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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

CAMBRIDGE MOBILE TELEMATICS, INC.,

Plaintiff,

v.

SFARA, INC.,

Defendant.

Document Filed Electronically

Case No.3:23-cv-01368-ZNQ-RLS

**SFARA, INC.’S ANSWER, AFFIRMATIVE DEFENSES,
AND COUNTERCLAIMS TO CAMBRIDGE MOBILE
TELEMATICS INC.’S COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Cambridge Mobile Telematics, Inc. (“CMT” or “Plaintiff”) is the industry behemoth when it comes to providing driving-behavior data to auto insurance companies. That data can be used by insurance companies to help set rates for the insurance policies they provide. A new and developing market for crash-detection data provided by drivers’ mobile phones is emerging that is valuable to insurance companies because it can speed claim-processing by accelerating the initial notice of accident as well as automating the claim process and detecting

fraud when filed claims are inconsistent with the reported data. In this area, CMT's technology is poor and an emerging company named Sfara, Inc. ("Sfara") has developed cutting-edge technology and algorithms that have made crash detection accurate. Sfara's technology has made significant advancements, particularly in accurately identifying low-speed crashes that were previously difficult to separate from the non-crash related movements of a smartphone in a car. Unwilling and unable to compete in the marketplace with an emerging company with superior technology, and fearful that it could be displaced as the omni-present data-provider in the driver-behavior market, CMT instead opted to file this patent infringement lawsuit against Sfara. But CMT's claims are frivolous. The technology involved in this case was embodied in Sfara's own patents and products well before CMT's asserted patents asserted were even filed. And CMT appears to have wrongfully obtained much of that technology *from Sfara* during confidential discussions to acquire Sfara in 2016. Those discussions and the technology Sfara disclosed during due diligence are protected by the parties' NDA. At the time of these discussions, Sfara also disclosed its patent portfolio. When acquisition discussions faltered, CMT approached Sfara because it knew it needed a license to use Sfara's crash-detection technology. But because that license was never obtained, and CMT has knowingly infringed Sfara patents and wrongfully used Sfara's confidential information, Sfara also brings counterclaims in this case. Those counterclaims against CMT include patent infringement (including willful infringement), breach of contract, and declaratory actions for findings of invalidity and unenforceability of at least one of CMT's patents because of fraud on the Patent Office in not disclosing knowledge of Sfara's patents and products when seeking to patent for itself the technology it took from Sfara. (see Counterclaims starting at page 13). Sfara, by and through its undersigned attorneys, thus responds to the Complaint filed by CMT as follows:

GENERAL DENIAL

Pursuant to Fed. R. Civ. P. 8(b)(3), Sfara denies all allegations in Plaintiff's Complaint, except those expressly admitted below.

NATURE OF THE ACTION

1. Sfara admits that this purports to be an action for infringement of U.S. Patents Nos. 11,587,368 (the "'368 patent") and 10,246,037 (the "'037 patent") (collectively, the "Asserted Patents") arising under the patent laws of the United States, Title 35, United States Code, including 35 U.S.C. Section 271.

THE PARTIES

2. Sfara is without sufficient knowledge or information to form a belief as to the allegations of paragraph 2 and therefore denies those allegations.

3. Sfara is without sufficient knowledge or information to form a belief as to the allegations of paragraph 3 and therefore denies those allegations including specifically denying that CMT is a pioneering innovator in the field of telematics. As detailed herein, Sfara is the true innovator.

4. Sfara admits that it is a Delaware corporation with a place of business at 221 River Street, 9th Floor, Hoboken, NJ 07030 and denies the remaining allegations contained in paragraph 4 of the Complaint.

5. Sfara admits that it competes with CMT in the telematics industry. Sfara denies the remaining allegations contained in paragraph 5 of the Complaint.

JURISDICTION AND VENUE

6. Sfara incorporates and repeats its responses to the foregoing paragraphs of the Complaint by reference as if fully set for herein.

7. To the extent that paragraph 7 states legal conclusions, no answer is required. To the extent an answer is required, Sfara admits that this civil action for patent infringement arises under the patent laws of the United States, 35 U.S.C. Section 1 *et seq.*, including under 35 U.S.C. Section 271, and Sfara does not contest subject matter jurisdiction in this action.

8. To the extent that paragraph 8 states legal conclusions, no answer is required. To the extent an answer is required, Sfara does not contest personal jurisdiction in this action. Sfara denies that it has committed any infringing activities.

9. To the extent that paragraph 9 states legal conclusions, no answer is required. To the extent an answer is required, Sfara does not contest venue in this District. Sfara denies that it has committed any infringing activities.

BACKGROUND

10. Sfara incorporates and repeats its responses to the foregoing paragraphs of the Complaint by reference as if fully set for herein.

A. CMT Developed and Commercialized its Groundbreaking Telematics Technology

11. Sfara is without sufficient knowledge or information to form a belief as to the allegations of paragraph 11 and therefore denies those allegations.

12. Sfara is without sufficient knowledge or information to form a belief as to the allegations of paragraph 12 and therefore denies those allegations.

13. Sfara is without sufficient knowledge or information to form a belief as to the allegations of paragraph 13 and therefore denies those allegations.

14. Sfara is without sufficient knowledge or information to form a belief as to the allegations of paragraph 14 and therefore denies those allegations.

B. The Patents-In-Suit

15. Sfara admits that U.S. Patent No. 11,587,368 is entitled “Method and System for Accident Detection Using Contextual Data” and that U.S. Patent No. 10,246,037 is entitled “Vehicle Telematics of Vehicle Crashes.” Sfara is without sufficient knowledge or information to form a belief as to the remaining allegations of paragraph 15 and therefore denies those allegations.

1. The '368 Patent

16. Sfara admits that CMT has correctly quoted the cited portion of the '368 patent, and that the Complaint attached a copy of the '368 patent as Exhibit 1. Sfara is without sufficient knowledge or information to form a belief as to the remaining allegations of paragraph 16 and therefore denies those allegations.

17. Sfara denies that that the '368 patent was duly and legally issued. Sfara admits that U.S. Application No. 17/166,998, which issued as the '368 patent, purports to claim the benefit of Provisional Application No. 62/541,615, filed on August 4, 2017, and Provisional Application No. 62/645,653, filed on March 20, 2018, but is without sufficient knowledge or information to form a belief as to whether the '368 patent is entitled to such benefit. Sfara admits that Brad Cordova, Rafi Finegold, Dan Shiebler, and Eddie Vaisman are named as inventors of the face of the '368 patent.

18. Sfara is without sufficient information to form a belief as to the allegations of paragraph 18 and therefore denies those allegations.

19. To the extent that paragraph 19 states legal conclusions, no answer is required. To the extent an answer is required, Sfara specifically denies that the claims of the '368 patent are valid and enforceable.

20. Sfara admits that CMT has correctly quoted from the cited portions of the '368 patent but is otherwise without sufficient information to form a belief as to the allegations of paragraph 20 and therefore denies those allegations.

21. Sfara is without sufficient information to form a belief as to the allegations of paragraph 21 and therefore denies those allegations.

22. To the extent that paragraph 22 states legal conclusions, no answer is required. To the extent an answer is required, Sfara denies those allegations.

23. To the extent that paragraph 23 states legal conclusions, no answer is required. To the extent an answer is required, Sfara denies those allegations.

2. The '037 Patent

24. Sfara admits that the Complaint attached a copy of the '037 patent as Exhibit 2. Sfara is without sufficient knowledge or information to form a belief as to the remaining allegations of paragraph 24 and therefore denies those allegations.

25. Sfara denies that that the '037 patent was duly and legally issued. Sfara admits that U.S. Application No. 16/035,861, which issued as the '037 patent, was filed July 16, 2018.

Sfara admits that Kimberly Shea, Geronimo Mirano, Jun-geun Park, and William Bradley are named as inventors on the face of the '037 patent.

26. Sfara admits that the '037 patent is assigned to CMT on its face but is without sufficient information to form a belief as to the remaining allegations of paragraph 26 and therefore denies those allegations.

27. To the extent that paragraph 27 states legal conclusions, no answer is required. To the extent an answer is required, Sfara specifically denies that the claims of the '037 patent are valid and enforceable.

28. Sfara admits that CMT has correctly quoted from the cited portions of the '037 patent but is otherwise without sufficient information to form a belief as to the allegations of paragraph 28 and therefore denies those allegations.

29. Sfara is without sufficient information to form a belief as to the allegations of paragraph 29 and therefore denies those allegations.

30. To the extent that paragraph 30 states legal conclusions, no answer is required. To the extent an answer is required, Sfara denies those allegations.

31. To the extent that paragraph 31 states legal conclusions, no answer is required. To the extent an answer is required, Sfara denies those allegations.

C. Sfara's [Allegedly] Infringing Products

32. Sfara admits that "Sfara's telematics platform" or the "Sfara Apps" use mobile phone sensor data, are powered by machine learning, determine when a person is driving, reveal certain behaviors behind the wheel, and detect crashes. Sfara admits that CMT has captured an accurate screen shot from Sfara's website <https://www.sfara.com/products/>.

33. Sfara admits that Sfara created mobile SDKs for use on Android and iOS platforms that are deployed on drivers' smartphones, that smartphones include processors, and that CMT has accurately quoted a portion of text found on Sfara's website at the cited URL. Sfara admits that Sfara's applications ("apps") that run or ran on mobile phones (both Apple and Android) include Sfara Quest (also known as "Brainy Tester"), Sfara Guardian Personal Safety, Sfara Fleet Companion, and Companion Mobile Safety, and that these apps all run or ran on mobile phones that include processors that collect(ed) data including sensor data and location information that is gathered from the user's phone. Sfara admits that CMT has captured accurate screen shots from <https://apptopia.com/google-play/app/com.sfara.fleet/about> and <https://apptopia.com/ios/app/1023342411/about>.

34. Sfara admits that CMT has accurately quoted a portion of text found on Sfara's website at the cited URL and that CMT has captured an accurate screen shot from Sfara's website at <https://companionmobilesafety.com/how-it-works/>. Sfara is without sufficient information to form a belief as to the remaining allegations of paragraph 34 and therefore denies those allegations.

35. Sfara admits that certain Sfara Apps are designed to provide notices of crashes to service providers to notify them of a First-Notice-of-Loss ("FNOL"), including information such as time, location, and other events.

36. Sfara admits that CMT has correctly quoted a portion of text found on Sfara's website at the cited URL and that Sfara introduced the world's first global safety, telematics, and FNOL platform that is hardware-free.

37. Sfara admits that CMT has correctly quoted a portion of text found on Sfara's website at the cited URL.

38. Sfara admits that CMT has correctly quoted a portion of text found on Sfara's website at the cited URL.

39. Sfara admits that CMT has correctly quoted a portion of text found on Sfara's website at the cited URL.

40. Sfara admits that it encourages others, including Sfara's customers and end users, to purchase and use Sfara's telematics platform.

41. Sfara denies the allegations set forth in paragraph 41 of the Complaint.

42. Sfara is without sufficient information to form a belief as to the allegations of paragraph 42 and therefore denies those allegations.

43. To the extent that paragraph 43 states legal conclusions, no answer is required. To the extent an answer is required, Sfara denies those allegations.

COUNT I: [ALLEGED] INFRINGEMENT OF U.S. PATENT NO. 11,587,368

44. Sfara incorporates and repeats its responses to the foregoing paragraphs of the Complaint by reference as if fully set forth herein.

45. Sfara admits that CMT has defined the "'368 Patent Accused Instrumentalities" as set forth in paragraph 45 of the Complaint but denies any infringement.

46. To the extent that paragraph 46 states legal conclusions, no answer is required. To the extent an answer is required, Sfara denies those allegations.

47. Sfara denies the allegations set forth in paragraph 47 of the Complaint.

48. Sfara denies the allegations set forth in paragraph 48 of the Complaint.

49. Sfara denies the allegations set forth in paragraph 49 of the Complaint.

50. Sfara denies the allegations set forth in paragraph 50 of the Complaint.

51. Sfara denies the allegations set forth in paragraph 51 of the Complaint.

52. Sfara denies the allegations set forth in paragraph 52 of the Complaint.

53. Sfara denies the allegations set forth in paragraph 53 of the Complaint.

54. Sfara denies the allegations set forth in paragraph 54 of the Complaint.

55. Sfara denies the allegations set forth in paragraph 55 of the Complaint.

56. Sfara denies the allegations set forth in paragraph 56 of the Complaint.

COUNT II: [ALLEGED] INFRINGEMENT OF U.S. PATENT NO. 10,246,037

57. Sfara incorporates and repeats its responses to the foregoing paragraphs of the Complaint by reference as if fully set for herein.

58. Sfara admits that CMT has defined the “’037 Patent Accused Instrumentalities” as set forth in paragraph 58 of the Complaint but denies any infringement.

59. To the extent that paragraph 59 states legal conclusions, no answer is required. To the extent an answer is required, Sfara denies those allegations.

60. Sfara denies the allegations set forth in paragraph 60 of the Complaint.

61. Sfara denies the allegations set forth in paragraph 61 of the Complaint.

62. Sfara denies the allegations set forth in paragraph 62 of the Complaint.

63. Sfara denies the allegations set forth in paragraph 63 of the Complaint.

64. Sfara denies the allegations set forth in paragraph 64 of the Complaint.

65. Sfara denies the allegations set forth in paragraph 65 of the Complaint.

66. Sfara denies the allegations set forth in paragraph 66 of the Complaint.

67. Sfara denies the allegations set forth in paragraph 67 of the Complaint.

68. Sfara denies the allegations set forth in paragraph 68 of the Complaint.

69. Sfara denies the allegations set forth in paragraph 69 of the Complaint.

AFFIRMATIVE DEFENSES

Sfara's Affirmative Defenses are listed below. Sfara reserves the right to amend its answer to add additional Affirmative Defenses consistent with the facts discovered in this case.

FIRST AFFIRMATIVE DEFENSE **(Non-Infringement)**

The manufacture, use, offer for sale, sale, or importation of Sfara's '368 Patent Accused Instrumentalities and '037 Patent Accused Instrumentalities does not infringe (either literally or under the doctrine of equivalents), directly or indirectly (either by inducement or contributorily), any valid and enforceable claim of the Asserted Patents.

