

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,
Petitioner

v.

G+ COMMUNICATIONS, LLC
Patent Owner.

IPR2023-00441
Patent 10,448,430 B2

Record of Oral Hearing
Held: May 6, 2024

Before GREGG I. ANDERSON, SCOTT B. HOWARD, and JASON M.
REPKO, *Administrative Patent Judges*.

APPEARANCES:

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

(1:00 p.m.)

JUDGE ANDERSON: Good day. This is the final hearing on IPR 2023-00441. Petitioner is Samsung Electronics Company, Limited and the Patent Owner is G+ Communications, LLC., owner of US Patent Number 10,448,430. I am Judge Anderson. I am joined by Judges Howard and Repko. We are participating via teleconference so, obviously, we need to keep some things in mind.

First of all, this is a public hearing so be aware that whatever we say may be heard by third parties not a part of the Board. Also, when we specifically get into demonstrative exhibits when referring to a demonstrative, please describe any slide you are discussing by slide number so that we can follow your arguments. We do have all of the demonstratives of both parties and we have a full file of the record made during this trial.

There were no objections that we got to any of the demonstratives; however, that does not mean that you can't have an objection to something. If you do, in terms of argument or a demonstrative, you need to raise it in your own argument, Petitioner would say something probably in surreply as to Patent Owner's demonstratives or arguments and correspondingly, Patent Owner can say something in terms of an objection when it does its response to the opening argument of the Petitioner.

Each party will have 30 minutes to present an argument as you requested in your respective requests for oral argument. Petitioner has the burden to show unpatentability and it will proceed first and then the Patent Owner may respond to what is argued by the Petitioner. Each party may reserve time to rebut the other party's position, so after the Patent Owner

1 responds, Petitioner can take whatever time it has reserved for a rebuttal
2 argument and correspondingly, Patent Owner may reserve time for a
3 surrebuttal after the Petitioner does its response to the position of the Patent
4 Owner.

5 Because we don't have any formal set up for timing, I'm running a
6 timer. I can represent that I will run a timer, but you should watch on your
7 own, counsel, for what time you have left. We are going to try to keep it to
8 the 30 minutes. The issues here are very concise.

9 At this time, let's go ahead and have counsel introduce themselves.
10 Who is going to be preparing the—let's see, I just got a note that there is a
11 little bit of a delay. Mr. Bansal, are you back on? It looks like maybe you
12 are.

13 MR. BANSAL: Good afternoon, Your Honors.

14 MR. MODI: Go ahead, Chet.

15 MR. BANSAL: Go ahead, I'm sorry.

16 MR. MODI: Your Honor, this is Naveen Modi. I'm counsel for
17 Petitioner as well. I think Mr. Bansal can hear you, but he cannot see
18 anyone, so I think he's going to try to disconnect. I was just waiting for you
19 to finish before I jumped in. If it's okay with you, I think he's going to need
20 to disconnect and reconnect. It sounds like there are some issues going on.

21 JUDGE ANDERSON: Well, we've had a few of those this morning,
22 so, yes go ahead and do that. If Mr. Torossian would let us know when all
23 this is ready to go, we'll give Mr. Bansal a chance to get in on video as well.

24 MR. MODI: Thank you, Your Honor.

25 JUDGE ANDERSON: We'll stay for a minute here and just see how
26 that goes.

1 MR. TOROSSIAN: This is Charlie, I'm on standby. Thank you. We
2 have Mr. Bansal connecting now.

3 JUDGE ANDERSON: Okay, Mr. Bansal, are you on now? I can see
4 you; I believe.

5 MR. BANSAL: Yeah, I can see you as well, Your Honors.

6 JUDGE ANDERSON: Okay, so I believe we were at the point of
7 introducing respective counsel for the parties. First, who will be making the
8 presentation on behalf of Petitioner and you might go ahead and identify
9 anyone who is with you, so that we can have that on the record as well.
10 Please go ahead.

11 MR. BANSAL: Thank you, Your Honors. This is Chetan Bansal
12 from Paul Hastings on behalf of Samsung Electronics. I have with me Mr.
13 Naveen Modi.

14 JUDGE ANDERSON: Very good. For Patent Owner, who is going
15 to be presenting the argument?

16 MR. STEPHENS: Your Honor, this is Jeffrey Stephens with Carter
17 Arnett Bennett & Perez. I will be presenting today. I have with me lead
18 counsel, Bradley Liddle.

19 JUDGE ANDERSON: Mr. Stephenson, Stephens, sorry. Okay,
20 before we get into the arguments, we just want the parties to know that
21 we've reviewed the record and our two issues that we want you to give some
22 particular attention to, from what I can tell in the demonstratives, you all are
23 well aware of this, so let me just put our little gloss on it, if you will.

