

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,
Petitioner,

v.

FLYPSI, INC.,
Patent Owner.

IPR2023-00357 (Patent 11,218,585 B2)
IPR2023-00358 (Patent 10,334,094 B1)
IPR2023-00359 (Patent 11,012,554 B2)
IPR2023-00360 (Patent 9,667,770 B2)
IPR2023-00361 (Patent 10,051,105 B2)

Record of Oral Hearing
Held: May 7, 2024

Before ROBERT J. WEINSCHENK, JAMES J. MAYBERRY, and
MICHAEL T. CYGAN, *Administrative Patent Judges*.

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The above-entitled matter came on for hearing on Tuesday, May 7, 2024, commencing at 1:00 p.m. EDT, via Video-conference.

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P R O C E E D I N G S

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1:00 p.m.

JUDGE WEINSCHENK: Good afternoon, everyone. This is an oral hearing for IPR2023-357, -358, -359, -360, and -361. I'm Judge Weinschenk. With me today are Judge Mayberry and Judge Cygan.

Let's start with some appearances. Who do we have today for Petitioner?

MR. ZEILBERGER: Good afternoon, Your Honor. This is Daniel Zeilberger on behalf of Petitioner. With me today is lead counsel Naveen Modi, as well as Howard Herr.

JUDGE WEINSCHENK: All right. Mr. Zeilberger, will you be doing the speaking today?

MR. ZEILBERGER: Yes, Your Honor.

JUDGE WEINSCHENK: Great. And who do we have for Patent Owner today?

MR. McCULLOUGH: Good afternoon. This is Matt McCullough for Patent Owner. I will be presenting today, and with me is lead counsel Louis Campbell.

JUDGE WEINSCHENK: Great. Thank you, Mr. McCullough.

Just a few preliminary matters before we get started. First of all, I know we emailed you earlier with the potential for possibly delaying the hearing today. We just wanted to thank everyone for their willingness to be

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1 flexible and accommodate the delay. It turns out we didn't need to, but we
2 do appreciate your flexibility on that.

3 As always, our primary concern here is your right to be heard. Since
4 this is a virtual hearing, if you have any technical difficulties at any point,
5 please let us know. You can try to let one of the judges know, or if you're
6 unable to talk to us, please reach out to the team member who sent you the
7 connection information today, and they should be able to help you.

8 Please remember to try to mute your mic when you're not speaking so
9 that we don't get any background noise. Also, please try to identify yourself
10 whenever you start speaking again. That helps the court reporter to keep a
11 clear record.

12 As you know, we have all the papers, exhibits, and demonstratives,
13 but when you're referring them, please use page numbers or slide numbers as
14 appropriate so that we can follow along as well.

15 There is a public line today. I don't believe that there's any
16 confidential information at issue in this case, but if for some reason you
17 think something has come up that is confidential or otherwise should not be
18 heard by the public, please let us know, and we can discuss that offline.

19 As you know from our order, each side will have 120 minutes to
20 present today. Petitioner may reserve some time for rebuttal, and Patent
21 Owner some time for surrebuttal.

22 I'll pause here for a second. Any questions or concerns before we
23 start, Mr. Zeilberger?

24 MR. ZEILBERGER: No, Your Honor. No questions.

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1 JUDGE WEINSCHENK: Anything from your end, Mr. McCullough?

2 MR. McCULLOUGH: No, Your Honor.

3 JUDGE WEINSCHENK: All right. Well, Mr. Zeilberger, you can
4 start when you're ready, just please let me know how much time you would
5 like to reserve for rebuttal. I will endeavor to give you about a five-minute
6 warning before your primary time is up. Sometimes I miss that by a little of
7 time if we're in the middle of questioning, but I'll try to give you a warning.

8 MR. ZEILBERGER: Thank you, Your Honor. With your
9 permission, I'd like to reserve 30 minutes for rebuttal. I will note, consistent
10 with the email we sent, we do anticipate being able to finish our opening
11 presentation and rebuttal within 90 minutes, but I'll defer to you on how you
12 want to account for the time.

13 JUDGE WEINSCHENK: Okay. Well, I think our order said 120
14 minutes, so if we need it, great, but if we don't, that's also fine. So, as much
15 time as you need, we'll work with it.

16 MR. ZEILBERGER: Thank you, Your Honor. And with your
17 permission, may I present our -- share the slides on the Webex?

18 JUDGE WEINSCHENK: That's fine.

19 MR. ZEILBERGER: Thank you. May it please the Board, today's
20 hearing involves five patents with overlapping issues. The '585, '094, and
21 '554 patents include claims that are generally directed to an outgoing call
22 from a mobile device, and the '770 and '105 patents include claims that are
23 generally directed to an incoming call.

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1 At their core, however, all five of the challenged patents are directed
2 to a system that allows a mobile device to have both a primary and
3 secondary telephone number. And the Backhaus reference, at issue in all of
4 the grounds of unpatentability, across all five of the proceedings, teaches the
5 same overall arrangement.

6 I'll proceed to slide 30. On slide 30, we have Figure 1 of Backhaus.
7 Backhaus describes a system that uses what it calls a second line service
8 platform, also called an SLS platform, which you can see in pink on the
9 right-hand side of the figure. The SLS platform allows those who subscribe
10 to its services to have secondary phone numbers, also called SLS numbers,
11 which they may wish to use, for example, for a side business or personal
12 calls.

13 Backhaus describes various ways of routing calls between a
14 telecommunication device that subscribes to the SLS platform, which
15 Backhaus frequently refers to as a subscriber TD, and the third-party device,
16 which may or may not also be a subscriber to the SLS platform.

17 For example, Backhaus describes how calls from a third-party device
18 to a subscribers secondary SLS phone number are automatically routed to
19 the SLS platform and then forwarded to the subscriber's device. And
20 Backhaus also describes how subscriber device can call a third party with
21 their SLS number by calling a special relationship number which routes calls
22 to the SLS platform, which then forwards the calls to the third party's device.

23 Let's proceed to slide 32. On slide 32, we have Claim 1 of the '585
24 patent. Claim 1 requires transmitting information that indicates an access

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1 telephone number to the mobile device via a data channel. We address this
2 limitation in our petition in two ways, that which we coined the first way and
3 the second way.

4 For the first way, when a third party calls the subscriber's device, a
5 relationship number which corresponds to the claimed access telephone
6 number is transmitted by the SLS platform. And for the second way, when a
7 subscriber calls a third party but there is not yet a relationship number
8 assigned, the relationship number will be assigned by the SLS platform and
9 transmitted back to the subscriber's device.

10 Because the second way was the basis for institution, I plan to focus
11 on that but will also touch on the first way. We turn to slide 33.

12 There is no dispute in this proceeding that Backhaus's relationship
13 number is an access telephone number. And we can see, at paragraph 49 of
14 Backhaus, that the relationship number is indeed used to access the SLS
15 platform.

16 Turn to slide 34. We have an excerpt of paragraph 71 of Backhaus,
17 where Backhaus begins to describe how the relationship number is indeed
18 transmitted via a data channel. Here, we can see that the SLS module of the
19 subscriber's device submits a request for a relationship number to the SLS
20 platform.

21 Then, turning to slide 35, at paragraph 72, Backhaus begins to
22 describe various ways that the SLS module of the subscriber device and the
23 SLS platform may communicate. For instance, at paragraph 72, Backhaus
24 explains that a session-based protocol may be used to, quote, to obtain a

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1 relationship number. And I think that's important to remember there. It
2 specifically calls out using this to obtain a relationship number.

3 Turn to slide 36.

4 JUDGE WEINSCHENK: Mr. Zeilberger?

5 MR. ZEILBERGER: Yes, Your Honor?

6 JUDGE WEINSCHENK: This is Judge Weinschenk. Can you go
7 back to that slide before we move on? So my question for you is did you
8 rely on this USSD protocol that's mentioned in paragraph 72 of Backhaus as
9 teaching the claimed data channel, or did you just rely on the IP channel in
10 later paragraphs?

11 MR. ZEILBERGER: We relied on Backhaus's description of all of
12 the data channels, from paragraph 72 through I believe it's 74. We
13 specifically identified an IP-based communication as an example that
14 matches up precisely with what's described in the patents as an example of a
15 data channel, but we certainly did also point to this as a broader teaching of
16 a data channel as well.

17 JUDGE WEINSCHENK: If you have it handy, could you tell me
18 where in the petition you relied on the USSD channel as well?

19 MR. ZEILBERGER: I believe it would be at pages 25 and 26 where
20 we cited to paragraph 72. I can pull up our petition and give you a more
21 precise -- so for example, Your Honor, at page -- toward the bottom of page
22 25 of our petition, in the -357 proceeding, we say Backhaus discloses that
23 TD 110 may communicate with SLS platform using various

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1 protocol/mechanisms, e.g., an unstructured supplementary services data
2 (USSD protocol).

3 JUDGE WEINSCHENK: Okay. Thank you.

4 MR. ZEILBERGER: Going forward to slide 36, Backhaus indeed also
5 says that as an alternative or additional way of communicating, there are
6 various other forms, including IP-based interactions, which are, again,
7 indisputably data channels.

8 If we turn to slide 37, this is why IP-based communications are
9 indisputably data channels because the patents specifically call them out as
10 the example of a data channel. You can see that at column 4, lines 19 to 26,
11 and column 4, lines 49 to 54.

12 Turning to slide 38, in paragraph 74 of Backhaus, we can see that the
13 relationship number is indeed returned to the SLS module of the subscriber
14 device.

15 Now, if we -- turning to slide 39, what does Flyp argue? Flyp does
16 not dispute that paragraphs 72 and 73 of Backhaus teach data protocols.
17 Instead, it argues that Backhaus's paragraphs 72 and 73 never mention the
18 relationship number, but that is simply not correct. We can see clearly, in
19 paragraph 72 -- and I'll turn back to it for a second in slide 35 -- that
20 Backhaus specifically says that this is done in order to obtain a relationship
21 number.

22 Turning to slide 40, I will, again, just briefly touch on the first way.
23 Under the first way --

24 JUDGE WEINSCHENK: Mr. Zeilberger?

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1 MR. ZEILBERGER: Yes, Your Honor?

2 JUDGE WEINSCHENK: This is Judge Weinschenk again. Sorry to
3 interrupt, but before you move on to the first way, it looked like there was a
4 dispute between the parties about the meaning of the term data channel or
5 channel. It appears -- do we need to resolve that dispute with respect to the
6 second way that Backhaus teaches this limitation, or is that claim
7 construction not really at issue for the second way?

8 MR. ZEILBERGER: It -- that claim construction would not be at
9 issue for the second way, Your Honor. It's only a potential issue for the first
10 way. To my knowledge, Flyp has not disputed that, for the second way, any
11 of these protocols that we relied on are data channels.

12 JUDGE WEINSCHENK: Thank you.

13 MR. ZEILBERGER: For the first way, again, the Board doesn't need
14 to reach this if it agrees with us on the second way, but I'll note that in
15 paragraph 55, Backhaus discloses how the relationship number is included in
16 a specially encoded message that is sent from the SLS platform 115 to the
17 subscriber device. And the specially encoded message here is sent using a
18 data channel for these two reasons: one, in Backhaus, a voice path is not
19 connected until the subscriber actually answers the call. That's disclosed at
20 paragraphs 52 and 56 of Backhaus.

21 And then, just to briefly touch on the claim construction, if we turn to
22 slide 16, the challenged patents are clear that a communication protocol is a
23 voice channel, quote, when used to carry voice information, end quote.
24 That's from column 4, lines 49 to 60. And in fact, Flyp's expert Dr. Akl, in

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1 deposition, we asked him, so is it your opinion that regardless of whether
2 you transmit voice traffic or data traffic, a cellular protocol would qualify as
3 a voice channel? And even he qualified -- he said it does qualify as a voice
4 channel when you're sending voice traffic, consistent with what the
5 specification says.

6 In addition, Backhaus also discloses that communication protocols,
7 like an IP-based protocol, can be used to share information, like the
8 relationship number, between the SLS platform and the SLS module, in
9 paragraph 73. And it's our position that that teaching also applies to this
10 disclosure of the specially encoded message that was sent between those two
11 devices.

12 I'll turn next to slide 41. Flyp also argues that the petition took
13 inconsistent positions regarding the two channel limitations: the data channel
14 and the second channel.

15 Turning to slide 42, as we explained in our reply, Flyp only refers to
16 issues that are implicated by the petition's first way when it makes this
17 argument, and there is no dispute that in the second way, the data channel
18 and the second channel were addressed in a consistent manner. So, like for
19 the claim construction, if Your Honors agree with the second way, this
20 would also be an issue that doesn't need to be reached.

21 However, I will note that for the first way, they were addressed in an
22 entirely consistent manner. We were clear that addressing the second
23 channel, we were addressing data transmission in contrast to the voice
24 channel where we were relying on voice traffic.

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1 I'll turn next to slide 45. Flyp argues that the petition did not
2 consistently address the switch limitations. And what this really comes
3 down to is whether a switch associated with the SLS platform that receives a
4 call is also used to connect the call.

5 Turning to slide 46, first we --

6 JUDGE WEINSCHENK: Mr. Zeilberger?

7 MR. ZEILBERGER: Yes, Your Honor.

8 JUDGE WEINSCHENK: This is Judge Weinschenk again. Can you
9 go back one slide for me one more time? So do you agree with Patent
10 Owner that the claims require that the same switch be used to perform all
11 three of these limitations you've highlighted here on the slide, which I
12 believe correspond to limitations 1.d, 1.e, and 1.f?

13 MR. ZEILBERGER: I think it's correct that a particular switch that's
14 the same one has to be involved in each of these steps. Where we would
15 disagree is that Flyp has seemed to suggest that you can't have any other
16 switches involved. And certainly, the claim does not preclude the
17 involvement of other switches.

18 JUDGE WEINSCHENK: Okay, but there has to be one switch -- at
19 least one switch that is involved in all three limitations?

20 MR. ZEILBERGER: Correct, Your Honor, that we -- we would agree
21 with that interpretation, and that's, in our view, how we address the claim.

22 JUDGE WEINSCHENK: Okay.

23 MR. ZEILBERGER: In slide 46, we have paragraph 32 of Backhaus
24 where Backhaus teaches that communications may occur over a PSTN,

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1 which is public switch telephone network. And turning to slide 47, we again
2 see in Figure 1 that Backhaus teaches that communication networks, in the
3 yellow bubble, they can be PSTN.

4 And turning to slide 48, as Dr. Lin explained in paragraph 79 of his
5 declaration, in order for servers and telecommunication devices to interface
6 with a PSTN, they need to connect to a local switch. And this is confirmed
7 by the State of the Art. For example, turning to slide 49, we see, in Exhibit
8 1007, which, for purposes of this ground, is a State of the Art reference, it's
9 the Taylor reference. In Figure 1A, we see how the components, like the
10 telephony server, connect to a particular local switch 12 within the PSTN.

11 Turning to slide 50, similarly, in Exhibit 1011, which is a textbook
12 describing a signal -- signaling system, it explains, at pages 6 and 7, how
13 devices in a telecommunications network have a particular local switch with
14 which they communicate. For example, it refers to a quote, subscriber's
15 local switch, and quote, a called party's local switch.

16 In view of these disclosures, Dr. Lin explained -- I'm on slide 51 -- in
17 paragraph 79 of his declaration, consistent with how PSTNs operate, that the
18 SLS platform in Backhaus would also communicate with a local switch in
19 the PSTN network.

20 JUDGE WEINSCHENK: Mr. Zeilberger?

21 JUDGE CYGAN: Mr. Zeilberger?

22 MR. ZEILBERGER: Yes, Your Honor.

23 JUDGE CYGAN: Sorry. Judge Weinschenk, go ahead.

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1 JUDGE WEINSCHENK: It seems that kind of the dispute here is
2 how does the PSTN work. Does a server or other endpoint access the PSTN
3 through a single local switch, or can it access it through multiple local
4 switches? I understand your view, I think, to be that it accesses through a
5 single local switch, it appears. What's the best evidence you have to show us
6 that that's necessarily how the PSTN works, and it's not capable of doing
7 what Patent Owner has suggested, which is accessing multiple local
8 switches?

9 MR. ZEILBERGER: Your Honor, I think the best evidence is the
10 evidence I just showed, Exhibit 1007 and Exhibit 1011, where it shows that,
11 at least in terms of a conventional PSTN, that is the way the PSTN devices
12 were configured. There's no dispute in this proceeding, in fact, Flyp and its
13 expert have conceded that both Backhaus and Exhibit 1007 are both directed
14 to conventional PSTN. So there's no argument here that Backhaus somehow
15 teaches some specialized or different, non-conventional PSTN.

16 And another thing I would point here, and this is an issue that Flyp
17 has raised, is that even if you were to kind of posit that you could have lots
18 of different phone calls in lots of different instances, and maybe caller A has
19 kind of one instance of the call where they access one switch and then kind
20 of two days later, there's some other switch that's used, that wouldn't avoid
21 anticipation here because the claims here are directed to a single, particular
22 instance of a phone call -- of an incoming or outgoing call.

23 And so, the -- going back to the question you asked me at the very
24 beginning of this issue, in terms of whether it's the same switch, it is the

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1 same switch but it's the same switch for a particular call. And so, even if it's
2 possible to have more than one switch if you're looking at a plurality of calls
3 involving different users, different subscribers, that wouldn't take this out of
4 the scope of meeting the claim.

5 JUDGE WEINSCHENK: I think what Petitioner has posited is that
6 one way this -- that Backhaus could work is that the SLS platform server
7 could receive a call from the mobile device, the subscriber, through one
8 switch, and then connect it to the third party through a different local switch.
9 Are you saying that's not possible; it's not a way that a conventional PSTN
10 could work?

11 MR. ZEILBERGER: It's not a way that a conventional PSTN would
12 work, Your Honor. And Flyp has introduced no evidence to support that
13 understanding. It only has its expert's conclusory say so that it's a
14 possibility. Whether you could kind of configure a PSTN in a non-
15 conventional way to do that, I don't know. There's no evidence of that. But
16 here, the only evidence in the record is that, at least in terms of a
17 conventional PSTN, that this is how they would operate.

18 JUDGE WEINSCHENK: I guess I couldn't find anything from your
19 expert saying that a conventional PSTN could not work that way. Is there a
20 reason why you didn't have you expert to say it doesn't work that way?

21 MR. ZEILBERGER: Respectfully, Your Honor, our expert did opine
22 on the way that a conventional PSTN would work, and he didn't leave open
23 to the possibility any other ways. In terms of kind of the strategic decisions
24 on whether to submit a declaration in a reply, I don't know, Your Honor.

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1 But again, we would submit that the only evidence currently in the
2 proceeding, besides Flyp's conclusory expert testimony, is that when you're
3 dealing with a conventional PSTN, this is the way they would operate.

4 JUDGE WEINSCHENK: Judge Cygan, I know you cut -- I cut you
5 off, so I'll -- I'll stop now.

6 JUDGE CYGAN: I think you covered it, Judge Weinschenk. Thank
7 you.

8 MR. ZEILBERGER: I will note though -- and I think this is a good
9 segue to the next issue -- even if Your Honors have any concern or question
10 about whether it's possible that a PSTN could be configured in some other
11 way, we do have our obviousness grounds that rely on the Taylor reference,
12 where there really shouldn't be any question that it would be single switch.
13 The Taylor reference here -- again, this is from the State of the Art reference
14 that we used for the anticipation ground where we just relied on Backhaus,
15 but we're relying on Taylor in a different way here.

16 Here, in Taylor -- or we can see in slide 58 -- it teaches what it calls a
17 PSTN interface that it uses to interface with the PSTN network. And if you
18 turn to slide 59, in paragraph 8 of Taylor, it explains that the PSTN interface
19 is used to receive and process calls pertaining to a predefined set of
20 telephone numbers.

21 And again, one thing that I think is important to recognize here is that
22 the PSTN interface is part of the server. It's not part of the actual PSTN
23 network. One of Flyp's arguments, again, is that the PSTN network has lots
24 of switches, and different switches are needed to be involved or used at

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1 different times. And while we very strongly disagree with Flyp on that
2 issue, here the question is not about the switches in the PSTN network itself.
3 Here, the question is about a separate switch that would be part of the
4 server.

5 Turning to slide 68, as Dr. Lin explained, a person of ordinary skill
6 would have been motivated to include a PSTN interface, like in Taylor, in
7 order to facilitate communications with the PSTN network. And that
8 explanation was at paragraph 97 of his declaration. And then, at paragraph
9 98, he explained how incorporating a PSTN interface would've simply been
10 an application of known technologies, according to known methods, to yield
11 predictable results.

12 Turning to slide 61, Flyp argues, in its response, that a PSTN interface
13 is not a switch, but that is incorrect. Flyp acknowledged in related district
14 court proceedings -- here, we have an excerpt from Exhibit 1009 that a
15 switch is, quote, a broad category of well-known structures. And it went on
16 to say that it includes elements that, quote, facilitate connections between
17 transmitters and receivers.

18 And then, turning to slide 62, Flyp's expert, Dr. Akl, indicated in
19 deposition that a switch is, quote, any combination of hardware and
20 software, or hardware, or software that, quote, takes an input and provides
21 an output. That's at Exhibit 1102, page 89, lines 13 to 19. And a PSTN
22 interface certainly would qualify as a switch under that understanding.

