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Transcript of Hearing

Date: April 26, 2023

Case: Netflix Inc. and Hulu, LLC -v- DivX, LLC (PTAB)

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WORLDWIDE COURT REPORTING & LITIGATION TECHNOLOGY

Transcript of Hearing
Conducted on April 26, 2023

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1 UNITED STATES PATENT AND TRADEMARK OFFICE 2 BEFORE THE PATENT TRIAL AND APPEAL BOARD 3 4 -----x 5 NETFLIX, INC., and HULU, LLC, : 6 Petitioners, : 7 vs. : IPR 2020-00558 8 DIVX, LLC, : 9 Patent Owner. : 10 -----x 11 12 13 14 15 HEARING 16 Conducted Telephonically 17 Wednesday, April 26, 2023 18 10:00 A.M. PDT 19 20 21 22 23 Job No.: 490550 24 Pages: 1-29 25 Reported by: Crystal Hereford, RPR	1 A P P E A R A N C E S 2 3 ADMINISTRATIVE PATENT JUDGES: 4 KEVIN V. TURNER 5 BART A. GERSTENBLITH 6 IFTIKHAR AHMED 7 8 ON BEHALF OF PETITIONERS: 9 HARPER BATTS, ESQ. 10 JEFFREY LIANG, ESQ. 11 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP 12 1540 El Camino Real 13 Suite 120 14 Menlo Park, California 94025 15 650.815.2600 16 17 ON BEHALF OF PATENT OWNER: 18 PARHAM HENDIFAR, ESQ. 19 KENNETH J. WEATHERWAX, ESQ. 20 LOWENSTEIN & WEATHERWAX LLP 21 1016 Pico Boulevard 22 Santa Monica, California 90405 23 310.307.4500 24 25
1 HEARING, in re: IPR 2020-00558, conducted 2 telephonically. 3 4 5 Pursuant to notice, before 6 CRYSTAL HEREFORD, Registered Professional 7 Reporter, Certificate No. 30819; California 8 Certified Reporter, Certificate No. 14416; and 9 Arizona Certified Shorthand Reporter, 10 Certificate No. 50893. 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	1 P R O C E E D I N G S 2 JUDGE TURNER: Good afternoon. This is 3 Judge Kevin Turner. I have on the line with me 4 Judge Ahmed and Judge Gerstenblith. 5 I'd like to start off with a roll call of 6 the parties who are on the line, starting with who 7 we have on the line for Petitioner, please. 8 MR. BATTS: Yes, Your Honor. This is 9 Harper Batts on behalf of Petitioner Netflix, and 10 with me on the line today is Jeffrey Liang as 11 well. 12 JUDGE TURNER: Okay. And for Patent 13 Owner, please. 14 MR. HENDIFAR: Good morning, Your Honor. 15 Parham Hendifar for Patent Owner. I am also on 16 the line with counsel Mr. Kenneth Weatherwax. 17 JUDGE TURNER: Okay. Thank you both. 18 I wanted -- we're in receipt of a 19 response to our email regarding how to proceed 20 with the remanded proceedings. I think that the 21 panel felt that it was probably proper to talk to 22 both parties since there seemed to be a 23 disagreement on length of briefing and also on 24 whether additional arguments may be made. 25 I'm going to go ahead and start off with

