*i.e.*, vehicle sensors).” *Id.* at 22–23 (citing Ex. 2001 ¶ 30).

⁷ Petitioner also asserts the ’271 patent specification lacks written description support under 35 U.S.C. § 112 for this limitation. *See* Pet. 7. The scope of unpatentability arguments in an *inter partes* review extends only to 35 U.S.C. §§ 102 and 103. *See* 35 U.S.C. § 311(b). Thus, we consider Petitioner’s written description arguments only in regard to the priority dispute, not the ’271 patent specification.

Patent Owner further argues P3 discloses an application gathering sensor inputs that are “common to modern smart phones” and “that the application ‘is arranged to record a number of *these sensor inputs* continuously.’” *Id.* at 23 (quoting Ex. 1505, 6:1–2 (emphasis by Patent Owner)) (citing Ex. 1505, 5:25–35; Ex. 2001 ¶ 31). Patent Owner asserts the “references to the mobile phone sensor set would make clear to a person of ordinary skill in the art that the Witness application disclosed in P3 was designed to rely on inputs received from the sensor set of the mobile phone.” *Id.* (citing Ex. 2001 ¶ 32). Patent Owner alleges this disclosure coupled with P3’s “teaching that the smart-phone’s sensor set is ‘richer’ than any other sensor set that could be utilized . . . makes clear that . . . the claim limitation of deriving driving information without data from the ‘less rich’ vehicle sensors is clearly disclosed in P3.” *Id.*

Patent Owner further asserts P3 discloses the use of vehicle sensors (e.g., an odometer) that are “used to confirm that the application is accurately tracking the beginning and end of each driving period.” *Id.* at 24–25 (citing Ex. 1505, 19:31–20:14 (“[M]easures may involve matching data recorded by the Witness application with that recorded independently by the vehicle. . . . If the distance recorded by the Witness application does not correlate with the difference between odometer readings, then the discrepancy will be flagged.”); Ex. 2001 ¶ 33). Patent Owner contends “the [’271 patent’s] inventors [similarly] contemplated the use of data from a vehicle sensor to supplement data derived from the mobile phone’s sensors.” *Id.* at 9 n.5 (citing Ex. 1001, 9:45–57).

Patent Owner also argues that “[w]hile any negative limitation included in a claim must have a basis in the disclosure, that basis may be

met, among other means, if alternative elements are positively recited in the specification and then explicitly excluded in the claims.” *Id.* at 25–26 (citing *In re Johnson*, 558 F.2d 1008, 1018–19 (CCPA 1977); *Ex parte Grasselli*, 231 USPQ 393 (Bd. App. 1983), *aff’d mem.*, 738 F.2d 453 (Fed. Cir. 1984)). Patent Owner asserts “the use of data from the mobile device’s sensor set, as well as from the vehicle’s sensor set, to derive driving information is disclosed as an alternative embodiment in P3.” *Id.* at 26–27. Thus, Patent Owner claims, “like in *Johnson*, the claim[’s] exclusion of data from one of those sensor sets, *i.e.*, the vehicle’s sensor set, is also disclosed and supported” as P3 “necessarily described the use of data only from the mobile device’s sensors” after “[h]aving described the use of data from both vehicle and mobile device sensors.” *Id.* at 27 (citing Ex. 2001 ¶ 35).

As an initial matter, we note there is no dispute between the parties that the subject limitation of claim 1 is a negative limitation that excludes a particular feature. *See* Pet. 7; Prelim. Resp. 9–10 & n.5, 21 n.11. For the purposes of this Decision, we consider the parties’ arguments and evidence under this undisputed claim construction adopted by both Petitioner and Patent Owner.

