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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INTUIT INC.,
Petitioner,

v.

SAMESURF, INC.,
Patent Owner.

IPR2023-00339 (Patent 9,185,145 B2)
IPR2023-00341 (Patent 9,483,448 B2)
IPR2023-00342 (Patent 8,527,591 B2)

Record of Oral Hearing
Held: March 27, 2024

Before KARL D. EASTHOM, BARBARA A. BENOIT, and PHILLIP A. BENNETT, *Administrative Patent Judges*.

APPEARANCES:

ON BEHALF OF THE PETITIONER:

Michael J. Sacksteder
FENWICK & WEST LLP
555 California Street, Suite 12
San Francisco, California 94104

Jennifer R. Bush
Geoffrey R. Miller
FENWICK & WEST LLP
801 California Street
Mountain View, California 94041

ON BEHALF OF THE PATENT OWNER:

Ryan B. McBeth
Saif M. Askar
MCKOOL SMITH, P.C.
600 Travis Street, Suite 7000
Houston, Texas 77002

Bernard P. Tomsa
BROOKS KUSHMAN P.C.
1000 Town Center, 22nd Floor
Southfield, Michigan 48075

ALSO PRESENT, OBSERVING:

David Pirnazar
Samesurf, Inc.

The above-entitled matter came on for hearing on March 27, 2024, commencing at 10:00 a.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

1 P R O C E E D I N G S
2 - - - - -
3 JUDGE EASTHOM: Good morning. We're convened here for
4 oral argument for three IPRs. Petitioner Intuit Inc. is challenging three
5 patents owned by Samesurf, Inc. And these IPRs are IPR2023- 00339,
6 00341, 00342, challenging Patents U.S. 9,185,145, U.S. 9,483,448, and U.S.
7 8,527,591, respectively. I'm Judge Easthom, and to my left is Judge Benoit,
8 and to my right is Judge Bennett on the video screen. Let's start with
9 appearances. Petitioner, who do we have?
10 MR. SACKSTEDER: Good morning, Your Honors. Michael
11 Sacksteder of Fenwick & West, on behalf of Petitioner, and I am joined by
12 Jennifer Bush and Geoffrey Miller.
13 JUDGE EASTHOM: Thank you. What's the last name? I'm
14 sorry.
15 MR. SACKSTEDER: My name is Michael Sacksteder.
16 JUDGE EASTHOM: I know, I have it. I have you, sir.
17 MR. SACKSTEDER: Oh, I'm sorry. Whose last name?
18 JUDGE EASTHOM: Michener (PHONETIC) or?
19 MR. SACKSTEDER: Miller.
20 JUDGE EASTHOM: Miller. Geoffrey Miller, that's right.
21 MR. SACKSTEDER: Yes.
22 JUDGE EASTHOM: Okay.
23 MR. SACKSTEDER: And Geoffrey is spelled G-E-O-F-F-R-
24 E-Y.

1 JUDGE EASTHOM: Thank you. And then, how about for
2 Patent Owner Samesurf?
3 MR. MCBETH: Good morning, Your Honors. My name is
4 Ryan McBeth. I'm with the law firm McKool Smith, on behalf of Samesurf,
5 Inc. I'm joined by my colleague Saif Askar, also with McKool Smith. And
6 we're also joined by Amendment Counsel Bernard Tomsa, with the firm
7 Brooks Kushman. And, also, observing here today is David Pirnazar, the
8 inventor on the patents in suit and the CEO of Samesurf, Inc. Thank you.
9 JUDGE EASTHOM: Welcome, everyone. Great. Since we
10 have three hearings here, we're going to add a single transcript into the
11 hearing for each IPR, and that will be the official record.
12 There's no audio or video taping by any of the other parties
13 here that's allowed. To ensure a clear record, and because we have the two
14 judges on video, please talk directly into the microphone and address
15 specific slide numbers and, also, any demonstratives -- slide numbers for the
16 demonstratives and page numbers if you're referring to exhibits or papers.
17 We have the full record and we have the demonstratives, but when you refer
18 to one of those, just please give us a minute, so that we can find a paper or
19 an exhibit in the record.
20 The hearing order granted 120 minutes for each side. We have
21 the request for the LEAP practitioner, Mr. Tomsa. And so, he'll have
22 another 15 minutes. He doesn't have to take the full 15 minutes, as long as
23 he has a meaningful and a substantive opportunity to argue the merits.
24 Petitioner has the ultimate burden of establishing
25 unpatentability. So, they'll go first and reserve rebuttal time. And then, that

1 will be followed by Patent Owner, who also may reserve rebuttal time. And
2 we'll plan on taking a short break after each party's case-in-chief.
3 A couple more matters. Sorry. Bear with me. Yes, we
4 recognize the parties each filed objections to the slides. We're not going to
5 rule on those right now. We will just remind the parties that, if the
6 arguments and particular evidence that you cite in the slides aren't in the
7 record, you're probably just wasting your time presenting them here.
8 Because in the final record, in the final decision, we won't probably even
9 look too much at the slides for that.
10 That said, if there are any new objections that come up during
11 your friends' opposing arguments, please don't interrupt. Just make a note
12 of it, and then, when it's your time to speak, you can re-enter your objections
13 if you want. So, with that, Petitioner, you may begin. How much time do
14 you want to reserve for rebuttal?
15 MR. SACKSTEDER: Well, we're going to split our argument,
16 Your Honor. Ms. Bush is going to address the motion to amend and the
17 motions to strike.
18 JUDGE EASTHOM: Okay.
19 MR. SACKSTEDER: And I will address sort of the main
20 portion of the IPR. So, I think we'll reserve 40 minutes.
21 JUDGE EASTHOM: Okay.
22 MR. SACKSTEDER: But I'm not sure how we're going to
23 divide the time.
24 JUDGE EASTHOM: Well, we can be flexible. I'll just set it
25 for tentatively.

1 MS. BUSH: Your Honor, I can bring you a hard copy of that
2 slide.
3 JUDGE EASTHOM: Oh, thank you very much. Thank you.
4 MS. BUSH: There should be one here as well.
5 JUDGE EASTHOM: Sure. Thank you. Okay. So, I'll have it
6 set up for 80 minutes to begin, and then, we can be flexible with that. And,
7 with that, please begin.
8 MR. SACKSTEDER: All right. Thank you, Your Honors.
9 Good morning. As I said, my name is Michael Sacksteder. I represent the
10 Petitioner, Intuit. If we can go to Slide 1, please?
11 As you know, Your Honors, we are address three different
12 related patents, the claims, all of which, all the claims of which were found
13 preliminarily by the Board in its institution decision to be unpatentable. We
14 don't believe that there has been much raised to change that conclusion
15 through the course of the trial.
16 Today, we'll be talking briefly about the patents that are
17 challenged, and I want to spend a lot of time talking about the claims.
18 Because I think there's been a lot of discussion of things that are in the
19 specification that aren't necessarily in the claims. And I want to make sure
20 that we're delineating very clearly what we are talking about when we're
21 talking about whether the references disclose the limitations of the claims.
22 And one thing I would like to do is apologize in advance
23 because I'm getting over a cold and I can feel the hoarseness of the part of
24 the cold coming on. I've been sort of power-eating cough drops all morning,
25 but I'm not sure that's going to work. So, if I am difficult to hear, please

1 bear with me and let me know.
2 And I'm going to divide the discussion up. We've had a lot of
3 sort of internal debate about how to divide this up. And what we're going to
4 do is there are a lot of limitations that are at issue that are similar or identical
5 across the claims. And so, we're going to talk about each ground. There are
6 two grounds. Ground 1 is Lebrun in combination with Wang or Lebrun by
7 itself. And No. 2 is Prajapat, either by itself or in combination with Wang.
8 And we're going to talk by grounds primarily, and then, go
9 from the '591, to the '145, to the '448 patent for each ground. And then,
10 toward the end, there are some limitations in Claim 1 of the '448 that do not
11 appear or don't have analogs in the other two patent claims, and we'll sort
12 hit on those at the end.
13 And then, after that, Ms. Bush will get up and discuss the
14 motion to amend the '591 patent and, also, the questions regarding the
15 evidence that was submitted with the sur-replies.
16 Can we go to Slide 2, please, Mr. Miller? All right. As I
17 mentioned, the Petitioner showed a reasonable likelihood of obviousness of
18 the claims at the institution stage. I understand that's not conclusive, but I
19 think we do have to look at whether that conclusion, that preliminary
20 conclusion, has been sort of unsettled, and I don't think it has been.
21 We haven't seen anything in the subsequent papers showing
22 that or negating the fact that the issued claims of all three patents are
23 obvious over the prior art, and then, we'll talk about the substitute claims
24 when we get to Ms. Bush's part of the discussion.
25 Slide 3, please, Mr. Miller. Okay. Briefly, the specification of

1 the patent. This is Figure 2 from the patent. This primarily -- and we're
2 talking, as you know, about a synchronized browsing session and how that
3 gets set up. And Figure 2 shows sort of the process of having a host device,
4 a synchronization server, and a guest device work together to establish that
5 synchronized browsing session in the first place.
6 And then, Slide 4, please. Go back to Slide 3 for one second,
7 Mr. Miller. You have a host device, a guest device, and a synchronization
8 server, and then, we'll see a web server appearing in a later slide.
9 On Slide 4, you see that, the '591 patent, Claim 1 is a method
10 for the guest device to perform certain steps to, basically, get into the
11 synchronized browsing session. The '145 patent is a method performed,
12 again, by a guest device for joining the synchronized browsing session, and
13 then, the '448, which has a fair number more claim limitations than the other
14 two, is a method performed by the host device for establishing the
15 synchronized browsing session in the first place. Slide 5, please. Well,
16 we'll skip over 5. Let's go to 6. So, Figure 5a is shown on Slide 6.
17 JUDGE BENOIT: Counselor
18 MR. SACKSTEDER: Yes, sir? Yes, ma'am? I'm sorry.
19 JUDGE BENOIT: No problem. Sorry, it's a little bit difficult
20 to interrupt in the video sometimes. But I wanted to go back to Slide 4. And
21 I may be getting ahead of your argument. So, if you want to tell me you're
22 going to deal with it later, that's fine.
23 But does the host device have to perform the limitations recited
24 in Claim 1?
25 MR. SACKSTEDER: Does the -- of Claim 1 in '448?

1 JUDGE BENOIT: The host device. Yes. Sorry, '448.
2 MR. SACKSTEDER: That's our position, Your Honor, that
3 this is a method for a host device to perform these steps to establish a
4 synchronized browsing session. I assume that Your Honor is asking about
5 the "wherein" clauses that appear in Claim 1 later on?
6 JUDGE BENOIT: I'm asking about all the other limitations.
7 MR. SACKSTEDER: Yes, I
8 JUDGE BENOIT: Do they all have to be performed by the
9 host device, setting aside the "wherein" clauses for the time being?
10 MR. SACKSTEDER: I would say that that's the way, at least
11 if you are reading the preamble as limiting, that it is a method performed by
12 a host device. And typically, when you have that kind of phraseology, and
13 then, you have some verb forms that follow it, some steps that follow it,
14 typically, the understanding is that it is the host device that is performing
15 those steps.
16 JUDGE BENOIT: So, their preamble is limiting?
17 MR. SACKSTEDER: Typically not, Your Honor, and I think
18 that it's entirely possible here that the intention was for it not to be limiting.
19 I apologize, I had understood you to be asking about the "wherein" clauses,
20 but the rest of the -- you know, the steps of Claim 1 in the '448 patent are
21 particular sort of verbs, as I've said, for doing things. And I haven't seen an
22 argument made that the preamble is or is not limiting, except for Patent
23 Owner's argument on sur-reply that the preamble is limiting as to -- well,
24 actually, it isn't. Yes, the use of the term "synchronized browsing session"
25 is, I believe, asserted to be limiting. I don't think I've addressed that

1 previously, Your Honor. So, I'm not sure that either side has taken a
2 position on it.
3 But is what you're getting at, if, for instance, the guest device
4 performs some of the steps, the activities, that are recited in the claim, that
5 that would be sufficient to practice the limitation?
6 JUDGE BENOIT: That's exactly my question.
7 MR. SACKSTEDER: I see. Yes, again, we haven't taken a
8 position on whether the preamble is limiting in that context. And I would
9 say that there is a -- you know, doing this on the fly, I think there is a
10 meaningful interpretation that it is not; that there are things that can be done,
11 and as long as the host device is able to establish the session, that maybe
12 those steps can be performed by other components of the system.
13 JUDGE BENOIT: Thank you. I appreciate that.
14 MR. SACKSTEDER: Does that sort of answer your question?
15 JUDGE BENOIT: Yes. Thank you. I appreciate your
16 answering on the fly, so to speak.
17 MR. SACKSTEDER: All right. Okay. Let's go to Slide 6.
18 So, this is sort of the exchange of information later on in the process,
19 typically, and shows the flow of data. I think my friend is going to show
20 you more about that. And so, I'm not going to dwell on it right now,
21 because it isn't often reflected in the claims.
22 So, let's go to Slide 7. All right. So, with regard to the relation
23 of the specification to the claims, Patent Owner argues that the term
24 "synchronized browsing session" is a limitation that, although not construed,
25 is a limitation that has a very broad applicability to these claims. I think that

1 that is a correct paraphrasing of their argument. And certainly, I took the
2 deposition of their expert and it was certainly his position that the
3 synchronized browsing session has to be something really, really
4 synchronized, simultaneous, real time -- all of those, all of those adjectives.
5 But I asked him during his deposition what it meant for it to be
6 synchronized, and he didn't have any answer. And he actually refused to
7 provide a construction for the term "synchronized browsing session" and
8 what is and what is not, and basically, just responded that he knows it when
9 he sees it.
10 So, in response to that, the limitations in the claims primarily
11 relate to establishing a synchronized browsing session and do not largely
12 recite detail about what happens after that is established. There is no
13 requirement that there is sort of absolutely simultaneous data transmission,
14 that it all happens at exactly the same time.
15 I think there is an argument in one of the sur-replies about a
16 form being filled in, and the form, you have to click "submit" before the
17 other client sees the form or sees what's been filled into the form and didn't
18 see it one letter or one number at a time, one character at a time.
19 And, you know, I think that's an awfully fine line to determine
20 what is synchronized and what is not. So, we'll talk about that a little bit.
21 There isn't anything in the claims that says that there has to be synchronized
22 transmission, synchronized sharing, or simultaneously or nearly
23 simultaneously doing anything. And there's only one appearance of the
24 word "real time," and we'll talk about that in a moment.
25 Can we go to Slide 8? Slide 8 has very little content. We'll go

1 to Slide 9. All right. Claim 1 of the '591 patent, again, is a method for a
2 guest device performing a synchronized browsing session. And the use of
3 the word "real time" appears in 1d, in limitation 1d, "receiving data from the
4 synchronization server, where the data relates to a website being accessed in
5 real time by a host device."
6 So, the only use of "real time" shows that the host device, the
7 initiator of all this, is the one that has the initial access to the web data, is
8 accessing that in real time. I don't think that that can be extrapolated to
9 show that the entire process has to be absolutely synchronized.
10 Quickly, just to look at the other two claims, if we can look at
11 Slide 10? Oh, and by the way, if go back
12 JUDGE BENNETT: Counselor
13 MR. SACKSTEDER: Yes, sir.
14 JUDGE BENNETT: Counselor, pardon me.
15 MR. SACKSTEDER: Yes.
16 JUDGE BENNETT: This is Judge Bennett. Can you think of
17 an example of what accessing a website not in real time would look like?
18 MR. SACKSTEDER: If it were cached and you went back and
19 you requested it, and then, it was cached, and you were able to access it later
20 on perhaps. Again, you know, I'm making that up on the fly, but it seems
21 like a reasonable
22 JUDGE BENNETT: Sure.
23 MR. SACKSTEDER: And I understand that, in real-time,
24 accessing in real-time has to mean something.
25 JUDGE BENNETT: Yes, and I think that was the point I was

1 getting at.
2 MR. SACKSTEDER: Understood. And I think that there is --
3 but there's a subject to that sentence. And the thing that is accessing in real
4 time is the host device. And it doesn't talk about the guest device accessing
5 that same web content in real time.
6 A quick explanation -- I'll be coming back to Slides 9, 10, and
7 11 to discuss the claims throughout -- a quick explanation. We have some
8 claim limitations that are in bold and some portions that are highlighted.
9 Here's the key to that.
10 The bold are the ones that are, in our view, are actively
11 contested by Patent Owner. So, for instance, the '145, Claim 1, 1C, and 1D
12 are the ones that we have spent our time briefing. And then, the parts that
13 are highlighted yellow in these two appear across the different patents. And
14 if we go to Claim 11, the green part is actually what is sort of reproduced
15 across the patents, and then, the bold portions are the ones that have been
16 briefed by Patent Owner. Can we go to Slide 12, please?
17 Okay. So, we'll discuss this briefly. There was some argument
18 in -- I forget if it was in the POR or the sur-replies, but Patent Owner asserts,
19 well, that these are all disputed. And we understand that we have the
20 ultimate burden of showing that the limitations are disclosed or rendered
21 obvious, or the whole invention is rendered obvious and the limitations are
22 disclosed in the prior art references. So, we aren't saying that isn't the case.
23 We're saying that we identified where they are disclosed, the
24 ones that aren't addressed in the briefing. We identified where they are
25 disclosed and we identified -- and then, the Board actually found that they

1 were, and there hasn't been any argument subsequent to that. So, we would
2 say there can't be any more argument, and we think that we have satisfied
3 our burden on those. Slide 13, please.
4 JUDGE BENOIT: All right. This is Judge Benoit. I have a
5 question about that. So, are you saying that in the filings we're receiving it
6 would be improper for us at this point to determine that any of the claims
7 that were not disputed are not met?
8 MR. SACKSTEDER: I'm not saying -- I'm not going to tell
9 the Board what to do. And I think that the Board has -- but I think the Board
10 has already addressed this. And I don't think that the Patent Owner has even
11 tried to do anything to change your minds. So, while I can't tell you not to
12 change your minds, and I'm happy to answer any questions about those
13 limitations, you know, I don't think it is justified for that conclusion to be
14 reversed.
15 JUDGE BENOIT: I'm not sure I would agree that we would be
16 changing our mind. I think we were careful in the decisions to institute to
17 indicate what your arguments were and whether they were sufficient for
18 institution, as opposed to finding a claim was shown to be unpatentable.
19 MR. SACKSTEDER: Understood, Your Honor, and agree with
20 that.
21 JUDGE BENOIT: Thank you.
22 MR. SACKSTEDER: Yes, what choice do I have? But I think
23 at the same time that we're trying to give credit to your preliminary decision.
24 And if there are questions about limitations that are not discussed in the
25 papers, I'm happy to address them.

1 JUDGE BENOIT: Thank you.
2 MR. SACKSTEDER: All right. We're on Slide 13. So, a
3 couple of arguments that appear in the sur-replies that we believe should
4 have, if they were going to be raised, should have been raised earlier.
5 First, the argument that the preamble is limiting as to the
6 synchronized browsing session term. And then the argument about what
7 Patent Owner calls the District Court contentions, really briefing on a
8 Section 101 motion to dismiss in the District Court case involving these
9 patents.
10 And, regarding their status as new argument, that should have
11 been raised earlier, if at all, Ms. Bush is going to address the motions to
12 strike those, the evidence upon which those are based. But, in any event,
13 you know, I've done a fair number of IPRs, I've done a fair number of
14 motions to dismiss under Section 101, and the issues are very different in
15 those. So, you may be talking generally about what the claims are directed
16 to without addressing what the specific limitations of the claims recite and
17 require. And so, I think that, even if this were to be considered, I don't think
18 it is probative in any way.
19 And regarding the preamble being limiting, which appeared for
20 the first time in the sur-replies, you know, I don't think that you can read the
21 term "simultaneous interactions" into claims that just don't require it in any
22 way. Slide 14, please. Okay. I'm not going to belabor Slide 14. Just that's
23 the conclusion of the Institution Decision. Slide 15, please. Okay. So, can
24 we go back to Slide 9 for a moment?
25 We are talking about Lebrun now, and Lebrun and Wang, and,

1 in particular, how it relates to Claim 1 of the '591 patent. So, now we can
2 go back to Slide 15. I apologize for jumping around.
3 So, this is from Lebrun, and I'm talking about the simultaneous
4 construction that Patent Owner is attempting to engraft onto the claims
5 generally. And so, it's kind of, even if you construed the claims that way,
6 the limitation is disclosed in the references. So, in the Lebrun reference --
7 and we'll talk about Prajapat in a little bit -- saying the same thing, that
8 multiple related users can simultaneously access a sequence of websites,
9 such that each of the related users had substantially the same content
10 presented at the same times.
11 Now, Patent Owner's expert was unwilling to give any kind of
12 construction to synchronized browsing session, but that's got to be -- that's
13 got to be within scope.
14 Can we go to Slide 16, please? Again, on Lebrun, this is, and
15 as noted in the briefing, both Lebrun and Prajapat have various
16 embodiments, and some of the figures relate to primarily one, but also show
17 more detail concerning the other. This is Figure 1 of Lebrun with some red
18 annotations.
19 And I would have, actually, in retrospect, circled one more,
20 because we'll also be talking about the notion of whether web page data can
21 be sent or whether the web page itself, or the HTML for the web page itself,
22 can be sent directly to the web client in these, in these references.
23 And if you have where it says, page 153, it has information 132,
24 link 154, and if you look, there's a little arrow that points directly down to
25 the web client. And so, it is not -- and we'll show you another from the

1 Figure 3 of Lebrun, ultimately -- you know, it is not the case that the -- and
2 this is something that Patent Owner has asserted, that the web page is always
3 sent to what is, effectively, the synchronization server in Lebrun or Prajapat.
4 It also can go directly back to the web client.
5 Let's go to Slide 17. Okay. And this is from Prajapat, again,
6 talking about the simultaneous synchronization, real time, all those different
7 requirements the Patent Owner says should be included in these claims.
8 They're disclosed anyway, again, in Prajapat. "The term 'co-browse' may
9 include one or more of the following situations: browser 12a and [browser]
10 12b display the same web pages at substantially the same time."
11 Talking a little bit later on about the use of a content tree in
12 Prajapat, "the content tree in browser 12a may then be synchronized with
13 other browsers 12 in a web page sharing session," to, later on, cause full
14 content synchronization.
15 So, even if we were to construe the claims to require a
16 synchronized browsing session, it requires something simultaneous, real
17 time, et cetera. That is disclosed in both of the primary references.
18 Slide 18. This is Figure 3 from Prajapat. I believe that my
19 friend is going to talk about the differences in the embodiments of Prajapat.
20 In this one, it shows the web content server is the web server in Figure 3 of
21 Prajapat. And it shows communications happening directly between the
22 browsers and the web content server. Slide 19. And this, too
23 JUDGE EASTHOM: Can I ask you a generic question, Mr.
24 Sacksteder?
25 MR. SACKSTEDER: Of course.