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5 1 Petitioner, and I think we -- we're in receipt, 2 but please tell us why you think the briefing and 3 your proposed schedule makes the most sense, 4 please. 5 MR. HENDIFAR: I apologize for 6 interrupting, Your Honor. We have a court 7 reporter that we ordered. I just want to make 8 sure the court reporter is also on the line. This 9 is Parham Hendifar for Patent Owner. 10 THE REPORTER: Yes. I was just going to 11 interrupt and introduce myself. 12 This is Crystal Hereford. I'm with 13 Planet Depos. 14 JUDGE TURNER: Okay. Thank you. I 15 should have asked. 16 But let me also check before we proceed. 17 Patent Owner, you'll be providing a copy of this 18 transcript included in the record, I assume. Yes? 19 MR. HENDIFAR: Yes, of course. 20 JUDGE TURNER: I know you say "of 21 course," but I always want to make sure. 22 MR. HENDIFAR: I meant -- yes. 23 JUDGE TURNER: No, that's fine. 24 So I'm going to go back -- thank you very 25 much for listing that.	7 1 we still have some obviousness issues that remain 2 with respect to Patent Owner's arguments regarding 3 Claim 1, I guess, Limitation 1-L, as well as the 4 common key limitations. 5 So I can give a few different examples. 6 I'm not aware of any remand briefing that's been 7 under five pages, let alone three pages. 8 Actually, all of the stuff that I've seen has been 9 usually 10 to 12 to 15 pages, where each side gets 10 10 to 15 pages of briefing. So, for example, 11 IPR 2020-0028 [sic], there was 15 pages of 12 briefing per side. IPR 2019-00728, it was 13 12 pages of briefing per side. IPR 2019-00610, it 14 was 10 pages per side. 15 I can give other cites, if you'd like, 16 Your Honors, but I think it's sufficient to say 17 double -- you know, double-digit briefing per side 18 in a remand proceeding is something that's 19 typically granted, and it seems appropriate here 20 for the issues that remain. 21 And then in terms of DivX's statement in 22 the email that they did not want us to present 23 any -- present, further develop, or otherwise 24 amend arguments, it really wasn't clear to us when 25 we asked them for clarification of what they mean.
6 1 And I'm going to go back to Petitioner. 2 And, Petitioner, the panel would like to hear the 3 rationale for the briefing schedule you propose, 4 please. 5 MR. BATTIS: Sure, Your Honor. And I 6 guess to start off things, we had also ordered a 7 court reporter. So I guess our court reporter can 8 just drop off. Sorry for the overlapping 9 confusion on that. 10 I think I would start off with saying I 11 do think there are a few agreements that the 12 parties did reach. I think, similar to the 651 13 remand, IPR 2020-00052, I think the parties had 14 agreed on a joint briefing approach here similar 15 to other remand proceedings. I don't know that 16 Patent Owner disagreed with our scheduling -- 17 like, our proposed schedule, so I'll leave that to 18 them. So I think really the only issue where we 19 had true disagreement was the number of pages for 20 the briefing. 21 And I guess our view as Petitioner is 22 that the federal circuit addressed that there 23 needed to be a reanalysis of the reasonable 24 expectation of success that was the subject of the 25 final written decision. And in addition to that,	8 1 I think similar to the prior remand proceedings, 2 Netflix agrees that we will not make new 3 arguments, and we will not submit new evidence, 4 and we stand by those same positions for this 5 remand proceeding. 6 JUDGE TURNER: Okay. Thank you, 7 Mr. Battis. 8 So let's go ahead and proceed to Patent 9 Owner, the rationale for the shorter briefing and 10 the rationale for -- about additional arguments, 11 please. 12 MR. HENDIFAR: Yes. Thank you, 13 Your Honor. 14 So the federal circuit mandate is a very 15 simple one in this case. The final written 16 decision based its ruling on combining Chen's, 17 quote, embodiment with Lindahl, whereas the 18 federal circuit, Petitioner relied on Chen's, 19 quote, teachings, which may or may not necessarily 20 include Chen's embodiments, together with a 21 discussion of prior art. That was all the federal 22 circuit held. Everything else has already been 23 briefed for Your Honors in our POR that applied at 24 the time of the petition. 25 So this is not a case where the federal