Our reviewing court has explained that “[n]egative claim limitations are adequately supported when the specification describes a reason to exclude the relevant limitation.” *Santarus*, 694 F.3d at 1351. The Federal Circuit noted that such support need not rise to the level of disclaimer and that it is possible to support both the inclusion and exclusion of the same element. *Id.* In *Inphi Corp. v. Netlist, Inc.*, 805 F.3d 1350 (Fed. Cir. 2015), the Federal Circuit expanded on the discussion of negative limitations, noting “that properly described alternative features are sufficient to satisfy

the written description standard of § 112, paragraph 1 for negative claim limitations.” *Inphi*, 805 F.3d at 1357; *see also* MPEP § 2173.05(i) (9th ed., Rev. 07.2022, Feb. 2023) (stating that, “[i]f alternative elements are positively recited in the specification, they may be explicitly excluded in the claims”).

We agree with Patent Owner that P3 provides support for the subject limitation to satisfy the written description requirement of 35 U.S.C. § 112. In particular, P3 discloses the use of the Witness application on a mobile device and the Witness application receives sensor data “typical for modern smart-phones.” Ex. 1505, 5:25–35. These sensor/data inputs include G-force/accelerometer, GPS module (speed, location, elevation, direction, etc.), 3D compass, and camera. *Id.*

Additionally, P3 discloses the processing of mobile phone sensor data to derive driving information such as driving speed and G-force. P3 discloses that:

Another setting that can be controlled in the Settings Screen is the G-force threshold at which the Witness application will assume that a crash has taken place. It is expected that different vehicles and driving styles will need different G-force thresholds to be set to ensure a reasonable sensitivity to crash forces whilst also prevent crash detection false positives.

Id. at 14:19–23. Similarly, as discussed in Section III.E.3(i)(b) above, P3 discloses that “the application may be arranged to detect the vehicle speed, and at a particular speed, switch off the screen entirely. It should be understood that the device will continue to record video, telemetry and other information even when the screen is switched off.” *Id.* at 15:5–8.

Further, P3 discloses that vehicle odometers collect data independently from the mobile device sensors. *Id.* at 19:31–20:14. As such,

this information can be used to confirm that the Witness application is accurately tracking the driving period. *See* Ex. 2001 ¶ 33 (“In P3, the odometer, which itself is a vehicle sensor, is used to confirm that the application is accurately tracking the beginning and end of each driving period.”). P3 states that:

[I]f a user could choose to disable the application when speeding then the effectiveness of the application would be reduced.

Accordingly, the application may include measures to guarantee that the application is enabled whenever a given insured vehicle is being driven.

Such measures may involve matching data recorded by the Witness application with that recorded independently by the vehicle. For example, the Witness application records the distance travelled during every journey. To ensure the summed distances of all journeys tracked by the Witness application tally with the total travelled distance of the vehicle, the user may be prompted to enter the odometer mileage periodically.

If the distance recorded by the Witness application does not correlate with the difference between odometer readings, then the discrepancy will be flagged to the user and/or the insurance company. A substantial discrepancy will typically indicate that the Witness application has not been monitoring all vehicle journeys and the appropriate action can be taken (e.g. the user can be warned, insurance premium may be raised etc[.]).

Ex. 1505, 19:31–20:14 (emphases added). In this instance, P3 discloses the mobile device sensors *may or may not* be used with the vehicle sensors (e.g., odometer) as an alternative embodiment to derive the driving information. Thus, read as a whole, P3 properly discloses alternative embodiments that provide a reason to exclude deriving driving information with the vehicle sensors, such as when the vehicle sensor data is not compared to check the accuracy of the Witness application. *See id.*

Based on, at least, this disclosure, we determine P3 provides written description support for the subject limitation of claim 1. “[N]egative claim limitations are adequately supported when the specification describes a reason to exclude the relevant limitation.” *Inphi*, 805 F.3d at 1355 (quoting *Santarus*, 694 F.3d at 1351). “[P]roperly describing alternative features—without articulating advantages or disadvantages of each feature—can constitute a ‘reason to exclude.’” *Id.* Moreover, “[i]f alternative elements are positively recited in the specification, they may be explicitly excluded in the claims.” *Id.* at 1356; *see also Johnson*, 558 F.2d at 1019 (“The notion that one who fully discloses, and teaches those skilled in the art how to make and use, a genus and numerous species therewithin, has somehow failed to disclose, and teach those skilled in the art how to make and use, that genus minus two of those species, and has thus failed to satisfy the requirements of § 112, first paragraph, appears to result from a hypertechnical application of legalistic prose relating to that provision of the statute.”).

