

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ROKU, INC.,
Petitioner,

v.

UNIVERSAL ELECTRONICS, INC.,
Patent Owner.

IPR2022-01289
Patent 9,847,083 B2

Record of Oral Hearing
Held: January 17, 2024

Before AMBER L. HAGY, SHARON FENICK, and
RUSSELL E. CASS, *Administrative Patent Judges*.

IPR2022-01289
Patent 9,847,083 B2

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P-R-O-C-E-E-D-I-N-G-S

1:00 p.m.

JUDGE CASS: This is the oral hearing in IPR2022-01289, Roku v. Universal Electronics challenging U.S. Patent Number 9,847,083. Could we now have an identification from each side of who is on the line? Petitioner's counsel, please proceed first.

MR. MCKEOWN: Good afternoon, good morning, Your Honor, as the case may be. Scott McKeown of Wolf Greenfield for Petitioner, Roku, and I'm joined today by Brendan McLaughlin and Matt Rizzolo of Ropes & Gray.

JUDGE CASS: Thank you. Now for Patent Owner.

MR. LUKAS: Good afternoon, Your Honors. James Lukas on behalf of the Patent Owner, Universal Electronics, Incorporated. With me in my conference room is Benjamin Gilford.

JUDGE CASS: Thank you. In our hearing order, we stated that each party will have 60 minutes of time to present arguments. As far as the order of presentation goes, Petitioner will proceed first, followed by Patent Owner's response. Petitioner may then use any remaining time for rebuttal to respond to Patent Owner's presentation. And, finally, Patent Owner may use any of its remaining time for surrebuttal responding to Petitioner's rebuttal arguments.

A few reminders before we begin. This is a public line for this case. We're not aware of any confidential information that may be discussed; but

1 if that's not the case, please let us know. Please keep your microphones
2 muted when you're not speaking. When it's your turn to argue, please speak
3 slowly; and if you hear another voice, please stop so that we don't talk over
4 each other.

5 If either party believes that the other party is presenting an improper
6 argument, such as a new argument not presented in the party's briefing,
7 please raise that issue during your own presentation and don't object at the
8 time and interrupt the other party's presentation.

9 I will keep time and can give you a warning when you've gone into
10 rebuttal time if you'd like. I also wanted to let you know we have received
11 demonstratives from the parties and are able to view them on our screens.
12 You may either share your screen and present them or refer to them by slide
13 number, and we will follow along. Either way, to ensure that we have a
14 clear transcript, please refer to your demonstratives by slide number as
15 you're going through them.

16 Are there any questions from the parties before we begin?

17 MR. MCKEOWN: No, Your Honor.

18 MR. LUKAS: No, Your Honor.

19 JUDGE CASS: All right. So counsel for Petitioner, would you like
20 to reserve time for rebuttal and, if so, how much?

21 MR. MCKEOWN: Yes, Your Honor. I'll reserve 15 minutes.

22 JUDGE CASS: All right. With that, you may begin.

1 MR. MCKEOWN: Okay. Thank you. Again, good afternoon, good
2 morning, as the case may be. Scott McKeown of Wolf, Greenfield & Sacks
3 for Petitioner, Roku, Inc. May it please the Board. I realize the panel is up
4 to speed on what is a very simple technology today, but I'll briefly review
5 the disputed claim term and relevant portions of the trial ground just to focus
6 the discussion.

7 So I'd like to start with Petitioner slide 3. So Petitioner slide 3 has a
8 representative claim. It's not the entirety of the claim. I've excerpted out
9 some of it just to focus on what's being disputed in the briefing. But, you
10 know, just at a high level, the preamble, we have a controlling device and a
11 target appliance. So the figure on the right, the controlling device is a
12 remote control, and the target appliance might be a television or an
13 amplifier, as illustrated there. And the claim is directed to a codeset record,
14 so this is the codeset that is provisioned to the controlling device, the remote
15 control, to allow operation of the target appliance.

16 And in that codeset record, I've highlighted a couple of terms here,
17 you know, as that was the focus of the briefing, but just at a high level. We
18 have protocol and formatting information in the codeset record. We have
19 individual command function entries in the codeset record, and then we have
20 some phonetic representations, synonyms, of those function entries. And so,
21 again, at a very high level, the way that this remote works is you can,
22 through voice control, select one of the functions, which is then sent over to

1 the target appliance in the form of command function entries of volume up,
2 volume down, on, off, et cetera.

3 The vast majority of the briefing has focused on that bold language
4 “protocol and formatting information.” And so just before we get into that
5 construction dispute at a high level, what we know from the claim is the
6 protocol and formatting information needs to be in the codeset record.
7 Down towards the bottom of the claim, I have highlighted how it is used.
8 That is, the controlling device transmits a command communication by
9 using the protocol and formatting information. So we know it's in the
10 codeset record. We know that it's used to transmit the commands to the
11 target appliances. One of skill in the art reading this claim might envision
12 protocol and formatting information, for example, being a carrier signal, an
13 infrared signal, and that would be correct. The explanation of protocol and
14 formatting information in the specification is found at column 10. So this is
15 the 083 patent at column 10 around line 49. We say the protocol and
16 formatting information may describe the physical protocol requirements for
17 transmitting the command data elements, which comprise this codeset,
18 including, for example, items such as carrier frequency, bit and coding, data
19 frame size and structure, appliance address, parity, or CRC requirements, et
20 cetera.

21 So the plain meaning of protocol and formatting information as
22 presented in the claim is its information, some modicum of information, in
23 the codeset record that is used to transmit a command. For example, we

1 know that at least it is a carrier signal or data encoding, CRC, et cetera.
2 Those examples are just what I said: examples. We also know from column
3 10 that the protocol and formatting information may be physical properties,
4 so it's an expansive teaching, but, at a minimum, we know that physical
5 properties are included in the claim scope from the specification's
6 explanation.

7 So moving on now to Petitioner slide 4, we will get to the mapping
8 of protocol and formatting information. And, again, I'm focusing on this
9 because this is, roughly, 80 percent of the dispute in the briefing.

10 So the way that Aginsky was mapped to protocol and formatting
11 information, you see the codeset record from Aginsky on the left-hand side
12 of the slide. I have highlighted the signal block there, as that's where we're
13 pointing to. That signal block is in the codeset record, and it includes
14 protocol and formatting information that is used in sending command data.
15 And on the right hand side of the slide, we have the justifications that were
16 in the Petition and were identified in the Institution Decision at page 22.
17 And I've numbered them one, two, and three because we've mapped protocol
18 and formatting information three different ways.

19 So the first we've said, well, the signal itself is a frequency set or
20 coded IR signal. So frequency set has a carrier. That was an example in the
21 083 specification. Coded IR is encoded data. That was an example of
22 protocol and formatting information in the specification.

1 And then down toward the bottom of the excerpt of the Institution
2 Decision, we have the Petitioner's expert, Mr. McNair, testifying that a
3 coded IR signal includes a coded, paren, format and a protocol which is,
4 paren, infrared there. So we've mapped the physical signals that are found in
5 the signal location of the codeset record as being protocol and formatting
6 information because those signals are encoded. And, as I've said, include
7 carriers, and those were examples in the 083 specification.

8 JUDGE CASS: This is Judge Cass. Let me ask you a question
9 before we continue. So what is the nature of the protocol and formatting
10 information in this coded IR signal, for example? I see Mr. McNair said that
11 it includes a coded format but doesn't really explain what that is. Could you
12 elaborate on that for us?

13 MR. MCKEOWN: Sure. So what we've said is coded IR, as the
14 name implies, infrared is the protocol, right. That's the carrier frequency.
15 That's the frequency spectrum. And the coded aspect is the various coding
16 schemes recognized as coded IR. And in the briefing, for example, let me
17 get you a picture you can look at in the reply brief, for example. So on page
18 7 of the reply brief, you'll see various code formats on modulation schemes.
19 So the Aginsky reference, when it talks about coded IR, says, for example,
20 look to this reference for these coding schemes. So those would be
21 examples of both a protocol infrared and a coded format using various
22 modulation schemes. Again, that's on page 7 of the Petitioner reply brief,
23 which is a figure from Exhibit 37, I believe. It's listed in there, but it's the

1 Wells patent which is incorporated by reference into Aginsky. So these are
2 known modulation schemes.

3 JUDGE CASS: Okay. So I see on page 7 of the reply and in Wells
4 there are these different modulation schemes. But what in there specifically
5 is the protocol and formatting information? I mean, I see we've got different
6 schemes, but what will we point to and say this is the protocol information,
7 this is the formatting information?

8 MR. MCKEOWN: So, as stated in the Institution Decision, Mr.
9 McNair testified that the format is the code, the modulation scheme, the
10 matter in which the bits are arranged, and the protocol in this case is infrared
11 protocol. It's over the infrared spectrum.

12 JUDGE CASS: So, sometimes, when I think of protocol, I think of
13 kind of instructions that are used by device to help it interpret a signal rather
14 than, you know, the format of the signal itself. Is that wrong or is that right,
15 or what's your reaction to that?

16 MR. MCKEOWN: I think it can be both, but the testimony in this
17 case, for example, Bluetooth is a protocol, right. Bluetooth is the way that
18 you get data from point A to point B, not how you understand the underlying
19 data. So there might also be a higher-level protocol, and Mr. McNair went
20 through this in his deposition transcript. You know, protocol can have
21 different meanings at different layers of the OSI stack. But in the 083
22 application, we're at least talking about physical protocol requirements, and
23 those physical protocol requirements in the 083 specifically list carriers and

1 carrier frequency and bit encoding. And so that's exactly what we've
2 mapped this to.

3 JUDGE CASS: Okay. And maybe not, I mean, now, if you have it.
4 If not, you can give it to me later. Could you give me a cite to where Mr.
5 McNair talks about that at his deposition?

6 MR. MCKEOWN: Sure. Let me just get that for you now. So if
7 you look at, for example, page 33, you know, it talks about what formatting
8 and protocol information there. And then Mr. McNair says it could be
9 higher-level information, so that's at line 13 of page 33 and then sort of goes
10 on from there.

11 JUDGE CASS: Okay. Give me a second here. Okay. Thank you.

12 MR. MCKEOWN: Sure. And so that was the first mapping, again,
13 as shown, again, going back to Petitioner slide 4. There's also a second
14 mapping which Aginsky also describes that there's a notation in addition to
15 the actual signals in the signal column, and that notation might say coded IR,
16 it might say Bluetooth. And, again, looking at that excerpt in the institution
17 decision on the right, there's testimony from Mr. McNair that Bluetooth also
18 includes a protocol and format, so when you tell someone that you're using
19 Bluetooth you are conveying protocol and format information. There's no
20 dispute in the record that Bluetooth is not a protocol, that Bluetooth is not a
21 format. Aginsky actually calls Bluetooth a protocol. So that's the second
22 way that protocol and formatting information is met by Aginsky.