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9 1 circuit has fundamentally changed any aspect of 2 it. The ruling was very, very limited. So we 3 submit that three pages is more than sufficient 4 for the parties to address the very limited scope 5 of remand. 6 With respect -- I also want to highlight 7 that even in the prior IPRs between the parties, 8 which my colleague pointed out, IPR 2020-00052, 9 where Judge Apnick (phonetic) was the presiding, 10 I believe, judge, the joint briefing was only six 11 pages per side. And that case was even more 12 complicated than the current one. So we oppose 13 the notion of a multi- or two-digit briefing. 14 And our primary concern is -- before the 15 federal circuit, Petitioners did attempt to expand 16 their analysis of the arguments with analysis that 17 was never presented before the board. The federal 18 circuit didn't have to reach any of those issues. 19 But I understand my colleague's statement 20 that they did not raise new arguments. That 21 wouldn't preclude them from providing additional 22 analysis of the existing arguments where the 23 additional analysis was not before the board, and 24 10, 12, those types of numbers of pages, will open 25 a can of worms for all the new issues that may	11 1 enough to clarify and maybe point me to which 2 topics you have in mind, I would be very happy to 3 address that. 4 JUDGE TURNER: Sure. I'm more than happy 5 to. 6 I think that if I -- and probably, 7 you know, a reasonable reading of the briefing 8 that -- at least Petitioner's reaction -- seemed 9 to be that Patent Owner was raising about whether 10 there was actual motivation to combine the 11 references in addition to the reasonable 12 expectation of success. So if I look at what 13 Patent Owner wrote in terms of what Patent Owner 14 was arguing at the federal circuit and 15 Petitioner's responsive briefing, it certainly 16 appears that that's an issue. 17 I understand that -- what, I guess, the 18 panel finds curious is one would think that Patent 19 Owner would want to have those additional 20 arguments raised below, because they were 21 potentially raised on appeal, and now Patent Owner 22 is saying, Well, we really want to confine the 23 issues really to, you know, anything that has only 24 been previously made, even though those were made 25 below as well, I think. So I think we're trying
10 1 come in and would not be within the scope of the 2 mandate. And that's primarily our concern. 3 But essentially, we believe the scope of 4 the mandate is so narrow that three pages or so 5 should suffice. 6 JUDGE TURNER: Okay. Thank you, 7 Mr. Hendifar. 8 Let me just redirect -- and this is, 9 again, to Patent Owner's counsel, Mr. Hendifar. 10 It seems from, you know -- the panel is 11 reviewing the briefing at the federal circuit. It 12 seemed like Patent Owner raised additional issues 13 there, and now you don't want to raise -- have any 14 additional issues raised. So if you can maybe 15 comment on that. It at least seems curious. 16 MR. HENDIFAR: I am not quite sure I 17 understand Your Honors' question. I don't believe 18 Patent Owner did raise new arguments before the 19 federal circuit. We responded to arguments that 20 were raised by Petitioner that were new, and we 21 pointed out that these are new analysis but we are 22 responding to it. 23 But being the respondent for -- because 24 we did not proactively raise any new arguments as 25 far as I'm aware, but if Your Honor would be kind	12 1 to tease out and understand that rationale from 2 Patent Owner's counsel. 3 MR. HENDIFAR: Understood. 4 So if Your Honors, for example, were to 5 look at our Patent Owner response, page 3, we did 6 have an entire section devoted to, and according 7 to title of the section, for multiple reasons the 8 petition fails to establish the motivation to 9 combine Lindahl's partial frame encryption with 10 Chen as a matter of law. And there was six to 11 seven pages discussing that. 12 So even though -- I think -- I am not -- 13 actually believe that we raised a new argument on 14 appeal, but the argument that there is no 15 motivation to combine the references was fully 16 briefed by Patent Owner in its POR. 17 I think the issue that I understood 18 Petitioner raised on appeal was that Petitioner 19 argued that the final written decision made no 20 finding on the motivation to combine, and both -- 21 and the federal circuit doesn't appear it's 22 inclined to agree with us on that point. So I 23 understand the issue was whether the final written 24 decision had found the motivation to combine, not 25 whether Patent Owner had raised that issue before

