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571-272-7822

Paper No. 33
Entered: March 20, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,
Petitioner,

v.

WILDSEED MOBILE, LLC,
Patent Owner.

IPR2023-00244 (Patent 10,251,021 B2)
IPR2023-00246 (Patent 9,141,960 B2)

Record of Oral Hearing
Held: February 29, 2024

Before KARL D. EASTHOM, TERRENCE W. McMILLIN, and MICHAEL T. CYGAN, *Administrative Patent Judges*.

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The above-entitled matter came on for hearing at 12:00 PM EDT on Thursday, February 29, 2024, at the U.S. Patent and Trademark Office, via video-teleconference.

1 P R O C E E D I N G S
2 - - - - -
3 JUDGE EASTHOM: Who's appearing today?
4 MR. EHMKE: Thank you, Your Honors. This is Andrew
5 Ehmke. I am lead counsel on behalf of the Petitioner. I will be presenting
6 today. Joining me as well is Calmann Clements, backup counsel.
7 JUDGE EASTHOM: Okay. Welcome Mr. Ehmke and Mr.
8 Clements. And then, excuse me one second. Patent Owner, please, can we
9 have your appearance?
10 MR. HAMILL: Good morning, Your Honors, or good
11 afternoon. I'm Andrew Hamill with Kramer Alberti Lim & Tonkovich for
12 Patent Owner, Wildseed Mobile, LLC. With me today for the Patent Owner
13 are Sal Lim, who is lead counsel, and David Alberti, also with Kramer
14 Alberti Lim & Tonkovich, as well as Jason Fitzsimmons and Jennifer
15 Chagnon with Sterne, Kessler, Goldstein & Fox.
16 JUDGE EASTHOM: Okay. Welcome everyone. Mr. Hamill,
17 you'll speak most of the hearing?
18 MR. HAMILL: I'll be presenting, that's correct.
19 JUDGE EASTHOM: Okay. And then, Mr. Ehmke, that's the
20 same for you?
21 MR. EHMKE: That is correct, Your Honor, yes.
22 JUDGE EASTHOM: Okay. How many -- why don't we get
23 started and tell us how much time you want to reserve, please.
24 MR. EHMKE: Thank you, Your Honor. Again, this is
25 Andrew Ehmke. Petitioner would like to reserve 15 minutes for rebuttal.
26 JUDGE EASTHOM: Okay. You may proceed.

1 MR. EHMKE: Thank you, Your Honors. And I'll be
2 referencing the demonstrative exhibits. I will not share my screen. I'm
3 using the Exhibit 1026 from the 00246 proceeding, although they're identical
4 demonstratives between the two proceedings. Turning to slide two, we have
5 simply a brief overview of the '960 and the '021 patents. They share a
6 common specification and are a direct continuation. What we see in the
7 upper left is just a simple hardware associated with the system. We have a
8 mobile device communicating wirelessly with a server.
9 What we'll be focusing on is the methodology used in this
10 system. We see the flowchart there on the right. And what's being claimed
11 is this notion of we're going to determine the location of the mobile device.
12 We're going to figure out what the user preferences are by inferring their
13 preferences based on the content on that device. And then using that
14 location and preference information, recommending an event that might be
15 of interest to the user that is approximate to the user's location.
16 So diving into that, we're turning to slide 3, dealing with the
17 first issue. It applies both to the '960 and the '021 patents about this notion
18 of inferring the entertainment preferences of the user. And we see that
19 manifested as we turn to slide 4 of what it looks like in the claims, and both
20 the claim from the '960, as well as the '021 patent. We're going to be
21 inferring one or more entertainment preferences of a user of the portable
22 media player device.
23 Turning to the prior art on the next slide, slide 5, we're looking
24 at Ellis. And starting with Ellis, Ellis is involving a portable device that
25 stores and downloads contents. We see it described there in the upper left.
26 This embodiment is configured to be used portably. It has speakers such as

1 headphones and an antenna for wireless communication. It's going to be
2 storing the content digitally in buffers on the storage of this device so that
3 the user can download and access and consume this content.
4 Turning to slide 6, what happens in the system of Ellis, is as the
5 user is consuming this digital content, the system is going to be monitoring
6 what the user is consuming. And when it does this, it is automatically
7 determining the user preferences. And this is what we've pointed to as the
8 action of inferring the preferences of the user of the portal media player
9 device. Ellis is monitoring what the user is consuming, and automatically
10 determining the user preferences based on that consumption. As this mobile
11 device is monitoring and collecting this information it is reporting this usage
12 data back to a central facility.
13 Turning then to slide 7, we're looking at the combination with
14 Sasaki. Just the patent has a baseline structure of a mobile device
15 communicating with the server, and then this methodology layer on top,
16 that's the proposed combination is this inference methodology layered on top
17 of a system. The system that we're looking at here is Sasaki system, which
18 describes a server that's storing preference information about the content on
19 a user's portable mobile terminal device. So we have the overlying
20 methodology of inferring user preferences by monitoring what the user
21 consumes and applying it to a content recommendation system that's
22 gathering user preferences and storing it on a server. So we have that
23 summary there on slide 8. You have this technique for automatically
24 determining. The server receives those user preferences. And it's going to
25 be using those preferences in the context of recommendations to the user of
26 the portable device.

1 Turning to slide 9, we'll dive a little deeper into the '960 patent
2 and its inferring of user preferences based on a plurality of media. On slide
3 10, we see how this language is shaped up in the claims. Again, we're
4 looking at the inferring step. We're going to be inferring the one or more
5 preferences of the user. It's going to be based on, at least in part, on the
6 retrieved plurality of media or information about the plurality of media.
7 The combination that we set forth in the Petition is shown on
8 slide 11. What we said is that we have this system of Sasaki, we have this
9 server that's storing user preferences about multiple types of content of a
10 user-affordable device, and we're taking that system in view of Ellis's
11 technique of automatically determining user preferences by monitoring what
12 the user consumes. So how does that look in the details? Well, on slide 12,
13 we have both Ellis and Sasaki. What Ellis shows is that the types of content
14 that it's looking at are songs, commercials, shows, and other content. It's
15 looking at information about that content. It's looking at the groupings of
16 them, whether it's a grouping of certain commercials or songs, or a category
17 of content such as bluegrass or alternative rock, or a specific performing
18 artist, or a particular radio station, or a particular radio show. It's looking at
19 different types of content.
20 We'll see that on the left. On the right, we look at the system of
21 Sasaki and what type of content its system is designed to be used with. Its
22 content recommendation system is about CD music, images, videos, and
23 novels, different types of media content. And that content is all stored, the
24 audio and image information is stored on the mobile device in Sasaki. So
25 we see that there's this plurality of media, whether it's songs, commercials,
26 or music, or DVDs, between the two references and their teachings of what a

1 POSITA would understand.
2 Turning then to slide 13, we'll address Patent Owner's first
3 argument with respect to this, is that Patent Owner has proposed a claim
4 construction of plurality of media, suggesting that it should mean more than
5 one media. I don't think that's that controversial of a claim construction,
6 although I don't think it really brings anything to the table in terms of
7 resolving the dispute. Where the real dispute lies here is Patent Owner's
8 subsequent analysis trying to apply this claim construction of that plurality
9 of media means more than one media. And in Patent Owner's response,
10 their argument was based on a plurality of media content types. You see
11 those quotes here. They specifically say Ellis does not disclose the claimed
12 plurality of media content types. Of course, that's not the claim language.
13 Now, Patent Owner I think has said that this was an error or a mistake, a
14 typographical error. I just want to address that the claim clearly doesn't state
15 a plurality of media content types. And if we look at the '960 patent, we see
16 further that there is this distinction, and I'm sorry, I've moved to slide 14,
17 Your Honors. On slide 14, we see this distinction from the specification that
18 the number of media files, that's media, and that's described differently than
19 the media types, which are text, audio, video, graphics. So when we're
20 thinking about a plurality of media, we're thinking about the files, the actual
21 media themselves, at least according to the specification of the patent.
22 We turn to slide 15, we see further how this is implemented
23 with respect to the notion of inference. The patent describes when we're
24 talking about how the server determines the user has a preference, looking at
25 the example on the left-hand side here, that when we determine the user has
26 a preference, we're looking at a substantial amount of music. So we're

1 looking at a plurality of media, the substantial amount of music. We're not
2 looking at the content type, it's just the given content type here is music, but
3 we're looking at the plurality of the music by the famous jazz artists in order
4 to figure out the inference. We see in the second description here at the
5 bottom that we're going to figure out the user has a preference for certain
6 film genres related to science fiction if a significant number of movies, such
7 as Close Encounters or Star Wars have been consumed. That's the plurality
8 of media in association with determining the user's preference through this
9 act of inference. We're inferring based off of a number of music or a
10 significant number of movies. Those are the examples from the
11 specification.
12 JUDGE EASTHOM: Counsel, can I ask you a question? I'm
13 not sure I understand what you're saying. I mean, Claim 1.12 does claim a
14 plurality of media content types. What are you?
15 MR. EHMKE: I believe that's in the '021 Patent though, Your
16 Honor, versus --
17 JUDGE EASTHOM: Okay. Oh, you're talking about '960.
18 Thank you. Thank you for clarifying.
19 MR. EHMKE: Yes, I apologize. Yes, we're talking about
20 the -- we're simply talking about the fact that Patent Owner had proposed a
21 claim construction in the '960 proceeding for a plurality of media that
22 appeared to indicate that it should mean a plurality of media content types.
23 We believe that was conflating the two patents, the '960 and the '021. So,
24 yes, we want to make sure there's a clarification here. When we're talking
25 about the '960, there is no recitation of the media content types. It's simply
26 the plurality of media.