23 And then thirdly --

1 JUDGE CASS: So this is Judge Cass again. So if I understand this
2 correctly, in the signal 112-1 column, it said, for instance, XY1, the system
3 would know, for instance, that that's Bluetooth; and, XY2, the system would
4 know that that's coded IR; is that what you're saying?

5 MR. MCKEOWN: Well, the description of Aginsky states that the
6 code and the notation are included there, so XY1 would include both the
7 underlying signal; it's in the signal spot. And Aginsky also describes using a
8 notation that Aginsky describes, again, on the right-hand side of the page
9 highlighted in yellow, which denotes the type of signal, as well as the code
10 or code sequence of the signal. So where the type of signal is Bluetooth or
11 where the type of signal is coded IR, that would additionally be protocol and
12 format information in accordance with specification of the 083 patent.

13 JUDGE CASS: I see. So, for instance, you could have, the first few
14 bits could be an identification of the type of signal and, following that, you'd
15 have the actual signal itself?

16 MR. MCKEOWN: Right. So likely there would be some flag bit
17 that says, you know, this is Bluetooth or what have you.

18 JUDGE CASS: And then I guess the system could, you know, it
19 might have in the remote, for instance, you know, some instructions on how
20 to receive and process Bluetooth signals, and this would tell it go to that and
21 pull that up and use that to interpret the signal that's going to follow; is that
22 how that would work?

1 MR. MCKEOWN: Likely, right, yes. But at least for purposes of
2 this patent, all we need to identify is some modicum of protocol and format
3 information. There's no particular requirement that it be anything more than
4 a flag bit or a carrier signal or encoded data, as explained in column 10 of
5 the 083 patent.

6 So those are the first two mappings. The third mapping is there's a
7 general teaching in Aginsky, and it's the third yellow highlight there, that
8 Aginsky also discloses that the data structure may include protocols, rules,
9 or other information useful to carrying out remote control of the controllable
10 device and, certainly, the physical properties in column 10 of the 083 patent
11 would be the types of things that would be useful because, without them,
12 you're not getting your data over to your target appliance.

13 So these were the three ways that we mapped protocol and
14 formatting information to Aginsky. Again, we've mapped it specifically to
15 frequency sets. We know that a carrier is in a frequency set. Carrier is
16 explicitly mentioned at column 10, line 53. Coded IR, again, encoded data
17 right in column 10 of the 083 patent. So we've taken the claims at face value
18 and said this matches up directly with what the 083 patent explains is at least
19 included in protocol and formatting information, although it may include
20 other stuff. It's in the codeset record, as you can see on the screen. That's
21 the codeset record, and it is used in communicating commands to the device.
22 And that's what the claim requires, which gets us to the claim construction
23 dispute. So we'll --

1 JUDGE CASS: This is Judge Cass again. Let me ask another
2 question related to your third mapping. So you referred to Aginsky column
3 13, lines 40 through 43, I think, to talk about how the data structure may
4 include protocols, rules, and other information. There's also a disclosure on
5 Aginsky at page, I'm sorry, at column 9 starting around line 22 that says, I'm
6 sorry, around line 17, to talk about protocols that may originate, in whole or
7 in part, from a number of sources. In the embodiment shown, the protocols
8 are configuration-specific to a particular remote device and define the
9 appearance, arrangement, and/or assignment of function controls or a
10 specific function of a controllable device and associated status. Is that the
11 same protocol information that's being referenced in column 13, or are those
12 different?

13 MR. MCKEOWN: Column 13 is the more general reference to any
14 protocol, as stated on that previous slide, necessary. There are examples of
15 different protocols in Aginsky. Column 9 is referring to some, I think these
16 are more upper-level protocols when you talk about appearance of data on
17 the screen; but, nevertheless, again, the 083 patent doesn't say what the
18 protocols and information must be. They say they may be physical
19 properties. So these very same protocols and formats in column 9 would
20 also be used in a communication because that's how you're formatting the
21 data across devices on the screens.

1 JUDGE CASS: So in your view, would the protocols in column 9 be
2 protocol and formatting information as recited in the claims of the 083
3 patent?

4 MR. MCKEOWN: Yes. So just to be clear, Rationale 1 and 2 map
5 directly to physical properties and map directly to the 083 disclosure in
6 column 10. To the extent protocols and information were construed as
7 requiring some upper-level or upper-layer protocol and format information,
8 some of these examples that you just pointed out in column 7 would meet
9 that, but also column 13 is generally teaching any protocol and format
10 information that is necessary in conveying communications between two
11 devices.

12 JUDGE CASS: Okay. Thank you.

13 MR. MCKEOWN: Sure. So let's jump to the claim construction
14 dispute, which is Petitioner slide 5. So once again, Petitioner has mapped
15 protocol and formatting information to the information in the signal location
16 of that codeset record, which includes signals and separate notation of
17 protocols and format information. So this just follows the plain meaning of
18 the claim as presented, and that information is used in transmission, so
19 meeting all of the claim requirements.

20 On the right-hand side, we have the Patent Owner's construction.
21 The first thing you'll notice is a 42-word definition, and I've highlighted
22 some of the words in there just to focus some of the conversation on where
23 these ideas are coming from, what they mean, how they change the claims.

1 So we'll start with a set of procedures. The first thing you'll notice is the
2 claims are directed to protocol and formatting information. Again, going
3 back to column 10, it might be a carrier signal, it might be a check sum. The
4 Patent Owner would like to change that to protocol and formatting
5 information set of procedures. That changes the language of the claims
6 drastically.

7 And then we go on to the set of procedures needed to transmit
8 commands from one device to another in a way that the receiving device can
9 make sense of and use the commands. So now we have altogether a new
10 functionality again, remembering back to slide 3. The only thing required of
11 protocol and formatting information is that it be used in a communication, in
12 a command communication. There's no requirement in the claim that the
13 underlying commands be understood, made sense of, whatever that means.
14 That portion of the definition is also indefinite, but, you know, we'll set that
15 aside for a moment.

16 So we have additional functions. We're changing information to a
17 set of procedures. And then finally, after the semicolon, we say, oh, and, by
18 the way, the protocol and formatting information needs to be stored
19 separately and distinct from the command data. So now we have structure to
20 the storage of the codeset record where the claim previously only recited the
21 content of the codeset record. So, you know, where is this language coming
22 from? Again, I read what the 083 specification says about protocol and
23 formatting information, so none of the 42 words here on the right-hand side

1 of the slide are found in the 083 specification itself. You won't find any
2 reference to protocol and formatting set of procedures in the spec, let alone
3 required. You won't find make sense and use a command functionality in
4 the spec, let alone required. And you won't find anything about separate and
5 distinct storage.

6 JUDGE CASS: Counsel, this is Judge Cass. Let me go to the Patent
7 Owner's construction on slide 5. So if we put aside the phrase “a set of
8 procedures” and, let's say, replace that with information or some broader
9 term, what I'm struggling with here is this language that the receiving device
10 can make sense of and use the commands. I'm having a little trouble
11 understanding why that wouldn't be a good way to look at protocol and
12 formatting information. What's wrong with that?

13 MR. MCKEOWN: Well, because it focuses on what is being done
14 with the commands. It doesn't say information that enables another device
15 to recognize the signal, which is what physical protocol and information
16 does as outlined, again, at column 10 of the actual patent. So this idea that
17 we need to add additional functionality about whether the commands
18 themselves make sense or whether we can use them, that's higher-level
19 functionality that has nothing to do with what the claim requires, and the
20 claim just says I need to use it to send a command communication. What
21 happens once I transmit it is not required of the claims.

22 JUDGE CASS: So if we change this to say “can make sense and use
23 the signal,” would that be okay?

1 MR. MCKEOWN: Well, if, again, we're construing the claim
2 correctly where it's just information that recognizes a signal, that's the plain
3 meaning. We don't have to add all these extra words to basically say what is
4 said in column 10 of the 083 patent, which is a carrier signal is something
5 you need to use in order for your communication to work. So this is just
6 superfluous language.

7 JUDGE CASS: I see. So you'd agree, though, that protocol and
8 formatting information would be information that the system would use to
9 make sense of and receive the signal that's coming in; is that right?

10 MR. MCKEOWN: Yes. The physical properties in the 083 patent,
11 the carrier signal check sum, that is to receive the signal. It has nothing to
12 do with whether the underlying data, the commands that are transmitted, can
13 be made sense of, as stated here, or used. That's an altogether different
14 issue.

15 JUDGE CASS: Okay. Thank you.

16 MR. MCKEOWN: Sure.

17 JUDGE HAGY: Counsel, this is Judge Hagy. So I'm also trying to
18 understand the difference that Patent Owner's construction would make. So
19 in terms of stored separately and distinctly in the codeset record, is it
20 Petitioner's position that this signal column is stored separately from
21 command function entries? Maybe those are a different column.

22 MR. MCKEOWN: Well, the answer is that's why they're arguing it,
23 Your Honor, at least with respect to those first two rationales we pointed out.

1 We are pointing to data that is in that location. So their argument is that it
2 has to be separate and distinctly stored, and we may as well talk about that
3 language now. So the way they get to this limitation is they say, well, if you
4 look at that figure on Petitioner's slide 5, they say, well, we have this figure
5 and it's a block diagram and you'll see protocol and formatting information is
6 in a different block than the entries 754. Therefore, our claim should be
7 limited to that embodiment. We know that, as a matter of law, limiting
8 claims to a single embodiment is wrong, even when that may be the only
9 embodiment in the specification. Further, the 083 specification tells you that
10 these block diagrams are not limiting. They tell you you can combine the
11 blocks, you can separate them, so, you know, don't read this patent as
12 limiting in that respect. And that's at column 11 of the 083 patent, lines 29
13 through 36. The Patent Owner's expert agrees that Figure 7b is a block
14 diagram, so, aside from the black letter law that would prevent this
15 limitation in the first place because we just can't limit the claims to particular
16 embodiments, the specification is also telling us that the figure can't be read
17 that way.