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13 1 the court for review. Because we have. It's in 2 our POR. 3 JUDGE TURNER: Okay. 4 MR. HENDIFAR: But the other issue is -- 5 I'm sorry. 6 The other issue is -- 7 JUDGE TURNER: No -- 8 MR. HENDIFAR: -- the argument -- I'm 9 sorry. I didn't mean to interrupt. Let me know 10 if I can continue. 11 JUDGE TURNER: No, no. I was asking you 12 to continue. I'm sorry. Please, go ahead, Mr. -- 13 MR. HENDIFAR: Thank you. 14 And the other issue is we don't have any 15 opportunity to produce evidence for any new 16 arguments to be made. But furthermore, because 17 this is a joint brief, we essentially have to 18 guess what new arguments may be raised by the 19 other side and proactively respond to it, which is 20 inefficient, unfair, and it would cause conflict. 21 So for those additional reasons, we do 22 believe that new arguments should not be 23 permitted. And that's our position. 24 JUDGE TURNER: Okay. Thank you. 25 And let me go back to Mr. Batts for any	15 1 Petitioner. So I guess -- I really don't 2 understand how they can be contending somehow that 3 we're arguing that there wasn't a motivation to 4 combine finding. 5 On reasonable expectation of success, 6 they can always say that that issue is now moot in 7 light of the federal circuit's decision, but I 8 don't hear them saying that. So I think we still 9 have to do some briefing on reasonable expectation 10 of success. 11 And then we still have those other 12 arguments that I noted that need to be still 13 decided by the board in the remand final written 14 decision that were raised by DivX but not 15 addressed in the first final written statement. 16 They're not really the thrust of the first final 17 written decision. 18 And I think our proposal is exactly what 19 was done in the prior remand, that we simply 20 explained where we had addressed the remaining 21 arguments in our prior briefing and then, 22 you know, basically provided citations. And I 23 think we can still do that here. We just need 24 more pages, given the number of issues that 25 remain.
14 1 response that you might have, please. 2 MR. BATTIS: Sure. I guess as an initial 3 matter, DivX didn't point to any support for 4 limiting the briefing here on remand at three 5 pages per side. It seems like they're just trying 6 to get the panel to split kind of the proposals 7 from between 3 and 12 and trying to reach back to 8 6 pages from the prior remand. 9 But I think, you know, if you look back 10 at the prior remand proceedings, the board's -- 11 the federal circuit's guidance on the construction 12 of level of detail left limited issues remaining 13 there about the selection limitations and 14 secondary considerations. So we thought six pages 15 was adequate. The parties agreed to that. Here 16 there is an actual dispute about the amount of 17 pages that are necessary to address the remaining 18 issues in this proceeding. 19 I'm kind of confused by Patent Owner's 20 position on motivation to combine. I certainly 21 think -- we never took a position at the appeal -- 22 at appeal level that motivation to combine wasn't 23 shown, and certainly, the federal circuit noted 24 that the final written decision said that 25 motivation to combine was adequately shown by	16 1 And then I guess the last point is I 2 think we have to -- I don't think the board -- I 3 mean, as a matter of law, I don't think it makes 4 any sense that we can't address -- both sides, as 5 well as the board, need to address what was 6 given -- the explanation and analysis provided by 7 the federal circuit. So to the extent the federal 8 circuit says you have to address the -- if you're 9 going to go back to looking at these questions of, 10 like, reasonable expectation of success or 11 motivation to combine, you have to address the 12 Chen-924 reference. 13 Well, I don't think we can somehow say 14 that that's a new argument that can't be addressed 15 when the federal circuit specifically gave a 16 mandate that that needed to be addressed. And I 17 guess I understood DivX to try to be arguing 18 something to the contrary, which just -- would be 19 inappropriate. 20 JUDGE TURNER: Okay. Thank you very 21 much. 22 Any rebuttal, Mr. Hendifar? 23 MR. HENDIFAR: Yes, please. 24 So two points. First, the additional 25 argument that they're not addressed in the first