We find P3’s disclosure reasonably conveys to a person of ordinary skill in the art that the inventor had possession of the limitation in claim 1 that requires deriving driving information without data from vehicle sensors.

(iii) Conclusion Regarding Claim 1

Petitioner does not argue that P3 does not disclose any of the remaining limitations in claim 1. As such, the Petition fails to establish P3 does not provide sufficient written description support for claim 1. Thus, the Petition fails to satisfy Petitioner’s burden to establish Peng qualifies as prior art, which is fatal to the Petition’s sole ground against claim 1 which relies on Peng as prior art.

4. *Independent Claim 4*

Petitioner argues P3 does not provide written description support for the same two limitations in claim 4 that are discussed above in Section III.E.3 in relation to claim 1. *See* Pet. 6–7. Patent Owner likewise responds with the same arguments considered above in relation to claim 1. *See* Prelim. Resp. 15–27. For the reasons provided above, we conclude the Petition fails to establish P3 does not provide sufficient written description support for claim 4, so the Petition fails to satisfy Petitioner’s burden to establish Peng qualifies as prior art which is fatal to the sole ground against claim 4.

5. *Independent Claim 6*

Petitioner argues P3 does not provide written description support for two limitations recited in claim 6. *See* Pet. 6–7 (“**First**” argument relating to claim elements [6.9] and [6.10], and “**Third**” argument relating to claim element [6.8]). We discuss each in turn.

(i) *Deriving Driving Information Without Data from Vehicle Sensors*

Petitioner argues P3 does not provide written description support for the limitation in claim 6 reciting a data-logging system that receives, from a remote mobile telecommunications device, “*driving information derived without data from vehicle sensors*,” as discussed above in Section III.E.3(ii) in relation to a substantially similar limitation in claim 1. Ex. 1001, 32:40–43, 32:48–50, 32:59–60 (emphasis added); *see* Pet. 7. Patent Owner likewise responds with the same arguments considered above in relation to claim 1. *See* Prelim. Resp. 21–27. For the reasons provided above, we

conclude the Petition fails to establish P3 does not provide written description support for this limitation in claim 6.

(ii) *Driving Score*

Claim 6 recites a data-logging system that receives, from a remote mobile telecommunications device, driving information that may comprise “*a driving score.*” Ex. 1001, 32:40–43, 32:48–50, 32:61–62 (emphasis added). Further, the data-logging system is “arranged to process the driving information . . . to *generate a driving score used to determine a risk profile for at least one of the vehicle and driver.*” *Id.* at 32:67–33:4 (emphasis added).

Petitioner argues P3 “fail[s] to provide support for a ‘driving score’” because “the phrase and/or functionality of a driving score [are] not even mentioned” in P3. Pet. 6 (citing Ex. 1003 ¶¶ 68–105).

Patent Owner argues P3 demonstrates possession of the claimed driving score. *See* Prelim. Resp. 27–28.⁸ Patent Owner asserts “[t]his driving score is a number associated with the risk profile of the driver” and provides “an assessment of what type of driver the individual is.” *Id.* at 28 (citing Ex. 1001, 10:10–17, 12:4–9). Patent Owner argues P3 correspondingly describes an “assessment of a driver risk profile.” *Id.* at 29–30 (citing Ex. 1505, 6:20–36, 7:10–12, 8:24–35). In particular, according to Patent Owner, “P3 clearly discloses the concept of relying on driving information to determine whether a driver is ‘safe’ or not, *i.e.*, to

⁸ Patent Owner cites “USAA-1505 at 33:1–4; 34:11–14,” but we believe Patent Owner meant to cite Exhibit 1001 (in which columns 33–34 contain the subject limitations of claims 6 and 7), not Exhibit 1505 (in which pages 33–34 contain Figures 12 and 13 of P3).

generate a risk profile for a particular driver” and a person of ordinary skill in the art “would understand that generation of a risk profile is generation of a type of driving score.” *Id.* at 30 (citing Ex. 2001 ¶ 40).

