

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNITED SERVICES AUTOMOBILE ASSOCIATION,
Petitioner,

v.

AUTO TELEMATICS LTD.,
Patent Owner

Case IPR2025-00812
U.S. Patent No. 12,236,728

PETITIONER'S REPLY TO PATENT OWNER'S RESPONSE

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	AUTO TELEMATICS SEEKS TO USE POST-ISSUANCE CONSTRUCTIONS TO AVOID THE BOARD’S FINDINGS THAT SIMILAR CLAIM LANGUAGE IS UNPATENTABLE OVER SIMILAR PRIOR ART.....	4
A.	The POR’s Constructions Lack Sufficient Justification And Are Met By The Asserted Prior Art Regardless	4
1.	“Driving Period”	4
2.	“Driving Information”	8
III.	THE ASSERTED PRIOR ART RENDERS CLAIM 1 OBVIOUS, AS CONFIRMED BY THE BOARD’S FINDINGS IN OTHER PROCEEDINGS INVOLVING RELATED PATENTS	11
A.	[1.5]: Callopy-Curry-Thompson Would Have Locally Processed “Sensor Data” On A Mobile Phone To Derive “Driving Information”	12
B.	[1.6]: Callopy-Curry-Thompson Would Have Determined A “Driving Period” That Is “Defined By A Duration Of A Vehicle Journey” Through Thompson’s Disclosed Use Of A Predetermined Threshold	15
C.	[1.8]: Callopy-Curry-Thompson Would Have Determined “Driving Information” Using Sensors Available On A Mobile Device “Without Data From Vehicle Sensors”	16
IV.	THE ASSERTED PRIOR ART ALSO RENDERS CLAIMS 2, 4, 25, AND 25 OBVIOUS.....	19
V.	THE PETITION ESTABLISHES A MOTIVATION TO COMBINE CALLOPY, CURRY, AND THOMPSON	22
VI.	THE BOARD HAS ALREADY ADDRESSED THE POR’S DISCUSSION OF PREVIOUSLY-CITED PRIOR ART	26
VII.	CONCLUSION.....	28

LIST OF EXHIBITS

USAA-1001	U.S. Patent No. 12,236,728 to Wright (“the ’728 patent”)
USAA-1002	Excerpts from the Prosecution History of the ’728 patent (“the Prosecution History”)
USAA-1003	Declaration and Curriculum Vitae of Dr. William Michalson
USAA-1004	Original Complaint for Patent Infringement in <i>Auto Telematics Ltd. v. United Services Automobile Association</i> , 6:22-cv-00474 (W.D. Tex. May 11, 2022)
USAA-1005	International Publication No. WO 2010/062899 (“Callopy”)
USAA-1006	International Publication No. WO 2010/042545 to Curry et. al (“Curry”)
USAA-1007	Thompson et al., “Using Smartphones and Wireless Mobile Sensor Networks to Detect Car Accidents and Provide Situational Awareness to Emergency Responders,” <i>Mobilware</i> 2010, LNICST 48, pp. 29–42, 2010 (“Thompson”)
USAA-1008	U.S. Pat. Publication No. 2006/0053038 to Warren et al. (“Warren”)
USAA-1009	European Pat. App. Pub. No. EP 1,914,691 to Katayama et al. (“Katayama”)
USAA-1010	U.S. Pat. No. 8,682,399 to Rabu (“Rabu”)
USAA-1011-1020 RESERVED	
USAA-1021	U.S. Pat. App. Pub. No. 2002/0105423 to Rast (“Rast”)
USAA-1022	U.S. Pat. App. Pub. No. 2009/0192705 to Golding (“Golding”)
USAA-1023	Internet Archive of iPhone User Guide

USAA-1024	Internet Archive of iPhone 3G Technical Specification
USAA-1025	Internet Archive of iPhone User Guide for iPhone and iPhone 3G
USAA-1026	Internet Archive of Instruction Sheet for iPhone 3G
USAA-1027	Zhao, Yilin, “Vehicle Location and Navigation Systems,” Artech House, Boston (1997) (“Zhao1997”)
USAA-1028	Conover, Gerald D, “ITS Technology in Automotive—Who's on First?” SAE International (2006): 1-11 (“Conover2006”)
USAA-1029	Skog, Isaac, et. al, “A versatile PC-based platform for inertial navigation,” Proceedings of the 7th Nordic Signal Processing Symposium-NORSIG 2006. IEEE, 2006 (“Skog2006”)
USAA-1030	Cheng et. al, “An Android System Design and Implementation for Telematics Services,” 2010 IEEE International Conference on Intelligent Computing and Intelligent Systems. Vol. 2. IEEE, 2010 (“Cheng2010”)
USAA-1031	Work, D. B. & Bayen, A. M. B., “Impacts of the mobile internet on transportation cyberphysical systems: traffic monitoring using smartphones,” National Workshop for Research on High-Confidence Transportation Cyber-Physical Systems: Automotive, Aviation, & Rail. 2008 (“Work2008”)
USAA-1032	Flinchbaugh, B., “Smart Camera Systems Technology Roadmap,” Real-Time Vision for Human-Computer Interaction (2005), 285-297 (“Flinchbaugh2005”)
USAA-1033	LeBlanc, David J., “Road departure crash warning system field operational test: methodology and results,” Vol. 1: Technical Report, University of Michigan, Ann Arbor, Transportation Research Institute, 2006 (“LeBlanc2006”)

- USAA-1034 Reddy, Sasank et al., “Determining transportation mode on mobile phones,” 2008 12th IEEE international symposium on wearable computers. IEEE, 2008 (“Reddy2008”)
- USAA-1035 Zhao, Yilin, “Standardization of mobile phone positioning for 3G systems,” IEEE Communications magazine 40.7 (2002): 108-116 (“Zhao2002B”)
- USAA-1036 Strömmer, Esko et al., “Ultra-low power sensors with near field communication for mobile applications,” Wireless Sensor and Actor Networks: IFIP WG 6.8 First International Conference on Wireless Sensor and Actor Networks, WSAAN’07, Albacete, Spain, September 24–26, 2007. Springer US, 2007 (“Strömmer2007”)
- USAA-1037 Schott, Christian, et al., “CMOS single-chip electronic compass with microcontroller,” IEEE Journal of Solid-State Circuits 42.12 (2007): 2923-2933 (“Schott2007”)
- USAA-1038 Liutkauskas, V. et al., “Location based services,” Elektronika ir elektrotechnika 52.3 (2004) (“Liutkauskas2004”)
- USAA-1039 Ealey, Lance & Luis Troyano-Bermúdez, “Are automobiles the next commodity?” The McKinsey Quarterly 4 (1996): 62 (“Ealey1996”)
- USAA-1040 Zhao, Yilin, “Efficient and reliable data transmission for cellular-and-GPS-based mayday systems,” Proceedings of Conference on Intelligent Transportation Systems, IEEE, 1998 (“Zhao1998B”)
- USAA-1041 Young, Richard A., “Association between embedded cellular phone calls and vehicle crashes involving airbag deployment,” Proceedings of the First International Driving Symposium on Human Factors in Driver Assessment, Training and Vehicle Design, Vol. 1. No. 2001, University of Iowa, 2001 (“Young2001”)