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17 1 final written decision, they were also not 2 addressed by the federal circuit. So, for 3 example, the issue of common keys or claim 4 construction. So we do not believe any additional 5 briefing are required on those. Going back to the 6 first point that my colleague made, I don't 7 believe the federal circuit mandate requires or 8 even encourages the parties to discuss arguments 9 that are not raised before the court. 10 So, for example, the federal circuit 11 opinion on page 12, Footnote 1, points out that 12 DivX has raised a question of forfeiture because 13 Chen-924 was not actually relied upon by 14 Petitioner before the board for a reasonable 15 expectation of success. The federal circuit 16 didn't mandate the board to analyze Chen-924 for a 17 reasonable expectation of success, but it asked 18 the board to add the contention of forfeiture to 19 the extent necessary to address Chen-924. 20 So we disagree with the notion that the 21 federal circuit mandate does or even potentially 22 can -- an additional legal forfeiture, order the 23 parties to consider argument and analysis that was 24 not before the board. The record needs to be 25 closed. No additional evidence can be submitted.	19 1 everyone. This is Judge Gerstenblith. We're back 2 on the record. 3 I just had a quick question and was 4 stepping in to help out a little. 5 From Petitioner's side and Patent Owner's 6 side, we think it would be helpful to just 7 identify the issues that are expected to be 8 considered on remand. And as Petitioners were the 9 appellate, I think it probably makes sense to let 10 Petitioner start the conversation. 11 MR. BATTIS: Yes, Your Honor. Harper 12 Batts again. 13 I think that we will have to still 14 address reasonable expectation of success on 15 remand per the federal circuit's direction. And 16 then the obviousness arguments that remain are the 17 claim construction of Cause Limitation 1-L and 18 then the common key limitation arguments that the 19 board rejected in the institution decision but 20 didn't address in the final written -- the final 21 written -- the first final written decision. 22 And then I actually don't know in terms 23 of whether we need to address motivation to 24 combine. I think that's a question of whether 25 DivX is saying that's now moot in light of the
18 1 So that's our response. 2 JUDGE TURNER: Okay. Thank you. 3 Let me just circle back to Mr. Batts and 4 find out if there's anything more you want to add 5 before the panel goes to confer. 6 MR. BATTIS: My point is just on -- 7 similar to the 651 remand proceeding, the 8 additional briefing here for the board is also for 9 the board's convenience and reference. I mean, 10 it's been quite a time period since we did our 11 briefing, and being able to put together in one 12 place, in a short amount of briefing, what issues 13 are remaining and where they were addressed in the 14 prior briefing is something that was productive in 15 the last remand, and we believe it's productive 16 here, and it's consistent with the other IPR 17 remand proceedings that we looked at. 18 JUDGE TURNER: Okay. Thank you very 19 much. 20 Please stay on the line. The panel is 21 going to confer, and we'll come back and give you 22 our response. Thank you. 23 (Off the record: 10:18 a.m. to 24 10:23 a.m.) 25 JUDGE GERSTENBLITH: Good afternoon,	20 1 federal circuit decision or whether they're trying 2 to still argue on that point. I don't know the 3 answer to that. 4 JUDGE GERSTENBLITH: Okay. Mr. Hendifar, 5 do you want to comment on what Mr. Batts said in 6 terms of the list in general? 7 MR. HENDIFAR: Yeah. And that's for the 8 briefing, correct? 9 JUDGE GERSTENBLITH: Yes -- well, let me 10 explain. Right? We have a decision that remands 11 the case to us, and our question for everybody 12 right now is: What are the issues that each side 13 thinks that we need to address on remand as 14 required by the federal circuit? 15 And so, Mr. Batts, just to make sure I 16 got what you said before I go on, you said 17 reasonable expectation of success and obviousness 18 combination and particular issues that flow from 19 that and that you weren't sure if motivation to 20 combine was back on the table or if in some way 21 the federal circuit decision addresses that. Did 22 I get that right, Mr. Batts, before I go back to 23 Mr. Hendifar? 24 MR. BATTIS: On the last point, I think 25 the federal circuit made clear that they thought