We mostly agree with Patent Owner. First, as a matter of claim construction, we agree with Patent Owner that the claimed “driving score” corresponds to an assessment of what type of driver an individual is. *See id.* at 28; Ex. 1001, 10:10–17 (stating “driving information can be matched to a particular driver” which is “particularly useful when assessing a risk profile of said driver” and “[t]he driving information may comprise the driving score”), 12:4–9 (stating “[t]he driving score may be used to determine a risk profile for at least one of the vehicle and driver”). However, to the extent that Patent Owner would limit a driving score to a “number” (Prelim Resp. 28), we disagree. The ’271 patent specification does not support such a construction. *See* Ex. 1001, 10:10–17, 12:4–9.

Next, we find P3 discloses that “[t]he Witness application is arranged to record a number of . . . sensor inputs continuously,” in order to track various driving conditions such as: “change in pitch + sharp deceleration (braking heavily / impact)”; “change in yaw at a given speed (swerve/skid)”; “roll (vehicle overturned)”; tire squeals; crumple zones being crushed; airbags deploying; breaking glass; impacts to the vehicle chassis; and passengers shouting or screaming. Ex. 1505, 5:25–6:3, 6:20–36. In one embodiment, this data “is used to determine the occurrence of ‘an event of significance’ such as a vehicle crash.” *Id.* at 6:21–22.

In a further embodiment, the same data “can be used for other purposes” such as “for *aiding the insurance company [to] assess the risk profile of the driver* (and potentially modify an insurance premium

accordingly)” using “[v]arious parameters.” *Id.* at 8:23–27 (emphasis added). In one example, the data can be used to alter the driver’s risk profile in a favorable way, to reflect safe driving characteristics, as P3 states:

If the Witness application incorrectly detects an incident of significance, and receives feedback that the vehicle was not in accident (but was in a near miss)—*this could alter the risk profile of the driver*. For example—if this happens frequently, but no accident occurs over a given period, this could be *an indicator that the driver is good at reacting to potential hazards*.

Id. at 8:29–33 (emphases added). In other examples, the data can be used to alter the driver’s risk profile in an unfavorable way, to reflect unsafe driving characteristics. *See id.* at 8:34–35 (indicating the data may be used to determine “[e]rratic driving (e.g. jerky steering or braking detected by G-force sensor” and “[d]riving faster than the speed limit allocated to a given road (detected by GPS)”).

We find P3’s foregoing disclosures provide written description support for generating “a driving score used to determine a risk profile” for a driver, as recited in claim 6. Ex. 1001, 32:61–62, 33:2–4. In particular, P3’s tracking of various driving “parameters” such as the frequency of near misses, erratic driving, and driving over the speed limit (Ex. 1505, 8:23–35) corresponds to the claimed “driving score.” P3 further discloses that the driving score is used to determine a driver’s “risk profile” per claim 6 (*see id.* at 8:23–35).

Moreover, in attempting to establish a lack of disclosure in P3 to support claim 6, the Petition improperly incorporates Dr. Michalson’s testimony by reference. *See* 37 C.F.R. § 42.6(a)(3). In particular, the Petition’s analysis is limited to *one sentence* with a supporting *parenthetical*

description of Dr. Michalson’s testimony, wherein the cited testimony spans more than 20 pages of the declaration. *See* Pet. 6 (“**First**” argument) (citing Ex. 1003 ¶¶ 68–105); Ex. 1003 ¶¶ 68–105 (starting on page 42, and ending on page 63). With the improper incorporation, the Petition contains 13,897 words, complying with the Board’s 14,000 word count limitation by 103 words. *See* Pet. 86; 37 C.F.R. § 42.24(a)(1)(i). There is no doubt that adding the incorporated twenty pages of witness testimony into the Petition would violate the Board’s word count limitation.