1 JUDGE EASTHOM: Just with respect to these claims in
2 general -- and I know they are slightly different -- but I'm looking at Claim 1
3 of '591. And it says, "receiving data from a synchronization server, where
4 the data relates to a website being accessed in real-time by a host device; and
5 wherein, the data wherein the data comprises a URL of the website and
6 cookie information," and so on.
7 And so, my question is, that's not part and parcel of what
8 makes it a synchronized browsing session, or is it? Is it the data that renders
9 this a synchronized browsing session, you know, the data in the step 1d? Or
10 is it something else? Or are they both part of what makes it a synchronized
11 browsing session up in step a? In other words, is there a separate
12 synchronizing thing going on, in addition to this data?
13 MR. SACKSTEDER: I don't believe that there is any
14 disclosure of a separate step for synchronizing something beyond the data, if
15 that's Your Honor's question.
16 JUDGE EASTHOM: I think it is. And so, that's what I'm
17 trying to get my head around. In other words, I think the issue here is
18 whether that step b, the data, in all these claims is sufficient in the prior art
19 to create a synchronized browsing session. Is that
20 MR. SACKSTEDER: Just receiving the data by itself at the
21 guest device?
22 JUDGE EASTHOM: Well, not receiving it, and then, actually
23 using it to
24 MR. SACKSTEDER: To operate the browser?
25 JUDGE EASTHOM: Right, right. Based on the data, I guess is

1 the way it
2 MR. SACKSTEDER: Those limitations do not recite a
3 synchronized browsing session unless you determine that the preamble is
4 limiting.
5 JUDGE EASTHOM: Okay.
6 MR. SACKSTEDER: You know, they don't recite it, anyway.
7 What is recited is sort of the process of setting it up from a guest device's
8 perspective.
9 JUDGE EASTHOM: All right.
10 MR. SACKSTEDER: So, it doesn't, 1D and 1E don't say, you
11 know, this is the synchronized browsing session. This is a part of the steps
12 of the claim. And I don't think that -- is your question, do those steps make
13 it synchronized or
14 JUDGE EASTHOM: That is part of my question, and then, is
15 that what you're contending, the prior art shows me the synchronized part of
16 a claim? It seems there's a lot of argument back and forth about whether
17 operating, based on that data, you know, you operate a browser or -- or I
18 guess there is no real argument about whether it's a synchronized -- whether
19 that forms part and parcel of a synchronization, right? That's just --
20 MR. SACKSTEDER: I don't think 1D and 1E say those have
21 to be synchronized.
22 JUDGE EASTHOM: Okay.
23 MR. SACKSTEDER: The portions of the reference that I just
24 identified actually show that the end result, you know, even if -- we don't
25 think that's a requirement, but even if synchronization is a requirement

1 throughout the claim, that's the end result. You know, the disclosure is for
2 all three limitations. I haven't gotten to the secondary reference yet, but they
3 all say you do this in synchronized form.
4 JUDGE EASTHOM: Right. So, that was kind of what raised
5 the question. That's what I was wondering about, because I wasn't sure that
6 those parts that you showed about synchronization and simultaneous
7 operation were related to these other steps.
8 MR. SACKSTEDER: Part of the problem is that we don't
9 know exactly Patent Owner asserts is the meaning of "synchronized
10 browsing session." As we said, for me, it has been part of the problem.
11 And, you know, directly asking Patent Owner's inventor met with refusals to
12 say what that means. And in one instance, sort of a concession that, well,
13 you know, the internet's laggy and you end with things that aren't perfectly
14 in sync.
15 But what I'm trying to show is that all three references are
16 directed to creating a situation where the different browsers on the different
17 devices, the host device and the guest device, are able to effectively look at
18 the same web content at the same time without screen-sharing or anything
19 that the patents say is a bad thing.
20 JUDGE EASTHOM: Okay. Thank you.
21 MR. SACKSTEDER: If we could go to slide -- I think we're
22 coming up on 19? Okay. And again, you know, this is sort of along the
23 same lines. So, the secondary reference, the Wang reference, has the same
24 kind of disclosures that what we're trying to do here is synchronize the client
25 devices in a collaboration environment. Each of the client devices includes

1 means for synchronizing displays on the plurality of client devices.
2 And we just think that that, you know, even if we don't think
3 synchronization is, except in the limitations where it's actually recited, is a
4 limitation, a synchronized browsing session, and it is not construed or
5 defined. But, to the extent it was, I don't see how you can say that this
6 doesn't disclose that.
7 So, Slide 20. Now we're going to talk a little bit more in detail
8 about the challenged limitations of the claims, the ones that I put in bold and
9 highlighted, and all that.
10 So, going to Slide 21, and sort of briefly, Slide 21 shows kind
11 of the overlapping things that we believe to be contested. And we'll come
12 back to this periodically.
13 Let's go to 23. So, first, it has a somewhat complicated
14 structure, though we're going to talk about Lebrun's disclosure of the
15 contested limitations, which are 1d and 1e.
16 Slide 24 just summarizes Patent Owner's arguments. And sort
17 of leaving aside the synchronization and the middleman server, and all that
18 stuff for now, and focusing on the actual claim limitations, the arguments are
19 that Lebrun doesn't have an embodiment disclosing a guest device receiving
20 from a sync server both the URL and cookies. Lebrun does not have an
21 embodiment disclosing operating a browser based on the data received from
22 the sync server, and then, the discussion of whether the embodiment should
23 be combined and whether there is motivation to combine Lebrun and Wang.
24 Slide 25. And I think this kind of gets to the -- you know, this
25 is more a summary of the conclusions, both in the institution decision and in

1 our contentions. And there are places where different limitations of the
2 claims appear in different embodiments. And that's a point of contention.
3 We have cited the *Boston Scientific v. Cordis* case that says,
4 you know, you can look at adjacent embodiments in a reference and it
5 doesn't require a step of inventiveness to say: here's most of it in one
6 embodiment. Why don't we just add this additional part in a separate
7 embodiment? And it's
8 JUDGE BENNETT: Counselor, this is Judge Bennett. Sorry to
9 interrupt.
10 MR. SACKSTEDER: Sure.
11 JUDGE BENNETT: With respect to that case, it seems like
12 kind of an outlier to me. Because, since that time, there's been several
13 Federal Circuit decisions where they have, effectively, said that you do have
14 to show reasoning for combining embodiments within a single reference.
15 Can you kind of explain the disconnect there for me?
16 MR. SACKSTEDER: Okay. I understand that, Your Honor,
17 but I do think that, in this case, the separate embodiments are directed to
18 effectively accomplishing the same thing. And frankly, Lebrun sort of has,
19 you know, it kind of talks about an overarching embodiment, and then, it
20 talks about one way of accomplishing that sort of that group internet
21 browsing embodiment, and then, it goes on to something else, and goes on to
22 something else that comes back to the first embodiment.
23 And I just think that, in this situation where they have
24 embodiments that are -- you know, it is, I think, sort of a fortiori to the
25 situation, where you have another reference entirely that has, you know, you

1 have most of the limitations in one embodiment, in one reference. You have
2 to get the other limitation from the second reference and have a reason to
3 combine them.
4 Often, you know, almost always, you have more reason to
5 combine the embodiments in a single reference, unless it says something like
6 "You could also do it this completely different way," which I don't think
7 either of these references does.
8 JUDGE BENNETT: One follow-up question. Does Petitioner
9 acknowledge that it is relying on different embodiments of Lebrun and it
10 depends on --
11 MR. SACKSTEDER: That's kind of a complicated question,
12 and we'll go into it some. Like I think it is -- I think that is probably the
13 case. But, as I said, there are sort of, you know, there's sort of, you know,
14 Roman numeral I, and then, there's A and B ways. And Roman numeral I
15 has some of the limitations disclosed, and A maybe doesn't disclose any,
16 and then, B discloses some. So, that's sort of something that we'll go
17 through a little bit when we discuss these specific limitations as well.
18 Okay. So, going to 1D, which is Slide 26, in the multiple
19 group-surfing session alternative embodiment, earlier, there's a discussion of
20 providing cookies to the client, to what is, effectively, the guest device. And
21 then, I think the argument to the contrary is the language that is shown here.
22 This is actually excerpted and quoted and cited by the decision
23 on the institution, where it says that Lebrun details that "[i]n alternative
24 embodiments, the second web client [110] can receive only a list of pointers
25 (such as URLs) to those pages presented during the group-surfing session,

1 dynamically updated when a new page is added."
2 And this is the notion of providing the web interaction data,
3 providing the information from a sync server to the guest device, to go
4 directly and get the web page.
5 And I think the argument was that, where it says, "receive only
6 a list of pointers (such as URLs) to those pages presented," that this was
7 excluding cookies being provided to the guest device. And the Board
8 preliminarily determined that Lebrun does not provide any indication that
9 this alternative embodiment is used only in the absence of cookies.
10 Okay. Go to Slide 27. So, this is the actual language from
11 Lebrun on page 43, lines 16 to 22. And the alternative, it's important to look
12 at the context of what the alternative -- what embodiment this is an
13 alternative to. And in this case, it says that, first, you know, basically, the
14 server, the sync server provides the page. And in alternative embodiments
15 to that, you can send a list of pointers, such as URLs, so that you can go out
16 and get those. And there's no indication they don't send cookies, because
17 that would likely -- you know, you need to identify the session and identify
18 exactly what at the URL that you're getting, and the cookies could be
19 included.
20 So, that is something that is getting provided. It's not in an
21 alternative embodiment to the one where you have cookies. It's an
22 alternative embodiment to the one where you provide the web page directly
23 from the synchronization server, which, by the way, we think -- you know,
24 well, they contend is not the point.
25 Okay. On Slide 28, this is, again, from the decision on

1 institution, and, you know, it is concluding that the argument made by Patent
2 Owner is conflating the no cookies embodiment with the embodiment where
3 you replace the whole web page with pointers and assume something that
4 isn't correct to be assumed.
5 Slide 29. These are the portions of Lebrun that discuss sending
6 cookie information to the participating clients. The top quote there from
7 2425, and then, the rest is from the reply -- or in the institution decision.
8 Can we go to Slide 30, please? Okay. And then, Patent Owner's arguments
9 for 1e -- can we go back to Slide 9 for a second, so you can see 1E?
10 Okay. So, this is the operating a browser by the guest device
11 based on the data received from the synchronization server. And there are
12 some issues in contention regarding that.
13 Can we go back to the slide we were on, 30? So now, we're
14 talking about operating a browser. You get, the guest device gets some data
15 from the synchronization server, and then, based on that data, then operates a
16 browser.
17 You know, we contend that the data could be the HTML that
18 draws the website. It does not have to be and it isn't always in Lebrun, but
19 that's something that's contested by Patent Owner. Again, there are other
20 ways of doing it, where you can get pointers and go directly to the web
21 server.
22 Slide 31, please. So, on this, there's also the -- you know,
23 based on data received from the synchronization server, and what is that data
24 exactly? Well, the data can be URLs and cookies, which is what is claimed
25 in the previous limitation. It can also be the HTML that draws the whole

1 web page, or it can be the HTML that draws the web page and says, oh, and
2 there are some other things you have to go directly to the web server to get,
3 where there are, for instance, multimedia elements. So, you've got the
4 HTML, and then, you actually operate the browser not just -- you know,
5 that's data that is related to the web page that's being viewed, and then, you
6 go directly to the web server. So, I think that is disclosed in that way in
7 Lebrun as well.
8 And then, I think that there's also an argument -- and I'm not
9 sure I understand it completely -- but there is an argument that's made by
10 Patent Owner that -- based on the data has to be just the URL and the cookie
11 information. But that is not what the claim says. It says the data comprises
12 a URL and cookie information and can include other things. Because, as we
13 know, that's what "comprises" means in the language of patents.
14 And so, there is no requirement that you only get the data based
15 on URL and cookie information. It's possible that a person of ordinary skill
16 in the art would know how to do that with just a URL and cookie
17 information, anyway, but, in this case, that is not required.
18 Slide 33 is just the multimedia features that I discussed, and
19 also, the argument that Lebrun teaches away from Wang. Want says nothing
20 about not doing things the way that Lebrun does them. You know, it's sort
21 of differences in approaches are not teaching away, unless they are attempts
22 to criticize or discourage the approach.
23 And then, here in Lebrun, it actually sends a web page without
24 multimedia features, and Wang is designed to store a snapshot of page data
25 locally, but that difference does not create a teaching-away situation.

1 And then, the Board did find that there was, at least
2 preliminarily, that there was motivation to combine, utilizing Wang's
3 designated URL address to activate a session join invitation that would
4 enable Lebrun's group-surfing server to coordinate and manage the group-
5 surfing session and further Lebrun's goal of providing improved group
6 access to websites.
7 Okay. The '145 patent, let's go back to Slide 10. Okay. This
8 is quite similar. We are operating, in 1D, we're operating an application
9 instead of operating a browser. And then, we're, again, receiving 1C, web
10 browsing interaction data from the synchronization server.
11 If we could go to slide -- let's go to 36. Okay. So, the web
12 browsing interaction data, receiving at the guest device. Again, we're
13 talking about the guest device. The Board preliminarily found that web
14 browsing interaction data encompasses web pages, as we discussed, or
15 portions thereof related to browsing interaction.
16 And in the sur-reply, there discussions about, well, what does
17 this do about bandwidth and processing power? And, you know, say that
18 that's a benefit of the invention. But operating a browser or other
19 application of a guest device is going to operate on the web browsing
20 interaction data that is provided, which could be HTML for a website, partial
21 HTML for a website. It could be a URL and cookies. URL and cookies is
22 not required by Claim 1 of the '145, however. Slide 37.
23 JUDGE BENOIT: Counselor, this is Judge Benoit. I have a
24 question for you on Slide 36.
25 MR. SACKSTEDER: Sure.

1 JUDGE BENOIT: Now, first of all, I appreciate your reply that
2 provided the plain meaning of what one of ordinary skill in the art would
3 understand the web browsing interaction data.
4 But my question is, do you agree with Patent Owner's position
5 that the web browsing interaction data is interchangeable with a written
6 description of web page interactions and web page interaction information,
7 and also, information related to a shared web browsing interaction?
8 MR. SACKSTEDER: As used in the claims?
9 JUDGE BENOIT: As used in the written description.
10 MR. SACKSTEDER: Okay. Because I think that the last
11 one -- and it's hard to keep straight; we used an unpronounceable acronym
12 for it, I think, the third one, "information regarding," et cetera. And you're
13 asking if I agree that that is synonymous with the use of web browsing
14 interaction data in the claims of the '591 and the '145?
15 JUDGE BENOIT: Sorry. No. I'm asking whether the claimed
16 web browsing interaction data in the '145 patent is interchangeable with the
17 written description towards web page interactions, web page interaction
18 information, and information related to a shared web browsing interaction.
19 MR. SACKSTEDER: Well, I don't think that -- and again, I'm
20 not looking at the written description. I apologize. And I don't recall there
21 being sort of a lexicographer type of definition for this information. And so,
22 I apologize. I don't know that I can effectively answer your question,
23 although I could take a look at the exact disclosures in the written
24 description and provide that before we're done today certainly.
25 JUDGE BENOIT: Yes. So, the reason I ask is that's Patent

1 Owner's position.
2 MR. SACKSTEDER: No, I understand. No, I understand, and
3 I think, generally, Patent Owner is trying to read the written description into
4 the claims in a lot of ways. And I think that they have overreached in this
5 instance. And I think the Board's preliminary determination was correct in
6 this situation.
7 As for the use of the longer term that's in the '448 patent and
8 this, I think maybe there's a closer call on whether it's exactly the same
9 thing. Normally, you call it the same thing if they mean the same thing. But
10 here, I don't think there is, you know, sort of a meaningful basis for saying
11 one means one thing and one means a slightly different thing.
12 JUDGE BENOIT: Thank you. And I know you've talked
13 about later you're going to address the issue of whether the web page data
14 can be web browsing interaction data. But I did want to hear what your
15 reaction is and maybe, particularly, in the context of that. The Patent Owner
16 argues in this that the description makes a distinction between web page
17 content and the web page interactions or web page browsing data.
18 MR. SACKSTEDER: I understand that to be their argument.
19 And if I wasn't clear, I think that one thing that can be web browsing
20 interaction data can be the HTML, because it does -- you know, it isn't just
21 that the construction that has been proposed by Patent Owner, you know,
22 uses the word, describes the interaction, basically. And I don't think that
23 that -- I think that is unjustifiably narrow and is something that, to the extent
24 it is anything, it is improperly reading the written description into the claims.
25 And I don't think there's anything that limits it in that way.

1 But, you know, if it is the HTML from the page, which
2 requires, among other things, you to go out to something else and
3 dynamically bring in from the web server, or from a web server, the
4 information, then I think that falls within the description of web browsing
5 interaction data or the longer term.
6 JUDGE BENOIT: Thank you.
7 MR. SACKSTEDER: Does that answer your question?
8 JUDGE BENOIT: Yes, it does. Thank you.
9 MR. SACKSTEDER: Okay. I think we are on 37. Is that
10 right? Okay. So, this is this whole thing with sending the web page without
11 multimedia elements, which, then, you have to go out again from the
12 website. So, 38, more of the same thing. We can skip on to 39, I think, and
13 address that.
14 So, in 39, the sur-reply says that there's nothing that shows that
15 any information was sent from the synchronization server to the guest
16 device. It actually says the group-surfing server 140 sends only the page
17 itself, and then, in other cases sends the page itself without the multimedia
18 elements. And that is sent from the synchronization server to the guest
19 device. So, I don't think that contention is correct.
20 Slide 40. Yes, I mean, this is just the Board's preliminary
21 disagreement with that position. Quickly, Slide 41 just shows the disclosure
22 of the client device accessing the server apparatus directly to acquire a web
23 page. And that's in Wang.
24 The '448 in Lebrun. Let's move on to Slide 45. And here, we
25 get our acronym, the information related to the shared web browsing

1 interaction, and the Board preliminarily determined that that was kind of
2 what it said: information related to shared web browsing interaction -- and
3 that Lebrun unambiguously describes that.
4 Okay. Go to Slide 46. So, this is Lebrun disclosing the sync
5 server transmitting information related to the shared web browsing
6 interaction to the guest device -- again, in the highlighted language.
7 Slide 47 is, effectively, the same language. And one thing to
8 note in Lebrun is that -- somewhat unhelpfully, but you can decipher it -- all
9 of the messages in Lebrun are 151. So, there are different kinds of messages
10 and they are always identified as 151. Slide 48 talks about each web client
11 receiving, can receive the next page directly from a website.
12 Slide 49. Okay. So, this is a limitation 1.f.iii. Can we go back
13 to Slide 11? So, Slide 11, 1.f.iii, "wherein the invitee device retrieves data
14 from the website serve in response to receiving the information related to the
15 shared web browsing interaction from the synchronization server, the data
16 associated with the web page content requested by the host device and the
17 information related to the shared web browsing interaction."
18 And this is something that happens that the guest device is
19 doing. That's the invitee device in this claim. And it's that "wherein" claim
20 which relates to other things for sure that are being done by other
21 components, as opposed to the host device.
22 And I think Patent Owner says -- if we can back to Slide 49 -- it
23 says that it's "retrieving" and "receiving" are different things, and that
24 somehow Lebrun doesn't show "retrieving," going out and getting, I guess,
25 but does show "receiving." But the receiving in the claim is in 1g, and that's

1 receiving. That's a step that we are assuming is performed by the host
2 device.
3 And so, the distinction between something being retrieved and
4 being received, one, I don't think it's a very meaningful distinction, but it's
5 two different things doing it. And so, we think that argument does not
6 change the fact that the invitee or guest device retrieves the information.
7 Okay. Ground 2 is Prajapat.
8 JUDGE BENOIT: Sorry, counselor.
9 MR. SACKSTEDER: Sure.
10 JUDGE BENOIT: I had another question about that.
11 MR. SACKSTEDER: Of course.
12 JUDGE BENOIT: Doesn't 1.f.iii, Roman numeral 3, the
13 wherein clause, invitee device retrieves the data?
14 MR. SACKSTEDER: That's correct. If I didn't say that, I
15 messed up.
16 JUDGE BENOIT: Yes, so it's not talking about the host. But
17 we're talking about that it's retrieving data here. And I believe the citations
18 in Lebrun was that the guest receives the information and not retrieves it.
19 And so the distinction I think that Patent Owner was trying to
20 make that I also have a question about is how is Lebrun's disclosure of
21 receiving the data, how does that teacher suggest retrieved? And as you
22 said, retrieving is going to get it. Receiving is receiving the data.
23 MR. SACKSTEDER: I'd characterize it more as one as a
24 subset of the other. But I understand, I think, the point -- can we go to Slide
25 73? So, the discussion of Lebrun there is delivering information to the web

1 clients or the group-surfing server in response to requests made during the
2 communication protocol.
3 And it's our contention that those requests can't be made by the
4 web clients. And there are requests by the web clients that are disclosed, for
5 instance, for getting the multi-media elements. Slide 50 --
6 JUDGE EASTHOM: But that's -- I think my colleague's
7 question was about step 1.f.1.1, that's what has the retrieve stuff. And this is
8 talking about receiving. So, are you reading this disclosure from Lebrun on
9 both of those?
10 MR. SACKSTEDER: Well, I think -- as I previously posited, I
11 think that retrieving could be interpreted as asking for and getting.
12 JUDGE EASTHOM: Right, right.
13 MR. SACKSTEDER: And receiving is the second part of that.
14 JUDGE EASTHOM: Right.
15 MR. SACKSTEDER: And so, what I showed you in 73 is
16 talking about f.1.i.
17 JUDGE EASTHOM: Oh, I understand.
18 MR. SACKSTEDER: But it also shows the --
19 MR. SACKSTEDER: And so, yeah, sorry. There are a lot of --
20 as I said, there are a lot of overlaps here in the arguments. And so
21 sometimes things appear -- could profitably appear in both of the sections
22 and don't. So that's why I went to select 73.
23 Can we go to Slide 38? Okay. And this again we're talking
24 about a different patent. But here we're talking about each participating web
25 client and Lebrun requesting multi-media elements directly from the

1 website. So, I think there is retrieving disclosed multiple places in the
2 Lebrun.
3 Okay. Now Prajapat, let's go to 52. No, 53. So this is --
4 paragraph 43 has a fair amount of disclosure in Prajapat talking about links
5 being requested again.
6 The web content server is the web server. The web media
7 server is the synchronization server. And the way that we have read this
8 talks about what the request for the web page may include, including session
9 information, cookies, et cetera, and URLs.
10 We're back to '591, somewhat confusingly. Slide 54, so there's
11 an argument that there's no suggestion that the whole simultaneous thing.
12 And, again, this is talking about the '591 patent in Claim 1 and asking Mr.
13 Friedman whether there's anything about simultaneous in the claim. And he
14 said at least the words don't appear there. Did not identify anything else that
15 requires it.
16 Slide 55, again, okay, we're going to go through this pretty fast.
17 This is, again, disclosures, synchronization.
18 JUDGE BENNETT: Counselor, Judge Bennett. I'm sorry to
19 interrupt.
20 MR. SACKSTEDER: Yes, sir.
21 JUDGE BENNETT: Just going back to that last slide.
22 MR. SACKSTEDER: 53?
23 JUDGE BENNETT: Yeah, I think just a larger question.
24 Simultaneously doesn't appear in the claims.
25 MR. SACKSTEDER: Right.

1 JUDGE BENNETT: Nor does nearly simultaneously. But
2 reading the claim, isn't there some notion that things are happening roughly
3 at the same time? I mean, isn't that the whole point here that you're getting
4 the same browsing experience on two different computers?
5 MR. SACKSTEDER: Yeah, I don't think that is incorrect. I
6 don't think that the idea is for it to be a -- well, it doesn't appear -- again, it
7 doesn't appear on the right parts of the claims.
8 And there is no proposed construction for synchronized
9 browsing session, just plain meaning. And Patent Owner's expert said, I
10 can't tell you what synchronized means. But I know whether the references
11 disclose it or not. And even when they disclose a synchronized, real-time,
12 simultaneous, somehow that is not good enough.
13 So, I think the idea is that we don't think that the simultaneous
14 thing is required by the claim. But even if it were, it is disclosed. But I take
15 your meaning that this is -- the idea overall is to allow people to look at the
16 same website and maybe to have it contemporaneous.
17 But what that means beyond the disclosure and the references
18 that it's simultaneous, synchronized, et cetera, there is no finer point on it.
19 And there's nothing in the patent or the prosecution history or anywhere else
20 that says, no, it really means we got to thread this little needle.
21 And I think that's the main point. And it was frankly very
22 difficult. And I took Mr. Friedman's deposition. It's very difficult to get
23 him to say what it means to be synchronized, to be simultaneous.
24 Well, it was impossible. He said that the term has been
25 construed as plain meaning. So, again, I can't tell you what it means, but I

1 know it when I see it.
2 Okay. So Prajapat Slide 55 I think we can go to. Again, on
3 that, we're talking about in Prajapat full content synchronization.
4 Slide 57, skip to 57. And again, the combination of Prajapat
5 and Wang, there is no dispute according to Mr. Friedman, the Patent
6 Owner's expert, that Prajapat and Wang discloses all limitations.
7 He doesn't concede it. But he says he doesn't have an opinion
8 about it. And so, there is no sort of factual basis or expert opinion basis for
9 Patent Owner to the contrary.
10 Moving on to the '145 patent, let's go to 59. This is the
11 Board's preliminary determination on receiving web browsing interaction
12 data from the synchronization server. Move to Slide 60.
13 Again, talking about the web media servers. Oh, I see. This is
14 the sur-reply, talking about the web media servers communicating with the
15 web content servers.
16 One, we don't think that is necessarily a problem as we
17 discussed with regard to the other patents.
18 Move to Slide 61. And it also says, and browser 12B is the
19 guest device. So, in this excerpt from Prajapat, it says, Browser 12B may
20 use the URL and any other suitable information to request from web content
21 server 18.
22 That's the web server, the web page that Browser 12A, the host
23 device, requested. So, we think it's very clearly disclosed in Prajapat.
24 Let's see. Slide 62. And again -- okay, so here we are talking
25 about the combination of the disclosures from the different embodiments.

1 I have a feeling I'm going to hear more from my friend from
2 Patent Owner on that. But, just generally, there's a discussion in Prajapat
3 where it talks about Figure 3.
4 Figures 1, 2, and 3 sort of disclose these embodiments. And it
5 talks about web media server, locating a web media server associated with
6 browser 12B in a substantially similar manner to that described above with
7 reference to Figures 1 and 2.
8 And there are other discussions about doing things substantially
9 in the same manner as described with reference to 1, 2, and 3.
10 And again, 1 and 2, this is a discussion of Figure 3. And then
11 there are -- in both patents, there are general discussions that you can take
12 these things and mix them and match them.
13 And so, I think there is plenty of motivation to look to all three
14 embodiments of Prajapat to see if they disclose or render obvious the claim
15 convention.
16 Moving on to the '448 patent as it regards to Prajapat Slide 64.
17 Can I have a little more water?
18 Okay. So, this is the synchronization server transmitting the
19 information related to shared web browsing interaction to the invitee device
20 and then retrieving data from the website server. This is the web media
21 server. It may be communicating the URL and any other suitable
22 information to browser 12B.
23 That's the sync server providing the guest device. Browser 12B
24 may use the URL and any other suitable information to request from web
25 content server, the web page that browser 12A requested.