USAA-1042	De Fabritiis, Corrado et al., “Traffic estimation and prediction based on real time floating car data,” 2008 11th international IEEE conference on intelligent transportation systems, IEEE, 2008 (“DeFabritiis2008”)
USAA-1043	Schäfer, Ralf-Peter, et al., “A traffic information system by means of real-time floating-car data” (2002) (“Schäfer2002”)
USAA-1044	Kerner, B. S., et al., “Traffic state detection with floating car data in road networks,” Proceedings of the 8th International IEEE Conference on Intelligent Transportation Systems, 2005, (“Kerner2005”)
USAA-1045	Leduc, Guillaume, “Road traffic data: Collection methods and applications,” Working Papers on Energy, Transport and Climate Change 1.55 (2008): 1-55 (“Leduc2008”)
USAA-1046	Troncoso, Carmela, et al, “Pripayd: privacy friendly pay-as-you-drive insurance,” IEEE Transactions on Dependable and Secure Computing, Vol. 8, No. 5, October 2011 (“Troncoso2011”)
USAA-1047	RESERVED
USAA-1048	Excerpts of The New Oxford American Dictionary, Second Edition (2005)
USAA-1049	Lee, Suzanne et al., “A Comprehensive Examination of Naturalistic Lane-Changes,” DOT HS 809 702, National Highway Traffic Safety Administration (March 2004) (USAA-1049)
USAA-1050	Turner, S. & Holdener D., “Probe Vehicle Sample Sizes for Real-Time Information: The Houston Experience,” IEEE (1995)
USAA-1051	Order in <i>Auto Telematics Ltd. v. United Services Automobile Association</i> , Case No. 2025-1209 (Fed. Cir. Mar. 4, 2025)

LISTING OF CHALLENGED CLAIMS

Claim	Identifier	Claim Language
1	[1.1]	A data-logging system configured to monitor how safely a vehicle is being driven by a driver throughout a driving period and to log, during the driving period, driving information representing movement of the vehicle whilst the vehicle is being driven by the driver, the data-logging system comprising:
	[1.2]	a remote data-logging server;
	[1.3]	a mobile telecommunications device including a user interface, a processor, a memory, and a sensor set comprising at least an accelerometer and a positioning module; and
	[1.4]	an application comprising computer-executable instructions downloaded onto the memory, wherein the computer-executable instructions, when executed by the processor, cause the mobile telecommunications device to:
	[1.5]	process, using the processor, raw sensor data representing at least acceleration of the vehicle and position of the vehicle from the sensor set to generate derived driving information representing how safely the vehicle is being driven by the driver throughout the driving period,
	[1.6]	wherein the driving period is defined by a duration of a vehicle journey, and the derived driving information includes a driving score, and
	[1.7]	wherein the processing of the raw sensor data, by the processor, includes determining a driving incident occurring within the driving period by comparing the raw sensor data against at least one predetermined threshold value and detecting the driving incident when the raw sensor data exceeds the at least one predetermined threshold, the driving incident including at least one of harsh braking, harsh acceleration, harsh

Claim	Identifier	Claim Language
		swerving or a vehicle accident;
	[1.8]	generate the derived driving information without data from vehicle sensors throughout the driving period in which the mobile telecommunications device is within the vehicle and the vehicle is being driven by the driver; and
	[1.9]	transmit at least some of the derived driving information including the driving incident to the remote data-logging server,
	[1.10]	wherein the remote data-logging server is configured to log the at least some of the derived driving information received from the mobile telecommunications device
	[1.11]	[the data-logging server] comprises: a database for storing a plurality of accounts, at least one of the plurality of accounts having a unique identifier, and the database being configured to store the selection of the derived driving information transmitted from the mobile telecommunications device to the at least one account, the derived driving information being associated by the unique identifier to the vehicle and the driver; and
	[1.12]	a communications interface configured to communicate with the mobile telecommunications device and receive therefrom:
	[1.13]	the unique identifier for association of the mobile telecommunications device with the at least one of the plurality of accounts; and
	[1.14]	the at least some of the derived driving information transmitted from the mobile telecommunications device to be logged to the at least one of the plurality of accounts.
2	[2.1]	The data-logging system of claim 1, wherein execution of the computer-executable instructions by the processor further causes the mobile telecommunications device to:

Claim	Identifier	Claim Language
		store the raw sensor data relating to the driving incident; and
	[2.2]	transmit the stored raw sensor data to the remote data-logging server.
3	[3]	The data-logging system of claim 2, wherein execution of the computer-executable instructions by the processor further causes the mobile telecommunications device to store the raw sensor data generated before, during, and after the driving incident that is continuously collected, associated with the driving incident.
4	[4]	The data-logging system of claim 1, wherein execution of the computer-executable instructions by the processor further causes the mobile telecommunications device to register a start of the driving period in response to an initialization input generated automatically in response to the raw sensor data having predetermined values.
5	[5]	The data logging system of claim 1, wherein the remote data-logging server is further configured to process the derived driving information logged to the at least one of the plurality of accounts over a plurality of driving periods, including the driving period, to generate an aggregated driving score used to determine a risk profile for at least one of the vehicle and the driver.
6	[6.1]	The data logging system of claim 1, wherein the driving period comprises a plurality of portions of time throughout the driving period, and
	[6.2]	the execution of the computer executable instructions by the processor further causes the processor to select a portion of time related to the driving incident from the plurality of portions of time for transmission to the remote logging server and to reduce the amount of data transmitted by transmitting raw sensor data relating to the selected portion of time to the remote data logging server.

Claim	Identifier	Claim Language
7	[7]	The data-logging system of claim 6, wherein the driving incident, determined by the processor, is defined by a marked variation in a change of the raw sensor data over at least a portion of the plurality of portions of time during the driving period indicative of a difference in a state of motion of the vehicle occurring over the at least a portion of the plurality of portions.
8	[8]	The data-logging system of claim 7, wherein execution of the computer-executable instructions by the processor further causes the mobile telecommunications device to select, prior to transmitting the derived driving information, the raw sensor data relating to the driving incident.
9	[9]	The data-logging system of claim 8, wherein, to select the raw sensor data relating to the driving incident, execution of the computer-executable instructions by the processor further cause the mobile telecommunications device to select the raw sensor data generated before, during, and after the driving incident.
10	[10]	The data-logging system of claim 9, wherein execution of the computer-executable instructions by the processor further causes the mobile telecommunications device to transmit the selected raw sensor data to the remote data-logging server.
11	[11]	The data-logging system of claim 7, wherein the at least a portion of the plurality of portions comprises a five-minute time period.
12	[12]	The data logging system of claim 6, wherein the remote-logging server is configured to store the raw data relating to the selected portion of time related to the driving incident to the at least one account.
13	[13.1]	A data-logging system configured to monitor how safely a vehicle is being driven by a driver throughout a driving period and to log driving information representing movement of the vehicle whilst the vehicle

Claim	Identifier	Claim Language
		is being driven by the driver during the driving period, the data-logging system comprising:
	[13.2]	a remote data-logging server;
	[13.3]	a mobile telecommunications device including a user interface, a processor, a memory, and a sensor set comprising at least an accelerometer and a positioning module; and
	[13.4]	an application comprising computer-executable instructions downloaded onto the memory, wherein the computer-executable instructions, when executed by the processor, cause the mobile telecommunications device to:
	[13.5]	process, using the processor, raw sensor data from the sensor set representing at least acceleration of the vehicle and position of the vehicle, to generate derived driving information representing how safely the vehicle is being driven by the driver throughout the driving period,
	[13.6]	wherein the driving period is defined by a duration of a vehicle journey comprising a plurality of portions of time, and
	[13.7]	wherein processing of the raw sensor data, by the processor, includes determining a driving incident occurring within the driving period by comparing the raw sensor data against at least one predetermined threshold value and detecting the driving incident when the raw sensor data exceeds the at least one predetermined threshold, the driving incident including at least one of harsh breaking, harsh acceleration, harsh swerving or a vehicle accident;
	[13.8]	generate the derived driving information without data from vehicle sensors during throughout the driving period in which the mobile telecommunications device is within the vehicle and the vehicle is being driven by the driver; and