23 JUDGE MAYBERRY: Excuse me, Counsel. This is
24 Judge Mayberry. Wouldn't you agree then that even the server itself, after it

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1 passes through the interface, would be a switch because it takes an input and
2 provides an output?

3 MR. ZEILBERGER: I think an argument probably could be made
4 along those lines, Your Honor. We didn't argue that in the petition, but I -- I
5 don't think I would disagree.

6 JUDGE MAYBERRY: So it seems to me that pretty much anything
7 could be a switch, which is a little disturbing to me because it seems like the
8 switch is -- probably should be something a little more specific.

9 MR. ZEILBERGER: Your Honor, I wouldn't agree that anything
10 could be a switch. Like for example, I think Flyp, in its -- I believe in its
11 surreply, it had an example of a wire, and it said, like, literally a wire would
12 be a switch under this understanding. And I wouldn't agree with that
13 because a wire wouldn't actually be doing anything to facilitate the
14 connection between the two devices.

15 The word switch, as Flyp itself has said, is indeed a very broad term.
16 The patent doesn't provide any specificity or explanation on what a switch
17 is. If there are kind of gray areas, if you're talking like a very big box like a
18 server, again, that's not what we relied on in our petition. We relied on the
19 very particular PSTN interface which plays a very critical role in handling
20 the communications with the PSTN network.

21 So to the extent there's ambiguity in the word switch, I don't think it
22 would cause the PSTN interface to be outside of the scope of the claims.

23 JUDGE MAYBERRY: All right. Thank you.

24 (Simultaneous speaking.)

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1 JUDGE WEINSCHENK: This time, you go first, Judge Cygan.

2 (Laughter.)

3 JUDGE CYGAN: Could you go back to slide 49 for me?

4 MR. ZEILBERGER: Yes, Your Honor.

5 JUDGE CYGAN: Can you walk us through the combination of the
6 PSTN interface that you're sort of plucking out of the prior art of this
7 reference? I'd like to understand why, here, you'd be using the same
8 interface throughout the entire call or throughout the entire connection
9 because it's being received through the Internet, correct? Or are -- I'm not
10 sure if you're applying its connection through the Internet or if you're just
11 applying the interface by itself. So you could explain about how this works
12 in your Backhaus combination?

13 MR. ZEILBERGER: Sure, Your Honor. And one thing to -- I
14 just want to make sure you're understanding. For slide 49, this is the portion
15 of our presentation that that's not directed to the obviousness combination.
16 This is where kind of relying on Taylor as a State of the Art reference. The
17 -- kind of the portion of our presentation has the same figure but is part of
18 the combination is slide 58. I just want to make sure that that's clear.

19 JUDGE CYGAN: Thank you.

20 MR. ZEILBERGER: But in terms of the PSTN interface, that
21 interface is what's interfacing with the PSTN network. And so, that would
22 not be a scenario where you're kind of connecting to the Internet. That's
23 where you're connecting to the public switch network.

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1 JUDGE CYGAN: And so, how is that being used in the combination?
2 Where is that go into Backhaus then?

3 MR. ZEILBERGER: It wouldn't change the way Backhaus operates
4 at all. The issue here is that Backhaus simply doesn't explicitly recite that it
5 has a PSTN interface. It probably -- I mean, even Flyp itself, in its papers, it
6 argues that Backhaus would already have a PSTN interface, and the
7 combination, they say, fails because we don't explain why you would have a
8 second PSTN interface or why you would swap the two PSTN interfaces.

9 But that's not what we're arguing here. It's essentially a situation
10 where Backhaus very likely would've had a PSTN interface, but it was silent
11 on it. And so, in an abundance of caution, we explained how it would have
12 been obvious to have that sort of component to interface with the PSTN
13 network simply to allow Backhaus to have its functionality that it already
14 describes.

15 JUDGE CYGAN: It's -- if I understand correctly, you're using a
16 PSTN interface to teach a switch which is separate from the PSTN; is that
17 correct?

18 MR. ZEILBERGER: No, Your Honor. The PSTN interface -- oh,
19 sorry. That is separate from the PSTN, yes. It's part of -- in the combination
20 of Backhaus, it would be part of the SLS server. So it'd be separate from the
21 PSTN. In the combination, it's -- the PSTN interface is part of the SLS
22 network.

23 JUDGE CYGAN: And the SLS network, that's shown in -- can you
24 take us back to the slide where you showed -- where you showed that?

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1 MR. ZEILBERGER: Yeah. I think we have it at slide 30 here, as an
2 example. So, in the pink side here, you have the SLS platform, which is
3 essentially a server -- an SLS server that provides this functionality, and it
4 interfaces with the PSTN. And so, this server would have a PSTN interface
5 akin to what's in Taylor. We address it through obviousness because
6 Backhaus is silent on that, and we explain why it would be obvious to have a
7 PSTN interface within the SLS platform in order to enable the PSTN
8 functionality.

9 JUDGE CYGAN: So, in a sense, to guard against the -- the argument
10 that the switch in Backhaus is actually in the 125 and not connected with the
11 server. That's the point of the Taylor reference.

12 MR. ZEILBERGER: So the anticipation ground, in fact, argues that
13 the switch in 125 -- that there would be a local switch within 125 that
14 corresponds to the claimed switch, that there's a local switch in 125 that
15 would interact with the SLS platform. That's our anticipation argument.

16 The obviousness argument looks to 115 and argues that there would
17 be a PSTN interface within 115 that would act as a switch, and there'd be a
18 single PSTN interface within 115.

19 JUDGE CYGAN: So, in a sense, in your combination, the reason
20 why it would be unquestioned that there is a single switch is because your
21 obviousness case is that you plucked a single switch and put it the platform.

22 MR. ZEILBERGER: Right. And there would be no reason to have
23 more than one. I mean, it's a component on a server which would handle the
24 communications with the PSTN network. So it'd be a single -- a single

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1 module, single piece of hardware that's responsible for that, but yes, that's
2 how we addressed it in our obviousness combination. We explained how
3 there would be a -- I don't -- I don't think we used the literal word single, but
4 we address it in the singular. We pointed to a PSTN interface.

5 JUDGE CYGAN: Thank you for explaining that distinction.

6 JUDGE WEINSCHENK: Mr. Zeilberger, I -- this is
7 Judge Weinschenk. I have questions on this too, while we're on it. And my
8 question is what you've labeled as claim limitations 1.d, 1.e, and 1.f seem to
9 specify what the switch does. For example, this -- you know, you receive, at
10 a switch, an outgoing call from the mobile device. And then you receive
11 information from the server directing the switch to connect the outgoing call.
12 And I know you made an argument that the switch -- the local switch inside
13 the PSTN network does those things. How do you know that the PSTN
14 interface also does those things? Is there a reason that they would both do
15 those limitations? Because I think, in your combination, you would have
16 both. You'd have an interface and a local switch. How do we know which
17 one is performing the functions recited in the claim?

18 MR. ZEILBERGER: Well, they both would, Your Honor, because
19 the PSTN interface is the component that interacts directly with the PSTN
20 network. And so, in our view, you have a PSTN interface which would
21 always be communicating with a local switch in the PSTN network. Those
22 are both singular, so anytime the SLS network -- SLS server is
23 communicating with the PSTN network in order to perform all of the steps
24 that we discuss and that are disclosed in Backhaus, it would be that PSTN

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1 interface that says I want to make this communication, which would then
2 communicate with the local switch in the PSTN network.

3 JUDGE WEINSCHENK: Did you make that specific argument
4 somewhere in your petition that it basically would perform all the same
5 things that the local switch would do?

6 MR. ZEILBERGER: I can't remember the exact wording we used,
7 Your Honor, but that certainly was the thrust of our argument.

8 JUDGE WEINSCHENK: My second question for you was, it seemed
9 like there was almost an attempt at construing the term switch. You know,
10 is there any intrinsic evidence to support the construction that you've sort of
11 proposed here? I know you've cited to Patent Owner's brief in another case,
12 but is there anything actually in the intrinsic record that supports that
13 construction?

14 MR. ZEILBERGER: One moment, Your Honor.

15 (Pause.)

16 MR. ZEILBERGER: So what I would -- I would cite to Your Honors
17 is in, for this particular patent, Exhibit 1001, column 2, lines 19 to 21;
18 column 6, lines 5 to 7; and column 6, lines 16 to 18 where the functionality
19 of a switch is described in broad terms as simply receiving and processing
20 calls. And it's described broadly in that manner.

21 JUDGE WEINSCHENK: Okay.

22 (Simultaneous speaking.)

23 MR. ZEILBERGER: Sorry, Your Honor.

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1 JUDGE WEINSCHENK: Would you be amenable if we just, you
2 know, for example, we just construed switch to be performing the steps that
3 it's recited to do in the claim?

4 MR. ZEILBERGER: I wouldn't disagree with that, Your Honor. I
5 would not disagree with that. I would note, in addition, that from our
6 perspective, while it's not necessarily intrinsic evidence, Patent Owner's
7 admissions -- that were, in fact, relied on by the District Court in resolving a
8 claim construction dispute in District Court -- are perhaps not binding but
9 certainly important in deciding this issue.

10 Turning to slide 63, I'll just briefly note that --

11 JUDGE MAYBERRY: Excuse me, Counsel?

12 MR. ZEILBERGER: Yes, Your Honor?

13 JUDGE MAYBERRY: This is Judge Mayberry. May I ask a
14 question, and if possible, could you go back to what the slides you had up,
15 Backhaus Figure 1?

16 MR. ZEILBERGER: Of course. Backhaus Figure 1?

17 JUDGE MAYBERRY: Please. So, there, the communications
18 network 125, it includes the Internet, a cell network, a cable network, or a
19 PSTN. And the first receiving step in Claim 1 -- and I'm looking at the
20 patent at issue in the -359 case -- talks about receiving at the switch
21 associated with the server an outgoing call from the mobile device. So is it
22 the case that the call from the mobile device would go to the cell network,
23 and the cell network would then go to the PSTN and then to the server so
24 there would be no cell network interface for the -- for the server?

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1 MR. ZEILBERGER: Your Honor, so I don't think the claims
2 necessarily require a cellular device. It could just be a device that interacts
3 immediately with the PSTN interface.

4 JUDGE MAYBERRY: So the mobile device recited in the claims
5 isn't necessarily a cellular device?

6 MR. ZEILBERGER: It certainly could be. I'm just saying the claims
7 don't have specific limitations on -- with respect to cellular. That was my
8 only quibble, Your Honor. But what I would say is that in Backhaus, what
9 is clear is that the PSTN network can be one of the networks that is
10 interacted with before reaching the SLS server. And so, when you reach,
11 finally, the local switch associated with the SLS server within the PSTN
12 network, that would be the switch in our anticipation mapping. And then,
13 when the communication goes into the PSTN interface of the SLS server,
14 that would be the switch for this receiving step within our obviousness
15 combination.

16 JUDGE MAYBERRY: Okay. So, I'm sorry, Counsel. Let me just
17 make sure I understand the -- what Petitioner's position is. So, when we get
18 to that first receiving step and we have an outgoing call from a mobile
19 device, say that there are certain situations where that outgoing call from the
20 mobile device will reach the Backhaus's server through a PSTN?

21 MR. ZEILBERGER: That's right, Your Honor.

22 JUDGE MAYBERRY: And that that's because certain mobile
23 devices connect directly to a PSTN?

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1 MR. ZEILBERGER: Whether they connect directly to a PSTN or
2 they first connect to a cellular network which then connects to a PSTN I
3 don't think is material to whether Backhaus meets the claim. What is clear
4 in Backhaus -- and from in our perspective, what is sufficient to meet the
5 claim -- is that eventually, that communication will be received within the
6 PSTN network, which will then travel to the local switch of the PSTN
7 network, which would then go to the PSTN interface of the SLS server.

8 JUDGE MAYBERRY: All right. Thank you.

9 JUDGE WEINSCHENK: While we're on this end, I have one more
10 question for you, too. This is kind of a high-level question. Does -- when
11 we talk about the term PSTN network, are we talking about just sort of
12 hardwired, fixed wired networks, or does that include wireless networks?

13 MR. ZEILBERGER: That's a good question, Your Honor. It -- I
14 don't think that's been briefed in this proceeding. I would -- honestly would
15 have to think about that to give kind of a complete answer. So all I can say
16 is right now, I'm not sure.

17 JUDGE WEINSCHENK: Are we at least distinguishing a PSTN
18 being different than a cellular network, for example? Or are they -- or can a
19 PSTN include cellular networks?

20 MR. ZEILBERGER: I would have to think about that, Your Honor.
21 From our perspective, I don't think it matters if there's eventually a local
22 switch with the PSTN network, but again, that's not an issue Flyp raised.
23 And so, to give a complete answer, I would probably have to think about
24 that some more.

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1 I will note that for the -358 and -359 proceedings, which address the
2 '094 and '554 patents, they've been briefed post-institution in a substantively
3 identical manner. The issues are essentially identical. And so, unless there
4 is unique questions on those, I'm going to proceed to the -360 proceeding.

5 So the issues involved in the IPR challenging the '770 patent overlap,
6 to a large degree, with those -- in the IPRs we've already discussed. One
7 thing I'll note, which I think is a bit ironic perhaps, given the lengthy
8 discussion we've just had, is that Flyp actually does not make any of its
9 arguments relating to whether the same switch is used, either based on
10 Backhaus's teachings or Backhaus in combination with Taylor, when
11 addressing the '770 patent.

12 One additional issue that is in dispute for Claim 1 of the '770 patent
13 includes a limitation directed to -- it's highlighted on the bottom here --
14 based on user input accepting an incoming call by connecting with a switch
15 over a voice channel using a bridge telephone number, but this is disclosed
16 in Backhaus.

17 Turning to slide 72, in particular, when a third party calls a
18 subscriber's SLS number, the call gets routed to the SLS platform, which
19 determines the relationship number, which corresponds to the bridge
20 telephone number, and then calls the subscriber's device with the
21 relationship number in the calling party field. The relationship number is
22 what allows the SLS module of the subscriber's device to recognize that the
23 incoming call is from the SLS platform, and it is what allows the SLS
24 module to handle the call.

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1 Turning to slide 73, as can be seen in paragraph 68 of Backhaus, the
2 subscriber is then alerted to the incoming call, and the call is connected to
3 the subscribed device by the SLS platform 115 when the subscriber answers
4 the call. So the incoming call is connected based on user input.

5 Now, Flyp argues that the claim should be read to require that the
6 bridge telephone number itself must be used by the handset to connect to the
7 call, but this is doubly flawed. First, the claim does not specify whether the
8 bridge telephone number is used by the handset or the server, and second,
9 the bridge telephone number is used by both the server and the handset. The
10 device -- the user's device -- the subscriber device recognizes that an
11 incoming call is from the SLS platform. And the SLS module allows the
12 user to accept the call because of the relationship number that is transmitted.

13 Turning to slide 74 --

14 JUDGE MAYBERRY: Excuse me, Counsel.

15 MR. ZEILBERGER: Yes, Your Honor.

16 JUDGE MAYBERRY: This is Judge Mayberry. One question -- and
17 it's fine to have this slide up because it's really -- I was curious what your
18 thoughts were as far as how instructive the fact that using the bridge
19 telephone number, that phrase, it appears last; it appears after it talks about
20 the based on user input accepting the incoming call by connecting to the
21 switch over the -- at least one voice channel using the bridge telephone
22 number. So does the fact that the using the bridge telephone number
23 appearing last in the claim, is that instructive as to that it is more that the
24 user has to dial in the number?

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1 MR. ZEILBERGER: I don't think so, Your Honor. I think
2 grammatically, that the using here is modifying simply the connection, that
3 you're accepting the incoming call by connecting with the switch over the at
4 least one voice channel using the bridge telephone number so that the using
5 there is modifying the connecting. If Flyp had wanted to write the claim
6 such that it's the user input and the -- the user input at the device that's using
7 the bridge telephone number, that they -- I think they would have had to
8 write the claim differently.

9 They would have had to write perhaps something along the lines of
10 inputting the bridge telephone number with user input or based on user input
11 directed to the bridge telephone number, then accepting the incoming call, et
12 cetera. But I think, grammatically, the way it's written right now, the using
13 modifies the connecting, and the claim is silent about whether it's the user's
14 device or the server or, frankly, what -- whatever device is using the bridge
15 telephone number.

16 JUDGE MAYBERRY: All right. Thank you.

17 MR. ZEILBERGER: Claim 1 of the '770 patent also recites, as you
18 see here, transmitting pre-call information to the handset over the at least
19 one data channel. This is very similar to the limitation we saw earlier, in the
20 '585 patent, where an access telephone number was transmitted via data
21 channel, except here, the claim is referring to pre-call information.

22 Turning to slide 79, I'm going to jump ahead a little bit. As I
23 previously discussed -- I'm only jumping ahead because it's kind of
24 disclosures that I went over earlier. When an outgoing call is made in

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1 Backhaus to a new third party, a relationship number will be assigned and
2 transmitted to the subscriber's device. And that relationship number will
3 later be used when the subscriber's device receives an incoming call from the
4 third party.

5 Now, Flyp argues, in its response, that Backhaus's processes
6 associated with an outgoing call are not relevant to the processes associated
7 with an incoming call, but Backhaus is clear in these disclosures, at
8 paragraph 74 and paragraph 20, that after an outgoing call where a new
9 relationship number is assigned, the process essentially goes back to the start
10 of method 400, where an incoming or an outgoing call may be made. And
11 then, that relationship number that was previously acquired could then be
12 used.

13 Flyp argues that the pre-call information has to be received after the
14 incoming call is received, but nothing in the claim or the specification
15 supports that construction. In fact, the specification counsels otherwise.

16 If we jump back to slide 25, when we look to the specification -- this
17 is Exhibit 1001 from the -360 proceeding, column 6, lines 43 to 44 -- it
18 discloses that pre-call information may be received at the handset before or
19 during the call ringing on the handset. So it leaves open when the pre-call
20 information is received.

21 And then, in slide 26 --

22 JUDGE MAYBERRY: Excuse me, Counsel.

23 MR. ZEILBERGER: Yes, Your Honor.

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1 JUDGE MAYBERRY: Judge Mayberry here. Wouldn't another way
2 to read your highlighted portion be that the call has been received by the call
3 manager, then either -- then after that point, the pre-call information is sent
4 to the handset, and it's received by the handset, either before the call starts
5 ringing or while the call starts ringing. So I could see the before or during
6 still being after the call to the SLS that's managed by the call manager has
7 happened. Indeed, from column 732 to 42, which receives -- the snippet you
8 have here, that's really what's being described, isn't it? Doesn't the call come
9 in, and then the call manager manages it and sends the pre-call information?

10 MR. ZEILBERGER: Your Honor, I think they have embodiments
11 where the pre-call information is received after the call, but they're certainly
12 not limiting embodiments. And the claims don't have anything to suggest
13 that the pre-call information should be limited to that sort of pre-call
14 information. In our point in identifying this sentence from the specification
15 is that here, it doesn't say that it has to come in after the call is actually
16 received. And I would posit if the call isn't even ringing on the handset yet,
17 that that would be probably before the call is received.

18 But it certainly, just simply before call ringing, that's from time X and
19 all times before. It doesn't say from the time the call is received until the
20 call ringing. It just says before. It leaves it open-ended. And in the absence
21 of any special definition, these sorts of broad descriptions of pre-call
22 information should really hold against a narrow interpretation of pre-call
23 information.

24 JUDGE MAYBERRY: All right. Thank you.

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1 JUDGE CYGAN: Counsel, this is Judge Cygan. Currently, you're
2 only talking about -357, -358, right?

3 MR. ZEILBERGER: This is for the -360 proceeding, Your Honor.
4 For -357 and -358 and -359, the pre-call information is not a limitation that's
5 really in dispute or relevant to those proceedings.

6 JUDGE CYGAN: And you're also -- you're talking about '361 as
7 well?

8 MR. ZEILBERGER: I mean, I'm citing to disclosures in the '360
9 patent but -- or the -360 proceeding, but this same issue, with maybe one
10 nuance that I'll touch on, is also at issue in the -361 proceeding, that's right.

11 JUDGE CYGAN: Okay. Let me know when you are ready to talk
12 about the -361 claim language because I want to make sure I understand
13 which claim we're talking about here. If you're limiting it to -360, then that's
14 fine, but if you want to talk about that claim language in -361, that seems
15 like maybe it's a different story.

16 MR. ZEILBERGER: Yes, Your Honor. I do plan on reaching that
17 once I finish with the -360 proceeding.

18 JUDGE CYGAN: Thank you.

19 MR. ZEILBERGER: Jumping ahead to slide 81, I would also point
20 out that for the quote/unquote first way of addressing the claim, this timing
21 issue of the pre-call information would not apply. And the issues here are
22 essentially the same as for the data channel transmission discussed for the
23 first way for the '585 patent. One nuance that is here, for the -360
24 proceeding and also the -361 proceeding, is that here, we do have an

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1 alternative argument that it would've been obvious for the relationship
2 number and the encoded message to be transmitted using IP-based
3 communications.

4 And we made that argument based on Backhaus's disclosure that IP-
5 based communications may be used for establishing the relationship between
6 various numbers and databases, and its disclosure -- this is paragraph 73 --
7 that IP-based communications minimize temporal delays in allocating and
8 acquiring relationship numbers between an SLS module and an SLS
9 platform.