1 JUDGE EASTHOM: I appreciate that. Thank you.
2 MR. EHMKE: Turning to slide 16, just reiterating again that
3 whether we look at this as a plurality of media or plurality of media content
4 types, we're seeing that the combined system is inferring based off the
5 plurality of media. In Ellis, as it's watching what the user is consuming, the
6 user is consuming songs, more than one song. The user is consuming
7 commercials and shows, more than one show. The user is consuming
8 commercials and songs and shows and other content. Each of those is
9 describing a plurality of media content. Similarly with Sasaki, it's disclosing
10 that there's music and images and video and text on the device. Whether it's
11 plurality of media or plurality of content types, the prior art is disclosing
12 either of those interpretations.
13 Now on slide 17, Your Honor, we're actually switching to the
14 '021 Patent to specifically talk about plurality of media content types in the
15 '021 Patent. And we see in that claim limitation, Judge Easthom, as you
16 pointed out, it specifically does recite in the '021 Patent that when we're
17 inferring, we're doing an inference based at least in part on the retrieved
18 media, information about the media, and a plurality of content types with
19 respect to media stored on the portable device, and then it provides the litany
20 of where in that plurality of media content types comprises text, image,
21 audio, and video. As we set forth in the Petition, as we show on slide 19,
22 our proposed combination is --
23 COURT REPORTER: I apologize for the interruptions, but it
24 appears that I've lost audio. Hello?
25 SPEAKER: Court reporter has a question.
26 JUDGE EASTHOM: I think it may be someone was just not

1 muted.
2 COURT REPORTER: I apologize. This is the court reporter.
3 For some reason, during his last sentence, he froze on me, and I wasn't able
4 to get through when he was speaking. So, I apologize for that. If you would
5 just please repeat your last statement.
6 MR. EHMKE: Sure. We were referencing slide 19, where we
7 set forth in the Petition that Sasaki's server receives user preference
8 information about different media content types, such as music, pictures,
9 video, and text. And that's being combined with Ellis's teachings of how
10 you automatically determine a user's preferences based off of detecting and
11 monitoring what the user consumes. And I think, Judge Easthom, you had a
12 follow-up question.
13 JUDGE EASTHOM: No, that was sort of my question. So,
14 this claim is Claim 1. When it says the server is, I guess it's, it's caused the
15 computer server to control receipt of media, and then, and the inference is
16 based on, in part, on the retrieved media. So is this, in your view, does this
17 media have to be received by the server?
18 MR. EHMKE: No. The media does not have to be received by
19 the server. What the server is receiving is either the media or.
20 JUDGE EASTHOM: At the portable device.
21 MR. EHMKE: Correct. Or information about the media.
22 Which would be --
23 JUDGE EASTHOM: And basically, your argument is that Ellis
24 and Sasaki together meet that limitation. But as I understand it, Ellis
25 primarily stores this information on the, you know, on the portable device.
26 But I guess your take is, okay, well, Ellis also suggests sending usage

1 information over to a central facility and suggest other components can do
2 that. And then is it your other position that Sasaki's portable devices, the
3 terminal device, they call it in Sasaki, that that sends these
4 recommendations, and when it sends recommendations, it includes these
5 four media types?
6 MR. EHMKE: I got you. So first, Your Honor, yes. But what
7 we're looking at in terms of the teachings of Ellis is you have the portable
8 device in Ellis, but it specifically talks about transmitting the information
9 that it collects, calls it the usage data, which can include many different
10 things with respect to what the user is doing with their device. That
11 information can be sent to a central facility for processing. So Ellis does
12 describe embodiments where everything might be contained in a single
13 device, but it is also specifically describing and disclosing, sending that
14 user's information or further processing at a central facility. So that is a
15 hook to combine it with Sasaki, which teaches having a mobile device and a
16 central server, so you have a central server receiving the recorded usage data
17 using the technique of Ellis. So, that's the first question there.
18 JUDGE EASTHOM: Right. And then sort of your hook is a
19 good term, I guess, in Sasaki. So, Sasaki's terminals -- they -- when these
20 recommenders from the terminal, the way I understood is in Sasaki, they
21 would -- Sasaki's server would store that sort of that Figure 3C, it has user
22 preferences. And also, I think the way I read it, in order to determine if the
23 portable device or the terminal preferences are met, Sasaki's server also has
24 to store what would be Sasaki's Figure 3B, because that has the
25 recommendation information. I don't know if you read it that way, or how
26 do you read it?

1 MR. EHMKE: I'm going to pull up Sasaki's Figure 3B so I can
2 follow along with you, Your Honor. So Sasaki is storing at a server, it
3 simply discloses that it's storing user preference information at its server.
4 And so when we look at the combination, we have this concept in Ellis of
5 monitoring what the user does, report that usage data back, and
6 automatically determine the user preferences. So you have that technique of
7 how you figure out what the user's preferences are. And you have Sasaki's
8 system that has the central facility that is going to store the information that's
9 reported back to it, as well as the user preferences.
10 JUDGE EASTHOM: You're relying on the combination, but
11 my specific question is, doesn't Sasaki's server itself, when it determines that
12 someone meets the preference information, a user stores their preference
13 information at Figure 3C in Sasaki's server?
14 MR. EHMKE: Yes.
15 JUDGE EASTHOM: And then how does the server know what
16 to recommend based on that preference? You know, what does it
17 recommend? It seems like, in my view, it has these preference words, or I
18 forgot what they're called exactly the preference words like love or rock or
19 something. So in Figure 3C one of the words might be rock, and then if a
20 user comes up and the server detects that that terminal has a preference of
21 rock, it'll look through everything that it attaches to the word rock and send
22 it back to that terminal. Isn't that how Sasaki works?
23 MR. EHMKE: Yeah, that's, yes, generally that's how Sasaki
24 works. We also want to layer on top the additional teachings of Ellis that
25 talks about grouping music and grouping artists and providing
26 recommendations based off of groupings and similarity among groupings as

1 well. In terms of how the recommendation is generated, there's not a lot of
2 requirement in terms of the claim language of the specific steps in order to
3 provide the subsequent recommendation. We just have to generate the
4 recommendation of a venue of interest to the user. How is of interest to the
5 user is the next step.
6 JUDGE EASTHOM: Okay. And then your friends are arguing
7 on the other side that with respect to this preference information, you have a
8 limited showing about Ellis's teaching because Ellis only teaches to look at
9 audio content to determine automatically the preference information, and
10 your friend's argument is well how can you apply that to these other types of
11 media?
12 MR. EHMKE: Right. I'll direct you to slide 12, Your Honor,
13 of Petitioner's demonstratives. What Ellis is teaching is we're looking at
14 content that the user consumes, songs, shows, and other content. And that
15 when it's doing its recommendation analysis, it's looking at things also in
16 addition beyond that content. It's looking at the category of the content. It's
17 looking at who's providing the content. It's looking at who's making it
18 available from a particular station or a particular type of show. So it's not
19 just the content, it's information about the content. And so when you take
20 this technique involving digital content and information about digital
21 content, and you apply it to a system ready for improvement that already is
22 using digital content, such as that in Sasaki, you result in a system where
23 you are monitoring what a user consumes in terms of digital content.
24 What type of content? Well, Ellis says music and other content,
25 and Sasaki's types of content is music and other content, DVDs, images, and
26 text data. So, this is a specific showing of monitoring the content that the

1 user consumes. What type of content? The references dovetail together
2 about songs and other content. And Sasaki is songs, DVD, images, and
3 novels.
4 JUDGE EASTHOM: So, for example, you could monitor,
5 based on this combination, how long somebody would be looking at a
6 specific image. Is that sort of what you're arguing?
7 MR. EHMKE: That would be one way to look at it because
8 Ellis is saying monitor what the user is consuming.
9 JUDGE EASTHOM: Okay.
10 MR. EHMKE: Looking at a picture, you can monitor what
11 they're looking at. You can also monitor overtime. That's one of Ellis's
12 advantages is that you can watch automatically the term of a user likes over
13 time. So, what do they look at today? What do they look at tomorrow?
14 What do they look at next week? Do they look at a picture? Did they look
15 at music? Did they look at books? What content did they look at?
16 JUDGE EASTHOM: All right. And then why don't we go to
17 another big issue, which is the locality issue, I call it. So, that was a specific
18 question. Go ahead. Yeah. I'll just wait and see.
19 MR. EHMKE: I'll skip ahead to that. We actually addressed
20 that on slide 24. I'll give you a second to move to slide 24 about the locality
21 issue. So I'll direct you to 24. We'll immediately move to slide 25 to look at
22 the claim limitations. We're going to be accessing sources of information
23 that are proximal to a current location of the user. Claim 11, we're going to
24 be providing to a server by the portable media device, a current location of
25 the device, and we see that language mirrored on slide 26 with respect to the
26 '021 Patent. Slide 27.

1 So we'll move to the substance on slide 28. So we have in Ellis,
2 we have this technique where we're trying to figure out the user's location so
3 that we can recommend events that are close to the user. So what Ellis says
4 to use global positioning to monitor and determine the user's location, and
5 that the system can acquire the GPS information, for example, using a GPS
6 system monitor. So Ellis is teaching the technique of let's use GPS in order
7 to figure out the user's location. We then see on slide 29 why Ellis is
8 gathering this information. It's gathering this information of using this GPS
9 system monitor so that we can now acquire information about local events.
10 And then we're going to compare those events to compare information with
11 the user's information and select an event that matches the user's preferences.
12 So we're looking for events that are close to the user. We're looking at the
13 user's preferences. Is there a problem with the audio? I'm seeing some chats
14 indicating them.
15 JUDGE EASTHOM: I can hear you fine, but I don't know if
16 everybody else can.
17 UNIDENTIFIED SPEAKER: I can hear fine too.
18 MS. CHAGNON: I can hear fine also.
19 MR. EHMKE: I'm a little squeamish. On my last oral
20 argument the court reporter dropped out in the middle. So, I just want to
21 verify that the court reporter can still hear.
22 COURT REPORTER: I can still hear. Yes, sir.
23 MR. EHMKE: Great. Thank you. I apologize for the
24 diversion. And so the reason why Ellis is gathering this information is it's
25 going to be comparing the location information with local events and
26 comparing the user's preferences to find something that's going to match the

1 user's preferences. And we then see this exact same flowchart as was
2 described as in the '960 and the '021 Patents. We're going to acquire the user
3 preferences, acquire their location, get the local event information, and
4 provide a recommended event.
5 Now, on the issue of how to combine it with Sasaki, as we go to
6 slide 31, Sasaki is describing its two devices. It's device A and device B.
7 And in the first embodiment versus the second embodiment, we know that's
8 the question here. They're a terminal devices A and B in the first
9 embodiment, and in the second embodiment, there are a server and a
10 terminal device. What Sasaki describes with respect to these devices is that
11 they have built-in GPS to specify the place of transmission. It further
12 describes in paragraph 80 in the upper right that both of those devices, A and
13 B, have GPS receiving functionality. So if we continue through paragraph
14 80, even though it's not highlighted, it's simply talking about this notion of
15 when you get this information that says direct use of numerical information,
16 such as latitude and longitude right there in the middle, that's inconvenient.
17 So what we want to do is we want to -- we're going to potentially transfer
18 that to our first computer and convert that into map information. So we have
19 this --
20 JUDGE EASTHOM: Counsel, your friend, sorry to interrupt,
21 your friends on the other side are arguing, well, that's all good, even if the
22 terminal device does have GPS information. But it never -- the terminal
23 device and the server terminal embodiment, it just, the one that's receiving
24 the recommendation from the server never has any, it never sends a GPS. It
25 doesn't have to send any GPS because it's receiving the recommendation, it's
26 not providing a recommendation. And the --