Claim	Identifier	Claim Language
	[13.9]	transmit at least some of the derived driving information including the driving incident to the remote data-logging server;
	[13.10]	wherein the remote data-logging server is configured to log at least some of the derived driving information, including the driving incident, received from the mobile telecommunications device and
	[13.11]	[the remote data-logging server] comprises: a database for storing a plurality of accounts, at least one of the plurality of accounts having a unique identifier, and the database being configured to store the selection of the derived driving information, associated by the unique identifier to the vehicle and the driver, to the at least one account; and
	[13.12]	a communications interface configured to communicate with the mobile telecommunications device, and receive therefrom:
	[13.13]	the unique identifier for association of the mobile telecommunications device with the at least one of the plurality of accounts; and
	[13.14]	the derived driving information transmitted from the mobile telecommunications device to be logged to the at least one of the plurality of accounts, and
	[13.15]	wherein the remote data-logging server is further configured to process the derived driving information logged to the at least one of the plurality of accounts to determine a risk profile for at least one of the vehicle and driver.
14	[14]	The data-logging system of claim 13, wherein the at least one driving incident is defined by an occurrence of the sensor data exceeding a predetermined value during the driving period.

Claim	Identifier	Claim Language
15	[15.1]	The data-logging system of claim 14, wherein execution of the computer-executable instructions by the processor further causes the mobile telecommunications device to: store the raw sensor data relating to the at least one driving incident; and
	[15.2]	transmit the stored raw sensor data to the remote data-logging server.
16	[16]	The data-logging system of claim 15, wherein execution of the computer-executable instructions by the processor further causes the mobile telecommunications device to store the raw sensor data generated before, during, and after the at least one driving incident.
17	[17]	The data-logging system of claim 13, wherein execution of the computer-executable instructions by the processor further causes the mobile telecommunications device to determine the at least one driving incident as a marked variation in a change of the raw sensor data over at least a portion of the plurality of portions of time during the driving period indicative of a difference in a state of motion of the vehicle occurring over the at least a portion of the plurality of portions.
18	[18]	The data-logging system of claim 17, wherein execution of the computer-executable instructions by the processor further causes the mobile telecommunications device to select, prior to transmitting the selection of the derived driving information, the raw sensor data relating to the at least one driving incident.
19	[19]	The data-logging system of claim 18, wherein to select the raw sensor data relating to the at least one driving incident, execution of the computer-executable instructions by the processor further causes the mobile telecommunications device to select the raw sensor data generated before, during, and after the at least one driving incident.

Claim	Identifier	Claim Language
20	[20]	The data-logging system of claim 19, wherein execution of the computer-executable instructions by the processor further causes the mobile telecommunications device to transmit the selected raw sensor data to the remote data-logging server.
21	[21]	The data-logging system of claim 13, wherein the sensor set further comprises an image sensor.
22	[22]	The data-logging system of claim 13, wherein the driving information further comprises one or more of velocity, direction of travel, an indication of exceeding a velocity limit, or data representing jerky steering.
23	[23]	The data-logging system of claim 13, wherein execution of the computer-executable instructions by the processor further causes the mobile telecommunications device to register the start of the driving period in response to an initialization input generated automatically in response to the raw sensor data having predetermined values.
24	[24.1]	A data-logging system configured to monitor how safely a vehicle is being driven by a driver throughout a driving period and to log driving information representing movement of the vehicle whilst the vehicle is being driven by the driver during the driving period, the data-logging system comprising:
	[24.2]	a remote data-logging server;
	[24.3]	a mobile telecommunications device including a user interface, a processor, a memory, and a sensor set comprising at least an accelerometer and a positioning module;
	[24.4]	an application comprising computer-executable instructions downloaded onto the memory, wherein the computer-executable instructions, when executed by the processor, cause the mobile telecommunications device to:

Claim	Identifier	Claim Language
	[24.5]	process, using the processor, raw sensor data from the sensor set representing at least acceleration of the vehicle and position of the vehicle, to generate derived driving information representing how safely the vehicle is being driven by the driver during throughout the driving period,
	[24.6]	wherein the driving period is defined by a duration of a vehicle journey comprising a plurality of portions of time, and
	[24.7]	wherein the driving information includes at least one driving incident, the at least one driving incident being determined by the processor establishing by an occurrence of the raw sensor data exceeding a predetermined value during the driving period, the driving incident including at least one of harsh braking, harsh acceleration, harsh swerving, or a vehicle accident;
	[24.8]	generate the derived driving information without data from vehicle sensors during throughout the driving period in which the mobile telecommunications device is within the vehicle and the vehicle is being driven by the driver;
	[24.9]	store the raw sensor data relating to the at least one driving incident; and
	[24.10]	transmit at least some of the derived driving information, including the at least one driving incident, and the stored raw sensor data corresponding to the at least one driving incident;
	[24.11]	wherein the remote data-logging server is configured to log the derived driving information and the raw sensor data received from the mobile telecommunications device and
	[24.12]	[the data-logging server] comprises: a database for storing a plurality of accounts, at least one of the plurality of accounts having a unique identifier and the

Claim	Identifier	Claim Language
		database being configured to store the at least some selection of the derived driving information associated by the unique identifier to the vehicle and the driver, and the raw sensor data, to the at least one of the plurality of accounts;
	[24.13]	a communications interface configured to communicate with the mobile telecommunications device, and receive therefrom:
	[24.14]	the unique identifier for association of the mobile telecommunications device with the at least one of the plurality of accounts; and
	[24.15]	the at least some the derived driving information and the raw sensor data to be logged to the at least one of the plurality of accounts,
	[24.16]	wherein the remote data-logging server is further configured to process the derived driving information and the raw sensor data logged to the at least one of the plurality of accounts to determine a risk profile for at least one of the vehicle and driver.
25	[25.1]	A mobile telecommunications device configured to log driving information associated with how safely a vehicle is being driven, the mobile telecommunications device comprising:
	[25.2]	a sensor set comprising at least an accelerometer and a positioning module;
	[25.3]	a processor;
	[25.4]	a memory; and
	[25.5]	an application comprising computer-executable instructions downloaded onto the memory, wherein the computer-executable instructions, when executed by the processor, cause the mobile telecommunications device to:

Claim	Identifier	Claim Language
	[25.6]	determine, based on the raw sensor data from the sensor set, a start of a driving period at which the mobile telecommunications device is within the vehicle and the vehicle is in use,
	[25.7]	wherein the driving period is defined by a duration from a start to an end of a vehicle journey and the duration is comprised of a plurality of portions of time;
	[25.8]	process, using the processor, the raw sensor data from the sensor set representing at least acceleration of the vehicle and position of the vehicle throughout the driving period to derive driving information associated with how safely the vehicle is driven by the driver, the driving information representing movement of the vehicle whilst the vehicle is being driven by the driver throughout the driving period,
	[25.9]	wherein the processing of the raw sensor data, by the processor, includes determining a driving incident occurring within the driving period by comparing the raw sensor data against at least one predetermined threshold value, and detecting the driving incident when the raw sensor data exceeds the at least one predetermined threshold, the driving incident including at least one of harsh braking, harsh acceleration, harsh swerving or a vehicle accident;
	[25.10]	wherein the driving information is derived without data from vehicle sensors throughout the driving period and wherein the selection is determined by identifying a portion of the plurality of portions of time;
	[25.11]	transmit at least some of the derived driving information including the driving incident to a remote data-logging server; and
	[25.12]	wherein the mobile telecommunications device is controlled by a downloaded application to register the start of the driving period in response to an initialization