18 JUDGE FENICK: Judge Hagy -- oh, I'm sorry.

19 MR. MCKEOWN: Go ahead.

20 JUDGE FENICK: I didn't know, Judge Hagy, did you want to
21 continue?

22 JUDGE HAGY: No, go ahead, go ahead. Jump in, jump in. I'm
23 kind of --

1 JUDGE FENICK: Yes. I understand your argument with respect to
2 Figure 7. I'm just looking at the claim language itself. It talks about a
3 provisioned codeset record that comprises two things. One of them is the
4 protocol and formatting information that we're talking about, and the other
5 one is a plurality of individual command function entries. So doesn't the
6 plain language of the claim discuss this protocol and formatting information
7 being different from the plurality of individual command function entries?

8 MR. MCKEOWN: Well, I would ask the question differently, Your
9 Honor. There's no dispute that they're different logical functions. The
10 question is can you then read the claim to require a different structural
11 storage feature that's not recited in the claims. You can argue, for example,
12 that a carrier signal is different from the data that's expressed on the carrier
13 signal, that one is protocol and formatting information, one is command
14 entry. So in that respect, of course they're separate and distinct logically.
15 Otherwise, modern communications wouldn't work.

16 But the question is how do you argue that the claim is limited to a
17 storage structure just because you have two different items that are only
18 defined in the actual claim language as being in the codeset record. The
19 only limitation on the codeset record in Claim 1 is its contents. There's
20 nothing specific about where you would store that information. And Figure
21 7b is not a memory structure figure. It's a logical block diagram of
22 functionality. And, again, the 083 patent itself explains that you shouldn't
23 read that as segmenting anything from anything else. They can be

1 combined, they can be separated; so relying on the figure for some kind of
2 memory structure distinction not recited in the claims isn't proper.

3 JUDGE FENICK: If we did find that the claims or the figure require
4 the storage separately and distinctly of the procedures, would Aginsky's
5 column 13 disclosure cover that?

6 MR. MCKEOWN: Yes, Your Honor.

7 JUDGE FENICK: Thank you.

8 MR. MCKEOWN: And also, before I leave this topic, I would also
9 highlight the Petitioner's slide 6. If, for some reason, the claim were
10 interpreted as requiring separate storage locations that are not recited in the
11 claim, it would still be obvious. And this is a figure that comes from the
12 declaration that accompanied the Petition. When we were explaining how
13 protocol and formatting information is used, we pointed out that, just like
14 Figure 7b, you can put them in different boxes. Also, Patent Owner's expert
15 admitted that, well, if it's not in the entries themselves, it must be outside.
16 And so with only two options, this would be obvious in any case.

17 So, again, that's the 42-word definition that they'd like to graft into
18 the claim here. Our position is the plain meaning is apparent on its face.
19 You can't read column 10 of the 083 patent, which explains what is included
20 in protocol and formatting information, out of that patent and add a set of
21 procedures that have command functionality requirements and storage
22 structure. That's nowhere recited in the actual specification, which brings

1 me to the next point, which is, well, if it's not in the specification, where did
2 it come from. And for that, you can look at Patent Owner slide 6.

3 So this is explaining the construction prior to the semicolon. So
4 where did all of this set of procedures and all of that stuff come from. You
5 can see that they're stating at the top of this slide that it comes from the
6 experts agreeing with the Patent Owner's construction. That's just a blatant
7 misrepresentation of the record. Petitioner's expert never testified on any
8 claim construction. That was made clear in the transcript at these exact
9 locations. There are objections that are omitted from these excerpts. For
10 example, the first question: "So, at a high level, explain to me what claim
11 term, protocol, and formatting information means." There was an objection
12 there, calls for legal conclusion, which is not on the page, and then the
13 expert said: "Well, I can only answer that technically." Same thing for the
14 bottom box prior to that question. The expert made clear that he was not
15 discussing this in terms of any specific patent. He was just explaining
16 technically.

17 You'll also notice from that bottom question, "so is it fair to say that
18 protocol information is a set of procedures used to ensure orderly
19 communication and commands between communication entities," protocol
20 information is not even the claim term and the claim doesn't require
21 communications or commands, plural. So discussions of what is needed for
22 bidirectional communication, multiple commands, whether you need a set of
23 procedures there or not is irrelevant to the claims. The claims can claim as

1 much or as little as they want. In this case, they just claimed one
2 communication going out and any modicum of protocol and formatting
3 information used in that transmission meets the plain language of the claims.

4 JUDGE CASS: So this is Judge Cass. Why is the phrase “set of
5 procedures,” why is that important here? From your perspective, why is it
6 important that the claim construction doesn't require that?

7 MR. MCKEOWN: Well, because it's not supported in the intrinsic
8 record and it's not recited in the claims, right. The claims say protocol and
9 formatting information and when you read --

10 JUDGE CASS: I guess where I'm going with this is why does it
11 matter in terms of the prior art, in terms of the ultimate, whether the prior art
12 reads on the claim? Is that something that Aginsky doesn't teach or make
13 obvious?

14 MR. MCKEOWN: Well, I believe the Patent Owner's argument, and
15 they may be able to explain this better, you know, going back to Rationale 2,
16 a flag that says Bluetooth, well, that's not a set of procedures, that's just
17 information; or, you know, the underlying signal that includes a carrier or
18 some encoding data, that's not a procedure, that's not a set of procedures. So
19 I think the Patent Owner is trying to make some kind of distinction that,
20 where the claim is broad enough to cover a single bit of protocol and
21 formatting information, they would like to limit the claim to an entire set of
22 procedures.

1 JUDGE CASS: So in other words, Aginsky discloses having some
2 sort of designator to say this is Bluetooth and then the system can read that
3 and say, okay, let me fire up my Bluetooth protocols to interpret the signal
4 that's going to be coming in. And in your view, that designator is protocol
5 and formatting information; and under Patent Owner's view, that would not
6 be because the protocol information requires the actual procedures that are
7 being used and the procedures would be stored somewhere else rather than
8 in the codeset record itself; is that right?

9 MR. MCKEOWN: I believe that's their argument. But, again, all
10 the claim requires is protocol and formatting information. A single bit
11 identifying Bluetooth is all that the claim requires. But I believe that is their
12 argument, that you would need a complete set of procedures somehow
13 stored in the codeset record, which the 083 patent doesn't explain or require
14 in any way and the entirety of that argument comes from a statement, a
15 technical explanation, in the --

16 JUDGE CASS: Sorry. Counsel, I don't know if it's me or you, but
17 I'm getting some interference on the line. I don't know if my co-panelists
18 also are experiencing that, as well. It looks like they are.

19 JUDGE HAGY: Yes, your headset might have just bit the dust. I'm
20 not sure.

21 JUDGE CASS: I want to let you know I've paused the time because
22 I don't want technical issues to eat into your argument time. Actually, now
23 that I'm seeing it, it could be on our end.

1 JUDGE HAGY: I'm hearing the same thing you are.

2 JUDGE CASS: Yes, it looks like our people are trying to figure this
3 out. I don't know whose end it's on. Okay. We're getting a notice from our
4 people that, counsel, it's on your end. So we'll pause for a bit and see if you
5 can get it restarted.

6 MR. MCKEOWN: Can you not even hear me?

7 JUDGE CASS: Now I can hear you.

8 MR. MCKEOWN: Okay.

9 JUDGE HAGY: It's just like before.

10 MR. MCKEOWN: All right. Unplugging and plugging back in
11 always -- okay. So, again, all of this language is coming in from the
12 extrinsic record; and not only is that inappropriate, but it directly contradicts,
13 again, the actual explanation of the 083 patent on these features.

14 So that was slide 8. So we'll go to Patent Owner slide 10, which I
15 think gets to a question that was raised earlier. Again, that's Patent Owner
16 slide 10, this argument that, well, you know, protocol and formatting
17 information is one set of words and command function entries is another set
18 of words. Therefore, we have to interpret them differently. We are. The
19 carrier is different from the underlying data. That's pretty clear. So, you
20 know, this argument doesn't really gain Patent Owner anything, and then
21 they continue on to Patent Owner slide 11 and they say, well, there's some
22 case law about, you know, distinct words, you know, our distinct mechanical
23 components, at least in these mechanical cases. But what this case doesn't

1 say is that distinct components have to be distinctly stored, and that's
2 ultimately where the rubber hits the road here. Also, these cases don't say
3 that components can't be overlapping, especially when you're talking about
4 functionality in a computer-implemented environment.

5 So the fact that there are different words used here doesn't really
6 matter. All we know from the claim is that, as it states, the codeset record
7 has to include this information. How it is stored in the memory is nowhere
8 even described in the 083 patent. This Figure 7b is not a memory structure
9 configuration.

10 And then going on to Patent Owner's slide 10, again, they're pointing
11 at this figure and trying to limit the claims to this figure, which, again, is
12 just, black letter law, inappropriate. And, again, the 083 patent itself tells us
13 that these block diagrams, as Patent Owner's own expert pointed out, this
14 Figure 7b is a block diagram, cannot be read that way.

15 Also, on this figure, when I deposed Patent Owner's expert, I said,
16 well, okay, if this is such a strict figure that needs to be followed, what
17 about, you know, row 754. There's a standard function ID, there's a function
18 name, there's a phonetic representation, there's command data. Does that
19 have to be stored just like that in that order? Because that's essentially what
20 you're arguing is this is a memory map that has to be followed. And his
21 response to that question was, oh, well, this is just a pictorial representation
22 that has no significance whatsoever. So you'll see that in the Scordillis
23 transcript at page 18 around line 23. So, clearly, the expert is just talking out

1 of both sides of his mouth and is not qualified to construe claims in the first
2 instance, so none of that testimony is even admissible, let alone persuasive.

3 I'll just pause there before I move on from claim construction. I
4 think I've covered this enough. The next Patent Owner slides 13 through 22
5 just argue that their construction isn't met by the prior art, their construction
6 is improper, so we don't need to go through those. Unless there's any other
7 questions on claim construction, I'll move on to some of the final topics.

8 JUDGE CASS: You can proceed.

9 MR. MCKEOWN: Okay. So, quickly, this is somewhat related to
10 claim construction. This is Patent Owner slide 23. They say that, well, you
11 never argued that the code or code sequence of the signal is protocol and
12 formatting information. That was Rationale Number 1 on my slide 4, so,
13 again, we pointed to coded IR. The code is the format, the IR is the
14 protocol, so it couldn't be clearer that, yes, we indeed did rely on that.

15 And then a related slide, slide 29, and we discussed this one a little
16 bit earlier. They said, well, those modulation formats that you had on page 7
17 of your Petitioner reply that we talked about at the outset that you said were
18 stored in the signal column, they're not. They're actually just transmitted out
19 of the device. But there's numerous problems with that argument. First and
20 foremost, the figure that's on the left-hand side of the patent or, excuse me,
21 the left-hand side of the slide is from the incorporated by reference patent,
22 but that patent was incorporated for the teaching of different IR formats and
23 protocols. It wasn't incorporated for any specific transmission hardware.