24 The first issue is why we should or should not adopt the construction
25 of "pre-set UE number" from the District Court that's set forth in Exhibit
26 2008. In that claim construction order, which is Exhibit 2008, the District

1 Court determined that a person of ordinary skill in the art would understand
2 the term as meaning a quantity UE as opposed to an identifier. In our
3 institution decision, you will recall we preliminarily determined that it was
4 an identifier.

5 The second issue is should we go ahead and adopt the District Court's
6 construction. How does that impact patentability of, particularly,
7 independent Claims 1 and 18, as being unpatentable either as anticipated or
8 obvious on a combination of, or based alone, on Li, Exhibit 1,005 or Kim,
9 Exhibit 1,011. That does not preclude you from making any other
10 arguments. I know that there are some issues with respect to Claim 18,
11 specific to that claim and certainly you can do those, but just to give you the
12 heads up that's where we're headed.

13 With that, Mr. Bansal, you may proceed and let us know how much
14 time you would like to reserve, if any, for rebuttal.

15 MR. BANSAL: Yes, Your Honor, thank you. I would like to reserve
16 10 minutes for rebuttal.

17 JUDGE ANDERSON: Okay, that means you have 20 minutes of
18 argument time beginning now. Go ahead, Mr. Bansal.

19 MR. BANSAL: Great. Good afternoon. May it please the Board.
20 Your Honor, I think you succinctly summarized the issues and obviously
21 recognize there was one other issue that was raised in our papers. So, let me
22 start with the pre-set UE number issue and turning to slide number three of
23 Petitioner's demonstratives.

24 Both independent claims recite the term pre-set UE number. Our
25 petition mapped an identifier in the Li and Kim references to the term pre-set
26 UE number. Now, that construction was based on Patent Owner's

1 infringement contentions, which you can see on slide number 3. There is an
2 excerpt and before we filed the petitions, we had access to these contentions
3 and Patent Owner took the position that look, a UE identifier, such as a C-
4 RNTI number, is a pre-set UE number and you can see that highlighted on
5 slide number 3. We filed that petition under that understanding, noting that
6 Kim and Li would anticipate—well, Li would at least anticipate the claim,
7 Claim 1 and Claim 18, if Patent Owner’s interpretation is correct.

8 Now, turning to slide number 3, the Board, when it looked at the
9 record, when it looked to the specification, the meaning of the term pre-set
10 UE number was unclear and for good reason. I mean the meaning of the
11 term is unclear. The Board, however, came to the conclusion that, at least
12 preliminarily, they believe an identifier, a UE identifier can be a pre-set UE
13 number. There is no dispute that if that is the correct interpretation, that a
14 pre-set UE number could be a UE identifier, then the prior art clearly
15 invalidates Claims 1 through 15 and 17. There is no dispute about that.

16 Now, if I turn to slide number 5, Your Honors, what happened is you
17 had apparently District Court litigation, after we had filed the petition, and
18 after the Board instituted a trial, the District Court announced a construction
19 for this term, pre-set UE number, and the District Court construed the term
20 as a pre-set number of UEs. Now, we don’t dispute that. Under that
21 construction, Li and Kim would not disclose Claim 1, at least Claim 1, of the
22 430 patent. However, if the Board were to, you know, the Board is certainly
23 not bound by the District Court’s construction, Your Honor, as you know,
24 but if the Board maintains its preliminary construction of pre-set UE
25 number, at least Claims 1 through 5 and 17 are unpatentable. (Simultaneous
26 speaking.)

1 JUDGE HOWARD: This is Judge Howard. The District Court seems
2 to have completely rejected the claim construction that you put forth in this
3 case, which was Patent Owner's Claim Construction in the District Court
4 case. With you having won at the District Court, your claim construction
5 that you wanted, why should we do anything different here?

6 MR. BANSAL: Your Honor, I'll just quibble with that a little bit just
7 to make sure that the framing is correct as we see it. We did not proffer a
8 construction of pre-set UE number in the petition, nor did we proffer a
9 construction of that term before the District Court. Before the District
10 Court, our position was simply the term is indefinite.

11 JUDGE HOWARD: Which means your position, though, it did not
12 include it being a unique identifier. That was part of your construction or
13 part of your argument to the District Court.

14 MR. BANSAL: Yes, Your Honor. I think our argument to the
15 District Court was—

16 JUDGE HOWARD: So, you've told the District Court this doesn't
17 include a unique identifier and that was part of the District Court's claim
18 construction. Having succeeded on your argument at the District Court, why
19 should we do the exact opposite here?

20 MR. BANSAL: Your Honor, we didn't necessarily get what we
21 wanted at the District Court. I mean what we wanted (Simultaneous
22 speaking.)

23 JUDGE HOWARD: Sure, you did. You got the case dismissed,
24 that's exactly what you wanted and congratulations to your trial counsel
25 there. They got what they wanted that patent is no longer being asserted.
26 Aand then because you got what you wanted, you wanted a construction that

1 did not include it being a UE identifier and you got that and then the case
2 went away, why should we do something different here?