10 If there's no other questions on that, I'll move forward to slide 82
11 where Claim 1 of the '770 patent also requires that the pre-call information
12 includes the handset-associated telephone number, and Backhaus renders
13 this limitation obvious.

14 Turning to slide 83, first, Backhaus discloses, at paragraph 33, that the
15 calling line identification information can be displayed when the call is
16 received. And elsewhere, for example, in paragraph 55, Backhaus explains
17 that this sort of CLID information can include the relationship number and
18 the telephone number of the third-party device, but in paragraph 33 -- again,
19 what we have on this slide 83 -- Backhaus is also clear that any data
20 associated with the various devices, including the subscriber device itself,
21 may be rendered for the benefit of the user, and it says, quote, any data
22 uniquely associated with a call to a primary number or an SLS number may
23 be displayed for the benefit of a subscriber.

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1 And so, turning to slide 84, in view of Backhaus's disclosures, Dr. Lin
2 explained how it would've been beneficial to transmit the primary or SLS
3 numbers of the subscriber device so that those numbers could be displayed
4 to the user, for example, to differentiate between whether a personal or
5 business number is being called.

6 Now, Flyp primarily argues there would be no reason to display
7 whether a call is to a primary or SLS number because, according to Flyp,
8 Backhaus only handles calls to a subscriber's SLS number, but that's simply
9 factually incorrect. Even in the paragraph we saw on the previous slide,
10 paragraph 33 -- I'll turn back there for a second -- it refers to at -- towards
11 the bottom of this excerpt, it refers to, quote, any data uniquely associated
12 with a call to a primary number or an SLS number. In other words, it's
13 referring to calls to both a subscriber's primary number and a subscriber's
14 SLS number.

15 And this makes sense because Backhaus also explains, for example, at
16 paragraph 37, that both the subscriber device and the third-party device can
17 be SLS enabled. So you could have situations where a third-party device is,
18 in fact, itself an SLS subscriber, and they could call the -- kind of the
19 nominally subscriber device's primary number.

20 Turning to slide 85, I'll just briefly note that the same kind of channel
21 issue, whether they're consistent and the fact that they're not really relevant
22 to the second way of mapping, is also in play in the -360 proceeding, but it's
23 substantively identical between the proceedings.

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1 Turning to slide 87, the -360 proceeding also has this requirement of
2 acquiring first digital information indicating primary call processing rules.
3 And as we established in the petition, this limitation is rendered obvious by
4 the combination of Backhaus and Logan.

5 Turning to slide 88, first, at paragraph 68 of Backhaus, Backhaus at
6 least suggests call processing rules since it discloses how the SLS service
7 may provide a voicemail or message service.

8 Turning to slide 89, Logan, which similarly relates to providing
9 telephone services through communication networks, describes how calls
10 may be routed to voicemail based on user preferences that define factors
11 such as time of day, location, and which of a user's multiple phone numbers
12 is being called. And the next few slides, through 93, have various
13 disclosures in Logan consistent with that. And so, as Dr. Lin explained, it
14 would've been obvious to apply this sort of call processing rules described in
15 Logan, in Backhaus's system.

16 Now, jumping ahead to slide 94, Flyp argues that Logan does not
17 describe a server acquiring rules for processing calls to a primary number,
18 but that, again, is incorrect. Logan discloses base and virtual numbers
19 associated with its multi-number cell phone, similar to Backhaus's primary
20 and SLS numbers.

21 For example, at paragraph 11, it discloses how the user's preferences
22 can control the forwarding of calls to a virtual number and base number.
23 And as we can see here from deposition, at Exhibit 1102, at page 104,
24 Dr. Akl admitted that the user preferences in Logan dictate how a call will

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1 be processed, whether it's the base or virtual number. And I'd point out that
2 in Flyp's surreply, it does not even respond to our arguments in reply or
3 otherwise address this limitation.

4 Turning to slide 95, the disputed issues in this proceeding for Claim 1
5 are largely the same as those in the -360 proceeding, but turning to slide 96,
6 one item that I would like to point out is that in Claim 1 of the '105 patent,
7 the pre-call information includes a bridge telephone number for connecting
8 the handset to the incoming call at the switch. The issues for this limitation,
9 again, are largely the same as for the pre-call information recited in Claim 1
10 of the '770 patent with a couple of nuances.

11 First, unlike the '770 patent, there is no requirement here for a
12 handset-associated telephone number. In addition, here, Flyp seeks to
13 construe this phrase, but it does so in a way that, at least in our view,
14 introduces requirements that Flyp is also attempting to bring into Claim 1 of
15 the '770 patent. But I'll jump back to slide 28 to kind of go over the
16 construction that they're pursuing here for this limitation.

17 And in particular, they're construing the phrase as requiring that the
18 bridge telephone number must be capable of being used by the handset to
19 connect to the specific incoming call previously received in 1.d. And there's
20 several reasons why this construction should be rejected.

21 First, Flyp's construction is improper because it introduces a timing
22 requirement that the incoming call first be received before the bridge
23 telephone number. In our view, nothing in the claim supports that
24 interpretation. In addition, it also requires, similar to how Flyp argued the

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1 '770 patent, that the handset itself use the bridge telephone number. Again,
2 nothing in the claim supports construing the claim in that manner.

3 But I will note that consistent with the discussion we had for the '770
4 patent, these requirements, even if they were adopted, are met in Backhaus.
5 We don't think they should be incorporated, but they would be met if they
6 were -- if the claim was construed in this way.

7 JUDGE CYGAN: So, Counselor, this is Judge Cygan.

8 MR. ZEILBERGER: Yes, Your Honor.

9 JUDGE CYGAN: So your argument is basically we don't need to
10 determine whether the term "the incoming call" is referring back to an
11 incoming call in the claim because it's met in either situation?

12 MR. ZEILBERGER: I think it would depend, Your Honor, on kind of
13 what you decided to resolve first. If you rely on the first way of addressing
14 the claims in the -360 and -361 proceedings, then it -- this construction
15 becomes less of an issue, and you probably wouldn't need to resolve this
16 construction. If kind of similar to the -357, -358, and -359 proceedings, you
17 relied on the second way, then I think it probably would be beneficial to
18 resolve this construction because its -- I would acknowledge it's a more
19 difficult argument for us that the second way meets this limitation as
20 construed by Flyp. And so, it would really depend on which path you go
21 forward with, in your decision.

22 JUDGE CYGAN: Would you like to make a brief explanation of
23 your opinion on why there's no antecedent basis for that term, the incoming
24 call?

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1 MR. ZEILBERGER: And when you're referring to antecedent basis --
2 I've gone back to slide 96 -- which limitation in particular are you referring
3 to, Your Honor? I apologize.

4 JUDGE CYGAN: Well, you're discussing the pre-call information as
5 something that doesn't need to be made after the occurrence of an incoming
6 call, correct?

7 MR. ZEILBERGER: That's right, Your Honor, but my question --
8 well, from our perspective, there is no recitation that that would implicate
9 antecedent basis here. There's transmitting pre-call information here, but it
10 doesn't say that it happens in response to the call or anything like that. You
11 have a transmission of pre-call information, and that pre-call information
12 includes a bridge telephone number for connecting the handset and incoming
13 call at the switch.

14 And maybe this is getting at the question that you're asking, Your
15 Honor, the claim is not saying that actively, as part of the pre-call
16 transmission, in fact, connect the call to the -- to connect the incoming call at
17 the switch. It's saying that you're sending a bridge telephone number for
18 connecting, so that's describing the purpose of the bridge telephone number,
19 but it's only later in the claim that you actually establish the connection.

20 After that transmittal of pre-call information, you actually receive the
21 call -- the indication of a selection of the call processing rule, and
22 establishing a voice channel. The transmittal of pre-call information is only
23 directed to, literally, transmittal of pre-call information, which would
24 include the bridge telephone number.

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1 JUDGE CYGAN: So, in the way you're looking at the claim, the
2 phrase in the blue acknowledges that a transmitting step occurs after there's
3 been some incoming call, the "a incoming call" -- or "an incoming call" in
4 the receiving step, correct? It's just the --

5 MR. ZEILBERGER: No, Your Honor.

6 (Simultaneous speaking.)

7 MR. ZEILBERGER: Sorry, Your Honor.

8 JUDGE CYGAN: So you're -- let me rephrase that. You're not
9 arguing that the incoming call at the switch is different than the "an
10 incoming call"; it's referring to the same call. Your assertion is that the
11 transmitting step happens before any of this happens, and it could be to -- I
12 guess, the part that I'm not understanding is that the bridge telephone
13 number is for connecting to a handset, but it seems like that's a very specific
14 call. It's not just any incoming call. It's they -- the incoming call, the one
15 that has been received. So I -- I'm having a little trouble following your non-
16 timing argument here.

17 MR. ZEILBERGER: Your Honor, we agree that the incoming call
18 here is referring to the previously recited in the claim incoming call. But the
19 claim doesn't say that the bridge telephone number has to be received after
20 the incoming call is received. For example, what it leaves open within its
21 scope to including is a situation where you receive pre-call information,
22 including the bridge telephone number, then you receive the incoming call,
23 and then you, because of how the system is already pre-arranged to perform,

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1 you use the bridge telephone number for connecting the handset to the
2 incoming call at the switch.

3 JUDGE CYGAN: So, in your reading of how the claim is structured,
4 you could have a transmission of a whole bunch of bridge telephone
5 numbers, and then later, that will be used for any incoming calls that come
6 in. And that's -- that's sufficient to meet the claim.

7 MR. ZEILBERGER: I'm not completely sure I understood Your
8 Honor's hypothetical, but the -- again, if you have a situation where you
9 receive a bridge telephone number or receive a plurality of bridge telephone
10 numbers, and then, at a later time, receive an incoming call at the switch,
11 and then you use the bridge telephone number to connect the handset to the
12 incoming call, then that would be sufficient to meet the claim.

13 Again, we have mappings that don't require that interpretation of the
14 claim, I think that the kind of the quote/unquote first way very clearly
15 doesn't require that interpretation of the claim, but in our view, the claim
16 includes within its scope, that scope.

17 JUDGE CYGAN: And can you briefly run through how that -- how
18 that works in Backhaus?

19 MR. ZEILBERGER: Sure, Your Honor. So I think the most kind of
20 relevant example -- sorry. Let me take a step back. Are you talking about
21 the situation that would require kind of this broader interpretation of the
22 claim, or the mapping that would address Flyp's narrow interpretation of the
23 claim?

24 JUDGE CYGAN: Yes, the second way teaching.

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1 MR. ZEILBERGER: Right. So the way that would meet the broader
2 interpretation of the claim; is that right?

3 JUDGE CYGAN: Correct.

4 MR. ZEILBERGER: Okay. So, essentially, the way it works in
5 Backhaus is if you have a scenario where a subscriber device calls a -- or
6 attempts to call a third party's phone number, and in that situation, if there is
7 not yet a relationship number that has been assigned to the third party
8 number, the SLS server would detect that and would select the next available
9 relationship number and send that back to the SLS -- or sorry -- to the
10 subscriber's device and would store that relationship number in its own
11 database, such that at a later time, when there is an incoming call by the third
12 party, that third party would then be able to use that relationship number to
13 -- or they would use the SLS number of the subscriber.

14 And so that would route the call to the SLS server, and then the SLS
15 server would use the very relationship number that was previously assigned
16 in order to call the subscriber and connect the call.

17 JUDGE CYGAN: Okay. Thank you.

18 MR. ZEILBERGER: I will next turn to slide 99 to address the issues
19 involving Claim 2 of the '105 patent, where this is really an issue that's
20 unique to the -361 proceeding, where we have our obviousness combination
21 based on Backhaus and Winbladh.

22 Turning to slide 100, we have Claim 2 of the '105 patent where one of
23 the limitations that differentiates Claim 2 from Claim 1 is that it requires that
24 the pre-call information allows the telephone handset to accept an incoming

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1 call to a secondary telephone number by making a first bridge call using the
2 first bridge telephone number to connect the incoming call to the telephone
3 handset via the switch.

4 Turning to slide 101, we see a figure from Winbladh where you can
5 see that it's similar to Backhaus in that you have a connection between a first
6 device A and a second device B, making use of an intermediary server,
7 which, in this case, is the device 110.

8 And turning to slide 102, Winbladh describes a scenario where a
9 device can accept an incoming call by making a bridge call to the
10 intermediary device using a predefined telephone number. And in
11 particular, it explains how when a caller A first establishes a connection with
12 caller B, which you can see at the top of this figure, the caller B may be
13 charged an expensive international, long-distance rate.

14 And so, Winbladh explains that as soon as such a connection exists --
15 and I'll jump forward to 103, so you can see this disclosure. As soon as such
16 a connection exists, the terminal B may disconnect the second leg L2 and
17 reconnect to the intermediary 110 at a local call rate, and then reestablish the
18 connection with terminal A.

19 And so, as Dr. Lin explains, at paragraphs 143 to 146 of his
20 declaration, a person of ordinary skill in the art would have been motivated
21 to implement this sort of call-back feature in Backhaus's system because it
22 would have similarly been beneficial for reducing costs of long-distance
23 calls.

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1 If Your Honors have no further questions, I'll reserve the rest of my
2 time for rebuttal.

3 JUDGE CYGAN: Counselor, if I can ask one question on this?

4 MR. ZEILBERGER: Yes, Your Honor.

5 JUDGE CYGAN: Patent Owner had made a couple of arguments that
6 one was the use of the -- a single switch or the same switch for all the
7 processes. For -361, Patent Owner also argued that the collect call and the
8 local call rate wasn't really going to meet the claim limitations, or indeed, it
9 wasn't going to make sense in terms of the combination.

10 But they did make one particular argument that I wanted to get your
11 opinion on, and that was their argument that if you're changing from a
12 collect call to a local call, which is your primary motivation for combining
13 these, why would you still be using the same switch when you're -- when
14 you're moving from a collect call to a local call?

15 MR. ZEILBERGER: Your Honor, so I would have two answers to
16 that question. The first one is, in a sense perhaps, a non-answer, but I just
17 want to point it out that Flyp does not raise any arguments directed to our
18 Taylor grounds where we modify kind of in a similar to have the PSTN
19 interface. And so, from a kind of practical manner, its arguments directed to
20 the switch are arguably moot since it doesn't challenge the Taylor ground in
21 this proceeding.

22 But setting that aside, the way we kind of presented this obviousness
23 combination based on Winbladh, it still would be the singular SLS server.
24 We weren't proposing to add in additional servers or anything like that. It

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1 would really just be a situation where you're creating or making use of a
2 local number that the SLS number, just like Winbladh, could have generated
3 for the user to access.

4 It's not kind of a large change. It's really just if you have scenarios
5 where that one leg of the call is being made with a long-distance number,
6 you would not want that. You'd want to save money, or at least sometimes
7 you would want to save money, and allow the user to have access to a local
8 number. And this -- I think that it would be the very same kind of issues that
9 we've talked about in terms of why it's still a singular switch in our view.

10 JUDGE CYGAN: But Patent Owner's argument appears to be that
11 there's some difference between the switches that would be used between a
12 local call and long-distance call. Did you have anything on the other side of
13 that that you wanted to point out?

14 MR. ZEILBERGER: I, frankly, didn't completely understand Flyp's
15 argument there. I mean, a switch within a PSTN network doesn't necessarily
16 even know whether it's a local number or kind of a long-distance number. I
17 think they functionally would be the same, so I, honestly, didn't completely
18 understand its argument. I don't think there's any evidence in the record to
19 suggest that there would be or would be required to be, given that here we're
20 talking about obviousness, more than one switch. And again, I would also
21 reiterate that they haven't challenged kind of our obviousness grounds based
22 on Taylor here, which arguably mitigate this issue.

23 JUDGE CYGAN: So, when we're looking at Winbladh, how does it
24 actually work when it -- when it switches -- it switches the number? Does it

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1 give us any description of how it acts to switch from a long-distance to a
2 local?

3 MR. ZEILBERGER: It -- Winbladh doesn't get into kind of the
4 particulars of what switches would be used, which I, frankly, would also
5 stress to the Panel is -- is also the case in the patents. I know Flyp has made
6 a very big deal about the switch limitation in this proceeding. Its patents
7 hardly talk about it. It's an afterthought. It's certainly not a point of
8 patentability that they discuss in the patents.

9 But Winbladh itself doesn't discuss kind of what switches would be
10 used. But again, I think, from our perspective, it would really be the same
11 analysis as we've talked about for Backhaus, so kind of the State of the Art,
12 on the one hand, in terms of local switches within a PSTN network and a
13 PSTN interface. When we're talking about Taylor and kind of the
14 obviousness grounds there, we have to address switches as well.

15 JUDGE CYGAN: But you would agree it's your burden to show the
16 motivation that you're asserting, correct?

17 MR. ZEILBERGER: It's absolutely Petitioner's burden, Your Honor.
18 And from our perspective, we've by far surpassed our burden here.

19 JUDGE CYGAN: Thank you, Counsel.

20 MR. ZEILBERGER: If there's nothing further, Your Honors, I'll save
21 the rest of my time for rebuttal.

22 JUDGE WEINSCHENK: Thank you, Mr. Zeilberger. It looks to me
23 like you've used about seventy-three minutes of your time. So you'll have
24 forty-seven remaining for your rebuttal if you choose to use it.

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1 MR. ZEILBERGER: Thank you very much.

2 JUDGE WEINSCHENK: Mr. McCullough, whenever you're ready,
3 please just let me know if and how much time you'd like to reserve for
4 rebuttal.

5 MR. McCULLOUGH: Yes. I'd like to reserve thirty minutes.

6 JUDGE WEINSCHENK: Thank you. You can start whenever you're
7 ready.

8 MR. McCULLOUGH: All right. Let me share my screen. Okay.
9 So, I am going to start with the outbound patents, and then I'll move to the
10 inbound patents. And I'll start with the switch argument. And the -- this
11 argument applies two grounds one and two of the 357, 358 and 359
12 petitions. And Petitioner has failed to meet its burden to show that the use
13 of the same switch is inherently Backhaus.

14 So I'll start with plain language here on slide five. In each of the
15 patents, the claims are clear, and it sounded like Petitioner agreed with this
16 that the same switch has to be used with respect to multiple limitations. And
17 in particular, I'm looking at the limitations that say the outgoing call from
18 the mobile device has to be received at a switch, and then the further
19 outgoing call to the third party contact also has to be -- or the information
20 directing that call has to be received at the same switch. So both legs of the
21 call, from the subscriber to the platform, and then from the platform from
22 third party, have to involve the same switch.

23 JUDGE WEINSCHENK: Mr. McCullough.

24 MR. McCULLOUGH: Yes.

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1 JUDGE WEINSCHENK: This is Judge Weinschenk. It does sound
2 like Petitioner agrees with you on that -- that the switch associated with the
3 server needs to be that same one that performs these three steps here, 1D, 1E
4 and 1F in the '585 patent. But I'm not sure if you're disputing or not, but in
5 order to actually complete the call to the other end, there could be other
6 switches in the PSTN network involved. I mean, that's -- that's just going to
7 happen, right? You've got a network full of switches. In order to get a call
8 from one end all the way to the other, you're going to need more than one
9 switch. It's just that these particular steps that are recited in the claim need
10 to be performed by the same switch associated with the server, correct?

11 MR. McCULLOUGH: Yes, that's exactly correct. There are going to
12 be a number of switches through the network. Every call is going to go
13 through multiple switches. There's no -- There's no dispute on that point.

14 But the claim focuses on the switch associated with the server. So, it's
15 talking about the switch that the server is communicating with and is
16 managing calls through. And that switch has to be the same. And both
17 lengths of the call from the subscriber to the server, and from the server to
18 the third party have to involve that same switch. And yes, there may be
19 other switches, you know, as the call is routed through the network, but this -
20 - that same switch associated with server has to be involved in both legs of
21 the call.

22 JUDGE WEINSCHENK: Okay, thank you.

23 MR. McCULLOUGH: And the Petitioner has chosen to --

24 JUDGE MAYBERRY: Counsel?

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1 MR. McCULLOUGH: Yes.

2 JUDGE MAYBERRY: This is Judge Mayberry. May I ask you a
3 question about the switch? Really more kind of for background. And I'll
4 pick the '554 patent, but it could be any one of these three.

5 How does the patent describe ensuring that the same switch is used for
6 the three receiving steps that we have in the claim? So, how does it work?
7 How do we know that it uses the same switch? In like one of the
8 embodiments in -- in the patent?

9 MR. McCULLOUGH: So, when you look at the embodiments in the
10 specification, they describe how the call is being routed, and it comes in --
11 let me find you the exact citation. But it comes in through a switch, and then
12 it -- the call --

13 JUDGE MAYBERRY: Counsel, I'm sorry. It comes in through a
14 switch. Where is the switch? Is it at the server? Is it part of the -- the
15 communication network?

16 MR. McCULLOUGH: So, I -- what the plain language says is that
17 the switch is associated with the server. And so I think there's -- there's two
18 things that you can learn from that. One is that the switch is not the server
19 itself. And I heard some argument from Petitioner that you could conflate
20 the switch and the server. I don't think that's consistent with the plain
21 language. And it's not consistent with the specification either, which
22 describe the switch and the server as separate components -- separately
23 numbered components.