We find P3’s disclosure reasonably conveys to a person of ordinary skill in the art that the inventor had possession of the limitation in claim 6 that requires generating a driving score used to determine a risk profile of a driver.

(iii) Conclusion Regarding Claim 6

Petitioner does not argue that P3 does not disclose any of the remaining limitations in claim 6. As such, the Petition fails to establish P3 does not provide sufficient written description support for claim 6. Thus, the Petition fails to satisfy Petitioner’s burden to establish Peng qualifies as prior art, which is fatal to the Petition’s sole ground against claim 6 which relies on Peng as prior art.

6. Independent Claim 7

Petitioner argues P3 does not provide written description support for the same two limitations in claim 7 that are discussed above in Section III.E.5 in relation to claim 6. *See* Pet. 6–7. Patent Owner likewise responds with the same arguments considered above in relation to claim 6. *See* Prelim. Resp. 21–31. For the reasons provided above, we conclude the

Petition fails to establish P3 does not provide sufficient written description support for these two limitations in claim 7.

The Petition indicates Petitioner’s argument concerning the term “driving score,” discussed above in relation to claim 6, applies to element “[7.11]” in claim 7 which is not recited in claim 6. Pet. 6. Element [7.11] recites “the driving score is used to define an insurance premium associated with the account,” and the data-logging system is “arranged to communicate to the remote mobile telecommunication device an insurance offer.”

Ex. 1001, 34:15–21; *see* Pet. xv.

However, Petitioner’s terse argument is limited solely to whether P3 discloses a “driving score” *per se*, and does not address these additional requirements in claim 7 for how the driving score is used. *See* Pet. 6. In opposition, Patent Owner argues P3 “discloses using [its] risk assessment to assist an insurance company in determining a car insurance premium,” so P3 supports element [7.11]. Prelim. Resp. 30–31 (citing Ex. 2001 ¶ 41).

Based on the record presented, we agree with Patent Owner. In particular, P3 describes how the mobile device may “transmit all or selected portions of the recorded data associated with the incident” such as a crash or an accident to an insurance company, “for aiding the insurance company [to] assess the risk profile of the driver (*and potentially modify an insurance premium accordingly*).” Ex. 1505, 7:29–8:26 (emphasis added); *see also id.* at 17:26–30 (“The Witness application can assist the insurance company in making informed decisions about a user’s insurance policy,” for example “if it is determined from video logs that a driver drives safely, then the insurance premium associated with that driver may be lowered.”).

Moreover, concerning the “insurance offer” limitation of claim 7, P3 states

“the interaction of the mobile device and the device monitoring system has the advantage of actively improving user driving behaviour” and, as an example, “an insurance company may be able to incentivise users through lower insurance premiums.” *Id.* at 19:21–26. In light of these P3 disclosures, and based on the record presented, we determine P3 demonstrates possession of element [7.11].

Thus, we conclude the Petition fails to establish P3 does not provide sufficient written description support for claim 7, so the Petition fails to satisfy Petitioner’s burden to establish Peng qualifies as prior art which is fatal to the sole ground against claim 7.

7. Dependent Claims 2, 3, and 5

Petitioner does not argue P3 fails to disclose the subject matter added by dependent claims 2, 3, and 5 to their respective parent independent claims 1 and 4, which are addressed in Sections III.E.3–4 above. Therefore, the Petition fails to establish P3 lacks written description support for the dependent claims for the reasons provided above, and so fails to satisfy Petitioner’s burden to establish Peng qualifies as prior art against the dependent claims.

F. Conclusion

For the reasons provided above, we determine Petitioner has not demonstrated a reasonable likelihood of showing that Peng qualifies as prior art to the ’271 patent. Therefore, we determine Petitioner has failed to demonstrate a reasonable likelihood of prevailing on its challenge to claims 1–7 in Grounds 1A through 1D, all of which rely on Peng. We therefore *deny* institution of the petitioned *inter partes* review.

IV. ORDER

In consideration of the foregoing, it is:

ORDERED that the Petition is *denied* as to all challenged claims of the '271 patent, and no *inter partes* review is instituted.

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