3 MR. BANSAL: Your Honor, we're not suggesting one way or the
4 other what the Board should do. We're simply laying out the framework for
5 if the Board does X, then the result is Y. If the Board does A, the result is B.
6 If the Board maintains its original interpretation at the Institution Decision
7 stage of pre-set UE number, then Claims 1 through 15 and 17 should be
8 canceled, should be found unpatentable. However, if the Board does adopt
9 the District Court's construction, then we would agree that Claims 1 through
10 15 and 17 would survive. I think that's the way I would put it, Your Honor.

11 JUDGE HOWARD: Okay, so if you're not proposing a claim
12 construction, does that mean we should move onto the next topic?

13 MR. BANSAL: Yes, Your Honor, if you would like me to.

14 JUDGE HOWARD: (Simultaneous speaking.) I'm not going to put
15 arguments, if you want to argue something, I mean you should certainly be
16 arguing it, but it seems to me if you don't have a position on the claim
17 construction, it would not be a good use of your time to be arguing
18 something about the claim construction.

19 MR. BANSAL: No, Your Honor, and so we were very clear in our
20 papers, hopefully we were clear in our papers. We take no position on the
21 District Court's claim construction. We just simply gave the Board the way
22 we see how the case can proceed depending on what the Board chooses to
23 do. We have not referred a construction of pre-set UE number to the Board
24 here post institution. I mean that's where the matter stands. With that,
25 unless there are any questions, I would like to move on to issue number two,
26 which is the—

1 JUDGE ANDERSON: I'm not done, Mr. Bansal.

2 MR. BANSAL: Oh, sorry.

3 JUDGE ANDERSON: You're not taking any position at all on claim
4 construction here. You're leaving it up to us, but it's your job as Petitioner
5 to construe the claims. So, you're telling us you have no construction to
6 propose on pre-set UE number, correct?

7 MR. BANSAL: Your Honor, yes, that is correct and the reason we
8 don't have a construction is because the term is indefinite. (Simultaneous
9 speaking.)

10 JUDGE ANDERSON: Well, that's really kind of your issue and, you
11 know, you need to take the cards your dealt so you need to come up with a
12 position and you're not. The Patent Owner has made a fairly good
13 argument, in my view, that you should have. So, are you or are you not
14 going to present a construction for pre-set UE number?

15 MR. BANSAL: Your Honor, like we said, we certainly do not take
16 any position on the District Court's construction; however, if we need to
17 proceed based on the petition then so be it. Based on the petition, if you've
18 seen the petition, the interpretation that we proffered was that an identifier
19 under Patent Owner's interpretation in the infringement contentions would
20 satisfy pre-set UE number.

21 If you do need to take into account or you do need to find that we took
22 some positions and that's the only position that exists currently in the record.

23 But, like I said, Your Honor, I mean as the cases have progressed and once
24 we got into claim construction, it became apparent that the term is indefinite.
25 I understand that may not be a satisfying answer for you, so if you need to

1 take Samsung's position as being what's in the petition, then that's what it
2 is. We are not presenting any other construction for your consideration.

3 JUDGE ANDERSON: Okay, so you were very clear that Claim 1 has
4 not been shown unpatentable if we follow the District Court's construction.
5 What about Claim 18?

6 MR. BANSAL: Your Honor, Claim 18 poses a slightly different
7 issue. I mean certainly the term pre-set UE number is also in Claim 18, but
8 we do not believe the Board should render an opinion or a decision on the
9 merits on Claim 18 because the scope of Claim 18 cannot be determined
10 with reasonable certainty and if you can turn to slide number 7, Your Honor,
11 we can see why that's an issue.

12 JUDGE ANDERSON: Okay, let me kind of cut to it on that one then.
13 If we don't agree with you that Claim 18 is indefinite, then you would also
14 agree that Claim 18 has not been shown to be unpatentable under the
15 construction that the District Court took of the term pre-set UE number,
16 correct?

17 MR. BANSAL: I would agree with that, Your Honor.

18 JUDGE ANDERSON: Thank you.

19 MR. BANSAL: Your Honor, very quickly, if we turn to slide number
20 7, the terms any unit is recited in Claim 18 and that unit performs two
21 functions. There is no dispute between the parties. In fact, the parties agree
22 that the terms any unit should be construed as a means-plus-function
23 element. If you turn to slide number 9, the only evidence in the record at
24 this point is that there is no structure specified in the specification for the
25 terms any unit. So, any unit invokes a means-plus-function, well the
26 specification has to provide sufficient structure for it and there is none. The

1 only thing that is shown is a black box in the specification (Simultaneous
2 speaking.)

3 JUDGE ANDERSON: Did the District Court find that there was
4 sufficient structure for a means-plus-function shown in the patent?