Claim	Identifier	Claim Language
		input generated automatically in response to the sensor data having a predetermined start value.
26	[26]	The mobile telecommunications device of claim 25, wherein execution of the computer-executable instructions by the processor further causes the mobile telecommunications device to detect the end of the driving period in response to an ending input generated automatically in response to the raw sensor data having a predetermined end value.
27	[27.1]	The mobile telecommunications device of claim 25, wherein the driving period comprises a plurality of portions of time throughout the driving period, and
	[27.2]	the execution of the computer executable instructions by the processor further causes the processor to select a portion of time related to the driving incident from the plurality of portions of time for transmission to the remote logging server and to reduce the amount of data transmitted by transmitting raw sensor data relating to the selected portion of time to the remote data logging server.
28	[28]	The mobile telecommunications device of claim 25, wherein execution of the computer-executable instructions by the processor further causes the mobile telecommunications device to determine the at least one driving incident as a marked variation in a change of the raw sensor data over at least a portion of the plurality of portions of time during the driving period indicative of a difference in a state of motion of the vehicle occurring over the at least a portion of the plurality of portions.

I. INTRODUCTION

The Board has already deemed claimed subject matter recited in the subject patent (U.S. Pat. No. 12,236,728 or “the ’728 patent”) to be unpatentable in five distinct proceedings. *See* IPR2023-00518,¹ IPR2023-00768, IPR2023-00857, IPR2023-00911, IPR2024-00779 (“Prior Proceedings”). This sixth proceeding is no different because ’728 patent recites similar claim features (e.g., “driving period,” “driving information”) and the Petition applied similar prior art (e.g., Curry, Callopy) that the Board found in these five proceedings sufficient to demonstrate unpatentability.

And yet, in its Patent Owner Response (“POR”), Auto Telematics (“AT”) maintains its efforts to pursue unpatentable subject matter. These efforts rehash AT’s prior arguments from the Prior Proceedings (including those involving claim construction), which have already been addressed by the Board and are not pending appeal before the Federal Circuit. AT has also failed to address aspects of the underlying record of this proceeding in its POR, much less address the

¹ The POR exclusively references the IPR2023-00518 record, and this Reply thereby similarly addresses the Board’s findings in that proceeding. The Board has previously addressed related patents that share the same specification and claims similar features as the ’728 patent subject to this proceeding. *See* Pet., 1-2.

unfavorable analysis and conclusions offered by the Board (albeit, preliminarily) in the Institution Decision.

Instead, the POR advances implicit constructions of two terms—“driving period”² and “driving information”—to avoid the Board’s prior findings relating to the same two terms. Like it now does in the POR, AT previously attempted to construe these terms over the Curry and Callopy references in the Prior Proceedings. But the Board rejected these constructions and found the disclosures of these references sufficient to meet the requirements under their plain and ordinary meaning. *See, e.g.*, IPR2023-00518, Pap. 30 (PTAB Sept. 14, 2024) (“the ’487 FWD”), at 8-10 (addressing “driving period” and “driving information”).

The POR thereby shifts to a different phrase—“duration of a vehicle journey”—which AT now requires a different construction in the Challenged Claims. But AT’s interpretation of this phrase actually reinforces the Board’s analysis of “driving period” in the Prior Proceedings and the mappings identified in the Petition. *See* §II.A, *infra*. Notably, the Petition demonstrated satisfaction of

² The POR seeks to further narrow “driving period ” in this proceeding beyond the Board’s analysis of the same term in prior proceedings. According to AT, this is justified by a difference in claim language, namely the presence of “duration of a vehicle journey” within the Challenged Claims. *See* POR, 10-13.

the POR's framing of a "duration of a vehicle journey" based on Thompson's disclosure of using a speed filter (e.g., 15mph) to initiate a recording period for continuously monitoring sensor data for detecting accidents while a vehicle travels between two locations. *See* Pet., 32 (citing USAA-1007, 8). This is precisely what the POR suggests falls within the scope a "vehicle journey" because, as described by AT, a vehicle journey "may not commence until the vehicle has reached a movement threshold value representing at least acceleration of the vehicle and positioning of the vehicle as captured by the sensor set." POR, 16-17; *see also id.*, 13-14 (citing to specification support).

Worse, the POR's interpretations are merely attorney arguments because AT failed to substantiate its positions with expert testimony. AT thereby has no rebuttal to the Petition's prior art grounds under the claims' plain and ordinary meaning. This is particularly fatal since AT fails to produce any evidence of how a POSITA would have understood the claim language, let alone interpret them in the same way as the POR. Rather, the only expert testimony within the record evidence reflecting how a POSITA would have understood and interpreted the claim language is included in an expert declaration submitted by USAA's expert, Dr. William Michalson. *See generally* APPLE-1003. The Petition's grounds therefore stand un rebutted, and the Challenged Claims should be found unpatentable.

II. AUTO TELEMATICS SEEKS TO USE POST-ISSUANCE CONSTRUCTIONS TO AVOID THE BOARD’S FINDINGS THAT SIMILAR CLAIM LANGUAGE IS UNPATENTABLE OVER SIMILAR PRIOR ART

Despite the Petition’s articulation that no formal constructions are required in this proceeding (Pet., 6), the POR attempts to raise two constructions to avoid the Board’s findings in the Prior Proceedings. But these constructions only reinforce the Board’s findings and thereby fail to distinguish the asserted prior art even if the Board reaches these constructions. Indeed, as discussed below, the asserted prior art nonetheless satisfies the claim language under the POR’s framing.

A. The POR’s Constructions Lack Sufficient Justification And Are Met By The Asserted Prior Art Regardless

1. *“Driving Period”*

AT construes “driving period” to impose two key requirements: (1) a time period of monitoring of sensor data “throughout” a period that is more than episodic, and (2) where the time period represents a “vehicle journey” that involves travel between two different locations (as opposed to mere vehicle movement). POR, 12-16.

But no claim construction for “driving period” is necessary for resolution of this proceeding because the Petition demonstrated satisfaction of the POR’s framing. As explained in the Petition, Curry-Callopy-Thompson would have

included Thompson’s disclosed technique using a speed filter (e.g., 15mph) to initiate a continuous monitoring period during which acceleration data is collected without regard to user activity (e.g., by “looking for potential accidents above 15mph”). USAA-1007, 8 (cited in Pet., 32). And, because Thompson describes initiating the recording period once a vehicle satisfies the threshold speed, the progression of time associated with the recording period would have resulted in the vehicle moving between two locations under the POR’s framing. Further, per Thompson’s disclosure, the recording period would be terminated upon satisfaction of specified criteria (e.g., phone being unplugged). *See* USAA-1003, ¶272 (“Thompson similarly teaches configurations in which a smartphone ends a monitoring period”) (citing USAA-1007, 8). The Board therefore need not reach whether “driving period” requires construction since the asserted prior art meets the requirements under the framings in each of the Petition and the POR.