SECOND AFFIRMATIVE DEFENSE **(Invalidity)**

The claims of the Asserted Patents are invalid for failure to meet one or more of the conditions for patentability specified in Title 35 of the United States Code, particularly 35 U.S.C. §§ 101, 102, 103, and/or 112.

THIRD AFFIRMATIVE DEFENSE **(Prosecution History Estoppel)**

The claims of the Asserted Patents are limited so as not to cover the manufacture, use, offer for sale, sale, or importation of Sfara's '368 Patent Accused Instrumentalities and '037 Patent Accused Instrumentalities due to the arguments, statements, representations, and/or amendments made by CMT to the United States Patent and Trademark Office during prosecution of the respective applications leading to the issuance of the Asserted Patents.

FOURTH AFFIRMATIVE DEFENSE **(Failure to State a Claim)**

The Complaint fails to state a claim upon which relief may be granted.

FIFTH AFFIRMATIVE DEFENSE
(Lack of Standing)

The Complaint is barred to the extent CMT lacks standing as to the '368 Patent, which is owned by an entity not a party to this action.

SIXTH AFFIRMATIVE DEFENSE
(Unenforceability)

Plaintiff's fraud on the Patent Office renders its patents unenforceable.

SEVENTH AFFIRMATIVE DEFENSE
(Equitable Estoppel/Unclean Hands)

Recovery is barred by Plaintiff's inequitable behavior.

PRAYER FOR RELIEF

Sfara denies that CMT is entitled to any of the relief requested in CMT's Prayer for Relief or to any relief whatsoever. Sfara prays that the Court enter judgment against CMT and in favor of Sfara, dismissing with prejudice each of the claims asserted by CMT, and that the Court award any other relief it deems to be just and proper.

SFARA’S COUNTERCLAIMS

Counterclaim-Plaintiff Sfara, Inc. (“Sfara”) alleges in this Counterclaim for patent infringement (including willful infringement), and breach of contract, as well as a declaratory action for patent invalidity and unenforceability against Plaintiff and Counterclaim-Defendant Cambridge Mobile Telematics, Inc. (“CMT”) as follows:

NATURE OF THE ACTION

Sfara and CMT are not strangers to one another. Today, they are fierce competitors in the burgeoning First Notice of Loss market with insurance carriers, where low-speed crash detection via smartphone is the “holy grail.” In 2016, CMT (through True Motion) courted Sfara and after extensive due diligence about Sfara’s technology and intellectual property offered to acquire Sfara and its patent portfolio. When that acquisition did not materialize because the parties could not agree on price, CMT contacted Sfara to license its patented technology—admitting that it needed a patent license to carry out its plans to enter the smartphone crash-detection market. That license was never obtained. CMT, however, moved forward with its business plans knowingly using Sfara’s confidential technical disclosures (which were subject to a Non-Disclosure Agreement) and infringing Sfara’s patents. As if stealing Sfara’s technology and pirating its intellectual property was not enough, CMT has now asserted two of its own patents against Sfara. But CMT knows, or should know, that its patents—which were acquired years after Sfara’s patents on the same or similar subject matter—are invalid. And, because CMT failed to disclose Sfara’s patents and products to the Patent Office (as well as other material prior art) when it sought certain patents, at least some of its patents were obtained through fraud on the Patent Office. This action is brought to render CMT’s patents invalid and unenforceable and to

hold CMT responsible for its knowing infringement of Sfara's patents, and its breach of a Confidential Non-Disclosure Agreement.

PARTIES

1. Counterclaim Plaintiff Sfara is a Delaware corporation with an office at 221 River Street, 9th Floor, Hoboken, NJ 07030.

2. Sfara, previously known as Apio Systems, Inc. and as Driversiti Inc., is a company founded by pioneers in connected-vehicle safety. Sfara's leadership team has spent years in the connected-vehicle space, pioneering its technologies, logging billions of miles driven on the programs they created, and helping hundreds of thousands of people during their moments of crisis. Its smartphone-based solutions are revolutionizing global transportation safety and the industries servicing it, including first-notification-of-loss ("FNOL") claims processing for insurance carriers servicing automotive policy-holders.

3. Counterclaim-defendant CMT is a Delaware corporation with its principal place of business at 314 Main Street, Suite 1200, Cambridge, MA 02142.

4. CMT is one of the world's largest telematics service providers. The company's AI-driven platform, DriveWell®, gathers sensor data from devices, including smartphones, to accumulate and present information regarding driver behavior. The primary use of this data has been to provide insurance companies with driver statistics to inform the policy-pricing decisions of such insurance companies.

5. On or about June 2021 CMT acquired TrueMotion, Inc. ("TrueMotion"), another player in the automotive telematics data industry, to, among other things, acquire TrueMotion's smartphone crash-detection technology.

JURISDICTION AND VENUE

6. Sfara incorporates the foregoing paragraphs of these Counterclaims by reference as if fully set forth herein.

7. This action arises under 35 U.S.C. §1, *et seq.* This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a) and 1367.

8. This Court has personal jurisdiction over Counterclaim-Defendant CMT at least because it instituted this action in this jurisdiction, has availed itself of the laws and protections of this District, is a resident of and/or has regularly conducted business activities in this District, has committed infringing acts in this District, and/or has placed products, systems, and/or services that infringe the Sfara's Patents in the stream of commerce with the knowledge and intent that they would be used, offered for sale, and/or sold in this District.

9. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c) and/or 28 U.S.C. § 1400(b) and because Counterclaim-Defendant initiated this action in this venue and thus has consented to venue in this forum.

BACKGROUND

10. Sfara's founder, Sascha Simon, who is the named inventor on the asserted Sfara Patents in this case, has decades of experience in developing and deploying life-saving automotive technologies. In 2012, Mr. Simon left Mercedes-Benz to start Sfara. His vision was to deliver safety to all drivers, not just those fortunate enough to be able to purchase luxury cars. Driven by that moral imperative, Mr. Simon and his then-fledgling company began to transform the automotive-safety game. After years of research and development, Sfara launched a solution that no longer required specialized equipment and could work using the sensors in a common smartphone—achieving the potential for ubiquitous emergency services on a global basis. This

solution was launched in 2015, and Mr. Simon's first of many patents on this subject matter was issued that same year. Today, Sfara's solution presents an unparalleled global crash and emergency response capability available in 49 countries and 15 languages.

11. Mr. Simon's technology also opened the doors for the development of a new business segment in which companies like Sfara could deliver real-time reliable data to insurance companies about the circumstances of a detected crash through a smartphone. That data can provide information about crash conditions, accelerating and assisting in claims processing and fraud detection. Mr. Simon's novel technology in that area has made such data reliable even in low-speed crashes (which was previously difficult to distinguish from other phone movements). Sfara introduced products into the marketplace as early as 2015 (including but not limited to its Driversiti mobile app, which was deployed by fleets including SuperShuttle, Veolia (fka Transdev), and others having the ability to collect, process, and report crash data using a smartphone. As is described below, this technology was shared with CMT during acquisition discussions in 2016. After those discussions, Sfara continued to innovate, developed new technologies and refined its algorithms to make accurate low-speed crash detection a reality. That capability was launched in Germany during 2019. The market for this technology is substantial and consists of insurance carriers, automotive manufacturers and their suppliers, and telecommunications companies, among others. Sfara's leadership in low-speed crash-detection has put it in a position to obtain significant market share in the developing crash-detection/claims-processing segment of the insurance market.

12. CMT is currently the largest provider of driver-behavior data to insurance companies. This data helps insurance companies to gauge risk and set policy rates—at the beginning of the relationship with a driver. Notably, despite its efforts, CMT has failed to make

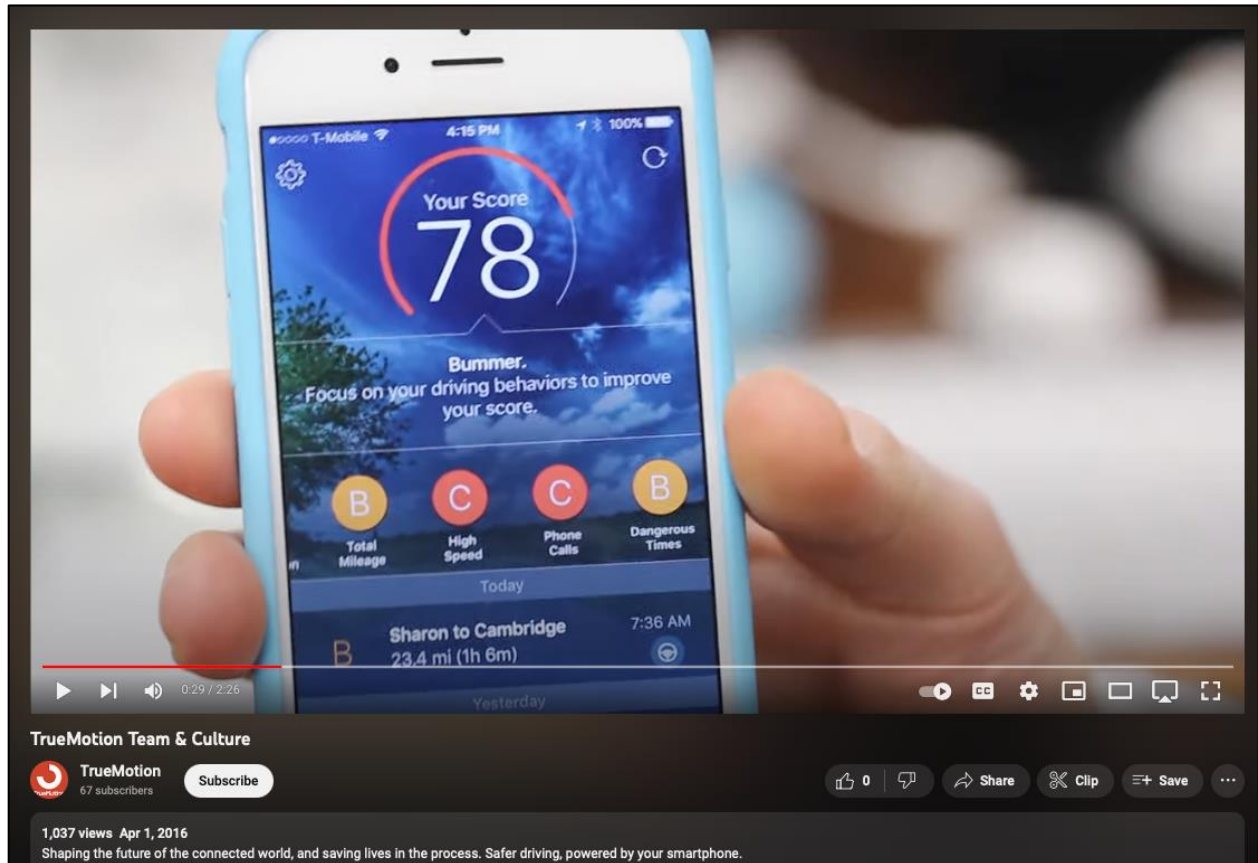
significant inroads into the crash-detection/claims-processing market utilizing a smartphone. Its crash-detection technology has lagged well behind Sfara's—particularly with respect to the accurate detection of low-speed accidents. CMT, even after misappropriating Sfara's earlier-produced technology, cannot today offer a product with the accuracy required by insurance companies. As Sfara penetrates the crash-detection/claims-processing market—and continues to interact with CMT's insurance customers—Sfara may displace CMT as the leading provider of driver-behavior data used for rate-setting by those same insurance companies. CMT's desperation to protect its position in the driving-behavior market, and its inability to effectively compete in the crash-detection market, apparently forced it to bring this frivolous suit.

Sfara's Interaction with Censio/True Motion

13. CMT is well aware of Sfara's technology and its leadership. In or around June 2021, for more than \$100,000,000, CMT acquired a company called TrueMotion, Inc. ("TrueMotion"), which had previously been known as Censio, Inc. As a result, CMT acquired TrueMotion's smartphone-based driving data platform known as "TrueMotion *Impact*." That platform used mobile phone sensor data to determine when a person is driving and detect crashes. The acquisition of TrueMotion thus brought crash-detection capabilities on smartphones to CMT, which CMT hoped would allow it to have a presence in the crash-detection/claims-processing market without the need for extra hardware. Before that acquisition, CMT's foray into crash-detection was based upon additional hardware (sometimes referred to as a tag) that drivers would have to affix to their vehicle's windshield.

14. TrueMotion's smartphone-based technology, however, was, at least in part, based upon Sfara's proprietary and/or patented technology that TrueMotion wrongfully and

deliberately took from Sfara. More specifically, on March 8, 2016, TrueMotion and Sfara¹ entered a reciprocal Non-Disclosure Agreement (“NDA”). Prior to that time TrueMotion’s business used smartphone sensors only to obtain driving behavior—not crash detection.



See e.g., <https://www.youtube.com/watch?v=Ikma3yV16W0>. (Uploaded April 1, 2016)

15. In and around March and April of 2016, and pursuant to the NDA, Sfara disclosed confidential technology, business plans, and financial information to True Motion. Sfara also disclosed the existence of its patent assets, including issued U.S. Patent No. 8,989,952, titled

¹ TrueMotion was originally known as Censio and changed its name in April of 2016. Sfara was then known as Apio and later Driversiti. As used herein, TrueMotion refers to TrueMotion and Censio, and Sfara refers to Sfara, Apio, and Driversiti. References to CMT include legacy CMT entities as well as the acquired TrueMotion entities.

“System and method for detecting vehicle crash” (“the ’952 Patent”) to True Motion and its principals and employees.

16. TrueMotion engaged in confidential discussions with Sfara for the purpose of evaluating a potential acquisition of Sfara. Critical to that discussion was TrueMotion understanding Sfara’s cutting-edge crash detection technology. Up until those discussions, TrueMotion did not have any smartphone-based crash detection products—only driver-behavior detection on smartphones. Sfara’s unique, smartphone-only-based crash detection technology was the principal area of discussion, and Sfara presented extensive details to TrueMotion concerning its technology, testing, software, and commercial strategies.