5 MR. BANSAL: Yes, Your Honor. The District Court did actually
6 say that and, as you will see in our reply, Your Honor, we disagreed with the
7 District Court and we explained why we disagreed. For example, what the
8 District Court said is the structure is simply a general-purpose computer with
9 a transmitter. That's insufficient because a general-purpose computer with a
10 transmitter cannot, for instance, send a message according to certain
11 requirements of the claim and as explained in our papers.

12 Just for that reason, Your Honor, we believe that the claim term is
13 indefinite and under the Samsung we pursue a precedent. The Board,
14 regardless of what it does on pre-set UE number, should not issue a final
15 decision on Claim 18. If there are any other questions, Your Honor
16 (Simultaneous speaking.)

17 JUDGE HOWARD: This is Judge Howard. Where did you say that
18 in your petition because I looked through your petition and I see the exact
19 opposite. I see you setting forth that it's taught by the prior art.

20 MR. BANSAL: Your Honor—

21 JUDGE HOWARD: (Simultaneous speaking.) You've got some
22 great stuff on your arguments in your petition, so where is it?

23 MR. BANSAL: Your Honor, again, there's a footnote in our petition,
24 Your Honor. It's on page 21, footnote number 5. Right there and I can read
25 that footnote for you, Your Honor.

26 JUDGE HOWARD: No, I have it. Thank you.

1 MR. BANSAL: Yes. We clearly stated there that look, these terms
2 dealing with 112(f) and there is no corresponding structure both monitoring
3 unit and sending unit. Now, Patent Owner, after institution, accepted or
4 adopted the position that yes, these terms do invoke Section 112(f) and now
5 they're arguing that look, the structure isn't met by the prior art. Okay, well,
6 if they are going to do that then they also need to engage with this
7 indefiniteness issue. Where is the structure for sending unit? There is none.
8 That's our position because under the Samsung, we pursue our case if a
9 claim comes indefinite or if the claim is indefinite then the Board should not
10 issue a final decision on the matter.

11 JUDGE HOWARD: Thank you for pointing out that footnote, that
12 was helpful, but isn't the Federal Circuit case law pretty clear that even
13 though claims may be indefinite, if you can find something that meets the
14 limitation, even if the claim is otherwise indefinite, we still need to reach the
15 issue of unpatentability?

16 MR. BANSAL: I think, Your Honor, you're talking about the same
17 case where the Prisua case where there was an IPXL indefiniteness issue and
18 yes, in that particular very specific scenario, where you have an IPXL type
19 of indefiniteness argument, the Federal Circuit did say that look, even
20 though the claim may be indefinite, the Board can reach a final decision on
21 the merits. But, again, it's limited to the IPXL kind of situation.

22 JUDGE HOWARD: Did the Federal Circuit limit it that way in its
23 decision or is that just your reading of it here?

24 MR. BANSAL: Your Honor, that's our reading of it.

25 JUDGE HOWARD: Thank you.

1 MR. BANSAL: Unless there are any further questions, Your Honor, I
2 will yield the panel back my time and save my 10 minutes for rebuttal.

3 JUDGE ANDERSON: Okay, Mr. Bansal. According to me, you're
4 (Simultaneous speaking.) done then for your initial argument. Is that what
5 I'm hearing?

6 JUDGE REPKO: Judge Anderson, I have a question, sorry.

7 JUDGE ANDERSON: No, go ahead.

8 JUDGE REPKO: A question about the functions that the sending unit
9 performs. Your petition at pages 21 through 22, and I guess, in your reply,
10 you talk about how it performs complex functions. It requires a specialized
11 algorithm. What are the complex functions in particular? It seems like one
12 reading could be that it's just simply sending data. What additional
13 complexity are you seeing there?

14 MR. BANSAL: Your Honor, I think the complexity is described in
15 Exhibit 1,014, which is Dr. Ding's declaration, but I can point you if we
16 look at slide number 7, for example. Slide number 7 says well that
17 reproduces the two functions. If we look at function number B, send a
18 message according to an Uplink grant allocated to the UE. So, Your Honor,
19 some sort of processing has to be done to determine what the Uplink grant
20 is. You have to parse the Uplink grant and then be able to send the message.
21 That's not something that a general-purpose processor can do. That's
22 something that the patentee has to describe in the specifications as to how
23 it's done and that hasn't happened here.

24 In fact, patentee had an opportunity in its surreply to come in and
25 explain. Is there an algorithm? Is there some other structure that does this
26 thing beyond a general-purpose processor, but patentee took no position.

1 They provided you and Petitioner with no rebuttal as to where there is
2 support. Their only argument was this issue is vague and we don't
3 understand that. It's clearly raised in the footnote. We have previously
4 taken the position that there is no structure, so if there is some structure, the
5 patentee it was their burden to come forward with that and they haven't done
6 that.

7 JUDGE REPKO: So, the according to language, you're saying that
8 changes the way the message is sent or the way the message is formed? Or
9 when the message is sent? What's the complexity again?