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21 1 the board had decided on motivation to combine but 2 left it to the board's discretion of whether they 3 would reconsider the issue. And I don't know if 4 the board plans to reconsider that issue and if we 5 need to do briefing on that. I think part of that 6 is up to whether DivX is going to argue motivation 7 to combine as still something that needs to be 8 addressed again. 9 JUDGE GERSTENBLITH: Okay. I see. 10 Mr. Hendifar, does that make sense now, 11 what I was trying to -- 12 MR. HENDIFAR: Yes. 13 JUDGE GERSTENBLITH: -- get at? 14 Okay. Because obviously -- and just so 15 there's no confusion about why we're asking this. 16 The length of the briefs can often depend on how 17 many issues there are to address. And the concept 18 of the way that Mr. Batts, I think, and, 19 Mr. Hendifar -- that you both had pretty much 20 described the briefing, telling us the issues that 21 are outstanding, how the parties had previously 22 addressed those issues, and where the citations 23 are in the record that currently exists. Right? 24 So as we go through that process, it would be nice 25 if we all knew what issues we were addressing	23 1 briefing. There's already sufficient briefing 2 on these by the federal circuit. 3 But the first set of issues, we believe 4 that the additional briefing that needs -- that is 5 going to be done needs to address -- 6 First, the extent to -- 7 JUDGE GERSTENBLITH: Mr. Hendifar, can I 8 ask you -- Mr. Hendifar? Mr. Hendifar, sorry to 9 interrupt. Can I ask you just to slow down a 10 little bit, because my -- 11 MR. HENDIFAR: Yes. 12 JUDGE GERSTENBLITH: -- connection is 13 not, like, a hundred percent crystal clear. Thank 14 you. 15 MR. HENDIFAR: I apologize. So I will 16 repeat myself, and I apologize for some of the 17 repetition. 18 We believe there are two sets of issues 19 remaining. One is the set of issues that were 20 potentially disturbed by the federal circuit and 21 are the subject of the mandate. And those would 22 be the issues that should be addressed in the 23 additional briefing. And the second set of issues 24 are the additional arguments that the federal 25 circuit did not disturb or address. And for
22 1 before the parties start, you know, writing your 2 briefs, because there's going to be a limited 3 amount of space. 4 Now, I'm not saying that -- I'm not 5 trying to say immediately that we have to lock 6 this down a hundred percent on this call, but I 7 think it would be helpful for both of you to have 8 as much guidance as we can give before you start 9 writing the briefs. And we do plan to issue an 10 order, and there may be more detail in that order 11 than what we completely finish on this call, but I 12 wanted to at least give each side a chance to 13 speak to this question of what issues they think 14 are still outstanding. 15 So, Mr. Hendifar, I'm going to go to you 16 now. You've been waiting patiently. What do you 17 think we need to do on remand to satisfy what the 18 federal circuit has said? 19 MR. HENDIFAR: Yes. Thank you very much. 20 And I want to clarify there are two sets 21 of issues. One is the issue that's remanded in 22 the mandate, and we believe that's the subject of 23 the additional briefing. The second is a set of 24 issues that the federal circuit did not touch, and 25 they don't need to be addressed in the additional	24 1 those, we don't believe additional briefing is 2 required, because they were already in the 3 existing briefing before the board. They were not 4 addressed -- or they were not even subject of the 5 appeal. 6 Now, with respect to the first set of 7 issues, we believe the following issues need to be 8 addressed in the additional briefing: Which 9 portions of Chen are Petitioners relying on when 10 they rely on Chen teachings; whether there is a 11 reasonable expectation of success in combining 12 those portions of Chen with Lindahl's partial 13 frame encryption; and whether there is a 14 motivation to make that combination. 15 And for the motivation, I would like to 16 direct Your Honors' attention to the opinion of 17 the federal circuit on pages 11 and 12 where the 18 federal circuit expresses that the motivation may 19 be reconsidered, and, in fact, the board should -- 20 and I'm quoting -- determine -- assess "whether a 21 relevant artisan would, in the first place, have 22 selected a particular disclosure in one reference, 23 here, Chen, a patent application, for combination 24 with another reference." 25 So we believe the idea or the argument on