17. A large team of individuals from TrueMotion were exposed to the confidential information from Sfara, including, among others, Mr. Vance Loiselle (Chief Executive Officer), Brad Cordova (Chief Technology Officer), Kevin Farrell (President and Chief Product Officer), and Joe Adelmann (Co-founder and VP Operations)—all of whom were present in person for due diligence presentations. On information and belief, Rafi Finegold (VP Product & Experience), Scott Griffith, Jonathan McNeill, Dan Shiebler (Senior Data Scientist), and Eddie Vaisman (Data Scientist) also had access to Sfara’s written materials and communicated information.

18. The business venture progressed rapidly, and as shown below, Messrs. Cordova and Adelman toasted the relationship with Sfara’s Mr. Simon on March 31, 2016, the day before an in-person meeting on April 1. That’s the very same Mr. Cordova who subsequently listed himself as an inventor on TrueMotion’s ’368 patent.



19. Ongoing discussions took place in person and/or telephonically on a daily or near-daily basis. TrueMotion sought more and more confidential information from Sfara.

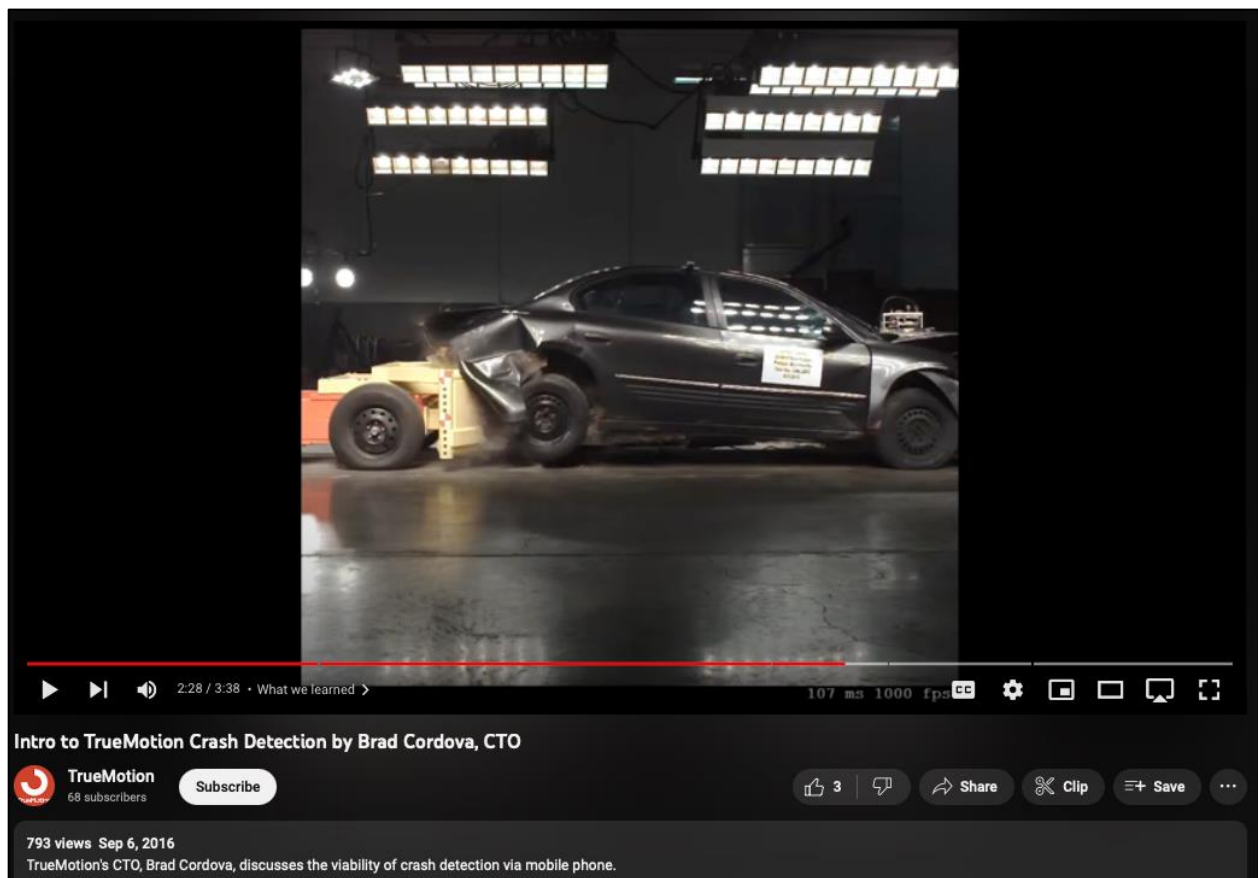
20. To secure its opportunity, on or about April 11, 2016, TrueMotion required that Sfara execute an exclusivity agreement to accelerate negotiations and provide for further in-person due diligence sessions. As part of that agreement, the parties again confirmed that all the information provided for due diligence was subject to the NDA.

21. On or about April 13, 2016, a due diligence meeting was conducted during which Sfara again shared detailed technical and financial information. Among other presentations, Sfara disclosed a 73-page slide deck discussing algorithms, formulas, inputs, testing, and other technical analysis.

22. Although a letter of intent and an exclusivity agreement were executed and offers were exchanged, the parties did not agree on terms for TrueMotion's planned acquisition of Sfara.

23. On or about May 5, 2016, True Motion's Chief Executive Officer, Vance Loiselle, called Mr. Simon and asked for a license to Sfara's technology and patents. Mr. Loiselle acknowledged that TrueMotion would need a license to implement an expansion into the smartphone crash-detection market and further expressed his disappointment that the parties could not agree on terms for a business combination, commenting that his Board just got it "wrong."

24. Despite not purchasing Sfara and its technology and patents, and not obtaining a license to Sfara's patents and technology, TrueMotion pushed on with product development improperly using Sfara's technology and proprietary information. And a few months later, True Motion was, for the first time, in the marketplace with crash detection.



See e.g., https://www.youtube.com/watch?v=RV_rPvokoSU. (Uploaded September 6, 2016).

25. When CMT acquired True Motion, many of True Motion's employees joined CMT, including some of the individuals involved in confidential discussions with Sfara and/or who had access to Sfara's confidential disclosures. Joe Adelman and Rafi Finegold were two such individuals. At TrueMotion, Mr. Finegold had worked extensively with Brad Cordova and others on product development, and he continued in that role at CMT as Senior Vice-President of Product Management.

26. CMT incorporated True Motion's technology into its products (which was in turn based upon Sfara's technology) and further used Sfara's confidential information as well as Sfara's patented technology to design, develop, enhance and deploy CMT products including, without limitation, CMT's DriveWell Platform, DriveWell Fusion Platform, DriveWell Fleet, DriveWell Auto, DriveWell Tag, DriveWell SDK, DriveWell Risk, DriveWell Crash & Claims, DriveWell Engage, Advanced Risk, OpenRoad, CMT's API, CMT's cloud platform, CMT's Mobile Apps including, but not limited to, CMT's DriveWell Go, and related products and services (collectively, "CMT's Telematics Platform").

27. Because of CMT's knowing and wrongful use of Sfara's technology and patents, and the unwarranted and baseless filing of its patent infringement case to damage Sfara's reputation and impede its market progress in the competitive marketplace, Sfara brings the below enumerated counterclaims.

COUNT I: INFRINGEMENT OF U.S. PATENT NO. 8,989,952

28. Sfara incorporates the foregoing paragraphs of these Counterclaims by reference as if fully set forth herein.

29. On March 24, 2015, the United States Patent and Trademark Office duly and legally issued United States Patent No. 8,989,952 ("the '952 Patent") entitled "System and

Method For Detecting Vehicle Crash” to Sascha Simon. A true and correct copy of the ’952 patent is attached as Exhibit 1.

30. U.S. Patent Application No. 14/105,744, which issued as the ’952 Patent, is a continuation-in-part of U.S. Patent Application No. 14/072,231, filed November 5, 2013 (now U.S. Patent No. 9,333,946); is a continuation-in-part of U.S. Patent Application No. 14/095,156, filed December 3, 2013 (now abandoned); and claims the benefit of U.S. Provisional Application No. 61/740,814, filed December 21, 2012; U.S. Provisional Application No. 61/740,831, filed December 21, 2012; U.S. Provisional Application No. 61/740,851, filed December 21, 2012; and U.S. Provisional Application No. 61/745,677, filed December 24, 2012.

31. Sfara owns all rights, title, and interest in the ’952 Patent, and holds sole and exclusive rights to sue and recover damages for any infringement of the ’952 Patent, including past infringement.

32. The claims of the ’952 Patent are valid and enforceable.

33. The ’952 Patent generally relates to a system and method for detecting a vehicle crash, including, *inter alia*, “a communication device, e.g., a smartphone, within the vehicle at the time of the vehicle crash.” ’952 Patent at 4:29-32. The patented subject matter is not directed to an abstract idea and is not limited to well-understood, routine, or conventional activity. Rather, the claimed inventions include inventive components that allow for detecting a vehicle crash.

34. Prior to the ’952 Patent, existing crash-detection telematics solutions required dedicated hardware installed in the vehicle or attached to the vehicle. The embedded or attached telematics equipment connected to the vehicle’s on-board diagnostics (OBD) to collect driving data, exchange information in real-time, and facilitate voice-based communication or being a

stand-alone device being connected via direct cellular connection to a telematics control center. These systems, however, “remain mainly focused on voice-based driver to call center communication, with data services being only slowly introduced, hindered by low bandwidth communication modules, high cost and only partial availability on some model lines.” ’952 Patent at 1:43-48.

35. Because of these shortcomings, there was a need in the industry for “a safety functionality without the need for any embedded device, thus allowing millions of drivers the safety benefit of automatic crash notification without the need for an expensive embedded/add-on device and a costly subscription.” ’952 Patent at 2:47-50. There was also a need in the industry to “reduce the likelihood of obtaining a false-positive determination of a vehicle crash without connecting to an OBD.” ’952 Patent at 4:27-29.

36. The invention of the ’952 Patent solves the problems of the prior art by enabling “a communication device to accurately determine[] whether a vehicle [h]as crashed without accessing the OBD of the vehicle.” ’952 Patent at 16:45-47. The inventions disclosed by the ’952 Patent include, for example, a smartphone-based system capable of determining whether the smartphone is located in a vehicle based on the detection of certain parameters associated with a vehicle. With an in-vehicle determination, the system is able to further detect a crash of the vehicle based on at least two additionally detected parameters, such as the vibrations and a magnetic field distortion associated with the deployment of an airbag. *See, e.g.*, ’952 Patent at 4:32-42, 5:1-5. The ’952 Patent discloses numerous benefits over the prior art including, but not limited to, collecting driving data without dedicated OBD equipment, reducing the number of false-positive vehicle crash detections, and reducing power consumption.

37. CMT is not authorized to use the technology claimed in the ’952 Patent.

38. CMT infringes at least one claim of the '952 Patent under 35 U.S.C. § 271(a), including at least claim 1, by making, using, offering to sell, selling, and/or importing into the United States products including, but not limited to, CMT's Telematics Platform. CMT infringes literally and/or under the doctrine of equivalents.

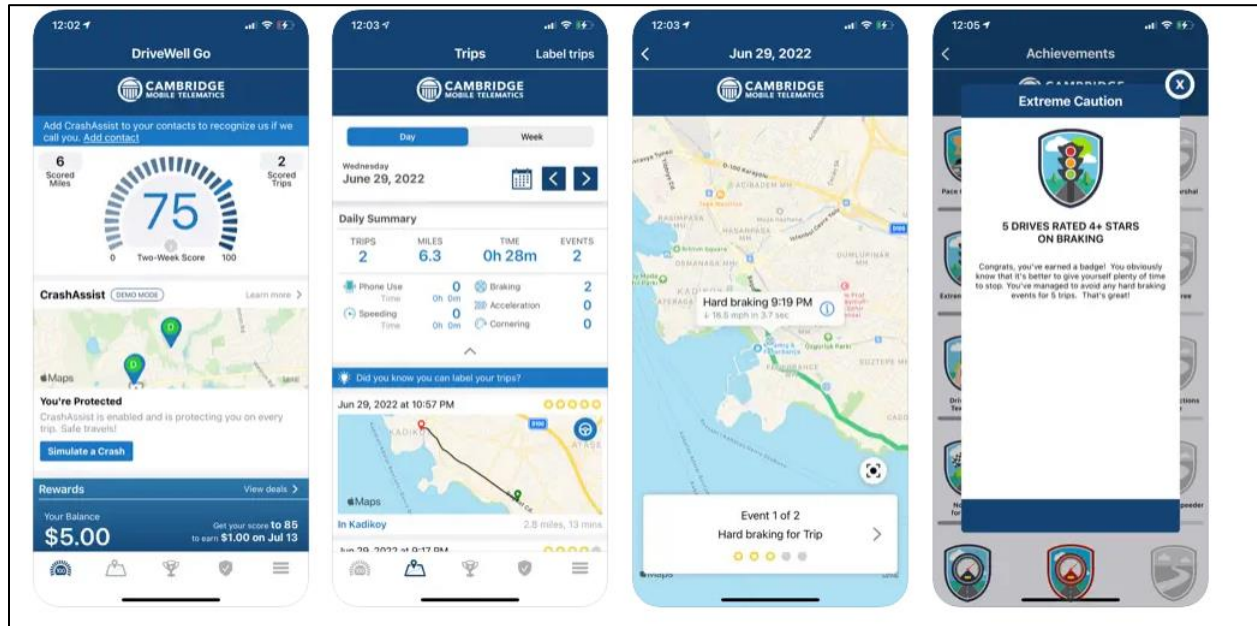
39. On information and belief, CMT's Telematics Platform is/includes a device for use with a vehicle. CMT's Telematics Platform "gathers sensor data from millions of IoT devices—including smartphones, proprietary tags, connected vehicles, dashcams, and third-party devices—and fuses them with contextual data to create a unified view of vehicle and driver behavior." <https://www.cmtelematics.com/safe-driving-technology/how-it-works/> (accessed May 23, 2023).