10 MR. BANSAL: Your Honor, the complexity, I can point you to Dr.
11 Ding's declaration, specifically Exhibit 1,014, paragraph number nine. Your
12 Honor, he explains that look implementing this function would have
13 required specialized software, example in algorithm, to example, process
14 and parse the Uplink grant allocated to the UE and generated a message
15 based on the results of such processing and in parsing.

16 JUDGE REPKO: But the limitation doesn't say generate a message,
17 it says sending it, so how does it actually modify the sending, the "according
18 to"? Does it change the way the message is sent?

19 MR. BANSAL: The message is dependent on the Uplink grant and so
20 the (Simultaneous speaking.)

21 JUDGE REPKO: (Simultaneous speaking.) requires the sending
22 right? The sending unit performs the sending. Does it actually form the
23 message, I guess that's what my question is, I just want to clarify that.

24 MR. BANSAL: Yes, the implication is that the system is also
25 forming a message. It's sending a message. It's not just sending a message
26 tree. It's sending a message tree according to an Uplink grant, allocated to

1 the UE. Therein the message tree has specific characteristics. So, Your
2 Honor, again, our position is that the Patent Owner hasn't provided you with
3 any support or any description of an algorithm where that is in the
4 specification. Ultimately, this issue, at least from our perspective, is
5 undisputed. We have testimony in the record from our declarant stating that
6 there is no algorithm and there is no specialized software and Patent Owner
7 hasn't pointed us to anything.

8 JUDGE REPKO: So, you view the sending unit as forming the
9 message and sending it? Is that your position? I just want to clarify that.

10 MR. BANSAL: Your Honor, I think that's accurate, especially in
11 view of sent a message tree according to an Uplink grant, where the message
12 tree comprises XYZ things, which is the random access request a number of
13 UEs or a pre-set UE number.

14 JUDGE REPKO: But is there sufficient structure to actually just send
15 data? Are you disagreeing with that?

16 MR. BANSAL: Your Honor, a transmitter, for instance, that's not
17 even described, so when you're looking at just the specifications, there isn't
18 even a transmitter. The way the District Court sort of interpreted this issue
19 or engaged with this issue was finding a person of ordinary skill in the art is
20 going to know that these systems have transmitters. Well, that's fine, but the
21 specification still needs to have structure first of all and in this case, have an
22 algorithm and then there has to be linking of the algorithm to the sending
23 unit. I mean that simply isn't the case here because the sending unit is just
24 described as a black box. Under Section 112, that's a requirement, Your
25 Honor.

1 JUDGE REPKO: Yes, so the specialized algorithm must be there to
2 be able to form the message and send the message as well. You're looking
3 for some sort of specialized thing and a general-purpose computer, while it
4 can send data, it can't form the message first and send the data, which is
5 what you believed the sending unit covers.

6 MR. BANSAL: Yes, we believe that the sending unit has to send a
7 message according to an Uplink grant, so it has to parse the Uplink grant and
8 then send the message tree according to that and that's not described in the
9 specifications that's required under Section 112.

10 JUDGE REPKO: Thank you. I have no further questions.

11 JUDGE HOWARD: Mr. Bansal, this is Judge Howard again. I do
12 have one other question. You said something about the *Samsung versus*
13 *Prisua* case. I went and looked and one case that cites it is *Intel v.*
14 *Qualcomm* at 21 F.4th 801, in which the Federal Circuit is saying that the
15 Board erred in a case involving 112 paragraph 6, 112(f), in which we just
16 accepted the argument that there wasn't sufficient structure and said it was
17 impossible and they said, no, you have to go back and figure out whether or
18 not you can go and actually reach the determination. Doesn't this seem to
19 contradict your point that just our saying that there's not sufficient structure
20 ends our analysis? That we actually have to go deeper to see if we could
21 rule on this?

22 MR. BANSAL: Your Honor, I will need to go and consider that case
23 to have a proper response and an accurate response for you. Our position is
24 simply at least based on the *Samsung v Prisua* case and the way we
25 understand it that look, if there's an indefinite issue with the Claim, then the
26 Board should not be issuing a final decision.

1 JUDGE HOWARD: Okay, thank you.

2 MR. BANSAL: Thank you. Your Honors, I have nothing further.
3 Thank you for your questions. I'll yield my time back to the court.

4 MR. STEPHENS: Good afternoon, Your Honors. This is Jeffrey
5 Stephens with—

6 JUDGE REPKO: Just a moment, Mr. Stephens.

7 MR. STEPHENS: Sure.

8 JUDGE REPKO: I just want to make sure that we give Judge
9 Anderson . . . it looks like he is missing video here. He might also be
10 missing audio. It looks like Judge Anderson has just disconnected and will
11 rejoin. Let's take a moment to let him do that. Thank you.

12 PTAB HEARINGS TEAM MEMBER: Judges, this is Pat from the
13 Hearings Team, just to let you know we're still trying to get him up.