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1 As for the physical location of the switch, I don't think either the
2 claims or the specification require any particular physical location. It could
3 be, you know, sitting running on a computer right next to the server, or it
4 could be a switch that is perhaps some distance away and integrated into the
5 public network. I don't think that's -- I don't think there's any limitations on
6 where the switch is physically located.

7 But I do think it's wrong to conflate the switch and the server, because
8 the patent consistently describes them, and the plain language also uses
9 different terms to describe them. And so, I think that argument that you
10 would conflate the switch on the server, we disagree with that. There are
11 two separate components.

12 JUDGE MAYBERRY: Yeah, and I -- I apologize if I got you off in
13 that direction. That wasn't what I meant to. Really, what I was concerned
14 with, in your second example where the switch could be some distance away
15 from server, perhaps part of the public network, how does the invention
16 ensure that it goes through the same switch?

17 MR. McCULLOUGH: So, in the description of the call processing,
18 the patent only gives the example of communicating with a single switch. I -
19 - I don't know patent does not talk about multiswitch configurations. So, I'm
20 not sure if that precisely answers your question, but there's nothing -- there's
21 a reason for the patent to describe how you would go to one switch, because
22 it was only ever talking about one switch. I think -- I hope that answers the
23 question.

24 JUDGE MAYBERRY: Sure, I'm fine. Thank you.

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1 MR. McCULLOUGH: Okay. And so, the Petitioner has chosen to
2 argue this limitation by arguing inherency. And inherency is a very high
3 burden. And it's very important that the Board understand that inherency is
4 Petitioner's burden. There was some discussion by Petitioner that we
5 haven't -- that we, Patent Owner, haven't shown that you could configure
6 that in multiple -- to use multiple switches. That's not the test.

7 The test is that it must be -- the priority must necessarily function as
8 Petitioner describes. It can't be a possibility or probability. It can't be
9 something that may happen. It must necessarily be the case that Backhaus
10 can only be used with a single switch that is involved in both legs of the call,
11 in order for it to inherently anticipate the use claim limitations. And the
12 possibility of any alternate arrangement, this is the MEHL case 192 F.3d at
13 1365. The possibility of any alternative arrangement defeats inherent
14 anticipation.

15 And here the problem is that using the same switch is not inherent.
16 Our expert, Dr. Akl, in Exhibit 2010, paragraphs 90 and 91 of the 357 case,
17 explains that one way you could use Backhaus -- one way you could
18 configure Backhaus is to receive a call leg at a first switch and then place the
19 second call leg -- so that's the call leg from the SLS platform to the third
20 party, on a second switch. And there are reasons that you would do that, to
21 balance the load and to manage the load between switches.

22 Switches, like other computer hardware, have a finite capacity. We
23 cannot have an infinite number of calls on the same switch. And so
24 Backhaus it would be entirely possible to configure Backhaus to set these

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1 call legs on different switches. And that's actually consistent with some of
2 the description in Backhaus. So this is Backhaus Exhibit 1005, paragraphs
3 56 and 60. And Backhaus expressly states in paragraph 56, that there are
4 two legs of the call. So there are two separate independent legs of the call
5 that the SLS platform connects. And it says that one way it can connect
6 them is in forward or a bridge. So if you can have two independent call legs
7 that are bridged together by baghouses SLS platform, and that's perfectly
8 consistent with what Dr. Akl testified, that to you can have those two
9 separate co legs running through two different switches. And then you
10 bridge them using Backhaus's SLS platform.

11 And paragraph 60 is consistent as well, when it says the SLS platform
12 may complete the call. So that Backhaus is teaching is that the platform
13 completes the call. Backhaus is completely silent on switches on how it
14 connects to the PSTN. And Petitioner has not and cannot show that the only
15 possible way to configure Backhaus to connect to the PSTN is that it
16 connects to a single switch. And that is the burden that they have to move
17 for inherency.

18 Here, we have --

19 JUDGE WEINSCHENK: Mr. -- Mr. McCullough?

20 MR. McCULLOUGH: Yes.

21 JUDGE WEINSCHENK: This is Judge Weinschenk.

22 Do you dispute that the SLS platform necessarily connects to a PSTN
23 network through a switch -- like there has to be a local switch, right? It's

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1 just a matter of whether you think both legs are -- of the call come through
2 the same switch or not.

3 MR. McCULLOUGH: Yes, I think that's right. We don't dispute that
4 there -- it will have to connect to some switch. But I think, if I -- and I'll
5 jump to Slide 11 now. This -- or let me jump to Slide 12. This concept of a
6 local switch I think has been mischaracterized by Petitioner.

7 A local switch isn't -- it describes for a particular call, the local switch
8 is the switch that one endpoint is connected to. But it is not a fixed
9 relationship that every call from that endpoint will always go to the same
10 local switch. So, I think there's been in this characterization. This concept
11 of a local switch doesn't tell you how your next call is going to be routed.
12 It's a description of, in a current call, which switch is the quick connect to
13 that is the local switch for that particular call.

14 But it doesn't tell you anything about how Backhaus would be
15 configured. And in particular, the important part is the Backhaus -- the way
16 it is described that I just showed in paragraph 56 of Backhaus, Backhaus has
17 two separate call legs that it's connecting together. So those are two
18 independent calls that it bridges together.

19 And so it's not just the case that there's a single call, which is the
20 evidence that Petitioner has cited, that you have a single call from one
21 landline to another. There's a local switch. That may be true in a single call,
22 but that doesn't tell you anything about how Backhaus connects to the PSTN
23 when Backhaus is managing multiple call legs at the same time.

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1 It's entirely consistent with the teachings in Backhaus and with the
2 knowledge of a person of ordinary skill in the art that Backhaus would
3 actually connect to multiple switches and would have different colleagues
4 associated with different switches to manage the load and the capacities of
5 those switches.

6 JUDGE WEINSCHENK: Mr. McCullough, while you're on this
7 slide, I do want to ask you about paragraph 93 here of your expert's
8 declaration.

9 MR. McCULLOUGH: Yes.

10 JUDGE WEINSCHENK: It seems that he focuses on location. Like,
11 for example, he says that, you know, if you make a call on a cell phone, you
12 use one local switch, and then if you change locations then make another
13 call, then you may have a different local switch when you change your
14 location. Similarly says for server systems, if you've got servers at multiple
15 locations, server in one place may use one local switch, and a server in
16 another place may use a different local switch.

17 And my question for you is if you have a single server running in a
18 single location, will that server use the same local switch for multiple calls?

19 MR. McCULLOUGH: No, it doesn't have to. And that's -- that's
20 what our expert addresses back in paragraph 91, is that a single server, you
21 could actually connect it to multiple switches and you would do -- the reason
22 you would do that is to manage the load between them.

23 Now going back to paragraph 93, the language that you're asking
24 about here is in response to the theory advanced by petition and Petitioner's

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1 expert, which seem to be based on the assumption that every call necessarily
2 connects to the same local switch. And these are just counter examples that
3 -- that that's not possible, or that's not a correct assumption. If you have cell
4 phones, and you travel different locations, you'll connect to different
5 switches based on you location. Servers can be distributed. And so the
6 assumption that there is a single local switch associated with every endpoint
7 is incorrect.

8 Now, the argument that you just propose that because the server is
9 located in one place -- first of all, I will point out, I don't think that argument
10 is advanced by the Petitioner. But even considering that argument in
11 paragraph 91, Dr. Akl explains that you could still connect it to multiple
12 switches, and that you actually have a reason to do that, because switches
13 have finite capacity. And so, you want to manage and balance the load
14 between different switches. And so proceed with the understanding that you
15 could actually configure Backhaus to have multiple different switches, and
16 to have different callings associated with different switches, which means
17 the Backhaus would not inherently anticipate these claim limitations.

18 JUDGE WEINSCHENK: Do you have any documentary evidence
19 outside of your expert declaration indicating that a conventional PTSN
20 network could function in this way? That a single endpoint like a server or a
21 phone could connect to multiple switches even without changing location?

22 MR. McCULLOUGH: So, Your Honor, I think that's the wrong
23 question. The question here is not how the PSTN interface functions. It's
24 how Backhaus is configured to connect to the PSTN. And so it's not a

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1 question -- you know, the PSTN routes calls between landlines and cell
2 phones and so on. And that's set up, and that's, you know, essentially, I don't
3 want to say fixed. But I mean, that the PSTN operates the way it operates,
4 and everyone plugs into the PSTN.

5 The question is not how is the PSTN operating. It's, how is Backhaus
6 operating. And although Backhaus does not provide that level of detail, the
7 best evidence that we have in Backhaus is what we've cited here, and we've
8 cited in paragraphs 56 and 60, and what our expert considered that there are
9 separate legs of the call, and they're connected via a bridge. So Backhaus is
10 not --

11 JUDGE WEINSCHENK: Mr. McCullough, I want to stop you for
12 just a second while we're on this. Because there's nothing in Backhaus, I
13 guess that's the point. It doesn't say whether it uses one switch or multiple
14 switches. It can certainly do this with one switch or two switches. I think
15 the question is, how do you connect, because it says it connects to a
16 conventional PTSN network. And the question is, how does it do that. Does
17 it -- is it required to connect through one local switch? Or can it handle
18 multiple local switches at the same time? And I think we have some
19 documentary evidence that indicate -- that makes it appear as though you
20 connect through one local switch at a time, whereas you're saying to get to
21 two or more.

22 And I just -- I'm curious if you have any evidence indicating that that's
23 how a conventional network works, that you're -- it's possible for Backhaus
24 to do that.

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1 MR. McCULLOUGH: We have evidence in our expert's declaration,
2 which is cited on Slide 8, and we have the -- this evidence in paragraphs 56
3 and 60, which, you're right, does not expressly talk about switches. But it
4 does -- it is consistent with our description. It describes two separate legs of
5 the call being bridged by the platform, not at a single switch, but by the
6 platform. And so we think that evidence is -- all supports that it's possible to
7 do it another way.

8 And then remember the burden here is on Petitioner. And I'm not sure
9 what evidence you were referring to. But I don't think there's any evidence
10 that Petitioner has cited that says that when you have a -- something like a
11 server like Backhaus's SLS platform that is managing multiple call legs at
12 the same time, that those call legs must necessarily go through the same
13 local switch.

14 The only evidence that Petitioner cited is describing, you know, very
15 conventional phone calls between two landlines or two cell phones where
16 there's not this concept of a server in the middle, managing multiple call
17 legs. And so it doesn't describe how you could connect Backhaus to the
18 PSTN. It describes how you would connect a conventional standard
19 cellphone or landline phone to the PSTN. There's no evidence that
20 Petitioner's cited that is comparable in any way to Backhaus's SLS platform,
21 and that is what they have to show must necessarily connect through a single
22 switch in order to show inherency.

23 JUDGE WEINSCHENK: Do you have a Taylor Figure 1 in -- in your
24 slides that you could pull up?

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1 MR. McCULLOUGH: Sure.

2 JUDGE WEINSCHENK: So like, for example, here in this Figure 1A
3 -- sorry -- Figure 1A of Taylor, you've got a server, number 50 there, that
4 appears to be connected to the PSTN through a single local exchange 12.
5 And it can receive and transmit data back to the network because it has the
6 arrow on both ends there, through that local exchange. It doesn't show it
7 connected to multiple local exchanges. I guess the call could then get routed
8 through the switches, but it's the only interaction with the PSTN is through a
9 single local exchange. So there's at least some evidence here indicating that
10 that's how a server would connect to the conventional PSTN.

11 MR. McCULLOUGH: So, two responses to that. One, that the law in
12 inherency is clear. The possibility that you can only be connected to one is
13 not sufficient to show an inherency. At most, that's what Figure 1 of Taylor
14 shows, is that it's possible to connect to one.

15 Second, is that this Figure in Taylor is not describing, and Petitioner
16 has never contended, the Taylor server is anything like Backhaus's server.
17 It's not a server that is making or receiving multiple call legs and bridging
18 them together at the same time. This server is connecting in Taylor -- all it
19 shows is that it's connecting to the PSTN. There's no description of having
20 multiple different call legs and bridging them together.

21 And so this figure also doesn't show anything about how you will
22 connect Backhaus, given Backhaus's functionality, to PSTN. It simply
23 doesn't relate to that type of device. And it certainly doesn't show that the
24 only possible way is to connect to a single switch. And that's it.

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1 JUDGE WEINSCHENK: I understand. I want to ask you one more
2 question about this, because I want to make sure I understand sort of, I know
3 you don't have the burden on this issue, but you did posit what you propose
4 as sort of an alternative design.

5 MR. McCULLOUGH: Yes.

6 JUDGE WEINSCHENK: And so how would this work? So for
7 example, you would have a call leg coming from the mobile device. It
8 would be received through one local switch associated with the SLS
9 platform. And then the SLS platform would instruct a different local switch
10 to go to the third party. And then it would bridge those calls together at the
11 platform.

12 MR. McCULLOUGH: Mm-hmm.

13 JUDGE WEINSCHENK: So in this -- in this alternative you've
14 proposed, would the server or the SLS platform be connected to two local
15 switches at the same time?

16 MR. McCULLOUGH: Yes.

17 JUDGE WEINSCHENK: Okay. I'm curious because I -- I'm
18 wondering how you answer -- it seems like your expert may have said
19 something that's inconsistent with that concept in his deposition. I don't
20 know if you have this transcript available. I think it's Exhibit 1102. If you
21 could pull that up.

22 MR. McCULLOUGH: I can. And where are you asking about?

23 JUDGE WEINSCHENK: It will be page 80, line 25. And he -- And
24 he was asked the question, but when you're only using one server, how many

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1 local switches -- or how many local switch is the server connected to when
2 using one server? And he said, I think you asked me that, and I said it might
3 be connected to one at a time. But at different points in time, it may connect
4 to different servers if it has multiple connections.

5 So it seems like the hypothetical you've proposed is something where
6 the server would be connected to multiple local switches at the same time.
7 And seemed like your expert acknowledged that while it can connect to
8 different local switches, it can only do one at a time. Which seems
9 inconsistent with the concept that it can do two at a time. I'm curious if you
10 have a response to that.

11 MR. McCULLOUGH: So I pulled out that quote, and I think if you
12 look at the next sentence in his answer, when Dr. Akl says is, it even connect
13 to -- to multiple switches to support simultaneous connections. So that is
14 talking about connecting to multiple switches at the same time.

15 So, I -- I think here, he's saying that all of these are possible. You can
16 do one switch at a time. You can do multiple switches at the same time. Do
17 multiple switches at different times. They're all possibilities, and that's
18 exactly the problem that Petitioner has here, is they just identified a set of
19 possibilities, but they haven't shown that using only one switch is necessarily
20 required in Backhaus. And that's their burden under inherency.

21 JUDGE WEINSCHENK: Okay. Thank you.

22 JUDGE CYGAN: And, Counselor, that doesn't apply to the
23 obviousness grounds based on Taylor. Correct?

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1 MR. McCULLOUGH: I think it does, to some extent. Let me -- let
2 me jump to Taylor. I'll jump to Taylor right now.

3 So I think the Taylor theory has shifted tremendously in the course of
4 today's hearing. The Taylor theory as presented in the petition and in the
5 reply, is a conditional obviousness theory that is only relevant to the extent
6 the switch has to be separate from the PSTN, which is something that Patent
7 Owner has never argued. I don't even -- it's something that has no basis in
8 claims which don't even recite the PSTN. I just -- this argument is a
9 conditional, hindsight driven attempt to -- to predict what how we were
10 going to respond to their Backhaus theory, and then offer an alternative.
11 And we never made this response. So I think the Taylor theory, as presented
12 in the petition and in the reply is simply irrelevant.

13 Now, today, the Taylor theory has sort of morphed. And if I
14 understood Petitioner's counsel correctly, they seem to be suggesting that
15 Taylor wasn't a combination at all, but that Taylor was somehow explaining
16 what the Backhaus system would already have. And I think respectfully,
17 that -- that argument is not in the petition. The petition is very clear. If you
18 look, for example, at the -357 petition at page 54, the theory that's advanced
19 is what had been obvious to modify Backhaus to implement a PSTN
20 interface in light of Taylor.

21 So it -- it was clearly presented as a modification to Backhaus. And
22 today it's morphed into sort of a -- it's elucidating something that's already in
23 Backhaus. I don't really understand the theory that was articulated today.
24 But it's an entirely improper new argument.

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1 The only argument that has ever been advanced is that you would
2 modify Backhaus to introduce the PSTN interface from Taylor. And that
3 argument has several problems. The first is that PSTN interface is not a
4 switch. That Petitioner admits -- the 357 petition at 35 to 36 calls local
5 switch 12. That's how they identify items 12 in Taylor. So they admit that
6 switch is the item number 12, not the item number PSTN interface 52.
7 That's the same way Taylor describes it in Exhibit 1007 paragraphs 4. It
8 says switched 12.

9 Dr. Akl, our expert in his declaration, as shown on Slide 53 says a
10 person having ordinary skill in the art would understand the PSTN interface
11 is not a switch. And even if it were, there's still no reason why you would
12 necessarily have to use one PSTN interface.

13 And this is particularly true in light of the way this theory was
14 presented in the petition. They said it would be obvious to modify Backhaus
15 to implement a PSTN interface. And that's again, that's the 357 petition at
16 page 54.

17 But Backhaus already talks to the PSTN. There's -- There's no
18 dispute over that. Backhaus, in paragraph 32, expressly states that it can
19 route things -- route calls through communications network 125, which
20 includes the PSTN. Our expert likewise says a person of ordinary skill in
21 the art would still understand that Backhaus could interface with the PSTN.

22 So the theory that's advanced in the petition is that you would add a
23 second PSTN interface. A) that doesn't make any sense. There's never a
24 reason articulated for why you would add a second -- or I think it replied --

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1 Petitioner suggested they're not adding a new one. They're just replacing the
2 one that's already there. There's no reason why you would do that either.
3 But then going back to the -- the point that I was making here on slide 53,
4 adding this PSTN interface would not render obvious using the same switch,
5 because you're adding an interface.

6 Backhaus already has its own interface. So you already have multiple
7 interfaces. And there's nothing -- there's no reason, there's no explanation
8 ever articulated, why you would have these multiple interfaces in first. But,
9 if you have them, why would every call be routed through one and not the
10 other. There's simply no explanation of this Taylor theory. And I think it --
11 it really has morphed today into a theory that is not supported by petition.
12 That is an improper new argument.

13 I also want to address the claim construction argument. There was
14 sort of a new claim construction presented in reply that --

15 JUDGE CYGAN: Counselor, before we move on to that, I just want
16 to make sure I understand your point here. So, in your argument is that the
17 anticipation ground fails, because we have on the record there could clearly
18 be one switch, but could also clearly be other switches. And it's not
19 necessarily one switch. The obviousness ground fails, because although it's
20 been established on the record, that it's obvious -- it's obvious it could be one
21 switch, Petitioners somehow did not include the ground based on Taylor.

22 MR. McCULLOUGH: So, I would not agree that it's been established
23 that it's obvious that there's one switch. I think it's a possibility that there's

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1 one switch. But the mere fact that there's a possibility does not -- is not the
2 same as saying that it's obvious to do it in that particular way.

3 JUDGE CYGAN: Well, your expert did say that it could be done in
4 that way, or it could be done with more. And it -- my understanding of your
5 expert's testimony was your expert was saying, sure it connects to one
6 switch. However, if it's moving around, maybe it connects to other switches.
7 If it's at a location where there's some load balancing, we use other
8 switches. But it never seemed to have posited one switch as something
9 which wouldn't have been obvious, or wouldn't have been understood to be
10 an alternative that someone would know.

11 MR. McCULLOUGH: So again, I don't think alternative that
12 someone would know is the correct legal test for whether a claim is obvious.
13 Acknowledging that it is a possible technical configuration is used when the
14 switch is not the same as saying that it will be obvious to a person of
15 ordinary skill in the art to use one switch. Petitioner has never --

16 JUDGE CYGAN: Let just let me stop you there, because that's not
17 the argument you're making, if I understand correctly. Your argument is
18 simply that Petitioner never advanced this sort of Goldilocks argument.
19 Petitioner had an anticipation argument that fails because they didn't
20 establish that was necessary, Petitioner has an obviousness argument that
21 fails because it doesn't use Taylor's teaching in the proper way. Is that
22 correct?

23 MR. McCULLOUGH: So, it's absolutely correct that the Petitioner
24 never made the argument that it would be obvious to use a single switch in

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1 backups. The only obviousness argument they presented is that it would be
2 obvious to incorporate this PSTN interface from Taylor. That is the only
3 argument anywhere in the petition, anywhere in the expert's declaration.

4 And it's the petition that governs the issues that are at issue in the IPR.
5 And so on that basis, we don't think this theory that it would be obvious to
6 use one switch with backups -- I don't think that theory is -- is before the
7 Board at all, under any of these grounds.

8 So yes, that -- that is absolutely a part of our argument. I'm
9 addressing, in part, what I've heard today, which I think are improper new
10 theories, based on the argument that's been presented today. But our first
11 and foremost argument is absolutely, that the only argument they've made is
12 this PSTN argument, and the condition that on this switch having to be
13 separate from the PSTN, none of that is relevant.