1 So that discloses this limitation, even if it is the limited
2 construction of information related to the shared web browsing interact that
3 Patent Owner asserts.
4 Slide 60, okay, now we're going to talk briefly about sort of the
5 other contested limitations in the '448, and then I believe I will be finished
6 with my portion.
7 So, Slide 66, these are the remaining limitations of Slide 67.
8 Again, the Board found that they were disclosed and there hasn't been
9 anything to, in my view, rebut that.
10 Slide 68, so 1C, sending an invitation to an invitee device to
11 join the synchronized browsing session wherein the invitation includes a
12 session identifier.
13 This is talking about the session creation message that is
14 ultimately sent to the guest device and the message including an identifier
15 for the group-surfing session so that other web clients can add themselves to
16 that session.
17 So, message is sent to -- and this is Lebrun, by the way -- is sent
18 to the synchronization server. And then it's provided to the web client so
19 they can access the session.
20 Slide 69, that's basically the same text. It is -- I think the sur-
21 reply says, well, this says that it's only being sent to the group-surfing
22 server.
23 And then there's an implication. I don't think it says that, that
24 it terminates after arriving there. I think the fact that it says, so that other
25 web clients can add themselves to that session implies that it is provided at

1 least renders obvious providing that identifier to the guest devices.
2 Okay, 1D, the next slide, Slide 71 -- actually, go to Slide 70.
3 Okay. Now this one is recording a shared web browsing interaction
4 responsive to determining that a web browsing interact of the host device, et
5 cetera, is a sharable web browsing interaction.
6 This is -- although recording really isn't described much in the
7 written description, and by much, I mean at all.
8 It does talk about the selection of a link being caught on the
9 program fragment that allows the web client to select pages to look ahead
10 before designating those web pages as next pages in the progression of pages
11 in the session.
12 So that, I think, discloses recording the web browsing
13 interaction.
14 JUDGE EASTHOM: So, you're saying it's a temporary
15 recording almost like a --
16 MR. SACKSTEDER: It is some kind of a list, maybe, that is --
17 again, I don't think there's much, if any, disclosure about how this is
18 supposed to happen in the claim invention of the challenge patent.
19 But in this case, it says you look ahead and you figure out what
20 pages are coming up next. And that requires recording is what I'm saying.
21 Slide 71, so it says Petitioner must explain why catching or
22 intercepting is different from recording. That's kind of how computers
23 work. Normally, if they are going to intercept something, they are going to
24 duplicate it and save it somewhere so they can have access to the next pages
25 that are going to be requested and shown. So, I think that is at least obvious.

1 On 1E, Slide 72, sending a request for web page content to a
2 website server independent of the synchronization server, again, we've seen
3 these quotes before where they are disclosed, the identifier being provided
4 and then the web client receiving the next page directly from the website.
5 And let's go to 75. Okay. 75 is on -- well, let's go 74 just so
6 we're -- 73. Okay. 73 is receiving responses to sending the request for
7 website -- web page content, the content from the website server.
8 And again, this is something that is, I think -- and this may be --
9 Judge Benoit, is what you're referring to previously or at least part of it that
10 is who is doing the receiving here.
11 And so, yeah, I mean, we can't argue indefiniteness here. But it
12 is -- if it's the host device or the guest device, then either way it's disclosed
13 in the quote from Lebrun which is delivering information 132 to the web
14 clients, plural, in response to requests made using the communication
15 protocol.
16 So, I think that although that's -- I'm not sure the answer to the
17 question of who's doing it. Either way, it says the web clients.
18 Okay. 75, disclosing. Okay. This is for 1E and 1G, fails to
19 disclose the host device sending the request for web page content to the
20 website server. Again, it says if the information is delivered to the web
21 clients in response to requests made using the communication protocol.
22 And I think that the requests ultimately are likely sent by the
23 host device because the host device is the one asking for the sites of the first
24 place.
25 76, 1.f.i, transmitting information related to the shared web

1 interaction to the synchronization server and enabling the invitee device to
2 generate a request.
3 That's disclosed in Lebrun by the controlling web client which
4 is the host device sending a next page message. And then each participating
5 web client requests those multi-media elements directly from the website
6 and then receives them.
7 So, I'm taking away from Ms. Bush's time on other important
8 matters.
9 We fully briefed Prajapat as it relates to the '448 remaining
10 limitations. If the Board has any questions regarding that, I'm happy to
11 address them. But in the interest of time, I think I will rely on our briefing
12 and allow Ms. Bush to address her issues.
13 JUDGE EASTHOM: All right. Thank you. Oh, go ahead.
14 JUDGE BENOIT: I have two questions, sorry. But they're not
15 on Prajapat. So, just briefly, regarding the web browser interaction data
16 instruction, does the panel need to expressly construe the term to resolve a
17 dispute?
18 MR. SACKSTEDER: I don't think so if the panel is
19 comfortable determining that the plain and ordinary meaning of web
20 browsing interaction data encompasses more than sort of the very narrow
21 information describing which appears nowhere in the claim a web browsing
22 interaction.
23 And it's instead encompassing what has been said before by the
24 Board and by the Petitioner which is that it is -- it's a broader construction of
25 information that relates to the web browsing interaction.

1 But without construing it, I don't think that is something that is
2 absolutely necessary and certainly often happens that the Board will
3 determine that we don't need to construe it. It's disclosed.
4 JUDGE BENOIT: Thank you. I have one more question. So,
5 with regard to your argument that in the '448 patent, the wherein clauses, the
6 1.f.v and iii are intended use and therefore shouldn't give patentable weight.
7 Did you raise that issue in your petition?
8 MR. SACKSTEDER: It was not raised in our petition, Your
9 Honor.
10 JUDGE BENOIT: The reason I ask is Rule 42.104 requires
11 that terms be construed in the petition.
12 MR. SACKSTEDER: I understand. All right. And with that,
13 I'll cede my 25 seconds and hopefully a little more time to Ms. Bush.
14 JUDGE EASTHOM: All right. Thank you. And I guess I'll
15 just put --
16 MS. BUSH: Maybe ten.
17 JUDGE EASTHOM: Okay.
18 MS. BUSH: I won't speed talk.
19 JUDGE EASTHOM: What I'm going to do is just let it roll and
20 see. I think I'll keep track of it in total. It'll probably say minus ten up
21 there. Whenever you're ready.
22 MS. BUSH: And we'll take that as a rating.
23 JUDGE EASTHOM: Might want to introduce -- well, I think
24 we're still on the record. Okay, Ms. Bush.
25 MS. BUSH: Yeah, I'm Jennifer Bush, lead counsel for

1 Petitioner. So, Slide 84 just kind of has a quick overview for the motion to
2 amend for the '591 patent, as I'm sure Your Honors recall.
3 The preliminary guidance found both that the proposed
4 substitute claims lack written description support and that they were shown
5 over each combination of art. So, Lebrun and Wang, Prajapat and Wang,
6 and our newly introduced reference with respect to the amended claims,
7 Birnbaum, in combination with some of the other references.
8 And Patent Owner has not really provided any credible rational
9 or evidence to refute these findings. And one of the primary reasons that our
10 case is stronger as well is they have not provided an expert declaration
11 supporting any of their arguments with respect to the motion to amend,
12 neither with the motion nor with the reply.
13 So, there isn't any substantial evidence supporting their
14 positions when they're contrary to ours, which are provided with support by
15 an expert.
16 If we could just look real quick at the amendment on page 85.
17 I've called out the two portions of claim '591 that were added to. There's
18 two limitations where terms were added, amended in. And the first one was
19 originally '591 just had data that was sent.
20 And that was changed to first data that has the URL of the
21 website and the cookie, and then was added and information related to a
22 shared user input web browsing interaction that includes second data,
23 including at least one direct host device interaction with content of the
24 website performed by the host device.
25 And within this limitation, Your Honors have indicated that the

1 written description support was lacking for the term second data in
2 particular.
3 And then the entire remaining last element as amended also
4 lacks written description support.
5 Operating a browser by the guest device, you may recall that
6 was already there with respect to from that data. But now it's based on at
7 least the second data that was added. And that's in order to independently
8 replicate the host device interaction with the content of the website and that
9 data being obtained by the guest device from a website server based on the
10 first data.
11 So, it sort of ties both the first and second data back to the prior
12 limitation of operating a browser.
13 If we could go -- we can skip 86. Let's go to 88, please. As I
14 mentioned, Your Honors had found in the preliminary guidance a lack of
15 written description for second data and the operating a browser limitation.
16 And this is really fatal to Patent Owner's motion to amend
17 before we even get to any of the discussion of the references and their
18 obviousness.
19 And so, in the reply, Patent Owner attempted to remedy this by
20 adding some additional support and some additional portions that they cite to
21 the specification. But, in doing so, they did not actually follow the statutory
22 guidelines which require them to go back to that original disclosure in the
23 specification as filed, in the application that's filed and point those out.
24 So, all the citations are to the patent as issues instead. We did
25 go back and make that correlation to figure out which was which.

1 And the reason that matters is that some of them aren't there.
2 So, Your Honors were never provided with that citation to the original
3 record for the items that were added.
4 And there's eight new citations. I have them highlighted in the
5 slide just for easy reference. But those are the ones that are missing, and just
6 to point them out. But in reality, even if they --
7 JUDGE EASTHOM: So, can I interrupt? Are they added -- are
8 you saying they added amendments to the specification added material?
9 MS. BUSH: Oh, so their reliance on where in the specification
10 was alleged to provide the written description support, they added some in
11 the reply that were not previously in the motion to amend. And when they
12 did so, they didn't go back to the original application as filed. They only
13 made cites to the patent as issued.
14 JUDGE EASTHOM: Oh, okay.
15 MS. BUSH: And 37 CFR 42.121(b)(1) says that they're
16 supposed to go back to that original application as filed.
17 JUDGE EASTHOM: I understand. Okay.
18 MS. BUSH: So, some of those were absent from the motion to
19 amend. And even if they overcome that hurdle, what they've added doesn't
20 save them. There's nothing in that, that helps.
21 I'm going to just briefly hit 89. There's a couple discussions of
22 claim differentiation as the reason why the second data can't be the URL and
23 cookie data that was described as part of the first data.
24 And that's just not what claim differentiation is. Of course,
25 they don't have a case cited there. But claim differentiation in short is that

1 different claims have different scope or presume to, a rebuttable
2 presumption. But it doesn't really have a lot to do with what terms mean in
3 between the same limitation of the same claim, which is what they argue. If
4 we can go to 90. So, for the first term, the Board found no written
5 description support for second data.
6 The reply to the motion to amend fails to really still show
7 where that would be found. Ultimately, as you wade through what they have
8 there because they don't explicitly say the second data is X, they provide a
9 singular what they call non-limiting example of form data.
10 That can be part of the, quote-unquote, other user inputted
11 information that is sent from the host to the sync server and then ultimately
12 to the guest device as part of that communication.
13 And then I've got on the screen three portions that they relied
14 on. So, the first is a communication message 61, if you remember Figure 5A
15 that has all the arrows going around. That's from the host to the sync server.
16 And they're looking at that language there, other user inputted information,
17 which doesn't say form data.
18 And then the one on the top right is the message 64 which is
19 from the sync server to the guest which says other information. Also doesn't
20 say form data. And then they go to this one at the very bottom where it says,
21 utilizes the passing of certain data such URL information, form data, scripts,
22 cookies, or other types of information.
23 And they're reading that form data into the other information
24 that is sent in those messages, although it's not indicated as I noted in the
25 two sections at the top. So, they basically -- this is where it comes from, this

1 list of form data within the list of information that's passed between the
2 different entities.
3 So, there's a couple problems here. One is the form data only
4 occurs in certain discussions here. It doesn't even talk about it when it's
5 passing message 61 and 64. And maybe a bigger problem is there isn't any
6 support for delineating the URL and cookies as a first data and then this
7 form data as a second data.
8 There's nothing in the specification supporting splitting those
9 up and that the form data would be about interactions and that the other data
10 would not which is an argument that they make.
11 If we could look at 91, please. And then moving to operating a
12 browser based on that second data, they never actually explicitly state that at
13 all.
14 So, I put on the screen what appears to be the closest support
15 for these. We've got communication message 64 used by the guest device to
16 formulate a website request. And we've got a similar language at 65 -- I'm
17 sorry, on the right-hand side.
18 And then at the bottom, finally, we have something about
19 relaying web page interactions on the bottom two portions. And just so you
20 know, the outline is in red because those are the two that weren't in the
21 motion originally. I just sort of wanted to distinguish between which were
22 there and which were not.
23 In the end, even though the interaction information could be
24 relayed to the guest device, what's never shown in any of the support is how
25 that guest device then replicates that interaction with the content that the

1 host device had made.
2 So, it may get that information. But if the operating the
3 browser step still said explicitly that it was supposed to.
4 I'll get the language in front of me. Judge, if you could go to
5 85 real quick. Operating a browser to independently replicate the host
6 device interaction with the content of the website.
7 None of the support that they point to, new or old, shows the
8 guest device performing that -- replicating that same interaction with the
9 content of the website.
10 And if you turn now to 93, in fact, it can't. And the reason that
11 it can't is as you may recall and I'm sure they'll bring up this figure, that 64
12 which I've highlighted yellow is the data going from the sync server to the
13 guest device.
14 And let's assume that was, in fact, enough information for the
15 guest device to know which interactions were performed. We then have a
16 communication message 65 which is supposed to contain that data going up
17 to the website server.
18 Well, at that point, it is sent before any content is received from
19 the guest device which would be step 67. So, there's no content yet that it
20 could even interact with at this point.
21 And I think something that goes back to one of the questions I
22 believe Judge Benoit had earlier -- or actually, it wasn't -- I'm trying to
23 remember which judge said it.
24 But there was a question that had to do with synchronization.
25 And this, I think, makes that point a bit as well which is there is no

1 disclosure in the specification about repeating these steps.
2 Getting this data over to the sync server to the guest device.
3 The guest device requests the content and gets content back. It's described
4 once. Never did the specification say do it again.
5 And because that's lacking, the only content that is received is
6 that this step 67 which is after step 65 has occurred which would supposedly
7 be the support for how that guest device would interact with the content it
8 doesn't have yet.
9 Do you have questions? I'm going to move to the motion to
10 strike and to exclude briefly if you don't have questions. But I'm happy to
11 field any questions if you --
12 JUDGE EASTHOM: So, is your point that there's no
13 disclosure for an iterative process to keep maintaining the synchronization?
14 MS. BUSH: Correct. Nowhere in the specification does it say,
15 do Figure 5A more than once or how you would or how there would be a
16 timely correlation between data 66 that the host device gets and data 67 that
17 the guest device gets.
18 JUDGE EASTHOM: Okay, thank you.
19 MS. BUSH: I'll hit the -- just very briefly the -- sorry, not the
20 motions yet, the references. Apologies. Turning -- let's jump to 96, please.
21 I'll skip over some of the ones that are easy here. So, on Slide 96, really
22 only the operating browser limitation dispute with respect to the references.
23 Patent Owner didn't challenge our opposition arguments or the
24 Board's preliminary findings about the first data being received limitation.
25 So, we'll stand on our papers for that, unless Your Honors have questions.

1 And then when it came to responding to the references portion, Patent
2 Owner largely disregarded the preliminary guidance. There's very limited
3 discussion about the Board's discussion of the references.
4 They reiterate arguments that are completely contrary to the
5 position the Board took preliminarily and the guidance. And they don't even
6 address Birnbaum's substantively at all. They only address it as a
7 combination.
8 So quite a bit is not challenged from our position. Quickly for
9 Lebrun based arguments on 97, I've got her on the screen the portions that
10 the Board relied upon which have to do with form completion and the guest
11 device receiving URLs.
12 So, there's HTML form data that is used. And that form data
13 then gets replicated by the guest. And then, again, Patent Owner made the
14 same argument about the different embodiments of Lebrun not being able to
15 be combined, which Mr. Sacksteder already addressed. If we can jump to
16 99. Prajapat, again, I've got up on the board here.
17 The sections that the Board relied upon were mentioned about
18 Prajapat in the preliminary guidance. The top right, 31 probably being the
19 clearest there, which is that in certain embodiments, web page form content
20 such as fields in a web page are kept in sync on web pages between
21 browsers.
22 That's specifically form content and that it's kept in sync. So, I
23 think that's about as close as it could get. Again, they argue that the
24 embodiments of Prajapat also could not be combined. That's been
25 addressed as well.

1 Let's skip to 102. So, we haven't covered Birnbaum, so just
2 quickly. This was the reference we added in response to the motion to
3 amend and it's called Collaboration Between Two Computing Devices.
4 I've highlighted some related language here. But it really says
5 midway about the second computing device implementing the information
6 by acting on or displaying the information from the first and doing so in the
7 appropriate field on a form as shown on the right Figure 4.
8 Birnbaum very specifically has a form on the first computing
9 device on the left being completed and that second data being filled in on the
10 second computing device on the right.
11 This is pretty directly -- if we take their explanation that second
12 data is form data, Birnbaum shows it.
13 Just briefly, I mentioned one of three. They did not refute or
14 even address the Board's preliminary findings as to the substance of
15 Birnbaum. Patent Owner only discussed the combinations of the references.
16 104, this is somewhat of a replication of the other side because
17 it has Figure 4. But this language I think is helpful is any change occurring
18 at the customer's browser will also occur at the agent's browser. So, the
19 agent's browser will be synchronized to the customer's browser.
20 And then just hitting, briefly, Slide 105. Patent Owner made a
21 few challenges to the combinations. But those fail as well. They didn't
22 challenge combining our original grounds references, either in the motion or
23 in the reply. And they didn't address the Board's preliminary finding that a
24 person of skill in the art would have combined these references.
25 And they do talk a little bit about Birnbaum being combined

1 with the other references. And what we wanted to just clarify here is that we
2 relied primarily on Birnbaum for these added limitations. And we only
3 relied on the other references for the ones that are duplicative of the issued
4 claims in the patents.
5 And, real quick, 106. The also mischaracterize the law. Patent
6 owner puts up a lot of statutes that they purport to say that we didn't meet
7 our burden with respect to the opposition to the motion to amend because we
8 didn't address directly where in each of the references the identical claims to
9 the issued claims are found.
10 Those are identical limitations as those in the issued claims are
11 found. None of their statutes they'll put up for you to say that. None of
12 them say that Petitioner is required to repeat those arguments.
13 And as I'm sure Your Honors know, there's recent case law in
14 the trial practice guide that says the Board decides the substitute claims on
15 the entire record, including opposition made by the Petitioner but consider
16 the entire record.
17 So, I'm going to go ahead and stop there. So, we do have a
18 little bit of time left at the end. If you have questions on the motion to strike
19 or exclude, I'm happy to field those now or in rebuttal.
20 JUDGE EASTHOM: Any questions? Okay, great. Oh, go
21 ahead.
22 JUDGE BENOIT: Sorry. I have a quick question on the
23 motion to exclude and strike. And the reason I'm asking the question, we
24 often handle these very easily on the papers as we're writing the final
25 decision as you're well aware.

1 In this case, the accusation strikes at the heart of
2 gamesmanship, making inappropriate argument here, inconsistent
3 arguments. And, as you know, the Board is very concerned about
4 gamesmanship here.
5 And so, I just want to ask you straight out, are you taking an
6 inconsistent position here at PTAB? Is it your position to take it in district
7 court with regard to the 101 motion?
8 MS. BUSH: Yeah, we don't believe that we've taken an
9 inconsistent position at all. So, the papers that Patent Owner belatedly cited
10 in the sur-reply, which as I'm sure Your Honor saw, they actually cited the
11 decision on the motion to dismiss with their patient owner's response.
12 So, there was zero reason they couldn't have cited these papers
13 earlier if they wanted to bring up this issue and they didn't at that time. It's
14 not inconsistent because what we were argument was for the purpose of a
15 101 motion for patentable subject matter and what the claims we believe
16 were directed to.
17 That's a consideration of all the claims, a consideration of sort
18 of the gist of the claims which goes to one of the earlier questions of what
19 the claims were about.
20 But what we are arguing now is these words, synchronized,
21 simultaneous, real time except for '591. None of these words they're
22 arguing from the specification are in the claims.
23 That was true at the 101 stage, too. We lost the motion to
24 dismiss on 101. The judge said our abstract idea was wrong. So, it seems
25 strange that a statement that was deemed incorrect we would be then held to

1 stay consistent with that position. So, we don't think it's inconsistent.
2 JUDGE BENOIT: So, counselor, is there any reason that we
3 shouldn't take official notice of your briefing and your motion in support of
4 in the district court and then also give you an opportunity to brief the issue
5 of whether the statements are inconsistent so that we have your response on
6 the record?
7 MS. BUSH: We would be happy to brief that issue if Your
8 Honors think it would be helpful. To us, it just doesn't seem inconsistent at
9 all. And there is discussion of that in the papers for the motion to exclude
10 since we had an opportunity to respond to those arguments that they had
11 made in their opposition to our motion to exclude.
12 So, I won't reply to that. There is some discussion of that for
13 why as I mentioned before we don't think it's inconsistent.
14 As far as judicial notice, I'll go with Mr. Sacksteder's answers.
15 I won't tell Your Honors what to do if you think that's appropriate. I think
16 that I know judicial notice is typically for facts. I'm not sure that there's
17 anything about the position we took since it's not binding on us in any way.
18 I'm not sure that that's necessary in this case. I also don't think
19 it's probably necessary to Your Honors rendering a decision in this case.
20 And I know pretty commonly in final written decisions, you don't grant
21 motions to exclude and the like because you just don't consider the
22 information.
23 So, I think if that's the way Your Honors are leaning, then I
24 think that would probably be covered there.
25 JUDGE BENOIT: Thank you very much.

1 JUDGE EASTHOM: Thank you. Okay. Why don't we take a
2 ten-minute break? I think the way, I calculate, you have about 19 minutes
3 left on rebuttal. And then we'll hear from Patent Owner. So, it's 11:47 now.
4 Actually, why don't we come back in eight minutes? Why don't we just
5 come back at noon? We'll return at noon.
6 (Whereupon, the above-entitled matter went off the record at
7 11:47 a.m. and resumed at 12:01 p.m.)
8 JUDGE EASTHOM: Okay. This is Judge Easthom. We're
9 back on the record. Counsel, welcome. Patent Owner, could you please
10 introduce yourself and let me know what you want for rebuttal?
11 MR. MCBETH: Sure. Hi, this is Ryan McBeth with the law
12 firm, McKool Smith, on behalf of Patent Owner Samesurf, Inc. If we could
13 get, let's say, 90 minutes on the clock, I think that should be good. And we
14 reserve the rest for rebuttal. And I'm going to split that time with
15 amendment counsel and see if I can go 60, 65 minutes and then hand over to
16 amendment counsel if that works.
17 JUDGE EASTHOM: Perfect.
18 MR. MCBETH: Excellent.
19 JUDGE EASTHOM: Whenever you're ready, please.
20 MR. MCBETH: Thank you, Your Honors, for having us today.
21 It's very good to be here. Again, I'm joined today by the inventor on the
22 patent, Mr. David Pirnazar. He's the CEO of Samesurf. When he came up
23 with the inventions in these patents, he founded his company, Samesurf.
24 And these patents are very important to him and very important to his
25 company. And it's very good to be here today. I'm proud to be representing

1 him in front of this tribunal.
2 And as you know, there are three challenge patents, the '591,
3 '145, and '448. And here's a roadmap to what I'm going to start with today.
4 What we'd like to start with first, what was the prior art? What were the
5 problems that existed in the industry when Mr. Pirnazar came up with his
6 invention?
7 And I've got one small prop with me today. This is not an
8 original iPhone, but it's the second gen iPhone. I think it's an iPhone 3G or
9 3GS. It's the first time that I decided to buy an iPhone. But this came out
10 around 2010, which was about when Mr. Pirnazar came up with his
11 invention.
12 And the reason I brought this little device with me today is just
13 to remind all of us when Mr. Pirnazar invented what was underlying these
14 patents, technology was a little bit different.
15 Our phones were a little slower. Data transmission was a little
16 slower. Even our home PCs, our home laptops, the internet connections
17 were all just a tiny bit slower than they were today.
18 And so he looked at what was out there in the field and he
19 looked at screen sharing and web page sharing solutions. And he wanted to
20 come up with something that was more efficient, that was a little less data
21 intensive.
22 And part of his thinking was, because he was living in the
23 world when iPhones were just coming out, when our computers were a little
24 slower and internet was a little slower. I just mention this so we all have
25 perspective on where the idea for the invention came from.