14 JUDGE REPKO: Thank you.

15 (Whereupon, the above-entitled matter went off
16 the record at 1:34 p.m. and resumed at 1:40 p.m.)

17 JUDGE ANDERSON: Okay, can everybody hear me? I believe I am
18 back in action here.

19 MR. STEPHENS: Yes, Your Honor.

20 JUDGE REPKO: Judge Anderson, we can hear you.

21 JUDGE ANDERSON: Okay. Sorry about that, but I have no control.
22 Mr. Bansal, I believe you had just responded to a question from, I believe, it
23 was Judge Howard at the time, maybe it was Judge—but in any event, you
24 have 8 minutes and 48 seconds left. I had one question that I wanted to put
25 to you and that is this, have you got any reason as to why we should not
26 accept the reasoning of the District Court on the construction of the pre-set

1 UE number that was set forth, I believe, at page 20 of Exhibit 2008. Three
2 reasons were given. Do you have any reasons why we should not accept the
3 construction of the District Court as in those reasons?

4 MR. BANSAL: Your Honor, Samsung takes no position on the
5 District Court's construction, so I have no reason to give you as to why that
6 construction is wrong or right.

7 JUDGE ANDERSON: Okay. Unless you or Judge Repko or Judge
8 Howard have additional questions, thank you for your presentation. You
9 have 9 minutes remaining for rebuttal. With that, Mr. Stephens, you may
10 proceed. Would you like to reserve any time for rebuttal?

11 MR. STEPHENS: Yes, Your Honor, I'd like to reserve 10 minutes
12 for surrebuttal.

13 JUDGE ANDERSON: Okay, very good. We will keep track of that
14 as best we can and you may proceed, Mr. Stephens.

15 MR. STEPHENS: Thank you, and may it please the Board. Good
16 afternoon, I represent the Patent Owner G+ Communications in this IPR. I
17 think Your Honors have the case clearly in mind. I will go through our
18 positions and welcome any questions if there are any, but I think as Your
19 Honors have correctly identified, Samsung takes no position on the proper
20 interpretation of pre-set UE number. Samsung did not spell out any kind of
21 a construction in their initial petition and the Patent Owner response, as
22 Your Honors have recognized, asks that the Board construe the term
23 consistent with how the District Court construed it. Samsung in its reply
24 does not attempt to even clarify what it's claim construction position was in
25 the petition. They don't take any position one way or the other which, in
26 effect, is a backtracking from whatever kind of implied construction may

1 have been in the petition itself. We heard today from counsel for Samsung
2 that if they had to take a position, they would stand on the petition, but it's
3 also a little late for that because that wasn't even in the reply as their
4 preferred construction. So, there was really nothing for Patent Owner to
5 respond to in that respect.

6 If Your Honors would consider slide number 8 of Patent Owner's
7 slides. I think that the Board is within its right to determine that Samsung
8 has failed to meet its burden of proof by not taking a position on claim
9 construction and that's been made very clear by saying that they take no
10 position as to the correctness or incorrectness of the District Court
11 construction, then they're necessarily saying we take no position as to the
12 construction of the term at all, so they're calling into question any potential
13 implied construction from their petition.

14 Moving onto slide number 10, our position is certainly that if the
15 Board does not determine that they've simply failed to meet their burden by
16 not engaging in the claim construction process, that the Board should, for the
17 reasons given by the District Court, construe the pre-set UE number how the
18 District Court did, i.e., a quantity or pre-set number of UEs. I would like to
19 just highlight the Petitioner's statements before the District Court. This is
20 shown on slide 11, where Petitioner has correctly stated that before the
21 District Court, Samsung took the position that pre-set UE number was
22 indefinite. Of course, they avoided taking that position initially in their
23 petition in this matter because they wanted to get the case instituted, but they
24 did state before the District Court that, if anything, the patent suggests that
25 the pre-set UE number is not an identifier; which, I think, Your Honors have
26 recognized is directly contradictory to how their petition at least implies the

1 construction, which again they have not engaged with in any of the papers in
2 this IPR in terms of supporting or backtracking expressly from that
3 construction. They did present that statement, which was accepted, credited
4 at least to some degree by the District Court in light of the construction that
5 the District Court arrived at.

6 The District Court gave three reasons, we've highlighted these on
7 slide 12 of our demonstratives. The Petitioner has not addressed any of
8 those reasons. I would be happy to go through them if that would be helpful
9 for Your Honors, but otherwise, I think it's clear that they want to avoid
10 saying anything. They avoided in the petition even their position that it was
11 indefinite. They avoided that, kind of skirted around that issue for Claim 18
12 as well with the means-plus-function limitations of the sending unit and
13 monitoring unit. Ultimately, Your Honors, I hate to ascribe any intention to
14 them, but it appears like a scenario where Petitioners could try to gain the
15 IPR system this way by not taking any position as to indefiniteness in initial
16 petition and then—and this really applies to Claim 18, but also to the pre-set
17 UE identifier in both Claims 1 and 18, where Petitioners avoid saying
18 anything about indefiniteness in the petition. Then in their reply, they really
19 come back and hammered that.