14 So in our view, that's the simplest and easiest way to resolve with the
15 Taylor grounds, is that there were a conditional argument that we're
16 conditioned on something that never happened, and so there's simply no
17 reason for Board to reach these grounds at all.

18 Now, I do want to shift to the -- I'm sorry, the claim construction. So
19 this is Slide 54, quoting from the 357 reply at page 18. There was this new
20 argument advanced in reply that I think it's basically a claim construction
21 that any element in a communication network that facilitates connections
22 between transmitters and receivers, or takes some input and provides an
23 output is a switch.

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1 I think, you know, first of all, that's an improper new argument and
2 improper new construction. But I think it's also clearly overbroad on its
3 face. We gave the example of wire in our briefing, and Petitioner and their
4 argument said that a wire doesn't meet this because it doesn't facilitate
5 connections. I don't understand that argument. If you make a call in
6 Backhaus to a third party landline, it's going to at some point in that process,
7 that call will be routed through a wire to the third parties landline. And so,
8 the wire is facilitating that connection, and it meets every aspect of this,
9 really -- really, very, very overbroad definition that the reply has proposed.

10 This would also apply to the server itself. And as we discussed
11 earlier, the claim is clear that the server and switch are separate elements.
12 The specification is clear that the servers which are separate elements. So I
13 think this this new claim construction, which was founded on a little bit in
14 Petitioner's argument today, is simply improper. It is far too overbroad, and
15 is not consistent with disclosure in patents.

16 JUDGE WEINSCHENK: Mr. McCullough, this is Judge
17 Weinschenk. It appeared as though Petitioner took this construction from
18 your brief in another case. I'm just curious if you disagree with it, how
19 would you propose that we construe the term, switch? I understand you're
20 arguing that Taylor talks about other switches, but we're not really
21 concerned with terms that Taylor uses. Right? And the question for us is,
22 what does switch mean in the context of the challenge patent. And then does
23 the identified thing in Taylr meet that construction, regardless of the terms
24 used in Taylor.

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1 So I think we need to figure out what switch means, and then figure
2 out if the interface in Taylor meets that construction. So what would be your
3 construction of switch?

4 MR. McCULLOUGH: We have not put forth the construction,
5 because this -- this issue was not raised in the petition. And then I don't --

6 JUDGE WEINSCHENK: Well, I mean, you raised the argument, Mr.
7 McCullough, because you said that Taylor's interface is not a switch. So
8 you -- you presented an argument that it's not a switch. And I'm curious how
9 you would define switch.

10 MR. McCULLOUGH: So the argument that we've advanced is based
11 on our expert's testimony about what a POSITA would understand when
12 looking at these references. And I don't -- It's not based on a particular
13 definition. And I -- I think I would also say, in response to your question
14 about whether it matters, I think it does matter.

15 Taylor's language, when it calls switch 12 a switch, that is consistent
16 with our expert's testimony that that's what a person of ordinary skill in the
17 art would understand. There has been no showing that Taylor is using the
18 term switch in a nonstandard way, or that the patents are using the term
19 switch in a nonstandard way.

20 And so, there's no showing -- there's been no reason to construe a
21 switch that has been identified by the petition. They've simply chosen to
22 focus on this PSTN interface, even though it's not a switch. It's not called a
23 switch. And they've given no justification for why the term switch would
24 even need to be construed when persons of ordinary skill in the art would

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1 understand it the same way that the reference itself describes it that the
2 switches are the items number 12 and not the PSTN interface part of the
3 server.

4 JUDGE WEINSCHENK: Let me ask you this. I asked Petitioner the
5 same question. Would you be amendable if we interpreted switch just to
6 mean an element that performs the steps that are recited for the switch in the
7 claim? For example, you know, I think there's three limitations in each
8 claim that reference the switch, and it says it does certain things. If we just
9 said a switch has to do those three things, would that be an amendable
10 construction?

11 MR. McCULLOUGH: I don't think so. Because I think part of what
12 that misses -- and I put the claim language back up from Slide 5, is that the
13 claim is all saying that there's a switch associated with the server. And part
14 of what I heard from Petitioner is that well, you could just say the server is
15 performing these functions, and that meets the claim. So, I don't think it's
16 correct that any device performing these functions will meet the claim.

17 The switch, at the very least, is a separate device from the server.
18 And I think just proposing to define switch in sort of purely functionally,
19 you just identified, would -- would remove that structural distinction in the
20 claim between the switch in the server as different elements. So, I think in
21 that respect, that construction would not be correct and would not be
22 consistent with the claims.

23 JUDGE WEINSCHENK: I guess it -- So, your main point here would
24 be that it's something separate from the server that does these things.

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1 MR. McCULLOUGH: Yes. I -- Yes.

2 JUDGE WEINSCHENK: Okay. I understand.

3 MR. McCULLOUGH: All right. Now, I'm going move to the data
4 channel argument. And this applies -- it applies to some extent, to all of the
5 petitions that 360 and 361 had some separate obviousness arguments that I
6 will address when it gets the outbound patents.

7 And I'm going to start with proper construction of channel. And there
8 was questions of the Petitioner's counsel of do we even need to address this,
9 and Petitioner's position seems to be no, as long as you're relying on the
10 second way. And we disagree with that completely. And there are several
11 reasons why the Board should -- should address this construction and should
12 address the Petition's first way, or regardless of whether or not it ultimately
13 relies in the second way, because the Petitioner's expert, has advanced
14 contradictory positions and positions that he cannot explain the basis of his
15 deposition. And that significantly impacts the credibility of his testimony.

16 And when there are disputed factual issues, for example, the disputed
17 factual issues on inherency, the disputed issues of obviousness, the
18 credibility of the expert is absolutely an important factor that the Board
19 should be -- should consider when rendering its judgments.

20 And so we think it's important to go through all of these arguments
21 and to see exactly what the problems are with theories that petition and the
22 Petitioner's expert advance. So I am going to address all of these arguments.

23 We think they're relevant you know, regardless of which way the board
24 ultimately relies.

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1 So first, for the construction of channel --

2 JUDGE CYGAN: Counselor?

3 MR. McCULLOUGH: Yes.

4 JUDGE CYGAN: This is Judge Cygan. And I apologize for
5 dragging you back to switch for more, kind of question. Just to be clear, the
6 fact that it connects -- the connection to the PSTN in total, the PSTN in total
7 does not act as a switch, right? That can't be the claim switch.

8 MR. McCULLOUGH: Yes, I -- I think that's right. The PSTN is the
9 overall network. People would understand that to refer to, you know, sort of
10 everything in between all of landlines, cell phones, etc., all the routing
11 infrastructure and so on. So that is not the switch that we're talking about
12 the claims then.

13 JUDGE CYGAN: So, the claimed switch can't be the PSTN itself?

14 MR. McCULLOUGH: Yeah, I think that's right. I don't think you
15 would refer -- or I don't think you would consider the -- the whole PSTN to
16 be the claim switch.

17 JUDGE CYGAN: Okay. I mean, that does seem to bring in the
18 language that Petitioner is using for its ground. You know, to the extent
19 they state to claimed switch is interpreted to be something separate from the
20 PSTN.

21 MR. McCULLOUGH: The switch can be part of the PSTN, but the
22 switch doesn't have to be the entire -- and the question that I understood you
23 to be asking was, would you consider the entire PSTN to be the switch. And
24 I don't think that's accurate, but the switch can absolutely be part of the PTS

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1 -- PSTN, and that is -- that is the specific issue that was the justification of
2 Taylor. We said the switch had to be separate from the PSTN, could not be
3 part of it. That that was the justification for their Taylor grounds. We've
4 never advanced that message.

5 JUDGE CYGAN: So your understanding of what the Petitioner is
6 saying in the petition, is that the switch had instead -- they're concerned that
7 the switch has to be outside the PSTN, which is not your argument. And it's
8 not the fact that Petitioner is presenting an alternative in the case in which
9 the PSTN itself can't be the switch.

10 MR. McCULLOUGH: Yeah, I think correct. That's what their
11 concern was, whether the device was separate from the PSTN. So it was -- it
12 was never about whether the -- the entirety of the PSTN was the switch.
13 That's not an argument that Petitioner ever made. It was never referenced in
14 the Taylor grounds. The only thing they referenced was whether the device,
15 the switch had to be separate from the PSTN. And that is the argument that
16 we've never made, and why we think these Taylor grounds simply don't --
17 don't come into play.

18 JUDGE CYGAN: Okay, thank you for weighing in. I appreciate it.

19 MR. McCULLOUGH: Sure. All right. So, going to the construction
20 of channel. And, the petition is based on the erroneous premise that a voice
21 path must be connected in order for there to be a -- a voice channel. This is
22 the 357 petition at page 24. A POSITA would have understood the encoded
23 message would just automatically be transmitted because Backhaus

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1 discloses that a voice path is not connected until the subscriber answers the
2 call.

3 Now, I want to be clear, this is not in any way specific to Backhaus,
4 despite the reference to Backhaus in Petitioner's sentence. This is true of
5 any conventional call. If I call you on a landline, the voice path is not
6 connected until you pick up your phone. This is not in any way specific to
7 Backhaus. And there's no teaching in Backhaus that says you're going to
8 have a different channel at this period of time. The only basis for the
9 petition is just assuming that because the voice path is not connected, you
10 must have a different construction.

11 And I've shown here on Slide 18, side by side Dr. Lin's declaration of
12 Petitioner's expert, and the petition. They are essentially the word for word
13 identical. There's no explanation of why the fact that the other end of the
14 call hasn't picked up means you could have a separate data channel. There's
15 no explanation, well, there's no citation to any separate channel used in
16 Backhaus. It's just asserted based on this implicit construction that we think
17 is wrong.

18 And this implicit assumption is one that the Petitioner also contradicts
19 later on in their reply. In the petition, they say a voice path is not connected.

20 But in reply, they say regardless of whether it is, the voice channel exists,
21 then that does not impact the existence of the separate data channel. But that
22 simply can't be reconciled with the petition.

23 The only explanation they give for their position in the petition is
24 because Backhaus discloses that a voice path is not connected. So, if

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1 whether or not the voice path is not connected has no effect, then the petition
2 has -- has provided no basis at all, for its conclusory assertion that there's a
3 data channel.

4 And so we asked, Dr. Lin at his deposition, what is this based off?
5 And we asked him repeatedly to identify the basis of this. And he said, it's
6 based on my understanding when I read the patents. And so, the second
7 question, I asked what specifically in the patents. And then he just again
8 repeats, it's my opinion that a person of ordinary skill in the art would have
9 understood when reading this patent that a channel that is carrying a voice is
10 a voice channel, and when it is not, it is carrying nonvoice data. What is the
11 basis for that? And he just says the basis is the person of ordinary skill in
12 the art would have understood it.

13 There's no explanation here. It's purely circular. It's -- it's from their
14 expert that because he says so, there is a separate channel. But there's no
15 explanation. There's no teaching in Backhaus that he's relying on for this. It
16 is purely an assumption that because the voice path has not been connected,
17 there is going to be some separate data channels.

18 And it is not based -- importantly, it's not based on how conventional
19 calls are routed. When we talk about -- when we asked Dr. Lin about
20 conventional call routing -- so, in a conventional call, it's ringing, and we
21 asked him, you know, when it does that, is that using the voice channel, yes
22 or no? And he says, the teaching that I've applied does not bring that into
23 question. So, that's not the basis of his opinion. He is not relying on
24 conventional call routing. He's not -- he can't identify anything specific in

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1 Backhaus. And the argument that they're advancing -- the petition and
2 Petitioners expert -- are advancing contradicts the specification of the patent.

3 This is Slide 22, showing the '585 patent at column seven, lines 9
4 through 21, and it describes that when a handset makes an outgoing call, in
5 step 422, that that call occurs over a voice channel. And then the return call
6 -- or sorry, that's from a third party. And then the return call from the
7 handset to the bridge number in the next step is also using a voice channel.
8 And that call is received at the switch and step 424, which bridges the
9 incoming voice channel from one leg with the incoming voice channel call
10 from the other leg.

11 And so the specification is clear, that even before you actually
12 perform the bridging, even before you connect the calls on both ends, they're
13 using a voice channel. That -- This assumption that the Petitioner's expert
14 makes that you don't have a voice channel until the person picks up is
15 fundamentally inconsistent with his teaching of the specification.

16 And so we asked --

17 JUDGE MAYBERRY: Can you --

18 MR. McCULLOUGH: Yes.

19 JUDGE MAYBERRY: Excuse me, counsel. This is Judge Mayberry.

20
21 How do you respond to Petitioner directing us to the disclosure at
22 paragraph -- I'm sorry -- Column 4, lines 46 to 57 of the -- of the challenge
23 patent?

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1 MR. McCULLOUGH: Sure. So, I have that here on the left side of
2 Slide 27. And so, the -- the statement that they focus on in particular is the
3 last sentence of this paragraph that says such CDMAGSN are like
4 government communications when used to carry voice information are
5 referred to herein is being conducted over voice channel.

6 And our experts explained, Dr. Akl in paragraph 43 in his declaration,
7 that that is not -- the POSTIA would not understand that to impose a
8 temporal restriction. And in fact, if you look at paragraph 46, when he said
9 the POSITA would understand that to be describing is the well-known fact
10 that you can also transmit data over cellular protocols. And you can also
11 transmit voice over internet protocols.

12 And so, in those cases, you may be using one protocol on top of
13 another, and you would like to which protocol is actually being used to
14 transmit information as opposed to the underlying protocol that is used for
15 merely transporting a different protocol. And so that is the -- that's the
16 concept that's referred to in the specification.

17 And it says when used to carry voice information, it's distinguishing,
18 for example, from when you're using cellular connections to make data
19 transmissions, it's not saying that in the course of an individual call, you're
20 not using the voice channel until the phone has been answered. That is a
21 misreading of the specification. It's consistent with the description that we
22 just looked at in column seven. And it's just not what a person of ordinary
23 skill in the art would understand this language to be referring to.

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1 JUDGE MAYBERRY: Excuse me, counsel. Let me try to use an
2 example. It's -- I'm still having trouble understanding. So, I have a cell
3 phone and I receive an SMS text. My cell phone network uses GSM. I get
4 an SMS text. Would that be using the GSM protocol as a data channel?

5 MR. McCULLOUGH: So I'm not familiar with exactly how SMS is
6 transmitted. So I don't -- I'm not sure of the answer to that question.

7 JUDGE MAYBERRY: But it wouldn't be a voice channel. Or are
8 you saying that there are certain hardware that only carry voice and certain
9 that it only carries data in a -- in a cellular network?

10 MR. McCULLOUGH: No. We're not saying that. I think that our
11 what our expert says in paragraph 46 is the exact opposite. That -- that a
12 person of ordinary skill would know that you can transmit data over cellular
13 protocols or vice versa, that you can transmit voice over internet protocols.
14 And so you can use multiple protocols on top of one another, and that is
15 what the teaching of this specification, when it says when used to transmit
16 voice information, that's what it's trying to distinguish, between
17 circumstances when you're using your cell phone for voice versus when
18 you're using it to go on the internet. It's not distinguishing between in a call
19 before and after the other person picks up.

20 JUDGE MAYBERRY: But, if I get a call, and then I answer it, now
21 I'm using the connection to the cell tower for a voice call. So, that's a voice
22 channel. You would agree with that?

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1 MR. McCULLOUGH: Yes. If you're get a call on your cell phone,
2 and you answer, you're going to be using a voice channel. It could be
3 CDMA, GSM, LTE, 3G, 4G, so on.

4 JUDGE MAYBERRY: But, five minutes before when I didn't get the
5 call, I'm not using a voice channel. I could have received a text, surfed the
6 internet. I'm using data channels.

7 MR. McCULLOUGH: Yes. I think that's -- that's fair.

8 JUDGE MAYBERRY: So where is this voice channel? Where does
9 it exist five minutes before I get my call?

10 MR. McCULLOUGH: So, I'm not -- the voice channel is not -- it's
11 not like a physical pathway that always exists. It's created as needed. And
12 the same is true of data channels. If your phone is sitting in your pocket --

13 JUDGE MAYBERRY: Isn't that -- Isn't that what Patent Owner and
14 what this paragraph and challenge patent's saying? That these channels
15 exist when they're being used?

16 MR. McCULLOUGH: So, I think that's a little different than what
17 Patent Owner's saying because what --

18 JUDGE MAYBERRY: And I'm sorry. Petitioner.

19 MR. McCULLOUGH: -- or what Petitioner's saying.

20 JUDGE MAYBERRY: I steered you wrong. What Petitioner is
21 saying.

22 MR. McCULLOUGH: So, I think what petitioner is saying is -- so
23 when -- when a call is being made, and it's ringing, there's a channel, and it's
24 being used. It has not yet been picked up. And it's not yet, you know -- you

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1 can't actually talk to the other person yet. But -- but there is a call that is
2 being made. It's ringing at your phone. And so, what Petitioner seems
3 to be saying is that even though you're using it, and even though it's ringing
4 at your phone, it does count yet because the other person hasn't picked up
5 yet. And I think that's a different argument than saying, you know, at one
6 moment, I'm not using my phone to make the call. I'm using it for internet.
7 And then five minutes later, I'm using it for a call. I think those are two
8 different things.

9 It's absolutely true that you're going to create the voice channel when
10 you make a call. The same is true of data channel. When you go to access
11 the internet, that's going to create a data channel. But it doesn't support this
12 argument in the petition that when you're making a call, there's no voice
13 channel until the other person picks up. Because that's just not true. You
14 have to route that call. And you have to cause it to ring on the other person's
15 phone. And the way you do that is through the voice channel. Either it's a
16 conventional PSTN call, or it's a call through cellular network. But there is a
17 call being made, and it causes the other person's phone to ring, which is how
18 you know that there's a voice channel being used, even though the other
19 person hasn't picked up yet.

20 JUDGE MAYBERRY: Okay, thank you.

21 JUDGE WEINSCHENK: Mr. McCullough, this is Judge
22 Weinschenk. Can you have a voice channel and a data channel at the same
23 time?

24 MR. McCULLOUGH: Yes, I think you could. I don't know of any

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1 reason why you wouldn't be able to.

2 JUDGE WEINSCHENK: It would seem to me, you know, what
3 Petitioner is referring to in paragraph 55 of Backhaus is sending a, I think
4 the term, a specially encoded message that includes the relationship number.
5 Isn't that data? Wouldn't you send data over a data channel? How could
6 you even send a specially encoded message including data like that over a
7 voice channel such that the, you know, with the person on the other end hear
8 the relationship number and need to enter it into the database? I'm not really
9 understanding how that would be transmitted over a voice channel.

10 MR. McCULLOUGH: So what Backhaus says in paragraph 55 is the
11 calling party field of the call can have information which can include the
12 relationship number and potentially some other stuff. And what Dr. Akl
13 explained is that a person who is skilled in the art would understand this is
14 just conventional caller ID. You can have caller ID on calls from one
15 landline to another. And it's going to be routed through the PSTN or a
16 conventional voice call, but it's also going to include information about the
17 number that is making the call so that the receiving party will be able to
18 display that number on their caller ID.

19 The fact that you're transmitting data does not mean you necessarily
20 have to use two different channels at the same time. And there's no teaching
21 in Backhaus that suggests that you would use two different channels. The
22 only thing it says is that the calling party field of the call. So it describes it
23 as part of the call itself. It doesn't describe it as a separate data transmission
24 with the calling party field that goes alongside of the call. It says that it's

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1 part of the call. And based on that teaching --

2 JUDGE WEINSCHENK: And it can be a relationship number that's
3 transmitted over the voice channel and that is decoded somehow at the
4 handset into the data that's needed to store in the database.

5 MR. McCULLOUGH: Yeah. And I think -- so this -- there's been a
6 lot of attention to this specially encoded language, but if you actually look at
7 the next sentence in paragraph 55, the only encoding that Backhaus ever
8 describes is that you can have the relationship and the actual primary
9 number separated by a star. Okay. It's not coding in the sense of, you know,
10 converting it into some secret encrypted code that you don't understand. It's
11 saying that you have two different numbers and you just use a star character
12 to separate them. That's all it is.

13 And so your phone can see that. Your phone can receive star
14 characters. They're dialable parts of a telephone number just like a pound
15 key as well. And so I think this specially encoded language is really being
16 taken out of proportion because it's not describing anything different than a
17 conventional caller ID. It's just you may have two numbers instead of one,
18 but you're still putting them in the caller ID. You're still using dialable
19 separators such as the star character. So it's still numbers that can be part of
20 the caller ID.

21 And that's wholly consistent with what our expert says, you would -- a
22 POSITA would understand Backhaus's teaching is that they're transmitting
23 this calling party field the same way you would a conventional caller ID,
24 which does not involve a separate data check.

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1 JUDGE WEINSCHENK: Okay. I understand. Thank you, Mr.
2 McCullough.

3 MR. McCULLOUGH: All right. And now I want to -- all right. I
4 want to go back to this -- column 7 of the specification because the petition
5 and Dr. Lin, the theory, I think, significantly contradicts the specification.
6 And so we asked Dr. Lin about this part of the specification and asked about
7 the call in step 422, which the patent expressly says is over a voice channel.
8 And he did not agree that that is over a voice channel. He says when it says
9 over a channel or a voice channel, I think it is talking about making a call
10 over something that can act as a voice channel.