1 MR. EHMKE: Correct.
2 JUDGE EASTHOM: Okay, go ahead. Thanks.
3 MR. EHMKE: Yes, they are making that argument. And I
4 think that's actually arguing the references individually here, Your Honor.
5 What we're looking at is Sasaki describing that each device has the
6 capability to transmit GPS information. Each device has GPS receiving
7 functionalities. It also discusses that you want to transform that information
8 from location information into map information, such as a building name or
9 the like as a landmark. And that there are a variety of methods to provide
10 positional information. That's the disclosure here on 69, 80, and 81. So we
11 have in our baseline system the teaching of each device has the capability of
12 sending. Each device has the capability of receiving GPS information. And
13 then the question becomes, why? Patent Owner focuses on solely Sasaki,
14 and saying Sasaki only does this in very limited circumstance. But we know
15 that Sasaki has the functionality to send GPS information and receive
16 information by both devices. And we want to know the why we want to do
17 this. Why we want to do this, the reason we're doing this is the methodology
18 described in Ellis. Ellis is describing, as we go back to slide 30, why you
19 want to acquire the GPS location information, why you want to report it
20 back to a server. You want to do this so that you can figure out where the
21 device is, because I want to provide recommendations that closely match
22 your location, and closely match your preferences. That's why you want to
23 gather and collect the GPS signal. That's why in Ellis is describing, you
24 have a GPS on the mobile device and you're reporting back to a central
25 facility. You're doing that to accomplish this specific goal.
26 And when you have that goal in mind, when you have that

1 teaching as a POSITA, and you look at the system of Sasaki that already has
2 the sharing of GPS information, you reach the obvious conclusion, we're
3 going to apply the techniques of Ellis, where we're going to gather the GPS
4 information on a mobile device, report this information back to a server, so
5 that the server can take your user preferences and provide you a
6 recommendation. That's the why. Patent Owner's arguments are focused on
7 the distinct multi-embodiment issue and the reason in Sasaki that you might
8 share it, but they're ignoring the reasons in Ellis of why you want to share
9 and transmit the GPS location.
10 JUDGE CYGAN: So counselor, this is Judge Cygan. For this
11 limitation, you're relying only on the GPS information obtained from the
12 portable media device, correct?
13 MR. EHMKE: Correct.
14 JUDGE CYGAN: Thank you.
15 MR. EHMKE: I'll slide the, move to slide 33. I've alluded to it.
16 I want to address it briefly to make sure that there weren't any questions on
17 it. As I've been mentioning, the GPS functionality described in Sasaki,
18 Patent Owner has made the argument that that analysis is only applicable to
19 the first embodiment of Sasaki and not the second embodiment. We do
20 agree Sasaki has two headings in its patent called First Embodiment and
21 Second Embodiment. But what Sasaki particularly, specially teaches with
22 respect to that second embodiment, we have it here on slide 33, it's
23 paragraph 113. That the way you implement the second embodiment, it
24 specifically says this. "The second embodiment is realized such that, in the
25 above-described first embodiment…" You then are going to replace the
26 terminal with the server. So that when we're talking about the second

1 embodiment of Sasaki, Sasaki is telling the POSITA go to the first
2 embodiment.
3 You go to the above-described first embodiment and you make
4 these changes. And the changes are the terminal becomes a server, and that
5 when it becomes a server you remove the processor, the speaker, the driver,
6 and the LCD. That's our figure on the right from the Petition. We
7 specifically followed the instructions set forth in Sasaki. We went to Figure
8 1, that's embodiment one. That's the above described first embodiment.
9 And then we made that switch. We swapped the terminal device for the
10 server and we removed the components. We specifically X-ed them out.
11 We weren't to rely on those components. It doesn't make any changes to the
12 other terminal. And so when we look at the above described first
13 embodiment and the functionalities of the terminal, we're talking about the
14 terminal in the above described first embodiment.
15 JUDGE EASTHOM: Your friends will argue that --
16 JUDGE CYGAN: Is it necessary --
17 JUDGE EASTHOM: Go ahead.
18 JUDGE CYGAN: Sorry. Judge Easthom, go ahead.
19 JUDGE EASTHOM: No, no. You go ahead. You started first.
20 JUDGE CYGAN: Going off of my previous question, is it
21 important whether or not the server retains GPS capability?
22 MR. EHMKE: It is not important that the server retain GPS
23 capability in this particular implementation as we apply Ellis. I don't think it
24 matters one way or the other that we know the location of the server. What
25 we're looking at is the location of the mobile device because we're trying to
26 match and find events that are local to that device, and that's specifically

1 what Ellis describes. I don't think there's a need if we were to look at the
2 hypothetical proposed combination that we'd know the specific location of
3 the server.
4 JUDGE CYGAN: Thank you.
5 MR. EHMKE: Judge Easthom, did you have a question as
6 well?
7 JUDGE EASTHOM: Yes. Your friends also argue that, well,
8 in Sasaki, when these two devices connect, they're right next to each other.
9 So I'm not sure why they need to send location information if the server is
10 right next to the terminal device and they both know they're in the same
11 location, the server already knows what location the terminal device is in.
12 MR. EHMKE: Sasaki is specifically saying that it's taking the
13 latitude and longitude in order to convert it to a map location. So Sasaki is
14 predicated on the assumption that we need to figure out what the location of
15 the other device is.
16 JUDGE EASTHOM: But isn't that true that in Sasaki, I don't
17 know what the reason is that they do that in Sasaki, I was kind of inferring
18 from it that they do it because the user wants to recall where this
19 recommendation occurred so that it can jog its memory about it, and/or it
20 could also use it to delete earlier recommendations.
21 MR. EHMKE: Okay. And I would still say then that, Your
22 Honor, that we're looking at the reference individually, not in the proposed
23 combination. We're simply looking at this --
24 JUDGE EASTHOM: So you're saying that -- are you saying
25 then that Sasaki is able to communicate between terminal and server that's
26 not a local communication that can do it over different RF frequencies that

1 are farther apart, in other words, or . . . ?
2 MR. EHMKE: Sasaki discloses Bluetooth, both Wi-Fi
3 communication and ultra-wideband communication as well. So if we're
4 doing Wi-Fi communication, now we're talking about potentially the
5 Internet.
6 JUDGE EASTHOM: But if the Wi-Fi is right next to the
7 server, don't you mean, you know, I'm trying to figure this out, but if you're
8 using Wi-Fi and you're right next to the server, you know, the server doesn't
9 need to know where you are. It already knows you're right next to it.
10 MR. EHMKE: I guess I'm mildly confused by that, Your
11 Honor, because why would we need the GPS functionality within Sasaki at
12 all then, which it is expressly disclosing?
13 JUDGE EASTHOM: Well, it's because it's supposed to jog the
14 user's memory of where this occurred, where this recommendation occurred.
15 MR. EHMKE: Okay. But we're also applying GPS
16 functionality from Ellis as well so that we specifically know what the user is
17 so that we can match it with local events.
18 JUDGE EASTHOM: Right. I think so that's what I'm asking
19 you. This Sasaki, I think you answered it before, but I was a little, I think
20 maybe you misunderstood my question, but you're saying Sasaki has
21 wideband, so that would mean this terminal doesn't have to be right next to
22 the server. Is that right?
23 MR. EHMKE: I don't believe there's a physical locality
24 requirement in Sasaki that they need to be near each other in the mobile
25 device terminal server embodiment.
26 JUDGE EASTHOM: Okay.

1 MR. EHMKE: I will confirm that during Patent Owner's
2 presentation to make sure I'm giving you a proper answer, Your Honor.
3 JUDGE EASTHOM: And then, okay, thank you.
4 JUDGE CYGAN: Counselor, can you walk me through how
5 the server embodiment in Sasaki, with your combination of Ellis is meeting
6 the claim limitations? Specifically, the server in Sasaki is described as
7 providing recommendations to the user. So that would be sort of the, the
8 server would not be the device which has the location device in it. And I
9 think that's what you've been saying. Where is the server getting its
10 recommendation information from, in your combination?
11 MR. EHMKE: In our combination, what it's doing is, and I'm
12 going to go back to slide 29. In our combination, we have Ellis describing
13 all of the functionality needed in order to provide recommendations. It's
14 going to acquire GPS information. It's going to go to a database and acquire
15 information about local events. It's then going to compare information about
16 those events with the user's information, and selecting an event that matches
17 the user's preferences. That's how we're going to generate the
18 recommendation. So you have this technique of a central facility, the server
19 part of the system, that's getting the user preferences automatically. It's
20 getting GPS information. It's then getting local event information from a
21 database. And it's then running this comparison to try to find events that are
22 local and match the user's preferences. You then have a content
23 recommendation at that point that you can then transmit to the user's mobile
24 device.
25 JUDGE CYGAN: Thank you.
26 MR. EHMKE: Let's see, turning to slide 35, just briefly, I want

1 to address a couple of the arguments regarding combinations. Patent Owner
2 had argued that Sasaki and Ellis are addressing distinct problems because
3 Ellis is radio only and Sasaki is various types of non-radio data. We think
4 this is a narrow reading of the prior art. When we look at slide 36, Sasaki
5 and Ellis are involving the same type of devices. They're talking about
6 portable devices that the user can use and carry with them. As we go to slide
7 37, these devices are involving the same thing, they're both designed for
8 consumption of content, whether it's music and other content and shows in
9 Ellis, or music and images in DVD in Sasaki.
10 They're both designed for content consumption. And when we
11 go to slide 38, both of these systems are designed to provide content
12 recommendations to the user. Ellis is doing this comparison that we just
13 discussed, gathering location information, gathering preference information,
14 provide venue recommendations. Sasaki's design provides
15 recommendations to that mobile device. They're not addressing different
16 problems. They're addressing the same problem.
17 JUDGE EASTHOM: Counsel, can you address your friends'
18 arguing about Claim 9? They argue that you shifted your rationale on the
19 Sur-Reply, and in your Reply. Can you address that, please?
20 MR. EHMKE: And I want to make sure I'm talking about the
21 right claim, Your Honor, Claim 9.
22 JUDGE EASTHOM: Nine in the, let me see, I'm sorry, I
23 should have been more specific. Nine in the '021 Patent.
24 MR. EHMKE: Nine in the '021 Patent. Let me double check
25 and make sure I'm looking at the right one here. Claim 9. Oh, just the ---.
26 Yes, I can address that. We have that on --