To the extent the Board reaches AT’s construction of “driving period,” the POR fails to demonstrate why such construction is warranted. AT plainly disregards the Board’s preliminary findings in this proceeding that rejected its prior attempt in its Preliminary Response to draw a meaningful distinction between “during” and “throughout.” Dec., 9. Having considered the pre-institution record (including the specification and the language used in the Challenged Claims), the Board found that “the use of ‘during’ and ‘throughout’ does not require express

interpretation as the terms ‘during’ and ‘throughout’ are synonymous.” *Id.* (citing a dictionary definition of “During” as “[t]hroughout the duration of.”). The POR does not introduce any new evidence to set aside this preliminary finding, and its attorney arguments regarding the meaning of “throughout” are not supported by any testimony.

While AT urges that the prosecution history “necessarily implicates a narrower scope,” because “‘throughout’ is more than ‘any moment in time within the driving period’” (POR, 11), the POR fails to produce evidence of clear and unambiguous disclaimer, disavowal or redefinition to support narrowing claim scope based on construction.³ *Cupp Computing AS v Trend Micro Inc.*, 53 F.4th 1376, 1383 (Fed. Cir. 2022). The POR also fails to identify any applicant statements during prosecution relating to the meaning of the “throughout,” much less a statement that the law requires to rise to the level of prosecution history

³ The term “throughout” and the phrase “vehicle journey” are absent from the textual description of the specification. *See generally* USAA-1001. Moreover, while the POR cites to paragraphs in referencing the specification (*see, e.g.*, POR, 13, citing to “’728 Patent at [0014]”), this citation format appears erroneous since the issued patent representing ’728 Patent does not have any paragraph numbering. *See* USAA-1001.

disclaimer. *See* POR, 7-8, 11-13.

Nor does the POR demonstrate evidence in the specification that represents a clear or unmistakable disavowal of a broader construction that the POR seeks to distinguish. Rather, as AT admits, the specification makes clear that usage of a threshold speed limit is encompassed by claim’s use of “vehicle journey” in relation to “driving period” terms—same interpretation applied by the Board in the prior proceedings and in the Petition in addressing the “driving period.” *See* POR, 14 (“The system checks for threshold value, as measured by the sensor data, to confirm that **this is a vehicle journey** and so recording the driving behavior is commenced”); *see also* ’487 FWD, 12 (“...we understand the [specification] to disclose the start a ‘driving period’ after a threshold velocity is reached, even though the vehicle is in operation and in use prior to reaching that velocity...”); Pet., Pet., 32 (citing USAA-1007, 8).

AT’s interpretation of “vehicle journey” is also fraught with obscurity that injects greater ambiguity (and not clarity) in the claim language. For instance, the POR’s hypothetical regarding a vehicle being moved “from a garage of a house to a parking spot on the street” (POR, 12–13) fails to define the metes and bounds of the claims because AT never explains what constitutes a “location of a vehicle” for purposes of its proposed construction. AT also appears to assume that “location” is represented by proximity to a fixed landmark (e.g., a house), but location may

also be represented by GPS coordinates—a form of data identified in the specification. *See* USAA-1001, 9:17-47 (identifying “a positioning module” that “may comprise a GPS module” and “can allow the mobile device to determine its position (and so the position of the vehicle) over time”). If a vehicle’s location is represented by GPS coordinates, then moving a vehicle from a garage to a parking spot on the street may, in fact, represent a change in location by virtue of a change in GPS coordinates. This undermines AT’s assertion that “the location of the vehicle is not changing” in this scenario. POR, 13.

AT’s hypothetical also presupposes that a “garage” is sufficiently proximate to a “parking spot on the street” such that no meaningful location change occurs, but this assumption does not define what level of location change is required to constitute a “vehicle journey.” Indeed, given the sheer number of accidents that occur leaving a driveway or parking, such a construction would also seemingly exclude the driving behavior that seemingly improve the safety sought to be addressed in the prior art as well the specification. *See, e.g.*, USAA-1001, 1:27-35; 24:49-25:63.

2. *“Driving Information”*

AT also construes “driving information” to require five aspects: (1) that it be generated from raw sensor data on the mobile device; (2) that it represents movement of the vehicle while being driven; (3) that it represent how safely the

vehicle is being driven throughout the driving period; (4) that it includes a driving score; and (5) that it involves determining a driving incident. POR, 20-22. AT further interprets this term to “exclude[]” the specific types of “driving behavioral information” described in Curry and previously addressed by the Board in IPR2023-00518. *Id.*, 22. As explained in §III, *infra*, even if the Board entertains AT’s constructions (each of which lack sufficient justification), the asserted prior art satisfies the POR’s framing regardless.

But no claim construction for “driving information” is necessary for resolution of this proceeding because the Petition demonstrated satisfaction of the POR’s framing. As explained in the Petition, Callopy-Curry-Thompson would have included Curry’s disclosed techniques of a mobile phone generating the types of information identified in the POR. This includes data reflecting speeding, abnormal acceleration, abnormal deceleration, and sharp turns (USAA-1006, 3:24-4:6), as well as a driving safety score (*id.*, 9:31-33, 11:3-14), from its own embedded accelerometer and GPS receiver, without any connection to vehicle sensors. And Thompon teaches similar types of information as further including an accident as a type of driving incident. *See* Pet., 34 (citing USAA-1007, 8-10). Thus, information derived from sensor data by Callopy-Curry-Thompson is (1) generated from measurements from an accelerometer and/or position sensor, (2) represents movement of a vehicle, (3) represents how safely the vehicle is being

driven throughout the driving period, (4) includes a driving score, and (5) involves determining a driving incident (per Thompson). *See* Pet., 31-35; USAA-1003, ¶¶152-167. And, because sensor data used to determine this information itself is limited not driving behavior, this even satisfies AT’s desire for the “driving information” to “exclude[] the driving behavioral information that was proffered by Petitioner in the IPR2023-00518 and accepted by the Board.” POR, 22.

To the extent the Board reaches AT’s construction of “driving information,” the construction is improper because the POR only includes it to support AT’s desire to ensure similar claim language recited in the Challenged Claims otherwise escapes the Board’s findings in at least IPR2023-00518.⁴ AT seeks to distinguish these findings, because they confirm what the Board already addressed in the Prior Proceedings—that Curry renders the “driving information” under its plain and ordinary meaning. *See* ’487 FWD, 32. But AT’s desire to purportedly narrow claim scope to distinguish Curry in view of the Board’s prior findings relating to its disclosure does not provide a sufficient justification for reaching a different construction on similar terms predicated upon the same specification and in view of the same prior art.

⁴ Tellingly, the POR’s entire analysis of the “driving information” term is premised on distinguishing IPR2023-00518.

The POR also mischaracterizes the Board’s findings in IPR2023-00518 in advocating for its construction. According to AT, additional language in the Challenged Claims “narrow[s] the scope” of the “driving information” term “compared to the claims under review in the IPR2023-00518 and excludes the **driving behavioral information** that was proffered by Petitioner in the IPR2023-00518 and accepted by the Board.” POR, 22. But the Board’s findings in IPR2023-00518 with respect to “driving information” was not limited only to “driving behavior information.” Rather, the Board found that “the calculation of the driving safety index or score for the user, ‘space-mean speed measure...as traveled distance divided by time interval,’ or the calculation of ‘the magnitude of acceleration/deceleration’ disclose ‘driving information’ recited in claim 1.” ’487 FWD, 32 (citing Curry, 17:1-10). Thus, the Board’s identification information other than “driving behavior information” in the context of analyzing similar claim language demonstrates that Curry satisfies AT’s proposed construction of the “driving information” in this proceeding as excluding this type of information.