1 And so, I'd like to talk a little bit about what was in the prior
2 art. Screen-sharing is probably what we're actually doing right now. I don't
3 know if Your Honors are able to see the exact slides that we have up in this
4 room here. But I'm here on slide -- and I should mention my slide number.
5 I'm on Slide 5 right now.
6 Screen-sharing broadcasts continuous screenshots of what is
7 one screen, what's on the host screen to the users, right? So that's a lot of
8 data. It's, like, broadcasting a video stream. That's very data-intensive in
9 terms of network traffic. It's CPU-intensive. Each computer receiving all of
10 these screenshots continuously has to process that, display that image, right?
11 And so, it's so interesting that is actually what we're likely
12 doing right now in this presentation is doing screen-sharing.
13 That was something that was known in the prior art that was
14 one of the problems that Mr. Pirnazar sought to overcome with his
15 invention.
16 The other technology that was available at that time was web
17 page sharing. Web page sharing is simply a tool that allows folks to see the
18 same web page, to be on the same web page, to go look at the same web
19 page at the same time.
20 That is different from what is claimed here. What is claimed by
21 Mr. Pirnazar's invention is synchronized browsing.
22 The idea that he had was for folks to be on the same web page
23 doing the same things at the same time and have a common experience
24 between each other. And I'm going to get to the details of that a little bit
25 more as we go.

1 But I think it's important to appreciate these were the problems
2 in the industry, the problems in the technology that preexisted -- Mr.
3 Pirnazar has mentioned that preexisted the Samesurf patents. And so, okay,
4 here are -- I think I've already listed most of these. These are the
5 shortcomings of the prior art, obviously, high resource utilization,
6 bandwidth, CPU and GPU utilization.
7 There were also latency issues. When you're sharing your
8 screen in, like, a Zoom screen-sharing session, having all of the pixels
9 needing to be replicated on everyone's screen.
10 If those are not instantly sent, then there's going to be latency.
11 There's going to be hesitation. There's going to be lag. Sometimes you get
12 a delay when someone moves a screen -- a window around on their screen.
13 You also have privacy issues, possible disclosure of sensitive
14 screen elements. If you entered your Social Security number, your address,
15 other personal information, medical information.
16 In a screen-sharing session, that's generally visible. It also
17 lacks synchronization of the experience between the users because you're
18 not getting, like, the full we're doing the same things at the same time,
19 seeing the same things at the same time, at least with regard to web page
20 sharing.
21 And then there's also no support for full multi-user interactivity
22 like there is with the Samesurf invention. Now let's talk about -- a little bit
23 about the benefits of the invention itself.
24 Mr. Pirnazar's invention was intended and does not materially
25 improve more bandwidth or processing power requirements than simply

1 browsing the internet using standard conventional methods.
2 That is each user's device is doing the same things they would
3 be doing if they were just browsing a web page.
4 There's just minimal additional traffic that's happening with the
5 communications with the synchronization server. Other than that, it's a very
6 low bandwidth, a very lightweight solution.
7 So, there's low levels of latency here. You have protection for
8 your host information because you're not sharing your full screen. You're
9 not sharing your full desktop. And it also provides a synchronized browsing
10 experience.
11 And we're going to get into the details of that a little bit more,
12 synchronized browsing versus simply going to the same web page at the
13 same time. That's different. There's a fundamental difference there, and
14 we're going to get into that. And there's also support for multi-user
15 interactivity with the Samesurf solution.
16 So, let's talk a little bit about what is synchronized browsing
17 and why is that different from web page sharing. Right here in the
18 specification, it states --
19 JUDGE BENOIT: Counselor, before you move on, I just
20 wanted to ask a very specific question, and it's about what went into the
21 prior art identified in the written description.
22 MR. MCBETH: Right.
23 JUDGE BENOIT: There's a little bit of back and forth. I just
24 want to make sure I understand it.
25 MR. MCBETH: Okay.

1 JUDGE BENOIT: For the '154 patent in the '339 case, your
2 response on page 9, you're talking about the shortcomings in the prior art
3 written description at column 2. And the way you phrase a sentence there, it
4 did seem like you might have been talking about the patent was criticizing
5 not just desktop screen-sharing but also the page sharing.
6 And you clarified in your sur-reply that was not the case. You
7 did not -- you were not indicating that the written description criticized page
8 sharing technology. I just wanted to make sure that I understood that is your
9 position.
10 MR. MCBETH: Sure. I believe the specifications of each of
11 the patents in suit, generally and broadly, criticize screen-sharing, and
12 focused on that is one of the main problems. And I guess what we're talking
13 about now is just orienting, you know, what were the problems that existed
14 in this technology space that Mr. Pirnazar sought to solve.
15 JUDGE BENOIT: Absolutely. I understood that you were
16 giving a broader state of the art right now. I just wanted to make sure that I
17 understood that you were clarifying in your sur-reply that you did not
18 indicate page sharing was a shortcoming identified in column 2 of the patent.
19 MR. MCBETH: That is correct. That is correct, Your Honor.
20 JUDGE BENOIT: That's all. It's a very minor point and I'm
21 sorry to interrupt the flow of setting the stage here, because I do think that's
22 very helpful.
23 MR. MCBETH: Absolutely. No, I fully invite all questions.
24 Thank you so much. So, I think, in looking at the spec, it's very clear what
25 the present invention was directed to. And it was directed to synchronized

1 browsing. And I think it's important for us all to understand what
2 synchronized browsing is.
3 So, I'm going to -- if you bear with me, I'm going to read a few
4 sections from the specification. And this is on Slide 8, now. The present
5 invention allows two or more persons browsing the internet to share their
6 internet browsing experience and have all users simultaneously browse and
7 fully interact with websites, games, virtual worlds, or other online
8 applications in real time.
9 This specification goes on to say, in a synchronized browsing
10 session, two or more people may read the same article, watch the same
11 video, or shop for the same item automatically without the hassle of
12 coordinating user input. And that's a big part of this, not having the hassle
13 of coordinating that user input.
14 But taking the web browsing interactions performed by a host
15 device and replicating them and doing the same interactions, performing the
16 same interactions on a guest device, you're able to have two side-by-side
17 users in different locations having the same internet browsing experience.
18 And that is what is the invention that is claimed. And we're
19 going to go through the claims and show where that is supported in the
20 claims as well.
21 JUDGE EASTHOM: Can I ask general question?
22 MR. MCBETH: Yes, Your Honor.
23 JUDGE EASTHOM: I asked your friends earlier the same
24 question. But is part of the synchronization that you're talking about, is that
25 embedded in step 1D of the '591 claim? Is that how you do it? My question

1 is how do you do the synchronized browsing?
2 MR. MCBETH: So, the key to the synchronization is that the
3 host and the guest devices are doing the same things. And they're ending up
4 having the same experience because of that, right?
5 So, you got to synchronize what the host is doing and what the
6 guest is doing. And the synchronized browsing session and the actions of
7 the synchronization server and then the actions of the host and the guest
8 device are what allows that to occur. And that's all covered in the claims.
9 Here's an example in '448 Claim 1 in front of us now on Slide 9.
10 JUDGE EASTHOM: Claim 1?
11 MR. MCBETH: That's right.
12 JUDGE EASTHOM: What slide are you on?
13 MR. MCBETH: This is on Slide 9 now.
14 JUDGE EASTHOM: I guess so maybe we could go to -- do
15 you have the '591 Claim 1?
16 MR. MCBETH: Sure. Yeah, if we could go to Slide 74, I
17 believe it's on. So, here's Slide 74. This is '591 Claim 1.
18 JUDGE EASTHOM: Okay. So, in the last step 1D, the
19 synchronization server sends the URL and the copyright and some other
20 information?
21 MR. MCBETH: Yes.
22 JUDGE EASTHOM: Because it says comprises. And then the
23 browser operates based on that data.
24 MR. MCBETH: Right.
25 JUDGE EASTHOM: Is that how you synchronize it?

1 MR. MCBETH: That is one aspect to being synchronized,
2 right?
3 JUDGE EASTHOM: Right.
4 MR. MCBETH: It's the claim as a whole. And if you look at
5 starting in the preamble, we talk about a method for a guest device
6 performing a synchronized browsing session administered by a
7 synchronization server.
8 And there are different parts of the puzzle here. This is '591,
9 Claim 1. This is from the perspective of the guest device.
10 JUDGE EASTHOM: Right.
11 MR. MCBETH: So, this is focused on the actions of what the
12 guest device does to be part of this synchronization session. And if you look
13 at step 1B, we're sending a request by guest device to join the synchronized
14 browsing session.
15 Step 1C, receiving from the synchronization server a
16 notification that the guest device has joined.
17 Step 1D, receiving data from the synchronization server.
18 Again, these are all actions that it's the synchronization server kind of
19 conducting what's going on here. Receiving data from the synchronization
20 server where the data relates to a website being accessed in real time by the
21 host device.
22 So, you're taking -- the host device has performed a web
23 browsing interaction. And an example of that would be going to a specific
24 URL. That is communicated to the synchronization server.
25 The synchronization server communicates it to the guest device.

1 And then the guest device goes and performs the web browsing interaction.
2 So, that way, the host and the guest are looking at the same thing at the same
3 time. They're having that same internet browsing experience. So, it's
4 really -- it's aspects of each of these steps that are required to achieve the
5 synchronization.
6 JUDGE EASTHOM: And then that was sort of my
7 understanding, initially. And so, I'm glad you clarified that. And then my
8 other question was is it looks like in your amended claims, you capture this
9 more where there's more of sort of an automatic operation of the --
10 MR. MCBETH: I will apologize, Your Honor. I am not
11 allowed to answer questions on amendments. I'll have to defer to
12 amendment counsel on that.
13 JUDGE EASTHOM: Okay. I understand. Well, maybe I can
14 ask a general question about Claim 1 here. It's saying Step 1. He says
15 operating a browser by the guest device. But the way I read that, it's not
16 clear to me that the browser operates on that data by itself. In other words,
17 the user itself can choose to hit the URL. Was I reading that too broadly?
18 MR. MCBETH: I think that is reading that too broadly. To
19 achieve the synchronization, it's required that the guest device operate a
20 browser by the guest device based on the data received from the
21 synchronization server.
22 JUDGE EASTHOM: I see what you're saying. So, the guest
23 device itself has to operate. Okay.
24 MR. MCBETH: That's right. That's right.
25 JUDGE EASTHOM: Appreciate that.

1 MR. MCBETH: Sure, absolutely. Let's go back. Okay. So,
2 we're talking about what is synchronized browsing. And I think it sounds
3 like Your Honors get what that is here. So, I'm going to keep moving
4 ahead.
5 And we have talked about it. A synchronized browsing session
6 is a browsing session in which a host device shares its internet browsing
7 interaction.
8 The key here is interactions within a website with the guest
9 device via the synchronization server in a simultaneous real time fashion in
10 order for the multitude of synchronous use cases.
11 And what is the synchronization server? What is the
12 synchronization server's role in the system? A synchronization server
13 establishes and facilitates a synchronized browsing session between a host
14 device and a guest device and relays web browsing interaction data from the
15 host to the guest device.
16 And I think a real key to understanding what Mr. Pirnazar's
17 invention was is just stepping through each of the steps as it relates to Figure
18 5A here. And we've made that as simple as we can by pulling the figures
19 apart and talking about each step individually.
20 So, what happens initially? In step 1, the host device has a
21 website request. A website interaction of browsing -- sorry, web browsing
22 interaction is performed by the host device.
23 So what request is made? The host device sends a
24 communication to the synchronization server describing that interaction.
25 The synchronization server relays that communication message

1 to the guest device. The guest device in step 4 performs that web browsing
2 interaction by making a website request.
3 And then, finally, the web content reply comes in to both the
4 host and guest device.
5 Very important is understanding why this architecture is
6 different from what Lebrun, Prajapat, and Wang propose. Here, it's the
7 synchronization server passing information related to the interactions
8 between the users, right?
9 If you look at the synchronization server, looking at the entire
10 specification, and looking at the descriptions of these figures, the
11 synchronization server is not going out, reaching out to a website, pulling
12 down a web page, and then distributing that web page to the host and the
13 guest.
14 That does not happen in this set of figures and this description,
15 right? But that is precisely what Prajapat, Lebrun, and Wang are doing,
16 right?
17 They're a middleman's group-surfing server, essentially a
18 proxy server that's going out and grabbing the web pages for each of their
19 users, and then distributing the web page to each of the users.
20 The Petitioner stated earlier that cashing a website would not be
21 a real time access I would say. But that's precisely what each of Lebrun,
22 Prajapat, and Wang are doing. They're taking a copy of the website, cashing
23 it locally, and then distributing it to each of the users of the system.
24 That's a completely different architecture than what Mr.
25 Pirnazar came up with, and it's data intensive. There's a bottleneck. If

1 you're having one server that's responsible for distributing all the website
2 and all the users, that's a bottleneck. And that's different from Mr.
3 Pirnazar's system. That's different from what's claimed here. The idea here
4 is a very lightweight implementation where the synchronization server is
5 passing around interaction data.
6 JUDGE EASTHOM: You don't dispute Lebrun sends a URL,
7 right?
8 MR. MCBETH: So, Lebrun, the way it works is -- and, sorry,
9 let me move on to a slide on that, if you don't mind, so we have a
10 visualization. And I'll just step forward here.
11 So, here we go. We're on Slide 18. And this shows the
12 architecture of the system of Lebrun. What Lebrun does is a host device has
13 a URL or a list of URLs that it sends to the group-surfing server. The group-
14 surfing server will then go grab that URL and then distribute it to each of the
15 web clients, including the host device, right?
16 So, the host device never reaches out to that website. Each of
17 the guest devices do not reach out. It's the group-serving server doing that
18 and distributing it. So, the actual interaction data is never performed by the
19 host device.
20 It's never performed by the guest devices. It is the result of the
21 interaction which is the website that gets pulled down that's distributed to
22 the devices.
23 So, the interaction data never actually makes it to the purported
24 guest devices if that makes sense. And we can see each of the steps laid out
25 here in Slide 19.

1 So, I think it's important to recognize and to talk about what is a
2 web browsing interaction. And we know what a web browsing interaction
3 is. And, in fact, the Patent Office reinforced this. This is a statement of
4 reasons for allowance for the '448 patent.
5 I'm on Slide 13. The examiner here, in allowing the claims for
6 the '448 patent, said a shareable web browsing interaction is an active step
7 that must be performed.
8 So, an interaction that is done by a host device is something that
9 must be performed. An interaction by a guest device is something that must
10 be performed. It's an active step.
11 If we look at how a session is started, in the '448 patent in
12 limitation 1C, it's required that the device send an invitation to an invitee
13 device to join the synchronized browsing session where the invitation
14 includes a session identifier.
15 And in the '145 patent, limitation 1A, it's a similar disclosure.
16 Receiving from the synchronization server a session invitation including a
17 session identifier associated with the host device.
18 In each of the references, Lebrun, Prajapat, and Wang, an
19 invitation is not sent from a host device to a guest device that includes a
20 section identifier. And we're going to go into the details of that in each
21 reference.
22 So, we've gone through how synchronized browsing works,
23 why the same sort of convention, why Mr. Pirnazar's invention is different
24 from the architecture and these references.
25 But let's look at the references a little bit more closely now.

1 So, we talked about Lebrun's architecture. Lebrun is a group-surfing server
2 where the group-surfing server is doing the heavy lifting.
3 The group-surfing server is going out there and retrieving those
4 websites on behalf of the web clients. And it's distributing the websites to
5 the web clients. Lebrun does not teach the claimed invitation session either.
6 In fact, Lebrun says to add itself to the session, a second web
7 client sends a session-join message to the group-surfing server. That means
8 each of the web clients in Lebrun are adding themselves to the session.
9 They're not receiving an invitation to the session. And we
10 know that from the further additional disclosures in Lebrun that you can see
11 on slides 20 and 21.
12 JUDGE EASTHOM: So, in Lebrun, they have to coordinate
13 independently?
14 MR. MCBETH: That's right. Lebrun did not contemplate the
15 concept of sending the invitation from the host to the guest with the section
16 identifier. And if you read the spec here, it says, add itself to the session.
17 The web client sends a session-join message the group-surfing server.
18 Petitioner relied on a disclosure of Lebrun that talks about a
19 message being sent from the host to the group-surfing server to start the
20 session. And --
21 JUDGE BENNETT: Counselor, it's Judge Bennett. In Lebrun,
22 how would the web client know which session to join?
23 MR. MCBETH: Your Honor, that's a great question. And
24 Lebrun actually does not have that in the disclosure. It's silent on that.
25 And so, it's a good question from that perspective. But what is

1 disclosed by Lebrun is the host device contacting the group-surfing server to
2 start the session. And it simply doesn't contemplate sending that invitation
3 with the session.
4 JUDGE BENNETT: But the client has to know somehow what
5 session to join, right? Presumably, it knows.
6 MR. MCBETH: That is -- the client would need to know how
7 to join the session. But Lebrun is silent on that communication and how that
8 occurs.
9 So, we know that the Samesurf architecture is different from
10 that of Lebrun, right? The surfer in Samesurf is not going out and fetching
11 the web pages and distributing them to the clients like the Lebrun
12 architecture is.
13 This is also similar to the way that Prajapat works. If we look
14 at Prajapat Figure 1 which is what we refer to as embodiment 1 in Prajapat,
15 your browser A goes to web media server A to request a web page from web
16 content server.
17 Web content server 18 delivers the web page to web media
18 server A. And browser A gets what Prajapat refers to as an intermediate
19 rendered copy of the web page.
20 And web media server A -- browser B only gets access to that
21 intermediate rendered form through web media server B which gets it from
22 web media server A.
23 So, in this architecture, what Petitioner alleges to be the guest
24 device which is browser B never goes out and requests the content from the
25 web content server.

1 And so, this architecture, again, this is a web page sharing
2 architecture where the web pages are essentially distributed a copy of the
3 web page which is transformed in this instance even is distributed through
4 the construct of web media servers.
5 And Prajapat was trying to come up with something that was
6 more efficient, more efficient from the perspective of not burdening the web
7 content servers.
8 And that's a different concept altogether than what Mr. Pirnazar
9 and Samesurf came up with. And they implemented this in an architecture
10 that is a web page sharing architecture.
11 Now, Petitioner has also looked at the Prajapat reference
12 generally. And, unfortunately, they have cherry picked things from each of
13 the three embodiments you see on the screen here.
14 This is on Slide 24. So, Slide 24 shows Prajapat embodiment 1,
15 which is described in relation to Figure 1, a peer-to-peer dynamic web page
16 sharing embodiment.
17 Prajapat also describes what we call embodiment 2. It's shown
18 by Figure 3, peer-to-peer simple web page sharing.
19 And then Prajapat has additionally described a third
20 embodiment, phone-to-phone web page sharing that's shown in Figure 4.
21 Now, Petitioner, they admitted earlier that they looked at the
22 Prajapat reference generally. And they use disclosures from the reference
23 generally. But what they didn't recognize is that each of those disclosures
24 relate to one of these embodiments.
25 And each of these embodiments is a slightly different

1 architecture. And they're not combinable. Our expert, Stacy Friedman, has
2 explained why they're not combinable.
3 We have argued in our briefing why they're not combinable.
4 And Petitioner has not met their burden. They have not explained how each
5 of these embodiments could be combined, how they would function
6 together.
7 And when you have different architectures that are for a
8 different purpose and function in a different way, Petitioner has that burden.
9 Remember that patents have presumption of validity, right? So,
10 it's Petitioner's burden to make those explanations, to explain how these
11 different embodiments would function today.
12 JUDGE EASTHOM: The way I understand it --
13 JUDGE BENNETT: Counselor -- sorry, go ahead.
14 JUDGE EASTHOM: No, you go ahead, Judge Bennett.
15 JUDGE BENNETT: Thank you. How do you address the
16 *Boston Scientific* case that Petitioner relied upon? It pretty clearly said
17 adjacent embodiments are okay.
18 MR. MCBETH: Right. So, I think that was a very, very
19 specific case. And I do believe there's been subsequent case law as you
20 mentioned earlier that has altered that finding.
21 But here, this is not merely adjacent embodiments. This is
22 different embodiments that had different purposes that had different
23 functional constructs.
24 And it's not just like, oh, one was slightly different than the
25 other and it would be obvious to combine them. That is not the case here.

1 This is where you've got a totally different architecture, a different purpose,
2 a different explanation.
3 And we also have POSITA support saying a POSITA would
4 not have combined these. It wouldn't have been obvious to combine these.
5 And so, I think we did cite to some IPR -- different IPR decisions that
6 supported our point here that it's Petitioner's burden to explain that.
7 We can't just take them at face value that it would've been
8 obvious to combine these. They've offered no explanation on how to do
9 that.
10 JUDGE EASTHOM: I sort of thought your friends were saying
11 that there's a description in Prajapat that there are similar methods going on
12 between -- for some of these steps.
13 I don't know which ones particularly. And I take your point
14 even with the *Boston* case. That was an obviousness case. Right before the
15 sentence where it talks about a leap of inventiveness.
16 It says there was reasons to combine there. So, I think they use
17 leap in a sense that it's not a huge -- you don't need a huge, great reason. I
18 don't know.
19 But that might be a red herring here. They're kind of saying
20 that there's overlapping disclosure that relates to all three of these
21 embodiments. And maybe your point is they didn't make the burden of
22 showing how they're overlapping.
23 I hear you're saying that maybe. But could you just specifically
24 say which part that they relied on that's overlapping that shouldn't be
25 overlapping?

1 MR. MCBETH: Sure. I think that they generally did not meet
2 their burden here, right?
3 JUDGE EASTHOM: Okay.
4 MR. MCBETH: I think that they have said, oh, there's
5 overlapping parts in it. And it's true. Like, I mean, there's a browser A in
6 both Figure 1 and Figure 3, right?
7 Like, there are some devices that are similar here. But if you
8 think about what is being talked about in the peer-to-peer dynamic web page
9 sharing, it's web media server A getting web content from the web content
10 server, right, and caching it and then changing the format of it to display it to
11 browser A.
12 And then browser B can request it from web media server B as
13 it has been relayed from web media server A. That is completely different in
14 function to the way embodiment 2 in Figure 3 works where Figure 3 is more
15 of a non-synchronized static URL sharing.
16 It's two devices sharing URLs with each other. It's not
17 explained to be in any kind of a synchronized format.
18 And so, there's just -- like, fundamentally, there is a difference
19 here in where the web content is coming from, in what is being shared
20 between the devices.
21 And they simply don't function together. And I think if I go
22 on -- here's a quote from our POSITA, Stacy Friedman.
23 He said, Prajapat's dynamic web page sharing embodiment is
24 incompatible with either the simple web page sharing or phone-to-phone
25 web page sharing.

1 He goes on to say, Prajapat's dynamic web page sharing
2 embodiment -- I'm sorry. That's the same quote.
3 Figure 1, corresponding to the dynamic web page sharing, is an
4 entirely different architecture and message for Figure 3. It is clear from the
5 figures that the dynamic web page sharing embodiment is distinct from the
6 simple web page sharing embodiment.
7 Here, we have argued and our POSITA has argued and
8 recognized that these are different embodiments that wouldn't function
9 together.
10 Petitioner simply hasn't met their burden of explaining how
11 they would function together. And, of course, there's also the asserted
12 reference, Wang. I'm sorry. Did you have another question?
13 JUDGE EASTHOM: I guess my point is notwithstanding what
14 your expert said and I agree. They're all different. But if the Petitioners, for
15 example, make it simple said they use the protocol from one that's not
16 explicitly disclosed for the other one. No one would say that's too big of a
17 leap, right, if we're just using the same protocol or something.
18 MR. MCBETH: If it was something simple like that to ensure.
19 But I guess that's not the case and they haven't made that argument.
20 JUDGE EASTHOM: That's why I was just asking you what's
21 the specific limitation where they combine these that makes it fail showing.
22 MR. MCBETH: Sure. And I think that they didn't recognize
23 that they were different embodiments.
24 If you read their petition, there's not a discussion of recognizing
25 that they're different embodiments. They simply picked and choose

1 disclosures from the specification and put them all forth as one --
2 JUDGE EASTHOM: Can you give me one example of one of
3 those disclosures that you're talking about?
4 MR. MCBETH: Sure. Maybe if we come back in the rebuttal
5 and do that.
6 JUDGE EASTHOM: Okay. That'd be fine. Thank you.
7 MR. MCBETH: Thank you.
8 JUDGE BENOIT: Counsel, before you go on.
9 MR. MCBETH: Sure.
10 JUDGE BENOIT: Similarly, I'm just looking at Prajapat now.
11 And they use the same browser, right, in Figure 2 which is the dynamic in
12 Figure 3.
13 MR. MCBETH: Sure.
14 JUDGE BENOIT: And they use the same browser on those
15 reference numbers across figures. And, often, that's similar or the same item
16 used in different implementation and different figures.
17 It also talks about referencing other figures. I'm looking at
18 paragraph 41 in Figure 3. It says, the web media server – the web media
19 server -- it says, the browser is substantially similar.
20 So that's described above with reference Figures 1 and 2. And
21 there's also some other discussions similar to that for Figure 2 saying this is
22 similar to Figure 1.
23 So, to me, at least, it's not as clear cut that there are these
24 discrete, separate embodiments that don't share features. It seems like
25 Prajapat itself is saying, hey, there's similarities across these figures. Here's

1 some examples of them.
2 MR. MCBETH: Sure. I think that's a great point. And
3 actually, you read the exact quote that I was going to go to in these
4 references. So, thank you for locating that for me. And we do have a slide
5 on that I'll go to in a second.
6 But if you look at what is described commonly between those
7 embodiments, it says that the servers may locate each other in a similar way,
8 right? And it's talking about web media server A, web media server B.
9 If you see the cloud 16 in between them, it's talking about the
10 way the servers located each other. And in terms of the disclosures of
11 Prajapat, that is the only commonality that is discussed between those
12 different embodiments is the way the servers locate each other.
13 And that is not really the aspect that Petitioner is relying on.
14 That's not the aspect that is under discussion. It is just one minor thing that
15 is common between these embodiments.
16 JUDGE BENNETT: Counselor, this is Judge Bennett. So, in
17 paragraph 47 of Prajapat, the sentence says, in this example, web pages may
18 be shared in a substantial similar manner to that described above with
19 reference to Figures 1 and 2.
20 MR. MCBETH: Sure.
21 JUDGE BENOIT: So, you're saying that sentence is telling us
22 just about how the web media servers are finding each other and nothing
23 else?
24 MR. MCBETH: Sure. I think it's important to read the
25 sentence just preceding that. We have a slide on that if we could go to that.