1 And perhaps most importantly, it could not be clearer from Aginsky itself
2 that what is in that column is a signal, and I'll just go to quickly column 8,
3 lines 63 through 67, which states that command signals (signal columns 112-
4 1, 112-2) for implementing a change in the state of a controllable device's
5 function can be any type of signal required for control purposes, typically a
6 frequency set, et cetera. Obviously, frequency sets are signals; and if that
7 weren't clear enough, you can also take a look at column 13, lines 17
8 through 21, and I'll just read this into the record: when a command is
9 received from a user while the session remains active, then process 414
10 sends the associated command signal to the paired controllable device using
11 the proper signal set as obtained from its memory (signal 112-1) as
12 discussed above with respect to 1b. So there is no confusion, Aginsky
13 specifically states that the signal used in that column is what is actually
14 transmitted. So that attempt at deflection doesn't work.

15 But let's switch to speech recognition very quickly. So there's
16 nothing really new here. I don't need to spend a lot of time on it. At the
17 deposition of Petitioner's expert, I asked him to identify the speech
18 recognition in the figures. He pointed to the general processors. I asked
19 him, you know, what is the speech recognition instruction set. Is it
20 described in the 083 patent, and he said, no, you know, this is turnkey
21 hardware, it's well known in the art that, you know, these instruction sets
22 were out there. So a speech recognition engine consistent with the actual

1 083 patent is just a processor that is described as having a speech
2 identification functionality.

3 So nothing has really changed since institution as to that point.
4 Patent Owner at slide 39, so, again, Patent Owner slide 39 through 40 tries
5 to make an argument that somehow we are changing our tune on this. We're
6 not. There's a small snippet here of the reply at 26, which, of course, there's
7 a much more robust discussion of all of this at the reply pages 22 through
8 23. That's not cited here. What this is saying, and this was held at
9 institution at page 53, Aginsky already teaches voice recognition
10 functionality. It includes a processor. So there doesn't need to be any
11 motivation to provide that functionality because it's already there to the same
12 extent as your patent describes it and we argued it in the alternative. You'll
13 see in the Petition, well, Aginsky discloses the speech recognition. To the
14 extent that the Patent Owner argues it does not, the specific words speech
15 recognition engine are used in the secondary references.

16 So that was the alternative argument. The expert essentially mooted
17 the argument that speech recognition engine requires anything particular, so
18 just pointing out that one or the other of those arguments works is in no way,
19 you know, any kind of new argument.

20 And then at Patent Owner slide 41, they say that Patent Owner has
21 provided un rebutted evidence that Aginsky does not teach, quote, a speech
22 recognition engine. This is just a word-matching exercise what they're
23 arguing here. As I pointed out, a speech recognition as taught by the 083

1 patent is just a processor described as having voice recognition functionality,
2 so there is no magic word requirement.

3 And then the highlighted argument on the right side of the slide says,
4 well, you might not use a turnkey solution such as a speech recognition
5 engine. You might use a speech recognizer using Dynamic Time Warping,
6 Hidden Markov Models, and Neural Networks. The fact that there are other
7 obvious ways to implement speech recognition is not a rebuttal that general
8 speech recognition as taught in the 083 patent at the same level of detail in
9 Aginsky would meet the claim.

10 So that's it on speech recognition.

11 JUDGE CASS: Counsel, this is Judge Cass. I wanted to let you
12 know you're going into your rebuttal time now.

13 MR. MCKEOWN: Understood. Yes, I'm just going to hit a few
14 quick points here. So Patent Owner slide 46, they argue that the claim charts
15 were deficient because we didn't say that the phonetic data was in the
16 command line entry, so that's Patent Owner slide 46. On rebuttal, we
17 explained that, well, if you actually read the entirety of the claim chart, we
18 state that, as modified, Aginsky, would include that data in the individual
19 function entries; and then, later, in that same cell, we refer back to the data
20 structure we are modifying. Pretty clear.

21 Patent Owner slide 48 -- excuse me. Patent Owner slide 47 just
22 states at the top, well, this is non-responsive and there are still gaps, so

1 they're just repeating their argument. They're not rebutting the fact that all
2 of this is in the claim chart.

3 Last argument on the phonetic issue, the phonetic synonyms. Patent
4 Owner slide 48, it's an incorporation by reference argument. They say, well,
5 if you modified Aginsky with Stammmler, you would use the same phrase-
6 based phenome analysis as Stammmler teaches. That's not the ground. We're
7 modifying Aginsky which is already using its own word models. It has no
8 rationale for bringing anything in, and we don't explain it in the ground as
9 doing so. And in response, on Patent Owner slide 49, they say, well, no, it's
10 not bodily incorporation because you didn't answer our argument about, you
11 know, Aginsky uses different words than Stammmler. That's just the same
12 spin on the same argument. We identified Stammmler for teaching phenomes,
13 not phenomes for conversational phrases that would somehow be infused to
14 Aginsky. So that is that.

15 So let me just wrap up and say, you know, there's no legal basis to
16 replace the plain terms of the 083 claims. This terminology that's supported,
17 once again, clearly, at column 10 of the patent. We can't read that out of the
18 patent. We can't amend the patent at this point to change "information" to
19 "set of procedures." We can't add, you know, command makes sense of and
20 use functionality and there is no teaching anywhere in the patent of any kind
21 of memory structure, you know, let alone one that is read into a claim that
22 has no memory structure. The only structure of the codeset record is its
23 contents where that stuff is, unless it's specifically pointed out in the claims,

1 and it is not just because we're using different words that cannot be used to
2 amend these claims.

3 So absent further question, I'll reserve my remaining time for
4 rebuttal.

5 JUDGE CASS: All right. Thank you, counsel, you have used up 48
6 minutes, so that will leave you 12 minutes remaining for rebuttal.

7 MR. MCKEOWN: Thank you.

8 JUDGE CASS: So with that, why don't we turn to counsel for Patent
9 Owner.

10 MR. LUKAS: Good afternoon, Your Honors. James Lukas on
11 behalf of Patent Owner, Universal Electronics.

12 JUDGE CASS: Yes, let's give -- there you go. I was just giving it a
13 second to have the video switch over. Would you like to reserve time for
14 rebuttal?

15 MR. LUKAS: I would, Your Honor. Can I reserve 10 minutes,
16 please?

17 JUDGE CASS: Sure. All right. You may begin when you're ready.

18 MR. LUKAS: Thank you, Your Honors. Once again, James Lukas
19 on behalf of the Patent Owner. I'm going to be devoting a substantial
20 amount of time discussing protocol and formatting information in the claim,
21 the claims that, you know, require that. I'd like to take you to slide 2. Can
22 we share our slides with you?

23 JUDGE CASS: Sure.

1 MR. LUKAS: Thank you. I kind of just wanted to give you a little
2 bit of an overview of what I'm going to be talking about. The first issue,
3 first dispute I would say, would be that Aginsky does not disclose protocol
4 and formatting information. The protocol and formatting information, that's
5 going to be the first dispute and argument. I was happy to hear that there is
6 a claim construction dispute. I think the only issue that involves claim
7 construction, we're not even going to talk about that Aginsky in combination
8 with Stammmler or Hanson doesn't disclose, teach, or suggest a speech
9 recognition engine. I'm going to follow that up --

10 JUDGE CASS: Counsel, if I could interrupt you, I think your
11 display is showing a -- there you go. That's better.

12 MR. LUKAS: You all set?

13 JUDGE CASS: Yes.

14 MR. LUKAS: Okay. Thank you, Your Honor. And then, third,
15 we're going to be talking about there's no motivation to combine or modify
16 Aginsky in view of Stammmler or Hanson to provide the phonetic
17 representations limitation. And, finally, I'd like to address that the Petitioner
18 has failed to show that the dependent claims are obvious, and that covers all
19 grounds.

20 I'm going to highlight, as I get into this, I think it's very important
21 that it's Petitioner's burden of proof here, that the testimony of a POSITA is
22 extremely important here, that the Petitioners changed positions on
23 numerous issues but that the Petitioners should be stuck with what's in the

1 Petition. And then, finally, on the first issue that we have a dispute as to
2 claim construction that we are asking the Board to resolve with the claim
3 construction, I think both parties now are on record saying there is a dispute
4 regarding claim construction.

5 So with that, I'd like to get into the first issue, what we're calling the
6 first dispute, and it starts with claim construction. And I'm going to take you
7 to slide 4. And I think, before I get into this, as the Board knows very well, I
8 want to just reiterate controlling law. The words of the claim are generally
9 given their ordinary meaning, ordinary customary meaning as understood by
10 a person of ordinary skill in the art when read in the context of the
11 specification and prosecution history. I know the Board has heard this a lot.

12 That cites from *Thorner*, 669 F.3d 1362 at 1365, Fed Circuit 2012. I think
13 that's going to be important as we get into this claim construction issue, so I
14 just wanted to highlight that.

15 Turning to slide 4 and the claims. I think there sounds like there's
16 not a dispute on a couple of issues, but I want to get into Claim 1 as an
17 example. And as you can see here in Claim 1, it's very clear that the
18 provisioned codeset record comprising protocol and formatting information
19 and a plurality of individual command function entries. That's very clear in
20 the claim language. And then if you go down further, it points out several
21 times that you have to use the protocol and formatting information to
22 transmit the command communication to the control device. It says that
23 twice in Claim 1. That's also repeated in Claim 12, the other independent

1 claim. That's very important that it's got to be, this protocol and formatting
2 information must be in the codeset record that's provisioned to the control
3 device and it must be used to transmit the command communications. So I
4 want to start there.

5 Now I'm going to turn to slide 5. Before we get into it, there's
6 already been some discussion about it. Patent Owner's position is that the
7 protocol and formatting information to one of skill in the art is the set of
8 procedures needed to transmit commands from one device to another in the
9 way the receiving device can make sense of and use the commands.
10 Petitioner hasn't really offered a construction until now. It seems like it's
11 something like just generally information used in transmission, any
12 information; and so I want to just set that out there.

13 And then I want to turn to the testimony of skill in the art. I'm at
14 slide 6. But I think this is really important with what I highlighted, like,
15 well, what does protocol and formatting information -- it means something.
16 It means something. It's extremely important. It's got to be in the codeset
17 record, and it's got to be used to allow for transmission of the commands.