III. THE ASSERTED PRIOR ART RENDERS CLAIM 1 OBVIOUS, AS CONFIRMED BY THE BOARD’S FINDINGS IN OTHER PROCEEDINGS INVOLVING RELATED PATENTS

The POR primarily addresses Curry amongst Callopy-Curry-Thompson in relation to three limitations recited in claim 1: [1.5], [1.6], and [1.8]. For [1.5], AT attempts to distinguish Curry’s derived driving information by characterizing it as

dependent on user behavior and not independently representative of driving safety. For [1.6], AT narrowly characterizes Curry's recording period as triggered only by phone calls or texts, ignoring Curry's express disclosure of automated sensor-based initiation. For [1.8], AT argues that any processing in Curry occurs at the server rather than on the mobile device. Each of these arguments fails because they mischaracterize Curry and/or the Petition, overlook teachings from other asserted prior art (such as Thompson), and are not supported by any testimonial evidence. Further, as noted above, the Board has already considered similar claim language in the Prior Proceedings and found that language unpatentable over the similar prior art teachings applied in the Petition (e.g., based on Curry and Callopy).

A. [1.5]: Callopy-Curry-Thompson Would Have Locally Processed “Sensor Data” On A Mobile Phone To Derive “Driving Information”

Callopy-Curry-Thompson satisfies [1.5] through disclosures in each reference reflecting local processing of sensor data (e.g., acceleration data, position data) to generate information representing how safely the vehicle is being driven. Pet., 20 (citing USAA-1006, 3:24-4:6, 7:5-29; USAA-1005, [0307], [0320]; USAA-1007, 5). Examples of such information include derived information described in Curry, such as “speeding, abnormal acceleration, abnormal deceleration, and taking sharp turns” and a “driver safety statistic,” which may be “reported to” a data server.” *Id.*, See USAA-1005, 3:24-4:6; see USAA-1003,

¶¶126-28.

The POR fails to rebut these mappings and focuses instead on distinguishing over specific examples of the information identified in the Petition. *See* POR, 53-57. AT’s characterization of Curry’s data representing “text...or texting...while driving” not representing the recited “driving information” is largely inconsequential because the Petition identified other examples of information that otherwise relates to vehicle movement, such as Curry’s “speeding, abnormal acceleration, abnormal deceleration, and taking sharp turns.” This reflects derived data and not driving actions separate from driving. Pet., 20, 28; *see* USAA-1003, ¶¶142-151.

AT also concedes that Curry’s “speeding, abnormal acceleration, abnormal deceleration, and taking sharp turns” reflects vehicle movement, since its principal distinction over this type of information is *where* the information is processed. And, according to AT, processing of that information (information stored in Curry’s local motion data cache) is “carried out *at the data server*.” *See* POR, 54-57. This is a similar interpretation of Curry that AT unsuccessfully advocated for in IPR2023-00518 and the Board already rejected and resolved in the FWD of that proceeding. There, the Board found “we do not agree with Patent Owner that Curry is limited to post-processing of sensor data because Curry’s express disclosure contradicts Patent Owner’s position, indicating that Curry’s

determination of activity mode can occur in real-time.” ’487 FWD, 32. The Board reached this finding based on evaluation of several types of teachings across Curry’s disclosure that similarly contracts AT’s position in this proceeding. *See id.*, 27-33 (citing Curry, 5:7-15, 7:13-15, 9:31-33, 13:20-33, 14:5-8, 16:23-33, 17:2-13, FIGS. 3, 5). Thus, contrary to the POR, Board has already found that Curry discloses processing of data stored in motion data cache (including speeding, abnormal acceleration, abnormal deceleration, taking sharp turns) such that its process is not limited to a data server.

The Board’s analysis of Curry in IPR2023-00518 is further reinforced by other aspects of Curry’s disclosure and record evidence in this proceeding. For instance, Curry describes “sensors embedded in mobile phones” are used to track “location, speed, and acceleration data of a driver[,]” and further, that “[t]he communication links in the mobile phone can be used to [transmit] driving safety performance data to a central data server.” USAA-1006, 11:15–25. For instance, Dr. Michalson explains that a POSITA would have understood and found obvious that examples of information stored locally are also processed locally because of the various examples contemplated in Curry’s disclosure. *See* USAA-1003, ¶¶148-151.

AT’s assertion the Curry’s “driver safety statistic” is not “driving information” because it “always in combination with the user interaction with the

wireless device” fails to find a basis in the claim language. POR, 55-56. As the AT’s construction of “driving information” confirms, there is no claim language suggesting that the “driving information” necessarily excludes “user interaction.” Thus, even if AT’s characterization of Curry’s “driver safety statistic” being associated with “user information” is given credence, there is no negative limitation within any of the Challenged Claims supporting AT’s interpretation that the recited “driving information” necessarily excludes information associated with user interaction. In any event, under obviousness, AT’s assertion of the “lack of independence” between motion data and user interaction data is at odds with other disclosure in Curry expressly teaching that motion data “may be collected in periods other than when phone calls are answered or made”—disclosure that AT itself highlights earlier within the same paragraph on page 56. POR, 56.

B. [1.6]: Callopy-Curry-Thompson Would Have Determined A “Driving Period” That Is “Defined By A Duration Of A Vehicle Journey” Through Thompson’s Disclosed Use Of A Predetermined Threshold

Callopy-Curry-Thompson satisfies [1.6] through a recording period (“driving period”), where the recording period is defined by a time duration associated with vehicle travel (“duration of a vehicle journey”) based on vehicle speed satisfying a predetermined threshold and persisting until exit conditions are met (as taught in Thompson), and further, (ii) disclosures in Curry and Callopy describing examples of driving scores. Pet., 31 (citing USAA-1005, [0307],

USAA-1006, 13:20-26, USAA-1007, 8).

Despite Petition's application of each of Thompson, Curry, and Callopy to [1.8], AT's responsive arguments for this limitation are entirely focused on Curry. *See* POR, 58-59. AT makes no attempt to address Thompson's disclosures relating to using a speed threshold to start a recording period, which, as previously discussed in §II.A.1, demonstrate satisfaction of even the POR's framing of "driving information" and "vehicle journey." This failure leaves the Petition's analysis of Thompson to [1.6] un rebutted, and any contention addressing these mappings in the Sur-Reply for the "duration of a vehicle journey" element would be impermissibly late.

Along the same lines, AT's broad assertion that "Curry is a different type of monitoring device that has no association with a duration of a vehicle journey" is irrelevant. As noted above, the Petition relied on Thompson to address the "duration of a vehicle journey" element. *See* Pet., 32. This is further supported by testimony from Dr. Michalson that "smartphone configurations for using sensor data in relation to starting and terminating driving-related monitoring periods were well-known by the Critical Date." USAA-1003, ¶272 (cited in Pet., 31); *see also id.*, ¶¶273-274.

C. [1.8]: Callopy-Curry-Thompson Would Have Determined "Driving Information" Using Sensors Available On A Mobile Device "Without Data From Vehicle Sensors"

Callopy-Curry-Thompson satisfies [1.8] through disclosures in Curry and Callopy of generating driving information using embedded sensors (e.g., accelerometer, GPS receiver) of mobile devices without any connection to vehicle sensors. Pet., 35 (citing USAA-1005, [0308], [0323]-[0324], [0330], [0333]-[0334], [0342], [0346], [0388], USAA-1006, 3:24-4:6, 7:5-29); USAA-1003, ¶¶168-70.