11 So I don't know what distinction he's drawing between being a voice
12 channel and something that can act as a voice channel. But it's clear that the
13 basis of his opinions are not consistent with the specification. And then on
14 slide 25, we asked him specifically, can you tell me the number of a step
15 where the handset begins actually using a voice channel? He first gave a
16 long answer, but didn't identify a step number. And then I followed up and
17 asked, is that step -- that is Step 424. And he says, finally, at the end of his
18 answer, so that would be at step 424.

19 But that is not consistent with what the patent teaches. The patent
20 expressly states that step 422 happens as a call leg that's made over a voice
21 channel. So his contention that a voice channel doesn't happen until the ends
22 of the call are connected is inconsistent with the patent. It directly
23 contradicts these teachings in paragraph 7. And it is, it simply can't be
24 reconciled.

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1 So now we'll look at the petition's first way. And this is where we
2 were just looking at paragraph 56 and 60 of Backhaus. But I just want to be
3 very clear because we're going to talk about the contradiction in the petition
4 in a moment. The petition's first way theory is that a third party calls the
5 subscriber, and then the SLS platform in Backhaus establishes a second call
6 leg. So it's a call leg from the SLS platform to the subscriber, and it has a
7 calling party field. That is the first theory.

8 Now, Petitioner curiously makes the argument that caller ID depends
9 on implementation details. But the petition does not rely on any teaching in
10 Backhaus about how caller ID is implemented. And as we saw in Dr. Lin's
11 testimony before, he's not basing it on how prior caller ID is routed.

12 So there's just nothing behind Petitioner's theory except for this
13 improper construction. And that is the problem with the first way is that it
14 has -- there's no basis for this theory. And it contradicts, if we look now at
15 slide 33, the teachings in Backhaus where the calling party field is described
16 as part of the call. That's the language used in Backhaus. And a person of
17 ordinary skill in the art would understand that to be part of the call on the
18 same channel as the call, and therefore not any data channel.

19 Now, Petitioner has also tried to rely on some teachings in paragraph
20 73, particularly this language I've highlighted on the right of slide 35, that
21 something like cellular data, Wi-Fi, Bluetooth could be used to communicate
22 between the module and the platform. But 73 -- paragraph 73, relates to
23 figure 4D. It's part of the process flow described in Backhaus. And if you
24 look at Backhaus, the only way to get to figure 4D is if you're not -- if the

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1 call coming into Backhaus's server is not a call from a third party, and it is
2 not an outgoing call to a relationship number.

3 So this teaching in Backhaus is simply not relevant to the petition's
4 first way. Because as we saw a moment ago, the petition's first way
5 expressly depends on a call being received from a third party. So at figure
6 4A, in this diamond 404 that's shown on slide 36, the first way would follow
7 the yes path. And if you follow that yes path, it's -- there's no way you get to
8 figure 4D. The only way that you can get to figure 4D is if you first follow
9 the no path, meaning it was not a call from a third party. But the moment
10 you follow that path, you're no longer consistent with the first way theory
11 that the petitioner has advanced.

12 And so there's a fundamental inconsistency in relying on paragraph 73
13 as part of the first way, because it is simply not reachable when you have an
14 incoming call from a third party. And then the reply introduced this new
15 genus/species argument. And relying on the statements in paragraph 73 of
16 Backhaus that -- and this is the 357 reply at page 9, they quote the statement
17 in paragraph 73 of Backhaus that IP-based interactions can be used in setting
18 up relationship databases and sharing information.

19 And then they claim that because the encoded message is an example
20 of setting up relationship databases or sharing information, that it therefore
21 is an IP communication. Now, the first problem is this still depends on
22 paragraph 73, which, as we just showed, it is not actually reachable as part
23 of the incoming call. So it's inconsistent with Backhaus's own teaching. But
24 the second problem is that the law is clear, and this is the Metabolite Labs

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1 case, 370 F.3d 1354 at 1367 from the Federal Circuit, that a prior reference
2 that discloses a genus does not inherently disclose all species within the
3 broad category.

4 And importantly, this Metabolite Labs case applied this ruling in the
5 context of both anticipation and obviousness. And the Federal Circuit held
6 that the party had not shown that the claims were invalid, either as
7 anticipated or as obvious. And so this argument, this response to the
8 genus/species argument applies not just to the anticipation grounds, but also
9 to the obviousness grounds that the petitioner cannot simply assume that
10 because a caller ID can be used to set up a relationship database or share
11 information, that it can be transmitted by IP. That's an improper fallacy
12 that's contrary to the law.

13 So now I want to address the second way. So the petition's second
14 way theory is -- relies on paragraphs 72, 3, and 4. And instead of an
15 incoming call from a third party, the second way is based on an outgoing
16 call. The problem here is that they're still combining disparate parts of
17 Backhaus. So Backhaus paragraphs 72 and 73, they do talk about some
18 things that could qualify as data channel, but they're never used to transmit
19 the relationship number. There's no transmission of a relationship number
20 from the module to the user in paragraph 72 or 73.

21 Then in paragraph 74, Backhaus moves to describing a new step in its
22 process, what's called block 448. It says a relationship number is returned.
23 It doesn't say how, it never describes what protocol is used to transmit this
24 information. And so that is insufficient to show anticipation. In order to

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1 show anticipation, Backhaus has to expressly or inherently disclose that
2 every limitation claim is satisfied. And the claim expressly requires
3 transmitting the relationship number via a data channel.

4 The only time the relationship number is transmitted is in paragraph
5 74. And it does not say -- Backhaus does not say how that relationship
6 number is transmitted. And so Backhaus cannot anticipate transmitting the
7 data channel or transmitting the relationship number via a data channel, even
8 under the petition's second way.

9 JUDGE WEINSCHENK: Mr. McCullough, this is Judge
10 Weinschenk. Can you look at paragraph 72 for me, Backhaus? It says, it is
11 envisioned that the SLS module 105 may communicate with the SLS
12 platform 115 in some embodiments to obtain a relationship number for a
13 third party that has not previously been called via session-based protocols
14 such as, and I'll abbreviate, the USSD protocol. That certainly seems like
15 Backhaus is disclosing that the relationship number may be transmitted from
16 the platform to the module via a USSD protocol. Do you agree or disagree
17 with that?

18 MR. McCULLOUGH: I don't agree with that. What paragraph 72 is
19 talking about is communications from the module to the platform. It does
20 not -- paragraph 72 does not describe the platform actually sending the
21 relationship number. Neither is paragraph 73. The only time that that is
22 described in Backhaus is paragraph 74. And in paragraph 74, it's silent
23 about how the relationship number is transmitted.

24 JUDGE WEINSCHENK: Well, I want to back you up for a second

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1 because then if we go back to paragraph 71 and previous to 72, it says the
2 SLS module has provided the request for the new relationship number to the
3 SLS platform. So it certainly sounds like it's the module asking for the
4 relationship number from the platform. And then it's saying that it may
5 obtain it via USSD protocol. So that certainly sounds like the relationship
6 number is being transmitted from the platform to the module because the
7 module is requesting it via the USSD protocol.

8 MR. McCULLOUGH: I'm not seeing where in paragraph 72 or 73 it
9 says the module has already placed the request.

10 JUDGE WEINSCHENK: All right. So if you go to paragraph 71, I'll
11 give you a line, line 1. So it's about line 18 in paragraph 71.

12 MR. McCULLOUGH: 71, okay.

13 JUDGE WEINSCHENK: And the first part of that line says party
14 number and then it's period. And it says the SLS module 105 has provided
15 the request for the new relationship number along with the third-party
16 number it desires to call to the SLS platform 115.

17 MR. McCULLOUGH: So I still read paragraph 72 and 73 as
18 describing what's happening by the SLS module. They're not -- there's
19 nothing in Backhaus that connects them to the statement in paragraph 74 that
20 says the relationship number is returned by the SLS or to the SLS module.
21 That is not described as occurring on a data channel, occurring via USSD or
22 any other particular protocol. And if you look at the way these paragraphs
23 are describing the flow through figure 4, I think it's important to note that
24 paragraph 74 is moving to a new step. It's moving to block 448.

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1 The previous two paragraphs 72 and 73 are a continuation of the
2 explanation that's provided in paragraph 71, which is describing previous
3 steps in figure 4. In particular, 446 appears to be the step that is describing
4 the module making a request. But in 74, the Backhaus patent moves to a
5 new step, block 448, and only in that new step is the relationship number
6 actually provided from Backhaus's server to the client. And Backhaus is
7 silent on how that communication happens, what protocol it uses.

8 And so I don't think you can simply take these teachings from 71, 72,
9 and 73, which are talking about earlier steps in figure 4 and assume that they
10 also apply to 74. I don't think that's proper. I don't think that's sufficient to
11 meet Petitioner's burden to show anticipation.

12 All right. And so, now I also -- so that's the first and second way, but
13 I also want to address the way that the petition and the petitioner have taken
14 inconsistent positions. And the petitioner in this argument appear to contend
15 that if you rely on the second channel, then you can just ignore the
16 inconsistencies. And I don't -- again, I don't think that's accurate. The
17 inconsistencies in this case are particularly important because they weigh on
18 Dr. Lin's credibility and on the weight that the board should give to his
19 declaration, which is a virtual carbon copy of the petitions.

20 So I want to go through the two -- the two contradictory positions. So
21 the first way theory that the petition takes is that there's a third-party call. It
22 gets routed to the SLS platform. The SLS platform makes a call to the
23 subscriber, and it has a calling party field with the relationship number. And
24 the petition claims that is the data chain. That is their first way theory for

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1 how the relationship number is transmitted on a data chain. But then, for a
2 later limitation of the claim -- and I've used the '585 patent as an example
3 here.

4 So the '585 patent claim 1D, which recites that you have a -- let me
5 just pull up the exact language. That you receive a switch associated with
6 the server, an outgoing call from the mobile device to the access telephone
7 number via a second channel. And so for this second channel limitation,
8 they rely on the subscriber making a call leg that gets routed to the SLS
9 platform. It's a call leg from the subscriber to the platform. And we've cited
10 from the petition itself where they acknowledge that this call leg has a
11 calling party field. And in fact, the SLS platform relies on that calling party
12 field in order to be able to route this.

13 So on the left of slide 44, we've shown excerpts from the petition at
14 pages 32 and 39 where the petition acknowledges that this call leg has a
15 calling party field. And the petitioner claims that this is the second channel.

16 So comparing these two theories side by side, it's clear that there is no
17 meaningful difference between them. There is a call leg between the
18 platform and the subscriber that has a calling party field. The only
19 difference is which direction.

20 Does the call leg go from the platform to the subscriber or does it go
21 in the other direction from the subscriber to the platform? But there's no
22 reason why the direction the call has been made should impact whether it is
23 using a data channel or a second channel, a voice channel. And yet the
24 petition takes fundamentally inconsistent positions. Dr. Lin embraced both

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1 of these arguments, even though there's simply no way to reconcile it.

2 And so we asked Dr. Lin about this. This is slide 47. And I'll show
3 you his answer on slide 48. But I asked him specifically about these two
4 calls, comparing the first way and then the call from the subscriber's device
5 to the relationship number that you are relying on for limitation 1D. And I
6 said in the third paragraph here, both of these calls are between the
7 subscriber's terminal device and the SOS platform. They both have a calling
8 party field. They're both received before the voice path is connected.

9 So why do you conclude that the call in paragraph 68 is a data
10 channel, but the limitation 1D call is a voice channel? And he just -- Dr.
11 Lin, here on slide 48, this is from his deposition, which is the 2009, page
12 182, line 6 through 183.20. He couldn't explain it. He didn't provide any
13 distinction. He just repeated his theory for limitation 1D. But that's the
14 problem here, is that there's no explanation behind Dr. Lin's analysis. And
15 we are facing exactly the situation that the Board addressed in the Netflix
16 case and Xerox case where the declaration from the expert is essentially
17 word-for-word identical to the petitions.

18 It doesn't cite to a supporting evidence. It doesn't provide technical
19 reasoning. And Dr. Lin at his deposition couldn't provide the supporting
20 evidence or the technical reasoning either. And so, we think Dr. Lin's
21 declaration should be given little to no weight by the Board. We think it is -
22 - it's significant problem in this petition that Dr. Lin's opinions cannot be
23 explained. And we would urge the Board to give little to no weight to that.
24 All right. I am now going to move to the inbound patents, the '360 and '361,

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1 unless there are any questions on the outgoing patents.

2 JUDGE WEINSCHENK: Mr. McCullough, I'll just give you a quick
3 update right now. You're at about, I'd say, 75 minutes. So you probably
4 have about 15 minutes remaining in your opening argument if you still want
5 to save 30 for rebuttal.

6 MR. McCULLOUGH: Okay. Thank you. I may go a little longer,
7 but --

8 JUDGE WEINSCHENK: Yeah. You're obviously entitled to go into
9 your rebuttal time now. Not an issue.

10 MR. McCULLOUGH: So I'll start with this argument that the
11 Backhaus-Logan combination does not render obvious the handset uses the
12 bridge telephone number to connect. So this applies to the '360 petition and
13 claim one in the '361 petition. And we think in both of these claims, it's
14 clear that the bridge telephone number is for connecting to the incoming call
15 and it's for use by the handset in particular. We think that is clear from the
16 claim language. The handset is capable -- in the '770 patent, the handset is
17 capable of accepting the incoming call by connecting using the bridge
18 number.

19 I agree. I think Fisher (phonetic) has said that they read this using the
20 bridge telephone number language as modifying connecting. We agree with
21 that. That's the natural grammatical reading of this claim. So the bridge
22 telephone number has to be used to connect and has to be used by the
23 handset. And then in the '105 patent, the language is a little different, but we
24 think it is the same principle that the bridge telephone number is for

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1 connecting the handset to the incoming call.

2 So again, it's for connecting to the incoming call and it's for the
3 handset in particular. And -- let me skip ahead to -- the specification is
4 consistent with that. So this is showing figure 4 and an excerpt from the
5 '105 patent that the handset is the device that uses the bridge telephone
6 number to connect.

7 Now, there are sort of two levels of problems with the petitioner's
8 argument. The first argument is that or the first problem is that the petition,
9 and this is the '360 petition at 45 to 46, the petition relied exclusively on
10 actions by the SLS platform. It did not rely on any action by the handset at
11 all. And so that fails to show that the claim language is satisfied.

12 But there's a second problem. Even if you consider this argument or
13 even if you consider the replies, the argument that the handset uses the
14 bridge number, and that is that the relationship number, which is what
15 they're reading on the bridge number, is used as caller ID. It's not used for
16 connecting the incoming call. A person of ordinary skill in the art would
17 understand the caller ID is not used to connect the call. It's transmitted
18 along with the call and it provides information that the handset may display
19 to the user, but it is not used for connecting the call by either the handset or
20 the server.

21 And so regardless of which of the theories you're looking at, the
22 petition's theory, which is based on the server, or the replies theory, which is
23 based on the handset, updating their internal database and displaying a caller
24 ID. The claim language, if we go back to slide 59, is that you use the bridge

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1 telephone number for connecting the call. It's not using it to display a caller
2 ID or using it to update an internal database. It's using it for connecting to
3 the call. And the only argument the petitioner makes is using the
4 relationship number as caller ID, which is insufficient to meet this claim.

5 JUDGE CYGAN: Counsel, does Backhaus talk -- does Backhaus
6 refer to its relationship number as a caller ID number?

7 MR. McCULLOUGH: It doesn't expressly say that. What it says is
8 that it's -- the language it uses is calling party field of the call. That's in
9 paragraph 55 of Backhaus. And our expert has testified, this is slide 34, that
10 a person of ordinary skill in the art would understand that to be referring to
11 caller ID. If it's not caller ID, then there's no description of what it is, if it's
12 something different from conventional caller ID. Because Backhaus does
13 not provide any more description than the statement I showed in paragraph
14 55 that's part of the calling party field of the call.

15 JUDGE CYGAN: So should we understand your declarant as giving
16 the opinion that a relationship number is a caller ID number?

17 MR. McCULLOUGH: Under the petition's hearing, where they're
18 relying on this teaching in Backhaus as part of their first claim that the
19 calling party field of the call, that is caller ID, yes. That's our contention.

20 JUDGE CYGAN: Did your declarant express that caller ID performs
21 all the functions of the relationship number as described in Backhaus, or is it
22 only in this one context that we should interpret the relationship number as a
23 caller ID?

24 MR. McCULLOUGH: I'm not sure I entirely understand the

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1 question, but I think it's the latter. Our expert's statement is based on this
2 teaching in Backhaus. So when it's transmitted as the calling party field of
3 the call, then it's being transmitted as caller ID. We're not saying necessarily
4 that every possible way that Backhaus uses the relationship ID is consistent
5 with conventional caller ID. I don't think we have any opinion about that.
6 But the transmission of it as part of the calling party field of the call, that is
7 being transmitted as conventional caller ID would be transmitted.

8 JUDGE CYGAN: Can you share the argument you just had up a
9 minute ago?

10 MR. McCULLOUGH: I can.

11 JUDGE CYGAN: So this discussion is about what caller ID would
12 do. Does this account for the fact that Backhaus's relationship number is not
13 synonymous with caller ID?

14 MR. McCULLOUGH: So I think there's two different paragraphs
15 shown here on slide 34. So paragraph 59 is our expert saying that a person
16 with ordinary skill in the art would understand the teaching in Backhaus
17 when it says calling party field of the call that you're transmitting it the same
18 way you transmit normal caller ID. So that's part one.

19 And then part two, which is paragraph 60, is the question of would a
20 person of ordinary skill in the art understand conventional caller ID to be
21 transmitted on the same channel or a different channel? And that's where he
22 says a person of ordinary skill in the art would understand conventional
23 caller ID is transmitted over the same channel. You wouldn't consider that
24 to be using a separate channel.

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1 So I think these are addressing two slightly different issues. And I
2 think perhaps what you're getting at is there's a distinction between the
3 content of this calling party field in Backhaus and how it's transmitted. And
4 the claim is directed to how it's transmitted by a data channel. The claim is
5 not directed to the content of the caller ID or to how it's used or how it's
6 decoded, how you interpret that star character. None of that is part of the
7 claim. The claim is how is it transmitted?

8 So I think, the distinction -- to the extent there are distinctions
9 between Backhaus's calling party field and caller ID, those distinctions are to
10 the content and the formatting of the caller ID, but they're not distinctions as
11 to how it is transmitted. There's no teaching in Backhaus that suggests it's
12 transmitted differently than conventional caller ID.

13 JUDGE CYGAN: So in your opinion, when we look at all the
14 discussion in, say paragraph 71 through 74 and other places in Backhaus to
15 talk about how the relationship number is being transmitted, we should
16 simply refer to conventional caller ID and not really pay too much attention
17 to those specific recitations and disclosures?

18 MR. McCULLOUGH: No, that's not our position with respect to
19 paragraph 71 and 74 in particular. Our position is that those should not be
20 considered in the context of an incoming call at all. Because Backhaus is
21 very clear in its description of figure 4A that the only way you get to
22 paragraph 71 to 74 is if you are not receiving an incoming call. You have to
23 follow this no path in figure 4A and then you have to follow the no path in
24 figure 4C to even get to paragraph 71 to 74.

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1 So the disclosures in paragraph 71 and 74 are not about conventional
2 caller ID. And our position is that they shouldn't be considered at all in the
3 context of an incoming call.

4 JUDGE CYGAN: And the discussion in other portions of it, for
5 example, paragraph 67.

6 MR. McCULLOUGH: Which paragraph, Your Honor?

7 JUDGE CYGAN: Without trying to pin down specific paragraphs,
8 your basic interpretation is that the discussions of a relationship number in
9 Backhaus and how it's being transmitted, we should only read those as if
10 they were talking about something which is a caller ID because your expert
11 relates the two together. Is that your argument?

12 MR. McCULLOUGH: No, I don't think that's right. Our expert
13 relates it to caller ID specifically in the context of the incoming call. So
14 that's described in paragraph 55 and a little bit in 60 as well. And in that
15 context, which is the petition's first way, it is being transmitted the same way
16 the conventional caller ID is. He is not saying and we're not saying that you
17 should treat the relationship number in Backhaus as if it were a conventional
18 caller ID. All we're saying is that in the first way, when the relationship
19 number is transmitted in this calling party field, then it is being transmitted
20 the same way as a conventional caller ID.

21 JUDGE CYGAN: Okay. Thank you.

22 MR. McCULLOUGH: All right. Going back to the inbound patents,
23 I'll address the data channel quickly. Most of the arguments from before
24 apply. The one additional argument that I want to address in slide 69 is that

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1 the petition makes this extra delay argument that you would use IP because
2 it allegedly reduces delays. And there's no merit to that argument because
3 the petition fails to explain why you would want to separate the caller ID,
4 the relationship number being transmitted in the calling party field from the
5 actual call itself.

6 Backhaus says it's part of the call. That's how conventional caller ID
7 is done. And in that way, you will get the caller ID at the same time that the
8 call ready to accept. But if you split them up, and if it actually were faster,
9 which is the premise of the obviousness modification that Petitioner has
10 proposed, then the user is going to get a notification that says you have an
11 incoming call before they actually get the call.