1 JUDGE EASTHOM: By the way, you have about six minutes
2 left in your --
3 MR. EHMKE: Thank you. Thank you, Your Honor. We'll
4 address it. So I think we're addressing this on slide, yes, slide 49, about the
5 information about the media from the storage server. What our position all
6 along with respect to this, when we're looking at obtaining information about
7 the media from storage within the computer server, what we have said all
8 along in our Petition, if we go to slide 51, is that we have in this combined
9 teaching, Sasaki has its server. That server is doing two things. It's doing
10 processing, and it's processing based on the preference information stored in
11 the hard drive.
12 So, we have preference information stored in the hard drive.
13 Now, in our combination, what is that preference information? Well, that's
14 the information that we've been collecting using Ellis's technique. Ellis's
15 technique is to collect information about the media, what the user is
16 consuming, and report that back to the central facility. So the information
17 being reported back to the central facility, that's being stored in the server.
18 We now have information stored in a server. Now, how does the server
19 obtain that information? Well, we know it obtains the information because
20 it's now going to perform processing based off of that information stored in
21 the hard drive. So we have information stored on the hard drive of the
22 server, and it's being obtained because it's being pulled, and then subsequent
23 processing happens. This is what we set forth in the Petition at pages 45 and
24 46. The processing of the information stored in the hard drive is showing
25 that the system in Sasaki is obtaining information about the media, this
26 media that was reported back from the mobile device. Does that answer

1 your question, Your Honor?
2 JUDGE EASTHOM: Appreciate that. Yes, thank you. And
3 now with respect to Claim 2, your friend said no podcast information in
4 the --
5 MR. EHMKE: Yes. We have that on slide 47 of our
6 demonstratives. Again, we're looking at just the audio media comprises
7 podcast media. Slide 48, what did we point to as showing that the prior art
8 teaches podcast media? Well, Ellis, again, is describing the type of content
9 that it monitors and looks at. And here it says it's looking at specific radio
10 show. Where is this content made available? It's made available via internet
11 broadcasts. What can happen with this content? It can be downloaded and
12 stored on the device.
13 And so what Ellis is teaching is radio shows that are made
14 available via internet broadcasts that can be downloaded. We included
15 extrinsic evidence in the record, the Lim documentation, showing what
16 POSITAs understood podcasts to mean at the time. Podcasts is a digital
17 recording of a radio broadcast made available on the Internet. That's
18 precisely what Ellis is showing. It's a radio show, Internet broadcast
19 available for download. Ellis is rendering obvious that it was known that
20 audio media could include podcast media.
21 JUDGE EASTHOM: Thank you.
22 MR. EHMKE: I think I will reserve the remainder of my time
23 for rebuttal, Your Honors, if there weren't any additional questions.
24 JUDGE EASTHOM: Okay. Thank you. You have 18 minutes
25 for rebuttal.
26 MR. EHMKE: Thank you.

1 JUDGE EASTHOM: All right. So, why don't we hear from
2 Mr. Hamill, Patent Owner, please. How many minutes would you like to
3 reserve, Mr. Hamill?
4 MR. HAMILL: Thank you, Your Honors. I'd like to reserve 15
5 minutes as well.
6 JUDGE EASTHOM: Okay. Great. Please proceed whenever
7 you're ready.
8 MR. HAMILL: And I'll, if it's okay with the panel, I'll go
9 ahead and proceed without displaying the slides on the screen, if that's all
10 right.
11 JUDGE EASTHOM: That's perfect. We have slides.
12 MR. HAMILL: Okay. So getting started, turning to slide 3, I
13 just have an agenda here of what I'll be covering today. I'll briefly touch on
14 the '021 and '960 Patents. Then I'll address the inferring limitations,
15 followed by the current location limitations. And then touch on Dependent
16 Claims 2 and 9 of the '021 Patent.
17 And so, turning to slide 5, we have exemplary claims of the
18 '021 Patent, and each independent claim has an "inferring" limitation and a
19 "current location" information. And there are some differences in the
20 "current location" limitations across the patents, and I'll address those in
21 detail later on. The "inferring" limitations are the same across all the claims
22 in the '021 for all purposes that we're interested in today.
23 Then turning to slide 6, we have exemplary claims of the '960
24 Patent. Again, each independent claim includes an "inferring" limitation
25 and a "current location" limitation. And the '960 Patent claims also have
26 different varieties of "current location" limitations, which I'll address in

1 detail.
2 So, starting, turning to slide 7, starting with the "inferring"
3 limitations and turning to slide 8, we see the relevant claim language for the
4 '021 Patent, Claim 1, which is representative. The plain meaning of the
5 claim language here, well, the claim language states, "wherein the plurality
6 of media content types comprises textual media, image media, audio media,
7 and video media." The plain meaning requires all four of the recited media
8 content types. And then --
9 JUDGE EASTHOM: Counsel, can I interrupt you for a
10 second?
11 MR. HAMILL: Yes, Your Honor.
12 JUDGE EASTHOM: Okay. So, if I enter if I -- sorry, there
13 was another timer. I apologize. If -- now I have two questions. Plurality
14 means two or more, right?
15 MR. HAMILL: Yes, Your Honor.
16 JUDGE EASTHOM: Okay. So, if I substitute two or more for
17 that last clause on the bottom where it says, and "the plurality of media
18 content types." And so it says, and two or more media content types,
19 wherein the two or more media content types comprise textual media, image
20 media, and audio media and video media. Isn't that the plain meaning?
21 MR. HAMILL: Well, when you have "plurality" combined
22 with "comprises" in a list of four, then in that context the plain meaning
23 would require four or more media content types.
24 JUDGE EASTHOM: So you're saying that the last clause
25 contradicts what plurality -- the plain meaning of plurality is, or it informs
26 that plurality doesn't include two or more, it's four or more?

1 MR. HAMILL: Well, I think you can say plurality is more than
2 one, but in this context, it's further limited by requiring at least the
3 enumerated four, but it could be more. So, I don't see this as a contradiction.
4 It's just a further limitation of the claim.
5 JUDGE EASTHOM: Okay. And then your friends brought up
6 the fact that there's nowhere in your spec., or at least every instance where
7 you have a preference, it's based on one of these media things like jazz. If
8 it's jazz, you'll recommend Ella Fitzgerald, for example. How do you -- do
9 you have an example where you get one preference from four media types?
10 Can you give me an example of that in the Spec?
11 MR. HAMILL: Well, the Specification I don't believe provides
12 an example like the one you've described, but the Specification does
13 specifically discuss all of the media types that are recited in this claim.
14 JUDGE EASTHOM: Well, hypothetically, if I have a picture
15 of Ella Fitzgerald, and I have text about the houses in my neighborhood, and
16 I have an image about a bird, and then I have audio or somebody singing, or
17 you get the drift here. I have these disparate plurality of media content
18 types. How do you get one? I don't even understand how you get one
19 preference out of that, out of four different media types.
20 MR. HAMILL: Well, if hypothetically the system would
21 probably could, you know, based on what we know, could have a lot more
22 information than just one about each content type, about what you've been --
23 what media you've been consuming. And so, it could combine all these for a
24 holistic picture.
25 JUDGE EASTHOM: Seems like there's a written description
26 problem with that claim construction. It seems almost that if you read the

1 clause, one or more entertainment preferences, then maybe the more
2 entertainment preferences might correspond to the plurality. But I don't see
3 how the one preference corresponds to more than one media content. Maybe
4 two. I mean, it says plurality, to me that means two or more. But it, you
5 know, if you could come up with a good example in the Spec that has that
6 other than maybe, you know, I could understand this more, but it's hard to
7 understand in that context.
8 MR. HAMILL: Well, Your Honor, I think the way to look at
9 the claim language and to interpret it is to start with the plain meaning. And
10 if you have "comprises" with four recited types, those are all required. And
11 the specification does not include a clear disavowal or a lexicography that
12 would change the plain meaning. The specification provides examples. And
13 so, I don't believe it would be proper to limit the claim language to those
14 embodiments disclosed. And so, it comes back to that "comprises" and then
15 the four enumerated media types, they're all required.
16 JUDGE EASTHOM: Well, I mean, they can all be required as
17 media content types, and, but those are just a list from which you pick two or
18 more. Why isn't that a plain meaning?
19 MR. HAMILL: Well, because if it's a plurality of media
20 content types from the list "consisting of" these four then I think then that
21 would be a different claim, and it could be met by any two or any more than
22 one of those media content types, but where you have "comprises," I think
23 the proper interpretation is that each of the enumerated media content types
24 are required, otherwise you don't meet "comprises textual, image, audio, and
25 video media." And it's not an "or," it's an "and." So I think that the plain
26 meaning requires all four, and the Specification doesn't provide any kind of

1 disavowal whereby the plain meaning would be disregarded or replaced with
2 a different interpretation.
3 JUDGE EASTHOM: Okay. I appreciate that. And then, --
4 JUDGE CYGAN: Judge Easthom, can I just ask a follow-up
5 on that? So, just to clarify, the scope of that Claim 1 in the '021 Patent
6 requires at least those four and more. So that there's no inference that's
7 going to occur. It's not based upon a combination of those four types and
8 other ones, correct?
9 MR. HAMILL: I don't think other types of media are required.
10 I think as long as you --
11 JUDGE CYGAN: Well, it's comprised of, so it's open-ended,
12 right?
13 MR. HAMILL: So it could be more. I don't think that more
14 would be required.
15 JUDGE CYGAN: But the only inferences that will be made is
16 inferences based upon each of those -- those four types.
17 MR. HAMILL: Right. Inferences that are based on those four
18 types of media, but other types of media could be included as well.
19 JUDGE CYGAN: Thank you.
20 MR. HAMILL: Okay. So, we discussed the claim language of
21 Claim 1 of the '021 Patent. The file history is consistent with this
22 interpretation of requiring each of the four recited media content types. I
23 don't think I need to go through the entire file history in painstaking detail
24 here right now, but the short version is that both the examiner and the
25 applicant interpreted this claim limitation as requiring all four media content
26 types. If we just jump ahead to slide 13, you see the applicant arguing that