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25 1 whether -- would be motivated to combine 2 specifically Chen with Lindahl, even if it did 3 have a reasonable expectation of success, that's a 4 live issue. 5 But those are the extent of issues we 6 believe need to be addressed in the additional 7 briefing. 8 The arguments that remain that are not 9 the subject of appeal, for example, the common key 10 argument, as counsel pointed out, or the -- 11 argument, those were not appealed. They were not 12 briefed before the federal circuit. They were not 13 addressed by the federal circuit. They are not 14 within the scope of the mandate. So there is no 15 reason for additional briefing about those 16 arguments. 17 Does that answer Your Honors' question? 18 JUDGE GERSTENBLITH: It does. 19 Mr. Batts, do you want to say anything 20 before we go back on a brief hold? 21 MR. BATTIS: I don't think so, Your Honor. 22 I think -- the last thing I would say is just 23 that, again, they're trying to split the issues 24 that remain, but those are the issues that remain 25 that the board does need to address in the final	27 1 indulgence in our consideration. 2 We are going to permit briefing. We 3 certainly appreciate the parties for being willing 4 to state the issues and what they think. We're 5 going to issue our briefing order in the next two 6 days and -- highlighting the briefing that we 7 think is necessary in order to resolve this on 8 remand. 9 I thank the parties for their attention. 10 Let me also ask. Are there any 11 additional issues that either side has at this -- 12 had at this time? 13 MR. HENDIFAR: From Patent Owner -- 14 MR. BATTIS: No further comment -- 15 UNIDENTIFIED SPEAKER: I'm sorry -- 16 JUDGE TURNER: -- didn't stipulate, but 17 it sounds like no -- there are no additional 18 issues to be addressed at this time. 19 And I thank the parties for their 20 attention, and our briefing order will follow 21 shortly. 22 MR. HENDIFAR: I have a question, 23 Your Honor. Would you like us to file the 24 transcript prior to Your Honors' order? Probably 25 by tomorrow, if that's possible from the court
26 1 written decision. And I don't know why it 2 wouldn't make sense to have briefing by each side 3 that addresses the issues that have to be 4 addressed in the final recitation. And I'll leave 5 it at that. 6 JUDGE GERSTENBLITH: Okay. I appreciate 7 that. 8 I understand what Mr. Hendifar was saying 9 also, that there's -- there are issues that have 10 been briefed that are not disturbed by what the 11 federal circuit has said in its decision, and so 12 those issues are -- you know, they're sitting here 13 on paper already and that there's another set that 14 are explicitly intertwined with the decision that 15 went on appeal that is now back to us. So that 16 makes perfect sense, and I think you both are 17 very, very close together on what you think needs 18 to be addressed. 19 So let me ask everybody just to hold for 20 another few minutes, and we'll get right back with 21 you. Thank you so much. 22 (Off the record: 10:32 a.m. to 23 10:34 a.m.) 24 JUDGE TURNER: Thank you. This is 25 Judge Turner. Thank you to the parties and their	28 1 reporter. 2 JUDGE TURNER: You can set it up -- as 3 long as it gets filed. It doesn't matter if it 4 precedes the briefing order or not. I think we've 5 taken sufficient notes and gotten sufficient 6 information from you that I've jotted down that we 7 should be able to address the briefing order if we 8 need to. But, you know, sooner is better than 9 later, but it doesn't have to be commensurate with 10 when we're going to issue the order. 11 MR. HENDIFAR: Understood. Thank you 12 very much. 13 JUDGE TURNER: Okay. Thank you. 14 I thank the parties for their attention. 15 We'll look for that transcript. And thank you, 16 and we are adjourned. 17 (Proceedings concluded at 10:36 a.m.) 18 19 20 21 22 23 24 25

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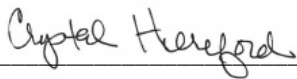
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CERTIFICATE OF SHORTHAND REPORTER

I, CRYSTAL HEREFORD, the officer before whom the foregoing deposition was taken, do hereby certify that the foregoing transcript is a true and correct record of the testimony given; that said testimony was taken by me stenographically and thereafter reduced to typewriting under my direction; that reading and signing was not requested; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my signature this 27th day of April, 2023.



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