AT ignores the Petition’s mapping to Curry and instead primarily focuses on Callopy. This avoidance is unsurprising, since the Board previously found in IPR2023-00518 that Curry’s disclosure is sufficient to satisfy near-identical claim language in the related ’487 patent. *See* 487 ’FWD, 50-51. There, the Board credited testimony from Dr. Michalson that “‘a POSITA would have understood there to be no need to use data from vehicle sensors to derive Curry’s driving information because its phone includes all of the necessary sensors, processing, and memory to derive the driving information.’” *Id.*, 51 (citing expert testimony). Dr. Michalson similarly testified in this proceeding that “Given that the CCT phone includes requisite sensing and processing capabilities to generate the derived driving information, a POSITA would have understood and found obvious that the information may be generated without reliance on vehicle sensors.” USAA-1003, ¶169.

AT's broad assertion that Callopy's system requires use of on-board monitoring system 4025 and/or on-board data system 4130 is overly restrictive. In addressing [1.8], the POR primarily focuses on implementation details in the textual description of Callopy's paragraph [0325]. POR, 59-62. But the POR fails to address a POSITA's understanding of this textual description in the context of obviousness. In contrast, the Petition's analysis relied on obviousness in light of Callopy's written description since "a POSITA would have understood and found obvious that [driving information within the combination] may be generated without reliance on vehicle sensors" because "the CCT phone includes requisite sensing and processing capabilities to generate the derived driving information..." *See* Pet., 35 (citing USAA-1003, ¶169). Dr. Michalson's testimony substantiates this position since a POSITA would have recognized that "[t]o the extent that Callopy discusses vehicle sensors with respect to Figures 40-42, it describes permissive, not mandatory, language. *See* USAA-1003, ¶169 (citing USAA-1005, [0325]-[0326]). And, because the POR's analysis of Callopy's paragraph [0325] is merely attorney argument, the record evidence supports the Petition's application of the disclosure in addressing [1.8] under obviousness based on testimony from Dr. Michalson.

IV. THE ASSERTED PRIOR ART ALSO RENDERS CLAIMS 2, 4, 25, AND 26 OBVIOUS

AT's patentability arguments for claims 2, 4, 25, and 26 are each defective in two ways. First, each section is largely duplicative of the purported distinctions the POR raises in connection with the corresponding limitations of Claim 1—specifically [1.5], [1.6], and [1.8]. For claim 2, POR largely repackage its [1.5] contentions regarding Curry's server-side processing and the scope of "driving information." The arguments for claim 4 re-apply the interpretation of "vehicle journey" advanced in addressing [1.6]. The arguments for claim 25 re-focus contentions regarding on-device processing of raw sensor data. Finally, as to claim 26, the POR does little more than restating the same purported distinctions raised in connection with [1.5] and [1.6]. Because arguments for these dependent claims rise and fall with its arguments for the corresponding claim 1 limitations, they fail to rebut the Petition for the reasons set forth above.

Each of these sections further mischaracterize the Petition by selectively focusing on certain aspects of its prior art mapping while refusing to engage with others. In each instance, the POR directs its analysis exclusively at Curry's disclosure while entirely overlooking mappings to Thompson—mappings that squarely address the very limitations the POR contends are not met. This selective treatment does not discharge AT's burden of rebuttal, and its silence on

Thompson's contributions to each of these dependent claim limitations reflects its tacit acknowledgement that the combination of teachings satisfies the claim requirements.

More specifically, as to claim 2, the POR largely repackages of its [1.5] contentions that Curry's processing is server-side and that its outputs do not reflect the "driving information." POR at 62-64. But this analysis is primarily focused on Curry, and in doing so, overlooks mapping to Thompson that the Petition identified as discloses local storage and transmission of sensor data on a smartphone. *See* Pet., 44-45 (citing USAA-1007, 2, 9); *see also* USAA-1003, ¶¶188-190. The POR also overlooks Curry's disclosure of a "driving safety data" being "recorded in mobile phones and then transmitted to a centrally managed data server through wireless communication links." USAA-1006, 7:8-10; *see also* '487 FWD, 49 (citing the same).

As to claim 4, the POR reiterates its interpretation of "vehicle journey" in its [1.6] contentions and suggests that Curry's call/text-based triggering mechanism "has no relation to the start of a vehicle journey" and therefore cannot satisfy Claim 4. POR, 64. But this analysis focuses exclusively on Curry, and in doing so, overlooks the Petition's mapping to Thompson, which the Petition relied upon to address claim 4's initialization requirement. *See* Pet., 46-47 (citing USAA-1007, 8) ("In Thompson, a smartphone is configured to initiate recording of sensor

data once a vehicle speed is ‘above 15 mph.’”).

As to claim 25, the POR recycles its [1.5] and [1.6] contentions focused on-device processing of raw sensor data to generate derived driving information representing how safely a vehicle is being driven throughout a driving period.

POR, 65-66. The POR's central assertion—that “[t]here is no processing of raw data on the Thompson device” ignores Thompson’s disclosure that its smartphone processes accelerometer data on-device by comparing sensor values against a threshold (e.g., 4g) to detect accident events, and uses GPS-based speed data to initiate recording above 15mph. USAA-1007, 2, 8-10; *see also* USAA-1003, ¶¶161-62. The POR also overlooks the Petition’s mapping of Thompson’s speed-threshold-based initiation of recording to [25.6] and [25.12]. Pet., 73-75.

The POR’s arguments against claim 26 amount to little more than a restatement of the same purported distinctions raised in connection with [1.5] and [1.6]. POR, 67. Here, the POR advances a conclusory allegation that claim 26 “is not disclosed in any of the cited prior art,” and that the Petition “fails to address any of these shortcomings.” *Id.* But this ignores the Petition’s identification of Curry’s “activity recognition module” being configured to “identify when a user is substantially stationary” and to detect a change in activity mode “from driving to fully stop” using acceleration data from the accelerometer. Petition, 75-76 (citing USAA-1006, 4:12-15; 16:7-22). The Petition further noted that Thompson teaches

configurations in which a smartphone ends a monitoring period, and that smartphone configurations for terminating driving-related monitoring periods based on sensor data were well-known by the Critical Date. *Id.*, 76 (citing USAA-1007, 8; USAA-1010, 11:21-40).

V. THE PETITION ESTABLISHES A MOTIVATION TO COMBINE CALLOPY, CURRY, AND THOMPSON

AT seeks to criticize the Petition’s motivation to combine Callopy, Curry, and Thompson in various ways, including (1) that the CCT phone would be too complex to implement (POR, 43-46), (2) that Callopy’s silence on implementation detail is intentional rather than a gap to be filled (*id.*, 46-48), (3) that Callopy already discloses safety metrics, making Curry redundant (*id.*, 47-48), and (4) the references have “[d]iverging [d]isclosures” rendering them technically incompatible (*id.*, 48-53).