1 the Spiegelman and Baudino combination discloses all but one of the four
2 media content types. And then Martin discloses textual, the last one, but that
3 the combination of Martin with the other references is improper and
4 therefore the combination does not render the claim limitation obvious. And
5 then if you turn to slide 14, the examiner agreed and specifically explained
6 that although Spiegelman and Baudino disclose three out of the four,
7 because Martin can't be properly combined with those, then the claim is not
8 obvious. And so, the examiner allowed the claims. So --
9 JUDGE EASTHOM: Okay. Mr. Hamill, there's nowhere in
10 this long prosecution history where the applicant clearly disavowed the plain
11 meaning that you're arguing here, right? I mean, you're not arguing that you
12 disavow anything. You're just saying that the examiner thought you needed
13 four different media types. The examiner never even said, as far as I saw,
14 that you need to infer anything from the four media types. But just to be
15 clear, the way I understand disclaimer law is that the applicant has to say,
16 this claim requires you to infer something from these four media types. And
17 the applicant never made that statement, did they?
18 MR. HAMILL: The applicant did not make that statement, but
19 the context is the examiner, or the applicant, did explain that if the
20 combination doesn't disclose all four media content types, then the claim is
21 not valid.
22 JUDGE EASTHOM: Right. I understand that. And I
23 understand that claim construction can help us construe things where they're
24 not necessarily clear, but I thought your position was this has a plain
25 meaning.
26 MR. HAMILL: That's right. It is. And I bring up the file

1 history simply to show that it supports the plain meaning that.
2 JUDGE EASTHOM: Okay. Okay. I see your point. I
3 appreciate that.
4 MR. HAMILL: So, I'm not -- I'm not --
5 JUDGE EASTHOM: You're not arguing disavowal. Yeah.
6 You don't argue a claim disavowal, or you don't argue that you're limiting
7 the claim at all through claim disavowal. You're just saying this claim
8 construction is consistent with the prosecution history.
9 MR. HAMILL: That's correct, Your Honor.
10 JUDGE EASTHOM: Okay.
11 JUDGE CYGAN: Are you drawing, counselor, are you
12 drawing a distinction between the language of Claim 1, the language of, for
13 example, Claim 11, where the recommendation is based upon one or more of
14 different types?
15 MR. HAMILL: No. I believe that essentially there's no salient
16 difference between the independent claims. I'll take a quick look at Claim
17 11. But no, Your Honor, our position is that each independent claim
18 requires a plurality of media content types and at least each of the four
19 recited media content types are required.
20 JUDGE CYGAN: I'm a little confused because Claim 11
21 seems to say it's based upon one or more.
22 MR. HAMILL: Well, Your Honor, one or more is simply
23 another way of saying a plurality, but when four are recited, then it needs to
24 be at a minimum the four recited media content types.
25 JUDGE CYGAN: Well, the thing that confuses me a bit is
26 Claim 3 is written a little differently. It lists the four different types of

1 genres, but in, with an "and" clause. But Claim 11 seems to pretty clearly
2 use an "or" clause.
3 MR. HAMILL: And so, are you referring to the one or more
4 preferences?
5 JUDGE CYGAN: Right. That in Claim 11, it's based upon one
6 or more of these four different genres.
7 MR. HAMILL: Okay. So, Claim 11 is dependent -- depends
8 from Claim 10. And so, here you have a recommendation based on one or
9 more of, and then you have a number of genres. And so, I think this is a
10 different requirement than Claim 10. So it's building on Claim 10, but
11 Claim 10, the independent claim, is essentially the same on this limitation as
12 Claim 1. So the inferred preferences are based at least on the access media,
13 et cetera, et cetera, wherein the plurality of media content types comprises
14 textual media, image media, audio media, and video media. And so, I don't
15 think Claim 11 changes that, the interpretation of that clause of Claim 10.
16 JUDGE CYGAN: Doesn't Claim 11 break out different genres
17 which correspond to different types of media? Because the music genre is
18 claimed as being based on audio media, and the theater genre is based upon
19 being video media. If the recommendation only needs to be based on one of
20 those, doesn't that indicate that only one of those types of media is
21 necessary?
22 MR. HAMILL: I don't think so, Your Honor, because these
23 limitations are just additional requirements. And so, it's saying that in
24 addition to everything required in Claim 10, the recommendation is based on
25 one or more genre of music played at the event or venue of interest and a
26 music genre preference of user inferred by the server, et cetera, et cetera.

1 And so, in addition to all that, one of the requirements or one of the
2 recommendations needs to be based at least on one of these specific
3 examples that are recited in Claim 11.
4 JUDGE CYGAN: I'm sorry, are you saying that the claim
5 requires four different types of preferences and then only uses one type of
6 recommendation. The recommendation is only based upon one of those
7 types of preferences?
8 MR. HAMILL: I think that the requirement here is that it
9 would -- at least one of the recommendations would need to match one of
10 these. And so it could be, if it's going to be a music recommendation, it
11 would look at the genre played at the event or venue of interest, and a music
12 genre preference of the user inferred by the server based on audio media.
13 And so, that's an additional requirement because the independent claim
14 requires audio media, but it doesn't necessarily have to be music. It could
15 be podcasts or something else. And so, this is getting more specific as to
16 what kind of recommendation we're talking about. And so, in this first
17 example of Claim 11, now it's latching onto music. So it's going to factor in
18 a type of music played at the event or venue. And so that's not a
19 requirement in Claim 11. And so I don't think this is -- I think this is just an
20 additional requirement. We're getting more specific. In addition to
21 everything in Claim 10, we're going to say that this has to generate a
22 recommendation that includes music, which is not a requirement of Claim
23 10.
24 JUDGE CYGAN: Thank you, counsel. I understand your
25 position. You can continue on.
26 MR. HAMILL: Okay. And so, turning to -- jumping ahead

1 past the file history discussion to slide 15. We have Petitioner's position and
2 Petitioner is combining Sasaki's server that receives user preference
3 information about different media content types with Ellis's teachings of
4 determining a user's preferences based on the audio media content type.
5 And so, turning to slide 16, we see that Ellis discloses simply
6 relying on.
7 JUDGE EASTHOM: Counsel, maybe we can simplify this. I
8 mean, I understand your argument is that Ellis, and I think I asked your
9 friend this, they only infer preferences based on audio data. And you're
10 saying you just can't combine that and use that preference information. You
11 can't use Ellis's technique to, you know, to go after those four different
12 media types in Sasaki. Isn't that the thrust of your argument? And you're
13 saying that they haven't shown them sufficiently how or why you would do
14 that. Do I have that right?
15 MR. HAMILL: That's correct, Your Honor. And not only that,
16 the Petition does not acknowledge that there's no disclosure of inferring
17 based on any media content type other than audio. And so that -- the
18 Petition hasn't met its burden since this is a whole in combination, and it
19 really wasn't, in our view, specifically addressed. And so, in addition to
20 there being issues with the combination of Ellis and Sasaki, in the Petition's
21 analysis, obviousness has not been disclosed, even if they're combined,
22 because the lack of disclosure of inferring preferences based on any media
23 content type other than audio is not addressed.
24 JUDGE EASTHOM: Okay. And then, why wouldn't Ellis's
25 technique work logically? We were talking about it earlier. One of the
26 techniques Ellis uses is to see how long someone's listening to certain songs.

1 Why doesn't that apply to video?
2 MR. HAMILL: Well, Ellis is specifically, you know, a radio
3 system geared towards audio. Ellis itself, as we pointed out in the Response,
4 recites differences between audio and video data, media is an example. And
5 so these are different types of media and the Ellis teachings are very specific
6 towards audio and in the context of a radio, an enhanced radio system.
7 JUDGE EASTHOM: Okay. I appreciate that.
8 MR. HAMILL: Okay. And so I don't think I need to march
9 through the slides that are discussing Sasaki and Ellis. I mean, that is the
10 point that we're making with respect to the inferring limitation of the '021
11 Patent claims. So, turning to the '960 Patent. So on slide 19 the '960 Patent
12 inferring limitations are different, and we are not asserting that the '960
13 Patent independent claims require a plurality of media content types, but
14 they do require a plurality of media. And so, here again, our position is that
15 the Petition has not sufficiently explained how the prior art meets the
16 plurality of media requirement.
17 And so, if we turn to slide 20, we see the Petitioner's position,
18 that the Sasaki server that stores user preferences about multiple types of
19 content accessed by a user of a portable media player device, in view of
20 Ellis's technique of automatically determining a user's preferences about
21 types of content, songs, commercial shows, and other content. And our view
22 is that the Petition and Dr. Houh do not specifically address the plurality of
23 media and how the combination renders obvious that limitation. And so I'm
24 happy to answer any questions about that. Otherwise, I would move ahead
25 to the "current location" limitations.
26 JUDGE EASTHOM: That would be great. Yeah, I'd like to

1 hear you on that. I don't know if the other Judges have anything else on the
2 previous.
3 MR. HAMILL: Okay. So, turning to slide 24, back to the
4 agenda. So, the first thing I'd like to address with respect to the "current
5 location" limitations are Sasaki's two distinct embodiments. And Your
6 Honors addressed this during the Petitioner's time, but this is important
7 because each of the different types of "current location" limitations, and
8 there are three different permutations, for each of them Petitioner is mixing
9 and matching from Sasaki's two embodiments, but Petitioner did not explain
10 why a POSITA would combine these two distinct embodiments. The
11 Petition doesn't even acknowledge that Sasaki discloses two distinct
12 embodiments, and so this is contrary to law, and the combination of Sasaki's
13 embodiments must be disregarded under the law. And because the Petition
14 relies on that combination for each of the different types of current location
15 limitations, the obviousness argument for all of those fails.
16 JUDGE EASTHOM: But as a general proposition, if your
17 friend is relying on overlapping common features of the two embodiments,
18 that's okay, right, legally?
19 MR. HAMILL: Let's see if I understood the question. If --
20 JUDGE EASTHOM: No, the two embodiments, they have
21 these commonalities, they both share these certain same things, certain
22 functionality, certain devices. So, as long as -- as long as Petitioner stays
23 within those commonalities, there's nothing wrong with -- you're not really
24 mixing and picking and choosing from two different embodiments, you're
25 just picking from the intersection of the two of them, if you will.
26 MR. HAMILL: I agree, Your Honor, to the extent that they're

1 relying on anything that is fairly within the server to terminal embodiment,
2 for example, then that would be fine, even if it's -- there's a reference,
3 perhaps, to another part of the specification or that would inform it. But to
4 the extent features of the terminal-to-terminal embodiment are being mixed
5 and matched with the server-to-terminal embodiment, that would be
6 improper. And --
7 JUDGE EASTHOM: Yeah, what's the biggest place where
8 they do that in your view?
9 MR. HAMILL: Well, sure. So, let's see. Turning to -- let's
10 jump ahead to slide 34. Here's a discussion of the first type of "current
11 location" claims. And so, these require the portable media player device to
12 transmit location information to a server. And so, slide 35 shows examples
13 of those claims. And then 36, slide 36 we have Petitioner's position. And
14 here, for example, on the left, the '021 Patent Petition, it says Sasaki teaches
15 that the portable media player device associated with the user directly
16 transmits location information to the server. And so, this is clearly a mixing
17 and matching of the two. It's actually more than mixing and matching
18 because there is no disclosure even in either embodiment of Sasaki of the
19 terminal device transmitting.
20 JUDGE EASTHOM: Let me ask you about that specifically. I
21 read in your brief where you made that argument. And so, I'm interested, do
22 you have a slide with Figure 3B and 3C on there of Sasaki anywhere? Or do
23 we have one we can look at?
24 MR. HAMILL: Let me see. I don't think the slides include
25 Figure 3B or 3C.
26 JUDGE EASTHOM: Okay. Well, maybe I can talk about it.