1 So, okay, yeah, this is on Slide 130.
2 And if you look at the sentence right before that, it says,
3 although the illustrated embodiment depicts browsers retrieving web pages
4 from the web content server, system 48 may be constructed such that UA
5 and web medial controller is operable to retrieve web pages from web
6 content server.
7 So, the idea here and what Prajapat has described is
8 reconstructing what is shown to match with embodiment 1, I believe here.
9 So, it says, in this example, web pages may be shared in a
10 substantially similar manner to that described above with reference to Figure
11 1 and Figure 2.
12 So that is saying that you would be following the setup of
13 Figure 1 which again is a different architecture from the Samesurf
14 architecture, right?
15 That's a web page sharing architecture where a copy of the web
16 pages cached on that web media server A.
17 The whole idea with Prajapat embodiment 1 is to distribute the
18 web media sharing, caching of the web page, and the distribution of that to
19 the browsers.
20 It's just another web page sharing architecture, another web
21 page sharing embodiment. That is different from what the synchronization
22 server is doing in terms of sharing interactions between users. Does that
23 answer your question, Your Honor?
24 JUDGE BENNETT: Yes, it does. Thank you.
25 MR. MCBETH: So, moving on to the third piece of cited art,

1 Wang. Wang is also a different architecture. It's another web page sharing
2 architecture that's different from the Samesurf architecture. And we know
3 this because Wang teaches an apparatus that requests and receives web
4 content.
5 And, again, here it's a copy of the web content. And Wang is
6 distributing that web content to each of the users of Wang. And it's one
7 server with users where the web content is being sent out to the users.
8 This is similar to web page sharing in Lebrun, similar to web
9 page sharing in Prajapat. It's a cached copy of a web page that's being
10 distributed to each of the users.
11 And again, here with Wang, the invitation message, if you look
12 at Figure 3 of Wang as we've shown here in Slide 30, the invitation message
13 is sent from the first client device to the server apparatus.
14 But then the message that is sent from the server apparatus to
15 the second client device is merely an invitation acknowledgment.
16 It's not an invitation that includes a session identifier. And that
17 is required by both '145 Claim 1 and '448 Claim 1. The invitation has to be
18 sent -- and here -- again, here, this is first client to the server, server to the
19 second client.
20 The claims require that the invitation be sent from the host
21 device to the guest device and that the invitation include a session identifier.
22 And that's not the case in Wang, not the case in Lebrun as we discussed
23 earlier.
24 JUDGE BENOIT: So, counsel, why can it not go through the
25 server apparatus? Does it have to be sent directly?

1 MR. MCBETH: Sure. If we could go to Claim 65, it shows
2 '448 Claim 1. So, if we look at step -- I believe it is step 1C. Okay. This is
3 '448 Claim 1.
4 And remember, '448 Claim 1 is from the perspective of host
5 device. So, these are steps that are conducted by the host device. So, step
6 1C says sending an invitation to an invitee device to join the synchronized
7 browsing session where the invitation includes session identifier.
8 And this is an action taken by the host device to get the
9 invitation to the guest device so that they can join the session.
10 We're just relying on that claim language. And if we could go
11 to '145 Claim 1, I believe that's on Slide 70. Okay. In '145 Claim 1, we
12 look at, okay, now work from the perspective of the guest device in '145
13 Claim 1.
14 And in step 1, let's see, 1B, it says, activating the session
15 invitation to -- sorry, let's back up for a second.
16 Step 1A says, receiving from the synchronization server a
17 session invitation including a session identifier associated with the host
18 device.
19 And then 1B is activating the session invitation to send a
20 request to join the synchronized browsing session to the synchronization
21 server.
22 JUDGE BENOIT: But that doesn't require the host, right?
23 MR. MCBETH: Sure, yeah. This is -- '145 Claim 1 is a little
24 bit different in the methodology for the invention.
25 JUDGE BENOIT: It doesn't require receiving it from the host?

1 MR. MCBETH: That is correct, though it does still require the
2 session identifier be included and associated with the host device.
3 JUDGE BENOIT: How about the '591 patent? Where does
4 that require the guest device to receive directly from the host?
5 MR. MCBETH: Sure. So, '591 Claim 1 is different. It's got a
6 different construct here. If we look at claim element 1.a and 1.b, '591 claim
7 element 1a. says, detecting an activation of a hyperlink associated with the
8 synchronized browsing session by a guest device.
9 And 1.b says, sending a request by the guest device to join the
10 synchronized browsing session to the synchronization server in response to
11 the activation hyperlink. So, the invitation methodology is a little bit
12 different than '591.
13 JUDGE BENOIT: So, counselor, I know you're dealing with a
14 lot across these cases, but the parties jointly wanted to do it this way. So,
15 you're stuck with dealing with all these claims at one time. But it would be
16 really helpful if, when there are these different claim language like that, to
17 clarify which claim you're talking about.
18 MR. MCBETH: Absolutely, Your Honor. Thank you.
19 JUDGE BENOIT: We, of course, feel free to ask clarifying
20 questions. But I realize it's complex. But it's important that we stick with
21 the claim language, as you know. So, thank you.
22 MR. MCBETH: Absolutely. Appreciate it.
23 MR. MCBETH: So, moving on. I think it's important for us to
24 consider and talk about the key distinctions between Mr. Pirnazar's
25 invention and what is claimed here in the cited prior art references.

1 And I think one of the big distinctions here is the claims, the
2 claim invention is synchronized. That's fundamental to the invention. If
3 you go and you read the specification for any of the patents that are being
4 challenged, it is very clear that synchronization and synchronizing the
5 activity between each of the users is key to this invention. And it is a big
6 part of the claims as well. And we're going to step through that. And so --
7 JUDGE BENNETT: Counselor, this is Judge Bennett. When
8 we talk about synchronization, my understanding is that you're trying to
9 achieve a shared browsing experience where two different people are
10 experiencing the same, effectively, the same browsing session together.
11 MR. MCBETH: Right.
12 JUDGE BENNETT: Is that what you mean by synchronized
13 browsing session?
14 MR. MCBETH: It absolutely is. And I've got a slide here on
15 this so I'll just step you through if you don't mind. This is Slide 47. And
16 the question is kind of like, what's the goal in being synchronized here. And
17 it's achieving the synchronized browsing session, which is a part of each of
18 the claims.
19 And, you know, let's start by looking at the abstract here. The
20 present invention describes a method and apparatus for the implementation
21 of a real time shareable web browsing experience on a guest device utilizing
22 the transfer of URL and form data information.
23 In the technical field of the intention section, the present
24 invention relates in general to a shareable browsing experience, and more
25 specifically, to a method and apparatus for the implementation of a

1 synchronized browsing session on a guest device utilizing the transfer of
2 URL, form data, script, and other information.
3 The specification goes on to say, there is a need in the art for an
4 internet enabled collaboration, online commerce, and social networking
5 innovation that facilitates real time sharing of a more complete internet
6 experience.
7 Specifically, there is a need for a device that allows all users in
8 a session to interact with, discuss, log in separately or together, and share
9 internet browsing in a real time for online activities, such as shopping
10 together, booking travel together, watching or listening to media together
11 and browsing the media together in a simultaneous fashion from different
12 devices and/or locations. It is to these ends that the present invention has
13 been developed.
14 And I would note that each of these sections talk about the
15 present invention. And we know from our Federal Circuit case law that
16 when a patent describes the features of the present invention as a whole, this
17 description limits the scope of the invention. This is on Slide 48. We cite to
18 the *Verizon v. Vonage* Federal Circuit opinion here.
19 And so, you know, the specification was very clear. This is a
20 real time synchronized browsing session. And you don't just have to look at
21 the specification, we can also look at the claim language. Because the
22 claims do make it clear.
23 We've got examples from each of the claims on Slides 36, 37,
24 and 38. Each of the claims claim a method, or similarly claim, a method for,
25 this '448 Claim 1. A method performed by a host device for establishing a

1 synchronized browsing session between a host device and an invitee device.
2 '448 Claim 1 also talks about sending requests to establish the
3 synchronized browsing session wherein the session identifier is associated
4 with the host device and the established synchronized browsing session.
5 Sending an invitation to an invitee device to join the synchronized browsing
6 session.
7 The concept of synchronized browsing, like the claims like are
8 fully directed towards synchronized browsing. The specification of each of
9 the patents talks about a synchronized browsing session. There is no aspect
10 of this that was ever intended to not be synchronized.
11 It's, you know, abundantly clear by each of the claims, it's
12 abundantly clear in the specifications as well that the invention was directed
13 towards a synchronized browsing session. That's different from web page
14 sharing. That is different from like screen sharing, right? It's a
15 synchronized browsing session.
16 You want each of those users to have the same experience.
17 And the way that you get there is by each of those, you know, the host
18 device and the guest device performing the interaction. So, the host device
19 performs the interaction, it goes to the sync server, the sync server sends that
20 information to the guest device so the guest device can also perform the
21 interactions.
22 JUDGE BENNETT: Okay. So, counselor, this is Judge
23 Bennett again. So, in essence, what you're talking about is, each client
24 makes an identical request to the web server and because of that what's
25 returned is identical?

1 MR. MCBETH: Your Honor, I think that's correct. And I
2 think the requests are nearly identical. And, you know, I looked to each of
3 the claims to do that. And maybe we can step through, can you go to Slide
4 65 real quick?
5 And I think, you know, it's important to look at this through the
6 lens of each of the claims here. And, you know, I first direct your attention
7 to Claim Element 1.d. And remember, this is '448 Claim 1. Sorry, we're on
8 Slide 65.
9 So, '448 Claim 1, this is from the perspective of the host
10 device. Claim Element 1.d says, recording a shared web browsing
11 interaction responsive to determining that a web browsing interaction of the
12 host device within the web browsing window is a shareable web browsing
13 interaction.
14 So, this is the host device recording the shared web browsing
15 interaction. And that's part of this, right? The host device has got to record
16 it. And then if we can go on to the next steps --
17 JUDGE BENNETT: Counselor, before you do that.
18 MR. MCBETH: Yes.
19 JUDGE BENNETT: I'm sorry to be interrupting so much.
20 MR. MCBETH: No, please.
21 JUDGE BENNETT: Can you provide kind of a real-world
22 example of Step 1.d?
23 MR. MCBETH: Yes.
24 JUDGE BENNETT: What would be happening in a practical
25 implementation?

1 MR. MCBETH: Sure.
2 JUDGE BENNETT: What does the reporting look like --
3 MR. MCBETH: Right.
4 JUDGE BENNETT: -- what is the shared web browsing
5 interaction that's being recorded?
6 MR. MCBETH: Absolutely.
7 JUDGE BENNETT: Thank you.
8 MR. MCBETH: And I'll give a simple example, and an
9 example that was, I believe discussed in the specification patent. Let's say
10 you're on uspto.gov and you're in a synchronized browsing session, the host
11 device is on uspto.gov, it's the host device clicking on, for example, a link
12 on uspto.gov and it's the clicking of the link, and it's some kind of
13 identification information to identify what is being clicked on, right?
14 So, the host device is performing an active step, you know,
15 performing the web browsing interaction on the website. The information
16 describing that is sent to the synchronization server, sent to the guest server
17 so that the guest device can, and now we would look at step, I'm sorry,
18 Claim Element 1.f.i of '448.
19 And this says, where the information related to the shared web
20 browsing interaction is to be processed by a browser of the invitee device
21 and enables the invitee device to generate a request to retrieve substantially
22 the same web page content as the request for the web page content from the
23 host device.
24 So, it's the interaction that the host performed. That
25 information goes to the sync server, the sync server gets it to the guest

1 device, the guest device gets to do the same thing so that way both users are
2 having that common web browsing experience. That fully interactive
3 experience.
4 JUDGE BENOIT: So, is it sending the URL, the link that was
5 clicked on?
6 MR. MCBETH: It would be sending the URL of the link, but
7 also the information that you need to go to that as well, right? It's not just
8 the URL itself. If the URL was by itself without any other information with
9 it, you know, that's a URL. Right?
10 It's more than that. It's information that's describing the web
11 browsing interaction. So, it's the link and it's, and it's, I went to the link,
12 you're going to link so that we're having the same web browsing experience
13 too.
14 JUDGE BENNETT: So, it's essentially sending all of the
15 information that the web server is using to create a send? Is that correct?
16 MR. MCBETH: I think --
17 JUDGE BENNETT: For example, the cookies if it was a form
18 submission, the form data, information like that.
19 MR. MCBETH: It's the information necessary to perform the
20 same web browsing interaction on the guest device.
21 JUDGE BENNETT: Okay, thank you.
22 MR. MCBETH: Okay. I'll get back to the key distinctions.
23 JUDGE EASTHOM: But where in the claim does it require an
24 extra information that tells the guest browser that it has to do that?
25 MR. MCBETH: Sure. And that is in, so sorry, if we can go

1 back to Slide 65. Again, this is '448 Claim 1. If you look at Step 1.f.i it
2 says, wherein the information related to the shared web browsing interaction
3 is to be processed by a browser of the invitee device and enables the invitee
4 device to generate a request to retrieve substantially the same web page
5 content as the requests for the web page content from the host device.
6 So, the invitee device has to have the information to generate
7 the request --
8 JUDGE EASTHOM: Yes, but doesn't that just read on sending
9 the URL to the --
10 MR. MCBETH: Sure. And I think it's more than that because
11 a web browsing interaction can mean many different things, right? It could
12 be we --
13 JUDGE EASTHOM: Yes, it can be --
14 MR. MCBETH: Right.
15 JUDGE EASTHOM: -- but it's not required of it.
16 JUDGE EASTHOM: I mean, you just told us, with respect to
17 1.d that, with the USPTO example, all you have to do is click on a link and
18 then send the URL over.
19 MR. MCBETH: Sure. You're right. And that's one example,
20 but because this is a synchronized browsing session it contemplates the
21 many different types of interactions that could happen.
22 JUDGE EASTHOM: True. And I appreciate that, and I think
23 you'll understand my question. It contemplates that it may be within the
24 scope of a claim, but the claim doesn't necessarily require that extra
25 information. Do we agree on that?

1 MR. MCBETH: I don't know if I do because it does, this claim
2 element, 1.f.i, requires that this information enables the invitee device to
3 generate a request to retrieve substantially the same web page content. So,
4 it's got to be at least enough information --
5 JUDGE EASTHOM: Then why isn't a browser enabled when
6 it just has the URL? That was my question.
7 MR. MCBETH: The browser would need to know that it needs
8 to go to that URL as well. It's not just, if you just delivered the URL to the
9 browser and the browser didn't, you know, you could potentially end up in a
10 non-synchronized embodiment.
11 JUDGE EASTHOM: Okay. And then, and a related question
12 here, because I'm looking at the claim language and it says, wherein the
13 information related to the shared web browsing interaction is to be
14 processed. And then if we go back to the antecedent for the shared
15 browsing, web browsing interaction, that's from Step 1.d, and you just told
16 me that's a URL.
17 MR. MCBETH: Sorry, if you could repeat that? From 1.d,
18 recording a shared web browsing interaction. It would be the performance
19 of the interaction. Recording a shared web browsing interaction.
20 JUDGE EASTHOM: The shared web browsing interaction I
21 guess is referring back, the shared web browsing interaction in Step 1.f.1,
22 1.f.i, excuse me, is referring back to a shared web browsing interaction in
23 Step 1.d, right?
24 MR. MCBETH: I believe that is correct.
25 JUDGE EASTHOM: Okay. And then at that point, if I heard

1 you right, you need to correct me now, but I thought you told me that that
2 could be a simple URL? I'm at the USPTO and I press 1 for URL.
3 MR. MCBETH: And I think I, sorry, and just to clarify, I
4 believe it would be more than just a simple URL. It would be the
5 performance of actually clicking on and going to the URL. That is what is
6 being recorded. You're recording the shared web browsing interaction.
7 JUDGE EASTHOM: Okay.
8 JUDGE BENNETT: So, counsel, that would be, for example,
9 an http get command, right?
10 MR. MCBETH: I'm sure. Yes. I think that's a fair example.
11 You know, it's something that is an active step that must be performed.
12 That is what is being recorded. Recording a shared web browsing
13 interaction.
14 And so, it's that step that the host device, the host device is
15 performing that interaction, and the guest device, each of the guest devices
16 need to perform that same interaction so that you're both viewing
17 substantially the same web page at substantially the same time.
18 JUDGE BENOIT: Counselor, I don't see any discussion, or
19 example of an http get command. You know, I'm looking at column 7 in the
20 '145. It says, exemplary embodiments, related web page interaction may
21 include data such as URL, formed data scripts, advertising codes and other
22 information.
23 Did you have anything in this written description that describes
24 that you must do this command that you just talked about? Because right,
25 I've seen a number of, a couple of references in this deck and it's URL.

1 Why is the URL not sufficient?
2 MR. MCBETH: Your Honor, I think that's a fair question.
3 And the reason the URL is not sufficient is because a URL by itself is not an
4 interaction, right? The patent claims specifically talk about web browsing
5 interactions, the specification talks about web browsing interactions. And
6 the interaction is, it is an interaction. It's an active step that must be
7 performed.
8 And so just, you can have a URL written on a piece of paper,
9 it's not an interaction in that format. It's an interaction when it's a host
10 device going to the URL by actively going and performing that step. And
11 that is what is discussed in the claims. It's what's discussed in the
12 specification.
13 JUDGE BENOIT: Again, I'm reading from the specification
14 and it describes, related web page interactions may include data such as
15 URL, et cetera. So, I'm just saying that I think the specification clarifies that
16 if URL data is one example of the web page interaction data.
17 MR. MCBETH: Sure. I do think that's part of the web page
18 interaction data. And I think it's, you know, there is more to it than that
19 because the claims require that it be something that is performance.
20 Something, the interaction is something that's performed. It's an action that
21 is taken.
22 JUDGE BENOIT: And we're talking about the '448 patent
23 right now, right?
24 MR. MCBETH: Yes, Your Honor.
25 JUDGE BENOIT: That's not true in the '145 patent, right?

1 The specific steps in the ’448 aren’t recited in the ’145?
2 MR. MCBETH: Sure. If we could go to the ’145, I’ll talk to
3 that for a minute. So, you’re right, Your Honor, that ’145, the claim
4 language is different than the ’448.
5 In the ’145. Step 1.c says -- and now we’re in ’145 Claim 1, so
6 remember, this is from the perspective of the guest device. And Step 1.c
7 says, receiving web browsing interaction data from said synchronization
8 server where the web browsing and action data is associated a website server
9 that is independent of the sync server and the host device that has initiated
10 the session limitation.
11 And the Step 1.d requires the guest device operating application
12 on said web browsing interaction data, received from the synchronization
13 server to access the website server independent of the sync server.
14 And I think a really important distinction on this claim is the
15 operating step here. Because the operating step requires that the guest
16 device use the web browsing interaction data to access the website server
17 independent of the sync server. And you’ve got to remember, in each of the
18 architectures that Petitioner has cited, Lebrun, Prajapat, Wang, they’re all
19 web page sharing architectures where you got a central server that’s
20 retrieving the web page, distributing a copy of the web page to each of the
21 web clients.
22 So, this step here accessing a website server independent of the
23 synchronization server where the guest device is doing that is never carried
24 out in any of the Lebrun, Prajapat or Wang references that are cited by
25 Petitioner.

1 JUDGE BENOIT: Well, that's not entirely true, right? There
2 are embodiments in Lebrun that do get information directly from the website
3 independent of the sync server. Independent of the group server in Lebrun,
4 right, where they talk about the embodiment in which the guest device can
5 access the web page directly?
6 Just use it directly from the group server, surfing server. And it
7 also talks about that may be an example where the multimedia data is
8 retrieved directly from the website server.
9 MR. MCBETH: So, I think these are both good examples, and
10 I'd like to take up each one of them. First, if we could discuss the partial
11 web page that is sent.
12 So, the partial web page is actually not web browsing
13 interaction, right, because it's not, the web browsing interaction is something
14 that has to be performed. What the user gets back is the web page.
15 So, a partial web page is not an interaction, it's something that
16 is received as the result of an interaction. And so simply passing a partial
17 web page from, which is a copy of the web page at that point, a copy of the
18 partial web page from the group surfing server in Lebrun to the user, and
19 having the user fill in the remaining media and some things, is not, it's not
20 interaction data, and it's not operating an application based on the web
21 browsing interaction. It's not data that is descriptive of the interaction.
22 And then the next point, I believe, was that, well can't the users
23 in Lebrun access the web pages themselves? And I don't think, if you look
24 closely at the Lebrun reference, that is not described in relation to each of
25 the web clients going to the same web page at the same time.

1 Whenever Lebrun talks about each of the web clients going to
2 the same web page at the same time it's always in the construct of, it's a host
3 device determining what the next page is, or what the page is. The group
4 surfing server going and retrieving that web page, distributing that web page
5 to each of the users in Lebrun.
6 And again, that's a different architecture, you're right. Because
7 the sync server is not going and retrieving the web pages in Samesurf, it's
8 each of the host and the guest devices going and retrieving the web pages on
9 their own, right? Because Samesurf is the lightweight system and it's
10 different from a web page sharing system where you have that middleman
11 server going and retrieving the web pages.
12 JUDGE BENNETT: Counsel, Judge Bennett here. Talking
13 about that particular aspect of Lebrun, I'm looking at Page 43 of Lebrun.
14 And, in particular, lines 13, 22. I don't know if you have that available to
15 you. But if you do, it does talk about exactly what you just said where the
16 group surfing server kind of receives the page that is added to a group
17 surfing session and then distributes it to the other clients. But then the last
18 sentence of that passage reads, in alternative embodiments, second web
19 client 110 can receive only a list of pointers, such as URLs closed pages
20 presented during the group surfing session, dynamically updated when a new
21 page is added.
22 Could you explain why that's not similar to or that that's not an
23 example of the client getting the web content directly from the server instead
24 of from the so-called middleman server?
25 MR. MCBETH: Sure. And I think that goes back to, those are

1 not interactions that are performed by the host device, it's just a list of
2 URLs, right? It would be the same as emailing a list of URLs. There is
3 nothing synchronized about it. There is no concept of synchronized
4 browsing there. There's not a host device performing an interaction, and
5 then each of the guest devices performing the interaction, that's just the
6 reliance of a list of URLs, nothing more. Lebrun does not expand on that
7 embodiment or on that sentence.
8 JUDGE BENNETT: So, if I'm understanding, so in the first
9 part of the paragraph you agree at least that what Lebrun is talking about is
10 that the guest web clients are receiving the web page that the host device has
11 accessed in real time, except for that it's going through a middleman server
12 so that's why it's different. Do you agree with me there?
13 MR. MCBETH: I think if -- and sorry, I don't have that exact
14 section in front of me, but if you're talking about the next page message, if
15 that's the embodiment that you're talking about, that is always in the context
16 of the group surfing server doing the fetching of the web pages, right?
17 And it's always in the context of the group surfing server
18 distributing those web pages, it's never in the context of, okay, now each of
19 the users is instructed to go perform the web browsing interaction, to go
20 fetch the web page themselves, right?
21 JUDGE BENNETT: I see. So, what you're saying is that when
22 these URLs are handed out to the second web client, they're not handed out
23 with an instruction for the browser to go automatically get it, they're just
24 handed out and if the user wants to go and get it, they can?
25 MR. MCBETH: That's right. That's right.