18 I'm going to take you initially to Petitioner's expert and go through
19 what he said about protocol and formatting information. So I'm at Exhibit
20 2002, and I heard from Petitioner a lot of, you know, strained objections to
21 the testimony. But when I read it, it's pretty clear. The POSITA performing
22 an analysis of patentability analysis has to construe the claims, has to
23 interpret the claims. In order for them to meet their burden, Petitioner to

1 meet its burden, its expert had to have performed a claim construction, had
2 to determine what the plain and ordinary meaning of the terms were. So to
3 say that he didn't do that, well, if that's going to be their argument, the
4 Petition fails right there.

5 But I'm going to take you to Exhibit 2002, and I'm at Petitioner's
6 expert's testimony, page 32. It's the first question, and there's multiple
7 questions that were asked. Is it fair to say, at page 32, that, when the 083
8 patent refers to protocol and formatting information, it's referring to the
9 physical protocol requirements for transmitting the command data elements
10 which comprise the codeset, and the answer from Petitioner's expert: Well,
11 the specification is giving that as an example. It says it may include that.
12 And that follow-up question: what else could the term protocol and
13 formatting information be referring to? Well, there's a wide variety of
14 things. It may include frame size. It may include bit order. When I define
15 protocol, you know, a protocol is a defined set of procedures designed to
16 ensure the orderly exchange of information between communicating
17 elements. So whenever I need to make sure that the exchange of
18 information is done in an orderly and reliable manner, you know, protocol
19 would define that. And that carried over on page 33 of Exhibit 2002.

20 Later on, the Petitioner's expert, at the bottom of 33 of Exhibit 2002,
21 so, at a high level, explain to me what the claim term protocol and
22 formatting information means. There is an objection, calls for a legal
23 conclusion. Petitioner's expert says, well, I can only answer that technically.

1 Formatting and protocol information would be the information that I need to
2 transmit from one device in a way that the receiving device can make sense
3 out of it and use it.

4 And then later on at page 35 of Exhibit 2002, and I'm only going to -
5 - actually, 34 and 35, there's a question, what's the difference between
6 protocol information and formatting information, and Petitioner's expert
7 answers, well, you know, in the abstract, not necessarily in the context of
8 this patent, I'd have to see if there were any, you know, any examples that
9 might mean something different than this; but I would say, in general, a
10 protocol would include formats. A format might be more specific than the
11 overall protocol. The format would include, you know, things, for instance,
12 like frame size, bit order, and the protocol would include that, as well as
13 what messages may mean that are formatted in a particular way.

14 Finally, I wanted to go to Petitioner's expert's deposition transcript at
15 page 36, Exhibit 2002. So, at a high level, what does the claim term
16 protocol information mean to your understanding? Well, the standard
17 meaning. Another objection, calls for a legal conclusion. The standard
18 meaning of protocol, you know, separate from any particular patent, a
19 protocol is a procedure, a set of procedures used to ensure orderly
20 communications and commands between communicating entities. So it's a
21 set of procedures; that's what protocol is. Follow-up question at page 36: so
22 is it fair to say that protocol information is a set of procedures used to ensure

1 orderly communications and commands between communicating entities?

2 Yes, that's the term of art in the art of communicating systems.

3 So that's, I mean, right there we have Petitioner's expert telling us
4 what protocol and formatting information means. And then I'm not going to
5 go into as much detail, but we also have some other testimony of a POSITA,
6 and that is at Exhibit 2001. This is Patent Owner's expert, Exhibit 2001.
7 And I'm not going to read everything for you, but I can tell you it's very
8 consistent with Petitioner's expert. Exhibit 2001, paragraph 66, 68, 69, and
9 79 is where Patent Owner's expert at Exhibit 2001 goes in and defines to one
10 of skill in the art what protocol and formatting information is.

11 I now want to go to the spec because there's been a lot of discussion
12 about the spec, and I think that's also important. We have the testimony of
13 one of skill in the art in light of the specification, and now we have the
14 specification. I want to just point to a couple of spots in the spec, and this is
15 at Exhibit 1001. So if I take you to Exhibit 1001 at column 4, it looks like
16 line 67, excuse me, 65: in some embodiments, controlling device 100 may
17 be of the universal type that is provisioned with a library comprising a
18 multiplicity of command codes and protocols suitable for controlling various
19 appliances.

20 Later on in the specification at column 10, line 47 on: with reference
21 to Figure 7b, each codeset record may comprise a unique codeset identity
22 number, a block of protocol and formatting information 752, which may
23 describe the physical protocol requirements for transmitting the command

1 data elements which comprise this codeset, including, for example, items
2 such as carrier frequency, bit encoding, data frame size and structure,
3 appliance address parity or CRC requirements, et cetera.

4 We're still at Exhibit 1001 and later on at column 11 at lines 10
5 through, I think it looks like 13: loaded in the memory of the controlling
6 device or a local appliance or may comprise a full download of codeset
7 number 750, protocol and formatting information 752, and all or a portion of
8 the command data entry 762. So other than what we talked about in the
9 claims, that's some disclosure from the specification about protocol and
10 formatting information.

11 I want to take you now to --

12 JUDGE CASS: Counsel, this is Judge Cass.

13 MR. LUKAS: Sure.

14 JUDGE CASS: Let me ask you a question. So if we go to the 083
15 patent, so looking at Figure 7a that's disclosing the device. It's got a bunch
16 of different codesets 706 on the right, 1 through N, and then Figure 7b is
17 showing the structure of each of those codesets and each of those include
18 protocol and formatting information. So are you saying that, for instance, if
19 you have Bluetooth, all of the set of procedures needed to interpret a
20 Bluetooth signal have got to be in each one of the codeset number 706? So
21 if you've got 10 of them, you've got to repeat it 10 different times? Is that
22 required or could you have something somewhere else in the device where it
23 might say, okay, the procedures for interpreting a Bluetooth signal are the

1 following, and then in the codeset, in each codeset record you would just
2 have some basic information saying we can interpret Bluetooth and go here
3 to do it, we can interpret coded IR, go there to do it? Would that be
4 sufficient or do you have to have all of the procedures repeated in each
5 codeset record?

6 MR. LUKAS: Well, in the codeset record, my answer to that is it's
7 very clear that you have to have an amount of protocol and formatting
8 information that is used to transmit a communication command. That must
9 be stored in that specific codeset record. That is an amount of protocol and
10 formatting information, it has to be in the codeset record. And that comes
11 from the claim. I mean, I read the claim just saying that. It says comprising,
12 you know, the provision codeset record comprising protocol and formatting
13 information. Enough protocol and formatting information needs to be in that
14 codeset record such that you can transmit the codes, and that, you know, as
15 you see later on in the claim, as I earlier talked about, by using that amount
16 of protocol and formatting information, it has to be there, that set of
17 procedures, what's needed or a subset of procedures that's needed to transmit
18 the command communication. It needs to be in the codeset record. That's
19 my response to that.

20 JUDGE CASS: Could you have some of the protocol information in
21 the codeset record and some of it somewhere else?

22 MR. LUKAS: I mean, I think that's possible. I don't think the claim
23 necessarily limits that. But it has to be, what you have in that codeset record

1 has to be enough such that you can transmit the command communication,
2 as it says later in the claim. It couldn't be incomplete. The set of procedures
3 could not be incomplete. It has to be enough. The protocol and the
4 formatting information has to be enough such that you can transmit the
5 command communication. Enough protocol and formatting information
6 must be in there. So if it's incomplete and you're not able to make that
7 transmission, then I would say, no, you couldn't have it elsewhere. Does
8 that answer your question?

9 JUDGE CASS: It does. Thank you.

10 MR. LUKAS: Okay. Great.

11 JUDGE FENICK: You quoted to us from column 10 of the 083
12 patent where it says, lines 47 and on, it says that the protocol and formatting
13 information may describe the physical protocol requirements. You're saying
14 that that description can't just be, you know, "use Bluetooth" or a bit that
15 says the protocol is Bluetooth, but it has to actually – "describe the physical
16 protocol requirements" has to mean "include the physical protocol
17 requirements"?

18 MR. LUKAS: Yes. That's my response to that. The claim is very
19 clear that the provision codeset has to have enough protocol and formatting
20 information stored there, included in there, such that you can transmit a
21 command communication. That is borne out by the rest of the claim also.
22 The comprising is extremely important. It says comprising. I read that as
23 including, meaning that information has to be in that codeset record and then

1 you have to use it so that you can send, you can transmit a command. So,
2 yes, it can't be just be a little bit, it can't be -- I think what I'm going to get
3 into, it can't be an indication of something. It actually has to be enough
4 protocol and formatting information has to be in that codeset record. And I
5 think the claims are very clear on that. I mean, with the comprising and then
6 the by using later on, that's where I come out. And I think that's also
7 consistent with the spec and the testimony of the two experts. Did that
8 answer your question?

9 JUDGE FENICK: Yes. Thank you.

10 JUDGE CASS: This is Judge Cass. Let me follow up. So I'm
11 looking at column 10 of the 083 patent around line 47, which is part of what
12 you discussed before, which says "with reference to Figure 7b, each codeset
13 record 706 may comprise a unique codeset identity number, a block of
14 protocol and formatting information 752, which may describe the physical
15 protocol requirements which comprise this codeset, including, for example,
16 items such as carrier frequency, bit and coding, data frame size and
17 structure, appliance address, parity, or CRC requirements, et cetera." So I'm
18 not seeing anything in this discussion that says all of the protocol and
19 formatting information has to be stored in the codeset record. It just says
20 you've got to have, you know, in this example, it could include things like
21 frequency and bit and coding, appliance address, et cetera. But it doesn't
22 seem to preclude that you could have other pieces of it somewhere else. Am
23 I reading that incorrectly or missing anything?

1 MR. LUKAS: Well, I mean, this is a portion from the specification.
2 My answer is dictated primarily from the claim language, and the reason I
3 responded earlier was it has to be enough protocol and formatting
4 information to cause, to be used to cause transmission of a command
5 communication. It has to be enough. I think the reason this paragraph is
6 written like this is it depends on different protocols. I think they might have
7 different requirements, different formatting information, different protocol
8 information. And so I think that's the way it's read. But I think if you go
9 back to the claim, the claim is saying, look, it includes, it comprises this
10 protocol and formatting information and you have to be able to use it to
11 transmit a command. You have to use the protocol and formatting
12 information, you have to have enough there to allow for transmission of the
13 command, so it has to be enough of a set of procedures or a subset of
14 procedures from protocol and formatting that need to be in that codeset
15 record.