40. CMT hosts and runs mobile applications for use on Android and iOS platforms that are deployed on drivers' smartphones. *See, e.g.*, <https://apps.apple.com/us/developer/cambridge-mobile-telematics-inc/id655601790?see-all=i-phone-apps>; https://play.google.com/store/apps/developer?id=Cambridge+Mobile+Telematics&hl=en_US&gl=US.

41. CMT's Telematics Platform operates on smartphones having a variety of embedded sensors. CMT's Telematics Platform uses smartphone sensors and/or other components to detect "whether a user is driver or passenger (or in a car at all)," and generate an in-vehicle signal (e.g., indicating the device is in a vehicle). *See, e.g.*, <https://news.mit.edu/2016/startup-smartphone-app-safe-driving-0105> (accessed May 23, 2023). For example, CMT's DriveWell app "automatically detects when driving starts and stops, and

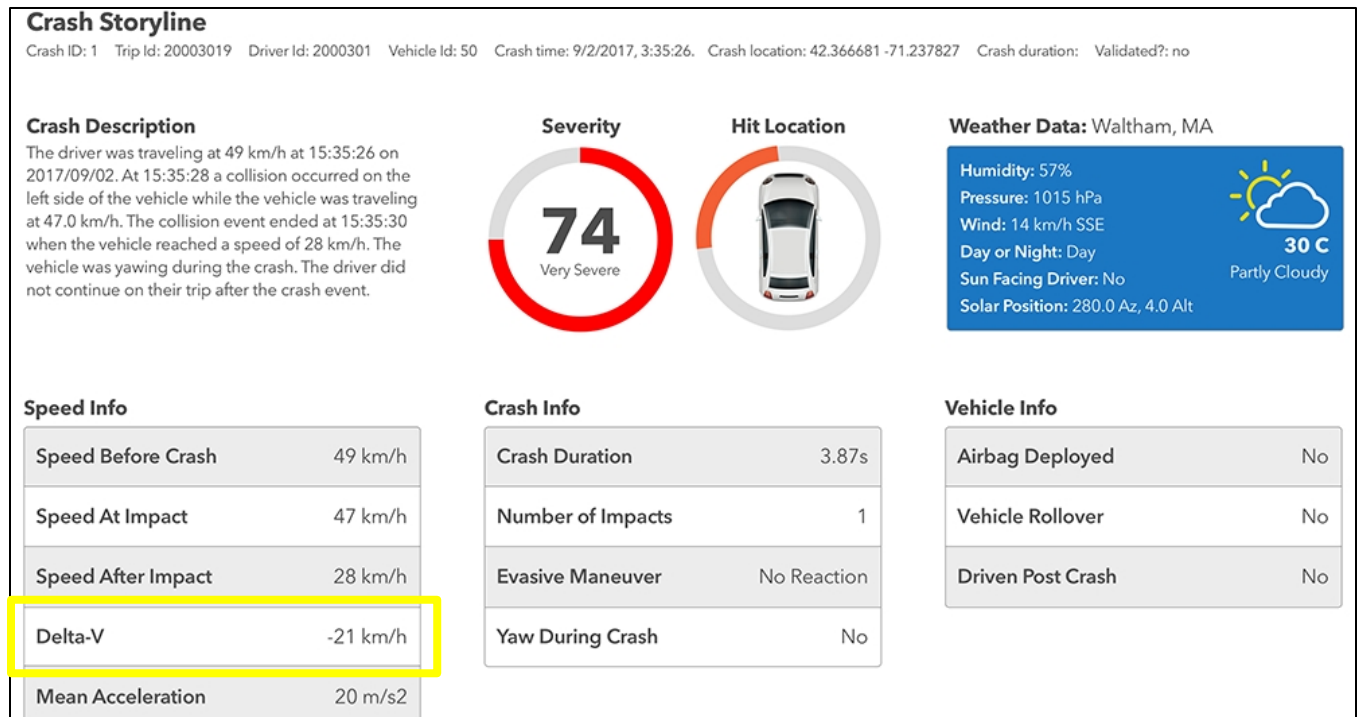
uses the phone's sensors to measure your vehicle's driving dynamics."

<https://apps.apple.com/us/app/drivewell-go/id655601647> (accessed May 23, 2023).



Id.

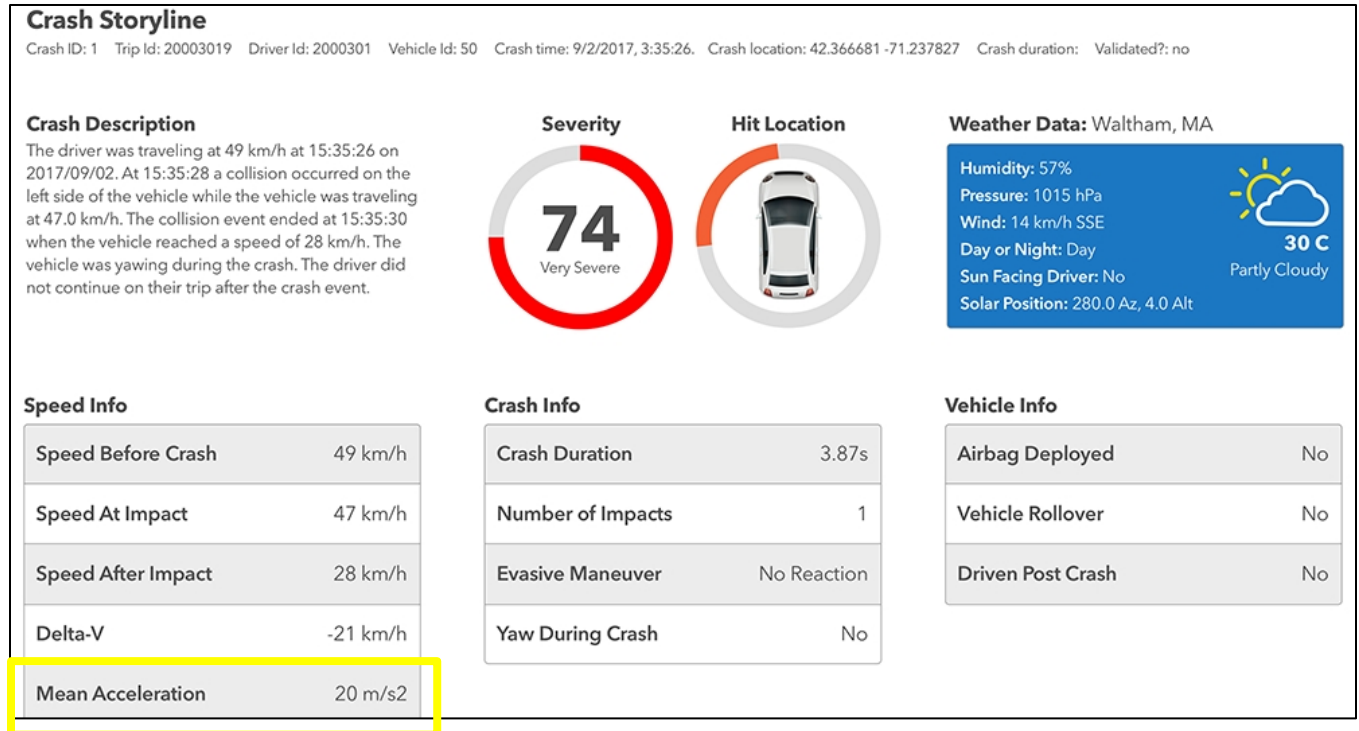
42. CMT's Telematics Platform uses smartphone sensors and/or other components to detect a first parameter (*e.g.*, a change in velocity) and generate a first detector signal based on the *e.g.*, change in velocity, delta-v.



[https://apnews.com/article/technology-business-smartphones-](https://apnews.com/article/technology-business-smartphones-0e1197c6cb0b4673a27979ceccc61290)

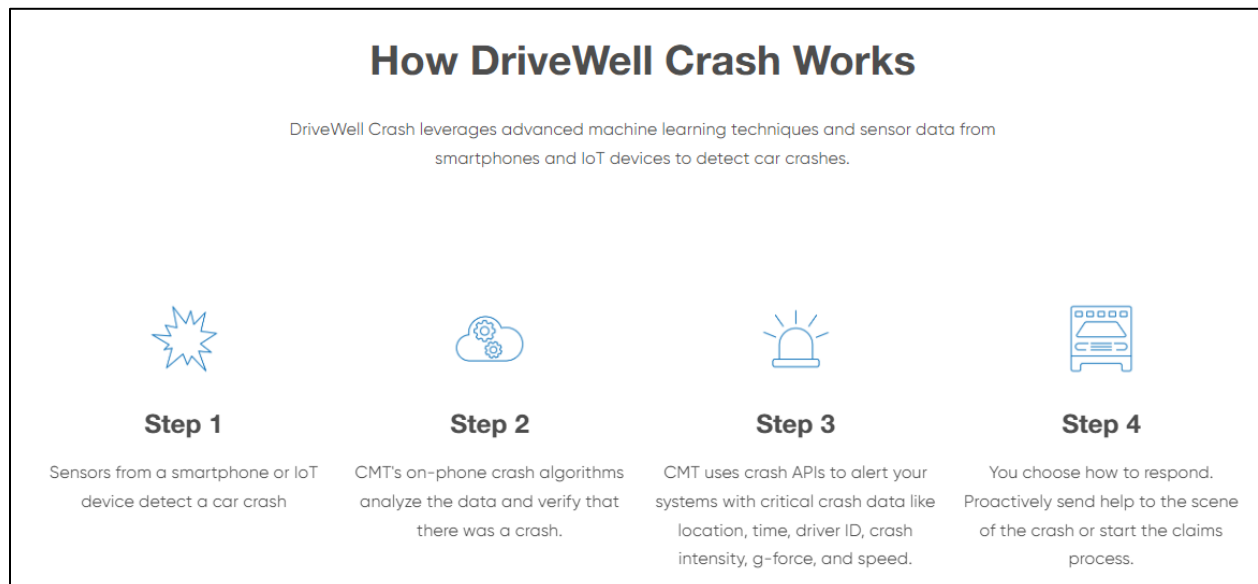
0e1197c6cb0b4673a27979ceccc61290 (accessed May 23, 2023).

43. The CMT Telematics Platform uses smartphone sensors and/or other components to detect a second parameter (*e.g.*, acceleration) and generate a second detector signal based on the *e.g.*, acceleration.

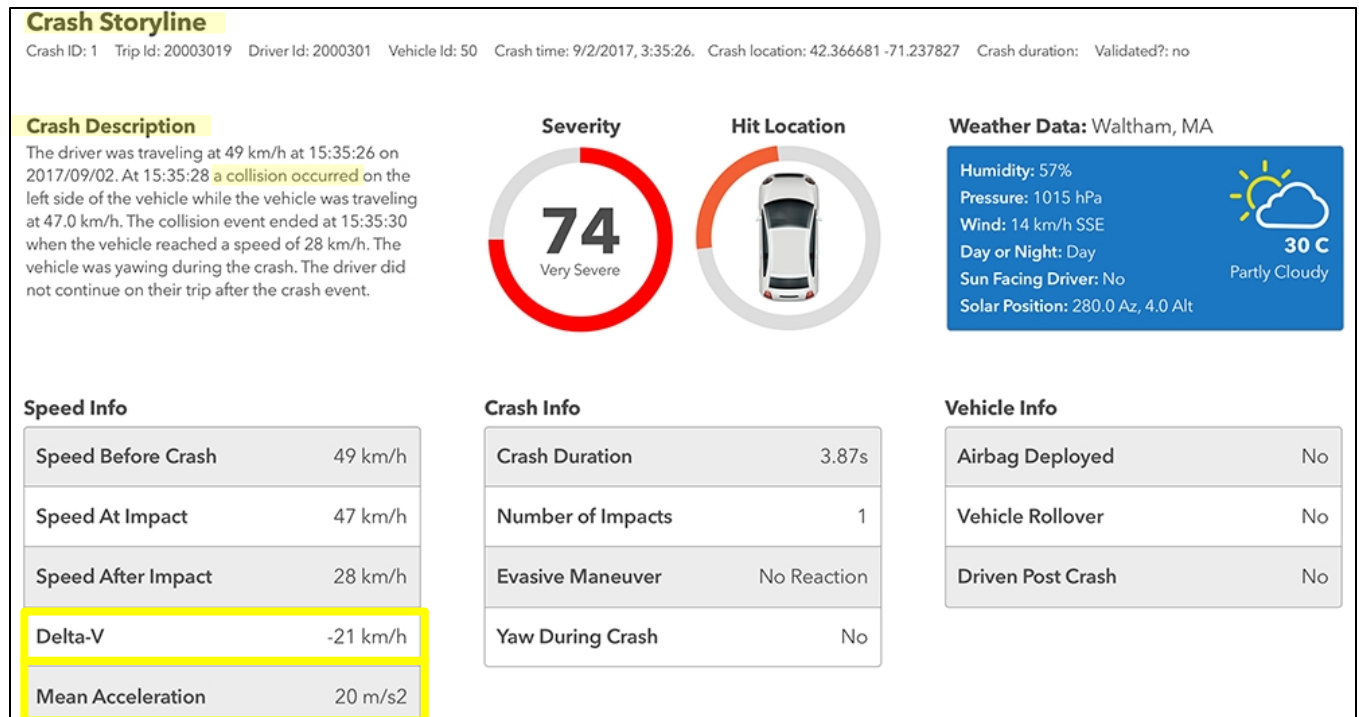


Id.

44. CMT's Telematics Platform is further operable to generate a crash mode signal based on the in-vehicle signal, the first detector signal and the second detector signal.



<https://www.cmtelematics.com/crash-detector/> (accessed May 23, 2023).



[https://apnews.com/article/technology-business-smartphones-](https://apnews.com/article/technology-business-smartphones-0e1197c6cb0b4673a27979ceccc61290)

0e1197c6cb0b4673a27979ceccc61290 (accessed May 23, 2023).

45. On information and belief, CMT, including but not limited to, its now-former-CTO, Brad Cordova, was aware of the '952 Patent (since at least 2016) and its relevance to the business activities of TrueMotion and CMT.