1 JUDGE BENNETT: Okay, thank you.
2 MR. MCBETH: Sure. Thank you.
3 JUDGE BENOIT: So, counselor, and not to perseverate on this
4 particular point, but in terms of the Claim 1 in the '145 patent, you know, I
5 understand, you know, the invention of the claim, the Figure 5 description
6 that you're talking about.
7 MR. MCBETH: Sure.
8 JUDGE BENOIT: The issue that I see with Claim 1 of the '145
9 patent is the incredible breadth of what the patent, what the claim covers,
10 right?
11 I mean, you are making operating an application based on said
12 web browsing interaction data received from the synchronization server to
13 access a website server independent of the synchronization server
14 subsequent to the activation, the session invitation. I mean, you're making
15 that require the innovative architecture that you're seeing in Figure 5 of the
16 patent.
17 And I have difficulty reading the preamble of joining in a
18 synchronized browsing session and then operating an application based on
19 receiving web browsing interaction data from the synchronization server to
20 now incorporate all the description in Figure 5.
21 MR. MCBETH: Sure. And I think that's a fair question, Your
22 Honor. And I think what I would focus you on here, with regard to the '145
23 Claim 1, is web browsing interaction data. And remember, this is from the
24 perspective of the guest device. And it's receiving web browsing interaction
25 data from the synchronization server where the web browsing interaction

1 data is associated with both the website server that is independent of the
2 sync server and the host device.
3 And so, it's the web browsing interaction data. What that data
4 is, which is data describing the performance of the interaction by the host
5 device, right? And it's the guest device operating in an application based on
6 that specific data. And that is what captures what you're referring to in
7 Figure 5(a).
8 JUDGE BENOIT: Thank you. And I'd also ask you the
9 question, I mean, you're talking a lot today about Figure 5 and have your
10 papers, but there are other figures and there are other descriptions in the
11 written description of the various patents.
12 And I don't understand your argument to be the claims, these
13 claims only read on Figure 5. You know, for instance, do they read on
14 Figure 1?
15 MR. MCBETH: Sure. And let me go to Figure 1 quickly in the
16 slides so we can look at that.
17 JUDGE BENOIT: Yes. Figure 1.b is where -- actually the one
18 that I'm looking at. And I'm in the '145 patent in column 8.
19 MR. MCBETH: Okay. And so, I think, if you look at the other
20 figures of the patents, you know, certainly the other figures help describe the
21 invention, and they help describe it as well. Figure 5(a) is what captures the
22 architecture and what kind of consistently captures the architecture that's
23 described throughout the specification. So that's why we focused our
24 narrative on that paper.
25 JUDGE BENOIT: Oh no, I appreciate that but from, you

1 know, from Claim 1 of the '145 patent doesn't seem to be claiming that
2 architecture. And I'll focus my question on this Figure 1.b description on
3 column 8. Column 8 of the '145 patent. Do you have access to that?
4 MR. MCBETH: Sure, I do. I have that in front of me.
5 JUDGE BENOIT: Okay. So do I. So, thank you. So, I'm
6 looking at numerical 5, column 8 around, starting on Page 131. In
7 exemplary embodiments to the present invention.
8 MR. MCBETH: Sure, I have that.
9 JUDGE BENOIT: Right. And then it talks about all the
10 different kinds of any web-based content that may be activated. And so, I'm
11 particularly interested in, or any form of web-based content may be activated
12 by a leading device to be relieved, relayed by synchronization server 13, and
13 onto the following devices within the synchronized browsing session.
14 So that seemed to be talking about any form of web-based
15 content may be activated and sent. Would that not be an example of just
16 sending the URL?
17 MR. MCBETH: I really think just sending the URL by itself
18 does not capture an interaction, right? Again, my example here is just, if
19 you write a URL on a piece of paper it's not an interaction at that point in
20 time, it's got to be something that is performed to rise to the level of being
21 an interaction.
22 And here, if we're talking in the context of the '145 Claim 1,
23 we're talking about web browsing interaction data. So, we're specifically
24 talking about data that is describing web browsing interactions versus
25 something like a static URL simply taken by itself without more. Does that

1 make sense?
2 JUDGE BENOIT: I think I understand your position. Thank
3 you.
4 MR. MCBETH: Thank you. So, I think a few key things here
5 and then I'm going to try to reserve time for co-counsel to go next. You
6 know, again, Petitioner had taken too differing stance on the claims being
7 synchronized. We've highlighted that in our slides.
8 We've also stated that the permeable is limiting. We know that
9 because of this case law in the Side 35, in re Fought. The preamble
10 constitutes the limitation when the claims depend on it for antecedent basis.
11 Here each of the claims do depend on a synchronized browser session for
12 independent, for antecedent basis from the preamble.
13 And again, each of the '448, the '145, '591, they all contain a
14 synchronized browsing session. They all talk about a synchronization
15 server. They all claim a synchronized architecture.
16 And it's true in the District Court proceeding, Petitioner took
17 the stance that these claims were synchronized. We see that in their
18 statements that were made in their filings on Slide 39. On Slide 48 they
19 specifically point to all the various sections of the claims that talk about a
20 synchronized browsing session.
21 And then also, if we go on to Slide 43 and 44, the District Court
22 also took the position that these claims are synchronized. The court stated
23 the asserted claims are not merely directed to sending and receiving
24 information for simultaneous interaction, rather the asserted claims are
25 specifically directed to performing a synchronized browsing session between

1 two electronic devices via a synchronization server.
2 So here, in considering a motion on the invalidity of the claims,
3 you know, Petitioner took a stance, the District Court took a stance. You
4 know, we all agree the claims are synchronized like they were clearly
5 synchronized by the claims themselves, by the specification and we think
6 it's unfair that Petitioner would come into this proceeding and take the
7 opposite stance. It's not fair to the Patent Owner, it's not fair to Mr.
8 Pirnazar for a party to take those differing stances on, in an invalidity
9 proceeding.
10 And so --
11 JUDGE EASTHOM: But to your friend's point, it seems that if
12 they did argue that it was more narrow, you know, to get the abstract idea
13 across, it almost seems counterintuitive, like you're saying. I mean, it
14 almost seems like they're saying there must not be much to this
15 synchronization step. It's not a real innovative step if they're trying to say
16 it's an abstract idea, right?
17 MR. MCBETH: You know, I think their argument there was
18 almost that, you know, because their arguments were defeated, we shouldn't
19 hold those arguments against them. But it wasn't, that was not the idea that
20 was defeated.
21 The District Court agreed, and we agreed, that the claims are
22 synchronized. And that's, it's an important part of the invention because
23 that's the part of the invention that gets each of the users looking at
24 substantially the same web page, substantially the same time, having the
25 same experience, right?

1 The was Mr. Pirnazar's idea. That was the problem that he was
2 trying to solve. And he was trying to --
3 JUDGE BENNETT: Counselor?
4 MR. MCBETH: Sure. Yes, Your Honor.
5 JUDGE BENNETT: Go ahead. I'll let you finish and then I'll
6 ask the question.
7 MR. MCBETH: Sure. And keep in mind, he was trying to
8 overcome the problems of the prior art, like with screen sharing, right? So,
9 with screen sharing it's a very high bandwidth thing, but the goal was that
10 we're both looking at the same thing at the same time. But the problem was
11 the bandwidth limitations were too --
12 JUDGE EASTHOM: And just so the inventor knows, we think
13 what you disclosed here is, you know, greatness at high level. We're talking
14 about what's in the claims.
15 MR. MCBETH: Sure. Absolutely. Yes, Judge Bennett?
16 JUDGE BENNETT: Yes, thank you. Yes, I think, I mean, this
17 discussion about synchronization, what it makes me wonder is, it seems
18 though that each of the prior art references we're talking about also provide
19 synchronized browsing experience as well, do they not?
20 I mean, why is, why is it super important here? I'm not sure I
21 understand it.
22 MR. MCBETH: I think it's important because some of the
23 embodiments that Petitioner relies on are not synchronized. Like if you
24 think about Prajapat embodiment Number 2, it's just sharing URLs, right?
25 It's not saying that each of the users need to even go to the URLs at the same

1 point in time, it's just sharing the URLs in an unsynchronized format.
2 So, Petitioner has kind of surprised us with this new position in
3 their reply saying that, oh, the claims are not synchronized. It seems like
4 they're trying to capture embodiments in the prior art that are not
5 synchronized. And we don't think it's appropriate to do that. And also, you
6 know, these other embodiments are not synchronized and so they're not
7 disclosing the same things that the claims are claiming.
8 And also very important, if you look at Slide 45, understanding
9 that these are two different architectures. So, on the left side we have the
10 middleman server, which is what Lebrun, Prajapat and Wang all did. It's a
11 server that's in the middle that's grabbing web pages from the web server
12 distributing those web pages to each of the devices.
13 This is different from what the sync server is doing. The sync
14 server is helping the host and guest devices perform the same interactions
15 with the websites so that they can achieve the same experience.
16 And I think they have; Petitioner has objected to this slide.
17 This slide captures all the arguments we've made in our petitions all along.
18 That these are different architectures. It's important to understand those
19 distinctions, to then understand why the claims are claiming the architecture
20 on the right side of your screen.
21 I think, you know, are there any additional questions that the
22 Board has? I may hand over to amendment counsel out of respect for time,
23 but I do want to answer all of your questions.
24 JUDGE EASTHOM: I don't have any questions. Does
25 anybody?

1 JUDGE BENOIT: I'll just have one more question. And I
2 appreciate your patience in all the questions we've been asking. I do think
3 it's important to clarify the architecture in the spec versus the claims, as
4 Judge Easthom said. You know, we appreciate the architecture in the
5 specification and the challenge of claiming the architecture from these
6 different points of view, the guest device and the host device.
7 But my question more is about the state of the art in the
8 specification. In the written description the criticism of the desktop sharing
9 was that the images are being sent, right? That ultimately is the criticism in
10 the written description of the state of the art at the time of the invention. Is
11 that right?
12 MR. MCBETH: Sure.
13 JUDGE BENOIT: It uses the word bandwidth; it goes on to
14 specifically say it's the broadcasting continuous screenshots of the host
15 screen that's the problem.
16 MR. MCBETH: Sure. Part of it's the bandwidth. There's also
17 the latency issues. There's also the number of steps it takes. There's a lot of
18 parts to why the previous technologies were inefficient.
19 And yes, again, the specification does focus on the downfalls of
20 screen sharing. Why screen sharing is incredibly inefficient. But the
21 inventor, Mr. Pirnazar, was also very much aware of web page sharing. And
22 web page sharing has a bottleneck in that the middleman server has to grab
23 the web pages, distribute the web pages. It's also grabbing copies of web
24 pages. It's not each of the users going to the live web page themselves.
25 So, there are many, you know, downsides to what is the prior

1 art that Petitioner has relied on doing. It's a different architecture than what
2 Mr. Pirnazar came up with and what he claimed.
3 JUDGE BENOIT: Thank you. And I just have one follow-up
4 to that. I'm not trying to be too particular here, but again, in column 8.
5 There's an embodiment, again, I'm looking at the '145 patent, column 8.
6 The paragraph beginning on line 39. That it talks about enabling desktop
7 sharing.
8 MR. MCBETH: Sure. I do see that.
9 JUDGE BENOIT: Yes. So, I guess my question is, you know,
10 how is this desktop sharing different from the criticized prior art the desktop
11 is sharing?
12 Is the answer because the desktop sharing gets criticized in
13 column 2 is the continuous broadcast of the screen, screenshots as column 2
14 says, or is this desktop sharing is using the techniques of the, sending the
15 URL and the forms and the job descripts in the interaction data?
16 MR. MCBETH: Your Honor, I may look at this and get back to
17 you on the rebuttal, if that's okay?
18 JUDGE BENOIT: Yes, no problem. I realized it hasn't been
19 briefed, I just was very curious how to reconcile those two --
20 JUDGE EASTHOM: Counsel -- sorry, I thought he was
21 leaving the podium, I didn't mean to interrupt you, Judge Benoit. Go ahead,
22 finish up.
23 JUDGE BENOIT: No. And the way I reconcile them is the
24 techniques that are accomplishing the desktop sharing. And the prior art
25 that's criticized in column 2 is that continual broadcast versus sharing what's

1 the website interaction data in the invention.
2 MR. MCBETH: Sure. I think that makes sense. And I'm
3 happy to answer further questions on that in rebuttal. I'm going to go ahead
4 and yield the time to amendment counsel --
5 JUDGE BENOIT: Thank you.
6 MR. MCBETH: Okay, thank you.
7 JUDGE EASTHOM: Can I just ask you? I wanted to ask you
8 about the column 6, line 30 of the same patent.
9 MR. MCBETH: Sure.
10 JUDGE EASTHOM: Because there, column 6, line 33 it says,
11 during a synchronized browsing session -- I'll wait till you get there.
12 MR. MCBETH: Sure.
13 JUDGE EASTHOM: I'm sorry.
14 MR. MCBETH: I'm there now. Thanks.
15 JUDGE EASTHOM: Okay, thanks. During synchronized
16 browsing session data communication sent by host device 10 to website
17 server 12 is forwarded to sync server 13 in order to provide for synchronized
18 browsing of guest devices 14 and 15.
19 And then if you scroll down to the next full paragraph so that
20 you're on line 57 of the same column it says, it says, synchronization server,
21 sorry, line 51, it says, synchronization server 13 may then forward the data
22 communication to guest device 14 and 15. So it's sending the same data that
23 the host sent to the website server. Now the host is only going to send an
24 URL to the website server.
25 MR. MCBETH: So, I think, let me see here. You know, I

1 think that is certainly going to be part of the data. The performance, the
2 interaction has to be performed by the guest device. And so, looking back at
3 each of the claims it talks about web browsing interaction data. And so, it's
4 data that is describing the interaction being performed.
5 I certainly think that is part of the data. And I think it's also the
6 actual, like, you need to go do this. You need to go perform this --
7 JUDGE EASTHOM: Yes, I understand that but that's not what
8 that column is saying, right? I mean, it's pretty broad there. It says, during
9 a synchronized browsing session, again, it's on, this is line 33, data
10 communications sent by host device 10 to web server 12 is forward to sync
11 server 13 in order to provide for synchronized browsing with guest devices
12 14 and 15.
13 And if you scroll down it says, an exemplary embodiment of a
14 synchronized browsing session, once data communication is forwarded to
15 guest devices from host device, sync via sync server 13, guest devices 14
16 and 15 will transmit the same data communication to website server 12.
17 That seems like it's saying it's going to transmit the same thing that the host
18 sent to the sync devices. The guest devices are going to send the same thing,
19 which is a URL.
20 MR. MCBETH: Yes. I think here, and I'm sorry, I may come
21 back to your question --
22 JUDGE EASTHOM: Yes, thank you.
23 JUDGE EASTHOM: Okay. I'm glad I asked you that at the
24 end, and you can address it later if you want.
25 MR. MCBETH: Okay. Sure, let's do that in respect for time

1 here.
2 JUDGE EASTHOM: Perfect.
3 MR. MCBETH: Okay, great, thank you.
4 JUDGE EASTHOM: Perfect. Thank you.
5 JUDGE EASTHOM: Welcome, Mr. Tomas.
6 MR. TOMSA: Thank you, Your Honors. I'd like to apologize
7 to the Court and all counsel present for the cell phone. I absolutely turned
8 off the volume, but I was in my text messaging app so all I turned off was
9 the volume for my text messaging app.
10 Anyhow, Your Honors, my name is Bernard Tomas arguing on
11 behalf of Patent Owner and Respondent, Samesurf Incorporated. I'll be
12 arguing in support of the contingent motion to amend.
13 Your Honors, there are three points we would like to touch on
14 and review for contingent motion to amend. First, we will demonstrate that
15 Patent Owner has adequate written description support for the operating
16 browser limitation and how such second data, as now newly claimed is
17 utilized in that operating browser.
18 Second, Your Honors, we will demonstrate that not a single one
19 of Petitioner's obviousness type rejections satisfy the requirements of 37
20 CFR 42.2282 or 42.2383. Or not a single one of its combinations contain
21 the basic requirements for a motivation to combine necessary to be
22 explained in an obviousness combination.
23 Third, Your Honors, we will show that even if the previously
24 cited references are considered the opposition fails. As was explained in
25 some detail by my co-counsel, the prior art simply does things using

1 different actors in a different manner than is claimed by Patent Owner.
2 Your Honors, I briefly wanted to address a contention by
3 Petitioner that the lack of an expert in our cases means that are, that none of
4 it, anything that I said was underpinned by substantial evidence. As long
5 established, Your Honors, that patent, that experts are not a necessary
6 element in Patent Office proceedings, and that it is up to the Board to decide
7 whether or not expert testimony is necessary to understand some aspect of
8 these proceedings.
9 In particular, in this instance, Patent Owner relies on clear
10 record cites with clearly understandable technology that requires no such
11 expert testimony. Your Honor, when the references are easily, in the
12 invention are easily understandable, expert testimony is not required. And
13 the substantial evidence that is presented by Patent Owner in support of its
14 arguments are the citations to the record itself. Therefore, contrary to
15 Petitioner's suggestion we are not lacking substantial evidence for all the
16 contentions that we present with this argument.
17 Your Honors, in reviewing the preliminary guidance it was
18 clear that the Board had somewhat of an issue with the support that was
19 provided for the operating of browser step in conjunction with the second
20 data limitation. The preliminary guidance indicated that there, not that there
21 was inadequate support for the second data, but rather that we had not
22 specifically identified what Patent Owner considered to be the second data.
23 It was unclear whether or not the Board also wanted to know
24 where the support for the browser specifically came from, so I will walk
25 through an explanation that provides examples of both. With regards to

1 Patent Owner's content, or Petitioner's contention that we did not provide
2 record cites from the original disclosure, I will show the Board that all the
3 citations included in the reply correlate to portions cited in the original
4 motion, except for perhaps three or four lines of a citation from paragraph, I
5 believe heard from column 7 I believe, and upon that no particular reliance
6 is placed.
7 So here on Slide 3, Your Honors, we see in blue the newly and
8 the added limitations to the claim, right? And we see the preliminary
9 guidance where the Board clear notes that Patent Owner cites 17 paragraphs
10 of the application without identifying or stating what in the application
11 corresponds to the newly claimed second data. This is what motivated
12 Patent Owner's decision to provide citations to that patent as opposed to the
13 application because it allowed for significantly more precision in explaining
14 to the Board specifically what it is that Patent Owner believed constituted
15 the second data.
16 Turning to Slide 5, Your Honors. As noted on the left, the
17 patent gives a number of examples passing data that's additional to URL and
18 cookie data, right?
19 So, as we've discussed at some great detail, as my co-counsel
20 discussed, in addition to passing the URL and cookie data, there is other
21 information that is input into host devices. And per the specification of the
22 '591 patent that information is formatted, forwarded, and inputed into other
23 devices. This, as the patent explains, enables all session attendees to view
24 and fully interact in a shared browsing experience with the same internet
25 contact.

1 Further, the ’591 patent goes on to explain that fully interacting
2 with such data includes examples such as filling in form data or drawing on
3 the screen. Solely understand from the expressed teachings of the patent that
4 when such data is formatted, forwarded and imputed into the guest device,
5 such an instance includes, for example, and as expressly stated filling in
6 form data. Thus, the guest device, being in possession of the form data, per
7 the message from the synchronization server, is able to use that form data to
8 fill in a form, which is quite literally what this portion of the patent states.
9 It is somewhat succinctly summed up in this particular
10 paragraph here, Your Honors, where the whole process is described in a neat
11 little description from the ’591 patent saying, share browsing window 17, the
12 shared element of the guest device allows for the web page interactions of a
13 host device, or other leading device, to be relayed to the following devices in
14 a synchronized browsing session. In exemplary embodiments, the visual
15 output of that shared browsing window on the guest device may be identical
16 to the shared browsing window on the host device.
17 Again, we understand, Your Honors, that when the examples
18 include things such as filling in form data when the guest device executing
19 synchronized browsing software has possession of the form data, and when
20 the patent explicitly calls for allowing for identical visual output on both the
21 guest and host device it is well within the skill of a person of ordinary skill
22 in the art to understand that that form data would be used by that
23 synchronized browsing software to fill in that form as the patent expressly
24 indicates.
25 Slide 8, Your Honors, is provided here with several examples

1 of what shared browsing software can constitute. It wasn't clear to me when
2 I was preparing my reply whether or not the Court was actually asking what
3 the particular browsers were. I believe the focus was more on the second
4 data, however, if Your Honors have any particular questions related to the
5 browser itself, they should be answered by the citations on this page.
6 To address, briefly, the contention that we did not follow the
7 rules and that we cited portions from the patent specification not previously
8 cited in the motion, Slide 9 is presented. On the left-hand side we see
9 Petitioner's contention. That the Patent Owner did not set forth where it
10 could be found in the original disclosure.
11 Now, of course, in the motion to amend, Patent Owner did
12 reference the original disclosure, but since the Court asked for more clarity
13 in the reply, Patent Owner chose to cite the specification so that the Board
14 could more closely see where it was that Patent Owner was relying on the
15 record.
16 So, as you can see from the Footnote 1 on your left, Your
17 Honor, the "citations with no corresponding '743 application citation spans
18 73, or 732 through 62 and 1651 through 63."
19 Your Honor, here is the '591 patent, Exhibit 1001, with lines
20 732 through 62. I apologize, it's a partial recreation, it only goes down to
21 line 55. That portion of the specification spans paragraphs 53, 54 and 55.
22 As you can see down here, Your Honors, there is support in the
23 original motion to amend from paragraph, the citation to paragraph 53.
24 Further, as you can see on this slide, Your Honors --
25 JUDGE EASTHOM: What slide is that, counsel?