16 I can tell you when I read 11, excuse me, column 11, that talks about
17 a full download of protocol and formatting information. So that's just
18 another, I guess, example. But when I read the claims, and that's kind of
19 where I'm coming from, that dictates, the claim language dictates here in
20 conjunction with the spec and in conjunction with, you know, the expert
21 testimony that you have to have enough such that you can use it to transmit
22 the command communication.

1 JUDGE CASS: So wouldn't it be inefficient to have a system where
2 all of the protocol and formatting information is repeated in each codeset
3 record? For instance, if there's some protocol and formatting information
4 that is required for any Bluetooth signal, why would you want to repeat that
5 over and over again? It seems to me like what would make more sense is to
6 have in each codeset record for a particular controllable device the protocol
7 and formatting information that might be specific to that device, but you
8 might be able to have other information that would apply to any device or
9 somewhere else. Why wouldn't that be covered by this claim?

10 MR. LUKAS: I'll answer the first question. I don't know if it would
11 not be beneficial to have it done this way. But this is the way, I mean, I
12 think your question opens the door to, well, you know, it sounds like you're
13 saying this is novel, this is unique, and this is not obvious. I think, you
14 know, we have to go with what's claimed. It's unique in the sense that it is,
15 in each codeset record, it's providing this protocol and formatting
16 information that will allow commands to be transmitted to multiple
17 different, you know, to different controlled appliances. I guess each codeset
18 record could have different protocols, and I think that's the benefit here and
19 the uniqueness of it. And I'm not sure if I answered your question fully, but
20 I think that's what's so special about these claims. They're making this
21 remote control that has a lot more information, so it's easier for you to
22 control different devices using different protocols. I think that's the novelty
23 of the non-obviousness of these claims. Does that make sense?

1 JUDGE CASS: I think I understand your position.

2 MR. LUKAS: Okay.

3 JUDGE CASS: Yes, I think I do.

4 MR. LUKAS: Okay. So I wanted to get to slide 8. We've kind of
5 gone into, well, what evidence do we have that supports, you know, Patent
6 Owner's construction. Once again, I'm just going to repeat it. The set of
7 procedures needed to transmit commands from one device to another in a
8 way that the receiving device can make sense of and use the commands. We
9 have that. Initially, we have Petitioner not offering a construction. We then
10 have its expert, you know, agreeing with Patent Owner's construction, and
11 now we have, I guess, through today's hearing and, you know, if you can
12 kind of see, well, what is Patent Owner arguing, excuse me, Petitioner
13 arguing on the construction, it appears to be something like anything used in
14 transmission. If you ask me at slide 8, well, what is Petitioner really
15 arguing, I think it's just like anything used in transmission. First of all, not
16 offering construction when there's a dispute and not construing this term,
17 obviously, our position is that violates *O2 Micro* and even Petitioner cites
18 *Nidec*, 868 F.3d 1013, 1017. That's Petition at 20. They specifically say
19 that terms necessary to resolve a controversy must be construed. So that's
20 the first point if there is no construction that they're offering.

21 But their alternative for a construction is any information used in
22 transmission. Our first argument to that is that reads out the entirety of
23 protocol and formatting information. You've rendered those terms

1 completely meaningless just saying anything used in transmission. So that's
2 the first argument.

3 And then used in transmission, it repeats the language recited
4 elsewhere in the claim that I've talked about, that I keep bringing up: will
5 cause the controlling device to transmit a command communication by using
6 the protocol and formatting information. It's kind of just repeating later
7 claim language without ever defining what protocol and formatting
8 information is. And so I think Petitioner's apparent construction is not
9 correct. It's not the proper construction.

10 Okay. So I want to get into -- I'm done, generally, with the claim
11 construction issue. I'd like to get into the second part of the first dispute
12 where we actually look at what Petitioner is arguing. Did you have any
13 questions before I go there?

14 JUDGE CASS: Go ahead.

15 MR. LUKAS: Okay. So I want to take you to Petitioner's theory,
16 and I'm at slide 18. Petitioner's theory is that Aginsky discloses the
17 provisioned codeset record comprising protocol and formatting information.
18 And Patent Owner's position is they have not shown, Petitioner has not met
19 its burden of showing that Aginsky discloses the provisioned codeset record
20 comprising protocol and formatting information. And just to kind of follow-
21 up on that, so there's no doubt that that's their position, I wanted to go to the
22 Petition because that's what the Petitioner said. I'm at paper two, and you
23 can see at page 36, and this relates to Ground 1, at 36 at the bottom of paper

1 two, Petitioner states Aginsky discloses the provisioned codeset record
2 comprising protocol and formatting information, e.g. signal columns 112-1
3 and 112-2 denote the type of signal. That follows up on page 37. And then
4 you can take the Petition and you can look at 47. This relates to Claim 12,
5 Ground 1 again, and it just refers back to the earlier page, 36 and 37. So
6 that's Ground 1.

7 And then if you can look in the Petition, paper two, this is Ground 3,
8 you can see at page 71 for Claim 1, Petitioner refers back to the earlier 36
9 and 37. And then at page 77 of the petition, for Claim 12, Ground 3,
10 Petitioner once again refers back to page 47 of the Petition. So right there
11 Aginsky, the petitioner is saying Aginsky discloses the provisioned codeset
12 record by denoting the type of signal.

13 And lest there be any doubt, my whole goal is to kind of just get rid
14 of any confusion, Petitioner's expert's theory is consistent with Petitioner.
15 And so if you look at, I'm looking at Petitioner's expert's deposition
16 transcript, which is Exhibit 2002, and I'm at page 28. And the question is at
17 the bottom of page 28, Exhibit 2002: "And, specifically, it's your position
18 that the type of signal denoted in signal columns 112-1 and 112-2 discloses
19 the claim protocol and formatting information, right?" "Yes," at page 29.
20 So there you go there.

21 The same testimony is repeated in Petitioner's expert's declaration.
22 I'll just go to the first example. I'm at Exhibit 1003. This is the Petitioner's
23 expert's declaration, and if you just look at paragraphs 123 and 124, the type

1 of signal, the type of signal, in those two paragraphs from the signal
2 columns 112-1 and 112-2. That testimony is repeated in later paragraphs of
3 Petitioner's expert.

4 There was some discussion about that Petitioner's position is not
5 limited to the type of signal. That's incorrect. If you can go to, once again,
6 Exhibit 2002, which is the deposition of Petitioner's expert, Bruce McNair,
7 at 47, the question is asked at the bottom of page 47, Exhibit 2002: "in your
8 analysis of the 083 patent and Aginsky, were you reading Aginsky's code or
9 code sequence of the signal on the claim command data?" There's an
10 objection to form, and then the response was yes.

11 So that kind of puts us where we need to be at slide 20. And the
12 question posed in this slide is: Do Aginsky's signal columns 112-1 and 112-2
13 actually include protocol and formatting information, i.e. the set of
14 procedures needed to transmit commands from one device to another in a
15 way that the receiving device can make sense of and use the commands?
16 And then if I could direct you to slide 21, and we're going to talk about,
17 well, what do these signal columns actually include. You know, what do
18 they actually store and include. Aginsky expressly teaches that signal
19 columns 112-1 and 112-2 denote the type of signal, as well as the code or
20 code sequence of the signal. So I just read you from Petitioner's expert's
21 testimony that he's not contending, that Petitioner and Petitioner's expert are
22 not contending that the code or code sequence of the signal is protocol and
23 formatting information, so we're left with the type of signal. But there's the

1 definition right there, and that's consistent with, if you look at Aginsky on
2 Exhibit 1004, right in the abstract, right off the top of Exhibit 1004, abstract,
3 about midway down, it says together with the identity of the signal type that
4 will achieve the desired operation. Right there. So you have the reference I
5 provided in 21, and then you have the abstract which is consistent with that.

6 Okay. So now I'm at slide 22, and Patent Owner's position is that the
7 type of signal is not the claimed protocol and formatting information,
8 according to the proper definition of that term. And all this is is, as I said,
9 all that's in those columns is an indication or the identity of a signal type.
10 The identity or the indication of a signal type is not protocol and formatting
11 information. It's not the set of procedures needed to transmit commands
12 from one device to another in a way that the receiving device can make
13 sense of and use the commands.

14 And I had a slide on this. I already talked about it, but 23 just kind
15 of confirms, as I mentioned earlier with Mr. McNair's, the Petitioner's
16 expert, testimony, the code or code sequence of the signal, Petitioner is not
17 contending that that is protocol and formatting information. So we're left
18 with the type, again, of signal. Okay.

19 I'm at slide 24 now, and it's important to highlight that the Board has
20 un rebutted testimony from Patent Owner's expert saying that the type of
21 signal is not protocol and formatting information. An indication or
22 identification of just a type of signal is not the set of procedures needed to
23 transmit commands, and that's all you have in Aginsky in those columns.

1 And so I'm at Exhibit 2001. This is Patent Owner's expert, and he goes on
2 from 80 through 91 explaining, according to someone of skill in the art, why
3 that indication is not protocol and formatting information, and that's
4 un rebutted. And I show that at --

5 JUDGE CASS: Counsel, this is Judge Cass.

6 MR. LUKAS: Sure.

7 JUDGE CASS: Turning to Aginsky at column 13, lines 40 through
8 43, which says "in other embodiments, the exchanged data structure may be
9 more robust and include protocols, rules, or other information useful to
10 carrying out remote control of the controllable device," why doesn't that
11 disclose protocol and formatting information in the data structure?

12 MR. LUKAS: Can you repeat the column you were --

13 JUDGE CASS: Yes. It's column 13, starting at line 40 through 43.

14 MR. LUKAS: Yes. So I can tell you why, but I'm going to direct
15 you right to a spot where an expert or a POSITA tells you. It's Exhibit 2001,
16 and it's at paragraph 87. So this protocols, rules, or other information useful
17 to carrying out remote controllable devices is misleading he says. And I
18 want to make a point this is not in the Petition. They never referenced this
19 in the specific claim-by-claim analysis, so I want to point that out. That was
20 new when they brought it up today, and I think they brought it up in the
21 reply.