1 But in general, you agree that the server in Sasaki, and they specifically say
2 that they store that Figure 3C, right? That's the one with the user
3 preferences?
4 MR. HAMILL: If you have a -- that's correct, yeah.
5 JUDGE EASTHOM: Okay. So, but when a mobile terminal
6 comes up to the server, the mobile terminal, it sends a recommendation to
7 the server. All the mobile terminals send recommendations because the
8 server collects all the recommendations from all the terminals. That's the
9 way I understand Sasaki. So, all these terminals come up and Sasaki collects
10 all this information and it collects reference information also about each one
11 of these mobile terminals. And then what it wants them to then -- the whole
12 purpose is for Sasaki to send back a recommendation as you argued. Well,
13 it's sending back a recommendation based on stuff that it's stored from the
14 set of recommendations that it received. And those are stored in Figure 3B.
15 Otherwise, it would never be able to send a recommendation back. You
16 can't just store the preferences, you have -- those preferences have to point to
17 the stored recommendations. Does that make sense?
18 MR. HAMILL: So if you'll turn to slide 29, we have Figure 5
19 of Sasaki.
20 JUDGE EASTHOM: Right.
21 MR. HAMILL: And I think there's a difference between user
22 preference information and actual content recommendations. So, in the
23 server to terminal embodiment, the second embodiment, that's Sasaki, the
24 user -- the terminal device connects to the server, and the server determines
25 whether a piece of content recommendation information matches the
26 preferences of the user and if there's a match it sends the recommendation.

1 But the preference --
2 JUDGE EASTHOM: How does it send a recommendation?
3 How does it send -- where does it get the recommendation?
4 MR. HAMILL: So, it stores the user preference information
5 and if there's a match with -- between content and the user preference, it'll
6 send a recommendation.
7 JUDGE EASTHOM: Right. And the content though, that's
8 what I'm getting at. If there's a match with that content, it got that content
9 from all those terminals that sent all their recommendations to it.
10 MR. HAMILL: Your Honor, I don't believe there's any
11 disclosure of terminals sending recommendations to the server.
12 JUDGE EASTHOM: In step six, it says terminal device A
13 transmit the selected -- it says on your slide here, 26. It sends a selected
14 piece of content recommendation information.
15 MR. HAMILL: Right. Slide 26 relates to the terminal-to-
16 terminal embodiment. And in this --
17 JUDGE EASTHOM: I thought the terminal, I thought, okay.
18 Okay. So, I'm sorry. Do you have --
19 MR. HAMILL: And so, Figures 2 through 4 relate to different
20 varieties of the first embodiment of the terminal-to-terminal embodiment.
21 JUDGE EASTHOM: Okay. How about slide 28? Let's go to
22 slide 28. It says it right there. You have it highlighted. In the second
23 embodiment, the content recommendation information is transmitted and
24 received between a server and a service spot. So that's telling me, I just
25 don't see how you can send back a recommendation unless you already have
26 a bunch of recommendations stored.

1 MR. HAMILL: So, I mean I see that sentence, but in the
2 context here, I mean, if you look at the heading, it's reception of content
3 recommendation information from a service spot. And the figure shows the
4 recommendations going one way. The -- let me see if --
5 JUDGE EASTHOM: But that's because it's not showing what
6 happened before this though, but --
7 MR. HAMILL: Right. So, if you look at slide 29, there's a
8 discussion here in paragraph 126 that preference information of the members
9 are stored beforehand. And there's a discussion in Sasaki that this
10 information can be uploaded through a PC or some other method. Let me
11 see if I can.
12 JUDGE EASTHOM: Okay. So, how about 119, counsel?
13 Sorry to interrupt. I'm just trying to get this straight, but it says the server
14 determines whether or not HDD4 of the server stores a piece of content
15 recommendation information. So, that's, that's, where did it get that? That's
16 what I'm asking. In my view, there's only one place you can get it, it's from
17 the other terminals. And then you see if the match, see that's stored in that
18 Figure 3B of Sasaki. And then if there's a match from Figure 3C, if you
19 have that those words, “love,: if you have “love” in one of the preference
20 words in Figure 3C, you go up to Figure 3B and if there's a “love,” then
21 that's a match and it'll send that one. It'll send that recommendation.
22 MR. HAMILL: And so, Your Honor, I don't have this in slides,
23 but in Sasaki, if you have it handy in paragraph 128, this is in the context of
24 the server-to-terminal embodiment, and I believe this was cited in the
25 Response. This provides an example of using a personal computer at home
26 to access a service site through a network such as the Internet.

1 JUDGE EASTHOM: Right, but that's how you can -- that's one
2 way you can send preference information, but that has nothing to do with the
3 recommendation that I'm talking about.
4 MR. HAMILL: Well the recommendation is a, would refer to a
5 piece of actual media content. And so, I don't think that Sasaki discloses
6 how all the media content is uploaded into the database of the server, but I
7 don't think that there's an inference or implication that it's provided by
8 terminal devices if the server would have a database of a bunch of --
9 JUDGE EASTHOM: How does it how does it provide a
10 match? What does it try to match it to? What does it try to match
11 preference information to? What is a server -- the server matches preference
12 information to what?
13 MR. HAMILL: To the media content.
14 JUDGE EASTHOM: The media content. Where did it get the
15 media content?
16 MR. HAMILL: Well, it doesn't disclose but --
17 JUDGE EASTHOM: You think the server just stores all the
18 media content somehow and then it gets preference information and then
19 somehow it matches the preference information to that media content. That
20 sounds like an inference then. Aren't you talking yourself into telling me
21 that Sasaki infers preferences?
22 MR. HAMILL: No, because the user provides the preference
23 information, and the server determines if there's a match --
24 JUDGE EASTHOM: Oh, the user provides preference words?
25 And then Sasaki says, oh, what do I have -- well, I have to send something
26 based on this word. What do I know what to send? Well, it goes and it

1 looks up above, and it goes, oh, this guy sent me this recommendation and it
2 has that same word in it, so I'll send it back. I mean that's how the terminal-
3 to-terminal works, and absent, you know, a contrary explanation about the
4 terminal to server, I don't see how else it would work.
5 MR. HAMILL: Right. The user preference information in both
6 examples is specifically provided by the user, not inferred. And the -- in the
7 case of the server to terminal embodiment, the server will determine if
8 there's a match between the preference information and the content, and if
9 there's an app.
10 JUDGE EASTHOM: And then the -- so if I could stop you
11 there. The content, where does it get that content? That's what I'm trying to
12 ask you.
13 MR. HAMILL: Well, I don't think that's specified, but.
14 JUDGE EASTHOM: Well let's say in the terminal, the
15 terminal --
16 MR. HAMILL: We access servers every day and they're
17 usually not full of just information that users have provided from their
18 mobile devices. They're databases that have a lot of information. I think
19 that, that it would be full of information that's provided by the terminal
20 devices - that would be the last sort of assumption I would make.
21 JUDGE EASTHOM: Okay. Okay. Well, I don't want to take
22 up all your time. I'm probably -- I appreciate your response. I'm, you know,
23 just trying to figure out how it works and could be wrong.
24 MR. HAMILL: Well, I think at the end of the day, the -- there's
25 no disclosure of how that's in the database, what the user preference is
26 matching to. But there's certainly not a disclosure that that's provided to the

1 server from the terminal devices.
2 JUDGE EASTHOM: Okay. I appreciate that.
3 MR. HAMILL: Okay. And so, I think we've burrowed pretty
4 deep into the two embodiments of Sasaki. And so applying that to the
5 claims and the arguments, you know, if we turn to slide 34 here, we start to
6 address the first set where the claims require the portable media player
7 device to send its location information to the server. And if we turn to slide
8 36, the Petition relies on, or in our view, incorrectly describes Sasaki
9 because neither embodiment discloses a portable media player device
10 sending, here as it states, directly transmitting the location information to the
11 server.
12 Then on slide 37, we have just provided examples where the
13 Petition relies on the server-to-terminal embodiment, whereas for the
14 "current location" limitation, the terminal-to-terminal embodiment is relied
15 on. And so, this shows the mixing and matching with no explanation of how
16 the different embodiments should be combined, which is the Petitioner's
17 burden.
18 And so, I think I'll skip ahead. We discussed the two Sasaki
19 embodiments.
20 JUDGE CYGAN: So, counselor, are you taking the position
21 that in Sasaki's server-to-terminal embodiment, the server is taking the place
22 of the terminal that would be sending the location information?
23 MR. HAMILL: In -- well, in Figure 5, you know, the Patent
24 specifically says Terminal A in the context of Figure 5 that's the server. And
25 so in the communications protocol described with respect to the second
26 embodiment, terminal devices connect to the server, the server determines if

1 there's a match, and if so, sends a content recommendation.
2 There's no disclosure of that going, happening in the other
3 direction, and it wouldn't really make sense to provide a recommendation to
4 a server since it's -- the idea is for the user to have a recommendation to use.
5 So, a server does replace one of the terminals, but it's not, in the context of
6 the first of the terminal-to-the terminal embodiment, the implication is that
7 the recommendation can go either way because both terminals are the same.
8 In the context of the second embodiment, the two devices are different. The
9 server and the terminal device are different, and there's only a disclosure of
10 the server which has its database sending recommendations to the terminal
11 device. Does that answer your question?
12 JUDGE CYGAN: If I can rephrase that a bit. In Sasaki, the
13 server is the device that is providing the recommendation. And in the
14 terminal, the terminal device, that entity is also the one whose location is
15 being monitored. Is that your argument? So you're taking -- in the terminal
16 embodiment, you have one user, terminal A, is providing a location. And
17 then you're replacing that in the server-to-terminal embodiment and taking
18 that terminal that was providing its location and replacing that with the
19 server. Is that your argument?
20 MR. HAMILL: So I think what's an important detail is that the
21 location information is determined by the terminal device and is sent
22 together with the content recommendation information. So the only
23 disclosure in Sasaki of a device determining its location is the terminal
24 device, and it only sends the location information together with the content
25 recommendation. And so in the server-to-terminal embodiment because the
26 content recommendation doesn't go from the terminal device at all, it's