1 MR. TOMSA: This is Slide 2, I apologize.
2 JUDGE EASTHOM: That's all right.
3 MR. TOMSA: On Slide 2, Patent Owner referenced paragraph
4 55 for an additional examples of the data that is being shared between the
5 host.
6 So, as I noted, Your Honors, the only thing that is missing is the
7 recitation of paragraph 54, which is the part that's very difficult to see here
8 but it says, it is example of several other browsing software items it's not
9 particular relied on for any teaching of the amended claim limitations.
10 Similarly, Your Honors, here we see column 16, lines 51 through 63.
11 And we see paragraph 115 of the '743 application. And
12 paragraph 115 of the '743 application is cited in this excerpt from the motion
13 to amend. Candidly, Your Honor, I am not entirely sure what particular
14 portions or teachings we allegedly did not cite in our original motion, nor
15 which teachings we allegedly did not cite with reference to the original
16 specification.
17 JUDGE EASTHOM: Counsel, your friends made a point, we
18 understand it, is that you don't disclose anywhere how to create an iterative
19 active process that can continually keep a synchronized browsing session.
20 Can you address that argument please?
21 MR. TOMSA: Yes, Your Honor. So, they have made the
22 position that a person of ordinary skill would not understand how to
23 iteratively recreate that session. In fact, this is a page from their opposition
24 to the motion to amend, page 4. Right.
25 They reference their expert declaration. This is the expert

1 declaration, page 7. And the expert declaration specifically says the point
2 you just made, Your Honor. The specification does not disclose that the
3 process shown in 5.a is performed repeatedly, or even more than once, as
4 would be required to synchronize the data. Right.
5 So at this moment in time the person of ordinary skill is unable
6 to understand that despite their being a desire for an ongoing synchronized
7 browsing session, despite their being clear conveyance of information from
8 the host device to the guest device, despite the fact that the guest device has
9 the capability to replicate such information, it is beyond, according to their
10 expert, the understanding of a person of ordinary skill that such a thing
11 would be done more than once in order to maintain a synchronized browsing
12 session.
13 Curiously though, Your Honor, if we turn to Page 16 of the
14 opposition, we see that same person of ordinary skill understanding Prajapat
15 with fewer teachings and less information in Prajapat, Your Honors, that
16 person of ordinary skill is suddenly, miraculously able to draw all sorts of
17 conclusions.
18 Here Petitioner references paragraph 19 of the expert
19 declaration. Here is paragraph 19 of the expert declaration where the
20 Petitioner's expert notes that the user input is received by a guest browser
21 and that Prajapat paragraphs 12, 30 and 31 allow the person of ordinary skill
22 to make it obvious to understand that a URL "and any other suitable
23 information, allow that browser to independently replicate the host device
24 interaction with content of the website."
25 So, when the same person of ordinary skill is attempting to

1 understand our specification having significantly more guidance and express
2 teaching, they can glean almost nothing. But when they suddenly turn to the
3 Prajapat reference they are embodied with all sorts of understanding about
4 how the teachings of the prior art would allow them to independently
5 replicate host interactions we feel is an untenable position, Your Honor, to
6 say that this same skilled artisan can change their understanding based on
7 markedly similar teachings and gain or lose understanding of what is
8 essentially a common result.
9 Our teachings go further than those of Prajapat. And we my co-
10 counsel has pointed out, are different from those of Prajapat. The only
11 commonality between them, and the thing that they say the person or
12 ordinary skill can't understand in our case, is how to independently replicate
13 an interaction.
14 Prajapat produces a result that is common to independent
15 replication, but it does it in a manner that is different from how it is claimed.
16 Thus, a person of ordinary skill may understand, from both references, that
17 an ultimate result is comparable, but that same person of ordinary skill
18 would understand that the method of achieving that result is different in
19 Prajapat from what is claimed. This is --
20 JUDGE BENNETT: Counselor, this is Judge Bennett.
21 MR. TOMSA: Yes, sir.
22 JUDGE BENNETT: If I may interrupt you briefly. One of the,
23 one of the issues I had going through this amended claim was trying to really
24 understand what the amendments were doing and what they meant. Would
25 it be possible for you to walk through the two wherein clauses to explain, or

1 at least provide, and I said something similar earlier, like a real-world
2 example of what's happening in the context of this amended claim
3 language?
4 MR. TOMSA: Yes.
5 JUDGE BENNETT: Thank you.
6 MR. TOMSA: So, I believe these are the two clauses you need.
7 JUDGE EASTHOM: What slide is that again, I'm sorry?
8 MR. TOMSA: This is Slide 3.
9 JUDGE EASTHOM: 3. Thank you.
10 MR. TOMSA: So, the guest device, Your Honor, is receiving
11 information from the synchronized browsing server, right? That is
12 information indicative of a host interaction with website content. And the
13 only reason the words first and second appears in here is as identifiers. If
14 you'll require, the claim used to simply say data. But because I needed to
15 later refer to the second data, I included adjectival identifiers for first and
16 second data. There is no particular other meaning behind those terms, but I
17 had to use something for distinguishing purposes.
18 So, ultimately, without any contemporaneousness requirement,
19 the first data that must be received to meet the claim includes a URL, cookie
20 information, and, which is something different, information related to a
21 shared user input web browsing interaction which includes second data
22 indicating at least one direct host device interaction with content of the
23 website performed by the host device.
24 So, to the extent that the Board thought that prior claims may be
25 somewhat overreaching, Petitioner, or Patent Owner has attempted to amend

1 the claims in somewhat of a narrower fashion to expressly state what it
2 believes was already encompassed in those claims. Namely, that in addition
3 to URL and cookie information there is specifically this browsing interaction
4 data.
5 Then the claim goes on to contend that the guest device, again,
6 the acting agent here, operates a browser based on the second data by using
7 that information, such as form data about the host device interaction, to
8 independently replicate the host interaction with content of the website
9 obtained by the guest device based on the first data. So, it uses the URL, for
10 example, to obtain content of the web device, and it uses the form data to
11 interact with i.e., fill in the form corresponding to add information.
12 Again, there is no contemporaneousness or timeliness
13 requirement for all of this, Your Honor. As Petitioner themselves noted, on
14 Slide 7 at the onset of this case, they said that the claims lack the use of the
15 word synchronized, simultaneous or temporal coordination, right? Well, this
16 claim is equally, not temporally, coordinated.
17 It is quite possible for the guest device to receive some of the
18 first data at one point in time, such as the URL, because that is what the host
19 interaction indicated. Then it obtains the content based on the URL. At
20 another point in time, it is possible for the guest device to receive the
21 additional second data, such as the form data, and interact with that content
22 that it obtained based on the first data.
23 That, so for, Your Honor, does that answer your question about
24 the sort of real-world example or would you like me to be more precise?
25 JUDGE BENNETT: Well not entirely. So, let me quickly just

1 kind of walk through them first. The first wherein clause. Wherein the first
2 data comprises the URL of a website. So that's the first thing that that first
3 data comprises. It also includes cookie information associated with the
4 website in the host device. So that's the second thing that the first data
5 comprises, correct?
6 MR. TOMSA: Yes.
7 JUDGE BENNETT: And then there's a third piece of
8 information that that first data comprises. Information related to a shared
9 user input web browsing interaction. So those are the three pieces of
10 information that are part of the first data.
11 And then what we're saying after that is that this third piece of
12 information has kind of a -- a part of it is the second data that indicates at
13 least one direct host-device interaction. And that, what would that be?
14 What type of, what would an example of that host-device interaction, the
15 direct host-device interaction be?
16 MR. TOMSA: So that would be, Your Honor, as I showed here
17 on Slide 6, and that could be filling in a form, right?
18 JUDGE BENNETT: Okay.
19 MR. TOMSA: Or drawing on a screen and simultaneously
20 transmitting those figures, annotations or markups to other users in the
21 session. Those are interactions with the data performed by the host device,
22 right? Something different than a URL and a cookie but something that's
23 actually indicative of what that interaction was that was performed.
24 All right. So, then we see that the browser, or the
25 synchronization service conveyed all that data to the browser. Again, not

1 necessarily contemporaneously. And then the operating a browser step
2 requires that it use that data as it possess it to complete the steps there.
3 Which in this case is having that website, per the URL, having that form for
4 the URL, and then filling in that form based on the second data, which I
5 explained in this example is the form data.
6 JUDGE BENNETT: So, if I'm understanding, this amendment
7 to the claim would cover a scenario where the host issuer has a web page on
8 their browser and they start filling in a web form, and what would happen
9 would be the guest users would see the web form being filled in, is that
10 correct?
11 MR. TOMSA: It would happen, but it would happen in a
12 particular manner, Your Honor, because as we have seen in Lebrun, a
13 comparable situation is contemplated, but it is achieved through a different
14 methodology. So, it isn't simply the result that we have to focus on, we
15 have to focus on the steps and the actors. That is, what goes on and who
16 does what things in order to achieve that because if it were merely an
17 outcome-dependent situation where we just said, well, the claims produce
18 something that's similar to the prior art, then it might be satisfactory to say
19 that it was in Lebrun.
20 But as my co-counsel has explained, it is the group surfing
21 server in Lebrun that is going the actions. The group surfing server that is
22 "presenting the form information on the guest devices." And in that regard,
23 there are two problems. One, the form data is never relayed to the guest
24 devices, and two, the guest devices are not using that form data on
25 information that they obtained directly from the website server per Amended

1 Claim 1. Sorry, per Amended Claim 19. Right.
2 So, when you parse the claim down to the level of the acting
3 agents and understand specifically which entities here are always the guest
4 device are being claimed to do what, you can, the distinctions in the prior art
5 become clear. In all of the prior art references, as my co-counsel explained,
6 the intermediary server is a heavily acting agent and is heavily involved in
7 the process.
8 In Prajapat the intermediary server is distributing formatted
9 renderable versions of the web pages to the Client devices. And in Lebrun
10 the group surfing server is "presenting the form information" in the example
11 cited by Petitioner.
12 So again, Your Honor, while there will ultimately be some form
13 of output that seems comparable, it is a different methodology and the
14 inventors entitled to the claims related to the methodology that the inventor
15 chose which are different from the methodology of the prior art.
16 Your Honors, before I yield the rest of my time in the interest
17 of preserving some of it, I do want to briefly discuss the procedural
18 deficiencies in Petitioner's arguments.
19 As noted in our reply, Intuit has a burden pursuant to these rules
20 that govern these proceedings to place a full statement of the reasons for
21 relief requested in its motion. In its opposition. All the arguments for the
22 relief requested must be made in the opposition per the rules. And yet, as we
23 can see, Your Honors, when Intuit began making this argument it started at
24 limitation 1.d. It does not even perfunctorily reference its argument for
25 limitations 1.a through 1.c.

1 This amplifies the problem when you get to the Birnbaum
2 reference, Your Honors, because in addition to the fact that it is unclear
3 which aspects of Wang or Lebrun, or Prajapat are attempted to be applied,
4 there is no prior explanation or motivation to combine anything with
5 Birnbaum. So, in addition to missing any explanation whatsoever, per the
6 rules related to elements 1.a through 1.c, Petitioner also has insufficient
7 motivation to combine, specifically with regards to the Birnbaum reference.
8 Petitioner conflates the issues saying that the trial practice guide
9 provides that they may respond to new issues and may include new
10 evidence, but that is simply permission to go beyond the briefing provided in
11 the original petition, it does not allow them to skate the rules, 42.22 and
12 42.23, that govern the contents of these motions for these proceedings.
13 So, the fact that they may add new evidence and new argument
14 doesn't mean that they're absolved from the requirement that they must fully
15 include a full statement of the reasons, and the opposition must comply with
16 such rules, and all arguments for the relief requested must be made in the
17 motion.
18 Unlike Petitioners contended, that nothing in the statute, or
19 other statutes, requires Petitioner to repeat arguments. The words "must" are
20 what require it, Your Honor. The statute plainly says what must be
21 included. Of course, it does not enumerate all the things that are
22 encompassed by that because it relies on the plain statement made in the
23 statute about what must be included.
24 Again, Your Honors, if we look at the arguments made by
25 Petitioner, they begin at Element 1.d. Petitioners also argue that *KCG*

1 *Holdings* is a representative case, and wherein the Board had a comparable
2 situation appear before it, and the Board was comfortable issuing a final
3 written decision based on a similar fact pattern.
4 Unfortunately, Your Honors, *KCG Holdings* presents a
5 significantly different fact pattern. All right? As we can see --
6 JUDGE EASTHOM: What slide is that?
7 MR. TOMSA: I will find the slide, Your Honor, and I will tell
8 you. Oh my goodness. Here we go. Slide 17, Your Honors. On the right-
9 hand side is the opening statement made in the opposition in *KCG Holdings*.
10 The first thing the petitioner did is say, for the reasons presented in the
11 petition, these references, those previously referenced in the petition, teach
12 all of the elements in the proposed claims that are identical.
13 Here, Petitioner has made no such proffer. They did not even
14 perfunctorily reference their prior arguments but instead jumped right in at,
15 imitation d.
16 JUDGE EASTHOM: Do you think the Federal Circuit would
17 allow us to just dismiss this whole amendment by just saying they forgot to
18 say this magic sentence?
19 MR. TOMSA: Well, Your Honors, I would point to the *Parus*
20 *Holdings* case where it does permit the Board to disregard evidence and
21 issues not introduced at all or introduced by a party in violation of its rules.
22 JUDGE EASTHOM: Okay.
23 MR. TOMSA: So, if the Federal Circuit does give the Board a
24 great deal of discretion in the application of its rules, then I do believe that
25 the Federal Circuit would allow you to dismiss this because of the clear

1 violation of the rules, right? These are highly paged constraint proceedings
2 and for them to essentially gain the benefit of additional pages by refusing to
3 include the full --
4 JUDGE EASTHOM: That's one sentence you're saying.
5 You're saying they missed one sentence.
6 MR. TOMSA: Your Honor, it goes further than that though
7 when it comes to the motivation to combine. All right, so as you can see,
8 Your Honor, and I will address your question in a moment, six pages were
9 provided for motivation to combine in the allegedly analogous case. Six
10 pages of explanation, including an explanation of where the previously cited
11 references had a motivation to combine.
12 In marked contrast, this is the entire motivation to combine for
13 everything. One paragraph, speaking at a very high level about generalities
14 in the references, and then containing a string cite to the petition, and then
15 two paragraphs saying that Birnbaum is likewise combinable with Lebrun
16 and/or Wang failing to specify which particular reference is primary, which
17 particular reference is being combined and how the teachings in these
18 references are being combined.
19 You can see that while Petitioner did pull out a single limitation
20 from Birnbaum that it wants to combine, it simply generally combines it
21 with Lebrun and/or Wang's "multiuser collaborative web browsing." That is
22 not a modification of a teaching, there is no expectation of success, there is
23 no explanation of why a person of ordinary skill in the art would be so
24 motivated to combine these things. This is a short shrift explanation and
25 Petitioner, or Patent Owner is entitled to have Petitioner follow the rules and

1 present a fully flushed out motivation to combine.
2 Your Honor, in light of this particular deficiency, specifically
3 with respect to Birnbaum, this is why Patent Owner did not address the
4 substantial rejections predicated on Birnbaum because this motivation to
5 combine is so markedly deficient that it cannot possibly be found to be
6 adequate support for an obviousness type argument.
7 JUDGE EASTHOM: I appreciate that. Thank you.
8 MR. TOMSA: Thank you, Your Honor.
9 JUDGE EASTHOM: Were you -- I'm sorry.
10 MR. TOMSA: Oh, I'm sorry.
11 JUDGE EASTHOM: Oh, you're finished? I'm sorry, I didn't
12 mean to --
13 MR. TOMSA: I --
14 JUDGE EASTHOM: -- question that.
15 MR. TOMSA: Are there any other questions, Your Honors?
16 JUDGE EASTHOM: No, thank you. That was helpful. Let
17 me stop this clock. Okay, so you have 22:14 left for your rebuttal. Thank
18 you. And then we're back to, oh, let's take a, does anybody want longer
19 than a five-minute break?
20 PARTICIPANT: No.
21 JUDGE EASTHOM: Five minutes? Okay. Why don't we
22 adjourn and come back on the hour please?
23 MR. MCBETH: Thank you.
24 (Whereupon, the above-entitled matter went off the record at
25 1:55 p.m. and resumed at 2:03 p.m.)

1 JUDGE EASTHOM: Welcome Back, Mr. Sacksteder. So, are
2 you all set?
3 MR. SACKSTEDER: Thank you, Your Honor, yes. So, I have
4 always said that rebuttals like this are kind of like when you write down a
5 dream in the middle of the night and then you look at your notes and it says
6 chocolate milk, so anyway I'll do my best here.
7 So could we call up Slide 45 from counsel's presentation. So,
8 the figure on the left is sort of what they say, this is sort of the old stuff that
9 is in Prajapat and the old stuff that is in Lebrun, but I think it oversimplifies.
10 One, you know, as we have discussed, the claimants are doing
11 some really heavy lifting on getting a lot of stuff from the specification into
12 it and specific parts, which I think Judge Benoit identified for Example 1D
13 in Claim 1, in the '145 Patent, the phrase "synchronized browsing session"
14 in all the patents but discussing only particular things.
15 They are trying to put a whole lot of stuff in there, but they are
16 also not quite telling you what's in the, what's disclosed in the references.
17 So, on the left side of Slide 45 is supposed to be kind of what this old
18 middleman server architecture is, and I don't think there is anything in the
19 claims by the way that establishes a particular architecture, but that's a
20 different matter.
21 But even if it did -- Can we got to Slide 18. We're moving
22 pretty fast. Slide 18 is Figure 3 from Lebrun and something that somehow
23 didn't translate to the middleman server diagram we just looked at is that
24 arrow on the left which goes from in this case from the website, the web
25 server, to the web client up above in that embodiment and that is, the way

1 that we interpret it is that is showing for instance if you have the multimedia
2 information and you have to go out and the HDML requires you to go out
3 and get that separately, there is a direct communication, which is what is in
4 the claims, or at least arguably what they say is in the clams, from between
5 the client, the guest user and the web server, and we think that is shown in
6 Figure 3.
7 Another figure that I wanted to address briefly, this is Slide 30,
8 and this is from Wang and I think this was what counsel used as sort of the
9 distinguishing point on Wang. This doesn't show what is recited in the
10 claims and you have that from T7 to T8, invitation acknowledgment.
11 But if you look at what the specification of Wang actually says,
12 it says at T7 the server apparatus transmits an invitation notice and a URL
13 address to be used, such as an invitation acknowledgment, my URL address,
14 to a second client device by way of, for example, and then for some reason
15 there is a typo and there is nothing else there.
16 But what is being shown there is not just an acknowledgment, it
17 is an invitation as well. That's not shown in the figure, it's shown in the text
18 of the patent. I am trying to do this and leave a little bit of time for Ms.
19 Bush to address her portion as well.
20 Let's talk about the different embodiments of Prajapat and just
21 sort of whether they can be considered. Let's go to Slide 24. I just want to
22 be clear that there was no response to the citation to *Boston Scientific* that
23 was in our reply. The sur-reply did not address that, didn't cite any other
24 case law that is inconsistent with that.
25 Also, I wanted to note that our expert provided declaration

1 testimony about all of the motivations to combine the embodiments that are
2 in Prajapat and the embodiments that are in Lebrun.
3 Finally, just quickly just to sort of read into the record sort of
4 where the description is of combining the embodiments, and one place I
5 would like you to look and direct you to is Page 37 of Lebrun, which it's
6 interesting that it's at the beginning of kind of a subsection that says
7 "Variations on the group surfing session," and it specifically says there are a
8 lot of different ways you can do this and here are some of them.
9 So, it isn't sort of the boilerplate, you know, at the end of the
10 specification, and you could do a lot of other stuff, too, it actually says
11 here's some stuff you could do regarding the group surfing session.
12 In Prajapat actually I think the Board actually brought up one of
13 the portions of paragraph 47 that I was going to cite so I'll just re-cite to that
14 as well as the others that I referenced this morning.
15 So, one thing about the, and I forget which slide it was, but the
16 reference to the present invention in the Federal Circuit case, I think it was
17 the *Verizon vs. Vonage* case, it says that in that case the language limited the
18 claims from beyond sort of going to what their broad, plain ordinary
19 meaning would be, what it doesn't say is that you read in something from
20 the specification to the claims.
21 So there is a difference between interpreting a claim limitation
22 in light of the specification, which is sometimes but not always appropriate,
23 and reading in things that just aren't in the claims at all and I think that that
24 is what is being attempted here by Patent Owner where, you know, it's a
25 pretty slender thread that Patent Owner is trying to get in the sort of

1 simultaneous real time, et cetera, meaning for synchronized browsing
2 session, and also the sort of there can't be a middleman server and you can
3 never have anything go through the synchronization server to go directly to
4 the guest device.
5 I just don't think those are in the claims and I don't see where
6 they are.
7 JUDGE BENNETT: Counselor, this is Judge Bennett.
8 MR. SACKSTEDER: Yes, sir.
9 JUDGE BENNETT: One of the points that I think Patent
10 Owner was making was that in the prior art references, Lebrun and Prajapat,
11 in the specific embodiments where the browser communicates directly with
12 the web server and avoids the so-called middleman, in those embodiments
13 they aren't resulting in a co-browsing session and that's why those
14 embodiments are not sufficient to render obvious the claims. Do you have a
15 response to that?
16 MR. SACKSTEDER: Well, I think that both of those
17 references talk either about co-browsing sessions or something very similar
18 that means the same thing, so I don't see how they cannot be directed toward
19 that in general at least.
20 Our Slide 15, and I'm not going to ask Mr. Miller to call it up,
21 has the quote from Lebrun which says "The invention provides an improved
22 technique for group access to websites. Multiple related users can
23 simultaneously access a sequence of websites such that each of the related
24 users has substantially the same content presented at the same time." I mean
25 that --

1 JUDGE BENNETT: Sorry to interrupt. I agree with you that it
2 certainly is contemplating co-browsing in that scenario. I think what the
3 Patent Owner was trying to say is that in these alternative embodiments
4 when, for example, just URLs are sent to the other web browser and more,
5 that there is no instruction to actually access those URLs.
6 MR. SACKSTEDER: But I think as was discussed during
7 Patent Owner's portion of the presentation that there really isn't anything in
8 the specification of the challenged patents as well, you know, there isn't that
9 instruction.
10 There is URLs, there is cookies, et cetera, but that additional
11 information is, you know, it's either inferred in both of them or it just isn't
12 present in both of them.
13 JUDGE BENNETT: Okay. Thank you.
14 MR. SACKSTEDER: Yes.
15 JUDGE EASTHOM: And a related question to that --
16 MR. SACKSTEDER: Sure.
17 JUDGE EASTHOM: -- if you can go to your Slide 10, and
18 that's Claim 1 of '145.
19 MR. SACKSTEDER: Sure.
20 JUDGE EASTHOM: You know, I have asked this a couple
21 times and I asked your friend this, so if you just send a URL and then you're
22 looking at that step 1d is that sufficient if step 1d isn't automatically
23 performed by the guest device?
24 In other words if they are -- I take it your position is in Lebrun
25 or the other reference, Prajapat, you can send a URL and then if I am the

1 client, the guest device, I have the URL and I can operate the web browsing
2 by clicking on it if I want to but it doesn't haven't to be an automatic
3 clicking or --
4 MR. SACKSTEDER: I don't see that it has to be an automatic
5 clicking in the claims either.
6 JUDGE EASTHOM: Okay.
7 MR. SACKSTEDER: I mean I don't see -- I heard it when
8 Patent Owner was up here, but I don't see a requirement in the patents that
9 the challenged claims actually necessarily require that there isn't some
10 additional step.
11 It says "a method performed by a guest device" and then it says
12 "operating an application based on said web browsing interaction data." It
13 can either be, you know, it can be as we discussed this morning, you know,
14 sending an HDML, sent an HDML code that among other things has the
15 place where you go out and get the video that's supposed to be the website,
16 and that would happen, you know, the browser would do it, not the user, but
17 I don't see any requirement that the browser does it without any additional
18 step.
19 JUDGE EASTHOM: So, I mean, your position is this claim
20 when it says, "when you have a browsing" -- I guess joining a synchronized
21 browsing session -- this just provides the information so that if the guest
22 device wants to have a synchronized session they can but they don't
23 necessarily have to press on the URL to get that synchronization.
24 MR. SACKSTEDER: Well, I think that in order for -- that
25 would have to -- you know, somebody has to press on the URL or it has to

1 happen automatically as with the HDML and multimedia example.
2 JUDGE EASTHOM: Right.
3 MR. SACKSTEDER: But either way if that happened then the
4 guest device is, in fact, operating an application based on said web browsing
5 interaction data.
6 I do disagree and I am not going to take much more time, but I
7 do disagree that web browsing interaction data or any other variation of that
8 term requires that it's just data that describes the web browsing interaction.
9 JUDGE EASTHOM: Okay. And just to be clear, so you're
10 showing in the petition with respect to Lebrun and Prajapat you're not
11 contending that any of those show an automatic reaction to this URL, your
12 position is that the claim doesn't require that?
13 MR. SACKSTEDER: Well, I think it maybe doesn't say
14 exactly expressly that that happens. I think it's contemplated that it can
15 happen and I think it is something that happens with the website with the
16 multimedia element where the HDML is just going to instruct the browser
17 to, you know, issue a --
18 JUDGE EASTHOM: Okay.
19 MR. SACKSTEDER: -- request.
20 JUDGE EASTHOM: Okay.
21 MR. SACKSTEDER: So, I think that that -- You know, I think
22 that part at least is disclosed.
23 JUDGE EASTHOM: So, you can just have it either way you're
24 saying?
25 MR. SACKSTEDER: I think that's the way they claimed it.

1 JUDGE EASTHOM: Right.
2 MR. SACKSTEDER: You know, and so that -- Yes.
3 JUDGE EASTHOM: No, I don't mean you can have it either
4 way, you show, you attempted to show, your position is you showed it both
5 ways in the petition?
6 MR. SACKSTEDER: Exactly.
7 JUDGE EASTHOM: Okay.
8 MR. SACKSTEDER: Yes, that's a fair description. One more
9 thing, if we can just go to the next slide, to Slide 11. Finally on recording,
10 the -- Now I'm losing it. It's 1d. Literally today I think was the first time
11 we have ever heard what Patent Owner thinks it means for it to be a
12 recording shared web browsing interaction.
13 I'm not sure I followed it completely, but I didn't really think
14 that the description that we were given really disclosed recording the
15 interaction in response to determining that the interaction was shareable.
16 So, I'm still a little bit at sea on recording, but if it is as we
17 discussed before, you know, it was something where you just, it goes into,
18 you know, it goes into RAM or it goes into a cache or something like that
19 then I think it's disclosed in the references. So, I will let Ms. Bush take the
20 rest of my time.
21 JUDGE EASTHOM: Thank you.
22 MS. BUSH: Hello, Your Honors. I just want to address a few
23 of the comments made by Patent Owner's amendment counsel. Geoff,
24 please, Slide 86 of our deck. Thank you.
25 Patent Owner's counsel sort of wants to brush off that they

1 didn't have an expert declaration and that shouldn't have a lot of weight put
2 on it and we had argued here and on the slide that there is no substantial
3 evidence to support their position.
4 I think they kind of missed the point in their argument, which is
5 that attorney argument alone is not evidence and there is case law that mere
6 conclusory statements in the form of attorney argument can't take the place
7 of evidence.
8 Our exhibit to our expert declaration is evidence and they don't
9 have any to the contrary. So, where those conflict the evidence should win
10 based on the case law.
11 Slide 88, just briefly. There was some contention that these did
12 align, that what they have newly cited did align with at least some of what
13 they had cited before. I don't know, we had to match them up manually,
14 which we are not supposed to have to do, they didn't meet the statutory
15 requirement, but I believe what is listed there is accurate as being missing
16 from those original cites.
17 Slide 90, please. I want to focus on this bottom portion where
18 form data is what was relied on as the second data. Part of why I want to
19 focus on this is the whole conversation by Patent Owner earlier was how
20 interaction data is what is important.
21 I think Patent Owner's counsel had argued that data wasn't
22 enough. So, if this is just form data how is that an interaction? That seems
23 inconsistent with their prior statement that a URL, for example, is not
24 enough alone. How is form data being sent here enough alone to be an
25 interaction? They didn't explain that.