20 In the argument today, even though it wasn't in their reply, we heard
21 that Samsung's position is that the meaning of pre-set UE number is unclear.
22 They've said one thing to gain institution in a case and they're now taking
23 no position other than to argue things are unclear and indefinite. In this
24 situation, Your Honor, it would appear to be proper for the Board to say that
25 they've failed to carry their burden, simply by the changing positions and the
26 lack of position on how the claims should be construed.

1 I think this applies with equal force to the Claim 18 terms that
2 the parties at this point agree are means-plus-function limitations. Petitioner
3 has pointed to footnote 5 of its petition as—

4 JUDGE HOWARD: Mr. Stephens, before you get onto that.

5 MR. STEPHENS: Yes.

6 JUDGE HOWARD: This is Judge Howard. Just getting back to the
7 District Court claim construction for a minute. I know from looking at your
8 papers, I'm looking at page 19 of your response, you've indicated that Patent
9 Owner has acquiesced in the District Court's construction. It's no longer
10 asserting the '430 patent in that litigation. You said, "does not plan to
11 appeal the construction of that term", and that does not plan language is a
12 little iffy because it could be you didn't intend to appeal it as of that day and
13 you could change your mind in the future. Is there anything more to make it
14 clear that Patent Owner is not planning, you know, not that he's not
15 planning, but will not appeal the claim construction and, therefore, making it
16 truly a final claim construction? Or are you not prepared to go that far?

17 MR. STEPHENS: I am not prepared to go that far, Your Honor, but
18 there is one consideration to think about with that. We don't know exactly
19 what the Board is going to do, so were the Board to construe the term
20 differently than the District Court, we're kind of left with no choice but to
21 try to somehow reconcile the two decisions. I mean that's one reason why
22 we couldn't say with certainty.

23 JUDGE HOWARD: Okay. Then let me ask the question slightly
24 differently because I see your point there and it's a valid point. If we go and
25 adopt the District Court's claim construction, are you able to go and say that
26 Patent Owner will not appeal that claim construction in the District Court?

1 MR. STEPHENS: I would see that as very unlikely. I cannot at this
2 moment say there's no scenario under which that would happen.

3 JUDGE HOWARD: Okay, thank you.

4 MR. STEPHENS: Thank you, Your Honor. I will move on to
5 address Claim 18's limitation specific to that claim, unless there are any
6 further questions on the pre-set UE number, although I will, I guess, reiterate
7 what we heard from Samsung's counsel which is that there was no dispute
8 that under the District Court construction of pre-set UE number, Li and Kim
9 would not disclose at least Claim 1 and then in follow up questions, agree
10 that would also apply to the pre-set UE number term in Claim 18. It's very
11 clear that under the District Court's construction, they cannot prevail and
12 they will have failed to meet their burden of proof under that construction
13 that was adopted by the District Court.

14 As to the Claim 18 limitations, I'd like to go back to footnote 5 that
15 was brought up by Petitioner from their petition. That was on page 21 of
16 Paper 1, the petition. In Petitioner's reply and in the argument today, there
17 was some suggestion that Petitioner argued in the petition that there was no
18 corresponding structure and really what footnote 5 shows is that Petitioner
19 was aware of this issue, but really chose not to address it. Everything in the
20 reply about this was plainly foreseeable as shown by what they stated in
21 footnote 5, but there is no analysis that goes along with it.

22 Footnote 5 says, arguably the terms, there are nonce terms and there is
23 no corresponding structure, I'm paraphrasing there. Then, there is a broad
24 statement that to the extent Patent Owner says there is an algorithm is
25 disclosed, the prior arts disclosure is commensurate with the extent to which
26 any such algorithm is disclosed. I think the Board has recognized that

1 Petitioners have to do more in the petition, especially where you're dealing
2 with potential means-plus-function claims, as we pointed out in the
3 response. Petitioners agreed before the District Court that those were
4 means-plus-function limitations.

5 We've included additional analysis in the reply as to why these terms
6 are means-plus-function limitations. Plainly, the Petitioner was aware of
7 this issue and should have addressed it in the petition in terms of addressing
8 any corresponding structure in the 430 patent and then addressing where that
9 structure or its equivalents would have been located in prior art. There
10 really is no such analysis. They did not deal with that analysis and it's plain
11 now why they wanted to avoid that, is just that they wanted to argue after
12 institution that these limitations are indefinite.

13 I would urge the Board not to go down that road in terms of the, for
14 lack of a better word, the gamesmanship of Petitioner here in saying one
15 thing to gain institution and coming back with another thing to try and avoid
16 a decision on the term that they haven't addressed. I think the Board has
17 different routes here it could take in terms of how it makes its decision, but
18 at the end of the day, based on Petitioner's positions, both on claim
19 construction and its admission as to what is not shown in the petition and the
20 references that they raised, that the Board should determine that the
21 Petitioner has not met its burden of proof in this case.