1 coming from the server, there is no disclosure of the terminal device
2 sending. Excuse me, my timer is a little loud. The location information is,
3 you know, disclosed to be part of a package with the content
4 recommendation in the server-to-terminal embodiment, that content
5 recommendation only goes from the server to the terminal. So there's no
6 instance in which the terminal would send a location information to the
7 server because it's not sending content recommendation to the server.
8 JUDGE CYGAN: And your argument is that even in the
9 terminal-to-terminal embodiment, the terminal that's sending the
10 recommendation is also the terminal that is sending its location along with
11 the recommendation?
12 MR. HAMILL: That's right.
13 JUDGE CYGAN: So there's no embodiment in Sasaki, if I'm
14 understanding your point, in which one of those devices, either whether it's a
15 terminal or server, there's no embodiment where one device receives
16 location and then sends out content recommendation. And your argument is
17 that even if you combine it with Ellis, where there is some sort of location of
18 the user also being determined, it's unclear how those get combined to reach
19 this, the claimed limitation. Is that your argument?
20 MR. HAMILL: That's right. In Sasaki, the device that's
21 receiving a recommendation is not sending its location. And so that's not
22 disclosed. And Ellis --
23 JUDGE EASTHOM: Counsel, you have 10 minutes left in
24 rebuttal. I should have warned you earlier, but I didn't want to interrupt you.
25 Sorry.
26 MR. HAMILL: Sure. I'll just wrap up answering this question.

1 And so in Ellis the enhanced radio system can use its own location to look
2 up events and whatnot, but it's not transmitting it to a server for the server to
3 use. That's the distinction. Does that answer your question?
4 JUDGE CYGAN: It does. Thank you.
5 MR. HAMILL: Okay. And I'll just hit the dependent claims
6 really quickly. Maybe I'll start with, does the panel have any questions
7 about the dependent claims?
8 JUDGE EASTHOM: No. I mean, I think we read your brief. I
9 understand your argument with Claims 2 and 11. I think Claim 2, you're
10 saying that there's no storage of the podcast so it's not a podcast. Is that
11 basically it?
12 MR. HAMILL: That's right. It's not (INDISCERNIBLE)
13 storage and based on the definition relied on by Dr. Houh in the Petition,
14 which Mr. Stillerman agrees with, then that's not met. And then Claim 9 is
15 the information about the media. Claim 9 requires that to be information
16 relied on to come up with the inference, not the user preference information
17 itself. And so, there's a disconnect there between what Sasaki has, which is
18 the user preference information, and what the claim requires, which is
19 information about the media used to determine the user preference. And so,
20 if there are no further questions about that, I'll save the rest of my time.
21 JUDGE EASTHOM: Okay. Great. You have eight minutes
22 left. Can we hear from Petitioner, please?
23 MR. EHMKE: Yes, Your Honors. Thank you again. This is
24 Andrew Ehmke. Just a few points to address. Judge Easthom, you had
25 asked me a question about the proximity and location of within Sasaki of the
26 mobile device to the server and how close they might be. I would direct you

1 to Sasaki Exhibit 1004. If we look at paragraph 142 in Sasaki, it's on page
2 12 of the Patent, page 18 of the PDF, where Sasaki is talking about the types
3 of devices that might be in play here. And one of the types of devices in
4 play would be an on-vehicle GPS system, as it carries over to the top of the
5 paragraph four. We're not talking about necessarily that a user has a device,
6 their mobile terminal is sitting next to the server. We're talking about
7 potentially mobile devices, including cars, driving past these servers and
8 locations. So, it's not necessarily in close proximity.
9 While we're looking at Sasaki, Your Honor, following up on
10 your questions about Figures 3B and 3C, we look at paragraph 65. So,
11 staying in Exhibit 1004, it's page 5 of the Patent at the top or page 11 of the
12 PDF. We're looking at 65. And I'm directing you to this because the
13 language here in Sasaki is talking about content recommendation. And I just
14 want to level set. When we're looking at this phrasing of content
15 recommendation, we're looking at 65, what's being stored is there's two
16 additional terms being used. There's content recommendation that's
17 transmitted and content recommendation received. And so we're looking at
18 the two devices in Sasaki, device A and device B, they each have content
19 recommendations that are transmitted and are stored. And this storage area
20 shown in Figure 3A and 3B and 3C, is about content recommendations
21 received, about content recommendations to be sent, and about the user
22 preferences. So when we're looking at these devices, whether it's the server
23 or mobile-to-mobile terminal environment, each of these devices has content
24 recommendations that it's received and that's content recommendations that
25 it will be transmitting.
26 I want to follow up --

1 JUDGE CYGAN: Counsel, before you move on to that, can
2 you take, can you explain how that works in the context of Figure 5? I'm
3 specifically looking at Patent Owner's demonstrative slide 30.
4 MR. EHMKE: Right, and I think I would go slightly back then
5 to paragraph 63, where we have this automated content, excuse me,
6 automated process of performing the transfer of content recommendations
7 between the two devices. In 63, the communication device between both
8 devices is automatically performed regardless of whether or not each user is
9 aware of the process. So the user can initially know the existence of a
10 content link information by accessing information that it's received. It can
11 also later look at it.
12 So we have this automated process occurring with both devices
13 sending content recommendations. And so when we're looking at Patent
14 Owner's arguments regarding Figure 5, they're looking at a particular
15 embodiment of how the acknowledgments are happening back and forth in
16 the content recommendation transmitting. But we have to recognize that the
17 rest of disclosure in Sasaki is talking about automated processing between
18 both systems, both devices, where each device is transmitting and receiving
19 recommendation information. Does that answer your --
20 JUDGE CYGAN: So what you're saying is it's not only -- let's
21 focus on Figure 5.
22 MR. EHMKE: Okay.
23 JUDGE CYGAN: If I understand what you're saying, it's really
24 that both, in the terminal-to-terminal environment, both of the terminals are
25 capable of being a recommendation transmitter, and both of them are
26 capable of being a recommendation receiver. What I'm trying to understand

1 is in the context of Figure 5, where is the preference information along with
2 location information being received? I know where the recommendation
3 information comes out. That's at that step, S27. But where is the preference
4 information from your mobile device, which is terminal B, where is that
5 being received?
6 MR. EHMKE: I would say it's being received in the sense of
7 one device is sending to the other device a content recommendation. And
8 what Sasaki describes that as, I want to find that paragraph here.
9 JUDGE CYGAN: But doesn't the claim require information
10 preferences or information about media to be received? Are you saying --
11 I'm not sure I understand your contentions here.
12 MR. EHMKE: When the device sends a content
13 recommendation, they're providing information about a piece of content that
14 the user likes. That would be evidence of the user's preferences.
15 JUDGE CYGAN: And where does that show up on Figure 5?
16 MR. EHMKE: And I'm doing this in reference, I'm looking at
17 Figure 5, Your Honor, which I know is not answering your question. In
18 Figure 5, there is the transmit a selected piece of recommended information.
19 From one terminal to the other terminal.
20 JUDGE CYGAN: And that's the end of it, right? But isn't that
21 something which you're saying is based upon preference information?
22 MR. EHMKE: It could be. Well, but again, it's based on what
23 the user has said that they like. It's based on a piece of content that they
24 liked. And again, I want to make sure I'm being straightforward here. We
25 are not relying on all of the elements of Sasaki for establishing the concept
26 of inferring a user's preferences where relying on Sasaki is providing the

1 baseline system that unto itself already has these hooks of a content
2 recommendation system involving content and communication between two
3 devices. And when I have that --
4 JUDGE CYGAN: Understood.
5 MR. EHMKE: Okay.
6 JUDGE CYGAN: If you can run me through that
7 communication between the two devices, to the extent that you're relying on
8 Sasaki to meet the claim limitations. Can you run through Sasaki for me and
9 show me how that goes?
10 MR. EHMKE: So Sasaki is teaching the server, and Sasaki is
11 teaching a mobile device. Sasaki teaches storing on the server user
12 preference information and teaches storing on the server different types of
13 content recommendations. Sasaki teaches wirelessly communicating with
14 the mobile device, and Sasaki teaches receiving user preferences about the
15 user's content on that mobile device. And that information is stored on the
16 server so that the server has the user's preference information. Those are the
17 teachings of Sasaki. Sasaki also shows the different types of media content
18 that can be stored on the mobile device. I'm sorry. Yes, go ahead.
19 JUDGE CYGAN: And the retrieving step, the first step of
20 Claim 1, the '960 Patent.
21 MR. EHMKE: That step is, I believe, I just want to make sure I
22 look at the Petition, to make sure I don't create a new argument here, Your
23 Honor. Are you looking at the '960 Patent or the '021 Patent?
24 JUDGE CYGAN: I'm looking at the '960 Patent.
25 MR. EHMKE: '960, I'm sorry but it's long. So the act of
26 retrieving the media is we've got the portable device and Ellis is the one

1 that's monitoring and looking at what the user is consuming. And so we're
2 retrieving information about the media, right? There's an "or" in that
3 language. It's not necessarily retrieving plurality of media, it's retrieving
4 information about said media. And so what's being retrieved is Ellis's
5 reporting of usage data of what the user is consuming on their portable
6 device. That's what we're relying on for the retrieval of information about
7 the plurality of media.
8 JUDGE CYGAN: And does Ellis teach that being retrieved by
9 a server from a portable mobile device?
10 MR. EHMKE: Ellis is teaching that when the mobile device is
11 gathering the usage data that is then being sent to the central facility. So
12 when the central facility is pulling that information down from the mobile
13 device, it's the central server that is receiving information about the plurality
14 of media consumed by the mobile device.
15 JUDGE CYGAN: So in Ellis, it's a central server that's doing
16 the retrieving from the mobile device?
17 MR. EHMKE: Correct.
18 JUDGE CYGAN: And that retrieving is of -- and then once
19 Ellis retrieves that information, the server then performs the inference.
20 MR. EHMKE: Performs, not only performs the inference,
21 right, that's the whole flowchart that we included in our Petition and in our
22 slide deck. Let's see if I can find, I have so many things open.
23 JUDGE CYGAN: So none of the retrieving and inferencing is
24 being done by Sasaki here. It's being done all by Ellis, correct?
25 MR. EHMKE: Well, no, no, Your Honor. We still have the
26 system of Sasaki because we have to have the server performing it. There's