12 And so they're going to have that notification, but they're not going to
13 be able to accept the call, which would be a bad experience. Or maybe
14 there's network delay and the notification actually comes later. And so
15 they'll get the incoming call first, and they won't know who -- they won't
16 have the caller ID, so they won't know who the call was from. Either way,
17 it's a bad experience.

18 This delay argument is a purely hindsight-driven contention that just
19 generically using IP as fast does not -- is not consistent with Backhaus's
20 teachings, and there's no reason why you would split apart the caller ID in
21 the call in Backhaus to make this obviousness modification.

22 JUDGE MAYBERRY: Excuse me, counsel. This is Judge Mayberry.
23 What about the scenario where the caller is a new third-party caller, but
24 doesn't have a relationship number. So the platform has to make one? So

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1 then the caller ID, it comes in and it says unknown, because the module
2 that's on the handset doesn't have a relationship number associated with it.
3 So it doesn't know who the caller is.

4 So in fact, Backhaus says it would specifically say unknown caller.
5 But then the platform sends information on the new number. It gets stored
6 in the database on the handset, and it actually gets updated. Unknown caller
7 gets removed, and the caller ID gets put into place. That's paragraph 66 in
8 Backhaus.

9 MR. McCULLOUGH: Sorry, I thought I had it on the slide. I was
10 trying to jump there. So -- okay, here it is. It is paragraph 66. So what
11 Backhaus says -- and to be clear, I don't think this is relied on in the petition.
12 But nevertheless, what it says is that the call will come in, it will display
13 something as unknown caller because it doesn't recognize the relationship
14 number, and then it can ask for the third-party calling number.

15 And so it may get a separate transmission that gives you the third-
16 party number, but that's not the number that's required to be transmitted by
17 the claims. The claim requires that you get the relationship number, and the
18 relationship number has already come in through the caller ID. The fact that
19 you don't recognize the relationship number is how you know to display
20 unknown caller and to make this separate request for, hey, what is the actual
21 third-party contact number associated with this new relationship number. So
22 the relationship number is still transmitted in the caller ID. That's how you
23 know to do this extra step in paragraph 66 of asking for what the
24 corresponding third-party number is.

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1 JUDGE MAYBERRY: Okay. Thank you.

2 MR. McCULLOUGH: Okay. So now I want to address this concept
3 of the pre-call information and the antecedent basis that exists in the claims,
4 which we have proposed should be construed to require two things. One,
5 that the pre-call information is transmitted after you receive the call at the
6 switch or at the server in the preceding limitations shown here on slide 71,
7 and that the pre-call information relates to that specific call. And the basis
8 for this is the antecedent basis relationship that's demonstrated in the claims.

9 All of the claims say you receive an incoming call at the switch or at
10 the server. That's limitation 1F of the '770 patent, 1D of the '105, and 2A of
11 the '105. And then in a later step, they say you transmit pre-call information
12 that includes a bridge number that can be used to accept the D incoming call.
13 And that's 1G of the '770 patent, 1G of the '105, and 2B of the '105 patent.

14 So there's an antecedent basis relationship that is a classic case for
15 when claims impose an order between steps, because the default rule is
16 there's no order unless there's something in the claims that as a matter of
17 logic or grammar require it. And the antecedent basis is a classic case. We
18 cited the Hytera case in our briefing, but antecedent basis is a very
19 prototypical case where there is an order to the steps. And that's exactly the
20 case here. In order to transmit pre-call information --

21 JUDGE CYGAN: Counselor, sorry to interrupt you, but we discussed
22 this with your opposing counsel. They didn't argue that there was lacking an
23 antecedent basis connection. Can you address their argument about the
24 language on that? The fact that it could -- the pre-call information could be

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1 received before and sort of held in abeyance until the call comes in. Can
2 you address that argument, which I thought was the -- where we ended up
3 with Petitioner's counsel?

4 MR. McCULLOUGH: So I think I have a couple of responses to that.
5 So one, I thought it was very interesting when Petitioner was addressing the
6 same switch argument for the outgoing patents, they made a statement that
7 the calls all relate to a single incoming or single outgoing call. And so it
8 doesn't matter if you might use different switches between different calls.
9 And I agree with that.

10 That was never our argument on the switch limitation, but I think it
11 defeats the argument they're making here that you can have a bridge number
12 from one call, and then five days later, you receive an incoming call and use
13 the bridge number again and that satisfies the claims. That is not what the
14 claims are about. There's no disclosure of that anywhere in the claims, and I
15 don't think that's consistent.

16 Although they've claimed they're not disputing the antecedent basis, I
17 don't think that's consistent with the claim language, because the claim
18 language requires that the pre-call information include a bridge number that
19 is capable of accepting the incoming call. So it's a specific call. It's not any
20 incoming call from the same number, but it is the incoming call. So it has to
21 be a call that exists and that can be connected to at the time you're sending
22 the pre-call information, which is why the pre-call information step has to
23 occur after the call is received at the switch. And that is consistent with all
24 of the teachings and specifications. This is figure 4 of the '770 patent --

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1 JUDGE MAYBERRY: Excuse me counsel, this is Judge Mayberry.
2 So if the bridge number is received on Tuesday, and a call comes with that
3 bridge number on Wednesday, and the system is capable of using that bridge
4 number for connecting the call, that -- what was gotten on Tuesday would
5 not be pre-call information?

6 MR. McCULLOUGH: Correct. Because in the context of the claims,
7 pre-call information relates to, quote, the incoming call. So it is a specific --

8 JUDGE MAYBERRY: Yeah, but the incoming call comes -- I'm
9 sorry to interrupt you. But the incoming call comes on Wednesday. And the
10 incoming call is processed using that pre-call information that we got on
11 Tuesday.

12 MR. McCULLOUGH: So I would disagree that information
13 transmitted on a Tuesday relates to the incoming call received on a
14 Wednesday. The language in the claims is clear that you're talking about
15 one incoming call. You're not talking about two separate disconnected calls.
16 And you're not talking about the possibility of reusing a number for a
17 different call from the same third party. That is -- that's not what the claims
18 are talking about. That's not what specification is talking about. I don't --
19 that is a complete misreading of the patents to try and morph the patents to
20 fit onto Backhaus. But the patent --

21 JUDGE CYGAN: How do you explain column 9 then? Isn't column
22 9 about future conference calls, future scheduled conference calls? Can you
23 explain how that plays into it?

24 MR. McCULLOUGH: Column 9 of which patent?

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1 JUDGE CYGAN: Of the '105 patent.

2 MR. McCULLOUGH: So I'm not sure what part of this you're talking
3 about, but column 9 primarily relates to a conference call invite, which is not
4 even the claimed embodiment. But I think if I understand the point behind
5 your question, so it's absolutely true that in the patents, the bridge number is
6 reused over multiple calls. But that does not -- there's nothing that ever says
7 that the pre-call information can be transmitted in advance of actually
8 receiving a call. You can transmit it one day and that counts as pre-call
9 information for a call received five days later.

10 JUDGE CYGAN: Just to clarify, on column 9, line 10, when the
11 invitation messages include the assigned bridge telephone number for the
12 conference call, and that conference call is in the future, that's outside the
13 scope of claim 1. That's not pre-call information.

14 MR. McCULLOUGH: That's not relevant to the claims at all, Your
15 Honor. That is not an incoming call from a third party. That's setting up a
16 conference call and inviting people to the conference call. It's not -- you're
17 not receiving an incoming call directed to a secondary number, which is
18 what the claims are about. So I don't think that embodiment is relevant at
19 all. I don't think Petitioner has relied on it in any of their arguments. The
20 claims are about receiving an incoming call to a secondary number.

21 And they say that you receive that call and then you transmit pre-call
22 information that includes the bridge number that you can use to connect to
23 that call. And based on the plain language of the claims and based on all of
24 the disclosure in the specification, we think it is clear that that must refer to a

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1 single call. You can't treat the receiving a call step and the transmitting pre-
2 call information step as relating to two different calls, even if they happen to
3 be calls from the same number. We don't think that's consistent with the
4 claim. It's not consistent with anything in the specification. There's no
5 teaching of that anywhere.

6 JUDGE MAYBERRY: Yeah. Well, counsel, again Judge Mayberry
7 here. Our starting point with claim 1, a method claim, is that these steps can
8 be done in any order, unless the steps teach or recite an order based on how
9 they're structured. So, for example, acquiring a first digital information and
10 then storing -- I guess, that includes a primary call processing rules. And
11 then storing the processing rules, I would contend you have to acquire before
12 you store. So that language seems to suggest an order in those two steps.

13 But I still do not -- I'm not persuaded so far from whatever I've heard
14 from you and read from patent owner, that I could not be given pre-call
15 information, pre-call, before call information on a Tuesday associated with a
16 call I'm going to get Wednesday, but then allows me to process the call
17 based on the other steps in the claim. I don't see the fact that it refers to the
18 call.

19 That's merely an antecedent basis using a V because a call was recited
20 earlier. I don't think that that in and of itself is sufficient to provide a
21 requirement that the pre-call information has to come in after the call is
22 initiated. So that's where I'm at right now, to be honest.

23 MR. McCULLOUGH: So I'll look -- I'll focus just on the middle
24 claim language here just because it's the shortest, but it's the same

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1 requirement in all three. So if you look at limitation 1G of the '105 patent, it
2 says set pre-call information, including a bridge telephone number for
3 connecting the handset to the incoming call at the switch. So if you're -- in
4 your hypothetical, if we're talking about a transmission made on Tuesday,
5 that transmission does not satisfy this limitation because it doesn't include a
6 bridge telephone number for connecting to the incoming call. There is no
7 incoming call to be connected to on Tuesday.

8 JUDGE MAYBERRY: Oh, well, of course it does. You're going to
9 call me on Wednesday. I know that. My system has sent me the bridge
10 number on Tuesday so that when you call me on Wednesday, I can use that
11 bridge number to connect to the incoming Wednesday call from you.

12 MR. McCULLOUGH: So you don't know that there's an incoming
13 call. And even if you did, when the pre-call information is being
14 transmitted, in your example, on Tuesday, there is no call to connect to. So
15 at the moment that it's being transmitted, it does not include any bridge
16 telephone number for connecting the handset to the incoming call. Under
17 your view -- under that view, the pre-call information would only meet this
18 claim language a day later. And so it would be changing of status over time.
19 I think that's a very strange way to read the claims. I don't think that's
20 consistent with how claims are normally interpreted in patent law.

21 When it says the pre-call information includes a bridge telephone
22 number for connecting the handset to the incoming call, do you think that
23 means based on the plain claim language that when you transmit that pre-
24 call information, it has to include something that can connect to an incoming

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1 call at that moment? It can't be a hypothetical, maybe you'll receive a call in
2 the future and be able to use it. In order to satisfy the plain claim language,
3 the pre-call information has to include a bridge telephone number for
4 connecting to the incoming call.

5 And if in your example, where it's a future notification, there is no
6 bridge telephone number for connecting to the incoming call because there is
7 no incoming call when you transmit the pre-call information. So I think here
8 the antecedent basis relationship and the structure of the claims really
9 requires an order that the pre-call information is transmitted after you
10 receive the call to switch. And that it relates to that call such that you can
11 use the bridge telephone number to connect to that specific call, not to some
12 other hypothetical future call from the same number.

13 JUDGE MAYBERRY: All right. Thank you, Counsel. You can
14 move on.

15 JUDGE WEINSCHENK: Mr. McCullough, just so you know, you
16 have about 15 minutes remaining in your rebuttal time now.

17 MR. McCULLOUGH: Sure. Let me just address a couple of points
18 very quickly. So the petition is focused on this argument that you can
19 transmit pre-call information before or during ringing. Sorry, I'm on slide
20 76. That's irrelevant to the construction we're advancing. The construction
21 that we're advancing is the pre-call information has to be after the call is
22 received at the switch. We're not imposing any timing requirements with
23 respect to when you ring at the handset.

24 Now, let me quickly address that the pre-call information must

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1 include the handset associated telephone number. So this is the '360 patent
2 or '360 petition only. And the premise of this argument is that you will use -
3 - you would include the handset number to distinguish between calls. But
4 our expert has explained, you can't reuse the same relationship number for
5 different contacts. Because if you did, Backhaus's routing would break
6 down.

7 So there's no reason to make the modification that Petitioner is
8 proposing. It is purely a hindsight-driven modification to try and match the
9 claims. Because you already have enough information in Backhaus with just
10 the relationship number alone to know exactly who's been called. And that's
11 true even if you have multiple SLS numbers. That's true even if the other
12 party calling you is an SLS number, you have enough information. And this
13 expert testimony is unrebutted. They chose not to have their expert respond
14 and reply.

15 And then finally, I want to address the Winbladh combination very
16 briefly. This only applies to the '361 petition. And I just want to highlight
17 one I think really interesting and important point. In their reply, for the first
18 time, the petitioner's contended that Winbladh could use the internet to
19 bridge any distances between the parties that are communicating at a
20 constant and low rate. And this is their support for how it allegedly would
21 save money and therefore justify the combinations.

22 But this argument, I think, aside from the fact that it's new, this
23 argument completely defeats the contention that the Backhaus-Winbladh
24 combination would use the same switches. Because they've now conceded

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1 that Winbladh is replacing conventional call routing over PSTN with some
2 other routing over the internet to bridge distances. And to bridge distances
3 means your colleagues on the two different sides are going to be connected
4 to different switches. They're not going to have a common switch as
5 required by the claims. They're going to be connected across the internet
6 and they're never going to have the common switch that the claims require.

7 And so I think it's very telling that the petitioner has conceded that
8 Winbladh is using this internet routing system because it confirms our
9 arguments that you would not combine the system because Backhaus
10 teaches away from that. And it also would not use the same switch.

11 And I'll make a final point that the petitioner suggested that we did not
12 respond to the Taylor grounds for the '361 patent. But the Taylor grounds
13 for the '361 patent don't have any effect on whether it makes sense to
14 combine Backhaus and Winbladh. All of our arguments that a person of
15 ordinary skill in the art would not combine them and that combining them
16 would not use the same switch apply regardless of whether you add in this
17 PSTN interface from Taylor, which is the only argument you need in
18 relation to Taylor.

19 So the Taylor argument is irrelevant. The Backhaus-Winbladh
20 combination fails because a person of ordinary skill in the art would not
21 combine those references and they do not (audio interference). And, with
22 that, I will reserve the remainder of my time.

23 JUDGE WEINSCHENK: All right. Thank you, Mr. McCullough.
24 You have 13 minutes remaining for your rebuttal. We've been going for

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1 about three hours now. Let's take a short break here for a recess. Let's say
2 about ten minutes. So, it's 4:04 now. Let's be back online at 4:15 to do
3 rebuttal and surrebuttal. All right. We're off the record.

4 (Whereupon, the above-entitled matter went off the record at 4:04
5 p.m. and resumed at 4:15 p.m.)

6 JUDGE WEINSCHENK: All right. This is Judge Weinschenk. It's
7 4:15, so let's go back on the record here. Mr. Zeilberger, can you hear us all
8 right?

9 MR. ZEILBERGER: Yes, Your Honor. Can you hear me?

10 JUDGE WEINSCHENK: I can. Mr. McCullough, are you there, and
11 can you hear us?

12 MR. McCULLOUGH: Yes, I can.

13 JUDGE WEINSCHENK: All right. Mr. Zeilberger, you have by my
14 account here, 47 minutes remaining for your rebuttal. You can get started
15 whenever you're ready.

16 MR. ZEILBERGER: Thank you, Your Honor, and I'll address the
17 issues in roughly the same order that patent owner presented them in. I
18 won't endeavor to address every single issue, but suffice it to say we do kind
19 of stand on our papers to the -- I don't touch on an issue, but I'll start with
20 respect to the Taylor grounds with respect to the switch and an argument that
21 patent owner raised that the Board shouldn't even resolve the Taylor
22 grounds.

23 I think the way patent owner framed it is that it's a conditional ground,
24 and that that's a reason why the Board shouldn't address it. I think that

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1 would be error and I think the patent owner would be leading Your Honors
2 to error with that instruction. I think both the Federal Circuit and the
3 Supreme Court have been clear that all grounds of unpatentability have to
4 be addressed at final decision.

5 And I think what's kind of funny, for lack of a better word here, is that
6 patent owner is essentially saying, well, they buy into the Backhaus ground
7 sufficiently. Even though they disagree with them, that you shouldn't reach
8 the Taylor grounds. And I think it's clear that the Taylor grounds were
9 presented in a context where we're essentially saying, if you disagree that
10 Backhaus itself teaches a switch because of its disclosures relating to PSTN
11 networks, then Taylor in any event renders such a switch obvious.

12 JUDGE WEINSCHENK: Mr. Zeilberger, can I ask you a question on
13 this Taylor ground?

14 MR. ZEILBERGER: Yes, Your Honor.

15 JUDGE WEINSCHENK: I think I posed a question in your opening
16 argument. And I want to come back to it for a second. In your petition, you
17 argued that Taylor's PSTN interface is similar to the switch described in the
18 '585 patent, and I'm talking about the '357 case. I know you made some
19 more arguments in the other cases. But the claims require more than it's just
20 similar to the switch. It does require that the switch do certain things, for
21 example, that it receive an outgoing call from the mobile device, receive
22 information from the server directing the switch to connect the outgoing call
23 to the contact telephone number, and there's others in the claim as well.

24 And I went back through your petition and I'm having some trouble

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1 figuring out how do we know that if you take this PSTN interface from
2 Taylor and include it in Backhaus, that it's going to satisfy all those
3 limitations? Previously you argued that the thing that does those limitations
4 is the switch inside the PSTN network. How do we know that if you
5 incorporated and added an interface, that somehow that interface would
6 perform and satisfy all those limitations in the claims?

7 I think you said something to the effect that it would do the same
8 thing that this local exchange does. Perhaps that's correct, but I couldn't find
9 anything in the record that we could cite to as evidence that that's what the
10 interface would do. So maybe if you could take a look and try to point me to
11 something as to where you make that argument or what evidence might
12 support that.

13 MR. ZEILBERGER: Your Honor, so I think the way to look at it is
14 the claims have a series of steps, let's say steps, A, B, C, and D. Set aside
15 for a moment what the structure is they have. It's domestic claims and they
16 have a series of steps that have to be performed. And some of those steps
17 are recited as being performed by, or kind of associated with in some way,
18 the switch. There is -- in our view, it's indisputable that Backhaus, or in
19 some cases Backhaus together with other references, but kind of focus on the
20 anticipation grounds for a moment. Backhaus teaches performing those
21 steps, setting aside the switch for a moment.

22 When you're talking about these communicating between device A
23 and the SLS interface, or between the SLS interface and device B, there's
24 only one way out of the SLS interface. You connect to the PSTN network.

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1 And so, there's no other way to do it is the short answer, Your Honor, that if
2 you have a PSTN interface, that is communicating with the PSTN network.

3 If you only have one PSTN interface and Backhaus is teaching you
4 perform all these steps and interact and establishes connections and these
5 would happen with the PSTN network, that's how it would work if you have
6 a single PSTN interface in Backhaus's SLS interface. You couldn't have a
7 connection between the device A and the SLS interface if it's not through the
8 PSTN interface, and you can have a connection from the SLS interface to
9 device B if it's not through the SLS interface. That's its very function.
10 That's its role, and that's what we focused on our petition.

11 When talking about obviousness, we were talking about how -- what
12 would be the component that connects to the PSTN. Backhaus already
13 teaches everything except for what component it is that interacts with the
14 PSTN network. And all that we're adding is this one missing piece where,
15 okay, it's a PSTN interface module itself. That's the component that
16 connects to the PSTN network.

17 JUDGE WEINSCHENK: I guess I understand your argument. It's
18 just I'm having trouble finding that in the record such that I could cite to
19 something to say that that's how the interface is going to work when it's put
20 in there. I think the only thing we have is that it receives and processes calls
21 and nothing more specific than that.

22 MR. ZEILBERGER: I'm looking through my petition right now. If
23 you just give me a moment. So, again, I guess I am not completely sure I
24 understand your question in that. Our position -- if we start -- I think the

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1 way to look at it is we have to start with ground 1 and the anticipation
2 explanation where we explain how in our view there is a local switch in the
3 PSTN network that the SLS interface interacts with and we establish in
4 ground 1 already how each of the steps in the method claim, assuming we're
5 correct about the local switch, would teach the relevant method steps,
6 including their association with the switch.

7 Flyp's only quibble with that is that, well, it might not be a single local
8 switch. You might have lots of switches because maybe the person's
9 moving around, or maybe the server is moving around, or there's load
10 balancing, what have you. We're not disputing in the context of the switch
11 that you're going to have a PSTN or SLS interface. That's connecting with
12 even a switch. They're just saying there's multiple switches.

13 Here for this ground, we're really just, we're not changing anything
14 about the steps being performed or their interactions with the PSTN. All
15 we're saying is, well, there's another side to this connection. On the one side
16 there's the local switch, on the other side of that connection with the local
17 switch, there is a PSTN interface.

18 So even if you want to say, well, the PSTN interface itself might
19 connect with multiple local switches, you'll have a single PSTN interface.
20 But that's all this ground attempted to establish. It's all it needed to establish
21 and when you look at it from that perspective, all of our arguments in ground
22 1 still apply. And, yeah.