46. On information and belief, at least since 2016 (and unquestionably after the filing and service of this Counterclaim), CMT knowingly encouraged, and continues to encourage, its customers and/or end-users to directly infringe one or more claims of the '952 Patent, including by CMT's actions that include, without limitation, instructing and encouraging its customers and/or end-users to use CMT's Telematics Platform through the publishing, distribution, and

propagation of user guides,² advertisements,³ blog posts,⁴ live events,⁵ promotional materials⁶ and technical support⁷.

47. On information and belief, at least since its knowledge of the '952 Patent, CMT knows the acts CMT induced its customers and/or end-users to take constitute patent infringement and CMT's encouraging acts result in direct infringement of one or more claims of the '952 Patent by those customers and/or end-users performing each step of one or more methods recited in those claims (including at least claim 7).

48. On information and belief, CMT instructs and continues to instruct customers and/or end-users to use CMT's Telematics Platform including, without limitation, through CMT's website, which provides access to, and support for, using CMT's Telematics Platform.

49. On information and belief, CMT's customers and/or end-users directly infringe one or more claims of the '952 Patent through their use of the CMT's Telematics Platform in accordance with CMT's instruction and encouragement.

² See e.g., <https://www.stateauto.com/public/files/Fleet%20Safety%20360%20App-Tag%20App%20Install%20Guide%20for%20DRIVERS.pdf>.

³ See e.g., <https://www.youtube.com/@cambridgemobiletelematics2253>.

⁴ See e.g., <https://www.cmtelematics.com/news-and-insights/>.

⁵ See e.g., <https://twitter.com/cmtelematics/status/1461046480807112704?cxt=HHwWgMC9jZGC18YoAAA>.

⁶ See e.g., <https://www.cmtelematics.com/who-we-are/what-our-partners-say/>.

⁷ See e.g., https://www.cmtelematics.com/wp-content/uploads/2020/11/Summary-of-Technical-Support_Rev-Oct-2020.pdf.

50. On information and belief, CMT is in violation of 35 U.S.C. § 271 (b) and has been indirectly infringing and continues to indirectly infringe one or more claims of the '952 Patent by knowingly and specifically intending to induce infringement by others (including, without limitation, CMT's customers and end-users) and possessing specific intent to encourage infringement by CMT's customers and end-users. The components of CMT's Telematics Platform are specifically configured to function in accordance with the '952 Patent claims, are material parts of the invention.

51. CMT's infringement was intentional, deliberate, willful, and malicious.

52. Sfara has been damaged by the direct and/or indirect infringement of CMT and is suffering and will continue to suffer irreparable harm and damages as a result of this infringement.

COUNT II: INFRINGEMENT OF U.S. PATENT NO. 9,333,946

53. Sfara incorporates the foregoing paragraphs of these Counterclaims by reference as if fully set forth herein.

54. On March 10, 2016, the United States Patent and Trademark Office duly and legally issued United States Patent No. 9,333,946 ("the '946 Patent") entitled "System and Method for Identifying Vehicle by Utilizing Detected Magnetic Field" to Sascha Simon. A true and correct copy of the '946 Patent is attached as Exhibit 2.

55. U.S. Patent Application No. 14/072,231, which issued as the '946 Patent, claims the benefit of U.S. Provisional Application No. 61/740,814, filed December 21, 2012; U.S. Provisional Application No. 61/740,831, filed December 21, 2012; U.S. Provisional Application No. 61/740,851, filed December 21, 2012; and U.S. Provisional Application No. 61/745,677, filed December 24, 2012.

56. Sfara owns all right, title, and interest in the '946 Patent, and holds sole and exclusive rights to sue and recover damages for any infringement of the '946 Patent, including past infringement.

57. The claims of the '946 Patent are valid and enforceable.

58. The '946 Patent generally relates to “an improved method and apparatus of determining the specific identity and type of vehicle a smartphone is in.” '946 Patent at 2:46-48. The patented subject matter is not directed to an abstract idea and is not limited to well-understood, routine, or conventional activity. Rather, the claimed inventions include inventive components that allow for detecting a vehicle crash.

59. Prior to the '946 Patent, most existing crash-detection telematics solutions required dedicated hardware installed in the vehicle. The embedded telematics equipment connected to the vehicle's on-board diagnostics (OBD) to collect driving data, exchange information in real-time, and facilitate voice-based communication. These systems, however, “remain mainly focused on voice-based driver to call center communication, with data services being only slowly introduced, hindered by low bandwidth communication modules, high cost and only partial availability on some model lines.” '946 Patent at 1:40-45.

60. Because of these shortcomings, there was a need in the industry to “correlate the driver and smartphone owner” without embedded telematics equipment connected to the vehicle's OBD. '946 Patent at 1:33-38. Accordingly, there existed a need for “an improved method and apparatus of determining the specific identity and type of vehicle a smartphone is in.” '946 Patent at 1:39-42.

61. The invention of the '946 Patent solves the problems of the prior art by utilizing the sensors and functionalities of smartphones to supplement or even replace the known vehicle-based techniques of vehicle telematics. More specifically,

[A] smartphone may utilize its magnetometer function to periodically measure the electromagnetic levels sensed at the smartphone's current location. The smartphone uses its processing capabilities to try to map the periodic electromagnetic levels sensed by the smartphone with the vehicular electromagnetic signatures stored in library. If the periodic electromagnetic levels sensed by the smartphone match any of the specific vehicle signatures stored in the library, then the processor of the smartphone may generate and/or otherwise output a signal indicating that the smartphone is located in the specific vehicle, which in turn will be used by the Vehicle Mode detection method to trigger certain functions.

'946 Patent at 17:25-37.

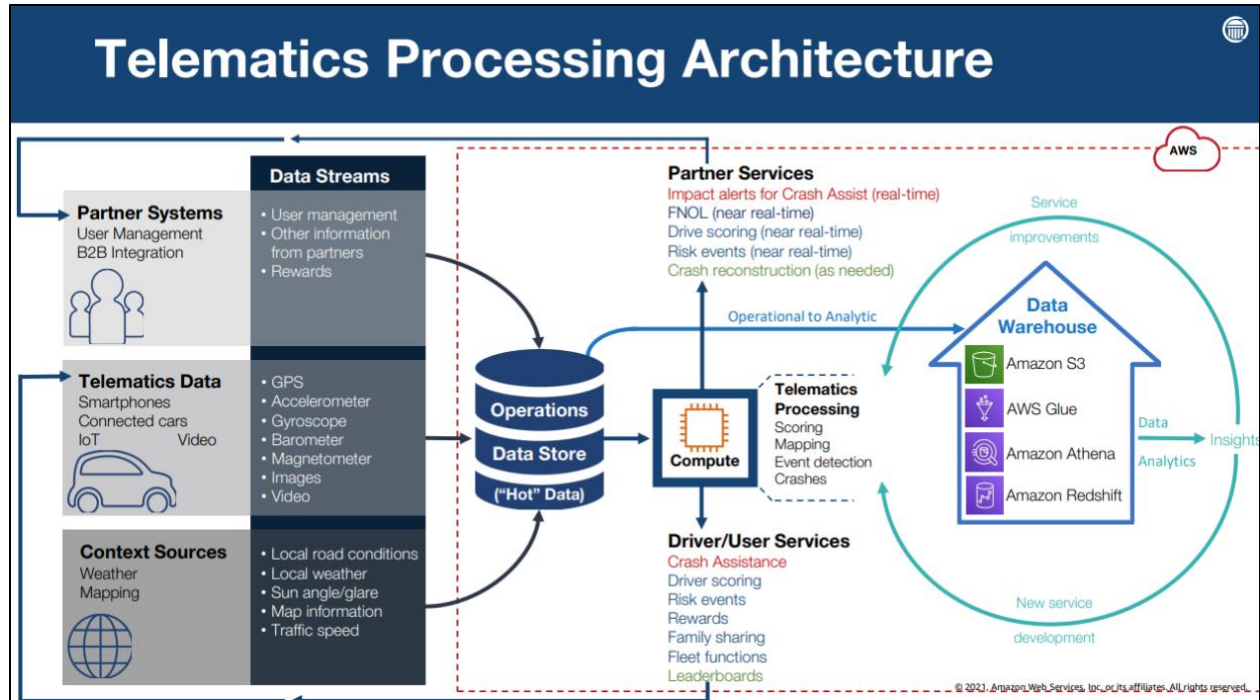
62. The '946 Patent discloses numerous benefits over the prior art including, but not limited to, collecting driving data without dedicated OBD equipment, and enabling vehicle identification.

63. CMT is not authorized to use the technology claimed in the '946 Patent.

64. CMT infringes at least one claim of the '946 Patent under 35 U.S.C. § 271(a), including at least claim 1, by making, using, offering to sell, selling, and/or importing into the United States products including, but not limited to, CMT's Telematics Platform. CMT infringes literally and/or under the doctrine of equivalents.

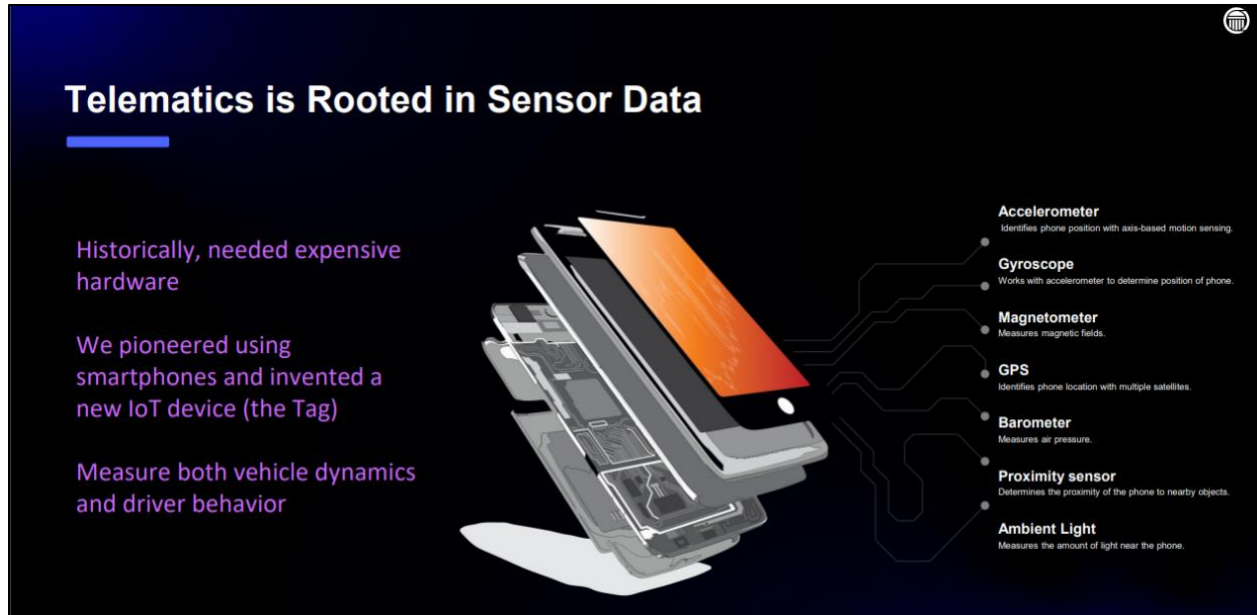
65. On information and belief, CMT's Telematics Platform is/includes a device for use with a database that "gathers sensor data" from devices including smartphones and fuses that information with "contextual data to create a unified view of vehicle and driver behavior."

<https://www.cmtelematics.com/safe-driving-technology/how-it-works/>.

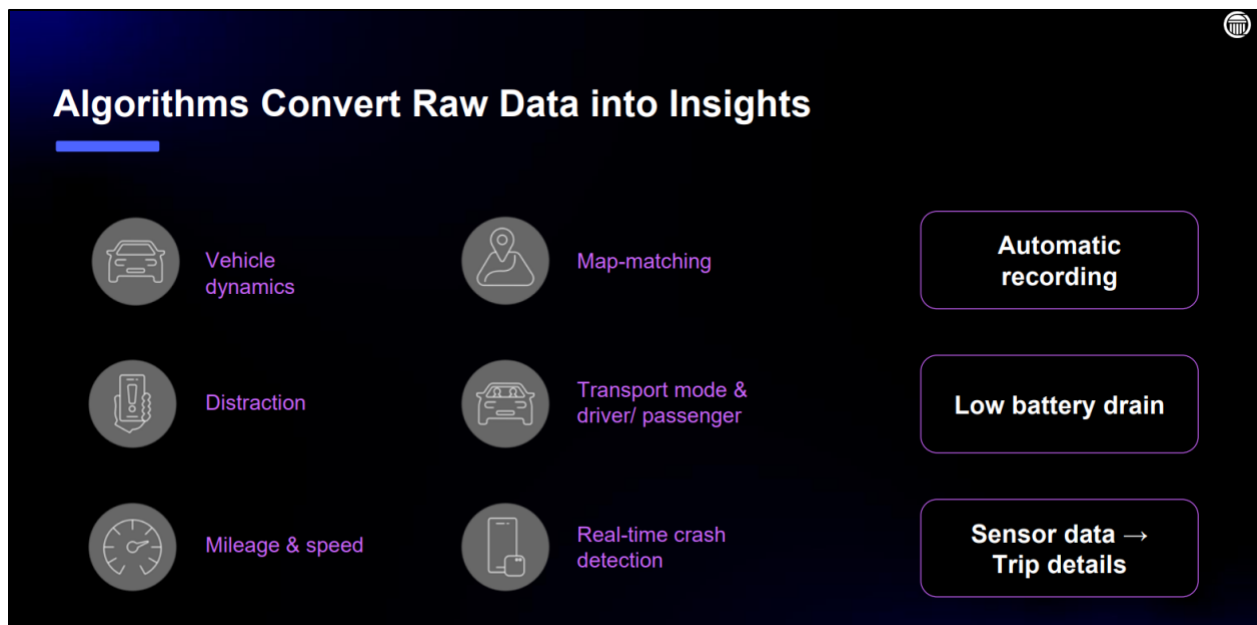


https://d1.awsstatic.com/events/reinvent/2021/Using_privacyfirst_data_processing_to_make_drivers_smarter_STP207.pdf (accessed May 23, 2023).