22 But, anyway, it's a throw-in because Petitioner knows it has trouble
23 with the column 112, excuse me, the 112-1 and 112-2. But those protocols

1 and rules mentioned in the above quote refer to user device permissions and
2 restrictions, for example password requirements and child permissions, and
3 customized control layouts for devices, how the buttons are arranged. These
4 protocols and rules are in no way related to the claimed protocol and
5 formatting information, which, again, is the set of procedures needed to
6 transmit commands from one device to another. So it's at the local level and
7 has nothing to do with transmission of commands, and these are not the
8 protocols and formatting information --

9 JUDGE CASS: Where are you again?

10 MR. LUKAS: Excuse me. So I was actually from Patent Owner's
11 expert. Exhibit 2001, paragraph 87, lays it out, and so I thought it would
12 just be easier to read from there so I didn't make any mistakes. How about
13 that? But paragraph 87 goes in and just says this is not protocol and
14 formatting information, this is something completely different. It's not
15 related to using this stuff to transmit commands. These are like very local
16 level user device permissions, restrictions, and how you lay out the device,
17 that kind of stuff. So it's completely irrelevant, I guess, and it does not even
18 come close to meeting what's required by the proper construction of the
19 claim --

20 JUDGE CASS: So how do we know, though, or how does Dr.
21 Scordillis know that these protocols are limited to user device permissions or
22 customized layouts?

23 MR. LUKAS: Well, I mean, I think he references it --

1 JUDGE CASS: I don't see that in the portion of column 13 of
2 Aginsky.

3 MR. LUKAS: Okay. Oh, you know what? This is a situation where
4 it also, it talks about it earlier. They come up -- let's go to column 6, 7. I
5 remember reading this. I just wanted to -- so here you go. So this is the best
6 place to point you to. Go to column 6 of Exhibit 1004, and I start at, I think
7 it's line 7. If you go all the way down through 7-16, there's a lengthy
8 discussion about what they're talking about here. This is not communication
9 methods, nothing related to protocol and formatting information. Rules
10 customized for a specific remote device or a specific user. It goes in right
11 there. So that's the best way to kind of lead you to it. I'd say start there.
12 Column 6, lines 7 through 7-16, really gets into a discussion about these
13 protocols and rules. And then column 13 is just relating back to that, you
14 know, talking about that stuff, not talking about what we're talking about,
15 which is more of a communication method and related formatting
16 information. Does that answer your question?

17 JUDGE CASS: I'm just taking another look at it. And, I mean, it
18 here, too, says such protocols or rules, I'm reading from column 6, line 11,
19 define, for example, and then they give these various examples, but it doesn't
20 seem to limit the type of protocol information that could be included; is that
21 right?

22 MR. LUKAS: I would say these are not protocol and formatting
23 information, according to the 083 patent, 100 percent they are not. And if

1 you go back to the Petition, this argument was never made. They are rules
2 to affect the remote locally, et cetera. Protocol and formatting information
3 relates to specific communication methods. These have nothing to do with
4 communication methods and related formatting information. And Patent
5 Owner's expert lays that out, and it's also clear from Aginsky, if you look
6 into it. I think, separately, they talk in Aginsky about communication
7 methods, like IR or Bluetooth, et cetera. And this is completely separate.
8 So I would say it does exclude that, it does exclude communication methods
9 at the protocol and formatting information we're talking about.

10 JUDGE CASS: Okay. Thank you.

11 MR. LUKAS: And I would also, just to follow up, I would take you
12 back again to Petitioner's theory and Petitioner's expert, right to those
13 columns 112-1 and 112-2 and, as we talked about, the signal type. That's
14 what they're stuck with, and that is not related to the signal type. Okay.

15 JUDGE CASS: I'm sorry. You also just started going into your --
16 I'm sorry. I thought you were at 15 minutes. You're at 45 minutes.

17 MR. LUKAS: Okay. Great. Thanks. All right. So I wanted to just,
18 Patent Owner is finished with its central arguments regarding protocol and
19 formatting information. It would show that Aginsky does not disclose the
20 properly-construed protocol and formatting information. I did want to
21 address a couple of Petitioner's arguments, and I'll start at slide 28. And the
22 frequency set, the first argument is that the frequency set, coded IR, and
23 Bluetooth signals incorporate protocol and formatting information within the

1 signal. And that's shown at slide 28, and the response to that is it's irrelevant
2 because no signals are included in the specific codeset record in Aginsky.
3 All you have is the indication or identity of the signal type; that's it. And
4 that's borne out in Aginsky, as I mentioned earlier. And so you're not storing
5 signals in 112-1. You're just not. And to be clear, I think there might be
6 some intentional confusion. A signal is like the electromagnetic wave that's
7 transmitted from a controlling device. So you're not storing these
8 electromagnetic waves in signals 112-1 column. You're not. So I want to
9 make that very clear. At most, there's an indication of a signal type and a
10 code or code sequence. We've already gone through Petitioner is not
11 contending a code or code sequence is protocol and formatting information,
12 so we're left with signal type, and that's, at most, an indication or the identity
13 of the type of signal: Bluetooth, IR. That's it. That's all you got. So that's
14 their first argument.

15 I'm at 30. I already got into this because one of the judges raised
16 this, and this is about these other rules that are not protocol and formatting
17 information at 30. We've provided un rebutted evidence at slide 31 showing
18 that this has nothing to do with communication methods and related protocol
19 and formatting information. And that's at 31.

20 Thirty-two. This is Petitioner's third argument. I didn't hear about it
21 today. It's another weak argument by Petitioner that, in Aginsky, you check
22 whether a command is legal, and that teaches protocol and formatting
23 information. That's at slide 32. That's also untimely, unsupported by a

1 POSITA, and completely wrong. And as you can see at 33, we point this
2 out. Process 306 detects receipt of a command signal or other event from a
3 remote device. That command signal is checked by process 307 to
4 determine if it is legal. So this is not even being performed on Aginsky's
5 controlling device. This is on a controlled device. So completely irrelevant
6 and wrong.

7 And then, finally, there are only two places for protocol and
8 formatting information to be stored, I didn't hear about this today, but I'll get
9 into it because it also shows the strained arguments we're making here.
10 Thirty-four and the thirty-five. It's circular. It's nonsensical because it
11 presumes that an indication of a signal type is protocol and formatting
12 information, and we've already shown it's not.

13 So that concludes dispute number one. Do we have any questions on
14 that?

15 JUDGE CASS: I don't think we have any questions. I just want to
16 let you know you're now at 50 minutes.

17 MR. LUKAS: Okay. How many minutes?

18 JUDGE CASS: Fifty, so you have ten minutes. You're going into
19 rebuttal time now.

20 MR. LUKAS: So I have 15 minutes left.

21 JUDGE CASS: No, you have 50 minutes you've used, so you have
22 10 minutes left.

1 MR. LUKAS: All right. Well, let me get through this then. All
2 right. I'm going to go to dispute two, and I'm making sure here, I'm at slide
3 36. All right. The claims recite a speech recognition engine. The Petition
4 doesn't contend at 38 that Petitioner's primary reference, Aginsky, discloses
5 or teaches or suggests speech recognition engine. Instead, in the petition, the
6 Petitioner contended that the secondary reference discloses a speech
7 recognition engine. I heard discussion about alternative arguments. That's
8 not correct, and there was no proposal to modify the primary reference.

9 In the reply, Petitioner concedes that it didn't propose modifying
10 Aginsky to have a speech recognition engine and then says for the first time
11 that Aginsky expressly teaches the speech recognition engine. Okay. And
12 that's at slide 39.

13 Anyway, Patent Owner's arguments are pretty clear. It should be
14 rejected. But even if the Board does consider it, it also fails. In the original
15 Petition, there was no proposal to modify Aginsky to incorporate a speech
16 recognition engine. And now their secondary argument, the new argument
17 is that Aginsky expressly discloses it. It also doesn't expressly disclose it.
18 Speech recognition engine mentioned in the abstract, Exhibit 1001, the 083
19 patent. There's also a speech recognition means mentioned throughout the
20 patent. That's important because a speech recognition engine is a specific
21 structural device also mentioned in the original claims, Exhibit 1002 at 28
22 through 33. So important.

1 Anyway, I wanted to get to this. In the Petition, paper two, at 45 and
2 46, you can see that Petitioner just says Aginsky is modified by Stammeler as
3 a speech recognition engine. No speech recognition engine in Aginsky. It's
4 at 45 and 46, also at 50, of paper two. Same thing. It incorporates, refers
5 back to 1C. The same can be said later on in Ground 3.

6 Then Petitioner's expert repeats most of the same arguments in
7 Exhibit 1003 about Aginsky not disclosing it and relying on the secondary
8 references. Now, in the reply at paper 18, the Petitioner says we don't need
9 to modify Aginsky because we didn't do it, we didn't propose it, because
10 Aginsky just discloses it, expressly discloses the speech recognition engine.
11 That's at Figure 18 at page 26. There need be no motivation to do as
12 expressly taught.

13 And that reply cites back to the Petition at 25. If you look at the
14 Petition at 25, which is paper two, you can see there's no mention
15 whatsoever of a speech recognition engine in page 25. No mention
16 whatsoever. Okay. Then you actually look at the specific points of Aginsky
17 that they refer to, column 9, 6 to 65, column 6, lines 2 to 6, and column 8,
18 lines 8 to 12, no mention of a speech recognition engine.

19 So, anyway, the point is if you let them make their argument on
20 Aginsky expressly teaching a speech recognition engine, it's not there. And
21 we also have Patent Owner's expert saying it's not there, Exhibit 2001,
22 paragraphs 121 through 123.

1 And I wanted to say one more thing about that. There is no
2 testimony and they never made this argument because I know it was touched
3 on that Aginsky might or necessarily includes a speech recognition engine.
4 There's no evidence of a POSITA saying that in the Petition. There's no
5 inherency argument. Now they're saying expressly, expressly, so it actually
6 has to expressly be there, and it's not. So that's that.

7 How many minutes do I have left?

8 JUDGE CASS: So you're at 56, which means you have 4 minutes
9 left.

10 MR. LUKAS: Okay.

11 JUDGE CASS: You're in your rebuttal time, so when you use that
12 you'll be done.

13 MR. LUKAS: I do want to get into it because I think there's some
14 good ones. I'm just going to wrap up with dispute number four and just talk
15 about the dependent claims because I think he has some good stuff here. I'm
16 not going to get too deep into it. But Claims 6 and 18, this is the easy one.
17 Claims 6 and 18 at slide 52, they're materially different than Claim 1. And,
18 yet, if you look at paper two, 55 through 56, 59 and 60, you can see that
19 there's no separate discussion of this additional limitation, the mapping each
20 of the less than all the individual command function entries from within the
21 provisions codeset record; therefore, they haven't met their burden. That's
22 that on Claims 6 and 18.

1 I want to talk about, I want to skip ahead to here, so you look at slide
2 54. We're talking about Claims 13 and 14, another issue of not meeting their
3 burden. You have Claim 12, which Claim 13 relies on and Claim 14 also
4 relies on, saying a processing device having associated instructions stored on
5 a non-transient readable media with instructions when executed by the
6 processing device. So those are the instructions referenced in Claim 13.
7 They're never discussed in the petition or in the supporting declaration. You
8 can see that in paper two at pages 58, 59, and 80. So Petitioner has not met
9 their burden to show that those dependent claims, 13 and 14, are invalid as
10 obvious.