23 JUDGE WEINSCHENK: Okay. I think I understand your position. I
24 did want to ask you also about -- while we're on this topic about the

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1 anticipation aspect of this and the inherency argument based on Backhaus
2 alone. I was looking back through your evidence, and it looks like we have -
3 - this is what you pointed to in your slides. We have Taylor figure 1A,
4 which appears to show a server connecting to a single local switch, or at
5 least saying that that's a possibility that it can connect to just one switch.

6 You've got Exhibit 1011 which refers to various places, for example,
7 the subscriber's local switch or the calling party's local switch maybe
8 suggesting that there's just one local switch for each party. And I believe
9 your expert sort of talks about how a local switch could do these things. But
10 my question for you is, I couldn't find anything in there that indicates that
11 that's the only way to do it. And I think that's what you have to prove here
12 that it's going to necessarily do this through one single local switch, and
13 maybe the documents and testimony would have indicated that that's a
14 possibility.

15 But how do we know from the evidence that you have that's the only
16 way? Because I didn't see -- like I mentioned in the opening, I didn't see a
17 reply declaration from your expert rebutting the fact that it could be done
18 other ways. So I'm curious. Is there a piece of evidence I'm missing here
19 that really hammers home that that's the only way to do this?

20 MR. ZEILBERGER: I would disagree that Exhibits 1007 and 1011
21 don't establish that it's the only way when we're talking about a conventional
22 PSTN. Here, patent owner has admitted that both Backhaus and Taylor are
23 both direct to conventional PSTNs and whether we could have some non-
24 standard PSTN, which there's no evidence in the record of. patent owner

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1 said that their expert cited evidence, but their expert only sites Backhaus.
2 He doesn't cite anything besides Backhaus.

3 JUDGE WEINSCHENK: But let's assume for the moment. I'm not
4 disputing with you here. I'll agree with you that these references talk about
5 conventional PSTN networks. I'm just like, if I look at figure 1A of Taylor,
6 I agree this certainly looks like it's connecting to one local switch, but how
7 do I know that there's not something else out there? Like, it doesn't -- there's
8 nothing in the text or any statement from your expert that I could find that
9 says, this is -- in a conventional network, this is the only way to do it. It's
10 certainly one way and I agree it shows that, but how do I know that there
11 isn't another possibility?

12 MR. ZEILBERGER: I think that is -- if I understand your question
13 correctly, Your Honor, I think that's applying too high of a standard. This is
14 not a sort of chemical case or a mathematical certainty case where we're
15 asking -- we're looking at whether something would necessarily operate in a
16 particular way inherently, like, say, a compound would necessarily melt at a
17 particular temperature, whether that would inherently happen.

18 Here, I think that the relevant legal question is how would a person of
19 ordinary skill in art interpret Backhaus's reference to a conventional PSTN?
20 And on that question, we have our expert's testimony based on Exhibit 1007,
21 based on Exhibit 1011, based on Backhaus, that a person of ordinary skill in
22 the art reading Backhaus, reading its reference to a conventional PSTN,
23 reading Taylor state of the art reference on how you can see an exhibit in
24 figure 1A. The PSTN interface kind of an arrow pointing to one particular

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1 switch 12. Different components pointing to different particular switches
2 12. Putting that all together, that's how a person of ordinary skill in art
3 would read Backhaus.

4 JUDGE WEINSCHENK: I guess the trouble I'm having is we have
5 testimony from patent owner's declarant saying that I would read this and
6 know that in a PSTN network, as they exist, that you can have one server
7 connecting to multiple local switches. And we've got nothing from your
8 declarant or any documentary evidence indicating that that's not a possibility
9 or a known possibility, at the time of the references.

10 MR. ZEILBERGER: Well, I would disagree in the sense that we have
11 our expert's declaration where he opined that this is how a person of
12 ordinary skill in the art would interpret the Backhaus reference. And their
13 expert can say a lot of things, but they're just words. I mean, if it was
14 actually a possibility, something that people of ordinary skill in the art at the
15 time would actually consider, one would expect that patent owner would
16 have cited that as evidence, and they didn't. And I think that's very telling
17 that they didn't because their expert was just postulating on things that are
18 not relevant for a conventional PSTN network.

19 JUDGE WEINSCHENK: Okay. Thank you.

20 MR. ZEILBERGER: With respect to the Taylor ground, I also want
21 to point out that patent owner said a couple of times that we are suggesting
22 to add a second PSTN interface to Backhaus. That's outright not correct that
23 patent owner said that for the first time, and they still reply we're absolutely
24 not suggesting that you would add a second PSTN interface to Backhaus.

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1 As I explained in my opening presentation, we're simply saying that you
2 would modify or configure Backhaus to have a PSTN interface in view of
3 Taylor's teachings.

4 Regarding the meeting of the word switch, I don't think it's
5 appropriate for patent owner to now run away from its admissions that the
6 District Court relied on in District Court. But I would also say that Your
7 Honors don't need to necessarily go as far as kind of came during the
8 exchange to my opening about seeing a server itself is a switch. I've never
9 said that that's our new position that that's not our position. I said that's not
10 one of our grounds.

11 We're not relying on a server in itself, being a switch. We're relying
12 on, in the case of anticipation, the local switch, and in the case of
13 obviousness, a particular PSTN interface. And Flyp during its presentation
14 conceded that a switch is not limited to a switch in a PSTN network, and it
15 could be simply, I think they said, a box sitting next to the server.

16 Regarding the data channel, one moment, Your Honor. So regarding the
17 data channel, patent owner argued that it's conclusory for us to argue that
18 because there is no voice information sent yet in Backhaus, there wouldn't
19 be a voice channel and it would send via a data channel.

20 I think that position doesn't properly take into account the disclosures
21 in the specification at column for lines 49 to 60, which, as we saw earlier,
22 specifically say that when CDMA -- similar communications are, quote,
23 used to carry voice information only in that circumstance, or the voice
24 channel. It also doesn't take into account their own expert's admission in

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1 deposition that a cellular protocol will qualify as a voice channel, quote,
2 when you're sending voice traffic. Again, that was that Exhibit 1102, page
3 41, line 23 to 42, line 4.

4 Regarding the calling party, Backhaus's reference to a calling party
5 field of the call pointed to this to suggest that that part of the call has to be a
6 voice channel. I think their theory is that because you use the word call. In
7 layman's terms, when you think of a call, that's a voice call, but Backhaus is
8 very clear at paragraph 30 that when Backhaus uses the word call, it refers
9 very broadly to things like, quote, a voice transmission, yes, but also a text
10 message, a video message, a page and a data transmission. So Backhaus
11 even refers to a call as being a data transmission.

12 So the fact that there is a calling party field of the call, that does not
13 mean that it would not be a data transmission. Patent owner suggested we
14 were making some sort of genus/species argument. In terms of paragraph
15 73, we're not in the case of the first way when we're citing to paragraph 73.
16 For the first three proceedings, the '357 to 58 to 59 proceedings where it's
17 our position as I indicated that that disclosure is a disclosed option for how
18 data communication can occur including for the first way.

19 And for the '360 and '361 proceedings, as I explained, we also have an
20 obviousness position based on paragraph 73, and I didn't quite understand. I
21 think that the patent owner is arguing that the genus/species -- its
22 genus/species argument applies to that. I didn't quite understand it, but our
23 position is very clear there that I'm really taking the disclosures in paragraph
24 73 would have rendered it obvious to also apply those same data protocols to

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1 the data transmission in the first way.

2 In terms of Backhaus's disclosures in paragraph 72 and 73, I think
3 patent owner has argued today for the first time that those data protocols
4 essentially, at least as I understood their argument, that it's only describing
5 communication in one direction. That it can go from the module to the SLS
6 interface, but not back from the SLS interface to the module. I think that's
7 flatly inconsistent with what Backhaus teaches about the relationship of the
8 data exchange in paragraph 71, 72, 73 and 74, and I think one excerpt from
9 paragraph 73 in particular. It's pretty telling where it says -- I'll just read it.

10 In paragraph 73 of Backhaus, as would be recognized by one of
11 ordinary skill in the art, use of session-based protocols or other
12 communication protocols may minimize temporal delays in allocating and
13 acquiring relationship numbers between an SLS module and an SLS
14 platform 115. So it's clearly contemplating not only requesting the
15 relationship number, but also sending it back to the SLS module.

16 In terms of patent owner's argument that the relationship number,
17 when it's part of the caller ID is merely a caller ID and it's not actually being
18 used, that as well is inconsistent with what Backhaus teaches, for example,
19 at paragraph 67, Backhaus specifically says that the relationship number in
20 the calling party field of the call signaling causes the SLS module 105 to
21 handle the call. So that's a particular functionality. It's not just data that's
22 displayed to the user. Specifically, it's how the SLS module works. It
23 impacts its functionality. Backhaus's system wouldn't work if not for the
24 relationship number getting sent to the SLS module and the SLS module

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1 detecting that there is a relationship number there.

2 In terms of the limitation in the '360 proceeding that the pre-call
3 information includes the handset associated telephone number, Flyp claimed
4 that their expert's testimony about why you would not want to include the
5 handset associated telephone number is unrebutted. That's not correct. As I
6 previously explained, their expert's testimony was, in fact, based on a clear,
7 plain factual error that Backhaus's SLS system does not permit calls to the
8 primary number of an SLS subscriber. As I talked about before, Backhaus is
9 very clear that within the context of its SLS system, you can have calls and it
10 enables calls to the primary number.

11 In addition, Flyp seemed to have made a new argument today, as I
12 understood it, that the pre-call information itself in the '360 and '361
13 proceedings is received on the switch. They seem to argue that because we
14 were pointing out how the claims are directed to a single call and how that
15 implies that you're going to have a single local switch because it's a single
16 call. That means that -- well, it doesn't make sense for the pre-call
17 information to come earlier. And I think their takeaway was that that's
18 because the pre-call information itself is received on the switch.

19 But what I think what's actually very telling there on this issue is that
20 actually the claims don't. One place where the claims don't talk about a
21 switch is for the pre-call information. None of the claims say that the pre-
22 call information is received on the switch. I think that's very telling for the
23 question of when the pre-call information is received.

24 Unless Your Honors have any questions, those are the issues I

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1 wanted to highlight today. As I indicated at the beginning, obviously, we
2 stick to the positions that we laid out in our petition and reply, and I
3 welcome any questions Your Honors have.

4 JUDGE WEINSCHENK: Nothing else from me. Judge Mayberry,
5 Judge Cygan, anything from you?

6 (No audible response.)

7 JUDGE WEINSCHENK: All right. Thank you, Mr. Zeilberger.

8 MR. ZEILBERGER: Thank you, Your Honor.

9 JUDGE WEINSCHENK: All right. Mr. McCullough, you have 13
10 minutes left for your surrebuttal. Please start whenever you're ready.

11 MR. McCULLOUGH: Thank you. So I want to start with the same
12 switch inherency argument. And I think Petitioner's argument is simply
13 inconsistent with the legal standard. They made arguments that you would
14 expect patent owner to have cited evidence. No, we have no burden at all to
15 cite any evidence under the inherency standard. It is Petitioner's burden to
16 establish that it is necessarily the only way that Backhaus operates is using a
17 single switch.

18 They also suggested that there is some difference because this is not a
19 chemical or a mathematics case. That is not consistent with the law either.
20 There is no any sliding scale of inherency. Inherency is an absolute
21 proposition. And the petition advanced an inherency argument, so they have
22 to establish that the only way to configure Backhaus is by using a single
23 switch. And there's no evidence of that.

24 And I think in their argument, Petitioner has continued to conflate two

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1 different things. They talked a lot about how the PSTN network is
2 structured. That is not what -- that is not where the dispute is. The dispute
3 is how Backhaus connects to the PSTN. It doesn't matter how the PSTN is
4 structured.

5 We're not suggesting that there's some way to modify the PSTN.
6 What we're suggesting is that there's at least two different possible ways to
7 connect Backhaus to the PSTN. You can either connect it through a single
8 switch or you can connect it through multiple switches. And they have not
9 identified a single piece of evidence that establishes that it is impossible to
10 connect Backhaus to two different switches and to use them for the two
11 different lines of a call. And because of that, they failed to show inherency.

12 And I think it's particularly telling that despite having a chance to
13 submit a reply declaration from their expert to dispute that this was possible
14 or just to give some reason why this, you know, our proposed scenario was
15 technically impossible. They chose not to do that. They chose not to submit
16 any evidence in response to our expert's explanation of a different possible
17 configuration. And because of that, they have failed to show inherency.

18 Next, I'll address the Taylor combination briefly. And I think -- I
19 forget which of you was questioning, but I agree completely that they have
20 not identified any evidence that this PSTN interface meets the claim
21 limitations. And our expert, Dr. Akl, in paragraph 101 of his declaration, in
22 the '357 case, he explained that a person of ordinary skill in the art would
23 understand Backhaus already has its own PSTN interface.

24 So if they're proposing this modification, there should have been some

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1 explanation of are you replacing it, are you adding it, how are you doing
2 that, and how, once you've done whatever replacement or modification
3 they're proposing, does it meet the claims? And there's no evidence of that,
4 which he addresses in the previous paragraph, paragraph 100. And so there's
5 simply no evidence, even if you consider this argument that the PSTN
6 interface is a switch, which it's not, there's no evidence that it meets any of
7 the claim limitations or remedies any of the other deficiencies.

8 Turning to the data channel argument, with respect to the language
9 and the specification that talks about when used to carry voice information --

10 JUDGE WEINSCHENK: Mr. McCullough, could I ask you one
11 question about the switch issue? As Petitioner pointed out, patent owner did
12 take a position regarding what a person of ordinary skill in the art would
13 understand switch to mean in a related District Court case. I believe they
14 cited your responsive claim construction brief in that case. I think it's maybe
15 Exhibit 1009 perhaps, or 1109. But is there a reason why we shouldn't adopt
16 that construction here or we shouldn't hold you to that construction here? I
17 mean, if that's what you say it means, why does it mean something different
18 in this case?

19 MR. McCULLOUGH: So I think if you look at that, I don't think --
20 so first of all, that wasn't a proposed construction. Let me just put up. So
21 this is Petitioner's slide at 61. This is the language they quoted from Exhibit
22 1009. And so this was in response to an indefiniteness argument. It was
23 not a proposed precise definition. But if you look at what we say in the first
24 excerpt they've cited, all it says is that switch describes a broad category of

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1 structures, including both mechanical and software switches. Nothing about
2 that is inconsistent with what we've -- with the position that we've taken here
3 today.

4 This does not -- there was no discussion of Taylor's PSTN interface.
5 There was no discussion of a reference that called something a switch and
6 then called something else a PSTN interface. So there's simply no
7 contradiction. And what we say in the second excerpt here, the switch is an
8 element that facilitates connections. Again, that was not an attempt to
9 provide a precise construction. And this is -- that's consistent with what a
10 switch is, but I don't think that's a precise definition and no one ever
11 suggested that it was.

12 So I don't think there is a contradiction here. I think Petitioner is
13 trying to create some inconsistency that simply isn't there. And I apologize,
14 I guess I wasn't sharing. But I was -- I can put that up on the screen really
15 quickly. I was looking at slide 61 of Petitioner's demonstratives and these
16 are the two statements, and I don't think either of these is inconsistent with
17 any position taken here.

18 JUDGE WEINSCHENK: Okay. Thank you.

19 JUDGE CYGAN: One question on the switch question.

20 MR. McCULLOUGH: Yes.

21 JUDGE CYGAN: In the petition, was the argument made that it was
22 inherent, or was the argument made that it anticipated because of the
23 disclosure of Backhaus? I'm not sure I saw the word inherent being used
24 except for your briefs.

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1 MR. McCULLOUGH: So the argument in -- and I'll cite you to the
2 '357 petition at page 34. The language that uses a POSITA would have
3 understood that network 125 necessarily includes the plain switch. So I
4 think that necessarily includes language was clearly invoking an inherency
5 argument. In the next sentence, they say a POSITA would have understood
6 that an SSD is a necessary part of the PSTN.

7 So although they didn't -- I don't think they use the word inherent, but
8 they use this necessarily language, which is clearly invoking an inherency
9 theory. And they've never at any stage of proceedings or in the oral
10 argument today, as far as I'm aware, they've never disputed that they're
11 relying on inherency.

12 JUDGE CYGAN: Can you give me that page number again?

13 MR. McCULLOUGH: Yeah. Page 34 of the '357 petition.

14 JUDGE CYGAN: Okay. Thank you.

15 MR. McCULLOUGH: All right. Regarding Backhaus's teaching that
16 the relationship number is included in the calling party field of the call,
17 Petitioner made the argument that Backhaus describes things like videos and
18 text messages and data transmissions. One, that that was an improper new
19 argument that was included in reply. They've never relied on any type of
20 call other than a voice call, and that is consistently cited throughout the
21 petition. They are consistently referring to voice calls. They're referring to
22 the PSTN. So there is no coherent theory of invalidity for any type of call
23 other than a voice call.

24 So not only is it a new argument, but it's simply inconsistent with

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1 everything in the petition. And the fact that they're grasping at this
2 disclosure, I think, supports our position that they don't have a response to
3 the fact that Backhaus expressly teaches the relationship number is
4 transmitted as part of the call. That is the language that Backhaus uses in
5 paragraph 55. And they have proposed that it is somehow separate from the
6 call, but there is simply no way to read Backhaus to get the separation that
7 they are talking about.

8 Regarding paragraphs 71 through 74 of Backhaus, the petitioner said
9 they're not making a genus/species argument. I don't think that's consistent
10 with what they've argued in their reply. They are clearly making an
11 argument that because a relationship number is used either to set up a
12 database or to communicate between the platform and the server, the client
13 and the server, that it can be transmitted through IP because that is what they
14 claim Backhaus teaches. That is a clear genus/species argument.

15 We cannot assume that just because Backhaus says you can use IP to
16 set up relationship databases, that specific transmission of a relationship
17 number from Backhaus's platform to its client in the specific step that they're
18 relying on paragraph 74 is part or is done on a data channel. You can't make
19 that assumption. That is the Metabolite Labs case that we cited. You can't
20 make that assumption for either anticipation or obviousness.

21 Their expert simply has not identified any teaching anywhere in
22 Backhaus that links the paragraph 74 and specifically the step 448, which is
23 a new step being introduced in paragraph 74 with any transmission over an
24 alleged data channel. There's nothing that links that specific transmission to

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1 a data channel. There's no argument why it would be obvious to do that
2 specific transmission on a data channel. The petitioner and its expert are just
3 assuming that because it's a transmission between the platform and server, it
4 can be IP. But that is a legally deficient argument under the Metabolite Labs
5 case.

6 And then finally, I'll turn to the pre-call information. I heard some
7 suggestion that we were arguing the pre-call information has to be received
8 by the switch. That's not true. The pre-call information is transmitted from
9 the server to the handset. That's what all of the claims require. That's all
10 they said. The argument that I was making with respect to the switch was in
11 the context of the switch inherency argument.

12 Petitioner made the statement that the claims are limited to a single
13 incoming call or a single outgoing call. And so it doesn't matter whether
14 you can have different switches for different calls. And we agree, and that
15 was never the argument we were making on switch. But their admission that
16 the claims are directed to a single incoming call or a single outgoing call
17 defeats this theory that the pre-call information can be transmitted on a
18 Tuesday and relate to a call on a Thursday. That is not what the claims are
19 about.

20 There's no disclosure anywhere in the specification. And it is not
21 consistent with the plain claim language because the pre-call information has
22 to include a bridge telephone number for connecting, quote, the incoming
23 call. And a pre-call information that's transmitted on Tuesday, if there's no
24 incoming call, then it doesn't meet that claim limitation of having a bridge

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1 number for connecting to, quote, the incoming call.

2 You cannot rely on the hypothetical possibility of a future call from
3 the same number to satisfy the plain language. That's not a reasonable
4 interpretation of the claim. That would render the claim to have different
5 meanings at different points in times. It would make infringement depend
6 on different points in time, the message or whether or not an actual incoming
7 call came in from that number five days later. It's just not a reasonable way
8 to read the claims.

9 The only reasonable way to read the claim based on the antecedent
10 basis and based on the disclosure in the specification is that the pre-call
11 information has to come after the call is received at the switch. And with
12 that, unless Your Honors have any questions, I'll conclude my argument.

13 JUDGE WEINSCHENK: Nothing from me. Anything from you,
14 Judge Mayberry or Judge Cygan?

15 (No audible response.)

16 JUDGE WEINSCHENK: All right. Well, thank you, Mr.
17 McCullough. I just want to say thank you again to the parties for being a bit
18 flexible today. I know you offered to cut back to 90 minutes, but it feels like
19 we probably kept you here for the full time anyway. So thank you all for
20 your preparation and for answering all of our questions. Certainly, it's
21 extremely helpful to us. So thank you for all of that. Before we adjourn,
22 any questions or issues from Petitioner's side, Mr. Zeilberger?

23 MR. ZEILBERGER: No, Your Honor. Thank you very much.

24 JUDGE WEINSCHENK: Anything from you, Patent Owner Mr.

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1 McCullough?

2 MR. McCULLOUGH: No, Your Honor.

3 JUDGE WEINSCHENK: All right. Well, thank you again for your
4 time.

5 (Whereupon, the above-entitled matter went off the record at 4:51
6 p.m.)

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