66. CMT's Telematics Platform uses smartphone sensors (e.g., magnetometer) and/or other components to detect e.g., a magnetic field and to generate a detected field signature (e.g., magnitude of the magnetometer data associated with e.g., a first mode of transportation, such as a car) based on the detected magnetic field.

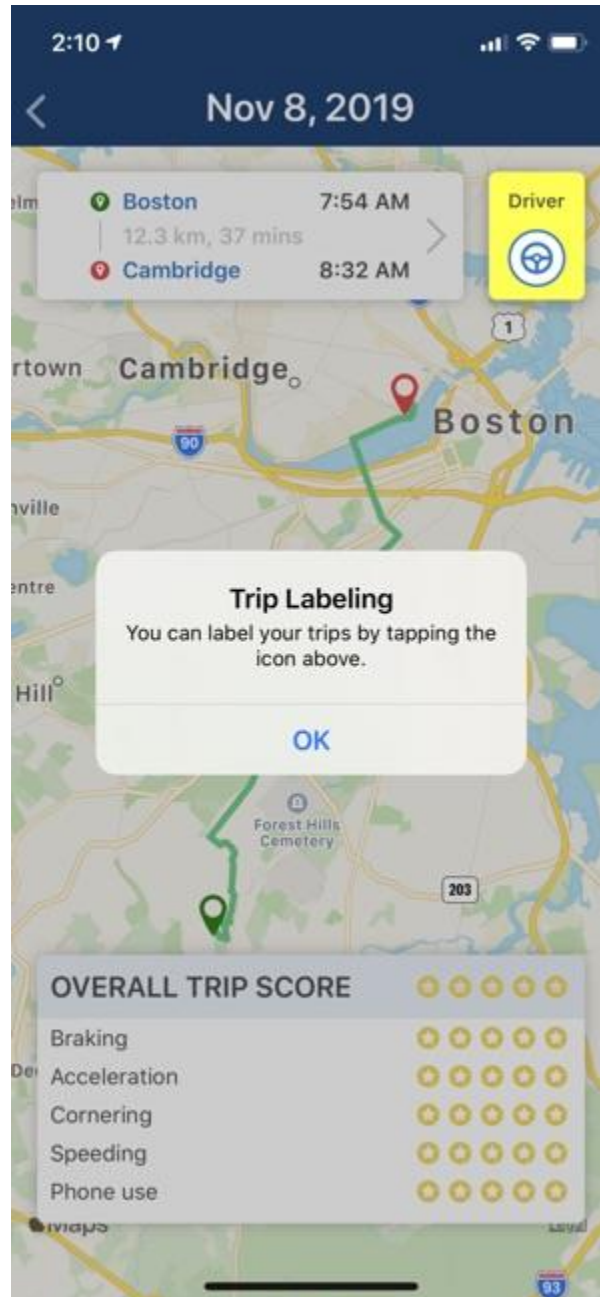


https://d1.awsstatic.com/events/reinvent/2021/Using_privacyfirst_data_processing_to_make_drivers_smarter_STP207.pdf (accessed May 23, 2023).



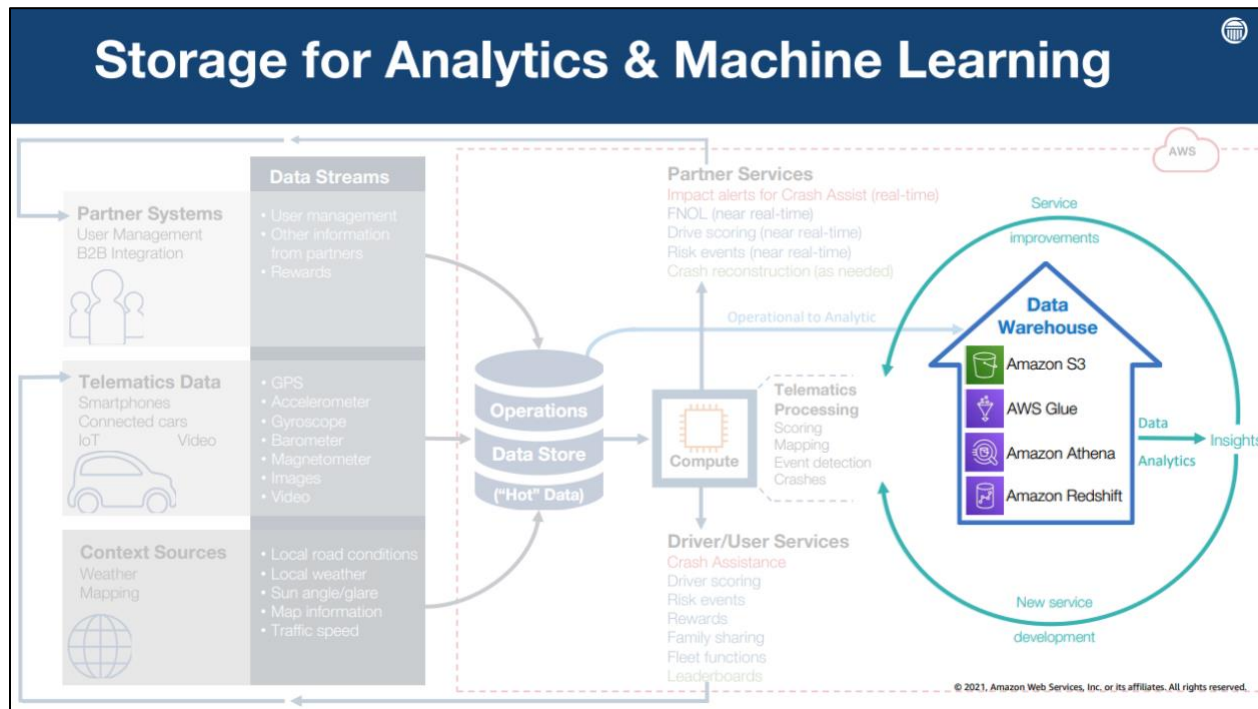
Id.

67. CMT's Telematics Platform includes an input component (e.g., graphical user interface (GUI) having a user interactive touch screen) operable to input the detected field signature into the database.



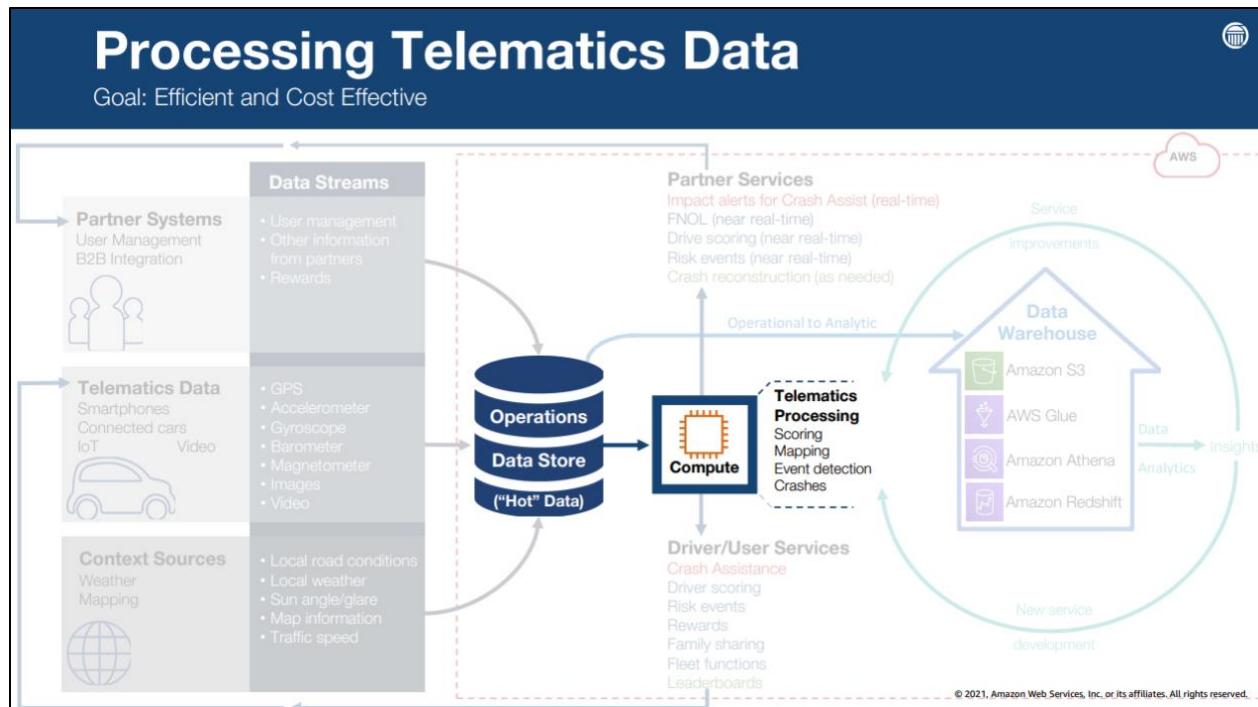
<https://apps.apple.com/us/app/drivewell-fleet/id1485885494> (accessed May 23, 2023).

68. CMT's Telematics Platform includes an accessing component operable to access the detected field signature from the database.



https://d1.awsstatic.com/events/reinvent/2021/Using_privacyfirst_data_processing_to_make_drivers_smarter_STP207.pdf (accessed May 23, 2023).

69. CMT's Telematics Platform includes a comparing component operable to generate a comparison signal (e.g., indicating a difference(s) between magnitudes of the magnetometer data).

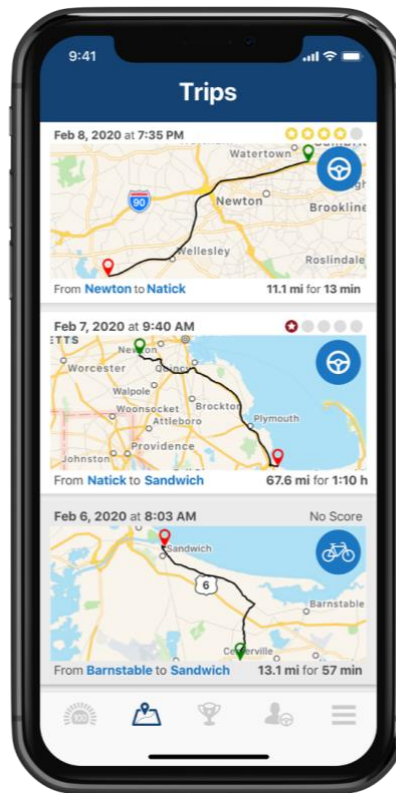


https://d1.awsstatic.com/events/reinvent/2021/Using_privacyfirst_data_processing_to_make_drivers_smarter_STP207.pdf (accessed May 23, 2023).

70. CMT's Telematics Platform includes an identifying component operable to identify one of an item (e.g., a mode of transportation, such as a car, motorcycle, bicycle, train, bus) and a location (e.g., driver's side of the vehicle) based on the comparison signal.

- ✓ Identifying Driver versus Passenger
- ✓ Identifying Car Trips versus Other Transport Modes

<https://www.cmtelomatics.com/cmt-mobile-sdk/> (accessed May 23, 2023).



Id.

71. CMT's Telematics Platform uses the smartphone sensors (e.g., magnetometer) and/or other components to further detect e.g., a second magnetic field and to generate a second detected field signature (e.g., magnitude of the magnetometer data associated with e.g., a second mode of transportation, such as a bicycle) based on the second detected magnetic field. *See, e.g.,* https://d1.awsstatic.com/events/reinvent/2021/Using_privacyfirst_data_processing_to_make_drivers_smarter_STP207.pdf (accessed May 23, 2023).

72. CMT's Telematics Platform uses one or more components to generate the comparison signal based on a comparison of the detected field signature (e.g., magnitude of the magnetometer data associated with e.g., a first mode of transportation, such as a car) and the second detected field signature (e.g., magnitude of the magnetometer data associated with e.g., a second mode of transportation, such as a bicycle). In this way, CMT's Telematics Platform

“determines whether [the device is] in a car or some other mode of transport like a bus or a motorcycle or a bicycle or a boat....” <https://agencychecklists.com/2018/04/10/cmt-telematics-2018-22735/> (accessed May 23, 2023).

73. CMT as well as its now-former-CTO, Brad Cordova, and its former CEO, Vance Loiselle, were all aware of the '946 Patent (since at least 2016) and its relevance to the business activities of TrueMotion and CMT.

74. On information and belief, at least since 2016 (and certainly after the filing and service of this Counterclaim) CMT knowingly encouraged, and continues to encourage, its customers and/or end-users to directly infringe one or more claims of the '946 Patent, including by CMT's actions that include, without limitation, instructing and encouraging its customers and/or end-users to use CMT's Telematics Platform through the publishing, distribution, and propagation of user guides,⁸ advertisements,⁹ blog posts,¹⁰ live events,¹¹ promotional materials¹² and technical support¹³.

⁸ See e.g., <https://www.stateauto.com/public/files/Fleet%20Safety%20360%20App-Tag%20App%20Install%20Guide%20for%20DRIVERS.pdf>.

⁹ See e.g., <https://www.youtube.com/@cambridgemobiletelematics2253>.

¹⁰ See e.g., <https://www.cmtelematics.com/news-and-insights/>.

¹¹ See e.g., <https://twitter.com/cmtelematics/status/1461046480807112704?cxt=HHwWgMC9jZGC18YoAAA>.

¹² See e.g., <https://www.cmtelematics.com/who-we-are/what-our-partners-say/>.

¹³ See e.g., https://www.cmtelematics.com/wp-content/uploads/2020/11/Summary-of-Technical-Support_Rev-Oct-2020.pdf.

75. On information and belief, at least since CMT's knowledge of the '946 Patent, CMT understands that the acts CMT induced its customers and/or end-users to take actions that constitute patent infringement and that CMT's encouraging acts result in direct infringement of one or more claims of the '946 Patent by those customers and/or end-users performing each step or of one or more methods recited in those claims including at least claim 8.

76. On information and belief, CMT instructs and continues to instruct customers and/or end-users to use CMT's Telematics Platform including, without limitation, through CMT's website, which provides access to, and support for, using CMT's Telematics Platform.