Each of these criticisms ignore the multiple rationales for combining Callopy, Curry, and Thompson identified in the Petition. *See* Pet., 11-18. These rationales are grounded in the teachings of each reference and supported by expert testimony explaining how those teachings would have been understood by a POSITA around the Critical Date. *See* Pet., 11-18; USAA-1003, ¶¶100-123. For example, because Callopy “broadly describes its system as using ‘various analytical methods’ to ‘facilitate determination of an appropriate insurance rate’”

but “does not provide specific implementation detail on how the rate is calculated,” a POSITA would have been motivated to consult Curry, which “describes well-known insurance rate calculation techniques through use of scoring to reflect risk factor assessment of driving-related information captured by mobile device sensors.” Pet., 11 (citing USAA-1003, ¶100). Dr. Michalson further explains that this motivation is reinforced by the “alignment of purpose” between the references. The data already collected in Callopy’s system “is precisely the type of information that Curry’s algorithms were designed to process,” such that “the combination would be technically operable.” USAA-1003, ¶110.

In contrast, AT’s criticisms are unsupported by any third-party evidence. It could have also deposed Dr. Michalson but chose not to. It also opted not to support its criticisms with any independent expert testimony. These arguments therefore rest entirely on attorney argument, not substantial evidence. *Icon Health & Fitness, Inc. v. Strava, Inc.*, 849 F.3d 1034, 1043 (Fed. Cir. 2017) (“Attorney argument is not evidence.”). The POR’s arguments are not supported by *any* testimony, so they lack any evidentiary basis, let alone one that rises to the level of substantial evidence.

Evidentiary defects aside, AT’s criticisms overlook the importance of predictability under the obviousness framework. Under *KSR*, the “[t]he combination of familiar elements according to known methods is likely to be

obvious when it does no more than **yield predictable results.**” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 417 (2007). Record evidence demonstrates predictable results since “[b]oth Callopy and Curry employ similar sensor configurations within standard mobile devices[,]” and “[b]oth systems also utilize accelerometers and GPS receivers housed within smartphones to capture driving behavior data” such that the combination may be implemented “without requiring any modification to the underlying hardware platform[,]” which “represents a significant technical compatibility that would have provided confidence in the viability of the combination.” USAA-1003, ¶108.

AT’s criticisms also improperly demand bodily incorporation of every feature of each reference. “The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference.” *In re Keller*, 642 F.2d 413, 425 (CCPA 1981). “Rather, the test is what the combined teachings of those references would have suggested to those of ordinary skill in the art.” *Id.* When AT focuses on specific aspects of the references, it misapplies the legal standard for obviousness.

The logic underlying AT’s criticisms also lacks technical merit. For example, while AT urges the combination as being too complex (POR, 43-46), this assertion is rebutted by record evidence explaining “implementation of the CCT phone may be achieved without any changes to its underlying hardware.” USAA-

1003, ¶¶106, 119. Similarly, AT’s suggestion that “there would be no need to turn to Curry” because of the “well-known” nature of techniques employed in the combination ignores the improvements imparted by Curry’s specific teachings relating to scoring methodology, risk factor assessment framework, or driving behavior evaluation technique. *See* USAA-1003 (identifying improvements to Callopy provided by Curry’s teachings). In any event, as previously noted, because they represent attorney argument, these and other characterizations of the prior art are speculative at best, and unsupported by substantial evidence.

AT’s focus on Callopy and Curry having “[d]iverging disclosures” also fail to rebut obviousness regarding their combinability. POR, 48-51. AT’s own presentation confirms why. In addressing this topic, AT does not argue that Callopy and Curry constitute non-analogous prior art. Nor does it identify any teaching in either reference that “criticizes, discredits, or otherwise discourages” the manner in which the Petition proposes incorporating Curry’s sensor-based processing architecture and scoring methodology into the Callopy system. *See In re Gurley*, 27 F.3d 551, 553 (Fed. Cir. 1994). It also fails to identify any inoperability resulting from the proposed combination. These omissions reveal that even AT recognizes that mere divergence in objectives amongst prior art references does not foreclose a motivation to combine under the *KSR* framework. “Rather, the test is what the combined teachings of those references would have

suggested to those of ordinary skill in the art.” *Id.*

Finally, AT’s hindsight allegations fare no better. *See* POR, 3-4, 45. “[A]ny judgment on obviousness is in a sense necessarily a reconstruction based on hindsight reasoning, but so long as it takes into account only knowledge which was within the level of ordinary skill in the art at the time the claimed invention was made and does not include knowledge gleaned only from applicant's disclosure, such a reconstruction is proper.” *In re McLaughlin*, 443 F.2d 1392, 1395 (CCPA 1971). Each rationale for combining Callopy, Curry, and Thompson is grounded in the independent teachings of those references as they would have been understood by a POSITA—not in any feature unique to the challenged claims. *See* Pet., 11-18; USAA-1003, ¶¶100-123. AT also fails to identify a specific instance in which the Petition relied on the ’728 patent as a roadmap for the combination.

VI. THE BOARD HAS ALREADY ADDRESSED THE POR’S DISCUSSION OF PREVIOUSLY-CITED PRIOR ART

AT also devotes roughly 18 pages in its POR to framing a purported overlap between Callopy and Collopy that ultimately has no bearing on the Board’s Final Written Decision (FWD). *See* POR, 22-40. The Board’s authority to complete *inter partes* review is not defeated by the fact that a petitioner's prior art reference shares disclosure with a reference previously considered during prosecution. The proper vehicle for such a challenge is a § 325(d) argument—a discretionary denial

framework that AT conspicuously declined to invoke prior to institution. Having waived that argument, AT now seeks a functional equivalent of § 325(d) relief by repackaging the same contentions as a substantive challenge to the merits of the Petition's grounds.

Setting aside the procedural deficiency, AT's position mischaracterizes both the Petition and Callopy. The Petition does not rely on merely on Callopy to address unpatentability of the Challenged Claims. Rather, the Petition applies Callopy in combination with Curry and Thompson to demonstrate obviousness based on the combined teachings of their disclosures, as supported by expert testimony. *See* §III.A-C, *infra*. The Examiner's allowance of the Challenged Claims over Callopy—despite any overlap with Callopy—does not itself establish a basis to set aside the challenges set forth in the Petition based on Callopy applied in combination with Curry and Thompson—challenges the Examiner did not each in original examination because Thompson was never cited in original examination.

AT also misleadingly contends that the Petition “repeatedly misrepresents” Callopy's disclosure in [0307]. POR, 36. The POR incorrectly asserts that the Petition relied on this paragraph alone to support the general proposition that Callopy's mobile device 4005 performs certain functions that, according to AT, are attributable to on-board monitoring system 4025. Beyond this paragraph, the

Petition also cited to disclosure in other paragraphs, such as [0323], which describes that “the GPS 4110 and the accelerometer 4120 *can be located in the mobile device*” as the basis for the proposition that Callopy's mobile device 4005 itself houses the sensors used to generate driving information. Pet., 35 (citing USAA-1005, [0308], [0323]-[0324], [0330], [0333]-[0334], [0342], [0346], [0388]). Moreover, unlike the POR’s interpretation of [0307], the Petition’s interpretation of this paragraph as representing functional disclosure relating to the mobile device 4005 is supported by expert testimony. USAA-1003, ¶130, 142, 154 (explaining that Callopy suggests that “its mobile device 4005 monitors a variety of driver information”).

VII. CONCLUSION

For the foregoing reasons, USAA respectfully requests a final written decision finding the Challenged Claims unpatentable.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §42.6(e), the undersigned certifies that on April 29, 2026 a complete and entire copy of this Petitioner's Reply to Patent Owner's Response was provided via email to the Patent Owner by serving the correspondence email address of record as follows:

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