1 The other thing is, for the first time today I heard that the first
2 data and second data could be received in different steps so that first the
3 guest device might get that first data and have the URL and then it might
4 subsequently get the second data about the interaction.
5 I have never heard that before today and as I discussed earlier
6 this specification doesn't talk about repeating that Figure 5A at all, so there
7 is no disclosure then that you would have one set of data that is conveyed
8 and that the guest device then gets that content back and then a second one
9 that talks about then interacting with that content they already received in
10 the first round and now a second round of trying to receive that from the web
11 client, that is just not discussed ever in the specification.
12 With respect to Prajapat, specifically, it actually says "full
13 content synchronization," so the point that they were trying to make that
14 Prajapat does not, I guess they were saying we were inconsistent that the
15 specification says one and Prajapat says something similar.
16 So, there are sort of two problems with that. The first is
17 Prajapat does say it. It says "As the content tree is updated that information
18 is sent so there is an accurate reflection of the content tree as it changes so
19 that it's synchronized with other browsers in the session for full content
20 synchronization."
21 The second point being that written description is not the same
22 thing as embodiment. They pointed to parts of their spec said an adventure
23 wouldn't be, I'm sorry, enablement, wouldn't be enabled to do that, that we
24 were suggesting that. We aren't arguing enablement so that's not really on
25 point.

1 And then, finally, with respect to the various points they were
2 making, there is multiple cases besides the one we cited where the Board has
3 considered and granted motions to amend. I have actually been on Patent
4 Owner's side twice when motions to amend only addressed the newly-
5 amended claims. That's not anything new.
6 The Board considers the whole record, as I am sure Your
7 Honors know. There is case law about that. It is even contemplated in the
8 new proposed rules having that explicitly made part of the rules.
9 So, you know, if Your Honors want a list of other cases where
10 that happens we would be happy to provide one, but it's pretty common. I
11 think we -- Am I out of time?
12 JUDGE EASTHOM: No, you're running into time, but I'll just
13 add it to their time if that's --
14 MS. BUSH: Okay.
15 JUDGE EASTHOM: But if you could wrap it up, please.
16 MS. BUSH: Just the last thing I was going to say about they
17 made one of their points about the evidence about our, they complained
18 about us not referring to the petition and then they showed a section where
19 we had a string cite to the petition in the discussion of the motivation to
20 combine, so there is a discussion of the petition.
21 I think the other part that was important about that was that we
22 also have an expert declaration that was supporting our position on
23 motivation to combine that says more than just what the paper said, so there
24 was expert support there as well that they didn't mention. That's it unless
25 Your Honors have questions.

1 JUDGE EASTHOM: I don't see any questions. Thank you
2 both, we appreciate that.
3 MS. BUSH: Okay. Thank you.
4 JUDGE EASTHOM: I'm going to add a couple minutes to -- I
5 rounded up and gave you three extra minutes, so I'll just --
6 MR. MCBETH: Thank you. Go ahead and start?
7 JUDGE EASTHOM: Whenever you are ready.
8 MR. MCBETH: Sure. Your Honors, thank you so much. I am
9 going to try to reserve five minutes for amendment counsel, so let's see if I
10 can --
11 JUDGE EASTHOM: Keep an eye on the --
12 MR. MCBETH: Judge Easthom and Judge Benoit, I told you I
13 would get back to your questions and I definitely want to do that first.
14 So, Judge Easthom, you had asked me about the '145 Patent,
15 column 6, starting at line 34 and then going down to around line 60. I just
16 wanted to address your question. I think we need to read starting from line
17 51 and going to line 57.
18 That says "The synchronization server may then forward the
19 data communication to guest device 14 and 15 in an exemplary embodiment
20 of a synchronized browsing session. Once data communication is forwarded
21 to guest device 14 and 15 from host device via synchronization serve guest
22 device 14 and15 will transmit the same data communication to the website
23 server."
24 It is this "will transmit" line that is the, it's the requirement of
25 the performance. So it's --

1 JUDGE EASTHOM: Say that again, I'm sorry, I couldn't hear
2 what you said.
3 MR. MCBETH: The "will transmit" is the piece of information
4 that is the requirement of the performance. So, the guest device must do the
5 same thing that the host device did, it must perform the interaction.
6 So, it's not enough to just say it's just the URL, it's the URL
7 and then the necessity that each of the devices perform whatever the
8 interaction is and, you know, as we discussed earlier there are many
9 different types of --
10 JUDGE EASTHOM: I don't understand how you're getting
11 that out of that passage.
12 MR. MCBETH: Sure. You know, I think it's saying that guest
13 devices 14 and 15 will transmit the same data communication --
14 JUDGE EASTHOM: Will transmit the same data
15 communication, is that what you --
16 MR. MCBETH: Right. And the same data communication
17 goes back to what we were talking about in line 33, "During a synchronized
18 browsing session data communication sent by the host device 10 to a
19 website server 12 is forwarded to the synchronization server."
20 So, it's the host device has used that data, has performed that
21 interaction, it's sent to the sync server --
22 JUDGE EASTHOM: Yeah, but I mean that's my point with
23 that first three lines you just read.
24 MR. MCBETH: Sure.
25 JUDGE EASTHOM: Line 33 it says "Data communication

1 sent by host device 10 to a website server 12," there is no reason for that
2 communication to include anything that has to do with anything about an
3 interaction because it's just grabbing something from the website server.
4 MR. MCBETH: Sure.
5 JUDGE EASTHOM: So, it's only going to send the URL to
6 that and then that URL is going to be forwarded to the sync server.
7 MR. MCBETH: Sure. So, I think part of the requirement of
8 the system as claimed is that both the host device and the guest device are
9 performing the interaction.
10 Maybe let's look at the claim instead of this spec language for
11 the '145 to get --
12 JUDGE EASTHOM: Well, I mean I'm trying to read the claim
13 in light of the spec and you're trying to read limitations from the spec and
14 this is telling me that all you need to satisfy the claim is the URL.
15 MR. MCBETH: Sure.
16 JUDGE EASTHOM: That is a specific example almost.
17 MR. MCBETH: Sure. You know, I guess what I am pointing
18 to is the subsequent language here that says "with respect to this information
19 the guest device will transmit the same data communication to the website
20 server."
21 JUDGE EASTHOM: Right. It's going to transmit the same
22 data, which I think refers to the communication, the data communication
23 sent by the host device to the website server. I'm sorry, I'm repeating
24 myself, but --
25 MR. MCBETH: Sure. Sure.

1 JUDGE EASTHOM: -- it seems like that data is the URL, is it
2 not?
3 MR. MCBETH: I think that data could be a URL. It could be
4 the host device clicking "play" on a movie. It could be a variety of different
5 actions that could occur. It could be the submission of form data, right.
6 It could be any one of these interactions. It could -- Here's
7 another example, if you were to go to amazon.com and click on an image it
8 could be the clicking on the image, right, so it's not just a URL, like that's
9 one example.
10 JUDGE EASTHOM: But the fact that you clicked on it isn't
11 going to be sent to the server, it's just going to send the result of the click to
12 the server.
13 MR. MCBETH: If we go -- It would be the performance of it
14 as well though because the web browsing interaction remember it's an active
15 step, it must be performed, right, it's a web browsing interaction, it's in the
16 word "interaction," right, it's an action that's taken. It's not just a piece of
17 information. It's not just a destination. It's actually what the host device is
18 doing that is being replicated on the other device.
19 JUDGE EASTHOM: Okay, I understand your argument. I am
20 having a hard time seeing it with respect to this passage, but --
21 MR. MCBETH: Sure.
22 JUDGE EASTHOM: And I understand the language they put
23 in the claim a little bit.
24 MR. MCBETH: Sure. Maybe let's look at -- Sorry, I'm on
25 '448, let's go to the '145 claim one. This is also going to touch on a

1 discussion from Petitioner's rebuttal. Here, remember this is -- Okay, '145,
2 Claim 1, this is from the perspective of the guest device and it's guest
3 device, it's not from the perspective of the user of the guest device, it's the
4 guest device, right.
5 JUDGE EASTHOM: Right.
6 MR. MCBETH: And so, it receives the web browsing
7 interaction and then Step 1d requires operating an application, operating an
8 application by the guest device based on the web browsing interaction data
9 received.
10 So, there was some discussion earlier about does that step have
11 to be performed, yes, it does have to be performed and it has to be performed
12 by the guest device, and if there is not an option for is the user going to, you
13 know, click or not click, are they going to submit the form or not. From Mr.
14 Pirnazar's invention, the architecture here in --
15 JUDGE BENNETT: Counsel, can I interrupt quickly?
16 MR. MCBETH: Sure, absolutely.
17 JUDGE BENNETT: I just want to pick up on that point really
18 quickly.
19 MR. MCBETH: Right.
20 JUDGE BENNETT: I mean, certainly, operating a browser by
21 the guest device, it covers when the guest device does it on its own, right?
22 But why wouldn't it also cover it when the user clicks it? Because the guest
23 device is still doing it, right?
24 MR. MCBETH: Sure. So, in this instance remember we're in a
25 synchronized browsing session, we have a synchronization server, the goal

1 is to have each of the users looking at the same information at the same time.
2 So, these are steps that must be performed as part of this claim
3 and it's an operating step that is from the perspective of the guest device and
4 it says "operating application based on the web browsing interaction data
5 received from the sync server to access the website server subsequent to the
6 activation and steps in limitation."
7 Remember this is in a synchronized browsing session, right.
8 The claims require that we are in a synchronized browsing session
9 administered by a synchronization server and we have discussed how
10 synchronized is absolutely an aspect of this claim.
11 You know, that step simply must be performed is our take on it.
12 JUDGE BENNETT: Thank you.
13 MR. MCBETH: Great. Thank you. And, Judge --
14 JUDGE BENOIT: Sorry, I was trying to ask a question --
15 MR. MCBETH: Please.
16 JUDGE BENOIT: -- and I was speaking over my unmute
17 button. So, again, on the '145 patent it doesn't talk about replaying or the
18 same interaction that came from the host, right, all this claim's limitation is
19 operating application based on that web browsing interaction data received
20 from the synchronization server to access a website server.
21 I mean this language is not specific as to what you are requiring
22 that requires the host and the guest perform the same interaction. It doesn't
23 say "perform the same interaction."
24 MR. MCBETH: I think that's a fair comment on Step 1d and I
25 think you've got to look at 1d recognizing what browsing interaction data is

1 and that's a limited type of data that has come from the host device that is
2 describing an interaction that was performed by the host device.
3 So, the limitation of what web browsing interaction data is
4 limits 1d even though 1d is written broadly aside from that aspect.
5 JUDGE BENOIT: But, again, it just says "based on," it doesn't
6 say performing the interaction represented by the web browsing interaction
7 data.
8 MR. MCBETH: That is correct and, you know, my only other
9 comment in there is that, you know, this is a synchronized browsing session
10 so each of these claim limitations should be viewed from the perspective of
11 we're performing a synchronized browsing session and part of that is the
12 host device, the guest device, you know, doing those same interactions.
13 JUDGE BENOIT: Thank you.
14 MR. MCBETH: Thank you. And, sorry, Judge Benoit, I also
15 want to answer your question from earlier which was in regard to column 8,
16 lines 39 through 47. This talks about an alternative embodiment
17 synchronized browsing software may provide or integrate desktop sharing
18 functionality.
19 You know, I think the reason that that is in here was to
20 recognize that there may be things on a desktop that are not part of the web
21 that you would want to share with other users, it's an alternative
22 embodiment and that's why the mention is in here.
23 It's not in there with respect to the synchronized browsing of
24 the web together.
25 JUDGE BENOIT: Is that a different desktop sharing

1 technology than we see described in column 2?
2 MR. MCBETH: I don't believe so. It's a side embodiment and
3 alternative embodiment where you could provide, you could integrate
4 desktop sharing functionality to also have that functionality in addition to the
5 synchronized browsing.
6 JUDGE BENOIT: Thank you very much, that's helpful.
7 MR. MCBETH: Thank you. If we could go back to '448,
8 Claim 1 on Slide 65. So, I just wanted to talk for another minute or two
9 about this claim.
10 Remember 1d we talked about recording a shared web
11 browsing interaction. What Petitioner has relied on as showing this step is
12 from Lebrun, the program fragment, and there has been a little confusion in
13 their briefing on who the program fragment is operating on, whether it's the
14 host or guest, and our read of Lebrun is that there is a program fragment
15 operating on a host device and the program fragment may intercept some
16 messages that the host device is trying to do here.
17 I think, you know, Petitioner has said, well, intercept record,
18 kind of the same thing, but you need to think about what is being recorded,
19 right. So here it's recording a shared web browsing interaction, meaning it's
20 recording the host device performing a shared web browsing interaction.
21 If you look at the intercept disclosures of Lebrun, and literally
22 I've done ctrl+F and looked at every time the word "intercept" is used, it's
23 only used three times. It's used in the paragraphs where it's talking about
24 the program fragment and if you read each of those three paragraphs in a
25 row it's clear that the word "intercept" means stop.

1 So, it takes what the host device is doing, if the host device is
2 going to a URL it stops it, it sends it to the group surfing server for the group
3 surfing server to go to that URL. So, there is no recording of a web
4 browsing interaction, the interaction never actually happens.
5 That message is intercepted, it's sent to the group surfing
6 server, the group surfing server retrieves the web page and distributes it to
7 each of the hosts in the guest devices. If you look at, if you read the third
8 instance of the word "intercept" it talks about actually stopping something
9 from happening that would break the function of Lebrun.
10 So that's how we know that Lebrun intended that word to mean
11 stop. It doesn't intend it to mean record something that's happening, it's
12 stopped, no, you're not going to do it, the group surfing server is going to do
13 that. That's the architecture of Lebrun and that makes sense as well.
14 So, I just wanted to address that aspect because I don't think,
15 you know, yeah, I think you need to look at each instance of intercept to
16 come to that conclusion.
17 JUDGE BENOIT: Just let me ask a quick question.
18 MR. MCBETH: Sure.
19 JUDGE BENOIT: I mean it says the selection is caught by the
20 "program fragment" which sends the selection to the group surfing server.
21 So, it's sending something it just caught?
22 MR. MCBETH: Right.
23 JUDGE BENOIT: So, it didn't just stop, right, it sends
24 something, so how is that not equal --
25 MR. MCBETH: Sure. I think that same description of what is

1 caught is described using the word "intercept." If you look at each of those
2 it's describing the same thing and we know that that means stop because of
3 the third use of the word "intercept."
4 The third use of the word "intercept" is literally saying you
5 must stop this thing from happening because it will frustrate and break the
6 system of Lebrun.
7 We know that in Lebrun it's intercepting it, it's the group
8 surfing server that is getting the web page and the group surfing server is
9 giving it back to the host device that have that program fragment running.
10 So, the host device never completes going to the website and
11 downloading the website, it's letting the program, I mean, sorry, the group
12 surfing server perform that step because that is the architecture of the
13 program.
14 And I would just add to that that the host must send the request,
15 whereas the program fragment is stopping the request from occurring.
16 So, if we could go back to the -- Can you take away this?
17 Actually, sorry, go -- Just give me one second here to get to another figure.
18 MR. MCBETH: So, I just wanted to also touch on Slide 53.
19 There has been some discussion about the partial web page and whether or
20 not the partial web page or even a full web page could constitute interaction
21 data.
22 Slide 53 really makes it clear that the interaction, there is an
23 interaction part of this transaction and then there is a receiving a web page
24 part of this transaction. If you look at Figure 5D, Step 601 and 602, it says
25 "Receive web page interaction information from the sync server."

1 Step 602, "Transmit request to web page server utilizing web
2 page interaction info." It's not till Step 603, "Receive web page data from
3 web page server," and Step 604, "Output web page data in shared web
4 browsing window."
5 You know, there is two different sides to this equation. There
6 is the interaction being performed and then there is the subsequent thing that
7 occurs which is receiving the web page. So, the interaction and the web
8 browsing interaction data is related to the interaction, the web page is
9 something that is received subsequent in time after the interaction has been
10 performed after it has occurred.
11 So, you know, the group surfing server is sending a partial web
12 page, sending a whole web page, whatever it is, it's not web browsing
13 interaction data, it's data that is the resulting data from the interaction being
14 performed.
15 MR. MCBETH: Just in the time I have remaining I just want to
16 go through a few key takeaways here and also resolve any additional
17 questions you might have.
18 MR. MCBETH: Okay. So, you know, if there is anything you
19 walk out of here today remembering I want it to be these things. You know,
20 same surf synchronization server and synchronized browsing session are
21 novel inventions.
22 Mr. Pirnazar came up with something new and different from
23 these prior architectures. This is not screen-sharing, this is not web page
24 sharing, this is synchronized browsing. It's the idea that two individuals or
25 multiple individuals are sitting on their computers remote from each other

1 and able to have that same browsing experience together.
2 They are looking at the same part of the web page at the same
3 time. We believe that the claims support that. None of the asserted art
4 describes the synchronization server. The concept of the synchronization
5 server is not present in the art.
6 In the art it's always a web page server that is downloading and
7 caching copies of a web page, distributing it to web clients, distributing it to
8 users, it's not -- None of the art has this concept of a sync server that is just
9 saying, you know, hey, we need each of the hosting guest devices to be
10 performing the same actions at the same time so that you have that same
11 browsing experience.
12 These are different architectures. Lebrun, Prajapat, Wang,
13 different architecture. Those are all web page sharing architectures. They
14 are all utilizing copies of web pages, it's not a host device, a guest device,
15 performing synchronized browsing, participating in synchronized browsing
16 sessions, seeing the same web page at the same time, seeing the same, you
17 know, having the same web browsing experience at the same time.
18 Number three, each of the asserted art relates to web page
19 sharing, not synchronized browsing. I think I just said that. Four, same surf
20 host and guest devices request and receive web content from the web server.
21 This is very important.
22 It's what gives the same surf invention its efficiency, is that the
23 host and they guest they are taking on the work. They are doing the heavy
24 lifting. They are going to the web page and getting the web content.
25 The sync server is very lightweight. It's passing the interaction

1 information between the host and the guest device. That's unlike anything
2 that we have looked at today. It's unlike desktop sharing and screen sharing
3 that are very bandwidth intensive.
4 There is a bottleneck in desktop sharing and screen sharing.
5 There is a bottleneck in web page sharing. Mr. Pirnazar's invention sought
6 to overcome those problems and we believe that his architecture does that.
7 Number four, same surfs -- Oh, sorry. Number 5, each of the
8 prior art devices receives web content through a middleman server. I think,
9 you know, we have covered that in detail today.
10 These are different architectures and we are putting different
11 architectures against each other. There are important differences and
12 distinctions between them and, you know, that is recognized in the claims. I
13 think we have gone through that today.
14 I appreciate everyone's questions on this. I am going to allow
15 amended counsel to have the remainder of the time.
16 (Off the record comments.)
17 MR. TOMSA: Your Honors, there are just several points I
18 would like to address on surrebuttal. First is the expert of our lack of expert
19 testimony seems to be resurfacing, I would point out that in *Belden v. Burk-*
20 *Tek*, Your Honors, 805 F.3d 1064, the Federal Circuit noted it's not even
21 necessary to have an expert guide the Board in many instances.
22 Specifically, the Court stated no rule requires a petition to be
23 accompanied by any declaration, let alone one from an expert. What the
24 Board can find without an expert depends on the prior art involved in the
25 particular case.

1 Even in Court we have said expert testimony is not required
2 when the references in their invention are easily understandable. Similarly,
3 Your Honors, in *Elm 3DS Innovations*, which was a case cited by the
4 Petitioner on Page 25 --
5 JUDGE EASTHOM: Counsel, we fully appreciate that. I was
6 involved in a case and we dismissed the expert, it went on appeal, and the
7 Court said that's fine.
8 MR. TOMSA: Fair enough, Your Honor.
9 JUDGE EASTHOM: I think your friend's point is -- that was
10 *VirnetX v. Apple*, by the way. I don't have the cite, but -- I think your
11 friend's point is that -- they are alleging that you don't cite to any evidence
12 in the record to support your argument. I'm not saying that's right, but I
13 think that's what they are saying.
14 MR. TOMSA: That is untrue, Your Honor. We did not cite to
15 significant evidence in our motion to amend, where the burden was not ours
16 to show anything with regards to the record; however, in the reply, virtually
17 every sentence is underpinned by a record cite to somewhere in the art.
18 JUDGE EASTHOM: I think that's a fair rebuttal we need to
19 weigh, if that's the argument, but I just wanted to adjoin the issue there.
20 MR. TOMSA: Okay. Thank you, Your Honor.
21 JUDGE BENNETT: Counsel, quickly on that issue a little bit.
22 This is Judge Bennett here. The Petitioners, I think, also made the point
23 regarding motivation to combine with respect to Birnbaum.
24 MR. TOMSA: Mm-hmm.
25 JUDGE BENNETT: You get that. In addition to their briefs

1 there was expert testimony on the point.
2 MR. TOMSA: Yes, Your Honor, that is my --
3 JUDGE BENNETT: Is that a fair characterization of the
4 record?
5 MR. TOMSA: Well, Your Honor, to the extent that they
6 contend the expert testimony is different I would say no. Here is their entire
7 explanation and motivation to combine on the left and here is the entire
8 expert testimony on the right. As you can see the first motivation to
9 combine --
10 JUDGE EASTHOM: What slide is that, counsel --
11 MR. TOMSA: Oh, I apologize. Slide 28, Your Honor.
12 JUDGE EASTHOM: Slide 28. Thank you.
13 MR. TOMSA: On the left the green portion over here is the
14 motivation to combine the original references and on the right is the expert
15 testimony on the point. You can see it cites this declaration to paragraph 29.
16 The purple information in the record is the purple information
17 in the expert testimony. So, in this particular instance, Your Honor, the
18 expert added the following. "A POSITA would consider these teachings
19 together to yield the claim combination with a high expectation of success in
20 that combination."
21 There is no substantial evidence supporting that statement.
22 There is no tactical explanation supporting that statement. There essentially
23 just is a verbatim recreation of what was placed into the opposition.
24 Then we turn to the motivation for Birnbaum, Your Honor,
25 seen on the next paragraph. Again, they cite paragraph 30 of the expert

1 declaration. Again, Your Honor, the purple language is an exact copy and
2 the green language is an exact copy.
3 Once again, the expert adds the following pieces of
4 information, "This combination would be to meet the amended claim
5 limitations. Each of these are being used "according to their established
6 functions in each reference."
7 And at the end these would be used -- There would be an
8 expectation of success "as a predictable use of prior art elements according
9 to their established function." These are just usages of buzz words by the
10 expert, Your Honor.
11 None of these rise to the requisite showings that the case law
12 requires. So, when they say that there is "substantial additional expert
13 testimony," Your Honors, this is it. It's almost a mere verbatim recreation
14 of what is stated in the petition.
15 None of it is underpinned by substantial evidence or record
16 cites. Specifically, Your Honor, you can see with respect to Birnbaum down
17 here the only record cite is one cite from Birnbaum in paragraph 80.
18 There are no cites from Lebrun or Wang whatsoever and
19 Prajapat is not even mentioned. So there is no technical explanation of why
20 you would combine these, no evidence of what elements are being
21 combined, it's not even entirely clear what the primary reference is because
22 their argument says Birnbaum in view of Lebrun or Wang or Prajapat, but
23 then the argument down here argues combining Birnbaum with Lebrun or
24 Wang, again no mention of Prajapat, and so the combination is inadequately
25 explained and the motivation to combine is similarly inadequately explained

1 and not supported by any record evidence.

2 If Your Honors have no further questions that's the end of my

3 time.

4 JUDGE EASTHOM: Any questions?

5 Thank you, counsel, appreciate that. All right. We just wanted

6 to say we appreciate the input from both sides. It was evident that you all

7 were very prepared and we know it was very difficult to keep the three cases

8 separate and that was impressive from both sides and that helps us, too, it

9 saved our time and helped us keep all the issues that were the same the same

10 and vice versa, so I just want to commend counsel on that. With that, we are

11 adjourned.

12 (Whereupon, the above-entitled matter went off the record at

13 2:51 p.m.)

IPR2023-00339 (Patent 9,185,145 B2)
IPR2023-00341 (Patent 9,483,448 B2)
IPR2023-00342 (Patent 8,527,591 B2)

PETITIONER:

Jennifer R. Bush
Christopher L. Larson
Fenwick & West LLP
jbush-ptab@fenwick.com
clarson@fenwick.com

PATENT OWNER:

Scott W. Hejny
Ryan B. McBeth
Archis (Neil) V. Ozarkar
MCKOOL SMITH, P.C.
shejny@mckoolsmith.com
rmcbeth@mckoolsmith.com
nozarkar@mckoolsmith.com