77. On information and belief, CMT's customers and/or end-users directly infringe one or more claims of the '946 Patent through their use of the CMT's Telematics Platform in accordance with CMT's instruction and encouragement.

78. On information and belief, CMT is in violation of 35 U.S.C. § 271(b) and has been, at least since its knowledge of the '946 Patent, indirectly infringing and continues to indirectly infringe one or more claims of the '946 Patent by knowingly and specifically intending to induce infringement by others (including, without limitation, CMT's customers and end-users) and possessing specific intent to encourage infringement by CMT's customers and end-users. The components of CMT's Telematics Platform are specifically configured to function in accordance with the '946 Patent claims, are material parts of the invention.

79. Upon information and belief, CMT's infringement was intentional, deliberate, willful, and malicious.

80. Sfara has been damaged by the direct and/or indirect infringement of CMT and is suffering and will continue to suffer irreparable harm and damages as a result of this infringement.

COUNT III: BREACH OF CONTRACT

81. Sfara incorporates the foregoing paragraphs of these Counterclaims by reference as if fully set forth herein.

82. Sfara and TrueMotion entered into a valid and binding Reciprocal Nondisclosure Agreement (“NDA”) on or about March 8, 2016, which allowed the parties to share confidential information for a limited purpose. More specifically, the NDA provided that the “purpose for which Proprietary Information may be disclosed in for the Parties to discuss, review, and evaluate business, technical and financial plans to determine if a business relationship would be mutually beneficial.” TrueMotion agreed to use Sfara’s information “only for the purpose described above.”

83. TrueMotion also agreed to keep Sfara’s confidential information “in confidence” and to “prevent the unauthorized use, dissemination or publication” of that information.

84. TrueMotion knew that Sfara’s confidential information “remains the property” of Sfara and that TrueMotion would “not acquire any intellectual property rights” under the NDA.

85. TrueMotion received confidential information from Sfara pursuant to the NDA.

86. Sfara performed its obligations under the NDA.

87. TrueMotion (and later CMT) breached the provisions of the NDA by using and disseminating Sfara’s confidential information without authorization and for the improper use of commercializing products using Sfara’s confidential information and planning and conducting a competitive business with that information.

88. Sfara has been damaged by the aforementioned breaches of the NDA and the unauthorized disclosure and use of Sfara’s confidential materials.

COUNT IV: INVALIDITY OF U.S. PATENT NO. 11,587,368

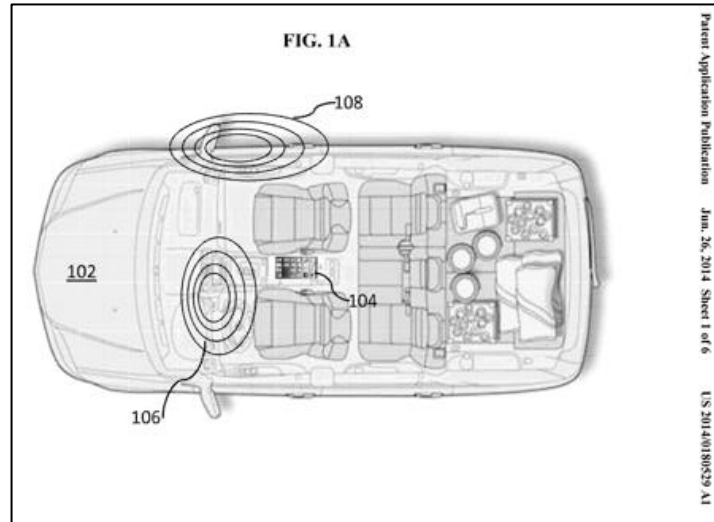
89. Sfara incorporates the foregoing paragraphs of these Counterclaims by reference as if fully set forth herein.

90. An actual case or controversy exists between CMT and Sfara as to whether the '368 Patent is invalid because, among other reasons, CMT has asserted claims 1-7, 9-13, and 16-20 of the '368 patent against Sfara (the "'368 Asserted Claims").

91. A judicial declaration is necessary and appropriate so that Sfara may ascertain its rights as to whether the '368 Asserted Claims are invalid.

92. The '368 Asserted Claims are invalid because they fail to meet the "conditions for patentability" of 35 U.S.C. §§ 101, 102, 103, and/or 112.

93. For example, Sfara's '952 Patent issued in 2015, almost six years before CMT's '368 Patent was filed and years before the earliest claimed priority date and is prior art to the '368 Patent. Sfara's '952 Patent discloses each and every element in claim 1 of CMT's '368 Patent and renders claim 1 invalid under 35 U.S.C. § 102 and/or 103. Claim 1 of CMT's '368 Patent requires a mobile device with sensors, memory, a processor, the collection of driving data used to detect an event, and the collection of additional data to detect and report an accident. Yet Sfara's '952 Patent previously – and straightforwardly -- disclosed the use of a "smartphone" to "detect at least two parameters associated with a vehicle crash."



(Exhibit 1, Fig. 1A and 4:29-37). The system disclosed in Sfara's '952 Patent uses the collected data to calculate a "crash probability C_p " (*Id.* at 13:8-10 and 55-61). If that crash probability does not conclusively indicate a crash, the system collects additional data and, "after the additional parameter is detected (S318), the crash probability is updated." (*Id.* at 15:10-17). If the new crash probability indicates an accident, the device is operated in "crash mode" which generates a report of accident, including "automatically contacting emergency services." (*Id.* At 14: 36-39; *see also* Fig. 3).

94. In addition, Sfara's Driversiti app was on the market by early as 2015 (and deployed by fleets including SuperShuttle, Veolia (fka Transdev), and others, and is prior art to the '368 patent.

95. There is nothing new or nonobvious claimed in the '368 Asserted Claims, and those claims are all invalid under 35 U.S.C. § 102 and/or 103 as anticipated or obvious in light of the prior art.

96. The '368 Asserted Claims are also invalid under § 112 because it lacks written description, is not enabled, and/or is indefinite.

97. The '368 Asserted Claims are invalid under § 101 because the claimed subject matter was not patentable.

98. The '368 Asserted Claims are additionally invalid under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, at least for intentionally failing to name the proper inventors as specified in at least 35 U.S.C. §§ 101 and 115(a) including, at least, Mr. Sascha Simon. The alleged inventions claimed by one or more claims of the '368 Patent were not independently invented the named inventors, but rather were copied from information provided by Mr. Simon and Sfara.

99. Sfara is entitled to a declaratory judgment finding the '368 Asserted Claims to be invalid.

COUNT V: UNENFORCEABILITY OF U.S. PATENT NO. 11,587,368

100. Sfara incorporates the foregoing paragraphs of these Counterclaims by reference as if fully set forth herein.

101. During the prosecution of the '368 Patent, Applicants, including at least named inventors Brad Cordova and Rafi Feingold, were aware of Sfara's existing products and the '952 Patent, which were material to the patentability of the claims of the '368 Patent.

102. Pursuant to 37 C.F.R. 1.56, applicants, including at least named inventors Brad Cordova and Rafi Feingold, had a duty to disclose information material to patentability during the prosecution of the '368 Patent.

103. Applicants, including at least named inventors Brad Cordova and Rafi Feingold, failed to disclose their knowledge of Sfara's existing products and the '952 Patent during prosecution of the '368 Patent.

104. The '368 Patent is unenforceable pursuant to 37 C.F.R. § 1.56 and the doctrine of inequitable conduct due to the intentional withholding of material prior art during prosecution of the '368 patent, including the '952 Patent and Sfara's pre-existing products.

105. In addition, the '368 Patent is unenforceable under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, at least for intentionally failing to name the proper inventors as specified in at least 35 U.S.C. §§ 101 and 115(a) because the alleged inventions claimed in the '368 Patent were not independently invented by Applicants and were, in actuality invented, in whole or in part by Mr. Sascha Simon.

106. Applicants knowingly and intentionally misrepresented the true inventorship of the '368 Patent by, at least, omitting Mr. Sascha Simon as a named inventor, when filing the application and related documents which led to the improper issuance of the '368 Patent.

107. Sfara is entitled to a declaratory judgment finding the '368 Patent unenforceable.

COUNT VI: INVALIDITY OF U.S. PATENT NO. 10,246,037

108. Sfara incorporates the foregoing paragraphs of these Counterclaims by reference as if fully set forth herein.

109. An actual case or controversy exists between CMT and Sfara as to whether the '037 Patent is invalid because, among other reasons, CMT has asserted claims 1-3, 5-6, and 9-24 of the '037 Patent against Sfara (the '037 Asserted Claims).

110. A judicial declaration is necessary and appropriate so that Sfara may ascertain its rights as to whether the '037 Asserted Claims are invalid.

111. The '037 Patent Asserted Claims are invalid because they fail to meet the "conditions for patentability" of 35 U.S.C. §§ 101, 102, 103, and/or 112.

112. For example, Sfara's '952 Patent issued in 2015, more than three years before the '037 Patent was filed and is prior art to the '037 Patent. Other Sfara patents were also prior art to the '037 Patent including at least U.S. Patent Nos. 9,333,946; 9,414,221; 9,867,035; 10,062,285; 10,419,598; 10,432,774; and 11,350,237.

113. In addition, Sfara's Driversiti app was on the market by early as 2015 (and deployed by fleets including SuperShuttle, Veolia (fka Transdev), and others, and is prior art to the '037 patent.

114. The TrueMotion *Impact* product was also, years before the '037 Patent was filed, announced as an available "smartphone app that can detect when a vehicle has been in a collision." The TrueMotion *Impact* product was at that time, in the United States, on sale, used publicly, disclosed publicly, and "available for licensing by Insurance companies" and was prior art to the '037 Patent.

TrueMotion Impact Detects Car Crashes Using a Smartphone

NEWS PROVIDED BY
Marketwired
September 10, 2016, 04:23 GMT

[f](#) [t](#) [in](#) [E](#)

Enables Insurance Companies to Provide an App That Can Help Save Lives, Deepen Customer Relationships and Streamline Claims Management

 [/EINPresswire.com/](#) -- TrueMotion, a technology company that leverages the power of smartphone technology and big data to improve road safety today announced the availability of TrueMotion *Impact*, a smartphone app that can detect when a vehicle has been in a collision. TrueMotion *Impact* automatically notifies first responders, connects with emergency services and subsequently facilitates the claims process saving time and money. Announced today at TU-Automotive's Connected Car Insurance USA event, *Impact* is now available for licensing by insurance companies.

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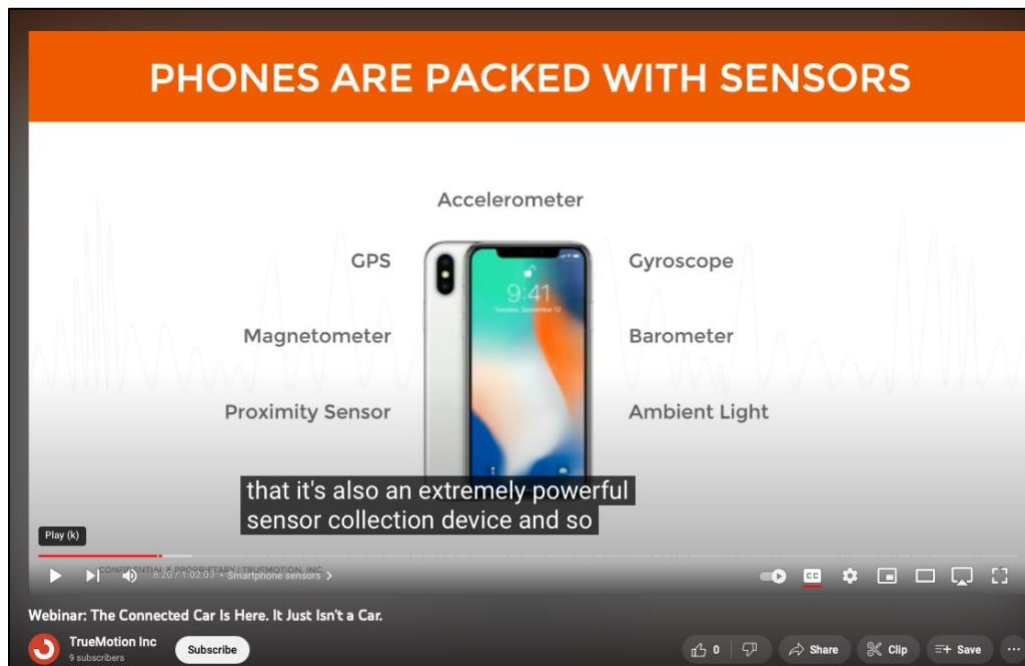
[REMINDER/Saputo Inc.: Fiscal 2018 Results](#)

See e.g., https://www.einnews.com/pr_news/344085086/truemotion-impact-detects-car-crashes-using-a-smartphone; <https://www.slideshare.net/gotruemotion/vance-loiselle-tu-automotive-keynote-65796143>.

115. There is nothing new in the '037 Asserted Claims, and those claims are anticipated and/or rendered obvious by the prior art pursuant to sections 102 and/or 103 in light of the knowledge of one of ordinary skill in the art at the time of the alleged invention.

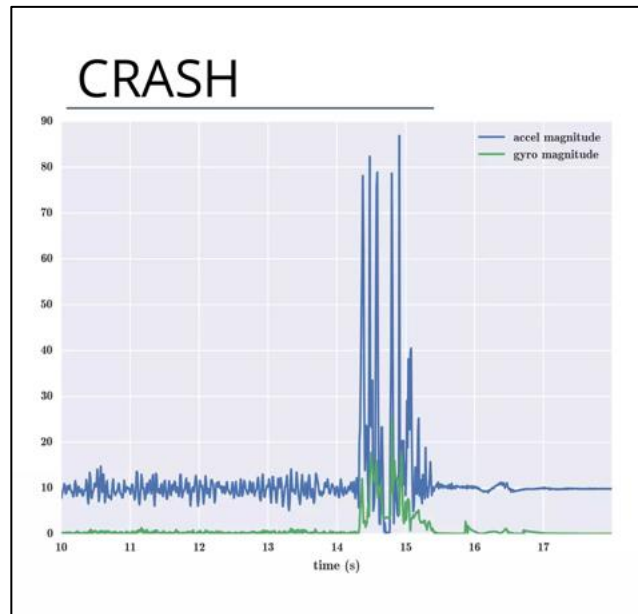
116. For example, claim 1 of the '037 Patent purports to claim as an invention a system that uses “telematics data” from “sensors” (including at least one of a list of enumerated sensors including an accelerometer, barometer, gyroscope or position sensor) to determine the beginning of a crash period and to determine metrics associated with the crash period and “automatically generating documentation” reported as a “narrative description” including “common phrases.” There is nothing new in this purported invention claimed.