1 the techniques taught in Ellis that says that you have a server retrieving,
2 reporting data, and performing the active inference. But we need a physical
3 piece of hardware to do it. And Ellis teaches that its technique could be
4 done by a central facility. In the actual implementation that we've described,
5 we're going to be using Sasaki's server to perform the techniques described
6 in Ellis that would be performed by the central facility.
7 JUDGE CYGAN: So if we're taking a look at Figure 5, on
8 Patent Owner's slide 30, everything up before -- everything at the beginning,
9 terminal A is your server. You're relying on Ellis to get all of that
10 information being retrieved from terminal B. That happens through the
11 teachings of Ellis, to get all that information to be retrieved by the server,
12 which would now be terminal A of Figure 5. And then from that point,
13 you're still relying on Ellis for the inferences, and then Sasaki is providing
14 the transmission of the recommendation. Is that correct?
15 MR. EHMKE: Ellis is also describing that you provide the
16 recommendation as well as part of your technique. Again, in terms of the
17 specific implementation of the hardware performing it, it would actually be
18 Ellis and I believe Jacobi because Jacobi is teaching how you physically
19 transmit and provide the recommendation. Right? And I keep drawing this
20 distinction as we think about it, just as the way the Patent describes is you
21 have your hardware layer, and then you have this methodology and these
22 techniques being performed, the analysis of the data, performing the
23 inferences, figuring out what the recommendation would be. Those
24 techniques are all LSB implemented by the hardware, primarily of Sasaki.
25 And then there was a combination of Jacobi just to make sure we hit the
26 transmission of the recommendation limitation. So it's very much their

1 platform being provided by Sasaki, which is GPS functionality, mobile
2 device, and server in a recommendation system. And then we have the
3 methodology provided by Ellis of what information you should collect,
4 where it should go, and how you should use it in order to come up with
5 recommendations.
6 JUDGE CYGAN: Thank you for clarifying that.
7 MR. EHMKE: I'm happy to. Just we'll briefly on the limitation
8 on inferring in the four media types and that potential claim construction. I
9 just want to be careful as we think about that. Patent Owner's argument
10 appears to be that their claim construction is you must not have a single
11 preference unless it's only been inferred using all four of those media types.
12 In other words, we're excluding the embodiments disclosed in the
13 Specification. And we don't think that would be a proper understanding and
14 application of the claim language when it doesn't specifically require that
15 exclusion.
16 And we included in our slide deck the quote from Dr.
17 Stillerman. This is slide 22 of Petitioner's slide deck of what his
18 understanding of what that claim language was, is that if you look at the
19 claim in its entirety, and this is his quote, as long as the media player can
20 handle all four content types, then the inference is based on one of those
21 types. And so there is this dichotomy as we think about the wherein clause
22 and the four media types. The wherein clause is addressing what the media
23 player can store or access. It's not specifically narrowing and requiring the
24 active inference of a given preference to necessarily rely on all four of those
25 components. And that also aligns, as we have on slide 23 of our slide deck,
26 of what's disclosed in the patents where a given preference is based off of a

1 single media type. Now, there are multiple preferences identified across
2 different media types. But there's no disclosure of a single preference being
3 based on all four media types.
4 And then the last issue I want to address is --
5 JUDGE EASTHOM: But doesn't the claim have to rely on, I
6 mean, if you look at the claim, I was asking your friend about what plurality
7 means and it means two or more. It seems you have to have two or more if
8 you're just looking at this claim, two or more of those.
9 MR. EHMKE: I would say, I don't dispute that, Your Honor,
10 but what we're talking about when we're talking about that two or more,
11 we're talking about the media on the storage device, on the media player.
12 That's what the wherein clause is addressing. Just as understood by Patent
13 Owner's expert. If the media --
14 JUDGE EASTHOM: But it says the preferences are based in
15 part on a plurality of media content types. And this is in, you know, the '021
16 Patent Claim 1, right? So doesn't it have to be based on two media content
17 types?
18 MR. EHMKE: I think the preferences, the plurality of the
19 preferences, the one or more entertainment preferences are based on a
20 plurality of media types. We're staying in that plurality zone. And that's
21 what the Specification describes. You have one preference based off of one
22 type, and a second preference based on a second type. But it's not a given
23 preference, it's based on all four types.
24 JUDGE EASTHOM: And you're saying a given preference
25 doesn't have to be based on two types either? One preference.
26 MR. EHMKE: Again, that's what Patent Owner's expert

1 testified to. And those are the examples disclosed in the Specification, is
2 that a preference could be based on a single type. The player, right, we don't
3 want to remove that language. The player has to be able to handle all four
4 types. But when we're looking at a given preference, that's just based off the
5 media, the information, and from among those types.
6 JUDGE EASTHOM: But it's also based on a plurality of media
7 content types. It says it's, right, it says infer preferences based on a plurality
8 of media content types. It seems like --
9 MR. EHMKE: Yes.
10 JUDGE EASTHOM: So that would be based on two, wouldn't
11 it?
12 MR. EHMKE: They -- yes, but I guess it's a one to many
13 versus a one to one. And the Specification describes two. And in the
14 Specification, the two is described as likes jazz music because they listen to
15 jazz music. And then the second preference is they like science fiction
16 because they watch science fiction movies. So each of the --
17 JUDGE EASTHOM: Okay. So, it's just -- so you're saying that
18 that only applies if you have more than one inference. Is that right?
19 MR. EHMKE: Again, look, trying to read the claim in the
20 context of the Specification, yes. When we have a preference, it's going to
21 be based off of what the users consumed. In this case, they consumed jazz
22 music, so we're able to infer their preference. It doesn't say that the
23 preference must be based on all four. And that's the only, you know, the
24 question here is whether or not the claim necessarily requires one preference
25 to be based on all four. And that's the only thing that the claim permits.
26 And as the Board noted, there wasn't a clear disavowal. The claim language

1 doesn't say that the inference, the actual inference itself encompasses all four
2 embodiments. We're talking about one or more entertainment preferences
3 based off of three things. And then the category of information on that new
4 device is from the group before.
5 JUDGE EASTHOM: Okay. Thank you.
6 MR. EHMKE: If there were no further questions, I will cede
7 the rest of my time.
8 JUDGE EASTHOM: Thank you. You're -- okay. Thank you
9 very much. And then your friend, Patent Owner, you have eight more
10 minutes. Mr. Hamill?
11 MR. HAMILL: Thank you, Your Honors. So, I'd like to just
12 make a few points. First of all, with respect to Mr. Stillerman's deposition
13 testimony, we explained in the Sur-Reply the testimony is vague. The
14 question was about the Specification. Mr. Stillerman's answer stated
15 something about the claims, but I think in the context of the question and
16 answer, it's vague, and this vague statement is not enough to overcome the
17 totality of his testimony and the expert declaration. His position is clear that
18 that the four media types are each required.
19 Next, there was the issue of, it came up whether in Sasaki, the
20 server to terminal embodiment, it can be communicating over the Internet or
21 other such methods and reference was made to it could be part of the
22 automobile. I'd like to highlight that the whole automobile example, there's
23 a couple of those examples in paragraphs 137 and 138 of Sasaki. And in
24 these examples, the car is pulling into a gas station and the terminal is
25 communicating with the server at the gas station. That's in 137 and 138.
26 The cars at the entrance gate of a toll road and it's communicating with a

1 server that's located at that entrance to the toll road. So, these aren't
2 examples of communicating over the Internet. They're communicating with
3 a server that's right there. Figure 5 also shows. And there's quite a lot of
4 detail of the protocol they use to connect to each other. They're not going
5 through some access point or cell tower. They're communicating directly
6 with each other.
7 The next point is just on the subject of whether there's ever in
8 the second embodiment, two-way recommendation information being sent.
9 If we turn to paragraph 115 of Sasaki, it's very explicit. At the service spot,
10 the installed server provides content recommendation information to a user's
11 terminal device, and the terminal device receives and stores the content
12 recommendation information. And then at the bottom of that paragraph,
13 accordingly, by using content recommendation information provided from
14 the server at the service spot to each terminal device, guidance can be
15 performed so that content purchase is facilitated. So it's very clear in the
16 second embodiment that the recommendations are going from the server to
17 the terminal devices.
18 JUDGE CYGAN: Counselor, can you address Ellis's teaching
19 on that, because your counterpart seems to indicate that all of this stuff
20 regarding the interaction between the two devices, we should be looking to
21 Ellis as opposed to Sasaki.
22 MR. HAMILL: And so Ellis -- so in Ellis what's disclosed is
23 that the device knows its location, the radio system, and then it retrieves
24 information about locations, close to that location. It's not transmitting that
25 location information to a server.
26 JUDGE CYGAN: So, your contention is that in Ellis, one

1 single device knows its own location, but it's not receiving it. It's -- the
2 server is not receiving the location information along with the preferences
3 from the mobile device in Ellis. Is that your contention?
4 MR. HAMILL: That's correct. There's no disclosure in our
5 view in Ellis of that, the transmission of location information to the server.
6 JUDGE EASTHOM: But wouldn't -- I think your friend is
7 saying you would at least send the GPS information to a website so that you
8 can get that local information, or you would send it to another component
9 that may be part of the system. Do you agree with that or? I'm not saying
10 those are servers. I'm not saying those are servers. I'm just asking you. I
11 think that's their position.
12 MR. HAMILL: Well, the radio system would determine its
13 own location and use that information to look up information, but it's not
14 sending it so that a server can use that information to make any kind of
15 determination. So, I think that's an important distinction.
16 JUDGE EASTHOM: Right.
17 MR. HAMILL: So, those were the points I wanted to make.
18 Oh, I'll -- I have two more minutes. I'll make one more point. There's the
19 issue has come up of whether Sasaki does an inference. I think that if you
20 turn to slide 15, we can see that the Petition never made that argument. The
21 Petition, and I think that was made quite clear in the Petitioner's Reply brief
22 as well, that they're saying, you know, we're not relying on Sasaki for the
23 inference part. That's just for the multiple media types. It's Ellis that we're
24 relying on for the inference. And so, I think it's quite clear that the
25 question --
26 JUDGE EASTHOM: Yeah, I think your friends dropped that

1 line. I think we raised it maybe in the Petition, I mean, in the DI. I think
2 you're correct, your observation.
3 MR. HAMILL: Okay. If there are no further questions,
4 nothing further from me.
5 JUDGE EASTHOM: I don't have any anybody else. Well, I
6 want to thank both of you gentlemen. That was very enlightening, and it'll
7 help us come to the conclusion here. So we appreciate your input and
8 knowledge of the record. We're adjourned. Have a great rest of the week.
9 (Whereupon, the above-entitled matter went off the record at
10 2:03 p.m.)

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