11 And, finally, slide 55. This one is also pretty simple. We were
12 talking about Claims 7, 11, and 19, and it's very clear in Claim 7 you have to
13 use at least location data to identify the codeset record that is caused to be
14 provisioned to the controlling device. In their reply, in Petitioner's reply,
15 right off the bat, they say it's not the codeset record. They actually say
16 remote control presets. So it has nothing to do with their -- they've admitted
17 they've kind of taken themselves out of the Board here. They've argued
18 away from these Claims 7 and 11 and 19 being patentable because they're
19 saying it's presets, it's not even select codesets. If you look at the reply, right
20 there on its face at 28, and it's clear as day that they can't meet their burden.
21 They admit that they can't meet their burden to show that the location data is
22 used to identify the codeset record that is going to be provisioned. Presets
23 are completely different than codeset records.

1 So that covers the dependent claims, and I'll reserve what's
2 remaining. Thank you, Your Honors.

3 JUDGE CASS: Okay. Thank you, counsel. You actually have used
4 up 59 minutes, so you have one minute remaining to say whatever you could
5 say in that amount of time. So with that, we'll turn back to counsel for
6 Petitioner, and I'll wait until your screen shifts and you start talking, and
7 then we'll start the clock. You have 12 minutes remaining.

8 MR. MCKEOWN: All right. Let me know when the screen shifts.

9 JUDGE CASS: Okay. We're ready now.

10 MR. MCKEOWN: Good. Okay. Let's start with where Patent
11 Owner left off on the dependent claims, Patent Owner slide 55. This is a
12 combination of references. The secondary reference teaches using location
13 data. We didn't rely on it for the presets, so that's just attacking the
14 references individually.

15 Patent Owner slide 54. The control application that's download
16 provides the control. It includes the instructions. Everybody knows that
17 software is an instruction set. It's Patent Owner's burden to explain why that
18 it's not an instruction set. There's no requirement to use magic words. These
19 claims are interpreted from the perspective of a POSITA and their
20 understanding of instructions in this context.

21 I think he also talked about slide 52 as being limited to Claim 1.
22 That's incorrect. There's an entire discussion at the Petition at pages 67

1 through 70 on this point, so there's no issue with the dependent claims that
2 were discussed.

3 As to the speech recognition issue, as I mentioned, this was covered
4 in detail at institution at page 53 of the Institution Decision. These
5 arguments are just the same retread of those arguments, only now, as I
6 mentioned, they're in a worse position because their expert has admitted that
7 a speech recognition engine is nothing more than a processor that's taught as
8 having speech functionality. There's no requirement to use any magic
9 words, so there doesn't need to be any further discussion of that issue.

10 But I do want to go back to Petitioner slide 4. So on Petitioner slide
11 4, I have an excerpt on the right of what the Board understood the grounds in
12 the Petition to be. Patent Owner is now arguing that number three is a new
13 argument, so either the Board anticipated that new argument or the Patent
14 Owner is mischaracterizing the record. And while we're on the topic of
15 number three, which there was a discussion, Judge Cass, you had asked
16 extensively what the difference was between those additional protocols and
17 rules in Aginsky as compared to what the Patent Owner thought those
18 protocols and rules were, and I just want to highlight a couple of things.
19 First of all, Patent Owner's demonstrative 32, they said, oh, well, here's an
20 argument we haven't heard about today. This argument is explaining why
21 that additional protocol information would map directly on their claim
22 construction. So when you say that the claim construction has to make sense
23 of and use the commands, well, protocols that determine if a command is a

1 legal would map directly onto that construction. So they're now running
2 away from this construction in multiple respects, this being the least of them.

3 I think the main issue now with their construction is while they later
4 in their presentation used a set of procedures, Judge Cass, when you asked
5 them if a set of procedures is in the record, they're now running away from
6 that to say, well, it could be an amount, it could be enough, whatever that
7 means. Whatever amount or enough means, Aginsky certainly has it.
8 There's no argument, no evidence in the record that Aginsky doesn't work.
9 So whatever enough is, a carrier signal that gets you the communication to
10 the device is enough, a coded IR signal is enough. And, again, all of this
11 maps directly to their own specification but --

12 JUDGE FENICK: Mr. McKeown, this is Judge Fenick. I was
13 wondering, I was looking at Patent Owner's demonstrative 31, and they cite
14 Exhibit 2001, their declarant's testimony in paragraph 87, and they say this is
15 un rebutted, that this is what the protocols and rules in column 13 of Aginsky
16 referred to. Do you have a response to the characterization of this as
17 un rebutted?

18 MR. MCKEOWN: Yes, Your Honor. And slide 32 would be part of
19 that rebuttal. You know, they basically argue that, well, it's just permissions
20 and passwords, and we said, well, no, at least in one respect, it teaches
21 assessing the legality of the command, so it's more than that. And, again, if
22 your construction is, well, it needs to be information that's specific to

1 command usage, the legality of that command would be on all fours with
2 that. So we did dispute it and --

3 JUDGE FENICK: Sorry. This is Judge Fenick again. Is there any
4 deposition testimony or declaration evidence that talks about this, or are we
5 just talking about the arguments back and forth by the parties after this?

6 MR. MCKEOWN: I would say Aginsky itself is the best evidence
7 of that, column 13, around line 40, doesn't limit that teaching to any of the
8 stuff. That's their spin on it. So Aginsky itself is the best evidence.

9 JUDGE FENICK: Thank you.

10 JUDGE CASS: This is Judge Cass. So on the slide you were just
11 referring us to, which I think is Patent Owner's slide 32, isn't this checking to
12 see whether a command is legal, isn't that done by the controlled device --

13 MR. MCKEOWN: Well, it still has --

14 JUDGE CASS: -- instead of the remote?

15 MR. MCKEOWN: Sure, Your Honor. Well, two points. Number
16 one, there's no specifications in the claims as to where the protocol needs to
17 be used, only that it's understood on both sides. So if there's a protocol in
18 place on assessing the legality of commands, it has to be understood by both
19 devices. So where it's executed is not anything that's recited in the claims.

20 JUDGE CASS: Okay. Thank you.

21 MR. MCKEOWN: But staying on Aginsky, there was a lot of
22 argument about the signals not being in the signal storage location. There's
23 numerous problems with that. All the patent read back to refute that was the

1 abstract. I've already read into the record portions of, I believe it was
2 column 13, lines 17 through 21, which states in no uncertain terms that it is a
3 signal that comes from that location that is used. That's also consistent with
4 column 8, lines 63 through 67. And it's also consistent with what their
5 expert said, so you can look at page 20, line 20, to page 21, line 6, where the
6 expert makes clear that there are carrier signals there and they are actual
7 physical signals. That's his direct quote. So we can't run away from the fact
8 that Aginsky has a signal location where signals are stored. So that's it on
9 Aginsky.

10 There was a lot of discussion about what the deposition transcript
11 said, very little discussion of what the patent said, what Petition said. This is
12 typical. The Patent Owner would like to change the grounds, would like to
13 change the evidence that's in the Petition, argue that something wasn't
14 argued when, in fact, it was. This trial is based on the grounds that were
15 instituted. Mischaracterizations of the deposition testimony doesn't change
16 any of that.

17 But, again, if the construction is an entire set of procedures, Judge
18 Cass, to your point, you are not putting entire sets of procedures in every
19 codeset record. These are small devices, limited memory. That's just not
20 happening. And in any event, it's not taught or explained that way in the
21 Aginsky patent or, for that matter, the 083 patent. All that's required of
22 these claims, again, is what is explained, at a minimum, at column 10 of this
23 patent. If we can point to a carrier signal, if we can point to coded IR, those

1 are the same exact examples in the 083 specification. That's why the Patent
2 Owner doesn't want to talk about the 083 patent. They read a couple of
3 passages about protocol and format information but didn't explain how it has
4 anything to do with the construction they're proposing. Certainly, protocol
5 and formatting information is mentioned in the specification. What that has
6 to do with their 42-word construction is anyone's guess.

7 So with that, unless there are further questions, I would ask that the
8 claims be canceled based upon the clear showing of the prior art, which
9 coincides directly with the claim language and the supporting specification,
10 and accepting constructions outside of the extrinsic record that are directly
11 contradicted by the specification in many instances is improper as a matter
12 of law.

13 JUDGE CASS: Okay. Thank you very much, counsel. With that,
14 we will turn back to counsel for Patent Owner. You have a minute left to
15 sum up or hit any point that you want to hit in that time.

16 MR. LUKAS: Yes. Thank you, Your Honors. Just a couple of
17 points. I mean, I heard a lot of burden shifting, and I just want to reiterate
18 it's Petitioner's burden. I heard a lot of stuff about, like, for example, there's
19 no evidence or Patent Owner's expert never said this. They're talking about
20 the signal columns, and there's no evidence from Petitioner's expert that
21 there's anything in that signal column other than an indication of signal time.
22 That's it. Patent Owner's expert actually says also what that column is

1 limited to. Just saying a protocol is not enough, just saying a signal type is
2 not enough.

3 And there was a lot of talk about, well, this wouldn't make sense if it
4 was all protocol information. Well, these claims are talking about one
5 codeset, and the bottom line is they have no evidence in the record that
6 protocol and formatting information is provisioned in a codeset record and
7 used to command the transmission of a command. None. We're limited to
8 the signal type, an indication or identity of a signal type. That's it. There
9 was a lot of attorney argument that I heard, but no evidence.

10 And then, finally, going back to the speech recognition grammar --

11 JUDGE CASS: Counsel, I think you're about out of time so --

12 MR. LUKAS: All right. Thank you, Your Honors. We ask that the
13 Board confirm the patentability of all the claims.

14 JUDGE CASS: Okay. Thank you very much. With that, that will
15 conclude the argument part of this hearing. I would like to thank both
16 counsel for all the time and effort they took in preparing the case and
17 making the presentations. We appreciate that very much.

18 So that will conclude the hearing. And at this point, if you could
19 stay on for just a few minutes to see if the court reporter has any spellings or
20 other issues, word issues, that they would like to go over with you, that
21 would be great. And we will issue a decision in due course.

22 MR. MCKEOWN: Thank you, Your Honor.

23 MR. LUKAS: Thank you.

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1 (Whereupon, the above-entitled matter went off the record at 3:05
2 p.m.)

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