117. TrueMotion *Impact* disclosed all of these features including the use of telematics data from sensors including at least an accelerometer, a barometer, a gyroscope, and a position sensor:



See e.g., <https://www.youtube.com/watch?v=DBb7FLFXDGA>.

118. True Motion *Impact* also disclosed using the data to determine the beginning of a crash period and using data related to the crash period:



See e.g., <https://www.slideshare.net/gotruemotion/vance-loiselle-tu-automotive-keynote-65796143>.





See e.g., <https://www.youtube.com/watch?v=xfs22yuEe04&t=120s>.

119. TrueMotion *Impact* also disclosed automatically generated narrative descriptions containing information about crash metrics in common sense language including “critical data and insights about location, conditions, time of day, speed, braking” and other information about the crash – and even descriptions of the accident to start insurance claim processing (First Notification of Loss or “FNOL” reporting):

By Dylan Martin

September 08, 2016, 01:01pm EDT

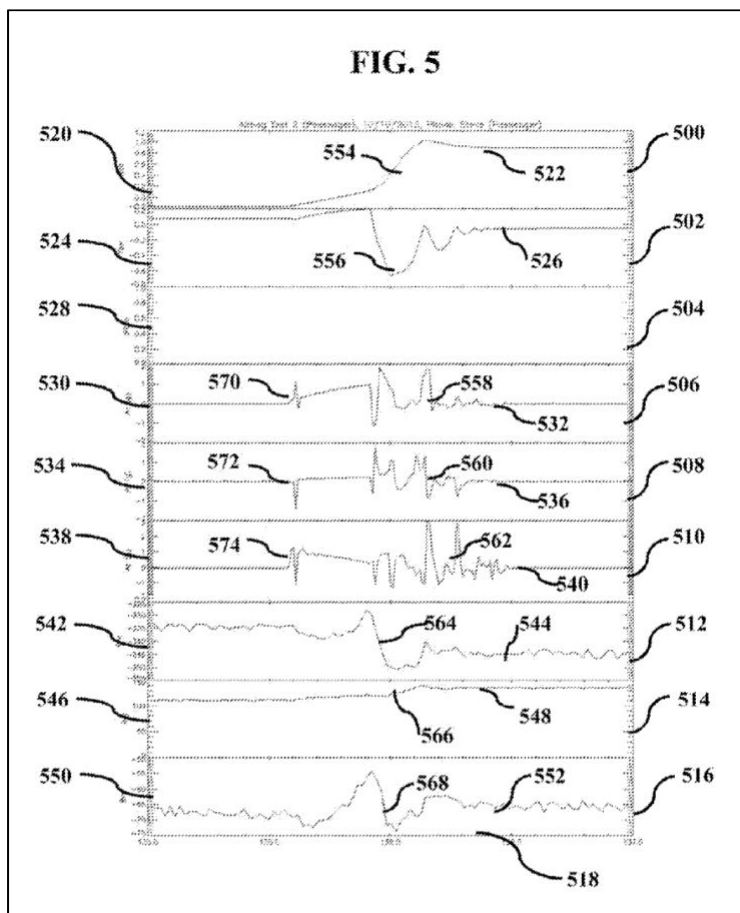
Coming soon to your car: a smartphone app that will call 911 when you get in a car crash, but it won't just do that. It will also notify your family and start the insurance claims process with "critical data and insights about location, conditions, time of day, speed, braking" and other information recorded by the app. It can even send an Uber your way.

See e.g., <https://www.bizjournals.com/boston/inno/stories/news/2016/09/08/this-app-dials-911-if-your-car-crashes-then-starts.html>.



See e.g., <https://www.youtube.com/watch?v=DBb7FLFXDGA>.

120. Similarly, Sfara's '952 Patent (which discloses automatically generated crash reporting in "crash mode") describes using sensors to provide telematics data used to calculate a variety of metrics associated with a crash period as shown in Figure 5 depicting measured parameters over time in a crash period:



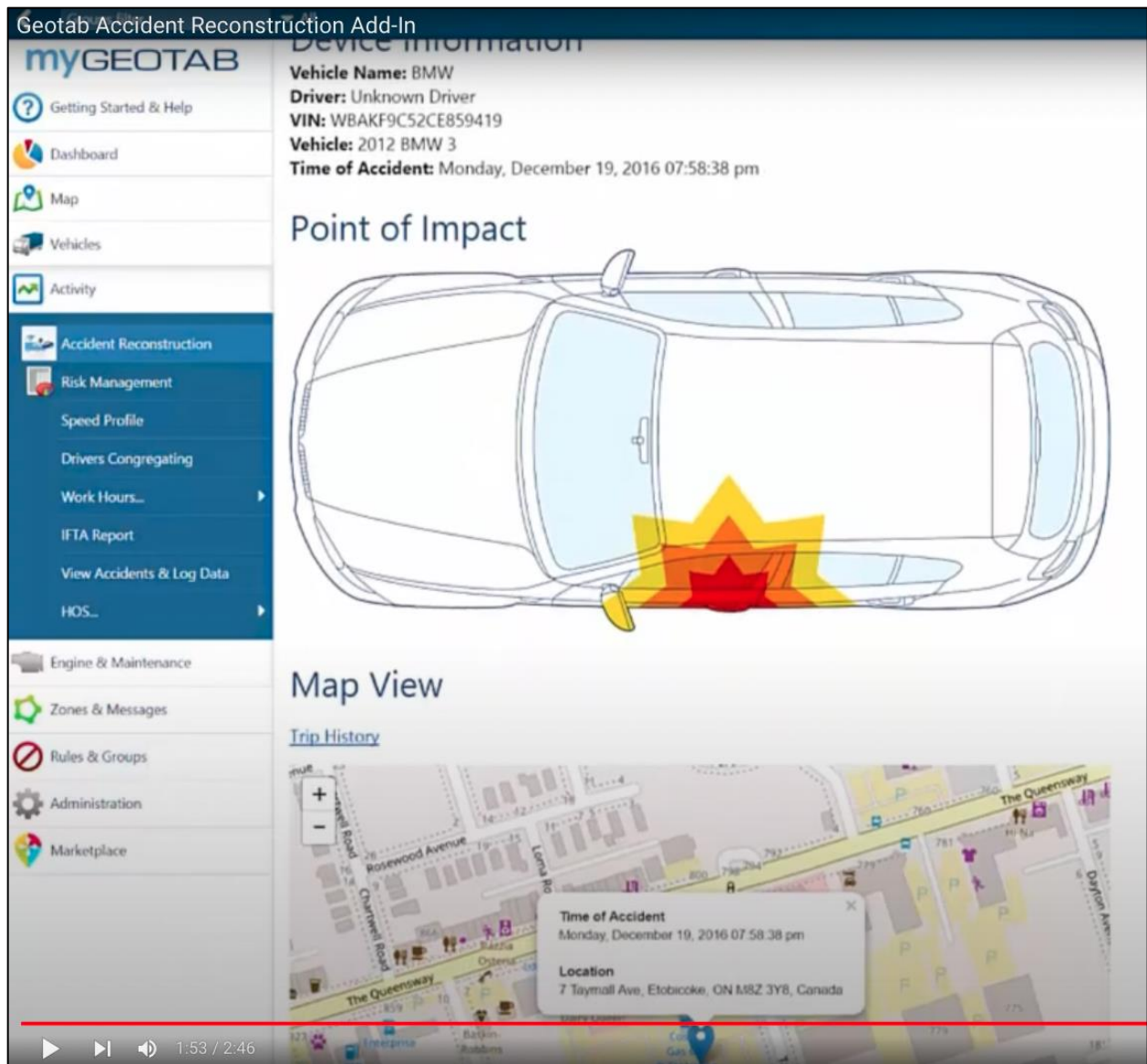
121. And several products in the marketplace generated narrative reports based on accumulated crash data in OBD systems.

- **Crash reporting systems** – Crash reporting systems can offer critical, life-saving benefits to a driver involved in a crash. If the driver is injured and unable to call for help, these systems can help notify authorities when needed. Additionally, first notice of loss (or FNOL to those in the insurance industry) can be fully automated through telematics, improving the speed and accuracy of the claims process for both the insurance provider and the policyholder.

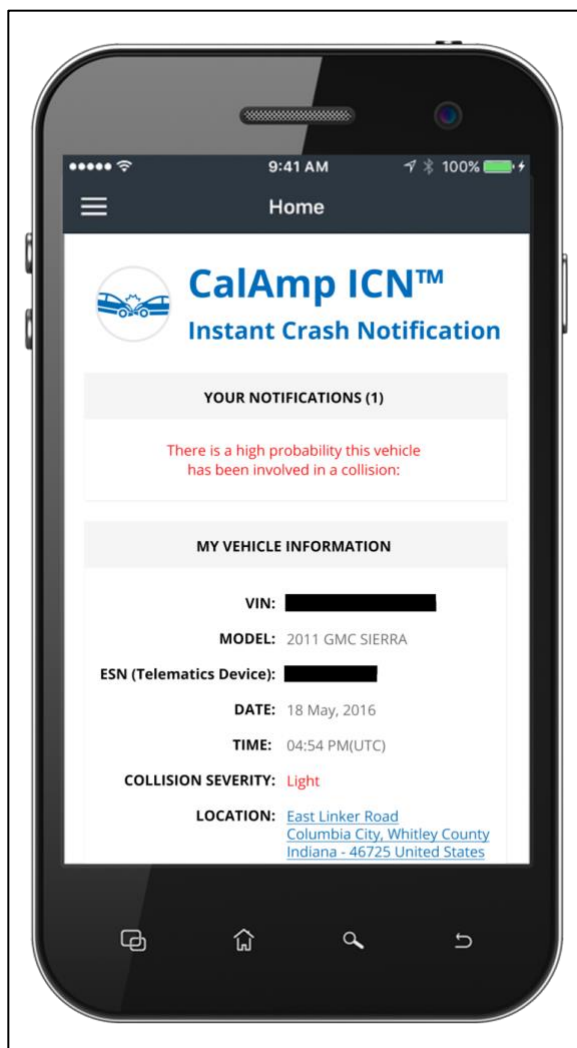
See e.g., <https://lojack.com/blog/2016/12/telematics-can-make-driving-safer/>.

3,746 views Jan 6, 2017

Geotab's Accident Reconstruction Add-In provides customers an all-in-one solution to viewing, analyzing and interpreting accident data from Geotab tracking devices. This add-in finds and analyzes known accidents for a given time period and displays all relevant information into a single easy to read document. This tool is great for fleet managers and administrators looking to view the position of any accident in their fleet as well as point of impact and customized links to view speed profile, RPM and accelerometer data during the accident.



See e.g., <https://www.youtube.com/watch?v=brQqibU1KK4>.



See e.g., <https://www.repairerdrivennews.com/wp-content/uploads/2016/10/calamp-screenshot-redacted-2016-1-768x1392.png>.

122. The '037 Asserted Claims are also invalid under § 112 because they lack written description, are not enabled, and/or are indefinite.

123. The '037 Asserted Claims are invalid under § 101 because the claimed subject matter was not patentable.

124. Sfara is entitled to a declaratory judgment finding the '037 Patent Asserted Claims to be invalid.

JURY DEMANDED

Pursuant to Federal Rule of Civil Procedure 38(b), Sfara hereby requests a trial by jury on all issues so triable.

PRAYER FOR RELIEF

Sfara respectfully requests this Court to enter judgment in its favor and against CMT as follows:

- a. finding that CMT has infringed one or more claims of Sfara's '952 Patent;
- b. finding that CMT has infringed one or more claims of Sfara's '946 Patent;
- c. finding CMT liable for breach of contract;
- d. finding the asserted claims of CMT's '368 Patent invalid pursuant to one or more of under 35 U.S.C. §§ 101, 102, 103, and/or 112;
- e. finding CMT's '368 Patent unenforceable for inequitable conduct;
- f. finding the asserted claims of CMT's '037 Patent invalid pursuant to one or more of under 35 U.S.C. §§ 101, 102, 103, and/or 112;
- g. enjoining CMT from further infringement under 35 U.S.C. § 283;
- h. awarding Sfara patent damages under 35 U.S.C. § 284, and breach of contract damages, and/or for damages otherwise permitted by law, including supplemental damages for any continued post-verdict infringement;
- i. awarding Sfara pre-judgment and post-judgment interest on the damages award and costs;
- j. declaring that this case is exceptional and awarding costs of this action (including all disbursements) and attorney fees pursuant to 35 U.S.C. § 285, or as otherwise permitted by the law; and

- k. awarding such other costs and further relief that the Court determines to be just and equitable.

Dated: June 7, 2023

Respectfully submitted,

/s/ Scott R. Samay

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**Not admitted in Virginia*

Attorneys for Defendant Sfara, Inc.

CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2

The undersigned hereby certifies, pursuant to Local Civil Rule 11.2, that the matter in controversy is not the subject of any other action pending in any court, or of any pending arbitration or administrative proceeding.

/s/ Scott R. Samay
Scott R. Samay

CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 201.1

The undersigned hereby certifies, pursuant to Local Civil Rule 201.1, that the foregoing Counterclaims seek injunctive and other equitable relief, and therefore this action is not appropriate for compulsory arbitration.

/s/ Scott R. Samay
Scott R. Samay

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of June, 2023, a true and correct copy of the foregoing pleading was filed via ECF filing and forwarded by electronic mail to all counsel of record for Plaintiff.

/s/ Tedd W. Van Buskirk

Tedd W. Van Buskirk