22 JUDGE ANDERSON: Mr. Stephens, let me ask about Claim 18 and
23 the structure issue here on the means-plus-function aspect of it. Petitioner
24 does provide a rebuttal declaration of—I can't remember if he's a professor
25 or not, but I'll say Professor Ding, who says that unit is a generic term, does

1 not provide any indication regarding structure. Do you have anything to say
2 about that at this time? The Ding declaration, the rebuttal declaration.

3 MR. STEPHENS: Yes, Your Honor, that declaration I don't recall it
4 being cited in the papers and certainly not that part of it. I mean the position
5 in the petition was arguably there could be no corresponding structure, but
6 even what is in that exhibit and I believe that declaration was simply
7 provided from the District Court proceedings. I don't think it was—I could
8 be wrong; I don't believe that was specific to this proceeding. Let me see if
9 I can find that to confirm.

10 JUDGE ANDERSON: I'll double check that. Yes, Mr. Stephens, I'm
11 showing it was, in fact, submitted in this case.

12 MR. STEPHENS: In this case? Okay. Well, as to the substance, it
13 really is neither here nor there. As to the substance of it, the Patent Owner
14 does take the position in the reply, goes through the analysis. We agree that
15 they are means-plus-functions terms, so that's kind of step one of the
16 analysis of whether they're means-plus-function terms, right? Whether the
17 term—well, maybe I've misunderstood question, Your Honor, if you
18 would—

19 JUDGE ANDERSON: I don't want to spend a huge amount of time
20 on this. Let me kind of short circuit to it. I take it your position is the Ding
21 declaration is the Ding declaration, there's not really anything you need to
22 say about it. You didn't get a responsive declaration along with your
23 surreply and you're relying essentially on what the District Court said in its
24 claim construction order. Fair?

25 MR. STEPHENS: That's fair, Your Honor, yes.

26 JUDGE ANDERSON: Okay.

1 MR. STEPHENS: I welcome any other questions, but I yield the time
2 back to the Board if there are none and I will save my rebuttal time.

3 JUDGE ANDERSON: Okay, you have 3-1/2 minutes left plus your
4 10 minutes, so you have 13 minutes if you choose to use them, which is not
5 required. Back to Mr. Bansal, Mr. Bansal, you have 9 minutes remaining for
6 your rebuttal. You may proceed.

7 MR. BANSAL: Thank you, Your Honors. Can you hear me?

8 JUDGE ANDERSON: Yes.

9 MR. BANSAL: Okay. Your Honor, just very briefly, I was not going
10 to have any rebuttal, but I heard the accusation or the word gamesmanship a
11 couple of times, so I just have to say that look, we're not going to engage
12 with those comments. There was no gamesmanship here. We filed the
13 petition based on the cards we were dealt at that time, that's about it. Once
14 we had the District Court's construction, we told the Board where we stood.
15 That's about it, unless there are any further questions, thank you for your
16 time.

17 JUDGE ANDERSON: Very good, Mr. Bansal. Mr. Stephens, I doubt
18 you have much to say and probably can't really say anything given that
19 response, but here's your opportunity.

20 MR. STEPHENS: I will just say I was not trying to level any kind of
21 an accusation, but to point out the potential, you know, if the Board were to
22 go down the road of entertaining sort of new arguments about indefiniteness
23 and things that really weren't presented and developed in the petition, I was
24 just trying to point out sort of the dangers and opportunities it could provide
25 for gamesmanship, that was only point. Thank you, Your Honor.

1 JUDGE ANDERSON: Very good. I have no further questions.
2 Judge Howard, do you have any further questions?

3 JUDGE HOWARD: I have no further questions.

4 JUDGE ANDERSON: And Judge Repko, any further questions?

5 JUDGE REPKO: No further questions. Thank you.

6 JUDGE ANDERSON: Okay. I thank the parties for the presentations
7 and the focus of the issues here. It's very helpful to have that. With that,
8 unless either party has a question, we are adjourned. Any questions from
9 you, Mr. Bansal?

10 MR. BANSAL: No. Thank you, Your Honor.

11 JUDGE ANDERSON: And, Mr. Stephens?

12 MR. STEPHENS: No, Your Honor. Thank you for the panel's time
13 today.

14 JUDGE ANDERSON: Very good. Okay, with that we are adjourned.
15 Now, I would ask the attorneys to stay on the line so that the court reporter
16 can address any questions, I believe it's a he today, might have. The judges
17 will leave the video right now. If you have any questions, Court Reporter,
18 please ask them of the attorneys. We are adjourned. Thank you very much.
19 (Whereupon, the above-entitled matter went off the record at 2:01 p.m.)

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